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Title 3—

The President

Proclamation 7548 of April 30, 2002

Law Day, U.S.A., 2002

By the President of the United States of America

A Proclamation

One of our Nation's greatest strengths is its commitment to a just, fair legal system and the protection it affords to the rights and freedoms we cherish. On May 1, we observe Law Day to draw attention to the principles of justice and the practice of law. The theme of this year's Law Day, "Celebrate Your Freedom: Assuring Equal Justice for All," acknowledges the essential task of protecting the rights of every American.

When disputes or conflicts arise, or when persons are charged with violating the law, resolution often occurs within the legal system. Consultation with an attorney is a common first step in this process. Attorneys advise clients of their rights and obligations, suggest possible courses of action, and help their clients to understand legal procedures. Attorneys are zealous advocates on behalf of their clients, helping to ensure that each one receives full and fair representation before the courts. Bar associations and other attorney groups play an important role in maintaining the integrity of our legal system by overseeing admission to the bar and setting standards of discipline for those who practice law.

Our Founding Fathers believed that a strong and independent judiciary was a cornerstone of democracy. Judges must be men and women of skill, discernment, experience, and character who meet the highest standards of training, temperament, and impartiality. They must understand and honor the powers granted to them under the Constitution, as well as the limits on those powers. In criminal matters, judges help to ensure that the innocent remain free and the guilty are appropriately punished. In civil disputes, judges' decisions help to safeguard the stability of the commercial marketplace and address the grievances of wronged parties. Judges are called upon daily to render decisions that are based upon the law and facts of each case, without regard for popular opinion or political or other extraneous pressures.

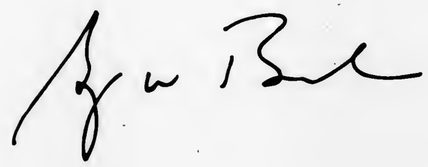
Our forefathers imagined a well-qualified judiciary put in place through a dynamic and constructive interaction between the executive and legislative branches of Government. Under our Constitution, the President selects individuals for nomination to the Federal judiciary and the Senate provides its advice and consent. In all cases, both branches of Government strive to make certain that only men and women of the highest intellect, character, integrity, judgment, and experience are appointed to serve our Nation and its citizens in these critical positions.

This Law Day, I encourage all Americans to reflect on the vital work performed by our Federal judiciary in upholding the rule of law and on the importance of a robust and independent judiciary in our system of Government.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, in accordance with Public Law 870920, as amended, do hereby proclaim May 1, 2002, as Law Day, U.S.A. I call upon all the people of the United States to observe this day with appropriate ceremonies and

activities. I also call upon Government officials to display the flag of the United States in support of this national observance.

IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11245
Filed 05–02–02; 9:31 am]
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Presidential Documents

Proclamation 7549 of April 30, 2002

Loyalty Day, 2002

By the President of the United States of America

A Proclamation

Ours is a Nation of people who demonstrate their patriotic loyalty through service to our country. Whether born on American soil or abroad, Americans appreciate patriotism and loyalty to our country. President Woodrow Wilson said, "Loyalty means nothing unless it has at its heart the absolute principle of self-sacrifice." Americans affirmed this sense of loyalty for their homeland during and following the attacks of September 11, 2001. Brave rescuers died while saving others. Passengers on a hijacked airplane gave their lives to prevent the deaths of fellow Americans. Americans pledged to fight terrorism, both here and across the globe.

Since that tragic day, citizens across our country overwhelmingly gave their time and resources to help those in need. These countless expressions of patriotism reflect an inspiring devotion to our fellow citizens and our Nation.

For our military personnel, loyalty and dedication is a way of life. The men and women of our Armed Forces embody loyalty as they work to protect our ideals. Throughout our history, America's military has heroically defended our country and its founding principles of freedom and democracy. Today, our military is again responding to the call of duty with courage and pride. These brave individuals who risk their lives fighting terror honor those who have made the ultimate sacrifice on behalf of the American people.

Our Constitution speaks of forming "a more perfect Union," and Americans have always responded to this call with commitment and character. Brave citizens have fought to abolish slavery, to extend voting rights to all our citizens, and to uphold civil rights. The struggle to improve our Nation also takes place on an individual level, one person at a time. Men and women of all ages and from all over the country work every day to help others in need. Through families, community groups, and places of worship, Americans give of themselves to help others realize a brighter future.

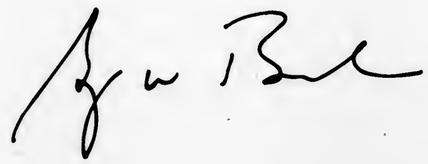
Our loyalty to American democracy and freedom is born of pride, appreciation, and understanding of our country. We are loyal to America, our fellow citizens, and these ideals. Loyalty Day provides an opportunity to recognize those who demonstrate their commitment to our country through service and sacrifice. These individuals serve as a model for all Americans.

The Congress, by Public Law 85–529, as amended, has designated May 1 of each year as "Loyalty Day." On this special occasion, I encourage all Americans to join me in reaffirming our allegiance to our blessed Nation.

NOW, THEREFORE, I, GEORCE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 1, 2002, as Loyalty Day. I call upon all Americans to take part in celebrating this national observance.

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IN WITNESS WHEREOF, I have hereunto set my hand this thirtieth day of April, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11246
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Presidential Documents

Proclamation 7550 of May 1, 2002

Asian/Pacific American Heritage Month, 2002

By the President of the United States of America

A Proclamation

Our Nation's rich cultural diversity reflects our Constitution's core vision of freedom and justice for all. Throughout our history, Asian/Pacific Americans have made great contributions to America's heritage and prosperity. During this month, we proudly celebrate Asian/Pacific Americans, one of the fastest growing ethnic groups in the United States, for their remarkable role in our Nation's development.

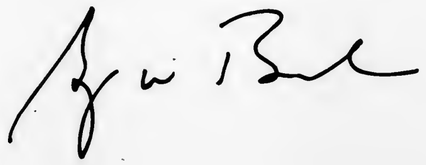
Through the years, Asian immigrants and Pacific Islanders have enriched the American way of life. Nobel Prize winner Dr. Subrahmanyan Chandrasekhar's groundbreaking theories on the evolution of stars helped lay the foundation for modern astrophysics. Actress Anna May Wong was one of the first Asian Americans to achieve great fame in American film. And the men of the 100th Infantry Battalion and the 442nd Regimental Combat Team, composed primarily of Asian/Pacific Americans, valiantly served our Nation during World War II. These units are remembered as some of the most highly decorated in U.S. military history.

During the observance of Asian/Pacific American Heritage Month, we celebrate the cultural traditions, ancestry, native languages, and unique experiences represented among the more than 30 ethnic groups from Asia and the Pacific found here in the United States. We also recognize millions of Asian/Pacific Americans whose love of family, hard work, and community has helped unite us as a people and sustain us as a Nation.

To honor the achievements of Asian/Pacific Americans, the Congress, by Public Law 102-450, as amended, has designated the month of May each year as "Asian/Pacific American Heritage Month."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 2002 as Asian/Pacific American Heritage Month. I call upon our citizens to learn more about the history of Asian/Pacific Americans and how they have contributed so much to our national heritage and culture.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02-11293
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Presidential Documents

Proclamation 7551 of May 1, 2002

Older Americans Month, 2002

By the President of the United States of America

A Proclamation

Our Nation's strength and vitality reside in our citizens. Each year in May, we honor and recognize older Americans for their important sacrifices and contributions to our society. Our seniors have cared for their families and communities, enhanced our economic prosperity, defended our Nation, and preserved and protected the Founders' vision. Their commitment to our future sets an inspiring example for all. And their resilience, fortitude, and experience provide us with important perspectives and insights as we face the challenges of a new era.

The theme of this year's observance, "America: A Community for All Ages," reminds us that all citizens, regardless of age, are essential to successful and safe communities. The celebration also recognizes the extended role seniors play in our families, communities, and workplaces, as they live longer, healthier, and more productive lives. Drawing on their considerable knowledge and experience, older Americans mentor at-risk children, deliver meals to homebound seniors, and care for frail or chronically ill family members. Others embark on exciting new careers or engage in challenging themselves in athletic competitions. In addition, many seniors have answered my call to service by becoming involved in the Senior Corps domestic service program, which is administered by the Corporation for National and Community Service.

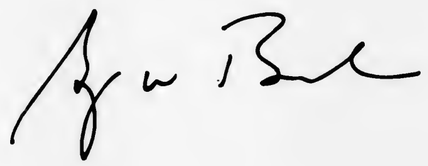
As we celebrate the lives of older Americans, we also renew our dedication to their well-being. My Administration strongly supports measures that protect the promise of retirement and healthcare security for seniors. We must modernize our Medicare and Medicaid programs so that seniors can access the best medicines and treatments. We must secure a good prescription drug benefit program for all our seniors. We must also continue to support medical research that is specifically targeted to the health problems of older Americans. By supporting flexible and innovative forms of long-term care, we can reduce the demands of caring for an elderly or disabled loved one. And we must strengthen financial security by protecting Social Security for today's retirees by encouraging private saving among all Americans, giving individuals more control over their investments.

This year's observance of Older Americans Month also marks the 30th anniversary of the Older Americans Act Nutrition Program, one of our most vital, community-based programs for seniors. Managed by the Administration on Aging and supported by the private sector and countless nonprofit organizations, the program has provided nearly 6 billion meals to senior centers and other group settings and to those who are homebound. It has also provided nutrition counseling and opportunities for health screening. For many elderly, this program has made a tremendous impact on their quality of life.

By maintaining and improving programs that assist older Americans, we help these important citizens enjoy longer, healthier, and more productive lives. During this month, I join all Americans in paying tribute to the achievements and contributions of our greatest generation and reaffirming our commitment to their well-being.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 2002 as Older Americans Month. I commend the national aging network of State, local, and tribal organizations, service and healthcare providers, caregivers, and millions of dedicated volunteers for your daily efforts on behalf of our senior citizens. I encourage all Americans to honor their elders, to seek opportunities to address their needs, and to work together to reinforce the bonds that unite families and communities. I also call upon all our citizens to publicly reaffirm our Nation's commitment to older Americans this month and throughout the year.

IN WITNESS WHEREOF, I have hereunto set my hand this first day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Rules and Regulations

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Monday, May 6, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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NUCLEAR REGULATORY COMMISSION

10 CFR Part 15

RIN 3150–AG80

Debt Collection Procedures

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations concerning the procedures used to collect debts that are owed to NRC. These amendments will conform NRC regulations to the legislative changes enacted in the Debt Collection Improvement Act of 1996 (DCIA) and the amended procedures presented in the Federal Claims Collection Standards (FCCS) issued by the Department of the Treasury (Treasury) and the Department of Justice (DOJ). This final action is intended to allow the NRC to improve its collection of debts due the United States.

EFFECTIVE DATE: June 5, 2002.

FOR FURTHER INFORMATION CONTACT: Leah Tremper, Office of the Chief Financial Officer, U.S. Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD 20852–2738, Telephone 301–415–7347.

SUPPLEMENTARY INFORMATION:

I. Background
II. Comments on Proposed Rule
III. Section by Section Analysis
IV. Voluntary Consensus Standards
V. Finding of No Significant Environmental Impact
VI. Paperwork Reduction Act
VII. Regulatory Analysis
VIII. Regulatory Flexibility Certification
IX. Backfit Analysis

I. Background

On August 9, 1990 (55 FR 32375), the Nuclear Regulatory Commission (NRC) published a final rule concerning debt collection procedures. Since then, the DCIA Act (DCIA) of 1996 (Pub. L. 104–134), was enacted on April 26, 1996. This Act enhances debt collection Government-wide. The purposes of this Act are—

(1) To maximize collections of delinquent debts owed to the Government by ensuring quick action to enforce recovery of debts and the use of all appropriate collection tools,

(2) To minimize the costs of debt collection by consolidating related functions and activities and utilizing interagency teams,

(3) To reduce losses arising from debt management activities by requiring proper screening of potential borrowers, aggressive monitoring of all accounts, and sharing of information within and among Federal agencies,

(4) To ensure that the public is fully informed of the Federal Government's debt collection policies and that debtors are cognizant of their obligations to repay amounts owed to the Federal Government,

(5) To ensure that debtors have all appropriate due process rights, including the ability to verify, challenge, and compromise claims, and access to administrative appeals procedures which are both reasonable and protect the interests of the United States,

(6) To encourage agencies, when appropriate, to sell delinquent debt particularly debts with underlying collateral, and

(7) To rely on the experience and expertise of private sector professionals to provide debt collection services to Federal agencies.

This Act provides that any nontax debt or claim owed to the United States that has been delinquent for a period of 180 days shall be referred to the Treasury or Treasury-designated collection center for appropriate action to collect or terminate collection action on the debt or claim. The DCIA of 1996 has expanded the collection tools available through administrative offset.

One of the most significant provisions of the DCIA of 1996 is the requirement that most agency debt over 180 days delinquent be referred to the Treasury for collection. The DCIA of 1996 provides Treasury with new collection tools, including the authority to offset any Federal agency's payment to a vendor to satisfy that vendor's debt to a different Federal agency. This capability can improve our collection efforts as follows:

(1) It limits the amount of time spent on trying to collect from delinquent debtors by referring a debt to Treasury when it becomes 180 days delinquent;

(2) It provides a powerful collection tool, offset of Federal payments, that is otherwise unavailable to NRC; and

(3) It puts the debt in the hands of a professional staff that is dedicated to handling collections.

The FCCS (31 CFR Chapter IX and parts 900, 901, 902, 903, and 904) were revised on November 22, 2000 (65 FR 70390). The revised FCCS clarify and simplify Federal debt collection procedures and reflect changes under the DCIA of 1996 and the General Accounting Office Act of 1996. The revised FCCS reflect legislative changes to Federal debt collection procedures enacted under the DCIA of 1996 (DCIA), Public Law 104–134, 110 Stat. 1321–358, as part of the Omnibus Consolidated Rescissions and Appropriations Act of 1996. The revised FCCS provide agencies with greater latitude to adopt agency-specific regulations, tailored to the legal and policy requirements applicable to the various types of Federal debt, to maximize the effectiveness of Federal debt collection procedures. The Secretary of the Treasury has been added as a co-promulgator of the FCCS in accordance with section 31001(g)(1)(C) of the DCIA of 1996. The Comptroller General has been removed as a co-promulgator in accordance with section 115(g) of the General Accounting Office Act of 1996, Public Law 104–316, 110 Stat. 3826 (October 19, 1996), (65 FR 70390 (2000)). The Treasury and DOJ have published the revised FCCS as a joint final rule under new Chapter IX, Title 31, Code of Federal Regulations. The revised FCCS supersede the current FCCS codified at 4 CFR parts 101–105.

The revised FCCS prescribe standards for Federal agency use in the administrative collection, offset, compromise, and the suspension or termination of collection activity for civil claims for money, funds, or property, as defined by 31 U.S.C. 3701(b), unless specific Federal agency statutes or regulations apply to such activities, or as provided for by Title 11 of the United States Code when the claims involve bankruptcy. The revised

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FCCS also prescribe standards for referring debts to the DOJ for litigation.

II. Comments on Proposed Rule

On October 5, 2001 (68 FR 50860), the NRC published a proposed rule to amend its debt collections procedures to conform NRC regulations to the legislative changes enacted in the DCIA of 1996 and the revised FCCS. The comment period expired on December 19, 2001. No comments were received on the proposed rule.

III. Section by Section Analysis

Section 15.1 Application

The DCIA of 1996 requires all Federal agencies to refer delinquent debt that is over 180 days old to Treasury for offset and collection. This section is amended to reflect that the NRC is not limited to collection remedies contained in the revised FCCS, and eliminate the GAO's role as co-promulgator of the FCCS.

Section 15.2 Definitions

This section is amended to expand the definition of "claim or debt" to conform with the DCIA of 1996. Other definitions such as "administrative wage garnishment," "cross-servicing," "Federal agencies," "recoupment," "tax refund offset," "Treasury," and "withholding order" have been added to conform to the definitions in the DCIA of 1996.

Section 15.5 Claims That Are Covered

This section is amended to include reference to Executive Order 12146, which references interagency resolution of disputes, to exclude specifically from coverage a claim under the Internal Revenue Code of 1986, and to add claims that involve bankruptcy are covered by Title 11 of the United States Code.

Section 15.7 Monetary Limitation on NRC's Authority

This section is amended to increase NRC's authority to compromise a claim or to terminate or suspend collection action on a claim covered by these procedures to $100,000 to reflect the ceiling change established by 31 U.S.C. 3711(a)(2) and to delete reference to the GAO.

Section 15.8 Information Collection Requirements: OMB approval

This section is added to state that this part contains no information collection requirements and is not subject to the requirements of the Paperwork Reduction Act.

Section 15.9 No Private Rights Created

This section is amended to change the section heading from "Omission not a defense" to "No private rights created" and delete the reference to 4 CFR part 101–105 and substitute the reference to 31 CFR Chapter IX, parts 900–904.

Section 15.11 Form of Payment

This section is amended to change the section heading from "Conversion claims" to "Form of payment" and allow claims to be paid in money or property, if contractually authorized.

Section 15.20 Aggressive Agency Collection Action

This section is added to include DCIA debt collection provisions for referral of delinquent debt to Treasury for cross-servicing, and mandate cooperation among Federal agencies as required by the DCIA of 1996.

Section 15.21 Written Demand for Payment

This section is amended to change the number of demand letters to be sent for each debt from three to two. The revised FCCS allows agencies latitude to adopt agency-specific regulations and this change in the number of demand letters reflects the latitude allowed. In addition, the noticing requirements is amended to include the name, address, and phone number of an NRC contact for each demand letter, to delete the reference to 4 CFR 102.13 and 102.5 and to substitute the reference to 31 CFR Chapter IX part 901.9 and 901.4, and to add procedures to follow when a bankruptcy petition is filed by a debtor. The DCIA of 1996 allows agencies greater latitude to adopt agency-specific regulations and the change in the number of demand letters reflects the latitude allowed.

Section 15.23 Telephone or Internet Inquiries and Investigations

This section is amended to include the use of the internet as a means of contacting a debtor.

Section 15.26 Reporting Claims

The section heading is changed from "Use of consumer reporting agencies" to "Reporting claims." This section is amended to include the due process notification to the individual debtor with the second demand letter, and delete the requirement for sending at least one demand letter by registered or certified mail.

Section 15.29 Suspension or Revocation of License

This section is revised to:

(1) State that the suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal Government; and

(2) Include that NRC will seek legal advice from its Office of the General Counsel for those debts that involve bankruptcy before suspending or revoking a license.

Section 15.32 Contracting for Collection Services

This section is amended to include that NRC may contract for collection services in order to recover delinquent debts if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services and delete the reference to 4 CFR 102.6 and substitute the reference to 31 CFR Chapter IX, part 901.5.

Section 15.33 Collection by Administrative Offset

This section is revised to include several new debt collection procedures under the DCIA of 1996, including but not limited to—

(1) Transfer or referral of delinquent debt to the Department of the Treasury or Treasury-designated debt collection center for collection, known as "cross-servicing;"

(2) Centralized administrative offset by disbursing officials;

(3) Credit bureau reporting; and

(4) Prohibition against extending Federal financial assistance in the form of a loan or loan guarantee to delinquent debtors.

Included in this section are NRC administrative offset procedures to be followed prior to initiating centralized and non-centralized offsets.

Section 15.35 Payments

This section is amended to delete confess-judgment notes, delete how payments are to be applied when there are multiple debts, include credit cards as a payment method, and change the address where payments are to be sent.

Section 15.37 Interest, Penalties, and Administrative Charges

This section is amended to delete reference to 4 CFR 102.2 and 102.13 and substitute the reference to 31 CFR Chapter IX, part 901.2 and 901.9 and add that NRC is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

Section 15.39 Bankruptcy Claims

This section is amended to include procedures the NRC would follow when

notified that a debtor has filed for bankruptcy protection.

Section 15.41 When a Claim May Be Compromised

This section is amended to delete reference to the GAO, clarify that the FCCS applies to debt referred to Treasury for collection (cross-servicing), and include procedures for referring claims that exceed $100,000 to the DOJ for acceptance of the compromise offer.

Section 15.43 Reasons for Compromising a Claim

This section is amended to delete reference to 4 CFR 103 and 103.4 and substitute the reference to 31 CFR Chapter IX, part 902 and 902.2.

Section 15.45 Consideration of Tax Consequences to the Government

This section heading is changed from "Restrictions on the compromise of a claim" to "Consideration of tax consequences to the Government." This section is amended to allow acceptance of a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim and reword the remainder of the section.

Section 15.49 Mutual Release of the Debtor and the Government

This section is added to include the requirement that compromises be implemented by means of mutual release, when appropriate.

Section 15.51 When Collection Action May Be Suspended or Terminated

This section is amended to include procedures for suspending or terminating collection action on claims over $100,000 and to eliminate GAO's debt collection role.

Section 15.53 Reasons for Suspending Collection Action

This section is amended to prescribe factors to consider when determining that collection action should be suspended, and when collection activity should be suspended pending waiver or administrative review, and to include consideration of the impact of the Bankruptcy Code in bankruptcy cases.

Section 15.55 Reasons for Terminating Collection Action

This section is amended to combine paragraphs (a) through (c) and add that NRC may terminate collection activity on a debt that has been discharged in bankruptcy.

Section 15.57 Termination of Collection Action

This section is amended to add that termination does not preclude retention of debt records for purposes of selling the debt, pursuing collection at a subsequent date, offsetting against future income or assets, and screening future applicants for prior indebtedness; and add that collection activity may be terminated for debts that have been discharged in bankruptcy.

Section 15.60 Discharge of Indebtedness; Reporting Requirements

This section is added to require the NRC to take all appropriate collection actions and make a determination that further collection action is not warranted before making a determination to discharge a debt, provide that the NRC may not discharge a debt until the requirements of 31 U.S.C. 3711(i) (sale of debt) have been met, and provide that the NRC will report discharge of debt to the IRS on Form 1099–C.

Section 15.61 Prompt Referral

This section is amended to include revised procedures for referring debts that are over $1,000,000 to the DOJ for litigation, include requirements that the NRC refrain from debtor contact after referral to DOJ, and add provisions that DOJ shall notify the NRC of any payments received from the debtor.

Section 15.65 Referral of a Compromise Offer

This section is amended to delete reference to the GAO and include the requirement that a written offer of compromise that is substantial in amount be referred to DOJ using a Claims Collection Litigation Report (CCLR) accompanied by supporting data and particulars concerning the debt.

Section 15.67 Referral to the Department of Justice

This section is amended to add the requirement that certified copies of documents be forwarded to DOJ with litigation referrals, increase the minimum amount of claims to be referred to DOJ to $2,500, and add exception for claims being referred solely to secure a judgment for lien filing purposes.

IV. Voluntary Consensus Standards

The National Technology Transfer and Advancement Act of 1995, Public Law 104–113, requires that Federal agencies use technical standards that are developed or adopted by voluntary consensus standards bodies unless using such a standard is inconsistent with applicable law or otherwise impractical. In this final rule, the NRC is amending part 15 to reflect the current requirements of the revised DCIA of 1996 and the revised FCCS. This action does not constitute the establishment of a standard that contains generally applicable requirements.

V. Finding of No Significant Environmental Impact

The Commission has determined, under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and, therefore, an environmental impact statement is not required. This final rule is necessary to conform the NRC regulations to the amended procedures presented in the revised FCCS. Amending the procedures that the NRC uses to collect debts which are owed to it will not have any radiological environmental impact offsite and no impact on occupational radiation exposure onsite. The rule does not affect nonradiological plant effluents and has no other environmental impact. The environmental assessment and finding of no significant impact, on which this determination is based, are available for inspection at the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, between 7:30 am and 4:15 pm except on Federal holidays.

VI. Paperwork Reduction Act

This final rule does not contain information collection requirements and, therefore, is not subject to the requirements of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

VII. Regulatory Analysis

The final rule conforms NRC procedures for collecting debts owed it with the amended procedures presented in the FCCS and the DCIA of 1996, and, as such, will not have a significant impact on state and local governments and geographical regions; health, safety, and the environment; nor will it represent substantial costs to licensees, the NRC, or other Federal agencies. This constitutes the regulatory analysis for this final rule.

VIII. Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Commission certifies that this rule does not have a significant economic impact on a substantial number of small entities. As a result, a regulatory flexibility analysis has not been prepared. Interest and late payment

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charges imposed on a small entity will ordinarily not exceed $100 per year. This rule affects small entities billed for byproduct materials licensing fees, and materials annual fees established under 10 CFR 170.31, Category 3, and 10 CFR 171.16, Category 3 (physicians in private practice, small hospitals, other entities involved with radiography and research), and for Freedom of Information Act processing costs (small universities, small consulting firms, and public interest groups). The NRC issues approximately 1,100 billings annually to small entities. For example, the maximum annual billing under 10 CFR 171.16, Category 3, to any one small entity is $2,300 per fee category. Past experience shows that 97–98 percent of billings are paid within 90 days after the billing date. The late payment charges imposed for a small entity that pays the debt of $2,300, 90 days after the billing date, will be $84.12 assuming a Treasury annual interest rate of 6 percent, penalty at 6 percent, and administrative charges at $5 per month.

The rule allows a small entity to pay a debt on an installment basis if it is unable to pay a debt in full prior to the due date (ordinarily 30 days after the billing date). This arrangement requires the payment of interest on the unpaid debt and the administrative charge for each month the installment is in effect. The annual interest charges imposed on a small entity will be less than $140 assuming a maximum billing of $2,300 paid in 12 monthly installments at an annual interest rate of 6 percent and $60 in administrative charges.

IX. Backfit Analysis

The NRC has determined that the backfit rule does not apply to this final rule; therefore, a backfit analysis is not required for this final rule because these amendments are mandated by the DCIA of 1996 (Pub. L. 104–134, 110 Stat. 1321–358 (April 26, 1996)).

List of Subjects in 10 CFR Part 15

Administrative practice and procedures, Debt collection.

Small Business Regulatory Enforcement Fairness Act

In accordance with the Small Business Regulatory Enforcement Act of 1996, the NRC has determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR part 15.

PART 15—DEBT COLLECTION PROCEDURES

1. The authority citation for Part 15 is revised to read as follows:

Authority: Secs. 161, 186, 68 Stat. 948, 955, as amended (42 U.S.C. 2201, 2236); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841); sec. 1, Pub. L. 97–258, 96 Stat. 972 (31 U.S.C. 3713); sec. 5, Pub. L. 89–508, 80 Stat. 308, as amended (31 U.S.C. 3716); Pub. L. 97–365, 96 Stat. 1749 (31 U.S.C. 3719); Federal Claims Collection Standards, 31 CFR Chapter IX, parts 900–904; 31 U.S.C. Secs. 3701, 3716; 31 CFR Sec. 285; 26 U.S.C. Sec. 6402(d); 31 U.S.C. Sec. 3720A; 26 U.S.C. Sec. 6402(c); 42 U.S.C. Sec. 664; Pub. L. 104–134, as amended (31 U.S.C. 3713); 5 U.S.C. 5514; Executive Order 12146 (3 CFR, 1980 Comp. pp. 409–412); Executive Order 12988 (3 CFR, 1996 Comp., pp. 157–163).

2. In § 15.1 paragraphs (a)(1) and (a)(3) are revised and paragraph (c) is added to read as follows:

§ 15.1 Application.

(a) * * *

(1) Collects, compromises, suspends, offsets, and terminates collection action for claims;

* * * * *

(3) Refers unpaid claims over 180 days delinquent to Treasury for offset and collection and to the DOJ for litigation.

* * * * *

(c) The NRC is not limited to collection remedies contained in the revised Federal Claims Collection Standards (FCCS). The FCCS is not intended to impair common law remedies.

3. In § 15.2, the definition of *Claim* and *debt* is revised, and the definitions of *Administrative wage garnishment, Cross-servicing, Federal agencies, Recoupment, Tax refund offset, Treasury,* and *Withholding order,* are added in alphabetical order to read as follows:

§ 15.2 Definitions.

* * * * *

Administrative wage garnishment is the process of withholding amounts from an employee's disposable pay and the paying of those amounts to a creditor in satisfaction of a withholding order.

Claim and *debt* are used synonymously to refer to an amount of money, funds, or property that has been determined by an agency official to be owed to the United States from any person, organization, or entity, except another Federal agency. For the purposes of administrative offset under 31 U.S.C. 3716, the terms *claim* and *debt* include an amount of money, funds, or property owed by a person to a State (including past-due support being enforced by a State), the District of Columbia, American Samoa, Guam, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, or the Commonwealth of Puerto Rico.

Cross-servicing means that the Treasury or another debt collection center is taking appropriate debt collection action on behalf of one or more Federal agencies or a unit or subagency thereof.

* * * * *

Federal agencies include agencies of the executive, legislative, and judicial branches of the Government, including Government corporations.

* * * * *

Recoupment is a special method for adjusting debts arising under the same transaction or occurrence. For example, obligations arising under the same contract generally are subject to recoupment.

* * * * *

Tax refund offset means withholding or reducing a tax refund payment by an amount necessary to satisfy a debt owed by the payee(s) of a tax refund payment.

Treasury as used in 10 CFR part 15 means the Department of the Treasury.

Withholding order means any order for withholding or garnishment of pay issued by an agency, or judicial or administrative body.

4. In § 15.5, paragraphs (b)(4) and (b)(5) are revised and (b)(7) is added to read as follows:

§ 15.5 Claims that are covered.

* * * * *

(b) * * *

(4) A claim under the Internal Revenue Code of 1986.

(5) A claim between Federal agencies. Federal agencies should attempt to resolve interagency claims as referenced in Executive Order 12146 (3 CFR, 1980 Comp., pp. 409–412).

* * * * *

(7) A claim involving bankruptcy is covered by Title 11 of the United States Code.

5. In § 15.7, paragraphs (a) and (b) are revised to read as follows:

§ 15.7 Monetary limitation on NRC's authority.

* * * * *

(a) Have not been referred to another Federal Agency for further collection actions; and

(b) Do not exceed $100,000 (exclusive of interest, penalties, and administrative charges) or such higher amount as the Attorney General shall from time to time prescribe for purposes of compromise or suspension or termination of collection activity.

6. Section 15.8 is added to read as follows:

§ 15.8 Information Collection Requirements: OMB approval.

This part contains no information collection requirements, and therefore, is not subject to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

7. Section 15.9 is amended by revising the section heading and paragraph (a) to read as follows:

§ 15.9 No private rights created.

(a) The failure of NRC to include in this part any provision of the FCCS, 31 CFR Chapter IX, parts 900–904, does not prevent the NRC from applying these provisions.

* * * * *

8. Section 15.11 is amended by revising the section heading and paragraphs (a) and (b) to read as follows:

§ 15.11 Form of payment.

* * * * *

(a) The return of specific property; or

(b) The performance of specific services.

9. Section 15.20 is added under subpart B to read as follows:

§ 15.20 Aggressive agency collection activity.

(a) The NRC shall take aggressive action to collect all debts. These collection activities will be undertaken promptly and follow-up action will be taken as appropriate. These regulations do not require the Department of Justice, Department of the Treasury (Treasury), or any other Treasury-designated collection center to duplicate collection activities previously undertaken by NRC.

(b) Debt referred or transferred to Treasury or to a Treasury-designated debt collection center under the authority of 31 U.S.C. 3711(g) must be serviced, collected, or compromised, or the collection action will be suspended or terminated, in accordance with the statutory requirements and authorities applicable to the collection of the debts.

(c) The NRC shall cooperate with other agencies in their debt collection activities.

(d) The NRC will consider referring debts that are less than 180 days delinquent to Treasury or to a Treasury-designated debt collection center to accomplish efficient, cost-effective debt collection. Referrals to debt collection centers are at the discretion of, and for a time period acceptable to, Treasury.

(e) The NRC shall transfer any debt that has been delinquent for 180 days or more to Treasury so that it may take appropriate action to collect the debt or terminate collection actions. This requirement does not apply to any debt that—

(1) Is in litigation or foreclosure;

(2) Will be disposed of under an approved asset sale program;

(3) Has been referred to a private collection contractor for a period of time acceptable to Treasury;

(4) Is at a debt collection center for a period of time acceptable to Treasury;

(5) Will be collected under internal offset procedures within 3 years after the date the debt first became delinquent; or

(6) Is exempt from this requirement based on a determination by Treasury that exemption for a certain class of debt is in the best interest of the United States.

(f) Agencies operating Treasury-designated debt collection centers are authorized to charge a fee for services rendered regarding referred or transferred debts. The fee may be paid out of amounts collected and may be added to the debt as an administrative cost.

10. In § 15.21, paragraphs (a)(5), (a)(6), the introductory text of paragraph (b), paragraphs (b)(3)(ii), (b)(3)(iii), and (b)(3)(vi) are revised and paragraphs (a)(7) and (e) are added to read as follows:

§ 15.21 Written demands for payment.

(a) * * *

(5) The applicable standards for assessing interest, penalties, and administrative costs under 31 CFR 901.9;

(6) The applicable policy for reporting the delinquent debt to consumer reporting agencies; and

(7) The name, address, and phone number of a contact person or office within the NRC will be included with each demand letter.

(b) The NRC shall normally send two demand letters to debtors. The initial demand letter will be followed approximately 30 days later with a second demand letter, unless circumstances indicate that alternative remedies better protect the Government's interest, that the debtor has explicitly refused to pay, or that sending a further demand letter is futile. Depending upon the circumstances, the first and second demand letters may—

* * * * *

(3) * * *

(ii) The NRC may report debts to credit bureaus, refer debts to debt collection centers and collection agencies for cross-servicing (including wage garnishment), tax refund offset, administrative offset, and litigation. Any eligible debt that is delinquent for 180 days or more will be transferred to the Treasury for collection. Credit bureau reporting for transferred debts will be handled by Treasury or a Treasury-designated center.

(iii) Possible reporting of the delinquent debt to consumer reporting agencies in accordance with the guidance and standards contained in 31 CFR 901.4.

* * * * *

(vi) The right to refer the claim to DOJ for litigation.

* * * * *

(e) When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, the NRC will cease collection action immediately unless it has been determined that under 11 U.S.C. 362, the automatic stay has been lifted or is no longer in effect.

11. In § 15.23, the section heading and paragraph (a) are revised to read as follows:

§ 15.23 Telephone or internet inquiries and investigations.

(a) If a debtor has not responded to one or more demands, the NRC shall make reasonable efforts by telephone or internet to determine the debtor's intentions.

* * * * *

12. Section 15.26 is amended by revising the section heading and paragraph (a)(2), removing paragraph (a)(3), and redesignating paragraphs (a)(4) and (a)(5) as (a)(3) and (a)(4) and revising these paragraphs to read as follows:.

§ 15.26 Reporting claims.

(a) * * *

(2) The NRC has included a notification in the second written demand (see § 15.21(b)) to the individual debtor stating—

(i) That the payment of the debt is delinquent;

(ii) That within not less than 60 days after the date of the notification, the NRC intends to disclose to a consumer reporting agency that the individual debtor is responsible for the debt;

(iii) The specific information to be disclosed to the consumer reporting agency; and

(iv) That the debtor has a right to a complete explanation of the debt (if that has not already been given), to dispute information in NRC records about the

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debt, and to request reconsideration of the debt by administrative appeal or review of the debt.

(3) The NRC has reconsidered its initial decision on the debt when the debtor has requested a review under paragraph (a)(2)(iv) of this section.

(4) The NRC has taken reasonable action to locate a debtor for whom the NRC does not have a current address to send the notification provided for in paragraph (a)(2) of this section.

* * * * *

13. Section 15.29 is revised to read as follows:

§ 15.29 Suspension or revocation of license.

In non-bankruptcy cases, the NRC may suspend or revoke any license, permit, or approval which the NRC has granted to the debtor for any inexcusable, prolonged, or repeated failure of the debtor to pay a delinquent debt. Before suspending or revoking any license, permit, or approval for failure to pay a debt, the NRC shall issue to the debtor (by certified mail) an order or a demand for information as to why the license, permit, or approval should not be suspended or revoked. The NRC shall allow the debtor no more than 30 days to pay the debt in full, including applicable interest, penalties, and administrative costs of collection of the delinquent debt. The NRC may revoke the license, permit, or approval at the end of this period. If a license is revoked under authority of this part, a new application, with appropriate fees, must be made to the NRC. The NRC may not consider an application unless all previous delinquent debts of the debtor to the NRC have been paid in full. The suspension or revocation of a license, permit, or approval is also applicable to Federal programs or activities that are administered by the states on behalf of the Federal Government to the extent that they affect the Federal Government's ability to collect money or funds owed by debtors. In bankruptcy cases, before advising the debtor of NRC's intention to suspend or revoke licenses, permits, or approvals, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code which may restrict such action.

14. Section 15.32 is revised to read as follows:

§ 15.32 Contracting for collection services.

The NRC may contract for collection services in order to recover delinquent debts only if the debts are not subject to the DCIA requirement to transfer debts to Treasury for debt collection services, e.g. debts that are less than 180 days delinquent. However, the NRC retains the authority to resolve disputes, compromise claims, suspend or terminate collection action, and initiate enforced collection through litigation. When appropriate, the NRC shall contract for collection services in accordance with the guidance and standards contained in 31 CFR chapter IX, parts 900–904.

15. Section 15.33 is revised to read as follows:

§ 15.33 Collection by administrative offset.

(a) *Application.* (1) The NRC may administratively undertake collection by centralized offset on each claim which is liquidated or certain in amount in accordance with the guidance and standards in 31 CFR Chapter IX, parts 900–904 and 5 U.S.C. 5514.

(2) This section does not apply to:

(i) Debts arising under the Social Security Act, except as provided in 42 U.S.C. 404;

(ii) Payments made under the Social Security Act, except as provided for in 31 U.S.C. 3716(c) (see 31 CFR 285.4, Federal Benefit Offset);

(iii) Debts arising under, or payments made under, the Internal Revenue Code (see 31 CFR 285.2, Tax Refund Offset) or the tariff laws of the United States;

(iv) Offsets against Federal salaries to the extent these standards are inconsistent with regulations published to implement such offsets under 5 U.S.C. 5514 and 31 U.S.C. 3716 (see 5 CFR part 550, subpart K, and 31 CFR 285.7, Federal Salary Offset);

(v) Offsets under 31 U.S.C. 3728 against a judgment obtained by a debtor against the United States;

(vi) Offsets or recoupments under common law, State law, or Federal statutes specifically prohibiting offsets or recoupments of particular types of debts; or

(vii) Offsets in the course of judicial proceedings, including bankruptcy.

(3) Unless otherwise provided for by contract or law, debts or payments that are not subject to administrative offset under 31 U.S.C. 3716 may be collected by administrative offset under the common law or their applicable statutory authority.

(4) Unless otherwise provided by law, the NRC may not initiate administrative offset of payments under the authority of 31 U.S.C. 3716 to collect a debt more than 10 years after the Government's right to collect the debt first accrued, unless facts material to the Government's right to collect the debt were not known and could not reasonably have been known to the NRC, or collection of "approval" fees has been deferred under 10 CFR part 170. If the collection of "approval" fees has been deferred, the ten-year period begins to run at the end of the deferral period.

(5) In bankruptcy cases, the NRC will seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on pending or contemplated collections by offset.

(b) *Mandatory centralized offset.* (1) The NRC is required to refer past due, legally enforceable, nontax debts that are over 180 days delinquent to Treasury for collection by centralized administrative offset. A debt is legally enforceable if there has been a final NRC determination that the debt, in the amount stated, is due and there are no legal bars to collection action. Debts that are less than 180 days delinquent also may be referred to Treasury for this purpose.

(2) The names and taxpayer identifying numbers (TINs) of debtors who owe debts referred to Treasury as described in paragraph (b)(1) of this section must be compared to the names and TINs on payments to be made by Federal disbursing officials. Federal disbursing officials include disbursing officials of Treasury, the Department of Defense, the United States Postal Service, other Government corporations, and disbursing officials of the United States designated by Treasury. When the name and TIN of a debtor match the name and TIN of a payee and all other requirements for offset have been met, the payment will be offset to satisfy the debt.

(3) Federal disbursing officials will notify the debtor/payee in writing that an offset has occurred to satisfy, in part or in full, a past due, legally enforceable delinquent debt. The notice must include a description of the type and amount of the payment from which the offset was taken, the amount of offset that was taken, the identity of the creditor agency (NRC) requesting the offset, and a contact point within NRC who will respond to questions regarding the offset

(c) *NRC administrative offset.* (1) Before referring a delinquent debt to Treasury for administrative offset, the NRC adopts the following administrative offset procedures:

(i) Offsets may be initiated only after the debtor has been sent written notice of the type and amount of the debt, the intention of the NRC to use administrative offset to collect the debt, and an explanation of the debtor's rights under 31 U.S.C. 3716; and

(ii) The debtor has been given—

(A) The opportunity to inspect and copy NRC records related to the debt;

(B) The opportunity for a review within the NRC of the determination of indebtedness; and

(C) The opportunity to make a written agreement to repay the debt.

(iii) The procedures set forth in paragraph (c)(1)(i) of this section may be omitted when—

(A) The offset is in the nature of a recoupment;

(B) The debt arises under a contract as set forth in Cecile Industries, Inc. v. Cheney, 995 F.2d 1052 (Fed. Cir. 1993) (notice and other procedural protections set forth in 31 U.S.C. 3716(a) do not supplant or restrict established procedures for contractual offsets accommodated by the Contracts Disputes Act); or

(C) The NRC first learns of the existence of the amount owed by the debtor when there is insufficient time before payment would be made to the debtor/payee to allow for prior notice and an opportunity for review. This applies to non-centralized offsets conducted under paragraph (d) of this section. When prior notice and an opportunity for review are omitted, the NRC shall give the debtor notice and an opportunity for review as soon as practicable and shall refund any money ultimately found not to have been owed to the NRC.

(iv) When an agency previously has given a debtor any of the required notice and review opportunities with respect to a particular debt (31 CFR 901.2), the NRC need not duplicate the notice and review opportunities before administrative offset may be initiated.

(2) When referring delinquent debts to Treasury, the NRC shall certify, in a form acceptable to Treasury, that:

(i) The debt is past due and legally enforceable; and

(ii) The NRC has complied with all due process requirements under 31 U.S.C. 3716(a) and the NRC's regulations.

(3) Payments that are prohibited by law from being offset are exempt from centralized administrative offset. The Treasury shall exempt payments under means-tested programs from centralized administrative offset when requested in writing by the head of the payment-certifying or authorizing agency. Also, the Treasury may exempt other classes of payments from centralized offset upon the written request of the head of the payment-certifying or authorizing agency.

(4) Benefit payments made under the Social Security Act (42 U.S.C. 301 *et seq.*), part B of the Black Lung Benefits Act (30 U.S.C. 921 *et seq.*), and any law administered by the Railroad Retirement Board (other than tier 2 benefits), may be offset only in accordance with Treasury regulations, issued in consultation with the Social Security Administration, the Railroad Retirement Board, and the Office of Management and Budget (31 CFR 285.4).

(5) In accordance with 31 U.S.C. 3716(f), the Treasury may waive the provisions of the Computer Matching and Privacy Protection Act of 1988 concerning matching agreements and post-match notification and verification (5 U.S.C. 552a(o) and (p)) for centralized administrative offset upon receipt of a certification from the NRC that the due process requirements enumerated in 31 U.S.C. 3716(a) have been met. The certification of a debt in accordance with paragraph (c)(2) of this section will satisfy this requirement. If a waiver is granted, only the Data Integrity Board of the Department of the Treasury is required to oversee any matching activities, in accordance with 31 U.S.C. 3716(g). This waiver authority does not apply to offsets conducted under paragraphs (c) and (d) of this section.

(d) *Non-centralized administrative offset.* (1) Generally, non-centralized administrative offsets are ad hoc case-by-case offsets that NRC would conduct, at its discretion, internally or in cooperation with the agency certifying or authorizing payments to the debtor. Unless otherwise prohibited by law, when centralized administrative offset is not available or appropriate, past due, legally enforceable, nontax delinquent debts may be collected through non-centralized administrative offset. In these cases, the NRC may make a request directly to a payment-authorizing agency to offset a payment due a debtor to collect a delinquent debt. For example, the NRC will request the Office of Personnel Management (OPM) to offset a Federal employee's lump sum payment upon leaving Government service to satisfy an unpaid advance.

(2) Before requesting Treasury to conduct a non-centralized administrative offset, the NRC adopts the following procedures, which provide that such offsets may occur only after:

(i) The debtor has been provided due process as set forth in paragraph (c)(1) of this section; and

(ii) The Treasury has received written certification from NRC that the debtor owes the past due, legally enforceable delinquent debt in the amount stated, and that the NRC has fully complied with its regulations concerning administrative offset.

(3) Treasury shall comply with offset requests by NRC to collect debts owed to the United States, unless the offset would not be in the best interests of the United States with respect to the Treasury's program, or would otherwise be contrary to law. Appropriate use should be made of the cooperative efforts of other agencies in effecting collection by administrative offset.

(4) When collecting multiple debts by non-centralized administrative offset, the NRC will apply the recovered amounts to those debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case, particularly the applicable statute of limitations.

(e) *Requests to OPM to offset a debtor's anticipated or future benefit payment under the Civil Service Retirement and Disability Fund.* Upon providing OPM written certification that a debtor has been afforded the procedures provided in paragraph (c)(1) of this section, the NRC will request OPM to offset a debtor's anticipated or future benefit payments under the Civil Service Retirement and Disability Fund (Fund) in accordance with regulations codified at 5 CFR 831.1801–831.1808. Upon receipt of such a request, OPM will identify and "flag" a debtor's account in anticipation of the time when the debtor requests, or becomes eligible to receive, payments from the Fund. This will satisfy any requirement that offset be initiated prior to the expiration of the time limitations referenced in paragraph (a)(4) of this section.

(f) *Review requirements.* (1) For purposes of this section, whenever the NRC is required to afford a debtor a review within the agency, the NRC shall provide the debtor with a reasonable opportunity for an oral hearing in accordance with 10 CFR 16.9, when the debtor requests reconsideration of the debt, and the NRC determines that the question of the indebtedness cannot be resolved by review of the documentary evidence, for example, when the validity of the debt turns on an issue of credibility or veracity.

(2) Unless otherwise required by law, an oral hearing under this section is not required to be a formal evidentiary hearing, although the NRC should carefully document all significant matters discussed at the hearing.

(3) This section does not require an oral hearing with respect to debt collection systems in which a determination of indebtedness rarely involves issues of credibility or veracity, and the NRC has determined that review of the written record is ordinarily an adequate means to correct prior mistakes.

(4) In those cases in which an oral hearing is not required by this section, the NRC shall accord the debtor a "paper hearing," that is, a determination of the request for reconsideration based upon a review of the written record.

16. In § 15.35, paragraph (b), the introductory text of paragraph (c), and paragraph (c)(1) are revised to read as follows:

§ 15.35 Payments.

* * * * *

(b) Payment by installment. If a debtor furnishes satisfactory evidence of inability to pay a claim in one lump sum, payment in regular installments may be arranged. Evidence may consist of a financial statement or a signed statement that the debtor's application for a loan to enable the debtor to pay the claim in full was rejected. Except for a claim described in 5 U.S.C. 5514 and codified in 10 CFR part 16, all installment payment arrangements must be in writing and require the payment of interest and administrative charges.

(1) Installment note forms may be used. The written installment agreement must contain a provision accelerating the debt payment in the event the debtor defaults. If the debtor's financial statement discloses the ownership of assets which are free and clear of liens or security interests, or assets in which the debtor owns an equity, the debtor may be asked to secure the payment of an installment note by executing a Security Agreement and Financing Statement transferring to the United States a security interest in the asset until the debt is discharged.

(2) If the debtor owes more than one debt, the NRC will apply the payment to the various debts in accordance with the best interests of the United States, as determined by the facts and circumstances of the particular case.

(c) To whom payment is made. Payment of a debt is made by check, electronic transfer, draft, credit card, or money order and should be payable to the United States Nuclear Regulatory Commission, License Fee and Accounts Receivable Branch, P.O. Box 954514, St. Louis, MO. 63195–4514, unless payment is—

(1) Made pursuant to arrangements with DOJ;

* * * * *

17. In § 15.37, paragraphs (a) and (b) are revised and paragraph (l) is added to read as follows:

§ 15.37 Interest, penalties, and administrative costs.

(a) The NRC shall assess interest, penalties, and administrative costs on debts owed to the United States Government in accordance with the guidance provided under the FCCS, 31 CFR 901.9.

(b) Before assessing any charges on delinquent debt, the NRC shall mail or hand-deliver a written notice to the debtor explaining its requirements concerning these charges under 31 CFR 901.2 and 901.9, except where these charges are included in a contractual or repayment agreement.

* * * * *

(l) The NRC is authorized to impose interest and related charges on debts not subject to 31 U.S.C. 3717, in accordance with common law.

18. Section 15.39 is revised to read as follows:

§ 15.39 Bankruptcy claims.

When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, before proceeding with further collection action, the NRC will immediately seek legal advice from its Office of the General Counsel concerning the impact of the Bankruptcy Code on any pending or contemplated collection activities. Unless the NRC determines that the automatic stay imposed at the time of filing pursuant to 11 U.S.C. 362 has been lifted or is no longer in effect, collection activity against the debtor will in most cases stop immediately.

(a) After seeking legal advice from its Office of the General Counsel, a proof of claim usually will be filed with the bankruptcy court or the Trustee.

(b) If the NRC is a secured creditor, it may seek relief from the automatic stay regarding its security, subject to the provisions and requirements of 11 U.S.C. 362.

(c) Offset is stayed in most cases by the automatic stay. However, the NRC will seek legal advice from its Office of the General Counsel to determine whether its payments to the debtor and payments of other agencies available for offset may be frozen by the agency until relief from the automatic stay can be obtained from the bankruptcy court. The NRC will seek legal advice from its Office of the General Counsel to determine if recoupment is available.

19. Section 15.41 is revised to read as follows:

§ 15.41 When a claim may be compromised.

(a) The NRC may compromise a claim not in excess of the monetary limitation if it has not been referred to DOJ for litigation.

(b) Unless otherwise provided by law, when the principal balance of a debt, exclusive of interest, penalties, and administrative costs, exceeds $100,000 or any higher amount authorized by the Attorney General, the authority to accept the compromise rests with the DOJ. The NRC will evaluate the compromise offer, using the factors set forth in this part. If an offer to compromise any debt in excess of $100,000 is acceptable to the NRC, the NRC shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ using a CCLR. The referral must include appropriate financial information and a recommendation for the acceptance of the compromise offer. DOJ approval is not required if the compromise offer is rejected by NRC.

20. In § 15.43, paragraphs (c) and (d) are revised to read as follows:

§ 15.43 Reasons for compromising a claim.

* * * * *

(c) The cost of collecting the claim does not justify the enforced collection of the full amount. The NRC shall apply this reason for compromise in accordance with the guidance in 31 CFR 902.2.

(d) The NRC shall determine the debtor's inability to pay, the Government's ability to enforce collection, and the amounts that are acceptable in compromise in accordance with the FCCS, 31 CFR part 902.

* * * * *

21. Section 15.45 is revised to read as follows:

§ 15.45 Consideration of tax consequences to the Government.

(a) The NRC may accept a percentage of a debtor's profits or stock in a debtor corporation in compromise of a claim. In negotiating a compromise with a business concern, the NRC should consider requiring a waiver of tax-loss-carry-forward and tax-loss-carry-back rights of the debtor. For information on reporting requirements, see § 15.60.

(b) When two or more debtors are jointly and severally liable, the NRC will pursue collection activity against all debtors, as appropriate. The NRC will not attempt to allocate the burden of payment between the debtors but will proceed to liquidate the indebtedness as quickly as possible. The NRC will ensure that a compromise agreement with one debtor does not release the NRC's claim against the remaining debtors. The amount of a compromise with one debtor shall not be considered a precedent or binding in determining the amount that will be required from other debtors jointly and severally liable on the claim.

22. Section 15.49 is added to subpart C to read as follows:

§ 15.49 Mutual releases of the debtor and the Government.

(a) In all appropriate instances, a compromise that is accepted by NRC should be implemented by means of a mutual release.

(1) The debtor is released from further non-tax liability on the compromised debt in consideration of payment in full of the compromised amount.

(2) The Government and its officials, past and present, are released and discharged from any and all claims and causes of action arising from the same transaction held by the debtor.

(b) If a mutual release is not executed when a debt is compromised, unless prohibited by law, the debtor is still deemed to have waived any and all claims and causes of action against the Government and its officials related to the transaction giving rise to the compromised debt.

23. Section 15.51 is revised to read as follows:

§ 15.51 When collection action may be suspended or terminated.

The NRC may suspend or terminate collection action on a claim not in excess of the monetary limitation of $100,000 or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, after deducting the amount of partial payments or collections, if any of the debt has not been referred to the DOJ for litigation. If, after deducting the amount of any partial payments or collections, the principal amount of a debt exceeds $100,000, or such other amount as the Attorney General may direct, exclusive of interest, penalties, and administrative costs, the authority to suspend or terminate rests solely with the DOJ. If the NRC believes that suspension or termination of any debt in excess of $100,000 may be appropriate, the NRC shall refer the debt to the Civil Division or other appropriate litigating division in the DOJ, using the CCLR. The referral should specify the reasons for the NRC's recommendation. If, prior to referral to the DOJ, the NRC determines that a debt is plainly erroneous or clearly without legal merit, the NRC may terminate collection activity, regardless of the amount involved, without obtaining DOJ concurrence.

24. Section 15.53 is revised to read as follows:

§ 15.53 Reasons for suspending collection action.

The NRC may suspend collection activity when:

(a) The NRC cannot locate the debtor;

(b) The debtor's financial condition is not expected to improve; or

(c) The debtor has requested a waiver or review of the debt.

(d) Based on the current financial condition of the debtor, the NRC may suspend collection activity on a debt when the debtor's future prospects justify retention of the debt for periodic review and collection activity and:

(1) The applicable statute of limitations has not expired; or

(2) Future collection can be effected by administrative offset, notwithstanding the expiration of the applicable statute of limitations for litigation of claims, with due regard to the 10-year limitation for administrative offset prescribed by 31 U.S.C. 3716(e)(1); or

(3) The debtor agrees to pay interest on the amount of the debt on which collection will be suspended, and such suspension is likely to enhance the debtor's ability to pay the full amount of the principal of the debt with interest at a later date.

(e)(1) The NRC shall suspend collection activity during the time required for consideration of the debtor's request for waiver or administrative review of the debt, if the statute under which the request is sought prohibits the NRC from collecting the debt during that time.

(2) If the statute under which the request is sought does not prohibit collection activity pending consideration of the request, the NRC may use discretion, on a case-by-case basis, to suspend collection. Further, the NRC ordinarily should suspend collection action upon a request for waiver or review, if the NRC is prohibited by statute or regulation from issuing a refund of amounts collected prior to NRC consideration of the debtor's request. However, the NRC should not suspend collection when the NRC determines that the request for waiver or review is frivolous or was made primarily to delay collection.

(f) When the NRC learns that a bankruptcy petition has been filed with respect to a debtor, in most cases, the collection activity on a debt must be suspended, pursuant to the provisions of 11 U.S.C. 362, 1201, and 1301, unless the NRC can clearly establish that the automatic stay has been lifted or is no longer in effect. The NRC should seek legal advice immediately from its Office of the General Counsel and, if legally permitted, take the necessary steps to ensure that no funds or money are paid by the NRC to the debtor until relief from the automatic stay is obtained.

25. Section 15.55 is revised to read as follows:

§ 15.55 Reasons for terminating collection action.

The NRC may terminate collection activity when:

(a) The NRC is unable to collect any substantial amount through its own efforts or through the efforts of others;

(b) The NRC is unable to locate the debtor;

(c) Costs of collection are anticipated to exceed the amount recoverable,

(d) The debt is legally without merit or enforcement of the debt is barred by any applicable statute of limitations;

(e) The debt cannot be substantiated; or

(f) The debt against the debtor has been discharged in bankruptcy.

26. Section 15.57 is revised to read as follows:

§ 15.57 Termination of collection action.

(a) Before terminating collection activity, the NRC should have pursued all appropriate means of collection and determined, based upon the results of the collection activity, that the debt is uncollectible. Termination of collection activity ceases active collection of the debt. The termination of collection activity does not preclude the NRC from retaining a record of the account for purposes of:

(1) Selling the debt, if the Treasury determines that such sale is in the best interests of the United States;

(2) Pursuing collection at a subsequent date in the event there is a change in the debtor's status or a new collection tool becomes available;

(3) Offsetting against future income or assets not available at the time of termination of collection activity; or

(4) Screening future applicants for prior indebtedness.

(b) Generally, the NRC will terminate collection activity on a debt that has been discharged in bankruptcy, regardless of the amount. However, the NRC may continue collection activity, subject to the provisions of the Bankruptcy Code, for any payments provided under a plan of reorganization.

27. Section 15.59 is revised to read as follows:

§ 15.59 Exception to termination.

When a significant enforcement policy is involved, or recovery of a judgment is a prerequisite to the imposition of administrative sanctions, the NRC may refer debts for litigation, although termination of collection activity may be appropriate.

28. Section 15.60 is added to subpart D to read as follows:

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§ 15.60 Discharge of indebtedness; reporting requirements.

(a) Before discharging a delinquent debt (also referred to as a close out of the debt), the NRC shall take all appropriate steps to collect the debt in accordance with 31 U.S.C. 3711(g). including, as applicable, administrative offset; tax refund offset; Federal salary offset; referral to Treasury, Treasury-designated debt collection centers, or private collection contractors; credit bureau reporting; wage garnishment; litigation; and foreclosure. Discharge of indebtedness is distinct from termination or suspension of collection activity under 10 CFR 15.55 and 15.57 and is governed by the Internal Revenue Code. When collection action on a debt is suspended or terminated, the debt remains delinquent, and further collection action may be pursued at a later date. When the NRC discharges a debt in full or in part, further collection action is prohibited. Therefore, the NRC will make the determination that collection action is no longer warranted before discharging a debt. Before discharging a debt, the NRC must terminate debt collection action.

(b) Section 3711(i), title 31, United States Code, requires agencies to sell a delinquent nontax debt upon termination of collection action if Treasury determines such a sale is in the best interests of the United States. Since the discharge of a debt precludes any further collection action (including the sale of a delinquent debt), the NRC may not discharge a debt until the requirements of 31 U.S.C. 3711(i) have been met.

(c) Upon discharge of an indebtedness, the NRC shall report the discharge to the IRS in accordance with the requirements of 26 U.S.C. 6050P and 26 CFR 1.6050P–1. The NRC may request Treasury or a Treasury-designated debt collection center to file a discharge report to the IRS on the NRC's behalf.

(d) When discharging a debt, the NRC shall request that litigation counsel release any liens of record securing the debt.

29. Section 15.61 is revised to read as follows:

§ 15.61 Prompt referral.

(a) The NRC shall promptly refer debts that are subject to aggressive collection activity (as described in subpart B of this part) and that cannot be compromised, or debts on which collection activity cannot be suspended or terminated, to DOJ for litigation. Debts for which the principal amount exceeds $1,000,000, or such other amount as the Attorney General may direct, exclusive of interest and penalties, must be referred to the Civil Division or other division responsible for litigating such debts at DOJ, Washington, DC. Debts for which the principal amount is $1,000,000 or less, or such other amount as the Attorney General may direct, exclusive of interest or penalties, must be referred to the DOJ's Nationwide Central Intake Facility, as required by the CCLR instructions. Debts will be referred as early as possible, consistent with the NRC's aggressive collection activity and well within the one year of the NRC's final determination of the fact and the amount of the debt.

(b) DOJ has exclusive jurisdiction over the debts referred to in paragraph (a) of this section. The NRC shall terminate the use of any administrative collection activities to collect a debt when the debt is referred to DOJ. The NRC shall advise the DOJ of the collection activities it used and the results. The NRC shall refrain from having any contact with the debtor and shall direct all inquiries to DOJ. The NRC shall immediately notify DOJ of any payments credited to the debtor's account after the account has been referred to DOJ. DOJ shall notify NRC in a timely manner of any payments it receives from the debtor.

30. Section 15.65 is revised to read as follows:

§ 15.65 Referral of a compromise offer.

The NRC may refer a debtor's firm written offer of compromise, which is substantial in amount, to the Civil Division or other appropriate litigating division in DOJ using a CCLR accompanied by supporting data and particulars concerning the debt.

31. Section 15.67 is revised to read as follows:

§ 15.67 Referral to the Department of Justice.

(a) Unless excepted by DOJ, the NRC shall complete the CCLR accompanied by a Certificate of Indebtedness, to refer all administratively uncollectible claims to the DOJ for litigation.

(b) The NRC shall indicate the actions it wishes DOJ to take regarding the referred claim on the CCLR.

(c) Before referring a debt to DOJ for litigation, the NRC shall notify each person determined to be liable for the debt that, unless the debt can be collected administratively, litigation may be initiated. This notification must comply with Executive Order 12988 (3 CFR, 1996 Comp., pp 157–163) and may be given as part of a demand letter or as a separate document.

(d) The NRC shall preserve all files and records that DOJ may need to prove the claim in court.

(e) The NRC may ordinarily not refer for litigation claims of less than $2,500, exclusive of interest, penalties, and administrative charges, or such other amount as the Attorney General shall from time to time prescribe.

(f) The NRC may not refer claims of less than the minimum amount unless:

(1) Litigation to collect a smaller claim is important to ensure compliance with NRC's policies and programs;

(2) The claim is being referred solely to secure a judgment against the debtor, which will be filed as a lien against the debtor's property under 28 U.S.C. 3201 and returned to the NRC for enforcement, or

(3) The debtor has the clear ability to pay the claim, and the Government effectively can enforce payment, with due regard for the exemptions available to the debtor under state and Federal law and the judicial remedies available to the Government.

Dated at Rockville, Maryland, this 24th day of April 2002.

For the Nuclear Regulatory Commission.

Jesse L. Funches,

Chief Financial Officer.

[FR Doc. 02–11022 Filed 5–3–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 300

[Docket No. OST–2002–12200]

RIN 2105–AD10

Reporting Prohibited Communications

AGENCY: Office of the Secretary, DOT.

ACTION: Final rule.

SUMMARY: The Department is amending a provision regarding aviation economic rules in order to eliminate an obsolete provision.

EFFECTIVE DATE: Rule shall become effective on May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Colleen Hanley, Attorney-Advisor, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–2509, *colleen.hanley@ost.dot.gov*. Office hours are from 8 a.m. to 5:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: One of our aviation economic regulations requires minor changes to eliminate an obsolete provision in light of the Department's transition to an electronic docket system. Specifically, this document amends a rule of conduct in aviation economic adjudicatory proceedings regarding the method of filing prohibited communications or correspondence. The revision recognizes that prohibited communications in docketed cases are made available to the public through the Department's Internet-based Docket Management System ("DMS").

The substance of § 300.3 deals with reporting of prohibited communications, and does not reflect procedures currently in place. This section was enacted prior to the Department's use of an electronic docket. The web-based Docket Management System, now currently utilized, provides a searchable and downloadable database on which all public communications with the DOT are posted under their current docket number. DMS is searchable by date, docket number, terms, party name(s), or document type, providing a much more efficient means of locating information pertaining to any such communications referred to in §§ 300.3 (b)(1)–(2). Once the corresponding docket number is located, a viewable and downloadable listing of all filings, pleadings, orders, and correspondence will be accessible to the user. Other sections within § 300.3 will be amended to be consistent with these changes.

Under the Administrative Procedure Act (5 U.S.C. 553), the Department determines that notice and an opportunity for public comment are impracticable, unnecessary, and contrary to the public interest. The amendments made in this document are ministerial, removing obsolete and redundant material or making minor technical and terminology changes. These changes will have no substantive impact, and the Department would not anticipate receiving meaningful comments on them. Comment is therefore unnecessary, and it would be contrary to the public interest to delay unnecessarily this effort to eliminate or revise outdated rules.

An electronic copy of this document may be downloaded from the Internet using the universal resource locator (URL): *http://dms.dot.gov*. It is available 24 hours each day, 365 days each year. Please follow the instructions online for more information and help.

Regulatory Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This final rule is not considered a significant regulatory action under section 3(f) of Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget. This rule is not considered significant under the Regulatory Policies and Procedures of the Department of Transportation (44 FR 11034). Because of the minimal economic impact of this rule, preparation of a regulatory impact analysis or a regulatory evaluation is not warranted.

Executive Order 13132 (Federalism Assessment)

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 ("Federalism"). This final rule does not adopt any regulation that has substantial direct effect on States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 131232 do not apply.

Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601, et seq.) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The Regulatory Flexibility Act applies only to final rules that are preceded by notices of proposed rulemaking. Because this amendment was not preceded by an NPRM, no assessment is required.

Paperwork Reduction Act

This final rule does not impose any new information collection burdens.

Regulation Identifier (RIN)

A regulation identifier (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

Unfunded Mandates Reform Act

This final rule imposes no mandates and, thus, does not impose unfounded mandates under the Unfunded Mandates Reform Act of 1995.

National Environmental Policy Act

The Department has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347) and had determined that this action will not have any effect on the quality of the environment.

Final Rule

For the reasons set out in the preamble, Title 14, Chapter II of the Code of Federal Regulations is amended to read as follows:

List of Subjects in 14 CFR Part 300

Administrative practice and procedure, Prohibited communications, Conflict of interests, Reporting and recordkeeping requirements.

PART 300—[Amended]

1. The authority for part 300 continues to read as follows:

Authority: 49 U.S.C. subtitle I and chapters 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, 465.

2. In § 300.3, in paragraph (b)(1), remove the words "put into the correspondence or other appropriate file of the proceeding" and add, in their place, the words "placed onto the electronic docket management system (DMS) in the file of the docket number corresponding to the proceeding" and remove the words "the Documentary Services Division" and add, in their place, the words "Office of Docket Operations and Media Management"; revise paragraph (b)(3) to read as set forth below; and in paragraph (c)(1), remove the words "the Documentary Services Division" and add, in their place, the words "Office of Docket Operations and Media Management".

The revised text reads as follows:

§ 300.3 Reporting of communications.

* * * * *

(b) * * *

(3) Electronic copies of written communications and oral summaries shall be posted to the DOT's electronic docket. Such docketed materials may be searched, viewed, and downloaded through the Internet at *http://dms.dot.gov*.

* * * * *

Issued in Washington, DC, on April 25, 2002.

Read Van de Water,

Assistant Secretary for Aviation and Internationol Affairs.

[FR Doc. 02–11049 Filed 5–3–02; 8:45 am]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

[Release No. 34–45848]

Delegation of Authority to the Secretary of the Commission

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is amending its rules to delegate authority to the Secretary of the Commission to enter orders instituting previously authorized administrative proceedings based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association. This delegation is intended to conserve Commission resources as well as expedite the institution of proceedings in which the Commission considers whether to impose remedial measures on certain persons who are subject to injunctions or who have been criminally convicted.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Levine, Office of the General Counsel, at (202) 942–0890, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0606.

SUPPLEMENTARY INFORMATION: The Commission today is amending its rules governing delegation of authority to the Office of the Secretary.[1]

The Securities Exchange Act of 1934[2] ("Exchange Act") and the Investment Advisers Act of 1940[3] ("Advisers Act") authorize the Commission to institute administrative proceedings against certain persons[4] based upon, among other things, a court's entry of an injunction against certain conduct or violations of the federal securities laws, or convictions for certain crimes.[5] Frequently, when the Commission authorizes the filing of an injunctive action in district court against a regulated person, it also authorizes the future institution of an administrative proceeding against that person based on the anticipated entry of an injunction at the conclusion of the district court litigation or based on an anticipated criminal conviction. The Commission is amending its rules to delegate to the Secretary the authority to issue orders instituting such administrative proceedings where the Commission has previously authorized the proceeding based on the anticipated entry of an injunction or on a criminal conviction. The delegation also includes the authority to issue settled orders making findings and imposing sanctions where the respondent consents to a bar from association " i.e., the maximum relief available in such a case. Nevertheless, the staff may submit matters to the Commission for consideration as it deems appropriate.

Administrative Law Matters

The Commission finds, in accordance with Section 553(b)(A) of the Administrative Procedure Act, 5 U.S.C. 553(b)(A), that this amendment relates solely to agency organization, procedure, or practice. Accordingly, notice and opportunity for public comment, as well as publication 30 days before its effective date, are unnecessary. Because notice and comment are not required for this final rule, a regulatory flexibility analysis is not required under the Regulatory Flexibility Act.[6]

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended.[7] The rule will not impose any costs on the public.

List of Subjects in 17 CFR Part 200

Administrative practice and procedure, Authority delegations (Government agencies).

Text of the Amendment

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows.

PART 200—ORGANIZATION; CONDUCT AND ETHICS; AND INFORMATION AND REQUESTS

1. The authority citation for Part 200, Subpart A, continues to read in part as follows:

Authority: 15 U.S.C. 77s, 78d–1, 78d–2, 78w, 78*ll*(d), 78mm, 79t, 77sss, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. The authority citation following § 200.30–7 is removed.

3. Section 200.30–7 is amended by adding paragraph (a)(12) to read as follows:

§ 200.30–7 Delegation of authority to Secretary of the Commission.

* * * * *

(a) * * *

(12) To issue orders instituting previously authorized administrative proceedings pursuant to sections 15(b)(4) or (6), 15B, 15C, or 17A of the Securities Exchange Act of 1934 (15 U.S.C. 78o(b)(4) or (6), 78o–4, 78o–5, or 78q–1), and section 203(e) or (f) of the Investment Advisers Act of 1940 (15 U.S.C. 80b–3(e) or (f)), based on the entry of an injunction or a criminal conviction, and to issue findings and orders in such cases where a respondent consents to a bar from association.

* * * * *

Dated: April 30, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11099 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–U

[1] 17 CFR 200.30–7.

[2] 15 U.S.C. 78a *et seq.*

[3] U.S.C. 80b–1 *et seq.*

[4] The Commission is authorized to bring administrative proceedings based on the entry of an injunction or a criminal conviction against the following persons: brokers or dealers pursuant to Section 15(b)(4) of the Exchange Act; persons associated with brokers or dealers, or persons participating in an offering of a penny stock pursuant to Section 15(b)(6) of the Exchange Act; municipal securities dealers and persons associated with municipal securities dealers pursuant to Section 15B(c) of the Exchange Act; government securities brokers or dealers and persons associated with government securities brokers or dealers pursuant to Section 15C(c) of the Exchange Act; transfer agents and persons associated with transfer agents pursuant to Section 17A(c) of the Exchange Act; and investment advisers and persons associated with investment advisers pursuant to Section 203(e) or (f) of the Advisers Act.

Other provisions of the securities laws, such as Section 19(h) of the Exchange Act, authorize administrative proceedings against other categories of persons; however, these other provisions do not permit administrative proceedings to be based on the entry of an injunction or a criminal conviction.

[5] In this context, a criminal conviction "includes a verdict, judgment, or plea of guilty, or a finding of guilt on a plea of nolo contendere, if such verdict, judgment, plea, or finding has not been reversed, set aside, or withdrawn, whether or not sentence has been imposed." Section 202(a)(6) of the Advisers Act.

[6] *See* 5 U.S.C. 603.

[7] 44 U.S.C. 3501 *et seq.*

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs For Use in Animal Feeds; Nicarbazin, Narasin, and Bacitracin Methylene Disalicylate

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for using approved two-way narasin/nicarbazin and single-ingredient bacitracin methylene disalicylate (BMD) Type A medicated articles to make three-way, combination drug Type C medicated feeds for broiler chickens.

DATES: This rule is effective May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7580, e-mail: svaughn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, has filed NADA 141–124 that provides for the combination use of approved MAXIBAN (36 grams per pound (g/lb) each of narasin and nicarbazin) and BMD (10, 25, 30, 40, 50, 60, or 75 g/lb bacitracin methylene disalicylate) Type A medicated articles in three-way, combination drug Type C medicated feeds for broiler chickens. The Type C feeds containing 27 to 45 g/ton each narasin and nicarbazin and 50 g/ton bacitracin methylene disalicylate are used for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The Type C broiler feeds containing 27 to 45 g/ton each narasin and nicarbazin and 100 to 200 g/ton BMD are used for the prevention of coccidiosis caused by *E. tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati* as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The NADA is approved as of January 14, 2002, and the regulations in 21 CFR 558.76 and 558.366 are amended to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

FDA has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

§ 558.76 [Amended]

2. Section 558.76 *Bacitracin methylene disalicylate* is amended in paragraph (d)(3)(xii) by adding "or narasin" after "narasin".

3. Section 558.366 is amended in the table in paragraph (d), in the column for "Combination in grams per ton" after the entry for "Narasin 27 to 45 and bacitracin methylene disalicylate 4 to 50" by adding entries for "Narasin 27 to 45 and bacitracin methylene disalicylate 50" and "Narasin 27 to 45 and bacitracin methylene disalicylate 100 to 200" to read as follows:

§ 558.366 Nicarbazin.

* * * * *

(d) * * *

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
•	•	•	•	•
27 to 45	Narasin 27 to 45 and bacitracin methylene disalicylate 50.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Narasin and nicarbazin as provided by No. 000986, bacitracin methylene disalicylate by No. 046573 in § 510.600(c) of this chapter.	046573

Nicarbazin in grams per ton	Combination in grams per ton	Indications for use	Limitations	Sponsor
	Narasin 27 to 45 and bacitracin methylene disalicylate 100 to 200.	Broiler chickens: For prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. maxima, E. brunetti,* and *E. mivati,* as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	To control necrotic enteritis, start medication at first clinical signs of disease; vary dosage based on the severity of infection; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin to prevention level (50 g/ton). Do not feed to laying hens. Withdraw 5 days before slaughter. Do not allow turkeys, horses or other equines access to formulations containing narasin. Ingestion of narasin by these species has been fatal. Narasin and nicarbazin as provided by No. 000986, bacitracin methylene disalicylate by No. 046573 in § 510.600(c) of this chapter.	046573

Dated: April 9, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–10964 Filed 5–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 1820

[WO–850–1820–XZ–24–1A]

RIN 1004–AD34

Application Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule amends the regulation showing the location of the Bureau of Land Management (BLM) State Offices in order to show the new address of the BLM Oregon State Office, which moved in January 2002. Personal, messenger, and express mail delivery of filings and other documents must be to the new office address. You must continue to direct filings and other delivery by U.S. mail to the same post office box address which has not been changed.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Michael H. Schwartz, (202) 452–5198. Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339, 24 hours a day, 7 days a week.

SUPPLEMENTARY INFORMATION: This final rule reflects the administrative action of changing the address of the Oregon State Office of BLM. It changes the street address for the location of the BLM Oregon State Office, but makes no other changes in filing requirements. Specifically, the rule does not change the mailing address of the Oregon State Office, but only the street address.

Because this final rule is an administrative action to change the address for one BLM State Office, BLM has determined that it has no substantive impact on the public. It imposes no costs, and merely updates a list of addresses included in the Code of Federal Regulations for the convenience of the public. The Department of the Interior, therefore, for good cause finds under 5 U.S.C. 553(b)(B) and 553(d)(3) that notice and public procedure are unnecessary and that this rule may take effect upon publication.

Because this final rule is a purely administrative regulatory action having no effects upon the public or the environment, we have determined that the rule is categorically excluded from review under Section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332(2)(C).

This rule was not subject to review by the Office of Management and Budget under Executive Order 12866.

As required by Executive Order 12630, the Department of the Interior has determined that the rule would not cause a taking of private property. No private property rights are affected by this rule which only reports address changes for BLM State Office. The Department therefore certifies that this rule does not represent a governmental action capable of interference with constitutionally protected property rights.

The rule will not have a substantial direct effect on the states, on the relationship between the National Government and the states, or on the distribution of power and responsibilities among the various levels of government. The rule reflects the administrative action of changing the address of the Oregon State Office of BLM. Therefore, in accordance with Executive Order 13132, BLM has determined that this rule would not have sufficient Federalism implications to warrant preparation of a Federalism Assessment.

Under Executive Order 12988, Civil Justice Reform, the Office of the Solicitor has determined that this rule would not unduly burden the judicial system and that it meets the requirements of the sections 3(a) and 3(b)(2) of the Order.

Further, the Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) that it will not have a significant economic impact on a substantial number of small entities. Reporting address changes for BLM State Offices will not have any economic impact.

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

BLM has determined that this rule is not significant under the Unfunded Mandates Reform Act of 1995, because it will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. Further, this rule will not significantly or uniquely affect small governments.

In accordance with Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, we have found this final rule does not included policies that have tribal implications. This administrative final rule reflects the administrative action of changing the address of Oregon State Office of BLM. It changes the street address for the location of the BLM Oregon State Office, but make no other changes in filing requirements.

Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. The BLM has determined that this rule will not have substantial direct effects on the energy supply, distribution or use, including a shortfall in supply or price increase. This rule simply changes an address for the Oregon State Office of BLM.

Dated: April 18, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

List of Subjects in 43 CFR Part 1820

Administrative practice and procedure, Application procedures, Execution and filing of forms, Bureau offices of record.

For the reasons discussed in the preamble, the Bureau of Land Management, amend 43 CFR part 1820 as follows:

PART 1820—APPLICATION PROCEDURES

1. The authority citation for part 1820 continues to read as follows:

Authority: 5 U.S.C. 552, 43 U.S.C. 2, 1201, 1733, and 1740.

Subpart 1821—General Information

§ 1821.10 Where are BLM offices located?

(a) * * *

State Offices and Areas of Jurisdiction

* * * * *

Oregon State Office, 333 Southwest 1st Avenue, Portland, OR 97204; Mail: P.O. Box 2965, Portland, OR 97208–

Oregon and Washington

* * * * *

[FR Doc. 02–11108 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–84–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA–7783]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule identifies communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective dates listed within this rule because of noncompliance with the floodplain management requirements of the program. If the Federal Emergency Management Agency (FEMA) receives documentation that the community has adopted the required floodplain management measures prior to the effective suspension date given in this rule, the suspension will be withdrawn by publication in the **Federal Register**.

EFFECTIVE DATE: The effective date of each community's suspension is the third date ("Susp.") listed in the third column of the following tables.

ADDRESSES: If you wish to determine whether a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

FOR FURTHER INFORMATION CONTACT: Edward Pasterick, Division Director, Program Marketing and Partnership Division, Federal Insurance Administration and Mitigation Directorate, 500 C Street, SW; Room 411, Washington, DC 20472, (202) 646–3098.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance which is generally not otherwise available. In return, communities agree to adopt and administer local floodplain management aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage as authorized under the National Flood Insurance Program, 42 U.S.C. 4001 *et seq.*; unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed in this document no longer meet that statutory requirement for compliance with program regulations, 44 CFR part 59 *et seq.* Accordingly, the communities will be suspended on the effective date in the third column. As of that date, flood insurance will no longer be available in the community. However, some of these communities may adopt and submit the required documentation of legally enforceable floodplain management measures after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the **Federal Register**.

In addition, the Federal Emergency Management Agency has identified the special flood hazard areas in these communities by publishing a Flood Insurance Rate Map (FIRM). The date of the FIRM if one has been published, is indicated in the fourth column of the table. No direct Federal financial assistance (except assistance pursuant to the Robert T. Stafford Disaster Relief and Emergency Assistance Act not in connection with a flood) may legally be provided for construction or acquisition of buildings in the identified special flood hazard area of communities not participating in the NFIP and identified for more than a year, on the Federal Emergency Management Agency's initial flood insurance map of the community as having flood-prone areas (section 202(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4106(a), as amended). This prohibition against certain types of Federal assistance becomes effective for the communities listed on the date shown in the last column. The Associate Director finds that notice and public comment under 5 U.S.C. 553(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified.

Each community receives a 6-month, 90-day, and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective suspension date. Since these notifications have been made, this final rule may take effect within less than 30 days.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Considerations. No

environmental impact assessment has been prepared.

Regulatory Flexibility Act

The Associate Director has determined that this rule is exempt from the requirements of the Regulatory Flexibility Act because the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4022, prohibits flood insurance coverage unless an appropriate public body adopts adequate floodplain management measures with effective enforcement measures. The communities listed no longer comply with the statutory requirements, and after the effective date, flood insurance will no longer be available in the communities unless they take remedial action.

Regulatory Classification

This final rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866 of September 30, 1993, Regulatory Planning and Review, 58 FR 51735.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp.; p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp.; p. 309.

List of Subjects in 44 CFR Part 64

Flood insurance, Floodplains.

Accordingly, 44 CFR part 64 is amended as follows:

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 3 CFR, 1978 Comp.; p. 329; E.O. 12127, 44 FR 19367, 3 CFR, 1979 Comp.; p. 376.

§ 64.6 [Amended]

2. The tables published under the authority of § 64.6 are amended as follows:

State and location	Community No.	Effective date authorization/cancellation of sale of flood insurance in community	Current effective map date	Date certain Federal assistance no longer available in special flood hazard areas
Region I				
New Hampshire:				
Strafford, Town of, Strafford County ..	330196	August 6, 1976 Emerg.; April 2, 1986, Reg. May 2, 2002.	5/2/02	5/2/02
Region II				
New Jersey:				
Summit, City of, Union County	340476	November 24, 1972 Emerg.; February 2, 1977, Reg. May 2, 2002.	5/2/02	5/2/02
Region I				
Maine:				
Princeton, Town of, Washington County..	230320	June 11, 1975 Emerg.; August 19, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Region V				
Illinois:				
Kendall County, Unincorporated Areas..	170341	July 5, 1973 Emerg.; July 19, 1982, Reg. May 15, 2002.	5/15/02	5/15/02
Newark, Village of, Kendall County. ...	170344	April 28, 1975 Emerg.; June 1, 1982, Reg. May 15, 2002.	5/15/02	5/15/02
Sandwich, City of, De Kalb County. ...	170188	May 13, 1975 Emerg.; February 27, 1984, Reg. May 15, 2002.	5/15/02	5/15/02
Indiana				
Fairmount, Town of, Grant County.	180074	July 21, 1975 Emerg.; July 3, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Gas City, City of, Grant County.	180075	July 21, 1975 Emerg.; July 5, 1983, Reg. May 15, 2002.	5/15/02	5/15/02
Grant County, Unincorporated Areas.	180435	May 6, 1983 Emerg.; June 17, 1986, Reg. May 15, 2002.	5/15/02	5/15/02
Jonesboro, Town of, Grant County. ...	180076	July 25, 1975 Emerg.; August 1, 1983, Reg. May 15, 2002.	5/15/02	5/15/02
Matthews, City of, Grant County.	180329	April 21, 1975 Emerg.; November 15, 1985, Reg. May 15, 2002.	5/15/02	5/15/02
Sweetser, Town of, Grant County.	180503	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Upland, Town of, Grant County.	180504	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Van Buren, Town of, Grant County. ...	180469	November 7, 1991, Reg. May 15, 2002 ...	5/15/02	5/15/02
Region IX				
Hawaii:				
Maui County, Unincorporated Areas.	150003	September 18, 1970 Emerg.; June 1, 1981, Reg. May 15, 2002.	5/15/02	5/15/02

Code for reading third column: Emerg.-Emergency; Reg.-Regular; Susp.-Suspension.

Dated: April 23, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–11120 Filed 5–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020409080–2100–02; I.D. 032602A]

RIN 0648–AP78

Magnuson-Stevens Fishery Conservation and Management Act Provisions; Fisheries of the Northeastern United States; Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; change in effective date; correction; request for comments.

SUMMARY: NMFS issues this interim final rule to amend measures that were implemented through an interim final rule published by NMFS on April 29, 2002, in order to protect species managed under the Northeast Multispecies Fishery Management Plan (FMP) from overfishing. This interim final rule imposes additional restrictions ordered by the U.S. District Court for the District of Columbia (Court) in a Remedial Order issued on April 26, 2002: Two new area closures in the eastern Gulf of Maine (GOM), an increase in the minimum size for commercially caught cod, and a new restriction on dehooking devices. This interim final rule also accelerates the date of implementation of the gear restrictions contained in the April 29, 2002, interim final rule. This action is necessary to bring the regulations governing the Northeast multispecies (groundfish) fishery into compliance with the Court's Remedial Order.

DATES: Effective from 0001 hours, local time, May 1, 2002 (i.e., immediately following implementation of the provisions contained in the interim final rule of April 29, 2002, at 67 FR 21140), through 2400 hours, local time, on July 31, 2002. The effectiveness of the provision in § 648.80(j)(3)(i) and (iii) is changed from May 15, 2002, through July 31, 2002, to May 1, 2002, through July 31, 2002. Comments on this interim final rule must be received no later than 5 p.m., local time, on June 5, 2002.

ADDRESSES: Written comments should be sent to Patricia A. Kurkul, Regional Administrator, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope, "Comments on the Amended Interim Final Rule for Groundfish." Comments also may be sent via facsimile (fax) to (978) 281–9135. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Thomas Warren, Fishery Policy Analyst, phone: 978–281–9347, fax: 978–281–9135; email: thomas.warren@noaa.gov

SUPPLEMENTARY INFORMATION:

Background

On December 28, 2001, a decision was rendered by the Court on a lawsuit brought by the Conservation Law Foundation (CLF), Center for Marine Conservation, National Audubon Society and Natural Resources Defense Council against NMFS (*Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CVO1134, (D.D.C., December 28, 2001)). The lawsuit alleged that Framework Adjustment 33 to the FMP violated the overfishing, rebuilding and bycatch provisions of the Magnuson-Steven Act (18 U.S.C. 1801, *et seq.*), as amended by the Sustainable Fisheries Act (SFA), and the Court granted plaintiffs' Motion for Summary Judgment on all counts. The Court had not yet imposed a remedy, but it did ask the parties to the lawsuit to propose remedies consistent with the Court's findings. Additional background on the lawsuit is contained in the preamble to the April 29, 2002, interim rule and is not repeated here.

On March 1, 2002, NMFS, at the request of the Court, proposed a measure to bring the FMP into full compliance with the SFA, the Magnuson-Stevens Act, and all other applicable law as quickly as possible. That proposed measure would have resulted in three actions over the next year and a half. Plaintiffs and the intervenors in the case also proposed remedies to the Court. From April 5–9, 2002, plaintiffs, defendants and intervenors engaged in Court-assisted mediation to try to agree upon mutually acceptable short-term and long-term solutions to present to the Court as a possible settlement. Although these discussions ended with no settlement, several of the parties continued mediation and filed with the Court a Settlement Agreement Among Certain Parties (Settlement Agreement) on April 16, 2002. In addition to NMFS, the parties signing the agreement include CLF, which is one of the plaintiff conservation groups, all four state intervenors, and two of three industry intervenors.

In order to ensure the implementation of protective management measures by May 1, 2002, NMFS, notwithstanding that the Court had not yet issued its Remedial Order, proceeded to file an interim final rule with the Office of the **Federal Register** on April 25, 2002, for publication on April 29, 2002. The interim final rule, published on April 29, 2002, implemented measures identical to the short-term measures contained in the Settlement Agreement filed with the Court. The measures contained in the April 29, 2002, interim final rule were to become effective on May 1, 2002, with the exception of §§ 648.80(j)(3)(i) and (iii), and 648.89(i)(1), which were to become effective May 15, 2002.

On April 26, 2002, the Court issued a Remedial Order that ordered the promulgation of two specific sets of management measures (to be effective from May 1, 2002, to July 31, 2002, and from August 1, 2002, until promulgation of Amendment 13, respectively). The Court-ordered measures for the first set of measures were, in the majority, identical with those contained in the Settlement Agreement and the measures contained in NMFS' April 29, 2002, interim final rule. However, the Court-ordered measures included additional provisions and an accelerated schedule of effectiveness for all measures, which were not contained in either the Settlement Agreement or the April 29, 2002, interim final rule. Further, the Court ordered that NMFS publish in the **Federal Register**, as quickly as possible, an "amended interim rule and an amended second interim rule" that would "include the departures from the Settlement Agreement incorporated in the Remedial Order." To comply with the Court Order in the meantime, NMFS publishes this interim final rule to modify the measures implemented through the April 29, 2002, interim final rule and to accelerate the effectiveness of the gear restrictions in § 648.80(j)(3)(i) and (iii) to May 1, 2002, consistent with the Remedial Order. The measures in § 648.89(i)(1) are administrative, only, and will still become effective on May 15, 2002.

NMFS intends to publish another interim final rule as soon as possible to implement management measures for the period August 1, 2002, through the implementation of Amendment 13 to the FMP, in accordance with the Remedial Order. Amendment 13 will implement rebuilding plans for several

groundfish stocks and continue to address capacity issues in the fishery. Amendment 13 is under development by NMFS and the Council and will be implemented by August 22, 2003.

Management Measures

The following management measures are implemented through this interim final rule: All measures that were in place prior to the April 29, 2002, interim final rule that were not amended by that rule and all measures implemented by the April 29, 2002, interim final rule that are not specifically amended through this interim final rule and that remain in effect. The measures added or modified through this interim final rule are as follows:

1. The minimum size for cod that may be lawfully sold is increased from 19 inches (48.3 cm) to 22 inches (55.9 cm)(total length).

2. Two new year-round closed areas, Cashes Ledge East and Cashes Ledge West, which correspond to statistical area blocks 128 and 130, respectively, are added. The existing Cashes Ledge Area Closure remains in effect and overlaps Cashes Ledge West.

3. A new restriction is placed on the hook-gear sector of the industry to discourage dehooking strategies that may reduce survival of discarded fish. Specifically, this interim final rule prohibits the use of de-hookers (crucifiers) with less than 6–inch (15.2–cm) spacing between the fairlead rollers.

4. The gear restrictions contained in § 648.80(j)(3)(i) and (iii), which were to become effective May 15, 2002, as a result of the April 29, 2002, interim final rule, are made effective May 1, 2002.

Classification

This rulemaking is required to be made effective on May 1, 2002, by the April 26, 2002 Remedial Order issued by the Court in *Conservation Law Foundation, et al.*, v. *Evans*, Case No. 00CV01134 (D.D.C., Dec. 28, 2001). This Order leaves NMFS with no discretion as to whether or when to promulgate this interim final rule.

This rule has been determined to be significant for purposes of Executive Order 12866. NMFS has not prepared an assessment of the potential costs and benefits of this rule as required by the Executive Order.

Because the Court mandated on April 26, 2002, that this rule must be in effect no later than May 1, 2002, it is impracticable for NMFS to provide prior notice and an opportunity for public comment. Such procedures would prevent NMFS from timely implementation of the Court's order. Accordingly, the Assistant Administrator for Fisheries (AA) finds that there exists good cause to waive the notice and comment requirements of the Administrative Procedure Act pursuant to 5 U.S.C. 553(b)(B). For the same reason, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the measures required by this rule.

Since notice and an opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, this rule is not subject to the analytical requirements of the Regulatory Flexibility Act. As such, no regulatory flexibility analysis is required for this rulemaking, and none has been prepared. 5 U.S.C. 603.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 2, 2002.

Rebecca Lent,

Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons stated in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.14, paragraphs (a)(149) through (151) are added to read as follows:

§ 648.14 Prohibitions.

(a) * * *

(149) Use of de-hookers ("crucifiers") with less than 6–inch (15.2–cm) spacing between the fairlead rollers.

(150) Fish for, land, or possess NE multispecies harvested with the use of de-hookers ("crucifiers") with less than 6–inch (15.2–cm) spacing between the fairlead rollers unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

(151) Possess de-hookers ("crucifiers") with less than 6–inch (15.2–cm) spacing between the fairlead rollers while in possession of NE multispecies, unless the vessel has not been issued a multispecies permit and fishes for NE multispecies exclusively in state waters.

* * * * *

3. In § 648.80, paragraph (n)(6) is added to read as follows:

§ 648.80 Multispecies regulated mesh areas and restrictions on gear and methods of fishing.

* * * * *

(n) * * *

(6) The use of de-hookers ("crucifiers") with less than 6–inch (15.2–cm) spacing between the fairlead rollers is prohibited.

* * * * *

§ 648.81 [Corrected]

4. Section § 648.81 is corrected by revising paragraph (u)(1) (effective May 1, 2002, through July 31, 2002) to read as follows:

§ 648.81 Closed areas.

* * * * *

(u) *Cashes Ledge Closure Areas.* (1) No fishing vessel or person on a fishing vessel may enter, fish in, or be in, and no fishing gear capable of catching NE multispecies, unless otherwise allowed in this part, may be in, or on board a vessel in, the three areas known as the Cashes Ledge Closure Areas, as defined in this paragraph (u)(1), except as specified in paragraphs (s) and (u)(2) of this section. A chart depicting these areas is available from the Regional Administrator upon request (see Table 1 to § 600.502 of this chapter). The Cashes Ledge Closure Areas are three areas, two of which are overlapping, defined by straight lines connecting the following points in the order stated:

(i) *Cashes Ledge West.*

Point	N. Lat.	W. Long.
CL7	43°00′	69°30′
CL8	43°00′	69°00′
CL9	42°30′	69°00′
CL10	42°30′	69°30′
CL7	43°00′	69°30′

(ii) *Cashes Ledge.*

Point	N. Lat.	W. Long.
CL1	43°07′	69°02′
CL2	42°49.5′	68°46′
CL3	42°46.5′	68°50.5′
CL4	42°43.5′	68°58.5′
CL5	42°42.5′	69°17.5′
CL6	42°49.5′	69°26′
CL1	43°07′	69°02′

(iii) *Cashes Ledge East.*

Point	N. Lat.	W. Long.
CL11	43°00′	68°30′
CL12	43°00′	68°00′
CL13	42°30′	68°00′
CL14	42°30′	68°30′
CL11	43°00′	68°30′

* * * * *

5. In § 648.83, paragraph (a)(1) is suspended and paragraph (a)(3) is added to read as follows:

§ 648.83 Multispecies minimum fish sizes.

(a) * * *

(3) Minimum fish sizes for recreational vessels and charter/party vessels that are not fishing under a NE multispecies DAS are specified in § 648.89. Except as provided in § 648.17, all other vessels are subject to the following minimum fish sizes, determined by total length (TL):

MINIMUM FISH SIZES (TL) FOR COMMERCIAL VESSELS

Species	Sizes (inches)
Cod	22 (55.9 cm)
Haddock	19 (48.3 cm)
Pollock	19 (48.3 cm)
Witch flounder (gray sole)	14 (35.6 cm)
Yellowtail flounder	13 (33.0 cm)
American plaice (dab)	14 (35.6 cm)
Atlantic halibut	36 (91.4 cm)
Winter flounder (blackback)	12 (30.5 cm)
Redfish	9 (22.9 cm)

* * * * *

[FR Doc. 02–11272 Filed 5–2–02; 3:28 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 87
Monday, May 6, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 187

Fees for FAA Services for Certain Flights

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of inquiry and request for comments.

SUMMARY: Since August 1, 2000, the FAA has been charging fees, required by law, for air traffic control and related services provided to aircraft that fly in U.S.-controlled airspace but neither take off from, nor land in, the United States. These fees, commonly referred to as "Overflight Fees," were authorized by the Federal Aviation Reauthorization Act of 1996, enacted on October 9, 1996.

The Aviation and transportation Security Act, enacted on November 19, 2001, amended the Overflight Fee authorization in several respects: first, changing the wording of the operative standard by substituting "reasonably" for "directly" (thereby requiring that fees be "reasonably related" to costs, rather than "directly related") and substituting "Administration's costs as determined by the Administrator" for "Administration's costs;" and second, providing that "the determination of such costs by the Administrator are not subject to judicial review."

The purpose of this notice of inquiry is to solicit public comment on whether and to what extent, if any, these latest statutory changes require the FAA to modify its Final Rule on Overflight Fees.

EFFECTIVE DATE: The due date for receipt of comments is June 5, 2002. This matter is the subject of ongoing litigation before the United States Court of Appeals for the District of Columbia Circuit (the Court), and the Court has provided 60 days for the FAA to consider the effects of recent statutory changes on its Final Rule. The FAA will therefore be unable to consider any comments received after the due date.

ADDRESSES: Comments should be mailed or delivered, in duplicate, to: U.S. Department of Transportation Dockets, Docket No. FAA–00–7018, 400 Seventh Street, SW., Room Plaza 401, Washington, DC 20590. Comments may be filed and examined in Room Plaza 401 between 10 a.m. and 5 p.m., weekdays, except Federal holidays. Comments may also be sent electronically to the Dockets Management System (DMS) at the following Internet address: *http://dms.dot.gov/* at any time. Commenters who wish to file electronically should follow the instructions on the DMS web site.

FOR FURTHER INFORMATION CONTACT: Randall Fiertz, Office of Cost and Performance Management (APF–2), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC 20591, (202) 267–7140; or Dr. Harold (Woody) Davis, Office of the Chief Counsel (AGC–200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington DC, 20591, (202) 267–3152.

SUPPLEMENTARY INFORMATION:

History

The Federal Aviation Reauthorization Act of 1996 (the Act) directs the FAA to establish by Interim Final Rule (IFR) a fee schedule and collection process for air traffic control (ATC) and related services provided to aircraft, other than military and civilian aircraft of the U.S. Government or of a foreign government, that transit U.S.-controlled airspace but neither take off from, nor land in, the United States (49 U.S.C. 45301, as amended by Pub. L. 104–264). Such flights are commonly referred to as "Overflights." The Act further directs the FAA to seek public comment after issuing the Interim Final Rule and subsequently to issue a Final Rule.

The Act was substantively amended in November 2001 (see below). As originally enacted, it directed the FAA to ensure that the fees authorized by the Act were "directly related" to the FAA's costs of providing the services rendered. The Act further states that "services for which costs may be recovered include the costs of air traffic control, navigation, weather services, training and emergency services which are available to facilitate safe transportation over the United States, and other services provided by the Administrator or by programs financed by the Administrator to flights that neither take off from, nor land in, the United States."

On March 20, 1997, the FAA published an Interim Final Rule (IFR), "Fees for Air Traffic Services for Certain Flights through U.S.-Controlled Airspace" (62 FR 13496), which established the Overflight Fees. The FAA invited public comment on the IFR and held a public meeting on May 1, 1997. The effective date of the rule was May 19, 1997, and the comment period closed on July 18, 1997. The FAA also published two additional amendments to the IFR on May 2, 1997 (62 FR 24286) and October 2, 1997 (62 FR 51736).

That rulemaking was subsequently challenged. The Air Transport Association of Canada (ATAC) and seven foreign air carriers petitioned the Court to review the rule. On January 30, 1998, the Court issued its Opinion on the eight consolidated petitions in the case of *Asiana Airlines* v. *FAA*, 134 F.3d 393 (D.C. Cir. 1998). The Court rejected the petitioners' claims that: (a) the FAA acted improperly in employing an expedited procedure before the effective date of the IFR; and (b) the FAA violated the anti-discrimination provisions of various international aviation agreements. The Court, however, concluded that the FAA's methodology of determining cost violated statutory requirements, vacated the IFR fee schedule, and remanded the IFR to the FAA for further proceedings. The FAA subsequently refunded all fees (nearly $40 million) collected under the IFR. On July 24, 1998, the FAA published a Final Rule (63 FR 40000) removing the 1997 IFR.

Although the 1997 IFR had been removed, the statutory requirement that FAA establish Overflight Fees by IFR remained in effect. Therefore, in 1998 the FAA began developing a new IFR on Overflight Fees using a different methodology. The fees this time were to be derived from cost data produced by the agency's new Cost Accounting System (CAS), then under development. On June 6, 2000, the FAA published a new IFR with a request for comments and notice of another public meeting (65 FR 36002, June 6, 2000). The FAA held the public meeting on June 29, 2000, and 12 individuals representing 10 different organizations made

presentations. A discussion of the comments made at the public meeting can be found in the docket of this rulemaking (Docket No. FAA–00–7018). (This may be found on the Internet by going to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*), typing in the last four digits of the Docket number (7018), and clicking on "search.") The FAA began charging fees under the new IFR on August 1, 2000. The FAA twice extended the comment period; first on October 6, 2000 (65 FR 59713), and again on October 27, 2000 (65 FR 64401), closing it finally on December 26, 2000.

On November 1, 2000, the Congress enacted the National Transportation Safety Board Amendments Act of 2000 (Public Law 106–424). Section 16 of that Act deemed the Interim Final Rule, published on June 6, 2000, to have been issued in accordance with the procedural requirements of the Act.

Just before the August 1, 2000, effective date of the fees, the ATAC and seven foreign air carriers again petitioned the Court to review the new IFR. The petitions were again consolidated into a single case. Issues raised by the petitioners included some of the same process and procedure questions raised in the previous litigation, as well as new issues regarding the adequacy of information provided by the FAA to support the fees and whether the fees met the statutory requirement (subsequently amended; see below) of being "directly related" to the FAA's costs of providing the services. The Court heard oral arguments on May 14, 2001. On July 13, 2001, the Court issued an Opinion, finding that the FAA had failed to provide an explanation for one assumption in its fee setting methodology (*i.e.*, that the costs, on a per-mile basis, of providing ATC and related services to Overflights are the same as the costs of providing such services to flights that take off and/or land in the United States). Because the FAA had failed to address this assumption, the Opinion directed that the IFR be vacated. At the time the Opinion was issued, the FAA was in the final stages of Executive Branch review of a Final Rule on Overflight Fees, which contained a detailed explanation of the assumption in question. Because the Court faulted only FAA's failure to provide an explanation of an assumption in support of the IFR, and not the substance of the IFR itself, the FAA decided to proceed with issuance of the Final Rule in order to both meet the requirements of the Act and address the concerns of the Court. This was done within the 45-day period between the issuance of the Court's Opinion and the issuance of its Mandate making the Opinion effective.

The Final Rule was published in the **Federal Register** on August 20, 2001. It reduced the fees established under the IFR by approximately 15%, effective immediately, back to the original date of imposition (*i.e.*, August 1, 2000). The same group of eight petitioners who had sought judicial review of the most recent IFR again sought such review of the Final Rule. That litigation is ongoing.

Following the August 20, 2001 publication of the Final Rule, the FAA petitioned the Court on August 24, 2001 to reconsider the remedy (vacating of the IFR) it had imposed in its Opinion of July 13, 2001. On December 28, 2001, the Court granted the FAA's request, modifying its July 13 Opinion and issuing a Mandate that did not vacate the IFR.

Legislative Action

On November 19, 2001, additional legislation was enacted regarding Overflight Fees. The Aviation and Transportation Security Act (ATSA), Public Law 107–71, contained the following amendment (Section 119(d)):

(d) AMENDMENT OF GENERAL FEE SCHEDULE PROVISION.—Section 45301(b)(1)(B) of title 49, United States Code, is amended—(1) by striking "directly" and inserting "reasonably"; (2) by striking "Administration's costs" and inserting "Administration's costs, as determined by the Administrator,"; and (3) by adding at the end "The Determination of such costs by the Administrator is not subject to judicial review."

Thus, the statutory authorization for FAA's Overflight Fees (49 U.S.C. 45301(b)(1)(B)) now provides that "the Administrator shall ensure that each of the fees * * * is reasonably related to the Administration's costs, as determined by the Administrator, of providing the service rendered" to overflights.

The accompanying Conference Committee Managers' Report on the ATSA addressed the amendment of the "Overflight Fee" language, as follows:

The Conference substitute amends section 45301(b) of title 49, United States Code, with respect to limitations on overflight fees to (1) to make the language consistent with the new security fee language of this Act, and (2) to clarify Congressional intent with respect to the FAA costs upon which the fees can be based. Specifically, the conference substitute replaces the word "directly" with "reasonably," since the word "directly" has been a source of much confusion and narrow interpretation, and has been a primary cause of recurring litigation which has frustrated and delayed the FAA's imposition of the overflight fees for a number of years. Additionally, this amendment specifies that the FAA's costs upon which the fees are based are to be determined solely by the Administrator. This is to clarify that the Administrator has full authority to determine costs by appropriate means. This amendment is not intended to require revision of the fees recently promulgated by the FAA (66 FR 43680, Aug. 20, 2001) but rather, to clarify longstanding Congressional intent that the FAA expeditiously and continuously collect the fees authorized under section 45301(a) of title 49.

The enactment of these statutory changes raises the question of what specific further rulemaking action, if any, is required by the FAA.

On January 25, 2002, the FAA sought from the Court a limited remand of the record in the Final Rule case. As stated in the agency motion:

The purpose of the requested remand would be to permit the FAA, on its own initiative, to conduct a limited reconsideration of the final rule in light of the new legislation. More specifically, the agency would conduct such reconsideration solely to determine the extent, if any, to which the change in the operative statutory standard requires the FAA to modify its final rule. If the agency determines that no such modification is required by the changes in the statute from "directly related" to "reasonably related," and the substitution of "Administration's costs, as determined by the Administrator" for "Administration's costs," the agency would continue with the final rule that it has already adopted. This is because the FAA seeks to determine only whether Congress has required the agency to make changes in its final rule, and does not contemplate making any discretionary changes at this time.

On April 22, 2002, the Court ordered the Final Rule record returned to FAA "so that it may conduct proceedings, for no more than 60 days from the date of this order, to determine to what extent, if any, the Aviation and Transportation Security Act, Public Law 107–71, Section 119(d) (November 19, 2001), requires the agency to modify its final rule. "Fees for [F]AA Services for Certain Flights." 66 FR 46380 (Aug. 20, 2001)."

Request for Comments

Given the demonstrated significant interest of a large number of parties in matters relating to FAA's Overflight Fees, and consistent with the Court's order, the FAA seeks public comment regarding the extent, if any, to which the change in the ATSA requires the FAA to modify its Final Rule. Under the terms of the remand granted by the Court, the FAA must complete its reconsideration within 60 days from the

date of the remand. The Court granted the remand on April 22, 2002; therefore, the 60-day deadline for completion of all action on this matter by the FAA is June 21, 2002.

The FAA believes that providing an opportunity for public comment on this matter is very much in the public interest. It should also serve the interest of both judicial economy and efficient agency administration since this proceeding will permit the FAA, in advance of judicial review of its Final Rule, to consider any possible impact of the ATSA amendment, which was enacted after the Final Rule had been issued and the petitions for review of that rule had been filed with the Court.

Accordingly, before making its decision as to whether the statutory change requires modification of the Final Rule, the FAA is allowing 30 days (within the 60 days stipulated by the Court) during which interested parties may address and provide comments on this matter.

Dated: April 30, 2002.

Chris Bertram,

Assistant Administrator for Financial Services and Chief Financial Officer.

[FR Doc. 02–11109 Filed 5–1–02; 3:45 pm]

BILLING CODE 4910–13–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 948

[WV–094–FOR]

West Virginia Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; reopening of public comment period.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are reopening the public comment period on the effectiveness of a recently approved amendment to the West Virginia surface mining regulatory program (the West Virginia program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act) to satisfy the Federal requirements regarding an alternative bonding system (ABS).

We are reopening the comment period to provide an opportunity to review and comment on a proposed regulatory change by the State. The proposed amendment concerns water quality enhancement, and deletes regulatory language that limits expenditures from the State's Fund for water quality enhancement projects to 25 percent of the Fund's gross annual revenue. The amendment is intended to satisfy the required program amendment codified in the Federal regulations at 30 CFR 948.16(jjj). The proposed amendment is part of the State's efforts to fully resolve all ABS deficiencies and to satisfy the required program amendment at 30 CFR 948.16(lll).

This document gives the times and locations that the amendment is available for your inspection, and the comment period during which you may submit written comments.

DATES: We will accept written comments until 4:30 p.m. (local time), on May 21, 2002.

ADDRESSES: You may mail or hand-deliver written comments to Mr. Roger W. Calhoun, Director, Charleston Field Office at the address listed below.

You may review copies of the West Virginia program, this amendment, all written comments received in response to this document at the addresses below during normal business hours, Monday through Friday, excluding holidays. You may receive one free copy of the amendment by contacting OSM's Charleston Field Office.

Mr. Roger W. Calhoun, Director, Charleston Field Office, Office of Surface Mining Reclamation and Enforcement, 1027 Virginia Street, East, Charleston, West Virginia 25301, Telephone: (304) 347–7158. E-mail: *chfo@osmre.gov.*

West Virginia Department of Environmental Protection, 10 McJunkin Road, Nitro, West Virginia 25143, Telephone: (304) 759–0510. The approved amendment is posted at the Division of Mining and Reclamation's Internet web page: *http://www.dep.state.wv.us/mr.*

In addition, you may review copies of the amendment and all written comments received in response to this document during regular business hours at the following locations:

Office of Surface Mining Reclamation and Enforcement, Morgantown Area Office, 75 High Street, Room 229, P.O. Box 886, Morgantown, West Virginia 26507, Telephone: (304) 291–4004. (By Appointment Only)

Office of Surface Mining Reclamation and Enforcement, Beckley Area Office, 313 Harper Park Drive, Suite 3, Beckley, West Virginia 25801, Telephone: (304) 255–5265.

FOR FURTHER INFORMATION CONTACT: Mr. Roger W. Calhoun, Director, Charleston Field Office; Telephone: (304) 347–7158.

SUPPLEMENTARY INFORMATION:

I. Background on the West Virginia Program
II. Description of the Proposed Amendment
III. Public Comment Procedures
IV. Procedural Determinations

I. Background on the West Virginia Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its program includes, among other things, " * * * a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the West Virginia program on January 21, 1981. You can find background information on the West Virginia program, including the Secretary's findings, the disposition of comments, and conditions of approval of the West Virginia program in the January 21, 1981, **Federal Register** (46 FR 5915). You can also find later actions concerning West Virginia's program and program amendments at 30 CFR 948.10, 948.12, 948.13, 948.15, and 948.16.

II. Description of the Proposed Amendment

By letter dated April 9, 2002 (Administrative Record Number WV–1296A), West Virginia sent us a proposed amendment to its program under SMCRA. The amendment that we are seeking comment on concerns the water quality enhancement provisions at Code of State Regulations (CSR) 38–2–12.5. The amendment to CSR 38–2–12.5. was submitted as part of a larger program amendment authorized by Enrolled Committee Substitute for House Bill 4163 that was passed by the Legislature on March 9, 2002, and signed into law by the Governor on April 3, 2002 (Administrative Record Number WV–1293).

We are seeking your comments on the deletion, at CSR 38–2–12.5.d., of the 25-percent limitation on expenditures from the Fund for water quality enhancement projects. The specific language that the State proposed to delete at subsection 12.5.d. is as follows:

> Expenditures from the special reclamation fund for water quality enhancement projects shall not exceed twenty-five percent (25%) of the funds gross annual revenue as provided in subsection g, section 11 of the [West Virginia] Act.

After the deletion, CSR 38–2–12.5.d. reads as follows:

> 12.5.d. In selecting such sites for water quality improvement projects, the Secretary shall determine the appropriate treatment techniques to be applied to the site. The selection process shall take into consideration the relative benefits and costs of the projects.

Related Information

This proposed amendment is part of the State's efforts to fully resolve all ABS deficiencies and to satisfy the required program amendment codified at 30 CFR 948.16(lll). On December 28, 2001, we approved an amendment to the West Virginia program concerning the ABS. The amendment was submitted in response to our 30 CFR part 733 notification of June 29, 2001 (Administrative Record Number WV–1218). The amendment consisted of changes to the Code of West Virginia (W. Va. Code) as contained in Enrolled Senate Bill 5003. It established the Special Reclamation Fund Advisory Council to ensure the effective, efficient and financially stable operation of the Fund; provided for a contract with a qualified actuary to determine the Fund's soundness on a four-year basis; increased the special reclamation tax rate to provide additional revenue for the reclamation of bond forfeiture sites; and deleted language in the statute that limited expenditures from the State's ABS for water treatment.

In our December 28, 2001 (66 FR 67446), approval, we deferred our decision on the broader question of whether the amendment fully satisfies the requirement at 30 CFR 948.16(lll), concerning the adequacy of the State's ABS. We also revised the required program amendment codified at 30 CFR 948.16(jjj) to require, in part, the removal of the 25-percent limitation on the expenditure of funds for water treatment at CSR 38–2–12.5.d. The State had previously removed the 25-percent limitation on the expenditure of funds for water treatment from its statute, but had failed to remove the 25-percent limitation in its rules.

On December 28, 2001, we opened a comment period to allow more time to consider and provide additional comment on the question of whether the State has fully satisfied the requirement at 30 CFR 948.16(lll) concerning the adequacy of the State's ABS. That comment period closed on March 28, 2002.

III. Public Comment Procedures

Under the provisions of 30 CFR 732.17(h), we are seeking your comments on whether the amendment satisfies the applicable program amendment approval criteria of 30 CFR 732.15. If we approve the amendment, it will become part of the State program.

Written Comments

Send your written comments to OSM at the address given above. Your written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of your recommendation(s). In the final rulemaking, we will not necessarily consider or include in the administrative record any comments received after the time indicated under **DATES** or at locations other than the Charleston Field Office.

Electronic Comments

Please submit Internet comments as ASCII or Word file avoiding the use of special characters and any form of encryption. Please also include "Attn: SPATS No. WV–094–FOR" and your name and return address in your Internet message. If you do not receive a confirmation that we have received your Internet message, contact the Charleston Field Office at (304) 347–7158.

Availability of Comments

We will make comments, including names and addresses of respondents, available for public review during our normal business hours. We will not consider anonymous comments. If individual respondents request confidentiality, we will honor their request to the extent allowable by law. Individual respondents who wish to withhold their names or address from public review, except for the city or town, must state this prominently at the beginning of their comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

IV. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart federal regulations.

Executive Order 12866—Regulatory Planning and Review

This rule is exempt from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, to the extent allowable by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA. Section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse affect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

Section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that a decision on a proposed State regulatory program provision does not constitute a major Federal action within the meaning of section 102(2)(C) of the National Environmental Policy Act (NEPA) (42 U.S.C. 4332(2)(C)). A determination has been made that such decisions are categorically excluded from the NEPA process (516 DM 8.4.A).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulation.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million: (b) Will not cause a major increase in costs or prices for consumers, individual industries, geographic regions or Federal, State, or local government agencies; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

This determination is based upon the fact that the State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose a cost of $100 million or more in any given year on any governmental entity or the private sector.

List of Subjects in 30 CFR Part 948

Intergovernmental relations, Surface mining, Underground mining.

Dated: April 24, 2002.

George J. Rieger,

Acting Regional Director, Appalachian Regional Coordinating Center.

[FR Doc. 02–11247 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Chapter I

Public Meeting of the Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore

AGENCY: National Park Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of meetings of the Negotiated Rulemaking Advisory Committee for Off-Road Driving Regulations at Fire Island National Seashore (36 CFR 7.20).

DATES AND TIMES: The Committee will meet on the following dates—Friday and Saturday, June 28–29, 2002; Friday and Saturday, July 26–27, 2002; and Friday and Saturday, September 13–14, 2002. All meetings will begin at 9 a.m.

ADDRESSES: All meetings will be held at Dowling College, Oakdale, New York.

FOR FURTHER INFORMATION CONTACT: Constantine Dillon, Superintendent, Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772, 631–289–4810 (Ext. 225).

SUPPLEMENTARY INFORMATION:

Matters to be Considered: Meetings will be held for the to develop advice for the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore.

Below is the initial agenda for the Committee. There will be public comment periods during each negotiating session. However, the Committee may modify its agenda during the course of its work.

Session I—June 28–29, 2002

Welcoming Remarks by National Park Service
Introductions of Committee Members
Discuss and adopt Organizational Protocols (Committee groundrules)
Discuss and adopt draft agenda
Presentation and discussion on applicable laws, regulations, policies and data
Discussion of Committee Member's Ideas For Improving Management of Off-Road Vehicles
Discussion of Agenda for Next Meeting and Tasks Between Sessions
Adjourn Session I.

Session II—July 26–27, 2002

Review and Adopt Session I Meeting Summary
Discussion of Proposed Agenda for Session
Updates and Reports
Review and Discussion of Proposed Draft Rule
Refine Proposals, Seek Tentative Agreements, Clarify Outstanding Issues
Discussion of Agenda for Session III and Tasks Between Sessions
Adjourn Session II

Session III—September 13–14, 2002

Review and Adopt Session II Meeting Summary
Discussion of Proposed Agenda
Review and Discussion of Outstanding Issues
Review and Discussion of Outstanding Issues—Seek Tentative Agreement on Remaining Issues
Seek Consensus on Complete Draft Rule
Discuss Next Steps
Adjournment

The meetings are open to the public. It is expected that 75 persons will be able to attend the meetings in addition to the Committee members.

The Committee was established pursuant to the Negotiated Rulemaking Act of 1990 (5 U.S.C. 561–570). The purpose of the Committee is to advise the National Park Service with regard to proposed rulemaking governing off-road vehicle use at Fire Island National Seashore. Notice of intent to establish this committee was published in 65 FR 70674–70675, November 27, 2000.

Interested persons may make brief oral/written presentations to the Committee during the meetings or file written statements. Such presentations may be made to the Committee during the Public Comment Periods of the meeting, or in writing to the Park Superintendent at the above address at least seven days prior to the meeting.

Draft minutes of the meeting will be available for public inspection about 12 weeks after the meeting at Fire Island National Seashore, 120 Laurel Street, Patchogue, NY 11772.

Dated: April 2, 2002.

Constantine J. Dillon,

Superintendent, Fire Island National Seashore.

[FR Doc. 02–11048 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

RIN 1024–AD02

Assateague Island National Seashore, Personal Watercraft Use

AGENCY: National Park Service, Interior.

ACTION: Proposed rule.

SUMMARY: The National Park Service is proposing to designate areas where personal watercraft (PWC) may be used in Assateague Island National Seashore, Maryland and Virginia. This rule is necessary because regulations requires any park allowing the use of PWC to promulgate a special regulation authorizing the use. Furthermore, the NPS Management Policies 2001 also, require individual parks, in order to promulgate a special regulation, to determine that PWC use is appropriate for a specific park area based on that area's enabling legislation, resources, values, other visitor uses, and overall management objectives.

DATES: Comments must be received by July 5, 2002.

ADDRESSES: Comments on the rule and the Environmental Assessment should be sent to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811 Email: *Regina Jones-Brake@nps.gov* Fax: (410) 641–1099.

FOR FURTHER INFORMATION CONTACT: Kym Hall, Regulations Program Manager, National Park Service, 1849 C Street, NW, Room 7413, Washington, DC 20240. Phone: (202) 208–4206. Email: *Kym_Hall@nps.gov.* Fax: (202) 208–6756.

SUPPLEMENTARY INFORMATION:

Purposes of the National Seashore

Assateague Island National Seashore was authorized on September 21, 1965 (Pub. L. 89–195) "for the purpose of protecting and developing Assateague Island * * * and certain adjacent waters and small marsh islands for public outdoor recreation, use and enjoyment * * *" The 1965 Act went on to state "* * * the Secretary shall administer the Assateague Island National Seashore for the general purposes of public outdoor recreation, including conservation of natural features contributing to public enjoyment. In the administration of the seashore * * * the Secretary may utilize such statutory authorities relating to areas administered * * * through the National Park Service * * * for conservation and management of natural resources as he deems appropriate * * *".

This purpose was amended by the Act of October 21, 1976 (Pub. L. 94–578) that directed the Secretary of the Interior to prepare a "comprehensive plan" which would include, among other things, "Measures for the full protection and management of natural resources and natural ecosystems of the seashore." The General Management Plan that evolved from this mandate reflects a systematic approach to park management whereby recreational use and development is balanced with the need to ensure long-term protection of natural resources and values.

Description of the National Seashore

Assateague Island National Seashore is an important national resource visited by more than 1.8 million people annually, showcasing one of the few remaining undeveloped barrier island environments along the Mid-Atlantic Coast. The National Park Service shares responsibility for land management on Assateague Island with the State of Maryland, which operates Assateague State Park, and the U.S. Fish and Wildlife Service, which manages Chincoteague National Wildlife Refuge on the Virginia portion of the island.

Assateague Island is a 37-mile long coastal barrier island located along the Delaware-Maryland-Virginia (Delmarva) peninsula, extending from Ocean City Inlet, Maryland to Chincoteague Inlet, Virginia. The Island varies in width from less than 1000 feet along portions of the northern end to more than 4300 feet adjacent to Toms Cove in Virginia. Elevation is generally very low, averaging approximately 7 feet, but can exceed 35 feet on isolated dunes. The ocean shoreline has a smooth curving configuration while the bay shoreline is a highly irregular mosaic of terrestrial and aquatic habitats created by numerous small landforms lying adjacent to Assateague Island proper.

The boundary of the National Seashore includes approximately 48,700 acres, most of which are adjacent oceanic and estuarine waters. The boundary extends offshore from Assateague Island approximately one-half mile on the ocean side, and a variable distance on the bay side ranging from less than 600 feet to more than 5,000 feet. On the Island itself, approximately 9,000 acres (predominantly in Virginia) and 700 acres (Maryland) fall under the jurisdiction of the U.S. Fish and Wildlife Service and State of Maryland, respectively, with the balance, some 8,100 acres (predominantly in Maryland), managed by the National Park Service.

The resources and values that define the natural environment of Assateague Island National Seashore include a diverse assemblage of wildlife, vegetation communities, water resources, geological features and physical processes reflecting the complexity of the land/sea interface along the Mid-Atlantic coast. Wildlife resources range from a myriad of aquatic and terrestrial species inhabiting estuarine habitats to the free roaming feral horses for which Assateague is famous. The indigenous plant communities reflect the adaptive extremes necessary for survival on a barrier island, where exposure to salt spray, lack of freshwater, and shifting sands create a harsh and dynamic environment. Throughout the Seashore, the relationship of land and water is paramount and change is the only constant.

The aquatic habitats of Assateague Island and the adjacent coastal bays are central to the significance of the National Seashore. The inshore waters are part of a relatively small network of coastal lagoons that parallel the Atlantic coast from Delaware to Virginia. Assateague Island forms the eastern boundary of the Sinepuxent/Chincoteague bays complex, the largest component of the system. Combined, these two bays have a total surface area of approximately 36,000 acres and a watershed of approximately 150 square miles. The bays are uniformly shallow with an average depth of 1.2 meters (4 feet) and are generally characterized as poorly flushing due to the limited freshwater inflow, restricted tidal exchange through two inlets, and a tidal range of less than 1 foot.

From a regional perspective, Assateague Island National Seashore includes the only remaining undeveloped barrier island in the State of Maryland, and a significant portion of the region's highest-quality marine/estuarine habitat. A substantial portion of the submerged aquatic vegetation (SAV) occurring in Maryland's coastal bays is found within park boundaries. Extensive salt marshes, inter-tidal flats, and the broad shallow margins of the

coastal bays adjacent to Assateague are key components of an estuarine system crucial to the maintenance of regional biological diversity and ecosystem health.

Assateague Island National Seashore provides important habitat for a number of federally listed threatened and endangered species, including but not limited to the peregrine falcon, loggerhead, green, and leatherback sea turtles, bald eagle, Delmarva fox squirrel, piping plover, and sea beach amaranth. Of these species, the National Seashore provides critical habitat for piping plover and sea beach amaranth, and is a focal point for mid-Atlantic conservation and restoration efforts. The northern 6 miles of the park provides the most favorable conditions for piping plover breeding activity and supports a majority of the local population. Recently re-discovered after an absence of more than 30 years, sea beach amaranth is the subject of an ongoing restoration effort to develop a sustainable population on Assateague Island.

In addition to the piping plover, the National Seashore provides important habitat for a multitude of bird species throughout the year. The island is renowned for the autumn migration of peregrine falcons and abundance of wintering waterfowl, and because of its importance as wintering, staging, and breeding habitat, has been designated a component of the Western Hemisphere Shorebird Reserve Network and a Globally Important Bird Area. Shorebirds, colonial waterbirds, neotropical migratory songbirds, and a variety of wading birds intensively utilize park habitats, and in general, occur in greater abundance and diversity than on the adjacent mainland.

The coastal waters within Assateague Island National Seashore are regularly utilized by a variety of marine mammals on a seasonal or transitory basis. More than fifteen species have been documented to occur in the National Seashore, all of which are protected under the Marine Mammal Protection Act of 1972. The most commonly observed species are the harbor porpoise and bottlenose dolphin, generally occurring in ocean nearshore waters. Harbor porpoise are most commonly observed during the winter months, while bottlenose dolphins are present largely during the summer.

Oceanic and estuarine waters and their associated biota also play a dominant role in recreational use of the National Seashore. More than 65% of visits to the park involve the use of aquatic habitats. The primary recreational activities include swimming, walking for pleasure, sightseeing, wildlife photography and observation, picnicking, and saltwater fishing.

Authority and Jurisdiction

The National Park Service is granted broad authority under 16 U.S.C. 1 *et seq.*, the NPS "Organic Act", to regulate the use of the Federal areas known as national parks. In addition, the Organic Act (16 U.S.C. 3) allows the NPS, through the Secretary of the Interior, to "make and publish such rules and regulations as he may deem necessary or proper for the use and management of the parks * * *"

16 U.S.C. 1a–1 states, "The authorization of activities shall be conducted in light of the high public value and integrity of the National Park System and shall not be exercised in derogation of the values and purposes for which these various areas have been established * * *"

As with the United States Coast Guard, NPS regulatory authority over waters subject to the jurisdiction of the United States, including navigable waters and areas within their ordinary reach, is based upon the Property and Commerce Clauses of the U.S. Constitution. In regards to the NPS, Congress in 1976 directed the NPS to "promulgate and enforce regulations concerning boating and other activities on or relating to waters within areas of the National Park System, including waters subject to the jurisdiction of the United States * * *" (16 U.S.C. 1a–2(h)). In 1996 the NPS clarified its authority to regulate activities within the park boundaries occurring on waters subject to the jurisdiction of the United States by publishing a final rule, 36 CFR 1.2(a)(3).

Personal Watercraft Use in the National Seashore

PWC use at Assateague Island National Seashore is a relatively recent phenomenon, paralleling the national trend of increasing popularity and sales during the 1980s and 1990s. During that period, the preponderance of PWC use within the National Seashore occurred in the ocean and bay waters surrounding the northernmost 6 miles of Assateague Island. This area is immediately adjacent to the town of Ocean City which, with its summertime population of 300,000 and numerous marinas and boat launching facilities, generates significant amounts of water-based recreation, including boating and PWC use.

While systematic counts of PWC operating within the National Seashore have not been conducted, regional surveys indicate that general boating activity increased significantly between 1970 and 1990. Informal observations by NPS staff suggest a continuation of this trend through the 1990s, particularly in the use of PWC. In 1999, surveys conducted by the Maryland Department of Natural Resources over consecutive August weekends reported the total number of all vessels using Sinepuxent Bay and Ocean City Inlet ranged from 172–376. PWC use during the same surveys ranged from 63 to 137. Most of this use was in the Ocean City Inlet, going to or returning from the ocean, and close to but outside the park boundaries.

The predominate season of PWC use in the Assateague region is May through September. Operators have tended to be non-residents vacationing in the Ocean City area, although rapid population growth in the coastal counties of Maryland and Virginia is continually increasing the number of resident boaters using local waterways.

On April 20, 2000, the National Park Service adopted a final rule for managing PWC use in areas of the National Park System. The rule was implemented to ensure a prudent approach to PWC management that would potentially allow their use, yet protect park resources, sensitive natural areas, plants and wildlife, and reduce conflicts between park visitors. The final rule prohibited PWC use in all National Park System areas unless the NPS determined that this type of water-based activity was appropriate for a specific park based upon the legislation establishing the area, the park's resources and values, other visitor uses of the area, and overall management objectives.

Prior to 2000, PWC use was allowed throughout Assateague Island National Seashore, although as previously noted, the vast majority occurred adjacent to the northern end of the Island. In May 2000, most of the waters within the National Seashore were closed to PWC use consistent with the National Park Service PWC rule and a local determination that their continued use threatened the resources and values for which the park was established to protect. The authority for this closure was based upon 36 CFR Section 1.5, Closure and Public Use Limits.

Three areas within the boundary of the National Seashore were designated to remain open to PWC use: The first was a small area (approximately 26 acres) located in the Ocean City Inlet adjacent to the north shore of Assateague Island. The second was a larger area (approximately 224 acres) located near the southern end of the Island between Assateague Point and Horse Marsh. The third was located in Sinepuxent Bay, just north of Verrazano Bridge, and included waters lying between the Park's authorized boundary and a roughly parallel line of State of Maryland buoys marking submerged aquatic vegetation (SAV) beds adjacent to Assateague Island.

Development of the Proposed Rule

As established by the April 2000 National Park Service rule, PWC use is prohibited in all National Park System areas unless determined appropriate. The process used to identify appropriate PWC use at Assateague Island National Seashore considered the known and potential effects of PWC on park natural resources, traditional uses, public health and safety. The proposed rule is designed to manage PWC use within the National Seashore in a manner that achieves the legislated purposes for which the park was established while providing reasonable access to the park by PWC.

The use of motor vessels is a traditional method of accessing Assateague Island for land-based recreational activities. As such, providing PWC owners with this opportunity was considered both desirable and compatible with park purposes, assuming that such use would not result in unacceptable impacts. To identify areas of potential use, the effects of PWC were evaluated against a number of resource and public use issues. Given the high value and significance of National Seashore resources, a precautionary approach was employed. Only those areas with minimal, if any, potential for resource and visitor use impacts were selected. A summary of the issues considered and evaluation results are presented in the next section.

Under this proposed rule, two of the three areas where PWC use now exists, the Ocean City Inlet and Horse Marsh areas, will remain open for PWC use, primarily to provide transportation corridors. Both areas have physical and biological characteristics that minimize the potential for adverse impacts to park resources and values, and both are located immediately adjacent to population centers and currently experience high levels of general boat traffic. The intended effect is to provide island access for persons wanting to use a PWC to travel to the National Seashore or for persons for whom a PWC is the only form of water access to Assateague Island.

The third area where PWC use now exists (Sinepuxent Bay) was re-evaluated against the resource protection and public use issues described below. The area was found to be comparable to the majority of park waters, and did not possess the physical and biological characteristics that would minimize the potential for adverse impacts. As such, the use of PWC in this area is incompatible with the resource protection objectives of the National Seashore. However, the closure will have minimal impact on PWC use in the majority of Sinepuxent Bay because the largest portion of the Bay is outside NPS jurisdiction and will remain open to PWC use, subject to the state of Maryland laws and regulations.

The closure of most National Seashore waters to PWC use does not adversely effect the public's ability to operate PWC in the region as a whole. More than two-thirds of Chincoteague Bay, Sinepuxent Bay and the Ocean City Inlet, and all of Isle of Wright and Assawoman Bays are outside National Park Service jurisdiction. These areas are currently available to PWC and constitute alternative use areas for operators who had previously utilized waters within the National Seashore that are now closed.

Resource Protection and Public Use Issues

The following summarizes the predominant resource protection and public use issues associated with PWC use at Assateague Island National Seashore. Each of these issues is analyzed in the companion environmental assessment.

Water Quality

The main issues associated with PWC use and water resources at Assateague Island are those related to water quality. Chemical impacts to water quality draw from PWC emissions of hydrocarbons including benzene, toluene, ethylbenze, xylene (BTEX), polycyclic aromatic hydrocarbon (PAH) and of methyl tertiary butyl ether (MTBE) directly into the water. Yet, the impacts to water quality from pollutants vary according to the PWC use areas. Areas of high tidal flushing dispel pollutants faster than areas of low tidal flushing. Assateague Island's inlets experience very high flushing while its bays experience low flushing. Thus, toxic pollutants remain in the bays for longer periods of time than they do in the inlets.

The two locations proposed for continued use by PWC are both located adjacent to ocean inlets with high tidal flushing and contain less than 1% of the water surface area of the National Seashore. As such, allowing PWC use in these areas will have negligible to minor adverse impacts on water quality. When analyzed with relation to all vessels in these areas, the cumulative impacts of all vessels will be negligible to moderate adverse.

Air Quality

PWC emit various compounds that pollute the air even though the exhaust is usually routed below the waterline. As much as one third of the fuel delivered to current two-stroke PWC remains unburned and is discharged as gaseous hydrocarbons (HC); the lubricating oil is used and expelled as part of the exhaust; the combustion process results in emissions of air pollutants such as volatile organic compounds (VOC), nitrogen oxides (NO_X), particulate matter (PM), and carbon monoxide (CO) (US EPA).

NPS analyzed two categories of airborne pollution impacts: Impacts on human health and impacts on air quality related values in Assateague Island. Pollutants emitted from PWC that affect human health includes VOC and NO_X, which in sunlight form ozone. Ozone can cause or contribute to respiratory illness (Wark and Warner 1981). Carbon monoxide (CO) also affects humans by interfering with the oxygen carrying capacity of blood.

With regard to impacts on human health, continuation of PWC use in the two locations proposed at Assateague Island would result in minor adverse impacts for CO and negligible adverse impacts for other pollutants of concerns including PM, HC, and VOC. When considering cumulative impacts of all boating activities, emissions would result in moderate adverse for CO and negligible to minor adverse for all other pollutants of concern.

PWC emissions also impact air quality related values. For example, ozone, which is toxic to sensitive vegetative species, causes visible injury to foliage, decreases plant growth, and increases plant susceptibility to insects and disease. NO_X and PM emissions associated with PWC use can degrade visibility. NO_X also contributes to acid deposition effects on plants, water, and soil. With respect to air quality related values in the areas at Assateague Island proposed for continued use under this rule, annual PWC emissions would result in negligible adverse impacts with no perceptible qualitative visibility impacts or injury to plants. Impacts on visibility, wildlife, and plants from airborne pollutants are negligible. When considering all boating activity, emissions result in negligible to minor adverse impacts.

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Soundscapes Values

Studies by many organizations on different types of PWC have found noise levels associated with PWC to vary and range from about 71 to 105 dB. However, unlike motorboats, PWC are highly maneuverable and are used for stunts, which often result in quickly varying noise levels due to changes in acceleration and exposure of the jet exhaust when crossing waves. The frequent change in pitch and noise levels, especially if operated closer to land, make the noise from PWC more noticeable to human ears (Asplund 2001).

One of the Seashore's natural resources is the natural soundscape, also referred to as "natural ambient sounds" or "natural quiet." The natural soundscape includes all of the naturally occurring sounds of the National Seashore. Conversely, "noise" is defined as unwanted sound. Sounds are described as noise if they interfere with an activity or disturb the person hearing them. The level of sound generated by watercraft using the national seashore area is expected to affect recreation users differently. For example, visitors participating in less sound-intrusive activities such as bird watching and/or hiking would likely be more adversely affected by PWC noise than another PWC or motorboat user.

Noise levels vary from the north and south ends of the island. Noise levels at the north end of the island are affected by PWC use in the transportation corridor and outside the national seashore boundary. Noise sources at the Ocean City Inlet area include powerboats, PWC, commercial vessels, background noise from the town of Ocean City, and small aircraft. In general, the use of PWC would result in minor adverse impacts where other users are concentrated in the northern inlet landing area. At the Ocean City Inlet landing area, PWC noise would be heard throughout the day but ambient sounds are predominant.

Little Beach (southern end of Assateague Island) is quieter with fewer PWC and/or watercraft generating noise in the area. It is assumed to have lower ambient noise levels due to its location away from urban environments. Little Beach is sensitive to noise disturbances due to the abundant bird population in the area. PWC noise levels would be expected to have moderate adverse impacts in the area of Little Beach potentially disturbing wildlife. Overall, noise levels from PWC would be expected to have negligible to moderate adverse impacts at certain locations within the Assateague Island National Seashore boundary.

The cumulative impacts of boating noise, ambient noise levels, and PWC would continue to range from negligible to moderate dependant on location within the park boundary. The northern landing area in the Ocean City Inlet experiences elevated noise levels due to the presence of Ocean City and the level of boat traffic within the inlet. Impacts to noise levels would be minor with the continuation of noise from PWC in the inlet.

Submerged Aquatic and Shoreline Vegetation

PWC have the potential to impact submerged aquatic vegetation and shoreline vegetation as a result of operating in shallow waters or adjacent to wetland habitats. Submerged aquatic vegetation (SAV) benefit the aquatic ecosystems because they provide a protective habitat for fish and shellfish; food for waterfowl, fish, and mammals; and aid in oxygen production; absorb wave energy and nutrients; and improve the clarity of the water. In addition, SAV beds stabilize bottom sediments and reduce suspended sediments present in the water column. However, SAV beds do not exist in the areas proposed for continued PWC use at Assateague Island; therefore in these areas, PWC use will have no impact.

Short-term, minor adverse direct and indirect impacts to shoreline vegetation are expected under the proposed rule in the northern landing area. While direct impacts from PWC use to shoreline vegetation at the northern PWC landing area are not expected because the shoreline is characterized by an unvegetated beach, an access trail to the beach may allow some trampling of vegetation as a result of foot travel off trail. This however, would only occur if PWC operators disembark at the landing area and travel by foot along the island, as do other visitors.

Under the proposed rule, PWC are only allowed shore access to the area designated as Little Beach in the southern landing area. Areas of sparse shrubland habitat, naturally occurring unvegetated beaches, maritime/coastal loblolly pine wetland forest, grass shrubland, and a few small areas of dune grassland characterize Little Beach. Impacts to shoreline vegetation are expected to result primarily from foot traffic. Adverse effects are expected to be minor due to limited use of the southern landing area. Cumulative impacts to shoreline vegetation are not expected if PWC and other watercraft are restricted to designated use areas.

Wildlife and Habitats

Some research suggests that PWC impact wildlife by interrupting normal activities, causing alarm or flight, causing animals to avoid habitat, displacing habitat, and affecting reproductive success. PWC may have a greater impact on waterfowl and nesting birds because of their noise, speed, and ability to access shallow-water areas more readily than other types of watercraft. Literature suggests that PWC can access sensitive shorelines, disrupting riparian habitat areas critical to wildlife.

The northern landing area is located in an area that experiences a high level of use by PWC. Yet, PWC use in the vicinity of the northern landing area would have minor adverse effects on terrestrial wildlife, such as shorebirds using the landing area and adjacent areas and other species such as fish that use nearshore habitats to forage for food. However, effects would be minor because species sensitive to a high level of noise and human activity are not expected to regularly use the landing area or immediately adjacent habitats during high PWC use periods.

The intensity of PWC use in the vicinity of the southern landing area is much less than at the northern landing area. Wildlife species using marsh and shoreline areas on and in the vicinity of the southern landing area would be less accustomed to high levels of human activity and noise. Occasional nearshore PWC use in the vicinity of the southern landing area would have minor adverse effects to wading and shorebirds, waterfowl, and other wildlife by disrupting normal nesting, foraging, or resting activities.

Threatened and Endangered Species and Species of Concern

Numerous Federal and state listed threatened and endangered species and protected species utilize habitats within Assateague Island National Seashore on either a permanent, seasonal, or transitory basis. Federally listed species documented on Assateague Island include the piping plover, bald eagle, loggerhead sea turtle, the Delmarva fox squirrel, and the seabeach amaranth. The Maryland listed threatened black skimmer, peregrine falcon, gull-billed tern, royal tern, white tiger beetle, little white tiger beetle, and least tern also occurs on the Island.

The federally listed piping plover's nesting areas are located several hundred feet from the northern landing area. However, access to shore areas adjacent to the landing area with the potential to provide nesting areas for the piping plover is prohibited during the nesting season. Piping plover are not likely to be adversely affected by PWC use at the northern or southern landing areas due to the distance of the landing areas from nesting areas and access restrictions around piping plover nesting areas during the nesting season.

Several Federal and state endangered and threatened turtles including Kemp's Ridley sea turtle, green sea turtle, leatherback sea turtle and the loggerhead sea turtle have been documented by the NMFS to occur in the waters off of Assateague Island during the warmer summer months. Sea turtles are not likely to be adversely affected by PWC use in the northern and southern landing areas because the proposed use areas represent a very small portion of the overall habitat available in both the park and region.

The Federal and Virginia threatened bald eagle is documented to have two active nests in the Chincoteague National Wildlife Refuge. Foraging activities of bald eagles could potentially be affected by PWC use in the area of the southern landing area; however, because PWC use in this area is limited, adverse effects on the species are not likely.

No effects to the Delmarva fox squirrel or seabeach amaranth are expected as a result of PWC use because these species do not occur in areas affected by PWC use. Cumulative impacts are not likely to adversely affect federally listed threatened or endangered species on Assateague Island National Seashore.

Visitor Experience

A survey of recreational boaters operating in the waters within and adjacent to Assateague Island National Seashore reports a high frequency of conflicts between the boating public and PWC users. Problems reported include the presence of PWC in fishing areas, noise, PWC operation too close to anchored boats, and excessive speed (University of Delaware 2000).

Of visitors who access Assateague Island by vehicle, swimmers, hikers and other visitors to the north end of the island and the hiking trails to the south would have slightly more contact with PWC operators than visitors to the oceanside of the park. Noise generated by PWC would reach visitors to the marshes and hiking trails at the southern end of the island. Impacts to visitor experience, specifically bird watching, would be moderate adverse towards the end of the season when the first waves of migratory birds begin to show their presence on the island and PWC users are still present.

PWC users would have little or no noticeable change in their visitor experience or visitor satisfaction, since restrictions would allow for access to portions of the park and not affect PWC activity outside the park boundary. Visitors who use PWC at Assateague Island National Seashore would experience negligible adverse impacts. Elimination of PWC in Sinepuxent Bay portion of the park would affect those who would be precluded from using PWC there, but because the use is relatively low and other opportunities exist for PWC use, these impacts would be minor. Cumulative impacts related to PWC, other boats, and visitors on the visitor experience would be negligible adverse, since there would be little noticeable change in the visitor experience overall.

Visitor Conflicts and Safety

PWC comprise 9% of all registered "vessels" in the United States, but are involved in 36% of all boating accidents (NTSB 1998). In part, this is believed to be a boater education issue (i.e., inexperienced riders lose control of the craft), but it also is a function of the PWC operation (i.e., no brakes or clutch; when drivers let up on the throttle to avoid a collision, steering becomes difficult). Newer models will reportedly have improved safety devices such as better steering and braking systems, however it will take time to infuse the market with these types of newer machines.

Although the study conducted by National Transportation Safety Board indicates PWC related fatalities increasing in the United States, PWC related fatalities in the Assateague Island National Seashore area have been few in recent years. There were 46 PWC-related accidents including one fatality in Maryland in 2000. The primary causes of these accidents were excessive speed, operator inexperience, operator inattention, and machinery failure. There were 37 PWC-related accidents resulting in one fatality in Virginia in 2000.

The potential for accidents with other boaters (canoes, kayaks, sailboats and motorboats) in the Ocean City Inlet is considered to be of a moderate to major level due to the level of activity. The nature of PWC use poses threats to the safety of the PWC operator and occupants of vessels with slow reaction times such as sailboats, canoes, and kayaks. However, the areas proposed to be open to PWC use are intended to be used primarily as transportation corridors which may mitigate these potential hazards. Potential accidents involving PWC and swimmers may occur in nearshore waters at the extreme northeast and northwest sections of the island adjacent to the PWC landing area (most swimmers do not venture farther than 200 feet from shore). However, due to the small number of visitors utilizing these shores, adverse impacts are predicted to continue at a minor to moderate level. At the southern end of the island at Little Beach, potential accidents may occur involving PWC and swimmers. The number of PWC in this area is much more limited than at the northern end of the island. Consequently, the potential adverse impacts to swimmers at Little Beach are considered to be negligible to minor adverse.

Cumulative impacts under the proposed rule would continue at minor to potentially major levels over the next 10 years as congestion increases. As the number of motorized watercraft in the water continues to increase, the potential for accidents would escalate as well. This is particularly visible in the Ocean City Inlet where the potential for accidents between PWC and other motorboats exists.

Compliance With Other Laws

Regulatory Planning and Review (Executive Order 12866)

This document is a significant rule and has been reviewed by the Office of Management and Budget under Executive Order 12866.

(1) This rule will not have an effect of $100 million or more on the economy. It will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

The National Park Service has completed the report "Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore" (Law Engineering and Environmental Sciences, Inc) dated March 2002. The report found that this proposed rule will not have a negative economic impact. In fact this rule, which will not impact local PWC dealerships and rental shops, may have an overall positive impact on the local economy. This positive impact to the local economy is a result of an increase of other users, most notably canoeists, swimmers, anglers and traditional boaters seeking solitude and quiet, and improved water quality.

(2) This rule will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency.

Actions taken under this rule will not interfere with other agencies or local

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government plans, policies, or controls. This is an agency specific rule.

(3) This rule does not alter the budgetary effects of entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients.This rule will have no effects on entitlements, grants, user fees, or loan programs or the rights or obligations of their recipients. No grants or other forms of monetary supplements are involved.

(4) This rule raises novel policy issues.

This regulation is the first of thirteen special regulations for managing PWC use in National Park Units. The National Park Service published the general regulations (36 CFR 3.24) in March 2000, requiring individual park areas to adopt special regulations to authorize PWC use. The implementation of the requirements of the general regulation continues to generate interest and discussion from the public concerning the overall effect of authorizing PWC use and National Park Service policy and park management.

Regulatory Flexibility Act

The Department of the Interior certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This certification is based upon the finding in a report prepared by the National Park Service entitled, "Economic Analysis of Personal Watercraft Regulations in Assateague Island National Seashore" (Law Engineering and Environmental Sciences, Inc., March 2002). The focus of this study was to document the impact of this rule on two types of small entities, PWC dealerships and PWC rental outlets. This report found that the potential loss for these types of businesses as a result of this rule would be minimal to none.

Small Business Regulatory Enforcement Fairness Act (SBREFA)

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The National Park Service has completed an economic analysis to make this determination. This rule:

a. Does not have an annual effect on the economy of $100 million or more.

b. Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions.

c. Do not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Unfunded Mandates Reform Act

This rule does not impose an unfunded mandate on State, local, or tribal governments or the private sector of more than $100 million per year. The rule does not have a significant or unique effect on State, local or tribal governments or the private sector. This rule is an agency specific rule and imposes no other requirements on other agencies, governments, or the private sector.

Takings (Executive Order 12630)

In accordance with Executive Order 12630, the rule does not have significant taking implications. A taking implication assessment is not required. No takings of personal property will occur as a result of this rule.

Federalism (Executive Order 13132)

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. This proposed rule only effect use of NPS administered lands and waters. It has no outside effects on other areas and only allows use within a small portion of the park.

Civil Justice Reform (Executive Order 12988)

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and meets the requirements of sections 3(a) and 3(b)(2) of the Order.

Paperwork Reduction Act

This regulation does not require an information collection from 10 or more parties and a submission under the Paperwork Reduction Act is not required: An OMB form 83–I is not required.

National Environmental Policy Act

The National Park Service has analyzed this rule in accordance with the criteria of the National Environmental Policy Act and has prepared a Draft Environmental Assessment (EA). The EA is available for public review and comment in conjunction with this proposed rule. A copy of the Draft EA is available by contacting the Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811, Email: *Regina—Jones-Brake@nps.gov*, Fax: (410) 641–1099, or by downloading it from the internet at *www.nps.gov/asis*.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government to Government Relations with Native American Tribal Governments" (59 FR 22951) and 512 DM 2:

We have evaluated potential effects on federally recognized Indian tribes and have determined that there are no potential effects.

Clarity of Rule

Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to read if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§ " and a numbered heading; for example § 7.65 Assateague Island National Seashore. (5) Is the description of the rule in the "Supplementary Information" section of the preamble helpful in understanding the proposed rule? What else could we do to make the rule easier to understand?

Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW., Washington, DC 20240.

Drafting Information: The primary authors of this regulation are:

John C. Burns, Chief Ranger, Carl S. Zimmerman, Chief of Resource Management, Assateague Island National Seashore, Sarah Bransom, Environmental Quality Division, and Kym Hall, Regulations Program Manager.

Public Participation: If you wish to comment, you may submit your comments by any one of several methods. You may mail written comments to: Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland 21811, comment by electronic mail to: *Regina_Jones-Brake@nps.gov*, or comment by Fax at: (410) 641–1099. Please also include "PWCrule" in the subject line and your name and return address in the body of your Internet message. Finally, you may hand deliver

comments to Superintendent, Assateague Island National Seashore, 7206 National Seashore Lane, Berlin, Maryland. Our practice is to make comments, including names and addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the rulemaking record, which we will honor to the extent allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials or organizations or businesses, available for public inspection in their entirety.

List of Subjects in 36 CFR Part 7

District of Columbia, National parks, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, the National Park Service proposes to amend 36 CFR part 7 as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8–137(1981) and D.C. Code 40–721 (1981).

2. Section 7.65 is amended by adding paragraph (c) to read as follows:

§ 7.65 Assateague Island National Seashore

* * * * *

(c) *Personal Watercraft.* (1) Personal Watercraft (PWC) are allowed in Assateague Island National Seashore within the following locations and under the following conditions:

(i) *Ocean City Inlet.* PWC may operate, transit, launch in water or beach on land between the north shore of Assateague Island and the south margin of the established Ocean City Inlet channel, between Lighted Buoy #10 at approximate latitude 38.19.30N, longitude 75.05.30W and Lighted Buoy #11 at approximate latitude 38.19.16N, longitude 75.09.0W

(ii) *Chincoteague Bay.* PWC may operate, transit or launch in waters between the established Park boundary and the western shore of Assateague Island, from Assateague Point north to that portion of Horse Marsh located due east of the Memorial Park boat ramp on Chincoteague Island.

(iii) *Oceanside.* PWC are allowed to beach along the ocean side of the island only in the case of personal injury or mechanical failure.

(2) The Superintendent may temporarily limit, restrict or terminate access to the areas designated for PWC use after taking into consideration public health and safety, natural and cultural resource protection, and other management activities and objectives.

Dated: March 26, 2002.

Craig Manson,

Assistant Secretary, Fish and Wildlife and Parks.

[FR Doc. 02–11046 Filed 5–3–02; 8:45 am]

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FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Docket No. FEMA–B–7424

Proposed Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction of proposed rule.

SUMMARY: This document contains corrections to the proposed rule (Docket No. FEMA–B–7424), which was published on February 5, 2002. The correction more accurately represents the Flood Insurance Study and Flood Insurance Rate Map for the unincorporated areas of Greene County, Missouri, than previously published.

DATES: The comment period is ninety (90) days following the second publication of this correction to the proposed rule in a newspaper of local circulation in the community.

ADDRESSES: The proposed base flood elevations for the community are available for inspection at the Planning and Zoning Section, 833 Boonville Road, Springfield, Missouri 65802.

FOR FURTHER INFORMATION CONTACT: Matthew B. Miller, P.E., Chief, Hazards Study Branch, Federal Insurance and Mitigation Administration, 500 C Street SW., Washington, DC 20472, (202) 646–3461, or (e-mail) matt.miller@fema.gov.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency (FEMA) publishes proposed determinations of base (1-percent-annual-chance) flood elevations (BFEs) and modified BFEs for communities participating in the National Flood Insurance Program (NFIP), in accordance with Section 110 of the Flood Disaster Protection Act of 1973, 42 U.S.C. 4104, and 44 CFR 67.4(a). These proposed BFEs and modified BFEs, together with the floodplain management criteria required by 44 CFR 60.3, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements of its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed BFEs are used to meet the floodplain management requirements of the NFIP and are also used to calculate the appropriate flood insurance premium rates for new buildings built after these elevations are made final, and for the contents in these buildings.

Correction:

In proposed rule FR Doc. 02–2660, published February 5, 2002 (67 FR 5246), make the following correction to the addresses published under the authority of § 67.4. On page 5248, revise the text following the table for Greene County, Missouri, to read as follows:

Maps are available for inspection at the County Environmental Office, County Courthouse, 940 Boonville Avenue, Springfield, Missouri.

Send comments to the Honorable David L. Coonrod, Presiding Commissioner, Greene County Commissioners, County Courthouse, 940 Boonville Avenue, Springfield, Missouri 65802.

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: April 5, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

[FR Doc. 02–10220 Filed 5–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020412086–2086–01; I.D. 010202C]

RIN 0648–AJ08

Fisheries Off West Coast States and in the Western Pacific; Western Pacific Pelagics Fisheries; Pacific Remote Island Areas; Permit and Reporting Requirements for the Pelagic Troll and Handline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS issues a proposed rule that would establish Federal permit and reporting requirements for any U.S. fishing vessel that uses troll or handline fishing gear to harvest pelagic management unit species in waters of the U.S. exclusive economic zone (U.S. EEZ) around Howland Island, Baker Island, Jarvis Island, Johnston Atoll, Kingman Reef, Palmyra Atoll, Wake Island and Midway Atoll. These islands are referred to as the Pacific remote island areas (PRIA). The purpose of this proposed rule is to monitor participation in the fishery and to obtain fish catch and fishing effort data (including bycatch data), including interactions with protected species, so that fishery management decisions are based on complete information.

DATES: Comments on this proposed rule will be accepted through June 20, 2002.

ADDRESSES: Send comments to Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of background material pertaining to this action may be obtained from Kitty Simonds, Executive Director, Western Pacific Fishery Management Council (Council), 1164 Bishop St. Suite 1400, Honolulu, HI 96813. Comments will not be accepted if submitted via e-mail or the internet. Send comments on the reporting burden estimate or other aspect of the collection-of-information requirements in this proposed rule to NMFS, PIAO and to the Office of Management and Budget (OMB) at the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, at 808–973–2937.

SUPPLEMENTARY INFORMATION: The collection and analysis of reliable data are needed to assess the status and health of fishery stocks, evaluate the effectiveness of management measures, determine the need for changes in the management regime, prevent overfishing, determine and minimize bycatch, document protected species interactions with fishing gear, and assess the potential impact of fishery interactions. Other than for vessels registered for use with Federal Hawaii longline limited access permits, or Federal Western Pacific longline general permits, there are no specific regulations under the Fishery Management Plan for Pelagic Fisheries of the Western Pacific Region applicable to vessels targeting pelagic species in the U.S. EEZ waters around the PRIA. The PRIA or "U.S. island possessions in the Pacific" are the distant and mostly uninhabited U.S. islands in the central and western Pacific Ocean consisting of Howland Island, Baker Island, Jarvis Island, Wake Island, Kingman Reef, Johnston Atoll, Palmyra Atoll, and Midway Atoll. Midway Atoll, located in the Northwestern Hawaiian Islands, is not part of the State of Hawaii and is treated as one of the PRIA.

In recent years, several troll and handline fishing vessels from Hawaii have targeted pelagic fish stocks off Palmyra Atoll and Kingman Reef. This expansion of troll and handline fishing activity beyond the Hawaiian Archipelago to the U.S. EEZ around certain PRIA and the lack of any reporting requirements for these fisheries demonstrates the need to put in place reporting procedures in order to collect catch and bycatch data for these fisheries. The proposed establishment of a permit requirement for the PRIA pelagic troll/handline fishery would serve to identify actual or potential participants in the fishery. This would be an "open access" fishery, meaning any U.S. vessel would be eligible to receive a permit.

The Council has recommended the establishment of a reporting requirement for all vessel operators who participate in the PRIA pelagic troll/handline fishery, except at Midway Atoll. They would be required to use a new NMFS fish catch and effort reporting form created especially for the PRIA. At Midway Atoll, troll/handline vessel operators (i.e., charter boat captains), who operate under the Midway Atoll National Wildlife Refuge program, administered by the U.S. Fish and Wildlife Service (FWS), would continue to report their catch and effort data on existing fish catch reporting forms provided by the FWS. NMFS and FWS will coordinate their efforts to obtain the necessary data from fishermen at Midway Atoll and avoid duplication of reporting regimes.

Under this proposed rule NMFS would require vessel operators, except operators of vessels operating in the U.S. EEZ around Midway Atoll, to submit their catch reports to NMFS within 10 days after the completion of each fishing trip to the U.S. EEZ around the PRIA. The 10–day requirement is to allow vessels to make fish landings at Palmyra Atoll and to potentially conduct another fishing trip enroute to the vessel's homeport. By landing at Palmyra Atoll there would be no need for these vessels to return to their home ports between trips and, in that case, the prompt transmittal of catch reports to NMFS would be infeasible. For this reason NMFS proposes to allow the operators whose vessels are registered for use with PRIA troll/handline pelagic permits an extended reporting window.

The regulatory text for this proposed rule would correct a typographical error in the prohibition on longline fishing within longline fishing areas at § 660.22(i) to reference § 660.27 instead of a redundant reference to § 660.17. Also, a cross reference in § 660.21(i)(1) is revised to comport with the proposed redesignation of paragraphs in § 660.21.

Classification

This proposed rule has been determined to be not significant for purposes of Executive Order 12866.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration that this proposed rule, if adopted, would not have a significant economic impact on a substantial number of small entities as follows:

Based on historical records, it is estimated that two to three vessels from Hawaii, and three Midway Atoll-based vessels have fished in the U.S. EEZ around the PRIA in recent years. Future increases in effort are difficult to predict; however, it appears unlikely that significant expansion in this fishery will occur in the future due to long travel distances to reach the PRIA fishing grounds. It is estimated that there are approximately 5,000 fishing vessels that participate in the pelagic troll and handline fisheries in Hawaii, American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands; however, it is expected that this rule would impact less than 10 of the vessel operators. Further, due to its purely administrative and record keeping nature, this proposed rule would not affect fishing operations directly and would require only relatively minor tasks related to permit application and reporting requirements. The new reporting requirement would be largely similar to the existing requirements for other areas, which are familiar to the majority of likely fishery participants. Eligibility criteria and application forms for the permit would be the same as those for other Federal western Pacific fishing permits. No fee is associated with the PRIA pelagic troll and handline permit. Estimated total annual cost to respondents for completing permit applications and required reports is $600 per year. The proposed permitting and reporting demands are considered to be minimal, and, when combined with the small number of individuals likely to be impacted, provide a basis for certification of this action as one not likely to have a significant economic impact on a substantial number of small entities.

As a result, no regulatory flexibility analysis is required for this proposed rule and none has been prepared.

This proposed rule contains collection-of-information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). These requirements have been submitted to OMB for approval. Public reporting burden for these collections of information is estimated at 30 minutes for a permit application and 5 minutes for a daily troll/handline log sheet. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: Whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this proposed rule to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, and no person shall be subject to penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Fishing Gear, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, Reporting and recordkeeping requirements.

Dated: April 29, 2002.

Rebecca Lent,

Acting Deputy Assistant Administrator for Regulatory Programs, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is proposed to be amended to read as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation for part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.12, the definitions for "Pelagic handline fishing," "Pelagic troll fishing," and "Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean)," are added in alphabetical order to read as follows:

§ 660.12 Definitions.

* * * * *

Pacific remote island areas (PRIA, or U.S. island possessions in the Pacific Ocean) means Palmyra Atoll, Kingman Reef, Jarvis Island, Baker Island, Howland Island, Johnston Atoll, Wake Island, and Midway Atoll.

Pelagic handline fishing means fishing for pelagic management unit species from a stationary or drifting vessel using hook and line gear other than longline gear.

Pelagic troll fishing (trolling) means fishing for pelagic management unit species from a moving vessel using hook and line gear.

* * * * *

3. In § 660.14, paragraph (a) is revised to read as follows:

§ 660.14 Reporting and recordkeeping.

(a) *Fishing record forms.* The operator of any fishing vessel subject to the requirements of §§ 660.21, 660.41, or 660.81 must maintain on board the vessel an accurate and complete record of catch, effort, and other data on report forms provided by the Regional Administrator. All information specified on the forms must be recorded on the forms within 24 hours after the completion of each fishing day. The original logbook form for each day of the fishing trip must be submitted to the Regional Administrator as required by this paragraph (a). Each form must be signed and dated by the fishing vessel operator.

(1) The operator of any vessel subject to the requirements of §§ 660.21(a) through (c), 660.41, or 660.81 must submit the original logbook form for each day of the fishing trip to the Regional Administrator within 72 hours of each landing of management unit species.

(2) Except for a vessel that is fishing in the U.S. EEZ around Midway Atoll as specified in paragraph (a)(3) of this section, any operator whose vessel is registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d) must submit the original logbook form for each day of fishing within the U.S. EEZ around the PRIA to the Regional Administrator within 10 days of each landing of management unit species.

(3) The operator of a vessel fishing in the U.S. EEZ around Midway Atoll and registered for use with a PRIA pelagic troll and handline fishing permit under § 660.21(d), must submit an appropriate reporting form as required and in a manner specified by the U.S. Fish and Wildlife Service for each day of fishing within the U.S. EEZ around Midway Atoll, which is defined as an area of the Pacific Ocean bounded on the east by 177°10′ W. long., on the west by 177°30′ W. long., on the north by 28°25′ N. lat., and on the south by 28°05′ N. lat.

* * * * *

4. In § 660.21, paragraphs (d) through (l) are redesignated as (e) through (m), newly redesignated paragraph (l)(1) is revised, and new paragraph (d) is added to read as follows:

§ 660.21 Permits.

* * * * *

(d) A fishing vessel of the United States must be registered for use with a PRIA pelagic troll and handline fishing permit if that vessel is used to fish for Pacific pelagic management unit species using pelagic handline or trolling fishing methods in the U.S. EEZ around the PRIA.

* * * * *

(l)(1) Upon receipt of an appeal authorized by this section, the Regional Administrator may request additional information. Upon receipt of sufficient information, the Regional Administrator will decide the appeal in accordance with the criteria set out in this part and in the fishery management plans prepared by the Council, as appropriate, based upon information relative to the application on file at NMFS and the Council and any additional information available; the summary record kept of any hearing and the hearing officer's recommended decision, if any, as provided in paragraph (l)(3) of this section; and such other considerations as deemed appropriate. The Regional Administrator will notify the appellant of the decision and the reasons therefor, in writing, normally within 30 days of the receipt of sufficient information.

unless additional time is needed for a hearing.

* * * * *

5. In § 660.22, the phrase "U.S. possessions in the Pacific Ocean area" is revised to read "U.S. island possessions in the Pacific Ocean" each place that it appears, paragraph (i) is revised, and new paragraph (uu) is added to read as follows:

§ 660.22 Prohibitions.

* * * * *

(i) Fish with longline gear within a longline fishing prohibited area, except as allowed pursuant to an exemption issued under § 660.17 or § 660.27.

* * * * *

(uu) Use a U.S. vessel employing pelagic handline or trolling methods to fish in the U.S. EEZ around the PRIA without a valid PRIA pelagic troll and handline fishing permit registered for use with that vessel.

[FR Doc. 02–11026 Filed 5–3–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 87
Monday, May 6, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Submission for OMB Review; Comment Request

May 1, 2002.

The Department of Agriculture has submitted the following information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503 and the Departmental Clearance Office, USDA, OCIO, Mail Stop 7602, Washington, DC 20250–7602. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling (202) 720–6746.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

Foreign Agricultural Agency

Title: Request for Vessel Approval.
OMB Control Number: 0551–0008.
Summary of Collection: Title I of the Agricultural Trade Development and Assistance Act of 1954 (Pub. L. 480, 83rd Congress, as amended) provides for U.S. government financing of sales of U.S. agricultural commodities to recipients (foreign countries or private entities). In accordance with the law, an agreement providing for long-term credit financing is first negotiated with the recipients through diplomatic channels. Within the U.S. government, the Foreign Agricultural Service (FAS) of the Department of Agriculture is the agency responsible for administering Public Law 480, Title I ("Title I") agreements. After an agreement has been signed, the recipient applies to FAS for authorization to purchase each commodity provided in the agreement. A purchase authorization is issued which provides for financing of commodity sales by the Commodity Credit Corporation (CCC). The recipient then purchases the commodity for delivery at U.S. ports and arranges for ocean transportation. The recipient must send the pertinent terms of all proposed ocean freight contracts, regardless of whether any portion of the ocean freight is financed by CCC, to FAS for review and approval before the vessel is "fixed" (i.e. contracted).
Need and Use of the Information: FAS will collect information on the ocean freight contract. The information is needed to ensure: that Title I recipient comply with the requirement that U.S. flag vessels carry 75 percent of the tonnage shipped under this program, that program recipients comply with Public Law 664 (Cargo Preference Act) and the Merchant Marine Act of 1936, as amended. FAS also uses the information to prepare form CCC–105, "Advice of Vessel Approval," which specifies what part of the ocean freight rate will be financed by the CCC.
Description of Respondents: Business or other for-profit.
Number of Respondents: 5.
Frequency of Responses: Reporting; on occasion.
Total Burden Hours: 9.

Farm Service Agency

Title: Verification of Debts and Assets.
OMB Control Number: 0560–0166.
Summary of Collection: The Consolidated Farm and Rural Development Act (CONACT) Sections 311 (7 U.S.C. 1941), 302 (7 U.S.C. 1922 and 321 (7 U.S.C. 1961), authorize the Farm Service Agency to determine an applicant's eligibility for Operating, Farm Ownership or Emergency loans. Additionally, Section 353 (7 U.S.C. 2001) requires FSA to collect financial data to verify debts and assets of borrowers that requested primary and preservation loan servicing or debt settlement. FSA will collect information using FSA form 440–32, Verification of Debts and Assets.
Need and Use of the Information: FSA will collect information to determine whether an applicant is eligible for a loan or the appropriateness of a servicing or debt settlement action. The data collected is then used to determine feasibility of the loan request. If the data were not collected, FSA would be forced to use outdated financial information, which would result in much higher losses to the Government.
Description of Respondents: Business or other for-profit; individuals or households; farms; Federal Government.
Number of Respondents: 23,656.
Frequency of Responses: Reporting; on occasion.
Total Burden Hours: 11,828.

Rural Business Cooperative Service

Title: 7 CFR Part 1980–E, Business and Industry Loan Program.
OMB Control Number: 0570–0014.
Summary of Collection: The Business and Industry (B&I) program was legislated in 1972 under Section 310B of the Consolidated Farm and Rural Development Act. The purpose of the program is to improve, employ, develop, or finance businesses, industries, and improve the economic and environmental climate in rural communities; including pollution abatement and control. This is achieved through bolstering the existing private credit structure by making direct loans, thereby providing lasting community benefits. The B&I program is administered by the agency through Rural Development State and sub-State Offices serving the State. All the reporting and recordkeeping burden estimates for making and servicing B&I Guaranteed Loans have been moved to the B&I Guaranteed Loan Program regulations (7 CFR 4279–A and B and

4287–B). 7 CFR 1980–E, in conjunction with 7 CFR 1942–A and other regulations, is currently used only for making B&I Direct Loans. 7 CFR 1951–E is used for servicing B&I Direct and Community Facility loans.

Need and Use of the Information: RD will collect the minimum information needed from applicant to determine program eligibility, or the current financial condition of a business or a credit proposal; is requested. The majority of the information is collected only once and the agency monitors the progress of the business through the analysis of annual borrower financial statements and visits to the borrower.

Description of Respondents: Individuals or households; State, Local or Tribal Government.

Number of Respondents: 200.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 4,550.

Rural Business Service

Title: 7 CFR 1951–R, Rural Development Loan Servicing.

OMB Control Number: 0570–0015.

Summary of Collection: The Rural Development (RD) Loan Servicing was legislated in 1985 under Section 1323 of the Food and Security Act of 1985. This action is needed to implement the provision of Section 407 of the Health and Human Services Act of 1986, which amended Section 1323 of the Food Security Act of 1985. Subpart R of part 1951 contains regulations for servicing and liquidating existing loans previously approved and administered by the U.S. Department of Health and Human Services under 45 CFR Part 1076 and transferred from HHS to the Department of Agriculture. This subpart contains regulation for servicing and liquidating loans made by RD, successor to the Farmers Home Administration, under the Intermediary Relending Program to eligible intermediaries and applies to ultimate recipients and other involved parties.

Need and Use of the Information: RD will collect information from the Intermediary, i.e. assets and liabilities, income statement and a summary of the Intermediary's lending and guarantee program. The information is vital to RD for the Agency to make credit and financial analysis decisions based on financial information provided by the Intermediary.

Description of Respondents: Not-for-profit institutions; business or other for-profit.

Number of Respondents: 420.

Frequency of Responses: Reporting: On occasion; quarterly; semi-annually; annually.

Rural Housing Service

Title: Application Certification, Federal Collections Policies for Consumer or Commercial Debts.

OMB Control Number: 0575–0127.

Summary of Collection: OMB Circular A–129, "Policies for Federal Credit Programs and Non-Tax Receivables," states "further information on the implementation of credit management and debt collection policies may be found in the credit supplement to the Treasury Financial Manual"—According to Managing Government Credit: A Supplement to the Treasury Financial Manual. The agency will inform its loan applicants of the Federal Government's debt collection policies and procedures prior to extending credit. Applicants are required to sign a debt collection certification statement to certify knowledge of the Government's policies in which the statement details the consequences of delinquency.

Need and Use of the Information: RD will collect the information using Form RD 1910–11 to advise applicants of the debt collection methods that will and can be used in recovering delinquent or defaulted loans. The information will be obtained from loan applicants for consumer and commercial debt at the time of loan application. If the application results in a loan, the information will be maintained in the borrower's case file or loan docket and used as documentation should the borrower become delinquent or default.

Description of Respondents: State, Local or Tribal Government; not for profit institutions; Individuals, Households; business or other for-profit; Federal Government.

Number of Respondents: 1,625.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 406.

Rural Housing Service

Title: RD 3550–28, "Authorization Agreement for Preauthorization Payments"; RD 1951–65; "Customer Initiated Payments (CIP)" and RD 1951–66, "Fedwire Worksheet".

OMB Control Number: 0575–New.

Summary of Collection: Rural Development has expanded its use of electronic methods for receiving and processing loan payments and collections. These electronic collection methods include Preauthorized Debits (PAD), Customer Initiated Payments (CIP), and FedWire; and they can provide the borrower the ability to submit their loan payments the day prior to, or the day of their installment due date. To administer these electronic payment methods, Rural Development (RD) will use approved agency forms for collecting financial institution routing information. Form RD 3550–28, Authorization Agreement for Preauthorized Payments, is prepared by the borrower to authorized RD to electronically collect regular loan payments from a borrower's account at a financial institution (FI) as preauthorized debits. Form RD 1951–65, is prepared by the borrower to enroll in CIP. CIP is an electronic collection method that enables borrowers to input payment data to a contract bank via telephone (touch tone and voice) or computer terminal. Form RD 1951–66, FedWire Worksheet, is completed by the borrower to establish an electronic FedWire format with their FI.

Need and Use of the Information: Rural Development (RD) will request that borrowers make payments electronically via PAD, CIP, or FedWire. The information is collected only once unless the FI routing information changes. If the information were not collected, RD would be unable to collect loan payments electronically, resulting in increased costs to borrowers and the government to process hard copy checks, money orders, etc.

Description of Respondents: Not-for-profit institutions; Business or other for-profit; State, Local or Tribal Government.

Number of Respondents: 600.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 300.

Animal Plant and Health Inspection Service

Title: Brucellosis Program Cooperative Agreements—Title 9, CFR Parts 50, 51, 53, 54, 71, 76, and 78.

OMB Control Number: 0527–0047.

Summary of Collection: Brucellosis is a contagious animal disease that causes loss of young through spontaneous abortion or birth of weak offspring, reduced milk production, and infertility. It is mainly a disease of cattle, bison and swine. There is no economically feasible treatment for brucellosis in livestock. Veterinary Services, a division with USDA's Animal and Plant Health Inspection Service (APHIS), is responsible for administering regulations intended to prevent the dissemination of animal diseases, such as brucellosis, within the United States. These regulations are found in Part 78 of Title 9, Code of Federal Regulations. The continued presence of brucellosis in a herd seriously threatens the health of other animals.

Need and Use of the Information: APHIS will use the information collected from the various forms to continue to search for other infected herds, maintain identification of livestock, monitor deficiencies in identification of animals for movement, and monitor program deficiencies in suspicious and infected herds. This information will be used to determine brucellosis area status and aids herd owners by speeding up the detection and elimination of serious disease conditions in their herds. Without the data, APHIS' Brucellosis Eradication Program would be severely crippled.

Description of Respondents: Farms; State, Local or Tribal Government.

Number of Respondents: 7,382.

Frequency of Responses: Recordkeeping; reporting: On occasion.

Total Burden Hours: 4,036.

Animal Plant and Health Inspection Service

Title: 7 CFR 319.76 Exotic Bee Diseases and Parasites, 7 CFR 322 Honeybees and Honeybee Semen.

OMB Control Number: 0579–0072.

Summary of Collection: The Honeybee Act of 1922 (Title 7, Chapter 11) was created to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable plasm of honeybees. The introduction and establishment of new honeybee diseases, parasites, and undesirable honeybee strains in the United States could cause multimillion-dollar losses to American agriculture. Diseases and parasites can weaken or kill honeybees, thereby causing substantial reductions in the production of honey and other honeybee products, as well as reduction in pollination activity. Section 281c of the Honeybee Act provides that honeybees and honeybee semen can only be imported into the United States under rules and regulations prescribed by the Secretary of Agriculture and the Animal and Plant Health Inspection Service (APHIS). Anyone who seeks to import honeybees, honeybee semen, or articles that could harbor diseases or parasites of honeybees must apply to APHIS for an import permit. APHIS will collect various pieces of information concerning the nature and point of origin of the items to be imported using a number of forms and documents.

Need and Use of the Information: APHIS collects information from importers such as name, address, telephone number, the quantity and kinds of articles intended for import, the amount of semen to be imported; the species or subspecies of honeybee from which the semen was collected; the country or locality or origin; the intended port of entry in the United States; the means of transportation; and the expected date of arrival. The information is needed to determine if the honeybee semen or restricted articles are eligible for importation into the United States, and under what conditions (i.e., necessary treatment, appropriate shipping containers, proper port of entry, etc.

Description of Respondents: Business or other for profit; individuals or households; farms; State, Local or Tribal Government; Federal Government.

Number of Respondents: 13.

Frequency of responses: Reporting: On occasion.

Total Burden Hours: 9.

Animal Plant and Health Inspection Service

Title: 7 CFR 340–Intro of Organisms and Products Altered or Produced Through Genetic Engineering Which are Plant Pests or Which There is Reason to Believe are Plant Pests.

OMB Control Number: 0579–0085.

Summary of Collection: The Animal and Plant Health Inspection Service (APHIS) is charged with preventing the introduction into, and dissemination and establishment of plant pests in the United States. The statutory requirements for the information collection activity are found in the Federal Plant Pest Act (FPPA) and the Plant Quarantine Act (PQA). The regulations in 7 CFR part 340 implement the provisions of the FPPA and PQA by providing the information necessary to establish conditions for proposed introductions of certain genetically engineered organisms and products which present a risk of plant pest introduction.

Need and Use of the Information: APHIS will collect the information through a notification procedure or a permit requirement to ensure that certain genetically engineered organisms, when imported, moved interstate, or released into the environment, will not present risk of plant pest introduction. The information collected through the petition process is used to determine whether a genetically engineered organism will pose a risk to agriculture or the environment, if grown in the absence of regulation by APHIS. The information is also provided to State departments of agriculture for review, and made available to the public and private sectors on the Internet to ensure that all sectors are kept informed concerning any potential risks posed through the use of genetic engineering technology.

Description of Respondents: Business or other for profit; not-for-profit institutions; State, Local or Tribal Government.

Number of Respondents: 105.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2,984.

Animal & Plant Health Inspection Service

Description of Respondents: State, Local or Tribal Government; Federal Government;

Number of Respondents: 120.

Frequency of Responses: Recordkeeping; reporting; on occasion.

Total Burden Hours: 240.

Animal Plant and Health Inspection Service

Title: 7 CFR Parts 319—Importation of Fruits and Vegetables.

OMB Control Number: 0579–0136.

Summary of Collection: The Department of Agriculture is responsible for preventing plant diseases or insect pests from entering the United States. The Plant Protect Quarantine Act and the Federal Pest Act authorizes the Department and the Animal and Plant Health Inspection Service (APHIS) to carry out this mission. Implementing the laws is necessary to prevent injurious insect pest and plant diseases from entering the United States, a situation that could produce serious consequences for U.S. agriculture. Providing for the safe importation of these fruits and vegetables will necessitate the use of several information collection activities and forms, including an application for permit, phytosanitary certificate, certain marking requirements, trapping and survey procedures.

Need and Use of the Information: APHIS will collect information from permit applications to determine if the fruits meets the requirements for importation and also this enables APHIS to evaluate potential risks associated with the proposed movement of these fruits and vegetables into the United States. The information is used to determine whether a permit can be issued, and also to develop risk-mitigating conditions for the proposed movement.

Description of Respondents: Business or other for profit; individuals or households; not-for-profit institutions; farms; State, Local or Tribal Government.

Number of Respondents: 822.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 1,343.

Agricultural Marketing Service

Title: National Research, Promotion, and Consumer Information Programs—Honey Revision—Final Rule.

OMB Control Number: 0581–0093.

Summary of Collection: The Department of Agriculture has the responsibility of implementing and overseeing national commodity research and promotion programs for beef, cotton, dairy, eggs, honey, kiwifruit, mushrooms, peanuts, popcorn, pork, potatoes, soybeans, and watermelons. These programs are established under freestanding legislation, which means that each program is authorized under an act of Congress.

In the Federal Agriculture Improvement and Reform Act of 1996, (Pub. L. 104–127, signed April 4, 1996), Congress amended the Honey Research, Promotion, and Consumer Information Act (7 U.S.C. 4601–4613), hereinafter referred to as the Act. This Act requires honey producers to maintain, retain, and make available to the National Honey Board and the Secretary of Agriculture such books and records as are necessary for the administration and enforcement of the Act. The Act also requires producers to file reports with the Board or the Secretary to facilitate the administration and enforcement of the Act. Before these changes, only handlers, importers, and producer-packers were subject to recordkeeping and reporting requirements.

Need and Use of the Information: The Secretary of the Board uses form, AD–755, to conduct applicant background clearances and determine qualifications and suitability for appointment. The Transaction Report form authorizes the collection of assessments, provides information on importers, honey purchased from other producers and countries, and domestic honey. The timing and frequency of information collected is intended to meet the needs of the industry while staying in compliance with the Act and Order. If the information were not collected, the Board would be incapable of carrying out the provisions of the Act and Order.

Description of Respondents: Business or other for-profit; farm; Federal Government.

Number of Respondents: 320,139.

Frequency of Responses: Recordkeeping; reporting: Weekly, monthly, semi-Annually, annually.

Total Burden Hours: 343,487.

Agricultural Marketing Service

Title: Lamb Promotion, Research and Information Program.

OMB Control Number: 0581–0198.

Summary of Collection: The authority for Lamb Promotion, Research, and Information Order is established under the Commodity Promotion, Research, and Information Act of 1996. These programs carry out projects relating to research, consumer information, advertising, producer information, market development, and product research with the goal of maintaining and expanding their existing markets and uses and strengthening their position in the marketplace.

Need and Use of the Information: Various forms will be used to collect information for reporting, background, certification, remittance and nomination. The information requested on the forms is the minimum information necessary to effectively carry out the requirements of the program. The information is not available from other sources because it relates specifically to individual lamb producers, feeders, seedstock producers exporters and first handlers.

Description of Respondents: Farms: individuals or households; business or other for-profit.

Number of Respondents: 70,804.

Frequency of Response: Recordkeeping; reporting: Monthly.

Total Burden House: 66,406.

Food and Nutrition Service

Title: 14 State Summer Food Service Program Pilot Project.

OMB Control Number: 0584–NEW.

Summary of Collection: Children in low-income communities are eligible to receive free or reduced-price meals during the school year through the National School Lunch Program and the School Breakfast Program. The Summer Food Service Program (SFSP) was created to ensure that children in low-income areas could continue to receive nutritious meals during long school vacations, when they do not have access to school lunch or breakfast. Subsection 18 (f) of the Richard B. Russell National School Lunch Act (NSLA) (42 U.S.C. 1769 (f)) added by section 1 (a)(4) of the Consolidated Appropriations Act, 2001 (Pub. L. 106–554, December 21, 2000), authorized the Secretary of Agriculture, through the Administrator of the Food and Nutrition Service (FNS), to conduct a pilot in each eligible State to increase the number of children participating in the Summer Food Service Program in that State. Definition of "eligible State" that is a State which has low (SFSP) participation, was provided in the authorizing legislation. Fourteen States met the eligibility criteria and are participating in the pilot.

Need and Use of the Information: FNS will collect information to describe (a) any effect on participation by children and service institutions in the SFSP in the pilot States; (b) any effect of the pilot on the quality of meals and supplements served in the pilot States; and (c) any effect of the pilot on program integrity. The information collected will provide Congress and FNS with much needed information on the impact of implementing this pilot on program participation.

Description of Respondents: Business or other for profit; State, Local or Tribal Government.

Number of Respondents: 630.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 274.

Animal Plant and Health Inspection Service

Title: Self-Certification Medical Statement (SCMS).

OMB Control Number: 0579–NEW.

Summary of Collection: The Secretary of Agriculture is responsible for ensuring consumers that food and farm products are moved from producer to consumer in the most efficient, dependable, economical, and equitable system possible. 5 CFR Part 339 authorizes an agency to obtain medical information about the applicant's health status to assist management in making employment decisions concerning positions that have specific medical standards or physical requirements. The Animal Plant and Health Inspection Service (APHIS) of the U.S. Department of Agriculture hires individuals each year in commodity grading and inspection positions. These positions involve arduous duties and work under conditions, around moving machinery, slippery surfaces, and high noise level noise. APHIS will collect information using the MRP–5 form (Self-Certification Medical Statement).

Need and Use of the Information: The data is needed to obtain information from the applicant about his/her health and fitness. Denial of the information would greatly hamper APHIS recruiting capability and adversely affect management's ability to facilitate hiring, placement, and utilization of qualified individuals into positions that have specific medical standards and physical requirements.

Description of Respondents: Individuals or households; farms; State, Local or Tribal Government; Federal Government.

Number of Respondents: 300.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 50.

Rural Housing Service

Title: 7 CFR 1901–K, "Certificates of Beneficial Ownership and Insured Notes".

OMB Control Number: 0575–0064.

Summary of Collection: The Rural Housing Service (RHS), Farm Service Agency (FSA), and the Rural Business Service (RBS) and the Rural Utilities Service (RUS) currently shared this regulation. FSA's Farm Loan Program (FLP) provides supervised credit in the form of loans to family farmers and ranchers to purchase land and finance agricultural production. RHS provides supervised credit in the form of Multi-Family Housing (MFH) loans and Community Facility (CF) loans. The MFH loan program provides eligible persons with rental or cooperative housing pursuant to the Housing Act of 1949. RBS provides supervised credit in the form of direct loans to businesses in rural areas. In the past, these agencies financed the lending activity of their respective insurance funds through the sale of insured notes, insurance contracts, and Certificates of Beneficial Ownership (CBO) to the Federal Financing Bank and the public.

Need and Use of the Information: The owners, holders or assignees of notes, contracts and CBO's will submitted the information collected to the agency offices. The agency will use the information to redeem or replace or pay interest on these documents and monitor CBO sales and transfer consistent with sound financial management practices. A private holder of RD insured note or CBO is required to document any of the following (1) notice and acknowledgement of sale of insured or guaranteed loans; (2) assignment of CBO's; (3) loss, theft, destruction, mutilation, or defacement of insured CBO's or (4) death of a note holder or certificate holder. Failure by RD to monitor Certificates of Beneficial Ownership (CBO) sales and transfers could possibly lead to non-compliance with statutory intent.

Description of Respondents: Individuals or households.

Number of Respondents: 4.

Frequency of Responses: Reporting: On occasion.

Total Burden Hours: 2.5.

Sondra A. Blakely,

Departmental Information Clearance Officer.

[FR Doc. 02–11157 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–01–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting and extension of comment period.

SUMMARY: The Forest Counties Payments Committee will meet in Rapid City, South Dakota, on April 20, 2002. The purpose of the meeting is to receive comments from both elected officials and the general public on the recommendations the Committee must make to Congress as specified in Section 320 of the Fiscal Year 2001 Interior and Related Agencies Appropriations Act. The meeting will consist of a public input session from 1 p.m. until 5 p.m. This notice also provides an extension of the comment period associated with the Forest Counties Payments Committee meeting held in Reno, Nevada, on April 20, 2002 (67 FR 5087, February 4, 2002).

DATES: The Rapid City, South Dakota, meeting will be held on May 17, 2002. Persons who attended or spoke at the Reno, Nevada, meeting, who will attend the Rapid City, South Dakota, meeting, or who are otherwise interested in providing comments to the Committee on payments to counties in South Dakota and Nevada have until June 30 to submit their written comments. Comments received after that date will be considered to the extent possible.

ADDRESSES: The May 17 meeting will be held at the Holiday Inn Rushmore Plaza, 505 North Fifth Street, Rapid City, South Dakota. Those who cannot be present may submit written responses to the questions listed in **SUPPLEMENTARY INFORMATION** in this notice to Randle G. Phillips, Executive Director, Forest Counties Payments Committee, P.O. Box 34718, Washington, D.C. 20043–4713, or electronically at the Committee's website at *http://countypayments.gov/comments.html.*

FOR FURTHER INFORMATION CONTACT: Randle G. Phillips, Executive Director, Forest Counties Payments Committee, (202) 208–6574 or via e-mail at *rphillips01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Section 320 of the 2001 Interior and Related Agencies Appropriations Act (Pub. L. 106–291) created the Forest Counties Payments Committee to make recommendations to Congress on a long-term solution for making Federal payments to eligible States and counties in which Federal lands are situated. To formulate its recommendations to Congress, the Committee will consider the impact on eligible States and counties of revenues from the historic multiple use of Federal lands; evaluate the economic, environmental, and social benefits which accrue to counties containing Federal lands; evaluate the expenditures by counties on activities occurring on Federal lands which are Federal responsibilities; and monitor payments and implementation of the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393).

At the May 17 meeting in Rapid City, South Dakota, the Committee asks that elected officials and others who wish to comment provide information in response to the following questions:

1. Do counties receive their fair share of federal revenue-sharing payments made to eligible States?
2. What difficulties exist in complying with, and managing all of the federal revenue-sharing payments programs? Are some more difficult than others?
3. What economic, social, and environmental costs do counties incur as a result of the presence of public lands within their boundaries?
4. What economic, social, and environmental benefits do counties realize as a result of public lands within their boundaries?
5. What are the economic and social effects from changes in revenues generated from public lands over the past 15 years, as a result of changes in management on public lands in your State or county?
6. What actions has your State or county taken to mitigate any impacts associated with declining economic conditions, or revenue-sharing payments?
7. What effects, both positive and negative, have taken place with education and highway programs that are attributable to the management of public lands within your State or county?
8. What relationship, if any, should exist between federal revenue-sharing programs, and management activities on public lands?
9. What alternatives exist to provide equitable revenue-sharing to States and counties and to promote "sustainable forestry?'
10. What has been your experience regarding implementation of Public Law 106–393, The Secure Rural Schools and Community Self-Determination Act?
11. What changes in law, policies and procedures, and the management of public land have contributed to changes in revenue derived from the multiple-use management of these lands?
12. What changes in law, policies and procedures, and the management of public land are needed in order to restore the revenues derived from the multiple-use management of these lands?

Persons interested in the payments to Nevada counties also are requested to

address these same questions and also have until June 30 to submit their views in writing to the Committee

Dated: April 29, 2002.

Elizabeth Estill,

Deputy Chief for Programs and Legislation.

[FR Doc. 02–11111 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Notice of Idaho Panhandle Resource Advisory Committee Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act (Pub. L. 92–463) and under the Secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Idaho Panhandle National Forests' Idaho Panhandle Resource Advisory Committee will meet Friday, May 17, 2002 in Coeur d'Alene, Idaho for a business meeting. The meeting is open to the public.

DATES: May 17, 2002.

ADDRESSES: The meeting location is the Idaho Panhandle National Forests' Supervisor's Office, located at 3815 Schreiber Way, Coeur d'Alene, Idaho 83815.

FOR FURTHER INFORMATION CONTACT: Ranotta K. McNair, Forest Supervisor and Designated Federal Officer, at (208) 765–7369.

SUPPLEMENTARY INFORMATION: Agenda topics include reviewing project proposals and receiving public comment.

Dated: April 29, 2002.

Ranotta K. McNair,

Forest Supervisor.

[FR Doc. 02–11113 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

United States Standards for Lentils

AGENCY: Grain Inspection, Packers and Stockyards Administration, USDA.

ACTION: Notice with opportunity to comment.

SUMMARY: The Grain Inspection, Packers and Stockyards Administration (GIPSA) is proposing to revise the United States Standards for Lentils to modify the definitions for "good" and "fair" color lentils; establish an additional color factor and definition, "poor color lentils;" establish a new grading factor, "contrasting lentils;" and expand the definition of damaged lentils to include "immature lentils." These changes are being made at the request of the lentil industry in order to improve the usability of the United States Standards for Lentils.

DATES: Comments must be received by June 30, 2002.

ADDRESSES: Written comments must be submitted to Tess Butler, USDA, GIPSA, STOP 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3604; faxed to (202) 690–2755, or e-mail: *H.Tess.Butler@usda.gov*.

All comments received will be made available for public inspection at the above address during regular business hours (8 a.m.–3:30 p.m.).

The current United States Standards for Lentils, along with the proposed changes, are available either through the above addresses or by accessing GIPSA's Home Page on the Internet at: *www.usda.gov/gipsa/reference-library/standards/stds.htm*.

FOR FURTHER INFORMATION CONTACT: John Giler, Chief, Policies and Procedures Branch, USDA, GIPSA, Stop 3604, 1400 Independence Avenue, SW., Washington, DC 20250–3632; telephone (202) 720–0252; or e-mail to: *John.C.Giler@usda.gov*

SUPPLEMENTARY INFORMATION: Section 203(c) of the Agricultural Marketing Act of 1946, as amended, directs and authorizes the Secretary of Agriculture "to develop and improve standards of quality, condition, quantity, grade, and packaging and recommend and demonstrate such standards in order to encourage uniformity and consistency in commercial practices. * * *" GIPSA is committed to carrying out this authority in a manner that facilitates the marketing of agricultural commodities. The United States Standards for Lentils do not appear in the Code of Federal Regulations but are maintained by the U.S. Department of Agriculture.

GIPSA is proposing to change the United States Standards for Lentils using the procedures it published in the **Federal Register** on February 13, 1997 (62 FR 6705). Specifically, GIPSA is proposing to better define current color requirements; establish a new color requirement; expand the definition of damaged lentils; and include a new factor, "contrasting lentils."

GIPSA representatives work closely with the U.S.A. Dry Pea and Lentil Council (USADPLC) and others in the lentil industry to examine the effectiveness of the U.S. Standards for Lentils in today's marketing environment. Through discussions, it appears that most of the current standards continue to meet consumer/processor needs. However, changing market trends demand that certain changes be made pertaining to the acceptable appearance of the lentils.

At the request of the lentil industry, GIPSA is proposing these changes be implemented by July 1, 2002, in order to be in place before harvest of the lentil crop year.

Lentil Color

The U.S. Standards for Lentils characterize lentil color as being "good lentil color" which is the minimum color requirement for U.S. No. 1 and "fair lentil color" which is the minimum color requirement for U.S. Nos. 2 and 3. However, the current written descriptions for these characterizations and the absence of any visual reference aids may cause confusion concerning the applications of color. Due to the economic significance general appearance (color) has for processors and end-users, GIPSA and the USADPLC worked together to more clearly define the terms used to describe lentil color and to create visual references that aid in the consistent applications of color.

The current definition of good lentil color is "Lentil that in mass are practically free from discoloration and have the natural color appearance characteristics of the predominating class." The proposed definition is "Lentils that are practically free from discoloration and have the uniform natural color and appearance characteristics of the predominating lentil type." The current definition of fair color lentils is "Lentils that are not of good color." The proposed definition is "Lentils that are lightly to moderately discolored from storage or other causes to the extent they cannot be considered of good color."

Also, the existing lentil color characterizations, "good" and "fair," do not sufficiently address the color degradation process and all possible degrees of color. Samples that are marginally discolored and those which are significantly discolored are both considered to be of "fair lentil color." Accordingly, GIPSA and the USADPLC established visual reference standards to distinguish between three-color categories: good, fair, and poor. The proposed definition for poor lentil color is: "Lentil that are severely discolored from storage or other causes to the extent they cannot be considered of fair color."

The addition of "poor lentil color" to the Standards, the clarification of the definitions for "good color lentils" and "fair color lentils," and the establishment of visual aids for these colors will result in a more uniform and consistent application of the Standards. While "good" and "fair" will continue to serve as the minimum color standard for U.S. Nos. 1 and 2, respectively, samples considered to be of "poor lentil color" will receive no better than a U.S. No. 3 grade designation. This will assist in moving the U.S. lentil market towards fewer quality complaints.

Also, the establishment of visual aid standards will provide the platform for the development of computer imaging technology for determining color classifications. Imaging technology eliminates certain variables in the inspection process and can provide the most uniform color classifications on a national level. This type of technology is crucial for the U.S. lentil market in becoming more competitive in the world market.

Immature Lentils

Lentils, like many other field crops, are occasionally harvested before all lentils have reached full maturity. These under-filled, often disfigured, lentils have less market value than fully matured lentils. To address this marketing concern, GIPSA decided to revise the lentil standards to expand the definition of "Damaged Lentils" to include "Immature Lentils."

The current definition of damaged lentils is: "Whole and pieces of lentils which are distinctly damaged by frost, weather, disease, heat (other that to a material extent), or other causes, except weevil or material heat damage, or are distinctly soiled or stained by nightshade, dirt, or toxic material." The proposed definition is: "Whole and pieces of lentils which are distinctly damaged by frost, weather, disease, heat (other that to a material extent), immaturity, or other causes, except weevil or material heat damage, or are distinctly soiled or stained by nightshade, dirt, or toxic material."

The proposed definition for immature lentils is: "Immature Lentils. Lentils that do not have a traditional lens-shaped profile due to immaturity. Immature lentils are characterized as having a thin or flat (wafer-like), wrinkled, and misshapen appearance. Lentils may also be discolored."

GIPSA conducted a crop survey in 2001 which revealed that over 70 percent of the samples reviewed showed no measurable amount of immature lentils and all samples had less than 1 percent (the limit for U.S. No. 1 is 2.0 percent) defective lentils. Based on these results, the proposed definition would have no impact on grade. Further, the following statement will appear in the Pea and Lentil Handbook as an interpretive aid for determining when a lentil is considered immature. "All three conditions (thin, wrinkled, and misshapen) must be present for an inspector to consider a lentil an immature lentil."

Contrasting Lentils

The terms good, fair, and poor lentil color are not intended to address the different sizes and colors associated with the lentil types and varieties produced in the U.S. The possible introduction of distinctively different lentils is a concern to those marketing lentils. Accordingly, a new factor, "contrasting lentils," is being introduced into the standards.

Introducing contrasting lentils as a new factor discourages the blending of different lentil types by focusing on inherently and noticeably different sizes and color. Additionally, it provides the processor a standard for the lentils that are consistent in size and color.

The proposed definition for contrasting lentils is: "Lentils that differ substantially in size or color from the predominating lentil type." In addition, the following statement will appear in the Pea and Lentil Handbook as an interpretive aid: "Color, as used in this definition, is limited to the lentil's natural seed coat color and excludes the mottling that may be present on some seed coats."

The proposed maximum limit for contrasting lentils for U.S. No. 1 is 2.0 percent, and the proposed maximum limit for U.S. No. 2 is 4.0 percent. Lentils containing more than 4.0 percent contrasting lentils will be graded U.S. No. 3.

These proposed standard changes were recommended to us and reviewed by the affected trade. Therefore, GIPSA is publishing these proposed standard changes with a 30 day comment period which will provide a sufficient amount of time for interested persons to comment on changes to the standards.

Authority: 7 U.S.C. 1621 *et.seq.*

Dated: April 30, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–11156 Filed 5–3–02; 8:45 am]

BILLING CODE 3410–EN–P

CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

Sunshine Act Meeting

In connection with its investigation into the cause of the vessel failure and fire at the BP Amoco Polymers Plant in Augusta, Georgia on March 13, 2001, the United States Chemical Safety and Hazard Investigation Board announces that it will convene a Public Meeting beginning at 10:00 a.m. local time on May 14, 2002, at 2175 K Street, Suite 400 Conference Room. The Board will also consider adopting final rule implementing Government and Sunshine Act.

The incident left three plant personnel dead. The expulsion of material from the failed vessel initiated a secondary chemical fire that took five hours to bring under control. The incident occurred during maintenance operations on equipment used to produce Amodel, a high-temperature plastic used in automobile parts. Workers were unbolting a one-ton cover plate from a process vessel when the failure occured. Two workers were killed instantly, and a third was pronounced dead later.

At the meeting CSB staff will present to the Board the results of their investigation into this incident including an analysis of the incident together with a discussion of the key findings and root and contributing causes. The Board will consider carefully the presentations by the staff as it continues its review of the formal staff report.

This period of review will also allow the Board to carefully review all proposed recommendations that may result from this investigation. Recommendations are issued by a vote of the Board and address an identified safety deficiency uncovered during the investigation, and specify how to correct the situation. Safety recommendations are the primary tool used by the Board to motivate implementation of safety improvements and prevent future incidents. The CSB uses its unique independent accident ivestigation perspective to identify trends or issues that might otherwise be overlooked. CSB recommendations may be directed to corporations, trade associations, government entities, safety organizations, labor unions and others. With the issuance of a final report and recommendations, the Board begins the process that promotes saving lives and property.

All staff presentations are preliminary and are intended solely to allow the Board to consider in a public forum the

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issues and factors involved in this case. No factual analyses, conclusions or findings should be considered final. Only after the Board has considered the staff presentation and thoroughly analyzed, reviewed and approved the staff report will there be an approved final record of this incident.

The meeting will be open to the public. Please notify CSB if a translator or interpreter is needed, 10 business days prior to the public meeting. For more information, please contact the Chemical Safety and Hazard Investigation Board's Office of Prevention Outreach and Policy, (202)–261–7600, or visit our website at: *www.csb.gov*.

Christopher W. Warner,

General Counsel.

[FR Doc. 02–11287 Filed 5–6–02; 2:06 pm]

BILLING CODE 6350–01–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Statement of Ultimate Consignee and Purchaser

ACTION: Proposed Collection: comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 5, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Ms. Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The form is required in support of an export license application where the country of ultimate destination is in Country Group Q, S, V, W, Y or Z. It is used by licensing officers in determining the validity of the end-use.

II. Method of Collection

Submitted to BIS on form BXA–711P or company letterhead.

III. Data

OMB Number: 0694–0021.

Form Number: Form BXA–711.

Although the name of the agency has changed to the Bureau of Industry and Security (BIS), we will continue to use previous forms until the stock is depleted.

Type of Review: Regular submission for extension of a currently approved collection.

Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.

Estimated Number of Respondents: 4,535.

Estimated Time Per Response: 16 minutes per response.

Estimated Total Annual Burden Hours: 1,210.

Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: April 30, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11079 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party, as defined in section 771(9) of the Tariff Act of 1930, as amended (the Act), may request, in accordance with section 351.213 (2000) of the Department of Commerce (the Department) Regulations, that the Department conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review: Not later than the last day of May 2002, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in May for the following periods:

	Period
Antidumping Duty Proceeding	
Argentina: Light-walled Rectangular Carbon Steel Pipe and Tubing, A–357–802	5/1/01–4/30/02
Belgium: Stainless Steel Plate in Coils, A–423–808	5/1/01–4/30/02
Brazil:	
Iron Construction Castings, A–351–503	5/1/01–4/30/02
Frozen Concentrated Orange Juice, A–351–605	5/1/01–4/30/02
Canada: Stainless Steel Plate in Coils, A–122–830	5/1/01–4/30/02
France: Antifriction Bearings, Ball and Spherical Plain, A–427–801	5/1/01–4/30/02
Germany: Antifriction Bearings, Ball, A–428–801	5/1/01–4/30/02

	Period
India: Welded Carbon Steel Pipes and Tubes, A–533–502	5/1/01–4/30/02
Indonesia: Extruded Rubber Thread, A–560–803	5/1/01–4/30/02
Italy:	
Antifriction Bearings, Ball, A–475–801	5/1/01–4/30/02
Stainless Steel Plate in Coils, A–475–822	5/1/01–4/30/02
Japan:	
Antifriction Bearings, Ball, A–588–804	5/1/01–4/30/02
Gray Portland Cement and Clinker, A–588–815	5/1/01–4/30/02
Stainless Steel Angle, A–588–856	1/12/01–4/30/02
Republic of Korea:	
Malleable Cast Iron Pipe Fittings, Other than Grooved, A–580–507	5/1/01–4/30/02
Polyester Staple Fiber, A–580–812	5/1/01–4/30/02
Stainless Steel Angle, A–580–846	1/12/01–4/30/02
Stainless Steel Plate in Coils, A–580–831	5/1/01–4/30/02
Singapore: Antifriction Bearings, Ball, A–559–801	5/1/01–4/30/02
Spain: Stainless Steel Angle, A–469–810	1/12/01–4/30/02
South Africa: Stainless Steel Plate in Coils, A–791–805	5/1/01–4/30/02
Taiwan:	
Certain Circular Welded Carbon Steel Pipe & Tubes, A–583–008	5/1/01–4/30/02
Polyester Staple Fiber, A–583–833	5/1/01–4/30/02
Polyvinyl Alcohol, A–583–824	5/1/01–4/30/02
Stainless Steel Plate in Coils, A–583–830	5/1/01–4/30/02
The People's Republic of China:	
Iron Construction Castings, A–570–502	5/1/01–4/30/02
Polyvinyl Alcohol, A–570–842	5/1/01–4/30/02
Pure Magnesium, A–570–832	5/1/01–4/30/02
The United Kingdom: Antifriction Bearings, Ball, A–412–801	5/1/01–4/30/02
Turkey: Welded Carbon Steel Pipe and Tube, A–489–501	5/1/01–4/30/02
Countervailing Duty Proceedings	
Belgium: Stainless Steel Plate in Coils, C–423–809	1/1/01–12/31/01
Brazil: Iron Construction Castings, C–351–504	1/1/01–12/31/01
Italy: Stainless Steel Plate in Coils, C–475–823	1/1/01–12/31/01
South Africa: Stainless Steel Plate in Coils, C–791–806	1/1/01–12/31/01

Suspension Agreements

None.

In accordance with section 351.213(b) the regulations, an interested party as defined by section 771(9) of the Act may request in writing that the Secretary conduct an administrative review. For both antidumping and countervailing duty reviews, the interested party must specify the individual producers or exporters covered by an antidumping finding or an antidumping or countervailing duty order or suspension agreement for which it is requesting a review, and the requesting party must state why it desires the Secretary to review those particular producers or exporters. If the interested party intends for the Secretary to review sales of merchandise by an exporter (or a producer if that producer also exports merchandise from other suppliers) which were produced in more than one country of origin and each country of origin is subject to a separate order, then the interested party must state specifically, on an order-by-order basis, which exporter(s) the request is intended to cover.

Six copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room 1870, U.S. Department of Commerce, 14th Street & Constitution Avenue, NW., Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping/Countervailing Enforcement, Attention: Sheila Forbes, in room 3065 of the main Commerce Building. Further, in accordance with section 351.303(f)(l)(i) of the regulations, a copy of each request must be served on every party on the Department's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation" for requests received by the last day of May 2002. If the Department does not receive, by the last day of May 2002, a request for review of entries covered by an order, finding, or suspended investigation listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute but is published as a service to the international trading community.

Dated: May 1, 2002.

Holly A. Kuga,

Senior Office Director, Group II, Office 4, Import Administration.

[FR Doc. 02–11202 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–825]

Oil Country Tubular Goods From Korea: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review and New Shipper Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit for preliminary results of administrative review.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Tom Gilgunn or Scott Lindsay, AD/CVD Enforcement, Import Administration, International Trade Administration,

U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington DC 20230; telephone: (202) 482–4236 or (202) 482–0780, respectively.

The Applicable Statute

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Departments's regulations are to the current regulations, codified at 19 CFR part 351 (2001).

Background

On August 31, 2001, the Department of Commerce (the Department) received timely requests to conduct an administrative review of the antidumping duty order on oil country tubular goods from Korea. On October 1, 2001, the Department published a notice of initiation of this administrative review, covering the period of August 1, 2000 through July 31, 2001 (66 FR 49924).

Extension of Time Limits for Preliminary Results

Because of the complexity and timing of certain issues in this case, specifically the use of third country sales and the appropriate basis for determining normal value, it is not practicable to complete this review within the usual time limits mandated by section 751(a)(3)(A) of the Act. Therefore, we are extending the due date for the preliminary results of the administrative review of SeAH until August 26, 2002, pursuant to section 751(a)(3)(A). The final results continue to be due 120 days after the publication of the preliminary results. We note that on February 6, 2002, the Department aligned the new shipper review of Shinho Steel Co., Ltd. (Shinho) with this administrative review of oil country tubular goods from Korea (67 FR 5563). Therefore, the due date for the preliminary determination of the new shipper review of Shinho is also extended to August 26, 2002.

Dated: April 23, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–11077 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–437–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid From Hungary

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that sulfanilic acid from Hungary is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination (see the "Public Comment" section of this notice).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Jarrod Goldfeder, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0189.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR Part 351 (April 2001).

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Investigations: Sulfanilic Acid from Hungary and Portugal*, 66 FR 54214, 54218 (October 26, 2001) ("*Initiation Notice*")), the following events have occurred:

On October 25, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received comments from the petitioner on October 30, 2001.

On November 20, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of sulfanilic acid from Hungary are materially injuring the United States industry (*see* ITC Investigation No. 731–TA–984–985 (Publication No. 3472)).

We issued an antidumping questionnaire to Nitrokemia 2000 Rt. ("Nitrokemia"), a pro se respondent, on November 19, 2001. We received responses to the questionnaire from Nitrokemia on December 8, 2001, and January 14, 2002. We issued supplemental questionnaires to Nitrokemia on January 25, February 12, March 11, and April 8, 2002, to which we received responses on February 6, February 28, March 27, and April 17, 2002, respectively. On January 29 and February 1, 2002, we received comments from the petitioner on the respondent's questionnaire responses. Subsequently, on February 10, 2002, we received comments from Nitrokemia on the petitioner's comments concerning the respondent's questionnaire responses.

On February 14, 2002, the petitioner made a timely request to postpone the preliminary determination pursuant to 19 CFR 351.205(e). On February 15, 2002, we postponed the preliminary determination until no later than April 8, 2002. *See Notice of Postponement of Preliminary Determinations of Antidumping Investigations: Sulfanilic Acid from Hungary and Portugal*, 67 FR 8525 (February 25, 2002).

On April 4, 2002, the Department again postponed the preliminary determination until no later than April 26, 2002. For the reasons for the postponement, *see Notice of Postponement of Preliminary Antidumping Duty Determinations of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal*, 67 FR 17968 (April 12, 2002).

On April 19, 2002, the petitioner submitted comments with respect to the upcoming preliminary determination.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, currently classifiable under subheading 2921.42.22 of the *Harmonized Tariff Schedule* ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

In accordance with the preamble to the Department's regulations (*see Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive any such comments.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Hungary to the United States were made at less than fair value, we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs. Any company-specific changes to the EP and NV calculations are discussed in Nitrokemia's calculation memorandum, which is on file in the Import Administration's Central Records Unit, Room B–099 of the main Department of Commerce building.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Nitrokemia in the foreign market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical products in the third market (*see* "Normal Value" section, below), where appropriate. Where there were no sales of identical merchandise in the foreign market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; product type; aniline impurity content; alkali insoluble impurity content; and sulfanilic content.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the packed CIF price to unaffiliated purchasers in the United States. We made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included foreign inland freight, inland insurance, and ocean freight. We increased EP, where appropriate, for duty drawback in accordance with section 772(c)(1)(B) of the Act. We relied on the U.S. sales data submitted by Nitrokemia, with the following exceptions.

Based on our review of Nitrokemia's questionnaire responses, we find that Nitrokemia did not answer many of the Department's numerous and repeated questions relating to the completeness and accuracy of its reporting of U.S. sales and related charges and adjustments. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[1] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we find that Nitrokemia has withheld information requested by the Department concerning the completeness and accuracy of Nitrokemia's U.S. sales response. Specifically, we noted in Nitrokemia's original questionnaire response that it reported credit expenses, inventory carrying costs, direct selling expenses, and packing costs on some, but not all, U.S. sales. In several supplemental questionnaires, we requested that Nitrokemia report these expenses for all U.S. sales, or explain why it was not appropriate to do so. Despite our repeated notifications to Nitrokemia of these deficiencies in its data and the several opportunities we provided the company to remedy its reporting of these fields (pursuant to section 782(d) of the Act), Nitrokemia continued to provide incomplete responses. Since Nitrokemia did not provide the information requested or provided information that was so incomplete that it could not be used (within the meaning of section 782(e) of the Act), we are resorting to facts otherwise available pursuant to section 776(a)(2)(A) of the Act. Further, the data that Nitrokemia did not provide on some U.S. transactions was provided for other U.S. transactions. Nitrokemia did not sufficiently explain why it was not possible to provide this information for all U.S. transactions. Therefore, we conclude that Nitrokemia could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly,

[1] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

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we find that the use of an adverse inference is warranted.

As explained in the Memorandum from Team to the File, "Preliminary Determination Calculation Memorandum for Nitrokemia 2000 Rt.," dated April 26, 2002 ("*Calculation Memorandum*"), as adverse facts available, we adjusted EP or NV, as appropriate, by the highest adjustment amount that Nitrokemia actually reported in its U.S. sales response for direct selling expenses and packing costs. Furthermore, we recalculated Nitrokemia's credit expenses and inventory carrying costs using information contained in Nitrokemia's questionnaire responses and a published dollar-denominated short-term interest rate. No other adjustments were made to Nitrokemia's submitted U.S. sales response. We intend to review Nitrokemia's questionnaire responses extensively at verification in order to ascertain whether this application of facts available is adequately adverse.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We determined that Nitrokemia's volume of home market sales was less than five percent of its volume of U.S. sales. Therefore, we have based NV for Nitrokemia on third country sales in the usual commercial quantities and in the ordinary course of trade. For the reasons described in the Memorandum to Richard Moreland, "*Selection of Third Country Comparison Market,*" dated April 26, 2002, we used sales to Germany as third-country comparison sales. Germany was Nitrokemia's largest third-country market for sulfanilic acid in terms of both value and quantity.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of sulfanilic acid in the third market were made at prices below their cost of production ("COP"). Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. *See Antidumping Duty Petition*, September 26, 2001. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 54215).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general, and administrative expenses ("SG&A"), interest expenses, and foreign market packing costs (*see* "Test of Foreign Market Sales Prices" section below for treatment of foreign market selling expenses). We relied on the COP data submitted by Nitrokemia, with the following exceptions. Despite our repeated requests in the original and supplemental questionnaires, Nitrokemia did not report overhead, SG&A, and financial expense in accordance with the Department's instructions. Moreover, the actual cost data supplied by Nitrokemia are not sufficient for purposes of deriving SG&A and financial expense ratios. Because Nitrokemia failed to provide this cost information in the form and manner requested by the Department, pursuant to section 776(a)(2)(B) of the Act we find that facts available is warranted. As facts available, we derived SG&A and interest expense ratios based on Nitrokemia's 2000 financial statements, as included in the petition and submitted by Nitrokemia in its questionnaire responses. Furthermore, we derived an overhead ratio based on total overhead costs reported by Nitrokemia and information from Nitrokemia's 2000 financial statements. As we noted above, we intend to review Nitrokemia's questionnaire responses extensively at verification in order to ascertain whether this application of facts available is adequately adverse.

2. Test of Foreign Market Sales Prices

We compared COP to foreign market sale prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts and rebates, and selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP over a period of at least six months, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act and, if so, we disregard the below-cost sales.

We found that, for certain products, more than 20 percent of Nitrokemia's foreign market sales were at prices less than the COP and did not provide for the recovery of costs. Therefore, we excluded these sales and used the remaining above-cost sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or constructed export price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Nitrokemia regarding the marketing stages involved in making the reported third market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. In the comparison market, all sales reported by Nitrokemia were direct sales to end users. Sales through this single channel of distribution to the sole customer category were similar with respect to all selling activities and, therefore, Nitrokemia's foreign market sales constituted a single level of trade.

In the U.S. market, Nitrokemia had only EP sales. Nitrokemia reported direct EP sales to end users through only one channel of distribution and one customer category, and therefore had only one level of trade for its EP sales. This EP level of trade was similar to the foreign market level of trade with respect to selling activities, except for marginal differences in sales process and marketing support. Consequently, we matched the EP level of trade to sales at the same level of trade in the foreign market.

D. Calculation of Normal Value Based on Foreign Market Prices

We calculated NV based on free carrier, carriage paid, or delivered duties unpaid prices to unaffiliated customers. We made adjustments for inland freight, international freight, and duty drawback, in accordance with section 773(a)(6)(B)(iii) of the Act. We made adjustments, where appropriate, for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for commissions, imputed credit expenses, and other direct selling expenses. We also made adjustments, in accordance with 19 CFR 351.410(e), for indirect selling expenses incurred in the foreign market on U.S. sales where commissions were granted on sales in one market but not in the other (the commission offset). We deducted foreign market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We adjusted Nitrokemia's reported inventory carrying costs and packing costs, where appropriate, as explained in the *Calculation Memorandum*.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales, either as certified by the Federal Reserve Bank or, in the case of Hungarian forints, as reported by the Dow Jones. [4]

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Nitrokemia	7.40
All Others	7.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department not later than June 4, 2002. Rebuttal briefs must be filed by June 10, 2002. *See* 19 CFR 309(c)(1)(i). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held on June 13, 2002, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is

[2] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale occurs.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common sulfanilic acid selling functions into four major categories: Sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[4] We normally make currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. In this case, where foreign market prices, costs and expenses were reported in Hungarian forints, we made currency conversions based on the exchange rates in effect on the dates of the U.S. sales as reported by the Dow Jones because the Federal Reserve Bank does not track the forint-to-dollar exchange rate.

requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination by not later than 75 days after the date of the Department's preliminary determination.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11075 Filed 5–3–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–471–806]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sulfanilic Acid from Portugal

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value

SUMMARY: We preliminarily determine that sulfanilic acid from Portugal is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination (*see* the "Public Comment" section of this notice).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: S. Anthony Grasso, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–3853.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department") regulations are to 19 CFR Part 351 (April 2001).

Background

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal*, 66 FR 54214, 54218 (October 26, 2001) ("Initiation Notice")), the following events have occurred:

On October 25, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes. We received these comments on October 30, 2001.

On November 20, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of sulfanilic acid from Portugal are materially injuring the United States industry (*see* ITC Investigation No. 731–TA–984–985 (Publication No. 3472)).

We issued an antidumping questionnaire to Quimigal - Quimica de Portugal S.A. ("Quimigal") on November 19, 2001. We received responses to the questionnaire from Quimigal on December 10, 2001, and on January 14, 2002. We issued supplemental questionnaires to Quimigal on January 31, 2002, and March 5, 2002, to which we received responses on February 25, 2002, and March 19, 2002, respectively.

On February 14, 2002, the petitioner made a request to postpone the preliminary determination pursuant to 19 CFR 351.205(e). On February 15, 2002, we postponed the preliminary determination until no later than April 8, 2002. *See Notice of Postponement of Preliminary Antidumping Duty Determinations: Sulfanilic Acid from Hungary and Portugal*, 67 FR 8525 (February 25, 2002).

On April 4, 2002, the Department again postponed the preliminary determination until not later than April 26, 2002. For the reasons for the postponement, *see Notice of Postponement of Preliminary Antidumping Duty Determinations of Antidumping Duty Investigations: Sulfanilic Acid from Hungary and Portugal*, 67 FR 17968 (April 12, 2002).

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 3, 2002, Quimigal requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the Federal Register, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Quimigal accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until not later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

Imports covered by this investigation are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline and sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free-flowing powders.

Technical sulfanilic acid, currently classifiable under subheading 2921.42.22 of the *Harmonized Tariff Schedule* ("HTS"), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also currently classifiable under 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), currently classifiable under HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, the written description of the scope of this investigation is dispositive.

In accordance with the preamble to the Department regulations (*see* Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27323 (May 19, 1997)), we set aside a period of time for parties to raise issues regarding product coverage and encouraged all parties to submit comments within 20 calendar days of publication of the *Initiation Notice*. We did not receive any such comments.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Date of Sale

We used the sale invoice date as the date of sale. Although Quimigal negotiated a contract with its buyer that established a fixed price and quantity prior to the POI, the terms of the contract fluctuated throughout the POI according to documented and undocumented agreements. Because record evidence indicates that the material terms of the sale contract were subject to change up until invoicing, we preliminarily determine that the invoice date more accurately represents the date of sale than the contract date.

Fair Value Comparisons

To determine whether sales of sulfanilic acid from Portugal to the United States were made at less than fair value, we compared the export price ("EP") to the normal value ("NV"), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs. Any company-specific changes to the EP and NV calculations made by the Department are discussed in the company's calculation memorandum, which is on file at the Department's Central Records Unit in Room B–099 of the main Department building. *See* Memorandum from team to the file, "Preliminary Determination Calculation Memorandum for Quimigal - Quimica de Portugal, S.A.," ("Calculation Memo") dated April 8, 2002.

Product Comparisons

In accordance with section 771(16)(A) of the Act, we considered all products produced and sold by the respondent in the third-country market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the third-country market. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: form; product type; aniline impurity content; alkali insoluble impurity content; and sulfanilic content.

Export Price

We calculated EP, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the ex-works price to an unaffiliated purchaser/reseller. We made no adjustments to this price.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a basis for calculating NV (*i.e.*, whether the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), the Department compares the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. We determined that Quimigal has no home market sales. Therefore, we have based NV for Quimigal on third-country sales in the usual commercial quantities and in the ordinary course of trade. For the reasons described in the *Memorandum to Richard Moreland, "Selection of Third Country Comparison Market,"* dated April 26, 2002, we used sales to the United Kingdom ("UK") as third-country comparison sales. The UK was Quimigal's largest third-country market for sulfanilic acid in terms of both value and quantity.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of sulfanilic acid in the third-country market were made at prices below their cost of production ("COP"). Reasonable grounds exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the comparison market in question are at below-cost prices. Accordingly, based on the allegation in the petition and pursuant to section 773(b)(1) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice*, 66 FR at 54214, 54215–17).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses ("SG&A"), interest expenses, and home market packing costs (*see* "Test of Foreign Market Sales Prices" section below for treatment of third-market selling expenses). We relied on the COP data submitted by Quimigal, except in the following instance. To calculate the fixed overhead, we used Quimigal's depreciation as it is recorded in its financial accounts according to Portuguese GAAP (*i.e.*, accelerated depreciation), rather than relying upon Quimigal's reported unit which was calculated using straight line depreciation. See Calculation Memo.

2. Test of Foreign Market Sales Prices

We compared COP to the sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard foreign market sales made at prices below the COP, we examined whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to foreign market prices, less any applicable movement charges, discounts, and rebates.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product are at prices less than the COP over a period of at least six months, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which

would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act and, if so, we disregard the below-cost sales.

We found that, for certain products, more than 20 percent of Quimigal's third-country market sales were at prices less than the COP and did not provide for the recovery of costs. Therefore we excluded these sales and used the remaining above-cost sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where normal value cannot be based on comparison market sales, normal value may be based on constructed value ("CV"). Accordingly, for Quimigal, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with sections 773(e)(1), (e)(2)(A), and (e)(3) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A (including interest), profit and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by Quimigal in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

D. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or the constructed export price. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent) according to 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"), including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (i.e., NV based on either home market or third-country prices[1]), we consider the starting prices before any adjustments.

When the Department is unable to match U.S. sales to sales of the foreign like product in the comparison market at the same LOT as the EP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales at different LOTs in the country in which NV is determined, we make a level of trade adjustment under section 773(a)(7)(A) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732 (November 19, 1997).

We obtained information from Quimigal regarding the marketing stages involved in making the reported third-country market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. In the comparison market, all sales reported by Quimigal were direct sales to a trading company. Sales through this single channel of distribution to the sole customer category were similar with respect to all selling activities and, therefore, Quimigal's foreign market sales constituted a single level of trade.

In the U.S. market, Quimigal had only EP sales. Quimigal reported direct EP sales to a trading company through only one channel of distribution and one customer category, and therefore had only one level of trade for its EP sales. This EP level of trade was similar to the foreign market level of trade with respect to selling activities. Consequently, we matched the EP level of trade to sales at the same level of trade in the foreign market.

E. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on ex-works/ex-warehouse prices to unaffiliated customers that we determined to be at arm's-length. In addition, where appropriate, we made adjustments under section 773(a)(6)(C)(iii) of the Act for differences in circumstances of sale for imputed credit expenses. We deducted foreign market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

F. Calculation of Normal Value Based on Constructed Value

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act. Where we compared CV to EP, we made circumstance-of-sale adjustments.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as reported by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/Manufacturer	Weighted Average Margin Percentage
Quimigal	75.52
All Others	75.52

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our preliminary determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[1] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A, and profit for CV, where possible.

Disclosure

We will disclose the calculations used in our analysis to parties to this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department not later than August 6, 2002. Rebuttal briefs must be filed by August 12, 2002. *See* 19 CFR 309(c)(1)(i). A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be scheduled for two days after the submission of rebuttal briefs, *i.e.*, on August 14, 2002, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) the party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination not later than 135 days after the date of publication of the Department's preliminary determination. See 19 CFR 351.210(b).

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

DATED: April 26, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11076 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A-588-054]

Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan: Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Court Decisions and Amended Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 13, 1997, the Department of Commerce (the Department) published the final results of its administrative reviews of the antidumping duty order on tapered roller bearings (TRBs) and parts thereof, finished and unfinished, from Japan (A-588-604), and the antidumping finding on TRBs, four inches or less in outside diameter, and components thereof, from Japan (A-588-054) for the period October 1, 1994 through September 30, 1995. See Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From Japan and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, From Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part, 62 FR 11825 (March 13, 1997) (1994-95 TRBs from Japan). Subsequent to our publication of these final results, one party to the proceedings challenged certain aspects of our final results before the United States Court of International Trade (CIT).The CIT has affirmed the final remand results with respect to the 1994-95 final results. As there are now final and conclusive court decisions with respect to the litigation pertaining to this proceeding, we are hereby amending our final results of review and will subsequently instruct Customs to liquidate entries subject to these reviews.

DATES: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Scott or Robert James, AD/CVD Enforcement, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482-2657 or (202) 482-0649, respectively.

SUPPLEMENTARY INFORMATION:

Background

Below is a summary of the litigation for the 1994-95 final results for which the CIT has now issued a final and conclusive decision.

On March 13, 1997, we published in the **Federal Register** our notice of the final results of administrative reviews for the 1994-95 period of review (POR) (*see 1994-95 TRBs from Japan*). Subsequent to the publication of these final results, the petitioner, The Timken Co. (Timken), challenged various aspects of our final results before the CIT (Court No. 97-04-00562). The CIT remanded the case with respect to TRBs manufactured by Koyo Seiko Co., Ltd. (Koyo) and ordered the Department to: 1) determine the extent to which Koyo reported any positive values for inside diameters for cups and outside diameters for cones in its sales of U.S. cups and cones and to correct the computer program by setting the value of any positive inside cup diameters or outside cone diameters to zero in Koyo's U.S. summary sales database; and 2) ensure that no models were matched to constructed value (CV) when a comparison to similar home-market products was appropriate in accordance with *Cemex, S.A. v. United States*, 113 F.3d 897 (Fed. Cir. 1998). *See Timken v. U.S.*, Slip Op. 98-92 (July 2, 1998). No party appealed the CIT's decision.

As there is now a final and conclusive court decision with respect to this litigation (*see Timken v. U.S.*, Slip Op. 99-9 (January 22, 1999)), we are amending our final results of review for Koyo based on our recalculation of Koyo's rates pursuant to the remand. The amended final results margin for Koyo is 21.49 percent for the 1994-95 administrative review of the antidumping finding on TRBs from Japan. We will issue instructions to Customs to liquidate entries of subject merchandise made by Koyo during this period pursuant to these amended final results.

Amendment To Final Determinations

Pursuant to 19 U.S.C. 1516(f), we are now amending the final results of the 1994-95 administrative review of the antidumping finding on TRBs from Japan manufactured by Koyo. The amended weighted-average margin for Koyo in the antidumping finding on TRBs from Japan (A-588-054) for the period October 1, 1994 through September 30, 1995 is 21.49 percent.

Accordingly, the Department will determine and Customs will assess appropriate antidumping duties on entries of the subject merchandise made by firms covered by the review of the

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period listed above. The Department will issue appraisement instructions directly to Customs.

Dated: April 29, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11181 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

District Export Council Nomination Opportunity

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of opportunity to serve as a member of one of the fifty-six District Export Councils.

SUMMARY: The U.S. Department of Commerce is currently seeking expressions of interest from individuals in serving as a member of one of the fifty-six District Export Councils (DECs) nationwide. The DECs are closely affiliated with the U.S. Export Assistance Centers of the U.S. Commercial Service. DECs combine the energies of more than 1,500 exporters and export service providers who promote U.S. exports. DEC members volunteer at their own expense.

DATES: Applications for nomination to a DEC must be received by the designated local USEAC representative by May 17, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Stone Marshall, National DEC Program Manager, the U.S. Commercial Service, tel. 202–482–6298.

SUPPLEMENTARY INFORMATION: DECs sponsor and participate in numerous trade promotion activities, as well as supply specialized expertise to small and medium-sized businesses that are interested in exporting.

Selection Process: About half of the approximately 30 positions on each of the 56 DECs are open for nominations for the term that ends December 31, 2005. Nominees are recommended by the local U.S. Export Assistance Center Director, in consultation with the DEC and other local export promotion partners. After a review process, nominees are selected and appointed to a DEC by the Secretary of Commerce.

Membership Criteria: Each DEC is interested in nominating highly-motivated people. Appointment is based upon an individual's energetic leadership, position in the local business community, knowledge of day-to-day international operations, interest in export development, and willingness and ability to devote time to council activities. Members include exporters, export service providers and others whose profession supports U.S. export promotion efforts.

Authority: 15 U.S.C. 1501 *et seq.*, 15 U.S.C. 4721.

Dated: April 30, 2002.

Bruce W. Blakeman,

Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commercial Service.

[FR Doc. 02–11172 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–FP–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002D]

Gulf of Mexico Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public meeting of the Ad Hoc Red Snapper Advisory Panel (AP) from May 20 through May 21, 2002.

DATES: The Council's Ad Hoc Red Snapper AP will convene at 8:30 a.m. (CST) on Monday, May 20, 2002 and conclude by 5 p.m. on Tuesday, May 21, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL; telephone: 813–877–6688.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Swingle, Executive Director, Gulf of Mexico Fishery Management Council; telephone: 813–228–2815.

SUPPLEMENTARY INFORMATION: The AP will convene to discuss the issues related to and continue the development of an individual fishing quota (IFQ) profile for the commercial red snapper fishery. The profile will examine the benefits and consequences of using IFQs to manage the commercial red snapper fishery. When the profile is completed by the AP and Council, it will be submitted to the current participants in the fishery for a referendum to determine if the majority of the participants favor management by IFQs.

The AP members consist of commercial fishermen holding Class 1 or Class 2 commercial red snapper licenses, and licensed commercial reef fish dealers. They are assisted by 4 non-voting members with expertise in fishery economics, fishery biology, environmental science, and law enforcement. The completion of the profile will require several subsequent meetings of this AP.

Although other non-emergency issues not on the agenda may come before the AP for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the AP will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under Section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency. Copies of the agenda can be obtained by calling 813–228–2815.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Anne Alford at the Council (*see* **ADDRESSES**) by May 13, 2002.

Dated: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11169 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002E]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Scientific and Statistical Committee in May, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Monday, May 20, 2002, at 10 a.m.

ADDRESSES: The meeting will be held at the Holiday Inn, 31 Hampshire Street, Mansfield, MA 02048; telephone: (508) 339–2200.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: The committee will review and provide the Council guidance on the Final Report of the Working Group on the Re-evaluation of Biological Reference Points for New England Groundfish. They will also provide guidance to the Monkfish Plan Development Team and the Council on monkfish management reference points. Also on the agenda will be to provide guidance to the Scallop Plan Development Team and the Council on scallop management reference points if it has not been done prior to the May 14-15, 2002 Scallop Committee meeting.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice, and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11170 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102A]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: The Pacific Fishery Management Council's (Council) Ad Hoc Allocation Committee will hold a telephone conference and meeting, which are open to the public.

DATES: The telephone conference will be held Tuesday, May 21, 2002 from 8 a.m. until business is completed. A follow-up meeting of the Allocation Committee will be held on Monday, June 3, 2002, from 8 a.m. until business is completed.

ADDRESSES: Four listening stations will be available for the May 21st telephone conference. See **SUPPLEMENTARY INFORMATION** for the locations. The June 3 meeting will be held at the Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; Contact: Mr. John DeVore (503) 326–6352, ext. 210.

FOR FURTHER INFORMATION CONTACT: Mr. John DeVore, telephone: (503) 326–6352, ext. 210.

SUPPLEMENTARY INFORMATION: The listening stations will be located at the following addresses:

1. National Marine Fisheries Service, Northwest Region, Director's Conference Room, 7600 Sand Point Way NE, Building 1, Seattle, WA 98115; Contact: Mr. Bill Robinson (206) 526–6142;

2. Washington Department of Fish and Wildlife, Natural Resource Building, Room 677, 1111 Washington Street SE, Olympia, WA 98501; Contact: Mr. Phil Anderson (360) 902–2720;

3. Pacific Fishery Management Council, West Conference Room, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384; Contact: Mr. John DeVore (503) 326–6352, ext. 210;

4. California Department of Fish and Game, Conference Room, Room 1320, 1416 Ninth Street, Sacramento, CA 95814; Contact: Mr. LB Boydstun (916) 653–6281.

The purpose of the May 21 telephone conference and June 3 meeting is to develop preliminary options for allocations and other management measures for the 2003 Pacific Coast groundfish fishery. In addition, the committee will evaluate current catch levels of overfished groundfish species and may propose inseason adjustments. The committee will discuss the types of provisions that may be necessary to prevent further overfishing, to reduce bycatch of overfished species in the various groundfish fisheries, and to reduce bycatch in non-groundfish fisheries. The committee will prepare recommendations and contribute to draft rebuilding plans for overfished groundfish species that will be presented to the Council at future meetings. If available, the committee may also review new rebuilding analyses for canary rockfish, bocaccio, and yelloweye rockfish. No management actions will be decided by the Ad Hoc Allocation Committee. The committee's role will be development of recommendations for consideration by the Pacific Fishery Management Council at its June meeting in Foster City, California.

Although nonemergency issues not contained in the teleconference call or meeting agendas may come before the Ad Hoc Allocation Committee for discussion, those issues may not be the subject of formal Ad Hoc Allocation Committee action during this meeting. Ad Hoc Allocation Committee action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Ad Hoc Allocation Committee's intent to take final action to address the emergency.

Special Accommodations

This teleconference call and meeting are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the teleconference date.

Dated: May 1, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11171 Filed 5–3–02; 8:45 am]

BILLING CODE 3510–22–S

COMMISSION OF FINE ARTS

Notice of Meeting

The next meeting of the Commission of Fine Arts is scheduled for 16 May 2002 at 10 a.m. in the Commission's offices at the National Building Museum, Suite 312, Judiciary Square, 441 F Street NW., Washington, DC, 20001–2728. Items of discussion affecting the appearance of Washington, DC may include buildings, parks and memorials.

Draft agendas are available to the public one week prior to the meeting. Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Charles H. Atherton, Secretary.

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Commission of Fine Arts, at the above address or call 202–504–2200. Individuals requiring sign language interpretation for the hearing impaired should contact the Secretary at least 10 days before the meeting date.

Dated in Washington, DC, April 30, 2002.

Charles H. Atherton,

Secretary.

[FR Doc. 02–11114 Filed 5–3–02; 8:45 am]

BILLING CODE 6330–01–M

DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Fort Sam Houston and Camp Bullis Master Plan Programmatic Environmental Impact Statement

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: This announces the availability of the Fort Sam Houston and Camp Bullis Master Plan Programmatic Environmental Impact Statement (PEIS), which assesses the potential environmental impacts of implementing three master planning alternatives. Alternative 1 (No Action) includes the continuation of the currently identified stationed Population reductions, as reflected in the Army Stationing and Installation Plan; the projected reductions in the Real Property Maintenance Activity budget program for facility maintenance and repair; the zero investment maintenance expenditures for vacant historical facilities; and the projected reductions in the Base Operations budget program for utilities and other engineering services. Alternative 2 (Reuse of Facilities and Property by Federal Users) would result in an adaptive reuse of currently vacant historical facilities using the existing appropriated funds process. This may be accomplished by bringing additional military missions to Fort Sam Houston through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston, and/or additional federal missions through individual stationing decisions that take advantage of the capabilities of Fort Sam Houston.

Alternative 3 (Reduction of Underutilized/Unutilized Property through Lease, Sale, or Removal (preferred alternative)) would result in the reduction of underutilized/unutilized facilities and property on Fort Sam Houston and Camp Bullis, in addition to changes in the Land Use Plan. The reduction in underutilized/unutilized property may be accomplished through: outgrant leases to the city, county, state, private citizens, businesses, or investors; sale to the city, county, state, private citizens, businesses, or investors; removal from the site; or demolition. The Army may select any one alternative or a combination of alternatives for future activities and planning at Fort Sam Houston.

DATES: The review period for the Final PEIS will end 30 days after publication of the Notice of Availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: To obtain copies of the Final PEIS, contact Ms. Jackie Schlatter, PEIS Project Manager, ATTN: MCCS–BFE–N, 2202 15th Street (Bldg. 4196), Fort Sam Houston, Texas 78234–5007.

FOR FURTHER INFORMATION CONTACT: Ms. Jackie Schlatter at (210) 221–5093, by email at *jackie.schlatter@cen.amedd.army.mil*, or by fax at (210) 221–5419.

SUPPLEMENTARY INFORMATION: This document includes analyses of the potential environmental consequences that the alternative actions may have on land use and visual resources, transportation, utilities, earth resources, air quality, water resources, biological resources, cultural resources, socio-economics, noise, and hazardous materials and items of special concern. The findings indicate that potential environmental impacts from the alternatives may result in some impacts to cultural resources.

Copies of the PEIS have been provided to the following libraries for public access to the document: Fort Sam Houston Library, Building 1222, 2601 Harney, Fort Sam Houston, TX 78234 and the San Antonio Public Library, 600 Soledad Plaza, San Antonio, TX 78205.

Dated: April 29, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health), OASA(I&E).

[FR Doc. 02–11115 Filed 5–3–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 7, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 5, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance

the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 1, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they need to succeed when they enter kindergarten.

Additional Information: The Department expects to receive a large number of applications, and wishes to ensure that the funded applications are of the highest quality, and plans to use a two-phase application process (with a Pre-Application and Full Application). This two-phase application process will put less burden on the majority of applicants by requiring only a short concept paper from them, and will also have the benefit of providing helpful comments from peer reviewers to strengthen proposals from applicants invited to submit Full Applications. It would be difficult, without emergency paperwork clearance, for the Department to award these grants by December, 2002. Based upon the unexpected delay and the public harm that might otherwise occur with delaying grant awards, the Department is requesting approval by May 7, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 12,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2020. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contac` Kathy Axt at her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11133 Filed 5–3–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 5, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW, Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: April 30, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: State Library Agencies Survey, 2000–2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 51.

Burden Hours: 561.

Abstract: State library agencies (StLAs) are the official agencies of each state charged by state law with the extension and development of public library services throughout the state. The purpose of this survey is to provide state and federal policymakers with information about StLAs, including their governance, allied operations, developmental services to libraries and library systems, support of electronic information networks and resources, number and types of outlets, direct services to the public, public service hours, type and size of collections, service and development transactions, staffing patterns, and income and expenditures.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 1945. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail *address vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the

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complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11082 Filed 5–3–02; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Voluntary Reporting of Greenhouse Gas Emissions, Reductions, and Carbon Sequestration

AGENCY: Department of Energy.

ACTION: Notice of inquiry and request for comment.

SUMMARY: The Department of Energy (DOE) is seeking comments on possible modifications to the guidelines governing the Voluntary Reporting of Greenhouse Gases Program (VRGGP) that allows for the voluntary reporting of greenhouse gas emissions and reductions, and carbon sequestration under section 1605(b) of the Energy Policy Act of 1992. On February 14, 2002, the President directed the Secretary of Energy to propose improvements to the current registry to "enhance measurement accuracy, reliability and verifiability, working with and taking into account emerging domestic and international approaches." This notice of inquiry is an initial step in a process to propose improvements to the current VRGGP Greenhouse Gas Registry (GHG Registry), for which guidelines were published in 1994. DOE is seeking comment on the issues posed below, and welcomes any other comments pertinent to future changes in the GHG Registry.

Because of the broad public interest in the issues involved, DOE believes that the public should have an opportunity to provide input on the issues raised in advance of the Secretary's recommendations to the President. DOE is requesting written comments as one means to bring a broad range of views into the process of developing recommendations for proposed improvement to the GHG Registry. After analyzing submissions made in response to this notice, DOE contemplates scheduling at least one public workshop for obtaining additional public input prior to finalizing the recommendations for proposed improvements to the GHG Registry. Notice of workshop(s) and other opportunities for input during development of proposed improvements to the GHG Registry will be published in the **Federal Register.**

DATES: Commenters should submit a signed original, a computer diskette (WordPerfect or Microsoft Word) and three copies of the written comments. Written comments are to be filed at the address listed below no later than 4:30 p.m., eastern time June 5, 2002. Alternately, comments can be filed electronically by e-mail to: *ghgregistry.comments@hq.doe.gov,* noting "Voluntary Reporting Comments" in the subject line.

ADDRESSES: Written comments should be submitted to: Office of Policy and International Affairs, Office of Electricity and Natural Gas Analysis, PI–23, Attention: Voluntary Reporting Comments, U.S. Department of Energy, Forrestal Building, Room 7H–034, 1000 Independence Ave., SW., Washington, DC 20585. Alternately, comments can be filed electronically by e-mail to: *ghgregistry.comments@hq.doe.gov,* noting "Voluntary Reporting Comments" in the subject line.

FOR FURTHER INFORMATION CONTACT: Ms. Jean Vernet, U.S. Department of Energy, Office of Policy and International Affairs, Office of Electricity and Natural Gas Analysis, Forrestal Building, PI–23, Room 7H–034, 1000 Independence Ave., SW., Washington, DC 20585, (202) 586–4755, e-mail: *jean.vernet@hq.doe.gov;* or Mr. Peter Karpoff, PI–23, (202) 586–5639, e-mail: *peter.karpoff@hq.doe.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

A. Section 1605(b) of EPAct and the Current Guidelines

Section 1605(b) of the Energy Policy Act of 1992 (EPAct), Public Law 102–486, required the Secretary of Energy, with the Energy Information Administration (EIA), to establish a voluntary reporting program and database on emissions of greenhouse gases, reductions of these gases, and carbon sequestration (42 U.S.C. 13385(b)). More specifically, section 1605(b) required that DOE's guidelines provide for the "accurate" and "voluntary" reporting of information on: (1) Greenhouse gas emission levels for a baseline period (1987–1990) and, thereafter, annually; (2) annual reductions of greenhouse gas emissions and carbon sequestration regardless of the specific method used to achieve them; (3) greenhouse gas emission reductions achieved because of voluntary efforts, plant closings, or mandatory state or federal requirements; and (4) the aggregate calculation of greenhouse gas emissions by each reporting entity (42 U.S.C. 13385(b)(1)(A)–(D)). Section 1605(b) contemplates a program whereby voluntary efforts to reduce greenhouse gas emissions could be recorded, with the specific purpose that this record could be used "by the reporting entity to demonstrate achieved reductions of greenhouse gases" (42 U.S.C. 13385(b)(4)).

To carry out this statutory mandate, DOE established the GHG Registry, a program for the voluntary reporting of greenhouse gas emissions, emission reductions and carbon sequestration that has been in operation since 1995. The GHG Registry currently is governed by the General Guidelines for the Voluntary Reporting of Greenhouse Gases under Section 1605(b) of the Energy Policy Act of 1992 ("General Guidelines"), which were issued in 1994 after notice and public comment (59 FR 52769). The current General Guidelines are supported by two additional documents: Sector-Specific Issues and Reporting Methodologies, volumes one and two, which include supporting Appendices A–E. Volume one of the Sector-Specific Issues and Reporting Methodologies addresses the Electricity Supply Sector, Residential and Commercial Buildings Sector, and Industrial Sector. Volume two covers the Transportation Sector, Forestry Sector, and Agricultural Sector. Together, the General Guidelines and supporting documents establish a broad-based program for the reporting of greenhouse gas reductions and carbon sequestration that result from voluntary and other activities. The General Guidelines and supporting documents may be accessed at *http://www.eia.doe.gov/oiaf/1605/guidelns.html.*

The current General Guidelines encourage participants to report all types of greenhouse gas emission reduction and carbon sequestration activities, and participants are given flexibility in determining whether and how actual reductions are accomplished and reported. Any person or entity ("reporter") who wishes to participate in the current GHG Registry must, however, comply with the following minimum information requirements:

(1) Reporters must clearly identify the facilities involved, the greenhouse gases reduced, the amount of reduction, and the year of the emissions;

(2) Reporters must describe the emissions reduction or carbon sequestration project and provide sufficient data to permit database users to have "a clear understanding of the nature and scope" of the project, "including the cause of the change in emissions or carbon sequestration";

(3) Reporters must be able to identify the source of the data presented, the level of change in emissions or sequestration per year, and the year in which the change took place; and

(4) Reporters who submit a project report of their own design must identify the techniques used to gather the data and to make estimates.

As required by section 1605(b)(2), EIA developed forms for reporting to the GHG Registry. As long as participants use EIA forms and meet the minimum reporting requirements, they are allowed to define the activities they report and to determine how to estimate the effects of those activities on greenhouse gas emissions and carbon sequestration. The General Guidelines require reporters to self-certify the accuracy of their reports, but does not specify verification measures. As part of the report review process, EIA evaluates each report received for consistency with the General Guidelines, comprehensiveness, and arithmetic accuracy, and makes suggestions for improving the accuracy and clarity of reports. EIA also provides reporters with suggested and default greenhouse gas emissions factors for optional use.

Additional information, including the program's annual reports and reporting forms, can be accessed at *http://www.eia.doe.gov/oiaf/1605/frntvrgg.html.*

B. The President's Directive To Improve the GHG Registry

On February 14, 2002, President Bush, in announcing a new approach for meeting the long-term challenge of climate change, directed the Secretary of Energy, in consultation with the Secretaries of Commerce and Agriculture, the Administrator of the Environmental Protection Agency (EPA), and other Departments and agencies, to propose improvements to the current program to "enhance measurement accuracy, reliability and verifiability, working with and taking into account emerging domestic and international approaches." [1] The President directed that DOE recommend proposed improvements to the GHG Registry within 120 days. Also on February 14, 2002, the President directed the Secretary of Energy to recommend reforms "to ensure that businesses and individuals that register reductions are not penalized under a future climate policy, and to give transferable credits to companies that can show real emissions reductions." [2] The President also directed the Secretary of Agriculture, in consultation with EPA and DOE, to develop accounting rules and guidelines for crediting carbon sequestration projects.

Pursuit of the related Presidential directives poses significant policy, technical, and legal questions. In light of the short time available, DOE began consultations with the Departments of Commerce and Agriculture, and the EPA immediately after the President's announcement. This notice is directed to obtaining information from interested parties that will be useful in developing proposed improvements to the GHG Registry consistent with the President's announcement. If, as a result, modifications to the guidelines for reporting are pursued, the public will be given an opportunity to comment on the proposed revised guidelines, as provided in section 1605(b)(1) (42 U.S.C. 13385(b)(1)).

II. Request for Public Comment

DOE requests written comments from interested persons on all aspects of possible revisions to the guidelines governing the GHG Registry. DOE is especially interested in receiving written comments from persons with particular knowledge of the institutional, legal, and technical issues related to measuring and reporting GHG emissions, emissions reductions, and carbon sequestration. All information provided by commenters will be available for public inspection at the Department of Energy, Freedom of Information Reading Room, room 1E–190, 1000 Independence Ave., SW, Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday though Friday, except Federal holidays.

DOE also intends to enter all written comments on a website specially established for this proceeding. The Internet website is *http://www.pi.energy.gov/enhancingGHGregistry.* To assist DOE in making public comments available on a website, interested persons are encouraged to submit an electronic version of their written comments in accordance with the instructions in the **DATES** section of this notice.

Because DOE intends to make all submissions publicly available on a website, it requests that commenters not submit information believed to be confidential and exempt from public disclosure. However, if any person chooses to submit information that he or she considers to be privileged or confidential and exempt from public disclosure, that person must clearly identify the information that is considered to be privileged or confidential and explain why the submitter thinks the information is exempt from disclosure, addressing as appropriate the criteria for nondisclosure in DOE's Freedom of Information Act regulations at 10 CFR 1004.11(f). DOE also requests such submitters to provide one copy of their comments from which the information believed to be exempt from disclosure has been redacted, with the areas where information has been redacted clearly marked. DOE will determine if the information or data sought to be protected from disclosure is exempt from disclosure in accordance with the procedures set forth in its Freedom of Information Act regulations at 10 CFR 1004.11.

Commenters may find it helpful to review the notices that preceded the issuance of the current guidelines in 1994. These notices provide additional detail on issues considered during the development of the current guidelines: Notice of Inquiry (58 FR 40116; July 27, 1993); Notice of Availability requesting comment on the draft guidelines (59 FR 28345; June 1, 1994); and the Notice of Availability of the Guidelines (59 FR 52769; October 19, 1994). DOE has included these notices on the website established for this proceeding for the convenience of interested persons.

III. Issues for Comment

This section of the notice identifies specific areas for comment; however, these areas are not intended to limit the content of submissions.

A. Issues Related to Comment Scope

- Identify and discuss whether and how any improvement you suggest is necessary and appropriate in light of the President's directives and the purposes of the reporting program, including reporting of emission reductions and carbon sequestration activities for transferable credits or protection against penalty under future climate policy.

B. Issues in the Relationship of the GHG Registry to Other Approaches in GHG Reporting

- Identify and discuss whether and how your suggested improvements are consistent with existing and emerging domestic and international approaches to reporting GHG emissions, emission reductions and carbon sequestration. DOE is aware that efforts in the public and private sectors, domestic and international, have been undertaken to

[1] Global Climate Change Policy Book 2 (White House, February 14, 2002).

[2] Id.

develop GHG reporting approaches. Included in these are efforts by U.S. state governments, foreign governments, and multinational stakeholder groups. Reporting protocols have also been developed under voluntary emissions reduction programs initiated by the federal government and others.

C. Institutional Issues

• Time frame of data reported. Identify and discuss how any suggested improvements to the GHG Registry could accommodate the time period of reported emissions and emissions reductions, and carbon sequestration. The current GHG Registry accepts information on emissions and reductions back to 1991 and on emissions back to 1987, and provides for revision and supplementation of submitted reports. If your suggested improvements to the GHG Registry entail submission of additional accompanying information or new protocols for some types of reports, discuss how the guidelines could address the time frame of past and future reported data, and whether and how previously submitted data may be resubmitted under the revised purposes of the Registry.

• Reporting entity definition. Discuss whether the GHG Registry's broad definition of "reporting entity" continues to be appropriate in any improved reporting program. The current guidelines define a reporting entity as "a legal U.S. entity," meaning "any U.S. citizen or resident alien; any company, organization, or group incorporated under or recognized by U.S. law; or any U.S. Federal, state, or local government entity."

• Level of reporting. Discuss whether it is appropriate for reports to cover: (1) All emitting activities of the entire reporting entity; (2) emissions by facility/site, affiliate, or subsidiary; or (3) an emissions reduction, emissions avoidance or carbon sequestration project. Identify how different levels of reporting may be appropriate for various reporting purposes, including for transferable credits and protection against penalty under future climate policy.

• Reportable GHGs. Discuss whether and how it may be appropriate, in light of your suggested improvements to the GHG Registry, to modify the current GHG Registry approach which allows reports on various greenhouse gases and other pollutants, and their reduction. These gases include carbon dioxide, methane, nitrous oxides, perfluorocarbons (PFCs), hydrofluorocarbons (HFCs) and sulfur hexafluoride (SF_6).

• Indirect emissions. Identify and discuss how a reporter could treat indirect emissions, such as those resulting from electricity use, and indirect emissions reductions, such as those from decreased electricity use, in the context of an improved reporting program. Discuss whether and how life cycle and fuel cycle emissions, and wholesale electric or natural gas transactions should be treated. Indirect emissions are emissions from sources outside the reporting entity that are affected by the reporter's activities, for example, emissions of an electric utility resulting from the reporter's consumption of electricity.

• Avoided emissions. Identify and discuss how a reporter could treat actions that avoid, at least in part, the production of GHG emissions. The GHG Registry currently includes these as reported reductions. Examples of activities that avoid emissions include, but are not limited to, electricity generation from renewable energy sources or nuclear power, the use of natural gas-fueled motor vehicles, and energy efficiency improvements in industrial or other applications.

• Baselines (or reference case) definition. Identify and discuss appropriate changes to the GHG Registry's approaches to determining an emissions baseline(s) or reference case. Identify how different baseline determinations may be appropriate for reporting purposes, transferable credits, or protection against penalty under future climate policy. Discuss how the reporting program could be used by reporters who may wish to report their GHG emissions measured as emissions per unit of output or emissions intensity. Discuss how "units of output" or emissions intensity could be calculated for varying industries. The current guidelines permit the reporter several options for identifying the baseline (referred to as the reference case) for emissions reductions or carbon sequestration, including use of historical emissions or sequestration (historical reference case), or an estimate of what emissions or sequestration would have been in the absence of a project or a group of projects (modified reference case).

• Thresholds for reporting emissions and for reporting emissions reductions.

The current guidelines do not set a minimum size for a reporting entity, or for reported emissions, emissions reductions, avoided emissions, or sequestered carbon. Identify and discuss whether and how an improved program might appropriately set minimum thresholds for these categories of data.

• Reduction activity reports on domestic and international projects. The current GHG Registry accepts reports of project-level data for both domestic and international projects, without regard to entity-level emissions data. Discuss the need for, and appropriateness of, entity-level emissions data accompanying information on projects either within or outside the U.S.

• Transferable credits and transferring ownership of reductions. Discuss any attributes of GHG emissions reductions or carbon sequestration that may be appropriate or necessary for transferable emissions reduction or carbon sequestration credits. Provide information on reporting parameters you believe are necessary to establish and transfer ownership of real emissions reductions or carbon sequestration credits.

• Reporting joint activities, addressing duplication of reported emissions and reductions, and ownership. The current guidelines permit reporters, or third parties on the behalf of others, to report individual and joint activities, and to modify reporter-identification as needed. Discuss whether and what changes are appropriate or necessary to minimize duplicative reporting, and assure correct identification of the owner of emissions, emission reductions or avoidance, and carbon sequestration.

• Verification and third-party audit standards. As required by 1605(b)(2), the current guidelines and EIA forms require that the reporter self-certify the accuracy of the reported information (42 U.S.C. 13385(b)(2)). No independent certification or verification is required. While the Federal government does not certify reported data, EIA currently reviews each report for consistency with the program guidelines, comprehensiveness, and arithmetic accuracy. Identify and discuss any forms of verification that may be appropriate in a program that contemplates the use of the GHG Registry for transferable credits. If you suggest third party verification or certification, discuss possible standards for certifying bodies.

• Confidentiality of reported data; public availability of information. The current guidelines provide that information determined under DOE regulations to be confidential under the Freedom of Information Act (5 U.S.C. 552(b)(4)) does not appear in EIA's public database and is not made available to the public. This is consistent with the provision in section 1605(b) requiring the protection of trade secret and commercial or financial information that is privileged or confidential (42 U.S.C. 13385(b)(3)). Discuss whether revised guidelines should include a provision requiring reporters to waive the protection provided by section 1605(b)(3) if they wish to obtain a certificate of emission reductions for potential use in connection with transferable credits, or for protection against penalty under future climate policy.

D. Technical Issues

• Measurement and estimation techniques. Although the current guidelines and reporting forms provide a number of default and other estimation techniques, they do not prescribe measurement and estimation techniques. Identify and discuss the need for prescribed techniques for measurement and estimation under an improved GHG Registry that could provide the basis for transferable credits or protection against penalty under future climate policy. Provide specific examples and citations to techniques you identify.

Issued in Washington, DC, on April 15, 2002.

Robert Card,

Undersecretary.

[FR Doc. 02–11180 Filed 5–3–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–8–000]

Big West Oil, LLC 333 West Center Street, Salt Lake City, Utah 84054; Chevron Products Company, 2351 N. 1100 West, Salt Lake City, UT 84116; Sinclair Oil Corporation, 550 East South Temple, Salt Lake City, UT 84102 and Tesoro Refining and Marketing Company, 300 Concord Plaza Dr., San Antonio, Texas 78216; Complainants, v. Express Pipeline LLC, Suite 2500, 255 5th Avenue, SW, Calgary, Alberta T2P 3G6, Canada, Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, Big West Oil LLC (Big West), Chevron Products Company (Chevron), Sinclair Oil Corporation (Sinclair) and Tesoro Refining and Marketing Company (Tesoro) tendered for filing a Complaint against Express Pipeline LLC (Express). Big West, Chevron, Sinclair and Tesoro state in their Complaint that their refineries use substantial quantities of crude oil and synthetic crude oil (syncrude) that have been transported from Canada on the Express pipeline system. Big West, Chevron, Sinclair and Tesoro allege that the rates Express is charging for pipeline transportation service from the US/Canadian Border to Casper, Wyoming are unjust and unreasonable and, therefore, in violation of the Interstate Commerce Act. Big West, Chevron, Sinclair and Tesoro further maintain that Express has violated and is continuing to violate the Interstate Commerce Act by improperly shifting costs to its shippers for the transfer of crude petroleum from the Express pipeline to a pipeline operated by Frontier Pipeline Company.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11143 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. MG02–2–000]

Central New York Oil and Gas Company, LLC; Notice of Filing

April 30, 2002.

On April 4, 2002, Central New York Oil and Gas Company, LLC filed its initial standards of conduct.

Central New York Oil and Gas Company, LLC states that it served copies of the filing on all customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest in this proceeding with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. (18 CFR 385.211 or 385.214) All such motions to intervene or protest should be filed on or before (15 days after date of notice) 2002. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11142 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. OR02–9–000]

Chevron Products Company, Complainant v. CalNev Pipe Line, L.L.C., Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, Chevron Products Company (hereinafter referred to as Complainant) filed a complaint alleging that the rates of CalNev Pipe Line, L.L.C. (CalNev) subject to the jurisdiction of the Federal Energy Regulatory Commission are not just and reasonable.

According to Complainant, the overcharges are 22.8 percent in excess of the claimed just and reasonable return claimed by CalNev in its year 2000 interstate cost of service.

Complainant further alleges that the rate are not subject to the threshold

"changed circumstances" standard pursuant to the Energy Policy Act of 1992.

Complainant alleges that it is aggrieved and damaged by the acts of CalNev Pipe Line LLC and seeks relief in the form of reduced rates in the future and reparations for past and current overcharges for transportation and terminalling, with interest.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11144 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 9974–048]

Wisconsin Department of Natural Resources, Complainant, v. Halstead Construction, Respondent; Notice of Complaint

April 30, 2002.

Take notice that on April 26, 2002, the Wisconsin Department of Natural Resources (WDNR) filed a complaint against Halstead Construction, owner of the Upper Watertown Dam.

WDNR states that a copy of the complaint was delivered to Thomas Philipsborn, Hastead Construction, Chicago IL.

WDNR states that the Upper Watertown Dam, project no. 9974 is not in compliance with the Exemption issued in 1989. The WDNR alleges that the dam is not fully operational, doesn't have the necessary spillway capacity, is not following the Public Safety Plan, is not maintained ice-free; and the turbine leaks oil if generating.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 16, 2002 . Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 16, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11147 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–125–000, et al.]

PSEG Fossil LLC, et al.; Electric Rate and Corporate Regulation Filings

April 26, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. PSEG Fossil LLC

[Docket No. EG02–125–000]

Take notice that on April 24, 2002, PSEG Fossil LLC (PSEG Fossil or Applicant), having its principal place of business at 80 Park Plaza, T–16, Newark, New Jersey, filed with the Federal Energy Regulatory Commission (Commission), an application for redetermination of exempt wholesale generator status pursuant to Part 365 of the Commission's regulations.

PSEG Fossil is a limited liability company organized under the laws of the State of Delaware. PSEG Fossil states that it will be engaged, directly or indirectly through an affiliate as defined in section 2(a)(11)(B) of the Public Utility Holding Company Act of 1935, exclusively in owning, or both owning and operating eligible generating facilities, and engaging in sales of electric energy at wholesale.

Comment Date: May 17, 2002.

2. New England Power Pool

[Docket No. ER02–1618–000]

Take notice that on April 23, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted the Eighty-Fourth Agreement Amending New England Power Pool Agreement (Eighty-Fourth Agreement), which proposes changes to the NEPOOL Tariff and the Restated NEPOOL Agreement to integrate the merchant transmission facility Cross Sound Cable project into the NEPOOL Tariff and to provide for operational control of the facility by the New England independent system operator. Expedited consideration, a waiver of the sixty-day notice requirement and a June 1, 2002 effective date has been requested.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers and the New England state governors and regulatory commissions.

Comment Date: May 14, 2002.

3. Ameren Services Company

[Docket No. ER02–1619–000]

Take notice that on April 23, 2002, Ameren Services Company (ASC) tendered for filing a Parallel Operating Agreement between ASC and Clay County Trust 2000. ASC asserts that the purpose of the Agreement is to permit ASC to provide transmission service to Clay County Trust 2000 pursuant to Ameren's Open Access Transmission Tariff.

Comment Date: May 14, 2002.

4. Exelon Generation Company, LLC

[Docket No.ER02–1620–000]

Take notice that on April 23, 2002, Exelon Generation Company, Inc. (EXELON) filed under section 205 of the Federal Power Act, 16 USC 792 *et seq.*, a Transaction Agreement dated March 22, 2002 with Kennebunk Light and Power District (KLPD) under EXELON's FERC Electric Tariff Original Volume No. 1 (Tariff).

EXELON requests an effective date of May 1, 2002 for the Agreement.

Comment Date: May 14, 2002.

5. Southern California Edison Company

[Docket No. ER02–1621–000]

Take notice, that on April 23, 2002, Southern California Edison Company (SCE) tendered for filing revisions to the Interconnection Facilities Agreement (Interconnection Agreement) between SCE and the City of Colton (Colton). The revisions reflect SCE's and Coltons's (Parties) negotiations to revise the original Interconnection Agreement in order to incorporate into it the Interconnection Facilities and a cost estimate to accommodate Colton's request to replace the existing metering facilities at SCE's Colton Substation with new metering.

SCE requests the Commission to assign an effective date of April 11, 2002 to the Amended Interconnection Agreement. Copies of this filing were served upon the Public Utilities Commission of the State of California and Colton.

Comment Date: May 14, 2002.

6. Entergy Services, Inc.

[Docket No. ER02–1624–000]

Take notice that on April 23, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and RWE Trading Americas Inc.

Comment Date: May 14, 2002.

7. PPL Electric Utilities Corporation

[Docket No. ER02–1625–000]

Take notice that on April 23, 2002, PPL Electric Utilities Corporation (PPL Electric) filed an Interchange Scheduling Procedures and Data Access Agreement between PPL Electric and Citizens' Electric Company of Lewisburg (Citizens' Electric).

PPL Electric states that a copy of this filing has been provided to Citizens' Electric.

Comment Date: May 14, 2002.

8. Arizona Public Service Company

[Docket No. ER02–1627–000]

Take notice that on April 23, 2002, the Arizona Public Service Company tendered for filing proposed revisions to Arizona Public Service Company's fuel adjustment clause contained in certain wholesale power agreements on file with the Federal Energy Regulatory Commission (Commission).

A copy of this filing has been served on all parties on the service list.

Comment Date: May 14, 2002.

9. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1628–000]

Take notice that on April 23, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *American Electric Power Service Corporation.*

Ameren Energy seeks Commission acceptance of these service agreements effective April 15, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 14, 2002.

10. Ameren Energy, Inc. on Behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company

[Docket No. ER02–1629–000]

Take notice that on April 23, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with *American Electric Power Service Corporation.*

Ameren Energy seeks Commission acceptance of these service agreements effective April 10, 2002. Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 14, 2002.

11. PacifiCorp

[Docket No.ER02–1630–000]

Take notice that on April 24, 2002, PacifiCorp tendered for filing in accordance with 18 CFR part 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Umbrella Service Agreement No. 73 with the City of Hermiston under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12.

Copies of this filing were supplied to the Public Utility Commission of Oregon.

Comment Date: May 15, 2002.

12. Aquila, Inc.

[Docket No. ER02–1631–000]

Take notice that on April 24, 2002, Aquila, Inc. (Aquila), filed with the Federal Energy Regulatory Commission (Commission), pursuant to section 205 of the Federal Power Act, 16 USC 824d, and Part 35 of the Commission's regulations, Service Agreement No. 21 to Aquila's Market Based Power Sales Tariff (Aquila's FERC Electric Tariff No. 28). The service agreement is a Power Purchase Agreement between Aquila and Midwest Energy Inc., Missouri.

Comment Date: May 15, 2002.

13. Energy America LLC

[Docket No. ER02–1632–000]

Take notice that on April 24, 2002, Energy America tendered for filing an application for authorization to sell energy, capacity and ancillary services at market-based rates pursuant to section 205 of the Federal Power Act. Energy America is a direct subsidiary of Centrica US Holdings Ltd., and an indirect subsidiary of Centrica plc.

Comment Date: May 15, 2002.

14. Auburndale Peaker Energy Center, L.L.C.

[Docket No. ER02–1633–000]

Take notice that on April 24, 2002, Auburndale Peaker Energy Center, L.L.C. (Applicant) tendered for filing, under section 205 of the Federal Power Act a request for authorization to make wholesale sales of electric energy, capacity, replacement reserves, and ancillary services at market-based rates, to reassign transmission capacity, and to resell firm transmission rights. Applicant proposes to own and operate a 115 megawatt electric generating facility located in Florida.

Comment Date: May 15, 2002.

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15. Entergy Services, Inc.

[Docket No. ER02–1634–000]

Take notice that on April 24, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and Cleco Power LLC.

Comment Date: May 15, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11095 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 10855–002, Michigan, and 2589–024, Michigan]

Upper Peninsula Power Company, and Marquette Board of Light and Power; Notice of Availability of Draft Environmental Assessment

April 30, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations contained in the Code of Federal Regulations (CFR) (18 CFR part 380 [FERC Order No. 486, 52 F.R. 47897]), the Office of Energy Projects Staff (Staff) has reviewed the application for an initial license for the Dead River Project and a new license for the Marquette Project, both located on the Dead River in Marquette County, Michigan, and has prepared a draft environmental assessment (DEA) for the projects. In this DEA, the Staff has analyzed the potential environmental effects of the existing projects and has concluded that licensing the projects, with staff's recommended measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, Room 2–A, of the Commission's offices at 888 First Street, N.E., Washington, D.C. 20426. This DEA may also be viewed on the Internet at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions. Please call (202) 208–2222 for assistance.

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, D.C. 20426. Please affix "Dead River Project No. 10855–002" and/or "Marquette Project No. 2589–024," as appropriate, to all comments. For further information, please contact Lee Emery at (202) 219–2779.

Comments, may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11148 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 637–022]

Notice of Application and Applicant-Prepared Environmental Assessment Accepted for Filing, Notice Soliciting Motions To Intervene and Protests, and Notice Soliciting Comments, Final Terms and Conditions, Recommendations and Prescriptions

April 29, 2002.

Take notice that the following hydroelectric application and applicant-prepared environmental assessment have been accepted for filing with the Commission and are available for public inspection:

a. *Type of Application:* New License.

b. *Project No.:* 637–022.

c. *Date filed:* March 23, 2002.

d. *Applicant:* Public Utility District No.1 of Chelan County (Chelan PUD).

e. *Name of Project:* Lake Chelan Hydroelectric Project.

f. *Location:* On the Chelan River in Chelan County, Washington. The project occupies about 465 acres of federal lands administered by the U.S. Forest Service and the National Park Service.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Gregg Carrington, Chelan PUD, 327 North Wenatchee Ave. Wenatchee WA 98801 or P.O. Box 1231, Wenatchee WA 98807–1231, 509–663–8121 or within Washington State toll-free at 888–663–8121, email: gregg@chelanpud.org.

i. *FERC Contact:* Vince Yearick, FERC, 888 First Street, NE., Room 61–11, Washington, DC 20426, (202) 219–3073, email: vince.yearick@ferc.gov.

j. *Deadline for filing interventions, protests, comments, recommendations, terms and conditions, and prescriptions:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commissions, 888 First Street, NE., Washington, DC 20426. Documents may also be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Brief Project Description:* The existing Lake Chelan Project consists of: Lake Chelan, a natural-glacial lake that was raised 21 feet by construction of the dam to a current normal maximum water surface elevation of 1,100 feet; a 40-foot-high, 490-foot-long, concrete gravity, steel-reinforced dam; a 14-foot-diameter power tunnel, 2.2 miles long; a 45-foot-diameter-by-125-foot-high steel surge tank located along the power tunnel approximately 700 feet upstream of the powerhouse; a 90-foot-long penstock transition that reduces from 14 feet in diameter to 12 feet in diameter and then bifurcates; two 9-foot-diameter, steel-lined, concrete-encased penstocks that reduce to 7.5 feet in diameter at the turbine shutoff valves; a 140-foot-long, 100-foot-wide and 124-foot-high reinforced concrete powerhouse that contains two vertical-shaft, Francis-type turbines with a rated generating capacity of 24,000 kilowatts (kW) each; and a 1,700-foot-long excavated tailrace channel adjacent to the mouth of the Chelan River that discharges into the Columbia River.

l. *Locations of the application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 888 First Street, NE., Room 2–A, Washington, DC 20426, or by calling (202) 219–1371. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item h above.

m. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item n. below.

n. *Comments, Recommendations, Terms and Conditions, Prescriptions, and Reply Comments:* The Commission is requesting comments on the applicant's application and draft environmental assessment, final recommendations, terms and conditions, prescriptions, and final reply comments.

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedures, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protest, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to Section 4.34(b) of the regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "PROTEST," "MOTION TO INTERVENE," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis; and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11145 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice That Application is Accepted for Filing and Ready for Environmental Analysis; Solicitation of Comments, Terms and Conditions, Recommendations, Prescriptions, and Motions To Intervene and Protests

April 30, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 6418–007.

c. *Date filed:* February 12, 2002.

d. *Applicant:* Judith A. Burford.

e. *Name of Project:* A J Allen Power Plant.

f. *Location:* On East Brush Creek, a tributary of the Eagle River, in Eagle County, Colorado. The project occupies 1.008 acres of land within the White River National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* J Richard Allen, 5401 East Dakota Avenue # 21, Denver, Colorado 80426, Tel. # (303) 333–1339.

i. *FERC Contact:* Gaylord Hoisington, (202) 219–2756, or *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protests, comments, and terms and conditions, recommendations, and prescriptions and request for cooperating agency status:* July 1, 2002.

All documents (original and eight copies) should be filed with: Magalie R Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

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The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application has been accepted for filing, and is now ready for environmental analysis.

We will consider the prefiling consultation process that has occurred as satisfying National Environmental Policy Act scoping and intend on issuing one environmental assessment (EA) rather than issuing a draft and final EA. Tentatively, we plan on issuing an EA by August 2002.

m. *The existing A J Allen Project consists of:* (1) An 8-inch-diameter 970-foot-long steel pipeline; (2) a rock pile diversion structure; (3) a gate valve just upstream of the turbine; (4) a 9-foot by 11-foot concrete and wood powerhouse containing a Pelton impulse turbine having a rated capacity of 8-kilowatts; (5) a 5-volt, 112-foot-long transmission line; and (6) other appurtenances.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

The Commission directs, pursuant to Section 4.34 (b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11146 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PL02–3–000]

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information; Statement of Policy on Maximizing the Quality, Objectivity, Utility, and Integrity of Disseminated Information and Reqyest for Comments

April 30, 2002.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice, availability of draft report with Proposed guidelines and request for comments.

SUMMARY: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), directed the Office of Management and Budget (OMB) to issue government-wide guidelines to "provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies." OMB's final guidelines were published on February 22, 2002. 67 FR 8452 (2002). Agencies are directed to issue implementing guidelines by October 1, 2002. The Federal Energy Regulatory Commission (FERC or Commission) is issuing and requesting comments on these draft guidelines as part of this process.

DATES: Comments are due June 7, 2002.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Taylor, Office of the Chief Information Officer, Federal Energy Regulatory Commission, 888 First Street, Washington, DC 20426, (202)208–0826, e-mail: *Elizabeth.Taylor@ferc.gov.*

SUPPLEMENTARY INFORMATION: In section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Public Law 106–554), Congress directed the Office of Management and Budget (OMB) to issue by September 30, 2001, government-wide guidelines that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information (including statistical information) disseminated by Federal agencies. (OMB subsequently revised its guidelines to reflect comments by federal agencies and this revision as noted above was noticed in the **Federal Register** on February 22, 2002).

Section 515 directs agencies subject to the Paperwork Reduction Act (44 U.S.C. 3502(1)) to:

1. Issue their own information quality guidelines ensuring and maximizing the quality, objectivity, utility, and integrity of information, including statistical information, disseminated by the agency no later than one year after the date of issuance of the OMB guidelines;

2. Establish administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency that does not comply with the OMB guidelines; and

3. Report annually, beginning January 1, 2004, to the Director of OMB the number and nature of requests for correction received by the agency regarding agency compliance with these OMB guidelines concerning the quality, objectivity, utility, and integrity of information and how such requests for correction were resolved.

The FERC's draft guidelines are included as Attachment A. The request for correction and request for reconsideration processes are described in Attachment B. Attachments A and B are available on the FERC website at *http://www.ferc.gov/* and in the Public Reference Room, 888 First Street., NE., Washington, DC 20426 (202–208–1371, extension 0, or *Public.ReferenceRoom@FERC.fed.us*).

Magalie R. Salas,

Secretary.

[FR Doc. 02–11149 Filed 5–3–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7206–1]

Availability of "Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2002 Appropriations Act"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Award of Grants and Cooperative Agreements for the Special Projects and Programs Authorized by the Agency's FY 2002 Appropriations Act." This memorandum provides information and guidelines on how EPA will award and administer grants for the special projects and programs identified in the State and Tribal Assistance Grants (STAG) account of the Agency's fiscal year (FY) 2002 Appropriations Act (Public Law 107–73). The STAG account provides budget authority for funding identified water, wastewater and groundwater infrastructure projects, as well as budget authority for funding the United States-Mexico Border program, the Alaska Rural and Native Villages program, the Above Ground Storage Tank Grant Program, and the Long Island Sound Restoration Program. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Larry McGee, (202) 564–0619 or *mcgee.larry@epa.gov.*

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm319.pdf.*

Dated: April 16, 2002.

Michael B. Cook,

Director, Office of Wastewater Management.

[FR Doc. 02–11177 Filed 5–3–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0026; FRL–6836–1]

Atrazine; Availability of Revised Risk Assessments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the revised risk assessments and related documents for the triazine pesticide, atrazine. In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit comments on risk management ideas or proposals for atrazine. This action is in response to a joint initiative between EPA and the U.S. Department of Agriculture (USDA) to increase transparency in the tolerance reassessment process for all pesticides.

DATES: Comments, identified by docket control number OPP–34237C, must be received by EPA on or before July 5, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34237C in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Kimberly Nesci Lowe, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8059; e-mail address: lowe.kimberly@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the revised risk assessments and submitting risk management comments on atrazine, including environmental, human health, and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document or Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document and other related documents from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. To access information about pesticides and obtain electronic copies of the revised risk assessments and related documents mentioned in this notice, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/reregistration/atrazine/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–34237C. The official record

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consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as CBI. This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

III. How Can I Respond to this Action?

A. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–34237C in the subject line on the first page of your response.

1. *By mail.* Submit comments to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW, Washington, DC 20460.

2. *In person or by courier.* Deliver comments to: Public Information and Records Integrity Branch, Information Resources and Services Division, Office of Pesticide Programs, Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* Submit electronic comments by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file, avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard computer disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by the docket control number OPP–34237C. Electronic comments may also be filed online at many Federal Depository Libraries.

B. How Should I Handle CBI Information that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

IV. What Action is EPA Taking in this Notice?

EPA is making available for public viewing the revised risk assessments and related documents for the triazine pesticide, atrazine. These documents have been developed as part of the public participation process that EPA and USDA are using to involve the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA), and the reregistration of individual pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). A pilot public participation process was developed as part of the EPA and the USDA Tolerance Reassessment Advisory Committee (TRAC), which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process has been to find a more effective way for the public to participate at critical junctures in the Agency's development pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation. The documents being released to the public through this notice provide information on the revisions that were made to the atrazine preliminary risk assessments, which were released to the public on February 14, 2001 (66 FR 10287) (FRL–6765–3) and September 26, 2001 (66 FR 49186) (FRL–7063–7), through notices in the **Federal Register**.

In addition, this notice starts a 60–day public participation period during which the public is encouraged to submit risk management proposals or other comments on risk management for atrazine. The Agency is providing an opportunity, through this notice, for interested parties to provide written comments on risk management proposals or ideas for atrazine. Such comments and proposals could address ideas about how to manage dietary, occupational, or ecological risks on specific atrazine use sites or crops across the United States or in a particular geographic region of the country. To address dietary risk, for example, commenters may choose to discuss the feasibility of lower application rates, increasing the time interval between application and harvest ("preharvest intervals"), modifications in use, or suggest alternative measures to reduce residues contributing to dietary exposure. For occupational risks, commenters may suggest personal protective equipment or technologies to reduce exposure to workers and pesticide handlers. For ecological risks, commenters may suggest ways to reduce environmental exposure, e.g., exposure to birds, fish, mammals, and other non–target organisms. All comments and proposals must be received by EPA on or before July 5, 2002. Comments and proposals will become part of the Agency record for the pesticide specified in this notice.

List of SubjectsP≤Environmental protection, Chemicals, Pesticides and pests, Atrazine, Triazines.

Dated: April 19, 2002.

Lois A. Rossi,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–11159 Filed 5–1–02; 2:28 pm]

BILLING CODE 6560–50–S

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice and request for comment.

SUMMARY: The FDIC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35). Currently, the FDIC is soliciting comments concerning the following collections of information titled: (1) Notification of Performance of Bank Services; and (2) Prompt Corrective Action.

DATES: Comments must be submitted on or before July 5, 2002.

ADDRESSES: Interested parties are invited to submit written comments to Tamara R. Manly, Management Analyst (Regulatory Analysis), (202) 898–7453, Office of the Executive Secretary, Room F–4058, Attention: Comments/OES, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429. All comments should refer to the OMB control number. Comments may be hand-delivered to the guard station at the rear of the 17th Street Building (located on F Street), on business days between 7 a.m. and 5 p.m. [FAX number (202) 898–3838; Internet address: *comments @ fdic.gov*].

A copy of the comments may also be submitted to the OMB desk officer for the FDIC: Alexander Hunt, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Tamara R. Manly, at the address identified above.

SUPPLEMENTARY INFORMATION:

Proposal to renew the following currently approved collections of information:

1. *Title:* Notification of Performance of Bank Services.
OMB Number: 3064–0029.
Form Number: FDIC 6120/06.
Frequency of Response: On occasion.
Affected Public: Business or other financial institutions.
Estimated Number of Respondents: 412.
Estimated Time per Response: ½ hour.
Total Annual Burden: 206 hours.
General Description of Collection: Insured state nonmember banks are required to notify the FDIC, under section 7 of the Bank Service Corporation Act (12 U.S.C. 1867), of the relationship with a bank service corporation. Form FDIC 6120/06 (Notification of Performance of Bank Services) may be used by banks to satisfy the notification requirement.

2. *Title:* Prompt Corrective Action.
OMB Number: 3064–0115.
Frequency of Response: On occasion.
Affected Public: All financial institutions.
Estimated Number of Respondents: 10.
Estimated Time per Response: 4 hours.
Total Annual Burden: 40 hours.
General Description of Collection: The prompt corrective action provisions of FDICIA require or permit the FDIC and other federal financial regulators to take certain supervisory actions when FDIC-insured institutions fall within one of five categories. The collection consists of applications required to obtain FDIC exceptions to otherwise restricted activities.

Request for Comment

Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the FDIC's functions, including whether the information has practical utility; (b) the accuracy of the estimates of the burden of the information collection, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the collection should be modified prior to submission to OMB for review and approval. Comments submitted in response to this notice also will be summarized or included in the FDIC's requests to OMB for renewal of these collections. All comments will become a matter of public record.

Dated at Washington, DC, this 30th day of April, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–11140 Filed 5–3–02; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1407–DR]

Kentucky; Amendment No. 2 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1407–DR), dated April 4, 2002, and related determinations.

EFFECTIVE DATE: April 26, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 2002:

Floyd, Martin, and Pike Counties for Individual Assistance.

Johnson, Knott, and Magoffin Counties for Individual Assistance (already designated for Public Assistance).

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11122 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1408–DR]

Tennessee; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Tennessee, (FEMA–1408–DR), dated April 5, 2002, and related determinations.

EFFECTIVE DATE: April 23, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or madge.dale@fema.gov.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the

State of Tennessee is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 5, 2002:

Anderson County for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11123 Filed 5–3–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Radiological Emergency Preparedness: Exercise Credit

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice with request for comments.

SUMMARY: Pursuant to the Radiological Emergency Preparedness (REP) Program Strategic Review initiative 1.6, the Federal Emergency Management Agency (FEMA) is proposing to implement a policy for granting REP exercise credit to offsite response organizations (ORO) for participation in an actual incident or in a non-REP exercise. The subject notice contains the activities eligible for consideration for credit, guidelines for submitting a request, and documentation required.

DATES: FEMA must receive comments on or before July 5, 2002.

ADDRESSES: You may submit your comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, or send them by e-mail to *rules@fema.gov*. Please reference "REP Exercise Credit" in the subject line of your e-mail or comment letter.

FOR FURTHER INFORMATION CONTACT: Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; (202) 646–3664; vanessa.quinn@fema.gov.

SUPPLEMENTARY INFORMATION: Pursuant to the REP Program Strategic Review initiative 1.6, FEMA is proposing to implement a policy for granting REP exercise credit to offsite response organizations for participation in an actual incident or in a non-REP exercise. The subject notice contains the activities eligible for consideration for credit, guidelines for submitting a request, and documentation required.

Background

A radiological emergency response plan is developed and exercised in order to have reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency. FEMA evaluates the exercises to ensure that the OROs have the capability to respond to a radiological emergency. An ORO's response to man-made or natural events or participation in a non-REP exercise may also test all or part of the plan. For those areas that were tested, it may be appropriate to give credit in place of certain aspects of an evaluated REP exercise.

Credit for Responding to an Actual Emergency

When an ORO responds to an actual incident involving radioactive materials, FEMA can consider granting exercise credit for such response activities as environmental monitoring; monitoring for contamination of persons and equipment and/or other activities, if these activities were successfully performed according to the applicable plan and procedures. FEMA may also consider granting credit for generic response activities, such as mobilization of personnel and facilities,[1] for those OROs affected by an actual radiological incident.

When an ORO responds to an actual incident that does not involve radioactive materials, the ORO may qualify for credit for generic response functions and activities, such as mobilization, facilities[1], communications equipment, and congregate care. The Credit columns in Table 1, Federal Evaluation Process Matrix, indicate which functions and activities may be considered for the granting of exercise credit for response to a radiological or a non-radiological emergency.

When requesting exercise credit for a response to an actual emergency, an ORO should ensure that the response included the following four elements:

- A prompt and timely mobilization of key State and local government staff and providers responsible for REP emergency functions;
- An actual reporting of the key REP staff who, in accordance with the plans, would report to the facility;
- Activation of the facility(ies) of the responding jurisdiction(s); and
- Establishment of communication links among responding organizations.

The ORO should then provide the following documentation to FEMA:

1. Type and nature of the emergency;
2. Timeline, to include time of response and time State and local REP staff arrived at the facility;
3. Sign in-out sheet with name, function, date and time;
4. List of involved REP personnel and organizations and their connection to a REP response;
5. Communications log showing the establishment of communication links with other organizations;
6. List of involved jurisdictions;
7. Emergency decisions made and implemented;
8. Resources (facilities, equipment, etc.) used; and
9. List of corrective actions or improvement items identified in the after-action report.

Credit for Participating in Preparedness Exercises Other Than REP

ORO(s) may request REP exercise credit for demonstrating preparedness capabilities in FEMA exercises other than REP. These capabilities could include congregate care, facilities, [1] and/or other activities performed in the exercise. The Credit columns in the attached Table 1 indicate which functions and activities may be considered for the granting of exercise credit for participation in an exercise other than REP when the exercise has a radiological component or when the exercise does not have a radiological component.

ORO credit requests for participating in non-REP exercises must specify the exercise and document the ORO's participation, including the activities it performed and a list of corrective actions or improvement items identified in the exercise after-action report. If credit is granted, the ORO must also include its exercise participation in the Annual Letter of Certification.

Process

An ORO submits its application for credit to the appropriate FEMA Region.

[1] FEMA will evaluate all facilities, as a baseline, during the first exercise under the new Evaluation Criteria. Therefore, FEMA will not grant exercise credit for facilities for the first exercise using the new Evaluation Criteria.

[1] FEMA will evaluate all facilities, as a baseline, during the first exercise under the new Evaluation Criteria. Therefore, FEMA will not grant exercise credit for facilities for the first exercise using the new Evaluation Criteria.

The application must specify the basis for the credit (response to a radiological emergency, response to a non-radiological emergency, participation in a radiological exercise other than REP or participation in a non-radiological exercise other than REP) and the REP evaluation area criterion (a) for which credit is requested. The application must also contain the appropriate documentation, as specified above. The FEMA Region will submit the request for credit, along with the Region's review and recommendations, to FEMA Headquarters. FEMA Headquarters will determine whether the credit requested will be granted, and if so, will issue an exemption to an ORO from FEMA evaluation of this criterion (a) in the next REP exercise. However, even if FEMA exempts a criterion from exercise evaluation, certain fundamental radiological emergency response functions and activities that are integral to the REP exercise must still be demonstrated in order to conduct the exercise. FEMA will specify any exempted activities that the ORO must still demonstrate. FEMA will not evaluate these activities unless their demonstration had a potential or actual adverse effect on the REP exercise.

Timeline

The ORO requesting credit for responding to an actual radiological or non-radiological emergency should submit the request to the appropriate FEMA Regional Office within 90 days following the event. The ORO requesting credit for participation in a non-REP exercise should submit the initial information 60 days in advance of the non-REP exercise and follow-up documentation within 90 days after the non-REP exercise. Any credit that is granted must be completed in time to allow inclusion in the extent-of-play discussions 90 days prior to the REP exercise for which credit is granted. FEMA will grant exemption from evaluation of a specific exercise criterion only once during the six-year cycle for the applicable REP exercise. In addition, FEMA will not consider exemption from evaluation if the emergency response activity for which credit would be sought occurred more than two years before the date of the next scheduled REP exercise.

Dated: April 23, 2002.

Michael D. Brown,

General Counsel.

Table 1, Federal Evaluation Process Matrix, reads as follows:

TABLE 1.—FEDERAL EVALUATION PROCESS MATRIX[1]

Evaluation Area and Sub-Elements	Consolidates REP–14 objective(s)	Minimum frequency[2]	Out-of-sequence of exercise scenario	Credit		Staff ass't visit
				Radiological	Non-radiological	
1. Emergency Operations Management	1, 2, 3, 4, 5, 14, 17, 30.					
a. Mobilization		Every Exercise	NO	YES	YES	NO
b. Facilities		Every Exercise	NO	YES	YES	YES
c. Direction and Control		Every Exercise	NO	NO	NO	NO
d. Communications Equipment		Every Exercise	NO	NO	NO	NO
e. Equipment and Supplies to Support Operations.		Every Exercise	YES	YES	NO	YES
2. Protective Action	5, 7, 9, 14, 15, 16, 17, 26, 28.					
a. Emergency Worker Exposure Control		Every Exercise	YES	YES	NO	YES
b. Radiological Assessment & Protective Action Recommendations & Decisions for the Plume Phase of the Emergency.		Every Exercise	NO	YES	NO	NO
c. Protective Action Decisions for the Protection of Special Populations.		Every Exercise	NO	YES	YES	NO
d. Radiological Assessment and Decision-making for the Ingestion Exposure Pathway[3].		Once in 6 years	NO	YES	NO	NO
e. Radiological Assessment and Decision-making Concerning Relocation, Re-entry, and Return[3].		Once in 6 years	NO	YES	NO	NO
3. Protective Action Implementation	5, 14, 15, 16, 17, 27, 29.					
a. Implementation of Emergency Worker Exposure Control.		Every Exercise	YES	YES	NO	NO
b. Implementation of KI Decision		Once in 6 years	YES	YES	NO	NO
c. Implementation of Protective Actions for Special Populations.		Once in 6 years	YES	YES	YES	YES
d. Implementation of Traffic and Access Control[5].		Every Exercise	YES	YES	YES	YES
e. Implementation of Ingestion Pathway Decisions.		Once in 6 years	NO	YES	NO	NO
f. Implementation of Relocation, Re-entry, and Return Decisions.		Once in 6 years	NO	YES	NO	NO
4. Field Measurement and Analysis	6, 8, 24, 25					
a. Plume Phase Field Measurements and Analysis.		Every Full Participation Exercise[2].	YES	YES	NO	NO
b. Post Plume Phase Field Measurements and Sampling.		Once in 6 years	YES	YES	NO	NO
c. Laboratory Operations		Once in 6 years	YES	YES	NO	NO
5. Emergency Notification and Public Information	10, 11, 12, 13					

TABLE 1.—FEDERAL EVALUATION PROCESS MATRIX[1]—Continued

Evaluation Area and Sub-Elements	Consolidates REP–14 objective(s)	Minimum frequency[2]	Out-of-sequence of exercise scenario	Credit		Staff ass't visit
				Radiological	Non-radiological	
a.1 Activation of the Prompt Alert and Notification System[5].		Every exercise	NO	NO	NO	NO
a.2 Activation of the Prompt Alert and Notification System (Fast Breaking).	10					
a.3 Notification of Exception Areas and/or Backup Alert and Notification System within 45 minutes.		Every exercise	NO	NO	NO	NO
b. Emergency Information and Instructions for the Public and the Media.		Every exercise	NO	NO	NO	NO
6. Support Operations/Facilities	18, 19, 20, 21, 22					
a. Monitoring and Decontamination of Evacuees and Emergency Workers and Registration of Evacuees.		Once in 6 yrs.[4]	YES	YES	NO	NO
b. Monitoring and Decontamination of Emergency Worker Equipment.		Once in 6 yrs.[4]	YES	YES	NO	NO
c. Temporary Care of Evacuees		Once in 6 yrs.[6]	YES	YES	YES	YES
d. Transportation and Treatment of Contaminated Individuals.		Every 2 years	YES	YES	NO	NO

[1] See Evaluation Criteria for specific requirements.
[2] Each State within the 10-mile EPZ of a commercial nuclear power site shall fully participate in an exercise jointly with the licensee and appropriate local governments at least every two years. Each State with multiple sites within its boundaries shall fully participate in a joint exercise at some site on a rotational basis at least every two years. When not fully participating in an exercise at a site, the State shall partially participate at that site to support the full participation of the local governments.
[3] The plume phase and the post-plume phase (ingestion, relocation, re-entry and return) can be demonstrated separately.
[4] All facilities must be evaluated once during the six-year exercise cycle.
[5] Physical deployment of resources is not necessary.
[6] Facilities managed by the American Red Cross (ARC), under the ARC/FEMA Memorandum of Understanding, will be evaluated once when designated or when substantial changes occur; all other facilities not managed by the ARC must be evaluated once in the six-year exercise cycle.

[FR Doc. 02–11121 Filed 5–3–02; 8:45 am]
BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 20, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Michael Leo Middleton, Sara Ann Middleton and Barbara Ann Ehrenstrom, all of La Plata, Maryland, Rebecca Lynn McDonald, Vienna, Virginia, Kate Elizabeth Middleton, Arlington, Virginia, James Edgar Middleton, Waldorf, Maryland, Frances Leona Rock, Westminster, Maryland, and Muriel Theresa Werking, Port Tobacco, Maryland; to acquire voting shares of Tri-County Financial Corporation, Waldorf, Maryland, and thereby indirectly acquire Community Bank of Tri-County, Waldorf, Maryland.

B. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. John R. Madden,Oak Brook, Illinois, Lenore McCarter, LaGrange Park, Illinois, Edward J. Madden and Debbie Maloney, both of Chicago, Illinois, John J. Madden, and Martin P. Madden, both of LaGrange, Illinois, Marilyn Hessert and Thomas Hessert, both of Cherry Hill, New Jersey, Thomas Herbsrtitt, Franklin Park, Illinois, Jane Lyman, Winnetka, Illinois, Julie Scanlon, Western Springs, Illinois, and Amy Reardon, River Forest, Illinois; to acquire control of First Schaumburg Bancorporation, Inc., Schaumburg, Illinois, and thereby indirectly acquire Heritage Bank of Schaumburg, Schaumburg, Illinois, by utilizing Schaumburg Bancshares, Inc., Hinsdale, Illinois. First Schaumburg Bancorporation, Inc.'s name will be change to Schaumburg Bancshares, Inc.

Board of Governors of the Federal Reserve System, April 30, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–11096 Filed 5–3–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Hometown Independent Bancorp, Inc., Employee Stock Ownership Plan and Trust, Morton, Illinois; to acquire an additional 6.6 percent, for a total of 37.1 percent, of the voting shares of Hometown Independent Bancorp, Inc., Morton, Illinois, and thereby indirectly acquire Morton Community Bank, Morton, Illinois.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. South Central Bancshares, Inc., Russellville, Kentucky; to merge with Commerce Bancshares, Inc., Franklin, Tennessee, and thereby indirectly acquire Peoples State Bank of Commerce, Trenton, Tennessee.

Board of Governors of the Federal Reserve System, April 30, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–11097 Filed 5–3–02; 8:45 am]
BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–48]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

National Nursing Home Survey (OMB No. 0920–0353)—Reinstatement with Change—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). Section 306 of the Public Health Service Act states that the National Center for Health Statistics "shall collect statistics on health resources * * * [and] utilization of health care, including utilization of * * * services of hospitals, extended care facilities, home health agencies, and other institutions." The data system responsible for collecting this data is the National Health Care Survey (NHCS). The National Nursing Home Survey (NNHS) is part of the Long-term Care Component of the NHCS. The NNHS was conducted in 1973–74, 1977, 1985, 1995, 1997, and 1999. NNHS data describe a major segment of the long-term care system and are used extensively for health care research, health planning and public policy. NNHS provides data on the characteristics of nursing homes in relation to their residents and staff, Medicare and Medicaid certification, basic rates for Medicaid and private pay residents, sources of payment, residents' functional status and diagnoses. The survey provides detailed information on utilization patterns and quality of care that is needed in order to make accurate assessments of the need for and effects of changes in the provision and financing of long-term care for the elderly. The use of long-term care services is becoming an increasingly important issue as the number of elderly increases and persons with disabilities live longer. Data from the NNHS have been used by the National Immunization Program at CDC, the Office of the U.S. Attorney General, the Bureau of Health Professionals at the Health Resources and Services Administration, the National Institute of Dental and Craniofacial Research at the National Institutes of Health, the Agency for Healthcare Research and Quality, the American Health Care Association, Johnson and Johnson Pharmaceutical, the Rand Corporation, AARP, National Academy of Social Insurance, and by newspapers and journals. NCHS plans to conduct the next NNHS in September-December 2003. This national survey will be preceded by a pretest of forms and procedures in January-February 2003. The data collection forms and procedures have been extensively revised from the previous NNHS. The 2003 NNHS will be based on computer-assisted personal interview (CAPI) methodology. The is no cost to respondents.

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	100	1	20/60	33.3
Nursing Home Staff Questionnaire	100	1	2.5	250
Current Resident Sampling List	100	1	20/60	33.3
Current Resident Questionnaire	100	8	25/60	333.3
Discharged Resident Sampling List	100	1	15/60	25

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Discharged Resident Questionnaire	100	8	25/60	333.3
Total				1,008.3

Forms	Number of respondents	Number of responses/ respondent	Average burden/ response (in hrs.)	Total burden (in hrs.)
Facility Questionnaire	3,000	1	20/60	1,000
Nursing Home Staff Questionnaire	3,000	1	2.5	7,500
Current Resident Sampling List	3,000	1	20/60	1,000
Current Resident Questionnaire	3,000	8	25/60	10,000
Discharged Resident Sampling List	3,000	1	15/60	750
Discharged Resident Questionnaire	3,000	8	25/60	10,000
Total				30,250

Dated: April 26, 2002.

Nancy E. Cheal,

Acting Associate Director for policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11080 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02115]

National Asthma Health Education Enhancement Program; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for National Asthma Health Education Enhancement. This program addresses the "Healthy People 2010" focus areas of Environmental Health and Respiratory Diseases.

The purpose of the program is to strengthen the nation's capacity to carry out public health activities in the area of asthma education. The objectives are to: (1) Disseminate educational information on a national level to families impacted by asthma; (2) help families learn to cope with challenges they face due to having a child with asthma; and (3) serve as a resource for families impacted by asthma.

Organizations that are well-established and have a history and demonstrated capacity of providing asthma education to a national audience are targeted with this announcement. This announcement is not intended to build capacity of start up organizations.

Measurable outcomes of the program will be in alignment with one or more of the performance goals of the Government Performance Results Act: increasing the understanding of the relationship between environmental exposures and health effects.

1. Use of Funds

No research may be conducted as a part of this cooperative agreement.

2. Funding Preferences

Preference may be given to organizations who have demonstrated their capacity and ability to reach a national audience with asthma education materials that were developed within the National Asthma Education and Prevention Program (NAEPP) guidelines.

B. Eligible Applicants

Assistance will be provided only to the applicants that are well-established national, non-profit organizations with experience in development and dissemination of asthma educational materials and whose membership includes families of children with asthma or others affected by the disease.

To be eligible, applicants must:

1. Demonstrate that your organization's mission is explicitly committed to improving the lives of families impacted by asthma, or other similar lung diseases, through the provision of timely, accurate, and useful information about the disease and how it can be controlled. You must have experience providing asthma education to a nationwide audience. The foregoing may be demonstrated by submission of your charter, articles of incorporation, or other governing documents.

2. Demonstrate that your organization is non-profit and recognized as tax exempt under Section 501(c)(3) of the Internal Revenue Code. This may be demonstrated through inclusion of your Internal Revenue Service determination letter.

3. Demonstrate your organization has capacity and experience providing educational services to families with asthma on a nationwide basis. This may be demonstrated through letters of support.

4. Demonstrate that you have a national membership of families or a national network of local organizations. This may be done through a letter from your organization's leadership which describes your national network/ membership (number of members and national coverage of the membership).

This information should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $300,000 is available in FY 2002, to fund approximately two to three awards. It is expected that the award will range from $100,000 to $150,000. It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Review and disseminate asthma currently available education information to reach your members and other community members on both a local and national level. Materials must be reviewed to insure they are in accordance with sound asthma management practices and appropriate NAEPP Guidelines.

b. In cases where appropriate educational information does not exist and a need for such material is identified, develop scientifically-based, accurate, user-friendly, culturally-appropriate educational materials to be used to educate your members and other community members, or any targeted group for which a gap in currently available information is identified. Literacy level and appropriate demographics of your target audience should be considered.

c. Conduct community and outreach education at the local level, aimed at your members and community members affected by asthma.

d. Collaborate with partners, including CDC, and appropriate asthma education organizations, to insure that best practices are used in the development and dissemination of asthma education materials for your target group(s).

e. For all of the above activities "a. through d." develop and implement an evaluation plan which measures the effectiveness of your activities involved in each step indicated.

2. CDC Activities

a. Collaborate with recipients in the development of scientifically-based, accurate, user-friendly, culturally-appropriate educational information concerning asthma, reaching a variety of literacy levels and considering appropriate demographic information for the target audience. Ensure coordination of this activity among all recipients and facilitate information sharing.

b. Review recipients' identification of currently available educational materials and gap analysis. Ensure coordination of this activity among all recipients and facilitate information sharing and to eliminate duplication of efforts.

c. Facilitate and coordinate meetings to bring together national groups as collaborators, as appropriate.

d. Collaborate with recipients on the development of an appropriate evaluation plan which measures the effectiveness of recipient activities involved in each step indicated, and approve the plan.

e. Coordinate recipient activities with asthma education partners (such as the Robert Wood Johnson Foundation's Allies Against Asthma resource bank) to insure no duplication of activities occurs.

E. Content

Letter of Intent (LOI)

A non-binding LOI is requested for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than one, double-spaced page, printed on one side, with one inch margins, and unreduced font. It should identify the name of your proposed project director and name of the organization. Your letter of intent will be used to allow CDC to determine the level of interest in the announcement, to plan the review more efficiently.

Applications

The Program Announcement title and number must appear in the application kit. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out the program plan.

The narrative should be no more than 20 pages, double spaced, printed on one side, with one inch margins, and unreduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 15, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Eligibility Documents
Budget Information Form
Checklist
Assurances
Certifications
Disclosure Form
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 PM Eastern Time on June 24, 2002, submit the application to: Technical Information Management Section, PA #02115, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146

Deadline: Applications shall be considered as meeting the deadline if they are received before 5:00 PM Eastern Time on the deadline date.

Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will, upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal as stated in section A. "Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

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1. History and Experience (30 points)

The extent to which the proposal clearly demonstrates the applicant's solid reputation and history of serving families affected by asthma. The proposal should demonstrate that the applicant has a broad range of knowledge and expertise in the field of asthma, as well as significant years of experience in the dissemination and application of this knowledge and expertise. The proposal should also demonstrate that the applicant's membership is comprised of families affected by asthma and that this membership is national in scope.

2. Proposed Program (30 points)

The extent to which the proposal clearly demonstrates the applicant's understanding of the issues surrounding asthma and asthma education activities and addresses gaps in the current state of asthma educational materials and activities. The proposal demonstrates that the applicant has a clear understanding of the gaps and needs and has a clear plan of activities which will address these gaps. The applicant must demonstrate their educational materials are in adherence to the NAEPP guidelines and when these guidelines are updated, materials are appropriately updated.

3. Evaluation Plan (30 points)

The extent to which the applicant describes a realistic plan to accurately measure the effectiveness of their activities and which has mechanisms to insure quality improvement occurs over the life of the project.

4. Facilities, Staff, and Resources (10 points)

The extent to which the applicant can provide adequate facilities, staff and/or collaborators, and resources to accomplish the proposed goal(s) and objectives during the project period. The extent to which the applicant demonstrates staff and/or collaborator availability, expertise, previous experience, and capacity to perform the undertaking successfully.

5. Budget (not scored)

The extent to which the proposal demonstrates appropriateness and justification of the requested budget relative to the activities proposed.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.) The progress report shall include the following items.

a. A brief project description;

b. A comparison of actual accomplishments to the goals and objectives established for the period;

c. In the case that established goals and objectives may not be accomplished or are delayed, documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project;

d. A financial summary of obligated dollars to date as a percentage of total available dollars;

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period; and

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–21 Small, Minority, Women-Owned Businesses

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k)(2) of the Public Health Service Act, [42 U.S.C. 241 and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Sonia Roswell, Grants Management Specialist
Acquisition Assistance Branch B, Procurement and Grants Office
Centers for Disease Control and Prevention
Announcement 02115
2920 Brandywine Road, Room 3000
Atlanta, GA 30341–4146
Telephone number (770) 488–2724
email address srowell@cdc.gov

For program technical assistance, contact:

Sheri Disler, Public Health Advisor
National Center for Environmental Health
Centers for Disease Control and Prevention
1600 Clifton Road, NE, MS E–17
Atlanta, GA 30333
Telephone number (404) 498–1018
email address sdisler@cdc.gov

Dated: April 30, 2002.

Sandra R. Manning, CGFM,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11117 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02086]

Prevention of Viral Hepatitis Among High-Risk Youth Through Integrating Prevention Services into Existing Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Prevention of Viral Hepatitis among High-Risk Youth Through Integrating Prevention Services into Existing Programs. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

The purpose of the program is to evaluate the feasibility and effectiveness of integrating activities to prevent infection with Hepatitis A Virus (HAV), Hepatitis B Virus (HBV), and Hepatitis C Virus (HCV) into existing programs that serve high-risk adolescents populations.

High-risk adolescents are youth aged 11–19 years who engage or are at risk for engaging in behaviors shown to be associated with transmission of infection with hepatitis viruses or other blood borne virus infections such as Human Immunodeficiency Virus (HIV/AIDS), injecting or non-injecting drug use, male homosexual activity, sexual activity with multiple partners, and behaviors leading to incarceration.

Prevention of infection with hepatitis viruses is achieved through immunization (HAV, HBV) and risk reduction intervention (HCV) to prevent injection drug use and high risk sexual practices. For adults, activities to prevent viral hepatitis have been effectively integrated into other prevention programs. However, the feasibility of providing such services for high-risk youth, and the effectiveness of these prevention services in reducing all types of viral hepatitis in this population has not been evaluated. This announcement is intended to support the formative, operational and evaluation research required to determine the most effective means of integrating viral hepatitis prevention activities into existing disease prevention and health promotion programs.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their *bona fide* agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations. Faith-based Organizations are eligible to apply.

Eligible applicants are required to have a minimum of two years of experience in developing and implementing public health prevention or promotion activities in addition to having access to the at risk adolescent population to be served.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

A. Availability of Funds

Approximately $150,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12 month budget period within a project period up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

Preference will be given to population based programs that deliver or provide oversight for public health services to large adolescent populations (1000 to 3000 individuals served per year) in which a high proportion have risk factors for infection with hepatitis viruses. Such community-based programs should attempt to identify and follow cohorts of youth through indicators of risk and specific programs, including: demographic characteristics and health disparities which identify high-risk youth, correctional settings, residential community programs, court mandated programs, job corps, drug detoxification and rehabilitation programs, homeless and runaway shelters, HIV/AIDS prevention services, and Sexually Transmitted Disease (STD) prevention and treatment programs.

B. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and implement protocol(s) to integrate currently recommended viral hepatitis prevention services into existing public health programs and services, as appropriate for adolescents in the particular setting(s) proposed. Viral hepatitis prevention services may include, but are not limited to:

(1) Providing hepatitis B vaccination.

(2) Assessing risk histories for viral hepatitis among clients.

(3) Providing client-centered prevention counseling to patients with risks for infection.

(4) Providing testing to appropriate risk groups for HCV infection (anti-HCV), and chronic or past hepatitis B virus (HBV) infection, hepatitis B surface antigen, (HbsAg) or anti-HBc, when appropriate.

(5) Providing hepatitis A vaccine to persons in appropriate risk groups (e.g., men having sex with men (MSM) and, illegal drug users).

(6) Providing secondary prevention services for anti-HCV positive and HBsAg-positive persons, including: (1) Counseling on how to prevent transmission to others, (2) identification of partners (sex and/or needle sharing) for counseling and referral services, if appropriate, and (3) providing hepatitis B vaccination for at-risk (sex or needle sharing) partners and household contacts of HBsAg-positive persons.

(7) Providing, either directly or by referral, appropriate services to persons found to be HBsAg-positive or anti-HCV positive, including: (1) Alcohol and drug counseling, and (2) appropriate medical referral and assistance in accessing medical care for evaluation of chronic liver disease and possible treatment.

b. Provide staff training regarding viral hepatitis prevention and control related to implementing this program.

c. Develop and implement protocols, data collection and analytic systems to assess the feasibility, impact, and effectiveness of integrating viral hepatitis prevention services into existing programs for high-risk youth. Areas of analysis could include prevention of infections, completion of hepatitis B vaccine series, determining cost effectiveness of interventions, and defining the determinants of prevention services.

d. Conduct appropriate data analysis and interpretation.

e. Attend and participate in an annual meeting of project managers, to plan and present program activities and evaluate activities.

2. CDC Activities

a. Provide technical support for and training in the design, implementation, and evaluation of program activities, if requested. This includes training on participation in the Vaccine for Children (VFC) Program on how to acquire vaccine for eligible adolescents.

b. Assist in data management, analysis, presentation, and publication of project findings.

c. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than five double spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to plan and execute the evaluation of applications, and should include the following information: (1) Name and address of institution, and (2) name, address, and telephone number of a contact person.

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Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double spaced pages, printed on one side, with one inch margins, and unreduced fonts.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, and Evaluation. The Budget should contain a line item descriptive justification for personnel, travel, supplies, laboratory testing, and other services related to the project. Contracts should include the name of the person or firm to receive the contract, the method of selection, the period of performance, and a description of the contracted service requested, itemized budget with narrative justification and method of accountability. Funding levels for years two and three should be estimated. A one page executive summary and a complete index to the application and its appendices should be provided.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

On or before July 1, 2002, submit the application to the Technical Information Management Section 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date.

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing).

Late: Applications which do not meet the criteria in 1. or 2. above will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 total points)

a. The extent to which the applicant demonstrates a clear understanding of the subject area and of the purpose and objectives of this cooperative agreement. (5 points)

b. The extent to which the applicant demonstrates need based on disease burden of viral hepatitis (i.e., prevalence, incidence data) among adolescent high-risk populations, as well as prevalence of risk factors for viral hepatitis among populations accessible to the applicant programs and services. (5 points)

2. Capacity (40 total points)

The extent to which the applicant provides evidence of ability to provide all recommended and appropriate viral hepatitis prevention and control activities and services annually to 1000 to 3000 adolescents with identifiable risk factors for viral hepatitis. This should include:

a. Description of adequate resources, including personnel and facilities (both technical and administrative), either direct or through collaboration, for conducting the project. (10 points)

b. Description of population served by existing program(s) and access to additional populations with identifiable risk factors for viral hepatitis (heterosexuals at high risk, MSM, injection drug users (IDUs), sex partners of IDUs), that may accept viral hepatitis prevention and control activities and services provided through an integrated program. (10 points)

c. The extent to which the applicant documents experience of proposed personnel, either direct or collaborating, in providing viral hepatitis prevention and control activities and services (*e.g.*, training, testing, counseling, vaccination, clinical services). (10 points)

d. Evidence of existing quality assurance mechanisms to insure appropriate counseling and other services as recommended for the proposed setting, as provided by published CDC guidelines in various settings (e.g. STD, HIV, Drug Treatment) and the extent the applicant demonstrates how the planned integration activities may improve existing prevention services. (10 points)

3. Objectives and Technical Approach (45 total points)

a. The extent to which the applicant describes objectives of the proposed project which are (1) consistent with the purpose and goals of this cooperative agreement program, (2) measurable and time-phased, and (3) consistent with published CDC guidelines on prevention and control of Hepatitis C (MMWR 1998;47[No. RR–19], Hepatitis B (MMWR 1991;40[No.RR–13) and Hepatitis A (MMWR 1999;48[No.RR–12]. (15 points)

b. The extent and quality of an operational plan proposed for implementing the program, including maximizing the use of existing resources and staff to integrate viral hepatitis prevention services, which clearly and appropriately addresses all "Recipient Activities" in the application. (10 points)

c. The extent to which the applicant clearly identifies specific assigned responsibilities of all key professional personnel. (5 points)

d. The extent to which the applicant prioritizes resources for evaluation and determination of effectiveness of integrating services through a detailed and adequate plan for evaluating progress toward achieving program process and outcome objectives. This should include methods and instruments for evaluating progress in planning, implementation, and effectiveness of interventions through measurement of outcomes related to viral hepatitis and to impact of integrating these services on other prevention services offered (e.g., HIV counseling and testing). (10 points)

e. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed program. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (4) A statement as to whether the plans for recruitment and outreach for participants include the process of establishing partnerships with community or communities and recognition of mutual benefits. (5 points)

4. Measures of Effectiveness

The exten the applicant provide Measures of Effectiveness that will demonstrate the accomplishment of the purpose of the cooperative agreement. The measures must be objective/quantitative and must adequately measure the intended outcome? (5 points)

5. Budget (Not Scored)

The budget will be reviewed to determine the extent to which it is reasonable, clearly justified, consistent with the intended use of funds, and allowable.

6. Human Subjects (Not Scored)

Does the application adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of

1. Semiannual progress reports.

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301(a) and 317(k)(2) of the Public Health Service Act [42 U.S.C. Sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from:

Reneé Benyard, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146, Telephone number: (770)488–2722, Fax number: (770)488–2777, email address: *bnb8@cdc.gov*.

For program technical assistance, contact: Joanna Buffington, Program Management Official, Division of Viral Hepatitis, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop G–37, Atlanta, GA 30333, Telephone number: (404)371–5460, Fax number: (404) 371–5488, e-mail address: *jyb4@cdc.gov*.

Dated: April 30, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11116 Filed 5–3–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0123]

Agency Information Collection Activities; Proposed Collection; Comment Request; Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (the PRA), Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on reporting and recordkeeping requirements for firms that process acidified foods and thermally processed low-acid foods in hermetically sealed containers.

DATES: Submit written or electronic comments on the collection of information by July 5, 2002.

ADDRESSES: Submit electronic comments on the collection of information to http://www.accessdata.fda.gov/scripts/oc/dockets/edockethome.cfm. Submit written comments on the collection of information to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. All comments should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: Under the PRA (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor. "Collection of information" is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3506(c)(2)(A)) requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, FDA is publishing notice of the proposed collection of information set forth in this document.

With respect to the following collection of information, FDA invites comments on: (1) Whether the proposed collection of information is necessary for the proper performance of FDA's functions, including whether the information will have practical utility; (2) the accuracy of FDA's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques, when appropriate, and other forms of information technology.

Food Canning Establishment Registration, Process Filing and Recordkeeping for Acidified Foods and Thermally Processed Low-Acid Foods in Hermetically Sealed Containers (OMB Control Number 0910–0037)—Extension

Under the Federal Food, Drug, and Cosmetic Act (the act), FDA is authorized to prevent the interstate distribution of food products that may be injurious to health or that are otherwise adulterated, as defined in section 402 of the act (21 U.S.C. 342). Under the authority granted to FDA by section 404 of the act (21 U.S.C. 344), FDA regulations require registration of food processing establishments, filing of process or other data, and maintenance of processing and production records for acidified foods and thermally processed low-acid foods in hermetically sealed containers. These requirements are intended to ensure safe manufacturing, processing, and packing procedures and to permit FDA to verify that these procedures are being followed. Improperly processed low-acid foods present life-threatening hazards if contaminated with foodborne microorganisms, especially *Clostridium botulinum*. The spores of *C. botulinum* must be destroyed or inhibited to avoid production of the deadly toxin that causes botulism. This is accomplished with good manufacturing procedures, which must include the use of adequate heat processes or other means of preservation.

To protect the public health, FDA regulations require that each firm that manufactures, processes, or packs acidified foods or thermally processed low-acid foods in hermetically sealed containers for introduction into interstate commerce register the establishment with FDA using Form FDA 2541 (§§ 108.25(c)(1) and 108.35(c)(2) (21 CFR 108.25(c)(1) and 108.35(c)(2))). In addition to registering the plant, each firm is required to provide data on the processes used to produce these foods, using Form FDA 2541a for all methods except aseptic processing, or Form FDA 2541c for aseptic processing of low-acid foods in hermetically sealed containers (§§ 108.25(c)(2) and 108.35(c)(2)). Plant registration and process filing may be accomplished simultaneously. Process data must be filed prior to packing any new product, and operating processes and procedures must be posted near the processing equipment or made available to the operator (21 CFR 113.87(a)).

Regulations in parts 108, 113, and 114 (21 CFR parts 108, 113, and 114) require firms to maintain records showing adherence to the substantive requirements of the regulations. These records must be made available to FDA on request. Firms are also required to document corrective actions when process controls and procedures do not fall within specified limits (§§ 113.89, 114.89, and 114.100(c)); to report any instance of potential health-endangering spoilage, process deviation, or contamination with microorganisms where any lot of the food has entered distribution in commerce (§§ 108.25(d) and 108.35(d) and (e)); and to develop and keep on file plans for recalling products that may endanger the public health (§§ 108.25(e) and 108.35(f)). To permit lots to be traced after distribution, acidified foods and thermally processed low-acid foods in hermetically sealed containers must be marked with an identifying code (§§ 113.60(c) (thermally processed foods) and 114.80(b) (acidified foods)).

FDA estimates the burden of complying with the information collection provisions of the agency's regulations for acidified foods and thermally processed low-acid foods in hermetically sealed containers as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

Form No.	21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
Form FDA 2541 (Registration)	108.25(c)(1) and 108.35(c)(1)	500	1	500	.17	85
Form FDA 2541a (Process Filing)	108.25(c)(2) and 108.35(c)(2)	1,000	7	7,000	.333	2,331
Form FDA 2541c (Process Filing)	108.35(c)(2)	275	2	550	.75	412
Total				8,050		2,828

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

TABLE 2.—ESTIMATED ANNUAL RECORDKEEPING BURDEN[1]

21 CFR Part	No. of Recordkeepers	Annual Frequency per Recordkeeping	Total Annual Records	Hours per Recordkeeper	Total Hours
108, 113, and 114	6,000	1	6,000	250	1,500,000

[1] There are no capital costs or operating and maintenance costs associated with this collection of information.

The reporting burden for §§ 108.25(d) and 108.35(d) and (e) is insignificant because notification of spoilage, process deviation or contamination of product in distribution occurs less than once a year. Most firms discover these problems before the product is distributed and, therefore, are not required to report the occurrence. To avoid double-counting, estimates for §§ 108.25(g) and 108.35(h) have not been included because they merely cross-reference recordkeeping requirements contained in parts 113 and 114.

Dated: April 23, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11132 Filed 5–3–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4734–N–17]

Notice of Submission of Proposed Information Collection of OMB; Land Survey Report for Insured Multifamily Projects

AGENCY: Office of the Chief Information Officer, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* June 5, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB approval number (2502–0010) and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503; Fax number (202) 395–6974; e-mail *Joseph_F._Lackey_Jr@OMB.EOP.GOV.*

FOR FURTHER INFORMATION CONTACT: Wayne Eddins, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 Seventh Street, Southwest, Washington, DC 20410; e-mail *Wayne_Eddins@HUD.gov;* telephone (202) 708–2374. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Eddins.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the OMB approval number, if applicable; (4) the description of the need for the information and its proposed use; (5) the agency form number, if applicable; (6) what members of the public will be affected by the proposal; (7) how frequently information submissions will be required; (8) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (9) whether the proposal is new, an extension, reinstatement, or revision of an information collection requirement; and (10) the name and telephone number of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

This Notice also lists the following information:

Title of Proposal: Land Survey Report for Insured Multifamily Projects.

OMB Approval Number: 2502–0010.

Form Numbers: HUD–2457.

Description of the Need for the Information and Its Proposed Use: To secure a marketable title and title insurance for their property, multifamily programs submit a land survey and related information.

Respondents: Business or other for-profit, not-for-profit institutions.

Frequency of Submission: On occasion, twice, during application period and closing period.

	Number of respondents	Annual responses	×	Hours per response	=	Burden hours
Reporting Burden	750	2		.50		750

Total Estimated Burden Hours: 750.

Status: Reinstatement, without change.

Authority: Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. 35, as amended.

Dated: April 26, 2002.

Wayne Eddins,

Departmental Reports Management Officer, Office of the Chief Information Officer.

[FR Doc. 02–11081 Filed 5–3–02; 8:45 am]

BILLING CODE 4210–72–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–200–1220–MA]

Change to Shooting Closure Order and Closure Order for Motor Vehicle Travel on Public Lands in Fremont County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Change to shooting closure order, and closure order.

SUMMARY: The BLM Royal Gorge Field Office (BLM or "we") is adjusting the boundary of the recreational target shooting closure established in 1995 in the Garden Park Fossil Area, located in Fremont County, Colorado (60 FR 26452). The boundary adjustment is necessary to enhance public safety, to protect a power line right-of-way, and to protect a range improvement. Approximately 150 acres will be added to the closure area and approximately 20 acres will be excluded from the original recreational target shooting closure area and opened to recreational target shooting.

Also, we are making the following closures: We are temporarily closing approximately 40 acres to all types of motor vehicle travel to allow for reclamation of damaged soils and vegetation. We are permanently closing approximately two miles of two track roads to all types of motor vehicle travel to enhance public safety in areas adjacent to recreational target shooting activity in the Garden Park Fossil Area.

DATES: The shooting closure change and motor vehicle travel closure will be effective upon publication. The temporary motor vehicle travel closure will remain in effect until April 1, 2005, to allow for successful reclamation.

ADDRESSES: You may obtain copies of the map and details of the boundary adjustment and closure from the Field Manager, BLM Royal Gorge Field Office, 3170 East Main Street, Canon City, CO 81212; telephone (719) 269–8500.

FOR FURTHER INFORMATION CONTACT: Leah Quesenberry, Interpretive Specialist, or Diana Kossnar, Outdoor Recreation Planner, at the address and phone number listed above.

SUPPLEMENTARY INFORMATION:

Background

BLM administers approximately 3,000 acres of public land in the Garden Park Fossil Area, located 5 miles north of Canon City, CO. Target shooting is one of many public uses in the area. The area includes nationally significant paleontological and historic sites and the Gold Belt Tour National Scenic Byway. Private lands with residential and agricultural developments adjoin the area. In 1995, approximately 1,840 acres of public land in this area were closed to recreational target shooting to enhance public safety. This closure was accomplished through an extensive public process. Public meetings were held to address public safety and resource protection concerns. Stakeholders involved in developing the closure proposal included Fremont County Commissioners, target shooting enthusiasts, residents of the adjoining private lands, public land grazing permit holders, and the Garden Park Paleontology Society.

Authority: BLM issues this order under the authority of 43 CFR 8364.1, Closure and restriction orders, and 43 CFR 8341.2 (a), Special rules.

Reasons for Closures

This notice adjusts the boundary of the closure area established in 1995, to address additional public safety concerns. The primary public safety concern is the on-going vandalism of an existing high voltage power line by recreational target shooters. The power line, owned by WestPlains Energy Corporation, provides power to Cripple Creek and Victor, Colorado. Specific concerns include the cost of repairing damage to the power line caused by recreational target shooting, the possibility that this vandalism will result in a major power outage in Cripple Creek and Victor, and the dangers (electrocution, fire) posed by vandalism of live high voltage power lines in an area that is heavily used by the public.

Affected Lands

The public lands affected by this boundary adjustment and containing the closed areas and roads are identified as follows:

Sixth Principal Meridian, Colorado

T.17S., R.70W., Sections 28, 33, & 34.

Map

Notice of this closure and a detailed map will be posted at the Royal Gorge Field Office.

Exceptions

This closure does not apply to emergency, law enforcement, and Federal or other government vehicles while being used for official or emergency purposes, or to any other vehicle whose use is expressly authorized or otherwise officially approved by BLM.

Penalties

Violation of this order is punishable by imprisonment for up to 12 months and/or a fine as defined in 18 U.S.C. 3571.

Roy L. Masinton,

Field Manager.

[FR Doc. 02–11087 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–129–5882–AC–CD00; GP2–0133]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Coos Bay District Resource Advisory Committee will hold a meeting in Reedsport, Oregon. Agenda topics include review of last meeting minutes; presentations on proposed fiscal year 2003 Title II projects, and decide which projects to recommend for implementation.

DATES: August 1, 2002. The meeting will begin at 9 a.m. A public comment period will be held at 1 p.m. The meeting is expected to adjourn by 4 p.m. If the Committee cannot complete the agenda by 4 p.m., they will reconvene on August 8, 2002, at the BLM office in North Bend, Oregon. If held, that meeting will begin at 9 a.m.

ADDRESSES: The August 1 meeting will be held at the Reedsport City Council chambers at 451 Winchester Ave. in Reedsport, Oregon. If the August 8th meeting is held, it will meet in the U.S. Bureau of Land Management office at 1300 Airport Lane, North Bend, Oregon.

FOR FURTHER INFORMATION CONTACT: Alan Hoffmeister, Coos Bay District Office, (541) 751–4249.

Dated: March 15, 2002.

Sue E. Richardson,

Coos Bay District Manager.

[FR Doc. 02–11088 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR090–02–5882–PH–EEDO; GP2–0148]

Notice of Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: The Eugene Resource Advisory Committee will hold two meetings in Eugene, Oregon. Agenda topics include review of last meeting minutes, presentations on proposed fiscal year 2003 Title II projects and discussion and recommendations for approval for funding of such projects. Meetings are being held under the authority of Public Law 106–393.

DATES: June 13, 2002 and July 25, 2002. The meetings will begin at 9 a.m. A public comment period will be held during each meeting at 11:30 am. The meetings are expected to adjourn by 4 pm.

ADDRESSES: The meetings will be held at the U. S. Bureau of Land Management Office, 2890 Chad Drive, Eugene, Oregon 97408.

FOR FURTHER INFORMATION CONTACT: Wayne Elliott, Eugene District Office, Eugene, Oregon, (541) 683–6989.

Dated: April 1, 2002.

Julia Dougan,

Eugene District Manager.

[FR Doc. 02–11089 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–600–02–1040–PG–241A]

Southwest Colorado and Northwest Colorado Resource Advisory Council Meetings

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meetings.

SUMMARY: Notice is hereby given that the next two meetings of the Southwest Resource Advisory Council (RAC) will be held June 7, 2002, at the Gunnison County Multi Purpose Bldg., 275 South Spruce, in Gunnison, Colorado and August 16, 2002, at the Anasazi Heritage Center, 27501 Highway 184, in Dolores, Colorado. Notice is also given that the next two meetings of the Northwest RAC will be held June 13, 2002, at the Holiday Inn, 755 Horizon Drive, in Grand Junction, Colorado and August 8, 2002, at the U.S. Forest Service Office, 925 Weiss Dr., in Steamboat Springs, Colorado.

DATES: Southwest RAC meetings June 7, 2002 and August 16, 2002; Northwest RAC meetings June 13, 2002 and August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Larry J. Porter, Bureau of Land Management, 2815 H Road, Grand Junction, Colorado 81506; Telephone (970) 244–3012.

SUPPLEMENTARY INFORMATION: The Southwest RAC will meet on Friday, June 7, 2002, at the Gunnison County Multi Purpose Bldg., 275 South Spruce, in Gunnison, Colorado. The meeting will begin at 9:30 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including wildlife issues, Gunnison Gorge National Conservation Area update, Canyon of the Ancients National Monument update, and the County Partnership Restoration project. The Southwest RAC will also meet on Friday, August 16, 2002, at the Anasazi Heritage Center, 27501 Highway 184, in Dolores, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including Canyon of the Ancients National Monument update, Gunnison Gorge National Conservation Area update, and the County Partnership Restoration project.

The Northwest RAC will meet on Thursday, June 13, 2002, at the Holiday Inn, 755 Horizon Drive, in Grand Junction, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including wildlife issues, oil and natural gas program review, Grand Mesa Slopes update, Weeds Committee report, National Forest Study Committee report, Cultural Resources report, status of travel management planning, and the Colorado Canyons National Conservation Area planning update. The Northwest RAC will also meet on August 8, 2002, at the Forest Service Office located at 925 Weiss Dr. in Steamboat Springs, Colorado. The meeting will begin at 9 a.m. and adjourn at 4 p.m. Purpose of the meeting is to consider several resource management topics including Grand Mesa Slopes update, Colorado Canyons National Conservation Area planning update, and RAC Committee reports.

These meetings are open to the public. Interested members of the public may present written or oral comments to either of the RACs in the morning from 9:30 to 9:50 a.m. and in the afternoon sessions, at a time to begin no later than 3 p.m., on the respective meeting dates. Personal time limits for oral statements may be set to allow all interested individuals an opportunity to speak. Subject to time available, individuals may also be allowed to provide input to the councils during the discussion of agenda topics.

Summary minutes of RAC meetings are maintained in the BLM Western Slope Center Office located at 2815 H Road, Grand Junction, CO 81506, phone (970) 244–3000. Minutes are available for public inspection and reproduction during regular business hours within thirty (30) days following the meeting.

Dated: April 10, 2002.

Dave Atkins,

Acting Northwest Center Manager.

[FR Doc. 02–11090 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–02); (OKNM 98652)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 98652

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 98652 for lands in Dewey County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and have reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438–7530.

Dated: March 19, 2002.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 02–11084 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM–930–1310–02; OKNM 98653]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease OKNM 98653

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 98653 for lands in Dewey County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from June 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessees have paid the required $500.00 administrative fee and have reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessees have met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 USC 188), and the Bureau of Land Management is proposing to reinstate the lease effective June 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Bernadine T. Martinez, BLM, New Mexico State Office, (505) 438–7530.

Dated: March 19, 2002.

Bernadine T. Martinez,

Land Law Examiner, Fluids Adjudication Team.

[FR Doc. 02–11085 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[(NM–930–1310–02); (OKNM 96107)]

New Mexico: Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease OKNM 96107 for lands in Woodward County, Oklahoma, was timely filed and was accompanied by all required rentals and royalties accruing from December 1, 2001, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of $10.00 per acre or fraction thereof and 16⅔ percent, respectively. The lessee has paid the required $500 administrative fee and has reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

The Lessee has met all the requirements for reinstatement of the lease as set out in Sections 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C 188), and the Bureau of Land Management is proposing to reinstate the lease effective December 1, 2001, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

FOR FURTHER INFORMATION CONTACT: Lourdes B. Ortiz, BLM, New Mexico State Office, (505) 438–7586.

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Dated: March 20, 2002.
Lourdes B. Ortiz,
Land Law Examiner.
[FR Doc. 02–11086 Filed 5–3–02; 8:45 am]
BILLING CODE 4310–FB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–650–01–1220–JG–064B]

Notice of a Firearm Shooting Restriction on Public Lands Within the Red Mountain Polygon, San Bernardino County, CA

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Firearm shooting restriction on public lands within the Red Mountain Polygon, San Bernardino County, California.

SUMMARY: Notice is hereby given that a firearm shooting restriction in the Red Mountain Polygon, located in the northwestern portion of San Bernardino County, California, is in effect as of January 16, 2002. The Red Mountain Polygon is comprised of approximately 98,043 acres of public lands in the California Desert Conservation Area, and is located within the western Mojave Desert area of northwestern San Bernardino County, California. Specifically, the firearm shooting restriction requires that all target shooting conducted on public lands within the Red Mountain Polygon be directed at paper targets created specifically for such purpose. The use of firearms for hunting administered by the California Fish and Game Commission is not affected by this firearm shooting restriction. This restriction will remain in effect until amendments to the California Desert Conservation Area Plan are finalized which is expected to occur in 2003.

EFFECTIVE DATE: January 16, 2002.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Bureau of Land Management, Ridgecrest Field Office, 300 South Richmond Road, Ridgecrest CA 93555, (760) 384–5405.

SUPPLEMENTARY INFORMATION: The Bureau of Land Management, Ridgecrest Field Office, has analyzed the effects of the firearm shooting restriction in an environmental assessment entitled "Environmental Assessment for Interim Closure of Selected Vehicle Routes and a Firearm Shooting restriction in the Red Mountain Polygon, California Desert Conservation Area, dated October 18, 2001, and a supplement to this assessment dated January 14, 2002.

On March 16, 2000, the Center for Biological Diversity, *et al* (Center) filed for injunctive relief in U.S. District Court, Northern District of California (Court) against the Bureau of Land Management. The Center alleged the Bureau of Land Management was in violation of Section 7 of the Endangered Species Act by failing to enter into formal consultation with the Fish and Wildlife Service on the effects of adoption of the California Desert Conservation Area Plan, as amended, upon threatened and endangered species. Instead of litigating the case, and facing a possible injunction of all authorized desert activities, the Bureau of Land Management entered into five stipulated agreements, including the stipulation which includes the firearm shooting restriction.

The authority for proposing a firearm shooting restriction is derived from 43 CFR 8364 (Closures and Restrictions). This regulation allows the authorized officer to issue an order to close or restrict use of designated public lands in order to protect persons, property, and public lands and resources. In this case, the shooting restriction will aid in protecting the desert tortoise from indiscriminate firearm use, and stop the practice of shooting at objects that result in the accumulation of trash, broken glass, cans, electronic parts, propane gas cylinders, metal, etc. in critical habitat for the desert tortoise. Furthermore, the restriction will aid in reducing the incidence of wildfire that could result from bullets striking rocks and generating sparks in combustible materials.

Although the desert tortoise has been fully protected in California since 1961 through regulation of the California Fish and Game Commission, remains of tortoises containing gunshot holes have been observed in numerous areas of the California Desert. From 1972 to 1982, a study of tortoise gunshot mortality was conducted on 11 sites in the California Desert. The highest incidence of gunshot holes in carcasses of desert tortoises occurred in the western Mojave Desert at the Fremont Valley site, the Desert Tortoise Natural Area, and the Fremont Peak site (located at the southern boundary of the Red Mountain Polygon). The percent of tortoises dying on the study sites due to gunshots were 28.9 % at Fremont Valley, 19.6% at the Desert Tortoise Natural Area, and 16.7% at the Fremont Peak. In contrast, the incidence of such deaths in the eastern Mojave Desert sites ranged from 1.8 to 3.1 %. California Department of Fish and Game wardens reported that they occasionally found tortoises dead from gunshots near roads in eastern Kern and northwestern San Bernardino Counties during the 1960s and 1970s. Between 1981 and 1984, Bureau of Land Management and other observers found the remains of 10 tortoises shot and killed in the western Mojave Desert in the vicinity of the Desert Tortoise Natural Area, El Paso Mountains, Fremont Peak and Stoddard Valley. Higher incidence of gunshot deaths of tortoises in the western Mojave was attributed to the higher numbers of human visitors, greater vehicular access and closer proximity to urban centers. Target practice in the California Desert, especially in portions of the western Mojave Desert, is associated with human-caused wildfire from bullets striking rocks, and people shooting at tortoises for target practice. In the Recovery Plan for the Mojave Population of the Desert Tortoise, the U.S. Fish and Wildlife Service reported that shooting and vandalism play a major role in losses of desert tortoises in many areas, particularly where human visitation is high. They also reported that approximately 15 to 29 percent of carcasses of desert tortoises studied on Bureau of Land Management study plots in the western Mojave Desert had evidence of gunshot.

This firearm shooting restriction will enable the Bureau of Land Management to comply with Section 7(a)(1) of the Endangered Species Act using its full authorities to conserve endangered species and threatened species.

This interim firearm shooting restriction will allow BLM to properly evaluate and arrive at a final decision on environmentally acceptable firearm use throughout the West Mojave Planning Area, which will result in amendments to the California Desert Conservation Area Plan, expected to be completed in 2003. This planning process now underway is a formal plan amendment process that involves the public and will conform to the requirements of the National Environmental Policy Act. Maps showing the affected area are available by contacting the Ridgecrest Field Office of the Bureau of Land Management at the address shown above.

Appeal Rights

The decision that instituted this firearm shooting restriction may be appealed to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations contained in 43 CFR part 4 and the enclosed Form 1842–1. If an appeal is taken, a notice of appeal must be filed in this office (at the above address) within 30 days from receipt of this decision. The appellant has the burden

of showing that the decision appealed from is in error.

Those wishing to file a petition pursuant to regulation 43 CFR 4.21 (58 FR 4939, January 19, 1993) or 43 CFR 2804.1 for a stay of the effect of this decision during the time that an appeal is being reviewed by the Board must request a stay in the notice of appeal. A petition for a stay is required to show sufficient justification based on the standards listed below. Copies of the notice of appeal and petition for a stay must also be submitted to each identified party, to the Interior Board of Land Appeals, and to the appropriate Office of the Solicitor (*see* 43 CFR 4.413) at the same time the original documents are filed with this office. If you request a stay, you have the burden of proof to demonstrate that a stay should be granted.

Standards for Obtaining a Stay

Except as otherwise provided by law or other pertinent regulation, a petition for a stay of a decision pending appeal shall show sufficient justification based on the following standards:

(1) The relative harm to the parties if the stay is granted or denied,

(2) The likelihood of the appellant's success on the merits,

(3) The likelihood of immediate and irreparable harm if the stay is not granted, and

(4) Whether the public interest favors granting the stay.

Dated: January 18, 2002.
Hector A. Villalobos,
Field Office Manager.
[FR Doc. 02–11083 Filed 5–3–02; 8:45 am]
BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[66⅔% to CO–956–1420–BJ–0000–241A; 13⅓% to CO–956–9820–BJ–CO001–241A; 20% to CO–956–9820–BJ–CO003–241A]

Colorado: Filing of Plats of Survey

April 1, 2002.

The plats of survey of the following described land will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., April 1, 2002. All inquiries should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215–7093.

The plat representing the entire record of the dependent resurvey Mineral Survey No. 961, Union lode, in the SW¼ of section 33, T. 2 S., R. 73 W., Sixth Principal Meridian, Group 1241, Colorado, was accepted January 17, 2002.

The plat representing the entire record of the dependent resurvey Mineral Survey No. 846, H. B. lode, in the SE¼ of section 34, T. 2 S., R. 73 W., Sixth Principal Meridian, Group 1241, Colorado, was accepted January 17, 2002.

The plat representing the partial subdivision of section 22, T. 14 S., R. 82 W., Sixth Principal Meridian, Group 1320, Colorado, was accepted March 5, 2002.

The Plat representing the dependent resurvey of portions of west boundary, subdivisional lines, certain tract lines and the subdivision of section 7, and a metes-and-bounds survey, T. 37 N., R. 2 W., New Mexico Principal Meridian, Group 1255, Colorado, was accepted March 13, 2002.

The Plat representing the dependent resurvey of a portion of the subdivisional lines, the partial subdivision of sections 12 and 13, and a metes-and-bounds survey, T. 37 N., R. 3 W., New Mexico Principal Meridian, Group 1255, Colorado, was accepted March 13, 2002.

These surveys were requested by the Forest Service for administrative purposes.

The plat representing the dependent resurvey of portions of the west boundary, subdivisional lines, certain private claim lines, and the subdivision of sections 7 and 18, T. 7 S., R. 87 W., Sixth Principal Meridian, Group 1300, Colorado, was accepted January 23, 2002.

The supplemental plat correcting the over distance and the distances of the W½ of the East and West center line of section 35, T. 11 N., R. 79 W. Sixth Principal Meridian, Colorado, was accepted January 24, 2002.

The supplemental plat creating new lots 60 and 61, from original lot 12 in the SW¼NE¼ of section 12, T. 1 N., R. 73 E., Sixth Principal Meridian, Colorado, was accepted January 29, 2002.

The supplemental plat creating new lots 119 and 120, from original lot 107 in the SE¼SW¼ of section 7, T. 1 N., R. 72 E., Sixth Principal Meridian, Colorado, was accepted January 29, 2002.

The supplemental plat creating new lots 62 and 63, based upon the excluded area of Mineral Survey No. 10880, Helen C. lode, in the S½NW¼ of section 12 and also identifies new lot 64 in the SE¼SE¼ of section 12, T. 1 N., R. 73 E., Sixth Principal Meridian, Colorado, was accepted January 30, 2002.

The supplemental plat amending original lot 135, in the S½NE¼SW¼ of section 6 to new lot 178 by excluding the area within Mineral Survey No. 19159, Legal Tender lode as described in the field notes of the Dependent Resurvey and Survey approved January 31, 1996, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2002.

The supplemental plat amending original lot 112, in the SE¼NW¼ of section 6 to new lot 179 by excluding the area within Mineral Survey No. 14963, Maid of Erin lode as described in the field notes of the Dependent Resurvey and Survey approved January 31, 1996, T. 1 N., R. 72 W., Sixth Principal Meridian, Colorado, was accepted January 31, 2002.

The plat of the entire record of the dependent resurvey of Mineral Survey No. 65, Maxwell lode, and a portion of the subdivisional lines, T. 1 N., T. 72 W., Sixth Principal Meridian, Group 1236, Colorado, was accepted February 13, 2002.

The plat representing the dependent resurvey of a portion of the subdivisional lines, and the subdivision of sections 15, T. 50 N., R. 1 E., New Mexico Principal Meridian, Group 1349, Colorado, was accepted February 21, 2002.

The plat representing the entire record of the dependent resurvey of a portion of the subdivisional lines, and the metes-and-bounds survey creating new lots in the NW¼ of section 19, T. 49 N., R. 10 E., New Mexico Principal Meridian, Group 1314, Colorado, was accepted March 27, 2002.

These surveys and supplemental plats were requested by the Bureau of Land Management for administrative purposes.

Darryl A. Wilson,
Chief Cadastral Surveyor for Colorado.
[FR Doc. 02–11091 Filed 5–3–02; 8:45 am]
BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–957–1430–BJ]

Idaho: Filing of Plats of Survey

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., on the dates specified: The plat representing the dependent resurvey of portions of certain lots in section 14,

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and a portion of the west boundary of the Fort Sherman Abandoned Military Reservation, and the metes-and-bounds survey of Tract 44, in T. 50 N., R. 4 W., Boise Meridian, Idaho, was accepted January 18, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The supplemental plat prepared to create new lottings in section 10, in T. 48 N., R. 3 E., Boise Meridian, Idaho, was accepted January 25, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of portions of the east and north boundaries, the Fourth Guide Meridian East (west boundary), subdivisional lines, certain Mineral Surveys in sections 4, 5, 6, 8, 9, 13, 14, 23, 24, and 25, and the Clayton Townsite in section 25, and the survey of the 1997–2001 meanders of the Salmon River in sections 24 and 25, and the metes-and-bounds survey of certain lots in sections 24 and 25, in T. 11 N., R. 17 E., Boise Meridian, Idaho, was accepted February 5, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the subdivisional lines and original meanders of the Salmon River in section 30, and the metes-and-bounds surveys of lot 6 in section 19 and lot 11 in section 30, in T. 11 N., R. 18 E., Boise Meridian, Idaho, was accepted February 5, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management. The plat representing the dependent resurvey of a portion of the subdivisional lines and the subdivision of section 20, in T. 1 S., R. 5 E., Boise Meridian, Idaho, was accepted February 8, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

The plat representing the dependent resurvey of a portion of the south boundary, a portion of the west boundary, and a portion of the subdivisional lines, and the subdivision of sections 31 and 33, and a metes- and bounds survey in section 33, in T. 16 N., R. 43 E., Boise Meridian, Idaho, was accepted March 20, 2002. The plat was prepared to meet certain administrative needs of the Bureau of Land Management.

FOR FURTHER INFORMATION CONTACT: Duane E. Olsen, Chief, Cadastral Survey, Idaho State Office, Bureau of Land Management, 1387 South Vinnell Way, Boise, Idaho, 83709–1657, 208–373–3980.

Dated: April 2, 2002.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 02–11094 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–926–02–1420–BJ]

Montana: Filing of Plat of Survey

AGENCY: Bureau of Land Management, Montana State Office, Interior.

ACTION: Notice.

SUMMARY: The plat of the following described land is scheduled to be officially filed in the Montana State Office, Billings, Montana, thirty (30) days from the date of this publication.

Black Hills Meridian, South Dakota

Tps. 4 S., Rs. 10 and 11 E.

This plat, in 2 sheets, represents the dependent resurvey of portions of the east boundary, the subdivisional lines, and the adjusted original meanders of the left bank of the South Fork of the Cheyenne River through sections 25, 26, 27, and 36 (and section 31, Township 4 South, Range 11 East), the subdivision of section 27, and the survey of lot 7 within section 25, a certain division of accretion line and the new meanders of the left bank of the South Fork of the Cheyenne River through sections 25, 26, 27, and 36 (and section 31, Township 4 South, Range 11 East), in Township 4 South, Ranges 10 and 11 East, Black Hills Meridian, South Dakota, was officially accepted March 29, 2002.

The survey was requested by the U.S. Forest Service, Nebraska National Forest, and was necessary to identify lands administered by the U.S. Forest Service.

A copy of the preceding described plat will be immediately placed in the open files and will be available to the public as a matter of information.

If a protest against this survey, as shown on this plat, is received prior to the date of the official filings, the filings will be stayed pending consideration of the protests.

This particular plat will not be officially filed until the day after all protests have been accepted or dismissed and become final or appeals from the dismissal affirmed.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 5001 Southgate Drive, PO Box 36800, Billings, Montana 59107–6800.

Dated: April 8, 2002.

Thomas M. Deiling,

Chief Cadastral Surveyor, Division of Resources.

[FR Doc. 02–11092 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

National Park Service

Notice of Minor Boundary Revision, Indiana Dunes National Lakeshore, Indiana, Under the Authority of Public Law 94–549, Enacted October 18, 1976, (16 U.S.C., Section 460u–19) and Section 7 (c) of the Land and Water Conservation Fund Act of 1965, as Amended [16 U.S.C., Section 460*l*–9(c)]

SUMMARY: This notice announces a minor boundary revision of the boundaries of Indiana Dunes National Lakeshore, Indiana, to include eight (8) parcels of land.

FOR FURTHER INFORMATION CONTACT: Superintendent, Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299, or by telephone at 219–926–7561 ext. 429.

SUPPLEMENTARY INFORMATION: Notice is hereby provided that the boundaries of Indiana Dunes National Lakeshore are revised. This revision is effective upon publication of this notice, to include certain parcels of real property situated in Porter County and Lake County, Indiana. These parcels contain 3.99 acres of land, more or less, in Porter County and 58.48 acres, more or less, in Lake County, Indiana. The parcels are identified as follows:

Porter County:

Tracts 109–15, 109–16, 109–18, 109–19, and 109–20 on Segment Map 109, Drawing Number 626/35,109 dated February 2002.

Lake County:

Tract 13–138 on Segment Map 13, Drawing Number 626/35,013 dated February, 2002. and

Tracts 12–113 and 12–114 on Segment Map 12, Drawing Number 626/35,012 dated February 2002.

All of the above-cited Segment Maps are on file at the following locations:

U.S. Department of the Interior, National Park Service, Midwest Region, Land Resources, 1709 Jackson Street, Omaha, Nebraska 68102–2571.

Indiana Dunes National Lakeshore, 1100 North Mineral Springs Road, Porter, Indiana 46304–1299.

Dated: March 15, 2002.

William W. Schenk,

Regional Director, Midwest Region, Department of the Interior, National Park Service.

[FR Doc. 02–11135 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

National Park Service

Native American Graves Protection and Repatriation Review Committee Nomination Solicitation; Correction

AGENCY: National Park Service, Interior.

ACTION: Notice; correction.

The National Park Service published a document in the **Federal Register** of April 12, 2002, concerning the solicitation of nominations for the Native American Graves Protection and Repatriation Review Committee. The document contained an incorrect date.

In the **Federal Register** of April 12, 2002, in FR Doc. 02-8575, on page 18034, in the first column, in the last line of the DATES section, correct the date "May 13, 2002" to read "July 11, 2002.".

Dated: April 17, 2002.

Robert Stearns,

Manager, National NAGPRA Program.

[FR Doc. 02-11136 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–S

DEPARTMENT OF THE INTERIOR

National Park Service

Glacier Bay National Park, Alaska; Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve

AGENCY: National Park Service, Interior.

ACTION: Extension of the public scoping period.

SUMMARY: The National Park Service (NPS) announces that the public scoping period for the Environmental Impact Statement on Vessel Quotas and Operating Requirements for Glacier Bay National Park and Preserve, published in the **Federal Register** on February 22, 2002 (67 FR 8313), has been extended through June 7, 2002. The original scoping period was through April 22, 2002.

Public scoping meetings will be conducted during the period May 20–31, 2002 in Anchorage, Juneau, Gustavus, Hoonah, Elfin Cove, and Pelican, Alaska and in Seattle, Washington. Specific dates, times, and locations of scoping meetings will be announced in local area newspapers and by other media.

DATES: Comments concerning the scope of this project will be accepted through June 7, 2002.

ADDRESSES: Comments should be mailed to the address provided below.

FOR FURTHER INFORMATION CONTACT: Nancy Swanton, Park Planner, National Park Service, Alaska Support Office, 2525 Gambell Street, Anchorage, Alaska 99503. Telephone (907) 257–2651, Fax (907) 257–2517.

Dated: April 25, 2002.

Fran P. Mainella,

Director, National Park Service.

[FR Doc. 02–11134 Filed 5–3–02; 8:45 am]

BILLING CODE 4310–70–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Central Valley Project Improvement Act, Water Management Plans

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability.

SUMMARY: The following Water Management Plans are available for review:

- Banta-Carbona Water District
- Bella Vista Water District
- City of Tracy
- Clear Creek Community Services District
- Dunnigan Water District
- East Bay Municipal Utility District
- Kanawha Water District
- Glide Water District
- Shafter Wasco Irrigation District
- Stockton East Water District
- Tea Pot Dome Water District

To meet the requirements of the Central Valley Project Improvement Act of 1992 (CVPIA) and the Reclamation Reform Act of 1982, the Bureau of Reclamation (Reclamation) developed and published the Criteria for Evaluating Water Management Plans (Criteria). **Note:** For the purpose of this announcement, Water Management Plans (Plans) are considered the same as Water Conservation Plans. The above entitie(s) have developed a Plan, which Reclamation has evaluated and preliminariily determined to meet the requirements of these Criteria. Reclamation is publishing this notice in order to allow the public to comment on the preliminary determinations. Public comment to Reclamation's preliminary (i.e., draft) determination is invited at this time.

DATES: All public comments must be received by June 5, 2002.

ADDRESSES: Please mail comments to Bryce White, Bureau of Reclamation, 2800 Cottage Way, Sacramento, California 95825, or contact at 916–978–5208 (TDD 978–5608), or e-mail at *bwhite@mp.usbr.gov.*

FOR FURTHER INFORMATION CONTACT: To be placed on a mailing list for any subsequent information, please contact Bryce White at the e-mail address or telephone number above.

SUPPLEMENTARY INFORMATION: We are inviting the public to comment on our preliminary (*i.e.*, draft) determination of Plan adequacy. Section 3405(e) of the CVPIA (Title 34 Public Law 102–575), requires the "Secretary of the Interior to establish and administer an office on Central Valley Project water conservation best management practices that shall * * * develop criteria for evaluating the adequacy of all water conservation plans developed by project contractors, including those plans required by section 210 of the Reclamation Reform Act of 1982." Also, according to Section 3405(e)(1), these criteria must be developed "* * * with the purpose of promoting the highest level of water use efficiency reasonably achievable by project contractors using best available cost-effective technology and best management practices." These criteria state that all parties (Contractors) that contract with Reclamation for water supplies (municipal and industrial contracts over 2,000 acre-feet and agricultural contracts over 2,000 irrigable acres) must prepare Plans that contain the following information:

1. Description of the District
2. Inventory of Water Resources
3. Best Management Practices (BMPs) for Agricultural Contractors
4. BMPs for Urban Contractors
5. Plan Implementation
6. Exemption Process
7. Regional Criteria
8. Five-Year Revisions

Reclamation will evaluate Plans based on these criteria. Our practice is to make comments, including names and home addresses of respondents, available for public review. Individual respondents may request that we withhold their home address from public disclosure, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity from public disclosure, as allowable by law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your

comment. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public disclosure in their entity.

A copy of these Plans will be available for review at Reclamation's Mid-Pacific (MP) Regional Office located in Sacramento, California. Plans may be available locally. If you wish to review a copy of these Plans, please contact Mr. White to find the office nearest you.

Dated: April 12, 2002.

Donna E. Tegelman,

Acting Regional Resources Manager.

[FR Doc. 02–11118 Filed 5–3–02; 8:45 am]

BILLING CODE 4210–MN–P

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 26, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 219–8904 or Email *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ESA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used:
- Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: OFCCP Recordkeeping and Reporting Requirements: Supply and Service.

OMB Number: 1215–0072.

Affected Public: Business or other for-profit; not-for-profit institutions; State, Local or Tribal Government.

Frequency: On occasion.

Number of Respondents: 95,311.

Number of Annual Responses: 95,311.

ESTIMATED TIME PER RESPONSE

Requirements	Average hours per response	Frequency
Recordkeeping:		
Initial Development of AAP	112.65	Once.
Update of AAP	51.14	Annually.
Maintenance of AAP	51.14	Annually.
Uniform Guidelines on Employee Selection Procedures	2.18	Annually.
Reporting:		
Standard Form 100	3.8	Annually.
Scheduling Letter	4.5	On occasion.
Compliance Check Letter	.4	On occasion.

Total Burden Hours: 9,967.675.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $23,096.

Description: The Office of Federal Contract Compliance Programs (OFCCP) is responsible for the administration of equal opportunity (EO) programs prohibiting employment discrimination against employees of Federal Contractors. OFCCP administers three programs: Executive Order 11246, as amended; Section 503 of the Rehabilitation Act of 1973, as amended; and the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended (VEVRAA), 38 USC 4212. This information collection covers the supply and service aspects of these EO programs to substantiate compliance with nondiscrimination and affirmative action requirements enforced by OFCCP.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11152 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–CM–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation for BLS, ETA, PWBA, and OASAM contact Karin Kurz ((202) 693–4127 or by E-mail to *Kurz-Karin@dol.gov*). To obtain documentation for ESA, MSHA, OSHA, and VETS contact Darrin King ((202) 693–4129 or by E-Mail to *King-Darrin@dol.gov*).

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, DM, ESA, ETA, MSHA, OSHA, PWBA, or VETS, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Employment Standards Administration (ESA).

Title: Application for Farm Labor Contractor and Farm Labor. Contractor Employee Certificate of Registration.

OMB Number: 1215–0037.

Affected Public: Individuals or households; business or other for-profit; and Farms.

Frequency: On occasion and biennially.

Number of Respondents: 9,200.

Number of Annual Responses: 9,200.

Estimated Time Per Response: 30 minutes.

Total Burden Hours: 4,600.

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $2,153.

Description: Section 101(a) of the Migrant and Seasonal Agricultural Worker Protection Act provides that no individual may perform farm labor contracting activities without a certificate of registration. Form WH–530 is the application form that provides the Department of Labor with the information necessary to issue certificates specifying the farm labor contracting activities authorized. This collection of information is authorized by 29 CFR part 500.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11153 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 30, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E-Mail: *King-Darrin@dol.gov*.

Comment should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for ETA, Officer of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated; electronic, mechanical, or other technological collection techniques or other forms of information information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of currently approved collection.

Agency: Employment and Training Administration (ETA).

Title: WIA Management Information and Reporting System.

OMB Number: 1205–0420.

Affected Public: State, Local, or Tribal Government and Individuals or households.

Type of Response: Reporting and recordkeeping.

Number of Respondents: 53.

Annual Responses: 318.

Average Response Time: 2,410 hours (per State).

Estimated Burden Hours: 766,451.

Total Annualized Capital/Startup Costs: $919,213.

Total Annual Costs (operating/maintaining systems or purchasing $18,986,229.

Description: Selected standardized information pertaining to participations in Workforce Investment Act (WIA) Title IB program is collected and reported for the purposes of general programs is collected and reported for the purposes of general program oversight, evaluation and performance assessment. State governments are responsible for providing the required reports. On a voluntary basis, program participants may be asked to respond to a customer satisfaction survey in order to assess to effectiveness of State WIA Title IB programs. This collection of information is authorized under WIA section 188 and 185 (d) (1) (A–E).

Ira L. Mills,

Department Clearance Officer.

[FR Doc. 02–11154 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

April 29, 2002.

The Department of Labor (DOL) has submitted the following public information collection request (ICR) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Darrin King on (202) 693–4129 or E–Mail: *King-Darrin@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OSHA, Office of Management and Budget, Room 10235, Washington, DC 20503 ((202) 395–7316), within 30 days from the date of this publication in the **Federal Register.**

The OMB is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Type of Review: Extension of a currently approved collection.

Agency: Occupational Safety and Health Administration (OSHA).

Title: Hazard Communication—29 CFR 1200; 1915; 1917; 1918; 1926; 1928.

OMB Number: 1218–0072.

Affected Public: Business or other for-profit; farms; Federal Government; and State, Local, or Tribal Government.

Frequency: On occasion.

Number of Respondents: 6,035,925.

Type of Response: Recordkeeping and Third-party disclosure.

Requirement	Annual responses	Average response time (hours)	Estimated annual burden hours
1. Written Hazard Communication Program—New Establishments:			
Manufacturing	5,258	5.00	26,290
Non-Manufacturing	61,465	2.50	153,663
2. Written Hazard Communication Program—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	0.50	1,129,863
3. Hazardous Determination	30,248	8	241,984
4. Existing Establishments Sending of MSDSs for New Hazardous:			
Manufacturing	1,014,462	0.14	142,025
Non-Manufacturing	3,434,784	0.14	480,870
5. New Establishments Sending MSDSs for All Hazardous Chemicals:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
6. Obtaining & Maintaining MSDSs—Existing Establishments:			
Manufacturing	154,644	1.00	154,644
Non-Manufacturing	2,259,726	1.00	2,259,726
7. Obtaining & Maintaining MSDSs—New Establishments:			
Manufacturing	465,648	0.14	65,191
Non-Manufacturing	1,261,262	0.14	176,577
8. Labeling Shipping Containers	0	0.00	0
9. Labeling In-Plant Containers	443,636,930	0.0033	1,464,002
10. Access to Trade Secrets	62,870	4.00	251,480
Employee Access	3,621,555	0.17	603,351
Federal Access	92,351	0.08	7,388
Total	460,242,484		7,553,465

Total Annualized Capital/Startup Costs: $0.

Total Annual Costs (operating/maintaining systems or purchasing services): $247,039.

Description: 29 CFR 1200; 1915; 1917; 1918; 1926; and 1928 require all employers to establish hazard communication programs and to transmit information on the hazards of chemicals to their employees by means of container labels, material safety data sheets and training programs. These actions reduce the incidents of chemical-related illnesses and injury in the workplace.

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–11155 Filed 5–3–02; 8:45 am]

BILLING CODE 4510–23–M

NUCLEAR REGULATORY COMMISSION

Pre-PIRT Meeting on Triso Coated Fuel Particles

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

Purpose: The Nuclear Regulatory Commission will hold a pre-PIRT (Phenomena Identification and Ranking Table) meeting to identify Phenomena and issues related to TRISO coated fuel particles in order to develop research program. PIRTs have been used at NRC since 1988, and they provide a structured way to obtain a technical understanding that is needed to address certain issues.

DATES: May 28–29, 2002 (9 a.m.–5 p.m. and 9 a.m.–3:30 p.m. respectively).

ADDRESSES: Rooms T–10C2 on May 28, 2002 and T–2C2 on May 29, 2002 of the Nuclear Regulatory Commission, 11545 Rockville Pike, Rockville, MD.

Participants

This is a technical workshop to be conducted as roundtable discussions and presentation of handouts between the NRC staff and NRC and DOE contractors. Agenda will be provided to invited participants before the meeting. All handouts will be published as part of a NUREG/CR report. Invited NRC and DOE contractors are as follows:

Brent Boyack, Los Alamos National Laboratory
Syd Ball, Oak Ridge National Laboratory
Robert Morris, Oak Ridge National Laboratory
David Petti, Idaho National Engineering Laboratory
Dana Powers, Sandia National Laboratory
Randy Gaunt, Sandia National Laboratory
NRC Staff

Public Attendance

The meeting will be conducted as roundtable discussions between the invited participants and NRC staff. Although the focus of discussions will be among invited participants and NRC staff, the meeting is open to public. Members of the audience will be given opportunity to comment before the lunch breaks and at the end of the meetings each day. They may also submit written comments after the meeting. All written comments should be received within 15 days of conclusion of the meeting. All written comments which are received within 15 days of the conclusion of the meeting will be published as part of the NUREG/CR report.

SUPPLEMENTARY INFORMATION: The meeting agenda will be posted on the NRC Web site at *www.nrc.gov/RES/meetings.html* by May 20, 2002. Attendees will need to obtain a visitor badge at the TWFN building lobby and an escort is required.

FOR FURTHER INFORMATION CONTACT: Dr. Frank Odar, SMSAB, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Research, Washington, DC 20555–0001, telephone (301) 415–6500.

Dated at Rockville, Maryland, this 30th day of April 2002.

For the Nuclear Regulatory Commission.

Farouk Eltawila,

Director, Division of Systems Analysis and Regulatory Effectiveness, Office of Nuclear Regulatory Reseorch.

[FR Doc. 02–11137 Filed 5–3–02; 8:45 am]

BILLING CODE 7590–01–P

OFFICE OF MANAGEMENT AND BUDGET

Competition in Contracting; Contract Bundling

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice of public meeting and request for comments.

SUMMARY: The Office of Management and Budget (OMB) is reviewing federal agencies' use of competition in their contracting activities. Although "full and open" competition remains the general rule when agencies acquire goods and services, a variety of legislative, regulatory, and policy initiatives, implemented primarily over the past decade, authorize competition on a significantly more restricted and informal basis. The purpose of this review, which has been called for by the White House, is to identify steps for ensuring that agency competition practices facilitate access to the full range of marketplace capabilities—especially those of small businesses—to consistently achieve good quality at lower cost to the taxpayer. This review will occur in conjunction with an initiative to address contract bundling (i.e., the consolidation of two or more requirements previously provided or performed under separate smaller contracts into a single contract that is likely to be unsuitable for award to a small business).

OMB invites interested parties from both the public and private sector, and especially from small businesses, to provide comments on: The positive and negative effects of agency competition practices from the 1990s to the present, and the impact of contract bundling. Interested parties may offer oral and/or written comments at a public meeting to be held on June 14, 2002. Parties may also provide written comments directly to OMB's Office of Federal Procurement Policy (OFPP) by the date indicated below.

DATES: *Public Meeting:* A public meeting will be conducted at the address shown below on June 14, 2002, from 1 p.m. to 3 p.m. Eastern standard time. The time period may be extended based on the level of interest expressed. Parties wishing to make formal oral presentations at the public meeting must contact Ms. Barbara Diering of OFPP by June 3, 2002. Due to time limitations, OFPP will notify individuals of their speaking status (time) prior to the meeting. Time allocations for oral presentations will depend on the number of individuals who desire to make presentations. Parties wishing to share written statements at the public meeting must submit such statements to OFPP by June 7, 2002.

Statements: In lieu of, or in addition to, participating in the public meeting, interested parties may submit comments to OFPP at the address shown below on or before July 1, 2002.

ADDRESSES: *Public Meeting:* The public meeting will be held at the General Services Administration (GSA) auditorium, 18th and F Streets NW., Washington, DC 20405.

Statements: Interested parties may send comments by electronic mail (e-mail) to *bdiering@omb.eop.gov*. While e-mail is preferred, parties may alternatively submit comments by facsimile (202) 395–5105. In either case, please cite "Competition in contracting review" as the subject. Since hard copy mail is not being accepted on a regular basis (due to security reasons), comments should not be submitted in this mode. Parties that cannot submit comments using either e-mail or facsimile should contact Ms. Diering.

FOR FURTHER INFORMATION CONTACT: *For clarification of subject matter related to the review of competition practices:* Mr. Mathew Blum, OFPP, (202) 395–4953.

For clarification of subject matter related to contract bundling and small business issues: Mr. Michael Gerich, OFPP, (202) 395–6811.

For public meeting information and submission of comments to OFPP: Ms. Barbara Diering, OFPP, (202) 395–3256.

The TTY number for further information is: 1–800–877–8339.

SUPPLEMENTARY INFORMATION: In 1984, the Competition in Contracting Act (CICA), Public Law 98–369, sec. 2701, established "full and open" as the competition standard in federal contracting. CICA's enactment marked a culmination of concerns that competition had become the exception, rather than the rule, in acquiring goods and services. Despite these concerns, CICA's approach to competition has been criticized as unduly burdensome and complex. These concerns led to a series of legislative, regulatory, and policy reforms—the most significant of which occurred in the mid-1990s—to streamline and simplify competition and contracting processes. Many of these changes authorize competition on a relatively restrictive and informal basis. These changes include, among others:

- Authority to conduct limited competitions under multiple award task and delivery order contracts (MACs) or GSA's Multiple Award Schedules (MAS) program, where the source selection process for becoming a contract holder is open to all interested sources but competitions for orders are limited to pre-qualified contract holders; and
- Authority to seek competition "to the maximum extent practicable" using simplified source selection procedures for all actions under the simplified acquisition threshold (SAT), which is currently at $100,000, and, on a test basis, up to $5 million for commercial items.

An increasing number of recent reports addressing streamlined acquisition processes and competition practices, including studies by the General Accounting Office and agency inspectors general, call into question whether agencies are taking advantage of the full range of marketplace capabilities in their use of competition. In addition, concerns have been voiced that other acquisition practices are also limiting opportunities for contractors, especially small businesses. In particular, there is ongoing concern that agencies are unnecessarily bundling

contracts and, in doing so, have created an environment that makes it difficult for small businesses to flourish.

The President is committed to ensuring that agencies take full advantage of competition in contracting, especially the services of small business contractors. This commitment, like those in the President's Management Agenda generally, reflect the Administration's focus on strengthening the performance of government through results-oriented initiatives—i.e., in this case, improving the return on taxpayer investments in contracting. To this end, OMB has been instructed both to review competition practices at agencies with significant procurement activities and to develop a strategy to address contract bundling.

OMB has established two inter-agency working groups to carry out these efforts: one working group will address agency competition practices; the other will develop a strategy for unbundling contracts whenever practicable. OMB seeks public comment from all interested parties, and especially from small businesses, to inform these working groups. Comments are especially welcome on the following topics:

1. *Use of other than full and open competition.* What are the positive and negative effects of authorities that allow competition on other than a full and open basis?

• Authorities to consider might include:

(1) Micro-purchase authority (see Federal Acquisition Regulation (FAR) Subpart 13.2);

(2) Authority to transact using the government-wide purchase card (see FAR 13.301);

(3) Authority to seek competition to the "maximum extent practicable" and use of simplified source selection procedures for acquisitions under the SAT (see FAR part 13 generally) and up to $5 million for the acquisition of commercial items (see FAR subpart 13.5);

(4) Authority to conduct limited competitions through MACs (see FAR 16.504 and 16.505) and the MAS program (see FAR subpart 8.4); and

(5) Inter-agency contracting through government-wide acquisition contracts (i.e., task or delivery order contracts for information technology established for government-wide use and operated by executive agents designated by OMB), multi-agency contracts (i.e., task or delivery order contracts established for use by government agencies consistent with the Economy Act), or other contracts for multiple agency use.

• Effects to consider might include:

(a) Opportunities to learn about and participate in planned acquisitions;

(b) Ability of contractors to offer, or agencies to secure: (i) Fair and reasonable pricing, (ii) favorable terms and conditions, and (iii) timely delivery of good and services; and

(c) Ability of contractors to make meaningful offers and agencies to make rationally-based decisions.

2. *Use of full and open competition.* What are the effects, positive and negative, of changes made in the way full and open competition is pursued, such as under Part 15 of the FAR? (For effects to consider, see question no. 1.)

3. *Areas of impact.* Have the authorities identified in question nos. 1 and 2 had an especially noticeable effect on any particular: (a) Dollar range, (b) contract type, or (c) product or service category?

4. *Barriers to small business participation.* What barriers presently make it difficult for small businesses to participate in federal procurement, and what steps can be taken to remove barriers to participation, particularly in full and open competitions?

5. *Contract bundling.* If you believe that agency contract bundling has direct effects on participation by small businesses in federal contracting, what steps can be taken to mitigate those effects?

6. *Application of electronic commerce techniques.* How has electronic commerce affected contractor participation in government contracting in general, and small business participation in particular, and in what, if any, ways can its applications be improved to increase participation in government contracting?

7. *Studies and articles on competition and bundling.* What, if any, recent studies or articles addressing competition or contract bundling in federal contracting should be considered by OMB's competition and bundling working groups?

Special Accommodations

The public meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Diering (202–395–3254) at least 5 days prior to the meeting date.

Angela B. Styles,

Administrator.

[FR Doc. 02–11139 Filed 5–3–02; 8:45 am]

BILLING CODE 3110–01–P

OFFICE OF PERSONNEL MANAGEMENT

Proposed Collection; Comment Request for Review of an Expiring Information Collection: Establishment Information Form, Wage Data Collection Form, Wage Data Collection Continuation Form DD 1918, DD 1919, and DD 1919C

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Under the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) intends to submit to the Office of Management and Budget a request for clearance of an information collection. The Establishment Information Form, the Wage Data Collection Form, and the Wage Data Collection Continuation Form are wage survey forms developed by OPM for use by the Department of Defense to establish prevailing wage rates for Federal Wage System employees.

The Department of Defense contacts approximately 21,200 businesses annually to determine the level of wages paid by private enterprise establishments for representative jobs common to both private industry and the Federal Government. Each survey collection requires 1–4 hours of respondent burden, resulting in a total yearly burden of approximately 75,800 hours.

Comments are particularly invited on: whether this information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on (202) 606–8358, fax (202) 418–3251, or e-mail to *mbtoomey@opm.gov*. Please include a mailing address with your request...

DATES: Comments on this proposal must be received within 60 calendar days after the date of this publication.

ADDRESSES: Send or deliver written comments to:

Donald J. Winstead, Assistant Director for Compensation Administration, Workforce Compensation and Performance Service, U.S. Office of Personnel Management, 1900 E Street NW., Room 7H31, Washington, DC 20415–8200.

FOR INFORMATION REGARDING ADMINISTRATIVE COORDINATION—CONTACT: Mark A. Allen, Salary and Wage Systems Division, Office of Compensation Administration, (202) 606–2848.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11204 Filed 5–3–02; 8:45 am]

BILLING CODE 6325–39–P

POSTAL RATE COMMISSION

[Order No. 1339; Docket No. MC2002–1]

Classification and Fees for Confirm® Service

AGENCY: Postal Rate Commission.

ACTION: Notice and order concerning Confirm® service.

SUMMARY: This document informs the public that the Postal Service has asked the Commission for a decision on classification and fees for Confirm®, a new service to enable mailers to track automation compatible letter-size and flat mail pieces. It also establishes several procedural deadlines and sets a date for a prehearing conference and possible informal settlement discussions.

DATES: *May 16, 2002:* deadline for notices of intervention.

May 20, 2002: prehearing conference (at 1 p.m.) and tentatively scheduled informal settlement discussion (at 9:30 a.m.) if notice is served on participants by the Postal Service.

May 23, 2002: deadline for answers to conditional motion for waiver.

ADDRESSES: The prehearing conference will be held in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. Send notices and comments to the attention of Steven W. Williams, secretary, 1333 H Street NW., suite 300, Washington, DC 20268–0001.

FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, 202–789–6824.

SUPPLEMENTARY INFORMATION:

A. Authority To Consider the Service's Request

39 U.S.C. 3622 and 3623.

B. Background

On April 24, 2002, the Postal Service filed a request for a recommended decision on classification and fees for Confirm®, a new service using PLANET Codes (a new form of bar code) to enable commercial mailers to track individual automation compatible letter-size and flat mail pieces. Request of the United States Postal Service for a recommended decision on classification and fees for Confirm®, April 24, 2002 (request). The request was accompanied by a statement of compliance with the Commission's filing requirements and a conditional motion for waiver. In addition, the Postal Service requests that proceedings to consider Confirm® be expedited.

Establishing a Formal Docket

The Postal Service's request was filed pursuant to sections 3622 and 3623 of the Postal Reorganization Act, 39 U.S.C. 101 *et seq.* The Commission hereby institutes a proceeding, designated as docket no. MC2002–1, to consider the instant request. In the course of this proceeding, participants may propose alternatives to the Service's proposal, and the Service itself may revise, supplement, or amend its initial filing. The Commission's review of the Service's request, including any revisions, alternatives proposed by others, or options legally within the purview of the Service's request, may result in recommendations that differ from those proposed by the Postal Service in its initial filing.

Contents of the filing

As a preliminary matter, the Commission has posted the request and related material on its website at *www.prc.gov*. Subsequent filings in this case will also be posted on the website, if provided in electronic format or amenable to conversion, and not subject to a valid protective order. Information on how to use the Commission's website is available online or by contacting the Commission's webmaster at 202–789–6873.

The entire filing and related documents are also available for public inspection in the Commission's docket section. The docket section's hours are 8 a.m. to 4:30 p.m., Monday through Friday, except on federal government holidays. The docket section telephone number is 202–789–6846.

The request includes six attachments as follows. Attachment A contains the proposed amendments to the domestic mail classification schedule (DMCS); Attachment B sets forth the proposed fee schedule. Attachment C is the required certification concerning the accuracy of the cost statements and supporting data submitted as part of the request. Attachment D contains the audited financial statements for FY 2000 and FY 2001. Citing USPS–LR–J–2, the Postal Service notes that the cost and revenue analysis report for FY 2000 was filed in docket no. R2001–1. Appendix E is an index of testimonies, workpapers, and associated attorneys. Appendix F represents the Postal Service's compliance statement in response to Commission rules 54 and 64, 39 CFR 3001.54 and 3001.64.

In support of the request, the Postal Service also submitted the testimony of five witnesses. Witness Bakshi, a Postal Service employee, describes Confirm® service, its operation, and its implementation. *See* USPS–T–1. Witness Lubenow, a consultant, provides both background and an industry perspective concerning Confirm® service. *See* USPS–T–2. Witness Nieto, a consultant, provides estimated test year costs in support of the proposed Confirm® fees. *See* USPS–T–3. Witness Rothschild, a consultant, presents the results of survey research undertaken to assess the market demand for Confirm® products at two different pricing scenarios. *See* USPS–T–4. Witness Keifer, a Postal Service employee, describes the proposed fee design and classification changes. Witness Keifer also addresses the financial impacts associated with Confirm®. *See* USPS–T–5.

In addition, the Postal Service filed two Category 2 library references supporting the prepared testimony: USPS–LR–1, witness Rothschild's (USPS–T–4) CONFIRM market research, and USPS–LR–2 supporting spreadsheets for witness Nieto (USPS–T–3).

Brief Description of the Proposal

The Postal Service proposes to offer Confirm® in a three-tiered subscription format, with the subscriptions labeled platinum, gold, and silver. As proposed, Confirm® service will be available to users of First-Class Mail, Standard mail, and Periodicals. Confirm® service will enable subscribers to track qualified outgoing and incoming mail, providing information about each mailpiece, *e.g.*, the date and time processed, the processing facility, and barcode data.

The proposed annual fee for a platinum subscription is $10,000, which entitles the subscriber to three ID codes and unlimited scans. The proposed annual fee for a gold subscription is $4500, entitling the subscriber to one ID code and 50 million scans. A silver subscription is available for a term of three months and entitles the subscriber to one ID code and 15 million scans. The proposed fee is $2000. See USPS–T–5 at 2.

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As proposed, subscribers may obtain additional ID codes for $500 per three months, or $2000 per year. Silver and gold subscribers may obtain additional scans, silver in blocks of 2 million scans for $500, and gold in blocks of 6 million scans for $750. Ibid.

Proposed Classification Changes

The Postal Service proposes to amend the DMCS to include new sections 990 and 991, which, among other things, define the service, and describe its availability and customer requirements. A new fee schedule, 991, is also proposed. Request at attachments A and B.

Conditional Motion for Waiver

In addition to attachment F, the Postal Service submitted a separate statement concerning its compliance with the filing requirements. This statement was coupled with a conditional motion for waiver. See statement of United States Postal Service concerning compliance with filing requirements and conditional motion for waiver (statement). The Postal Service indicates that it has supplemented materials developed specifically to support its request by incorporating testimony and documentation submitted in the recently concluded omnibus rate case, docket no. R2001–1. Statement at 1. The Postal Service suggests that this approach is justified for several reasons, including, among others, congruent test years (FY 2003) and a substantial overlap between the information required by the general filing requirements and that already provided in docket no. R2001–1. Id. at 2–3. Further, the Postal Service asserts that its compliance should be assessed in light of the nature of Confirm® service and the minor extent that total cost-revenue relationships will be affected by its implementation. Id. at 3. The Postal Service, therefore, contends that it is in compliance with the Commission's filing requirements. Alternatively, however, the Postal Service requests a waiver of the filing requirements pursuant to 39 CFR 3001.22, 3001.54(r), and 3001.64(h)(3).

Request for Expedition

The Postal Service accompanied its filing with a precatory request for expedition. See United States Postal Service request for expedition. In support, the Postal Service states its belief that an early recommended decision will benefit mailers and facilitate an orderly transition to the proposed service and fees. The Postal Service emphasizes, however, that it is not advocating any schedule that would compromise any participants' opportunity to be heard consistent with due process requirements or that would otherwise limit the Commission's ability to develop a record on which to make its recommendations. Further, the Postal Service suggests that this proceeding warrants expeditious procedures, noting its optimism on the possibility that it may be settled. The Postal Service concludes with a request that "due consideration be given to taking measures that would expedite proceedings and lead to an early Recommended Decision." United States Postal Service request for expedition at 2.

Intervention

Each interested person wishing to be heard in this matter is directed to file a notice of intervention with Steven W. Williams, secretary of the Commission, 1333 H Street NW., suite 300, Washington, DC 20268–0001, on or before May 16, 2002. Each notice should specify whether the party seeks to participate on a full or limited basis. *See* 39 CFR 3001.20 and 3001.20a. Written discovery pursuant to rules 25–28 may be undertaken upon intervention.

Representation of Interests of the General Public

The Commission designates Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, to represent the interests of the general public in this proceeding, pursuant to 39 U.S.C. 3624(a). Ms. Dreifuss shall direct the activities of Commission personnel assigned to assist her and, at an appropriate time, provide the names of these employees for the record. Neither Ms. Dreifuss nor the assigned personnel shall participate in or advise as to any Commission decision in this proceeding, other than in their designated capacity. Participants shall serve the OCA separately with three copies of all filings in addition to, and at the same time, as they effect service on the Commission.

Prehearing Conference Date; Informal Settlement Discussion

The Commission will hold a prehearing conference on May 20, 2002, at 1:00 p.m. in the Commission's hearing room, 1333 H Street NW., suite 300, Washington, DC 20268–0001. In light of the Postal Service's statement concerning the prospects of settling this proceeding, the Commission will make its hearing room available at 9:30 a.m. on May 20, 2002 for the participants to engage in informal settlement discussions. If such discussions are scheduled, the Postal Service should provide notice to all participants. At the prehearing conference, the Postal Service shall present a status report concerning settlement discussions, if any.

Ordering Paragraphs

It is ordered:

1. Docket no. MC2002–1 is established to consider the Postal Service's request for a recommended decision on classification and fees for Confirm® service.

2. The Commission will sit en banc in this proceeding.

3. Notices of intervention are due no later than May 16, 2002.

4. A prehearing conference will be held May 20, 2002 at 1:00 p.m. in the Commission's hearing room.

5. Answers to the Postal Service's conditional motion for waiver are due May 23, 2002.

6. Shelley S. Dreifuss, acting director of the Commission's office of the consumer advocate, is designated to represent the interests of the general public.

7. The Secretary shall cause this notice and order to be published in the **Federal Register**.

Dated: April 29, 2002.

Steven W. Williams,

Secretary.

[FR Doc. 02–11107 Filed 5–3–02; 8:45 am]

BILLING CODE 7715–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45816; File No. SR–ISE–2002–11]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the International Securities Exchange LLC Relating to a Market Maker Inactivity Fee

April 24, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE proposes to adopt a $25,000 per month fee on Competitive Market Makers ("CMMs") if their membership is not actively trading. Below is the text of the proposed rule change. Additions are italicized.

* * * * *

ISE SCHEDULE OF FEES

Electronic Market Place	Amount	Billable unit	Frequency
. . . . .	.	.	.
Inactive PMM Fee	$100,000	Membership[3] ...	Monthly
Minimum PMM Fee	$50,000	Membership[4] ...	Monthly
Inactive CMM Fee	$25,000	Membership[5] ...	Monthly
. . . . .	.	.	.

[3] Effective January 1, 2001, if a group has not been open for trading, the PMM appointed to that group will be subject to an "inactive" fee of $100,000 per-month; provided that, for an entity that owns a PMM membership and that is not itself a registered broker-dealer, the fee will become effective on May 7, 2001.

[4] Effective January 1, 2001, PMMs are subject to a minimum fee of $50,000 per options group. To the extent that aggregate execution fees in a group do not total at least $50,000 per month, the PMM for that group must pay a fee representing the difference between $50,000 and the aggregate actual execution fees.

[5] *Effective July 1, 2002, CMMs are subject to an inactivity fee of $25,000 per CMM membership that is not actively trading. In applying this fee: (1) this fee shall not apply to any CMM membership in an options group for which the CMM also is leasing a PMM membership; and (2) if a CMM is approved with respect to more than one CMM membership that is not actively trading (any such inactive CMM membership in addition to one inactive membership referred to as "additional inactive memberships"), an Exchange official designated by the Board may grant the CMM an exemption from this fee for any or all additional inactive memberships if the CMM presents a business plan that an Exchange official designated by the Board determines will lead to active trading in such additional inactive membership(s) within a reasonable period of time.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to adopt a fee allowing the ISE to recoup a portion of the revenue it loses when a CMM owns or leases one or more memberships that are not open for trading. While the Exchange currently has a Primary Market Maker ("PMM") inactivity fee, there is no similar fee for CMMs. The Exchange proposes that the fee be effective on July 1, 2002, in order to give members a reasonable period of time to begin trading in inactive memberships.

The fee will not apply if a member holds an inactive CMM membership in a group of securities in which it also is operating the PMM membership pursuant to a lease. In that case, the member cannot operate both the PMM and CMM membership, and the member reasonably may want to retain control of the CMM membership so that it can operate the membership when its PMM lease expires. The proposal also will authorize the Exchange staff to grant exemptions if a member holds multiple inactive CMM memberships. In that situation, the Exchange can grant exemptions for all but one such membership as long as the member presents a business plan establishing that trading will begin in the inactive memberships over a reasonable time period.

The Exchange proposes a $25,000 fee based on conservative estimates of the revenues lost due to an inactive CMM membership. For the first quarter of 2002, an average CMM membership generated just over $25,000 in transaction-based fees. This does not include other fees that the Exchange loses, such as session/API fees. The Exchange will periodically reevaluate this fee to maintain the relationship between the amount of the fee and the lost revenue being recouped.

2. Statutory Basis

The basis for this proposed rule change is the requirement under section 6(b)(4) of the Act[6] that an exchange have an equitable allocation of reasonable dues, fees, and other charges among its members and other persons using its facilities.

[6] 15 U.S.C. 78f(b)(4).

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule

change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing also will be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–11 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11104 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45840; File No. SR–ISE–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the International Securities Exchange LLC Relating to Fee Changes

April 29, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 15, 2002, the International Securities Exchange LLC ("ISE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the ISE. On April 23, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On April 25, 2002, the Exchange filed Amendment No. 2 to the proposed rule change.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes three fee changes: (i) an extension of its waiver of customer transaction and comparison fees for an additional year and one month; (ii) an extension of its waiver of multiple "Click" trading terminal charges for an additional year; and (iii) the deletion of Torque trading application fees.

Below is the text of the proposed rule change. Proposed new language is *italicized;* proposed deletions are in [brackets].

* * * * *

ISE SCHEDULE OF FEES

Electronic market place	Amount	Billable unit	Frequency
Execution Fees			
• Customer	$0.05	contract/side	Transaction
(Fee waived through *June 30, 2003* [May 31, 2002])			
. . . .	.	. . .	.
Comparison Fee	0.03	contract/side	Transaction
(Fee waived for Customer Trades through *June 30, 2003* [May 31, 2002])			
. . . .	.	. . .	.
Trading Application Software			
. . . .	.	. . .	.
Software License & Maintenance			
• [Torque			
First	1,250.00	Terminal	Monthly
Second through Fourth	750.00	Terminal	Monthly
Fifth and More	250.00	Terminal	Monthly]
• Click/Trade Review Terminal**			
First through Fifth	500.00	Terminal.	
Sixth and More	250.00	Terminal.	
Session/API Fee			
• EAM/Trade Review Terminal* * *			
First Through Fifth	250.00	API	Monthly
Sixth and More	100.00	API	Monthly
. . . .	.	. . .	.

** All Click fees for a second and subsequent terminals are waived through *May 31, 2003* [May 31, 2002]. Thereafter, fees are waived for third and subsequent Click terminals ("incremental Click terminals") if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated April 22, 2002 ("Amendment No. 1"). In Amendment No. 1, the ISE amended its proposal to extend a waiver for the API Session fee as it relates to the Click through May 31, 2003.

[4] *See* letter from Michael J. Simmons, Senior Vice President and General Counsel, ISE, to Nancy Sanow, Assistant Director, Division, Commission, dated April 23, 2002 ("Amendment No. 2"). In Amendment No. 2, the ISE amended its proposal to include reasoning for the extended waiver for its API fee associated with Click terminals.

*** All API Session/API fees associated with a second and subsequent Click terminals are waived through *May 31, 2003* [May 31, 2002]. Thereafter, such fees are waived for third and subsequent Session/API associated with an incremental Click terminal for EAMs if the member executes, on average, at least 500 customer or firm proprietary contracts per day per incremental Click terminal on the Exchange for the month.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The ISE proposes to amend three aspects of the its current fee schedule. First, the ISE proposes to extend the waiver of customer transaction fees. While the ISE currently waives customer transaction and comparison fees, this waiver will expire on May 26, 2002. The ISE proposes to extend this waiver through June 30, 2003 for competitive reasons.

Second, the ISE proposes to extend the waiver of the Click terminal fee and the API fee associated with the use of Click terminals for an additional year. "Clicks" are ISE order-entry terminals, and the waiver applies to a member's second and subsequent Click terminals. By its terms, this waiver will expire on May 31, 2002. Because this fee waiver has worked well to encourage firms to install and use multiple Clicks, the ISE proposes to extend the program for an additional year.

Third, the ISE proposes to delete the "Torque" fees from our fee schedule. ISE market makers can use either the Torque application or any other application of their choice to support their trading. Recently, the ISE ceased to provide Torque directly to market makers. Instead, market makers using Torque currently contract directly with the supplier of that application, and pay all fees directly to that supplier. Thus, the ISE believes that Torque fees are no longer relevant and proposes to delete these fees from its fee schedule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act, [5] in general, and Section 6(b)(4) of the Act,[6] in particular, in that it provides for the equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change, as amended, has become effective as of the date of filing of Amendment No. 2, on April 25, 2002, pursuant to Section 19(b)(3)(A)[7] of the Act and subparagraph (f)(2) of Rule 19b-4 [8] thereunder because it establishes or changes a due, fee, or other charge imposed by the Exchange. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[9]

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(4).

[7] 15 U.S.C. 78s(b)(3)(A).

[8] 17 CFR 240.19b–4(f)(2).

[9] For purposes of calculating the 60-day period within which the Commission may summarily abrogate the proposed rule change under Section 19(b)(3)(C) of the Act, the Commission considers that period to commence on April 25, 2002, the date the ISE filed Amendment No. 2. *See* 15 U.S.C. 78s(b)(3)(C).

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change, as amended, that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR–ISE–2002–08 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11105 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45847; File No. SR–Phlx–2002–30]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to the Adoption of a Fee for Construction of Kiosks

April 30, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the

[10] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its schedule of dues, fees and charges to require specialists and specialist units (collectively referred to as "specialist units") to pay for the construction cost of a kiosk if the specialist unit initiates the construction request for the kiosk.[3] The text of the proposed rule change is available at the Phlx's Office of the Secretary and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to require specialist units to pay for the cost of constructing a kiosk, if requested by them, due to the considerable costs associated with construction. These requests for construction may not be consistent with the Exchange's floor development plans, thereby requiring an unbudgeted expenditure of capital by the Exchange. However, consistent with current Exchange billing policies, if the Exchange chooses to construct a kiosk, it will charge the specialist unit the fee for a trading post with kiosk. Therefore, for future kiosk construction requests initiated by a specialist unit, the Exchange will pass through the construction cost to the specialist unit.[4]

The Exchange intends to request one-half of the cost prior to construction, with the remainder charged after construction is completed.[5] Because the specialist unit would pay for the construction cost of the kiosk, the Exchange's current monthly fee of $375 for trading post with kiosk will not apply.[6] However, the Exchange's current monthly fee of $250 for a trading post will continue to apply.[7]

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[8] in general, and furthers the objectives of Section 6(b)(4) of the Act,[9] in particular, by providing for the equitable allocation of reasonable dues, fees and other charges among the Exchange's members because the members who request and pay for the construction of the kiosk will incur the benefit of using the kiosk.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or charge imposed by the Exchange and, therefore, has become effective upon filing pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and Rule 19b–4(f)(2) thereunder.[11] At any time within 60 days of the filing of Amendment No. 1 to the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–30 and should be submitted by May 28, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11106 Filed 5–3–02; 8:45 am]

BILLING CODE 8010–01–P

[3] A kiosk is an open, flat surface that contains computer terminals and allows the specialist units to face the trading crowd.

[4] The decision to construct a kiosk at a particular post is solely within the Exchange's discretion, even if the specialist unit pays for the construction cost for the kiosk.

[5] This fee is not eligible for the monthly credit of up to $1,000 to be applied against certain fees, dues and charges and other amounts owed to the Exchange by certain members. *See* Securities Exchange Act Release No. 44292 (May 11, 2001), 66 FR 27715 (May 18, 2001) (SR–Phlx–2001–49).

[6] *See* Securities Exchange Act Release No. 44744 (August 24, 2001), 66 FR 45884 (August 30, 2001) (SR–Phlx–2001–80).

[7] Generally, post space is space on the Exchange's trading floor for specialist units.

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(4).

[10] 15 U.S.C. 78(s)(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3404]

Commonwealth of Kentucky; Amendment #1

In accordance with information received from the Federal Emergency Management Agency, dated April 26, 2002, the above numbered declaration is hereby amended to include Floyd, Johnson, Knott, Magoffin, Martin and Pike Counties in the Commonwealth of Kentucky as disaster areas due to damages caused by severe storms and flooding occurring on March 17 through March 21, 2002..

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the previously designated location: Buchanan and Dickenson Counties in the Commonwealth of Virginia; and Mingo County in the State of West Virginia. All other counties contiguous to the above-named primary counties have been previously declared.

All other information remains the same, *i.e.*, the deadline for filing applications for physical damage is June 3, 2002, and for loans for economic injury the deadline is January 6, 2003.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: April 29, 2002.

Herbert L. Mitchell,

Associate Administrator for Disaster Assistance.

[FR Doc. 02–11119 Filed 5–3–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4005]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-day notice of information collection; Form DS–71, affidavit of identifying witness; OMB #1405–0088.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Affidavit of Identifying Witness.

Frequency: On occasion.

Form Number: DS–71.

Respondents: Individuals or households.

Estimated Number of Respondents: 120,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 10,000.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11160 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4006]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of information collection; Form DS–86, statement of non-receipt of passport (Formerly DSP–86); OMB #47–R0178.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 30 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Reinstatement, with change, of a previously approved collection for which approval has expired.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement of Non-Receipt of Passport.

Frequency: On occasion.

Form Number: DS–86 (Formerly DSP–86).

Respondents: Individuals or households.

Estimated Number of Respondents: 20,000.

Average Hours Per Response: 1/12 hr. (5 min).

Total Estimated Burden: 1,667 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11161 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

Bureau of Consular Affairs

[Public Notice 4007]

Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-Day notice of information collection; Form DS–19, passport amendment/validation application; OMB #1405–0007.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—Revision of a Currently Approved Collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Passport Amendment / Validation Application.

Frequency: On occasion.

Form Number: DS–19.

Respondents: Individuals or households.

Estimated Number of Respondents: 230,912.

Average Hours Per Response: ½ hr. (5 min).

Total Estimated Burden: 19,243 hours.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11162 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF STATE

[Public Notice 4008]

Bureau of Consular Affairs, Passport Services; Information Collection

AGENCY: Department of State.

ACTION: 60-day notice of information collection; Form DS–64, statement regarding lost or stolen passport; OMB #1405–0014.

SUMMARY: The Department of State has submitted the following information collection request to the Office of Management and Budget (OMB) for approval in accordance with the Paperwork Reduction Act of 1995. Comments should be submitted to OMB within 60 days of the publication of this notice.

The following summarizes the information collection proposal submitted to OMB:

Type of Request: Regular—extension of a currently approved collection.

Originating Office: Bureau of Consular Affairs, CA/PPT/FO/FC.

Title of Information Collection: Statement Regarding Lost or Stolen Passport.

Frequency: On occasion.

Form Number: DS–64.

Respondents: Individuals or households.

Estimated Number of Respondents: 75,000.

Average Hours Per Response: ½ hr. (5 min).

Total Estimated Burden: 6,250.

Public comments are being solicited to permit the agency to:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility.

• Evaluate the accuracy of the agency's estimate of the burden of the collection, including the validity of the methodology and assumptions used.

• Enhance the quality, utility, and clarity of the information to be collected.

• Minimize the reporting burden on those who are to respond, including through the use of automated collection techniques or other forms of technology.

FOR FURTHER INFORMATION CONTACT: Copies of the proposed information collection and supporting documents may be obtained from Margaret A. Dickson, CA/PPT/FO/FC, Department of State, 2401 E Street, NW., Room H904, Washington, DC 20522, and at 202–633–2460.

Dated: April 19, 2002.

Georgia A. Rogers,

Deputy Assistant Secretary, Bureau of Consular Affairs, Department of State.

[FR Doc. 02–11163 Filed 5–3–02; 8:45 am]

BILLING CODE 4710–06–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Countries That Deny Adequate Protection, or Market Access, for Intellectual Property Rights Under Section 182 of the Trade Act of 1974

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted its annual report on the identification of those foreign countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection, and those foreign countries determined to be priority foreign countries, to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, pursuant to section 182 of the Trade Act of 1974, as amended (the Trade Act) (19 U.S.C. 2242).

DATES: This report was submitted on April 30, 2002.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20508.

FOR FURTHER INFORMATION CONTACT: Kira Alvarez, Director for Intellectual Property, (202) 395–6864, or Stephen Kho, Assistant General Counsel, (202) 395–3581, or Victoria Espinel, Assistant General Counsel, (202) 395–7305.

SUPPLEMENTARY INFORMATION: Section 182 of the Trade Act requires USTR to identify within 30 days of the publication of the National Trade Estimates Report all trading partners that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to United States persons that rely upon intellectual property protection. Those countries that have the most onerous or egregious acts, policies, or practices that have the greatest adverse impact (actual or potential) on the relevant United States products must be identified as "priority foreign countries," unless they are entering into good faith negotiations or are making significant progress in bilateral or multilateral negotiations to provide adequate and effective protection for intellectual property rights. In identifying countries in this manner, the USTR is directed to take into account the history of intellectual property laws and practices of the foreign country, including any previous identifications as a priority foreign country, and the history of efforts of the United States, and the response of the foreign country, to achieve and effective protection and enforcement of intellectual property rights. In making these determinations, the USTR must consult with the Register of Copyrights, the Commissioner of Patents and Trademarks, other appropriate officials of the Federal Government and take into account information from other sources such as information submitted by interested persons.

On April 30, 2002, USTR identified 51 trading partners that deny adequate and effective protection of intellectual property or deny fair and equitable market access to United States artists and industries that rely upon intellectual property protection. USTR maintained Ukraine's designation as a Priority Foreign Country, and again designated Paraguay and China for "Section 306 monitoring" to ensure both countries comply with the commitmetns made to the United States under bilateral intellectual property agreements.

USTR also announced placement of 15 trading partners on the "Priority Watch List": Argentina, Brazil, Colombia, Dominican Republic, European Union, Egypt, Hungary, India, Indonesia, Israel, Lebanon, Philippines, Russia, Taiwan, and Uruguay. In addition, USTR placed 33 trading partners on the "Watch List." Moreover, out-of-cycle reviews will be conducted of Indonesia, Israel, the Philippines, the Bahamas, Costa Rica, Poland, and Thailand. While Mexico is not listed, USTR will also conduct an out-of-cycle review of it later in the year.

Kira M. Alvarez,

Director for Intellectual Property.

[FR Doc. 02–11151 Filed 5–3–02; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of the United States Trade Representative

AGENCY: Office of the United States Trade Representative.

ACTION: Notice; request for comments.

SUMMARY: The Office of the United States Trade Representative ("USTR") is seeking written comments from the public concerning the agency's draft Information Quality Guidelines. These Information Quality Guidelines describe USTR's pre-dissemination information quality control and the proposed administrative mechanism for requests for correction of information publicly disseminated by USTR.

DATES: USTR will accept comments received on or before June 5, 2002.

ADDRESSES: Submit comments to Richard Kristobek, Office of Computer Operations, Room F203, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC 20508. Comments will also be accepted via electronic mail at *USTRIQG@ustr.gov.*

FOR FURTHER INFORMATION CONTACT: Richard Kristobek, Acting Director, Office of Computer Operations, Office of the United States Trade Representative, 600 17th Street, NW, Washington, DC (202) 395–5140.

SUPPLEMENTARY INFORMATION: The USTR draft Information Quality Guidelines are posted on the USTR website, *www.ustr.gov.*

Richard F. Kristobek,

Acting Director, Office of Computer Operations.

[FR Doc. 02–11150 Filed 5–3–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34193]

Toledo, Peoria & Western Railway Corporation—Corporate Family Merger Transaction Exemption

Toledo, Peoria & Western Railroad Corporation (TPWRR), Marksman Corp. (Marksman), Toledo, Peoria & Western Railway Corporation (TPWRY), and Florida Rail Lines, Inc. (Florida Rail), have jointly filed a verified notice of exemption under the Board's class exemption procedure at 49 CFR 1180.2(d)(3).[1] The exempt transaction is a corporate reorganization which involves the merger of TPWRR, TPWRY, and Florida Rail into Marksman. After the merger, Marksman, the surviving corporation, will change its name to Toledo, Peoria & Western Railway Corporation.

The transaction was scheduled to be consummated on or shortly after April 15, 2002, the effective date of the exemption.

The transaction is intended to simplify the corporate structure and reduce overhead costs and duplication by eliminating three corporations while retaining the same assets to serve customers.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The parties state that the transaction will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

Under 49 U.S.C. 10502(g), the Board may not use its exemption authority to relieve a rail carrier of its statutory obligation to protect the interests of its employees. Section 11326(c), however, does not provide for labor protection for transactions under sections 11324 and 11325 that involve only Class III rail carriers. Because this transaction involves Class III rail carriers only, the Board, under the statute, may not impose labor protective conditions for this transaction.

If the notice contains false or misleading information, the exemption is void *ab initio.* Petitions to reopen the proceeding to revoke the exemption under 49 U.S.C. 10502(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

An original and 10 copies of all pleadings, referring to STB Finance Docket No. 34193, must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW, Washington, DC 20423–0001. In addition, a copy of each pleading must be served on Louis E. Gitomer, Ball Janik LLP, Suite 225, 1455 F Street, NW, Washington, DC 20005.

Board decisions and notices are available on our website at *"WWW.STB.DOT.GOV."*

Decided: April 25, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–10755 Filed 5–3–02; 8:45 am]

BILLING CODE 4915–00–P

[1] Florida Rail, a noncarrier, directly controls TPWRR, which in turn directly controls Marksman, and Marksman directly controls TPWRY. Florida Rail is directly controlled by RailAmerica Transportation Corp., which is directly controlled by Palm Beach Rail Holding, Inc., a wholly owned subsidiary of RailAmerica, Inc.

DEPARTMENT OF THE TREASURY

Customs Service

Proposed Collection; Comment Request; Vessel Entrance or Clearance Statement Form

ACTION: Notice and request for comments.

SUMMARY: Customs published a document in the **Federal Register** on April 19, 2002, entitled "Proposed Collection; Comment Request; Master's Oath on Entry of Vessel in Foreign Trade", inviting comment on an information collection requirement. The document contained many errors, including that the particular information collection on which comments were being sought, the Customs Form (CF) 1300, is no longer called the "Master's Oath on Entry of Vessel in Foreign Trade". The CF 1300 is now called the "Vessel Entrance or Clearance Statement". Accordingly, the document published on April 19, 2002, is withdrawn. This document, in which

Customs invites the general public and other Federal agencies to comment on the information collection entitled "Vessel Entrance or Clearance Statement" replaces the April 19 document. This request for comment is being made pursuant to the Paperwork Reduction Act of 1995 (Public Law 104–13; 44 U.S.C. 3502(c)(2)).

DATES: Written comments should be received on or before July 5, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to U.S. Customs Service, Information Services Group, Attn.: Tracey Denning, 1300 Pennsylvania Avenue, NW, Room 3.2C, Washington, DC 20229.

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to U.S. Customs Service, Attn.: Tracey Denning, 1300 Pennsylvania Avenue NW, Room 3.2C, Washington, DC 20229, Tel. (202) 927–1429.

SUPPLEMENTARY INFORMATION:

Background

On April 19, 2002, Customs published a document in the **Federal Register** (67 FR 19477) inviting the public to comment on an information collection entitled the "Master's Oath on Entry of Vessel in Foreign Trade". The document contained many errors, including that the particular information collection on which comments were being sought, the Customs Form (CF) 1300, is no longer called the "Master's Oath on Entry of Vessel in Foreign Trade". The CF 1300 is now called "the Vessel Entrance or Clearance Statement". This document replaces the April 19, 2002 document.

Request for Comments

Customs invites the general public and other Federal agencies to comment on proposed and/or continuing information collections pursuant to the Paperwork Reduction Act of 1995 (Pub. L. 104–13; 44 U.S.C. 3505(c)(2)). The comments should address: (1) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimates of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden including the use of automated collection techniques or the use of other forms of information technology; and (e) estimates of capital or start-up costs and costs of operations, maintenance, and purchase of services to provide information. The comments that are submitted will be summarized and included in the Customs request for Office of Management and Budget (OMB) approval. All comments will become a matter of public record. In this document Customs is soliciting comments concerning the following information collection:

Title: Vessel Entrance or Clearance Statement Form.

OMB Number: 1515–0060.

Form Number: Customs Form 1300.

Abstract: This form is used by a master of a vessel to attest to the truthfulness of all other forms associated with the manifest.

Current Actions: There are no changes to the information collection. This submission is being submitted to extend the expiration date.

Type of Review: Extension (without change).

Affected Public: Businesses, individuals, institutions.

Estimated Number of Respondents: 12,000.

Estimated Time Per Respondent: 5 minutes.

Estimated Total Annual Burden Hours: 21,991.

Estimated Total Annualized Cost on the Public: $314,470.

Dated: April 29, 2002.

Tracey Denning,

Information Services Group.

[FR Doc. 02–11078 Filed 5–3–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–21]

Duty-Free Treatment of Articles Imported in Connection With the 2002 World Basketball Championship for Men

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of designation of international athletic event for purposes of preferential tariff provision.

SUMMARY: This notice advises the public of the designation of the 2002 World Basketball Championship for Men to be held in Indianapolis, Indiana, August 29, 2002, through September 8, 2002, as a qualifying international athletic event under subheading 9817.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: T. James Min II, Office of Regulations & Rulings (202–927–1203).

SUPPLEMENTARY INFORMATION:

Background

Section 1456 of the Tariff Suspension and Trade Act of 2000 (the "Act") (Pub. L. 106–476, 114 Stat. 2101) promulgated the duty-free treatment provided under subheading 9817.60.00, HTSUS, for certain articles brought into the United States for certain international athletic events. Subheading 9817.60.00, HTSUS, which implements section 1456(a) of the Act, states:

> Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow.

Section 1456(b) of the Act, as implemented in Note 6 of Subchapter XII, HTSUS, provides that "[a]ny article exempt from duty under heading 9817.60.00 shall be free of taxes and fees that may otherwise be applicable, but shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service."

The 2002 World Basketball Championship for Men will be held in Indianapolis, Indiana, from August 29, 2002, through September 8, 2002. This event is sponsored by the *Fédération Internationale de Basketball* (FIBA), which is basketball's international governing body. USA Basketball and the Indianapolis Sports Corporation also will sponsor the event, which features 16 national men's teams from five continents. These teams will be from the United States, Angola, Algeria, Argentina, Brazil, Canada, Puerto Rico, Venezuela, China, Lebanon, Yugoslavia, Turkey, Spain, Germany, Russia, and New Zealand. A total of 62 games will be played over the 11-day event.

The Managing Director of the 2002 World Basketball Championship for Men has requested that the event be designated as a qualifying international athletic event for purposes of subheading 9817.60.00, HTSUS.

Determination

Section 1456 of the Tariff Suspension and Trade Act of 2000 provides that the Secretary of the Treasury may determine that international athletic events not explicitly mentioned in the statute qualify as similar to those mentioned for purposes of the duty-free treatment provided for in subheading 9817.60.00, HTSUS.

Noting that the 2002 World Basketball Championship for Men is organized by FIBA, the international governing body for basketball, and that the event includes finalists from over five continents, it is therefore determined that the event qualifies as a "similar international athletic event" in accordance with section 1456 of the Tariff Suspension and Trade Act of 2000. Therefore, articles meeting the conditions and requirements set forth in subheading 9817.60.00, HTSUS, imported in connection with the 2002 World Basketball Championship for Men, will be entitled to duty-free treatment.

Robert C. Bonner,

Commissioner of Customs.

Approved: April 30, 2002.

Timothy E. Skud,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–11131 Filed 5–3–02; 8:45 am]

BILLING CODE 4820–02–P

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Corrections

Federal Register
Vol. 67, No. 87
Monday, May 6, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Public Comments

Correction

In notice document 02–5355 beginning on page 23654 in the issue of Friday, May 3, 2002, make the following correction:

On page 30305, third column, second line from the bottom, the file date "5-3-02" should read "5-2-02".

[FR Doc. C2–5355 Filed 5–3–02; 8:45 am]

BILLING CODE 1505–01–D



Federal Register

Monday,
May 6, 2002

Part II

Environmental Protection Agency

40 CFR Part 51

Proposed Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[FRL–7205–4]

RIN 2060–AJ50

Proposed Revisions to Regional Haze Rule To Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes Within That Geographic Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The purpose of this proposal is to request comment on revisions to the EPA's regional haze rule to incorporate certain provisions for Western States and eligible Indian Tribes.

The Western Regional Air Partnership (WRAP) submitted an Annex to the 1996 report of the Grand Canyon Visibility Transport Commission (GCVTC) to EPA on September 29, 2000. This submittal was required under the regional haze rule in order for nine Western States (and Indian Tribes within the same geographic region) to have the option of submitting plans implementing the GCVTC recommendations. The Annex contains recommendations for implementing the regional haze rule in the West, including a set of recommended regional emissions milestones for 2003–2018 sulfur dioxide (SO_2), a key precursor to the formation of fine particles and regional haze.

In this proposal, EPA proposes to approve the provisions of the Annex submitted by the WRAP as meeting the requirements of the regional haze rule and applicable requirements under the Clean Air Act (CAA). In this proposal, we include specific proposed changes to the regional haze rule to incorporate recommendations from the Annex.

DATES: *Comments:* We are requesting written comments by July 5, 2002.

Public Hearings: The public hearing will be held on June 4, 2002 at 2 p.m.

ADDRESSES: *Comments:* You should submit comments on today's proposal and the materials referenced herein (in duplicate if possible) to the Air and Radiation Docket and Information Center (6102), Attention: Docket No. A–2000–51, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. You may also submit comments to EPA by electronic mail at the following address: A-and-R-Docket@epamail.epa.gov. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. All comments and data in electronic form must be identified by the docket number [A–2000–51]. Electronic comments on this proposed rule also may be filed online at many Federal Depository Libraries.

Public Hearings: The public hearing will be held in rooms 1709 and 1710, Arizona Department of Environmental Quality, 3033 North Central, Phoenix, Arizona, located on the South Mall.

If you wish to attend the public hearing or wish to present oral testimony, please send notification no later than one week prior to the date of the public hearing to Ms. Marty Robin, Air Division (AIR–1), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105, telephone (415) 947–4143, email robin.marty@epa.gov.

Written statements (duplicate copies preferred) should be submitted to docket number A–2000–51 at the address listed above for submitting comments. The hearing schedule, including lists of speakers, will be posted on EPA's webpage at *http://www.epa.gov/air/visibility/whatsnew.html.*

A verbatim transcript of the hearings and written statements will be made available for copying during normal working hours at the Air and Radiation Docket and Information Center at the address listed above.

Docket: Information related to this proposal is available for inspection at the Air and Radiation Docket and Information Center, docket number A–2000–51. The docket is located at the U.S. EPA, 401 M Street, SW., Room M–1500, Washington, DC 20460, telephone (202) 260–7548. The docket is available for public inspection and copying between 8 a.m. and 5:30 p.m., Monday through Friday, excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Tim Smith (telephone 919–541–4718) , Mail Code C504–02 , EPA, Air Quality Strategies and Standards Division, Research Triangle Park, North Carolina, 27711, or Steve Frey (telephone 415–972–3990), EPA Region 9 (AIR–5), 75 Hawthorne Street, San Francisco, CA 94105. Internet addresses: *smith.tim@epa.gov* and *frey.steve@epa.gov.*

SUPPLEMENTARY INFORMATION: We are providing the public with the opportunity to comment on EPA's incorporation of SO_2 milestones and a backstop emissions trading program for nine Western states and eligible Indian Tribes within that geographic area.

Oral testimony at the public hearing will be limited to 5 minutes each. The hearing will be strictly limited to the subject matter of the proposal, the scope of which is discussed below. Any member of the public may file a written statement by the close of the comment period.

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- H. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments
- I. National Technology Transfer and Advancement Act
- J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

I. Overview of the Proposed Stationary Source SO_2 Reduction Program

The purpose of this rulemaking is to propose revisions to 40 CFR 51.309 of the regional haze rule to incorporate additional provisions to address visibility impairment in the 16 Class I areas on the Colorado Plateau.

A. What Is the Regional Haze Rule?

The CAA, in section 169A establishes a national goal for protecting visibility in 156 scenic areas. These 156 "Class I" areas are federally protected areas and include national parks and wilderness areas. The national visibility goal is to remedy existing impairment and prevent future impairment in these Class I areas, consistent with the requirements of sections 169A and 169B of the CAA.

Regional haze is a type of visibility impairment caused by air pollutant emissions from a broad region. The EPA uses the term regional haze to distinguish these types of visibility problems for those which are more local in nature. In 1999, EPA issued a regional haze rule requiring States to develop implementation plans designed to make "reasonable progress" toward the national visibility goal. The first State plans for regional haze are due between 2003 and 2008, (64 FR 35714, July 1, 1999). The regional haze rule provisions appear at 40 CFR 51.308 and 40 CFR 51.309.

B. What Are the Special Provisions for Western States and Eligible Indian Tribes in 40 CFR 51.309 of the Regional Haze Rule?

The regional haze rule at 40 CFR 51.308 sets forth the requirements for State implementation plans (SIPs) under the regional haze program. The rule requires State plans to include visibility progress goals for each Class I area, as well as emissions reductions strategies and other measures needed to meet these goals. The rule also provides an optional approach, described in 40 CFR 51.309, that may be followed by the nine Western States (Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Utah, and Wyoming) that comprise the transport region analyzed by the GCVTC during the 1990's. This optional approach is also available to eligible Indian Tribes within this geographic region. The regulatory provisions at 40 CFR 51.309 are based on the final report issued by the GCVTC in 1996,[1] which included a number of recommended emissions reductions strategies designed to improve visibility at the 16 Class I areas on the Colorado Plateau.

In developing the regional haze rule, EPA received a number of comments on the proposed rule encouraging the Agency to recognize explicitly the work of the GCVTC. In addition, in June 1998, Governor Leavitt of Utah provided comments to EPA on behalf of the Western Governors Association (WGA), further emphasizing the commitment of Western States to implementing the GCVTC recommendations. The WGA comments also suggested the translation of the GCVTC recommendations into a separate section of the rule. The EPA issued a Notice of Availability during the fall of 1998 requesting further comment on the WGA proposal and a draft translation into regulatory language. Based on the comments received on this **Federal Register** notice, EPA developed the provisions set forth in 40 CFR 51.309 that allow the nine Transport Region States and eligible Tribes within that geographic area to implement many of the GCVTC recommendations within the framework of the national regional haze rule.

The provisions in 40 CFR 51.309 comprise a comprehensive long-term strategy for addressing sources that contribute to visibility impairment within this geographic region. The strategy addresses the time period between the year 2003,[2] when the implementation plans are due, and the year 2018. The provisions address emissions from stationary sources, mobile sources, and area sources such as emissions from fires and windblown dust.

One element of the GCVTC's strategy to address regional haze is a program to reduce stationary source emissions of SO_2. This program calls for setting a series of declining caps on emissions of SO_2. These declining caps on emissions are referred to as emissions milestones and provide for a reduction in SO_2 emissions over time. In designing this program, the GCVTC intended for these milestones to be reduced through voluntary measures, but also included provisions for an enforceable market-based program that would serve as a "backstop" if voluntary measures did not succeed. At the time the regional haze rule was published, however, it was broadly recognized that the specific emission milestones, and the details of how both the voluntary and enforceable phases of the program would be implemented, were necessary elements of a regulatory program. Accordingly, the regional haze rule, in 40 CFR 51.309(f), required the development of an "Annex" to the report of the GCVTC that would fill in these details. The regional haze rule provided that the option afforded by 40 CFR 51.309 would only be available if an Annex addressing the specific requirements of 40 CFR 51.309(f) was submitted to EPA by October 1, 2000. The EPA required the submission of an Annex by this date to ensure that EPA would be able to act on it before the December 31, 2003 deadline for SIPs under 40 CFR 51.309(c).

C. What Was Required To Be Included in the Annex to the GCVTC Report?

The regional haze rule required the GCVTC (or a regional planning body formed to implement the Commission recommendations, i.e., the WRAP) to provide recommendations to fill in the details for two main aspects of the program:

—Emissions reductions milestones for stationary source SO_2 emissions for the years 2003, 2008, 2013, and 2018. The milestones must provide for "steady and continuing emissions reductions" for the 2003–2018 time period. In addition, the milestones must ensure greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to section 51.308(e)(2).

—Documentation for implementing a market trading program in the event that voluntary measures are not sufficient to meet the required milestones. This documentation must include model rules, memoranda of understanding, and other documentation describing in detail how emissions reductions progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

The EPA received the Annex from the WRAP in a timely manner, on September 29, 2000. The EPA recognizes the significant amount of work that was devoted to developing the Annex and we commend the WRAP participants for their efforts. Under 40 CFR 51.309(f)(3), if EPA finds that the Annex meets the requirements of the regional haze rule, EPA committed to revise the regional haze rule based on

[1] Recommendations for Improving Western Vistas. Grand Canyon Visibility Transport Commission, June 10, 1996.

[2] As explained in unit III of this preamble, Indian Tribes are given the flexibility under EPA regulations to submit implementation plans and opt into the program after the 2003 deadline.

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the Annex to incorporate provisions requiring compliance with the milestones and backstop trading program. Along with the existing elements of 40 CFR 51.309, these new provisions would also be addressed in the 2003 SIPs by the Transport Region States. This proposed rule is the first step in revising section 51.309 based on the Annex.

D. What Topics Are Covered in This Preamble?

The preamble addresses the following topics:

- The proposed regional SO_2 milestones and WRAP's determination that the milestones meet the criteria for approval in the regional haze rule. The EPA has reviewed the WRAP's methodology for developing specific milestones for SO_2 for the years between 2003 and 2018. The EPA proposes to approve the milestones as satisfying the broad requirements of the regional haze rule. The EPA believes that the milestones provide for "steady and continuing emissions reductions." The EPA also believes that the milestones provide for "greater reasonable progress" than the BART emission limits that would otherwise be required by the regional haze rule.
- Ways in which the milestones may be adjusted in the future. The preamble discusses the limited circumstances under which the milestones may be adjusted in the future and the proposed administrative process for making those changes.
- The stationary sources of SO_2 that are included in the program. This unit of the preamble discusses the stationary sources of SO_2 that would be required to participate in the program, and whose cumulative emissions would be compared to the milestones.
- The annual process for determining whether a milestone is exceeded, thereby triggering the trading program. This section describes the steps to be followed in evaluating emissions data at the State, tribal and regional levels. It also describes a mechanism by which States and Tribes can activate the trading program in 2013 if evidence indicates that the 2018 milestone will not be reached without such action.
- Key trading program elements that are required in SIPs and Tribal implementation plans (TIPs). This unit of the preamble covers issuance of and compliance with allowances, emissions quantification protocols and tracking system, the annual reconciliation process, and penalty provisions.
- Status of the program after 2018. This unit of the preamble discusses what happens to the milestones and backstop trading program at the completion of the first implementation period, in 2018.

Unit II of the preamble describes each of these programmatic areas in detail, including EPA's review of the relevant portion of the WRAP submittal. Unit III discusses issues related to implementation of this program in Indian country. Unit IV documents that this proposal complies with the administrative requirements of various Executive Orders and statutes.

E. What Is the Next Step If the Regional Haze Rule Is Revised?

If this proposal is finalized, it will modify the requirements in 40 CFR 51.309 of the regional haze rule. As a result, 40 CFR 51.309 will then provide the complete regulatory framework to be used by Western States and Tribes in developing regional haze implementation plans. The EPA will continue to work closely with the States and Tribes to support their efforts to develop plans that meet the applicable requirements of the regional haze rule. Once State and tribal plans that meet the applicable requirements of the regional haze rule are reviewed and approved by EPA, they will be federally enforceable.

The requirements in 40 CFR 51.309, if revised, will be the product of a substantial effort by many States, Tribes, Federal agencies, and other interested parties, extending over a number of years from the work of the GCVTC to that of the WRAP. The EPA recognizes, however, that the States and Tribes do have the option of implementing the regional haze rule under 40 CFR 51.308 rather than 40 CFR 51.309. Because the objective of 40 CFR 51.309 is to provide a regional approach to protecting air quality at the 16 Class I areas on the Colorado Plateau, EPA believes that there must be a "critical mass" of States participating for 40 CFR 51.309 SIPs to be approvable.

II. Proposed Program Details

Today's proposal closely follows the provisions of the Annex submitted by the WRAP on September 29, 2000, and the supplement to the Annex submitted on June 1, 2001. [3] [4] The EPA proposes to incorporate those provisions into 40 CFR 51.309 of the regional haze rule by adding a new paragraph (h), by adding language to refer to this new paragraph, and by adding a few new definitions.

In this section of the preamble, we discuss the details of the proposed regional emission tracking and backstop trading program for stationary source SO_2 emissions. For each provision of the program, we provide:

—An overview of the provision,
—The requirements that apply to the provision in 40 CFR 51.309(f)(1) of the regional haze rule,
—The section of the Annex and/or supporting documents where the WRAP discusses the provision and its rationale,
—A discussion of EPA's proposed finding that the provision meets the requirements of the CAA and the regional haze rule, and
—A description of how EPA proposes to incorporate the provision into the regional haze rule.

A. What Are the Proposed Regional SO_2 Emission Milestones? [5]

A key provision of the WRAP's SO_2 reduction program is a set of SO_2 emissions milestones. The Annex includes a set of milestones, which represent targets for the total annual amounts of SO_2 emissions that may be emitted from stationary sources of SO_2 within the nine-State region. The program is designed to ensure that these milestones will be met. The EPA agrees with the WRAP's conclusion that these milestones meet the requirements of the CAA and the regional haze rule, and EPA proposes to amend the regional haze rule to incorporate the milestones into the rule. The rationale for EPA's position is set forth in this unit of the preamble.

1. Background. Requirement in the Regional Haze Rule that the Milestones Must Provide for "Greater Reasonable Progress" than BART and for "Steady and Continuing" Progress.

The regional haze rule, in 40 CFR 51.309(f)(1)(i), requires the Annex to contain milestones for the years 2003, 2008, 2013, and 2018. Moreover,

[3] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report.* Submitted to EPA by the Western Regional Air Partnership, June 1, 2001.

[4] The WRAP submitted a satisfactory Annex, which included all of the elements listed in 40 CFR 51.309(f)(1) (i) and (ii). This enabled EPA to begin work immediately on assessing the substance of the WRAP's strategy for addressing visibility impairment in the 16 Class I areas covered by 40 CFR 51.309(f). The October 1, 2000 deadline was accordingly met. The supplemental information submitted by the WRAP after the October 1, 2000 deadline has served to improve the clarity of today's proposal and will improve the implementation of the program.

[5] In 40 CFR 51.309 of the regional haze rule issued on July 1, 1999, we defined the term "milestone" as a reduction in emissions relative to a 1990 actual emissions baseline. In discussions of the WRAP, and in the Annex itself, the term almost has most often been used to mean an emissions cap for the region that reflects a reduction in emissions. To avoid any confusion, EPA is proposing to revise the definition of "milestone" to more closely conform to the way it is used in the Annex.

paragraph 40 CFR 51.309(f)(1)(i) requires that the milestones "must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2)."

In order to understand the implications of these requirements for "greater reasonable progress * * * than * * * BART," it is important to understand the basic provisions for BART in the CAA and in the regional haze rule. The CAA, in section 169A(b)(2) requires that SIPs for visibility protection must apply BART to certain large-emitting sources. More specifically, BART is required for sources that: [6]

(1) Are in one of 26 specific listed source categories;

(2) Were in existence as of August 1977 but were not in operation in August of 1962;

(3) Have the potential to emit 250 tons per year; and

(4) Emit an air pollutant that "may reasonably be anticipated to cause or contribute to any impairment of visibility" in any of 156 protected scenic areas.

When EPA published its regulations for regional haze SIPs in 1999, we included a requirement for BART. In their regional haze SIPs, States must identify sources subject to the BART requirement, and for these sources there are two options. The first option, set forth in 40 CFR 51.308(e)(1), is to establish case-by-case BART emissions limits for each source subject to BART. The second option, set forth in 40 CFR 51.308(e)(2), is to develop an alternative program, such as an emission trading program, that provides for "greater reasonable progress" in visibility improvement than would be achieved through the case-by-case imposition of BART. The BART requirements of the regional haze rule are described in detail in the preamble to the regional haze rule, (64 FR 35737, July 1, 1999). Additionally, the EPA has proposed guidelines for implementing the BART requirement, (66 FR 38108, July 20, 2001).

Paragraph 40 CFR 51.309(f)(1)(i) requires that the milestones:

> Must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018.

The requirement for "steady and continuing" emissions reductions originated in a recommendation of the 1996 report of the GCVTC (*Recommendations for Improving Western Vistas. Report of the Grand Canyon Visibility Transport Commission to the United States EPA,* p. 34).

The Annex includes the WRAP's recommended milestones. The milestones are listed Table 1 in section III (page 55) of the Annex, and are also listed and discussed further in section II (pages 9–15) of the Annex and in Attachment C of the Annex. The WRAP has concluded that the milestones meet the requirements of the regional haze rule discussed above. The EPA agrees with the WRAP's conclusions and is proposing to amend the regional haze rule to incorporate these milestones into the rule. The following discussion sets forth the technical analysis and rationale for (1) EPA's proposed conclusion that the year 2018 milestone provides for "greater reasonable progress than BART," and (2) EPA's conclusion that the milestones provide for "steady and continuing progress."

2. Milestone for the Year 2018. Rationale for EPA's Proposal that the Year 2018 Milestone Represents "Greater Reasonable Progress" than BART.

Attachment C to the Annex discusses (1) the WRAP's process for developing a regional emissions milestone for SO_2 for the year 2018, and (2) the WRAP's determination that the regional milestone will provide for greater reasonable progress than would be achieved by BART. Considerable discussions, technical analyses, and negotiations were held within the WRAP to develop the year 2018 milestone. [7]

To identify the year 2018 milestone, the WRAP:

—Estimated the baseline SO_2 emissions for the year 2018, (e.g., the predicted SO_2 emissions in the year 2018 in the absence of a program to reduce SO_2 emissions);
—Developed a list of BART-eligible sources in the region;
—Estimated the emissions reductions that BART sources could achieve, and
—Selected a year 2018 milestone that reduces the baseline emissions by an amount that would achieve greater reasonable progress in improving visibility than by requiring each BART-eligible source to install BART. The EPA agrees with the WRAP that these are appropriate steps for demonstrating that the year 2018 milestone is consistent with the regional haze rule requirement for achieving greater reasonable progress than BART if source-specific BART is not applied.

Baseline emissions. The WRAP conducted a technical analysis to calculate a best estimate of the projected actual SO_2 emissions baseline for the year 2018. Based upon a review of the documentation of this analysis, and based upon EPA's participation in the WRAP's technical forums and committees, the EPA believes that the data used and assumptions made by the WRAP for projecting the baseline are reasonable. The EPA invites comment on these baseline emission estimates, including whether there are any elements of the calculations for which alternative assumptions would be more technically appropriate. The point source SO_2 emission inventory for the nine-State region can be subdivided into four broad classes: (1) Electric utility boilers, (2) cogeneration facilities, (3) copper smelters, and (4) other sources. Electric utility boilers are by far the largest emitting category, comprising about two-thirds of the overall SO_2 inventory. Copper smelters are the next largest source of SO_2 emissions. A host of smaller sources contribute to the "other source" category, including industrial boilers, petroleum refineries, cement kilns, paper mills, and natural gas production plants.

For each of these broad classes, estimation of any future year's emissions involves the estimation of actual emissions for a year in the recent past, and then making assumptions on how those emissions will change in the future. We provide an overview here of how the WRAP developed the year 2018 baseline by taking emissions estimates for the most recently available year (generally 1998 or 1999) and by making assumptions on how those emissions would change by the year 2018. Further details are available in the technical support information provided by the WRAP. [8]

[6] In the regional haze rule, EPA uses the term "BART-eligible source" to refer to sources meeting criteria (1) to (3), and uses the term "sources subject to BART" to refer to sources meeting all four criteria.

[7] You will find complete information on discussions related to this milestone at the WRAP's website (*http://www.wrapair.org.* These discussions generally took place within the WRAP's Market Trading Forum.

[8] *Technical Support Documentation. Voluntary Emission Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program.* WRAP, October 16, 2000.

The WRAP estimated utility emissions for the year 2018 using, as a starting point, 1999 emissions data that the utilities submitted to EPA to comply with the requirements of the national acid rain program. In order to estimate how these current emissions would change for the year 2018, the WRAP took into account several considerations. The resulting utility emissions forecast for the year 2018, taking into account all of these considerations, is 415,000 tons.

First, the WRAP took into account for utilities the expected future operations at coal-fired power plants. The WRAP assumed that boilers would be shut down by the year 2018 if they had been in operation more than 60 years by that date (that is, sources which began operation in the year 1957 or before). For the remaining boilers, the WRAP assumed they would continue to operate and would increase their utilization of capacity from current rates (typically less than 80 percent of name plate capacity) to an 85 percent utilization rate. In developing the emission forecasts, the WRAP took into account future demand growth. The WRAP assumed there would be an increase of 1.4 percent per year in net generation in the GCVTC region. As noted above, the WRAP assumed that existing sources would continue to be used until they reached 85 percent of capacity. When existing available generation is exhausted, new sources are assumed to emit on average 0.02 pounds per million BTU. The 0.02 pounds per million BTU figure assumes that well-controlled coal-fired boilers would comprise 20 percent of the new generation capacity, with the remainder of generation using gas-firing (either natural gas or from coal gasification). Documentation of the WRAP's assumptions for power generation is found in section 2.C of the document entitled *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program*. Submitted by the WRAP to the U.S. EPA, October 16, 2000.

Second, the WRAP considered the expected reductions in SO_2 emissions from the Mohave Generating Station in Nevada and from a number of plants on the Colorado Front Range. For the Mohave Generating Station, the plant's owners and a number of environmental organizations entered into a consent decree on December 21, 1999. A proposed revision to the Federal Implementation Plan (FIP) for Nevada, reflecting the terms of the consent decree, was published in the **Federal Register** on February 8, 2002, (67 FR 6130). For the Colorado Front Range plants, reductions are expected from a voluntary agreement between Public Service Company of Colorado and the Colorado Air Pollution Control Division.[9]

Third, the WRAP applied a 10,000 ton downward adjustment to account for the expected effects of a recent revision to the procedure for measuring the stack flow rate, which is an integral part of the measurement of SO_2 emissions using a continuous emission monitor (CEM). The procedure in place before the revision, which was used in the calculation of the 1999 baseline emissions, could overestimate the flow rate for certain types of stacks, and thus lead to an overestimate of the measured emissions. This same overestimate would also be present in estimates of future year emissions for the 2003 to 2018 time period, which used the 1999 emissions as a starting point. Accordingly, the new procedure, if used, would lead to a decrease in the measured and forecasted emissions even if the emitting characteristics of the boiler (fuel used and sulfur content) did not change. Such a "paper" decrease would not represent real emissions reductions. The WRAP estimated that for the year 2018, there will be 10,000 tons of emission decreases that will be solely due to expected changes in the flow rate measurement method for the boiler population. Thus, 10,000 tons were subtracted from the year 2018 milestone.

Finally, the WRAP included an upward adjustment to account for continued operation of three of the Colorado Front Range boilers that would be operating more than 60 years in the year 2018. Even though the general methods used to forecast emissions assumed that these boilers would shut down after 60 years, the WRAP believed that planned capital investments would likely extend the operations of these three boilers for a longer time period. The WRAP's estimated emissions increase, to account for these three boilers, is 4,000 tons.

[9] "Voluntary Emissions Reduction Agreement between the Colorado Air Pollution Control Division and Public Service Company of Colorado," submitted for approval to the Air Quality Control Commission, July 16, 1998.

For cogeneration facilities, the WRAP assumed that year 1999 emissions of 8,000 tons would remain constant through the year 2018, with no growth or retirement of these plants.

For copper smelters, the WRAP used emissions data for 1998 [10] provided by the State air quality agencies as the starting point for projecting SO_2 emissions for 2018. Since 1998, two smelters have temporarily suspended operations. It is difficult to predict the national and international market conditions that would influence whether these smelters will resume operation. Accordingly, the WRAP decided to include two separate emissions forecasts for the year 2018 for smelters. The first forecast assumes that the two suspended smelters will be permanently shut down by the year 2018, and emissions from the remaining smelters would be 48,000 tons. The second forecast operations at the two currently suspended smelters will have resumed, which results in an overall smelter emissions total of 78,000 tons.

For the broad "other source" category, the WRAP used recent inventory data as the starting point for future projections. To forecast emissions to the year 2018, the WRAP used general growth and retirement rates that are included in the Integrated Assessment System (IAS) used by the GCVTC. The growth and retirement rates in the IAS are annual percentages that are applied to the base year inventory total.[11] The inventory amount is reduced according to the retirement rates, and increased according to the growth rates. The WRAP funded a technical review of the emissions for the "other source" category, which was completed in July 2000. This report, *Historical and Future SO_2 Emissions Analysis. 9 State Western Region Draft Report*, is included as section 2.A of the WRAP's technical support documentation. For these sources, emissions were predicted to decline from the 1998 total of about 162,000 tons to 141,000 tons in the year 2018.

[10] For all other sources besides utility boilers, the year 1998 was the most recent year of data available to the WRAP at the time the Annex was developed.

[11] For non-utility sources, the WRAP's IAS took demand growth into account through an economic model called the Regional Economics Model, Inc (REMI) model. The REMI model predicts changes in economic indicators for source categories and regions within the overall geographic area studied. The REMI model was used to determine the degree to which activity levels are predicted to increase for a given source type and sub-region.

In summary, the WRAP estimates year 2018 emissions as follows:

Electric utility boilers [12]	415,000
Cogeneration units	8,000
Copper smelters	48,000 or 78,000
Other stationary sources	141,000
Total (if suspended smelters remain closed)	612,000
Total (if suspended smelters resume operation)	642,000

[12] Including adjustment for new flow rate method, and including the retirement adjustment for Colorado Front Range plants. This value represents the 421,000 tons for "utility emissions" on page C–8 of the Annex, plus the 4,000 tons for "front range adjustment" on page C–8, minus the 10,000 tons referred to as "CEMS bias adjustment" on page C–11 of the Annex.

List of BART-eligible sources. The WRAP, as described in Appendix C of the Annex, pages C–2 and C–3, developed a list of BART-eligible sources using the definitions in the regional haze rule and a number of assumptions. Subsequent to the submittal of the Annex, the EPA formally proposed BART guidelines in a rulemaking proposal published on July 20, 2001 (66 FR 38108). These proposed guidelines include proposed methods for identifying BART-eligible sources. In order to meet the October 2000 deadline for the Annex, the WRAP needed to identify BART-eligible sources before the guidelines were proposed by EPA.

In identifying BART-eligible sources, the WRAP identified individual emission units that have a potential to emit more than 250 tons per year. In the proposed BART guidelines, the EPA takes a slightly different approach. Using the method in the proposed BART guidelines, a source would be BART-eligible when the sum of the potential emissions over all emission units built between the 1962–1977 time period is greater than 250 tons per year. For example, assume a plant had two emission units built within the 1962–1977 time period, emission unit A with a potential to emit 125 tons per year of SO_2, and unit B with a potential to emit 150 tons per year of SO_2. Under the proposed BART guidelines, you would add the potential emissions of both units. Thus, both of these units would be BART-eligible under EPA's proposed BART guidelines because their combined potential to emit exceeds 250 tons per year. Under the system used by the WRAP, these units would not have been identified as BART-eligible.

The EPA believes that even if the BART guidelines are finalized as proposed, the BART-eligible sources identified by the WRAP, and the SO_2 emissions resulting from those sources, would be nearly identical to those identified under the BART guidelines. The EPA estimates that the difference in emissions coverage between the method used by the WRAP and the method in EPA's proposed guidelines is at most a few thousand tons. We request comment on this assessment.

Emissions reductions from BART-eligible sources. The WRAP's next step was to calculate the emissions reductions that would be achieved by requiring the installation and operation of BART on all BART-eligible sources in the region. The first step in this process was to identify the "appropriate" retrofit technologies for categories of BART-eligible sources. This is described in section C of Annex Attachment C. The WRAP discusses in Attachment C, page C–4, that the factors to consider for BART, including cost, energy and non-air environmental impacts, existing pollution controls, and remaining useful life were addressed in a broad way through the identification of technologies that were currently being used as retrofits in the region. The WRAP's Market Trading Forum looked at ranges of potential retrofit controls and established a level that it expected to be valid as a regional average. Further documentation of the technology analysis is found in section 6 of the Technical Support Document (*Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Trading Program*. Submitted by the WRAP, October 16, 2000). This technology analysis was performed on a source category basis, as is allowed by the regional haze rule.

The WRAP developed a series of control technology assumptions for specific categories in the region. These control technology assumptions are summarized in Annex Table 1, page C–5. Another table describing the types of controls considered is included as Table 1 on pages 12–18 of Section 6.A of the *Technical Support Document*. The technology determination with the greatest effect on emissions was for utility boilers, which represent about 2/3 of projected 2018 emissions, and which also have the greatest potential for further emissions control. For utility boilers, the WRAP developed a three-tier system as follows. For uncontrolled utility boilers, and for boilers currently with controls achieving less than a 70 percent reduction in SO_2 emissions, the WRAP assumed an "appropriate" technology level of 85 percent control. For boilers currently achieving a 70 to 80 percent reduction in SO_2 emissions, the WRAP assumed that control efficiencies could be increased by five percent. For example, if a boiler is currently achieving 72 percent reduction in SO_2 emissions, the WRAP assumed it would be controlled to 77 percent. For utility boilers currently achieving greater than 80 percent reduction in SO_2 emissions, no additional reductions were assumed.

In developing the three-tier system for boilers, the WRAP assumed that emissions can be reduced by flue gas desulfurization, and made broad judgments on the level of control that this technology could achieve. These judgments included a general discussion of whether any of the statutory factors for BART would likely mitigate against application of the technology. As noted in Table 1, page C–5 of the Annex, the WRAP assumed controls for additional categories as follows:

—Petroleum refineries. For sulfur recovery units, the WRAP assumed BART was 98 percent control or the equivalent of a 3-stage Claus unit. For catalytic crackers, the WRAP assumed 90 percent control level. For flares, the WRAP assumed no additional control.

—Industrial boilers. For non-utility boilers, the WRAP used the same 3-tier assumptions as for utility boilers.

—All other categories, including cement kilns, recovery furnaces at kraft pulp mills, and copper smelters. The WRAP assumed that BART would require no additional SO_2 control.

The WRAP calculated the emissions reductions for the BART-eligible sources for the year 2018 as outlined in section 6.B of the *Technical Support Documentation*. By applying the 3-tier approach to utility boilers, and the assumptions noted above for refineries and industrial boilers, the WRAP calculated emissions reductions from BART-eligible sources of about 168,000 tons for the year 2018. Of this amount, the great majority of the reductions (152,000 of the 168,000) were from utility boilers.

During May 2000, EPA provided the WRAP with a technical review of the control technology judgments made by the WRAP for utility boilers.[13] As noted in this technical review, EPA believes that for utility boilers that are currently uncontrolled, emissions reductions of 90 percent or better are readily achievable. Of the total of 53 BART-eligible utility boilers in the WRAP

[13] May 22, 2000 letter from Lydia Wegman, Richard R. Long, and Deborah Jordan, EPA to Colleen Delaney, co-chair, WRAP Market Trading Forum.

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region, 21 are currently uncontrolled. The EPA's technical analysis also provided upper and lower-bound estimates of the degree to which the 30 units with existing wet scrubbers could be upgraded. This technical analysis resulted in emissions reductions of 170,000 to 190,000 tons, which were about 15,000 to 35,000 tons greater than estimated by the WRAP.[14]

Inclusion of an additional amount of emissions to account for "uncertainty" and "headroom." In calculating the year 2018 milestone, the WRAP included 35,000 tons for "uncertainty" and "operational headroom." This is discussed on pages C–9 through C–11 of Annex Attachment C.

The WRAP uses the term "headroom" generally to mean an amount that accounts for unexpected future events. For example, if a WRAP-developed milestone is established at 800,000 tons, and expected emissions are 750,000 tons, then the difference—50,000 tons—is "headroom" that provides additional assurances that the milestone would not be expected to be exceeded.

The WRAP uses the term "uncertainty" generally in the context of data parameters whose actual values in the future may differ from current projections. All parties to the WRAP discussions agree that there is a fair degree of uncertainty in projecting emissions nearly 20 years in the future. Projections for the year 2018 involve numerous inherent assumptions about economic and other conditions, and the SO_2 emissions results of those conditions. For example, the tool used for emissions forecasting, the IAS, assumes a certain percentages of plant retirements, and emissions reductions from those plant retirements. There is nothing that would prohibit these sources that are assumed to retire from continuing operating, or even increasing their operations. Scenarios different from those projected by the IAS would result in emission increases for the "other source" category of several tens of thousands of tons per year. Another example of uncertainty leading to an unexpected increase in emissions would be an increase in the overall average sulfur content of coal used in coal-fired boilers. If this value increased by 5 percent, for example, then the forecasted emission baseline for utility boilers would increase by more than 20,000 tons. It is also possible that boilers that are currently burning natural gas could switch to fuel oil if the relative prices of the two fuels were to change. Finally, there are uncertainties regarding the number of new coal-fired utility boilers that will be built in the region, and the emissions from such boilers.

The EPA agrees with the WRAP that long-term emissions predictions are uncertain and that it is accordingly difficult to predict with accuracy the level of SO_2 emissions for the region in 2018. We request comment on the WRAP's use of the 35,000 tons per year of "headroom/uncertainty" as an amount that is included in the calculation of a year 2018 milestone.

Milestones for the year 2018 selected by the WRAP. The WRAP determined the milestone for the year 2018 by taking the projected baseline amount, subtracting the 168,000 tons for "appropriate" control technology, and adding the 35,000 tons for "uncertainty and headroom." Because the WRAP projected two cases for future smelter operations, there were two associated milestones for the year 2018. For the case without operation of the two smelters, the WRAP determined that the milestone would be 612,000 − 168,000 + 35,000, or 480,000 tons (the WRAP rounded the value of 479,000 tons up to 480,000). For the case which assumes that the two smelters will resume operation, similar calculations yield a milestone of 510,000 tons.

Discussion of EPA's finding that the year 2018 milestone meets the requirements of the regional haze rule. The EPA believes that the year 2018 milestone fulfills the requirement in 40 CFR 51.309(f)(1)(ii) of the regional haze rule that "the milestones must be shown to provide for greater reasonable progress than would be achieved by application of BART under 51.308(e)(2)." 40 CFR 51.308(e)(2) of the regional haze regulations requires that the analysis of whether "greater reasonable progress" would be achieved must include the following:

—A list of all BART-eligible sources,
—A source-specific or category-wide analysis of possible BART controls, taking into consideration the technology available, the costs of compliance, the energy and non-air quality environmental impacts of compliance, any pollution control equipment in use, and the remaining useful life, and
—An analysis of the degree of visibility improvement that would be achieved from application of BART-level controls.

The EPA believes that the WRAP's analysis, described above, meets these requirements. The WRAP has provided a list of BART-eligible sources, and a sufficient category-wide analysis of the possible BART controls. The WRAP also provided an analysis of the visibility improvement from the SO_2 emissions reduction program, in addition to a number of possible scenarios for BART-level controls. This visibility analysis is discussed in section F of Attachment C to the Annex. Supplemental information, which included additional visibility analyses, was submitted to EPA on September 24, 2001 in a document entitled "Sensitivity Analysis to Quantify the Benefits Achieved by an Emission Cap."

The EPA has reviewed the calculations, analyses and other documentation provided by the WRAP in order to judge whether the 2018 SO_2 milestone provides for greater reasonable progress than BART. One important consideration in making this judgment, as noted by the WRAP in the Annex, is that the program establishes an enforceable cap for the Region on the emissions of SO_2 from all stationary sources in the region emitting more than 100 tons per year. In contrast, a program that addressed only the BART sources would result in a reduction in emissions from the sources covered by the BART requirements, but it would not limit the overall emissions of SO_2 in the WRAP region.

It is an inherently uncertain exercise to predict future SO_2 emissions in the absence of this program, and there is also uncertainty in predicting what appropriate BART-level emissions controls would be for the year 2018. The EPA believes that the future emissions in the WRAP region could plausibly be greater than or less than those forecasted by the WRAP. For the utility sector, we believe there is a relatively low probability that existing utility boilers will increase their use of capacity by a greater percentage than the overall capacity factor of 85 percent assumed by the WRAP. There is, however, a growing likelihood that there will be more new coal-fired power plants in place in 2018 than assumed when the Annex was submitted to EPA. For copper smelters, it is unlikely that emissions would increase by any appreciable amount above those forecasted in the two scenarios developed by the WRAP. For the "other" source category incorporating all non-utility and non-smelter sources, greater use of capacity or new source growth could plausibly lead to emissions that are greater than the 141,000 tons forecasted by the WRAP. In summary, taking into account all of these categories, it is possible that future emissions could be more or less than calculated by the WRAP.

Likewise, the EPA believes there is some uncertainty regarding the level of emissions control that would be achieved by applying SO_2 controls to the BART-eligible source population on a source-by-source basis. While EPA, as noted above, calculates a somewhat greater degree of possible SO_2 reductions than the WRAP, it is also possible that a State-by-State, source-specific analysis of BART would result in a lesser degree of control on some sources.

The visibility analyses conducted by the WRAP attempted to capture the uncertainty that exists in comparing a program with a fixed cap on emissions to a program that would achieve a given level of control on the BART population. The emissions reductions from the trading program are guaranteed, because they assure that emissions will not exceed the milestones. On the other hand, the overall effect of emissions reductions from application of BART is best expressed as a range of results. Because of the factors States and Tribes may consider when determining BART for individual sources, there is no guarantee of the amount of reductions application of BART would achieve.

The uncertainty of the comparison is compounded to a degree by the fact that under a trading program, it is not possible to predict with precision where the emissions reductions would occur. The modeling results showed that the visibility impacts of the trading program are likely to be very similar to those for the range of possible BART results, and that the visibility impacts of the trading program could be slightly greater or slightly less than a BART-only program would achieve.

Taking all of these uncertainties into account, EPA believes that it is reasonable to conclude that the year 2018 milestone meets the requirements for "greater reasonable progress" in the regional haze rule. The WRAP has satisfied the requirements of the regional haze rule that the milestones provided for greater reasonable progress than would be achieved by BART, and the WRAP has provided the necessary documentation to support that conclusion. Central to their finding of greater reasonable progress is that the program provides for an overall cap instead of individual emission limits which do not guarantee the same emissions reductions. Modeling scenarios show that the trading program is likely to achieve results equivalent to, or greater than, an emission limit-based program. Although not determinative of whether the program achieves better than BART reductions, EPA believes that it is also important to recognize that the WRAP program has resulted from a consensus effort, which included broad-based participation of many Western stakeholders.

3. Milestones for the Interim Years (2003 through 2017). Rationale for EPA's Proposal that the Milestones Represent "Steady and Continuing" Progress.

As discussed above, 40 CFR 51.309 (f)(1)(i) of the regional haze rule requires that the milestones in the Annex:

> Must provide for steady and continuing emission reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018.

The WRAP discusses the milestones for these interim years in section II.b, pages 11–15, of the Annex. The milestones selected by the WRAP in the Annex are as follows:

TABLE 1.—WRAP'S PROPOSED REGIONAL DIOXIDE MILESTONES FOR STATIONARY SOURCES EMITTING MORE THAN 100 TPY

[Amounts listed are tons per year]

Year	Each year between 2003 through 2007	Each year between 2008 through 2012	Each year between 2013 and 2017	2018
Maximum Milestone (smelters in)	720,000	715,000	655,000	510,000
Minimum Milestone (smelters out)	682,000	677,000	625,000	480,000

The EPA believes that these milestones provide for "steady and continuing" emissions reductions and the requirements of 40 CFR 51.309(f)(1)(i). Taking each phrase of 40 CFR 51.309(f)(1) separately, our rationale for this finding is as follows.

First, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress "consistent with the Commission's definition of reasonable progress." As noted in section II.A.1.b of the Annex, the GCVTC defined reasonable progress as follows:

> Reasonable progress towards the national visibility goal is achieving continuous emission reductions necessary to reduce existing impairment and attain steady improvement of visibility in mandatory Class I areas, and managing emissions growth so as to prevent perceptible degradation of clean air days.

For the reasons set forth below, EPA is proposing to find that the milestones listed above are consistent with this definition in the Commission report.

In its analysis of whether the milestones provide for "continuous" or "continuing" reductions for the 2003 to 2018 time period, the WRAP uses as its starting point, or frame of reference, the Commission's goal of achieving a 13 percent reduction in 1990 baseline emissions by the year 2000, rather than an estimate of actual emissions for 2000. A 13 percent reduction from the 1990 baseline emission of about 830,000 tons results in emissions of about 720,000 tons. Using the emission inventory estimates for the most recently available year at the time of the Annex, generally from 1998 or 1999, the WRAP estimated that the total actual emissions for the 1998–1999 time period were about 652,000 tons, roughly a 22 percent reduction from the 1990 baseline. Thus, the milestones, which range from 677,000 tons to 715,000 tons for the 2008–2012 time period, allow for actual emission increases to occur between this 1998/1999 time period and this time period. The EPA agrees that the WRAP may use the 13 percent level, rather than current actual emissions, as the basis for determining that "steady" reductions are occurring. Otherwise, EPA believes that the region would in essence be penalized for achieving early reductions in emissions. Also, there is future emission growth expected due to increased use of operating capacity at utility boilers and other source types. Accordingly, a relatively "flat" line between 2003 and 2012 can represent a significant reduction in emissions that would have otherwise been expected. The EPA requests comment on this finding.

Second, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress "consistent with * * * (the Commission's) * * * goal of 50 to 70

[14] Subsequent to EPA's May 2000 analysis, the WRAP developed refined estimates of the year 2000 emissions baseline. This estimate of 170,000 to 190,000 tons was based on the emissions information available at the time of EPA's May 2000 analysis.

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percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040." Because the 1990 actual emissions of SO_2 for the region were 830,000 tons per year, the 2018 milestones proposed by the WRAP for 2018 represent a 39 to 43 percent reduction from 1990 baseline emissions. Emissions reductions consistent with the 2018 milestone will achieve a substantial portion of the Commission's goal set by the Commission for the 50-year period, 1990 to 2040. The EPA believes that the criterion for steady and continuing emissions reductions consistent with this long-term goal of 50–70 percent reduction in SO_2 emissions is clearly met.

Third, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress "consistent with applicable requirements under the CAA." The EPA believes that the milestones recommended by the WRAP are consistent with all applicable requirements of the CAA. As noted above, EPA proposes that the milestones constitute "greater reasonable progress" than would be achieved through implementation of the BART requirements in section 169A of the CAA.

Finally, 40 CFR 51.309(f)(1)(i) requires steady and continuing progress "consistent with the timing of implementation plan assessments and identification of deficiencies which will be due in the years 2008, 2013, and 2018." In the Annex, the WRAP has established an annual process for comparing emissions with milestones. This annual process, discussed in greater detail below, ensures that emissions will be compared against the milestones each year, and not just in 2008, 2013, and 2018. The EPA believes that this annual check is a helpful clarification of the way the program will be implemented, and that it will ensure that ample information will be available at the time of the 5-year program reviews required by 40 CFR 51.309(d)(10) of the regional haze rule.

In summary, EPA believes that the milestones in the Annex fulfill all of the requirements for "steady and continuing" progress. We request comment on this proposed finding.

4. How the Milestones are Listed in the Proposed Amendments to 40 CFR 51.309.

The Annex, in sections II.A.3.b and III.A.6.b, clarifies that the annual process for comparing emissions to the milestones will, with one exception, involve a comparison of multi-year averages. Because the program does not begin until 2003, compliance with the 2003 milestone will be based on 2003 emissions data only. Compliance with the program in 2004 will be based on an average of 2003 and 2004 emissions data. In subsequent years, compliance with the milestones will be determined by using a 3-year average of emissions. The Annex also makes clear that for the 2005 through 2017 time period, compliance will be determined by comparing 3-year averages of emissions with 3-year averages of the milestones. For example, the milestones for 2006, 2007, and 2008 are 677,000 682,000, and 682,000 tons, respectively (see Table 1 above, smelters out). The 3-year average of the milestones is: (682,000 + 682,000 + 677,000)/3, or about 680,000 tons. Thus, after the end of calendar year 2008, under the system of averaging contained in the Annex, the participating States and Tribes will compare the 3-year average of emissions (that is, the average of emissions for the years 2006, 2007, and 2008) against 680,000 tons.

To minimize any confusion from this system of averaging, EPA has included in the proposed amendments to 40 CFR 51.309 a table which sets out, for each year of the program, the emission inventory years to be used, and the amount of tons per year that the emissions will be compared against. This is included in the proposed rule amendments as Table 1 in proposed paragraph 40 CFR 51.309(f)(1). This table also makes clear that for the year 2018, participating States and Tribes will compare the year 2018 inventory to the year 2018 milestone, without any averaging of previous years.

B. What Future Adjustments to the Milestones Are Allowed by the Proposed Rule?

The Annex provides for future adjustments to the milestones under certain prescribed circumstances. The EPA understands that the WRAP's negotiations succeeded largely because the participants were able to reach agreement on milestones that addressed stakeholder interests, met the requirements of the CAA, provided certainty to the regulated community, and provided interest groups with a fixed set of milestones that would ensure long-term progress in reducing SO_2 emissions and improving visibility. However, the WRAP did anticipate that there were a number of specific circumstances under which the milestones should be adjusted. The EPA believes that these are the only circumstances that should lead to changed milestones. The EPA requests comment on the appropriateness of these adjustments and whether additional adjustment to the milestones may be appropriate. These adjustments are described in sections III.A.3, III.A.4, and III.A.5 of the Annex and are discussed further in section II.A.2 of the Annex. The EPA believes that each of these adjustments is consistent with the requirements of the regional haze rule.

The WRAP identified the following seven possible adjustments to the milestones:

(1) Adjustments to be made at the outset of the program if certain States and Tribes choose not to participate in the program, and for Tribes that choose to opt into the program after the 2003 deadline;

(2) Adjustments to account for specific contingencies regarding the future operations of copper smelters;

(3) Adjustments for changes in emission measurement techniques;

(4) Adjustments for changes in flow rate measurement methods;

(5) Adjustments for illegal emissions;

(6) Adjustments due to periodic reviews and audits; and

(7) Adjustments for individual sources opting into the program.

For the first adjustments (1) and (2), the specific amounts by which the milestones would change are listed in the proposed amendments to 40 CFR 51.309 of the regional haze rule. For adjustment (4), a specific defined process for calculating the adjustment can be specified in the rule. The specifics of each of the adjustments are described in detail below. In addition, for three adjustments, (1) (2) and (4), we are proposing in today's amendments the specific circumstances under which the adjustments would occur and the procedures for making these types of adjustments to the milestones. Because we are proposing the specific emission quantities, circumstances and procedures in the rule, and are taking comment on these specific details, we are also proposing to allow States and eligible Tribes to make these adjustments without triggering a requirement to revise their SIP. For the remaining adjustments, we are proposing to require States and eligible Tribes to revise their implementation plans, consistent with the procedures at 40 CFR 51.102 and 40 CFR 51.103, before making the adjustment.

1. Adjustment for States and Tribes That Choose Not To Participate in the Program, and for Tribes That Choose To Opt Into the Program After 2003

As noted previously, 40 CFR 51.309 of the regional haze rule provides nine Western States with an optional program to meet the requirements of the CAA and the regional haze rule. States that choose to meet the requirements of 40 CFR 51.309 are assured of having an approvable long-range visibility strategy for 16 Class I areas in the vicinity of the Grand Canyon. It is not yet known, however, which States will choose to exercise the option under 40 CFR 51.309. Accordingly, the Annex, including the supplemental information submitted in June 2001[15], provides for adjustments to the milestones in the event that not all eligible States and Tribes choose to participate.

The WRAP has identified for each State, and for each year from 2003 to 2018, the amount of emissions that would be deducted from the milestones for each State that chooses not to participate. The methodology and data sources for determining these individual State opt-out amounts are explained further in the WRAP's supplementary information submitted to EPA in June 2001. The EPA includes in the proposed amendments to 40 CFR 51.309 of the regional haze rule a table (Table 2) displaying the opt-out amounts.

The EPA notes that the emissions amount budgeted in this table are only for the purpose of determining the milestones at the outset of the program should some States and Tribes choose not to participate. The amounts budgeted to each State in this table are not necessarily the amounts that will be allocated to sources in the State if a trading program is triggered. Further discussion on the requirements for source allocations under a trading program are discussed below in unit II.D. of the preamble.

The EPA believes that for the program under 40 CFR 51.309 to achieve the WRAP's objectives and the objectives of the GCVTC, a sufficient number of States must participate in the program. The WRAP recognizes this issue of "critical mass" as well and has funded a study to review the results of a number of scenarios for possible participation in the program. The EPA proposes to defer to the WRAP's judgment on the issue of "critical mass," and we request comment on this proposal.

The process for taking the State opt-out amounts into account would happen automatically at the outset of the program and would be reflected in the SIPs submitted in 2003. For the States that opted out, the amounts in Table 2 of the rule (included in the proposed rule in 40 CFR 51.309(h)(1)(i)) would be deducted from the amounts in Table 1 for purposes of establishing the program milestones.

As is discussed below in unit III.D of this preamble, Tribes have the flexibility to opt into the program after the 2003 deadline. The process for taking into account the tribal amounts in Table 2 of the rule needs to take this into account. For Tribes that have not opted into the program by the 2003 date, the amounts in Table 2 will be deducted from the amounts in Table 1 at the outset of the program. For Tribes that opt into the program at a later date, these amounts will be automatically added to the amounts in Table 1, beginning with the first year after the TIP implementing 40 CFR 51.309 is approved by EPA. [16]

2. Adjustment for Smelter Operations

Currently, two of the copper smelters in the nine-State Visibility Transport Region are temporarily shutdown due to economic conditions. These smelters are the Phelps Dodge Corporation's Hidalgo Smelter in New Mexico, and the BHP Company San Manuel Smelter in Arizona. As noted above, it is difficult to predict whether long-term economic conditions may lead to resumed operation of these two smelters. Because of the significance of these smelters, the Annex makes provisions to adjust the milestones upward if either of the two smelters resume operation. The Annex also has a provision to adjust the milestones upward if either one, or both, of the two smelters remain shutdown, but other smelters in the region increase copper production such that SO_2 emissions exceed the year 2000 baseline level. This adjustment for the currently suspended smelters is described in section III.A.3.a. of the Annex and is discussed further in section II.A.2.a of the Annex.

During the last full year of operation of the two smelters, 1998, the Phelps Dodge Hidalgo smelter emitted 22,000 tons of SO_2, while the BHP San Manuel Smelter emitted 16,000 tons. These two smelters have air quality permits from the respective State air agencies, and the Annex states that they would be allowed to resume full operation at any time. The Annex provides for the following adjustments if one or both of these smelters resumes full operation consistent with its existing permitted levels:

—22,000 tons is added to each of the milestones if Phelps Dodge Hidalgo resumes operation but BHP San Manuel does not resume operation,

—16,000 tons is added to each of the milestones if BHP San Manuel resumes operation but Phelps Dodge Hidalgo does not resume operation, and

—If both smelters resume operation, then 38,000 tons is added to the milestones for each subsequent year up to the year 2012, and 30,000 tons is added to each milestone for the year 2013 through the year 2018.

The Annex describes two sets of circumstances under which resumed operations of the smelters could result in emissions that are less than historical levels. The first is if a smelter were to operate in a "substantially different" manner than it had operated in the past. For example, if only a portion of a plant were to resume operation, then emissions would fall below past levels. This would happen, for example, if the plant were to resume operation but used the acid plant to produce acid from elemental sulfur, rather than to resume copper production. The Annex states that in such a case, the State will reduce the emissions adjustment amount to reflect such conditions in the milestones.

The second set of circumstances addressed in the Annex for reducing the adjustments is when one or both of the two smelters resumes operations in a manner that triggers new source review requirements under parts C or D of title I of the CAA. The Annex recognizes that this new source review process might lead to a change in the level of SO_2 emission levels as compared to past levels. The Annex states that under such circumstances the State will determine an "appropriate" adjustment to the milestone based upon the emission levels allowed by the new source review permit. For this case, the "appropriate" emission level will be added to the milestone for each subsequent year after the source remains in operation at the newly permitted levels. The Annex clarifies that in no instances may the adjustments exceed 22,000 tons for the Hidalgo smelter or 16,000 tons for the San Manuel smelter.

The final consideration in the Annex for making adjustments to the milestones to reflect future changes in smelter operations involves those smelters in the region other than Phelps Dodge Hidalgo or BHP San Manuel. The Annex provides for smelter-specific adjustments to the milestones if two conditions are met:

(1) Either the Phelps Dodge Hidalgo or BHP San Manuel smelter has not resumed operations, and

[15] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report*. Western Regional Air Partnership, June 1, 2001.

[16] If EPA promulgates a FIP implementing 40 CFR 51.309 for a Tribe, that FIP will be treated in the same manner as a TIP for purposes of this provision.

(2) One of the remaining smelters increases its actual emissions [17] above its year 2000 baseline level.

The following table illustrates the smelter-specific adjustments provided for in the Annex.

TABLE 2.—SMELTER-SPECIFIC ADJUSTMENTS

Company/smelter	Baseline emissions (tons per year)	Maximum adjustment to the milestone for any year where emissions exceed 2000 baseline levels
BHP San Manuel	16,000	1,500
Asarco Hayden	23,000	3,000
Phelps Dodge Chino	16,000	3,000
Phelps Dodge Hidalgo	22,000	4,000
Phelps Dodge Miami	8,000	2,000
Kennecott Salt Lake	1,000	100

The EPA interprets the Annex as providing for an adjustment to the milestones by the amount by which a smelter's actual emissions exceed the baseline levels, up to the amount listed in the right-hand column. For example, if in the year 2006 BHP San Manuel has not resumed operation and Asarco Hayden's actual emissions for that year are 25,000 tons (2,000 tons more than Asarco Hayden's baseline emissions), then the milestone would increase by 2,000 tons. If, on the other hand, Asarco Hayden's actual emissions are 28,000 tons, (5,000 tons more than baseline emissions), the milestone would be adjusted by 3,000 tons, the maximum amount listed in the table.

40 CFR 51.309(h)(1)(ii) of the proposed rule identifies the adjustments to the milestones under the various operating scenarios identified in the Annex by the WRAP. The EPA has attempted to clarify the adjustments with a series of "if-then" tables consistent with EPA's plain language guidelines. We request comment on these adjustments, and whether these tables properly interpret the procedures in section III.A.3.a of the Annex. In addition, EPA has included in the proposed rule a requirement that any adjustments to the milestones made to reflect changes in smelter operating conditions, and the basis for those adjustments, must be clearly identified by the States and Tribes in the annual process to determine whether the milestone is exceeded. (This annual process is described further in unit II.C of this preamble).

3. Adjustment for Changes in Emissions Calculation Methods

The Annex provides for adjusting the milestones if there are changes in emissions calculation methods. Such changes could result, for example, if States or Tribes were to find errors in the 1998/99 inventories used to establish the milestones, or based on State, tribal and EPA efforts to improve the accuracy of emissions calculation methods.

In establishing an emissions baseline, the WRAP has used a number of different techniques to estimate or measure the emissions from the sources covered by the program. These current methods vary in their accuracy and reliability. For example, EPA believes that the most reliable method for measuring emissions is that currently being used to monitor electric utility boilers under the CAA acid rain program. This monitoring method measures the amount of SO_2 in the exhaust from the boilers and the quantity (flow) of exhaust on a continuous basis. This allows the hourly tracking of SO_2 emissions. Another method for calculating SO_2 emissions for industrial coal-fired boilers is to measure the amount of sulfur in the coal and the quantity of coal burned, and to use EPA emission factors to determine the SO_2 emissions. The EPA considers this method to be less accurate than the method for monitoring emissions for the acid rain program because coal is a heterogeneous mixture. As such, there are variations in the fuel sulfur which result in inherent uncertainties in knowing whether a given fuel sulfur measurement is representative of the entire quantity of fuel combusted. The copper smelters in the WRAP region are also considered to have a reliable method of determining their SO_2 emissions, relying on a combination of monitoring and mass balance.[18] For a number of other source types—such as portland cement plants, fluid cat cracker regenerators and sulfur plants, emissions are usually estimated using emission factors (that is, multipliers that are expressed in terms of amount emitted per amount of throughput or production). For sources relying on emission factors or other calculation techniques, there is a greater probability that there will be future improvements in the emission estimation methods.

As the WRAP's SO_2 program progresses, it is likely that some facilities that have relied on emission factors and other less accurate methods for determining the emissions will improve the accuracy of the emission estimates. The Annex provides for adjustments to the milestones when emission calculation techniques change is to avoid the creation of "paper" increases or decreases in emissions that do not reflect actual changes in emissions. As an example, assume that in their baseline inventory, a State in the WRAP region estimated emissions for a portland cement plant using an emission factor that a subsequent source test shows to be inaccurate. If the source test indicated that the plant is emitting 10 percent more emissions per unit of production than predicted by the emission factor, the emission estimate for the portland cement plant would increase even if production levels remained the same. While the new information shows that the emissions from the plant are more than previously thought, this does not mean that emissions have increased. Similarly, a new method of calculating emissions that shows that emissions per unit of production are less than previously estimated would not indicate that emissions have decreased. Accordingly, in a program which depends on long-term comparisons of emission inventories relative to initial expectations, EPA agrees with the WRAP that it is important that the system avoid creating such "paper" increases and decreases.

This provision for making these adjustments is discussed in sections II.A.d. and III.a.4.b of the Annex, and in a supplemental paper entitled "Emission Tracking Prior to Triggering the Backstop Trading Program." In summary, the Annex provides for:

—Documenting the method of estimating or measuring emissions that was used in developing a baseline for the program,
—Keeping track of when these emission calculations methods change relative to the baseline,
—Periodically revising the SIPs to adjust the milestones to reflect these changes, and
—Using the method in place pending the SIP revision.

The Annex provides that the implementation plan submittals must document how the emissions were determined for each unit that is part of the program. This information will be used to track the changes that occur over the years in the emission estimating and measuring techniques. As noted below in unit II.C of this preamble, States will report these changes annually in "exceptions reports," which are reports that are intended to facilitate public review of the annual inventories by highlighting items of interest. The EPA agrees with the WRAP that future adjustments to the milestones for currently unknown changes in emissions calculation methods should only be made through revisions of SIPs/TIPs. The milestones are a fundamental component of the SO_2 reduction program. Accordingly, it is important that any changes to those milestones be transparent to the public in order to ensure the overall integrity of the program. The implementation plan revision process assures that such a public review will take place. At the same time, we agree with the WRAP that it is not practical to provide for SIP revisions every year to account for such adjustments. In the supplemental paper, the WRAP recommends that these adjustments be made every 5 years and be included in the SIP revisions required by 40 CFR 51.309(d)(10). The EPA believes that this is a reasonable time frame for making these changes. The EPA notes, however, that during the time period between the date the calculation method changes and the date that the SIP is revised, it is equally important to ensure that there not be "paper" emissions increases and decreases relative to the milestones. This would occur if emissions were reported using a new method, while the milestone reflected baseline estimates based on the previous method. The EPA agrees with the WRAP's suggestion that for purposes of the annual determination, the same method be used for reporting emissions, that is, the old method (on which the baseline emissions were calculated), pending the completion of the periodic SIP revision. The WRAP's process would accomplish this by having the regional planning body identify and account for any such "paper" increases and decreases in the annual determination process.

The EPA has incorporated the proposed adjustment for emission calculation method changes in the proposed rule as paragraph 40 CFR 51.309(h)(1)(iii).

4. Adjustments for Utility Boilers Opting to Use More Refined Flow Rate Methods.

In 1999, EPA adopted revisions to EPA's Reference Method 2, the standard method for measuring stack flow rates, (64 FR 26484, May 14, 1999). The revisions provided three new procedures: Methods 2F, 2G, and 2H. The new procedures, if used for a given source, allow for a more detailed assessment of the stack flow rates to provide more accurate results. The changes addressed concerns raised by utilities that Reference Method 2 may over-estimate flow in certain cases, such as when the flow is not going straight up the stack. If the flow rate is over-estimated, this would also lead to the overestimation of SO_2 emissions because the facility's continuous flow rate monitor is calibrated to correspond to the flow test method. Facilities subject to the acid rain program under title IV of the CAA must perform these flow tests at least once a year to determine the accuracy of their continuous flow monitors. Facilities have an option to use either the old Method 2, or one or more of the new methods.

When the WRAP made its emission projections for purposes of developing the milestones, the new methods were not yet in place. Accordingly, if a source owner chooses to use the new flow methods, and if as expected it results in a reduced flow rate for the same level of operation, then there will be a corresponding decrease in the emissions estimate. The EPA agrees with the WRAP that this would create the possibility of a "paper" decrease relative to the milestone if the milestone reflects the old method. As discussed in section III.A.5 of the Annex, the WRAP notes that a protocol is needed for adjusting the milestones to reflect changes in the baseline emission for utility boilers any time that a source opts to change its CEMs method. The WRAP addressed this issue in greater detail in a supplemental paper entitled "Emissions Tracking Prior to Triggering the Backstop Trading Program," which was submitted to EPA on June 1, 2001.

The WRAP has identified three possible technical procedures for developing an "adjustment factor" for the new flow method. The EPA agrees that any of these three procedures would be acceptable. Under the first procedure, there would be a side-by-side comparison of flow rates using both the new and the old flow reference methods. For example, if the new method measured 760,000 cubic feet per minute, and the old method measured 800,000 feet per minute, the adjustment factor would be (760,000/800,000), or 0.95. The second method would use annual average heat rate, which is reported to the Energy Information Administration (EIA), as a surrogate for the flow rate. Under this method, the flow adjustment factor would be calculated using the annual average heat rate using acid rain heat input data (MMBtu) and total generation (MWHrs) reported to EIA, calculated as the following ratio:

Heat Input/MW for first full year of data using new flow rate method
Heat Input/MW for last full year of data using old flow rate method

The third method would use data reported to EPA's acid rain program. Under this method, there would be a comparison of the standard cubic feet per minute (CFM) per megawatt (MW) before and after the new flow reference method based on CEMs data, as follows:

SCF/Unit of Generation for first full year of data using new flow rate method
SCF/Unit of Generation for last full year of data using old flow rate method

In the supplemental information paper, the WRAP identified three possible approaches for using the adjustment factors for making a correct comparison of emissions to the milestones. The WRAP did not indicate a preference for any single approach. The three options are as follows:

(a) Using one of the options described above for determining the flow adjustment factor, revise the source's baseline emissions forecast for 2003,

[17] Although not stated explicitly in the Annex, EPA interprets this to mean legally permissible increases in actual emissions within levels allowed by permits and regulations.

[18] "Mass balance" (also sometimes called "material balance") techniques use data on the total amount of pollutant present, along with the amount that ends up in product or wastes, to deduce the amount that is emitted to the air. For some source categories, this can be a highly accurate method for determining the emissions. For others, it is much more uncertain.

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2008 and 2013. For each year following the adoption of the new flow reference method through 2017, reduce the interim milestone by the corresponding amount. Using the example above where the adjustment factor is 0.95, this means that the previous baseline emissions for that source would be multiplied by 0.95. The annual compliance check will then be done by comparing regional SO_2 emissions (unadjusted, as reported to EPA's acid rain program) to the revised milestone.

(b) Using one of the options described above for determining the flow adjustment factor, revise the source's reported emissions on an annual basis, and do not adjust the milestone. For the example noted above, the emissions reported to EPA's acid rain program would be adjusted upward by multiplying the amount times (1/0.95). For each year following the adoption of the new flow reference method through 2017, the annual compliance check will be done by comparing the adjusted regional SO_2 emissions to the unadjusted milestones.

(c) Use a combination of the two approaches. Under this approach, interim milestones would be adjusted only every 5 years [using option (a) above] and the reported emissions for additional sources making the change in the intervening years are adjusted for comparison to the milestones [using option (b) above].

The EPA believes that any one of these three approaches would be acceptable, but that a specific approach needs to be selected for the final rule. The EPA also believes that these adjustments to the milestone or to the reported emissions would not necessarily require SIP or TIP revisions, because the precise method for making the adjustment, and the publicly available data elements that will be used for making the adjustment, could be specifically identified in the final rule.

5. Adjustments for Illegal Emissions

The Annex at section III.A.4.d. provides for future decreases to the milestones if it is determined that "the milestones were based on illegal emissions." The Annex also includes a discussion of this adjustment in Attachment A, Draft Model Rule, sections A3.3(b)(4) and C4.6. These sections of the Annex provide a brief discussion of this adjustment and noted that "the specific mechanism for this adjustment needs further discussion by the WRAP."

In developing the milestones, the WRAP identified the baseline emissions for each source during the base year, and estimated emissions for the source during the 2003 to 2018 time period, taking into consideration growth, utilization, retirement, and the absence of any additional requirements. The compilation of these source-specific baseline emissions resulted in the baseline emission inventory totals, which serve as a "starting point" for measuring progress from the program. The WRAP recognized in the Annex that if a source was in violation during the base year when its emissions were determined, the baseline emissions during 2003–2018 would be overestimated.For example, assume the baseline emissions for a boiler were calculated based upon an emission factor of 0.6 pounds per million BTU, and using actual and projected fuel amounts, the baseline emissions source were 10,000 tons in the year 1998, increasing to 20,000 tons in the year 2008 and continuing at 20,000 tons for the years between 2008 and 2018. For this example case, it is later discovered that the source has been in violation since 1998 of an emission limit of 0.3 pounds per million BTU. Based on a final enforcement action that takes place in the year 2007, it is determined that if the source was in compliance with its limit, baseline emissions would have been 5000 tons in the year 1998, increasing to 10,000 tons in the year 2008 and continuing at 10,000 tons for the years between 2008 and 2018. For this example case, baseline emissions for each year between 1998 and 2018 would be overestimated, by amounts that vary from 5,000 to 10,000 tons.

The Annex and the WRAP's supplementary information include this provision without any further explanation of what should be considered as illegal emissions, who makes the determination, or what is the process for making this adjustment. The EPA is proposing the rule with the language consistent with the Annex, and we solicit comments on whether the term "illegal emissions" should be further clarified in the final rule.

There are many types of outcomes between plaintiffs and defendants when resolving a dispute over illegal emissions. The most obvious example is when a case goes to court and there is a court decision that the emissions were not legal. This is the rarest of the dispute resolution methods. It is more typical that the disputing parties resolve their differences through one of the following two methods:

—A consent decree that is either entered through Federal or State courts, or
—An administrative enforcement proceedings by either States, Tribes, or EPA.

Under these two methods of resolving an allegation of an illegal emission, it is typical that the defendant neither admits nor denies the alleged violation. They simply agree to correct the situation through injunctive relief and often pay penalties for being in violation.

Sometimes, States and EPA disagree over whether or not a particular alleged violation was correct. This is typical in cases when EPA files a case that a State has opted not to pursue. There also can be disagreement when citizen groups pursue violations. Many of these cases are due to a difference in the federally enforceable SIP regulations and the current State regulations.

Because of the issues referred to above, EPA is soliciting comment on how these types of settlements should affect the milestones. An important consideration to note is that under any of the options described below, adjustments to the milestone would occur only after the source in the enforcement case has achieved the additional control of their SO_2 emissions. Consequently, adjustments to the milestone will have no affect on any other facility's operation because all of the reductions are being achieved by the source subject to the enforcement action. We seek comment on the following possible options:

Option 1. Under this option, the rule would require that if there is any resolution to an alleged illegal SO_2 emission, then all of the reductions would be considered as "illegal emissions." Taking into account these reductions, there would be a "re-forecast" of the source's emissions and its effect on the milestone. "Re-forecast" means to re-apply the forecasting process, that is the process the WRAP originally used to project future emissions and develop the milestones, using the corrected baseline sulfur dioxide emissions for the affected source. A comparison of this re-forecasted emission level with the previously forecasted emissions would yield a calculation of the amount of the adjustment for each year up through 2018.

Option 2. Under this option, the rule would allow for case-by-case judgments on the appropriateness of the adjustment, and would clarify the entity responsible for deciding whether a case involves illegal emissions warranting an adjustment to the milestones. Under this option, we also seek comment on the entity responsible for this determination, that is whether the rule should clarify whether the parties entering into a settlement, the States, the Tribes, the WRAP, or EPA would determine the settlement's impact on the milestones.

Another issue that EPA is soliciting comments on is how to treat any extra SO_2 emissions reductions that a facility might achieve as a result of a settlement. The EPA will often allow a company that is settling through a consent decree or consent agreement to perform a "supplementary environmental project" and allow the expenditures on this project to partially offset penalties that the company would be assessed. If the milestones are not reduced by the amount of extra emissions reductions from this type project, then the environment may see little benefit, since another company would be allowed more SO_2 emissions. We seek input on whether these "extra" emissions reductions should be considered part of this "illegal emission" adjustment and factored into a recalculation of the milestone.

In the proposed rule, EPA includes, at 40 CFR 51.309(h)(1)(v), the Annex's provision for decreasing the milestone for illegal emissions. The EPA requests comment on how we have incorporated this provision, including whether the final rule should add further detail on the timing of the adjustment, and on the administrative steps that would be followed in making the adjustment. For example, EPA believes it may be useful to clarify that the adjustment to the milestone should be made beginning with the year that the source comes into compliance, rather than beginning with the date of the enforcement action.

6. Adjustment Based Upon Findings of Future Program Audits

As will be discussed in greater detail below, there are several types of program reviews and audits that are part of this program. The Annex includes a provision to adjust the milestones if these program reviews and audits identify reasons for an adjustment. The Annex describes this adjustment in section III.A.4.c. and in Attachment A, Draft Model Rule sections B5 and C14.2. The WRAP has further clarified this process in the Supplemental Paper, "Emissions Tracking Prior to Triggering the Trading Program."

There are three types of program reviews and audits in this program: (1) Audits of the data quality and administrative aspects of the program if the trading program is not triggered, (2) a review of data quality, administrative process and other issues related to the trading program if it is triggered, and (3) the 5-year SIP or TIP review (due in 2008, 2013, and 2018) required by the regional haze rule in 40 CFR 51.309(d)(10). The WRAP recommends, and EPA agrees, that such program reviews and independent party audits may identify the need for adjustments to the milestones to correct errors that do not fit into any of the other categories of adjustments discussed above. Accordingly, the Annex and the proposed rule provide a process for making such adjustments as appropriate.

As indicated, in a supplemental paper to the Annex,[19] the pre-trigger audits of the program will be completed by the third year of each 5-year cycle (that is, by 2006, 2011, and 2016). A requirement for these audits is included in the proposed rule at 40 CFR 51.309(h)(3)(v). The timing of these pre-trigger audits is designed to provide participating States and Tribes with sufficient lead-time to make any necessary changes during the general program review due 2 years later (in 2008, 2013, and 2018, respectively).

The EPA includes the requirement to adjust milestones based on the results of the three types of data and program audits described above. This provision is included in the proposed rule as 40 CFR 51.309(h)(1)(vi). The proposed rule also requires that if, during any audit or program review, the WRAP finds that changes need to be made then they will be incorporated at the time of the next SIP revision required under 40 CFR 51.309(d)(10).

The EPA wishes to clarify that each 5-year SIP review under 40 CFR 51.309(d)(10) should include an evaluation of:

(1) Key program assumptions against current findings, (2) the adequacy of State and tribal resources to implement the program, and (3) the effectiveness of interstate coordination and memoranda of understanding between the States and Tribes implementing the program.

7. Adjustments for Individual Sources Opting Into the Program

The Annex, in section III.A.4.a. on page 58, and in section II.A.2.c on pages 21 and 22, provides for possible adjustments to the milestones for small sources that choose to participate in the program. Because the program includes all sources whose emissions exceed 100 tons per year, any such source opting into the program would be one that emits less than this amount.

The EPA does not view the individual source opt-in as an essential element of the regional SO_2 program, but we do not object to its inclusion. We believe that if the program allows an expansion of the universe of sources subject to the program, it is reasonable that the milestones be adjusted upward to account for the inclusion of additional sources. The proposed rule, in proposed 40 CFR 51.309(h)(1)(vii), allows for adjustments to the milestones if such sources opt into the program. In addition, the proposed rule requires that the adjustment be done through SIP revision procedures.

[19] *Supplementary Submittal to EPA in Support of the SO_2 Annex to the Grand Canyon Visibility Transport Commission Report.* Submitted to EPA by the Western Regional Air Partnership, June 1, 2001.

C. What Is the Annual Process for Determining Whether a Trading Program Is Triggered?

The regional haze rule requires the Annex to identify the specific process for determining whether the milestones are exceeded. The WRAP included in the Annex a discussion of an annual process for making the determination, and in a supplemental paper submitted to EPA in June 2001. In this unit of the preamble, we discuss this annual process and how EPA has incorporated this process into the proposed rule.

Regional Haze Rule Requirements for Specifying How the Market Trading Program Would Be Activated

The regional haze rule, in 40 CFR 51.309(f)(1)(ii) requires that the Annex provide documentation "describing in detail how emissions reduction progress will be monitored, and what conditions will require the market trading program to be activated. * * *" In addition, 40 CFR 51.309(d)(4)(i) requires that implementation plans submitted under 40 CFR 51.309 must

include provisions requiring the monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting must be sufficient to determine whether a 13 percent reduction in actual stationary source emissions has occurred between the years 1990 and 2000, and whether milestones required by paragraph * * * [40 CFR 51.309(f)(1)(i)] * * * have been achieved for the transport region. The plan submission must provide for reporting of these data by the State to the Administrator. Where procedures developed under paragraph (f)(1)(ii) of this section and agreed upon by the State include reporting to a regional planning organization, the plan submission must provide for reporting to the regional planning body in addition to the Administrator.

Finally, 40 CFR 51.309(d)(4)(ii) requires that implementation plans submitted under 40 CFR 51.309 must include "the criteria and procedures for activating a market trading program or other program consistent with paragraph (f)(1)(i) of this section if an applicable regional milestone is exceeded, * * *", that is, consistent with the Annex.

How the Regional Haze Rule Requirements for Program Activation Are Addressed in the Annex

The WRAP addresses the requirements for documenting how the program would be activated in the Annex, and in a June 2001 supplemental paper entitled "Emissions Tracking Prior to Triggering the Emissions Trading Program." Regarding the requirement to "include provisions requiring the monitoring and reporting of actual stationary source sulfur dioxide emissions," the Annex provides that participating States and Tribes will compile an annual emissions report indicating the emissions of all stationary sources with actual SO_2 emissions greater than 100 tons per year, beginning with the year 2003 inventory. Any source which reduces emissions below 100 tons per year in later years will continue to be subject to the program.

As further described in the Annex (III.A.6.b and II.A.3.b), participating States and Tribes must determine annually from 2003 to 2018 whether the market trading program is triggered by comparing the regional SO_2 emissions from stationary sources covered by the program to the applicable milestone. Compliance with the milestone is measured by using a 3-year average of total regional emissions with the 3-year average of the milestones except for the years 2003, 2004, and 2018. For 2003, the determination is based on 2003 emissions data only. For 2004, the program will use an average of 2003 and 2004 emissions data. Compliance using a 3-year average will begin with the 2003–05 emissions data for comparison with the year 2005 milestone. For the year 2018, total emissions will be compared to the 2018 milestone, not a 3-year average.

As outlined in greater detail in the supplemental paper cited above, the annual process that participating States and Tribes will use consists of the following steps:

(1) Each participating State and Tribe will compile annual emissions reports from all sources within their jurisdiction that are subject to the program (this includes all sources with actual emissions of 100 tons/year or greater of SO_2 during the year 2003 or any subsequent year),

(2) Each State and Tribe will solicit public comment on its annual emissions report for stationary sources,

(3) States and Tribes will submit their annual emissions report to the WRAP. The annual emissions report would be due by September 30 of the following year. (For example, the emissions report for calendar year 2003 would be due September 30, 2004),

(4) The WRAP will consolidate the data into a regional emissions report, assure the integrity of the regional reporting process and the quality of the data, and issue a draft regional emissions report. The draft regional emissions report will compare regional emissions to the milestone. (**Note:** This function could also be carried out by another State and tribal designee approved by EPA, for example, a regional modeling center or other program tracking administrator.) The draft regional emissions report will be completed by December 31 of the following year (for example, the draft finding for the year 2003 will be completed by the end of calendar year 2004), and

(5) Taking into account public comment, participating States and Tribes will review and approve the final regional emissions report and make a formal submittal to EPA documenting their final determination of whether the milestone has been exceeded. The WRAP's supplementary information paper clarifies that this final submittal will be due the following March (for example, March 2005 for the emissions report for the year 2003), and this March deadline is included in the proposed rule. If the regional inventory exceeds the applicable milestone, participating States and Tribes will formally trigger the program by notifying EPA and the public at the time that the final report is submitted.

Special Provisions for the Year 2018

As discussed in sections III.A.6.c and II.A.3.c of the Annex, the participating States and Tribes will compare the total regional emissions of SO_2 for 2018 against the year 2018 milestone. Unlike for the comparison for years before 2018, there is no averaging of the emissions for 2018 with emissions of previous years. If emissions in 2018 are greater than the 2018 milestone, then source-specific penalties will be imposed if sources exceed their trading program emissions allowances.[20]

Option for Triggering the Program in the Year 2013 Based Upon Projected Emissions for the Year 2018

The Annex provides participating States and Tribes an option for triggering the market trading program in the year 2013 even if the milestone has not been exceeded. This 2013 trigger option will be implemented by consensus of those States and Tribes that have implementation plans under 40 CFR 51.309. Implementation of the early trigger will be based on emissions forecasts indicating that compliance with the 2018 milestone is not expected. The purpose of the optional trigger is to help sources to avoid penalties for the year 2018 by formally triggering the trading program in advance. Triggering the trading program early would also help ensure that actual emissions in the year 2018 will be less than the milestone.

Special Provisions for Mohave Electric Generation Station for the Years Between 2003 and 2006

The Annex also provides for special provisions in the annual emissions reporting for the Mohave Electric Generating Station for the years between 2003 and 2006. For this plant, controls will be installed by the year 2006 consistent with the Consent Decree for Grand Canyon Trust v. Southern California Edison (District of Nevada CV–S–98–00305–LDG, dated December 15, 1999).

When the interim milestones were first recommended by the WRAP Initiatives Oversight Committee (IOC), there was an error in the baseline emissions projection for the Mohave Generating Station. In estimating this baseline, the WRAP assumed that controls required for the Mohave Electric Generating Station in 2006 would be in place in 2003. Therefore, as discussed in Annex sections III.a.6.d. and II.A.3.d, the WRAP has included a correction for this error that will be used when measuring compliance with the milestones for 2003 through 2006. For these years, emissions from the Mohave Generating Station will be calculated using an SO_2 emissions rate of 0.15 pound per million BTU of coal input, consistent with the maximum allowable emissions rate effective in 2006 under the Consent Decree. These calculated emissions for Mohave will be substituted for the actual emissions in 2003, 2004, and 2005. For the year 2006, the emissions will be calculated based upon 05 pound per million BTU for any part of 2006 prior to the installation of the controls.

Reliance on Current Emissions Reporting Requirements

The WRAP, in the Annex, recommends that the current inventory techniques and requirements that States are using in the development of emissions inventories should be sufficient for quantifying the regional SO_2 emissions on an annual basis for the pre-trigger program. Consistent with this recommendation, the Annex does not provide for the development of emission quantification protocols for the pre-trigger phase of the program. The WRAP recommends that this should be adequate since the large majority of emissions come from the coal-fired power plants and the copper smelters, which are accurately measured using current methods. As noted above, the Annex includes adjustments to the milestones to take into account any changes to emission estimating or measuring techniques. If the trading program is triggered, as discussed below, the WRAP recognizes the need for protocols for consistent and "best available" emission monitoring and reporting for each source category. The EPA proposes to agree with the WRAP's recommendation that existing emissions reporting requirements are sufficient for the pre-trigger phase. However, EPA recognizes that there is some measure of uncertainty in the program because there is currently less information on the specific methods being used for reporting emissions from the other sources (that is, other than utilities and smelters), and the level of accuracy with the methods for each of these sources is not as well understood. Reliance on current inventory techniques and requirements will also result in sources in the same source category using different methodologies since the inventory reporting process allows for such variability. There will also be variability from State to State, or Tribe to Tribe, since there is no requirement for consistency between States or Tribes. We request comment on the acceptability of reliance on current emission inventory methods being used for sources in the region.

Exceptions Reports

The supplemental information provided by the WRAP indicates that the program will include a requirement for participating States and Tribes to include what are termed "exceptions reports." These exceptions reports will contain the following information:

—Identification of any new or additional SO_2 sources greater than 100 tons per year that were not contained in the previous inventory;

—Identification of sources shut down or removed from the previous inventory;

—Explanation for emissions variations at any covered source that exceeds plus or minus 20 percent from the previous year's emissions; and

—Identification and explanation of new emissions reporting methods at any source.

Incorporation of the Annual Process Into the Proposed Rule

The EPA believes that the detailed information provided by the WRAP in the Annex and in supplemental materials fulfills the requirements for the Annex that are contained in 40 CFR 51.309(f)(1)(ii) for "documentation describing in detail how emissions reduction progress will be monitored." In addition, EPA believes that State SIPs and tribal TIPs submitted consistent with these provisions will satisfy the requirements of 40 CFR 51.309(d)(4)(i) for monitoring and reporting of SO_2 emissions.

How EPA Proposes To Incorporate the Annual Process Into 40 CFR 51.309 of the Regional Haze Rule

In the proposed rule, EPA includes the WRAP program's requirements for an annual process for determining whether the milestones are exceeded. This process appears in the proposed rule at 40 CFR 51.309(h)(2) and (3). The EPA proposes that the Annex (including the supplemental papers) meets all of the requirements of 40 CFR 51.309 of the regional haze rule for "describing in detail how emission progress will be monitored, and what conditions will require the market trading program to be activated."

Proposed paragraph 40 CFR 51.309(h)(2) describes the process for collecting emissions data each year and for the reporting of such data by each participating State and Tribe. This includes provisions describing which sources must be included in the program, a requirement for States to submit emissions reports for the previous year by September 30th of each year, a requirement that the annual emissions report include exceptions reports, the special provisions for the Mohave Generating Stations for the years 2003 through 2006, and the option for including year 2018 emissions projections in the year 2013.

The regional haze rule requires, as noted above, that:

> The plan submission must provide for reporting of these data by the State to the Administrator. Where procedures developed under paragraph (f)(1)(ii) of this section and agreed upon by the State include reporting to a regional planning organization, the plan submission must provide for reporting to the regional planning body in addition to the Administrator. 40 CFR 51.309(d)(4)(i).

This provision does not require participating States and Tribes to report the relevant data to a regional planning organization, but it does give the WRAP the ability to include procedures in the Annex for the collection of data by a regional planning body. Such procedure would facilitate each State and Tribe's ability to determine whether the milestones are exceeded.

As indicated in the WRAP's supplemental paper "Emissions Tracking Prior to Triggering the Emissions Trading Program" the Annex includes a regional planning body, that is, the WRAP, for the reporting of emissions. Assuming that each participating State and Tribe designates the WRAP as the "regional planning body," each State and Tribe would report to the WRAP. The EPA, therefore, expects that the WRAP will be compiling the information from each participating State and Tribe.

The EPA assumes at this point that the participating States and Tribes will agree on the procedures for reporting data to the WRAP. However, to ensure that there would be a process in place in the unlikely instance that the participating States and Tribes do not designate a regional planning body for this purpose, or do not agree on the reporting procedures, the proposed rule provides that each State and Tribe would make the determination of whether a milestone is exceeded based on the information submitted to them by the other participating States and Tribes.

Proposed paragraph 40 CFR 51.309(h)(3) describes the process for making the annual determination of whether the milestone was met. A draft determination would be submitted by the regional planning body (which EPA assumes will be the WRAP) or each State or Tribe by the end of the following year (for example, the end of 2004 for the determination for the year 2003). The proposed rule requires a final determination, based on comments received on the draft determination, by the end of the following March (for example, the end of March 2005 for the year 2003).

D. What Must Each Participating State and Tribe's Implementation Plan Include for Administering the Trading Program, If It Is Triggered?

The regional haze rule, at 40 CFR 51.309(d)(4)(iii) and (iv), requires that SIPs/TIPs provide for a market trading program that would serve as a "backstop" to ensure that SO_2 emissions would not exceed the milestone. The regional haze rule, at 40 CFR 51.309(f)(1)(ii), requires that the annex provide information on this market trading program, consistent with 51.309(d)(4). This provision requires that the Annex must contain "documentation" of the market trading program, including model rules,

[20] See preamble unit II.D below for a further discussion of the trading program allowances.

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memoranda of understanding, and other documentation describing in detail how emissions reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate.

The regional haze rule, in 40 CFR 51.309(d)(4)(iii) requires that the implementation plans submitted under 40 CFR 51.309 must:

—Contain provisions to activate the market trading program or other program within 12 months after the emissions for the region are determined to exceed the applicable emissions reductions milestone, and
—Must assure that all affected sources are incompliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emissions reductions milestone.

Additionally, 40 CFR 51.309(d)(4)(iv) requires that the implementation plans include provisions for market trading program compliance reporting, and provisions requiring the State to provide annual reports assuring that all sources are in compliance with the market trading program.

The Annex includes documentation of the market trading program in sections II.D and II.E of the Annex, pages 28–53, and in section III.D of the Annex, pages 63–67. A draft model rule is included as Appendix A to the Annex. A draft memoranda of understanding is included as Appendix B. A few clarifications on trading program issues are included in the supplemental information submitted by the WRAP during June 2001.

These sections of the Annex provide the "documentation" required by 40 CFR 51.309(f)(2)(ii), and they include "model rules, memoranda of understanding, and other documentation describing in detail how emissions reduction progress will be monitored, what conditions will require the market trading program to be activated, how allocations will be performed, and how the program will operate." Therefore, EPA proposes a finding that the information submitted in the Annex, including the Appendices and supplemental information, satisfies the requirements in 40 CFR 51.309(f)(2)(ii) of the regional haze rule.

The EPA also proposes a finding that the Annex provides for a trading program which, if followed in the 2003 SIP submittals, will satisfy the requirements in 40 CFR 51.309(d)(4)(iii) and (iv). The June 2001 supplemental information makes clear that the backstop market trading provisions will be activated within 12 months after the emissions for the region are determined to exceed the applicable emissions reductions milestone. The Annex also, as clarified with the example in section II.D.1 on page 29, provides that all affected sources must be in compliance with allocation and other requirements within 5 years after the emissions for the region are determined to exceed the applicable emissions reductions milestone. The Annex includes provisions requiring annual reports assuring that all sources are in compliance with applicable requirements of the market trading program.

Incorporation of Annex Trading Program Provisions in the Proposed Rule

The EPA has incorporated the Annex provisions for a market trading program in proposed 40 CFR 51.309(h)(4). In the proposed rule, EPA also has included a list of fundamental elements that the SIPs must contain, and the basic requirements for those elements that will help guide EPA's review of the SIPs. These fundamental elements are aimed at ensuring the integrity of the market trading program, and are consistent with the provisions of EPA's guidance for economic incentive programs (EIPs). (*Improving Air Quality with Economic Incentive Programs* EPA–452/R–01–001, January 2001). The fundamental elements are as follows:

(1) Provisions for the allocation of allowances to each source in the program;
(2) Emissions quantification protocols;
(3) Provisions for the monitoring, record keeping and reporting of emissions;
(4) Provisions for a centralized system to track allowances and emissions;
(5) Provisions requiring the identification of an authorized account representative for each source in the program;
(6) Provisions requiring the account representative to demonstrate annual compliance with allowances;
(7) Provisions for the process of transferring allowances between parties;
(8) Provisions describing the "banking" of extra emissions reductions for use in future years, if the implementation plan allows for banked allowances;
(9) Provisions establishing enforcement penalties for noncompliance with the trading program; and
(10) Provisions for periodic evaluation of the trading program.

The EPA believes that the detailed draft model rule, which is Appendix A to the Annex, addresses these general principles. The draft model rule is intended to provide detailed regulatory language to implement the program and will serve as a template that individual States and Tribes can use to develop their SIPs under 40 CFR 51.309. The EPA intends to work together with States and Tribes to ensure that the final model rule, and the resulting State and tribal plans, are consistent with the requirements of the regional haze rule, with the provisions for TIPs contained in 40 CFR part 49, and with other requirements that are common to all State/tribal implementation plans and EIPs. The EPA believes that completion of this model rule effort in a timely manner is very important to the overall success of the program. In a supplemental paper entitled, "State Rulemaking Schedules for 309," the WRAP provided estimated timelines for each of the 9 States in the transport region to complete a SIP under 40 CFR 51.309. Based on this paper, it appears that the WRAP intends to refine and finalize the model rule by early 2002.

The EPA believes that the Annex provisions in 40 CFR 51.309 do not require the WRAP's submittal to contain the same level of detail that is required in the final model rule. First, EPA believes that it need not incorporate into 40 CFR 51.309 the same level of detail regarding the trading program that will be set forth in the model rule. Second, the model rule addresses details that are essential to the program, but may not be appropriate as Federal mandates. For example, while it is essential that the program issue specific emissions allocations to each source under the trading program, it is not necessary or appropriate for EPA to dictate that a specific method be used. Finally, we believe that if SIPs/TIPs submitted under 40 CFR 51.309 adequately address the basic fundamental criteria that we are proposing, they will provide for a sound program consistent with EPA regulations and policies.

The following is a description of each of the trading program requirements that are included in proposed 40 CFR 51.309(h)(4). For each of these proposed requirements, EPA requests comment on whether we have addressed the requirement to an appropriate level of detail, and on whether the substance of the requirement is sufficient to ensure program integrity for the backstop market trading program.

Allowances. 40 CFR 51.309(h)(4)(i) and (ii)

Allowances are a key feature of the backstop market trading program. An allowance authorizes a source to emit one ton of SO_2 during a given year or (with some exceptions) in a future year. At the end of the compliance period, which is a 12-month period ending with each calendar year, a source owner's allowances must exceed or equal its annual emissions. For example, a source that emits 5,000 tons of SO_2 in a given year must hold at least 5,000 allowances for that year.

Allowances are fully marketable commodities. Once allocated, allowances may be bought, sold, traded, or (where allowed) banked for use in future years. If the trading program is triggered, allowances are the currency with which compliance with the SO_2 emissions requirements is achieved. Sources that reduce their emissions below the number of allowances they hold may transfer allowances to other units in their system, sell or trade allowances to other sources or private parties on the open market, or bank them to cover emissions in future years. Allowance trading provides incentives for energy conservation and technology innovation that can both lower the cost of compliance and yield pollution prevention benefits.

The Annex includes a hypothetical timeline in section II.D.1. on page 29 of the Annex, which clarifies how the market trading program would be implemented. This Annex shows sources must hold sufficient allowances to cover their emissions by the 6th year following the calendar year for which emissions exceed a milestone. For example, if the milestone is exceeded in 2004, then the first calendar year for which a source would have to comply with allowances would be the calendar year 2010. As a result, the milestones become an enforceable "cap" on emissions, and the total amount of allowances issued for participating States may not exceed this "cap." A table listing the allowance totals by year is included in the proposed rule as Table 4.[21]

The proposed rule requires States and Tribes to include initial source-specific allowance allocations for each source in their implementation plans submitted under 40 CFR 51.309. These initial allocations must specify the tons per year allocated for each source for each year between 2009 and 2018.

The Annex, in section II.D (pages 28–37) and in section III.D.7 (pages 63–67) contains a detailed discussion of the methodology that the WRAP proposes for distributing allowances to sources.

[21] Note that while the Annex provides for averaging of emissions reporting and milestones for purposes of making the annual determination of whether the milestone is exceeded, once a trading program is in place, there is no averaging of the milestones for purposes of the trading program. For example, milestones for the year 2013 must add up to 655,000 (with suspended smelters) or 625,000 tons (without suspended smelters). There is no averaging of the year 2013 with 2012 and 2011 as is done for the annual determination.

This methodology outlines in detail the parameters and considerations that States and Tribes will use for issuing initial allowances to sources, and for adjusting those allowances with time. The EPA proposes not to include the details of this methodology in 40 CFR 51.309. So long as the SIPs/TIPs contain source-specific allowances for each source included within the program, and those allowances add up to the appropriate regional total, EPA believes the objectives of the program are met. The EPA views the choice of method, and the implementation of the method, to be primarily an issue for States and Tribes to address.

There is one element of the allocation methodology that EPA has chosen to include in the proposed rule to ensure that it is included in the program. This element, a 20,000 ton "set-aside" for use by Tribes, over and above any amount allocated in the process described above, can probably be assured only if EPA includes a requirement in the rule. Accordingly, 40 CFR 51.309(h)(4) requires that before issuing allowances to individual sources, 20,000 tons must be subtracted from the total for use by Tribes. The EPA believes that this 20,000 ton set-aside should not be used for issuing initial allowances to tribal sources of SO_2 included within the program, and for adjusting those allowances with time. Further discussion of issues related to tribal participation in the program, and use of the "set-aside" for Tribes, is included below in unit III of this preamble.

Emissions Quantification Protocol, and Monitoring, Recordkeeping and Reporting Provisions. 40 CFR 51.309(h)(4)(iii) and (iv)

The proposed rule requires that States include specific emissions quantification protocols, that is the procedures for determining actual emissions. These procedures will be used to measure, or determine, annual emissions if the trading program is triggered. The proposed rule also requires that States include the necessary monitoring, record keeping, and reporting provisions to measure and track results.

The WRAP recognized the need to have detailed and prescribed emission quantification protocols and proposes that the participating States and Tribes establish such provisions in the SIPs submitted under 40 CFR 51.309. The Annex describes the WRAP's approach to monitoring in section II, pages 39–41, in section III, item III.D.3 on page 64, and in Attachment A, Draft Model Rule section C.2.3 Monitoring Requirements, and section C9 Emissions Monitoring. In particular, the WRAP recognized the need for emission monitoring protocols which ensure that emissions are accurate and comparable for participating sources. For the trading program, the emissions amount becomes a tradeable, fungible commodity. Accordingly, it is important to the integrity of the program to ensure that one ton of emissions from one source is equivalent to one ton of emissions from another source. The WRAP plans to develop the specific emissions quantification protocols in a subsequent collaborative process involving States, Tribes, and EPA.

Under this program, the WRAP in the Annex proposes that sources subject to the acid rain program under title IV of the CAA will continue to follow the continuous emission monitoring procedures in the acid rain program, which appear on 40 CFR part 75. As a result, EPA would not develop or require separate emission protocols for these sources as part of implementing 40 CFR 51.309.

For the other source categories not covered by part 75, the WRAP in the Annex recognizes the need to develop protocols based upon "best available" monitoring techniques for each source category. The EPA proposes that the criteria for acceptability of these protocols in the implementation plans are the same criteria as listed in section 5.2 and 5.3 of the EIP guidelines. These guidelines state that emission quantification protocols:

—Must ensure reliable results, and that they must ensure that repeated application of the protocol obtains results equivalent to EPA-approved test methods;
—Must be replicable, that is, the protocol ensures that different users will obtain the same or equivalent results in calculating the amount of emissions and/or emissions reductions.

These guidelines also specify that trading programs need to include monitoring, record keeping, and reporting provisions to provide adequate information for determining a source's compliance with the program. Adequate monitoring, record keeping and reporting procedures have several key attributes, including representativeness (characteristic of the source category and available monitoring techniques), reliability, replicability, frequency (that is, the monitoring is sufficiently repeated within the compliance period), enforceability (that is, the monitoring is independently verifiable), and timeliness.

Tracking Process. 40 CFR 51.309(h)(4)(v)

The proposed rule requires that the implementation plans submitted under 40 CFR 51.309 must include provisions identifying a specific tracking process to track allowances and emissions. Consistent with the EIP guidance, the proposed rule requires that the implementation plans must provide that all emissions, allowance, and transaction information is transparent and publicly available in a secure, centralized data base.

The WRAP, in the Annex and draft model rule, has included numerous provisions detailing the system that States and Tribes intend to use to satisfy this proposed requirement. These provisions are outlined in detail in the draft Model Rule section C.8 and on pages 64–65 of the Annex. The overall program is referred to as the Western Emission Budget, or WEB. The tracking system includes a centralized tracking systems administrator who would be appointed by States and Tribes as the administrator of a "WEB allowance tracking system" and a "WEB emissions tracking system." The WRAP and EPA recognize that in assigning duties to any such tracking system administrator, States and Tribes may not delegate any inherent governmental responsibilities. For example, emissions data certification and program enforcement must remain with the States and Tribes. The WRAP envisions that the central tracking system will serve a number of functions: To identify which sources hold allowances in the program, to identify how many allowances a source owner holds, and to record allowance transactions. Another function of the tracking system administrator in the trading system is to record allowance transfers and to ensure at the end of the year that a source's emissions do not exceed the number of allowances it holds. The tracking system serves as the official record and operates much like a bank account.

The allowance accounts are the official records for allowance holdings for compliance purposes. It is for that reason that the EIP requires that these systems be secure and allow for frequent updates (EIP, section 7.4(g)). Also consistent with the EIP, there must be a way to uniquely identify each allowance and there must be enforceable procedures for recording data.

Responsible Party. 40 CFR 51.309(h)(4)(vi)

The EPA believes that it is important that each source owner or operator designate a person who is responsible for the data reported for that source. The proposed rule includes a requirement that the SIPs/TIPs must include such a provision.

The market trading program described in the Annex includes this requirement and refers to this person as the Authorized Account Representative (AAR). The Annex discusses the role and responsibilities of the AAR on pages 44 and 45 and in section C3 of the Draft Model Rule. The representative's responsibilities include performing permit, compliance, and allowance related actions for the WEB Program. That person will be responsible for certification for each emissions and allowance transaction.

Requirement for Annual Demonstration of Compliance. 40 CFR 51.309(h)(4)(vii)

The proposed rule requires that the SIPs/TIPs include a provision requiring the responsible party for each source to demonstrate that the source holds a quantity of allowances equal to or greater than the amount of SO_2 emitted during that year. The responsible party must make this determination within a specified number of days following the end of each calendar year. The responsible party must determine the amount of SO_2 emitted in accordance with the approved emissions quantification protocols and monitoring, record keeping and reporting provisions developed by the participating States and Tribes or the WRAP as part of this program. The EPA believes that 60 days should be generally sufficient for preparing this demonstration. This time period is consistent with the national acid rain program, and thus has been demonstrated as a reasonable time period for utility boiler sources covered by that program. The WRAP has indicated that the time necessary for determining compliance will be dependent on emission quantification protocols adopted. As these protocols are still under development, the WRAP believes that it is possible that a longer time period may be warranted in some cases. The EPA proposes that the WRAP deadline be 60 days unless a specific need is identified. We request comment on whether EPA should include a specific, generally applicable, deadline in the final rule.

Requirement for Provisions Detailing the Process for Transferring Allowances Between Parties. 40 CFR 51.309(h)(4)(viii)

The proposed rule requires that SIPs/TIPs must contain provisions detailing the process for transferring allowances from one source to another. Section C6 of the Draft Model Rule in the Annex provides a detailed description of allowance transfer procedures. The program would provide procedures for sources to request an allowance transfer, for the Tracking System Administrator to record the requests, and for notification of the source and the public of each transfer and request.

Banking Provisions. 40 CFR 51.309(h)(4)(ix)

The banking of allowances occurs when allowances that have not been used for compliance are set aside for use in a later compliance period. Banking provides flexibility to sources, encourages early reductions, and encourages early application of innovative technology. However, banking also carries an associated risk of delayed or impaired achievement of air quality goals due to the use of banked allowances.

The Annex discusses banking on page 64 and the Draft Model Rule outlines the banking procedures in section C7. The Annex states that the use of banked allowances in the compliance process will be regulated by management provisions, which would act as a disincentive for sources to use banked allowances in years where there is a substantial bank of allowances available to use in compliance. The purpose of these management provisions, sometimes referred to as "flow control" is to ensure that there would not be a substantial increase in emissions in a year for which a relatively large fraction of banked emissions were used. This provision, accordingly, will help to ensure that the milestones continue to be met.

The proposed rule allows trading programs to include provisions for banked allowances, so long as the SIPs/TIPs clearly identify how unused allowances may be kept for use in future years, and the restrictions for use of any such banked allowances. Because a key objective of the Annex is to ensure that actual emissions will not exceed the milestone for the year 2018, the proposed rule requires that any banking provision of the trading program must be designed in a way that would not allow actual emissions to exceed this milestone.

Allowing the use of banking raises a potential issue regarding records retention. While records are normally required to be retained for a minimum of 5 years from their creation, banking allows for the possibility that an unused allowance could be banked for some time before being used. Consequently, in order to ensure that records are retained for a sufficient period of time to provide for enforceability of the program, the proposed rule requires that records relating to the banked allowances must be retained for at least 5 years after the use of those allowances. For example, if an unused allowance from the year 2009 is used in 2012, the source owner or operator must retain records relating to that allowance for 5 years after its use, which in this example would be 2017.

Enforcement Penalties. 40 CFR 51.309(h)(4)(x)

The proposed rule requires that the trading program describe the specific enforcement penalties that will be applied if a source's emissions exceed its allowances. The EPA agrees with the WRAP that it is important to provide automatic and stringent penalties to provide for sufficient incentive for source owners to comply with their allowances.[22]

The EPA requires all market trading programs to include provisions for imposing penalties when a source fails to hold enough allowances to cover emissions, violates its record keeping obligations, or violates any other obligations under the program. The program must define a violation, establish the procedure for determining the magnitude of a violation, set potential penalties, and maintain the ability to impose the maximum monetary penalty consistent with the CAA. The EIP (section 7.4(h)) outlines the compliance provisions EPA considers to be essential in multi-source emission cap-and-trade programs.

The EIP also outlines the provisions for assessing liability, in section 6.1(a). Emission trading, unlike traditional regulatory mechanisms, generally involves more than one party. These parties can be not only the owners or operators of the sources participating in the program but sometimes another party who facilitated the trade (e.g., a broker). To ensure integrity in the trading system, all parties are normally responsible for ensuring the validity of the trades or their use of emissions reductions.

The penalty provisions in the emissions trading program must include mechanisms that enable the State to assess monetary penalties and impose corrective actions against the sources participating in the trading program.

The Annex outlines the enforcement elements developed by the WRAP in section II.E.6.f and in Draft Model Rule section C13. These provisions include two automatic penalties for excess emissions. First, there would be an automatic surrendering of two future year allowances for every one ton of excess emissions. Second, there would be a financial penalty that would exceed by a factor of three to four the projected range of prices for allowances. In addition to these penalties for excess emissions, the Annex provides for penalties for failure to comply with other program requirements, such as the monitoring, record keeping and reporting requirements, that would be consistent with CAA civil and criminal penalties.

Provisions for Periodic Evaluation of the Trading Program. 40 CFR 51.309(h)(4)(xi)

The proposed rule requires the backstop trading program to include a provision for periodic evaluations of the program. Such periodic evaluations are required as a means of determining whether the program, in its actual implementation, needs any mid-course corrections. The EPA, in the proposed rule, includes a list of questions that the program evaluations should address. These questions are derived from the EIP, section 5.3(b).

E. What Additional Provisions Must the SIP or TIP Include Regarding the Market Trading Program?

As included in the proposed rule in 40 CFR 51.309(h)(5), EPA proposes to include two provisions of the Annex that provide for integration with other CAA programs.

The proposed language in 40 CFR 51.309(5)(i) notes that the requirements of this program, including the backstop market trading program, are applicable requirements of the CAA that must be included in permits issued under title V of the CAA. The EPA expects that most, if not all, sources included within the program will have title V permits. The program requires participation by all sources with actual emissions of SO_2 of more than 100 tons per year. These sources would also have a potential to emit of more than 100 tons per year. As the requirements of title V apply to sources with the potential to emit 100 tons per year of any air pollutant, EPA anticipates that almost all sources in the program would have a title V permit. The only likely sources which may not have title V permits would be any source that chose to opt into the program with potential emissions of less than 100 tons per year. In the Annex in section II.E.4., the WRAP discusses permit requirements for the program. This discussion describes in detail the mechanisms that would be used to ensure that any such opt-in sources have federally enforceable permit requirements. The EPA does not believe it is necessary in 40 CFR 51.309 to include this same level of detail for opt-in sources. The proposed rule does include in 40 CFR 51.309(h)(5)(i) a requirement that all requirements of the program be enforceable by EPA, and by citizens to the extent permitted under the CAA.

As the WRAP noted in section III.D. on page 47 of the Annex, the market trading program must not interfere with other provisions of the CAA. The program must also provide for provisions to ensure its integration with other programs. For example, some sources in the market trading program may be subject to title IV of the CAA or the Southern California RECLAIM program and these sources would be subject to more than one trading program. We have included as 40 CFR 51.309(h)(5)(ii) a requirement that the SIPs submitted in 2003 must ensure that this program does not eliminate or interfere with any other requirements a source may have under the CAA.

F. What Happens to the Program After the Year 2018?

It is EPA's understanding that the Annex did not attempt to address the fate of this program beyond calendar year 2018. The regional haze rule requires that SIPs be submitted in the year 2018 for a long-term regional haze strategy covering the time period between 2018 and 2028. There may be significant technological advances between now and the time that these SIPs/TIPs are developed that affect the possible measures for visibility protection, or the reasonableness of existing measures. Accordingly, EPA believes it is reasonable to defer until that time the judgment on the specific levels of SO_2 that can be achieved.

At the same time, EPA believes it is important to recognize that any actions that occur after 2018 should not be allowed to increase SO_2 emissions beyond the 2018 milestone. Accordingly, we note in the discussions of the milestones in Table 1 of the proposed rule that any milestone developed for years after 2018 must not allow increases over and above those for the year 2018.

[22] It should be noted that EPA policy for the Administration of Environmental Programs on Indian Reservations, reaffirmed by the Administrator on July 11, 2001 and the EPA Office of Enforcement and Compliance Assurance (OECA) Guidance on the Enforcement Principles outlined in the 1984 Indian Policy dated January 17, 2001 provide guidance on EPA's response to noncompliance at tribal facilities. The EPA intends to act in a manner consistent with the Indian Policy and OECA guidance with regard to enforcement actions that would be taken under this program against tribal facilities.

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III. Implementation of the Regional SO_2 Emissions Reduction Program in Indian Country

The provisions in 40 CFR 51.309 of the regional haze rule provide for a regional visibility program within a geographic area of nine Western States. Within that geographic area, there are more than 200 federally recognized Indian Tribes. Throughout the development of the GCVTC report, and in the subsequent activities of the WRAP, including the development of the Annex, Indian Tribes have been involved in the discussions. The GCVTC and the WRAP have clearly benefitted from their understanding of the tribal perspective. These discussions have also served the Tribes in ensuring that unique issues of importance to Tribes have been carefully considered by both entities. The GCVTC report included section IV, "Tribal Perspectives and Position Regarding Recommendations." The Annex includes specific consideration of tribal interests, including a specific provision of the program for Tribes in the market trading program that is described in Attachment F to the Annex.

As demonstrated by the Tribes' participation in the WRAP, EPA believes that continued involvement by Tribes is important to any program for visibility protection in the Western United States, including the program in the Annex for stationary source SO_2 emissions. In this unit of the preamble, we discuss issues related to tribal implementation of the SO_2 program contained in the Annex.

A. Current Stationary Source SO_2 Emissions in the Region

The Annex includes only those sources whose annual emissions exceed 100 tons per year. Although as noted previously there are more than 200 Indian reservations in the geographic region potentially covered by the Annex, it appears that only four currently have stationary sources that would be affected by the program.[23] The EPA is aware of only six such sources located in Indian country within the geographic area covered by the Annex, as noted in the following table:

Reservation	Source	Base year emissions (tons/yr)
Navajo (NM)	Four Corners Power Plant	42,522 (1999)
Navajo (AZ)	Navajo Generating Station	9,162 (1999)
Fort Hall (ID)	Astaris-Idaho elemental phosphorous production facility	4,994 (1998)
Wind River (WY)	Snyder Oil	147 (1998)
Wind River (WY)	Koch Sulfur Products	1,237 (1998)
Uintah and Ouray (UT)	Bonanza Power Plant	1,135 (1999)
Total		59,197

Together, these sources represent about nine percent of the total base year stationary source inventory of 652,000 tons of SO_2 emissions in the region.

B. "Set-Aside" for Tribes in the Market Trading Program

A key feature of the Annex program provides that if the market trading program is triggered, a 20,000 ton amount will be allocated to Tribes. This amount is in addition to any allocations to the six individual sources within Indian country (see table above), and is also in addition to specific amounts in the Annex that are allocated for new source growth. As discussed in Attachment F to the Annex, this 20,000 ton set-aside is intended to help ensure equitable treatment for tribal economies and to prevent barriers to economic development. The 20,000 ton amount of allowances would be available to Tribes to either: (1) Allow for new source growth over and above the amounts allocated for new sources by the Annex program, (2) sell for revenue, such that the source owners could purchase the allowances and increase their emissions or (3) retire the allowances, which would mean they would not be sold and would therefore lead to emission decreases relative to the milestones.

The process for allocating the tribal set-aside allowances is still to be determined. In Attachment F to the Annex, the WRAP states that:

> In order to insure that all Tribes in the region have a fair and meaningful opportunity to take part in this determination, it must be done in the context of government-to-government consultation between EPA and the Tribes, during the rule making process to amend 40 CFR 51.309.

While EPA agrees with the need for meaningful consultation, EPA proposes that the process of allocating need not be determined during the rulemaking process to amend 40 CFR 51.309. For example, the proposed rule for participating States and Tribes, as noted above, allows for initial allocations in the SIPs/TIPs submitted in the year 2003. Moreover, States and Tribes could amend these initial allocations later consistent with a methodology they include in their SIPs/TIPs. The EPA proposes that allocation of the additional 20,000 tons for Tribes could take place over a more extended time frame.

C. Background on Provisions for Tribal Air Quality Programs in the CAA and in EPA Regulations

On November 8, 1984, the EPA adopted a policy entitled "EPA Policy for the Administration of Environmental Programs on Indian Reservations." This policy, available on the Internet at *http://www.epa.gov/indian/1984.htm*, establishes a number of principles that guide EPA in the conduct of our congressionally mandated responsibilities. In particular, EPA will pursue the principle of tribal "self-government" and will work with tribal governments on a "government-to-government" basis. The EPA will work with interested tribal governments in developing environmental programs for Indian country. Generally, EPA will retain responsibility for protecting tribal air quality until such time as Tribes administer their own air quality protection programs. Administrator Whitman reaffirmed the 1984 EPA Indian policy on July 11, 2001.

The CAA, as amended in 1990, added section 301(d) which authorizes EPA to "treat Tribes as States" for the purposes of administering CAA programs. Section 301(d) requires that EPA promulgate regulations listing CAA provisions for which it would be appropriate to treat

[23] To date, EPA has not received any TIPs from these four Tribes. Nothing in this preamble is intended to suggest that these Tribes are authorized by EPA to administer CAA regulatory programs.

Tribes as States and establishing the criteria that Tribes must meet in order to be eligible for such treatment under the CAA. The EPA proposed these regulations on August 25, 1994 (59 FR 43956), and finalized the rule on February 12, 1998 (63 FR 7254). Much of the regulatory language in this rule is codified in the CFR as a new 40 CFR part 49. This rule is generally referred to as the Tribal Authority Rule or TAR.

The TAR includes general eligibility requirements, codified in 40 CFR 49.6, for Tribes interested in assuming program responsibilities. Tribes may request a formal eligibility determination using administrative procedures contained in 40 CFR 49.7. Tribes may also use the administrative procedures in 40 CFR 49.7 to seek approval to implement CAA programs. As noted in 40 CFR 49.7(c), Tribes that are interested in seeking EPA approval to implement air quality programs under the CAA may request approval to implement only partial elements of a CAA program, so long as the elements of the partial program are "reasonably severable."

Section 301(d)(4) of the CAA confers discretionary authority on EPA to provide through regulation alternative means of air quality protection in cases where it determines that treating Tribes as "identical" to States would be inappropriate or administratively infeasible. In promulgating the TAR, EPA provided flexibility to Tribes seeking to implement the CAA. Some flexibility is established by virtue of EPA's decision, under 40 CFR 49.4 of the final rule, not to treat Tribes as States for specified provisions of the CAA. The rationale for this approach is discussed in the preamble to the TAR (63 FR 7264–7265) and in the preamble to the proposed rule (59 FR 43964–43968). For example, unlike States, Tribes are not required by the TAR to adopt and implement CAA plans or programs. Tribes are also not subject to mandatory deadlines for submittal of implementation plans. As discussed in the preamble previously, EPA believes that it generally would not be reasonable to impose the same types of deadlines on Tribes as on States. Among the CAA provisions for which EPA has determined it will not treat Tribes as States is section 110(c)(1) of the CAA, which requires EPA to intervene and ensure air quality protection within 2 years after a State either fails to adopt a SIP or does not win EPA approval for a SIP that was determined to be deficient. The EPA did not apply this provision to Tribes because the section 110(c) obligation on EPA to promulgate a FIP is based on failures with respect to required submittals, and, as noted above, tribal submissions under the TAR are voluntary, not mandatory. Instead, pursuant to its section 301(d)(4) discretionary authority, EPA has provided in the TAR that, where necessary and appropriate, it will promulgate FIPs within reasonable timeframes to protect air quality in Indian Country. See 40 CFR 49.11(a).

D. Discussion of the TAR as it Relates to Tribal Participation in the SO_2 Reduction Program

The EPA believes that clarification is needed on whether Tribes, like States, must develop and submit implementation plans by the end of the year 2003 in order to exercise the option provided by 40 CFR 51.309. Regarding this year 2003 deadline, in the preamble to the regional haze rule we laid out the framework for waiving the 51.309(c) deadline with respect to Indian Tribes. Section 309(c) requires that, in order to exercise the option provided by section 309, each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the sixteen Class I areas by December 31, 2003. The preamble reiterates the Agency's recognition that some Tribes have limited resources and/or expertise to participate in regional planning efforts for regional haze, stating:

> [i]n order to encourage Tribes to develop self-sufficient programs, the TAR provides Tribes with the flexibility of submitting programs as they are developed, rather than in accordance with statutory deadlines. This means that Tribes that choose to develop programs, where necessary may take additional time to submit implementation plans for regional haze over and above the deadlines in the Transportation Equity Act for the 21st Century (TEA–21) legislation as codified in today's final rule. (See unit III.B for discussion of those deadlines.) (64 FR 35759, July 1, 1999).

Unit III.B of the preamble, entitled, "Timetable for Submitting the First Regional Haze State Implementation Plan (SIP)" includes in the summary of the timetable for submitting SIPs, the 40 CFR 51.309 deadline of Dec. 31, 2003.

The preamble further discusses the link between the TEA–21 legislation changing the SIP deadlines for regional haze, and the TAR 49.4(f) provision waiving the section 169(b)(e)(2) SIP submittal deadline with regard to Indian Tribes.

The TEA–21 legislation changed the deadlines for State submission of SIP revisions to address regional haze, which were originally set out in section 169(B)(e)(2) of the CAA. Section 49.4(a) of the TAR provides that specific plan submittal and implementation deadlines for NAAQS-related requirements do not apply to Tribes. Section 49.4(e) states that Tribes will not be subject to specific visibility implementation plan submittal deadlines established under 169A of the CAA. Section 49.4(f) of the TAR provides that deadlines related to SIP submittals under section 169(B)(e)(2) do not apply to Tribes. Under section 49.4(f) Tribes will not be treated in the same manner as States with regard to, "[specific implementation plan submittal deadlines related to sections 169B(e)(2), 184(b)(1) & (c)(5) of the Act. For eligible Tribes participating as members of such commissions, the Administrator shall establish those submittal deadlines that are determined to be practicable or, as with other non-participating Tribes in an affected transport region, provide for federal implementation of necessary measures."

Under 40 CFR 51.309(c), each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the sixteen Class I areas by December 31, 2003. Otherwise, the State must submit SIPs consistent with 40 CFR 51.308. Based on the above provisions of the TAR, however, Tribes are not required to develop and submit implementation plans by the end of the year 2003 and may choose to opt-in to the program at a later date. We encourage Tribes choosing to develop implementation plans to make every effort to submit by the deadlines to ensure that the plans are integrated with and coordinated with regional planning efforts.

E. Current Thinking on Tribal Program Assistance

For Tribes which choose to implement 40 CFR 51.309, EPA believes there are a number of ways that EPA can provide assistance. As discussed above, a number of major sources of SO_2 are located on areas within Indian country. The EPA would like to help the Tribes that have major SO_2 sources to comply with the pre-trigger emission tracking requirements of the program, and to help them develop ways to participate in the backstop trading program.

The EPA also sees a possible need to help facilitate allocation of the 20,000 tons allocated to Tribes under the backstop market trading program. The EPA believes, however, that the critical need for the allocation does not exist until a trading program is triggered. As discussed above in unit II.D of this preamble, the earliest year for compliance with allowances is the year 2009. While it is preferable to have any allowances in place well in advance of

this date, EPA does not see the distribution of the tribal set-aside as a critical issue for EPA involvement in the near term. The EPA expects that Tribes will develop a method for allocating the 20,000 tons. The EPA will seek to provide assistance as necessary to facilitate the process.

In summary, EPA is committed to ensuring protection of tribal air resources, building tribal air program capacity and working with Tribes on a government-to-government basis. We request comment from Tribes on how we can implement this program in the best way consistent with EPA's Indian Policy.

IV. Administrative Requirements

In preparing any proposed rule, EPA must meet the administrative requirements contained in a number of statutes and executive orders. In this unit of the preamble, we discuss how today's regulatory proposal for incorporating the provisions of the WRAP Annex addresses these administrative requirements.

A. Executive Order 12866: Regulatory Planning and Review by the Office of Management and Budget (OMB)

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impacts of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action." As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

Today's proposed rulemaking would amend the regional haze rule by incorporating a specific set of SO_2 emission targets for region-wide stationary sources of SO_2 emissions for a nine-State region in the western United States. The emission targets would affect and have potential economic impacts only for States choosing to participate in the optional program provided by 40 CFR 51.309 of the regional haze rule. The emissions reductions resulting from the program vary over the 2003 to 2018 time period. If all nine States participate in the program, the WRAP estimates that for the year 2018, SO_2 emissions would be reduced from a projected baseline of 612,000–642,000 tons to an enforceable milestone of 480,000–510,000 tons (described above in unit II.A.). If the milestones are not achieved through voluntary emissions reductions by the affected sources, then they will be achieved through an enforceable backstop market trading program.

The EPA believes that in order to understand the possible regulatory impacts of today's proposed rule, it is important to review the previous analysis that EPA completed for the regional haze program overall. In 1999, the EPA prepared a Regulatory Impact Analysis (RIA) for the regional haze rule (available in the docket for the regional haze rule (A–95–38)). In that RIA, the EPA assessed "the costs, economic impacts, and benefits for four illustrative progress goals, two sets of control strategies, two sets of assumptions for estimating benefits, and systems of national uniform verus regionally varying progress goals," (64 FR 35760, July 1, 1999). Because EPA had no way of predicting the visibility goals each State would pick under the regional haze rule requirements, EPA conducted an extensive analysis of "what if" scenarios. For example, one of the scenarios assumed that all States would choose to achieve a 10 percent improvement in visibility (measured in deciviews) over a 10-year period, while another of the scenarios assumed a 1.0 deciview improvement over a 15-year period. For each scenario, the RIA determined the control measures that would be needed to achieve the given degree of visibility improvement, and the cost of those control measures. In addition to calculating the national impacts of the regional haze rule under the various scenarios, the RIA also presented results for six specific sub-regions. Four of the sub-regions ("Rocky Mountain," "West," "Northwest," and "South Central") contained one or more States within the nine-State region addressed by the WRAP Annex. The regional approach reflected the distinction across regions in the nature of the impairment in the Class I areas, the causes of the visibility impairment, and the costs of achieving the various progress objectives in each region. Emission reductions under the various scenarios by sub-region are provided in the RIA in tables 6–7 and 6–8.

The EPA believes that some of the emission reductions resulting from the Annex provisions for stationary source SO_2 (assuming that States exercise the option for this program) may result from other environmental obligations under the CAA. For example, SO_2 reductions may be required for attainment of the national ambient air quality standard for $PM_{2.5}$. To the extent that this is the case, the emissions reductions required by the WRAP's SO_2 milestones and backstop trading program may have already been addressed in other regulatory impact analyses for those programs.

The remainder of the emissions reductions resulting from the WRAP's program for stationary source SO_2 would be over and above those required to meet other environmental obligations. Where this is the case, EPA believes that the control costs and other potential economic consequences of achieving the reductions are reflected in the RIA for the 1999 regional haze rule. The range of results for the eight scenarios analyzed in the RIA resulted in predicted sulfur dioxide emission reductions that are within the range of emission reductions included in the Annex. Two of the eight scenarios resulted in 284,000 tons of stationary source reductions in regions containing one or more of the WRAP Annex States. Five other scenarios included sulfur dioxide emissions reductions ranging from 95,000 to 128,000 tons per year. Hence, the costs and benefits associated with the WRAP's program are captured in the RIA for the 1999 final regional haze rule.

B. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business that is a small industrial entity as defined in the U.S. Small Business Administration (SBA) size standards (as discussed on the SBA website at *http://www.sba.gov/size/SIC2NAICSmain.html*); (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the potential for economic impacts of today's proposed rule on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities. Today's proposed rule amends the requirements of the regional haze program to provide nine western States and a number of Tribes with an optional method for complying with the requirements of the CAA. No State or Tribe is required to submit an implementation plan meeting its requirements. For States or Tribes that choose to submit an implementation plan under this optional program, however, today's proposed rule requires those States and/or Tribes to meet a series of regional SO_2 emission milestones. The EPA will determine whether these milestones are met based on the actual emissions from stationary sources with SO_2 emissions of more than 100 tons per year. From data EPA obtained from the WRAP's website, it appears that there are 197 establishments meeting the 100 tons per year of SO_2 criterion for this program, including 39 utility power plants, and 158 non-utility sources.[24] The vast majority of these establishments—which include sources such as power plant boilers, copper smelters, chemical plants, petroleum refineries, natural gas production plants, large manufacturing operations, paper mills—are not small entities. The EPA estimates that 12 facilities are likely to be small entities, and 166 are not small. The EPA has been unable to determine the size of 16 entities at this time.[25] Even if all 16 were determined to be small entities, and all nine States and those Tribes with covered sources adopted the optional approach to complying with the visibility requirements of the CAA, less than 30 small entities would be potentially affected by this proposed rule. The goal of the WRAP is for the regional SO_2 milestones established by the rule to be met through voluntary measures, see Annex at 23, and EPA believes that participating States and Tribes may be able to meet the milestones through such measures. However, as a backstop in the event the milestones are not met in this manner, the proposed rule requires the implementation of a market trading program to ensure that emissions in the relevant region do not exceed the milestones. The proposed rule gives the States and Tribes the discretion to structure the emissions trading program, including the discretion to allocate emissions credits to sources, as the States and Tribes determine appropriate. Thus, ultimately, the impact on small entities will be determined not by this rule, but rather by how the relevant State or Tribe exercises its discretion in adopting the optional program and allocating emissions credits. The EPA encourages the States to consider the impact of its market trading program on small entities in structuring the program, but EPA cannot predict the impact of the rule on small entities. Nonetheless, EPA believes that no more than 28 small entities will be effected by this rule, and most likely less, given that EPA does not anticipate that all 9 States with the option of adopting this program will do so. Thus, EPA believes that this action will not have a significant economic impact on a substantial number of small entities.

We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

C. Paperwork Reduction Act—Impact on Reporting Requirements

The information collection requirements in this proposal have been submitted to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared by EPA (ICR No. 1813.03) and a copy may be obtained from Sandy Farmer, by mail at Collection Strategies Division; U.S. EPA (2822) 1200 Pennsylvania Avenue, NW, Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

This ICR contains burden estimates specific to the implementation of the WRAP's program for stationary sources of SO_2. Because this proposed rule is an amendment to the regional haze rule, this ICR will revise the existing ICR for the regional haze rule (ICR 1813.02). For future ICR renewals for the regional haze rule, EPA will incorporate the effects of this rule.

The EPA has prepared burden estimates for the specific burden impacts of today's proposed rule. These burden estimates are calculated using the assumption that 7 eligible States and 4 Tribes would participate in the program. The results of the calculations indicate 16,100 hours to 19,990 hours for affected sources, 14,010 to 14,430 hours for States, 2520 to 2600 hours for Tribes, and 1305 to 1375 for the Federal government.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division; U.S. Environmental Protection Agency (2822); 1200

[24] The number of power plants was obtained from "Data Worksheets from ICF Consulting Detailing Utility Emissions Projections," Item 3 in supplemental information transmitted to Tim Smith, EPA, from Patrick Cummins, WRAP, June 29, 2001. The non-utility estimate was obtained from: *Technical Support Documentation. Voluntary Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide in Nine Western States and a Backstop Market Trading Program.* Section 2.A. Revised Appendix A for the Pechan Report, table A–1.

[25] The EPA provides documentation of these estimates in a technical memorandum, "Size of Potentially Affected Entities Should the Western Regional Air Partnership States Choose to Adopt Regulations in Accordance with the Draft Proposed Rule Revising Section 51.309(h)." Allen Basala, EPA, October 17, 2001. This memorandum is included in the docket for today's proposal.

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Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 6, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 5, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

D. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4) (UMRA), establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, 2 U.S.C. 1532, EPA generally must prepare a written statement, including a cost-benefit analysis, for any proposed or final rule that "includes any Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more * * * in any one year." A "Federal mandate" is defined under section 421(6), 2 U.S.C. 658(6), to include a "Federal intergovernmental mandate" and a "Federal private sector mandate." A "Federal intergovernmental mandate," in turn, is defined to include a regulation that "would impose an enforceable duty upon State, local, or tribal governments," section 421(5)(A)(i), 2 U.S.C. 658(5)(A)(i), except for, among other things, a duty that is "a condition of Federal assistance," section 421(5)(A)(i)(I). A "Federal private sector mandate" includes a regulation that "would impose an enforceable duty upon the private sector," with certain exceptions, section 421(7)(A), 2 U.S.C. 658(7)(A).

Before promulgating an EPA rule for which a written statement is needed under section 202 of the UMRA, section 205, 2 U.S.C. 1535, of the UMRA generally requires EPA to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective, or least burdensome alternative that achieves the objectives of the rule.

By proposing to incorporate into the regional haze rule the provisions of the Annex for a voluntary emissions reductions program and backstop trading program, EPA is not directly establishing any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments. The entire program under 40 CFR 51.309, including the proposed amendments, is an option that each of the States may choose to exercise. The program is not required and thus is clearly not a "mandate." Thus, EPA is not obligated to develop under section 203 of the UMRA a small government agency plan.

The EPA also believes that because today's proposal provides those States potentially subject to the proposed rule with substantial flexibility, the proposed rule meets the UMRA requirement in section 205 to select the least costly and burdensome alternative in light of the statutory mandate for SIPs for visibility protection that address BART. The proposed rule provides States and sources with the flexibility to achieve regional SO_2 reductions in a way that is cost effective and administratively effective. Sources are given the opportunity to achieve voluntary reductions. If such reductions do not occur, the rule provides for the establishment of a trading program to achieve targeted emissions reductions. If a trading program is implemented, sources have the flexibility to buy and sell allowances in order to reach emissions reduction milestones in the most cost-effective way. The proposed rule therefore, inherently provides for adoption of the least costly, most cost-effective, or least-burdensome alternative that achieves the objective of the rule.

The EPA believes that this rulemaking action is not subject to the requirements of UMRA. For regional haze SIPs overall, it is questionable whether a requirement to submit a SIP revision constitutes a Federal mandate, as discussed in the preamble to the regional haze rule, (64 FR 35761, July 1, 1999). However, today's proposed rule contains no Federal mandates (under the regulatory provisions of title II of the UMRA) for States, local, or tribal governments or the private sector. The program contained in 40 CFR 51.309, including today's proposed amendments, is an optional program.

E. Executive Order 12898: Environmental Justice

Executive Order 12898 requires that each Federal agency make achieving environmental justice part of its mission by identifying and addressing, as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minorities and low-income populations.

The EPA believes that this proposed rule should not raise any environmental justice issues. The overall result of the program is regional reductions in SO_2. Because this program would likely reduce regional and local SO_2 levels in the air, and because there are separate programs under the CAA to ensure that SO_2 levels do not exceed national ambient air quality standards, it appears unlikely that this program would permit any adverse affects on local populations.

F. Executive Order 13045: Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency. The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Order has the potential to influence the regulation. The proposal to codify the SO_2 emissions reduction program is not subject to Executive Order 13045 because it does not establish an environmental standard intended to mitigate health or safety risks.

G. Executive Order 13132: Federalism

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

Under section 6(b) of Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. Under section 6(c) of Executive Order 13132, EPA may not issue a regulation that has federalism implications and that preempts State law, unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As an optional program, the proposed rule will not directly impose significant new requirements on State and local governments. In addition, even if the proposed rule did have federalism implications, it will not impose substantial direct compliance costs on State or local governments, nor will it preempt State law.

Consistent with EPA policy, EPA nonetheless consulted with State and local officials early in the process of developing the proposed regulation, to provide them an opportunity for meaningful and timely input into its development. These consultations included a working meeting with State and local officials, and numerous discussions with committees and forums of the WRAP. In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

H. Executive Order 13175: Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to, among other things, ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian Tribes, on the relationship between the Federal government and the Indian Tribes, or on the distribution of power and responsibilities between the Federal government and Indian Tribes."

Under section 5(b) of Executive Order 13175, EPA may not issue a regulation that has tribal implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by tribal governments, or EPA consults with tribal officials early in the process of developing the proposed regulation. Under section 5(c) of the Executive Order, EPA may not issue a regulation that has tribal implications and that preempts tribal law, unless the Agency consults with tribal officials early in the process of developing the proposed regulation.

This proposed rule may have tribal implications, but EPA believes that it will neither impose substantial direct compliance costs on the Tribes nor preempt tribal law. The EPA is seeking input from potentially affected Tribes before reaching a conclusion on whether this rule will have tribal implications. This is due, in large part, to the voluntary nature of this program and the uncertainty of potential impacts on Tribes in the event a State or Tribe chooses to participate in the program. Possible impacts on Tribes choosing to opt into the program are discussed above in unit III of this preamble. The EPA specifically requests comments from tribal governments on whether this proposed rule, if finalized, constitutes a policy that has tribal implications as defined in E.O. 13175.

The EPA notes that the WRAP consulted extensively with tribal representatives in the development of the Annex, the document which provided the basis for today's proposed rulemaking. The Annex provides recognition of Tribes throughout the document and a specific discussion of tribal issues in Attachment F. Today's rulemaking closely mirrors the recommendations of the WRAP and therefore reflects discussions between the WRAP and Tribes.

In any case, prior to the issuance of the final rule, EPA will provide additional opportunities for consultation with tribal officials or authorized representatives of tribal governments on the potential impacts of the proposed rule on Tribes and whether the rule has tribal implications. The EPA will consider concerns expressed by tribal officials during these consultations in the development of the final rule. This consultation will be conducted consistent with the requirements of E.O. 13175 and afford Tribes opportunities to provide additional input into the development of this rule. In the preamble to the final rule, EPA will include a discussion of the consultation we have undertaken and our conclusions regarding tribal implications. The EPA specifically solicits additional comment on this proposed rule from tribal officials.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act of 1995 ("NTTAA"), Public Law 104–113, Section 12(d) (15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in its regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs EPA to provide Congress, through OMB, explanations when the Agency decides not to use available and applicable voluntary consensus standards.

However, this action does not incorporate any requirements to use any particular technical standards, such as specific measurement or monitoring techniques. Therefore, EPA is not considering the use of any voluntary consensus standards in this rulemaking. The proposed rule does require States to develop emissions quantification protocols and monitoring procedures for their SIPs as part of the market trading program. However, EPA generally defers to the choices the States make in their SIPs when the CAA does not prescribe requirements, so EPA is not proposing to require the use of specific, prescribed techniques or methods in those SIPs. Nevertheless, while EPA believes that it is not necessary to consider the use of any voluntary consensus standards for this proposal, we will encourage States and tribes to consider the use of such standards in the development of these protocols.

We welcome comments on this aspect of the proposed rulemaking.

J. Executive Order 13211: Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," (66 FR 28355, May 22, 2001), provides that agencies shall prepare and submit to the Administrator of the Office of Information and Regulatory Affairs, OMB, a Statement of Energy Effects for certain actions identified as "significant

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energy actions." Section 4(b) of Executive Order 13211 defines "significant energy actions" as "any action by an agency (normally published in the **Federal Register**) that promulgates or is expected to lead to the promulgation of a final rule or regulation, including notices of inquiry, advance notices of proposed rulemaking, and notices of proposed rulemaking: (1)(i) That is a significant regulatory action under Executive Order 12866 or any successor order, and (ii) is likely to have a significant adverse effect on the supply, distribution, or use of energy; or (2) that is designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action." Under Executive Order 13211, a Statement of Energy Effects is a detailed statement by the agency responsible for the significant energy action relating to: (i) Any adverse effects on energy supply, distribution, or use including a shortfall in supply, price increases, and increased use of foreign supplies should the proposal be implemented, and (ii) reasonable alternatives to the action with adverse energy effects and the expected effects of such alternatives on energy supply, distribution, and use.

While this rulemaking is a "significant regulatory action" under Executive Order 12866, EPA has determined that this rulemaking is not a significant energy action because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. In the proposed rule, if States chose to implement the option provided by 40 CFR 51.309, this would lead to a regional reduction in SO_2 emissions in order to meet the WRAP's SO_2 milestones for the 2003–2018 time period. The WRAP's analysis of the program's requirements results in the following projections: [26]

—No reduction in crude oil supply;
—No reduction in fuel production;
—0.0 percent to 0.2 percent increase in wholesale electricity prices in 2018;
—Production cuts in coal in the western States balanced by increases in coal production in the Appalachian region;
—No increase in energy distribution costs;
—No significantly increased dependence on foreign supplies of energy;
—Adverse impacts on employment, gross regional product, and real disposable incomes in the affected western States of less than 0.05 percent in 2018;
—Room for new sources of electrical generating capacity within the target SO_2 emission levels.

Given the particular concern in the West regarding needed electrical generating capacity, EPA believes it important to note the WGA statement that "the conclusion [* * * of their analysis * * *] is that sulfur dioxide emissions reductions milestones should in no way impede the construction of new coal-fired power plants in the West.[27] * * *"

Furthermore, an assessment by WGA of the effects of the WRAP Annex indicates that it is possible to build 7000 megawatts or more of new coal fired generation at any time between 2001 and 2018 without exceeding the SO_2 emission milestones in the Annex.[28] However the amount of megawatts that could be built is affected by analytical assumptions regarding fuel mix and quality, capacity utilization, control levels, and the demarcation of fuel use regions. Additional scenarios included in the WGA analysis show that there could be room for 19,000 megawatts of generation capacity.

The EPA believes that the program contained in the Annex and in today's proposed rule will not result in energy reduction of 500 or more megawatts installed production capacity. Under this program, considerable flexibility is afforded to electricity generators on how to comply with the program. Even if the trading program is triggered and sources must comply with allowances, we believe that the least-cost solutions afforded by the trading program, and the ability to secure emissions reductions from other sources, will make it very unlikely that the program would lead to plant shutdowns.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Nitrogen dioxide, Particulate matter, Sulfur oxides, Volatile organic compounds.

Dated: April 25, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set forth in the preamble, part 51 of chapter I of title 40 of the Code of Federal Regulations is proposed to be amended as follows:

[26] ICF consulting, Final Report on Regional Economic Impacts of Annex. Transmitted to Tim Smith, EPA/OAQPS by Patrick Cummins, WRAP Co-Project Manager, June 29, 2001.

[27] Memorandum from Jim Souby to Staff Council, State Environmental Directors and State Air Directors, "Energy and Air Quality Issues," February 23, 2001.

[28] Technical Memorandum, "Analysis of New Coal-Fired Power Plants Under the Proposed Sulfur Dioxide Emission Reduction Milestones for the Nine-State Grand Canyon Visibility Transport Region," February 22, 2001.

PART 51—REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF IMPLEMENTATION PLANS

Subpart P—Protection of Visibility

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410–7671q.

2. Section 51.309 is amended by:
a. Revising paragraph (b)(5).
b. Adding paragraphs (b)(8) and (b)(9).
c. Revising paragraph (c).
d. Revising paragraphs (d)(4)(i) through (d)(4)(iv).
e. Revising paragraph (f)(1)(i).
f. Adding paragraph (h).

The revisions and additions read as follows:

§ 51.309 Requirements Related to the Grand Canyon Visibility Transport Commission.

* * * * *

(b) * * *

(5) Milestone means the maximum level of annual regional sulfur dioxide emissions for a given year, assessed annually consistent with paragraph (h)(2) of this section beginning in the year 2003.

* * * * *

(8) BHP San Manuel means:

(i) The copper smelter located in San Manuel, Arizona which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(9) Phelps Dodge Hidalgo means:

(i) The copper smelter located in Hidalgo, New Mexico which operated during 1990, but whose operations were suspended during the year 2000,

(ii) The same smelter in the event of a change of name or ownership.

(c) Each Transport Region State may meet the requirements of § 51.308(b) through (e) by electing to submit an implementation plan that complies with the requirements of this section. Each Transport Region State must submit an implementation plan addressing regional haze visibility impairment in the 16 Class I areas no later than December 31, 2003. Indian Tribes may submit implementation plans after the December 31, 2003 deadline. A Transport Region State that elects not to submit an implementation plan that complies with the requirements of this section (or whose plan does not comply with all of the requirements of this section) is subject to the requirements of § 51.308 in the same manner and to the same extent as any State not included within the Transport Region.

* * * * *

(d) * * *

(4) * * *

(i) Sulfur dioxide milestones consistent with paragraph (h)(1) of this section.

(ii) Monitoring and reporting of sulfur dioxide emissions. The plan submission must include provisions requiring the annual monitoring and reporting of actual stationary source sulfur dioxide emissions within the State. The monitoring and reporting data must be sufficient to determine whether a 13 percent reduction in actual emissions has occurred between the years 1990 and 2000, and for determining annually whether the milestone for each year between 2003 and 2018 is exceeded, consistent with paragraph (h)(2) of this section. The plan submission must provide for reporting of these data by the State to the Administrator and to the regional planning organization consistent with paragraph (h)(2) of this section.

(iii) Criteria and Procedures for a Market Trading Program. The plan must include the criteria and procedures for activating a market trading program within 5 years consistent with paragraph (h)(3) of this section if an applicable milestone is exceeded. The plan must also provide for implementation plan assessments of the program in the years 2008, 2013, and 2018.

(iv) Provisions for market trading program compliance reporting consistent with paragraph (h)(3) of this section.

* * * * *

(f) * * *

(1) * * *

(i) The annex must contain quantitative emissions milestones for stationary source sulfur dioxide emissions for the reporting years 2003, 2008, 2013 and 2018. The milestones must provide for steady and continuing emissions reductions for the 2003–2018 time period consistent with the Commission's definition of reasonable progress, its goal of 50 to 70 percent reduction in sulfur dioxide emissions from 1990 actual emission levels by 2040, applicable requirements under the CAA, and the timing of implementation plan assessments of progress and identification of deficiencies which will be due in the years 2008, 2013, and 2018. The milestones must be shown to provide for greater reasonable progress than would be achieved by application of best available retrofit technology (BART) pursuant to § 51.308(e)(2) and would be approvable in lieu of BART.

* * * * *

(h) *Emissions Reduction Program for Major Industrial Sources of Sulfur Dioxide.* The first implementation plan submission must include a stationary source emissions reduction program for major industrial sources of sulfur dioxide that meets the following requirements:

(1) *Regional sulfur dioxide milestones.* The plan must include the milestones in Table 1, and provide for the adjustments in paragraphs (h)(1)(i) through (iv) of this section. Table 1 follows:

TABLE 1.—SULFUR DIOXIDE EMISSIONS MILESTONES

Column 1	Column 2	Column 3	Column 4
For the year—	* * * if BHP San Manuel and Phelps Dodge Hidalgo resume operation, the maximum regional sulfur dioxide milestone is—	* * * if neither BHP San Manuel nor Phelps Dodge Hidalgo resumes operation, the minimum regional sulfur dioxide milestone is—	* * * and the emission inventories for these years will determine whether emissions are greater than or less than the milestone—
2003	720,000 tons	682,000 tons	2003.
2004	720,000 tons	682,000 tons	Average of 2003 and 2004.
2005	720,000 tons	682,000 tons	Average of 2003, 2004 and 2005.
2006	720,000 tons	682,000 tons	Average of 2004, 2005 and 2006.
2007	720,000 tons	682,000 tons	Average of 2005, 2006, and 2007.
2008	718,333 tons	680,333 tons	Average of 2006, 2007, and 2008.
2009	716,667 tons	678,667 tons	Average of 2007, 2008 and 2009.
2010	715,000 tons	677,000 tons	Average of 2008, 2009 and 2010.
2011	715,000 tons	677,000 tons	Average of 2009, 2010, and 2011.
2012	715,000 tons	677,000 tons	Average of 2010, 2011, and 2012.
2013	695,000 tons	659,667 tons	Average of 2011, 2012, and 2013.
2014	675,000 tons	642,333 tons	Average of 2012, 2013, and 2014.
2015	655,000 tons	625,000 tons	Average of 2013, 2014, and 2015.
2016	655,000 tons	625,000 tons	Average of 2014, 2015, and 2016.
2017	655,000 tons	625,000 tons	Average of 2015, 2016, and 2017.
2018	510,000 tons	480,000 tons	Year 2018 only.
each year after 2018	no more than 510,000 tons	no more than 480,000 tons	Three-year average of the year and the two previous years, or any alternative provided in a future plan revisions under § 51.308(f).

(i) Adjustment for States and Tribes Which Choose Not to Participate in the Program, and for Tribes that choose to opt into the program after the 2003 deadline. If a State or Tribe chooses not to submit an implementation plan under the option provided in this section, the amounts for that State or Tribe which are listed in Table 2 must be subtracted from the milestones that are included in the implementation plans for the remaining States and Tribes. For Tribes that opt into the program after 2003, the amounts in Table 2 of this paragraph will be automatically added to the milestones that are included in the implementation plans for the participating States and Tribes, beginning with the first year after the tribal implementation plan implementing this section is approved by the Administrator. The amounts listed in Table 2 are for purposes of adjusting the milestones only, and they do not represent amounts that must be allocated under any future trading program. Table 2 follows:

TABLE 2.—AMOUNTS SUBTRACTED FROM THE MILESTONES FOR STATES AND TRIBES WHICH DO NOT EXERCISE THE OPTION PROVIDED BY § 51.309

State or Tribe	2003	2004	2005	2006	2007	2008	2009	2010
1 Arizona	117,372	117,372	117,372	117,372	117,372	117,941	118,511	119,080
2. California	37,343	37,343	37,343	37,784	37,343	36,363	35,382	34,402
3. Colorado	98,897	98,897	98,897	98,897	98,897	98,443	97,991	97,537
4. Idaho	18,016	18,016	18,016	18,016	18,016	17,482	16,948	16,414
5. Nevada	20,187	20,187	20,187	20,187	20,187	20,282	20,379	20,474
6. New Mexico	84,624	84,624	84,624	84,624	84,624	84,143	83,663	83,182
7. Oregon	26,268	26,268	26,268	26,268	26,268	26,284	26,300	26,316
8. Utah	42,782	42,782	42,782	42,782	42,782	42,795	42,806	42,819
9. Wyoming	155,858	155,858	155,858	155,858	155,858	155,851	155,843	155,836
10. Navajo Nation	53,147	53,147	53,147	53,147	53,147	53,240	53,334	53,427
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintah and Ouray Reservation	1,129	1,129	1,129	1,129	1,129	1,131	1,133	1,135
13. Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

State or Tribe	2011	2012	2013	2014	2015	2016	2017	2018
1. Arizona	119,080	119,080	116,053	113,025	109,998	109,998	109,998	82,302
2. California	34,402	34,402	33,265	32,128	30,991	30,991	30,991	27,491
3. Colorado	97,537	97,537	94,456	91,375	88,294	88,294	88,294	57,675
4. Idaho	16,414	16,414	15,805	15,197	14,588	14,588	14,588	13,227
5. Nevada	20,474	20,474	20,466	20,457	20,449	20,449	20,449	20,232
6. New Mexico	83,182	83,182	81,682	80,182	78,682	78,682	78,682	70,000
7. Oregon	26,316	26,316	24,796	23,277	21,757	21,757	21,757	8,281
8. Utah	42,819	42,819	41,692	40,563	39,436	39,436	39,436	30,746
9. Wyoming	155,836	155,836	151,232	146,629	142,025	142,025	142,025	97,758
10. Navajo Nation	53,427	53,427	52,707	51,986	51,266	51,266	51,266	44,772
11. Shoshone-Bannock Tribe of the Fort Hall Reservation	4,994	4,994	4,994	4,994	4,994	4,994	4,994	4,994
12. Ute Indian Tribe of the Uintah and Ouray Reservation	1,135	1,135	1,135	1,135	1,135	1,135	1,135	1,135
13. Northern Arapaho and Shoshone Tribes of the Wind River Reservation	1,384	1,384	1,384	1,384	1,384	1,384	1,384	1,384

(ii) Adjustment for Future Operation of Copper Smelters.

(A) The plan must provide for adjustments to the milestones in the event that Phelps Dodge Hidalgo and/or BHP San Manuel resume operations or that other smelters increase their operations.

(B) The plan must provide for adjustments to the milestones according to Tables 3a and 3b of this paragraph except that if either the Hidalgo or San Manuel smelters resumes operation and is required to obtain a permit under 40 CFR 52.21 or 40 CFR 51.166, the adjustment to the milestone must be based upon the levels allowed by the permit. In no instance may the adjustment to the milestone be greater than 22,000 tons for the Phelps Dodge Hidalgo, greater than 16,000 tons for BHP San Manuel, or more than 30,000 tons for the combination of the Phelps Dodge Hidalgo and BHP San Manuel smelters for the years 2013 through 2018. Tables 3a and 3b follow:

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS

Scenario	If this happens–	• • • and this happens—	• • • then you calculate the milestone by adding this amount to the value in column 3 of Table 1:—
1	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 tons PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.

TABLE 3A.—ADJUSTMENTS TO THE MILESTONES FOR FUTURE OPERATIONS OF COPPER SMELTERS—Continued

Scenario	If this happens–	• • • and this happens—	• • • then you calculate the milestone by adding this amount to the value in column 3 of Table 1:—
2	Phelps Dodge Hidalgo resumes operation, but BHP San Manuel does not.	Phelps Dodge Hidalgo resumes operation in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) Expected emissions for Phelps Dodge Hidalgo (not to exceed 22,000 tons), PLUS (2) Any amounts identified in Table 3b. B. For the years 2013 through 2018, the milestone increases by this amount or by 30,000 tons, whichever is less.
3	BHP San Manuel BHP San Manuel operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel BHP San Manuel resumes production consistent with past operations and emissions.	A. 16,000 tons PLUS B. Any amounts identified in Table 3b.
4	BHP San Manuel resumes operation, but Phelps Dodge Hidalgo does not.	BHP San Manuel resumes operations in a substantially different manner such that emissions be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. Expected emissions (not to exceed 16,000 tons) PLUS B. Any amounts identified in Table 3b.
5	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	Both smelters resume production consistent with past operations and emissions.	A. Beginning with the year that production resumes, and for each year up to the year 2012, the milestone increase by 38,000 tons. B. For the years 2013 through 2018, the milestone increases by 30,000 tons.
6	Both Phelps Dodge Hidalgo and BHP San Manuel resumes operations.	Phelps Dodge Hidalgo resumes production consistent with past operations and emissions, but BHP Manuel operations in a substantially different manner such that emissions will be less than for past operations (an example would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 22,000 PLUS (2) Expected emissions San Manuel (not to exceed 16,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
7	Both Phelps Dodge Hidalgo and BHP San Manuel resume operations.	BHP San Manuel resumes production consistent with past operations and emissions, but Phelps Dodge Hidalgo resumes operations in a substantially different manner such that emissions will be less than for past operations (an example to exceed would be running only one portion of the plant to produce sulfur acid only).	A. For the year that production resumes, and for each year up to the year 2012, the milestone increases by: (1) 16,000 PLUS (2) expected Hidalgo emissions (not 22,000 tons). B. For the years 2013 though 2018, the milestone increases by this same amount, or by 30,000 tons, whichever is less.
8	Both Phelps Dodge Hidalgo and BHP San Manuel do not resume operations.	.....	A. Any amounts identified in Table 3b.

TABLE 3B. ADJUSTMENTS FOR CERTAIN COPPER SMELTERS WHICH OPERATE ABOVE BASELINE LEVELS.

Where it applies in table 3a, if the following smelter—	Complies with existing permits but has actual annual emissions that exceed the following baseline level—	• • • the milestone increases by the difference between actual emissions and the baseline level, OR the following amount, whichever is less.
Asarco Hayden	23,000 tons	3,000 tons.
BHP San Manuel	16,000 tons	1,500 tons.
Kennecott Salt Lake	1,000 tons	100 tons.
Phelps Dodge Chino	16,000 tons	3,000 tons.
Phelps Dodge Hidalgo	22,000 tons	4,000 tons.
Phelps Dodge Miami	8,000 tons	2,000 tons.

(iii) Adjustments for changes in emission monitoring or calculation methods. The plan must provide for adjustments to the milestone to reflect changes in sulfur dioxide emission monitoring or measurement methods for a source that is included in the program, including changes identified under paragraph (h)(2)(iii)(D) of this section. Any such adjustment based upon changes to emissions monitoring or measurement methods must be made in the form of an implementation plan revision that complies with the procedural requirements of § 51.102 and § 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due

date for a periodic report under paragraph(d)(10) of this section following the change in emission monitoring or measurement method.

(iv) Adjustments for changes in flow rate measurement methods. The implementation plan must provide for adjustments to the milestones for sources using the methods contained in 40 CFR part 60, appendix A, Methods 2F, 2G, and 2H.

(v) Adjustments for illegal emissions. The implementation plan must provide for adjustments to the milestones if any source in the program decreases its sulfur dioxide emissions in order to comply with applicable regulations which were in effect prior to the calculation of the source's baseline sulfur dioxide emissions. The plan must provide that the milestone must be decreased by an appropriate amount based on a reforecasted calculation of the source's decreased sulfur dioxide emissions. Any such adjustment based upon illegal emissions must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(vi) Adjustment based upon program audits. The plan must provide for appropriate adjustments to the milestones based upon the results of program audits. Any such adjustment based upon audits must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103. The implementation plan revision must be submitted to the Administrator no later than the first due date after the audit for a periodic report under paragraph (d)(10) of this section.

(vii) Adjustment for individual sources opting into the program. The plan must provide for adjustments to the milestones for any source choosing to participate in the program even though they do not meet the 100 tons per year criterion for inclusion. Any such adjustments must be made in the form of an implementation plan revision that complies with the procedural requirements of §§ 51.102 and 51.103.

(2) *Requirements for monitoring, record keeping and reporting of actual annual emissions of sulfur dioxide.*

(i) *Sources included in the program.* The implementation plan must provide for annual emission monitoring and reporting, beginning with calendar year 2003, for all sources whose actual emissions of sulfur dioxide are 100 tons per year or more as of 2003, and all sources whose actual emissions are 100 tons or more per year in any subsequent year. States and Tribes may include other sources, if the implementation plan provides for the same procedures and monitoring as for other sources in a way that is federally enforceable.

(ii) *Documentation of emissions calculation methods.* The implementation plan must provide documentation, consistent with EPA's applicable guidance on preparation of emissions inventories, of the specific methodology used to calculate emissions for each emitting unit during the base year. The implementation plan must also provide for documentation for each emission unit of any change to the specific methodology for each year after the base year.

(iii) *Record keeping.* The implementation plan must provide for the retention of records for at least 5 years from the establishment of the record. If a record will be the basis for an adjustment to the milestone as provided for in paragraph (h)(1) of this section, that record must be retained for at least 5 years after the date of the SIP revision which reflects the adjustment.

(iv) *Completion and submission of emissions reports.* The implementation plan must provide for collection of the emissions data, quality assurance, and public review and submission to the Administrator and to each State and Tribe which has submitted an implementation plan under this section by no later than September 30 of the following year. For sources for which changes in emission quantification methods require adjustments under paragraph (h)(1)(iii) of this section, the emissions reports must reflect the method in place before the change, for each year until the milestone has been adjusted. If each of the States which have submitted an implementation plan under this section have identified a regional planning organization to coordinate the annual comparison with the milestone, the implementation plan must provide for reporting of this information to the regional planning body.

(v) *Exceptions reports.* The emissions report submitted by each State and Tribe under paragraph (h)(2)(ii) of this section must provide for exceptions reports containing the following:

(A) Identification of new or additional sulfur dioxide sources greater than 100 tons per year that were not contained in the previous year emissions report;

(B) Identification of sources shut down or removed from the previous year emissions report;

(C) Explanation for emissions variations at any covered source that exceeds plus or minus 20 percent from the previous year emissions report;

(D) Identification and explanation of new emissions monitoring and reporting methods at any source. The use of any new methods requires an adjustment to the milestones according to paragraph (h)(1)(iii) of this section.

(vi) *Reporting of emissions for the Mohave Generating Station for the years 2003 through 2006.* For the years 2003, 2004, 2005, and for any part of the year 2006 before installation and operation of sulfur dioxide controls at the Mohave Generating Station, emissions from the Mohave Generating Station will be calculated using a sulfur dioxide emission factor of 0.15 pounds per million BTU.

(vii) *Special provision for the year 2013.* The implementation plan must provide that in the emissions report for calendar year 2012, which is due by September 30, 2013 under paragraph (h)(2)(ii) of this section, each State has the option of including calendar year 2018 emission projections for each source, in addition to the actual emissions for each source for calendar year 2012.

(3) *Annual comparison of emissions to the milestone.*

(i) The implementation plan must provide for a comparison each year of annual SO_2 emissions for the region against the appropriate milestone. In making this comparison:

(A) Each State or Tribe must make the comparison, using its annual emissions report and emissions reports from other States and Tribes reported under paragraph (h)(2)(ii) of this section, or

(B) Where each State or Tribe has designated a regional planning organization for this purpose, the regional planning organization makes the comparison, using information provided by each State and Tribe.

(ii) Beginning with an initial public review draft report due December 31, 2004 that makes the comparison for the year 2003 milestone, the implementation plan must provide the public with a public review draft comparison by no later than December 31 of each year. This public review draft must be issued by each State or Tribe or in a coordinated report by the regional planning body.

(iii) The implementation plan must provide for a final determination by each State or Tribe, or by the regional planning organization designated by each State or Tribe, of whether or not the annual milestone is exceeded. The determination must take into account public comments on the draft report. This determination must be submitted to the Administrator by the end of March of the year following issuance of the initial public review draft report. The first final determination will be due to the Administrator on March 31, 2005.

(iv) Special considerations for year 2012 report. If each State or Tribe has included calendar year 2018 emission projections under paragraph (h)(2)(v) of this section, then the report for the year 2012 milestone which is due by December 31, 2013 under paragraph (h)(3)(ii) of this section may also include a comparison of the regional year 2018 emissions projection with the milestone for calendar year 2018. If the report indicates that the year 2018 milestone will be exceeded, then each State or Tribe, or the regional planning organization may choose to implement the market trading program beginning in the year 2018.

(v) Independent review. The implementation plan shall provide for reviews of the annual emissions reporting program by an independent third party. This independent review is not required if a determination has been made under paragraph (h)(3)(iii) of this section to implement the market trading program. The independent review shall be completed by the end of 2006, and every 5 years thereafter, and shall include an analysis of:

(A) The uncertainty of the reported emissions data;

(B) Whether the uncertainty of the reported emissions data is likely to have an adverse impact on the annual determination of emissions relative to the milestone; and,

(C) Whether there are any necessary improvements for the annual administrative process for collecting the emissions data, reporting the data, and obtaining public review of the data.

(4) *Market trading program.* The implementation plan must provide for implementation of a market trading program if the determination required by paragraph (h)(3)(iii) of this section indicates that a milestone has been exceeded. The implementation plan must provide for the option of implementation of a market trading program if a report under paragraph (h)(3)(iv) of this section indicates that projected emissions for the year 2018 will exceed the year 2018 milestone. The implementation plan must provide for a market trading program whose provisions are the same for each State or Tribe submitting an implementation plan under this section. The implementation plan must include the following market trading program provisions:

(i) *Allowances.* For each source in the program, the implementation plan must identify the specific allocation of allowances, on a tons per year basis, for each calendar year from 2009 to 2018. The total of the tons per year allowances across all participating States and Tribes may not exceed the amounts in Table 4 of this paragraph, less a 20,000 ton amount that must be set aside for use by Tribes. The implementation plan may include procedures for redistributing the allowances in future years, so long as the amounts in Table 4 of this paragraph, less a 20,000 ton amount, are not exceeded. The implementation plan must provide that any adjustment for a calendar year applied to the milestones under paragraphs (h)(1)(i) through (v) of this section must also be applied to the amounts in Table 4. Table 4 follows:

TABLE 4.—TOTAL AMOUNT OF ALLOWANCES BY YEAR

For this year—	If the two smelters resume operations, the total number of allowances issued by States and Tribes may not exceed this amount—	If the two smelters do not resume operations, the total number of allowances issued by States and Tribes may not exceed this amount—
2009	715,000	677,000
2010	715,000	677,000
2011	715,000	677,000
2012	715,000	677,000
2013	655,000	625,000
2014	655,000	625,000
2015	655,000	625,000
2016	655,000	625,000
2017	655,000	625,000
2018	510,000	480,000

(ii) *Compliance with allowances.* The implementation plan provide that, beginning with the compliance period 6 years following the calendar year for which emissions exceeded the milestone and for each compliance period thereafter, each source owner must hold allowances for each ton of sulfur dioxide emitted.

(iii) *Emissions quantification protocols.* The implementation plan must include specific emissions quantification protocols for each source category included within the program, including the identification of sources subject to part 75 of this chapter. For sources subject to part 75 of this chapter, the implementation plan may rely on the emissions quantification protocol in part 75. For source categories with sources in more than one State submitting an implementation plan under this section, each State must use the same protocol. The protocols must provide consistent approaches for all sources within a given source category. The protocols must provide for reliability (repeated application obtains results equivalent to EPA-approved test methods), and replicability (different users obtain the same or equivalent results that are independently verifiable). The protocols must include procedures for addressing missing data, which provide for conservative calculations of emissions and provide sufficient incentives for sources to comply with the monitoring provisions.

(iv) *Monitoring and Record keeping.* The implementation plan must include monitoring provisions which are consistent with the emissions quantification protocol. Monitoring required by these provisions must be timely, of sufficient frequency, and ensure the enforceability of the program. The implementation plan must also include requirements that source owners or operators keep records consistent with the emissions quantification protocols, and keep all records used to determine compliance for at least 5 years, unless a longer period is required by paragraph (h)(2)(iii) of this section. For source owners or operators which use banked allowances, all records relating to the

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banked allowance must be kept for at least 5 years after the banked allowances are used.

(v) *Tracking system.* The implementation plan must provide for submitting data to a centralized system for the tracking of allowances and emissions. The implementation plan must provide that all necessary information regarding emissions, allowances, and transactions is publicly available in a secure, centralized database. The system must ensure that each allowance may be uniquely identified, allow for frequent updates, and include enforceable procedures for recording data.

(vi) *Authorized account representative.* The implementation plan must include provisions requiring the owner or operator of each source in the program to identify an authorized account representative. The implementation plan must provide that all matters pertaining to the account, including, but not limited to, the deduction and transfer of allowances in the account, and certifications of the completeness and accuracy of emissions and allowances transactions required in the annual report under paragraph (h)(4)(vi) of this section shall be undertaken only by the authorized account representative.

(vii) *Annual report.* The implementation plan must include provisions requiring the authorized account representative for each source in the program to demonstrate and report within a specified time period following the end of each calendar year that the source holds allowances for each ton per year of SO_2 emitted. The implementation plan shall require the authorized account representative to submit the report within 60 days of the end of each calendar year, unless an alternative deadline is specified consistent with emission monitoring and reporting procedures.

(viii) *Allowance transfers.* The implementation plan must include provisions detailing the process for transferring allowances between parties.

(ix) *Emissions banking.* The implementation plan may provide provisions for the banking of unused allowances. Any such provisions must state whether unused allowances may be kept for use in future years and describe any restrictions on the use of any such allowances. Allowances kept for use in future years may be used in calendar year 2018 only to the extent that the implementation plan ensures that such allowances would not interfere with the achievement of the year 2018 amount in Table 4 in paragraph (h)(4)(i) of this section.

(x) *Penalties.* The implementation plan must include specific enforcement penalties to be applied if emissions from a source in the program exceed the allowances held by the source. In establishing specific enforcement penalties, the State or Tribe must ensure that:

(A) When emissions from a source in the program exceed the allowances held by the source, each day of the year is a separate violation; and

(B) Each ton of excess emissions is a separate violation.

(xi) *Provisions for periodic evaluation of the trading program.* The implementation plan must provide for an evaluation of the trading program no later than 3 years following the first full year of the trading program, and at least every 5 years thereafter. Any changes warranted by the evaluation should be incorporated into the next periodic SIP or TIP revision required under paragraph (d)(10) of this section. The evaluation should be conducted by an independent third party and should include an analysis of:

(A) Whether the total actual emissions could exceed the values in paragraph (h)(4)(i) of this section, even though sources comply with their allowances;

(B) Whether the program achieved the overall emission milestone it was intended to reach, and a discussion of actions that have been necessary to reach the milestone;

(C) The effectiveness of the compliance, enforcement and penalty provisions;

(D) The administrative costs of the program to sources and to State and tribal regulators, including a discussion of whether States and Tribes have enough resources to implement the trading program;

(E) Whether the market trading program has likely led to decreased costs for reaching the milestone relative to a non-market based approach, including a discussion of the market price of allowances relative to control costs that might have otherwise been incurred;

(F) Whether the trading program resulted in any unexpected beneficial effects, or any unintended detrimental effects;

(G) Whether the actions taken to reduce sulfur dioxide have led to any unintended increases in other pollutants;

(H) Whether there are any changes needed in emissions monitoring and reporting protocols, or in the administrative procedures for program administration and tracking;

(I) The effectiveness of the provisions for interstate trading, and whether there are any procedural changes needed to make the interstate nature of the program more effective.

(5) What other provisions are required for the program?

The implementation plan must provide for:

(i) *Permitting of affected sources.* For sources subject to part 70 or part 71 of this chapter, the implementation plan requirements for emissions reporting and for the trading program under paragraph (h) of this section must be incorporated into the part 70 or part 71 permit. For sources not subject to part 70 or part 71, the requirements must be incorporated into a permit that is enforceable as a practical matter by the Administrator, and by citizens to the extent permitted under the CAA.

(ii) *Integration with other programs.* In addition to the requirements of paragraph (h) of this section, the restrictions of State, tribal and local rules, and State, tribal and Federal law remain in place. No provision of paragraph (h) of this section should be interpreted as exempting any source from compliance with any other provision of State, tribal or local law, the applicable and approved implementation plan, the tribal implementation plan, a federally enforceable permit, or implementing regulations under the CAA.

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Federal Register

Monday,
May 6, 2002

Part III

Department of Education

34 CFR Part 200
Title I—Improving the Academic Achievement of the Disadvantaged; Proposed Rules

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DEPARTMENT OF EDUCATION

34 CFR Part 200

RIN 1810–AA92

Title I—Improving the Academic Achievement of the Disadvantaged

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the programs administered under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA)—referred to in these proposed regulations as the Title I programs. These proposed regulations are needed to implement recent changes to the standards and assessment requirements of Title I of the ESEA made by the No Child Left Behind Act of 2001 (NCLB Act) and were drafted subject to a negotiated rulemaking process.

DATES: We must receive your comments on or before June 5, 2002.

ADDRESSES: Address all comments about these proposed regulations to Joseph F. Johnson, Jr., Director, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W230, FB–6, Washington, DC 20202–6132. The Fax number for submitting comments is (202) 260–7764. If you prefer to send your comments through the Internet, use the following address: *TitleIRulemaking@ed.gov*

If you want to comment on the information collection requirements, you must send your comments to Joseph F. Johnson, Jr. at the address above.

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, FB–6, Washington, DC 20202–6132. Telephone: (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Invitation to Comment

We invite you to submit comments regarding these proposed regulations. To ensure that your comments have maximum effect in developing the final regulations, we urge you to identify clearly the specific section or sections of the proposed regulations that each comment addresses and to arrange your comments in the same order as the proposed regulations.

During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W204, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for these proposed regulations. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

Background

The NCLB Act reauthorized the ESEA and incorporated the major educational reforms proposed by President George W. Bush in his No Child Left Behind initiative, particularly with regard to standards and assessment, accountability, and school improvement. These provisions are the centerpiece of Title I, Part A of the ESEA, as amended by the NCLB Act, which is designed to help disadvantaged children meet high academic standards.

These proposed regulations would implement changes to the academic standards and assessment provisions of Title I, Part A of the ESEA in a manner that respects State and local control over education while ensuring strong accountability for results. The Secretary also is considering proposing regulations for other provisions in Title I, Part A of the ESEA. Any additional regulations will be part of a future **Federal Register** document. The Secretary intends to regulate only if absolutely necessary; for example, if the statute requires regulations or if regulations are necessary to provide flexibility or clarification for State and local educational agencies.

Rather than regulating extensively, the Secretary intends to issue nonregulatory guidance addressing particular legal and policy issues under the Title I programs. This guidance will inform schools, parents, school districts, States, and other affected parties about the flexibility that exists under the statute, including different approaches they may take to carry out the statute's requirements.

Negotiated Rulemaking

Section 1901(b) of Title I of the ESEA describes procedures that the Department must follow in developing and issuing regulations to implement the Title I programs. Section 1901(b)(1) requires the Secretary to obtain the advice and recommendations of representatives of Federal, State, and local administrators; parents; teachers; paraprofessionals; members of local boards of education; and other organizations involved with the implementation and operation of Title I programs. Accordingly, the Department published in the **Federal Register** on January 18, 2002 (67 FR 2770) a request for advice and recommendations on regulatory issues concerning Title I. We received 178 responses. To obtain additional advice and recommendations, the Secretary invited a broad spectrum of individuals and organizations affected by the Title I programs to participate in focus group sessions in January and February in Tampa, Florida; New Orleans, Louisiana; Washington, DC; and Denver, Colorado.

After obtaining this advice, the Secretary established a negotiated rulemaking process on the issues of academic standards and assessments in accordance with section 1901(b)(3) of Title I. The Secretary appointed members of a negotiated rulemaking committee (the Committee) to participate in this process. The Committee was made up of 2 representatives of the U.S. Department of Education and 22 individuals from all geographic regions of the United States and was balanced between representatives of parents and students and representatives of educators and education officials. The sessions were held on March 11–13 and 19–20, 2002, near Washington, DC.

Under the Committee's protocols, "consensus" meant the lack of active objection by any Committee member on all issues within a regulatory section. The Committee reached consensus on every issue in the draft regulations that were the subject of its negotiations. The Secretary therefore proposes these negotiated regulations without change, other than those changes needed to correct technical, punctuation, or grammatical errors.

Significant Proposed Regulations

We discuss substantive issues under the sections of the proposed regulations to which they pertain. Generally, we do not address proposed regulatory provisions that are technical or otherwise minor in effect.

Section 200.1 State Responsibilities for Developing Challenging Academic Standards

Statute: Under section 1111(b)(1) of Title I, each State must adopt challenging academic content standards and student academic achievement standards (formerly called "student performance standards"). These will be used by the State, its local educational agencies (LEAs), and its schools to carry out Part A (Improving Basic Programs Operated by Local Educational Agencies) of Title I. The State must apply these academic standards to all students and all schools in the State. States must have these standards in subjects determined by the State, but, at a minimum, in mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science. The State's content standards must specify what children are expected to know and be able to do in academic subjects. They must contain coherent and rigorous content and encourage the teaching of advanced skills.

States also must have challenging student academic achievement standards that are aligned with the State's content standards and describe at least three levels of achievement: advanced, proficient, and basic. Advanced and proficient levels determine how well children are mastering the State's content standards. The basic level provides complete information about the progress of lower-performing children toward achieving the proficient and advanced levels.

Current Regulations: The current regulations governing State responsibilities for developing academic standards (34 CFR 200.2) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.1 would repeat the statutory requirements for States to develop academic content and student academic achievement standards for all schools and all children. It also would clarify that States have the flexibility to develop academic content standards in reading/language arts and mathematics that may cover either each grade specifically or more than one grade. If a State develops academic content standards that cover more than one grade, the State must have content expectations that indicate to teachers and others the portion of the standards to be taught at each grade level.

Proposed § 200.1 would also clarify that high school standards must reflect what a State expects all high school students to know by the time they graduate, without regard to course titles or years completed. In other words, the focus of high school standards is at least on the broad academic content in mathematics, reading/language arts, and, beginning in 2005–2006 school year, science that a State expects high school students to know, rather than content linked to specific courses, such as Algebra I, or the specific year in which a high school assessment is taken. Proposed § 200.1 also incorporates the Committee's recommendations to clarify that these standards are for all public schools and public school children.

Proposed § 200.1(c)(1)(ii) would specify (1) what academic achievement standards must include and (2) the information that is necessary to demonstrate fulfillment of the statutory requirement to set three levels of achievement based on State standards and assessments.

Proposed § 200.1(c)(2) would specify that, although academic content standards may cover more than one grade, States must have academic achievement standards for each grade and subject assessed. Proposed § 200.1(c)(3) would clarify that, with regard to student achievement standards in science, States must have achievement levels and descriptions of those levels in place by the 2005–2006 school year. The actual assessment scores (called "cut scores" by the assessment community) for those achievement levels, however, would not have to be set until the assessments are due in the 2007–08 school year.

Reasons: Proposed § 200.1 reflects the Secretary's goals of providing flexibility while remaining true to statutory intent and providing clarity if the statute is ambiguous. Proposed § 200.1(c)(1)(ii) is designed to address past confusion on the meaning and components of "student academic achievement standards." Proposed § 200.1(c)(3) would address the technical problem that it is not possible to set fully academic achievement standards before assessments are final.

Section 200.2 State Responsibilities for Assessment

Statute: Under section 1111(b)(3) of Title I, each State must implement a set of high-quality, yearly student academic assessments in, at a minimum, mathematics, reading/language arts, and, by school year 2007–08, science. The State must use these assessments as the primary means of determining the yearly progress of the State, each LEA, and every public school toward enabling all children to meet the State's student academic achievement standards. The State must use the same assessments to measure the achievement of all children; align the assessments with the State's academic content and student achievement standards; and use the assessments for purposes for which they are valid and reliable.

Assessments must involve multiple up-to-date measures of academic achievement, including measures that assess higher-order thinking skills and understanding.

The State must disaggregate the results of assessments within each State, each LEA, and each school by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities compared to nondisabled students, and by economically disadvantaged students compared to students who are not economically disadvantaged.

The State must produce interpretive, descriptive, and diagnostic reports for each student and itemized score analyses that allow parents, teachers, and principals to understand and address the specific academic needs of the student based on his or her achievement against State standards.

Current Regulations: The current regulations governing State responsibilities for assessments (34 CFR 200.4) reflect provisions of section 1111 of the ESEA that were superseded by the NCLB Act.

Proposed Regulations: Proposed § 200.2 incorporates the statutory requirements for a State to implement a system of high-quality, yearly student academic assessments. The Committee's discussions centered on three provisions, and the proposed regulations reflect the changes recommended by the negotiators:

First, proposed § 200.2(b)(2) would include a requirement that a State's assessment system be designed to be valid and accessible for use with the widest possible range of students, including students with disabilities and students with limited English proficiency.

Second, the Committee incorporated in proposed § 200.2(b)(5) statutory language requiring a State's assessment system to be supported by evidence provided by test publishers or other relevant sources. The additional

provisions would specify that the Secretary would provide this evidence to the public on request, consistent with applicable Federal laws governing the disclosure of information.

Third, proposed § 200.2(b)(10)(v) incorporates the Committee's suggestion to clarify that, for purposes of disaggregating assessment data, students with disabilities are those defined under section 602(3) of the Individuals with Disabilities Education Act.

Proposed § 200.2(b)(8) reflects legislative history from the conference report accompanying the NCLB Act clarifying that the requirement to test only objective knowledge does not prohibit essay responses and opinion questions.

Reasons: Proposed § 200.2 reflects the Secretary's goals of providing flexibility while remaining true to statutory intent and providing clarity if the statute is ambiguous. The provision in proposed § 200.2(b)(2) addresses the concern that, often, assessments are not designed to be used for the broadest possible range of students, including students with disabilities and students with limited English proficiency. For example, the design of assessments may not include validation studies with sufficient samples of students with limited English proficiency or students with disabilities, and, thus, may yield invalid results for those populations.

The provisions in proposed § 200.2(b)(5) governing the public availability of certain evidence that supports a State's assessment system represent the Committee's efforts to ensure that the proposed regulations are more clearly aligned with the statutory requirements. The clarification in proposed § 200.2(b)(10)(v) is designed to clarify that under the statute, States, LEAs, and schools would be required to disaggregate results only for children with disabilities as defined under the Individuals with Disabilities Education Act.

Section 200.3 Designing State Academic Assessment Systems; and § 200.4 State Law Exception

Statute: As noted in the discussion under "Section § 200.2 State responsibilities for assessment," section 1111(b)(3) of the ESEA requires each State to implement a set of high-quality, yearly student academic assessments that meet certain requirements.

Proposed regulations: Proposed §§ 200.3 and 200.4 would clarify that a State has flexibility in how it sets up its statewide assessment system, but also would establish qualitative criteria that the system must meet to fulfill statutory requirements and ensure that all students meet challenging State standards. Specifically, proposed § 200.3 would clarify that a State may use different types of assessments as long as each test (for each grade and subject) fully addresses the depth and breadth of the State's academic content standards; is valid, reliable, and of high technical quality; and expresses results in terms of the State's academic achievement standards.

If a State uses only assessments referenced against national norms at a particular grade, these assessments would have to be augmented with additional items as necessary to (1) measure accurately the depth and breadth of the State's academic content standards and (2) express results in terms of the State's academic achievement levels.

If a State includes a combination of assessments (whether different State assessments or State and local assessments), the State must demonstrate (1) that the design is rational and coherent, (2) that the assessments work together to assess fully the State's academic content standards, and (3) that the assessments measure adequate yearly progress, as well as student progress towards meeting the State's standards.

A State would be permitted to include locally designed assessments if the State assumed responsibility for: (1) Setting technical criteria; (2) ensuring that the assessments are equivalent to one another and to State assessments, if any, in content coverage, difficulty, and quality; (3) reviewing and approving each assessment; and (4) ensuring that data from all assessments can be aggregated to make a fair, rational, and equitable determination of adequate yearly progress for school districts and schools. When aggregating data from different assessments, a State must be able to demonstrate that results are sufficiently comparable to be aggregated. Such evidence might include data analysis and analyses by psychometricians with experience in large-scale assessments. The Committee spent a substantial amount of time on these provisions trying to make them as clear as possible.

Proposed § 200.4(a) clarifies that if a State is prohibited by State law from establishing a statewide assessment system, the State would be excepted from the requirement for a single statewide system. Instead, that State could establish a statewide system composed of only local standards and assessments. The State would have to meet the same qualitative criteria that other States must meet with regard to inclusion of local assessments in an overall State accountability framework.

Reasons: Proposed §§ 200.3 and 200.4 would permit States considerable flexibility in designing State academic assessment systems consistent with the statutory provisions.

Section 200.5 Timeline for Assessments

Statute: Under section 1111(b)(3)(C) of the Act, a State must administer assessments consistent with a specified timeline. The statute establishes a three-stage timeline for developing and administering assessments:

- In stage one, through school year 2004–2005, the State must administer the yearly assessments in mathematics and reading/language arts at least once during each of three grade groupings: (1) Grades 3 through 5, (2) grades 6 through 9, and (3) grades 10 through 12.
- In stage two, beginning no later than school year 2005–2006, annually, the State must administer the yearly assessments in mathematics and reading/language arts, at a minimum, in each of grades 3 through 8 and once during grades 10 through 12.
- In stage three, beginning no later than school year 2007–2008, in addition to the assessments required in stage two, the State must administer the yearly assessments that measure proficiency in science at least once during each of three grade groupings: (1) Grades 3 through 5, (2) grades 6 through 9, and (3) grades 10 through 12.

Proposed regulations: Proposed § 200.5 describes the statutory timelines for administering assessments. In particular, it would clarify that, beginning no later than the 2005–06 school year, States must administer yearly assessments in both reading/language arts and in mathematics in each of the required grades 3 through 8 and at least once in grades 10 through 12. It would include the statutory requirement that a State provide assessment results to school districts, schools, and teachers no later than the beginning of the next school year. It would clarify that this requirement starts beginning with the 2002–2003 school year.

Reasons: Proposed § 200.5 is designed to clarify that the assessments in reading/language arts and mathematics are both to be administered each year as opposed to administering the reading/language arts assessment one year and the mathematics assessment in alternate years. It also clarifies the starting date for the requirement to provide assessment results no later than the beginning of the next school year.

Section 200.6 Inclusion of All Students

Statute: A State's assessment system must provide for the inclusion of all students and provide appropriate accommodations for students with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act, and students with limited English proficiency.

Moreover, to the extent practicable, a State must assess students with limited English proficiency in the language and form most likely to yield accurate data on what those students know and can do in academic content areas until they have achieved English proficiency. With respect to reading/language arts, a State must assess students with limited English proficiency who have attended schools in the United States (excluding Puerto Rico) for three or more consecutive school years in English. If an LEA determines, on a case-by-case basis, however, that academic assessments in another language would likely yield more accurate and reliable information, the LEA may use those assessments for up to an additional two years.

Proposed Regulations: Proposed § 200.6 incorporates and clarifies the requirement that State assessment systems include all students and provide appropriate accommodations for students with disabilities. Proposed § 200.6(a) was the subject of substantial discussion by the Committee. At the Committee's suggestion, the proposed regulations would specify that the accommodations for students with disabilities be those that each student's IEP team determines are necessary to measure the student's academic achievement relative to the State's academic content and achievement standards for the grade in which the student is enrolled.

The proposed regulations also would clarify that a State's assessment system is to provide appropriate accommodations for students covered under section 504 of the Rehabilitation Act of 1973. The proposed regulations would specify that each student's placement team determines which accommodations are necessary to measure the student's academic achievement relative to the State's academic content and achievement standards for the grade in which the student is enrolled.

Proposed § 200.6(a)(2) reflects the Committee's consensus that a State's academic assessment system must provide one or more alternate assessments for those students with disabilities (as defined under section 602(3) of the Individuals with Disabilities Education Act), who, in the determination of the student's IEP team, cannot participate in all or part of the State assessments, even with appropriate accommodations.

This section would clarify that alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science. The Committee recommended that this provision be further clarified in future guidance to indicate that a State may use the same alternate assessment for reading and mathematics and, beginning in the 2007–2008 school year, science.

Proposed § 200.6(b) would also clarify the statutory provisions regarding the assessment of children with limited English proficiency. The proposed regulations would make clear that this requirement does not exempt a State from assessing limited English proficient students before those students are required to be assessed in English in reading/language arts. The proposed regulations would require a State to assess limited English proficient students in a valid and reliable manner that includes reasonable accommodations and, to the extent practicable, assessments in native language, if they would yield better information on what those students know. The proposed regulations would also require the State to assess limited English proficient students' achievement in English in reading/language arts if those students have been in schools in the United States (except Puerto Rico) for three or more consecutive years.

Proposed § 200.6(c) would clarify that migrant and other mobile students must be assessed even if they are not included for accountability purposes. The Committee agreed to expand this section to clarify that a State must include homeless children (as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Homeless Assistance Act) in its State assessment, reporting, and accountability systems, consistent with the requirements of the statute addressing mobile students. In other words, homeless students who are mobile must be tested, but their results do not need to be included in determining adequate yearly progress. Non-mobile homeless students must be tested and their results included in accountability.

Reasons: The proposed clarifications in § 200.6(a)(1) reflect the Committee's concern that students covered by section 504 of the Rehabilitation Act of 1973 are not necessarily students with disabilities under section 602(3) of the Individuals with Disabilities Education Act, yet they may need accommodations to ensure that they can participate in a State's assessment system. Proposed § 200.6(a)(1)(i) and (a)(1)(ii) require that accommodations permit measurement of a student's academic achievement relative to grade-level academic content and achievement standards. These provisions reflect the Committee's concerns that the statute's requirements for rigorous accountability for all students not be diluted by permitting accommodations that would evaluate against lower standards students taking assessments with accommodations.

The Committee's recommendation for future guidance to clarify that a State may use the same alternate assessment for reading/language arts and mathematics recognizes a practice already in place in some States. The clarification on including students with limited English proficiency in State assessment systems was designed to eliminate the potential misunderstanding that these students might be exempt from all assessments until they are required to be tested in English in reading/language arts.

Section 200.7 Disaggregation of Data

Statute: The statute requires, for purposes of determining adequate yearly progress, measurement of the achievement of all public elementary and secondary school students, economically disadvantaged students, students from major racial and ethnic groups, students with disabilities, and students with limited English proficiency. The statute also requires disaggregation and reporting of assessment results by gender, by each major racial and ethnic group, by English proficiency status, by migrant status, by students with disabilities as compared to nondisabled students, and by economically disadvantaged students as compared to students who are not economically disadvantaged. For all of these purposes, disaggregation by these groups would not be required if the numbers are too small to yield reliable information or if the results would reveal personally identifiable information about an individual student.

Proposed Regulations: Proposed § 200.7 would clarify that, in disaggregating data, a State is responsible for determining how many students constitute a sufficient number to make the results reliable for accountability and reporting purposes. It also would clarify that a State must apply section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act) in determining whether disaggregated data

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would reveal personally identifiable information. The proposed regulations would require a State to make every effort to maximize disaggregation of data, while meeting the requirements for privacy and statistical reliability.

Reasons: By allowing a State to establish the minimum numbers for determining reliable disaggregated data, the proposed provisions offer flexibility and acknowledge that these minimums may vary according to circumstance or location.

Section 200.8 Assessment Reports

Statute: A State assessment system must be able to produce student reports and itemized score analyses.

Proposed Regulations: Proposed § 200.8 addresses the types of reports that a State's assessment system must produce. The proposed regulations would clarify that individual student reports must describe achievement measured against the State's academic achievement standards. The proposed regulations also would clarify that the requirement for producing and reporting analyses of student scores does not require the State to release individual test items.

Reasons: Proposed § 200.8 is intended to provide greater clarity regarding the statutory requirements pertaining to student reports and itemized score analyses.

Section 200.9 Deferral of Assessments

Statute: Under section 1111(b)(3)(D) of the ESEA, a State may defer the commencement, or suspend the administration, of certain assessments for each year that the amount appropriated at the Federal level for assessment development falls below a specified minimum. The State may not, however, cease the development of its assessments even if sufficient funds are not appropriated.

Proposed regulations: Proposed § 200.9(b) would clarify that the statute requires a State to continue to develop assessments if amounts appropriated at the Federal level for assessments are below a certain minimum.

Reasons: Proposed § 200.9 is intended to make the intent of this provision more clear and avoid confusion.

Section 200.10 Applicability of a State's Academic Assessments to Private Schools and Private School Students

Statute: Under section 9506 of the ESEA, a student who attends a private school that does not receive funds or services under the ESEA is not required to participate in any assessment referred to in the ESEA.

Proposed Regulations: Proposed § 200.10 is designed to clarify that nothing in proposed § 200.2 would require a private school to participate in a State's assessment system. However, through timely consultation with private school officials, an LEA must determine how it will assess academic services to participating private school students and how it will use the assessment results to improve services to these children. The assessments used could be the State's academic assessments under proposed § 200.2 or other appropriate academic assessments.

Reasons: The proposed regulations would clarify the flexibility given to an LEA in determining how services to participating private school students will be assessed.

Executive Order 12866

1. Potential Costs and Benefits

The proposed costs have been reviewed in accordance with Executive Order 12866. Under the terms of the Order, the Secretary has assessed the costs and benefits of this regulatory action.

The standards and assessments requirements of the new legislation require States to develop additional standards in the area of science, and many States will also need to develop and implement new assessments in order to meet the statutory requirement that they put in place assessments, at least in reading/language and mathematics, in grades 3 through 8. These new requirements will impose costs on States, with the precise amount of these costs dependent on State decisions about the types of assessments they will adopt, whether they will develop these assessments on their own or in partnership with other States, and other factors. The Federal Government is financing the development and implementation of the additional standards and assessments through appropriations for Elementary and Secondary Education programs. The Secretary believes that the costs not met through Federal funding are likely to be minimal, depending on the level of Federal funding Congress provides through appropriations.

The new legislation, and the regulations, also convey major benefits on States. The Department is providing increased support for State and local efforts to raise educational achievement for all students. The standards and assessment requirements of Title I are also part of a package of reforms that includes major new provisions allowing increased State and local flexibility in the use of Federal education funds. These provisions will not only allow States and school districts to use Federal funds in a manner more consistent with their own reform strategies and priorities, they will save money normally spent in complying with multiple Federal requirements. While most of the benefits of the new law are conveyed by the statute, the regulations proposed through this notice would also result in cost savings, by allowing States considerable flexibility in adopting assessment systems composed entirely of State-developed and administered tests, or systems composed of both State and local tests, and by allowing a combination of criterion- and norm-referenced tests, so long as mixed systems meet certain basic requirements.

For these reasons, the Secretary has concluded that these regulations are justified in terms of the costs and benefits.

Summary of Potential Costs and Benefits

Because the Secretary has chosen to regulate on very few statutory provisions, States and LEAs have considerable flexibility in implementing the provisions of Title I to meet their particular needs and circumstances. Moreover, the potential costs associated with the proposed regulations are minimal.

2. Clarity of the Regulations

Executive Order 12866 and the Presidential Memorandum on "Plain Language in Government Writing" require each agency to write regulations that are easy to understand.

The Secretary invites comments on how to make these proposed regulations easier to understand, including answers to questions such as the following:

- Are the requirements in the proposed regulations clearly stated?
- Do the proposed regulations contain technical terms or other wording that interferes with their clarity?
- Does the format of the proposed regulations (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce their clarity?
- Would the proposed regulations be easier to understand if we divided them into more (but shorter) sections? (A "section" is preceded by the symbol "§" and a numbered heading; for example, § 200.1 State responsibilities for developing challenging academic standards.)
- Could the description of the proposed regulations in the "Supplementary Information" section of this preamble be more helpful in making the proposed regulations easier to understand? If so, how?
- What else could we do to make the proposed regulations easier to understand?

Send any comments that concern how the Department could make these proposed regulations easier to understand to the person listed in the **ADDRESSES** section of the preamble.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. The small entities that would be affected by these proposed regulations are small LEAs receiving Federal funds under this program. However, the regulations would not have a significant economic impact on the small LEAs affected because the regulations would not impose excessive regulatory burdens or require unnecessary Federal supervision. The regulations would impose minimal requirements to ensure the proper expenditure of program funds.

Paperwork Reduction Act of 1995

The proposed regulations contain two information collection requirements. Under proposed §§ 200.6(b)(1)(ii) and 200.7(a)(2), a State must include several items in its Title I State plan. First, a State must identify languages other than English that are present in the student population served by the State educational agency and indicate the languages for which student academic assessments are not available and are needed. Second, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose under the statute where disaggregated data are used.

Title IX, Part C of the ESEA, as amended by the NCLB Act, authorizes the Secretary to provide States with the option of submitting a consolidated application to obtain certain ESEA funds, including Title I funds. The Department is in the process of obtaining Office of Management and Budget (OMB) approval for the clearance package addressing the paperwork requirements for a consolidated application on an emergency basis. That package incorporates the Title I State plan requirements proposed in this regulation. We invite comments on the paperwork requirements of this proposed regulation. These written comments should be addressed to Joseph F. Johnson, Jr. at the address listed under **ADDRESSES.**

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(Catalog of Federal Domestic Assistance Numbers: 84.010 Improving Programs Operated by Local Educational Agencies)

List of Subjects in 34 CFR Part 200

Administrative practice and procedure, Adult education, Children, Coordination, Education, Education of disadvantaged children, Education of children with disabilities, Elementary and secondary education, Eligibility, Family, Family-centered education, Grant programs-education, Indians-education, Institutions of higher education, Interstate coordination, Intrastate coordination, Juvenile delinquency, Local educational agencies, Migratory children, Migratory workers, Neglected, Nonprofit private agencies, Private schools, Public agencies, Reporting and recordkeeping requirements, State-administered programs, State educational agencies, Subgrants.

Dated: May 1, 2002.

Rod Paige,

Secretary of Education.

The Secretary proposes to amend part 200 of title 34 of the Code of Federal Regulations as follows:

PART 200—TITLE I—IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

1. The authority citation for part 200 is revised to read as follows:

Authority: 20 U.S.C. 6301 through 6578, unless otherwise noted.

2. Revise the first undesignated center heading in subpart A of this part to read as follows:

Standards and Assessments

3. Revise §§ 200.1 through 200.6, to read as follows:

§ 200.1 State responsibilities for developing challenging academic standards.

(a) *Academic standards in general.* A State must develop challenging academic content and student academic achievement standards that will be used by the State, its local educational agencies (LEAs), and its schools to carry out subpart A of this part. These academic standards must—

(1) Be the same academic standards that the State applies to all public schools and public school children in the State, including the public schools and public school children served under subpart A of this part;

(2) Include the same knowledge, skills, and levels of achievement expected of all children; and

(3) Include at least mathematics, reading/language arts, and, beginning in the 2005–2006 school year, science, and may include other subjects determined by the State.

(b) *Academic content standards.* (1) The challenging academic content standards required under paragraph (a) of this section must—

(i) Specify what all children are expected to know and be able to do;

(ii) Contain coherent and rigorous content; and

(iii) Encourage the teaching of advanced skills.

(2) A State's academic content standards may be grade specific or, if grade-level content expectations are provided for each of grades 3 through 8, may cover more than one grade.

(3) At the high school level, the academic content standards must define the knowledge and skills that all high school students are expected to know and be able to do in at least reading/language arts, mathematics, and, beginning in the 2005–06 school year, science, irrespective of course titles or years completed.

(c) *Academic achievement standards.* (1) The challenging student academic achievement standards required under paragraph (a) of this section must—

(i) Be aligned with the State's academic content standards; and

(ii) Include the following components for each content area:

(A) Achievement levels that describe at least—

(*1*) Two levels of high achievement—proficient and advanced—that determine how well children are mastering the material in the State's academic content standards; and

(*2*) A third level of achievement—basic—to provide complete information

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about the progress of lower-achieving children toward mastering the proficient and advanced levels of achievement.

(B) Descriptions of the competencies associated with each achievement level.

(C) Assessment scores ("cut scores") that differentiate among the achievement levels as specified in paragraph (c)(1)(ii)(A) of this section, and a description of the rationale and procedures used to determine each achievement level.

(2) A State must develop academic achievement standards for every grade and subject assessed, even if the State's academic content standards cover more than one grade.

(3) With respect to academic achievement standards in science, a State must develop—

(i) Achievement levels and descriptions no later than the 2005–06 school year; and

(ii) Assessment scores ("cut scores") after the State has developed its science assessments but no later than the 2007–08 school year.

(d) *Subjects without standards.* If an LEA serves students under subpart A of this part in subjects for which a State has not developed academic standards, the State must describe in its State plan a strategy for ensuring that those students are taught the same knowledge and skills and held to the same expectations in those subjects as are all other students.

(Authority: 20 U.S.C. 6311(b)(1))

§ 200.2 State responsibilities for assessment.

(a)(1) Each State, in consultation with its LEAs, must implement a system of high-quality yearly student academic assessments that includes, at a minimum, academic assessments in mathematics, reading/language arts and, beginning in the 2007–08 school year, science.

(2) The State may also measure the achievement of students in other academic subjects in which the State has adopted challenging academic content and student academic achievement standards.

(b) The assessment system required under this section must meet the following requirements:

(1) Be the same assessment system used to measure the achievement of all students in accordance with § 200.3 or § 200.4.

(2) Be designed to be valid and accessible for use by the widest possible range of students, including students with disabilities and students with limited English proficiency.

(3)(i) Be aligned with the State's challenging academic content and student academic achievement standards; and

(ii) Provide coherent information about student attainment of those standards.

(4)(i) Be used for purposes for which the assessment system is valid and reliable; and

(ii) Be consistent with relevant, nationally recognized professional and technical standards.

(5) Be supported by evidence (which the Secretary will provide upon request, consistent with applicable federal laws governing the disclosure of information) from test publishers or other relevant sources that the assessment system is—

(i) Of adequate technical quality for each purpose required under the Act; and

(ii) Consistent with the requirements of this section.

(6) Be administered in accordance with the timeline in § 200.5.

(7) Involve multiple up-to-date measures of student academic achievement, including measures that assess higher-order thinking skills and understanding of challenging content.

(8) Objectively measure academic achievement, knowledge, and skills without evaluating or assessing personal or family beliefs and attitudes, except that this provision does not preclude the use of items—

(i) Such as constructed-response, short answer, or essay; or

(ii) That require a student to analyze a passage of text or to express opinions.

(9) Provide for participation in the assessment system of all students in the grades being assessed consistent with § 200.6.

(10) Except as provided in § 200.7, enable results to be disaggregated within each State, LEA, and school by—

(i) Gender;

(ii) Each major racial and ethnic group;

(iii) English proficiency status;

(iv) Migrant status as defined in Title I, Part C of the Act;

(v) Students with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act as compared to all other students; and

(vi) Economically disadvantaged students as compared to students who are not economically disadvantaged.

(11) Produce individual student reports consistent with § 200.8(a).

(12) Enable itemized score analyses to be produced and reported to LEAs and schools consistent with § 200.8(b).

(c) The State may include academic assessments that do not meet the requirements in paragraph (b) of this section in the assessment system as additional measures. Those additional assessments—

(1) May not reduce the number, or change the identity, of schools that would otherwise be subject to school improvement, corrective action, or restructuring under section 1116 of Title I of the Elementary and Secondary Education Act, as amended by the NCLB Act (hereinafter "the Act"), if those assessments were not used; but

(2) May identify additional schools for school improvement, corrective action, or restructuring.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.3 Designing State Academic Assessment Systems.

(a)(1) For each grade and subject assessed, a State's assessments must—

(i) Address the depth and breadth of the State's academic content standards under § 200.1(b);

(ii) Be valid, reliable, and of high technical quality;

(iii) Express student results in terms of the State's student academic achievement standards; and

(iv) Be designed to provide a coherent system across grades and subjects.

(2) A State may include in its academic assessment system under § 200.2 either or both—

(i) Criterion-referenced assessments; and

(ii) Assessments that yield national norms, provided that, if the State uses only assessments referenced against national norms at a particular grade, those assessments—

(A) Are augmented with additional items as necessary to measure accurately the depth and breadth of the State's academic content standards; and

(B) Express student results in terms of the State's academic achievement standards.

(b) A State that includes a combination of assessments, as described in paragraph (a)(2) of this section, or a combination of State and local assessments in its State assessment system must demonstrate that the system has a rational and coherent design that—

(1) Identifies the assessments to be used;

(2) Indicates the relative contribution of each assessment towards—

(i) Ensuring alignment with the State's academic content standards; and

(ii) Determining the adequate yearly progress of each school and LEA; and

(3) Is able to provide information regarding the progress of students relative to the State's academic standards in order to inform instruction.

(c) A State that includes local assessments in the assessment of its content standards must—

(1) Establish technical criteria to ensure that each local assessment meets the requirements of paragraph (a)(2) of this section;

(2) Demonstrate that all local assessments in use for this purpose—

(i) Are equivalent to one another and to State assessments, where they exist, in their content coverage, difficulty, and quality;

(ii) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(iii) Provide unbiased, rational, and consistent determinations of the annual progress of schools and LEAs within the State;

(3) Review and approve each local assessment to ensure that it meets or exceeds the State's technical criteria in paragraph (c)(1) of this section and the requirements in paragraph (c)(2) of this section; and

(4) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(d) A State's academic assessment system may rely exclusively on local assessments only if it meets the requirements of § 200.4.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.4 State law exception.

(a) If a State provides satisfactory evidence to the Secretary that neither the SEA nor any other State government official, agency, or entity has sufficient authority under State law to adopt academic content standards, student academic achievement standards, and academic assessments applicable to all students enrolled in the State's public schools, the State may meet the requirements under §§ 200.1 and 200.2 by—

(1) Adopting academic standards and academic assessments that meet the requirements of §§ 200.1 and 200.2 on a Statewide basis and limiting their applicability to students served under subpart A of this part; or

(2) Adopting and implementing policies that ensure that each LEA in the State that receives funds under subpart A of this part will adopt academic standards and academic assessments aligned with those standards that—

(i) Meet the requirements in §§ 200.1 and 200.2; and

(ii) Are applicable to all students served by the LEA.

(b) A State that qualifies under paragraph (a) of this section must—

(1) Establish technical criteria for evaluating whether each LEA's—

(i) Academic content and student academic achievement standards meet the requirements in § 200.1; and

(ii) Academic assessments meet the requirements in § 200.2, particularly regarding validity and reliability, technical quality, alignment with the LEA's academic standards, and inclusion of all students in the grades assessed;

(2) Review and approve each LEA's academic standards and academic assessments to ensure that they—

(i) Meet or exceed the State's technical criteria; and

(ii) For purposes of this section—

(A) Are equivalent to one another in their content coverage, difficulty, and quality;

(B) Have comparable validity and reliability with respect to groups of students described in section 1111(b)(2)(C)(v) of the Act; and

(C) Provide unbiased, rational, and consistent determinations of the annual progress of LEAs and schools within the State; and

(3) Be able to aggregate, with confidence, data from local assessments to determine whether the State has made adequate yearly progress.

(Authority: 20 U.S.C. 6311(b)(5))

§ 200.5 Timeline for assessments.

(a) *Reading/language arts and mathematics.* (1) Through no later than the 2004–2005 school year, a State must administer the assessments required under § 200.2 not less than one time during—

(i) Grades 3 through 5;

(ii) Grades 6 through 9; and

(iii) Grades 10 through 12.

(2) Except as provided in paragraph (a)(3) of this section, beginning no later than the 2005–2006 school year, a State must administer both the reading/language arts and mathematics assessments required under § 200.2—

(i) In each of grades 3 through 8; and

(ii) At least once in grades 10 through 12.

(3) The Secretary may extend, for one additional year, the timeline in paragraph (a)(2) of this section if a State demonstrates that—

(i) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(A) A natural disaster; or

(B) A precipitous and unforeseen decline in the financial resources of the State; and

(ii) The State can complete implementation within the additional one-year period.

(b) *Science.* Beginning no later than the 2007–2008 school year, the assessments required under § 200.2 must be administered not less than one time during—

(1) Grades 3 through 5;

(2) Grades 6 through 9; and

(3) Grades 10 through 12.

(c) *Timing of results.* Beginning with the 2002–2003 school year, a State must promptly provide the results of its assessments no later than before the beginning of the next school year to LEAs, schools, and teachers in a manner that is clear and easy to understand.

(Authority: 20 U.S.C. 6311(b)(3))

§ 200.6 Inclusion of all students.

A State's academic assessment system required under § 200.2 must provide for the participation of all students in the grades assessed.

(a) *Students eligible under IDEA and Section 504. (1) Appropriate accommodations.* A State's academic assessment system must provide—

(i) For each student with disabilities, as defined under section 602(3) of the Individuals with Disabilities Education Act, appropriate accommodations that each student's IEP team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grade in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c); and

(ii) For each student covered under section 504 of the Rehabilitation Act of 1973, appropriate accommodations that each student's placement team determines are necessary to measure the academic achievement of the student relative to the State's academic content and achievement standards for the grades in which the student is enrolled, consistent with § 200.1(b)(2), (b)(3), and (c).

(2) *Alternate assessment.*

(i) The State's academic assessment system must provide for one or more alternate assessments for each student with disabilities as defined under section 602(3) of the Individuals with Disabilities Education Act who the student's IEP team determines cannot participate in all or part of the State assessments under paragraph (a)(1) of this section, even with appropriate accommodations.

(ii) Alternate assessments must yield results in at least reading/language arts, mathematics, and, beginning in the 2007–2008 school year, science.

(b) *Limited English proficient students.* A State must include limited English proficient students in its academic assessment system as follows:

(1) *In general.* (i) Consistent with paragraph (b)(2) of this section, the State must assess limited English proficient

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students in a valid and reliable manner that includes—

(A) Reasonable accommodations; and

(B) To the extent practicable, assessments in the language and form most likely to yield accurate and reliable information on what those students know and can do to determine the students' mastery of skills in subjects other than English until the students have achieved English language proficiency.

(ii) In its State plan, the State must—

(A) Identify the languages other than English that are present in the student population served by the SEA; and

(B) Indicate the languages for which yearly student academic assessments are not available and are needed.

(iii) The State—

(A) Must make every effort to develop such assessments; and

(B) May request assistance from the Secretary if linguistically accessible academic assessment measures are needed.

(2) *Assessing reading/language arts in English.* (i) Unless an extension of time is warranted under paragraph (b)(2)(ii) of this section, a State must assess, using assessments written in English, the achievement of any limited English proficient student in meeting the State's reading/language arts academic standards if the student has attended schools in the United States, excluding Puerto Rico, for three or more consecutive years.

(ii) An LEA may continue, for no more than two additional consecutive years, to assess a limited English proficient student under paragraph (b)(1) of this section if the LEA determines, on a case-by-case individual basis, that the student has not reached a level of English language proficiency sufficient to yield valid and reliable information on what the student knows and can do on reading/language arts assessments written in English.

(iii) The requirements in paragraph (b)(2)(i) and (ii) of this section do not permit an exemption from participating in the State assessment system for limited English proficient students.

(3) *Assessing English proficiency.* (i) Unless a State receives an extension under paragraph (b)(3)(ii) of this section the State must require each LEA, beginning no later than the 2002–2003 school year, to assess annually the English proficiency, including reading, writing, speaking, and listening skills, of all students with limited English proficiency in schools in the LEA.

(ii) The Secretary may extend, for one additional year, the deadline in paragraph (b)(3)(i) of this section if the State demonstrates that—

(A) Full implementation is not possible due to exceptional or uncontrollable circumstances such as—

(*1*) A natural disaster; or

(*2*) A precipitous and unforeseen decline in the financial resources of the State; and

(B) The State can complete implementation within the additional one-year period.

(c) *Migrant and other mobile children.* A State must include migrant children, as defined in Title I, Part C, of the Act, and other mobile children in its academic assessment system, even if those students are not included for accountability purposes under section 1111(b)(3)(C)(xi) of the Act.

(d) *Children experiencing homelessness.*

(1) A State must include homeless children, as defined in section 725(2) of Title VII, Subtitle B of the McKinney-Vento Act, in its academic assessment, reporting, and accountability systems, consistent with section 1111(b)(3)(C)(xi) of the Act.

(2) The State is not required to report as a separate disaggregated category as defined in paragraph (b)(10) of this section the assessment results of the children referred to in paragraph (d)(1) of this section.

(Authority: 20 U.S.C. 6311(b)(3))

4. Add § 200.7 to read as follows:

§ 200.7 Disaggregation of data.

(a) *Statistically reliable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act (report cards) or to identify schools in need of improvement, corrective action, or restructuring under section 1116 of the Act if the number of students in those subgroups is insufficient to yield statistically reliable information.

(2) Based on sound statistical methodology, a State must determine and justify in its State plan the minimum number of students sufficient to yield statistically reliable information for each purpose for which disaggregated data are used.

(b) *Personally identifiable information.* (1) A State may not use disaggregated data for one or more subgroups under § 200.2(b)(10) to report achievement results under section 1111(h) of the Act (report cards) if the results would reveal personally identifiable information about an individual student.

(2) To determine whether disaggregated results would reveal personally identifiable information about an individual student, a State must apply the requirements under section 444(b) of the General Education Provisions Act (the Family Educational Rights and Privacy Act of 1974).

(3) Nothing in paragraph (b)(1) or (b)(2) of this section shall be construed to abrogate the responsibility of States to implement the requirements of section 1116(a) of the Act for determining whether States, LEAs, and schools are making adequate yearly progress on the basis of the performance of each group listed in section 1111(b)(2)(C)(v)(II) of the Act.

(4) Each State shall include in its State plan, and each State and LEA shall implement, appropriate strategies to protect the privacy of individual students in reporting achievement data under section 1111(h) of the Act and in determining whether schools and LEAs are making adequate yearly progress on the basis of disaggregated groups under section 1111(b)(2)(C)(v)(II) of the Act.

(Authority: 20 U.S.C. 6311(b)(3); 1232g)

5. Revise § 200.8 and place it under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.8 Assessment reports.

(a) *Student reports.* A State's academic assessment system must produce individual student interpretive, descriptive, and diagnostic reports that—

(1)(i) Include information regarding achievement on the academic assessments under § 200.2 measured against the State's student academic achievement standards; and

(ii) Help parents, teachers, and principals to understand and address the specific academic needs of students; and

(2) Are provided to parents, teachers, and principals—

(i) As soon as is practicable after the assessment is given;

(ii) In an understandable and uniform format; and

(iii) To the extent practicable, in a language that parents can understand.

(b) *Itemized score analyses for LEAs and schools.* (1) A State's academic assessment system must produce and report to LEAs and schools itemized score analyses, consistent with § 200.2(b)(4), so that parents, teachers, principals, and administrators can interpret and address the specific academic needs of students.

(2) The requirement to report itemized score analyses in paragraph (b) of this section does not require the release of test items.

(Authority: 20 U.S.C. 6311(b)(3))

6. Add § 200.9 under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.9 Deferral of assessments.

(a) A State may defer the start or suspend the administration of the assessments required under § 200.2 that were not required prior to the date of enactment of the Act for one year for each year for which the amount appropriated for State assessment grants under section 6113(a)(2) of the Act is less than the trigger amount in section 1111(b)(3)(D) of the Act.

(b) A State may not cease the development of the assessments referred to in paragraph (a) of this section even if sufficient funds are not appropriated under section 6113(a)(2) of the Act.

(Authority: 20 U.S.C. 6311(b)(3); 7301b(a)(2))

7. Revise § 200.10 and place it under the undesignated center heading "Standards and Assessments" to read as follows:

§ 200.10 Applicability of a State's academic assessments to private schools and private school students.

(a) Nothing in § 200.1 or § 200.2 requires a private school, including a private school whose students receive services under this part, to participate in a State's academic assessment system.

(b)(1) If an LEA provides services to eligible private school students under subpart A of this part, the LEA must, through timely consultation with appropriate private school officials, determine how services to eligible private school students will be academically assessed and how the results of that assessment will be used to improve those services.

(2) The assessments referred to paragraph (b)(1) of this section may be the State's academic assessments under § 200.2 or other appropriate academic assessments.

(Authority: 20 U.S.C. 7886(a))

[FR Doc. 02–11128 Filed 5–1–02; 2:00 pm]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

34 CFR Part 200

Office of Elementary and Secondary Education; Title I of the Elementary and Secondary Education Act of 1965, as Amended (ESEA); Improving the Academic Achievement of the Disadvantaged

AGENCY: Department of Education.

ACTION: Notice of meetings to solicit public comment on proposed regulations.

SUMMARY: The Assistant Secretary for Elementary and Secondary Education (Assistant Secretary) of the Department of Education (Department) will convene five regional meetings to solicit additional public comment on the Department's Notice of Proposed Rulemaking (NPRM) published elsewhere in this issue of the **Federal Register**. The NPRM would implement recent changes made by the No Child Left Behind Act of 2001 (NCLB Act) to the standards and assessment requirements under Title I of the Elementary and Secondary Education Act of 1965, as amended (ESEA). The proposed regulations were subjected to a negotiated rulemaking process, and we invited the public to submit comments on them. The Assistant Secretary is convening these regional meetings to provide the public additional opportunities to comment on the proposed regulations.

DATES: We will hold five regional meetings as listed in the Schedule of Regional Meetings under **SUPPLEMENTARY INFORMATION.**

ADDRESSES: We will hold the five regional meetings at the locations listed in the Schedule of Regional Meetings under **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Susan Wilhelm, Compensatory Education Programs, Office of Elementary and Secondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., room 3W202, Washington, DC 20202–6132. Telephone (202) 260–0826.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

The meeting sites are accessible to individuals with disabilities. If you need an auxiliary aid or service to participate in the meetings (e.g., interpreting service, assistive listening device, or materials in alternative format), notify the contact person listed in this notice in advance of the scheduled meeting date. We will make every effort to meet any request we receive.

The regional meetings are open to the public.

SUPPLEMENTARY INFORMATION:

Schedule of Regional Meetings

We will hold five regional meetings to solicit public comment on the NPRM on the following dates at the following locations:

1. May 6, 2002, 9 a.m. to 5:15 p.m., Holiday Inn Cincinnati Airport, 1717 Airport Exchange Boulevard, Erlanger, Kentucky.

2. May 7, 2002, 9 a.m. to 5:15 p.m., Sheraton Atlanta, 165 Courtland Street, Atlanta, Georgia.

3. May 13, 2002, 9 a.m. to 5:15 p.m., The Westgate Hotel, 1055 Second Avenue, San Diego, California.

4. May 16, 2002, 9 a.m. to 5:15 p.m., Doubletree Hotel Little Rock, 424 West Markham, Little Rock, Arkansas.

5. May 30, 2002, 9 a.m. to 5:15 p.m., LaGuardia Marriott, 102–05 Ditmars Boulevard, East Elmhurst, New York.

Background

On January 8, 2002, President George W. Bush signed the NCLB Act, amending the ESEA. The NCLB Act incorporated major education reforms proposed by the President in his No Child Left Behind initiative, particularly in the areas of assessment, accountability, and school improvement. Among other things, the NCLB Act reauthorizes—for a six-year period—the programs under Title I of the ESEA (Title I programs), which are designed to help disadvantaged children reach high academic standards.

Section 1901 of Title I of the ESEA contains procedures that the Department must follow in developing and issuing regulations to govern the Title I programs. Consistent with those requirements, the Secretary obtained the advice and recommendations of representatives of Federal, State, and local administrators; parents; teachers; paraprofessionals; members of local boards of education; and other organizations involved with the implementation and operation of the Title I programs. After obtaining this advice, the Secretary conducted a negotiated rulemaking process on issues relating to Title I standards and assessment requirements. The negotiated rulemaking process produced proposed regulations on these issues that the Secretary is publishing without change in the NPRM. The preamble to the NPRM describes in more thorough detail this regulatory process.

Regional Meetings

In addition to the invitation to comment contained in the NPRM, the Assistant Secretary is offering an opportunity for the public to provide

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input regarding the proposed regulations at the scheduled regional meetings.

During the morning of each meeting, from 9 a.m. to 12 noon, representatives of the Department will provide background information on the statutory context for the NPRM, the negotiated rulemaking process, and the major issues that the proposed regulations are designed to address. Expert educators will also present their findings and experiences in the field of standards and assessments. During the afternoon of each meeting, from 1 p.m. to 5:15 p.m., the public will have the opportunity to offer oral or written comments, or both, on the NPRM.

Public Comments

The Department will consider all comments obtained during these regional meetings, along with all other comments submitted to the Department in response to the NPRM. During and after the comment period, you may inspect all public comments about these proposed regulations in room 3W204, FB–6, 400 Maryland Avenue, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Electronic Access to This Document

You may view this document, in Text or Adobe Portable Document Format (PDF), on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC, area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO access at: *http://www.access.gpo.gov/nara/index.html.*

(Catalog of Federal Domestic Assistance Number: 84.010, Improving Programs Operated by Local Educational Agencies)

Program Authority: 20 U.S.C. 6301–6578.

Dated: May 1, 2002.

Susan B. Neuman,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 02–11127 Filed 5–1–02; 2:00 pm]

BILLING CODE 4000–01–U



Federal Register

Monday,
May 6, 2002

Part IV

Office of Management and Budget

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85; Notice

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy; Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: The Office of Management and Budget (OMB) is hereby publishing the attached memorandum to heads of agencies concerning the determination of the maximum "benchmark" compensation that will be allowable under government contracts during contractors' FY 2002—$387,783. This determination is required to be made pursuant to Section 808 of Public Law 105–85. It applies equally to both defense and civilian procurement agencies.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Acting Deputy Administrator, Office of Federal Procurement Policy, on (202) 395–3254.

Angela B. Styles,
Administrator.

To The Heads of Executive Departments and Agencies

Determination of Executive Compensation Benchmark Amount Pursuant to Section 808 of Public Law 105–85

This memorandum sets forth the "benchmark compensation amount" as required by Section 39 of the Office of Federal Procurement Policy (OFPP) Act (41 U.S.C. 435), as amended. Under Section 39, the "benchmark compensation amount" is "the median amount of the compensation provided for all senior executives of all benchmark corporations for the most recent year for which data is available." The "benchmark compensation amount" established as directed by Section 39 limits the allowability of compensation costs under government contracts. The "benchmark compensation amount" does not limit the compensation that an executive may otherwise receive.

Based on a review of commercially available surveys of executive compensation and after consultation with the Director of the Defense Contract Audit Agency, I have determined pursuant to the requirements of Section 39 that the benchmark compensation amount for contractor fiscal year 2002 is $387,783. This benchmark compensation amount is to be used for contractor fiscal year 2002, and subsequent contractor fiscal years, unless and until revised by OMB. This benchmark compensation amount applies to contract costs incurred after January 1, 2002, under covered contracts of both the defense and civilian procurement agencies as specified in Section 808 of Public Law 105–85.

Questions concerning this memorandum may be addressed to Richard C. Loeb, Acting Deputy Administrator, Office of Federal Procurement Policy, on (202) 395–3254.

Angela B. Styles,
Administrator.

[FR Doc. 02–11138 Filed 5–3–02; 8:45 am]
BILLING CODE 3110–01–P

Federal Register

Monday,
May 6, 2002

Part V

Department of Labor

Employment and Training Administration

20 CFR Parts 655 and 656
Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System; Proposed Rule

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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 655 and 656

RIN 1205–AA66

Labor Certification for the Permanent Employment of Aliens in the United States; Implementation of New System

AGENCIES: Wage and Hour Division, Employment Standards Administration, and Employment and Training Administration, Labor.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of Labor is proposing to amend its regulations governing the filing and processing of labor certification applications for the permanent employment of aliens in the United States to implement a new system for filing and processing such applications. The proposed rule would also amend the regulations governing the employer's wage obligation under the H–1B program. The new system would require employers to conduct recruitment before filing their applications directly with an ETA application processing center on application forms designed for automated screening and processing. State Workforce Agencies (SWA's) would provide prevailing wage determinations to employers. Employers would be required to place a job order with the SWA which would be processed the same as any other job order placed by employers. SWA's would no longer be the intake point for submission of applications and would not be involved in processing the applications as they are now in the present system. The combination of prefiling recruitment, automated processing of applications, and elimination of the role of the SWA's in the processing of applications will yield a large reduction in the average time needed to process labor certification applications and are expected to eliminate the need to periodically institute special, resource intensive efforts to reduce backlogs which have been a recurring problem.

DATES: Interested persons are invited to submit written comments on the proposed rule on or before July 5, 2002.

ADDRESSES: Submit written comments to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications.

FOR FURTHER INFORMATION CONTACT: Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, Employment and Training Administration, 200 Constitution Avenue, NW., Room C–4318, Washington, DC 20210. Telephone: (202) 693–2953 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

I. Background

The process for obtaining a permanent labor certification has been criticized as being complicated, time consuming and requiring the expenditure of considerable resources by employers, SWA's and the Federal Government. It can take up to two years or more to complete the process for applications that are filed under the basic process and do not utilize the more streamlined reduction in recruitment (RIR) process. The reduction in recruitment process allows employers that request RIR processing to conduct recruitment before filing their applications and these applications are evaluated on the basis of such recruitment.

The redesigned system we envision would require employers to conduct recruitment before filing their applications. Employers would be required to conduct both mandatory and alternative recruitment steps. The alternative steps would be chosen by the employer from a list of additional recruitment steps in the regulations. The employer would not be required to submit any documentation with its application, but would be expected to have assembled supporting documentation specified in the regulations and would be required to provide it in the event its application is selected for audit.

Employers would be required to submit their applications on forms designed for automated processing to minimize manual intervention to an ETA application processing center for automated screening and processing. After an application has been determined to be acceptable for filing, an automated system would review it based upon various selection criteria that would allow applications to be identified for potential audits before determinations could be made. In addition, some applications would be randomly selected as a quality control measure for an audit without regard to the results of the computer analysis.

A complete application would consist of two forms. *An Application for Permanent Labor Certification* form (ETA Form 9089) and a *Prevailing Wage Determination Request* (PWDR) form (ETA Form 9088). The application form would require the employer to respond to 56 items. The majority of the items on the application form would consist of attestations which would require the employer to do no more than check "yes", "no", or "NA" (not applicable) as a response. These attestations and other information required by the application form elicit information similar to that required by the current labor certification process. For example, the employer will have to attest to, such items as: whether the employer provided notice of the application to the bargaining representative or its employees; whether the alien beneficiary gained any of the qualifying experience with the employer; whether the alien is currently employed by the employer; whether a foreign language requirement is required to perform the job duties; and whether the U.S. applicants were rejected solely for lawful job related reasons. (The term "applicant" is defined at § 656.3 as an U.S. worker who is applying for a job opportunity for which an employer has filed an *Application for Permanent Labor Certification* (ETA Form 9089). The term "U.S. Worker" is also defined at § 656.3.) The wage offered on the application form would be required to be to equal to or greater than the prevailing wage determination entered by the SWA on the PWDR form described below. Comments are requested on ETA forms 9088 and 9089 which are published at the end of this NPRM.

The application form, however, would not require the employer to provide a job description, or detailed job requirements. The job description and job requirements would be entered on the PWDR form, which the employer would be required to submit to the SWA for a prevailing wage determination. The SWA would enter its prevailing wage determination on the form and return it to the employer with its endorsement. The employer would be required to submit both forms to an ETA servicing office for processing and a determination.

The employer would not be required to provide any supporting documentation with its application but would be required to furnish supporting documentation to support the attestations and other information provided on the form if the application was selected for an audit. The standards used in adjudicating applications under the new system would be substantially the same as those used in arriving at a determination in the current system.

The determination would still be based on: whether the employer has met the requirements of the regulations; whether there are insufficient workers who are able, willing, qualified and available; and whether the employment of the alien will have an adverse effect on the wages and working conditions of U.S. workers similarly employed.

SWA's would no longer be the intake point for submission of applications for permanent alien employment certification and would not be required to be the source of recruitment and referral of U.S. workers as they are in the present system. The required role of SWA's in the redesigned permanent labor certification process would be limited to providing prevailing wage determinations (PWD). Employers would be required to submit a PWDR form to SWA's to obtain a PWD before filing their applications with an ETA application processing center. The SWA's would, as they do under the current process, evaluate the particulars of the employer's job offer, such as the job duties and requirements for the position and the geographic area in which the job is located, to arrive at a PWD.

The combination of prefiling recruitment, automated processing of applications, and elimination of the SWA's' required role in the recruitment and referral of U.S. workers would yield a large reduction in the average time needed to process labor certification applications and would also eliminate the need to institute special, resource intensive efforts to reduce backlogs which have been a recurring problem.

The proposed labor certification application and PWDR have been designed to be machine readable or directly completed in a web-based environment. Initially, depending upon whether or not a processing fee is implemented, applications will be on forms which can be submitted by facsimile transmission or by mail and will be subject to an initial acceptability check to determine whether the application can be processed. If a fee for processing the application is required, all applications will have to be submitted by mail. (However, as indicated in section IV.E, of the preamble below, the Department cannot promulgate and implement a fee charging rule until Congress passes the necessary authorizing legislation.) In the long-term, ETA will be exploring the possibility of further automating the process so that applications and PWDR's may be submitted electronically to an application processing center whether or not a fee is required to be submitted with an application.

After an application, including the PWDR, has been determined to be acceptable for filing, a computer system will review the application based upon various selection criteria that will allow more problematic applications to be identified for audit. Additionally, we anticipate that some applications will be randomly selected for an audit without regard to the results of the computer analysis as a quality control measure. If an audit has not been triggered by the information provided on the application or because of a random selection, the application will be certified and returned to the employer. The employer may then submit the certified application to the Immigration and Naturalization Service (INS) in support of an employment-based I–140 petition. We anticipate that if an application is not selected for an audit, an employer will have a computer-generated decision within 21 calendar days of the date the application was initially filed.

If an application is selected for an audit, the employer will be notified and required to submit, in a timely manner, documentation specified in the regulations to verify the information stated in or attested to on the application. Upon timely receipt of an employer's audit documentation, the application will be distributed to the appropriate ETA regional office where it will be reviewed by the regional Certifying Officer.

After an audit has been completed, the proposed rule provides that the Certifying Officer can certify the application; deny the application; or order supervised recruitment. If the audit documentation is complete and consistent with the employer's statements and attestations contained in the application, the application will be certified and returned to the employer. If the audit documentation is incomplete, is inconsistent with the employer's statements and/or attestations contained in the application, or if the application is otherwise deficient in some material respect, the application will be denied and a notification of denial with the reasons therefor will be issued to the employer. If an application is denied, the employer will be able to request review of the Certifying Officer's decision by the Board of Alien Labor Certification Appeals (Board or BALCA). Additionally, on any application selected for an audit, the regional Certifying Officer will have the authority to request additional information before making a final determination or order supervised recruitment for the employer's job opportunity in any case where questions arise regarding the adequacy of the employer's test of the labor market.

The supervised recruitment that may be required by the regional Certifying Officer, is similar to the current non-RIR regulatory recruitment scheme under the current basic process which requires placement of an advertisement in conjunction with a 30-day job order by the employer. The recruitment, however, will be supervised by ETA regional offices instead of the SWA's. At the completion of the supervised recruitment efforts, the employer will be required to document in a recruitment report that such efforts were unsuccessful, including the lawful, job-related reasons for not hiring any U.S. workers who applied for the position. After a review of the employer's documentation, the regional Certifying Officer will either certify or deny the application. In all instances in which an application is denied, the denial notification will set forth the deficiencies upon which the denial is based. The employer would be able to seek administrative-judicial review of a denial.

II. Statutory Standard

Before the Immigration and Naturalization Service (INS) may approve petition requests and the Department of State may issue visas and admit certain immigrant aliens to work permanently in the United States, the Secretary of Labor must first certify to the Secretary of State and to the Attorney General that:

(a) There are not sufficient United States workers who are able, willing, qualified, and available at the time of the application for a visa and admission into the United States and at the place where the alien is to perform the work; and

(b) The employment of the alien will not adversely affect the wages and working conditions of similarly employed United States workers. (8 U.S.C. 1182(a)(5)(A)).

If the Secretary, through ETA, determines that there are no able, willing, qualified, and available U.S. workers and that employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, DOL so certifies to the INS and to the Department of State, by issuing a permanent alien labor certification.

If DOL cannot make one or both of the above findings, the application for permanent alien employment certification is denied. DOL may be unable to make the two required

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findings for one or more reasons, including:

(a) The employer has not adequately recruited U.S. workers for the job offered to the alien, or has not followed the proper procedural steps in 20 CFR part 656.

(b) The employer has not met its burden of proof under section 291 of the Immigration and Nationality Act (INA or Act.) (8 U.S.C. 1361), that is, the employer has not submitted sufficient evidence of its attempts to obtain available U.S. workers, and/or the employer has not submitted sufficient evidence that the wages and working conditions which the employer is offering will not adversely affect the wages and working conditions of similarly employed U.S. workers.

III. Current Department of Labor Regulations

The Department of Labor has promulgated regulations, at 20 CFR part 656, governing the labor certification process for the permanent employment of immigrant aliens in the United States. Part 656 was promulgated under section 212(a)(14) of the INA (now at section 212(a)(5)(A)). 8 U.S.C. 1182(a)(5)(A).

The regulations at 20 CFR part 656 set forth the factfinding process designed to develop information sufficient to support the granting or denial of a permanent labor certification. These regulations describe the nationwide system of public State Workforce Agency offices available to assist employers in finding available U.S. workers and how the factfinding process is utilized by DOL as the basis of information for the certification determination. See also 20 CFR parts 651 through 658, and the Wagner-Peyser Act (29 U.S.C. Chapter 4B).

Part 656 also sets forth the responsibilities of employers who desire to employ immigrant aliens permanently in the United States. Such employers are required to demonstrate that they have attempted to recruit U.S. workers through advertising, through the Federal-State Employment Service/One-Stop System, and by other specified means. The purpose of the recruitment process is to assure that there is an adequate test of the availability of U.S. workers to perform the work and to ensure that aliens are not employed under conditions that would adversely affect the wages and working conditions of similarly employed U.S. workers.

In brief, the current process for obtaining a labor certification requires employers to actively recruit U.S. workers in good faith for a period of at least 30 days for the job openings for which aliens are sought. The employer's job requirements must conform to the regulatory standards (e.g., those normally required for the job), and employers must offer prevailing wages and working conditions for the occupation in the area in which the job is located. Further, employers may not favor aliens or tailor the job requirements to any particular alien's qualifications.

During the 30-day recruitment period, employers are required to place a three-day help-wanted advertisement in a newspaper of general circulation, or a one-day advertisement in a professional, trade, or business journal, or in an appropriate ethnic publication. Employers are also required to place a 30-day job order with the local office of the State Workforce Agency in the state in which the employer seeks to employ the alien. Alternatively, if employers believe they have already conducted adequate recruitment efforts seeking qualified U.S. workers at prevailing wages and working conditions through sources normal to the occupation and industry, they may request a waiver of the otherwise mandatory 30-day recruitment efforts. This waiver process is generally referred to as involving "Reduction in Recruitment" applications. If the employer does not request RIR processing or if the request is denied, the help-wanted advertisements which are placed in conjunction with the mandatory thirty-day recruitment effort direct job applicants to either report in person to the State Workforce Agency office or to submit resumes to the State Workforce Agency.

Job applicants are either referred directly to the employer or their résumés are sent to the employer. The employer then has 45 days to report to the State Workforce Agency the lawful, job-related reasons for not hiring any U.S. worker referred. If the employer hires a U.S. worker for the job opening, the process stops at that point, unless the employer has more than one opening, in which case the application may continue to be processed. If, however, the employer believes that able, willing and qualified U.S. workers are not available to take the job, the application, together with the documentation of the recruitment results and prevailing wage information, are sent to one of the Department's regional offices. There, it is reviewed and a determination is made as to whether or not to issue the labor certification based upon the employer's compliance with the regulations governing the program. If the Department of Labor determines that there are no able, willing, qualified and available U.S. workers, and that the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers, we so certify to the INS and the DOS, by issuing a permanent labor certification. See 20 CFR part 656; see also section 212(a)(5)(A) of the Immigration and Nationality Act, as amended (INA).

IV. Discussion of Regulatory Amendments

A. Definitions

We have made several changes to the definitions of the terms used in part 656. With the exception of the change of the definition of the term "employer," substantive changes in definitions are discussed along with substantive changes in the relevant regulatory provisions.

The definition of employer would be amended to reflect the longstanding policy articulated in *Technical Assistance Guide No. 656 Labor Certifications*, issued in 1981 that:

- Persons who are temporarily in the United States, such as foreign diplomats, intracompany transferees, students, exchange visitors, and representatives of foreign information media cannot be employers for the purpose of obtaining a labor certification for permanent employment; and
- Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

B. Schedule A

1. General

Schedule A is a list of occupations for which DOL has precertified job opportunities, having made determinations that qualified U.S. workers are not able, willing, and available, and that alien employment will not adversely affect the wages and working conditions of similarly employed U.S. workers. See 20 CFR 656.10 and 656.22. Certification applications are filed with INS or the Department of State, and those agencies determine whether an individual application has been precertified by DOL.

2. Professional Nurses

We have conformed the general description of aliens seeking *Schedule A* labor certification as professional nurses at § 656.5(a)(1) (currently § 656.10(a)(2)) to the procedures at § 656.15(c)(2) (currently § 656.22(c)(2)) to indicate that only a permanent license can be used to satisfy the alternative requirement to passing the Commission on Graduates of Foreign Nursing Schools exam that the alien hold a full and unrestricted license to practice professional nursing in the State of intended employment. INS has informed us that it has received applications with temporary licenses or permits filed as supporting documentation to *Schedule A* applications. Our intent in promulgating the current *Schedule A* procedures for professional nurses was to put an end to the pre-1981 practice whereby some nurses entered the United States on temporary licenses and permits, but failed to pass State examinations for a permanent license. As we have stated with respect to this issue, "it is not in the public interest to grant certification to nurses who will not be able to practice their profession or who will likely limit or otherwise adversely affect the wages or job opportunities for U.S. workers in lower-skilled jobs." 45 FR 83926, 83927 (December 19, 1980); see also 20 CFR 656.22(c)(2) (1991).

To be consistent with the description of the other occupational groups on Schedule A, the definition of professional nurse would be moved from the section containing the definitions, at § 656.3 in the current rule, to the section providing a general description of *Schedule A*, at § 656.5 in the proposed rule.

3. Aliens of Exceptional Ability In the Performing Arts

The amendments would remove aliens of exceptional ability in the performing arts from the special handling procedures and include them on *Schedule A* as a separate category. The employer or the alien will have to submit to INS the documentation currently required by 20 CFR 656.21a(a)(1)(iv)(A)(*1*) through (a)(1)(iv)(A)(*6*) of the current regulations. Current recruitment requirements consisting of an advertisement or a statement from the union, if customarily used as a recruitment source in the area or industry, will no longer be required. As a practical matter, under 20 CFR 656.21a, once we determined that an alien was of exceptional ability in the performing arts, certification was issued in virtually all such cases. INS can make this determination as readily as DOL. Such determinations are similar to determinations Immigration Officers make for aliens of exceptional ability in the sciences and arts under Group II of *Schedule A*. In both cases a determination has to be made whether or not the alien's work during the past year and intended work in the United States will require exceptional ability.

Aliens of exceptional ability in the sciences or arts comprise Group II of *Schedule A*. We have delegated the determination whether an alien beneficiary of a labor certification application qualifies for *Schedule A* to the Immigration and Naturalization Service (INS). *Schedule A* applications are filed with the INS; not with the Department of Labor. The current and proposed regulations provide that the *Schedule A* determination of the INS shall be conclusive and final. Therefore the employer may not make use of the administrative review procedures in Part 656. The INS, however, in the process of making its *Schedule A* determination may request an advisory opinion as to whether an alien is qualified for the *Schedule A* occupation from the Division of Foreign Labor Certifications.

We have also concluded, based on the small number of applications submitted on behalf of aliens of exceptional ability in the performing arts and experience in evaluating the required recruitment reports submitted in conjunction with such applications, that there are few performing artists, whether alien beneficiaries or U.S. workers, who can satisfy the standards to qualify as an alien of exceptional ability in the performing arts as defined in the regulations. Consequently, the admission of the few aliens who may qualify as aliens of exceptional ability in the performing arts will not have an adverse effect on the wages and working conditions of U.S. performing artists.

C. Schedule B

Schedule B is a list of occupations for which we determined that U.S. workers are generally able, willing, qualified and available, and that the wages and working conditions of United States workers similarly employed will generally be adversely affected by the employment of aliens in the United States in such occupations. (See 20 CFR 656.11(a) and 23(a) and (b)). The current regulations require that a waiver must be obtained to receive certification of *Schedule B* jobs. A request for a waiver must be filed along with the application to obtain a certification for an occupation listed on *Schedule B*.

We propose to eliminate *Schedule B*, because program experience indicates that it has not contributed any measurable protection to U.S. workers. Once an employer files a *Schedule B* waiver, the application is processed the same as any other application processed under the non-RIR, basic process. Whether or not an application for a *Schedule B* occupation is certified is dependent on the results of the basic labor market test detailed in § 656.21 of the current regulations.

D. General Instructions

1. Expansion of Posting Requirement

The posting regulation at § 656.10(d)(ii) in the proposed rule has been expanded to require in addition to a posting a notice of the *Application for Permanent Labor Certification* (ETA Form 9089), that the employer must publish the posting in any and all in-house media, whether electronic or printed, in accordance with the normal procedures generally used in recruiting for other positions in the employer's organization. Employers must also be prepared to provide documentation of the posting requirements in the event of an audit.

2. Ability to Pay and Place the Alien on the Payroll

The current regulations and *Application for Alien Employment Certification* form (ETA 750) require that the employer document that it "has enough funds available to pay the wage or salary offered the alien", and that "(t)he employer will be able to place the alien on the payroll on or before the date of the alien's proposed entrance into the United States". We propose to eliminate these provisions from the regulations and the *Application for Alien Employment Certification* form, since our examination of these issues is a duplication of the examination of the employer's financial standing and the ability to place the alien on the payroll undertaken by the INS when it processes the employer's petition. Moreover, these provisions are also unnecessary because the underlying issues could still be addressed because we are proposing to retain the provision in the current regulations that "(t)he job opportunity has been and is clearly open to any qualified U.S. worker." If the employer is not in a position to pay the alien and/or place him or her on the payroll, it is not offering a job opportunity that is clearly open to U.S. workers.

E. Fees

The Appendix to the FY 2001 Budget of the United States states that "(l)egislation will be proposed that would authorize the Secretary of Labor to collect fees from employers for the certification of certain aliens as eligible workers under the Immigration and Nationality Act." Although specific legislation has not been proposed to

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implement the fee charging language in the President's budget, the proposed rule contains a provision outlining how fee charging would be implemented if it becomes law. If this occurs, the final rule would require employers to submit a fee with their applications. A charge of $30.00 would be imposed if a check in payment of the fee is not honored by the financial institution on which it is drawn. The existence of any outstanding "insufficient funds" checks would be grounds for returning applications for alien employment certification to the employer as unacceptable for processing. Receipt of any "insufficient funds" checks while the application is being processed would be grounds for denying the application. Receipt of any "insufficient funds" checks after an application has been certified would be grounds for revoking the certification. If an application is returned to the employer because it was incomplete, the employer would be able to request a refund of the fee or resubmit the application.

Fees would also be required for *Schedule A* and Sheepherder applications which are submitted to INS for adjudication.

If legislation authorizing the Secretary of Labor to collect fees from employers for the certification of immigrant workers is not passed by the time a Final Rule is to be published, the proposed fee provisions will not be included in the Final Rule.

F. Applications for Labor Certification for Schedule A Occupations

1. PWDR Required to File Schedule A Applications With INS

Employers would be required to submit the required processing fee, a completed PWDR endorsed by the SWA, and a completed *Application for Alien Employment Certification* form to the appropriate INS office. The current *Application for Alien Employment Certification* form (ETA 750) requires employers to enter the offered rate of pay and to certify that the wage offered equals or exceeds the prevailing wage. Since the application form no longer contains the offered wage, employers would be required to submit a completed and endorsed PWDR as well as the application form in Schedule A cases to the appropriate INS office.

2. Aliens of Exceptional Ability in the Performing Arts

As explained above, the proposed rule would remove aliens of exceptional ability in the performing arts from the special handling procedures and include them on *Schedule A* and the documentation currently required by 20 CFR 656.21a(a)(1)(iv)(A)(*1*) through (a)(1)(iv)(A)(*6*) of the regulations would be required to be submitted to INS by the employer or the alien beneficiary.

G. Labor Certification Applications for Sheepherders

Procedures for filing applications for Sheepherders in the current regulations are in the special handling procedures at § 656.21(a). The new system does not contain a section on special handling procedures, since we will handle all applications submitted to the Department in the same way. Sheepherder applications will continue to be submitted to INS along with the required processing fee. Employers would have to submit to the appropriate INS officer in addition to the processing fee:

- A completed *Application for Alien Employment Certification* form;
- A completed PWDR endorsed by the SWA; and
- A signed letter or letters from all U.S. employers who have employed the alien as a sheepherder during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a sheepherder, for at least 33 of the immediately preceding 36 months.

Employers that cannot not meet the requirements to file their applications for sheepherders with INS will be able to file their applications under the revised basic process described below.

H. Basic Process

1. Filing Applications

Employers would be required to file a completed Application for Alien Employment Certification form and a PWDR endorsed by the SWA with a designated ETA application processing center. Supporting documentation that may be requested by the Certifying Officer in an audit letter would not be filed with the application, but the employer would be expected to be able to provide required supporting documentation if its application were selected for audit.

The new system would limit the role of the SWA in the permanent labor certification process to providing PWD's. Prevailing wage determinations are currently made by SWA's after the application has been filed as part of the normal process of reviewing an application and informing the employer of deficiencies therein. In the new process, the employer would still be required to obtain a PWD from the SWA, although the timing would change from a post-filing action to a pre-filing action.

Under the proposed regulations, before filing a permanent application with an ETA application processing center, the employer would submit a PWDR to the SWA. (The "machine readable" PWDR would also be used to submit prevailing wage requests for the H–1B and H–2B programs.) The SWA would issue a PWD on the PWDR form and return it to the employer. The fully executed PWDR form would become part of the new application form filed at an ETA application processing center.

2. Processing

Computers would do an initial analysis of the information provided on the "machine readable" application form. Applications that could not be accepted for processing because certain information that was requested by the application form was not provided will be returned to the employer. Applications accepted for processing would be screened and would be certified, denied or selected for audit.

Information on the form may trigger a denial of the application or a request for an audit by Federal regional office staff. The application may also be selected for audit on a random basis as a quality control measure. If an application is not denied or selected for audit we anticipate that the application will be certified and returned to the employer within 21 days.

If the application is selected for audit, we will send the employer a letter with instructions to furnish required documentation supporting the information provided on the application form within 21 calendar days of the date of the request. If the requested information is not received in a timely fashion, the application will be denied.

3. Filing Date

Applications accepted for processing will be date stamped. Applications which are not accepted for processing and returned to employer will not be date stamped to minimize the administrative burden, and to discourage employers from filing an application merely to obtain a filing date, which under the regulations of the INS and Department of State becomes the priority date for processing petitions and visa applications, respectively.

Employers will be able to withdraw applications for alien employment certification filed under the current regulations and file an application for the identical job opportunity involved in the withdrawn application under the proposed rule without loss of the filing date.

4. Required Prefiling Recruitment

a. Professional occupations.

Exclusively for the purpose of the permanent labor certification program, the proposed rule defines a professional occupation as an occupation for which the attainment of a bachelor's or higher degree is a usual requirement for the occupation. Employers would be required to adequately test the labor market at prevailing wages and working conditions during the 6-month period preceding the filing of the application. The recruitment steps consist of prescribed mandatory and alternative steps and are designed to reflect what we believe, based on our program experience, are the recruitment methods that are most appropriate to the occupation. The mandatory steps for professional occupations consist of:

- Placement of a job order with the SWA serving the area of intended employment;
- Placement of two advertisements in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment; and
- Placement of an advertisement in an appropriate journal in lieu of one Sunday advertisement if the position involves experience and an advanced degree.

Under the current system, the employer may advertise, when a newspaper of general circulation is designated as the appropriate advertising medium, in any newspaper of general circulation. However, our experience has shown that some employers routinely place newspaper advertisements in those newspapers with the lowest circulation and that these publications are often the least likely to be read by qualified U.S. workers. Therefore, in order for the employer's job opening to receive appropriate exposure, the proposed regulation requires that the mandatory advertisements appear in the newspaper of general circulation most appropriate to the occupation and the workers most likely to apply for the job opportunity in the area of intended employment. For example, in a relatively large metropolitan area such as Philadelphia, Pennsylvania or Washington, DC, it would not be appropriate to place an advertisement for a computer professional in a suburban newspaper of general circulation since workers interested in professional jobs consult the metropolitan newspapers in the area of intended employment with the largest circulation rather than the suburban newspapers of general circulation. On the other hand, it would be appropriate to advertise in a suburban newspaper of general circulation for nonprofessional occupations, such as jewelers, houseworkers or drivers.

If the position involves experience and an advanced degree, the proposed regulation requires that the employer place one advertisement in an appropriate professional journal in lieu of one Sunday advertisement. To assure that employers make a current and complete test of the labor market, the mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the application is filed. In addition, the mandatory advertisements must be placed at least 28 days apart.

The employer, as indicated above, would also be required to select three additional pre-filing recruitment steps from among commonly used professional recruitment channels, such as job fairs, job search web sites and private employment agencies. Unlike the mandatory steps, one of the additional recruitment steps may consist solely of activity that takes place within 30 days of the filing of the application.

We are publishing in Appendix A to the preamble a list of occupations for which a bachelor's or higher degree is a usual requirement. The basic list was developed by the Bureau of Labor Statistics (BLS) and was based on its analyses of occupations' usual education and training requirements conducted to produce the *Occupational Outlook Handbook*. The Employment and Training Administration developed a crosswalk to the O*NET, Standard Occupational Classification (SOC) codes. The occupational titles, along with the relevant O*Net-SOC codes and codes which indicate whether the usual degree requirement for the occupation is for a professional degree, doctoral degree, master's degree, work experience plus a bachelor's or higher degree, or a bachelor's degree, are presented in the list we are publishing in Appendix A. We do not plan to codify Appendix A. Additional information about the occupations, including their definitions, can be obtained from O*Net online at *http://online.onetcenter.org*. Commenters are invited to submit comments on the appropriateness of the occupations included on the list published in Appendix A.

b. Nonprofessional Occupations

The proposed rule defines a non-professional occupation as any occupation for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation. Recruitment for occupations that normally do not require a baccalaureate or higher degree, i.e., non-professional occupations, consists of three mandatory steps: two newspaper advertisements and placement of a job order with the SWA serving the area of intended employment. All three recruitment steps must occur at least 30 days but no more than 180 days, before filing the application. Like recruitment for professional occupations, the advertisements must be placed at least 28 days apart, and must run in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity.

The advertising requirements for both professional and nonprofessional occupations are more extensive than under the current regulations. The difference in advertising requirements between professional and nonprofessional occupations is based on the Department's experience as to how employers advertise for these two broad categories of workers. The Department is interested in receiving comments on the more extensive advertising requirements, and the different advertising requirements for professional and nonprofessional occupations.

5. Newspaper Advertising Requirements

The proposed requirements for the newspaper advertisements are modeled after current regulatory requirements at 20 CFR 656.21(g), except the advertisement must: (1) identify the employer; (2) direct potential job seekers to the employer and not the SWA; and (3) provide a description of the job and its geographical location that is sufficiently detailed to fully inform U.S. workers of the particular job opportunity. Additionally, the wage must equal or exceed the prevailing wage entered on the PWDR by the SWA. Any job requirements listed in the advertisement may not exceed those listed on the PWDR.

6. Recruitment Report

The employer will be required to maintain documentation of the recruitment efforts it has undertaken and the results thereof, including the lawful job-related reasons for rejecting U.S. workers who applied for the job. Recruitment reports may be required in the cases selected for audit and are required in every case in which employers conduct supervised recruitment. Under the current regulations, employers have always had

to report on the lawful job-related reasons why each U.S. worker applying for the job or referred to the employer was not hired. See 20 CFR 656.21(b)(6) in the current regulations. The proposed regulation provides that the employer must prepare a summary report describing the recruitment steps taken and the results, including the number of U.S. applicants, the number of job openings in the job opportunity, the number of applicants hired and, if applicable, the number of U.S. workers rejected summarized by the lawful job reasons for such rejections. The Certifying Officer, however, after reviewing the employer's recruitment report may request the resumes or applications of the U.S. workers who were rejected sorted by the reasons for rejection provided by the employer in its recruitment report.

The proposed rule governing the content of recruitment reports, required for recruitment conducted prior to filing the application by the employer or for supervised recruitment that may be required by the Certifying Officer, would also clarify our position regarding "qualified" U.S. workers. We have added the requirements currently found at § 656.24(b)(2)(ii) to the requirements for the recruitment reports required to be submitted by employers on the results of their prefiling and supervised recruitment of U.S. workers. The recruitment requirements thus provide that a U.S. worker may be qualified for the employer's job opportunity even if he/she does not meet every one of the employer's job requirements. The U.S. worker who, by education, training, experience, or a combination thereof, qualifies by being able to perform, in the normally accepted manner, the duties involved in the occupation may not be rejected for failing to meet a specific job requirement. In addition, the U.S. worker is considered qualified, if he/she can acquire during a reasonable period of on-the-job-training, the skills necessary to perform as customarily performed by other U.S. workers similarly employed, the duties involved in the occupation.

7. Job Requirements

a. Business Necessity Standard and Job Duties

The requirement that the employer's job requirements must be those normally required for jobs in the United States would be retained in the new system. Employers, however, would not be able to justify job requirements that exceed those that are normal by use of business necessity. The business necessity standard, currently at 20 CFR 656.21(b), often works to the disadvantage of U.S. workers. This regulation has been difficult to administer and has generated a greater amount of litigation than any other regulatory provision in the current regulations. Since the position for which certification is sought is usually held by an alien worker who is the beneficiary of the application, job requirements tend to be manipulated to favor the selection of the alien. The existing business necessity standard requires the CO to evaluate the unique standards of an employer's business. In highly technical areas this is an extremely difficult undertaking and may be subject to employer manipulation since we are in no position to second guess the employer in such circumstances.

We have concluded that any business necessity standard that may be adopted would present similar problems. Therefore, the proposed rule would not retain a business necessity standard as a justification for employer's job requirements that exceed requirements that are normal to jobs in the United States. However, as discussed below, the case law relating to how the business necessity standard relates to a language requirement is being adopted. Further, any requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of education or training in the occupation cannot be specified as a job requirement, unless justified in the limited circumstances discussed below.

Accordingly, the proposed rule provides that the job opportunity's requirements cannot exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O*Net Job Zones, except in certain limited circumstances, as explained below.

b. Other Job Requirements

Job requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of training cannot be used unless justified in certain limited circumstances, discussed below.

(1) Previous Employment of U.S. Workers

Other requirements can be justified if the employer employed a U.S. worker to perform the job opportunity with the duties and requirements specified in the application within 2 years of filing the application. ETA's operating experience indicates that the more recently a job existed and was filled by a U.S. worker before the time an application is filed, the more likely it is to involve a job that is clearly open to U.S. workers. In the event of an audit, the proposed rule provides that previous employment of a U.S. worker in an occupation with requirements other than those relating to experience, education and/or training can be documented by furnishing the name of the former employee, and an appropriate combination of the following: job description, resume, payroll records, letter from previous employee and previous recruitment documentation.

(2) Other Requirements Are Normal to the Occupation

Requirements other than those relating to amount of experience and education could be justified if the requirements were normal to the occupation in order for a person to perform the basic job duties and were routinely required by other employers in the industry. The proposed rule provides that employers can document such requirements by providing copies of state and/or local laws, regulations, ordinances; articles; help-wanted advertisements; or employer surveys. Acceptable examples, depending on the occupation, include but are not limited to, professional trade or business licenses, licensing standards, specified typing speed, and the ability to lift a minimum number of pounds.

(3) Foreign Language Requirement

Preventing employers from artificially tailoring job opportunities to fit the unique skills of the incumbent alien has always been a major issue is the labor certification process. Since 1977, we have addressed this through the use of the "business necessity" test. For reasons already discussed, we are not utilizing business necessity in the new system. However, with respect to language requirements, which are often used by employers seeking to artificially restrict the job to the incumbent alien, the use of the business necessity standard produced a well-understood and, generally, well-accepted body of law about when and how language requirements can be utilized. The proposed rule incorporates that legal standard.

Consistent with the majority of BALCA decisions, the proposed rule would require that a foreign language requirement cannot be included merely for the convenience of the employer or because it is a mere preference of the employer, co-workers or customers. Although the proposed rule would eliminate any business necessity standard as a means of justifying a foreign language requirement, the rule would incorporate the existing standards and criteria developed under BALCA case law. Therefore, a foreign language can be based on the nature of the occupation; e.g., translator, or, for example, the existence of the need to communicate with a large majority of the employer's customers or regular contractors who cannot communicate effectively in English. This can be documented by the employer furnishing the number and proportion of its clients contractors who cannot communicate in English, a detailed explanation of why the duties of the position for which certification is sought require frequent contact with and communication with customers or contractors who cannot communicate in English, and why it is reasonable to believe that the foreign language customers and contractors cannot communicate in English.

(4) Combination Occupations

The revised regulation makes two changes to the provision about combination of duties in the current regulation. First, the proposed regulation uses the term "combination of occupations" instead of "combination of duties" as most jobs require the incumbent to perform a combination of duties. Second, the ability to document the need for a combination of occupations would be limited to two instead of three alternative forms of documentation that can be furnished by the employer to support a combination of occupations under the current regulations. For the reasons explained above in the discussion on the elimination of a business necessity standard, business necessity would no longer be a basis for justifying a job opportunity involving a combination of occupations. Further, the alternative provided in the current regulations for justifying a combination of duties which allows the employer to document that it has normally employed persons for that combination of duties would be replaced with the standard, discussed above, for justifying requirements other than experience and education that are based on the previous employment of a U.S. worker. Accordingly, the revised regulation limits the alternative forms of documentation the employer can furnish to support a combination of occupations to documentation that it employed a U.S. worker for the same combination of occupations involved in the application within 2 years of filing the application and/or that workers customarily perform the combination of occupations in the area of intended employment.

Consistent with our longstanding policy, combination jobs would be classified and prevailing wages determined in the following order: (1) The highest paying occupation; (2) the highest skilled occupation; or (3) the occupation that requires the largest percentage of the applicant's time. The highest paying occupation is considered first in classifying the job opportunity because the prevailing wage for the highest paying occupation has to be offered by the employer in order to conduct a valid test of the labor market for the highest paying occupation involved in the employer's job opportunity. If two or more occupations have the same high prevailing wage, the job opportunity would be classified according to the one that is the most highly skilled. If two or more occupations require the same high level of skill, the combination occupation would be classified in accordance with the one that would require the largest percentage of the incumbent's time.

8. Actual Minimum Requirements

The proposed rule precludes employers including as a requirement for the job opportunity any experience the alien gained working for the employer in any capacity, including working as a contract employee. Since 1977, we have prohibited using experience gained with the employer to be used as qualifying experience except in cases where the alien gained the experience in dissimilar jobs or in instances where it is no longer feasible for the employer to train a U.S. worker. After over 2 decades of administering this regulation, we have concluded there is no material difference in the need to protect U.S. workers if the alien gained the experience in a similar job or a dissimilar job, or if the employer maintains that it is no longer feasible to train another worker for the job involved in the application.

The need to protect U.S. workers stems in large measure from the same reason we are proposing to eliminate business necessity as a justification for exceeding job requirements that are normal to the job in the United States. In situations where the alien encumbers the job opportunity involved in the employer's application, job requirements tend to be manipulated in favor of the alien incumbent to the disadvantage of U.S. workers.

The question of what employing entity is the employer has also presented considerable confusion. To clarify this issue and to maximize protection to U.S. workers we have concluded, consistent with the BALCA decision *In the Matter of Haden, Inc.* (88–INA–245, August 30, 1988), that the definition of employer should be broadly drawn. Accordingly, we propose to define the term "employer" to include predecessor organizations, successors in interest, a parent, branch, subsidiary, or affiliate, whether located in the United States or another country. Although ETA has followed *Haden* in administering the current regulations, the Department seeks comments on the proposed definition of employer for administering the provision pertaining to actual minimum requirement at § 656.17(h).

9. Alternative Experience Requirements

We are proposing to eliminate the use of alternative experience requirements as a means of qualifying for the employer's job opportunity for much the same reasons we are proposing to eliminate business necessity and to preclude the employer from including as a requirement for the job opportunity any experience the alien gained working for the employer in any capacity.

As a practical matter, in virtually all instances involving alternative experience requirements the alien beneficiary has been employed, usually by the employer applicant, in a job requiring less than 2 years of training or experience. The Act only allocates 10,000 visas a year to workers immigrating to work in the employment-based preference provided in the Act for such jobs (see 8 U.S.C. 1153(b)(3)(A)(iii)). The visa category for these unskilled jobs is oversubscribed and there is approximately a 4½ year wait for aliens who are waiting to immigrate to work in jobs requiring less than 2 years of training and experience. The other employment-based preferences requiring labor certification are generally not oversubscribed. The primary objective of the employer in specifying alternative experience requirements is to obtain certification for a job opportunity for which visa numbers are currently available. In these cases, as in the situations where business necessity justifications have been proffered, or in instances where the employer maintains the alien gained the experience in a dissimilar jobs or maintains that it is no longer feasible to train another worker for the job involved in the application, there is a need to protect U.S. workers as the job requirements tend to be manipulated to favor the alien beneficiary.

10. Conditions of Employment

The current regulations do not explicitly address conditions of employment, but we consider conditions of employment, such as a

requirement to live in the employer's household or a requirement to work a split shift, an important element of working conditions. Generally, unusual working conditions can be justified if the employer can document that they are normal to the occupation in the area and industry. The one exception to this rule is for live-in household domestic service workers. Because of the past history of program abuse involving the filing of large numbers of accommodation cases motivated primarily by the desire to obtain permanent resident alien status for the alien beneficiary and not by legitimate employment needs, the proposed rule would incorporate the standards and criteria that have been developed by BALCA case law to determine when a live-in requirement for a household domestic service workers is acceptable.

Therefore, live-in requirements are acceptable for household domestic service workers only if the employer can demonstrate that the requirement is essential to perform in a reasonable manner the job duties as described by the employer, and there are not cost-effective alternatives to a live-in household requirement. Mere employer assertions do not constitute acceptable documentation. For example, a live-in requirement could be supported by documenting two working parents and young children in the household, and/or the existence of erratic work schedules requiring frequent travel and a need to entertain business associates and clients on short notice. Depending upon the situation, acceptable documentation could consist of travel vouchers, written estimates of costs of alternatives such as baby sitters, and/or a detailed listing of the frequency and length of absences of the employer from the home.

The proposed rule would also retain the filing and documentation requirements at 20 CFR 656.21(a) for live-in household domestic service workers that have been in the permanent labor certification regulations since 1977 to minimize program abuse and abuse of the alien, such as the requirement that a signed copy of the contract must be provided to the alien and documentation of the alien having 1 year's prior experience in the occupation and are described below in greater detail.

11. Layoffs

The current regulations do not specifically require employers to consider potentially qualified U.S. workers who may have been laid off within a reasonably contemporaneous period of time of the filing of the labor certification application by the employer. However, it has always been our position that Certifying Officers have the authority to consider the availability of these workers under § 656.24(b)(2)(i) and (iii) of the current regulations. Under § 656.24(b)(2)(i), the Certifying Officer may determine whether there are other appropriate sources of workers from which the employer should recruit or might be able to recruit U.S. workers. Section 656.24(2)(iii) provides that in determining whether U.S. workers are available, the Certifying Officer shall consider as many sources as are appropriate. The proposed rule would provide Certifying Officers with broad authority to designate other sources of recruitment where the employer would be required to recruit for U.S. workers.

Accordingly, the proposed rule would require employers, if there has been a layoff in the area of intended employment within 6 months of the filing of the application, to attest to and document notification and consideration of potentially qualified U.S. workers involved in the layoff and the results of such notification.

12. Alien Influence Over Job Opportunity

When an employer seeks labor certification for an alien who is in a position to unduly influence hiring decisions or who has such a dominant role in, or close personal relationship with the employer and/or employer's business that it is unlikely that the employer would replace the alien with a qualified U.S. applicant, BALCA decisions allow the Certifying Officer to determine that the job opportunity has not been clearly open to any qualified U.S. worker.

The leading BALCA decision, *Modular Container Systems, Inc.* (89–INA–228, July 16, 1991), articulates several factors that should be considered by Certifying Officers to determine whether or not the job opportunity is bona fide or clearly open to U.S. workers. The proposed rule incorporates this requirement. The proposed rule specifies what documentation the employer must be prepared to furnish to enable the Certifying Officer to evaluate the employer's application in light of the factors articulated by BALCA in *Modular Container Systems*. These factors include whether the alien:

- Is in the position to control or influence hiring decisions about the job for which labor certification is sought;
- Is related to the corporate directors, officers or employees;
- Was an incorporator or founder of the company;
- Has an ownership interest in the company;
- Is involved in the management of the company;
- Is one of a small number of employees;
- Has qualifications for the job that are identical to specialized or unusual job duties and requirements stated in the application; and
- Is so inseparable from the sponsoring employer because of his or her pervasive presence and personal attributes that the employer would be unlikely to continue in operations without the alien.

I. Optional Special Recruitment and Documentation Requirements for College and University Teachers

Procedures for filing applications for college and university teachers in the current regulations are in the special handling procedures at 20 CFR 656.21(a). As indicated above, the new system does not provide for any special handling procedures. All applications we receive will be processed in the same way, although there may be some differences depending upon the occupation, in the attestation and documentation requirements. Consequently, procedures for filing applications on behalf of college and university teachers would be in a separate section. The documentation requirements for filing applications for college and university teachers would remain much the same as under the current regulation. The revised regulations, however, would specifically recognize current operating practice that employers that cannot or choose not to satisfy the special recruitment procedures for college and university teachers may avail themselves of the basic process in the new system.

Whether employers file applications on behalf of college and university teachers under the special recruitment procedures or the basic process, they are required to be able to document, if requested by the Certifying Officer, that the alien was found to be more qualified than any U.S. worker who applied for the job opportunity. The Act requires, in the case of members of the teaching profession, that U.S. workers have to be equally qualified with respect to the alien beneficiary to be considered by the employer for the job opportunity for which certification is sought. See 8 U.S.C. 1182(a)(5)(A).

J. Live-in Household Domestic Service Workers

Applications for household domestic service occupations would be filed, as in the current rule, under the revised basic process. Most of the documentation requirements for live-in household domestic service workers are unchanged from the current requirements contained in the current regulation at § 656.21(a)(3)(i) and (ii). However, some of the information that was previously required to be provided in item 20 of Form ETA 750, Part A, Statement for Live-at-Work Job Offers will no longer be collected on the application, but employers will be required to furnish that information if their applications are audited. This information includes a description of the residence, the number of individuals living in the household and their ages in the case of persons under the age of 18, and a statement as to whether or not free board and a private room not shared by another person will be provided to the alien. The employer would be required to attest on the application form that it will maintain all required documentation and, in the event of an audit, the employer will be required to submit this documentation to ETA, as well as the other documentation that is required for all occupations under the basic labor certification process.

K. Audit Letters

Under the current regulations, if a Certifying Officer determines that a certification cannot be issued, a Notice of Findings (NOF) must first be issued to the employer notifying it of the specific reasons for which the Certifying Officer intends to deny the application. Issuing a NOF and analyzing employers responses is probably the most time consuming aspect of the current labor certification system. The proposed rule does away with NOF's.

As indicated above, after an application has been determined to be acceptable for filing, a computer system would review it based upon various selection criteria that would allow applications to be identified for an audit. Additionally, as a quality control measure, the regulations provide that some applications could be randomly selected for audit without regard to the results of the computer analysis. Audit letters would be, for the most part, standardized, computer generated documents, stating the documentation that must be submitted by the employer. The proposed regulation would provide, in virtually all instances where an employer could be required to submit documentation in support of its attestations, the type of documentation the employer would be required to maintain and furnish in the event of an audit. Employers would be expected to have assembled and have a hand in all documentation necessary to support their applications before they are submitted.

If the employer did not mail the requested documentation within 21 days of the date of the audit letter, the application would be denied and the administrative-judicial review procedures provided for in the proposed rule would not be available. We have concluded that 21 days is sufficient time for employers to respond to audit letters because, as indicated above, the regulations indicate what documentation employers will be required to assemble, maintain and submit to respond to an audit letter. Extensions would not be granted to respond to audit letters. Failure to provide required documentation in a timely manner would be deemed a material misrepresentation to dissuade those small number of employers that conceivably may file applications without complying with all the documentation requirements from filing such applications. Further, failure to timely provide documentation would constitute a refusal to exhaust available administrative remedies and the administrative-review procedures would not be available.

If the requested documentation is submitted on time, the Certifying Officer would review the documentation submitted by the employer under the proposed standards in § 656.24 of this part.

As discussed below in the section on labor certification determinations, if the Certifying Officer determines that the employer materially misrepresented documentation requirements due to a failure to provide required documentation pursuant to § 656.21(a)(3)(ii) of this part, or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to section 656.21 of this part in future filings of labor certification applications for a period of 2 years. Commenters are invited to suggest items that can be added to the application form that would be helpful in identifying applications that may involve fraud and abuse.

Before making a final determination in accordance with the standards in § 656.24 of this part, the Certifying Officer could request supplemental documentation or require the employer to conduct supervised recruitment. A request for supplemental documentation could include a request for certain limited information not specified in the regulations, but that should be readily available to the employer. For example, if an application under review involves a job opportunity for a specialty chef, the Certifying Officer could request a copy of the restaurant's menu to aid in determining whether there was a *bona fide* job opening available for a specialty chef.

Once the Certifying Officer has reviewed all requested information, the Certifying Officer will issue a final determination granting or denying the application.

L. Supervised Recruitment

1. General

In any case where the Certifying Officer determines it to be appropriate, post-filing supervised recruitment may be ordered. This would include cases selected for audit and cases where serious questions arise about the adequacy of the employer's test of the labor market. It is anticipated, however, that the decision to order supervised recruitment will usually be based on labor market information. Supervised recruitment would operate much like the non-RIR recruitment under the current basic process at § 656.21, except that the recruitment efforts would be directed by the Certifying Officer and not by the SWA, as is the case under the current system.

2. Recruitment Sources

The advertisement requirements would be more detailed and rigorous than for pre-application recruitment. The advertisement would be required to be approved by the Certifying Officer before publication and the Certifying Officer would direct where it would be placed. We anticipate that Certifying Officers would, based on their broad knowledge of the labor market and experience in evaluating recruitment results placed in various newspapers, direct employers where to place advertisements. The advertisement would direct applicants to send resumes or applications to the Certifying Officer and would be required to include a summary of the employer's minimum job requirements. The Certifying Officer, as in the current rule, would have broad authority to designate other sources of workers where the employer should recruit for U.S. workers. The broad authority of the Certifying Officer to determine if there are other appropriate sources of workers where the employer should have recruited or might be able

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to recruit U.S. workers would be moved from the determination process at 20 CFR 656.24 in the current regulations, to the section on supervised recruitment in the proposed rule at 20 CFR 656.21.

3. Recruitment Report

At the completion of the supervised recruitment efforts, the employer will be required to document that its efforts were unsuccessful, including documenting the lawful job-related reasons for not hiring any U.S. workers who applied for the position. As explained above, employers have always been required to report on the lawful job-related reasons why each U.S. worker applying for the job or referred to the employer was not hired under the current regulation at 20 CFR 656.21(b)(6). This would be a specific requirement that employers would have to address in the employer report on supervised recruitment. The current regulation at 20 CFR 656.21(j) specifying the content of recruitment reports is potentially confusing in that it does not agree with the current requirement at 20 CFR 656.21(b)(6). In the present regulations employers only have to provide the lawful job related reasons for not hiring each U.S. workers interviewed. The other requirements for the employer's recruitment are much the same as in the current regulations. The employer would be required to report the number of U.S. workers who applied for the position, the number of workers interviewed, the names and addresses of the U.S. workers interviewed for the job opportunity, and the job title of the person who interviewed the workers.

We are taking the same position on who is a qualified U.S. worker in the supervised recruitment process as we took in our discussion of the issue for the prefiling recruitment process. A U.S. worker may be qualified even if he/she does not meet every one of the employer's job requirements. U.S. workers would be considered qualified if the U.S. workers, by education, training, or a combination thereof, qualify by being able to perform, in the normally accepted manner, the duties involved in the occupation. U.S. workers would be considered qualified if they could acquire, during a period of reasonable on-the-job training, the skills necessary to perform as customarily performed by other workers similarly employed, the duties involved in the occupation. Rejection of such workers based solely on lack of familiarity with some particular subsidiary job duty will not be permitted.

M. Labor Certification Determinations

1. Referral of Applications to the National Office for a Determination and Specification of Applications to be Handled in the National Office

The provisions that applications involving special or unique problems may be referred to the National Certifying Officer by the Regional Certifying Officer and that certain types of applications or specific applications be handled in the National Office have been deleted because they are no longer necessary. Under the existing regulations there are specific provisions governing the processing of an individual application through the SWA's and the ETA regional offices. The current regulations specify, depending upon the geographic location of the employer, which applications would be processed and reviewed by the various Certifying Officers. Accordingly, there was a need for provisions in the regulations to provide the authority for regional Certifying Officers to refer applications to the National Office or for the National Office to have the authority to direct that certain types of applications or specific applications be handled in the national office. Under the new system the SWA's will no longer be involved in case processing and the proposed regulations do not specify which applications will be reviewed by the various Certifying Officers, including the National Certifying Officer. Therefore, specific provisions are not required in the regulations to govern referrals by regional Certifying Officers of applications involving unique or special problems to the National Certifying Officer, or for the National Office to direct that certain types of applications or specific applications be handled in the ETA National Office.

2. Designation of Recruitment Sources

The determination process has been revised to reflect that all fact finding will have been completed by the time the Certifying Officer makes a determination. Consequently, the broad authority of the Certifying Officer to designate other appropriate recruitment sources from which the employer should recruit for U.S. workers is deleted from the determination process and included in the section detailing the operation of supervised recruitment in the new system at § 656.21.

3. Qualified U.S. Workers

As indicated above, consistent with the provisions in the regulations governing the content of recruitment reports that must be completed by employers whether they conduct prefiling or supervised recruitment, the section on determinations would be revised to provide that, alternatively, the U.S. worker is qualified if he/she can acquire during a reasonable period of on-the-job training, the skills necessary to perform the duties involved in the occupation, as customarily performed by other U.S. workers similarly employed.

4. Material Misrepresentations

As indicated above, if a Certifying Officer determines that the employer materially misrepresented it had complied with all documentation requirements due to a failure to provide required documentation pursuant to § 656.21(a)(3)(ii) of this part, or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to section 656.21 of this part in future filings of labor certification applications for a period of 2 years.

5. Reconsideration

The present regulations are silent with respect to the availability of motions for reconsideration after a Final Determination. Historically, Certifying Officers sometimes honored such motions but generally treated them as requests for review and transmitted the matter to the ALJ.

In order to address this matter, the regulation is amended to specifically provide that while motions for reconsideration before the Certifying Officer may be filed, the Certifying Officer may, in his/her complete discretion, choose to treat the motion as a request for review.

N. Board of Alien Labor Certification Appeals Review, Consideration and Decisions

1. Only Employer Can Request Review

The current regulations provide that if a labor certification is denied, a request for review of the denial may be made to the Board of Alien Labor Certification Appeals, by the employer and by the alien, but in the case of the alien, only if the employer also requests such a review. Only an employer can file *An Application for Alien Employment Certification*. Moreover, the employer can withdraw its application at any time. In view of the primacy of the employer in the labor certification process, we have concluded that it makes little sense to allow an alien to also file an appeal and are proposing to only authorize employer appeals.

2. Time Allowed to File Requests for Review

Consistent with the objective of streamlining and reducing processing time, the proposed rule would reduce the time to file a request for review to 21 calendar days from the 35 days specified in the current regulations. The Department believes that 21 days is sufficient time for an employer to file a request for review.

3. Aliens of Exceptional Ability in the Performing Arts

All references to aliens of exceptional ability in the performing arts would be deleted from the sections in the proposed rule detailing the procedures for filing requests for review and from the procedures to be followed by the Board in considering appeals and issuing decisions, since aliens of exceptional ability in the performing arts would be moved to *Schedule A*. The proposed rule would provide, as does the current rule, that the *Schedule A* determination of INS shall be conclusive and final.

4. Amicus Briefs

The provisions for *amicus briefs* for cases involving college and university teachers and aliens of exceptional ability in the performing arts would also be deleted from the sections of the proposed rule detailing the procedures to be followed in filing requests for review and the procedures to be followed by the Board in considering appeals and issuing decisions. Provisions for *amicus briefs* would no longer be applicable to aliens of exceptional ability in the performing arts, since they would be on *Schedule A* and *Schedule A* determinations of the INS are conclusive and final. Specific provisions for *amicus briefs* are no longer necessary in the case of college and university teachers because BALCA, in practice, accepts such briefs from any party that wishes to file one. The current language implies that BALCA would accept *amicus curiae* briefs only in cases involving college and university teachers and aliens of exceptional ability in the performing arts.

5. Copies of Appeal File

In the interest of providing improved customer service, the revised regulation would provide that the Certifying Officer shall send a copy of the Appeal File to the employer in lieu of only a copy of the index to the Appeal File to the employer. This would obviate the need for the employer to examine the Appeal File at the office of the Certifying Officer. The named alien beneficiary of the labor certification would not receive a copy of the appeal file for much the same reasons he or she would not be allowed to file a request for review as discussed above.

6. Elimination of Remands

The current regulations provide that the Board may remand cases to a Certifying Officer for further consideration or fact-finding and determination. We anticipate that cases processed under the new system would be sufficiently developed by the time they get to the Board that there should be no need to remand a case to a Certifying Officer. The proposed regulation authorizes the BALCA to either affirm or reverse the Certifying Officer's decision, but makes no provision for remands.

O. Validity and Invalidation of Labor Certifications

Substitution of Alien Beneficiaries

We published an interim final rule on October 23, 1991, effective November 22, 1991, which limited the validity of labor certifications to the specific alien named on the labor certification application. (See 56 FR 54925, 54930.) This interim final rule had the effect of eliminating the practice of allowing the substitution of alien beneficiaries on approved labor certifications. On December 1, 1994, the U.S. District Court for the District of Columbia, acting under the mandate of the U.S. Court of Appeals for the District of Columbia in *Kooritzky* v. *Reich*, 17 F.3d 1509 (D.C. Cir. 1994), issued an order invalidating that portion of the interim final rule which eliminated substitution of labor certification beneficiaries. The order had the effect of reinstating the Department's previous practice of allowing substitution of alien beneficiaries on approved labor certifications.

Although the regulation was never conformed to the District Court order, we reinstated the practice of allowing the substitution of alien beneficiaries on approved labor certifications. Subsequently, operational responsibility for substituting alien beneficiaries on approved labor certifications was delegated to INS. INS issued a memorandum on March 7, 1996, Subject: *Substitution of Labor Certification Beneficiaries*, to implement the delegation of the responsibility for substituting labor certification beneficiaries to the Service. On March 22, 1996, ETA issued a Field Memorandum (FM) to its Regional Administrators informing them that all requests for substitution received after the date of the FM were to be returned to the employer with instructions to file the request with INS along with a copy of the I–140 preference petition. The proposed rule would return the regulatory provisions detailing the scope of the certification at 20 CFR 656.30(c)(1) and (2) to read the same as they did before November 22, 1991. As before the Interim Final Rule, the regulation does not mention substitution.

P. Revocation of Approved Labor Certifications

We propose to provide Certifying Officers with limited authority to revoke labor certifications within 1 year of the date the labor certification is granted or before a visa number becomes available to the alien beneficiary, whichever occurs first. The proposed rule lists the steps that may be taken by the Certifying Officer, who issued the certification, or an authorized person acting on his or her behalf, in consultation with the National Certifying Officer, to revoke the certification if the Certifying Officer finds that the certification was improvidently granted.

The proposal also provides that an employer may file an appeal with BALCA if it first files timely rebuttal evidence in response to the Certifying Officer's Notice of Intent to Revoke and the Certifying Officer determines that the certification should be revoked.

Q. Prevailing Wages

1. PWDR

We propose to standardize the PWD process through the use of the PWDR form. Before submitting a labor certification application under the new system, the employer will be required to submit the new PWDR form to the SWA in the State where the work will be performed. The PWDR form would require information from the employer that would allow the SWA to make the required determination of the prevailing wage for the job opportunity for which certification is sought. Specifically, the proposed form would require the employer to indicate the location of the job opportunity in terms of city or county and state, the title of the job and a description of the duties to be performed, the education, training, and/or experience required for the job, including any special requirements.

Upon receipt of a PWDR form, the SWA would review it and would determine the occupational classification and the area of intended employment. The SWA would then enter its determination on the PWDR form and return it with its endorsement

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to the employer. The PWDR form may then be submitted in support of a permanent labor certification application. The SWA determination would include a State agency tracking number unique to that particular determination that would be used by ETA for program management purposes. The determination would also include the occupational code assigned to the job, the specific prevailing wage level determined by the SWA and the source of that information, the level of skill of the job in the case of those determinations made using the wage component of the Occupational Employment Statistics (OES) survey, and the date upon which the determination was made. If there is no collective bargaining agreement that would set the prevailing wage for the position, the employer will have the option of submitting an alternative wage survey or other source data for which the employer wishes the SWA to approve as a determinant of the prevailing wage in response to that specific request.

2. Validity Period of PWD

We are proposing that the SWA must specify the validity period of PWD on the PWDR form, which in no event shall be less than 90 days or more than 1 year from the determination date entered on the PWDR. Employers filing LCA's under the H–1B program must file their labor condition application within the validity period. Since employers filing applications for permanent labor certification can begin the required recruitment steps required under the regulations 180 days before filing their applications, they must initiate at least one of the recruitment steps required for a professional or nonprofessional occupation within the validity period of the PWD to rely on the determination issued by the SWA.

3. Collective Bargaining Agreement, Davis Bacon Act and Service Contract Act

Under the current regulations at § 656.40 the first order of inquiry for a SWA in determining the prevailing wage is to determine if the employer's job opportunity is in an occupation which is subject to a wage determination in the area under the Davis Bacon Act (DBA) or the McNamara-O'Hara Service Contract Act (SCA). If there is a prevailing wage under one of those statutes in the area of intended employment it must be used as the prevailing wage whether or not the employer has a Government contract in the area of intended employment. We are proposing to amend the prevailing wage regulation so that the first order of inquiry by the SWA in determining prevailing wages will be to determine whether or not the employer's job opportunity is covered by a union contract which was negotiated at arms length between a union and the employer. If the job opportunity is covered by such a contract it will be the prevailing wage for labor certification purposes.

The BALCA decision in *El Rio Grande on behalf of Galo M. Narea* (1998–INA–133, February 4, 1998; Reconsideration July 28, 2000) has prompted us to review the requirement for use of DBA and SCA wage determinations in making prevailing wage determinations for the permanent alien labor certification program. As explained more fully below, BALCA, in *El Rio Grande*, held that it has jurisdiction to review challenges to PWD's based on an SCA wage determination.

The use of DBA and SCA statutory wage determinations first appeared in the permanent labor certification regulations in 1967 (see 32 FR 10932). The use of DBA and SCA wage determinations in the permanent labor certification was in large measure prompted by concerns for administrative convenience. The SCA and DBA wage determinations were viewed as a convenient source of wage determinations that could be used for labor certification purposes. At that time, wage surveys were not as numerous, comprehensive and well developed as they are now.

On October 31, 1997, ETA in General Administrative Letter No. 2–98; Subject: *Prevailing Wage Policy for Nonagricultural Immigration Programs*, stated it had determined that the most efficient and cost effective way to develop consistently accurate prevailing wage rates is to use the wage component of the Bureau of Labor Statistics' expanded Occupational Employment Statistics (OES) program. The OES is based on the Standard Occupational Classification System (SOC), which will be used by all Federal statistical agencies for reporting occupational data. The OES provides arithmetic means by occupation and relevant geographic area for use in making prevailing wage determinations in the labor certification program.

There are marked differences in the way prevailing wages are determined under the DBA and SCA programs. The first order of inquiry in making SCA and DBA wage determinations is the wage paid to the majority (more than 50 percent) of the workers in a particular classification. See 29 CFR parts 1 and 4. Under SCA, if there is no rate paid to the majority, the median is ordinarily used rather than the mean. The regulations for the SCA program at 29 CFR 4.51(c) also provide that in those instances in which a wage survey for a particular locality may result in insufficient data, the prevailing wage may be established through a "slotting" procedure whereby wage rates for an occupational classification are based on a comparison of equivalent or similar job duty and skill characteristics between the classification studied and those for which no survey data is available. Under the OES system, if the data obtained for an occupation are insufficient, larger areas are used in aggregating wage data so that an appropriate arithmetic mean can be determined. Operational difficulties are also encountered in applying DBA and SCA statutory wage determinations because they are based on a different occupational classification system than the SOC. Further, SCA wage determinations frequently do not contain levels within an occupation, while the OES survey data furnished to ETA and the SWA's provides two levels of wages for every occupation.

We have concluded that it makes little sense to make determinations based on different statistical measures arrived at through inconsistent methodologies in determining prevailing wages mandatory for the permanent labor certification program. Accordingly, the proposed rule deletes the provision requiring that DBA and SCA wage determinations must be used in determining prevailing wages. Employers will, however, have the option to use current DBA and SCA wage determinations in addition to using the arithmetic mean provided by the wage component of the Occupational Employment Statistics Survey and employer provided wage information in accordance with the proposed provision at section 656.40(b)(4) of this part.

Surveys used to arrive at DBA wage determinations are not conducted by BLS, but by the Wage and Hour Division. Rather than sample surveys, they are universe surveys and data is sought on all projects in the area for a particular type of construction—ordinarily building construction, heavy construction, highway construction, and residential construction. The prevailing wage is determined based on the rate paid the majority, or if there is no majority, the arithmetic mean, of workers employed in the occupation based on wage data from the peak workweek for each project during the survey period (ordinarily 1 year), thereby allowing duplicated counting of

workers. Since these procedures are significantly different than those set forth in GAL 2–98 cited above, and do not provide an arithmetic mean of all of the workers in the occupation in the appropriate geographic area, we are considering the appropriateness of use of Davis-Bacon surveys in the permanent labor certification program.

We invite comment on the appropriate use of the surveys conducted to arrive at DBA and SCA wage determinations.

Although the proposed rule for determining prevailing wages does not contain a provision about the use of DBA and SCA wage determinations, we are aware that the regulations may be changed after review of the comments. Therefore, as a result of the *El Rio Grande* decision, the proposed rule for the prevailing wage panel review of prevailing wage determinations, discussed below, contains provisions for review of determinations involving DBA or SCA wage determinations.

We are also proposing changes similar to those discussed above to § 655.731 of the regulations under the H–1B program. The INA requires that the wages paid to an H–1B professional worker be the higher of the actual wage paid to workers in the occupation by the employer or the prevailing wage for the occupational classification in the area of employment. The H–1B regulations incorporate the language of 20 CFR 656.40 (as suggested by H.R. Conference Report, No. 101–95, October 26, 1990, page 122) and provide employers filing applications the option of obtaining a PWD from the SWA, using an independent authoritative source, or using another legitimate source as provided by § 655.731(a)(2)(iii)(B) and (C) of the H–1B regulations. See also § 655.731(b)(3). Thus we are proposing changes to the H–1B regulations similar to the ones we are proposing to § 656.40 of the regulations governing the determination of prevailing wages for the permanent labor certification program.

4. Elimination of 5 Percent Variance

We are proposing to eliminate a provision from the existing regulations governing the requirements for paying the prevailing wage for the occupation and area. Under § 656.40(a)(2)(i), the wage set forth in a labor certification application is considered as meeting the prevailing wage standard if it is within 5 percent of the average rate of wages. That is, the employer is considered to meet the prevailing wage requirement as long as it offers to pay 95% of the prevailing wage as determined by the SWA. The rationale for this provision, which has been in the Department's permanent program regulations since 1977, was that it was not always possible to determine an average rate of wages with exact precision. Before January 1, 1998, when we implemented the use of the wage component of the OES survey, SWA's usually obtained prevailing wage information by purchasing available published surveys or by conducting ad hoc telephone surveys of employers in the area of intended employment likely to employ workers in the occupational classification involved in an employer's labor certification application. Since the statistical precision of these methods varied greatly, we believed it was necessary to allow some variance in the rate offered by the employer.

The wage component of the OES survey is conducted by the Bureau of Labor Statistics (BLS) and, with the exception of the decennial Census, is the most comprehensive survey conducted by an agency of the Federal government. The OES program conducts a yearly mail survey designed to produce estimates of employment and wages for specific occupations. The OES program collects data on wage and salary workers in non-farm establishments in order to produce employment and wage estimates for over 750 occupations by geographic area and by industry. Estimates based on geographic areas are available at the National, State, and Metropolitan Area levels. The OES program surveys approximately 400,000 establishments per year, taking three years to fully collect the sample of 1.2 million establishments. This total covers over 70 percent of the employment in the U.S. Due to the comprehensive nature of the survey and the resulting degree of statistical precision with regard to the results thereof, we believe that it is no longer necessary to provide the 5% variance authorized under the existing labor certification regulations at § 656.49(a)(2)(i), and the H–1B regulations at §§ 655.731(a)(2)(iii) and 655.731(d)(4).

5. Employer-Provided Wage Data

The proposed rule directs SWA's to consider the use of employer-provided wage data in the absence of a PWD obtained through a collective bargaining agreement negotiated between the union and the employer.

In all cases where the employer submits a survey or other wage data for which it seeks acceptance, the employer would be required to provide the SWA with enough information about the survey methodology, including such items as the sample frame size and source, sample selection procedures, and survey job descriptions, to allow the SWA to make a determination about the adequacy methodology used to conduct the survey in accordance with guidance issued by the ETA National Office. The function of the SWA in these instances is merely to determine if the employer-provided survey is adequate and acceptable. ETA's National Office will provide guidance to be used in evaluating the statistical methodology used in producing the employer provided survey. The role of the SWA is not to determine whether the employer provided survey is more or less accurate than the prevailing wage information provided by the OES survey. If the employer-provided data is found to be acceptable, the specific wage rate obtained from that source will be determined to be the prevailing wage in responding to that particular request. We will continue our existing policy of not considering the issuance of a PWD based upon the acceptance of employer-provided wage data for a specific job opportunity as superseding the OES wage rate for subsequent requests for PWD's in the same occupation and area, since such determinations are made on a case-by-basis. For example, the job description in the employer provided survey may not be general enough to apply to all employers that employ workers in the occupation for which certification is being sought in a particular instance in the area of intended employment.

The proposed rule would also provide that if the employer-provided data is found not to be acceptable, the SWA's response to the employer must include the specific reasons why it is not acceptable (e.g., the geographic area covered by the survey is broader than that which is necessary to obtain a representative sample), and must provide the employer with the appropriate prevailing wage rate as derived from the OES survey data. Employers will have an opportunity to provide one supplemental filing that must be considered by the SWA. If the SWA finds the survey unacceptable after considering the supplemental information it must provide the employer the reasons why the supplemental information does not make the survey acceptable.

The employer after receiving notification that the survey it provided for the SWA's consideration will be able to file a new request for a prevailing wage determination, or appeal under § 656.41.

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6. Use of Median

Another change we are proposing is to permit an additional measure of central tendency to be used in determining prevailing wages. Specifically, we are proposing that employers be allowed to submit alternative sources of wage data that provide a median wage rate for an occupational classification.

Under the current regulations, at § 656.40(a)(2)(i), the prevailing wage is defined as:

> (t)he average rate of wages, that is, the rate of wages to be determined, to the extent feasible, by adding the wage paid to workers similarly employed in the area of intended employment and dividing the total by the number of such workers.

This process yields an arithmetic mean rate of wages. We propose to allow employers to submit alternative sources of wage data that provide the median wage rate, but do not provide the arithmetic mean of wages of U.S. workers employed in the area of intended employment. The median of a data set is the middle number when the measurements are arranged in ascending (or descending) order. Allowing the use of alternative sources of wage data that provide median wage rates would also increase the pool of published data available for the employer to use in obtaining valid prevailing wage surveys. Therefore, we propose to allow the use of median wage rates as the basis for determining the applicable prevailing wage under § 656.40 of the permanent labor certification regulations, and under § 655.731(b)(3)(iii).

7. Definition of Similarly Employed

We are proposing an additional change in the H–1B and permanent labor certification regulations to the definition of "similarly employed" for purposes of determining the pool of workers to be included in a survey conducted to arrive at the applicable prevailing wage rate. The existing regulations, at § 656.40 (b), provide that "similarly employed" means:

> Having substantially comparable jobs in the occupational category in the area of intended employment, except that, if no such workers are employed by employers other than the employer applicant in the area of intended employment, "similarly employed" shall mean:
>
> (1) Having jobs requiring a substantially similar level of skills within the area of intended employment; or
>
> (2) If there are no substantially comparable jobs in the area of intended employment, "having substantially comparable jobs with employers outside of the area of intended employment."

Essentially the same language is also in the H–1B regulations at § 655.731(a)(2)(iv).

Under the current regulations, the survey area should be expanded or similar jobs considered only if there are no other employers of workers with substantially comparable jobs in the area of intended employment other than the employer applicant. The proposed regulatory language would alter this construct to be more in line with the SWA's operational practice of generally expanding the area included in the survey whenever a representative sample of workers with substantially comparable jobs in the area of intended employment cannot be obtained, even if there are, in fact, one or more other employers in area who employ such workers. The original language was promulgated at a time when SWA's generally conducted ad hoc surveys to determine prevailing wages. As a means to conserve resources, SWA's were instructed to expand the geographic scope of the survey only if there were no other employers other than the employer applicant employing workers with substantially comparable jobs in the area. As a means to ensure the confidentiality of the data, BLS will not publish reportable wage data where the sample frame is such that participating employers could readily be identified. It would be much more difficult for BLS to get employers to participate in the survey if an iron-clad guarantee of confidentiality could not be assured. Therefore, reportable wage data are only published and available for alien certification purposes if a representative sample of similarly employed workers in the area of intended employment can be obtained. For these reasons, we are proposing to amend the regulations to provide that the area covered by a survey should be expanded any time it is not possible to obtain a representative sample of similarly employed workers in the area of intended employment.

8. Issues Specific to H–1B Program

a. Transition of H–1B Workers From Inexperienced to Experienced

After further experience with the H–1B program, we have realized that as a result of the 3-year LCA issued under the current regulations, a prevailing wage determination for an employee who is inexperienced and cannot work without close supervision when originally hired may be applicable for 3 years, despite the fact that the employee is likely to begin working independently well before the end of the 3-year period. We therefore propose to amend § 655.731(a)(2) to provide that where a survey that is the basis for a prevailing wage determination contains more than one wage rate for the occupational classification, the employer is required to pay the H–1B workers at least the applicable wage for the work performed. In other words, as an entry-level worker gains experience and is able to work independently, the applicable prevailing wage would be the wage from the same survey for workers who work independently. Since at all times the prevailing wage would be the applicable rate from the survey that was the basis for the initial wage determination, we believe this is consistent with the statutory mandate that the prevailing wage be based on the best information available as of the time of filing the application.

b. Appeals by Employees and Other Interested Parties

We are also considering providing employees and other interested parties the right to appeal determinations of the prevailing wage made by ETA at the request of the Administrator of the Wage and Hour Division under § 655.731(d). Although we consider this to be a procedural matter not requiring notice and comment under the Administrative Procedure Act, we are seeking comments on the advisability of providing such appeal rights and the methodology to be used in administering appeals that may be made by interested parties other than employers. Commenters are invited to submit comments on these issues.

R. ETA Prevailing Wage Panel

Currently, SWA's provide PWD's to employers that wish to file applications to obtain alien workers under the H–1B (professionals in specialty occupations), H–1C (registered nurses at eligible health care facilities), and H–2B (nonagricultural temporary labor) nonimmigrant programs, and the labor certification process for the permanent employment of aliens in the United States. Under GAL 2–98, employers intending file applications under one of the nonimmigrant programs can only challenge the PWD through the Employment Service Complaint System (ESCS). See 20 CFR 658, subpart E. Employers that intend to file applications in the permanent alien labor certification program, on the other hand, may file appeals about SWA PWD's directly with the Certifying Officers. The challenges filed directly with Certifying Officers tend to be resolved more quickly than those filed in the ESCS. The existence of these two different systems of dealing with prevailing wage challenges has proven

to be confusing to employers, needlessly complicated, and time consuming. The resulting confusion on the part of employers is understandable since the prevailing wage methodology to determine prevailing wages for all programs is based on the regulation governing the determination of prevailing wages for the permanent program at 20 CFR 656.40.

The current structure in place for administering the PWD process and handling prevailing wage challenges has caused some inconsistency in the issuance of PWD's and the response to prevailing wage challenges. There are currently 9 Certifying Officers who provide oversight to the SWA's within their jurisdiction over the day-to-day operations involved in the issuance of prevailing wages to employers. Each of the 9 Certifying Officers have responsibility for resolving such challenges submitted by employers wishing to file permanent applications for alien employment certification.

To improve customer service and to enhance consistency in the day-to-day administration of the PWD process and in the resolution of challenges to PWD's, we propose to establish a prevailing wage panel (PWP) to adjudicate all complaints, arising from the PWD process. This would include, in the case of the H–1B program, not only those challenges that may be filed in response to the initial receipt of a PWD by the employer from a SWA, but also those instances when the Administrator of the Wage and Hour Division receives a PWD from ETA in the course of an enforcement action under to 20 CFR 656.731(d)(2). In those instances where the Wage and Hour Administrator obtains a prevailing wage from ETA, we anticipate that the Administrator when he/she informs the employer of the RD's determination, will also inform the employer that it may appeal the determination through the PWP and the procedures for filing such appeals.

By centralizing the review process in a single adjudicative body, we hope to increase the consistency of the decisions and establish clearly defined precedents governing the issuance of PWD's and the standards governing the use of alternative sources of wage data submitted by employers. We anticipate that the PWP will deal primarily with prevailing wage challenges arising from SWA determinations rejecting alternative sources of wage data. We anticipate that such challenges arising from the use of OES prevailing wage data will involve primarily, if not exclusively, questions as to whether the job was coded properly in terms of the occupational classification and the level of skill applied, and on whether the survey was based on the appropriate geographical area.

The size and composition of the PWP will be determined by the Chief, Division of Foreign Labor Certifications, and is subject to change depending upon the volume and complexity of employer challenges to be considered. We propose that the staffing of the panel may include SWA and Federal staff with experience in the prevailing wage determines area, and may also include specialists in survey methodology, PWD's, and occupational analysis and classification.

We are proposing that the employer must request, in writing, review of a PWD by the PWP in writing within 21 calendar days of the date the SWA issued the determination. The appeal must be mailed to the SWA that issued the prevailing wage determination. The appeal must set forth the particular grounds for the request and include copies of any of the materials submitted by the employer to the SWA pertaining to the PWD up until the determination date entered on the PWDR form by the SWA and copies of all the documents received from the SWA concerning the PWD. Failure to file a request for review would constitute a failure to exhaust administrative remedies.

The SWA would then send a copy of the employer's appeal, including any material added by the SWA, to the PWP, and would also send a copy of the appeal file as sent to the PWP to the employer. The employer would be able to furnish or suggest directly to the PWP the addition of any documentation that is not among the materials sent to the PWP by the SWA.

The PWP will review the SWA PWD solely on the basis upon which the PWD was made. The employer would have 21 days after receipt of the decision of the PWP to request a review by BALCA.

As explained above, although the proposed prevailing wage regulation deletes the use of DBA and SCA wage determinations, we seek comments on a proposed procedure providing for review of DBA and SCA wage determinations pending analysis of the comments received on the proposed rule. Accordingly, in the event we conclude that SCA and DBA wage determinations should be retained in the regulation, we propose to handle requests for review of PWD's based on DBA and SCA wage rates under the review procedures established by the Employment Standards Administration (ESA) for interested parties to obtain review of such rates at 29 CFR 1.8 and 7, subpart B in the case of DBA wage determinations and at 29 CFR 4.55, 4.56 and 8, subpart B in the case of SCA wage determinations. This procedure would enhance administrative consistency in the administration of the DBA and SCA, and would provide for administrative review in the agency with expertise. The current labor certification regulations and the proposed rule, in relevant part, contain a provision that reads as follows:

> If the job opportunity is in an occupation which is subject to a wage determination in the area under the Davis-Bacon Act * * * or the McNamara O'HARA Service Contract Act * * *, the prevailing wage shall be at the rate required under the statutory determination. Certifying Officers shall request the assistance of the DOL Employment Standards wage specialists if they need assistance in making this determination.

Before the decision of BALCA in *El Rio Grande*, it had been our position that Certifying Officers did not have the authority to determine whether or not to use an SCA or DBA wage determination in the labor certification context and that BALCA did not have the authority to review challenges to PWD's based on a SCA wage determinations. In *El Rio Grande*, however, BALCA held that:

> The regulatory language * * * places the ultimate responsibility for the SCA wage determination in a labor certification context on the CO, and only places Wage and Hour Division in an advisory role. Morever, the regulatory framework does not provide employers in labor certification proceedings the right to challenge SCA wage determinations through the Wage and Hour appeal procedures at 29 CFR 4.55, 4.56, and 8.2. Accordingly, we conclude that the Board of Alien Labor Certification appeals has jurisdiction, indeed the obligation, to review challenges to SCA wage determinations made by Cos pursuant to 20 CFR 655.40(a)(1).

Although the Board's decision in *El Rio Grande* did not specifically address DBA wage determinations, it would in all probability be equally applicable to DBA wage determinations, since they are used the same way SCA wage determinations are used in the labor certification regulations and the current review procedures established for DBA wage determinations do not provide employers in labor certification proceedings the right to challenge SCA wage determinations through the appeal procedures at 29 CFR 1.8 and 7, subpart B.

Executive Order 12866: We have determined that this proposed rule is not an "economically significant regulatory action" within the meaning of Executive Order 12866. The direct incremental costs employers would incur because of this rule, above business practices required by the current rule of employers that are applying for permanent alien workers

will not amount to $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities. The Department believes that any potential increase in recruitment and recordkeeping costs associated with the proposed rule would be more than offset by the combination of eliminating the role of the SWA's in the recruitment process and, consequently, eliminating the time employer's currently spend in working with SWA's to meet regulatory requirements. Further, the expected large reduction in average processing time to process applications will lead to a reduction in the resources employers spend on processing applications and will eliminate the need of the Department to periodically institute special, resource intensive efforts to reduce backlogs which have been a recurring problem under the current process. Any cost savings realized, however, will not be greater than $100 million. Public comment is requested on this issue.

While it is not economically significant, the Office of Management and Budget (OMB) reviewed the proposed rule because of the novel legal and policy issues raised by this rulemaking.

Regulatory Flexibility Act: The proposed rule would only affect those employers seeking immigrant workers for permanent employment in the United States. We have notified the Chief Counsel for Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the proposed rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995: This rule will not result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any 1 year, and it will not significantly or uniquely affect small governments. Therefore, no actions are deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996: This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 13132: This proposed rule will not have a substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, we have determined that this rule does not have sufficient federalism implications to warrant the preparation of a summary impact statement.

Assessment of Federal Regulations and Policies on Families: The proposed regulation does not affect family well-being.

Paperwork Reduction Act

Summary:. This NPRM contains revised paperwork requirements at sections 655.731, 656.10, 656.14, 656.15, 656.16, 656.17, 656.18, 656.19, 656.21, 656.24 , 656.26, 656.40 and 656.41. The revised paperwork requirements are necessary to implement a streamlined system to process and adjudicate applications for permanent labor certification.

Published at the end of this NPRM are two forms that would be required to implement the streamlined process for the permanent labor certification program. One form is the *Prevailing Wage Determination Request* (PWDR) (ETA Form 9098) and the other is be the *Application for Permanent Labor Certification* (ETA Form 9099). Supporting documentation would not have to be submitted with an application, but employers would be required to assemble and maintain required supporting documentation and be able to produce such documentation in the event of an audit by an ETA Certifying Officer.

Need: The design and implementation of a streamlined permanent labor certification process that will yield a large reduction in the average time required to process labor certification applications requires revised paperwork requirements and the design and implementation of forms that are designed for automated processing.

Respondents and frequency of response: Employers submit applications for permanent labor certification when they wish to employ an immigrant alien worker. ETA estimates, based on its operating experience that in the upcoming year employers will file approximately 121,300 applications for alien employment certification and 121,300 PWDR's'(including an estimated 5,300 applications filed with the INS on behalf of aliens who qualify for *Schedule A* or who are immigrating to work as sheepherders) for a total burden of just over 357,835 hours (121,300 PWDR's × .75 hour + 121,300 applications for permanent labor certification × 2.2 hours = 357,835 hours).

Additionally, the Department estimates that 61,825 H–1B employers will file PWDR's with the SWA's to obtain prevailing wage determinations pursuant to provisions of 20 CFR 656.40 that have been incorporated into the regulations setting the forth H–1B employers' wage obligations at 20 CFR 655.731. This results in an additional annual burden of 46,369 hours (61,825 × .75 hours) or a total annual burden of 137,344 hours for the PWDR. The total annual burden for the PWDR and the Application for Permanent Labor Certification amounts to 404,204 hours.

The Department estimates that the total annual burden for all information collections in the proposed rule amounts to 557,429 hours. Employers filing applications for permanent alien labor certification come from a wide variety of industries. Salaries for employers and/or their employees who perform the reporting and recordkeeping functions required by this regulation may range from several hundred dollars to several hundred thousand dollars where the corporate executive office of a large company performs some or all of these functions themselves. Absent specific wage data regarding such employers and employees, respondent costs were estimated in the proposed rule at $25 an hour. Total annual respondent hour costs for all information collections are estimated at $13,935,725 (557,429 × $25.00).

The Department estimates that the 5000 employers will be required to conduct supervised recruitment. The Department estimates that cost of an advertisement over all types of publications and geographic locations will average $500.00 for a total annual burden of $2,500,000.

Request for comments: The public is invited to provide comments on the revised information collection requirements so that the Department of Labor may:

(1) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimates of the burdens of the collections of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility and clarity of the information to be collected; and

(4) Minimize the burden of the collections of information on those who are to respond, including through the use of automated, electronic, mechanical or other technological collection techniques; e.g., permitting electronic submission of responses.

Written comments should be sent to the Assistant Secretary for Employment and Training, U.S. Department of Labor, 200 Constitution Avenue, NW., Room C–4318,Washington, DC 20210, Attention: Dale Ziegler, Chief, Division of Foreign Labor Certifications. Comments should be received by July 5, 2002.

The collections of information in this notice of proposed rulemaking contain revised paperwork requirements currently approved under OMB control number 1205–0015 and the revisions have been submitted to OMB for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Copies of the information collection request submitted to OMB may be obtained by contacting Ira Mills, Departmental Clearance Officer. Telephone: (202) 693–4122 (this is not a toll free number), or E-Mail: *Mills-Ira@dol.gov.*

Catalogue of Federal Domestic Assistance Number: This program is listed in the *Catalogue of Federal Domestic Assistance* at Number 17.203, "Certification for Immigrant Workers."

List of Subjects in 20 CFR Parts 655 and 656

Administrative practice and procedure, Agriculture, Aliens, Crewmembers, Employment, Employment and training, Enforcement, Forest and forest products, Fraud, Guam, Health professions, Immigration, Labor, Longshore and harbor work, Migrant labor, Passports and visas, Penalties, Reporting and recordkeeping requirements, Students, Unemployment, Wages, Working conditions.

Appendix A to the Preamble—Education and Training Categories by O*Net-SOC Occupation

Note: Appendix A will not be codified in the Code of Federal Regulations when a final regulation is published.

BILLING CODE 4510–30–P

Education and Training Categories by O*NET-SOC Occupation

Code	Education and training category
1	1st professional degree
2	Doctoral degree
3	Master's degree
4	Work experience plus bachelor's or higher degree
5	Bachelor's degree

O*NET-SOC code	O*NET-SOC title	Education & training category code
21-2011.00	Clergy	1
23-1011.00	Lawyers	1
29-1011.00	Chiropractors	1
29-1021.00	Dentists, General	1
29-1022.00	Oral and Maxillofacial Surgeons	1
29-1023.00	Orthodontists	1
29-1024.00	Prosthodontists	1
29-1041.00	Optometrists	1
29-1051.00	Pharmacists	1
29-1061.00	Anesthesiologists	1
29-1062.00	Family and General Practitioners	1
29-1063.00	Internists, General	1
29-1064.00	Obstetricians and Gynecologists	1
29-1065.00	Pediatricians, General	1
29-1066.00	Psychiatrists	1
29-1067.00	Surgeons	1
29-1081.00	Podiatrists	1
29-1131.00	Veterinarians	1
19-1020.01	Biologists	2
19-1021.01	Biochemists	2
19-1021.02	Biophysicists	2
19-1022.00	Microbiologists	2
19-1023.00	Zoologists and Wildlife Biologists	2
19-1041.00	Epidemiologists	2
19-1042.00	Medical Scientists, Except Epidemiologists	2
19-2011.00	Astronomers	2
19-2012.00	Physicists	2
25-1021.00	Computer Science Teachers, Postsecondary	2
25-1022.00	Mathematical Science Teachers, Postsecondary	2
25-1032.00	Engineering Teachers, Postsecondary	2
25-1041.00	Agricultural Sciences Teachers, Postsecondary	2
25-1042.00	Biological Science Teachers, Postsecondary	2
25-1043.00	Forestry and Conservation Science Teachers, Postsecondary	2

25-1052.00	Chemistry Teachers, Postsecondary	2
25-1054.00	Physics Teachers, Postsecondary	2
25-1071.00	Health Specialties Teachers, Postsecondary	2
25-1121.00	Art, Drama, and Music Teachers, Postsecondary	2
15-2021.00	Mathematicians	3
15-2031.00	Operations Research Analysts	3
15-2041.00	Statisticians	3
19-3031.01	Educational Psychologists	3
19-3031.02	Clinical Psychologists	3
19-3031.03	Counseling Psychologists	3
19-3032.00	Industrial-Organizational Psychologists	3
19-3041.00	Sociologists	3
19-3051.00	Urban and Regional Planners	3
19-3091.01	Anthropologists	3
19-3091.02	Archeologists	3
19-3093.00	Historians	3
19-3094.00	Political Scientists	3
21-1012.00	Educational, Vocational, and School Counselors	3
21-1014.00	Mental Health Counselors	3
21-1022.00	Medical and Public Health Social Workers	3
21-1023.00	Mental Health and Substance Abuse Social Workers	3
25-1072.00	Nursing Instructors and Teachers, Postsecondary	3
25-4011.00	Archivists	3
25-4012.00	Curators	3
25-4021.00	Librarians	3
29-1121.00	Audiologists	3
29-1123.00	Physical Therapists	3
29-1127.00	Speech-Language Pathologists	3
11-1011.01	Government Service Executives	4
11-1011.02	Private Sector Executives	4
11-2011.00	Advertising and Promotions Managers	4
11-2021.00	Marketing Managers	4
11-2022.00	Sales Managers	4
11-3011.00	Administrative Services Managers	4
11-3021.00	Computer and Information Systems Managers	4
11-3031.01	Treasurers, Controllers, and Chief Financial Officers	4
11-3031.02	Financial Managers, Branch or Department	4
11-3040.00	Human Resources Managers	4
11-3041.00	Compensation and Benefits Managers	4
11-3042.00	Training and Development Managers	4
11-3061.00	Purchasing Managers	4
11-3071.01	Transportation Managers	4
11-3071.02	Storage and Distribution Managers	4
11-9031.00	Education Administrators, Preschool and Child Care Center/Program	4
11-9032.00	Education Administrators, Elementary and Secondary School	4
11-9033.00	Education Administrators, Postsecondary	4
11-9041.00	Engineering Managers	4
11-9111.00	Medical and Health Services Managers	4
11-9121.00	Natural Sciences Managers	4

11-9151.00	Social and Community Service Managers	4
13-1111.00	Management Analysts	4
23-1021.00	Administrative Law Judges, Adjudicators, and Hearing Officers	4
23-1022.00	Arbitrators, Mediators, and Conciliators	4
23-1023.00	Judges, Magistrate Judges, and Magistrates	4
27-3021.00	Broadcast News Analysts	4
11-3051.00	Industrial Production Managers	5
11-9021.00	Construction Managers	5
11-9141.00	Property, Real Estate, and Community Association Managers	5
13-1021.00	Purchasing Agents and Buyers, Farm Products	5
13-1022.00	Wholesale and Retail Buyers, Except Farm Products	5
13-1023.00	Purchasing Agents, Except Wholesale, Retail, and Farm Products	5
13-1031.01	Claims Examiners, Property and Casualty Insurance	5
13-1051.00	Cost Estimators	5
13-1071.01	Employment Interviewers, Private or Public Employment Service	5
13-1071.02	Personnel Recruiters	5
13-1072.00	Compensation, Benefits, and Job Analysis Specialists	5
13-1073.00	Training and Development Specialists	5
13-2011.01	Accountants	5
13-2011.02	Auditors	5
13-2021.01	Assessors	5
13-2021.02	Appraisers, Real Estate	5
13-2031.00	Budget Analysts	5
13-2041.00	Credit Analysts	5
13-2051.00	Financial Analysts	5
13-2052.00	Personal Financial Advisors	5
13-2053.00	Insurance Underwriters	5
13-2071.00	Loan Counselors	5
13-2072.00	Loan Officers	5
13-2081.00	Tax Examiners, Collectors, and Revenue Agents	5
15-1021.00	Computer Programmers	5
15-1031.00	Computer Software Engineers, Applications	5
15-1032.00	Computer Software Engineers, Systems Software	5
15-1051.00	Computer Systems Analysts	5
15-1061.00	Database Administrators	5
15-1071.01	Computer Security Specialists	5
15-1081.00	Network Systems and Data Communications Analysts	5
15-2011.00	Actuaries	5
17-1011.00	Architects, Except Landscape and Naval	5
17-1012.00	Landscape Architects	5
17-1021.00	Cartographers and Photogrammetrists	5
17-1022.00	Surveyors	5
17-2011.00	Aerospace Engineers	5
17-2021.00	Agricultural Engineers	5
17-2041.00	Chemical Engineers	5
17-2051.00	Civil Engineers	5
17-2061.00	Computer Hardware Engineers	5
17-2071.00	Electrical Engineers	5
17-2072.00	Electronics Engineers, Except Computer	5

17-2111.01	Industrial Safety and Health Engineers	5
17-2111.02	Fire-Prevention and Protection Engineers	5
17-2111.03	Product Safety Engineers	5
17-2112.00	Industrial Engineers	5
17-2121.01	Marine Engineers	5
17-2121.02	Marine Architects	5
17-2131.00	Materials Engineers	5
17-2141.00	Mechanical Engineers	5
17-2151.00	Mining and Geological Engineers, Including Mining Safety Engineers	5
17-2161.00	Nuclear Engineers	5
17-2171.00	Petroleum Engineers	5
19-1011.00	Animal Scientists	5
19-1012.00	Food Scientists and Technologists	5
19-1013.01	Plant Scientists	5
19-1013.02	Soil Scientists	5
19-1031.01	Soil Conservationists	5
19-1031.02	Range Managers	5
19-1031.03	Park Naturalists	5
19-1032.00	Foresters	5
19-2021.00	Atmospheric and Space Scientists	5
19-2031.00	Chemists	5
19-2032.00	Materials Scientists	5
19-2041.00	Environmental Scientists and Specialists, Including Health	5
19-2042.01	Geologists	5
19-2043.00	Hydrologists	5
19-3011.00	Economists	5
19-3021.00	Market Research Analysts	5
19-3092.00	Geographers	5
21-1021.00	Child, Family, and School Social Workers	5
21-1091.00	Health Educators	5
21-1092.00	Probation Officers and Correctional Treatment Sp	5
21-2021.00	Directors, Religious Activities and Education	5
25-1191.00	Graduate Teaching Assistants	5
25-2011.00	Preschool Teachers, Except Special Education	5
25-2012.00	Kindergarten Teachers, Except Special Education	5
25-2021.00	Elementary School Teachers, Except Special Education	5
25-2022.00	Middle School Teachers, Except Special and Vocational Education	5
25-2023.00	Vocational Education Teachers, Middle School	5
25-2031.00	Secondary School Teachers, Except Special and Vocational Education	5
25-2032.00	Vocational Education Teachers, Secondary School	5
25-2041.00	Special Education Teachers, Preschool, Kindergarten and Elementary	5
25-2042.00	Special Education Teachers, Middle School	5
25-2043.00	Special Education Teachers, Secondary School	5
25-9021.00	Farm and Home Management Advisors	5
25-9031.00	Instructional Coordinators	5
27-1011.00	Art Directors	5
27-1021.00	Commercial and Industrial Designers	5
27-1022.00	Fashion Designers	5
27-1025.00	Interior Designers	5

27-3022.00	Reporters and Correspondents	5
27-3031.00	Public Relations Specialists	5
27-3041.00	Editors	5
27-3042.00	Technical Writers	5
27-3091.00	Interpreters and Translators	5
27-4032.00	Film and Video Editors	5
29-1031.00	Dietitians and Nutritionists	5
29-1071.00	Physician Assistants	5
29-1122.00	Occupational Therapists	5
29-1125.00	Recreational Therapists	5
29-2011.00	Medical and Clinical Laboratory Technologists	5
33-3021.03	Criminal Investigators and Special Agents	5
39-9032.00	Recreation Workers	5
39-9041.00	Residential Advisors	5
41-3021.00	Insurance Sales Agents	5
41-3031.01	Sales Agents, Securities and Commodities	5
41-3031.02	Sales Agents, Financial Services	5
41-9031.00	Sales Engineers	5
53-2011.00	Airline Pilots, Copilots, and Flight Engineers	5
53-2012.00	Commercial Pilots	5

Education & Training Category Code

1 First professional degree. Completion of the academic program usually requires at least 6 years of full-time equivalent academic study, including college study prior to entering the professional degree program.

2 Doctoral degree. Completion of the degree program usually requires at least 3 years of full-time equivalent academic work beyond the bachelor's degree.

3 Master's degree. Completion of the degree program usually requires 1 or 2 years of full-time equivalent study beyond the bachelor's degree.

4 Work experience, plus a bachelor's or higher degree. Most occupations in this category are managerial occupations that require experience in a related nonmanagerial position.

5 Bachelor's degree. Completion of the degree program generally requires at least 4 years but not more than 5 years of full-time equivalent academic work.

BILLING CODE 4510-30-C

Accordingly, we propose that parts 655 and 656 of Chapter V of Title 20 of the Code of Federal Regulations to be amended as follows:

PART 655—TEMPORARY EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart H—Labor Condition Applications and Requirements for Employers Using Nonimmigrants on H–1B Visas.

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c) and (d); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2102 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note); sec. 323, Pub. L. 103–206, 107 Stat. 2149; Title IV, Pub. L. 105–277,112 Stat. 2681; Pub. L. 106–95, 113 Stat. 1312 (8 U.S.C. 1182 note); and 8 CFR 213.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. L 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note).

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; sec 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note); and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subparts J and K issued under 29 U.S.C. 49 *et. seq.*; and sec 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

Subparts L and M issued under 8 U.S.C. 1101(a)(15)(H)(i)(c), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*

2. Amend § 655.731 as follows:

a. Revise paragraph (a)(2);

b. Redesignate paragraphs (b)(3)(iii)(B)(*2*) and (*3*) as paragraphs (b)(3)(iii)(B)(*3*) and (*4*), respectively;

c. Add new paragraph (b)(3)(iii)(B)(*2*);

d. Redesignate paragraphs (b)(3)(iii)(C)(*2*) and (*3*) as paragraphs (b)(3)(iii)(C)(*3*) and (*4*), respectively;

e. Add new paragraph (b)(3)(iii)(C)(*2*);

f. Revise paragraph (d)(2); and

g. Remove paragraph (d)(4).

The revisions and additions are to read as follows:

§ 655.731 What is the first LCA requirement, regarding wages?

* * * * *

(a) * * *

(1) * * *

(2) The *prevailing wage* for the occupational classification in the area of intended employment must be determined as of the time of filing the application. The employer shall base the prevailing wage on the best information available as of the time of filing the application. Where the survey which is the basis for the prevailing wage determination contains more than one wage for the occupational classification, the employer shall pay the H–1B nonimmigrant(s) at least the applicable wage from the survey for the work performed. For example, if an H–1B nonimmigrant initially is an inexperienced worker who cannot work independently, and later the H–1B nonimmigrant is able to work independently, the employer, where applicable, shall pay at least the wage for such independent work as set forth in the survey that was the basis for the initial prevailing wage determination. Except as provided in this section, the employer is not required to use any specific methodology to determine the prevailing wage and may utilize a State Employment Security Agency (SESA), an independent authoritative source, or other legitimate sources of wage data. One of the following sources shall be used to establish the prevailing wage:

(i) A collective bargaining agreement which was negotiated at arms-length between a union and the employer which contains a wage rate applicable to the occupation; or

(ii) If the job opportunity is in an occupation which is not covered by paragraph (a)(2)(i) of this section, the prevailing wage shall be the arithmetic mean of the wages of workers similarly employed, except that the prevailing wage shall be the median when provided by paragraphs (a)(2)(ii)(A), (b)(3)(iii)(B)(*2*), and (b)(3)(iii)(C)(*2*) of this section. The prevailing wage rate shall be based on the best information available. The Department believes that the following prevailing wage sources are, in order of priority, the most accurate and reliable:

(A) *SESA determination.* Upon receipt of a written request for a prevailing wage determination, the SESA will determine whether the occupation is covered by a collective bargaining agreement which was negotiated at arms length, and, if not, determine the arithmetic mean of wages of workers similarly employed in the area of intended employment. The wage component of the Bureau of Labor Statistics Occupational Employment Statistics survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey. If an acceptable employer-provided wage survey provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity. In making a prevailing wage determination, the SESA will follow § 656.40 of this chapter and other administrative guidelines or regulations issued by ETA. The SESA shall specify the validity period of the prevailing wage determination which in no event shall be for less than 90 days or more than 1 year from the date of the determination.

(*1*) An employer who chooses to utilize a SESA prevailing wage determination shall file the labor condition application within the validity period of the prevailing wage as specified on the Prevailing Wage Determination Request form (ETA FORM 9088). Any employer desiring review of a SESA prevailing wage determination, including judicial review, shall follow the appeal procedures at § 656.41 of this chapter. Employers which challenge a SESA prevailing wage determination under § 656.41 must obtain a ruling prior to filing an LCA. In any challenge, the Department and the SESA hall not divulge any employer wage data which was collected under the promise of confidentiality. Once an employer obtains a prevailing wage determination from the SESA and files an LCA supported by that prevailing wage determination, the employer is deemed to have accepted the prevailing wage determination (as to the amount of the wage) and thereafter may not contest the legitimacy of the prevailing wage determination by filing an appeal with the Prevailing Wage Panel (see § 656.41 of this chapter), or in an investigation or enforcement action.

(*2*) If the employer is unable to wait for the to produce the requested prevailing wage for the occupation in question, or for the Prevailing Wage Panel and/or the Board of Alien Labor Certification Appeals to issue a decision, the employer may rely on other legitimate sources of available wage information as set forth in paragraphs (a)(2)(ii)(B) and (C) of this section. If the employer later discovers, upon receipt of the prevailing wage determination from the SESA, that the information relied upon produced a wage that was below the prevailing wage for the occupation in the area of intended employment and the employer was paying below the SESA-determined wage, no wage violation will be found if the employer retroactively compensates the H–1B nonimmigrant(s)

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for the difference between wage paid and the prevailing wage, within 30 days of the employer's receipt of the prevailing wage determination.

(*3*) In all situations where the employer obtains the prevailing wage determination from the SESA, the Department will accept that prevailing wage determination as correct (as to the amount of the wage) and will not question its validity where the employer has maintained a copy of the SESA prevailing wage determination. A complaint alleging inaccuracy of a SWA prevailing wage determination, in such cases, will not be investigated.

(B) *An independent authoritative source.* The employer may use an independent authoritative wage source in lieu of a SESA prevailing wage determination. The independent authoritative source survey must meet all the criteria set forth in paragraph (b)(3)(iii)(B) of this section.

(C) *Another legitimate source of wage information.* The employer may rely on other legitimate sources of wage data to obtain the prevailing wage. The other legitimate source survey must meet all the criteria set forth in paragraph (b)(3)(iii)(C) of this section. The employer will be required to demonstrate the legitimacy of the wage in the event of an investigation.

(iii) For purposes of this section, "similarly employed" means "having substantially comparable jobs in the occupational classification in the area of intended employment," except that if a representative sample of employers in the occupational category cannot be obtained in the area of intended employment, "similarly employed" means:

(A) Having jobs requiring a substantially similar level of skills within the area of intended employment; or

(B) If there are no substantially comparable jobs in the area of intended employment, having substantially comparable jobs with employers outside of the area of intended employment.

(iv) A prevailing wage determination for LCA purposes made pursuant to this section shall not permit an employer to pay a wage lower than that required under any other applicable Federal, state or local law.

(v) Where a range of wages is paid by the employer to individuals in an occupational classification or among individuals with similar experience and qualifications for the specific employment in question, a range is considered to meet the prevailing wage requirement so long as the bottom of the wage range is at least the prevailing wage rate.

(vi) The employer shall enter the prevailing wage on the LCA in the form in which the employer will pay the wage (i.e., either a salary or an hourly rate), except that in all cases the prevailing wage must be expressed as an hourly wage if the H–1B nonimmigrant will be employed part-time. Where an employer obtains a prevailing wage determination (from any of the sources identified in paragraph (a)(2)(i) and (ii) of this section) that is expressed as an hourly rate, the employer may convert this determination to a yearly salary by multiplying the hourly rate by 2080. Conversely, where an employer obtains a prevailing wage (from any of these sources) that is expressed as a yearly salary, the employer may convert this determination to an hourly rate by dividing the salary by 2080.

(vii) In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment in the case of an employee of an *institution of higher education or an affiliated or related nonprofit entity, a nonprofit research organization, or a Governmental research organization* as these terms are defined in 20 CFR 656.40(e), the prevailing wage level shall only take into account employees at such institutions and organizations in the area of intended employment.

(viii) An employer may file more than one LCA for the same occupational classification in the same area of employment and, in such circumstances, the employer could have H–1B employees in the same occupational classification in the same area of employment, brought into the U.S. (or accorded H–1B status) based on petitions approved pursuant to different LCAs (filed at different times) with different prevailing wage determinations. Employers are advised that the prevailing wage rate as to any particular H–1B nonimmigrant is prescribed by the LCA which supports that nonimmigrant's H–1B petition. The employer is required to obtain the prevailing wage at the time that the LCA is filed (see paragraph (a)(2) of this section). The LCA is valid for the period certified by ETA, and the employer must satisfy all the LCA's requirements (including the required wage which encompasses both prevailing and actual wage rates) for as long as any H–1B nonimmigrants are employed pursuant to that LCA (§ 655.750). Where new nonimmigrants are employed pursuant to a new LCA, that new LCA prescribes the employer's obligations as to those new nonimmigrants. The prevailing wage determination on the later/subsequent LCA does not "relate back" to operate as an "update" of the prevailing wage for the previously-filed LCA for the same occupational classification in the same area of employment. However, employers are cautioned that the actual wage component to the required wage may, as a practical matter, eliminate any wage-payment differentiation among H–1B employees based on different prevailing wage rates stated in applicable LCAs. Every H–1B nonimmigrant is to be paid in accordance with the employer's actual wage system, and thus to receive any pay increases which that system provides.

* * * * *

(b) * * *

(3) * * *

(iii) * * *

(B) * * *

(*2*) Reflect the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment;

* * * * *

(C) * * *

(*2*) Reflect the median wage of workers similarly employed in the area of intended employment if the survey provides such a median and does not provide a weighted average wage of workers similarly employed in the area of intended employment;

* * * * *

(d) * * *

(2) In the event the Administrator obtains a prevailing wage from ETA pursuant to paragraph (d)(1) of this section, and the employer desires review, including judicial review, the employer shall challenge the ETA prevailing wage only by filing a request for review with the Prevailing Wage Panel (PWP) under § 656.41(a) of this chapter within 21 calendar days of the employers receipt of the prevailing wage determination from the Administrator. If the request is timely filed, the decision of ETA shall be inoperative until the PWP issues a determination on the employer's appeal. If the employer desires review, including judicial review, of the decision of the PWP, the employer shall make a request for review of the determination by the Board of Alien Labor Certification Appeals (BALCA) under § 656.41(e) of this chapter within 21 days of the receipt of the decision of the PWP. If a request for review is timely filed with the BALCA, the determination by the PWP shall be inoperative until the BALCA issues a determination on the employer's appeal. In any challenge to the wage determination, neither ETA nor the SESA shall divulge any employer wage data which was collected under the promise of confidentiality.

* * * * *

3. Part 656 is revised to read as follows:

PART 656—LABOR CERTIFICATION PROCESS FOR PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Subpart A—Purpose and Scope of Part 656

Sec.

656.1 Purpose and scope of part 656.
656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.
656.3 Definitions, for purposes of this part, of terms used in this part.

Subpart B—Occupational Labor Certification Determinations

656.5 Schedule A.

Subpart C—Labor Certification Process

656.10 General instructions.
656.14 Fees.
656.15 Applications for labor certification for *Schedule A* occupations.
656.16 Labor certification applications for sheepherders.
656.17 Basic labor certification process.
656.18 Optional special recruitment and documentation procedures for college and university teachers.
656.19 Live-in household domestic service workers.
656.20 Audit letters.
656.21 Supervised recruitment.
656.24 Labor certification determinations.
656.25 Board of Alien Labor Certification Appeals review of denials of labor certification.
656.26 Board of Alien Labor Consideration Appeals review of denials of labor certification.
656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.
656.30 Validity of and invalidation of labor certifications.
656.31 Labor certifications involving fraud or willful misrepresentation.
656.32 Revocation of approved labor certifications.

Subpart D—Determination of Prevailing Wage

656.40 Determination of prevailing wage for labor certification purposes.
656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

Authority: 8 U.S.C. 1182(a)(5)(A), 1189(p)(1); 29 U.S.C. 49 *et seq.*; section 122, Pub. L. 101–649, 109 Stat. 4978; and Title IV, Pub. L. 105–277, 112 Stat. 2681.

Subpart A—Purpose and Scope of Part 656

§ 656.1 Purpose and scope of part 656.

(a) Under section 212(a)(5)(A) of the Immigration and Nationality Act (INA) (8 U.S.C. 1182(a)(5)(A)) certain aliens may not obtain visas for entrance into the United States in order to engage in permanent employment unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(1) There are not sufficient United States workers, who are able, willing, qualified and available at the time of application for a visa and admission into the United States and at the place where the alien is to perform the work, and

(2) The employment of the alien will not adversely affect the wages and working conditions of United States workers similarly employed.

(b) The regulations under this part set forth the procedures through which such immigrant labor certifications may be applied for, and granted or denied.

(c) Correspondence and questions about the regulations in this part should be addressed to: Division of Foreign Labor Certifications, Office of Workforce Security, Department of Labor, Washington, DC 20210.

§ 656.2 Description of the Immigration and Nationality Act and of the Department of Labor's role thereunder.

(a)(1) *Description of the Act.* The Immigration and Nationality Act (Act) (8 U.S.C. 1101 *et seq.*) regulates the admission of aliens into the United States. The Act designates the Attorney General and the Secretary of State as the principal administrators of its provisions.

(2) The Immigration and Naturalization Service (INS) performs most of the Attorney General's functions under the Act. See 8 CFR 2.1.

(3) The consular offices of the Department of State throughout the world are generally the initial contacts for aliens in foreign countries who wish to come to the United States. These offices determine the type of visa for which aliens may be eligible, obtain visa eligibility documentation, and issue visas.

(b) *Burden of Proof Under the Act.* Section 291 of the Act (8 U.S.C. 1361) provides, in pertinent part, that:

> Whenever any person makes application for a visa or any other documentation required for entry, or makes application for admission, or otherwise attempts to enter the United States, the burden of proof shall be upon such person to estaolish that he is eligible to receive such visa or such document, or is not subject to exclusion under any provision of this Act * * *.

(c)(1) *Role of the Department of Labor.* The role of the Department of Labor under the Act derives from section 212(a)(5)(A) (8 U.S.C. 1182(a)(5)(A)), which provides that any alien who seeks admission or status as an immigrant for the purpose of employment under paragraph (2) or (3) of section 203(b) of the Act must be excluded unless the Secretary of Labor has first certified to the Secretary of State and to the Attorney General that:

(i) There are not sufficient United States workers, who are able, willing, qualified, and available at the time of application for a visa and admission to the United States and at the place where the alien is to perform such skilled or unskilled labor; and

(ii) The employment of such alien will not adversely affect the wages and working conditions of workers in the United States similarly employed.

(2) This certification is referred to in this part 656 as a "labor certification."

(3) We issue labor certifications in two instances: For the permanent employment of aliens; and for temporary employment of aliens in the United States classified under 8 U.S.C. 1101(a)(15)(H)(ii), under the regulations of the Immigration and Naturalization Service at 8 CFR 214.2(h)(6) and sections 101(a)(15)(H)(ii), 214, and 218 of the Act. See 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188. We also administer attestation and labor condition application programs for the admission and/or work authorization of the following nonimmigrants: Specialty occupations and fashion models (H–1B visas), registered nurses (H–1C visas), and crewmembers performing longshore work (D visas), classified under 8 U.S.C. 1101(a), (15)(H)(i)(b), 1101(a)(15)(H)(i)(c), and 1101(a)(15)(D), respectively. See also 8 U.S.C. 1184 (c), (m), and (n), and 1288.

§ 656.3 Definitions, for purposes of this part, of terms used in this part.

Act means the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Administrative Law Judge means a Department of Labor official appointed under 5 U.S.C. 305.

Agent means a person who is not an employee of an employer, and who has been designated in writing to act on behalf of an alien or employer in connection with an application for labor certification.

Applicant means a U.S. worker (see definition of U.S. worker below) who is applying for a job opportunity for which an employer has filed an

Application for Permanent Labor Certification (ETA Form 9089).

Application means an *Application for Alien Employment Certification form and Prevailing Wage Determination Request* form submitted by an employer (or its agent) in applying for a labor certification under this part.

Application for Alien Employment Certification Form (ETA Form 9089) means the form, which in addition to the *Prevailing Wage Determination Request* form (see definition below), must be submitted by the employer to an ETA application processing center to apply for a labor certification under this part. The *Application for Alien Employment Certification* form requires the employer to respond to attestations and to provide other information necessary to assess the employer's compliance with program requirements.

Area of intended employment means the area within normal commuting distance of the place (address) of intended employment. There is no rigid measure of distance which constitutes a normal commuting distance or normal commuting area because there may be widely varying factual circumstances among different areas (*e.g.*, normal commuting distances might be 20, 30, or 50 miles). If the place of intended employment is within a Metropolitan Statistical Area (MSA) or a Primary Metropolitan Statistical Area (PMSA), any place within the MSA or PMSA is deemed to be within normal commuting distance of the place of intended employment; however, all locations within a Consolidated Metropolitan Statistical Area (CMSA) will not be deemed automatically to be within normal commuting distance. The borders of MSA's and PMSA's are not controlling in the identification of the normal commuting area; a location outside of an MSA or PMSA (or a CMSA) may be within normal commuting distance of a location that is inside (*e.g.*, near the border of) the MSA or PMSA (or CMSA).

Attorney means any person who is a member in good standing of the bar of the highest court of any State, Possession, Territory, or Commonwealth of the United States, or the District of Columbia, and who is not under any order of any court or of the Board of Immigration Appeals suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Attorney General means the chief official of the U.S. Department of Justice or the designee of the Attorney General.

Board of Alien Labor Certification Appeals (BALCA or Board) means the permanent Board established by this part, chaired by the Chief Administrative Law Judge, and consisting of Administrative Law Judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals. The Board of Alien Labor Certification Appeals is located in Washington, DC, and reviews and decides appeals in Washington, DC.

Certifying Officer means a Department of Labor official who makes determinations about whether or not to grant applications for labor certifications.

Chief Administrative Law Judge means the chief official of the Office of Administrative Law Judges of the Department of Labor.

Division of Foreign Labor Certifications means the organizational component within the Employment and Training Administration (defined below) which provides national leadership and policy guidance and develops regulations and procedures to carry out the responsibilities of the Secretary of Labor under the Immigration and Nationality Act, as amended, concerning alien workers seeking admission to the United States in order to work under to Section 212(a)(5)(A) of the Immigration And Nationality Act, as amended.

Employment means: (1) permanent, full-time work by an employee for an employer other than oneself. For purposes of this definition, an investor is not an employee. In the event of an audit, the employer must be prepared to document the permanent and full-time nature of the position by furnishing position descriptions and payroll records for the job opportunity involved in the *Application for Alien Employment Certification*.

(2) Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the Division of Foreign Labor Certifications.

Employer means: (1) A person, association, firm, or a corporation which currently has a location within the United States to which U.S. workers may be referred for employment, and which proposes to employ a full-time worker at a place within the United States or the authorized representative of such a person, association, firm, or corporation. For purposes of this definition an "authorized representative" means an employee of the employer whose position or legal status authorizes the employee to act for the employer in labor certification matters.

(2) Persons who are temporarily in the United States, such as foreign diplomats, intracompany transferees, students, exchange visitors, and representatives of foreign information media cannot be employers for the purpose of obtaining a labor certification for permanent employment.

(3) Job opportunities consisting solely of job duties that will be performed totally outside the United States, its territories or possessions cannot be the subject of a permanent application for alien employment certification.

Immigration and Naturalizotion Service (INS) means the agency within the U.S. Department of Justice which administers that Department's principal functions under the Act.

Immigration Officer means an official of the Immigration and Naturalization Service (INS) who handles applications for labor certifications under this part.

INS, see "Immigration and Naturalization Service."

Job opportunity means a job opening for employment at a place in the United States to which U.S. workers can be referred.

Labor certification means the certification to the Secretary of State and to the Attorney General of the determination by the Secretary of Labor under section 212(a)(5)(A) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(5)(A)):

(1) That there are not sufficient U.S. workers who are able, willing, qualified, and available at the time of an alien's application for a visa and admission to the United States and at the place where the alien is to perform the work; and

(2) That the employment of the alien will not adversely affect the wages and working conditions of similarly employed U.S. workers.

Non-professional occupation means any occupation for which the attainment of a bachelor's or higher degree is not a usual requirement for the occupation.

Non-profit or tax exempt organization for the purposes of § 656.40 means an organization which:

(1) Is defined as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and

(2) Has been approved as a tax exempt organization for research or educational purposes by the Internal Revenue Service.

*O*Net* means the system developed by the Department of Labor, Employment and Training Administration, to provide to the general public information on skills, abilities, knowledge, work activities, interests and specific vocational preparation levels associated with occupations. O*Net is based on the Standard Occupational Classification system. Further information about O*Net can be found at http://online.onetcenter.org/.

Prevailing Wage Determination means the prevailing wage entered on the *Prevailing Wage Determination Request* form by the State Employment Security Agency.

Prevailing Wage Determination Request (PWDR) Form (ETA Form 9088) means the form that must be submitted to the State Employment Security Agency to obtain a prevailing wage determination.

Professional occupation means an occupation for which the attainment of a bachelor's or higher degree is a usual education requirement for the occupation. A beneficiary of an application for permanent alien employment certification involving a professional occupation need not have a bachelor's or higher degree to qualify for the professional occupation. However, if the employer is willing to accept work experience in lieu of a baccalaureate or higher degree such work experience must be attainable in the U.S. labor market and must be stated on the PWDR form. If the employer is willing to accept an equivalent foreign degree, it must be clearly stated on the PWDR form.

Regional Director, Employment and Training Administration (RD) means the chief official of the Employment and Training Administration (ETA) in a Department of Labor regional office.

Schedule A means the list of occupations set forth in § 656.5 for which we have determined that there are not sufficient United States workers who are able, willing, qualified and available, and that the employment of aliens in such occupations will not adversely affect the wages and working conditions of United States workers similarly employed.

Secretary means the Secretary of Labor, the chief official of the U.S. Department of Labor, or the Secretary's designee.

Secretary of State means the chief official of the U.S. Department of State or the Secretary of State's designee.

Specific Vocational Preparation (SVP) means the amount of lapsed time required by a typical worker to learn the techniques, acquire the information, and develop the facility needed for average performance in a specific job-worker situation. Lapsed time is not the same as work time. For example, 30 days is approximately 1 month of lapsed time and not six 5-day work weeks, and 3 months refers to 3 calendar months and not 90 work days. The various levels of specific vocational preparation are provided below.

Level and Time

1—Short demonstration.
2—Anything beyond short demonstration up to and including 30 days.
3—Over 30 days up to and including 3 months.
4—Over 3 months up to and including 6 months.
5—Over 6 months up to and including 1 year.
6—Over 1 year up to and including 2 years.
7—Over 2 years up to and including 4 years.
8—Over 4 years up to and including 10 years.
9—Over 10 years.

State Employment Security Agency (SWA) means the state agency which, under the Wagner-Peyser Act, receives funds to provide prevailing wage determinations to employers, and/or administers the public labor exchange delivered through the state's One-Stop delivery system in accordance with the Wagner-Peyser Act.

United States, when used in a geographic sense, means the fifty States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

United States Worker means any worker who:

(1) Is a U.S. citizen;

(2) Is a U.S. national;

(3) Is lawfully admitted for permanent residence;

(4) Is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1);

(5) Is admitted as a refugee under 8 U.S.C. 1157; or

(6) Is granted asylum under 8 U.S.C. 1158.

Subpart B—Occupational Labor Certification Determinations

§ 656.5 Schedule A.

We have determined that there are not sufficient United States workers who are able, willing, qualified, and available for the occupations listed below on *Schedule A* and that the wages and working conditions of United States workers similarly employed will not be adversely affected by the employment of aliens in *Schedule A* occupations. An alien seeking a labor certification for an occupation listed on *Schedule A* may apply for that labor certification under § 656.19

Schedule A

(a) Group I:

(1) Persons who will be employed as physical therapists, and who possess all the qualifications necessary to take the physical therapist licensing examination in the State in which they propose to practice physical therapy.

(2) Aliens who will be employed as professional nurses; and (i) who have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination; or (ii) who hold a permanent, full and unrestricted license to practice professional nursing in the State of intended employment.

(3) Definitions of Group I occupations:

(i) *Physical therapist* means a person who applies the art and science of physical therapy to the treatment of patients with disabilities, disorders and injuries to relieve pain, develop or restore function, and maintain performance, using physical means, such as exercise, massage, heat, water, light, and electricity, as prescribed by a physician (or surgeon).

(ii) *Professional nurse* means a person who applies the art and science of nursing which reflects comprehension of principles derived from the physical, biological and behavioral sciences. Professional nursing generally includes making clinical judgments involving the observation, care and counsel of persons requiring nursing care; administering of medicines and treatments prescribed by the physician or dentist; and participation in the activities for the promotion of health and prevention of illness in others. A program of study for professional nurses generally includes theory and practice in clinical areas such as obstetrics, surgery, pediatrics, psychiatry, and medicine.

(b) Group II:

(1) *Sciences or arts (except performing arts).* Aliens (except for aliens in the performing arts) of exceptional ability in the sciences or arts including college and university teachers of exceptional ability who have been practicing their science or art during the year prior to application and who intend to practice the same science or art in the United States. For purposes of this group, the term "science or art" means any field of knowledge and/or skill with respect to which colleges and universities commonly offer specialized courses leading to a degree in the knowledge and/or skill. An alien, however, need not have studied at a college or

university in order to qualify for the Group II occupation.

(2) *Performing arts.* Aliens of exceptional ability in the performing arts whose work during the past 12 months did require and whose intended work in the United States will require exceptional ability.

Subpart C—Labor Certification Process

§ 656.10 General instructions.

(a) *Filing of Applications.* A request for a labor certification on behalf of any alien who is required by the Act to be a beneficiary of a labor certification in order to obtain permanent resident status in the United States may be filed as follows:

(1) Except as provided in paragraphs (a)(2) and (3) of this section, an employer seeking a labor certification must file under this section and § 656.17.

(2) An employer seeking a labor certification for a college or university teacher must apply for a labor certification under this section and may also choose to file under either § 656.17 or § 656.18.

(3) An employer seeking labor certification for an occupation listed on *Schedule A* may apply for a labor certification under this section and § 656.15.

(4) An employer seeking labor certification for a sheepherder must apply for a labor certification under this section and may also choose to file under either § 656.16 or § 656.17.

(b) *Representation.* (1) Employers may have agents or attorneys represent them throughout the labor certification process. If an employer intends to be represented by an agent or attorney, the employer must sign the statement set forth on the *Application for Alien Employment Certification* form: That the attorney or agent is representing the employer and that the employer takes full responsibility for the accuracy of any representations made by the attorney or agent. Whenever, under this part, any notice or other document is required to be sent to the employer, the document must be sent to the attorney or agent who has been authorized to represent the employer on the *Application for Alien Employment Certification* form.

(2)(i) It is contrary to the best interests of U.S. workers to have the alien and/or agents or attorneys for the alien participate in interviewing or considering U.S. workers for the job offered the alien. As the beneficiary of a labor certification application, the alien cannot represent the best interests of U.S. workers in the job opportunity. The alien's agent and/or attorney cannot represent the alien effectively and at the same time truly be seeking U.S. workers for the job opportunity. Therefore, the alien and/or the alien's agent and/or attorney may not interview or consider U.S. workers for the job offered to the alien, unless the agent and/or attorney is the employer's representative, as described in paragraph (b)(2)(ii) of this section.

(ii) The employer's representative who interviews or considers U.S. workers for the job offered to the alien must be the person who normally interviews or considers, on behalf of the employer, applicants for job opportunities such as that offered the alien, but which do not involve labor certifications.

(3) No person under suspension or disbarment from practice before the United States Department of Justice's Executive Office for Immigration Review or the INS under 8 CFR 292.3 is permitted to act as an agent, representative, or attorney for an employer and/or alien under this part.

(c) *Attestations.* The employer must attest to the conditions listed below on the *Application for Alien Employment Certification* form under penalty of perjury under 28 U.S.C. 1746. Failure to attest to any of the conditions listed below results in a denial of the application:

(1) The wage offered equals or exceeds the prevailing wage determined under § 656.40, and the employer will pay the prevailing wage to the alien from the time a petition filed to adjust status under section 245 of the Act is approved, or from the time the alien enters the United States to take up the certified employment after the issuance of a visa by a Consular Officer;

(2) The wage offered is not based on commissions, bonuses or other incentives, unless the employer guarantees a wage paid on a weekly, bi-weekly, or monthly basis;

(3) The job opportunity does not involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship;

(4) The employer's job opportunity is not:

(i) Vacant because the former occupant is on strike or is being locked out in the course of a labor dispute involving a work stoppage; or

(ii) At issue in a labor dispute involving a work stoppage;

(5) The employer's job opportunity's terms, conditions and occupational environment are not contrary to Federal, State or local law; and

(6) The job opportunity has been and is clearly open to any qualified U.S. worker.

(d) *Notice.* (1) In applications filed under §§ 656.15 (*Schedule A*), 656.16 (Sheepherders), 656.17 (Basic Process), 656.18 (College and University Teachers), and 656.21 (Supervised Recruitment), the employer must give notice of the filing of the *Application for Alien Employment Certification* and be able to document that notice was provided, if requested by the Certifying Officer as follows:

(i) To the bargaining representative(s) (if any) of the employer's employees in the occupational classification for which certification of the job opportunity is sought in the employer's location(s) in the area of intended employment. Documentation may consist of a copy of the letter and a copy of the *Application for Alien Employment Certification* form that was sent to the bargaining representative.

(ii) If there is no such bargaining representative, by posted notice to the employer's employees at the facility or location of the employment. The notice must be posted for at least 10 consecutive business days. The notice must be clearly visible and unobstructed while posted and must be posted in conspicuous places, where the employer's U.S. workers can readily read the posted notice on their way to or from their place of employment. Appropriate locations for posting notices of the job opportunity include locations in the immediate vicinity of the wage and hour notices required by 20 CFR 516.4 or occupational safety and health notices required by 20 CFR 1903.2(a). In addition the employer must publish the posting in any and all in-house media, whether electronic or printed, in accordance with the normal procedures used for the recruitment of other positions in the employer's organization. The documentation requirement may be satisfied by providing a copy of the posted notice and stating where it was posted, and by providing copies of the in-house media whether electronic or published that were used to distribute notice of the application in accordance with the procedures used for other positions recruitment within the employer's organization.

(2) In the case of a private household, notice is required under this paragraph (d) only if the household employs one or more U.S. workers at the time the application for labor certification is filed. The documentation requirement may be satisfied by providing a copy of the posted notice to the Certifying Officer.

(3) Any notice of the filing of an *Application for Alien Employment Certification* must:

(i) State that the notice is being provided as a result of the filing of an application for permanent alien labor certification for the relevant job opportunity;

(ii) State that any person may provide documentary evidence bearing on the application to the Certifying Officer of the Department of Labor; and

(iii) Provide the address of the appropriate Certifying Officer.

(4) If an application is filed under § 656.17, the notice must be provided between 45 and 180 days before filing the application, must contain the information required for advertisements by § 656.17(e)(1) through (e)(7), and must contain the information required by paragraph (d)(3) of this section.

(5) If an application is filed on behalf of a college and university teacher selected in a competitive selection and recruitment process, as provided by § 656.18, the notice must include the information required for advertisements by § 656.18(b)(2), and must include the requirements of paragraph (d)(3) of this section.

(6) If an application is filed under the *Schedule A* procedures at § 656.15, or the procedures for sheepherders at § 656.16, the notice must contain a description of the job and rate of pay, and must meet the requirements of paragraphs (d)(3)(i) and (ii) of this section.

(e)(1)(i) *Submission of evidence.* Any person may submit to the Certifying Officer documentary evidence bearing on an application for permanent alien labor certification filed under the basic labor certification process at § 656.17 or an application involving a college and university teacher that may be selected in a competitive recruitment and selection process under § 656.18.

(ii) Documentary evidence submitted under paragraph (e)(1)(i) of this section may include information on available workers, information on wages and working conditions, and information on the employer's failure to meet the terms and conditions for the employment of alien workers and co-workers. The Certifying Officer must consider this information in making his or her determination.

(2)(i) Any person may submit to the appropriate INS office documentary evidence of fraud or willful misrepresentation in a *Schedule A* application filed under § 656.15 sheepherder application filed under § 656.16.

(ii) Documentary evidence submitted under paragraph (e)(2)(i) of this section is limited to information relating to possible fraud or willful misrepresentation. The INS may consider this information under § 656.31.

§ 656.14 Fees.

(a) *Payment of processing fee.* Employers must submit with their application a check or money order drawn on a financial institution in the United States in the amount of $XXXX, payable in U.S. Currency. A charge of $30.00 will be imposed if a check in payment of the fee is not honored by the financial institution on which it is drawn.

(1) Checks for applications filed with the U.S. Department of Labor under §§ 656.17 and 18 must be made payable to the U.S. Department of Labor.

(2) Checks for applications filed with INS under §§ 656.15 and 17, must be made payable to the Immigration and Naturalization Service.

(b) *Returned ("insufficient funds") checks.* (1) Existence of any outstanding "insufficient funds" check that was submitted for processing an application or for payment of the $30.00 charge imposed for a check submitted in payment of the charge imposed for submission of a check that was not honored by the financial institution on which it was drawn, is grounds for returning any application for alien employment certification to the employer as unacceptable for processing.

(2) Receipt of any "insufficient funds" check while the application is being processed is grounds for denying the application.

(3) Receipt of any "insufficient funds" checks after an application has been certified results in automatic revocation of the certification, if payment in U.S. funds has not been received within 14 calendar days of date of the notification to the employer of the existence of an "insufficient funds" check.

(c) *Returned applications.* If an application is returned to the employer because it is incomplete, the employer may request a refund of the fee or resubmit the application.

§ 656.15 Applications for labor certification for Schedule A occupations.

(a) *Filing application.* An employer must apply for a labor certification for a *Schedule A* occupation by filing an application in duplicate with the appropriate Immigration and Naturalization Service office, not with the Department of Labor or a State Workforce Agency office.

(b) *General documentation requirements.* The *Application for Alien Employment Certification* form must include:

(1) An *Application for Alien Employment Certification* form and a completed PWDR form endorsed by the SWA.

(2) Evidence that notice of filing the application for Alien Employment Certification was provided to the bargaining representative or the employer's employees as prescribed in § 656.10(f)(3).

(c) *Group I documentation.* An employer seeking labor certification under Group I of *Schedule A* must file, as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking *Schedule A* labor certification for an alien to be employed as a physical therapist (§ 656.5(a)(1)) must file as part of its labor certification application a letter or statement signed by an authorized State physical therapy licensing official in the State of intended employment, stating that the alien is qualified to take that State's written licensing examination for physical therapists. Application for certification of permanent employment as a physical therapist may be made only under this § 656.15 and not under § 656.17.

(2) An employer seeking a *Schedule A* labor certification as a professional nurse (§ 656.5(a)(2)) must file as part of its labor certification application documentation that the alien has passed the Commission on Graduates of Foreign Nursing Schools (CGFN) Examination; or that the alien holds a full and unrestricted (permanent) license to practice nursing in the State of intended employment. Application for certification of employment as a professional nurse may be made only under this § 656.15 (c), and not under § 656.17.

(d) *Group II documentation.* An employer seeking *Schedule A* labor certification under Group II of *Schedule A* must file as part of its labor certification application, documentary evidence of the following:

(1) An employer seeking labor certification on behalf of an alien to be employed as an alien of exceptional ability in the sciences or arts (excluding those in the performing arts) must file documentary evidence showing the widespread acclaim and international recognition accorded the alien by recognized experts in the alien's field; and documentation showing that the alien's work in that field during the past year did, and the alien's intended work in the United States will, require exceptional ability. In addition, the employer must file documentation

about the alien from at least two of the following seven groups:

(i) Documentation of the alien's receipt of internationally recognized prizes or awards for excellence in the field for which certification is sought;

(ii) Documentation of the alien's membership in international associations, in the field for which certification is sought, which require outstanding achievement of their members, as judged by recognized international experts in their disciplines or fields;

(iii) Published material in professional publications about the alien, about the alien's work in the field for which certification is sought, which shall include the title, date, and author of such published material;

(iv) Evidence of the alien's participation on a panel, or individually, as a judge of the work of others in the same or in an allied field of specialization to that for which certification is sought;

(v) Evidence of the alien's original scientific or scholarly research contributions of major significance in the field for which certification is sought;

(vi) Evidence of the alien's authorship of published scientific or scholarly articles in the field for which certification is sought, in international professional journals or professional journals with an international circulation; or

(vii) Evidence of the display of the alien's work, in the field for which certification is sought, at artistic exhibitions in more than one country.

(2) An employer seeking labor certification on behalf of an alien of exceptional ability in the performing arts must file documentary evidence that the alien's work experience during the past twelve months did require, and the aliens' intended work in the United States will require, exceptional ability; and must submit documentation to show this exceptional ability, such as:

(i) Documentation attesting to the current widespread acclaim and international recognition accorded to the alien, and receipt of internationally recognized prizes or awards for excellence;

(ii) Published material by or about the alien, such as critical reviews or articles in major newspapers, periodicals, and/or trade journals (the title, date, and author of such material shall be indicated);

(iii) Documentary evidence of earnings commensurate with the claimed level of ability;

(iv) Playbills and star billings;

(v) Documents attesting to the outstanding reputation of theaters, concert halls, night clubs, and other establishments in which the alien has appeared or is scheduled to appear; and/or

(vi) Documents attesting to the outstanding reputation of theaters or repertory companies, ballet troupes, orchestras, or other organizations in which or with which the alien has performed during the past year in a leading or starring capacity.

(e) *Determination.* An Immigration Officer determines whether the employer and alien have met the applicable requirements of § 656.10 and of *Schedule A* (§ 656.5); reviews the application; and determines whether or not the alien is qualified for and intends to pursue the *Schedule A* occupation. The *Schedule A* determination of INS is conclusive and final. The employer, therefore, may not appeal from any such determination under the review procedures at § 656.26.

(f) *Department of Labor copy.* If the alien qualifies for the occupation, the Immigration Officer must indicate the occupation on the *Application for Alien Employment Certification* form. The Immigration Officer then must promptly forward a copy of the *Application for Alien Employment Certification* form, without attachments, to the Director, indicating thereon the occupation, the Immigration Officer who made the *Schedule A* determination, and the date of the determination (see § 656.30 for the significance of this date).

(g) *Refiling after denial.* If an application for a *Schedule A* occupation is denied, the employer, except where the occupation is as a physical therapist or a professional nurse, may at any time file for a labor certification on the alien beneficiary's behalf under § 656.17. Labor certifications for professional nurses and for physical therapists may be considered only under § 656.15.

§ 656.16 Labor certification applications for sheepherders.

(a) *Filing requirements and required documentation.* (1) An employer may apply for a labor certification to employ an alien (who has been employed legally as a nonimmigrant sheepherder in the United States for at least 33 of the preceding 36 months) as a sheepherder by filing an *Application for Alien Employment Certification form* and a completed PWDR form endorsed by the SWA, directly with a District Office of INS, not with an office of DOL.

(2) A signed letter or letters from each U.S. employers who has employed the alien as a sheepherder during the immediately preceding 36 months, attesting that the alien has been employed in the United States lawfully and continuously as a sheepherder for at least 33 of the immediately preceding 36 months must be filed with the application.

(b) *Determination.* An Immigration Officer reviews the application and the letters attesting to the alien's previous employment as a sheepherder in the United States, and determines whether or not the alien and the employer(s) have met the requirements of this section.

(1) The determination of the Immigration Officer under paragraph (b) of this section is conclusive and final. The employer(s) and the alien, therefore, may not make use of the review procedures set forth at §§ 656.26 and 656.27 to appeal such a determination.

(2) If the alien and the employer(s) have met the requirements of this section, the Immigration Officer must indicate on the *Application for Alien Employment* form the occupation, the immigration office which made the determination, and the date of the determination (see § 656.30 for the significance of this date). The Immigration Officer then forwards promptly to the Division of Foreign Labor Certifications copies of the *Application for Alien Employment Certification* form, without the attachments.

(c) *Alternative filing.* If an application for a sheepherder does not meet the requirements of this section, the application may be filed under § 656.17.

§ 656.17 Basic labor certification process.

(a) *Filing applications.* Except as otherwise provided by §§ 656.15, 656.16 and 656.18, an employer who desires to apply for a labor certification on behalf of an alien must file, signed by hand, a completed Department of Labor *Application for Alien Employment Certification* form, a completed PWDR form that has been endorsed by the SWA serving the area where the employer proposes the alien will be employed, and the processing fee of $XXXX in accordance with § 656.14. The application must be filed with the DOL servicing office. Supporting documentation that may be requested by the Certifying Officer in an audit letter should not be filed with the application, but the employer must be prepared to furnish required supporting documentation if its application is selected for audit.

(b) *Processing.* (1) Applications are screened and found to be either incomplete, or are certified, denied, or selected for audit. Applications that cannot be accepted for processing because certain information that was requested by the application form was not provided are returned to the employers.

(2) Employers will be notified if their applications have been selected for audit by the issuance of an audit letter under § 656.20.

(3) Applications may be selected for audit in accordance with predetermined selection criteria or may be randomly selected.

(c) *Filing Date.* (1) Applications accepted for processing shall be date stamped.

(2) Applications not accepted for filing and returned to employers shall not be date stamped.

(3) Employers that filed applications under the regulations that were in effect prior to _____, 2002, may refile such cases under the current regulations without loss of the filing date by:

(i) Submitting an application on behalf of an identical job opportunity filed under the regulations that were in effect prior to _____, 2002, if the employer has complied with all of the filing and recruiting requirements of the current regulations; and

(ii) Identifying and withdrawing the application involving the identical job opportunity pending under the regulations effective prior to _____, 2002.

(d) *Required prefiling recruitment.* Except for labor certification applications involving college or university teachers selected to by a competitive recruitment and selection process (see § 656.18), *Schedule A* occupations (see §§ 656.5 and 656.15), and sheepherders (see § 656.16), an employer must attest, depending on whether a professional or nonprofessional occupation is involved in the application, to have conducted the following recruitment prior to filing the application:

(1) *Professional Occupations.* If the application is for a professional occupation, the employer must conduct the six recruitment steps within 6 months of filing the application for alien employment certification. The employer must maintain documentation of the recruitment and be prepared to document such recruitment in the event of an audit.

(i) *Mandatory steps.* Two of the steps are mandatory for all applications involving professional occupations, except applications for college or university teachers selected in a competitive selection and recruitment process as provided in § 656.16. The mandatory recruitment steps must be conducted at least 30 days, but no more than 180 days, before the filing of the application.

(A) *Job order.* Placement of a job with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application serve as documentation of this step.

(B) *Advertisements in newspaper or professional journals.* (*1*) Placing two advertisements in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment. There must be a minimum of three consecutive intervening Sundays between publication of the two advertisements and they must satisfy the requirements of paragraph (f)(1) of this section. Documentation of this step can be satisfied by furnishing copies of the tear sheets of the newspaper pages in which the advertisements appeared or proof of publication furnished by the newspaper.

(*2*) If the job involved in the application requires experience and an advanced degree, the employer must, in lieu of one of the Sunday advertisements, place an advertisement in the professional journal most likely to bring responses from able, willing, qualified and available U.S. workers. Documentation of this step can be satisfied by providing a copy of the page in which the advertisement appeared.

(ii) *Additional recruitment steps.* The employer must select three additional recruitment steps from the alternatives listed below. Only one of the additional steps may consist solely of activity that took place within 30 days of the filing of the application. None of the steps may have taken place more than 180 days prior to filing the application.

(A) *Job fairs.* Recruitment at job fairs for the occupation involved in the application which can be documented by brochures advertising the fair and newspaper advertisements in which the employer is named as a participant in the job fair;

(B) *Employer's web site.* The use of the employer's web site as a recruitment medium for the occupation involved in the application can be documented by providing dated copies of pages from the site which advertise the occupation involved in the application.

(C) *Job search web site other than employer's.* The use of a job search web site other than the employer's can be documented by providing dated copies of pages from one or more web site(s) which advertises the occupation involved in the application. Copies of web pages generated in conjunction with the newspaper advertisements required by paragraph (d)(1)(i)(B) of this section cannot serve as document of the use of a web site other than the employer's.

(D) *On-campus recruiting.* The employer's on-campus recruiting can be documented by providing copies of the notification issued or posted by the college's or university's placement office naming the employer and the date it will be conducting interviews for employment in the occupation.

(E) *Trade or professional organizations.* The use of professional or trade organizations as a recruitment source can be documented by providing copies of pages of newsletters or trade journals containing advertisements for the occupation involved in the application for alien employment certification.

(F) *Private employment firms.* The use of private employment firms or placement agencies can be documented by providing documentation sufficient to demonstrate that recruitment has been conducted by a private firm for the occupation for which certification is sought. For example, documentation might consist of copies of contracts between the employer and the private employment firm and copies of advertisements placed by the private employment firm for the occupation involved in the application.

(*2*) *Non-professional occupations.* If the application is for a non-professional occupation, the employer must at a minimum, conduct two of the following steps within 6 months of filing the occupation. The steps must be conducted at least 30 days but no more that 180 days before the filing of the application.

(i) *Job Order.* Placing a job order with the SWA serving the area of intended employment for a period of 30 days. The start and end dates of the job order entered on the application entered on the application serve as documentation of this step.

(ii) *Newspaper advertisements.* Placing of two advertisement in the Sunday edition of the newspaper of general circulation most appropriate to the occupation and the workers likely to apply for the job opportunity in the area of intended employment. There must be a minimum of three consecutive intervening Sundays between publication of the two advertisements and the advertisements must satisfy the requirements of paragraph (f)(1) of this section. Placing the newspaper advertisements can be documented in the same way as provided in paragraph (c)(1)(i)(B) for professional occupations.

(e) *Advertising Requirements.* Advertisements placed in Sunday

editions of newspapers of general circulation or in professional journals before filing the Application *for Alien Employment Certification* must:

(1) Name the employer;

(2) Direct applicants to report or send resumes, as appropriate for the occupation, to the employer;

(3) Provide a description of the vacancy specific enough to apprise the U.S. workers of the job opportunity for which certification is sought;

(4) Describe the geographic area involved in the application with enough specificity to apprise applicants of any travel requirements and where applicants will likely have to reside to perform the job opportunity;

(5) State the rate of pay which must equal or exceed the prevailing wage entered on the PWDR form by the SWA;

(6) Not contain any job requirements which exceed the job requirements listed on the PWDR form; and

(7) Offer wages, terms, and conditions of employment which are no less favorable than those offered to the alien.

(f) *Recruitment report.* (1) The employer must prepare a summary report signed by the employer or the employer's representative described in § 656.10(b)(2)(ii) describing the recruitment steps undertaken and the results achieved, including the number of U.S. workers who applied for the job opportunity, the number of hires, and, if applicable, the number of U.S. workers rejected, summarized by the lawful job related reasons for such rejections. The Certifying Officer, after reviewing the employer's recruitment report, may request the resumes or applications of the U.S. workers sorted by the reasons they were rejected.

(2) Rejecting U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training is not a lawful job-related reason for rejection of the U.S. workers. For the purpose of paragraph (e)(2) of this section, a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(g) *Job Requirements.* (1) The job opportunity's requirements must not exceed the Specific Vocational Preparation level assigned to the occupation as shown in the O*Net Job Zones.

(2) Requirements other than those relating to the number of months or years of experience in the occupation or the number of months or years of education or training in the occupation cannot be used unless justified in the following circumstances:

(i) The employer employed a U.S. worker to perform the job opportunity with the special requirements within 2 years of filing the application. This could be documented by furnishing the name of the former employee and one or more of the following: Job description, resume, letter from previous employee and/or previous recruitment documentation.

(ii) The other requirements are normal to the occupation for a person to perform the basic job duties and are routinely required by other employers in the industry. Acceptable examples, depending on the occupation, include but are not limited to: Professional trade or business licenses, specified typing speed, and ability to lift a minimum number of pounds. Acceptable documentation that other employers in the industry routinely have such a requirement includes state and/or local laws regulations, or ordinances, articles, help-wanted advertisements, or employer surveys.

(iii) A foreign language requirement cannot be included merely for the convenience of the employer or due to the mere preference of the employer, or customers. A foreign language requirement can be based on the nature of the occupation; *e.g.*, translator, or, for example, the need to communicate with a large majority of the employer's customers or contractors who cannot communicate effectively in English. Acceptable documentation includes:

(A) The employer furnishing the number and proportion of its clients, or contractors who cannot communicate in English, and/or a detailed plan to market products or services in a foreign country; and

(B) A detailed explanation of why the duties of the position for which certification is sought require frequent contact and communication with customers, or contractors who cannot communicate in English and why it is reasonable to believe that the allegedly foreign language customers, employees and contractors cannot communicate in English.

(iv) Combination occupations are acceptable only if the employer has employed a U.S. worker in the combination of occupations for the 2 years immediately before the filing of the application and/or workers customarily perform the combination of duties in the area of intended employment. Combination occupations can be documented by position descriptions and relevant payroll records and/or letters from other employers stating that their workers normally perform the combination of occupations in the area of intended employment.

(3) A job requirement for a bachelor's or higher degree does not have to be justified if:

(i) the occupation involved in the employer's application is on a list of occupations issued by ETA for which a bachelor's or higher degree is required; and

(ii) the education and training requirements for the employer's job opportunity is consistent with the education and training required for the occupation involved in the employer's application.

(h) *Actual minimum requirements.* (1) The job requirements, as described, must represent the employer's actual minimum requirements for the job opportunity, and the employer must not have:

(i) Hired workers with less training or experience for jobs similar to that involved in the job opportunity;

(ii) Included as a requirement for the job offer experience which the alien gained working for the employer in any capacity, including working as a contract employee; and

(iii) Paid for any of the alien's education or training necessary to satisfy any of the employer's job requirements.

(2) For purposes of this paragraph (h), the term "employer" includes predecessor organizations, successors in interest, a parent, branch, subsidiary, or affiliate, whether located in the United States or another country.

(i) *Conditions of employment.* (1) Working conditions must be normal to the occupation in the area and industry.

(2) Live-in requirements are acceptable for household domestic service workers only if the employer can demonstrate that the requirement is essential to perform in a reasonable manner the job duties as described by the employer and that there are not cost-effective alternatives to a live-in household requirement. Mere employer assertions do not constitute acceptable documentation. For example, a live-in requirement could be supported by documenting two working parents and young children in the household, and/or the existence of erratic work schedules requiring frequent travel and a need to entertain business associates and clients on short notice. Depending upon the situation, acceptable documentation could consist of travel vouchers, written estimates of costs of alternatives such as baby sitters, a detailed listing of the frequency and length of absences of the employer from the home.

(j) *Layoffs.* (1) If there has been a layoff by the employer applicant in the area of intended employment within 6 months of filing the occupation involving the occupation for which certification is sought or in a related occupation, the employer must document that it has notified and considered all potentially qualified laid off U.S. workers of the job opportunity involved in the application and the results of the notification.

(2) For the purposes of paragraph (i)(1) of this section, a related occupation is any occupation which requires workers to perform a majority of the essential duties involved in the occupation for which certification is sought.

(k) *Alien influence and control over job opportunity.* If the employer is a closely held corporation or partnership in which the alien has an ownership interest, or if there is a familial relationship between the stockholders, corporate officers, incorporators, or partners, and the alien, the employer in the event of an audit must provide the following documentation:

(1) A copy of the articles of incorporation;

(2) A list of all corporate officers and shareholders of the corporation, their titles and positions in the corporate structure, and a description of their relationship to each other and to the alien beneficiary;

(3) The financial history of the corporation, including the total investment in the corporation and the amount of investment of each corporate officer, incorporator and the alien beneficiary; and

(4) The name of the corporate official with primary responsibility for interviewing and hiring applicants for positions within the organization and the name(s) of the corporate official(s) having control or influence over hiring decisions involving the position for which labor certification is sought.

§ 656.18 Optional special recruitment and documentation procedures for college and university teachers.

(a) *Filing requirements.* Applications on behalf of college and university teachers must be filed by submitting a completed *Application for Permanent Employment Certification* form and PWDR form with the appropriate application processing center.

(b) *Recruitment* The employer may recruit for college and university teachers under § 656.17 or be able to document that the alien was selected for the job opportunity in a competitive recruitment and selection process through which the alien was found to be more qualified than any of the United States workers who applied for the job. For purposes of this paragraph (b), documentation of the "competitive recruitment and selection process" must include:

(1) A statement, signed by an official who has actual hiring authority from the employer outlining in detail the complete recruitment procedures undertaken; and which must set forth:

(i) The total number of applicants for the job opportunity;

(ii) The specific lawful job-related reasons why the alien is more qualified than each U.S. worker who applied for the job; and

(iii) A final report of the faculty, student, and/or administrative body making the recommendation or selection of the alien, at the completion of the competitive recruitment and selection process.

(2) A copy of at least one advertisement for the job opportunity placed in a national professional journal, giving the name and the date(s) of publication; and which states the job title, duties, and requirements;

(3) Evidence of all other recruitment sources utilized; and

(4) A written statement attesting to the degree of the alien's educational or professional qualifications and academic achievements.

(c) *Time limit for filing.* Applications for permanent alien labor certification for job opportunities as college and university teachers must be filed within 18 months after a selection is made in to a competitive recruitment and selection process.

(d) *Alternative procedure.* An employer that cannot or does not choose to satisfy the special recruitment procedures for a college or university teacher under this section may avail itself of the basic process at § 656.17. An employer that files for college and university teachers under § 656.17 or this section must be able to document, if requested by the Certifying Officer, in accordance with § 656.24(a)(2)(ii), that the alien was found to be more qualified than any U.S. worker who applied for the job opportunity.

§ 656.19 Live-in household domestic service workers.

(a) *Filing requirements.* Applications on behalf of live-in household domestic service workers must be filed by submitting a completed *Application for Alien Employment Certification* form and PWDR form endorsed by the SWA with the appropriate application processing center.

(b) *Required documentation.* Employers filing applications on behalf of live-in household domestic must provide, in event of an audit, the following documentation:

(1) A statement describing the household living accommodations that must include the following:

(i) Whether the residence is a house or apartment;

(ii) The number of rooms in the residence;

(iii) The number of adults and children, and ages of the children residing in the household; and

(iv) Whether or not free board and a private room not shared by any other person will be provided to the alien.

(2) Two copies of the employment contract, each signed and dated by both the employer and the alien (not by their attorneys or agents). The contract must clearly state:

(i) The wages to be paid on an hourly and weekly basis;

(ii) Total hours of employment per week, and exact hours of daily employment;

(iii) That the alien is free to leave the employer's premises during all non-work hours except that the alien may work overtime if paid for the overtime at no less than the legally required hourly rate;

(iv) That the alien will reside on the employer's premises;

(v) Complete details of the duties to be performed by the alien;

(vi) The total amount of any money to be advanced by the employer with details of specific items, and the terms of repayment by the alien of any such advance by the employer;

(vii) That in no event may the alien be required to give more than two weeks' notice of intent to leave the employment contracted for and that the employer must give the alien at least two weeks' notice before terminating employment;

(viii) That a duplicate contract has been furnished to the alien;

(ix) That a private room and board will be provided at no cost to the worker; and

(x) Any other agreement or conditions not specified on the *Application for Alien Employment Certification* form.

§ 656.20 Audit letters.

(a) *Issuance of audit letter.* Review of the labor certification application may lead to an audit of the application. Additionally, certain applications may be selected for audit for quality control purposes. If an application is selected for audit, the Certifying Officer issues an audit letter. The audit letter must:

(1) Contain the date on which the audit letter was issued;

(2) State the documentation that must be submitted by the employer;

(3) Specify a date, 21 calendar days from the date of the audit letter by which the required documentation must be submitted and advise that, if the required documentation has not been mailed by certified mail by the date specified:

(i) The application shall be denied;

(ii) Failure to provide required documentation shall be deemed to be a material misrepresentation of the employer's attestation that it has complied with all documentation requirements;

(iii) Failure to provide documentation in a timely manner constitutes a refusal to exhaust available administrative remedies; and

(iv) The administrative-judicial review procedure provided in § 656.26 is not available.

(4) Certifying Officers may not provide any extensions to the 21 days specified in § 656.20(a)(3).

(b) If documentation is submitted on time, the Certifying Officer reviews that documentation in accordance with the standards in § 656.24.

(c) Before making a final determination in accordance with the standards in § 656.24, the Certifying Officer may:

(1) Request supplemental information and/or documentation; or

(2) Require the employer to conduct recruitment under § 656.21.

§ 656.21 Supervised Recruitment.

(a) *Supervised recruitment.* In a case where the Certifying Officer determines it to be appropriate, including determinations made pursuant to § 656.20(a)(3)(ii), post-filing supervised recruitment may be required of the employer.

(b) *Requirements.* Supervised recruitment consists of advertising for the job opportunity by placing an advertisement in a newspaper, or in a professional, trade, or ethnic publication. If published in a newspaper of general circulation, be published for 3 consecutive days, one of which must be a Sunday, or, if published in a professional, trade, or ethnic publication, be published in the next published edition. The advertisement must be approved by the Certifying Officer before publication and the Certifying Officer will direct where the advertisement is placed. The advertisement must:

(1) Direct applicants to send resumes or applications for the job opportunity to the Certifying Officer for referral to the employer;

(2) Include a regional office identification number and an address designated by the Certifying Officer, but must not identify the employer;

(3) Describe the job opportunity;

(4) State the rate of pay, which must not be below the prevailing wage for the occupation entered on the PWDR form by the SWA;

(5) Summarize the employer's minimum job requirements which cannot exceed any of the requirements entered on the PWDR form by the employer;

(6) Offer training if the job opportunity is the type for which employers normally provide training; and

(7) Offer wages, terms and conditions of employment which are no less favorable than those offered to the alien.

(c) *Additional or substitute recruitment.* The Certifying Officer may designate other appropriate sources of workers where the employer must recruit for U.S. workers in addition to the advertising described in paragraph (b)(1) of this section.

(d) *Recruitment report.* The employer must provide to the Certifying Officer a detailed written report of the employer's supervised recruitment, signed by the employer, or the employer's representative described in § 656.10(b)(2)(ii), within 21 days of the Certifying Officer's request for such a report. The recruitment report results must:

(1) Identify each recruitment source by name and document that each recruitment source named was contacted. This can include, for example, copies of letters to recruitment sources such as unions, trade associations, colleges and universities and any responses received to the employer's inquiries. Documentation of advertisements placed in newspapers, professional, trade, or ethnic publications can be documented by furnishing copies of the tear sheets of the pages of the publication in which the advertisements appeared, proof of publication furnished by the publication, or dated copies of the web pages if the advertisement appeared on the web as well as in the publication in which the advertisement appeared;

(2) State the number of U.S. workers who responded to the employer's recruitment;

(3) State the names, addresses, and provide resumes (if any) of the U.S. workers who applied for the job opportunity, the number of workers interviewed, and the job title of the person who interviewed the workers;

(4) Explain, with specificity, the lawful job-related reason(s) for not hiring each U.S. worker who applied. Rejection of U.S. workers for lacking skills necessary to perform the duties involved in the occupation, where the U.S. workers are capable of acquiring the skills during a reasonable period of on-the-job training is not a lawful job-related reason for rejecting the U.S. workers. For the purpose of this paragraph (d)(4), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

§ 656.24 Labor certification determinations.

(a) The Certifying Officer makes a determination either to grant or deny the labor certification on the basis of whether or not:

(1) The employer has met the requirements of this part; and

(2) There is in the United States a worker who is able, willing, qualified and available for and at the place of the job opportunity.

(i) The Certifying Officer must consider a U.S. worker able and qualified for the job opportunity if the worker, by education, training, experience, or a combination thereof, is able to perform in the normally accepted manner the duties involved in the occupation as customarily performed by other U.S. workers similarly employed. For the purposes of this paragraph (a)(2)(i), a U.S. worker is able and qualified for the job opportunity if the worker can acquire the skills necessary to perform the duties involved in the occupation during a reasonable period of on-the-job training.

(ii) If the job involves a job opportunity as a college or university teacher, the U.S. worker must be at least as qualified as the alien.

(3) The employment of the alien will not have an adverse effect upon the wages and working conditions of U.S. workers similarly employed. In making this determination the Certifying Officer considers such things as labor market information, the special circumstances of the industry, organization, and/or occupation, the prevailing wage in the area of intended employment, and the prevailing working conditions, such as hours in the occupation.

(b) The Certifying Officer notifies the employer in writing of the labor certification determination.

(c) If a labor certification is granted, except for a labor certifications for an occupation on *Schedule A* (§ 656.5) or for employment as a sheepherder under § 656.16, the Certifying Officer must send the certified application and complete Final Determination form to the employer, or, if appropriate, to the employer's agent or attorney, indicating that the employer may file all the documents with the appropriate INS office.

(d) If the labor certification is denied, the Final Determination form must:

(1) Contain the date of the determination;

(2) State the reasons for the determination;

(3) Quote the request for review procedures at § 656.26 (a) and (b);

(4) Advise that failure to request review within 21 calendar days, as specified in § 656.26(a), constitutes a failure to exhaust administrative remedies;

(5) Advise that, if a request for review is not made within 21 calendar days, the denial shall become the final determination of the Secretary;

(6) Advise that if an application for a labor certification is denied, and a request for review is not made in accordance with the procedures at § 656.26(a) and (b), a new application may be filed at any time; and

(7) Advise that a new application in the same occupation for the same alien cannot be filed, while a request for review is pending with the Board of Alien Labor Certification Appeals.

(e) If the Certifying Officer determines that the employer made a material misrepresentation that it has complied with all documentation requirements pursuant to § 656.20(a)(ii), or otherwise determines a material misrepresentation was made with respect to the application for any reason, the employer may be required to conduct supervised recruitment pursuant to § 656.21 in future filings of labor certification applications for 2 years.

(f) The employer may request reconsideration at any time within 21 days from the date of insurance of the denial. The Certifying Officer may, in his or her complete discretion, reconsider the determination or treat it as a request for review under § 656.26(a).

§ 656.26 Board of Alien Labor Certification Appeals review of denials of labor certification.

(a) *Request for review.* (1) If a labor certification is denied or revoked, a request for review of the denial or revocation may be made to the Board of Alien Labor Certification Appeals by the employer. Any employer seeking review of a determination issued under § 656.24, including judicial review, must make a request for such an administrative review in accordance with the procedures provided in this paragraph (a). The request for review:

(i) Must be in writing;

(ii) Must be mailed by certified mail to the Certifying Officer who denied the application within 21 calendar days of the date of the determination, that is, by the date specified on the Final Determination form;

(iii) Must clearly identify the particular labor certification determination from which review is sought; must set forth the particular grounds for the request; and

(iv) Must include all the documents which accompanied the Final Determination form.

(2) The request for review, statements, briefs, and other submissions of the parties and amicus curiae must contain only legal argument and only such evidence that was within the record upon which the denial of labor certification was based.

(b) Upon the receipt of a request for review, the Certifying Officer immediately must assemble an indexed Appeal File:

(1) The Appeal File must be in chronological order, must have the index on top followed by the most recent document, and must have consecutively numbered pages. The Appeal File must contain the request for review, the complete application file, and copies of all the written material, such as pertinent parts and pages of surveys and/or reports upon which the denial was based.

(2) The Certifying Officer must send the Appeal File to the Board of Alien Labor Certification Appeals, Office of Administrative Law Judges, 800 K Street, NW., Suite 400, Washington, DC 20001–8002.

(3) The Certifying Officer must send a copy of the Appeal File to the employer. The employer may furnish or suggest directly to the Board of Alien Labor Certification Appeals the addition of any documentation which is not in the Appeal File, but which was submitted before the issuance of the Final Determination form. The employer must submit such documentation in writing, and must send a copy to the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, U.S. Department of Labor, Washington, D.C. 20210.

§ 656.27 Consideration by and decisions of the Board of Alien Labor Certification Appeals.

(a) *Panel Designations.* In considering requests for review before it, the Board of Alien Labor Certification Appeals may sit in panels of three members. The Chief Administrative Law Judge may designate any Board of Alien Labor Certification Appeals member to submit proposed findings and recommendations to the Board of Alien Labor Certification Appeals or to any duly designated panel thereof to consider a particular case.

(b) *Briefs and Statements of Position.* In considering the requests for review before it, the Board of Alien Labor Certification Appeals must afford all parties 21 days to submit or decline to submit any appropriate Statement of Position or legal brief. The Department of Labor is to be represented solely by the Solicitor of Labor or the Solicitor's designated representative.

(c) *Review on the record.* The Board of Alien Labor Certification Appeals must review the denial of labor certification on the basis of the record upon which the denial of labor certification was made, the request for review, and any Statements of Position or legal briefs submitted and must:

(1) Affirm the denial of the labor certification; or

(2) Direct the Certifying Officer to grant the certification; or

(3) Direct that a hearing on the case be held under paragraph (e) of this section.

(d) *Notifications of decisions.* The Board of Alien Labor Certification Appeals must notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of its decision, and must return the record to the Certifying Officer unless the case has been set for hearing under paragraph (e) of this section.

(e) *Hearings.* (1) *Notification of hearing.* If the case has been set for a hearing, the Board of Alien Labor Certification Appeals must notify the employer, the alien, the Certifying Officer, and the Solicitor of Labor of the date, time, and place of the hearing, and that the hearing may be rescheduled upon written request and for good cause shown.

(2) *Hearing procedure.* (i) The "Rules of Practice and Procedure For Administrative Hearings Before the Office of Administrative Law Judges", at 29 CFR part 18, apply to hearings under this paragraph (e).

(ii) For the purposes of this paragraph (e)(2), references in 29 CFR part 18 to: "administrative law judge" means the Board of Alien Labor Certification Appeals member or the Board of Alien Labor Certification Appeals panel duly designated to under § 656.27(a); "Office of Administrative Law Judges" means the Board of Alien Labor Certification Appeals; and "Chief Administrative Law Judge" means the Chief Administrative Law Judge in that official's function of chairing the Board of Alien Labor Certification Appeals.

§ 656.30 Validity of and invalidation of labor certifications.

(a) *Validity of labor certifications.* Except as provided in paragraph (d) of this section, a labor certification is valid indefinitely.

(b) *Validation date.* (1) A labor certification involving a job offer is validated as of the date the servicing office date-stamped the application; and

(2) A labor certification for a *Schedule A* occupation is validated as of the date the application was dated by the Immigration Officer.

(c) *Scope of validity.* (1) A labor certification for a *Schedule A* occupation is valid only for the occupation set forth on the *Application for Alien Employment Certification* form and throughout the United States unless the certification contains a geographic limitation.

(2) A labor certification involving a specific job offer is valid only for the particular job opportunity and for the area of intended employment stated on the *Application for Alien Employment Certification* form.

(d) *Invalidation of labor certifications.* After issuance, a labor certifications is subject to invalidation by the INS or by a Consul of the Department of State upon a determination, made in accordance with those agencies' procedures or by a Court, of fraud or willful misrepresentation of a material fact involving the labor certification application. If evidence of such fraud or willful misrepresentation becomes known to an RD or to the Chief, Division of Foreign Labor Certifications, the RD or the Chief, Division of Foreign Labor Certifications, as appropriate, notifies in writing the INS or State Department, as appropriate. A copy of the notification must be sent to the regional or national office, as appropriate, of the Department of Labor's Office of Inspector General.

(e) *Duplicate labor certifications.* Certifying Officers shall issue duplicate labor certifications only upon the written request of a Consular or Immigration Officer. Certifying Officers shall issue such duplicate certifications only to the Consular or Immigration Officer who submitted the written request. An alien, employer, or an alien's or employer's agent, therefore, may petition an Immigration or Consular Officer to request a duplicate labor certification from a Certifying Officer.

§ 656.31 Labor certification applications involving fraud or willful misrepresentation.

(a) *Possible fraud or willful misrepresentation.* If possible fraud or willful misrepresentation involving a labor certification is discovered before a final labor certification determination, the Certifying Officer must refer the matter to the INS for investigation, must notify the employer in writing, and must send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General. If 90 days pass without the filing of a criminal indictment or information, or receipt of a notification from INS that an investigation is being conducted, the Certifying Officer must continue to process the application.

(b) *Criminal indictment or information.* If it is learned that an application is the subject of a criminal indictment or information filed in a court, the processing of the application must be halted until the judicial process is completed. The Certifying Officer must notify the employer of this fact in writing and must send a copy of the notification to the alien, and to the Department of Labor's Office of Inspector General.

(c) *Finding of no fraud or willful misrepresentation.* If a court finds that there was no fraud or willful misrepresentation, or if the Department of Justice decides not to prosecute, the Certifying Officer must not deny the labor certification application on the grounds of fraud or willful misrepresentation. The application, of course, may be denied for other reasons under this part.

(d) *Finding of fraud or willful misrepresentation.* If a court, the INS or the Department of State determines that there was fraud or willful misrepresentation involving a labor certification application, the application is automatically invalidated, processing is terminated, a notice of the termination and the reason therefor is sent by the Certifying Officer to the employer, and a copy of the notification is sent by the Certifying Officer to the alien, and to the Department of Labor's Office of Inspector General.

§ 656.32 Revocation of approved labor certifications.

(a) *Basis for DOL Revocation.* Within 1 year of the date a labor certification is granted or before a visa number becomes available to the alien beneficiary, whichever occurs first, the Certifying Officer who issued it, in consultation with the National Certifying Officer, may take steps to revoke a labor certification, if he/she finds that the certification was improvidently granted.

(b) *DOL procedures for revocation.* (1) The Certifying Officer sends to the employer, and a copy to the alien, a *Notice of Intent to Revoke* an approved labor certification.

(2) The *Notice of Intent to Revoke* must contain a detailed statement of the grounds for the revocation and the time period allowed for the employer's rebuttal. The employer may submit evidence in rebuttal within 21 days of receipt of the notice. The Certifying Officer must consider all relevant evidence presented in deciding whether to revoke the labor certification.

(3) The Certifying Officer must inform the employer within 30 days of receiving any rebuttal evidence whether or not the labor certification will be revoked.

(4) The Certifying Officer must send a notice to the employer, with a copy to the alien, informing the employer whether or not the labor certification has been revoked.

(5) If the labor certification is revoked, the Certifying Officer must also send a copy of the notification to the INS.

(6) If rebuttal evidence is not filed by the employer, the Notice of Intent to Revoke becomes the final decision of the Secretary.

(7) If the Employer files rebuttal evidence and the Certifying Officer determines that the certification should be revoked, the employer may file an appeal under § 656.26.

Subpart D—Determination of Prevailing Wage

§ 656.40 Determination of prevailing wage for labor certification purposes.

(a) *Application process.* The employer must complete the appropriate sections of the PWDR form and submit it to the SWA having jurisdiction over the proposed area of intended employment. The SWA must enter its wage determination on the PWDR form and return the form with its endorsement to the employer. Unless the employer chooses to appeal the SWA's prevailing wage determination under § 656.41(a), it submits the PWDR form *and* the *Application for Alien Employment Certification* to the ETA servicing office.

(b) *Determinations.* The SWA determines the prevailing wage as follows:

(1) Except as provided in paragraphs (e) and (f) of this section, if the job opportunity is in an occupation covered by a collective bargaining agreement (CBA) which was negotiated at arms-length between the union and the employer, the wage rate set forth in the CBA agreement is considered as not adversely affecting the wages of U.S. workers similarly employed, that is, it is considered the "prevailing wage" for labor certification purposes.

(2) If the job opportunity is in an occupation which is not covered by a CBA, the prevailing wage for labor certification purposes shall be the arithmetic mean, except as provided in paragraphs (b)(3) of this section, of the wages of workers similarly employed in the area of intended employment. The wage component of the Occupational Employment Statistics Survey shall be used to determine the arithmetic mean, unless the employer provides an acceptable survey under paragraph (g) of this section.

(3) If the employer provides a survey acceptable under paragraph (g) of this section provides a median and does not provide an arithmetic mean, the median shall be the prevailing wage applicable to the employer's job opportunity.

(4) The employer may utilize a current DBA or SCA wage determination in the occupation and the area of intended employment as the prevailing wage.

(c) *Validity Period.* The SWA must specify the validity period of the prevailing wage on the PWDR form, which in no event may be less than 90 days or more than 1 year from the determination date entered on the PWDR. To use a SWA PWD, employers must file their applications or begin the recruitment required by §§ 656.17(c) or 656.21 within the validity period specified by the SWA.

(d) *Similarly employed.* For purposes of this section, except as provided in paragraphs (e) and (f) of this section, "similarly employed" means "having substantially comparable jobs in the occupational category in the area of intended employment," except that, if a representative sample of workers in the occupational category cannot be obtained in the area of intended employment, "similarly employed" means:

(1) "Having jobs requiring a substantially similar level of skills within the area of intended employment"; or

(2) If there are no substantially comparable jobs in the area of intended employment, "Having substantially comparable jobs with employers outside of the area of intended employment".

(e) *Institutions of higher education and research entities.* In computing the prevailing wage for a job opportunity in an occupational classification in an area of intended employment for an employee of an institution of higher education, or an affiliated or nonprofit entity; a nonprofit research organization; or a Governmental research organization, the prevailing wage level only takes into account the wage levels of employees at such institutions and organizations in the area of intended employment.

(1) The organizations listed in this paragraph (e) are defined as follows:

(i) An *institution of higher education* is defined in section 101(a) of the Higher Education Act of 1965. Section 101(a) of that act, 20 U.S.C. 1001(a) (2000), provides that an "institution of higher education" is an educational institution in any State that —

(A) Admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(B) Is legally authorized within such State to provide a program of education beyond secondary education;

(C) Provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(D) Is a public or other nonprofit institution; and

(E) Is accredited by a nationally recognized accrediting agency or association or, if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time.

(ii) *Affiliated or related nonprofit entity.* A nonprofit entity (including but not limited to a hospital and a medical or research institution) that is connected or associated with an institution of higher education, through shared ownership or control by the same board or federation, operated by an institution of higher education, or attached to an institution of higher education as a member, branch, cooperative, or subsidiary;

(iii) *Nonprofit research organization or Governmental research organization.* A research organization that is either a nonprofit organization or entity that is primarily engaged in basic research and/or applied research, or a United States Government entity whose primary mission is the performance or promotion of basic research and/or applied research. Basic research is general research to gain more comprehensive knowledge or understanding of the subject under study, without specific applications in mind. Basic research is also research that advances scientific knowledge, but does not have specific immediate commercial objectives although it may be in fields of present or commercial interest. It may include research and investigation in the sciences, social sciences, or humanities. Applied research is research to gain knowledge or understanding to determine the means by which a specific, recognized need may be met. Applied research includes investigations oriented to discovering new scientific knowledge that has specific commercial objectives with respect to products, processes, or services. It may include research and investigation in the sciences, social sciences, or humanities.

(2) A *non-profit organization or entity* for the purpose of this paragraph (e) means an organization which is qualified as a tax exempt organization under the Internal Revenue Code of 1986, section 501(c)(3), (c)(4), or (c)(6) (26 U.S.C. 501(c)(3), (c)(4) or (c)(6)), and has received approval as a tax exempt organization from the Internal Revenue Service, as it relates to research or educational purposes.

(f) *Professional athletes.* In computing the prevailing wage for a professional athlete, as defined in section 212(a)(5)(A)(iii)(II) of the Act, when the job opportunity is covered by professional sports league rules or regulations, the wage set forth in those rules or regulations is considered the prevailing wage. Section 212(a)(5)(A)(iii)(II), 8 U.S.C. 1182(a)(5)(A)(iii)(II) (1999), defines a professional athlete as an individual who is employed as an athlete by—

(1) A team that is a member of an association of six or more professional sports teams whose total combined revenues exceed $10,000,000 per year, if the association governs the conduct of its members and regulates the contests and exhibitions in which its member teams regularly engage; or

(2) Any minor league team that is affiliated with such an association.

(g) *Employer provided wage information.* (1) If the job opportunity is not covered by a CBA, the SWA must consider wage information provided by the employer in making a prevailing wage determination.

(2) In each case where the employer submits a survey or other wage data for which it seeks acceptance, the employer must provide the SWA with enough information about the survey methodology, including such items as sample frame size and source, sample selection procedures, and survey job descriptions, to allow the SWA to make a determination about the adequacy of the data provided and validity of the statistical methodology used in conducting the survey in accordance

with guidance issued by the ETA National Office.

(3) The survey submitted to the SWA must be based upon recently collected data:

(i) A published survey must have been published within 24 months of the date of submission to the SWA, must be the most current edition of the survey, and the data upon which the survey is based must have been collected within 24 months of the publication date of the survey.

(ii) A survey conducted by the employer must be based on data collected within 24 months of the date it is submitted to the SWA.

(4) A prevailing wage determination based upon an employer-provided wage survey is applicable only to the specific action for which the wage determination is issued and does not supersede the prevailing wage rate for an occupation based upon the arithmetic mean provided by the Occupational Employment Statistics program, as applied to other requests for prevailing wage determinations.

(5) If the employer-provided survey is found not to be acceptable, the SWA must inform the employer in writing of the reasons the survey was not accepted.

(6) The employer, after receiving notification that the survey it provided for the SWA's consideration is not acceptable, may file supplemental information as provided in paragraph (h) of this section, file a new request for a prevailing wage determination, or appeal under § 656.41.

(h) *Submittal of supplemental information by employer.* (1) If the employer disagrees with the skill level assigned to its job opportunity, or if the SWA informs the employer that its survey is not acceptable, the employer may submit supplemental information to the SWA concerning the skill level of its job opportunity or the survey it provided for the SWA's consideration.

(2) The SWA must consider one supplemental filing about the employer's survey or the skill level the SWA assigned to the job opportunity. If the SWA does not accept the employer's survey after considering the supplemental information, or affirms its determination concerning the skill level, it must inform the employer of the reasons for its decision.

(3) The employer may then apply for a new wage determination or appeal under § 656.41.

(i) *Wage cannot be lower than required by any other law.* No prevailing wage determination for labor certification purposes made under this section permits an employer to pay a wage lower than the highest wage required by any applicable Federal, State or local law.

(j) *Fees prohibited.* No SWA employee may charge a fee in connection with the filing of a request for a prevailing wage determination, responding to such a request, or responding to a request for a review of a SWA prevailing wage determination under § 656.41.

Alternative One for § 656.41

§ 656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

(a) *Review of SWA prevailing wage determinations.* Any employer desiring review, including judicial review, of a SWA prevailing wage determination must make a request for such a review to the ETA Prevailing Wage Panel within 21 calendar days of receiving a determination from the SWA. The request for review must be in writing and mailed by certified mail to the SWA that issued the prevailing wage determination (PWD) within 21 calendar days of the date of the PWD; clearly identify the particular prevailing wage determination from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the SWA up to the date of the PWD received from the SWA, and all the documents the employer received from the SWA concerning the PWD.

(b) *Transmission of request to the panel.* (1) Upon the receipt of a request for review, the SWA must review the employer's request and accompanying documentation and include any material sent to the employer by the SWA up to the date of the PWD that may have been omitted by the employer.

(2) The SWA must send a copy of the employer's appeal, including any material added under paragraph (b)(1) of this section, to the U.S. Department of Labor, ETA Prevailing Wage Panel, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room C–4318 Washington, DC 20210.

(3) The SWA must send a copy of the employer's appeal and any material added by the SWA under paragraph (b)(1) of this section to the employer. The employer may furnish or suggest directly to the ETA Prevailing Wage Panel the addition of any documentation which is not among the materials sent to the ETA Prevailing Wage Panel by the SWA, but which was submitted before the issuance of the prevailing wage determination. The employer must submit such documentation in writing, and shall send a copy to the SWA which issued the PWD.

(c) *Designations.* The size and composition of the ETA Prevailing Wage Panel is determined by the Chief, Division of Foreign Labor Certifications. Staffing of the panel may include both SWA and Federal staff and may include specialists in survey methodology, prevailing wage determinations, and occupational analysis and classification.

(d) *Review on the record.* The ETA Prevailing Wage Panel reviews the SWA prevailing wage determination solely on the basis upon which the prevailing wage determination was made and upon the request for review, and may:

(1) Affirm the prevailing wage determination issued by the SWA;

(2) Modify the prevailing wage determination; or

(3) Remand the matter to the SWA for further action.

(e) *Request for review by BALCA.* Any employer, desiring review, including judicial review, of a determination of the PWP must make a request for review of the determination by the Board of Alien Labor Certification Appeals within 21 calendar days of the receipt of the decision of the ETA Prevailing Wage Panel.

(1) The request for review must be in writing and addressed to the Chairperson of the ETA Prevailing Wage Panel. Upon receipt of a request for review, the Chairperson must immediately assemble an indexed appeal file in chronological order with the index on top followed by the most recent document.

(2) The Chairperson must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, Suite 400–N, Washington, DC 20001–8002.

(3) The BALCA handles the appeals under §§ 656.26 and 27 of this part.

Alternative Two for § 656.41

§ 656.41 ETA Prevailing Wage Panel review of prevailing wage determinations.

(a) *Review of SWA prevailing wage determinations.* Any employer desiring review, including judicial review, of a SWA prevailing wage determination must make a request for such a review to the ETA Prevailing Wage Panel within 21 calendar days of receiving a determination from the SWA. The request for review must be in writing and mailed by certified mail to the SWA that issued the prevailing wage determination (PWD) within 21 calendar days of the date of the PWD; clearly identify the particular prevailing wage determination from which review is sought; set forth the particular grounds for the request; and include all the materials pertaining to the PWD submitted to the SWA up to the date of the PWD received from the SWA, and all the documents the employer received from the SWA concerning the PWD.

(b) *Transmission of request to the panel.* (1) Upon the receipt of a request for review, the SWA must review the employer's request and accompanying documentation and include any material sent to the employer by the SWA up to the date of the PWD that may have been omitted by the employer.

(2) The SWA must send a copy of the employer's appeal, including any material added under paragraph (b)(1) of this section, to the U.S. Department of Labor, ETA Prevailing Wage Panel, Division of Foreign Labor Certifications, 200 Constitution Avenue, NW., Room C–4318 Washington, DC 20210.

(3) The SWA must send a copy of the employer's appeal and any material added by the SWA under paragraph (b)(1) of this section to the employer. The employer may furnish or suggest directly to the ETA Prevailing Wage Panel the addition of any documentation which is not among the materials sent to the ETA Prevailing Wage Panel by the SWA, but which was submitted before the issuance of the prevailing wage determination. The employer must submit such documentation in writing, and must send a copy to the SWA which issued the PWD.

(c) *Designations.* The size and composition of the ETA Prevailing Wage Panel is determined by the Chief, Division of Foreign Labor Certifications. The panel's staff may include both SWA and Federal staff and may include specialists in survey methodology, prevailing wage determinations, and occupational analysis and classification.

(d) *Review on the record.* The ETA Prevailing Wage Panel reviews the SWA prevailing wage determination solely on the basis upon which the prevailing wage determination was made and upon the request for review, and may:

(1) Affirm the prevailing wage determination issued by the SWA;

(2) Modify the prevailing wage determination; or

(3) Remand the matter to the SWA for further action.

(e) *Request for review by BALCA.* Any employer, desiring review, including judicial review, of a determination of the PWP must make a request for review of the determination by the Board of Alien Labor Certification Appeals within 21 calendar days of the receipt of the decision of the ETA Prevailing Wage Panel.

(1) The request for review must be in writing and addressed to the Chairperson of the ETA Prevailing Wage Panel. Upon receipt of a request for review, the Chairperson must immediately assemble an indexed appeal file in chronological order with the index on top followed by the most recent document.

(2) The Chairperson must send the Appeal File to the Office of Administrative Law Judges, Board of Alien Labor Certification Appeals, 800 K Street, Suite 400–N, Washington, DC 20001–8002.

(3) The BALCA handles the appeals under §§ 656.26 and 27 of this chapter.

(f) *Review of Wage Determination Involving the Service Contract Act or Davis-Bacon Act.*

(1) Where an employee seeks to challenge a SWA prevailing wage rate that is based on a wage determination issued under either the McNamara-O'Hara Service Contract Act (SCA) or the Davis-Bacon Act (DBA), the employer must either:

(i) Follow the procedures set forth at 29 CFR 4.56 and 29 CFR Part 8, subpart B, where the challenged rate is based on a wage determination issued under the SCA, or

(ii) Follow the procedures set forth at 29 CFR 1.8, 1.9, and 29 CFR Part 7, subpart B, where the challenged rate is based on a wage determination issued under the DBA.

(2) Limitations contained in the regulations as to who may seek review of a wage determination (e.g., 29 CFR 7.2(b)) or the timeliness of such review with regard to certain procurement actions (e.g., 29 CFR 8.6(b)) do not apply to the review of SWA prevailing wage under this paragraph (f).

Signed at Washington, DC, this 24th day of April, 2002.

Emily Stover DeRocco,

Assistant Secretary for Employment and Training.

[The following two forms will not appear in the Code of Federal Regulations.]

BILLING CODE 4510–30–P

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

IMPORTANT: Please read these instructions carefully before completing Form ETA 9088 (Prevailing Wage Determination Request).

Electronic means (i.e. scanning technology) may be used to capture the information on these forms. To ensure the accuracy of readability and avoid rejections, it is preferred that the forms be completed using the ETA 9088 program available from the U.S. Department of Labor's web site at "http://ows.doleta.gov". If you hand-write the form, print legibly in ink using a medium to thick pen. Print only in CAPITAL LETTERS and avoid contact with the edge of the boxes. If you use a typewriter to complete the form, use a font equivalent to 12 - 14 pt. Center each letter in the box and use only CAPITAL LETTERS. Be sure to sign and date the form.

To knowingly and willingly furnish any false information in the preparation of Form ETA 9088 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to five years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

Supporting Documents

If either Collective Bargaining Agreement (CBA) or Employer Provided Survey are marked, the appropriate supporting document must be attached when the ETA Form 9088 is submitted. Without these documents the SWA will use OES to make the determination.

When submitting CBAs, please include a note indicting whether the relevant passages of the document are located. Highlighting the table of contents or tabbing the sections is also acceptable.

Employers seeking to utilize the Davis Bacon Act and the Service Contract Act wage determinations should include sufficient documentation to identify the determination relied upon.

Include a copy of all relevant pages for surveys used. Be sure the information includes job descriptions, wages, and the specific area covered by the wages. The information must also provide a description of the methodology used to determine the sample and average stated. Refer to 20 CFR 656.40(g) for the complete requirements.

OMB Notice Paperwork Reduction Project 1205-0015

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 3/4 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210

Examples of how best to fill out Form ETA 9088

A. For optimum accuracy, please print in capital letters and avoid contact with the edge of the box.
The following will serve as an example:

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

B. For optimum accuracy, please print carefully and avoid contact with the edges of the box. The following will serve as an example:

1	2	3	4	5	6	7	8	9	0

C. Shade Circles Like This--> ●
Not Like This--> ⊗ ✓

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

Submission Information

Submit a completed Form ETA 9088 to the State Workforce Agency (SWA) with jurisdiction over the location where the job opportunity is offered. Addresses for the SWA's are available on-line at http://ows.doleta.gov.

Instructions for Section I
Employer's Information

1. **Wage Source Requested**: Enter the source of the wage information from which the employer is requesting a prevailing wage determination. Unless otherwise requested, the state will provide a prevailing wage based on the Occupational Employment Statistics Survey. If an alternative wage source is requested, such as employer provided survey, Service Contract Act, Davis-Bacon Act, or collective bargaining agreement, fill in the appropriate oval. Provide relevant supporting documentation.

2. **Full Legal Name of Employer**: Enter the full legal name of the business, firm, or organization, or, if an individual, enter the name used on legal documents. Some abbreviation may be required for long names.

3. **Federal Employer I.D. Number**: Enter the employer's nine-digit Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

4. **Employer's Telephone Number**: Enter the employer's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/).

5. **Return Fax Number**: ***This question is optional.*** If the technology is available to return the application via facsimile transmission, and you would like the application returned via facsimile, enter the fax number, area code first, to which you want the SWA to send the final determination. This may be the fax number of a person or entity other than the employer (e.g., an attorney or agent). If you want the application mailed, leave the Return Fax Number blank.

6. **Contact/Attorney/Agent's Telephone Number**: ***This question is optional.*** Enter the contact/attorney/agent's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/). This question MUST be entered if Contact/Attorney/Agent's Name (question 8) is filled in.

7. **Employer's Address**: Enter the address of the employer's principle place of business.

8. **Contact/Attorney/Agent's Name**: Enter the full legal name.

9. **Correspondence Address**: ***This question is optional.*** Enter the address (if different from the Employer's Address initially entered) where correspondence should be sent.

10. **E-mail Address**: ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

Instructions for Section II
Location of Work

1. **City and State**: Enter the city and state of the physical location where the work will actually be performed.

Instructions for Form ETA 9088 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9088 - Prevailing Wage Determination

PageLink

Enter a six-digit number. this is used to help keep all pages of your form together. It must be the same on all pages of ETA Form 9088. ***If you are completing the form using the program provided by DOL, the PageLink will be entered automatically. If you are completing this form manually, you must enter this number yourself.*** Please do not use numbers like 111111,222222, or 123456. An example of one way to generate a manual page link is to use the time (a combination of the hours, minutes, and seconds) the form is submitted. For example, a form completed and submitted at 1:55 PM would have a PageLink of 015513.

Instructions for Section III
Job Opportunity

1. **Job Title:** Self-Explanatory

2. **Education or Training:** Indicate the minimum diploma, degree, or training for worker to satisfactorily perform the job description.

3. **Field of Study:** Enter the field of study for the above training or education.

4. **Months of Training:** Enter the minimum number of months of training necessary for the worker to carry out the described duties.

5. **Months of Experience:** Enter the minimum number of months of experience necessary for the worker to carry out the described duties.

6. **Field of Experience:** Enter the type of experience necessary for the worker to carry out the described duties.

7. **Job Duties:** Describe the actual work to be performed. Step by step detail description of the duties (work tasks) which make up the job. Avoid technical terms as much as possible. If they must be used, define them. The description needs to include: equipment that will be used, level of supervision that will be provided, and the provision of tools and equipment. Example for Job Title Bookkeeper Supervisor: "Supervise bookkeepers. Ensure their work meets the company quality standards and that they are trained on all new software. Resolve any personnel issues that may arise.

8. **Specific Skills or Other Requirements:** Enter any job-related specific skill or additional requirements necessary to perform the job. If there is a specific minimum level for the skill, include it here. Examples of specific skills include: licenses or permits that are necessary, ability to type 40 words per minute, ability to lift 40 pounds, ability to live on premises, knowledge of a programming language (such as COBOL, C, Java, etc...), and certifications (such as CPR certified, MCSE certified, CPA certified, etc...)

State Agency Prevailing Wage Determination

Do not make any marks in this area, the appropriate State Workforce Agency (SWA) will complete this section.

Prevailing Wage Determination Request

ETA Form 9088
OMB Approval:
Expiration Date:

U.S. Department of Labor
Employment and Training Administration

I. Employer's Information

(1) Wage Source Requested:
*(see instructions for full details) Fill the **ONE** appropriate circle*

Employer ○ SCA ○ DBA ○ CBA ○

(2) Full Legal Name of Employer (use second line only if necessary, otherwise leave blank.)

(3) Federal Employer I.D. Number (9 digits) (EIN from IRS) -

(4) Employer's Telephone Number - - /

(5) Return FAX Number (Optional) -

(6) Contact/Attorney/Agent's Telephone Number (Optional) - - /

(7) Employer's Address

Number / Street (use second line only if necessary, otherwise leave blank.)

City | State | Postal Code

(8) Contact/Attorney/Agent's Name - Family name on the first line, Given name then initial on the second line.

(9) Correspondence Address (only use this area if correspondence should be sent to a location other than the Employer's address above.

Number / Street (use second line only when necessary, otherwise leave blank.)

City | State | Postal Code

(10) Contact/Attorney/Agent's E-mail Address (Optional)

@

II. Location of Work

City | State

OMB Notice

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 3/4 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210.

PageLink

PageLink must be the same on all three (3) pages, including the last page

Draft

Prevailing Wage Determination Request

ETA Form 9088
OMB Approval:
Expiration Date:

U.S. Department of Labor
Employment and Training Administration

III. Job Opportunity

(1) Job Title

(2) Education or Training: Highest Level Required

Fill Only ONE Circle ◯ None ◯ High School ◯ Technical ◯ Vocational ◯ Apprenticeship ◯ Associate ◯ Bachelor ◯ Master ◯ Doctorate

(3) Field of Study - Leave blank if None or High School

(4) Months of Training
Leave blank if None, High School, Associate, Bachelor, Master, or Doctorate was selected in Question 2.

(5) Months of Experience

(6) Field of Experience

(7) Job Duties

Prevailing Wage Determination Request

ETA Form 9088
OMB Approval:
Expiration Date:

U.S. Department of Labor
Employment and Training Administration

III Job Opportunity (Continued...)

(8) Specific Skills or Other Requirements

State Agency Prevailing Wage Determination

State Agency's Case/Tracking Number

Occupational Code

Level

Prevailing Wage
$. /
Year Month 2 Weeks Week Hour

Prevailing Wage Source
◯ SCA ◯ DBA ◯ CBA ◯ OES ◯ Employer

Determination Date
M M / D D / Y Y Y Y

Expiration Date
M M / D D / Y Y Y Y

State Agency Endorsement

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

IMPORTANT: Please read these instructions carefully before completing Form ETA 9089 (Application for Permanent Labor Certification).

These instructions pertain only to applications for Permanent Labor Certification. They are not to be used when filing for Temporary Labor Certifications.

Electronic means (i.e. scanning technology) may be used to capture the information on these forms. To ensure the accuracy of readability and avoid rejections, it is preferred that the forms be completed using the ETA 9089 program available from the U.S. Department of Labor's web site at "http://ows.doleta.gov". If you hand-write the form, print legibly in ink using a medium to thick pen. Print only in CAPITAL LETTERS and avoid contact with the edge of the boxes. If you use a typewriter to complete the form, use a font equivalent to 12 - 14 pt. Center each letter in the box and use only CAPITAL LETTERS. Be sure to sign and date the form.

To knowingly and willingly furnish any false information in the preparation of Form ETA 9089 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to five years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

OMB Notice Paperwork Reduction Project 1205-0015

Persons are not required to respond to this collection of information unless it displays a current, valid OMB control number. Respondent's obligation to reply to these reporting requirements is mandatory (INA, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 2 1/5 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the Employment and Training Administration at U.S. Department of Labor * Room C-4318 * 200 Constitution Avenue, NW * Washington, DC * 20210

Submission Information

Submit the completed Form ETA 9089 to an ETA Application Processing Center via mail at the following address: Department of Labor * P.O. Box 13640 * Philadelphia, PA * 19101.

Examples of how best to fill out Forms ETA 9098 and 9099

A. For optimum accuracy, please print in capital letters and avoid contact with the edge of the box.
The following will serve as an example:

A	B	C	D	E	F	G	H	I	J	K	L	M
N	O	P	Q	R	S	T	U	V	W	X	Y	Z

B. For optimum accuracy, please print carefully and avoid contact with the edges of the box. The following will serve as an example:

1	2	3	4	5	6	7	8	9	0

C. Shade Circles Like This--> ●
Not Like This--> ⊗ ✓

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section I
Application Information

1. **Is application a conversion request?** If the application is submitted with the intent of converting a previous application with the same job title, job description, and job requirements to the new system select Yes. Otherwise, select No. **Note** - if Yes is selected, a copy of the previously submitted application and documentary proof of the associated priority date (i.e., official notification letter stating the receipt date) must be submitted as an attachment to the application.

Instructions for Section II
Employer's Information

1. **Full Legal Name of Employer:** Enter the full legal name of the business, firm, or organization, or, if an individual, enter the name used on legal documents. Some abbreviation may be required for long names.

2. **Federal Employer I.D. Number:** Enter the employer's nine-digit Federal Employer Identification Number (EIN) assigned by the Internal Revenue Service.

3. **Employer's Telephone Number:** Enter the employer's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/).

4. **Return Fax Number:** ***This question is optional.*** If the technology is available to return the application via facsimile transmission, and you would like the application returned via facsimile, enter the fax number, are code first, to which you want the SWA to send the final determination. This may be the fax number of a person or entity other than the employer (e.g., an attorney or agent). If you want the application mailed, leave the Return Fax Number blank.

5. **Contact/Attorney/Agent's Telephone Number:** ***This question is optional.*** Enter the contact/attorney/agent's telephone number, area code first. If necessary, enter an extension in the space provided following the slash (/). This question MUST be entered if Contact/Attorney/Agent's Name (question 8) is filled in.

6. **Employer's Address:** Enter the address of the employer's principle place of business.

7. **Contact/Attorney/Agent's Name:** ***This question is optional.*** Enter the full legal name of a contact.

8. **Correspondence Address:** ***This question is optional.*** Enter the address (if different from the Employer's Address initially entered) where correspondence should be sent.

9. **E-mail Address:** ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

10. Select Yes or No.

Instructions for Section III
Wage Offer Information

1. **State Agency's Case/Tracking Number:** Enter the case/tracking number assigned by the SWA on the supporting ETA Form 9088.

2. **Offered Wage:** Enter the wage rate offered by the employer. Fill the one appropriate circle to indicate whether the offered wage is to be paid in terms of year, month, two-weeks, week, or hour.

 Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section III - Continued...
Wage Offer Information

3. Select Yes or NO.

4. Select Yes, NO, or N/A (not applicable). Use N/A if there are no commissions, bonuses, or other incentives included in the offered wage.

PageLink

Enter a six-digit number. this is used to help keep all pages of your form together. It must be the same on all pages of ETA Form 9088. ***If you are completing the form using the program provided by DOL, the PageLink will be entered automatically. If you are completing this form manually, you must enter this number yourself.*** Please do not use numbers like 111111,222222, or 123456. An example of one way to generate a manual page link is to use the time (a combination of the hours, minutes, and seconds) the form is submitted. For example, a form completed and submitted at 1:55 PM would have a PageLink of 015513.

Instructions for Section IV
Recruitment Efforts Information

1. **Occupation Identification:** Select the statement for the required recruiting efforts. See 20 CFR 656.17 and 656.18 for details.

   * If the Occupation Type is Special Recruitment (e.g., College and University instructional position), you need only complete questions 8 to 13 on this page of the application.
   * If the Occupation Type is Non-professional, you must complete questions 2 to 6 and questions 8 to 13 on this page of the application. You do not need to complete question 7.
   * If the Occupation Type is Professional, you must complete all questions on this page of the application.

2. **Start date for the job order in America's Job Bank:** The begin date for the position as listed in America's Job Bank

3. **Newspaper of General Circulation:** The name of the newspaper the help wanted advertisement was circulated in.

4. Enter the date the advertisement was run in the newspaper or professional journal identified in Question 3.

5. Enter the date the advertisement was run in the newspaper of general circulation identified in Question 6.

6. **Newspaper or Professional Journal:** The name of the newspaper or professional journal in which the second help wanted advertisement was circulated.

7. Enter the dates for at least three of the recruiting efforts listed. Use for professional occupations only.

8. Select the appropriate notice statement.

9. **How many U.S. workers:** Enter the number of U.S. workers that applied for the position

10. Select Yes, No, or N/A (not applicable). If no layoffs occurred, use N/A.

11. Select Yes, No, or N/A (not applicable). If no U.S. workers applied, use N/A.

12. Select Yes or No.

13. Select Yes or No.

Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section V
Designation of Agent/Attorney

1. **Name of Agent or Attorney:** The full name of the agent or attorney. Enter the family (last) name on the first line and the given (first) name and initial on the second line.

2. **Agent's/Attorney's Telephone Number:** A ten-digit telephone number (include the area code). If applicable, use the 4 digits after the slash for the extension.

3. **Agent's/Attorney's Address:** Self-explanatory

4. **E-mail Address:** ***This question is optional.*** Enter the logon identity portion of the e-mail address on the first line. Enter the ISP provider portion of the e-mail address on the second line. Do not enter the @ symbol. Please note the following example: if an e-mail address is maeve@doleta.gov, the logon identity, maeve, would be entered on the first line while the ISP provider, doleta.gov, would be entered on the second line.

5. **Agent's/Attorney's Signature:** The signature of the agent/attorney that is representing the employer. The date the agent's/attorney's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

6. **Employer's Signature:** The signature of the employer authorizing the agent/attorney. The date the employer's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

Instructions for Section VI
Alien's Information

1. **Full Legal Name of Alien:** The full legal name of the alien for whom the Permanent application is applied.

2. **Country of Alien's Birth:** Enter the country where the alien was born.

3. **Alien's Current Address:** Enter the address where the alien currently resides. If the address is outside the U.S., use the country line.

4. **Current Visa:** Enter the current visa type held by the alien.

5. **Education:** Indicate the highest diploma or degree held by the alien.

6. **Year Obtained:** Enter the year the highest diploma or degree held by the alien was received.

7. **School Where Obtained:** Enter the name of the school at which the field of study was conducted.

8. **Field of Study or Training:** Enter the field of study for the education/training above.

9. **Months of Study or Training:** Enter the number of months of training completed by the alien. Leave this blank if none, high school, associate, bachelor, master, or doctorate was selected for Question 5.

10. **Months of Experience:** If applicable, enter the number of months experience held by the alien in the field of experience identified in Question 11.

11. **Field of Experience:** Enter the alien's field of experience.

12. Select Yes or NO.

13. Select Yes or NO.

Instructions for Form ETA 9089 Continued On Next Page...

U.S. Department of Labor
Employment and Training Administration

OMB Approval:
Expiration Date:

Application Instructions ETA Form 9089
Application for Permanent Employment Certification

Instructions for Section VI - Continued...
Alien's Information

14. Select Yes or NO. If Yes, enter the date the alien started working for the employer in the space provided.

15. Select Yes, NO, or N/A (not applicable). Use N/A if the position is NOT a household service worker.

Instructions for Section VII
Job Opportunity Information

1. ***Foreign Education Equivalent Acceptable:*** Select Yes or No indicating whether a foreign education equivalent is acceptable.

2. Select Yes or No.

3. Select Yes or NO.

4. Select Yes or NO. If Yes is selected, answer Question 5. Otherwise go straight to Question 6.

5. Select Yes or NO. Only answer this question if Question 4 is answered Yes.

6. Select Yes or No.

7. Select Yes or No.

8. Select Yes or No.

9. Select Yes or No.

Instructions for Section VIII
Declaration of Employer

1. **Name of Hiring or Other Designated Official**: The full legal name of the hiring or authorized official.

2. **Title of Hiring or Other Designated Official**: The title of the hiring or authorized official.

3. **Signature**: The signature of the hiring or authorized official. The date the hiring or authorized official's signature was affixed to the application should be entered in the space provided. The date should be entered in an MM/DD/YYYY format.

For U.S. Government Agency Use Only

Do not make any marks in this area.

Application for Permanent Employment Certification

U.S. Department of Labor
Employment and Training Administration

ETA Form 9089
OMB Approval:
Expiration Date:

I. Application Information

Is this application a conversion request from a previous SWA/DOL Case? ◯ Yes ◯ No

If Yes, attach a copy of the previously submitted application and documentary proof of the associated Priority Date.

II. Employer's Information

(1) Full Legal Name of Employer (use second line only when necessary, otherwise leave it blank.)

(2) Federal Employer I.D. Number (9 digits) (EIN from IRS) -

(3) Employer's Telephone Number - /

(4) Return FAX Number (Optional) -

(5) Contact/Attorney/Agent's Telephone Number (Optional) - /

(6) Employer's Address
Number/Street (use second line only when needed, otherwise leave it blank.)

City | State | Postal Code

(7) Contact/Attorney/Agent's Name - Optional/Family name on the first line, Given name then initial on the second line.

(8) Correspondence Address - Optional/Only use if correspondence should be sent to a location other than the Employer's or Agent's/Attorney's address.
Number / Street (use second line only when needed, otherwise leave it blank.)

City | State | Postal Code

(9) Contact/Attorney/Agent's E-mail Address (Optional)
@

(10) Yes ◯ No ◯ Is the employer a closely held corporation or a partnership in which the alien has an ownership interest, or is there a familial relationship between the stockholders, partners, corporate officers, incorporators, and the alien?

III. Wage Offer Information

NOTE- if the offered wage is less than the Prevailing Wage (from the supporting ETA-9088), this application will be denied.

(1) State Agency's Case/Tracking Number

(2) Offered Wage $. **PER** ◯ Hour ◯ Month ◯ Week ◯ Year ◯ Bi-Weekly

Fill the *one* appropriate circle for each of thefollowing:

	Yes	No	N/A	
(3)	◯	◯		Do you promise to pay the alien the prevailing wage?
(4)	◯	◯	◯	If the offered wage is based upon commissions, bonuses, or other incentives, do you guarantee to pay the offered wage on a weekly, bi-weekly, or monthly basis?

PageLink

PageLink must be the same on all five (5) pages, including the last page

***NOTE:* See OMB notice on page 3 of this form.**

Draft

Application for Permanent Employment Certification | **U.S. Department of Labor** Employment and Training Administration | ETA Form 9089 OMB Approval: Expiration Date:

IV. Recruitment Efforts Information

(1) Occupation Identification

- ○ The application is for an occupation which has been identified for **special recruitment processes**
- ○ This application is for **non-professional occupations** (those for which a Bachelor's Degree or higher is not normally required) for which, in the 6-month period preceding the filing of the application, the Employer has placed a job order with SWA; two advertisements in the Sunday edition of a newspaper of general circulation in two different months.
- ○ This application is for **professional occupations** (those for which at least a Bachelor's Degree is normally required) for which the employer has taken the following additional recruitment steps in the 6-month period preceding the filing of the application: a job order placed with SWA; two advertisements in the Sunday edition of a newspaper of general circulation in two different months OR an advertisement in an appropriate professional Journal; at least three of the below.

* If the Occupation Type is Special Recruitment, you need only complete questions 8 to 13 on this page of the application.
* If the Occupation Type is Non-professional, you must complete questions 2 to 6 and questions 8 to 13 on this page of the application. You do not need to complete question 7
* If the Occupation Type is Professional, you must complete all questions on this page of the application.

(2) Start date for the job order with SWA M M / D D / Y Y Y Y End date for the job order with SWA M M / D D / Y Y Y Y

(3) Name of Newspaper of General Circulation Advertisement Placed With

(4) Date of advertisement identified in Question 3 / /

(5) Date of advertisement identified in Question 6 / /

(6) Name of Newspaper or Professional Journal Advertisement Placed With

(7) For Professional Occupations ONLY, fill in the date, using MM/DD/YYYY format, the job opportunity was advertised through three of the advertising mediums listed below:

Job Fair	/ /	On Campus Recruiting	/ /
Own Web Site Posting	/ /	Trade or Professional Organization	/ /
Job Search Web Site	/ /	Private Employment Firm	/ /

(8) Which of the following is true:

- ○ There is no bargaining representative, therefore, a notice of this filing has been posted for 10 days in a conspicuous location at the place of employment.
- ○ Notice of this filing has been provided to the bargaining representative of workers in the occupation in which the alien beneficiary will be employed.

(9) How many U.S. workers applied for the job?

Fill the one appropriate circle for each of the following:

	Yes	No	N/A	
(10)	○	○	○	If a layoff occurred within 6 months immediately preceding the filing of the application, were the U.S workers who performed the majority of the essential duties involved in the job opportunity, who were able, willing, qualified and available for work, offered the job?
(11)	○	○	○	If U.S. workers applied for the job opportunity, were they rejected for lawful, job related reasons?
(12)	○	○		On the date the application was signed or submitted was there a strike, lockout, or work stoppage in the course of a labor dispute in the occupation in which the alien beneficiary would be employed at the place of employment?
(13)	○	○		Has the job opportunity been and is still clearly open to any qualified U.S. worker?

Application for Permanent Employment Certification | **U.S. Department of Labor** Employment and Training Administration | ETA Form 9089 OMB Approval: Expiration Date:

V. Designation of Agent/Attorney

(1) Name of Agent or Attorney (Family name on the first line, Given name then initial on the second line)

(2) Agent's/Attorney's Telephone Number -

(3) Agent's/Attorney's Address

Number / Street (use second line only if necessary, otherwise leave blank.)

City | State | Postal Code

(4) E-mail Address (Optional)

@

I hereby agree to act as the agent/attorney for the applicant listed on page 1 of this application.

(5) **Agent's/Attorney's Signature – DO NOT let signature extend beyond the box.** Date Signed: M M / D D / Y Y Y Y

I hereby designate the above as my agent/attorney.

(6) **Employer's Signature – DO NOT let signature extend beyond the box.** Date Signed: M M / D D / Y Y Y Y

OMB Notice

Persons are not required to respond to this collection of information unless it displays a currently valid OMB control number. Respondents obligation to reply to these reporting requirements are mandatory (INA Act, Section 212 (a) (5) (A)). Public reporting burden for this collection of information is estimated to average 2 1/5 hour per response, which includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the following address:

Employment and Training Administration, Department of Labor, Room C-4318, 200 Constitution Avenue, NW., Washington, DC 20210. (Paperwork Reduction Project 1205-0015).

DO NOT SEND THE COMPLETED FORM TO THIS OFFICE.

Application for Permanent Employment Certification | **U.S. Department of Labor** Employment and Training Administration | ETA Form 9089 OMB Approval: Expiration Date:

VI. Alien's Information

(1) Full Legal Name of Alien - Optional/Family name on the first line, Given name then initial on the second line.

(2) Country of Alien's birth

(3) Alien's Current Address

Number/Street (use second line only when needed, otherwise leave it blank.)

City | State | Postal Code

Country (Leave blank if in the United States)

(4) Current Visa (If Applicable)

(5) Education or Training: Highest Level Achieved

Fill Only ONE Circle: ○ None ○ High School ○ Associate ○ Bachelor ○ Master ○ Doctorate ○ Technical ○ Vocational ○ Apprenticeship

(6) Year Obtained

(7) School Where Obtained

(8) Field of Study or Training - If None or High School leave blank.

(9) Months of Study or Training
Leave blank if None, High School, Associate, Bachelor, Master, or Doctorate was selected in Question 2.

(10) Months of Experience

(11) Field of Experience

Fill the one appropriate circle for each of the following:

	Yes	No	
(12)	○	○	Did the alien beneficiary gain any of the qualifying experience with the employer?
(13)	○	○	Did the employer pay for any of the alien's education or training necessary to satisfy any of the employer's job requirements?
(14)	○	○	Is the alien currently employed by the petitioning employer? If so, please note the start date in the box to the right. → Start Date M M / D D / Y Y Y Y

	Yes	No	N/A	
(15)	○	○	○	If the application is for a live-in household domestic service worker, have the employer and alien executed the required employment contract, and has the employer provided a copy to the alien?

PageLink | PageLink must be the same on all five (5) pages, including the last page | Draft

NOTE: **See OMB notice on page 3 of this form.**

Application for Permanent Employment Certification | **U.S. Department of Labor** Employment and Training Administration | ETA Form 9089 OMB Approval: Expiration Date:

VII. Job Opportunity Information

The specifics of the job opportunity are exactly the same as the Prevailing Wage Determination (ETA Form 9088) used to support this application. The State Agency Tracking number is required in the Wage Offer Section. That Prevailing Wage Determination becomes a part of this application.

Fill the one appropriate circle for each of the following:

	Yes	No	
(1)	○	○	Is a foreign educational equivalent acceptable?
(2)	○	○	Does the job require the employee to live on the employer's premises?
(3)	○	○	Does the job require split-shifts?
(4)	○	○	Does your job offer contain any requirements other than those relating to the number of months or years of experience in the occupation or alternative job, or the number of months or years of education or training required?

If YES to Number 4, answer question 5. Otherwise go straight to question 6.

	Yes	No	
(5)	○	○	Did you employ a U.S. worker to perform the job opportunity with the same combination of experience, education, skills, abilities, and special requirements as presently required within 2 years of filing the application?
	○	○	Is the combination of required experience, education, skills, abilities and special requirements normal to the occupation?
(6)	○	○	Is the job offer for full-time, year-round employment?
(7)	○	○	Is knowledge of a foreign language required to perform the job duties?
(8)	○	○	Does the job opportunity involve unlawful discrimination by race, creed, color, national origin, age, sex, religion, handicap, or citizenship?
(9)	○	○	Are the job opportunity's terms, conditions and occupational environment contrary to Federal, State or local law?

To knowingly and willingly furnish any false information in the preparation of Forms ETA 9098 and 9099 and/or any supporting documentation, or to aid, abet, or counsel another to do so is a federal offense, punishable by fine or imprisonment up to fiver years, or both (18 U.S.C. 1001). Other penalties apply as well to fraud or misuse of these documents and to perjury with respect to these forms (18 U.S.C. 1546 and 1621).

VIII. Declaration Of Employer

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury the foregoing is true and correct.

(1) Name of Hiring or Other Designated Official - Optional/Family name on the first line, Given name then initial on the second line.

(2) Title of Hiring or Other Designated Official

(3) Signature – DO NOT let signature extend beyond the box.

Date Signed: M M / D D / Y Y Y Y

FOR U.S. GOVERNMENT AGENCY USE ONLY:

Certification Stamp | U.S. Department of Labor Case No. | Dateof Certification | Date of Receipt by U.S. Department of Labor

PageLink | PageLink must be the same on all five (5) pages, including this page | Draft

NOTE: **See OMB notice on page 3 of this form.**

[FR Doc. 02–10570 Filed 5–3–02; 8:45 am]
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Federal Register

Monday,
May 6, 2002

Part VI

Department of Transportation

Federal Aviation Administration

14 CFR Parts 61, 63, and 65 Relief for Participants in Operation Enduring Freedom; Final Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 61, 63, and 65

[Docket No. FAA–2002–12199; Special Federal Aviation Regulation No. 96]

RIN 2120–AH58

Relief for Participants in Operation Enduring Freedom

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: The FAA is adopting a Special Federal Aviation Regulation (SFAR) that allows Flight Standards District Offices (FSDO) to accept expired flight instructor certificates and inspection authorizations for renewals from civilian and military personnel who serve in Operation Enduring Freedom. Additionally, this SFAR allows FSDOs to accept expired airman written test reports from civilian and military personnel who serve in Operation Enduring Freedom. This action is necessary to avoid penalizing airmen who are unable to meet the regulatory time limits of their flight instructor certificate, inspection authorization, or airmen written test report solely because of their service in Operation Enduring Freedom. The effect of this action is to give these airmen extra time to meet certain eligibility requirements in the current rules.

DATES: This SFAR is effective May 6, 2002. We must receive comments on or before June 5, 2002. This SFAR expires May 6, 2004.

ADDRESSES: Mail your comments to the Public Docket Office, Department of Transportation, 400 Seventh Street, SW., Room PL–401, Washington, DC 20590–0001. Or, send your comments through the Internet to *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: John Lynch, Certification Branch, AFS–840, General Aviation and Commercial Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3844.

SUPPLEMENTARY INFORMATION:

Your Comments Are Welcome

Under 14 CFR part 11, the FAA may issue a final rule with request for comments, which is a rule issued in final (with an effective date) that invites public comment on the rule. Although this action is a final rule and was not preceded by a notice of proposed rulemaking we invite your comments on this SFAR. The most useful comments are those that are specific and related to issues raised by the SFAR, and that explain the reason for any recommended change. We specifically invite comments on the economic, environmental, energy, federalism, international trade, energy, and overall regulatory aspects of the SFAR that might suggest a need to modify it. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this action and determining whether additional rulemaking action is needed.

To ensure consideration, you must identify the Rules Docket number in your comments, and you must submit comments to one of the addresses specified under the **ADDRESSES** section of this preamble. We will consider all communications received on or before the closing date for comments, and we may amend or withdraw this SFAR in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. We will file in the Rules Docket a report that summarizes each public contact related to the substance of this rule.

You may review the public docket containing comments on this SFAR in person in the Docket Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the address specified in the **ADDRESSES** section. Also, you may review the public docket on the Internet at *http://dms.dot.gov.*

If you want us to acknowledge receipt of your comments submitted in response to this rule, you must include with your comments a self-addressed, stamped postcard on which you identify the Rules Docket number of this rulemaking. We will date stamp the postcard and return it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this SFAR using the Internet through FAA's Web page at *http://www.faa.gov/avr/arm/nprm/nprm.htm* or through the Government Printing Office's Web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

You can get a paper copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) requires the FAA to report inquiries from small entities concerning information on, and advice about, compliance with statutes and regulations within the FAA's jurisdiction, including interpretation and application of the law to specific sets of facts supplied by a small entity. If your organization is a small entity and you have a question, contact your local FAA official. If you don't know how to contact your local FAA official, you may contact the FAA Office of Rulemaking, ARM–27, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591, telephone (888) 551–1594. Internet users can find additional information on SBREFA in the FAA's Web page at *http://www.faa.gov/avr/arm/sbrefa.html.* You may send inquiries to the following Internet address: *9–AWA–SBREFA@faa.gov.*

Background

As a result of the events of September 11, 2001, many U.S. military and civilian personnel are serving and will serve in Operation Enduring Freedom. Some of these personnel are serving or will serve in locations outside the United States. Due to the length of these assignments, flight instructor certificates, inspection authorizations, and airman written test reports held by these individuals may expire before they return home. If so, these individuals would then have to undergo the process of reestablishing their qualifications. The FAA believes that it would be unfair to penalize in this way the men and women who are serving their country in Operation Enduring Freedom.

The FAA has recently taken similar action in response to the terrorist acts of September 11. On October 12, 2001, we issued a final rule that extends the time allowed for 14 CFR part 121 and part 135 check airmen (simulator), part 121 and part 135 flight instructors (simulator), part 121 aircraft dispatchers, and part 142 training center instructors, to meet certain qualification requirements, in-flight line observation programs, or operating familiarization as part of their periodic qualifications (*See* 66 FR 52278).

The purpose of this SFAR is to respond to the needs of civilian and military personnel who are serving overseas in support of Operation Enduring Freedom. Most of these airmen will be located at military bases that are away from their normal training or work environment. There will be no FAA aviation safety inspectors, designed examiners, or FAA facilities readily available in the areas where these airmen are assigned. The FAA has determined that we should provide relief to those people who are unable to comply with the regulatory time constraints of their flight instructor certificate, inspection authorization, or airman written test report as a result of their assignment in support of Operation Enduring Freedom. Under similar circumstances in the past, the FAA has taken similar action. During Operation Desert Shield/Desert Storm, the FAA issued SFAR No. 63 for this same purpose (*See* FR 27160, June 12, 1991).

As described below, the SFAR we are adopting today is narrowly focused on providing a reasonable amount of regulatory relief to a specific class of individuals while avoiding, to the extent possible and foreseeable, unintended adverse impacts on safety. For example, although the SFAR gives additional time for renewing a flight instructor certificate, the person will still have to meet the proficiency or experience requirements of 14 CFR 61.197.

Who Is Affected by This SFAR?

To be eligible for the relief provided by this SFAR, a person must meet two criteria, one relating to the person's assignment and one to the expiration of the person's certificate, authorization, or test report.

Assignment

The person must have served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States some time between September 11, 2001 and May 6, 2004. The term "United States" is defined under 14 CFR 1.1 and means "the States, the District of Columbia, Puerto Rico, and the possessions, including the territorial waters and the airspace of those areas." The person must be able to show that he or she had the assignment by providing certain kinds of documents (described below).

Expiration

The person's flight instructor certificate, inspection authorization, or airman written test report must have expired some time between September 11, 2001 and 6 calendar months after returning to the United States, or by May 6, 2004.

Renewing a Flight Instructor Certificate

The FAA regulations governing flight instructor certificates provide that they expire 24 calendar months after the month of issuance. The regulations also provide that a flight instructor may renew his or her certificate before it expires, but if it expires, the flight instructor must get a new certificate. If you are interested in the details of how to get or renew a flight instructor certificate, please see 14 CFR 61.197 and 199.

This SFAR changes the existing regulations for a certain class of individuals by allowing FAA Flight Standards District Offices to accept for a limited amount of time an *expired* flight instructor certificate for the purpose of renewing the certificate. Therefore, a person who can show the kind of evidence required by this SFAR (described below) could apply for renewal of a flight instructor certificate under 14 CFR 61.197. A person must not exercise the privileges of a flight instructor certificate if it has expired, but the person can renew the flight instructor certificate under the limited circumstances described in this SFAR.

Airman Written Test Reports of Parts 61, 63, and 65

Generally, FAA regulations give airmen a limited amount of time to take a practical test after passing a knowledge test. For example, 14 CFR 61.39(a)(1) gives a person 24 calendar months. This SFAR permits an extension of the expiration date of the airman written test reports of parts 61, 63, and 65. The extension can be for up to 6 calendar months after returning to the United States or May 6, 2004 whichever date is earlier.

Renewing an Inspection Authorization

Under 14 CFR 65.92, an inspection authorization expires on March 31 of each year. Under 14 CFR 65.93, a person can renew an inspection authorization for an additional 12 calendar months by presenting certain evidence to the FAA during the month of March. This SFAR changes the existing regulations for individuals eligible under this SFAR by allowing FAA Flight Standards District Offices to accept for a limit amount of time an expired inspection authorization for the purpose of renewing the authorization. Therefore, a person who can show the kind of evidence required by this SFAR (described below) can apply for renewal of an inspection authorization under 14 CFR 65.93. If an inspection authorization expires while a person is assigned to Operation Enduring Freedom, the person must not exercise the privileges of the authorization until that person renews the authorization. In this case, to meet the renewal requirements the person must attend a refresher course [*See* § 65.93(a)(4)] or submit to an oral test [*See* § 65.93(a)(5)] within 6 months after returning from Operation enduring Freedom.

Evidence of Participation in Operation Enduring Freedom

Under this SFAR, a person must show one of the following kinds of evidence to establish that the person is eligible for the relief provided by this SFAR:

1. An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States some time between September 11, 2001, and May 6, 2004;
2. Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004; or
3. A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004.

Justification for Final Rule With Request for Comments

Under the Administrative Procedure Act, 5 U.S.C. 553, agencies generally must publish regulations for public comment and give the public at least 30 days notice before adopting regulations. There is an exception to these requirement if the agency for good cause finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest. When we invoke the "good cause" exception, we have to publish a statement of our finding and the reasons for it.

Under our regulations at 14 CFR part 11, we are issuing this SFAR as a final rule with request for comment. We have determined that issuing a notice of proposed rulemaking (NPRM) is unnecessary. An NPRM is unnecessary because we don't anticipate any substantive comments. When we issued SFAR No. 63 for Operation Desert Shield/Desert Storm, we received only two comments, both of which were favorable (*See* 56 FR 27160, June 12, 1991). We will consider any comments that we receive on or before the closing date for comments, and we may amend or withdraw this SFAR in light of the comments we receive. We also find

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good cause to make this SFAR effective immediately upon publication. To make this SFAR effective 30 days after publication in the **Federal Register** would be contrary to the public interest. A delayed effective date could adversely affect the ability of airmen to get renewals in a timely fashion.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that relate to this SFAR.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3507(d), the FAA has determined that there are no new requirements for information collection associated with this SFAR.

Economic Evaluation

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866, Regulatory Planning and Review, directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act requires agencies to consider international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more, in any one year (adjusted for inflation).

The Department of Transportation Order DOT 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the regulation doesn't warrant a full evaluation, a statement to the effect and the basis for it is included in the preamble. The FAA has determined that the expected economic impact of this SFAR is so minimal that it doesn't warrant a full regulatory evaluation. This action imposes no costs on operators subject to this rule; however, it does provide some unquantifiable benefits to some who would avoid the costs of having to reestablish expired credentials. Since benefits exceed costs, the FAA has determined that this SFAR is consistent with the objectives of Executive Order 12866.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide range of small entities, including small businesses, not-for-profit organizations and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule isn't expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis isn't required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

This action imposes no costs on any small entities subject to this rule; however, it does provide some unquantifiable benefits to some of them. consequently, the FAA certifies that the rule won't have a significant economic impact on a substantial number of small entities.

International Trade Impact Analysis

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, aren't considered unnecessary obstacles. The statute also requires consideration of international standards and where appropriate, that they be the basis for U.S. standards. In accordance with the above statute and policy, the FAA has assessed the potential effect of this final rule to be minimal and therefore has determined that this rule won't result in an impact on international trade by companies doing business in or with the United States.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (UMRA), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of UMRA requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed for final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This SFAR doesn't contain such a mandate. Therefore, the requirements of Title II of UMRA don't apply.

Executive Order 13132, Federalism

The FAA has analyzed this final rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action won't have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we determined that this final rule doesn't have federalism implications.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j) this rulemaking action qualifies for a categorical exclusion.

Energy Impact

We have assessed the energy impact of this SFAR in accord with the Energy Policy and Conservation Act (EPCA), Pub. L. 94–163, as amended (42 U.S.C. 6362), and FAA Order 1053.1. We have determined that this SFAR isn't a major regulatory action under the provisions of the EPCA.

List of Subjects

14 CFR Part 61

Aircraft, Aircraft pilots, Airmen, Airplanes, Air safety, Air transportation, Aviation safety, Balloons, Helicopters, Rotorcraft, Students.

14 CFR Part 63

Air safety, Air transportation, Airman, Aviation safety, Safety, Transportation.

14 CFR Part 65

Airman, Aviation safety, Air transportation, Aircraft.

The Rule

In consideration of the foregoing, the Federal Aviation Administration amends parts 61, 63, and 65 of Title 14 of the Code of Federal Regulations as follows:

PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS

1. The authority citation for part 61 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

2. Add Special Federal Aviation Regulation (SFAR) No. 96 to read as follows:

SFAR No. 96—Relief for Participants in Operation Enduring Freedom

1. *Applicability.* Flight Standards District Offices are authorized to accept from an eligible person, as described in paragraph 2 of this SFAR, the following:

(a) An expired flight instructor certificate to show eligibility for renewal of a flight instructor certificate under § 61.197, or an expired written test report to show eligibility under part 61 to take a practical test;

(b) An expired written test report to show eligibility under §§ 63.33 and 63.57 to take a practical test; and

(c) An expired written test report to show eligibility to take a practical test required under part 65 or an expired authorization to show eligibility for renewal under § 65.93.

2. *Eligibility.* A person is eligible for the relief described in paragraph 1 of this SFAR if:

(a) The person served in a civilian or military capacity in support of Operation Enduring Freedom outside the United States during some period of time from September, 11, 2001, to May 6, 2004;

(b) The person's flight instructor certificate, airman written test report, or inspection authorization expired some time between September 11, 2001, and 6 calendar months after returning to the United States, or May 6, 2004, whichever is earlier; and

(c) The person complies with § 61.197 or § 65.93 of this chapter, as appropriate, or completes the appropriate practical test within 6 calendar months after returning to the United States, or May 6, 2004, whichever is earlier.

3. *Required documents.* The person must present in person the Airman Certificate and/or Rating Application (FAA Form 8710–1) to the appropriate Flight Standards District Office. The person must include with the application one of the following documents, which must show the date of assignment outside the United States and the date of return to the United States.

(a) An official U.S. Government notification of personnel action, or equivalent document, showing the person was a civilian on official duty for the U.S. Government in support of Operation Enduring Freedom outside the United States between September 11, 2001, and May 6, 2004;

(b) Military orders showing the person was assigned to duty outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004;

(c) A letter from the person's unit commander or supervisor providing the dates during which the person served outside the United States in support of Operation Enduring Freedom some time between September 11, 2001, and May 6, 2004.

4. *Expiration date.* This Special Federal Aviation Regulation No. 96 expires May 6, 2004, unless sooner superseded or rescinded.

PART 63—CERTIFICATION: FLIGHT CREWMEMBERS OTHER THAN PILOTS

3. The authority citation for part 63 continues to read as follow:

Authority: 49 U.S.C. app. 1354(a), 1355, 1421, 1422, and 1427; 49 U.S.C. 106(g).

4. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as follows:

Special Federal Aviation Regulations.

* * * * *

Special Federal Aviation Regulation No. 96—Relief for Participants in Operation Enduring Freedom

PART 65—CERTIFICATION: AIRMAN OTHER THAN FLIGHT

5. The authority citation for part 65 continues to read as follows;

Authority: 49 U.S.C. 106(g) 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

6. Add Special Federal Aviation Regulation (SFAR) No. 96 by reference as follows:

Special Federal Aviation Regulation No. 96—Relief for Participants in Operation Enduring Freedom

Issued in Washington, DC, on April 29, 2002.

Jane F. Garvey,

Administrator.

[FR Doc. 02–10944 Filed 5–3–02; 8:45 am]

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Federal Register

Monday,
May 6, 2002

Part VII

Department of Education

National Institute on Disability and Rehabilitation Research; Notice of Proposed Priority

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DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research; Notice of Proposed Priority

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of proposed priority.

SUMMARY: The Assistant Secretary for Special Education and Rehabilitative Services proposes funding a priority on Disability in Rural Communities under the Rehabilitation Research and Training Center (RRTC) Program for the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years (FY) 2002–2004. The Assistant Secretary takes this action to focus research attention on an identified national need. We intend this priority to improve the rehabilitation services and outcomes for individuals with disabilities.

DATES: We must receive your comments on or before June 5, 2002.

ADDRESSES: Address all comments about this proposed priority to Donna Nangle, U.S. Department of Education, 400 Maryland Avenue, SW., room 3412, Switzer Building, Washington, DC 20202–2645. If you prefer to send your comments through the Internet, use the following address:
donna.nangle@ed.gov

You must include the term *Disability in Rural Communities* in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Donna Nangle. Telephone: (202) 205–5880.

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–4475 or via the Internet: *donna.nangle@ed.gov*

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SUPPLEMENTARY INFORMATION:

Invitation To Comment

We invite you to submit comments regarding this proposed priority.

We invite you to assist us in complying with the specific requirements of Executive Order 12866 and its overall requirement of reducing the regulatory burden that might result from this proposed priority. Please let us know of any further opportunities we should take to reduce potential costs or increase potential benefits while preserving the effective and efficient administration of the program.

During and after the comment period, you may inspect all public comments about this proposed priority in room 3412, Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this proposed priority. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**.

We will announce the final priority in a notice in the **Federal Register**. We will determine the final priority after considering responses to this notice and other information available to the Department. This notice does *not* preclude us from proposing or funding an additional priority, subject to meeting applicable rulemaking requirements.

Note: This notice does not solicit applications. In any year in which we choose to use this proposed priority, we invite applications through a notice published in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational.

The proposed priority refers to President Bush's New Freedom Initiative (NFI). The NFI can be accessed on the Internet at: *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

The proposed priority also refers to NIDRR's Long-Range Plan (the Plan). The Plan can be accessed on the Internet at the following site: *http://www.ed.gov/offices/OSERS/NIDRR/Products.*

Description of the Rehabilitation Research and Training Centers (RRTC) Program.

The RRTCs conduct coordinated and integrated advanced programs of research targeted toward the production of new knowledge, to improve rehabilitation methodology and service delivery systems, alleviate or stabilize disabling conditions, or promote maximum social and economic independence for persons with disabilities. RRTCs operate in collaboration with institutions of higher education or providers of rehabilitation or other appropriate services. Additional information on the RRTC program can be found at: *http://www.ed.gov/offices/OSERS/NIDRR/Programs/res_program.html#RRTC.*

General Requirements

The RRTC must:

- Carry out coordinated advanced programs of rehabilitation research;
- Provide training, including graduate, pre-service, and in-service training, to help rehabilitation personnel more effectively provide rehabilitation services to individuals with disabilities;
- Provide technical assistance to individuals with disabilities, their representatives, providers, and other interested parties;
- Disseminate informational materials to individuals with disabilities, their representatives, providers, and other interested parties; and
- Serve as centers for national excellence in rehabilitation research for individuals with disabilities, their representatives, providers, and other interested parties.

Priority

Background

Individuals living in rural areas experience a disproportionately higher rate of disability compared to individuals living in metropolitan areas (National Health Interview Survey, Washington, DC: Department of Health and Human Services, 1992). In addition to the high rate of disability in rural America, individuals with disabilities residing in these areas are impacted by other salient and challenging issues such as employment, economic and community development, and health-related concerns.

Rural areas continue to lag behind urban areas in economic and community development, including employment opportunities, (Johnson S., *Focusing on Differences: A New Approach for Rural Policy? The Main Street Economist,* Center for the Study of Rural America, Federal Reserve Bank of Kansas City, July 2001). Job opportunities and economic development are inextricably associated with economic policy initiatives. Historically, rural policy and economic development endeavors have been more attentive to specific economic sectors such as agriculture and manufacturing and have not adequately addressed attention to community and individual needs (Johnson, 2001).

Research will help in understanding the impact of rural policy and economic development initiatives on systems providing services for individuals with disabilities and their influence on employment outcomes for individuals with disabilities. Further, research can assist with development and examination of effective policies and strategies for addressing existing and emerging problems in rural populations.

Emerging disabilities and health-related issues, such as secondary conditions, are a critical challenge for rural healthcare providers and individuals with disabilities living in rural communities. There have only been limited studies to address the unique needs of individuals with disabilities within a wellness and health promotion context.

Traditionally, individuals with disabilities are viewed from an illness perspective. More specifically, the medical model orientation to disability has led to an inadequate emphasis on health promotion and disease prevention activities, as well as contributed to the frequency to which secondary conditions are experienced by persons with primary disabilities living in rural areas (U.S. Department of Health and Human Services, *Healthy People 2010: With Understanding and Improving Health and Objectives,* 2nd ed, Washington, DC: U.S. Government Printing Office, Nov. 2000; *http://www.health.gov/healthypeople).*

Research will help to illuminate the impact of inadequate health promotion and prevention activities on the health status of individuals with disabilities, including secondary disabling conditions. Further, research will assist with identifying effective intervention strategies for improving health outcomes, and enhance understanding of the healthcare needs of individuals with disabilities in rural communities, secondary conditions, and the needs of healthcare providers.

While healthcare issues present critical challenges, transportation issues also have adverse consequences for individuals with disabilities and service providers in rural communities. Participation in the community is often limited for individuals with disabilities in rural communities because transportation services are either not available or inadequate to meet community needs. Current research cites insufficient transportation as one of the more serious problems for individuals with disabilities living in rural areas (O'Day B., *Issues in Rural Independence: Revisited,* Independent Living Research Utilization at TIRR, 2001; *http://www.ilru.org/ilnet/files/bookshelf/rural/revisited).*

The President's New Freedom Initiative (NFI) also cites the lack of adequate transportation as a primary barrier for individuals with disabilities. The NFI identifies the need to test new transportation ideas and to increase access to alternate means of transportation, such as vans with specialty lifts, modified automobiles, and ride-share programs for those who cannot access buses or other forms of mass transportation (The President's New Freedom Initiative, 2001) *http://www.whitehouse.gov/news/freedominitiative/freedominitiative.html.*

In conclusion, individuals with disabilities living in rural areas face a unique challenge, that impact their lives as a result of living in these communities. To address these challenges and find viable solutions, NIDRR is interested in research activities that include individuals with disabilities, particularly as researchers. Inclusion of individuals with disabilities provides the opportunity for consumers to influence research direction and policy. Participatory research has the potential of enhancing the relevance and applicability of research results, particularly, when individuals with disabilities are participants at every stage of the research process (Olkin R., *What Psychotherapists Should Know About Disability,* Guilford, 1999), including planning, development, and evaluation of research activities, and especially when the role of consumers is not limited to the role of research subject.

Proposed Priority

The Assistant Secretary proposes to establish an RRTC on Disability in Rural Communities. The purpose of the absolute priority is to generate new knowledge through research and development activities that improves the effectiveness of rehabilitation services. The RRTC project must propose research and development activities that are focused on each of the three areas of inquiry: (1) Rural Employment, and Community and Economic Development Policy; (2) Rural Health and Disability; and (3) Rural Community Transportation, as follows:

(1) Rural Employment, and Community and Economic Development Policy: (a) Identify economic and community development policies and evaluate their impact on the employment status of individuals with disabilities living in rural areas, public and private service delivery systems, and service providers;

(b) Investigate the effectiveness of policies and strategies for addressing existing and emerging problems for individuals with disabilities in rural communities.

(c) Identify and evaluate employment policies and employment strategies, including those used in State vocational rehabilitation systems, and investigate the impact on employment outcomes for individuals with disabilities.

(2) Rural Health and Disability:

(a) Identify and investigate the needs of healthcare providers and health care needs of individuals with disabilities in rural communities and factors contributing to secondary conditions.

(b) Investigate the impact of inadequate health promotion, wellness, and prevention activities on the health status and disability outcomes for individuals with disabilities, including secondary disabling conditions.

(c) Develop and evaluate health promotion intervention strategies or identify and evaluate effective health promotion strategies for improving health outcomes for individuals with disabilities in rural communities, including an emphasis on prevention of secondary conditions. Investigate the impact of inadequate wellness and health promotion on healthcare service systems in rural communities.

(d) Develop and test training materials for healthcare providers and consumers to enhance knowledge of disability, secondary conditions, and effective wellness and health promotion intervention strategies.

(3) Rural Community Transportation:

(a) Identify or develop and test new transportation ideas and investigate their effectiveness to increase access for individuals with disabilities, and assess whether they are cost effective.

(b) Investigate the impact of alternate means of transportation on disability outcomes, especially employment and health outcomes, and

(c) Identify and investigate the impact of transportation policies, programs, and resource allocations on access and community integration for individuals with disabilities; In carrying out the purposes of the priority, the RRTC shall:

- Disseminate information about disability issues in rural communities;
- Use advances in telecommunications and web-based technologies, where appropriate, to ensure broad access to research results and their practical application; and
- Involve individuals with disabilities, their family members, and consumers, as appropriate, in all stages of the research process and related activities.

Applicable Program Regulations: 34 CFR part 350.

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(Catalog of Federal Domestic Assistance Number 84.133B, Rehabilitation Research and Training Center)

Program Authority: 29 U.S.C. 762(g) and 764(b)(2).

Dated: April 29, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and, Rehabilitative Services.

[FR Doc. 02–11203 Filed 5–3–02; 8:45 am]

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S. 2248/P.L. 107–168

To extend the authority of the Export-Import Bank until May 31, 2002. (May 1, 2002; 116 Stat. 131)

Last List April 23, 2002

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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

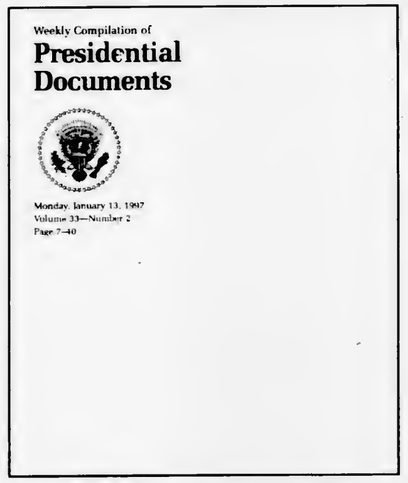
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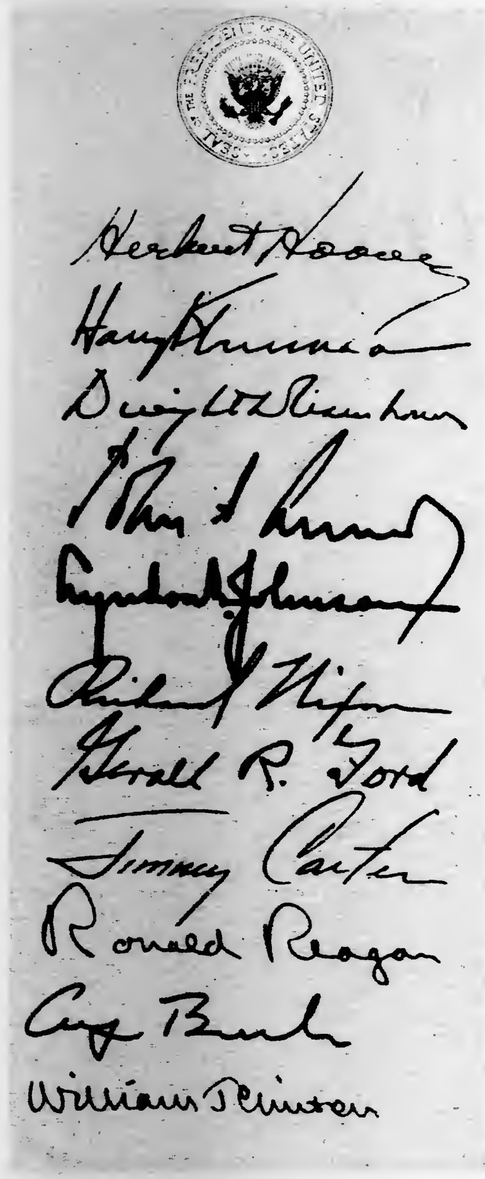
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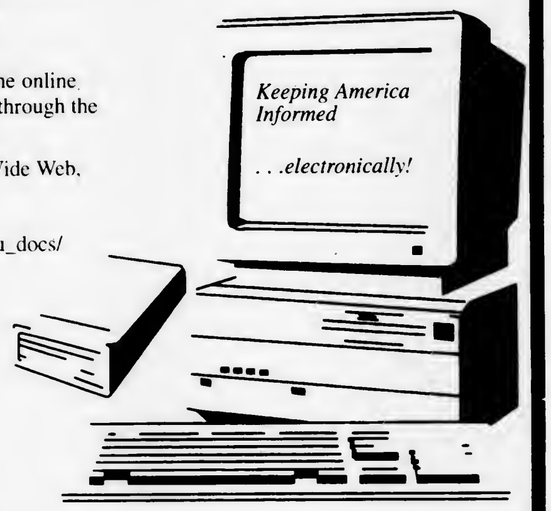
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The President

Proclamation 7552 of May 2, 2002

National Charter Schools Week, 2002

By the President of the United States of America

A Proclamation

Over a decade ago in Minnesota, a handful of educators envisioned a new kind of educational institution that would provide an alternative for children trapped in under-performing public schools. Their philosophy for a "charter school" was straightforward and powerful: provide parents the option to send their children to innovative public schools that combine flexibility and autonomy with a guarantee to raise student achievement.

Today, we recognize the important successes of the charter school experiment. Nearly 2,400 charter schools now exist across our Nation. Thanks to bipartisan support at the local, State, and Federal level, more than a half-million children have attended these public schools and obtained a better education.

In reading, math, science, special education, early childhood education, and other areas, charter schools have implemented innovative programs that produce results. Charter school principals and teachers have the freedom to develop classroom techniques that meet their students' unique needs, and parents appreciate the ability to have direct input into their children's educational progress. Charter school administrators are accountable to students, parents, and community leaders, and they know that if their school fails to meet expectations, it must either improve or close.

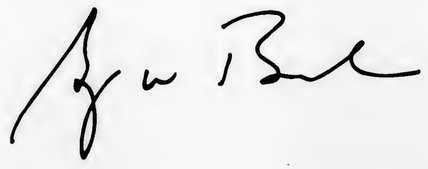
The effects of charter schools extend beyond the schoolhouse walls. Wherever charter schools are clustered together, we see traditional schools reevaluate their methods and programs. At this basic level, charter schools help stimulate community debate and inspire educational excellence.

Accountability, flexibility, expanded choices, and a focus on methods that work are all important elements in the landmark, bipartisan, No Child Left Behind Act of 2001, which I signed into law in January. This legislation authorizes a new program, the Charter School Facility Demonstration Project, which provides important seed funding for charter school infrastructure and construction needs. It also continues the Charter School Grants program that supports planning and development of new public charter schools. Together these programs provide valuable tools to American education. Now we must work together to implement this new legislation in all our communities so no child is left behind.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim April 28 through May 4, 2002, as National Charter Schools Week. I call on parents of charter school children to share their success stories with others so that all Americans may learn more about charter schools and their important work. I commend the States with charter schools.

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IN WITNESS WHEREOF, I have hereunto set my hand this second day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11486
Filed 5–6–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7553 of May 3, 2002

To Restore Nondiscriminatory Trade Treatment (Normal Trade Relations Treatment) to the Products of Afghanistan

By the President of the United States of America

A Proclamation

1. Section 118(a)(1) of Public Law 99–190, 99 Stat. 1319, authorized the President to deny nondiscriminatory trade treatment to the products of Afghanistan and thereby cause such products to be subject to the rate of duty in column 2 of the Harmonized Tariff Schedule of the United States (HTS).

2. Presidential Proclamation 5437 of January 31, 1986, modified the HTS so as to deny nondiscriminatory trade treatment to the products of Afghanistan.

3. Restoration of nondiscriminatory trade treatment will support U.S. efforts to normalize relations with Afghanistan and facilitate increased trade with the United States, which could contribute to economic growth and assist Afghanistan in rebuilding its economy.

4. Pursuant to section 118(c)(1) of Public Law 99–190, I have determined that it is appropriate to restore nondiscriminatory trade treatment to the products of Afghanistan and thereby cause such products to be subject to the applicable rate of duty in column 1 of the HTS.

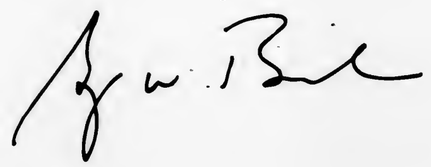
NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 118 of Public Law 99–190, and section 604 of the Trade Act of 1974, as amended (19 U.S.C. 2483), do hereby proclaim that:

(1) Nondiscriminatory trade treatment (normal trade relations treatment) shall be restored to the products of Afghanistan;

(2) General note 3(b) of the HTS is modified to exclude Afghanistan; and

(3) The restoration of nondiscriminatory trade treatment and the modification to general note 3(b) of the HTS shall be effective with respect to goods entered, or withdrawn from warehouse for consumption, on or after the thirtieth day after the date of publication of this proclamation in the **Federal Register**.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02-11487
Filed 5-6-02; 8:45 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 7554 of May 3, 2002

To Extend Duty-Free Treatment for Certain Agricultural Products of Israel

By the President of the United States of America

A Proclamation

1. On April 22, 1985, the United States entered into the Agreement on the Establishment of a Free Trade Area between the Government of the United States of America and the Government of Israel (the "FTA"), which the Congress approved in the United States-Israel Free Trade Area Implementation Act of 1985 (the "FTA Act") (19 U.S.C. 2112 Note).

2. On November 4, 1996, the United States entered into an agreement with Israel concerning certain aspects of trade in agricultural products, effective from December 4, 1996, through December 31, 2001 (the "1996 Agreement"), in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to agricultural trade with Israel while acknowledging differing interpretations regarding the meaning of certain rights and obligations in the FTA as to such trade.

3. Section 4(b) of the FTA Act provides that, whenever the President determines that it is necessary to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, the President may proclaim such withdrawal, suspension, modification, or continuance of any duty, or such continuance of existing duty-free or excise treatment, or such additional duties as the President determines to be required or appropriate to carry out the FTA.

4. Pursuant to section 4(b) of the FTA Act, President Clinton issued Proclamation 6962 of December 2, 1996, to provide through the close of December 31, 2001, access into the United States customs territory for specified quantities of certain agricultural products of Israel free of duty or certain fees or other import charges, consistent with the 1996 Agreement.

5. On December 31, 2001, the United States entered into an agreement with Israel to extend the 1996 Agreement through December 31, 2002, in order to allow for additional time to negotiate a successor arrangement to the 1996 Agreement.

6. Pursuant to section 4(b) of the FTA Act, I have determined that it is necessary, in order to maintain the general level of reciprocal and mutually advantageous concessions with respect to Israel provided for by the FTA, to provide through the close of December 31, 2002, duty-free treatment for specified quantities of certain agricultural products of Israel.

7. Section 604 of the Trade Act of 1974 (19 U.S.C. 2483) (the "Trade Act") authorizes the President to embody in the Harmonized Tariff Schedule of the United States (HTS) the substance of the relevant provisions of that act, and of other acts affecting import treatment, and actions thereunder, including removal, modification, continuance, or imposition of any rate of duty or other import restriction.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, acting under the authority vested in me by the Constitution and the laws of the United States, including section 4 of the FTA Act and section 604 of the Trade Act, do hereby proclaim:

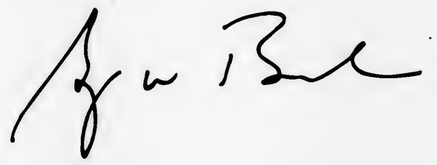
(1) In order to implement U.S. commitments under the 1996 Agreement as extended through December 31, 2002, and, in particular, to provide duty-free treatment for specified quantities of certain agricultural products of Israel, subchapter VIII of chapter 99 of the HTS is modified as provided in the Annex to this proclamation.

(2) Any provisions of previous proclamations and Executive Orders that are inconsistent with the actions taken in this proclamation are superseded to the extent of such inconsistency.

(3)(a) The modifications to the HTS made by the Annex to this proclamation shall be effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, including entries for which the liquidation of duties has not become final under section 514 of the Tariff Act of 1930, as amended (19 U.S.C. 1514).

(b) The provisions of subchapter VIII of chapter 99 of the HTS, as modified by the Annex to this proclamation, shall continue in effect through the close of December 31, 2002.

IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



Billing code 3195–01–P

Modifications to Subchapter VIII of Chapter 99 of the Harmonized Tariff Schedule of the United States

Effective with respect to goods that are the product of Israel and are entered, or withdrawn from warehouse for consumption, on or after January 1, 2002, and through the close of December 31, 2002, subchapter VIII of chapter 99 of the HTS is modified as provided herein:

1. U.S. note 1 to such subchapter is modified by striking "December 31, 2001," and by inserting in lieu thereof "December 31, 2002,".

2. U.S. note 3 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2002 . . . . . 383,000".

3. U.S. note 4 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2002 . . . . . 1,160,000".

4. U.S. note 5 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2002 . . . . . 1,279,000".

5. U.S. note 6 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2002 . . . . . 116,000".

6. U.S. note 7 is modified by inserting at the end of the table therein the following additional applicable time period and quantity: "Calendar year 2002 . . . . . 405,317".

[FR Doc. 02–11488
Filed 5–6–02; 8:45 am]
Billing code 3190–01–M

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Rules and Regulations

Federal Register
Vol. 67, No. 88
Tuesday, May 7, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–01–AD; Amendment 39–12744; AD 2002–09–11]

RIN 2120–AA64

Airworthiness Directives; SOCATA—Groupe AEROSPATIALE Model TBM 700 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes Airworthiness Directive (AD) 2001–05–03, which applies to certain SOCATA—Groupe AEROSPATIALE (Socata) Model TBM 700 airplanes. AD 2001–05–03 currently requires you to apply Loctite on attaching bolt/screw threads of inboard, central, and outboard carriages; increase tightening torques of associated hardware; and replace central carriage attaching bolts. The French airworthiness authority has determined that certain service information referenced in AD 2001–05–03 be removed and additional inspection of the flap carriage attaching bolts, screws, and barrel nut be included. Therefore, this AD will retain the requirements of the current AD and will add the information communicated by the French airworthiness authority. The actions specified by this AD are intended to prevent the flap attaching bolts/screws from becoming loose and separating from the airplane, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane.

DATES: This AD becomes effective on June 20, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 20, 2002.

ADDRESSES: You may get the service information referenced in this AD from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930–F65009 Tarbes Cedex, France; telephone: (33) (0)5.62.41.73.00; facsimile: (33) (0)5.62.41.76.54; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023; telephone: (954) 893–1400; facsimile: (954) 964–4191. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE–01–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? Reports of occurrences on Socata Model TBM 700 airplanes where a screw of a flap attachment fitting was found partly unscrewed and another was missing caused us to issue AD 2001–05–03, Amendment 39–12139 (66 FR 14308, March 12, 2001). The occurrences were the result of flap vibration. AD 2001–05–03 requires the following on Socata Model TBM 700 airplanes:

—Apply Loctite on attaching bolt/screw threads of inboard, central, and outboard carriages;
—Increase tightening torques of associated hardware; and
—Replace central carriage attaching bolts.

Accomplishment of these actions is required in accordance with Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000, or Socata Mandatory Service Bulletin SB 70–087, dated September 2000.

What has happened since AD 2001–05–03 to initiate this action? The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified FAA of the need to change AD 2001–05–03. The DGAC reports the procedures in the original issue of Socata Mandatory Service Bulletin SB 70–087, dated September, 2000, do not correct the unsafe condition. The DGAC indicates that reference to this service information should be removed from the AD. In addition, the DGAC is requiring the barrel nut be inspected for correct installation, with corrective action as necessary, on certain Socata Model TBM 700 airplanes registered in France.

What is the potential impact if FAA took no action? This condition, if not corrected, could result in the flap attaching bolts/screws becoming loose and separating from the airplane, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane.

Has FAA taken any action to this point? We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Socata Model TBM 700 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on February 11, 2002 (67 FR 6207). The NPRM proposed to supersede AD 2001–05–03 with a new AD that would require you to:

—Inspect the flap carriage attaching bolts and screws for damage and replace as necessary;
—Apply Loctite on the attaching bolt and screw threads of inboard, central, and outboard carriages;
—Increase the tightening torques;
—Replace central carriage attaching bolts; and
—Inspect the barrel nut for correct positioning, and corrective action as necessary.

The NPRM also proposed to remove compliance in accordance with the procedures in Socata Mandatory Service Bulletin SB 70–087 57, dated September 2000.

Was the public invited to comment? The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What is FAA's final determination on this issue? After careful review of all

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available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How many airplanes does this AD impact? We estimate that this AD affects 75 airplanes in the U.S. registry.

What is the cost impact of this AD on owners/operators of the affected airplanes?

We estimate the following costs to accomplish the modifications:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
6 workhours × $60 per hour = $360	$10	$360 + $10 = $370	$370 × 75 = $27.750

The only difference between this AD and AD 2001–05–03 is the addition of the inspection of the flap carriage attachment bolts, screws, and barrel nut. The FAA has determined that the cost of this inspection is minimal and does not increase the cost impact over that already required by AD 2001–05–C3.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does this AD involve a significant rule or regulatory action? For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by removing Airworthiness Directive (AD) 2001–05–03, Amendment 39–12139 (66 FR 14308, March 12, 2001), and by adding a new AD to read as follows:

2002–09–11 SOCATA—Groupe Aerpspatiale: Amendment 39–12744; Docket No. 2002-CE–01-AD; Supersedes AD 2001–05–03, Amendment 39–12139.

(a) *What airplanes are affected by this AD?* This AD affects Model TBM 700 airplanes, serial numbers 1 through 164 and 166 through 173, that are certificated in any category.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to prevent the flap attaching bolts/screws from becoming loose and separating from the airplane, which could cause rough or irregular control. Such rough or irregular control could lead to the loss of control of the airplane. 5

(d) *What actions must I accomplish to address this problem?* To address this problem, you must accomplish the following:

Actions	Compliance	Procedures
(1) Accomplish the following on the flap carriages: (i) Inspect the inboard and carriage attaching bolts and screws for peening and/or distortion, and replace screws and/or bolts, as necessary; (ii) Apply Loctite on the attaching bolt and screw threads of the inboard and the outboard carriages; (iii) Increase tightening torque of associated hardware; (iv) Apply a red paint line on the inboard and outboard carriages and the screw heads; (v) Inspect the central carriage barrel nut for correct positioning, remove, inspect, and replace, as necessary; (vi) Replace the central carriage attaching bolts with new bolts, part number (P/N) Z00.N5109337315 (or FAA-approved equivalent part); (vii) Apply Loctite on the attaching bolt threads of the central carriage; (viii) Increase tightening torque of associated hardware; and (ix) Apply a red paint line on the on the central carriage and on the bolt heads.	Within the next 100 hours time-in-service (TIS) after June 20, 2002 (the effective date of this AD), unless already accomplished. Socata Mandatory Service Bulletin SB 70–087 57 Amendment 1, dated November 2000, includes all procedures required in this AD. If yoy have already accomplished all procedures in the service bulletin, proceed to paragraph (s)(2) of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS in Socata Mandatory Service Bulliten SB 70–087, Amendment 1, dated November 2000, and the applicable maintenance manual.
(2) Inspect the alignment of the red paint line on the inboard, and central carriages to determine if the attaching screws and/or bolts have become loose.	At intervals not to exceed 100 hours TIS after compliance with the actions required in paragraph (d)(1) of this AD.	In accordance with the ACCOMPLISHMENT INSTRUCTIONS in Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000, and the applicable maintenance manual.
(3) If any inspection required in paragraph (d)(2) of this AD reveals that the inboard, the outboard, and/or the central carriage attaching screws and/or bolts have become loose, accomplish the following: (i) Obtain a repair scheme from the manufacturer through the FAA at the address specified in paragraph (f) of this AD; (ii) Incorporate this repair scheme; and (iii) Continue to repetitively inspect as required in paragraph (d)(2) of this AD, unless the repair scheme directs AD. differently.	Prior to further flight after the inspection in which the attaching screws and/or bolts are found loose.	In accordance with the repair scheme obtained from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. Obtain this repair scheme through the FAA at the address specified in paragraph (f) of this AD.
(4) Do not install any central carriage attaching bolts that are not P/N Z00.N5109337315 (or FAA-approved equivalent part).	As of April 27, 201 (the effective date of AD 2001–05–03).	Not Applicable.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(i) Your alternative method of compliance provides an equivalent level of safety; and

(ii) The Manager, Standards Office, Small Airplane Directorate, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standards Office, Small Airplane Directorate.

(2) Alternative methods of compliance approved in accordance with AD 2001–05–03, which is superseded by this AD, are not approved as alternative methods of compliance with this AD.

Note 1: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Karl Schletzbaum, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329–4146; facsimile: (816) 329–4090.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with

Socata Mandatory Service Bulletin SB 70–087 57, Amendment 1, dated November 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You may get copies from SOCATA Groupe AEROSPATIALE, Customer Support, Aerodrome Tarbes-Ossun-Lourdes, BP 930—F65009 Tarbes Cedex, France; or the Product Support Manager, SOCATA—Groupe AEROSPATIALE, North Perry Airport, 7501 Pembroke Road, Pembroke Pines, Florida 33023. You may view copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *Does this AD action affect any existing AD actions?* This amendment supersedes AD 2001–05–03, Amendment 39–12139.

Note 2: The subject of this AD is addressed in French AD No. 2000–409(A) R1, dated September 29, 2001.

(j) *When does this amendment become effective?* This amendment becomes effective on June 20, 2002.

Issued in Kansas City, Missouri, on April 29, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11215 Filed 5–6–02; 8:45 am]

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1260

RIN 2700–AC51

NASA Grant and Cooperative Agreement Handbook—Limitations on Incremental Funding and Deobligations on Grants, and Elimination of Delegation of Closeout of Grants and Cooperative Agreements to Office of Naval Research

AGENCY: National Aeronautics and Space Administration.

ACTION: Final rule.

SUMMARY: This final rule amends the NASA Grant and Cooperative Agreement Handbook to revise the threshold for incrementally funding grants and to establish dollar thresholds for incremental funding and funding deobligation actions under grants. These changes will further limit the number of grants eligible to be incrementally funded and the number of incremental funding and funding deobligation actions. Additionally, this final rule eliminates the possibility of delegating closeout of grants and cooperative agreements to the Office of Naval Research (ONR). That function will be retained by NASA.

EFFECTIVE DATE: May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Rita Svarcas, NASA Headquarters, Code HC, Washington, DC, (202) 358–0464, e-mail: *rsvarcas@hq.nasa.gov.*

SUPPLEMENTARY INFORMATION:

A. Background

Currently, the Grant and Cooperative Agreement Handbook limits the incremental funding of grants. In spite of these restrictions, numerous incremental funding actions are being issued against grants. The high number of actions creates a workload burden for finance and procurement personnel in the Agency. This final rule further restricts the number of grants that can be incrementally funded by revising the dollar threshold that a grant must meet in order for it to be incrementally funded. An anticipated annual funding threshold of at least $100,000 is now specified in order for a grant to be incrementally funded. It also establishes a minimum dollar threshold of $25,000 that certain incremental funding and funding deobligation actions must meet.

Currently, section 1260.70 of the Grant and Cooperative Agreement Handbook states that NASA Centers will delegate both property administration and closeout of grants and cooperative agreements to ONR. Section 1260.77 discusses ONR tasks within the NASA closeout procedures, including certification that all required reports have been received and approved by the NASA technical officer. Both NASA and ONR were obtaining certifications. As a result, Grant Information Circular (GIC) 01–02 was issued on August 2, 2001. GIC 01–02 changed NASA's closeout policy by eliminating that specific closeout function from ONR's responsibilities. With the issuance of GIC 01–02, NASA Centers have started the process of bringing in-house the closeout function for grants and cooperative agreements. Eliminating the possibility of Centers delegating the closeout function to ONR assures that the duplication of effort (NASA and ONR) will end.

B. Regulatory Flexibility Act

NASA certifies that this final rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* because the changes primarily affect internal procedures which will merely result in fewer, but larger dollar value, funding actions on grants.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because this rule does not impose any new recordkeeping or information collection requirements, or collection of information from offerors, contractors, or members of the public that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, et. seq.

List of Subjects in 14 CFR Part 1260

Grant programs—science and technology.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 14 CFR part 1260 is amended as follows:

1. The authority citation for 14 CFR 1260 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1), Pub. L. 97–258, 96 Stat. 1003 (31 U.S.C. 6301 *et seq.*), and OMB Circular A–110.

PART 1260—GRANTS AND COOPERATIVE AGREEMENT

2. In § 1260.11, revise paragraph (h) introductory text and add paragraphs (h)(3) and (h)(4) to read as follows:

§ 1260.11 Evaluation and selection.

* * * * *

(h) NASA reserves the right to either fully fund or incrementally fund grants based on fiscal law and program considerations. Grants with anticipated annual funding exceeding $100,000 may be funded for less than the amount stated in the proposal. On an exception basis, and with the concurrence of the installation comptroller, the procurement officer may allow individual grants with anticipated annual funding between $50,000 and $100,000 to be funded for less than the amount stated in the proposal. The procurement officer shall maintain a record of all such approvals during the fiscal year.

* * * * *

(3) Unless the action is necessary to fully fund a grant, incremental funding actions totaling less than $25,000 shall not be issued.

(4) Unless the action is necessary to close out a grant or to make a corrective accounting adjustment, funding actions to deobligate funds totaling less than $25,000 shall not be issued.

* * * * *

3. In § 1260.70, amend paragraph (a) introductory text, paragraphs (a)(3) and (a)(4), and paragraph (b) to read as follows:

§ 1260.70 Delegation of administration.

(a) In most cases, property administration of NASA grants and cooperative agreements will be delegated to the Office of Naval Research (ONR). Other administration duties may be assigned as listed on NF 1674. Exceptions to this policy are:

* * * * *

(3) Grant officers may waive specific administration requirements (as listed on NF 1674) in exceptional circumstances for individual grants. Exceptions to administration duties that are normally delegated must be justified and approved in writing by the Grant Officer, and made part of the file.

(4) Waiver of delegation of property administration duties that are to be instituted by a center as a standard practice constitutes a deviation to this handbook, and requires approval in accordance with § 1260.7.

(b) Grant and cooperative agreement administration delegations will be made by use of NF 1674 (Exhibit F to subpart A of this part 1260). When administration duties have been assigned to ONR, the NF 1674, the award document, and the approved budget will be sent to ONR in a single package (electronically, when possible).

* * * * *

4. In § 1260.77, revise paragraphs (b), (c), (d) introductory text and (d)(1) through (3) to read as follows:

§ 1260.77 Closeout procedures.

* * * * *

(b) Those who are designated to receive NASA reports (except for CASI, which only acknowledges receipt) must provide certification to the NASA grant officer that the reports have been received and satisfactorily completed. Electronic certifications are acceptable. See §§ 1260.75 and 1260.171(a). The property certification should indicate that disposal of any remaining Government property has been made as directed and that NASA has been compensated for any residual inventory.

(c) When ONR has been delegated grant and cooperative agreement administration duties as listed on the NF 1674, and has completed its actions, the NASA grant officer is to receive from ONR all of the following:

(1) For notification of the completion of property administration duties, a DD Form 1593 Contract Administration Completion Record (or equivalent electronic notification), without supporting or backup documents, indicating property administration is complete.

(2) For other administration duties, an electronic notification confirming that all assigned administration duties have been completed is sufficient. Although a DD Form 1594 is not required, ONR may use this form if they choose.

(d) A grant is administratively complete and ready for closeout by NASA when:

(1) Property disposition has been completed.

(2) The grant officer has obtained from the NASA technical officer certifications that all reports have been received.

(3) When administration duties have been delegated to ONR, an electronic notification confirming the completion of all assigned administration duties has been received. Although not required, a DD Form 1594 may be used by ONR in lieu of the electronic notification.

* * * * *

[FR Doc. 02–11167 Filed 5–6– 8:45am]

BILLING CODE 7510–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Bacitracin Methylene Disalicylate and Robenidine Hydrochloride

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Alpharma, Inc. The NADA provides for use of approved single-ingredient bacitracin methylene disalicylate (BMD) and robenidine hydrochloride Type A medicated articles to make two-way combination Type C medicated broiler and fryer chicken feeds used for prevention of coccidiosis, and as an aid in the prevention or control of necrotic enteritis.

DATES: This rule is effective May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Steven D. Vaughn, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7584, e-mail: svaughn@cvm.fda.gov.

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed NADA 141–154 that provides for use of BMD (10, 25, 30, 40, 50, 60, or 75 grams per pound (g/lb) BMD) and ROBENZ (30 g/lb robenidine hydrochloride) Type A medicated articles to make two-way combination Type C medicated feeds containing 30 g/ton robenidine hydrochloride and 50 or 100 to 200 g/ton BMD for use in broiler and fryer chickens.

The combination Type C medicated feeds containing 50 g/ton BMD are used for prevention of coccidiosis caused by *Eimeria tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and as an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. The combination Type C medicated feeds containing 100 to 200 g/ton BMD are used for prevention of coccidiosis caused *E. tenella, E. necatrix, E. acervulina, E. brunetti, E. mivati,* and *E. maxima,* and as an aid in the control of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin. NADA 141–154 is approved as of February 11, 2002, and the regulations are amended in 21 CFR 558.515 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under the authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR part 558 continues to read as follows:

Authority: 21 U.S.C. 360b, 371.

2. Section 558.515 is amended in the table in paragraph (d) by adding new entries after the entry for "Bacitracin (as bacitracin methylene disalicylate) 27 to 50" under the "Combination in grams/ton" column to read as follows:

§ 558.515 Robenidine hydrochloride.

* * * * *

(d) * * *

Robenidine hydrochloride in grams/ton	Combination in grams/ton	Indications for use	Limitations	Sponsor
	Bacitracin (as bacitracin methylene disalicylate) 27 to 50			
	Bacitracin (as bacitracin methylene disalicylate) 50	For broiler and fryer chickens: As an aid in the prevention of necrotic enteritis caused or complicated by *Clostridium* spp. or other organisms susceptible to bacitracin.	Feed continuously as sole ration. Do not feed to laying hens. Withdraw 5 days before slaughter.	046573
	Bacitracin (as bacitracin methylene disalicylate) 100 to 200	For broiler and fryer chickens: As an aid in the control of necrotic enteritis caused or complicated by Clostridium spp. or other organisms susceptible to bacitracin.	To control a necrotic enteritis outbreak, start medication at first clinical signs of disease; administer continuously for 5 to 7 days or as long as clinical signs persist, then reduce bacitracin methylene disalicylate to prevention level (50 g/ton). Do not feed to laying hens. Withdraw 5 days before slaughter.	046573

Dated: April 18, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–11207 Filed 5–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF STATE

22 CFR Part 41

[Public Notice 4009]

Visas: Passports and Visas Not Required for Certain Nonimmigrants—Visa Waiver Program

ACTION: Final rule.

SUMMARY: This rule amends the Department of State's regulation regarding the Visa Waiver Pilot Program (VWPP) by removing from it the list of countries designated to participate in the Visa Waiver Program (VWP), by changing all references to the VWPP to references to the VWP, and by adding a paragraph to require that an alien denied admission under the VWP obtain a visa before again seeking admission into the United States. Each of the amendments is necessitated by a statutory change. Readers will now be referred to the Department of Justice (INS) regulations for the list of VWP-designated countries, the VWP will only be referred to as such, rather than the VWPP, and an alien from a VWP country refused admission to the United States under the VWP will be permitted to file a visa application as the only form of appeal from such a denial.

DATES: Effective date: The rule takes effect on May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Patrick Chairge, Legislation and Regulations Division, Visa Office, Room L603–C, SA–1, Department of State, Washington, DC 20520–0106, 202–663–1202.

SUPPLEMENTARY INFORMATION:

What Is the History of the Visa Waiver Program (VWP)?

Authority for the Visa Waiver Program is contained in section 217 of the Immigration and Nationality Act, added initially by section 313 of the Immigrant Reform and Control Act of 1986 (IRCA). Until the enactment of the Visa Waiver Permanent Program Act (VWPPA), Public Law 106–369, on October 30, 2000, the VWP was a pilot program, known as the Visa Waiver Pilot Program (VWPP). Under the original provisions of the VWPP, the Attorney General acted jointly with the Secretary of State to determine which countries would be designated to have their nationals participate in the VWP. However, prior to the enactment of the VWPPA, Public Law 104–208 amended the statutory language to permit the Attorney General, after consultation with the Secretary of State, to make that determination. In addition, among the other changes made to the VWP by the VWPPA was the addition of a requirement that aliens denied admission into the United States under the VWP must obtain a visa prior to again seeking admission. The Department previously has promulgated regulations regarding the VWP at 22 CFR 41.2(l).

How Is the Department Amending Its Regulation?

Effective February 21, 2002, the Attorney General, after consultation with the Secretary of State, terminated Argentina as a country designated to participate in the Visa Waiver Program (VWP). Under the Department's existing regulation the removal of Argentina would necessitate an amendment by the Department to its list of VWP countries found at 22 CFR 41.2(l)(2). However, in view of the fact that final authority for designating countries to participate in the VWP now rests with the Attorney General, the Department is taking this opportunity to eliminate the list of designated countries entirely from its regulation and is replacing it with a cross reference to the authoritative list contained in the VWP regulation of the Department of Justice (INS) found at 8 CFR 217.2(a). Further, the Department is changing the name of the program used in its regulation to the Visa Waiver Program in order to reflect the program's permanent status per the VWPPA. Finally, the Department is also adding a new paragraph 2 to the regulation to require consular officers to accept and adjudicate a properly filed visa application from a national of a program country who has been denied admission under the Visa Waiver Program by virtue of an INA 212(a) inadmissibility. Pursuant to the VWPPA, no other means of administrative or judicial review of a denial is permitted.

Regulatory Findings

Administrative Procedure Act

The Department's implementation of this regulation as a final rule is based upon the "good cause" exceptions found at 5 U.S.C. 553(b)(B) and (d)(3). Publication of this regulation as a final rule will expedite implementation of Public Laws 106–369 and 104–208, both already in effect. The change of the name of the program and the removal of the list of countries from the current regulation serve only to conform the existing regulation to the relevant statutes without any administrative interpretation or additional burden being placed on the public. Likewise, the application requirement for persons refused admission simply informs the public of a new statutory requirement, placing it in the context of the relevant Department regulation. In view of these circumstances, the Department does not believe that a solicitation for comments would serve any useful purpose.

Regulatory Flexibility Act

The Department of State, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by section 804 of the Small Business Regulatory Enforcement Act of 1996. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

The Department of State does not consider this rule to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. In addition, the Department is exempt from Executive Order 12866 except to the extent that it is promulgating regulations in conjunction with a domestic agency that are significant regulatory actions. The Department has nevertheless reviewed the regulation to ensure its consistency with the regulatory philosophy and principles set forth in that Executive Order.

Executive Order 13132

This regulation will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Paperwork Reduction Act

This rule does not impose any new reporting or record-keeping requirements. The information collection requirement (Form DS–156) contained by reference in this rule was previously approved for use by the Office of Management and Budget (OMB) under the Paperwork Reduction Act as OMB control number 1405–0018.

List of Subjects in 22 CFR Part 41

Aliens, Nonimmigrants, Passports and visas.

For the reasons set forth in the preamble, the Department is amending the regulations at 22 CFR 41.2 to read as follows:

PART 41—[AMENDED]

1. The authority citation for Part 41 continues to read as follows:

Authority: 8 U.S.C. 1104; Pub. L. 105–277, 112 Stat. 2681–795 through 2681–801.

2. Revise § 41.2(l) to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(l) *Visa waiver program.* (1) A visa is not required of any person who seeks admission to the United States for a period of 90 days or less as a visitor for business or pleasure and who is eligible to apply for admission to the United States as a Visa Waiver Program applicant. (For the list of countries whose nationals are eligible to apply for admission to the United States as Visa Waiver Program applicants, *see* 8 CFR 217.2(a)).

(2) An alien denied admission under the Visa Waiver Program by virtue of a ground of inadmissibility described in INA section 212(a) that is discovered at the time of the alien's application for admission at a port of entry or through use of an automated electronic database may apply for a visa as the only means of challenging such a determination. A consular officer must accept and adjudicate any such application if the alien otherwise fulfills all of the application requirements contained in Part 40, § 41.2(l)(1).

Dated: March 22, 2002.

Mary A. Ryan,

Assistant Secretary for Consular Affairs, Department of State.

[FR Doc. 02–11164 Filed 5–6–02; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8993]

RIN 1545–AY60

Debt Instruments With Original Issue Discount; Annuity Contracts

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the federal income tax treatment of annuity contracts issued by certain insurance companies. The regulations provide guidance on whether certain annuity contracts are excluded from the definition of a debt instrument under the original issue discount provisions of the Internal Revenue Code.

DATES: *Effective Date:* These regulations are effective June 6, 2002.

Applicability Dates: For dates of applicability, see § 1.1275–1(k)(3).

FOR FURTHER INFORMATION CONTACT: Patrick E. White, (202) 622–3920 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Sections 163(e) and 1271 through 1275 of the Internal Revenue Code (Code) provide rules for the treatment of debt instruments with original issue discount (OID). Section 1275(a)(1)(A) defines the term debt instrument to include a bond, debenture, note, or

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certificate or other evidence of indebtedness. Sections 1275(a)(1)(B)(i) and (ii), however, exclude certain annuity contracts from the definition of a debt instrument. This document contains rules concerning the exception for annuities described in section 1275(a)(1)(B)(ii). A notice of proposed rulemaking (REG–125237–00, 2001–12 I.R.B. 919) was published in the **Federal Register** (66 FR 2852) on January 12, 2001. One individual commented anonymously on the proposed regulations. The individual primarily expressed concern that the proposed guidance should not limit the investment options of U.S. investors. No public hearing was requested or held. The proposed regulations are adopted as proposed.

Explanation of Provisions

In general, the OID provisions apply to issuers and holders of debt instruments. The term debt instrument generally means any instrument or contractual arrangement that constitutes indebtedness under general principles of income tax law. See section 1275(a)(1)(A) and § 1.1275–1(d) of the Income Tax Regulations.

If a contract is a debt instrument with OID, section 1272 generally requires the holder of the contract to include OID in income currently on a constant yield basis, regardless of the holder's overall method of accounting. By contrast, the holder of an annuity contract to which section 72 applies generally is allowed to defer recognizing economically earned income until distributions are made on the contract.

Section 1275(a)(1)(B) excepts two types of annuity contracts from the definition of a debt instrument. First, section 1275(a)(1)(B)(i) excepts an annuity contract to which section 72 applies if the contract "depends (in whole or in substantial part) on the life expectancy of 1 or more individuals." Second, section 1275(a)(1)(B)(ii) excepts an annuity contract to which section 72 applies under certain circumstances if the contract "is issued by an insurance company subject to tax under subchapter L (or by an entity described in section 501(c) and exempt from tax under section 501(a) which would be subject to tax under subchapter L were it not so exempt). . . ."

The regulations provide that an annuity contract issued by a foreign insurance company is treated under section 1275(a)(1)(B)(ii) as issued by an insurance company subject to tax under subchapter L if the insurance company is subject to tax under subchapter L with respect to income earned on the annuity contract. The IRS and Treasury conclude that this is the most appropriate application of the language of section 1275(a)(1)(B)(ii) and is consistent with the use of that phrase elsewhere in the Code and regulations. See, e.g., sections 953(e)(3)(C) and 1297(b)(2)(B); § 1.848–2(h).

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Patrick E. White, Office of the Associate Chief Counsel (Financial Institutions & Products). However, other personnel from the IRS and Treasury Department participated in their development.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Section 1.1271–0 is amended by adding entries for paragraphs (k) through (k)(3) to § 1.1275–1 to read as follows:

§ 1.1271–0 Original issue discount; effective dates; table of contents.

* * * * *

§ 1.1275–1 Definitions.

* * * * *

(k) Exception under section 1275(a)(1)(B)(ii) for annuities issued by an insurance company subject to tax under subchapter L of the Internal Revenue Code.

(1) Rule.

(2) Examples.

(3) Effective date.

* * * * *

Par. 3. Section 1.1275–1 is amended by adding paragraph (k) to read as follows:

§ 1.1275–1 Definitions.

* * * * *

(k) *Exception under section 1275(a)(1)(B)(ii) for annuities issued by an insurance company subject to tax under subchapter L of the Internal Revenue Code—(1) Rule.* For purposes of section 1275(a)(1)(B)(ii), an annuity contract issued by a foreign insurance company is considered as issued by an insurance company subject to tax under subchapter L if the insurance company is subject to tax under subchapter L with respect to income earned on the annuity contract.

(2) *Examples.* The following examples illustrate the rule of paragraph (k)(1) of this section. Each example assumes that the annuity contract is a contract to which section 72 applies and was issued in a transaction where there is no consideration other than cash or another qualifying annuity contract, pursuant to the exercise of an election under an insurance contract by a beneficiary thereof on the death of the insured party, or in a transaction involving a qualified pension or employee benefit plan. The examples are as follows:

Example 1. Company X is an insurance company that is organized, licensed and doing business in Country Y. Company X does not have a U.S. trade or business and is not, under section 842, subject to U.S. income tax under subchapter L with respect to income earned on annuity contracts. A, a U.S. taxpayer, purchases an annuity contract from Company X in Country Y. The annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

Example 2. The facts are the same as in Example 1, except that Company X has a U.S. trade or business. A purchased the annuity from Company X's U.S. trade or business. Under section 842(a), Company X is subject to tax under subchapter L with respect to income earned on the annuity contract. Under these facts, the annuity contract is excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

Example 3. The facts are the same as in *Example 2*, except that there is a tax treaty between Country Y and the United States. Company X is a resident of Country Y for purposes of the U.S.-Country Y tax treaty. Company X's activities in the U.S. do not constitute a permanent establishment under the U.S.-Country Y tax treaty. Because Company X does not have a U.S. permanent establishment, Company X is not subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

Example 4. The facts are the same as in *Example 1*, except that Company X is a foreign insurance corporation controlled by a U.S. shareholder. Company X does not make an election 1 under section 953(d) to be treated as a domestic corporation. The controlling U.S. shareholder is required under sections 953 and 954 to include income earned on the annuity contract in its taxable income under subpart F. However, Company X is not subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is not excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

Example 5. The facts are the same as in *Example 4*, except that Company X properly elects under section 953(d) to be treated as a domestic corporation. By reason of its election, Company X is subject to tax under subchapter L with respect to income earned on the annuity contract. Thus, the annuity contract is excepted from the definition of a debt instrument by section 1275(a)(1)(B)(ii).

(3) *Effective date.* This paragraph (k) is applicable for interest accruals on or after June 6, 2002. This paragraph (k) does not apply to an annuity contract that was purchased before January 12, 2001. For purposes of this paragraph (k), if any additional investment in a contract purchased before January 12, 2001, is made on or after January 12, 2001, and the additional investment is not required to be made under a binding written contractual obligation that was entered into before that date, then the additional investment is treated as the purchase of a contract after January 12, 2001.

Dated: April 26, 2002.

David A. Mader,

Acting, Deputy Commission of Internal Revenue.

Pamela F. Olson,

Acting, Assistant Secretary of the Treasury

[FR Doc. 02–11035 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

[KY–229–FOR]

Kentucky Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: We, the Office of Surface Mining Reclamation and Enforcement (OSM), are approving an amendment to the Kentucky permanent regulatory program (the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA or the Act). Kentucky proposed revisions to the State regulations pertaining to subsidence control. The amendment is intended to render the Kentucky program consistent with the corresponding Federal regulations and to provide additional specificity.

EFFECTIVE DATE: May 7, 2002.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Field Office Director Telephone: (859) 260–8400. Address: Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

SUPPLEMENTARY INFORMATION:

I. Background on the Kentucky Program
II. Submission of the Proposed Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Kentucky Program

Section 503(a) of the Act permits a State to assume primacy for the regulation of surface coal mining and reclamation operations on non-Federal and non-Indian lands within its borders by demonstrating that its State program includes, among other things, "a State law which provides for the regulation of surface coal mining and reclamation operations in accordance with the requirements of the Act * * *; and rules and regulations consistent with regulations issued by the Secretary pursuant to the Act." *See* 30 U.S.C. 1253(a)(1) and (7). On the basis of these criteria, the Secretary of the Interior conditionally approved the Kentucky program on May 18, 1982. You can find background information on the Kentucky program, including the Secretary's findings, the disposition of comments, and conditions of approval in the May 18, 1982 **Federal Register** (47 FR 21404). You can also find later actions concerning Kentucky's program and program amendments at 30 CFR 917.11, 917.13, 917.15, 917.16, and 917.17.

II. Submission of the Proposed Amendment

By letter dated January 25, 2001 (Administrative Record No. KY–1502), the Kentucky Department of Surface Mining Reclamation and Enforcement sent us an amendment to the Kentucky program. In its letter, Kentucky noted that on December 22, 1999, we suspended and modified portions of 30 CFR 784.20 and 30 CFR 817.121(c)(4)(i) through (iv) pursuant to an order of the United States Court of Appeals for the District of Columbia Circuit. Kentucky proposed to amend its rules in the same manner that we modified our regulations. The amendment, at Title 405 of the Kentucky Administrative Regulations (KAR) Chapter 18:210, deleted the provision that required presubsidence surveys of structures at Section 1(4) and the rebuttable presumption of causation of subsidence damage at Section 3(4).

Kentucky also submitted changes to Section 2(2) of 405 KAR 18:210, deleting references to the presubsidence survey of structures and adding a provision allowing property owners to waive the 30-day mining moratorium following the emergency notice. With the exception of the deletion of the references to presubsidence structural surveys, the changes to Section 2(2) do not correspond to any federal regulatory changes.

We announced receipt of the proposed amendment in the March 5, 2001, **Federal Register** (66 FR 13275). In the same document, we opened the public comment period and provided an opportunity for a public hearing or meeting on the amendment's adequacy (Administrative Record No. KY–1519). The public comment period ended on April 4, 2001.

By letter dated June 8, 2001 (Administrative Record No. KY–1513), Kentucky submitted the final version of the proposed amendment.

We reopened the public comment period in the August 15, 2001, **Federal Register** (66 FR 42815) and provided an opportunity for a public hearing or meeting on the adequacy of the revised amendment. (Administrative Record No. KY–1515). We did not hold a public hearing or meeting because no one requested one. The public comment period ended on August 30, 2001. We received comments from one industry group, one Federal agency, and two private citizens.

Procedural History of Suspended Federal Rules

The Energy Policy Act was enacted October 24, 1992, Pub. L. 102–486, 106 Stat. 2776 (1992) (hereinafter, The Energy Policy Act or EPAct). Section 2504 of that Act, 106 Stat. 2776, 3104, amends SMCRA, 30 U.S.C. 1201 *et seq.* Section 2504 of EPAct added a new section 720 to SMCRA. Section 720(a)(1) requires that all underground coal-mining operations conducted after October 24, 1992, promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations. Repair of damage includes rehabilitation, restoration, or

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replacement of the structures identified by section 720(a)(1), and compensation must be provided to the owners in the full amount of the diminution in value resulting from the subsidence. Section 720(a)(2) requires prompt replacement of certain identified water supplies, which have been adversely affected by underground coal mining operations. Under section 720(b), the Secretary of the Interior was required to promulgate final regulations to implement the provisions of section 720(a).

On September 24, 1993 (58 FR 50174), OSM published a proposed rule to amend the regulations applicable to underground coal mining and control of subsidence-caused damage to lands and structures through the adoption of a number of permitting requirements and performance standards. We adopted final regulations on March 31, 1995 (60 FR 16722).

The rules were challenged by the National Mining Association in the District Court for the District of Columbia and in the U.S. Court of Appeals for the District of Columbia Circuit. On April 27, 1999, the U.S. Court of Appeals issued a decision vacating certain portions of the regulatory provisions of the subsidence regulations. See *National Mining Association* v. *Babbitt*, 173 F.3d 906 (1999). We suspended those regulatory provisions that are inconsistent with the rationale provided in the U.S. Court of Appeals' decision. The following Federal provisions were suspended.

1. 30 CFR 817.121(c)(4)(i) through (iv)

This regulation provided that if damage to any non-commercial building or occupied residential dwelling or structures related thereto occurred as a result of earth movement within an area determined by projecting a specific angle of draw from the outer-most boundary of any underground mine workings to the surface of the land, a rebuttable presumption would exist that the permittee caused the damage. The presumption typically would have applied to a 30-degree angle of draw. Once the presumption was triggered, the burden of going forward shifted to the mine operator to offer evidence that the damage was attributable to another cause. The purpose of this regulatory provision was to set out a procedure under which damage occurring within a specific area would be subject to a rebuttable presumption that subsidence from underground mining was the cause of any surface damage to non-commercial buildings or occupied residential dwellings and related structures.

The Court of Appeals vacated, in its entirety, this rule that established an angle of draw and that created a rebuttable presumption that damage to EPAct protected structures within an area defined by an "angle of draw" was in fact caused by the underground mining operation. 173 F.3d at 913.

In reviewing the regulation, the Court rejected the Secretary's contention that the angle of draw concept was reasonably based on technical and scientific assessments and that it logically connected the surface area that could be damaged from earth movement to the underground mining operation. The angle of draw provided the basis for establishing the surface area within which the rebuttable presumption would apply. The Secretary had explained that the rebuttable presumption merely shifted the burden of document production to the operator in evaluating whether the damage was actually caused by the underground mining operation within the surface area defined by the angle of draw. The Court nevertheless held that the angle of draw was irrationally broad and that the scientific facts presented did not support the logical inference that damage to the surface area would be caused by earth movement from underground mining within the area.

Based on the conclusion that there was no scientific or technical basis provided for establishing a rational connection between the angle of draw and surface area damage, the Court further concluded that the rebuttable presumption failed. In reviewing the rebuttable presumption requirement, the Court held "an evidentiary presumption is 'only permissible if there is sound and rational connection between the proved and inferred facts, and when proof of one fact renders the existence of another fact so probable that it is sensible and timesaving to assume the truth of [the inferred] fact * * * until the adversary disproves it.'" That is to say, for the presumption to be permissible, the facts would have to demonstrate that the earth movement from the underground mining operation "more likely than not" caused the damage at the surface. See National Mining Association, 173 F.3d at 906–910. In compliance with the Court of Appeals' decision of April 27, 1999, we suspended 30 CFR 817.121(c)(4)(i) through (iv).

Paragraph (v) within this section applies generally to the types of information that must be considered in determining the cause of damage to an EPAct protected structure and is not limited to or expanded by the area defined by the angle of draw. Therefore, paragraph (v) remains in force.

2. Section 784.20(a)(3)

This regulatory provision required, unless the owner denied the applicant access for such purposes, a survey, which identified certain features. First, the survey had to identify the condition of all non-commercial buildings or occupied residential dwellings and related structures, which were within the area, encompassed by the applicable angle of draw and which might sustain material damage, or whose reasonably foreseeable use might be diminished, as a result of mine subsidence. Second, the survey had to identify the quantity and quality of all drinking, domestic, and residential water supplies within the proposed permit area and adjacent area that could be contaminated, diminished, or interrupted by subsidence. In addition, the applicant was required to notify the owner in writing that denial of access would remove the rebuttable presumption that subsidence from the operation caused any post mining damage to protected structures that occurred within the surface area that corresponded to the angle of draw for the operation. (See discussion of angle of draw above). This regulatory provision was challenged insofar as it required a specific structural condition survey of all EPAct protected structures. The Court of Appeals vacated the specific structural condition survey regulatory requirement in its decision on April 27, 1999. In reviewing the Secretary's requirement, the Court clearly upheld the Secretary's authority to require a pre-subsidence structural condition survey of all EPAct protected structures. The Court accepted the Secretary's explanation that this specific structural condition survey was necessary, among other requirements, in order to determine whether a subsidence control plan would be required for the mining operation. However, because of the Court's ruling on the "angle of draw" regulation discussed above, it vacated the requirement for a specific structural condition survey because it was tied directly to the area defined by the "angle of draw."

In compliance with the Court of Appeals" decision, we suspended that portion of 30 CFR 784.20(a)(3) which required a specific structural condition survey of all EPAct protected structures. The remainder of this section continues in force to the extent that it applies to the EPAct protected water supplies survey and any technical assessments or engineering evaluations necessarily related thereto.

III. Director's Findings

Following are the findings we made concerning Kentucky's amendment under SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17. As discussed below, we are approving the amendment.

Deletion of 405 KAR18:210 Section 1(4)(a)–(d)

Section 1(4)(a) of 405 KAR 18:210 requires presubsidence surveys of the specific structural conditions of protected structures within the projected angle of draw. Section 1(4)(b) provides for filing of written objections to the survey by property owners. Section 1(4)(c) prohibits mining within 1,500 feet horizontally of a structure for which a survey is required, unless the permittee submits the survey or demonstrates that the property owner refused access to the site for purposes of conducting the survey. Section 1(4)(d) allows the permittee to request an alternative to the temporary 1,500-foot buffer zone, based upon the angle of draw.

Paragraph (a) of Section 1(4) is substantively identical to the suspended portion of the Federal regulations at 30 CFR 784.20(a)(3). Paragraphs (b), (c) and (d) of Section 1(4) have no direct Federal counterparts. However, they relate only to the presubsidence structural survey requirement of paragraph (a). Because these State regulations are either substantively identical to or related only to the suspended portion of the Federal regulations at 30 CFR 784.20(a)(3), we find that their deletion will not render the Kentucky program inconsistent with SMCRA or the Federal regulations. Therefore, the deletions are approved.

Deletion of 405 KAR 18:210 Section 3(4)

Section 3(4) of 405 KAR 18:210 establishes a rebuttable presumption that damage to protected structures resulting from earth movement within the projected angle of draw was caused by the permittee. This provision is substantively identical to the suspended Federal regulations at 30 CFR 817.121(c)(4)(i) through (iv). Therefore, we find that its deletion will not render the Kentucky program inconsistent with SMCRA or the Federal regulations. We are approving the deletion.

Revision of 405 KAR 18:210 Section 2(2)

Kentucky also proposes to amend 405 KAR 18:210, Section 2(2), which requires notice to surface owners before mining beneath their property. Section 2(1) requires the permittee to notify, in writing, all residents and occupants of surface properties and structures within the area above underground workings that mining will occur beneath their property or structures. The notification must be by mail, and must be sent to the owners or occupants at least 90 days prior to mining beneath the property or structures. Section 2(2) provides an exception to the minimum notification time in Section 2(1) if "subsequent emergencies or other unforeseen conditions in underground mining necessitate mining beneath such property or residence sooner than ninety (90) days after such notice." If an emergency or other unforeseen condition exists, the State rule requires an additional written notice to the owner or resident that mining will occur. It also provides that "in no case shall mining be conducted beneath the property or residence sooner than thirty (30) days after such additional notice is given."

Kentucky proposes to amend Section 2(2) to allow the property owner to waive the 30-day moratorium on mining. The waiver must be expressly given, in writing, and "shall be granted after the initial notice required under subsection (1) of this section has been given, and shall be separate from any other waiver, lease, deed, easement, agreement, or other conveyance of property or rights." Kentucky has stated that both the initial notice under Section 2(1) and subsequent notice under Sections 2(2) are not waivable. Rather, the property owner may waive only the 30-day mining moratorium that commences after the subsequent notice. (See April 11, 2001, Statement of Consideration, Administrative Record No. KY–1513).

The Federal regulations at 30 CFR 817.122 require underground mine operators to provide written notice by mail, at least 6 months prior to mining, to all owners and occupants of surface property and structures above underground workings. The regulatory authority may, however, approve a notice period of less than 6 months after considering whether the chosen notice period is sufficient to "allow surface owners to take steps to protect their property." (48 FR 24638, 24647, June 1, 1983).

Because Kentucky does not propose to allow waiver of either the initial or subsequent, i.e., "emergency" notice, a property owner will have at least 30 days warning, if he wants it, of the impending underground mining. As such, the owner will have an opportunity, if he so desires, to take steps necessary to protect that property. Therefore, the allowance of a waiver, so long as it is expressly given in writing, does not frustrate the purpose of this regulation, which is to provide a landowner with sufficient time to protect his property if he wishes to do so. For this reason, the proposed amendment does not render Section 2(2) inconsistent with the Federal regulations at 30 CFR 817.122, and it is therefore approved. However, for the reasons discussed below in our responses to the comments of the National Citizens' Coal Law Project, we are approving the waiver provision only to the extent that, where more than one entity owns the land or mineral resources, all such owners must sign express waivers of the 30-day period before the regulatory authority may grant the waiver.

IV. Summary and Disposition of Comments

Public Comments

We asked for public comments on the amendment. One public comment was received from National Citizen's Coal Law Project in a letter dated August 30, 2001 (Administrative Record No. KY–1517). The commenter stated that the regulation, at 405 KAR 18:210, Section 2(2), is inconsistent with and less effective than the corresponding Federal counterpart requirement at 30 CFR 817.122 because it provides for a 30-day notice period prior to mining in some instances, whereas the federal regulation requires at least 6 months notice. Specifically, the commenter charged that "Kentucky's regulatory approach has been eroding the timeframe set by Congress from six months to three months, to one month, and now proposes to eliminate entirely the waiting period." Therefore, the commenter stated that the amendment must be disapproved.

We disagree. First, we previously approved the 30-day emergency notice period in our original approval of the Kentucky program (47 FR at 21412, Finding 13.21, in which we approved 405 KAR 18:210E, Section 2). Second, Kentucky does not propose to eliminate the notice period entirely, as the commenter alleges, unless the property owner waives his right to use that period to take steps necessary to protect his property from mining. Therefore, as explained in the finding above, the purpose of the regulation is still served.

The commenter also objected to the allowance of a waiver of the 30-day notice period prior to mining. Specifically, the commenter stated the following: (1) Where the landowner who resides in the dwelling refuses to sign a waiver or lease but a non-resident co-tenant signs such a lease and a waiver of the 30-day notice, this regulation

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could allow immediate undermining despite the objection of the surface owner; (2) The existence of past fraud in submission of waivers also demands that a time period be allowed to assure that undermining does not occur based on a fraudulent "waiver" of the 30-day period and; (3) Once undermined, the aggrieved party who opposed mining cannot be made "whole." Their property and interests are irreparably altered. Allowing the waiver of any time frame based on an "owner" waiver, the commenter indicated, invites more mischief and more hardship for co-tenants who are often subject to coal companies purchasing or leasing a minor fractional interest and then mining the property.

We agree that the commenter's concerns have some historical validity. Therefore, our approval of this waiver provision must not be construed to allow the outcomes feared by the commenter. In other words, as noted in the finding above, we are approving the waiver provision only to the extent that, where more than one entity owns the land or mineral resources, all such owners must sign express waivers of the 30-day period before the regulatory authority may grant the waiver. Moreover, we believe that safeguards in the proposal itself may assuage the commenter's concern about fraudulent waivers. For example, the regulation provides that the waiver may be granted only after the permittee has made the initial notice as required, and the waiver must be separate from any other waiver, lease, deed, easement, agreement, or other conveyance of property or rights. These restrictions will help insure that the owner is aware, at the time he grants the waiver, of the current circumstances and the notice to which he is entitled. Moreover, because the regulatory authority will receive copies of the waivers, it can verify the names of the waiving property owners by checking them against the names of surface and mineral owners provided in the permit application. While these safeguards do not guarantee that a fraudulent waiver will never be accepted, such a guarantee simply does not exist. Indeed, regulatory authorities must rely to some degree upon the veracity of the permittee in other instances, such as the acceptance of information provided in a permit application itself. Finally, we note again that the permittee must give the initial 90-day notice and an additional notice as required when it wishes to undermine a property sooner than 90 days after the initial notice. The owner cannot waive the permittee's obligation to provide these notices.

Federal Agency Comments

Under 30 CFR 732.17(h)(11)(i) and section 503(b) of SMCRA, we requested comments on the amendment from various Federal agencies with an actual or potential interest in the Kentucky program (Administrative Record No. KY–1515). The U.S. Department of Labor, Mine Safety and Health Administration (MSHA) responded in a letter dated August 27, 2001 (Administrative Record No. KY–1516). The commenter indicated that the proposed changes should have no foreseeable impact concerning MSHA.

Environmental Protection Agency (EPA) Concurrence and Comments

Under 30 CFR 732.17(h)(11)(i) and (ii), we are required to get a written concurrence from EPA for those provisions of the program amendment that relate to air or water quality standards issued under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). This amendment does not pertain to air or water quality standards. Therefore, we did not ask the EPA for concurrence.

Under 30 CFR 732.17(h)(11)(i), we requested comments on the amendment from EPA (Administrative Record No. KY–1515). EPA did not respond to our request.

State Historic Preservation Officer (SHPO) and the Advisory Council on Historic Preservation (ACHP)

Under 30 CFR 732.17(h)(4), we are required to request comments from the SHPO and ACHP on amendments that may have an effect on historic properties. On August 22, 2001, we requested comments on Kentucky's amendment (Administrative Record No. KY–1515), but neither entity responded to our request.

V. Director's Decision

Based on the above findings, we approve the Kentucky amendment, as revised on June 8, 2001.

To implement this decision we are amending the Federal regulations at 30 CFR part 917, which codifies decisions concerning the Kentucky program. We find that good cause exists under 5 U.S.C. 553(d)(3) to make this final rule effective immediately. Section 503 of SMCRA requires that the State's program demonstrate that the State has the capability of carrying out the provisions of the Act and meeting its purposes. Making this regulation effective immediately will expedite that process. SMCRA requires consistency of State and Federal standards.

VI. Procedural Determinations

Executive Order 12630—Takings

This rule does not have takings implications. This determination is based on the analysis performed for the counterpart Federal regulation.

Executive Order 12866—Regulatory Planning and Review

This rule is exempted from review by the Office of Management and Budget under Executive Order Order 12866.

Executive Order 12988—Civil Justice Reform

The Department of the Interior has conducted the reviews required by section 3 of Executive Order 12988 and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments because each program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and the Federal regulations at 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

Executive Order 13132—Federalism

This rule does not have Federalism implications. SMCRA delineates the roles of the Federal and State governments with regard to the regulation of surface coal mining and reclamation operations. One of the purposes of SMCRA is to "establish a nationwide program to protect society and the environment from the adverse effects of surface coal mining operations." Section 503(a)(1) of SMCRA requires that State laws regulating surface coal mining and reclamation operations be "in accordance with" the requirements of SMCRA, and section 503(a)(7) requires that State programs contain rules and regulations "consistent with" regulations issued by the Secretary pursuant to SMCRA.

Executive Order 13211—Regulations That Significantly Affect the Supply, Distribution, or Use of Energy

On May 18, 2001, the President issued Executive Order 13211 which requires agencies to prepare a Statement of Energy Effects for a rule that is (1) considered significant under Executive Order 12866, and (2) likely to have a significant adverse effect on the supply, distribution, or use of energy. Because this rule is exempt from review under Executive Order 12866 and is not expected to have a significant adverse effect on the supply, distribution, or use of energy, a Statement of Energy Effects is not required.

National Environmental Policy Act

This rule does not require an environmental impact statement because section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act (42 U.S.C. 4332(2)(C)).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

Regulatory Flexibility Act

The Department of the Interior certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

Small Business Regulatory Enforcement Fairness Act

This rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This rule: (a) Does not have an annual effect on the economy of $100 million; (b) Will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and (c) Does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation was not considered a major rule.

Unfunded Mandates

This rule will not impose an unfunded mandate on State, local, or tribal governments or the private sector of $100 million or more in any given year. This determination is based upon the fact that the State submittal, which is the subject of this rule, is based upon counterpart Federal regulations for which an analysis was prepared and a determination made that the Federal regulation did not impose an unfunded mandate.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: March 27, 2002.

Allen D. Klein,

Regional Director, Appalachian Regional Coordinating Center.

For the reasons set out in the preamble, 30 CFR 917 is amended as set forth below:

PART 917—KENTUCKY

1. The authority citation for part 917 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 917.15 is amended by adding a new entry to the table in chronological order to read as follows:

§ 917.15 Approval of Kentucky regulatory program amendments.

* * * * *

Original amendment submission date	Date of final publication	Citation/description
January 25, 2001	May 7, 2002	405 KAR 18:210, Sections 1(4), 2(2), and 3(4).

[FR Doc. 02–11212 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–05–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 701

[Secretary of the Navy Instruction 5211.5]

Privacy Act; Implementation

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy deleted the exempt system of records N05527–4, entitled "Naval Security Group Personnel Security/Access Files" on April 24, 2002, at 67 FR 20100. This rule will delete the exemption rule for the now non-existent Privacy Act system of records.

EFFECTIVE DATE: April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION:

Executive Order 12866, "Regulatory Planning and Review"

It has been determined that Privacy Act rules for the Department of Defense are not significant rules. The rules do not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy; a sector of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Public Law 96–354, "Regulatory Flexibility Act" (5 U.S.C. Chapter 6)

It has been determined that Privacy Act rules for the Department of Defense do not have significant economic impact on a substantial number of small entities because they are concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Public Law 96–511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been determined that Privacy Act rules for the Department of Defense impose no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

Section 202, Public Law 104–4, "Unfunded Mandates Reform Act"

It has been determined that the Privacy Act rulemaking for the Department of Defense does not involve a Federal mandate that may result in the expenditure by State, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more and that such rulemaking will not significantly or uniquely affect small governments.

Executive Order 13132, "Federalism"

It has been determined that the Privacy Act rules for the Department of Defense do not have federalism implications. The rules do not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 701

Privacy.

1. The authority citation for 32 CFR part 701, Subpart G continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat. 1896 (5 U.S.C. 552a).

2. In Section 701.118, paragraph (p) is removed and reserved as follows:

§ 701.118 Exemptions for specific Navy record systems.

* * * * *

(p) [Reserved]

* * * * *

Dated: April 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–10993 Filed 5–6–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[USCG–2002–12227]

Safety Zones and Security Zones

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules issued by the Coast Guard and temporarily effective between July 1, 2001 and March 31, 2002, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard regulations that became effective and were terminated between July 1, 2001 and March 31, 2002.

ADDRESSES: The Docket Management Facility maintains the public docket for this notice. Documents indicated in this notice will be available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, Room PL–401, 400 Seventh Street SW., Washington, DC 20593–0001 between 9 a.m. and 5 p.m., Monday through Friday, except Federal Holidays. You may electronically access the public docket for this notice on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact LTJG Sean Fahey, Office of Regulations and Administrative Law, telephone (202) 267–2830. For questions on viewing, or on submitting material to the docket, contact Dorothy Beard, Chief, Dockets, Department of Transportation (202) 366–5149.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive to the safety and security needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Safety and security zones may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without sufficient advance notice. The affected public is, however, informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation. Because **Federal Register** publication was not possible before the beginning of the effective period, mariners were personally notified of the contents of these special local regulations, security zones, or safety zones by Coast Guard officials on-scene prior to the enforcement action. However, the Coast Guard, by law, must publish in the **Federal Register** notice of substantive rules adopted. To meet this obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary security zones and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. The safety zones and security zones listed in this notice have been exempted from review under Executive Order 12866 because of their emergency nature, or limited scope and temporary effectiveness.

The following regulations were placed in effect temporarily during the period from July 1, 2001 through March 31, 2002, unless otherwise indicated. This notice also includes regulations that were not received in time to be included on the quarterly notice for the third and fourth quarter of 2001.

Dated: May 1, 2002.

S.G. Venckus,

Chief, Office of Regulations and Administrative Law.

COTP QUARTERLY REPORT.—1ST QUARTER 2002

COTP docket	Location	Type	Effective date
ACTBALT 02–001	POCOMOKE CITY, MARYLAND	SAFETY ZONE	01/18/2002
CHARLESTON 02–012	COOPER RIVER, SOUTH CAROLINA	SECURITY ZONE	02/19/2002
CORPUS CHRISTI 02–002	PORT OF CORPUS CHRISTI, TEXAS	SECURITY ZONE	03/09/2002
HOUSTON–GALVESTON 02–003	GALVESTON, TEXAS	SECURITY ZONE	03/19/2002
HOUSTON–GALVESTON 02–004	GALVESTON, TEXAS	SECURITY ZONE	03/29/2002

COTP QUARTERLY REPORT.—1ST QUARTER 2002—Continued

COTP docket	Location	Type	Effective date
JACKSONVILLE 02–005	ATLANTIC OCEAN, DAYTON BEACH, FL	SECURITY ZONE	01/30/2002
JACKSONVILLE 02–010	PORT CANAVERAL, FL	SECURITY ZONE	02/13/2002
JACKSONVILLE 02–016	COCOA, FL	SAFETY ZONE	02/23/2002
JACKSONVILLE 02–017	MATANZAS RIVER, ST. AUGUSTINE, FL	SAFETY ZONE	02/22/2002
LA/LONG BEACH 02–001	LOS ANGELES HARBOR, CALIFORNIA	SECURITY ZONE	01/07/2002
MEMPHIS 02–001	LWR MISSISSIPPI RIVER, M. 595 TO 618	SAFETY ZONE	01/10/2002
MEMPHIS 02–003	MCCLELLAN–KERR ARKANSAS RIVER	SAFETY ZONE	02/13/2002
MEMPHIS 02–004	LWR MISSISSIPPI RIVER, M. 733 TO 736	SAFETY ZONE	02/13/2002
MEMPHIS 02–005	MCCLELLAN–KERR ARKANSAS RIVER	SAFETY ZONE	02/28/2002
MEMPHIS 02–006	MCCLELLAN–KERR ARKANSAS RIVER	SAFETY ZONE	03/16/2002
MOBILE 02–001	WEST PASCAGOULA RIVER AND BAY	SAFETY ZONE	01/21/2002
MOBILE 02–002	CHOCTAWHATCHEE BAY, FLORIDA	SECURITY ZONE	02/04/2002
MOBILE 02–003	MOBILE RIVER, MOBILE, ALABAMA	SAFETY ZONE	03/01/2002
MORGAN CITY 02–001	EUGENE ISLAND SEA BUOY TO MM 119.8	SAFETY ZONE	03/12/2002
NEW ORLEANS 02–001	LWR MISSISSIPPI RIVER, M. 99 TO 102	SECURITY ZONE	01/15/2002
NEW ORLEANS 02–002	LWR MISSISSIPPI RIVER, M. 92.6 TO 98.2	SECURITY ZONE	02/01/2002
NEW ORLEANS 02–003	LUNDI GRASS BOAT PARADE, M. 94 TO 96	SAFETY ZONE	02/11/2002
NEW ORLEANS 02–006	RIGOLETS RAILROAD DRAW BRIDGE	SAFETY ZONE	03/18/2002
PADUCAH 02–001	TENNESSEE RIVER, M. 446 TO 471	SAFETY ZONE	01/24/2002
PADUCAH 02–002	TENNESSEE RIVER, M. 0 TO 003.5	SAFETY ZONE	01/29/2002
PADUCAH 02–003	TENNESSEE RIVER, M. 002 TO 003	SAFETY ZONE	02/07/2002
PADUCAH 02–004	TENNESSEE RIVER, M. 446 TO 454.6	SAFETY ZONE	03/18/2002
PITTSBURGH 02–003	MONONGAHELA RIVER, M. 0 TO 0.5	SECURITY ZONE	02/05/2002
PITTSBURGH 02–004	OHIO RIVER, M. 14.8	SAFETY ZONE	02/27/2002
PITTSBURGH 02–006	OHIO RIVER, M. 24 TO 25	SAFETY ZONE	03/09/2002
PORT ARTHUR 02–001	PORT ARTHUR, TX	SAFETY ZONE	02/10/2002
SAN DIEGO 02–002	SAN DIEGO, CA	SAFETY ZONE	02/06/2002
SAN FRANCISCO BAY 02–001	OFFSHORE OF SAN FRANCISCO, CA	SAFETY ZONE	02/08/2002
WESTERN ALASKA 02–002	COOK INLET, AK	SECURITY ZONE	01/08/2002
WESTERN ALASKA 02–006	S/S ARCTIC SUN, COOK INLET, AK	SECURITY ZONE	01/19/2002

DISTRICT QUARTERLY REPORT.—1ST QUARTER 2002

District docket	Location	Type	Effective date
01–02–008	PRESIDENTIAL VISITS, PORTLAND, ME	SAFETY ZONE	01/25/2002
01–02–022	PORTLAND, ME	SAFETY ZONE	02/22/2002
05–02–001	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	01/14/2002
05–02–001a	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	01/15/2002
05–02–002	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	02/07/2002
05–02–010	ELK RIVER, CHESAPEAKE BAY, MARYLAND	SAFETY ZONE	03/04/2002
05–02–011	HAMPTON ROADS, ELIZABETH RIVER, VA	SECURITY ZONE	03/21/2002
09–02–002	LAKE ST. CLAIR, HARRISON TWP., MI	SAFETY ZONE	02/16/2002
13–02–001	PORTLAND INTERNATIONAL AIRPORT	SECURITY ZONE	01/05/2002
13–2–005	AIRCRAFT IN THE WATER, ELLIOTT BAY, WA	SAFETY ZONE	03/28/2002

REGULATIONS NOT ON PREVIOUS 3RD AND 4TH QUARTERLY REPORT

District/COTP	Location	Type	Effective date
DISTRICT REGULATION FOR 3RD QUARTER			
CGD09–01–062	LAKE ONTARIO, OSWEGO, NEW YORK	SAFETY ZONE	07/01/01
COTP REGULATIONS FOR 4TH QUARTER			
CORPUS CHRISTI 01–003	INNER HARBOR, CORPUS CHRISTI, TX	SAFETY ZONE	10/01/01
JACKSONVILLE 01–131	ST. JOHN'S RIVER, JACKSONVILLE, FL	SAFETY ZONE	10/27/01
PITTSBURGH 01–005	OHIO RIVER, M. 119 TO 119.8	SAFETY ZONE	10/15/01
PITTSBURGH 01–006	OHIO RIVER, M. 34.6 TO 35.1	SAFETY ZONE	10/15/01
WESTERN ALASKA 01–007	PHILLIPS PETROLEUM, LNG PIER, NIKISKI, AK	SECURITY ZONE	10/19/01

[FR Doc. 02–11277 Filed 5–6–02; 8:45 am]

BILLING CODE 4910–15–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Port Arthur–02–002]

RIN 2115–AA97

Safety Zones; Port Neches Riverfest, Neches River, Port Neches, Texas

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing temporary safety zones for all waters of the Neches River, adjacent to Port Neches Park in Port Neches, Texas. These safety zones are necessary to protect spectators and vessels from the potential safety hazards associated with a fireworks display and boat races that are part of the Port Neches Chamber of Commerce Riverfest. Entry into these zones is prohibited unless specifically authorized by the Captain of the Port, Port Arthur or his designated representative.

DATES: This rule is effective from 8 p.m. on May 11, 2002 through 6 p.m. on May 12, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket, are part of docket [COTP Port Arthur-02–002] and are available for inspection or copying at Marine Safety Office Port Arthur, 2875 Jimmy Johnson Blvd., Port Arthur, Texas, 77640 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Mike Kicklighter, Marine Safety Office Port Arthur, at (409) 723–6500.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM, and under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Publishing a NPRM and delaying its effective date would be contrary to public interest since immediate action is needed to protect vessels and mariners from the hazards associated with this event. The Coast Guard did not receive notice of the Port Neches Riverfest in time to publish a NPRM or to have the temporary final rule, published in the **Federal Register** 30 days prior to the event.

Background and Purpose

The Port Neches Chamber of Commerce Riverfest will include a fireworks display as well as a series of boat races on the Neches River, adjacent to Port Neches Park, Port Neches, Texas. Safety zones will be established during the fireworks display and during the boat races to ensure the safety of the participants, spectators, and other vessels.

The fireworks safety zone will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park, between the northern boundary at 30°00′00″ N and the southern boundary at 29°59′42″ N. These coordinates are based upon [NAD 83]. This safety zone will be enforced from 8 p.m. to 10 p.m. on May 11, 2002.

The safety zone for the boat races will encompass all waters of the Neches River, shore to shore, adjacent to Port Neches Park in Port Neches, Texas, between the northern boundary at 30°00′12″ N and the southern boundary at 29°59′36″ N. These coordinates are based upon [NAD 83]. This safety zone will be enforced from 8 a.m. to 6 p.m. on May 12, 2002.

Entry into these zones by anyone other than event participants is prohibited, unless authorized by the Captain of the Port, Port Arthur or his designated representative.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies procedures of DOT is unnecessary. The waterway will be closed briefly from 8 p.m to 10 p.m. on May 11, 2002 for the fireworks display. On May 12, 2002, there will be two breaks during the boat races. During these breaks, the waterway will be cleared and traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander. The break periods will begin at approximately 11 a.m. and 2:45 p.m. and will last approximately one hour each. Notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners and the event sponsors. The impacts on routine navigation are expected to be minimal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: The owners or operators of vessels intending to transit that portion of the Neches River adjacent to Port Neches Park, Port Neches, Texas, from 8 p.m. to 10 p.m. on May 11, 2002 and from 8 a.m. to 6 p.m. on May 12, 2002.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: (1) The safety zone for the fireworks display will only be in effect for a short period of time, (2) there will be two breaks during the boat races. During these breaks the waterway will be cleared and traffic will be allowed to pass through the zone as directed by the Coast Guard patrol commander, and (3) notifications of the safety zones and break periods will be made to the marine community by broadcast notices to mariners and the event sponsors.

If you are a small business entity and are significantly affected by this regulation please contact LTJG Mike Kicklighter, Marine Safety Office Port Arthur, at (409) 723–6500.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, so we discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (Water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 8 p.m. May 11 through 6 p.m. May 12, 2002, a new temporary § 165.T08–043 is added to read as follows:

§ 165.T08–043 Safety Zones; Port Neches Riverfest, Neches River, Port Neches, Texas.

(a) *Regulated Areas.* The following areas are safety zones:

(1) *Fireworks safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, Texas, between the northern boundary at 30°00′00″ N and the southern boundary at 29°59′42″ N. These coordinates are based upon [NAD 83].

(2) *Boat race safety zone.* All waters of the Neches River, shore to shore, adjacent to Port Neches Park, Port Neches, Texas, between the northern boundary at 30°00′12″ N and the southern boundary at 29°59′36″ N. These coordinates are based upon [NAD 83].

(b) *Enforcement dates.* (1) The fireworks safety zone in paragraph (a)(1) of this section will be enforced from 8 p.m. to 10 p.m. on May 11, 2002.

(2) The boat race safety zone in paragraph (a)(2) of this section will be enforced from 8 a.m. to 6 p.m. on May 12, 2002.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.23 of this part, entry into the safety zones in this section is prohibited unless authorized by the Captain of the Port, Port Arthur, or his designated representative.

(2) Vessels requiring entry into or passage through a safety zone in this section must request permission from the Captain of the Port, Port Arthur, or his designated representative. They may be contacted via VHF Channel 13 or 16, or via telephone at (409) 723–6500.

(3) All persons and vessels shall comply with the instructions of the Captain of the Port, Port Arthur and designated on-scene U.S. Coast Guard patrol personnel. On-scene U.S. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

Dated: April 22, 2002.

R.E. Walker,

Commander, U.S. Coast Guard, Acting Captain of the Port, Port Arthur.

[FR Doc. 02–11276 Filed 5–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP BALTIMORE 02–002]

RIN 2115–AA97

Security Zone; Potomac River, Washington Channel, Washington, DC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary security zone

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in the waters of Washington Channel on the Potomac River off Fort Lesley J. McNair, Washington, DC during the May 30, 2002, U.S. Coast Guard Commandant's Change of Command ceremony. The security zone is necessary to provide for the security and safety of life and property of event participants, spectators and mariners on U.S. navigable waters during the event. Entry into this zone is prohibited unless authorized by the Captain of the Port, Baltimore, Maryland, or designated representative.

DATES: This rule is effective from 11 a.m. through 4 p.m. on May 30, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket COTP Baltimore 02–002 and are available for inspection or copying at U.S. Coast Guard Activities Baltimore, Port Safety, Security and Waterways Management Branch, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ronald L. Houck, Port Safety, Security and Waterways Management Branch, at telephone number (410) 576–2674.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On March 20, 2002, we published a notice of proposed rulemaking (NPRM) entitled Security Zone; Potomac River, Washington Channel, Washington, DC in the **Federal Register** (67 FR 12947). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. Immediate action is needed to protect dignitaries taking part in the high-level military ceremony from potential threats posed by waterborne acts of sabotage or other subversive acts. For the concerns noted, it is in the public interest to have this regulation in effect during the event.

Background and Purpose

The Coast Guard will conduct a Change of Command ceremony along the Potomac River at Washington, DC. A security zone is needed to protect dignitaries taking part in the high-level military ceremony from potential threats posed by waterborne acts of sabotage or other subversive acts. The purpose of the proposed regulation is to promote maritime safety and protect participants and spectators during the event. These regulations will impact the movement of all vessels operating in the specified area on the Washington Channel at Washington, DC.

Discussion of Comments and Changes

No comments were received; therefore, we have made no changes to the regulatory text.

Discussion of Rule

The U.S. Coast Guard Commandant's Change of Command ceremony will be held at Fort Lesley J. McNair, Washington, DC on May 30, 2002. The event will consist of a background comprised of three U.S. Coast Guard vessels anchored adjacent to Fort McNair on the confined waters of the Washington Channel, on the Potomac River. A security zone is needed from 11 a.m. through 4 p.m. on May 30, 2002 to safeguard event participants and spectators. U.S. Coast Guard patrol vessels will be provided to prevent the movement of persons and vessels in an area approximately 200 yards wide and 450 yards long within Washington Channel. Entry into this zone is prohibited unless authorized by the Captain of the Port or his or her designated representative. The Captain of the Port will notify the public of changes in the status of the zone by a Marine Safety Radio Broadcast.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This temporary rule affects a limited area for approximately five hours, and will not completely close the navigable channel. Therefore, the Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit or anchor in a portion of the Washington Channel from 11 a.m. through 4 p.m. on May 30, 2002. The zone will only encompass a limited area. Shallow water vessel traffic not constrained by draft can pass safely around the security zone. A lack of commercial vessel traffic exists in the area during the effective period. Maritime advisories on the Change of Command ceremony have been advertised and made widely available to users of the channel and will continue until the ceremony is complete.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because of the limited duration and scope of the regulation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.T05–006 to read as follows:

§ 165.T05–006 Security Zone; Potomac River, Washington Channel, Washington, DC

(a) *Location.* The following area is a security zone: all waters of the Washington Channel, from surface to bottom, encompassed by lines connecting the following points, beginning at 38°52′03″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′14″ W, thence to 38°51′50″ N, 077°01′16″ W, thence to 38°51′50″ N, 077°01′07″ W, thence to 38°52′03″ N, 077°01′07″ W. These coordinates are based upon NAD 1983.

(b) *Regulations.*

(1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Baltimore, Maryland, or his or her designated representative. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number (410) 576–2693 or on VHF channel 16 (156.8 MHz) or VHF channel 22 (157.1 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(d) *Effective period.* This section will be effective from 11 a.m. through 4 p.m. on May 30, 2002.

Dated: April 23, 2002.

E.Q. Kahler,

Acting Commander, U.S. Coast Guard. Captain of the Port, Baltimore, Maryland.

[FR Doc. 02–11275 Filed 5–6–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF AGRICULTURE

Forest Service

50 CFR Part 100

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

RIN 1018–AH85

Subsistence Management Regulations for Public Lands in Alaska

AGENCY: Forest Service, Agriculture; and Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: This rule, in response to comments on an interim rule, amends the operating regulations of the Federal Subsistence Management Program in Alaska. The primary aspects of that Interim Rule, published June 12, 2001, expanded the authority that the Board may delegate to agency field officials and clarified the procedures for enacting emergency or temporary restrictions, closures, or openings. This Final Rule also corrects some inadvertent errors and oversights of previous rules.

DATES: This rule is effective June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o U.S. Fish and Wildlife Service, Thomas H. Boyd, (907) 786–3888. For questions specific to National Forest System lands, contact Ken Thompson, Regional Subsistence Program Manager, USDA, Forest Service, Alaska Region, (907) 271–2540.

SUPPLEMENTARY INFORMATION:

Background

Title VIII of the Alaska National Interest Lands Conservation

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Act (ANILCA) (16 U.S.C. 3111–3126) requires that the Secretary of the Interior and the Secretary of Agriculture (Secretaries) implement a joint program to grant a preference for subsistence uses of fish and wildlife resources on public lands, unless the State of Alaska enacts and implements laws of general applicability that are consistent with ANILCA and that provide for the subsistence definition, preference, and participation specified in Sections 803, 804, and 805 of ANILCA. The State implemented a program that the Department of the Interior previously found to be consistent with ANILCA. However, in December 1989, the Alaska Supreme Court ruled in *McDowell* v. *State of Alaska* that the rural preference in the State subsistence statute violated the Alaska Constitution. The Court's ruling in McDowell required the State to delete the rural preference from the subsistence statute and, therefore, negated State compliance with ANILCA. The Court stayed the effect of the decision until July 1, 1990.

As a result of the *McDowell* decision, the Department of the Interior and the Department of Agriculture (Departments) assumed, on July 1, 1990, responsibility for implementation of Title VIII of ANILCA on public lands. On June 29, 1990, the Temporary Subsistence Management Regulations for Public Lands in Alaska were published in the **Federal Register** (55 FR 27114–27170). On January 8, 1999, (64 FR 1276), the Departments extended jurisdiction to include waters in which there exists a Federal reserved water right. This amended rule conformed the Federal Subsistence Management Program to the Ninth Circuit's ruling in *Alaska* v. *Babbitt*.

Consistent with Subparts A, B, and C of these regulations, the Departments established a Federal Subsistence Board to administer the Federal Subsistence Management Program. The Board's composition includes a Chair appointed by the Secretary of the Interior with concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; the Alaska Regional Director, U.S. National Park Service; the Alaska State Director, U.S. Bureau of Land Management; the Alaska Regional Director, U.S. Bureau of Indian Affairs; and the Alaska Regional Forester, USDA Forest Service. Through the Board, these agencies participate in the development of regulations for subparts A, B, and C, and the annual subpart D regulations.

On June 12, 2001 (66 FR 31533), the Secretaries published an Interim rule expanding the authority of the Board to delegate in-season management decisions to local field managers. This final rule responds to comments received on that Interim rule and makes changes to it as appropriate. All Board members have reviewed this rule and agree with its substance.

Federal Subsistence Regional Advisory Councils

Alaska has been divided into ten subsistence resource regions, each of which is represented by a Federal Subsistence Regional Advisory Council. The Regional Councils provide a forum for rural residents with personal knowledge of local conditions and resource requirements to have a meaningful role in the subsistence management of fish and wildlife on Alaska public lands. The Regional Council members represent geographical, cultural, and user diversity within each region.

Public Review and Comment

The Secretaries published an Interim rule (66 FR 31533) on June 12, 2001, in order to provide necessary delegation of authority to field managers to make crucial fishery management decisions during the past fishing season. At the same time, comments were solicited on the Interim rule. During their Winter Council meetings in February and March 2001, all Regional Advisory Councils supported the expansion of delegation authority found in § ____.10(d)(6). We also received a total of three written comments on the Interim rule.

Analysis of Public Comments

Two commentators supported clarification of residency requirements found in § ____.6(a)(1). A number of agencies indicated that there needed to be clarification regarding the minimum age at which a person could obtain a Federal Subsistence Registration permit or Designated Harvester permit. Clarifying language has been added at § ____.6(b).

Three commentators opposed the expansion of delegated authority, believing that it would remove the public process from critical management decisions. They also indicated that the decisions should remain with the Federal Subsistence Board. In developing the implementing letter that instructs field managers in the procedures to use for in-season management decisions, the Federal Subsistence Board specifically included language requiring public coordination and communication prior to in-season management decisions. During summer and fall 2001, over 30 in-season management decisions were made by field managers. All of these were accomplished with public involvement and close coordination with the Alaska Department of Fish and Game (ADFG). The delegated authority worked so well that ADFG is in the process of acquiring the same level of authority for its own field managers.

One commentator indicated opposition to the formation of any Federal local advisory committees (§ ____.10(d)(4)(xii)). The Board intends to continue utilizing State local fish and game advisory committees and not to establish any Federal ones.

One commentator supported the reorganization and clarifying language relative to Special Actions (§ ____.19).

One commentator recommended transmitting a copy of any Request for Reconsideration to the State for review and recommendation. This requirement has been added to § ____.20(e). Another commentor recommended that the conditions for accepting a Request for Reconsideration be less open to interpretation. The standards that were placed in § ____.20(d) are the same standards that the Board has been using since assuming jurisdiction for subsistence management. However, this is the first time that they have been formally published. We believe that it is in the public interest to let potential requestors know under what circumstances the Board will be accepting a Request for Reconsideration. Unfortunately, all of the criteria cannot be completely objective; there will always be some level of subjectivity.

One commentator also disagreed with a statement made in the preamble regarding economic effects. This rule by itself does not, and will not, restrict any existing sport or commercial fisheries. However, future Board actions could result in some closures to those fisheries in certain areas in order to protect the fish stocks upon which subsistence users and non-subsistence users depend.

Summary of Changes

Based on our analysis of public comments and agency concerns expressed since publication of the Interim rule (66 FR 31533) on June 12, 2001, we have made the following revisions:

Section ____.6(b)—Clarified the age at which you can obtain a Federal subsistence registration permit, a Designated Harvester permit, or have someone serve as a designated harvester for you. Agencies, staff, and members of the public have expressed concern about alleged and potential abuse by individuals obtaining permits for infants;

Section ____.7—Corrected an inadvertent error that removed the allowance for barter of fish and wildlife. Barter is provided for in ANILCA and had been allowed in the regulations until publication of the rule expanding jurisdiction for subsistence fisheries management (January 8, 1999, 64 FR 1276);

Section ____.11(b)(1)—Removed the unintended requirement that Regional Council member recommendations could only come from nominations made by subsistence users. The Board's recommendations to the Secretaries for appointment to the Regional Councils may come from nominations or from self-applicants;

Section ____11(c)(3)—Clarified that Regional Council recommendations should be supported by substantial evidence, be consistent with recognized principles of fish and wildlife conservation, and not be detrimental to the satisfaction of subsistence needs. This corresponds to the reasons under which the Board may reject a Regional Council recommendation;

Section __.14(b)—Clarified that the Board's authority includes trapping, as well as hunting and fishing;

Section ____.18—Removed duplicative language;

Section ____.19(c)—Revised the statement that implied that any Special Action that is not accepted would be deferred to the next regulatory cycle. Upon further consideration, a proponent may not wish to have his/her request appear in the next cycle because conditions may have changed or other information is now available warranting other action;

Section ____.20—Inserted a requirement for the Board to provide a copy of any Request for Reconsideration for review and recommendation to the Alaska Department of Fish and Game;

Section ____.23(a)—Included the areas of Kenai, Seward, and Homer to the list of non-rural areas. This reflects the Board's May 2001 recision of its May 2000 decision that had determined these communities to be rural; and,

Section ____.23(a)—Corrected the description of one location in the Ketchikan area (Mountain Point versus Mountain Pass) and parts of Gravina Island.

Nothing in this rule is intended to change the underlying rural priority that is set out in Title VIII of ANILCA or otherwise amend the statutory basis of the Federal Subsistence Management Program. Although most sections of these regulations are not being amended, for the purpose of clarity and ease of understanding, the entire text of subparts A and B, and portions of C is being printed. The unpublished sections (portions of subpart C and Sections ____.25, ____.26, ____.27, and ____.28) relate to wildlife, fish, and shellfish regulations that are revised annually. Because this rule relates to public lands managed by an agency or agencies in both the Departments of Agriculture and the Interior, identical text is incorporated into 36 CFR part 242 and 50 CFR part 100.

The primary purpose of the interim rulemaking action was to delegate additional authority from the Board to local officials to make conservation decisions. We published an interim rule because there was inadequate time to engage in notice-and-comment rulemaking prior to the start of the spring/summer salmon runs. Many of these runs, particularly on the Yukon and Kuskokwim Rivers, were the lowest in history last year and were expected to be very low again this past season. As such, the ability to make immediate (often within hours) decisions relative to a specific run or pulse of fish was critical in protecting the health of the population while, if at all possible, providing a subsistence opportunity for the rural residents.

Conformance with Statutory and Regulatory Authorities

National Environmental Policy Act Compliance—A Draft Environmental Impact Statement (DEIS) that described four alternatives for developing a Federal Subsistence Management Program was distributed for public comment on October 7, 1991. That document described the major issues associated with Federal subsistence management as identified through public meetings, written comments and staff analysis and examined the environmental consequences of the four alternatives. Proposed regulations (Subparts A, B, and C) that would implement the preferred alternative were included in the DEIS as an appendix. The DEIS and the proposed administrative regulations presented a framework for an annual regulatory cycle regarding subsistence hunting and fishing regulations (Subpart D). The Final Environmental Impact Statement (FEIS) was published on February 28, 1992.

Based on the public comment received, the analysis contained in the FEIS, and the recommendations of the Federal Subsistence Board and the Department of the Interior's Subsistence Policy Group, it was the decision of the Secretary of the Interior, with the concurrence of the Secretary of Agriculture, through the U.S. Department of Agriculture-Forest Service, to implement Alternative IV as identified in the DEIS and FEIS (Record of Decision on Subsistence Management for Federal Public Lands in Alaska (ROD), signed April 6, 1992). The DEIS and the selected alternative in the FEIS defined the administrative framework of an annual regulatory cycle for subsistence hunting and fishing regulations. The final rule for Subsistence Management Regulations for Public Lands in Alaska, Subparts A, B, and C (57 FR 22940–22964, published May 29, 1992) implemented the Federal Subsistence Management Program and included a framework for an annual cycle for subsistence hunting and fishing regulations.

An environmental assessment has been prepared on the expansion of Federal jurisdiction over fisheries and is available by contacting the office listed under **FOR FURTHER INFORMATION CONTACT**. The Secretary of the Interior with the concurrence of the Secretary of Agriculture has determined that the expansion of Federal jurisdiction does not constitute a major Federal action, significantly affecting the human environment and has, therefore, signed a Finding of No Significant Impact.

Compliance with Section 810 of ANILCA—A Section 810 analysis was completed as part of the FEIS process on the Federal Subsistence Management Program. The intent of all Federal subsistence regulations is to accord subsistence uses of fish and wildlife on public lands a priority over the taking of fish and wildlife on such lands for other purposes, unless restriction is necessary to conserve healthy fish and wildlife populations. The final Section 810 analysis determination appeared in the April 6, 1992, ROD which concluded that the Federal Subsistence Management Program, under Alternative IV with an annual process for setting hunting and fishing regulations, may have some local impacts on subsistence uses, but it does not appear that the program may significantly restrict subsistence uses.

During the environmental assessment process, an evaluation of the effects of this rule was also conducted in accordance with Section 810. This evaluation supports the Secretaries' determination that the final rule will not reach the "may significantly restrict" threshold for notice and hearings under ANILCA Section 810(a) for any subsistence resources or uses.

Paperwork Reduction Act—This rule contains information collection requirements subject to Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1995. It applies to the

use of public lands in Alaska. The information collection has been approved by OMB, Control Number 1018–0075, which expires July 31, 2003. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Currently, information is being collected by the use of a Federal Subsistence Registration Permit and Designated Harvester Application. The information collected on these two permits establishes whether an applicant qualifies to participate in a Federal subsistence hunt or fishery on public land in Alaska and provides a report of harvest and the location of harvest. The collected information is necessary to determine harvest success, harvest location, and population health in order to make management decisions relative to the conservation of healthy fish or wildlife populations. Additional harvest information is obtained from harvest reports submitted to the State of Alaska. The recordkeeping burden for this aspect of the program is negligible (1 hour or less). This information is accessed via computer data base.

Form	Estimated number of respondents	Completion time for each form (in hours)	Estimated annual response	Estimated annual burden (in hours)	Hourly cost for respondent	Financial burden on respondents
Federal Subsistence Registration Permit.	15,000	¼	15,000	3,750	$20.00	$5.00 each or $75,000 total
Designated Harvester Application	2,000	¼	2,000	500	$20.00	$5.00 each or $10,000 total

The information collected will establish whether the applicant qualifies to participate in a Federal subsistence hunt or fishery on public land in Alaska and will provide a report of harvest and location of harvest.

You may direct comments on the burden estimate or any other aspect of this form to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, NW, MS 222 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Department of the Interior Desk Officer, 725 17th Street, NW., Washington, D.C. 20503. Additional information collection requirements may be imposed if local advisory committees subject to the Federal Advisory Committee Act are established under subpart B. Such requirements will be submitted to OMB for approval prior to their implementation.

Clarity of the Rule Executive Order 12866 requires each agency to write regulations that are easy to understand. We invite your comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (A "section" appears in bold type and is preceded by the symbol "§" and a numbered heading; for example, § __.24 Customary and traditional determinations.) (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand? Send a copy of any comments that concern how we could make this rule easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240. You may also e-mail the comments to this address: Exsec@ios.doi.gov.

Economic Effects This rule is not a significant rule subject to OMB review under Executive Order 12866. This rulemaking will impose no significant costs on small entities; this rule does not restrict any existing sport or commercial fishery on the public lands and subsistence fisheries will continue at essentially the same levels as they presently occur. The exact number of businesses and the amount of trade that will result from this Federal land-related activity is unknown. The aggregate effect is an insignificant positive economic effect on a number of small entities, such as ammunition, snowmachine, fishing tackle, and gasoline dealers. The number of small entities affected is unknown; but, the fact that the positive effects will be seasonal in nature and will, in most cases, merely continue preexisting uses of public lands indicates that they will not be significant.

In general, the resources to be harvested under this rule are already being harvested and consumed by the local harvester and do not result in an additional dollar benefit to the economy. However, it is estimated that 24 million pounds of fish (including 8.3 million pounds of salmon) are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound for salmon and $0.58 per pound for other fish, would equate to about $34 million in food value statewide. We also estimate that 2 million pounds of meat are harvested by subsistence users annually and, if given an estimated dollar value of $3.00 per pound, would equate to about $6 million in food value statewide.

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which include small businesses, organizations or governmental jurisdictions. The Departments have determined based on the above figures that this rulemaking will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act. Under the Small Business Regulatory Enforcement Act (5 U.S.C. 801 *et seq.*), this rule is not a major rule. It does not have an effect on the economy of $100 million or more, will not cause a major increase in costs or prices for consumers, and does not have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises.

Title VIII of ANILCA requires the Secretaries to administer a subsistence priority on public lands. The scope of this program is limited by definition to certain public lands. Likewise, these regulations have no potential takings of private property implications as defined by Executive Order 12630.

The Secretaries have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502 *et seq.*, that this rulemaking will not impose a cost of $100 million or more in any given year on local or state governments or private entities. The implementation of this rule is by Federal agencies and there is no cost imposed on any state or local entities or tribal governments.

The Secretaries have determined that these final regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

In accordance with Executive Order 13132, the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. Title VIII of ANILCA precludes the State from exercising subsistence management authority over fish and wildlife resources on Federal lands unless it meets certain requirements.

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175, and 512 DM 2, we have evaluated possible effects on Federally recognized Indian tribes and have determined that there are no effects. The Bureau of Indian Affairs is a participating agency in this rulemaking.

On May 18, 2001, the President issued Executive Order 13211 on regulations that significantly affect energy supply, distribution, or use. This Executive Order requires agencies to prepare Statements of Energy Effects when undertaking certain actions. As this rule is not a significant regulatory action under Executive Order 13211, affecting energy supply, distribution, or use, this action is not a significant action and no Statement of Energy Effects is required.

Drafting Information—These regulations were drafted by William Knauer under the guidance of Thomas H. Boyd, of the Office of Subsistence Management, Alaska Regional Office, U.S. Fish and Wildlife Service, Anchorage, Alaska. Additional guidance was provided by Taylor Brelseford, Alaska State Office, Bureau of Land Management; Sandy Rabinowitch and Bob Gerhard, Alaska Regional Office, National Park Service; Greg Bos and Rod Simmons, Alaska Regional Office, U.S. Fish and Wildlife Service; Ida Hildebrand, Alaska Regional Office, Bureau of Indian Affairs; and Ken Thompson, USDA-Forest Service.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

For the reasons set out in the preamble, the Departments amend Title 36, Part 242, and Title 50, Part 100, of the Code of Federal Regulations, as set forth below.

PART—SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA

1. The authority citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3586; 43 U.S.C. 1733.

2. Revise subparts A and B of 36 CFR part 242 and 50 CFR part 100 to read as follows:

Subpart A—General Provisions

Sec.

____.1 Purpose.
____.2 Authority.
____.3 Applicability and scope.
____.4 Definitions.
____.5 Eligibility for subsistence use.
____.6 Licenses, permits, harvest tickets, tags, and reports.
____.7 Restriction on use.
____.8 Penalties.
____.9 Information collection requirements.

Subpart B—Program Structure

____.10 Federal Subsistence Board.
____.11 Regional advisory councils.
____.12 Local advisory committees.
____.13 Board/agency relationships.
____.14 Relationship to State procedures and regulations.
____.15 Rural determination process.
____.16 Customary and traditional use determination process.
____.17 Determining priorities for subsistence uses among rural Alaska residents.
____.18 Regulation adoption process.
____.19 Special actions.
____.20 Request for reconsideration.
____.21 [Reserved]

Subpart A—General Provisions

§ _____.1 Purpose.

The regulations in this part implement the Federal Subsistence Management Program on public lands within the State of Alaska.

§ _____.2 Authority.

The Secretary of the Interior and Secretary of Agriculture issue the regulations in this part pursuant to authority vested in Title VIII of the Alaska National Interest Lands Conservation Act (ANILCA), 16 U.S.C. 3101–3126.

§ _____.3 Applicability and scope.

(a) The regulations in this part implement the provisions of Title VIII of ANILCA relevant to the taking of fish and wildlife on public lands in the State of Alaska. The regulations in this part do not permit subsistence uses in Glacier Bay National Park, Kenai Fjords National Park, Katmai National Park, and that portion of Denali National Park established as Mt. McKinley National Park prior to passage of ANILCA, where subsistence taking and uses are prohibited. The regulations in this part do not supersede agency-specific regulations.

(b) The regulations contained in this part apply on all public lands including all non-navigable waters located on these lands, on all navigable and non-navigable water within the exterior boundaries of the following areas, and on inland waters adjacent to the exterior boundaries of the following areas:

(1) Alaska Maritime National Wildlife Refuge;
(2) Alaska Peninsula National Wildlife Refuge;
(3) Aniakchak National Monument and Preserve;
(4) Arctic National Wildlife Refuge;
(5) Becharof National Wildlife Refuge;
(6) Bering Land Bridge National Preserve;
(7) Cape Krusenstern National Monument;
(8) Chugach National Forest, excluding marine waters;
(9) Denali National Preserve and the 1980 additions to Denali National Park;
(10) Gates of the Arctic National Park and Preserve;
(11) Glacier Bay National Preserve;
(12) Innoko National Wildlife Refuge;
(13) Izembek National Wildlife Refuge;
(14) Katmai National Preserve;
(15) Kanuti National Wildlife Refuge;
(16) Kenai National Wildlife Refuge;
(17) Kobuk Valley National Park;
(18) Kodiak National Wildlife Refuge;
(19) Koyukuk National Wildlife Refuge;
(20) Lake Clark National Park and Preserve;
(21) National Petroleum Reserve in Alaska;
(22) Noatak National Preserve;
(23) Nowitna National Wildlife Refuge;
(24) Selawik National Wildlife Refuge;
(25) Steese National Conservation Area;
(26) Tetlin National Wildlife Refuge;
(27) Togiak National Wildlife Refuge;
(28) Tongass National Forest, including Admiralty Island National Monument and Misty Fjords National Monument, and excluding marine waters;
(29) White Mountain National Recreation Area;
(30) Wrangell-St. Elias National Park and Preserve;
(31) Yukon-Charley Rivers National Preserve;
(32) Yukon Delta National Wildlife Refuge;

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(33) Yukon Flats National Wildlife Refuge;
(34) All components of the Wild and Scenic River System located outside the boundaries of National Parks, National Preserves, or National Wildlife Refuges, including segments of the Alagnak River, Beaver Creek, Birch Creek, Delta River, Fortymile River, Gulkana River, and Unalakleet River.

(c) The public lands described in paragraph (b) of this section remain subject to change through rulemaking pending a Department of the Interior review of title and jurisdictional issues regarding certain submerged lands beneath navigable waters in Alaska.

§ _____.4 Definitions.

The following definitions apply to all regulations contained in this part:

Agency means a subunit of a cabinet-level Department of the Federal Government having land management authority over the public lands including, but not limited to, the U.S. Fish & Wildlife Service, Bureau of Indian Affairs, Bureau of Land Management, National Park Service, and USDA Forest Service.

ANILCA means the Alaska National Interest Lands Conservation Act, Public Law 96–487, 94 Stat. 2371, (codified, as amended, in scattered sections of 16 U.S.C. and 43 U.S.C.)

Area, District, Subdistrict, and *Section* mean one of the geographical areas defined in the codified Alaska Department of Fish and Game regulations found in Title 5 of the Alaska Administrative Code.

Barter means the exchange of fish or wildlife or their parts taken for subsistence uses; for other fish, wildlife or their parts; or, for other food or for nonedible items other than money, if the exchange is of a limited and noncommercial nature.

Board means the Federal Subsistence Board as described in § ____.10.

Commissions means the Subsistence Resource Commissions established pursuant to section 808 of ANILCA.

Conservation of healthy populations of fish and wildlife means the maintenance of fish and wildlife resources and their habitats in a condition that assures stable and continuing natural populations and species mix of plants and animals in relation to their ecosystem, including the recognition that local rural residents engaged in subsistence uses may be a natural part of that ecosystem; minimizes the likelihood of irreversible or long-term adverse effects upon such populations and species; ensures the maximum practicable diversity of options for the future; and recognizes that the policies and legal authorities of the managing agencies will determine the nature and degree of management programs affecting ecological relationships, population dynamics, and the manipulation of the components of the ecosystem.

Customary trade means exchange for cash of fish and wildlife resources regulated in this part, not otherwise prohibited by Federal law or regulation, to support personal and family needs; and does not include trade which constitutes a significant commercial enterprise.

Customary and traditional use means a long-established, consistent pattern of use, incorporating beliefs and customs which have been transmitted from generation to generation. This use plays an important role in the economy of the community.

FACA means the Federal Advisory Committee Act, Public Law 92–463, 86 Stat. 770 (codified as amended, at 5 U.S.C. Appendix II, 1–15).

Family means all persons related by blood, marriage, or adoption or any other person living within the household on a permanent basis.

Federal Advisory Committees or Federal Advisory Committee means the Federal Local Advisory Committees as described in § ____.12

Federal lands means lands and waters and interests therein the title to which is in the United States, including navigable and non-navigable waters in which the United States has reserved water rights.

Fish and wildlife means any member of the animal kingdom, including without limitation any mammal, fish, bird (including any migratory, nonmigratory, or endangered bird for which protection is also afforded by treaty or other international agreement), amphibian, reptile, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the carcass or part thereof.

Game Management Unit or GMU means one of the 26 geographical areas listed under game management units in the codified State of Alaska hunting and trapping regulations and the Game Unit Maps of Alaska.

Inland Waters means, for the purposes of this part, those waters located landward of the mean high tide line or the waters located upstream of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea. Inland waters include, but are not limited to, lakes, reservoirs, ponds, streams, and rivers.

Marine Waters means, for the purposes of this part, those waters located seaward of the mean high tide line or the waters located seaward of the straight line drawn from headland to headland across the mouths of rivers or other waters as they flow into the sea.

Person means an individual and does not include a corporation, company, partnership, firm, association, organization, business, trust, or society.

Public lands or *public land* means:

(1) Lands situated in Alaska which are Federal lands, except—

(i) Land selections of the State of Alaska which have been tentatively approved or validly selected under the Alaska Statehood Act and lands which have been confirmed to, validly selected by, or granted to the Territory of Alaska or the State under any other provision of Federal law;

(ii) Land selections of a Native Corporation made under the Alaska Native Claims Settlement Act, 43 U.S.C. 1601 *et seq.*, which have not been conveyed to a Native Corporation, unless any such selection is determined to be invalid or is relinquished; and

(iii) Lands referred to in section 19(b) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1618(b).

(2) Notwithstanding the exceptions in paragraphs (1)(i) through (iii) of this definition, until conveyed or interim conveyed, all Federal lands within the boundaries of any unit of the National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers Systems, National Forest Monument, National Recreation Area, National Conservation Area, new National forest or forest addition shall be treated as public lands for the purposes of the regulations in this part pursuant to section 906(o)(2) of ANILCA.

Regional Councils or *Regional Council* means the Regional Advisory Councils as described in § ___.11.

Regulatory year means July 1 through June 30, except for fish and shellfish where it means March 1 through the last day of February.

Reserved water right(s) means the Federal right to use unappropriated appurtenant water necessary to accomplish the purposes for which a Federal reservation was established. Reserved water rights include nonconsumptive and consumptive uses.

Resident means any person who has his or her primary, permanent home for the previous 12 months within Alaska and whenever absent from this primary, permanent home, has the intention of returning to it. Factors demonstrating the location of a person's primary, permanent home may include, but are not limited to: the address listed on an Alaska Permanent Fund dividend application; an Alaska license to drive, hunt, fish, or engage in an activity regulated by a government entity; affidavit of person or persons who know the individual; voter registration; location of residences owned, rented, or leased; location of stored household goods; residence of spouse, minor children, or dependents; tax documents; or whether the person claims residence in another location for any purpose.

Rural means any community or area of Alaska determined by the Board to qualify as such under the process described in § _____.15.

Secretary means the Secretary of the Interior, except that in reference to matters related to any unit of the National Forest System, such term means the Secretary of Agriculture.

State means the State of Alaska.

Subsistence uses means the customary and traditional uses by rural Alaska residents of wild, renewable resources for direct personal or family consumption as food, shelter, fuel, clothing, tools, or transportation; for the making and selling of handicraft articles out of nonedible byproducts of fish and wildlife resources taken for personal or family consumption; for barter, or sharing for personal or family consumption; and for customary trade.

Take or *taking* as used with respect to fish or wildlife, means to pursue, hunt, shoot, trap, net, capture, collect, kill, harm, or attempt to engage in any such conduct.

Year means calendar year unless another year is specified.

§ _____.5 Eligibility for subsistence use.

(a) You may take fish and wildlife on public lands for subsistence uses only if you are an Alaska resident of a rural area or rural community. The regulations in this part may further limit your qualifications to harvest fish or wildlife resources for subsistence uses. If you are not an Alaska resident or are a resident of a non-rural area or community listed in §____.23, you may not take fish or wildlife on public lands for subsistence uses under the regulations in this part.

(b) Where the Board has made a customary and traditional use determination regarding subsistence use of a specific fish stock or wildlife population, in accordance with, and as listed in, §____.24, only those Alaskans who are residents of rural areas or communities designated by the Board are eligible for subsistence taking of that population or stock on public lands for subsistence uses under the regulations in this part. If you do not live in one of those areas or communities, you may not take fish or wildlife from that population or stock, on public lands under the regulations in this part.

(c) Where customary and traditional use determinations for a fish stock or wildlife population within a specific area have not yet been made by the Board (e.g., "no determination"), all Alaskans who are residents of rural areas or communities may harvest for subsistence from that stock or population under the regulations in this part.

(d) The National Park Service may regulate further the eligibility of those individuals qualified to engage in subsistence uses on National Park Service lands in accordance with specific authority in ANILCA, and National Park Service regulations at 36 CFR Part 13.

§ _____.6 Licenses, permits, harvest tickets, tags, and reports.

(a) If you wish to take fish and wildlife on public lands for subsistence uses, you must be an eligible rural Alaska resident and:

(1) Possess the pertinent valid Alaska resident hunting and trapping licenses (no license required to take fish or shellfish, but you must be an Alaska resident) unless Federal licenses are required or unless otherwise provided for in subpart D of this part;

(2) Possess and comply with the provisions of any pertinent Federal permits (Federal Subsistence Registration Permit or Federal Designated Harvester Permit) required by subpart D of this part; and

(3) Possess and comply with the provisions of any pertinent permits, harvest tickets, or tags required by the State unless any of these documents or individual provisions in them are superseded by the requirements in subpart D of this part.

(b) In order to receive a Federal Subsistence Registration Permit or Federal Designated Harvester Permit or designate someone to harvest fish or wildlife for you under a Federal Designated Harvester Permit, you must be old enough to have reasonably harvested that species yourself (or under the guidance of an adult.)

(c) If you have been awarded a permit to take fish and wildlife, you must have that permit in your possession during the taking and must comply with all requirements of the permit and the regulations in this section pertaining to validation and reporting and to regulations in subpart D of this part pertaining to methods and means, possession and transportation, and utilization. Upon the request of a State or Federal law enforcement agent, you must also produce any licenses, permits, harvest tickets, tags, or other documents required by this section. If you are engaged in taking fish and wildlife under the regulations in this part, you must allow State or Federal law enforcement agents to inspect any apparatus designed to be used, or capable of being used to take fish or wildlife, or any fish or wildlife in your possession.

(d) You must validate the harvest tickets, tags, permits, or other required documents before removing your kill from the harvest site. You must also comply with all reporting provisions as set forth in subpart D of this part.

(e) If you take fish and wildlife under a community harvest system, you must report the harvest activity in accordance with regulations specified for that community in subpart D of this part, and as required by any applicable permit conditions. Individuals may be responsible for particular reporting requirements in the conditions permitting a specific community's harvest. Failure to comply with these conditions is a violation of the regulations in this part. Community harvests are reviewed annually under the regulations in subpart D of this part.

(f) You may not make a fraudulent application for Federal or State licenses, permits, harvest tickets or tags or intentionally file an incorrect harvest report.

§ _____.7 Restriction on use.

(a) You may not use fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(b) You may not exchange in customary trade or sell fish or wildlife or their parts, taken pursuant to the regulations in this part, unless provided for in this part.

(c) You may barter fish or wildlife or their parts, taken pursuant to the regulations in this part, unless restricted in §§____.25, ____.26, ____.27, or ____.28.

§ _____.8 Penalties.

If you are convicted of violating any provision of 50 CFR Part 100 or 36 CFR Part 242, you may be punished by a fine or by imprisonment in accordance with the penalty provisions applicable to the public land where the violation occurred.

§ _____.9 Information collection requirements.

(a) The rules in this part contain information collection requirements subject to Office of Management and

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Budget (OMB) approval under 44 U.S.C. 3501–3520. They apply to fish and wildlife harvest activities on public lands in Alaska. Subsistence users will not be required to respond to an information collection request unless a valid OMB number is displayed on the information collection form.

(1) Section ____.6, Licenses, permits, harvest tickets, tags, and reports. The information collection requirements contained in §____.6 (Federal Subsistence Registration Permit or Federal Designated Harvester Permit forms) provide for permit-specific subsistence activities not authorized through the general adoption of State regulations. Identity and location of residence are required to determine if you are eligible for a permit and a report of success is required after a harvest attempt. These requirements are not duplicative with the requirements of paragraph (a)(3) of this section. The regulations in §——.6 require this information before a rural Alaska resident may engage in subsistence uses on public lands. The Department estimates that the average time necessary to obtain and comply with this permit information collection requirement is 0.25 hours.

(2) Section ____.20, Request for reconsideration. The information collection requirements contained in §——.20 provide a standardized process to allow individuals the opportunity to appeal decisions of the Board. Submission of a request for reconsideration is voluntary but required to receive a final review by the Board. We estimate that a request for reconsideration will take 4 hours to prepare and submit.

(3) The remaining information collection requirements contained in this part imposed upon subsistence users are those adopted from State regulations. These collection requirements would exist in the absence of Federal subsistence regulations and are not subject to the Paperwork Reduction Act. The burden in this situation is negligible, and information gained from these reports is systematically available to Federal managers by routine computer access requiring less than 1 hour.

(b) You may direct comments on the burden estimate or any other aspect of the burden estimate to: Information Collection Officer, U.S. Fish and Wildlife Service, 1849 C Street, N.W., MS 222 ARLSQ, Washington, D.C. 20240; and the Office of Management and Budget, Paperwork Reduction Project (Subsistence), Washington, D.C. 20503. Additional information requirements may be imposed if Local Advisory Committees or additional Regional Councils, subject to the Federal Advisory Committee Act (FACA), are established under subpart B of this part. Such requirements will be submitted to OMB for approval prior to their implementation.

Subpart B—Program Structure

§____.10 Federal Subsistence Board.

(a) The Secretary of the Interior and Secretary of Agriculture hereby establish a Federal Subsistence Board, and assign it responsibility for administering the subsistence taking and uses of fish and wildlife on public lands, and the related promulgation and signature authority for regulations of subparts C and D of this part. The Secretaries, however, retain their existing authority to restrict or eliminate hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands when such activities interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority.

(b) *Membership.* (1) The voting members of the Board are: a Chair to be appointed by the Secretary of the Interior with the concurrence of the Secretary of Agriculture; the Alaska Regional Director, U.S. Fish and Wildlife Service; Alaska Regional Director, National Park Service; Alaska Regional Forester, USDA Forest Service; the Alaska State Director, Bureau of Land Management; and the Alaska Regional Director, Bureau of Indian Affairs. Each member of the Board may appoint a designee.

(2) [Reserved]

(c) Liaisons to the Board are: a State liaison, and the Chairman of each Regional Council. The State liaison and the Chairman of each Regional Council may attend public sessions of all Board meetings and be actively involved as consultants to the Board.

(d) *Powers and duties.* (1) The Board shall meet at least twice per year and at such other times as deemed necessary. Meetings shall occur at the call of the Chair, but any member may request a meeting.

(2) A quorum consists of four members.

(3) No action may be taken unless a majority of voting members are in agreement.

(4) The Board is empowered, to the extent necessary, to implement Title VIII of ANILCA, to:

(i) Issue regulations for the management of subsistence taking and uses of fish and wildlife on public lands;

(ii) Determine which communities or areas of the State are rural or non-rural;

(iii) Determine which rural Alaska areas or communities have customary and traditional subsistence uses of specific fish and wildlife populations;

(iv) Allocate subsistence uses of fish and wildlife populations on public lands;

(v) Ensure that the taking on public lands of fish and wildlife for nonwasteful subsistence uses shall be accorded priority over the taking on such lands of fish and wildlife for other purposes;

(vi) Close public lands to the non-subsistence taking of fish and wildlife;

(vii) Establish priorities for the subsistence taking of fish and wildlife on public lands among rural Alaska residents;

(viii) Restrict or eliminate taking of fish and wildlife on public lands;

(ix) Determine what types and forms of trade of fish and wildlife taken for subsistence uses constitute allowable customary trade;

(x) Authorize the Regional Councils to convene;

(xi) Establish a Regional Council in each subsistence resource region and recommend to the Secretaries, appointees to the Regional Councils, pursuant to the FACA;

(xii) Establish Federal Advisory Committees within the subsistence resource regions, if necessary, and recommend to the Secretaries that members of the Federal Advisory Committees be appointed from the group of individuals nominated by rural Alaska residents;

(xiii) Establish rules and procedures for the operation of the Board, and the Regional Councils;

(xiv) Review and respond to proposals for regulations, management plans, policies, and other matters related to subsistence taking and uses of fish and wildlife;

(xv) Enter into cooperative agreements or otherwise cooperate with Federal agencies, the State, Native organizations, local governmental entities, and other persons and organizations, including international entities to effectuate the purposes and policies of the Federal subsistence management program;

(xvi) Develop alternative permitting processes relating to the subsistence taking of fish and wildlife to ensure continued opportunities for subsistence;

(xvii) Evaluate whether hunting, fishing, or trapping activities which occur on lands or waters in Alaska other than public lands interfere with subsistence hunting, fishing, or trapping on the public lands to such an extent as to result in a failure to provide the subsistence priority, and after appropriate consultation with the State of Alaska, the Regional Councils, and other Federal agencies, make a recommendation to the Secretaries for their action;

(xviii) Identify, in appropriate specific instances, whether there exists additional Federal reservations, Federal reserved water rights or other Federal interests in lands or waters, including those in which the United States holds less than a fee ownership, to which the Federal subsistence priority attaches, and make appropriate recommendation to the Secretaries for inclusion of those interests within the Federal Subsistence Management Program; and

(xix) Take other actions authorized by the Secretaries to implement Title VIII of ANILCA.

(5) The Board may implement one or more of the following harvest and harvest reporting or permit systems:

(i) The fish and wildlife is taken by an individual who is required to obtain and possess pertinent State harvest permits, tickets, or tags, or Federal permit (Federal Subsistence Registration Permit);

(ii) A qualified subsistence user may designate another qualified subsistence user (by using the Federal Designated Harvester Permit) to take fish and wildlife on his or her behalf;

(iii) The fish and wildlife is taken by individuals or community representatives permitted (via a Federal Subsistence Registration Permit) a one-time or annual harvest for special purposes including ceremonies and potlatches; or

(iv) The fish and wildlife is taken by representatives of a community permitted to do so in a manner consistent with the community's customary and traditional practices.

(6) The Board may delegate to agency field officials the authority to set harvest and possession limits, define harvest areas, specify methods or means of harvest, specify permit requirements, and open or close specific fish or wildlife harvest seasons within frameworks established by the Board.

(7) The Board shall establish a Staff Committee for analytical and administrative assistance composed of members from the U.S. Fish and Wildlife Service, National Park Service, U.S. Bureau of Land Management, Bureau of Indian Affairs, and USDA Forest Service. A U.S. Fish and Wildlife Service representative shall serve as Chair of the Staff Committee.

(8) The Board may establish and dissolve additional committees as necessary for assistance.

(9) The U.S. Fish and Wildlife Service shall provide appropriate administrative support for the Board.

(10) The Board shall authorize at least two meetings per year for each Regional Council.

(e) *Relationship to Regional Councils.* (1) The Board shall consider the reports and recommendations of the Regional Councils concerning the taking of fish and wildlife on public lands within their respective regions for subsistence uses. The Board may choose not to follow any Regional Council recommendation which it determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, would be detrimental to the satisfaction of subsistence needs, or in closure situations, for reasons of public safety or administration or to assure the continued viability of a particular fish or wildlife population. If a recommendation is not adopted, the Board shall set forth the factual basis and the reasons for the decision, in writing, in a timely fashion.

(2) The Board shall provide available and appropriate technical assistance to the Regional Councils.

§____.11 Regional advisory councils.

(a) The Board shall establish a Regional Council for each subsistence resource region to participate in the Federal subsistence management program. The Regional Councils shall be established, and conduct their activities, in accordance with the FACA. The Regional Councils shall provide a regional forum for the collection and expression of opinions and recommendations on matters related to subsistence taking and uses of fish and wildlife resources on public lands. The Regional Councils shall provide for public participation in the Federal regulatory process.

(b) *Establishment of Regional Councils; membership.* (1) The number of members for each Regional Council shall be established by the Board, and shall be an odd number. A Regional Council member must be a resident of the region in which he or she is appointed and be knowledgeable about the region and subsistence uses of the public lands therein. The Board shall accept nominations and make recommendations to the Secretaries for representatives on the Regional Councils. Appointments to the Regional Councils shall be made by the Secretaries.

(2) Regional Council members shall serve 3-year terms and may be reappointed. Initial members shall be appointed with staggered terms up to 3 years.

(3) The Chair of each Regional Council shall be elected by the applicable Regional Council, from its membership, for a 1-year term and may be reelected.

(c) *Powers and Duties.* (1) The Regional Councils are authorized to:

(i) Hold public meetings related to subsistence uses of fish and wildlife within their respective regions, after the Chair of the Board or the designated Federal Coordinator has called the meeting and approved the meeting agenda;

(ii) Elect officers;

(iii) Review, evaluate, and make recommendations to the Board on proposals for regulations, policies, management plans, and other matters relating to the subsistence take of fish and wildlife under the regulations in this part within the region;

(iv) Provide a forum for the expression of opinions and recommendations by persons interested in any matter related to the subsistence uses of fish and wildlife within the region;

(v) Encourage local and regional participation, pursuant to the provisions of the regulations in this part in the decisionmaking process affecting the taking of fish and wildlife on the public lands within the region for subsistence uses;

(vi) Prepare and submit to the Board an annual report containing—

(A) An identification of current and anticipated subsistence uses of fish and wildlife populations within the region;

(B) An evaluation of current and anticipated subsistence needs for fish and wildlife populations from the public lands within the region;

(C) A recommended strategy for the management of fish and wildlife populations within the region to accommodate such subsistence uses and needs related to the public lands; and

(D) Recommendations concerning policies, standards, guidelines, and regulations to implement the strategy;

(vii) Appoint members to each Subsistence Resource Commission within their region in accordance with the requirements of Section 808 of ANILCA;

(viii) Make recommendations on determinations of customary and traditional use of subsistence resources;

(ix) Make recommendations on determinations of rural status;

(x) Make recommendations regarding the allocation of subsistence uses among

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rural Alaska residents pursuant to §____.17;

(xi) Develop proposals pertaining to the subsistence taking and use of fish and wildlife under the regulations in this part, and review and evaluate such proposals submitted by other sources;

(xii) Provide recommendations on the establishment and membership of Federal Advisory Committees.

(2) The Regional Councils shall:

(i) Operate in conformance with the provisions of FACA and comply with rules of operation established by the Board;

(ii) Perform other duties specified by the Board.

(3) The Regional Council recommendations to the Board should be supported by substantial evidence, be consistent with recognized principles of fish and wildlife conservation, and not be detrimental to the satisfaction of subsistence needs.

§_____.12 Local advisory committees.

(a) The Board shall establish such local Federal Advisory Committees within each region as necessary at such time that it is determined, after notice and hearing and consultation with the State, that the existing State fish and game advisory committees do not adequately provide advice to, and assist, the particular Regional Council in carrying out its function as set forth in §____.11.

(b) Local Federal Advisory Committees, if established by the Board, shall operate in conformance with the provisions of the FACA, and comply with rules of operation established by the Board.

§_____.13 Board/agency relationships.

(a) *General.* (1) The Board, in making decisions or recommendations, shall consider and ensure compliance with specific statutory requirements regarding the management of resources on public lands, recognizing that the management policies applicable to some public lands may entail methods of resource and habitat management and protection different from methods appropriate for other public lands.

(2) The Board shall issue regulations for subsistence taking of fish and wildlife on public lands. The Board is the final administrative authority on the promulgation of subparts C and D regulations relating to the subsistence taking of fish and wildlife on public lands.

(3) Nothing in the regulations in this part shall enlarge or diminish the authority of any agency to issue regulations necessary for the proper management of public lands under their jurisdiction in accordance with ANILCA and other existing laws.

(b) Section 808 of ANILCA establishes National Park and Park Monument Subsistence Resource Commissions. Nothing in the regulations in this part affects the duties or authorities of these commissions.

§_____.14 Relationship to State procedures and regulations.

(a) State fish and game regulations apply to public lands and such laws are hereby adopted and made a part of the regulations in this part to the extent they are not inconsistent with, or superseded by, the regulations in this part.

(b) The Board may close public lands to hunting, trapping, or fishing, or take actions to restrict the taking of fish and wildlife when necessary to conserve healthy populations of fish and wildlife, continue subsistence uses of such populations, or pursuant to other applicable Federal law. The Board may review and adopt State openings, closures, or restrictions which serve to achieve the objectives of the regulations in this part.

(c) The Board may enter into agreements with the State in order to coordinate respective management responsibilities.

(d) Petition for repeal of subsistence rules and regulations. (1) The State of Alaska may petition the Secretaries for repeal of the subsistence rules and regulations in this part when the State has enacted and implemented subsistence management and use laws which:

(i) Are consistent with sections 803, 804, and 805 of ANILCA; and

(ii) Provide for the subsistence definition, preference, and participation specified in sections 803, 804, and 805 of ANILCA.

(2) The State's petition shall:

(i) Be submitted to the Secretary of the Interior, U.S. Department of the Interior, Washington, D.C. 20240, and the Secretary of Agriculture, U.S. Department of Agriculture, Washington, D.C. 20240;

(ii) Include the entire text of applicable State legislation indicating compliance with sections 803, 804, and 805 of ANILCA; and

(iii) Set forth all data and arguments available to the State in support of legislative compliance with sections 803, 804, and 805 of ANILCA.

(3) If the Secretaries find that the State's petition contains adequate justification, a rulemaking proceeding for repeal of the regulations in this part will be initiated. If the Secretaries find that the State's petition does not contain adequate justification, the petition will be denied by letter or other notice, with a statement of the ground for denial.

§_____.15 Rural determination process.

(a) The Board shall determine if an area or community in Alaska is rural. In determining whether a specific area of Alaska is rural, the Board shall use the following guidelines:

(1) A community or area with a population of 2,500 or less shall be deemed to be rural unless such a community or area possesses significant characteristics of a non-rural nature, or is considered to be socially and economically a part of an urbanized area.

(2) Communities or areas with populations above 2,500 but not more than 7,000 will be determined to be rural or non-rural.

(3) A community with a population of more than 7,000 shall be presumed non-rural, unless such a community or area possesses significant characteristics of a rural nature.

(4) Population data from the most recent census conducted by the United States Bureau of Census as updated by the Alaska Department of Labor shall be utilized in this process.

(5) Community or area characteristics shall be considered in evaluating a community's rural or non-rural status. The characteristics may include, but are not limited to:

(i) Use of fish and wildlife;

(ii) Development and diversity of the economy;

(iii) Community infrastructure;

(iv) Transportation; and

(v) Educational institutions.

(6) Communities or areas which are economically, socially, and communally integrated shall be considered in the aggregate.

(b) The Board shall periodically review rural determinations. Rural determinations shall be reviewed on a 10-year cycle, commencing with the publication of the year 2000 U.S. census. Rural determinations may be reviewed out-of-cycle in special circumstances. Once the Board makes a determination that a community has changed from rural to non-rural, a waiting period of 5 years shall be required before the non-rural determination becomes effective.

(c) Current determinations are listed at §____.23.

§_____.16 Customary and traditional use determination process.

(a) The Board shall determine which fish stocks and wildlife populations have been customarily and traditionally used for subsistence. These determinations shall identify the specific community's or area's use of specific fish stocks and wildlife populations. For areas managed by the National Park Service, where subsistence uses are allowed, the determinations may be made on an individual basis.

(b) A community or area shall generally exhibit the following factors, which exemplify customary and traditional use. The Board shall make customary and traditional use determinations based on application of the following factors:

(1) A long-term consistent pattern of use, excluding interruptions beyond the control of the community or area;

(2) A pattern of use recurring in specific seasons for many years;

(3) A pattern of use consisting of methods and means of harvest which are characterized by efficiency and economy of effort and cost, conditioned by local characteristics;

(4) The consistent harvest and use of fish or wildlife as related to past methods and means of taking; near, or reasonably accessible from, the community or area;

(5) A means of handling, preparing, preserving, and storing fish or wildlife which has been traditionally used by past generations, including consideration of alteration of past practices due to recent technological advances, where appropriate;

(6) A pattern of use which includes the handing down of knowledge of fishing and hunting skills, values, and lore from generation to generation;

(7) A pattern of use in which the harvest is shared or distributed within a definable community of persons; and

(8) A pattern of use which relates to reliance upon a wide diversity of fish and wildlife resources of the area and which provides substantial cultural, economic, social, and nutritional elements to the community or area.

(c) The Board shall take into consideration the reports and recommendations of any appropriate Regional Council regarding customary and traditional uses of subsistence resources.

(d) Current determinations are listed in §____.24.

§_____.17 Determining priorities for subsistence uses among rural Alaska residents.

(a) Whenever it is necessary to restrict the subsistence taking of fish and wildlife on public lands in order to protect the continued viability of such populations, or to continue subsistence uses, the Board shall establish a priority among the rural Alaska residents after considering any recommendation submitted by an appropriate Regional Council.

(b) The priority shall be implemented through appropriate limitations based on the application of the following criteria to each area, community, or individual determined to have customary and traditional use, as necessary:

(1) Customary and direct dependence upon the populations as the mainstay of livelihood;

(2) Local residency; and

(3) The availability of alternative resources.

(c) If allocation on an area or community basis is not achievable, then the Board shall allocate subsistence opportunity on an individual basis through application of the criteria in paragraphs (b)(1) through (3) of this section.

(d) In addressing a situation where prioritized allocation becomes necessary, the Board shall solicit recommendations from the Regional Council in the area affected.

§_____.18 Regulation adoption process.

(a) Proposals for changes to the Federal subsistence regulations in subparts C or D of this part shall be accepted by the Board according to a published schedule. The Board may establish a rotating schedule for accepting proposals on various sections of subpart C or subpart D regulations over a period of years. The Board shall develop and publish proposed regulations in the **Federal Register** and publish notice in local newspapers. Comments on the proposed regulations in the form of proposals shall be distributed for public review.

(1) Proposals shall be made available for at least a thirty (30) day review by the Regional Councils. Regional Councils shall forward their recommendations on proposals to the Board. Such proposals with recommendations may be submitted in the time period as specified by the Board or as a part of the Regional Council's annual report described in §____.11, whichever is earlier.

(2) The Board shall publish notice throughout Alaska of the availability of proposals received.

(3) The public shall have at least thirty (30) days to review and comment on proposals.

(4) After the comment period the Board shall meet to receive public testimony and consider the proposals. The Board shall consider traditional use patterns when establishing harvest levels and seasons, and methods and means. The Board may choose not to follow any recommendation which the Board determines is not supported by substantial evidence, violates recognized principles of fish and wildlife conservation, or would be detrimental to the satisfaction of subsistence needs. If a recommendation approved by a Regional Council is not adopted by the Board, the Board shall set forth the factual basis and the reasons for its decision in writing to the Regional Council.

(5) Following consideration of the proposals the Board shall publish final regulations pertaining to subparts C and D of this part in the **Federal Register**.

(b) Proposals for changes to subparts A and B of this part shall be accepted by the Secretary of the Interior in accordance with 43 CFR part 14.

§_____.19 Special actions.

(a) The Board may restrict, close, or reopen the taking of fish and wildlife for non-subsistence uses on public lands when necessary to assure the continued viability of a particular fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(b) The Board may open, close, or restrict subsistence uses of a particular fish or wildlife population on public lands to assure the continued viability of a fish or wildlife population, to continue subsistence uses of a fish or wildlife population, or for reasons of public safety or administration.

(c) The Board will accept a request for a change in seasons, methods and means, harvest limits and/or restrictions on harvest under this §_____.19 only if there are extenuating circumstances necessitating a regulatory change before the next annual subpart D proposal cycle. Extenuating circumstances include unusual and significant changes in resource abundance or unusual conditions affecting harvest opportunities that could not reasonably have been anticipated and that potentially could have significant adverse effects on the health of fish and wildlife populations or subsistence uses. Requests for Special Action that do not meet these conditions will be rejected; however, a rejected Special Action request will be deferred, if appropriate, to the next annual regulatory proposal cycle for consideration, after coordination with the submitter. In general, changes to Customary and Traditional Use Determinations will only be considered through the annual subpart C proposal cycle.

(d) In an emergency situation, the Board may immediately open, close,

liberalize, or restrict subsistence uses of fish and wildlife on public lands, or close or restrict non-subsistence uses of fish and wildlife on public lands, if necessary to assure the continued viability of a fish or wildlife population, to continue subsistence uses of fish or wildlife, or for public safety reasons. Prior to implementing an emergency action, the Board shall consult with the State. The emergency action shall be effective when directed by the Board, may not exceed 60 days, and may not be extended unless it is determined by the Board, after notice and public hearing, that such action should be extended. The Board shall, in a timely manner, provide notice via radio announcement or personal contact of the emergency action and shall publish notice and reasons justifying the emergency action in newspapers of any area affected, and in the **Federal Register** thereafter.

(e) After consultation with the State, the appropriate Regional Advisory Council(s), and adequate notice and public hearing, the Board may make or direct a temporary change to close, open, or adjust the seasons, to modify the harvest limits, or to modify the methods and means of harvest for subsistence uses of fish and wildlife populations on public lands. An affected rural resident, community, Regional Council, or administrative agency may request a temporary change in seasons, harvest limits, or methods or means of harvest. In addition, a temporary change may be made only after the Board determines that the proposed temporary change will not interfere with the conservation of healthy fish and wildlife populations, will not be detrimental to the long-term subsistence use of fish or wildlife resources, and is not an unnecessary restriction on non-subsistence users. The decision of the Board shall be the final administrative action. The temporary change shall be effective when directed by the Board following notice in the affected area(s). This notice may include publication in newspapers or announcement on local radio stations. The Board shall publish notice and reasons justifying the temporary action in the **Federal Register** thereafter. The length of any temporary change shall be confined to the minimum time period or harvest limit determined by the Board to be necessary to satisfy subsistence uses. A temporary opening or closure will not extend beyond the regulatory year for which it is promulgated.

(f) Regulations authorizing any individual agency to direct temporary or emergency closures on public lands managed by the agency remain unaffected by the regulations in this part, which authorize the Board to make or direct restrictions, closures, or temporary changes for subsistence uses on public lands.

(g) You may not take fish and wildlife in violation of a restriction, closure, opening, or temporary change authorized by the Board.

§ _____.20 Request for reconsideration.

(a) Regulations in subparts C and D of this part published in the **Federal Register** are subject to requests for reconsideration.

(b) Any aggrieved person may file a request for reconsideration with the Board.

(c) To file a request for reconsideration, you must notify the Board in writing within sixty (60) days of the effective date or date of publication of the notice, whichever is earlier, for which reconsideration is requested.

(d) It is your responsibility to provide the Board with sufficient narrative evidence and argument to show why the action by the Board should be reconsidered. The Board will accept a request for reconsideration only if it is based upon information not previously considered by the Board, demonstrates that the existing information used by the Board is incorrect, or demonstrates that the Board's interpretation of information, applicable law, or regulation is in error or contrary to existing law. You must include the following information in your request for reconsideration:

(1) Your name, and mailing address;

(2) The action which you request be reconsidered and the date of **Federal Register** publication of that action;

(3) A detailed statement of how you are adversely affected by the action;

(4) A detailed statement of the facts of the dispute, the issues raised by the request, and specific references to any law, regulation, or policy that you believe to be violated and your reason for such allegation;

(5) A statement of how you would like the action changed.

(e) Upon receipt of a request for reconsideration, the Board shall transmit a copy of such request to any appropriate Regional Council and the Alaska Department of Fish and Game (ADFG) for review and recommendation. The Board shall consider any Regional Council and ADFG recommendations in making a final decision.

(f) If the request is justified, the Board shall implement a final decision on a request for reconsideration after compliance with 5 U.S.C. 551–559 (APA).

(g) If the request is denied, the decision of the Board represents the final administrative action.

§ _____.21 [Reserved]

Subpart C—Board Determinations

3. Amend subpart C of 36 CFR part 242 and 50 CFR part 100 by revising §§ ____.22 and ____.23 to read as follows:

§ _____.22 Subsistence resource regions.

(a) The Board hereby designates the following areas as subsistence resource regions:

(1) Southeast Region;
(2) Southcentral Region;
(3) Kodiak/Aleutians Region;
(4) Bristol Bay Region;
(5) Yukon-Kuskokwim Delta Region;
(6) Western Interior Region;
(7) Seward Peninsula Region;
(8) Northwest Arctic Region;
(9) Eastern Interior Region;
(10) North Slope Region.

(b) You may obtain maps delineating the boundaries of subsistence resource regions from the U.S. Fish and Wildlife Service, 3601 C Street, Suite 1030, Anchorage, Alaska 99503.

§ _____.23 Rural determinations.

(a) The Board has determined all communities and areas to be rural in accordance with § ____.15 except the following:

Adak;
Fairbanks North Star Borough;
Homer area—including Homer, Anchor Point, Kachemak City, and Fritz Creek;
Juneau area—including Juneau, West Juneau, and Douglas;
Kenai area—including Kenai, Soldotna, Sterling, Nikiski, Salamatof, Kalifornsky, Kasilof, and Clam Gulch;
Ketchikan area—including Ketchikan City, Clover Pass, North Tongass Highway, Ketchikan East, Mountain Point, Herring Cove, Saxman East, Pennock Island, and parts of Gravina Island;
Municipality of Anchorage;
Seward area—including Seward and Moose Pass, Valdez, and
Wasilla area—including Palmer, Wasilla, Sutton, Big Lake, Houston, and Bodenberg Butte.

You may obtain maps delineating the boundaries of non-rural areas from the U.S. Fish and Wildlife Service.

(b) [Reserved]

4. Amend § ____.24 by revising paragraph (a) introductory text to read as follows:

§ _____.24 Customary and traditional use determinations.

(a) The Federal Subsistence Board has determined that rural Alaska residents of the listed communities, areas, and individuals have customary and traditional use of the specified species on Federal public land in the specified areas. Persons granted individual customary and traditional use determinations will be notified in writing by the Board. The Fish & Wildlife Service and the local NPS Superintendent will maintain the list of individuals having customary and traditional use on National Parks and Monuments. A copy of the list is available upon request. When there is a determination for specific communities or areas of residence in a Unit, all other communities not listed for that species in that Unit have no Federal subsistence priority for that species in that Unit. If no determination has been made for a species in a Unit, all rural Alaska residents are eligible to harvest fish or wildlife under this part.

* * * * *

Dated: April 19, 2002.

Gale Norton,

Secretary of the Interior.

Dated: January 14, 2002.

Dennis E. Bschor,

Regional Forester, USDA—Forest Service.

[FR Doc. 02–11319 Filed 5–6–02; 8:45 am]

BILLING CODE 3410–11–P

POSTAL SERVICE

39 CFR Part 111

Realignment of Buffalo and Pittsburgh Postal Facilities for Deposit of DBMC Rate Standard Mail and Package Services Machinable Parcels

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: This final rule sets forth the Domestic Mail Manual (DMM) standards adopted by the Postal Service requiring mailers to deposit, at the Pittsburgh Bulk Mail Center (BMC), Standard Mail machinable parcels and Package Services machinable parcels, currently required to be taken to the Buffalo, New York, Auxiliary Service Facility (ASF), in order to claim destination bulk mail center (DBMC) rates. This mail, where applicable, will be required to be zoned from the Pittsburgh BMC.

DATES: *Effective.* Compliance is optional as of May 7, 2002. Compliance will be required on January 5, 2003.

FOR FURTHER INFORMATION CONTACT: OB Akinwole, (703) 292–3643 or Cheryl Beller (703) 292–3747.

SUPPLEMENTARY INFORMATION: On January 17, 2002, the Postal Service published, for public comment, a notice in the **Federal Register** (67 FR 2388), proposing to realign permissible points for mailer deposit of Standard Mail machinable parcels and Package Services machinable parcels currently required, by DMM Standard, to be entered at the Buffalo, New York, Auxiliary Service Facility (ASF) in order to be claimed at destination bulk mail center (DBMC) rates.

Mailers will now be required to enter mail, addressed for delivery within the ZIP Code range of the Buffalo ASF service area, as defined for the appropriate class of mail in DMM Exhibit E650.5.1 and Exhibit E751.1.3, at the Pittsburgh BMC to claim the DBMC rates. As part of this final rule, all machinable and nonmachinable parcels (Parcel Post, Parcel Select, and Bound Printed Matter) deposited at the Pittsburgh BMC are also required to be zoned from Pittsburgh using Postal Service zone chart 150. As an option, mailers may also deposit nonmachinable parcels for the Buffalo ASF service area ZIP Codes listed in DMM labeling list L602 at the Pittsburgh BMC, provided that these nonmachinable parcels are commingled in bedloads with the DBMC rate machinable parcels. These nonmachinable parcels would also be eligible for the DBMC rates. Otherwise, nonmachinable parcels must continue to be deposited at the Buffalo ASF in order to be eligible for the DBMC rates. Barcoded machinable parcels for the Buffalo ASF service will be eligible for the parcel barcode discount when entered at the Pittsburgh BMC. Under this final rule, entry of Standard Mail, Parcel Select, and Bound Printed Matter machinable parcels sorted to the 5-digit ZIP Codes within the Buffalo sectional center facility (SCF) service area, as defined in DMM L005, would continue to be required to be deposited at the Buffalo SCF in order to qualify for the destination sectional center facility (DSCF) rate. Standard Mail machinable parcels claimed at DSCF rates and entered at Buffalo will continue to be eligible for a parcel barcode discount.

Currently, all machinable parcels entered at the Buffalo ASF are sorted manually by the Postal Service to the first three digits of the delivery address ZIP Codes. Those parcels destined to addresses within the Buffalo ASF service are either further sorted to the Buffalo SCF or transported to SCFs in Rochester, Syracuse, Elmira, and Utica. At the SCFs, the parcels are sorted by 5-digit ZIP Code to the associated delivery offices and subsequently transported to those delivery offices.

In contrast to this manual operation in Buffalo, the Pittsburgh BMC sorts machinable parcels on parcel sorting machines (PSMs) and finalizes the parcels to 5-digit ZIP Codes in one or two passes. Parcels destined for the Buffalo ASF service area are then transported directly from the Pittsburgh BMC to the appropriate SCFs. This rule change will minimize more costly and slower manual processing and provide more direct transportation of such parcels. The Postal Service believes that this realignment of ZIP Codes for DBMC rate eligibility between between the Pittsburgh BMC and the Buffalo ASF will provide consistent customer service by eliminating at least one step in the transportation process.

This rule change will eliminate any confusion concerning the applicable standards for the deposit of DBMC machinable parcels in the affected service areas. This final rule contains the DMM standards adopted by the Postal Service after review of the comments that were submitted.

Evaluation of Comments From the Proposed Rule

The Postal Service received written comments on the January 17 proposed rule from three mailers and one mailer association.

One commenter questioned the accuracy of the statement in the proposed rule that "current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments."

The Postal Service acknowledges that the statement should have read "current records indicate that more than three years have passed since the Buffalo ASF has received any drop shipments of machinable parcels."

The same commenter suggested that the exception to allow mailers to divert machinable parcels from the Buffalo ASF to the Pittsburgh BMC is the real issue to be addressed. According to this commenter, mailers not party to the exception should not be penalized.

This final rule formally designates the Pittsburgh BMC as the appropriate deposit point for machinable parcels claimed at DBMC rates destined for the Buffalo ASF service area. Moreover, the Postal Service believes that this change will ensure a fair and uniform rate application to all mailers depositing machinable parcels at the Pittsburgh BMC. Many of those mailers have been depositing machinable parcels destined

for the Buffalo ASF service area and zoning and rating those parcels from the Pittsburgh BMC.

Another commenter implied that the proposed changes stem from possible mismanagement of operational resources at the Buffalo ASF, including inappropriate mail processing equipment. The commenter further states that the Postal Service is imposing increased DBMC rates on customers because of its own inadequacies. The commenter believes that the proposed changes are tantamount to a "poorly concealed rate increase."

The changes announced in this final rule are not the result of mismanagement or inappropriate resource allocation but rather a reflection of effective cost management for mailers and the Postal Service. In addition, the changes in this final rule are not an attempt to increase rates by use of a technical regulatory change. Part of this management is the long-term strategy of realigning the Postal Service processing and transportation networks as a viable means to raise productivity, stabilize costs, and minimize postage rate increases.

The diversion to the Pittsburgh BMC of machinable parcels destined for the Buffalo ASF service area is not the outcome of recent redirection of that volume by the Buffalo ASF. Almost from the inception of the DBMC entry rates on February 24, 1991, the majority of dropship parcel mailers have been depositing at the Pittsburgh BMC machinable parcels and some nonmachinable parcels destined for the Buffalo ASF. In fact, about 31 percent of the current parcel volume processed at the Pittsburgh BMC is destined for the Buffalo ASF. This large percentage is not surprising because western New York is not an originating area for large parcel shippers. As a result, the majority of parcel shippers who have parcels destined for the Buffalo ASF are also likely to have parcels destined for the Pittsburgh BMC service area.

Based on the expected additional costs that the commenters or their clients may incur, all four commenters objected to the realignment, particularly the requirement to zone mail entered at the Pittsburgh BMC using the Pittsburgh zone chart instead of the Buffalo zone chart. Alternatives suggested included extending the effective date, either to the end of calendar year 2002, or the beginning of calendar year 2003, and developing an optional sort rate for packages presorted and containerized by 3-digit ZIP Codes prefixes and entered at the Buffalo ASF for cross-docking to SCFs. The comment suggesting the development of an optional sort rate for packages presorted and containized by 3-digit ZIP Code prefixes and entered at the Buffalo ASF for cross-docking to SCFs is beyond the scope of this rulemaking and is not addressed in this final rule.

The Postal Service is indeed concerned about any financial burden that this final rule will place on parcel shippers. As a consequences, the Postal Service will delay required implementation of these changes to January 5, 2003. This delay should reduce any financial impact on mailers this year and, at the same time provide sufficient time to plan for significant or individual changes that would affect their current operations.

One commenter noted that zoning Buffalo Parcel Select from Pittsburgh will raise customer rates by $0.89 per parcel. This commenter implied that DBMC rates as a whole are going up faster than DSCF and DDU rates frequently used by large package consolidators, leading the commenter to believe that the intent of the Postal Service is to drive customers to competitors.

On one hand, the Postal Service does acknowledge that there will be some adjustments in postage paid because of the requirement that mailers zone machinable parcels destined for the Buffalo ASF from the Pittsburgh BMC. Not all increased costs, however, are attributed solely to postage. Depending on the size, weight, and distance of the parcel as well as associated transportation costs, mailers can benefit from the changes in this final rule because they are permitted to use one facility rather than two for the deposit of their mail for the same geographic area. In essence, they can benefit from reduced transportation costs.

Although both the DDU and the DSCF rates for Parcel Select will have increases effective with the June 30, 2001, implementation of R2001–1 as announced in the **Federal Register** on April 16, 2001, adjustments were made to the DBMC rates to reflect increased postal costs for handling. The Postal Service introduced a separate 1-pound Parcel Post rate to mitigate increases in rates for lighter weight parcels. Increases in the DBMC rates are not part of any strategy to drive customers to competitors but to provide universal service within the guidelines of the standards that govern the Postal Service. Furthermore, customers who use package consolidators actually pay those consolidators higher rates for these services than the published DDU and DSCF rates.

After full consideration of the comments received the Postal Service believes it appropriate to adopt, without revisions, the proposed changes in eligibility requirements.

The Domestic Mail Manual is revised as follows: These changes are incorporated by reference in the Code of Federal Regulations. See 39 CFR part 111.

List of Subjects in 39 CFR Part 111

Administrative Practice and Procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 3626, 5001.

2. Amend Domestic Mail Manual (DMM) modules E and L as follows:

Domestic Mail Manual (DMM)

E Eligibility

* * * * *

E600 Standard Mail

* * * * *

E650 Destination Entry

* * * * *

5.0 DBMC DISCOUNT

5.1 Definition

[Amend Exhibit 5.1 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

Eligible destination ZIP Codes	Entry facility
. . . . .	.
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140
150–168, 260–266, 439–447 [Except machinable parcels]	BMC PITTSBURGH PA 15195
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195

Eligible destination ZIP Codes	Entry facility
. . . . .	.

* * * * *

5.5 Additional Standards for Machinable Parcels

[Amend 5.5a by adding the phrase "except as shown in Exhibit 5.1" to the second sentence to explain when sortation of parcels to ASFs is optional to read as follows:]

* * * * *

a. Destination BMC/ASF Containers. Machinable parcels pallelized under M045 or sacked under M610 may be sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. When machinable parcels are sorted to both destination BMCs and ASFs under L601 and L602, they qualify for DBMC rates under 5.2. Except as provided in Exhibit 5.1, sortation of machinable parcels to ASFs is optional but is required for the ASF mail to be eligible for DBMC rates. * * *

* * * * *

E700 Package Services

* * * * *

E750 Destination Entry

E751 Parcel Select

* * * * *

Eligible destination ZIP Codes	Entry facility
. . . . .	.
130–136, 140–149 [Except machinable parcels]	ASF BUFFALO NY 140
150–168, 260–266, 439–447 [Except machinable parcels]	BMC PITTSBURGH PA 15195
130–136, 140–168, 260–266, 439–447 [Machinable parcels only or machinable parcels combined with bedloaded nonmachinable parcels].	BMC PITTSBURGH PA 15195

* * * * *

E752 Bound Printed Matter

* * * * *

2.0 Destination Bulk Mail Center (DBMC) Rates

* * * * *

2.3 Presorted Machinable Parcels

[Amend 2.3 by adding the phrase "except as shown in Exhibit E751.1.3" to the third sentence to read as follows:]

Presorted machinable parcels in sacks or on pallets at all sort levels may claim DBMC rates Machinable parcels palletized under M045 or sacked under M722 maybe sorted to destination BMCs under L601 or to destination BMCs and ASFs under L601 and L602. Except as provided in Exhibit E751.1.3, sortstation of machinable parcels to ASFs its optional but is required for the ASF mail to be eligible for DBMC rates.

* * *

* * * * *

L Labeling Lists

* * * * *

1.0 BASIC STANDARDS

* * * * *

1.3 Definition

[Amend Item and Exhibit 1.3 by showing realignment of eligible destination ZIP Codes for machinable parcels for the Buffalo ASF and Pittsburgh BMC entry facilities to read as follows:]

* * * * *

b. Except as provided in Exhibit 1.3, pieces deposited at each BMC or ASF must be addressed for delivery within the ZIP Code range of that facility.

L600 Standard Mail and Package Services

L601 BMCs

[Amend L601 by revising items to read as follows:]

* * * * *

a. Standard Mail machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC.

* * * * *

c. Bound Printed Matter machinable parcels except ASF mail (other than mail for the Buffalo ASF service area) prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC if bedloaded and presented with machinable parcels.

* * * * *

L602 ASFs

Amend L602 by revising L602a, L602c, and L602e to read as follows:]

L602 defines the service area by individual 3-digit ZIP Code prefix for Standard Mail and Package Services mail that must be sorted to ASFs.

Use this list for:

a. Standard Mail machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

c. Bound Printed Matter machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601.

* * * * *

e. Parcel Post machinable parcels if ASF mail (other than mail for the Buffalo ASF service area) is prepared

and claimed at DBMC rates. Machinable parcels for the Buffalo ASF service area prepared and claimed at DBMC rates must be sorted to the Pittsburgh BMC under L601. Nonmachinable parcels for the Buffalo ASF service area claimed at DBMC rates may be sorted to the Pittsburgh BMC under L601 if bedloaded and presented with machinable parcels.

* * * * *

[An appropriate amendment to 39 CFR part 111.3 will be published to reflect these changes.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02-11310 Filed 5-6-02; 8:45 am]

BILLING CODE 7710-12-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[GA-57-200224; FRL-7206-2]

Approval and Promulgation of Implementation Plans; Georgia: 1-Hour Ozone Attainment Demonstration, Motor Vehicle Emissions Budgets, Reasonably Available Control Measures, Contingency Measures and Attainment Date Extension

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act, as amended in 1990, (CAA), EPA is approving the 1-hour ozone attainment demonstration State Implementation Plan (SIP) for the Atlanta serious 1-hour ozone nonattainment area. In conjunction with its approval of the attainment demonstration, EPA is: extending the ozone attainment date for the Atlanta 1-hour ozone nonattainment area to November 15, 2004, while retaining the area's current classification as a serious ozone nonattainment area; finding that the Atlanta 1-hour ozone nonattainment area meets the reasonably available control measures (RACM) requirements of the CAA; finding that the contingency measures identified by the State of Georgia are adequate; approving the Partnership for a Smog Free Georgia (PSG) program; and approving the 2004 motor vehicle emissions budgets (MVEB).

EFFECTIVE DATE: This rule will be effective June 6, 2002.

ADDRESSES: Copies of documents relevant to this action are available for public inspection during normal business hours at the following addresses: U.S. EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW., Atlanta, Georgia 30303-8960.

Air Protection Branch, Georgia Environmental Protection Division, Georgia Department of Natural Resources, 4244 International Parkway, Suite 120, Atlanta, Georgia 30354. Telephone (404) 363-7000.

FOR FURTHER INFORMATION CONTACT: Scott M. Martin, EPA Region 4, (404) 562-9036 or email: *martin.scott@epa.gov.*

SUPPLEMENTARY INFORMATION:

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I. Background

On July 17, 2001, the Georgia Environmental Protection Division (GAEPD) submitted to EPA a revised 1-hour ozone attainment demonstration for the Atlanta 1-hour ozone nonattainment area (Atlanta area) that replaced the attainment demonstration submitted to EPA on October 28, 1999. The new submittal contained a revised MVEB, a request for an attainment date extension to November 15, 2004, a revised PSG program and the RACM analysis. GAEPD also agreed to perform an early assessment of the Atlanta Ozone Attainment SIP and submit it to EPA by November 15, 2003.

EPA proposed to approve the attainment demonstration and to grant an attainment date extension, pursuant to EPA's "Guidance on Extension of Air Quality Attainment Dates for Downwind Transport Areas." The extension policy applies where pollution from upwind areas interferes with the ability of a downwind area to demonstrate attainment with the 1-hour ozone standard by the dates prescribed in the CAA. As an alternative to reclassification for areas affected by transport, the extension policy provides that an area, such as Atlanta, is eligible for an attainment date extension if it can make submissions that meet certain conditions. EPA proposed that the Atlanta area met all of the required conditions.

In the alternative, EPA proposed to find that the Atlanta area failed to attain the 1-hour ozone National Ambient Air Quality Standards (NAAQS) by November 15, 1999, the date set forth in the CAA for serious nonattainment areas. If EPA had finalized this finding, the Atlanta area would be reclassified, by operation of law, as a severe nonattainment area. EPA also took comment on a proposed schedule for submittal of the SIP revisions required for severe areas should the area be reclassified.

Please see the **Federal Register** proposal actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

II. Today's Actions

A. Attainment Demonstration Approval and Extension of Attainment Date

In today's action EPA is finalizing its proposed determination that the Atlanta SIP has met the criteria for an attainment date extension. Therefore, EPA is extending the attainment date for the Atlanta area to November 15, 2004, to allow the reductions in transport needed for attainment to occur. Please see the **Federal Register** actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

EPA's policy regarding an extension of the ozone attainment date for areas affected by transport was set forth in a July 16, 1998, guidance Memorandum entitled "Extension of Attainment Dates for Downwind Transport Areas" which was published in a notice of interpretation on March 25, 1999, (64 FR 12221). In it, EPA set forth its interpretation of the CAA regarding the extension of attainment dates for ozone nonattainment areas that have been classified as moderate or serious for the 1-hour ozone NAAQS, and which are downwind of areas that have interfered with the moderate and serious nonattainment areas's attainment of the ozone NAAQS by dates prescribed in the CAA. EPA stated that it will consider extending the attainment date for an area or a state that:

a. Has been identified as a downwind area affected by transport from either an upwind area in the same state with a later attainment date or an upwind area in another state that significantly contributes to downwind ozone nonattainment;

b. Has submitted an approvable attainment demonstration with any necessary, adopted local measures, and with an attainment date that shows it will attain the 1-hour NAAQS no later than the date that the emission reductions are expected from upwind areas in the final nitrogen oxide (NO_X) SIP Call and/or the statutory attainment date for upwind nonattainment areas, i.e., assuming the boundary conditions reflecting those upwind emission reductions;

c. Has adopted all applicable local measures required under the area's current ozone classification and any additional emission control measures demonstrated to be necessary to achieve timely attainment, assuming the emission reductions occur as required in the upwind areas; and

d. Has provided that it will implement all adopted measures as expeditiously as practicable, but no later than the date by which the upwind reductions needed for attainment will be achieved.

EPA has determined that the Atlanta area has satisfied the criteria for an attainment date extension as follows.

(i) The State has cited EPA's NO_X SIP Call modeling and analyses documented in EPA's final NO_X SIP Call notice published on October 27, 1998, (63 FR 57356) to demonstrate that the Atlanta area is affected by an upwind area in another state that significantly contributes to ozone nonattainment in the Atlanta area. In our December 16, 1999, notice (64 FR 70478) proposing approval of the initial 1-hour ozone attainment demonstration for the Atlanta area submitted on October 28, 1999, we explained how the Ozone Transport Assessment Group (OTAG) modeling which supported the NO_X SIP Call and the attainment demonstration for the Atlanta area demonstrates the impacts of transport. The NO_X SIP Call notice provides that emissions from sources in Alabama, Kentucky, North Carolina, South Carolina, and Tennessee significantly contribute to violations of the 1-hour ozone standard in the Atlanta area.

(ii) As explained elsewhere in this notice, the GAEPD has submitted an attainment demonstration that EPA believes is approvable and that provides for timely attainment no later than the date emission reductions are expected under the NO_X SIP call. All of the local control measures relied upon in the attainment demonstration have been adopted and submitted to EPA. These measures include all serious area requirements under section 182(c) and the additional controls discussed in the December 16, 1999, proposal (64 FR 70478) and the July 10, 2001, (66 FR 35906) final rule.

(iii) The GAEPD has adopted all local measures required by section 182(c) of the CAA for the Atlanta serious nonattainment area and all other measures necessary for timely attainment. (See 59 FR 46176, 60 FR 12691, 60 FR 66150, 61 FR 3819, 62 FR 42918, 64 FR 20188). Additionally, see discussion of contingency measures discussed below.

(iv) With respect to implementation of all adopted measures as expeditiously as practicable but no later than the time upwind controls are expected, the Atlanta SIP requires that all local control measures needed for attainment be in place by May 1, 2003, or earlier. The upwind areas identified above are required to implement controls consistent with the NO_X SIP Call by May 31, 2004. All of the local control measures in the Atlanta SIP will, therefore, be implemented prior to that time and EPA also finds that they will be implemented as expeditiously as possible.

EPA has determined, based on the above discussion, that the Atlanta SIP has met the criteria for an attainment date extension. Therefore, EPA is extending the attainment date for the Atlanta area to November 15, 2004, to allow the reductions in transport to occur before attainment is required. This does not affect the GAEPD's obligation to implement the remaining local measures by the dates required in the approved SIP regulations. Additional background information on EPA's attainment date extension policy can be found in the following **Federal Register** notices:

64 FR 14441—March 25, 1999
64 FR 12284—March 18, 1999
64 FR 18864—April 16, 1999
64 FR 27734—May 21, 1999
64 FR 70459—December 16, 1999
65 FR 20404—April 17, 2000
66 FR 585—January 3, 2001
66 FR 634—January 3, 2001
66 FR 666—January 3, 2001
66 FR 17647—April 3, 2001
66 FR 20122—April 19, 2001
66 FR 26913—May 15, 2001
66 FR 33996—June 26, 2001

In the supplemental proposed rule published on December 11, 2001, EPA proposed to approve the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, and to extend the area's attainment date to November 15, 2004. In the alternative, EPA proposed to find that the Atlanta area failed to attain the 1-hour ozone NAAQS by November 15, 1999, and to reclassify the Atlanta area to severe.

In today's action, EPA is granting final approval to the 1-hour ozone attainment demonstration for the Atlanta area and extending the attainment date to November 15, 2004. The Atlanta area will thus retain its classification as a serious nonattainment area.

B. Reasonably Available Control Measures Analysis (RACM)

Section 172(c)(1) of the CAA requires attainment demonstration SIPs to provide for the implementation of all RACM as expeditiously as practicable (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology, (RACT) and to provide for the attainment of the NAAQS. EPA has previously provided guidance interpreting the RACM requirements of 172(c)(1) (see 57 FR 13498, 13560). RACM was also discussed in the supplemental proposed rule published on December 11, 2001, (see 66 FR 63972). Today, EPA is approving Georgia's RACM analysis.

C. 2004 Motor Vehicle Emissions Budgets

The MVEB for 2004 were calculated using the revised speeds, updated registration data, updated vehicle miles traveled (VMT), and projected 2004 VMT, and the control measures identified in the 1-hour ozone attainment demonstration for the Atlanta area. The resulting budgets are 106.25 and 225.12 tons per typical summer day of VOC and NO x, respectively.

These MVEB reflect the most up-to-date mobile modeling assumptions including 2004 VMT projected from the travel demand model for the Atlanta area and July 2004 emission factors from EPA's MOBILE5b emission factor model and 1999 vehicle registration data, which were available at the time of SIP adoption. The control measures identified and modeled for mobile emissions used to establish the MVEB, along with other control measures in this plan, will result in attainment of the 1-hour ozone NAAQS by 2004.

EPA is granting final approval to the 2004 MVEB because they are based on the most recent data, they reflect reductions from the control measures included in the attainment demonstration and they are consistent with the overall attainment demonstration.

Now that EPA has approved the Atlanta attainment demonstration, all future transportation conformity determinations must be measured against the MVEB in the approved SIP. The previous adequacy determination that EPA had made with respect to the MVEB in the submitted attainment demonstration SIP will have no further force or effect in any future conformity determinations. EPA's final approval of the attainment demonstration and the

MVEB contained in it is a separate action from EPA's prior adequacy determination and is based upon different analyses and standards. The adequacy determination had only found that the submitted budgets met the adequacy criteria in EPA's transportation conformity regulations, 40 CFR 93.118(e)(4). Today's approval is based on EPA's conclusions that the SIP as a whole, including the MVEB it contains, meets all applicable requirements for approval of an attainment demonstration as described throughout this notice.

D. Partnership for a Smog Free Georgia

In 1997, EPA published the "Voluntary Mobile Source Emission Policy" (VMEP) in order to assist states considering nonregulatory emission strategies, which are generally not effective on a mandatory basis. The VMEP policy allows states to take credit for expected emission reductions from voluntary mobile source programs, and allows states to take credit for up to 3 percent of the total emission reductions needed for attainment through the VMEP policy. Georgia is using this policy to take credit for its PSG program. The PSG promotes effective voluntary actions that employers, their employees and general residents in the region can take to help improve air quality in the metro Atlanta region during the ozone season.

EPA is approving the PSG program, its evaluation procedures, and the expected emission reduction targets as an enforceable part of the SIP under the VMEP policy. Additional information can be found in the above referenced proposal notice.

E. Contingency Measures

Section 172(c)(9) and 182(c)(9) of the CAA require SIPs to contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date or to meet rate-of-progress (ROP) deadlines. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. Although the Atlanta SIP does not contain such contingency measures EPA has determined that existing federally enforceable measures would provide the necessary substantive relief sufficient to provide the basis for approval of an extension to the area's attainment date. Georgia must still submit the required contingency measures to EPA for approval into the SIP. Additional information can be found in the above referenced proposal notice.

III. Comment and Response

EPA received comments from the public on the Notices and Supplemental Notices of Proposed Rulemaking published in the **Federal Register** on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972.) Comments were submitted by The Georgia Conservancy, Environmental Defense, Natural Resources Defense Council, The Sierra Club, Souther Company Services, Kilpatrick Stockton LLP, Georgia Center for Law in the Public Interest, American Road & Transportation Builders Association (ARTBA), Advocates for Safe and Efficient Transportation (ASET), National Association of Home Builders (NAHB), and the Southern Environmental Law Center.

EPA sets forth below in this section our responses to adverse comments received on these notices which are relevant to this rulemaking. Additionally, some of the comments received in Docket A–98–47 on EPA's notice regarding "Extensions of Attainment Dates for Downwind Transport Areas" 64 FR 14441 (March 25, 1999), are relevant to this rulemaking. EPA incorporates its responses to those comments, set forth in 66 FR 585, 66 FR 634, 66 FR 666 (January 3, 2001), 66 FR 26913 (May 15, 2001), and 66 FR 33996 (June 26, 2001) insofar as herein relevant.

The following discussion summarizes and responds to all adverse comments:

Comments Received Relating to the Supplemental Proposed Rule Published in the **Federal Register** *on Tuesday, December 11, 2001, See 66 FR 63972*

Comment 1

EPA proposes to extend the attainment date for the Atlanta metropolitan area to November 15, 2004, 66 Fed. Reg. 63,972. Because this extension violates the plain meaning of the CAA, it must be rejected under Step One of *Chevron U.S.A.* v. *Natural Resources Defense Council*, 467 U.S. 837, 842–43 (1984). Moreover, the extension rests on an unreasonable—and therefore impermissible—interpretation that must be rejected even if Chevron Step Two applies. See *Whitman* v. *American Trucking Assns.*, 121 S. Ct. 903, 916 (2001) (reversing an EPA interpretation of Subparts 1 and 2 that "goes beyond the limits of what is ambiguous and contradicts what in our view is quite clear"); *Natural Resources Defense Council* v. *Daley*, 209 F.3d 747, 753 (D.C. Cir. 2000) (rejecting an agency interpretation that "diverges from any realistic meaning" of the statute).

The CAA expressly sets November 15, 1999, as the attainment date for serious areas, and authorizes no extensions on the grounds asserted by EPA. The structure of the CAA further refutes EPA's assertion of authority to amend those deadlines administratively. While accepted principles of statutory interpretation would in any event preclude EPA's attempt to administratively amend express statutory provisions, such amendment is especially unwarranted with respect to deadlines for attainment of primary air quality standards.

EPA's claim that it has authority to extend attainment dates based on pollution transport is further refuted by express CAA provisions showing that Congress expressly authorized both (1) attainment date extensions and (2) modifications to the CAA's provisions based on pollution transport. These extension provisions provide the exclusive authority for attainment date extensions because when Congress has prescribed the conditions under which an extension may be granted, no other conditions may be created by the Agency to grant an extension. The U.S. Court of Appeals for the Eleventh Circuit rejected EPA's administrative amendment of the CAA plain terms.

Response 1

In this final rule, EPA responds to the adverse comments on EPA's legal authority to extend Atlanta's attainment date received in response to the relevant proposals. The responses to comments in a number of prior rulemakings concerning the attainment date extensions granted in Washington, DC, Springfield, MA, Greater CT, Beaumont Texas, and St. Louis are relevant and responsive to the comments received on Atlanta. In those prior rulemakings, EPA responded to similar challenges to the legality of the attainment date extension policy, and EPA therefore incorporates its responses to these comments, set forth in 66 FR 586, 66 FR 634, 66 FR 666 (January 3, 2001), 66 FR 26913 (May 15, 2001) and 66 FR 33996 (June 26, 2001) insofar as herein relevant.

Many of the legal arguments and other issues raised in the comments addressing the attainment date extension proposed in Atlanta have also been addressed in the briefs EPA has filed in litigation concerning the extensions in Washington, D.C. (*Sierra Club* v. *Whitman*) No. 01–1070 (D.C. Cir.), St. Louis, *Sierra Club* v. *EPA* 01–2844, No. 01–2845 (7th Cir.), and *Sierra Club* v. *Whitman*, Nos. 01–5123 and 01–5299 (D.C. Cir.) and Beaumont *Sierra Club* v. *EPA*, No. 01–60537 (5th Cir.). These briefs have been placed in the docket for this rulemaking and are incorporated herein by reference.

In response to the contention that EPA's proposed attainment date extension conflicts with an order previously issued by the Eleventh Circuit Court of Appeals, the Eleventh Circuit Court of Appeals has not even directly reviewed, or ruled on, and thus certainly has not formally rejected, EPA's attainment date extension policy. The court did issue a stay of EPA's adequacy determination on the emissions budgets in the 1999 attainment demonstration SIP pending completion of litigation in *Georgians for Transportation Alternatives, et al.* v. *EPA, et al.*, No. 00–12187, order of July 18, 2000. The petitioners had alleged in their stay request that the budget was inadequate because the SIP illegally relied upon an attainment date extension. However, EPA responded that the budget would be adequate even if an attainment date were not granted and the area were bumped up, since in either case the attainment date would be the same. The court granted the stay in a one line order without opinion. The most that can be taken from this action is that the court believed petitioners had some likelihood of success on the merits and in light of allegations of potential harm chose to preserve the status quo pending completion of the litigation. The issuance of the stay without opinion in no way indicates that the court affirmatively rejected EPA's extension policy. The court never ruled further on the matter since EPA ultimately withdrew its adequacy determination based on new factual developments relating to the attainment demonstration. Similarly, in a recent development that occurred after EPA received comments on its instant action, the 11th Circuit Court of Appeals issued a stay on the recently adequate MVEB for the Atlanta nonattainment area in response to a request for an expedited stay in *Sierra Club, et al* v. *EPA*, No. 02–11188–F on April 17, 2002. However, the 11th Circuit of Appeals did not provide any rationale for its grant of the stay. It simply issued a stay in the same manner as in *Georgians for Transportation Alternatives, et al.* v. *EPA, et al.*, No. 00–12187. Since a stay is not an adjudication on the merits, the grant of a stay does not change EPA's position as to the legality of the extension policy.

A commenter's contention that EPA should not grant Atlanta an attainment date extension because Georgia should have acted earlier to commence a section 126 proceeding to reduce emissions from upwind states ignores the fact that an adequate analysis and allocation of responsibility for transport did not exist in time to support relief by the area's original attainment date. See similar responses in EPA's prior rulemakings on the other attainment date extension areas.

Another argument raised is that reclassification of an area affected by transport is necessary to achieve additional interim reductions in the area, even where they will not advance attainment and when a combination of local and upwind reductions will bring the area into attainment. The commenter relies for his argument on section 176(c)(1)(A), a conformity provision which contains only a general characterization of the purposes of the SIP as a whole. While EPA agrees that SIPs have purposes other than that of providing for attainment, the CAA contains specific and detailed requirements directed to fulfilling those purposes, and the SIP for Atlanta meets those requirements. EPA believes that, under the circumstances, Congress did not intend to require a SIP to go beyond those requirements in order to obtain reductions to compensate for pollution coming from outside the area's borders. The commenter also references *Natural Resources Defense Council* v. *Reilly*, 983 F.2d 259, 268, 272 (D.C. Cir. 1993). This case involved promulgation of requirements for on-board refueling vapor recovery systems, a provision far different from the complex relationship among the CAA provisions regarding transport and reclassification. Contrary to commenter's contention that *Reilly* supports the concept of "double controls", in the context of onboard regulation, Congress mandated that Stage II controls be withdrawn after the promulgation of onboard controls in moderate areas, and also mandated a more delayed withdrawal from serious and severe areas because of the decade-long phase-in required for effective onboard controls in those areas. That case did not deal with transport, and nothing in *Reilly* indicates that Congress would be supportive of local areas being held responsible for reducing transported pollution for which upwind areas are obligated to promulgate and implement controls.

A commenter argues that it is equitable to reclassify Atlanta because, although it is downwind of some areas, it is upwind of other nonattainment areas, and may contribute to nonattainment there. Reclassification of an upwind area, however, is not the mechanism prescribed by Congress to remedy transport. An area is not required to be reclassified if it provides for local attainment but contributes to nonattainment elsewhere. For purposes of reclassification the relevant analysis is of the air quality and transported pollution problem in the area being reclassified, and not the air quality downwind from the area. To the extent that the area is responsible for violations in other areas downwind, it is subject to the provisions of section 110(a)(2)(D) and section 126.

Commenters cite to prior case law in support of such propositions as: a list of specific remedial provisions excludes the possibility of inferring that Congress intended any additional forms of relief; an agency cannot substitute its policy choices for those of Congress; the attainment deadlines are central to the CAA and cannot be adjusted. EPA has previously set forth its views on these issues in its prior responses and in its briefs. None of the cases or arguments cited by the commenter alters these views, or undermines EPA's authority to interpret the text of the statute in its full context so as to give effect to Congress's intent. EPA is implementing the attainment date extension not as a mere Agency policy preference, but in order to fulfill Congress's intent. Moreover, even in the absence of explicit statutory authority, EPA may grant extensions of time under the CAA where it concludes that Congress would have done the same had it foreseen the circumstances presented. *NRDC* v. *EPA*, 22 F.3d 1125 (D. C. Cir. 1994).

Comment 2

EPA's proposal to grant an unauthorized date extension has been pre-empted by the re-classification of the Atlanta area that occurred by operation of law pursuant to section 182(g)(3) of the CAA. That provision provides for reclassification of a serious area to severe "[i]f a State fails to submit a demonstration under paragraph 2 for any Serious area within the required period," and fails to make a election of one of the statutory options prescribed by paragraph (3) for remedying that failure.

Comment 3

The fact that Georgia failed to make the demonstration required by section 182(g)(2) is established by EPA's response to a Freedom of Information Act request submitted April 20, 2001.

Comment 4

Atlanta failed to comply with the rate of further progress milestone for NO_X.

Response to Comments 2, 3, and 4

Under paragraph (2) of subsection 182(g), each State containing all or part of a nonattainment area classified serious or higher is required to submit.

at specified times after a milestone has occurred, "a demonstration that the milestone has been met." This provision further provides,

A demonstration under this paragraph shall be submitted in such form and manner, and shall contain such information and analysis, as the Administrator shall require; by rule. The Administrator shall determine whether or not a State's demonstration is adequate within 90 days after the Administrator's receipt of a demonstration which contains the information and analysis required by the Administrator.

Under paragraph (3), "If a State fails to submit a demonstration under paragraph (2)," it must, within specified time frames, elect among several choices, and if it fails to make such an election, then, at a specified time, it is reclassified by operation of law.

By its terms, paragraph (3) mandates the reclassification, or bump-up, only if the State fails to submit "a demonstration under paragraph (2)." Paragraph (2), in turn, provides by its terms that the required demonstration is one that "in such form and manner * * * contain[s] such information and analysis as the Administrator shall require, by rule."

Subsection 182(g) does not provide a date by which EPA must promulgate the rule that establishes the requirements for the demonstration, and EPA has not yet promulgated such a rule. By limiting the bump-up to circumstances in which the State fails to submit a demonstration that conforms to EPA requirements for form and content, subsection 182(g), read most straightforwardly, indicates at least through implication that absent such a rule, there is no requirement for any demonstration that, if not submitted, would ultimately result in a bump-up.

This reading is sensible in light of the many different methods that EPA could require for the demonstration. The milestone compliance demonstration is designed to require some form of accounting to ascertain whether the area has achieved the amount of emissions reductions that the SIP requires by that time. One method of making this calculation may be to require a comprehensive inventory of all sources near the time of the milestone. This approach may require careful consideration because of the time and expense typically involved in conducting inventories, and because other provisions of the CAA require inventories, but at different times than would be required by the milestone compliance demonstration. *See* 182(a)(3). A second method may be to allow emissions estimates, consistent with approved methodologies, rather than comprehensive inventories. A third method may be to determine whether the controls required under the SIP to have been implemented by the time of the milestone have, in fact, been implemented. These different methods would impose significantly different burdens on States and sources, and may yield somewhat different results.

This review of the different methods for making the demonstration makes clear that the most straightforward reading of section 182(g)(2)–(3)—to require application of the bump-up by operation of law only after a EPA promulgates rules for the demonstration—is sensible. It makes sense that EPA should first tell the States, by rule, which of the various milestone accounting methodologies they must use. By comparison, it would make little sense to punish, in effect, a State with a bump-up for failing to submit a demonstration when EPA has not yet told the State the form and content for the demonstration, and when important differences exist in the various methods for making the demonstration.

The CAA requires serious ozone nonattainment areas to develop and submit Rate of Progress Plans (ROP) which would provide for at least a 15 percent reduction of volatile organic compound (VOC) emissions 1990 to 1996 (15 percent plan), and Post-1996 ROPs, which would provide for at least three percent per year in either VOC or NO_X annually for 1997, 1998, and 1999, (9 percent plan). The 15 percent plan was submitted on November 15, 1993, and the 9 percent plan was submitted on November 15, 1994. Both plans were revised on June 17, 1996.

All elements of the 15 percent plan, which reduced VOC emissions by 117.06 tons per day were implemented by the GAEPD. EPA granted final approval to this plan on April 26, 1999, (64 FR 20186). A milestone compliance demonstration (MCD) as required by section 182(g) of the CAA was submitted by the GAEPD to EPA on February 14, 1997.

All elements of the 9 percent plan, which reduced NO_x emissions by 50.10 tons per day, were implemented by the GAEPD. Although the GAEPD did not submit a milestone compliance demonstration, there is a discussion in section 3.2.2. of the attainment demonstration which states that all control measures associated with the 15 and 9 percent plans have been adopted and implemented. EPA granted final approval to this plan on March 18, 1999, (64 FR 13348).

Comment 5

The Atlanta SIP fails to demonstrate attainment with a standard of 0.12 ppm, rather than 0.124 which was not promulgated as the NAAQS.

Response 5

Although the 1-hour NAAQS itself includes no discussion of specific data handling conventions similar to that of the 8-hour NAAQS, EPA's publicly articulated position and the approach long since universally adopted by the air quality management community is that the interpretation of the 1-hour ozone standard requires rounding ambient air quality data consistent with the stated level of the standard. EPA has clearly communicated the data handling conventions for the 1-hour ozone NAAQS in regulation and guidance documents. In the 1990 Amendments to the CAA, Congress expressly recognized the continuing validity of EPA guidance.

As early as 1977, two years before EPA promulgated the 1-hour ozone NAAQS, EPA provided in guidance that the level of the standard dictates the number of significant figures to be used in determining whether the standard was exceeded (Guidelines for the Interpretation of Air Quality Standards, OAQPS No. 1.2–008, February 1977). In addition, the regulations governing the reporting of annual summary statistics from ambient monitoring stations for use by EPA in determining national air quality status clearly indicate the rounding convention to be used for 1-hour ozone data (40 CFR 58, Appendix F). In 1979, EPA issued additional guidance specific to ozone in which EPA provided that "the stated level of the standard is taken as defining the number of significant figures to be used in comparisons with the standard. For example, a standard level of .12 ppm means that measurements are to be rounded to two decimal places (.005 rounds up), and, therefore, .125 ppm is the smallest concentration value in excess of the level of the standard." (Guideline for the Interpretation of Ozone Air Quality Standards, EPA–450/4–79–003, at p. 6.) EPA's guidance on air quality modeling is consistent with those Guidelines. *See e.g.*, Guidance on Use of Modeled Results to Demonstrate Attainment of the Ozone NAAQS, July 1996.

The level of the 1-hour ozone National Ambient Air Quality Standard (NAAQS) is defined in 40 CFR 50.9 as 0.12 parts per million (ppm), not 120 parts per billion (ppb) as implied by the commenter. In other words, the 1-hour ozone NAAQS is specified as two

significant digits and the data handling approach employed to compare ambient air quality data to the 1-hour ozone standard is to round to two decimal places as per the regulations and guidance referenced above.

In the 1990 Amendments to the CAA, Congress expressly provided that "[e]ach regulation, standard, rule, notice, order and *guidance* promulgated or issued by the Administrator under this Act, as in effect before the date of the enactment of the Clean Air Act Amendments of 1990 shall remain in effect according to its terms * * *" Thus, under the amended CAA, Congress expressly carried forth EPA interpretations set forth in guidance such as the guideline documents interpreting the NAAQS.

Comment 6

The control strategy submitted in the SIP as developed from the photochemical grid modeling demonstration will not provide for attainment.

Response 6

Even though, evidence from the photochemical grid model demonstrates that the control measures submitted in the current SIP may result in exceedances, the demonstration does provide for attainment. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value is expected to be at or below the level of the standard. Since the form of the 1-hour NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions. The Atlanta demonstration contains adequate measures to reduce the area-wide design value to below the level of the NAAQS.

The photochemical grid modeling assumed an attainment year of 2003. Allowing additional time to redo the modeling for 2004 would not be consistent with the CAA intent that areas come into attainment as expeditiously as practicable nor would it significantly advance the technical basis for the attainment demonstration. Therefore, EPA agreed that attainment for 2004 could be demonstrated with the submittal of a 2004 emissions inventory as a supplement to the 2003 demonstration, provided that the 2004 emissions are less than or equal to the level of emissions used in the modeling. It could then be concluded that if emissions for 2004 were modeled, the predicted concentrations of ozone would be less than or equal to the 2003 1-hour ozone concentrations modeled. As described below, the state has adequately addressed the differences between the emissions projections for 2003 and 2004.

The Atlanta 1-hour ozone attainment demonstration is based on photochemical grid modeling and weight of evidence analyses as recommended in the EPA's guidance for the 1-hour ozone attainment demonstration. Georgia submitted an attainment modeling demonstration supporting the attainment date extension to 2003 for the Atlanta 13-county nonattainment area to achieve the 1-hour ozone NAAQS to EPA on October 28, 1999. EPA proposed to approve the attainment demonstration and an attainment date extension request on the December 16, 1999, in the **Federal Register** (see 64 FR 70478). The photochemical grid ozone modeling performed for the Atlanta 1-hour ozone nonattainment area is based on an emissions projection to 2003, the attainment extension year that the Georgia Environmental Protection Division (Georgia EPD) requested of EPA in it's October 28, 1999, submittal. On December 16, 1999, EPA proposed approval of the 2003 attainment strategy developed with photochemical grid modeling and the supporting weight of evidence (WOE) analyses. EPA does not agree that errors and deficiencies exist in the 2003-based photochemical modeling to affect its approvability for demonstrating attainment of the 1-hour ozone NAAQS. Detailed information on the 2003 Atlanta attainment photochemical modeling demonstration, the supplemental WOE analysis and EPA modeling requirements are contained in the Technical Support Document for the December 16, 1999, proposal (64 FR 70478). The 2003 modeled control strategy simulations indicate that ozone levels in the Atlanta area will be significantly reduced when the identified additional controls are implemented.

Subsequent to the State's October 1999 submission and EPA's December 1999 proposed approval of the Atlanta attainment demonstration, the source compliance date under the NO_X SIP Call rule was extended from May 1, 2003 to May 31, 2004. In May 1999, the Court of Appeals for the District of Columbia Circuit stayed the obligation of states to submit SIPs in response to EPA's NO_X SIP Call rule, pending litigation over the rule. In March 2000, the Court issued an opinion largely upholding the SIP Call rule. In later rulings in the summer of 2000, the Court lifted the stay of the SIP submission obligation, but provided that since SIP submissions were delayed, EPA could not mandate that states require sources to comply with state-adopted rules under the SIP Call earlier than May 31, 2004. Because the attainment demonstration relied on upwind reductions from the NO_X SIP Call. Georgia determined that it could not attain in the year preceding the source-compliance date under the SIP and submitted a revised SIP requesting an attainment date of November 2004.

The revised attainment demonstration submitted by the State on July 17, 2001, relies on the photochemical grid modeling that was submitted in October 1999, but provides additional analysis. Although a 2004 attainment year is being proposed for approval for the Atlanta nonattainment area because of the upwind contribution, the local controls in the attainment strategy will all be implemented no later than May 2003.

The 2004 demonstration is based on the following procedures. First, the State uses information from the photochemical grid modeling and ambient air modeling to assess whether or not additional levels of emission reductions are needed beyond those that were necessary to demonstrate attainment. This assessment was completed using the emissions projections for 2004. The second part of the analysis involves an assessment of the levels of attainment emissions for 2004 and whether or not attainment in 2004 is reasonably likely to occur. A determination was made that if the estimates of the projected 2004 emissions with controls implemented are at or below the 2003 modeled levels then attainment by 2004 is reasonably likely to occur.

A comparison of the 2003 and 2004 modeling inventories indicate that NO_x emissions increase about 2 percent over the modeling domain, while VOC emissions decrease over 8 percent. Since the total NO_X emissions projected for 2004 are more than the levels modeled for 2003, a demonstration was needed to show why this would not adversely affect the ability of the area to attain the 1-hour ozone NAAQS by 2004. We believe that the relationship between VOC emission reductions and ozone concentration reductions and between NO_X emission reductions and ozone concentration reductions can be determined using the photochemical modeling results. Sensitivity analyses

from the photochemical modeling in the fine grid were used to develop a relationship to assess the potential for increases in ozone formation for the emission levels projected for 2004. The majority of the local emissions reductions for the attainment strategy occur within the 4-km fine grid with the exception of two power plants near the southern boundary. The sensitivity simulations used were based on the three episode days (i.e., July 31, 1987; August 1, 1987; and July 8, 1988) that were used in the 2003 control strategy simulations. These sensitivity simulations represented modeling scenarios based on reductions across emission inventory categories (e.g., low-level source or elevated sources) while holding all other emissions source categories constant. The air-quality-to-emission-change ratio (i.e., tons per day of emissions change per ppb change in ozone) was developed for each day and sensitivity simulation. The average of these ratios over all days and sensitivities was then determined for each pollutant for each episode day.

The submitted ratios indicate that a 41.5 TPD increase in NO_X is needed to cause a 1.0 ppb increase in ozone or a 164.9 TPD increase in VOC is needed to cause a 1.0 ppb increase in ozone. These relationships were applied to the emissions changes predicted between 2003 and 2004 as presented in Table 1. The tables indicate that NO_X emissions are expected to increase by 12.9 TPD and VOC emissions will decrease by 43.7 TPD in 2004. The NO_X and VOC ratios were applied to the emission changes between 2003 and 2004 to determine how ozone formation would be affected in 2004. This analysis indicated that a 0.3 ppb increase in ozone from the increase in NO_X emissions is offset by the a 0.3 ppb decrease in ozone from the VOC emissions. The identified shortfall gap has thus been met by the State and the necessary control measures approved by EPA. Therefore, the assessment supports the conclusion that the area will attain the NAAQS in 2004

Comment 7

The Atlanta SIP fails to demonstrate timely attainment through the impermissible use of linear rollback assumptions to demonstrate attainment under the weight of evidence approach to demonstrating attainment. The relative reduction factor (RRF) analysis used to estimate a future design value provides no rational basis for discounting the emissions reductions required by the Urban Airshed Model (UAM), to show attainment in all grid cells for future predictions for each day modeled.

Response 7

Episodic photochemical grid modeling is the primary basis for the attainment demonstration, as it was used to define the majority of the control strategy. However, the modeling and corroborative analyses, which form the basis of the weight of evidence analysis, provide a preponderance of evidence to support EPA's determination that attainment of the 1-hour ozone NAAQS will be achieved in 2004. One of these WOE analyses involved the use of a relative reduction factor (derived from the local model results) to determine the level of additional NO_X and VOC emissions reductions needed to attain.

EPA has generally relied on photochemical modeling to evaluate the attainment demonstration control strategy, and has used locally derived adjustment factors as a component to estimate the extent to which additional emissions reductions—not the core control strategy—would reduce ozone levels and thereby strengthen the weight of evidence test. This limited use of adjustment factors is more technically sound than the unacceptable use of proportional rollback. The limited use of adjustment factors is more practical in light of the uncertainty in the modeling; the resources and time required to perform additional modeling; and the requirement that serious areas perform a progress check by the end of 2003.

The relative reduction factor was used in one WOE analysis to estimate the reductions from additional control measures in the weight of evidence analysis. The 1996 modeling guidance recommends the optional use of weight of evidence analysis partly due to the form of the 1-hour ozone NAAQS. The 1-hour ozone NAAQS allows exceedances, and taking modeling uncertainty into consideration, EPA is not requiring all predicted values in the future model run to be below the level of the NAAQS. The 1996 guidance provides an approach for addressing exceedances (selection of episodes representative of the areas design value and the "statistical" test) and the 1999 guidance provides a method for testing whether additional measures, not modeled, are needed (estimate of a future design value). Since exceedances are allowed, EPA does not agree that the future modeling shows that the area will not attain. The modeling indicates the area may experience an exceedance (model predictions above the level of the NAAQS) but does not indicate this will lead to a violation (future design value estimate is below the level of the NAAQS).

EPA did not rely on "proportional" rollback as defined in Section 14.0 of 40 CFR 51 Appendix W which defines "rollback" as "a simple model that assumes that if emissions from each source affecting a given receptor are decreased by the same percentage, ambient air quality concentrations decrease proportionately." The prohibition in section 6.2.1.e of Appendix W (i.e., "Proportional (rollback/forward) modeling is not an acceptable procedure for evaluating ozone control strategies.") applies to the use of a rollback method which is empirically/mathematically derived and independent of model estimates or observed air quality and emissions changes as the sole method for evaluating control strategies. In this case, EPA used a locally derived as determined by the model, relative reduction factor to estimate a future design value and then used observed changes in air quality (i.e., ratio of change in emissions to change in ozone) to estimate additional emission reductions to achieve an additional increment of ambient improvement in ozone. This did assume a linear relationship between the precursors and ozone for determining additional reductions needed for small improvements in ozone.

In 1999, EPA issued additional guidance (hereafter, the 1999 guidance) [1] that makes further use of model results for base case and future emission estimates to predict a future design value. This guidance describes the use of an additional component of the WOE determination, which requires, under certain circumstances, additional emission reductions that are or will be approved into the SIP, but that were not included in the modeling analysis, that will further reduce the modeled design value. An area is considered to monitor attainment if each monitor site has air quality observed ozone design values (4th highest daily maximum ozone using the three most recent consecutive years of data) at or below the level of the standard. Therefore, it is appropriate for EPA, when making a determination that a control strategy will provide for attainment, to determine whether or not the model predicted future design value

[1] "Guidance for Improving Weight of Evidence Through Identification of Additional Emission Reductions, Not Modeled." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. November 1999. Web site: *http://www.epa.gov/ttn/scram.*

is expected to be at or below the level of the standard. Since the form of the 1-hour ozone NAAQS allows exceedances, it did not seem appropriate for EPA to require the test for attainment to be "no exceedances" in the future model predictions. The method outlined in EPA's 1999 guidance uses the highest measured design value from all sites in the nonattainment area for each of three years. The three year "design value" represents the air quality observed during the time period used to predict ozone for the base emissions. This is appropriate because the model is predicting the change in ozone from the base period to the future attainment date. The three yearly design values (highest across the area) are averaged to account for annual fluctuations in meteorology. The result is an estimate of an area's base year design value. The base year design value is multiplied by a ratio of the peak model predicted ozone concentrations in the attainment year (i.e., average of daily maximum concentrations from all days modeled) to the peak model predicted ozone concentrations in the base year (i.e., average of daily maximum concentrations from all days modeled). The result is an attainment year design value based on the relative change in peak model predicted ozone concentrations from the base year to the attainment year.

In the event that the attainment year design value is above the standard, the 1999 guidance provides a method for identifying additional emission reductions, not modeled, which at a minimum provide an estimated attainment year design value at the level of the standard. This step uses a locally derived factor which assumes a linear relationship between ozone and the precursors. This is the WOE analysis used by the State to determine additional reductions needed for attainment beyond those modeled. It incorporates the analysis used in the RRF analysis. The regulations do not mandate or nor does EPA guidance suggest that States must model all control measures being implemented. Moreover, a component of this technique, the estimation of future design value, should be considered a model predicted estimate. Therefore, results from this technique are an extension of "photochemical grid" modeling and are consistent with Section 182(c)(2)(A).

Comment 8

The Atlanta SIP fails to demonstrate attainment by averaging the emissions reductions required for different atmospheric episodes to determine reductions needed to attain at specific monitoring sites, and averaging between monitoring sites to support a weight of the evidence analysis.

Response 8

The commenter is concerned that calculating the RRF by averaging across episode days is not justified by sound science. When developing the 1999 guidance, EPA considered the use of day specific RRFs versus an average RRF across the days. It was determined that due to day to day variability in ozone concentrations there is more uncertainty in the day specific RRFs, than the RRF calculated by averaging across days. Therefore this approach reduces the impact of a single day and the uncertainty associated with the calculation of the estimated future design value. Since the goal was to estimate a future design value (which allows exceedances), EPA used the average across days. This approach demonstrates future design values below the NAAQS, not day specific predictions below the NAAQS. EPA did estimate an area-wide future design value based on the area's worst design value, instead of site specific future design values as recommended in the EPA's 8-hour modeling guidance. Site specific estimates would provide more information on the spatial variability in the future estimates. However, we have seen from other analyses that other sites typically respond in the same manner as the worst site. The episodes modeled in the attainment demonstration represent the most severe days and highest ever monitored ozone concentration from the three most common meteorological regimes (i.e., stagnation, northwest winds, and the worst case of all other meteorological conditions combined) observed in the Atlanta monitoring network. The guidance does not require that an area demonstrate no exceedances for these severe days, but rather for those days that are representative of the area's design value. It is likely that the model could have predicted lower ozone values for the future scenarios if more representative episodes had been modeled.

Comment 9

Failure to consider the implications of uncertainty in results precludes demonstration of attainment.

Response 9

EPA considers uncertainty as the "notion that model estimates will not perfectly predict observed air quality at each receptor location, neither now nor in the future." [2] A great deal of variability in the model estimate is possible from day to day. This variability is in part due to the use of different days, limits on model formulation, limits on understandings of the problem to be modeled, database limitations, uncertainties in forecasting emissions. Some of this variability can be investigated through the use of diagnostic tests which describe alternate, yet highly, plausible variations in the input estimates for wind fields, emission, and modeling methods for chemistry, transport algorithms, removal processes, and numerical routines. For these reasons, EPA recommends that a model performance evaluation be conducted, using graphical and statistical measures, to determine how the model replicates historical ozone events. The state developing the attainment demonstration needs to verify that the model is properly simulating the chemistry and atmospheric conditions through diagnostic analyses and model performance tests. Once these steps are satisfactorily completed, the model is ready to be used to generate air quality estimates to support an attainment demonstration. EPA does not require a rigid criterion for model performance, similar to the 95% certainty level cited by the commenter to be used in a pass/fail test. However, certain statistical parameters are recommended to be developed. Statistical performance measures are recommended to assess whether or not the model evaluation is acceptable.[3] The three primary statistical measures calculated, and the EPA recommended "acceptability" ranges used in the SIP are unpaired accuracy of the peak (EPA goal: within ± 15–20 percent), and the mean relative error (EPA goal: within ± 5–15 percent, mean unsigned relative error (EPA goal: 30–35 percent). If a state develops an attainment demonstration that indicates acceptable model performance according to the UAM guidance, EPA allows the State to use that model, inputs, and projected emissions to develop an attainment strategy.

[2] "Draft Guidance on the Use of Models and other Analyses in Attainment Demonstrations for the 8-Hour Ozone NAAQS." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. May 1999. Web site: *http://www.epa.gov/ttn/scram.*

[3] "Guideline for Regulatory Application of the Urban Airshed Model." U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Emissions, Monitoring, and Analysis Division, Air Quality Modeling Group, Research Triangle Park, NC 27711. July 1996. Web site: *http://www.epa.gov/ttn/scram.*

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Although there are uncertainties associated with the model outputs, it can still be used to support an attainment demonstration and make use of the RRF analysis as part of the weight of evidence.

As calculated, the RRF negates some of the model uncertainty. The same modeling assumptions and meteorological inputs are used for the base year and future year model simulations (only emissions change). Thus to some degree simulated ozone concentrations for both the base year and future year show similar bias (both magnitude and direction). This model bias is eliminated when the RRF is calculated. Since the RRF is a ratio, the bias in the future year concentration (numerator) is canceled by the bias in the base year concentration (denominator). This ratio is then multiplied by the areas observed design value to estimate a future design value. Since in most cases, uncertainties associated with observations are negligible compared to the uncertainties associated with the modeled ozone concentrations, the resulting future design value is a reasonable prediction of future air quality which accounts for uncertainty in day specific model predictions. Therefore, when the RRF is applied to the observed ozone design value concentration, values below the standard indicate attainment is likely to be achieved.

Comment 10

Commenters object to the arbitrary and capricious use of MOBILE5 to estimate motor vehicle emissions which has been shown to significantly underestimate motor vehicle emissions.

The tool used to estimate motor vehicle emissions for the attainment demonstration is the MOBILE model. The accuracy of this estimate is critical because, as demonstrated by Table 1 in the notice, on-road sources account for 53 percent of the total NO_X emission inventory, and 35% of VOCs for the nonattainment area. MOBILE5 was used to estimate motor vehicle emissions in the region for the attainment demonstration. The commenter believes the vehicle emissions are underestimated and should have been run using MOBILE6.

Response 10

As noted in the January 18, 2002 Memorandum titled, "Policy Guidance on the Use of MOBILE6 for SIP Development and Transportation Conformity," the CAA requires that SIP inventories and control measures be based on the most current information available and applicable when a SIP is developed [Section 172(c)(3) of the CAA and 40 CFR 51.112(a)(1)]. However, as noted in the answer to the first question in that document, "EPA believes that the CAA would not require states that have already submitted SIPs or will submit SIPs shortly after MOBILE6's release to revise these SIPs because a new motor vehicle emissions model is now available." This concept was reiterated in the January 29, 2002, **Federal Register** notice announcing the approval and availability of MOBILE6 for use in SIPs and conformity determinations. Use of the MOBILE6 model for SIP development was not allowed before the January 29, 2002 **Federal Register** notice. As the Atlanta attainment demonstration was submitted on July 17, 2001, and the MOBILE modeling was performed prior to that date, MOBILE5 had to be used as MOBILE6 was not yet approved for use in SIP development.

It should also be noted that at the time of the development of the Atlanta attainment demonstration changes were being made to the various draft versions of the MOBILE6 model as problems were detected in testing the drafts. Since the MOBILE6 model was not available when the Atlanta SIP was developed EPA concludes that it was appropriate to develop the SIP with the MOBILE5 model. In addition, changes in emission rate estimates, as compared to those modeled with MOBILE5, are area specific. Therefore, the exact effect in Atlanta can not be determined until MOBILE6 is run with area specific data. EPA can not now predict whether the MOBILE6 model will produce lower or higher emissions for the attainment year for Atlanta.

Comment 11

Commenters object to taking credit for expected reductions in motor vehicle emissions from the PSG that have not occurred, are not being demonstrated, are not enforceable and may not be reasonably expected.

Response 11

The Voluntary Mobile Source Emission Reduction Policy is designed to encourage innovation in air pollution control without the typical regulatory hammer used to enforce against stationary sources. The policy allows a state to take a small amount of credit for reasonably expected emission reductions. The reasoning should be based on historical trends or other methodologies or commitments to meet certain goals. In addition, the State must commit to monitor, evaluate, and reconcile any emissions reduction shortfall from such programs in a timely manner. In the case of the PSG program, the State demonstrated that trends with the PSG program show that it has the potential to achieve the emission reductions claimed. Furthermore, the state committed to specific target levels or participants and corresponding emission reductions. Should the target levels not be met, the state is responsible for the shortfall and must make up the shortfall through other measures. Enforcement of these measures is available under the SIP against the State should it not timely reconcile any emission reduction shortfall. Based on this information, EPA determined that the expectations of the PSG program are reasonable and that there are enough evaluation periods to assure that the 2004 emission reductions goals are met. EPA does not believe that the PSG program should be considered as part of the additional WOE and did not consider it in the WOE evaluation. See 66 FR 57159, 57190 (November 14, 2001) for further information.

Comment 12

EPA's basis for allowing Georgia to reject most of the control measures reviewed for RACM is arbitrary and capricious, and not supported by law. Comments submitted to EPA in response the Agency's supplemental RACM notice in October 2000 were incorporated by reference. In that proposal, EPA confirms Georgia's assertion that not a single additional control measure was reasonably available over the next five years to address ozone pollution in the Atlanta area. Such an extreme position is neither consistent with the CAA nor supported by the record.

Comment 13

EPA acknowledged that additional measures were available to reduce ozone levels in the Atlanta area, but were not "reasonably available" within the meaning of the statute because they purportedly would not advance the date of full attainment. EPA asserted that the RACM mandate was part of the CAA's requirement that plans demonstrate attainment "as expeditiously as practicable," and that it would be unreasonable to require measures that do not advance the attainment date—even if those measures would reduce harmful ozone levels in the interim. The Agency's position conflicts with the CAA's requirement to adopt all RACM in addition to the requirement for timely attainment and for the SIP to eliminate or reduce the severity and number of violations of the NAAQS . These provisions require ozone SIPS to demonstrate attainment of the ozone standard "as expeditiously as practicable, but no later than" area's attainment date. 42 U.S.C. §§ 7511(a)(1), (c)(2)(A). EPA wrongly presumes that the sole purpose of SIPs is to achieve full attainment by the deadline, and that healthier air in the interim is irrelevant. This conflicts with the CAA's public health purpose. The CAA's mandates for interim progress in years prior to attainment to provide air quality benefits well in advance of full attainment. The State concedes that some additional control measures not rejected on other grounds will reduce NO_X and VOC emissions, but rejects even those measures on the ground that they will not advance attainment. EPA inexplicably insists that such controls are not "reasonable" unless they solve the whole problem. Such a position conflicts with CAA's text and purpose and lacks any rational basis.

Comment 14

Neither the State nor EPA has quantified the level of local emission reductions that would be needed to advance the attainment date. EPA may not reasonably conclude that sufficient control measures are not available to satisfy this test until it first determines the amount of emission reduction needed to meet this requirement, and then determines that measures considered by the State and other measures proposed by other stakeholders and not considered by the State, do not achieve sufficient reductions to meet this test. To show the actual impact of additional controls on air quality, EPA would need to conduct photochemical grid modeling. Instead, EPA has estimated the ambient impact of the emissions reductions expected from the small suite of measures not rejected by Georgia, and applied the absurd ratio of 1 ppb to 41.5 t/d NO_X discussed above to show that no air quality benefit would result. This approach is arbitrary for several reasons.

EPA failed to consider the potential emission reduction benefits of all of the available measures. EPA further failed to consider potential ozone reduction benefits from the combined implementation of strategies to reduce overall motor vehicle traffic ("transportation control measures" or "TCMs"). EPA refused to consider the potential emission reduction benefits of such combined implementation, asserting that it "would be impossible to analyze a seeming infinite set of combinations of measures for possible benefits."

Absent a constitutional prohibition against the implementation of such measures, there is no legal bar to the consideration of such measures. Nor were these measures considered in the 1997 Georgia State report since federal tax laws supporting such strategies had not yet been enacted, and the measures had not been tried in other states and shown to be effective. The analysis provided by the State is wholly inadequate with respect to considering the cumulative effect on travel demand and SOV use in the Atlanta area if an aggressive, and comprehensive Commuter Choice program were developed and implemented in the region.

Given EPA's issuance of Guidance to the States supporting the development of such programs, it is especially unreasonable for EPA not to require that the air quality benefits of such a program be fully characterized and considered for adoption as a reasonably available control measure.

Response 12, 13, and 14

Georgia EPD performed a RACM analysis for potential control of NO x and VOC emission sources not included in the attainment demonstration for the Atlanta 1-hour ozone nonattainment area. Each control option was evaluated according to: (1) The State's authority to implement controls; (2) the amount of NO_X reductions; (3) the amount of VOC reductions; (4) whether a similar control measure is already being implemented in the SIP; (5) the cost effectiveness of the control; (6) whether SIP credit has already been taken for the measure; and (7) whether the measure can be implemented to achieve reductions during the 2003 ozone season, (measures implemented after the 2003 ozone season cannot advance the 2004 attainment date). Any measures determined to be feasible to implement after the above described evaluation were grouped, by primary category, under the heading "Remaining measures.". After further analysis of potential controls on each of the above sources, GAEPD concluded that it was not reasonable or practicable to further control these sources. Specifically, for many of the sources GAEPD stated that the time required to implement controls is unpredictable because legislative action authorizing such regulation by GAEPD would be required, or the number of facilities and potential discharge points affected by these control measures would require a tremendous increase in GAEPD resources to implement and ensure compliance (see 66 FR 63982 for further information.). Therefore, GAEPD concluded that these measures could not be implemented in time to achieve reductions by 2003. EPA agrees with the RACM analysis.

The EPA's approach toward the RACM requirement is grounded in the language of the CAA. Section 172(c)(1) states that a SIP for a nonattainment area must meet the following requirement, "In general.—Such plan provisions shall provide for the implementation of *all reasonably available control measures as expeditiously as practicable* (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology) and shall *provide for attainment of the national primary ambient air quality standards.*" [Emphasis added.] The EPA interprets this language as tying the RACM requirement to the requirement for attainment of the national primary ambient air quality standard. The CAA provides that the attainment date shall be "as expeditiously as practicable but no later than * * *" the deadlines specified in the CAA. EPA believes that the use of the same terminology in conjunction with the RACM requirement serves the purpose of specifying RACM as the way of expediting attainment of the NAAQS in advance of the deadline specified in the CAA. As stated in the "General Preamble" (57 FR 13498 at 13560, April 16, 1992), "The EPA interprets this requirement to impose a duty on all nonattainment areas to consider all available control measures and to adopt and implement such measures as are reasonably available for implementation in the area *as components of the area's attainment demonstration.*" [Emphasis added.] In other words, because of the construction of the RACM language in the CAA, EPA does not view the RACM requirement as separate from the attainment demonstration requirement. Therefore, EPA believes that the CAA supports its interpretation that measures may be determined to not be RACM if they do not advance the attainment date. In addition, EPA believes that it would not be reasonable to require implementation of measures that would not in fact advance attainment (see 57 FR 13560). EPA has historically taken this interpretation and consistently implemented it through guidance since 1979 (see 44 FR 20372, 20375, April 4, 1979).

The term "reasonably available control measure" is not actually defined in the definitions in the CAA. Therefore, the EPA interpretation that potential measures may be determined not to be RACM if they require an intensive and costly effort for numerous small area

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sources is based on the common sense meaning of the phrase, "reasonably available." A measure that is reasonably available is one that is technologically and economically feasible and that can be readily implemented. Ready implementation also includes consideration of whether emissions from small sources are relatively small and whether the administrative burden, to the States and regulated entities, of controlling such sources was likely to be considerable. As stated in the General Preamble, EPA believes that States can reject potential measures based on local conditions including cost. 57 FR 13561.

Also, the development of rules for a large number of very different source categories of small sources for which little control information may exist will likely take much longer than development of rules for source categories for which control information exists or that comprise a smaller number of larger sources. The longer the time frame for development of rules by the State would decrease the possibility that the emission reductions from the additional rules in the nonattainment area would advance the attainment date earlier than would be achieved from the larger amount of reductions expected from upwind controls, such as from the NO_X SIP Call and controls from upwind severe areas with later statutory attainment dates.

Commenter's argument that the RACM requirement requires interim reductions in addition to the duty to demonstrate timely attainment is incorrect. Although various CAA provisions do require interim reductions, *see, e.g.*, sections 7502(c)(2), 7511a(b)(1) and (c)(2)(B), nothing in the CAA indicates that areas must use the measures required by section 7502(c)(1) to reach these interim goals. Instead, the RACM provision in section 7502(c)(1) refers only to the obligation to demonstrate timely attainment. EPA reasonably concluded that interim reduction requirements could be met by any measures selected by the states, and that section 7502 requires implementation in areas that have met RFP requirements only if such reasonably available control measures as will provide for timely attainment of the NAAQS. As noted above, Atlanta has met its 15 percent and 9 percent ROP requirements.

Another appellate court recently upheld EPA's interpretation of the corresponding RACM provisions for particulate matter (PM–10) in section 7513a(a). *Ober* v. *Whitman*, 243 F.3d 1190 (9th Cir. 2001). There, EPA applied a two-part test in determining whether controls on certain sources of de minimis PM–10 emissions would need to be implemented as RACM—looking first at the actual amount of emissions and then at whether control of those emissions would contribute to attainment as expeditiously as practicable. *Id.* at 1193, 1196. The court upheld EPA:

> Using the [attainment] deadline to determine whether controls must be imposed makes sense. The deadline is not an arbitrary date unrelated to air quality concerns. * * * In this case, the [plan] concludes that the deadline will not be met even if these small sources of PM–10 were controlled. Under those circumstances, it is reasonable to decline to control the de minimis sources of pollution.

Id. at 1198. EPA reasonably concluded here that section 7502(c)(1) similarly does not require implementation of measures that will not contribute to attainment as expeditiously as practicable.

Comment 15

The State does not include any of the measures required for severe areas. In view of its bump-up to severe by operation of law, the SIP must include the measures required by section 182(d), including reasonable further progress reductions for the years after 1999.

Response 15

As noted in the response to comments 2–4, no bump-up by operation of law occurred due to any purported failure to submit the appropriate milestone compliance demonstration.

Comment 16

The Atlanta SIP fails to include the contingency measures required by section 172(c)(9) and 182(c)(9). This proposal is unlawful because it proposes to rely on excess emissions reductions that do not exist, and relies on federal measures not dependent on the attainment status of the nonattainment area.

Response 16

Section 172(c)(9) and 182(c)(9) of the CAA require SIPs to contain additional measures that will take effect without further action by the state or EPA if an area fails to attain the standard by the applicable date or to meet rate-of-progress (ROP) deadlines. The CAA does not specify how many contingency measures are needed or the magnitude of emissions reductions that must be provided by these measures. However, EPA provided guidance interpreting the control measure requirements of 172(c)(1) and 182(c)(9) in the April 16, 1992, General Preamble for Implementation of the CAA (see 57 FR 13498, 13510). In that guidance, EPA indicated that states with moderate and above ozone nonattainment areas should include sufficient contingency measures so that, upon implementation of such measures, additional emissions reductions of up to 3 percent of the emissions in the adjusted base year inventory (or such lesser percentage that will cure the identified failure) would be achieved in the year following the year in which the failure has been identified. States must show that their contingency measures can be implemented with minimal further action on their part and with no additional rulemaking actions such as public hearings or legislative reviews. The additional 3 percent reduction would ensure that progress toward attainment occurs at a rate similar to that specified under the reasonable further progress requirements for moderate areas (i.e., 3 percent per year), and that the state will achieve these reductions while conducting additional control measure development and implementation as necessary to correct the shortfall in emissions reductions.

EPA has also determined that promulgated federal measures can be used to analyze whether the contingency measure requirements of section 179(c)(9) and 182(c)(9) have been met. While these measures are not SIP-approved contingency measures which would apply if an area fails to attain, EPA believes that existing federally enforceable measures can be used to provide the necessary substantive relief. Therefore, federal measures may be used in the analysis, to the extent that the attainment demonstration does not rely on them or take credit for them (see, e.g., 66 FR 586, 615, January 3, 2001, and the memorandum from G.T. Helms dated August 13, 1993, "Early Implementation of Contingency Measures for Ozone and Carbon Monoxide Nonattainment Areas".)

EPA believes the contingency measure requirements of sections 172(c)(9) and 182(c)(9) are independent requirements from the attainment demonstration requirements under sections 172(c)(1) and 182(c)(2)(A) and the ROP requirements under sections 172(c)(2) and 182(c)(2)(B). The contingency measure requirements are to address the event that an area fails to meet a ROP milestone or fails to attain the ozone NAAQS by the attainment date established in the SIP. The contingency measure requirements have no bearing on whether a state has submitted a SIP that projects attainment of the ozone NAAQS or the required ROP reductions toward attainment. The attainment or ROP SIP provides a demonstration that attainment or ROP requirements ought to be fulfilled, but the contingency measure SIP requirements concern what is to happen only if attainment or ROP is not actually achieved. The EPA acknowledges that contingency measures are an independently required SIP revision, but does not believe that submission of contingency measures is necessary before EPA may approve an attainment or ROP SIP. However, EPA believes that areas should have sufficient reductions to meet contingency measure requirements, even if a contingency measure SIP has not been approved, in order to receive an attainment date extension.

EPA has examined the 15 percent ROP and 9 percent ROP plans which were submitted to EPA on June 17, 1996. EPA believes that substantive contingency measure requirements can be met by surplus reductions already achieved in the ROP plans. EPA granted approval to the 15 percent ROP in a **Federal Register** published on April 26, 1999, (64 FR 20186). The 9 percent ROP was approved in a **Federal Register** published on March 18, 1999, (64 FR 13348). Detailed information relating to the calculation of Georgia's 1990 adjusted baseline inventory for VOC and NO_X emissions for the Atlanta area can be found in the above referenced **Federal Register** actions. The adjusted baseline inventory for VOC found in Georgia's 15 percent ROP is 526.19 tpd and the adjusted baseline inventory for NO_X found in the 9 percent ROP is 483.12. Therefore, the required 3 percent ROP reductions would be 15.79 tps for VOC (0.03 x 526.19 = 15.79) and 14.50 tpd for NO_X (0.03 x 483.12 = 14.5). In the 15 percent ROP Georgia exceeds the required VOC emissions reduction by 1.06 tpd. This equates to 0.20 percent of the required 3 percent reduction, leaving a balance of 2.80 percent to be made up by NO_X reductions. This must be 2.8 percent of the NO_X adjusted baseline inventory. Therefore, the required NO_X reductions to satisfy contingency requirements for ROP equal 13.53 tpd (0.0280 x 483.12). The 9 percent ROP achieves an excess NO_X emissions reduction of 19.47 tpd. Thus, the excess emission reductions achieved in the ROP plans meet the 3 percent contingency requirement.

Additionally, EPA examined the attainment demonstration for the Atlanta area submitted on July 17, 2001, for contingency measures. Although no measures have been specifically designated as contingency measures, EPA has found that measures that could reasonably constitute appropriate contingency measures are already contained in the SIP or exist in promulgated federal regulations. These measures include additional reductions after 2004 from EPA's Tier 2 tailpipe standards, national low emission vehicle program, and heavy duty diesel emission standards for 2004. Additionally, the Atlanta area will benefit from fleet turnover, as well as an additional model year of light duty vehicles subject to on-board diagnostic (OBD) testing. These measures will continue to provide reductions after November 2004, the attainment date EPA is approving for the Atlanta area. The measures are estimated to reduce emissions in the area by 1.45 percent of the 1990 VOC adjusted baseline emissions and 3.31 percent of the 1990 NO_X adjusted baseline emissions by 2005 (the year following the time by which EPA must determine whether the area has attained). More details on EPA's contingency measure analysis are included in the docket for this rulemaking action. While there is not an approved contingency measure that would apply if the Atlanta area failed to attain, EPA believes that existing federally enforceable measures would provide the necessary substantive relief sufficient to provide the basis for granting an extension to the area's attainment date. These federally enforceable measures were not accounted for in GAEPD's modeling and are therefore excess emission reductions.

Comment 17

The commenter believes that Georgia's Offset Rule is not being implemented in such a way as to provide for zero growth.

Response 17

The facility in question is one of a group of electric generating utilities that are subject to a special 7-plant average emissions limit. A revised application from the facility dated December 21, 2001, proposed an overall ton per ozone season limit for all of the companies' facilities subject to the 7-plant average. These limits will be placed in the facility's permits. Total emissions for the seven plants will not increase, and in fact, due to the early reductions and offset credit, will decrease. It is possible that some individual units may experience an increase in emissions, and hypothetically, these units could be located in the Atlanta non-attainment area. It is also possible that the units in the nonattainment area could be the ones experiencing the decreases in emissions.

EPD's assumption of zero growth is reasonable, given that (1) overall emissions for the seven plants will decrease; (2) exact locations of the decreases and increases were unknown at the time of the SIP demonstration and are still unknown today; (3) emissions from 2003 to 2004 for counties outside the non-attainment were calculated to reflect growth but may, due to the 7-plant limit mentioned above, experience a decrease in emissions; and (4) zero-growth in the 13-county non-attainment area was assumed only between 2003 and 2004. In fact, emissions were grown from 1999 to 2003, a period where zero-growth is expected due to the offset rule, making the assumption of zero growth a very conservative one.

In the future, Georgia EPD will continue to implement its Offset Rule in a manner that no leakage will occur, resulting in zero-growth or a decrease in emissions.

Comment 18

ARTBA supports approval of the attainment demonstration for the Atlanta area because approval is the only reasonable action.

Response 18

EPA agrees with the commenter.

Comment 19

Reclassification to severe nonattainment would not shorten the time for meeting Atlanta's air quality goals. In fact, it would extend the time for compliance to at least 2005. Regardless of whether EPA grants an extension pursuant to the downwind extension policy, EPA is prohibited from reclassifying the Atlanta area under Subpart 2 of the federal CAA. Under 42 U.S.C. 7509(c), an area can be reclassified only if EPA makes a formal finding "[w]ithin 6 months following the applicable attainment date" that the area failed to attain the ozone NAAQS. EPA did not make such a determination within six months of the nominal 1999 attainment deadline for the Atlanta area, and thus is now prohibited from doing so.

Response 19

EPA is not reclassifying the area at this time, but rather is granting an extension of the area's attainment date to November 2004. EPA agrees that reclassification must be based on a notice and comment rulemaking. See D.C. Circuit Slip opinion *Sierra Club* v. *Whitman* No. 01–5123 and 015299 April 5, 2002, Slip Opinion (D.C. Cir). EPA has not yet issued a rulemaking containing a final determination of whether Atlanta attained by its

attainment date. EPA does not agree, however, that missing a mandatory deadline means that EPA loses the power to act to discharge the duty to which the deadline applied. EPA retains the power to act to discharge the duty after the deadline has passed. *Southwestern Pennsylvania Growth Alliance* v. *Browner*, 121 F.3d 106, 113–114 (3d Cir. 1997). (EPA does not lose power to perform mandatory duty to act on redesignation request after 18-month statutory period has elapsed).

As noted in the response to comments 2–4, no bump-up by operation of law occurred due to any purported failure to submit the appropriate milestone compliance demonstration.

Comment 20

ARTBA recognizes that interest groups have threatened legal challenges of both the EPA extension policy and the proposed attainment demonstration for Atlanta. EPA should not allow the threat of legal challenge to cloud its judgment in approving this attainment demonstration. The practical effect of a legal challenge for the Atlanta transportation planners would be for the current transportation plan (at the time of invalidation) to remain in place because legal challenges would not have a retroactive effect. In the alternative, a disapproval and reclassification of the nonattainment area by EPA might cause air quality goals and transportation plans to be delayed because it would force Atlanta to develop a new state implementation plan and may require current transportation plans to shift to achieve conformity.

Response 20

EPA agrees with many of the comments made by the Commenters that correctly point out certain provisions in the conformity rule. However, several of the comments are taken out of context. The commenter notes that 40 C.F.R. § 93.118(e)(3) and proposed rule changes (see 66 FR 50954 and 50958, October 5, 2001) provide any finding of conformity for transportation plans or transportation improvement programs (TIPs) to a motor vehicle emission budget (MVEB), prior to an invalidation of a state implementation plan (SIP) containing that MVEB, would continue to be valid. The commenter further states, "As a policy matter, it is common sense for projects in an approved transportation improvement program to proceed, even when a SIP is subsequently invalidated, because those projects have been deemed by the state and regional planner to be essential in improving air quality, reducing congestion, improving mobility and access, and/or preventing traffic fatalities." This statement, however, is not correct. This rule provision recognizes that at some point the planning process must proceed, and recognizing that at the time the transportation plan and TIP were developed and approved, the latest applicable MVEB was used. However, the SIP containing the budget is subsequently disapproved (without a protective finding on the budget), only those projects in the first three years of the TIP, exempt and Transportation Control Measures in approved SIPs can proceed. This provision allows for recognition of the cost and resources expended by the transportation planners to this point in the process. Contrary to the commenter's statement, it does not imply that even if a SIP becomes invalid that the reason projects can proceed is because they were deemed to be essential by the state and regional planner.

The commenter also states, "In the case of Atlanta, its conformity determination would remain valid, if approved based on the January 8, 2002, adequacy determination or based on approval of the attainment demonstration at issue in the current rulemaking, regardless of any future SIP withdrawal or invalidation, until conformity would have otherwise lapsed of due course pursuant to EPA regulations at 40 C.F.R. § 93.104." The current 2025 transportation plan and FY 2002–04 TIP for Atlanta, Georgia were found in conformity to the 15 percent and 9 percent rate of progress SIP MVEBs. These were the latest approved budgets in the SIP at the time of transportation plan and TIP approval. The January 8, 2002, finding of adequacy is on the 1-hour attainment SIP. Presently, no finding of conformity has been made for this or any other attainment MVEB. While the conformity rule requires 18 months to redetermine conformity to the budget found adequate on January 8, 2002, this action has not yet occurred. The date by which the conformity redetermination for the new budget must be completed for the transportation plan and TIP would likely be 18 months from the date of the finding of adequacy on the budget. (EPA's proposed rule change, dated October 5, 1999, would start the 18-month trigger on the date of adequacy for a new SIP budget versus the date of a SIP submittal as currently required. Per this rule, a new SIP budget refers to an initial SIP submission for a given CAA requirement.)

Another statement made by the commenter refers directly to the 18-month clock to re-determine conformity. It stated (reference to the October 28, 1999, SIP and its budget), "Although this motor vehicle emissions budget was later withdrawn, conformity was determined within the required 18-month period. Any subsequent adequacy determination on a resubmitted budget would not be an initial SIP submission and would not trigger the 18-month "conformity clock'." This statement is incorrect. First, no finding of conformity to the 1999 SIP budget was ever made. In addition, the purpose of the 1999 SIP submission was to demonstrate attainment by 2003. Because of a court decision regarding the nitrogen oxides SIP, the state developed and submitted a new SIP for the purpose of demonstrating attainment by 2004. Since conformity was never done to the 2003 attainment SIP and that SIP has since been replaced, the 2004 attainment SIP is considered an initial submission. Therefore, it started a new 18-month conformity schedule. When the 1999 SIP was withdrawn, the 18-month conformity schedule for that SIP was no longer applicable. When the new SIP was submitted in July 2001, a new 18-month conformity schedule began. Therefore, under the 18-month schedule for redetermining conformity to the MVEB in the July 2001 SIP (with an attainment date of 2004), the deadline is likely to be July 2003. (EPA's proposed rule change, dated October 5, 1999, would start the 18-month trigger on the date of adequacy for a new SIP budget versus the date of a SIP submittal. Should this rule be finalized, conformity will be required to the budget found adequate in January 2002 by July 2003.) Currently, a transportation plan is under development, with a schedule for adoption and conformity redetermination in late 2002. This action is intended to satisfy the 18-month conformity schedule for redetermining conformity to the most recent applicable SIP MVEB.

EPA does agree that the area should attain as expeditiously as practicable. However, EPA believes this can best be achieved by implementation of the submitted control strategy. Therefore, EPA intends to approve the 1-hour ozone attainment demonstration for the Atlanta area.

*Response to Comments Received Relating to the Proposed Rule Published in the **Federal Register** on December 16, 1999, See 64 FR 704787, Still Relevant to Today's Action*

Comment 1

There is no evidence in the submittal that the Governor has endorsed the SIP as required by 40 CFR 93.118(e)(4)(i).

Response 1

According to 40 CFR 93.118(e)(4), EPA will not find a motor vehicle emissions budget in a submitted control strategy implementation plan revision or maintenance plan to be adequate for transportation conformity purposes unless the following minimum criteria are satisfied:

(i) The submitted control strategy implementation plan revision or maintenance plan was endorsed by the Governor (or his designee) and was subject to a State public hearing.

The Georgia Air Quality Act, Article 1, Section 12–9–6 "Powers and Duties of Director as to Air Quality Generally" designates the Director of the Environmental Protection Division of the Department of Natural Resources of the State of Georgia to exercise general supervision over the administration and enforcement of this article and all rules, regulations, and orders promulgated under this article. The motor vehicle emissions budget was the subject of public hearings held on July 7, 1999, and September 8, 1999. The October 1999 State Implementation Plan (SIP) and subsequent supplemental SIP revisions were submitted via letter from Mr. Harold F. Reheis, the current Director of the Georgia Department of Natural Resources.

Comment 2

Commenter believes Georgia should increase information to the public on air quality. Commenter believes that year round data collection and more public information in a consumer friendly index format (e.g. UV index or other meteorological information) would help all citizens understand their risk and the dimensions of the problems.

Response 2

Through the Partnership for a SMOG-Free Georgia, one of the control measures, the public is provided information on air quality. The Georgia Department of Natural Resources' Environmental Protection Division (EPD) issues ozone forecasts throughout the ozone season, i.e., SMOG Alerts. In addition to the SMOG Alerts, the EPD provides, to the public, real-time air quality concentration data throughout the year for several measured ambient air pollutants through their internet web site (*GOTOBUTTON BM_1_ http://www.air.dnr.state.ga.us/*). Because ground level ozone is a health concern in Georgia only during the ozone season (March 1 through October 31), the EPA does not require EPD to monitor or provide public information for ozone year round.

Comment 3

Air emissions associated with the Norfolk Southern Railway Company's proposed intermodal transportation facility are likely to cause or contribute to continuing violations of the ozone standard and other air quality standards in and around Cobb County and to pose threats to public health. Regulations addressing this facility should be included in the SIP submittal.

Response 3

Specific emissions from the Norfolk Southern Railway Company's proposed facility may not have been included in the ozone modeling demonstration for the Atlanta nonattainment area. However, they were included in the projected emissions for Cobb County for this source category. EPA accepts the modeling and supporting weight of evidence analysis to identify additional controls as being representative of a demonstration to achieve the attainment of the 1-hour ozone standard. Regulations were developed for the controls used in this demonstration. It does not appear that specific controls at this facility were needed to achieve attainment of the 1-hour ozone NAAQS for the Atlanta nonattainment area. As such, regulations addressing this facility are not included in the SIP.

Comment 4

If the air emissions associated with the railroad facility were not consider in establishing the mobile source budget, future operation of the facility may render the budget inadequate to demonstrate attainment.

Response 4

Railroad emissions are not part of the motor vehicle emissions budget for onroad motor vehicles but rather are included in the inventory for nonroad motor vehicles. Railroad facility emissions were used in the development of Georgia's attainment demonstration and nonroad mobile source emissions inventory. All known future activity from railroads/yards were accounted for in the inventory development. Georgia's Nonroad mobile source inventory for 1990 was developed using an EPA Nonroad database developed for all nonattainment areas. All emission inventories for other years that were used in the attainment modeling demonstration were developed using Bureau of Economic Analysis (BEA) data. The database was developed in accordance with EPA's guidance document entitled "Procedures for Emission Inventory Preparation Volume IV: Mobile Source." Chapter 6 illustrates how emissions from locomotives are to be developed. Railroads are separated into three classes based upon size: Class I, Class II and Class III. Locomotives within each of the Classes can perform two different types of operations: line haul and yard (or switch). Furthermore, it is EPA's understanding that Georgia took into consideration the Austell Report regarding the proposed CSX rail yard move. This report shows that emissions from this move will decrease.

Comment 5

Letter to Georgia EPD requesting that proposed Norfolk Southern intermodal facility not be constructed or operated absent adoption of regulations and/or permit conditions to ensure necessary emission controls. Supporting documentation is included.

Response 5

The Norfolk Southern intermodal facility is a minor source in Cobb County. Permits are not required for these minor sources in Georgia.

Comment 6

EPD should require non-road diesel engines to use the proposed Georgia Diesel Fuel (CA style).

Response 6

In the October 1999 SIP submittal, the GAEPD listed several control measures, including low sulfur diesel, that would be studied to ensure that the 1-hour ozone standard will be met and to make progress towards attaining the 8-hour ozone standard. GAEPD investigated the potential for this type of control and met with the Georgia Petroleum Council to discuss this option, as well as the option for implementing a low sulfur/low Reid Vapor pressure gasoline. Since that time, GAEPD has implemented a control program requiring the low sulfur/low Reid Vapor gasoline, and is actively engaged in EPA's voluntary Heavy Duty Diesel Retrofit program. Through this program, GAEPD is encouraging the use of low sulfur diesel in combination with retrofitted diesel engines for construction equipment at the airport, auxiliary powered units, school bus fleets and so forth. GAEPD is working in partnership with engine manufacturers,

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municipalities, the City of Atlanta, EPA, and several refineries on this effort. GAEPD abandoned its efforts to mandate low sulfur diesel when EPA promulgated its Heavy Duty Diesel rule on January 18, 2001. This rule establishes a comprehensive national control program that will regulate the heavy-duty vehicle and its fuel as a single system. As part of this program, new emission standards will begin to take effect in model year 2007 and will apply to heavy-duty highway engines and vehicles. Additionally, this program requires a 97 percent reduction for the level of sulfur in highway diesel fuel by mid-2006.

Comment 7

Under the extension policy the state must have adopted all applicable local measures required under the area's current classification and any additional measures necessary to demonstrate attainment. The commenter does not believe all of Georgia's additional measures have been adopted.

Response 7

On January 31, 2000, and July 31, 2000, the Georgia Environmental Protection Division (GAEPD) submitted revisions to the October 28, 1999, 1-hour ozone attainment demonstration for the Atlanta serious ozone nonattainment area. The purpose of these revisions was to address the level of additional reductions for attainment (i.e., the shortfall) and to identify the controls to achieve the additional reductions. GA EPD used EPA's 1999 guidance to identify the additional reduction in NO_X and VOC needed for attainment. The additional control measures adopted represent the open burning ban for industrial, residential, commercial, prescribed and slash purposes for attainment counties, additional electric generating units controls for utilities, and a new combustion turbine regulation. GA EPD has adopted all applicable local measures required for a serious 1-hour ozone nonattainment areas and other additional control measures necessary to demonstrate attainment per the EPA attainment date extension policy and modeling guidance. A final rule on the regulations for the Atlanta attainment strategy was published in the **Federal Register** on July 10, 2001, (66 FR 35906) and became effective on August 9, 2001. Please see the **Federal Register** actions published on December 16, 1999, (64 FR 70478) and December 11, 2001, (66 FR 63972) for further information.

Comment 8

It is not clear that Georgia is "affected by transport" of ozone precursors in a manner contemplated by the extension policy. Significant effects are not apparent from EPA's Finding of Significant Contribution & Rulemaking for Certain States in the Ozone Transport Assessment Group for Purposes of Reducing Transport of Ozone, 62 FR 60318 (November 7, 1997). Explain specifically the extent to which upwind sources of air pollution are "significant" and the specific basis for EPA's conclusion.

Response 8

EPA provided all the evidence and supporting documentation that Atlanta is significantly affected by transport from upwind states, in the manner contemplated by the extension policy, in the nitrogen oxides (NO_x) State Implementation Plan (SIP) Call rulemaking (63 FR 57356, Oct. 27, 1998). This rule was upheld by the court in *Michigan* v. *EPA*, 213 F. 3d 663 (D.C. Cir. 2000).

The SIP for bringing the Atlanta area into compliance with the 1-hour ozone National Ambient Air Quality Standards (NAAQS) relies upon reductions from implementation of the NO_X SIP Call implemented in upwind states. Appendix G of the EPA NO_X SIP TSD referenced above, "Evaluation of Contributions—Tables of Metrics, 1-Hour CAMX: Upwind States to Downwind States," page G–6, gives average contributions to an Atlanta area exceedance as follows: Alabama, 8 percent; Kentucky, 1 percent; North Carolina, 1 percent; South Carolina, 1 percent; and Tennessee, 4 percent for a total contribution of 15 percent. The State calculated the effect on a monitored exceedance occurring at 125 ppb, the result being a contribution of 18.6 ppb (125 ppb × 15 percent). The implementation of the NO_X SIP Call in 2004 would reduce the contribution to ozone exceedances by 18.6 ppb. Thus, EPA has indicated that Georgia is affected by upwind transport.

IV. Final Action

Today, EPA is granting final approval to the 1-hour ozone attainment demonstration for the Atlanta area as submitted on July 17, 2001, the RACM analysis, commitment to perform an early attainment assessment, contingency measures, the 2004 MVEB, and the PSG program. Additionally, EPA is extending the attainment date to November 15, 2004. The Atlanta area will remain a serious nonattainment area.

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the CAA. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the CAA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements.

Dated: April 29, 2002.

J.I. Palmer, Jr.,

Regional Administrator, Region 4.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart L—Georgia

2. Section 52.570 is amended by adding a new entry 18 to the table in paragraph (e) to read as follows:

§ 52.570 Identification of Plan.

* * * * *

(e) EPA Approved Georgia Nonregulatory Provisions

Name of nonregulatory SIP provision	Applicable geographic or non-attainment area	State submittal date/effective date	EPA approval date
18. Georgia's State Implementation Plan for the Atlanta Ozone Nonattainment Area.	Atlanta Metropolitan Area	July 17, 2001	May 7, 2002.

[FR Doc. 02–11176 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 261–0337c; FRL–7171–5]

Interim Final Determination That State has Corrected a Deficiency in the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Interim final determination.

SUMMARY: Elsewhere in today's **Federal Register**, EPA has published a direct final rulemaking fully approving a revision to the California State Implementation Plan (SIP). EPA has also published a proposed rulemaking to provide the public with an opportunity to comment on EPA's action. If a person submits adverse comments on EPA's direct final action, EPA will withdraw its direct final rule and will consider any comments received before taking final action on the State's submittal. Based on the proposed approval, EPA is making an interim final determination by this action that the State has corrected the deficiencies for which a sanctions clock began on October 13, 2000. This action will defer the imposition of offset and highway sanctions. Although this action is effective upon publication, EPA will take comment. If no comments are received on EPA's approval of the State's submittal, the direct final action published in today's **Federal Register** will also finalize EPA's determination that the State has corrected the deficiency that started the sanctions clock. If comments are received on EPA's approval and this interim final action, EPA will publish a final notice taking into consideration any comments received.

DATES: This interim final determination is effective May 7, 2002. Comments must be received by June 6, 2002.

ADDRESSES: Written comments must be submitted to Andy Steckel at the Region IX office listed below. Copies of the rule revision and EPA's evaluation report for the rule are available for public inspection at EPA's Region IX office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

Rulemaking Office (AIR–4), Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

Environmental Protection Agency, Air Docket (6102), 401 "M" Street, SW., Washington, DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office, AIR–4, Air Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 947–4117.

SUPPLEMENTARY INFORMATION:

I. Background

On September 29, 1998, the State submitted a revision to the SIP, which EPA disapproved in part on September 13, 2000. (65 FR 55193). EPA's disapproval action started an 18-month clock for the imposition of one sanction

(followed by a second sanction 6 months later) and a 24-month clock for promulgation of a Federal Implementation Plan (FIP). The State subsequently submitted a revised rule on February 20, 2002. EPA has taken direct final action on this submittal pursuant to its modified direct final policy set forth at 59 FR 24054 (May 10, 1994). In the Rules section of today's **Federal Register**, EPA has issued a direct final full approval of the State of California's submittal of its revision to the SIP. In addition, in the Proposed Rules section of today's **Federal Register**, EPA has proposed full approval of the State's submittal.

Based on the proposed approval set forth in today's **Federal Register**, EPA believes that it is more likely than not that the State has corrected the original disapproval deficiencies. Therefore, EPA is taking this final rulemaking action, effective on publication, finding that the State has corrected the deficiencies. However, EPA is also providing the public with an opportunity to comment on this final action. If, based on any comments on this action and any comments on EPA's proposed full approval of the State's submittal, EPA determines that the State's submittal is not fully approvable and this final action was inappropriate, EPA will either propose or take final action finding that the State has not corrected the original disapproval deficiencies. As appropriate, EPA will also issue an interim final determination or a final determination that the deficiencies have been corrected.

This action does not stop the sanctions clock that started for this area on October 13, 2000. However, this action will defer the imposition of offsets and highway sanctions. If EPA's direct final action fully approving the State's submittal becomes effective, such action will permanently stop the sanctions clock and will permanently lift any imposed, stayed or deferred sanctions. If EPA must withdraw the direct final action based on adverse comments and EPA subsequently determines that the State, in fact, did not correct the disapproval deficiencies, EPA will also determine that the State did not correct the deficiencies and the sanctions consequences described in the sanctions rule will apply. *See* 40 CFR 52.31.

II. EPA Action

EPA is taking interim final action finding that the State has corrected the disapproval deficiencies that started the sanctions clock. Based on this action, imposition of offset and highway sanctions will be deferred until EPA's direct final action fully approving the State's submittal becomes effective or until EPA takes action proposing or finally disapproving in whole or part the State submittal. If EPA's direct final action fully approving the State submittal becomes effective, at that time any sanctions clocks will be permanently stopped and any imposed, stayed or deferred sanctions will be permanently lifted.

Because EPA has preliminarily determined that the State has an approvable plan, relief from sanctions should be provided as quickly as possible. Therefore, EPA is invoking the good cause exception to the 30-day notice requirement of the Administrative Procedure Act because the purpose of this notice is to relieve a restriction. *See* 5 U.S.C. 553(d)(1).

III. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental regulations, Reporting and recordkeeping requirements, Ozone, Volatile organic compounds.

Dated: March 29, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 02–11173 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 261–0337a; FRL–7171–3]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives. We are approving a local rule that regulates this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 8, 2002 without further notice, unless EPA receives adverse comments by June 6, 2002. If we receive such comment, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building,

1200 Pennsylvania Avenue, NW., Washington D.C. 20460.
California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.
San Joaquin Valley Unified Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.
FOR FURTHER INFORMATION CONTACT:
Yvonne Fong, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION:
Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rule Did the State Submit?

Table 1 lists the rule we are approving with the dates that it was adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULE.

Local agency	Rule No.	Rule title	Adopted	Submitted
SJVUAPCD	4653	Adhesives	12/20/01	02/20/02

On March 15, 2002, this rule submittal was found to meet the completeness criteria in 40 CFR part 51, appendix V, which must be met before formal EPA review.

B. Are There Other Versions of This Rule?

We approved a version of Rule 4653 into the SIP on September 13, 2000. The SJVUAPCD adopted revisions to the SIP-approved version on December 14, 2000 and December 20, 2001. CARB submitted those revisions to us on March 14, 2001 and February 20, 2002. While we can act on only the most recently submitted version, we have reviewed materials provided with the previous submittal.

C. What Is the Purpose of the Submitted Rule Revision?

The rule revision was submitted to correct deficiencies identified by us in our September 13, 2000 rulemaking. The TSD has more information about this rule.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rule?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (see section 182(a)(2)(A)), and must not relax existing requirements (see sections 110(l) and 193). The SJVUAPCD regulates an ozone nonattainment area (see 40 CFR part 81), so Rule 4653 must fulfill RACT.

Guidance and policy documents that we used to help evaluate specific enforceability and RACT requirements include the following:

1. Portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044, November 24, 1987.
2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.
3. The California Air Resources Board's *Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Adhesives and Sealants*, dated December 1998.

B. Does the Rule Meet the Evaluation Criteria?

We believe this rule is consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. The TSD has more information on our evaluation.

C. EPA Recommendations to Further Improve the Rule

The TSD describes additional rule revisions that do not affect EPA's current action but are recommended for the next time the local agency modifies the rule.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rule because we believe it fulfills all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rule. If we receive adverse comments by June 6, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 8, 2002. This will incorporate this rule into the federally enforceable SIP and permanently terminate all sanctions and Federal Implementation Plan (FIP) clocks associated with EPA's September 13, 2000 limited disapproval of a previous version of this rule.

III. Background Information

Why Was This Rule Submitted?

VOCs help produce ground-level ozone and smog, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control VOC emissions. Table 2 lists some of the national milestones leading to the submittal of this local agency VOC rule.

TABLE 2—OZONE NONATTAINMENT MILESTONES.

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP–Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

B. Executive Order 13211

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995

("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the approval action promulgated does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's action because it does not require the public to perform activities conducive to the use of VCS.

I. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major" rule as defined by 5 U.S.C. 804(2).

J. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 29, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraph (c)(294) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

(294) New and amended regulations for the following APCD were submitted on February 20, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) San Joaquin Valley Unified Air Pollution Control District.

(*1*) Rule 4653, amended on December 20, 2001.

* * * * *

[FR Doc. 02–11174 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC 42–200220(b); FRL–7207–2]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Miscellaneous Revisions to the South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On November 21, 2001, the South Carolina Department of Health and Environmental Control submitted revisions to the South Carolina State Implementation Plan (SIP). These revisions include the amending of volatile organic compounds (VOC's), prevention of significant deterioration (PSD), and other miscellaneous regulations. The purpose of these revisions is to make the revised regulations consistent with the requirements of the Clean Air Act as amended in 1990. The EPA is approving these revisions.

DATES: This direct final rule is effective July 8, 2002 without further notice, unless EPA receives adverse comment by June 6, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032.

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at *terry.randy@epa.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

On November 21, 2001, the South Carolina Department of Health and Environmental Control (SCDHEC) submitted revisions to the South Carolina SIP. These revisions include the amending of volatile organic compounds (VOC's), prevention of significant deterioration (PSD), and other miscellaneous regulations. A description of each revision submitted is listed below.

II. Analysis of South Carolina's Submittal

Regulation 61–62, Air Pollution Control Regulations and Standards

.1 Section I, Definition 94. The definition of VOC was revised to include volatile methyl silicates.

.1 Section II, Permit Requirements; Part B(1). This section was revised to clarify when the written request for an operating permit is due.

.5 Standard 1, Emissions From Fuel Burning Operations; Section I.A. This section was revised to clarify the opacity requirements for existing sources. Section I.B. This section was revised to clarify the opacity requirements for new sources.

.5 Standard 4 Emissions from Process Industries; Section XI, and .5 Standard 5, Volatile Organic Compounds; Section I, Part C. These sections were revised to update a reference to the Clean Air Act.

.5 Standard 5 Volatile Organic Compounds Section I, Part A. This section was amended to correct the definition of "petroleum liquids." Section II, Part A(2). This section was amended to add language to aid in the clarity of the regulation.

.5 Standard 7. Prevention of Significant Deterioration. This regulation was replaced in whole to adopt a new regulation that incorporates the Federal Amendments.

The following sections were amended to correct minor typographical errors—

.3 Section I, Air Pollution Episodes Numbers 2,3,4

.5 Standard 4 Emissions From Process Industries
Section V, and Section VIII

.5 Standard 5 Volatile Organic Compounds
Section I, Part D; Section I, Part E(1); Section I, Part F(3); Section II, Part F(2); and Section II, Part N(4).

.6 Standard, Alternative Emission Limitation Options
Title, Section IV and Part A.2

III. Final Action

EPA is approving the aforementioned changes to the SIP because the revisions are consistent with Clean Air Act and EPA regulatory requirements. The EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 8, 2002 without further notice unless the Agency receives adverse comments by June 6, 2002.

If the EPA receives such comments, then EPA will publish a document withdrawing the final rule and informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period. Parties interested in commenting should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 8, 2002 and no further action will be taken on the proposed rule. Please note that if we receive adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, we may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United

States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 8, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

Chapter I, title 40 of the Code of Federal Regulations is amended as follows.

PART 52—[AMENDED]

1. The authority for citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart II—South Carolina

2. Section 52.2120(c) is amended by revising:

a. Regulation No. 62.1, entries for "Section I" and "Section II";

b. Regulation No. 62.3 entry for "Section I";

c. Regulation No. 62.5 Standard No. 1 entry for "Section I";

d. Regulation No. 62.5 Standard No. 4 entries for "Section V", "Section VIII", and "Section XI";

e. Regulation No. 62.5 Standard No. 5 entries for "Section I" and "Section II, Part A, Part E, Part F and Part N";

f. Regulation No. 62.5 Standard No. 6 title and entry, and "Section II, Part A"; and

g. Regulation No. 62.5 Standard No. 7 entire entry, to read as follows:

§ 52.2120 Identification of plan.

* * * * *

(c) * * *

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Regulation No. 62.1	Definitions, Permits Requirements, and Emissions Inventory			
Section I	Definitions	10/26/01	May 7, 2002	[Insert citation of publication].
Section II	Permit requirements	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Regulation No. 62.3	Air Pollution Episodes			
Section I	Episode Criteria	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Regulation No. 62.5	Air Pollution Control Standards			
Standard No. 1 Emissions from Fuel Burning Operations				
Section I	Visible Emissions	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Standard No. 4 Emissions from Process Industries				
•	•	•	•	•
Section V	Cotton Gins	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Section VIII	Other Manufacturing	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Section XI	Total Reduced Sulfur Emissions of Kraft Pulp Mills.	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Standard No. 5 Volatile Organic Compounds				
Section I	General Provisions	10/26/01	May 7, 2002	[Insert citation of publication].
Section II Provisions for Specific Sources				
Part A	Surface Coating of Cans	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•

AIR POLLUTION CONTROL REGULATIONS FOR SOUTH CAROLINA—Continued

State citation	Title/subject	State effective date	EPA approval date	Federal register notice
Part E	Surface Coating of Magnet Wire	10/26/01	May 7, 2002	[Insert citation of publication].
Part F	Surface Coating Miscellaneous Metal Parts & Products.	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Part N	Solvent Metal Cleaning	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Standard No. 6 Alternative Emissions Limitation Options ("Bubble")				
		10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Section II Conditions for Approval				
Part A	Emissions of Total Suspended Particulate or Sulfur Dioxide.	10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•
Section III Enforceability				
Standard No. 7 Prevention of Significant Deterioration				
		10/26/01	May 7, 2002	[Insert citation of publication].
•	•	•	•	•

[FR Doc. 02–11288 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL–7207–5]

Ocean Dumping; Site Modification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today modifies the designation of an Ocean Dredged Material Disposal Site (ODMDS)in the Atlantic Ocean offshore Charleston, South Carolina. The modification is to amend the restriction on use and shorten the site's name. This action is necessary to allow for disposal activities to continue as previously planned by the site's Task Force for management and monitoring.

EFFECTIVE DATE: This final rule is effective on June 6, 2002.

ADDRESSES: Send comments to: Wesley B. Crum, Chief, Coastal Section, Water Management Division, U.S. Environmental Protection Agency Region 4, 61 Forsyth Street, Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Gary W. Collins, 404/562–9395.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act (MPRSA) of 1972, as amended, 33 U.S.C. 1401 *et seq.*, gives the Administrator of EPA the authority to designate sites where ocean disposal may be permitted. On December 23, 1986, the Administrator delegated the authority to the Regional Administrator of the Region in which sites are located. The EPA Ocean Dumping Regulations promulgated under MPRSA (40 CFR chapter I, subchapter H, § 228.11) state that use of disposal sites may be modified.

Two ODMDS's were ultimately designated for Charleston in 1987. One was a 12-square mile site for deepening material. The second site was 3-square miles and was placed within the 12-square mile site. During the 1980's, additional benthic and sedimentological studies were conducted by the South Carolina Department of Natural Resources (SCDNR). In 1987, live bottoms were identified in the western portion of the 12-square mile site. Concerns regarding impacts to the living resources at the ODMDS encouraged EPA to place a restriction on the use of the 12-square mile site. The Final Rule regarding this restriction was published in the **Federal Register** March 5, 1991 stating, "Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged material, except entrance channel material, shall be limited to that part of the site east of the line between coordinates 32°39′04″ N, 79°44′25″ W and 32°37′24″ N, 79°45′30″ W unless the materials can be shown by sufficient testing to contain 10% or less of fine material (grain size of less than 0.074mm) by weight and shown to be suitable for ocean disposal." This bisecting line was an immediate effort by EPA to protect live bottom resources initially reported by fishermen. The line was set with limited knowledge of the exact location and extent of those resources, and was set in a location that was believed to be as protective as possible at that time.

During this same time frame, an interagency group (EPA, SCDNR, COE and State Ports Authority) began working together to develop a monitoring and management plan (MMP) for the ODMDS. As part of this MMP process, construction of an L-shaped berm was developed approximately midway within the ODMDS. The COE began construction of the L-shaped berm using consolidated material from the last (42-foot) deepening project. The berm was evident on 1993 bathymetry. Also, as part of the MMP, the interagency group began looking for an area within the ODMDS for disposal of dredged material which would have the least impacts on the live bottom resources located in the western region of the site. A 4-square mile area (disposal box) was identified within the eastern half of the 12-square mile designated ODMDS and placed in position with the L-shaped berm as part of the western boundary. This location was approved by all the agencies involved, and placed where it would impact minimal reef habitat. At that time, the bisecting line should have been moved, but due to an oversight, it was not.

In 1995, EPA de-designated the smaller 3-square mile site and modified the larger site to allow for continued disposal of all material, not just deepening material. However, the COE agreed not to place any material outside of the 4-square mile disposal box. During the 1999–2000 (deepening project) dredging, a number of unauthorized dumps occurred to the west of the 4-square mile site. To date, studies indicate that some fine-grained material is present to the west of the 4-square mile site. It is unknown at this time whether the disposal material is moving from the ODMDS over the berms, from the berms, is part of the unauthorized dumps that occurred in 1999 and 2000, whether it is from the dispersion of the material during disposal activities at the site, or whether it is some combination of these four possibilities. Subsequent investigation and studies conducted by SCDNR to date have not identified adverse impacts at index reef sites being monitored. Other samples of the sand bottom benthic communities in areas that now have muddy sediments are still being processed.

The proposed rule for this action was published in the **Federal Register** on October 10, 2001 (66 FR 51628). Only one letter was received during the 45 day comment period and was supportive of this action.

B. EIS Determination

EPA has voluntarily committed to prepare Environmental Impact Statements (EIS) in connection with the designation of ocean disposal sites (39 FR 16186 (May 7, 1974)). The need for an EIS in the case of modifications is addressed in 39 FR 37420 (October 21, 1974), section 1(a)(4). If the change is judged sufficiently substantial by the responsible official, an EIS is needed.

The continued use of the Charleston ODMDS is vital to the management goals of the Plan. EPA believes these changes do not warrant the preparation of an Environmental Impact Statement (EIS).

EPA's primary concern is to provide an environmentally acceptable ocean disposal site for Charleston Harbor area dredging projects on a continued basis.

C. Site Modification

The site modification for the Charleston Harbor Deepening Project ODMDS is the removal of the line that restricts disposal of fine-grained material and the addition of four corner coordinates (4 square-mile disposal box) that will define where all dredged material must be placed within the ODMDS. In addition, the site's official name is being shortened to the Charleston ODMDS.

D. Regulatory Assessments

1. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the modification will only have the effect of providing an environmentally acceptable disposal option for dredged material on a continued basis. Consequently, this Rule does not necessitate preparation of a Regulatory Flexibility Analysis.

2. Executive Order 12866

Under Executive Order 12866, EPA must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

3. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." This final rule does not have tribal implications, as specified in Executive Order 13175. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13175 does not apply to this rule.

4. Executive Order 13045

Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, EPA must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by EPA.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866, and because EPA does not have any reason to believe the environmental health or safety risks addressed by this action present a disproportionate risk to children. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA.

5. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. As described elsewhere in this preamble, today's final rule would only have the effect of providing a continual use of an ocean disposal site pursuant to section 102(c) of MPRSA. Thus, Executive Order 13132 does not apply to this rule. Although section 6 of Executive Order 13132 does not apply, EPA did consult with State officials in developing this rule and no concerns were raised.

6. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A Major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective June 6, 2002.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 228

Environmental protection, Water pollution control.

Dated: April 12, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

In consideration of the foregoing, subchapter H of chapter I of title 40 is amended as follows.

PART 228—[AMENDED]

1. The authority citation for part 228 continues to read as follows:

Authority: 33 U.S.C. 1412 and 1418.

2. Section 228.15 is amended by revising the paragraph heading of paragraph (h)(5) and revising paragraphs (h)(5)(v) and (vi) to read as follows:

§ 228.15 Dumping sites designated on a final basis.

* * * * *

(h) * * *

(5) Charleston, SC, Ocean Dredged Material Disposal Site.

* * * * *

(v) Period of Use: Continued use.

(vi) Restriction: Disposal shall be limited to dredged material from the Charleston Harbor area. All dredged materials must be placed within the box defined by the following four corner coordinates (NAD83): 32.65663° N, 79.75716° W; 32.64257° N, 79.72733° W; 32.61733° N, 79.74381° W; and 32.63142° N, 79.77367° W. Additionally, all disposals shall be in accordance with all provisions of disposal placement as specified by the Site Management Plan, which is periodically updated.

* * * * *

[FR Doc. 02–11299 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7205–9]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Immediate final rule.

SUMMARY: Utah has applied to EPA for Final authorization of the changes to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). EPA has determined that these changes satisfy all requirements needed to qualify for Final authorization and is authorizing the State's changes through this immediate final action. We are publishing this rule to authorize the changes without a prior proposal because we believe this action is not controversial. Unless we receive written comments which oppose this authorization during the comment period, the decision to authorize Utah's changes to their hazardous waste program will take effect. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing this rule before it takes effect, and a separate document in the proposed rules section of this **Federal Register** will serve as a proposal to authorize the changes.

DATES: This Final authorization will become effective on July 8, 2002 unless EPA receives adverse written comment by June 6, 2002. If EPA receives such comment, it will publish a timely withdrawal of this Immediate Final Rule in the **Federal Register** and inform the public that this authorization will not take effect.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. Copies of the Utah program revision applications and the materials which EPA used in evaluating the revisions are available for inspection and copying at the following locations: EPA Region VIII, from 7:00 AM to 4:00 PM, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139 or Utah Department of Environmental Quality (UDEQ), from 8:00 AM to 5:00 PM, 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION:

A. Why Are Revisions to State Programs Necessary?

States which have received Final authorization from EPA under RCRA section 3006(b), 42 U.S.C. 6926(b), must maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal program. As the Federal program changes, States must change their programs and ask EPA to authorize the changes. Changes to State programs may be necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, States must change their programs because of changes to EPA's regulations in 40 Code

of Federal Regulations (CFR) parts 124, 260 through 266, 268, 270, 273 and 279.

B. What Decisions Have We Made in This Rule?

We conclude that Utah's application to revise its authorized program meets all of the statutory and regulatory requirements established by RCRA. Therefore, we grant Utah Final authorization to operate its hazardous waste program with the changes described in the authorization application. Utah has responsibility for permitting Treatment, Storage, and Disposal Facilities (TSDFs) within its borders, except in Indian Country, and for carrying out the aspects of the RCRA program described in its revised program application, subject to the limitations of the Hazardous and Solid Waste Amendments of 1984 (HSWA). New Federal requirements and prohibitions imposed by Federal regulations that EPA promulgates under the authority of HSWA take effect in authorized States before they are authorized for the requirements. Thus, EPA will implement those requirements and prohibitions in Utah, including issuing permits, until the State is granted authorization to do so.

C. What Is the Effect of Today's Authorization Decision?

This decision means that a facility in Utah subject to RCRA will now have to comply with the authorized State requirements instead of the equivalent Federal requirements in order to comply with RCRA. Utah has enforcement responsibilities under its State hazardous waste program for violations of such program, but EPA retains its authority under RCRA sections 3007, 3008, 3013, and 7003, which include, among others, authority to:

- Do inspections, and require monitoring, tests, analyses or reports;
- Enforce RCRA requirements and suspend or revoke permits;
- And take enforcement actions regardless of whether the State has taken its own actions.

This action does not impose additional requirements on the regulated community because the regulations for which Utah is being authorized by today's action are already effective and are not changed by today's action.

D. Why Wasn't There a Proposed Rule Before Today's Rule?

EPA did not publish a proposal before today's rule because we view this as a routine program change. We are providing an opportunity for the public to comment now. In addition to this rule, in the proposed rules section of today's **Federal Register** we are publishing a separate document that proposes to authorize the State program changes.

E. What Happens if EPA Receives Comments That Oppose This Action?

If EPA receives comments that oppose this authorization, we will withdraw this rule by publishing a document in the **Federal Register** before the rule becomes effective. EPA will base any further decision on the authorization of the State program changes on the proposal mentioned in the previous paragraph. We will then address all public comments in a later final rule. You may not have another opportunity to comment. If you want to comment on this authorization, you must do so at this time.

If we receive comments that oppose only the authorization of a particular change to the State hazardous waste program, we will withdraw that part of this rule but the authorization of the program changes that the comments do not oppose will become effective on the date specified above. The **Federal Register** withdrawal document will specify which part of the authorization will become effective, and which part is being withdrawn.

F. What Has Utah Previously Been Authorized for?

Utah initially received Final Authorization on October 10, 1984, effective October 24, 1984 (49 FR 39683) to implement its base hazardous waste management program. Utah received authorization for revisions to its program on February 21, 1989 (54 FR 7417), effective March 7, 1989; May 23, 1991 (56 FR 23648) and August 6, 1991 (56 FR 37291), both effective July 22, 1991; May 15, 1992 (57 FR 20770), effective July 14, 1992; February 12, 1993 (58 FR 8232) and May 5, 1993 (58 FR 26689), both effective April 13, 1993; October 14, 1994 (59 FR 52084), effective December 13, 1994; May 20, 1997 (62 FR 27501), effective July 21, 1997; January 13, 1999 (64 FR 02144), effective March 15, 1999; and October 16, 2000 (65 FR 61109), effective January 16, 2001.

G. What Changes Are We Authorizing With Today's Action?

On April 4, 2000, Utah submitted a final complete program revision application, seeking authorization of their changes in accordance with 40 CFR 271.21. We now make an immediate final decision, subject to receipt of written comments that oppose this action, that Utah's hazardous waste program revision satisfies all of the requirements necessary to qualify for Final authorization. Therefore, we grant Utah Final authorization for the following program changes (the Federal Citation followed by the analog from the Utah Administrative Code (R315), revised September 20, 2001): Clarification of Standards for Hazardous Waste LDR Treatment Variances [62 FR 64504, 12/05/97] (Checklist 162)/R315–13–1; Organic Air Emission Standards for Tanks, Surface Impoundments, & Containers [62 FR 64636, 12/08/97] (Checklist 163)/R315–3–2.5(b)(5); R315–7–9.6(b); R315–7–12.4; R315–7–26; R315–7–27; R315–7–30; R315–50–17; R315–8–2.6(b)(4); R315–8–5.3; R315–817, R315–8–18; R315–8–22; Kraft Mill Steam Stripper Condensate Exclusion [63 FR 18504, 04/15/98] (Checklist 164)/R315–2–4(a)(15); Land Disposal Restrictions Phase IV—Treatment Standards for Metal Wastes & Mineral Processing Wastes [63 FR 28556, 05/26/98] (Checklist 167A)/R315–13–1; Land Disposal Restrictions Phase IV—Hazardous Soils Treatment Standards & Exclusions [63 FR 28556, 05/26/98] (Checklist 167B)/R315–13–1; Land Disposal Restrictions Phase IV—Corrections [63 FR 28556, 05/26/98] (Checklist 167C)/R315–13–1; R315–13–1; Mineral Processing Secondary Materials Exclusion [63 FR 28556, 05/26/98] (Checklist 167D)/R315–2–2(c)(1)(i); R315–2–2(c)(3); R315–2–2(e)(1)(iii); R315–2–4(a)(16); Bevill Exclusion Revisions & Clarifications [63 FR 28556, 05/26/98] (Checklist 167E)/R315–2–3(a)(2); R315–2–4(b)(7); Exclusion of Recycled Wood Preserving Wastewaters [63 FR 28556, 05/26/98] (Checklist 167F)/R315–2–4(a)(9); Hazardous Waste Combustors Revised Standards [63 FR 33782, 06/19/98] (Checklist 168)/R315–2–4(a)(17); R315–2–26; R315–3–4.3; Petroleum Refining Process Wastes [63 FR 42110, 08/06/98] (Checklist 169)/R315–2–3(a)(2)(iv)(C); R315–2–3(c)(2)(ii)(B); 2–3(c)(2)(ii)(E); R315–2–4(a)(12); R315–2–4(a)(18); R315–2–4(a)(19); R315–2–6; R315–210; R315–13–1; R315–14–7; R315–50–9; Land Disposal Restrictions Phase IV—Zinc Micronutrient Fertilizers, Amendment [63 FR 46332, 08/31/98] (Checklist 170)/R315–13–1; Land Disposal Restrictions Phase IV—Extension of Compliance Date for Characteristic Slags [63 FR 48124, 09/09/98] (Checklist 172)/R315–13–1; Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088); Final Rule [63 FR 51254, 09/24/98] (Checklist 173)/R315–13–1; Post-Closure Permit Requirement & Closure Process [63 FR 56710, 10/22/98] (Checklist 174)/R315–3–1.1; R315–3–2.5(a); R315–3–2.19; R315–7–13.1; R315–7–14; R315–7–15; R315–8–6.1; R315–8–7; R315–8–8; Universal Waste Rule—Technical Amendments [63 FR 71225] (Checklist 176)/R315–14–6; R315–16–1.9(j); Organic Air Emission Standards: Clarification and Technical Amendments [64 FR 03382] (Checklist 177)/R315–5–3.34; R315–7–30; R315–8–17; R315–8–22; Petroleum Refining Process Wastes-Leachate Exemption [64 FR 06806] (Checklist 178)/R315–2–4(b)(15).

H. Where Are the Revised State Rules Different From the Federal Rules?

In the Federal Register on October 16, 2000 [65 FR 61109, effective January 16, 2001], we listed several places where we consider the State requirements to be more stringent than the Federal requirements. R315–5–10 was inadvertently left off the list of citations where the State requires notification also be given to the Utah Division of Solid and Hazardous Waste, as well as, the Federal entities. These requirements are part of Utah's authorized program and are Federally enforceable.

I. Who Handles Permits After the Authorization Takes Effect?

Utah will issue permits for all the provisions for which it is authorized and will administer the permits it issues. EPA will continue to administer any RCRA hazardous waste permits or portions of permits which we issued prior to the effective date of this authorization until Utah has equivalent instruments in place. We will not issue any new permits or new portions of permits for the provisions listed in the Item G after the effective date of this authorization. EPA has previously suspended issuance of permits for other provisions on the effective date of Utah's Final Authorization for the RCRA base program and each of the revisions listed at Item F. EPA will continue to implement and issue permits for HSWA requirements for which Utah is not yet authorized.

J. How Does Today's Action Affect Indian Country (18 U.S.C. 1151) in Utah?

This program revision does not extend to "Indian Country" as defined in 18 U.S.C. Section 1151. Indian Country includes lands within the exterior boundaries of the following Indian reservations located within or abutting the State of Utah:

1. Goshute Indian Reservation
2. Navajo Indian Reservation
3. Northwestern Band of Shoshoni Nation of Utah (Washakie) Indian Reservation
4. Paiute Indian Tribe of Utah Indian Reservation
5. Skull Valley Band of Goshute Indians of Utah Indian Reservation
6. Uintah and Ouray Indian Reservation (see below)
7. Ute Mountain Indian Reservation

With respect to the Uintah and Ouray Indian Reservation, Federal courts have determined that certain lands within the exterior boundaries of the Reservation do not constitute Indian Country. This State program revision approval will extend to those lands which the courts have determined are not Indian Country.

In excluding Indian Country from the scope of this program revision, EPA is not making a determination that the State either has adequate jurisdiction or lacks jurisdiction over sources in Indian Country. Should the State of Utah choose to seek program authorization within Indian Country, it may do so without prejudice. Before EPA would approve the State's program for any portion of Indian Country, EPA would have to be satisfied that the State has authority, either pursuant to explicit Congressional authorization or applicable principles of Federal Indian law, to enforce its laws against existing and potential pollution sources within any geographical area for which it seeks program approval and that such approval would constitute sound administrative practice.

K. What Is Codification and Is EPA Codifying Utah's Hazardous Waste Program as Authorized in This Rule?

Codification is the process of placing the State's statutes and regulations that comprise the State's authorized hazardous waste program into the Code of Federal Regulations. We do this by referencing the authorized State rules in 40 CFR part 272. We reserve the amendment of 40 CFR part 272, subpart TT for the codification of Utah's program until a later date.

L. Administrative Requirements

The Office of Management and Budget has exempted this action from the requirements of Executive Order 12866 (58 FR 51735, October 4, 1993), and therefore this action is not subject to review by OMB. This action authorizes State requirements for the purpose of RCRA 3006 and imposes no additional requirements beyond those imposed by State law. Accordingly, I certify that this action will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.). Because this action authorizes pre-existing requirements under State law and does not impose any additional enforceable duty beyond that required by State law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). For the same reason, this action also does not significantly or uniquely affect the communities of Tribal governments, as specified by Executive Order 13084 (63 FR 27655, May 10, 1998). This action will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant and it does not make decisions based on environmental health or safety risks.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings" issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

The Congressional Review Act, 5 U.S.C. 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This action will be effective July 8, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: April 26, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–11291 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Chapter 18

RIN 2700–AC33

NASA FAR Supplement—Conformance With FACs 01–01, 01–02, and 01–06; and Miscellaneous Administrative and Technical Revisions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: This is a final rule to conform the NASA FAR Supplement with the FAR as a result of changes made by FAC's 01–01, 01–02, and 01–06; and make editorial and miscellaneous changes dealing with NASA internal and administrative matters.

EFFECTIVE DATE: May 22, 2002.

FOR FURTHER INFORMATION CONTACT: Celeste Dalton, NASA Headquarters Office of Procurement, Contract Management Division (Code HK), Washington, DC 20546, (202) 358–1645, e-mail: *celeste.dalton@hq.nasa.gov*.

SUPPLEMENTARY INFORMATION:

A. Background

Item IV of FAC 01–01 amended various FAR subparts and clauses to implement recent statutory and regulatory changes relating to veterans' employment opportunities and reporting. Item II of FAC 01–02 amended various FAR subparts to implement Executive Order 13123 of June 3, 1999, Greening the Government through Efficient Energy Management. Item III of FAC 01–02 amended various FAR subparts and clauses to reflect changes to the Office of Management and Budget (OMB) prompt payment requirements and clarify existing FAR prompt payment coverage. Item V of FAC 0106 amended various FAR subpart to rewrite procurement integrity coverage in plan language. This final rule makes changes to NFS parts 1803, 1811, 1822, 1823, and 1832 necessary to conform to the changes in FAC's 01–01,01–02, and 01–06. Additional changes dealing with NASA internal and administrative matters included in this rule clarify the approval authority for letter contracts and that "instrument" means the award document when referring to contracts, grants, cooperative agreement, or other agreement. Changes are made to subparts 1806.3 and 1819.70 to delete text duplicative of the FAR. Changes are made to clauses in part 1852 to identify optional (though preferable) forms for submission of information about technology innovations under NASA contracts and to identify the web site where these forms are available. Editorial changes are made throughout the NFS to reflect title changes. Lastly, technical amendments are made to subpart 1804.74 and part 1852 to update url listings. This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This final rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

NASA certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because it does not impose any new requirements.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the changes to the NFS do not impose any recordkeeping or information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR, Parts 1801 through 1809, 1811, 1812, 1815 through 1817, 1819, 1822, 1823, 1825, 1828 through 1830, 1832, 1835 through 1837, 1842, 1845, 1848 through 1850, and 1852

Government procurement.

Tom Luedtke,

Assistant Administrator for Procurement.

Accordingly, 48 CFR Chapter 18, Parts 1801 through 1809, 1811, 1812, 1815 through 1817, 1819, 1822, 1823, 1825, 1828 through 1830, 1832, 1835 through 1837, 1842, 1845, 1848 through 1850, and 1852 are amended as follows:

1. The authority citation for 48 CFR Chapter 18, Parts 1801 through 1809, 1811, 1812, 1815 through 1817, 1819, 1822, 1823, 1825, 1828 through 1830, 1832, 1835 through 1837, 1842, 1845, 1848 through 1850, and 1852 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

2. 48 CFR Chapter 18 is amended by—

a. Removing "Associate Administrator for Procurement" and adding "Assistant Administrator for Procurement" in its place each time it appears;

b. Removing "Associate Administrator for Management Systems and Facilities" and adding "Assistant Administrator for Management Systems" in its place each time it appears;

c. Removing "Associate Administrator for Equal Opportunity Programs" and adding "Assistant Administrator for Equal Opportunity Programs" in its place each time it appears;

d. Removing "Associate Administrator for Small and Disadvantage Business Utilization" and adding "Assistant Administrator for Small and Disadvantage Business Utilization" in its place each time it appears;

e. Removing "Associate Administrator for Headquarters Operations" and adding "Director for Headquarters Operations" in its place each time it appears; and

f. Removing "Deputy Associate Administrator for Procurement" and adding "Deputy Assistant Administrator for Procurement" in its place each time it appears.

PART 1803—IMPROPER BUSINESS PRACTICES AND PERSONAL CONFLICTS OF INTEREST

3. Redesignate section 1803.104–3 as 1803.104–1.

4. Redesignate section 1803.104–5 as 1803.104–4 and amend the newly designated section 1803.104–4 by—

a. Revising the title to read as follows:

1803.104–4 Disclosure, protection, and marking of contractor bid or proposal information and source selection information.

b. In paragraph (a)(ix), removing "1803.104–5(a)(i)" and adding "1803.104–4(a)(i)" in its place;

c. In paragraph (c)(i), removing—

(1) "FAR 3.104–3" and adding "FAR 2.101" in its place; and

(2) "FAR 3.104–5(c)" and adding "FAR 3.104–4(c)" in its place.

d. In paragraph (c)(ii), add "2.101 and" immediately before "3.104" in the first sentence.

5. Redesignate section 1803.104–10 as 1803.104–7.

PART 1804—ADMINISTRATIVE MATTERS

1804.7403 [Amended]

6. Amend section 1804.7403 in paragraph (a)(1) by removing "*http://www.ccr2000. com*" and adding" *http://www.ccr. gov*" in its place.

PART 1806—COMPETITION REQUIREMENTS

1806.303–170 [Amended]

7. Amend section 1806.303–170 by removing the last sentence.

PART 1811—DESCRIBING AGENCY NEEDS

8. Revise section 1811.101 to read as follows:

1811.101 Order of precedence for requirements documents.

(a) Safeguards to ensure safety, security, and environmental protection must be included, as applicable, in requirements documents.

(b)(2) Requirements for the use of environmentally preferable products will be established in accordance with NPG 8830.1, "Affirmative Procurement Plan for Environmentally Preferable Products." Requirements for the use of energy and water efficient products and the use of renewable energy technology will be established in accordance with NPG 8570.1, "Energy Conservation Technologies and Practices."

PART 1816—TYPES OF CONTRACTS

9. In section 1816.104–70, revise paragraph (b) to read as follows:

1816.104–70 Contract type for performance-based contracting (PBC).

* * * * *

(b) A PBC is a completion form of contract (something is accomplished). Term/level-of-effort, time-and-materials and labor hour contracts are not PBC.

10. Revise section 1816.603–370 to read as follows:

1816.603–370 Approvals.

(a)(1) The approval authority to issue a letter contract is—

(i) The Assistant Administrator for Procurement when the estimated value of the definitized contract is equal to or greater than the Master Buy Plan (MBP) submission threshold of 1807.7101;

(ii) The procurement officer when the estimated value of the definitized contract is below the MBP submission threshold; and

(iii) The Assistant Administrator for Procurement for any modification of an undefinitized letter contract approved by the procurement officer that increases the estimated value of the definitized contract to an amount equal to or above the MBP submission threshold. This approval must be obtained prior to issuing the modification.

(2) The procurement officer must sign all requests for approval by the Assistant Administrator for Procurement and submit them to Code HS.

(b) All requests for authority to issue a letter contract must include the following:

(1) Contractor name and address.

(2) Place of performance.

(3) Contract number, including modification number, if applicable.

(4) Brief description of the work or services to be performed.

(5) Performance period or delivery schedule for both the letter contract and definitized contract.

(6) Estimated value of the work authorized by the letter contract.

(7) Estimated value of the definitized contract.

(8) Contract type of the definitized contract.

(9) A statement that the definitized contract will contain all required clauses or identification of approved specific clause deviations.

(10) Complete justification of the necessity for the letter contract, including the advantages to the Government and a description of the efforts to avoid its issuance or to minimize its scope.

(11) The definitization schedule described in FAR 16.603–2(c) expected to be negotiated with the contractor.

PART 1819—SMALL BUSINESS PROGRAMS

1819.7001 [Removed]

11. Remove section 1819.7001.

PART 1822—APPLICATION OF LABOR LAWS TO GOVERNMENT ACQUISITIONS

12. Revise Subpart 1822.13 to read as follows:

Subpart 1822.13—Special Disabled Veterans, Veterans of the Vietnam ERA, and Other Eligible Veterans

1822.1305 Waivers.

(c) Requests for waivers shall be submitted to the Assistant Administrator for Equal Opportunity Programs (Code E).

1822.1308 Complaint procedures.

Contracting officers shall submit all complaints to the Assistant Administrator for Equal Opportunity Programs (Code E).

PART 1823—ENVIRONMENT, ENERGY AND WATER EFFICIENCY, RENEWABLE ENERGY TECHNOLOGIES, OCCUPATIONAL SAFETY, AND DRUG–FREE WORKPLACE

13. Revise the title of Part 1823 to read as set forth above.

14. Add Subpart 1823.2 to read as follows:

Subpart 1823.2—Energy and Water Efficiency and Renewable Energy

1823.203 Energy-efficient products.

Responsibility, policy and procedures for NASA's implementation of FAR 23.203, including cost-effectiveness, are described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices."

15. Add Subpart 1823.4 to read as follows:

Subpart 1823.4—Use of Recovered Materials

1823.404 Agency affirmative procurement programs.

NASA's affirmative procurement program is described in the Affirmative Procurement Plan for Environmentally Preferable Products (NPG 8830.1)

16. Add Subpart 1823.7 to read as follows:

Subpart 1823.7—Contracting for Environmentally Preferable Products and Services

1823.703 Policy.

Responsibility, policy and procedures for NASA's implementation of FAR 23.703 is described in NPG 8570.1, "Energy Efficiency and Water Conservation Technologies and Practices".

PART 1832—CONTRACT FINANCING

17. Add section 1832.007 to read as follows:

1832.007 Contract financing payments.

(a)(1) Except as authorized in 1832.908, it is NASA's policy to make contract financing payments on the 30th day after the designated billing office has received a proper request. However, the due date for making contract financing payments for a specific contract may be earlier than the 30th day, but not earlier than 7 days, after the designated billing office has received a proper request, provided that:

(i) The contractor provides consideration whose value is determined to be greater than the cost to the United States Treasury of interest on funds paid prior to the 30th day, calculated using the Current Value of Funds Rate published annually in the **Federal Register** (subject to quarterly revision);

(ii) The contracting officer approves the payment date change, with the concurrence of the installation Financial Management Officer; and

(iii) The contract file includes documentation regarding the value of the consideration and the analysis determining that value.

1832.906 [Removed]

18. Remove section 1832.906.

1832.908 [Amended]

19. Amend section 1832.908 by redesignating paragraph (c)(3) as (c)(2).

PART 1835—RESEARCH AND DEVELOPMENT CONTRACTING

1835.016–71 [Amended]

20. In section 1835.016–71, amend the last sentence of paragraph (c)((2)(B) by removing "NASA instruments" and adding "NASA award instruments" in its place.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.204–74 [Amended]

21. Section 1852.204–74 is amended as follows:

a. The clause date is revised to read "May 2002"; and

b. In paragraph (d) remove "*http://www.ccr2000.com*" and add "*http://www.ccr.gov*" in its place.

22. Revise section 1852.227–11 to read as follows:

1852.227–11 Patent Rights—Retention by the Contractor (Short Form).

As prescribed at 1827.303–70(a), modify the clause at FAR 52.227–11 by adding the following subparagraph (5) to paragraph (c) of the basic clause; adding the following subparagraph (5) to paragraph (f); and using the following subparagraph (2) in lieu of subparagraph (g)(2) of the basic clause:

(c)(5) The Contractor may use whatever format is convenient to disclose subject inventions required in subparagraph (c)(1). NASA prefers that the contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose subject inventions. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site http://invention.nasa.gov.

(End of addition)

(f)(5) The Contractor shall provide the Contracting Officer the following:

(i) A listing every 12 months (or such longer period as the Contracting Officer may specify) from the date of the contract, of all subject inventions required to be disclosed during the period.

(ii) A final report prior to closeout of the contract listing all subject inventions or certifying that there were none.

(iii) Upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) An irrevocable power to inspect and make copies of the patent application file, by the Government, when a Federal Government employee is a coinventor.

(End of addition)

(g)(2) The Contractor shall include the clause in the NASA FAR Supplement at 1852.227–70, New Technology, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, research, design, or engineering work to be performed by other than a small business firm or nonprofit organization.

(End of substitution)

23. Amend the clause at section 1852.227–70 by revising the date of the clause; redesignating paragraphs (e)(3) through (e)(5) as (e)(4) through (e)(6) respectively; and adding new paragraph (e)(3) to read as follows:

1852.227–70 New Technology.

* * * * *

New Technology

(May 2002)

(e) * * *

(3) The Contractor may use whatever format is convenient to disclose reportable items required in subparagraph (e)(2). NASA prefers that the Contractor use either the electronic or paper version of NASA Form 1679, Disclosure of Invention and New Technology (Including Software) to disclose reportable items. Both the electronic and paper versions of NASA Form 1679 may be accessed at the electronic New Technology Reporting Web site http://invention.nasa.gov.

* * * * *

1852.235–72 [Amended]

24. Section 1852.235–72 is amended as follows:

a. The clause date is revised to read "May 2002"; and

b. In the second sentence of paragraph (a)(4), add the word "award" immediately after the word "appropriate".

[FR Doc. 02–11168 Filed 5–6–02; 8:45 am]

BILLING CODE 7510–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 300, 600 and 660

[Docket No. 011231309–2090–03; I.D. 042502D]

Fisheries off West Coast States and in the Western Pacific; Pacific Coast Groundfish Fishery; Annual Specifications and Management Measures; Trip Limit Adjustments; Pacific Halibut Fisheries; Corrections

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Inseason trip limit adjustment; announcement of incidental halibut retention allowance; corrections to the 2002 specifications and management measures; request for comments.

SUMMARY: NMFS announces changes in the following trip limits for the Pacific Coast groundfish fisheries: limited entry trawl gear fisheries for the DTS complex (Dover sole, thornyheads, and sablefish), splitnose rockfish, minor slope rockfish, chilipepper rockfish, yelloweye rockfish sublimit in minor shelf rockfish, and lingcod; limited entry fixed gear fisheries for splitnose rockfish, minor slope rockfish, minor nearshore rockfish, and sablefish; open access fisheries for minor slope rockfish, minor nearshore rockfish, and sablefish; yelloweye rockfish in pink shrimp fishery; and yellowtail rockfish in salmon troll fishery. These actions, which are authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP), are intended to help the fisheries achieve optimum yield (OY) while protecting overfished and depleted stocks. NMFS announces regulations for the retention of Pacific halibut landed incidentally in the limited entry primary longline sablefish fishery north of Pt. Chehalis, WA. Clarification is provided on the sublimit in the limited entry small footrope trawl fishery for yellowtail rockfish. This document also contains notification of a voluntary closed area for commercial fisheries off Washington, a correction to a CFR citation in the 2002 specifications and management measures that were published on March 7, 2002, and a correction to the trip limits in Table 4 for limited entry fixed gear minor rockfish south between 40°10′ N. and 34°27′ N. lat.

DATES: Changes to management measures are effective 0001 hours (local time) May 1, 2002, through the effective dates of the 2003 specifications and management measures for the Pacific Coast groundfish fishery, unless modified, superseded, or rescinded, which will be published in the **Federal Register**. Comments on this rule will be accepted through May 22, 2002.

ADDRESSES: Submit comments to D. Robert Lohn, Administrator, Northwest Region, NMFS, 7600 Sand Point Way NE, Seattle, WA 98115–0070; or Rod McInnis, Acting Administrator, Southwest Region, NMFS, 501 West Ocean Blvd, Suite 4200, Long Beach, CA 90802–4213. This **Federal Register** document is available on the Government Printing Office's website at: http://www.access.gpo.gov/su_docs/aces/aces140.html.

FOR FURTHER INFORMATION CONTACT: Jamie Goen or Becky Renko (Northwest Region, NMFS) 206–526–6140.

SUPPLEMENTARY INFORMATION:

Background

The Pacific Coast Groundfish FMP and its implementing regulations at 50 CFR part 660, subpart G, regulate fishing for over 80 species of groundfish off the coasts of Washington, Oregon, and California. Annual groundfish specifications and management measures are initially developed by the Pacific Fishery Management Council (Pacific Council), and are implemented by NMFS. The specifications and management measures for the current fishing year (January 1–December 31, 2002) were initially published in the **Federal Register** as an emergency rule for January 1 - February 28, 2002 (67 FR 1540, January 11, 2002), and as a proposed rule for all of 2002 (67 FR 1555, January 11, 2002), then finalized effective March 1, 2002 (67 FR 10490, March 7, 2002). The emergency rule was subsequently amended at 67 FR 3820, January 28, 2002, and at 67 FR 7289, February 19, 2002. The final rule was subsequently amended at 67 FR 15338, April 1, 2002.

The Northern Pacific Halibut Act of 1982 (16 U.S.C. 773–773k) (Halibut Act) and its implementing regulations at 50 CFR part 300, subpart E, regulate fishing for Pacific Halibut in U.S. Convention waters. The Halibut Act also authorizes the Pacific Council to develop regulations governing the Pacific halibut catch in waters off of Washington, Oregon, and California that are in addition to, but not in conflict with, regulations of the International Pacific Halibut Commission (IPHC). Accordingly, the Pacific Council has developed, and NMFS has approved, a catch sharing plan (CSP) to allocate the total allowable catch (TAC) of Pacific halibut between treaty Indian and non-Indian harvesters, and among non-Indian commercial and sport fisheries in IPHC statistical Area 2A (off Washington, Oregon, and California). The CSP, as implemented at 50 CFR part 300, provides for retention of halibut landed incidentally in the limited entry, longline primary sablefish fishery north of Pt. Chehalis, WA (46°53′18″ N. lat.) in years when the Area 2A TAC is above 900,000 lb (408.2 mt). Because the Area 2A TAC is above 900,000 lb (408.2 mt) in 2002, NMFS is establishing an allowance for incidental halibut retention in the primary sablefish fishery in 2002.

The following changes to current groundfish management measures were recommended by the Pacific Council, in consultation with Pacific Coast Treaty Tribes and the States of Washington, Oregon, and California, at its April 8–12, 2002, meeting in Portland, OR. Pacific Coast groundfish landings will be monitored throughout the year, and further adjustments to the trip limits will be made as necessary to stay within the OYs and allocations announced in the 2002 specifications and management measures for the groundfish fishery, published in the **Federal Register** at 67 FR 10490 (March 7, 2002), as amended at 67 FR 15338 (April 1, 2002).

Darkblotched rockfish, an overfished species found on the continental slope, is of particular concern for, and is harvested by, several sectors of the groundfish fishery discussed in this inseason action. To protect darkblotched rockfish, NMFS and the Pacific Council previously restricted trip limits for continental slope fisheries north of 40°10′ N. lat. The restricted limits north of 40°10′ N. lat. were intended to reduce harvest of species that co-occur with darkblotched rockfish in order to reduce the incidental harvest of darkblotched rockfish in areas where they tend to occur. However, recent data have shown that darkblotched rockfish may also occur in higher concentrations than previously believed south of 40°10′ N. lat., especially between 40°10′ N. lat. and 36° N. lat. (Monterey management area).

For the 2002 specifications and management measures, NMFS introduced a new bycatch model for estimating the rates at which certain overfished species, including darkblotched rockfish, co-occur as bycatch in fisheries targeting healthier stocks. For the purposes of this inseason action, "bycatch" is used to describe a species' co-occurrence with a target species, regardless of whether the first species is retained (landed, sold, or otherwise used) or discarded. A re-evaluation of the bycatch model has shown that darkblotched rockfish landings information from the waters between 40°10′ N. lat. and 36° N. lat. (Monterey management area) may not have been accurate in the original bycatch model, resulting in co-occurrence rates used in the bycatch model for darkblotched rockfish being lower than what may have actually occurred in target fisheries in the Monterey area. NMFS and the Pacific Council must manage the coastwide fisheries to minimize opportunities for incidental darkblotched rockfish catch so as to not exceed the darkblotched rockfish OY, which is set at a level that is intended to rebuild the stock.

For these reasons, the Pacific Council recommended reducing slope rockfish trip limits in this management area, starting May 1, 2002. In the coming months, the Pacific Council's Groundfish Management Team (GMT) will review fish ticket data to better evaluate landings in the Monterey area and to determine whether further adjustments are needed to the bycatch model and to trip limits to protect darkblotched rockfish. NMFS and the Pacific Council will recommend further changes at the June 2002 Council

meeting, based on the GMT's evaluation.

In addition, NMFS must account for an additional 2 mt of darkblotched rockfish, expected to be taken in research catches. Together, these situations have led NMFS and the Pacific Council to recommended further restrictions to protect darkblotched rockfish. After considerable deliberation on this issue, NMFS and the Pacific Council have recommended reductions in the DTS fisheries, minor slope rockfish fisheries, and splitnose rockfish fisheries in order to further restrict the bycatch of darkblotched rockfish.

Limited Entry Trawl Gear Limits for DTS North of 40°10′ N. lat.

During January-February of this year, landings of the DTS complex were 8 percent above projected levels. Due to concern about increased effort in the DTS fishery and its effects on darkblotched rockfish, an overfished species that co-occurs with the DTS complex, the Pacific Council recommended reducing trip limits for DTS north of 40°10′ N. lat. in order to reduce the incidental harvest of darkblotched rockfish. Although trip limits for the DTS fishery were scheduled to decrease in the winter to reduce darkblotched bycatch, further restrictions are necessary at this time to protect darkblotched rockfish. Reducing trip limits for the July-August period is expected to save roughly 6 mt of darkblotched rockfish, which should keep the darkblotched rockfish catch within the 2002 OY while allowing fisheries for co-occurring species to continue.

The lower 2002 whiting OY, implemented on April 15, 2002 (67 FR 18117), will most likely result in a shorter whiting season. This could cause effort to shift into the DTS fishery during the July-August period. Reducing trip limits in the northern DTS fishery during July-August will reduce the catch of darkblotched rockfish not accounted for in the bycatch model, and will also reduce the likelihood of effort shifting into the DTS fishery from the whiting fishery. In order to accommodate the desire by fishers and processors to maintain year-round fishing opportunities and to reduce the likelihood of a total continental slope fishery closure later in the year due to early attainment of the DTS OY and/or interception of darkblotched rockfish, the trip limits for the DTS fishery for July-August were cut roughly in half.

For the July-August period, the 2-month cumulative limits for the DTS trawl fishery occurring north of 40°10′ N. lat. will be reduced as follows: Dover sole will be reduced from 28,000 lb (12,700 kg) to 14,000 lb (6,350 kg), shortspine thornyhead will be reduced from 2,600 lb (1,179 kg) to 1,500 lb (680 kg), longspine thornyhead will be reduced from 3,000 lb (1,361 kg) to 1,500 lb (680 kg), and sablefish will be reduced from 6,000 lb (2,722 kg) to 3,000 lb (1,361 kg).

Limited Entry Trawl and Fixed Gear Limits for Splitnose Rockfish and Limited Entry Trawl and Fixed Gear and Open Access Limits for Minor Slope Rockfish Between 40°10′ N. lat. and 36° N. lat.

Splitnose rockfish and minor slope rockfish both co-occur with darkblotched rockfish, an overfished species, on the continental slope. In light of the new information for the darkblotched rockfish in the Monterey management area (between 40°10′ N. lat. and 36° N. lat.) previously discussed, the Pacific Council recommended trip limit reductions for splitnose rockfish and minor slope rockfish as a precautionary measure to reduce possible incidental catch of darkblotched rockfish until further information is available at the June Pacific Council meeting.

Trip limits for splitnose rockfish and minor slope rockfish remain unchanged south of 36° N. lat. (south of the Monterey management area) because incidental catch of darkblotched rockfish has remained low in this area. In order to avoid excessive effort concentration on splitnose and minor slope rockfish from vessels moving south to the Conception management area (south of 36° N. lat.) to access higher trip limits, this issue will also be revisited at the June Pacific Council meeting, when fish tickets become available, to identify reasonable thresholds for removals of splitnose and minor slope rockfish.

To apply the reductions equally across sectors, splitnose rockfish limits will be reduced for limited entry trawl and fixed gear between 40°10′ N. lat. and 36° N. lat. from 25,000 lb (11,340 kg) per 2 months to 5,000 lb (2,268 kg) per 2–month period from May-August. The open access limit for splitnose rockfish south of 40°10′ N. lat. remains 200 lb (91 kg) per month. Also for the May-August period, the limited entry trawl, limited entry fixed gear and open access limits for minor slope rockfish between 40o10′ N. lat. and 36o N. lat. will each be reduced to 5,000 lb (2,268 kg) per 2–month period. Previously, minor slope rockfish limits for these sectors in the Monterey area were 50,000 lb (22,680 kg) per 2–months for limited entry trawl, 25,000 lb (11,340 kg) per 2-months for limited entry fixed gear, and 10,000 lb (4,536 kg) per 2–months for open access.

Limited Entry Small Footrope Trawl Gear Limits for Chilipepper Rockfish South of 40°10′ N. lat.

The best available information at the April Pacific Council meeting showed higher than projected landings in January-February for bocaccio, an overfished species that co-occurs with chilipepper rockfish. Estimated limited entry landings of bocaccio for January-February (the majority of which are from trawl gear) were 5 mt, above the projected catch of 1.3 mt. Although the January-February catch of bocaccio is higher than projected, the projected annual catch for 2002 (13.8 mt) was well below the 25 mt total catch harvest guideline for the limited entry fleet. Because fish ticket data are not yet available for the January-February period, it is not known what other species are being landed with bocaccio. However, previous examinations of rockfish compositions have shown that chilipepper rockfish is often landed along with bocaccio. Fish ticket data will be available and examined before the June Pacific Council meeting in San Francisco. If landings of bocaccio continue above the projected pace, further adjustments to harvest limits for bocaccio and co-occurring species will be recommended at that time.

Limited entry trawl cumulative limits for bocaccio are scheduled to increase from 600 lb (272 kg) per 2-month period to 1,000 lb (454 kg) per 2 months from May-October. The Pacific Council considered reducing this scheduled increase, but felt it was necessary to allow the scheduled increase to accommodate interception of bocaccio in other trawl fisheries.

Bocaccio is not a targeted species in limited entry trawl fisheries; thus, adjustments to target species that co-occur with bocaccio are the most effective way to minimize increased catch of bocaccio and bocaccio landings. NMFS expects that minimizing bocaccio interception in the coming years will be a continuing challenge as individuals from the robust 1999 year-class grow to a size that makes them available to the commercial fisheries. Thus, for the May-December period, the limited entry small footrope trawl limit for chilipepper rockfish south of 40°10′ N. lat. will be reduced from 7,500 lb (3,402 kg) per 2–month period to 4,000 lb (1,814 kg) per 2–month period.

Limited Entry Fixed Gear and Open Access Limits for Minor Nearshore Rockfish North of 40°10′ N. lat.

At its November 2001 meeting, the Pacific Council adopted a limited entry fixed gear trip limit for minor nearshore rockfish north of 40°10′ N. lat. of 5,000 lb (2,268 kg) per month, no more than 2,000 lb (907 kg) of which could be species other than black or blue rockfish. This was an oversight, as the nearshore rockfish limits in this fishery have commonly been managed as 2-month limits, not as monthly limits. The limited entry fixed gear limit for minor nearshore rockfish north of 40o10′ should have been 5,000 lb (2,268 kg) per 2–months, similar to the open access minor nearshore rockfish limit for that same area of 4,000 lb (1,814 kg) per 2 months.

Landings in the nearshore rockfish fisheries north of 40°10′ N. lat. through March are well below 2001 levels (11 mt for 2002 as opposed to 45 mt in 2001). Even though the 2002 harvest guideline for this fishery is lower than in 2001 (324 mt versus 412 mt), the entire 2001 landings were below the 2002 harvest guideline. As a result, the Pacific Council recommended increasing the open access trip limit and bringing the limited entry fixed gear trip limit in line with the open access trip limit beginning in May. These changes are expected to allow attainment of the nearshore harvest guidelines without allowing the fisheries to exceed these guidelines. The recommended limit is less than the limit for May-September last year, which was 7,000 lb (3,175 kg) per 2 months. If 2002 participation in this fishery is similar to 2001, this limit increase is not expected to result in early attainment of the minor nearshore rockfish OY.

The limited entry fixed gear limits for minor nearshore rockfish north of 40°10′ N. lat. will be decreased from 5,000 lb (2,268 kg) per month, no more than 2,000 lb (907 kg) of which may be species other than black and blue rockfish for limited entry fixed gear. For the open access fishery for minor nearshore rockfish north of 40°10′ N. lat. the limits will be increased from 4,000 lb (1,814 kg) per 2 months, no more than 1,600 lb (726 kg) of which may be species other than black and blue rockfish. For the May-December period, both the limited entry and the open access limits for minor nearshore rockfish north of 40°10′ N. lat. will be changed to 6,000 lb (2,722 kg) per 2 months, no more than 3,000 lb (1,361 kg) of which may be species other than black or blue rockfish.

Limited Entry Small Footrope/midwater Trawl Gear Sublimits for Yelloweye Rockfish in Minor Shelf Rockfish, Open Access Exempted Trawl Gear- No Retention of Yelloweye in the Pink Shrimp Fishery, Notification of Voluntary Closed Area

Further restrictions on yelloweye rockfish are being implemented as a precautionary measure. The limited entry trawl fishery trip limit for minor shelf rockfish is scheduled to increase to 1,000 lb (454 kg) per month from May-October. Although limited entry trawl landings of yelloweye rockfish have been low since the implementation of the small footrope and/or midwater trawl gear requirement for minor shelf rockfish, a sublimit on yelloweye rockfish is necessary to remove any incentive to target yelloweye rockfish, as yelloweye is an overfished species, while still allowing for landings of incidental catch. Therefore, for the May-October period, a yelloweye sublimit will be added as follows: the limited entry small footrope/midwater trawl fishery for minor shelf rockfish will be 1,000 lb (454 kg) per month, no more than 300 lb (136 kg) of which may be yelloweye rockfish.

This document adds a prohibition for the open access exempted trawl fishery for pink shrimp, on retention of yelloweye rockfish from May-December.

Further efforts to protect yelloweye rockfish in an area of high interception have been recommended by Washington Department of Fish and Wildlife. The majority of the fishing industry supports this voluntary closure and leaders of industry associations are working with their members to ensure voluntary avoidance of the area. For all commercial fisheries off Washington, including groundfish fisheries, a voluntary closure of a four-mile by seven-mile area adjacent to the halibut hotspot area is in place within a rectangle defined by the following coordinates: 48°04′ N. lat., 125°11′ W. long.; 48°04′ N. lat., 124°59′ W. long.; 48°00′ N. lat., 125°11′ W. long.; and 48°00′ N. lat., 124°59′ W. long.

Limited Entry Small Footrope/Midwater Trawl Gear Limits for Lingcod

The January-February lingcod catch (estimated landings plus assumed discard) of 6 mt is slightly ahead of the projected amount of 4.8 mt. Although the January-February lingcod catch is slightly higher than projected, the projected annual catch is still on track with the 2002 harvest guideline of 163 mt. In 2001, limited entry landings were 80 mt out of a 203 mt harvest guideline. Bycatch projections for the rest of the year also remain within the 2002 harvest guideline. In order to allow vessels to land unavoidable bycatch by the trawl fleet during summer continental shelf fisheries, the limited entry small footrope/midwater trawl gear limit for lingcod will be increased. Lingcod are also less likely to survive being caught and discarded during the summer months because mortality increases with higher water and air temperatures. This trip limit increase is not intended to fully take the landed catch harvest guideline for this species, but to reduce discard mortality in a manner that will not encourage targeting or result in excessive catch. Furthermore, this change in retention allowance should not affect the level of projected bycatch that will occur in available target fisheries, only the amount of that bycatch that may be retained.

For the May-October period, limited entry small footrope/midwater trawl gear limits for lingcod will be increased from 800 lbs (363 kg) per 2 months to 1,000 lb (454 kg) per 2 months. This increase is not expected to increase incidental interception of lingcod, but is expected to allow increased retention of dead lingcod.

Limited Entry Fixed Gear and Open Access Limits for Sablefish South of 36° N. lat.

Because of the darkblotched rockfish closure in the Conception management area (south of 34°27′ N. lat.) during January-February, there was more participation than projected in the daily-trip-limit (DTL) fishery for sablefish south of 36° N. lat. This concentration of effort produced landings of 47 mt (22.3 percent of the harvest guideline), an amount of landings that had not been achieved in 2001 until May. While participation in the sablefish DTL fishery was higher than anticipated in January-February, the pace of the fishery slowed in March. However, another rockfish closure similar to the previous one in January-February is scheduled for November-December. If this rockfish closure shifts participation into the sablefish DTL fishery as it did in January-February, the sablefish DTL fishery may have to be closed due to early attainment of the OY. Because fishery participants wish to have an opportunity to land sablefish in the winter when rockfish fisheries will be closed in this area, the Pacific Council recommended reducing DTL sablefish limits in the Conception area.

For the May-December period, the limited entry fixed gear and open access limits for sablefish south of 36° N. lat. will be reduced from 350 lb per day

(159 kg per day), or 1 landing per week of up to 1,050 lbs (476 kg) to 300 lb per day (136 kg per day), or 1 landing per week of up to 900 lbs (408 kg).

Open Access Limits for Yellowtail in the Salmon Troll Fishery North of 40°10′ N. lat.

In 2001, the Pacific Council's GMT analyzed the incidental catch of yellowtail and canary rockfish in the salmon troll fishery. Management measures aimed at protecting canary rockfish, an overfished species that is often caught in association with yellowtail rockfish, have reduced catch opportunity for yellowtail rockfish which is considered to be a healthy stock. However, the 2001 analysis indicated that the amount of canary rockfish taken with salmon troll gear was not highly correlated to the amount of yellowtail rockfish taken with salmon troll gear. Following these findings in 2001, the Pacific Council adopted, and NMFS implemented, the GMT's recommendation for a yellowtail incidental catch limit specific to the salmon troll fishery. The intent of this small trip limit was to help reduce discard in the salmon troll fishery, without providing an incentive to target yellowtail rockfish or to exacerbate the incidental catch of canary rockfish. The Pacific Council has recommended that NMFS reinstate this same incidental yellowtail retention trip limit for the remainder of 2002.

For the May-December period, the general open access limit for yellowtail rockfish north of 40°10′ N. lat. continues to be 200 lb per month for combined minor shelf, widow and yellowtail rockfish. Participants in the salmon troll fishery in this area have a specific yellowtail rockfish limit of 1 lb (0.45 kg) of yellowtail rockfish per 2 lb (0.91 kg) of salmon, up to 300 lb (136 kg) per month.

Retention of Incidental Halibut Catch in the Primary Sablefish Fishery

The Pacific halibut CSP and implementing regulations at 50 CFR 300.63(a)(3) provide for retention of halibut landed incidentally in the limited entry, longline primary sablefish fishery north of Pt. Chehalis, WA (46°53′18″ N. lat.) in years when the Area 2A TAC is above 900,000 lb (408.2 mt). The 2002 Area 2A TAC is 1,310,000 lb (594.2 mt).

According to IPHC and Federal regulations, Pacific halibut may not be taken by gear other than hook-and-line gear. Only vessels registered for use with sablefish-endorsed limited entry permits may participate in the primary fixed gear sablefish fishery specified for halibut retention in the CSP. Vessels must also carry IPHC commercial halibut licenses in order to retain and land halibut. Incidental halibut retention in the primary sablefish fishery is only available to vessels operating north of Pt. Chehalis, WA (46°53′18″ N. lat.).

Similar to 2001, retention of halibut caught incidentally to the primary sablefish fishery may be retained by appropriately licensed longline vessels. Beginning May 1, 2002, and continuing until the halibut quota (88,389 lbs or 40.1 mt) is taken: longliners participating in the primary sablefish fishery north of Pt. Chehalis, Washington with IPHC licenses may retain incidental halibut landings up to 150 lbs (68 kg) (dressed weight) of halibut for every 1,000 lbs (454 kg) (dressed weight) of sablefish landed and up to two additional halibut in excess of the 150 lb (68 kg) per 1,000 lb (454 kg) ratio per landing. Halibut may not be on board a vessel that also has gear other than longline gear on board (e.g., pot or trawl gear).

Clarification on Limited Entry Small Footrope Trawl for Yellowtail Rockfish North of 40°10′ N. lat.

The current limited entry small footrope trawl limit for yellowtail rockfish north of 40°10′ N. lat. reads, "In landings without flatfish, 1,000 lb per month. As flatfish bycatch, per trip limit is the sum of 33 percent (by weight) of all flatfish except arrowtooth flounder, plus 10 percent (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb per 2 months." This means that any yellowtail rockfish landed in the same landing as flatfish is subject to the flatfish ratio. Yellowtail landed with flatfish in excess of that ratio is subject to applicable enforcement procedures. One thousand lbs (454 kg) of yellowtail may be landed per month in landings that do not include flatfish. In total, yellowtail landings with and without flatfish may not exceed 30,000 lb (13,608 kg) per 2 months.

Corrections

The 2002 fishery specifications and management measures for the Pacific Coast groundfish FMP were published in the **Federal Register** on March 7, 2002 (67 FR 10490). The specifications and management measures contained an error that referred to regulations at 50 CFR part 663, rather than the correct reference to regulations at 50 CFR part 660. This is a minor editorial correction.

NMFS Actions

For the reasons stated here, NMFS concurs with the Pacific Council's recommendations and hereby announces the following changes to the 2002 specifications and management measures (67 FR 10490 March 7, 2002, as amended at 67 FR 15338 April 1, 2002) to read as follows:

1. On page 10516, in section IV, under B. Limited Entry Fishery, at the end of paragraph (1), Tables 3 and 4 are revised to read as follows:

IV. NMFS Actions

B. Limited Entry Fishery

(1) * * *

BILLING CODE 3510-22-S

Table 3. Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**				1,800 lb/ 2 months		
2	North						
3	South						
4	40°10′ - 36° N. lat.			5,000 lb/ 2 months		50,000 lb/ 2 months	
5	South of 36° N. lat.			50,000 lb/ 2 months			
6	**Splitnose - South**				5,000 lb/ 2 months	25,000 lb/ 2 months	
7	40°10′ - 36° N. lat.			25,000 lb/ 2 months			
8	South of 36° N. lat.				4,000 lb/ month	2,000 lb/ month	
9	**Pacific ocean perch - North**[3]				25,000 lb/ 2 months		
10	**Chilipepper - South**[3]				4,000 lb/ 2 months		
11	mid-water trawl						
12	small footrope trawl				7,500 lb/ 2 months		
13	large footrope trawl				500 lb/ trip, not to exceed small footrope cumulative 2-month limits at any time during the year		
14	**DTS complex - North**						
15	Sablefish				6,000 lb/ 2 months		
16	Longspine thornyhead				10,000 lb/ 2 months		
17	Shortspine thornyhead				2,600 lb/ 2 months		
18	Dover sole				30,000 lb/ 2 months	28,000 lb/ 2 months	14,000 lb/ 2 months
19	**DTS complex - South**						
20	Sablefish						
21	Longspine thornyhead						
22	Shortspine thornyhead						
23	Dover sole						
24	**Flatfish - North**						
25	All other flatfish[3]	Small footrope required: 15,000 lb/ month		30,000 lb/ month, no more than 10,000 of which may be petrale sole	40,000 lb/ month, no more than 15,000 of which may be petrale sole	50,000 lb/ month, no more than 20,000 of which may be petrale sole	Small footrope required: 50,000 lb/ month
26	Petrale sole			Not limited			Not limited
27	Rex sole			Not limited			Not limited
28	Arrowtooth flounder			Small footrope required: 7,500 lb/ trip, no more than 30,000 lb/ month			30,000 lb/ trip
29	**Flatfish - South**						
30	All other flatfish[3]	Small footrope: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs, no more than 15,000 lb may be petrale sole					Small footrope: 70,000 lb/ month, no more than 40,000 lb of which may be species other than Pacific sanddabs
31	Petrale sole						Not limited
32	Rex sole						Not limited
33	Arrowtooth flounder			Small footrope required: 7,500 lb/ trip, no more than 30,000 lb/ month			30,000 lb/ trip
34	**All other flatfish[3] - North and South**				Large footrope: 1,000 lb/trip, not to exceed small footrope cumulative monthly limits at any time during the year		
35	**Whiting shoreside**[4]				Primary Season		20,000 lb/ trip

<< TABLE 3 CONTINUED ON NEXT PAGE >>

Table 3. (CONTINUED) Trip Limits[1] and Gear Requirements[2] for Limited Entry Trawl Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
36	**USE OF SMALL FOOTROPE BOTTOM TRAWL[4] OR MIDWATER TRAWL[4] REQUIRED FOR LANDING ALL OF THE FOLLOWING SPECIES:**						
37	**Minor shelf rockfish**			1,000 lb/ month, no more than 300 lb of which may be yelloweye rockfish		300 lb/ month 500 lb/ month	
38	North						
39	South						
40	**Canary rockfish**			600 lb/ 2 months		200 lb/ 2 months	
41	**Widow rockfish**						
42	mid-water trawl	CLOSED[7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative widow limit of 1,500 lb/ month 1,000 lb/ month		CLOSED[7]	
43	small footrope trawl						
44	**Yellowtail - North**[5]						
45	mid-water trawl	CLOSED[7]		During primary whiting season, in trips of at least 10,000 lb of whiting: combined widow and yellowtail limit of 500 lb/ trip, cumulative yellowtail limit of 2,000 lb/ month		CLOSED[7]	
46	small footrope trawl	In landings without flatfish, 1,000 lb/ month. As flatfish bycatch, per trip limit is the sum of 33% (by weight) of all flatfish except arrowtooth flounder, plus 10% (by weight) of arrowtooth flounder. Combined with and without flatfish, not to exceed 30,000 lb/ 2 months.					
47	**Bocaccio - South**[6]	600 lb/ 2 months		1,000 lb/ 2 months		600 lb/ 2 months	
48	**Cowcod**	CLOSED[7]					
49	**Minor nearshore rockfish**			300 lb/ month			
50	North			300 lb/ month			
51	South						
52	**Lingcod**[8]	800 lb/ 2 months		1,000 lb/ 2 months		800 lb/ 2 months	

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat. is about 20 nm south of Cape Mendocino, CA.
2/ Gear requirements and prohibitions are explained above. See IV.A.(14).
3/ "Other" flatfish means all flatfish at 50 CFR 660.302 except those in this Table 3 with species specific management measures, including trip limits.
4/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies before and after the primary season.
5/ Small footrope trawl means a bottom trawl net with a footrope no larger than 8 inches (20 cm) in diameter. Midwater gear also may be used, the footrope must be bare. See above.
6/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
7/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
8/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

Table 4. Trip Limits[1] for Limited Entry Fixed Gear
Other Limits and Requirements Apply -- Read Sections IV. A. and B. NMFS Actions before using this table

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	1,000 lb/ month		5,000 lb/ 2 months			2,000 lb/ 2 months
3	South						
4	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		25,000 lb/ 2 months	
5	South of 36° N. lat.	25,000 lb/ 2 months					
6	**Splitnose - South**						
7	40°10' - 36° N. lat.	25,000 lb/ 2 months		5,000 lb/ 2 months		25,000 lb/ 2 months	
8	South of 36° N. lat.	25,000 lb/ 2 months					
9	**Pacific ocean perch - North**[5]	2,000 lb/ month		4,000 lb/ month			2,000 lb/ month
10	**Sablefish**						
11	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
12	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
13	**Longspine thornyhead**	9,000 lb/ 2 months					
14	**Shortspine thornyhead**	2,000 lb/ 2 months					
15	**Dover sole**	5,000 lb/ month (all flatfish)					
16	**Arrowtooth flounder**						
17	**Petrale sole**						
18	**Rex sole**						
19	**All other flatfish**[3]						
20	**Whiting**[3]	20,000 lb/ trip					
21	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish**[5]						
22	North	200 lb/ month					
23	South						
24	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4]	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[4]	200 lb/ month	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[4]	CLOSED[4]
25	South of 34°27' N. lat.	CLOSED[4]	1,000 lb/ month				CLOSED[4]
26	**Canary rockfish**	CLOSED[4]					
27	**Yelloweye rockfish**	CLOSED[4]					
28	**Cowcod**	CLOSED[4]					
29	**Bocaccio - South**[5]						
30	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[4]		200 lb/ month	CLOSED[4]	
31	South of 34°27' N. lat.	CLOSED[4]	200 lb/ month				CLOSED[4]
32	**Chilipepper - South**[5]						
33	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[4]		500 lb/ month	CLOSED[4]	
34	South of 34°27' N. lat.	CLOSED[4]	2,500 lb/ month				CLOSED[4]
35	**Minor nearshore rockfish**						
36	North	5,000 lb/ month, no more than 2,000 lb of which may be species other than black or blue rockfish[6]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[6]			
37	South						
38	40°10' - 34°27' N. lat.	1,600 lb/ 2 months	CLOSED[4]	Shoreward of 20 ftm depth, 1,600 lb/ 2 months, otherwise CLOSED[4]	1,600 lb/ 2 months	Shoreward of 20 ftm depth, 1,600 lb/ 2 months, otherwise CLOSED[4]	CLOSED[4]
39	South of 34°27' N. lat.	CLOSED[4]	2,000 lb/ 2 months				CLOSED[4]
40	**Lingcod**[7]						
41	North	CLOSED[4]		400 lb/ month			CLOSED[4]
42	South						
43	40°10' - 34°27' N. lat.	CLOSED[4]		Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4]	400 lb/ month	Shoreward of 20 ftm depth, 400 lb/ month, otherwise CLOSED[4]	CLOSED[4]
44	South of 34°27' N. lat.	CLOSED[4]		400 lb/ month			CLOSED[4]

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. to the U.S.-Canada border. "South" means 40°10' N. lat. to the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.
2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 4 with species specific management measures, including trip limits.
3/ The whiting "per trip" limit in the Eureka area inside 100 fm is 10,000 lb/ trip throughout the year. Outside Eureka area, the 20,000 lb/ trip limit applies.
4/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7).
5/ Yellowtail rockfish and widow rockfish coastwide and bocaccio and chilipepper rockfishes in the north are included in the trip limits for shelf rockfish in the appropriate area. POP in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.
6/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.
7/ The minimum size limit for lingcod is 24 inches (61 cm) total length.
To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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* * * * *

2. On page 10519, first column, paragraph (b), line 9, correct the citation to read, "(See 50 CFR 660.323(a)(2)(i))".

3. On page 10519, at the beginning of column 2, add paragraph B(2)(b)(i)(A) to read as follows:

(2) * * *

(b) * * *

(i) * * *

(A) *Incidental halibut retention north of Pt. Chehalis, WA (46°53'18" N. lat).* Vessels authorized to participate in the primary sablefish fishery, licensed by the International Pacific Halibut Commission for commercial fishing in Area 2A (waters off Washington, Oregon, California), and fishing with longline gear north of Pt. Chehalis, WA (46°53'18" N. lat.) may land up to the following cumulative limits: 150 lb (68 kg) dressed weight of halibut per 1,000 lb (454 kg) dressed weight of sablefish, plus up to two additional halibut per fishing trip. "Dressed" halibut in this area means halibut landed eviscerated with their heads on. Halibut taken in the primary sablefish fishery north of Pt. Chehalis may only be landed north of Pt. Chehalis and may not be landed south of Pt. Chehalis.

4. On page 10519, under *C. Trip Limits in the Open Access Fishery*, after paragraph (1), Table 5 is revised to read as follows:

C. Trip Limits in the Open Access Fishery

(1) * * *

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Table 5. Trip Limits[1/] for Open Access Gears
Other Limits and Requirements Apply – Read Sections IV. A. and C. NMFS Actions before using this table
Exceptions for exempted gears at Section IV.C.

line	Species/groups	JAN-FEB	MAR-APR	MAY-JUN	JUL-AUG	SEP-OCT	NOV-DEC
1	**Minor slope rockfish**						
2	North	Per trip, no more than 25% of weight of the sablefish landed					
3	South						
4	40°10' - 36° N. lat.	10,000 lb/ 2 months		5,000 lb/ 2 months		10,000 lb/ 2 months	
5	South of 36° N. lat.	10,000 lb/ 2 months					
6	**Splitnose - South**	200 lb/ month					
7	**Pacific ocean perch - North[4/]**	100 lb/ month					
8	**Sablefish**						
9	North of 36° N. lat.	300 lb/ day, or 1 landing per week of up to 800 lb, not to exceed 2,400 lb/ 2 months					
10	South of 36° N. lat.	350 lb/ day, or 1 landing per week of up to 1,050 lb		300 lb/ day, or 1 landing per week of up to 900 lb			
11	**Thornyheads**						
12	North of 34° 27' N. lat.	CLOSED[3/]					
13	South of 34°27' N. lat.	50 lb/ day, no more than 2,000 lb/ 2 months					
14	**Dover sole**	3,000 lb/ month, no more than 300 lb of which may be species other than Pacific sanddabs					
15	**Arrowtooth flounder**						
16	**Petrale sole**						
17	**Rex sole**						
18	**All other flatfish[2/]**						
19	**Whiting**	300 lb/ month					
20	**Shelf rockfish, including minor shelf rockfish, widow and yellowtail rockfish[4/]**						
21	North	200 lb/ month					
22	South						
23	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[3/]	200 lb/ month	Shoreward of 20 ftm depth, 200 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]
24	South of 34°27' N. lat.	CLOSED[3/]	500 lb/ month				CLOSED[3/]
25	**Canary rockfish**	CLOSED[3/]					
26	**Yelloweye rockfish**	CLOSED[3/]					
27	**Cowcod**	CLOSED[3/]					
28	**Bocaccio - South[4/]**						
29	40°10' - 34°27' N. lat.	200 lb/ month	CLOSED[3/]		200 lb/ month	CLOSED[3/]	
30	South of 34°27' N. lat.	CLOSED[3/]	200 lb/ month				CLOSED[3/]
31	**Chilipepper - South[4/]**						
32	40°10' - 34°27' N. lat.	500 lb/ month	CLOSED[3/]		500 lb/ month	CLOSED[3/]	
33	South of 34°27' N. lat.	CLOSED[3/]	2,500 lb/ month				CLOSED[3/]
34	**Minor nearshore rockfish**						
35	North	3,000 lb/ 2 months, no more than 1,200 lb of which may be species other than black or blue rockfish[5/]		6,000 lb/ 2 months, no more than 3,000 lb of which may be species other than black or blue rockfish[5/]			
36	South						
37	40°10' - 34°27' N. lat.	1,200 lb/ 2 months	CLOSED[3/]	Shoreward of 20 ftm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	1,200 lb/ 2 months	Shoreward of 20 ftm depth, 1,200 lb/ 2 months, otherwise CLOSED[3/]	CLOSED[3/]
38	South of 34°27' N. lat.	CLOSED[3/]	1,200 lb/ 2 months				CLOSED[3/]
39	**Lingcod[6/]**						
40	North	CLOSED[3/]		300 lb/ month			CLOSED[3/]
41	South						
42	40°10' - 34°27' N. lat.	CLOSED[3/]		Shoreward of 20 ftm depth, 300 lb/ month, otherwise CLOSED[3/]	300 lb/ month	Shoreward of 20 ftm depth, 300 lb/ month, otherwise CLOSED[3/]	CLOSED[3/]
43	South of 34°27' N. lat.	CLOSED[3/]		300 lb/ month			CLOSED[3/]

1/ Trip limits apply coastwide unless otherwise specified. "North" means 40°10' N. lat. To the U.S.-Canada border. "South" means 40o10' N. lat. To the U.S.-Mexico border. 40°10' N. lat is about 20 nm south of Cape Mendocino, CA.

2/ "Other flatfish" means all flatfish at 50 CFR 660.302 except those in this Table 5 with species specific management measures, including trip limits.

3/ Closed means that it is prohibited to take and retain, possess, or land the designated species in the time or area indicated. See IV.A.(7)

4/ Yellowtail rockfish in the south and bocaccio and chilipepper rockfishes in the north are included in the trip limits for minor shelf rockfish in the appropriate area. Pop in the south and splitnose rockfish in the north are included in the trip limits for minor slope rockfish in the appropriate area.

5/ For black rockfish north of Cape Alava (48°09'30" N.lat.), and between Destruction Island (47°40'00" N.lat.) and Leadbetter Point (46°38'10" N.lat.), there is an additional limit of 100 lbs or 30 percent by weight of all fish on board, whichever is greater, per vessel, per fishing trip.

6/ The size limit for lingcod is 24 inches (61 cm) total length.

To convert pounds to kilograms, divide by 2.20462, the number of pounds in one kilogram.

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5. On page 10521, second column, under section C(3)(a), add paragraph (a)(v) to read as follows:

(v) Yelloweye rockfish–Closed (Retention prohibited)

* * * * *

6. On page 10521, third column, after paragraph (d), add C(4) to read as follows:

* * * * *

(4) *Groundfish taken with troll gear by vessels engaged in fishing for salmon north of 40°10′ N. lat.*

(a) In any trip in which salmon troll gear, as defined at 50 CFR 660.402, is used to take and land yellowtail rockfish north of 40°10′ N. lat., the following cumulative limit applies: no more than 1 lb (0.45 kg) of yellowtail rockfish may be landed for every 2 lbs (0.91 kg) of salmon landed, and no more than 300 lbs (136 kg) of yellowtail rockfish may be landed per month.

(b) The trip limits in Table 5 apply to all other groundfish taken with troll gear by vessels fishing for salmon.

* * * * *

Classification

These actions are authorized by the Pacific Coast groundfish FMP, the Halibut Act, and their implementing regulations, and are based on the most recent data available. The aggregate data upon which these actions are based are available for public inspection at the Office of the Administrator, Northwest Region, NMFS (see **ADDRESSES**) during business hours.

The Assistant Administrator for Fisheries, NMFS, finds good cause to waive the requirement to provide prior notice and opportunity for public comment on this action pursuant to 5 U.S.C. 553(b)(B), because providing prior notice and opportunity for comment would be impracticable. It would be impracticable because the cumulative trip limit period for the Pacific Coast groundfish fishery begins May 1, 2002, and affording prior notice and opportunity for public comment would impede the agency's function of managing fisheries to achieve OY. Most of the trip limits adjustments in this document are reductions from the status quo. Decreases to trip limits must be implemented in a timely manner to protect overfished and depleted groundfish species and to prevent the harvest of healthy stocks from exceeding the OY for 2002. Because the Pacific Coast groundfish fishery is managed by trip limits, most of which are based on a 2– month cumulative period (January-February, March-April, May-June, July-August, September-October, November-December), these actions should be implemented by the beginning of the next cumulative trip limit period (May 1, 2002) to prevent fishers from harvesting the prior higher trip limits during that period before the new limit goes into place. Allowing fishers to continue harvesting the prior higher trip limits after the start of the cumulative trip limit period may cause premature fishery closures or more severe trip limit reductions in the future. For a few species, the trip limit adjustment is an increase. Increases to trip limits in this inseason action allow fishers to access groundfish allocations without exceeding the OY for those species or the OYs of overfished or depleted stocks and delaying the increase could prevent the industry from obtaining the intended benefit. In addition, the affected public had the opportunity to comment on these actions at the April 8–12, 2002, Pacific Council meeting. For these reasons, good cause also exists to waive the 30–day delay in effectiveness requirement of 5 U.S.C. 553 (d)(3).

These actions are taken under the authority of 50 CFR 300.63(a)(3) and 660.323(b)(1), and are exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 773–773k; 1801 *et seq.*

Dated: May 1, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11218 Filed 5–2–02; 12:49 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 648

[Docket No. 020313058–2094–02 ; I.D. 030402A

RIN 0648–AP07

Fisheries of the Northeastern United States; Spiny Dogfish Fishery; 2002 Specifications

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; final specifications.

SUMMARY: NMFS issues final specifications for the 2002 spiny dogfish fishery. This rule implements a commercial quota and possession limits for the 2002 fishing year to address overfishing of the spiny dogfish resource. This rule also makes a technical correction to the spiny dogfish regulations, to indicate that the target fishing mortality rate (F) specified for the period May 1, 2003 - April 30, 2004, should be F=0.03. This is specified in the Fishery Management Plan for the Spiny Dogfish fishery (FMP). The intent of this action is to comply with implementing regulations for the Fishery Management Plan for the FMP, which require NMFS to publish measures for the upcoming fishing year that will prevent overfishing of this fishery.

DATES: The amendment to part 648 is effective May 2, 2002. The 2002 final specifications are effective from May 2, 2002, through April 30, 2003.

ADDRESSES: Copies of supporting documents used by the Spiny Dogfish Monitoring Committee; the Regulatory Impact Review (RIR), the Final Regulatory Flexibility Analysis (FRFA) contained within the RIR, and the Environmental Assessment (EA) are available from the Northeast Regional Office, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930-2298. The EA/RIR/FRFA is also accessible via the Internet at http://www.nero.nmfs.gov.

FOR FURTHER INFORMATION CONTACT: Bonnie L. Van Pelt, Fishery Policy Analyst, (978)281–9244, fax (978)281–9135, e-mail bonnie.l.vanpelt@noaa.gov.

SUPPLEMENTARY INFORMATION: A proposed rule for this action was published in the **Federal Register** on March 22, 2002, (67 FR 13303). The comment period closed on April 8, 2002.

Background

The spiny dogfish fishery is managed under an FMP developed jointly by the Mid-Atlantic Fishery Management Council and the New England Fishery Management Council (Councils). The implementing regulations for the dogfish fishery are found at 50 CFR part 648, subpart L.

Pursuant to 50 CFR 648.230, the Administrator, Northeast Region, NMFS, (Regional Administrator) implements measures for the 2002 fishing year to assure that the target fishing mortality rate (F), as specified in the FMP, is not exceeded. The target F and management measures (i.e., semi-annual commercial quota and possession limits) are summarized below. Detailed background information regarding the development of the proposed specifications for the 2002 spiny dogfish fishery was provided in the preamble to the proposed rule (67 FR 13303, March 22, 2002) and is not repeated here. In addition to establishing the annual measures, this action makes a technical correction to

the spiny dogfish regulations to indicate that the target F, F=0.03, extends through April 30, 2004. The current regulations mistakenly reference a target F, F=0.03, through April 30, 2003.

Annual Commercial Quota and Possession Limits

The FMP specifies a target F of 0.03 for 2002 to be attained through a commercial quota, and possibly other management measures. This rule implements a commercial quota of 4 million lb (1.81 million kg) for the 2002 fishing year that is allocated on a semi-annual basis as follows: Quota Period 1 (May 1 - October 31) is allocated 57.9% of the 4-million lb (1.81 million kg) quota, or 2,316,000 lbs (1,050,512 kg), and Quota Period 2 (November 1 - April 30) is allocated 42.1% of the 4-million lb (1.81 million kg) quota, or 1,684,000 lbs (763,849 kg).

This final rule also maintains the existing possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively, to allow for the retention of spiny dogfish caught incidentally while fishing for other species throughout the entire fishing year.

Technical Correction

This rule will correct the current regulatory text to extend the target F of 0.03 through the end of the 2003-2004 fishing year (May 1, 2003 - April 30, 2004).

Comments and Responses

There were 2 written comments submitted in response to the proposed rule during the comment period. One came from the Massachusetts Division of Marine Fisheries (MADMF) and the other was from a group of environmental organizations.

NMFS considered all comments received during the comment period that are directly related to the proposed measures in making the decision to issue this final rule.

Comment 1: MADMF was opposed to the level of the proposed commercial quota and requested that NMFS implement a higher quota consistent with the NEFMC recommendation. MADMF believes the resource can support a small-scale directed fishery and still rebuild.

Response: The Spiny Dogfish Monitoring Committee (Monitoring Committee) indicated that the quota of 4.0 million lb that NMFS is implementing through this final rule is consistent with the objective to achieve F=0.03, as required by the FMP. A higher quota would cause the F target to be exceeded and would not comply with the FMP's rebuilding program.

Comment 2: MADMF commented in favor of the higher possession limit of 7,000 lb recommended by the NEFMC and opposed the proposed possession limits. MADMF stated that processors could not operate efficiently (i.e., in cost effective manner) with erratic landing levels that would result from the lower possession limits.

Response: NMFS is maintaining the current possession limits (600 lb for Quota Period 1 and 300 lb for Quota Period 2) because these levels are intended to allow incidentally caught spiny dogfish to be landed during the quota period. Although these possession limits end the directed fishery, which depends on large volumes of landings of large spiny dogfish, this is an anticipated consequence of the FMP. This approach has been chosen because it is necessary to protect the mature female spiny dogfish stock component in order to rebuild the spawning stock. The 7,000 lb (3,175 kg) possession limit would allow for some directed fishing, which is inconsistent with the rebuilding program.

The impact of erratic bycatch landings on processors was considered fully during the development of the FMP. There were two scenarios anticipated in the FMP with respect to the impacts on the processing sector and resulting markets. First, markets for dogfish could be completely lost or, second, other market opportunities could develop. It was acknowledged that the first scenario would be the more likely. However, it was believed that the processing sector might adapt to the landings allowed during the rebuilding period.

Comment 3: The environmental organizations supported the 4-million lb commercial quota, while emphasizing that a 3-million lb quota would be more consistent with the rebuilding strategy outlined in the FMP. They also supported the proposed possession limits and strongly opposed higher possession limits, which would result in a directed fishery and derailed rebuilding efforts.

Response: NMFS is implementing the 4-million lb (1.81 million kg) commercial quota and 600 lb (272 kg)/ 300 lb (136 kg) possession limits for Quota Period 1 and 2, respectively consistent with the Monitoring Committee recommendation to maintain fishing mortality targets and rebuilding objectives of the FMP. The Monitoring Committee did not comment on a 3-million lb quota (1.35 million kg) quota, because the 4-million lb (1.81 million kg) commercial quota allows us to comply with the FMP's fishing mortality and rebuilding objectives, while affording the industry some economic relief. Any further reduction in landings would have to be considered in light of potential increased spiny dogfish bycatch and discards.

Changes From the Proposed Rule

The preamble of the proposed rule referenced trip limits, when in fact this rule implements possession limits--defined as the maximum amount that can be landed in any one 24-hr period (calendar day).

There were no changes made to the regulatory text from the proposed rule.

Classification

This final rule has been determined to be not significant for purposes of E.O. 12866.

This action establishes annual quotas and maintains the current possession limits for the spiny dogfish fishery, which are used to control the harvest of spiny dogfish and to restrict landings when quotas are attained. This action must be taken immediately at the start of the 2002 fishing year on May 1, 2002, to conserve this resource. It would be impracticable to delay implementation of the quota provisions because a hiatus in harvest restrictions represented by the quota would allow for an unrestricted harvest and, if spiny dogfish are congregated in areas where other species are being targeted, the Period 1 quota will quickly be attained. In the absence of a commercial quota, there would be no ability to close the fishery to prevent further increases in fishing mortality and potential deleterious effects to rebuilding efforts. Therefore, the AA finds good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delayed effectiveness period for the implementation of the 2002 Federal spiny dogfish quota.

NMFS and the MAFMC prepared a FRFA for this action. The FRFA includes comments on the Initial Regulatory Flexibility Act (IRFA), the discussion and the responses contained in the preamble to this final rule, and a summary of the analyses done in support of this action. Copies of the analysis are available from the Regional Administrator (see **ADDRESSES**). The preamble to the proposed rule included a detailed summary of the analyses contained in the IRFA, and that entire discussion is not repeated here. A summary of the FRFA follows:

The reason that action is being taken by the agency and the objectives of this final rule are explained in the preambles to the proposed rule and this final rule. This action does not contain any new collection-of-information, reporting,

recordkeeping, or other compliance requirements. It does not duplicate, overlap, or conflict with any other Federal rules. There are no new compliance costs associated with this final rule.

Public Comments

None of the comments that were received on the measures contained in the proposed rule specifically referenced the IRFA analyses of the expected impacts of the proposed trip limit levels on small entities. Concerns about the impacts of the measures on industry were expressed and are discussed in the Comments and Responses section of this final rule (see response to Comments 1 and 2). No changes to the final rule were made as a result of these comments.

Number of Small Entities

The entities impacted by this action include 488 vessels that have reported (based on vessel trip report (VTR) data) spiny dogfish landings to NMFS in 2000 (the most recent year for which there is vessel-specific data). In addition, there are vessels that are not subject to the Federal reporting requirements because they fish exclusively in state waters. It is not possible to identify these vessels, but some number of them are likely to be impacted. There is no reason to presume the impacts on these vessels would be substantially different from the impact on Federally-permitted vessels. Furthermore, 2,079 vessels were issued Federal spiny dogfish permits in 2001, but a large percentage of those have not fished for spiny dogfish. It is presumed that these vessels are interested in the fishery but have chosen not to participate under the restrictive trip limits. If any of these vessels should choose to participate in the upcoming fishing year, they might experience revenue increases associated with landings of spiny dogfish but those increases cannot be estimated.

Minimizing Significant Economic Impact on Small Entities

This FRFA summary includes a discussion of minimizing significant economic impacts on small entities. The IRFA analyzed three alternatives: (1) Alternative 1 is implemented by this action (commercial quota of 4-million lb (1,814 mt) and possession limits of 600 lb (272 kg) and 300 lb (136 kg) for Quota Period 1 and Quota Period 2, respectively); (2) Both Alternative 2 (commercial quota of 8.8 million lb (4 million kg) and a possession limit of 7,000 lb (3,175 kg) for both quota periods) and Alternative 3 (no quota or possession limits) would have lower impact on small entities, but neither meets the conservation objectives of the FMP. Alternative 2 could not be enacted without amending the FMP to modify the F target specified in the rebuilding program. The circumstance contemplated in Alternative 3 could not be allowed under the FMP, which requires the fishery be managed consistent with the FMP.

The FMP determined that the spiny dogfish stock could not support a directed fishery. In the absence of a directed fishery, long-term profitability and solvancy issues could not have been anticipated and would be difficult to compute. Therefore, the potential changes in 2002 revenues under the 4-million lb (1.81-million kg) quota were evaluated relative to landings and revenues derived during 2001: 4.6 million lb (2.08 million kg) of landings, valued at $1,012,000. The analysis is based on the last full fishing year of landings data and assumed that the revenues of the 488 vessels that landed spiny dogfish in 2000 would be reduced proportionately by the proposed action. The reduction in overall gross revenues to the fishery as a whole was estimated to be about $132,000, or about $270 per vessel, compared to fishing year 2001. Compared to actual dogfish landings during the 2001 fishing year of 4.6 million lb (2,087 mt), the 4.0 million-lb (1,814 mt) quota represents a 13 percent reduction. However, the 4.0 million-lb (1,814 mt) quota would not be a reduction relative to the 2001 fishing year quota allocation. It is only due to the landings in excess of the quota that this quota specification for spiny dogfish is expected to result in a reduction in revenues.

List of Subjects in 50 CFR Part 648

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 648 is amended as follows:

PART 648—FISHERIES OF THE NORTHEASTERN UNITED STATES

1. The authority citation for part 648 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 648.230, paragraph (a) is revised to read as follows:

§ 648.230 Catch quotas and other restrictions.

* * * * *

(a) *Annual review.* The Spiny Dogfish Monitoring Committee will annually review the following data, subject to availability, to determine the total allowable level of landings (TAL) and other restrictions necessary to assure a target fishing mortality rate (F) of 0.2 in 1999 through April 30, 2000, a target F of 0.03 from May 1, 2000, through April 30, 2004, and a target F of 0.08 thereafter will not be exceeded: Commercial and recreational catch data; current estimates of F; stock status; recent estimates of recruitment; virtual population analysis results; levels of noncompliance by fishermen or individual states; impact of size/mesh regulations; sea sampling data; impact of gear other than otter trawls and gill nets on the mortality of spiny dogfish; and any other relevant information.

* * * * *

[FR Doc. 02–11271 Filed 5–2–02; 3:28 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 020430101–2101–01; I.D. 042902A]

RIN 0648–AP52

Fisheries Off West Coast States and in the Western Pacific; West Coast Salmon Fisheries; 2002 Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual management measures for the ocean salmon fishery; request for comments.

SUMMARY: NMFS establishes fishery management measures for the 2002 ocean salmon fisheries off Washington, Oregon, and California, and the 2003 salmon seasons opening earlier than May 1, 2003. Specific fishery management measures vary by fishery and by area. The measures establish fishing areas, seasons, quotas, legal gear, recreational fishing days and catch limits, possession and landing restrictions, and minimum lengths for salmon taken in the U.S. exclusive economic zone (EEZ)(3–200 nm) off Washington, Oregon, and California. The management measures are intended to prevent overfishing and to apportion the ocean harvest equitably among treaty Indian, non-treaty commercial, and recreational fisheries. The measures are also intended to allow a portion of the salmon runs to escape the ocean fisheries in order to provide for spawning escapement and for inside fisheries (fisheries occurring in state internal waters).

DATES: Effective from 0001 hours Pacific Daylight Time, May 1, 2002, until the effective date of the 2003 management measures, as published in the **Federal Register**. Comments must be received by May 22, 2002.

ADDRESSES: Comments on the management measures and the related environmental assessment (EA) may be sent to D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, 7600 Sand Point Way N.E., Seattle, WA 98115–0070, fax: 206–526–6376; or to Rod McInnis, Acting Regional Administrator, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, fax: 562–980–4018. Comments will not be accepted if submitted via e-mail or Internet.

Copies of the EA and other documents cited in this document are available from Dr. Donald O. McIsaac, Executive Director, Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

Send comments regarding the reporting burden estimate or any other aspect of the collection-of-information requirements in these management measures, including suggestions for reducing the burden, to one of the NMFS addresses and to the Office of Management and Budget (OMB), Washington, DC 20503 (ATTN: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140, or Svein Fougner at 562–980–4040.

SUPPLEMENTARY INFORMATION:

Background

The ocean salmon fisheries in the EEZ off Washington, Oregon, and California are managed under a "framework" fishery management plan entitled the Pacific Coast Salmon Plan (Salmon FMP). Regulations at 50 CFR part 660, subpart H, provide the mechanism for making preseason and inseason adjustments to the management measures, within limits set by the Salmon FMP, by notification in the **Federal Register**.

These management measures for the 2002 and pre-May 2003 ocean salmon fisheries were recommended by the Pacific Fishery Management Council (Council) at its April 8 to 12, 2002, meeting.

Schedule Used To Establish 2002 Management Measures

The Council announced its annual preseason management process for the 2002 ocean salmon fisheries in the **Federal Register** on January 9, 2002 (67 FR 1186). This document announced the availability of Council documents as well as the dates and locations of Council meetings and public hearings comprising the Council's complete schedule of events for determining the annual proposed and final modifications to ocean salmon fishery management measures. The agendas for the March and April Council meetings were published in subsequent **Federal Register** documents prior to the actual meetings.

In accordance with the Salmon FMP, the Council's Salmon Technical Team (STT) and staff economist prepared a series of reports for the Council, its advisors, and the public. The first of the reports was prepared in February when the necessary scientific information first became available. The first report, "Review of 2001 Ocean Salmon Fisheries" (REVIEW), summarizes biological and socio-economic data for the 2001 ocean salmon fisheries and assesses how well the Council's 2001 management objectives were met. The second report, "Preseason Report I Stock Abundance Analysis for 2002 Ocean Salmon Fisheries" (PRE I), provides the 2002 salmon stock abundance projections and analyzes the impacts on the stocks and Council management goals if the 2001 regulations and regulatory procedures were applied to the projected 2002 stock abundances. For coho salmon there was an insufficient abundance of marked (adipose fin clipped) hatchery coho forecast for 2002; therefore, the 2000 regulations were used to model projected impacts. The completion of Preseason Report I is the initial step in the evaluating the full suite of preseason options.

The Council met in Sacramento, CA from March 11 to 15, 2002, to develop 2002 management options for proposal to the public. The Council proposed three options of commercial and recreational fisheries management for analysis and public comment. These options consisted of various combinations of management measures designed to protect weak stocks of coho and chinook salmon and to provide for ocean harvests of more abundant stocks. After the March Council meeting, the Council's STT and staff economist prepared a third report, "Preseason Report II Analysis of Proposed Regulatory Options for 2002 Ocean Salmon Fisheries," which analyzes the effects of the proposed 2002 management options. This report was made available to the Council, its advisors, and the public.

Public hearings to receive testimony on the proposed options were held on: April 1, 2002, in Westport, WA and Coos Bay, OR; April 2, 2002, in Tillamook, OR and Eureka, CA; and April 3, 2002, in Moss Landing, CA. The Council also received public testimony at both the March and April meetings, and received written comments at the Council office.

The Council met from April 8 to 12, 2002, in Portland, OR to adopt its final 2002 recommendations. Following the April Council meeting, the Council's STT and staff economist prepared a fourth report, "Preseason Report III Analysis of Council-Adopted Management Measures for 2002 Ocean Salmon Fisheries," which analyzes the environmental and socio-economic effects of the Council's final recommendations. This report also was made available to the Council, its advisors, and the public. After the Council took final action on the annual ocean salmon specifications in April, it published the recommended management measures in its newsletter.

Resource Status

Since 1989, NMFS has listed under the Endangered Species Act (ESA) 16 evolutionarily significant units (ESUs) of salmon on the west coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations and issued biological opinions (BOs) that consider the impacts to listed salmonid species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures. Associated with the BOs are incidental take statements that specify the level of take that is exempted from the section 9 prohibitions of the ESA. Some of the BOs have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed ESUs. Other BOs have found that implementation of the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration. In a March 8, 2002, letter to the Council, NMFS provided the Council with ESA consultation standards and guidance for the management of stocks listed under the ESA in anticipation of the BO in

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preparation for the 2002 management season for Sacramento River winter chinook.

Estimates of the 2001 spawning escapements for key stocks managed under the Salmon FMP and preseason estimates of 2002 ocean abundance are provided in the Council's REVIEW and PRE I documents. The primary resource and management concerns are for salmon stocks listed under the ESA.

NMFS has listed three ESUs of coho under the ESA: central California coastal, southern Oregon/northern California coastal, and Oregon coastal (61 FR 56138, October 31, 1996; 62 FR 43937 August 18, 1997; and 63 FR 42587, August 10, 1998, respectively). The three northern sub-stocks of Oregon coastal natural (OCN) coho comprise the Oregon coastal coho ESU. OCN coho are the largest naturally produced component of the natural and hatchery coho stocks originating from rivers south of Leadbetter Point, WA. OCN coho are managed as a stock aggregate with four identified sub-stocks that include coho produced from Oregon river and lake systems south of the Columbia River. NMFS' ESA consultation standards require that the three OCN northern sub-stocks be managed in accordance with Amendment 13 to the Salmon FMP, which permits an exploitation rate of up to 15 percent under the current level of marine survival and parent spawner status. The southern sub-stock is part of the southern Oregon/northern California coastal ESU and must be managed in accordance with the requirements for that ESU. The 2002 ocean abundance estimate for OCN is 71,800 coho, which is 143 percent of the 2001 preseason prediction of 50,100 coho, and 44 percent of the post-season estimate of 163,200 coho (PRE I).

Central California coastal coho and southern Oregon/northern California coastal coho are listed as threatened species under the ESA (61 FR 56138, October 31, 1996, and 62 FR 24588, May 6, 1997). Coho populations in California have not been monitored closely in the past, and no forecasts of the ocean abundance of listed coho originating from California are available; these runs have been generally at low abundance levels for many years. NMFS' ESA consultation standards for the southern Oregon/northern California coastal coho and Central California coastal coho ESUs require that the ocean exploitation rate on Rogue/Klamath hatchery coho be constrained to 13 percent or less, and that the retention of coho in recreational and commercial fisheries off California be prohibited.

Sacramento River winter chinook is listed as an endangered species under the ESA (59 FR 440, January 4, 1994). The Council, at its March 2002 meeting, initiated the FMP amendment process to develop recovery and long term conservation objectives for Sacramento River winter chinook and Central Valley spring chinook. The amendment is on a schedule for completion by November 2003. NMFS has issued a 2-year biological opinion to accommodate the amendment process. The ESA consultation standard for the 2002 seasons requires that the duration and timing of commercial and recreational seasons south of Point Arena, California, not change substantially relative to the 2000 and 2001 seasons. Spawning populations of Sacramento River winter chinook have consistently increased since 1994; the spawner abundance in 2001 was estimated to be 7,200 fish.

California Central Valley spring chinook is listed as a threatened species under the ESA (64 FR 50394, September 16, 1999). Since 1994, the spawning populations of Central Valley spring chinook returning to Deer, Mill, and Butte creeks have increased, with relatively strong returns to Butte Creek. The combined escapement of the three populations in 2001 was 12,300 fish.

California coastal chinook is listed as a threatened species under the ESA (64 FR 50394, September 16, 1999). Coastal chinook spawning populations are not well monitored and no estimate of an ocean exploitation rate is available. NMFS' ESA consultation standard for California coastal chinook requires that the ocean harvest rate on Klamath River fall chinook not exceed 0.16, which is the maximum observed since 1996. The standard is intended to prevent harvest impacts on California coastal chinook from increasing substantially above levels that have occurred since 1996.

Snake River wild fall chinook is listed under the ESA as a threatened species (57 FR 14653, April 22, 1992). Direct information on the stock's ocean distribution and on fishery impacts is not available. Fishery impacts on Snake River fall chinook are evaluated using the Lyons Ferry Hatchery stock as an indicator. The Lyons Ferry stock is widely distributed and harvested by ocean fisheries from southern California to Alaska. NMFS' ESA consultation standard requires that Council fisheries must be managed to ensure that the exploitation rate on age-3 and age-4 adults for the combined Southeast Alaska, Canadian, and Council fisheries is 30 percent less than that observed during the 1988–1993 base period.

This is the third year that NMFS provided guidance to the Council related to the Puget Sound chinook ESU (64 FR 14308, March 24, 1999). NMFS' consultation standards for Puget Sound chinook stocks are expressed in terms of total or southern U.S. fishery exploitation rate ceilings, or terminal escapement objectives. Under the current management structure, Council fisheries are included as part of the suite of fisheries that comprise the fishing regime negotiated each year by the co-managers under *U.S.* v. *Washington* to meet management objectives for Puget Sound and Washington Coastal salmon stocks. Because these management objectives and the management planning structure address fisheries wherever they exist, Council and Puget Sound fisheries are interconnected. Therefore, in adopting its regulations, the Council must determine that its fisheries in the ocean, when combined with the suite of other fisheries impacting this ESU, meet the management targets set for stocks within this ESU. NMFS estimated in its BO for 2000 fisheries that the exploitation rates from Council-managed fisheries on Puget Sound spring and fall chinook stock aggregates have been zero and three percent or less, respectively, in recent years. Management actions taken to meet exploitation rate targets will, therefore, occur primarily in the Puget Sound fisheries, but the nature of the existing process is such that ocean fishery impacts will be accounted for, and are potentially liable to constraining measures to meet particular targets.

NMFS has evaluated the "Puget Sound Comprehensive Chinook Management Plan: Harvest Management Component as a Resource Management Plan" for Puget Sound chinook, and the "Summer Chum Salmon Conservation Initiative—An Implementation Plan to Recover Summer Chum in the Hood Canal and Strait of Juan de Fuca Region" for Hood Canal summer chum, under ESA 4(d) rule (65 FR 42422, July 10, 2000) (the RMPs). The RMPs, jointly developed by the Washington Department of Fish and Wildlife and the Puget Sound Treaty Tribes, include stock-specific harvest management objectives for Puget Sound chinook and Hood Canal summer chum. NMFS has determined that the RMPs are consistent with the ESA 4(d) rule, and that the 2002 ocean and inside fisheries are consistent with the RMPs and associated biological opinion. For the 2002 fisheries the Hood Canal summer chum RMP requires non-retention of chum north of Cape Alava during August and September.

Management Measures for 2002 Fisheries

The Council recommended ocean harvest levels and management measures for 2002 fisheries are designed to apportion the burden of protecting the weak stocks identified and discussed in PRE I equitably among ocean fisheries and to allow maximum harvest of natural and hatchery runs surplus to inside fishery and spawning needs. NMFS finds the Council's recommendations responsive to the goals of the Salmon FMP, the requirements of the resource, and the socio-economic factors affecting resource users. The recommendations are consistent with the requirements of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) and other applicable law, including the ESA and U.S. obligations to Indian tribes with federally recognized fishing rights. Accordingly, NMFS has adopted them.

The dominant issue before the Council in the development of the 2002 management measures for the west coast ocean salmon fisheries was achieving an ocean exploitation rate on OCN coho that would meet the State of Oregon's management objective for ocean harvest of lower Columbia River wild coho. Lower Columbia River coho are not federally listed, however they are listed as an endangered species by the State of Oregon. To protect lower Columbia River coho, Oregon recommended to the Council an ocean exploitation rate on OCN of 10.5–12.5 percent. No ocean exploitation rate estimate is available for lower Columbia River coho, and OCN were used as the best available surrogate. The ESA and Salmon FMP objective for OCN is less than or equal to 15 percent. The reduced abundance of coho, particularly the hatchery stocks, also constrained access to the strong Columbia River chinook runs.

The Oregon Production Index of Oregon coastal and Columbia River hatchery coho stocks is forecast to be only 300,000 fish for 2002, compared to 1.7 million fish in 2001. At the same time, the OCN population is forecast to improve to 71,800 fish, up from the 50,100 coho forecast in 2001. This combination of OCN and hatchery coho abundances required significant constraints on ocean fisheries in order to meet Oregon's OCN management objective for lower Columbia River wild coho. The North of Falcon coho quota in 2002 is only about 47 percent of the 2001 quota.

From the U.S.-Canada border to Cape Falcon, OR, ocean fisheries are managed to protect depressed lower Columbia River fall chinook salmon and Washington coastal and Puget Sound natural coho salmon stocks, and to meet ESA requirements for Snake River fall chinook salmon. Ocean treaty and non-treaty harvests and management measures were based in part on negotiations between Washington State fishery managers, commercial and recreational fishing groups, and the Washington coastal, Puget Sound, and Columbia River treaty Indian tribes as authorized by the U.S. District Court in *U.S.* v. *Washington*, No. C70–9213 (W.D. Wash.); *U.S.* v. *Oregon*, Civil No. 68–513 (D.Or.); and *Hoh Indian Tribe* v. *Baldrige* 522 F. Supp. 683 (1981).

North of Cape Falcon, OR, the 2002 management measures have substantially higher chinook quotas but much lower coho quotas relative to the 2001 season. The total allowable catch for 2002 is 150,000 chinook and 140,000 coho; these fisheries are restricted to protect depressed lower Columbia River wild coho, Washington coastal, Puget Sound, and OCN coho. Washington coastal and Puget Sound chinook generally migrate to the far north and are affected insignificantly by ocean harvests from Cape Falcon to the U.S.-Canada Border. North of Cape Alava there is a new provision requiring non-retention of chum during August and September.

South of Cape Falcon, OR, the retention of coho is prohibited, except for a recreational selective fishery off Oregon with a 22,500-fish quota of marked hatchery coho. Chinook fisheries are constrained primarily to meet the ESA standards for California coastal chinook and Sacramento River winter chinook. The Council's recommendations were below the 15-percent exploitation rate permitted under Amendment 13 to protect listed OCN coho stocks, with an expected 12.3-percent OCN coho exploitation rate and a 7.5-percent marine exploitation rate for Rogue/Klamath coho.

Treaty Indian Fisheries

The treaty-Indian commercial troll fishery quota is 60,000 chinook in ocean management areas and Area 4B combined, a significant increase from 2001. The fisheries include a chinook-directed fishery in May and June (under a quota of 30,000 chinook) and an all-salmon season beginning in July with a 30,000 chinook sub-quota. The coho quota for the treaty-Indian troll fishery in ocean management areas, including Washington State Statistical Area 4B for the July–September period is 60,000 coho, a decrease from 2001.

Management Measures for 2003 Fisheries

The timing of the March and April Council meetings makes it impracticable for the Council to recommend fishing seasons that begin before May 1 of the same year. Therefore, the 2003 fishing seasons opening earlier than May 1 are also established in this action. The Council recommended, and NMFS concurs, that the recreational seasons from Horse Mountain to the U.S.-Mexico Border will open off California in 2003 as indicated in the season description section. At the November 2002 meeting, the Council may consider inseason recommendations to adjust commercial and recreational seasons for all salmon except coho prior to May 1 in areas off Oregon south of Cape Falcon. At the March 2003 meeting, the Council may consider inseason recommendations to open commercial seasons for all salmon except coho prior to May 1 in areas off Washington and Oregon north of Cape Falcon.

Inseason Actions

The following sections set out the management regime for the salmon fishery. Open seasons and days are described in Sections 1, 2, and 3 of the 2002 management measures. Inseason closures in the commercial and recreational fisheries are announced on the NMFS hotline and through the U.S. Coast Guard Notice to Mariners as described in Section 7. Other inseason adjustments to management measures are also announced on the hotline and through the Notice to Mariners.

The following are the management measures recommended by the Council and approved and implemented by NMFS for 2002 and, as specified, for 2003.

Section 1. Commercial Management Measures for 2002 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery.

A. Season Description

North of Cape Falcon

U.S.-Canada Border to Cape Falcon

May 1 through earlier of June 30 or 50,000 chinook quota. All salmon except coho (C.6). See gear restrictions (C.2.a). Cape Flattery and Columbia Control Zones closed (C.4.a, C.4.b). Vessels must land and deliver their fish within the area, in adjacent areas closed to commercial non-Indian salmon fishing, or in areas south of Cape Falcon, and within 24 hours of any

closure of this fishery; State regulations require that fishers fishing within this area and intending to land salmon south of Cape Falcon notify Oregon Department of Fish and Wildlife (ODFW) before they leave the area at the following phone number (541) 867–0300, Ext. 252. Inseason actions may modify quotas or harvest guidelines in later fisheries to achieve or prevent exceeding the overall allowable troll harvest impacts (C.7.a).

Except as provided below during the selective fishery, the season will be: July 1 through earlier of September 8 or 32,500 chinook quota (C.7.a). All salmon except coho, and no chum retention north of Cape Alava during August and September. Gear restricted to plugs 6 inches (15.2 cm) or longer between U.S.-Canada Border to Leadbetter Point (C.2.b). Cape Flattery and Columbia Control Zones closed (C.4.a, C.4.b). Vessels must land and deliver their fish within the area, in adjacent areas closed to commercial non-Indian salmon fishing, or in areas south of Cape Falcon, and within 24 hours of any closure of this fishery. No more than four spreads per line between Cape Falcon and Leadbetter Point (C.2.c). Trip limits, gear restrictions, and guidelines may be implemented or adjusted inseason (C.7.a).

Selective Fishery for Adipose Fin Clipped Coho

Leadbetter Point to Cape Falcon: All salmon August 1 through earlier of September 8 or subarea quota of 5,000 adipose fin clipped coho (all retained coho must have a healed adipose fin clip). Fishery will remain open for all salmon except coho after the marked hatchery coho quota is reached, provided adequate chinook impacts remain on the 32,500 chinook quota. Washington state regulations require fishers fishing within this subarea to land coho south of Leadbetter Point. Oregon state regulations require that fishers fishing within this subarea and intending to land chinook or coho south of this subarea notify ODFW before they leave the subarea at the following phone number (541) 867–0300 Ext. 252. Trip limits, gear restrictions, and guidelines may be implemented or adjusted inseason.

South of Cape Falcon

Cape Falcon to Florence South Jetty

March 20 through July 15; August 1 through August 29; and September 1 through October 31. All salmon except coho. See gear restrictions (C.2.a, C.2.d) and Oregon State regulations for a description of the closed area at the mouth of Tillamook Bay.

In 2003 the season will open March 15 for all salmon except coho. This opening could be modified following Council review at its November 2002 meeting.

Florence South Jetty to Humbug Mountain

March 20 through June 30; July 17 through August 29; and September 1 through October 31. All salmon except coho. See gear restrictions (C.2.a, C.2.d).

In 2003 the season will open March 15 for all salmon except coho. This opening could be modified following Council review at its November 2002 meeting.

Humbug Mountain to Oregon-California Border

March 20 through May 31. All salmon except coho. See gear restrictions (C.2.a, C.2.d).

June 1 through earlier of June 30 or 3,000 chinook quota; July 1 through earlier of July 31 or 1,500 chinook quota; August 1 through earlier of August 29 or 3,000 chinook quota; and September 1 through earlier of September 30 or 2,000 chinook quota. No transfer of remaining quota from earlier fisheries allowed. All salmon except coho. Possession and landing limit of 50 fish per trip. See gear restrictions (C.2.a, C.2.d). All salmon must be landed and delivered to Gold Beach, Port Orford, or Brookings, and within 24 hours of closure.

In 2003 the season will open March 15 for all salmon except coho. This opening could be modified following Council review at its November 2002 meeting.

Oregon-California Border to Humboldt South Jetty

August 16 through the earlier of August 30 or 3,000 chinook quota and September 1 through earlier of September 30 or 10,000 chinook quota. All salmon except coho. Possession and landing limit of 40 fish per day. See gear restrictions (C.2.a, C.2.e). All fish must be landed within the area and within 24 hours of any closure of the fishery. When the fishery is closed between the OR–CA border and Humbug Mountain and open to the south, vessels with fish on board caught in the open area off California may seek temporary mooring in Brookings, OR prior to landing in California only if such vessels first notify the Chetco River Coast Guard Station via VHF channel 22A between the hours of 0500 and 2200 and provide the vessel name, number of fish on board, and estimated time of arrival. Klamath Control Zone closed (C.4.c).

Horse Mountain to Point Arena (Fort Bragg)

July 20 through earlier of July 30 or 10,000 chinook quota; August 1 through August 30; and September 1 through September 30. All salmon except coho. All fish caught in this area in July and August must be landed within the area. All fish caught in this area must be landed within 24 hours of any closure of the fishery. See gear restrictions (C.2.a, C.2.e).

Point Arena to Pigeon Point (San Francisco)

May 1 through September 30. All salmon except coho. Minimum size limit 26 inches (66.0 cm) total length. See gear restrictions (C.2.a, C.2.e).

Point Reyes to Point San Pedro (Fall Area Target Zone)

October 1 through October 18, Monday through Friday. All salmon except coho. Minimum size limit 26 inches (66.0 cm) total length. See gear restrictions (C.2.a, C.2.e).

Pigeon Point to U.S.-Mexico Border

May 1 through September 30. All salmon except coho. Minimum size limit 26 inches (66.0 cm) total length. See gear restrictions (C.2.a, C.2.e).

B. MINIMUM SIZE

[Inches]

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
North of Cape Falcon	28.0	21.5	16.0	12.0	None.

B. MINIMUM SIZE—Continued

[Inches]

Area (when open)	Chinook		Coho		Pink
	Total length	Head-off	Total length	Head-off	
South of Cape Falcon	[a]26.0	[a]19.5			None.

[a] Chinook not less than 26 inches (19.5 inches head-off) taken in open seasons south of Cape Falcon may be landed north of Cape Falcon only when the season is closed north of Cape Falcon.
Metric equivalents: 28.0 in=71.1 cm, 26.0 in=66.0 cm, 21.5 in=54.6 cm, 19.5 in=49.5 cm, 16.0 in=40.6 cm, 12.0 in=30.5 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. *Compliance with Minimum Size or Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2. *Gear Restrictions:*

a. Single point, single shank, barbless hooks are required in all fisheries.

b. *U.S.-Canada Border to Leadbetter Point, July 1 to September 8:* Gear restricted to plugs with a one piece body that is at least six inches long, not including hooks or attachments.

c. *Leadbetter Point to Cape Falcon, July 1 to September 8:* No more than 4 spreads are allowed per line.

Spread defined: A single leader connected to an individual lure or bait.

d. *Off Oregon South of Cape Falcon:* No more than 4 spreads are allowed per line.

e. *Off California:* No more than 6 lines are allowed per vessel and barbless circle hooks are required when fishing with bait by any means other than trolling.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

Trolling defined: Fishing from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

C.3. *Transit Through Closed Areas with Salmon on Board:* It is unlawful for a vessel to have troll or recreational gear in the water while transiting any area closed to fishing for a certain species of salmon, while possessing that species of salmon; however, fishing for species other than salmon is not prohibited if the area is open for such species and no salmon are in possession.

C.4. *Control Zone Definitions:*

a. *Cape Flattery Control Zone:* The area from Cape Flattery (48°23′00″ N. lat.) to the northern boundary of the U.S. EEZ; and the area from Cape Flattery south to Cape Alava, 48°10′00″ N. lat. and east of 125°05′00″ W. long.

b. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

c. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.5. *Notification When Unsafe Conditions Prevent Compliance with Regulations:* If prevented by unsafe weather conditions or mechanical problems from meeting special management area landing restrictions, vessels must notify the U.S. Coast Guard and receive acknowledgment of such notification prior to leaving the area. This notification shall include the name of the vessel, port where delivery will be made, approximate amount of salmon (by species) on board and the estimated time of arrival.

C.6. *Incidental Halibut Harvest:* During authorized periods, the operator of a vessel that has been issued an incidental halibut harvest license may retain Pacific halibut caught incidentally in Area 2A while trolling for salmon. Halibut retained must be no less than 32 inches (81.3 cm) in total length (with head on). License applications for incidental harvest must be obtained from the International Pacific Halibut Commission (phone 206–634–1838). Applicants must apply prior to April 1 of each year. Incidental harvest is authorized only during May and June troll seasons and after June 30 if quota remains and if announced on the NMFS hotline (phone 800–662–9825). ODFW and Washington Department of Fish and Wildlife (WDFW) will monitor landings. If the landings are projected to exceed the 39,300-lb. (17.8-mt) preseason allocation or the total Area 2A non-Indian commercial halibut allocation, NMFS will take inseason action to close the incidental halibut fishery.

License holders may land no more than 1 halibut per each 3 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip.

C.7. *Inseason Management:* In addition to standard inseason actions or modifications already noted under the season description, the following inseason guidance is provided to NMFS:

a. In the overall non-Indian commercial chinook quota north of Cape Falcon, 20,000 chinook from the May/June harvest quota are the result of impacts assessed at the July–September harvest impact rate. Inseason, these 20,000 chinook (or remaining portion thereof) may be transferred to the July–September harvest guideline at a one-to-one rate if not caught in the May/June fishery. Any chinook remaining in the May/June harvest guideline in excess of 20,000 may be transferred to the July–September harvest guideline on a fishery impact equivalent basis.

b. At the March 2003 meeting, the Council will consider inseason

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recommendations to open commercial seasons for all salmon except coho prior to May 1 in areas off Oregon and Washington north of Cape Falcon.

C.8. Consistent with Council management objectives, the State of Oregon may establish additional late-season, chinook-only fisheries in state waters. Check state regulations for details.

C.9. For the purposes of CDFG Code, Section 8232.5, the definition of the Klamath Management Zone for the ocean salmon season shall be that area from Humbug Mountain, OR to Horse Mountain, CA.

Section 2. Recreational Management Measures for 2002 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C that must be followed for lawful participation in the fishery.

A. Season Description

North of Cape Falcon

U.S.-Canada Border to Cape Falcon

May 25 through earlier of June 16 or 20,000 chinook quota (7 days per week) (C.4.). Chinook salmon only; 2 fish per day. See gear restrictions (C.2.a). Columbia Control Zone closed (C.3.a).

U.S.-Canada Border to Cape Alava (Neah Bay Area)

July 7 through earlier of September 8 or 11,780 coho subarea quota, 7 days per week. All salmon, except no chum retention during August and September; 2 fish per day and all retained coho must have a healed adipose fin clip. Chinook non-retention east of the Bonilla-Tatoosh line during the Council managed recreational ocean fishery in July through September. The Bonilla-Tatoosh Line is defined as a line running from the western end of Cape Flattery to Tatoosh Island Lighthouse (48°23′30″ N. lat., 124°44′12″ W. long.) to the buoy adjacent to Duntze Rock (48°28′00″ N. lat., 124°45′00″ W. long.), then in a straight line to Bonilla Point (48°35′30″ N. lat., 124°43′00″ W. long.) on Vancouver Island, BC. Inseason management may be used to sustain season length and keep harvest within a guideline of 2,600 chinook (C.4).

Cape Alava to Queets River (La Push Area)

July 7 through earlier of September 8 or 2,770 coho subarea quota; September 21 through earlier of October 6 or overall subarea quota of 100 coho and 100 chinook; 7 days per week. All salmon; 2 fish per day and all retained coho must have a healed adipose fin clip. See gear restrictions (C.2.a). Inseason management may be used to sustain season length and keep harvest within a guideline of 1,600 chinook (C.4).

Queets River to Leadbetter Point (Westport Area)

June 30 through earlier of September 8 or 39,280 coho subarea quota. Sunday through Thursday prior to August 16, 7 days per week thereafter. All salmon. 2 fish per day and all retained coho must have a healed adipose fin clip. See gear restrictions (C.2.a). Inseason management may be used to sustain season length and keep harvest within a guideline of 32,000 chinook (C.4).

Leadbetter Point to Cape Falcon (Columbia River Area)

July 7 through earlier of September 30 or 55,700 coho subarea quota. Sunday through Thursday prior to August 16, 7 days per week beginning August 16. All salmon. Two fish per day and all retained coho must have a healed adipose fin clip. Closed between Cape Falcon and Tillamook Head beginning August 1. Columbia Control Zone closed (C.3.a). See gear restrictions (C.2.a). Inseason management may be used to sustain season length and keep harvest within a guideline of 11,200 chinook (C.4).

South of Cape Falcon

Cape Falcon to Humbug Mountain

Except as provided below during the selective fishery, the season will be April 1 through October 31. All salmon except coho; 2 fish per day. See gear restrictions (C.2.a, C.2.b). See Oregon State regulations for a description of a closure at the mouth of Tillamook Bay.

In 2003 the season will open March 15 for all salmon except coho. Two fish per day. Same gear restrictions as in 2002. This opening could be modified following Council review at its November 2002 meeting.

Selective fishery for marked coho: July 7 through earlier of August 4 or a landed catch of 22,500 coho; 7 days per week. All salmon; 2 fish per day, all retained coho must have a healed adipose fin clip. See gear restrictions (C.2.a, C.2.b). Open days may be adjusted to utilize the available quota. All salmon except coho season reopens the earlier of August 5 or attainment of the coho quota.

Humbug Mountain to Horse Mountain (Klamath Management Zone)

May 15 through June 30; July 3 and 4; and August 1 through September 15. All salmon except coho; 2 fish per day; no more than 6 fish in 7 consecutive days. See gear restrictions (C.2.a, C.2.b). Klamath Control Zone closed in August (C.3.b).

Horse Mountain to Point Arena (Fort Bragg)

February 16 through July 7 and July 20 through November 17. All salmon except coho; 2 fish per day. Minimum size 24 inches (61.0 cm) total length through April 30 and 20 inches (50.8 cm) total length thereafter. See gear restrictions (C.2.a, C.2.b, C.2.c).

In 2003, season opens February 15 for all salmon except coho. 2 fish per day, 24-inch (61.0-cm) total length minimum size limit and the same gear restrictions as in 2002.

Point Arena to Pigeon Point (San Francisco)

April 13 through November 10. All salmon except coho; 2 fish per day. Minimum size limit 24 inches (61.0 cm) total length through April 30 and 20 inches (50.8 cm) total length thereafter. See gear restrictions (C.2.a, C.2.b, C.2.c).

In 2003, the season will open April 12 for all salmon except coho. 2 fish per day, 24-inch (61.0-cm) total length minimum size limit and the same gear restrictions as in 2002.

Pigeon Point to U.S.-Mexico Border

March 30 through September 29. All salmon except coho; 2 fish per day. Minimum size limit 24 inches (61.0 cm) total length through April 30 and 20 inches (50.8 cm) total length thereafter. See gear restrictions (C.2.a, C.2.b, C.2.c).

In 2003, the season will open March 29 for all salmon except coho. Two fish per day, 24-inch (61.0-cm) total length minimum size limit and the same gear restrictions as in 2002.

B. MINIMUM SIZE

[Total length in inches]

Area (when open)	Chinook	Coho	Pink
North of Cape Falcon	24.0	16.0	None

B. MINIMUM SIZE—Continued

[Total length in inches]

Area (when open)	Chinook	Coho	Pink
Cape Falcon to Horse Mountain	20.0	16.0	None, except 20.0 off CA.
South of Horse Mt. Prior to May 1	24.0	.....	20.0
Beginning May 1	20.0	.....	20.0

Metric equivalents: 24.0 in=61.0 cm, 20.0 in=50.8 cm, 16.0 in=40.6 cm.

C. Special Requirements, Definitions, Restrictions, or Exceptions

C.1. *Compliance with Minimum Size and Other Special Restrictions:* All salmon on board a vessel must meet the minimum size or other special requirements for the area being fished, and the area in which they are landed if that area is open. Salmon may be landed in an area that is closed only if they meet the minimum size or other special requirements for the area in which they were caught.

C.2. *Gear Restrictions:* All persons fishing for salmon, and all persons fishing from a boat with salmon on board must meet the gear restrictions listed below for specific areas or seasons.

a. *U.S.-Canada Border to Point Conception, California:* No more than one rod may be used per angler and single point, single shank barbless hooks are required for all fishing gear.

[**Note:** ODFW regulations in the state-waters fishery off Tillamook Bay may allow the use of barbed hooks to be consistent with inside regulations.]

b. *Between Cape Falcon, OR and Point Conception, CA:* Anglers must use no more than 2 single point, single shank, barbless hooks.

c. *Off California between Horse Mountain and Point Conception:* Single point, single shank, barbless circle hooks (see circle hook definition below) must be used if angling with bait by any means other than trolling and no more than 2 such hooks shall be used. When angling with 2 hooks, the distance between the hooks must not exceed 5 inches when measured from the top of the eye of the top hook to the inner base of the curve of the lower hook, and both hooks must be permanently tied in place (hard tied). Circle hooks are not required when artificial lures are used without bait.

Circle hook defined: A hook with a generally circular shape and a point which turns inward, pointing directly to the shank at a 90° angle.

Trolling defined: Angling from a boat or floating device that is making way by means of a source of power, other than drifting by means of the prevailing water current or weather conditions.

C.3. *Control Zone Definitions:*

a. *Columbia Control Zone:* An area at the Columbia River mouth, bounded on the west by a line running northeast/southwest between the red lighted Buoy #4 (46°13′35″ N. lat., 124°06′50″ W. long.) and the green lighted Buoy #7 (46°15′09″ N. lat., 124°06′16″ W. long.); on the east, by the Buoy #10 line which bears north/south at 357° true from the south jetty at 46°14′00″ N. lat., 124°03′07″ W. long. to its intersection with the north jetty; on the north, by a line running northeast/southwest between the green lighted Buoy #7 to the tip of the north jetty (46°15′48″ N. lat., 124°05′20″ W. long.) and then along the north jetty to the point of intersection with the Buoy #10 line; and, on the south, by a line running northeast/southwest between the red lighted Buoy #4 and tip of the south jetty (46°14′03″ N. lat., 124°04′05″ W. long.), and then along the south jetty to the point of intersection with the Buoy #10 line.

b. *Klamath Control Zone:* The ocean area at the Klamath River mouth bounded on the north by 41°38′48″ N. lat. (approximately 6 nautical miles (11.1 km) north of the Klamath River mouth); on the west, by 124°23′00″ W. long. (approximately 12 nautical miles (22.2 km) off shore); and, on the south, by 41°26′48″ N. lat. (approximately 6 nautical miles (11.1 km) south of the Klamath River mouth).

C.4. *Inseason Management:* Regulatory modifications may become necessary inseason to meet preseason management objectives such as quotas, harvest guidelines, and season duration. Actions could include modifications to bag limits or days open to fishing, and extensions or reductions in areas open to fishing. NMFS may transfer coho inseason among recreational subareas north of Cape Falcon to help meet the recreational season duration objectives (for each subarea) after conferring with the states, Council, representatives of the affected ports, and the Salmon Advisory Subpanel recreational representatives north of Cape Falcon.

In addition to the above and modifications already noted under season descriptions, the following guidance is provided to NMFS:

In the overall recreational chinook quota north of Cape Falcon, 10,000 chinook from the May/June harvest quota are the result of impacts assessed at the July-September harvest impact rate. Inseason, these 10,000 chinook (or remaining portion thereof) may be transferred to the July-September harvest guideline at a one-to-one rate if not caught in the May/June fishery. Any chinook remaining in the May/June harvest guideline in excess of 10,000 may be transferred to the July-September harvest guideline on a fishery impact equivalent basis.

C.5. *Additional Seasons in State Territorial Waters:* Consistent with Council management objectives, the states of Washington and Oregon may establish limited seasons in state waters. Oregon state-water fisheries are limited to chinook salmon. Check state regulations for details.

Section 3. Treaty Indian Management Measures for 2002 Ocean Salmon Fisheries

Note: This section contains restrictions in parts A, B, and C which must be followed for lawful participation in the fishery.

A. Season Descriptions

Tribe and area boundaries	Open seasons	Salmon species	Minimum size (inches)		Special restrictions by area
			Chinook	Coho	
MAKAH—Washington State Statistical Area 4B and that portion of the FMA north of 48°02′15″ N. lat. (Norwegian Memorial) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat or no more than 4 hand-held lines per person.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUILEUTE—That portion of the FMA between 48°07′36″ N. lat. (Sand Point) and 47°31′42″ N. lat. (Queets River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
HOH—That portion of the FMA between 47°54′18″ N. lat. (Quillayute River) and 47°21′00″ N. lat. (Quinault River) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	
QUINAULT—That portion of the FMA between 47°40′06″ N. lat. (Destruction Island) and 46°53′18″ N. lat. (Point Chehalis) and east of 125°44′00″ W. long.	May 1 through earlier of June 30 or chinook quota.	All except coho	24		Barbless hooks. No more than 8 fixed lines per boat.
	July 1 through earliest of September 15 or chinook or coho quota.	All	24	16	

* Metric equivalents: 24 in=61.0 cm, 16 in=40.6 cm.

B. Special Requirements, Restrictions, and Exceptions

B.1. All boundaries may be changed to include such other areas as may hereafter be authorized by a Federal court for that tribe's treaty fishery.

B.2. Applicable lengths for dressed, head-off salmon, are 18 inches (45.7 cm) for chinook and 12 inches (30.5 cm) for coho. Minimum size and retention limits for ceremonial and subsistence harvest are as follows:

Makah Tribe: None.

Quileute, Hoh and Quinault tribes: Not more than 2 chinook longer than 24 inches (61.0 cm) in total length may be retained per day. Chinook less than 24 inches (61.0 cm) total length may be retained.

B.3. The area within a 6 nautical mile (11.1 km) radius of the mouths of the Queets River (47°31′42″ N. lat.) and the Hoh River (47°45′12″ N. lat.) will be closed to commercial fishing. A closure within 2 nautical miles (3.7 km) of the mouth of the Quinault River (47°21′00″ N. lat.) may be enacted by the Quinault Nation and/or the State of Washington and will not adversely affect the Secretary of Commerce's management regime.

C. Quotas

C.1. The overall treaty troll ocean quotas are 60,000 chinook and 60,000 coho. The overall chinook quota is divided into 30,000 chinook for the May/June chinook-directed fishery and 30,000 chinook for the July through September all-salmon season. If the chinook quota for the May/June fishery is not fully utilized, the excess fish cannot be transferred into the later all-salmon season. The quotas include troll catches by the S'Klallam and Makah tribes in Washington State Statistical Area 4B from May 1 through September 30.

Section 4. Halibut Retention

Under the authority of the Northern Pacific Halibut Act, NMFS promulgated regulations governing the Pacific halibut fishery which appear at 50 CFR part 300, subpart E. In addition, the 2002 Pacific halibut management measures were published in the **Federal Register** on March 20, 2002 (67 FR 12885). The regulations and management measures provide that vessels participating in the salmon troll fishery in Area 2A (all waters off the States of Washington, Oregon, and California), which have obtained the appropriate International Pacific Halibut Commission (IPHC) license, may retain halibut caught incidentally during authorized periods in conformance with provisions published with the annual salmon management measures. A salmon troller may participate in the halibut incidental catch fishery during the salmon troll season or in the directed commercial fishery targeting halibut, but not both.

The following measures have been approved by IPHC, and implemented by NMFS. The operator of a vessel who has been issued an incidental halibut harvest license by the IPHC may retain Pacific halibut caught incidentally in Area 2A, during authorized periods, while trolling for salmon. Incidental harvest is authorized only during the May and June troll seasons. It is also authorized after June 30 if halibut quota remains and if halibut retention is announced on the NMFS hotline (phone 800–622–9825). License holders may land no more than 1 halibut per each 3 chinook, except 1 halibut may be landed without meeting the ratio requirement, and no more than 35 halibut may be landed per trip. Halibut retained must meet the minimum size limit of 32 inches (81.3 cm). The ODFW and WDFW will monitor landings and, if they are projected to exceed the 39,300-lb. (17.8-mt) preseason allocation or the Area 2A non-Indian commercial total allowable catch of halibut, NMFS will take inseason action to close the incidental halibut fishery. License applications for incidental harvest must be obtained from the IPHC. Applicants must apply prior to April 1 of each year.

Section 5. Gear Definitions and Restrictions

In addition to the gear restrictions shown in Section 1, 2, and 3, the following gear definitions and restrictions are applicable:

Commercial Troll Fishing Gear: Troll fishing gear for the ocean salmon fisheries in the EEZ off Washington, Oregon, and California is defined as one or more lines that drag hooks behind a moving fishing vessel. In that portion of the fishery management area (FMA) off Oregon and Washington, the line or lines must be affixed to the vessel and must not be intentionally disengaged from the vessel at any time during the fishing operation.

Recreational Fishing Gear: Recreational fishing gear for the FMA is defined as angling tackle consisting of a line with no more than one artificial lure or natural bait attached. In that portion of the FMA off Oregon and Washington, the line must be attached to a rod and reel held by hand or closely attended; the rod and reel must be held by hand while playing a hooked fish. No person may use more than one rod and line while fishing off Oregon or Washington. In that portion of the FMA off California, the line must be attached to a rod and reel held by hand or closely attended. Weights directly attached to a line may not exceed 4 lb (1.8 kg). While fishing off California north of Point Conception, no person fishing for salmon and no person fishing from a boat with salmon on board may use more than one rod and line. Fishing includes any activity that can reasonably be expected to result in the catching, taking, or harvesting of fish.

Section 6. Geographical Landmarks

Wherever the words "nautical miles off shore" are used in this document, the distance is measured from the baseline from which the territorial sea is measured. Geographical landmarks referenced in this document are at the following locations:

Cape Flattery	48°23′00″ N. lat.
Cape Alava	48°10′00″ N. lat.
Queets River	47°31′42″ N. lat.
Leadbetter Point	46°38′10″ N. lat.
Cape Falcon	45°46′00″ N. lat.
Florence South Jetty	44°00′54″ N. lat.
Humbug Mountain	42°40′30″ N. lat.
Oregon-California Border.	42°00′00″ N. lat.
Humboldt South Jetty	40°45′53″ N. lat.
Horse Mountain	40°05′00″ N. lat.
Point Arena	38°57′30″ N. lat.
Point Reyes	37°59′44″ N. lat.
Point San Pedro	37°35′40″ N. lat.
Pigeon Point	37°11′00″ N. lat.
Point Conception	34°27′00″ N. lat.

Section 7. Inseason Notice Procedures

Actual notice of inseason management actions will be provided by a telephone hotline administered by the Northwest Region, NMFS, 206–526–6667 or 800–662–9825, and by U.S. Coast Guard Notice to Mariners broadcasts. These broadcasts are announced on Channel 16 VHF–FM and 2182 KHz at frequent intervals. The announcements designate the channel or frequency over which the Notice to Mariners will be immediately broadcast. Inseason actions will also be filed with the **Federal Register** as soon as practicable. Since provisions of these management measures may be altered by inseason actions, fishermen should monitor either the telephone hotline or Coast Guard broadcasts for current information for the area in which they are fishing.

Classification

This notification of annual management measures is exempt from review under Executive Order 12866.

The Assistant Administrator for Fisheries, NOAA (AA) finds good cause under 5 U.S.C. 553(b)(B), to waive the requirement for prior notice and opportunity for public comment.

The time-frame of the preseason process for determining the annual modifications to ocean salmon fishery management measures is driven by the availability of biological data. Ocean salmon fisheries are directed primarily at maturing fish destined to return to freshwater and spawn each year. Fisheries are adjusted annually based on the status of the affected stocks that particular year. But the information necessary to forecast stock status, particularly escapement information, is not available until the first part of each year, since spawning escapement continues through the fall. The preseason planning and public review process is initiated in February as soon as the forecast information becomes available. The public planning process requires coordination of management actions of four states, numerous Indian tribes, and the Federal Government, all of which have management authority over the stocks. The government entities also involve the affected user groups. This complex process is compressed into a 2-month period which culminates at the April Council meeting in order to provide decisions necessary prior to the start of fisheries on May 1. Fisheries generally begin May 1 to provide access to harvestable fish and greater flexibility to use time/area constraints to meet conservation and use objectives.

As described earlier (See Schedule Used to Establish 2002 Management Measures), the Council solicited public comment on these measures and has notified the public of the measures it recommended for implementation. In addition to the Council process, notice and opportunity for public comment is provided through meetings and caucuses of State, Tribal, local governments, and the various user groups. This parallel process occurs throughout the February to April time-frame when Council managed salmon fisheries are developed. The major meetings that concern salmon fisheries on the west coast include the Klamath Fishery Management Council, established at 16 U.S.C. 46085–2; North of Cape Falcon Forum, sponsored by the state of Washington and northwest Indian tribes with treaty fishing rights; *U.S.* v. *Oregon* meetings related to ocean and Columbia River fisheries; Oregon Fish and Wildlife Commission; and California Fish and Game Commission. Recommendations and information from these forums are incorporated into the Council process when representatives from these entities provide comments and information at Council sponsored functions.

Providing additional opportunity for prior notice and public comments on these measures through a proposed and final rulemaking process would be impracticable and contrary to the public interest. Given the need to protect extremely low returns of many ocean salmon stocks listed under the ESA, the need to prevent overfishing, the need to facilitate a level of escapement to meet the requirements of the resource and inside fisheries, and the need to allow harvest of fish that can be harvested while still allowing appropriate escapements; it is essential to have these measures effective at the beginning of the fishing year. Otherwise 2001 management measures will continue to apply.

For example, under 2001 management in the Fort Bragg area a troll fishery in May would open, which would not be open under 2002 management regulations because the impacts on OCN coho would be too high. In other cases, areas scheduled to open early in the 2002 season would remain closed under 2001 management, thus foreclosing the opportunity to harvest some stocks that are available for harvest this year. In 2001, the recreational fishery north of Cape Falcon did not open until July 1. Under 2002 regulations the recreational fishery would open on May 25. As a result, using the 2001 regulations would preclude harvest opportunity for chinook that would not be recovered later because of conservation constraints for coho.

Overall, the annual population dynamics of the various salmon stocks cause managers to vary the season structure of the various west coast area fisheries to both protect weaker stocks and give fishers access to stronger salmon stocks, particularly hatchery produced fish. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries.

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thereby undermining the purposes of this agency action. Based upon the above-described need to have these measures effective on May 1 and the fact that there is limited time available to implement these new measures after the final Council meeting in April and before the commencement of the ocean salmon fishing year on May 1, NMFS has concluded it is impracticable to provide an opportunity for prior notice and public comment under 5 U.S.C. 553(b)(B).

The provisions of 50 CFR 660.411 state that if, for good cause, an action must be filed without affording a prior opportunity for public comment, the measures will become effective; however, public comments on the action will be received for a period of 15 days after date of publication in the **Federal Register**. NMFS will receive public comments on this action for 15 days after the date of publication of this action in the **Federal Register**.

The AA also finds that good cause exists under 5 U.S.C. 553(d)(3), to waive the 30-day delay in effectiveness of this rule. As previously discussed, these measures are essential to conserve threatened and endangered ocean salmon stocks, and to provide for harvest of more abundant stocks. If these measures are not in place on May 1, the previous year's management measures will continue to apply. Failure to implement these measures immediately could compromise the status of certain stocks and negatively impact international, state, and tribal salmon fisheries, thereby undermining the purposes of this agency action.

To enhance notification of the fishing industry of these new measures, NMFS is announcing the new measures over the telephone hotline used for inseason management actions and by U.S. Coast Guard Notice to Mariners Broadcast. NMFS is also advising the States of Washington, Oregon, and California on the new management measures. These states announce the seasons for applicable state and Federal fisheries through their own public notification systems.

This action contains collection-of-information requirements subject to the Paperwork Reduction Act (PRA), and which have been approved by OMB under control number 0648–0433. The public reporting burden for providing notifications if landing area restrictions cannot be met, or to obtain temporary mooring in Brookings, OR, is estimated to average 15 minutes per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate, or any other aspect of this data collection, including suggestions for reducing the burden, to NMFS and OMB (see **ADDRESSES**).

Notwithstanding any other provision of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

Since 1989, NMFS has listed 16 ESUs of salmon on the West Coast. As the listings have occurred, NMFS has conducted formal ESA section 7 consultations (Table 1) and issued BOs that consider the impacts to listed salmon species resulting from proposed implementation of the Salmon FMP, or in some cases, from proposed implementation of the annual management measures.

TABLE 1.—NMFS' BIOLOGICAL OPINIONS AND SECTION 4(D) DETERMINATIONS RELATED TO OCEAN FISHERIES IMPLEMENTED UNDER THE SALMON FMP AND DURATION OF THE PROPOSED ACTION COVERED BY EACH

Date	ESU covered and effective period
March 8, 1996	Snake River chinook and sockeye (until reinitiated).
April 28, 1999	Oregon coast coho, S. Oregon/N. California coast coho, Central California coast coho (until reinitiated).
April 28, 2000	Central Valley spring chinook and California coast chinook (until reinitiated).
April 27, 2001 [4(d)], Sept. 14, 2001 (BO)	Puget Sound chinook and Hood Canal summer chum 4(d) limit & associated biological opinion (2 years).
April 30, 2001	Lower Columbia River chinook, Upper Willamette chinook, and Upper Columbia spring chinook (until reinitiated).
April 29, 2002	Sacramento River winter chinook (2 years).

Associated with the BOs are incidental take statements that specify the expected level of take. If the fisheries are conducted in accordance with the statement's terms and conditions the take is exempted from the section 9 prohibitions of the ESA. Some of the BOs have concluded that implementation of the Salmon FMP is not likely to jeopardize the continued existence of certain listed ESUs. Other BOs have found that implementation of the Salmon FMP is likely to jeopardize certain listed ESUs and have identified reasonable and prudent alternatives (consultation standards) that would avoid the likelihood of jeopardizing the continued existence of the ESU under consideration. NMFS recently completed an additional BO regarding Sacramento River winter chinook for the 2002 and 2003 seasons.

In a March 8, 2002, letter to the Council, NMFS provided the Council with ESA consultation standards and guidance for the management of stocks listed under the ESA, and in anticipation of the BO that was being prepared for the 2002 management season for Sacramento River winter chinook.

Proposed fisheries affecting Puget Sound chinook and the Hood Canal summer chum were considered under provisions of the 4(d) rule. NMFS has determined that the Puget Sound chinook and Hood Canal summer chum RMPs are consistent with the ESA section 4(d) rule, and that the 2002 ocean and inside fisheries are consistent with the RMPs. In addition, the 2002 and pre-May 2003 management measures are consistent with the standards set to avoid jeopardy in the RMPs and associated biological opinion.

The Council's recommended management measures are consistent with the BOs that find no jeopardy, the reasonable and prudent alternatives in the jeopardy BOs, and the terms of the State and Tribal RMPs.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 1, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, Notional Marine Fisheries Service.

[FR Doc. 02–11219 Filed 5–1–02; 5:02 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 88
Tuesday, May 7, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–45854; File No. S7–14–02]

RIN 3235–AI49

Assessments on Security Futures Transactions and Fees on Sales of Securities Resulting From Physical Settlement of Security Futures Pursuant to Section 31 of the Exchange Act

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing to clarify how to calculate assessments that are required to be paid by national securities exchanges and national securities associations pursuant to Section 31(d) of the Securities Exchange Act of 1934 ("Exchange Act") for security futures transactions. In addition, the Commission is proposing guidance on how to calculate fees that are required to be paid by national securities exchanges and national securities associations pursuant to Sections 31(b) and (c) of the Exchange Act, respectively, for sales of securities that result from the physical settlement of security futures.

DATES: Comments should be submitted on or before June 6, 2002.

ADDRESSES: All comments should be submitted in triplicate and addressed to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW, Washington DC 20549–0609. Comments also may be submitted electronically at the following E-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–14–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for inspection and copying in the Commission's Public Reference Room at the same address. Electronically submitted comment letters will be posted on the Commission's Internet web site (*http://www.sec.gov*). Personal identifying information, such as names or e-mail addresses, will not be edited from electronic submissions. Submit only information you wish to make publicly available.

FOR FURTHER INFORMATION CONTACT: Kelly Riley, Senior Special Counsel, at (202) 942–0752, Susie Cho, Special Counsel, at (202) 942–0748, and Geoffrey Pemble, Attorney, at (202) 942–0757, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street NW, Washington DC 20549–1001.

SUPPLEMENTARY INFORMATION:

I. Background

Section 31 of the Exchange Act [1] requires each national securities exchange and each national securities association to pay assessments and fees based on transactions in or sales of certain securities. The Commission proposes to amend Rule 31–1 [2] to clarify how national securities exchanges and national securities associations should calculate: (1) Assessments for security futures transactions required to be paid pursuant to Section 31(d) of the Exchange Act [3] and (2) fees for sales of securities resulting from physical settlement of security futures required to be paid pursuant to either Section 31(b) or (c) of the Exchange Act.

II. Proposal and Discussion

A. Assessments Under Section 31(d) of the Exchange Act

Section 31(d) of the Exchange Act provides that each national securities exchange and each national securities association shall pay an assessment "for each round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery) on a security future traded on such national securities exchange or by or through a member of such association otherwise than on a national securities exchange." [4] The Commission believes that there are two issues that need to be clarified with regard to the application of Section 31(d): (1) the meaning of "round turn" and (2) the unit of a "transaction" on which the assessment is based. These issues are discussed below.

1. Meaning of "Round Turn"

Section 31(d) clarifies that a "round turn" transaction on a security future is "treated as including one purchase and one sale" of a contract for future delivery. This language can be interpreted to mean that a round turn transaction is a completed trade involving the simultaneous purchase and sale of a contract for future delivery by the two parties to the trade. From the perspective of an exchange or association, there is, in fact, one purchase and one sale of a contract for future delivery in such a trade. As such, this interpretation is consistent with the fact that it is the obligation of an exchange or association to pay an assessment on a round turn transaction.

An alternative interpretation would treat a round turn transaction as a purchase and subsequent liquidating sale, or a sale followed by a subsequent covering purchase, of a contract for future delivery by a single market participant. If this market participant-based interpretation of "round turn" were used to determine when an assessment is to be paid by an exchange or association under Section 31(d), the exchange or association would need to track buy and sell transactions by individual market participants. Such tracking could be very difficult. For example, a market participant could open a large position on one day and then liquidate that position over several subsequent days.

The ability to track the opening and closing of positions by individual market participants could be further complicated if, as is expected, some security futures trade on more than one market. That is, a round turn transaction under the alternative interpretation could involve *two* markets, if the purchase and sale were effected in different markets, and it would not be clear if either or both were responsible for paying a Section 31(d) assessment on the transaction. The alternative interpretation of "round turn," therefore, could create difficulties under Section 31(d) because that section appears to require only *one* market (an exchange or association) to pay the assessment on a round turn transaction.

The Commission believes that it is consistent with the intent and language of the Section 31(d) to view a round turn transaction as a completed trade involving the simultaneous purchase and sale of a contract for future delivery by the two parties to the trade. This interpretation is consistent with the fact that it is the obligation of an exchange or association to pay the assessment on the round turn transaction, and the fact that the section appears to impose an obligation on only one market. Interpreting the term "round turn" in this manner for purposes of Section 31(d) also simplifies the calculation of assessments on such transactions.

The Commission expects that the total assessments paid under this interpretation would be virtually identical to the total assessments paid under the alternative interpretation because most market participants are expected to enter into offsetting transactions before a security future settles. In any event, the Commission seeks comment on this interpretation of the term "round turn" for purposes of Section 31(d).

2. Meaning of "Transaction"

Exchanges and associations must pay Section 31(d) assessments for each "round turn transaction (treated as including one purchase and one sale of a contract of sale for future delivery)." The parenthetical makes clear that the assessment is applied on each purchase and sale of each *contract* for future delivery. Thus, the total Section 31 assessment an exchange or association must pay to the Commission will be the amount of the assessment—which is currently $0.009—multiplied by the number of contracts traded on such exchange or by or through a member of such association otherwise than on an exchange. The Commission proposes to amend the Preliminary Note to Rule 31–1 to establish this method of calculating the Section 31(d) assessment. The Commission seeks comment, however, on the meaning of "transaction" and the appropriate method for calculating the Section 31(d) assessment on such transaction.

B. Fees Under Sections 31(b) and (c) of the Exchange Act

In addition to the assessments paid by exchanges and associations pursuant to Section 31(d) of the Exchange Act, Section 31(b) of the Exchange Act requires each national securities exchange to pay a fee based on the aggregate dollar amount of sales of securities transacted on such exchange. Similarly, Section 31(c) of the Exchange Act requires each national securities association to pay a fee based on the aggregate dollar amount of sales transacted by or through any member of such association otherwise than on a national securities exchange.[5] Because at physical settlement of a security future a sale of the underlying security or securities occurs, each national securities exchange or national securities association is required to pay a fee to the Commission based on the dollar amount of such sale. Thus, as in the exercise of an option,[6] the fees that are required pursuant to either Section 31(b) or Section 31(c) of the Exchange Act are only payable to the Commission if a security future is held until settlement and settlement results in the physical delivery of the underlying security or securities. Such physical delivery occurs because a holder of the short position in a security future is required pursuant to the terms of the contract to sell the underlying security or securities to the holder of the long position in the security future. Security futures that are cash-settled do not result in the sale of the underlying security or securities and, therefore, do not result in a fee being owed by an exchange or association to the Commission pursuant to Sections (b) or (c) 31 of the Exchange Act.

The Commission proposes to amend the Preliminary Note to Rule 31–1 to clarify that the aggregate dollar amount of sales of securities resulting from the physical settlement of a security future should be calculated based on the price at which the security future was sold by the market participant effecting delivery of the underlying security upon settlement. The Commission, however, seeks comment on whether this is the appropriate price for determining the aggregate dollar amount of sale.

The Commission also proposes to amend the Preliminary Note to Rule 31–1 to clarify that the obligation to pay a Section 31(b) or (c) fee on a sale of a security underlying a physically-settled security future does not accrue until the time that physical settlement occurs. Because, however, one way to view a future is a sale of the underlying instrument at the time of the future transaction with a delayed settlement, the Commission requests comment on whether the obligation to pay a Section 31(b) or (c) fee should accrue at any time other than the actual settlement date.

Finally, the Commission proposes to amend the Preliminary Note to Rule 31–1 to provide that The Options Clearing Corporation ("OCC") may pay Section 31 assessments on round turn transactions on security futures and fees for sales of securities that result from the physical settlement of security futures on behalf of national securities exchanges and national securities associations. This provision would permit the OCC to serve the same role it currently does in paying Section 31 fees on options transactions on behalf of the options exchanges. The Commission seeks comment on whether any other registered entity should be permitted to pay the Section 31 assessments and fees due to the Commission on behalf of any national securities exchange or national securities association.

The Commission reminds national securities exchanges and national securities associations that the obligation to pay the Section 31(d) assessment on a security futures transaction rests with such exchanges and associations. If a national securities exchange or national securities association intends to levy charges upon its members to cover the Section 31(d) assessments for security futures transactions, such exchange or association would need to adopt rules requiring its members to pay such assessments.[7] The national securities exchanges and national securities associations also may want to amend their rules that charge their members fees to cover the fees owed by them under Sections 31(b) and (c) of the Exchange Act to clarify the application

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[1] 15 U.S.C. 78ee.

[2] 17 CFR 240.31–1.

[3] Earlier this year, the Commission exempted futures on narrow-based security indexes from the assessment and fee requirements of Section 31 of the Exchange Act. See Securities Exchange Act Release No. 45371 (January 31, 2002), 67 FR 5199 (February 5, 2002). Accordingly, assessments under Section 31(d) of the Exchange Act are required only for transactions in security futures on single securities.

[4] 15 U.S.C. 78ee(d). For fiscal year 2002, the assessment is $0.009 for each round turn transaction on a security future. For fiscal year 2007 and each succeeding fiscal year, such assessment shall be equal to $0.0042 for each round turn transaction.

[5] Sections 31(b) and (c) of the Exchange Act set forth initial rates of $15 per $1,000,000. The Commission, however, is required to make adjustments to these fee rates pursuant to Section 31(j) of the Exchange Act. See Securities Exchange Act Release No. 45842 (April 29, 2002) Order making fiscal 2003 annual adjustments to the fee rates applicable under Section 6(b) of the Securities Act of 1933, and Sections 13(e), 14(g), 31(b) and 31(c) of the Exchange Act).

[6] Section 31 fees that are paid upon an options exercise are paid only on options that are physically-settled, not options that are cash-settled, because, upon exercise, physically-settled options result in the actual sale and delivery of the underlying securities.

[7] Currently, national securities exchanges and the National Association of Securities Dealers ("NASD") charge their members fees to cover the fees owed by them to the Commission under Sections 31(b) and (c) of the Exchange Act. *See e.g.*, Schedule A to the NASD By-Laws, Section 8; New York Stock Exchange Rule 440H.

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of such fees to sales of securities resulting from the physical settlement of security futures. Of course, new exchanges would need to adopt rules to impose assessments and fees on their members to cover their obligations under Section 31.[8]

III. Paperwork Reduction Act

The Paperwork Reduction Act is not applicable to the proposed amendments because they do not impose any collection of information requirements that would require the approval of the Office of Management and Budget.

IV. Costs and Benefits of Proposed Amendments to Rule 31–1

The Commission is considering the costs and benefits of its amendments to Rule 31–1 and requests comment on all aspects of this cost-benefit analysis, including identification of any additional costs or benefits of the proposed amendments to Rule 31–1. The Commission encourages commenters to identify, discuss, analyze, and supply relevant data concerning the costs and benefits of the proposed rule.

A. Costs

The proposed amendments to Rule 31–1 are for the purpose of providing guidance on how Section 31 assessments and fees are to be calculated for transactions in security futures and sales of securities resulting from physical settlement of security futures. Specifically, the amendments are intended to clarify: (1) the method by which assessments required pursuant to Section 31(d) of the Exchange Act are calculated for round turn transactions on security futures traded on national securities exchanges or by members of national securities associations; and (2) the manner in which fees required pursuant to Sections 31(b) and (c) of the Exchange Act are calculated for sales of securities resulting from physical settlement of security futures. Accordingly, because the proposed amendments to Rule 31–1 do not give rise to additional obligations on national securities exchanges, associations, or other market participants, but rather merely provide guidance on complying with existing statutory obligations, the Commission preliminarily believes that there would be no costs imposed on market participants by the proposed amendment to the rule.

B. Benefits

The Commission preliminarily believes that its proposed amendments to Rule 31–1 would benefit exchanges and associations by providing clarification on the assessments and fees payable under Sections 31(b), (c) and (d) of the Exchange Act. Although these sections of the Exchange Act set forth generally the obligations of national securities exchanges and national securities associations to pay assessments and fees on security futures transactions and sales of securities resulting from physical settlement of such futures, the Commission has concluded that guidance is necessary to clarify the mechanics of the assessment and fee calculation and collection process for security futures. The Commission's guidance in the proposed amendments to Rule 31–1 would remove any potential ambiguity in the statute about, for example, the meaning of "round turn transaction" and the price on which fees for sales of securities that result from the physical settlement of security futures will be based.

V. Consideration of Burden on Competition and Promotion of Efficiency, Competition, and Capital Formation

Section 23(a)(2) of the Exchange Act requires the Commission, when adopting rules under the Exchange Act, to consider the impact of such rules on competition.[9] In addition, Section 3(f) of the Exchange Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[10]

The Commission has considered the proposed rule in light of these standards and preliminarily believes that the proposed rule will not impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Exchange Act. As noted above, in amending Rule 31–1 the Commission is merely providing guidance in the rule to clarify recent amendments to Section 31 of the Exchange Act. Likewise, the Commission preliminarily believes that the proposed rule will not have an impact on capital formation. To the extent the proposed rule reduces any ambiguity regarding the application of Section 31 to security futures transactions and the physical settlement of security futures, the proposed rule promotes efficiency. The Commission requests comment on the effects of the proposed rules on competition, efficiency, and capital formation.

VI. Regulatory Flexibility Act Certification

Section 3(a) of the Regulatory Flexibility Act[11] requires the Commission to undertake an initial regulatory flexibility analysis of the proposed rule's impact on small entities unless the Chairman certifies that the rule, if adopted, would not have a significant economic impact on a substantial number of small entities.[12] The proposed amendments to Rule 31–1 under the Exchange Act would apply to national securities exchanges and national securities associations that are required under the Exchange Act to pay fees and assessments on sales of securities and security futures transactions. The Commission believes that there could be seven national securities exchanges and one national securities association that would be subject to the proposed rule, none of which is a small entity.[13] The Chairman has certified that the proposed rule would not have a significant economic impact on a substantial number of small entities. A copy of the certification is attached as Appendix A.

For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, the Commission also is requesting information regarding the potential impact of the proposed rule on the economy on an annual basis. Commentators should provide empirical data to support their views.

VII. Statutory Authority

The Commission is proposing amendments to Rule 31–1 under the Exchange Act pursuant to its authority under Exchange Act Sections 3(b), 23(a), and 31.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Rule

For the reasons set out in the preamble, the Commission proposes to amend Part 240 of Chapter II, Title 17 of the Code of Federal Regulations as follows.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77z–2, 77z–3, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78e, 78f, 78g, 78i, 78j, 78j–1, 78k, 78k–1, 78l, 78m, 78n, 78o, 78p, 78q, 78s, 78u–5, 78w, 78x, 78ll, 78mm, 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.31–1 is proposed to be amended by removing the Preliminary Note and adding Preliminary Notes 1 and 2 and introductory text to read as follows:

§ 240.31–1 Securities transactions exempt from transaction fees.

Preliminary Notes

1. The section 31 fee for options transactions occurring on a national securities exchange, or transactions in options subject to prompt last sale reporting occurring otherwise than on an exchange (with the exception of sales of options on securities indexes) is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the option premium (market price) for the sale of the option. In the event of the exercise of an option, whether such option is traded on an exchange or otherwise, a section 31 fee is to be paid by the exchange or the national securities association itself, or The Options Clearing Corporation on behalf of the exchange or association, and such fee is to be computed on the basis of the exercise price of the option.

2. The section 31(d) assessment on a round turn transaction on a security future traded on a national securities exchange, or by or through a member of a national securities association otherwise than on a national securities exchange, is to be paid by the exchange or the national securities association itself, respectively, or by The Options Clearing Corporation on behalf of the exchange or association, and such assessment is to be computed on the basis of the number of contracts of sale for future delivery traded on such exchange or by or through any member of such association otherwise than on an exchange. In the event of the physical settlement of a security future, a section 31 fee is to be paid by the exchange on which the round turn transaction on the security future was traded, or, if the round turn transaction on the security future was traded by or through a member of a national securities association otherwise than on a national securities exchange, by the association, or by The Options Clearing Corporation on behalf of such exchange or association. Such fee, whether paid under section 31(b) or section 31(c), is to be computed on the basis of the sale price of the security future, although the obligation to pay such fee does not accrue until the time that physical delivery occurs.

The following shall be exempt from section 31 of the Act:

* * * * *

By the Commission.

Dated: May 1, 2002.

Jill M. Peterson,

Assistant Secretary.

Note: This Appendix A to the Preamble will not appear in the Code of Federal Regulations.

Appendix A

Regulatory Flexibility Act Certification

I, Harvey L. Pitt, Chairman of the Securities and Exchange Commission ("SEC"), on information and belief, hereby certify, pursuant to 5 U.S.C. § 605(b), that the proposed amendment to Rule 31–1 under the Securities Exchange Act of 1934 ("Exchange Act") would not, if adopted, have a significant economic impact on a substantial number of small entities. Section 31 of the Exchange Act requires each national securities exchange and each national securities association to pay fees and assessments to the Commission based on sales of or transactions in certain securities. Section 31 of the Exchange Act was amended by the Commodity Futures Modernization Act of 2000 ("CFMA") to impose assessments on transactions in security futures.

The proposed amendment to Rule 31–1 would clarify the method by which assessments are to be calculated for transactions in security futures and fees are to be calculated for sales of securities resulting from the physical settlement of security futures. Only national securities exchanges and national securities associations are required to pay Section 31 assessments for security futures transactions and fees for sales of securities resulting from the physical settlement of security futures. None of these exchanges or associations is a small entity for purposes of the Regulatory Flexibility Act. Accordingly, the proposed amendment to Rule 31–1 would not have a significant economic impact on a substantial number of small entities.

Dated: April 30, 2002.

Harvey L. Pitt,

Chairman.

[FR Doc. 02–11267 Filed 5–6–02; 8:45 am]

BILLING CODE 8010–01–P

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Part 203

Registration of U.S. Private Voluntary Organizations for Foreign Aid Programs

AGENCY: Agency for International Development (USAID).

ACTION: Proposed rule.

SUMMARY: USAID proposes to amend its regulations by creating a less cumbersome and more streamlined registration process for private voluntary organizations (PVOs).

DATES: Please submit comments on or before July 8, 2002.

ADDRESSES: You may mail written comments concerning the proposed changes to Mary Newton, Registrar, USAID, Office of Private and Voluntary Cooperation, 1300 Pennsylvania Avenue, NW, Washington, DC, 20523–7600. You may submit comments electronically to *mnewton@usaid.gov*.

FOR FURTHER INFORMATION CONTACT: Mary Newton, Registrar, Office of Private and Voluntary Cooperation, telephone 202–712–4747; telefax (202) 216–3041; e-mail *mnewton@usaid.gov*.

SUPPLEMENTARY INFORMATION:

A. Explanation of Proposed Changes

Following an extensive review of the registration process of U.S. private voluntary organizations (PVOs), we propose to amend the regulations to make the registration process less cumbersome and more streamlined for both applicants and the Agency. The major changes are as follows:

1. Defined the term "U.S. PVO" in section 203.2 so that an organization can determine if it needs to be registered. An organization that meets the definition must be registered to be eligible for a subvention or to receive a USAID grant or cooperative agreement. If an organization does not meet the definition, it is not considered a PVO for purposes of registration.

2. Combined two conditions regarding tax exemption and voluntary nature into one condition.

3. Deleted references to other types of nonprofit organizations. Only 501(c)(3) organizations are considered PVOs. Organizations registered before these

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[8] National securities exchanges registered under Section 6(g) of the Exchange Act would not be required to file such rules with the Commission. *See* Exchange Act Section 6(g)(4)(B), 15 U.S.C. 78f(g)(4)(B).

[9] 15 U.S.C. 78w(a)(2).

[10] 15 U.S.C. 78c(f).

[11] 5 U.S.C. 603(a).

[12] 5 U.S.C. 605(b).

[13] Paragraph (e) of Exchange Act Rule 0–10 provides that the term "small entity," when referring to an exchange, means any exchange that has been exempted from the reporting requirements of 17 CFR 240.11Aa3–1 and is not affiliated with any person that is not a small entity. Under this standard, none of the exchanges affected by the proposed rule is a small entity. Similarly, the national securities associations affected by the proposed rule are not small entities as defined by 13 CFR 121.201.

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changes are implemented will remain in the USAID Registry of PVOs.

4. Added requirement that the organization is incorporated at least 18 months before applying.

5. Separated conditions from documentation requirements for easier reference.

6. Reduced the number of documents required for application from 18 to 7 and for annual submission from 6 to 4.

7. Added Condition No. 8 on U.S. national security issues.

B. Regulatory Analysis

1. *Executive Order 12866.* USAID has determined that this regulation is not a significant regulatory action as defined in Executive Order 12866 and, accordingly, this regulation has not been reviewed by the Office of Management and Budget.

2. *Regulatory Flexibility Act.* It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a Regulatory Flexibility Analysis is not required.

3. *Executive Order 13132.* This regulation will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this regulation does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

4. *Unfunded Mandates Reform Act of 1995.* This regulation will not result in the expenditure by state, local and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one-year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

5. *Small Business Regulatory Enforcement Fairness Act of 1996.* This rule is not a major rule as defined by section 251 of the Small Business Regulatory Enforcement Act. 5 U.S.C. 804. This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic or export markets.

6. *Executive Order 12988—Civil Justice Reform.* USAID has conducted the reviews required by section 3 of Executive Order 12988 and has determined that, this rule meets the applicable standards in section 3 to mitigate litigation, eliminate ambiguity and reduce burden.

7. *Paperwork Reduction Act.* This rule does contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*). We are in the process of obtaining the necessary approvals.

List of Subjects in 22 CFR Part 203

Foreign aid, Nonprofit organizations.

Accordingly, 22 CFR part 203 is proposed to be revised to read as follows:

PART 203—REGISTRATION OF U.S. PRIVATE VOLUNTARY ORGANIZATIONS (PVOs)

Sec.

203.1 Purpose.
203.2 Definitions.
203.3 Conditions of registration.
203.4 Documentation requirements for initial registration.
203.5 Annual documentation requirements.
203.6 Denial of registration, reconsideration and resubmission.
203.7 Termination of registration.
203.8 Access to records and communications.
208.9 Delegation of authority.

Authority: 22 U.S.C. 2381.

§ 203.1 Purpose.

(a) USAID registers U.S. PVOs for the following purposes:

(1) Registration is a statutory condition of eligibility for U.S. PVOs for subventions.

(2) Registration is a condition of eligibility for U.S PVOs for USAID grants and cooperative agreements.

(3) Registration provides USAID with information for computing the amount of USAID funding made available to U.S PVOs.

(4) Registration provides USAID with the information necessary to determine whether a PVO meets the statutory "20 percent privateness test." The statue requires that a U.S. PVO must obtain at least 20 percent of its financial support (cash) for its international activities from sources other than the U.S. Government to receive certain USAID grants and cooperative agreements. The privateness test is an eligibility criterion for PVO programs; it is not a condition for registration.

(b) It is not the purpose of registration to allow registered U.S. PVOs to make, or enable to be made, any representation to the public concerning the meaning of being registered with USAID.

(c) Registration does not bring an organization within the Ambassador's authority and responsibility for the security of U.S. Government operations and personnel abroad.

§ 203.2 Definitions.

As used in this part:

(a) *Annual report* means a yearly document that describes the PVO's program activities conducted during the same period as the audited financial statement.

(b) *FAA* means the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2151, *et seq.*

(c) *U. S. general public* means U.S. citizens and U.S. nongovernmental organizations, e.g., private citizens, groups, foundations and corporations. U.S. general public does not include government agencies in the U.S. or abroad, or international organizations such as the United Nations, or non-U.S. citizens or institutions.

(d) *Headquarters* means the principal executive office where legal, accounting, and administrative information may be accessed in the daily course of conducting business.

(e) *Public Law 480* means the Agricultural Trade Development and Assistance Act of 1954, as amended, 7 U.S.C. 1691 *et seq.*

(f) *Supporting Services* mean the total of general and administration expenses plus fundraising and promotion expenses.

(g) *Subventions* mean the payment of transportation charges under section 123(b) of the FAA, 22 U.S.C. 2151u(b); the sale of the services or commodities, e.g., excess property, under section 607(a) of the FAA, 22 U.S.C. 2357(a); and the furnishing of agricultural commodities under section 202 of Public Law 480, 7 U.S.C. 1722.

(h) *USAID* means U.S. Agency for International Development.

(i) *U.S. PVO* means a private voluntary organization that

(1) Is exempt from Federal income taxes under Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 501(c)(3));

(2) Works in, or intends to work in, foreign development activities;

(3) Receives some portion of its annual support from the private sector;

(4) Receives voluntary contributions of money from the U.S. general public; and

(5) Is not, for registration purposes, a university, college, accredited degree-granting institution of education, private foundation, hospital, organization engaged exclusively in research or scientific activities, church, or organization engaged exclusively in religious activities.

§ 203.3 Conditions of registration.

There are eight conditions of registration " the first four conditions define a PVO, and the last four conditions establish standards by which the PVO is evaluated. An applicant shall be registered with USAID as a U.S. PVO if USAID finds that the applicant has satisfied the following conditions:

(a) *Condition No. 1 (U.S.-based).* Is U.S.-based in that it:

(1) Is organized under the laws of the United States;

(2) Has its headquarters in the United States; and

(3) Has been incorporated for not less than 18 months.

(b) *Condition No. 2 (Private).* Is not a governmental entity.

(c) *Condition No. 3 (Voluntary).* Is a voluntary organization in that it:

(1) Is a public charity and has tax exemption under section 501(c)(3) of the Internal Revenue Code; and

(2) Solicits and receives cash contributions from the U.S. general public.

(d) *Condition No. 4 (Overseas Activities).* Conducts, or anticipates conducting, overseas activities that are consistent with the general purposes of the Foreign Assistance Act or Public Law 480, 7 U.S.C. 1691.

(e) *Condition No. 5 (Financial Viability).* That it:

(1) Accounts for its funds in accordance with generally accepted accounting principles (GAAP);

(2) Has a sound financial position; and

(3) Makes its financial statements available to the public upon request.

(f) *Condition No. 6 (Board of Directors).* Has a board of directors:

(1) That meets at least annually;

(2) Whose members serve without compensation or honorarium for such services; and

(3) Whose majority is not composed of the PVO's officers or staff members.

(g) *Condition No. 7 (Program and Supporting Services).* That it:

(1) Expends and distributes its cash and gifts in-kind in accordance with the annual report of program activities; and

(2) Does not expend more than 40 percent of total expenses on supporting services.

(h) *Condition No. 8 (General Eligibility).* It is not:

(1) Suspended or debarred by an agency of the United States Government;

(2) Designated as a foreign terrorist organization by the Secretary of State pursuant to section 219 of the Immigration and Nationality Act, 8 U.S.C. 1189, as amended; or

(3) The subject of a decision by the Department of State to the effect that registration or a financial relationship between USAID and the organization is contrary to the national defense, national security, or foreign policy interests of the United States.

§ 203.4 Documentation requirements for initial registration.

(a) In order for USAID to determine if the applicant meets the conditions of registration, an applicant shall submit in duplicate to USAID, Office of Private and Voluntary Cooperation, 1300 Pennsylvania Avenue, NW, Washington, D.C., 20523–7600, the following documents with a cover letter stating the reason the organization is applying for registration, its agreement to the conditions of registration, and its agreement to provide such other information as USAID may reasonably require to determine that the applicant meets the conditions of registration. This information is required for the purpose of determining that the applicant meets the conditions of registration:

(1) Articles of incorporation or charter on state letterhead with state seal and authorizing state official's signature;

(2) Bylaws or other documents establishing corporate structure;

(3) IRS Form 990 or 990–PF (for availability see 26 CFR 601.602) and a copy of IRS letter of tax exemption;

(4) Audited financial statements (for the most recent fiscal year) and an Office of Management and Budget (OMB) Circular A–133 (for availability see 5 CFR 1310.3) audit, if applicable, prepared on an accrual basis in accordance with generally accepted accounting principles (GAAP) certified by an independent certified public accountant (CPA);

(5) Annual report or similar document which describes overseas program activities and lists all board members;

(6) USAID Form 1550–2 for the same reporting period as the financial statements; and

(7) Classification list of activity sectors and countries.

(b) In addition, each applicant shall submit such other information as USAID may reasonably require to determine whether the organization meets the conditions of registration.

(c) USAID may revise this list of documents from time to time.

(d) Other USAID officials may request the same or similar information at a later date for purposes of determining the PVO's eligibility for a particular grant of cooperative agreement.

§ 203.5 Annual documentation requirements.

(a) In order to maintain its registration, each registered PVO shall submit annually, within 180 days after the close of its fiscal year, the following:

(1) Audited financial statements for the registrant's most recent fiscal year and an OMB Circular A–133 audit, if applicable, prepared on an accrual basis in accordance with GAAP by an independent CPA;

(2) Annual report or similar document describing overseas program activities and listing all board members;

(3) USAID Form 1550–2 for the same reporting period as the financial statements; and

(4) Classification listing of activity sectors and countries.

(b) PVOs also must submit any amendments, if applicable, to their articles of incorporation, charter or bylaws and any changes in the organization's tax-exempt status.

(c) In addition, each registrant shall submit such other information as USAID may reasonably require to determine that the organization continues to meet the conditions of registration.

(d) USAID may revise this list of documents from time to time.

§ 203.6 Denial of registration, reconsideration and resubmission.

(a) *Notification of denial of registration.* If USAID decides to deny an applicant registration, USAID will inform the applicant in writing of the denial with a specific statement of those conditions and documentation requirements of registration that the applicant has failed to satisfy.

(b) *Reconsideration.* An applicant may, after receipt of a notification of denial of registration, resubmit its application for reconsideration within the timeframe as designated by USAID. USAID will inform, in writing, the applicant resubmitting its application of USAID's decision upon resubmission.

(c) *Resubmission.* An applicant may at any time resubmit a new application for registration.

§ 203.7 Termination of registration.

(a) USAID may terminate registration for any of the following reasons:

(1) Relinquished voluntarily by the registrant upon written notice to USAID;

(2) Terminated by USAID if registrant does not submit annual documentation within 180 days after its fiscal year end;

(3) Terminated by USAID if registrant has no overseas expenditures within three consecutive years;

(4) Terminated by USAID for failure of the registrant to comply with conditions of registration;

(5) Terminated by USAID if registrant uses promotional material or advertisement suggesting the fact of registration is an endorsement; or

(6) Terminated by USAID if registrant refuses to transfer to USAID any records, documents, or information that are referred to in this regulation and are within registrant's control, or copies of such records or documents, within a reasonable time after requested by USAID.

(b) Termination by USAID shall include prior written notice to the registrant of the grounds for the proposed termination and opportunity for the registrant to file a written statement within 30 days of receipt of the written notice as to why its registration should not be terminated. USAID will inform, in writing, registrant requesting such reconsideration of USAID's decision. In addition, USAID may, at its own discretion, reconsider a termination of registration at any time.

§ 203.8 Access to records and communications.

(a) All records, reports, and other documents that are made available to USAID pursuant to this part shall be made available for public inspection and copying pursuant to the Freedom of Information Act and other applicable law.

(b) All communications to applicants and registrants by USAID are made to the organization's principal executive office, not the organization's registered office or other address.

§ 203.9 Delegation of authority.

The Assistant Administrator for the Bureau for Democracy, Conflict and Humanitarian Assistance is delegated by the Administrator the authority to administer the registration process, including the authority to waive, withdraw, or amend any or all of the provisions of the regulations in this part.

Dated: April 30, 2002.

Karl Schwartz,

Chief, Information and Program Support Division, Office of Private and Voluntary Cooperation, Bureau for Democracy, Conflict and Humanitarian Assistance.

[FR Doc. 02–11243 Filed 5–6–02; 8:45 am]

BILLING CODE 6116–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 31

[REG–142686–01]

RIN 1545–BA26

Application of the Federal Insurance Contributions Act, Federal Unemployment Tax Act, and Collection of Income Tax at Source to Statutory Stock Options; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of time of public hearing.

SUMMARY: This document contains a notice of change of time of public hearing on proposed regulations relating to incentive stock options and options granted under employee stock purchase plan.

DATES: The time of the public hearing originally scheduled for Thursday, May 14, 2002, beginning at 10 a.m. has been changed to begin at 9 a.m.

ADDRESSES: The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. In addition, all visitors must present photo identification to enter the building.

FOR FURTHER INFORMATION CONTACT: Concerning the hearing, and/or to be placed on the building access list to attend the hearing Treena Garrett, (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations (REG–142686–01) that was published in the **Federal Register** on November 14, 2001 (65 FR 57023).

The rules of 26 CFR 601.601(a)(3) apply to the hearing. A period of 10 minutes is allotted to each person for presenting oral comments.

After the deadline for receiving outlines has passed, the IRS will prepare an agenda containing the schedule of speakers. Copies of the agenda will be made available, free of charge, at the hearing.

Because of access restrictions, the IRS will not admit visitors beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this document.

Cynthia E. Grigsby,

Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).

[FR Doc. 02–11311 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Parts 1 and 2

RIN 0651–AB51

Revision of Patent and Trademark Fees for Fiscal Year 2003

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: The United States Patent and Trademark Office (referred to as "we", "us", or "our" in this notice) is proposing to adjust certain patent fee amounts and a trademark fee amount to reflect fluctuations in the Consumer Price Index (CPI). Also, we are proposing to adjust, by a corresponding amount, a few patent fees that track the affected fees. The Director is authorized to adjust these fees annually by the CPI to recover the higher costs associated with doing business.

DATES: Comments must be submitted on or before June 6, 2002.

ADDRESSES: Comments may be submitted by e-mail addressed to *matthew.lee@uspto.gov*. Comments may also be submitted by mail addressed to: Office of Finance, Crystal Park One, Suite 802, Washington, DC, 20231, or by fax to (703) 305–8007, marked to the attention of Matthew Lee.

FOR FURTHER INFORMATION CONTACT: Matthew Lee by e-mail at *matthew.lee@uspto.gov*, by telephone at (703) 305–8051, or by fax at (703) 305–8007.

SUPPLEMENTARY INFORMATION: This proposed rule would adjust our fees in accordance with the applicable provisions of title 35, United States Code, as amended by the Consolidated Appropriations Act, Fiscal Year 2000 (which incorporated the Intellectual Property and Communications Omnibus Reform Act of 1999) (Public Law 106–113); and section 1113 of title 15, United States Code. This proposed rule would also adjust, by a corresponding amount, a few patent fees (37 CFR 1.17(e), (r), (s), and (t)) that track statutory fees (either 37 CFR 1.16(a) or 1.17(m)).

In addition to this proposed rule, we have also prepared another notice of proposed rulemaking, to seek comment on a $50 per-class surcharge on the trademark application fee and the fee for filing certain other trademark-related documents where: (1) A Trademark Electronic Application System (TEAS) form is available for that document and (2) the document is filed on paper. That notice of proposed rulemaking deals with the current trademark application fee, not the CPI adjusted fee, and proposes that the current fee of $325 be used for the filing of a TEAS application. A paper application filed under the same fee schedule would be $375.

Background

Statutory Provisions

Patent fees are authorized by 35 U.S.C. 41, 119, 120, 132(b) and 376. For fees paid under 35 U.S.C. 41(a) and (b), independent inventors, small business concerns, and nonprofit organizations who meet the requirements of 35 U.S.C. 41(h)(1) are entitled to a fifty-percent reduction.

Section 41(f) of title 35, United States Code, provides that fees established under 35 U.S.C. 41(a) and (b) may be adjusted on October 1, 1992, and every year thereafter, to reflect fluctuations in the CPI over the previous twelve months.

Section 41(d) of title 35, United States Code, authorizes the Director to establish fees for all other processing, services, or materials related to patents to recover the average cost of providing these services or materials, except for the fees for recording a document affecting title, for each photocopy, for each black and white copy of a patent, and for library services.

Section 41(g) of title 35, United States Code, provides that new fee amounts established by the Director under section 41 may take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Section 1113 of title 15, United States Code, authorizes the Director to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials relating to trademarks and other marks.

Section 1113(a) of title 15, United States Code, allows trademark fees to be adjusted once each year to reflect, in the aggregate, any fluctuations during the preceding twelve months in the CPI.

Section 1113(a) also allows new trademark fee amounts to take effect thirty days after notice in the **Federal Register** and the *Official Gazette of the United States Patent and Trademark Office*.

Fee Adjustment Level

The patent statutory fees established by 35 U.S.C. 41(a) and (b) are proposed to be adjusted on October 1, 2002, to reflect any fluctuations occurring during the previous twelve months in the Consumer Price Index for all urban consumers (CPI–U). The Office of Management and Budget has advised us that in calculating these fluctuations, we should use CPI–U data as determined by the Secretary of Labor. In accordance with previous fee-setting methodology, we base this proposed fee adjustment on the Administration's projected CPI–U for the twelve-month period ending September 30, 2002, which is 2.4 percent. Based on this projection, patent statutory fees are proposed to be adjusted by 2.4 percent. Before the final fee amounts are published, the fee amounts may be adjusted based on actual fluctuations in the CPI–U published by the Secretary of Labor.

Certain patent processing fees established under 35 U.S.C. 41(d), 119, 120, 132(b), 376, and Public Law 103–465 (the Uruguay Round Agreements Act) are proposed to be adjusted to reflect fluctuations in the CPI.

A trademark processing fee established under 15 U.S.C. 1113 is proposed to be adjusted to reflect fluctuations in the CPI.

The fee amounts were rounded by applying standard arithmetic rules so that the amounts rounded would be convenient to the user. Fees for other than a small entity of $100 or more were rounded to the nearest $10. Fees of less than $100 were rounded to an even number so that any comparable small entity fee would be a whole number.

General Procedures

Any fee amount that is paid on or after the effective date of the proposed fee increase would be subject to the new fees then in effect. The amount of the fee to be paid will be determined by the time of filing. The time of filing will be determined either according to the date of receipt in our office or the date reflected on a proper Certificate of Mailing or Transmission, where such a certificate is authorized under 37 CFR 1.8. Use of a Certificate of Mailing or Transmission is not authorized for items that are specifically excluded from the provisions of § 1.8. Items for which a Certificate of Mailing or Transmission under § 1.8 are not authorized include, for example, for filing of Continued Prosecution Applications (CPAs) under § 1.53(d) and other national and international applications for patents. *See* 37 CFR 1.8(a)(2).

Under 37 CFR 1.10(a), any correspondence delivered by the "Express Mail Post Office to Addressee" service of the United States Postal Service (USPS) is considered filed or received in our office on the date of deposit with the USPS. The date of deposit with the USPS is shown by the "date-in" on the "Express Mail" mailing label or other official USPS notation.

To ensure clarity in the implementation of the new fees, a discussion of specific sections is set forth below.

Discussion of Specific Rules

37 CFR 1.16 National Application Filing Fees

Section 1.16, paragraphs (a), (b), (d), and (f) through (i), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.17 Patent Application and Reexamination Processing Fees

Section 1.17, paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.18 Patent Post Allowance (Including Issue) Fees

Section 1.18, paragraphs (a) through (c), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.20 Post Issuance Fees

Section 1.20, paragraphs (e) through (g), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 1.492 National Stage Fees

Section 1.492, paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d), if revised as proposed, would adjust fees established therein to reflect fluctuations in the CPI.

37 CFR 2.6 Trademark Fees

Section 2.6, paragraph (a)(1), if revised as proposed, would adjust the fee established therein to reflect fluctuations in the CPI.

Other Considerations

This proposed rule contains no information collection requirements within the meaning of the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq*. This proposed rule has been determined to be not significant for purposes of Executive Order 12866. This proposed rule does not contain

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policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 13132 (August 4, 1999).

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule change would not have a significant economic impact on a substantial number of small entities (Regulatory Flexibility Act, 5 U.S.C. 605(b)). The proposed rule change increases fees to reflect the change in the CPI as authorized by 35 U.S.C. 41(f). Further, the principal impact of the major patent fees has already been taken into account in 35 U.S.C. 41(h)(1), which provides small entities with a fifty-percent reduction in the major patent fees. We received roughly 98,000 patent applications (approximately 30 percent of total patent applications) last year from small entities. Since the average small entity fee would increase by less than $10.00, with a minimum increase of $1.00 and a maximum increase of $35.00, there will not be a significant economic impact on a substantial number of small entities due to this proposed rule change.

Lists of Subjects

37 CFR Part 1

Administrative practice and procedure, Inventions and patents, Reporting and record keeping requirements, Small businesses.

37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, we are proposing to amend title 37 of the Code of Federal Regulations, Parts 1 and 2, as set forth below.

PART 1—RULES OF PRACTICE IN PATENT CASES

1. The authority citation for 37 CFR Part 1 would continue to read as follows:

Authority: 35 U.S.C. 2(b)(2), unless otherwise noted.

2. Section 1.16 is proposed to be amended by revising paragraphs (a), (b), (d), and (f) through (i) to read as follows:

§ 1.16 National application filing fees.

(a) Basic fee for filing each application for an original patent, except provisional, design, or plant applications:

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

(b) In addition to the basic filing fee in an original application, except provisional applications, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))—$43.00
By other than a small entity—$86.00

* * * * *

(d) In addition to the basic filing fee in an original application, except provisional applications, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))—$145.00
By other than a small entity—$290.00

* * * * *

(f) Basic fee for filing each design application:

By a small entity (§ 1.27(a))—$170.00
By other than a small entity—$340.00

(g) Basic fee for filing each plant application, except provisional applications:

By a small entity (§ 1.27(a))—$260.00
By other than a small entity—$520.00

(h) Basic fee for filing each reissue application:

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

(i) In addition to the basic filing fee in a reissue application, for filing or later presentation of each independent claim which is in excess of the number of independent claims in the original patent:

By a small entity (§ 1.27(a))—$43.00
By other than a small entity—$86.00

* * * * *

3. Section 1.17 is proposed to be amended by revising paragraphs (a)(2) through (a)(5), (b) through (e), (m), and (r) through (t) to read as follows:

§ 1.17 Patent application and reexamination processing fees.

(a) * * *

(1) * * *

(2) For reply within second month:

By a small entity (§ 1.27(a))—$205.00
By other than a small entity—$410.00

(3) For reply within third month:

By a small entity (§ 1.27(a))—$470.00
By other than a small entity—$940.00

(4) For reply within fourth month:

By a small entity (§ 1.27(a))—$735.00
By other than a small entity—$1,470.00

(5) For reply within fifth month:

By a small entity (§ 1.27(a))—$1,000.00
By other than a small entity—$2,000.00

(b) For filing a notice of appeal from the examiner to the Board of Patent Appeals and Interferences:

By a small entity (§ 1.27(a))—$165.00
By other than a small entity—$330.00

(c) In addition to the fee for filing a notice of appeal, for filing a brief in support of an appeal:

By a small entity (§ 1.27(a))—$165.00
By other than a small entity—$330.00

(d) For filing a request for an oral hearing before the Board of Patent Appeals and Interferences in an appeal under 35 U.S.C. 134:

By a small entity (§ 1.27(a)—$145.00
By other than a small entity—$290.00(e)

To request continued examination pursuant to § 1.114:

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

* * * * *

(m) For filing a petition for revival of an unintentionally abandoned application, for the unintentionally delayed payment of the fee for issuing a patent, or for the revival of an unintentionally terminated reexamination proceeding under 35 U.S.C. 41(a)(7) (§ 1.137(b)):

By a small entity (§ 1.27(a))—$655.00
By other than a small entity—$1,310.00

* * * * *

(r) For entry of a submission after final rejection under § 1.129(a):

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

(s) For each additional invention requested to be examined under § 1.129(b):

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

(t) For the acceptance of an unintentionally delayed claim for priority under 35 U.S.C. 119, 120, 121, or 365(a) or (c) (§§ 1.55 and 1.78): $1,310.00.

4. Section 1.18 is proposed to be amended by revising paragraphs (a) through (c) to read as follows:

§ 1.18 Patent post allowance (including issue) fees.

(a) Issue fee for issuing each original or reissue patent, except a design or plant patent:

By a small entity (§ 1.27(a))—$655.00
By other than a small entity—$1,310.00

(b) Issue fee for issuing a design patent:

By a small entity (§ 1.27(a))—$235.00
By other than a small entity—$470.00

(c) Issue fee for issuing a plant patent:

By a small entity (§ 1.27(a))—$315.00
By other than a small entity—$630.00

* * * * *

5. Section 1.20 is proposed to be amended by revising paragraphs (e) through (g) to read as follows:

§ 1.20 Post issuance fees.

* * * * *

(e) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond four years; the fee is due by three years and six months after the original grant:

By a small entity (§ 1.27(a))—$450.00
By other than a small entity—$900.00

(f) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond eight years; the fee is due by seven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,035.00
By other than a small entity—$2,070.00

(g) For maintaining an original or reissue patent, except a design or plant patent, based on an application filed on or after December 12, 1980, in force beyond twelve years; the fee is due by eleven years and six months after the original grant:

By a small entity (§ 1.27(a))—$1,585.00
By other than a small entity—$3,170.00

* * * * *

6. Section 1.492 is proposed to be amended by revising paragraphs (a)(1) through (a)(3), (a)(5), (b), and (d) to read as follows:

§ 1.492 National stage fees.

* * * * *

(a) The basic national fee:

(1) Where an international preliminary examination fee as set forth in § 1.482 has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$365.00
By other than a small entity—$730.00

(2) Where no international preliminary examination fee as set forth in § 1.482 has been paid to the United States Patent and Trademark Office, but an international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office as an International Searching Authority:

By a small entity (§ 1.27(a))—$380.00
By other than a small entity—$760.00

(3) Where no international preliminary examination fee as set forth in § 1.482 has been paid and no international search fee as set forth in § 1.445(a)(2) has been paid on the international application to the United States Patent and Trademark Office:

By a small entity (§ 1.27(a))—$530.00
By other than a small entity—$1,060.00

(4) * * *

(5) Where a search report on the international application has been prepared by the European Patent Office or the Japan Patent Office:

By a small entity (§ 1.27(a))—$455.00
By other than a small entity—$910.00

(b) In addition to the basic national fee, for filing or later presentation of each independent claim in excess of 3:

By a small entity (§ 1.27(a))—$43.00
By other than a small entity—$86.00

* * * * *

(d) In addition to the basic national fee, if the application contains, or is amended to contain, a multiple dependent claim(s), per application:

By a small entity (§ 1.27(a))—$145.00
By other than a small entity—$290.00

* * * * *

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for 37 CFR Part 2 would continue to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is proposed to be amended by revising paragraph (a)(1) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) * * *

(1) For filing an application, per class—$340.00

* * * * *

Dated: May 1, 2002.

Jon W. Dudas,

Acting Under Secretary of Commerce for Intellectual Property and Acting Director of the United States Patent and Trademark Office.

[FR Doc. 02–11270 Filed 5–6–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 261–0337b; FRL–7171–4]

Revisions to the California State Implementation Plan, San Joaquin Valley Unified Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a revision to the San Joaquin Valley Unified Air Pollution Control District (SJVUAPCD) portion of the California State Implementation Plan (SIP). This revision concerns volatile organic compound (VOC) emissions from adhesives. We are proposing to approve a local rule to regulate this emission source under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 6, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revision and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revision at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

San Joaquin Valley Air Pollution Control District, 1990 E. Gettysburg, Fresno, CA 93726.

FOR FURTHER INFORMATION CONTACT: Yvonne Fong, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 947–4117.

SUPPLEMENTARY INFORMATION: This proposal addresses SJVUAPCD Rule 4653, Adhesives. In the Rules and Regulations section of this **Federal Register**, we are approving this local rule in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule.

We do not plan to open a second comment period, so anyone interested in commenting should do so at this time. If we do not receive adverse comments, no further activity is planned. For further information, please see the direct final action.

Dated: March 29, 2002.

Laura Yoshii,

Deputy Regional Administrator, Region IX.

[FR Doc. 02–11175 Filed 5–6–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[LA–60–1–7551; FRL–7207–9]

Approval and Promulgation of Implementation Plans; Louisiana; Rescission of the Sections 182(f) and 182(b)(1) Exemptions to the Nitrogen Oxides (NO_X) Control Requirements for the Baton Rouge Ozone Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: In this action, we, the EPA, are proposing to rescind the nitrogen oxides (NO_X) exemptions for the Baton Rouge ozone nonattainment area. On January 26, 1996 (61 FR 2438), we granted an exemption under section 182(f) of the Clean Air Act (CAA) from the reasonably available control technology (RACT) and nonattainment new source review (NSR) requirements for major stationary sources of NO_X, as well as the vehicle inspection/maintenance (I/M) NO_X requirements and general conformity NO_X requirements. On February 27, 1996 (61 FR 7218), we also granted an exemption for the Baton Rouge ozone nonattainment area from the transportation conformity NO_X requirements. We based our approval of the exemptions on modeling showing that NO_X controls would not contribute to attainment of the national ambient air quality standard (NAAQS) for ozone. In granting the exemptions, EPA reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Photochemical modeling recently conducted for the Baton Rouge area State Implementation Plan (SIP) indicates that control of NO_X sources will help the area attain the NAAQS for ozone. The State of Louisiana has, therefore, requested that EPA rescind the NO_X exemption based on this new modeling. If EPA finalizes the rescissions, the State will be required to implement the NO_X requirements for RACT, NSR, vehicle I/M, and general and transportation conformity in the Baton Rouge area.

DATES: Comments must be received on or before June 6, 2002.

ADDRESSES: All comments should be addressed to Mr. Thomas H. Diggs, Chief, Air Planning Section, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Suite 700, Dallas, Texas 75202–2733.

Copies of documents relevant to this action are available for public inspection during normal business hours at the following locations:

Environmental Protection Agency, Region 6, Air Planning Section (6PD–L), 1445 Ross Avenue, Dallas, Texas 75202–2733; Louisiana Department of Environmental Quality (LDEQ), 7290 Bluebonnet Boulevard, Baton Rouge, Louisiana 70810. Please contact the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Alan Shar, Air Planning Section (6PD–L), EPA Region 6, 1445 Ross Avenue, Dallas, Texas 75202–2733, telephone (214) 665–6691.

SUPPLEMENTARY INFORMATION: The use of "we," "us," or "our" in this document refers to EPA.

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I. What Action Is EPA Proposing to Take?

At the request of the State of Louisiana, we are proposing to rescind the sections 182(f) and 182(b)(1) exemptions from certain CAA NO_X requirements for the Baton Rouge ozone nonattainment area. Rescission of these NO_X exemptions would remove the Baton Rouge ozone nonattainment area from exempt status and the State would be required to immediately implement the Federal NO_X RACT, NSR, vehicle I/M, and general and transportation conformity requirements.

II. What Is a NO_X Exemption?

The CAA states, in section 182(f), that an exemption from NO_X controls may be given to an ozone nonattainment area if the Administrator determines that NO_X controls would not contribute to attainment of the ozone NAAQS. On November 17, 1994, Louisiana submitted a petition to the EPA requesting that the Baton Rouge serious ozone nonattainment area [1] be exempted from requirements to implement NO_X controls pursuant to section 182(f) of the CAA. The exemption request, which addressed NO_X RACT, NSR, vehicle I/M, general and transportation conformity requirements, was based on modeling demonstrating additional NO_X emission controls within the nonattainment area would not contribute to attainment of the ozone NAAQS.

In April 1995, EPA changed the procedural mechanism through which a NO_X exemption from the transportation conformity requirements would be granted.[2] Instead of a petition under section 182(f), transportation conformity NO_X exemptions for ozone nonattainment areas subject to section 182(b)(1) of the CAA (i.e., moderate and above areas) would need to be submitted as a SIP revision. The Baton Rouge ozone nonattainment area is classified as serious and, thus, is subject to section 182(b)(1). Accordingly, on July 25, 1995, the State of Louisiana submitted to EPA, pursuant to section 182(b)(1), a SIP revision requesting an exemption from the transportation conformity NO_X requirements. The State based the section 182(b)(1) exemption request on the same modeling relied on for the earlier section 182(f) exemption request.

We approved the sections 182(f) and 182(b)(1) exemptions on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR 7218), respectively. In our **Federal Register** notices approving the exemptions, we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls.

III. Why Is EPA Proposing To Take This Action?

We are proposing to take this action because the State has requested rescission of the NO_X waivers based on revised modeling, and we have evaluated the new modeling and find that it appears to demonstrate that NO_X controls will contribute to attaining the ozone NAAQS. Specifically, on September 24, 2001, the State of Louisiana submitted to EPA a request to rescind the section 182(f) NO_X exemption for the Baton Rouge ozone nonattainment area. The State based its request on photochemical modeling recently conducted for the Baton Rouge area demonstrating that NO_X reductions are needed in order for the area to attain the one-hour ozone standard. In addition, on December 31, 2001, the State submitted to EPA a revision to the Baton Rouge SIP requesting rescission of the transportation conformity NO_X exemption based on this photochemical modeling.

As stated previously, when we approved the sections 182(f) and 182(b)(1) NO_X exemptions, we reserved the right to reverse the approval of the exemptions if subsequent modeling data demonstrated an ozone attainment benefit from NO_X emission controls. Based on our preliminary review of the recently completed modeling, it appears that additional NO_X controls are now needed in order for the Baton Rouge area to attain the ozone standard.

IV. What Actions Has The State Taken?

The State has taken a number of actions aimed at NO_X control consistent with its revised modeling showing that NO_X reductions will contribute to achieving the ozone NAAQS.

Specifically, on December 20, 2001, the State of Louisiana adopted revisions to its NSR regulations to address the NO_X NSR requirements. See Louisiana Administrative Code (LAC) 33:III.504, "Nonattainment New Source Review Procedures." The rule revisions were effective on that date. The NO_X NSR requirements apply to owners or operators planning to construct or modify a source, in the Baton Rouge serious ozone nonattainment area, that emits or has the potential to emit 50 tons per year or more of NO_X. The compliance date for the State's NO_X NSR rule is December 20, 2001.

In addition, on February 20, 2002, the State adopted NO_X control regulations. See LAC 33:III.Chapter 22, "Control of Emissions of Nitrogen Oxides (NO_X)." The rules were effective on that date. The regulations establish requirements for reducing emissions of NO_X from industrial sources in a nine-parish control region, which includes the five-parish Baton Rouge ozone nonattainment area (Ascension, East Baton Rouge, Iberville, Livingston and West Baton Rouge Parishes), as well as East Feliciana, West Feliciana, St. Helena, and Pointe Coupee Parishes. Affected facilities include those with one or more affected point sources [3] that collectively emit, or have the potential to emit, fifty (50) tons per year or more of NO_X. The rules are intended not only to satisfy the Federal NO_X RACT requirements applicable to the Baton Rouge ozone nonattainment area, but are also a key component of a broader control strategy to bring the Baton Rouge area into compliance with the one-hour ozone standard. The State's NO_X control rules' final compliance date is as expeditious as possible and varies from source to source, but no compliance date is later than May 1, 2005.

Lastly, on December 31, 2001, the State submitted to EPA a revision to the vehicle I/M SIP for the Baton Rouge area to address the I/M NO_X requirements.

V. What Would Be the Effect of Rescinding the NO_X Exemptions on Conformity?

The NO_X exemptions for transportation and general conformity determinations would no longer apply after the effective date of a final rule. The implications of rescinding the transportation and general conformity NO_X exemptions are discussed below.

The section 182(b)(1) transportation conformity NO $_X$ exemption waived the Federal transportation conformity rule's "build-no build" test for NO_X emissions. The "build-no build" test applies to ozone nonattainment areas without motor vehicle emissions budgets. See 40 CFR 93.119. However, on July 2, 1999 (64 FR 35930), EPA approved motor vehicle emissions budgets for VOC and NO_X as part of its approval of the 1999 Attainment Demonstration for the Baton Rouge ozone nonattainment area. Because the State of Louisiana now has established motor vehicle emission budgets for volatile organic compounds (VOC) and NO_X as part of its approved SIP, rescission of the transportation conformity NO_X exemption has no practical implications for the Baton Rouge ozone nonattainment area. If the section 182(b)(1) NO_X exemption is rescinded, the State of Louisiana would not need to revise its transportation conformity rules. See LAC 33:III, Chapter 14, Subchapter B, Section 1432, and 40 CFR 93.118 for more information.

The section 182(f) NO_X waiver exempted Federal projects from general conformity determinations with respect to NO_X. If the exemption is rescinded, Federal agencies making future general conformity determinations for Federal projects in the Baton Rouge area would now be subject to the NO_X requirements outlined in the State's general conformity rules. The State would not need to revise its general conformity rules if the section 182(f) NO_X waiver is rescinded. See LAC 33:III, Chapter 14, Subchapter A, and 40 CFR part 51 subpart W for more information.

Existing conformity determinations would not be affected by the rescission of the sections 182(f) and 182(b)(1) NO_X exemptions and will continue to be valid to the same extent as generally allowed under the rules; however, new conformity determinations will have to observe the NO_X requirements.

VI. What Would Be the Effect of Rescinding the Section 182(f) NO_X exemption on Vehicle I/M?

The vehicle I/M NO_X requirements would apply to the Baton Rouge ozone nonattainment area after the effective date of this rule. As stated previously, on December 31, 2001, the State submitted to EPA a revision to the vehicle I/M SIP for the Baton Rouge area to address the I/M NO_X requirements. The SIP includes a revised program design intended to meet the Federal low enhanced I/M performance standard for VOC and NO_X.[4] See 40 CFR 51.351.

VII. What Further Actions Would EPA Need To Take?

We will be reviewing the State's NO_X control regulations to ensure that they meet the requirements for NO_X RACT. We will also be reviewing the revised NSR regulations to ensure that they satisfy the Federal NO_X NSR requirements. We will be acting upon these regulations in separate rulemaking actions because they are elements of a broader SIP for the Baton Rouge ozone nonattainment area that was submitted to EPA on December 31, 2001. This SIP includes, among other things, the photochemical modeling on which the State's NO_X exemption rescission requests are based. We will be acting on this modeling—and other elements of this SIP submittal—in a separate rulemaking action.

In addition, we will be reviewing the revised vehicle I/M SIP submitted to EPA on December 31, 2001, to determine whether it meets the Federal I/M program requirements (including NO_X). We will act upon this SIP revision in a future rulemaking action on that subject.

VIII. Where Can I Get Background Information on the Exemptions?

As discussed above, the sections 182(f) and 182(b)(1) NO_X exemptions were approved on January 26, 1996 (61 FR 2438), and February 27, 1996 (61 FR

[1] At the time, the Baton Rouge serious ozone nonattainment area consisted of six parishes: Ascension, East Baton Rouge, Iberville, Livingston, Pointe Coupee, and West Baton Rouge. However, Pointe Coupee has since been redesignated to ozone attainment. See 61 FR 37833, dated July 22, 1996.

[2] For a detailed discussion of the basis for the procedural change, please reference EPA's October 6, 1995, proposed approval of the Baton Rouge transportation conformity NO_X exemption (60 FR 52348).

[3] Please see LAC 33:III.2201, "Affected Facilities in the Greater Baton Rouge NO_X Control Area," for definitions, exemptions, etc.

[4] The new program design replaces the fuel inlet pressure test (which was not implemented) with on-board diagnostics. The existing anti-tampering check and gas cap pressure test are still applicable. See LAC 55:III.Chapter 8, "Motor Vehicle Inspections."

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7218), respectively. We proposed approval of the sections 182(f) and 182(b)(1) NO_X exemptions on August 18, 1995 (60 FR 43100), and October 6, 1995 (60 FR 52349), respectively.

A copy of the recently completed modeling, NO_X control and NSR regulations, and I/M SIP revision that were submitted by the State to EPA are available from EPA and LDEQ at the addresses provided above.

IX. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This proposed action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This proposed rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This proposed rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Conformity, Hydrocarbons, Intergovernmental Relations, Nitrogen oxides, Ozone, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

[FR Doc. 02–11297 Filed 5–6–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC42–200220(a); FRL–7207–1]

Approval and Promulgation of Implementation Plans; South Carolina: Approval of Miscellaneous Revisions to The South Carolina State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve the State Implementation Plan (SIP) revisions submitted by the South Carolina Department of Health and Environmental Control, through the State of South Carolina, for the purpose of amending regulations relating to volatile organic compounds (VOC's), prevention of significant deterioration (PSD) and other miscellaneous rules. In the Final Rules section of this **Federal Register**, the EPA is approving the South Carolina SIP revision as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no significant, material, and adverse comments are received in response to this rule, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this rule. The EPA will not institute a second comment period on this document. Any parties interested in commenting on this document should do so at this time.

DATES: Written comments must be received on or before June 6, 2002.

ADDRESSES: All comments should be addressed to: Randy Terry at the EPA, Region 4 Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960.

Copies of the State submittal(s) are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region 4, Air Planning Branch, 61 Forsyth Street, SW, Atlanta, Georgia 30303–8960. Randy Terry, 404/562–9032. South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201–1708.

FOR FURTHER INFORMATION CONTACT: Randy B. Terry at 404/562–9032, or by electronic mail at terry.randy@epa.gov.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule which is published in the Rules section of this **Federal Register**.

Dated: April 8, 2002.

A. Stanley Meiburg,

Acting Regional Administrator, Region 4.

[FR Doc. 02–11289 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–7205–8]

Utah: Final Authorization of State Hazardous Waste Management Program Revision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to grant Final authorization to the hazardous waste program changes submitted by Utah. In the "Rules" section of this **Federal Register**, we are authorizing the State's program changes as an immediate final rule without a prior proposed rule because we believe this action is not controversial. Unless we receive written comments opposing this authorization during the comment period, the immediate final rule will become effective and the Agency will not take further action on this proposal. If we receive comments that oppose this action, we will publish a document in the **Federal Register** withdrawing that rule before it takes effect. EPA will address public comments in a later final rule based on this proposal. EPA may not provide further opportunity for comment. Any parties interested in commenting on this action must do so at this time.

DATES: We must receive your comments by June 6, 2002.

ADDRESSES: Send written comments to Kris Shurr, 8P–HW, U.S. EPA, Region VIII, 999 18th St, Ste 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139. You can view and copy Utah's application at the following addresses: Utah Department of Environmental Quality (UDEQ), from 8 a.m. to 5 p.m., 288 North 1460 West, Salt Lake City, Utah 84114–4880, contact: Susan Toronto, phone number: (801) 538–6776 and EPA Region VIII, from 8 a.m. to 3 p.m., 999 18th Street, Suite 300, Denver, Colorado 80202–2466, contact: Kris Shurr, phone number: (303) 312–6139.

FOR FURTHER INFORMATION CONTACT: Kris Shurr, EPA Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, phone number: (303) 312–6139.

SUPPLEMENTARY INFORMATION: For additional information, please see the immediate final rule published in the "Rules" section of this **Federal Register**.

Dated: April 26, 2002.

Jack W. McGraw,

Acting Regional Administrator, Region VIII.

[FR Doc. 02–11292 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG88

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for *Cirsium loncholepis* (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* (Gaviota tarplant), and the availability of the draft economic analysis for the proposed designation of critical habitat. We are reopening the comment period for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until June 6, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: For general information, Connie Rutherford or Catrina Martin, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, telephone 805/644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Cirsium loncholepis (La Graciosa thistle), *Eriodictyon capitatum* (Lompoc yerba santa), and *Deinandra increscens* ssp. *villosa* [=*Hemizonia increscens* ssp. *villosa*] (Gaviota tarplant) occur along the south central California coast. They are restricted to a narrow area in northern and western Santa Barbara County and southern San Luis Obispo County, in declining or altered habitats including central dune scrub, central maritime chaparral, valley needlegrass grassland, coastal freshwater wetlands, and southern bishop pine forest (Holland 1986, Schoenherr 1992).

Cirsium loncholepis is a short-lived, spreading, mound-like or erect and often fleshy, spiny member of the sunflower family (Asteraceae). Plants are from 10 to 100 centimeters (cm) (4 to 39 inches (in)) tall, with purplish flower heads occurring in wide, tight clusters at the tips of the stems. There are approximately 17 known locations for *Cirsium loncholepis*, all in San Luis and Santa Barbara counties. Ongoing threats to this species include groundwater pumping, oil field development and remediation, and competition from aggressive native and non-native plants.

Eriodictyon capitatum is a shrub in the waterleaf family (Hydrophyllaceae) with narrow, sticky stems up to 3 m (10 ft) tall, and a lavender inflorescence with corollas that are 6 to 15 mm (0.2 to 0.6 in) long. The four known locations of *Eriodictyon capitatum* occur in western Santa Barbara County. Fire management practices, invasive non-native plant species, low seed productivity, and naturally occurring catastrophic events pose significant threats to the long-term survival of this species.

Deinandra increscens ssp. *villosa*, a member of the sunflower family, is a yellow-flowered, variable gray-green, soft, hairy annual that is 30 to 90 cm (12 to 35 in) tall. *Deinandra increscens* ssp. *villosa* has a highly localized distribution in western Santa Barbara County, and is threatened by destruction of individual plants, habitat loss, and habitat degradation from the development and decommissioning of oil and gas facilities, including pipelines, and competition with non-native weeds.

On June 17,1999, our failure to issue a final rule and to make a critical habitat determination for *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa* was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.). Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Cirsium loncholepis*, *Eriodictyon capitatum*, and *Deinandra increscens* ssp. *villosa*, were listed as endangered species on March 20, 2000 (65 FR 14888). On November

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15, 2001, the proposed rule to designate critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa,* was published in the **Federal Register** (66 FR 57560). The original comment period closed on January 14, 2002. We are reopening the comment period for an additional 30 days to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

We have proposed to designate approximately 27,046 hectares (66,830 acres) in San Luis Obispo and Santa Barbara Counties, California, as critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa.* Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Cirsium loncholepis, Eriodictyon capitatum,* and *Deinandra increscens* ssp. *villosa,* we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may send comments by electronic mail (e-mail) to: *fw1coastaltrio@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AG88" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at telephone number 805/644–1766.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at "www.r1.fws.gov/news" or by writing to the Field Supervisor at the address under (1) above.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Catrina Martin (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–10999 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG73

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Holocarpha macradenia* (Santa Cruz Tarplant)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for the Santa Cruz tarplant (*Holocarpha macradenia*), and the availability of the draft economic analysis for the proposed designation of critical habitat. We are reopening the comment period for this species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until June 6, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Connie Rutherford or Catrina Martin, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, telephone 805/644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Holocarpha macradenia (Santa Cruz tarplant) is an aromatic annual herb in the aster family (Asteraceae) that is restricted to coastal terrace prairie habitat along the coast of central California. *Holocarpha macradenia* is one of only four species of the genus *Holocarpha.* All four are geographically restricted to California. The plant grows to the height of 10 to 50 centimeters (cm) (4 to 20 inches (in)). The yellow daisy-like flower head is surrounded from beneath by individual bracts (small leaf-like structure associated with flower head). *Holocarpha macradenia* is distinguished from other members of the genus by its numerous ray flowers and black anthers. *Holocarpha macradenia* is threatened primarily by historic and recent habitat destruction caused by residential development and habitat alteration caused primarily by land management practices that favor the increase of other species which compete with *Holocarpha macradenia. Holocarpha macradenia* is currently known from approximately 14 native and 8 experimentally seeded populations in Contra Costa, Monterey, and Santa Cruz Counties.

On June 17, 1999, our failure to issue a final rule and to make a critical habitat determination for Santa Cruz tarplant (*Holocarpha macradenia*) was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.). Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *Holocarpha macradenia* was listed as a threatened species on March 20, 2000 (65 FR 14898). On November 15, 2001,

the proposed rule to designate critical habitat for *Holocarpha macradenia* was published in the **Federal Register** (66 FR 57526). The original comment period closed on January 14, 2002. We are reopening the comment period for an additional 30 days to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

We have proposed to designate approximately 1,360 hectares (3,360 acres) in Contra Costa, Santa Cruz and Monterey Counties, California, as critical habitat for *Holocarpha macradenia.* Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Holocarpha macradenia,* we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may send comments by electronic mail (e-mail) to: *fws1sctarplant@r1.fws.gov.* If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AG73" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at telephone number 805/644–1766.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at *www.r1.fws.gov/news* or by writing to the Manager at the address under (1) above.

Author

The primary author of this notice is Catrina Martin (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11001 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG92

Endangered and Threatened Wildlife and Plants; Designating Critical Habitat for *Thlaspi californicum* (Kneeland Prairie penny-cress)

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for *Thlaspi californicum* (Kneeland Prairie penny-cress), and the availability of the draft economic analysis for this proposed designation of critical habitat. We are reopening the comment period to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record and will be fully considered in the final rule.

DATES: We will accept public comments until June 6, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Arcata Fish and Wildlife Office, U.S. Fish and Wildlife Service, 1655 Heindon Road, Arcata, CA 95521.

FOR FURTHER INFORMATION CONTACT: Field Supervisor, Arcata Fish and Wildlife Office, at telephone: 707/822–7201; facsimile: 707/822–8411.

SUPPLEMENTARY INFORMATION:

Background

Thlaspi californicum is a perennial member of the mustard family (Brassicaceae). The species grows from 9.5 to 12.5 centimeters (3.7 to 4.9 inches) tall with a basal cluster of green to purplish, sparsely toothed leaves. Leaves borne along the stem are sessile (without a stalk) with entire to toothed margins. The white flowers have strongly ascending flower stalks. *Thlaspi californicum* flowers from April to June. The fruit is a sharply pointed silicle (a short fruit typically no more than two to three times longer than wide), and is elliptic to obovate, without wings, and with an ascending stalk.

Thlaspi californicum is endemic to serpentine soils in Kneeland Prairie, located in the outer north coast range of Humboldt County, California. Serpentine soils are derived from ultramafic rocks (rocks with unusually large amounts of magnesium and iron). The entire known distribution of *T. californicum* occurs on Ashfield Ridge at elevations ranging from 792 to 841 meters (m) [2,600 to 2,760 feet (ft)].

The only known occurrence of *Thlaspi californicum* includes five relatively distinct groups of plants all located within 300 m (980 ft) of each other. The species occupies an area divided by the Kneeland Airport and Mountain View Road. The known population consists of approximately 5,300 individuals. The five colonies occupy an estimated 0.3 ha (0.8 ac).

Historically, several land use activities may have altered the distribution and abundance of *Thlaspi californicum* colonies. These activities included construction of the county road in the 1800s (currently Mountain View Road), the Kneeland Airport in 1964, and the California Department of Forestry & Fire Protection (CDFFP) helitack base in 1980. Currently, potential threats to *T. californicum* include small population size; expansion of Kneeland Airport and CDFFP helitack base; road realignment; catastrophic events; and spread of exotic species.

On June 17, 1999, our failure to issue a final rule and to make a critical habitat determination for *Thlaspi californicum* was challenged in *Southwest Center for*

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Biological Diversity and California Native Plant Society v. *Babbitt* (Case No. C99–2992 (N.D.Cal.). Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), *T. californicum* was listed as an endangered species on February 9, 2000 (65 FR 6332). On October 24, 2001, the proposed rule to designate critical habitat for *Thlaspi californicum* was published in the **Federal Register** (66 FR 53756). The original comment period closed on December 24, 2001. We are reopening the comment period for an additional 30 days to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

We proposed to designate critical habitat in one critical habitat unit that includes approximately 30 ha (74 ac), surrounding Kneeland Airport and bisected by Mountain View Road. This unit includes all five known plant colonies and all other serpentine outcrops in close proximity to the colonies. All of the proposed critical habitat for *Thlaspi californicum* is located on Ashfield Ridge in Kneeland Prairie, Humboldt County, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *T. californicum*, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this comment period. If you wish to comment, you may submit written comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Arcata Fish and Wildlife Office, 1655 Heindon Road, Arcata, CA 95521.

(2) You may send comments by electronic mail (e-mail) to: *FW1_kneelandpennycress@fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any. form of encryption. Please also include "Attn: RIN 1018–AG92" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Arcata Fish and Wildlife Office at telephone number 707/822–7201.

(3) You may hand-deliver comments to our Arcata Fish and Wildlife Office at the above address.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at "*www.r1.fws.gov/news*" or by writing to the Field Supervisor at the address under (1) above.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Robin Hamlin, Fish and Wildlife Biologist, at the above Arcata address.

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11002 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AG75

Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for *Chlorogalum purpureum*, a Plant From the South Coast Ranges of California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; reopening of comment period and notice of availability of draft economic analysis.

SUMMARY: We, the U.S. Fish and Wildlife Service, announce the reopening of the comment period for the proposed designation of critical habitat for two varieties of purple amole: *Chlorogalum purpureum* var. *purpureum* (purple amole) and *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole), and the availability of the draft economic analysis for the proposed designation of critical habitat. We are reopening the comment period for these species to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis. Comments previously submitted need not be resubmitted as they will be incorporated into the public record as part of this extended comment period and will be fully considered in the final rule.

DATES: We will accept public comments until June 6, 2002.

ADDRESSES: Written comments and information should be submitted to Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003. For the electronic mail address, and further instructions on commenting, refer to Public Comments Solicited section of this notice.

FOR FURTHER INFORMATION CONTACT: Heidi E. D. Crowell, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, telephone 805/644–1766; facsimile 805/644–3958.

SUPPLEMENTARY INFORMATION:

Background

Chlorogalum purpureum is a low-growing lily that forms a rosette composed of linear and flat, bright green leaves at the base of the plant (basal rosette). It is the only member of the genus *Chlorogalum* with bluish-purple flowers that open during daytime hours. *Chlorogalum purpureum* var. *purpureum* has an inflorescence (flowering structure) that is 25 to 40 cm (10 to 16 in) high, in contrast to *C. p.* var. *reductum* which has a shorter inflorescence that is 10 to 20 cm (4 to 8 in) high (Wilken 2000, Hoover 1964, Jernstedt 1993).

Chlorogalum purpureum is endemic to the south coast ranges of Monterey and San Luis Obispo counties. *Chlorogalum purpureum* var. *purpureum* (purple amole) occurs in the Santa Lucia Range of southern Monterey County and in northern San Luis Obispo County. *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole) occurs in one region of the La Panza Range of San Luis Obispo County. Threats include habitat fragmentation, habitat conversion, establishment of invasive plant species and nonnative grasses, establishment of military training facilities at Fort Hunter Liggett and Camp Roberts, and possibly the establishment of the San Antonio Reservoir in southern Monterey County.

Pursuant to the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), both varieties of *Chlorogalum purpureum* were proposed for listing as threatened species on March 30, 1998 (63 FR 15158). On June 17, 1999, our failure to issue a final rule and to make a critical habitat determination was challenged in *Southwest Center for Biological Diversity and California Native Plant Society* v. *Babbitt* (Case No. C99–2992 (N.D.Cal.)). The final rule listing the species *Chlorogalum purpureum*, which comprises two varieties, *Chlorogalum purpureum* var. *reductum* (Camatta Canyon amole) and *Chlorogalum purpureum* var. *purpureum* (purple amole), as threatened was published on March 20, 2000. On November 8, 2001, the proposed rule to designate critical habitat for *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* was published in the **Federal Register** (66 FR 56508). The original comment period closed on January 7, 2002. We are reopening the comment period for an additional 30 days to allow all interested parties to comment simultaneously on the proposed rule and the associated draft economic analysis.

We have proposed to designate approximately 8,898 hectares (21,980 acres) as critical habitat for *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum* in Monterey and San Luis Obispo counties, California. Critical habitat receives protection from destruction or adverse modification through required consultation under section 7 of the Act with regard to actions carried out, funded, or authorized by a Federal agency that may affect the critical habitat. Section 4(b)(2) of the Act requires that we designate or revise critical habitat based upon the best scientific and commercial data available, after taking into consideration the economic, or any other relevant impact of specifying any particular area as critical habitat. Based upon the previously published proposal to designate critical habitat for *Chlorogalum purpureum* var. *purpureum* and *C. p.* var. *reductum*, we have prepared a draft economic analysis of the proposed critical habitat designation. The draft economic analysis is available on the Internet and from the mailing addresses in the Public Comments Solicited section below.

Public Comments Solicited

We will accept written comments and information during this reopened comment period. If you wish to comment, you may submit your comments and materials concerning this proposal by any of several methods:

(1) You may submit written comments and information to the Field Supervisor, Ventura Fish and Wildlife Office, U.S. Fish and Wildlife Service, 2493 Portola Road, Suite B, Ventura, CA 93003.

(2) You may send comments by electronic mail (e-mail) to: *fw1chlorogalum@r1.fws.gov*. If you submit comments by e-mail, please submit them as an ASCII file and avoid the use of special characters and any form of encryption. Please also include "Attn: RIN 1018–AG75" and your name and return address in your e-mail message. If you do not receive a confirmation from the system that we have received your e-mail message, contact us directly by calling our Ventura Fish and Wildlife Office at telephone number 805/644–1766.

(3) You may hand-deliver comments to our Ventura Fish and Wildlife Office at the address given above.

Comments and materials received, as well as supporting documentation used in preparation of the proposal to designate critical habitat, will be available for inspection, by appointment, during normal business hours at the address under (1) above. Copies of the draft economic analysis are available on the Internet at "*www.r1.fws.gov/news*" or by writing to the Field Supervisor at the address under (1) above.

References Cited

A complete list of all references cited herein, as well as others, is available upon request from the Ventura Fish and Wildlife Office (see **ADDRESSES** section).

Author

The primary author of this notice is Catrina Martin (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11003 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AI18

Endangered and Threatened Wildlife and Plants; Listing the Carson Wandering Skipper as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; notice of reopening of comment period, and notice of public informational meeting.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the reopening of the public comment period for the proposed rule to list the Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) as endangered. The comment period is reopened to allow additional time for all interested parties to submit written comments on the proposal. Comments previously submitted need not be resubmitted as they already have been incorporated into the public record and will be fully considered in the final rule. Additionally, we are announcing that a public informational meeting will be held to share information and answer questions from interested persons regarding the species and the listing proposal.

DATES: We will accept comments until the close of business on June 6, 2002. The public meeting will be held on May 22, 2002, from 5 p.m. to 7 p.m. at the Lassen County Fairgrounds Commercial Building in Susanville, California.

ADDRESSES: Copies of the draft proposal are available on the Internet at: *http://endangered.fws.gov/frpubs/01fedreg.htm* or by writing to the Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, 1340 Financial Boulevard, Suite 234, Reno, NV 89502.

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods:

You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Nevada Fish and Wildlife Office, at the above address.

You may also send comments by electronic mail (e-mail) to: *fw1renoskipper@r1.fws.gov*. See the Public Comments Solicited section below for file format and other information about electronic filing.

You may hand-deliver comments to our Nevada Fish and Wildlife Office,

1340 Financial Boulevard, Suite 234, Reno, NV 89502.

Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marcy Haworth, Nevada Fish and Wildlife Office, at telephone 775/861–6300; facsimile 775/861–6301.

SUPPLEMENTARY INFORMATION:

Background

The genus *Pseudocopaeodes* in the family Hesperiidae and subfamily Hesperiinae (grass skippers) contains only one species, *Pseudocopaeodes eunus*. The Carson wandering skipper (*Pseudocopaeodes eunus obscurus*) is one of five subspecies in this genus and is locally distributed in grassland habitats on alkaline substrates in eastern California and western Nevada. Currently, it is known from only two populations, one in Washoe County, Nevada, and one in Lassen County, California.

Pursuant to the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) (Act), we published an emergency rule to list the Carson wandering skipper as endangered on November 29, 2001 (66 FR 59537). The emergency rule provides immediate Federal protection to this subspecies for a period of 240 days. We also published a proposed rule on November 29, 2001, to list the Carson wandering skipper as endangered under our normal listing procedures (66 FR 59550).

For further information regarding background biological information, previous Federal actions, factors affecting the subspecies, and conservation measures available to the Carson wandering skipper, please refer to our emergency and proposed rules published in the **Federal Register** on November 29, 2001.

Public Comments Solicited

With this notification, we solicit additional information and comments that may assist us in making a final decision on the proposed rule to list the Carson wandering skipper as endangered. We intend that any final listing action resulting from our proposal will be as accurate and effective as possible. Therefore, we request comments and additional information from the general public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule. Comments are particularly sought concerning:

(1) The location of any additional populations of this subspecies, and the reasons why any habitat should or should not be determined to be critical habitat pursuant to section 4 of the Act;

(2) Additional information regarding the range, distribution, and population size of this subspecies;

(3) Biological, commercial trade, or other relevant data regarding any threat (or lack thereof) to the Carson wandering skipper; and

(4) Current or planned activities or land use practices that could potentially impact the Carson wandering skipper.

Previously submitted written comments on this proposal need not be resubmitted. If you submit comments by e-mail, please submit them in ASCII file format and avoid the use of special characters and encryption. Please include "Attn: Carson wandering skipper" and your name and return address in your e-mail message. If you do not receive a confirmation from our system that we have received your e-mail message, contact us directly by calling our Nevada Fish and Wildlife Office at telephone number 775/861–6300. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the Nevada Fish and Wildlife Office, at the above address.

Public Meeting

A public informational meeting on the proposed listing of the Carson wandering skipper is scheduled to be held on May 22, 2002, from 5 p.m. to 7 p.m., at the Lassen County Fairgrounds Commercial Building in Susanville, California. Please contact the Nevada Fish and Wildlife Office at the above address with any questions concerning this public meeting.

Author

The primary author of this notice is Marcy Haworth of the Nevada Fish and Wildlife Office (see **ADDRESSES** section).

Authority: The authority of this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

Dated: April 24, 2002.

Marshall P. Jones, Jr.,

Acting Director, Fish and Wildlife Service.

[FR Doc. 02–11000 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 228

[I.D. 042502C]

Taking of the Cook Inlet (CI), Alaska, Stock of Beluga Whales by Alaska Natives, Marine Mammal Protection Act (MMPA)

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability; request for comments.

SUMMARY: The MMPA allows NMFS to limit the subsistence harvest of marine mammals by Alaska Natives when the affected stock of marine mammals is depleted and after the opportunity for a formal hearing on the proposed regulations to limit subsistence harvest. After designating the Cook Inlet stock of beluga whales as depleted, NMFS proposed regulations to limit the subsistence harvest from this stock. In December 2000, a formal hearing was conducted on the proposed regulations. The Administrative Law Judge presiding in the hearing has submitted his recommended decision to the Assistant Administrator for Fisheries (AA). The Judge's recommended decision is available for public review, and NMFS solicits comments on his recommendations.

DATES: Comments must be received by May 27, 2002.

ADDRESSES: Copies of the recommended decision may be reviewed and/or copied at the Protected Resources Division, Alaska Regional Office, NMFS, Anchorage, AK, 99513; or at the Alaska Regional Office, Protected Resources Division, Juneau, AK 99802. Copies of the recommended decision and the entire record of the hearing may be reviewed and/or copied at the Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments on the recommended decision should be forwarded to the Chief, Marine Mammal Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910 or submitted by facsimile to (301) 713–0376. Comments will not be accepted if submitted via the Internet or e-mail.

FOR FURTHER INFORMATION CONTACT: Thomas Eagle, NMFS, Office of Protected Resources, (301) 713–2322, ext. 105; Barbara Mahoney, NMFS Alaska Region, Anchorage Field Office, (907) 271–5006; or Michael Payne, NMFS, Alaska Region, (907) 586–7235.

SUPPLEMENTARY INFORMATION:

Electronic Access

The recommended decision, proposed regulations, and other documents related to the proposed rule and recovery effort are available on the Internet at the following address: *http://www.fakr.noaa.gov/protectedresources/whales/beluga.htm.*

Background

NMFS proposed regulations limiting the subsistence harvest of beluga whales in Cook Inlet, Alaska, on October 4, 2000 (65 FR 59164). The proposed rule's objectives are to recover the depleted stock of Cook Inlet beluga whales to its optimum sustainable population level while preserving the traditional subsistence use of the marine mammals by Alaska Natives. The proposed rule provides that:

(1) Subsistence harvest can only occur under an agreement between NMFS and an Alaska Native organization pursuant to section 119 of the MMPA;

(2) Subsistence harvest shall be limited to no more than two strikes annually until the stock is no longer considered depleted under the MMPA;

(3) The sale of CI beluga whale products shall be prohibited;

(4) All hunting for subsistence purposes shall occur after July 15 each year; and

(5) The harvest of newborn calves, or adult whales with maternally dependent calves shall be prohibited.

Section 101(b) and section 103(d) of the MMPA require that regulations prescribed to limit the subsistence harvest of marine mammals by Alaska Natives be made after opportunity for a formal agency hearing. Judge Parlen L. McKenna convened a hearing on the proposed rule December 5-8, 2000, in Anchorage, Alaska. Seven persons or parties participated in the hearing.

On March 29, 2002, Judge McKenna submitted his recommended decision in the case to the AA. Federal regulations (50 CFR 228.20) require the AA to make the recommended decision available for public review and comment for a 20-day period. Following the 20-day comment period, the AA must make a final decision on the proposed regulations, which must include the following:

(1) A statement containing a description of the history of the proceeding;

(2) Findings on the issues of fact with the reasons therefor; and

(3) Rulings on issues of law.

The AA's decision must be published in the Federal Register, and final regulations shall be promulgated with the decision. In accordance with these regulations, NMFS solicits public comments on Judge McKenna's recommended decision.

Dated: May 1, 2002.

David Cottingham,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–11302 Filed 5–6–02; 8:45 am]

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Notices

Federal Register
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Tuesday, May 7, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Grand Mesa, Uncompahgre and Gunnison National Forest, Colorado, Kennicott Slough Reservoir Peat Removal Project

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Surface Creek Ditch and Reservoir Company has asked to be allowed to remove all of the peat from Kennicott Slough Reservoir by mechanical means over the next five to ten years. This is in response to advice from the Colorado State Engineer's office that peat in the reservoir poses a serious risk to the integrity of the reservoir, and that failure of the dam could result in the loss of life and property down stream.

DATES: Comments concerning the scope of the analysis must be received by June 1, 2002. The draft environmental impact statement is expected August of 2002 and the final environmental impact statement is expected December of 2002.

ADDRESSES: Send written comments to Kennicott Slough Analysis, Grand Mesa, Uncompahgre and Gunnison National Forest, 2250 Hwy 50, Delta, Colorado 81416.

FOR FURTHER INFORMATION CONTACT: Jeff Burch, Environmental Coordinator, Grand Mesa, Uncompahgre and Gunnison National Forest, 2250 Hwy 50, Delta, Colorado 81416.

SUPPLEMENTARY INFORMATION: Kennicott Slough Reservoir capacity is approximately 1,034 acre-feet. The drainage basin area above the dam including the reservoir is about 283 acres. Before a dam was build at Kennicott Slough there existed a natural lake. Associated with this lake were extensive shallows which gradually filled in with peat deposits. These peat deposits are the accumulation of organic materials from wetland vegetation growth over long periods of time. They are thought to be as much as 10,000 years old in some parts of the reservoir. Given enough time they will completely fill shallow lakes and reservoirs. With the construction of the first dam at Kennicott in about 1900 to 1910, the water line of the bankfill pool expanded over existing peat and created more shallows conducive to the formation of peat and the "peat body" began to expand. With the construction of an even higher second dam in 1947 and 1948, fluctuating water levels caused additional detachment of peat from its original location, and peat producing vegetation and the peat body itself continued to expand.

The Forest Service estimates there to be approximately 317,000 cubic yards, or using a conversion of 50 to 70 pounds per cubic foot, 214,300 to 300,000 tons of peat proposed for removal from Kennicott Slough. Approximately 80% of the reservoir's surface area is occupied by either floating or submerged peat. As water levels fluctuate, and especially during spring snow/ice melt and runoff, pieces of peat detach from the main peat body and float freely. As water passes through the reservoir, these pieces of peat tend to migrate toward the outlet and spillway of the reservoir. Some pieces are small; others are large (as much as 40 feet across).

The Colorado State Division of Water Resources has advised that these floating pieces of peat pose a real threat to the safety of the dam. These detached pieces of peat have the potential of blocking either the outlet works or the spillway, causing overfilling of the reservoir, spillage and cutting of the earthen dam, and possible catastrophic failure. Kennicott is a Class I dam, which means that failure poses threat to human safety down stream. The nearest habitation is 3½ miles down stream and 2000 feet lower in elevation, with additional homes along the Kiser Creek channel about 6 miles downstream from the reservoir. The town of Cedaredge is some 12 to 15 miles below the reservoir on Surface Creek and could be affected by the sudden release of water from a dam failure. According to the reservoir company, this peat accumulation has been a problem for 50 or more years. At one point in time the reservoir was drained for a two-year period to allow for removal of the peat. The peat was to be removed, and sold, but the venture apparently proved unsuccessful from an economical approach.

More recently, the Surface Creek Ditch and Reservoir Company has been authorized each year to remove detached pieces of peat which pose the greatest threat, using mechanical means of removal. In fall, after the reservoir is drained and dried somewhat, a track-mounted backhoe, a front end loader, and dump truck operation remove identified pear. In 2000, approximately 200 tons were removed. This amounted to less than one tenth of one percent of the entire peat body at Kennicott. The same has been done in the fall of 2001, removing designated portions of the peat as part of routine reservoir maintenance. This annual practice of selective removal of peat does not address the broader and more long term problem.

Purpose and Need for Action

The purpose and need for action is dam safety. The detached pieces of peat directly threaten the safety of the dam with risk of blocking the spillway and outlet works intake. This poses a threat to the integrity of the dam.

Proposed Action

The proposed action is to remove the entire peat mass from Kennicott Slough Reservoir (approximately 30 acres) with heavy equipment (excavator, loader, dump truck) over a period of several years, during the months of August through October in order to prevent additional detachment of the pieces from the main peat mass and subsequent movement of the detached pieces into the reservoir spillway or outlet structure.

Possible Alternatives

Alternative 1: Under this alternative no additional peat removal would be authorized from Kennicott Slough Reservoir. This alternative is required by NEPA to be presented as a baseline to consider the environmental effects of action alternatives. In the event the action alternatives were found to be unacceptable, this alternative could be selected. However we are aware that this could (likely would over time) lead to expansion of the peat body, further detachment of peat and threat to the safety and function of the dam. This could lead to the requirement to remove the dam structure and abandon the reservoir.

Alternative 2: Under this alternative the current practice of identifying specific areas (typically detached, semi-detached or those with extensive "fractures") of peat for removal on an annual basis would continue. Only detached pieces could be removed as operations and maintenance (O&M). There would be no systematic removal of the larger peat body. Operations would take place in the fall and would be below the high water line for the reservoir to prevent surface disturbance outside the footprint of the bank-full reservoir.

Alternative 3: This is the proposed action, and will not be repeated in detail here. See above.

Alternative 4: This alternative compresses the time within which the proposed peat removal would take place. Instead of extending the removal operation over several years, the company would be required to not fill the reservoir until all peat was removed. This would likely still take two to three years. The files on Kennicott have reference to one other occasion when this was attempted but not accomplished due to the cost involved. This would compress all effects into one short time period and would immediately and completely address the dam safety issue.

Alternative 5: Under this alternative, an engineering solution would be employed to armor or block the outlet works and the spillway against the deposits of loose peat. This alternative addresses a way to leave most of the peat in place and still maintain the dam in a safe condition as required by the State. In general a strong marine netting would be installed across the reservoir using concrete caisson piles to support the net panels. Prior to installation, peat would have to be removed between the netting location and the high water line toward the direction of the outlet works. The reservoir would be drained and left to dry out to the extent possible in one season to allow collection of the peat, drilling of the caissons, and installation of the net panels. The location of the netting would be about 25 feet from the outlet pipe and about 100 feet from the edge of the dam crest. The netting would have to be about 40 feet high in the deepest section and 1200 feet long.

Alternative 6: Under this alternative the existing peat which now represents a risk of detachment would be trimmed over the next 2 years. The edge of the peat would then be anchored using mechanical means. The remainder, 80 to 90%, of the peat/wetland/fen would be left in tact.

Responsible Official

The responsible official is Robert L. Storch, Forest Supervisor, 2250 Hwy. 50, Delta, Colorado 81416.

Nature of Decision To Be Made: The decision to be made is whether or not to allow the entire peat body, or some portion of it, to be removed, and on what schedule; and what mitigation measures or operating restrictions (these may include timing, methods, and other measures to prevent environmental harm or unacceptable conflict in the use of the National Forest).

Scoping Process: Initial scoping was conducted for this proposal during August and early September of 2000. Letters inviting comments on the proposal were sent to parties known to be interested. A news release was issued and published in the Grand Junction Daily Sentinel. Also, a legal notice was run in that same newspaper (see project record). Seven letters were received in response, and a number of phone conversations were documented. From the response to scoping, as well as from correspondence with the Surface Creek Ditch Company, and the State of Colorado Division of Water Resources, over a number of years dealing with the peat problem at Kennicott, an initial set of issues were identified. The agency ID Team met and discussed the project and identified additional issues to be addressed. This list of preliminary issues will be supplemented following comment in response to this NOI.

Preliminary Issues: The following issues have been identified as preliminary issues to be carried through the analysis: effects on the wetland/fen (including Threatened Endangered or Sensitive species of plants), dam safety, effects on water quality and water quantity, effects on aquatic and terrestrial wildlife (including Threatened, Endangered or Sensitive species), effects on the recreation setting and use of the area, effects on potential paleontological resources, road use/maintenance and access to Kennicott Slough Reservoir, and economics/cost of project.

Permits or Licenses Required: Activities regarding management of this reservoir are governed in part by a special use authorizations held by the Surface Creek Ditch and Reservoir Company, and administered by the U.S. Forest Service. There are no additional permits or licenses required.

Comment Requested

This notice of intent initiates the scoping proces which guides the development of the environment impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review: A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the Federal Register.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(*Authority:* 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1090.15, Section 21)

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Dated: April 23, 2002.
Robert L. Storch,
Forest Supervisor.
[FR Doc. 02–11214 Filed 5–6–02; 8:45 am]
BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

National Agricultural Statistics Service

Notice of Intent to Revise and Extend a Currently Approved Information Collection

AGENCY: National Agricultural Statistics Service, USDA.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. No. 104–13) and Office of Management and Budget regulations at 5 CFR part 1320 (60 FR 44978, August 29, 1995), this notice announces the intention of the National Agricultural Statistics Service (NASS) to revise and extend a currently approved information collection, the Agricultural Labor Survey.

DATES: Comments on this notice must be received by July 11, 2002 to be assured of consideration.

ADDRESSES: Comments may be mailed to Ginny McBride, NASS OMB Clearance Officer, U.S. Department of Agriculture, Room 5336-South, 1400 Independence Avenue SW, Washington, D.C. 20250–2024 or sent electronically to *gmcbride@nass.usda.gov.*

FOR FURTHER INFORMATION CONTACT: Rich Allen, Associate Administrator, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–4333 or Linda Hutton, Chief, Environmental, Economics, and Demographics Branch, National Agricultural Statistics Service, U.S. Department of Agriculture, (202) 720–6146.

SUPPLEMENTARY INFORMATION:

Title: Agricultural Labor Survey.
OMB Number: 0535–0109.
Expiration Date of Approval: September 30, 2002.
Type of Request: Intent to Revise and Extend a Currently Approved Information Collection.
Abstract: The primary objective of the National Agricultural Statistics Service is to prepare and issue State and national estimates of crop and livestock production, disposition, and prices. The Agricultural Labor Survey provides statistics on the number of agricultural workers, hours worked, and wage rates. Number of workers and hours worked are used to estimate agricultural productivity; wage rates are used in the administration of the "H–2A" Program and for setting Adverse Effect Wage Rates. Survey data are also used to carry out provisions of the Agricultural Adjustment Act. NASS intends to request that the Agricultural Labor Survey be approved for another 3 years, with the program reduction noted below.

Notice is hereby given that the National Agricultural Statistics Service has modified the scope of the quarterly Agricultural Labor program as of July 2002. Based on findings of a recent comprehensive program review, the following changes have been made: (a) The number and average hours worked of self-employed and unpaid agricultural workers will no longer be collected each quarter and the annual averages will no longer be published and (b) the percent of hired workers that are migrant labor will no longer be collected or published.

These data will be collected under the authority of 7 U.S.C. 2204(a). Individually identifiable data collected under this authority are governed by Section 1770 of the Food Security Act of 1985, 7 U.S.C. 2276, which requires USDA to afford strict confidentiality to non-aggregated data provided by respondents.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 15 minutes per response.

Respondents: Farms and businesses.
Estimated Number of Respondents: 14,700.
Estimated Total Annual Burden on Respondents: 11,000 hours.

Copies of this information collection and related instructions can be obtained without charge from Ginny McBride, NASS OMB Clearance Officer, at (202) 720–5778.

Comments: Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. All responses to this notice will become a matter of public record and be summarized in the request for OMB approval.

Dated: April 26, 2002.
Rich Allen,
Associate Administrator.
[FR Doc. 02–11226 Filed 5–6–02; 8:45 am]
BILLING CODE 3410–20–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–817]

Administrative Review of Oil Country Tubular Goods from Mexico: Extension of Time Limit for Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 7, 2002.

FOR FURTHER INFORMATION CONTACT: Phyllis Hall at (202) 482–1398, or Abdelali Elouaradia at (202) 482–1374, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce ("the Department") to make a preliminary determination within 245 days after the last day of the anniversary month of an order for which a review is requested, and a final determination within 120 days after the date on which the preliminary determination is published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary determination to a maximum of 365 days and for the final determination to 180 days (or 300 days if the Department does not extend the time limit for the preliminary determination) from the date of publication of the preliminary determination.

Background

On October 1, 2001, the Department published the Notice of Initiation of Administrative Review of the Antidumping Duty Order on Oil Country Tubular Goods from Mexico, covering the period August 1, 2000 through July 31, 2001 (66 FR 49924).

The preliminary results are currently due no later than May 3, 2002.

Extension of Time Limit for Preliminary Results of Review

The instant administrative review involves several complex issues that necessitate a greater amount of time in order to preliminarily complete this review (discrepancies between the public version and proprietary version of U.S. Customs data). Therefore, it is not practicable to complete the preliminary results of this review within the original time limits mandated by section 751 (a)(3)(A) of the Act. The Department is extending the time limit for completion of the preliminary results by 120 days, until September 2, 2002.

This extension of the time limit is in accordance with section 751 (a)(3)(A) of the Act and 19 CFR 351.213(h)(2).

Dated: April 29, 2002
Joseph A. Spetrini,
Deputy Assistant Secretary for Import Administration, Group III.
[FR Doc. 02–11309 Filed 5–6–02; 8:45 am]
BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Prospective Grant of Exclusive Patent License

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice of prospective grant of exclusive patent license.

SUMMARY: This is a notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institute of Standards and Technology ("NIST"), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States of America, its territories, possessions and commonwealths, to NIST's interest in the invention embodied in U.S. Patent No. 6,015,714 (Application No. 09/098,142), titled, "Characterization Of Individual Polymer Molecules Based On Monomer-Interface Interactions," filed June 16, 1998; NIST Docket No. 95–040CIP, to the President and Fellows of Harvard College, 1350 Massachusetts Avenue, Holyoke Center, Suite 727, Cambridge, MA 02138. The grant of the license would be for all fields of use.

FOR FURTHER INFORMATION CONTACT: J. Terry Lynch, National Institute of Standards and Technology, Office of Technology Partnerships, 100 Bureau Drive, Stop 2200, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The prospective exclusive license will be royalty sharing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NIST receives written evidence and argument which establish that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7. The availability of the invention for licensing was published in the **Federal Register**, Vol. 67, No. 19 (January 29, 2002).

U.S. Patent No. 6,015,714 is a joint invention between Harvard, NIST, and the University of California. NIST's interest in the invention is owned by the U.S. government, as represented by the Secretary of Commerce. The present invention relates to a method for sequencing a nucleic acid polymer by (1) providing two separate, adjacent pools of a medium and an interface between the two pools, the interface having a channel so dimensioned as to allow sequential monomer-by-monomer passage from one pool to the other pool of only one nucleic acid polymer at a time; (2) placing the nucleic acid polymer to be sequenced in one of the two pools; and (3) taking measurements as each of the nucleotide monomers of the nucleic acid polymer passes through the channel so as to sequence the nucleic acid polymer.

Dated: April 30, 2002.
Karen H. Brown,
Deputy Director.
[FR Doc. 02–11306 Filed 5–6–02; 8:45 am]
BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 042902C]

Marine Mammals; File No. 984–1587

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Receipt of application for amendment.

SUMMARY: Notice is hereby given that Dr. Terrie Williams, Long Marine Lab, Institute of Marine Sciences, University of California at Santa Cruz, 100 Shaffer Road, Santa Cruz, CA 95060, has requested an amendment to scientific research Permit No. 984–1587–00.

DATES: Written or telefaxed comments must be received on or before June 6, 2002.

ADDRESSES: The amendment request and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376; and

Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; phone (562)980–4001; fax (562)980–4018.

Written comments or requests for a public hearing on this request should be submitted to the Chief, Permits, Conservation and Education Division, F/PR1, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular amendment request would be appropriate.

Comments may also be submitted by facsimile at (301)713–0376, provided the facsimile is confirmed by hard copy submitted by mail and postmarked no later than the closing date of the comment period. Please note that comments will not be accepted by e-mail or other electronic media.

FOR FURTHER INFORMATION CONTACT: Amy Sloan or Ruth Johnson, (301)713–2289.

SUPPLEMENTARY INFORMATION: The subject amendment to Permit No. 984–1587–00, issued on October 31, 2000 (65 FR 66718), is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216).

Permit No. 984–1587–00 authorizes the permit holder to examine the physiological responses of two adult male dolphins (*Tursiops truncatus*) and three adult female California sea lions (*Zalophus californianus*) during swimming and diving. Testing involves measuring locomotor, thermal, and maintenance costs using voluntary behaviors through training at Long Marine Laboratory.

The permit holder requests authorization to: (1) extend the holding and research on the California sea lions at Long Marine Laboratory from the expiration date of September 30, 2002, to June 30, 2004; (2) obtain an adult male California sea lion on temporary breeding loan from Oceans of Fun

(Milwaukee, WI) to mate with the three female sea lions; and (3) conduct the same research on the three female sea lions while pregnant. All procedures are performed voluntarily by the sea lions. Types of take include mating; blood, milk, saliva, fecal, and urine sampling; open flow respirometry, swimming and walking, and voluntary breath holding. The purpose of this research is to test the hypothesis that physiological adaptations for the marine environment result in elevated energetic costs in otariids compared to terrestrial mammals, which will be tested by measuring locomotor, thermal, maintenance, and reproductive costs in sea lions.

In compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), an initial determination has been made that the activity proposed is categorically excluded from the requirement to prepare an environmental assessment or environmental impact statement.

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 2, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Educotion Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–11303 Filed 5–6–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Navy

Notice of Availability of Invention for Licensing; Government-Owned Invention

AGENCY: Department of the Navy, DoD.

ACTION: Notice.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is available for licensing by the Department of the Navy. Navy Case No. 83,234, entitled "Combining a Constraint Solvers with a BDD for Automatic Invariant Checking".

ADDRESSES: Requests for information about the invention cited should be directed to the Naval Research Laboratory, Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, and must include the Navy Case number.

FOR FURTHER INFORMATION CONTACT: Catherine M. Cotell, Ph.D., Head, Technology Transfer Office, NRL Code 1004, 4555 Overlook Avenue, SW, Washington, DC 20375–5320, telephone (202) 767–7230. Due to temporary U.S. Postal Service delays, please fax (202) 404–7920, E-Mail: *cotell@nrl.navy.mil* or use courier delivery to expedite response.

(**Authority:** 35 U.S.C. 207, 37 CFR Part 404)

Dated: May 1, 2002.

R. E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–11248 Filed 5–6–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; System of Records

AGENCY: Department of the Navy, DoD.

ACTION: Notice to amend records system.

SUMMARY: The Department of the Navy proposes to amend two systems of records notices in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on June 6, 2002, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to Department of the Navy, PA/FOIA Policy Branch, Chief of Naval Operations, DNS10, 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Doris Lama at (202) 685–6545 or DSN 325–6545.

SUPPLEMENTARY INFORMATION: The Department of the Navy's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The Department of the Navy proposes to amend a system of records notice in its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended. The changes to the system of records are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports. The records system being amended is set forth below, as amended, published in its entirety.

Dated: April 29, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N12630–1

SYSTEM NAME:

Voluntary Leave Transfer Program Records (July 13, 2000, 65 FR 43307).

CHANGES:

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete first paragraph and replace with 'Policy official: Office of Civilian Human Resources, Nebraska Avenue Complex, 321 Somers Court NW, Suite 40101, Washington, DC 20393–5451.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Employee, supervisors, co-workers or other agency or contractor-employee personnel, and private individuals to include family members of employee and outside practitioners.'

* * * * *

N12630–1

SYSTEM NAME:

Voluntary Leave Transfer Program Records.

SYSTEM LOCATION:

Navy Human Resources Offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have volunteered to participate in the leave transfer program as either a donor or recipient.

CATEGORIES OF RECORDS IN THE SYSTEM:

Separate files exist for leave recipients and leave donors records.

Leave recipients records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, pay level, leave balance, number of hours requested, brief description of the medical or personal hardship which qualifies the individual for inclusion in the program, the status of that hardship, and a statement that selected data elements may be used in soliciting donations. The file may also contain medical or physician certifications and agency approvals or denials.

Leave donors records contain the individual's name, organization, office telephone number, Social Security Number, position title, grade, and pay level, leave balance, number of hours donated and the name of the designated recipient.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; 5 U.S.C. 6331 *et seq.* (Leave); E.O. 9397 (SSN); and 5 CFR part 630.

PURPOSE(S):

To manage the Department of the Navy's Voluntary Leave Transfer Program. The recipient's name, position data, organization, and brief hardship description are published internally for passive solicitation purposes. The Social Security Number is sought to effectuate the transfer of leave by human resources and pay offices from the donor's account to the recipient's account.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 522a(b)(3) as follows:

To the Department of Labor in connection with a claim filed by an employee for compensation due to a job-connected injury or illness, when leave donor and leave recipient are employed by different Federal agencies.

The DoD 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and automated records.

RETRIEVABILITY:

Name/Social Security Number of leave recipient for access to their files. Name/Social Security Number of leave donor for access to their files.

SAFEGUARDS:

Access to records is limited to the custodian of the records or by persons responsible for servicing the records in the performance of their official duties. Records are stored in locked cabinets or rooms and are controlled by personnel screening. Computer terminals are located in supervised areas. Access to computerized data is controlled by password or other user code systems.

RETENTION AND DISPOSAL:

Records are destroyed one year after the end of the year in which the file is closed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy official: Office of Civilian Human Resources, Nebraska Avenue Complex, 321 Somers Court NW, Suite 40101, Washington, DC 20393–5451.

Record holder: Director of local Human Resources Offices. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquires to their servicing Human Resources Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of record.

The request should contain the name, approximate date during which the case record was developed, the address of the individual concerned and should be signed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about them contained in this system of records should address written inquiries to their servicing Human Resources Office. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records.

The request should contain the name, approximate date during which the case record was developed, the address of the individual concerned and should be signed.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Employee, supervisors, co-workers or other agency or contractor-employee personnel, and private individuals to include family members of employee and outside practitioners.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N12792–7

SYSTEM NAME:

Drug-Free Workplace Program Records (February 8, 2000, 65 FR 6184).

Changes

* * * * *

SYSTEM LOCATION:

Delete entry and replace with Records are located at the local naval activity, the local servicing Human Resources Offices, the Human Resource Service Center Regional Offices Regional Offices, or the Office of Civilian Human Resources.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with "Pub.L. 100–71, 5 U.S.C. 7301; 21 U.S.C. 812 (Schedule of Controlled Substances); E.O. 12564, Drug-Free Federal Workplace; E.O. 9397 (SSN); and Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with "Negative test records are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive or Non-negative test records are permanently retained. Written records and test results together with urine specimens shall be retained until litigation is complete when the employee challenges or appeals adverse actions. Negative urine specimens are disposed of at the end of the test day."

* * * * *

N12792–7

SYSTEM NAME:

Drug-Free Workplace Program Records.

SYSTEM LOCATION:

Records are located at the local naval activity, the local servicing Human Resources Offices, the Human Resource Service Center Regional Offices Regional Offices, or the Office of Civilian Human Resources.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and applicants for employment with the Department of the Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records related to selection, notification, testing of employees and applicants, urine specimens, drug test results, collection authentication and chain of custody documents.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 100–71, 5 U.S.C. 7301; 21 U.S.C. 812 (Schedule of Controlled Substances); and E.O. 12564, Drug-Free Federal Workplace; E.O. 9397 (SSN); and Department of Health and Human Services Mandatory Guidelines for Federal Workplace Drug Testing Programs.

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PURPOSE(S):

The system is established to maintain records relating to the selection and testing of Department of the Navy employees, and applicants for employment, for use of illegal drugs and drugs identified in Schedules I and II of 21 U.S.C. 812 (Schedule of Controlled Substances).

The records are also used by the Medical Review Officer; the administrator of any Employee Assistance Program in which the employee is receiving counseling or treatment or is otherwise participating; and supervisory or management officials within the employee's agency having authority to take adverse personnel action against such employee.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with the provisions of 5 U.S.C. 7301, the DoD "Blanket Routine Uses" published at the beginning of the Navy's compilation do not apply to this system.

To a court of competent jurisdiction where required by the United States Government to defend against any challenge against any adverse personnel action.

Note: Record of the identity, diagnosis, prognosis, or treatment of any client/patient, irrespective of whether or when he ceases to be a client/patient, maintained in connection with the performance of any alcohol or drug abuse prevention and treatment function conducted, regulated, or directly or indirectly assisted by any department or agency of the United States, shall, except as provided therein, be confidential and be disclosed only for the purposes and under the circumstances expressly authorized in 42 U.S.C. 290dd-2. The results of a drug test of civilian employees may be disclosed only as expressly authorized under 5 U.S.C. 7301. These statutes take precedence over the Privacy Act of 1974, in regard to accessibility of such records except to the individual to whom the record pertains. The DoD "Blanket Routine Uses" do not apply to these types records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records consist of written materials and/or electronic media.

RETRIEVABILITY:

Records are retrieved by name of employee, applicant for employment, Social Security Number, specimen I.D. number assigned, or any combination of these.

SAFEGUARDS:

Records will be stored in secure containers, e.g., safes, locked filing cabinets, etc. Urine specimens will be stored in appropriate locked storage facilities. Access to such records and specimens is restricted. Chain-of-custody and other procedural and documentary requirements of Pub. L. 100–71 and the Department of Health and Human Services Guidelines will be followed in collection of urine samples, conducting drug tests, and processing test results. All information contained in computers is password protected.

RETENTION AND DISPOSAL:

Negative test records are retained for three years and then destroyed by shredding, burning, or erasure in the case of electronic media. Positive or Non-negative test records are permanently retained. Written records and test results together with urine specimens shall be retained until litigation is complete when the employee challenges or appeals adverse actions. Negative urine specimens are disposed of at the end of the test day.

SYSTEM MANAGER(S) AND ADDRESS:

Policy and Record Holder: DON Drug Program Coordinator, Office of Civilian Human Resources, Nebraska Avenue Complex, 321 Somers Court NW, Suite 40101, Washington, DC 20393–5441.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system contains information about themselves should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Commanding Officer/Commander of the DON activity or the servicing human resources office at which they are or were employed, or at which they made application for employment, and for which they provided a urine specimen for drug testing.

Individuals may furnish their full name, Social Security Number, the title, series, and grade of the position they occupied or applied for when the drug test was conducted, specimen ID number, and the date of the test.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Records are obtained from the individual to whom the record pertains; DON or contractor employees involved in the selection, notification, and collection of urine from individuals who are tested; DON or contractor laboratories that test urine samples for the presence of illegal drugs, DON or contractor Medical Review Officers; supervisors and managers and other DON officials engaged in administering the Drug-Free Workplace Program; the Civilian Employee Assistance Program; processing adverse actions based on drug test results; and DON or contractor electronic databases.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–10994 Filed 5–6–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF EDUCATION

[CFDA No.: 84.195N]

English Language Acquisition: National Professional Development Program; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants

This notice is a complete application package. Together with the statute authorizing the program and the applicable regulations governing this program, including the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms; and instructions needed to apply for a grant under this program.

Purpose of Program

This program provides grants for professional development activities that will improve classroom instruction for limited English proficient (LEP) children and assist educational personnel working with such children to meet high professional standards, including standards for certification and licensure as teachers who work in language instruction educational programs or serve LEP students.

Eligible Applicants: One or more institutions of higher education (IHEs) that have entered into consortia arrangements with local educational agencies (LEAs) or State educational agencies (SEAs).

Deadline for Transmittal of Applications: June 6, 2002.

Deadline for Intergovernmental Review: July 8, 2002.

Available Funds: $37.5 million.

Estimated Range of Awards: $200,000-$300,000 per year for single IHEs applying in consortia with LEAs or SEAs. $300,000–$400,000 per year for multiple IHEs applying in consortia with LEAs or SEAs.

Estimated Average Size of Awards: $250,000 per year.

Estimated Number of Awards: 150.

Project Period: Up to 60 Months.

Page Limit: The application narrative (Part III of the application) is where you, the applicant, address the selection criteria reviewers use to evaluate your application. You must limit the application narrative to the equivalent of no more than 35 pages, using the following standards:

- A page is 8.5 X 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs, except that within the 35-page limit you may include five pages or less of single-spaced text in one chart describing the management plan.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet; Part II, the budget section, including budget justification and the cost itemization; Part IV, the assurances and certifications; the table of contents, or the one-page abstract, or the letters attached to the one-page abstract signed by consortia representatives. However you must include all of the application narrative in Part III.

If, to meet the page limit, you use more than one side of the page, you use a larger page, or you use a print size, spacing, or margins smaller than the standards in this notice, we will reject your application.

Applicable Regulations

(a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80. 81, 82, 85, 86, 97, 98 and 99.

Description of Program

The statutory authorization for this program, and the application requirements that apply to this competition, are set out in section 3131 of Public Law 107–110, the Elementary and Secondary Education Act of 1965 as amended by the No Child Left Behind Act of 2001.

Grants awarded under this program may be used for preservice professional development programs that will assist local schools and IHE's to upgrade the qualifications and skills of educational personnel who are not certified or licensed, especially educational paraprofessionals; for the development of curricula appropriate to the needs of the consortia participants involved; and in conjunction with other Federal need-based student financial assistance programs, for financial assistance, and costs related to tuition, fees, and books for enrolling in courses required to complete the degree involved, to meet certification or licensing requirements for teachers who work in language instruction educational programs or serve limited English proficient children.

Priorities

Competitive Priority

Under 34 CFR 75.105(c)(2)(i), we award 15 points to applications that meet the following priority. These points are in addition to any points the applicant earns under the selection criteria.

IHE's, applying as lead agencies, in consortia with LEAs or SEAs, that are novice grantees, and which propose to assist participants to meet certification requirements for teachers of LEP students. For the purpose of this priority a novice grantee is defined as an institution of higher education that has not received funding since FY 1995 under Title VII of the Elementary and Secondary Education Act or 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382, enacted October 20, 1994)

Invitational Priorities

The Secretary is particularly interested in applications that meet the following invitational priorities. However, an application that meets any of these invitational priorities receives no competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

(a) Applications proposing partnerships involving IHEs experienced in preparing teachers of LEP students, SEAs, and institutions proposing to develop new programs for teachers of LEP students, which may include Hispanic-Serving Institutions, Historically Black Colleges and Universities, and 2-year colleges,

(b) Applications which propose alternative teacher certification programs for individuals with high academic qualifications.

(c) Applications which propose professional development in research-based reading instruction for reading teachers of LEP students, other teachers of LEP students, or school administrators.

(d) Applications which address the needs of schools in rural areas with emerging populations of LEP students.

Waiver of Proposed Rulemaking

In accordance with the Administrative Procedure Act (5 U.S.C. 553), it is the practice of the Department of Education to offer interested parties the opportunity to comment on proposed priorities that are not taken directly from statute. Ordinarily, this practice would have applied to the competitive priority and selection criteria in this notice. Section 437(d)(1) of the General Education Provisions Act (GEPA), however, exempts rules that apply to the first competition under a new program from this requirement. The program covered by this notice, the National Professional Development Program, is a new program that is authorized by the No Child Left Behind Act of 2001, P.L. 107–110. The Secretary, in accordance with section 437(d)(1) of GEPA, in order to ensure timely awards, has decided to forego public comment with respect to the competitive priority and selection criteria. The competitive priority and selection criteria will apply only to the FY 2002 grant competition, unless the Department issues a notice for proposed rulemaking for 2003.

Selection Criteria

The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Need for project.* (10 points) (1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the following factors:

(i) The extent to which the applicant has identified specific needs for improving the quality and increasing the quantity of educational personnel to serve LEP students in the targeted schools and districts.

(ii) The extent to which the applicant has coordinated with SEAs and LEAs in identifying needs to be addressed by the proposed project.

(b) *Quality of the project design.* (40 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the project design represents a cohesive plan, which effectively links identified needs, goals, objectives and activities.

(ii) The extent to which the project objectives specify measurable outcomes for the quality and quantity of participants recruited, the progress of participants in completing program requirements, the success of participants in achieving high standards and completing program requirements, the placement and the effectiveness of graduates in the instructional setting, and the improved capacity of the institution to prepare educational personnel to serve LEP students effectively.

(iii) The extent to which project curricula reflect state standards for educational personnel preparing to serve LEP students.

(iv) The extent to which the proposed project will effectively prepare participants who are preservice teachers in the content of subjects they will teach, and prepare all participants in instructional strategies and assessment measures appropriate for LEP students.

(v) The extent to which field practice activities will provide participants with adequate time, guidance, and experience in school settings with LEP students.

(vi) The extent to which the proposed project will be coordinated within the institution and with consortia members and will assist participants to progress effectively through their course of study and obtain employment in schools that serve LEP students.

(vii) The extent to which the proposed selection of participants who are preservice teachers is based on language proficiency in English and a language other than English, if appropriate, academic qualifications, and the demonstrated commitment to work in schools serving LEP students.

(viii) The extent to which the proposed project incorporates research-based instructional practices and professional development practices with demonstrated effectiveness in increasing children's English proficiency, and increasing participants' teaching skills and subject matter knowledge.

(ix) The extent to which the proposed project is designed to improve professional development for all teachers and other educational personnel in the IHE and in the schools to be served.

(c) *Quality of the management plan.* (20 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the effectiveness of the management plan in demonstrating how the objectives and activities of the proposed project will be achieved effectively on time, and within budget, including clearly defined responsibilities of staff, timelines, benchmarks, and milestones for accomplished tasks.

(d) *Quality of project personnel.* (5 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factor: the qualifications, including relevant training and experience, of key project personnel as required by job descriptions of key personnel.

(e) *Quality of the project evaluation.* (25 points) (1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers the following factors:

(i) The extent to which the evaluation plan will provide performance feedback on program activities, including participant progress, and permit periodic assessment of participant and project progress toward achieving intended outcomes.

(ii) The extent to which the evaluation will provide data on the quality and quantity of participants recruited, the progress of participants in completing program requirements, the success of participants in achieving high standards and completing project requirements, the placement and the effectiveness of graduates in the instructional setting, and the improved capability of the institution to prepare educational personnel to serve LEP students.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive order 12372.

If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any SPOC, you may view the latest official SPOC list on the Web site of the Office of Management and Budget at the following address: *http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.195N, U.S. Department of Education, FB–6, Room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Application Instructions and Forms

The appendix to this notice contains the following forms and instructions plus a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, questions and answers on this program (located at the end of the notice) and various assurances, certifications, and required documentation:

a. Estimated Public Reporting Burden
b. Application Instructions
c. Nonregulatory Guidance: Questions and Answers
d. Application for Federal Education Assistance (ED 424) and instructions
e. Budget Information
f. Participant Data Form
g. Assurances—Non-Construction Programs (Standard Form 424B) and instructions
h. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions
i. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014) and instructions (Note: This form is intended for the use of grantees and should not be transmitted to the Department.)
j. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and instructions. The document has been marked to reflect statutory changes
k. Notice to All Applicants (GEPA Requirement) and instructions (OMB No. 1801–0004)

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. All applicants must submit *one* original signed application, including ink signatures on all forms and assurances, and *two* copies of the application. Please mark each application as "original" or "copy". We will not award a grant unless we have received a completed application form.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application package.

Electronic Access to this Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or portable document format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available at GPO access at: *http://www.access.gpo.gov.nara.index.html*

FOR FURTHER INFORMATION CONTACT: Applicants west of the Mississippi River may contact: Brenda Compton-Turner, US Department of Education, 400 Maryland Avenue, SW., Room 5090, Switzer Building, Washington, D.C. 20202–6510. Telephone: (202) 205–9839; E-mail address: *Brenda.Turner@ed.gov* Applicants east of the Mississippi River may contact: Mahal May, at the address above. Telephone: (202) 205–8727; E-mail address: *Mahal.May@ed.gov.*

If you use a telecommunications device for the deaf (TDD) you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Instructions for Transmitting Applications

If you want to apply for a grant and be considered for funding you must meet the following deadline requirements:

(a) *If You Send Your Application By Mail.* You must mail the original and two copies of the application on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA# 84.195N), Room 3671, Regional Office Building 3, 7th and D Streets, SW, Washington, DC 20202–4725.

You must show one of the following as proof of mailing.

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal Express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) "If you Send Your Application by Mail," then follow the instructions in section (b) "If You Deliver Your Application by Hand."

(b) *If You Deliver Your Application By Hand.*—You or your courier must hand-deliver the original and two copies of the application by 4:30 p.m. (Washington, D.C. time) on or before the deadline date. Deliver your application to: U.S. Department of Education, Application Control Center, Attention: (CFDA#84.195N), Room #3671, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

The Application Control Center accepts application deliveries daily between 8:00 a.m. and 4:30 p.m. (Washington DC time), except Saturdays, Sundays and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A courier delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) If you send your application by mail or you or your courier deliver it by hand, the Application Control Center will mail a Grant Application Receipt Acknowledgment to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Assistance (ED 424 (exp 11/30/2004)) the CFDA number and suffix letter, if any, of the competition under which you are submitting your application.

Program Authority: Section 3131 of Public Law 107–110.

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Dated: May 1, 2002.

Maria Hernandez Ferrier,

Acting Director, Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students.

Appendix

Instructions for Estimated Public Reporting Burden

According to the Paperwork Reduction Act of 1995, you are not required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No.1885–0550. Expiration Date: April 30, 2004. We estimate the time required to complete this information collection is estimated to average 102 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. *If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to:* U.S. Department of Education, Washington, D.C. 20202–4651. *If you have any comments or concerns regarding the status of your individual submission of this form, write directly to:* Office of English Language Acquisition, Language Enhancement and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202–6510.

Instructions for Application Narrative

Abstract

The narrative section should be preceded by a one-page single-spaced abstract that includes a short description of the project design, project objectives, activities, and competitive and invitational priorities the project proposes to address; the SEAs and LEAs with which you have entered into consortia arrangements; and a description of how the proposed program will not duplicate the activities of other proposed projects under this program or currently funded projects under Subpart 3 of Part A of Title VII of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act (Pub L. 103–382). You may attach to the abstract letters acknowledging participation in your consortium signed by representatives of LEAs or SEAS. These will not count against the page limit.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes. Instead, provide position descriptions for key personnel. Do not include bibliographies, letters of support, or appendices in your application. Paginate all pages of the narrative. This package includes questions and answers to assist you in preparing the narrative portion of your application.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and be directly applicable to the program design and all other project components. A separate budget summary and cost itemization must be provided. Prepare an itemized budget for each year of requested funding. Requested budgets for each of years two through five should not exceed the requested budget for year one. Indirect costs for institutions of higher education, which are the fiscal agents for National Professional Development Program, are limited to the lower of either 8 percent of a modified total direct cost base or the IHE's actual indirect cost agreement. A modified direct cost base is defined as total direct costs less stipends, tuition and related fees and capital expenditures of $5,000 or more. In describing student support costs, distinguish costs for tuition and fees from costs for other stipends.

Final Application Preparation

Use the following checklist to verify that all necessary items are addressed. Prepare one original with an original signature, and include two additional copies. Do not use elaborate bindings or covers. The application package must be delivered to the Application Control Center (ACC) and postmarked by the deadline date published in this notice. Applicants are encouraged to use a courier service to deliver applications.

Checklist for Applicants

The following forms and other items must be included in the application:

1. Application for Federal Assistance (SF 424)
2. Budget Information (ED Form No. 524)
3. Itemized Budget for each year (attached to ED Form No. 524)
4. Participant Data Form
5. Assurances—Non-Construction Programs (SF 424B)
6. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013)
7. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions (ED 80–0014)
8. Disclosure of Lobbying Activities (SF–LLL)
9. GEPA Response
10. Table of Contents
11. One-page single-spaced abstract
12. Application narrative (Not to exceed 35 double-spaced paginated pages, see page limits)

Department of Education

Questions and Answers

What Activities Are Allowable Under the National Professional Development Program?

Allowable activities are those which serve teachers and other educational personnel who are either involved with, or preparing to be involved with, serving students with limited English proficiency. Such activities may include, but are not limited to: Providing career ladder programs for paraprofessionals; Developing program curricula; Collaborating with local school districts in designing high-quality professional development activities for new teachers; Improving teacher training programs to reflect high standards of professionalism; Providing programs to assist regular classroom teachers to meet State certification requirements for teachers of LEP students. Only institutions of higher education, applying in consortia arrangements with one or more local educational agencies or State educational agencies, are eligible to apply for the National Professional Development Program. This means the institution of higher education would be the lead agency and the fiscal agent for the grant.

What Type of Educational Personnel May Be Served Under the National Professional Development Program?

Applicants have flexibility in selecting methods and approaches for training participants; schools and school districts to be served, and types of personnel to be trained. These may include, but are not limited to, career ladder paraprofessionals, new teachers working toward alternative certification, regular classroom teachers working toward ESL or bilingual certification or endorsement, bilingual teachers preparing for recertification. In making choices about schools, types of personnel and training approaches, an applicant should consider the state plan for serving LEP students and the needs of schools and districts it proposes to serve.

May an Applicant Propose Training for More Than One Type of Personnel?

An applicant may propose training for more than one type of educational personnel, for example, career ladder paraprofessionals pursuing degrees and certification and regular classroom teachers working toward ESL endorsement. In determining the number of types of personnel to be trained, applicants should consider the identified needs of the districts to be served and the capacity of the institution to provide services for multiple types of educational personnel. In addition, applicants should also consider that service to multiple types of personnel may require goals, objectives, project activities and evaluation activities for each type of personnel. Applicants are reminded of the 35-page limit.

How Does an Applicant Demonstrate That it Is Not Duplicating Activities of Currently Funded Grants?

An applicant that proposes activities that duplicate those under another proposal under this program or funded under a current grant awarded under subpart 3 of Part A of Title VII of the Elementary and Secondary Education Act of 1965, as amended by the Improving America's Schools Act of 1994 (Pub. L. 103–382) will be rejected. An applicant should describe in the 1-page abstract how the proposed project will extend or expand activities it is currently conducting or that are currently conducted by another entity. Some examples of extended or expanded activities include: Extending services to districts or schools which are currently not served; Implementing a new service delivery model, such as a distance learning program or a professional practice school; Implementing professional development for a new category of training participants, such as paraprofessionals preparing to become teachers.

What Information May Be Helpful in Planning a Budget?

For each of project years two through five, an applicant's requested budget should not exceed the amount of the budget requested for year 1. Project budgets should reflect proposed project activities. It is expected that the major portion of budget costs for National Professional Development Program will be related to costs for student support. In addition to student support costs, budget items may include costs for personnel, supplies or equipment, and other costs to support developmental activities.

What Information May Be Helpful in Preparing a Narrative for the National Professional Development Program?

Technical assistance information on professional development grants is available through the OELA website: *www.ed.gov/offices/OELA*. In responding to the selection criteria, applicants may wish to consider the following questions as a guide for preparing the application narrative.

- Does the project plan describe specific responsibilities of districts, schools, institutions of higher education, and other partnership organizations in planning, implementing, and evaluating the proposed project? How were teachers, administrators and others involved in planning and designing the project? What resources and support will be provided by each of the contributing partners?
- Does the management plan effectively demonstrate the relationship among project objectives and activities (including benchmarks and milestones), budget expenditures (such as personnel, travel, and supplies) for accomplishing project tasks? Is the information conveyed clearly in a chart or graph?
- Will support services be provided for participants to ensure that they make progress and complete project requirements, such as special academic support, mentoring, enhanced advisement, test preparation, coordinated release time? How will the project coordinate with other departments in the institution and with LEAs to be served or other consortia partners to ensure that services are provided?
- Are coursework and field practice well described? Are expected competencies of participants described? Does the narrative explain how project requirements support state certification requirements and State k-12 instructional standards?
- How will the project improve professional development in the IHE and in the target schools? For example, will project activities result in improved curricula related to preparing all teachers to provide instruction to LEP students, or to strengthening content knowledge of teachers; in improved field practice, assessment of teacher skills, or improved skills of higher education faculty; in better support services for participants?
- How will the project coordinate with other departments in the institution, partner schools, the SEA or national organizations to ensure graduates are placed in a school setting serving LEP students?
- What are the expected outcomes for participant recruitment, participant progress in meeting project requirements, participant success in achieving program standards, graduate effectiveness in the instructional setting, improved professional development in the school or the university? Do objectives include indicators of expected performance? Will the project use multiple measures to assess participant and program effectiveness? What measures will the proposed program use to collect data on the effectiveness of the program in meeting its objectives, such as: field practice assessments, National or State benchmark tests, surveys of graduates, mentor teachers, school administrators, rates of transfer from 2-year to 4-year institutions, graduation rates, placement rates, achievement of k-12 students?
- How will the project assess progress and performance of participants; communicate meaningful, regular and timely feedback to participants? How will the project collect data and report on recruitment, participants' progress in meeting program requirements, participants' success in achieving program standards and graduate placement and effectiveness in the instructional setting? What evaluation questions related to project, participant, graduate effectiveness are proposed to guide the evaluation design?

Other

- Applicants are reminded to consider delivery of applications by courier service to the Application Control Center.
- Applicants applying as novice grantees should indicate their status as novice grantee on item 6 of the Application Face Page and in the 1-page abstract.

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Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__|-|__|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84..195N**
Title: _____

5. Project Director: _____
Address: _____
City _____ State _____ Zip code + 4 _____
Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |___|

A - State
B - Local
C - Special District
D - Indian Tribe
E - Individual
F - Independent School District
G - Public College or University
H - Private, Non-profit College or University
I - Non-profit Organization
J - Private, Profit-Making Organization
K - Other *(Specify)*: _____

Application Information

9. Type of Submission:
-PreApplication
___ Construction
___ Non-Construction
-Application
___ Construction
___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes *(Date made available to the Executive Order 12372 process for review)* ___/___/_____
___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____
___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:
_____
_____

Estimated Funding

14a. Federal	$ _____.00
b. Applicant	$ _____.00
c. State	$ _____.00
d. Local	$ _____.00
e. Other	$ _____.00
f. Program Income	$ _____.00
g. TOTAL	$ _____.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)
_____
b. Title: _____
c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
d. E-Mail Address: _____
e. **Signature of Authorized Representative**
_____ Date: ___/___/_____

Instructions for Form ED 424

1. **Legal Name and Address.** Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. **D-U-N-S Number.** Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: **http://www.dnb.com.**

3. **Tax Identification Number.** Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. **Catalog of Federal Domestic Assistance (CFDA) Number.** Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. **Project Director.** Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. **Novice Applicant.** Check **"Yes"** or **"No"** only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, **leave blank.**

   Check **"Yes"** if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check **"No"** if you do not meet the requirements for novice applicants.

7. **Federal Debt Delinquency.** Check **"Yes"** if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check **"No."**

8. **Type of Applicant.** Enter the appropriate letter in the box provided.

9. **Type of Submission.** See "Definitions for Form ED 424" attached.

10. **Executive Order 12372.** See "Definitions for Form ED 424" attached. Check **"Yes"** if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check **"No."**

11. **Proposed Project Dates.** Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. **Human Subjects Research.** (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

   If Not Human Subjects Research. Check **"No"** if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

   If Human Subjects Research. Check **"Yes"** if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check **"Yes"** even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. **If Human Subjects Research is Exempt from the Human Subjects Regulations.** Check **"Yes"** if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **If Human Subjects Research is Not Exempt from Human Subjects Regulations.** Check **"No"** if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. **Human Subjects Assurance Number.** If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves nonexempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. **Project Title.** Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. **Estimated Funding.** Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate **only** the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show

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breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. **Certification.** To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1875-0106**. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to:** U.S. Department of Education, Washington, D.C. 20202-4651. **If you have comments or concerns regarding the status of your individual submission of this form write directly to:** Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." *If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge it is research.* Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." *(1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met.* [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the **only** involvement of human subjects will be in one or more of the following six categories of ***exemptions*** are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. ***If the subjects are chil-***

dren, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12 a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12 a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) **Human Subjects Involvement and Characteristics**: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) **Sources of Materials**: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) **Recruitment and Informed Consent**: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) **Potential Risks**: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) **Protection Against Risk**: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) **Importance of the Knowledge to be Gained**: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) **Collaborating Site(s)**: If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004
Expiration Date: 02/28/2003

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs.						
11. Training Stipends						
12. Total Costs (lines 9-11)						

ED Form No. 524

Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						
2. Fringe Benefits						
3. Travel						
4. Equipment						
5. Supplies						
6. Contractual						
7. Construction						
8. Other						
9. Total Direct Costs (lines 1-8)						
10. Indirect Costs						
11. Training Stipends						
12. Total Costs (lines 9-11)						

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

PARTICIPANT DATA

Note: This form must be completed by applicants under the National Professional Development Program

Number of proposed participants in each of the following categories to be served each year of the grant.

Preservice Teachers (who are not paraprofessionals) _____

Preservice Teachers (who are currently paraprofessionals) _____

Inservice Teachers _____

Other Educational Personnel (Specify type of personnel below) _____

_____ _____

_____ _____

Degree level(s) to be attained (if applicable) _____

Certification Type(s) to be attained _____

Language(s) of Participants (other than English) _____

_____

_____

OMB No: 1885-0550 Expiration Date: April 30, 2004

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ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

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Standard Form 424B (Rev. 7-97)
Prescribed by OMB Circular A-102

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

Standard Form 424B (Rev. 7-97) Back

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82 105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110--

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position

title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check [ ] if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion -- Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," " person," "primary covered transaction," " principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled ACertification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion-Lower Tier Covered Transactions,≅ without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV.12/88), which is obsolete)

Approved by OMB
0348-0046

Disclosure of Lobbying Activities

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: a. contract ___ b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	**2. Status of Federal Action:** a. bid/offer/application _____ b. initial award c. post-award	**3. Report Type:** a. initial filing _____ b. material change **For material change only:** Year _____ quarter _____ Date of last report_____
4. Name and Address of Reporting Entity: ___ Prime _____ Subawardee Tier_____, if Known: **Congressional District, if known:**		**5. If Reporting Entity in No. 4 is Subawardee,** Enter Name and Address of Prime: **Congressional District, if known:**
6. Federal Department/Agency:		**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known:*		**9. Award Amount,** *if known:* **$**
10. a. Name and Address of Lobbying Registrant *(if individual, last name, first name, MI):*		**b. Individuals Performing Services** *(including address if different from No. 10a)* *(last name, first name, MI):*
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.		**Signature:** _____ **Print Name:** _____ **Title:** _____ **Telephone No.:** _____ **Date:** _____
Federal Use Only		**Authorized for Local Reproduction** **Standard Form - LLL (Rev. 7-97)**

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitations for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Included prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007.** The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

[FR Doc. 02-11307 Filed 5-6-02; 8:45 am]
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DEPARTMENT OF ENERGY

Environmental Management Site-Specific Advisory Board, Hanford

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the Environmental Management Site-Specific Advisory Board (EM SSAB), Hanford. The Federal Advisory Committee Act (Pub. L. No 92–463, 86 Stat. 770) requires that public notice of these meeting be announced in the **Federal Register.**

DATES: Thursday, June 6, 2002,—9:00 a.m.—5:00 p.m.; Friday, June 7, 2002,—8:30 a.m.—4:00 p.m.

ADDRESSES: Best Western Hood River Inn, 1108 East Marina Way, Hood River, OR 97031 (541) 386–2200.

FOR FURTHER INFORMATION CONTACT: Gail McClure, Public Involvement Program Manager, Department of Energy Richland Operations Office, P.O. Box 550 (A7–75), Richland, WA, 99352; Phone: (509) 373–5647; Fax: (509) 376–1563.

SUPPLEMENTARY INFORMATION: *Purpose of the Board:* The purpose of the Board is to make recommendations to DOE and its regulators in the areas of environmental restoration, waste management, and related activities.

Tentative Agenda

Thursday, June 6, 2002

- Discussion of the Draft Hanford Performance Management Plan
- Update on C3T (Cleanup Constraints and Challenges Team)
- Introduction of Draft Advice on the Integrated Safety Management System (ISMS)
- Introduction of Draft Advice from the Exposure Scenario Task Force Workshop on the 200 Area
- Introduction of Draft Advice on the FY03 and FY04 Budgets

Friday, June 7, 2002

- Groundwater/Vadose Zone Presentation and Discussion
- Adoption of Draft Advice on the Integrated Safety Management System (ISMS)
- Adoption of Draft Advice from the Exposure Scenario Task Force Workshop on the 200 Area
- Adoption of Draft Advice on the FY03 and FY04 Budgets
- Long-Term Stewardship Draft Plan
- Committee Updates

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Gail McClure's office at the address or telephone number listed above. Requests must be received five days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Deputy Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Each individual wishing to make public comment will be provided equal time to present their comments.

Minutes: The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585 between 9:00 a.m. and 4:00 p.m., Monday-Friday, except Federal holidays. Minutes will also be available by writing to Gail McClure, Department of Energy Richland Operation Office, P.O. Box 550, Richland, WA 99352, or by calling her at (509) 373–5647.

Issued at Washington, DC, on May 2, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–11284 Filed 5–6–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Federal Energy Management Advisory Committee

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces an open meeting of the Federal Energy Management Advisory Committee (FEMAC). The Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770) requires that these meetings be announced in the **Federal Register** to allow for public participation. This notice announces the seventh meeting of FEMAC, an advisory committee established under Executive Order 13123—"Greening the Government through Efficient Energy Management."

DATES: Monday, June 3, 2002; 6:00 p.m. to 7:30 p.m.; Tuesday, June 4, 2002; 1:00 p.m. to 2:00 p.m.

ADDRESSES: Wyndham Palm Springs Hotel, 888 East Tahquitz Canyon Way, Palm Springs, California 92262. Monday's meeting will be in the Wyndham's Mojave Training Center. Tuesday's meeting will be in the Wyndham's San Jancito Room.

FOR FURTHER INFORMATION CONTACT: Rick Klimkos, Acting Designated Federal Officer for the Committee, Office of Federal Energy Management Programs, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586–8287.

SUPPLEMENTARY INFORMATION:

Purpose of meeting: To provide advice and guidance on a range of issues critical to meeting mandated Federal energy management goals.

Tentative Agenda: Agenda will include discussions on the following topics:

Monday, June 3, 2002

The advisory committee is interested in receiving comments and recommendations from Federal facility managers regarding their experiences with Federal energy management project; topics of interest include but are not limited to:

- Implementation of Executive Order 13123
- Innovative financing mechanisms
- New technologies, products, and services
- Sustainable design
- Training and technical assistance
- Availability of useful information

Tuesday, June 4, 2002

The advisory committee is interested in receiving comments and recommendations from industry stakeholders (e.g., equipment manufacturers, utilities, energy service companies) regarding their experiences with Federal energy projects; topics of interest include but are not limited to:

- Barriers and opportunities
- Innovative financing mechanisms
- New technologies, products, and services
- Availability of useful information

Public Participation: In keeping with procedures, members of the public are welcome to observe the business of the Federal Energy Management Advisory Committee. If you would like to file a written statement with the committee, you may do so either before or after the meeting. If you would like to make oral statements regarding any of these items on the agenda, you should contact Rick Klimkos at (202) 586–8287 or *Rick.Klimkos@ee.doe.gov* (e-mail). You must make your request for an oral statement at least 5 business days before the meeting. Members of the public will be heard in the order in which they sign up at the beginning of the meeting. Reasonable provision will be made to include the scheduled oral statements on the agenda. The chair of the committee will make every effort to hear the views of all interested parties. The chair will conduct the meeting to facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room; Room 1E–190; Forrestal Building; 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 1, 2002.

Rachel M. Samuel,

Deputy Advisory Committee Management Officer.

[FR Doc. 02–11283 Filed 5–6–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1084–000]

Alcan Power Marketing, Inc.; Notice of Issuance of Order

May 1, 2002.

Alcan Power Marketing, Inc. (Alcan) submitted for filing a rate schedule under which Alcan will engage in the sales of capacity, energy, replacement reserves, and ancillary services at market-based rates and for the reassignment of transmission capacity. Alcan also requested waiver of various Commission regulations. In particular, Alcan requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by Alcan.

On April 24, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by Alcan should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, Alcan is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of Alcan, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of Alcan's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 24, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm.*

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11261 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER02–1118–000]

Continental Electric Cooperative Services, Inc.; Notice of Issuance of Order

May 1, 2002.

Continental Electric Cooperative Services, Inc. (CCS) submitted for filing a rate schedule under which CCS will engage in the sales of capacity, energy and ancillary services at market-based rates and for the reassignment of transmission capacity. CCS also requested waiver of various Commission regulations. In particular, CCS requested that the Commission grant blanket approval under 18 CFR part 34 of all future issuances of securities and assumptions of liability by CCS.

On April 24, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CCS should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, CCS is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of CCS, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of CCS' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is May 24, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at http://www.ferc.fed.us/efi/doorbell.htm.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11262 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 184–065 California]

El Dorado Irrigation District; Notice of Public Meetings

May 1, 2002.

The Federal Energy Regulatory Commission (Commission) is reviewing the application for a new license for the El Dorado Project (FERC No. 184), filed on February 22, 2000. The El Dorado Project, licensed to the El Dorado Irrigation District (EID), is located on the South Fork American River, in El

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Dorado, Alpine, and Amador Counties, California. The project occupies lands of the Eldorado National Forest.

The EID, several state and federal agencies, and several non-governmental agencies have asked the Commission for time to work collaboratively with a facilitator to resolve certain issues relevant to this proceeding. These meetings are a part of that collaborative process. On Monday, May 13, 2002, there will be a Plenary Meeting, and meetings of Recreation and Terrestrial Workgroups. On Tuesday, May 14, the Aquatics-Hydrology Workgroup will meet. The workgroup meetings will focus on further defining interests and the development of management objectives. We invite the participation of all interested governmental agencies, non-governmental organizations, and the general public in these meetings.

On Monday, May 13, the meetings will be held as follows:

Plenary Meeting—9:00 am–11:30 am
Recreation Workgroup—12:30 pm–3:30 pm
Terrestrial Workgroup—3:30 pm–5:30 pm

On Tuesday, May 14, the aquatics-hydrology workgroup will meet from 9:00 am until 4:00 pm. All meetings will be held in the Folsom Hilton Garden Inn, located at 221 Iron Point Road, Folsom, California.

For further information, please contact Elizabeth Molloy at (202) 208–0771 or John Mudre at (202) 219–1208.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11263 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–64–001]

Trailblazer Pipeline Company; Notice of Compliance Filing

May 1, 2002.

Take notice that on March 8, 2002, Trailblazer Pipeline Company (Trailblazer) tendered for filing to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, certain tariff sheets to be effective April 20, 2002.

Trailblazer states that the filing is submitted pursuant to the Federal Energy Regulatory Commission's (Commission) order issued May 18, 2001, in Docket No. CP01–64–000, which directed Trailblazer to file tariff sheets implementing its expansion project fuel retention percentage and tracking mechanism, incremental recourse rates, and either its negotiated expansion contracts of tariff sheets between thirty (30) and sixty (60) days before the in-service date of the new facilities.

Trailblazer requests any waivers which may be required to permit the tariff sheets submitted to become effective on April 20, 2002.

Trailblazer states that copies of the filing have been mailed to interested state regulatory agencies and all parties set out on the Commission's official service list in Docket No. CP01–64.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.214 and Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed by May 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11260 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–557–001, et al.]

Reliant Energy Desert Basin, LLC, et al.; Electric Rate and Corporate Regulation Filings

April 30, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Reliant Energy Desert Basin, LLC

[Docket No. ER02–557–001]

Take notice that on April 24, 2002, pursuant to the Letter Order issued March 29, 2002 in the captioned docket, Reliant Energy Desert Basin, LLC tendered for filing a long-term service agreement under its market-based rate tariff, with the service agreement designated as required by Order No. 614.

Comment Date: May 15, 2002.

2. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1422–001]

Take notice that on April 16, 2002, the Midwest Independent Transmission System Operator, Inc. (the Midwest ISO) tendered for filing corrections to certain errata contained in the Joint Open Access Transmission Tariff for the Midwest Independent Transmission System Operator, Inc for the Transmission System (Michigan), FERC Electric Tariff, Original Volume No. 2, which was filed on March 29, 2002, in the above referenced docket.

The Midwest ISO has electronically served copies of its filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at *www.midwestiso.org* under the heading "Filings to FERC" for other interested parties in this matter.

Comment Date: May 13, 2002.

3. Reliant Energy Aurora, LP, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Services, Inc., Reliant Energy Shelby County, LP, El Dorado Energy, LLC, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Orion Power MidWest, L.P., Twelvepole Creek, LLC

[Docket No. ER02–1635–000]

Take notice that on April 22, 2002, Astoria Generating Company, L.P., Carr Street Generating Station, L.P., Erie Boulevard Hydropower, L.P., Liberty Electric Power, LLC, Orion Power MidWest, L.P., and Twelvepole Creek, LLC (collectively, the Orion Entities) tendered for filing pursuant to Section 205 of the Federal Power Act, and Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35 revised market-based rate tariffs in connection with the recent merger of Reliant Energy Power Generation Merger Sub, Inc. (Merger Sub) and the Orion Entities' parent company, Orion Power Holdings, Inc. (Orion Power). In addition, Reliant Energy Aurora, LP, Reliant Energy Coolwater, LLC, Reliant Energy Desert Basin, LLC, Reliant Energy Ellwood, LLC, Reliant Energy Etiwanda, LLC, Reliant Energy Indian River, LLC, Reliant Energy Mandalay, LLC, Reliant Energy Maryland Holdings, LLC, Reliant Energy Mid-Atlantic Power Holdings, LLC, Reliant Energy New Jersey Holdings, LLC, Reliant Energy Ormond Beach, LLC, Reliant Energy Osceola, LLC, Reliant Energy Services, Inc., Reliant Energy Shelby County, LP and El Dorado Energy, LLC (collectively, the Reliant Affiliates), amended their market-based rate tariffs to remove restrictions applicable only while the merger of Merger Sub and Orion Power was pending.

The Reliant Affiliates and the Orion Entities request waiver of the prior notice requirements of Section 35.3 of the Commission's regulations, 18 CFR 35.3, to permit their filing to become effective February 19, 2002.

Comment Date: May 13, 2002.

4. LG&E Capital Corporation

[Docket No. ER02–1636–000]

Take notice that on April 24, 2002, LG&E Capital Corporation tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15 in order to reflect the cancellation of its Market Rate Tariff, designated as FERC Electric Tariff, Original Volume No. 1, originally accepted for filing in Docket No. ER99–2108–000.

Comment Date: May 15, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–1637–000]

Take notice that on April 24, 2002, the California Independent System Operator Corporation (ISO) submitted for filing Amendment No. 43 to the ISO Tariff. Amendment No. 43 would modify Section 11.2.4.1 of the ISO Tariff such that, through September 30, 2002, the ISO will settle Energy imported into the ISO Control Area by Scheduling Coordinators for each BEEP interval during the operating hour at the ISO Instructed Imbalance Energy Market Clearing Price. The ISO requests that these modifications be made effective immediately upon Commission approval.

The proposed modification will make participation in the ISO Real Time Market more attractive for importers of Energy.

The ISO has served copies of this filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO is posting this filing on the ISOs Home Page.

Comment Date: May 15, 2002.

6. New England Power Pool

[Docket No. OA97–237–012]

Take notice that on April 24, 2002, the New England Power Pool (NEPOOL) Participants Committee and ISO New England Inc. (ISO-NE) have jointly filed with the Federal Energy Regulatory Commission (Commission) for acceptance, materials reflecting compliance with the requirement of a certain settlement agreement approved by the Commission by order dated July 30, 1999, New England Power Pool, 88 FERC ¶ 61,140, that an audit of the charges for regional network service (RNS) under the formula rate provisions of the NEPOOL Tariff for charges in effect for the NEPOOL rate years June 1, 1997 through May 31, 2000 be performed by or under the direction of ISO-NE, and that the results of that audit be submitted to the Commission as an informational filing.

The Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions, the NEPOOL Participants and to the parties who executed the settlement agreement.

Comment Date: May 24, 2002.

7. Avista Corporation; Bonneville Power Administration; Idaho Power Company; The Montana Power Company; Nevada Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Energy, Inc.; Sierra Pacific Power Company

[Docket No. RT01–35–007]

Take notice that on April 22, 2002, Avista Corporation, the Bonneville Power Administration, Idaho Power Company, Nevada Power Company, NorthWestern Energy, L.L.C. (formerly the Montana Power Company), PacifiCorp, Portland General Electric Company, Puget Sound Energy, Inc., and Sierra Pacific Power Company, joined by British Columbia Hydro and Power Authority, a nonjurisdictional Canadian utility, (collectively, the filing utilities) filed with the Federal Energy Regulatory Commission (the Commission), an Errata Filing Relating to Stage 2 Filing and Request For Declaratory Order Pursuant to Order 2000. This filing corrects certain errors in the Stage 2 Filing and Request for Declaratory Order Pursuant to Order 2000, submitted to the Commission on March 29, 2002.

Comment Date: May 30, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11241 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Solicitation of Comments, Terms and Conditions, Recommendations, and Prescriptions

May 1, 2002.

Take notice that the following hydroelectric application has been filed

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with the Commission and is available for public inspection:

a. *Type of Application*: New Major License.

b. *Project No.*: P–401–027.

c. *Date Filed*: September 14, 2001.

d. *Applicant*: Indiana Michigan Power Company.

e. *Name of Project*: Mottville Hydroelectric Project.

f. *Location*: On the St. Joseph River, in Mottville Township, St. Joseph County, Michigan. The project does not affect Federal lands.

g. *Filed Pursuant to*: Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: J.F. Norris, Jr., American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223–1700, or *jfnorris@aep.com*.

i. *FERC Contact*: Lee Emery, (202) 219–2778 or *lee.emery@FERC.gov*.

j. *Deadline for filing comments, final terms and conditions, recommendations, and prescriptions*: 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426. Comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

The Commission's Rules of Practice require all interveners filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. The license application has been accepted for filing and is now ready for environmental analysis. No additional information or studies are needed to prepare the Commission's environmental assessment. Comments are now being requested from interested parties. The applicant will have 45 days following the end of this comment period to respond to any comments filed within the comment period.

l. *Description of Project*: The existing Mottville Project consists of: (1) two 17-foot high earth-filled embankments extending towards the center of the river from both riverbanks, (l) a west embankment that is 140 feet long and has a crest width of 15 feet and extends to the powerhouse, (ii) an east embankment that is 365 feet long and has a crest width of 8 feet and extends from the east riverbank to the spillway; (2) a 237-foot long, reinforced concrete spillway with 10 steel Taintor gates along the crest of the spillway, which are separated by 2.5-foot wide piers between Bays 1 and 2 and 3 and 4 and 1.5-foot-wide piers between the remaining Bays, (l) Taintor gates are 22 feet wide and 13 feet high in Bays 1 and 2 and 22 feet wide and 7.5 feet high in Bays 3 through 10; (3) a combined powerhouse-intake structure, made of brick and concrete, that is 118 feet long, 28 feet wide, and 25 feet long; (4) 4 vertical shaft, single runner, propeller type generating units with an installed generating capacity of 420 kW each; (5) a 14.5-foot-long, 28-foot-wide, and 25-foot-long switchboard bay attached to the west end of the powerhouse; (6) a 50 horsepower, 460-volt, 3-phase air bubbler system; (7) a 15-ton overhead traveling crane; (8) a 20-foot-wide stilling basin extending across the length of the spillway; (9) a 12-inch thick, reinforced concrete spillway apron; (10) an inoperable 4-foot-wide by 150-foot-long concrete fishway with a slope of about 25 percent; (11) sets of angled steel intake trashracks that are 3-feet 2-inches wide by 14-feet-high with 3/8-inch steel bars with 4-inch spacing between the bars; (12) a five-mile-long, 378-acre reservoir with a gross storage capacity of 2,900-acre-feet at the normal operating pool surface elevation of 770.4 NGVD; (13) a three phase, 2.4/34.5 kV transformer; and (14) other appurtenant facilities. The applicant estimates that the total average annual generation would be 7,800 MWh. All generated power is sold to Indiana Michigan Power Company's customers.

m. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#":and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction by contacting the applicant identified in item "h" above.

n. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

These deadlines may be extended by the Commission, but only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant, and the project number of the application, to which the filing pertains; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11264 Filed 5–6–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7208–1]

Draft Procedure for the Joint Solicitation Of Research Proposals by the U.S. Environmental Protection Agency's Office of Research and Development and the American Chemistry Council's Long-Range Research Initiative; Solicitation of Public Input into the Development of a Joint Request for Applications on "Novel Approaches for Analysis of Human Exposure Data;" Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The U.S. Environmental Protection Agency's Office of Research and Development (ORD) and the American Chemistry Council's (ACC) Long-Range Research Initiative (LRI) are interested in issuing joint solicitations for research proposals. A draft document has been developed that sets forth a public process that brings together government and industry to engage the best scientists in the research community to assist in improving the quantity and quality of data for use in human health and ecological risk assessment. Recent discussions have led ORD and ACC to agree to pursue, as a first area of collaboration, a joint request for applications (RFA) in the area of "Novel Approaches for Analysis of Human Exposure Data." The purpose of this meeting is to: (1) Present the draft procedures for the public process of issuing joint RFAs, (2) solicit comment on the proposal, and (3) solicit specific input (e.g., suggested research areas) into the development of a joint RFA on novel approaches for analysis of human exposure data.

DATES: The meeting will be held on Thursday, May 23, 2002 beginning at 1 PM and adjourning at 4 PM. Times noted are Eastern Time.

ADDRESSES: The meeting will be held in the Hemisphere B Room on the Concourse Level of the Ronald Reagan Building, 1300 Pennsylvania Avenue, NW, Washington, DC.

SUPPLEMENTARY INFORMATION: The draft procedure for the joint solicitation of research proposals by the U.S. Environmental Protection Agency's Office of Research and Development and the American Chemistry Council's Long-Range Initiative and the agenda for the meeting may be obtained electronically through: (1) The EPA website: *http://www.epa.gov/ncerqa*, (2) the ACC website: *http://www.americanchemistry.com*, (3) the LRI website: http://www.uslri.org, and (4) the below listed point of contact.

The meeting is open to the public. Registration before the meeting is requested. Any member of the public wishing to make a presentation at the meeting should also request to do so beforehand. Presentations should be limited to 10 minutes. Written comments on the draft process for collaboration and for consideration toward the development of the RFA on novel approaches for analysis of human exposure data will be accepted until June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Requests to register for the meeting and to provide oral and/or written public comment should be sent to Michaela Hancock, The Scientific Consulting Group, Inc., 656 Quince Orchard Road, Suite 210, Gaithersburg, MD 20878–1409; Telephone: 301–670–4990; x41; Fax: 301–670–3815; E-mail: mhancock@scgcorp.com

Dated: April 30, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–11301 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7207–6]

EPA Science Advisory Board; Notification of Public Advisory Committee Meetings: Affordability Criterion for Drinking Water Treatment Technologies for Small Systems

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given of a meeting of the Environmental Economics Advisory Committee (EEAC) of the EPA Science Advisory Board (SAB) to review the Agency's affordability criterion for small systems under the Safe Drinking Water Act Amendments of 1996. The SAB was established to provide independent scientific and technical advice to the EPA Administrator on Agency positions; in this case the methodology for developing and applying the affordability criterion. The EEAC is a standing committee of the SAB and is responsible for reviewing economic guidance and analyses that are used by EPA in carrying out its mission.

The review meeting will be held on June 13, 2002 at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314, telephone (703) 548–6300. The meeting will start at 9:00 am and conclude by 3:00 pm on that date. All times noted are Eastern Time. The meeting is open to the public, however, seating is limited and available on a first-come basis. *Important Notice*: Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB Office—information concerning availability of documents from the relevant Program Office is included below.

The review will be conducted by the SAB's Environmental Economics Advisory Committee. Collectively, the appointed members of the EEAC have broad expertise in environmental economics and their expertise is appropriate to address EPA's charge which asks the SAB to address the economic aspects associated with development and application of the affordability criterion. The SAB will make use of Invited Experts to provide technical information and insights to inform the deliberations of the EEAC; however, these experts will not serve as members of this SAB Committee nor will they be signatories to the EEAC's report.

Background

The 1996 Safe Drinking Water Act (SDWA) amendments include a number of provisions intended to help minimize the financial impact that new regulations will have on small drinking water systems. Several important provisions of SDWA (e.g., compliance technologies, variance technologies, and variances) hinge on the concept of "affordability" as it applies to smaller communities across the country. The Agency currently assesses the affordability of new regulations on the basis of: (a) An estimated affordability threshold (the upper limit for the costs of water bills, including the costs of treatment, distribution, and operation), which the Agency puts at a level of 2.5% of the median household income (MHI); and (b) baseline expenditures (derived from current annual water bills and MHI). Detailed information on the Agency's approach to affordability can be found in the Report to Congress: Small System Arsenic Implementation Issues, dated March 2002 (see the report on the EPA Website at *http://www.epa.gov/safewater/arsenic.html*).

The Charge. The Agency is asking the SAB for advice on economic issues associated with its national-level affordability criterion, as well as the methodology used to establish the criterion. EPA asks that while taking into consideration the structure of the Safe Drinking Water Act and the limitations of readily available data and information sources, what is the Committee's opinion of the Agency's national level affordability criterion, methodology for deriving the criterion, and approach to applying those criteria to national primary drinking water regulations (NPDWRs)? Specifically, EPA is seeking the SAB's responses to the following questions:

1. What is the SAB's view of the Agency's basic approach of comparing average compliance costs for an NPDWR with an expenditure margin, which is derived as the difference between an affordability threshold and an expenditure baseline?

2. If the basic approach is retained, should a measure other than median income that captures the impact on more disadvantaged households be used as the basis for the affordability threshold? If so, what alternative measures (e.g., 10th or 25th income percentile, poverty level income) should the Agency consider and why? What would be the likely effect of such alternatives on existing and future

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national level affordable technology determinations?

3. What alternatives should the Agency consider to 2.5% as the income percentage for the national level affordability threshold, and what would be the likely effect of such alternatives on existing and future national level affordable technology determinations? What basis should the Agency use to select from among such alternatives? Should the Agency use costs of other household goods and services or risk reduction activities as a basis for setting the affordability threshold as was done in the development of the current criteria?

4. Does the Committee believe the Agency should consider approaches to calculating the national "expenditure baseline" other than those used by the Agency heretofore?

5. Does the Committee believe that separate national level affordability criterion should be developed for ground water and surface water systems?

6. Should the Agency include an evaluation of the potential availability of financial assistance (e.g., Drinking Water State Revolving Fund) in its national level affordability criterion? If so, how could the potential availability of such financial assistance that reduces household burden be taken into consideration?

7. Is there a need for making affordable technology determinations on a regional rather than a national basis? Does adequate, readily available information exist to support such an approach? EPA is still exploring the degree of flexibility afforded by SDWA to make regional determinations, but would appreciate the Committee's advice on whether such determinations are feasible and warranted.

Approach to Conducting the Review—EPA has asked the EPA Science Advisory Board for advice on economic issues associated with its national-level affordability criterion. In addition to its focused discussion on the economic aspects of this issue with the SAB, EPA intends to obtain input on broader aspects of the criterion and the process for its establishment, from its National Drinking Water Advisory Council (NDWAC) and through interactions with a broad group of stakeholders that it intends to convene subsequent to the SAB review.

The SAB has determined that the appropriate Panel for conducting this focused review is its Environmental Economics Advisory Committee (EEAC), complemented by Invited Experts who can provide EEAC members with information on and insights into drinking water treatment techniques. By this notice, the public is invited to suggest names of experts who are appropriate for use as invited experts in this regard. The Invited Experts will not be members of the Panel, per se, and will not be signatories to the EEAC's report, nor will they be a part of analysis of balance of bias on this topic for the EEAC itself. Suggestions for Invited Experts should include the individual's name, affiliation, position, contact information (telephone number, mailing address, and email address and/or Website), a current resume (preferably in electronic form), and a statement regarding the nominee's background, experience, and qualifications to serve as an Invited Expert for this activity.

Biographical sketches of the EEAC members who are participating in this review can be found on the SAB Website at *www.epa.gov/SAB/*. By this notice, the public is invited to provide the EPA Science Advisory Board with information or analyses pertinent to the service of any of these individuals on the review. Information, preferably in electronic form, must be received no later than May 10, 2002. Information should be sent by mail to Mr. Thomas O. Miller, Designated Federal Officer, SAB Environmental Economics Advisory Committee (see contact information below). A final roster of the participating EEAC members, along with the Invited Experts, will be placed on the SAB Website no later than May 14, 2002.

The EEAC will deliberate in public session on June 13, 2002 in Alexandria, VA at the Holiday Inn Hotel and Suites, 625 First Street, Alexandria, VA 22314, telephone (703) 548–6300. The Meeting will convene at 9:00 am and adjourn no later than 3:00 pm Eastern Time. Not later than four weeks prior to the meeting, the Agency will send the group background information that will be the focus of their discussion at the public meeting. Material distributed to the EEAC and Invited Experts will be available from the Agency, not the SAB itself. To obtain copies of materials provided to the SAB, members of the public should contact by mail Mr. Amit Kapadia, US Environmental Protection Agency, Office of Ground Water and Drinking Water, Standards and Risk Management Division (4607M), 1200 Pennsylvania, Ave., NW, Washington, DC 20460; by email *kapadia.amit@epa.gov*; by FAX at (202) 564–3760; or by telephone at (202) 564–4879.

Approximately four weeks after the face-to-face meeting, the EEAC and Invited Experts will have a contingency conference call to resolve any outstanding issues before sending their report to the SAB Executive Committee for action and subsequent transmittal to the Administrator. The date and time of the contingency conference call will be posted on the SAB Website (*www.epa.gov/sab*) by June 15, 2002.

FOR FURTHER INFORMATION: Any member of the public wishing further information concerning this meeting or who wishes to submit brief oral comments must contact Mr. Thomas O. Miller, Designated Federal Officer, SAB Environmental Economics Advisory Committee, USEPA Science Advisory Board (1400A), Suite 6450CC, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4558; fax at (202) 501–0582; or via e-mail at *miller.tom@epa.gov*. Requests for oral comments must be *in writing* (e-mail, fax or mail) and received by Mr. Miller no later than noon Eastern Time five business days prior to the meeting date (June 6, 2002). See below for time limitations on public comments.

Members of the public desiring additional information about the meeting location must contact Ms. Renee Cooper, EPA Science Advisory Board (1400A), Suite 6450N, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460; telephone/voice mail at (202) 564–4533; fax at (202) 501–0582; or via e-mail at *cooper.renee@epa.gov*.

A copy of the draft agenda for each meeting will be posted on the SAB Website (*www.epa.gov/SAB/*) (under the AGENDAS subheading) approximately 10 days before that meeting.

Providing Oral or Written Comments at SAB Meetings

It is the policy of the EPA Science Advisory Board to accept written public comments of any length, and to accommodate oral public comments whenever possible. The EPA Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. *Oral Comments*: In general, each individual or group requesting an oral presentation at a face-to-face meeting will be limited to a total time of ten minutes (unless otherwise indicated). For teleconference meetings, opportunities for oral comment will usually be limited to no more than three minutes per speaker and no more than fifteen minutes total. Deadlines for getting on the public speaker list for a meeting are given above. Speakers should bring at least 35 copies of their comments and presentation slides for distribution to the reviewers and public at the meeting. *Written Comments*: Although the SAB accepts written comments until the date of the meeting (unless otherwise stated), written comments should be received in the SAB Staff Office at least one week prior to the meeting date so that the comments may be made available to the review panel for their consideration. Comments should be supplied to the appropriate DFO at the address/contact information noted above in the following formats: one hard copy with original signature, and one electronic copy via e-mail (acceptable file format: Adobe Acrobat, WordPerfect, Word, or Rich Text files (in IBM-PC/Windows 95/98 format). Those providing written comments and who attend the meeting are also asked to bring 35 copies of their comments for public distribution.

Meeting Access

Individuals requiring special accommodation at this meeting, including wheelchair access to the conference room, should contact Mr. Miller at least five business days prior to the meeting so that appropriate arrangements can be made.

General Information

Additional information concerning the Science Advisory Board, its structure, function, and composition, may be found on the SAB Website (*http://www.epa.gov/sab*) and in the Science Advisory Board FY2001 Annual Staff Report which is available from the SAB Publications Staff at (202) 564–4533 or via fax at (202) 501–0256.

Dated: April 29, 2002.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 02–11300 Filed 5–6–02; 8:45 am]

BILLING CODE 6560–50–P

FARM CREDIT ADMINISTRATION

Sunshine Act Meeting, Notice

AGENCY: Farm Credit Administration.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the June 13, 2002 regular meeting of the Farm Credit Administration Board (Board) will not be held. The FCA Board will hold a special meeting at 9:00 a.m. on Thursday, June 6, 2002. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Kelly Mikel Williams, Secretary to the Farm Credit Administration Board, (703) 883–4024, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: May 3, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–11396 Filed 5–7–02; 11:52 am]

BILLING CODE 6705–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

April 30, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 8, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0009.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License or Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form No.: FCC Form 316.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit, not-for-profit institutions, state, local, or tribal government.

Number of Respondents: 700.

Estimated Time Per Response: 3.5 hours.

Total Annual Burden: 700 hours.

Annual Reporting and Recordkeeping Cost Burden: $416,220.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: Filing of the FCC Form 316 is required when applying for authority for assignment of a broadcast station construction permit or license, or for consent to transfer control of a corporation holding a broadcast station construction permit or license where there is little change in the relative interest or disposition of its interests; where transfer of interest is not a controlling one; where there is no substantial change in the beneficial ownership of the corporation; where the assignment is less than a controlling interest in a partnership; and where there is an appointment of an entity qualified to succeed to the interest of a deceased or legally incapacitated individual permittee, licensee or controlling stockholder. In addition, the applicant must notify the Commission when an approved transfer of control of a broadcast station construction permit or license has been consummated. The data is used by FCC staff in determining if the applicant is qualified to become a Commission licensee or permittee of a commercial or noncommercial broadcast station and to carry out the statutory provisions of Section 310(d) of the Communications Act of 1934, as amended.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11211 Filed 5–6–02; 8:45 am]

BILLING CODE 6712–01–P

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FEDERAL EMERGENCY MANAGEMENT AGENCY

Compendium of Flood Map Changes

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Correction notice.

SUMMARY: This Correction Notice provides a listing of the changes to National Flood Insurance Program (NFIP) maps made by FEMA during the first 6 months of 2001 that were inadvertently omitted from the Compendium of Flood Map Changes issued in August 2001.

DATES: The listing provided in this Correction Notice includes changes to NFIP maps that became effective January 1, 2001, through June 30, 2001.

FOR FURTHER INFORMATION CONTACT: Michael K. Buckley, P.E., Director, Hazard Mapping Division, Federal Insurance and Mitigation Administration, FEMA, Washington, DC 20472, (202)646–2756.

SUPPLEMENTARY INFORMATION: In accordance with Paragraph 1360(i) of the National Flood Insurance Reform Act of 1994, on August 28, 2001, we published a Notice in the **Federal Register** to inform interested parties of changes made by FEMA to NFIP maps. The two listings provided in that Notice showed communities affected by map changes made by letter and communities affected by physical map changes. We recently determined that some changes to NFIP maps made by FEMA during this period were inadvertently omitted from the August 28 **Federal Register** Notice. We are publishing this Correction Notice to inform all interested parties about the omitted map changes. As in the August 28 **Federal Register** Notice, a Map Revision listing is provided. For each physical map change, the Map Revision listing provides the map panel(s) affected and the effective date of the change. The listing also identifies: (1) those panels on which the Special Flood Hazard Areas have not been changed or have been changed only to incorporate the Letters of Map Change issued before the effective date; and (2) those panels for which a Flood Insurance Rate Map is produced for the first time, resulting only in changes to flood insurance and floodplain management requirements in the affected community.

Dated: April 29, 2002.

Robert F. Shea,

Acting Administrator, Federal Insurance and Mitigation Administration.

The Map Revision listing below includes those map panels that FEMA physically revised and republished from January 1 through June 30, 2001, that were omitted from the **Federal Register** Notice published on August 28, 2001. For those map panels on which the Special Flood Hazard Areas have not been changed or have been changed only to incorporate Letters of Map Change issued before the effective date, two asterisks (**) are shown to the right of the map panel number. For those map panels for which a Flood Insurance Rate Map is produced for the first time, resulting only in changes to flood insurance and floodplain management requirements in the affected community, three asterisks (***) are shown to the right of the map panel number. A single asterisk (*) is shown to the right of each county name that appears in the "Community" column. This asterisk indicates the area covered is the unincorporated areas of that county.

Region	State	Community	Panel	Panel date
07	IA	BEACON, CITY OF	190452 A***	01–MAR–2001
07	IA	GRAY, CITY OF	190318 B	02–APR–2001
07	IA	JEWELL, CITY OF	190600 A***	01–MAR–2001
07	KS	HOXIE, CITY OF	200508 A***	01–MAR–2001
07	MO	BATES COUNTY *	2907860001B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860002B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860003B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860004B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860005B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860006B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860007B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860008B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860009B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860010B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860011B***	01–MAR–2001
07	MO	BATES COUNTY *	2907860012B***	01–MAR–2001
07	MO	BATES COUNTY *	290786IND0***	01–MAR–2001
07	MO	HOLDEN, CITY OF	290714 A***	01–MAR–2001
07	MO	IRONDALE, TOWN OF	290446 B	02–APR–2001
07	NE	BURWELL, CITY OF	310354 A	02–APR–2001
07	NE	BUSHNELL, VILLAGE OF	310255 A	02–APR–2001
07	NE	CAMPBELL, VILLAGE OF	310256 A***	01–MAR–2001
07	NE	GUIDE ROCK, VILLAGE OF	310234 A***	01–MAR–2001
07	NE	RIVERTON, VILLAGE OF	310084 A***	01–MAR–2001
07	NE	TABLE ROCK, VILLAGE OF	310172 B	02–APR–2001

[FR Doc. 02–11254 Filed 5–6–02; 8:45 am]

BILLING CODE 6718–04–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

Privacy Act Systems of Records; Notice of New System of Records

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of new system of records.

SUMMARY: Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), the Federal Emergency Management Agency (FEMA) proposes to establish a new system of records entitled "Citizen Corps Database Tracking System, FEMA/VOL–1," and proposes routine uses for the new system. Subsections 552a(e)(4) and (11) of title 5, United States Code, provide that the public be given a 30-day period in which to comment on routine uses. The Office of Management and Budget (OMB), which has oversight responsibility under the Act, requires a 40-day period in which to review the proposed systems. The public, OMB and Congress are invited to comment on the proposed system of records.

DATES: The proposed system of records will be effective June 21, 2002, unless comments are received that result in a contrary determination.

ADDRESSES: Submit written comment to Rules Docket Clerk, Federal Emergency Management Agency, Office of General Counsel, room 840, 500 C Street SW., Washington, DC 20472, or (e-mail) *rules@fema.gov.*

FOR FURTHER INFORMATION CONTACT: Edward Broyles at (202) 646–3961.

SUPPLEMENTARY INFORMATION: This new system of records contains information gathered by the Citizen Corps, which is part of the USA Freedom Corps established by President George W. Bush under Executive Order 13254, January 29, 2002. The Corps helps individuals to become involved in volunteer activities. FEMA is the lead federal agency for Citizen Corps activities. The Citizen Corps coordinates efforts and channels information to participating organizations, including the Community Emergency Response Team, Neighborhood Watch, Volunteers in Police Service, Medical Reserve Corps, Operation TIPS, and Citizen Corps Councils.

Dated: April 29, 2002.

Michael D. Brown,

General Counsel.

FEMA/VOL–1

SYSTEM NAME:

Citizen Corps Database.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

FEMA Headquarters, Mezzanine Server Room, 500 C Street, SW., Washington, DC 20472.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The system covers those individuals who express an interest in Citizen Corps programs or activities. Corps programs include Community Emergency Response Teams, Neighborhood Watch, Volunteers in Police Service, Medical Reserve Corps, Operation TIPS, and Citizen Corps Councils.

CATEGORIES OF RECORDS IN THE SYSTEM:

Each file or entry contains an interested individual's name, mailing address, e-mail address, and Volunteer Program area of interest. The database contains and tracks names of each individual and the date of expression of interest, type of interest expressed (e.g., Community Emergency Response Team, Neighborhood Watch, Citizen Corps Councils), and similar information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Section 2, Executive Order 13254, January 29, 2002.

PURPOSE(S):

The Citizens Corps, through its Internet site at *www.citizencorps.gov*, allows individuals to indicate their interest in specific voluntary programs. Information concerning those desired activities is then disseminated by FEMA to the appropriate organization for further processing or response. The Citizens Corps coordinates efforts among several organizations, including the Community Emergency Response Team, Neighborhood Watch, Volunteers in Police Service, Medical Reserve Corps, Operation TIPS, and Citizen Corps Councils. In addition, these entities may express an interest in sharing their respective contact and similar information with other participants in these programs.

ROUTINE USE OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information from this file may be disclosed:

(a) To appropriate Federal, State, or local law enforcement agencies in connection with actual or potential violation of criminal or civil laws, statutes, or regulations, or in conjunction with investigative or litigation responsibilities of the recipient agency;

(b) In a proceeding before a court or adjudicative body before which FEMA is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by FEMA to be arguably relevant to the litigation: FEMA or any of its subdivision; any FEMA employee in his or her official capacity, or in his or her individual capacity where FEMA agrees to represent the employee; or the United States where FEMA determines that the litigation is likely to affect it or any of its subdivisions;

(c) To the USA Freedom Corps, Executive Office of the President;

(d) To organizations or activities that the respondent indicates as being within the respondent's areas of interest (e.g., Community Emergency Response Team participation);

(e) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record; and

(f) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Records in this system are not appropriate for disclosure to consumer reporting agencies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Computerized records are stored in a database server in a secured file room.

RETRIEVABILITY:

Records are retrieved by name, mailing address, e-mail address or Volunteer Program(s) in which the respondent indicates an interest.

SAFEGUARDS:

The Database Administrator controls access to the files. The files are stored in a secure server room at Agency headquarters. Records are maintained in accordance with federal computer security standards.

RETENTION AND DISPOSAL:

FEMA will submit a request to the National Archives and Records Administration for disposition authority for this system of records. The request will recommend a retention period of 120 days and seek approval for records to be purged from the system after the period.

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SYSTEM MANAGER(S) AND ADDRESS:

Rebecca Rutledge, FEMA Headquarters, Mezzanine Room, 500 C Street SW, Washington, DC 20472.

NOTIFICATION PROCEDURE:

Same as "Record access procedures."

RECORD ACCESS PROCEDURES:

Make all requests for access in writing, and clearly mark letter and envelope "Privacy Act Request." Clearly indicate name of the requester, nature of the record sought, approximate dates of the records, and provide the required verification of identity. Direct all requests to the system manager identified above, Attention: Freedom of Information/Privacy Act Officer, and provide a return address for transmitting the information.

Contesting record procedures:

Direct all requests to contest or amend information to the system manager in accordance with the procedures outlined above. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information sought.

RECORD SOURCE CATEGORIES:

Records are generated by FEMA based on individual responses by users.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–11253 Filed 5–6–02; 8:45 am]

BILLING CODE 6718–32–M

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc.02-10242) published on page 20790 of the issue for Friday, April 26, 2002.

Under the Federal Reserve Bank of Kansas City heading, the entry for Brooke Holdings, Inc., Brooke Corporation, Inc., and Brooke Bancshares, Inc., all of Overland Park, Kansas, is revised to read as follows:

Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Brooke Holdings, Inc., Brooke Corporation, Inc., and Brooke Bancshares, Inc., all of Overland Park, Kansas; to become bank holding companies by acquiring 100 percent of the voting shares of Centerville State Bank, Centerville, Kansas.

Comments on this application must be received by May 20, 2002.

Board of Governors of the Federal Reserve System, May 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11239 Filed 5–6–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 31, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Community Bankshares, Inc., Orangeburg, South Carolina; to merge with Ridgeway Bancshares, Inc., Ridgeway, South Carolina, and thereby indirectly acquire voting shares of The Bank of Ridgeway, Ridgeway, South Carolina.

2. First Citizens Bancorporation of South Carolina, Inc., Columbia, South Carolina; to acquire up to 10 percent of the voting shares of Trinity Bank, Monroe, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. First Southern Bancshares, Inc., Carbondale, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Shawnee Bancshares, Inc., Grand Tower, Illinois, and thereby indirectly acquire voting shares of Shawnee State Bank, Grand Tower, Illinois.

C. Federal Reserve Bank of San Francisco (Maria Villanueva, Consumer Regulation Group) 101 Market Street, San Francisco, California 94105–1579:

1. First Financial Holding Co., Ltd., Taipei, Taiwan (in formation); to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank Co., Ltd., Taipei, Taiwan, and thereby indirectly acquire voting shares of First Commercial Bank (USA), Alhambra, California.

2. Bank of Taiwan, Taipei, Taiwan; to acquire at least 12.32 percent of the voting shares of First Financial Holding Co., Ltd., Taipei, Taiwan, and thereby indirectly acquire voting shares of First Commercial Bank Co., Ltd., Taipei, Taiwan, and First Commercial Bank (USA), Alhambra, California.

Board of Governors of the Federal Reserve System, May 1, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11240 Filed 5–6–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0044]

Proposed Collection Application/ Permit for Use of Space in Public Buildings and Grounds

AGENCY: General Services Administration (GSA, Public Buildings Service.

ACTION: Notice of an emergency reinstatement and request for public comments of collection (3090–0044).

SUMMARY: Under the provisions of the paperwork Reduction Act of 1995 (44 U.S.C. chapter 35), the General Services Administration (GSA) is requesting the Office of Management and Budget (OMB) to reinstate an information collection that pertains to GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds. This notice indicates GSA's intent to request an extension by 3 years of OMB's emergency reinstatement of this collection and to request public review and comment on the collection.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of GSA use of applications/ permits for use of space in a GSA building, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Comments may be submitted on or before July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Charlene Heeter, Public Buildings Service, GSA (202) 208–0214.

ADDRESSES: Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to Stephanie Morris, General Services Administration, Regulatory Secretariat, 1800 F Street, NW, Room 4035, Washington, DC 20405.

SUPPLEMENTARY INFORMATION:

A. Purpose

GSA will be requesting the Office of Management and Budget (OMB) to review and approve information collection, 3090–0044, Application/ Permit for Use of Space in Public Buildings and Grounds. The general public uses this GSA Form to request the use of public space in Federal buildings for cultural, educational, or recreational activities. A copy, sample, or description of any material or item proposed for distribution or display must also accompany this request.

B. Annual Reporting Burden

Respondents: 8,000.
Responses Per Respondent: 1.
Hours Per Response: 0.05.
Total Burden Hours: 400.
Obtaining Copies of Proposals: Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW, Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0044, GSA Form 3453, Application/Permit for Use of Space in Public Buildings and Grounds, in all correspondence.

Dated: April 29, 2002.

Michael W. Carlton,

Chief Information Officer (I).

[FR Doc. 02–11223 Filed 5–6–02; 8:45 am]

BILLING CODE 6820–EP–M

GENERAL SERVICES ADMINISTRATION

[OMB Control No. 3090–0259]

Submission for OMB Review; Comment Request Entitled Market Research Questionnaire

AGENCY: Federal Supply Service, GSA.

ACTION: Notice of a request for an extension to an existing OMB clearance (3090–0259), Market Research Questionnaire.

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the General Services Administration (GSA) has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Market Research Questionnaire. A request for public comments was published at 67 FR 7377, February 19, 2002. No comments were received.

Public comments are particularly invited on: Whether this collection of market research information is necessary for the proper performance of GSA procurement, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: *Comment Due Date:* July 7, 2002.

ADDRESSES: Comments regarding this collection of information should be submitted to Jeanette Thornton, GSA Desk Officer, OMB, Room 10236, NEOB, Washington, DC 20503, and a copy to Stephanie Morris, General Service Administration, Acquisition Policy Division, 1800 F Street, NW., Room 4035, Washington, DC 20405 or fax to (202) 501–4067. Please cite OMB Control Number 3090–0259.

FOR FURTHER INFORMATION CONTACT: Charles P. Gallagher, Federal Supply Service, GSA (703) 305–6930.

SUPPLEMENTARY INFORMATION:

A. Purpose

The General Services Administration is requesting that the Office of Management and Budget (OMB) review and approve information collection, 3090–0259, concerning the Market Research Questionnaire. The Market Research Questionnaire is used to gather information that is necessary to develop and/or revise Federal specifications and other purchase descriptions.

B. Annual Reporting Burden

Respondents: 25.
Annual Responses: 25.
Average hours per response: 0.5.
Burden Hours: 12.5.
Obtaining Copies of Proposal: Requester may obtain a copy of the proposal from the General Services Administration, Acquisition Policy Division (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405, telephone (202) 501–4744. Please cite OMB Control No. 3090–0259, Market Research Questionnaire.

Dated: April 29, 2002.

Michael W. Carleton,

Chief Information Officer (I).

[FR Doc. 02–11224 Filed 5–6–02; 8:45 am]

BILLING CODE 6820–61–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Meeting of the Secretary's Advisory Committee on Regulatory Reform

AGENCY: Office of the Assistant Secretary for Planning and Evaluation, HHS.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given of a public meeting of the Department of Health and Human Services (HHS) Secretary's Advisory Committee on Regulatory Reform. As governed by the Federal Advisory Committee Act in accordance with section 10(a)(2), the Secretary's Advisory Committee on Regulatory Reform is seeking guidance for the Department's efforts to streamline regulatory requirements. The Advisory Committee will advise and make recommendations for changes that would be beneficial in four broad areas: health care delivery, health systems operations, biomedical and health research, and the development of pharmaceuticals and other products. The Committee will review changes

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identified through regional public hearings, written comments from the public, and consultation with HHS staff.

All meetings and hearings of the Committee are open to the general public. During each meeting, invited witnesses will address how regulations affect health-related issues. Meeting agendas will also allow some time for public comment. Additional information on each meeting's agenda and list of participating witnesses will be posted on the Committee's Web site prior to the meetings (*http://www.regreform.hhs.gov*).

DATES: The second full meeting of the Secretary's Advisory Committee on Regulatory Reform will be held on Wednesday, May 15, 2002, from 8:00 a.m. to 5:00 p.m. and on Wednesday, May 16, from 8:00 a.m. to 3:00 p.m.

ADDRESSES: The hearing will be held in Ballroom "E" at the Marriott Denver City Center, 1701 California Street, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Christy Schmidt, Executive Coordinator, Secretary's Advisory Committee on Regulatory Reform, Office of the Assistant Secretary for Planning and Evaluation, 200 Independence Avenue, SW., Room 344G, Washington, DC, 20201, (202) 401–5182.

SUPPLEMENTARY INFORMATION: The Marriott Denver City Center is in compliance with the Americans with Disabilities Act. Anyone planning to attend the meeting who requires special disability-related arrangements such as sign-language interpretation should provide notice of their need by Monday, May 14, 2002. Please make any request to Michael Starkweather—phone: 301–628–3141; fax: 301–628–3101; e-mail: *mstarkweather@s-3.com*.

On June 8, 2001, HHS Secretary Thompson announced a Department-wide initiative to reduce regulatory burdens in health care, to improve patient care, and to respond to the concerns of health care providers and industry, State and local Governments, and individual Americans who are affected by HHS rules. Common sense approaches and careful balancing of needs can help improve patient care. As part of this initiative, the Department is establishing the Secretary's Advisory Committee on Regulatory Reform to provide findings and recommendations regarding potential regulatory changes. These changes would enable HHS programs to reduce burdens and costs associated with departmental regulations and paperwork, while at the same time maintaining or enhancing the effectiveness, efficiency, impact, and access of HHS programs.

Dated: April 29, 2002.

William Raub,

Deputy Assistant Secretary for Planning and Evaluation.

[FR Doc. 02–11221 Filed 5–6–02; 8:45 am]

BILLING CODE 4151–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02148]

Building Regional Coalitions to Promote Patient Safety; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for building regional coalitions to promote patient safety. This program addresses the "Healthy People 2010" focus areas of Access to Quality Health Services and Immunization and Infectious Diseases.

The purpose of the program is to support and develop a regional coalition that combines the efforts of major healthcare stakeholders to promote patient safety by preventing adverse events associated with healthcare, including evaluation of prevention effectiveness and cost effectiveness. Adverse events associated with healthcare to be targeted for preventions include, but are not limited to, healthcare associated infections, including those caused by antimicrobial resistant organisms. The goals of this program are to: (1) Support further development of an existing regional infrastructure to address issues of patient safety in a geographic area encompassing a major metropolitan area; (2) support implementation of interventions on a regional level designed to prevent adverse events associated with healthcare; (3) support interventions that address problems with current systems of healthcare delivery and their role in contributing to adverse events; (4) support the development of an existing region-wide system of surveillance for adverse events associated with healthcare; (5) support the development of a common information platform which can be used to collect electronic information on a regional level; and(6) evaluate the prevention effectiveness and cost effectiveness of regional interventions.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible to submit an application.

Applicants will need to have access to a coalition that actively engages a broad spectrum of healthcare quality stakeholders, including, but not limited to, healthcare facilities, major insurers, healthcare purchasers, physicians, corporate and civic leaders, organized labor, and State government.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

A. Availability of Funds

Approximately $100,000 is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12 month budget period within a project period of up to three years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preferences

1. Funding preference will be given to applicants who demonstrate the presence of an existing regional healthcare coalition with documented active engagement of a broad spectrum of healthcare quality stakeholders, including, but not limited to, healthcare facilities, major insurers, healthcare purchasers, physicians, corporate and civic leaders, organized labor, and State government. Applicants should have existing community charters signed by senior executive officers of at least 25 regional healthcare facilities, insurance companies representing at least 50 percent of the privately insured lives in the region, and at least 15 of the 30 largest employers in the region. These charters should specifically outline participatory actions to which the chief executive officers commit.

2. Funding preference will be given to applicants who can demonstrate the existence of a region-wide system of surveillance for healthcare-associated infections. The surveillance system should include a method of reporting infections back to individual participating facilities. The method should utilize definitions and methods consistent with CDC's National Nosocomial Infection Surveillance System (NNIS).

3. Funding preference will be given to regional coalitions that can document prior and ongoing participation of at least 25 healthcare facilities in the geographic region, including the sharing of healthcare-associated infection surveillance data with all other participating institutions.

4. Funding preference will be given to applicants who demonstrate a prior interest in interventions which take a systems-based approach to improving healthcare quality.

5. Funding preference will be given to applicants who have experience in implementing quality improvement techniques adopted from non-healthcare industries to prevent adverse events associated with healthcare including, but not limited to, healthcare associated infections.

6. Funding preference will be given to applicants who have developed a common electronic information platform which has been used to collect electronic medical data from at least 20 healthcare facilities region-wide. The electronic information platform should be compliant with the functional and technical specifications of the National Electronic Disease Surveillance System (NEDSS)information architecture *http://www.cdc.gov/nedss*.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Further develop and implement a regional program to improve healthcare quality and assure patient safety by preventing adverse events associated with healthcare including, but not limited to, healthcare-associated infections.

b. Regional Program: Continue to build and develop the existing regional program designed to reduce healthcare-associated adverse events. Establish active involvement of a broad spectrum of stakeholders in healthcare quality, including healthcare facilities, major insurers, healthcare purchasers, physicians, corporate and civic leaders, organized labor, and State government.

c. Regional Surveillance system: Maintain an established regional system for surveillance of healthcare-associated adverse events, and a method for reporting the data back to individual healthcare facilities.

d. Coordination and networking of regional healthcare information systems: The regional program should have infrastructure in place that allows for electronic information networking and data sharing. Continue to develop the network for the purpose of collecting and sharing information that promotes healthcare quality in the region, including the development and validation of novel strategies for surveillance using electronic data.

e. Development and application of novel intervention strategies: Study novel interventions that address problems in healthcare delivery systems that contribute to adverse events associated with healthcare. Interventions should include strategies adopted from industries other than healthcare.

f. Evaluate prevention effectiveness and cost effectiveness: Develop methods for evaluating the prevention effectiveness and cost-effectiveness of interventions at both the facility and regional level.

2. CDC Activities

a. Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance.

b. Assist in data collection, analysis, and interpretation of data from the project, as requested.

c. Participate in improving program performance through consultation based on information and activities of other projects.

d. Collaborate on appropriate aspects of the program, preventive measures, and program strategies for the prevention of adverse healthcare-associated events, as needed.

e. Assist, as needed, in the reporting and dissemination of research and other results and relevant healthcare quality prevention education and training information, to appropriate Federal, State, and local agencies, health-care providers, the scientific community, and prevention and service organizations with an interest in healthcare quality, and the general public.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than three single spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the program. Your letter of intent should identify the program announcement number 02148, and should include the following information: (1) name and address of institution, and (2) name, address, telephone number, e-mail address, and fax number of a contact person.

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one-inch margins, and unreduced font, and should include the following information.

1. Provide a line-item budget and narrative justification for all requested costs. Budgets should be consistent with the purpose, objectives and research activities, and include:

a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

b. For each contract: (1) Name of proposed contractor, (2) breakdown and justification for estimated costs, (3) description and scope of activities to be performed by contractor, (4) period of performance, (5) method of contractor selection (e.g., sole source or competitive solicitation), and (6) method of accountability.

c. A brief five year budget projection should be submitted that clearly separates and distinguishes direct from indirect costs.

d. A description of any financial and in-kind contributions from nonfederal sources.

Additionally, include a one page, single spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a work plan identifying activities to be developed, activities to be completed, and a time line for completion of these activities.

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F. Submission and Deadline

Letter of Intent (LOI)

On or before June 10, 2002, submit the letter of intent (original and two copies) to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*, or in the application kit.

On or before July 5, 2002, submit the application to: Technical Information Management-PA02148, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Understanding the objectives of the Building Regional Coalitions to Promote Patient Safety Program (5 points)

a. Demonstration of a clear understanding of the background and objectives of this cooperative agreement program.

b. Demonstration of a clear understanding of the requirements, responsibilities, problems, constraints, and complexities that may be encountered in establishing and operating the regional coalition.

c. Demonstration of a clear understanding of the roles and responsibilities of participation in the program.

2. Description of the existing regional coalition (40 points)

a. Clear description of the regional coalition participants, including the specific role of each and evidence of active participation. (10 points)

b. Clear description of the region wide system of surveillance for adverse events associated with healthcare, including the methods of reporting data back to individual participating facilities. The applicant should provide documentation of participation of a large proportion of healthcare facilities in the geographic region. (10 points)

c. Clear description of the common electronic information platform which has been used to collect electronic medical data from healthcare facilities region-wide. (10 points)

d. Clear description of the degree to which the applicant has exhibited an ability to comply with the NEDSS information technology architecture in the collection of electronic medical data from healthcare facilities participating in the regional coalition. (10 points)

3. Description of Existing Capacity to Actively Engage the Regional Participants in Implementing Activities That Support Patient Safety by Preventing Adverse Events Associated With Healthcare (25 points)

a. Description of applicants experience and documentation of accomplishments in conducting quality improvement activities.

b. Description of applicants experience and documentation of accomplishments in conducting surveillance and prevention activity in the areas of healthcare-associated infections and other adverse events.

c. Demonstration of the applicants interest and expertise in interventions which take a systems based approach to improving healthcare quality.

d. Demonstrate the applicants experience and expertise in quality improvement techniques adapted from non-healthcare industries.

e. Demonstration of applicants ability to develop and maintain strong cooperative regional relationships with medical, public health, laboratory, academic, and community organizations that are either public or private. Evidence of applicant's ability to solicit and secure programmatic collaboration, and financial and technical support from such organizations.

f. Demonstration of support from non-applicant participating agencies, institutions, organizations, laboratories, individuals, consultants, etc., mentioned in the operational plan. Applicant should provide (in an appendix) letters of support which clearly indicate each collaborator's willingness to participate in the activities of the regional coalition.

4. Operational Plan (20 points)

a. The extent to which the applicants plan for operating and maintaining the regional coalition clearly describes the proposed activities and clearly identifies the roles and responsibilities of all participating individuals, agencies, organizations, and institutions.

b. Description of the applicants plan for implementing interventions designed to promote patient safety through the prevention of adverse events associated with healthcare, including healthcare-associated infections.

c. Description of the applicants plan to develop and validate novel strategies for using electronic surveillance data for improving patient safety.

d. Description of the applicants plan to utilize quality improvement techniques adapted from non-healthcare industries to promote patient safety.

e. Consistency of the proposed projects with regard to program goals.

f. Identification of applicant's key professional personnel to be assigned to the program and to specific projects as well as key professional personnel from other participating or collaborating institutions, agencies, and organizations outside of the applicants agency that will be assigned to activities (provide curriculum vitae for each in an appendix). Clear identification of applicants' respective roles in the management and operation of the regional coalition.

g. Description of all support staff and services assigned to the regional coalition.

h. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes (1) the proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation, (2) the proposed justification when representation is limited or absent, (3) a statement as to whether the design of the study is adequate to measure differences when warranted, and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community (or communities) and recognition of mutual benefits.

5. Evaluation (5 points)

a. Quality of plan for monitoring and evaluating the prevention effectiveness and the cost effectiveness of the interventions.

b. Quality of plan for monitoring and evaluating progress in achieving the purpose and overall goals of this cooperative agreement program.

6. Measures of Effectiveness (5 points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishments of the various identified objectives of the grant. Measures must be objective and quantitative and must measure the intended outcome.

7. Budget (not scored)

The extent to which the line-item budget is detailed, clearly justified, and consistent with the purpose and objectives of this program.

8. Human Subjects (Not Scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where to Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—http://www.cdc.gov. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Yolanda Sledge, Grants Management Specialist, Acquisition and Assistance, Team B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000 Mailstop K–75, Atlanta, GA 30341–4146, Telephone number: 770–488–2787, Fax number: 770–488–2777, E-mail address: yis0@cdc.gov.

For program technical assistance, contact: John Jernigan, M.D., Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Healthcare Quality and Promotion, Executive Park 57, Suite 4109 Mailstop E–68, Telephone number: (404) 498–1257, Fax number: 404–498–1244, E-mail address: JJernigan@cdc.gov.

Dated: May 1, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11249 Filed 5–6–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

[Program Announcement No. OCS–2002–11]

Request for Applications Under the Office of Community Services' Fiscal Year 2002 Community Food and Nutrition Program

AGENCY: Office of Community Services, Administration for Children and Families, Department of Health and Human Services.

ACTION: Announcement of availability of funds and request for competitive applications under the Office of Community Services' Community Food and Nutrition Program (CFNP).

SUMMARY: The Administration for Children and Families (ACF), Office of Community Services (OCS), invites eligible entities to submit competitive grant applications for new grants for the Community Food and Nutrition Program (CFNP) pursuant to the Secretary's discretionary authority under Section 681 of the Community Services Block Grant Act, as amended [Sec. 42 USC 9922]. This Program Announcement contains forms and instructions for submitting an application. The awarding of grants under this Program Announcement is subject to the availability of funds for support of these activities.

DATES: To be considered for funding, applications must be *postmarked* on or before July 8, 2002. Applications postmarked after that date will not be accepted for consideration. See Part IV of this announcement for more information on submitting applications.

FOR FURTHER INFORMATION CONTACT: Catherine Rivers at (202) 401–9354 or the OCS Operations Center at 1–800–281–9519 for referral to the appropriate contact person in OCS for programmatic questions or send an e-mail to: *OCS@legnet.com.*

For a copy of this announcement, contact: OCS Operations Center, 1815 North Fort Meyer Drive, Suite 300, Arlington, Virginia 22209, 1–800–281–9519.

In addition, this announcement is accessible on the OCS website for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm*

If this Program Announcement is not available at these sources, it may be obtained by telephoning or writing the office listed under **FOR FURTHER INFORMATION, CONTACT.**

The Catalog of Federal Domestic Assistance (CFDA) number for this program is 93.571. The title is Community Food and Nutrition Program.

SUPPLEMENTARY INFORMATION: This Program Announcement consists of seven parts plus Attachments:

Part I Background Information

A. Legislative Authority
B. Program Purpose
C. Project Goals
D. Definition of Terms

Part II Program Objectives and Requirements

A. Project Requirements
B. Program Priority Areas
C. Eligible Applicants
D. Availability of Funds and Grant Amounts
E. Mobilization of Resources
F. Project and Budget Periods
G. Administrative Costs/Indirect Costs
H. Program Beneficiaries
I. Number of Projects in Application
J. Multiple Submittal
K. Sub-Contracting or Delegating Projects

Part III The Project Description, Program Proposal Elements and Review Criteria

A. Purpose
B. Project Summary Abstract
C. Objectives and Need for Assistance
D. Results or Benefits Expected
E. Approach
F. Organizational Profiles
G. Budget and Budget Justification
H. Non-Federal Resources

I. Evaluation Criteria

Part IV Application Procedures

A. Application Development/Availability of Forms
B. Application Submission
C. Intergovernmental Review
D. Initial OCS Screening
E. Consideration of Applications

Part V Instructions for Completing Forms SF–424

A. SF–424—Application for Federal Assistance
B. SF–424A—Budget Information—Non-Construction Programs
C. SF–424B—Assurances—Non-Construction Programs

Part VI Contents of Application and Receipt Process

A. Contents of Application
B. Application Format
C. Acknowledgment of Receipt

Part VII Post Award Information and Reporting Requirements

A. Notification of Grant Award
B. Reporting Requirements
C. Audit Requirements
D. Prohibitions and Requirements with Regard to Lobbying
E. Applicable Federal Regulations

Paperwork Reduction Act of 1995

Public reporting burden for this collection of information is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining the data needed and reviewing the collected information.

The project description is approved under OMB control number 0970–0139 which expires 12/31/2003.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Part I. Background Information

A. Legislative Authority

The Community Services Block Grant Act, as amended, authorizes the Secretary of Health and Human Services to make funds available under several programs to support program activities which will result in direct benefits targeted to low-income people. This Program Announcement covers the grant authority found at Section 681 of the Community Services Block Grant Act, (The Act) (Pub. L. 97–35) as amended by the Community Opportunities, Accountability, and Training and Educational Services Act of 1998 (Pub. L. 105–285), Community Food and Nutrition Programs. The Act authorizes the Secretary to award grants on a competitive basis to eligible entities for community-based, local and statewide and national programs including programs benefitting Indians (as defined in 42 U.S.C. 9911) and migrant farm workers. Grant funds are provided to: (1) coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals.

B. Purpose of Community Food and Nutrition Program

The Department of Health and Human Services (DHHS) is committed to improving the overall health and nutritional well-being of all individuals, including low-income persons, through improved preventive health care and promotion of personal responsibility.

DHHS also recognizes that improving the health and nutrition status of low-income persons can also be improved by access to healthy, nutritious foods or by other means. The DHHS encourages community efforts to improve the coordination and integration of health and social services for all low-income families, and to identify opportunities for collaborating with other programs and services for this population. Such collaboration can increase a community's capacity to leverage resources and promote an integrated approach to health and nutrition through existing programs and services.

C. Project Goals

The goals of the Community Food and Nutrition Program are: (1) to coordinate private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve the food and nutrition needs of low-income populations; (2) to assist low-income communities to identify potential sponsors of child nutrition programs and to initiate such programs in underserved or unserved areas; and (3) to develop innovative approaches at the State and local level to meet the nutrition needs of low-income individuals, including displaced workers, elderly people, children, and the working poor and other low-income individuals.

D. Definition of Terms

For purposes of this Program Announcement, the following definitions apply:

Budget period: The interval of time into which a grant period of assistance (project period) is divided for budgetary and funding purposes.

Displaced worker: An individual who is in the labor market but has been unemployed for six months or longer.

Eligible entity: State and local governments, as well as Indian tribes, and public and private nonprofit agencies/organizations including Community Action Agencies. (See Part II). Faith-based organizations are eligible to apply for these grants.

Empowerment Zones and Enterprise Communities: Those communities designated as such by the Secretary of Agriculture or the Secretary of Housing and Urban Development.

Indian tribe: A tribe, band, or other organized group of Native American Indians recognized in the State or States in which it resides or considered by the Secretary of the Interior to be an Indian tribe or an Indian organization for any purpose.

Innovative project: One that departs from, or significantly modifies, past program practices and tests a new approach.

Migrant farmworker: An individual who works in agricultural employment of a seasonal or other temporary nature who is required to be absent from his/her place of permanent residence in order to secure such employment.

Program income: Gross income earned by the grant recipient that is directly generated by an activity supported with grant funds.

Project period: The total time for which a project is approved for support, including any approved extensions.

Seasonal farmworker: Any individual employed in agricultural work of a seasonal or other temporary nature who is able to remain at his/her place of permanent residence while employed.

Self-sufficiency: A condition where an individual or family does not need, and is not eligible to receive, TANF assistance under Title I of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (Part A of Title IV of the Social Security Act).

Underserved area (as it pertains to child nutrition programs): A locality in which less than one-half of the low-income children eligible for assistance participate in any child nutrition program.

Part II. Program Objectives and Requirements

The OCS invites qualified entities to submit competing grant applications for Community Food and Nutrition Projects that will establish, support, and/or manage food and nutrition services for low-income people. The main objective of the CFNP is to link low-income people to food and nutrition programs.

A. Project Requirements

Focus on one or more legislatively-mandated program activities: (a) coordination of private and public food assistance resources, wherever the grant recipient involved determines such coordination to be inadequate, to better serve low-income populations; (b) assistance to low-income communities in identifying potential sponsors of child nutrition programs and initiating such programs in unserved or underserved areas; and (c) development of innovative approaches at the state and local level to meet the nutrition needs of low-income individuals.

Additionally, in carrying out such activities, projects funded under this program should: (1) Be designed and intended to provide nutrition benefits, including those which incorporate the benefits of disease prevention, to a targeted low-income group of people; (2) Provide outreach and public education to inform eligible low-income individuals and families of other nutritional services available to them under the various Federally-assisted programs; (3) Carry out targeted communications and social marketing to improve dietary behavior and increase program participation among eligible low-income populations. Populations to be targeted can include displaced workers, elderly people, children, and the working poor, and (4) Consult with and/or inform local offices that administer other food programs such as W.I.C. and Food Stamps, where applicable, to ensure effective coordination which can jointly target services to increase their effectiveness. Such consultation may include involving these offices in planning grant applications.

The OCS views this program as a capacity building program, rather than a service delivery program.

B. Program Priority Areas

There are two Program Priority Areas under this program for Fiscal Year 2002: Priority Area 1.0, General Projects, under which OCS will accept applications as described below, and Priority Area 2.0, Nationwide Programs, will be covered under a separate Program Announcement as described below.

1. General Projects—Priority Area 1.0

The application should describe the target area and population to be served and discuss the nature and extent of the problem to be solved. The application must contain a detailed and specific work program that is sound and feasible. Projects funded under this Announcement must produce lasting and measurable results that fulfill the purposes of this program as described above. The OCS grant funds, in combination with private and/or other public resources, must be targeted to low-income individuals and communities.

Applicants will certify in their submission that projects will only serve the low-income population as stipulated in the DHHS Poverty Income Guidelines (Attachment A). Failure to certify that only beneficiaries that meet the DHHS Poverty Income Guidelines may result in the application not being considered for funding.

If an applicant proposes a project which will affect a property listed in, or eligible for, inclusion in the National Register of Historic Places, it must identify this property in the narrative and explain how it has complied with the provisions of Section 106 of the National Historic Preservation Act of 1966, as amended. If there is any question as to whether the property is listed in, or is eligible for inclusion in, the National Register of Historic Places, applicant should consult with the State Historic Preservation Officer. The applicant should contact OCS early in the development of its application for instructions regarding compliance with the Act and data required to be submitted to DHHS.

When projects proposed to mobilize or improve the coordination of existing public and private food assistance resources, the guidelines governing those resources apply. However, when projects propose to provide direct assistance to beneficiaries through grants funded under this program, those beneficiaries must fall within the official DHHS Poverty Income Guidelines as set forth in Attachment A.

Applications proposing the use of grant funds to develop printed or visual materials must contain convincing evidence that these materials are not available from other sources. The OCS will not provide funding for such items if justification is not sufficient. Approval of any films or visual presentations proposed by applicants approved for funding will be made part of the grant award. When material outlays for equipment (audio and visual) are requested, specific evidence must be presented that there is a definite programmatic connection between the equipment (audio and visual) usage and the outreach requirements described in Part II of this Announcement.

2. Nationwide Program—Priority Area 2.0

Under a separate Program Announcement, ACF/OCS will invite eligible applicants to compete for a grant to administer through a Cooperative Agreement, the CFNP Nationwide Program. The ACF will make available approximately $300,000 to support the project for the first year. It is expected that this will be a three-year project.

For further information or to obtain a copy of the CFNP Nationwide Program Announcement, contact the office listed in this Announcement under **FOR FURTHER INFORMATION, CONTACT.**

C. Eligible Applicants

Eligible applicants are State and local governments, Indian tribes, and public and private nonprofit agencies/organizations with a demonstrated ability to successfully develop and implement programs and activities similar to those enumerated above. The OCS encourages Historically Black Colleges and Universities, minority institutions and faith-based organizations to submit applications. Eligible applicants with programs benefitting Native Americans and migrant or seasonal farmworkers are also encouraged to submit applications.

Any nonprofit organization, including faith-based organizations, are eligible to apply for these funds. In submitting an application, each organization must submit proof of its nonprofit status at the time of submission. The nonprofit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, a copy of the currently valid IRS tax exemption certificate, or a copy of the applicant's Articles of Incorporation bearing the seal of the State in which the corporation or association is domiciled.

D. Availability of Funds and Grant Amounts

1. Fiscal Year 2002 Funding

The funds available for grant awards under the Community Food and Nutrition Program (CFNP) in Fiscal Year 2002 are: General Projects—Priority Area 1.0: *$2,400,000.

All grant awards are subject to the availability of appropriated funds.

2. Grant Amounts

No individual grant application will be considered for an amount in excess of $50,000 for applications submitted under General Projects.

E. Mobilization of Resources

The OCS would like to mobilize as many resources as possible to enhance projects funded under the CFNP. The OCS supports and encourages applications submitted by applicants whose programs will leverage other resources, either cash or third party in-kind.

F. Project Periods and Budget Periods

For most projects, OCS will grant funds for one year. However, in rare instances, depending on the characteristics of any individual project and the justification presented in the application, a grant may be made for a project period of up to 17 months.

G. Administrative Costs/Indirect Costs

There is no predetermined administrative cost ceiling for projects funded under this program. Indirect costs consistent with approved indirect cost rate agreements are allowable. Applicants should enclose a copy of the current approved rate agreement. However, it should be understood that indirect costs are part of, and not in addition to, the amount of funds awarded in the subject grant.

H. Program Beneficiaries

Projects proposed for funding under this Announcement must result in direct benefits targeted toward low-income people as defined in the most recent annual update of the Poverty Income Guidelines published by DHHS. Attachment A to this Announcement is an excerpt from the most recently published guidelines. Annual revisions of these guidelines are normally published in the **Federal Register** in February or early March of each year and are applicable to projects being implemented at the time of publication. Grantees will be required to apply the most recent guidelines throughout the project period. The **Federal Register** may be obtained from public libraries, Congressional offices, or by writing the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402. The **Federal Register** is also available on the Internet through GPO Access at the following web address: *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

No other government agency or privately defined poverty guidelines are applicable to determining low-income eligibility for this OCS program.

I. Number of Projects in Application

An application may contain only one proposed project and this project must address the basic criteria found in Parts II and III of this Program Announcement. Applications not complying with these requirements will not be funded.

J. Multiple Submittal

There is no limit to the number of applications that can be submitted by an eligible applicant as long as each application is for a different project. However, no applicant will receive more than one grant.

K. Sub-Contracting or Delegating Projects

The OCS will not fund any project where the role of the eligible applicant is primarily to serve as a conduit for funds to other organizations.

Part III. The Project Description, Program Proposal Elements and Review Criteria

A. Purpose

The project description provides the major means by which an application is evaluated and ranked to compete with other applications for available assistance. The project description should be concise, complete and should address the activity for which Federal funds are being requested. Supporting documents should be included where they can present information clearly and succinctly. Applicants are encouraged to provide information on their organizational structure, staff, related experience, and other information. Awarding offices use this and other information to determine whether the applicant has the capability and resources necessary to carry out the proposed project. It is important, therefore, that this information be included in the application. However, in the narrative the applicant must distinguish resources directly related to the proposed project and those that will not be used in support of the specific project for which funds are requested.

B. Project Summary/Abstract

Provide a summary of the project description (one page or less) with reference to the funding request.

C. Objectives and Need for Assistance

Clearly identify the physical, economic, social, financial, instructional, and/or other problem(s) requiring a solution. The need for assistance must be demonstrated and the principal and subordinate objectives of the project must be clearly stated; supporting documentation, such as letters of support and testimonials from concerned interests other than the applicant, may be included. Any relevant data based on planning studies should be included or referred to in the endnotes/footnotes. Incorporate demographic data and participant/beneficiary information, as needed. In developing the project description, the applicant may volunteer or be requested to provide information on the total range of projects currently being conducted and supported (or to be initiated), some of which may be outside the scope of the program announcement.

D. Results or Benefits Expected

Identify the results and benefits to be derived. For example, describe the population to be served by the Community Food and Nutrition Program, including how many low-income people are projected to be served. Explain the ways in which the project will be used to reach your client base and will benefit participants, including whether it may aid some participants in moving towards self-sufficiency.

E. Approach

Outline a plan of action which describes the scope and detail of how the proposed work will be accomplished. Account for all functions or activities identified in the application. Cite factors which might accelerate or decelerate the work and state the reason for taking the proposed approach rather than others. Describe any unusual features of the project such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvement.

Provide quantitative monthly or quarterly projections of the accomplishments to be achieved for each function or activity in such terms as the number of people served. When accomplishments cannot be quantified by activity or function, list them in chronological order to show the schedule of accomplishments and their target dates.

Indicate whether data will be collected, maintained, and/or disseminated. Note that clearance may be required from the U.S. Office of Management and Budget (OMB) in order to conduct such activities. This requirement pertains to any "collection of information that is conducted or sponsored by ACF".

The OCS is also interested in projects that address the needs of homeless families and welcomes applications that seek to develop innovative approaches to promote health and nutritional awareness among low-income populations.

List organizations, cooperating entities, consultants, or other key individuals who will work on the project along with a short description of the nature of their effort or contribution.

F. Organization Profiles

Provide information on the applicant organization(s) and cooperating partners such as organizational charts, financial statements, audit reports or statements from CPAs/Licensed Public Accountants, Employer Identification Numbers, names of bond carriers, contact persons and telephone numbers, child care licenses and other documentation of professional accreditation, information on compliance with Federal/State/local government standards, documentation of experience in the program area, and other pertinent information. Any non-profit organization submitting an application must submit proof of its non-profit status in its application at the time of submission. The non-profit agency can accomplish this by providing a copy of either the applicant's listing in the Internal Revenue Service's (IRS) most recent list of tax-exempt organizations, or the currently valid IRS tax exemption certificate, or, the articles of incorporation bearing the seal of the State in which the corporation or association is domiciled.

G. Budget and Budget Justification

Provide a line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification that describes how categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs.

The following guidelines are for preparing the budget and budget justification. Both Federal and non-Federal resources shall be detailed and justified in the budget and narrative justification. For purposes of preparing the budget and budget justification, "Federal resources" refers only to the ACF grant for which you are applying. Non-Federal resources are all other Federal and non-Federal resources. It is suggested that budget amounts and computations be presented in a columnar format: first column, object class categories; second column, Federal budget; next column(s), non-Federal budget(s), and last column, total budget.

Personnel

Description: Costs of employee salaries and wages.

Justification: Identify the project director or principal investigator, if known. For each staff person, provide the title, time commitment to the project (in months), time commitment to the project (as a percentage or full-time equivalent), annual salary, grant salary, wage rates, etc. Do not include the costs of consultants or personnel costs of delegate agencies or of specific project(s) or businesses to be financed by the applicant.

Fringe Benefits

Description: Costs of employee fringe benefits, unless treated as part of an approved indirect cost rate.

Justification: Provide a breakdown of the amounts and percentages that comprise fringe benefit costs such as health insurance, FICA, retirement insurance, taxes, etc.

Travel

Description: Costs of project-related travel by employees of the applicant organization (does not include costs of consultant travel).

Justification: For each trip, show the total number of traveler(s), travel destination, duration of trip, per diem, mileage allowances, if privately owned vehicles will be used, and other transportation costs and subsistence allowances.

Equipment

Description: "Equipment" means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for the financial statement purposes, or (b) $5,000. (Note: Acquisition cost means the net invoice unit price of an item of equipment, including the cost of any modifications, attachments, accessories, or auxiliary apparatus necessary to make it usable for the purpose for which it is acquired. Ancillary charges, such as taxes, duty, protective in-transit insurance, freight, and installation shall be included in, or excluded from, acquisition cost in accordance with the organization's regular written accounting practices.)

Justification: For each type of equipment requested, provide a description of the equipment, the cost per unit, the number of units, the total cost, and a plan for use on the project, as well as use or disposal of the equipment after the project ends. An applicant organization whose definition of equipment differs from ACF's definition of equipment as described above should provide a copy of its policy or section of its policy which includes the equipment definition.

Supplies

Description: Costs of all tangible personal property other than that included under Equipment.

Justification: Specify general categories of supplies and their costs. Show computations and provide other information which supports the amount requested.

Contractual

Description: Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and subrecipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) (currently set at $100,000.) Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Other

Enter the total of all other costs. Such costs, where applicable and appropriate, may include but are not limited to

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insurance, food, medical and dental costs (noncontractual), professional services costs, space and equipment rentals, printing and publication, computer use, training costs such as tuition and stipends, staff development costs, and administrative costs.

Justification: Provide computations, a narrative description and a justification for each cost under this category.

H. Non-Federal Resources

Amounts of non-Federal resources that will be used to support the project as identified in Block 15 of the SF–424. The firm commitment of these resources must be documented and submitted with the application in order to be given credit in the review process. A detailed budget must be prepared for each funding source.

I. Evaluation Criteria

Proposal Elements and Review Criteria for Applications

Each application which passes the initial screening described in Part IV, Section D of this Program Announcement will be assessed and scored by three independent reviewers. Each reviewer will give a numerical score for each application. These numerical scores will be supported by explanatory statements on a formal rating form describing major strengths and weaknesses under each applicable criterion published in the Announcement. Scoring will be based on a total of 100 points, and for each application will be the average of the scores of the three reviewers.

The competitive review of proposals will be based on the degree to which applicants:

(1) adhere to the requirements in PART II and (2) incorporate each of the Elements and Sub-Elements below into their proposals, so as to describe convincingly a project that will develop new food and nutrition services/activities to benefit low-income households including displaced workers, elderly people, children, and the working poor.

In order to simplify the application preparation and review process, OCS seeks to keep grant proposals cogent and brief. Applications with project narratives (excluding Project Summaries, Budget Justifications and Appendices) exceeding 30 letter-sized pages of 12 c.p.i. type or equivalent on a single side will not be reviewed. Applicants should prepare and assemble their project descriptions using the following outline of required project elements. They should, furthermore, build their project concept, plans, and application description upon the guidelines set forth for each of the project elements.

Project descriptions are evaluated on the basis of substance, not length. Pages should be numbered consecutively and a table of contents should be included for easy reference. Applicants are reminded that the overall Project Narrative must not exceed 30 pages.

When writing their Project Narratives, applicants should respond to the review criteria using the same sequential order.

Criteria for Review and Evaluation of Applications Submitted Under This Program Announcement: (*Note:* The review criteria both reiterate and explain in greater detail the information requirements contained in Part II of this Announcement.)

Evaluation Criterion 1: Objectives and Need for Assistance

Element I. Description of Target Population and Analysis of Needs/Priorities (0 to 10 Points)

Sub-Element I(a) Description of Target Population. (0 to 4 Points)

In addressing this criterion, the applicant should describe the target area and population to be served, including specific details on any minority population(s) to be served.

Sub-Element I(b) Analysis of Needs/Priorities (0 to 6 Points)

In addressing the above criterion, the applicant should discuss the nature and extent of the problem(s) and/or need(s), including specific information on minority populations(s).

Evaluation Criterion 2: Approach I

Element II. Adequacy of Work Program (0 to 25 Points)

Sub-Element II(a). Realistic Quarterly Time Lines (0 to 10 Points)

Applicant should provide realistic quarterly projections of the activities to be carried out including the projected number of beneficiaries to be served each quarter.

Sub-Element II(b). Detailed Work Plan (0–15)

Applicant must insure that activities are adequately described and appear reasonably likely to achieve results which will have a desired impact on the identified problems and/or needs.

In addressing this criterion, the applicant should address the basic criteria and other mandated activities found in Part II and should include:

(1) Project priorities, and rationale for selecting them, which relate to the specific nutritional problem(s) and/or need(s) of the target population identified under Criterion I;

(2) Goals and objectives that speak to the(se) problem(s) and/or need(s); and

(3) Project activities that, if successfully carried out, can reasonably be expected to result in achieving these goals and objectives.

Evaluation Criterion 3: Results or Benefits Expected

Element III. Significant and Beneficial Impact (0–30 Points)

Sub-Element III(a) Improvement in Nutrition Services to Low-Income People (0 to 15 Points)

Applicants shall address how they propose to significantly improve or increase nutrition services to low-income people and indicate how such improvements or increases are quantified.

Sub-Element III(b) Promotional Health and Social Service Activities Included in Nutrition Services (0 to 5 Points)

Applicant incorporates into the project awareness of health and social services activities for low-income people along with nutritional services.

Sub-Element III(c) Commitment of Resources (0 to 5 Points)

Applicant indicates that the project will significantly leverage or mobilize other community resources. These resources are detailed and quantified.

Sub-Element III(d) One Time Funding (0 to 5 Points)

Applicant demonstrates either that the project addresses problem(s) that can be resolved by one-time OCS funding, or demonstrates that non-Federal funding is available to continue the project without Federal support.

In addressing the above criterion, the applicant must include quantitative data for items (a),(b), and (c), and discuss how the beneficial impact relates to the relevant legislatively-mandated program activities identified in Part II and the problems and/or needs described under Criterion I.

Evaluation Criterion 4: Approach II

Element IV. Coordination/Services Integration (0 to 15 Points)

Sub-Element IV (a) Coordinated Community-Based Planning (0 to 10 Points)

Application demonstrates evidence of coordinated community-based planning in its development, including strategies in the work program to collaborate with other locally-funded Federal programs (such as DHHS health and social services and USDA Food and Consumer Service programs) in ways that will eliminate duplication and will, for example: (1) unite funding streams at the local level to increase program outreach and effectiveness; (2) facilitate access to other needed social services by coordinating and simplifying intake and eligibility certification processes for clients; or (3) bring project participants into direct interaction with holistic family development resources in the community where needed.

Sub-Element IV (b) Community Empowerment Consideration (0 to 5 Points)

Special consideration will be given to applicants located in areas characterized by poverty and other indicators of socio-economic distress such as a poverty rate of at least 20 percent, designation as an Empowerment Zone or Enterprise Community, high levels of unemployment, and high levels of incidences of violence, gang activity, crime, or drug use. Applicants should document their involvement in preparing and planned implementation of a comprehensive community-based strategic plan to achieve both economic and human development in an integrated manner.

If the applicant is receiving funds from the State for community food and nutrition activities, the applicant should address how the funds are being utilized, and how they will be coordinated with the proposed project to maximize the effectiveness of both. If State funds are being used in the project for which OCS funds are being requested, their usage should be specifically described.

Evaluation Criterion 5: Organizational Profiles

Element V. Organizational Experience and Administrative Capability (0 to 15 Points)

Sub-Element V(a). Organizational Experience in Program Area (0–5 Points)

The applicant should document the organization's capability and relevant experience in developing and operating programs which deal with poverty problems similar to those to be addressed by the proposed project. Documentation provided should indicate that projects previously undertaken have been relevant and effective and have provided permanent benefits to the low-income population. Organizations proposing training and technical assistance should have detailed competence in the program area and expertise in training and technical assistance. If applicable, information provided by these applicants also addresses related achievements and competence of each cooperating or sponsoring organization.

Sub-Element V(b). Management History (0–5 Points)

Applicants must demonstrate their ability to implement sound and effective management practices. If they have been recipients of other Federal or other governmental grants, they must also document their compliance with financial and program progress reporting and audit requirements. Such documentation may be in the form of references to any available audit or progress reports and should be accompanied by a statement from a Certified or Licensed Public Accountant as to the sufficiency of the applicant's financial management system to protect adequately any Federal funds awarded under the application submitted.

Sub-Element V(c). Staff Skills, Resources and Responsibilities (0–5 Points)

The application should adequately describe the experience and skills of the proposed Project Director, showing that the individual is not only well qualified, but that his/her professional capabilities are relevant to successfully implement the project. If the key staff person has not yet been identified, the application contains a comprehensive position description indicating that the responsibilities to be assigned to the project director are relevant to successfully implement the project. The application must indicate that the applicant has adequate facilities and resources (i.e. space and equipment) to carry out the work plan successfully.

In addressing the above criterion, the applicant must clearly show that sufficient time of the Project Director and other senior staff will be budgeted to assure timely project implementation and oversight and that the assigned responsibilities of the staff are appropriate to the tasks identified.

Evaluation Criterion 6: Budget and Budget Justification

Element VI. Appropriateness of Budget (0 to 5 Points)

Every application must include a Budget Justification, placed after the budget forms SF 424 and 424A, explaining the sources and uses of project funds. The budget is adequate and administrative costs are appropriate to the services proposed.

Part IV. Application Procedures

A. Application Development/Availability of Forms

To be considered for a grant under this program announcement, an application must conform to the Program Requirements set out in Part II and be prepared in accordance with the guidelines set out in Part III. It must be submitted on the forms supplied in the attachments to this Announcement and in the manner prescribed below. Attachments A through K contain all standard forms necessary to apply for awards under this OCS program. These attachments and Parts V and VI of this Announcement contain all the general instructions required for submitting applications.

Additional copies may be obtained by writing or telephoning the office listed under the section entitled **FOR FURTHER INFORMATION CONTACT:** at the beginning of this announcement. In addition, this Announcement is accessible on the Internet through the OCS Website for reading or downloading at: *http://www.acf.dhhs.gov/programs/ocs/kits1.htm* under "Funding Opportunities."

The applicant must be aware that in signing and submitting the application for this award, it is certifying that it will comply with the Federal requirements concerning the drug-free workplace, the Certification Regarding environmental tobacco smoke, and debarment regulations set forth in Attachments E, J, and F.

PART III contains instructions for the substance and development of the project narrative. PART V contains instructions for completing application forms. PART VI, Section A, describes the contents and format of the application as a whole.

B. Application Submission

1. Number of Copies Required. One signed original application and two copies must be submitted at the time of initial submission. (OMB 0970–0139). Two additional optional copies would be appreciated to facilitate the processing of applications.

2. Closing Date. The closing date for submitting applications is July 8, 2002. Applications postmarked after the closing date will be classified as late.

Hand delivered applications are accepted during the normal working hours of 8:00 a.m. to 4:30 p.m. EST at the Community Food and Nutrition Program Operations Center: 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209 between Monday and Friday (excluding Federal holidays). (Applicants are cautioned that express/

overnight mail services do not always deliver as agreed.)

Mailing Address: Applications must be mailed to Community Food and Nutrition Program Operations Center, 1815 North Fort Myer Drive, Suite 300, Arlington, VA 22209; Attention: Application for Community Food and Nutrition Program.

Applicants must ensure that a legibly dated U.S. Postal Service postmark, or a legibly dated machine produced postmark of a commercial mail service, or an official dated receipt of an overnight/express delivery service, is affixed to the envelope/package containing the application(s). To be acceptable as proof of timely mailing, a postmark from a commercial mail service or receipt from an overnight/express delivery service company must include the logo/emblem of the company and must reflect the date the package was received by the company from the applicant. *Private Metered postmarks shall not be acceptable as proof of timely mailing.*

ACF cannot accommodate transmission of applications by fax or through other electronic media. Therefore, applications transmitted to ACF electronically will not be accepted regardless of date or time of submission and time of receipt.

3. Late Applications. Applications which do not meet the criteria above are considered late applications. ACF shall notify each late applicant that its application will not be considered in the current competition.

4. Extension of Deadlines. ACF may extend an application deadline for applicants affected by acts of God such as floods and hurricanes, or when there is widespread disruption of the mails. A determination to waive or extend deadline requirements rest with ACF's Chief Grants Management Officer.

C. Intergovernmental Review

This program is covered under Executive Order 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Program and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs.

All States and Territories except Alabama, Alaska, Arizona, Colorado, Connecticut, Hawaii, Idaho, Indiana, Kansas, Louisiana, Massachusetts, Minnesota, Montana, Nebraska, New Jersey, New York, Ohio, Oklahoma, Oregon, Pennsylvania, South Dakota, Tennessee, Vermont, Virginia, Washington, Wyoming, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these twenty-seven jurisdictions need take no action regarding E.O. 12372. Applicants for projects to be administered by Federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372. Otherwise, applicants should contact their SPOCs as soon as possible to alert them of the prospective applications and receive any necessary instructions. Applicants must submit any required material to the SPOCs as soon as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or indicate "not applicable" if no submittal is required) on the Standard Form 424, item 16a.

Under 45 CFR 100.8(a)(2), a SPOC has 60 days from the application deadline to comment on proposed new or competing continuation awards.

SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations.

Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which may trigger the "accommodate or explain" rule.

When comments are submitted directly to ACF, they should be addressed to: Department of Health and Human Services, Administration for Children and Families, Office of Grants Management/OCSE, 370 L'Enfant Promenade, S.W., 4th floor East, Washington, D.C. 20447.

A list of the Single Points of Contact for each State and Territory is included as Attachment G to this Announcement.

D. Initial OCS Screening

Each application submitted under this program announcement will undergo a pre-review to determine that the application was postmarked by the closing date and submitted in accordance with the instructions in this Announcement.

All applications that meet the published deadline requirements as provided in this Program Announcement will be screened for completeness and conformity with the following requirements. Only complete applications that meet the requirements listed below will be reviewed and evaluated competitively. Other applications will be returned to the applicants with a notation that they were unacceptable and will not be reviewed.

The following requirements must be met by all Applicants except as noted:

(1) The application must contain a signed Standard Form 424 Application for Federal Assistance" (SF–424), Attachment B, a budget (SF–424A), Attachment C, and signed "Assurances" (SF 424B), Attachment D, completed according to instructions published in Part V and Attachments A, B, and C of this Program Announcement. The SF–424 and the SF–424B must be signed by an official of the organization applying for the grant who has authority to obligate the organization legally. Applicant must also be aware that the applicant's legal name as required on the SF–424 (Item 5) must match that listed as corresponding to the Employer Identification Number (Item 6).

(2) A project narrative must also accompany the standard forms. OCS requires that the narrative portion of the application be no more than 30 letter-size pages, numbered consecutively , and typewritten on one side of the paper only with one-inch margins and type face no smaller than 12 characters per inch (c.p.i.) or equivalent. Applications with project narratives (excluding Project Summaries and appendices) of more than 30 letter-size pages of 12 c.p.i. type or equivalent on a single side will not be reviewed for funding.

The budget narrative, charts, exhibits, resumes, position descriptions, letters of support or commitment are not counted against this page limit and should be in the Appendix. It is strongly recommended that applicants adopt for their program project narratives the sequence and content described in part III, section I.

(3) Application must contain documentation of the applicant's tax exempt status as required under PART II, Section C.

Applicants are strongly encouraged to mobilize additional resources, which may be cash or in-kind contributions, Federal or non-Federal. [See PART E]

E. Consideration of Applications

Applications which pass the initial OCS screening will be reviewed and rated by an independent review panel on the basis of the Program Elements and Review Criteria set forth in PART III. These review criteria were designed to assess the quality of a proposed project and determine the likelihood of its success. The review criteria are closely related and are considered as a whole in judging the overall quality of an application. Points are awarded only to applications which are responsive to the program elements and review criteria within the context of this Program Announcement.

Reviewers' scores will assist the Director and OCS program staff in considering competing applications. Reviewers' scores will weigh heavily in funding decisions, but will not be the only factors considered.

Applications generally will be considered in order of the average scores assigned by reviewers. However, highly ranked applications are not guaranteed funding because other factors are taken into consideration. These include, but are not limited to: the timely and proper completion by applicant of projects funded with OCS funds granted in the last five (5) years; comments of reviewers and government officials; staff evaluation and input; amount and duration of the grant requested and the proposed project's consistency and harmony with OCS goals and policy; geographic distribution of applications; previous program performance of applicants; compliance with grant terms under previous HHS grants, including the actual dedication to program of mobilized resources as set forth in project applications; audit reports; investigative reports; and applicant's progress in resolving any final audit disallowance on previous OCS or other Federal agency grants.

Applicants may omit from the application the specific salary rates or amounts for individuals identified in the application budget. Rather, only summary information is required. OCS reserves the right to discuss applications with other Federal or non-Federal funding sources to verify the applicant's performance record and the documents submitted.

Part V. Instructions for Completing Forms SF 424

All application forms are now available on the ACF website for downloading: http://www.acf.dhhs.gov/programs/ofs/forms.htm.

The standard forms attached to this announcement shall be used to apply for funds under this program announcement.

It is suggested that you reproduce single-sided copies of the SF–424 and SF–424A, and type your application on the copies. Please prepare your application in accordance with instructions provided on the forms (Attachments B,C and D) as modified by the instructions set forth in PART III. above, and the OCS specific instructions set forth below:

Provide line item detail and detailed calculations for each budget object class identified on the Budget Information form. Detailed calculations must include estimation methods, quantities, unit costs, and other similar quantitative detail sufficient for the calculation to be duplicated. The detailed budget must also include a breakout by the funding sources identified in Block 15 of the SF–424.

Provide a narrative budget justification which describes how the categorical costs are derived. Discuss the necessity, reasonableness, and allocability of the proposed costs. (Note: The Budget detail and Narrative Budget Justification should follow the SF 424 and 424A, and are not counted as part of the Project Narrative.)

A. SF–424—Application for Federal Assistance (Attachment B)

Where the applicant is a previous DHHS grantee, enter the Central Registry System Employee Identification Number (CRS/EIN) and the Payment Identifying Number, if one has been assigned, in the Block entitled Federal Identifier located at the top right hand corner of the form (third line from the top).

Item 1. For the purposes of this announcement, all projects are considered Applications; there are no Pre-Applications.

Item 7. If applicant Is an Indian Tribe enter "K" in the box. If applicant is a non-profit organization enter "N" in the box.

Item 9. Name of Federal Agency—Enter DHHS–ACF/OCS.

Item 10. The Catalog of Federal Domestic Assistance number for OCS programs covered under this announcement is 93.571. The title is "Community Food and Nutrition Program (CFNP)."

Item 11. In addition to a brief descriptive title of the project, indicate the priority area for which funds are being requested. Use the following letter designations:

Use Priority Area 1.0 for General Projects.

Item 13. Proposed Project Dates—Show 12-month project period. (See Part II) In addition, the project start date must begin on or before September 30, 2002; the ending date should be calculated on the basis of a 12-month Project Period.

Item 14. Congressional District of Applicant/Project—Enter the number(s) of the Congressional District where the applicant's principal office is located and the number(s) of the Congressional District(s) where the project will be located.

Item 15. Estimated Funding—Item 15a. Show the total amount requested for the entire project period; Item 15b. For each line item, show both cash and third party in-kind contributions for the total project period; Item 15f. Show the estimated amount of program income for the total project period; Item 15g. Enter the sum of all the line items.

B. SF–424A—Budget Information—Non-Construction Programs (Attachment C)

In completing these sections, the Federal Funds budget entries will relate to the requested OCS Community Food and Nutrition Program funds only, and Non-Federal will include funds mobilized from all other sources—applicant, state, local, and other. Federal funds other than those requested from the Community Food and Nutrition Program should be included in *Non-Federal* entries.

Sections A and D of SF–424A must contain entries for both Federal (OCS) and *non-Federal* mobilized funds.

Section A—Budget Summary

Lines 1—4

Column (a) Line 1—Enter OCS CFNP
Column (b) Line 1—Enter 93.571
Columns (c) and (d)—Not Applicable
Columns (e), (f) and (g)—Line 1—Enter appropriate amounts needed to support the project for the entire project period.

Line 5

Enter the figures from Line 1 for all columns completed, (e), (f), and (g).

Section B—Budget Categories

This section should contain entries for OCS funds only. For all projects, the first budget period of 12 months will be entered in Column (1).

Allocability of costs is governed by applicable cost principles set forth in the Code of Federal Regulations (CFR), Title 45, parts 74 and 92.

Budget estimates for administrative costs must be supported by adequate detail for the grants officer to perform a cost analysis and review. Adequately detailed calculations for each budget object class are those which reflect estimation methods, quantities, unit costs salaries, and other similar quantitative detail sufficient for the calculation to be duplicated. For any additional object class categories included under the object class other, identify the additional object class(es) and provide supporting calculations.

Supporting narratives and justifications are required for each budget category, with emphasis on unique/special initiatives; large dollar amounts; local, regional, or other travel; new positions; major equipment purchases; and training programs.

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A detailed itemized budget with a separate budget justification for each major item should be included as indicated below:

Line 6a

Personnel—Enter the total costs of salaries and wages.

Justification—Identify the project director and staff. Specify by title or name the percentage of time allocated to the project, the individual annual salaries and the cost to the project (both Federal and non-Federal) of the organization's staff who will be working on the project.

Line 6b

Fringe Benefits—Enter the total costs of fringe benefits unless treated as part of an approved indirect cost rate which is entered on Line 6j.

Justification—Enter the total costs of fringe benefits, unless treated as part of an approved indirect cost rate. Provide a breakdown of amounts and percentages that comprise fringe benefit costs.

Line 6c

Travel—Enter total cost of all travel by employees of the project. Do not enter costs for consultant's travel.

Justification—Include the name(s) of traveler(s), total number of trips, destinations, length of stay, mileage rate, transportation costs and subsistence allowances. Traveler must be a person listed under the personnel line or employee being paid under non-Federal share. (Note: Local transportation and consultant travel costs are entered on Line 6h.)

Line 6d

Equipment—Enter the total costs of all equipment to be acquired by the project. Equipment means an article of non-expendable, tangible personal property having a useful life of more than one year and an acquisition cost which equals or exceeds the lesser of (a) the capitalization level established by the organization for financial statement purposes, or (b) $5,000. [Note: If an applicant's current rate agreement was based on another definition for equipment, such as "tangible personal property $500 or more," the applicant shall use the definition used by the cognizant agency in determining the rate(s). However, consistent with the applicant's equipment policy, lower limits may be set.]

Justification—Equipment to be purchased with Federal funds must be required to conduct the project, and the applicant organization or its sub-grantees must not already have the equipment or a reasonable facsimile available to the project.

Line 6e

Supplies—Enter the total costs of all tangible personal property other than that included on line 6d.

Justification—Provide a general description of what is being purchased such as type of supplies (office, classroom, medical, etc.). Include equipment costing less than $5,000 per item.

Line 6f

Contractual—Costs of all contracts for services and goods except for those which belong under other categories such as equipment, supplies, construction, etc. Third-party evaluation contracts (if applicable) and contracts with secondary recipient organizations, including delegate agencies and specific project(s) or businesses to be financed by the applicant, should be included under this category.

Justification: All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. Recipients and sub-recipients, other than States that are required to use Part 92 procedures, must justify any anticipated procurement action that is expected to be awarded without competition and exceed the simplified acquisition threshold fixed at 41 USC 403(11) currently set at $100,000. Recipients might be required to make available to ACF pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc.

Note: Whenever the applicant intends to delegate part of the project to another agency, the applicant must provide a detailed budget and budget narrative for each delegate agency, by agency title, along with the required supporting information referred to in these instructions.

Line 6g

Construction—Not applicable.

Line 6h

Other—Enter the total of all other costs. Such costs, where applicable, may include, but are not limited to, insurance, food, medical and dental costs (non-contractual); fees and travel paid directly to individual consultants; local transportation (all travel which does not require per diem is considered local travel); space and equipment rentals; printing and publication; computer use training costs including tuition and stipends; training service costs including wage payments to individuals and supportive service payments; and staff development costs.

Line 6j

Indirect Charges—Enter the total amount of indirect costs. This line should be used only when the applicant currently has an indirect cost rate approved by DHHS or other Federal agencies.

If the applicant organization is in the process of initially developing or renegotiating a rate, it should, immediately upon notification that an award will be made, develop a tentative indirect cost rate proposal based on its most recently completed fiscal year in accordance with the principles set forth in the pertinent DHHS Guide for Establishing Indirect Cost Rates and submit it to the appropriate DHHS Regional Office. It should be noted that when an indirect cost rate is requested, those costs included in the indirect cost pool cannot also be budgeted or charged as direct costs to the grant. Indirect costs consistent with approved indirect cost rate agreements are allowable. Also, if the applicant is requesting a rate which is less than what is allowed under the program, the authorized representative of the applicant organization must submit a signed acknowledgment that the applicant is accepting a lower rate than allowed.

Line 6k

Totals—Enter the total amount of Lines 6i and 6j.

Line 7

Program Income—Enter the estimated amount of income, if any, expected to be generated from this project. Separately show expected program income generated from OCS support and income generated from other mobilized funds. Do not add or subtract this amount from the budget total. Show the nature and source of income in the program narrative statement.

Justification—Describe the nature, source and anticipated use of program income in the Program Narrative Statement.

Section C—Non-Federal Resources

This section is to record the amounts of non-Federal resources that will be used to support the project. Non-Federal resources mean other than OCS funds for which the applicant has received a commitment. Provide a brief explanation, on a separate sheet, showing the type of contribution, broken out by Object Class Category, (see SF–424A, Section B.6) and whether it is cash or third party in-kind. The firm commitment of these required

funds must be documented and submitted with the application in order to be given credit in the criterion.

This documentation must be in the form of letters of commitment or letters of intent from the organization(s)/individuals from which funds will be received.

Line 8

Column (a)—Enter the project title.
Column (b)—Enter the amount of cash or donations to be made by the applicant.
Column (c)—Enter the State contribution.
Column (d)—Enter the amount of cash and third party in-kind contributions to be made from all other sources.
Column (e)—Enter the total of columns (b), (c), and (d).

Lines 9, 10 and 11

Leave Blank.

Line 12

Carry the total of each column of Line 8, (b) through (e). The amount in Column (e) should be equal to the amount on Section A, Line 5, Column (f).

Justification—Describe third party in-kind contributions, if included.

Section D—Forecasted Cash Needs

Line 13

Federal—Enter the amount of Federal (OCS) cash needed for this grant, by quarter, during the 12-month budget period.

Line 14

Non-Federal—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15

Totals—Enter the total of Lines 13 and 14.

Section F—Other Budget Information

Line 21

Direct Charges—Include narrative justification required under Section B for each object class category for the total project period.

Line 22

Indirect Charges—Enter the type of DHHS or other Federal agency approved indirect cost rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied and the total indirect expense. Also, enter the date the rate was approved, where applicable. Attach a copy of the approved rate agreement.

Line 23

Provide any other explanations and continuation sheets required or deemed necessary to justify or explain the budget information.

C. SF–424B—Assurances Non-Construction Programs (Attachment D)

All applicants must sign and return the "Assurances" with the application.

Part VI. Contents of Application and Receipt Process

A. Contents of Application

Each CFNP application must include all of the following, in the order listed below:

1. Table of Contents

2. An abstract of the Proposed Project—very brief, not to exceed 250 words, that would be suitable for use in an announcement that the application has been selected for a grant award and which identifies the type of project, the target population, and the major elements of the work plan.

3. A completed Standard Form 424 that has been signed by an Official of the organization applying for the grant who has authority to obligate the organization legally. (Attachment B)

4. Budget Information-Non-Construction Programs (SF–424A) (Attachment C);

5. A narrative budget justification for each object class category required under Section B, SF–424A.

6. Certification and Assurances Required: Applicants requesting financial assistance for a non-construction project must sign and return Standard Form 424B, "Assurances: Non-Construction Programs" with their applications. (See Attachment D)

Applicants must provide a Certification Regarding Lobbying. Prior to receiving an award in excess of $100,000, applicants shall furnish an executed copy of the lobbying certification. Applicants must sign and return the certification with their application. (See Attachment H)

Applicants must make the appropriate certification of their compliance with the Drug-Free Workplace Act of 1988. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment E)

Applicant must make the appropriate certification that they are not presently debarred, suspended or otherwise ineligible for award. By signing and submitting the applications, applicants are providing the certification and need not mail back the certification with the applications. (See Attachment F)

Applicants must make the appropriate certification of their compliance with all Federal statues relating to nondiscrimination. By signing and submitting the applications, applicants are providing the certification and need not mail back a certification form.

Applicants must make the appropriate certification of their compliance with the requirements of the Pro-Children Act of 1994 as outlined in Certification Regarding Environmental Tobacco Smoke. (See Attachment J)

7. A Project Narrative of no more than 30 pages consisting of the Elements described in Part III of this announcement set forth in the order therein presented and preceded by a consecutively numbered table of contents.

The total number of pages for the narrative portion of the application package must not exceed 30 pages. (See Part IV.D.2 for pages that do not count against the 30-page limit).

8. Appendices—proof of nonprofit tax-exempt status as outlined in Part II, Section C; Single Point of Contact comments, if applicable, and resumes and position descriptions.

Pages should be numbered sequentially throughout, including appendices, beginning with the Abstract as page 1.

B. Application Format

Applications must be uniform in composition since OCS may find it necessary to duplicate them for review purposes. Therefore, applications must be submitted on white 8–½ x 11 inch paper only. Applicants must not include colored, oversized or folded materials. Applicants should not include organizational brochures or other promotional materials, slides, films, clips, etc. Such material will be discarded if included.

Applications must be bound or enclosed in loose-leaf binder notebooks. Preferably, applications should be two-holed punched at the top center and fastened separately with a compressor slide paper fastener, or a binder clip.

C. Acknowledgment of Receipt

All applicants will receive an acknowledgment with an assigned identification number. Applicants are requested to supply a self-addressed mailing label with their Application, or a FAX number or e-mail address which can be used for acknowledgment. The assigned identification number, along with any other identifying codes, must be referenced in all subsequent communications concerning the

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Application. If an acknowledgment is not received within three weeks after the deadline date, please notify the OCS Operations Center at 1–800–281–9519.

Part VII. Post Award Information and Reporting Requirements

A. Notification of Grant Award

Following approval of the applications selected for funding, notice of project approval and authority to draw down project funds will be made in writing. The official award document is the Financial Assistance Award which specifies the amount of Federal funds approved for use in the project, the project and budget period for which support is provided, the terms and conditions of the award.

B. Reporting Requirements

Grantees will be required to submit semi-annual program progress and financial reports (SF 269) as well as a final progress and financial report.

C. Audit Requirements

Grantees are subject to the audit requirements in 45 CFR Part 74 (non-profit organizations) or Part 92 (governmental entities) which require audits under OMB Circular A–133.

D. Prohibitions and Requirements With Regard To Lobbying

Section 319 of Public Law 101–121, signed into law on October 23, 1989, imposes prohibitions and requirements for disclosure and certification related to lobbying on recipients of Federal contracts, grants, cooperative agreements, and loans. It provides limited exemptions for Indian tribes and tribal organizations. Current and prospective recipients (and their subtier contractors and/or grantees) are prohibited from using appropriated funds for lobbying Congress or any Federal agency in connection with the award of a contract, grant, cooperative agreement or loan. In addition, for each award action in excess of $100,000 (or $150,000 for loans) the law requires recipients and their subtier contractors and/or sub-grantees (1) to certify that they have neither used nor will use any appropriated funds for payment to lobbyists, (2) to submit a declaration setting forth whether payments to lobbyists have been or will be made out of non-appropriated funds and, if so, the name, address, payment details, and purpose of any agreements with such lobbyists whom recipients or their subtier contractors or sub-grantees will pay with the non-appropriated funds and (3) to file quarterly up-dates about the use of lobbyists if an event occurs that materially affects the accuracy of the information submitted by way of declaration and certification.

The law establishes civil penalties for noncompliance and is effective with respect to contracts, grants, cooperative agreements and loans entered into or made on or after December 23, 1989. See Attachment H, for certification and disclosure forms to be submitted with the applications for this program.

E. Applicable Federal Regulations

Attachment K indicates the regulations which apply to all applicants/grantees under the Community Food and Nutrition Program.

Dated: April 19, 2002.

Clarence H. Carter,

Director, Office of Community Services.

List of Attachments

A. 2002 Poverty Income Guidelines.
B. Standard Form 424, Application for Federal Assistance.
C. Standard Form 424A, Budget Information—Non-Construction Programs.
D. Standard Form 424B, Assurances—Non-Construction Programs.
E. Certification Regarding Drug-Free Workplace Requirements.
F. Certification Regarding Debarment, Suspension And Other Responsibility Matters.
G. Intergovernmental Review State Single Point Of Contact (SPOC) List.
H. Certification Regarding Lobbying and Disclosure Of Lobbying Activities, Standard Form LLL.
I. Applicant's Checklist.
J. Certification Regarding Environmental Tobacco Smoke.
K. DHHS Regulations Applying To All Applicants/Grantees Under The Community Food and Nutrition Program (CFNP).

Attachment A

2002 POVERTY GUIDELINES FOR THE 48 CONTIGUOUS STATES AND THE DISTRICT OF COLUMBIA

Size of family unit	Poverty guideline
1	$8,860
2	11,940
3	15,020
4	18,100
5	21,180
6	24,260
7	27,340
8	30,420

Note.—For family units with more than 8 members, add $3,080 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR ALASKA

Size of family unit	Poverty guideline
1	$11,080
2	14,930
3	18,780
4	22,630
5	26,480
6	30,330
7	34,180
8	38,030

Note.—For family units with more than 8 members, add $3,850 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

2001 POVERTY GUIDELINES FOR HAWAII

Size of family unit	Poverty guideline
1	$10,200
2	13,740
3	17,280
4	20,820
5	24,360
6	27,900
7	31,440
8	34,180

Note.—For family units with more than 8 members, add $3,080 for each additional member. (The same increment applies to smaller family sizes also, as can be seen in the figures above).

BILLING CODE 7590–01–M

Attachment B, Page 1

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APPLICATION FOR FEDERAL ASSISTANCE

2. DATE SUBMITTED	Applicant Identifier
3. DATE RECEIVED BY STATE	State Application Identifier
4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

1. TYPE OF SUBMISSION:
Application: ☐ Construction ☐ Non-Construction
Preapplication: ☐ Construction ☐ Non-Construction

5. APPLICANT INFORMATION
Legal Name:
Organizational Unit:
Address *(give city, county, State, and zip code):*
Name and telephone number of person to be contacted on matters involving this application *(give area code)*

6. EMPLOYER IDENTIFICATION NUMBER *(EIN):*
☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: *(enter appropriate letter in box)* ☐
A. State
B. County
C. Municipal
D. Township
E. Interstate
F. Intermunicipal
G. Special District
H. Independent School Dist.
I. State Controlled Institution of Higher Learning
J. Private University
K. Indian Tribe
L. Individual
M. Profit Organization
N. Other (Specify) _____

8. TYPE OF APPLICATION:
☐ New ☐ Continuation ☐ Revision
If Revision, enter appropriate letter(s) in box(es) ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other *(specify):*
_____

9. NAME OF FEDERAL AGENCY:

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:
☐☐ – ☐☐☐
TITLE:

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT *(Cities, Counties, States, etc.):*

13. PROPOSED PROJECT
Start Date | Ending Date

14. CONGRESSIONAL DISTRICTS OF:
a. Applicant | b. Project

15. ESTIMATED FUNDING:

a. Federal	$ .00
b. Applicant	$ .00
c. State	$ .00
d. Local	$ .00
e. Other	$ .00
f. Program Income	$ .00
g. TOTAL	$ .00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?
a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:
DATE _____
b. No. ☐ PROGRAM IS NOT COVERED BY E. O. 12372
☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?
☐ Yes If "Yes," attach an explanation. ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.

a. Type Name of Authorized Representative	b. Title	c. Telephone Number
d. Signature of Authorized Representative		e. Date Signed

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Standard Form 424 (Rev. 7-97)
Prescribed by OMB Circular A-102

INSTRUCTIONS FOR THE SF-424 **Attachment B, Page 2**

Public reporting burden for this collection of information is estimated to average 45 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0043), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item:	Entry:
1.	Self-explanatory.
2.	Date application submitted to Federal agency (or State if applicable) and applicant's control number (if applicable).
3.	State use only (if applicable).
4.	If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5.	Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6.	Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7.	Enter the appropriate letter in the space provided.
8.	Check appropriate box and enter appropriate letter(s) in the space(s) provided: -- "New" means a new assistance award. -- "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date. -- "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9.	Name of Federal agency from which assistance is being requested with this application.
10.	Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11.	Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.
12.	List only the largest political entities affected (e.g., State, counties, cities).
13.	Self-explanatory.
14.	List the applicant's Congressional District and any District(s) affected by the program or project.
15.	Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16.	Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17.	This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18.	To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

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ATTACHMENT C, Page 1

OMB Approval No. 0348-0044

BUDGET INFORMATION - Non-Construction Programs

SECTION A - BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		Total (g)
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	
1.		$	$	$	$	$
2.						
3.						
4.						
5. Totals		$	$	$	$	$

SECTION B - BUDGET CATEGORIES

6. Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY (1)	(2)	(3)	(4)	Total (5)
a. Personnel	$	$	$	$	$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges *(sum of 6a-6h)*					
j. Indirect Charges					
k. TOTALS *(sum of 6i and 6j)*	$	$	$	$	$
7. Program Income	$	$	$	$	$

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Standard Form 424A (Rev. 7-97)
Prescribed by OMB Circular A-10

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ATTACHMENT C, Page 2

SECTION C - NON-FEDERAL RESOURCES					
	(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.		$	$	$	$
9.					
10.					
11.					
12. TOTAL *(sum of lines 8-11)*		$	$	$	$
SECTION D - FORECASTED CASH NEEDS					
		Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal		$	$	$	$	$
14. Non-Federal						
15. TOTAL *(sum of lines 13 and 14)*		$	$	$	$	$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
	(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
		(b) First	(c) Second	(d) Third	(e) Fourth
16.		$	$	$	$
17.					
18.					
19.					
20. TOTAL *(sum of lines 16-19)*		$	$	$	$
SECTION F - OTHER BUDGET INFORMATION					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks:					

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Attachment C.—Instructions for the SF–424A

Public reporting burden for this collection of information is estimated to average 180 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0044), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary Lines 1–4 Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the Catalog program title and the Catalog number in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1–4, Columns (c) through (g).

For new applications, leave Column (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Column (e) and (f).

Line 5—Show the totals for all columns used.

Section B. Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1–4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Line 6a–i—Show the totals of Lines 6a to 6h in each column.

Line 6j—Show the amount of indirect cost.

Line 6k—Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5) Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)–(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

Line 7—Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and spruce of income. The estimated amount of program income may be considered by the Federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Line 8–11 Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter totals of Columns (b), (c), and (d).

Line 12—Enter the total for each of Columns (b)–(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13—Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14—Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15—Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Line 16–19—Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). That section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20—Enter the total for each of the Columns (b)–(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21—Use this space to explain amounts for individual direct object class cost categories that may appear to be out of the ordinary or to explain the details as required by the federal grantor agency.

Line 22—Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23—Provide any other explanations or comments deemed necessary.

Attachment D.—Assurances—Nonconstruction Programs

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0040), Washington, DC 20503.

Please do not return your completed form to the Office of Management and Budget. Send it to the address provided by the sponsoring agency.

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Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representatives of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standard of agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728–4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standard for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88–352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681–1683, and 1685–1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §§ 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101–6107), which prohibits discrimination on the basis of age;

(e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92–255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91–616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§ 290 dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§ 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Title II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91–646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501—1508 and 7324–7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a–7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. § 874, and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327—333), regarding labor standards for federally assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93–234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91–190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetland pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Costal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. §§ 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93–523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93–205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C § 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§ 49a–1 et seq.).

14. Will comply with P.L. 93–348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89–544, as amended, 7 U.S.C. §§ 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

Signature of Authorized Certifying Official

Title

Applicant Organization

Date Submitted

Attachment E.—Certification Regarding Drug-Free Workplace Requirements

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988: 45 CFR Part 76, Subpart F. Sections 76.630(c) and (d)(2) and 76.645(a)(1) and (b) provide that a Federal agency may designate a central receipt point for STATE-WIDE AND STATE AGENCY-WIDE certifications, and for notification of criminal drug convictions. For the Department of Health and Human Services, the central point is: Division of Grants Management and Oversight, Office of Management and Acquisition, Department of Health and Human Services, Room 517–D, 200 Independence Avenue, SW., Washington, DC 20201.

Certification Regarding Drug-Free Workplace Requirements (Instructions for Certification)

1. By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

2. The certification set out below is a material representation of fact upon which reliance is placed when the agency awards the grant. If it is later determined that the grantee knowingly rendered a false certification, or otherwise violates the requirements of the Drug-Free Workplace Act, the agency, in addition to any other remedies available to the Federal Government, may take action authorized under the Drug-Free Workplace Act.

3. For grantees other than individuals, Alternate I applies.

4. For grantees who are individuals, Alternate II applies.

5. Workplaces under grants, for grantees other than individuals, need not be identified on the certification. If known, they may be identified in the grant application. If the grantee does not identify the workplaces at the time of application, or upon award, if there is no application, the grantee must keep the identity of the workplace(s) on file in its office and make the information available for Federal inspection. Failure to identify all known workplaces constitutes a violation of the grantee's drug-free workplace requirements.

6. Workplace identifications must include the actual address of buildings (or parts of buildings) or other sites where work under the grant takes place. Categorical descriptions may be used (e.g., all vehicles of a mass transit authority or State highway department while in operation, State employees in each local unemployment office, performers in concert halls or radio studios).

7. If the workplace identified to the agency changes during the performance of the grant, the grantee shall inform the agency of the change(s), if it previously identified the workplaces in question (see paragraph five).

8. Definitions of terms in the Nonprocurement Suspension and Debarment common rule and Drug-Free Workplace common rule apply to this certification. Grantees' attention is called, in particular, to the following definitions from these rules:

Controlled substance means a controlled substance in Schedules I through V of the Controlled Substances Act (21 U.S.C. 812) and as further defined by regulation (21 CFR 1308.11 through 1308.15);

Conviction means a finding of guilt (including a plea of nolo contendere) or imposition of sentence, or both, by any judicial body charged with the responsibility to determine violations of the Federal or State criminal drug statutes;

Criminal drug statute means a Federal or non-Federal criminal statute involving the manufacture, distribution, dispensing, use, or possession of any controlled substance;

Employee means the employee of a grantee directly engaged in the performance of work under a grant, including: (i) All direct charge employees; (ii) All indirect charge employees unless their impact or involvement is insignificant to the performance of the grant; and, (iii) Temporary personnel and consultants who are directly engaged in the performance of work under the grant and who are on the grantee's payroll. This definition does not include workers not on the payroll of the grantee (e.g., volunteers, even if used to meet a matching requirement; consultants or independent contractors not on the grantee's payroll; or employees of subrecipients or subcontractors in covered workplaces).

Certification Regarding Drug-Free Workplace Requirements

Alternate I. (Grantees Other Than Individuals)

The grantee certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an ongoing drug-free awareness program to inform employees about—

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency in writing, within ten calendar days after receiving notice under paragraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to every grant officer or other designee on whose grant activity the convicted employee was working, unless the Federal agency has designated a central point for the receipt of such notices. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under paragraph (d)(2), with respect to any employee who is so convicted—

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

(B) The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

Check if there are workplaces on file that are not identified here.

Alternate II. (Grantees Who Are Individuals)

(a) The grantee certifies that, as a condition of the grant, he or she will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant;

(b) If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, he or she will report the conviction, in writing, within 10 calendar days of the conviction, to every grant officer or other designee, unless the Federal agency designates a central point for the receipt of such notices. When notice is made to such a central point, it shall include the identification number(s) of each affected grant.

Attachment F.—Certification Regarding Debarment, Suspension and Other Responsibility Matters

Certification Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

4. The prospective primary participant shall provide immediate written notice to the department or agency to which this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

5. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.

6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily

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excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

7. The prospective primary participant further agrees by submitting this proposal that it will include the clause tied "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from Federal Procurement and Nonprocurement Programs.

9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transactions knowingly enters into a lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certificotion Regarding Debarment, Suspension, and Other Responsibility Matters—Primary Covered Transoctions

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;

(b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receive stolen property;

(c) Are not presently indicated for or otherwise criminally or civility charged by a government entity (Federal, State, local) with commission of any other the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or had become erroneous by reason of changed circumstances.

4. The terms covered transaction, debarred, suspended, ineligible, lower tier covered transaction, participant, person, primary covered transaction, principal, proposal, and voluntarily excluded, as used in this clause, have the meaning set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, [[Page 33043]] should the proposed covered transaction be entered into, it shall now knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not proposed for debarment under 48 CFR part 9, subpart 9.4, debarred, suspended, ineligible, or voluntarily excluded from covered transactions, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the List of Parties Excluded from federal Procurement and Nonprocurement Programs.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by clause.

The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly under 48 CFR part 9, subpart 9.4, suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pressure available remedies, including suspension and/or debarment.

Certification Regarding Debarment, Suspension, Ineligibility an Voluntary Exclusion—Lower Tier Covered Transactions

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Attachment G.—Intergovernmental Review (SPOC List)

It is estimated that in 2001 the Federal Government will outlay $305.6 billion in grants to State and local governments. Executive Order 12372, "Intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The Order allows each State to designate an entity to perform this function. Below is the official list of those entities. For those States that have a home page for their designated entity, a direct link has been provided below.

States that are not listed on this page have chosen not to participate in the intergovernmental review process, and therefore not have a SPOC. If you are located within one of these States, you may still send application materials directly to a federal awarding agency.

Contact information for Federal agencies that award grants can be found in Appendix

IV of the Catalog of Federal Domestic Assistance.

Arkansas

Tracy L. Copeland, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, 1515 W. 7th St., Room 412, Little Rock, Arkansas 72203, Telephone: (501) 682–1074, Fax: (501) 682–5206, tlcopeland@dfa.state.ar.us

California

Grants Coordination, State Clearinghouse, Office of Planning and Research, P.O. Box 3044, Room 222, Sacramento, California 95812–3044, Telephone: (916) 445–0613, Fax: (916) 323–3018, state.clearinghouse@opr.ca.gov

Delaware

Charles H. Hopkins, Executive Department, Office of the Budget, 540 S. Dupont Highway, 3rd Floor, Dover, Delaware 19901, Telephone: (303) 739–3323, Fax: (302) 739–5661, chopkins@state.de.us

District of Columbia

Luisa Montero-Diaz, Office of Partnerships and Grants, Development, Executive Office of the Mayor, District of Columbia Government, 441 4th Street, NW, Suite 530 South, Washington, DC 20001, Telephone: (202) 727–8900, Fax: (202) 727–1652, opgd.eom@dc.gov

Florida

Jasmin Raffington, Florida State Clearinghouse, Department of Community Affairs, 2555 Shumard Oak Blvd., Tallahassee, Florida 32399–2100, Telephone: (850) 922–5438, Fax: (850) 414–0479, clearinghouse@dca.state.fl.us

Georgia

Georgia State Clearinghouse, 270 Washington Street, SW, Atlanta, Georgia 30334, Telephone: (404) 656–3855, Fax: (404) 656–7901, gach@mail.opb.state.ga.us

Illinois

Virginia Bova, Department of Commerce and Community Affairs, James R. Thompson Center, 100 West Randolph, Suite 3–400, Chicago, Illinois 60601, Telephone: (312) 814–6028, Fax (312) 814–8485, vbova@commerce.state.il.us

Iowa

Steven R. McCann, Division of Community and Rural Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: (515) 242–4719, Fax: (515) 242–4809, steve.mccann@ided.state.ia.us

Kentucky

Ron Cook, Department for Local Government, 1024 Capital Center Drive, Suite 340, Frankfort, Kentucky 40601, Telephone: (502) 573–2382, Fax: (502) 573–2512, ron.cook@mail.state.ky.us

Maine

Joyce Benson, State Planning Office, 184 State Street, 38 State House Station, Augusta, Maine 04333, Telephone: (207) 287–3261, (207) 287–1461 (direct), Fax: (207) 287–6489, joyce.benson@state.me.us

Maryland

Linda Janey, Manager, Clearinghouse and Plan Review Unit, Maryland Office of Planning, 301 West Preston Street—Room 1104, Baltimore, Maryland 21201–2305, Telephone: (410) 767–4490, Fax: (410) 767–4480, linda@mail.op.state.md.us

Michigan

Richard Pfaff, Southeast Michigan Council of Governments, 535 Griswold, Suite 300, Detroit, Michigan 48226, Telephone (313) 916–4266, Fax: (313) 961–4869, pfaff@semcog.org

Mississippi

Cathy Mallette, Clearinghouse Officer, Department of Finance and Administration, 1301 Woolfolk Building, Suite E, 501 North West Street, Jackson, Mississippi 39201, Telephone: (601) 359–6762, Fax: (601) 359–6758

Missouri

Angela Boessen, Federal Assistance Clearinghouse, Office of Administration, P.O. Box 809, Truman Building, Room 840, Jefferson City, Missouri 65102, Telephone: (573) 751–4834, Fax: (573) 522–4395, igr@mail.oa.state.mo.us

Nevada

Heather Elliott, Department of Administration, State Clearinghouse, 209 E. Musser Street, Room 200, Carson City, Nevada 89701, Telephone: (775) 684–0209, Fax: (775) 684–0260, helliott@govmail.state.nv.us

New Hampshire

Jeffrey H. Taylor, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, Mike Blake, 2-½ Beacon Street, Concord, New Hampshire 03301, Telephone: (603) 271–2155, Fax: (603) 271–1728, jtaylor@osp.state.nh.us

New Mexico

Ken Hughes, Local Government Division, Room 201 Bataan Memorial Building, Santa Fe, New Mexico 87503, Telephone: (505) 827–4370, Fax: (505) 827–4948, khughes@dfa.state.nm.us

North Carolina

Jeanette Furney, Department of Administration, 1302 Mail Service Center, Raleigh, North Carolina 27699–1302, Telephone: (919) 807–2323, Fax: (919) 733–9571, jeanette.furney@ncmail.net

North Dakota

Jim Boyd, Division of Community Services, 600 East Boulevard Ave, Dept 105, Bismarck, North Dakota 58505–0170, Telephone: (701) 328–2094, Fax: (701) 328–2308, jboyd@state.nd.us

Rhode Island

Kevin Nelson, Department of Administration, Statewide Planning Program, One Capitol Hill, Providence, Rhode Island 02908–5870, Telephone: (401) 222–2093, Fax: (401) 222–2083, knelson@doa.state.ri.us

South Carolina

Omeagia Burgess, Budget and Control Board, Office of State Budget, 1122 Ladies Street, 12th Floor, Columbia, South Carolina 29201, Telephone: (803) 734–0494, Fax: (803) 734–0645, aburgess@budget.state.sc.us

Texas

Denise S. Francis, Director State Grants Team, Governor's Office of Budget and Planning, P.O. Box 12428, Austin, Texas 78711, Telephone: (512) 305–9415, Fax: (512) 936–2681, dfrancis@governor.state.tx.us

Utah

Carolyn Wright, Utah State Clearinghouse, Governor's Office of Planning and Budget, State Capitol, Room 114, Salt Lake City, Utah 84114, Telephone: (801) 538–1535, Fax: (801) 538–1547, cwright@gov.state.ut.us

West Virginia

Fred Cutlip, Director, Community Development Division, West Virginia Development Office, Building #6, Room 553, Charleston, West Virginia 25305, Telephone: (304) 558–4010, Fax; (304) 558–3248, fcutlip@wvdo.org

Wisconsin

Jeff Smith, Section Chief, Federal/State Relations, Wisconsin Department of Administration, 101 East Wilson Street—6th Floor, P.O. Box 7868, Madison, Wisconsin 53707, Telephone: (608) 266–0267, Fax: (608) 267–6931, jeffrey.smith@doa.state.wi.us

American Samoa

Pat M. Galea'i, Federal Grants/Programs Coordinator, Office of Federal Programs, Office of the Governor/Department of Commerce, American Samoa Government, Pago Pago, American Samoa 96799, Telephone: (684) 633–5155, Fax: (684) 633–4195, pmgaleai@samoatelco.com

Guam

Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agana, Guam 96910, Telephone: 011–671–472–2285, Fax: 011–472–2825, jer@ns.gov.gu

Puerto Rico

Jose Caballero/Mayra Silva, Puerto Rico Planning Board, Federal Proposals Review Office, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940–1119, Telephone: (787) 723–6190, Fax: (787) 722–6783

Attachment H.—Certification Regarding Lobbying

Certification for Contracts, Grants, Loans, and Cooperative Agreements

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal

loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Statement for Loan Guarantees and Loan Insurance

The undersigned states, to the best of his or her knowledge and belief, that:

If any funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this commitment providing for the United States to insure or guarantee a loan, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions. Submission of this statement is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required statement shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature

Title

Organization

BILLING CODE 4184-01-M

Attachment H, Page 2

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352

(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: Congressional District, *if known*:	Congressional District, *if known*:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	9. Award Amount, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	b. Individuals Performing Services (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only:	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

Instructions for Completion of SF–LLL, Disclosure of Lobbying Activities

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF–LLL–A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal Action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If that is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subaward, e.g., the first subaward of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

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6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organization level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP–DE–90–001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 and 5.

10. (a) Enter the full name, address, city, state and zip cod of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348–0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348–0046), Washington, DC 20503.

Reporting Entity

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of

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ATTACHMENT I

APPLICANT'S CHECKLIST

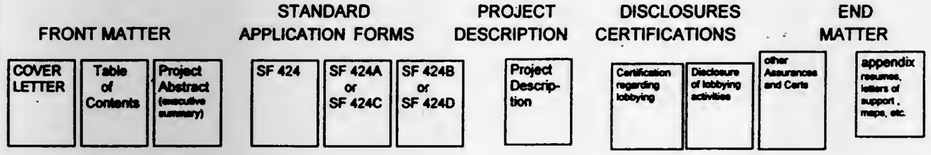
This checklist will assist you with preparing and assembling your application. Completing the checklist can help ensure that you do not omit key information. Because this checklist is used by many ACF programs, some of the information might not apply to your application. This checklist DOES NOT have to be completed and returned with your application.

	Yes	Included	N/A
Authorizing official read and understood Certification Regarding Debarment, Suspension, and Other Responsibility Matters?			
Authorizing official read and understood Certification Regarding Drug-Free Workplace Requirements–Grantees Other Than Individuals?			
Authorizing official read and understood Certification Regarding Environmental Tobacco Smoke?			
Application for Federal Assistance (SF 424) was completed? Proper Signature and Date for Line 18?			
Budget Information–Non-Construction Programs (SF 424A) or Budget Information–Construction Programs (SF 424C) was completed?			
Assurances– Non-Construction Programs (SF 424B) or Assurances–Construction Programs (SF 424D) was completed? (Proper Signature and Date?)			
Certification Regarding Lobbying was completed? (Proper Signature and Date?)			
Disclosure of Lobbying Activities was completed? (Proper Signature and Date?)			
Other special certifications, assurances, and/or disclosures required under the program were completed (e.g., maintenance of effort certification)?			
Proof of nonprofit status was provided?			
Has additional information such as biographical sketch(es) with job description(s) and other additional information been attached, when required?			
For a Supplemental application, does the detailed budget only address the additional funds requested?			
Checked all budget computations for accuracy?			

FOLLOW-UP QUESTIONS

	YES	N/A
On the Application for Federal Assistance (SF 424),		
⇒ did you enter the application number issued by the sponsoring ACF office in the "Federal Identifier" block?		
⇒ did you type the 12 digit Payee EIN or PIN previously assigned to your organization by DHHS in the "Federal Identifier" block?		
⇒ is the EIN in Item #6 assigned to the organization and organizational unit named in Item #5?		
⇒ did you include city, county, state and zip code of the applicant did organization in Item #5?		
⇒ has the appropriate box been checked in Item #16?		
⇒ has the entire proposed project period been identified in Item #13?		
On the Budget Information form (SF 424A or SF 424C),		
⇒ do the totals in Section B match the totals provided in the budget and budget narrative?		

SUGGESTED ORDERING OF APPLICATION MATERIALS



BILLING CODE 4184–01–C

Attachment J.—Certification Regarding Environmental Tobacco Smoke

Public Law 103227, Part C Environmental Tobacco Smoke, also known as the Pro Children Act of 1994, requires that smoking not be permitted in any portion of any indoor routinely owned or leased or contracted for by an entity and used routinely or regularly for provision of health, day care, education, or library services to children under the age of 18, if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan, or loan guarantee. The law does not apply to children's services provided in private residences, facilities funded solely by Medicare or Medicaid funds, and portions of facilities used for inpatient drug or alcohol treatment. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to $1000 per day and/or the imposition of an administrative compliance order on the responsible entity. By signing and submitting this application the applicant/grantee certifies that it will comply with the requirements of the Act.

The applicant/grantee further agrees that it will require the language of this certification be included in any subawards which contain provisions for the children's services and that all subgrantees shall certify accordingly.

Attachment K.—

Title 45 of the Code of Federal Regulations

Part 16—Department of Grant Appeals Process
Part 74—Administration of Grants (grants and subgrants to entities)
Part 75—Informal Grant Appeal Procedures
Part 76—Debarment and Suspension from Eligibility for Financial Assistance

Subpart F—Drug Free Workplace Requirements

Part 80—Non-Discrimination—Under Programs Receiving Federal Assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act Of 1964
Part 81—Practice and Procedures for Hearings Under Part 80 of this Title
Part 83—Regulation for the Administration and Enforcement of Section 799A and 845 of the Public Health Service Act
Part 84—Non-discrimination on the Basis of Handicap in Programs and Activities Receiving Federal Financial Assistance
Part 85—Enforcement of Non-Discrimination on the Basis of Handicap in Programs or Activities Conducted by the Department of Health and Human Services
Part 86—Nondiscrimination on the Basis of Sex in Education Programs and Activities Receiving or Benefiting from Federal Financial Assistance
Part 91—Non-discrimination on the Basis of Age in Health and Human Services Programs or Activities Receiving Federal Financial Assistance
Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to States and Local Governments (**Federal Register**, March 11, 1988)
Part 93—New Restrictions on Lobbying
Part 100—Intergovernmental Review of Department of Health and Human Services Programs and Activities

[FR Doc. 02–11217 Filed 5–6–02; 8:45 am]
BILLING CODE 4184–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02F–0181]

Safe Foods Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Safe Foods Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of cetylpyridinium chloride as an antimicrobial agent in poultry processing.

DATES: DATES: Submit written comments on the petitioner's environmental assessment by June 6, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–265), Food and Drug Administration, 5100 Paint Branch Pkwy., College Park, MD 20740, 202–418–3071.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 2A4736) has been filed by Safe Foods Corp., c/o Keller and Heckman LLP, 1001 G St. NW., Washington, DC 20001. The petition proposes to amend the food additive regulations in part 173 Secondary Direct Food Additives Permitted in Food for Human Consumption (21 CFR part 173) to provide for the safe use of cetylpyridinium chloride as an antimicrobial agent in poultry processing.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations issued under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (see **ADDRESSES**) for public review and comment. Interested persons may submit to the Dockets Management Branch written comments by June 6, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.51(b).

Dated: April 11, 2002.

Laura M. Tarantino,

Acting Director, Office of Food Additive Safety, Center for Food Safety and Applied Nutrition.

[FR Doc. 02–11255 Filed 5–6–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0315]

Determination That Acetaminophen and Codeine Phosphate Tablets, 500 Milligrams (mg)/15 mg, 500 mg/30 mg, and 500 mg/60 mg, Were Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, were not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg.

FOR FURTHER INFORMATION CONTACT: Carol E. Drew, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–2041.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is typically a version of the drug that was previously approved under a new drug application (NDA). Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of an NDA. The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products With Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness, or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

There are no NDAs for acetaminophen and codeine phosphate tablets. The initial acetaminophen/codeine combination drug product was accepted as an ANDA based on a **Federal Register** notice finding TRIGESIC with codeine to be effective for the relief of mild to moderate pain. (See 38 FR 3210, February 2, 1973.) FDA made this effectiveness determination under the 1962 amendments to the act, which required a demonstration of the effectiveness of new drugs, including those approved prior to 1962. FDA contracted with the National Academy of Science/National Research Council to carry out the Drug Efficacy Study assessing the evidence of effectiveness available for new drugs approved prior to 1962. TRIGESIC with codeine contained codeine, acetaminophen, aspirin, and caffeine. The initial ANDA for acetaminophen and codeine tablets was considered to be similar and related to TRIGESIC with codeine tablets, and therefore was accepted as an ANDA.

Roxane Laboratories (Roxane) filed a suitability petition (86P–0161/CP) on April 14, 1986, requesting permission to file ANDAs for three different strengths of acetaminophen and codeine phosphate tablets. Its suitability petition was approved on May 8, 1986. Roxane's acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, are the subject of ANDAs 89–511, 89–512, and 89–513, respectively. FDA approved ANDAs 89–511, 89–512, and 89–513, held by Roxane, on April 24, 1989, at which time they became "listed drugs" within the meaning of 21 CFR 314.3. On October 23, 1997, Roxane requested withdrawal of approval of ANDAs 89–511, 89–512, and 89–513. FDA withdrew approval of these ANDAs on June 11, 1998.

On July 23, 2001, Aspire Pharmaceuticals, Inc., submitted a citizen petition (Docket No. 01P–0315/CP1) under 21 CFR 10.30 to FDA requesting that the agency determine whether Roxane's acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, were withdrawn from sale for reasons of safety or effectiveness.

The agency has determined that Roxane's acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, were not withdrawn from sale for reasons of safety or effectiveness. Two grounds support the agency's finding. First, there are drug products with a combination of acetaminophen and codeine phosphate being marketed today with greater than 500 mg of acetaminophen. Second, when FDA's Center for Drug Evaluation and Research Suitability Petition Committee first considered Roxane's suitability petition for its acetaminophen and codeine phosphate drug products, it concluded that the drug products did not need any safety or efficacy studies to support their approval because the proposed change in strength of the acetaminophen component fell within acceptable limits established by the Monograph for Over-the-Counter Internal Analgesic, Antipyretic, and Antirheumatic Drug Products.

After considering the citizen petition and reviewing its records, FDA determines that, for the reasons outlined previously in this document, Roxane's acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, were not withdrawn from sale for reasons of safety or effectiveness. Accordingly, the agency will continue to list acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been withdrawn from marketing for reasons other than safety or effectiveness. ANDAs that refer to acetaminophen and codeine phosphate tablets, 500 mg/15 mg, 500 mg/30 mg, and 500 mg/60 mg, may be approved by the agency.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11206 Filed 5–6–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Comparability Studies for Human Plasma-Derived Therapeutics; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA) is announcing a public workshop, cosponsored with the Plasma Protein Therapeutics Association (PPTA), entitled "Comparability Studies for Human Plasma-Derived Therapeutics." The workshop will discuss current guidance, critical issues, and approaches for establishing the comparability of human plasma derivatives in order to support changes in manufacturing processes, equipment, or facilities.

Date and Time: The public workshop will be held on May 30, 2002, from 8 a.m. to 5:30 p.m., and on May 31, 2002, from 9 a.m. to 12 noon.

Location: The workshop will be held at the Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact: HelmsBriscoe Resource One, 12530 Browns Ferry Rd., Herndon, VA

20170, 703–421–5826, FAX 703–444–1737.

Registration: Preregistration is recommended on or before May 29, 2002. Onsite registration will be done on a space-available basis on both days of the workshop, beginning at 7:30 a.m. You may obtain registration forms and information about registration fees from HelmsBriscoe Resource One (see the *Contact* section of this document) or from Joseph Wilczek, Project Manager, at wilczek@cber.fda.gov. Mail or fax your registration information and registration fee to HelmsBriscoe Resource One by May 29, 2002.

If you need special accommodations due to a disability, please contact HelmsBriscoe Resource One at least 7 days in advance.

Transcripts: Transcripts of the public workshop may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, rm. 12A–16, Rockville, MD 20857, approximately 15 working days after the meeting at a cost of 10 cents per page. The public workshop transcript will also be available on the Internet at http://www.fda.gov/cber/minutes/workshop-min.htm.

SUPPLEMENTARY INFORMATION: FDA and PPTA are jointly cosponsoring a public workshop on comparability studies for human plasma-derived therapeutics. The workshop will discuss critical issues and approaches for establishing the comparability of human plasma derivatives for supporting changes in manufacturing processes, equipment, or facilities. On May 30, 2002, the workshop will address the three levels of comparability studies—physical/chemical characterization, preclinical studies, and clinical evaluations as they are related to manufacturing changes for a human plasma derivative, as well as information on reporting manufacturing changes, comparability protocols, and several case studies.

On May 31, 2002, the workshop will focus on issues related to comparing fractionation intermediates, a topic specific to the plasma derivative industry. FDA will present historical perspectives and current guidance on cooperative manufacturing arrangements. Industry will discuss the current status of the necessity for fractionation intermediates from sources outside of the company and the criteria for acceptance. The complexities involved in characterizing the source material, intermediates, and the drug products will be discussed. The public workshop agenda will be posted on the Internet at http://www.fda.gov/cber/whatsnew.htm.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11208 Filed 5–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Joint Meeting of the Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). The meeting will be open to the public.

Name of Committees: Nonprescription Drugs Advisory Committee and the Gastrointestinal Drugs Advisory Committee.

General Function of the Committee: To provide advice and recommendations to the agency on FDA's regulatory issues.

Date and Time: The meeting will be held on June 21, 2002, from 8 a.m. to 4:30 p.m.

Location: Holiday Inn, Versailles Ballroom, 8120 Wisconsin Ave., Bethesda, MD.

Contact Person: Sandra Titus, Center for Drug Evaluation and Research (HFD–21), Food and Drug Administration, 5600 Fishers Lane (for express delivery, 5630 Fishers Lane, rm. 1093), Rockville, MD 20857, 301–827–7001, or e-mail: Tituss@cder.fda.gov, or FDA Advisory Committee Information Line, 1–800–741–8138 (301–443–0572 in the Washington, DC area) code 12541. Please call the Information Line for up-to-date information on this meeting.

Agenda: The committees will consider the safety and efficacy of new drug application (NDA) 21–229, proposing over-the-counter (OTC) use of PRILOSEC1 (omeprazole magnesium), AstraZeneca LP/Procter and Gamble, for the prevention of the symptoms of frequent heartburn. The sponsor proposes a 20 milligram dose to be taken for 14 days. The background material for this meeting will be posted one working day before the meeting under the Nonprescription Drugs Advisory Committee (NDAC) on the Dockets Management Branch Web site at http://www.fda.gov/ohrms/dockets/ac/acmenu.htm. (Click on the year 2002 and scroll down to NDAC.)

Procedure: Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Written submissions may be made to the contact person by June 12, 2002. Oral presentations from the public will be scheduled on June 21, 2002, between approximately 8:15 a.m. and 9:15 a.m. Time allotted for each presentation may be limited. Those desiring to make formal oral presentations should notify the contact person before June 12, 2002, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time requested to make their presentation.

Persons attending FDA's advisory committee meetings are advised that the agency is not responsible for providing access to electrical outlets.

FDA welcomes the attendance of the public at its advisory committee meetings and will make every effort to accommodate persons with physical disabilities or special needs. If you require special accommodations due to a disability, please contact Sandra Titus at least 7 days in advance of the meeting.

Notice of this meeting is given under the Federal Advisory Committee Act (5 U.S.C. app. 2).

Dated: April 29, 2002.

Linda A. Suydam,

Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–11205 Filed 5–6–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Fiscal Year 2002 Competitive Application Cycle for the Radiation Exposure Screening and Education Program 93.257

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Correction.

SUMMARY: In notice document FR Doc. 02–10634, in the issue of Tuesday, April 30, 2002, make the following correction:

On page 21257 in the third column, under section "Funding Preferences," replace the first bullet (which reads "Applicants that propose a Statewide service area.") with the following bullet:

- Applicants that propose a Statewide service area and provide or arrange for services at multiple locations to serve a widely dispersed population so that all eligible individuals throughout the State have access to services.

Dated: April 30, 2002.

Jane M. Harrison,

Director, Division of Policy Review and Coordination.

[FR Doc. 02–11209 Filed 5–6–02; 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act for the Woodcock Singing Ground Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We will accept comments until July 8, 2002.

ADDRESSES: Send your comments and suggestions on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street, NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, or electronically to *rmullin@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB) regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L. 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see 5 CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the North American Woodcock Singing Ground Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0019.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise [Page 7661] management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate date on various characteristics of migratory bird populations. The North American Woodcock Singing Ground Survey is an essential part of the migratory bird management program. This survey is conducted annually by State and Federal conservation agencies to provide the necessary data to determine the population status of the woodcock. The information is used primarily by us to develop recommendations for hunting regulations. It is also used by us, State conservation agencies, University associates and other interested parties for various research and management projects. Without information on the population's status, we might promulgate hunting regulations that were too liberal thus causing harm to the woodcock population, or too conservative, thus unduly restricting recreational opportunities afforded by woodcock hunting.

Title: North American Woodcock Singing Ground Survey.

Approval Number: 1018–0019.

Service Form Number: 3–156.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 0.67 hours per respondent. With an estimated 40% entering data electronically, the reporting burden is estimated to average 0.75 hours per respondent. The Total Annual Burden hours is 527 hours.

Total Annual Responses: About 750 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: April 23, 2002.

Rebecca A. Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–11317 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Information Collection To Be Submitted to the Office of Management and Budget (OMB) for Approval Under the Paperwork Reduction Act for the Mourning Dove Call Count Survey

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice; request for comments.

SUMMARY: The U.S. Fish and Wildlife Service will submit the collection of information listed below to OMB for approval under the provisions of the Paperwork Reduction Act. A copy of the information collection requirement is included in this notice. If you wish to obtain copies of the proposed information collection requirement, related forms, and explanatory material, contact the Service Information Collection Clearance Officer at the address listed below.

DATES: We accept comments until July 8, 2002.

ADDRESSES: Send your comments on the requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, ms 222–ARLSQ, 1849 C Street NW., Washington, DC 20204.

FOR FURTHER INFORMATION CONTACT: To request a copy of the information collection request, explanatory information and related forms, contact Rebecca A. Mullin at (703) 358–2287, and electronically to *rmullin@fws.gov*.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget (OMB)

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regulations at 5 CFR 1320, which implement provisions of the Paperwork Reduction Act of 1995 (Pub. L 104–13), require that interested members of the public and affected agencies have an opportunity to comment on information collection and recordkeeping activities (see CFR 1320.8(d)). The U.S. Fish and Wildlife Service (We) plan to submit a request to OMB to renew its approval of the collection of information for the Mourning Dove Call-Count Survey. We are requesting a 3-year term of approval for this information collection activity.

Federal agencies may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this collection of information is 1018–0010.

The Migratory Bird Treaty Act (16 U.S.C. 703–711) and Fish and Wildlife Act of 1956 (16 U.S.C. 742d) designate the Department of the Interior as the key agency responsible for the wise management of migratory bird populations frequenting the United States and for the setting of hunting regulations that allow appropriate harvests that are within the guidelines that will allow for those populations' well being. These responsibilities dictate the gathering of accurate data on various characteristics of migratory bird populations. The Mourning Dove Call-Count Survey is an essential part of the migratory bird management program. The survey is a cooperative effort between us and State wildlife agencies. It is conducted each spring by State and Service biologists to provide the necessary data to determine the population status of the mourning dove. The survey results are then used to help guide us and the States in the annual promulgation of regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research. If this survey were not used, there would be no way to determine the population status of mourning doves prior to setting regulations.

Title: Mourning Dove Call-Count Survey.

Approval Number: 1018–0010.

Service Form Number: 3–159.

Frequency of Collection: Annually.

Description of Respondents: State, local, tribal, provincial, or Federal employees.

Total Annual Burden Hours: The reporting burden is estimated to average 2.5 hours per respondent. With an estimated 50% entering data electronically, the reporting burden is estimated to average 2.6 hours per respondent. The Total Annual Burden hours is 2,698 hours.

Total Annual Responses: About 1,062 individuals are expected to participate in the survey.

We invite comments concerning this renewal on: (1) Whether the collection of information is necessary for the proper performance of our migratory bird management functions, including whether the information will have practical utility; (2) the accuracy of our estimate of the burden of the collection of information; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and, (4) ways to minimize the burden of the collection of information on respondents. The information collections in this program are part of a system of record covered by the Privacy Act (5 U.S.C. 552(a)).

Dated: April 23, 2002.

Rebecca A. Mullin,

Information Collection Officer, Fish and Wildlife Service.

[FR Doc. 02–11318 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of Receipt of Applications for Permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 6, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

Applicant: John R. Hollenbeck, Spring Lake, MI, PRT–055700.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

Applicant: Bowmanville Zoological Park, Ontario, Canada, PRT–805163.

The applicant requests the re-issuance of its permit to export, re-export, and re-import ring-tailed lemurs (*Lemur catta*), and Bengal tigers (*Panthera tigris tigris*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: Bowmanville Zoological Park, Ontario, Canada, PRT–055508.

The applicant requests a permit to export, re-export, and re-import Asian elephants (*Elephas maximus*) and progeny of the animals currently held by the applicant and any animals acquired in the United States by the applicant to/from worldwide locations to enhance the survival of the species through conservation education. This notification covers activities conducted by the applicant over a three year period.

Applicant: H & L Sales, Patio Ranch, San Antonio, TX, PRT–704025.

The applicant request amendment of their permit to authorize interstate and foreign commerce, export and cull of excess animals for the Arabian oryx (*Oryx leucoryx*) from their captive herd for the purpose of enhancement of the survival of the species. This notice covers activities conducted by the applicant for a period of five years. Permittee must apply for renewal annually.

Marine Mammals

The public is invited to comment on the following application(s) for a permit to conduct certain activities with marine mammals. The application(s) was submitted to satisfy requirements of the Marine Mammal Protection Act of 1972, *as amended* (16 U.S.C. 1361 *et seq.*) and the regulations governing marine mammals (50 CFR 18). Written data, comments, or requests for copies of the complete applications or requests for a public hearing on these applications should be submitted to the Director (address above). Anyone requesting a hearing should give specific reasons why a hearing would be appropriate. The holding of such a hearing is at the discretion of the Director.

Concurrent with the publication of this notice in the **Federal Register**, the Division of Management Authority is forwarding copies of the above applications to the Marine Mammal Commission and the Committee of Scientific Advisors for their review.

Applicant: Thomas P. Bruner, Sawyer, ND, PRT–055566.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Lancaster Sound polar bear population in Canada, for personal use.

Truman D. Wade, Elverson, PA, PRT–055298.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

Jeffrey Stohr, Claremont, SD, PRT–055673.

The applicant requests a permit to import a polar bear (*Ursus maritimus*) sport hunted from the Northern Beaufort Sea polar bear population in Canada for personal use.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 19, 2002.

Monica Farris,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–11282 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Endangered and Threatened Species Permit Applications

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications.

SUMMARY: The following applicants have applied for a scientific research permit to conduct certain activities with endangered species pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*).

DATES: Written comments on these permit applications must be received within 30 days of the date of publication.

ADDRESSES: Written data or comments should be submitted to the Chief, Endangered Species Division, Ecological Services, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103; (505) 248–6649; Fax (505) 248–6788. Documents will be available for public inspection by written request, by appointment only, during normal business hours (8:00 to 4:30) at the U.S. Fish and Wildlife Service, 500 Gold Ave. SW, Room 4102, Albuquerque, New Mexico. Please refer to the respective permit number for each application when submitting comments. All comments received, including names and addresses, will become part of the official administrative record and may be made available to the public.

FOR FURTHER INFORMATION CONTACT: Chief, Endangered Species Division, P.O. Box 1306, Room 4102, Albuquerque, New Mexico 87103. Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice, to the address above.

SUPPLEMENTARY INFORMATION:

[Permit No. TE–054791]

Applicant: Bryce Marshall, Flagstaff, Arizona.

Applicant requests permit for recovery purposes to conduct presence/absence and monitoring surveys within Arizona for the following species: Mexican long-nosed bat (*Leptonycteris nivalis*), lesser long-nosed bat (*Leptonycteris curasoae (=sanborni) yerbabuenae*), southwestern willow flycatcher (*Empidonax traillii extimus*), and cactus ferruginous pygmy owl (*Glaucidium brasilianum cactorum*). In addition, applicant requests same permit to allow presence/absence surveys for the Mexican spotted owl (*Strix occidentalis lucida*) within Arizona and Utah.

[Permit No. TE–054802]

Applicant: Tony Adkins, Durango, Colorado.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the southwestern willow flycatcher (Empidonax traillii extimus) within Arizona, New Mexico, Colorado, Utah, and California.

[Permit No. TE–054803]

Applicant: Michael Larisch, El Paso, Texas.

Applicant requests permit for recovery purposes to conduct presence/absence surveys and nest monitoring for the northern aplomado falcon (*Falco femoralis septentrionalis*) within New Mexico.

[Permit No. TE–054804]

Applicant: Andrew C. Kasner, College Station, Texas.

Applicant requests permit for recovery purposes to conduct presence/absence and monitoring surveys for the interior least tern (*Sterna antillarum*) within Texas.

[Permit No. TE–054844]

Applicant: ALL Consulting, Edwardsville, Illinois.

Applicant requests permit for recovery purposes to conduct presence/absence and monitoring surveys and habitat identification for the interior least tern (*Sterna antillarum*) along the Red River within Texas, Oklahoma, and Arkansas.

[Permit No. TE–055006]

Applicant: ENSR International, Houston, Texas.

Applicant requests permit for recovery purposes to conduct presence/absence surveys for the golden-cheeked warbler (*Dendroica chrysoparia*) and black-capped vireo (*Vireo atricapillus*) within Texas.

Stephen C. Helfert,

Assistant Regional Director, Ecological Services, Region 2, Albuquerque, New Mexico.

[FR Doc. 02–11250 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–55–P

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DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings.

SUMMARY: Notice is hereby given that the Bureau of Indian Affairs (BIA) will conduct consultation meetings to obtain oral and written comments concerning potential issues in Indian Education Programs. The potential issues which will be set forth in a tribal consultation booklet to be issued prior to the meetings are the Office of Indian Education Programs' proposed State Plan for Implementing the No Child Left Behind Act of 2001, the Proposed Coordinated Services Plan for the BIA-OIEP Special Education Program and Negotiated Rulemaking under The Native American Education Improvement Act of 2001. Participants will be able to suggest other items for comment.

DATES: Comments are due on or before June 28, 2002. The meeting dates will be June 17 through 20, 2002 for all locations listed. All meetings will begin at 9:00 a.m. and continue until 3:00 p.m. (Local time) or until all meeting participants have an opportunity to make comments.

ADDRESSES: Send or hand-deliver written comments to William Mehojah, Jr., Director, Office of Indian Education Programs, Bureau of Indian Affairs, MS Room 3512-MIB, 1849 C St., NW., Washington, DC 20240. Submissions by facsimile should be sent to (202) 273–0030.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Whitehorn at (202) 208–4976.

SUPPLEMENTARY INFORMATION: The meetings are a follow-up to similar meetings conducted by the OIEP/BIA since 1990.

The purpose of the consultation, as required by 25 U.S.C. 2011(b), is to provide Indian tribes, school boards, parents, Indian organizations and other interested parties with an opportunity to comment on potential issues raised during previous consultation meetings or being considered by the BIA on Indian education programs.

MEETING SCHEDULE

Dates	Location	Local Contact	Phone Number
June 17, 2002	Albuquerque, NM	Benjamin Atencio	(505) 346–2431
June 18, 2002	Billings, MT	LaVonne French	(406) 247–7953
June 18, 2002	Window Rock, AZ	Bea Woodward	(505) 786–6150
June 18, 2002	San Diego, CA	Fayetta Babby	(916) 978–6057
June 18, 2002	Minneapolis, MN	Terry Portra	(612) 713–4400
June 18, 2002	New Orleans, LA	LaVonna Weller	(202) 208–7952
June 18, 2002	Rapid City, SD	Norma Tibbitts	(605) 867–1306
June 19, 2002	Anchorage, AK	Robert Pringle	(907) 271–4120
June 19, 2002	Portland, OR	John Reimer	(503) 872–2743
June 19, 2002	Mesa, AZ	Kevin Skenandore	(928) 338–5441
June 20, 2002	Oklahoma City, OK	Joy Martin	(405) 605–6051

A consultation booklet for the meetings is being distributed to federally recognized Indian tribes, Bureau Regional and Agency Offices and Bureau-funded schools. The booklets will also be available from local contact persons at each meeting.

Comments, including names, street addresses, and other contact information of respondents, will be available for public review at the address listed under the **ADDRESSES** section during regular business hours (7:45 a.m. to 4:15 p.m. EST), Monday through Friday, except Federal holidays.

Individual respondents may request confidentiality. If you wish us to withhold your name, street address, and other contact information (such as fax or phone number) from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your comment. We will honor your request to the extent allowable by law. We will make available for public inspection in their entirety all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.1.

Dated: April 26, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–11269 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–6W–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–070–02–1020–PG]

Resource Advisory Council Meeting, Butte, Montana.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: The Western Montana Resource Advisory Council will convene on June 10, 2002, at 9:00 a.m., at the BLM Butte Field Office, 106 North Parkmont, Butte, Montana, 59701.

Primary topics for the meeting will be updates from the RAC Subgroups on Areas of Critical Environmental Concern (ACECs) and Travel Management.

The meeting is open to the public and the public comment period is set for 11:30 a.m. The public may make oral statements before the Council or file written statements for the Council to consider. Depending on the number of persons wishing to make an oral statement, a per person time limit may be established. Summary minutes of the meeting will be available for public inspection and copying during regular business hours. Individuals who plan to attend and need further information about the meeting, or who need special assistance, such as sign language or other reasonable accommodations, should contact Marilyn Krause, Resource Advisory Council Coordinator, at the Butte Field Office, 106 North Parkmont, Butte, Montana 59701, telephone 406–533–7617.

FOR FURTHER INFORMATION CONTACT: Richard Hotaling, Field Manager, 406–533–7600 or Marilyn Krause at the above address and telephone number.

SUPPLEMENTARY INFORMATION: The purpose of the Council is to advise the Secretary of the Interior, through the BLM, on a variety of planning and management issues associated with public land management. The 15 member Council includes individuals who have expertise, education, training or practical experience in the planning and management of public lands and their resources and who have a knowledge of the geographical jurisdiction of the Council.

Dated: March 13, 2002.

Richard M. Hotaling,

Field Manager.

[FR Doc. 02–11256 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Realty Action: Direct Sale; Mr. & Mrs. John & Candy Kalal, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: The Bureau of Land Management (BLM) is providing notice of a proposed sale of public land in Phillips County involving only the surface estate to Mr. and Mrs. John and Candy Kalal. The purpose of the sale of 0.829 acres directly to Mr. and Mrs. John and Candy Kalal is to resolve an unauthorized occupancy. Disposal of the public land meets criteria 1 and 3 of section 203 of the Federal Land Policy and Management Act (FLPMA) of 1976 (43 U.S.C. 1713).

SUMMARY: Mr. and Mrs. John and Candy Kalal will use the purchased land as part of their existing motel, garage and trailer court. The BLM advised state and local officials about the proposed sale. The estimated fair market value is $6,225.00. Sale of the public land will occur in May or June of 2002.

The following described public land is suitable for sale under criteria 1 and 3 of section 203 of FLPMA of 1976 (43 U.S.C. 1713):

Principal Meridian Montana

T. 25 N., R. 25 E.,
Sec. 16, block 14 lot 1;
Sec. 17, block 6 lot 9.
Containing 0.829 acres.

DATES, COMMENTS AND PROTESTS: The effective date of this proposed sale notice is the publication date of this notice in the **Federal Register**.

Comments on the proposed sale may occur for 45 days from the date of this notice. Send comments to: Bureau of Land Management, Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

The State Director will weigh adverse comments on the proposed sale and may vacate or change this notice concerning the proposed sale. Without any objections this notice will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Information related to the proposed sale and environmental assessment are available from Bruce W. Reed, Field Manager, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047, 406–654–5113.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public land described above from appropriation under the public land laws, including the mining laws but not from sale under Section 203 of the FLPMA of 1976. The segregation will end upon issuance of the conveyance document or 270 days from the date of publication of this notice, whichever occurs first.

The conveyance of public land is subject to:

1. A reservation of a right-of-way for ditches and canals under 43 U.S.C. 945.

2. A reservation of all Federal minerals.

Bruce W. Reed,

Malta Field Manager.

[FR Doc. 02–10702 Filed 5–6–02; 8:45 am]

BILLING CODE 4310–$$–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–415]

U.S. Trade and Investment With Sub-Saharan Africa

AGENCY: United States International Trade Commission.

ACTION: Notice of preparation of third report and opportunity to submit information and comments.

EFFECTIVE DATE: April 29, 2002.

SUMMARY: Following receipt on April 12, 2000, of a letter from the United States Trade Representative (USTR), the Commission instituted investigation No. 332–415, U.S. Trade and Investment with Sub-Saharan Africa, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) for the purpose of preparing a series of five annual reports. This is the third report in the series, and the Commission plans to transmit this third report to the USTR by December 10, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Laurie-Ann Agama, Office of Economics (202–205–3220), or Mr. William Gearhart, Office of the General Counsel (202–205–3091) for information on legal aspects of the investigation. The media should contact Ms. Margaret O'Laughlin, Office of External Relations (202–l819).

Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on 202–205–1810.

Background

Pursuant to authority under section 332(g) of the Tariff Act of 1930, the USTR requested that the Commission prepare a series of annual report for five years containing the following information:

1. For the last five years (and the latest quarter available), data for U.S. merchandise trade and U.S. services trade with sub-Saharan Africa, including statistics by country, by major sectors, and by the top 25 commodities, as well as statistics on imports from sub-Saharan Africa under the GSP program by country and major product categories/commodities.

2. Country-by-country profiles of the economies of each sub-Saharan African country, including information on major trading partners, by country.

3. Sector profiles for sub-Saharan Africa, including information on trade, investment, industry and policy developments, by major sector. The five sector profiles in this investigation include: petroleum and energy, minerals and mining, chemicals and related products, agricultural products, and textiles, apparel and footwear.

4. A summary of the trade, services, and investment climates in each of the countries in sub-Saharan Africa, including a description of the basic tariff structure (e.g., the average tariff rate and the average agricultural tariff rate). The summaries should also include information on significant impediments to trade, including any import bans.

5. Updates on regional integration in sub-Saharan Africa and statistics on U.S. trade with major regional groupings (COMESA, EAC, ECOWAS, IGAD, SACU, SADC, and WAEMU). Where applicable, information should be provided on the regional group's tariff structure.

6. A description of the U.S. tariff structure for imports from Africa.

7. A summary of U.S. and total foreign direct investment and portfolio investment in sub-Saharan Africa.

8. Information on sub-Saharan African privatization efforts based on publicly available information.

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9. A summary of multilateral and U.S. bilateral assistance to the countries of sub-Saharan Africa.

The USTR requested that the Commission provide its first report by December 2000, and annually for a period of 4 years thereafter. The second report in the series was delivered to USTR on December 10, 2001. The third report shall be delivered no later than December 10, 2002. The 48 countries of sub-Saharan Africa covered in this investigation include: Angola, Benin, Botswana, Burkina Faso, Burundi, Cameroon, Cape Verde, Central African Republic, Chad, Comoros, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gabon, The Gambia, Ghana, Guinea, Guinea-Bissau, Kenya, Lesotho, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Mozambique, Namibia, Niger, Nigeria, Republic of the Congo, Rwanda, São Tomé and Principe, Senegal, Seychelles, Sierra Leone, Somalia, South Africa, Sudan, Swaziland, Tanzania, Togo, Uganda, Zambia, and Zimbabwe.

Written Submissions: The Commission does not plan to hold a public hearing in connection with this third report. However, interested persons are invited to submit written statements concerning matters to be addressed in the report. Commercial or financial information that a person desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. The Commission's Rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

All written submissions must conform with the provisions of section 201.8 of the Commission's Rules of Practice and Procedure (19 C.F.R 201.8). All submissions requesting confidential treatment must conform with the requirements of section 201.6 of the Commission's Rules (19 CFR 201.6). All written statements, except for confidential business information will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration, written statements relating to the Commission's report should be submitted at the earliest possible date and should be received not later than July 19, 2002. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW, Washington D.C. 20436. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

By order of the Commission.

Issued: May 2, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11285 Filed 5–6–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Manufacturer of Controlled Substances; Notice of Registration

By Notice dated July 13, 2001, and published in the **Federal Register** on July 23, 2001, (66 FR 38323), Research Triangle Institute, Kenneth H. Davis, Jr., Hermann Building, East Institute Drive, PO Box 12194, Research Triangle Park, North Carolina 27709, made application by renewal to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Cocaine (9041)	II

The institute will manufacture small quantities of cocaine derivatives and marihuana derivatives for use by their customers primarily in analytical kits, reagents and standards.

No comments or objections have been received. DEA has considered the factors in Title 21, United States Code, section 823(a) and determined that the registration of Research Triangle Institute to manufacture the listed controlled substances is consistent with the public interest at this time. DEA has investigated Research Triangle Institute on a regular basis to ensure that the company's continued registration is consistent with the public interest. These investigations have included inspection and testing of the company's physical security systems, audits of the company's records, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823 and 28 CFR 0.100 and 0.104, the Deputy Assistant Administrator, Office of Diversion Control, hereby orders that the application submitted by the above firm for registration as a bulk manufacturer of the basic classes of controlled substances listed above is granted.

Dated: April 18, 2002.

Laura M. Nagel,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 02–11304 Filed 5–6–02; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed collection; comments requested

ACTION: 30-Day Notice of Information Collection Under Review: Reinstatement, with change, of a previously approved collection for which approval has expired, Police Public Contact Survey.

The Department of Justice (DOJ), Office of Justice Programs has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the Federal Register Volume 67, Number 33, page 7379 on February 19, 2002, allowing for a 60 day comment period. The purpose of this notice is to allow for an additional 30 days for public comment until June 6, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information

(1) *Type of information collection:* Reinstatement, with change, of previously approved collection for which approval has expired.

(2) *The title of the form/collection:* Police Public Contact Survey.

(3) *The agency form number, if any, and the applicable component of the Department sponsoring the collection:* PPCS–1. Bureau of Justice Statistics, Office of Justice Programs, United States Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as brief abstract:* Primary: Eligible respondents to the survey must be age 16 or older. The Police Public Contact Supplement fulfills the mandate set forth by the Violent Crime Control and Law Enforcement Act of 1994 to collect, evaluate, and publish data on the use of excessive force by law enforcement personnel. The survey will be conducted as a supplement to the National Crime Victimization Survey in all sample households for six (6) month period. Other: None

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond/reply:* Of the 84,700 eligible persons, we expect approximately 80 percent of the eligible persons or 67,760 persons to complete only the first four (lead-in or screening questions) questions on the questionnaire. We expect the screeners to take approximately .033 hours (2 minutes) per person to administer. We expect that approximately 20 percent of the eligible persons or 16,940 persons will report contact with the police. We estimate an average of .167 hours (10 minutes) to ask the detailed questions regarding the nature of the contact.

(6) *An estimate of the total public burden (in hours) associated with the collection:* The total respondent burden is approximately 5,065 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: April 30, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–11242 Filed 5–6–02; 8:45 am]

BILLING CODE 4410–18–M

DEPARTMENT OF JUSTICE

National Institute of Corrections

Solicitation for a Cooperative Agreement—Training Program Revision: National Sheriffs' Institute

AGENCY: National Institute of Corrections, Department of Justice

ACTION: Solicitation for a Cooperative Agreement

SUMMARY: The National Institute of Corrections (NIC), Jails Division, is seeking applications for the analysis for the current National Sheriffs' Institute, a leadership training program for first term sheriffs, and development of a new course curriculum.

Background: The National Sheriffs' Institute (NSI) was created in the early 1970s in response to a needs assessment conducted by the National Sheriffs' Association (NSA) that identified critical areas affecting the success of a sheriff's term of office. The NSA, with Law Enforcement Assistance Administration (LEAA) funds, supported the development of the core curriculum by the School of Public Administration, University of Southern California. From 1973–1981, the program was conducted with LEAA funds. From 1982–1991, when federal funds were not available to the NSI, sheriffs were required to attend at their own expense. In 1993, NIC joined with NSA to sponsor the program. It is now held twice a year at NIC's training center in Longmont, Colorado.

The program has undergone a variety of revisions since its inception. Over the years, it has evolved to focus on leadership, specifically as it applies to the Office of the Sheriff. It is now the only national leadership development program designed specifically for sheriffs. NIC views this program as critical for first-term sheriffs, since many sheriffs come to office with a law enforcement background, some management skills, and certain technical knowledge, but often have little or no preparation for their assumption of a leadership position.

The applicant should be aware that not only is this course specific to the leadership roles of sheriffs, but also that about 90% of sheriffs are from smaller, rural jurisdictions, which typically have severely limited resources and minimal staff. This will need to be considered during course development.

It has been several years since the NSI has been closely examined in its totality. Various refinements have been made, but in a rather piecemeal fashion. The entire program now needs a rigorous examination to ensure that (1) there is a consistent focus on leadership, (2) the concepts taught are current and applicable to roles and responsibilities of sheriffs, (3) all modules clearly contribute to achieving the goals of the course, (4) instructional strategies reflect adult learning theory and accommodate various learning styles, (5) the instructional design is learner centered, and (6) program participants are required to apply leadership concepts to their roles and activities as sheriffs. The analysis will be the basis for the development of a new curriculum. The current course is based on the sheriff's leadership role in five areas: (1) The political arena, (2) the criminal justice system, (3) the community, (4) his/her organization and staff, and (5) the technical arena. The course is two weeks long. The first week includes the following topics:

- The Sheriff in the American Justice System
- Decision Making
- Leadership Styles
- Language of Leadership
- Value-Centered Leadership
- Developing a Good Place to Work
- Building the Executive Team
- Exterior Forces Affecting the Office of the Sheriff
- Strategic Planning and Change

The second week covers a variety of subjects, such as power and influence, managing diversity, the politics of budgeting, media relations, legal issues, the principles of community policing, and public issues confronting the sheriff.

It is important to acknowledge that the NSI has an extensive history and tradition that provide the foundation for the course. However, in the development of a revised course curriculum, the applicant is not bound by the specific content, delivery strategies, or length of the current program. (Note, however, that the program may not exceed two weeks). NIC seeks applicants who are able to take into account the history and tradition of the NSI, but who also are able to bring a fresh perspective to the course.

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Project Objectives: NIC wishes to analyze the current NSI in terms of the currency and relevance of content and the effectiveness of instructional strategies. Based on that analysis, NIC wishes to develop a revised course curriculum.

Scope of Work

Project description

The awardee will analyze the current NSI program and, based on that analysis, produce a complete, professionally-produced curriculum, with, at a minimum—

- *a narrative overview of the program,* describing the program's goals, characteristics of the target audience, the overall course framework, the rationale for the curriculum design, and an explanation of how the individual modules reinforce leadership concepts and relate to each other
- *lesson plans* for each module that detail content and provide for delivery strategies that require training participants to apply concepts to their roles and responsibilities as sheriffs
- *instructional aids,* such as handouts, computer-generated presentations, and other visual aids (visual aid must meet NIC's requirements for readability in a classroom setting)
- *instructor's guide*
- *suggested readings for participants*
- *participant workbook* that serves as a note-taking guide and provides all materials related to participant activities
- *participant evaluations,* including an end-of-program evaluation and a longer-term evaluation to determine if participants implement what they learn and the resulting benefits, if any

The applicant will be required to have all materials professionally edited for grammar, mechanics, spelling, and clarity. These materials will be delivered to NIC in one hard copy and on CD in Microsoft Word and PowerPoint format.

Project Schedule

The list below shows the major activities required to complete the project. Activities will begin upon award of this agreement and must be completed twenty-four months after the award date. The schedule for completion of activities should include the following, at a minimum.

- Meet with NIC staff for project overview and planning
- Review NSI materials provided by NIC
- Collect information on the leadership roles of the sheriff and related training needs, through literature research, interviews with sheriffs, attendance at an NSA conference, or other means
- Attend an NSI course in full and assess content, delivery strategies, and length
- Submit to NIC a written report that analyzes the current NSI in terms of, at a minimum, its adequacy in meeting the training needs of sheriffs regarding leadership, the currency and relevance of concepts taught, effectiveness of training delivery strategies, and quality and usefulness of program materials
- Meet with NIC staff regarding the written analysis
- Draft a proposed curriculum design, with the rationale for the design and an overview of content and delivery strategies
- Submit the proposed design to NIC for review
- Revise the proposed design based on comments from NIC
- Based on the agreed-upon design, draft program materials and submit to them to NIC as they are completed
- Revise draft materials based on NIC's comments
- Pilot the draft curriculum. This will be done during a scheduled NSI in Longmont (see dates below). If the applicant organization will instruct portions of the program, its fees and expenses must be charged to the cooperative agreement. NIC will choose and fund all other instructors, but the applicant is welcome to suggest potential instructors. Provision must be made to ensure instructors have program materials at least six weeks before the program so they can become familiar with them and ask any necessary clarification.
- Monitor the pilot program, in conjunction with NIC staff, for needed revision
- Revise program based on pilot
- Develop and submit final products, in hard copy (one) and on CD in Microsoft Word and PowerPoint format.

The awardee should make provision for two–three meetings with NIC staff—to be held in Longmont, Colorado—in addition to those listed above.

The National Sheriffs' Institute is conducted twice each federal fiscal year. One program remains in FY02, and that will be held on September 22–October 2, 2002. In FY03, the program will be held on April 27–May 9, 2003 and again on September 21 to October 3, 2003. In FY04, the program will be held in April and September, but the dates have yet to be set. Applicants for this cooperative agreement should develop their project schedules with these dates in mind.

Authority: Public Law 93–413.

Funds Available: The award will be limited to $145,000 (direct and indirect costs) and project activity must be completed within twenty-four months of the date of award. Funds may not be used for construction, or to acquire or build real property. This project will be a collaborative venture with the NIC Jails Division.

Application Procedures

Applications must be submitted in six copies to the Director, National Institute of Corrections, 320 First Street, NW., Room 5007, Washington, DC 20534. At least one copy of the application must have the applicant's original signature in blue ink. A cover letter must identify the responsible audit agency for the applicant's financial accounts.

Applications must be submitted using OMB Standard Form 424, Federal Assistance and attachments. The applications should be concisely written, typed double-spaced, and referenced to the project by the number and title given in this cooperative agreement announcement. The narrative portion of this grant application should include, at a minimum:

- A brief paragraph that indicates the applicant's understanding of the purpose of the document and the issues to be addressed;
- A brief paragraph that summarizes the project goals and objectives;
- A clear description of the methodology that will be used to complete the project and achieve its goals;
- A statement or chart of measurable project milestones and time lines for the completion of each;
- A description of the staffing plan for the project, including the role of each project staff, the time commitment for each, the relationship among the staff (who reports to whom), and an indication that all required staff will be available;
- A description of the qualifications of the applicant organization and each project staff;
- A budget that details all costs for the project, shows consideration for all contingencies for this project, and notes a commitment to work within the budget proposed (budget should be divided into object class categories as shown on application Standard Form 424A).

Documentation of the principals' and associates' relevant knowledge, skills, and abilities to carry out the described tasks must be included in the application. The application must also include a sample curriculum (includes all materials for the curriculum) developed by the applicant organization or by the curriculum-development specialist with whom the applicant intends to subcontract. The curriculum must be for a course that is at least three-days long.

Deadline for Receipt of Applications: Applications must be received by 4:00 p.m. on Tuesday, June 24, 2002. They should be addressed to Director, National Institute of Corrections, 320 First Street, NW, Room 5006, Washington, DC 20534. Applicants are encouraged to use Federal Express, UPS, or similar service to ensure delivery by the due date as mail at the National Institute of Corrections is still being delayed due to recent events. Hand delivered applications should be brought to 500 First Street, NW, Washington, DC 20534. The front desk will call (202) 307–3106, extension 0 for pickup.

ADDRESSES AND FURTHER INFORMATION: A copy of this announcement and the application forms may be obtained through the NIC web site: *http://www.nicic.org,* (click on cooperative agreements). Requests for a hard copy of this announcement and the application forms should be directed to Judy Evens, Cooperative Agreement Control Office, National Institute of Corrections, 320 First Street, NW, Room 5007, Washington, DC 20534 or by calling 800–995–6423, ext. 44222, 202–307–3106, ext. 44222, or email: *jevens@bop.gov.* All technical and/or programmatic questions concerning this announcement should be directed to Ginny Hutchinson or Jim Barbee at 1960 Industrial Circle, Longmont, CO 80501, or by calling 800–995–6429, ext. 140 (G. Hutchinson) or ext. 138 (J. Barbee) or by email: *vhutchinson@bop.gov* or *jbarbee@bop.gov.*

Eligible Applicants: An eligible applicant is any state or general unit of local government, public or private agency, educational institution, organization, team, or individual with the requisite skills to successfully meet the outcome objectives of the project.

Review Considerations: Applications received under this announcement will be subjected to a NIC three to five member Peer Review Process. Among the criteria used to evaluate the applications are:

- Indication of a clear understanding of the project requirements;
- Background, experience, and expertise of the proposed project staff, including any subcontractors;
- Effectiveness of the creative approach to the project;
- Clear, concise description of all elements and tasks of the project, with sufficient and realistic time frames necessary to complete the tasks;
- Technical soundness of project design and methodology;
- Financial and administrative integrity of the proposal, including adherence to federal financial guidelines and processes;
- Sufficiently detailed budget that shows consideration of all contingencies for this project and commitment to work within the budget proposed;
- Indication of availability to meet with NIC staff at key points in document development.
- Quality of sample curriculum.

Preference will be given to applicants or applicant teams that can clearly demonstrate expertise in executive leadership development, have experience in working with sheriffs and knowledge about the responsibilities and challenges of the Office of Sheriff, and have expertise and experience in professional curriculum development.

Number of Awards: One (1).

NIC Application Number: 02J20. This number should appear as a reference line in your cover letter, in box 11 of Standard Form 424, and on the outside of the envelope in which the application is sent.

Catalog of Federal Domestic Assistance Number: 16.601.

Dated: May 2, 2002.

Morris L. Thigpen,

Director, National Institute of Corrections.

[FR Doc. 02–11286 Filed 5–6–02; 8:45 am]

BILLING CODE 4410–36–M

NATIONAL TRANSPORTATION SAFETY BOARD

Sunshine Act Meeting Notice

Agenda

TIME AND PLACE: 9:30 a.m., Tuesday, May 14, 2002.

PLACE: NTSB Conference Center, 429 L'Enfant Plaza S.W., Washington, DC 20594.

STATUS: The two items are Open to the Public.

MATTERS TO BE CONSIDERED:

5299H—Most Wanted Safety Recommendations Program—2002 Update.

7465—Highway Accident Report—Work Zone Collision Between a Tractor-Semitrailer and a Tennessee Highway Patrol Vehicle in Jackson, Tennessee, on July 26, 2000.

News Media Contact: Telephone: (202) 314–6100.

Individuals requesting specific accommodations should contact Ms. Carolyn Dargan at (202) 314–6305 by Friday, May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Vicky D'Onofrio, (202) 314–6410.

Dated: May 3, 2002.

Vicky D'Onofrio,

Federal Register Liaison Officer.

[FR Doc. 02–11517 Filed 5–3–02; 3:48 pm]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: U. S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of pending NRC action to submit an information collection request to OMB and solicitation of public comment.

SUMMARY: The NRC is preparing a submittal to OMB for review of continued approval of information collections under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35).

1. *The title of the information collection:* 10 CFR Part 74, "Material Control and Accounting of Special Nuclear Material;" NUREG–1065, Rev. 2, "Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low Enriched Uranium Facilities;" NUREG/CR–5734, "Recommendations to the NRC on Acceptable Standard Format and Content for the Fundamental Nuclear Material Control (FNMC) Plan Required for Low-Enriched Uranium Enrichment Facilities;" and NUREG–1280, Rev. 1, "Standard Format and Content Acceptance Criteria for the Material Control and Accounting (MC&A) Reform Amendment".

2. *Current OMB approval number:* 3150–0123.

3. *How often the collection is required:* Submission of the fundamental nuclear material control plan is a one-time requirement which has been completed by all current licensees. However, licensees may submit amendments or revisions to the plans as necessary. In addition, specified inventory and material status reports are required annually or semiannually. Other reports are submitted as events occur.

4. *Who is required or asked to report:* Persons licensed under 10 CFR parts 70 who possess and use certain forms and quantities of special nuclear material.

5. *The number of annual responses:* 36 (25 responses + 11 recordkeepers)

6. *The number of hours needed annually to complete the requirement or request:* 6,314 (1,369 hours for reporting

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and 4,945 hours for recordkeeping [an average of 55 hours per response and 450 hours annually for each of 11 recordkeepers]).

7. *Abstract:* 10 CFR part 74 establishes requirements for material control and accounting of special nuclear material, and specific performance-based regulations for licensees authorized to possess and use strategic special nuclear material, or to possess and use, or produce, special nuclear material of low strategic significance. The information is used by the NRC to make licensing and regulatory determinations concerning material control and accounting of special nuclear material and to satisfy obligations of the United States to the International Atomic Energy Agency (IAEA). Submission or retention of the information is mandatory for persons subject to the requirements.

Submit, by July 8, 2002, comments that address the following questions:

1. Is the proposed collection of information necessary for the NRC to properly perform its functions? Does the information have practical utility?

2. Is the burden estimate accurate?

3. Is there a way to enhance the quality, utility, and clarity of the information to be collected?

4. How can the burden of the information collection be minimized, including the use of automated collection techniques or other forms of information technology?

A copy of the draft supporting statement may be viewed free of charge at the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike, Rockville, MD. OMB clearance requests are available at the NRC worldwide web site (http://www.nrc.gov/public-involve/doc-comment/omb/index.html). The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions about the information collection requirements may be directed to the NRC Clearance Officer, Brenda Jo. Shelton, U.S. Nuclear Regulatory Commission, T–6 E 6, Washington, DC 20555–0001, by telephone at (301) 415–7233, or by Internet electronic mail to INFOCOLLECTS@NRC.GOV.

Dated at Rockville, Maryland, this 1st day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11281 Filed 5–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–336]

Dominion Nuclear Connecticut, Inc.; Notice of Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 265 to Facility Operating License No. DPR–65 issued to Dominion Nuclear Connecticut, Inc., (the licensee), which revised the Final Safety Analysis Report (FSAR) for operation of the Millstone Nuclear Power Station, Unit No. 2, (MP2), located in New London County, Connecticut. The amendment is effective as of the date of issuance.

The amendment modified the MP2 FSAR, Chapter 14, description of the Steam Generator Tube Rupture (SGTR) event and its associated radiological dose consequences. The changes are not the result of hardware changes to the plant or changes in operating practices. Rather, the changes are the result of incorporating a postulated loss of offsite power into the event analyses as well as revised assumptions and analysis methodology. The FSAR changes show that the postulated dose consequences for the updated SGTR analysis are higher than the dose consequences for the previous analysis. However, the updated dose consequences are less than the dose guidelines of 10 CFR Part 100, Reactor Site Criteria, and 10 CFR Part 50, Appendix A, General Design Criterion (GDC) 19, Control Room.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing in connection with this action was published in the **Federal Register** on April 23, 2001 (66 FR 20485). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendment will not have a significant effect on the quality of the human environment (67 FR 18044).

Further details with respect to the action see (1) the application for amendment dated December 21, 2000, as supplemented June 29, 2001, (2) Amendment No. 265 to License No. DPR–65, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC Public Document Room Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 29th day of April 2002.

For the Nuclear Regulatory Commission.

Richard B. Ennis, Sr.

Project Manager, Section 2, Project Directorate I, Division of Licensing, Project Management Office of Nuclear Reactor Regulation.

[FR Doc. 02–11279 Filed 5–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Public Meetings for the Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of public meetings.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is announcing public meetings on the "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment." The draft "Yucca Mountain Review Plan" provides guidance to the NRC staff for evaluating a potential license application for a geologic repository. The draft "Yucca Mountain Review Plan" notice of availability and request for comments was published in the **Federal Register** on March 29, 2002 (67 FR 15257). A correction in the April 2, 2002 **Federal Register** (67 FR 16490) states the public comment period ends on June 27, 2002.

Three meetings have been scheduled in the State of Nevada to engage the public in a discussion of the draft "Yucca Mountain Review Plan" and ensure that the process for developing the final Revision 2 of the review plan gives full consideration to the views of the public. The meetings will include several brief presentations on the purpose, scope, structure, and content of the Yucca Mountain Review Plan. NRC is seeking public input on whether the draft "Yucca Mountain Review Plan" would effectively assess the safety of a potential geologic repository both during the operations period and after permanent closure. NRC will keep a transcript of the meetings to ensure full consideration of all comments and questions. The meetings will be facilitated by Francis X. Cameron, Special Counsel for Public Liaison, of the NRC.

Time/Date: The first public meeting will be held on Tuesday, May 21, 2002, from 6:30 PM to 9:00 PM (Pacific Time).

Place: Mountain View Casino and Bowl, 1750 South Pahrump Valley Boulevard, Pahrump, Nevada 89048–5615.

Time/Date: The second public meeting will be held on Wednesday, May 22, 2002, from 2:00 PM to 4:30 PM (Pacific Time).

Place: Clark County Building Department, 4701 W. Russell Road, Las Vegas, Nevada 89118. The cross street is (4900 W) Decatur/Russell.

Time/Date: The third public meeting will be held on Thursday, May 23, 2002, from 6:30 PM to 9:00 PM (Pacific Time).

Place: Clark County Building Department, 4701 W. Russell Road, Las Vegas, Nevada 89118. The cross street is (4900 W) Decatur/Russell.

FOR FURTHER INFORMATION CONTACT: Francis X. Cameron, Special Counsel for Public Liaison, Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by telephone: (301) 415–1642, or by e-mail: fxc@nrc.gov.

SUPPLEMENTARY INFORMATION: Copies of the draft "Yucca Mountain Review Plan" will be available at the public meeting. The document is also available at NRC's website at: *http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1804/*. You may also send comments electronically from this website by clicking on *comment form*. If a hard copy is preferred, a free single copy of the "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment," may be requested by writing to the U.S. Nuclear Regulatory Commission, ATTN.: Reproduction and Distribution Services Branch, Washington, DC 20555–0001; sending an e-mail to *Distribution@nrc.gov;* or by sending a fax to (301) 415–2289. A copy of the "Yucca Mountain Review Plan, NUREG–1804, Revision 2, Draft Report for Comment," is also available for inspection, and copying for a fee, in the NRC's Public Document Room, One White Flint North, Public File Area O1–F21, 11555 Rockville Pike, Rockville, Maryland.

Dated at Rockville, Maryland, this 30th day of April, 2002.

For the Nuclear Regulatory Commission.

Janet R. Schlueter,

Chief, High-Level Waste Branch, Division of Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 02–11280 Filed 5–6–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting Notice

DATES: Weeks of May 6, 13, 20, 27, June 3, 10, 2002.

Place: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

Status: Public and Closed.

Matters to be Considered

Week of May 6, 2002

There are no meetings scheduled for the Week of May 6, 2002.

Week of May 13, 2002—Tentative

Thursday, May 16, 2002

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Meeting with World Association of Nuclear Operators (WANO) (Public Meeting)

This meeting will be webcast live at the Web address—*www.nrc.gov*

2:00 p.m. Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of May 20, 2002—Tentative

Monday, May 20, 2002

2:00 p.m. Discussion of Security Issues (Closed—Ex. 1)

Week of May 27, 2002—Tentative

Tuesday, May 28, 2002

9:30 a.m. Briefing on Nuclear Material Licensee Decommissioning and Bankruptcy Issue (Public Meeting) (Contact: Larry Camper, 301–415–7234)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Wednesday, May 29, 2002

9:25 a.m. Affirmation Session (Public Meeting) (If needed)

9:30 a.m. Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301–415–1470)

This meeting will be webcast live at the Web address—*www.nrc.gov*

Week of June 3, 2002—tentative

Thursday, June 6, 2002

2:00 p.m. Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of June 10, 2002—Tentative

There are no meetings scheduled for the Week of June 10, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415–1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to dkw@nrc.gov.

Dated: May 2, 2002.

David Louis Gamberoni,

Technical Coordinator, Office of the Secretary.

[FR Doc. 02–11370 Filed 5–3–02; 10:56 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

Briefing on Service Quality Surveys

AGENCY: Postal Rate Commission.

ACTION: Notice of briefing.

SUMMARY: The Commission's Office of the Consumer Advocate (OCA) will host a presentation on aggregated results of recent service quality surveys on Wednesday, May 8, 2002, beginning at 1:30 p.m. (eastern time) at the Commission. Presenters will be University of Southern California students who were part of a class involved in survey administration. The survey results form the basis for an OCA report on quality of postal services. The report and a related library reference (OCA–LR–J–2) were filed with the Commission on March 6, 2002. The Commission will broadcast the presentation over its Web site.

DATES: May 8, 2002.

ADDRESSES: Postal Rate Commission (hearing room), 1333 H Street, NW., Washington, DC 20268–0001, suite 300.

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FOR FURTHER INFORMATION CONTACT: Stephen L. Sharfman, General Counsel, Postal Rate Commission, 202–789–6820.

Steven W. Williams,
Secretary.
[FR Doc. 02–11305 Filed 5–6–02; 8:45 am]
BILLING CODE 7710–FW–M

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.
Extension:
Rule 10A–1, SEC File No. 270–425, OMB Control No.3235–0468.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.), the Securities and Exchange Commission ("Commission") is soliciting comments on the collection of information summarized below. The Commission plans to submit this existing collection of information to the Office of Management and Budget for extension and approval.

Rule 10A–1 implements the reporting requirements in Section 10A of the Exchange Act, which was enacted by Congress on December 22, 1995 as part of the Private Securities Litigation Reform Act of 1995, Public Law No. 104–67. Under section 10A and Rule 10A–1 reporting occurs only if a registrant's board of directors receives a report from its auditors that (1) there is an illegal act material to the registrant's financial statements, (2) senior management and the board have not taken timely and appropriate remedial action, and (3) the failure to take such action is reasonably expected to warrant the auditor's modification of the audit report or resignation from the audit engagement. The board of directors must notify the Commission within one business day of receiving such a report. If the board fails to provide that notice, then the auditor, within the next business day, must provide the Commission with a copy of the report that it gave to the board.

Likely respondents are those registrants filing audited financial statements under the Securities Exchange Act of 1934 and the Investment Company Act of 1940.

It is estimated that Rule 10A–1 results in an aggregate additional reporting burden of 10 hours per year. The estimated average burden hours are solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules or forms.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW. Washington, DC 20549.

Dated: April 30, 2002.

J. Lynn Taylor,
Assistant Secretary.
[FR Doc. 02–11266 Filed 5–6–02; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Submission for OMB Review; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549–0004.
Approval of Existing Information Collections:
Rule 27d–1 and Form N–27D–1, SEC File No. 270–499, OMB Control No. 3235–new
Rule 27d–2, SEC File No. 270–500, OMB Control No. 3235–new

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission (the "Commission") has submitted to the Office of Management and Budget ("OMB") a request for approval of the collections of information under the Investment Company Act of 1940 ("Act") summarized below.

Rule 27d–1 [17 CFR 270.27d–1] is entitled "Reserve Requirements for Principal Underwriters and Depositors to Carry Out the Obligations to Refund Charges Required by Section 27(d) and Section 27(f) of the Act." Form N–27D–1 is entitled "Accounting of Segregated Trust Account." Rule 27d–2 [17 CFR 270.27d–2] is entitled "Insurance Company Undertaking in Lieu of Segregated Trust Account." Rule 27d–1 requires the depositor or principal underwriter for an issuer to deposit funds into a segregated trust account to provide assurance of its ability to fulfill its refund obligations under sections 27(d) and 27(f). The rule sets forth minimum reserve amounts and guidelines for the management and disbursement of the assets in the account. A single account may be used for the periodic payment plans of multiple investment companies. Rule 27d–1(j) directs depositors and principal underwriters to make an accounting of their segregated trust accounts on Form N–27D–1, which is intended to facilitate the Commission's oversight of compliance with the reserve requirements set forth in rule 27d–1. The form requires depositors and principal underwriters to report deposits to a segregated trust account, including those made pursuant to paragraphs (c) and (e) of the rule. Withdrawals pursuant to paragraph (f) of the rule also must be reported. In addition, the form solicits information regarding the minimum amount required to be maintained under paragraphs (d) and (e) of rule 27d–1. Depositors and principal underwriters must file the form once a year on or before January 31 of the year following the year for which information is presented.

Instead of relying on rule 27d–1 and filing Form N–27D–1, depositors or principal underwriters for the issuers of periodic payment plans may rely on the exemption afforded by rule 27d–2. In order to comply with the rule, (i) the depositor or principal underwriter must secure from an insurance company a written guarantee of the refund requirements, (ii) the insurance company must satisfy certain financial criteria, and (iii) the depositor or principal underwriter must file as an exhibit to its registration statement, a copy of the written undertaking, an annual statement that the insurance company has met the requisite financial criteria on a monthly basis, and an annual audited balance sheet.

Rules 27d–1 and 27d–2, which were explicitly authorized by statute, provide assurance that depositors and principal underwriters of issuers have access to sufficient cash to meet the demands of certificate holders who reconsider their decision to invest in a periodic payment plan. The information collection requirements in rules 27d–1 and 27d–2 enable the Commission to monitor compliance with reserve rules.

Commission staff estimates that there are three issuers of periodic payment plan certificates. The depositor or principal underwriter of each of these issuers must file Form N–27D–1 annually or comply with the requirements in rule 27d–2. One Form N–27D–1 is filed annually. The Commission estimates that a staff accountant spends 4 hours and an accounting manager spends 2 hours preparing Form N–27D–1. Therefore, the total annual hour burden associated with rule 27d–1 and Form N–27d–1 is estimated to be 6 hours. The staff estimates that two depositors or principal underwriters rely on rule 27d–2 and that each of these respondents makes three responses annually. We estimate that each depositor or underwriter expends approximately two hours per year obtaining a written guarantee from an insurance company or negotiating changes to coverage with the insurance company and 4.5 hours per year filing the two required documents from the insurance company on EDGAR. Thus, we estimate that the annual burden is approximately 13 hours.[1]

In addition to the hour burden described above, rule 27d–1 imposes certain costs. First, outside accountants review Form N–27D–1 at an annual cost of $90. Second, a financial printer files the form at an annual cost of $70. Thus, assuming that an average of one Form N–27D–1 is filed each year, the staff estimates that the total annual cost of the information collection burden in rule 27d–1 is $160. The staff believes that rule 27d–2 does not impose any cost burdens other than those arising from the hour burdens discussed above.

The estimates of average burden hours and costs are made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.[2]

Complying with the collection of information requirements of rule 27d–1 is mandatory for depositors or principal underwriters of issuers of periodic payment plans unless they comply instead with the requirements in rule 27d–2. The information provided pursuant to rules 27d–1 and 27d–2 is public and, therefore, will not be kept confidential. The Commission is seeking OMB approval, because an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.

Please direct general comments regarding the above information to the following persons: (i) Desk Officer for the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; and (ii) Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549. Comments must be submitted to OMB within 30 days of this notice.

Dated: April 30, 2002.

J. Lynn Taylor,
Assistant Secretary.
[FR Doc. 02–11265 Filed 5–6–02; 8:45 am]
BILLING CODE 8010–01–P

[1] 2 funds × (2 hours negotiating coverage + 4.5 hours filing necessary proof of adequate coverage) = *13 hours.*

[2] These estimates are based on telephone interviews between the Commission staff and representatives of depositors or principle underwriters of periodic payment plan issuers.

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25558; 812–12160]

Portfolio Partners, Inc., et al.; Notice of Application

April 30, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act, as well as certain disclosure requirements.

SUMMARY OF THE APPLICATION: Applicants seek an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval and would grant relief from certain disclosure requirements.

APPLICANTS: Portfolio Partners, Inc.[1] (the "PPI Fund"), The GCG Trust (the "GCG Trust," collectively with PPI Fund, the "Funds"), Aetna Life Insurance and Annuity Company[2] ("Aetna") and Directed Services, Inc. ("DSI," collectively with Aetna, the "Advisers").

FILING DATES: The application was filed on June 30, 2000, and amended on April 26, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 23, 2002 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary. SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, PPI Fund and Aetna, 151 Farmington Avenue, Hartford, CT 06156–8962; and GCG Trust and DSI, 1475 Dunwoody Drive, West Chester, PA 19380.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (telephone (202 942–8090).

Applicants' Representations

1. PPI Fund, a Maryland corporation, and GCG Trust, a Massachusetts business trust, are registered under the Act as open-end management investment companies. PPI Fund and GCG Trust are each comprised of multiple series (each a "Portfolio," collectively the "Portfolios"), each with its own investment objectives and policies.[3] The shares of each Portfolio currently are offered and sold through

[1] Effective May 1, 2002, Portfolio Partners, Inc. will be renamed "ING Partners, Inc."

[2] Effective May 1, 2002, Aetna Life Insurance and Annuity Company will be renamed "ING Life Insurance and Annuity Company."

[3] Applicants also request relief with respect to future series of the Funds and any other registered open-end management investment companies and series thereof that (a) are advised by the Advisers or any entity controlling, controlled by, or under common control with the Advisers; (b) use the Adviser/Sub-Adviser structure described in the application; and (c) comply with the terms and conditions in the application ("Future Funds," included in the term "Funds," and their series included in the term "Portfolios"). If the name of any Portfolio relying on the requested relief contains the name of a Sub-Adviser (as defined below), it will also contain the name of the Adviser, which will appear before the name of the Sub-Adviser.

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insurance company separate accounts, which are used to fund variable annuity contracts and variable life insurance contracts.

2. Aetna and DSI are registered as investment advisers under the Investment Advisers Act of 1940 (the "Advisers Act"). Aetna currently serves as the investment adviser to PPI Fund and DSI serves as the investment adviser to GCG Trust. Aetna and DSI are wholly owned subsidiaries of ING Group N.V.

3. PPI Fund and GCG Trust have entered into separate investment management agreements with Aetna and DSI ("Advisory Agreements"), respectively, that were approved by the Funds" respective boards of directors/trustees (the "Boards"), including a majority of the directors/trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Directors"), and each Portfolio's shareholders. The Advisory Agreements permit the Advisers to enter into separate investment advisory agreements ("Sub-Advisory Agreements") with investment management organizations as sub-advisers ("Sub-Advisers") to whom each Adviser may delegate day-to-day portfolio management responsibilities for a Portfolio.

4. Each Adviser monitors and evaluates the Sub-Advisers and recommends to the respective Board their hiring, retention or termination. Sub-Advisers recommended to the Board by the Adviser are selected and approved by the Board, including a majority of the Independent Directors. Each Sub-Adviser's fees are paid by the respective Adviser out of the management fees received by that Adviser under its Advisory Agreement.

5. Applicants request relief to permit the Advisers, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Adviser, other than by reason of serving as a Sub-Adviser to one or more of the Portfolios (an "Affiliated Sub-Adviser").

6. Applicants also request an exemption from the various disclosure provisions described below that may require the Portfolios to disclose the fees paid by an Adviser to the Sub-Advisers. An exemption is requested to permit the Portfolios to disclose (as both a dollar amount and as a percentage of a Portfolio's net assets): (a) aggregate fees paid to the Adviser and Affiliated Sub-Advisers; and (b) aggregate fees paid to the Sub-Advisers other than Affiliated Sub-Advisers ("Aggregate Fee Disclosure"). If a Portfolio employs an Affiliated Sub-Adviser, the Portfolio will provide separate disclosure of any fees paid to the Affiliated Sub-Adviser.

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f-2 under the Act provides that each series or class of stock in a series company affected by a matter must approve such matter if the Act requires shareholder approval.

2. Form N–1A is the registration statement used by open-end investment companies. Item 15(a)(3) of Form N–1A requires disclosure of the method and amount of the investment adviser's compensation.

3. Rule 20a-1 under the Act requires proxies solicited with respect to an investment company to comply with Schedule 14A under the Securities Exchange Act of 1934 (the "1934 Act"). Items 22(c)(1)(ii), 22(c)(1)(iii), 22(c)(8), and 22(c)(9) of Schedule 14A, taken together, require a proxy statement for a shareholder meeting at which the advisory contract will be voted upon to include the "rate of compensation of the investment adviser," the "aggregate amount of the investment adviser's fees," a description of "the terms of the contract to be acted upon," and, if a change in the advisory fee is proposed, the existing and proposed fees and the difference between the two fees.

4. Form N-SAR is the semi-annual report filed with the Commission by registered investment companies. Item 48 of Form N-SAR requires investment companies to disclose the rate schedule for fees paid to their investment advisers, including the Sub-Advisers.

5. Regulation S-X sets forth the requirements for financial statements required to be included as part of investment company registration statements and shareholder reports filed with the Commission. Sections 6–07(2)(a), (b), and (c) of Regulation S–X require that investment companies include in their financial statements information about investment advisory fees.

6. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for reasons discussed below.

7. Applicants assert that each Portfolio's shareholders have determined to rely on the Adviser to select, monitor and replace Sub-Advisers. Applicants contend that from the perspective of the investor, the role of the Sub-Advisers is comparable to individual portfolio managers employed by other firms. Applicants contend that requiring shareholder approval of the Sub-Advisory Agreements would impose unnecessary costs and delays on the Portfolios, and may preclude the Adviser from acting promptly in a manner considered advisable by the Board. Applicants note that the Advisory Agreements will remain subject to section 15(a) of the Act and rule 18f-2 under the Act.

8. Applicants assert that many Sub-Advisers charge their customers for advisory services according to a "posted" rate schedule. Applicants state that while Sub-Advisers are willing to negotiate fees lower than those posted in the schedule, particularly with large institutional clients, they are reluctant to do so when the fees are disclosed to other prospective and existing customers. Applicants submit that the relief will encourage Sub-Advisers to negotiate lower advisory fees with the Advisers, the benefits of which are likely to be passed on to the Portfolio's shareholders.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the outstanding voting securities of the Portfolio (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, pursuant to voting instructions provided by the unitholders of the sub-account), as defined in the Act, or, in the case of a Portfolio whose public shareholders (or variable contract owners through a separate account) purchased shares on the basis of a prospectus(es) containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before the shares of such Portfolio are offered to the public (or the variable contract owners through a separate account).

2. A Portfolio's prospectus will prominently disclose the existence, substance, and effect of any order granted pursuant to the application. Each Portfolio will hold itself out to the public as employing the management structure described in the application. A Portfolio's prospectus will prominently disclose that the Adviser has the ultimate responsibility (subject to oversight by the Board) to oversee the Sub-Advisers and recommend their hiring, termination, and replacement.

3. The Advisers will provide general management services to each of the respective Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to the review and approval by the Board, will (i) set each Portfolio's overall investment strategies; (ii) evaluate, select and recommend Sub-Advisers to manage all or part of a Portfolio's assets; (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple Sub-Advisers; (iv) monitor and evaluate the investment performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Portfolio's investment objectives, policies and restrictions.

4. At all times, a majority of the Board of the respective Fund will be Independent Directors and the nomination of new or additional Independent Directors will be at the discretion of the then-existing Independent Directors.

5. The Adviser will not enter into a Sub-Advisory Agreement with any Affiliated Sub-Adviser without such agreement, including the compensation to be paid thereunder, being approved by the shareholders of the applicable Portfolio.

6. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Board of the Fund, including a majority of the Independent Directors, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the applicable Portfolio and its shareholders and does not involve a conflict of interest from which the respective Adviser or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. No director, trustee, or officer of the Fund or director or officer of the Adviser will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by the director/trustee or officer) any interest in a Sub-Adviser except (a) for the ownership of interests in the Adviser or any entity that controls, is controlled by, or is under common control with the Adviser; or (b) for the ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Adviser will furnish shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, the Adviser will furnish the unitholders of the sub-account) of the applicable Portfolio all information about the new Sub-Adviser that would be contained in a proxy statement, except as modified by the order to permit Aggregate Fee Disclosure. This information will include Aggregate Fee Disclosure and any change in such disclosure caused by the addition of a new Sub-Adviser. To meet this condition, the respective Adviser will provide the shareholders (or, if the Portfolio serves as a funding medium for any sub-account of a registered separate account, then by providing unitholders of the sub-account) with an information statement meeting the requirements of Regulation 14C, Schedule 14C, and Item 22 of Schedule 14A under the 1934 Act, except as modified by the order to permit Aggregate Fee Disclosure.

9. Each Portfolio will disclose in its registration statement the Aggregate Fee Disclosure.

10. Independent legal counsel, as defined in Rule 0–1(a)(6) under the Act, will be engaged to represent the Independent Directors of the Fund. The selection of such counsel will remain within the discretion of the then-existing Independent Directors.

11. Each Adviser will provide the respective Board, no less frequently than quarterly, with information about the Adviser's profitability on a per-Portfolio basis. The information will reflect the impact on the profitability of the hiring or termination of any Sub-Adviser during the applicable quarter.

12. Whenever a Sub-Adviser is hired or terminated, the relevant Adviser will provide the Board with information showing the expected impact on the Adviser's profitability.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11229 Filed 5–6–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [To Be Published On May 3, 2002]

STATUS: Open Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, May 8, 2002 at 9:30 a.m.

CHANGE IN THE MEETING: Additional Item.

The following item will be considered at the open meeting scheduled for Wednesday, May 8, 2002:

The Commission will consider whether to issue an Order extending the temporary exemption of banks, savings associations, and savings banks from the definitions of "broker" and "dealer" under Section 3(a)(4) and 3(a)(5) of the Securities Exchange Act of 1934.

Commissioner Glassman, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

For further information please contact the Office of the Secretary at (202) 942–7070.

Dated: May 2, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11377 Filed 3–5–02; 11:52 am]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45855; International Series Release No. 1257]

List of Foreign Issuers That Have Submitted Information Under the Exemption Relating to Certain Foreign Securities

May 1, 2002.

Foreign private issuers with total assets in excess of $10,000,000 and a class of equity securities held of record by 500 or more persons, of which 300 or more reside in the United States, are subject to registration under Section 12(g) of the Securities Exchange Act of 1934 [1] (the "Act").[2]

[1] 15 U.S.C. 78a *et seq.*

[2] Foreign issuers may also be subject to such requirements of the Act by reason of having securities registered and listed on a national securities exchange in the United States, and may be subject to the reporting requirements of the Act by reason of having registered securities under the Securities Act of 1933, 15 U.S.C. 77a *et seq.*

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Rule 12g3–2(b)[3] provides an exemption from registration under Section 12(g) of the Act with respect to a foreign private issuer that submits to the Commission, on a current basis, the material required by the Rule. The informational requirements are designed to give investors access to certain information so they have the opportunity to inform themselves about the issuer. The Rule requires the issuer to provide the Commission with information that it has: (1) Made or is required to make public pursuant to the law of the country of its domicile or in which it is incorporated or organized; (2) filed or is required to file with a stock exchange on which its securities are traded and that was made public by such exchange; and/or (3) distributed or is required to distribute to its securities holders.

On October 6, 1983, the Commission revised Rule 12g3–2(b) by terminating the availability of the exemptive rule for certain foreign issuers with securities quoted on an automated inter-dealer quotation system—including the Nasdaq stock market.[4] The Commission grandfathered indefinitely securities of non-Canadian issuers that were in compliance with the Rule as of October 6, 1983 and quoted on Nasdaq on that date.[5]

When the Commission adopted Rule 12g3–2(b) and other rules[6] relating to foreign securities, it indicated that from time to time it would publish lists showing those foreign issuers that have claimed exemptions from the registration provisions of Section 12(g) of the Act.[7] The purpose of this release is to call to the attention of brokers, dealers and investors, that some form of relatively current information concerning the issuers included in this list is available in the Commission's public files.[8] The Commission also wishes to bring to the attention of brokers, dealers, and investors the fact that current information concerning foreign issuers may not necessarily be available in the United States.[9] The Commission continues to expect that brokers and dealers will consider this fact in connection with their obligations under the federal securities laws to have a reasonable basis for recommending those securities to their customers.[10]

Direct any questions regarding Rule 12g3–2 or the list of issuers in this release to Michael Coco, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549–0302 ((202) 942–2990). This release is available on the Commission's Web site: *www.sec.gov*. Requests for copies may also be directed to the Public Reference Room, Securities and Exchange Commission, Washington, DC 20549–0102 ((202) 942–8090).

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jill M. Peterson,

Assistant Secretary.

Company name	Country	File No.
10 Group plc	United Kingdom	82–5229
701 Com Corp	Canada	82–5119
AB Lietuvos Telekomas	Lithuania	82–5086
ABB AB	Sweden	82–736
Accor S.A	France	82–4672
Aceralia Corporacion Siderurgica S.A	Spain	82–4967
ACOM Co. Ltd	Japan	82–4121
Adidas Saloman AG	Germany	82–4278
AEM S.p.A	Italy	82–4911
Aeroflot Russian International Airlines	Russia	82–4592
AES Tiete S.A	Brazil	82–3691
Africa Gem Resources	South Africa	82–34638
African Marine Materials Corp	Canada	82–3329
Afrikander Lease Ltd	South Africa	82–34632
Agau Resources Inc	Canada	82–4769
Agenix Limited	Australia	82–34639
Agora S.A	Poland	82–4941
AIFUL Corp	Japan	82–4802
Air France	France	82–5050
Airtours plc	United Kingdom	82–5049
Albert Fisher Group plc	United Kingdom	82–1020
Aldeasa S.A	Spain	82–4774
Alive International Inc	Canada	82–5056
Alktek Power Corp	Canada	82–3219
Allgreen Properties Ltd	Singapore	82–4959
Allied Domecq plc	United Kingdom	82–878
Alpha General (Holdings) Ltd	Bermuda	82–34649
Altai Resources, Inc	Canada	82–2950
Amadeus Global Travel Distribution S.A	Spain	82–5173
America Telecom S.A. de C.V	Mexico	82–34636
American Comstock Exploration	Canada	82–3283
American Manor Corp	Canada	82–4158

[3] 17 CFR 240.12g3–2(b).

[4] Exchange Act Release No. 20264 (October 6, 1983).

[5] If, however, the securities are delisted from an automated inter-dealer quotation system or if the issuer fails to meet the requirements of the Rule, the grandfather provision will cease to apply. In addition, effective April 1, 1998, the securities of foreign private issuers that claim the Rule 12g3–2(b) exemption are no longer able to be quoted on the OTC Bulletin Board Service. See Exchange Act Release No. 38456 (March 31, 1997).

[6] Exchange Act Release No. 8066 (April 28, 1967).

[7] Exchange Act Release No. 41384 (May 10, 1999) was the last such list.

[8] Inclusion of an issuer on the list in this release is not an affirmation by the Commission that the issuer has complied or is complying with all the conditions of Rule12g3–2(b). The list does identify those issuers that have both claimed the exemption and have submitted relatively current information to the Commission as of April 4, 2002.

[9] Paragraph (a)(4) of Rule 15c2–11 [17 CFR 240.15c2–11] requires a broker-dealer initiating a quotation for securities of a foreign private issuer to review, maintain in its files, and make reasonably available upon request, the information furnished to the Commission pursuant to Rule 12g3–2(b) since the beginning of the issuer's last fiscal year.

[10] *See, e.g., Hanley* v. *SEC*, 415 F.2d 589 (2d Cir. 1969) (broker-dealer cannot recommend a security unless an adequate and reasonable basis exists for such recommendation).

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BankInter S.A	Spain	82–2972
BC Gas Inc	Canada	82–3909
BCE Emergis Inc	Canada	82–5206
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Beijing Datang Power Generation Co. Ltd	China	82–5186
Beijing Enterprises Holdings Ltd	Hong Kong	82–34642
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Roche Holding Ltd	Switzerland	82–3315
Rock Resources Inc	Canada	82–4504
Rolls-Royce plc	United Kingdom	82–2821
Romios Gold Resources	Canada	82–5093
Rosneftegazstroy	Russia	82–4597
RWE AG	Germany	82–4018
S Oil Corp	Korea	82–34630
S&T System Integration Technology	Austria	82–34634
S.A. Fabrica de Productos Alimenticios	Brazil	82–4870
Sage Group Ltd	South Africa	82–4241
Sahaviriya Steel Industries plc	Thailand	82–5008
SAIA-Burgess Electronics	Switzerland	82–4810
Sainsbury J. plc	United Kingdom	82–913
Saipem S.p.A	Italy	82–4776
Sakura Bank Ltd	Japan	82–3055
Sammy Corporation	Japan	82–5227
Sam's Seafood Holdings Ltd	Australia	82–34648
Samsung Electronics Co. Ltd	Korea	82–3109
Sancor Cooperativas Unidas Ltd	Argentina	82–4476
Sandvik AB	Sweden	82–1463
Santos Ltd	Australia	82–34
Sanwa Bank Ltd	Japan	82–4711
Sanyo Electric Co	Japan	82–264
Saskatchawan Wheat Pool	Canada	82–5037
Sasol Ltd	South Africa	82–631
Scandanavia Online A.B	Sweden	82–5178
Schwartz Pharma AG	Germany	82–34641
Sekisui House Ltd	Japan	82–5129
Sembcorp Industries Ltd	Singapore	82–5109

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Company name	Country	File No.
Sennen Resources	Canada	82–2238
Shanghai Industrial Holdings Ltd	China	82–5160
Shangra La Asia Ltd	Bermuda	82–5006
Sharp Corp	Japan	82–1116
Shinawata Satellite Public Co. Ltd	Thailand	82–4527
Shiseido Company Ltd	Japan	82–3311
Shun Tak Holdings	Hong Kong	82–3357
SIA Engineering Co. Ltd	Singapore	82–5123
Siam Commercial Bank Public Co. Ltd	Thailand	82–4345
Sigma AB	Sweden	82–5228
Silverarrow Explorations Inc	Canada	82–2945
Sime Darby Berhad	Malaysia	82–4968
Simsmetal Ltd	Australia	82–3838
Singapore Airport Terminal Services Ltd	Singapore	82–5117
Singapore Telecommunications Ltd	Singapore	82–3622
Singer N.V	Netherlands	82–34635
Skandia Insurance Co. Ltd	Sweden	82–5079
Sky Perfect Communications	Japan	82–5113
Slovnaft A.S	Russia	82–3721
Smartone Telecommunications	Bermuda	82–5114
Smith Howard Ltd	Australia	82–4538
Societe Generale	France	82–3501
Sogecable S.A	Spain	82–4981
Sons of Gwalia N.L	Australia	82–1039
South China Morning Post	Hong Kong	82–3327
Southcorp Holdings Ltd	Australia	82–2692
Southern Pacific Petroleum N.L	Australia	82–353
St. Dupont S.A	France	82–4552
St. Jude Resources Ltd	Canada	82–4014
Standard Chartered plc	United Kingdom	82–5188
Starlight International Holdings Ltd	Bermuda	82–3594
Starrex Mining Corp	Canada	82–3755
State Bank of India	India	82–4524
Statoil den Norske Stats Oljeselskap AS	Norway	82–3444
Stina Resources Ltd	Canada	82–2062
Stratabound Minerals Corp	Canada	82–3284
Strategic Technologies Inc	Canada	82–1548
Studsvisk AB	Sweden	82–5172
Sumitomo Minerals Corp	Japan	82–3507
Sumitomo Mitsui Banking Corp	Japan	82–4395
Sumitomo Trust & Banking Co. Ltd	Japan	82–4617
Sun Hung Kai Properties Ltd	Hong Kong	82–1755
Svenka Cellulosa Aktiebologot	Sweden	82–763
Svyazinform of Samara	Russia	82–4889
Swira Pacific Ltd	Hong Kong	82–2184
Swiss Reinsurance Co	Switzerland	82–4248
Synex International Inc	Canada	82–862
Tabcorp Holdings Ltd	Australia	82–3841
Tai Cheung Holdings Ltd	Bermuda	82–3528
Taylor Nelson AGB plc	United Kingdom	82–4668
Technovision Systems	Canada	82–5069
Telefonica Data Brasil Holding	Brazil	82–5151
Telefonica Data Peru Holding S.A.A	Peru	82–34646
Telefonica Moviles Peru Holding S.A.A	Peru	82–34645
Telepizza	Spain	82–5001
Televisao Gaucha S.A	Brazil	82–4339
Tennyson Networks Ltd	Australia	82–5138
TFS	Switzerland	82–5095
Thai Telephone and Telecommunications	Thailand	82–3744
THUS Group plc	United Kingdom	82–34650
Timebeat Com Enterprises Inc	Canada	82–2622
TNR Resources Ltd	Canada	82–4434
Tofas Turk Otomobil Fabrikasi AS	Turkey	82–3699
Tokai Bank Ltd	Japan	82–4811
Tomorrow International Holdings Ltd	Bermuda	82–4256
T-Online International AG	Germany	82–5125
Toyobo Co	Japan	82–1172
Toyoda Automatic Loom Works	Japan	82–5112
Toys "R" Us Japan Ltd	Japan	82–5073
Tradehold Ltd	South Africa	82–5238
Transportadora de Gas del Norte S.A	Argentina	82–3845
Trio Gold Corp	Canada	82–2127
Truly International Holdings	Cayman Islands	82–3700
Trust Company of Australia Ltd	Australia	82–1443

Company name	Country	File No.
Tsingtao Brewery Company Ltd	China	82–4021
Tullow Oil plc	United Kingdom	82–5202
Tyumen Air Company	Russia	82–4789
UJF Holdings Inc	Japan	82–5169
Unaxis AG	Switzerland	82–34643
UNI President Enterprises Co	Taiwan	82–3424
Union Miniere S.A	Belgium	82–3876
United Bank for Africa plc	Nigeria	82–4804
United Media Ltd	Canada	82–3859
USA Video Interactive Corp	Canada	82–1601
Usinas Siderurgicas de Minas Gerais S.A	Brazil	82–3902
Valeo S.A	France	82–3668
Valerie Gold Resources Ltd	Canada	82–3339
Vanguard Oil Corp	Canada	82–5148
Vedior N.V	Netherlands	82–4654
Velcro Industries. N.V	Neth. Ant.	82–145
Venfin Ltd	South Africa	82–3760
Veos plc	United Kingdom	82–5220
Viceroy Resource Corp	Canada	82–1193
Viktor Lenac Shipyard D.D. Rijeka	Croatia	82–5219
Village Roadshow Ltd	Australia	82–4513
Vinci	France	82–4781
Virotec International Ltd	Australia	82–5090
Vodafone Telecel Comunicacoe Pessoais S.A	Portugal	82–4528
Vodatel Networks Holdings Ltd	Bermuda	82–5146
Voyager Financial News.com	United Kingdom	82–5141
Voyagerit.com plc	United Kingdom	82–5140
VRX Worldwide Inc	Canada	82–4669
Vtech Holdings Ltd	Bermuda	82–3565
Walmart de Mexico S.A. de C.V	Mexico	82–4609
Wanadoo	France	82–5150
Western Pinnacle Mining Ltd	Canada	82–2418
Westone Ventures Inc	Canada	82–4890
Wienerberger Baustoffindustrie AG	Austria	82–4316
Windarra Minerals Ltd	Canada	82–561
Wing Tai Holdings Ltd	Singapore	82–4632
Woodside Petroleum Ltd	Australia	82–2280
Wrightson Ltd	New Zealand	82–3646
X-Cal Resources Ltd	Canada	82–1655
Yaroslavsky OJS Company of Energy & Electric	Russia	82–5144
Yeebo International Holdings Ltd	Bermuda	82–3869
Zero Hora-Editora Jornalistica S.A	Brazil	82–4337
Zhejiang Expressway Co. Ltd	China	82–34629
Zhejiang Southeast Electric Power Co. Ltd	China	82–34633

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45849; File No. SR–MSRB–2002–02]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Transactions With Sophisticated Municipal Market Professionals

April 30, 2002.

On January 25, 2002, pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to transactions with sophisticated municipal market professionals.

The Commission published the proposed rule change for comment in the **Federal Register** on February 12, 2002.[3] The Commission received four comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The MSRB's proposed rule change provides an interpretation of the duties under Rules G–13, G–17, G–18, and G–19[4] with regard to transactions involving sophisticated municipal market professionals. The MSRB proposed this rule change because it believes that dealers may consider the nature of the institutional customer in determining what specific actions are necessary to meet the fair practice standards for a particular transaction. The MSRB's proposal concerns only the manner in which a dealer determines that it has met certain of its fair practice obligations to certain institutional customers; it does not alter the basic duty to deal fairly, which applies to all transactions and all customers.[5]

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45364 (January 30, 2002), 67 FR 6294.

[4] The general rules are as follows: Rule G–13, Quotations Relating to Municipal Securities; Rule G–17, Conduct of Municipal Securities Activities; Rule G–18, Execution of Transactions; and Rule G–19, Suitability of Recommendations and Transactions; Discretionary Accounts.

[5] The proposed rule change describes institutional customer as "an entity, other than a natural person (corporation, partnership, trust, or otherwise), with total assets of at least $100 million invested in municipal securities in the aggregate in its portfolio and/or under management." *See*

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In the proposed rule change notice, the MSRB clarified the definition of sophisticated municipal market professional ("SMMP"). Not all institutional customers are sophisticated regarding investments in municipal securities. There are three important considerations with respect to the nature of an institutional customer in determining the scope of a dealer's fair practice obligations. When a dealer has reasonable grounds for concluding that an institutional customer (i) has timely access to the publicly available material facts concerning a municipal securities transaction;[6] (ii) is capable of independently evaluating the investment risk and market value of the municipal securities at issue;[7] and (iii) is making independent decisions about its investments in municipal securities, and other known facts do not contradict such a conclusion,[8] the institutional customer can be considered an SMMP.[9]

While the scope of a dealer's fair practice obligations depends on the particular transaction, by making a reasonable determination that an institutional customer is an SMMP, certain of the dealer's fair practice obligations remain applicable but are deemed fulfilled. In addition, as discussed below, the fact that a quotation is made by an SMMP would have an impact on how such quotation is treated under rule G–13.

Application of SMMP Concept to Rule G–17's Affirmative Disclosure Obligations

As it applies to rule G–17, the SMMP concept recognizes that the actions of a dealer, in compliance with affirmative disclosure obligations under rule G–17, when effecting non-recommended secondary market transactions may depend on the nature of the customer. When a dealer has reasonable grounds for concluding that the institutional customer is an SMMP, the institutional customer, by definition, is already aware, or capable of making itself aware of, material facts and is able to independently understand the significance of the material facts available from established industry sources.[10] When the dealer has reasonable grounds for concluding that the customer is an SMMP then the dealer's obligation when effecting non-recommended secondary market transactions to ensure disclosure of material information available from established industry sources is fulfilled. There may be times when an SMMP is not satisfied that the information available from established industry sources is sufficient to allow it to make an informed investment decision. In those circumstances, the MSRB believes that an SMMP can recognize that risk and take appropriate action, be it declining to transact, undertaking additional investigation or asking the dealer to undertake additional investigation.

This interpretation does nothing to alter a dealer's duty not to engage in deceptive, dishonest, or unfair practices under rule G–17 or under the federal securities laws. In essence, a dealer's disclosure obligations to SMMPs when effecting non-recommended secondary market transactions would be on par with inter-dealer disclosure obligations. This interpretation will be particularly relevant to dealers operating electronic trading platforms, although it will also apply to dealers who act as order takers over the phone or in-person.[11] This interpretation recognizes that there is no need for a dealer in a non-recommended secondary market transaction to disclose material facts available from established industry sources to an SMMP customer that already has access to the established industry sources.[12]

As in the case of an inter-dealer transaction, in a transaction with an SMMP, a dealer's intentional withholding of a material fact about a security, where the information is not accessible through established industry sources, may constitute an unfair practice violative of rule G–17. In addition, a dealer may not knowingly misdescribe securities to the customer. A dealer's duty not to mislead its customers is absolute and is not dependent upon the nature of the customer.

Application of SMMP Concept to Rule G–18 Interpretation—Duty to Ensure That Agency Transactions Are Effected at Fair and Reasonable Prices

Rule G–18 requires that each dealer, when executing a transaction in municipal securities for or on behalf of a customer as agent, make a reasonable effort to obtain a price for the customer that is fair and reasonable in relation to prevailing market conditions.[13] The actions that a dealer must take to make reasonable efforts to ensure that its non-recommended secondary market agency transactions with customers are effected at fair and reasonable prices may be influenced by the nature of the customer as well as by the services explicitly offered by the dealer.

If a dealer effects non-recommended secondary market agency transactions for SMMPs and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the dealer is not required to take further actions on individual transactions to ensure that its agency transactions are effected at fair and reasonable prices.[14] By making the determination that the customer is an SMMP, the dealer necessarily concludes that the customer has met the requisite high thresholds regarding timely access to information, capability of evaluating risks and market values, and undertaking of independent investment decisions that would help ensure the institutional customer's ability to evaluate whether a transaction's price is fair and reasonable.

This interpretation will be particularly relevant to dealers operating alternative trading systems in which participation is limited to dealers and SMMPs. It clarifies that in such systems rule G–18 does not impose an obligation upon the dealer operating such a system to investigate each individual transaction price to determine its relationship to the market. The MSRB recognizes that dealers operating such systems may be merely aggregating the buy and sell interest of other dealers or SMMPs. This function may provide efficiencies to the market. Requiring the system operator to evaluate each transaction effected on its system may reduce or eliminate the desired efficiencies. Even though this interpretation eliminates a duty to evaluate each transaction, a dealer operating such system, under the general duty set forth in rule G–18, must act to investigate any alleged pricing irregularities on its system brought to its attention. Accordingly, a dealer may be subject to rule G–18 violations if it fails to take actions to address system or participant pricing abuses.

If a dealer effects agency transactions for customers who are not SMMPs, or has held itself out to do more than provide anonymity, communication, matching and/or clearance services, or performs such services with discretion as to how and when the transaction is executed, it will be required to establish that it exercised reasonable efforts to ensure that its agency transactions with customers are effected at fair and reasonable prices.

Application of SMMP Concept to Rule G–19 Interpretation—Suitability of Recommendations and Transactions

The MSRB's suitability rule is fundamental to fair dealing and is intended to promote ethical sales practices and high standards of professional conduct. Dealers' responsibilities include having a reasonable basis for recommending a particular security or strategy, as well as having reasonable grounds for believing the recommendation is suitable for the customer to whom it is made. Dealers are expected to meet the same high standards of competence, professionalism, and good faith regardless of the financial circumstances of the customer. Rule G–19, on suitability of recommendations and transactions, requires that, in recommending to a customer any municipal security transaction, a dealer shall have reasonable grounds for believing that the recommendation is suitable for the customer based upon information available from the issuer of the security or otherwise and based upon the facts disclosed by the customer or otherwise known about the customer.

This guidance concerns only the manner in which a dealer determines that a recommendation is suitable for a particular institutional customer. The manner in which a dealer fulfills this suitability obligation will vary depending on the nature of the customer and the specific transaction. Accordingly, this interpretation deals only with guidance regarding how a dealer will fulfill such "customer-specific suitability obligations" under rule G–19. This interpretation does not address the obligation related to suitability that requires that a dealer have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers. In the case of a recommended transaction, a dealer may, depending upon the facts and circumstances, be obligated to undertake a more comprehensive review or investigation in order to meet its obligation under rule G–19 to have a "reasonable basis" to believe that the recommendation could be suitable for at least some customers.[15]

The manner in which a dealer fulfills its "customer-specific suitability obligations" will vary depending on the nature of the customer and the specific transaction. While it is difficult to define in advance the scope of a dealer's suitability obligation with respect to a specific institutional customer transaction recommended by a dealer, the MSRB has identified the factors that define an SMMP as factors that may be relevant when considering compliance with rule G–19. Where the dealer has reasonable grounds for concluding that an institutional customer is an SMMP, then a dealer's obligation to determine that a recommendation is suitable for that particular customer is fulfilled.

This interpretation does not address the facts and circumstances that go into determining whether an electronic communication does or does not constitute a customer-specific "recommendation."

Application of SMMP Concept to Rule G–13, on Quotations

New electronic trading systems provide a variety of avenues for disseminating quotations among both dealers and customers. In general, except as described below, any quotation disseminated by a dealer is presumed to be a quotation made by such dealer. In addition, any "quotation" of a non-dealer (e.g., an investor) relating to municipal securities that is disseminated by a dealer is presumed, except as described below, to be a quotation made by such dealer.[16] The dealer is affirmatively responsible in either case for ensuring compliance with the bona fide and fair market value

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Release No. 34–45364 (January 30, 2002), 67 FR 6294.

[6] A determination of "timely access to the publicly available material facts" will depend on the customer's resources and the customer's ready access to established industry sources for disseminated material information. Considerations include, but are not limited to, the following: resources available to the institutional customer to investigate the transaction; the institutional customer's independent access to the NRMSIR system and the MSRB's MSIL system; and the institutional customer's access to other sources of information concerning material finance developments. *See id.*

[7] To determine if an institutional customer is "capable of independently evaluating the investment risk and market value" depend on examination of that customer's ability to make its own investment decisions. Relevant considerations include, but are not limited to, the following: the use of one or more consultants, investment advisers, research analysts or bank trust departments; the general level of municipal securities market expertise of the institutional customer and expertise in the municipal securities under consideration; the institutional customer's ability to understand economic features of municipal securities; the institutional customer's ability to independently evaluate how market developments affect the municipal security under consideration; and the complexity of the municipal securities involved. *See id.*

[8] "Independent investment decisions" depend on the institutional customer's own thorough independent assessment of opportunities and risks presented by the potential investment, market forces, etc. Relevant considerations include, but are not limited to, the following: Any written or oral understanding that exists between the dealer and the institutional customer regarding the nature of the relationship and services between the dealer and the customer; the presence or absence of a pattern of acceptance of the dealer's recommendations; the use by the institutional customer of ideas, suggestions, market views and information obtained from sources other than the dealer; the extent to which whether the dealer has received from the institutional customer current comprehensive portfolio information in connection with municipal securities transactions. *See id.*

[9] Dealers are advised that they have the option of having investors attest to SMMP status as a means of streamlining the dealers' process for determining that the customer is an SMMP. However, a dealer would not be able to rely upon a customer's SMMP attestation if the dealer knows or has reason to know that an investor lacks sophistication concerning a municipal securities transaction.

[10] The MSRB filed a related notice regarding the disclosure of material facts under rule G–17 concurrently with this filing. See File No. SR-MSRB–2002–01. The MSRB's rule G–17 notice provides that a dealer would be responsible for disclosing to a customer any material fact concerning a municipal security transaction (regardless of whether such transaction had been recommended by the dealer) made publicly available through sources such as the NRMSIR system, the MSIL® system, TRS, rating agency reports and other sources of information relating to the municipal securities transaction generally used by dealers that effect transactions in municipal securities (collectively, "established industry sources").

[11] For example, if an SMMP reviewed an offering of municipal securities on an electronic platform that limited transaction capabilities to broker-dealers and then called up a dealer and asked the dealer to place a bid on such offering at a particular price, the interpretation would apply because the dealer would be acting merely as an order taker effecting a non-recommended secondary market transaction for the SMMP.

[12] In order to meet the definition of an SMMP an institutional customer must, at least, have access to established industry sources.

[13] This guidance only applies to the actions necessary for a dealer to ensure that its agency transactions are effected at fair and reasonable prices. If a dealer engages in principal transactions with an SMMP, rule G–30(a) applies and the dealer is responsible for a transaction-by-transaction review to ensure that it is charging a fair and reasonable price. In addition, rule G–30(b) applies to the commission or service charges that a dealer operating an electronic trading system may charge to effect the agency transactions that take place on its system.

[14] Similarly, the MSRB believes the same limited agency functions can be undertaken by a broker's broker toward other dealers. For example, if a broker's broker effects agency transactions for other dealers and its services have been explicitly limited to providing anonymity, communication, order matching and/or clearance functions and the dealer does not exercise discretion as to how or when a transaction is executed, then the MSRB believes the broker's broker is not required to take further actions on individual transactions to ensure that its agency transactions with other dealers are effected at fair and reasonable prices.

[15] *See e.g.*, Rule G–19 Interpretation—Notice Concerning the Application of Suitability Requirements to Investment Seminars and Customer Inquiries Made in Response to a Dealer's Advertisement, May 7, 1985, MSRB Rule Book (July 1, 2001) at 135; In re F.J. Kaufman and Company of Virginia, 50 S.E.C. 164, 168, 1989 SEC LEXIS 2376, *10 (1989). In a 1988 Release, the Commission's discussion of municipal underwriters' responsibilities noted that "a broker-dealer recommending securities to investors implies by its recommendation that it has an adequate basis for the recommendation." Municipal Securities Disclosure, Release No. 34–26100 (September 22, 1988) (the "1988 SEC Release") at text accompanying note 72.

[16] A customer's bid for, offer of, or request for bid or offer is included within the meaning of a "quotation' if it is disseminated by a dealer.

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requirements with respect to such quotation.

However, if a dealer disseminates a quotation that is actually made by another dealer and the quotation is labeled as such, then the quotation is presumed to be a quotation made by such other dealer and not by the disseminating dealer. Furthermore, if an SMMP makes à "quotation" and it is labeled as such, then it is presumed not to be a quotation made by the disseminating dealer; rather, the dealer is held to the same standard as if it were disseminating a quotation made by another dealer.[17] In either case, the disseminating dealer's responsibility with respect to such quotation is reduced. Under these circumstances, the disseminating dealer must have no reason to believe that either: (i) The quotation does not represent a bona fide bid for, or offer of, municipal securities by the maker of the quotation or (ii) the price stated in the quotation is not based on the best judgment of the maker of the quotation of the fair market value of the securities.

While rule G–13 does not impose an affirmative duty on the dealer disseminating quotations made by other dealers or SMMPs to investigate or determine the market value or bona fide nature of each such quotation, it does require that the disseminating dealer take into account any information it receives regarding the nature of the quotations it disseminates. Based on this information, such a dealer must have no reason to believe that these quotations fail to meet either the bona fide or the fair market value requirement and it must take action to address such problems brought to its attention. Reasons for believing there are problems could include, among other things, (i) complaints received from dealers and investors seeking to execute against such quotations, (ii) a pattern of a dealer or SMMP failing to update, confirm or withdraw its outstanding quotations so as to raise an inference that such quotations may be stale or invalid, or (iii) a pattern of a dealer or SMMP effecting transactions at prices that depart materially from the price listed in the quotations in a manner that consistently is favorable to the party making the quotation.[18]

[17] The disseminating dealer need not identify by name the maker of the quotation, but only that such quotation was made by another dealer or an SMMP, as appropriate.

[18] The MSRB believes that, consistent with its view previously expressed with respect to "bait-and-switch" advertisements, a dealer that includes a price in its quotation that is designed as a mechanism to attract potential customers interested in the quoted security for the primary purpose of drawing such potential customers into a negotiation on that or another security, where the quoting dealer has no intention at the time it makes the quotation of executing a transaction in such security at that price, could be a violation of rule G–17. *See* Rule G–21 Interpretive Letter—Disclosure Obligations, MSRB Interpretation of May 21, 1998, MSRB Rule Book (July 1, 2001) at p. 139.

[19] *See* Rule G–13 Interpretation, Notice of Interpretation of Rule G–13 on Published Quotations, April 21, 1988, MSRB Rule Book (July 1, 2001) at 91.

In a prior MSRB interpretation stating that stale or invalid quotations published in a daily or other listing must be withdrawn or updated in the next publication, the MSRB did not consider the situation where quotations are disseminated electronically on a continuous basis.[19] In such case, the MSRB believes that the bona fide requirement obligates a dealer to withdraw or update a stale or invalid quotation promptly enough to prevent a quotation from becoming misleading as to the dealer's willingness to buy or sell at the stated price. In addition, although not required under the rule, the MSRB believes that posting the time and date of the most recent update of a quotation can be a positive factor in determining whether the dealer has taken steps to ensure that a quotation it disseminates is not stale or misleading.

II. Summary of Comments

The Commission received five letters for comment on the proposal.[20] Of the five letters received, one expressed support[21] for the proposed rule change and the other four expressed concerns with the current form of the proposal.[22]

The comment letter received from TBMA stated that it "strongly supported" the MSRB's embrace of the sophisticated municipal market professional concept.[23] In their comment letter, the TBMA asserted that the MSRB's proposed rule change would advance the benefits resulting from on-line municipal security trading platforms. TBMA foresees that this proposal will allow trading platforms to "simplify their regulatory obligations, cut costs, and improve their ability to compete".[24] In addition, TBMA expressed its expectation the sophisticated municipal market professional concept will benefit all investors "by improved liquidity and transparency throughout the municipal market."[25]

The four letters opposing the MSRB's proposed rule change stated various customer protection concerns. Opponents foresee a reduction in a dealer's fair dealing standard resulting from this proposal. Collectively, these comment letters expressed trepidation with unintended consequences from the proposal in its current form.

The letter from ICI initially favors the concept of reducing certain obligations with transactions involving sophisticated municipal market professionals; however, the ICI does not favor the proposal's current draft form. The ICI states that it is "disappointed that the MSRB did not accept our recommendations and revise its interpretive notice accordingly."[26] Specifically, ICI requested that the MSRB make the following revisions: (1) Limit to the proposal's applicability to electronic trading platforms; and (2) exclude from the sophisticated municipal market professional safe harbor certain securities that are exempt from continuing disclosure requirements of the Exchange Act's Rule 15c2–12.[27] Without the inclusion of their request, ICI urges the MSRB to closely monitor the proposal's impact, if any, on the dissemination of secondary market disclosure.[28]

The letter from Fidelity presented a concern of an ensuing compromise of customer protections within the institutional market.[29] In reference to its agreement with ICI's position, Fidelity requested that the MSRB revise its proposal to: (1) limit the proposal's applicability to electronic trading platforms; and (2) exclude from the sophisticated municipal market professional safe harbor certain securities that are exempt from continuing disclosure requirements of the Exchange Act's Rule 15c2–12.[30] Additionally, Fidelity added emphasis to a commitment of protecting mutual fund and money market fund investors.

[20] *See* letter from Lynnette Kelly Hotchkiss, Senior Vice President and Associate General Counsel, The Bond Market Association ("TBMA"), to Mr. Jonathan Katz, Secretary, Commission, dated March 1, 2002; letter from James C. White, Senior Vice President, Schwab Capital Markets, Charles Schwab ("Schwab"), to Jonathan G. Katz, Secretary, Commission, dated March 4, 2002; letter from Amy B.R. Lancellotta, Senior Counsel, Investment Company Institute ("ICI"), to Mr. Jonathan G. Katz, Secretary, Commission, dated March 4, 2002; letter from Stanley N. Griffith, Vice President/Associate General Counsel, Fidelity Management & Research Co., Fidelity Investments ("Fidelity"), to Jonathan G. Katz, Secretary, Commission, dated March 13, 2002; letter from Ian MacKinnon, Managing Director, The Vanguard Group ("Vanguard"), to Jonathan G. Katz, Commission, dated March 25, 2002.

[21] *See* letter from TMBA, note 20, *supra*.

[22] *See* letters from Schwab, ICI, and Fidelity, note 20, *supra*.

[23] *See* letter from TBMA, note 20, *supra*.

[24] [24] *Id.*

[25] [25] *Id.*

[26] *See* letter from ICI, note 20, *supra*.

[27] *Id.*

[28] *Id.*

[29] *See* letter from Fidelity, note 20, *supra*.

[30] *Id.*

Fidelity asserted that reducing a dealer's role in disseminating secondary market disclosure "runs completely counter to the policy underpinnings of the investor protection provisions of the Investment Company Act of 1940 * * * including preserving liquidity * * * and providing adequate information".[31]

Similar to Fidelity's letters asserting concerns with the proposal's negative impact on municipal mutual funds and money market funds, Vanguard cites the interpretation's appearance of eliminating a dealer's obligation to make suitability determinations.[32] To avoid dilution of disclosure information, Vanguard recommends that the MSRB insert a carve-out for Rule G–19. According to the letter, Vanguard's opinion is that the MSRB has not demonstrated a commensurate benefit to be gained by reducing obligations for SMMPs and thus, should not affect a change that may "exacerbate the problems caused by the limited disclosure regime for municipal securities".[33] Vanguard stated that it recognizes that mutual funds and money market fund have their own regulatory compliance responsibilities, nevertheless, Vanguard sees cooperation of dealers as critical investor protection.

The comment letter from Schwab focused on interests of its retail customers. The letter expressed Schwab's agreement in the tremendous benefits the growth of on-line trading brings to the fixed-income marketplace. However, Schwab questioned the encouragement of growth in a "professionals-only" platform.[34] In its letter, Schwab stated that its "principal objection" to the proposal is the proposal's failure "to adequately acknowledge and protect the retail investor's right to fully participate in the growing electronic marketplace".[35] Schwab expressed fear that the proposed rule change will create a two-tiered market in fixed income securities and deny retail investors access to the best market prices.[36]

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act, the rules and regulations thereunder, which govern the MSRB.[37] The language of Section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitiating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.[38]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an interpretation of transactions with sophisticated municipal market professionals meets this standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In particular, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

IV. Conclusion

It is therefore Ordered, pursuant to Section 19(b)(2) of the Exchange Act,[39] that the proposed rule change (File No. SR-MSRB–2002–02) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[40]

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11231 Filed 5–6–02; 8:45 am]

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[31] *Id.*

[32] *See* letter from Vanguard, note 20, *supra*.

[33] *Id.*

[34] *See* letter from Schwab, note 20, *supra*.

[35] *Id.*

[36] *Id.*

[37] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[38] 15 U.S.C. 78o–4(b)(2)(c).

[39] 15 U.S.C. 78s(b)(2).

[40] 17 CFR 200.30–3(a)(12).

SOCIAL SECURITY ADMINISTRATION

Agency Information Collection Activities: Proposed Request and Comment Request

The Social Security Administration (SSA) publishes a list of information collection packages that will require clearance by the Office of Management and Budget (OMB) in compliance with Public Law 104–13 effective October 1, 1995, The Paperwork Reduction Act of 1995. SSA is soliciting comments on the accuracy of the agency's burden estimate; the need for the information; its practical utility; ways to enhance its quality, utility and clarity; and on ways to minimize burden on respondents, including the use of automated collection techniques or other forms of information technology.

Written comments and recommendations regarding the information collection(s) should be submitted to the OMB Desk Officer and the SSA Reports Clearance Officer and at the following addresses:

(OMB), Office of Management and Budget, Attn: Desk Officer for SSA, New Executive Office Building, Room 10235, 725 17th St., NW., Washington, DC 20503.

(SSA), Social Security Administration, DCFAM, Attn: Reports Clearance Officer, 1–A–21 Operations Bldg., 6401 Security Blvd., Baltimore, MD 21235.

I. The information collections listed below will be submitted to OMB within 60 days from the date of this notice. Therefore, your comments should be submitted to SSA within 60 days from the date of this publication. You can obtain copies of the collection instruments by calling the SSA Reports Clearance Officer at 410–965–4145, or by writing to the address listed above.

1. Letter to Landlord Requesting Rental Information—0960–0454. Form SSA–L5061 is used by SSA to provide a nationally uniform vehicle for collecting information from landlords in making a rental subsidy determination in the Supplemental Security Income (SSI) Program. The information is used in deciding whether income limits are met for SSI eligibility. The respondents are landlords who provide subsidized rental arrangements to SSI applicants and recipients.

Number of Respondents: 49,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Average Burden: 8,167.

2. Continuation of Full Benefit Standard for Persons Institutionalized—0960–0516. SSA is required by law to establish procedures for collecting information on whether an SSI recipient who becomes institutionalized (e.g., hospital, nursing home) may be eligible for continued benefits, based on the full federal benefit rate, if a physician certifies that he expects the period of medical confinement will last no more than 90 days. The individual (or someone acting on his behalf) must demonstrate that he needs to pay some or all of the expenses of maintaining the home to which he expects to return. The respondents are applicants for SSI benefits.

Number of Respondents: 60,000.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 5,000 hours.

3. Inquiry To File an SSI Child's Application—0960–0557. The information collected on Form SSRO–3–293 (formerly SSA–293) is used by SSA to document the earliest possible filing date and to determine potential eligibility for SSI child's benefits. The respondents are individuals, such as hospital social workers, who inquire about SSI eligibility for low birth weight babies.

Number of Respondents: 2,100.

Frequency of Response: 1.

Average Burden Per Response: 3 minutes.

Estimated Average Burden: 105 hours.

4. Supplemental Security Income Notice of Interim Assistance Reimbursement (Two Forms)—0960–0546. Form SSA–8125 and SSA–L8125–F6 collect interim assistance reimbursement (IAR) information from the States that provide such assistance. Form SSA–8125 is used in situations where IAR can be distributed directly to the recipient after the State has deducted the amount of assistance it provided. Form SSA–L8125–F6 is used in situations where a recipient entitled to underpayments has received IAR from a State and SSA will control the benefit through the installment process. SSA uses the information collected through these forms for accounting and auditing purposes in administering the IAR process. The respondents are States that provide IAR to SSI claimants.

	SSA–8125	SSA–L8125–F6
Number of Respondents	50,000	50,000.
Frequency of Response	1	1.
Average Burden Per Response	10 minutes	10 minutes.
Estimated Annual Burden	8,333 hours	8,333 hours.

5. National Employment Activity and Disability Survey —0960–NEW

Background

The Ticket to Work program (TTW) was established by the 1999 Ticket to Work and Work Incentives Improvement Act. The program will provide eligible Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) disability beneficiaries with a Ticket, which can be used to obtain vocational rehabilitation (VR) or employment services through participating providers, called Employment Networks (ENs).

The reason for the TTW program is that some beneficiaries currently lack the resources necessary to return to work at a level above the Substantial Gainful Activity (SGA) level, either because they do not have easy access to such services, or because they lack the incentive to invest resources in return to work activities because of a variety of factors affecting the decision to work. TTW confers upon a beneficiary a means to access those resources in a less restrictive manner than under the traditional program. The manner in which the program is being implemented is expected to increase beneficiary demand for employment-related services and activities. It is also expected to increase the number and diversity of providers in response to the less restrictive participation requirements and increased consumer demand for services.

The National Employment Activity and Disability Survey

The National Employment Activity and Disability Survey will collect data on the work-related activities of SSI and Old Age, Survivors and Disability Insurance (OASDI) beneficiaries as the TTW program, and other initiatives designed to improve beneficiary employment outcomes, are implemented. The TTW Survey is specifically designed to be a significant resource for the formal evaluation of TTW, but SSA anticipates that the survey will provide useful information for a variety of evaluation and policy analysis purposes, especially related to current efforts that attempt to improve return to work. The survey questionnaire focuses on information about beneficiaries and their work-related activities that cannot be obtained from SSA's administrative records. The survey will provide information about: (1) Beneficiaries who assign their Tickets to ENs, and their experience in the program; (2) beneficiaries who do not assign their Tickets, and the reasons why they do not, including involuntary non-participants; (3) the employment outcomes of Ticket users and other beneficiaries; and (4) the use of employment services by Ticket users and other beneficiaries. The respondents will be selected from SSI and OASDI disabled beneficiaries who meet the Ticket to Work program eligibility requirements.

Number of Respondents: 6,557.

Frequency of Response: 1.

Average Burden Per Response: 45 minutes.

Estimated annual Burden: 4,918 hours.

6. Public Information Campaign Collections—0960–0544. SSA uses the information from public broadcasting systems to determine media interest in broadcasting SSA's public information materials. The respondents are radio and television stations.

Number of Respondents: 8,000.

Frequency of Response: 3.

Average Burden Per Response: 1 minute

Estimated Annual Burden: 400.

7. State Mental Institution Policy Review—0960–0110. SSA uses the information collected on Form SSA–9584 to determine whether policies and practices of State mental institutions conform with SSA's regulations in the use of benefits and whether an institution is performing other duties and responsibilities required of a representative payee. The information also provides a basis for conducting an onsite review of the institution and is used in preparing the subsequent report of findings. The respondents are State mental institutions that serve as representative payees.

Number of Respondents: 125.

Frequency of Response: 1.

Average Burden Per Response: 60 minutes.

Estimated Annual Burden: 125 hours.

8. Record of Supplemental Security Income Inquiry—0960–0140. Form SSA–3462 is completed by SSA personnel via telephone or personal interview, and it is used to determine potential eligibility for SSI benefits. The respondents are individuals who inquire about SSI eligibility for themselves or someone else.

Number of Respondents: 2,341,856.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 195,155 hours.

II. The information collections listed below have been submitted to OMB for clearance. Your comments on the information collections would be most useful if received by OMB and SSA within 30 days from the date of this publication. You can obtain a copy of the OMB clearance package by calling the SSA Reports Clearance Officer on (410) 965–4145, or by writing to the address listed above.

1. Internet Social Security Disability Report—0960–NEW. The Social Security Act requires applicants to furnish medical and other evidence and information to prove they are disabled. Applicants for disability benefits will be given the option to provide information needed to help determine they are disabled through the Internet. The Internet Social Security Disability Report, which is similar to the Form SSA–3368–BK, Disability Report-Adult, will collect allegations of disability and gather information about the disabling condition and sources of medical evidence. Collecting this information is critical to case development and adjudication. The information on the Disability Report, together with other evidence and information, will be used by State Disability Determination Services (who make disability decisions on behalf of SSA) to develop medical evidence, assess the alleged disability, and make a determination on whether or not the applicant is disabled under the Act. SSA plans to conduct a limited pilot of the Internet Social Security Disability Report followed by national implementation. The respondents are applicants for title II and title XVI disability benefits.

Pilot Burden Hours Estimate

Number of Respondents: 8,400.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated annual Burden: 16,800 hours.

National Implementation Burden Hours Estimate

Number of Respondents: 66,000.

Frequency of Response: 1.

Average Burden Per Response: 2 hours.

Estimated annual Burden: 132,000 hours.

2. Employee Work Activity Report—0960–0483. The data collected by SSA on Form SSA–3033 is used to determine if the claimant meets the disability requirements of the law, when the claimant returns to work after the alleged or established onset date of disability. When a possible unsuccessful work attempt or nonspecific subsidy is involved, Form SSA-3033 will be used to request a description of the employee's work effort. The respondents are employers of OASDI and SSI disability applicants and beneficiaries.

Number of Respondents: 12,500.

Frequency of Response: 1.

Average Burden Per Response: 15 minutes.

Estimated Annual Burden: 3,125 hours.

Dated: May 1, 2002.

Liz Davidson,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 02–11210 Filed 5–6–02; 8:45 am]

BILLING CODE 4191–02–P

DEPARTMENT OF STATE

[Public Notice 4011]

Bureau of Political-Military Affairs; Rescission of Policy of Denial for China National Aero-Technology Import and Export Corporation (CATIC), China National Aero-Technology International Supply Company, CATIC (USA) Inc., Yan Liren and Hu Boru (Employees of CATIC), McDonnell Douglas Corporation, Douglas Aircraft Company and Robert Hitt (Employee of McDonnell Douglas Corporation and Douglas Aircraft Company); Continuation of Policy of Denial for Tal Industries Inc.

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given that Public Notice 3195, establishing as a policy of the Department of State the denial of all export applications and other requests of approval pursuant to section 38 of the Arms Export Control Act ("AECA") is partially rescinded. This rescission applies only to China National Aero-Technology Import and Export Corporation (CATIC), China National Aero-Technology International Supply Company, CATIC (USA) Inc., Yan Liren, Hu Boru, McDonnell Douglas Corporation, Douglas Aircraft Company and Robert Hitt. The Policy of Denial announced in Public Notice 3195 for Tal Industries, Inc. will continue to be in effect.

Public Notice 3195 stated that it would be the Department of State's policy to deny all export license applications and other requests for approval pursuant to section 38 of the AECA, for the export of, or the brokering activity involving the transfer of, defense articles or defense services by, for, or to the aforementioned persons and entities as well as any of their subsidiaries, affiliates, or successor entities.

EFFECTIVE DATE: The date of the dismissal of all charges: July 14, 2000 for Robert Hitt; May 15, 2001 for CATIC, CATIC (USA) Inc., Yan Liren, and Hu Boru; and November 14, 2001 for McDonnell Douglas and Douglas Aircraft.

FOR FURTHER INFORMATION CONTACT: David Trimble, Director, Compliance Division, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State (202) 633–2700.

SUPPLEMENTARY INFORMATION: Effective October 19, 2001 the Department of State, pursuant to sections 38 and 42 of the AECA, 22 U.S.C. 2778 and 2791, and 22 CFR 126.7(a)(2) and 126.7(a)(3) of the International Traffic in Arms Regulations ("ITAR"), instituted a policy of denial of all requests for licenses and other written approvals (including all activities under manufacturing license and technical assistance agreements and brokering activities) concerning exports of defense articles and provision of defense services or other transactions involving directly or indirectly CATIC, China National Aero-Technology International Supply Company, CATIC (USA) Inc., Tal Industries, Inc., Yan Liren, Hu Boru, McDonnell Douglas Corporation, Douglas Aircraft Company, and Robert Hitt and any of their affiliates, subsidiaries, or successor entities. Furthermore, the Department precluded the use of any exemptions from licenses or other approvals included in the ITAR except as those exemptions directly pertained to licenses or other written approvals granted prior to October 19, 1999.

This policy of denial was instituted in response to a sixteen-count indictment in the US District Court for the District of Columbia charging CATIC, CATIC (USA) Inc., TAL Industries, Inc., Yan Liren, Hu Boru, McDonnell Douglas Corporation, Douglas Aircraft Company, and Robert Hitt with violating, inter alias, the Export Administration Act of 1979 (EAA), 50 U.S.C. App. 2410 and the International Emergency Economic Powers Act (IEEPA), 50 U.S.C. 1701–1706.

With the exception of TAL Industries, all of the defendants have had their charges dismissed. The charges against Robert Hitt were dismissed on July 14, 2000. Subsequently, on May 15, 2001, the charges against CATIC, CATIC (USA) Inc., Yan Liren, and Hu Boru were dismissed. Finally, on November 14, 2001, the charges against McDonnell Douglas and Douglas Aircraft were

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dismissed. TAL Industries Inc., however, was convicted of violating the EAA and was sentenced on May 11, 2001 to five years of corporate probation, payment of a $1 million fine and payment of a special assessment of $200.

As a result, the Department of State has decided to rescind the policy of denial instituted against CATIC, CATIC (USA) Inc., Yan Liren, Hu Boru, and Robert Hitt and against McDonnell Douglas Corporation, Douglas Aircraft Company and any of their subsidiaries, affiliates or succesor entities. The policy of denial against TAL Industries, Inc., in accordance with section 38(g)(4) of the AECA, will continue to be in effect, due to its conviction for violating the EAA.

This action has been taken pursuant to sections 38 and 42 of the AECA, 22 USC 2778 and 22 USC 2791, and sections 126.7 and 127.11 of the ITAR, 22 CFR 126.7(a)(4) and 22 CFR 127.11.

Dated: March 7, 2002.

Lincoln P. Bloomfield, Jr.,

Assistant Secretary of State, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 02–11273 Filed 5–6–02; 8:45 am]

BILLING CODE 4710–25–P

DEPARTMENT OF STATE

[Public Notice 4012]

Bureau of Educational and Cultural Affairs Request for Grant Proposals: Tibet Development, Professional and Cultural Exchange Project

SUMMARY: The Office of Citizen Exchanges of the Bureau of Educational and Cultural Affairs announces an open competition for the Tibet Development, Professional and Cultural Exchange Project. U.S.-based public and private non-profit organizations meeting the provisions described in Internal Revenue code section 26 USC 501 (c) (3) may submit proposals that promote understanding between the people of the United States and the people of the Tibetan ethnic group living in China, through professional developmental, educational and cultural projects.

Interested applicants should read the complete **Federal Register** announcement before addressing inquiries to the Office of Citizen Exchanges or submitting their proposals. Once the RFP deadline has passed, the Office of Citizen Exchanges may not discuss this competition in any way with applicants until after the Bureau program and project review process has been completed.

Announcement Name and Number

All correspondence with the Bureau concerning this RFGP should reference the Tibet Development, Professional and Cultural Exchange Project and reference number: ECA/PE/C/WHAEAP–02–66. Please refer to title and number in all correspondence or telephone calls to the Office of Citizen Exchanges.

FOR FURTHER INFORMATION CONTACT: Interested organizations/institutions must contact the Office of Citizen Exchanges, room 216, SA–44, U.S. Department of State, 301 4th Street, SW., Washington, DC 20547, telephone number 202/619–5326, fax number 202/260–0440, or *pmidgett@pd.state.gov* to request a Solicitation Package. The Solicitation Package contains detailed award criteria, required application forms, specific budget instructions, and standard guidelines for proposal preparation. Please specify Bureau Program Officer, Raymond H. Harvey, on all other inquiries and correspondence.

To Download a Solicitation Package VIA Internet

The entire Solicitation Package may be downloaded from the Bureau's website at *http://exchanges.state.gov/education/RFGPs*. Please read all information before downloading.

Program Information

Overview

The Office of Citizen Exchanges welcomes proposals that directly respond to the following thematic areas. Preference will be given to those proposals that incorporate two of the following themes in the submission. Given budgetary limitations, projects for other themes will not be eligible for consideration under the FY–2002 Tibet Development, Professional and Cultural Exchange Project announcement.

Public Health Management

Projects submitted in response to this theme would be aimed at engaging public health leaders to combat the debilitating health problems ethnic Tibetans face in China, from malnutrition to fatal pneumonia, tuberculosis and diarrhea. The program would focus on developing and implementing appropriate public health policies, through seminars, training programs (especially in the areas of inoculations, child nutrition, midwifery, cataract surgery, or cleft palate repair) and outreach to public and private health planners and practitioners. to ensure the optimal welfare and economic viability of ethnic Tibetan communities. (Formal medical education and dispensing of medications are outside the purview of this theme and will not be accepted activities for funding based on exchange guidelines.)

Sustainable Development and Eco-Tourism

Exchanges and development activities funded under this theme would help American and ethnic Tibetan conservationists, tourism planners, and economic development officials share their experience in managing tourism resources and development projects, particularly in ecologically fragile areas, and would contribute to better understanding of conservation and concepts essential to responsible economic development. Local community development projects are invited in such areas as renewable energy, ecotourism, micro-credit, or poverty alleviation projects, including farm technology, animal husbandry, or agricultural marketing. Americans are in a good position to convey to their Tibetan counterparts the importance of sustainable forestry practices and sustainable harvesting of plant resources to short-term and long-term economic prospects.

Vocational Education

Proposals are sought which emphasize vocational training or administration and development of vocational schools targeted towards the practical needs of ethnic Tibetan communities. Successful projects would help influence thinking among those responsible for economic planning in rural and urban areas where Tibetans live. Discussion of how to integrate education planning with economic development initiatives, how to diversify revenue sources, and how to recruit, train and retain strong faculty would all contribute towards dialogue on vocational education, an issue important to both ethnic Tibetans and Americans in a modern and changing economy.

Vocational education may include practical training of entrepreneurs; development of Tibetan-language educational materials (such as Tibetan-English teaching guides or Tibetan-language public health education materials; or development of distance-learning technology solutions for remote rural schools. English-language training projects should focus on in situ training. (Projects seeking funding to support the travel of ethnic Tibetans to the U.S. for English language instruction are outside the purview of this theme and will not be accepted activities for funding based on exchange guidelines.)

Developing Enterpreneurship

Projects under this theme may focus on the skills ethnic Tibetans, many of whom come from rural backgrounds with rudimentary economies, need to function effectively in a modern economy (e.g. finance, accounting, and language skills). Projects that explore ways that both the government and the private sector can help promote entrepreneurship in sustainable ways, including access to credit, ecologically conscious tourism policies and investment, or English language training for trade or tourism purposes will be favored. Programs that train budding entrepreneurs and develop micro finance programs for them are welcome.

Cultural Preservation

Projects under this theme are aimed to assist ethnic Tibetans in preserving their cultural heritage through programs designed to reduce the threat of pillage of irreplaceable cultural heritage, and to create opportunities to develop long-term strategies for preserving cultural property through training and conservation, museum development, and public education. Projects might include supporting the preservation of cultural sites; objects in a site, museum or similar institution; or forms of traditional cultural expression. The proposals may encompass topics such as museum needs, historic buildings, collections, archaeological sites, rare manuscripts, traditional music and language.

Guidelines

The Office seeks proposals that provide professional experience and where possible, exposure to American life and culture through internships, workshops and other learning-sharing experiences hosted by local institutions. The experiences also will provide Americans the opportunity to learn about Tibetan culture and the social and economic challenges Tibetans face today. While a portion of this funding will be available for travel under these grants to support two-way exchanges, the key aim is to train and assist ethnic Tibetans living in China. Proposals only seeking funding for one-way travel, either Tibetans to travel to the United States or U.S. project personnel to travel to China must provide a clear explanation detailing the rationale for a one-way exchange. Projects in the U.S. should not simply be academic in nature; they should be designed to provide practical, hands-on experience in U.S. public/private sector settings that may be adapted to an individual's institution upon return home. Proposals may combine elements of professional enrichment, job shadowing and internships appropriate to the language ability and interests of the participants.

Applicants should identify the local organizations and individuals in the counterpart country with whom they are proposing to collaborate and describe in detail previous cooperative programming and/or contacts. Specific information about the counterpart organizations' activities and accomplishments is required and should be included in the section on Institutional Capacity. All proposals must contain letters of support specific to the project being proposed from all in-country partner organizations.

Exchanges and training programs supported by the institutional grants from the Bureau should operate at two levels: they should enhance institutional partnerships, and they should offer practical information to individuals and groups to assist them with their professional responsibilities. Strong proposals usually have the following characteristics: a strong existing partnership between a U.S. organization and a dependable in-country institution with a track record of successful project implementation; a proven track record of working in the proposed issue area; cost-sharing from U.S. and/or in-country sources; experienced staff with language facility and a commitment by the staff to monitor projects locally to improve accountability; a clear, convincing plan showing how permanent results will be accomplished as a result of the activity funded by the grant; and a follow-on plan beyond the scope of the Bureau grant. The Bureau would like to see tangible forms of time and money contributed to the project by the prospective grantee institution, as well as funding from third party sources.

Proposals must demonstrate an organization's willingness to consult closely with the Public Affairs Section and other officers at the U.S. Embassy in Beijing and at the U.S. Consulate in Chengdu. Proposal narratives should confirm that all materials developed for the project must acknowledge USG funding for the program as well as intention to invite representatives of the Embassy and/or Consulate to participate in various program sessions/site visits. Please note that this requirement will be included in the grant document.

Selection of Participants

All grant proposals should clearly describe the type of persons who will participate in the program as well as the process by which participants will be selected. It is recommended that for programs including U.S. internships, grant applicants submit letters tentatively committing host institutions to support the internships. In the selection of Tibetan participants, the Department, the U.S. Embassy in Beijing and the U.S. Consulate in Chengdu retain the right to review all participant nominations and to accept or refuse participants recommended by grantee institutions. The grantee institution will also provide the names of American participants and brief (two pages) biographical data on each American participant to the Office of Citizen Exchanges for information purposes. Priority in two-way exchange proposals will be given to foreign participants who have not previously traveled to the United States.

Programs must comply with J–1 visa regulations. Please refer to Solicitation Package for further information.

Budget Guidelines

Grants awarded to eligible organizations with less than four years of experience in conducting international development or exchange programs will be limited to $60,000. Applicants must submit a comprehensive budget for the entire program. Grant awards will range from $175,000 to $250,000. There must be a summary budget as well as breakdowns reflecting both administrative and program budgets. Applicants may provide separate sub-budgets for each program component, phase, location, or activity to provide clarification.

The following project costs are eligible for consideration for funding:

1. *Travel costs.* International and domestic airfares; visas; transit costs; ground transportation costs. Please note that all air travel must be in compliance with the Fly America Act. There is no charge for J–1 visas for participants in Bureau sponsored programs. Please note that Tibetan participants may not travel to the U.S. primarily for English language instruction.

2. *Per Diem.* For the U.S. program, organizations have the option of using a flat $160/day for program participants or the published U.S. Federal per diem rates for individual American cities. For activities outside the U.S., the published Federal per diem rates must be used. **NOTE:** U.S. escorting staff must use the published Federal per diem rates, not the flat rate. Per diem rates may be accessed at *http://www.policyworks.gov/*

3. *Interpreters:* If needed, interpreters for the U.S. program are available through the U.S. Department of State Language Services Division. Typically, a pair of simultaneous interpreters is

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provided for every four visitors who need interpretation. Bureau grants do not pay for foreign interpreters to accompany delegations from their home country. Grant proposal budgets should contain a flat $160/day per diem for each Department of State interpreter, as well as home-program-home air transportation of $400 per interpreter plus any U.S. travel expenses during the program. Salary expenses are covered centrally and should not be part of an applicant's proposed budget. Locally arranged interpreters with adequate skills and experience may be used by the grantee in lieu of State Department interpreters, with the same 1:4 interpreter to participant ratio. Costs associated with using their services may not exceed rates for U.S. Department of State interpreters.

4. *Book and cultural allowance:* Foreign participants are entitled to and escorts are reimbursed a one-time cultural allowance of $150 per person, plus a participant book allowance of $50. U.S. program staff members are not eligible to receive these benefits.

5. *Consultants.* Consultants may be used to provide specialized expertise, design or manage development projects or to make presentations. Honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal. Subcontracts should be itemized in the budget.

6. *Room rental.* Room rental may not exceed $250 per day.

7. *Materials development.* Proposals may contain costs to purchase, develop, and translate materials for participants.

8. *Equipment.* Proposals may contain limited costs to purchase equipment crucial to the success of the program, such as computers, fax machines and copy machines. However, equipment costs must be kept to a minimum, and costs for furniture are not allowed.

9. *Working Meal.* The grant budget may provide for only one working meal during the program. Per capita costs may not exceed $5–8 for a lunch and $14–20 for a dinner, excluding room rental. The number of invited guests may not exceed participants by more than a factor of two-to-one. Interpreters must be included as participants.

10. *Return travel allowance.* A return travel allowance of $70 for each foreign participant may be included in the budget. This may be used for incidental expenses incurred during international travel.

11. *Health Insurance.* Foreign participants will be covered under the terms of a U.S. Department of State-sponsored health insurance policy. The premium is paid by the U.S. Department of State directly to the insurance company. Applicants are permitted to included costs for travel insurance for U.S. participants in the budget.

12. *Administrative Costs.* Costs necessary for the effective administration of the program may include salaries for grant organization employees, benefits, and other direct or indirect costs per detailed instructions in the Solicitation Package.

Please refer to the Solicitation Package for complete budget guidelines and formatting instructions.

Deadline for Proposals

All proposal copies must be received at the Bureau of Educational and Cultural Affairs by 5 p.m. Washington, D.C. time on Friday, June 14, 2002. Faxed documents will not be accepted at any time. Documents postmarked the due date but received on a later date will not be accepted. Each applicant must ensure that the proposals are received by the above deadline.

Applicants must follow all instructions in the Solicitation Package. The original and 12 copies of the application should be sent to: U.S. Department of State, SA–44, Bureau of Educational and Cultural Affairs, Ref.: ECA/PE/C/WHAEAP–02–66, Program Management, ECA/EX/PM, Room 534, 301 4th Street, SW., Washington, DC 20547.

Applicants must also submit the "Executive Summary" and "Proposal Narrative" sections of the proposal on a 3.5" diskette, formatted for DOS. These documents must be provided in ASCII text (DOS) format with a maximum line length of 65 characters. The Bureau will transmit these files electronically to the Public Affairs section at the U.S. Embassy for its review, with the goal of reducing the time it takes to get embassy comments for the Bureau's grants review process.

Diversity, Freedom and Democracy Guidelines

Pursuant to the Bureau's authorizing legislation, programs must maintain a non-political character and should be balanced and representative of the diversity of American political, social, and cultural life. "Diversity" should be interpreted in the broadest sense and encompass differences including, but not limited to ethnicity, race, gender, religion, geographic location, socio-economic status, and physical challenges. Applicants are strongly encouraged to adhere to the advancement of this principle both in program administration and in program content. Please refer to the review criteria under the 'Support for Diversity' section for specific suggestions on incorporating diversity into the total proposal. Public Law 104–319 provides that "in carrying out programs of educational and cultural exchange in countries whose people do not fully enjoy freedom and democracy," the Bureau "shall take appropriate steps to provide opportunities for participation in such programs to human rights and democracy leaders of such countries." Public Law 106–113 requires that the governments of the countries described above do not have inappropriate influence in the selection process. Proposals should reflect advancement of these goals in their program contents, to the full extent deemed feasible.

Review Process

Proposals will be deemed ineligible if they do not fully adhere to the guidelines stated herein and in the Solicitation Package. The program office, the Public Diplomacy section and other elements at the U.S. Embassy in Beijing, and officials at the U.S. Consulate in Chengdu, will review all eligible proposals. Eligible proposals will be subject to compliance with Federal and Bureau regulations and guidelines and forwarded to Bureau grant panels for advisory review. Proposals may also be reviewed by the Office of the Legal Adviser or by other Department elements. Final funding decisions are at the discretion of the Department of State's Assistant Secretary for Educational and Cultural Affairs. Final technical authority for grants resides with the Bureau's Grants Officer.

Review Criteria

Technically eligible applications will be competitively reviewed according to the criteria stated below. These criteria are not rank ordered and all carry equal weight in the proposal evaluation:

1. *Quality of the program idea:* Proposals should exhibit originality, substance, precision, and relevance to the Bureau's mission.

2. *Program planning:* Detailed agenda and relevant work plan should demonstrate substantive undertakings and logistical capacity. Agenda and plan should adhere to the program overview and guidelines described above.

3. *Ability to achieve program objectives:* Objectives should be reasonable, feasible, and flexible. Proposals should clearly demonstrate how the institution will meet the program's objectives and plan.

4. *Multiplier effect/impact:* Proposed programs should strengthen long-term mutual understanding, including maximum sharing of information and establishment of long-term institutional and individual linkages.

5. *Support of Diversity:* Proposals should demonstrate substantive support of the Bureau's policy on diversity. Achievable and relevant features should be cited in both program administration (selection of participants, program venue and program evaluation) and program content (orientation and wrap-up sessions, program meetings, resource materials and follow-up activities).

6. *Institutional Capacity:* Proposed personnel and institutional resources should be adequate and appropriate to achieve the program or project's goals. For technical projects, foreign experts and their local partners will be required to have the necessary education, training and experience for the work to be undertaken, in addition to language skills where applicable.

7. *Institution's Record/Ability:* Proposals should demonstrate an institutional record of successful development or exchange programs, including responsible fiscal management and full compliance with all reporting requirements for past Bureau grants as determined by Bureau Grant Staff. The Bureau will consider the past performance of prior recipients and the demonstrated potential of new applicants. Applicants should have a multiyear track record of successful work in Tibetan regions of China or other remote parts of Asia.

8. *Follow-on Activities:* Proposals should provide a plan for continued follow-on activity (without Bureau support) ensuring that Bureau supported programs are not isolated events.

9. *Project Evaluation:* Proposals should include a plan to evaluate the activity's success, both as the activities unfold and at the end of the program. A draft survey questionnaire or other technique plus description of a methodology to use to link outcomes to original project objectives should be included with the application.

10. *Cost-effectiveness:* The overhead and administrative components of the proposal, including salaries and honoraria, should be kept as low as possible. All other items should be necessary and appropriate.

11. *Cost-sharing:* Proposals should maximize cost sharing through other private sector support as well as institutional direct funding contributions.

Authority

Overall grant making authority for this program is contained in the Mutual Educational and Cultural Exchange Act of 1961, Public Law 87–256, as amended, also known as the Fulbright-Hays Act. The purpose of the Act is "to enable the Government of the United States to increase mutual understanding between the people of the United States and the people of other countries * * *; to strengthen the ties which unite us with other nations by demonstrating the educational and cultural interests, developments, and achievements of the people of the United States and other nations * * * and thus to assist in the development of friendly, sympathetic and peaceful relations between the United States and the other countries of the world." The funding authority for the program above is provided through The Conference Report on the FY–2001 Consolidated Appropriation Act that mandated support for 2001 Tibet Professional and Cultural Exchange Project.

Notice

The terms and conditions published in this RFGP are binding and may not be modified by any Bureau representative. Explanatory information provided by the Bureau that contradicts published language will not be binding. Issuance of the RFGP does not constitute an award commitment on the part of the Government. The Bureau reserves the right to reduce, revise, or increase proposal budgets in accordance with the needs of the program and the availability of funds. Awards made will be subject to periodic reporting and evaluation requirements.

Notification

Final awards cannot be made until funds have been appropriated by Congress, allocated and committed through internal Bureau procedures.

Dated: April 28, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11274 Filed 5–6–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice 4010]

Privacy Act of 1974, as Amended: Altered Systems of Records

Notice is hereby given that the Department of State proposes to alter three systems of records, STATE–02, STATE–11 and STATE–20 pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a(r)), and the Office of Management and Budget Circular No. A–130, Appendix I. The Department's report was filed with the Office of Management and Budget on April 25, 2002.

It is proposed that due to the expanded scope of the current systems, the altered system descriptions will include revisions and/or additions to all sections except the system name. Changes to the existing system descriptions are proposed in order to reflect more accurately the Office of the Legal Adviser's record-keeping systems and a reorganization of activities and operations. Any persons interested in commenting on the altered systems of records may do so by submitting comments in writing to Margaret Peppe; Chief, Programs and Policies Division; Office of IRM Programs and Services; A/RPS/IPS/PP; U.S. Department of State, SA–2; Washington, DC 20522–6001. These systems of records will be effective 40 days from the date of publication, unless we receive comments that will result in a contrary determination.

The altered system descriptions, "Board of AppellateReview, STATE–02," "Extradition Records, STATE–11," and "Legal Adviser Attorney Employment Application Records, STATE–20," will read as set forth below.

Dated: April 25, 2002.

William A. Eaton,

Assistant Secretary for the Bureau of Administration, Department of State.

STATE–02

SYSTEM NAME:

Board of Appellate Review Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals whose appeal in cases involving loss of nationality or the revocation of a passport was decided by the Board of Appellate Review (Board).

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence between the appellant or his/her attorney and the Department, the appellant's passport file*, and copies of decisions rendered by the Board of Appellate Review.

* These records are only held in the Board of Appellate Review Records, STATE–02, for the duration of the review after which they are returned to Passport Records, STATE–26.

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AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

22 CFR part 7 (Board of Appellate Review); 22 CFR part 50 (Nationality Procedures); 22 CFR part 51 (Passports).

PURPOSE(S):

The information collected and maintained records the actions of the Board of Appellate review which directly affects the citizenship and passports of those who appeal Department of State determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is primarily used:

- By the Board to review individual cases under appeal involving loss of U.S. citizenship and revocation of U.S. passport cases;
- By the Board for its value as a body of precedents and as an analysis of relevant law and regulations;
- By the Department of Justice when seeking assistance in determining the citizenship status and passport eligibility of an individual; and
- By attorneys representing the individual.

Also see the "Routine Uses" Paragraph of the PrefatoryStatement published in the **Federal Register** and on our web site at www.foia.state.gov.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director; Office of the Legal Adviser; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Board of Appellate Review might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001. The individual must specify that he/she wishes the Board of Appellate Review Records to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; a brief description of the circumstances that caused the creation of the record and the approximate dates which give the individual cause to believe that the Board of Appellate Review has records about him/her; and preferably his/her social security number.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director; Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records and from his/her passport records.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) records in this system of records may be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I) and (f).

STATE–11

SYSTEM NAME:

Extradition Records.

SECURITY CLASSIFICATION:

Unclassified and classified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520; and overseas at U.S. embassies, U.S. consulates-general and consulates.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals charged with or convicted of an extraditable crime who have fled from the United States and whose return is sought by state or federal law enforcement agencies. Individuals charged with or convicted of an extraditable crime who have been located in the United States and whose return is sought by a foreign government. Individuals charged with or convicted of a state or federal crime in the United States whose return is sought by deportation or expulsion when they have fled the United States for a foreign country.

CATEGORIES OF RECORDS IN THE SYSTEM:

Dossiers documenting U.S. and foreign extradition requests of fugitives who are wanted for trial for, or who have been convicted of, crimes committed within the jurisdiction of the United States or foreign countries. Files may contain the following documents: Correspondence between the Office of the Legal Adviser and the U.S. Department of Justice, state and federal authorities in the U.S., courts of law, attorneys; copies of communications with Foreign Service posts serving as intermediaries in the extradition process; diplomatic correspondence to or from foreign governments; copies of interagency and intra-agency electronic communications; file and attorney notes; supporting documents such as copies of court records of the legal proceedings, including, but not limited to, charging documents such as complaints or indictments, warrants, judgments or conviction records, prosecutor and investigative affidavits, witness statements, applicable legal statutes; and identification information, including photos, fingerprints and identification numbers; committal documents, such as the extradition order, affidavit of waiver, legal briefs and hearing transcript, decision memo to the Secretary of State or to his or her Deputy, and the surrender warrant.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301 (Management of the Department of State); 18 U.S.C. 3181–3196 (Extradition); 22 U.S.C. 2651a (Organization of the Department of State); 22 U.S.C. 3904 (Foreign Relations and Intercourse, Functions of the Foreign Service); 22 U.S.C. 3921 (Management of the Foreign Service); and the U.S. Constitution, Art. VI, sec. 2 (Supremacy of the Constitution, Laws and Treaties).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of the Legal Adviser, Law Enforcement and Intelligence in the administration of its responsibility to facilitate U.S. and foreign requests for fugitives subject to extradition requests in accordance with international treaty obligations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

The information in this system is used exclusively to obtain the arrest and extradition of a fugitive who has committed a felony or extraditable crime and who is the subject of an outstanding domestic or foreign warrant of arrest. Extradition requests and documents are sent to the U.S. Embassy or U.S. Consulate resident in the appropriate countries for transmission to the foreign government, including the foreign ministry and law enforcement agencies. Extradition requests received by the U.S. Department of State from a foreign government are transmitted to the U.S. Department of Justice.

Also see the "Routine Uses" Paragraph of the Prefatory Statement published in the **Federal Register** and on our web site at www.foia.state.gov.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media, hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department and its annexes is controlled by security guards and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive, at which time they will be retired or destroyed in accordance with published record schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Legal Adviser for Law Enforcement and Intelligence, Office of the Legal Adviser; Room 5419; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of the Legal Adviser, Law Enforcement and Intelligence might have records pertaining to themselves should write to the Director; Office of IRM Programs and Services; SA–2; Department of State; 515 22nd Street, NW; Washington, DC 20522–6001. The individual must specify that he/she wishes the Extradition Records to be checked. At a minimum, the individual should include: name; date and place of birth; current mailing address and zip code; signature; and preferably his/her social security number; and a brief description of the circumstances that caused the creation of the record.

RECORD ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to the records pertaining to themselves should write to the Director; Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the U.S. Department of Justice, federal and state law enforcement agencies, state and federal courts, offices of the state and federal prosecutors and similar foreign and diplomatic sources, and attorneys representing the individual.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to 5 U.S.C. 552a (k)(1) and (k)(2) records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

STATE–20

SYSTEM NAME:

Legal Adviser Attorney Employment Application Records.

SECURITY CLASSIFICATION:

Unclassified.

SYSTEM LOCATION:

Department of State; 2201 C Street, NW; Washington, DC 20520.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All attorney applicants for employment with the Office of the Legal Adviser (including unsuccessful applicants).

CATEGORIES OF RECORD IN THE SYSTEM:

All categories of records may include identifying information, such as but not limited to, name, date of birth, home address, mailing and e-mail addresses, social security number, and home telephone number. The recruitment and employment files may contain any of the following documents as well as related documents not otherwise stated: resumes, interview opinions, letters of recommendation, applicant's writing samples, college transcripts, academic/professional references, and applications for Federal employment and associated attachments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 CFR 213.3102(d)&(e)(Excepted service attorney positions); 5 CFR 213.3202(a)(Excepted service student positions); 5 U.S.C. 301 (Management of the Department of State); 22 U.S.C. 2581 (General Authority of Secretary of State); and 22 U.S.C. 2651a (Organization of the Department of State).

PURPOSE(S):

The information contained in this system of records is collected and maintained by the Office of the Legal Adviser in order to fulfill its limited delegation of authority from the Bureau of Human Resources to facilitate the recruiting, processing and appointing of attorneys in the Office of the Legal Adviser.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

The information in the Legal Adviser Attorney Employment Application Records is used primarily to fill vacancies in the Office of the Legal Adviser. Information contained in the files is used:

- By the Bureau's Attorney Recruitment Committee and Executive Office Staff to screen and evaluate potential candidates;
- By the selecting official(s) for possible consideration and assessment; and

• By the Bureau of Human Resources to eventually complete the employment processing of selectees.

Also see the "Routine Uses" paragraph of the Prefatory Statement published in the **Federal Register** and on our web site at www.foia.state.gov.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Electronic media and hard copy.

RETRIEVABILITY:

Individual name.

SAFEGUARDS:

All employees of the Department of State have undergone a thorough background security investigation. Access to the Department of State and its annexes is controlled by security guards, and admission is limited to those individuals possessing a valid identification card or individuals under proper escort. All records containing personal information are maintained in secured file cabinets or in restricted areas, access to which is limited to authorized personnel. Access to computerized files is password-protected and under the direct supervision of the system manager. The system manager has the capability of printing audit trails of access from the computer media, thereby permitting regular and ad hoc monitoring of computer usage.

RETENTION AND DISPOSAL:

These records will be maintained until they become inactive at which time they will be retired or destroyed in accordance with published records schedules of the Department of State and as approved by the National Archives and Records Administration. More specific information may be obtained by writing to the Director, Office of IRM Programs and Services; Department of State; SA–2; 515 22nd Street, NW; Washington, DC 20522–6001.

SYSTEM MANAGER(S) AND ADDRESS:

Executive Director; Office of the Legal Adviser; Department of State; 2201 C Street, NW; Washington, DC 20520.

NOTIFICATION PROCEDURE:

Individuals who have reason to believe that the Office of the Legal Adviser might have records pertaining to themselves should write to the Director, Office of IRM Programs and Services; Department of State; SA–2; 515 22nd Street; NW; Washington, DC 20222–6001. The individual must specify that he/she wishes the Legal Adviser Attorney Employment Application Records to be checked. At a minimum, the individual must include: name; date and place of birth; current mailing address and zip code; signature; and the approximate date on which he/she applied for employment with the Office of the Legal Adviser.

RECORDS ACCESS AND AMENDMENT PROCEDURES:

Individuals who wish to gain access to or amend records pertaining to themselves should write to the Director, Office of IRM Programs and Services (address above).

RECORD SOURCE CATEGORIES:

These records contain information obtained primarily from the individual who is the subject of these records, the Bureau of Human Resources, educational institutions, the Office of the Legal Adviser, and the references provided by the applicant.

SYSTEM EXEMPTED FROM CERTAIN PROVISIONS OF THE PRIVACY ACT:

Pursuant to 5 U.S.C. 552a(k)(5), certain records contained within this system of records are exempted from 5 U.S.C. 552a (c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

[FR Doc. 02–11165 Filed 5–6–02; 8:45 am]

BILLING CODE 4710–24–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Notice With Respect to List of Countries DenyinG Fair Market Opportunities for Government-Funded Airport Construction Projects

AGENCY: Office of the United States Trade Representative.

ACTION: Notice with respect to a list of countries denying fair market opportunities for products and suppliers of the United States in airport construction procurements.

SUMMARY: Pursuant to section 533 of the Airport and Airway Improvement Act of 1982, as amended (49 U.S.C. 50104), the United States Trade Representative ("USTR") has determined not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

DATES: Effective May 1, 2002.

ADDRESSES: Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC, 20508.

FOR FURTHER INFORMATION CONTACT: Karissa Kovner, Director for International Procurement Negotiations, (202) 395–3063; or Mélida Hodgson, Associate General Counsel, (202) 395–3582.

SUPPLEMENTARY INFORMATION: Section 533 of the Airport and Airway Improvement Act of 1982, as amended by section 115 of the Airport and Airway Safety and Capacity Expansion Act of 1987, Pub. L. 100–223 (codified at 49 U.S.C. 50104) ("the Act"), requires USTR to decide by May 1, 2002, whether any foreign countries have denied fair market opportunities to U.S. products, suppliers, or bidders in connection with airport construction projects of $500,000 or more that are funded in whole or in part by the governments of such countries. The list of such countries must be published in the **Federal Register**. For the purposes of the Act, USTR has decided not to include any countries on the list of countries that deny fair market opportunities for U.S. products, suppliers, or bidders in foreign government-funded airport construction projects.

Robert B. Zoellick,

United States Trade Representative.

[FR Doc. 02–11320 Filed 5–6–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, Federal Aviation Administration & DOT.

ACTION: Notice to establish a system of records.

SUMMARY: DOT proposes to establish a new system of records under the Privacy Act of 1974.

EFFECTIVE DATE: June 17, 2002. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Address all comments concerning this notice to Judy Street, Department of Transportation, Federal Aviation Administration, (APF–100), 800 Independence Avenue, SW., Washington, DC 20590, (202) 267–9895.

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax)

Yvonne.Coates@ost.dot.gov (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address. The purpose of this notice is to propose the establishment of a system of records that will enable the Federal Aviation Administration to adequately assess the agency's cost of accomplishing its mission. The data will measure output produced; support management decisions and plans based on the cost information; measure and benchmark the performance of organizations and management; and provide end user services in support of user fees.

DOT/FAA 853

SYSTEM NAME:

Cost Accounting System " Employee Labor Data.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

U. S. Department of Transportation, Federal Aviation Administration (FAA), Assistant Administrator for Financial Services, 800 Independence Avenue, SW., Washington, DC 20591.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Present and former Federal employees of the Federal Aviation Administration.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records may include employee labor charging data containing FAA employee's names, current pay period and year-to-date salaries, and hours worked by FAA organizations on a particular project.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 40101; 49 U.S.C. 40122(g)

PURPOSE(S):

This Cost Accounting System—' Employee Labor Data System will enhance the agency's ability to provide the cost of end-user services in support of user fees; measure and benchmark the agency's financial and operational performance; support management decisions and plans based on reliable cost information; measure and control cost of resources consumed and outputs produced; track individual labor cost directly associated with projects/activities and facilitate the distribution of labor charges and actual operating expenses for costing purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

• To contractors, grantees, experts, consultants, detailees, and other non-FAA employees performing or working on a contract, service, grant, cooperative agreement, or other assignment from the Federal government, when necessary to accomplish an agency function related to this system of records.

• To other government agencies when required by law.

• See the Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

These records are stored on Local Area Network drives, magnetic cartridges, diskettes, and may be in hardcopy format when required.

RETRIEVABILITY:

These records are retrieved by the employee's name, organization, and assigned project numbers.

SAFEGUARDS:

Access to the system of records is restricted to authorized users. Each user is granted access with his or her user name and security password. The user privileges of each user are based on his or her assigned access rights. User access to sensitive data is granted only to limited individuals with the approval of management.

RETENTION AND DISPOSAL:

The records are retained and disposed of in accordance with FAA Order 1350.15 item number 2710 (2) (b), General Financial Records. Records are disposed of when 6 years and 3 months old.

SYSTEM MANAGER(S) AND ADDRESS:

Manager, Cost Accounting Division (APF–300), 800 Independence Avenue, SW., Washington, DC 20591.

NOTIFICATION PROCEDURES:

Write to the System Manager.

RECORD ACCESS PROCEDURES:

Write to the System Manager. Provide full name and a description of information that you seek, including the time frame during which the records may have been generated. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 C.F.R. 10.37).

CONTESTING RECORD PROCEDURES:

Write to the System Manager. Identify the information being contested, the reason for contesting it and the correction requested.

RECORD SOURCE CATEGORIES:

Information contained in this system is obtained from current Privacy Act systems of records, DOT/ALL 11, Integrated Personnel Payroll System (IPPS) and DOT/ALL 7, Departmental Accounting and Financial Information System (DAFIS) and Delphi Accounting System—Management Information Reporting (MIR).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 24, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–10942 Filed 5–6–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Privacy Act of 1974: System of Records

AGENCY: Office of the Secretary, DOT.

ACTION: Notice to establish a system of records.

SUMMARY: DOT proposes to establish a new system of records under the Privacy Act of 1974.

EFFECTIVE DATE: June 17, 2002. If no comments are received, the proposal will become effective on the above date. If comments are received, the comments will be considered and, where adopted, the documents will be republished with changes.

ADDRESSES: Address all comments concerning this notice to Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone).

FOR FURTHER INFORMATION CONTACT: Yvonne L. Coates, Department of Transportation, Office of the Secretary, 400 7th Street, SW., Washington, DC 20590, (202) 366–6964 (telephone), (202) 366–7024 (fax) *Yvonne.Coates@ost.dot.gov* (Internet address).

SUPPLEMENTARY INFORMATION: The Department of Transportation system of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above mentioned address.

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SYSTEM NAME:

Internet/Intranet Activity and Access Records.

SECURITY CLASSIFICATION:

Unclassified, sensitive.

SYSTEM LOCATION:

The system is located in the Department of Transportation. These offices are located within the Office of the Secretary (OST), Federal Aviation Administration (FAA), the United States Coast Guard (USCG), the Research and Special Programs Administration (RSPA), the Federal Highway Safety Administration (FHWA), Federal Motor Carrier Safety Administration (FMCSA), the National Highway Safety Administration (NHTSA), the Federal Transit Administration (FTA), the Maritime Administration (MARAD), the Federal Railroad Administration (FRA), the Bureau of Transportation Statistics (BTS), the St. Lawrence Seaway Development Corporation (SLSDC), Transportation Administrative Service Center (TASC), and the Transportation Security Administration (TSA).

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM OF RECORDS:

All DOT employees, contractors, or other users authorized or unauthorized who access the Internet/Intranet through any of the authorized DOT network computers or mainframe/enterprise servers, including individuals who send and receive electronic communications, access Internet/Intranet sites, or access system databases, files, or applications from DOT computers or sending electronic communications to DOT computers. An "Internet/Intranet Access Point" is one of the authorized gateways, through which all Internet/Intranet traffic passes. For statistical purposes, the system monitors the amount of traffic using different Internet/Intranet protocols, but does not view the content of transmissions (e.g., it does not monitor the text of electronic mail messages).

CATEGORIES OF RECORDS IN THE SYSTEM:

Records and reports in this system may include:

1. The source Internet/Intranet Protocol (IP) address of the computer used to make the Internet/Intranet connection.
2. The destination IP address of the site visited (could include URL address)
3. The date and time of the connection
4. The size of the transmission
5. Keywords propagated by Internet/Intranet web sites
6. Technical machine data as the system may generate (e.g., Machine-name field and Medium Access Control [MAC] address from the last device the machine traversed.)
7. Electronic mail systems, including the email address of sender and receiver of the electronic mail message, subject, date, and time.
8. Profile customization purposes to personalize levels of access.
9. Records on user access to DOT's office automation networks as well as denials of access.
10. Records relating to mainframe/enterprise server access.
11. Verification and authorization records.

Logs of Internet/Intranet access and use from a DOT computer generally do not directly contain names or similar personal identifiers. However, for official government business purposes and through research or investigation, an individual whose PC was assigned an IP address at a given time may be identifiable by name.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

49 U.S.C. 322, 49 U.S.C. 40122(g), 49 U.S.C. 40101, 40 U.S.C. 1441, 5 U.S.C. 302

PURPOSES:

Data in the system of records is used by DOT systems and security personnel or persons authorized to assist these personnel, to plan and manage systems services and otherwise perform their official duties. Such services would include, but are not limited to, analyzing engineering and statistical use data to assist in making business decisions regarding upgrading hardware, software, and communications technology to meet changing Internet/Intranet use requirements.

The system is also used to monitor for improper use.

Authorized managers may use the records in the system to investigate improper use or other improper activity by an employee, contractor or other individual relating to DOT computer systems use or access; to initiate disciplinary or other such action; and/or where the record(s) may appear to indicate a violation or potential violation of law, to refer such record(s) to the appropriate investigative organization within the agency or the Department of Transportation, or to other law enforcement agencies for investigation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

—To provide information to any person(s) authorized to assist in an approved investigation of improper access or usage of DOT computer systems.

—To an actual or potential party or his or her authorized representative for the purpose of negotiation or discussion of such matters as settlement of the case or matter, or informal discovery proceedings.

—To contractors, grantees, experts, consultants, detailees, and other non-DOT employees performing or working on a contract, service, grant cooperative agreement, or other assignment from the Federal government, when necessary to accomplish an agency function related to this system of records.

—To other government agencies where required by law.

—See Prefatory Statement of General Routine Uses.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

None.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

The information is collected at each monitoring location and the data may be merged into computers within DOT. Data may be stored on an internal hard disk and periodically backed up onto magnetic tape. The data on the systems are protected by passwords. Software may be maintained on the firewall server. The length of time of storage may be governed by available disk space on the server. When it is necessary to print a hard copy, copies will be stored in a locked file cabinet.

RETRIEVABILITY:

Records may be retrieved by user name, user ID, e-mail address, or other identifying search term employed, depending on the record category. The Department does not usually connect IP addresses with a person. However, in some instances, for official government business purposes, the Department may connect the IP address with an individual, and records may be retrieved by IP address.

SAFEGUARDS:

To safeguard against the risk of unauthorized disclosure, the DOT maintains the information at secured facilities in limited access areas of the DOT data processing facilities. The systems are also software-protected by a set of multiple passwords. There is backup capability to address issues of availability and continuity of operations. Previous week's backup tapes may be sent to an off-site storage location in some cases.

DOT limits access to monitoring software of the computer(s) to authorized personnel only. In addition, DOT limits who can use the computer(s), and limits dissemination of any passwords used to operate the computer(s). DOT maintains any hard copies of sensitive information in secure file cabinets.

RETENTION AND DISPOSAL:

The information is retained at DOT Headquarters by the system administrators and Regional Administrators. When there is no longer disk space available on the monitors' hard disks, the files are released to the operating system for re-write. This means the files are "marked" internally as eligible for the computer operating system to overwrite with subsequent data. DOT will comply with requirements of the National Archives and Records Administration (NARA). NARA regulations state that electronic files created to monitor system usage are authorized for erasure or deletion when the agency determines that they are no longer needed for administrative, legal, audit, or other operational purposes. Generally, these (and any associated hard copy) files will be authorized for deletion after 30 days unless needed for official purposes. Not all locations, HQ or regions, will be collecting information at all times.

SYSTEM MANAGER(S) AND ADDRESS:

a. Department of Transportation, Office of the Secretary, Office of the Chief Information Officer, S–80, 400 7th Street, SW., Washington, DC 20590.

b. Department of Transportation, Federal Aviation Administration, Assistant Administrator for Information Services and Chief Information Officer, AIO–1, FAA Headquarters, FOB–10A, 800 Independence Avenue, SW., Washington, DC 20591.

c. Department of Transportation, United States Coast Guard Headquarters, Commandant, G–C, 2100 2nd Street, SW., Washington, DC 20593.

d. Department of Transportation, Research and Special Programs Administration, Office of the Administrator, DRP–1, 400 7th Street, SW., Washington, DC 20590.

e. Department of Transportation, Federal Highway Safety Administration, Office of the Federal Highway Administrator, HOA–1, 400 7th Street, SW., Washington, DC 20590.

f. Department of Transportation, Federal Motor Carrier Safety Administration, Office of the Administrator, MC–A, 400 7th Street, SW., Washington, DC 20590.

g. Department of Transportation, National Highway Safety Administration, Office of the Administrator, NOA–01, 400 7th Street, SW., Washington, DC 20590.

h. Department of Transportation, Federal Transit Administration, Office of the Administrator, TOA–1, 400 7th Street, SW., Washington, DC 20590.

i. Department of Transportation, Maritime Administration, Office of Maritime Administrator, MAR–100, 400 7th Street, SW., Washington, DC 20590.

j. Department of Transportation, Federal Railroad Administration, The Administrator, ROA–1, 400 7th Street, SW., Washington, DC 20590.

k. Department of Transportation, Bureau of Transportation Statistics, Office of the Director, K–1, 400 7th Street, SW., Washington, DC 20590.

l. Department of Transportation, St. Lawrence Seaway Development Corporation, The Administrator, 400 7th Street, SW., Washington, DC 20590.

m. Department of Transportation, Transportation Administrative Service Center, Director, SVC–1, 400 7th Street, SW., Washington, DC 20590.

n. Department of Transportation, Transportation Security Administration (TSA), Under Secretary, TSA–1, 400 7th Street, SW., Washington, DC 20590.

NOTIFICATION PROCEDURE:

To determine whether the system may contain records relating to you, write to the System Manager.

RECORD ACCESS PROCEDURES:

Same as "Notification Procedure." Provide full name, assigned computer location, and a description of information that you seek, including the time frame during which the records(s) may have been generated. Individuals requesting access must comply with the Department of Transportation's Privacy Act regulations on verification of identity (49 C.F.R. 10.37).

CONTESTING RECORD PROCEDURES:

Same as "Notification Procedure" and "Record Access Procedure."

RECORD SOURCE CATEGORIES:

Information is collected from computers located at each of the Internet/Intranet Access locations. A software program installed on each of the machines retrieves the information from a hub or connection to the Internet/Intranet. Regional offices may be collecting information from time-to-time. Personal computers at data collection points are used to capture data in a passive mode. Most records are generated internally, i.e., computer activity logs; individuals covered by the system; and management officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

Dated: April 24, 2002.

Yvonne L. Coates,

Privacy Act Coordinator.

[FR Doc. 02–10943 Filed 5–6–02; 8:45 am]

BILLING CODE 4910–62–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Office of Hazardous Materials Safety; Notice of Delays in Processing of Exemption Applications

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applications Delayed more than 180 days.

SUMMARY: In accordance with the requirements of 49 U.S.C. 5117(c), RSPA is publishing the following list of exemption applications that have been in process for 180 days or more. The reason(s) for delay and the expected completion date for action on each application is provided in association with each identified application.

FOR FURTHER INFORMATION CONTACT: J. Suzanne Hedgepeth, Director, Office of Hazardous Materials, Exemptions and Approvals, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, (202) 366–4535.

Key to "Reasons for Delay"

1. Awaiting additional information from applicant
2. Extensive public comment under review
3. Application is technically complex and is of significant impact or precedent-setting and requires extensive analysis
4. Staff review delayed by other priority issues or volume of exemption applications

Meaning of Application Number Suffixes

N—New application
M—Modification request
PM—Party to application with modification request

Issued in Washington, DC, on April 29, 2002.

J. Suzanne Hedgepeth,

Director, Office of Hazardous Materials, Exemptions and Approvals.

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NEW EXEMPTION APPLICATIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
11862–N	The BOC Group, Murray Hill, NJ	4	5/31/2002
11927–N	Alaska Marine Lines, Inc., Seattle, WA	4	5/31/2002
12381–N	Ideal Chemical & Supply Co., Memphis, TN	4	6/28/2002
12412–N	Great Western Chemical Company, Portland, OR	4	6/28/2002
12440–N	Luxfer, Inc., Riverside, CA	4	5/31/2002
12571–N	Air Products & Chemicals, Inc., Allentown, PA	4	6/28/2002
12630–N	Chemetall GmbH Gesellschaft, Langelsheim, DE	4	6/28/2002
12634–N	Normal International, Los Angeles, CA	4	5/31/2002
12648–N	Stress Engineering Services, Inc., Houston, TX	4	5/31/2002
12661–N	United Parcel Service (UPS), Atlanta, GA	4	5/31/2002
12676–N	Hawks Logistics, Edmond, OK	4	6/28/2002
12690–N	Air Liquide America Corporation, Houston, TX	4	6/28/2002
12701–N	Fuel Cell Components & Integrators, Inc., Hauppauge, NY	4	6/28/2002
12706–N	Raufoss Composites AS, Raufoss, NO	4	5/31/2002
12716–N	Air Liquide America Corporation, Houston, TX	4	6/28/2002
12718–N	Weldship Corporation, Bethlehem, PA	4	6/28/2002
12751–N	Defense Technology Corporation, Casper, WY	4	5/31/2002
12753–N	Praxair, Inc., Danbury, CT	4	5/31/2002
12800–N	Department of Energy (DOE), Washington, DC	4	5/31/2002
12820–N	Trinity Manufacturing, Hamlet, NC	4	5/31/2002
12840–N	GreenField Compression, Inc., Richardson, TX	4	6/28/2002
12843–N	United States Enrichment Corporation, Bethesda, MD	4	6/28/2002
12845–N	Qantas Airways Limited, Los Angeles, CA	4	6/28/2002
12859–N	Atlantic Research Corporation, Gainesville, VA	4	6/28/2002
12867–N	G.L.I. Gitergaz, 964 Civray, FR	4	6/28/2002
12872–N	Southern California Edison, San Clemente, CA	4	6/28/2002
12924–N	Infineum USA LP, Linden, NJ	4	6/28/2002

MODIFICATION TO EXEMPTIONS

Application No.	Applicant	Reason for delay	Estimated date of completion
4884–M	Matheson Tri-Gas, East Rutherford, NJ	4	05/31/2002
6805–M	Air Liquide America Corporation, Houston, TX	4	05/31/2002
7007–M	Allied Universal Corp., Miami, FL	4	05/31/2002
7060–M	Federal Express, Memphis, TN	4	06/28/2002
7277–M	Structural Composites Industries, Pomona, CA	4	06/28/2002
8162–M	Structural Composites Industries, Pomona, CA	4	05/31/2002
8308–M	Tradewind Enterprises, Inc., Hillsboro, OR	4	06/28/2002
8308–M	American Courier Express Corporation, Miramar, FL	4	06/28/2002
8554–M	Orica USA Inc., Englewood, CO	4	06/28/2002
8718–M	Structural Composites Industries, Pomona, CA	4	06/28/2002
9884–M	Puritan Bennett Corp (Div. of Tyco Healthcare), Indianapolis, IN	4	05/31/2002
10019–M	Structural Composites Industries, Pomona, CA	4	06/28/2002
10440–M	MASS Systems (A Unit of Ameron Global, Inc.), Baldwin Park, CA	4	06/28/2002
10442–M	Kennedy Space Center, Kennedy Space Center, FL	4	06/28/2002
10832–M	Autoliv ASP, Inc., Ogden, UT	1	05/31/2002
11327–M	Phoenix Services, Inc., Pasadena, MD	1	05/31/2002
11379–M	TRW Automotive Occupant Safety Systems, Washington, MI	4	05/31/2002
11380–M	Baker Atlas (Houston Technology Center), Houston, TX	4	06/28/2002
11537–M	JCI Jones Chemicals, Inc., Milford, VA	4	05/31/2002
11769–M	Great Western Chemical Company, Portland, OR	4	06/28/2002
11769–M	Hydrite Chemical Company, Brookfield, WI	4	05/31/2002
11791–M	The Coleman Company, Inc., Wichita, KS	4	06/28/2002
11850–M	Air Transport Association, Washington, DC	4	05/31/2002
11911–M	Transfer Flow, Inc., Chico, CA	4	05/31/2002
12065–M	Petrolab Company, Latham, NY	4	05/31/2002
12196–M	HR Textron, Pacoima, CA	4	06/28/2002
12449–M	Chlorine Service Company, Inc., Kingwood, TX	4	05/31/2002
12599–M	Voltaix, Inc., North Branch, NJ	4	05/31/2002

[FR Doc. 02–11278 Filed 5–6–02; 8:45 am]
BILLING CODE 4910–60–M

DEPARTMENT OF TREASURY

Information Quality Law Guidelines

AGENCY: Department of Treasury.
ACTION: Notice.

SUMMARY: The Department of Treasury is publishing this notice of availability of the Information Quality Law Guidelines on the agency's website at *www.treas.gov/cio/informationquality.html* to provide an opportunity for the public to comment by May 31, 2002.

EFFECTIVE DATE: April 30, 2002.

FOR FURTHER INFORMATION CONTACT: Patty Haverstick, Office of the Chief Information Officer, Department of Treasury, Washington, DC 20220. Telephone (202) 622–1525 or by email to *prasubmission@do.treas.gov.*

SUPPLMENTARY INFORMATION: On January 3, 2002, OMB published Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information disseminated by Federal Agencies. These guidelines calls upon each agency to develop a draft report not later than May 1, 2002. Treasury Bureaus and Departmental Offices should use these guidelines to develop processes for disseminating quality information. The guidelines apply to information disseminated to the public in any medium including textual, graphic, narrative, numerical, or audiovisual forms. This means information that agencies post to the Internet, as well as Bureau and Departmental Offices sponsored distribution of information. They do not apply to opinions or Hyperlinks to information that others disseminate.

Dated: May 1, 2002.

W. Earl Wright, Jr.,
Chief, Management and Administrative Programs Office.

[FR Doc. 02–11268 Filed 5–6–02; 8:45 am]
BILLING CODE 4811–20–P

DEPARTMENT OF THE TREASURY

Fiscal Service

Surety Companies Acceptable on Federal Bonds: Termination—Columbia Mutual Insurance Company

AGENCY: Financial Management Service, Fiscal Service, Department of the Treasury.
ACTION: Notice.

SUMMARY: This is Supplement No. 25 to the Treasury Department Circular 570; 2001 Revision, published July 2, 2001, at 66 FR 35024.

FOR FURTHER INFORMATION CONTACT: Surety Bond Branch at (202) 874–6696.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Certificate of Authority issued by the Treasury to the above named Company, under the United States Code, Title 31, Sections 9304–9308, to qualify as an acceptable surety on Federal bonds is terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 66 FR 35033, July 2, 2001.

With respect to any bonds currently in force with above listed Company, bond-approving officers may let such bonds run to expiration and need not secure new bonds. However, no new bonds should be accepted from the Company. In addition, bonds that are continuous in nature should not be renewed.

The Circular may be viewed and downloaded through the Internet at *http://www.fms.treas.gov/c570/index.html.* A hard copy may be purchased from the Government Printing Office (FP), Subscription Service, Washington, DC, telephone (202) 512–1800. When ordering the Circular from GPO, use the following stock number: 769–004–04067–1.

Questions concerning this notice may be directed to the U.S. Department of the treasury, Financial Management Service, Financial Accounting and Services Division, Surety Bond Branch, 3700 East-West Highway, Room 6F04, Hyattsville, MD 20782.

Dated: April 24, 2002.

Wand J. Rogers,
Director, Financial Accounting and Services Division, Financial Management Service.

[FR Doc. 02–11222 Filed 5–6–02; 8:45 am]
BILLING CODE 4810–55–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form W–4P

AGENCY: Internal Revenue Service (IRS), Treasury.
ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form W–4P, Withholding Certificate for Pension or Annuity Payments.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Withholding Certificate for Pension or Annuity Payments.

OMB Number: 1545–0415.

Form Number: Form W–4P.

Abstract: Form W–4P is used by the recipient of pension or annuity payments to designate the number of withholding allowances he or she is claiming, an additional amount to be withheld, so that the payer can withhold the proper amount.

Current Actions: There are no changes being made to the form at this time. Type of Review: Extension of a currently approved collection.

Affected Public: Individuals and households.

Estimated Number of Respondents: 12,000,000.

Estimated Time Per Respondent: 2 hrs., 4 min.

Estimated Total Annual Burden Hours: 24,720,000.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB

approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11312 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 730

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 730, Tax on Wagering.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Tax on Wagering.

OMB Number: 1545–0235.

Form Number: Form 730.

Abstract: Form 730 is used to identify taxable wagers under Internal Revenue Code section 4401 and collect the tax monthly. The information is used to determine if persons accepting wagers are correctly reporting the amount of wagers and paying the required tax.

Current Actions: Form 730 has been reformatted to be scannable. New entry boxes have been added for a daytime telephone number, and to indicate a final return. Lines 4a and 4b each have a new entry to allow for the separate computation of tax amounts for wagers authorized under state law (line 4a) and for all other wagers (line 4b).

Type of Review: Revision of a currently approved collection.

Affected Public: Businesses or other for-profit organizations and individuals.

Estimated Number of Respondents: 51,082.

Estimated Time Per Response: 7 hrs., 25 min.

Estimated Total Annual Burden Hours: 378,518.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11313 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–R

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-R, Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Distributions From Pensions, Annuities, Retirement or Profit-Sharing Plans, IRAs, Insurance Contracts, etc.

OMB Number: 1545–0119. Form Number: 1099–R.

Abstract: Form 1099–R is used to report distributions from pensions, annuities, profit-sharing or retirement plans, IRAs, and the surrender of insurance contracts. This information is used by the IRS to verify that income has been properly reported by the recipient.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations, not for-profit institutions, and Federal, state, local or tribal governments.

Estimated Number of Responses: 56,518,218.

Estimated Time Per Response: 18 min.

Estimated Total Annual Burden Hours: 16,955,465.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11314 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 1099–A

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13(44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 1099-A, Acquisition or Abandonment of Secured Property.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Larnice Mack, (202) 622–3179, or through the Internet (*Larnice.Mack@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Acquisition or Abandonment of Secured Property.

OMB Number: 1545–0877.

Form Number: 1099–A.

Abstract: Form 1099–A is used by persons who lend money in connection with a trade or business, and who acquire an interest in the property that is security for the loan or who have reason to know that the property has been abandoned, to report the acquisition or abandonment.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Businesses or other for-profit organizations.

Estimated Number of Responses: 386,356.

Estimated Time Per Response: 10 min. 4 min.

Estimated Total Annual Burden Hours: 61,817.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2002.

Glenn Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11315 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 4684

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 4684, Casualties and Thefts.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or

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copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet(*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Casualties and Thefts.

OMB Number: 1545–0177.

Form Number: 4684.

Abstract: Form 4684 is used by taxpayers to compute their gain or loss from casualties or thefts, and to summarize such gains and losses. The data is used to verify that the correct gain or loss has been computed.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households and business or other for-profit organizations.

Estimated Number of Respondents: 170,000.

Estimated Time Per Respondent: 4 hr., 4 min.

Estimated Total Annual Burden Hours: 691,900.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: April 30, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11316 Filed 5–6–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Bureau of the Public Debt

Proposed Collection: Comment Request

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A). Currently the Bureau of the Public Debt within the Department of the Treasury is soliciting comments concerning the Brand Tracking Survey.

DATES: Written comments should be received on or before July 8, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Bureau of the Public Debt, Vicki S. Thorpe, 200 Third Street, Parkersburg, WV 26106–1328, or *Vicki.Thorpe@bpd.treas.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information should be directed to Vicki S. Thorpe, Bureau of the Public Debt, 200 Third Street, Parkersburg, WV 26106–1328, (304) 480–6553.

SUPPLEMENTARY INFORMATION:

Title: Brand Tracking Survey.

Abstract: The survey will focus on Treasury Direct marketing issues.

Current Actions: None.

Type of Review: New.

Affected Public: Individuals.

Estimated Number of Respondents: 2,600.

Estimated Total Annual Burden Hours: 650.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Dated: May 1, 2002.

Vicki S. Thorpe,

Manager, Graphics, Printing and Records Branch.

[FR Doc. 02–11252 Filed 5–6–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

United States Mint

Request for CCCAC Membership Applications

SUMMARY: The United States Mint is accepting applications for membership to the Citizens Commemorative Coin Advisory Committee (CCCAC). The CCCAC was established in 1993 under Public Law 102–390 to:

- Designate annually the events, persons, or places the committee recommends be commemorated by the issuance of commemorative coins,
- Make recommendations with respect to the mintage level for any commemorative coin recommended,
- Submit a report to the Congress containing a description of the recommendations and the Committee's reasons for such recommendation, and
- Review and comment on proposed designs for commemorative coins and the 50 State Quarters® Program.

Membership consists of seven voting members appointed to 4-year terms by the Secretary of the Treasury:

- Three members shall be appointed from among individuals specially qualified to serve by reason of their education, training or experience in art, art history, museum or numismatic collection curation, or numismatics,
- Three members shall be appointed from among individuals who will represent the interest of the general public, and
- One member shall be appointed from officers or employees of the United States Mint to represent the interests of the United States Mint.

The Committee is subject to the direction of the Secretary of the Treasury. The United States Mint is responsible for providing the necessary support services for the Committee. Committee members are not paid for their time or services, but, consistent with Federal Travel Regulations, members are reimbursed for their travel and lodging expenses to attend approximately two meetings each year. Members may be subject to the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR part 2653).

The United States Mint will review all submissions and will forward its recommendations to the Secretary of the Treasury for appointment consideration. Candidates who believe that they are specially qualified to serve by reason of their education, training, or experience in the fields of art, art history, museum or numismatic collection curation, or numismatics should include specific skills, abilities, talents, and credentials to support their applications. All candidates should submit any relevant information that demonstrates their qualifications to represent the interests of the public, including demonstrated experience with history, education, youth or American heritage and culture. The United States Mint is also interested in candidates who have demonstrated leadership skills, who have received recognition by their peers in their field of interest, who have a record of participation in public service or activities, and who are willing to commit the time and effort to participate in the Committee meetings and related activities.

Application Deadline: May 16, 2002.

Receipt of Applications: Any member of the public wishing to be considered for participation on the committee should submit a resume, or letter describing qualifications for membership, by e-mail to *cccacmembership@usmint.treas.gov* or by mail to the United States Mint, 801 9th Street, NW, Washington, DC 20001, Attn: CCCAC Membership. Submissions must be postmarked no later than May 16, 2002.

Dated: May 1, 2002.

Henrietta Holsman Fore,

Director, United States Mint.

[FR Doc. 02–11213 Filed 5–6–02; 8:45 am]

BILLING CODE 4810–37–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0075]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0075."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0075" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Statement in Support of Claim, VA Form 21–4138.

OMB Control Number: 2900–0075.

Type of Review: Extension of a currently approved collection.

Abstract: Claimants use VA Form 21–4138 to provide self-certified statements that the information provided to VA is true and correct in support of various types of claims processed by the agency.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2002, at pages 8065 and 8066.

Affected Public: Individuals or households.

Estimated Annual Burden: 188,000 hours.

Estimated Average Burden Per Respondent: 15 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 752,000.

Dated: April 23, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–11232 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0216]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0216."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0216" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Reimbursement from Accrued Amounts Due a Deceased Beneficiary, VA Form 21–601.

OMB Control Number: 2900–0216.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to file a claim for accrued benefits available at the time of the veteran's death. The information is used to determine the appropriate claimant eligibility for accrued benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on March 22, 2002, at pages 13413–13414.

Affected Public: Individuals or households, and Business or other for profit.

Estimated Annual Burden: 1,875 hours.

Estimated Average Burden Per Respondent: 30 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 3,750.

Dated: April 26, 2002.

By direction of the Secretary:

Barbara H. Epps,

Management Analyst, Information Management Service.

[FR Doc. 02–11233 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0270]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0270." Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0270" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Financial Counseling Statement, VA Form 26–8844.

OMB Control Number: 2900–0270.

Type of Review: Extension of a currently approved collection.

Abstract: The form is an integral part of VA's supplemental servicing program for helping veteran-borrowers who are seriously delinquent on guaranteed or insured VA home loans. In VA's supplemental servicing effort, financial counseling is performed in appropriate cases to afford veteran-borrowers the maximum assistance possible to retain their homes during periods of temporary financial difficulty. The information collected is used to make recommendations to the borrower in an effort to help the borrower cure the default status of the loan.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2002, at pages 8067 and 8068.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,750 hours.

Estimated Average Burden Per Respondent: 45 minutes.

Frequency of Response: On occasion.

Estimated Number of Total Respondents: 5,000.

Dated: April 23, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–11234 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0463]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION OR A COPY OF THE SUBMISSION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0463."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0463" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Notice of Waiver of VA Compensation or Pension to Receive Military Pay and Allowances, VA Form 21–8951 and VA Form 21–8951–2.

OMB Control Number: 2900–0463.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–8951 and 21–8951–2 are used by reservist/guardsman to waive disability benefits paid by VA in order to receive pay for inactive duty training.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2002, at page 8068.

Affected Public: Individuals or households.

Estimated Annual Burden: 3,500 hours.

Estimated Average Burden Per Respondent: 10 minutes.

Frequency of Response: Annually.

Estimated Number of Respondents: 21,000.

Dated: April 23, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–11235 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0503]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 et seq.), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW, Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0503."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0503" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Veterans Mortgage Life Insurance—Change of Address Statement, VA Form 29–0563.

OMB Control Number: 2900–0503.

Type of Review: Extension of a currently approved collection.

Abstract: The form is used to inquire about a veteran's continued ownership of the property issued under Veterans Mortgage Life Insurance when an address change for the veteran is received. The information collected is used in determining whether continued Veterans Mortgage Life Insurance coverage is applicable since the law granting this insurance provides that coverage terminates if the veteran no longer owns the property.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2002, at page 8066.

Affected Public: Individuals or households.

Estimated Annual Burden: 240 hours.

Estimated Average Burden Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Number of Respondents: 240.

Dated: April 23, 2002.

By direction of the Secretary.

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–11236 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–P

DEPARTMENT OF VETERANS AFFAIRS

[OMB Control No. 2900–0027]

Agency Information Collection Activities Under OMB Review

AGENCY: Veterans Benefits Administration, Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C., 3501 *et seq.*), this notice announces that the Veterans Benefits Administration (VBA), Department of Veterans Affairs, has submitted the collection of information abstracted below to the Office of Management and Budget (OMB) for review and comment. The PRA submission describes the nature of the information collection and its expected cost and burden; it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 6, 2002.

FOR FURTHER INFORMATION CONTACT: Denise McLamb, Information Management Service (045A4), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 273–8030, FAX (202) 273–5981 or e-mail: *denise.mclamb@mail.va.gov.* Please refer to "OMB Control No. 2900–0027."

Send comments and recommendations concerning any aspect of the information collection to VA's OMB Desk Officer, OMB Human Resources and Housing Branch, New Executive Office Building, Room 10235, Washington, DC 20503 (202) 395–7316. Please refer to "OMB Control No. 2900–0027" in any correspondence.

SUPPLEMENTARY INFORMATION:

Title: Application for Accrued Benefits by Veteran's Surviving Spouse, Child, or Dependent Parent, (Prior Law Pension Due at the Veteran's Death Which Was Withheld From the Veteran's Payments During Hospitalization, Institutional or Domiciliary Care), VA Form 21–551.

OMB Control Number: 2900–0027.

Type of Review: Extension of a currently approved collection.

Abstract: VA Form 21–551 is used by a surviving spouse, child, children, or dependent parent in applying for lump sum payment of pension authorized but withheld from the veteran during hospital treatment, institutional, or domiciliary care. The information is used to determine a claimant's entitlement to such benefits.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information unless it displays a currently valid OMB control number. The **Federal Register** Notice with a 60-day comment period soliciting comments on this collection of information was published on February 21, 2002, at page 8067.

Affected Public: Individuals or households.

Estimated Annual Burden: 33 hours.

Estimated Average Burden Per Respondent: 20 minutes.

Frequency of Response: On Occasion.

Estimated Number of Respondents: 100.

Dated: April 23, 2002.

By direction of the Secretary:

Genie McCully,

Acting Director, Information Management Service.

[FR Doc. 02–11237 Filed 5–6–02; 8:45 am]

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DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Homeless Veterans; Notice of Meeting

The Department of Veterans Affairs (VA) gives notice under Public Law 92–463 (Federal Advisory Committee Act) that the Advisory Committee on homeless Veterans will hold it's first meeting from Monday, June 3, 2002 through Wednesday, June 5, 2002, at the Ronald Reagan Building, in Rooms Meridian D & E, 1300 Pennsylvania Avenue, NW., Washington, DC. The meeting will convene daily at 8:30 a.m. and conclude Monday and Tuesday at 4:30 p.m. and Wednesday at 11:45 a.m. The meeting is open to the public.

The purpose of the Committee is to advise the Secretary of Veterans Affairs on the effectiveness of the policies, organizational structures, and services of the Department in assisting homeless veterans. The Committee shall assemble and review information relating to the needs of homeless veterans and provide advice on the most appropriate means of providing assistance to homeless veterans. The Committee will make recommendations to the Secretary regarding such activities.

On June 3, the Committee will convene its opening session with discussions on the mission and objectives of the Committee, an ethics briefing, and presentations on programs offered by the Veterans Health Administration. On June 4, the Committee will receive briefings from the Veterans Benefit Administration, the Veterans Health Administration, the National Cemetery Administration as well as information regarding other Federal programs that assist homeless veterans. On June 5, the Committee will conclude with a review of previous presentations and a discussion of action items for the Committee.

Those wishing to attend the meeting should contact Mr. Pete Dougherty, Department of Veterans Affairs, at (202) 273–5764. No time will be allocated for receiving oral presentations from the public. However, the Committee will accept written comments from interested parties on issues affecting homeless veterans. Such comments should be referred to the Committee at the following address: Advisory Committee on Homeless Veterans, Homeless Veterans Programs Office (075D), U.S. Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420.

Dated: April 29, 2002.

By direction of the Secretary.

Nora E. Egan,

Committee Management Officer.

[FR Doc. 02–11238 Filed 5–6–02; 8:45 am]

BILLING CODE 8320–01–M

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Consult the Reader Aids section at the end of this issue for phone numbers, online resources, finding aids, reminders, and notice of recently enacted public laws.
To subscribe to the Federal Register Table of Contents LISTSERV electronic mailing list, go to http://listserv.access.gpo.gov and select Online mailing list archives, FEDREGTOC-L, Join or leave the list (or change settings); then follow the instructions.

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Rules and Regulations

Federal Register
Vol. 67, No. 89
Wednesday, May 8, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

5 CFR Chapter VII

Removal of CFR Chapter

Effective November 15, 1995, the Advisory Commission on Intergovernmental Relations (ACIR) was terminated by the Treasury, Postal Service, and General Government Appropriations Act of 1996, Pub. L. 104–52, 109 Stat. 468. On October 19, 1996, in Pub. L. 104–328, 110 Stat. 4004, Congress provided for the continued existence of the ACIR solely for the purposes of performing any contract entered into pursuant to section 7(a) of the National Gambling Impact Study Commission Act (NGISCA) (Pub. L. 104–169, 110 Stat. 1487 (1996)). Under § 7(a) of the NGISCA the ACIR was required to submit a report to the National Gambling Impact Study Commission on the results of its efforts under the contract no later than 15 months after the first meeting of the National Gambling Impact Study Commission. Pursuant to Pub. L. 104–328, 110 Stat. 4004, the ACIR would terminate on the date of the completion of the contract. The final report of the National Gambling Impact Study Commission was published in 1999. Upon publication of the final report of the National Gambling Impact Study Commission, the statutory requirements of both the National Gambling Impact Study Commission and the ACIR were completed. Therefore, the **Office of the Federal Register** is removing ACIR regulations from the Code of Federal Regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR Part 8.

Accordingly, 5 CFR is amended by removing parts 1700 through 1720 and vacating Chapter VII.

[FR Doc. 02–55514 Filed 5–7–02; 8:45 am]
BILLING CODE 1505–01–D

NORTHEAST DAIRY COMPACT COMMISSION

7 CFR Chapter XIII

Removal of CFR Chapter

Effective September 30, 2001, Congressional consent for the implementation of the Northeast Interstate Dairy Compact and the operations of the Northeast Interstate Dairy Compact Commission (NEDCC) was terminated under the provisions of 7 U.S.C. 7256. Therefore, the **Office of the Federal Register** is removing NEDCC regulations from the Code of Federal Regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR Part 8.

Accordingly, 7 CFR is amended by removing parts 1300 through 1381 and vacating Chapter XIII.

[FR Doc. 02–55513 Filed 5–7–02; 8:45 am]
BILLING CODE 1505–01–D

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 02–029–1]

Citrus Canker; Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the citrus canker regulations by removing a portion of Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the Duette area of Manatee County, FL, has been free of citrus canker since February 4, 2000. This action removes restrictions on the interstate movement of regulated articles from that portion of Manatee County, FL.

DATES: This interim rule is effective May 8, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 8, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–029–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–029–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–029–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Poe, Operations Officer, Surveillance and Emergency Programs Planning and Coordination, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737; (301) 734–8899.

SUPPLEMENTARY INFORMATION:

Background

Citrus canker is a plant disease that affects plants and plant parts, including fresh fruit, of citrus and citrus relatives (Family *Rutaceae*). Citrus canker can cause defoliation and other serious damage to the leaves and twigs of susceptible plants. It can also cause lesions on the fruit of infected plants, which render the fruit unmarketable,

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and cause infected fruit to drop from the trees before reaching maturity. The aggressive A (Asiatic) strain of citrus canker can infect susceptible plants rapidly and lead to extensive economic losses in commercial citrus-producing areas.

The regulations to prevent the interstate spread of citrus canker are contained in 7 CFR 301.75–1 through 301.75–16 (referred to below as the regulations). The regulations restrict the interstate movement of regulated articles from and through areas quarantined because of citrus canker and provide for the designation of survey areas around quarantined areas. Survey areas undergo close monitoring by Animal and Plant Health Inspection Service and State inspectors for citrus canker and serve as buffer zones against the disease.

Under § 301.75–4(c) of the regulations, any State or portion of a State where an infestation is detected will be designated as a quarantined area and will retain that designation until the area has been free from citrus canker for 2 years. A 41-square-mile area in the eastern part of Manatee County, FL, has been free of citrus canker since February 4, 2000, and has thus met the requirement for declaration of eradication—that an area be free from citrus canker for a period of at least 2 years. This area, which has been known as the Duette quarantined area, is described as, "That portion of the county bounded by a line drawn as follows: Beginning at the northwest corner of sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E.; then east along sec. 8, 9, 10, 11, and 12, T. 33 S., R. 21 E., to sec. 12, T. 33 S., R. 21 E.; then south along sec. 12, T. 33 S., R. 21 E., to sec. 18, 19, 30, and 31, T. 33 S., R. 22 E.; then east along sec. 18, 19, 30, and 31, T. 33 S., R. 22 E., to sec. 6, T. 34 S., R. 22 E.; then south along sec. 6, T. 34 S., R. 22 E., to sec. 7, T. 34 S., R. 22 E.; then west along sec. 7, T. 34 S., R. 22 E., to sec. 12, 11, 10, and 9, T. 34 S., R. 21 E.; then south along sec. 12, 11, 10, and 9, T. 34 S., R. 21 E., to sec. 8 and 5, T. 34 S., R. 21 E.; then north along sec. 8 and 5, T. 34 S., R. 21 E., to sec. 31, 29, 20, 17, and 8, T. 33 S., R. 21 E.; then north along sec. 31, 29, 20, 17, and 8, T. 33 S., R. 12 E., to the point of beginning."

Regular and complete surveys have been conducted on an approximately monthly basis since the infestation was first detected, including that time from the destruction of the last infected tree on February 4, 2000, to the present. Surveys have been conducted of all citrus trees located in both commercial groves and at residential properties. In addition, any wild citrus that was observed in the area has also been surveyed.

Although not required as a condition of declaring eradication in an area, in this case all abandoned citrus orchards in the area have also been removed. Abandoned citrus groves present a challenge in conducting surveys, and thus the removal of these groves increases our confidence that citrus canker is no longer present in this area.

Therefore, we are amending the citrus canker regulations by removing the Duette area in Manatee County, FL, from the list of quarantined areas in § 301.75–4(a). This action removes restrictions on the interstate movement of regulated articles from and through the Duette area of Manatee County, FL.

Immediate Action

Immediate action is warranted to remove restrictions on the interstate movement of regulated articles from and through the portion of Manatee County, FL, that we are removing from the list of quarantined areas based on its freedom from citrus canker for a period of at least 2 years. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the citrus canker regulations by removing a portion of the quarantined area in Manatee County, FL, from the list of quarantined areas. The regulations require that an area be free from citrus canker for a period of at least 2 years before it may be removed from the list of quarantined areas. Surveys have shown that the 41-square-mile Duette quarantined area in eastern Manatee County, FL, has been free of citrus canker since February 4, 2000. This action removes restrictions on the interstate movement of regulated articles from the Duette area of Manatee County, FL.

The area to be removed from quarantine, totaling 41 square miles or 26,240 acres, represents a relatively small portion of citrus production in Manatee County. Even if the area consisted entirely of citrus acreage, which it does not, the 26,240 acres would be equivalent to approximately 3 percent of Florida's total citrus acreage. The table below shows statistics for Manatee County after trees were removed to limit the spread of citrus canker.

	Boxes of citrus produced in 2000–2001 season	Total acres January 2000	Total number of trees January 2000
All Round Oranges	7,791,000	21,236	2,631,200
All Grapefruit	400,000	1,197	111,900
Specialty Fruit	151,000	821	98,300
All Citrus	8,342,000	23,254	2,841,400

Source: Florida Agricultural Statistics Service, "Citrus Summary 2000–01," January 2002.

Most of the citrus producers in and around the Duette quarantined area would qualify as small businesses under Small Business Administration (SBA) guidelines. The Regulatory Flexibility Act requires that the Agency specifically consider the economic impact on small entities associated with rule changes. The SBA defines a firm engaged in agriculture as "small" if it has less than $750,000 in annual receipts.

This interim rule will not impose any costs on affected citrus producers and should offer them some benefits. Citrus producers in the Duette area will have the option of replanting trees in the previously quarantined area and have greater choice of where to market their fruit.

The benefits of releasing the Duette area from quarantine restrictions are likely to be small, however. How much of the newly unrestricted area will be replanted in citrus is unknown. In general, citrus prices have been soft, so it is uncertain whether a large portion of the acreage will be replanted in citrus in the short run. Of course, it takes several years for citrus trees to become productive, so any decision to replant will have to be based on the grower's perception of the market conditions for citrus several years in the future. Taking these factors into account, we anticipate that producer incomes or expenses are unlikely to be affected in a significant way.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, we are amending 7 CFR part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

§ 301.75–4 [Amended]

2. In § 301.75–4, paragraph (a), in the entry for Manatee County, the second paragraph is removed.

Done in Washington, DC, this 2nd day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11459 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL RESERVE SYSTEM

12 CFR Part 203

[Regulation C; Docket No. R–1001]

Home Mortgage Disclosure

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rules; delay of effective date.

SUMMARY: On February 15, 2002, the Board published in the Federal Register amendments to Regulation C effective for data collected beginning January 1, 2003, and solicited comment on several related issues with a comment period that closed on April 12. Financial institutions and their trade associations requested a postponement of the effective date until January 1, 2004, on the grounds that a 2003 deadline does not afford institutions adequate time to take the steps necessary to ensure full compliance with the new rules (including reprogramming their data systems and retraining their employees). Consumer and community organizations generally opposed postponement of the effective date. The Board has weighed the financial institutions' claims and underlying assumptions against public policy benefits of collecting the new data as soon as possible. The Board believes that some HMDA reporters, especially the largest ones, will not be able to fully implement the new rules by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. Accordingly, the Board is changing the effective date of the amendments from January 1, 2003, to January 1, 2004. The Board is, however, adopting an interim amendment to Appendix A, effective January 1, 2003, mandating the use of 2000 census data.

DATES: The effective date of the amendments to Regulation C (12 CFR part 203) published February 15, 2002, at 67 FR 7222 is delayed from January 1, 2003, to January 1, 2004. The interim amendment to Appendix A to part 203 contained herein is effective January 1, 2003.

FOR FURTHER INFORMATION CONTACT: Kathleen C. Ryan, Senior Attorney, or Dan S. Sokolov, Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452–3667 or (202) 452–2412. For users of Telecommunications Device for the Deaf (TDD) *only*, contact (202) 263–4869.

SUPPLEMENTARY INFORMATION:

I. Background

On February 15, 2002, the Board published in the **Federal Register** significant changes to Regulation C that expanded its coverage, redefined key terms, and required the collection of additional categories of data, including loan pricing data (the spread between the annual percentage rate on a loan and the yield on comparable Treasury securities). (67 FR 7222) The Board made the changes effective for data collected beginning January 1, 2003, and reported in March 2004.

In a related action, the Board sought public comment on a proposed rule to require lenders to report lien status for applications and originated loans and to ask telephone applicants their ethnicity, race, and sex. The Board also sought comment on the appropriate percentage thresholds for the reporting of loan pricing data. The public comment period closed on April 12, 2002.

II. Postponement of the Effective Date

Some financial institutions and several major trade associations submitted letters indicating that the January 1, 2003, effective date does not give financial institutions adequate time to implement the amendments effectively and efficiently. These commenters explained that, to comply with the amendments, the typical institution must take multiple steps including reprogramming systems for data collection, processing, and reporting; testing the software changes; and retraining employees, which ideally awaits development and testing of the software they will use. Commenters stated that these steps are particularly

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complex and time-consuming for large institutions with several interfacing data systems; employees in numerous locations and departments; and relationships with affiliates and with many third party brokers. Moreover, the commenters submit that the time available to them to accomplish these steps is even more limited than might appear given that they cannot get the changes fully under way until the Board acts on the proposed rule.

The Board also solicited input from consumer and community organizations. Their representatives generally oppose a postponement, and argue that forgoing even temporarily the anticipated public policy benefits of the amendments would be a substantial cost to the public. They believe that financial institutions are generally able to comply with a January 1, 2003, effective date without compromising the quality of the data.

There are significant public policy benefits to collecting the data as soon as possible, but those benefits will accrue only if the data are reliable and accurate. The Board believes that some HMDA reporters, especially the largest ones, will not be able to fully implement the new rule by January 1, 2003, without jeopardizing the quality and usefulness of the data and incurring substantial additional implementation costs that could be avoided by a postponement. Accordingly, the Board is changing the effective date of the revisions to Regulation C published on February 15, 2002, from January 1, 2003, to January 1, 2004.

III. Change That Will Take Effect on January 1, 2003: 2000 Census Data

The requirement to use 2000 census data rather than 1990 census data will become effective January 1, 2003, as previously scheduled. The change is implemented by an interim amendment to the current provisions in Appendix A concerning census data.

Changing to 2000 census tracts will make the HMDA data substantially more useful. Many of the output tables that comprise the individual institutions' HMDA disclosures and the aggregate disclosure statements for metropolitan areas rely on population and other characteristics for given census tracts (for example, the distribution of a census tract's residents by their income level). Given the many changes that have occurred since 1990, use of 2000 census tracts and demographics will produce more accurate and useful data in the HMDA disclosure statements and aggregate reports. Updated information will enhance evaluations under the Community Reinvestment Act, which rely on census data. The burden of changing to 2000 census tracts is mitigated by the availability of geocoding services from public and private sources, and should be about the same regardless of the effective date.

IV. Pending Item on Telephone Applications

The comment period on several items related to the final amendments to Regulation C closed on April 12. The Board has not yet taken final action. One item is a proposed amendment requiring lenders to ask telephone applicants for their race, ethnicity, and sex. This proposed amendment does not appear to require substantial changes to institutions' data systems. Accordingly, if the amendment is adopted, it may be made effective January 1, 2003, to reduce the risk of a further increase in the rate of missing data on race, ethnicity, and sex.

List of Subjects in 12 CFR Part 203

Banks, Banking, Federal Reserve System, Mortgages, Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 203 as follows:

PART 203—HOME MORTAGE DISCLOSURE (REGULATION C)

1. The authority citation for part 203 continues to read as follows:

Authority: 12 U.S.C. 2801–2810.

2. Appendix A, paragraphs V.C.3.b. and V.C.4., are amended by removing "1990" and adding "2000" in its place wherever it appears.

By order of the Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11343 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 609 and 620

RIN 3052–AC02

Electronic Commerce; Disclosure to Shareholders; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 609 and 620 on April 8, 2002 (67 FR 16627). This final rule creates a new part on Electronic Commerce (E-commerce) and amends another part to specifically allow electronic disclosures. These changes reflect emerging business approaches to E-commerce. The final rule removes regulatory barriers to E-commerce and creates a flexible regulatory environment that facilitates the safe and sound use of new technologies by Farm Credit System (System) institutions and their customers. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 8, 2002.

EFFECTIVE DATE: The regulation amending 12 CFR parts 609 and 620 published on April 8, 2002 (67 FR 16627) is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Dale Aultman, Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434; or Jane Virga, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 3, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

[FR Doc. 02–11400 Filed 5–7–02; 8:45 am]

BILLING CODE 6705–01–P

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Parts 790 and 792

Description of NCUA; Requests for Agency Action and Requests for Information under the Freedom Of Information Act and Privacy Act, and by Subpoena; Security Procedures for Classified Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Final rule.

SUMMARY: The National Credit Union Administration (NCUA) Board approved its fiscal year 2002 budget at its November 15, 2002, board meeting. The fiscal year 2002 budget includes several changes to NCUA's central office structure that will reduce costs and improve efficiency at the agency. The changes involve the elimination of some offices and a transfer of the duties of those offices to either existing offices or the newly created Office of Strategic Program Support and Planning (OSPSP).

EFFECTIVE DATE: This rule is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Rupp, Staff Attorney, Division of Operations, Office of General Counsel, (703) 518–6540, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428.

SUPPLEMENTARY INFORMATION: NCUA in conjunction with its fiscal year 2002 budget is restructuring its central office. This restructuring consists of: establishing an OSPSP; transferring the functions of the Office of Investment Services (OIS) and the Director of Strategic Planning (DSP) into OSPSP; transferring the functions of the Office of Administration (OA) to the Office of Chief Information Officer (OCIO), the Office of Public and Congressional Affairs (PACA) and the Office of the Chief Financial Officer (OCFO); and integrating the Office of Training (OTD) into the Office of Human Resources (OHR). The NCUA Board is amending parts 790 and 792 of its regulations, to conform them to the restructured central office. 12 CFR parts 790 and 792.

Regulatory Procedures

Final Rule Under the Administrative Procedure Act

The revisions made to this part are not subject to the notice and comment provisions of the Administrative Procedure Act (APA), 5 U.S.C. 551 *et seq.* The final rule revisions relate only to matters relating to agency management and personnel, topics exempt from APA requirements. 5 U.S.C. 553(a)(2).

Effective Date

NCUA also finds good cause to dispense with the 30-day delayed effective date requirement under sec. 553(d)(3) of the APA. The rule relates only to internal agency procedures and does not affect the public. The rule will, therefore, be effective immediately upon publication of this notice.

Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act is required only when an agency is required to publish a general notice of proposed rulemaking for any proposed rule. 5 U.S.C. 603. As noted previously, NCUA has determined that it is unnecessary to publish a notice of proposed rulemaking for this rule. Accordingly, an initial regulatory analysis is not required. Moreover, since this final rule imposes no new requirements and makes only housekeeping amendments, NCUA has determined and certifies that this rule will not have any significant economic impact on a substantial number of small credit unions (primarily those under $1 million in assets).

Small Business Regulatory Enforcement Fairness Act

Title II of the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 (Pub. L. 104–121) provides, generally, for congressional review of agency rules. A reporting requirement is triggered in instances where NCUA issues a final rule as defined by Section 551 of the Administrative Procedures Act. 5 U.S.C. 551. The Office of Management and Budget has reviewed this rule and has determined that for purposes of the Small Business Regulatory Enforcement Fairness Act of 1996 it is not a major rule.

Paperwork Reduction Act

NCUA has determined that the final rule does not increase paperwork requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and regulations of the Office of Management and Budget.

Executive Order 13132 Statement

Executive Order 13132 encourages independent regulatory agencies to consider the impact of their regulatory actions on state and local interests. In adherence to fundamental federalism principles, NCUA, an independent regulatory agency as defined in 44 U.S.C. 3502(5), voluntarily complies with the executive order. NCUA has determined that this final rule does not constitute a policy that has federalism implications for purposes of the executive order.

List of Subjects

12 CFR Parts 790 and 792

Credit unions.

By the National Credit Union Administration Board on April 29, 2002.

Becky Baker,

Secretary of the Board.

For the reasons stated in the preamble, NCUA amends 12 CFR chapter VII as set forth below:

PART 790—DESCRIPTION OF NCUA; REQUESTS FOR AGENCY ACTION

1. The authority citation for part 790 continues to read as follows:

Authority: 12 U.S.C. 1766, 1789, 1795f.

2. Amend § 790.2 as follows:

a. Remove paragraphs (b)(3), and (b)(15);

b. Redesignate paragraphs (b)(4) through (b)(14) as paragraphs (b)(3) through (b)(13) and paragraph (b)(16) as paragraph (b)(14);

c. Add one new sentence to the end of redesignated paragraphs (b)(4), (b)(8), (b)(9) and (b)(11);

d. Add "and carrying out the Board's responsibilities under the Privacy Act" to the end of the last sentence of redesignated paragraph (b)(7); and

e. Revise redesignated paragraph (b)(13) as follows:

§ 790.2 Central and Regional Office Organization.

* * * * *

(b) * * *

(4) * * * The Director is also responsible for providing NCUA's executive offices and Regional Directors with administrative services, including: agency security; contracting and procurement; management of equipment and supplies; acquisition; printing; and warehousing and distribution.

* * * * *

(8) * * * The Director is also responsible for providing a comprehensive program for the training and development of NCUA's staff, including developing policy consistent with the Government Employees Training Act; providing training opportunities equitably so that all employees have the skills necessary to help meet the agency's mission; evaluating the agency's training and development efforts; and ensuring that the agencies training monies are spent in a cost efficient manner and in accordance with the law.

(9) * * * The Chief Information Officer is also responsible for carrying out the Board's responsibilities under the Paperwork Reduction Act and in directing NCUA responses to reporting requirements.

* * * * *

(11) * * *. The Director is also responsible for providing NCUA's executive offices and Regional Directors with graphics.

* * * * *

(13) *Office of Strategic Program Support and Planning.* This office is responsible for providing interest rate risk assessment, investment expertise and advice to the Board and agency staff and conducting research and development to assess risk areas of emerging products, delivery systems, infrastructure issues, and investments. The office provides leadership, vision and focus on the internal and external environment related to the development

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of the agency's long range planning and implementation of the Government Performance Act of 1993. The office provides a macro view of the industry in a way that can be integrated into the day-to-day program functions. A working relationship is maintained with the financial marketplace to develop resources available to the NCUA and keep abreast of product initiatives. The NCUA Investment Hotline housed in this office is a toll-free number that is available to examiners, credit unions and financial product vendors to ask investment related questions. The Hotline provides NCUA an opportunity to be aware of current investment issues as they arise in credit unions and has permitted NCUA to become proactive, rather than reactive, to such issues. In addition, investment officers advise agency management on the purchase of authorized investments for the NCUSIF and the CLF.

* * * * *

PART 792—REQUESTS FOR INFORMATION UNDER THE FREEDOM OF INFORMATION ACT AND PRIVACY ACT, AND BY SUBPOENA; SECURITY PROCEDURES FOR CLASSIFIED INFORMATION

3. The authority citation for part 792 continues to read as follows:

Authority: 12 U.S.C. 1766, 12 U.S.C. 1789, 12 U.S.C. 1795f, 5 U.S.C. 552b, Executive Orders 12600 and 12356.

§ 792.50 [Amended]

4. In 12 CFR 792.50(b) remove the last sentence.

§ 792.51 [Amended]

5. In 12 CFR 792.51(b) remove the words "Administrative Office" in the third sentence and add in their place, the words "Office of Chief Financial Officer".

§§ 792.50 and 792.51 [Amended]

6. In addition to the amendments set forth above, in 12 CFR part 792 remove the words "Director of Office of Administration" and add in their place, the words "NCUA's Chief Financial Officer" and remove the words "Director" and add in their place, the words "Chief Financial Officer" in the following places:

a. Section 792.50 (a) and (b); and
b. Section 792.51(a), (b), (c) and (d).

§ 792.54 [Amended]

7. In 12 CFR 792.54(a) remove the words "Director of the Administrative Office" in the second sentence and add in their place the words "Privacy Act Officer, Office of General Counsel."

§ 792.69 [Amended]

7. In 12 CFR 792.69(a) remove the words "Director of the Office of Training and Development" and add in their place the words "Director of the Office of Human Resources."

[FR Doc. 02–11220 Filed 5–7–02; 8:45 am]

BILLING CODE 7535–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NE–04–AD; Amendment 39–12743; AD 2002–09–10]

RIN 2120–AA64

Airworthiness Directives; CFE Company Model CFE738–1–1B Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to CFE Company Model CFE738–1–1B turbofan engines. This amendment requires replacing the high pressure turbine (HPT) stage 1 aft cooling plate and HPT stage 2 disk at or before they reach new reduced life cycle limits. This amendment is prompted by analysis of the existing life cycle limits by the engine manufacturer. The actions specified by this AD are intended to prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk, which could result in an uncontained engine failure and damage to the airplane.

DATES: Effective date June 12, 2002.

ADDRESSES: Information regarding this action may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Keith Mead, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7744, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to CFE Company Model CFE738–1–1B turbofan engines was published in the **Federal Register** on December 4, 2001 (66 FR 63008). That action proposed to require replacing the HPT stage 1 aft cooling plate and HPT stage 2 disk at or before they reach new reduced life cycle limits.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Create AD's for Limits

One commenter questions why the FAA has to create an AD for limits contained in maintenance manuals that are already FAA approved.

AD Issuance Not Required

Another commenter states that this AD is not necessary since all U.S operators must maintain these engines in accordance with Federal Aviation Regulations and manufacturers' recommendations. The commenter also points to section 91.409(e) of the Federal Aviation Regulations (14 CFR 91.409), which requires adherence to life limits established for the aircraft, engines, and other equipment, to say that the AD is not required.

The FAA disagrees with these comments. Life limits are established during the type certification process and initially published in the product's Airworthiness Limitation Section of the Instructions for Continued Airworthiness. The limits established at the time the type certificate is issued are the limits required to be followed by owners and operators until the FAA issues an AD to lower those limits. AD's that apply more restrictive life limits to products are issued when the original life limits contribute to an unsafe condition. Without an AD, unless owners and operators agree to lower life limits as part of a continuous airworthiness maintenance plan, owners and operators need not adhere to a reduction in a life limit appearing only in a revised manual, updated type certificate data sheet, or service document, even if those documents indicate they are FAA approved. After a product enters service the FAA oversees manufacturers, and, as in this instance, reviews analyses performed by the manufacturers of the life limits established at the time the type certificate was issued in order to determine if there is a need to make an adjustment to those limits. Therefore this AD is necessary.

Typographical Error

The FAA comments that a typographical error exists in paragraph (c) of the proposal. Part number (P/N) 6038T38P07 is incorrect, and therefore is changed in the final rule to read P/N 6083T38P07.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the indicated part number change.

Economic Analysis

There are approximately 331 CFE Company model CFE738–1–1B turbofan engines of the affected design in the worldwide fleet. The FAA estimates that 247 engines installed on airplanes of U.S. registry would be affected by this AD. The FAA also estimates that it would take approximately 450 work hours per engine to accomplish the proposed actions (225 work hours to replace the HPT stage 1 aft cooling plate and 225 work hours to replace the HPT stage 2 disk), and that the average labor rate is $60 per work hour. Required parts would cost approximately $32,170 per engine ($11,775 for the HPT stage 1 aft cooling plate and $20,395 for the HPT stage 2 disk). Based on these figures, the total cost of the AD on U.S. operators is estimated to be $14,614,990.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–09–10 CFE Company: Amendment 39–12743. Docket No. 2001–NE–04–AD.

Applicability

This airworthiness directive (AD) is applicable to CFE Company model CFE738–1–1B turbofan engines with high pressure turbine (HPT) stage 1 aft cooling plates, part number (P/N) 6083T38P07, and HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11, installed. These engines are installed on, but not limited to Dassault-Breguet Falcon 2000 series airplanes.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent failure of the HPT stage 1 aft cooling plate and HPT stage 2 disk due to exceeding the life limit, do the following:

(a) Replace the HPT stage 1 aft cooling plate P/N 6083T38P07 at or before the cooling plate accumulates 3,500 cycles-since-new (CSN).

(b) Replace HPT stage 2 disks, P/N's 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, and 6083T92P11; at or before the disk accumulates 2,700 CSN.

(c) After the effective date of this AD, do not install any HPT stage 1 aft cooling plate, P/N 6083T38P07, that exceeds 3,500 CSN.

(d) After the effective date of this AD, do not install any HPT stage 2 disk, P/N 6083T92P06, 6083T92P07, 6083T92P08, 6083T92P10, or 6083T92P11, that exceeds 2,700 CSN.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Effective Date

(g) This amendment becomes effective on June 12, 2002.

Issued in Burlington, Massachusetts, on April 30, 2002.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11334 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–03]

Establishment of Class E Airspace; Lake Geneva, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Lake Geneva, WI. An Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP) has been developed for Grand Geneva Resort Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Grand Geneva Resort Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East

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Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Lake Geneva (67 FR 2148). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Lake Geneva, WI, to accommodate aircraft executing instrument flight procedures into and out of Grand Geneva Resort Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103; 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

* * * * *

AGL WI E5 Lake Geneva, WI [New]

Grand Geneva Airport, WI
(Lat. 42°36'54" N., long. 88°23'23" W.)

That airspace extending upward from 700 feet above the surface within a 8.4-mile radius of the Grand Geneva Resort Airport, excluding that airspace within the Chicago, IL, Burlington, WI, Delavan, WI, and East Troy, WI, Class E airspace areas.

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11503 Filed 5–07–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–14]

Modification of Class D Airspace; Columbus, OH

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Columbus, OH. A cutout in the Bolton Field Class D airspace is currently in place between 060 degrees and 105 degrees, from a 1.30-mile radius of the airport. This cutout exists to protect South Columbus Airport which has since been closed. This action reverts the airspace contained in the cutout back to Bolton Field Class D airspace.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plains, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace at Columbus, OH (67 FR 2157). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Columbus, OH, to accommodate aircraft executing instrument flight procedures into and out of Bolton Field Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES, AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace areas.

* * * * *

AGL OH D Columbus, OH [Revised]

Bolton Field Airprt, OH
(Lat; 30°54'03" N., long. 83°08'14" W.)

That airspace extending upward from the surface to and including 3,400 feet MSL within a 3.9-mile radius of Bolton Field Airport, excluding that portion beyond a 1.8-mile radius of the Bolton Field Airport bearing 270° to 325°, excluding that airspace within the Port Columbus International Airport, OH Class C airspace area. This Class D airspace area is effective during the specific dates and times established in advanced by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11501 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. 01–AGL–10]

Modification of Class D Airspace; Mosinee, WI; Modification of Class E Airspace; Mosinee, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Mosinee, WI, and modifies Class E airspace at Mosinee, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Central Wisconsin Airport. Controlled airspace extending upward from the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Central Wisconsin Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D and Class E airspace at Mosinee, WI (67 FR 2152). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, Class E airspace areas extending upward from the surface of the earth in paragraph 6002, and Class E airspace areas extending upward from 700 feet or more above the surface of the earth in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1 The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D and Class E airpsace at Mosinee, WI, to accommodate aircraft executing instrument flight procedures into and out of Central Wisconsin Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 5000 Class D airspace.

* * * * *

AGL WI D Mosinee, WI [Revised]

* * * * *

Central Wisconsin Airport, WI

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(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)
That airspace extending upward from the surface to and including 3,800 feet MSL within a 4.5-mile radius of the Central Wisconsin Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6002 Class E airspace areas extending upward from the Surface of the earth.

* * * * *

AGL WI E2 Mosinee, WI [Revised]

Central Wisconsin Airport, WI
(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)
That airspace extending upward from the surface within a 4.5-mile radius of the Central Wisconsin Airport. This Class E airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Mosinee, WI [Revised]

Central Wisconsin Airport, WI
(Lat. 44° 46′ 39″ N., long. 89° 40′ 00″ W.)
Wausau VORTAC
(Lat. 44° 50′ 49″ N., long. 89° 35′ 12″ W.)
That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Central Wisconsin Airport, and within 4 miles each side of the Wausau VORTAC 039° radial extending from the 7.0-mile radius to 10.9 miles northeast of the airport, excluding the airspace within the Wausau, WI Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11497 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–06]

Modification of Class D Airspace Bloomington, IL; Modification of Class E Airspace; Bloomington, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class D airspace at Bloomington, IL, and modifies class E airspace at Bloomington, IL. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Monroe County Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing Class D and Class E airspace for Monroe County Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class D airspace and Class E airspace at Bloomington, IL (67 FR 702). The proposal was to modify controlled airspace extending upward from the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class D airspace designations are published in paragraph 5000, and Class E airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class D and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class D airspace at Bloomington, IL, and Class E airspace at Bloomington, IL, to accommodate aircraft executing instrument flight procedures into and out of Monroe County Airport. The area will be depicted on appropriate aeroautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant perparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation. It is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 5000 Class D airspace

* * * * *

AGL IL D Bloomington, IL [Revised]

Monroe County Airport, IL
(Lat. 39° 08′ 40″N., long. 86° 37′ 00″
That airspace extending upward from the surface of the earth to and including 3,300 feet MSL within a 4.3-mile radius of the Monroe County Airport. This Class D airspace area is effective during the specific dates and times established in advance by Notice to Airmen. The effective date and time will thereafter be continously published in the Airport/Facility Directory.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 Feet or more above the surface of the earth.

AGL IL ES Bloomington, IL [Revised]

Monroe County Airport, IL
(Lat. 39° 08′ 40″N., long. 86° 37′ 00″W.)
That airspace extending upward from 700 feet above the surface within a 7.3-mile radius of the Monroe County airport.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11495 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–02]

Modification of Class E Airspace; Greenville, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Greenville, MI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Greenville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain airspace executing these approaches. This action increases the radius of the existing controlled airspace for Greenville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Greenville, MI (67 FR 706). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Greenville, MI, to accommodate airspace executing instrument flight procedures into and out of Greenville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR; 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Greenville, MI [Revised]

Greenville Municipal Airport, MI
(Lat. 43° 08′ 32″N., long 85° 15′ 14″W.)
That airspace extending upward from 700 feet above the surface within a 7.1-mile radius of the Greenville Municipal Airport, Greenville, MI.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11505 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–05]

Modification of Class E Airspace; St. James, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modified Class E airspace at St. James, MN. Area Navigation (RNAV) Standard Instrument Approach Procedure (SIAP's) have been developed for St. James Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action increases the radius of the existing controlled airspace for St. James Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Friday, January 18, 2002, the FAA proposed to amend 14 CFR part 71 to

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modify Class E airspace at St. James, MN (67 FR 2613). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at St. James, MN, to accommodate aircraft executing instrument flight procedures into and out of St. James Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS, ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 St. James, MN [Revised]

St. James Municipal Airport, MN
(Lat. 43°59'11" N., long. 94°33'29" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the St. James Municipal Airport, St. James, MN.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11504 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–04]

Modification of Class E Airspace; Winona, MN

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Winona, MN. An Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP) has been developed for Brainered-Crow Winona Municipal-Max Conrad Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action increases the radius of the existing controlled airspace for Winona Municipal-Max Conrad Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Winona, MN (67 FR 2149). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class B and Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Winona, MN, to accommodate aircraft executing instrument flight procedures into an out of Winona Municipal-Max Conrad Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a

substantial number of small entities under the criteria of the Regulatory flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the forgoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 700.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Winona, MN [Revised]

Winona Municipal-Max Conrad Airport, MN
(Lat. 40°04' 38" N., long. 91°42'30" W.)

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Winona Municipal-Max Conrad Airport, and within 2 miles each side of the 108° bearing extending from the 7-mile radius to 9.5 miles southeast of the airport excluding that airspace within the LaCrosse WI Class E airspace area.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11502 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–13]

Establishment of Class E Airspace; Walhalla, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Walhalla, ND. An Area Navigation (RNAV) Standard instrument Approach Procedure (SIAP) has been developed for Walhalla Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing this approach. This action establishes controlled airspace for Walhalla Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Walhalla, ND (67 FR 2155). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Walhalla, ND, to accommodate aircraft executing instrument flight procedures into and out of Walhalla Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air)

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL ND E5 Walhalla, ND [New]

Walhalla Municipal Airport, ND
(Lat. 48°56'26" N., long. 97°54'10" W.)
Devils Lake VOR/DME
(Lat. 48°06'55" N., long. 98°54'45" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Walhalla Municipal Airport.

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excluding that airspace north of lat. 49°00'00" N., and that airspace extending upward from 1200 feet above the surface bounded by a line beginning at Lat. 49°00'00" N., long. 97°30'00" W., to Lat. 48°48'00" N., long. 97°30'00" W., to Lat. 48°22'00" N., long. 98°31'00" W., via the Devils Lake VOR/DME 22 mile radius counter clockwise to long. 99°00'00" W., to lat. 49°00'00" N., long. 99°00'00" W., to point of beginning.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11500 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–12]

Establishment of Class E Airspace; Boyceville, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Boyceville, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Boyceville Municipal Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action establishes controlled airspace for Boyceville Municipal Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to establish Class E airspace at Boyceville, WI (67 FR 2154). The proposal was to establish controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 establishes Class E airspace at Boyceville, WI, to accommodate aircraft executing instrument flight procedures into and out of Boyceville Municipal Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Boyceville, WI [New]

Boyceville Municipal Airport, WI
(Lat. 45°02'39" N., long. 92°01'13" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Boyceville Municipal Airport, excluding that airspace within the Menomonie, WI, Class E airspace area.

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11499 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–11]

Modification of Class E Airspace; Manistee, MI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Manistee, MI, VHF Omnidirectional (VOR) Standard Instrument Approach Procedures (SIAP's) have been developed for Manistee County-Blacker Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action modifies the extensions to the existing Class E airspace for Manistee County-Blacker Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Monday, January 7, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Manistee, MI (67 FR 704). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet above the surface of the earth are published in paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Manistee, MI, to accommodate aircraft executing instrument flight procedures into and out of Manistee County-Blacker Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10584, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MI E5 Manistee, MI [Revised]

Manistee County—Blacker Airport, MI
(Lat. 44°16'21" N., long. 86°14'15" W.)
(Lat. 44°16'21" N., long. 86°14' 49" W.)
Manistee VOR/DME
(Lat. 44°16'14" N., long. 86°15' 15" W.)

That airspace extending upward from 700 feet above the surface within a 7.0-mile radius of the Manistee County-Blacker Airport and within 4 miles north and 8 miles south of the Manistee VOR/DME 385° radial extending from the 7 mile radius to 16 miles west of the VOR/DME, and within 4 miles south and 8 miles north of the Manistee VOR/DME 086° radial extending from the 7.0-mile radius to 16 miles east of the VOR/DME.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division, Great Lakes Region.

[FR Doc. 02–11498 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–AGL–09]

Modification of Class E Airspace; Green Bay, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Green Bay, WI. Area Navigation (RNAV) Standard Instrument Approach Procedures (SIAP's) have been developed for Austin-Straubel International Airport. Controlled airspace extending upward from 700 feet or more above the surface of the earth is needed to contain aircraft executing these approaches. This action adds an extension to existing Class E airspace for Austin-Straubel International Airport.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Denis C. Burke, Air Traffic Division, Airspace Branch, AGL–520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Wednesday, January 16, 2002, the FAA proposed to amend 14 CFR part 71 to modify Class E airspace at Green Bay, WI, (67 FR 2151). The proposal was to modify controlled airspace extending upward from 700 feet above the surface of the earth to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to 14 CFR part 71 modifies Class E airspace at Green Bay,

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WI, to accommodate aircraft executing instrument flight procedures into and out of Austin-Straubel International Airport. The area will be depicted on appropriate aeronautical charts.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 95665, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Green Bay, WI [Revised]

Austin-Straubel International Airport, WI
(Lat. 44° 29′ 06″N., long. 88° 07′ 47″W.)

That airspace extending upward from 700 feet above the surface within a 6.9-mile radius of the Austin-Straubel International Airport and within 2 miles each side of the 180° bearing from the Airport extending from the 6.9-mile radius to 12 miles south of the Airport.

* * * * *

Issued in Des Plaines, Illinois on March 29, 2002.

Nancy B. Shelton,

Manager, Air Traffic Division; Great Lakes Region.

[FR Doc. 02–11496 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 95

[Docket No. 30308; Amdt. No. 435]

IFR Altitudes; Miscellaneous Amendments

AGENCY: Federal aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts miscellaneous amendments to the required IFR (instrument flight rules) altitudes and changeover points for certain Federal airways, jet routes, or direct routes for which a minimum or maximum en route authorized IFR altitude is prescribed. This regulatory action is needed because of changes occurring in the National Airspace System. These changes are designed to provide for the safe and efficient use of the navigable airspace under instrument conditions in the affected areas.

EFFECTIVE DATE: 0901 UTC, June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Donald P. Pate, Flight Procedure Standards Branch (AMCAFS–420), Flight Technologies and Programs Division, Flight Standards Service, Federal Aviation Administration, Mike Monroney Aeronautical Center, 6500 South MacArthur Blvd. Oklahoma City, OK. 73169 (Mail Address: P.O. Box 25082 Oklahoma City, OK. 73125) telephone: (405) 954–4164.

SUPPLEMENTARY INFORMATION: This amendment to part 95 of the Federal Aviation Regulations (14 CFR part 95) amends, suspends, or revokes IFR altitudes governing the operation of all aircraft in flight over a specified route or any portion of that route, as well as the changeover points (COPs) for Federal airways, jet routes, or direct routes as prescribed in part 95.,

The Rule

The specified IFR altitudes, when used in conjunction with the prescribed changeover points for those routes, ensure navigation aid coverage that is adequate for safe flight operations and free of frequency interference. The reasons and circumstances that create the need for this amendment involve matters of flight safety and operational efficiency in the National Airspace System, are related to published aeronautical charts that are essential to the user, and provide for the safe and efficient use of the navigable airspace. In addition, those various reasons or circumstances require making this amendment effective before the next scheduled charting and publication date of the flight information to assure its timely availability to the user. The effective date of this amendment reflects those considerations. In view of the close and immediate relationship between these regulatory changes and safety in air commerce, I find that notice and public procedure before adopting this amendment are impracticable and contrary to the public interest and that good cause exists for making the amendment effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 95

Airspace, Navigation (air).

Issued in Washington, DC on May 3, 2002.

James J. Ballough,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, part 95 of the Federal Aviation Regulations (14 CFR part 95) is amended as follows effective at 0901 UTC,

1. The authority citation for part 95 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40106, 40113, 40114, 40120, 44502, 44514, 44719, 44721.

2. Part 95 is amended to read as follows:

REVISIONS TO IFR ALTITUDES AND CHANGEOVER POINTS

[Amendment 435, Effective date: June 13, 2002]

From	To	MEA
Atlantic Routes—G026		
is Amended to Delete		
Galveston, TX NDB	Rebaa, LA FIX	3000
Rebaa, LA FIX	Grand Isle, LA NDB	6000
Grand Isle, LA NDB	Lefko, FL FIX	6000
Lefko, FL FIX	Picny, FL NDB	5000
&95.6001 Victor Routes—U.S.		
&95.6006 VOR Federal Airway 6 is Amended to Read in Part,		
Empyr, NY FIX	Nanci, NY FIX	2700
Nanci, NY FIX	La Guardia, NY VOR/DME	5000
&95.6035 VOR Federal Airway 35 is Amended to Read in Part		
Cross City, FL VORTAC	Greenville, FL VORTAC	2000
&95.6123 VOR Federal Airway 123 is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY VOR/DME	5000
&95.6157 VOR Federal Airway 157 is Amended to Read in Part		
Robbinsville, NJ VORTAC	Minks, NJ FIX	2000
Minks, NJ FIX	La Guardia, NY VOR/DME	5,000
&95.6385 VOR Federal Airway 385 is Amended to Read in Part		
Lubbock, TX VORTAC *4600–MOCA	Wagun, TX FIX	*8500
Wagun, TX FIX *3800–MOCA	Abilene, TX VORTAC	*4900
&95.6433 VOR Federal Airway 433 is Amended to Read in Part		
Grity, NJ FIX	Tickl, NY FIX	4000
Tickl, NY FIX	La Guardia, NY VOR/DME	5000
&95.6445 VOR Federal Airway 445 is Amended to Read in Part		
Empyr, NY FIX	Nanci, NY FIX	2700
Nanci, NY FIX	La Guardia, NY VOR/DME	5000

[FR Doc. 02–11494 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–13–M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Futures and Options Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is granting an exemption to designated members of Eurex Deutschland ("Eurex") from the application of certain of the Commission's foreign futures and option rules based on substituted compliance with certain comparable regulatory and self-regulatory requirements of a foreign regulatory authority consistent with conditions specified by the Commission, as set forth herein. This Order is issued pursuant to Commission Rule 30.10, which permits specified persons to file a petition with the Commission for exemption from the application of certain of the rules set forth in Part 30 and authorizes the Commission to grant such an exemption if such action would not be otherwise contrary to the public interest or to the purposes of the provision from which exemption is sought. By this Order, the Commission also confirms that members of Eurex that have received confirmation of the relief set forth herein may engage in limited marketing conduct from a non-permanent U.S. location with respect to the offer and sale to certain qualified customers located in the U.S. of foreign futures and foreign options, subject to the terms and conditions of prior Commission orders.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Esq., Associate Chief Counsel, Susan A. Elliott, Esq., Staff Attorney, or Andrew V. Chapin, Esq., Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581. Telephone: (202) 418–5430.

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SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under CFTC Rule 30.10 Exempting Firms Designated by Eurex Deutschland ("Eurex") From the Application of Certain of the Foreign Futures and Option Rules the Later of the Date of Publication of the Order Herein in the **Federal Register** or After Filing of Consents by Such Firms and the Regulatory or Self-Regulatory Organization, as Appropriate, to the Terms and Conditions of the Order Herein; and Confirming that Designated Members of Eurex May Engage in Limited Marketing Conduct With Respect to Qualified Customers Located in the U.S., as Set Forth in Prior Commission Orders

Commission rules governing the offer and sale of commodity futures and option contracts traded on or subject to the rules of a foreign board of trade to customers located in the U.S. are contained in Part 30 of the Commission's rules.[1] These rules include requirements for intermediaries with respect to registration, disclosure, capital adequacy, protection of customer funds, recordkeeping and reporting, and sales practice and compliance procedures, that are generally comparable to those applicable to transactions on U.S. markets.

In formulating a regulatory program to govern the offer and sale of foreign futures and option products to customers located in the U.S., the Commission, among other things, considered the desirability of ameliorating the potential extraterritorial impact of such a program and avoiding duplicative regulation of firms engaged in international business. Based upon these considerations, the Commission determined to permit persons located outside the U.S. and subject to a comparable regulatory structure in the jurisdiction in which they were located to seek an exemption from certain of the requirements under Part 30 of the Commission's rules based upon substituted compliance with the comparable regulatory requirements of the foreign jurisdiction.

Appendix A to Part 30, "Interpretative Statement With Respect to the Commission's Exemptive Authority Under 30.10 of Its Rules" ("Appendix A"), generally sets forth the elements the Commission will evaluate in determining whether a particular regulatory program may be found to be comparable for purposes of exemptive relief pursuant to Rule 30.10.[2] These elements include: (1) Registration, authorization or other form of licensing, fitness review or qualification of persons through whom customer orders are solicited and accepted; (2) minimum financial requirements for those persons who accept customer funds; (3) protection of customer funds from misapplication; (4) recordkeeping and reporting requirements; (5) sales practice standards; (6) procedures to audit for compliance with, and to take action against those persons who violate, the requirements of the program; and (7) information sharing arrangements between the Commission and the appropriate governmental and/or self-regulatory organization to ensure Commission access on an "as needed" basis to information essential to maintaining standards of customer and market protection within the U.S.

Moreover, the Commission specifically stated in adopting Rule 30.10 that no exemption of a general nature would be granted unless the persons to whom the exemption is to be applied: (1) Submit to jurisdiction in the U.S. by designating an agent for service of process in the U.S. with respect to transactions subject to Part 30 and filing a copy of the agency agreement with the National Futures Association ("NFA"); (2) agree to provide access to their books and records in the U.S. to Commission and Department of Justice representatives; and (3) notify NFA of the commencement of business in the U.S.[3]

By letter dated April 23, 2001 and subsequent correspondence through November 21, 2001, Eurex petitioned the Commission on behalf of certain firms located and doing business in Germany for an exemption from the application of the Commission's Part 30 rules to those firms. In support of its petition, Eurex states that granting such an exemption with respect to firms that it has authorized to conduct foreign futures and options transactions on behalf of customers located in the U.S. would not be contrary to the public interest or to the purposes of the provisions from which the exemption is sought because such firms are subject to a regulatory framework comparable to that imposed by the Commodity Exchange Act ("Act") and the rules thereunder.

Based upon a review of the petition, supporting materials filed by Eurex and the recommendation of the Commission's staff, the Commission has concluded that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A thereof, have generally been satisfied and that compliance with applicable German law and Eurex rules may be substituted for compliance with those sections of the Act and rules thereunder more particularly set forth herein.

By this Order, the Commission hereby exempts, subject to specified conditions, those firms identified to the Commission by Eurex as eligible for the relief granted herein from:

—Registration with the Commission for firms and for firm representatives;

—The separate account requirement contained in Commission Rule 30.7, 17 CFR 30.7;

—The requirement in Commission Rule 30.6(a) and (d), 17 CFR 30.6(a) and (d), that firms provide customers located in the U.S. with the risk disclosure statements in Commission Rule 1.55(b), 17 CFR 1.55(b) and Commission Rule 33.7, 17 CFR 33.7, or as otherwise approved under Commission Rule 1.55(c), 17 CFR 1.55(c);

—Those sections of Part 1 of the Commission's financial rules that apply to foreign futures and options sold in the U.S. as set forth in Part 30; and

—Those sections of Part 1 of the Commission's rules relating to books and records that apply to transactions subject to Part 30, based upon substituted compliance by such persons with the applicable statutes and regulations in effect in Germany.

This determination to permit substituted compliance is based on, among other things, the Commission's finding that the regulatory scheme governing persons in Germany who would be exempted hereunder provides:

(1) A system of qualification or authorization of firms who deal in transactions subject to regulation under Part 30 that includes, for example, criteria and procedures for granting, monitoring, suspending and revoking licenses, and provisions for requiring and obtaining access to information about authorized firms and persons who act on behalf of such firms;

(2) Financial requirements for firms including, without limitation, a requirement that all firms immediately notify Eurex if the firms' liable equity capital falls below a specified level and daily mark-to-market settlement and/or accounting procedures;

(3) A system for the protection of customer assets that is designed to preclude the use of customer assets to satisfy house obligations and requires separate accounting for such assets, augmented by a compensation program

[1] Commission rules referred to herein are found at 17 CFR Ch. I (2001).

[2] 52 FR 28980, 29001 (August 5, 1987).

[3] 52 FR 28980, 28981 and 29002.

designed to compensate customers whose assets are segregated and who have suffered a loss as a result of fraud and/or insolvency of a firm;

(4) Recordkeeping and reporting requirements pertaining to financial and trade information including, without limitation, order tickets, trade confirmations, monthly customer account statements, customers' segregation records, accounting records for customer and proprietary trades and discretionary account documentation;

(5) Sales practice standards for authorized firms and persons acting on their behalf that include, for example, a requirement that authorized persons know their customers, required disclosures to prospective customers and prohibitions on misleading advertising and improper trading activities;

(6) Procedures to audit for compliance with, and to redress violations of, customer protection and sales practice requirements including, without limitation, an affirmative surveillance program designed to detect trading activities that take advantage of customers, and the existence of broad powers of investigation relating to sales practice abuses; and

(7) Mechanisms for sharing of information between the Commission, the Eurex, and the relevant German regulators on an "as needed" basis including, without limitation, confirmation data, data necessary to trace funds related to trading futures products subject to regulation in Germany, position data, and data on firms' standing to do business and financial condition.

This Order does not provide an exemption from any provision of the Act or rules thereunder not specified herein, for example, without limitation, the santifraud provision in Rule 30.9. Moreover, the relief granted is limited to brokerage activities undertaken on behalf of customers located in the U.S. with respect to transactions on or subject to the rules of Eurex for products that customers located in the U.S. may trade.[4] The relief also extends to otherwise permitted transactions on or subject to the rules of any other non-U.S. market where Eurex members are authorized by Germany law to conduct brokerage activities.[5] The relief, however, does not extend to rules relating to trading, directly or indirectly, on U.S. exchanges. For example, a firm trading in U.S. markets for its own account would be subject to the Commission's large trader reporting requirements.[6] Similarly, if such a firm were carrying a position on a U.S. exchange on behalf of foreign clients, it would be subject to the reporting requirements applicable to foreign brokers.[7] The relief herein is inapplicable where the firm solicits or accepts orders from customers located in the U.S. for transactions on U.S. markets. In that case, the firm must comply with all applicable U.S. laws and regulations, including the requirement to register in the appropriate capacity.

The eligibility of any firm to seek relief under this exemptive Order is subject to the following conditions:

(1) The regulatory or self-regulatory organization responsible for monitoring the compliance of such firms with the regulatory requirements described in the Rule 30.10 petition must represent in writing to the CFTC that:

(a) Each firm for which relief is sought is registered, licensed or authorized, as appropriate, and is otherwise in good standing under the standards in place in Germany; such firm is engaged in business with customers in Germany as well as in the U.S.; and such firm and its principals and employees who engage in activities subject to Part 30 would not be statutorily disqualified from registration under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(b) It will monitor firms to which relief is granted for compliance with the regulatory requirements for which substituted compliance is accepted and will promptly notify the Commission or NFA of any change in status of a firm that would affect its continued eligibility for the exemption granted hereunder, including the termination of its activities in the U.S.;

(c) All transactions with respect to customers located in the U.S. will be made on or subject to the rules of Eurex and the Commission will receive prompt notice of all material changes to the relevant laws in Germany, any rules promulgated thereunder and Eurex rules;

(d) Customers located in the U.S. will be provided no less stringent regulatory protection than German customers under all relevant provisions of German law; and

(e) It will cooperate with the Commission with respect to any inquiries concerning any activity subject to regulation under the Part 30 rules, including sharing the information specified in Appendix A on an "as needed" basis and will use its best efforts to notify the Commission if it becomes aware of any information that in its judgment affects the financial or operational viability of a member firm doing business in the U.S. under the exemption granted by this Order.

(2) Each firm seeking relief hereunder must represent in writing that it:

(a) Is located outside the U.S., its territories and possessions, and where applicable, has subsidiaries or affiliates domiciled in the U.S. with a related business (e.g., banks and broker/dealer affiliates) along with a brief description of each subsidiary's or affiliate's identity and principal business in the U.S.;

(b) Consents to jurisdiction in the U.S. under the Act by filing a valid and binding appointment of an agent in the U.S. for service of process in accordance with the requirements set forth in Rule 30.5;

(c) Agrees to provide access to its books and records related to transactions under Part 30 required to be maintained under the applicable statutes and regulations in effect in Germany upon the request of any representative of the Commission or U.S. Department of Justice at the place in the U.S. designated by such representative, within 72 hours, or such lesser period of time as specified by that representative as may be reasonable under the circumstances after notice of the request;

(d) Has no principal, or employee who solicits or accepts orders from customers located in the U.S., who would be disqualified from directly applying to do business in the U.S. under Section 8a(2) of the Act, 7 U.S.C. 12(a)(2);

(e) Consents to participate in any NFA arbitration program that offers a procedure for resolving customer disputes on the papers where such disputes involve representations or activities with respect to transactions under Part 30, even in circumstances where the claim involves a matter arising primarily out of delivery, clearing, settlement or floor practices, and consents to notify customers located in the U.S. of the availability of such a program;

[4] This Order granting exemptive relief does not authorize the offer or sale of any contract beyond the scope of the Part 30 rules or otherwise inconsistent with the CEA. Thus, for example, Eurex members may not offer or sell to U.S. customers any security futures product or any non-narrow-based stock index futures product. See, e.g., Sections 2(a)(1)(c) and (d) of the Commodity Exchange Act.

[5] See, e.g., 64 FR 50248, 50251 (September 16, 1999)(permitting designated members of the Singapore Exchange Derivatives Trading Limited to solicit and accept from U.S. customers foreign futures and foreign options orders for otherwise permitted transactions on an exchange located outside Singapore).

[6] See, e.g., 17 CFR Part 18 (2001).

[7] See, e.g., 17 CFR Parts 17 and 21 (2001).

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(f) Consents to refuse customers resident in the U.S. the option of not segregating funds notwithstanding relevant provisions of the German regulatory system and otherwise consents to provide all customers resident in the U.S. no less stringent regulatory protection than German customers under all relevant provisions of German law; and

(g) Undertakes to comply with the applicable provisions of German laws and Eurex rules that form the basis upon which this exemption from certain provisions of the Act and rules thereunder is granted.

As set forth in the Commission's September 11, 1997 Order delegating to NFA certain responsibilities, the written representations set forth in paragraph (2) shall be filed with NFA.[8] Each firm seeking relief hereunder has an ongoing obligation to notify NFA should there be a material change to any of the representations required in the firm's application for relief.

The Commission also confirms that Eurex members that receive confirmation of relief set forth herein may engage in limited marketing conduct with respect to certain qualified customers located in the U.S. from a non-permanent location in the U.S., subject to the terms and conditions set forth in prior Commission Orders.[9] The Commission notes that any firm and their employees or other representatives which engage in marketing conduct pursuant to this relief are deemed to have consented to the Commission's jurisdiction over such marketing activities by their filing of a valid and binding appointment of an agent in the U.S. for service of process.

This Order will become effective as to any designated Eurex member firm the later of the date of publication of the Order in the **Federal Register** or the filing of the consents set forth in paragraph (2). Upon filing of the notice required under paragraph (1)(b) as to any such firm, the relief granted by this Order may be suspended immediately as to that firm. That suspension will remain in effect pending further notice by the Commission, or the Commission's designee, to the firm and Eurex.

This Order is issued pursuant to Rule 30.10 based on the comparability representations made and supporting material provided to the Commission and the recommendation of the staff, and is made effective as to any firm granted relief hereunder based upon the filings and representations of such firms required hereunder. Any material changes or omissions in the facts and circumstances pursuant to which this Order is granted might require the Commission to reconsider its finding that the standards for relief set forth in Rule 30.10 and, in particular, Appendix A, have generally been satisfied. Further, if experience demonstrates that the continued effectiveness of this Order in general, or with respect to a particular firm, would be contrary to public policy or the public interest, or that the systems in place for the exchange of information or other circumstances do not warrant continuation of the exemptive relief granted herein, the Commission may condition, modify, suspend, terminate, withhold as to a specific firm, or otherwise restrict the exemptive relief granted in this Order, as appropriate, on its own motion.

The Commission will continue to monitor the implementation of its program to exempt firms located in jurisdictions generally deemed to have a comparable regulatory program from the application of certain of the foreign futures and option rules and will make necessary adjustments if appropriate.

Issued in Washington, DC on April 29, 2002.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 02–11013 Filed 5–7–02; 8:45 am]

BILLING CODE 6351–01–P

[8] 62 FR 47792, 47793 (September 11, 1999). Among other duties, the Commission authorized NFA to receive requests for confirmation of Rule 30.10 relief on behalf of particular firms, to verify such firms' fitness and compliance with the conditions of the appropriate Rule 30.10 Order and to grant exemptive relief from registration to qualifying firms.

[9] See 57 FR 49644 (November 3, 1992)(permitted limited marketing of foreign futures and foreign options products to certain governmental and institutional customers located in the U.S.); 59 FR 42156 (August 17, 1994)(expanding the relief set forth in the 1992 release to conduct directed towards "accredited investors", as defined in the Securities and Exchange Commission's Regulation D issued pursuant to the Securities Act of 1933).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM96–1–020; Order No. 587–O]

Standards for Business Practices of Interstate Natural Gas Pipelines

Issued: May 1, 2002.

AGENCY: Federal Energy Regulatory Commission, DOT.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission also is removing its regulations dealing with pipeline Electronic Bulletin Boards (EBBs), since all pipelines are required under Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.

DATES: The rule will become effective June 7, 2002. Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002.

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SUPPLEMENTARY INFORMATION:

Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell

1. The Federal Energy Regulatory Commission (Commission) is amending § 284.12 of its open access regulations governing standards for conducting business practices and electronic communications with interstate natural gas pipelines. The Commission is adopting the most recent version, Version 1.5, of the consensus industry standards, promulgated by the Wholesale Gas Quadrant of the North American Energy Standards Board (NAESB), formerly the Gas Industry Standards Board. The Commission also is removing § 284.12(a) of its regulations dealing with pipeline Electronic Bulletin Boards (EBBs),[1] since all pipelines are required under

[1] Citations to § 284.12 refer to the section as redesignated after removal of § 284.12(a).

Commission regulations to provide all electronic communications and conduct all electronic transactions using the public Internet.[2] The rule is intended to benefit the public by adopting the most recent and up-to-date standards governing business practices and electronic communication that includes new shipper options such as title transfer tracking, as well as standards for imbalance netting and trading and uniform procedures for implementation of aspects of Order No. 637.[3]

I. Background

2. Since 1996, in the Order No. 587 series,[4] the Commission has adopted regulations to standardize the business practices and communication methodologies of interstate pipelines in order to create a more integrated and efficient pipeline grid. In this series of orders, the Commission incorporated by reference consensus standards developed by NAESB, a private consensus standards developer composed of members from all segments of the natural gas industry. NAESB is an accredited standards organization under the auspices of the American National Standards Institute (ANSI).

3. On October 19, 2001, NAESB filed with the Commission a report informing the Commission that it had adopted a new version of its standards, Version 1.5. On December 3, 2001, NAESB filed with the Commission a report listing errata to the Version 1.5 standards.

4. NAESB reported that its newest version contains some of the following highlights: modifications to the data set, data element, and code value tables to support Internet web page standards and the transition of EBBs to the Internet; business practice standards and data sets governing imbalance netting and trading (although standards for electronic data interchange of the imbalance netting and trading are still in process); standards for title transfer tracking (TTT), with a recommendation from the NAESB Executive Committee that these standards be implemented no earlier than eight months from publication of these standards on August 18, 2001; and standards to support the implementation of Order No. 637 (additional standards are still being considered at the subcommittee level). NAESB also reported that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the NAESB Electronic Delivery Mechanism (EDM) standards.

5. On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) proposing to incorporate Version 1.5 of the NAESB standards into the Commission's regulations.[5] The Commission specifically requested comment on whether it should adopt NAESB standard 5.3.2 dealing with the timeline for capacity release transactions. In pertinent part, standard 5.3.2 provides that shippers consummating pre-arranged non-biddable capacity release transactions must notify the pipeline one hour prior to the time at which the replacement shipper would nominate under the release transaction. The Commission requested comment on whether it should adopt the one-hour prior notice requirement since in orders implementing Order No. 637, the Commission required pipelines to permit notice of the capacity release transaction coincident with the nomination timeline.

6. Thirteen comments were filed on the NOPR.[6] All the comments supported adoption of Version 1.5 of the NAESB standards, and only comment challenged any of the provisions.

II. Discussion

7. The Commission is adopting Version 1.5[7] of NAESB's consensus standards by incorporating these standards into its regulations.[8] Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002.[9]

8. Version 1.5 of the NAESB standards includes standards implementing provisions of Order No. 637, provides added flexibility to shippers, standardizes additional business practices, and updates and improves the current standards.[10] The principal changes occur in the areas of capacity release scheduling, title transfer tracking, imbalance netting and trading, and improvement of the standards for conducting business transactions electronically over the Internet. Version 1.5 (Standard 5.3.2) revises the capacity release bidding and scheduling standard to provide for nomination equality as required by the Commission in Order No. 637.[11] Version 1.5 incorporates a series of standards (Standards 1.3.64 through 1.3.78) that provides for title transfer tracking at pooling points. These standards will provide shippers with greater flexibility in structuring business transactions, and will enhance the liquidity of the natural gas market by providing for accurate accounting of gas purchase and sale transactions and integrating such transactions into the pipeline scheduling process. Version 1.5 includes new standards (standards

[2] New 18 CFR 284.12(b)(3)(i)(A).

[3] Regulation of Short-Term Natural Gas Transportation Services, Order No. 637, 65 FR 10156 (Feb. 25, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091 (Feb. 9, 2000).

[4] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587, 61 FR 39053 (Jul. 26, 1996), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038 (Jul. 17, 1996), Order No. 587–B, 62 FR 5521 (Feb. 6, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,046 (Jan. 30, 1997), Order No. 587–C, 62 FR 10684 (Mar. 10, 1997), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,050 (Mar. 4, 1997), Order No. 587–G, 63 FR 20072 (Apr. 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,062 (Apr. 16, 1998), Order No. 587–H, 63 FR 39509 (July 23, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,063 (July 15, 1998); Order No. 587–I, 63 FR 53565 (Oct. 6, 1998), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,067 (Sept. 29, 1998), Order No. 587–K, 64 FR 17276 (Apr. 9, 1999), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,072 (Apr. 2, 1999); Order No. 587–M, 65 FR 77285 (Dec. 11, 2000), FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,114 (Nov. 30, 2000); Order No. 587–N, 67 FR 11906 (Mar. 18, 2002), III FERC Stats. & Regs. Regulations Preambles, ¶ 31,125 (Mar. 11, 2002).

[5] Standards For Business Practices Of Interstate Natural Gas Pipelines, Notice of Proposed Rulemaking, 67 FR 44 (Jan. 2, 2002), IV FERC Stats. & Regs. Proposed Regulations, ¶ 32,557 (Dec. 20, 2001).

[6] The commenters and the abbreviations used in this order are listed on the appendix.

[7] The incorporation includes the errata sheets published by NAESB.

[8] Pursuant to the regulations regarding incorporation by reference, copies of Version 1.5 of the standards are available from NAESB, and the standards can be viewed, but not copied, at the Office of the Federal Register and at the Commission's Public Reference Room, 5 U.S.C. 552 (a)(1); 1 CFR 51 (2001).

[9] NAESB standard 1.3.78 provides that implementation of TTT not take place until eight months after publication of the TTT standards in the NAESB standards manual (which took place on August 18, 2001). Since the Commission's implementation date of October 1, 2002, falls after April 18, 2002, pipelines will be required to implement the TTT standards at the same time as the other standards.

[10] In Version 1.5, NAESB made the following changes to its standards. It added Principles 1.1.20, 1.1.21 and 2.1.5; Definitions 1.2.13 through 1.2.19, 2.2.2, 2.2.3, and 4.2.20; Standards 1.3.64 through 1.3.78, 2.3.36 through 2.3.50, 3.3.26, 4.3.86, 4.3.87, and 5.3.43; and Data Sets 2.4.7 through 2.4.16. It revised Standards 1.3.2, 1.3.54, 1.3.61, 1.3.63, 2.3.30, 2.3.32, 2.3.34, 4.3.16, 4.3.23, 4.3.35, 5.3.2, 5.3.22, 5.3.24, 5.3.31, 5.3.32, and 5.3.33, and Data Sets 1.4.1 through 1.4.7, 2.4.1, 2.4.3 through 2.4.6, 3.4.1, 3.4.2, 3.4.4, 5.4.1 through 5.4.10, 5.4.12, 5.4.13, and 5.4.16 through 5.4.19. It deleted Principles 4.1.5 and 4.1.8, and Standard 4.3.77.

[11] New 18 CFR 284.12 (b)(1)(ii) (2001); Order No. 637, 65 FR at 10191, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,091, at 31,297.

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2.3.36 through 2.3.50) for transmitting statements of allocation and implementing imbalance netting and trading as required by the Commission's regulations.[12] Version 1.5 also updates and improves the standards by modifying the electronic communication standards to better support Internet web page standards and the transition of EBBs to the Internet and by effectuating changes related to the assessment provided by Sandia National Laboratories. Commission adoption of these standards will keep the Commission regulations current.[13]

9. NAESB approved the standards under its consensus procedures.[14] As the Commission found in Order No. 587, adoption of consensus standards is appropriate because the consensus process helps ensure the reasonableness of the standards by requiring that the standards draw support from a broad spectrum of all segments of the industry. Moreover, since the industry itself has to conduct business under these standards, the Commission's regulations should reflect those standards that have the widest possible support. In § 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTT&AA), Congress affirmatively requires federal agencies to use technical standards developed by voluntary consensus standards organizations, like NAESB, as means to carry out policy objectives or activities.[15]

10. The Commission will address the comments on the NOPR below.

A. Capacity Release Timeline

11. In the NOPR, the Commission requested comment on whether to adopt in full Standard 5.3.2 of the NAESB standards which provides a timeline for pipelines to process capacity release transactions (biddable and non-biddable pre-arranged deals), and the resulting nominations submitted by replacement shippers. The NAESB standards provide for four nomination cycles.[16]

Nomination cycle	Time nomination due (CCT)[17]	Time nomination takes effect (CCT)
Timely Nomination.	11:30 a.m	9 a.m. next gas day
Evening Nomination.	6 p.m	9 a.m. next gas day
Intra-Day 1	10 a.m	5 p.m. same gas day
Intra-Day 2	5 p.m	9 p.m. same gas day

[17] CCT refers to Central Clock Time, which includes an adjustment for day light savings time. See New 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1 (2001). Under the NAESB standards, a gas day runs from 9 a.m. central clock time (CCT) on Day 1 to 9 a.m. CCT the next day (Day 2). New 18 CFR 284.12(a)(1)(i), Nominations Related Standards 1.3.1 (2001).

The pertinent section of Standard 5.3.2 provides that for pre-arranged non-biddable capacity release transactions the pipeline must be informed of the transaction one hour prior to each of the nomination opportunities in order for the replacement shipper to nominate at that opportunity.[18]

12. In Order No. 637, the Commission adopted new § 284.12(b)(1)(ii) of its regulations in order to provide scheduling equality between capacity release transactions and pipeline transportation services.[19] In implementing this provision of Order No. 637, the Commission had required pipelines to provide that notice of the capacity release transaction could be provided coincident with nomination by the replacement shipper.[20] In the NOPR, the Commission requested comment on whether it should adopt the NAESB one-hour notification period or continue to require pipelines to permit notification coincident with nomination.

13. The comments (except for Atmos) support adoption of the NAESB one-hour notification standard. Those supporting the standard maintain that the one-hour standard was a product of NAESB's consensus process, and that the Commission should defer to the consensus of the industry. The pipelines contend that the one-hour notification requirement is necessary for them to complete internal verification of contract data, such as updating their contract data base to reflect the assignment of capacity rights, so that nominations can be validated and the nomination process can proceed seamlessly. Without accurate data bases, the pipelines assert that nominations may be incorrectly rejected, because the contract data base does not reflect the assignment of capacity rights. While supporting the NAESB standard, AGA states that NAESB standards are minimums and that pipelines should be encouraged to exceed the minimum standard. In this regard, AGA contends the Commission should not disturb individual Order No. 637 compliance proceedings in which pipelines have already implemented scheduling systems with less than the one-hour notice.

14. Atmos maintains the Commission should reject the one-hour notice requirement as contrary to Commission policy. It argues that NAESB has failed to provide any justification for the departure from the Order No. 637 scheduling policy, and maintains pipelines that cannot meet the requirement for coincident notification and nomination should seek waivers.

15. The Commission is incorporating Standard 5.3.2 into its regulation and finds that compliance with this standard satisfies the scheduling equality requirements of new § 284.12(b)(1)(ii) of its regulations.[21] Standard 5.3.2 reflects the consensus of all facets of the natural gas industry. The Commission's general policy has been to accept such standards when they reflect the broad consensus of the industry.[22] The industry has determined that the one-hour notification requirement reflects a balance between the need for speed in consummating capacity release transactions and the need to update and verify contract data bases to ensure that nominations are accurate and can be processed efficiently, and the Commission finds the standard has struck a reasonable balance between the interests of all parties.

16. As AGA points out, the NAESB standards are generally considered minimum requirements that do not preclude pipelines from offering enhanced services, so long as the enhancement provides increased flexibility, does not compromise the uniformity sought to be achieved through standardization, does not affect shippers' ability to utilize the standard procedure, and does not adversely affect the rights of other parties.[23] In this case, the Commission agrees with AGA that pipelines can provide for shorter prior notice periods for prearranged, non-biddable deals without having adverse effects on shippers or limiting the benefits sought to be achieved by standardization. In order to provide shippers with the utmost flexibility in scheduling, the Commission encourages pipelines to reduce or eliminate prior notice provisions for pre-arranged non-biddable deals, as their scheduling systems currently permit or as these systems are improved in the future.

17. With respect to Atmos's comment that NAESB failed to justify the one-hour prior notice requirement, the comments in this proceeding have shown that this time period is a reasonable period for pipelines to update their contract data bases and provide for accurate verification of nominations. Atmos's suggestion to adopt a more stringent notification requirement and require pipelines to seek individual waivers would unnecessarily involve the Commission in attempting to evaluate the capabilities of individual pipeline computer operations. Given the industry consensus supporting the NAESB standard, the Commission finds little to be gained from entering into such an inquiry on an individual pipeline basis.

B. Title Transfer Tracking Standards

18. EPPG seeks clarification that the Version 1.5 NAESB standards do not require pipelines to provide title transfer tracking (TTT), and that pipelines need not provide TTT services beyond those contemplated by the Version 1.5 NAESB standards.

19. To ensure consistent implementation, the Commission will provide its interpretation of the pipelines' responsibilities with respect to TTT. Title transfer, under the standards, is defined as "the change of title to gas between parties at a location." [24] Title Transfer Tracking (TTT) is defined as "the process of accounting for the progression of title changes from party to party that does not effect a physical transfer of the gas." [25] The two standards defining the pipelines' responsibility are Standards 1.3.64 and 1.3.65. In pertinent part, Standard 1.3.64 provides: "At a minimum, the Transportation Service Providers (TSP) should be responsible for accommodating Title Transfer Tracking (TTT) services at all points identified by the TSP as pooling points, where TTT services are requested." Standard 1.3.65 provides that "the Title Transfer Tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes."

20. The Commission interprets these standards as requiring pipelines to permit and process, on a non-discriminatory basis, transportation nominations (along with required responsive scheduling information) effecting transfers of title at pooling points by any party including shippers, poolers, or third party account administrators.[26] As a simple example, Producer A aggregates 1000 Dth of gas from three receipt points at its pool at Pool 1, sells 1000 Dth to Marketer B at Marketer B's pool at Pool 1, and Marketer B sells 1000 Dth to Shipper C at the pooling point for transportation to Shipper C's delivery point under Shipper C's firm transportation contract.

Under the NAESB standards, the pipeline would have to process a transportation nomination from Producer A, including provision of the required scheduling responses, to reflect the transfer of gas from Producer A's pool to Marketer B's pool. Other than processing the transportation nomination to reflect the in-place transfer of gas, the pipeline would be required to provide no other "accounting services" [27] respecting the transfer of title. If EPPG requires more specific clarification as to its specific responsibilities for processing such nominations, it should request such a clarification from NAESB pursuant to NAESB's procedures for seeking interpretations of standards.[28]

[12] New 18 CFR 284.12(b)(2)(ii) (2001).

[13] The Commission also is continuing its previous practice of excluding standards 2.3.29 dealing with operational balancing agreements (OBAs), 2.3.30 dealing with netting and trading of imbalances, and 4.3.4 dealing with retention of electronic data. The Commission has issued its own regulations in these areas (New 18 CFR 284.12(b)(2)(i) (OBAs), (c)(2)(ii) (netting and trading of imbalances), and (c)(3)(v) (record retention)), so that incorporation of the NAESB standards is unnecessary and may cause confusion as to the applicable Commission requirements.

[14] This process first requires a super-majority vote of 17 out of 25 members of NAESB's Executive Committee with support from at least two members from each of the five industry segments—interstate pipelines, local distribution companies, gas producers, end-users, and services (including marketers and computer service providers). For final approval, 67% of NAESB's general membership must ratify the standards.

[15] Pub L. No. 104–113, § 12(d), 110 Stat. 775 (1996), 15 U.S.C. 272 note (1997).

[16] New 18 CFR 284.12(a)(1)(i) (2001). Nominations Related Standard 1.3.2.

[18] For example, for the Timely Nomination cycle, the pipeline must be informed of the capacity release transaction by 10:30 a.m. CCT, one hour prior to the nominatinn deadline at 11:30 a.m.

[19] New 18 CFR 284.12(b)(1)(ii). This regulation provides that pipelines "must permit shippers acquiring released capacity to submit a nomination at the earliest available nomination opportunity after the acquisition of capacity. If the pipeline requires the replacement shipper to enter into a contract, the contract must be issued within one hour after the pipeline has been notified of the release, but the requirement for contracting must not inhibit the ability of the replacement shipper to submit a nomination at the earliest available nomination opportunity."

[20] *See* Colorado Interstate Gas Company, 95 FERC ¶ 61,321, at 62,111–12 (2001), 97 FERC ¶ 61,011 (2001).

[21] Some pipelines will be required to implement Standard 5.3.2 (Version 1.5) as part of their Order No. 637 compliance proceedings. But, in any event, a pipeline must file to comply with this standard by no later than August 1, 2002.

[22] Order No. 587, 61 FR at 39056–57, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,059–60.

[23] Order No. 587, 61 FR at 39062, FERC Stats. & Regs. Regulations Preambles [July 1996–December 2000] ¶ 31,038, at 30,069–70.

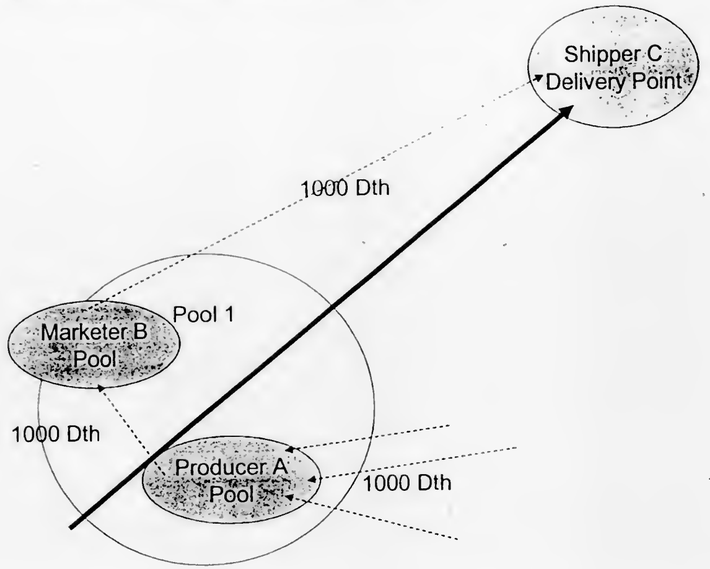
[24] Standard 1.2.14 (Version 1.5).

[25] Standard 1.2.15 (Version 1.5).

[26] A Third Party Account Administrator is defined as a Title Transfer Tracking Service Provider other than the Transportation Service Provider. Standard 1.2.17 (Version 1.5).

[27] Standard 1.2.15 defines title transfer tracking as the "process of accounting for the progression of title changes from party to party."

[28] NAESB PROCEDURES FOR ADOPTING STANDARDS, § 5.1 (*http://www.naesb.org/gov.htm*).



21. Williston maintains that it does not anticipate receiving requests for title transfer services and that it would take three months for it to implement a request for such services. It requests an extension of time to implement the TTT standards until three months after receiving a request to accommodate such services.

22. Such a specific request will not be granted in a rulemaking proceeding where potentially affected parties do not have the opportunity to protest the request. Further, since the NAESB standards envision that the pipelines are to accommodate title transfers using their existing nomination and scheduling processes, it is not clear why additional time is needed to permit title transfers.[29] Williston is free to file for an individual waiver of compliance with the regulation if it can show good cause.

C. Implementation

23. A number of comments request that the Commission implement the standards on the first day of the month falling 90 days after the issuance of the final rule, because first-of-the-month implementation facilitates administration. They further request that the TTT standards be implemented at the same time.[30] The Commission is granting these requests by providing for implementation on October 1, 2002, which is more than three months from adoption of the regulations, and is requiring implementation of the TTT standards at the same time.

24. KM Pipelines and Williston request that for those pipelines that have not yet implemented Order No. 637, implementation of the standards should be delayed until 90 days after the pipeline's implementation of Order No. 637. They maintain that such a delay is needed because of the extensive changes required by Order No. 637 and because implementation of the standards before implementation of Order No. 637 might result in conflicting tariff language.

25. The Commission denies the requests to delay implementation. The pipelines have not demonstrated that the changes in the NAESB standards relating to Order No. 637 create any conflict with requirements of Order No. 637 or will significantly delay the ability of a pipeline to comply with Order No. 637.

26. Nisource Pipelines requests a waiver of the requirement to implement the Electronic Data Interchange (EDI) requirements in the standards if a pipeline has no electronic trading partners or, in the alternative, requests a longer amount of time in which to implement such standards. Nisource Pipelines maintains that three months is not sufficient time to implement the EDI requirements. The Commission will not grant a generic waiver of EDI requirements in this rulemaking. Requests for waiver or extension of time to implement the EDI requirements must be handled on an individual basis depending on the circumstances facing the pipeline.

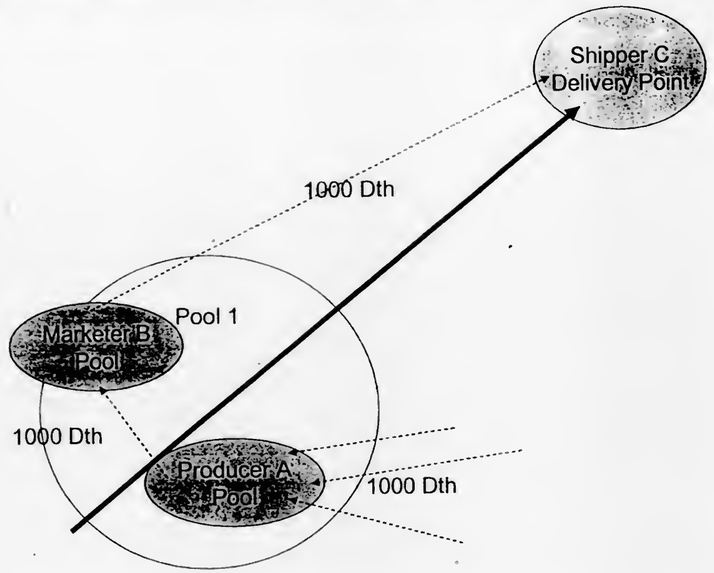
D. Sandia National Laboratories Recommendations

27. In its transmittal letter, NAESB reported that its electronic delivery mechanism standards include modifications related to the surety assessment performed by Sandia National Laboratories on the NAESB Electronic Delivery Mechanism (EDM) standards. Dominion and INGAA request clarification that the Commission is not adopting or endorsing the Sandia National Laboratories recommendations. INGAA maintains the Executive Committee sent the Sandia recommendations to a NAESB subcommittee for further review. The Commission clarifies that it is adopting here only the standards

[29] Standard 1.3.65 (title transfer tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes); Standard 1.3.70 (title transfer tracking should be conducted using existing applicable data sets).

[30] Comments by INGAA, Dominion, EIP, Gulf South, Northern Natural, Williston.

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21. Williston maintains that it does not anticipate receiving requests for title transfer services and that it would take three months for it to implement a request for such services. It requests an extension of time to implement the TTT standards until three months after receiving a request to accommodate such services.

22. Such a specific request will not be granted in a rulemaking proceeding where potentially affected parties do not have the opportunity to protest the request. Further, since the NAESB standards envision that the pipelines are to accommodate title transfers using their existing nomination and scheduling processes, it is not clear why additional time is needed to permit title transfers.[29] Williston is free to file for an individual waiver of compliance with the regulation if it can show good cause.

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D. Sandia National Laboratories Recommendations

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[29] Standard 1.3.65 (title transfer tracking services should be supported by means of the nominations, quick responses and scheduled quantities processes); Standard 1.3.70 (title transfer tracking should be conducted using existing applicable data sets).

[30] Comments by INGAA, Dominion, EIP, Gulf South, Northern Natural, Williston.

III. Notice of Use of Voluntary Consensus Standards

28. Office of Management and Budget Circular A–119 (§ 11) (February 10, 1998) provides that when a federal agency issues or revises a regulation containing a standard, the agency should publish a statement in the final rule identifying whether a voluntary consensus standard or a government-unique standard is being adopted. In this rulemaking, the Commission is incorporating by reference standards issued by the North American Energy Standards Board.

IV. Information Collection Statement

29. The Office of Management and Budget's (OMB) regulations in 5 CFR 1320.11 require that it approve certain reporting and recordkeeping requirements (collections of information) imposed by an agency. Upon approval of a collection of information, OMB will assign an OMB control number and an expiration date. Respondents subject to the filing requirements of this Rule will not be penalized for failing to respond to these collections of information unless the collections of information display a valid OMB control number.

30. The final rule will affect the following existing data collections: FERC–545 "Gas Pipeline Rates: Rate Change (Non-Formal)" (OMB Control No. 1902–0154) and FERC–549C "Standards for Business Practices of Interstate Natural Gas Pipelines" (OMB Control No. 1902–0174). The following burden estimates are related only to this rule and include the costs of complying with NAESB's version 1.5 standards. The burden estimates for the FERC–545 data collection are related to the tariff filings required to implement NAESB's version 1.5 standards. The burden estimates for the FERC–549C data collection are related to implementing the latest version of the business practice standards and related data sets. The costs for both of these data collections are primarily related to start-up and will not be on-going costs.

Data collection	Number of respondents	Number of responses per respondent	Hours per response	Total annual hours
FERC–545	93	1	38	3,534
FERC–549C	93	1	4,526	420,918

The total annual hours for collection is 424,452 hours.

	FERC–545	FERC–549C
Annualized capital/startup costs	$198,857	$23,684,934
Annualized costs (operations & maintenance)	0	0
Total annualized costs	198,857	23,684,934

The cost per respondent is $256,815 (rounded off).

31. The Commission sought comments to comply with these requirements. Comments were received from thirteen entities. No comments addressed the reporting burden imposed by these requirements. The substantive issues raised by the commenters are addressed in this preamble.

32. The Commission's regulations adopted in this rule are necessary to further the process begun in Order No. 587 of creating a more efficient and integrated pipeline grid by standardizing the business practices and electronic communication of interstate pipelines. Adoption of these regulations will update the Commission's regulations relating to business practices and communication protocols to conform to the latest version, Version 1.5, approved by NAESB.

33. The Commission has assured itself, by means of its internal review, that there is specific, objective support for the burden estimates associated with the information requirements. The information required in this Final Rule will help the Commission carry out its responsibilities under the Natural Gas Act and conforms to the Commission's plan for efficient information collection, communication, and management within the natural gas industry.

34. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, CI–1, (202) 208–1415, or *mike.miller@ferc.gov*] or the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Energy Regulatory Commission, 725 17th Street, NW, Washington, DC 20503. The Desk Officer can also be reached at (202) 395–7318, or fax: (202) 395–7285.

V. Environmental Analysis

35. The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[32] The regulations adopted in this rule fall within categorical exclusions in the Commission's regulations for rules that are clarifying, corrective, or procedural, for information gathering, analysis, and dissemination, and for sales, exchange, and transportation of natural gas that requires no construction of facilities.[33] Therefore, an environmental assessment

[31] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30,783 (1987).

[32] 18 CFR 380.4.

[33] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5), 380.4(a)(27).

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is unnecessary and has not been prepared.

VI. Regulatory Flexibility Act Certification

36. The Regulatory Flexibility Act of 1980 (RFA) [34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. The regulations adopted here impose requirements only on interstate pipelines, which are not small businesses, and, these requirements are, in fact, designed to benefit all customers, including small businesses. Accordingly, pursuant to § 605(b) of the RFA, the Commission hereby certifies that the regulations adopted herein will not have a significant adverse impact on a substantial number of small entities.

VII. Document Availability

37. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page (*http://www.ferc.gov*) and in FERC's Public Reference Room during normal business hours (8:30 a.m. to 5:00 p.m. Eastern time) at 888 First Street, N.E., Room 2A, Washington, DC 20426.

38. From FERC's Home Page on the Internet, this information is available in both the Commission Issuance Posting System (CIPS) and the Records and Information Management System (RIMS).

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Documents & Filing link. The full text of this document is available on CIPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

—RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Documents & Filing link. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

[34] 5 U.S.C. 601–612.

39. User assistance is available for RIMS, CIPS, and the Website during normal business hours from our Help line at (202) 208–2222 (E-Mail to WebMaster@ferc.gov) or the Public Reference at (202) 208–1371 (E-Mail to *public.referenceroom@ferc.gov*).

40. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Website are available. User assistance is also available.

VIII. Implementation Dates

Pipelines are required to make filings to comply with the regulations adopted in this rule by August 1, 2002, with an effective date of October 1, 2002. Pipelines must file revised tariff sheets to incorporate Version 1.5 of the standards into their tariffs since their tariffs incorporate by reference an older version number. [35] To the extent pipelines have individual tariff provisions based on these standards, pipelines also will have to conform their tariffs to the new standards.[36]

IX. Effective Date

41. These regulations are effective June 7, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs of OMB, that this rule is not a "major rule" as defined in Section 351 of the Small Business Regulatory Enforcement Fairness Act of 1996.

List of Subjects in 18 CFR Part 284

Continental shelf, Incorporation by reference, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends part 284, chapter I, Title 18, *Code of Federal Regulations*, as follows:

[35] *See* Texas Eastern Transmission Corporation, 77 FERC ¶ 61,175, at 61,646 (1996) (pipelines incorporating standards by reference in their tariffs must include number and version).

[36] In filing to implement Version 1.5 of the NAESB standards, pipelines need to change all references to the standards in their tariffs to Version 1.5. The version number applies to all standards contained in NAESB's Version 1.5 Standards Manuals, including standards that have not changed from prior versions.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352; 43 U.S.C. 1331–1356.

§ 284.12 [Amended]

2. Section 284.12 is amended as follows:

a. Paragraph 284.12(a) is removed and paragraphs 284.12(b) and (c) are redesignated 284.12(a) and (b) respectively.

b. In newly redesignated paragraphs (a)(1)(i), (ii), (iii), and (v), revise all references to "Version 1.4, August 31, 1999" to read "Version 1.5, August 18, 2001, including errata dated October 1, 2001, and November 30, 2001."

c. In newly redesignated paragraph (a)(1)(iv), revise all references to "Version 1.4, November 15, 1999" to read "Version 1.5, August 18, 2001, including errata dated October 1, 2001, and November 30, 2001."

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix

Comments Filed

Docket No. RM96–1–020

Commenter	Abbreviation
American Gas Association	AGA.
Atmos Energy Corporation	Atmos.
Columbia Gas Transmission Corporation, Columbia Gulf Transmission Company, Crossroads Pipeline Company, and Granite State Gas Transmission, Inc.	Nisource Pipelines.
Dominion Transmission, Inc	Dominion.
El Paso Pipeline Group	EPPG.
Enron Interstate Pipelines	EIP.
Great Lakes Gas Transmission Limited Partnership.	Great Lakes.
Gulf South Pipeline Company, LP.	Gulf South.
Interstate Natural Gas Association of America.	INGAA.
Natural Gas Pipeline Company of America, Kinder Morgan Interstate Gas Transmission LLC.	KM Pipelines.
Northern Natural Gas Company.	Northern Natural.
Williams Gas Pipeline Company.	Williams.
Williston Basin Interstate Pipeline Company.	Williston.

[FR Doc. 02–11346 Filed 5–7–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N–384H and 96P–0500]

RIN 0910–AA19

Food Labeling; Nutrient Content Claims, Definition of Sodium Levels for the Term "Healthy;" Extension of Partial Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; extension of partial stay.

SUMMARY: The Food and Drug Administration (FDA) is extending until January 1, 2006, the partial stay of certain provisions of the nutrient content claim regulations pertaining to the use of the term "healthy." This action is being taken to allow the agency to conduct rulemaking to consider amending the sodium content requirements for foods labeled "healthy." A stay also will provide industry time to implement any changes resulting from the rulemaking.

DATES: Effective May 8, 2002, 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2006. Submit written or electronic comments by June 7, 2002.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20857. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFS–822), Harvey W. Wiley Federal Bldg., 5100 Paint Branch Pkwy., College Park, MD 20740–3835, 301–436–1798.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 10, 1994 (59 FR 24232), FDA published a final rule defining the term "healthy" under section 403(r) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 343(r)). The final rule set up criteria for individual foods and for meal and main dish products to be able to use the nutrient content claim "healthy." Among other things, the final rule defined sequential timeframes (before January 1, 1998, and after January 1, 1998) in which different criteria for sodium content would be effective for foods labeled "healthy" or bearing another related term.

The final rule provided that before January 1, 1998, individual foods (including raw, single-ingredient seafood or game meat) could be labeled as "healthy" only if they contained no more than 480 milligrams (mg) of sodium: (1) Per reference amount customarily consumed per eating occasion (reference amount); (2) per serving size listed on the product label; and (3) per 50 grams (g) for products with small reference amounts (i.e., less than or equal to 30 g or less than or equal to 2 tablespoons) (§ 101.65(d)(2)(ii)(A) through (d)(2)(ii)(B) and (d)(3)(ii)(A) through (d)(3)(ii)(B)). Meal and main dish products could be labeled as "healthy" only if they contained no more than 600 mg of sodium per reference amount (§ 101.65(d)(4)(ii)(A)). After January 1, 1998, however, the sodium criteria for "healthy" foods were to become more stringent. For individual foods, the limit to qualify for a "healthy" claim was to become 360 mg sodium: (1) Per reference amount; (2) per serving size listed on the product label; and (3) per 50 g for products with small reference amounts (§ 101.65(d)(2)(ii)(C)(1) through (d)(2)(ii)(C)(2) and (d)(3)(ii)(C)(1) through (d)(3)(ii)(C)(2)). For meal and main dish products, the limit was to become 480 mg of sodium per reference amount (§ 101.65(d)(4)(ii)(B)). In the remainder of this document, the original, higher sodium levels will be referred to as the "first-tier sodium levels"; the lower levels that were to go into effect on January 1, 1998, will be referred to as the "second-tier sodium levels."

On December 13, 1996, FDA received a petition from ConAgra, Inc. (the petitioner), requesting that the agency amend § 101.65(d) to "eliminate the sliding scale sodium requirement for foods labeled 'healthy' by eliminating the entire second tier levels of 360 mg sodium for individual foods and 480 mg sodium for meals and main dishes." As an alternative, the petitioner requested that the January 1, 1998, effective date for the second-tier sodium levels be delayed until such time as food technology "catches up" with FDA's goal to reduce the sodium content of foods, and there is a better understanding of the relationship between sodium and hypertension.

FDA responded to ConAgra's petition by announcing a stay of the second-tier sodium levels until January 1, 2000 (62 FR 15390, April 1, 1997). This stay was intended to allow time for FDA to: (1) Reevaluate the second-tier sodium levels based on data contained in the petition and any additional data that the agency might receive; (2) conduct any necessary rulemaking; and (3) give industry an opportunity to respond to the rule or to any change in the rule that may result from the agency's reevaluation.

In the **Federal Register** of December 30, 1997 (62 FR 67771), FDA published an advance notice of proposed rulemaking (ANPRM) announcing that it was considering whether to initiate rulemaking to reevaluate and possibly amend the nutrient content claim regulations pertaining to use of the term "healthy." In the ANPRM, FDA requested comments on whether it should propose to amend the definition of the term "healthy" relative to sodium requirements. Persons who supported changing the "healthy" definition were asked to address what the new definition should require to ensure that the term could appear on a significant number of foods, without being so broadly defined as to lose its value in highlighting foods that are useful in constructing a diet consistent with dietary guidelines. Those who supported allowing the second-tier sodium levels to take effect were asked to provide data to demonstrate that those levels were not so restrictive as to effectively prevent use of the term (62 FR 67771 at 67772).

FDA received 22 responses to the ANPRM. The comments presented a variety of views on whether FDA should allow the second-tier sodium levels to take effect. They also contained a significant amount of data relating to the use of the term "healthy" in the marketplace.

In the **Federal Register** of March 16, 1999 (64 FR 12886), FDA further extended the stay of the second-tier sodium requirement for individual foods (§ 101.65(d)(2)(ii)(C)), for meal and main dish products (§ 101.65(d)(4)(ii)(B)), and for raw, single-ingredient seafood or game meat (§ 101.65(d)(3)(ii)(C)) until January 1, 2003.

FDA has decided that it is appropriate to further stay the second-tier sodium provisions of the final rule for the term "healthy" until January 1, 2006. Agency regulations at 21 CFR 10.35(a) provide that the Commissioner of Food and Drugs may at any time stay the effective date of an action. The agency finds that a further extension of the stay of the second-tier sodium provisions is in the public interest.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment,

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effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B), (d)(3), and 21 CFR 10.40(e)(1). Under these provisions, FDA may issue a regulation without notice and comment when the agency determines that such procedures are impracticable, unnecessary, or contrary to the public interest. Seeking public comment before implementing this stay would be contrary to the public interest.

The current, second-tier sodium provisions are scheduled to take effect on January 1, 2003. To comply with this effective date, manufacturers would have to reformulate and/or relabel their products within a short timeframe, a process that could involve significant expense. As FDA is currently preparing to issue a proposed rule concerning "healthy" sodium levels, it would be contrary to the public interest to require manufacturers to comply with the second-tier sodium levels, even as the agency considers whether alternative levels may be more appropriate. Accordingly, a further stay of the second-tier sodium levels is warranted. This stay will give the agency time to issue its proposed rule, consider comments, and complete the rulemaking. The stay also will allow time for manufacturers to make changes necessitated by the rulemaking (e.g., reformulating or relabeling products and using up old label stock). Finally, the January 1, 2006, effective date should coincide with the uniform compliance dates for food labeling regulations. The next uniform compliance date is scheduled for January 1, 2004, and FDA typically sets these dates to occur every 2 years (see 65 FR 69666).

Although FDA has determined that it is in the public interest to issue this rule without prior public comment, interested persons are invited to submit comments on whether this extension of the stay of the second-tier sodium levels should be modified or revoked (see 21 CFR 10.40(e)(1)). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA encourages manufacturers who can meet the second-tier sodium levels for particular foods and still produce an acceptable product to do so, even as the agency proceeds with rulemaking.

For the reasons set forth in the preamble, 21 CFR 101.65(d)(2)(ii)(C), (d)(3)(ii)(C), and (d)(4)(ii)(B) are stayed until January 1, 2006.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11378 Filed 5–7–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4, 5, 7, 19, 20, 22, 24, 25, 26, 27, 70, and 251

[T.D. ATF–479]

RIN 1512–AC47

Importation of Distilled Spirits, Wines, and Beer; Recodification of Regulations (2000R–247P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Final rule (Treasury decision).

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations pertaining to the importation of distilled spirits, wines, and beer. The purpose of this recodification is to reissue the regulations in part 251 of title 27 of the Code of Federal Regulations (27 CFR part 251) as 27 CFR part 27. This change improves the organization of title 27.

DATES: This rule is effective on May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, New York, (716) 434–8039.

SUPPLEMENTARY INFORMATION:

Background

As a part of continuing efforts to reorganize the part numbering system of title 27 CFR, ATF is removing part 251, Importation of Distilled Spirits, Wines, and Beers, in its entirety, and is recodifying the regulations as 27 CFR part 27. This change improves the organization of title 27 CFR. ATF intends to update and clarify the regulations in this part, but believes that such revisions would be best undertaken at a later time through a notice of proposed rulemaking with public comment.

DERIVATION TABLE FOR PART 27

The requirements of sec.	Are derived from sec.
Subpart A	
27.1	251.1
27.2	251.2
27.3	251.3
Subpart B	
27.11	251.11
Subpart C	
27.30	251.30
27.31	251.31
Subpart D	
27.40	251.40
27.41	251.41
27.42	251.42
27.42a	251.42a
27.43	251.43
27.44	251.44
27.45	251.45
27.46	251.46
27.48	251.48
27.48a	251.48a
27.49	251.49
Subpart E	
27.55	251.55
27.56	251.56
27.57	251.57
27.58	251.58
27.59	251.59
27.60	251.60
27.61	251.61
27.62	251.62
27.74	251.74
27.75	251.75
27.76	251.76
27.77	251.77
Subparts F–G [Reserved]	
Subpart H	
27.120	251.120
27.121	251.121
Subpart I	
27.133	251.133
27.134	251.134
27.136	251.136
27.137	251.137
27.138	251.138
27.139	251.139
Subparts J–K [Reserved]	
Subpart L	
27.171	251.171
27.172	251.172
27.173	251.173
27.174	251.174
27.175	251.175
Subpart M	
27.181	251.181
27.182	251.182

DERIVATION TABLE FOR PART 27—Continued

The requirements of sec.	Are derived from sec.
27.183	251.183
27.184	251.184
27.185	251.185
Subpart N	
27.201	251.201
27.202	251.202
27.204	251.204
27.206	251.206
27.207	251.207
27.208	251.208
27.209	251.209
Subpart O	
27.221	251.221

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Public Law 104–13, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule under the Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. We sent a copy of this final rule to the Chief Counsel for Advocacy of the Small Business Administration for comment in accordance with 26 U.S.C. 7805(f); we received no comments.

Executive Order 12866

This final rule is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this final rule is not subject to the analysis required by this Executive Order.

Administrative Procedure Act

Because this final rule merely makes technical amendments to improve the clarity and organization of the regulations, it is unnecessary to issue this final rule with notice and public comment procedure under 5 U.S.C. 553(b). Similarly, because this final rule makes no substantial changes and is merely the recodification of existing regulations, good cause is found that it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Jennifer Berry, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices, Wine.

27 CFR Part 5

Advertising, Customs duties and inspection, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 7

Advertising, Beer, Customs duties and inspection, Imports, Labeling, Reporting and recordkeeping requirements, Trade practices.

27 CFR Part 19

Caribbean Basin initiative, Claims, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Surety bonds, Vinegar, Virgin Islands, Warehouses.

27 CFR Part 20

Alcohol and alcoholic beverages, Claims, Cosmetics, Excise taxes, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 22

Administrative practice and procedure, Alcohol and alcoholic beverages, Excise taxes, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 24

Administrative practice and procedure, Claims, Electronic funds transfers, Excise taxes, Exports, Food additives, Fruit juices, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Research, Scientific equipment, Spices and flavorings, Surety bonds, Vinegar, Warehouses, Wine.

27 CFR Part 25

Beer, Claims, Electronic funds transfers, Excise taxes, Exports, Labeling, Packaging and containers, Reporting and recordkeeping requirements, Research, Surety bonds.

27 CFR Part 26

Alcohol and alcoholic beverages, Caribbean Basin initiative, Claims, Customs duties and inspection, Electronic funds transfers, Excise taxes, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Surety bonds, Virgin Islands, Warehouses.

27 CFR Part 27

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

27 CFR Part 70

Administrative practice and procedure, Claims, Excise taxes, Freedom of information, Law enforcement, Penalties, Reporting and recordkeeping requirements, Surety bonds.

27 CFR Part 251

Alcohol and alcoholic beverages, Beer, Cosmetics, Customs duties and inspection, Electronic funds transfers, Excise taxes, Imports, Labeling, Liquors, Packaging and containers, Reporting and recordkeeping requirements, Wine.

Authority and Issuance

For the reasons set forth in the preamble, ATF is amending chapter 1 of title 27 of the Code of Federal Regulations as follows:

PART 4—LABELING AND ADVERTISING OF WINE

Paragraph. 1. The authority citation for 27 CFR part 4 continues to read as follows:

Authority: 27 U.S.C. 205, unless otherwise noted.

Par. 2. Under "CROSS REFERENCES," remove the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer" and add, in part number order, a reference to—27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

PART 5—LABELING AND ADVERTISING OF DISTILLED SPIRITS

Par. 3. The authority citation for 27 CFR part 5 continues to read as follows:

Authority: 26 U.S.C. 5301, 7805, 27 U.S.C. 205.

§ 5.2 [Amended]

Par. 4. Amend § 5.2 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines

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and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

PART 7—LABELING AND ADVERTISING OF MALT BEVERAGES

Par. 5. The authority citation for 27 CFR part 7 continues to read as follows:

Authority: 27 U.S.C. 205.

§ 7.4 [Amended]

Par. 6. Amend § 7.4 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

PART 19—DISTILLED SPIRITS PLANTS

Par. 7. The authority citation for 27 CFR part 19 continues to read as follows:

Authority: 19 U.S.C. 81c, 1311; 26 U.S.C. 5001, 5002, 5004–5006, 5008, 5010, 5041, 5061, 5062, 5066, 5081, 5101, 5111–5113, 5142, 5143, 5146, 5171–5173, 5175, 5176, 5178–5181, 5201–5204, 5206, 5207, 5211–5215, 5221–5223, 5231, 5232, 5235, 5236, 5241–5243, 5271, 5273, 5301, 5311–5313, 5362, 5370, 5373, 5501–5505, 5551–5555, 5559, 5561, 5562, 5601, 5612, 5682, 6001, 6065, 6109, 6302, 6311, 6676, 6806, 7011, 7510, 7805; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 19.3 [Amended]

Par. 8. Amend § 19.3 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wine, and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wine, and Beer".

§ 19.524 [Amended]

Par. 9. Amend paragraphs (a)(1), (b)(1) and (b)(3) of § 19.524 by removing the reference to "parts 26 and 251" and adding, in its place, a reference to "parts 26 and 27".

§ 19.538 [Amended]

Par. 10. Amend § 19.538(a)(1)(iii) by removing the reference to "part 251" and adding, in its place, a reference to "part 27".

PART 20—DISTRIBUTION AND USE OF DENATURED ALCOHOL AND RUM

Par. 11. The authority citation for 27 CFR part 20 continues to read as follows:

Authority: 26 U.S.C. 5001, 5206, 5214, 5271–5275, 5311, 5552, 5555, 5607, 6065, 7805.

§ 20.3 [Amended]

Par. 12. Amend § 20.3 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

PART 22—DISTRIBUTION AND USE OF TAX-FREE ALCOHOL

Par. 13. The authority citation for 27 CFR part 22 continues to read as follows:

Authority: 26 U.S.C. 5001, 5121, 5142, 5143, 5146, 5206, 5214, 5271–5276, 5311, 5552, 5555, 6056, 6061, 6065, 6109, 6151, 6806, 7011, 7805; 31 U.S.C. 9304, 9306.

§ 22.3 [Amended]

Par. 14. Amend § 22.3 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

§ 22.171 [Amended]

Par. 15. Amend § 22.171(b) by removing the reference to "part 251" and adding, in its place, a reference to "part 27".

PART 24—WINE

Par. 16. The authority citation for 27 CFR part 24 continues to read as follows:

Authority: 5 U.S.C. 552(a); 26 U.S.C. 5001, 5008, 5041, 5042, 5044, 5061, 5062, 5081, 5111–5113, 5121, 5122, 5142, 5143, 5173, 5206, 5214, 5215, 5351, 5353, 5354, 5356, 5357, 5361, 5362, 5364–5373, 5381–5388, 5391, 5392, 5511, 5551, 5552, 5661, 5662, 5684, 6065, 6091, 6109, 6301, 6302, 6311, 6651, 6676, 7011, 7302, 7342, 7502, 7503, 7606, 7805, 7851; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 24.4 [Amended]

Par. 17. Amend § 24.4 by removing the reference to "27 CFR Part 251—Importation of Distilled Spirits, Wines and Beer" and adding, in part number order, a reference to "27 CFR Part 27—Importation of Distilled Spirits, Wines and Beer".

§ 24.272 [Amended]

Par. 18. Amend paragraphs (a)(1), (b)(1), and (b)(3) in § 24.272, by removing the reference to "parts 26 and 251" and adding, in its place, a reference to "parts 26 and 27".

PART 25—BEER

Par. 19. The authority citation for 27 CFR part 25 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5002, 5051–5054, 5056, 5061, 5091, 5111, 5113, 5142, 5143, 5146, 5222, 5401–5403, 5411–5417, 5551, 5552, 5555, 5556, 5671, 5673, 5684, 6011, 6061, 6065, 6091, 6109, 6151, 6301, 6302, 6311, 6313, 6402, 6651, 6656, 6676, 6806, 7011, 7342, 7606, 7805; 31 U.S.C. 9301, 9303–9308.

§ 25.165 [Amended]

Par. 20. Amend paragraphs (a)(1), (b)(1), and (b)(3) of § 25.165 by removing the reference to "parts 26 and 251" and adding, in its place, a reference to "parts 26 and 27".

PART 26—LIQUORS AND ARTICLES FROM PUERTO RICO AND THE VIRGIN ISLANDS

Par. 21. The authority citation for 27 CFR part 26 continues to read as follows:

Authority: 19 U.S.C. 81c; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5061, 5081, 5111, 5112, 5114, 5121, 5122, 5124, 5131–5134, 5141, 5146, 5207, 5232, 5271, 5276, 5301, 5314, 5555, 6001, 6301, 6302, 6804, 7101, 7102, 7651, 7652, 7805; 27 U.S.C. 203, 205; 31 U.S.C. 9301, 9303, 9304, 9306.

§ 26.112a [Amended]

Par. 22. Amend § 26.112a as follows:

a. In paragraphs (a)(1), (b)(1) and (b)(3), remove the reference to "parts 19 and 251" and add, in its place, a reference to "parts 19 and 27".

b. In paragraphs (a)(1), (b)(1) and (b)(3), remove the reference to "parts 240 and 251" and add, in its place, a reference to "parts 24 and 27".

c. In paragraph (b)(1) and (b)(3), remove the reference to "parts 245 and 251" and add, in its place, a reference to "parts 25 and 27".

d. In paragraph (a)(1), remove the reference to "parts 25 and 251" and add, in its place, a reference to "parts 25 and 27".

§ 26.267 [Amended]

Par. 23. Amend paragraph (a) of § 26.267 as follows:

a. Remove the reference to "parts 19 and 251" and add, in its place, a reference to "parts 19 and 27".

b. Remove the reference to "parts 240 and 251" and add, in its place, a reference to "parts 24 and 27".

c. Remove the reference to "parts 25 and 251" and add, in its place, a reference to "parts 25 and 27".

PART 70—PROCEDURE AND ADMINISTRATION

Par. 24. The authority citation for 27 CFR part 70 continues to read as follows:

Authority: 5 U.S.C. 301 and 552; 26 U.S.C. 4181, 4182, 5146, 5203, 5207, 5275, 5367, 5415, 5504, 5555, 5684(a), 5741, 5761(b), 5802, 6020, 6021, 6064, 6102, 6155, 6159, 6201, 6203, 6204, 6301, 6303, 6311, 6313, 6314, 6321, 6323, 6325, 6326, 6331–6343, 6401–6404, 6407, 6416, 6423, 6501–6503, 6511, 6513, 6514, 6532, 6601, 6602, 6611, 6621, 6622, 6651, 6653, 6656–6658, 6665, 6671, 6672, 6701, 6723, 6801, 6862, 6863, 6901, 7011, 7101, 7102, 7121, 7122, 7207, 7209, 7214, 7304, 7401, 7403, 7406, 7423, 7424, 7425, 7426, 7429, 7430, 7432, 7502, 7503, 7505, 7506, 7513, 7601–7606, 7608–7610, 7622, 7623, 7653, 7805.

§ 70.411 [Amended]

Par. 25. Amend § 70.411(c)(27) by removing the reference to "part 251" and adding, in its place, a reference to "part 27".

PART 251—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 26. The authority citation for 27 CFR part 251 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

PART 251—[REDESIGNATED AS PART 27]

Par. 27. Transfer 27 CFR part 251 from subchapter M to subchapter A and redesignate as 27 CFR part 27.

PART 27—IMPORTATION OF DISTILLED SPIRITS, WINES, AND BEER

Par. 28. The authority citation for the newly redesignated 27 CFR part 27 continues to read as follows:

Authority: 5 U.S.C. 552(a), 19 U.S.C. 81c, 1202; 26 U.S.C. 5001, 5007, 5008, 5010, 5041, 5051, 5054, 5061, 5111, 5112, 5114, 5121, 5122, 5124, 5201, 5205, 5207, 5232, 5273, 5301, 5313, 5555, 6302, 7805.

Par. 29. Amend the newly redesignated part 27 as follows:

AMENDMENT TABLE FOR PART 27

Amend section	By removing the reference to	And adding in its place
27.3	Part 251	Part 27.
27.11, definition of Appropriate ATF Officer	Part 251	Part 27.
27.31	251.30	27.30.
27.40(c)	251.40a	27.41.
27.44	251.43	27.43.
27.74 (three times)	251.49	27.49.
27.74	251.75	27.75.
27.76(c)(3)	251.40a	27.41.
27.77(a)	251.76(c)	27.76(c).
27.77(b)(1)	251.76(b)(1)	27.76(b)(1).
27.77(b)(2)	251.76(b)(2)	27.76(b)(2).
27.77(b)(3)(iii)	251.40a	27.41.
27.77(d)	251.76(d)	27.76(d).
27.120	251.133	27.133.
27.120	251.134	27.134.
27.133	251.134	27.134.
27.138 (Introductory text)	251.172	27.172.
27.172	251.138	27.138.
27.172	251.139	27.139.
27.185(b)	251.139	27.139.
27.208	251.206	27.206.

Signed: February 2, 2002.

Bradley A. Buckles,

Director.

Approved: April 9, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 02–11257 Filed 5–7–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 44

[T.D. ATF–480]

RIN 1512–AC36

Delegation of Authority

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Treasury decision, final rule.

SUMMARY: This final rule places most ATF authorities contained in its Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax regulations with the "appropriate ATF officer". Consequently, this final rule removes the definitions of, and references to, specific officers subordinate to the Director and the word "region." This final rule also requires that persons file documents required by these regulations with the "appropriate ATF officer" or in accordance with the instructions on the ATF form. Concurrently with this Treasury Decision, ATF Order 1130.31 is being issued and will be made available as specified in this rule. Through this order, the Director has delegated most of the authorities to the appropriate ATF officers and specified the ATF officers with whom applications, notices and other reports, which are not ATF forms, are filed. In addition, this final rule makes a few corrections and miscellaneous changes.

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EFFECTIVE DATE: This rule is effective May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 (telephone 202–927–8210 or e-mail to *alctob@atfhq.atf.treas.gov*).

SUPPLEMENTARY INFORMATION:

Background

Delegations of Authority

Pursuant to Treasury Order 120–01 (formerly 221), dated June 6, 1972, the Secretary of the Treasury delegated to the Director of the Bureau of Alcohol, Tobacco and Firearms (ATF), the authority to enforce, among other laws, the provisions of chapter 52 of the Internal Revenue Code of 1986 (IRC). The Director has subsequently redelegated certain of these authorities to appropriate subordinate officers by way of various means, including by regulation, ATF delegation orders, regional directives, or similar delegation documents. As a result, to ascertain what particular officer is authorized to perform a particular function under such provisions, each of these various delegation instruments must be consulted. Similarly, each time a delegation of authority is revoked or redelegated, each of the delegation documents must be reviewed and amended as necessary.

ATF has determined that this multiplicity of delegation instruments complicates and hinders the task of determining which ATF officer is authorized to perform a particular function. ATF also believes these multiple delegation instruments exacerbate the administrative burden associated with maintaining up-to-date delegations, resulting in an undue delay in reflecting current authorities.

Accordingly, this final rule rescinds all authorities of the Director in part 44 that were previously delegated and places those authorities with the "appropriate ATF officer." Most of the authorities of the Director that were not previously delegated are also placed with the "appropriate ATF officer." Along with this final rule, ATF is publishing ATF Order 1130.31, Delegation of the Director's Authorities in 27 CFR part 44, which delegates certain of these authorities to the appropriate organizational level. The effect of these changes is to consolidate all delegations of authority in part 44 into one delegation instrument. This action both simplifies the process for determining what ATF officer is authorized to perform a particular function and facilitates the updating of delegations in the future. As a result, delegations of authority will be reflected in a more timely and user-friendly manner.

In addition, this final rule also eliminates all references in the regulations that identify the ATF officer with whom an ATF form is filed. This is because ATF forms will indicate the officer with whom they must be filed. Similarly, this final rule also amends part 44 to provide that the submission of documents other than ATF forms (such as letterhead applications, notices and reports) must be filed with the "appropriate ATF officer" identified in ATF Order 1130.31. These changes will facilitate the identification of the officer with whom forms and other required submissions are filed.

This final rule also makes various technical amendments to Subpart A—Scope of Regulations of 27 CFR part 44. Specifically, § 44.3 is added to recognize the authority of the Director to delegate regulatory authorities for all of part 44 and identifies ATF Order 1130.31 as the instrument reflecting such delegations. Also, § 44.2 is amended to provide that the instructions for an ATF form identify the ATF officer with whom it must be filed.

ATF has made or will make similar changes in delegations to all other parts of Title 27 of the Code of Federal Regulations through separate rulemakings.

Inventory Provisions

This final rule eliminates all references to an ATF region, which were comprised of certain States for ATF administrative purposes. As a result, we have eliminated § 44.110 and part of § 44.146 which required an export warehouse proprietor to take an inventory of tobacco products when a factory moves from one region to another. Besides the fact that ATF is no longer organized by regions, ATF may require a manufacturer to take an inventory of tobacco products at any time under the provisions of § 44.145. Such times may include any change in the location of a factory. Consequently, ATF does not believe that such a specific requirement is presently needed to protect the revenue.

Corrections And Miscellaneous Changes

Throughout 27 CFR part 44, we have revised the numbers relating to ATF forms to reflect the correct numbers as shown on the following table:

Form No.	Revised form No.
1534	5000.8
2093	2093 (5200.3)
2098	2098 (5200.16)
2103	2103 (5220.5)
2104	2104 (5200.15)
2105	2105 (5000.7)
2148	2148 (5200.17)
2149	5200.14

In § 44.143(a) we have removed what an export warehouse proprietor must report on ATF Form 5220.3 and with whom it must be filed. This ATF form specifies what an export warehouse proprietor must report and contains instructions for filing.

In § 44.243 we have removed the last sentence. This sentence referred to bond form 2100 which no longer exists and to a regulation that was eliminated over 40 years ago.

We have amended §§ 44.222 and 44.224 to remove references to stamps denoting the payment of tax. Since 1959 (Treasury Decision 6832, 24 FR 4225), we have not required the use of such stamps on tobacco products. In the past, the use of such stamps on tobacco products evidenced the payment of Federal excise tax under section 5701 Title 26 of the United States Code. These two sections involved the destruction of the stamps when a claim for allowance of drawback was filed.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1995, Pub. L. 104–13, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this final rule because there are no new or revised recordkeeping or reporting requirements.

Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. A copy of this final rule was submitted to the Chief Counsel for Advocacy of the Small Business Administration in accordance with 26 U.S.C. 7805(f). No comments were received.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action because it will not: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Administrative Procedure Act

Because this final rule merely makes technical amendments and conforming changes to improve the clarity of the regulations, it is unnecessary to issue this final rule with notice and public procedure under 5 U.S.C. 553(b). Similarly it is unnecessary to subject this final rule to the effective date limitation of 5 U.S.C. 553(d).

Drafting Information

The principal author of this document is Robert Ruhf, Regulations Division, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 44

Administrative practice and procedure, Aircraft, Armed forces, Authority delegations, Cigars and cigarettes, Claims, Customs duties and inspection, Excise taxes, Exports, Foreign trade zones, Labeling, Packaging and containers, Penalties, Reporting and recordkeeping requirements, Seizures and forfeitures, Surety bonds, Tobacco, Transportation, Vessels, Warehouses.

Authority and Issuance

For the reasons set forth in the preamble, title 27, Code of Federal Regulations is amended as follows:

PART 44—[AMENDED]

Paragraph 1. The authority citation for part 44 continues to read as follows:

Authority: 26 U.S.C. 5142, 5143, 5146, 5701, 5703–5705, 5711–5713, 5721–5723, 5731, 5741, 5751, 5753, 5754, 6061, 6065, 6151, 6402, 6404, 6806, 7011, 7212, 7342, 7606, 7805, 31 U.S.C. 9301, 9303, 9304, 9306.

Par. 2. Amend § 44.2 by:

a. Removing the word "Director" and adding, in substitution, the words "appropriate ATF officer" in the first sentence of paragraph (a).

b. Adding a sentence at the end of paragraph (a) and revising paragraph (b) to read as follows:

§ 44.2 Forms prescribed.

(a) * * * The form will be filed in accordance with the instructions for the form.

(b) Forms may be requested from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or by accessing the ATF web site (*http://www.atf.treas.gov/*).

* * * * *

Par. 3. Add § 44.3 to read as follows:

§ 44.3 Delegations of the Director.

Most of the authorities of the Director contained in this part are delegated to appropriate ATF officers. These ATF officers are specified in ATF Order 1130.31, Delegation of the Director's Authorities in Part 44. ATF delegation orders, such as ATF Order 1130.31, are available from the ATF Distribution Center, P.O. Box 5950, Springfield, Virginia 22150–5950, or from the ATF web site (*http://www.atf.treas.gov*).

Par. 4. Amend § 44.11 by:

a. Removing the definitions of "Associate Director (Compliance Operations)", "ATF officer", "Region", and "Regional Director (compliance)"; and

b. Adding the definition of "Appropriate ATF officer" to read as follows:

§ 44.11 Meaning of Terms.

* * * * *

Appropriate ATF officer. An officer or employee of the Bureau of Alcohol, Tobacco and Firearms (ATF) authorized to perform any functions relating to the administration or enforcement of this part by ATF Order 1130.31, Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax.

* * * * *

§§ 44.35, 44.70, 44.71, 44.142, 44.143, 44.145, 44.147, 44.150, 44.199, 44.201, 44.225, 44.257, 44.266 and 44.267 [Amended]

Par. 5. Add the word "appropriate" before the words "ATF officer" or "ATF officers" each place they appear in the following places:

a. Section 44.35(c);
b. The heading and text of § 44.70;
c. Section 44.71;
d. The last sentence of § 44.142(e);
e. Section 44.143(b);
f. Section 44.145;
g. The last sentence of § 44.147;
h. Section 44.150;
i. The second sentence of § 44.199;
j. The last sentence of § 44.201;
k. Section 44.225;
l. The second sentence of § 44.257;
m. The last sentence of § 44.266; and
n. The last sentence of § 44.267.

Par. 6. In the sixth sentence of § 44.62 remove the words "regional director (compliance) for the region from which the articles were shipped" and add, in substitution, the words "appropriate ATF officer".

Par. 7. Remove the first sentence of § 44.66 and add, in substitution, two sentences to read as follows:

§ 44.66 Relief from liability for tax.

A manufacturer of tobacco products or cigarette papers and tubes or an export warehouse proprietor is relieved of the liability for tax on tobacco products, or cigarette papers or tubes upon providing evidence satisfactory to the appropriate ATF officer of exportation or proper delivery. The evidence must comply with this part. * * *

* * * * *

§§ 44.72, 44.73 and 44.184 [Amended]

Par. 8. Remove the words "Director" and add, in substitution, the words "appropriate ATF officer" each place they appear in the following places:

a. The introductory text of § 44.72 and the fifth, sixth and seventh sentences of § 44.72(c);

b. The introductory text of § 44.73 and the fourth and last sentence of § 44.73(c); and

c. Section 44.184.

§§ 44.72 and 44.73 [Amended]

Par. 9. Remove the words "do so, in triplicate, to the regional director (compliance) for transmittal to the Director" and add, in substitution, the words "the appropriate ATF officer" in the following places:

a. The third sentence of § 44.72(c); and

b. The fifth sentence of § 44.73(c).

Par. 10. Revise the first sentence of § 44.82 to read as follows:

§ 44.82 Application for permit.

Every person, before commencing business as an export warehouse proprietor, must apply on ATF Form 2093 (5200.3) and obtain the permit provided for in § 44.93. * * *

* * * * *

§§ 44.83 and 44.84 [Amended]

Par. 11. Remove the words "same regional director (compliance)" each place they appear and add, in substitution, the words "appropriate ATF officer" in the following places:

a. The last sentence of § 44.83; and

b. The last sentence of § 44.84.

§ 44.86 [Amended]

Par. 12. In the first sentence of § 44.86 add the numbers and parentheses "(5220.5)" after the numbers "2103".

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§ 44.87 [Amended]

Par. 13. In the last sentence of § 44.87 remove the number and the words "1534 and furnished to the regional director (compliance) and add, in substitution, the number and words "5000.8 in accordance with its instructions."

§§ 44.91, 44.92, 40.104, 44.105, 44.106, 44.112, 44.121, 44.123, 44.124, 44.125, 44.127, 44.129, 44.153, 44.154, 44.161, 44.162, 44.210, 44.213, 44.223, 44.226, 44.228, 44.230, 44.231, 44.232, 44.242, 44.244, 44.245 and 44.246 [Amended]

Par. 14. Remove the words "regional director (compliance)" and add, in substitution, the words "appropriate ATF officer" each place they appear in the following places:

a. Section 44.91;
b. Section 44.92;
c. The last sentence of § 40.104;
d. Section 44.105;
e. Section 44.106;
f. Section 44.112;
g. Section 44.121(b);
h. Section 44.123;
i. Section 44.124;
j. Section 44.125;
k. Section 44.127;
l. Section 44.129(a);
m. The second sentence of § 44.153;
n. The first sentence of § 44.154;
o. Section 44.161;
p. Section 44.162;
q. Section 44.210;
r. The first sentence of § 44.213;
s. Section 44.223;
t. The last sentence of § 44.226;
u. Section 44.228;
v. The last sentence of § 44.230;
w. Section 44.231;
x. Section 44.232;
y. Section 44.242;
z. Section 44.244;
aa. Section 44.245; and
bb. Section 44.246.

Par. 15. Revise § 44.93 to read as follows:

§ 44.93 Issuance of permit.

After the application for permit, bond, and supporting documents, as required under this part, has been approved, the appropriate ATF officer will issue a permit to the export warehouse proprietor. The proprietor must keep such permit at the export warehouse and make it available for inspection by an appropriate ATF officer.

§§ 44.101, 44.102, 44.103, 44.108, 44.109 and 44.111. [Amended]

Par. 16. Add the numbers and parentheses "(5200.16)" after the number "2098" each place they appear in the following places:

a. Section 44.101;
b. Section 44.102;
c. Section 44.103;
d. Section 44.108;
e. Section 44.109; and
f. Section 44.111.

§ 44.108 Change in location.

Par. 17. Section 44.108 is amended by:

a. Revising the heading to read as set forth above; and

b. Removing the words "within the same region" and the words and punctuation ", to the regional director (compliance)".

§ 44.110 [Removed and reserved]

Par. 18. Remove and reserve § 44.110.

§ 44.124 [Amended]

Par. 19. In the first sentence of § 44.124 remove the word "administrator".

§ 44.126 [Amended]

Par. 20. In § 44.126, add the numbers and parentheses "(5000.7)" after the number "2105".

§ 44.143 [Amended]

Par. 21. In § 44.143, remove the last sentence of paragraph (a) and remove paragraphs (a)(1) and (2).

§ 44.144 [Amended]

Par. 22. In § 44.144, remove the words "as indicated thereon by the regional director (compliance)".

§ 44.146 [Amended]

Par. 23. In § 44.146, remove the words and punctuation ", changes his location to another region,".

§ 44.147 [Amended]

Par. 24. In the first sentence of § 44.147, remove the words and punctuation ", to the regional director (compliance),".

Par. 25. Amend § 44.152 by:

a. In the second sentence removing the words "regional director (compliance) for the region in which the warehouse is located" and adding, in substitution, the words "appropriate ATF officer"; and

b. Revising the third and remaining sentences to read as follows:

§ 44.152 Claim for remission of tax liability.

* * * If the proprietor wishes to be relieved of the tax liability, the proprietor must prepare and file a claim on ATF Form 5620.8. The nature, date, place, and extent of the loss or destruction must be stated in such claim. The claim must be accompanied by such evidence as is necessary to establish to the satisfaction of the appropriate ATF officer that the claim is valid. When the appropriate ATF officer has acted on the claim, such officer will return a copy of ATF Form 5620.8 to the proprietor as notice of such action. The proprietor must keep the copy of ATF Form 5620.8 for 3 years following the close of the calendar year in which the claim is filed.

* * * * *

§§ 44.153 and 44.243 [Amended]

Par. 26. Remove the words "with the regional director (compliance)" in each of the following places:

a. The first sentence of § 44.153; and
b. The first sentence of § 44.243.

Par. 27. Revise the third sentence of § 44.154 to read as follows:

§ 44.154 Claim for refund of tax.

* * * The claim must be filed on ATF Form 5620.8 and supported by such evidence as is necessary to establish to the satisfaction of the appropriate ATF officer that the claim is valid. * * *

* * * * *

§ 44.199 [Amended]

Par. 28. In the first sentence of § 44.199 remove the words "regional director (compliance) for the region in which is located the factory or warehouse from which the shipment is removed" and add, in substitution, the words "appropriate ATF officer".

§§ 44.200, 44.201, 44.202, 44.203, 44.204, 44.205, 44.206, 44.207, 44.207a, 44.208, 44.212 and 44.213 [Amended]

Par. 29. Remove the words "his regional director (compliance)" and add, in substitution, the words "the appropriate ATF officer" each place it occurs in the following places:

a. The second sentence of § 44.200;
b. The second sentence of § 44.201;
c. The last sentence of § 44.202;
d. The last sentence of § 44.203;
e. The last sentence of § 44.204;
f. Section 44.205(b)(3);
g. The last sentence of § 44.206;
h. The third sentence of § 44.207;
i. The last sentence of § 44.207a;
j. The last sentence of § 44.208;
k. The first sentence of § 44.209;
l. The last sentence of § 44.212; and
m. The last sentence of § 44,213.

§ 44.212 [Amended]

Par. 30. In the last sentence of § 44.212 remove the word "he" and add, in substitution, the words "such officer".

§§ 44.213 and 44.226 [Amended]

Par. 31. Remove the words "an ATF officer" or "the ATF officer" and add, in substitution, the words "an appropriate ATF officer" or "the appropriate ATF officer", respectively, each place they appear in the following places:

a. In the first and third sentences of § 44.213;

b. In the second sentence of § 44.226.

Par. 32. Revise § 44.222 to read as follows:

§ 44.222 Claim.

Claim for allowance of drawback of tax, under this subpart, must be filed on Form 5620.7. Such claim must be filed in sufficient time to permit the appropriate ATF officer to detail an appropriate ATF officer to inspect the articles and supervise the affixture of a label or notice bearing the legend "For Export With Drawback of Tax." Upon receipt of a claim supported by satisfactory bond, as required by this subpart, an appropriate ATF officer will proceed to the place where the articles involved are held and there perform the functions required in § 44.224.

* * * * *

§ 44.223 [Amended]

Par. 33. In the first sentence of § 44.223 add the numbers and parentheses "(5200.17)" after the numbers "2148".

Par. 34. Revise § 40.224 to read as follows:

§ 44.224 Inspection by an appropriate ATF officer.

(a) *Examination.* An appropriate ATF officer will examine the tobacco products, and cigarette papers and tubes listed on ATF Form 5620.7. Such officer will verify the accuracy of the schedule of such articles on ATF Form 5620.7.

(b) *Label or notice.* If the tax on such articles has been paid by return, the appropriate ATF officer must be satisfied that the articles have in fact been taxpaid and each package bears the label or notice required by § 44.222.

(c) *Shipping containers.* The appropriate officer will supervise the packing of such articles in shipping containers. Each container must be numbered and have affixed to it the notice:

Drawback of tax claimed on contents. Sale, consumption, or use in U.S. prohibited.

(d) *Disposition of ATF Form 5620.7.* After the appropriate ATF officer completes the report of inspection on ATF Form 5620.7, such officer will return two copies to the claimant and send a copy to the ATF office listed on the form.

(e) *Release.* After executing the report of inspection on ATF Form 5620.7, the appropriate ATF office will release the shipment to the claimant for delivery to the port of exportation.

* * * * *

§ 44.227 [Amended]

Par. 35. In the last sentence of § 44.227 remove the words "regional director (compliance) for the region from which the articles were shipped" and add, in substitution, the words "appropriate ATF officer".

§ 44.229 [Amended]

Par. 36. In the first sentence of § 44.229 remove the words "regional director (compliance) with whom the drawback claim and bond were filed" and add, in substitution, the words "appropriate ATF officer".

§ 44.242 [Amended]

Par. 37. In the first sentence of § 44.242 remove the words and punctuation ", for the region in which is located the customs warehouse from which the cigars were withdrawn,".

§ 44.243 [Amended]

Par. 38. Amend § 44.243 by:

a. In the first sentence of § 44.243 add the numbers and parentheses "(5200.15) after the numbers "2104"; and

b. Removing the last sentence.

§ 44.257 [Amended]

Par. 39. In the first sentence of § 44.257 remove the words "regional director (compliance) for the region in which is located the customs warehouse from which the shipment is withdrawn" and add, in substitution, the words "appropriate ATF officer".

§ 44.258, 44.259, 44.260, 44.261, 44.262, 44.263, 44.264, 44.264a, 44.265 and 44.267 [Amended]

Par. 40. Remove the words "regional director (compliance)" and add, in substitution, the words "ATF officer" in each of the following places:

a. The last sentence of § 44.258;
b. The last sentence of § 44.259;
c. The last sentence of § 44.260;
d. The last sentence of § 44.261;
e. The last sentence of § 44.262;
f. The third sentence of § 44.263;
g. The last sentence of § 44.264;
h. The last sentence of § 44.264a;
i. The last sentence of § 44.265; and
j. The first sentence of § 44.267.

Par. 41. In the last sentence of § 44.264 remove the number "2149" and add, in substitution, the number "5200.14".

Signed: February 25, 2002.

Bradley A. Buckles,

Director.

Approved: March 28, 2002.

Timothy E. Skud,

Deputy Assistant Secretary (Regulatory, Tariff, and Trade Enforcement).

[FR Doc. 02–11258 Filed 5–7–02; 8:45 am]

BILLING CODE 4810–31–P

DEPARTMENT OF THE INTERIOR

Bureau of Mines

30 CFR Chapter VI

Removal of CFR Chapter

Effective April 26, 1996, the Bureau of Mines was terminated by Public Law 104–99, 110 Stat. 32. Therefore, the **Office of the Federal Register** is removing the Bureau of Mines regulations pursuant to its authority to maintain an orderly system of codification under 44 U.S.C. 1510 and 1 CFR part 8.

Accordingly, 30 CFR is amended by removing parts 601–652 and vacating Chapter VI.

[FR Doc. 02–55512 Filed 5–7–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S.

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS PORTER (DDG 78) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I, paragraph 2(f)(i) pertaining to placement of the masthead light or lights above and clear of all other lights and obstructions, and Annex I, paragraph 3(a) pertaining to the location of the forward masthead light in the forward quarter of the vessel, and the horizontal distance between the forward and after masthead lights. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for *USS PORTER*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
USS PORTER	DDG 78	108.43 thru 112.50°.

3. Table Five of § 706.2 is amended by revising the following entry for USS *PORTER*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained.
USS PORTER	DDG 78	X	X	X	14.4

Dated: February 8, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate, General (Admiralty and Maritime Law).

[FR Doc. 02–11357 Filed 5–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has determined that USS STETHEM (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with certain provisions of the 72 COLREGS without interfering with its special function as a naval ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: February 8, 2002.

FOR FURTHER INFORMATION CONTACT: Captain Richard T. Evans, JAGC, U.S.

Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law), Office of the Judge Advocate General, Department of the Navy, 1322 Patterson Ave., SE, Suite 3000, Washington Navy Yard, DC 20374–5066, Telephone number: (202) 685–5040.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law), under authority delegated by the Secretary of the Navy, has certified that USS STETHEM (DDG 63) is a vessel of the Navy which, due to its special construction and purpose, cannot fully comply with the following specific provisions of 72 COLREGS without interfering with its special function as a naval ship: Annex I paragraph 3(a) pertaining to the horizontal distance between the forward and after masthead lights; and Annex I paragraph 2(f)(i) pertaining to the placement of the masthead light or lights above and clear of all other lights and obstructions. The Deputy Assistant Judge Advocate General of the Navy (Admiralty and Maritime Law) has also certified that the lights involved are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), and Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read as follows:

Authority: 33 U.S.C. 1605.

2. Table Four, Paragraph 16 of § 706.2 is amended by revising the following entry for *USS STETHEM*:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

Vessel	Number	Obstruction angle relative ship's headings
USS STETHEM	DDG 63	108.5 thru 112.50°

3. Table Five of § 706.2 is amended by revising the entry for *USS STETHEM* to read as follows:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. annex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. annex I, sec. 3(a)	Percentage horizontal separation attained
USS STETHEM	DDG 63	X	X	X	20.9

Dated: February 8, 2002.

Richard T. Evans,

Captain, JAGC, U.S. Navy, Deputy Assistant Judge Advocate General (Admiralty and Maritime Law).

[FR Doc. 02–11356 Filed 5–7–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–015]

RIN 2115–AA97

Safety Zone; Maumee River, Lake Erie, Ohio

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone on the Maumee River, Toledo, Ohio. This zone is intended to restrict vessels from a portion of the Maumee River during the City of Toledo's May 25th Memorial Day 2002, fireworks display. This temporary safety zone is necessary to protect spectators and vessels from the hazards associated with fireworks displays.

DATES: This rule is effective from 10 p.m., May 25th, 2002, until 11 p.m. May 25th, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of

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docket [CGD09–02–015] and are available for inspection or copying at U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700 Toledo, Ohio, 43604 between 9:30 A.M. and 2 P.M., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, at (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Under 5 U.S.C. 553(d)(3), good cause exists for making this rule effective less than 30 days after publication in the **Federal Register.** The Coast Guard had insufficient advance notice to publish an NPRM followed by a temporary final rule. Publication of a notice of proposed rulemaking and delay of effective date would be contrary to the public interest because immediate action is necessary to prevent possible loss of life, injury, or damage to property.

Background and Purpose

This temporary safety zone is necessary to ensure the safety of spectators and vessels during the setup, loading and launching of a fireworks display in conjunction with the City of Toledo's May 25th Fireworks. The fireworks display will occur between 10 p.m. until 11 p.m. on May 25, 2002.

Discussion of Rule

This safety zone will encompass all waters and the adjacent shoreline of the Maumee River, Toledo, Ohio, Extending from the bow of the museum ship SS WILLIS B. BOYER at 41° 38′ 35″ N, 083° 31′ 54″ W, then north north-east to the south end of the City of Toledo Street at 41° 38′ 51″ N, 083° 31′ 50″ W, then south-west to Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38′ 48″ N, 083° 31′ 58″ W, then returning south south-east to the museum ship SS WILLIS B. BOYER. These coordinates are based upon North American Datum 1983 (NAD 1983).

All persons and vessels shall comply with the instructions of the Coast Guard Captain of the Port or his designated on scene patrol personnel. The designated on-scene representative will be the patrol commander. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port Toledo or his designated on scene representative. The Captain of the Port or his designated on scene representative may be contacted via VHF Channel 16.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). This finding is based on the historical lack of vessel traffic at this time of year.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners and operators of vessels intending to transit or anchor in a portion of the Maumee River off Toledo, Ohio.

This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: this rule will be in effect for only a few hours for one event and vessel traffic can pass safely around the safety zone. In the event that shipping is affected by this temporary safety zone, commercial vessels may request permission from the Captain of the Port Toledo to transit through the safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offered to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Toledo (*see* **ADDRESSES.**)

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a state, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Action Concerning Regulation that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, and 33 CFR 1.05–1(g), 6.04–6, 160.5; 49 CFR 1.46.

2. A new temporary § 165.T09–007 is added to read as follows:

§ 165.T09–007 Safety zone; Maumee River, Lake Erie, Ohio

(a) *Location.* All waters and adjacent shoreline of the Maumee River, Toledo, Ohio, extending from the bow of the museum ship SS WILLIS B. BOYER at 41° 38′ 35″ N, 083° 31′ 54″ W; then north north-east to the south end of the City of Toledo Street at 41° 38′ 51″ N, 083° 31′ 50″ W; then south-west to the Maumee River Buoy #64 (LLNR 6361) at approximate position 41° 38′ 48″ N, 083° 31′ 58″ W; then returning south south-east to the original starting position on the bow of the Museum ship SS WILLIS B. BOYER (NAD 1983).

(b) *Effective time and date.* This section is effective from 10 p.m. until 11 p.m. on May 25th 2002.

(c) *Regulations.* In accordance with the general regulations in §165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: April 26, 2002.

David L. Scott,

Commander, U.S. Coast Guard, Captain of the Port, Toledo.

[FR Doc. 02–11462 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–207]

RIN 2115–AA97

Security Zone; Seabrook Nuclear Power Plant, Seabrook, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period for the Seabrook Nuclear Power Plant, Seabrook, New Hampshire security zone. This change will extend the effective period of this temporary final rule until August 15, 2002, allowing adequate time for a proposed permanent rule to be developed through informal rulemaking. This temporary rule will continue to close certain land and water areas in the vicinity of the Seabrook Nuclear Power Plant.

DATES: The amendment to § 165.T01–207 is effective May 8, 2002. Section 165.T01–207, added at 66 FR 67488, December 31, 2001, effective December 7, 2001, until June 15, 2002, is extended in effect until August 15, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection and copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On December 31, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire" in the **Federal Register** (66 FR 67487). The effective period for this rule was from December 7, 2001 until June 15, 2002.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C 553(b)(3), the Coast Guard finds that good cause exists for not publishing an NPRM. The original temporary final rule was urgently required to protect the plant from subversive activity, sabotage or possible terrorist attacks initiated from waters surrounding the plant. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this TFR to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

The Coast Guard will be publishing a NPRM to establish a permanent security zone that is temporarily effective under this rule. There is no indication that the present rule has been burdensome on the maritime public; users of the areas surrounding the plant are able to pass safely outside the zone. No letters commenting on the present rule have been received from the public.

Background and Purpose

Due to the terrorist attacks on New York City, New York, and Washington DC, on September 11, 2001 and continued warnings from national security and intelligence officials that future terrorist attacks are possible, heightened security measures are necessary surrounding the Seabrook Nuclear Power Plant. A temporary security zone was implemented around the Seabrook Nuclear Power Plant to protect against possible damage to the

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facility from subversive activity, sabotage or terrorist attacks initiated from the surrounding waters. The rule was also implemented to protect persons at the facility, the public and surrounding communities from the catastrophic impact release of nuclear radiation would have on the surrounding area, and to provide the Captain of the Port, Portland, Maine with enforcement options to deal with potential threats to the security of the plant.

There is a continuing need for the protection of the plant. The temporary security zone surrounding the plant is only effective until June 15, 2002. The Coast Guard intends to implement a permanent security zone surrounding the facility. In order to provide continuous protection to the plant until the permanent zone is promulgated, the Coast Guard is extending the effective date of the rule until August 15, 2002. This extension will permit sufficient time to implement a permanent zone through notice and comment rulemaking, while ensuring that there is no lapse in coverage of the facility.

No person or vessel may enter or remain in the prescribed security zone at any time without the permission of the Captain of the Port, Portland, Maine. Each person or vessel in a security zone shall obey any direction or order of the Captain of the Port, Portland, Maine. The Captain of the Port, Portland, Maine may take possession and control of any vessel in a security zone and/or remove any person, vessel, article or thing from a security zone. No person may board, take or place any article or thing on board any vessel or waterfront facility in a security zone without permission of the Captain of the Port, Portland, Maine. These regulations were issued under authority contained in 33 U.S.C. 1223, 1225 and 1226.

Regulatory Evaluation

This temporary final rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. The effect of this regulation will not be significant for several reasons: there is ample room for vessels to navigate around the zone, notifications will be made to the local maritime community and signs will be posted informing the public of the boundaries of the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. For the reasons enumerated in the Regulatory Evaluation section above, this security zone will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 [Public Law 104–121], the Coast Guard offered to assist small entities in understanding this temporary final rule so that they can better evaluate its effects on them and participate in the rulemaking process. If your small business, organization or governmental jurisdiction would be affected by this rule, and you have questions concerning its provisions or options for compliance, please call Lieutenant (Junior Grade) R. F. Pigeon, Marine Safety Office Portland, Maine, at (207) 780–3251.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory action. In particular, the Act addresses actions that may require expenditure by a State, local or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this regulation and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administer of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

For the reasons set out in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5; 49 CFR 1.46.

2. Revise temporary § 165.T01–207, (b) to read as follows:

§ 165.T01–207; Security Zone: Seabrook Nuclear Power Plant, Seabrook, New Hampshire.

* * * * *

(b) *Effective dates.* This rule is effective from December 7, 2001 until August 15, 2002.

* * * * *

Dated: April 29, 2002.

M. P. O'Malley,

Commander, U.S. Coast Guard, Captain of the Port, Portland, Maine.

[FR Doc. 02–11490 Filed 5–7–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–01–192]

RIN 2115–AA97

Safety and Security Zones; Portsmouth Harbor, Portsmouth, New Hampshire

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule; change in effective period.

SUMMARY: The Coast Guard is extending the effective period of a temporary final rule establishing safety and security zones around vessels capable of carrying Liquefied Petroleum Gas (LPG) within the Captain of the Port, Portland, Maine zone. This change will extend the effective date of the temporary final rule until August 15, 2002, allowing time to develop a permanent rule.

DATES: Section 165.T01–192, added at 66 FR 58064 effective from November 9, 2001 through June 21, 2002 is extended in effect to August 15, 2002, and is amended effective May 8, 2002.

ADDRESSES: Documents as indicated in this preamble are available for inspection or copying at Marine Safety Office Portland, Maine, 103 Commercial Street, Portland, Maine 04101 between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

SUPPLEMENTARY INFORMATION:

Regulatory History

On November 20, 2001, the Coast Guard published a temporary final rule (TFR) entitled "Safety and Security Zones: LPG transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone" in the **Federal Register** (66 FR 58064). This rule was effective from November 9, 2001 through June 21, 2002. The Coast Guard did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553 (d) (3), the Coast Guard finds that good cause exists for not publishing a NPRM. This original temporary rule was urgently required to facilitate the safe passage of Liquefied Petroleum Gas (LPG) vessels into the Port of Portsmouth, NH, and to protect the port from the inherent dangers posed by the flammable nature of LPG and the potential impact the explosion of a LPG vessel could have on Portsmouth Harbor and the surrounding area. It was anticipated that the Coast Guard would assess the security environment at the end of the effective period to determine whether continuing security precautions were required and, if so, to propose regulations responsive to existing conditions. We have determined the need for continued security regulations does exist. The Coast Guard will utilize the extended effective period of this temporary rule to engage in notice and comment rulemaking to develop a permanent regulation tailored to the present and foreseeable security environment within the Captain of the Port, Portland, Maine zone.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. The measures contemplated by this rule are intended to prevent possible terrorist attacks against LPG vessels, and to protect other vessels, waterfront facilities, the public, Portsmouth Harbor and surrounding areas on the Piscataqua River from potential sabotage or other subversive acts, accidents or other causes of a similar nature. In addition, the zones are intended to protect persons, vessels and others in the maritime community from the hazards associated with the transit and limited maneuverability of a large tank vessel.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule. This revision preserves the status quo within the port while permanent rules are developed. The present temporary rule has not been burdensome on the maritime public as LPG vessel transits are infrequent. No letters commenting on the present temporary rule have been received from the public.

Background and Purpose

The September 11, 2001 terrorist attacks on New York and Washington D.C. inflicted catastrophic human casualties and property damage. National security and intelligence officials continue to warn that future terrorist attacks are possible. Due to these heightened security concerns, safety and security zones are prudent for LPG tank vessels, which may be likely targets of terrorist attacks due to the flammable nature of LPG and the serious impact on the Port of Portsmouth, New Hampshire and surrounding areas that may be incurred if a LPG vessel was subjected to a terrorist attack.

The original temporary rule established safety and security zones in

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a 500-yard radius around LPG vessels while the vessels were moored at the LPG receiving facility on the Piscataqua River in Newington, New Hampshire. It also created moving safety and security zones any time a LPG vessel was within Captain of the Port, Portland, Maine zone, as defined in 33 CFR 3.05–15, including the internal waters and out to 12 nautical miles from the baseline of the United States.

The original temporary rule also temporarily suspended a safety zone, defined in 33 CFR 165.103, for transits of tank vessels carrying LPG in Portsmouth Harbor, Portsmouth, New Hampshire. 33 CFR 165.103 recognized the safety concerns with transits of large tank vessels, but was inadequate to protect LPG vessels from possible terrorist attack, sabotage or other subversive acts. The original temporary rule provided increased protection for LPG vessels by establishing 500-yard safety and security zones around LPG vessels while moored at the LPG receiving facility on the Piscataqua River, Newington, New Hampshire; and by providing continuous protection for LPG vessels anytime a vessel was within the waters of the Captain of the Port, Portland, Maine zone, including the internal waters and out to 12 nautical miles from the baseline of the United States. 33 CFR 165.103 limited protection to vessels carrying LPG that were transiting to and from the facility. The original temporary rule also extended the zones to 1000 yards on either side of the vessel rather than limiting the zone to the limits of the Piscataqua River Channel. The original temporary rule also recognized the continued need for a safety zone around LPG vessels, which is necessary to protect persons, facilities, vessels and others in the maritime community, from the hazards associated with the transit and limited maneuverability of a large tank vessel.

This rulemaking will extend the effective date of the original temporary rule until August 15, 2002, to allow the establishment of permanent safety and security zones by notice and comment rulemaking, while retaining the added protections implemented in the temporary rulemaking. Due to the infrequent arrivals of LPG vessels in the Port of Portsmouth, this rulemaking will not have a significant effect on the maritime community. Nevertheless, the flexibility to utilize the measures permitted by the temporary rule is vital to ensure port security in the present environment.

Regulatory Evaluation

This temporary rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary for the following reasons: (1) These safety and security zones encompass only a portion of the Captain of the Port, Portland, Maine zone around the transiting LPG vessel, allowing vessels to safely navigate around the zones without delay, and (2) maritime advisories will be made in advance to advise the maritime community of the safety and security zones when in effect.

The Coast Guard will be publishing a NPRM to establish permanent safety and security zones that are temporarily effective under this rule.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the reasons addressed under the Regulatory Evaluation above, the Coast Guard expects the impact of this rule to be minimal and certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213 (a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Lieutenant (Junior Grade) R. F. Pigeon, Waterways Safety Branch, Port Operations Department, Captain of the Port, Portland, Maine at (207) 780–3251.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agricultural Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments or would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local or tribal government, in the aggregate, or the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity and reduce burden.

Protection of Children

The Coast Guard has analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard has considered the environmental impact of this rule and concluded that, under Figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Energy Effects

The Coast Guard has analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

Regulation

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

[§ 165.103 Suspended]

2. Suspend § 165.103 from June 21, 2002 through August 15, 2002.

3. In temporary § 165.T01–192 revise the section heading and add a new paragraph (c) to read as follows:

§ 165.T01–192 Safety and Security Zones; LPG Transits, Portland, Maine Marine Inspection Zone and Captain of the Port Zone

* * * * *

(c) *Effective dates.* This section is effective from November 9, 2001 through August 15, 2002.

Dated: April 29, 2002.

M.P. O'Malley,

Commander, Coast Guard, Captain of the Port, Portland, ME.

[FR Doc. 02–11491 Filed 5–7–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 124

Procedures for Decisionmaking

CFR Correction

In Title 40 of the Code of Federal Regulations, parts 100 to 135, revised as of July 1, 2001, in § 124.15, on page 266, the third sentence of paragraph (a) is revised, and in § 124.56, on page 276, paragraph (b)(1)(vi) is revised, as follows:

§ 124.15 Issuance and effective date of permit.

(a)* * * This notice shall include reference to the procedures for appealing a decision on a RCRA, UIC, PSD, or NPDES permit under § 124.19 of this part. * * *

* * * * *

§ 124.56 Fact sheets (applicable to State programs, see § 123.25 (NPDES).)

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(b)* * *

(1)* * *

(vi) Waivers from monitoring requirements granted under § 122.44(a) of this chapter.

[FR Doc. 02–55511 Filed 5–7–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SWH–FRL–7208–6]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste: Spent Catalysts From Dual-Purpose Petroleum Hydroprocessing Reactors

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of response to comments on the scope of petroleum hazardous waste listings.

SUMMARY: The Environmental Protection Agency (EPA) today is announcing its decision to maintain its interpretation that under RCRA regulations, spent catalyst wastes removed from dual purpose hydroprocessing reactors at petroleum refining facilities are listed hazardous wastes. This interpretation was previously announced in Agency memoranda dated November 29, 1999 and June 1, 2000. In a **Federal Register** notice published July 5, 2001 (66 FR 35379), EPA announced that it was providing the public an opportunity to comment on the interpretation set forth in these memoranda and that the Agency would issue a second **Federal Register** notice that would announce EPA's decision and provide responses to those comments received. EPA's responses are provided in today's document and in a background document, "Response to Comments: July 5, 2001 FR Notice on Spent Catalysts from Dual-Purpose Petroleum Hydroprocessing Reactors." The regulations addressed in the memoranda and again in today's document were promulgated under the Resource Conservation and Recovery Act (RCRA) on August 6, 1998 (63 FR 42110).

ADDRESSES: Supporting materials to this notice are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The Docket Identification Number is F–2002–PR2F–FFFFF. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review file materials, we recommend that you make an appointment by calling (703) 603–9230. You may copy a maximum of 100 pages from any file maintained at the RCRA Docket at no charge. Additional copies cost $0.15/per page. The docket index and some supporting materials are available electronically. See the beginning of the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

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FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 or TDD (800) 553–7672 (hearing impaired). In the Washington, DC, metropolitan area, call (703) 412–3323. For information on specific aspects of the information contained in the memoranda discussed below, contact Patricia Overmeyer or Max Diaz of the Office of Solid Waste (5304W), U.S. Environmental Protection Agency Ariel Rios, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. [E-mail addresses and telephone numbers: *Overmeyer.Patricid@epa.gov*, (703) 605–0708; *Diaz.Max@epa.gov*, (703) 308–0439.]

SUPPLEMENTARY INFORMATION: The docket index and some supporting documents, including the Response to Comments document, that are in the docket for today's notice also are available in electronic format on the Internet at URL: *http://www.epa.gov/epaoswer/hazwaste/id/petroleum/catalyst.htm*

EPA will keep the official record for this action in paper form. The official record is the paper file maintained at the RCRA Docket, the address of which is in **ADDRESSES** at the beginning of this document.

I. Background

A. What is the Reason for Today's Publication?

Today's notice fulfills the terms of a settlement agreement between EPA and the American Petroleum Institute (API), in which the Agency agreed to solicit comment on its interpretation, described in two Agency memoranda, regarding the regulatory status of spent catalysts removed from dual purpose reactors at petroleum facilities and provide the public with responses to comments received. Today's notice provides an overview of the response to comments and announces the availability of a separate, more detailed, response to comments document. In addition, today's notice announces that the Agency is maintaining its interpretation provided in the memoranda dated November 29, 1999 and June 1, 2000 with regard to the hazardous waste listing determinations issued on August 6, 1998. The interpretation is that spent catalysts removed from dual purpose petroleum hydroprocessing reactors are included within the scope of the hazardous waste listings for spent hydrotreating catalysts (K171) or spent hydrorefining catalysts (K172).

B. Overview of Past Agency Actions

On August 6, 1998, EPA listed as hazardous wastes spent hydrotreating catalysts (K171) and spent hydrorefining catalysts (K172) generated in petroleum refining operations (63 FR 42110). These regulations were promulgated under RCRA, 42 USC 6901, *et seq.* EPA took no action with regard to a third type of spent hydroprocessing catalyst generated by petroleum refineries, hydrocracking catalysts.

Subsequent to the promulgation of the hazardous waste listing determination, a number of industry and environmental groups filed lawsuits challenging the validity of the listings. These cases were consolidated in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit) in *American Petroleum Institute* v. *EPA*, Docket No. 94–1683.

Among the petitioners was Gulf Chemical and Metallurgical Corporation. Gulf asserted that the final rulemaking did not provide adequate definitions of the spent catalysts covered within the scope of the hazardous waste listing descriptions for K171 and K172. In particular, Gulf stated that the scope of the final listing descriptions did not adequately address the regulatory status of spent catalysts from petroleum hydroprocessing reactors that perform both hydrotreating and hydrocracking functions (*i.e.*, spent catalysts from dual purpose reactors). Gulf pointed out that such dual purpose reactors perform functions meeting both the definitions of "hydrotreating" and "hydrocracking" provided in the Department of Energy's (DOE's) Petroleum Supply Annual (PSA) and presented in the preamble to the August 6, 1998 final petroleum refining listing determination.

After reviewing the issues raised by Gulf in its petition, we concluded that the Agency had no dispute with the petitioner with regard to the regulatory status of spent catalysts removed from dual purpose reactors. In fact, we saw no grounds for Gulf's challenge to the August 1998 rulemaking given that our interpretation of the final listing descriptions for K171 and K172 is that spent catalysts from petroleum hydroprocessing units that perform hydrorefining and hydrotreatment functions are captured by the listing.

Gulf's challenge did, however, serve to highlight the potential for confusion regarding the regulatory status of spent catalysts removed from dual purpose reactors. Although a straight reading of the regulatory language promulgated in the final rule should result in a conclusion that spent catalysts from units or reactors that perform hydrotreatment or hydrorefining functions are listed hazardous wastes, EPA's Office of Solid Waste decided to issue a memorandum clarifying the regulatory status of spent catalysts from dual purpose petroleum hydroprocessing operations. The memorandum was issued on November 29, 1999, and was distributed to industry trade associations and posted on EPA's "RCRA On-line" website (*http://www.epa.gov/rcraonline*). After the memorandum was issued, Gulf dismissed its lawsuit on the hazardous waste listings (K171 and K172).

The Agency's policy with regard to spent catalysts from dual purpose reactors, as originally expressed in the November 29, 1999 memorandum, is based on the fact that catalysts used in dual purpose reactors enhance the hydrotreatment or hydrorefining of petroleum feedstock. Dual purpose reactors are hydroprocessing reactors that perform hydrotreatment or hydrorefining functions while simultaneously hydrocracking petroleum feedstock. As explained in the memorandum, the fact that such reactors hydrocrack petroleum feedstocks does not exclude the spent catalysts from the hazardous waste listing. It was never the Agency's intent to exclude a spent catalyst from the listings for K171 and K172 on the basis that a spent catalyst is removed from a unit or reactor that hydrocracks petroleum feedstock, when the same unit or reactor also performs a hydrotreating or hydrorefining function.

In February 2000, API filed a lawsuit in the D.C. Circuit challenging the validity of the November 29, 1999 memorandum. *API* v. *EPA*, Docket No. 00–1069. API, however, agreed to hold this lawsuit in abeyance until the court decided the challenge to the original hazardous waste listing determinations.

While awaiting the opinion of the court in the first API lawsuit, and while the second suit was being held in abeyance, EPA received further inquiries on the regulatory coverage of spent catalysts from dual purpose hydroprocessing reactors. In response to these additional inquiries, EPA distributed a second memorandum on June 1, 2000 further clarifying the scope of the K171 and K172 hazardous waste listings with regard to spent catalysts removed from dual purpose reactors. EPA also responded to two letters from individual petroleum refineries that requested information on the regulatory status of spent catalysts from two specific types of hydroprocessing reactors. These letters are discussed in more detail below, and both letters and

EPA's responses to each are in the docket for this notice.

On June 27, 2000, the D.C. Circuit issued an opinion in the first lawsuit that upheld EPA's hazardous waste listing determinations. *API* v. *EPA*, 216 F.3d 50. Following the announcement of the court's decision with regard to its petition filed in response to the August 6, 1998 listing determinations, API reactivated its lawsuit on the November 29, 1999 memorandum.

In June 2001, API and EPA entered into an agreement settling the second lawsuit. Under the terms of the settlement agreement, EPA agreed to publish a **Federal Register** notice announcing the opportunity for the public to comment on the Agency's memoranda regarding the regulatory status of spent catalysts removed from dual purpose reactors. We published this notice in the **Federal Register** on July 5, 2001.

In the settlement agreement, EPA also agreed to publish a second notice, after evaluating the public comments received in response to the first notice. In the July 5, 2001 notice, we explained that the second **Federal Register** notice would serve as an announcement of EPA's decision either to maintain, and possibly clarify, the positions expressed in the memoranda or to change them. Today's notice serves as the second notice that EPA agreed to publish and completes the activities that EPA agreed to undertake in our settlement agreement with API.

C. What Are Dual Purpose Reactors?

Petroleum refineries use hydroprocessing units to prepare residual stream feedstocks for cracking and coking units and to polish final products (*e.g.*, diesel fuels). Hydroprocessing reduces the boiling range of petroleum feedstock and removes substantial amounts of impurities from the feed.[1] During hydroprocessing, molecules in petroleum feedstock are split or saturated in the presence of hydrogen. Hydroprocessing is a broad term encompassing the more specific processes of hydrotreating, hydrorefining, and hydrocracking. Hydroprocessing reactors that hydrotreat petroleum feedstock stabilize the feed and remove impurities catalytically and react the feed with hydrogen. Hydrotreating includes the removal of sulfur, nitrogen, metals, and other impurities from petroleum feedstocks. Spent catalysts removed from hydrotreating reactors are listed hazardous wastes (K171). Hydrorefining also removes impurities, but uses more severe operating conditions than hydrotreating, and treats heavier molecular weight petroleum fractions (e.g., residual fuel oil and heavy gas oil). Spent catalysts removed from hydrorefining reactors also are listed hazardous wastes (K172).

Hydrocracking is a process in which the primary purpose is to reduce the boiling range of petroleum feedstocks. Hydrocracking involves the breaking down of higher molecular weight hydrocarbons to lighter components with an infusion of hydrogen and in the presence of heat. In the August 6, 1998 final rule, EPA did not make a listing determination for spent catalysts from petroleum hydrocracking reactors and these spent catalysts are not currently listed as hazardous wastes.

Dual purpose hydroprocessing reactors are designed to process petroleum feedstocks by both hydrotreating (or hydrorefining) the feedstock (*i.e.*, removing sulfur, nitrogen, metals, and/or other impurities) and hydrocracking the feedstock (*i.e.*, reducing boiling points). The impurities are removed from the feedstock and become deposited on the spent catalyst. Given that the catalysts in dual purpose reactors are used to promote a hydrotreating or hydrorefining function, as well as a hydrocracking function, such catalysts when spent, are listed hazardous wastes under the plain language of the regulation. Although some commenters argue that dual purpose reactors fall within the definition of "hydrocracking" provided in DOE's Petroleum Supply Annual (see 63 FR 42110, at 42155), we point out that these units also clearly fall within the definition of "hydrotreating" included in the Petroleum Supply Annual. We include spent catalysts removed from dual purpose units within the scope of the hazardous waste listings based on the fact that these units perform hydrotreating or hydrorefining functions. We disagree with API's apparent view that the definitions are mutually exclusive and that a unit that can be described legitimately as a hydrocracking unit cannot also be described legitimately as a hydrotreating or hydrorefining unit. We also disagree with API's suggestion that the hydrotreating definition should be limited to the activities that do not also fall within the hydrocracking definition.

The Agency knows of three specific types of dual purpose hydroprocessing reactors currently in use at petroleum refineries. The Agency is clarifying that spent catalysts removed from these three types of dual purpose units are listed hazardous wastes. All are expanded-or ebullating-bed processes. These are the H-Oil, the LC-Fining, and the T-Star reactors. These reactors are designed to process heavy feeds such as atmospheric tower bottoms or vacuum reduced crude and use a single moving-bed catalyst to perform hydrotreating (i.e., metals removal, desulfurization) and hydrocracking functions.[2] Ebullating bed hydroprocessing is a process that takes place in a reactor bed that is not fixed. In such a process, hydrocarbon feed streams enter the bottom of the reactor and flow upwards passing through the catalyst which is kept in suspension by the pressure of the fluid feed.

LC-Fining and H-Oil both use similar technologies but offer different mechanical designs. The purpose of an ebullating bed reactor is to convert the most problematic feeds, such as atmospheric residuum, vacuum residues, and heavy oils having a high content of asphaltenes, metals, sulfur, and sediments, to lighter, more valuable products while simultaneously removing contaminants. The function of the catalyst is to remove contaminants such as sulfur and nitrogen heteroatoms, which accelerate the deactivation of the catalyst, while cracking (converting) the feed to lighter products.

The H-Oil reactor is used to process residue and heavy oils to produce upgraded petroleum products such as liquefied petroleum gas (LPG), gasoline, middle distillates, gas oil, and desulfurized fuel oil. Stable operation is achieved through a high operating pressure. The reactor achieves a very high level of treatment, as well as a very high conversion rate. The H-Oil process can achieve conversion rates of 45 to 90 percent, desulfurization of 55 to 92 percent, and demetallization of 65 to 90 percent.[3]

The LC-Fining process serves the purposes of desulfurization, demetallization, Conradson Carbon Residue (CCR) reduction,[4] and hydrocracking of atmospheric and vacuum residuum. The LC-Fining process can be used to yield a full range

[1] Gary, James H. and Handwerk, Glenn E., "Petroleum Refining Technology and Economics," Third Edition, Marcel Dekker, Inc., New York, 1994, p. 174.

[2] Gary, James H., Handwerk, Glenn E., *Petroleum Refining Technology and Economics*, fourth edition. 2001. p. 165.

[3] See "Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units."

[4] Carbon residue is roughly related to the asphalt content of crude and to the quantity of lubricating oil fraction that can be recovered from it. It often is expressed in terms of weight percent carbon residue by the Conradson ASTM test procedure.

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of high quality distillates, including residuals that may be used as fuel oil, and synthetic crude or feedstock for a residuum FCC, coker, visbreaker, or solvent deasphalter. The LC-Fining process can achieve conversion rates of 40 to 97 percent, desulfurization of 60 to 90 percent, and a demetallization rate of 50 to 98 percent. These conversion and treatment percentages are high, relative to other types of hydroprocessing units.

The T-Star Process also is an ebullated bed hydrotreating/hydrocracking process designed to process very difficult feedstocks (e.g., atmospheric residuum, vacuum residues, and heavy oils with high levels of sulfur and/or metals) and achieve both a high level of treatment and high conversion. T-Star units can maintain conversion rates in the range of 20 to 60 percent and hydrodesulfurization rates in the range of 93 to 99 percent.[5] Additional information on each of the dual-purpose technologies is provided in "Background Document Clarifying the Scope of Petroleum Hazardous Waste Listings: Supplemental Information Regarding Petroleum Hydroprocessing Units' which can be found in the docket for today's notice.

At this time, EPA is aware of only three specific types of dual purpose hydroprocessing units. In addition to the technologies identified in today's notice and in the accompanying background document, other dual purpose units may be under development or made commercially available in the future. Therefore, we point out that the scope of the spent catalyst listings, as it applies to dual purpose units, is not limited to the three units named here. In naming these three specific units we do not mean to imply that spent catalysts from other types of dual purpose units that are designed to both hydrocrack petroleum feedstock and hydrotreat or hydrorefine the feedstock are not included within the scope of the listings. Our intention is to clarify that the scope of the hazardous waste listings includes spent catalysts removed from petroleum hydroprocessing units that perform both a hydrotreating or hydrorefining function, as well as a hydrocracking function. The scope of the hazardous waste listing is based upon the function performed by the reactor and is not specific to the name or brand of the reactor.

[5] Hydrocarbon Processing, "Refining Processes 2000." Process descriptions of hydroprocessing units, November 2000.

II. Summary of the Agency's Views Regarding Spent Catalysts From Dual Purpose Reactors

EPA is retaining its determination that spent catalysts removed from dual purpose reactors (i.e., those hydroprocessing reactors that perform both hydrotreating, or hydrorefining, and hydrocracking functions) are listed hazardous wastes. In the November 29, 1999 memorandum, the Agency clarified that these spent catalysts meet the listing descriptions for K171 or K172. Such materials include spent catalysts removed from expanded-or ebullated-bed reactors (e.g., H-Oil, T-Star, and LC-fining processes).

As explained in the preamble to the August 6, 1998, final rule, definitions for petroleum hydrotreating, hydrorefining, and hydrocracking operations are not universally established. We explained in the final rule preamble that classifying petroleum refining processes on the basis of conversion rates is problematic. Although the preamble introduced the concept of classifying hydroprocessing units on the basis of conversion rates, we decided not to rely upon specific conversion rates to define hydrotreating and hydrocracking. Our reasons for rejecting the use of specific conversion rates included the fact that the ability to vary the operating conditions for some reactors, or changes to the manner in which feedstock conversion is calculated or accounted for, may allow refineries to classify particular reactors as hydrocracking units despite the amount of hydrotreatment or hydrorefining conducted in the reactor. After considering all relevant information in the rulemaking record, as well as commenter suggestions, we decided that the simplest way to differentiate between hydrocracking and hydrotreating units was to rely on categorizations provided in the Department of Energy's (DOE) Petroleum Supply Annual (PSA).

We, however, did not foresee the confusion that arose after the final rule was promulgated over how to classify hydroprocessing units that meet more than one PSA definition. When we wrote the section of the final rule preamble discussing the definitions of hydrotreating, hydrorefining, and hydrocracking, we did not have dual purpose hydroprocessing units in mind. As a result, the discussion did not address the uncommon situation of petroleum hydroprocessing units or reactors that are designed to both hydrotreat or hydrorefine and hydrocrack feedstock and that legitimately meet both the PSA definition of hydrotreating and the PSA definition of hydrocracking. Inquiries received after promulgation of the 1998 final listing determination made us recognize that dual purpose hydroprocessing units that achieve high conversation rates and that are designed to and in fact do perform a high level of treatment were not specifically addressed in the preamble discussion. Due to the high level of treatment obtained in the units, the units meet the definition of a hydrotreater and the spent catalysts generated by the units become contaminated with the same contaminants for which spent hydrotreating catalysts were listed as hazardous wastes.

Dual purpose units are not widely used in the petroleum refining industry. The discussion provided in the 1998 final rule preamble addressed the more common situation where hydrotreatment and hydrocracking are done in succession and in separate units or in separate reactors within a given unit (e.g., a two-staged hydrocracker, where a guard bed performs treatment prior to hydrocracking). Most hydrocracking units, with the exception of the dual purpose units addressed in today's notice, are not designed to convert or crack untreated petroleum feedstock. Most hydrocracking units contain catalysts that promote hydrocarbon conversion but will become poisoned by the sulfur, metal and other heteoratom content of untreated feedstock. This is not the case with dual purpose units where the unit and catalyst can handle untreated petroleum feedstock and perform both hydrotreating and hydrocracking in the same unit. The 1998 preamble discussion addresses the most prevalent case, and did not address the unusual or limited situation of a dual purpose unit.

Our intention in the November 29, 1999 and June 1, 2000 memoranda was to address this situation and clarify that spent catalysts removed from hydroprocessing units that meet the PSA definition of hydrotreating are listed hazardous wastes, even in cases where the unit also meets the PSA definition of hydrocracking. We also clarified that we do not consider spent catalysts from a petroleum hydroprocessing reactor to be a listed hazardous waste solely because some incidental and minimal amount of hydrotreatment (or hydrorefining) of feeds occurs in a hydrocracking unit.

In addition, the Agency, in the November 1999 memorandum, clarified that the listing should not be interpreted as providing that spent catalysts from any hydrocracking process-regardless of whether or not hydrotreatment (or hydrorefining) also occurs—are, by definition, outside the scope of the K171 and K172 listings (i.e., if a spent catalyst otherwise meets the K171 or K172 listings because it comes from a unit that performs a hydrotreating or hydrorefining function, the fact that the spent catalyst is removed from a unit that also hydrocracks does not exclude the spent catalyst from the hazardous waste listing). In the August 1998 final rule, we did not define hydrocracking and then indicate that hydrotreating and hydrorefining are "not hydrocracking." It was never our intent to allow the scope of the hazardous waste listing determination to be defined or superseded when a catalyst performs a hydrocracking function, and that same catalyst also, by design, facilitates a hydrotreatment or hydrorefining function in the same unit or reactor. The final listing determinations were meant to include spent catalysts removed from reactors that perform hydrotreating and hydrorefining functions, even if the reactors also perform a hydrocracking function. This is consistent with EPA's decision in the final rulemaking to rely on the PSA definitions in determining the function or functions performed by a reactor. The PSA definitions of hydroprocessing take into account the function or operation performed by a reactor when defining hydroprocessing operations. We, therefore, clarified in the November 1999 memorandum that it was based on these functions, hydrotreating and hydrorefining, that we determine the regulatory status of the spent catalysts from dual purpose reactors. The presence of hydrocracking within a reactor does not exclude a spent catalyst from the scope of the hazardous waste listing when the reactor also functions as a hydrotreating or a hydrorefining unit.

We further clarify that spent catalysts generated by refineries that classify dual purpose reactors as hydrocracking units when reporting to DOE will nonetheless be K171 or K172 listed wastes if the unit performs a hydrotreatment or hydrorefining function. Today's notice retains the clarification that the 1998 final rule should not be interpreted as allowing petroleum refineries to classify dual purpose reactors as hydrocracking reactors and in doing so claim that the spent catalysts removed from these reactors are spent hydrocracking catalysts (which are not listed hazardous wastes). Catalysts removed from reactors that perform a hydrotreating or hydrorefining function, regardless of whether hydrocracking is performed in the same unit, are listed hazardous wastes, when spent.

We acknowledge that the preamble is confusing in that it indicated that units that previously have been classified as hydrocrackers are not covered by the listing. Again, at the time EPA wrote the final rule preamble, it did not have dual purpose reactors in mind. The preamble did specifically address guard beds, in which a separate bed treats feed in advance of feeding the petroleum stream to a hydrocracker. But, EPA did not (in the 1998 preamble) address the situation where a single reactor preforms both a hydrotreating (or hydrorefining) and a hydrocracking function. (Indeed, EPA's treatment of guard beds supports the interpretation retained today, in that it reflects EPA's clear intention to capture within the scope of the listings catalyst wastes from units that are intended to, and do, hydrotreat or hydrorefine petroleum feedstock). In any event, the indication that self-classification as a hydrocracker avoids listing coverage is inconsistent with EPA's stated intent to rely on the PSA definitions, in that it would allow spent catalysts from units that are designed to, and in fact do, perform hydrotreating or hydrorefining functions to escape the listing, despite the fact that they are generating precisely the wastes EPA intended to capture in the listing. It was because of the potential inconsistency in the preamble that EPA saw the need to issue its interpretive memoranda in the first place. EPA believes that its interpretation presented in these memoranda and retained today is most consistent with the preamble and rulemaking overall-it captures wastes from units that are designed to hydrotreat or hydrorefine waste under the PSA definitions.

After EPA distributed the November 29, 1999 memorandum, it was brought to the Agency's attention that the memorandum could be interpreted as indicating that spent catalysts from petroleum hydrocracking reactors are captured by the hazardous waste listings, even though such reactors may conduct only minimal and incidental hydrotreatment or hydrorefining of previously treated feedstock. For example, some reactors that hydrocrack petroleum feedstock treated previously to remove sulfur, metals and other impurities, may also in practice perform incidental and minimal hydrotreating or hydrorefining due to the operating parameters employed and the nature of the pre-treated feed entering the reactor.

The Agency did not intend, when issuing the November 29, 1999 memorandum, to include within the scope of the hazardous waste listings spent catalysts from hydrocracking reactors, if such reactors are designed to hydrocrack feedstock and perform only a minimal and incidental amount of hydrotreatment or hydrorefining. Rather, EPA intended to address only the status of dual purpose units that are designed to perform hydrotreatment or hydrorefining as well as hydrocracking functions. Therefore, we issued a memorandum dated June 1, 2000, clarifying that spent catalysts removed from reactors that hydrocrack petroleum feedstocks and perform only "minimal and incidental" hydrotreatment or hydrorefining are not within the scope of the hazardous waste listing descriptions for K171 or K172. This is consistent with the regulatory language, and with the intention stated in the preamble and the November 1999 memorandum, to adopt a functional approach to defining catalysts removed from hydroprocessing units.

Today, the Agency reiterates that a spent catalyst removed from a unit that performs hydrotreating or hydrorefining functions is a "spent hydrotreating catalyst" or a "spent hydrorefining catalyst" within the meaning of the regulation, even if the unit also performs a hydrocracking function. However, a spent catalyst removed from a reactor that hydrocracks and performs only minimal and incidental hydrotreatment or hydrorefining does not fall within the scope of the hazardous waste listings K171 and K172. Spent catalysts removed from such hydrocracking reactors are not captured by the listings simply because some hydrotreating or hydrorefining unavoidably occurs in the reactor. A copy of the Agency's June 1, 2000 memorandum clarifying this conclusion is included in the docket.

Following distribution of the November 29, 1999 memorandum, EPA also received requests from members of the petroleum refining industry for clarification of the regulatory status of two specific types of spent catalysts. In response to these requests, we issued two letters to the requesting parties on June 1, 2000. In a letter to Motiva Enterprises LLC, we explained that we determined that the spent catalyst removed from the Motiva refinery's H-Oil unit is a listed hazardous wastes. Based on our determination that the H-Oil unit is a dual purpose hydroprocessing reactor designed to both hydrotreat and hydrocrack petroleum feedstock in a single reactor using a single, ebullating bed catalyst, we found that the spent catalyst from the H-Oil unit falls within the scope of the hazardous waste listings.

In a second letter, to Chevron Research and Technology Company, we addressed the regulatory status of spent

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catalyst removed from Chevron's two-stage ISOCRACKING hydroprocessing unit. In this letter, we determined that spent catalyst removed from the first stage of the ISOCRACKING unit, which serves as a guard bed reactor and performs a predominant treatment function, is a listed hazardous waste (K171). The resulting K171 designation of spent catalyst from the first stage reactor of this unit follows from our determination that spent catalysts from guard bed reactors are within the scope of the listing descriptions for K171 and K172 as clarified in the preamble to the August 6, 1998 final rule. Also, the final listing descriptions for K171 and K172 clearly designate spent catalysts from guard bed reactors as included within the scope of the listings (see 40 CFR 261.32). In addition, we also stated in our letter to Chevron that spent catalysts removed from the second stage reactor of Chevron's ISOCRACKING unit are not spent hydrotreating or hydrorefining catalysts and are not captured by the listing descriptions for K171 and K172. The second stage reactor within the ISOCRACKING unit receives pretreated feed and performs a predominant hydrocracking function; we concluded that any hydrotreatment that occurs in the second stage of the reactor is minimal and incidental.

III. Overview of Public Comments

In the July 5, 2001 **Federal Register** notice, we reiterated our explanation that spent catalysts removed from dual purpose reactors are listed hazardous wastes. We explained in that notice that it was our finding that this conclusion, as expressed in the two EPA memoranda, is consistent with the plain language of the listing description. However, we acknowledged that the memoranda were controversial within the regulated community and we believed that providing an opportunity for public comment was in the interest of good government because it provides interested parties with a chance to influence the Agency's thinking and could avoid potentially unnecessary litigation. We, therefore, solicited comment on the regulatory interpretation presented in the November 29, 1999 and the June 1, 2000 memoranda which explained the Agency's position that spent catalysts removed from petroleum hydroprocessing reactors that perform both a hydrotreatment (or hydrorefining) function and a hydrocracking function are captured by the hazardous waste listings K171 or K172.

We also solicited comments as to whether there are specific situations where it is not clear whether, or relatively how much, hydrotreatment or hydrorefining is either occurring or intended in a particular unit or reactor. We noted especially that we were interested in comment on whether there is a better test for generally describing dual purpose units that are not H-Oil, LC-Fining, or T-Star reactors (the dual purpose reactors that, as noted above, EPA knows about) but perform hydrocracking and more than "minimal and incidental" hydrotreating or hydrorefining, or whether decisions regarding the regulatory status of these other reactors must be made on a case-by-case basis. We requested that any improvements suggested by commenters be consistent with our focus on determining when a catalyst is used in a reactor that performs a hydrotreatment or hydrorefining function, regardless of whether it also is performing a hydrocracking function.

We explained in the July 5, 2001 notice that we were not reopening comment on any substantive or procedural issues affecting the August 6, 1998 hazardous waste listing rule. Comments were requested solely on the issues addressed within the context of the two memoranda.

We received comments in response to the July 5, 2001 notice from one petroleum refinery, as well as from the American Petroleum Institute and the National Petrochemical and Refiners Association (NPRA). We also received comments from the Ferroalloys Association, a trade association representing the catalyst recycling industry.

We did not receive any comments on determining a clear test for describing dual purpose reactors that are not the three types EPA knows about, nor did any comments identify any other units that should be considered dual purpose reactors. However, we understand that we may in the future have to make case-by-case determinations of the status of spent catalysts from other dual purpose reactors under the general principles discussed in the record for the August 1998 rulemaking, as clarified by the record accompanying this **Federal Register** notice.

A. Comments Received From the Petroleum Refining Industry

Comments received from parties representing the petroleum refining industry argued that the memoranda developed by EPA clarifying the status of spent catalysts removed from dual purpose petroleum refining reactors contradict the preamble language included in the August 6, 1998 final rulemaking and substantially expand the listing definitions. The commenters stated that the preamble to the final rule did not mention dual purpose reactors and stated that, with the exception of guard beds, if a refinery had been classifying hydroprocessing units as hydrocrackers for the purpose of the DOE form EIA–820, spent catalyst from such a unit would not be covered by K171 or K172. These commenters also argued that since EPA promulgated source-specific listings (or "K" listings), the listings were clearly based on specific processes or units from which the catalysts are removed and not based on the function performed by the catalysts. In addition, these commenters suggested that EPA define the scope of the hazardous waste listings on the percentage of feedstock conversion (*i.e.*, the amount of hydrocracking performed) in the unit from which a spent catalyst is removed.

We admit that confusion may have been created by the sentence in the preamble to the August 1998 final rule that states that "if a refinery has been classifying its hydroprocessor as a catalytic hydrocracker for the purposes of DOE's Form EIA–820, spent catalysts from this unit would not be covered by K171 or K172 (with the exception of guard beds * * *)." As stated above, when we wrote the section of the final rule preamble discussing the definitions of hydrotreating, hydrorefining, and hydrocracking, we did not have dual purpose hydroprocessing units in mind. As a result, the discussion did not address the unusual situation of petroleum hydroprocessing units or reactors that legitimately meet both the PSA definition of hydrotreating and the PSA definition of hydrocracking.

Our intention in the November 29, 1999 and June 1, 2000 memoranda was to address this confusion and clarify that spent catalysts removed from hydroprocessing units that meet the PSA definition of hydrotreating are listed hazardous wastes, even in cases where the unit also meets the PSA definition of hydrocracking. We also clarified that we do not consider spent catalysts from a petroleum hydroprocessing reactor to be a listed hazardous waste solely because some incidental and minimal amount of hydrotreatment of feeds occurs in a hydrocracking unit. In addition, the Agency, in the November 1999 memorandum, clarified that the listing should not be interpreted as providing that spent catalysts from any hydrocracking process—regardless of whether or not hydrotreatment also occurs—are, by definition, outside the scope of the K171 and K172 listings.

Therefore, we disagree with the underlying premise of the commenter's argument that the PSA definitions of hydrotreatment and hydrocracking are mutually exclusive. The definitions clearly overlap. Individual hydroprocessing units may meet both definitions. The fact that any unit can legitimately be classified as a hydrocracker does not preclude the unit from meeting the definition of a hydrotreater or a hydrorefiner.

Based on guidance provided in the preamble to the final rule, including our use of definitions that categorize hydroprocessing units based on the function performed by the unit, and our rejection in the final rule of general refining process definitions (*e.g.*, definitions provided by the Oil and Gas Journal, that base hydroprocessor definitions on the percent of conversion obtained within a unit), we believe the preamble to the August 1998 rule reflects our intent to base the scope of the final listings on the function performed by the units or reactors in which spent catalysts are generated. Therefore, when we clarified in our November 29, 1999 and June 1, 2001 memoranda that spent catalysts removed from dual purpose reactors are included within the scope of the hazardous waste listings based on the function performed by dual purpose reactors, we were consistent with the overall thrust of the discussion provided in the preamble to the final rule.

As we explained in the July 5, 2001 **Federal Register** notice, we acknowledge that the scope of the hazardous waste listings, as explained in the memoranda, is controversial. Therefore, although we believe that the policy explained in the memoranda is a correct reading of the final regulatory language, we decided to take the unusual step of soliciting public comment on the memoranda in which we explained our policy, due to concerns raised by the regulatory community. In today's notice, and after considering public comments received in response to the July 5, 2001 notice, we are providing public notification that we are retaining our policy with regard to the regulatory status of spent catalysts removed from dual purpose hydroprocessing units, as it is explained in our memoranda of November 29, 1999 and June 1, 2000.

We also disagree with the commenters' assertion that, because we promulgated the final listings as "K" listings, this limits the scope of the listings to specific units. Neither the listing descriptions codified in the regulatory language nor the preamble to the final rule limits the listings to specific units. Both the final listing descriptions and the preamble language describe the scope of the listing based on the function performed by the units or reactors from which the spent catalysts have been removed. In addition, while the commenter is correct that some K-listings are unit specific (such as K051—API separator sludge from the petroleum refining industry), many K-listings are not unit specific, but process-specific from a particular industry. For example, there are 16 separate listings within the K-listings that specify "wastewater treatment sludge" from a particular industry (*e.g.*, from the production of toxaphene (K041)). The wastewater treatment sludge listings are not necessarily from a particular type of unit. Instead, the listings can be derived from any wastewater treatment process involved in the production of a certain product. In fact, very few of the K-listings actually specify a specific unit. The major difference between the F- and K-listings is that the K-listings generally identify wastes generated by a particular industry and are often more specific with regard to where the waste is formed. Therefore, the Agency's interpretation that spent catalyst from dual-purpose reactors is included in the listing is consistent with the Agency's designation of other K-listings.

We also do not agree with arguments that we should redefine the scope of the hazardous waste listings for spent hydrotreating catalysts and spent hydrorefining catalysts based on the amount of hydrocracking performed in the units or reactors from which the catalysts are removed. We find it is more appropriate to base the scope of the listings on the basis of the hydrotreating and hydrorefining functions performed by the units. As we explained in the preamble to the August 6, 1998 final rule and in our responses to comments received on the proposed listing determinations (60 FR 57747), we continue to reject the notion of defining these wastes on the basis of the degree of hydrocracking that is performed in the units or reactors from which they are removed. As we stated in the preamble to the final rule, reliance on specific conversion rates allows that slight changes in operating and accounting practices may result in reclassification of units or reactors that otherwise would be considered hydrorefiners or hydrotreaters. In addition, the mere presence of hydrocracking does not preclude a unit or reactor from performing a significant hydrotreating or hydrorefining function. Hydrotreating and hydrorefining of petroleum feedstock results in the demetalization and desulfurization of petroleum feedstock as well as the removal of other impurities and heteroatoms. The performance of these functions results in the contamination of the catalyst, such that it eventually becomes spent. We found that the degree of contamination of the catalyst has a direct correlation to the risk potential of the spent catalyst.

B. Comments Received From the Catalyst Recycling Industry

We also received comments from the Ferroalloys Association, a trade association representing companies that recycle spent hydroprocessing catalysts. The catalyst recycling industry generally supports the policy articulated in the November 29, 1999 and June 1, 2001 memoranda. As stated in its comments, the commenter agrees that spent catalysts that perform hydrotreating or hydrorefining functions should be regulated as hazardous wastes, even when the catalysts are removed from units that also perform conversion of heavy fractions to lighter fractions. The commenter points out, however, that in the July 5, 2001 **Federal Register** notice, we identified only three types of dual purpose hydroprocessing units. The commenter argues that other types of hydroprocessing units, including some fixed bed units also perform both hydrotreating and hydrocracking functions. As pointed out above, our interpretation of the final spent catalyst listings, as described in the final rule preamble, the two memoranda, and in this notice, is that the listings include spent catalysts from dual purpose hydroprocessing units. At present, we are aware of three types of specific dual purpose units (H-oil, L–C fining, and T-star units), that both hydrocrack petroleum feedstock and perform hydrotreatment or hydrorefining functions. We are aware that more such units could become available in the future and that others could now exist of which we are unaware. Although we do not anticipate that many other such units exist, other dual purpose units could exist, and the spent catalysts from such units would be captured by the listings.

The July 5, 2001 notice established that the Agency's policy, as described in the November 29, 1999 and June 1, 2000 memoranda, is that spent catalysts from hydroprocessing units that perform both a hydrotreating (or hydrorefining) function and a hydrocracking function are listed hazardous wastes. However, spent catalysts from reactors that perform a hydrocracking function and

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only some incidental and minimal amount of hydrotreatment of feeds (*e.g.*, the second stage of a two-staged ISOCRACKING unit) are not listed hazardous wastes. As explained above, the scope of the hazardous waste listings for K171 and K172 includes spent catalysts removed from a reactor that performs a hydrotreating or hydrorefining function, including a spent catalyst from any dual purpose reactor designed and operated to hydrotreat or hydrorefine petroleum feedstock, as well as hydrocrack the feed in the same reactor. The scope of the listing is not limited to the specific units named above or in the background document to this notice, or to units with specific brand names.

The catalyst recyclers also commented that, when EPA promulgated the final hazardous waste listings for spent catalysts, EPA designated the listings as "specific source" listings, or "K" listings. The recyclers suggested that the Agency amend the listings by combining both listings into one "F," or non-specific source listing. In its comments, the catalyst recycling industry also encouraged EPA to undertake a listing investigation to determine whether or not spent hydrocracking catalysts should be listed as hazardous waste. The commenter points out that data previously collected by the Agency may support such a hazardous waste listing.

The issue regarding the designation of a "specific source" listing versus "non-specific source" listing (i.e., a "F-listing" versus a "K-listing") is addressed above. The request regarding a listing determination for spent hydrocracking catalyst is beyond the scope of today's notice.

C. Comments Related to Encouraging Recycling

Commenters representing petroleum refineries argued that EPA should promulgate a conditional exemption from the hazardous waste listings for spent hydrotreating catalysts and spent hydrorefining catalysts that are recycled. Commenters argued that a conditional exemption from the hazardous waste listing would encourage more recycling of spent catalysts.

The consideration of a conditional exemption from the hazardous waste listing for spent catalysts that are recycled is beyond the scope of today's notice. A commenter representing the petroleum refining industry argued that the final listing determination resulted in significant increases in the cost of recycling spent catalysts. The commenter stated, that "the predicted result of EPA's refusal to tailor the listings was that the costs related to reclamation rose substantially (up to $500–800/ton) after the listings took effect in early 1999, while landfilling of the listed catalysts—in compliance with Subtitle C of RCRA—became relatively more practical and economical (about $200/ton) than reclamation." The commenter provided no additional documentation of its claim.

Information available to EPA does not support this conclusion. Available information indicates that management costs for catalyst recyclers increased only slightly as a result of the 1998 final rulemaking due to the need to manage wastes generated as a result of the reclamation process as hazardous wastes. Almost all of the catalyst reclaimers had Subtitle C storage permits prior to the 1998 final rule because many catalysts exhibit one or more of the hazardous waste characteristics and, therefore, had to be managed as hazardous wastes prior to the final listing determination. Although we do not dispute that there is a significant cost differential between the costs associated with reclamation and disposal of spent catalysts, the cost differential is not a result of the final listing determination. In addition, we do not expect a regulatory amendment changing the listing status of spent catalysts that are reclaimed or recycled to have any significant effect upon the future costs of waste management practices.

In its comments, the association representing the catalyst reclaimers did not address the issue of a conditional exemption from the hazardous waste listing for spent catalysts that are recycled. However, the association has petitioned the Agency to amend the land disposal restrictions treatment standards promulgated as part of the final listing determination to require similar treatment requirements for both spent hydrotreating catalysts and spent hydrorefining catalysts. The catalyst reclaimers argue that the difference in treatment standards for spent hydrorefining catalysts discourage recycling of these wastes and result in significant levels of hazardous constituents being land disposed.

We believe it is important to encourage recycling and reclamation of hazardous wastes, as well as the conservation of resources. It is a particularly important goal for the Agency to encourage the reclamation of hazardous wastes containing significant quantities of recoverable metals. As commenters to the July 5, 2001 notice pointed out, spent petroleum hydroprocessing catalyst can contain recoverable quantities of vanadium and other metals. Therefore, we continue to encourage all parties to identify ways in which the recycling of spent catalysts may be encouraged.

Dated: April 30, 2002.

Marianne Lamont Horinko,

Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 02–11451 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–975, MM Docket No. 01–128, RM–10133]

Digital Television Broadcast Service; Charleston, SC

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of WCSC, Inc., licensee of WCSC–TV, NTSC channel 5, substitutes DTV channel 47 for DTV channel 52 at Charleston. See 66 FR 34400, June 28, 2001. DTV channel 47 can be allotted to Charleston, South Carolina, in compliance with the principle community coverage requirements of Section 73.625(a) at reference coordinates 32–55–28 N. and 79–41–58 W. with a power of 1000, HAAT of 597 meters and with a DTV service population of 851 thousand.

With is action, this proceeding is terminated.

DATES: Effective June 17, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–128, adopted April 26, 2002, and released May 2, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Carolina, is amended by removing DTV channel 52 and adding DTV channel 47 at Charleston.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11389 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 214

[Docket No. FRA–2001–10426]

RIN 2130–AA48

Railroad Workplace Safety; Correction

AGENCY: Federal Railroad Administration (FRA), (DOT).

ACTION: Interim final rule; correction.

SUMMARY: In the **Federal Register** of Tuesday, January 15, 2002, (67 FR 1903), the FRA published an interim final rule prohibiting the use of body belts as permissible components of personal fall arrest systems and making technical changes. In the **Federal Register** of Tuesday, March 12, 2002, (67 FR 11055), the FRA published a correction to the interim final rule. Sections 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications.

DATES: Effective on May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Gordon A. Davids, Bridge Engineer, Office of Safety, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6320; or Cynthia Walters, Trial Attorney, Office of Chief Counsel, FRA, 1120 Vermont Avenue NW., Washington, DC 20590, Telephone: (202) 493–6027.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 15, 2002, (67 FR 1903), in an interim final rule, FRA incorrectly modified §§ 214.105(b)(14) and 214.117(a). In the **Federal Register** of March 12, 2002, (67 FR 11055), FRA published a correction to the interim final rule. Sections 214.105(b)(14) and 214.117(a) were incorrectly modified. This document corrects those modifications. In rule FR Doc. 02–723 published on January 15, 2002 (67 FR 1903), amend the following sections.

§ 214.105 [Corrected]

1. On page 1907, in the second column, in § 214.105, correct paragraph (b)(14) to read as follows:

(b)(14) Dee-rings and snap-hooks shall be capable of sustaining a minimum tensile load of 3,600 pounds without cracking, breaking, or taking permanent deformation.

§ 214.117 [Corrected]

2. On page 1908, in the second column, in § 214.117, correct paragraph (a) to read as follows:

(a) Railroad bridge workers shall be provided and shall wear eye and face protection equipment when potential eye or face injury may result from physical, chemical, or radiant agents.

Dated: May 2, 2002.

S. Mark Lindsey,

Chief Counsel, Federal Railroad Administration.

[FR Doc. 02–11489 Filed 5–7–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 89
Wednesday, May 8, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to waive the nonmanufacturer rule.

SUMMARY: The Small Business Administration (SBA) is considering a waiver of the Nonmanufacturer Rule for bearings, plain, unmounted and bearings mounted. The basis for waivers is that no small business manufacturers are supplying these classes of products to the Federal government. The effect of a waiver would be to allow otherwise qualified regular dealers to supply the products of any domestic manufacturer on a Federal contract set aside for small businesses or awarded through the SBA 8(a) Program. The purpose of this notice is to solicit comments and source information from interested parties.

DATES: Comments and sources must be submitted on or before May 23, 2002.

ADDRESSES: Submit comments to: Edith Butler, Program Analyst, U.S. Small Business Administration, 409 3rd Street, SW, Washington, DC 20416, Tel: (202) 619–0422.

SUPPLEMENTARY INFORMATION:

Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurement must provide the product of a small business manufacturer or processor, if the recipient is other than the actual manufacturer or processor. This requirement is commonly referred to as the Nonmanufacturer Rule. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 303(h) of the law provides for waiver of this requirement by SBA for any "class of products" for which there are no small business manufacturers or processors in the Federal market.

To be considered available to participate in the Federal market on these classes of products, a small business manufacturer must have submitted a proposal for a contract solicitation or received a contract from the Federal government within the last 24 months. The SBA defines "class of products" based on two coding systems. The first is the Office of Management and Budget *Standard Industrial Classification Manual*. The second is the Product and Service Code established by the Federal Procurement Data System.

This notice proposes to waive the Nonmanufacturer Rule for bearings, plain, unmounted and bearings mounted, SIC code 3562 and North American Industry Classification System (NAICS) 333613 public is invited to comment or provide source information to SBA on the proposed waiver of the nonmanufacturer rule for bearings, plain, unmounted and bearings mounted.

Luz A. Hopewell,

Associate Administrator for Government Contracting.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. FAA–2002–12244; Notice No. 02–08]

RIN 2120–AH65

Powerplant Controls on Transport Category Airplanes, General

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Aviation Administration proposes to amend the airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flight deck. The proposed rule would clarify the requirements for a means to select the intended position of the valve, to indicate the selected position, and to indicate if the valve has not attained the selected position. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

DATES: Send your comments on or before July 8, 2002.

ADDRESSES:

Address your comments to Dockets Management System, U.S. Department of Transportation Dockets, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–12244 at the beginning of your comments, and you should send two copies of your comments. If you wish to receive confirmation that the FAA has received your comments, please include a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. ____." We will date-stamp the postcard and mail it back to you.

You also may submit comments through the Internet to: *http://dms.dot.gov*. You may review the public docket containing comments to this proposed regulation in person in the Dockets Office, between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review the public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Michael McRae, FAA, Propulsion/Mechanical Systems Branch, ANM–112, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, WA 98055–4056; telephone 425–227–2123; facsimile 425–227–1320, e-mail *mike.mcrae@faa.gov*.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy, or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any

recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page *(http://dms.dot.gov/search)*.

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *http://www.faa.gov/avr/armhome.htm* or the **Federal Register**'s web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Any person interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular 11–2A, "Notice of Proposed Rulemaking Distribution System," which describes the application procedure.

What Are the Relevant Airworthiness Standards in the United States?

In the United States, the airworthiness standards for type certification of transport category airplanes are contained in Title 14, Code of Federal Regulations (CFR) part 25. Manufacturers of transport category airplanes must show that each airplane they produce of a different type design complies with the appropriate part 25 standards. These standards apply to:

- Airplanes manufactured within the U.S. for use by U.S.-registered operators, and
- Airplanes manufactured in other countries and imported to the U.S. under a bilateral airworthiness agreement.

What Are the Relevant Airworthiness Standards in Europe?

In Europe, the airworthiness standards for type certification of transport category airplanes are contained in Joint Aviation Requirements (JAR)–25, which are based on part 25. These were developed by the Joint Aviation Authorities (JAA) of Europe to provide a common set of airworthiness standards within the European aviation community. Twenty-three European countries accept airplanes type certificated to the JAR–25 standards, including airplanes manufactured in the U.S. that are type certificated to JAR–25 standards for export to Europe.

What Is "Harmonization" and How Did It Start?

Although part 25 and JAR–25 are similar, they are not identical in every respect. When airplanes are type certificated to both sets of standards, the differences between part 25 and JAR–25 can result in substantial added costs to manufacturers and operators. These added costs, however, often do not bring about an increase in safety. In many cases, part 25 and JAR–25 may contain different requirements to accomplish the same safety intent. Consequently, manufacturers are usually burdened with meeting the requirements of both sets of standards, although the level of safety is not increased correspondingly.

Recognizing that a common set of standards would not only benefit the aviation industry economically, but also maintain the necessary high level of safety, the FAA and the JAA began an effort in 1988 to "harmonize" their respective aviation standards. The goal of the harmonization effort is to ensure that:

- Where possible, standards do not require domestic and foreign parties to manufacture or operate to different standards for each country involved; and
- The standards adopted are mutually acceptable to the FAA and the foreign aviation authorities.

The FAA and JAA have identified a number of significant regulatory differences (SRD) between the wording of part 25 and JAR–25. Both the FAA and the JAA consider "harmonization" of the two sets of standards a high priority.

What Is ARAC and What Role Does It Play in Harmonization?

After initiating the first steps towards harmonization, the FAA and JAA soon realized that traditional methods of rulemaking and accommodating different administrative procedures were neither sufficient nor adequate to make appreciable progress towards fulfilling the goal of harmonization. The FAA then identified the Aviation Rulemaking Advisory Committee (ARAC) as an ideal vehicle for assisting in resolving harmonization issues, and, in 1992, the FAA tasked ARAC to undertake the entire harmonization effort.

The FAA had formally established ARAC in 1991 (56 FR 2190, January 22, 1991), to provide advice and recommendations concerning the full range of the FAA's safety-related rulemaking activity. The FAA sought this advice to develop better rules in less overall time and using fewer FAA resources than previously needed. The committee provides the FAA firsthand information and insight from interested parties regarding potential new rules or revisions of existing rules.

There are 64 member organizations on the committee, representing a wide range of interests within the aviation community. Meetings of the committee are open to the public, except as authorized by section 10(d) of the Federal Advisory Committee Act.

The ARAC establishes working groups to develop recommendations for resolving specific airworthiness issues. Tasks assigned to working groups are published in the **Federal Register**. Although working group meetings are not generally open to the public, the FAA solicits participation in working groups from interested members of the public who possess knowledge or experience in the task areas. Working

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groups report directly to the ARAC, and the ARAC must accept a working group proposal before ARAC presents the proposal to the FAA as an advisory committee recommendation.

The activities of the ARAC will not, however, circumvent the public rulemaking procedures; nor is the FAA limited to the rule language "recommended" by ARAC. If the FAA accepts an ARAC recommendation, the agency proceeds with the normal public rulemaking procedures. Any ARAC participation in a rulemaking package is fully disclosed in the public docket.

What Is the Status of the Harmonization Effort Today?

Despite the work that ARAC has undertaken to address harmonization, there remain a large number of regulatory differences between part 25 and JAR–25. The current harmonization process is extremely costly and time-consuming for industry, the FAA, and the JAA. Industry has expressed a strong desire to conclude the harmonization program as quickly as possible to alleviate the drain on their resources and to finally establish one acceptable set of standards.

Recently, representatives of the aviation industry [including Aerospace Industries Association of America, Inc. (AIA), General Aviation Manufacturers Association (GAMA), and European Association of Aerospace Industries (AECMA)] proposed an accelerated process to reach harmonization.

What Is the "Fast Track Harmonization Program"?

In light of a general agreement among the affected industries and authorities to expedite the harmonization program, the FAA and JAA in March 1999 agreed upon a method to achieve these goals. This method, which the FAA has titled "The Fast Track Harmonization Program," is aimed at expediting the rulemaking process for harmonizing not only the 42 standards that are currently tasked to ARAC for harmonization, but approximately 80 additional standards for part 25 airplanes.

The FAA initiated the Fast Track program on November 26, 1999 (64 FR 66522). This program involves grouping all of the standards needing harmonization into three categories:

Category 1: Envelope—For these standards, parallel part 25 and JAR–25 standards would be compared, and harmonization would be reached by accepting the more stringent of the two standards. Thus, the more stringent requirement of one standard would be "enveloped" into the other standard. In some cases, it may be necessary to incorporate parts of both the part 25 and JAR standard to achieve the final, more stringent standard. (This may necessitate that each authority revises its current standard to incorporate more stringent provisions of the other.)

Category 2: Completed or near complete—For these standards, ARAC has reached, or has nearly reached, technical agreement or consensus on the new wording of the proposed harmonized standards.

Category 3: Harmonize—For these standards, ARAC is not near technical agreement on harmonization, and the parallel part 25 and JAR–25 standards cannot be "enveloped" (as described under Category 1) for reasons of safety or unacceptability. A standard developed under Category 3 would be mutually acceptable to the FAA and JAA, with a consistent means of compliance.

Further details on the Fast Track Program can be found in the tasking statement (64 FR 66522, November 26, 1999) and the first NPRM published under this program, Fire Protection Requirements for Powerplant Installations on Transport Category Airplanes (65 FR 36978, June 12, 2000).

Under this program, the FAA provides ARAC with an opportunity to review, discuss, and comment on the FAA's draft NPRM. In the case of this rulemaking, ARAC recommended a number of changes to the NPRM. The FAA agrees with the intent of some of those recommendations, but we disagree with others. Those recommendations, and our reasons for disagreeing, are described below in the section entitled "What Comments Did ARAC Have Concerning the Proposed Action?"

Discussion of the Proposal

How Does This Proposed Regulation Relate to "Fast Track"?

This proposed regulation results from the recommendations of ARAC submitted under the FAA's Fast Track Harmonization Program. In this action, the FAA proposes to amend § 25.1141, concerning general design requirements for power plant controls. This action was designated a Category 1 project under the Fast Track program.

What Is the Underlying Safety Issue Addressed by the Current Standards?

The intent of this standard is to mitigate the potential for flightcrews to select an inappropriate position for, or be unaware of the position of, powerplant valves that are controlled from the flight deck.

What Are the Current 14 CFR and JAR Standards?

The current text of 14 CFR 25.1141(f) [amendment 25–72 (55 FR 29785, July 20, 1990)] is:

"(f) Powerplant valve controls located in the cockpit must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed position; and

(2) For power-assisted valves, a means to indicate to the flight crew when the valve—

(i) Is in the fully open or fully closed position; or

(ii) Is moving between the fully open and fully closed position."

The current text of JAR–25.1141(f) (Change 15, October 2000) is:

"(f) Powerplant valve controls located in the cockpit must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed positions; and

(2) In the case of valves controlled from the cockpit other than by mechanical means, where the correct functioning of such a valve is essential for the safe operation of the aeroplane, a valve position indicator operated by a system which senses directly that the valve has attained the position selected, unless other indications in the cockpit give the flight crew a clear indication that the valve has moved to the selected position.

(See Advisory Circular Joint (ACJ) 25.1141(f).)"

The JAA also has issued ACJ 25.1141(f), which serves as interpretative material that supplements JAR 25.1141(f). The text of the ACJ is:

"A continuous indicator need not be provided."

What Are the Differences in the Standards and What Do Those Differences Result In?

There are four differences between the two standards in paragraph (f)(2). These differences are:

1. To describe the applicable valves, part 25 uses the term "power-assisted." The JAR uses the phrase "other than by mechanical means."

2. The JAR uses the phrase "where the correct functioning of such a valve is essential for the safe operation of the aeroplane" to reduce the applicability to be more consistent with the requirements of JAR 25.1309(c) relating to indications. Part 25 does not use such a phrase.

3. For the basic indicating requirement, the JAR uses the phrase "a valve position indicator operated by a system which senses directly that the valve has attained the position selected." Part 25 uses the phrase "a means to indicate to the flight crew when the valve is in the fully open or fully closed position, or is moving between the fully open and fully closed position."

4. By including the phrase "unless other indications in the flight deck give the flightcrew a clear indication that the valve has moved to the selected position," the JAR specifically acknowledges that a dedicated indication is not required. Part 25 does not.

What, if Any, Are the Differences in the Means of Compliance?

The only significant differences in the means of compliance are those associated with the differences in the scope of the applicability of the standards.

What Is the Proposed Action?

The FAA proposes to revise the current standard to include the more stringent requirements of the parallel JAR. The text of the rule would be updated, however, so that it more clearly reflects the existing practices that have been found to achieve an acceptable level of safety. Specifically, the proposed revision would require that powerplant valve controls located in the flight deck must provide the crew with means to:

- Select each intended position of the valve;
- Indicate the selected position of the valve; and
- Indicate when the valve has not responded as intended to the selected position or function.

As used in the proposed rule, the "means to indicate" can be:

- Provided either by a dedicated "indicator" or through the inherent response of the airplane, system, or valve control;
- Provided by either the presence or lack of indication; or
- Provided either continuously or on an "as required" basis.

In any case, however, the means to indicate must be clearly evident to the crew.

As used in the proposed rule, the "means to indicate" must comply with all other relevant regulations such as §§ 25.1309(c), 25.1321, 25.1322, etc.

What Comments Did ARAC Have Concerning the Proposed Action?

During its review of this proposed rule, ARAC suggested changes to certain parts of the proposed action. Those suggestions and the FAA's response are as follows:

Suggestion 1. The powerplant valve controls should provide the crew with means to "determine"—rather than "indicate"—the selected position of the valve and when the valve has not responded as intended to the selected position or function.

FAA Response to Suggestion 1: The FAA does not agree with this change in wording because such a change would change the purpose of the rule in a way that is not intended or desired, and would go "beyond the scope" of harmonizing this part 25 rule with that of the parallel JAR–25. The intent is for there to be a means that directly or inherently indicates to the flightcrew the position of the valve and any incorrect response of the valve. The intent is not for the flightcrew to have to deliberate and determine these things.

Suggestion 2. The requirement for the powerplant valve controls to provide a means to indicate when the valve has not responded as intended should be accomplished in accordance with the provisions of an upcoming revision to § 25.1322 (Warning, caution, and advisory lights).

FAA Response to Suggestion 2: The FAA agrees with the intent of this suggestion, but considers it inappropriate to (1) refer to rules in transition, and (2) single out one indication requirement (§ 25.1322) when there are other rules that are just as relevant, such as § 25.1321 (Instruments: Installations, Arrangements and visibility). As an alternative, we have added a clarification in the preamble to indicate that the "means to indicate" must necessarily comply with all other relevant regulations, such as §§ 25.1309(c), 25.1321, 25.1322, etc.

Suggestion 3. The ARAC questioned what was meant by the phrase "the means to indicate must be provided * * * through the inherent response of the airplane * * *" The ARAC asked if it meant, for example, when the stick force lightens because of inappropriate fuel transfer to give the airplane an aft center of gravity, or when an engine quits for lack of fuel.

FAA Response to Suggestion 3: The FAA intends for that phrase to potentially include such examples and any others that the applicant claims and the FAA Aircraft Certification Office can substantiate as effective.

How Does This Proposed Standard Address the Underlying Safety Issue?

The proposed standard continues to address the identified safety issue. It continues to ensure that flight crews will not select an inappropriate position for, or be unaware of the position of, powerplant valves that are controlled from the flight deck. The proposed standard also clarifies the current industry practices that have been found to achieve an acceptable level of safety.

What Is the Effect of the Proposed Standard Relative to the Current Regulations?

The proposed standard specifically requires a means to indicate when the valve has not responded as intended to the selected position or function, while the current standard only implies this is a requirement for "manual valves."

Since the proposed rule takes the more "stringent" parts of both part 25 and JAR–25, it may be viewed as increasing the current level of safety. However, the intent of the proposed standard is not to increase the level of safety, but to help standardize current design practices.

What Is the Effect of the Proposed Standard Relative to Current Industry Practice?

In effect, the proposed standard duplicates the current requirements for those applicants who certify their designs to both 14 CFR and the JAR. Since these standards are what have resulted in the existing practices, this "enveloped" standard should also be considered capable of achieving an acceptable level of safety.

What Other Options Have Been Considered and Why Were They Not Selected?

One option considered was to delete § 25.1141(f) altogether and rely on § 25.1309(c). However, this would reduce the overall level of safety provided by part 25. Additionally, it would not fulfill the objectives of the FAA's tasking to harmonize standards.

Another option was to revise the text of § 25.1141(f) to state:

"(f) Powerplant valve controls located in the flight deck must have—

(1) For manual valves, positive stops or in the case of fuel valves suitable index provisions, in the open and closed positions; and

(2) For power-assisted valves, a valve position indicator operated by a system which senses directly that the valve has attained the position selected, unless other indications in the flight deck give the flight crew a clear indication that the valve has moved to the selected position."

While this, like the proposal, represents an "enveloped" standard, it does not reflect the existing practices as clearly and effectively as the proposed standard. Consequently, additional

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interpretive and guidance material probably would be needed to make this somewhat dated and narrow iteration of the rule more relevant for modern designs.

Who Would Be Affected by the Proposed Change?

The proposed standard would affect manufacturers of transport category airplanes and components. However, manufacturers are either already complying, or fully intend to comply with the more stringent standards as a means of obtaining joint certification.

Is Existing FAA Advisory Material Adequate?

With the change in the proposed standard, the FAA does not consider that additional advisory material is necessary.

What Regulatory Analyses and Assessments Has the FAA Conducted?

Regulatory Evaluation Summary

Proposed changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. section 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, this Trade Act also requires the consideration of international standards and, where appropriate, that they be the basis of U.S. standards. And fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector of $100 million or more annually (adjusted for inflation).

The FAA has determined that this proposal would result in a cost-savings by a reduction in duplicative testing, and that it is not "a significant regulatory action" as defined in Executive Order 12866, nor "significant" as defined in DOT's Regulatory Policies and Procedures. Further, this proposed rule would not have a significant economic impact on a substantial number of small entities, would reduce barriers to international trade, and would not impose an Unfunded Mandate on state, local, or tribal governments, or on the private sector.

The DOT Order 2100.5 prescribes policies and procedures for simplification, analysis, and review of regulations. If it is determined that the expected impact is so minimal that the proposed rule does not warrant a full evaluation, a statement to that effect and the basis for it is included in the proposed regulation. Accordingly, the FAA has determined that the expected impact of this proposed rule is so minimal that the proposed rule does not warrant a full evaluation. We provide the basis for this determination as follows:

Currently, airplane manufacturers must satisfy both part 25 and the European JAR–25 standards to certificate transport category aircraft in both the United States and Europe. Meeting two sets of certification requirements raises the cost of developing a new transport category airplane often with no increase in safety. In the interest of fostering international trade, lowering the cost of aircraft development, and making the certification process more efficient, the FAA, JAA, and aircraft manufacturers have been working to create, to the maximum possible extent, a single set of certification requirements accepted in both the United States and Europe. As explained in detail previously, these efforts are referred to as harmonization.

This proposal would replace some requirements of existing § 25.1141(f) with the "more stringent" requirements in JAR 25.1141(f) . It also would revise the wording of the section to reflect common industry terminology. This proposed rule results from the FAA's acceptance of recommendations made by ARAC. We have concluded that, for the reasons previously discussed in the preamble, the adoption of the proposed requirements in 14 CFR part 25 is the most efficient way to harmonize these sections and, in so doing, the existing level of safety will be preserved.

There was consensus within the ARAC members, comprised of representatives of the affected industry, that the requirements of the proposed rule will not impose additional costs on U.S. manufacturers of part 25 airplanes. In fact, manufacturers are expected to receive cost-savings by a reduction in the FAA/JAA certification requirements for new airplanes. The cost-savings from this proposed rule would be a reduction in duplicative testing to generate data to demonstrate compliance with each standard. We have reviewed the cost analysis provided by industry through the ARAC process. Based on this analysis, we consider that a full regulatory evaluation is not necessary.

We invite comments with supporting documentation regarding the regulatory evaluation statements based on ARAC's proposal.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act (RFA) of 1980, 50 U.S.C. 601–612, as amended, establishes "as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation." To achieve that principle, the RFA requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant impact on a substantial number of small entities. If the determination is that the rule will, the agency must prepare a regulatory flexibility analysis as described in the RFA.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the RFA provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA considers that this proposed rule would not have a significant impact on a substantial number of small entities for two reasons:

First, the net effect of the proposed rule is minimum regulatory cost relief. The proposed rule would require that new transport category aircraft manufacturers meet just one certification requirement, rather than different standards for the United States and Europe. Airplane manufacturers already meet or expect to meet this standard as well as the existing 14 CFR part 25 requirement.

Second, all U.S. transport-aircraft category manufacturers exceed the Small Business Administration small-entity criteria of 1,500 employees for aircraft manufacturers. The current U.S. part 25 airplane manufacturers include: Boeing, Cessna Aircraft, Gulfstream Aerospace, Learjet (owned by Bombardier), Lockheed Martin, McDonnell Douglas (a wholly-owned subsidiary of The Boeing Company), Raytheon Aircraft, and Sabreliner Corporation.

Given that this proposed rule is minimally cost-relieving and that there are no small entity manufacturers of part 25 airplanes, the FAA certifies that this proposed rule would not have a significant impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

In accordance with the above statute, the FAA has assessed the potential effect of the proposed rule and has determined that it complies with the Act because this rule would use European international standards as the basis for U.S. standards.

Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (the Act), codified in 2 U.S.C. 1532–1538, enacted as Public Law 104–4 on March 22, 1995, requires each Federal agency, to the extent permitted by law, to prepare a written assessment of the effects of any Federal mandate in a proposed or final agency rule that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more (adjusted annually for inflation) in any one year.

This proposed rule does not contain a Federal intergovernmental or private sector mandate that exceeds $100 million in any year; therefore, the requirements of the Act do not apply.

What Other Assessments Has the FAA Conducted?

Executive Order 13132, Federalism

The FAA has analyzed this proposed rule and the principles and criteria of Executive Order 13132, Federalism. The FAA has determined that this action would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, the FAA has determined that this notice of proposed rulemaking would not have federalism implications.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) requires that the FAA consider the impact of paperwork and other information collection burdens imposed on the public. We have determined that there are no new information collection requirements associated with this proposed rule.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is FAA policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The FAA determined that there are no ICAO Standards and Recommended Practices that correspond to this proposed regulation.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), this proposed rulemaking action qualifies for a categorical exclusion.

Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (43 U.S.C. 6362), and FAA Order 1053.1. It has been determined that it is not a major regulatory action under the provisions of the EPCA.

Regulations Affecting Intrastate Aviation in Alaska

Section 1205 of the FAA Reauthorization Act of 1996 (110 Stat. 3213) requires the Administrator, when modifying regulations in 14 CFR in a manner affecting intrastate aviation in Alaska, to consider the extent to which Alaska is not served by transportation modes other than aviation, and to establish such regulatory distinctions as he or she considers appropriate. Because this proposed rule would apply to the certification of future designs of transport category airplanes and their subsequent operation, it could, if adopted, affect intrastate aviation in Alaska. The FAA, therefore, specifically requests comments on whether there is justification for applying the proposed rule differently to intrastate operations in Alaska.

Plain Language

In response to the June 1, 1998, Presidential memorandum regarding the issue of plain language, the FAA re-examined the writing style currently used in the development of regulations. The memorandum requires Federal agencies to communicate clearly with the public. We are interested in your comments on whether the style of this document is clear, and in any other suggestions you might have to improve the clarity of FAA communications that affect you. You can get more information about the Presidential memorandum and the plain language initiative at *http://www.plainlanguage.gov*.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 25 of Title 14, Code of Federal Regulations, as follows:

PART 25—AIRWORTHINESS STANDARDS: TRANSPORT CATEGORY AIRPLANES

1. The authority citation for Part 25 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, and 44704

2. Amend section 25.1141 by revising paragraph (f) to read as follows:

§ 25.1141 Powerplant controls: general.

* * * * *

(f) Powerplant valve controls located in the flight deck must provide the flightcrew with means to:

(1) Select each intended position or function of the valve;

(2) Indicate the selected position or function of the valve; and

(3) Indicate when the valve has not responded as intended to the selected position or function.

Issued in Renton, Washington, on April 26, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11493 Filed 5–7–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–105885–99]

RIN 1545–AX52

Compensation Deferred Under Eligible Deferred Compensation Plans

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that would provide guidance on compensation deferred under eligible section 457(b) deferred compensation plans of state and local governmental and tax-exempt entities. The regulations reflect the changes made to section 457 by the Tax Reform Act of 1986, the Small Business Job Protection Act of 1996, the Taxpayer Relief Act of 1997, the Economic Growth and Tax Relief Reconciliation Act of 2001, the Job Creation and Worker Assistance Act of 2002, and other legislation. The regulations would also make various technical changes and clarifications to the existing final regulations on many discrete issues. These regulations provide the public with guidance necessary to comply with the law and will affect plan sponsors, administrators, participants, and beneficiaries. The document also provides a notice of public hearing on these proposed regulations.

DATES: Written and electronic comments must be received by August 6, 2002. Requests to speak and outlines of topics to be discussed at the public hearing scheduled for August 28, 2002, must be received no later than August 7, 2002.

ADDRESSES: Send submissions to CC:ITA:RU (REG–105885–99), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered between the hours of 8 a.m. and 5 p.m. to CC:ITA:RU (REG–105885–99), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at *www.irs.gov/regs*. The public hearing will be held in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, please contact Cheryl Press, (202) 622–6060 (not a toll-free number). To be placed on the attendance list for the hearing, please contact LaNita Van Dyke at (202) 622–7180 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information in this notice of proposed rulemaking has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545–1580.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On September 23, 1982, final regulations (TD 7836) under section 457 of the Internal Revenue Code of 1954 (Code) were published in the **Federal Register** (47 FR 42335) (September 27, 1982) (final regulations). The final regulations provide guidance for complying with the changes to the applicable tax law made by the Revenue Act of 1978 (92 Stat. 2779) relating to deferred compensation plans maintained by state and local governments and rural electric cooperatives. These proposed regulations would amend the final regulations to conform them to the many amendments made to section 457 by subsequent legislation, including section 1107 of the Tax Reform Act of 1986 (TRA '86) (100 Stat. 2494), section 1404 of the Small Business Job Protection Act of 1996 (SBJPA) (110 Stat. 1755) (1996), section 1071 of the Taxpayer Relief Act of 1997 (TRA '97) (111 Stat. 788) (1997), sections 615, 631, 632, 634, 635, 641, 647, 649, and other sections of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) (115 Stat. 38) (2001), and paragraphs (o)(8) and (p)(5) of section 411 of the Job Creation and Worker Assistance Act of 2002 (116 Stat. 21) (2002). These proposed regulations would also amend the final regulations to provide additional guidance on section 457 issues raised since the final regulations were published in 1982. This document also incorporates the guidance provided in Notice 98–8 (1998–1 C.B. 355), with respect to amendments made to section 457 by the SBJPA and TRA '97, including the section 457(g) trust requirement for eligible plans of state and local governments (eligible governmental plans).

Explanation of Provisions

Overview

The proposed regulations would provide broad guidance regarding the rules applicable to eligible deferred compensation plans described in section 457(b) (eligible plans) and, in particular, provide clear standards for the administration and operation of eligible plans. The proposed regulations would amend the existing final regulations to update them for changes in the law, including the many changes made by EGTRRA, and respond to the comments and inquiries received from state and local governments and tax-exempt employers that sponsor eligible plans, from participants and beneficiaries, and from service providers and other advisors.

The proposed regulations at §§ 1.457–1 through 1.457–3 include a general overview of section 457, as applicable to both eligible plans and ineligible plans that are subject to section 457(f), and general definitional provisions. Specific rules applicable to eligible plans are contained in proposed §§ 1.457–4 through 1.457–10, while rules applicable to those deferred compensation plans that fail to satisfy the requirements applicable to eligible plans (ineligible plans) are contained in proposed § 1.457–11.

1. General Provisions and Establishment of Eligible Plans

Section 457, as amended by TRA '86, applies to tax-exempt employers as well as to state and local governments. Eligible employers may maintain eligible plans, which must satisfy the requirements of section 457(b) in both form and operation, or may maintain ineligible plans. Benefits under eligible plans are excludable from income of plan participants until paid, in the case of an eligible governmental plan, or, in the case of an eligible plan of a tax-exempt employer, until paid or made available. Benefits under ineligible plans are, under section 457(f), includible in income when deferred or, if later, when rights to the benefits are not subject to a substantial risk of forfeiture. Certain types of plans of state and local government and tax-exempt entities are not subject to section 457. These types are listed in the definition of *plan* in proposed § 1.457–2.

The proposed regulations make clear that the requirements of section 457(b) for eligible plans apply to both elective contributions and to other types of contributions, such as mandatory contributions, nonelective employer contributions, and employer matching contributions. Thus, for example, proposed § 1.457–2(b) defines *annual deferrals* to include both elective salary reduction contributions and nonelective employer contributions. Annual deferrals also include compensation deferred under eligible plans that are defined benefit plans.

An eligible plan must satisfy the requirements of section 457(b) and related provisions both in form and in operation. Under the proposed regulations, an eligible plan must be established in writing, must include all of the material terms for benefits under the plan, and must be operated in compliance with the requirements reflected in the regulations. Of course, plan sponsors retain flexibility in determining whether to provide certain design options permitted under section 457. For example, although these proposed regulations permit certain in-service distributions of smaller account balances in accordance with section 457(e)(9), an eligible plan is not required to offer participants this distribution option. However, any optional features incorporated into an eligible plan must meet the requirements of section 457 and the regulations in both form and operation.

All amounts deferred under an eligible governmental plan are required to be set aside in a trust, custodial account, or annuity contract for the exclusive benefit of participants and their beneficiaries. However, under section 457(b)(6), all amounts deferred under an eligible plan of a tax-exempt employer are required to be unfunded. This requirement for an eligible plan of a tax-exempt employer does not alter any provision of Title I of the Employee Retirement Income Security Act of 1974 (ERISA). Accordingly, an eligible plan of a tax-exempt employer may be subject to certain of the requirements of Title I. In the case of an eligible plan of a tax-exempt employer that is subject to Title I of ERISA, compliance with the exclusive purpose, trust, funding, and certain other rules will cause the plan to fail to satisfy section 457(b)(6). See Q&A–25 of Notice 87–13 (1987–1 C.B. 432).

The proposed regulations include certain basic rules regarding the taxation of contributions and benefits under ineligible plans, especially the relationship between deferred compensation under an ineligible plan and property transfers to which section 83 applies, but are not intended to provide complete or comprehensive guidance under section 457(f). Similarly, the proposed regulations refer to, but do not provide specific guidance on, certain arrangements that are not treated as plans providing deferred compensation, such as bona fide severance pay plans described in section 457(e)(11).

2. Annual Deferrals, Deferral Limitations, and Deferral Agreements Under Eligible Plans

a. Annual Deferrals

Proposed § 1.457–4 sets forth rules regarding deferrals under eligible plans under section 457(b). The proposed regulations would expand the rules contained in the final regulations. Examples have been included in order to illustrate the application of the rules to specific circumstances and to address common questions and situations encountered in the administration of eligible plans.

The proposed regulations use the term *annual deferrals* to describe all amounts contributed or deferred under an eligible plan, whether by voluntary salary reduction contribution or by other employer contribution, and all earnings thereon. If, as is typical, amounts contributed to the eligible plan are fully vested, the total of amounts contributed to the eligible plan during a taxable year is the same as the total of the annual deferrals for the taxable year.

The proposed regulations would also clarify that the rules concerning agreements for deferrals operate on a cash basis. Thus, under proposed § 1.457–4(b), an agreement to defer compensation is valid if it is made before the first day of the month in which compensation is paid or made available. In general, there is no requirement that the agreement be entered into prior to the time the services giving rise to the compensation are performed. However, compensation payable in the first month of employment may be deferred only if an agreement is entered into prior to the time a participant performs services for the employer. The proposed regulations provide explicitly that nonelective employer contributions are treated as being made under a valid agreement. In addition, Rev. Rul. 2000–33 (2000–2 C.B. 142), provides guidance concerning automatic enrollment under eligible plans. Contributions made under an automatic enrollment arrangement described in that Revenue Ruling may be treated as made under a valid agreement.

b. Deferral Limitations

The proposed regulations under § 1.457–4 explain the annual limits that apply to annual deferrals under eligible plans. These contribution limits are sometimes referred to as "plan ceilings." Generally, the basic annual limit or plan ceiling for a year cannot exceed a specified dollar amount for the year or, if less, 100 percent of a participant's "includible compensation." Under EGTRRA, the dollar amount is $11,000 for 2002; $12,000 for 2003; $13,000 for 2004; $14,000 for 2005; and $15,000 for 2006 and thereafter. After 2006, the $15,000 amount is adjusted for cost-of-living. As a result of the enactment of the Job Creation and Worker Assistance Act of 2002, Public Law 107–147 (116 Stat. 21) on March 9, 2002, the calculation of includible compensation is no longer reduced by the exclusions from gross income under sections 402(g), 125, 132(f), and 457. Thus, for years beginning after December 31, 2001, includible compensation is no longer reduced by elective deferrals to an eligible plan. If a participant's includible compensation is less than the applicable dollar limit, the dollar amount equal to 100 percent of includible compensation is the basic annual limit for the participant.

An eligible plan may also permit certain "catch-up" contributions. First, in accordance with section 414(v) as added to the Code by EGTRRA, a plan may allow a participant who attains age 50 by the end of the year to elect to have an additional deferral for the year. The additional amount permitted under this age 50 catch-up is $1,000 for 2002, $2,000 for 2003, $3,000 for 2004, $4,000 for 2005, and $5,000 for 2006. Proposed regulations (REG–142490–01) under section 414(v) were published in the **Federal Register** on October 23, 2001 (66 FR 53555) as § 1.414(v)–1.

Second, an eligible plan may permit a larger catch-up amount in the last three years ending before the participant attains normal retirement age. The amount of this special section 457 catch-up is two times the basic annual limit (e.g., an additional $15,000 for 2006), but only to the extent the participant has not previously deferred the maximum amount under an eligible plan or similar tax-deferred retirement plan (called the underutilized amount or underutilized limitation in the proposed regulations). Alternatively, the age 50 catch-up is available in the last three years ending before the participant attains normal retirement age if the age 50 catch-up amount is larger than the special section 457 catch-up amount.

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Under the proposed regulations, a participant may not elect to have the special section 457 catch-up apply more than once, unless the participant is covered by a plan of another employer. If a participant also or later participates in an eligible plan of a different employer and otherwise meets the requirements for limited catch-up, the participant may elect under the new plan to have the special section 457 catch-up apply.

For purposes of the special section 457 catch-up, the proposed regulations provide that the plan must designate a normal retirement age between the age at which participants have the right to receive immediate retirement benefits under the basic pension plan of the state or tax-exempt entity without actuarial or similar reduction and age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. The proposed regulations provide a special rule for defining normal retirement age in eligible plans of qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I), taking into account that these participants are often eligible for retirement at a younger age than other workers.

The proposed regulations require an eligible plan to set forth the plan's normal retirement age. However, as discussed in this preamble under Proposed Effective Date, plan amendments to reflect this requirement are not required to be adopted until guidance is issued addressing when plan amendments must be adopted.

3. Individual Limitation for Combined Annual Deferrals Under Eligible Plans

Before enactment of EGTRRA, a coordination limitation applied under which the basic annual limitation and the special section 457 catch-up limitation were reduced by amounts excluded from a participant's income for any taxable year by reason of a salary reduction or elective contribution under a section 401(k) plan or a section 403(b) contract. EGTRRA eliminated coordination with section 401(k) plans and section 403(b) contracts for 2002 and thereafter. However, coordination with these types of arrangements is still taken into account for purposes of determining the underutilized amount for years before 2002, so that these rules continue to be reflected in the proposed regulations for that sole purpose.

EGTRRA did not eliminate section 457(c) under which the maximum amount excludable under all eligible plans, including eligible governmental plans and eligible plans of a tax-exempt entity, cannot exceed applicable section 457 plan limitations. Thus, these limitations, including the basic limitation, the age 50 catch-up limitation, and the special section 457 catch-up limitation, apply not only on a plan basis, but also on an individual basis for cases in which an individual participates in more than one eligible plan during a taxable year. The proposed regulations include rules for how the applicable section 457 limitations apply on an individual basis. The rules for applying catch-up limits on an individual basis provide that the special section 457 catch-up available in the last three years prior to normal retirement age is taken into account only to the extent that an annual deferral is made for a participant under an eligible plan as a result of plan provisions permitted under the special section 457 catch-up and, if the applicable catch-up amount is not the same for each such eligible plan, the individual limit is applied using the catch-up amount under whichever plan that has the largest catch-up amount applicable to the participant. However, as discussed above, a participant may not elect to have the special section 457 catch-up apply more than once, unless the participant is covered by a plan of another employer.

The proposed regulations allow an eligible governmental plan to pay out an annual deferral to the extent the deferral exceeds the individual limit or to correct a deferral in excess of the plan's limit.

4. Sick and Vacation Pay Deferrals

The proposed regulations would permit an eligible plan to provide that a participant may elect to defer accumulated sick pay, accumulated vacation pay, and back pay if certain conditions are satisfied. In accordance with section 457(b)(4), the plan must provide that these amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available to the participant. Thus, a participant is not permitted to elect to receive the value of accumulated sick and vacation pay on or after the date on which the employer makes that pay available to the participant in cash. Any deferrals under an eligible plan of sick and vacation pay or back pay are subject to the maximum deferral limitations of section 457 in the year of deferral. Thus, the total amount deferred for any year cannot exceed the plan ceiling for the year, taking into account the 100 percent of includible compensation limit.

5. Excess Deferrals

The proposed regulations address the treatment of excess deferrals and the effect of excess deferrals on plan eligibility under section 457(b). The proposed regulations also provide that an eligible governmental plan may self correct excess deferrals and will not fail to satisfy the applicable requirements of the proposed regulations (including the distribution rules and the funding rules) solely by reason of a distribution of excess deferrals.

Under the proposed regulations, if an excess deferral arises under the maximum deferral limits of section 457(b) for a plan of a governmental employer, an eligible governmental plan is required to correct the failure by distributing the excess deferral to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount would be an excess deferral. If excess deferrals of this type are not distributed, the plan will be an ineligible plan with respect to which benefits are taxed according to the rules of section 457(f). If an excess deferral arises under the maximum deferral limits of section 457(b) for a plan of a tax-exempt employer, the plan is not an eligible plan. For purposes of these rules, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

As stated previously, while EGTRRA repealed the coordination limitation under section 457(c), EGTRRA did not eliminate the requirement that the maximum amount excludable under all eligible plans under section 457(c) as revised by EGTRRA, including eligible governmental plans and eligible plans of a tax-exempt entity, cannot exceed the applicable section 457(b) limitations. Thus, an excess deferral that results from the application of the new individual limitation for multiple eligible plans under section 457(c) may also be, but is not required to be, distributed to the participant. However, consistent with the legislative history to section 457(c), the proposed regulations make clear that a plan will not lose its status as an eligible plan by failing to distribute those excess deferrals that result from the application of this requirement (although those amounts are currently includible in the participant's income).

Comments are specifically requested concerning record-keeping requirements with respect to excess deferrals that are not distributed and, in particular, concerning the maintenance of records adequate to keep track of any previously taxed excess deferrals that remain in an eligible plan. In addition, comments are also requested as to the proper income and payroll tax reporting of distributions of excess deferrals.

6. Minimum Distribution Requirements

EGTRRA eliminated the special minimum distribution rules that applied to eligible plans. Thus, the proposed regulations generally incorporate by reference the requirements of section 401(a)(9) and the regulations thereunder concerning minimum distributions to participants and beneficiaries. Final and temporary regulations (TD 8987) under section 401(a)(9) were published in the **Federal Register** on April 17, 2002 (67 FR 18988). These regulations provide rules for defined benefit plans and defined contribution plans. Generally, the rules for defined contribution plans apply to eligible deferred compensation plans. Beginning in 2003, a simple uniform table generally applies to all employees to determine the minimum distribution required during their lifetime, including employees covered by an eligible deferred compensation plan.[1] The one exception to this rule for lifetime distributions is for an employee with a spouse designated as the employee's sole beneficiary and the spouse is more than 10 years younger than the employee. In that case the employee can use the employee and spouse's joint and last survivor expectancy to determine the minimum distribution required during the employee's lifetime.

7. Loans

Proposed § 1.457–6(f) sets forth rules governing loans from eligible plans. This proposal responds to the numerous inquiries received concerning the availability of loans from eligible plans maintained by state and local governments, the assets of which are held in trust pursuant to section 457(g).

While section 457(g) does not directly address the issue of whether, or under what circumstances, loans may be made available from trusteed eligible plans, the legislative history to the SBJPA indicates that the new statutory provisions should be interpreted as permitting participant loans from the eligible plan trust under the rules applicable to loans from qualified plans. H.R. Rep. 104–737, at 251. Commentators, some citing this legislative history and some citing pre-ERISA case law and rulings interpreting the exclusive benefit requirement of section 401(a), have urged the IRS to issue formal guidance concerning loans from eligible plans. These comments take the position that the availability of loans will make savings through eligible plans more attractive to participants and will decrease the disparity between eligible plans and the other tax-favored voluntary retirement savings plans.

The pre-ERISA requirements applicable to loans from qualified plans require a facts and circumstances analysis of the availability of the loan feature to all participants, the rate of return, the overall prudence of the investment of the trust corpus in the note of an individual participant, and the pattern of repayments. See, e.g., *Central Motor Co.* v. *United States*, 583 F. 2d 470, 488–491 (10th Cir. 1978); *Winger's Department Store* v. *Commissioner*, 82 T.C. 869 (1982); *Ma-Tran Corp.* v. *Commissioner*, 70 T.C. 158 (1978); and *Feroleto Steel Co.* v. *Commissioner*, 69 T.C. 97 (1977). See also Rev. Rul. 67–258 (1967–2 CB 68).

Under the proposed regulations, a loan from an unfunded eligible plan of a tax-exempt organization would be treated as an impermissible distribution, in violation of the requirements of section 457. However, for loans from an eligible governmental plan, the proposed regulations include a facts and circumstances general standard. This general standard is intended to apply to determine whether the loan is bona fide and for the exclusive purpose of benefitting participants and beneficiaries under section 457(g), as was required under pre-ERISA law for qualified plans. Among the facts and circumstances are whether the loan has a fixed repayment schedule and a reasonable interest rate, and whether there are repayment safeguards to which a prudent lender would adhere.[2] The proposed regulations require a loan to bear a reasonable rate of interest in order to satisfy the requirement that assets and income of an eligible governmental plan be held for the exclusive benefit of participants and their beneficiaries. The proposed regulations would also clarify that section 72(p) applies with respect to loans made under an eligible governmental plan. Regulations interpreting section 72(p)(2) are at § 1.72(p)–1.

If the proposed regulations are finalized in their current form, it is anticipated that the IRS will modify its current no-rule position regarding the issuance of private letter rulings to eligible plans that provide for loans.

8. Distributions From Eligible Plans

a. Eligible Governmental Plans

EGTRRA substantially altered the taxation of distributions from an eligible governmental plan by providing that amounts held under such an eligible plan are not included in a participant's or beneficiary's gross income until distributed. The proposed regulations would interpret this EGTRRA change as applying to all participants in an eligible governmental plan. Thus, an eligible governmental plan may permit participants who are currently entitled to be paid after 2001 to change their previously irrevocable payment elections.

Under EGTRRA, after 2001, the direct rollover rules applicable to qualified plans and section 403(b) contracts will apply to distributions from an eligible governmental plan. The direct rollover rules for qualified plans and section 403(b) contracts are generally explained at §§ 35.3405–1, 31.3405(c)–1, 1.401(a)(31)–1, 1.402(c)–2, and 1.402(f)–1. These direct rollover regulations have not been updated since EGTRRA to reflect that rollovers are permitted for distributions from eligible governmental plans (nor do those regulations reflect that amounts may be rolled over to eligible governmental plans after 2001).

b. Eligible Plans of Tax-Exempt Entities

Amounts deferred under an eligible plan of a tax-exempt entity continue to be taxable when paid or made available. The proposed regulations explain these rules, including the exceptions for amounts available in the event of unforeseeable emergency and distributions of smaller accounts (not in excess of $5,000).

9. Plan terminations and plan-to-plan transfers

The proposed regulations address the topic of plan terminations and plan-to-plan transfers. These topics have become increasingly important in light of the recent statutory changes that impose a trust requirement on eligible governmental plans. In particular, questions have been raised with respect to hospitals and other entities that change from government to private entities, whether or not tax-exempt. The direct rollovers that will be permitted by EGTRRA beginning in 2002 for eligible governmental plans provide participants affected by these types of events the ability to retain their retirement savings in a funded, tax-deferred savings vehicle

[1] Employees may use these new final regulations for distributions for 2002 or may use regulations proposed in 1987 or 2001.

[2] See, for example, the standards in Rev. Rul. 69–494 (1969–2 C.B. 88) for determining when plan investments are primarily for the purpose of benefitting employees or their beneficiaries.

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by rollover to IRAs, qualified plan, or section 403(b) contracts. The proposed regulations provide a blueprint for the different plan termination and plan-to-plan transfer alternatives available to sponsors of eligible plans in these situations.

a. Plan Terminations

The proposed regulations would allow a plan to have provisions permitting plan termination whereupon amounts could be distributed without violating the distribution requirements of section 457. Under the proposed regulations, an eligible plan is terminated only if all amounts deferred under the plan are paid to participants as soon as administratively practicable. If the amounts deferred under the plan are not distributed, the plan is treated as a frozen plan and must continue to comply with all of the applicable statutory requirements necessary for plan eligibility. The proposed regulations generally follow the approach of Rev. Rul. 89–87 (1982–2 C.B. 81), which provides guidance on the termination of qualified plans. In that revenue ruling, a qualified plan under which benefit accruals have ceased is not terminated if assets of the plan remain in the plan's related trust rather than being distributed as soon as administratively feasible.

The proposed regulations also highlight the consequences to the plan in the case of an employer that ceases to be an eligible employer but fails to terminate the plan or to transfer its assets under the rules of the proposed regulations described below.

b. Plan-to-plan Transfers

The proposed regulations would clarify that transfers between certain types of eligible plans do not violate the requirements of section 457(b), including the distribution requirements of section 457(d), if certain conditions are satisfied. Thus, an eligible governmental plan may transfer its assets to another eligible governmental plan; likewise, an unfunded, tax-exempt plan may transfer amounts deferred to another unfunded, tax-exempt plan. However, in the same manner that rollovers are not permitted between unfunded plans of tax-exempt employers and funded governmental plans (and because of potential violations of the exclusive benefit rule applicable to eligible governmental plans), amounts cannot be transferred from an eligible plan of a tax-exempt employer to an eligible governmental plan or from an eligible governmental plan to an eligible plan of a tax-exempt employer.

Plan-to-plan transfers within similar types of eligible plans are permitted in two kinds of circumstances. First, it is contemplated that transfers may occur when a participant in the transferor plan terminates employment with the transferor employer and is employed by the transferee employer. Transfers with respect to individual participants are permitted if both plans agree to the transfer, the participant has terminated employment with the transferor, and the participant whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred immediately before the transfer.

Second, the proposed regulations also contemplate certain asset transfers of all amounts deferred under the plan in the event an activity of a state or local government is privatized or otherwise ceases to be performed by a governmental entity. Thus, as an alternative to plan termination or a plan-to-plan transfer, the proposed regulations provide that a government employer that loses its eligible status may transfer the eligible plan to another eligible government employer within the same state. For example, a county hospital that maintains an eligible plan and that ceases to be a governmental entity could transfer the plan to the county for continued administration.

The proposed regulations also address transfers between eligible governmental plans and qualified defined benefit plans with respect to past service credit. Because the proposed regulations specifically state that a transfer for past service credit is not treated as a distribution for purposes of section 457, such a transfer could be made while the participant is still working.

10. Qualified Domestic Relations Orders

The proposed regulations address the issue of qualified domestic relations orders (QDROs). The administration of QDROs has created difficulties for eligible employers and section 457 plan administrators and participants, and numerous inquiries and private letter ruling requests involving the application of judicial domestic relations orders to participants' accounts in eligible section 457(b) deferred compensation plans have been received. The proposed regulations provide that an eligible plan may honor the terms of a QDRO without jeopardizing its eligible status.

Under the proposed regulations, as provided under section 457 as amended by EGTRRA, an eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a QDRO described in section 414(p) (taking into account the special rule section 414(p)(11) for governmental and church plans), including a QDRO requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under § 1.457–6. In the case of an eligible governmental plan, amounts paid to the alternate payee who is the spouse or former spouse of a participant under the QDRO are taxable to the alternate payee when they are paid.

In the case of an eligible plan of a tax-exempt entity, amounts payable to the alternate payee who is the spouse or former spouse of a participant under the QDRO are taxable to the alternate payee when they are paid or made available to the alternate payee. In addition, amounts deferred under an eligible plan of a tax-exempt entity that are attributable to the alternate payee are treated as made available on the date the alternate payee is first able to receive a distribution.

11. Rollovers to Eligible Plans

EGTRRA now allows rollovers contributions to be accepted by an eligible governmental plan, but only if the receiving eligible governmental plan maintains the rollover amount in a separate account. The proposed regulations include such rollovers as part of the amount deferred under the receiving plan, but a rollover contribution is not taken into account as an annual deferral under the plan for purposes of the plan ceiling limit on annual deferrals. While EGTRRA does not require a separate account for each type of rollover contributions (e.g, an account for rollovers from qualified plans which is separate from rollovers from section 403(b) contracts), comments are requested on whether there are any special characteristics applicable to qualified plans, section 403(b) contracts, or individual retirement arrangements (IRAs) under section 72(t) (imposing an additional income tax on early distributions from such plans, contracts, or arrangements) which could be lost if multiple types of separate accounts are not maintained.

12. Correction Program for Section 457(b) Eligible Deferred Compensation Plans

Employee Plans, within the office of the Commissioner, Tax Exempt and Government Entities (TE/GE), has comprehensive correction programs for sponsors of retirement plans (qualified retirement plans, 403(b) plans, and Simplified Employee Pensions). These programs, including the Employee Plans Compliance Resolution System (EPCRS), Rev. Proc. 2001–17 (2001–7 I.R.B. 589), permit plan sponsors to correct plan defects and thereby continue to provide their employees retirement benefits on a tax-favored basis. Employee Plans intends to expand the provisions of EPCRS to include appropriate correction procedures for certain failures arising under eligible deferred compensation plans. The public is invited to submit comments to assist in the development of these procedures. Comments should be sent to: Internal Revenue Service, Attention: T:EP:RA:VC, 1111 Constitution Avenue NW, Washington, DC 20224.

Pending the update of EPCRS, submissions related to section 457 (b) eligible deferred compensation plan failures will be accepted by Employee Plans on a provisional basis outside of EPCRS.

13. Ineligible Plans

The proposed regulations include guidance regarding ineligible plans under section 457(f). Section 457(f) was in section 457 when it was added to the Code in 1978 for governmental employees, and extended to employees of tax-exempt organizations (other than churches or certain church-controlled organizations) in 1986, because unfunded amounts held by a tax-exempt entity compound tax free like an eligible plan, a qualified plan, or a section 403(b) contract. Section 457(f) was viewed as essential in order to provide an incentive for employers that are not subject to income taxes to adopt an eligible plan, a qualified plan, or a section 403(b) contract. [3] Section 457(f) generally provides that, in the case of an agreement or arrangement for the deferral of compensation, the deferred compensation is included in gross income when deferred or, if later, when the rights to payment of the deferred compensation cease to be subject to a substantial risk of forfeiture. Section 457(f) does not apply to an eligible plan, a qualified plan, a section 403(b) contract, a section 403(c) contract, a transfer of property described in section 83, a trust to which section 402(b) applies, or a qualified governmental excess benefit arrangement described in section 415(m).

The proposed regulations reflect the statutory changes in section 457(f) that have been made since 1982—which is when the current outstanding regulations were issued—and clarify the interaction between sections 457(f) and 83 (relating to the transfer of property in connection with the performance of services). Under the proposed regulations, section 457(f) does not apply to a transfer of property if section 83 applies to the transfer. Further, section 457(f) does not apply if the date on which there is no substantial risk of forfeiture with respect to the compensation is on or after the date on which there is a transfer of property to which section 83 applies. However, section 457(f) applies if the date on which there is no substantial risk of forfeiture with respect to the compensation deferred precedes the date on which there is a transfer of property to which section 83 applies. The proposed regulations include several examples, including an example illustrating that section 457(f) does not fail to apply merely because benefits are subsequently paid by a transfer of property. Comments are requested on the coordination of section 457(f) and section 83 under these proposed regulations.

In 2000, the IRS issued Announcement 2000–1 (2000–2 I.R.B. 294), in which it provided interim guidance on certain broad-based, nonelective plans of a state or local government that were in existence before 1999. Comments are requested on whether similar guidance should be included in the final regulations, and, if so, how the guidance should apply to arrangements, such as those maintained by certain state or local governmental educational institutions, under which supplemental compensation is payable as an incentive to terminate employment, or as an incentive to retain retirement-eligible employees, to ensure an appropriate workforce during periods in which a temporary surplus or deficit in workforce is anticipated.

[3] See generally the *Report to the Congress on the Tax Treatment of Deferred Compensation under Section 457*, Department of the Treasury, January 1992 (available from the Office of Tax Policy, Room 5315, Treasury Department, 1500 Pennsylvania Avenue, NW., Washington DC 20220).

Proposed Effective Date

It is proposed that these regulations apply generally for taxable years beginning after December 31, 2001. This is the general applicability date of the changes made in section 457 by EGTRRA. Special effective date provisions apply to provisions relating to coordination of sections 457(f) and 83 and for qualified domestic relations orders. Plan amendments to reflect EGTRRA, and any other requirement under these regulations, are not required to be adopted until the later of when guidance is issued addressing when plan amendments must be adopted or the date final regulations are issued. However, employers may rely on these proposed regulations in taxable years beginning after August 20, 1996 (which is the earliest applicability date for requirements applicable to eligible plans under the SBJPA). Comments are requested on whether an applicability date later than taxable years beginning after December 31, 2001 should apply when the regulations are issued in final form.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because the regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Internal Revenue Code, these proposed regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written or electronic comments (a signed original and eight (8) copies) that are submitted timely to the IRS. The IRS and Treasury specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for August 28, 2002, beginning at 10 a.m. in the IRS Auditorium of the Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. All visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, see the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 7, 2002. A period of 10 minutes

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will be allotted to each person for making comments. An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Cheryl Press, Office of Division Counsel/ Associate Chief Counsel (Tax Exempt and Government Entities), IRS. However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows.

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Sections 1.457–1, 1.457–2, 1.457–3 and 1.457–4 are revised to read as follows:

§ 1.457–1 General overview of section 457.

Section 457 provides rules for nonqualified deferred compensation plans established by eligible employers as defined under § 1.457–2(d). Eligible employers can establish either deferred compensation plans that are eligible plans and that meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10, or deferred compensation plans or arrangements that do not meet the requirements of section 457(b) and §§ 1.457–3 through 1.457–10 and that are subject to tax treatment under section 457(f) and § 1.457–11.

§ 1.457–2 Definitions.

This section sets forth the definitions that are used under §§ 1.457–1 through 1.457–11.

(a) *Amount(s) deferred. Amount(s) deferred* means the total annual deferrals under an eligible plan in the current and prior years, adjusted for gain or loss. Except as otherwise specifically indicated, *amount(s) deferred* includes any rollover amount held by an eligible plan as provided under § 1.457–10(e).

(b) *Annual deferral(s).*—(1) *Annual deferral(s)* means, with respect to a taxable year, the amount of compensation deferred under an eligible plan, whether by salary reduction or by nonelective employer contribution. The amount of compensation deferred under an eligible plan is taken into account as an annual deferral in the taxable year of the participant in which deferred, or, if later, the year in which the amount of compensation deferred is no longer subject to a substantial risk of forfeiture.

(2) If the amount of compensation deferred under the plan during a taxable year is not subject to a substantial risk of forfeiture, the amount taken into account as an annual deferral is not adjusted to reflect gain or loss allocable to the compensation deferred. If, however, the amount of compensation deferred under the plan during the taxable year is subject to a substantial risk of forfeiture, the amount of compensation deferred that is taken into account as an annual deferral in the taxable year in which the substantial risk of forfeiture lapses must be adjusted to reflect gain or loss allocable to the compensation deferred until the substantial risk of forfeiture lapses.

(3) If the eligible plan is a defined benefit plan within the meaning of section 414(j), the annual deferral for a taxable year is the present value of the increase during the taxable year of the participant's accrued benefit that is not subject to a substantial risk of forfeiture (disregarding any such increase attributable to prior annual deferrals). For this purpose, present value must be determined using actuarial assumptions and methods that are reasonable (both individually and in the aggregate), as determined by the Commissioner.

(c) *Beneficiary. Beneficiary* means a beneficiary of a participant, a participant's estate, or any other person whose interest in the plan is derived from the participant, including an alternate payee as described in § 1.457–10(c).

(d) *Catch-up. Catch-up* amount or *catch-up* limitation for a participant for a taxable year means the annual deferral permitted under section 414(v) (as described in § 1.457–4(c)(2)) or section 457(b)(3) (as described in § 1.457–4(c)(3)) to the extent the amount of the annual deferral for the participant for the taxable year is permitted to exceed the plan ceiling applicable under section 457(b)(2) (as described in § 1.457–4(c)(1)).

(e) *Eligible employer. Eligible employer* means an entity that is a state as defined in paragraph (l) of this section that establishes a plan or a tax-exempt entity as defined in paragraph (m) of this section that establishes a plan. The performance of services as an independent contractor for a state or local government or a tax-exempt entity is treated as the performance of services for an eligible employer. The term *eligible employer* does not include a church as defined in section 3121(w)(3)(A), a qualified church-controlled organization as defined in section 3121(w)(3)(B), or the Federal government or any agency or instrumentality thereof.

(f) *Eligible plan.* An *eligible plan* is a plan that meets the requirements of §§ 1.457–3 through 1.457–10 that is established and maintained by an eligible employer. An *eligible governmental plan* is an eligible plan that is established and maintained by an eligible employer as defined in paragraph (l) of this section. An arrangement does not fail to constitute a single eligible governmental plan merely because the arrangement is funded through more than one trustee, custodian, or insurance carrier. An *eligible plan of a tax-exempt entity* is an eligible plan that is established and maintained by an eligible employer as defined in paragraph (m) of this section.

(g) *Includible compensation. Includible compensation* of a participant means, with respect to a taxable year, the participant's compensation, as defined in section 415(c)(3), for services performed for the eligible employer. The amount of includible compensation is determined without regard to any community property laws.

(h) *Ineligible plan. Ineligible plan* means a plan established and maintained by an eligible employer that is not maintained in accordance with §§ 1.457–3 through 1.457–10. A plan that is not established by an eligible employer as defined in paragraph (e) of this section is neither an eligible nor an ineligible plan.

(i) *Nonelective employer contribution.* A *nonelective employer contribution* is a contribution made by an eligible employer for the participant with respect to which the participant does not have the choice to receive the contribution in cash or property. Solely for purposes of section 457 and §§ 1.457–2 through 1.457–11, the term *nonelective employer contribution* includes employer contributions that would be described in section 401(m) if they were contributions to a qualified plan.

(j) *Participant. Participant* in an eligible plan means an individual who is currently deferring compensation, or who has previously deferred compensation under the plan by salary reduction or by nonelective employer contribution and who has not received a distribution of his or her entire benefit under the eligible plan. Only individuals who perform services for the eligible employer, either as an employee or as an independent contractor, may defer compensation under the eligible plan.

(k) *Plan. Plan* includes any agreement or arrangement between an eligible employer and a participant or participants under which the payment of compensation is deferred (whether by salary reduction or by nonelective employer contribution). The following types of plan are not treated as agreements or arrangement under which compensation is deferred: a bona fide vacation leave, sick leave, compensatory time, severance pay, disability pay, or death benefit plan described in section 457(e)(11)(A)(i) and any plan paying length of service awards to bona fide volunteers (and their beneficiaries) on account of qualified services performed by such volunteers as described in section 457(e)(11)(A)(ii). Further, the term *plan* does not include any of the following (and section 457 and §§ 1.457–2 through 1.457–11 do not apply to any of the following)—

(1) Any nonelective deferred compensation under which all individuals (other than those who have not satisfied any applicable initial service requirement) with the same relationship with the eligible employer are covered under the same plan with no individual variations or options under the plan as described in section 457(e)(12), but only to the extent the compensation is attributable to services performed as an independent contractor;

(2) An agreement or arrangement described in § 1.457–11(b);

(3) Any plan satisfying the conditions in section 1107(c)(4) of the Tax Reform Act of 1986 (TRA '86) (relating to certain plans for state judges); and

(4) Any of the following plans or arrangements (to which specific transitional statutory exclusions apply)—

(i) A plan or arrangement of a tax-exempt entity in existence prior to January 1, 1987, if the conditions of section 1107(c)(3)(B) of the TRA '86, as amended by section 1011(e)(6) of Technical and Miscellaneous Revenue Act of 1988 (TAMRA), are satisfied;

(ii) A collectively bargained nonelective deferred compensation plan in effect on December 31, 1987, if the conditions of section 6064(d)(2) of TAMRA are satisfied;

(iii) Amounts described in section 6064(d)(3) of TAMRA (relating to certain nonelective deferred compensation arrangements in effect before 1989); and

(iv) Any plan satisfying the conditions in section 1107(c)(4) or (5) of TRA '86 (relating to certain plans for certain individuals with respect to which the Service issued guidance before 1977).

(l) *State. State* includes the 50 States of the United States, the District of Columbia, a political subdivision of a state or the District of Columbia, or any agency or instrumentality of a state or the District of Columbia.

(m) *Tax-exempt entity. Tax-exempt entity* includes any organization (other than a governmental unit) exempt from tax under subtitle A of the Internal Revenue Code.

(n) *Trust. Trust* means a trust described under section 457(g) and § 1.457–8. Custodial accounts and contracts described in section 401(f) are treated as trusts under the rules described in § 1.457–8(a)(2).

§ 1.457–3 General introduction to eligible plans.

(a) *Compliance in form and operation.* An eligible plan is a written plan established and maintained by an eligible employer that is maintained, in both form and operation, in accordance with the requirements of §§ 1.457–4 through 1.457–10. An eligible plan must contain all the material terms and conditions for benefits under the plan. An eligible plan may contain certain optional features not required for plan eligibility under section 457(b), such as distributions for unforeseeable emergencies, loans, plan-to-plan transfers, additional deferral elections, acceptance of rollovers to the plan, and distributions of smaller accounts to eligible participants. However, except as otherwise specifically provided in §§ 1.457–4 through 1.457–10, if an eligible plan contains any optional provisions, the optional provisions must meet, in both form and operation, the relevant requirements under section 457 and §§ 1.457–2 through 1.457–10.

(b) *Treatment as single plan.* In any case in which multiple plans are used to avoid or evade the requirements of §§ 1.457–4 through 1.457–10, the Commissioner may apply the rules under §§ 1.457–4 through 1.457–10 as if the plans were a single plan.

§ 1.457–4 Annual deferrals, deferral limitations, and deferral agreements under eligible plans.

(a) *Taxation of annual deferrals.* Annual deferrals that satisfy the requirements of paragraphs (b) and (c) of this section are excluded from the gross income of a participant in the year deferred or contributed and are not includible in gross income until paid to the participant in the case of an eligible governmental plan, or until paid or otherwise made available to the participant in the case of an eligible plan of a tax-exempt entity. See § 1.457–7.

(b) *Agreement for deferral.* In order to be an eligible plan, the plan must provide that compensation may be deferred for any calendar month by salary reduction only if an agreement providing for the deferral has been entered into before the first day of the month in which the compensation is paid or made available. A new employee may defer compensation payable in the calendar month during which the participant first becomes an employee if an agreement providing for the deferral is entered into on or before the first day on which the participant performs services for the eligible employer. An eligible plan may provide that if a participant enters into an agreement providing for deferral by salary reduction under the plan, the agreement will remain in effect until the participant revokes or alters the terms of the agreement. Nonelective employer contributions are treated as being made under an agreement entered into before the first day of the calendar month.

(c) *Maximum deferral limitations.*—(1) *Basic annual limitation.* (i) Except as described in paragraphs (c)(2) and (3) of this section, in order to be an eligible plan, the plan must provide that the annual deferral amount for a taxable year (the plan ceiling) may not exceed the lesser of—

(A) The applicable annual dollar amount specified in section 457(e)(15): $11,000 for 2002; $12,000 for 2003; $13,000 for 2004; $14,000 for 2005; and $15,000 for 2006 and thereafter. After 2006, the $15,000 amount is adjusted for cost-of-living in the manner described in paragraph (c)(4) of this section; or

(B) 100 percent of the participant's includible compensation for the taxable year.

(ii) The amount of annual deferrals permitted by the 100 percent of includible compensation limitation under paragraph (c)(1)(i)(B) of this section is determined under section 457(e)(5) and § 1.457–2(g).

(iii) For purposes of determining the plan ceiling under this paragraph (c), the annual deferral amount does not include any rollover amounts received by the eligible plan under § 1.457–10(e).

(iv) The provisions of this paragraph (c)(1) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant A, who earns $14,000 a year, enters into a salary reduction agreement in 2006 with A's eligible employer and elects to defer $13,000 of A's compensation for that year. Participant A is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section.

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participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation.

(ii) *Conclusion.* The annual deferral limit for A in 2006 is the lesser of $15,000 or 100 percent of includible compensation, $14,000. A's annual deferral of $13,000 is permitted under the plan because it is not in excess of $14,000 and thus does not exceed 100 percent of A's includible compensation.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1*, except that *A*'s eligible employer provides an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under A's eligible plan. The matching contribution is equal to 100 percent of elective contributions, but not in excess of 10 percent of compensation (in A's case, $1,400).

(ii) *Conclusion.* Participant A's annual deferral exceeds the limitations of this paragraph (c)(1). A's maximum deferral limitation in 2006 is $14,000. A's salary reduction deferral of $13,000 combined with A's eligible employer's nonelective employer contribution of $1,400 exceeds the basic annual limitation of this paragraph (c)(1) because A's annual deferrals total $14,400. A has an excess deferral for the taxable year of $400, the amount exceeding A's permitted annual deferral limitation. The $400 excess deferral is treated as described in paragraph (e) of this section.

Example 3. (i) *Facts.* Beginning in year 2002, Eligible Employer X contributes $3,000 per year for five years to Participant B's eligible plan account. B's interest in the account vests in 2006. B has annual compensation of $50,000 in each of the five years 2002 through 2006. Participant B is 41 years old. B is not eligible for the catch-up described in paragraph (c)(2) or (3) of this section, participates in no other retirement plan, and has no other income exclusions taken into account in computing includible compensation. Adjusted for gain or loss, the value of B's benefit when B's interest in the account vests in 2006 is $17,000.

(ii) *Conclusion.* Under this vesting schedule, $17,000 is taken into account as an annual deferral in 2006. B's annual deferrals under the plan are limited to a maximum of $15,000 in 2006. Thus, the aggregate of the amounts deferred, $17,000, is in excess of the B's maximum deferral limitation by $2,000. The $2,000 is treated as an excess deferral described in paragraph (e) of this section.

(2) *Age 50 catch-up*—(i) *In general.* In accordance with section 414(v) and the regulations thereunder, an eligible governmental plan may provide for catch-up contributions for a participant who is age 50 by the end of the year, provided that such age 50 catch-up contributions do not exceed the catch-up limit under section 414(v)(2) for the taxable year. The maximum amount of age 50 catch-up contributions for a taxable year under section 414(v) is as follows: $1,000 for 2002; $2,000 for 2003; $3,000 for 2004; $4,000 for 2005; and $5,000 for 2006 and thereafter. After 2006, the $5,000 amount is adjusted for cost-of-living. For additional guidance, see regulations under section 414(v).

(ii) *Coordination with special section 457 catch-up.* In accordance with sections 414(v)(6)(C) and 457(e)(18), the age 50 catch-up described in this paragraph (c)(2) does not apply for any taxable year for which a higher limitation applies under the special section 457 catch-up under paragraph (c)(3) of this section. Thus, for purposes of this paragraph (c)(2)(ii) and paragraph (c)(3) of this section, the special section 457 catch-up under paragraph (c)(3) of this section applies for any taxable year if and only if the plan ceiling taking into account paragraphs (c)(1) and (3) of this section (and disregarding the age 50 catch-up described in this paragraph (c)(2)) is larger than the plan ceiling taking into account paragraph (c)(1) of this section and the age 50 catch-up described in this paragraph (c)(2) (and disregarding paragraph (c)(3) of this section). Thus, a participant who is eligible for the age 50 catch-up for a year and for whom the year is also one of the participant's last three taxable years ending before the participant attains normal retirement age is entitled to the larger of—

(A) The plan ceiling under paragraph (c)(1) of this section and the age 50 catch-up described in this paragraph (c)(2) (and disregarding paragraph (c)(3) of this section) or

(B) The plan ceiling under paragraphs (c)(1) and (3) of this section (and disregarding the age 50 catch-up described in this paragraph (c)(2)).

(iii) *Examples.* The provisions of this paragraph (c)(2) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant C, who is 55, is eligible to participate in an eligible governmental plan in 2006. The plan provides a normal retirement age of 65. The plan provides limitations on annual deferrals up to the maximum permitted under paragraphs (c)(1) and (3) of this section and the age 50 catch-up described in this paragraph (c)(2). For 2006, C will receive compensation of $40,000 from the eligible employer. C desires to defer the maximum amount possible in 2006. The applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section is $15,000 for 2006 and the additional dollar amount permitted under the age 50 catch-up is $5,000 for 2006.

(ii) *Conclusion.* C is eligible for the age 50 catch-up in 2006 because C is 55 in 2006. However, *C* is not eligible for the special section 457 catch-up under paragraph (c)(3) of this section in 2006 because 2006 is not one of the last three taxable years ending before C attains normal retirement age. Accordingly, the maximum that C may defer for 2006 is $20,000.

Example 2. (i) *Facts.* The facts are the same as in *Exomple 1*, except that, in 2006, C will attain age 62. The maximum amount that C can elect under the special section 457 catch-up under paragraph (c)(3) of this section is $2,000 for 2006.

(ii) *Conclusion.* The maximum that C may defer for 2006 is $20,000. This is the sum of the basic plan ceiling under paragraph (c)(1) of this section equal to $15,000 and the age 50 catch-up equal to $5,000. The special section 457 catch-up under paragraph (c)(3) of this section is not applicable since it provides a smaller plan ceiling.

Example 3. (i) *Facts:* The facts are the same as in *Example 2*, except that the maximum additional amount that C can elect under the special section 457 catch-up under paragraph (c)(3) of this section is $7,000 for 2006.

(ii) *Conclusion.* The maximum that C may defer for 2006 is $22,000. This is the sum of the basic plan ceiling under paragraph (c)(1) of this section equal to $15,000, plus the additional special section 457 catch-up under paragraph (c)(3) of this section equal to $7,000. The additional dollar amount permitted under the age 50 catch-up is not applicable to C for 2006 because it provides a smaller plan ceiling.

(3) *Special section 457 catch-up*—(i) *In general.* Except as provided in paragraph (c)(2)(ii) of this section, an eligible plan may provide that, for one or more of the participant's last three taxable years ending before the participant attains "normal retirement age," the plan ceiling is an amount not in excess of the lesser of—

(A) Twice the dollar amount in effect under paragraph (c)(1)(i)(A) of this section; or

(B) The underutilized limitation determined under paragraph (c)(3)(ii) of this section.

(ii) *Underutilized limitation.* The underutilized amount determined under this paragraph (c)(3)(ii) is the sum of—

(A) The plan ceiling established under paragraph (c)(1) of this section for the taxable year; plus

(B) The plan ceiling established under paragraph (c)(1) of this section (or under section 457(b)(2) for any year before the applicability date of this section) for any prior taxable year or years, less the amount of annual deferrals under the plan for such prior taxable year or years (disregarding any annual deferrals under the plan permitted under the age 50 catch-up under paragraph (c)(2) of this section).

(iii) *Determining underutilized limitation under paragraph (c)(3)(ii)(B) of this section.* In determining the includible compensation of a participant under § 1.457–2(g) for purposes of calculating the amount described in paragraph (c)(3)(ii)(A) of this section, includible compensation is not reduced by contributions of amounts described in paragraph (c)(3)(ii)(B) of this section. In addition, a prior taxable year is taken into account

under paragraph (c)(3)(ii)(B) of this section only if it is a year beginning after December 31, 1978, in which the participant was eligible to participate in the plan, and in which compensation deferred (if any) under the plan during the year was subject to a plan ceiling established under paragraph (c)(1) of this section.

(iv) *Special rules concerning application of the coordination limit for years prior to 2002 for purposes of determining the underutilized limitation*—(A) *General rule.* For purposes of determining the underutilized limitation for years prior to 2002, participants remain subject to the rules in effect prior to the repeal of the coordination limitation under section 457(c)(2). Thus, the applicable basic annual limitation under paragraph (c)(1) of this section and the special section 457 catch-up under this paragraph (c)(3) for years in effect prior to 2002 are reduced, for purposes of determining a participant's underutilized amount under a plan, by amounts excluded from the participant's income for any prior taxable year by reason of a salary reduction or elective contribution under any other eligible section 457(b) plan, section 401(k) qualified cash or deferred arrangement, section 402(h)(1)(B) simplified employee pension (SARSEP), section 403(b) annuity contract, and section 408(p) simple retirement account, or under any plan for which a deduction is allowed because of a contribution to an organization described in section 501(c)(18) (pre-2002 coordination plans). Similarly, in applying the section 457(b)(2)(B) limitation for includible compensation for years prior to 2002, the limitation is 33⅓ percent of the participant's compensation includible in gross income.

(B) *Coordination limitation applied to participant.* For purposes of determining the underutilized limitation for years prior to 2002, the coordination limitation applies to pre-2002 coordination plans of all employers for whom a participant has performed services, not only to those of the eligible employer. Thus, for purposes of determining the amount excluded from a participant's gross income in any prior taxable year under paragraph (c)(3)(ii)(B) of this section, the participant's annual deferral under an eligible plan, and salary reduction or elective deferrals under all other pre-2002 coordination plans, must be determined on an aggregate basis. To the extent that the combined deferral for years prior to 2002 exceeded the maximum deferral limitations, the amount is treated as an excess deferral under paragraph (e) of this section for those prior years.

(C) *Special rule where no annual deferrals under the eligible plan.* A participant who, although eligible, did not defer any compensation under the eligible plan in any given year before 2002 is not subject to the coordinated deferral limit, even though the participant may have deferred compensation under one of the other pre-2002 coordination plans. An individual is treated as not having deferred compensation under an eligible plan for a prior taxable year if all annual deferrals under the plan are distributed in accordance with paragraph (e) of this section. Thus, to the extent that a participant participated solely in one or more of the other pre-2002 coordination plans during a prior taxable year (and not the eligible plan), the participant is not subject to the coordinated limitation for that prior taxable year. However, the participant is treated as having deferred amounts in a prior taxable year for purposes of determining the underutilized limitation for that prior taxable year under this paragraph (c)(3)(iv)(C), but only to the extent that the participant's salary reduction contributions or elective deferrals under all pre-2002 coordination plans have not exceeded the maximum deferral limitations in effect under section 457(b) for that prior taxable year. To the extent an employer did not offer an eligible plan to an individual in a prior given year, no underutilized limitation is available to the individual for that prior year, even if the employee subsequently becomes eligible to participate in an eligible plan of the employer.

(D) *Examples.* The provisions of this paragraph (c)(3)(iv) are illustrated by the following examples:

Example 1. (i) *Facts.* In 2001 and in years prior to 2001, Participant D earned $50,000 a year and was eligible to participate in both an eligible plan and a section 401(k) plan. However, D had always participated only in the section 401(k) plan and had always deferred the maximum amount possible. For each year before 2002, the maximum amount permitted under section 401(k) exceeded the limitation of paragraph (c)(3)(i) of this section. In 2002, D is in the 3-year period prior to D's attainment of the eligible plan's normal retirement age of 65, and D now wants to participate in the eligible plan and make annual deferrals of up to $30,000 under the plan's special section 457 catch-up provisions.

(ii) *Conclusion.* Participant D is treated as having no underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the catch-up limitation under section 457(b)(3) and paragraph (c)(3) of this section because, in each of the years before 2002, D has deferred an amount in excess of the limitation of paragraph (c)(3)(i) of this section.

Example 2. (i) *Facts.* Assume the same facts as in *Example 1*, except that D only deferred $2,500 per year under the section 401(k) plan for one year before 2002.

(ii) *Conclusion.* D is treated as having an underutilized amount under paragraph (c)(3)(ii)(B) of this section for 2002 for purposes of the special section 457 catch-up limitation. This is because D has deferred an amount for prior years that is less than the limitation of paragraph (c)(1)(i) of this section.

Example 3. (i) *Facts.* Participant E, who earned $15,000 for 2000, entered into a salary reduction agreement in 2000 with E's eligible employer and elected to defer $3,000 for that year. For 2000, E's eligible employer provided an immediately vested, matching employer contribution under the plan for participants who make salary reduction deferrals under E's eligible plan. The matching contribution was equal to 100 percent of elective contributions, but not in excess of 10 percent of compensation before salary reduction deferrals (in E's case, $1,500). For 2000, E was not eligible for any catch-up contribution, participated in no other retirement plan, and had no other income exclusions taken into account in computing taxable compensation.

(ii) *Conclusion.* Participant E's annual deferral exceeded the limitations of section 457(b) for 2000. E's maximum deferral limitation in 2000 was $4,000 because E's includible compensation was $12,000 ($15,000 minus the deferral of $3,000) and the applicable limitation for 2000 was one-third of the individual's includible compensation (one-third of $12,000 equals $4,000). E's salary reduction deferral of $3,000 combined with E's eligible employer's matching contribution of $1,500 exceeded the limitation of section 457(b) for 2000 because E's annual deferrals totaled $4,500. E had an excess deferral for 2000 of $500, the amount exceeding E's permitted annual deferral limitation, and E's underutilized amount for 2000 is zero.

(v) *Normal retirement age*—(A) *General rule.* For purposes of the special section 457 catch-up in this paragraph (c)(3), a plan must specify the normal retirement age under the plan. A plan may define normal retirement age as any age that is on or after the earlier of age 65 or the age at which participants have the right to retire and receive, under the basic defined benefit pension plan of the state or tax-exempt entity, immediate retirement benefits without actuarial or similar reduction because of retirement before some later specified age, and that is not later than age 70½. Alternatively, a plan may provide that a participant is allowed to designate a normal retirement age within these ages. For purposes of the special section 457 catch-up in this paragraph (c)(3), an entity sponsoring more than one eligible plan may not permit a participant to have more than one normal retirement age under the eligible plans it sponsors.

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(B) *Special rule for eligible plans of qualified police or firefighters.* An eligible plan with participants that include qualified police or firefighters as defined under section 415(b)(2)(H)(ii)(I) may designate a normal retirement age for such qualified police or firefighters that is earlier than the earliest normal retirement age designated under the general rule of paragraph (c)(3)(i)(A) of this section, but in no event may the normal retirement age be earlier than age 40. Alternatively, a plan may allow a qualified police or firefighter participant to designate a normal retirement age that is between age 40 and age 70½.

(vi) *Examples.* The provisions of this paragraph (c)(3) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant *F*, who will turn 61 on April 1, 2006, becomes eligible to participate in an eligible plan on January 1, 2006. The plan provides a normal retirement age of 65. The plan provides limitations on annual deferrals up to the maximum permitted under paragraphs (c)(1) through (3) of this section. For 2006, F will receive compensation of $40,000 from the eligible employer. F desires to defer the maximum amount possible in 2006. The applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section is $15,000 for 2006 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 is $5,000 for 2006.

(ii) *Conclusion.* F is not eligible for the special section 457 catch-up under paragraph (c)(3) of this section in 2006 because 2006 is not one of the last three taxable years ending before F attains normal retirement age. Accordingly, the maximum that F may defer for 2006 is $20,000. See also paragraph (c)(2)(iii) *Example 1* of this section.

Example 2. (i) *Facts.* The facts are the same as in *Example 1* except that, in 2006, F elects to defer only $2,000 under the plan (rather than the maximum permitted amount of $20,000). In addition, assume that the applicable basic dollar limit of paragraph (c)(1)(i)(A) of this section continues to be $15,000 for 2007 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 continues to be $5,000 for 2007. In F's taxable year 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, F again receives a salary of $40,000 and elects to defer the maximum amount permissible under the plan's catch-up provisions prescribed under paragraph (c) of this section.

(ii) *Conclusion.* For 2007, which is one of the last three taxable years ending before F attains the plan's normal retirement age of 65, the applicable limit on deferrals for F is the larger of the amount under the special section 457 catch-up or $20,000, which is the basic annual limitation ($15,000) and the age 50 catch-up limit of section 414(v) ($5,000). For 2007, F's special section 457 catch-up amount is the lesser of two times the basic annual limitation ($30,000) or the sum of the basic annual limitation ($15,000) plus the $13,000 underutilized limitation under paragraph (c)(3)(ii) of this section (the $15,000 plan ceiling in 2006, minus the $2,000 contributed for F in 2006), or $28,000. Thus, the maximum amount that F may defer in 2007 is $28,000.

Example 3. (i) *Facts.* The facts are the same as in *Examples 1* and *2*, except that F does not make any contributions to the plan before 2010. In addition, assume that the applicable basic dollar limitation of paragraph (c)(1)(i)(A) of this section continues to be $15,000 for 2010 and the additional dollar amount permitted under the age 50 catch-up in paragraph (c)(2) of this section for an individual who is at least age 50 continues to be $5,000 for 2010. In F's taxable year 2010, the year in which F attains age 65 (which is the normal retirement age under the plan), F desires to defer the maximum amount possible under the plan. F's compensation for 2010 is again $40,000.

(ii) *Conclusion.* For 2010, the maximum amount that F may defer is $20,000. The special section 457 catch-up provisions under paragraph (c)(3) of this section are not applicable because 2010 is not a taxable year ending before the year in which F attains normal retirement age.

(4) *Cost-of-living adjustment.* For years beginning after December 31, 2006, the $15,000 dollar limitation in paragraph (c)(1)(i)(A) of this section will be adjusted to take into account increases in the cost-of-living. The adjustment in the dollar limitation is made at the same time and in the same manner as under section 415(d) (relating to qualified plans under section 401(a)), except that the base period is the calendar quarter beginning July 1, 2005 and any increase which is not a multiple of $500 will be rounded to the next lowest multiple of $500.

(d) *Deferral of sick, vacation, and back pay under an eligible plan*—(1) *In general.* An eligible plan may provide that a participant may elect to defer accumulated sick pay, accumulated vacation pay, and back pay under an eligible plan if certain conditions are satisfied. The plan must provide, in accordance with paragraph (b) of this section, that these amounts may be deferred for any calendar month only if an agreement providing for the deferral is entered into before the beginning of the month in which the amounts would otherwise be paid or made available and the participant is an employee in that month. Any deferrals made under this paragraph (d)(1) under an eligible plan are subject to the maximum deferral limitations of paragraph (c) of this section.

(2) *Examples.* The provisions of this paragraph (d) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant G, age 62, is a participant in an eligible plan providing a normal retirement age of 65. Under the terms of G's employer's eligible plan and G's sick leave plan, G may, during November of 2003 (which is one of the three years prior to normal retirement age), make a one-time election to contribute amounts representing accumulated sick pay to the eligible plan in December of 2003 (within the maximum deferral limitations). Alternatively, such amounts may remain in the "bank" under the sick leave plan. No cash out of the sick pay is available at any time prior to termination of employment. The total value of G's accumulated sick pay (determined, in accordance with the terms of the sick leave plan, by reference to G's current salary) is $4,000 in December of 2003.

(ii) *Conclusion.* Under the terms of the eligible plan and sick leave plan, G may elect before December of 2003 to defer the $4,000 value of accumulated sick pay under the eligible plan, provided that G's other annual deferrals to the eligible plan for 2003, when added to the $4,000, do not exceed G's maximum deferral limitation for the year.

Example 2. (i) *Facts.* Employer X maintains an eligible plan and a vacation leave plan. Under the terms of the vacation leave plan, employees generally accrue three weeks of vacation per year. Up to one week's unused vacation may be carried over from one year to the next, so that in any single year an employee may have a maximum of four weeks vacation time. At the beginning of each calendar year, under the terms of the eligible plan (which constitutes an agreement providing for the deferral), the value of any unused vacation time from the prior year in excess of one week is automatically contributed to the eligible plan, to the extent of the employee's maximum deferral limitations. Amounts in excess of the maximum deferral limitations are forfeited.

(ii) *Conclusion.* The value of the unused vacation pay contributed to X's eligible plan pursuant to the terms of the plan and the terms of the vacation leave plan is treated as an annual deferral to the eligible plan in the calendar year the contribution is made. No amounts contributed to the eligible plan will be considered made available to a participant in X's eligible plan.

(e) *Excess deferrals under an eligible plan*—(1) *In general.* Any amount deferred under an eligible plan for the taxable year of a participant that exceeds the maximum deferral limitations set forth in paragraphs (c)(1) through (3) of this section, and any amount that exceeds the individual limitation under § 1.457–5, constitutes an excess deferral taxable in accordance with § 1.457–11 for that taxable year. Thus, an excess deferral is includible in gross income in the taxable year deferred or, if later, the first taxable year in which there is no substantial risk of forfeiture.

(2) *Excess deferrals under an eligible governmental plan other than as a result of the individual limitation.* In order to be an eligible governmental plan, the plan must provide that any excess deferrals resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section to amounts deferred under the eligible plan (computed without regard to the individual limitation under § 1.457–5) will be distributed to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan. An eligible governmental plan does not fail to satisfy the requirements of paragraphs (a) through (d) of this section or §§ 1.457–6 through 1.457–10 (including the distribution rules under § 1.457–6 and the funding rules under § 1.457–8) solely by reason of a distribution made under this paragraph (e)(2). If such excess deferrals are not corrected by distribution under this paragraph (e)(2), the plan will be an ineligible plan under which benefits are taxable in accordance with § 1.457–11.

(3) *Excess deferrals under an eligible plan of a tax-exempt employer other than as a result of the individual limitation.* If a plan of a tax-exempt employer fails to comply with the limitations of paragraphs (c)(1) through (3) of this section, the plan will be an ineligible plan under which benefits are taxable in accordance with § 1.457–11. For purposes of determining whether there is an excess deferral resulting from a failure of a plan to apply the limitations of paragraphs (c)(1) through (3) of this section, all plans under which an individual participates by virtue of his or her relationship with a single employer are treated as a single plan.

(4) *Excess deferrals arising from application of the individual limitation.* An eligible plan may provide that an excess deferral as a result of a failure to comply with the individual limitation under § 1.457–5 for a taxable year may be distributed to the participant, with allocable net income, as soon as administratively practicable after the plan determines that the amount is an excess deferral. An eligible plan does not fail to satisfy the requirements of paragraphs (a) through (d) of this section or §§ 1.457–6 through 1.457–10 (including the distribution rules under § 1.457–6 and the funding rules under § 1.457–8) solely by reason of a distribution made under this paragraph (e)(4). Although a plan will still maintain eligible status if excess deferrals are not distributed under this paragraph (e)(4), a participant must include the excess amounts in income as provided in paragraph (e)(1) of this section.

(5) *Examples.* The provisions of this paragraph (e) are illustrated by the following examples:

Example 1. (i) *Facts.* In 2006, the eligible plan of State Employer X in which Participant H participates permits a maximum deferral of the lesser of $15,000 or 100 percent of includible compensation. In 2006, H, who has compensation of $28,000, nevertheless defers $16,000 under the eligible plan. Participant H is age 45 and normal retirement age under the plan is age 65. For 2006, the applicable dollar limit under paragraph (c)(1)(i)(A) of this section is $15,000.

(ii) *Conclusion.* Participant H has deferred $1,000 in excess of the $15,000 limitation provided for under the plan for 2006. The $1,000 excess must be included by H into H's income for 2006. In order to correct the failure and still be an eligible plan, the plan must distribute the excess deferral, with allocable net income, as soon as administratively practicable after determining that the amount exceeds the plan deferral limitations. If the excess deferral is not distributed, the plan will be an ineligible plan with respect to which benefits are taxable in accordance with § 1.457–11.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that *H's* deferral under the eligible plan is limited to $11,000 and H also makes a salary reduction contribution of $5,000 to an annuity contract under section 403(b) with the same Employer X.

(ii) *Conclusion.* H's deferrals are within the plan deferral limitations of Employer X. Because of the repeal of the application of the coordination limitation under former paragraph (2) of section 457(c), H's salary reduction deferrals under the annuity contract are no longer considered in determining H's applicable deferral limits under paragraphs (c)(1) through (3) of this section.

Example 3. (i) *Facts.* The facts are the same as in *Example 1*, except that *H's* deferral under the eligible governmental plan is limited to $14,000 and H also makes a deferral of $4,000 to an eligible governmental plan of a different employer. Participant H is age 45 and normal retirement age under both eligible plans is age 65.

(ii) *Conclusion.* Because of the application of the individual limitation under § 1.457–5, H has an excess deferral of $3,000 (the sum of $14,000 plus $4,000 equals $18,000, which is $3,000 in excess of the dollar limitation of $15,000). The $3,000 excess deferral, with allocable net income, may be distributed from either plan as soon as administratively practicable after determining that the combined amount exceeds the deferral limitations. If the $3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the $3,000 must be included by H into H's income for 2006.

Example 4. (i) *Facts.* Assume the same facts as in *Example 3*, except that H's deferral under the eligible governmental plan is limited to $14,000 and H also makes a deferral of $4,000 to an eligible plan of Employer Y, a tax-exempt entity.

(ii) *Conclusion.* The results are the same as in *Example 3*, *i.e.*, because of the application of the individual limitation under § 1.457–5, H has an excess deferral of $3,000. If the $3,000 excess deferral is not distributed to H, each plan will continue to be an eligible plan, but the $3,000 must be included by H into H's income for 2006.

Par. 3. Sections 1.457–5 through 1.457–12 are added to read as follows:

§ 1.457–5 Individual limitation for combined annual deferrals under multiple eligible plans

(a) *General rule.* The individual limitation under section 457(c) and this section equals the basic annual deferral limitation under § 1.457–4(c)(1)(i)(A), the age 50 catch-up amount under § 1.457–4(c)(2), and the special section 457 catch-up amount under § 1.457–4(c)(3), applied by taking into account the combined annual deferral for the participant for any taxable year under all eligible plans. While an eligible plan may include provisions under which it will meet the individual limitation under section 457(c) and this section, annual deferrals by a participant that exceed the individual limit under section 457(c) and this section will not cause a plan to lose its eligible status. However, to the extent the combined annual deferrals for a participant for any taxable year exceed the individual limitation under section 457(c) and this section for that year, the amounts are treated as excess deferrals as described in § 1.457–4(e).

(b) *Limitation applied to participant.* The individual limitation in this section applies to eligible plans of all employers for whom a participant has performed services, including both eligible governmental plans and eligible plans of a tax-exempt entity and both eligible plans of the employer and eligible plans of other employers. Thus, for purposes of determining the amount excluded from a participant's gross income in any taxable year (including the underutilized limitation under § 1.457–4(c)(3)(ii)(B)), the participant's annual deferral under an eligible plan, and the participant's annual deferrals under all other eligible plans, must be determined on an aggregate basis. To the extent that the combined annual deferral amount exceeds the maximum deferral limitation applicable under § 1.457–4(c)(1)(i)(A), (c)(2), or (c)(3), the amount is treated as an excess deferral under § 1.457–4(e).

(c) *Special rules for catch-up amounts under multiple eligible plans.* For purposes of applying section 457(c) and

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this section, the special section 457 catch-up under § 1.457–4(c)(3) is taken into account only to the extent that an annual deferral is made for a participant under an eligible plan as a result of plan provisions permitted under § 1.457–4(c)(3). In addition, if a participant has annual deferrals under more than one eligible plan and the applicable catch-up amount under § 1.457–4(c)(2) or (3) is not the same for each such eligible plan for the taxable year, section 457(c) and this section are applied using the catch-up amount under whichever plan has the largest catch-up amount applicable to the participant.

(d) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Participant F is age 62 in 2006 and participates in two eligible plans during 2006, Plans J and K, which are each eligible plans of two different governmental entities. Each plan includes provisions allowing the maximum annual deferral permitted under § 1.457–4(c)(1) through (3). For 2006, the underutilized amount under § 1.457–4(c)(3)(ii)(B) is $20,000 under Plan J and is $40,000 under Plan K. Normal retirement age is age 65 under both plans. Participant F defers $15,000 under each plan. Participant F's includible compensation is in each case in excess of the deferral. Neither plan designates the $15,000 contribution as a catch-up permitted under each plan's special section 457 catch-up provisions.

(ii) *Conclusion.* For purposes of applying this section to Participant F for 2006, the maximum exclusion is $20,000. This is equal to the sum of $15,000 plus $5,000, which is the age 50 catch-up amount. Thus, F has an excess amount of $10,000 which is treated as an excess deferral for Participant F for 2006 under § 1.457–4(e).

Example 2. (i) *Facts.* Participant E, who will turn 63 on April 1, 2006, participates in four eligible plans during 2006: Plan W which is an eligible governmental plan; and Plans X, Y, and Z which are each eligible plans of three different tax-exempt entities. For 2006, the limitation under these plans that apply to Participant E under all four plans under § 1.457–4(c)(1)(i)(A) is $15,000. For 2006, the additional age 50 catch-up limitation that applies to Participant E under Plan W under § 1.457–4(c)(2) is $5,000. Further, for 2006, different limitations under §§ 1.457–4(c)(3) and (c)(3)(ii)(B) apply to Participant E under each of these plans, as follows: Under Plan W, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $7,000; under Plan X, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $2,000; under Plan Y, the underutilized limitation under § 1.457–4(c)(3)(ii)(B) is $8,000; and under Plan Z, § 1.457–4(c)(3) is not applicable since normal retirement age is age 62 under Plan Z. Participant E's includible compensation is in each case in excess of any applicable deferral.

(ii) *Conclusion.* For purposes of applying this section to Participant E for 2006, Participant E could elect to defer $23,000 under Plan Y, which is the maximum deferral limitation under §§ 1.457–4(c)(1) through (3), and to defer no amount under Plans W, X, and Z. The $23,000 maximum amount is equal to the sum of $15,000 plus $8,000, which is the catch-up amount applicable to Participant E under Plan Y and which is the largest catch-up amount applicable to Participant E under any of the four plans for 2006. Alternatively, Participant E could instead elect to defer the following combination of amounts: $5,000 to Plan W and an aggregate total of $15,000 to Plans X, Y, and Z; $22,000 to Plan W and none to any of the other three plans; $17,000 to Plan X and none to any of the other three plans; or $15,000 to Plan Z and none to any of the other three plans.

(iii) If the underutilized amount under Plans W, X, and Y for 2006 were in each case zero (because E had always contributed the maximum amount or E was a new participant) or an amount not in excess of $5,000, the maximum exclusion under this section would be $20,000 for Participant E for 2006 ($15,000 plus the $5,000 age 50 catch-up amount), which Participant E could contribute to Plan W.

§ 1.457–6 Timing of distributions under eligible plans.

(a) *In general.* Except as provided in paragraph (c) of this section (relating to distributions on account of an unforeseeable emergency), paragraph (e) of this section (relating to distributions of small accounts), § 1.457–10(a) (relating to plan terminations), or § 1.457–10(c) (relating to domestic relations orders), amounts deferred under an eligible governmental plan may not be paid to a participant or beneficiary before the participant has a severance from employment with the eligible employer. For rules relating to loans, see paragraph (f) of this section.

(b) *Severance from employment*—(1) *Employees.* An employee has a severance from employment with the eligible employer if the employee dies, retires, or otherwise has a severance from employment with the eligible employer.

(2) *Independent contractors*—(i) *In general.* An independent contractor is considered to have a severance from employment with the eligible employer upon the expiration of the contract (or in the case of more than one contract, all contracts) under which services are performed for the eligible employer, if the expiration constitutes a good-faith and complete termination of the contractual relationship. An expiration does not constitute a good faith and complete termination of the contractual relationship if the eligible employer anticipates a renewal of a contractual relationship or the independent contractor becoming an employee. For this purpose, an eligible employer is considered to anticipate the renewal of the contractual relationship with an independent contractor if it intends to again contract for the services provided under the expired contract, and neither the eligible employer nor the independent contractor has eliminated the independent contractor as a possible provider of services under any such new contract. Further, an eligible employer is considered to intend to again contract for the services provided under an expired contract if the eligible employer's doing so is conditioned only upon incurring a need for the services, the availability of funds, or both.

(ii) *Special rule.* Notwithstanding paragraph (b)(2)(i) of this section, the plan is considered to satisfy the requirement described in paragraph (a) of this section that no amounts deferred under the plan be paid or made available to the participant before the participant has a severance from employment with the eligible employer, if, with respect to amounts payable to a participant who is an independent contractor, an eligible plan provides that—

(A) No amount will be paid to the participant before a date at least 12 months after the day on which the contract expires under which services are performed for the eligible employer (or, in the case of more than one contract, all such contracts expire); and

(B) No amount payable to the participant on that date will be paid to the participant if, after the expiration of the contract (or contracts) and before that date, the participant performs services for the eligible employer as an independent contractor or an employee.

(c) *Rules applicable to distributions for unforeseeable emergencies*—(1) *In general.* An eligible plan may permit a distribution to a participant or beneficiary faced with an unforeseeable emergency. The distribution must satisfy the requirement of paragraph (c)(2) of this section.

(2) *Requirements*—(i) *Unforeseeable emergency defined.* An unforeseeable emergency must be defined in the plan as a severe financial hardship of the participant or beneficiary resulting from an illness or accident of the participant or beneficiary, the participant's or beneficiary's spouse or the participant's or beneficiary's dependent (as defined in section 152(a)); loss of the participant's or beneficiary's property due to casualty; or other similar extraordinary and unforeseeable circumstances arising as a result of events beyond the control of the participant or the beneficiary. For example, the imminent foreclosure of or eviction from the participant's or beneficiary's primary residence may constitute an unforeseeable emergency. In addition, the need to pay for medical expenses, including non-refundable deductibles, as well as for the cost of prescription drug medication, may constitute an unforeseeable emergency. Finally, the need to pay for the funeral expenses of a family member may also constitute an unforeseeable emergency. Except in extraordinary circumstances, the purchase of a home and the payment of college tuition are not unforeseeable emergencies under this paragraph (c)(2).

(ii) *Unforeseeable emergency distribution standard.* Whether a participant or beneficiary is faced with an unforeseeable emergency permitting a distribution under this paragraph (c) is to be determined based on the relevant facts and circumstances of each case, but, in any case, a distribution on account of unforeseeable emergency may not be made to the extent that such emergency is or may be relieved through reimbursement or compensation from insurance or otherwise; by liquidation of the participant's assets, to the extent the liquidation of such assets would not itself cause severe financial hardship; or by cessation of deferrals under the plan.

(iii) *Distribution necessary to satisfy emergency need.* Distributions because of an unforeseeable emergency must be limited to the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state, or local income taxes or penalties reasonably anticipated to result from the distribution).

(d) *Minimum required distributions for eligible plans.* In order to be an eligible plan, a plan must meet the distribution requirements of section 457(d)(1) and (2). Under section 457(d)(2), a plan must meet the minimum distribution requirements of section 401(a)(9). See section 401(a)(9) and the regulations thereunder for these requirements. Section 401(a)(9) requires that a plan begin lifetime distributions to a participant no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70½ or the calendar year in which the participant retires.

(e) *Distributions of smaller accounts*—(1) *In general.* An eligible plan may provide for a distribution of all or a portion of a dollar amount which is not attributable to rollover contributions (as defined in section 411(a)(11)(D)). In order to permit such a distribution, an eligible plan must provide that the amount of the distribution must not exceed the dollar limit under section 411(a)(11)(A) (which is $5,000 for 2002) and that the distribution is made only if no amount has been deferred under the plan by or for the participant during the two-year period ending on the date of the distribution and there has been no prior distribution under the plan to the participant under this paragraph (e). An eligible plan is not required to permit distributions under this paragraph (e).

(2) *Alternative provisions possible.* Consistent with the provisions of paragraph (e)(1) of this section, a plan may provide that the total amount deferred for a participant or beneficiary, if not in excess of the applicable dollar limit of section 411(a)(11)(A), will be distributed automatically to the participant or beneficiary if the requirements of paragraph (e)(1) of this section are met. Alternatively, the plan may provide for the total amount deferred for a participant or beneficiary, if not in excess of the applicable dollar limit of section 411(a)(11)(A), to be distributed to the participant or beneficiary only if the participant or beneficiary so elects. The plan is permitted to substitute a specified dollar amount that is less than the applicable dollar limit of section 411(a)(11)(A) under either of these alternatives. In addition, these two alternatives can be combined; for example, a plan could provide for automatic distributions for account balances totaling an amount not in excess of the applicable dollar limit of section 411(a)(11)(A) but allow participants or beneficiary to elect a distribution if the total account balance is above $500 but not above the applicable dollar limit of section 411(a)(11)(A).

(f) *Loans from eligible plans*—(1) *Eligible plans of tax-exempt entities.* If a participant or beneficiary receives (directly or indirectly) any amount deferred as a loan from an eligible plan of a tax-exempt entity, that amount will be treated as having been paid or made available to the individual as a distribution under the plan, in violation of the distribution requirements of section 457(d).

(2) *Eligible governmental plans.* The determination of whether the availability of a loan, the making of a loan, or a failure to repay a loan made from a trustee (or a person treated as a trustee under section 457(g)) of an eligible governmental plan to a participant or beneficiary is treated as a distribution (directly or indirectly) for purposes of this section, and the determination of whether the availability of the loan, the making of the loan, or a failure to repay the loan is in any other respect a violation of the requirements of section 457(b) and the regulations, depends on the facts and circumstances. Thus, for example, a loan must bear a reasonable rate of interest in order to satisfy the exclusive benefit requirement of section 457(g)(1) and § 1.457–8(a)(1). See also § 1.457–7(b)(3) relating to the application of section 72(p) with respect to the taxation of a loan made under an eligible governmental plan, and § 1.72(p)–1 relating to section 72(p)(2).

(3) *Example.* The provisions of paragraph (f)(2) of this section are illustrated by the following example:

Example. (i) *Facts.* Eligible Plan X of State Y is funded through Trust Z. Plan X provides for an employee's account balance under Plan X to be paid in 5 annual installments (of ⅕th the account balance the first year, ¼th the account balance the second year, *etc.*) beginning at severance from employment with State Y. Plan X includes a loan program under which any active employee with a vested account balance may receive a loan from Trust Z. Loans are made pursuant to plan provisions regarding loans that are set forth in the plan under which loans bear a reasonable rate of interest and are secured by the employee's account balance. In order to avoid taxation under § 1.457–7(b)(3) and section 72(p)(1), the plan provisions limit the amount of loans and require loans to be repaid in level installments as required under section 72(p)(2). Participant J's vested account balance under Plan X is $50,000. J receives a loan from Trust Z in the amount of $5,000 on December 1, 2003 to be repaid in level installments made quarterly over the 5-year period ending on November 30, 2008. Participant J makes the required repayments until J has a severance from employment from State Y in 2005 and subsequently fails to repay the outstanding loan balance of $2,250. The $2,250 loan balance is offset against J's $80,000 account balance benefit under Plan X, and J is paid one fifth of the remaining $77,750 in 2005.

(ii) *Conclusion.* The making of the loan to J will not be treated as a violation of the requirements of section 457(b) or the regulations. The cancellation of the loan at severance from employment does not cause Plan X to fail to satisfy the requirements for plan eligibility under section 457. In addition, because the loan satisfies the maximum amount and repayment requirements of section 72(p)(2), J is not required to include any amount in income as a result of the loan until 2005, when J has income of $2,250 as a result of the offset (which is a permissible distribution under this section) and income of $15,550 (one fifth of $77,750) as a result of the first annual installment payment.

§ 1.457–7 Taxation of distributions under eligible plans.

(a) *General rules for when amounts are included in gross income.* The rules for determining when an amount deferred under an eligible plan is includible in the gross income of a participant or beneficiary depend on whether the plan is an eligible governmental plan or an eligible plan of a tax-exempt entity. Paragraph (b) of this

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section sets forth the rules for an eligible governmental plan. Paragraph (c) of this section sets forth the rules for an eligible plan of a tax-exempt entity.

(b) *Amounts included in gross income under an eligible governmental plan*—(1) *Amounts included in gross income in year paid under an eligible governmental plan.* Except as provided in paragraphs (b)(2) and (3) of this section (or in § 1.457–10(c) relating to payments to a spouse or former spouse pursuant to a qualified domestic relations order), amounts deferred under an eligible governmental plan are includible in the gross income of a participant or beneficiary for the taxable year in which paid to the participant or beneficiary under the plan.

(2) *Rollovers to individual retirement arrangements and other eligible retirement plans.* A trustee-to-trustee transfer in accordance with section 401(a)(31) (generally referred to as a direct rollover) is not includible in gross income of a participant or beneficiary in the year transferred. In addition, any payment made in the form of an eligible rollover distribution (as defined in section 402(c)(4)) is not includible in gross income in the year paid to the extent the payment is transferred to an eligible retirement plan (as defined in section 402(c)(8)(B)) within 60 days, including the transfer to the eligible retirement plan of any property distributed from the eligible governmental plan. For this purpose, the rules of section 402(c)(2) through (7) and (9) apply. Any trustee-to-trustee transfer under this paragraph (b)(2) is a distribution that is subject to the distribution requirements of § 1.457–6.

(3) *Amounts taxable under section 72(p)(1).* In accordance with section 72(p), the amount of any loan from an eligible governmental plan to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is treated as having been received as a distribution from the plan under section 72(p)(1), except to the extent set forth in section 72(p)(2) (relating to loans that do not exceed a maximum amount and that are repayable in accordance with certain terms) and § 1.72(p)–1. Thus, except to the extent a loan satisfies section 72(p)(2), any amount loaned from an eligible governmental plan to a participant or beneficiary (including any pledge or assignment treated as a loan under section 72(p)(1)(B)) is includible in the gross income of the participant or beneficiary for the taxable year in which the loan is made. See generally § 1.72(p)–1.

(4) *Examples.* The provisions of this paragraph (b) are illustrated by the following examples:

Example 1. (i) *Facts.* Eligible Plan G of a governmental entity permits distribution of benefits in a single sum or in installments of up to 20 years, with such benefits to commence at any date that is after severance from employment (but not later than the plan's normal retirement age of 65). Effective for participants who have a severance from employment after December 31, 2001, Plan X allows an election—as to both the date on which payments are to begin and the form in which payments are to be made—to be made by the participant at any time that is before the commencement date selected. However, Plan X chooses to require elections to be filed at least 30 days before the commencement date selected in order for Plan X to have enough time to be able to effectuate the election.

(ii) *Conclusion.* No amounts are included in gross income before actual payments begin. If installment payments begin (and the installment payments are payable over at least 10 years so as not to be eligible rollover distributions), the amount included in gross income for any year is equal to the amount of the installment payment paid during the year.

Example 2. (i) *Facts.* Same facts as in *Example 1*, except that the same rules are extended to participants who had a severance from employment before January 1, 2002.

(ii) *Conclusion.* For all participants (i.e., both those who have a severance from employment after December 31, 2001 and those who have a severance from employment before January 1, 2002 (including those whose benefit payments have commenced before January 1, 2002)), no amounts are included in gross income before actual payments begin. If installment payments begin (and the installment payments are payable over at least 10 years so as not to be eligible rollover distributions), the amount included in gross income for any year is equal to the amount of the installment payment paid during the year.

(c) *Amounts included in gross income under an eligible plan of a tax-exempt entity*—(1) *Amounts included in gross income in year paid or made available under an eligible plan of a tax-exempt entity.* Amounts deferred under an eligible plan of a tax-exempt entity are includible in the gross income of a participant or beneficiary for the taxable year in which paid or otherwise made available to the participant or beneficiary under the plan. Thus, amounts deferred under an eligible plan of a tax-exempt entity are includible in the gross income of the participant or beneficiary in the year the amounts are first made available under the terms of the plan, even if the plan has not distributed the amounts deferred. Amounts deferred under an eligible plan of a tax-exempt entity are not considered made available to the participant or beneficiary solely because the participant or beneficiary is permitted to choose among various investments under the plan.

(2) *When amounts deferred are considered to be made available under an eligible plan of a tax-exempt entity*—(i) *General rule.* Except as provided in paragraphs (c)(2)(ii) through (iv) of this section, amounts deferred under an eligible plan of a tax-exempt entity are considered made available (and, thus, are includible in the gross income of the participant or beneficiary under this paragraph (c)) at the earliest date, on or after severance from employment, on which the plan allows distributions to commence, but in no event later than the date on which distributions must commence pursuant to section 401(a)(9). For example, in the case of a plan that permits distribution to commence on the date that is 60 days after the close of the plan year in which the participant has a severance from employment with the eligible employer, amounts deferred are considered to be made available on that date. However, distributions deferred in accordance with paragraphs (c)(2)(ii) through (iv) of this section are not considered made available prior to the applicable date under paragraphs (c)(2)(ii) through (iv) of this section. In addition, no portion of a participant or beneficiary's account is treated as made available (and thus currently includible in income) under an eligible plan of a tax-exempt entity merely because the participant or beneficiary under the plan may elect to receive a distribution in any of the following circumstances:

(A) If the requirements of § 1.457–4(d) are met, a distribution of amounts representing accumulated sick and vacation pay solely because a participant was entitled to take paid sick or vacation leave in lieu of regular compensation or because the participant could have deferred these amounts under an eligible plan at an earlier date. However, to the extent that the participant is able to receive the value of accumulated sick and vacation pay in cash (in addition to regular compensation) at the time of the election to defer, these amounts are considered made available.

(B) If the requirements of § 1.457–6(c)(2) are met, a distribution in the event of an unforeseeable emergency.

(C) If the requirements of § 1.457–6(e)(1) are met, a distribution not in excess of the dollar limit under section 411(a)(11)(A) (which is $5,000 for 2002) either before or after the participant has a severance from employment with the employer.

(ii) *Initial election to defer commencement of distributions*—(A) *In general.* An eligible plan of a tax-exempt entity may provide a period for making an initial election during which the participant or beneficiary may elect, in accordance with the terms of the plan, to defer the payment of some or all of the amounts deferred to a fixed or determinable future time. The period for making this initial election must expire prior to the first time that any such amounts would be considered made available under the plan under paragraph (c)(2)(i) of this section.

(B) *Failure to make initial election to defer commencement of distributions.* Generally, if no initial election is made by a participant or beneficiary under this paragraph (c)(2)(ii), then the amounts deferred under an eligible plan of a tax-exempt entity are considered made available and taxable to the participant or beneficiary in accordance with paragraph (c)(2)(i) of this section at the earliest time, on or after severance from employment (but in no event later than the date on which distributions must commence pursuant to section 401(a)(9)), that distribution is permitted to commence under the terms of the plan. However, the plan may provide for a default payment schedule that applies if no election is made. If the plan provides for a default payment schedule, the amounts deferred are includible in the gross income of the participant or beneficiary in the year the amounts deferred are first made available under the terms of the default payment schedule.

(iii) *Additional election to defer commencement of distribution.* An eligible plan of a tax-exempt entity is permitted to provide that a participant or beneficiary who has made an initial election under paragraph (c)(2)(ii)(A) of this section may make one additional election to defer (but not accelerate) commencement of distributions under the plan before distributions have commenced in accordance with the initial deferral election under paragraph (c)(2)(ii)(A) of this section. Amounts payable to a participant or beneficiary under an eligible plan of a tax-exempt entity are not treated as made available merely because the plan allows the participant to make an additional election under this paragraph (c)(2)(iii). A participant or beneficiary is not precluded from making an additional election to defer commencement of distributions merely because the participant or beneficiary has previously received a distribution under § 1.457–6(c) because of an unforeseeable emergency, has received a distribution of smaller amounts under § 1.457–6(e), has made (and revoked) other deferral or method of payment elections within the initial election period, or is subject to a default payment schedule under which the commencement of benefits is deferred (for example, until a participant is age 65).

(iv) *Election as to method of payment.* An eligible plan of a tax-exempt entity may provide that the election as to the method of payment under the plan may be made at any time prior to the time the amounts are distributed in accordance with the participant or beneficiary's initial or additional election to defer commencement of distributions under paragraph (c)(2)(ii) or (iii) of this section. Where no method of payment is elected, the entire amount deferred will be includible in the gross income of the participant or beneficiary when the amounts first become made available in accordance with a participant's initial or additional elections to defer under paragraphs (c)(2)(ii) and (iii) of this section, unless the eligible plan provides for a default method of payment (in which case amounts are considered made available and taxable when paid under the terms of the default payment schedule).

(3) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Eligible Plan X of a tax-exempt entity provides that a participant's total account balance, representing all amounts deferred under the plan, is payable to a participant in a single sum 60 days after severance from employment throughout these examples, unless, during a 30-day period immediately following the severance, the participant elects to receive the single sum payment at a later date (that is not later than the plan's normal retirement age of 65) or elects to receive distribution in 10 annual installments to begin 60 days after severance from employment (or at a later date, if so elected, that is not later than the plan's normal retirement age of 65). On November 13, 2002, participant K, a calendar year taxpayer, has a severance from employment with the eligible employer. K does not, within the 30-day window period, elect to postpone distributions to a later date or to receive payment in 10 fixed annual installments.

(ii) *Conclusion.* The single sum payment is payable to K 60 days after the date K has a severance from employment (January 12, 2003), and is includible in the gross income of K in 2003 under section 457(a).

Example 2. (i) *Facts.* The terms of eligible Plan X are the same as described in *Example 1.* Participant L participates in eligible Plan X. On November 11, 2002, participant L has a severance from the employment of the eligible employer. On November 24, 2002, L makes an initial deferral election not to receive the single sum payment payable 60 days after the severance, and instead elects to receive the amounts in 10 annual installments to begin 60 days after severance from employment.

(ii) *Conclusion.* No portion of L's account is considered made available in 2002 or 2003 before a payment is made and no amount is includible in the gross income of L until distributions commence. The annual installment payable in 2003 will be includible in L's gross income in 2003.

Example 3. (i) *Facts.* The facts are the same as in *Example 1*, except that eligible Plan X also provides that those participants who are receiving distributions in 10 annual installments may, at any time and without restriction, elect to receive a cash out of all remaining installments. Participant M elects to receive a distribution in 10 annual installments commencing in 2003.

(ii) *Conclusion.* M's total account balance, representing the total of the amounts deferred under the plan, is considered made available in, and is includible in M's gross income, in 2003.

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that, instead of providing for an unrestricted cash out of remaining payments, the plan provides that participants or beneficiaries who are receiving distributions in 10 annual installments may accelerate the payment of the amount remaining payable to the participant upon the occurrence of an unforeseeable emergency as described in § 1.457–6(c)(1) in an amount not exceeding that described in § 1.457–6(c)(2).

(ii) *Conclusion.* No amount is considered made available to participant M on account of M's right to accelerate payments upon the occurrence of an unforeseeable emergency.

Example 5. (i) *Facts.* Eligible Plan Y of a tax-exempt entity provides that distributions will commence 60 days after a participant's severance from employment unless the participant elects, within a 30-day window period following severance from employment, to defer distributions to a later date (but no later than the year following the calendar year the participant attains age 70½). The plan provides that a participant who has elected to defer distributions to a later date may make an election as to form of distribution at any time prior to the 30th day before distributions are to commence.

(ii) *Conclusion.* No amount is considered made available prior to the date distributions are to commence by reason of a participant's right to defer or make an election as to the form of distribution.

Example 6. (i) *Facts.* The facts are the same as in *Example 1*, except that the plan also permits participants who have earlier made an election to defer distribution to make one additional deferral election at any time prior to the date distributions are scheduled to commence. Participant N has a severance from employment at age 50. The next day, during the 30-day period provided in the plan, N elects to receive distribution in the form of 10 annual installment payments beginning at age 55. Two weeks later, within the 30-day window period, N makes a new election permitted under the plan to receive 10 annual installment payments beginning at age 60 (instead of age 55). When N is age 59, N elects under the additional deferral election provisions, to defer distributions until age 65.

(ii) *Conclusion.* In this example, N's election to defer distributions until age 65 is a valid election. The two elections N makes

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during the 30-day window period are not additional deferral elections described in paragraph (c)(2)(iii) of this section because they are made before the first permissible payout date under the plan. Therefore, the plan is not precluded from allowing N to make the additional deferral election. However, N can make no further election to defer distributions beyond age 65 because this additional deferral election can only be made once.

§ 1.457–8 Funding rules for eligible plans.

(a) *Eligible governmental plans*—(1) *In general.* In order to be an eligible governmental plan, all amounts deferred under the plan, all property and rights purchased with such amounts, and all income attributable to such amounts, property, or rights, must be held in trust for the exclusive benefit of participants and their beneficiaries. A trust described in this paragraph (a) that also meets the requirements of §§ 1.457–3 through 1.457–10 is treated as an organization exempt from tax under section 501(a), and a participant's or beneficiary's interest in amounts in the trust is includible in the gross income of the participants and beneficiaries only to the extent, and at the time, provided for in section 457(a) and §§ 1.457–4 through 1.457–10.

(2) *Trust requirement.* (i) A trust described in this paragraph (a) must be established pursuant to a written agreement that constitutes a valid trust under state law. The terms of the trust must make it impossible, prior to the satisfaction of all liabilities with respect to participants and their beneficiaries, for any part of the assets and income of the trust to be used for, or diverted to, purposes other than for the exclusive benefit of participants and their beneficiaries.

(ii) Amounts deferred under an eligible governmental plan must be transferred to a trust within a period that is not longer than is reasonable for the proper administration of the participant accounts (if any). For purposes of this requirement, the plan may provide for amounts deferred for a participant under the plan to be transferred to the trust within a specified period after the date the amounts would otherwise have been paid to the participant. For example, the plan could provide for amounts deferred under the plan to be contributed to the trust within 15 business days following the month in which these amounts would otherwise have been paid to the participant.

(3) *Custodial accounts and annuity contracts treated as trusts*—(i) *In general.* For purposes of the trust requirement of this paragraph (a), custodial accounts and annuity contracts described in section 401(f) that satisfy the requirements of this paragraph (a)(3) are treated as trusts under rules similar to the rules of section 401(f). Therefore, the provisions of § 1.401(f)–1(b) will generally apply to determine whether a custodial account or an annuity contract is treated as a trust. The use of a custodial account or annuity contract as part of an eligible governmental plan does not preclude the use of a trust or another custodial account or annuity contract as part of the same plan, provided that all such vehicles satisfy the requirements of section 457(g)(1) and (3) and paragraphs (a)(1) and (2) of this section and that all assets and income of the plan are held in such vehicles.

(ii) *Custodial accounts*—(A) *In general.* A custodial account is treated as a trust, for purposes of section 457(g)(1) and paragraph (a)(1) and (2) of this section, if the custodian is a bank, as described in section 408(n), or a person who meets the nonbank trustee requirements of paragraph (a)(3)(ii)(B) of this section, and the account meets the requirements of paragraphs (a)(1) and (2) of this section, other than the requirement that it be a trust.

(B) *Nonbank trustee status.* The custodian of a custodial account may be a person other than a bank only if the person demonstrates to the satisfaction of the Commissioner that the manner in which the person will administer the custodial account will be consistent with the requirements of section 457(g)(1) and (3). To do so, the person must demonstrate that the requirements of § 1.408–2(e)(2) through (6) (relating to nonbank trustees) are met. The written application must be sent to the address prescribed by the Commissioner in the same manner as prescribed under § 1.408–2(e). To the extent that a person has already demonstrated to the satisfaction of the Commissioner that the person satisfies the requirements of § 1.408–2(e) in connection with a qualified trust (or custodial account or annuity contract) under section 401(a), that person is deemed to satisfy the requirements of this paragraph (a)(3)(ii)(B).

(iii) *Annuity contracts.* An annuity contract is treated as a trust for purposes of section 457(g)(1) and paragraph (a)(1) of this section if the contract is an annuity contract, as defined in section 401(g), that has been issued by an insurance company qualified to do business in the State, and the contract meets the requirements of paragraphs (a)(1) and (2) of this section, other than the requirement that it be a trust. An annuity contract does not include a life, health or accident, property, casualty, or liability insurance contract.

(4) *Combining assets.* [Reserved]

(b) *Eligible plans maintained by tax-exempt entity*—(1) *General rule.* In order to be an eligible plan of a tax-exempt entity, the plan must be unfunded and plan assets must not be set aside for participants or their beneficiaries. Under section 457(b)(6) and this paragraph (b), an eligible plan of a tax-exempt entity must provide that all amounts deferred under the plan, all property and rights to property (including rights as a beneficiary of a contract providing life insurance protection) purchased with such amounts, and all income attributable to such amounts, property, or rights, must remain (until paid or made available to the participant or beneficiary) solely the property and rights of the eligible employer (without being restricted to the provision of benefits under the plan), subject only to the claims of the eligible employer's general creditors.

(2) *Additional requirements.* For purposes of paragraph (b)(1) of this section, the plan must be unfunded regardless of whether or not the amounts were deferred pursuant to a salary reduction agreement between the eligible employer and the participant. Any funding arrangement under an eligible plan of a tax-exempt entity that sets aside assets for the exclusive benefit of participants violates this requirement, and amounts deferred are generally immediately includible in the gross income of plan participants and beneficiaries. Nothing in this paragraph (b) prohibits an eligible plan from permitting participants and their beneficiaries to make an election among different investment options available under the plan, such as an election affecting the investment of the amounts described in paragraph (b)(1) of this section.

§ 1.457–9 Effect on eligible governmental plan when not administered in accordance with eligibility requirements.

A plan of a state ceases to be an eligible governmental plan on the first day of the first plan year beginning more than 180 days after the date on which the Commissioner notifies the state in writing that the plan is being administered in a manner that is inconsistent with one or more of the requirements of §§ 1.457–3 through 1.457–8, or 1.457–10. However, the plan may correct the plan inconsistencies specified in the written notification before the first day of that plan year and continue to maintain plan eligibility. If a plan ceases to be an eligible governmental plan, amounts

subsequently deferred by participants will be includible in income when deferred, or, if later, when the amounts deferred cease to be subject to a substantial risk of forfeiture, as provided at § 1.457–11. Amounts deferred before the date on which the plan ceases to be an eligible governmental plan, and any earnings thereon, will be treated as if the plan continues to be an eligible governmental plan and will not be includible in participant's or beneficiary's gross income until paid to the participant or beneficiary.

§ 1.457–10 Miscellaneous provisions.

(a) *Plan terminations and frozen plans*—(1) *In general.* An eligible employer may amend its plan to eliminate future deferrals for existing participants or to limit participation to existing participants and employees. An eligible plan may also contain provisions that permit plan termination and permit amounts deferred to be distributed on termination. In order for a plan to be considered terminated, amounts deferred under an eligible plan must be distributed to all plan participants and beneficiaries as soon as administratively practicable after termination of the eligible plan. The mere provision for, and making of, distributions to participants or beneficiaries upon a plan termination will not cause an eligible plan to cease to satisfy the requirements of section 457(b) of the regulations.

(2) *Employers that cease to be eligible employers*—(i) *Plan not terminated.* An eligible employer that ceases to be an eligible employer may no longer maintain an eligible plan. If the employer was a tax-exempt entity and the plan is not terminated as permitted under paragraph (a)(2)(ii) of this section, the tax consequences to participants and beneficiaries in the previously eligible (unfunded) plan of an ineligible employer will be determined in accordance with either section 451 if the employer becomes an entity other than a state or § 1.457–11 if the employer becomes a state. If the employer was a state and the plan is neither terminated as permitted under paragraph (a)(2)(ii) of this section nor transferred to another eligible plan of that state as permitted under paragraph (b) of this section, the tax consequences to participants in the previously eligible governmental plan of an ineligible employer, the assets of which are held in trust pursuant to § 1.457–8(a), will be determined in accordance with section 402(b) (section 403(c) in the case of an annuity contract) and the trust will no longer be treated as a trust that is exempt from tax under section 501(a).

(ii) *Plan termination.* As an alternative to determining the tax consequences to the plan and participants under paragraph (a)(2)(i) of this section, the employer may terminate the plan and distribute the amounts deferred (and all plan assets) to all plan participants as soon as administratively practicable in accordance with paragraph (a)(1) of this section. Such distribution may include eligible rollover distributions in the case of a plan that was an eligible governmental plan. In addition, if the employer is a state, another alternative to determining the tax consequences under paragraph (a)(2)(i) of this section is to transfer the assets of the eligible governmental plan to an eligible governmental plan of another eligible employer within the same state under the plan-to-plan transfer rules of paragraph (b) of this section.

(3) *Examples.* The provisions of this paragraph (a) are illustrated by the following examples:

Example 1. (i) *Facts.* Employer Y, a corporation that owns a state hospital, sponsors an eligible governmental plan funded through a trust. Employer Y is acquired by a for-profit hospital and Employer Y ceases to be an eligible employer under section 457(e)(1) or § 1.457–2(e). Employer Y terminates the plan and, during the next 6 months, distributes to participants and beneficiaries all amounts deferred that were under the plan.

(ii) *Conclusion.* The termination and distribution does not cause the plan to fail to be an eligible governmental plan. Amounts that are distributed as eligible rollover distributions may be rolled over to an eligible retirement plan described in section 402(c)(8)(B).

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that Employer Y decides to continue to maintain the plan.

(ii) *Conclusion.* If Employer Y continues to maintains the plan, the tax consequences to participants and beneficiaries with respect to compensation deferred thereafter will be determined in accordance with either section 402(b) if the compensation deferred is funded through a trust, section 403(c) if the compensation deferred is funded through annuity contracts, or § 1.457–11 if the compensation deferred is not funded through a trust or annuity contract. In addition, if Employer Y continues to maintain the plan, the trust (including amounts deferred before the date on which the plan ceases to be an eligible governmental plan and any earnings thereon) will no longer be treated as exempt from tax under section 501(a).

Example 3. (i) *Facts.* Employer Z, a corporation that owns a tax-exempt hospital, sponsors an unfunded eligible plan. Employer Z is acquired by a for-profit hospital and is no longer an eligible employer under section 457(e)(1) or § 1.457–2(e). Employer Z terminates the plan and distributes all amounts deferred under the eligible plan to participants and beneficiaries within a one-year period.

(ii) *Conclusion.* Distributions under the plan are treated as made under an eligible plan of a tax-exempt entity and the distributions of the amounts deferred are includible in the gross income of the participant or beneficiary in the year distributed.

Example 4. (i) Facts. The facts are the same as in *Example 3*, except that Employer Z decides to maintain instead of terminate the plan.

(ii) *Conclusion.* If Employer Z maintains the plan, the tax consequences to participants and beneficiaries in the plan will thereafter be determined in accordance with section 451.

(b) *Plan-to-plan transfers*—(1) *General rule.* An eligible governmental plan may provide for the transfer of amounts deferred by a participant or beneficiary to another eligible governmental plan, and an eligible plan of a tax-exempt entity may provide for transfers of amounts deferred by a participant to another eligible plan of a tax-exempt entity, if the conditions in paragraph (b)(2) of this section are met. An eligible governmental plan may accept transfers from another eligible governmental plan as described in the preceding sentence, and an eligible plan of a tax-exempt entity may accept transfers from another eligible plan of a tax-exempt entity as described in the preceding sentence. However, a state may not transfer the assets of its eligible governmental plan to a tax-exempt entity's eligible plan and the plan of a tax-exempt entity may not accept such a transfer. Similarly, a tax-exempt entity may not transfer the assets of its eligible plan to an eligible governmental plan and an eligible governmental plan may not accept such a transfer. In addition, if the conditions in paragraph (b)(4) of this section (relating to permissive past service credit and repayments under section 415) are met, an eligible governmental plan of a state may provide for the transfer of amounts deferred by a participant or beneficiary to a qualified plan (under section 401(a)) maintained by a state. However, a qualified plan may not transfer assets to an eligible governmental plan or to an eligible plan of a tax-exempt entity, and an eligible governmental plan or the plan of a tax-exempt entity may not accept such a transfer.

(2) *Requirements for plan-to-plan transfers among eligible plans.* A transfer under paragraph (b)(1) of this section from an eligible governmental plan to another eligible governmental plan is permitted only if the following conditions are met—

(i) The transferor plan provides for transfers;

(ii) The receiving plan provides for the receipt of transfers;

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(iii) The participant or beneficiary whose amounts deferred are being transferred will have an amount deferred immediately after the transfer at least equal to the amount deferred with respect to that participant or beneficiary immediately before the transfer; and

(iv) The participant or beneficiary whose amounts deferred are being transferred has had a severance from employment with the transferring employer and is performing services for the entity maintaining the receiving plan. However, this paragraph (b)(2)(iv) is not required to be satisfied if—

(A) All of the assets held by the eligible governmental plan are transferred;

(B) The transfer is to another eligible governmental plan maintained by an eligible employer that is a state entity within the same state; and

(C) The participants whose deferred amounts are being transferred are not eligible for additional annual deferrals in the receiving plan unless they are performing services for the entity maintaining the receiving plan.

(3) *Examples.* The provisions of paragraphs (b)(1) and (2) of this section are illustrated by the following examples:

Example 1. (i) *Facts.* Participant A, the president of City X's hospital, has accepted a position with another hospital which is a tax-exempt entity. A participates in the eligible governmental plan of City X. A would like to transfer the amounts deferred under City X's eligible governmental plan to the eligible plan of the tax-exempt hospital.

(ii) *Conclusion.* City X's plan may not transfer A's amounts deferred to the tax-exempt employer's eligible plan. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457–8(a).

Example 2. (i) *Facts.* County M, located in State S, operates several health clinics and maintains an eligible governmental plan for employees of those clinics. One of the clinics operated by County M is being acquired by a hospital operated by State S, and employees of that clinic will become employees of State S. County M permits those employees to transfer their balances under County M's eligible governmental plan to the eligible governmental plan of State S.

(ii) *Conclusion.* If the eligible governmental plans of County M and State S provide for the transfer and acceptance of the transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), the transfer will not cause either plan to violate the requirements of section 457 or these regulations.

Example 3. (i) *Facts.* City Employer Z, a hospital, sponsors an eligible governmental plan. City Employer Z is located in State B. All of the assets of City Employer Z are being acquired by a tax-exempt hospital. City Employer Z, in accordance with the plan-to-plan transfer rules of paragraph (b) of this section, would like to transfer the total amount of assets deferred under City Employer Z's eligible governmental plan to the acquiring tax-exempt entity's eligible plan.

(ii) *Conclusion.* City Employer Z may not permit participants to transfer the amounts to the eligible plan of the tax-exempt entity. In addition, because the amounts deferred would no longer be held in trust for the exclusive benefit of participants and their beneficiaries, the transfer would violate the exclusive benefit rule of section 457(g) and § 1.457–8(a).

Example 4. (i) *Facts.* The facts are the same as in *Example 3*, except that City Employer Z, prior to the transfer of all of its assets to the eligible plan of the tax-exempt entity, decides to transfer all of the amounts deferred under City Z's eligible governmental plan to the eligible governmental plan of the related state government entity, State B.

(ii) *Conclusion.* If City Employer Z's (transferor) eligible governmental plan provides for such transfer and the eligible governmental plan of the State B permits the acceptance of such a transfer (and the other requirements of paragraph (b)(1) of this section are satisfied), City Employer Z may transfer the total amounts deferred under its eligible governmental plan, prior to termination of that plan, to the eligible governmental plan maintained by State B. However, the participants of City Employer Z whose deferred amounts are being transferred are not eligible to participate in the eligible governmental plan of State B, the receiving plan, unless they are performing services for State B.

(4) *Purchase of permissive past service credit by plan-to-plan transfers from an eligible governmental plan to a qualified plan*—(i) *General rule.* An eligible governmental plan of a state may provide for the transfer of amounts deferred by a participant or beneficiary to a defined benefit governmental plan (as defined in section 414(d)) of that state, and no amount shall be includible in gross income by reason of the transfer, if the conditions in paragraph (b)(4)(ii) of this section are met. A transfer under this paragraph (b)(4) is not treated as a distribution for purposes of § 1.457–6. Therefore, such a transfer may be made before severance from employment.

(ii) *Conditions for plan-to-plan transfers from an eligible governmental plan to a qualified plan.* A transfer may be made under this paragraph (b)(4) only if the transfer is either—

(A) For the purchase of permissive past service credit (as defined in section 415(n)(3)(A)) under the receiving defined benefit governmental plan; or

(B) A repayment to which section 415 does not apply by reason of section 415(k)(3).

(iii) *Example.* The provisions of this paragraph (b)(4) are illustrated by the following example:

Example. (i) *Facts.* Plan X is an eligible governmental plan maintained by County Y for its employees. Plan X provides for distributions only in the event of death, an unforeseeable emergency, or severance from employment with Y (including retirement from Y). Plan S is a qualified defined benefit plan maintained by State T for its employees. County Y is within State T. Employee A is an employee of Y and is a participant in Plan X. Employee A previously was an employee of T and is still entitled to benefits under Plan S. Plan S includes provisions allowing participants in certain plans, including Plan X, to transfer assets to Plan S for the purchase past service credit under Plan S not in excess of the credit permitted under section 415(n) and does not permit the amount transferred to exceed the amount necessary to fund the benefit resulting from the past service credit. Although not required to do so, Plan X allows A to transfer assets to Plan T to provide a past service benefit under Plan T.

(ii) *Conclusion.* Assuming that the special rules at section 415(n)(3) are satisfied with respect to the transfer, the transfer is permitted under this paragraph (b)(4).

(c) *Qualified domestic relations orders under eligible plans*—(1) *General rule.* An eligible plan does not become an ineligible plan described in section 457(f) solely because its administrator or sponsor complies with a qualified domestic relations order as defined in section 414(p), including an order requiring the distribution of the benefits of a participant to an alternate payee in advance of the general rules for eligible plan distributions under § 1.457–6. If a distribution or payment is made from an eligible plan to an alternate payee pursuant to a qualified domestic relations order, rules similar to the rules of section 402(e)(1)(A) shall apply to the distribution or payment.

(2) *Examples.* The provisions of this paragraph (c) are illustrated by the following examples:

Example 1. (i) *Facts.* Participant C and C's spouse D are divorcing. C is employed by State S and is a participant in an eligible plan maintained by S. C has an account valued at $100,000 under the plan. Pursuant to the divorce, a court issues a qualified domestic relations order on September 1, 2003 that allocates 50 percent of C's $100,000 plan account to D and specifically provides for an immediate distribution to D of D's share within 6 months of the order. Payment is made to D in January of 2004.

(ii) *Conclusion.* S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457–11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457–6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The distribution is includible in D's gross income in 2004. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share will be includible in D's gross income when paid to D.

Example 2. (i) *Facts.* The facts are the same as in *Example 1*, except that S is a tax-exempt entity, instead of a state.

(ii) *Conclusion.* S's eligible plan does not become an ineligible plan described in section 457(f) and § 1.457–11 solely because its administrator or sponsor complies with the qualified domestic relations order requiring the immediate distribution to D in advance of the general rules for eligible plan distributions under § 1.457–6. In accordance with section 402(e)(1)(A), D (not C) must include the distribution in gross income. The distribution is includible in D's gross income in 2004, assuming that the plan did not make the distribution available to D in 2003. If the qualified domestic relations order were to provide for distribution to D at a future date, amounts deferred attributable to D's share would be includible in D's gross income when paid or made available to D.

(d) *Death benefits and life insurance proceeds.* A death benefit plan under section 457(e)(11) is not an eligible plan. In addition, no amount paid or made available under an eligible plan as death benefits or life insurance proceeds is excludable from gross income under section 101.

(e) *Rollovers to eligible governmental plans*—(1) *General rule.* An eligible governmental plan may accept contributions that are eligible rollover distributions (as defined in section 402(c)(4)) made from another eligible retirement plan (as defined in section 402(c)(8)(B)) if the conditions in paragraph (e)(2) of this section are met. Amounts contributed to an eligible governmental plan as eligible rollover distributions are not taken into account for purposes of the annual limit on annual deferrals by a participant in § 1.457–4(c) or § 1.457–5, but are otherwise treated in the same manner as amounts deferred under section 457 for purposes of §§ 1.457–3 through 1.457–9 and this section.

(2) *Conditions for rollovers to an eligible governmental plan.* An eligible governmental plan that permits eligible rollover distributions made from another eligible retirement plan to be paid into the eligible governmental plan is required under this paragraph (e)(2) to provide that it will separately account for any eligible rollover distributions it receives.

(3) *Example.* The provisions of this paragraph (e) are illustrated by the following example:

Example. (i) *Facts.* Plan T is an eligible governmental plan that provides that employees who are eligible to participate in Plan T may make rollover contributions to Plan T from amounts distributed to an employee from an eligible retirement plan. An eligible retirement plan is defined in Plan T as another eligible governmental plan, a qualified section 401(a) or 403(a) plan, or a section 403(b) contract, or an individual retirement arrangement (IRA) that holds such amounts. Plan T requires rollover contributions to be paid by the eligible retirement plan directly to Plan T (a direct rollover) or to be paid by the participant within 60 days after the date on which the participant received the amount from the other eligible retirement plan. Plan T does not take rollover contributions into account for purposes of the plan's limits on amounts deferred that conform to § 1.457–4(c). Rollover contributions paid to Plan T are invested in the trust in the same manner as amounts deferred under Plan T and rollover contributions (and earnings thereon) are available for distribution to the participant at the same time and in the same manner as amounts deferred under Plan T. In addition, Plan T provides that, for each participant who makes a rollover contribution to Plan T, the Plan T recordkeeper is to establish a separate account for the participant's rollover contributions. The recordkeeper calculates earnings and losses for investments held in the rollover account separately from earnings and losses on other amounts held under the plan and calculates disbursements from and payments made to the rollover account separately from disbursements from and payments made to other amounts held under the plan.

(ii) *Conclusion.* Plan T does not lose its status as an eligible governmental plan as a result of the receipt of rollover contributions.

(f) *Deemed IRAs under eligible governmental plans.* [Reserved]

§ 1.457–11 Tax treatment of participants if plan is not an eligible plan.

(a) *In general.* Under section 457(f), if an eligible employer provides for a deferral of compensation under any agreement or arrangement that is an ineligible plan—

(1) Compensation deferred under the agreement or arrangement is includible in the gross income of the participant or beneficiary for the first taxable year in which there is no substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)) of the rights to such compensation;

(2) If the compensation deferred is subject to a substantial risk of forfeiture, the amount includible in gross income for the first taxable year in which there is no substantial risk of forfeiture includes earnings thereon to the date on which there is no substantial risk of forfeiture;

(3) Earnings credited on the compensation deferred under the agreement or arrangement that are not includible in gross income under paragraph (a)(2) of this section are includible in the gross income of the participant or beneficiary only when paid or made available to the participant or beneficiary, provided that the interest of the participant or beneficiary in any assets (including amounts deferred under the plan) of the entity sponsoring the agreement or arrangement is not senior to the entity's general creditors; and

(4) Amounts paid or made available to a participant or beneficiary under the agreement or arrangement are includible in the gross income of the participant or beneficiary under section 72, relating to annuities.

(b) *Exceptions.* Paragraph (a) of this section does not apply with respect to—

(1) A plan described in section 401(a) which includes a trust exempt from tax under section 501(a);

(2) An annuity plan or contract described in section 403;

(3) That portion of any plan which consists of a transfer of property described in section 83;

(4) That portion of any plan which consists of a trust to which section 402(b) applies; or

(5) A qualified governmental excess benefit arrangement described in section 415(m).

(c) *Coordination of section 457(f) with section 83*—(1) *Transfer of property described in section 83.* Under paragraph (b)(3) of this section, section 457(f) and paragraph (a) of this section do not apply to that portion of any plan which consists of a transfer of property described in section 83. For this purpose, a transfer of property described in section 83 means a transfer of property to which section 83 applies. Section 457(f) and paragraph (a) of this section do not apply if the date on which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan is on or after the date on which there is a transfer of property to which section 83 applies. However, section 457(f) and paragraph (a) of this section apply if the date on which there is no substantial risk of forfeiture with respect to compensation deferred under an agreement or arrangement that is not an eligible plan precedes the date on which there is a transfer of property to which section 83 applies. If deferred compensation payable in property is includible in gross income under section 457(f), then, as provided in section 72, the amount includible in gross income when that property is later transferred or made available to the service provider is the excess of the value of the property at that time over the amount previously included in gross income under section 457(f).

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(2) *Examples.* The provisions of this paragraph (c) are illustrated in the following examples:

Example 1. (i) *Facts.* As part of an arrangement for the deferral of compensation, an eligible employer agrees on December 1, 2002 to pay an individual rendering services for the eligible employer a specified dollar amount on January 15, 2005. The arrangement provides for the payment to be made in the form of property having a fair market value equal to the specified dollar amount. The individual's rights to the payment are not subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B)).

(ii) *Conclusion.* In this example, because there is no substantial risk of forfeiture with respect to the agreement to transfer property in 2005, the present value (as of December 1, 2002) of the payment is includible in the individual's gross income for 2002. Under paragraph (a)(4) of this section, when the payment is made on January 15, 2005, the amount includible in the individual's gross income is equal to the excess of the fair market value of the property when paid, over the amount that was includible in gross income for 2002 (which is the basis allocable to that payment).

Example 2. (i) *Facts.* As part of an arrangement for the deferral of compensation, individuals A and B rendering services for a tax-exempt entity each receive in 2010 property that is subject to a substantial risk of forfeiture (within the meaning of section 457(f)(3)(B) and within the meaning of section 83(c)(1)). Individual A makes an election to include the fair market value of the property in gross income under section 83(b) and individual B does not make this election. The substantial risk of forfeiture for the property transferred to individual A lapses in 2012 and the substantial risk of forfeiture for the property transferred to individual B also lapses in 2012. Thus, the property transferred to individual A is included in A's gross income for 2010 when A makes a section 83(b) election and the property transferred to individual B is included in B's gross income for 2012 when the substantial risk of forfeiture for the property lapses.

(ii) *Conclusion.* In this example 2, in each case, the compensation deferred is not subject to section 457(f) or this section because section 83 applies to the transfer of property on or before the date on which there is no substantial risk of forfeiture with respect to compensation deferred under the arrangement.

Example 3. (i) *Facts.* In 2010, X, a tax-exempt entity, agrees to pay deferred compensation to employee C. The amount payable is $100,000 to be paid 10 years later in 2020. The commitment to make the $100,000 payment is not subject to a substantial risk of forfeiture. In 2010, the present value of the $100,000 is $50,000. In 2018, X transfers to C property having a fair market value (for purposes of section 83) equal to $70,000. The transfer is in partial settlement of the commitment made in 2010 and, at the time of the transfer in 2018, the present value of the commitment is $80,000. In 2020, X pays C the $12,500 that remains due.

(ii) *Conclusion.* In this example 3, C has income of $50,000 in 2010. In 2018, C has income of $30,000, which is the amount transferred in 2018, minus the allocable portion of the basis that results from the $50,000 of income in 2010. (Under section 72(e)(2)(B), income is allocated first. The income is equal to $30,000 ($80,000 minus the $50,000 basis), with the result that the allocable portion of the basis is equal to $40,000 ($70,000 minus the $30,000 of income).) In 2020, C has income of $2,500 ($12,500 minus $10,000, which is the excess of the original $50,000 basis over the $40,000 basis allocated to the transfer made in 2018).

§ 1.457–12 Effective dates.

Sections 1.457–1 through 1.457–11 apply for taxable years beginning after December 31, 2001, except that § 1.457–11(c) does not apply with respect to an option without a readily ascertainable fair market value (within the meaning of section 83(e)(3)) that was granted on or before May 8, 2002 and, except that § 1.457–10(c) (relating to qualified domestic relations orders) applies for transfers, distributions, and payments made afer December 31, 2001.

Robert E. Wenzel,

Deputy Commissioner of the Internal Revenue Service.

[FR Doc. 02–11036 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–011]

RIN 2115–AA97

Security Zones; Captain of the Port Toledo Zone, Lake Erie

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish two permanent security zones on the navigable waters of Lake Erie in the Captain of the Port Toledo zone. These security zones are necessary to protect the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Station from possible acts of terrorism. These security zones are intended to restrict vessel traffic from a portion of Lake Erie off the Enrico Fermi 2 Nuclear Power Station and the Davis Besse Nuclear Power Stations.

DATES: Comments and related material must reach the Coast Guard on or before June 7, 2002.

ADDRESSES: You may mail comments to U.S. Coast Guard Marine Safety Office Toledo, 420 Madison Ave, Suite 700, Toledo, Ohio 43604. The telephone number is (419) 418–6050. Marine Safety Office Toledo maintains the public docket for this rulemaking. Comments and materials received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying between 8 a.m. and 4 p.m., Monday through Friday, except Federal Holidays.

FOR FURTHER INFORMATION CONTACT: LT Herb Oertli, Chief of Port Operations, Marine Safety Office, 420 Madison Ave, Suite 700, Toledo, Ohio 43604; (419) 418–6050.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (CGD09–02–011), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to U.S. Coast Guard Marine Safety Office Toledo at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, the United States was the target of coordinated attacks by international terrorists resulting in the destruction of the World Trade Center, significant damage to the Pentagon, and tragic loss of life. National security and intelligence officials warn that future terrorists attacks are likely.

We propose to establish a permanent security zone off the waters of Enrico Fermi 2 Nuclear Power Station, Newport, Michigan. This security zone would include waters and adjacent shoreline within a boundary commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′ N, 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W.

Our proposed rule would also establish a permanent security zone off the waters of Davis Besse Nuclear Power Station, Port Clinton, Ohio. This security zone would include waters and adjacent shoreline within a boundary commencing at 41°36.3 N, 083°04.9′ W; then north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W.

These proposed security zones are necessary to protect the public, facilities, and the surrounding area from possible sabotage or other subversive acts. All persons other than those approved by the Captain of the Port Toledo, or his authorized representative, are prohibited from entering or moving within these zones. The Captain of the Port Toledo may be contacted via VHF Channel 16 for further instructions before transiting through the restricted area. The Captain of the Port Toledo's on-scene representative will be the patrol commander. In addition to publication in the **Federal Register**, the public will be made aware of the existence of this security zone, exact location and the restrictions involved via Local Notice To Mariners and a Broadcast Notice to Mariners.

Discussion of Proposed Rule

Following the catastrophic nature and extent of damage realized from the attacks of September 11, this proposed rulemaking is necessary to protect the national security interests of the United States against having these nuclear power plants become targets of terrorists.

On October 12, 2001 we published a temporary final rule establishing a security zone on the waters of Lake Erie around the Enrico Fermi 2 Nuclear Power Station, (66 FR 52039), as well as a security zone on Lake Erie around Davis Besse Nuclear Power Plant (66 FR 52038). We propose to establish permanent security zones in place of those temporary security zones. The proposed security zones in this regulation are smaller in size compared to those originally created on October 12, 2001 in the temporary final rule.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has exempted it from review under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

These proposed security zones will not have a significant economic impact on a substantial number of small entities for the following reasons. Our proposed rule will not obstruct the regular flow of commercial traffic and will allow vessel traffic to pass around the security zone.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the office listed in Addresses in this preamble.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this proposed rule would not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an

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economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.T09–135 [Removed]

2. Remove § 165.T09–135.

§ 165.T09–136 [Removed]

3. Remove § 165.T09–136.

4. Add § 165.915 to read as follows:

§ 165.915 Security zones; Captain of the Port Toledo Zone, Lake Erie.

(a) *Security zones.* The following areas are security zones:

(1) *Enrico Fermi 2 Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°58.4′ N, 083°15.4′ W; then northeast to 41°58.5′ N, 083°15.0′ W; then southeast to 41°58.2′ N, 083°13.7′ W; then south to 41°56.9′, N 083°13.8′ W; then west to 41°56.9′ N, 083°15.2′ W; then back to the starting point at 41°58.4′ N, 083°15.4′ W (NAD 83).

(2) *Davis Besse Nuclear Power Station.* All waters and adjacent shoreline encompassed by a line commencing at 41°36.3′ N, 083°04.9′ W; north to 41°37.0′ N, 083°03.9′ W; east to 41°35.9′ N, 083°02.5′ W; southwest to 41°35.4′ N, 083°03.7′ W; then back to the starting point 41°36.3′ N, 083°04.9′ W. (NAD 83).

(b) *Regulations.* (1) In accordance with § 165.33, entry into this zone is prohibited unless authorized by the Coast Guard Captain of the Port Toledo. Section 165.33 also contains other general requirements.

(2) Persons desiring to transit through either of these security zones, prior to transiting, must contact the Captain of the Port Toledo at telephone number (419) 418–6050, or on VHF/FM channel 16 and request permission. If permission is granted, all persons and vessels shall comply with the instructions of the Captain of the Port or his or her designated representative.

(c) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

Dated: April 26, 2002.

D.L. Scott,

Commander, U.S. Coast Guard, Captain of the Port Toledo.

[FR Doc. 02–11492 Filed 5–7–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7207–7]

RIN 2060–AG93

National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing operations. The EPA has identified these operations as major sources of emissions of hazardous air pollutants (HAP) such as hydrochloric acid (HCl), hydrofluoric acid (HF), glycol ethers, methanol, and xylene. These HAP are associated with a variety of adverse health effects. These adverse health effects include irritation of the lung, skin, and mucus membranes, effects on the central nervous system, and damage to the skeleton system. These proposed NESHAP would require all semiconductor manufacturing facilities that are major sources to meet emission standards reflecting the application of the maximum achievable control technology (MACT).

DATES: *Comments.* Submit comments on or before July 8, 2002.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by May 28, 2002, a public hearing will be held on June 7, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–15, U.S. EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–97–15, U.S. EPA, 401 M Street, SW., Washington, DC 20460. The EPA requests a separate copy also be sent to the contact person listed in **FOR FURTHER INFORMATION CONTACT.**

Public Hearing. If a public hearing is held, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina, or an alternate site nearby.

Docket. Docket No. A–97–15 includes source category-specific supporting information for Semiconductor Manufacturing. The docket is located at the U.S. EPA, Air and Radiation Docket and Information Center, Waterside Mall, Room M–1500 (ground floor), 401 M Street SW., Washington, DC 20460, and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: For information concerning the proposed rule, contact Mr. John Schaefer, US EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone (919) 541–0296, e-mail: *schaefer.john@epa.gov.*

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by electronic mail (e-mail) to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems and will also be accepted on disks in WordPerfect® format. All comments and data submitted in electronic form must note the appropriate docket number (*see* **ADDRESSES**). No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: John Schaefer, c/o OAQPS Document Control Officer (Room 740B), 411 W. Chapel Hill Street, Durham, North Carolina 27701. The EPA will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when it is received by the EPA, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Ms. Maria Noell, Organic Chemicals Group, Emission Standards Division (MD–13), US EPA, Research Triangle Park, North Carolina, 27711, telephone number (919) 541–5607 at least 2 days in advance of the public hearing. Persons interested in attending the public hearing should also call Ms. Noell to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of the record compiled by the EPA in the development of this rulemaking. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the Clean Air Act (CAA).) The regulatory text and other materials related to this rulemaking are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

Worldwide Web (WWW). In addition to being available in the docket, an electronic copy of the proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

Regulated Entities. Categories and entities potentially regulated by this action include:

Category	NAICS code	SIC code	Examples of regulated entities
Industrial	334413	3674	Semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your facility is regulated by this action, you should examine the applicability criteria in § 63.7181 of the proposed subpart. If you have any questions regarding the applicability of this action to a particular entity, consult the person(s) listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

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I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. The Semiconductor Manufacturing source

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category was listed on July 16, 1992 (57 FR 31576). As specified in section 112(a) of the CAA, a major source of HAP is any stationary source or group of stationary sources within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, 10 tons per year (tpy) or more of any single HAP or 25 tpy or more of any combination of HAP.

B. What Criteria Are Used in the Development of NESHAP?

Section 112 of the CAA requires us to establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable, taking into consideration the cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements. This level of control is commonly referred to as MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that all major sources achieve the level of control already achieved by the better-controlled and lower-emitting sources in each source category or subcategory. For new sources, NESHAP cannot be less stringent than the emission control that is achieved in practice by the best-controlled similar source. The NESHAP for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best-performing 12 percent of existing sources (or the best-performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor following consideration of cost, any health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With the Pollutants Emitted From Semiconductor Manufacturing Operations?

The primary HAP emitted by the semiconductor manufacturing industry are HCl, HF, glycol ethers, methanol, and xylene.

Glycol ethers. Glycol ethers are a large group of related compounds. Acute (short-term) exposure in humans to high levels of glycol ethers results in narcosis, pulmonary edema, and severe liver and kidney damage. Chronic (long-term) exposure to glycol ethers may result in neurological and blood effects, including fatigue, nausea, tremors, and anemia. No information is available on the reproductive, developmental, or carcinogenic effects of glycol ethers in humans. Animal studies have reported reproductive and developmental effects, including testicular damage, reduced fertility, maternal toxicity, early embryonic death, birth defects, and delayed development. The EPA has not classified any glycol ether compounds for carcinogenicity.

Hydrochloric acid. Hydrochloric acid is corrosive to the eyes, skin, and mucous membranes. Acute inhalation exposure may cause eye, nose, and respiratory tract irritation and inflammation and pulmonary edema in humans. Chronic occupational exposure to HCl has been reported to cause gastritis, bronchitis, and dermatitis in workers. Prolonged exposure to low concentrations may also cause dental discoloration and erosion. No information is available on the reproductive or developmental effects of HCl in humans. In rats exposed to HCl by inhalation, altered estrus cycles have been reported in females, and increased fetal mortality and decreased fetal weight have been reported in offspring. The EPA has not classified HCl for carcinogenicity.

Hydrogen fluoride. Acute inhalation exposure to gaseous HF can cause severe respiratory damage in humans, including severe irritation and pulmonary edema. While the respiratory effects are attributable to the HF compound, other effects, including those associated with chronic exposures are attributable to the fluoride ion absorbed into the body (as a result of inhalation or ingestion of various fluoride compounds, including HF). Chronic exposure to fluoride at certain levels may cause dental fluorosis or mottling, while very high exposures through drinking water or air can result in crippling skeletal fluorosis. One study reported menstrual irregularities in women occupationally exposed to fluoride. The EPA has not classified HF for carcinogenicity.

Methanol. Acute or chronic exposure of humans to methanol by inhalation or ingestion may result in blurred vision, headache, dizziness, and nausea. No information is available on the reproductive, developmental, or carcinogenic effects of methanol in humans. Birth defects have been observed in the offspring of rats and mice exposed to methanol by inhalation. A methanol inhalation study using rhesus monkeys reported a decrease in the length of pregnancy and limited evidence of impaired learning ability in offspring. The EPA has not classified methanol with respect to carcinogenicity.

Xylene. Short-term inhalation of mixed xylenes (a mixture of three closely-related compounds) in humans may cause irritation of the nose and throat, nausea, vomiting, gastric irritation, mild transient eye irritation, and neurological effects. Long-term inhalation of xylenes in humans may result in nervous system effects such as headache, dizziness, fatigue, tremors, and incoordination. Other reported effects include labored breathing, heart palpitation, severe chest pain, abnormal electrocardiograms, and possible effects on the blood and kidneys. The EPA has classified mixed xylenes as Group D carcinogens, not classifiable with respect to human carcinogenicity.

II. Summary of the Proposed NESHAP

A. What Is the Source Category To Be Regulated?

The Semiconductor Manufacturing source category includes operations used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate. Research and development activities located at a site manufacturing p-type and n-type semiconductors and active solid-state devices are included in the definition of semiconductor manufacturing. Examples of semiconductor or related solid-state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors. The source category includes all manufacturing from crystal growth through wafer fabrication, and test and assembly.

The crystal growing stage is where crystalline wafers of silicon or other specific semiconducting materials are manufactured for use as the substrate in the wafer fabrication process. Crystal growing begins with the storage of the raw materials (usually trichlorosilane, which is refined from ordinary sand) and ends with the final polishing of a wafer.

The wafer fabrication process is where a group of integrated circuits are created on the wafer through a series of pattern-forming processes. Wafer fabrication begins at the point where the wafer receives its first protective oxidative layer and ends when a functional integrated circuit or circuits have been created on a wafer.

The test and assembly process is the final step in the integrated circuit manufacturing process and begins when a wafer is cut into individual chips. The chips are then mounted onto a metal frame, connected to the leads, and enclosed in a protective housing. The process endpoint is the last test performed at an assembly facility to verify proper function of a completed integrated circuit housing.

B. What Are the Primary Sources of Emissions and What Are the Baseline Emissions?

We estimate nationwide HAP emissions from the semiconductor manufacturing industry to be 636 tpy. More than 90 percent of these emissions come from process vents at these facilities. We estimate that five chemicals comprise over 90 percent of the total HAP emissions: HCl, HF, glycol ethers, methanol, and xylene.

C. What Is the Affected Source?

For the Semiconductor Manufacturing source category, the affected source includes the collection of all semiconductor manufacturing units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, research and development activities on a semiconductor manufacturing site, and storage tanks located at a major source.

A semiconductor manufacturing unit is the equipment assembled and connected by duct work or hard-piping including: furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connection systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices. We have identified three distinct processes used in the manufacture of these semiconductors and devices: crystal growing, wafer fabrication, and assembly and test. A semiconductor manufacturing unit is typically engaged in one of these processes.

D. What Are the Emission Limits?

We are proposing NESHAP that would regulate HAP emissions from process vents and storage tank vents at semiconductor manufacturing facilities. We are proposing the same requirements for existing and new sources. We are proposing that all major sources reduce process vent HAP outlet concentrations by 98 percent from their uncontrolled levels. As an alternative, process vents may be controlled to a level below 20 parts per million volume (ppmv) HAP, corrected to 3 percent oxygen. We are proposing that all major sources reduce storage tank vent HAP outlet concentrations by 99 percent from their uncontrolled levels. As an alternative, storage tank vents may be controlled to a level below 1 ppmv HAP.

E. When Must I Comply With These Proposed NESHAP?

Existing semiconductor manufacturing affected sources must comply with the rule no later than 3 years from the effective date of the promulgated subpart. New or reconstructed affected sources that startup before the effective date of the promulgated subpart must comply with the rule no later than the effective date of the promulgated subpart unless the provisions in section 112(i)(2) of the CAA apply. New or reconstructed affected sources that startup after the effective date of the promulgated subpart must comply with the rule upon startup of the affected source.

F. What Are the Testing and Initial and Continuous Compliance Requirements?

We are proposing testing and initial and continuous compliance requirements that are, where appropriate, based on procedures and methods that we have previously developed and used for sources similar to those for which standards are being proposed today. For example, we are proposing compliance determination procedures, performance tests, and test methods to determine what level of control a process vent needs to achieve to demonstrate compliance with the standards.

We are proposing compliance procedures to determine process vent and storage tank vent flow rates and HAP concentrations. The proposed test methods parallel what we have used for process vents in previous organic HAP emissions standards (e.g., the Hazardous Organic NESHAP (HON)). For measuring vent stream flow rate, we propose the use of Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A. For measuring total vent stream organic HAP concentration to determine whether it is below a specified level, we propose the use of Method 18 of 40 CFR part 60, appendix A. For measuring the total HAP concentration of emission streams with inorganic HAP to determine if it is below a specified level, we propose the use of Method 320 of 40 CFR part 60, appendix A.

Additionally, we are proposing to require initial performance tests for all process vent and storage tank vent HAP emission control devices other than flares and certain boilers and process heaters. For vents controlled using flares, we are not requiring performance tests because we have developed design specifications that ensure these devices will achieve 98 percent destruction efficiency. As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 megawatts (MW) because they operate at high temperatures and residence times. In general, the higher the temperature and residence time, the greater the level of HAP destruction that is achieved by a control device. Therefore, boilers and process heaters larger than 44 MW easily achieve the required 98 percent destruction efficiency or the alternative requirement to reduce outlet concentrations below 20 ppmv.

For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. The proposed testing requirements for semiconductor manufacturing list the parameters that can be monitored for the common types of combustion devices. For other control devices, we require that an owner or operator establish site-specific parameter ranges for monitoring purposes through the Notification of Compliance Status Report and through the facility's operating permit. Parameters selected are required to be good indicators of continuous control device performance.

G. What Are the Notification, Recordkeeping, and Reporting Requirements?

We are proposing notification, recordkeeping, and reporting requirements in accordance with the part 63 General Provisions (40 CFR part 63, subpart A) and other previously promulgated NESHAP for similar source categories.

We are proposing that owners or operators of semiconductor manufacturing affected sources submit the following four types of reports: an Initial Notification Report, a Notification of Compliance Status Report, periodic compliance reports, reports of changes and other specified events. Records of reported information and other information necessary to document compliance with the promulgated standards would be required to be kept for 5 years. Equipment design records would be required to be kept for the life of the equipment.

For the Initial Notification Report, we are proposing that you list the

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semiconductor manufacturing operations at your facility, and the provisions of the rule that may apply. The Initial Notification Report must also state whether your facility can achieve compliance by the specified compliance date. You must submit this notification within 1 year after the date of promulgation of these NESHAP for existing sources, and within 180 days before commencement of construction or reconstruction of an affected source.

For the Notification of Compliance Status Report, we are proposing that you submit the information necessary to demonstrate that compliance has been achieved, such as the results of performance tests and design analyses. For each test method that you use for a particular kind of emission point (e.g., process vent), you must submit one complete test report. This notification must also include the specific range established for each monitored parameter for each emission point for demonstrating continuous compliance, and the rationale for why this range indicates proper operation of the control device.

We are proposing that you submit semiannual compliance reports. These reports must include a statement that no deviations from the emission limitations occurred during the reporting period, and that no continuous monitoring system (CMS) was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted. Additionally, a statement must be included if you had a startup, shutdown, or malfunction during the reporting period, and you took actions consistent with your Startup Shutdown and Malfunction Plan (SSMP). For process and storage tank vents, records of continuously monitored parameters must be kept. Records that such inspections or measurements were performed must be kept, but results are included in your periodic report only if there is a deviation from the operating limit. For each deviation from an emission limit, the semiannual compliance reports must document the time periods of each deviation; its cause; whether it occurred during a period of startup, shutdown, or malfunction; and whether and what time periods the CMS was inoperative or out of control.

We are proposing that you submit an immediate startup, shutdown, and malfunction report if you had a startup, shutdown, or malfunction that is not consistent with your SSMP.

Other proposed reporting requirements include reports to notify the regulatory authority before or after a specific event (e.g., if a process change is made, requests for extension of repair period).

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category?

The Semiconductor Manufacturing source category includes facilities that grow crystalline wafers for use in the manufacture of semiconductors, engage in the manufacture of p-type and n-type semiconductors and active solid-state devices, or engage in the assembly and test of semiconductor devices. The Semiconductor Manufacturing source category was included on the initial source category list at 57 FR 31576 (July 16, 1992). It was included on the list because there were facilities emitting HAP at major source levels, as defined in section 112(a) of the CAA.

However, since the initial listing, most of these semiconductor facilities have controlled emissions to levels below major source thresholds. As a result, during the course of developing this rulemaking, EPA received several requests from the Semiconductor Industry Association (SIA) to delist the semiconductor source category pursuant to CAA section 112(c)(1). These requests and comments are included in the docket (A–97–15).

We recognize this proposal will be of limited significance because it would regulate only a single source that, standing alone, has very small emissions. We nonetheless believe promulgation of standards for this source category is compelled by the Act. Section 112(a) defines "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control, that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." Thus, sources such as the semiconductor manufacturing source subject to this rule are considered part of a major source when they are collocated with other sources at facilities that in combination have the potential to emit over the major source thresholds. Because the statute is clear that such collocated sources must be considered major, we believe it is also clear in the statute that we must list categories that include such sources and promulgate standards for those categories pursuant to section 112(d).

Notwithstanding our reading of the Act, EPA requests comments on the appropriateness of including semiconductor manufacturing as a source category for regulation under CAA section 112(d). We will respond to SIA's pre-proposal requests and all additional comments in any final action on this rulemaking. We believe this approach is consistent with the approach outlined in section 112(e)(4), which indicates that EPA's decision to list a source category is not a reviewable final agency action unless, and until, EPA issues emissions standards for that category. See also *National Asphalt Paving Ass'n* v. *EPA*, 539 F.2d 775, 779 n.2 (D.C. Cir. 1976) (describing similar approach for category listing under CAA section 111).

B. How Did We Select the Affected Source?

In selecting the affected source for the Semiconductor Manufacturing source category, we included all equipment that emits HAP or has the potential to emit HAP, such as process vents, storage tanks, wastewater, and fugitive sources. We also included within the affected source other auxiliary equipment that is necessary to make the operation run, but which may not emit HAP. We did this to ensure that all equipment necessary to run a semiconductor manufacturing operation is included under these proposed NESHAP. In addition, we also included all research and development activities located at a site engaged in the manufacture of semiconductors. Thus, we are defining the affected source broadly to include the sum of all operations engaged in the manufacture of semiconductors.

C. How Did We Determine the Basis and Level of the Proposed Standards for Existing and New Sources?

We identified six facilities as having the potential to emit greater than the major source emissions threshold, but for the presence of add-on controls. A seventh facility was identified as being a major source due to the fact that it is collocated with other HAP-emitting processes. These seven facilities were evaluated to determine the MACT floor level of control.

Based on data gathering efforts that included site visits, industry survey responses, and literature searches, we identified three potential sources of HAP emissions for the semiconductor manufacturing industry: Process vents, storage tanks, and wastewater treatment. We did not consider equipment leaks as a separate emissions source because any potential emissions from this source are emitted into the manufacturing buildings and are included as part of process vent emissions.

We established a floor for process vents based on testing data that we collected for several vents. Additionally, we established a floor for storage tanks based on testing data we collected for HCl storage tanks in the HCl production industry. We could identify no emission controls, work practices, or other techniques currently used at these facilities to reduce HAP emissions from wastewater treatment based on the information obtained from the data gathering efforts. Therefore, MACT for wastewater treatment is based on no emission reduction.

For a source category with under 30 sources, section 112(d)(3) of the CAA directs that the MACT floor for existing sources be based on the average emission limitation achieved by the best performing five sources. The MACT floor for new sources in a source category is required to reflect the level of control being achieved by the best controlled similar source. The term "average" is not defined in the CAA, but we have interpreted "average," as used in section 112(d)(3), to include the mean, median, mode, or some other measure of central tendency (59 FR 29196, June 6, 1994). In this MACT floor analysis, we chose a modal analysis to determine the most frequently used control technology reported by the best performing sources.

For both the process vent and storage tank MACT floor analyses, we evaluated performance in terms of control device removal efficiency. In other words, the "best performing" semiconductor manufacturing facilities are those with the highest removal efficiencies.

Semiconductor manufacturing units typically produce process vent emission streams that contain either organic or inorganic compounds. At some facilities, the organic and inorganic process vent emission streams are segregated to facilitate control, while others combine them into one or more common exhaust streams. For purposes of the MACT floor analysis, all the data obtained for process vents were considered together. We made no distinction between organic, inorganic, or combined emission streams for the test data because the same level of control can be achieved whether the streams are segregated or combined.

A total of 26 process vents were reported at the seven facilities that make up the MACT floor data set. We calculated removal efficiency from the inlet and outlet concentration values for each process vent emission stream. We then ranked process vents from highest to lowest removal efficiency. We performed the ranking this way to determine the most prevalent control technology, not to determine the average removal efficiency, since the performance of control devices in the semiconductor manufacturing industry is affected by highly variable inlet conditions. The performance of these control devices varies in response to inlet conditions and is more erratic at lower inlet conditions. Any single control device will perform at peak efficiency on an episodic basis under optimum conditions, but the removal efficiencies represented by these test results cannot be maintained under all operating conditions that are typical in the semiconductor manufacturing industry.

We determined the MACT floor for process vents for existing sources from the best performing five sources, rather than the average of the top 12 percent because fewer than 30 sources are represented. Four of the top five best performing sources use some form of thermal oxidation; therefore, thermal oxidation is the technology basis of the MACT floor.

Consistent with other previously promulgated NESHAP for process vents, such as the HON (40 CFR part 63, subpart G), the level of control deemed to be generally achievable by a combustion control device, such as thermal oxidation, is 98 percent removal efficiency. We selected this value as the MACT floor for process vents at existing semiconductor manufacturing facilities. Because the same considerations for low concentration, high flow exhaust streams apply equally to new sources, and the best controlled source uses a thermal oxidizer, we also selected this level of control as the new source MACT floor for vents.

In order to account for the variability in the performance of control devices used in the semiconductor manufacturing industry, as well as the increased variability inherent in the test methods when analyzing the high flow, low concentration process vent emission streams typically controlled by these devices, the MACT floor includes an alternate format based on outlet concentration of HAP. This alternate format is intended to provide facilities with added flexibility to comply with the standard when the inlet concentration of the add-on control device drops below the point where optimum control efficiency can be achieved, and it would not be feasible to require optimum performance levels (expressed in terms of removal efficiency) to be met. To again be consistent with previous NESHAP that have specified a control level of 98 percent through the use of a combustion control device, we selected the alternate format for the MACT floor that would allow a facility to meet a HAP concentration limit of 20 ppmv for their vents. This level has been used in many other rules, including 40 CFR part 63, subpart SS, which is referenced by this action.

We obtained data on control of HAP emissions from storage tanks from six semiconductor manufacturing facilities, representing a total of 56 storage tanks. Emission controls were reported on 29 of these tanks. The materials stored in the controlled tanks were HCl and HF. In all cases, the control device was a scrubber. Therefore, scrubbers were selected as the technology basis of the storage tank MACT floor.

The semiconductor manufacturing industry was unable to provide control device removal efficiency or emissions data for the storage tank scrubbers. Therefore, we developed a floor based on scrubber performance data from scrubbers applied to storage tank vents in the HCl production industry, which would be expected to have similar characteristics.

We reviewed data from 17 sources in the HCl production source category. Because we had less than 30 sources, we based the floor on the best performing five facilities. The performance of the scrubber at the median facility of the best performing five was 99 percent HAP removal. Therefore, we chose 99 percent HAP removal as the floor. Similar to process vents, the concentration of HAP in storage tank exhaust streams is low and can vary widely. Low and variable inlet concentrations can result in high variability in scrubber removal efficiency. For this reason, we are proposing an alternative emission limit of 1 ppmv for storage vents. The value of 1 ppmv is the detection limit of the test method we are proposing for HCl and HF. Therefore, this is the lowest level outlet concentration we can specify because this is the lowest level we can measure.

We have no data on the performance of these scrubbers in reducing HF emissions. However, because HF has a similar solubility to HCl, it is reasonable to assume that scrubbers can also reduce HF emissions by 99 percent or to 1 ppmv.

The semiconductor industry reported storage tank capacities ranging from 300 gallons to 16,000 gallons. We ranked the tanks by their capacity and examined which tanks reported controls on their vents. The smallest storage tank with controls is 800 gallons. Five storage tanks in our data set are smaller than 800 gallons and do not control their emissions. Therefore, we have

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concluded that it is not feasible to control storage tanks of less than 800 gallons. We are proposing that facilities control HAP emissions from vents by 99 percent or reduce HAP emissions to no more than 1 ppmv for all storage tanks 800 gallons or larger.

D. Did We Consider Control Options More Stringent Than the MACT Floor?

We considered control options more stringent than the MACT floor for process vents, storage tanks, and wastewater treatment. No such control options were determined to be feasible.

The MACT floor of 98 percent control for process vents was determined to be the highest level of control achievable on a consistent basis. While control devices such as thermal oxidizers can be operated under certain conditions to achieve greater than 98 percent removal efficiency, this was not deemed achievable on a consistent basis for the varying emission streams present throughout the semiconductor manufacturing industry. Thus, no regulatory alternatives above the floor value of 98 percent control were identified that were expected to be technically feasible.

For storage tanks, the MACT floor of 99 percent control was determined to be the highest level of control achievable on a consistent basis. Like thermal oxidizers, scrubbers can be operated under certain conditions to achieve greater than 99 percent removal efficiency. However, due to the variability of HAP concentrations in storage tank emission streams, this was not deemed achievable on a consistent basis. Thus, no regulatory alternatives above the floor value of 99 percent control were identified that were expected to be technically feasible.

No wastewater HAP emission controls were identified for the semiconductor manufacturing industry. Wastewater streams from the semiconductor manufacturing industry consist predominately of acids (e.g., HCl), which do not readily volatilize. In addition, the concentration of HAP contained in these wastewater streams is very small, typically on the order of 3 to 4 ppmv. Due to these factors, the potential for emissions is very small. Due to this low level of emissions, we could not identify any technically or economically feasible control options.

Finally, we examined process changes that would reduce the amount of HAP used, and thus, have the potential to reduce HAP emissions from all emission points. Specifically, we considered requiring industry to increase the size of wafers used in the manufacture of integrated circuits. Industry studies indicate that going from one wafer size to the next larger size decreases a facility's HAP usage by about 20 to 30 percent. Typically, sizes used are 4, 6, and 8 inch wafers.

We have determined, however, that these process changes are not cost effective because an increase in wafer size requires replacing most of the equipment in a wafer fabrication facility. The one major source covered by these NESHAP would need to replace approximately $150 million worth of equipment in order to reduce HAP emissions by several hundred pounds. Therefore, we determined that process changes would not be a cost-effective or practical method for reducing HAP emissions at this time without a further evaluation of risk.

E. How Did We Select the Compliance, Monitoring, Recordkeeping, and Reporting Requirements?

The general recordkeeping and reporting requirements of these proposed NESHAP are very similar to those found in the HON (40 CFR part 63, subparts F, G, and H). You are also required to comply with the notification, recordkeeping, and reporting requirements in the General Provisions (40 CFR part 63 subpart A). We have included a table in the proposed subpart BBBBB that designates which sections of subpart A apply.

General compliance, monitoring, recordkeeping, and reporting requirements for emission points are contained within the proposed NESHAP. We specify compliance procedures necessary to determine the required level of control for process vents. We based the selection of emission point and/or control device-specific monitoring (including continuous monitoring), recordkeeping, and reporting requirements on the requirements contained in 40 CFR part 63, subpart SS for closed vent systems, control devices, recovery devices and routing to a fuel gas system or a process. Subpart SS contains a common set of monitoring, recordkeeping, and reporting requirements. We established these subparts to ensure consistency among emission requirements applied to similar emission points with pollutant streams containing gaseous HAP. We have proposed changes to the performance specifications for continuous compliance monitoring devices contained within subpart SS (65 FR 76408, December 6, 2000). Background information and public comments on the proposed changes can be found in Docket A–97–17. Interested parties should consider the proposed changes to subpart SS when reviewing and commenting on today's action for the Semiconductor Manufacturing source category.

As with the HON, we are not proposing a requirement to perform an initial performance test for boilers and process heaters larger than 44 MW because they operate at high temperatures and residence times. Analysis shows that when vent streams are introduced into the flame zone of these boilers and process heaters, greater than 98 weight-percent of HAP emissions are reduced, or the outlet concentration of HAP is below 20 ppmv, corrected to 3 percent oxygen. For flares, a percent reduction or outlet concentration measurement is not feasible. Therefore, we determined that a performance test is not necessary for boilers and process heaters larger 44 MW, or for flares. For all other types of control devices, the proposed NESHAP require the owner or operator to conduct a performance test to demonstrate that the control device can achieve the required control level and to establish operating parameters to be maintained to demonstrate continuous compliance. We believe that the compliance, monitoring, recordkeeping, and reporting requirements of the proposed NESHAP are consistent with subpart SS and the HON.

IV. Summary of Environmental, Energy, and Economic Impacts

This section presents projected impacts for existing sources only. We did not calculate impacts for new sources because we do not project any new major sources will commence construction in the foreseeable future. We expect that any new sources will have HAP emissions below major source thresholds. The industry trend over the past several years has been that HAP emissions have decreased while semiconductor production has increased. As a result, only one source in the industry is still a major source of HAP, and only because it is collocated at a facility with other HAP-emitting operations. We do not project that any other new semiconductor sources would be built on the site of another operation. We also project that the types of technologies that have evolved (*e.g.*, producing larger wafers), which are inherently less emitting, will continue.

A. What Are the Secondary and Energy Impacts Associated With These Proposed NESHAP?

We do not anticipate any significant increase in national annual energy usage as a result of these proposed NESHAP. Energy impacts include changes in energy use, typically increases, and secondary air impacts associated with increased energy use. Increases in energy use are associated with the operation of control equipment—in this case, the use of thermal oxidizers—to control process vents. Secondary air impacts associated with increased energy use are the emission of particulates, sulfur oxides (SO_X), and nitrogen oxides (NO_X). These secondary impacts are associated with power plants that would supply the increased energy demand. Since we project these NESHAP will apply to only one existing major source, no significant new control equipment requirements are expected. Therefore, secondary and energy impacts will be negligible.

B. What Are the Cost Impacts?

Although we estimate there are approximately 127 facilities engaged in semiconductor production, we estimate that the source category contains only one existing major source subject to the regulatory provisions specified under these proposed NESHAP. The remaining facilities are either area sources or synthetic minor sources, which are sources that have the potential to emit above major source thresholds but have taken enforceable permit conditions limiting their HAP emissions to below these major source thresholds.

We estimate that the one existing major source will not incur any control costs or annual operating and maintenance costs to comply with these proposed NESHAP. We estimate the one major source will incur a $5,180 cost to conduct all monitoring, inspection, reporting, and recordkeeping (MIRR) activities during the first 3 years after promulgation of the NESHAP. Other sources will not incur any costs from these proposed NESHAP. Because no capital costs will be incurred by the one major source, the total cost of the proposed NESHAP will be $5,180 in MIRR costs.

C. What Are the Economic Impacts?

The proposed NESHAP apply to only one major existing source, and no significant new control equipment requirements are expected. We estimate the MIRR costs for this facility to be only $5,180 over a 3-year period. Therefore, no economic impact on the industry is expected.

V. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a proposed regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that the proposed rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is, therefore, not subject to OMB review.

B. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

The EPA interprets Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the rule. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks. Additionally, the proposed rule is not economically significant as defined by Executive Order 12866.

C. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. No facilities subject to the proposed rule are owned by State or local governments, and the rule imposes no other obligations on State and local governments. Thus, Executive order 13132 does not apply to this proposed rule.

In the spirit of Executive Order 13132 and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

D. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. No tribal governments own or operate semiconductor manufacturing facilities, and the rule imposes no obligations on

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tribal governments. Thus, Executive Order 13175 does not apply to this rule.

In the spirit of Executive Order 13175 and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

E. Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use

This rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we must generally prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost effective, or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost effective, or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of our regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that the proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more by State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. The total cost to the private sector is approximately $22,700 per year. The proposed rule contains no mandates affecting State, local, or Tribal governments. Thus, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

We have also determined that the proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments because the proposal contains no requirements that apply to such governments nor imposes obligations upon them.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business according to Small Business Administration (SBA) size standards for NAICS code 334413 (i.e., semiconductor crystal growing facilities, semiconductor wafer fabrication facilities, semiconductor test and assembly facilities) whose parent company has 500 or fewer employees; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

Based on the above definition of small entities, the Agency has determined that there are no small businesses within this source category that would be subject to these proposed NESHAP. Therefore, because these proposed NESHAP will not impose any requirements on small entities, I certify that this action will not have a significant economic impact on a substantial number of small entities.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* The EPA has prepared an Information Collection Request (ICR) document (ICR No. 2042.01), and you may obtain a copy from Sandy Farmer by mail at the U.S. EPA, Office of Environmental Information, Collection Strategies Division (2822), 1200 Pennsylvania Avenue NW., Washington, DC 20460, by e-mail at *farmer.sandy@epa.gov*, or by calling (202) 260–2740. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*. The information requirements are not effective until OMB approves them.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to the EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to EPA policies set forth in 40 CFR part 2, subpart B. The annual monitoring, reporting, and recordkeeping burden for this collection, as averaged over the first 3 years after the effective date of the rule, is estimated to be 35 labor hours per year at a total annual cost of $1,727. This estimate includes a one-time plan for demonstrating compliance, annual compliance certificate reports, notifications, and recordkeeping. Total labor burden associated with the monitoring requirements over the 3-year period of the ICR are estimated at $5,180.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. EPA (2822), 1200 Pennsylvania Ave., NW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence. Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 8, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 7, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Public Law 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in our regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, and business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

These proposed NESHAP involve technical standards. The EPA proposes in this rule to use EPA Methods 1, 1A, 2, 2A, 2C, 2D, 2F, 2G, 3, 3A, 3B, 4, 18, 25, 25A, 26, 26A, 316, and 320. Consistent with the NTTAA, EPA conducted searches to identify voluntary consensus standards in addition to these EPA methods. No applicable voluntary consensus standards were identified for EPA Methods 1A, 2A, 2D, 2F, 2G, and 316. The search and review results have been documented and are placed in Docket A–97–15.

The consensus standard, ASTM D6420–99, Standard Test Method for Determination of Gaseous Organic Compounds by Direct Interface Gas Chromatography-Mass Spectrometry (GC/MS), is appropriate in the cases described below for inclusion in these proposed NESHAP for measurement of xylene, in addition to EPA Method 18, codified at 40 CFR part 60, appendix A.

Similar to EPA's performance-based Method 18, ASTM D6420–99 is also a performance-based method for measurement of gaseous organic compounds. However, ASTM D6420–99 was written to support the specific use of highly portable and automated GC/MS. While offering advantages over the traditional Method 18, the ASTM method does allow some less stringent criteria for accepting GC/MS results than required by Method 18. Therefore, ASTM D6420–99 is a suitable alternative to Method 18 only where the target compound(s) are those listed in section 1.1 of ASTM D6420–99, and the target concentration is between 150 parts per billion volume and 100 ppmv.

For target compound(s) not listed in Table 1.1 of ASTM D6420–99, but potentially detected by mass spectrometry, the regulation specifies that the additional system continuing calibration check after each run, as detailed in Section 10.5.3 of the ASTM method, must be followed, met, documented, and submitted with the data report, even if there is no moisture condenser used or the compound is not considered water soluble. For target compound(s) not listed in Table 1.1 of ASTM D6420–99, and not amenable to detection by mass spectrometry, ASTM D6420–99 does not apply.

As a result, EPA proposes to incorporate ASTM D6420–99 into 40 CFR 63.14 by reference for application under subpart SS of part 63. ASTM D6420–99 is being incorporated as an alternative to Method 18 for applicable situations discussed above. The EPA will also cite Method 18 as a gas chromatography (GC) option in addition to ASTM D6420–99. This will allow the continued use of GC configurations other than GC/MS.

In addition to the voluntary consensus standards EPA proposes to use in these NESHAP, this search for emissions measurement procedures identified 17 other voluntary consensus standards. The EPA determined that 13 of these 17 standards identified for measuring emissions of HAP or surrogates subject to emission standards in the proposed NESHAP were impractical alternatives to EPA test methods for the purposes of these proposed NESHAP. Therefore, EPA does not propose to adopt these standards today.

The following three of the 17 voluntary consensus standards identified in this search were not available at the time the review was conducted for the purposes of these proposed NESHAP because they are under development by a voluntary consensus body: ASME/BSR MFC 13M, "Flow Measurement by Velocity Traverse," for EPA Method 2 (and possibly 1); ASME/BSR MFC 12M, "Flow in Closed Conduits Using Multiport Averaging Pitot Primary Flowmeters," for EPA Method 2; and ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," for EPA Method 3A. While we are not proposing to include these three voluntary consensus standards in today's proposed NESHAP, the EPA will consider the standards when final.

One of the 17 voluntary consensus standards identified in this search, ASTM D6348–98, "Determination of Gaseous Compounds by Extractive Direct Interface Fourier Transform (FTIR) Spectroscopy," is under consideration by the EPA as an alternative for EPA Method 320. This ASTM standard has been reviewed by EPA and comments were sent to ASTM. Currently, the ASTM Subcommittee D22–03 is now undertaking a revision of the ASTM standard. Upon successful ASTM balloting and demonstration of technical equivalency with the EPA FTIR methods, the revised ASTM standard could be incorporated by reference for EPA regulatory applicability.

The EPA takes comment on the compliance demonstration requirements in these NESHAP and specifically invites the public to identify potentially-applicable voluntary consensus standards. Commenters should also explain why this proposed rule should adopt these voluntary consensus standards in lieu of, or in addition to, EPA standards. Emission test methods submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Section 63.7193 and table 1 to proposed subpart BBBBB lists the EPA testing methods included in the

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proposed NESHAP. Under 40 CFR 63.8 (the General Provisions), a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons stated in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart BBBBB to read as follows:

Sec.

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

What This Subpart Covers

63.7180 What is the purpose of this subpart?
63.7181 Am I subject to this subpart?
63.7182 What parts of my facility does this subpart cover?
63.7183 When do I have to comply with this subpart?

Emission Standards

63.7184 What emission limitations, operating limits, and work practice standards must I meet?

Compliance Requirements

63.7185 What are my general requirements for complying with this subpart?
63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?
63.7187 What performance tests and other compliance procedures must I use?
63.7188 What are my monitoring installation, operation, and maintenance requirements?

Applications, Notifications, Reports, and Records

63.7189 What applications and notifications must I submit and when?
63.7190 What reports must I submit and when?
63.7191 What records must I keep?
63.7192 In what form and how long must I keep my records?

Other Requirements and Information

63.7193 What parts of the General Provisions apply to me?
63.7194 Who implements and enforces this subpart?
63.7195 What definitions apply to this subpart?

Tables to Subpart BBBBB of Part 63

Table 1 to Subpart BBBBB of Part 63–Requirements for Performance Tests
Table 2 to Subpart BBBBB of Part 63–Applicability of General Provisions to Subpart BBBBB

Subpart BBBBB—National Emission Standards for Hazardous Air Pollutants: Semiconductor Manufacturing

What This Subpart Covers

§ 63.7180 What is the purpose of this subpart?

This subpart establishes national emission standards for hazardous air pollutants (NESHAP) for semiconductor manufacturing facilities. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission standards.

§ 63.7181 Am I subject to this subpart?

(a) You are subject to this subpart if you own or operate a semiconductor manufacturing process unit that is a major source of hazardous air pollutants (HAP) emissions or that is located at, or is part of, a major source of HAP emissions.

(b) A major source of HAP emissions is any stationary source or group of stationary sources located within a contiguous area and under common control that emits or has the potential to emit, considering controls, in the aggregate, any single HAP at a rate of 10 tons per year (tpy) or more or any combination of HAP at a rate of 25 tpy or more.

§ 63.7182 What parts of my facility does this subpart cover?

(a) This subpart applies to each new, reconstructed, or existing affected source that you own or operate that manufactures semiconductors.

(b) An affected source subject to this subpart is the collection of all semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors and active solid-state devices from a wafer substrate, including research and development activities at a semiconductor manufacturing site. A semiconductor manufacturing unit includes the equipment assembled and connected by ductwork or hard-piping, including furnaces and associated unit operations; associated wet and dry work benches; associated recovery devices; feed, intermediate, and product storage tanks; product transfer racks and connected ducts and piping; pumps, compressors, agitators, pressure-relief devices, sampling connecting systems, open-ended valves or lines, valves, connectors, and instrumentation systems; and control devices.

(c) Your affected source is a new affected source if you commence construction of the affected source after May 8, 2002, and you meet the applicability criteria in § 63.7181 at the time you commence construction.

(d) Your affected source is a reconstructed affected source if you meet the criteria for "reconstruction," as defined in § 63.2.

(e) Your source is an existing affected source if it is not a new or reconstructed affected source.

§ 63.7183 When do I have to comply with this subpart?

(a) If you have a new or reconstructed affected source, you must comply with this subpart according to paragraphs (a)(1) and (2) of this section.

(1) If you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], then you must comply with the emission standards for new and reconstructed sources in this subpart no later than [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(2) If you start up your affected source after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], then you must comply with the emission standards for new and reconstructed sources in this subpart upon startup of your affected source.

(b) If you have an existing affected source, you must comply with the emission standards for existing sources no later than 3 years from [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) If you have an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP and an affected source subject to this subpart, paragraphs (c)(1) and (2) of this section apply.

(1) Any portion of your existing facility that is a new affected source as specified at § 63.7182(c), or a reconstructed affected source as specified at § 63.1782(d), must be in compliance with this subpart upon startup.

(2) Any portion of your facility that is an existing affected source, as specified at § 63.7182(e), must be in compliance with this subpart by not later than 3 years after it becomes a major source.

(d) You must meet the notification requirements in § 63.7189 and in subpart A of this part. You must submit some of the notifications (e.g., Initial Notification) before the date you are required to comply with the emission limitations in this subpart.

Emission Standards

§ 63.7184 What emission limitations, operating limits, and work practice standards must I meet?

(a) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with one of the emission limitations in paragraph (a)(1) or (2) of this section for each process vent that emits HAP. These limitations can be met by venting emissions from your process vent through a closed vent system to any combination of control devices meeting the requirements of § 63.982(a)(2).

(1) Reduce the emissions of total HAP from the process vent stream by 98 percent by weight, corrected to 3 percent oxygen.

(2) Reduce or maintain the concentration of emitted HAP from the process vent to less than or equal to 20 parts per million volume (ppmv).

(b) If you have a new, reconstructed, or existing affected source, as defined in § 63.7182(b), you must comply with one of the emission limitations in paragraph (b)(1) or (2) of this section for each storage tank (including waste and wastewater storage tanks) 800 gallons or larger if the emissions from the storage tank vent contains greater than 1 ppmv HAP. These limitations can be met by venting emissions from your storage tank through a closed vent system to a halogen scrubber meeting the requirements of §§ 63.983 (closed vent system requirements) and 63.994 (halogen scrubber requirements); the applicable general monitoring requirements of § 63.996; the applicable performance test requirements; and the monitoring, recordkeeping and reporting requirements referenced therein.

(1) Reduce the emissions of total HAP from each storage tank by 99 percent by weight.

(2) Reduce or maintain the concentration of emitted HAP from the process vent to less than or equal to 1 ppmv.

(c) If you have a new, reconstructed, or existing affected source, as defined at § 63.7182(b), you must comply with the applicable work practice standards and operating limits contained in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.

Compliance Requirements

§ 63.7185 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the requirements of § 63.7184 at all times, except during periods of startup, shutdown, or malfunction.

(b) You must always operate and maintain your affected source, including air pollution control and monitoring equipment, according to the provisions in § 63.6(e)(1)(i).

(c) You must develop and implement a written startup, shutdown, and malfunction plan (SSMP). Your SSMP must be prepared in accordance with the provisions in § 63.6(e)(3).

(d) You must perform all the items listed in paragraphs (d)(1) through (3) of this section:

(1) Submit the necessary notifications in accordance with § 63.7189.

(2) Submit the necessary reports in accordance with § 63.7190.

(3) Maintain all necessary records you have used to demonstrate compliance with this subpart in accordance with § 63.7191.

§ 63.7186 By what date must I conduct performance tests or other initial compliance demonstrations?

For each process vent or storage tank vent emission limitation in § 63.7184 for which initial compliance is demonstrated by meeting a percent by weight HAP emissions reduction, or a HAP concentration limitation, you must conduct performance tests or an initial compliance demonstration within 180 days after the compliance date that is specified for your source in § 63.7183 and according to the provisions in § 63.7(a)(2).

§ 63.7187 What performance tests and other compliance procedures must I use?

(a) You must conduct each performance test in Table 1 to this subpart that applies to you as specified for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1). Performance tests must be conducted under maximum operating conditions or HAP emissions potential. Section 63.982(a)(1) and (2) only includes methods for the measure of total organic regulated material or total organic carbon (TOC) concentration. The EPA Method 301 is included in Table 1 to this subpart in addition to the test methods contained within § 63.982(a)(1) and (2). The EPA Method 301 must be used for testing regulated material containing inorganic HAP. The EPA Method 320 of 40 CFR part 63, appendix A, must be used to measure total vapor phase organic and inorganic HAP concentrations.

(b) If, without the use of a control device, your process vent stream has a HAP concentration of 20 ppmv or less, or your storage tank vent stream has a HAP concentration of 1 ppmv or less, you must demonstrate that the vent stream is compliant by engineering assessments and calculations or by conducting the applicable performance test requirements specified in Table 1 to this subpart. Your engineering assessments and calculations, as with performance tests (as specified in § 63.982(a)(1) and (2)), must represent your maximum operating conditions or HAP emissions potential and must be approved by the Administrator. You must demonstrate continuous compliance by certifying that your operations will not exceed the maximum operating conditions or HAP emissions potential represented by your engineering assessments, calculations, or performance test.

(c) During periods of startup, shutdown, and malfunction, you must operate in accordance with your SSMP.

(d) For each monitoring system required in this section, you must develop and submit for approval a site-specific monitoring plan that addresses the following three criteria:

(i) Installation of the continuous monitoring system (CMS) sampling probe or other interface at a measurement location relative to each affected process unit such that the measurement is representative of control of the exhaust emissions (*e.g.*, on or downstream of the last control device);

(ii) Performance and equipment specifications for the sample interface, the pollutant concentration or parametric signal analyzer, and the data collection and reduction system; and

(iii) Performance evaluation procedures and acceptance criteria (*e.g.*, calibrations).

(e) In your site-specific monitoring plan, you must also address the following three procedural processes:

(i) Ongoing operation and maintenance procedures in accordance with the general requirements of § 63.8(c)(1), (3), (4)(ii), (7), and (8);

(ii) Ongoing data quality assurance procedures in accordance with the general requirements of § 63.8(d); and

(iii) Ongoing recordkeeping and reporting procedures in accordance with the general requirements of § 63.10(c), (e)(1), and (e)(2)(i).

(f) You must conduct a performance evaluation of each CMS in accordance with your site-specific monitoring plan.

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(g) You must operate and maintain the CMS in continuous operation according to the site-specific monitoring plan.

§ 63.7188 What are my monitoring installation, operation, and maintenance requirements?

If you comply with the emission limitations of § 63.7184 by venting the emissions of your semiconductor process vent through a closed vent system to a control device, you must comply with the requirements of paragraphs (a) and (b) of this section.

(a) You must meet the applicable general monitoring, installation, operation, and maintenance requirements specified in § 63.996.

(b) You must meet the monitoring, installation, operation, and maintenance requirements specified for closed vent systems and applicable control devices in §§ 63.938 through 63.995.

Applications, Notifications, Reports, and Records

§ 63.7189 What applications and notifications must I submit and when?

(a) You must submit all of the applications and notifications in §§ 63.7(b) and (c); 63.8(e), (f)(4) and (f)(6); and 63.9(b) through (e), (g) and (h) that apply to you by the dates specified.

(b) As specified in § 63.9(b)(2), if you start up your affected source before [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER].

(c) As specified in § 63.9(b)(3), if you start up your new or reconstructed affected source on or after [DATE OF PUBLICATION OF THE FINAL RULE IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(d) If you are required to conduct a performance test, you must submit a notification of intent to conduct a performance test at least 60 calendar days before the performance test is scheduled to begin as required in § 63.7(b)(1).

(e) If you are required to conduct a performance test or other initial compliance demonstration, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii) and according to paragraphs (e)(1) and (2) of this section.

(1) For each initial compliance demonstration that does not include a performance test, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(2) For each initial compliance demonstration required that includes a performance test conducted according to the requirements in Table 1 to this subpart, you must submit a notification of the date of the performance evaluation at least 60 days prior to the date the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.7190 What reports must I submit and when?

(a) You must submit each of the following reports that apply to you.

(1) *Periodic compliance reports.* You must submit a periodic compliance report that contains the information required under paragraphs (c) through (e) of this section, and any requirements specified to be reported for process vents in § 63.982(a)(2) and storage tanks in § 63.982(a)(1).

(2) *Immediate startup, shutdown, and malfunction report.* You must submit an immediate Startup, Shutdown, and Malfunction Report if you had a startup, shutdown, or malfunction during the reporting period that is not consistent with your SSMP. Your report must contain actions taken during the event. You must submit this report by fax or telephone within 2 working days after starting actions inconsistent with your SSMP. You are required to follow up this report with a report specifying the information in § 63.10(d)(5)(ii) by letter within 7 working days after the end of the event unless you have made alternative arrangements with your permitting authority.

(b) Unless the Administrator has approved a different schedule for submission of reports under § 63.10(a), you must submit each report by the date according to paragraphs (b)(1) through (5) of this section.

(1) The first periodic compliance report must cover the period beginning on the compliance date that is specified for your affected source in § 63.7183 and ending on June 30 or December 31, whichever date is the first date following the end of the first 12 calendar months after the compliance date that is specified for your source in § 63.7183.

(2) The first periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first 12 calendar months after the compliance date that is specified for your affected source in § 63.7183.

(3) Each subsequent periodic compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent periodic compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each affected source that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established dates for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent periodic compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (b)(1) through (4) of this section.

(c) The periodic compliance report must contain the information specified in paragraphs (c)(1) through (5) of this section.

(1) Company name and address.

(2) Statement by a responsible official with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) If there are no deviations from any emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period and that no CMS was inoperative, inactive, malfunctioning, out-of-control, repaired, or adjusted.

(5) If you had a startup, shutdown, or malfunction during the reporting period and you took actions consistent with your SSMP, your periodic compliance report must include the information in § 63.10(d)(5) for each startup, shutdown, and malfunction.

(d) For each deviation from an emission limitation that occurs at an affected source where you are not using a CMS to comply with the emission limitations, the periodic compliance report must contain the information in paragraphs (d)(1) through (3) of this section.

(1) The total operating time of each affected source during the reporting period.

(2) Information on the number, duration, and cause of deviations (including unknown cause, if applicable, other than downtime associated with calibration checks).

(3) Information on the number, duration, and cause for monitor downtime incidents (including

unknown cause, if applicable, other than downtime associated with calibration checks).

(e) For each deviation from an emission limitation occurring at an affected source where you are using a CMS to demonstrate compliance with the emission limitation, you must include the information in paragraphs (e)(1) through (8) of this section.

(1) The date and time that each malfunction started and stopped, and the reason it was inoperative.

(2) The date and time that each CMS was inoperative, except for calibration checks.

(3) The date and time that each CMS was out-of-control, including the information in § 63.8(c)(8).

(4) The date and time that each deviation started and stopped, and whether each deviation occurred during a period of startup, shutdown, or malfunction or during another period, and the cause of the deviation.

(5) A summary of the total duration of the deviation during the reporting period, and the total duration as a percent of the total source operating time during that reporting period.

(6) A summary of the total duration of CMS downtime during the reporting period, and the total duration of CMS downtime as a percent of the total source operating time during the reporting period.

(7) An identification of each HAP that was monitored at the affected source.

(8) The date of the latest CMS certification or audit.

§ 63.7191 What records must I keep?

(a) You must keep the records listed in paragraphs (a)(1) through (3) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Notification of Compliance Status and periodic report of compliance that you submitted, according to the requirements in § 63.10(b)(2)(xiv).

(2) The records in § 63.6(e)(3)(iii) through (v) related to startup, shutdown, and malfunctions.

(3) Records of performance tests and performance evaluations as required in § 63.10(b)(2)(viii).

(b) For each CMS, you must keep the records listed in paragraphs (b)(1) through (5) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) All required measurements needed to demonstrate compliance with a relevant standard (e.g., 30-minute averages of CMS data, raw performance testing measurements, raw performance evaluation measurements).

(3) All required CMS measurements (including monitoring data recorded during unavoidable CMS breakdowns and out-of-control periods).

(4) Records of the date and time that each deviation started and stopped, and whether the deviation occurred during a period of startup, shutdown, or malfunction or during another period.

(5) Records for process vents according to the requirements specified in § 63.982(a)(2) and storage tank vents according to the requirements specified in § 63.982(a)(1).

§ 63.7192 In what form and how long must I keep my records?

(a) Your records must be in a form suitable and readily available for expeditious review, according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must keep each record on site for at least 2 years after the date of each occurrence, measurement, maintenance, corrective action, report, or record, according to § 63.10(b)(1). You can keep the records offsite for the remaining 3 years.

Other Requirements and Information

§ 63.7193 What parts of the General Provisions apply to me?

Table 2 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.7194 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. Environmental Protection Agency (U.S. EPA), or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the U.S. EPA Administrator and are not transferred to the State, local, or tribal agency.

(c) The authorities that will not be delegated to State, local, or tribal agencies are as listed in paragraphs (c)(1) through (4) of this section.

(1) Approval of alternatives to the non-opacity emission limitations in § 63.7184 under § 63.6(g).

(2) Approval of major alternatives to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major alternatives to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major alternatives to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.7195 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act, in §§ 63.2 and 63.981, the General Provisions of this part (40 CFR part 63, subpart A), and in this section as follows:

Semiconductor manufacturing means the collection of semiconductor manufacturing process units used to manufacture p-type and n-type semiconductors or active solid state devices from a wafer substrate, including processing from crystal growth through wafer fabrication, and testing and assembly. Examples of semiconductor or related solid state devices include semiconductor diodes, semiconductor stacks, rectifiers, integrated circuits, and transistors.

Semiconductor manufacturing process unit means the collection of equipment used to carry out a discrete operation in the semiconductor manufacturing process. These operations include, but are not limited to, crystal growing; solvent stations used to prepare and clean materials for subsequent processing or for parts cleaning; wet chemical stations used for cleaning (other than solvent cleaning); photoresist application, developing, and stripping; etching; gaseous operation stations used for stripping, cleaning, doping, etching, and layering; separation; encapsulation; and testing. Research and development operations conducted at a semiconductor manufacturing facility are considered to be semiconductor manufacturing process units.

Tables to Subpart BBBBB of Part 63

As stated in § 63.7187, you must comply with the requirements for performance tests in the following table:

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TABLE 1 TO SUBPART BBBBB OF PART 63.—REQUIREMENTS FOR PERFORMANCE TESTS

For * * *	You must * * *	Using * * *	According to the following requirements * * *
(1) Process or storage tank vent streams.	a. Select sampling port's location and the number of traverse ports.	Method 1 or 1A of 40 CFR part 60, appendix A.	Sampling sites must be located at the inlet (if emission reduction or destruction efficiency testing is required) and outlet of the control device and prior to any releases to the atmosphere.
	b. Determine velocity and volumetric flow rate.	Method 2, 2A, 2C, 2D, 2F, or 2G of 40 CFR part 60, appendix A.	For HAP reduction efficiency testing only; not necessary for determining compliance with a ppmv concentration limit.
	c. Conduct gas molecular weight analysis.	Method 3, 3A, or 3B of 40 CFR part 60, appendix A.	For flow rate determination only.
	d. Measure moisture content of the stack gas.	Method 4 of 40 CFR part 60, appendix A.	For flow rate determination and correction to dry basis, if necessary.
(2) Process vent stream	a. Measure oxygen concentration.	Method 3A or 3B of 40 CFR part 60, appendix A.	For correcting HAP concentrations measured from combustion control devices to 3 percent O_2.
	b. Measure organic and inorganic HAP concentration (two method option).	Method 18, 25, or 25A of 40 CFR part 60, appendix A.	To determine compliance with the 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet. If you use Method 25A to determine the TOC concentration for compliance with the 20 ppmv emission limitation, the instrument must be calibrated on methane or the predominant HAP. If you calibrate on the predominant HAP, you must comply with each of the following: • The organic HAP used as the calibration gas must be the single organic HAP representing the largest percent of emissions by volume. • The results are acceptable if the response from the high level calibration.
	c. Measure organic and inorganic HAP simultaneously ("one method" option).	Method 320 of 40 CFR part 63, appendix A.	To determine compliance with 98 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same organic and inorganic HAP at both inlet and outlet.
(3) Storage tank vent stream ...	Measure inorganic HAP concentration.	Method 301 of 40 CFR part 63, appendix A.	To determine compliance with 99 percent reduction limit, conduct simultaneous sampling at inlet and outlet of control device and analyze for same inorganic HAP at both inlet and outlet.

As stated in § 63.7193, you must comply with the applicable General Provisions requirements according to the following table:

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.1	Applicability	Yes.
§ 63.2	Definitions	Yes.
§ 63.3	Units and Abbreviations	Yes.
§ 63.4	Prohibited Activities and Circumvention.	Yes.
§ 63.5	Construction and Reconstruction	Yes.
§ 63.6	Compliance With Standards and Maintenance.	Yes.
§ 63.7	Performance Testing Requirements.	Yes, with the exception of § 63.7(e)(1). The requirements of § 63.7(e)(1) do not apply. Performance testing requirements that apply are specified in this subpart and in § 63.982(a)(1) and (2).
§ 63.8	Monitoring Requirements	Monitoring requirements are specified in this subpart and in § 63.982(a)(1) and (2). The closed vent system inspection requirements of § 63.983(c), as referenced by § 63.982(a)(1) and (2), do not apply.
§ 63.9	Notification Requirements	Yes.

TABLE 2 TO SUBPART BBBBB OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART BBBBB—Continued

Citation	Subject	Applicable to Subpart BBBBB?
§ 63.10	Recordkeeping and Reporting Requirements.	Yes, with the exception of § 63.10(e). The requirements of § 63.10(e) do not apply. In addition, the recordkeeping and reporting requirements specified in this subpart apply.
§ 63.11	Flares	Yes.
§ 63.12	Delegation	Yes.
§ 63.13	Addresses	Yes.
§ 63.14	Incorporation by Reference	Yes.
§ 63.15	Availability of Information	Yes.

[FR Doc. 02–11298 Filed 5–7–02; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 73 and 76

[MM Docket No. 98–204, DA 02–1007]

Revision of Broadcast and Cable EEO Rules and Policies

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: In this document, the Media Bureau (Bureau) grants a motion for procedural relief filed by the Minority Media and Telecommunications Council (MMTC). The intended effect is to grant an extension of the reply comments filing deadline.

DATES: Reply comments are due May 29, 2002.

ADDRESSES: Federal Communications Commission, Office of the Secretary, 445 12th Street, SW, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Estella Salvatierra, Media Bureau. (202) 418–1450.

SUPPLEMENTARY INFORMATION:

1. This is a synopsis of the Media Bureau's *Review of the Commission's Broadcast and Cable Equal Employment Opportunity Rules and Policies*, DA 02–1007, released May 1, 2002. On December 21, 2001, the Commission released a *Second Notice of Proposed Rule Making*, MM Docket No. 98–204, 67 FR 1704 (January 14, 2002) (*Second NPRM*) requesting comment on various proposals concerning the Commission's broadcast and cable EEO rules and policies.

2. On April 25, 2002, MMTC filed a Motion for Extension of Reply Comment Deadline requesting an extension of time for the filing date for reply comments.

3. MMTC requests that the Commission extend the reply comment deadline from May 15, 2002, to May 29, 2002. Because the Bureau believes that the public interest would be served by an extension of the reply comment period in this proceeding, we grant MMTC's request and extend the date for filing reply comments to May 29, 2002.

4. *Accordingly, it is ordered* that the Motion for Extension of Reply Comment Deadline filed by MMTC is granted.

5. *It is therefore ordered* that the date for filing reply comments in this proceeding *is extended* to May 29, 2002.

6. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 4(i) and 303(r), and §§ 0.204(b), 0.283 and 1.46 of the Commission's rules, 47 CFR. 0.204(b), 0.283 and 1.46.

Federal Communications Commission.

W. Kenneth Ferree,

Chief, Media Bureau.

[FR Doc. 02–11388 Filed 5–7–02; 8:45 am]
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Notices

Federal Register
Vol. 67, No. 89
Wednesday, May 8, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

JOINT BOARD FOR THE ENROLLMENT OF ACTUARIES

Advisory Committee on Actuarial Examinations; Invitation for Membership on Advisory Committee

AGENCY: Joint Board for the Enrollment of Actuaries.

ACTION: Notice.

SUMMARY: The Joint Board for the Enrollment of Actuaries (Joint Board), established under the Employment Retirement Income Security Act of 1974 (ERISA), is responsible for the enrollment of individuals who wish to perform actuarial services under ERISA. The Joint Board has established an Advisory Committee on Actuarial Examinations (Advisory Committee) to assist in its examination duties mandated by ERISA. The term of the current Advisory Committee will expire on November 1, 2002. This notice describes the Advisory Committee and invites applications from those interested in servicing on it.

1. General

To qualify for enrollment to perform actuarial services under ERISA, an applicant must have requisite pension actuarial experience and satisfy knowledge requirements as provided in the Joint Board's regulations. The knowledge requirements may be satisfied by successful completion of Joint Board examinations in basic actuarial mathematics and methodology and in actuarial mathematics and methodology relating to pension plans qualifying under ERISA.

The Joint Board, the Society of Actuaries, and the American Society of Pension Actuaries jointly offer examinations acceptable to the Joint Board for enrollment purposes and acceptable to those actuarial organizations as part of their respective examination programs.

2. Programs

The Advisory Committee plays an integral role in the examination program by assisting the Joint Board in offering examinations that will enable examination candidates to demonstrate the knowledge necessary to qualify for enrollment. The purpose of the Advisory Committee, as renewed, will remain that of assisting the Joint Board in fulfilling this responsibility. The Advisory Committee will discuss the philosophy of such examinations, will review topics appropriately covered in them, and will make recommendations relative thereto. It also will recommend to the Joint Board proposed examination questions. The Joint Board will maintain liaison with the Advisory Committee in this process to ensure that its views on examination content are understood.

3. Function

The manner in which the Advisory Committee functions in preparing examination questions is intertwined with the jointly administered examination program. Under that program, the participating actuarial organizations draft questions and submit them to the Advisory Committee for its consideration. After review of the draft questions, the Advisory Committee selects appropriate questions, modifies them as it deems desirable, and then prepares one or more drafts of actuarial examinations to be recommended to the Joint Board. (In addition to revisions of the draft questions, it may be necessary for the Advisory Committee to originate questions and include them in what is recommend.)

4. Membership

The Joint Board will take steps to ensure maximum practicable representation on the Advisory Committee of points of view regarding the Joint Board's actuarial examination extant in the community at large and from nominees provided by the actuarial organizations. Since the members of the actuarial organizations comprise a large segment of the actuarial profession, this appointive process ensures expression of a broad spectrum of viewpoints. All members of the Advisory Committee will be expected to act in the public interest, that is, to produce examinations that will help ensure a level of competence among those who will be accorded enrollment to perform actuarial services under ERISA.

Membership normally will be limited to actuaries previously enrolled by the Joint Board. However, individuals having academic or other special qualifications of particular value for the Advisory Committee's work also will be considered for membership. The Advisory Committee will meet about four times a year. Advisory Committee members should be prepared to devote from 125 to 175 hours, including meeting time, to the work of the Advisory Committee over the course of a year. Members will be reimbursed for Advisory Committee travels meals and lodging expenses incurred in accordance with applicable government regulations.

Actuaries interested in serving on the Advisory Committee should express their interest and fully state their qualifications in a letter addressed to: Joint Board for the Enrollment of Actuaries, c/o Internal Revenue Service, Attn: Executive Director N:C:SC:DOP, 1111 Constitution Avenue, NW., Washington, DC 20224.

Any questions may be directed to the Joint Board's Executive Director at 202–694–1891.

The deadline for accepting applications is August 19, 2002.

Dated: April 30, 2002

Patrick W. McDonough,

Executive Director, Joint Board for the Enrollment of Actuaries.

[FR Doc. 02–11472 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–U

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collections Being Reviewed by the U.S. Agency for International Development; Comments Requested

SUMMARY: U.S. Agency for International Development (USAID) is making efforts to reduce the paperwork burden. USAID invites the general public and other Federal agencies to take this opportunity to comment on the following proposed and/or continuing information collections, as required by the Paperwork Reduction Act for 1995. Comments are requested concerning: (a) Whether the proposed or continuing collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Submit comments on or before July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Beverly Johnson, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Room 2.07–106, RRB, Washington, DC 20523, (202) 712–1365 or via e-mail *bjohnson@usaid.gov.*

SUPPLEMENTARY INFORMATION:

OMB No.: OMB 0412–.
Form No.: N/A.
Title: Certification Agreement.
Type of Review: New.
Purpose: The United States Agency for International Development (USAID) needs to require applicants for assistance to certify that it does not and will not engage in financial transactions with, and does not and will not provide material support and resources to individuals or organizations that engage in terrorism. The purpose of this requirement is to assure that USAID does not directly provide support to such organizations or individuals, and to assure that recipients are aware of these requirements when it considers individuals or organizations are subrecipients.
Annual Reporting Burden:
Respondents: 1,100.
Total Annual Responses: 5,500.
Total Annual Hours Requested: 3,700 hours.

Dated: April 28, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11336 Filed 5–7–02; 8:45 am]

BILLING CODE 6116–01–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collections to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104–13. Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington, DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0506.
Form Number: AID 1420–50
Title: Vendor Data Base (formerly known as USAID Consultant Registry Information System (ACRIS)) Instruction Books for the Organization Profile.
Type of Submission: Renew
Purpose: USAID procuring activities are required to establish bidders mailing lists to assure access to sources and to obtain meaningful competition (41 CFR section 1–2.205). In compliance with this requirement, USAID's Office of Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the USAID procuring activities. (AIDAR 719.271–2(b)(4)).
Annual Reporting Burden:
Respondents: 1,000.
Total Annual Responses: 1,000.
Total Annual Hours Requested: 1,000 hours.

Dated: April 22, 2002.

Joanne Paskar,

Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11335 Filed 5–7–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–06]

Burley Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Burley Tobacco Advisory Committee.

DATES: May 23, 2002, 9 a.m.

ADDRESSES: The meeting will be held at the Campbell House Inn, South Colonial Hall, 1375 Harrodsburg Road, Lexington, Kentucky 40504.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW, Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the implementation of mandatory grading, establish alternate grading schedules, and discuss other related issues for the 2002–2003 burley tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by May 17, 2002, and inform us of your needs.

Dated: May 2, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–11458 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Forest Service

Leon, Liberty, Wakulla, Franklin, Columbia, Baker, Lake, Putnam and Marion Counties, FL

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare a draft environmental impact statement.

SUMMARY: The USDA Forest Service intends to prepare a draft environmental impact statement for designating a system of roads and trails within portions of the Apalachicola, Osceola, and Ocala National Forests in Florida.

DATES: A draft environmental impact statement is expected to be completed in August 2002. The final environmental impact statement is scheduled to be completed in November 2002.

ADDRESSES: You may request to be placed on the project mailing list and submit comments by contacting: Marsha Kearney, Forest Supervisor, USDA Forest Service, 325 John Knox Rd., Tallahassee, Florida, 32303.

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FOR FURTHER INFORMATION CONTACT: Andy Colaninno, District Ranger, Apalalachicola Ranger District, PO Box 579, Bristol, Florida 32321; Jerri Marr, District Ranger, Lake George Ranger District, 17147 Highway 40, Silver Springs, Florida 34488; Jim Thorsen, District Ranger, Seminole Ranger District, 40929 State Road 19, Umatilla, Florida 32784; Will Metz, District Ranger, Osceola Ranger District, PO Box 70, Olustee, Florida 32072.

SUPPLEMENTARY INFORMATION: Prior to 1999, vehicles could travel off roads (cross-country) on the National Forests in Florida except in areas specifically posted closed. The policy of allowing cross-country access contributed to a proliferation of travelways in portions of the Forests. As a result of this situation, vehicle access was addressed in the revision of Land and Resource Management Plan for the National Forests in Florida (Forest Plan).

Upon approval in 1999, the Forest Plan changed access for motorized vehicles in two ways: "cross-country" travel on land with no existing roads or trails is prohibited anywhere in the forests; and restricted areas were established where travel will be limited to designated roads and trails. The Forest Plan provided that a system of roads and trails would be designated in the restricted areas in cooperation with the public and user groups.

In January 2000 a series of public meetings was held near each National Forest in Florida. At these meetings, attendees selected a variety of stakeholder representatives to provide information on access preferences and needs. The group developed a proposed system for consideration by the Forest Service along with a set of guiding principles and designation criteria. The Forest Service began an environmental assessment of the proposed action in 2001. During the assessment, it became evident that an accurate inventory of roads, trails, and travelways was needed in the restricted areas. An inventory using the global positioning system (GPS) began in August 2001 and was completed in April 2002. It also became evident that the proposed action may have a significant effect on the human environment leading to preparation of an environmental impact statement.

The scoping process, as outlined by the Council on Environmental Quality (CEQ), will be utilized to involve Federal, State, and local agencies and other interested persons and organizations. Interested persons and organizations wishing to participate in the scoping process should contact the Forest Service at the above mentioned address. Environmental considerations include potential presence of historical or archeological resources, aesthetics, recreation demand, wetlands, endangered and threatened species, and fish and wildlife habitats and values. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the CEQ for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 2, 2002.

Marsha Kearney,

Forest Supervisor, National Forests in Florida.

[FR Doc. 02–11354 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Wildland Urban Interface Project; Caribou-Targhee National Forest, Fremont County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service is beginning to prepare an environmental impact statement (EIS) to document the analysis and disclose the environmental impacts of the Wildland Urban Interface Project in Island Park, ID. Within the project area, different treatment methods would be used to reduce the fire hazard depending upon the forest and fuel conditions. In the young and regenerated noncommercial lodgepole pine stands, trees would be thinned. Fuel reductions in larger diameter stands would be in the form of shaded fuel breaks. The shaded fuel breaks would be located in tactically important areas to provide firefighters an anchor from which to safely fight fire. Proposed fuel breaks would be up to 500 feet wide. These fuel breaks would be created along the interface between National Forest Service land and private property.

DATES: Comments concerning the scope of the analysis should be received within 30 days of the date of pu8blication of this notice in the **Federal Register.** The draft environmental impact statement is expected November of 2002 and the final environmental impact statement is expected February 2003.

ADDRESSES: Send written comments to the Ashton/Island Park Ranger District, Attn: Jim Cox/Becky Nedrow, Island Park Ranger Station, 3726 Highway 20, Island Park, ID.

FOR FURTHER INFORMATION CONTACT: Further information and questions concerning this proposed action and EIS contact Jim Cox at (208) 558–7301 or Becky Nedrow at (208) 652–7442. Jim can also be reached at *jcox@fs.fed/us.* Becky can be reached at *bnedrow@fs.fed.us*

SUPPLEMENTARY INFORMATION: The Douglas-fir and lodgepole pine forest types are included in the project area as are some sagebrush/grasslands. The Douglas-fir forest type occurs throughout the Centennial and Henrys Lake Mountains. Within the Douglas-fir type, mature forest makes up 79 percent of the forested areas. Because of the large component of mature Douglas-fir, severe first are a concern in these areas. The lodgepole pine forest type is primarily in the Island Park Caldera. Large areas of the lodgepole type were clearcut between 1960 and the late 1980's to salvage trees damaged or killed during a mountain pine bettle epidemic.

Purpose and Need for Action

A combination of accumulating fuels and increasing development on private lands along with existing residences under permit on the National Forest (National Forest summer homes) has led to an increase risk to human life and property from wildfire. The purpose of this project is to reduce the threat to human life and private property by reducing or removing the amount of woody material on National Forest System Lands adjacent to these private lands.

Proposed Action

The Ashton/Island Park Ranger District of the Caribou-Targhee National Forest is proposing a hazardous fuels reduction project located in the Island Park area of eastern Idaho. Implementation is expected to start in 2003 and continue through 2005. The project would create fuel breaks along the interface (boundary) between public and private lands (urban interface). These fuel breaks would reduce the risk to private lands from wildfire and provide for greater public and firefighter safety. The project includes only National Forest System Lands adjacent to private land, developed campgrounds, and those summer home areas under special use permit on the National Forest. No private or State land would be treated.

Proposed activities include:

- Thinning of small diameter noncommercial size trees
- Hand piling of thinning and other slash followed by burning
- Public firewood gathering
- Removal of fuels by private contractors
- Commercial timber sales (total volume from the project area is estimated at less than 1 million board feet with only temporary road construction)
- Prescribed burning where it is safe and at minimal risk to private property with appropriate involvement of property owners

Responsible Official

Jerry B. Reese, Forest Supervisory, Caribou-Targhee National Forest is the responsible official for this EIS.

Nature of Decision To Be Made

The Forest Supervisor will decide on whether to implement one of the alternatives for hazardous fuels reduction or defer any action at this time.

Scoping Process

Public scoping will be completed through letters, news releases, and public meetings. The meeting may be held in Idaho Falls or Island Park.

Preliminary Issues

Preliminary Issues identified are:

- Public safety
- Effects on visual quality of private property adjacent to National Forest land
- Reduction of wildlife hiding cover
- Risk to private property by burning to remove fuels
- Heritage resources
- Unauthorized structures or personal property on National Forest System lands

Comment Requested

This notice of intent initiates the scoping process which guides the development of the environmental impact statement.

Early Notice of Importance of Public Participation in Subsequent Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

(Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21)

Dated: April 18, 2002.

Jerry B. Reese,

Forest Supervisor.

[FR Doc. 02–11383 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

CARMA (Combined Array for Research in Millimeter-Wave Astronomy) Special Use Permit Authorization

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an Environmental Impact Statement and to conduct public scoping meetings.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a Special-Use Permit for a proposed project in the Inyo National Forest to operate an array of radio telescopes (antennas). The proposed project is called CARMA (Combined Array for Research in Millimeter-wave Astronomy).

The proposed CARMA array would combine two existing arrays: 6 antennas currently operated by the California Institute of Technology (Caltech) at the existing Owens Valley Radio Observatory (OVRO) site, and 9 antennas at Hat Creek in Shasta County, California, operated by the Berkeley-Illinois-Maryland Association (BIMA). BIMA is comprised of the University of California (Berkeley), the University of

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Illinois (Urbana-Champaign), and the University of Maryland (College Park). An additional 8 antennas from the University of Chicago, currently under development, are also proposed as part of the CARMA project. The CARMA consortium is a collaboration between Caltech and the BIMA consortium.

CARMA would enhance the United States' capability for research and education in millimeter-wave astronomy by using a combined array at an altitude approximately 4,000 feet higher than that at the OVRO facility. The increased altitude minimizes the adverse effects of atmospheric water vapor on astronomical observations. The proposed site for the project is an unnamed flat, which will be refered to as Juniper Flat, that is at an altitude of 7,800–7,900 feetin the Inyo Mountains, northeast from Big Pine, California. Two additional sites in the Inyo Mountains (Cedar Flat and Lower Harkless Flat) within the Inyo National Forest have also been analyzed by the proponent.

The purpose of the EIS will be to develop and evaluate a range of alternatives, including a No Action alternative and possible additional alternatives, to respond to issues identified during the scoping process. The decision on the proposed project by the Responsible Official will be in compliance with the direction in the Inyo National Forest Land and Resource Management Plans (1988), as amended by the Sierra Nevada Forest Plan Amendment, Record of Decision 2001, which provides the overall guidance for management of the area.

A joint EIS–EIR document is being prepared for compliance with the California Environmental Quality Act (CEQA), in coordination with the University of California (UC). UC will be carrying out the procedures under CEQA necessary to process the document as an EIR. Public meetings, hearings, and comment opportunities will be coordinated. For example, the scoping meeting described below will serve as the CEQA scoping meeting, and all comments submitted to the USFS contact person below will be addressed by UC in the CEQA process.

DATES: Two Public Scoping Meetings will be held to discuss the proposed action and the EIS process. On Monday June 3, 2002, a meeting will be held at the Parish Hall of Our Lady of Perpetual Help Catholic Church, 849 Home St., Bishop, California from 6:30 to 9 p.m. On Tuesday, June 4, 2002 a meeting will be held at the Mammoth Room at the Shilo Inn, 2963 Main Street, Mammoth Lakes, California from 6:30 to 9 p.m. The public is asked to submit comments on the proposed action postmarked by June 21, 2002.

ADDRESSES: Send written comments to: Colleen (Chaz) O'Brien, IDT Leader, USDA Forest Service, Inyo National Forest, 873 North Main Street, Bishop, CA 93514.

FOR FURTHER INFORMATION CONTACT: Colleen (Chaz) O'Brien, IDT Leader, Inyo National Forest, at the address listed above. The phone number is (760) 873–2490.

SUPPLEMENTARY INFORMATION:

Background

This action is proposed in response to an application submitted by Caltech. The CARMA Project has been under predevelopment review by the Forest Service since 1999. Initially, the project proponent had identified Upper Harkless Flat (UHF) as the proposed site. In response to public comments expressing concern about the UHF site and requesting that an alternative site be identified, the applicant removed the UHF site from consideration and proposed the Juniper Flat site. A special-use permit application for the Juniper Flat site was submitted in October of 2001.

The proposed site is located in Management Prescription #18 within Inyo National Forest Management Area #13 and is designated as a Multiple Resource Area. The proposed rule will be consistent with the management direction for Multiple Resource Area in the Land and Resource Management Plan for Inyo National forest. The EIS/EIR and any permit terms and conditions that may be contemplated for the Proposed Action will comprehensively address applicable standards and guidelines in the Land and Resource Management Plan.

Proposed Action

The INF is not in the business of identifying or controlling the best procedures for developing and managing research in millimeter wave astronomy. The Proposed Action that is being contemplated is whether to grant a special-use permit for the use of Forest land for the CARMA proposal, based on the National Forest plans and policies and considering the potential environmental impacts of the proposed action, other action alternatives, and a no action alternative. Depending upon the alternative selected, the Responsible official will also decide if a non-significant amendment is necessary. Preliminary analysis indicates that a non-significant amendment may be necessary to meet Visual Quality Objectives (VQO's).

The CARMA proposal consists of a millimeter-wave radio telescope array of 23 antennas of three different sizes: six 10.4 meter diameter antennas relocated from the OVRO facility; nine 6.1 meter diameter antennas relocated from the BIMA observatory at Hat Creek, CA; and, eight 3.5 meter diameter antennas from the University of Chicago.

The 23 movable antennas would be placed on the stations in various patterns depending on the research project; the eight 3.5 meter diameter antennas from the University of Chicago will remain on the central pad. All of the antennas would be relocated to the site from the OVRO facility and repositioned on the site by a road-capable special purpose transporter.

The antenna array would be positioned within a area of approximately 800 acres. The proposed project would require the disturbance and development of approximately 30.5 acres including a central complex, outlying antenna stations, site access improvements, and a repeater station. The proposed central complex includes: A 250-foot-by-250-foot concrete center pad area with 17 antenna stations; a 7,000-square-foot control building (including overnight accommodations for two astronomers); a 2,000-square-foot workshop; and a 600-kVA diesel electric-power generating facility. The proposed outlying antenna stations are comprised of 37 concrete antenna pads (each sized 20-feet-by-20-feet and 18-inches thick), interconnected by dirt roads and underground cables. Proposed site access improvement includes modification of 3.6 miles of existing dirt road. The proposed repeater station is comprised of a 20 by 40 foot site located approximately 3 miles northwest of Juniper Flat.

Scoping

Alternatives to the proposed action will be developed in response to issues identified during scoping. Issues that have been identified to date include potential effects on the following: visual quality, flora and fauna, heritage resources, geology and soils, recreation, traffic and air quality. The scoping process will include the following: identification and clarification of issues; identification of significant issues; exploration and development of additional alternatives; and identification of potential environmental effects of the Proposed Action and alternatives.

Coordination With Other Agencies

In preparation of the EIS, the Forest Service will consult, at a minimum, with the University of California (a member of the CARMA consortium, and the State of California Lead Agency under the California Environmental Quality Act—a joint EIS/EIR document will be prepared); Native American tribes (Big Pine Paiute, Bishop Paiute, Fort Independence Reservation, Lone Pine Paiute-Shoshone, and Timbisha Shoshone); the State of California Lahontan Regional Water Quality Control Board; Department of Fish and Game; US Fish and wildlife; Historic Preservation Officer; the U.S. Army Corp of Engineers; the California Department of Transportation; the Inyo County Public Works Department; the Inyo County Health & Human Services Department; and the Great Basin Unified Air Pollution Control District.

Commenting

Comments received in response to this invitation to participate in public scoping or any future solicitation for public comments on a draft EIS, including names and addresses of those who comment, will be considered part of the public record and will be available for public inspection. Additionally, pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission from the public record by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Person requesting such confidentiality should be aware that under the FOIA, confidentiality may be granted on only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality, and where the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for review in July-August, 2002. At that time, copies of the draft EIS will be distributed to interested and affected agencies, organizations, Tribes and members of the public for their review and comment. The comment period on the draft EIS will be 45 days from the date the EPA notice appears in the **Federal Register**.

The Forest Service believes that, at this early stage, it is very important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of a draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that persons interested in this proposed action participate by the close of the 45 days comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft EIS. Comments may also address the adequacy of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 is addressing these points.

The final EIS is scheduled to be available by November–December 2002. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period for the draft EIS. The Responsible Official is Jeffrey Bailey, Inyo National Forest Supervisor. He will decide whether to issue a Special-Use Permit for the project as described above and under what terms and conditions, or to meet the Purpose and Need for action through some other combination of management actions, or to defer any action at this time. His decision and rationale for the decision will be documented in the record of decision, which will be subject to Forest Service Appeal Regulations (36 CFR Part 215).

Dated: May 1, 2002.

Jeffrey E. Bailey,

Forest Supervisor.

[FR Doc. 02–11353 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Payette National Forest, ID; Upper Bear Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA Forest Service will prepare the Upper Bear Timber Sale environmental impact statement (EIS). The proposed action in its EIS is to reduce fuels within a "fuels reduction zone" (FRZ), manage forest vegetation, and manage roads. The EIS will analyze the effects of the proposed action and alternatives. The agency gives notice of the full National Environmental Policy Act (NEPA) analysis and decision making process on the proposal so interested and affected members of the public may participate and contribute to the final decision. The Payette National Forest invites written comments and suggestions on the scope of the analysis and the issues of address.

DATES: Comments must be received in writing by June 8, 2002.

ADDRESSES: Send written comments to Faye L. Krueger, Council District Ranger at P.O. Box 567, Council, Idaho, 83612.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project and scope of analysis should be directed to Alan R. Dohmen, Team Leader, at the above address, or phone at (208) 253–0100.

SUPPLEMENTARY INFORMATION: The analysis area is about 25 air miles north-northwest of Council, Idaho, in Adams County. The area can be reached by taking Forest Road #110 (Bear Creek) via Forest Roads #105 (Landore Road) and #002 (Council-Cuprum Road). The project area consists of National Forest Systems lands located in all or portions of sections 1–11, 16–18, 22–19 and 32–36, Township 5S, Range 2W, Boise Meridian. It is located entirely within the 11,000-acre Upper Bear subwatershed, and a small portion of the 9,500-acre Middle Bear subwatershed. The proposed action will be in compliance with the Payette National Forest Land and Resource Management Plan (Forest Plan of 1988), as amended, which provides overall guidance for management of this area.

Purpose and Need for Action

The purpose and need for the proposed action is to: (1) Improve timber stand growth and yield; (2) Reduce the incidence and hazard of insect and disease in timbered stands through harvest and salvage, (3) Reduce

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the risk of wildland fire to forestland, investments, adjacent private lands, and facilities, and (4) Reduce the potential of sediment delivery to Bear Creek from roads, and eliminate roads unneeded for future management. The proposal has three main objectives it would achieve. It would: (1) Reduce the risk of extreme fire behavior (crown fire) in the Upper and Middle Bear drainages. This in turn would: (a) Reduce the risk that wildfire would damage and/or destroy tree plantations in the Bear Creek drainage, thereby maintaining past investments; (b) protect structures located at the Bear Work Center; (c) provide an area that would allow firefighters to safely suppress an escaped wildfire; and (d) provide a foundation to expand future fuels reduction activities into other portions of the Upper Bear drainage. (2) Reduce overstocked timber stands and plantations through timber harvest and thinning. This in turn would: (a) Improve seral tree species health and decrease opportunities for insect and disease outbreaks; (b) improve tree growth by reducing the competition between trees for sunlight, moisture, and nutrients, (c) reforest with seral tree species, and (d) contribute to the Council District's portion of the Payette National Forest allowable sale quantity. (3) Design a transportation system that responds to human access needs while reducing impacts and improving watershed conditions for hydrologic function, soil productivity, and fisheries and wildlife habitat. This in turn would: (a) Improve the hydrological function and productivity on soils committed to roads that may no longer be needed for future management, (b) reduce current and potential sediment delivery to streams from roads, especially within Riparian Conservation Areas (RCAs), (c) improve fish passage at road crossings, (d) avoid management activities that have the potential to increase temperatures in Wildhorse River; a downstream; 303(d) listed Waterbody; (e) avoid additional cumulative impacts to the Snake River; a downstream 303(d) listed Waterbody, and (f) manage open densities to maintain the Forest Plan Elk Habitat Effectiveness (EHE) rating in Issue Reporting Area (IRA) 112, and improve the Forest Plan EHE rating in IRA 114.

Proposed Action

The Proposed Action would reduce fuels, manage forest vegetation, and manage roads. (1) Reduce Fuels—Use silvicultural treatments that use mechanical thinning and prescribed fire on 820 acres to create a "fuels reduction zone" (FRZ). Within the FRZ, thinning of trees is proposed on 643 acres and underburning on the entire 820 acre. A range of 32 to 38 trees per acre is planned to be retained in this FRZ, which would differ from that planned in other harvest units. (2) Manage Forest Vegetation—(a) Use ground-based, skyline, and helicopter yarding systems to harvest timber on appropriately 980 acres, of which 280 acres are within the FRZ. The harvest prescriptions would encompass 780 acres of reserve tree (retain 3–10 healthy seral trees per acre), 110 acres of shelterwood seed-cut (retain 10–15 healthy seral trees per acre), 90 acres of commercial thin, and an additional 680 acres of precommercial thin. Reforestation treatments would include 775 acres, of which approximately 370 acres would require plantation fencing. (b) Reduce generated fuels and/or prepare sites for planting by underburning or piling and burning of logging slash. (3) Manage Roads—(a) Construct 4.5 miles of new roads (close following project implementation), and decommission 11.9 miles of existing roads. (b) Close year-round approximately 8.5 miles of road that are currently open year-round and/or seasonally.

Responsible Official

The responsible official is the Forest Supervisor of the Payette National Forest.

Scoping Process

Public notices have placed in local and regional newspapers. A public meeting is anticipated to occur following issuance of the draft EIS. The meeting will be announced in the Payette National forest's newspaper of record, the Idaho Statesman, Boise, Idaho.

Preliminary Issues

(1) Water Quality—Prescribed fire, road construction, and timber harvest have the potential to increase erosion and sedimentation in the Upper Bear Subwatershed. Cumulative impacts from these activities also have the potential to affect beneficial uses in the 303(d) listed Water bodies downstream of the project. Increased road density reduces the geomorphic integrity of the watershed and increases the likelihood of road related erosion. (2) Fisheries—The proposed activities may increase sediment levels and affect aquatic habit for fish, particularly habitat for bull trout in the upper Bear Creek watershed. Some culverts may restrict fish passage. (3) Wildlife Habitat—Goshawks are known to nest in or around habitat similar to what is present in the project area. Prescribed fire and timer harvest activities can affect nest sites. Flammulated owls and white-headed woodpeckers are known to use old, large-diameter Ponderosa pine, and Douglas-fir habitiat, which is in short supply in the project area. Proposed activities can affect nesting and foraging areas. Historically, the project area may have provided habitat for mountain quail. Proposed activities may affect potentially limited habitat for this and other species that use forested riparian habitat. Snag habitat may be in short supply in and around previous harvests units and along roads. Sufficient snag habitat must be retained where possible. (4) Noxious Weeds—Disturbance from new road construction, timber harvest, and burning could allow noxious weeds to become established and/or spread in the project area. (5) Recreation—The public uses the Bear Creek and Council-Cuprum Roads for recreational driving during the summer and fall. The quality of this recreational experience could be affected by the removal of timer, logging activity, log truck traffic, road closures and road decommissioning, prescribed burning activities, and smoke. (6) Road Construction and Decommissioning—New road construction can allow for improved access, but may also affect other resource values such as fisheries, water quality, and wildlife habitat.

Design features for the Proposed Action will help reduce or eliminate other possible impacts (visual resource, heritage resources, water quality, soils, fisheries, wildlife, etc.).

Early Notice of Importance of Public Participation in Environmental Review

A draft environmental impact statement will be prepared for comment. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register.**

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. City of Angoon v. Hodel, 803 F.2d 1016, 1022 (9th Cir. 1986) and Wisconsin Heritages, Inc. v. Harris, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues raised by the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: May 1, 2002.

Robert S. Giles,

Acting Forest Supervisor.

[FR Doc. 02–11355 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Northwest Sacramento Provincial Advisory Committee (SAC PAC)

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Northwest Sacramento Provincial Advisory Committee (PAC) will meet on Wednesday, June 12, at Whiskeytown National Recreation Area, California. This meeting will be a field trip with discussion about water quality issues, prescribed burning and fire ecology. The field trip will begin at 9 a.m. and end at 3 p.m.

DATES: Wednesday, June 12.

LOCATION: The field trip will begin at the Whiskeytown Visitor Center at the intersection of Hwy 299 and Kennedy Memorial Dr., 7 miles East of Redding, CA.

FOR FURTHER INFORMATION CONTACT: Jackie Riley, Committee Coordinator, USDA, Shasta-Trinity National Forest, 2400 Washington Ave., Redding, CA 96001 (530) 242–2203; e-mail: *jriley01@fs.fed.us.*

SUPPLEMENTARY INFORMATION: All PAC meetings are open to the public. Interested citizens are encouraged to attend. Opportunity will be provided for public input and individuals will have the opportunity to address the Committee at that time.

Dated: April 30, 2002.

J. Sharon Heywood,

Forest Supervisor.

[FR Doc. 02–11331 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–FK–M

DEPARTMENT OF AGRICULTURE

Forest Service

Western Washington Cascades Provincial Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Meeting.

SUMMARY: The Western Washington Cascades Provincial Interagency Executive Committee Advisory Committee (Provincial Advisory Committee) will meet on Tuesday, May 21, 2002, at the Mt. Baker-Snoqualmine National Forest Headquarters, 21905 64th Avenue West, in Mountlake Terrace, WA.

The meeting will begin at 9 a.m. and continue until about 3 p.m. Agenda items to be covered include: (1) Review of the draft Finney Adaptive Management Area Plan, (2) Forest Vegetative Management, (3) Forest Monitoring and Accomplishment Reporting, and (4) an update on Forest issues. All Western Washington Cascades Provincial Advisory Committee meetings are open to the public. Interested citizens are encouraged to attend.

The Provincial Advisory Committee provided advice regarding ecosystem management for federal lands within the Western Washington Cascades Province, as well as advice and recommendations to promote better integration of forest management activities among federal and non-federal entities. The Advisory Committee is a key element of implementation of the Northwest Forest Plan.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Penny Sundblad, Province Liaison, USDA Forest Service, Mt. Baker-Snoqualmine National Forest, 810 State Route 20, Sedro Woolley, Washington 98284 (360–856–5700, Extension 321).

Dated: April 23, 2002.

John Phipps,

Acting Designated Federal Official.

[FR Doc. 02–11325 Filed 5–7–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Changes to Section 4 of the Iowa State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Iowa NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Iowa that changes must be made in the NRCS State Technical Guide specifically in Section 4, Practice Standards and Specifications, Residue Management, Seasonal (344), and Cross Wind Trap Strips (589C) to account for improved technology. These practices can be used in systems that treat highly erodible land.

DATES: Comments will be received for a 30-day period commencing with this date of publication.

FOR FURTHER INFORMATION CONTACT: Leroy Brown, State Conservationist, Natural Resources Conservation Service, Federal Building, 210 Walnut Street, 693 Federal Building, Des Moines, Iowa 50309; at (515) 284–4260 or fax (515) 284–4394.

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days the NRCS will receive comments relative to the proposed changes. Following that period a determination will be made by the NRCS regarding disposition of those comments and a final determination of change will be made.

Dated: April 23, 2002.

Leroy Brown,

State Conservationist.

[FR Doc. 02–11471 Filed 5–7–02; 8:45 am]

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DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Offsets in Military Reports

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th & Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Defense Production Act Amendments of 1992, Section 123 (Pub. L. 102558), which amended Section 309 of the Defense Production Act of 1950, requires United States firms to furnish information regarding offset agreements exceeding $5,000,000 in value associated with sales of weapon systems or defense-related items to foreign countries. The information collected on offset transactions will be used to assess the cumulative effect of offset compensation practices on U.S. trade and competitiveness, as required by statute.

II. Method of Collection

Annual report.

III. Data

OMB Number: 0694–0084.
Form Number: None.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 100.
Estimated Time Per Response: 10 hours per response.
Estimated Total Annual Burden Hours: 270.
Estimated Total Annual Cost: No start-up costs or capital expenditures.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11341 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Procedure To Initiate an Investigation Under the Trade Expansion Act of 1962

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

Upon request, the Department of Commerce shall initiate an investigation to determine the effects of imports of certain commodities on the national security, and will make the findings known to the President for possible adjustments to imports through tariffs. The findings are made publicly available and are reported to Congress. The purpose of this collection of information is to account for the public burden associated with submitting such a request from any interested party, including other government departments or by the Secretary of Commerce.

II. Method of Collection

In written form.

III. Data

A request or application shall describe how the quantity, availability, character and uses of a particular imported article, or other circumstances related to its import affect the national security.
OMB Number: N/A.
Form Number: N/A.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Businesses, or other for-profit institutions and the Federal Government.
Estimated Number of Respondents: 1.
Estimated Time Per Response: 4.0 hours.
Estimated Total Annual Burden Hours: 3,000 hours.
Estimated Total Annual Cost: $60 for respondents—no equipment or other materials will need to be purchased to comply with the requirement.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11342 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–JT–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–846]

Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has found no evidence that there were entries, exports, or sales of subject merchandise by respondent Kawasaki Steel Corporation (Kawasaki) during the current period of review (POR). Consequently, in accordance with 19 CFR 351.213(d)(3), the Department is rescinding this administrative review.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1395.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

Background

On June 29, 1999, the Department published in the Federal Register the antidumping duty order on certain hot-rolled flat-rolled carbon-quality steel flat products from Japan. See Antidumping Duty Order; Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan, 64 FR 34778. In response to a timely request from petitioners, Bethlehem Steel Corporation, LTV Steel Company, Inc., and United States Steel Corporation, previously known as U.S. Steel Group, a unit of USX Corporation, filed in accordance with19 CFR 351.213(b), the Department initiated an administrative review of this antidumping duty order. See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part, (66 FR 38252, July 23, 2001). This review covers one manufacturer/exporter of the subject merchandise, Kawasaki, for the period of June 1, 2000 through May 31, 2001.

On September 4, 2001, Kawasaki submitted a letter to the Department stating that it did not have any reviewable or reportable U.S. sales, entries, or shipments of subject merchandise during the POR. The Department reviewed data on entries under the order during the POR from the U.S. Customs Service. Our review of this data revealed no imports of the subject merchandise produced and/or exported by Kawasaki.

Pursuant to our regulations, the Department may rescind an administrative review, "if the Secretary concludes that, during the period covered by the review, there were no entries, exports, or sales of the subject merchandise, as the case may be." 19 CFR § 351.213(d)(3). On April 18, 2002, we faxed all parties a memorandum stating our intent to rescind this review because there are no reviewable sales, shipments or entries. See Memorandum from Doug Campau to The File: Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Flat Products from Japan: Notification to Interested Parties of Intent to Rescind, dated April 18, 2002. We have not received any comments. Because we have found no evidence that there were entries, exports, or sales of the subject merchandise by Kawasaki during the current POR, the Department is rescinding this administrative review in accordance with 19 CFR § 351.213(d)(3). The Department will issue appropriate assessment instructions to the U.S. Customs Service.

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR § 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 1, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11466 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[A–201–827]

Certain Large Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Mexico: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig or Brian Ledgerwood at (202) 482–4161 or (202) 482–3836, Office of AD/CVD Enforcement VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Ave, NW, Washington, DC 20230.

Time Limits

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department of Commerce (the Department) to issue the preliminary results of a review within 245 days after the last day of the anniversary month of an order or finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within that time period, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of the publication of the preliminary results.

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Background

On October 1, 2001, the Department published in the **Federal Register** the notice of initiation of this antidumping duty administrative review with respect to certain large diameter carbon and alloy seamless standard, line, and pressure pipe, covering the period February 4, 2000 through July 31, 2001 (66 FR 49924). The preliminary results are due no later than May 3, 2002.

Extension of Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit. Therefore, we are extending the time limit for completion of the preliminary results until no later than June 3, 2002. *See* Decision Memorandum from Melissa Skinner to Bernard Carreau, dated May 2, 2002, which is on file in the Central Records Unit, B–099 of the main Commerce Building. We intend to issue the final results no later than 120 days after the publication of the notice of preliminary results of this review.

This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: May 2, 2002.

Bernard T. Carreau,

Deputy Assistant Secretary for Import Administration.

[FR Doc. 02–11468 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–485–805]

Certain Small Diameter Carbon and Alloy Seamless Standard, Line and Pressure Pipe from Romania: Extension of Preliminary Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Riker at (202) 482–0186, Tisha Loeper-Viti at (202) 482–7425, or Martin Claessens at (202) 482–5451, Office of AD/CVD Enforcement 5, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Time Limits:

Statutory Time Limits

Section 751(a)(3)(A) of the Tariff Act of 1930, as amended (the Act), requires the Department to complete the preliminary results within 245 days after the last day of the anniversary month of an order/finding for which a review is requested and the final results within 120 days after the date on which the preliminary results are published. However, if it is not practicable to complete the review within these time periods, section 751(a)(3)(A) of the Act allows the Department to extend the time limit for the preliminary results to a maximum of 365 days after the last day of the anniversary month of an order/finding for which a review is requested and for the final results to 180 days (or 300 days if the Department does not extend the time limit for the preliminary results) from the date of publication of the preliminary results.

Background

On October 1, 2001, the Department of Commerce (the Department) published a notice of initiation of administrative review of the antidumping duty order on certain small diameter carbon and alloy seamless standard, line and pressure pipe from Romania, covering the period February 4, 2000, through July 31, 2001 (66 FR 49924). The preliminary results are currently due no later than May 3, 2002.

Extension of Time Limit for Preliminary Results of Review

We determine that it is not practicable to complete the preliminary results of this review within the original time limit for the reasons stated in our memorandum from Gary Taverman to Bernard Carreau, dated April 30, 2002, which is on file in the Central Records Unit, Room B–099 of the main Commerce building. Therefore, the Department is extending the time limit for completion of the preliminary results until no later than May 24, 2002. We intend to issue the final results no later than 120 days after publication of the preliminary results notice.This extension is in accordance with section 751(a)(3)(A) of the Act.

Dated: April 30, 2002.

Bernard Carreau,

Deputy Assistant Secretary for for AD/CVD Enforcement II.

[FR Doc. 02–11465 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–122–815]

Pure Magnesium and Alloy Magnesium from Canada: Preliminary Results and Partial Rescission of Countervailing Duty Administrative Reviews

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Reviews.

SUMMARY: The Department of Commerce is conducting administrative reviews of the countervailing duty orders on pure magnesium and alloy magnesium from Canada for the period January 1 through December 31, 2000. We have preliminarily determined that certain producers/exporters received net subsidies during the period of review. If the final results remain the same as these preliminary results, we will instruct the Customs Service to assess countervailing duties as detailed in the Preliminary Results of Reviews section of this notice. Based on information provided by Magnola Metallurgy Inc., we are rescinding the review with respect to this company.

Interested parties are invited to comment on these preliminary results (see the Public Comment section of this notice).

EFFECTIVE DATE: May 8, 2002.

FOR FURTHER INFORMATION CONTACT: Sally Hastings or Craig Matney, AD/CVD Enforcement, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–3464 or (202) 482–1778, respectively.

SUPPLEMENTARY INFORMATION:

Case History

On August 31, 1992, the Department of Commerce ("the Department") published in the **Federal Register** the countervailing duty orders on pure magnesium and alloy magnesium from Canada (57 FR 39392). The Department published a notice of "Opportunity to Request Administrative Review" of these countervailing duty orders (66 FR 39729) on August 1, 2001. We received a timely request for review of Norsk Hydro Canada, Inc. ("NHCI") and Magnola Metallurgy Inc. ("Magnola") from the petitioner, Magnesium Corporation of America. We initiated these reviews for calendar year 2000 on October 1, 2001 (66 FR 49924).

On October 16, 2001, we issued countervailing duty questionnaires to NHCI, Magnola, the Government of Qu'ebec ("GOQ"), and the Government of Canada ("GOC"). We received questionnaire responses from the GOQ and GOC on November 26, 2001, and from NHCI on December 10, 2001. A supplemental questionnaire was issued to NHCI on April 3, 2002, and NHCI submitted its supplemental questionnaire response on April 16, 2002.

Partial Rescission

We received letters from Magnola on November 8 and 9, 2001. Based on information presented by Magnola, on November 16, 2001, the Department notified Magnola of its intent to rescind these administrative reviews with respect to Magnola and its affiliates pursuant to 19 CFR 351.213(d). (See Letter from Susan Kuhbach to Elliott Feldman dated November 16, 2001, a public version of which is available in the Public Files of the Central Records Unit, B–099 of the main Commerce building.) Accordingly, these reviews now cover NHCI, a producer/exporter of the subject merchandise, and 16 subsidy programs.

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of section 751(a) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA"), effective January 1, 1995 ("the Act"). In addition, unless otherwise indicated, all citations to the Department's regulations are to 19 CFR Part 351 (2001).

Scope of the Reviews

The products covered by these reviews are shipments of pure and alloy magnesium from Canada. Pure magnesium contains at least 99.8 percent magnesium by weight and is sold in various slab and ingot forms and sizes. Magnesium alloys contain less than 99.8 percent magnesium by weight with magnesium being the largest metallic element in the alloy by weight, and are sold in various ingot and billet forms and sizes.

The pure and alloy magnesium subject to review is currently classifiable under items 8104.11.0000 and 8104.19.0000, respectively, of the *Harmonized Tariff Schedule of the United States* ("HTSUS"). Although the HTSUS subheadings are provided for convenience and customs purposes, the written descriptions of the merchandise subject to the orders are dispositive.

Secondary and granular magnesium are not included in the scope of these orders. Our reasons for excluding granular magnesium are summarized in *Preliminary Determination of Sales at Less Than Fair Value: Pure and Alloy Magnesium From Canada*, 57 FR 6094 (February 20, 1992).

Period of Review

The period of review ("POR") for which we are measuring subsidies is from January 1 through December 31, 2000.

Subsidies Valuation Information

Discount rate: As noted below, the Department preliminarily finds that NHCI benefitted from one countervailable subsidy program during the POR: Article 7 grants from the Québec Industrial Development Corporation. As in the investigations and previous administrative reviews of this case, we have used the company's cost of long-term, fixed-rate debt in the year in which this grant was approved as the discount rate for purposes of calculating the benefit pertaining to the POR.

Allocation period: In the investigations and previous administrative reviews of this case, the Department used as the allocation period for non-recurring subsidies, the average useful life ("AUL") of renewable physical assets in the magnesium industry as recorded in the Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS tables"), *i.e.*, 14 years. Pursuant to section 351.524(d)(2) of the countervailing duty regulations, the Department will use the AUL in the IRS tables as the allocation period unless a party can show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry. If a party can show that either of these time periods differs from the AUL in the IRS tables by one year or more, the Department will use the company-specific AUL or the country-wide AUL for the industry as the allocation period.

Neither NHCI nor the petitioner has contested using the AUL reported for the magnesium industry in the IRS tables. We are, therefore, continuing to allocate non-recurring benefits over 14 years.

Analysis of Programs

I. *Program Preliminarily Determined to Confer Countervailable Subsidies*

A. *Article 7 Grant from the Québec Industrial Development Corporation ("SDI")*

SDI (*Société de Développement Industriel du Québec*) administers development programs on behalf of the GOQ. SDI provides assistance under Article 7 of the SDI Act in the form of loans, loan guarantees, grants, assumptions of costs associated with loans, and equity investments. This assistance involves projects capable of having a major impact upon the economy of Québec. Article 7 assistance greater than 2.5 million dollars must be approved by the Council of Ministers and assistance over 5 million dollars becomes a separate budget item under Article 7. Assistance provided in such amounts must be of "special economic importance and value to the province." (*See Final Affirmative Countervailing Duty Determinations: Pure Magnesium and Alloy Magnesium from Canada*, 57 FR 30946, 30948 (July 13, 1992) ("*Magnesium Investigation*").)

In 1988, NHCI was awarded a grant under Article 7 to cover a large percentage of the cost of certain environmental protection equipment. In the *Magnesium Investigation*, the Department determined that NHCI received a disproportionately large share of assistance under Article 7. On this basis, we determined that the Article 7 grant was limited to a specific enterprise or industry, or group of enterprises or industries and, therefore, countervailable. In these reviews, neither the GOQ nor NHCI has provided new information which would warrant reconsideration of this determination.

In the *Magnesium Investigation*, the Department found that the Article 7 assistance received by NHCI constituted a non-recurring grant because it represented a one-time provision of funds. In the *Preliminary Results of First Countervailing Duty Administrative Reviews: Pure Magnesium and Alloy Magnesium From Canada*, 61 FR 11186, 11187 (March 19, 1996), we found this determination to be consistent with the principles enunciated in the Allocation section of the *General Issues Appendix* ("GIA") appended to the *Final Countervailing Duty Determination; Certain Steel Products from Austria*, 58 FR 37225, 37226 (July 9, 1993). In the current review, no new information has been placed on the record that would cause us to depart from this treatment. Therefore, in accordance with section 351.524(b)(2) of our regulations, we have continued to allocate the benefit of this grant over time. We used our standard grant methodology as described in section 351.524(d) of the regulations to calculate the countervailable subsidy. We divided the benefit attributable to the POR by NHCI's total sales of Canadian-

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manufactured products in the POR. On this basis, we preliminarily determine the countervailable subsidy from the Article 7 SDI grant to be 1.59 percent *ad valorem* for NHCI.

II. *Programs Preliminarily Determined To Be Not Used*

We examined the following programs and preliminarily determine that NHCI did not apply for or receive benefits under these programs during the POR:

- St. Lawrence River Environment Technology Development Program
- Program for Export Market Development
- The Export Development Corporation
- Canada-Québec Subsidiary Agreement on the Economic Development of the Regions of Québec
- Opportunities to Stimulate Technology Programs
- Development Assistance Program
- Industrial Feasibility Study Assistance Program
- Export Promotion Assistance Program
- Creation of Scientific Jobs in Industries
- Business Investment Assistance Program
- Business Financing Program
- Research and Innovation Activities Program
- Export Assistance Program
- Energy Technologies Development Program
- Transportation Research and Development Assistance Program

III. *Program From Which NHCI No Longer Receives a Countervailable Benefit*

- Exemption from Payment of Water Bills

In the administrative reviews covering calendar year 1997 the Department found that NHCI's benefits from this program had been exhausted and NHCI's participation in this program had ended. We also found that no residual benefits were being provided or received and no substitute program had been implemented. In our final results, we stated that we, therefore, did not intend to continue to examine this program in the future (*see Pure Magnesium and Alloy Magnesium from Canada: Final Results of Countervailing Duty Administrative Reviews*, 64 FR 48805, 48806 (September 8, 1999)). Consistent with this determination and in the absence of any new allegation, we did not examine this program in these reviews.

Preliminary Results of Reviews

In accordance with 19 CFR 351.221(b)(4)(i), we calculated a subsidy rate for NHCI, the sole producer/exporter subject to these administrative reviews. For the period January 1 through December 31, 2000, we preliminarily determine the net subsidy rate for NHCI to be 1.59 percent ad valorem. We will disclose our calculations to the interested parties upon request pursuant to section 351.224(b) of the regulations.

If the final results of these reviews remain the same as these preliminary results, the Department intends to instruct the Customs Service ("Customs") to assess countervailing duties at the net subsidy rate. The Department also intends to instruct Customs to collect cash deposits of estimated countervailing duties at the rate of 1.59 percent on the f.o.b. value of all shipments of the subject merchandise from NHCI entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of these administrative reviews.

Because the URAA replaced the general rule in favor of a country-wide rate with a general rule in favor of individual rates for investigated and reviewed companies, the procedures for establishing countervailing duty rates, including those for non-reviewed companies, are now essentially the same as those in antidumping cases, except as provided for in section 777A(e)(2)(B) of the Act. The requested reviews will normally cover only those companies specifically named. *See* 19 CFR 351.213(b)(2). Pursuant to 19 CFR 351.212(c), for all companies for which a review was *not* requested, duties must be assessed at the cash deposit rate, and cash deposits must continue to be collected, at the rate previously ordered. As such, the countervailing duty cash deposit rate applicable to a company can no longer change, except pursuant to a request for a review of that company. *See Federal-Mogul Corporation and The Torrington Company v. United States*, 822 F. Supp. 782 (CIT 1993) and *Floral Trade Council v. United States*, 822 F. Supp. 766 (CIT 1993) (interpreting 19 CFR 353.22(e), the antidumping regulation on automatic assessment, which is identical to 19 CFR 355.22(g), the predecessor to 19 CFR 351.212(c)). Therefore, the cash deposit rates for all companies except the company covered by these reviews, will be unchanged by the results of these reviews.

We will instruct Customs to continue to collect cash deposits for non-reviewed companies, (except Timminco Limited which was excluded from the orders during the investigations) at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rate that will be applied to non-reviewed companies covered by these orders is that established in *Pure and Alloy Magnesium From Canada; Final Results of the Second (1993) Countervailing Duty Administrative Reviews*, 62 FR 48607 (September 16, 1997) or the company-specific rate published in the most recent final results of an administrative review in which a company participated. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested. In addition, for the period January 1 through December 31, 2000, the assessment rates applicable to all non-reviewed companies covered by these orders are the cash deposit rates in effect at the time of entry, except for Timminco Limited which was excluded from the orders in the original investigations.

Public Comment

Interested parties may request a hearing within 30 days of the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs (*see* below). Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, limited to issues raised in case briefs, may be filed no later than five days after the date of filing the case briefs. Parties who submit briefs in these proceedings should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

The Department will publish a notice of the final results of these administrative reviews within 120 days from the publication of these preliminary results. These preliminary results are published pursuant to sections 703(f) and 777(i) of the Act.

Dated: May 1, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11467 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free-Trade Agreement, Article 1904 NAFTA Panel Reviews; Request for Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of first request for panel review

SUMMARY: On May 1, 2002, Veg Gro Sales, Inc. (a/k/a K & M Produce Distributors Inc.); Amco Farms, Inc.; Southpoint Produce (1977) Ltd.; and all Ontario companies subject to the "all others" rate (collectively referred to as the "Ontario Respondents"), filed a First Request for Panel Review with the United States Section of the NAFTA Secretariat pursuant to Article 1904 of the North American Free Trade Agreement. Panel review was requested of the Amended Final Results of the Final Determination of Sales at Less Than Fair Value respecting Greenhouse Tomatoes From Canada made by the United States International Trade Administration. This determination was published in the **Federal Register**, (67 Fed. Reg. 15528) on April 2, 2002: The NAFTA Secretariat has assigned Case Number USA-CDA–2002–1904–06 to this request.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686).

A first Request for Panel Review was filed with the United States Section of the NAFTA Secretariat, pursuant to Article 1904 of the Agreement, on May 1, 2002, requesting panel review of the Amended Final Determination described above.

The Rules provide that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is May 31, 2002);

(b) A Party, investigating authority or interested person that does not file a Complaint but that intends to appear in support of any reviewable portion of the final determination may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is June 17, 2002); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: May 2, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11423 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–U

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–98–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 30, 2002. A panel has been appointed to this panel review and consented to this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11424 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–99–1904–05).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. A panel has been appointed to this panel review and has granted this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

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SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11425 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–00–1904–04).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. A panel has been appointed to this panel review and has consented to this motion. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

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Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11426 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

International Trade Administration

North American Free Trade Agreement (NAFTA), Article 1904 Binational Panel Reviews: Notice of Termination of Panel Review

AGENCY: NAFTA Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of Consent Motion to Terminate the Panel Review of the final antidumping duty administrative review of the dumping order made by the International Trade Administration, respecting porcelain-on-steel cookware from Mexico (Secretariat File No. USA–MEX–01–1904–02).

SUMMARY: Pursuant to the Notice of Consent Motion to Terminate the Panel Review, the panel review is terminated as of April 29, 2002. No panel has been appointed to this panel review. Pursuant to Rule 71(2) of the *Rules of Procedure for Article 1904 Binational Panel Review*, this panel review is terminated.

FOR FURTHER INFORMATION CONTACT: Caratina L. Alston, United States Secretary, NAFTA Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the North American Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from a NAFTA country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1994, the Government of the United States, the Government of Canada and the Government of Mexico established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the **Federal Register** on February 23, 1994 (59 FR 8686). The panel review in this matter was requested and terminated pursuant to these Rules.

Dated: May 3, 2002.

Caratina L. Alston,

United States Secretary, NAFTA Secretariat.

[FR Doc. 02–11427 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–GT–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102B]

Gulf of Mexico Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Gulf of Mexico Fishery Management Council will convene a public meeting for a stakeholders workshop.

DATES: A stakeholders workshop on bioeconomic modeling will be held beginning at 8:30 a.m. on Wednesday, May 22, 2002, and will conclude at 4 p.m. on Friday, May 24, 2002.

ADDRESSES: The meeting will be held at the Tampa Airport Hilton Hotel, 2225 Lois Avenue, Tampa, FL 33607; telephone 813–877–6688.

FOR FURTHER INFORMATION CONTACT: Antonio B. Lamberte, Economist, Gulf of Mexico Fishery Management Council, 813–228–2815.

Council address: Gulf of Mexico Fishery Management Council, 3018 U.S. Highway 301 North, Suite 1000, Tampa, FL 33619.

SUPPLEMENTARY INFORMATION: A stakeholders workshop on bioeconomic modeling will be convened to address the economic impacts of regulations proposed for red grouper under Secretarial Amendment 1 to the Reef Fish Fishery Management Plan. A bioeconomic modeling group composed of some members of the Socioeconomic Panel (SEP), a member of the Reef Fish Stock Assessment Panel, and NMFS economists will lead the workshop. The modeling group will be assisted by NMFS stock assessment experts on the biological portion of the model. Dr. Walter Keithly, a SEP member, will act as the moderator for the workshop.

The main goal of the workshop is to adapt a bioeconomic model developed by Dr. Lee Anderson to the red grouper fishery in the Gulf. The public is strongly encouraged to attend and assist the modeling group in assessing the reasonableness of various parameters that would be used in the bioeconomic model. It should be understood by the attending public that while their active participation in the discussion is encouraged, the workshop is not a public hearing on the red grouper Secretarial amendment. A copy of the agenda can be obtained by calling 813–228–2815.

Upon successful adaptation of Dr. Anderson's bioeconomic model to the Gulf red grouper fishery, the SEP will employ the model to address the economic implications of various measures proposed for the red grouper Secretarial amendment. The SEP will meet on June 12-14, 2002, to evaluate the results of the model and prepare a report for review by the Reef Fish Advisory Panel and the Standing Scientific and Statistical Committee. The SEP report and its various reviews will be presented to the Council at their July 8-12, 2002, meeting when they will make final decisions on the red grouper Secretarial amendment.

Although other non-emergency issues not on the agendas may come before the workgroup for discussion, in accordance with the Magnuson-Stevens Fishery Conservation and Management Act, those issues may not be the subject of formal action during these meetings. Actions of the workgroup will be restricted to those issues specifically identified in the agendas and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take action to address the emergency.

Special Accommodations

The meeting is open to the public and is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to the Council office by May 15, 2002.

Dated: May 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11463 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002B]

Stock Assessment of Small Coastal Sharks in the U.S. Atlantic and Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: NMFS announces the availability of a stock assessment report on small coastal sharks (SCS) in the Atlantic and Gulf of Mexico, prepared by the NMFS Southeast Fisheries Science Center.

ADDRESSES: Written requests for copies of the report should be sent to Margo Schulze-Haugen, Highly Migratory Species Management Division (F/SF1), National Marine Fisheries Service (NMFS), 1315 East-West Highway, Silver Spring, MD 20910, or may be sent via facsimile (fax) to 301–713–1917.

FOR FURTHER INFORMATION CONTACT: Margo Schulze-Haugen or Karyl Brewster-Geisz, (301) 713–2347; fax (301) 713–1917.

SUPPLEMENTARY INFORMATION: Several species of SCS are caught in directed fisheries and as bycatch in the southeastern region of the United States. This management group presently includes the Atlantic sharpnose, bonnethead, blacknose, and finetooth sharks. The previous stock assessment of the SCS complex was conducted over a decade ago and the ensuing management plan classified this group as being fully utilized. A substantial amount of information has become available since then, including biological data, improved fisheries statistics, and bycatch estimates from the shrimp trawl fishery. Several new fishery-independent and fishery-dependent catch rate series have become available and previously developed time series have been extended. The report uses this information to assess the status of SCS stocks in the southeastern U.S. region.

The final version of the report is now available on the NMFS website (*http://www.nmfs.noaa.gov/sfa/hmspg.html*). Hard copies of the document are available upon request (see **ADDRESSES**).

Authority: 16 U.S.C. 971 *et seq.* and 1801 *et seq.*

Dated: May 2, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11464 Filed 5–7–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

In the Matter of DAISY MANUFACTURING COMPANY, Inc; d/b/a Daisy Outdoor Products, 400 West Stribling Drive, Rogers, AR 72756; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATES: This notice announces a prehearing conference to be held in the matter of Daisy Manufacturing Company, Inc. on May 15, 2002 at 10 a.m.

ADDRESSES: The prehearing conference will be in hearing room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in an administrative proceeding under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064 and section 15 of the Federal Hazardous Substances

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Act ("FHSA"), 15 U.S.C. 1274, captioned CPSC Docket No. 02–2, In the Matter of DAISY MANUFACTURING COMPANY, Inc. doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding this first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred to the Code of Regulations citation listed above for identification of the issues to be raised at the conference and is advised that the date, time and place of the hearing also will be established at the conference.

Substantively, the issues being litigated in this proceeding are described by the Presiding Officer to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged with a "virtual magazine," or fail to feed into the firing chamber, with the consequence that one may fire or shake the gun without receiving any visual or audible indication that it is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena mean that the gun is "defective" within the meaning of Section 15 of the CPSA, 15 U.S.C. 2064 and Section 15 of the FHSA, 15 U.S.C. 1274. The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a "defect" under the CPSA and the FHSA and presents a "substantial product hazard," creating a substantial risk of injury to consumers, within the meaning of Section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(2), and presents a substantial risk of injury to children under Sections 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should be mindful that these are allegations only and the CPSC bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to Section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–11328 Filed 5–7–02; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–C0005]

Golden Gift, L.L.C., a Limited Liability Corporation Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20. Published below is a provisionally-accepted Settlement Agreement with Golden Gift, L.L.C., a limited liability corporation containing a civil penalty of $125,000.

DATES: Any interested person may ask the Commission not to accept his agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by May 23, 2002.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 02–C0005 Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Dennis C. Kacoyanis, Trial Attorney, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0980, 1346.

SUPPLEMENTARY INFORMATION: The text of the Agreement and Order appears below.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary.

In the Matter of Golden Gift, L.L.C., a Limited Liability Corporation; Settlement Agreement and Order

1. Golden Gift, L.L.C. (hereinafter, "Golden Gift" or "Respondent"), a limited liability corporation, enters into this Settlement Agreement and Order (hereinafter, "Settlement Agreement") or "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry to the attached Order incorporated by reference herein. The purpose of the Settlement Agreement is to settle the staff's allegations that Golden Gift knowingly violated sections 4a) and (c) of the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1263(a) and (c).

I. The Parties

2. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States government, established pursuant to section 4 of the Consumer Product Safety Act (CPSA), 15 U.S.C. 2053.

3. Golden Gift is a limited liability corporation organized and existing under the laws of the State of California. Golden Gift's address is 2944 East 44th Street, Vernon, CA 90058. Golden Gift is an importer and wholesaler of toys.

II. Allegations of the Staff

A. Toys Intended for Children Under Three Years Old

4. On eight occasions between June 15, 1999, and September 6, 2000, Golden Gift introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, eight (8) kinds of toys (92,960 retail units) intended for use by children under three years old. These toys are identified and described as follows:

Sample No.	Product	Entry date	Exporter	Quantity
99–860–5381	Cartoon Car	06/15/99	Golden Bridge	3,200
99–860–5382	School Bus	06/15/99	Golden Bridge	960
99–860–5383	Toy Tricycle	06/15/99	Golden Bridge	1,200
99–860–5990	Animal Train Piano	09/12/99	Golden Bridge	1,200
99–860–6431	Toy Phone	07/22/99	Golden Bridge	3,600
00–860–6538	Shaking Drum Window	02/23/00	Topwell	18,000
00–860–6540	Toy Bell	02/23/00	Topwell	28,800

Sample No.	Product	Entry date	Exporter	Quantity
00–860–6543	Toy Bell	03/02/00	Topwell	28,800
00–860–6668	Fruit Telephone	09/06/00	Longbao	7,200

5. The toys identified in paragraph 4 above are intended for children under three years old and are subject to the Commission's Small Parts Regulation, 16 CFR part 1501.

6. The toys identified in paragraph 4 above failed to comply with the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and .52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the toys fit completely within the small parts test cylinder, and set forth in 16 CFR 1501.4.

7. Because the separated parts fit completely within the test cylinder as described in paragraph 6 above, each of the toys identified in paragraph 4 above presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration, and/or ingestion of small parts).

8. Each of the toys identified in paragraph 4 above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph 4 above is a "banned hazardous substance" pursuant to section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) and 16 CFR 1500.18(a)(9) because it is intended for use by children under three years of age and bears or contains a hazardous substance as described in paragraph 8 above; and because it presents a mechanical hazard as described in paragraph 7 above.

10. Golden Gift knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the banned hazardous toys, identified in paragraph 4 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. §§ 1263(a) and (c).

B. Toys Intended for Use by Children Who Are at Least Three Years Old But Less Than Six Years Old

11. On three occasions between August 31, 1999 and March 2, 2000, Golden Gift introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, three (3) kinds of toys (588,020 retail units) intended for use by children who are at least three years old but less than six years old. These toys are identified and described as follows:

Sample No.	Product	Entry date	Exporter	Quantity
99–860–6470	Marbles	08/31/99	Golden Bridge	7,220
00–860–6539	27 mm Ball	02/23/00	Topwell	268,800
00–860–6541	38 mm Ball	02/23/00	Topwell	21,600
00–860–6542	27 mm Ball	03/02/00	Topwell	268,800
00–860–6544	38 mm Ball	03/02/00	Topwell	21,600

12. The toys identified in paragraph 11 above are subject to, but failed to comply with the Labeling Requirements for Certain Toys and Games under sections 24(b)(2)(B) and (b)(2)(C) of the FHSA, 15 U.S.C. 1278(b)(2)(B) and (b)(3)(B) and 16 CFR 1500.19(b)(3)(i) and (b)(4)(i) in that the toys did not bear the required cautionary label.

13. Because they lacked the required labeling, the toys identified in paragraph 11 above are "misbranded hazardous substances" pursuant to sections 2(p)(1)(D) and 24(d) of the FHSA, 15 U.S.C. 1261(p)(1)(D) and 24(d) and 16 CFR §§ 1500.19(b)(3)(i) and (b)(4)(i).

14. Golden Gift knowingly introduced or caused the introduction into interstate commerce; and received in interstate commerce and delivered or proffered delivery thereof for pay or otherwise, the misbranded hazardous toys identified in paragraph 11 above, in violation of sections 4(a) and (c) of the FHSA, 15 U.S.C. §§ 1263(a) and (c).

III. Response of Golden Gift

15. Golden Gift denies the allegations of the staff set forth in paragraphs 4 through 14 above.

IV. Agreement of the Parties

16. The Consumer Product Safety Commission has jurisdiction over Golden Gift and the subject matter of this Settlement Agreement and Order under the Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.* and the Federal Hazardous Substances Act (FHSA), 15 U.S.C. 1261 *et seq.*

17. This Agreement is entered into for settlement purposes only and does not constitute an admission by Golden Gift or a determination by the Commission that Golden Gift knowingly violated the FHSA.

18. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20(e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed to be finally accepted on the 16th day after the date it is published in the **Federal Register.**

19. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Golden Gift knowingly, voluntarily, and completely waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Golden Gift failed to comply with the FHSA as aforesaid, (4) to a statement of findings of fact and conclusions of law, and (5) to any claims under the Equal Access to Justice Act.

20. In settlement of the staff's allegations, Golden Gift agrees to pay a $125,000.00 civil penalty as set forth in the attached Order incorporated herein by reference.

21. The Commission may publicize the terms of this Settlement Agreement and Order.

22. Upon final acceptance by the Commission of this Settlement Agreement and Order, the Commission shall issue the attached Order.

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23. A violation of the attached Order shall subject Golden Gift to appropriate legal action.

24. Agreements, understandings, representations, or interpretations made outside this Settlement Agreement and Order may not be used to vary or contradict its terms.

25. The provisions of this Settlement Agreement and Order shall apply to, and be binding upon, Golden Gift and each of its shareholders, officers, directors, employees, agents, successors, assigns, and representatives, directly or through any corporation, subsidiary, division, or other business entity, or through any agency, device, or instrumentality.

Respondent Golden Gift, L.L.C.

Dated: March 22, 2002.

Isaac Alchalel

Owner, Golden Gate, L.L.C., 2944 East 44th Street, Vernon, CA 90058.

Commission Staff

Alan H. Schoem,

Assistant Executive Director, Consumer Product Safety Commission, Office of Compliance, Washington, DC 20207–001.

Eric L. Stone,

Director, Legal Division, Office of Compliance.

Dennis C. Kacoyanis,

Legal Division, Office of Compliance.

Order

Upon consideration of the Settlement Agreement entered into between Respondent Golden Gift, L.L.C. (hereinafter, "Golden Gate" or "Respondent"), a limited liability corporation, and the staff of the Consumer Product Safety Commission having jurisdiction over the subject matter and Golden Gift; and it appearing that the Settlement Agreement and Order is in the public interest, *it is*

Ordered, that the Settlement Agreement be and hereby is accepted, and *it is*

further ordered, that upon final acceptance of the Settlement Agreement and Order, Respondent Golden Gift, L.L.C. shall pay to the United States Treasury a civil penalty in the amount of one hundred twenty-five thousand and 00/100 dollars ($125,000.00) in three (3) payments. The first payment of forty-two thousand and 00/100 dollars ($42,000.00) shall be paid within twenty (20) days after service of the Final Order of the Commission (hereinafter, "anniversary date"). The second payment of forty-two thousand and 00/100 dollars ($42,000.00) shall be paid within one (1) year of the anniversary date. The third payment of forty-one thousand and 00/100 dollars ($41,000.00) shall be paid within two (2) years of the anniversary date. Upon the failure of Respondent Golden Gift, L.L.C. to make a payment or on the making of a late payment by Respondent Golden Gift, L.L.C. (a) the entire amount of the civil penalty shall be due and payable, and (b) interest on the outstanding balance shall accrue and be paid at the federal legal rate of interest under the provisions of 28 U.S.C. § 1961(a) and (c).

Provisionally accepted and provisional Order issued on the 2nd day of May, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

Finally accepted and final Order issued on the _day of__,

By order of the Commission.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–11329 Filed 5–7–02; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 2, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.

Title: NCES Quick Response Information System.

Frequency: On Occasion.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions; Individuals or household; Businesses or other for-profit.

Reporting and Recordkeeping Hour Burden:

Responses:10,518.

Burden Hours: 7,889.

Abstract: The Quick Response Information System (QRIS) is comprised of two types of surveys, one oriented towards elementary and secondary school and library issues, the Fast Response Survey System (FRSS) and the second intended to address issues in postsecondary education, the Postsecondary Education Quick Information System (PEQIS). All the surveys conducted the QRIS are required to inform current policy issues for which there are no other timely and/or appropriate data available. In recent years, surveys have been conducted on topics as diverse as distance education in postsecondary education, services for students with disabilities in postsecondary education, advanced telecommunications in elementary and secondary schools, summer programs for migrant students, and teacher quality.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 2029. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11323 Filed 5–7–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.365C]

Office of English Language Acquisition; Native American and Alaska Native Children in School Program, Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), this notice contains all of the information, application forms, and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of the program is to provide grants that support language instruction educational programs for limited English proficient children from Native American, Alaska Native, Native Hawaiian and Native American Pacific Islander backgrounds. Projects that are designed for children who are learning and studying Native American languages shall have, as a project outcome, increases in English proficiency and a second language.

Eligible Applicants: The following entities, which operate elementary, secondary, and postsecondary schools primarily for Native American children (including Alaska Native children), are eligible applicants under this program: Indian tribes; tribally sanctioned educational authorities; Native Hawaiian or Native American Pacific Islander native language educational organizations; elementary schools or secondary schools that are operated or funded by the Bureau of Indian Affairs (BIA), or a consortium of such schools; elementary schools or secondary schools operated under a contract with or grant from the BIA in consortium with another such school or a tribal or community organization; and elementary schools or secondary schools operated by the BIA and an institution of higher education, in consortium with elementary schools or secondary schools operated under a contract with or a grant from the BIA or a tribal or community organization.

Note: Any eligible entity that receives Federal financial assistance under this program is not eligible to receive a subgrant under section 3114 of Title III of the Elementary and Secondary Education Act of 1965 (ESEA), as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

(Eligible applicants seeking to apply for funds as a consortium should read and follow the regulations in 34 CFR 75.127–75.129, which apply to group applications.)

Deadline for Transmittal of Applications: June 7, 2002.

Deadline for Intergovernmental Review: August 6, 2002.

Estimated Available Funds: $5.0 million.

Estimated Range of Awards: $100,000–$225,000.

Estimated Average Size of Awards: $192,307.

Estimated Number of Awards: 26.

Note: The Department is not bound by any estimates in this notice.

Project Period: 48 months.

Mandatory Page Limit for the Application Narrative

The narrative is the section of the application where you address the selection criteria used by reviewers in evaluating your application. You must limit the narrative to the equivalent of no more than 35 pages, using the following standards:

(1) A page is 8.5″ x 11″, on one side only with 1″ margins at the top, bottom, and both sides.

(2) Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.

Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to the Application for Federal Education Assistance Form (ED 424); the Budget Information Form (ED 524) and attached itemization of costs; the other application forms and attachments to those forms; the assurances and certifications; the text of the selection criteria; or the one-page abstract and table of contents described below. The page limit applies only to item 14 in the Checklist for Applicants provided below.

We will reject your application if—you apply these standards and exceed the page limit; or you apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79 (Part 79, does not apply to assistance to Federally recognized Indian tribes), 80, 81, 82, 85, 86, 97, 98,and 99.

Description of Program: The statutory authority for this program, and the application requirements that apply to this competition, are set out in Subpart 1 of Part A of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001 (Pub. L. 107–110).

Grants awarded under this program are to be used to develop high levels of academic attainment in English among limited English proficient children, and to promote parental and community participation in language instruction educational programs. Grants are intended for language instruction educational projects that are carefully-designed, well-implemented and rigorously evaluated.

Projects may include teacher training, curriculum development, evaluation and assessment to support the core program of student instruction and parental/community participation. Student instruction may comprise preschool, elementary, secondary, and postsecondary levels, or combinations of these.

Selection Criteria: We use the following selection criteria in 34 CFR 75.210 and sections 3115 and 3128 of the Act to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points.

The maximum score for each criterion is indicated in parentheses.

(a) *Project activities.* (18 points). The Secretary reviews each application to determine how well the applicant proposes to carry out activities that will:

(i) Increase the English proficiency of limited English proficient children by providing high-quality language instruction educational programs that are based on scientifically based research demonstrating the effectiveness of the programs in increasing English

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proficiency and student academic achievement in the core academic subjects; and

(ii) Provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the settings of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel, that is—

(A) Designed to improve the instruction and assessment of limited English proficient children;

(B) Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for limited English proficient children;

(C) Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of such teachers; and

(D) Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher)

(iii) At the applicant's option, provide instruction, teacher training, curriculum development, evaluation, and assessment designed for Native American children learning and studying Native American languages.

(b) *Need for project.* (6 points)

(1) The Secretary considers the need for the proposed project.

(2) In determining the need for the proposed project, the Secretary considers the extent to which specific gaps or weaknesses in services, infrastructure, or opportunities have been identified and will be addressed by the proposed project, including the nature and magnitude of those gaps or weaknesses.

(c) *Quality of the project design.* (22 points) (1) The Secretary considers the quality of the design of the proposed project.

(2) In determining the quality of the design of the proposed project, the Secretary considers the following factors:

(i) The extent to which the goals, objectives, and outcomes to be achieved by the proposed project are clearly specified and measurable.

(ii) The extent to which the design of the proposed project is appropriate to, and will successfully address, the needs of the target population or other identified needs.

(iii) The extent to which the design of the proposed project includes a thorough, high-quality review of the relevant literature, a high-quality plan for project implementation, and the use of appropriate methodological tools to ensure successful achievement of project objectives.

(iv) The extent to which the proposed project is designed to build capacity and yield results that will extend beyond the period of Federal financial assistance.

(v) The extent to which the proposed project is part of a comprehensive effort to improve teaching and learning and support rigorous academic standards for students.

(vi) The extent to which the proposed project encourages parental involvement.

(d) *Quality of project personnel.* (8 points) (1) The Secretary considers the quality of the personnel who will carry out the proposed project.

(2) In determining the quality of project personnel, the Secretary considers the extent to which the applicant encourages applications for employment from persons who are members of groups that have traditionally been underrepresented based on race, color, national origin, gender, age, or disability.

(3) In addition, the Secretary considers the following factors:

(i) The qualifications, including relevant training and experience, of key project personnel.

(ii) The qualifications, including relevant training and experience, of project consultants or subcontractors.

(e) *Adequacy of resources.* (6 points) (1) The Secretary considers the adequacy of resources for the proposed project.

(2) In determining the adequacy of resources for the proposed project, the Secretary considers the following factors:

(i) The extent to which the costs are reasonable in relation to the objectives, design, and potential significance of the proposed project.

(f) *Quality of the management plan.* (20 points) (1) The Secretary considers the quality of the management plan for the proposed project.

(2) In determining the quality of the management plan for the proposed project, the Secretary considers the following factors:

(i) The adequacy of the management plan to achieve the objectives of the proposed project on time and within budget, including clearly defined responsibilities, timelines, and milestones for accomplishing project tasks.

(ii) The adequacy of procedures for ensuring feedback and continuous improvement in the operation of the proposed project.

(iii) The extent to which the time commitments of the project director and principal investigator and other key project personnel are appropriate and adequate to meet the objectives of the proposed project.

(g) *Quality of the project evaluation.* (20 points)

(1) The Secretary considers the quality of the evaluation to be conducted of the proposed project.

(2) In determining the quality of the evaluation, the Secretary considers of the following factors:

(i) The extent to which the methods of evaluation are thorough, feasible, and appropriate to the goals, objectives, and outcomes of the proposed project.

(ii) The extent to which the methods of evaluation provide for examining the effectiveness of project implementation strategies.

(iii) The extent to which the methods of evaluation include the use of objective performance measures that are clearly related to the intended outcomes of the project and will produce quantitative and qualitative data to the extent possible.

(iv) The extent to which the methods of evaluation will provide performance feedback and permit periodic assessment of progress toward achieving intended outcomes.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79. *Note* that in Part 79, Intergovernmental Review, does not apply to assistance to Federally recognized Indian tribes.

One of the objectives of the Executive order is to foster an inter-governmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

If you are an applicant, you must contact the appropriate State Single Point of Contact (SPOC) to find out about, and to comply with, the State's process under Executive Order 12372. If you propose to perform activities in more than one State, you should immediately contact the SPOC for each of those States and follow the procedure established in each state under the Executive order. If you want to know the name and address of any SPOC, see the official latest SPOC list on the Web site of the Office of Management and Budget at the following address: *;http://www.whitehouse.gov/omb/grants/spoc.html.*

In States that have not established a process or chosen a program or review, State, area-wide, regional and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a SPOC and any comments from State, area-wide, regional, and local entities must be mailed or hand-delivered by the date indicated in this application notice to the following address: The Secretary, E.O. 12372—CFDA#84.365C, U.S. Department of Education, room 7E200, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

We will determine proof of mailing under 34 CFR 75.102 (Deadline date for applications). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

PLEASE NOTE THAT THE ABOVE ADDRESS IS NOT THE SAME ADDRESS AS THE ONE TO WHICH THE APPLICANT SUBMITS ITS COMPLETED APPLICATION. *DO NOT SEND APPLICATIONS TO THE ABOVE ADDRESS.*

Application Instructions and Forms

The appendix to this notice contains forms and instructions, a statement regarding estimated public reporting burden, a notice to applicants regarding compliance with section 427 of the General Education Provisions Act, various assurances and certifications. Please organize the parts and additional materials in the following order:

a. Instructions for Application Narrative.

b. Additional Guidance.

c. Estimated Public Reporting Burden.

d. Notice to All Applicants GEPA–427 Requirements (OMB No. 1801–0004).

e. Checklist for Applicants.

f. Application for Federal Education Assistance (ED 424) and instructions.

g. Budget Information—Non-Construction Programs (ED 524) and instructions.

h. Group Application Certification.

i. Student Data.

j. Project Documentation.

k. Assurances—Non-Construction Programs (SF 424B) and instructions.

l. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED 80–0013) and instructions.

m. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED 80–0014) and instructions.

Note: ED 80–0014 is intended for the use of grantees and should not be transmitted to the Department.

n. Disclosure of Lobbying Activities (SF LLL) (if applicable) and instructions.

You may submit information on a photocopy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. We will not award grants unless we have received a completed application form.

All applicants must submit ONE original signed application, including ink signatures on all forms and assurances, and TWO copies of the application. Please mark each application as "original" or "copy", No grant may be awarded unless a completed application has been received.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in this application notice.

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Document Format (PDF) on the Internet at the following site: *http://www.ed.gov/legislation/FedRegister.*

To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–800–293–6498; or in the Washington, DC area at (202) 512–1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on the GPO Access at: *http://www.access.gpo.gov/nara/index.html.*

FOR FURTHER INFORMATION CONTACT: Samuel Lopez, Office of English Language Acquisition, U.S. Department of Education, 400 Maryland Avenue, SW. Room MES 5605, Washington, DC 20202–6400. Telephone: 202–401–1427, or via Internet: *samuel.lopez@ed.gov.*

If you use telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.)

Instructions for Transmittal of Applications

If you want to apply for a grant and be considered for funding, you must meet the following deadline requirements:

(a) *If You Send Your Application by Mail*

You must mail the original and two copies of the application on or before the deadline date. Mail your application to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, 7th & D Street, SW., Room 3671, Regional Office Building 3, Washington, DC 20202–4725.

You must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

If you mail an application through the U.S. Postal Service, we do not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Note: Due to recent disruptions to normal mail delivery, the Department encourages you to consider using an alternative delivery method (for example, a commercial carrier, such as Federal express or United Parcel Service; U.S. Postal Service Express Mail; or a courier service) to transmit your application for this competition. If you use an alternative delivery method, please obtain the appropriate proof of mailing under this section (a) "If You Send Your Application by Mail," then follow the instructions in section (b) "If You Deliver Your Application by Hand."

(b) *If You Deliver Your Application by Hand*

You or your courier must hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: CFDA # 84.365C, Room 3671, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. 20202–4725.

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The Application Control Center accepts application deliveries daily between 8 a.m. and 4:30 p.m. (Washington, DC time), except Saturdays, Sundays, and Federal holidays. The Center accepts application deliveries through the D Street entrance only. A person delivering an application must show identification to enter the building.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, you should check with your local post office.

(2) If you send your application by mail or deliver it by hand or by a courier service, the Application Control Center will mail a Grant Application Receipt Acknowledgment to you. If you do not receive the notification of application receipt within 15 days from the date of mailing the application, you should call the U.S. Department of Education Application Control Center at (202) 708–9493.

(3) If your application is late, we will notify you that we will not consider the application.

(4) You must indicate on the envelope and—if not provided by the Department—in Item 4 of the Application for Federal Education Assistance (ED Form 424: (exp. 11–30–2004)) the CFDA number—and suffix letter #84.365 C of the, if any—of the competition under which you are submitting your application.

Program Authority: 20USC 6821(c), 6822.

Dated: May 2, 2002.

Maria Hernandez Ferrier,

Director, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students.

Estimated Burden Statement

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number. The valid OMB control number for this information collection is OMB No. 1885–0551 (Expiration Date: 09/30/2002). The time required to complete this information collection is estimated to average 80 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202–4651.

If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, SW., Room (5605), Switzer Building, Washington, DC 20202–6510.

Instructions for Application Narrative

Before preparing the Application Narrative you should read carefully the description of the program and the selection criteria we use to evaluate applications.

The narrative should—

1. Begin with an abstract; that is, a summary of your proposed project;
2. Describe your proposed project in light of each of the selection criteria in the order in which we list the criteria in this notice;
3. List each function or activity for which you are requesting funds; and
4. Include any other pertinent information that might assist us in reviewing your application.

Note: The section on Mandatory Page Limit elsewhere in this application notice applies to your application.

Additional Guidance

The narrative section should be preceded by a one-page abstract that includes a short description of the population to be served by the project, project objectives, and planned project activities.

Selection Criteria

The narrative should address fully all aspects of the selection criteria in the order listed and should give detailed information regarding each criterion. Do not simply paraphrase the criteria. Do not include resumes or curriculum vitae for project personnel; provide position descriptions instead. Do not include bibliographies, letters of support, or appendices in your application.

Table of Contents

The application should include a table of contents listing the various parts of the narrative in the order of the selection criteria. Be sure that the table includes the page numbers where the parts of the narrative are found.

Budget

Budget line items must support the goals and objectives of the proposed project and must be directly related to the instructional design and all other project components.

Final Application Preparation

Use the Checklist for Applicants to verify that your application is complete. Submit three copies of the application, including an original copy containing an original signature for each form requiring the signature of the authorized representative. Do not use elaborate bindings or covers. The application package must be mailed or hand-delivered to the Application Control Center (ACC) and postmarked by the deadline date.

Checklist for Applicants

The following forms and other items must be included in the application in the order listed below:

1. Application for Federal Education Assistance Form (ED 424).
2. Group Application Certification Form (if applicable).
3. Budget Information Form (ED 524).
4. Itemization of costs for each budget year.
5. Student Data Form.
6. Assurances—Non-Construction Programs Form (SF 424B).
7. Certifications Regarding Lobbying; Debarment, Suspension and Other Responsibility Matters; and Drug-Free Workplace Requirements Form (ED 80–0013).
8. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions Form (ED 80–0014) (if applicable).
9. Disclosure of Lobbying Activities Form (SF LLL).
10. Information that addresses section 427 of the General Education Provisions Act. (See the form below entitled Notice to All Applicants.)
11. One-page abstract.
12. Table of Contents.
13. Application narrative, not to exceed 35 pages.
14. One original and two copies of the application for transmittal to the Education Department's Application Control Center.

Non-Regulatory Guidance

Purpose of the Program

Q: *What is the purpose of the English Language Acquisition, Language Enhancement, and Academic Achievement Act for Limited English Proficient Students of Title III of the Elementary and Secondary Education Act as amended by the No Child Left Behind Act of 2001?*

A: The purpose of Title III is to ensure that limited English proficient (LEP) students develop English proficiency and meet the same academic content and academic achievement standards that other children are expected to meet. Schools use these funds to implement language instruction programs designed to achieve the purpose of the grants. The Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students (OELA) will hold grantees accountable for increasing the English proficiency and core academic content knowledge of LEP students.

Q: *May projects funded under this program support the teaching and studying of Native American Languages?*

A: Projects funded under this program may support the teaching and studying of Native American Languages, but must have, as project outcomes, increases in proficiency in English and a second language.

Q: *What instructional programs are grantees required to provide?*

A: Grantees under this program are required to provide high quality language instruction educational programs that are based on scientifically based research demonstrating effectiveness in increasing English proficiency and student academic achievement in the core academic subjects. A grantee must select one or more methods of instruction to be used in the programs and activities and provide evidence that the programs chosen are based on scientific research in teaching LEP students.

Q: *Does a grantee have flexibility in selecting the method of instruction to be used to assist LEP students to attain English proficiency and academic achievement?*

A: A grantee may select one or more methods of instruction to be used in assisting LEP students to attain English proficiency and student academic achievement. However, the language instruction curriculum used must be tied to scientifically based research on teaching LEP students and must have demonstrated effectiveness.

Role of Parents

Q: *How is the role of parents of LEP students addressed in the Title III legislation?*

A: Each grantee using funds provided under this title to provide a language instruction educational program must implement an effective means of outreach to parents of limited English proficient children to inform such parents of how they can be involved in the education of their children, and be active participants in assisting their children to learn English, to achieve at high levels in core academic subjects, and to meet the same challenging State academic content and student academic achievement standards as all children are expected to meet.

Q: *What is the length of time that a grantee has to inform parents that their child has been identified for participation in a language instruction educational program for limited English proficient (LEP) students?*

A: Grantees shall inform parent(s) that their child has been identified for participation in a language instruction educational program for LEPs not later than 30 days after the beginning of the school year. For a child who enters school after the beginning of the school year, grantees shall inform parent(s) within 2 weeks of the child's placement in such a program.

Q: *What kind of information must a grantee provide parents regarding their child's participation in a language instruction educational program for LEPs?*

A: Grantees shall provide parents (1) the reasons for identifying their child as being limited English proficient and the need to place him/her in a language instruction educational program for LEPs; (2) the child's level of English proficiency, including how the level was assessed and the status of the child's academic achievement; (3) the method of instruction that will be used in the program, including a description of other alternative programs; (4) how the program will meet the educational strengths and needs of the child; (5) how the program will help the child learn English and meet academic achievement standards; (6) the program exit requirements, including the expected rate of transition and the expected rate of graduation from secondary school; (7) how a program will meet the objectives of an individualized education program for a child with a disability; and (8) information pertaining to parental rights as prescribed by law.

Q: *Does the parent have the right to refuse placement of their child in a language instruction educational program?*

A: The grantee must provide parents with the required information under Section 3302 of ESEA Title III (parental notification). Parents have a right to have their child removed from such a program. The parents, also have the right to choose another program or method of instruction, if available.

Roles and Responsibilities of Grantees

Q: *What professional development activities are grantees encouraged to provide for teachers, administrators and others involved in language instruction educational programs?*

A: Grantees are encouraged to provide high-quality professional development to classroom teachers (including teachers in classroom settings that are not the setting of language instruction educational programs), principals, administrators, and other school or community-based organizational personnel that is:

- Designed to improve the instruction and assessment of LEP students;
- Designed to enhance the ability of such teachers to understand and use curricula, assessment measures, and instruction strategies for LEP children;
- Based on scientifically based research demonstrating the effectiveness of the professional development in increasing children's English proficiency, or substantially increasing the subject matter knowledge, teaching knowledge, and teaching skills of teachers; and
- Of sufficient intensity and duration to have a positive and lasting impact on the teachers' performance in the classroom (excluding activities such as one-day or short-term workshops and conferences unless the activity is a component of an established comprehensive professional development program for an individual teacher).

Local Reporting Requirements

Q: *What are the reporting requirements for grantees that receive a Title III, Native American and Alaskan Native Children in School grant?*

A: Grantees that receive this Title III direct grant must provide to the Secretary an annual performance report for continuation award purposes, and a final performance report (see 34 CFR 80.40(a)(1)–(4), (d), and (e) and 34 CFR 80.41). These reports must contain information regarding each objective. If possible quantified results should be reported depending on the content of the objective. An explanation is needed when an objective target for that performance year is not met. Disclosure must include a statement of the action to be taken or contemplated and any assistance needed to resolve the situation. Budgetary information in the form of a line item budget and budget narrative must also accompany the report [34 CFR 80.40(b)(2)(iii)].

Definitions

Q: *How do you define "language instruction educational program?"*

A: "Language instruction educational program" means an instruction course in which LEP students are placed for the purpose of developing and attaining English proficiency, while meeting challenging State academic content and student academic achievement standards. A language instruction educational program may make use of both English and a child's native language to enable the child to develop and attain English proficiency. Programs may include the participation of English

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proficient children in addition to LEP students if such a program enables participating students to become proficient in English and a second language.

Q: *What is the definition of "Native American" and "Native American Language?"*

A: The terms "Native American" and "Native American Language" are defined, under Section 3301(9) of ESEA to have the same meaning as those terms have under Section 103 of the Native American Languages Act. Under that Act, these terms are defined as follows. "Native American" means an Indian, Native Hawaiian, or Native American Pacific Islander. "Native American language" means the historical, traditional language spoken by Native Americans.

Q: *What does the term "Indian tribe" mean?*

A: "Indian tribe" means any Indian tribe, band, nation, or other organized group or community, including any Native village or Regional Corporation or Village Corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act, that is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians. (ESEA Section 3301(7)).

Q: *What is a "Native Hawaiian or Native American Pacific Islander Educational Organization"?*

A: "Native Hawaiian or Native American Pacific Islander native language educational organization" means a nonprofit organization with—

(A) a majority of its governing board and employees consisting of fluent speakers of the traditional Native American languages used in the organization's educational programs; and

(B) not less than 5 years successful experience in providing educational services in traditional Native American languages. (ESEA Section 3301(10))

Q: *What is a tribally sanctioned education authority?*

A: The term "tribally sanctioned educational authority" means—

(A) Any department or division of education operating within the administrative structure of the duly constituted governing body of an Indian tribe; and

(B) Any nonprofit institution or organization that is—(i) chartered by the governing body of an Indian tribe to operate a school described in section 3112(a) or otherwise to oversee the delivery of educational services to members of the tribe; and approved by the Secretary for the purpose of carrying out programs under subpart 1 of part A for individuals served by a school described in section 3112(a). (ESEA Section 3301(15))

BILLING CODE 4000–01–P

Application for Federal Education Assistance (ED 424)

U.S. Department of Education
Form Approved
OMB No. 1875-0106
Exp. 11/30/2004

Applicant Information

1. Name and Address
Legal Name: _____
Address: _____
_____
City _____ State _____ County _____ ZIP Code + 4 _____

Organizational Unit

2. Applicant's D-U-N-S Number |__|__|__|__|__|__|__|__|__|

3. Applicant's T-I-N |__|__|-|__|__|__|__|__|__|

4. Catalog of Federal Domestic Assistance #: **84.** 3 | 6 | 5 | C |

Title: **NATIVE AMERICAN AND ALASKA NATIVE CHILDREN IN SCHOOL PROGRAM**

5. Project Director: _____
Address: _____
_____
City _____ State _____ Zip code + 4 _____
Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
E-Mail Address: _____

6. Novice Applicant ___Yes ___No

7. Is the applicant delinquent on any Federal debt? ___Yes ___No
(If "Yes," attach an explanation.)

8. Type of Applicant *(Enter appropriate letter in the box.)* |___|

A - State
B - Local
C - Special District
D - Indian Tribe
E - Individual
F - Independent School District
G - Public College or University
H - Private, Non-profit College or University
I - Non-profit Organization
J - Private, Profit-Making Organization
K - Other (*Specify*): _____

Application Information

9. Type of Submission:

-PreApplication	*-Application*
___ Construction	___ Construction
___ Non-Construction	___ Non-Construction

10. Is application subject to review by Executive Order 12372 process?
___ Yes (*Date made available to the Executive Order 12372 process for review):* ___/___/_____
___ No *(If "No," check appropriate box below.)*
___ Program is not covered by E.O. 12372.
___ Program has not been selected by State for review.

11. Proposed Project Dates: ___/___/_____ ___/___/_____
Start Date: **End Date:**

12. Are any research activities involving human subjects planned at any time during the proposed project period?
___ Yes (Go to 12a.) ___ No (Go to item 13.)

12a. Are **all** the research activities proposed designated to be exempt from the regulations?
___ Yes (Provide Exemption(s) #): _____
___ No (Provide Assurance #): _____

13. Descriptive Title of Applicant's Project:
_____
_____

Estimated Funding

14a. Federal	$_____.00
b. Applicant	$_____.00
c. State	$_____.00
d. Local	$_____.00
e. Other	$_____.00
f. Program Income	$_____.00
g. TOTAL	$_____.00

Authorized Representative Information

15. To the best of my knowledge and belief, all data in this preapplication/application are true and correct. The document has been duly authorized by the governing body of the applicant and the applicant will comply with the attached assurances if the assistance is awarded.

a. Authorized Representative (*Please type or print name clearly.*)
_____
b. Title: _____
c. Tel. #: ( ) _____-_____ Fax #: ( ) _____-_____
d. E-Mail Address: _____
e. Signature of Authorized Representative
_____ Date: ___/___/_____

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Instructions for ED 424

1. Legal Name and Address. Enter the legal name of applicant and the name of the primary organizational unit which will undertake the assistance activity.

2. D-U-N-S Number. Enter the applicant's D-U-N-S Number. If your organization does not have a D-U-N-S Number, you can obtain the number by calling 1-800-333-0505 or by completing a D-U-N-S Number Request Form. The form can be obtained via the Internet at the following URL: http://www.dnb.com.

3. Tax Identification Number. Enter the taxpayer's identification number as assigned by the Internal Revenue Service.

4. Catalog of Federal Domestic Assistance (CFDA) Number. Enter the CFDA number and title of the program under which assistance is requested. The CFDA number can be found in the federal register notice and the application package.

5. Project Director. Name, address, telephone and fax numbers, and e-mail address of the person to be contacted on matters involving this application.

6. Novice Applicant. Check "Yes" or "No" only if assistance is being requested under a program that gives special consideration to novice applicants. Otherwise, leave blank.

   Check "Yes" if you meet the requirements for novice applicants specified in the regulations in 34 CFR 75.225 and included on the attached page entitled "Definitions for Form ED 424." By checking "Yes" the applicant certifies that it meets these novice applicant requirements. Check "No" if you do not meet the requirements for novice applicants.

7. Federal Debt Delinquency. Check "Yes" if the applicant's organization is delinquent on any Federal debt. (This question refers to the applicant's organization and not to the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.) Otherwise, check "No."

8. Type of Applicant. Enter the appropriate letter in the box provided.

9. Type of Submission. See "Definitions for Form ED 424" attached.

10. Executive Order 12372. See "Definitions for Form ED 424" attached. Check "Yes" if the application is subject to review by E.O. 12372. Also, please enter the month, day, and four (4) digit year (e.g., 12/12/2001). Otherwise, check "No."

11. Proposed Project Dates. Please enter the month, day, and four (4) digit year (e.g., 12/12/2001).

12. Human Subjects Research. (See I.A. "Definitions" in attached page entitled "Definitions for Form ED 424.")

    If Not Human Subjects Research. Check "No" if research activities involving human subjects are not planned at any time during the proposed project period. The remaining parts of Item 12 are then not applicable.

    If Human Subjects Research. Check "Yes" if research activities involving human subjects are planned at any time during the proposed project period, either at the applicant organization or at any other performance site or collaborating institution. Check "Yes" even if the research is exempt from the regulations for the protection of human subjects. (See I.B. "Exemptions" in attached page entitled "Definitions for Form ED 424.")

12a. If Human Subjects Research is Exempt from the Human Subjects Regulations. Check "Yes" if all the research activities proposed are designated to be exempt from the regulations. Insert the exemption number(s) corresponding to one or more of the six exemption categories listed in I.B. "Exemptions." In addition, follow the instructions in II.A. "Exempt Research Narrative" in the attached page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. If Human Subjects Research is Not Exempt from Human Subjects Regulations. Check "No" if some or all of the planned research activities are covered (not exempt). In addition, follow the instructions in II.B. "Nonexempt Research Narrative" in the page entitled "Definitions for Form ED 424." Insert this narrative immediately following the ED 424 face page.

12a. Human Subjects Assurance Number. If the applicant has an approved Federal Wide (FWA) or Multiple Project Assurance (MPA) with the Office for Human Research Protections (OHRP), U.S. Department of Health and Human Services, that covers the specific activity, insert the number in the space provided. If the applicant does not have an approved assurance on file with OHRP, enter "None." In this case, the applicant, by signature on the face page, is declaring that it will comply with 34 CFR 97 and proceed to obtain the human subjects assurance upon request by the designated ED official. If the application is recommended/selected for funding, the designated ED official will request that the applicant obtain the assurance within 30 days after the specific formal request.

    Note about Institutional Review Board Approval. ED does not require certification of Institutional Review Board approval with the application. However, if an application that involves non-exempt human subjects research is recommended/selected for funding, the designated ED official will request that the applicant obtain and send the certification to ED within 30 days after the formal request.

13. Project Title. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

14. Estimated Funding. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate only the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 14.

15. Certification. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. Be sure to enter the telephone and fax number and e-mail address of the authorized representative. Also, in item 15e, please enter the month, day, and four (4) digit year (e.g., 12/12/2001) in the date signed field.

Paperwork Burden Statement. According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1875-0106. The time required to complete this information collection is estimated to average between 15 and 45 minutes per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, D.C. 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form write directly to: Joyce I. Mays, Application Control Center, U.S. Department of Education, 7th and D Streets, S.W. ROB-3, Room 3633, Washington, D.C. 20202-4725.

Definitions for Form ED 424

Novice Applicant (See 34 CFR 75.225). For discretionary grant programs under which the Secretary gives special consideration to novice applications, a novice applicant means any applicant for a grant from ED that—

- Has never received a grant or subgrant under the program from which it seeks funding;
- Has never been a member of a group application, submitted in accordance with 34 CFR 75.127-75.129, that received a grant under the program from which it seeks funding; and
- Has not had an active discretionary grant from the Federal government in the five years before the deadline date for applications under the program. For the purposes of this requirement, a grant is active until the end of the grant's project or funding period, including any extensions of those periods that extend the grantee's authority to obligate funds.

In the case of a group application submitted in accordance with 34 CFR 75.127-75.129, a group includes only parties that meet the requirements listed above.

Type of Submission. "Construction" includes construction of new buildings and acquisition, expansion, remodeling, and alteration of existing buildings, and initial equipment of any such buildings, or any combination of such activities (including architects' fees and the cost of acquisition of land). "Construction" also includes remodeling to meet standards, remodeling designed to conserve energy, renovation or remodeling to accommodate new technologies, and the purchase of existing historic buildings for conversion to public libraries. For the purposes of this paragraph, the term "equipment" includes machinery, utilities, and built-in equipment and any necessary enclosures or structures to house them; and such term includes all other items necessary for the functioning of a particular facility as a facility for the provision of library services.

Executive Order 12372. The purpose of Executive Order 12372 is to foster an intergovernmental partnership and strengthen federalism by relying on State and local processes for the coordination and review of proposed Federal financial assistance and direct Federal development. The application notice, as published in the Federal Register, informs the applicant as to whether the program is subject to the requirements of E.O. 12372. In addition, the application package contains information on the State Single Point of Contact. An applicant is still eligible to apply for a grant or grants even if its respective State, Territory, Commonwealth, etc. does not have a State Single Point of Contact. For additional information on E.O. 12372 go to http://www.cfda.gov/public/eo12372.htm.

PROTECTION OF HUMAN SUBJECTS IN RESEARCH

I. Definitions and Exemptions

A. Definitions.

A research activity involves human subjects if the activity is research, as defined in the Department's regulations, and the research activity will involve use of human subjects, as defined in the regulations.

—Research

The ED Regulations for the Protection of Human Subjects, Title 34, Code of Federal Regulations, Part 97, define research as "a systematic investigation, including research development, testing and evaluation, designed to develop or contribute to generalizable knowledge." If an activity follows a deliberate plan whose purpose is to develop or contribute to generalizable knowledge, it is research. Activities which meet this definition constitute research whether or not they are conducted or supported under a program which is considered research for other purposes. For example, some demonstration and service programs may include research activities.

—Human Subject

The regulations define human subject as "a living individual about whom an investigator (whether professional or student) conducting research obtains (1) data through intervention or interaction with the individual, or (2) identifiable private information." (1) If an activity involves obtaining information about a living person by manipulating that person or that person's environment, as might occur when a new instructional technique is tested, or by communicating or interacting with the individual, as occurs with surveys and interviews, the definition of human subject is met. (2) If an activity involves obtaining private information about a living person in such a way that the information can be linked to that individual (the identity of the subject is or may be readily determined by the investigator or associated with the information), the definition of human subject is met. [Private information includes information about behavior that occurs in a context in which an individual can reasonably expect that no observation or recording is taking place, and information which has been provided for specific purposes by an individual and which the individual can reasonably expect will not be made public (for example, a school health record).]

B. Exemptions.

Research activities in which the only involvement of human subjects will be in one or more of the following six categories of exemptions are not covered by the regulations:

(1) Research conducted in established or commonly accepted educational settings, involving normal educational practices, such as (a) research on regular and special education instructional strategies, or (b) research on the effectiveness of or the comparison among instructional techniques, curricula, or classroom management methods.

(2) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless: (a) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and (b) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation. If the subjects are children, exemption 2 applies only to research involving educational tests and observations of public behavior when the investigator(s) do not participate in the

activities being observed. Exemption 2 does not apply if children are surveyed or interviewed or if the research involves observation of public behavior and the investigator(s) participate in the activities being observed. [Children are defined as persons who have not attained the legal age for consent to treatments or procedures involved in the research, under the applicable law or jurisdiction in which the research will be conducted.]

(3) Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior that is not exempt under section (2) above, if the human subjects are elected or appointed public officials or candidates for public office; or federal statute(s) require(s) without exception that the confidentiality of the personally identifiable information will be maintained throughout the research and thereafter.

(4) Research involving the collection or study of existing data, documents, records, pathological specimens, or diagnostic specimens, if these sources are publicly available or if the information is recorded by the investigator in a manner that subjects cannot be identified, directly or through identifiers linked to the subjects.

(5) Research and demonstration projects which are conducted by or subject to the approval of department or agency heads, and which are designed to study, evaluate, or otherwise examine: (a) public benefit or service programs; (b) procedures for obtaining benefits or services under those programs; (c) possible changes in or alternatives to those programs or procedures; or (d) possible changes in methods or levels of payment for benefits or services under those programs.

(6) Taste and food quality evaluation and consumer acceptance studies, (a) if wholesome foods without additives are consumed or (b) if a food is consumed that contains a food ingredient at or below the level and for a use found to be safe, or agricultural chemical or environmental contaminant at or below the level found to be safe, by the Food and Drug Administration or approved by the Environmental Protection Agency or the Food Safety and Inspection Service of the U.S. Department of Agriculture.

II. Instructions for Exempt and Nonexempt Human Subjects Research Narratives

If the applicant marked "Yes" for Item 12 on the ED 424, the applicant must provide a human subjects "exempt research" or "nonexempt research" narrative and insert it immediately following the ED 424 face page.

A. Exempt Research Narrative.

If you marked "Yes" for item 12a. and designated exemption numbers(s), provide the "exempt research" narrative. The narrative must contain sufficient information about the involvement of human subjects in the proposed research to allow a determination by ED that the designated exemption(s) are appropriate. The narrative must be succinct.

B. Nonexempt Research Narrative.

If you marked "No" for item 12a. you must provide the "nonexempt research" narrative. The narrative must address the following seven points. Although no specific page limitation applies to this section of the application, be succinct.

(1) Human Subjects Involvement and Characteristics: Provide a detailed description of the proposed involvement of human subjects. Describe the characteristics of the subject population, including their anticipated number, age range, and health status. Identify the criteria for inclusion or exclusion of any subpopulation. Explain the rationale for the involvement of special classes of subjects, such as children, children with disabilities, adults with disabilities, persons with mental disabilities, pregnant women, prisoners, institutionalized individuals, or others who are likely to be vulnerable

(2) Sources of Materials: Identify the sources of research material obtained from individually identifiable living human subjects in the form of specimens, records, or data. Indicate whether the material or data will be obtained specifically for research purposes or whether use will be made of existing specimens, records, or data.

(3) Recruitment and Informed Consent: Describe plans for the recruitment of subjects and the consent procedures to be followed. Include the circumstances under which consent will be sought and obtained, who will seek it, the nature of the information to be provided to prospective subjects, and the method of documenting consent. State if the Institutional Review Board (IRB) has authorized a modification or waiver of the elements of consent or the requirement for documentation of consent.

(4) Potential Risks: Describe potential risks (physical, psychological, social, legal, or other) and assess their likelihood and seriousness. Where appropriate, describe alternative treatments and procedures that might be advantageous to the subjects.

(5) Protection Against Risk: Describe the procedures for protecting against or minimizing potential risks, including risks to confidentiality, and assess their likely effectiveness. Where appropriate, discuss provisions for ensuring necessary medical or professional intervention in the event of adverse effects to the subjects. Also, where appropriate, describe the provisions for monitoring the data collected to ensure the safety of the subjects.

(6) Importance of the Knowledge to be Gained: Discuss the importance of the knowledge gained or to be gained as a result of the proposed research. Discuss why the risks to subjects are reasonable in relation to the anticipated benefits to subjects and in relation to the importance of the knowledge that may reasonably be expected to result.

(7) Collaborating Site(s): If research involving human subjects will take place at collaborating site(s) or other performance site(s), name the sites and briefly describe their involvement or role in the research.

Copies of the Department of Education's Regulations for the Protection of Human Subjects, 34 CFR Part 97 and other pertinent materials on the protection of human subjects in research are available from the Grants Policy and Oversight Staff, Office of the Chief Financial Officer, U.S. Department of Education, Washington, D.C. 20202-4248, telephone: (202) 708-8263, and on the U.S. Department of Education's Protection of Human Subjects in Research Web Site at http://www.ed.gov/offices/OCFO/humansub.html

U.S. DEPARTMENT OF EDUCATION
BUDGET INFORMATION
NON-CONSTRUCTION PROGRAMS

OMB Control Number: 1890-0004
Expiration Date: 02/28/2003

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION A - BUDGET SUMMARY
U.S. DEPARTMENT OF EDUCATION FUNDS

Name of Institution/Organization

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

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Name of Institution/Organization

Applicants requesting funding for only one year should complete the column under "Project Year 1." Applicants requesting funding for multi-year grants should complete all applicable columns. Please read all instructions before completing form.

SECTION B - BUDGET SUMMARY
NON-FEDERAL FUNDS

Budget Categories	Project Year 1 (a)	Project Year 2 (b)	Project Year 3 (c)	Project Year 4 (d)	Project Year 5 (e)	Total (f)
1. Personnel						0
2. Fringe Benefits						0
3. Travel						0
4. Equipment						0
5. Supplies						0
6. Contractual						0
7. Construction						0
8. Other						0
9. Total Direct Costs (lines 1-8)	0	0	0	0	0	0
10. Indirect Costs						0
11. Training Stipends						0
12. Total Costs (lines 9-11)	0	0	0	0	0	0

SECTION C - OTHER BUDGET INFORMATION (see instructions)

ED Form No. 524

Public reporting burden for this collection of information is estimated to vary from 13 to 22 hours per response, with an average of 17.5 hours per response, including the time reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and the Office of Management and Budget, Paperwork Reduction Project 1875-0102, Washington DC 20503.

INSTRUCTIONS FOR ED FORM 524

General Instructions

This form is used to apply to individual U.S. Department of Education discretionary grant programs. Unless directed otherwise, provide the same budget information for each year of the multi-year funding request. Pay attention to applicable program specific instructions, if attached.

Section A - Budget Summary
U.S. Department of Education Funds

All applicants must complete Section A and provide a breakdown by the applicable budget categories shown in lines 1-11.

Lines 1-11, columns (a)-(e): For each project year for which funding is requested, show the total amount requested for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If funding is requested for only one project year, leave this column blank.

Line 12, columns (a)-(e): Show the total budget request for each project year for which funding is requested.

Line 12, column (f): Show the total amount requested for all project years. If funding is requested for only one year, leave this space blank.

Section B - Budget Summary
Non-Federal Funds

If you are required to provide or volunteer to provide matching funds or other non-Federal resources to the project, these should be shown for each applicable budget category on lines 1-11 of Section B.

Lines 1-11, columns (a)-(e): For each project year for which matching funds or other contributions are provided, show the total contribution for each applicable budget category.

Lines 1-11, column (f): Show the multi-year total for each budget category. If non-Federal contributions are provided for only one year, leave this column blank.

Line 12, columns (a)-(e): Show the total matching or other contribution for each project year.

Line 12, column (f): Show the total amount to be contributed for all years of the multi-year project. If non-Federal contributions are provided for only one year, leave this space blank.

Section C - Other Budget Information
Pay attention to applicable program specific instructions, if attached.

1. Provide an itemized budget breakdown, by project year, for each budget category listed in Sections A and B.
2. If applicable to this program, enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period. In addition, enter the estimated amount of the base to which the rate is applied, and the total indirect expense.
3. If applicable to this program, provide the rate and base on which fringe benefits are calculated.
4. Provide other explanations or comments you deem necessary.

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ASSURANCES - NON-CONSTRUCTION PROGRAMS

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0040), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO THE OFFICE OF MANAGEMENT AND BUDGET. SEND IT TO THE ADDRESS PROVIDED BY THE SPONSORING AGENCY.

NOTE: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant, I certify that the applicant:

1. Has the legal authority to apply for Federal assistance and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project cost) to ensure proper planning, management and completion of the project described in this application.

2. Will give the awarding agency, the Comptroller General of the United States and, if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.

3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.

4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.

5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§4728-4763) relating to prescribed standards for merit systems for programs funded under one of the 19 statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).

6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. §794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. §§290 dd-3 and 290 ee 3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. §§3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and, (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.

7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally-assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.

8. Will comply, as applicable, with provisions of the Hatch Act (5 U.S.C. §§1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.

9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§276a to 276a-7), the Copeland Act (40 U.S.C. §276c and 18 U.S.C. §874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§327-333), regarding labor standards for federally-assisted construction subagreements.

10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.

11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§1451 et seq.); (f) conformity of Federal actions to State (Clean Air) Implementation Plans under Section 176(c) of the Clean Air Act of 1955, as amended (42 U.S.C. §§7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended (P.L. 93-523); and, (h) protection of endangered species under the Endangered Species Act of 1973, as amended (P.L. 93-205).

12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.

13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. §470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. §§469a-1 et seq.).

14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.

15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. §§2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.

16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§4801 et seq.) which prohibits the use of lead-based paint in construction or rehabilitation of residence structures.

17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act Amendments of 1996 and OMB Circular No. A-133, "Audits of States, Local Governments, and Non-Profit Organizations."

18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations, and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

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CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to attest. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. **LOBBYING**

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. **DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS**

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110—

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (2)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transaction (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. **DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)**

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 -

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about:

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address. city, county, state, zip code)

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610-

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants Policy and Oversight Staff, Department of Education, 400 Maryland Avenue, S.W. (Room 3652, GSA Regional Office Building No. 3), Washington, DC 20202-4248. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND / OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013 12/98

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DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change **For Material Change Only:** year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is a Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, *if known*: **Congressional District**, *if known*:	**Congressional District**, *if known*:
6. Federal Department/Agency:	**7. Federal Program Name/Description:** CFDA Number, *if applicable*: _____
8. Federal Action Number, *if known*:	**9. Award Amount**, *if known*: $
10. a. Name and Address of Lobbying Registrant (*if individual, last name, first name, MI*):	**b. Individuals Performing Services** (*including address if different from No. 10a*) (*last name, first name, MI*):
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less that $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
Federal Use Only	Authorized for Local Reproduction Standard Form LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.

(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

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GROUP APPLICATION CERTIFICATION					
NOTE: This form must be completed by eligible parties applying as a group for a grant. This form must be accompanied by a group agreement that details the activities that each member of the group plans to perform under the grant. (34 FR 75.128(b)-(c)).					
To the best of my knowledge and belief, all data in this application are true and correct. I agree to be bound to every statement and assurance made in this application					
Authorized Representative					Name of Institution/ Organization
Typed Name	Title	Signature	Date Signed	Telephone Number (Including Area Code)	

OMB Number 1885-0551 Expires 9/30/02

Paperwork Burden Statement: According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is 1885-0551. The time required to complete this information collection is estimated to average 4 hours (or minutes) per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to: U.S. Department of Education, Washington, DC 20202-4651. If you have comments or concerns regarding the status of your individual submission of this form, write directly to: Native American and Alaska Native Children in School Program, Office of English Language Acquisition, Language Enhancement, and Academic Achievement for Limited English Proficient Students, U.S. Department of Education, 400 Maryland Avenue, S.W., Switzer Building, Room 5605, Washington, D.C. 20202-4651

STUDENT DATA					
Name of Local Educational Agency					
SECTION A					
1. Total number of limited English proficient (LEP) students in the school district					
2. Total number of students in the school district					
3. Percentage of LEP students (line 1 divided by line 2)					%
SECTION B					
Name of project school	Language group(s) to be served	Grade(s) to be served	Number of students to be served		
			LEP	NON-LEP	TOTAL
Total number of students to be served					

OMB Number 1885-0551 Expires 9/30/02

OMB Control No. 1890-0007 (Exp. 09/30/2004)

NOTICE TO ALL APPLICANTS

The purpose of this enclosure is to inform you about a new provision in the Department of Education's General Education Provisions Act (GEPA) that applies to applicants for new grant awards under Department programs. This provision is Section 427 of GEPA, enacted as part of the Improving America's Schools Act of 1994 (Public Law (P.L.) 103-382).

To Whom Does This Provision Apply?

Section 427 of GEPA affects applicants for new grant awards under this program. **ALL APPLICANTS FOR NEW AWARDS MUST INCLUDE INFORMATION IN THEIR APPLICATIONS TO ADDRESS THIS NEW PROVISION IN ORDER TO RECEIVE FUNDING UNDER THIS PROGRAM.**

(If this program is a State-formula grant program, a State needs to provide this description only for projects or activities that it carries out with funds reserved for State-level uses. In addition, local school districts or other eligible applicants that apply to the State for funding need to provide this description in their applications to the State for funding. The State would be responsible for ensuring that the school district or other local entity has submitted a sufficient section 427 statement as described below.)

What Does This Provision Require?

Section 427 requires each applicant for funds (other than an individual person) to include in its application a description of the steps the applicant proposes to take to ensure equitable access to, and participation in, its Federally-assisted program for students, teachers, and other program beneficiaries with special needs. This provision allows applicants discretion in developing the required description. The statute highlights six types of barriers that can impede equitable access or participation: gender, race, national origin, color, disability, or age. Based on local circumstances, you should determine whether these or other barriers may prevent your students, teachers, etc. from such access or participation in, the Federally-funded project or activity. The description in your application of steps to be taken to overcome these barriers need not be lengthy; you may provide a clear and succinct description of how you plan to address those barriers that are applicable to your circumstances. In addition, the information may be provided in a single narrative, or, if appropriate, may be discussed in connection with related topics in the application.

Section 427 is not intended to duplicate the requirements of civil rights statutes, but rather to ensure that, in designing their projects, applicants for Federal funds address equity concerns that may affect the ability of certain potential beneficiaries to fully participate in the project and to achieve to high standards. Consistent with program requirements and its approved application, an applicant may use the Federal funds awarded to it to eliminate barriers it identifies.

What are Examples of How an Applicant Might Satisfy the Requirement of This Provision?

The following examples may help illustrate how an applicant may comply with Section 427.

(1) An applicant that proposes to carry out an adult literacy project serving, among others, adults with limited English proficiency, might describe in its application how it intends to distribute a brochure about the proposed project to such potential participants in their native language.

(2) An applicant that proposes to develop instructional materials for classroom use might describe how it will make the materials available on audio tape or in braille for students who are blind.

(3) An applicant that proposes to carry out a model science program for secondary students and is concerned that girls may be less likely than boys to enroll in the course, might indicate how it intends to conduct "outreach" efforts to girls, to encourage their enrollment.

We recognize that many applicants may already be implementing effective steps to ensure equity of access and participation in their grant programs, and we appreciate your cooperation in responding to the requirements of this provision.

Estimated Burden Statement for GEPA Requirements

According to the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless such collection displays a valid OMB control number. The valid OMB control number for this information collection is **1890-0007**. The time required to complete this information collection is estimated to average 1.5 hours per response, including the time to review instructions, search existing data resources, gather the data needed, and complete and review the information collection. **If you have any comments concerning the accuracy of the time estimate(s) or suggestions for improving this form, please write to:** Director, Grants Policy and Oversight Staff, U.S. Department of Education, 400 Maryland Avenue, SW (Room 3652, GSA Regional Office Building No. 3). Washington, DC 20202-4248.

[FR Doc. 02-11308 Filed 5-7-02; 8:45 am]
BILLING CODE 4000-01-C

DEPARTMENT OF ENERGY

[Solicitation Number DE-PS36-02GO92004]

Hydrogen Research and Development

AGENCY: Golden Field Office, DOE.

ACTION: Issuance of Solicitation for Financial Assistance Applications.

SUMMARY: The U.S. Department of Energy (DOE) is announcing its intention to seek Financial Assistance Applications for research and development (R&D) projects involving technologies for the production, storage, and utilization of hydrogen.

DATES: Issuance of the Solicitation is planned for no later than early May, 2002.

ADDRESSES: To obtain a copy of the Solicitation once it is issued, interested parties should access the DOE Golden Field Office home page at *http://www.golden.doe.gov/businessopportunities.html,* click on "Solicitations", and then access the solicitation number identified above. The Golden home page will provide direct access to the Solicitation and provide instructions on using the DOE Industry Interactive Procurement System (IIPS) Web site. The Solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Program Office for those solicitations issued by the Golden Field Office. DOE will not issue paper copies of the Solicitation.

FOR FURTHER INFORMATION CONTACT: Beth H. Dwyer, Contract Specialist, via facsimile to (303) 275-4788, or electronically to *Beth_Dwyer@nrel.gov.* Responses to questions will be made by amendment to the Solicitation and posted on the IIPS Web site.

SUPPLEMENTARY INFORMATION: The Department of Energy (DOE) Office of Energy Efficiency and Renewable Energy is soliciting Applications for R&D projects that will advance hydrogen production, storage, and utilization technologies. The DOE intends to provide financial support to assist in the development of such technologies under provisions of the Hydrogen Future Act of 1996, Public Law 104-271.

Under this Solicitation, DOE is seeking Applications for R&D projects that will lead to the implementation of hydrogen technologies in the areas of production, storage, and utilization. Within these three hydrogen technology areas, R&D activities related only to certain processes and equipment types will be eligible for an award, as specified in the Solicitation.

Awards under this Solicitation will be Cooperative Agreements, with a three-year Project Period consisting of three one-year Budget Periods. A go/no-go decision regarding the continuation and funding into Budget Periods subsequent to the first will be made as described in the Solicitation. Eligibility for an award is not restricted to any particular category of Applicant. However, a minimum Cost Share of 20% of Total Project Costs is required in order to be considered for an award.

Although this Solicitation is being issued in Fiscal Year (FY) 2002, potential awards will not be considered until early in FY 2003 (FY 2003 begins October 1, 2002). The possibility for initial awards to be made will depend on the availability of funds in the FY 2003 congressional appropriations. The anticipated level of available DOE funding is specified in the Solicitation for FY 2003, 2004, and 2005. DOE reserves the right to make no awards under this Solicitation or to reduce the requested DOE funding commitment on any potential award through negotiated reductions in work scope.

Issued in Golden, Colorado.

Jerry L. Zimmer,

Director, Office of Acquisition and Financial Assistance.

[FR Doc. 02-11398 Filed 5-7-02; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Bonneville Power Administration

Electrical Interconnection of the Satsop Combustion Turbine Project

AGENCY: Bonneville Power Administration (BPA), Department of Energy (DOE).

ACTION: Notice of availability of Record of Decision (ROD).

SUMMARY: This notice announces the availability of the ROD to offer contract terms to integrate power from the Satsop Combustion Turbine Project, a 650-megawatt gas-fired, combined-cycle, combustion turbine power generation project, into the Federal Columbia River Transmission System (FCRTS). The project is located in Satsop, in the Satsop Development Park, in Grays Harbor County, Washington. This decision was reached after consideration of the site-specific potential environmental impacts analyzed in BPA's Resource Contingency Program Environmental Impact Statement (RCP EIS, DOE/EIS-0230, November 1995), and is consistent with BPA's Business Plan EIS (BP EIS, DOE/EIS-0183, June 1995), and Business Plan ROD (August 1995).

ADDRESSES: Copies of the ROD for the Electrical Interconnection of the Satsop Combustion Turbine Project may be obtained by calling BPA's toll-free document request line: 1-800-622-4520. The RCP EIS, BP EIS, and BP ROD are also available.

FOR FURTHER INFORMATION CONTACT: Dawn R. Boorse, Bonneville Power Administration—KEC-4, P.O. Box 3621, Portland, Oregon, 97208-3621, direct telephone 503-230-5678; toll-free telephone 1-800-282-3713; e-mail *drboorse@bpa.gov.*

Issued in Portland, Oregon, on April 30, 2002.

Steven G. Hickok,

Acting Administrator and Chief Executive Officer.

[FR Doc. 02-11397 Filed 5-7-02; 8:45 am]
BILLING CODE 6450-01-P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Alliance Companies et al.; Notice of Non-Decisional Status

May 2, 2002.

In the matter of: Docket No. EL02-65-000, RT01-88-016; RT01-87-000, ER01-3142-000, ER02-106-000, ER02-107-000, ER02-108-000, ER02-111-000, ER02-290-000, ER01-123-000, ER02-484-000, ER02-485-000, ER02-488-000, ER02-652-000, ER02-947-000, ER02-1420-000, ER98-1438-00, ER02-871-000, and ER02-708-000; Alliance Companies; Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company and National Grid USA; Alliance Companies; Ameren Services Company on behalf of: Union Electric Company, Central Illinois Public Service Company; American Electric Power Service Corporation on behalf of: Appalachian Power Company, Columbus Southern Power

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Company, Indiana Michigan Power Company, Kentucky Power Company, Kingsport Power Company, Ohio Power Company, Wheeling Power Company; Consumers Energy Company and Michigan Electric Transmission Company; Dayton Power and Light Company; Exelon Corporation on behalf of: Commonwealth Edison Company, Commonwealth Edison Company of Indiana, Inc.; FirstEnergy Corporation on behalf of: American Transmission Systems, Inc., Cleveland Electric Illuminating Power Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company; Illinois Power Company; Northern Indiana Public Service Company; Virginia Electric and Power Company; Midwest Independent Transmission System Operator, Inc.

Take notice that, for purposes of the above-captioned dockets (and all subdockets in those dockets), Daniel L. Larcamp, Director of the Office of Markets, Tariffs and Rates, is a non-decisional authority and a non-decisional employee. *Cf.* 18 CFR 385.102(a) (2001) (definition of decisional authority); 18 CFR 385.2201 (2001) (definition of decisional employee).

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11401 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

May 2, 2002.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2545.

c. *Date filed:* April 24, 2002.

d. *Applicant:* Avista Corporation.

e. *Name of Project:* Spokane River Hydroelectric Project.

f. *Location:* On the Spokane River, in Spokane, Stevens, and Lincoln Counties, Washington and Kootenai and Benewah Counties, Idaho. The project occupies federal lands of the U.S. Bureau of Land Management and tribal lands of the Coeur d'Alene Indian Reservation.

g. *Filed Pursuant to:* Federal Power Act, 16 USC §§ 791(a)—825(r).

h. *Applicant Contact:* Bruce Howard, Spokane River License Manager, Avista Corporation, 1411 East Mission, P.O. Box 3727, MSC–1, Spokane, Washington 99220, (509) 495–2941, or e-mail: bruce.howard@avistacorp.com.

i. *FERC Contact:* Nan Allen at (202) 219–2938, or e-mail: nan.allen@ferc.gov.

j. *Deadline for Comments:* June 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site (http://www.ferc.gov) under the "e-Filing" link.

k. The project consists of five developments and appurtenant facilities. The Post Falls development consists of the 48,000-acre Coeur d'Alene Lake with a useable storage capacity of 223,100 acre-feet; a 431-foot-long and 31-foot-high spillway dam across the north channel, a 127-foot-long and 25-foot-high spillway dam across the south channel, and a 215-foot-long and 64-foot-high dam across the middle channel and forming the east wall of the powerhouse; six 56-foot-long penstocks; and a powerhouse with an installed capacity of 15 megawatts (MW).

The Upper Falls development consists of a 366-foot-long, 39-foot-high dam at 1,871 feet elevation; an 800-acre-foot reservoir; a channel leading to an intake structure; a 350-foot-long penstock, and a powerhouse with an installed capacity of 10 MW.

The Monroe Street development consists of a 240-foot-long, 24-foot-high dam with crest elevation of 1,806 feet; a 30-acre-foot reservoir; a 435-foot-long penstock; and an underground powerhouse with an installed capacity of 14.82 MW.

The Nine Mile development consists of a 464-foot-long, 58-foot-high dam with a crest elevation of 1596.6 feet without flashboards and 1606.6 feet with flashboards; a reservoir with 4,600 acre-feet of storage capacity; and a powerhouse with an installed capacity of 26 MW.

The Long Lake development consists of a 593-foot-long, 247-foot-high dam; a 108,080-acre-foot reservoir with a normal pool elevation of 1,536 feet; four 216-foot-long penstocks, and a powerhouse with an installed capacity of 71 MW.

l. A copy of the request to use alternative procedures is on file with the Commission and is available for public inspection. This filing may also be viewed on the web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

m. Avista Corporation has met with federal and state resources agencies, NGOs, elected officials, flood control and downstream interests, environmental groups, business and economic development organizations, recreation groups, and members of the public regarding the Spokane River Project and believes that a consensus exists that the use of alternative procedures is appropriate in this case. Avista Corporation intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by July 31, 2005. Avista Corporation has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGO), and others affected by the project. Avista Corporation has submitted a communications protocol that is supported by the stakeholders.

The purpose of this notice is to invite any additional comments on Avista Corporation's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Avista Corporation will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11406 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–018]

Colorado Interstate Gas Company; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 23, 2002, Colorado Interstate Gas Company (CIG) tendered for filing to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheets, to become effective May 1, 2002:

First Revised Sheet No. 11F
First Revised Sheet No. 11H
Original Sheet No. 11N

CIG states the proposed tariff sheets are being tendered to implement negotiated rate contracts pursuant to the Commission's Statement of Policy on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and Regulation of Negotiated Transportation Services of Natural Gas Pipelines issued January 31, 1996 at Docket Nos. RM95–6–000 and RM96–7–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc:gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11407 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–174–001]

Columbia Gas Transmission Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 26, 2002, Columbia Gas Transmission Corporation (Columbia) filed certain additional information to be provided in this proceeding. On March 28, 2002, the Commission issued an order in this proceeding accepting the tariff sheet filed as part of Columbia's March 1, 2002, annual retainage adjustment filing, subject to Columbia filing certain additional information in this proceeding. In this filing, Columbia is submitting the requested information.

Columbia states that copies of its filing have been mailed to all parties on the official service list in Docket No. RP02–174.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11415 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–048]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 2, 2002.

Take notice that on April 25, 2002, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing the following contract for disclosure of a negotiated rate transaction: Service Agreement No. 72659, between Columbia Gulf Transmission Company and Reliant Energy Services, Inc., dated April 18, 2002.

Transportation service is to commence May 1, 2002 and end May 31, 2002 under the agreement.

Columbia Gulf states that it has served copies of the filing on all parties identified on the official service list in Docket No. RP96–389.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11411 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–234–000]

Discovery Gas Transmission LLC; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Discovery Gas Transmission LLC (Discovery) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet to be effective July 1, 2001:

First Revised Sheet No. 153

Discovery asserts that the purpose of this filing is to comply with the Commission's order issued March 11, 2002, in Docket RM96–1–019.

Discovery states that this filing complies with the Commission's directives as set forth in Order 587-N to adopt standardized tariff language that provides releasing shippers the ability to recall scheduled and unscheduled capacity at the Timely and Evening Nomination Cycles, as well as the ability to recall unscheduled capacity at the Intra-Day 1 and Intra-Day 2 Nomination Cycles as set forth in the adopted tariff language.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11418 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–041]

Dominion Transmission, Inc.; Notice of Negotiated Rates

May 2, 2002.

Take notice that on April 26, 2002, Dominion Transmission, Inc. (DTI) tendered for filing the following tariff sheet for disclosure of a recently negotiated transaction with Sithe Power Marketing, LP:

First Revised Sheet No. 1416

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11410 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1652–000]

Entergy Services, Inc.; Notice of Filing

May 1, 2002.

Take notice that on April 26, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., tendered for filing the Thirty-first Amendment to the Power Coordination, Interchange and Transmission Service Agreement between Entergy Arkansas, Inc. and Arkansas Electric Cooperative Corporation, dated March 1, 2002. The Thirty-first Amendment modifies Exhibit A and F to Appendix A of Rate Schedule No. 82.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Wweb site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 17, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11403 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–233–000]

Florida Gas Transmission Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Florida Gas Transmission Company (FGT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

Tenth Revised Sheet No. 102B
Sixth Revised Sheet No. 102C
Sixth Revised Sheet No. 173

FGT states that on March 11, 2002, in Docket No. RM96–1–019, the Federal Energy Regulatory Commission (Commission) issued Order No. 587-N (Order). In the Order, the Commission amended its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The Order directs that recalls of released capacity will not be permitted to reduce (bump) already scheduled volumes for replacement shippers unless the replacement shippers are provided with at least one opportunity to reschedule any bumped volumes, which is similar to the protection afforded interruptible shippers. The Commission believes this rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The Order requires pipelines to make tariff filings by May 1, 2002 to implement provisions of the Order to become effective on July 1, 2002. The instant filing is made in compliance with Order No. 587-N.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11417 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–478–001]

Honeoye Storage Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002 Honeoye Storage Corporation (Honeoye) tendered for filing as part of its FERC Gas Tariff, First Revised Volume 1A, revised tariff sheets to be effective June 1, 2002. The revised tariff sheets are designated as:

First Revised Sheet No. 15 Superseding Original Sheet No. 15 Original Sheet No. 15A
First Revised Sheet No. 18 Superseding Original Sheet No. 18
First Revised Sheet No. 19 Superseding Original Sheet No. 19
First Revised Sheet No. 22 Superseding Original Sheet No. 22
First Revised Sheet No. 23 Superseding Original Sheet No. 23
First Revised Sheet No. 27 Superseding Original Sheet No. 27
First Revised Sheet No. 96 Superseding Original Sheet No. 96 Original Sheet No. 96A
First Revised Sheet No. 106 Superseding Original Sheet No. 106
Original Sheet No. 106A
Original Sheet No. 106B
First Revised Sheet No. 107 Superseding Original Sheet No. 107

Honeoye states that the purpose of the filing is to substitute certain tariff sheets which comply with the Commission's Order issued March 29, 2002 in Docket Nos. RP00–478–000 and RP00–574–000, the Commission proceedings in which Honeoye's compliance with Order Nos. 637,587–G and 586–L is at issue. Honeoye states that there will be no change in rates and revenues under the proposed revisions.

Honeoye states that copies of the filing are being mailed to Honeoye's jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11413 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–231–000]

Kern River Gas Transmission Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 24, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective as shown.

Eighth Revised Sheet No. 5 (Effective 5/1/02)
Ninth Revised Sheet No. 5 (Effective 7/1/02)
Tenth Revised Sheet No. 5 (Effective 5/1/03)
Sixth Revised Sheet No. 6 Effective 5/1/02)
Seventh Revised Sheet No. 6 (Effective 7/1/02)
Eighth Revised Sheet No. 6 (Effective 5/1/03)
Original Sheet No. 110–A (Effective 7/1/02)
Original Sheet No. 110–B (Effective 7/1/02)

Kern River states that the purpose of this compliance filing is to roll-in the cost and billing determinants of its amended 2002 Expansion Project, including permanent costs arising from the California Action Project, into the rates applicable to Extended Term shippers. Kern River states that this filing is made in compliance with the Commission's prior orders and is consistent with the provisions of the general rate settlement in Docket No. RP99–274. The filing establishes rates applicable to the 2002 Expansion Project shippers, reduces rates for interruptible and authorized overrun transportation, and reduces rates applicable to Extended Term shippers.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC

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20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11416 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–237–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 2, 2002.

Take notice that on April 29, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, First Revised Sheet No. 127; First Revised Sheet No. 162; First Revised Sheet No. 163; and First Revised Sheet No. 841, with an effective date of January 1, 2003.

Kern River states that the purpose of this filing is (1) to submit proposed tariff revisions to incorporate the Commission's policy and language pertaining to recalls of released capacity, in accordance with Order No. 587–N, and (2) to request an extension of time to comply with the Order.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11421 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–036]

Northern Natural Gas Company; Notice of Negotiated Rates

May 2, 2002.

Take notice that on April 29, 2002, Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 1, 2002:

Twenty-Third Revised Sheet No. 66
Fourteenth Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with WPS Energy Services, Inc. in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11408 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–235–000]

Northern Natural Gas Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 26, 2002, Northern Natural Gas Company (Northern), tendered for filing in its FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheet in compliance with the Commission's Order No. 587-N issued on March 11, 2002, in Docket No. RM96–1–019:

Fourth Revised Sheet No. 289

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11402 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER01–1152–004]

PacifiCorp; Notice of Filing

May 1, 2002.

Take notice that PacifiCorp on April 24, 2002, tendered for filing in compliance with the Federal Energy Regulatory Commission's (Commission) Order dated April 10, 2002 under FERC Docket No. ER01–1152–000 a refund report.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 15, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11402 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–413–001]

Pine Needle LNG Company, LLC; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002, Pine Needle LNG Company, LLC (Pine Needle), submits this filing to comply with the Federal Energy Regulatory Commission's (Commission) order issued March 29, 2002 in the referenced dockets related to Order 637, 587–G and 587–L compliance. Included herein are revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1. The enclosed tariff sheets, which are enumerated in Appendix A hereto, are proposed to be effective as described more fully herein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11412 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 2145, 943, 2149, and 2114]

Public Utility District No. 1 of Chelan County, WA, Project No. 2145, Project No. 943; Public Utility District No. 1 of Douglas County, WA, Project No. 2149; Public Utility District No. 2 of Grant County, WA; Project No. 2114; Notice of Site Visits

May 2, 2002.

On Tuesday, May 21, 2002, the Office of Energy Projects staff will participate in a site visit of the Priest Rapids Hydroelectric Project on the Columbia River. The site visit will begin at about 8 a.m. at the Wanapum Heritage Center at Wanapum Dam.

On Wednesday, May 22, 2002, the Office of Energy Projects staff will participate in a site visit of the Wells and Rock Island hydroelectric projects on the Columbia River. The Wells site visit will begin at about 9 a.m. at the Wells Project Overlook Area. The Rock Island site visit will begin at about 1 p.m. in Cottage A at the Public Utility District No. 1 of Chelan County offices on the east side of the Columbia River.

On Thursday, May 23, 2002, the Office of Energy Projects staff will participate in a site visit of the Rocky Reach Hydroelectric Project on the Columbia River. The site visit will begin at about 1 p.m. at the Rocky Reach Project Visitors Center.

All interested parties and individuals are welcome to attend these site visits. Those planning to attend must provide their own transportation and should contact the following individuals for each project no later than May 17, 2002.

Project(s)—Contact, Phone

Rocky Reach and Rock Island projects—Suzanne Bacon, (509) 663–8121

Wells Project—Bob Clubb, (509) 884–7191

Priest Rapids Project—Linda Jones, (509) 754–5037

For further information, please contact Bob Easton at (202) 219–2782 or *robert.easton@ferc.gov.*

Magalie R. Salas,

Secretary.

[FR Doc. 02–11405 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–312–070]

Tennessee Gas Pipeline Company; Notice of Negotiated Rate Filing

May 2, 2002.

Take notice that on April 29, 2002, Tennessee Gas Pipeline Company (Tennessee), submitted for filing and approval two amendments to a Gas Transportation Agreement between Tennessee and eCORP Marketing, L.L.C., that has been previously accepted as a negotiated rate agreement. Tennessee requests that the Commission accept and approve the first amendment to be effective on the later of May 1, 2002, or the date on which the Commission accepts and approves the amendment. Tennessee requests that the Commission accept and approve the second amendment to be effective on the later of November 1, 2002, the date on which certain minor facilities at the delivery point have been completed, or the date on which the Commission accepts and approves the amendment.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11409 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP01–236–005, RP00–553–008, and RP00–481–005]

Transcontinental Gas Pipe Line Corporation; Notice of Compliance Filing

May 2, 2002.

Take notice that on April 29, 2002, Transcontinental Gas Pipe Line Corporation(Transco), tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Substitute Second Revised Sheet No. 266, with an effective date of March 31, 2002.

Transco states that the filing is made in compliance with the Commission's order issued on March 29, 2002 in the referenced dockets. The revised tariff sheet is proposed to be effective as described more fully therein.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11414 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–236–000]

Transwestern Pipeline Company; Notice of Tariff Filing

May 2, 2002.

Take notice that on April 29, 2002, Transwestern Pipeline Company (TW) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets to become effective July 1, 2002:

6th Revised Sheet No. 95B
5th Revised Sheet No. 95B.01
7th Revised Sheet No. 95C
2nd Revised Sheet No. 95H.01

TW states that on March 11, 2002, in Docket No. RM96–1–019, the Federal Energy Regulatory Commission (Commission) issued Order No. 587-N (Order). In the Order, the Commission amended its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The Commission believes this rule creates greater flexibility for firm capacity holders on interstate pipelines by synchronizing the Commission's regulation of recalled capacity with its standards for intra-day nominations. The Order requires pipelines to make tariff filings implementing provisions of the Order by May 1, 2002, to become effective by July 1, 2002. TW also states that this filing is made in compliance with Order No. 587–N.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11420 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–935–002, et al.]

Florida Power & Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 1, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Florida Power & Light Company

[Docket No. ER02–935–002]

Take notice that on April 26, 2002, Florida Power & Light Company (FPL) filed, pursuant to the Order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the unelected Interconnection and Operation Agreement between FPL and Broward Development, LLC.

Comment Date: May 17, 2002.

2. Buchanan Generation, LLC

[Docket No. ER02–1638–000]

Take notice that on April 25, 2002, Buchanan Generation, LLC (Buchanan) filed a market rate tariff of general applicability under which it proposes to sell capacity and energy to affiliates and non-affiliates at market-based rates, and to make such sales to franchised public utility affiliates at rates capped by a publicly available regional index price.

Buchanan requests an effective date of June 1, 2002.

Comment Date: May 16, 2002.

3. Illinois Power Company

[Docket No. ER02–1639–000]

Take notice that on April 25, 2002, Illinois Power Company (Illinois Power), filed with the Federal Energy Regulatory Commission (Commission) a Non-Firm Point-to-Point Transmission Service Agreement and a Firm Short-Term Point-to-Point Transmission Service Agreement entered into by Illinois Power and US AG.

Illinois Power requests an effective date of May 1, 2002 for the Agreements and accordingly seeks a waiver of the Commission's notice requirement.

Illinois Power states that a copy of this filing has been sent to the customer.

Comment Date: May 16, 2002.

4. Cleco Power LLC

[Docket No. ER02–1640–000]

Take notice that on April 25, 2002, Cleco Power LLC tendered for filing an Interconnection and Operating Agreement between Cleco Power LLC, Cleco Midstream Resources LLC, and Columbian Chemicals Company related to a new cogeneration facility to be constructed at Columbian's plant site in St. Mary Parish, Louisiana. The Interconnection and Operating Agreement sets forth the terms and conditions governing the interconnection between the new facility and Cleco Power LLC's transmission system.

Comment Date: May 16, 2002.

5. California Independent System Operator Corporation

[Docket No. ER02–1641–000]

Take notice that on April 26, 2002, the California Independent System Operator Corporation (ISO) tendered for filing the Interconnected Control Area Operating Agreement (ICAOA) between the ISO and Sacramento Municipal Utility District (SMUD). The ISO requests that the agreement be made effective as of the later of June 1, 2002, or the date that the Western Electricity Coordinating Council (WECC) and North American Electric Reliability Council (NERC) provide final certification of SMUD as a control area operator and authorize SMUD to operate the SMUD control area.

The ISO states that this filing has been served on SMUD and the Public Utilities Commission of the State of California.

Comment Date: May 17, 2002.

6. Progress Energy on Behalf of Florida Power Corporation

[Docket No. ER02–1642–000]

Take notice that on April 26, 2002, Florida Power Corporation (FPC) tendered for filing Service Agreements for Non-Firm and Short-Term Firm Point-to-Point Transmission Service with US AB, London Branch. Service to this Eligible Customer will be in accordance with the terms and conditions of the Open Access Transmission Tariff filed on behalf of FPC.

FPC is requesting an effective date of April 1, 2002 for these Service Agreements. A copy of the filing was served upon the North Carolina Utilities Commission and the Florida Public Service Commission.

Comment Date: May 17, 2002.

7. Duquesne Light Company

[Docket No.ER02–1643–000]

Take notice that on April 26, 2002, Duquesne Light Company (DLC) filed a Service Agreement dated April 25, 2002 with Dominion Energy Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Dominion Energy Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 25, 2002 for the Service Agreement.

Comment Date: May 17, 2002.

8. PacifiCorp

[Docket No. ER02–1644–000]

Take notice that on April 26, 2002, PacifiCorp tendered for filing in accordance with 18 CFR 35 of the Federal Energy Regulatory Commission's (Commission) Rules and Regulations, Umbrella Service Agreement No. 70 with the City of Blanding under PacifiCorp's FERC Electric Tariff, Third Revised Volume No. 12

Copies of this filing were supplied to the Utah Public Service Commission and the Public Utility Commission of Oregon.

Comment Date: May 17, 2002.

9. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1645–000]

Take notice that on April 26, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) the Administrator of the Mid-Continent Area Power Pool (MAPP) Tariff, pursuant to Section 205 of the Federal Power Act and Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR 35.13 , submitted for filing an unelected Service Agreement for transmission service for Idaho Power Marketing under MAPP Schedule F.

A copy of this filing was sent to Idaho Power Marketing.

Comment Date: May 17, 2002.

10. New England Power Pool

[Docket No. ER02–1646–000]

Take notice that on April 26, 2002, the New England Power Pool (NEPOOL) Participants Committee submitted revisions to NEPOOL Market Rules and Procedures Nos. 7, 7–D and 17. The proposed changes to Market Rule 7 and the addition of Appendix 7–D are intended to more accurately reflect the lost opportunity costs of providers of Automatic Generation Control (AGC) service within the NEPOOL Control Area. The proposed change to Market

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Rule 17 is intended to provide a mechanism for allocating monthly fixed capacity-type payments made by ISO New England Inc. (ISO–NE) pursuant to mitigation agreements entered into by ISO–NE with the owners of generation resources. An effective date of June 1, 2002 was requested for the changes to Market Rule 7 and Appendix 7–D, and a July 1, 2002 date was requested for the change to Market Rule 17.

The NEPOOL Participants Committee states that copies of these materials were sent to the NEPOOL Participants, Non-Participant Transmission Customers, parties of record in FERC Docket No. ER02–648–000 and the New England state governors and regulatory commissions.

Comment Date: May 17, 2002.

11. San Diego Gas & Electric Company

[Docket No. ER02–1647–000]

Take notice that on April 26, 2002, San Diego Gas & Electric Company (SDG&E) tendered for filing its Service Agreements Numbers 15 and 16 to its FERC Electric Tariff, First Revised Volume No. 6, two interconnection agreements. Both agreements relate to the interconnection of a new generation plant to be owned by CalPeak Power -El Cajon LLC (CalPeak El Cajon). The plant, with a capacity of 49 MW, is being constructed on an expedited basis to meet potential shortfalls in the Western states' electric supplies. It will be located within the City of El Cajon in San Diego County, California, and is expected to begin testing on April 27, 2002, and commercial operation on or about June 1, 2002.

Service Agreement No. 15 is an Expedited Interconnection Facilities Agreement dated April 26, 2002, between SDG&E and CalPeak El Cajon, under which SDG&E will construct the proposed interconnection facilities. Service Agreement No. 16, the Interconnection Agreement between SDG&E and CalPeak Enterprise dated April 26, 2002, establishes interconnection, operation and maintenance responsibilities and associated communications procedures between the parties. SDG&E requests an effective date of April 27, 2002, for both agreements.

SDG&E states that copies of the amended filing have been served on CalPeak El Cajon and on the California Public Utilities Commission.

Comment Date: May 17, 2002.

12. Duquesne Light Company

[Docket No. ER02–1648–000]

Take notice that April 26, 2002, Duquesne Light Company (DLC) filed a Service Agreement dated April 25, 2002 with Dominion Energy Marketing, Inc. under DLC's Open Access Transmission Tariff (Tariff). The Service Agreement adds Dominion Energy Marketing, Inc. as a customer under the Tariff. DLC requests an effective date of April 25, 2002 for the Service Agreement.

Comment Date: May 17, 2002.

13. The Detroit Edison Company

[Docket No. ER02–1649–000]

Take notice that on April 26, 2002, The Detroit Edison Company (Detroit Edison) tendered for filing a notice of termination of a Detroit Edison rate schedule. The rate schedule being terminated is a lease agreement between Detroit Edison and The Toledo Edison Company (Toledo Edison), as amended. Detroit Edison requests that its notice of termination be accepted effective May 31, 2002.

Comment Date: May 17, 2002.

14. LG&E Capital Trimble County LLC

[Docket No. ER02–1650–000]

Take notice that on April 26, 2002, LG&E Capital Trimble County LLC (LCTC) tendered for filing with the Federal Energy Regulatory Commission (Commission) under Section 205 of the Federal Power Act, Rate Schedule FERC No. 1 (tariff) to make wholesale sales of test power at negotiated rates per Mwh up to, but not exceeding, the purchaser's avoided costs in such hour.

Comment Date: May 10, 2002.

15. California Independent System Operator System

[Docket No. ER02–1651–000]

Take notice that on April 26, 2002, pursuant to Section 205 of the Federal Power Act, 16 U.S.C. § 824d, and Section 35.13 of the Federal Energy Regulatory Commission's (FERC or Commission) regulations, 18 CFR 35.13, the California Independent System Operator Corporation (ISO) submitted for filing a pro forma Aggregated Distributed Generation Pilot Project (ADGPP) Participating Generator Agreement (PGA) and related requirements. The pro forma ADGPP PGA relates to a pilot project designed by the ISO and scheduled to be in effect from June 1, 2002, through December 31, 2002, unless terminated earlier. The pilot project will test arrangements for the aggregation of Generating Units with a rated capacity less than 1 MW for purposes of scheduling Energy with the ISO and of participation in the ISO's Supplemental Energy Market. The ISO also filed the ADGPP requirements for informational purposes. In addition, the ISO requested the Commission to extend to pilot project participants the streamlined regulatory procedures it offered until April 30, 2002, to accommodate wholesale sales within the Western Systems Coordinating Council (now WECC) area from generators providing primarily back-up or on-site generation in its March 14 and March 16, 2001, orders in Docket No. EL01–47–000.

The ISO has served copies of the filing upon the Public Utilities Commission of the State of California, the California Energy Commission, the California Electricity Oversight Board, and on all parties with effective Scheduling Coordinator Service Agreements under the ISO Tariff. In addition, the ISO posted the filing on the ISO's Home Page.

Comment Date: May 17, 2002.

16. Illinois Power Company

[Docket No. ER02–1653–000]

Take notice that on April 26, 2002, Illinois Power Company (Illinois Power), 500 South 27th Street, Decatur, Illinois 65251–2200, filed an Interconnection and Operating Agreement entered into with Corn Belt Generation Cooperative (Corn Belt).

Illinois Power requests an effective date of April 17, 2002 for the Agreement and seeks a waiver of the Commission's notice requirement. Illinois Power has served a copy of the filing on Corn Belt.

Comment Date: May 17, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11347 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Draft Application and Preliminary Draft Environmental Assessment (PDEA) and Request for Preliminary Terms and Conditions

May 2, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* New Major License.

b. *Project No.:* 487.

c. *Applicant:* PPL Holtwood, LLC.

d. *Name of Project:* Lake Wallenpaupack Hydroelectric Project.

e. *Location:* On Wallenpaupack Creek, in Wayne and Pike Counties, Pennsylvania.

f. *Applicant Contact:* Gary Petrewski, PPL Generation, LLC, Two North Ninth Street, Allentown, PA 18101–1179, (610) 774–5996, Email: *gpetrewski@pplweb.com.*

g. *FERC Contact:* Patrick K. Murphy (202) 219–2659, Email: *Patrick.Murphy@ferc.gov.*

h. PPL mailed a copy of the Preliminary Draft Environmental Assessment and draft application to interested parties on April 29, 2002. The Commission received a copy of the PDEA on April 30, 2002. Copies of the document are available from PPL at the above address.

i. With this notice we are soliciting preliminary terms, conditions, recommendations, prescriptions, and comments on the PDEA and draft license application. All comments on the PDEA and draft license application should be sent to the address above in item (f) with one copy filed with the Commission at the following address: Federal Energy Regulatory Commission, Magalie R. Salas, Secretary, 888 First Street, NE, Room 1A, Washington, DC 20426. All comments must include the project name and number, and bear the heading "Preliminary Comments", "Preliminary Recommendations", "Preliminary Terms and Conditions", or "Preliminary Prescriptions". Any party interested in commenting must do so before July 1, 2002.

j. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by Section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11404 Filed 5–7–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[Region 2 Docket No. NJ51–241 FRL–7208–2]

Adequacy Status of the Submitted Carbon Monoxide Redesignation Request and Maintenance Plan for the New Jersey Portion of the New York-Northern New Jersey-Long Island Moderate Carbon Monoxide Nonattainment Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of adequacy.

SUMMARY: In this notice, EPA is notifying the public that we have found that the motor vehicle emissions budgets for carbon monoxide (CO) in the submitted redesignation request and maintenance plan for the New Jersey portion of the New York-Northern New Jersey-Long Island moderate CO nonattainment area are adequate for transportation conformity purposes. On March 2, 1999, the D.C. Circuit Court ruled that submitted State Implementation Plans (SIPs) cannot be used for conformity determinations until EPA has affirmatively found them adequate. As a result of our finding, the New Jersey portion of the New York-Northern New Jersey-Long Island CO nonattainment area must use the motor vehicle emission budget from this submitted redesignation request and maintenance plan for future conformity determinations.

DATES: This finding is effective May 23, 2002.

FOR FURTHER INFORMATION CONTACT: Kenneth M. Champagne, Mobile Sources Team, Air Programs Branch, Environmental Protection Agency—Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, (212) 637–4249, *champagne.kenneth@epa.gov.*

The finding and the response to comments will be available at EPA's conformity website: *http://www.epa.gov/otaq/traq,* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

SUPPLEMENTARY INFORMATION:

Background

Today's notice is simply an announcement of a finding that we have already made. EPA Region 2 sent a letter to the New Jersey Department of Environmental Protection on April 22, 2002 stating that the CO motor vehicle emissions budgets for 2007 and 2014 in the submitted redesignation request and maintenance plan (dated January 15, 2002) for the New Jersey portion of the New York-Northern New Jersey-Long Island moderate CO nonattainment area are adequate for transportation conformity purposes. This finding will also be announced on EPA's conformity website: *http://www.epa.gov/otaq/traq,* (once there, click on the "Conformity" button, then look for "Adequacy Review of SIP Submissions for Conformity").

Transportation conformity is required by section 176(c) of the Clean Air Act. EPA's conformity rule requires that transportation plans, programs, and projects conform to SIPs and establishes the criteria and procedures for determining whether or not they do. Conformity to a SIP means that transportation activities will not produce new air quality violations, worsen existing violations, or delay timely attainment of the national ambient air quality standards.

The criteria by which we determine whether a SIP's motor vehicle emission budgets are adequate for conformity purposes are outlined in 40 CFR 93.118(e)(4). Please note that an adequacy review is separate from EPA's completeness review, and it also should not be used to prejudge EPA's ultimate approval of the SIP. Even if we find a budget adequate, the SIP could later be disapproved.

We have described our process for determining the adequacy of submitted SIP budgets in guidance (May 14, 1999 memo titled "Conformity Guidance on Implementation of March 2, 1999 Conformity Court Decision"). We followed this guidance in making our adequacy determination.

Authority: 42 U.S.C. 7401–7671q.

Dated: April 22, 2002.

William J. Muszynski,

Deputy Regional Administrator, Region 2.

[FR Doc. 02–11454 Filed 5–7–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0053; FRL–6836–9]

Versar Inc. and ICF Consulting; Transfer of Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces that pesticide related information submitted to EPA's Office of Pesticide Programs (OPP) pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA), including information that may have been claimed as Confidential Business Information (CBI) by the submitter, will be transferred to Versar Inc. and its subcontractor, ICF Consulting, in accordance with 40 CFR 2.307(h)(3) and 2.308(i)(2). Versar Inc. and its subcontractor, ICF Consulting, have been awarded a contract to perform work for OPP, and access to this information will enable Versar Inc. and its subcontractor, ICF Consulting, to fulfill the obligations of the contract.

DATES: Versar Inc. and its subcontractor, ICF Consulting, will be given access to this information on or before May 13, 2002.

FOR FURTHER INFORMATION CONTACT: By mail: Erik Johnson, FIFRA Security Officer, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 305–7248; e-mail address: johnson.erik@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

II. Contractor Requirements

Under Contract No. 68-W0-1036, Versar Inc. and its subcontractor, ICF Consulting, will perform the following: Office of Pesticide Programs (OPP) has the responsibility of reviewing Product and Residue Chemistry data submitted with applications for the registration of specific pesticide products, and new petitions for proposed uses or tolerances for currently registered or for new pesticides. The contractor shall provide back up support for these activities, which may include statistical evaluation of monitoring data, the review of data submitted in support of tolerance proposals, and the preparation of a summary and index system of previously completed EPA product and residue chemistry reviews by crop, data requirement, and/or chemical to serve as a reference, policy and training guide.

For this work assignment, the Contractor shall review data summaries and reformatted existing studies to identify data gaps and any studies that indicate adverse effects and conduct a thorough, comprehensive examination of all product chemistry and residue chemistry data of pesticides, including the chemistry and metabolism of pesticides in plants and animals and the resulting dietary exposure.

The OPP has determined that access by Versar Inc. and its subcontractor, ICF Consulting, to information on all pesticide chemicals is necessary for the performance of this contract.

Some of this information may be entitled to confidential treatment. The information has been submitted to EPA under sections 3, 4, 6, and 7 of FIFRA and under sections 408, and 409 of FFDCA.

In accordance with the requirements of 40 CFR 2.307(h)(2), the contract with Versar Inc. and its subcontractor, ICF Consulting, prohibits use of the information for any purpose not specified in the contract; prohibits disclosure of the information to a third party without prior written approval from the Agency; and requires that each official and employee of the contractor sign an agreement to protect the information from unauthorized release and to handle it in accordance with the FIFRA Information Security Manual. In addition, Versar Inc. and its subcontractor, ICF Consulting, are required to submit for EPA approval a security plan under which any CBI will be secured and protected against unauthorized release or compromise. No information will be provided to Versar Inc. and its subcontractor, ICF Consulting, until the requirements in this document have been fully satisfied. Records of information provided to Versar Inc. and its subcontractor, ICF Consulting, will be maintained by EPA Project Officers for this contract. All information supplied to Versar Inc. and its subcontractor, ICF Consulting, by EPA for use in connection with this contract will be returned to EPA when Versar Inc. and its subcontractor, ICF Consulting, have completed their work.

List of Subjects

Environmental protection, Business and industry, Government contracts, Government property, Security measures.

Dated: April 25, 2002.

Linda Vlier Moos,

Acting Director, Information Resources and Services Division, Office of Pesticide Programs

[FR Doc. 02–11179 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–1]

Investigator Initiated Grants: Request for Applications

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of requests for applications.

SUMMARY: This notice provides information on the availability of fiscal year 2002 investigator initiated grants program announcements, in which the areas of research interest, eligibility and submission requirements, evaluation criteria, and implementation schedules are set forth. Grants will be competitively awarded following peer review.

DATES: Receipt dates vary depending on the specific research areas within the solicitations.

SUPPLEMENTARY INFORMATION: In its Requests for Applications (RFA) the U.S. Environmental Protection Agency invites research applications in the following areas of special interest to its mission: (1) Assessing the Consequences of Global Change for Air Quality: Sensitivity of U.S. Air Quality to Climate Change and Future Global Impacts; (2) Ecological Indicators for the Great Rivers of the Central Basin; (3) Corporate Environmental Behavior: Examining the Effectiveness of Government Interventions and Voluntary Incentives; and (4) Market Mechanisms and Incentives for Environmental Management.

Contacts: (1) Assessing the Consequences of Global Change for Air Quality: Sensitivity of U.S. Air Quality to Climate Change and Future Global Impacts, *Turner.Vivian@epa.gov;* (2) Ecological Indicators for the Great Rivers of the Central Basin, *Levinson.Barbara@epa.gov;* (3) Corporate Environmental Behavior: Examining the Effectiveness of Government Interventions and Voluntary Incentives, *Carrillo.Susan@epa.gov;* and (4) Market Mechanisms and Incentives for Environmental Management, *Clark.Matthew@epa.gov.*

FOR FURTHER INFORMATION CONTACT: The complete program announcement can be accessed on the Internet at *http://www.epa.gov/ncer,* under "announcements." The required forms for applications with instructions are accessible on the Internet at *http://es.epa.gov/ncer/rfa/forms/downlf.html.* Forms may be printed from this site.

Dated: April 30, 2002.

Peter W. Preuss,

Director, National Center for Environmental Research.

[FR Doc. 02–11452 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–30124; FRL–6829–7]

Pesticide Product; Registration Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces receipt of an application to register pesticide products containing new active ingredients not included in any previously registered products pursuant to the provisions of section 3(c)(4) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

DATES: Written comments, identified by the docket control number OPP–30124, must be received on or before June 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30124 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Susanne Cerrelli, Regulatory Action Leader, Biopesticides and Pollution Prevention Division (7511C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8077; e-mail addess: cerrelli.susanne @epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–30124. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any

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information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPP–30124 in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: Public Information and Records Integrity Branch (PIRIB), Information Resources and Services Division (7502C), Office of Pesticide Programs (OPP), Environmental Protection Agency, Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. The PIRIB is open from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

3. *Electronically.* You may submit your comments electronically by e-mail to: opp-docket@epa.gov, or you can submit a computer disk as described above. Do not submit any information electronically that you consider to be CBI. Avoid the use of special characters and any form of encryption. Electronic submissions will be accepted in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number OPP–30124. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the registration activity.

7. Make sure to submit your comments by the deadline in this notice.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Registration Applications

EPA received an application as follows to register pesticide products containing active ingredients not included in any previously registered products pursuant to the provision of section 3(c)(4) of FIFRA. Notice of receipt of this application does not imply a decision by the Agency on the application.

EPA File symbol 69592-A . Applicant: AgraQuest, Inc., 1530 Drew Ave., Davis, CA 95616. Product Name: QST 2808 Technical. Active ingredient: *Bacillus pumilus* Strain QST 2808 at 2.0%. Proposed Classification/Use: Manufacturing use.

List of Subjects

Environmental protection, Pesticides and pest.

Dated: April 24, 2002.

Janet L. Andersen,

Director, Biopesticides and Pollution Prevention Division, Office of Pesticide Programs.

[FR Doc. 02–11178 Filed 5–7–02; 8:45 am]
BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7208–7]

Notice of Proposed de Minimis Settlements Under Section 122(g) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA) as Amended, 42 U.S.C. 9622(g), Great Lakes Container Corporation Superfund Site, City of St. Louis, MO, St. Louis County, MO, Docket No. CERCLA–07–2002–0124

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The United States Environmental Protection Agency (EPA) has entered into a *de minimis* administrative settlement to resolve claims against 78 *de minimis* parties under the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended, 42 U.S.C. 9622(g). These settlements are intended to resolve the liability of the following parties for: ACF Industries; A.O. Smith Corporation; Ashland, Inc.; Atlantic Richfield Company; Baker Petrolite; BASF Corporation; Bioproducts, Inc.; BP Products North America, Inc. (f/k/a Amoco Oil Co.); Brenntag Mid-South, Inc. (f/k/a PB&S Chemical Co., Inc.); Bristol-Meyers Squibb Company; Buckman Laboratories; Burkhart Foam, Inc.; Cerro Copper Products Company; Chart Automotive Group, Inc.; Chevron USA. Inc.; Conoco, Inc.; Consultant ubricants, Inc.; Crown Cork & Seal Company, Inc. on its own behalf and for Continental Can Co.; Daimler-Chrysler Corporation; Delano Oil Company; Dennis Chemical Company; deVan Sealants, Inc.; E.I. duPont de Nemours & Company; Energy Petroleum Company; Exxon Mobil Corporation (f/k/a Mobil Oil Company); Ford Motor Company; Fuchs Lubricants (f/k/a Century Lubricants, Inc.); Geldbach Petroleum Company, Inc.; General Motors Corp.; Great Lakes Chemical Corp.; Griffin L.L.C.; G.S. Robins and Company; Guth Lighting Systems, Division of JJI Lighting Group, Inc.; Harcros Chemicals, Inc.; Hartog Oil Company; H.B. Fuller Company; Healdton Oil Company, Inc.; Hicks Oils, Inc.; Hohn Manufacturing; Ingersoll-Rand Company (f/k/a Hussman Corporation); INX International Ink Company; Jackes-Evans Manufacturing Company; J.D. Streett & Company, Inc.; Jefferson Smurfit Corporation; Jenkin-Guerin, Inc.; Koch Materials Company; Luebbering Oil Company; Mango Distributing Company; Marathon Ashland Petroleum LLC; Marconi Data Systems (f/k/a Marsh Stencil Machine Company); Marcus Research Laboratory, Inc.; McDonnell Douglas Corporation; McKesson Corporation for its subsidiary McKesson Chemical Company; Meramec Group, Inc.; Metal Container Corporation; Mid-West Industrial Chemical Company; Minnesota Mining & Manufacturing Co.; Minwax Company for Eastman Kodak; Missouri Highways and Transportation Commission and the Missouri Department of Transportation; Missouri Paint & Varnish; MO–Tac Company; Mozel, Ellis & Everard (US Holdings), Inc.; National Steel Corporation, Granite City Division; Nestles USA, Inc.; Nuway, Inc.; The P.D. George Company; Pennzoil-Quaker State Company; Performance Polymers, Inc.; Phillips Petroleum Company; P.P.G. Industries, Inc.; The Proctor & Gamble Manufacturing Company; Schaeffer Manufacturing Company; Sequa Corporation; Sieveking, Inc.; Superior Oil Company, Inc. (a/k/a Superior Solvents & Chemicals); Texaco Group, Inc.; Transchemical, Inc.; and U.S. Polymers, Inc.

DATES: EPA will receive written comments relating to the proposed *de minimis* settlements by June 7, 2002.

ADDRESSES: Comments should be addressed to the Regional Administrator, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to: In the Matter of the Great Lakes Container Corporation Superfund Site, City of St. Louis, St. Louis County, Missouri, CERCLA Docket Nos.

FOR FURTHER INFORMATION CONTACT: Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101, (913) 551–7559.

SUPPLEMENTARY INFORMATION: The *de minimis* administrative settlement is intended to resolve the liability of the following parties for: ACF Industries; A.O. Smith Corporation; Ashland, Inc.; Atlantic Richfield Company; Baker Petrolite; BASF Corporation; Bioproducts, Inc.; BP Products North America, Inc. (f/k/a Amoco Oil Co.); Brenntag Mid-South, Inc. (f/k/a PB&S Chemical Co., Inc.); Bristol-Meyers Squibb Company; Buckman Laboratories; Burkhart Foam, Inc.; Cerro Copper Products Company; Chart Automotive Group, Inc.; Chevron USA, Inc.; Conoco, Inc.; Consultant Lubricants, Inc.; Crown Cork & Seal Company, Inc. on its own behalf and for Continental Can Co.; Daimler-Chrysler Corporation; Delano Oil Company; Dennis Chemical Company; deVan Sealants, Inc.; E.I. duPont de Nemours & Company; Energy Petroleum Company; Exxon Mobil Corporation (f/k/a Mobil Oil Company); Ford Motor Company; Fuchs Lubricants (f/k/a Century Lubricants, Inc.); Geldbach Petroleum Company, Inc.; General Motors Corp.; Great Lakes Chemical Corp.; Griffin L.L.C.; G.S. Robins and Company; Guth Lighting Systems, Division of JJI Lighting Group, Inc.; Harcros Chemicals, Inc.; Hartog Oil Company; H.B. Fuller Company; Healdton Oil Company, Inc.; Hicks Oils, Inc.; Hohn Manufacturing; Ingersoll-Rand Company (f/k/a Hussman Corporation); INX International Ink Company; Jackes-Evans Manufacturing Company; J.D. Streett & Company, Inc.; Jefferson Smurfit Corporation; Jenkin-Guerin, Inc.; Koch Materials Company; Luebbering Oil Company; Mango Distributing Company; Marathon Ashland Petroleum LLC; Marconi Data Systems (f/k/a Marsh Stencil Machine Company); Marcus Research Laboratory, Inc.; McDonnell Douglas Corporation; McKesson Corporation for its subsidiary McKesson Chemical Company; Meramec Group, Inc.; Metal Container Corporation; Mid-West Industrial Chemical Company; Minnesota Mining & Manufacturing Co.; Minwax Company for Eastman Kodak; Missouri Highways and Transportation Commission and the Missouri Department of Transportation; Missouri Paint & Varnish; MO–Tac Company; Mozel, Ellis & Everard (US Holdings), Inc.; National Steel Corporation, Granite City Division; Nestles USA, Inc.; Nuway, Inc.; The P.D. George Company; Pennzoil-Quaker State Company; Performance Polymers, Inc.; Phillips Petroleum Company; P.P.G. Industries, Inc.; The Proctor & Gamble Manufacturing Company; Schaeffer Manufacturing Company; Sequa Corporation; Sieveking, Inc.; Superior Oil Company, Inc. (a/k/a Superior Solvents & Chemicals); Texaco Group, Inc.; Transchemical, Inc.; and U.S. Polymers, Inc. In January 2002, Region VII entered into a de minimis administrative settlement pursuant to section 122(g) of CERCLA, 42 U.S.C. 9622(g) with 78 *de minimis* parties previously listed for the Great Lakes Container Corporation Superfund Site.

Great Lakes Container Corporation is a former drum reclamation company who operated at the Site from 1976 to 1985. The same business was operated as Northwestern Cooperage Company from the 1950's to 1976 and then operated as Great Lakes Container Corporation. EPA conducted time-critical removals completed in 1998 that consisted primarily of soil and drum removals. The EPA incurred costs of approximately $9,127,244.30. The hazardous substances at this Site consisted primarily of lead and polychlorinated biphenyls. Liability is based on the theory that the *de minimis* parties arranged for disposal of hazardous substances at the Site by shipping drums for reclamation coated with paint containing lead. The *de minimis* parties either admitted that they sent drums for reclamation to the Site or EPA had separate evidence to prove that *de minimis* parties sent drums for reclamation to the Site.

The settlements have been approved by the U.S. Department of Justice because the response costs in this matter exceed $500,000.00. Total past costs are $8,733,482.70 and future costs will include costs of litigation for recovering costs against remaining parties. This settlement is being offered to those parties who are liable for no more than one-quarter a percent (.25%) of EPA's past costs at the Site. The majority of *de minimis* parties are each required to pay $4,839.44 or $5,133.72 depending on whether the party was required to pay prejudgment interest. Other settlements made for six parties *de minimis* varied from $3,794.19 to $22,856.56 because more volume-specific information was available for them allowing EPA to refine the calculation. The amount and toxicity of hazardous substances contributed by these parties were minimal as compared to other parties' shares of hazardous substances. The EPA determined these amounts to be the *de minimis* parties' fair share of liability based on the amount of hazardous substances generated and disposed of at the Site and the volume of waste contributed by each of the parties. These settlements include contribution protection from lawsuits by other potentially responsible parties as provided for under Section 122(g)(5) of CERCLA, 42 U.S.C. 9622(g)(5).

The *de minimis* settlement provides that EPA covenants not to sue the *de minimis* parties for response costs at the Site or for injunctive relief pursuant to Sections 106 and 107 of CERCLA and section 7003 of the Resource Conservation and Recovery Act of 1976, as amended (RCRA), 42 U.S.C. 6973. The settlement contains a reopener

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clause which nullifies the covenant not to sue if any information becomes known to EPA that indicates that the parties no longer meet the criteria for a *de minimis* settlement set forth in Section 122(g)(1)(A) of CERCLA, 42 U.S.C. 9622(g)(1)(A). The covenant not to sue does not apply to the following matters:

(a) Claims based on a failure to make the required payment;

(b) Claims based on the future arrangement for disposal or treatment of any hazardous substance, pollutant, or contaminant at the Site after the effective date of the *de minimis* settlement;

(c) Criminal liability; or

(d) Liability for damages or injury to, destruction of, or loss of the natural resources and for the costs of any natural resource damage assessments.

The *de minimis* settlements will become effective upon the date which the EPA issues a written notice to the parties that the statutory public comment period has closed and that comments received, if any, do not require modification, of or EPA withdrawal from the settlement.

Dated: April 24, 2002.

William Rice,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region VII.

[FR Doc. 02–11453 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0012; FRL–6836–2]

Certain New Chemicals; Receipt and Status Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5 of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory) to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a premanufacture notice (PMN) or an application for a test marketing exemption (TME), and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 16, 2002 to March 31, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

DATES: Comments identified by the docket control number OPPT–2002–0012 and the specific PMN number, must be received on or before June 7, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit I. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0012 and the specific PMN number in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: Barbara Cunningham, Acting Director, Office of Program Management and Evaluation, Office of Pollution Prevention and Toxics (7408M), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general. As such, the Agency has not attempted to describe the specific entities that this action may apply to. Although others may be affected, this action applies directly to the submitter of the premanufacture notices addressed in the action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain copies of this document and certain other available documents from the EPA Internet Home Page at http://www.epa.gov/. On the Home-Page select "Laws and Regulations," " Regulations and Proposed Rules, and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

2. *In person.* The Agency has established an official record for this action under docket control number OPPT–2002–0012. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as confidential business information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, any test data submitted by the Manufacturer/Importer is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B– 607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number of the Center is (202) 260–7099.

C. How and to Whom Do I Submit Comments?

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is imperative that you identify docket control number OPPT–2002–0012 and the specific PMN number in the subject line on the first page of your response.

1. *By mail.* Submit your comments to: Document Control Office (7407), Office of Pollution Prevention and Toxics (OPPT), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

2. *In person or by courier.* Deliver your comments to: OPPT Document Control Office (DCO) in EPA East Building Rm. 6428, 1201 Constitution Ave., NW., Washington, DC. The DCO is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the DCO is (202) 564–8930.

3. *Electronically.* You may submit your comments electronically by e-mail to: "oppt.ncic@epa.gov," or mail your computer disk to the address identified in this unit. Do not submit any information electronically that you consider to be CBI. Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in WordPerfect 6.1/8.0 or ASCII file format. All comments in electronic form must be identified by docket control number and the specific PMN number. Electronic comments may also be filed online at many Federal Depository Libraries.

D. How Should I Handle CBI that I Want to Submit to the Agency?

Do not submit any information electronically that you consider to be CBI. You may claim information that you submit to EPA in response to this document as CBI by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. In addition to one complete version of the comment that includes any information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public version of the official record. Information not marked confidential will be included in the public version of the official record without prior notice. If you have any questions about CBI or the procedures for claiming CBI, please consult the person listed under **FOR FURTHER INFORMATION CONTACT.**

E. What Should I Consider as I Prepare My Comments for EPA?

You may find the following suggestions helpful for preparing your comments:

1. Explain your views as clearly as possible.

2. Describe any assumptions that you used.

3. Provide copies of any technical information and/or data you used that support your views.

4. If you estimate potential burden or costs, explain how you arrived at the estimate that you provide.

5. Provide specific examples to illustrate your concerns.

6. Offer alternative ways to improve the notice or collection activity.

7. Make sure to submit your comments by the deadline in this document.

8. To ensure proper receipt by EPA, be sure to identify the docket control number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and **Federal Register** citation.

II. Why is EPA Taking this Action?

Section 5 of TSCA requires any person who intends to manufacture (defined by statute to include import) a new chemical (i.e., a chemical not on the TSCA Inventory to notify EPA and comply with the statutory provisions pertaining to the manufacture of new chemicals. Under sections 5(d)(2) and 5(d)(3) of TSCA, EPA is required to publish a notice of receipt of a PMN or an application for a TME and to publish periodic status reports on the chemicals under review and the receipt of notices of commencement to manufacture those chemicals. This status report, which covers the period from March 16, 2002 to March 31, 2002, consists of the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period.

III. Receipt and Status Report for PMNs

This status report identifies the PMNs pending or expired, and the notices of commencement to manufacture a new chemical that the Agency has received under TSCA section 5 during this time period. If you are interested in information that is not included in the following tables, you may contact EPA as described in Unit II. to access additional non-CBI information that may be available. The "S" and "G" that precede the chemical names denote whether the chemical idenity is specific or generic.

In table I, EPA provides the following information (to the extent that such information is not claimed as CBI) on the PMNs received by EPA during this period: the EPA case number assigned to the PMN; the date the PMN was received by EPA; the projected end date for EPA's review of the PMN; the submitting manufacturer; the potential uses identified by the manufacturer in the PMN; and the chemical identity.

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0456	03/18/02	06/16/02	CIBA Specialty Chemicals Corp., Textile Effects	(S) Exhaust dyeing of polyamide fibers	(G) Naphthalenesulfonic acid amino halo substituted triazin azo substituted phenyl sodium salt
P–02–0457	03/18/02	06/16/02	Alberdingk Boley Inc	(G) Industrial coatings	(G) Oxyalkylpropanoic acid, polymer with dimethylcarbonate, 1,2-ethanediamine, 1,6-hexanediol and 1,1′-methylenebis[4-isocyanatocyclohexane]
P–02–0458	03/18/02	06/16/02	CBI	(G) Component of lubricating composition for finishing product of fiber and yam	(G) Fatty acid, polyoxyethylene-alkyl ether, ester
P–02–0459	03/18/02	06/16/02	Solutia Inc.	(S) Catalyst for industrial coatings	(G) Phosphoric acid ester
P–02–0460	03/19/02	06/17/02	CBI	(S) Printing press cleanup, mainly newsprint; in lithographic ink varnishes; lubricants in metalworking fluids	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, mixed esters with pentaerythritol and tall-oil fatty acids
P–02–0461	03/20/02	06/18/02	Apex Advanced Technologies, LLC	(S) Lubricant/surface agent for powder metal forming; high-temperature surface agent for an organic polymeric binder used in metal injection molding	(S) Hexanoic acid, 2-ethyl-, compound with guanidine (1:1)
P–02–0462	03/20/02	06/18/02	Apex Advanced Technologies, LLC	(S) Lubricant/surface agent for powder metal forming; high-temperature surface agent for an organic polymeric binder used in metal injection molding	(S) Octadecanoic acid, compound with guanidine (1:1)

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I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0463	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) 1-hydroxyethane 1,1-diphosphonic acid, diamine salt
P–02–0464	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) Amino, tris (methylene phosphonic acid), triamine salt
P–02–0465	03/19/02	06/17/02	CBI	(G) Flame/fire retardant - open non-dispersive use.	(G) Diethylene triamine penta methylene penta phosphonic acid, polyamine salt
P–02–0466	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, 1-methyl-1,2-ethanediyl esters
P–02–0467	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Glycerides, C_{16-18} and C_{18}-unsaturated, branched and linear mono- and di-
P–02–0468	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, C_{16-18} and C_{18}-unsaturated, branched and linear, n,n-bis(hydroxyethyl), phosphates (esters)
P–02–0469	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, sodium salts
P–02–0470	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, compounds with ethanolamine
P–02–0471	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, 2-hydroxymethylethyl esters
P–02–0472	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, compounds with isopropanolamine
P–02–0473	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, 2,2-dimethyl-1,3-propanediyl esters
P–02–0474	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, potassium salts
P–02–0475	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, compds. with triethanolamine
P–02–0476	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, tetraesters with pentaerythritol
P–02–0477	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, C_{16-18} and C_{18}-unsaturated, branched and linear, n-(hydroxyethyl)
P–02–0478	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, compounds with 2-amino-2-methyl-1-propanol
P–02–0479	03/21/02	06/19/02	Houghton International Inc..	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, compounds with diethanolamine
P–02–0480	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Amides, C_{16-18} and C_{18}-unsaturated, branched and linear, n,n-bis(hydroxyethyl)
P–02–0481	03/21/02	06/19/02	Houghton International Inc.	(S) Lubricant additive /emulsifier	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, esters with triethanolamine
P–02–0482	03/21/02	06/19/02	The Prince Manufacturing Company	(S) One coat resin for tpo's; adhesives for tpo's	(S) 2-propenoic acid, 2-methyl-, polymers with chlorinated maleic anhydride-polypropylene reaction products, cyclohexyl methacrylate and me methacrylate
P–02–0483	03/20/02	06/18/02	CBI	(G) Acrylic polymer for use in a coating application	(G) Copolymer of alkyl acrylates and alkyl methacrylates
P–02–0484	03/21/02	06/19/02	CIBA Specialty Chemicals Corp., textile effects	(S) Exhaust dyeing of nylon fibers	(G) Substituted naphthalenedisulfonic acid amino substituted triazine reaction products with substituted alkyl amino benzenesulfonic acid
P–02–0485	03/21/02	06/19/02	CBI	(G) Highly dispersive applications	(G) Substituted mercaptan
P–02–0486	03/21/02	06/19/02	CBI	(G) Surface coating additive	(G) Organosilane resin

I. 55 PREMANUFACTURE NOTICES RECEIVED FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Projected Notice End Date	Manufacturer/Importer	Use	Chemical
P–02–0487	03/22/02	06/20/02	Johnson Polymer	(G) Open, non-dispersive use	(G) Vinyl polymer emulsion
P–02–0488	03/22/02	06/20/02	Houghton International Inc.	(S) Paper additive/softener	(S) Imidazolium compounds, 2-(C_{15-17} and C_{17}-unsaturated branched and linear alkyl)-1-[2-(C_{16-18} and C_{18}-unsaturated branched and linear amido)ethyl]-3-ethyl-4,5-dihydro, et sulfates
P–02–0489	03/25/02	06/23/02	CBI	(G) Detergent and cleaner additive	(G) Acrylic copolymer
P–02–0490	03/25/02	06/23/02	CBI	(G) Lubricant	(G) C_{14-18} fatty acids, calcium salts
P–02–0491	03/25/02	06/23/02	CBI	(G) Pigment dispersant	(G) Aromatic polyalkoxylate
P–02–0492	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0493	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0494	03/25/02	06/23/02	CBI	(G) Lubricant additive	(G) Substituted imidoalkylcarboxylic acid
P–02–0495	03/25/02	06/23/02	Bedoukian Research, Inc.	(S) Chemical intermediate	(G) Branched alkyl ester
P–02–0496	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0497	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0498	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0499	03/25/02	06/23/02	CBI	(S) Resin for coatings	(G) Acrylic resin
P–02–0500	03/26/02	06/24/02	CBI	(S) The function is as a binder for roadmarking inks	(S) Fatty acids, C_{16-18} and C_{18}-unsaturated, branched and linear, polymers with glycerol, maleic anhydride and rosin
P–02–0501	03/20/02	06/18/02	Powdertech corporation	(S) Carrier for electrophotographic developer	(S) Ferrite substances, magnetoplumbite-spinel type, magnesium manganese strontium
P–02–0502	03/26/02	06/24/02	BASF Corporation	(G) Pick-up truck bed liner	(G) Ipdi prepolymer
P–02–0503	03/27/02	06/25/02	CBI	(G) Resin for coatings and inks	(G) Aromatic urethane
P–02–0504	03/27/02	06/25/02	CBI	(G) Site limited intermediate	(G) Aromatic aminoether
P–02–0505	03/27/02	06/25/02	CBI	(G) Sizing agent for paper and paperboard	(G) Mpeg-succinate
P–02–0506	03/27/02	06/25/02	CBI	(G) Open use, substrate	(G) Aromatic pyromellitic tetrapolyimide
P–02–0507	03/28/02	06/26/02	Tomen America Inc.	(S) Black coloring agent for paper	(S) 2,7-naphthalenedisulfonic acid, 4-[[4-[[7-[[2,4(2,6 or 3,5)-diaminosulfophenyl]azo]-1-hydroxy-3-sulfo-2-naphthalenyl]azo]-5-methoxy-2-methylphenyl]azo]-5-hydroxy-, tetrasodium salt
P–02–0508	03/29/02	06/27/02	CBI	(G) Additive, open, non-dispersive use	(G) Polyether modified polysiloxane
P–02–0509	03/29/02	06/27/02	The Dow Chemical Company	(S) Latex binder for ceiling tile	(G) Proprietary carboxylated styrene/acrylate polymer
P–02–0510	03/29/02	06/27/02	Hercules Incorporated	(S) Surfactant	(G) Polyethylene glycol fatty acid ester

In table II, EPA provides the following information (to the extent that such information is not claimed as CBI) on the Notices of Commencement to manufacture received:

II. 32 NOTICES OF COMMENCEMENT FROM: 03/16/02 TO 03/31/02

Case No.	Received Date	Commencement/ Import Date	Chemical
P–00–0160	03/29/02	03/04/02	(G) Modified acrylate copolymer
P–00–0306	03/26/02	01/21/02	(S) Sulfuric acid, dimethyl ester, compound with alpha,alpha′,alpha″,alpha‴-[1,6-hexanediylbis (nitrilodi-2,1-ethanediyl)] tetrakis [omega-hydroxypoly(oxy-1,2-ethanediyl)]
P–00–0363	04/01/02	03/13/02	(G) Asphatic ester
P–00–0520	03/29/02	03/11/02	(G) Perfluoroalkyl epoxide
P–00–1048	03/21/02	03/06/02	(G) Alkyl metal silicate
P–00–1145	03/26/02	01/23/02	(S) Hexanoic acid, 5-methyl-
P–01–0031	03/22/02	02/28/02	(G) Amine phosphate

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II. 32 NOTICES OF COMMENCEMENT FROM: 03/16/02 TO 03/31/02—Continued

Case No.	Received Date	Commencement/ Import Date	Chemical
P–01–0193	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–01–0319	03/18/02	03/11/02	(G) Vinyl-terminated polydimethylsiloxane
P–01–0467	03/21/02	03/07/02	(G) Organic transition metal complex
P–01–0525	03/18/02	10/10/01	(S) Poly[oxy(methyl-1,2-ethanediyl)], alpha-hydro-omega-hydroxy-, polymer with 1,6-diisocyanato-2,2,4-trimethylhexane and 1,6-diisocyanato-2,4,4-trimethylhexane, 2-oxepanone homopolymer 2-[(1-oxo-2-propenyl)oxy]ethyl ester-blocked
P–01–0832	03/20/02	03/11/02	(G) Polymeric acrylic ester
P–01–0946	04/01/02	01/18/02	(G) Alkoxylated fatty amine
P–01–0947	04/01/02	03/11/02	(G) Meko blocked aromatic polyisocyanate based on tdi
P–02–0036	03/20/02	02/15/02	(S) Imidazolium compounds, 2-(C_{15-17} and C_{17} unsaturated branched and linear alkyl)-1-ethyl-4,5-dihydro-3-(hydroxyethyl), et sulfates (salts)
P–02–0037	03/20/02	02/22/02	(S) Imidazolium compounds, 2-(C_{15-17} and C_{17}-unsaturated branched and linear alkyl)-1-[2-(C_{16-18} and C_{18} branched and linear amido)ethyl]-3-ethyl-4,5-dihydro, et sulfates
P–02–0038	03/18/02	02/20/02	(G) Modified acrylic emulsion
P–02–0070	03/20/02	02/27/02	(S) 2-propenoic acid, polymer with sodium 4-ethenylbenzenesulfonate
P–02–0081	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0082	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0083	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0084	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0085	03/29/02	03/14/02	(G) Styrene-methacrylate copolymer
P–02–0105	03/27/02	03/18/02	(S) 1,3-benzenedicarboxylic acid, 5-sulfo-, monosodium salt, polymer with 1,3, benzenedicarboxylic acid, 1,4-benzenedicarboxylic acid, 1,2-ethanediol, 2,2'-[1,2-ethanediylbis(oxy)]bis[ethanol] and 2,2'-oxybis[ethanol]
P–02–0110	03/21/02	03/12/02	(S) Tantalum, tris(n-ethylethanaminato)[2-methyl-2-propanaminato(2-)]-, (t-4)-
P–02–0122	03/27/02	03/21/02	(G) Sodium salt of a disubstituted diazo-amino-hydroxy-naphthalenedisulfonic acid
P–02–0140	03/25/02	03/13/02	(G) Acrylic copolymer polyurethane dispersion
P–02–0148	03/25/02	03/20/02	(G) Polyester resin
P–93–0512	03/27/02	02/14/02	(G) Zinc dialkyldithiocarbamate
P–94–0991	03/18/02	02/19/02	(G) Acrylic modified epoxy ester
P–96–0066	03/21/02	03/05/02	(G) Hydroxy functional polyester
P–96–0172	04/03/02	03/14/02	(G) Mono and di-amine salt carboxylate

List of Subjects

Environmental protection, Chemicals, Premanufacturer notices.

Dated: April 26, 2002.

Mary Louise Hewlett,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 02–11455 Filed 5–7–02; 8:45 am]

BILLING CODE 6560–50–S

EXPORT IMPORT BANK OF THE UNITED STATES

Committee Management; Notice of Establishment

AGENCY: Export Import Bank of the United States.

ACTION: Notice of establishment of advisory committee.

SUMMARY: The Vice Chairman and First Vice President of the Export-Import Bank of the United States ("Ex-Im Bank") has determined that the establishment of the Sub-Saharian Africa Advisory Committee ("Committee") is necessary and in the public interest in connection with the mission of the Ex-Im Bank, pursuant to sections 2(b)(9) of the Export-Import Bank Act of 1945, as amended (12 U.S.C. 635(b)(9)). This determination follows consultation with the Committee Management Secretariat, General Service Administration.

The Committee will consist of ten member who will provide advice and recommendations to Ex-Im Bank concerning programs in Sub-Saharian Africa. Ex-Im Bank will achieve balanced membership on the Committee by inviting a broad cross-section of parties with an interest in Sub-Saharian Africa to serve on the Committee.

The Committee will operate on a continuing basis.

ADDRESSES: Export Import Bank of the United States, 811 Vermont Ave., NW., Washington, DC 20571.

FOR FURTHER INFORMATION CONTACT: James Lambright, Export Import Bank of the United States at (202) 565–3515.

Dated: February 11, 2002.

James Lambright,

Designated Federal Officer.

[FR Doc. 02–11324 Filed 5–7–02; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collections Approved by Office of Management and Budget

April 30, 2002.

The Federal Communications Commission (FCC) has received Office of Management and Budget (OMB) approval for the following public information collections pursuant to the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a currently valid control number. For further information contact Shoko B. Hair, Federal Communications Commission, (202) 418–1379.

Federal Communications Commission

OMB Control No.: 3060–0756.

Expiration Date: 01/31/2005.

Title: Procedural Requirements and Policies for Commission Processing BOC Applications for the Provision of In-Region, InterLATA Services Under Section 271 of the Telecommunications Act of 1996.

Form No.: N/A.

Respondents: Business or other for-profit; State, Local or Tribal Government, Federal Government.

Estimated Annual Burden: 75 respondents; 250.9 hours per response (avg.).; 18,820 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion.

Description: In a Public Notice released March 23, 2001 (DA 01–734) the Commission set forth the procedural requirements and policies relating to FCC processing of Bell Operating Company (BOC) applications to provide in-region, interLATA services pursuant to 47 USC 271. BOCs must file applications, which provide information on which the applicant intends to rely in order to satisfy the requirement of Section 271. State regulatory commission and Department of Justice can file written consultations relating to the applications. Interested third parties may file comments and reply comments regarding the applications. See Public Notice for details of requirements. The Public Notice may be obtained from the Commission's website at *www.fcc.gov* or by calling 202–418–0500. All of the requirements are used to ensure that BOCs have complied with their obligations under the Communications Act of 1934, as amended, before being authorized to provide in-region, interLATA services pursuant to Section 271. Obligation to respond: Mandatory.

OMB Control No.: 3060–0814

Expiration Date: 03/31/2005

Title: Section 54.301, Local Switching Support and Local Switching Support Data Collection Form and Instructions.

Form No.: N/A.

Respondents: Business or other for-profit.

Estimated Annual Burden: 195 respondents; 19.42 hours per response (avg.).; 3787 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion; annually.

Description: Pursuant to Section 54.301, each incumbent local exchange carrier that is not a member of the NECA common line tariff, that has been designated an eligible telecommunications carrier, and that serves a study area with 50,000 or fewer access lines shall, for each study area, provide the Administrator with the projected total unseparated dollar amount assigned to each account in Section 54.301(b). (*No. of respondents:* 157; hours per response; 24 hours; *total annual burden:* 3768 hours). Average schedule companies are required to file information pursuant to Section 54.301(f), (*No. of respondents:* 38; *hours per response:* .5 hours; *total annual burden:* 19 hours). Both respondents must provide true-up data. Carriers must file this information within 12 months after the initial report. The universal service administrator, USAC, has developed a form to collect the information specified in the Commission's rules. Copies of the forms and instructions may be obtained from the Administrator by calling 202–776–0200. Copies of the forms and instructions may also be downloaded from the Administrator's web page (*www.universalservice.org*). The data is necessary to calculate the average unseparated local switching revenue requirement. This revenue requirement is necessary to calculate the amount of local switching support that carriers will receive. Obligation to respond: Mandatory. Note that this is a re-issuance of the notice of OMB approval that appeared in the **Federal Register** on April 12, 2002. The notice failed to mention the local switching support forms and instructions.

OMB Control No.: 3060–0856

Expiration Date: 04/30/2005

Title: Universal Service—Schools and Libraries Universal Service Program Reimbursement Forms

Form No.: FCC Forms 472, 473 and 474.

Respondents: Not-for-profit institutions; business or other for-profit.

Estimated Annual Burden: 61,800 respondents; 1.42 hours per response (avg.); 88,050 total annual burden hours.

Estimated Annual Reporting and Recordkeeping Cost Burden: $0.

Frequency of Response: On occasion, annually; third party disclosure.

Description: The Commission adopted rules providing support for all telecommunications services, Internet access, and internal connections for all eligible schools and libraries pursuant to the Telecommunications Act of 1996. The Universal Service Administrative Company (USAC) administers the telecommunications universal service programs. The following forms are necessary to enable USAC's Schools and Libraries Division (SLD), to pay universal service support to service providers who provide discounted service to eligible schools, libraries, and consortia of those entities. FCC Form 472, Billed Entity Applicant Reimbursement Form—The purpose of FCC Form 472 is to establish the process and procedure for an eligible entity to seek reimbursement from the service provider for the discounts on services paid in full since the actual service start date of the discounts as reported in the applicant's Form 486 Receipt of Services Confirmation Form, Column (E) of Block 2. Once the fund administrator processes the FCC Form 472, a notification will be sent to the service provider and applicant advising them of the approved amount of discounts. After receiving an invoice from the service provider, together with an FCC Form 474, the fund administrator will deliver the amount of the approved reimbursement to the service provider, and the service provider shall then remit that amount to the applicant. (*No. of respondents:* 50,000; *hours per response:* 15. hours; *total annual burden:* 75,000 hours). FCC Form 473—Service Provider Annual Certification Form—The purpose of FCC Form 473 is to establish the process and procedure for a service provider to confirm the accuracy of their Invoice Forms. This form is part of the procedure established to enable service providers to seek reimbursement for the costs of discounts they provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. (*No. of respondents:* 9300; *hours per response:* 1 hour; *total annual burden:* 9300 hours). FCC Form 474, Service Provider Invoice Form—The purpose of FCC Form 474, is to establish the processing and procedure for a service provider to seek reimbursement for the costs of discounts it provided to eligible entities on eligible services as defined under the FCC's rules governing the schools and libraries universal service support mechanism pursuant to the Telecommunications Act of 1996. The Service Provider Invoice Form is also used by the fund administrator, the SLD, to assure that the dollars paid out by the fund administrator on a funding request number (FRN) do not exceed that FRN. An FRN is a service or group of services for which funding was requested by an applicant and for which the fund administrator issued a Funding Commitment Decision Letter to both the applicant and service provider. The letter identifies the amount of discounts that have been approved for each FRN and the SPIN for the service provider that is authorized to provide the discounts. FCC Form 474 verifies that each service provider has provided discounted services within the current funding year for which it submits an invoice to the SLD and assures that

invoices submitted from service providers for the costs of discounted eligible services do not exceed the funding year cap for each FRN. (*No. of respondents:* 2500; *hours per response:* 1.5 hours; *total annual burden:* 3750 hours). All of the forms are necessary to implement the congressional mandate for universal service. FCC Forms 473 and 474 verify that each service provider has provided discounted services within the current funding year for which it submits an invoice to the SLD and assure that invoices submitted from service providers for the costs of discounted eligible services do not exceed the funding year cap for each FRN. FCC Form 472 allows eligible entities to seek reimbursement from the service providers. Call SLD at 1–888–203–8100 for questions concerning or for copies of FCC Forms 472, 473, or 474. Copies of the forms are also available via the internet at *www.universalservice.org. Obligation to respond:* Required to obtain or retain benefits.

Public reporting burdens for the collections of information are as noted above. Send comments regarding the burden estimates or any other aspect of the collections of information, including suggestions for reducing the burden to Performance Evaluation and Records Management, Washington, DC 20554.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11390 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 92–237; DA 02–1026]

Next Meeting of the North American Numbering Council

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: On May 3, 2002, the Commission released a public notice announcing the May 21–22, 2002, meeting and agenda of the North American Numbering Council (NANC). The intended effect of this action is to make the public aware of the NANC's next meeting and its agenda.

DATES: The North American Numbering Council (NANC) has scheduled a meeting to be held Tuesday, May 21, 2002, from 8:30 a.m. until 5 p.m., and on Wednesday, May 22, 2002, from 8:30 a.m., until 12 noon (if required).

ADDRESSES: The meeting will be held at the Federal Communications Commission, Portals II, 445 12th Street, SW., Room TW–C305, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Deborah Blue, Special Assistant to the Designated Federal Officer (DFO) at (202) 418–1466 or *dblue@fcc.gov*. The address is: Telecommunications Access Policy Division, Wireline Competition Bureau, Federal Communications Commission, The Portals II, 445 12th Street, SW., Suite 5–A420, Washington, DC 20554. The fax number is: (202) 418–2345. The TTY number is: (202) 418–0484.

SUPPLEMENTARY INFORMATION: Released: May 3, 2002.

This meeting is open to members of the general public. The FCC will attempt to accommodate as many participants as possible. The public may submit written statements to the NANC, which must be received two business days before the meeting. In addition, oral statements at the meeting by parties or entities not represented on the NANC will be permitted to the extent time permits. Such statements will be limited to five minutes in length by any one party or entity, and requests to make an oral statement must be received two business days before the meeting. Requests to make an oral statement or provide written comments to the NANC should be sent to Deborah Blue at the address under **FOR FURTHER INFORMATION CONTACT**, stated above.

Proposed Agenda—Tuesday, May 21, 2002

1. Announcements and Recent News
2. Approve Minutes
   —Meeting of March 12, 2002
3. Report of North American Numbering Plan Administrator (NANPA)
   —NPA Exhaust Projection
   —NANP Exhaust Assumptions
   —CO Code Activity
   —Intermediate Numbers
   —Returned Codes with Ported TNs
4. Report of NANP Expansion/ Optimization IMG
5. Status of Industry Numbering Committee activities
6. Report of NANPA Oversight Working Group
   —Evaluation of survey results
   —Determine which industry association had best survey participation rate: each association should make its claim (award at July meeting)
7. Report of the Local Number Portability Administration (LNPA) Working Group

Wireless Number Portability Operations (WNPO) Subcommittee

   —WNPO/CTIA: Status of meeting the Nov. 24, 2002 pooling and porting deadline
8. Report of National Thousands-Block Pooling Administrator
9. Report of NAPM LLC
10. Report from NBANC
11. Report of Cost Recovery Working Group
12. Report of E-Conferencing Subcommittee
13. Steering Committee
    —Table of NANC Projects
14. Report of Steering Committee
15. Action Items
16. Public Participation (5 minutes each)
17. Other Business

Adjourn no later than 5 p.m.

Wednesday, May 22, 2002 (if required)

18. Complete any unfinished Agenda Items
19. Other Business

Adjourn (no later than 12 Noon)

Next Meeting: July 17–18, 2002

Federal Communications Commission.

Cheryl L. Callahan,

Assistant Chief, Telecommunications Access Policy Division, Wireline Competition Bureau.

[FR Doc. 02–11469 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2548]

Petitions for Reconsideration of Action in Rulemaking Proceeding

April 30, 2002.

Petitions for Reconsideration have been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to these petitions must be filed by May 23, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of part 22 of the Commission's rules to provide for filing and processing of applications for unserved areas in the cellular service and to modify other cellular rules (CC Docket No. 90–6).

Cellular service and other commercial mobile radio services in the gulf of Mexico (WT Docket No. 97–112).

Number of Petitions Filed: 2.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11391 Filed 5–7–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 22084, May 2, 2002.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 A.M., Wednesday, May 8, 2002.

CHANGE OF MEETING TIME: Notice is hereby given that the Board of Directors meeting scheduled for 10 a.m. on Wednesday, May 8, 2002 has been changed to 2 p.m. on Wednesday, May 8, 2002.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

James L. Bothwell,

Managing Director.

[FR Doc. 02–11548 Filed 5–3–02; 5:08 pm]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW., Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011800.

Title: Dole Ocean Cargo Express/ Maersk Sealand Slot Charter Agreement.

Parties: A.P. Møller-Maersk Sealand, Dole Ocean Cargo Express, Inc.

Synopsis: Under the proposed agreement, Maersk Sealand will be chartering space to Dole in the trade between Port Everglades, Florida, and Puerto Limon, Costa Rica.

Agreement No.: 011801.

Title: Maersk Sealand/P&O Nedlloyd U.S. East Coast/Indian Subcontinent Slot Charter Agreement.

Parties: A.P. Møller-Maersk Sealand, P&O Nedlloyd Limited/P&O Nedlloyd BV.

Synopsis: Under the proposed agreement, Maersk Sealand will charter space to P&O Nedlloyd in the trade between U.S. East Coast ports and Mediterranean, Mideast, and Indian Subcontinent ports. The parties request expedited review.

Agreement No.: 011802.

Title: The Evergreen/Lloyd Triestino/ Hatsu Marine Alliance-WTSA Bridging Agreement.

Parties:

Evergreen Marine Corp. (Taiwan) Ltd.

Lloyd Triestino Di Navigazione S.p.A.

Hatsu Marine Limited, American President Lines, Ltd.

APL Co. PTE Ltd.

A.P. Moller-Maersk Sealand,

Cosco Container Lines Ltd.,

Hanjin Shipping Company, Ltd.,

Hapag-Lloyd Container Linie GmbH

Hyundai Merchant Marine Co., Ltd.

Kawasaki Kisen Kaisha, Ltd.

Mitsui O.S.K. Lines, Ltd.

Nippon Yusen Kaisha

Orient Overseas Container Line Limited

P&O Nedlloyd B.V.

P&O Nedlloyd Limited

Yangming Marine Transport Corp.

Synopsis: The proposed agreement authorizes a "bridge" agreement between the Evergreen/Lloyd Triestino/ Hatsu Marine Alliance Agreement and the Westbound Transpacific Stabilization Agreement ("WTSA"). The agreement will permit Lloyd Triestino and Hatsu, as well as their affiliate Evergreen, to discuss, share information, and reach voluntary agreements with WTSA and its members.

Agreement No.: 201133.

Title: TraPac Terminal Link of California Terminal Agreement.

Parties:

CMA CGM, S.A.

Trans Pacific Container Service Corporation

Terminal Link, S.A.

TraPac Terminal Link of California LLC.

Synopsis: Under the proposed agreement, the parties will discuss, agree, organize, and operate as a marine terminal operator through or with a limited liability company in Los Angeles County.

By Order of the Federal Maritime Commission.

Dated: May 3, 2002.

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–11460 Filed 5–7–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 22, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Gary F. Pribyl, Cedar Rapids, Iowa, as trustee to vote shares of Herky Hawk Financial Corp., Monticello, Iowa, and thereby indirectly retain voting shares of Citizens State Bank, Monticello, Iowa. Herky Hawk Financial Corp., also has applied to merge with Biggsville Financial Corporation, Biggsville, Illinois, and thereby acquire 100 percent of the outstanding voting shares of First State Bank, Biggsville, Illinois, and to acquire 100 percent of the outstanding voting shares of Casey State Bank, Casey, Illinois, and New Vienna Savings Bank, New Vienna, Iowa, pursuant to Section 3 of the Bank Holding Company Act.

Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11345 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are

set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 23, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Mack V. Colt and Sara C. Colt, both of Prairie Village, Kansas; to acquire control of Gower Bankshares, Inc., Gower, Missouri, and thereby indirectly acquire voting shares of The Farmers Bank of Gower, Gower, Missouri.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11482 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 3, 2002.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 2200 North Pearl Street, Dallas, Texas 75201–2272:

1. MOW/RPW II, Ltd., Victoria, Texas; to become a bank holding company by acquiring 15.66 percent of the voting shares of FVNB Corp., Victoria, Texas, and thereby indirectly acquire voting shares of FVNB Delaware Corp., Wilmington, Delaware, First Victoria National Bank, Victoria, Texas, and Citizens Bank of Texas, National Association, New Waverly, Texas.

2. MOW/RPW Management II, Inc., Victoria, Texas; to become a bank holding company by serving as the corporate general partner of and holding a 0.10 percent interest in MOW/RPW II, Ltd., Victoria, Texas.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11483 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 22, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Black Diamond Financial Group, Inc., Tampa, Florida; to engage *de novo* through its subsidiary, Black Diamond Wealth Management, Inc., Tampa, Florida, in investment advisory activities, pursuant to § 225.28(b)(6) of Regulation Y.

Board of Governors of the Federal Reserve System, May 2, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–11344 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities; Correction

This notice corrects a notice (FR Doc. 02-10621) published on pages 21242 and 21243 of the issue for Tuesday, April 30, 2002.

Under the Federal Reserve Bank of Richmond heading, the entry for Royal Bank of Canada, Montreal Canada; RBC Centura Banks, Inc., Rocky Mount, North Carolina, and peach Acquisition Sub, Inc., Atlanta, Georgia, is revised to read as follows:

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. Royal Bank of Canada, Montreal, Canada; and RBC Centura Banks, Inc., Rocky Mount, North Carolina; to acquire Eagle Bancshares, Inc., Tucker, Georgia, and thereby indirectly acquire Tucker Federal Bank, Tucker, Georgia, and thereby engage in operating a savings association; Eagle Bancshares Capital Group, Inc., Tucker, Georgia, and thereby engage in lending and lending-related activities; Prime Eagle Mortgage Corporation, Tucker, Georgia, and thereby engage in lending and lending-related activities; Eagle Service Corporation, Tucker, Georgia, and thereby engage in discount brokerage, lending and lending-related activities; TFB Management, Inc., TFB Management (NC), Inc., and TFB Management (RE), Inc., all of Wilmington, Delaware, and thereby engage in lending and lending-related activities; and Hampton Oaks, LLP., Tucker, Georgia, and thereby engage in community development activities, pursuant to §§ 225.28(b)(1); 225.28(b)(2)(ii); 225.28(b)(2)(iv); 225.28(b)(4)(ii); 225.28(b)(7)(i), and 225.28(b)(12)(i) of Regulation Y.

Comments on this application must be received by May 24, 2002.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 02–11484 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 30, 2002.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166–2034:

1. South Central Bancshares, Inc., Russellville, Kentucky; to acquire Citizens Corporation, Franklin, Tennessee, and thereby engage in making, acquiring, brokering, or servicing loans or other extensions of credit, and Citizens and Peoples Insurance, Inc., Grant, Alabama, and thereby engage in general insurance agency services in a town of less than 5,000 in population, pursuant to §§ 225.28 (b)(1), (b)(4), and (b)(11)(iii)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, May 3, 2002.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc.02–11485 Filed 5–7–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL TRADE COMMISSION

[File No. 021 0067]

Solvay S.A.; Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: The consent agreement in this matter settles alleged violations of federal law prohibiting unfair or deceptive acts or practices or unfair methods of competition. The attached Analysis to Aid Public Comment describes both the allegations in the draft complaint that accompanies the consent agreement and the terms of the consent order—embodied in the consent agreement—that would settle these allegations.

DATES: Comments must be received on or before June 3, 2002.

ADDRESSES: Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. Comments filed in electronic form should be directed to: *consentagreement@ftc.gov*, as prescribed below.

FOR FURTHER INFORMATION CONTACT: Richard Liebeskind, Bureau of Competition, 600 Pennsylvania Avenue, NW., Washington, DC 20580, (202) 326–2441.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46(f), and Section 2.34 of the Commission's Rules of Practice, 16 CFR 2.34, notice is hereby given that the above-captioned consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of thirty (30) days. The following Analysis to Aid Public Comment describes the terms of the consent agreement, and the allegations in the complaint. An electronic copy of the full text of the consent agreement package can be obtained from the FTC Home Page (for May 2, 2002), on the World Wide Web, at "*http://www.ftc.gov/os/2002/05/index.htm.*" A paper copy can be obtained from the FTC Public Reference Room, Room 130–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580, either in person or by calling (202) 326–2222.

Public comments are invited, and may be filed with the Commission in either paper or electronic form. Comments filed in paper form should be directed to: FTC/Office of the Secretary, Room 159–H, 600 Pennsylvania Avenue, NW., Washington, DC 20580. If a comment contains nonpublic information, it must be filed in paper form, and the first page of the document must be clearly labeled "confidential." Comments that do not contain any nonpublic information may instead be filed in electronic form (in ASCII format, WordPerfect, or Microsoft Word) as part of or as an attachment to email messages directed to the following email box: *consentagreement@ftc.gov*. Such comments will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice, 16 CFR 4.9(b)(6)(ii)).

Analysis To Aid Public Comment

The Federal Trade Commission ("Commission") has accepted, subject to final approval, an Agreement Containing Consent Orders ("Consent Agreement") from Solvay S.A. ("Solvay" or the "Respondent"). The Consent Agreement is intended to resolve anticompetitive effects stemming from Solvay's proposed acquisition of Ausimont S.p.A. ("Ausimont") from Italenergia S.p.A. The Consent Agreement includes a proposed Decision and Order (the "Order") which would require Respondent to divest Solvay's U.S. polyvinylidene fluoride ("PVDF") operations (the "Solvay Fluoropolymers Business"), including its Decatur, Alabama plant and its interest in the Alventia LLC joint venture, which manufacturers the main raw material for PVDF. The Consent Agreement also includes an Order to Hold Separate and Maintain Assets which requires Respondents to preserve the Solvay Fluoropolymers Business as a viable, competitive, and ongoing operation until the divestiture is achieved.

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The Consent Agreement, if finally accepted by the Commission, would settle charges that Solvay's proposed acquisition of Ausimont may have substantially lessened competition in two markets: PVDF, and melt-processible PVDF. The Commission has reason to believe that Solvay's proposed acquisition of Ausimont would have violated Section 7 of the Clayton Act and Section 5 of the Federal Trade Commission Act.

According to the Commission's proposed complaint, there are two relevant lines of commerce in which to analyze the effects of Solvay's proposed acquisition of Ausimont: the production and sale of all graded of PVDF; and the production and sale of melt-processible grades of PVDF. PVDF is a fluoropolymer used in a wide variety of applications, including highly durable architectural coatings, wire and cable jacketing, fiber optic raceways, chemical processing equipment, semiconductor manufacturing equipment, and other miscellaneous applications. The melt-processible grades include all PVDF grades except those used in coatings.

The proposed complaint alleges that the markets for PVDF and melt-processible PVDF are highly concentrated, and that the proposed acquisition of Ausimont by Solvay would increase concentration in those markets. The proposed complaint also alleges hat entry into the relevant markets would not be timely, likely, or sufficient to deter or offset the acquisition's adverse competitive effects. Producers employ proprietary technology to manufacture PVDF, and new entry would likely required entry into the production of VF_2, which is a necessary raw material to produce PVDF. Entry would likely take as long as three years.

The proposed complaint alleges that Solvay's acquisition of Ausimont would lessen competition by making coordinated interaction among the remaining producers more likely. The proposed compliant alleges that the acquisition would leave only two significant PVDF producers, that reliable pricing information is available from customers, and that the large number of customers in the industry would make cheating on any coordination easy to detect. The proposed complaint further alleges that Ausimont has been expanding its sales of melt-processible PVDF, and that the acquisition would limit the growing competition between Solvay and Ausimont in melt-processing grades of PVDF.

The proposed Order is designed to remedy the anticompetitive effects of the acquisition in the market for PVDF and melt-processible PVDF by requiring the divestiture of Solvay's fluoropolymers business in the U.S. That business includes Solvay's PVDF manufacturing plant in Decatur, Alabama, and its interest in Alventia LLC ("Alventia"), a VF_2 manufacturing joint venture. As part of the divestiture, the proposed Order would also require Solvay to provide to the Acquirer of the Solvay PVDF business a royalty-free license to Solvay's intellectual property, including detailed information about Solvay's production of PVDF at both Solvay's two plants, in Alabama and France. The scope of the license would allow the acquirer to manufacture or sell PVDF anywhere in the world. The proposed Order would further require the Respondent to divest other assets related to the Solvay PVDF business, including real property, customer lists, contracts, patents, inventories, and other intangible assets and goodwill used to operate the business.

The proposed Order requires that Respondents divest the Solvay Fluoropolymers Business to an acquirer approved by the Commission within one-hundred and eighty (180) days from the date upon which Solvay consummates its acquisition of Ausimont. The proposed Order also provides that if Solvay does not complete its divestiture within that period, the Commission may appoint a Divestiture Trustee to divest the Solvay Fluoropolymers Business in a manner acceptable to the Commission, or may require divestiture of Ausimont's PVDF business, including its VF_2 and PVDF manufacturing operations in Thorofare, New Jersey. The proposed Order also provides for the Commission to appoint a Monitor Trustee to oversee Solvay's compliance with the terms of the proposed Order and the divestiture agreements that Solvay enters pursuant to the proposed Order.

The proposed Order to Hold Separate and Maintain Assets that it also included in the Consent Agreement requires that Respondent hold separate and maintain the viability of Solvay's PVDF business as a viable and competitive operation, and to maintain the viability of Ausimont's PVDF business, until either business is transferred to the Commission-approved acquirer. Furthermore, it contains measures designed to ensure that no material confidential information is exchanged between Respondent and the Solvay PVDF business (except as otherwise provided in the Order to Hold Separate and Maintain Assets) and measures designed to prevent interim harm to competition in the PVDF market pending divestiture. The Order to Hold Separate and Maintain Assets provides for the Commission to appoint a Hold Separate Trustee who is charged with the duty of monitoring Respondent's compliance with the Order to Hold Separate and Maintain Assets.

The proposed Order requires Respondent to provide the Commission, within thirty (30) days from the date the Order becomes final, a verified written report setting forth in detail the manner and form in which the Respondent intends to comply, is complying, and has complied with the provisions relating to the proposed Order and the Order to Hold Separate and Maintain Assets. The proposed Order further requires Respondent to provide the Commission with a report of compliance with the Order every thirty (30) days after the date when the Order becomes final until the divestiture has been completed.

The proposed Order has been placed on the public record for thirty (30) days to receive comments by interested persons. Comments received during this period will become part of the public record. After thirty (30) days, the Commission will review the Consent Agreement and comments received and decide whether to withdraw its agreement or make final the Consent Agreement's proposed Order and Order to Hold Separate and Maintain Assets.

The purpose of this analysis is to facilitate public comment on the proposed Order. This analysis is not intended to constitute an official interpretation of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets or in any way to modify the terms of the Consent Agreement, the proposed Order, or the Order to Hold Separate and Maintain Assets.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 02–11386 Filed 5–7–02; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Proposed Collections; Comment Request

The Department of Health and Human Services, Office of the Secretary will periodically publish summaries of proposed information collections projects and solicit public comments in compliance with the requirements of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995. To request more information on the project or to obtain a copy of the information collection plans and instruments, call the OS Reports Clearance Officer on (202) 690–6207.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project 1

Protection of Human Subjects: Quality Assurance Self-Assessment Tool—NEW—The Office of Human Research Protections is establishing a new Quality Improvement Program (QIP) for human subjects protection programs of institutions and independent Institutional Review Boards to cooperatively work toward the strengthening of these programs. A major component of QIP will be the Quality Assurance Self-Assessment Tool, a voluntary mechanism which may be used by institutions to assure compliance with Federal regulations and assess a program's strengths and weaknesses. The information will be used by OHRP to identify technical assistance needs. *Respondents:* Businesses or other for-profit, non-profit institutions; State, Local or Tribal governments; Federal government; *Annual Number of Respondents:* 720; *Burden per Response:* 2 hours; *Total Burden:* 1,440 hours.

Please send comments to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Independence Avenue SW, Washington, DC 20201. Written comments should be received within 60 days of this notice.

Dated: April 26, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–11428 Filed 5–7–02; 8:45 am]

BILLING CODE 4150–28–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Notice of Interest Rate on Overdue Debts

Section 30.13 of the Department of Health and Human Services' claims collection regulations (45 CFR part 30) provides that the Secretary shall charge an annual rate of interest as fixed by the Secretary of the Treasury after taking into consideration private consumer rates of interest prevailing on the date that HHS becomes entitled to recovery. The rate generally cannot be lower than the Department of Treasury's current value of funds rate or the applicable rate determined from the "Schedule of Certified Interest Rates with Range of Maturities." This rate may be revised quarterly by the Secretary of the Treasury and shall be published quarterly by the Department of Health and Human Services in the **Federal Register**.

The Secretary of the Treasury has certified a rate of 11¾% for the quarter ended March 31, 2002. This interest rate will remain in effect until such time as the Secretary of the Treasury notifies HHS of any change.

Dated: April 29, 2002.

George Strader,

Deputy Assistant Secretary, Finance.

[FR Doc. 02–11429 Filed 5–7–02; 8:45 am]

BILLING CODE 4150–04–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Food and Drug Administration

National Institutes of Health

A Public Health Action Plan To Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report

The Centers for Disease Control and Prevention (CDC), Food and Drug Administration (FDA), and National Institutes of Health (NIH) announce an open meeting concerning antimicrobial resistance.

Name: A Public Health Action Plan to Combat Antimicrobial Resistance (Part I: Domestic Issues): Meeting for Public Comment on the Antimicrobial Resistance Interagency Task Force Annual Report.

Time and Date: 10 a.m.–5 p.m., June 26, 2002.

Place: Holiday Inn Select, Versailles Ballroom, 8120 Wisconsin Avenue, Bethesda, Maryland, 20814. (Toll-Free: 1–877–888–3001; Tel: 1–301–652–2000; Fax: 1–301–652–4525).

Status: Open to the public, limited only by the space available.

Purpose: To present the first annual report of progress by Federal agencies in accomplishing activities outlined in *A Public Health Action Plan to Combat Antimicrobial Resistance* (*Part I: Domestic Issues*) and solicit comments from the public regarding the annual report. The *Action Plan* serves as a blueprint for activities of Federal agencies to address antimicrobial resistance. The focus of the plan is on domestic issues.

Matters To Be Discussed: The agenda will consist of welcome, introductory comments, followed by discussion of each focus area in sequential plenary sessions lasting about 75 minutes each. The four focus areas are: Surveillance, Prevention and Control, Research, and Product Development. Session leaders will give a 10 to 15 minute overview at the beginning of each session, then open the meeting for general discussion.

Comments and suggestions from the public for Federal agencies related to each of the focus areas will be taken under advisement by the Antimicrobial Resistance Interagency Task Force. The agenda does not include development of consensus positions, guidelines, or discussions or endorsement of specific commercial products.

The Action Plan, Annual Report, and meeting agenda are available at *http://www.cdc.gov/drugresistance*. The public meeting is sponsored by the CDC, FDA, and NIH in collaboration with seven other Federal agencies and departments involved in developing and writing *A Public Health Action Plan to Combat Antimicrobial Resistance* (*Part I: Domestic Issues*).

Agenda items are subject to change as priorities dictate.

Limited time will be available for oral questions, comments, and suggestions from the public. Depending on the number wishing to comment, a time limit of three minutes may be imposed. In the interest of time, visual aids will not be permitted, although written material may be submitted for subsequent review by the Task Force. Written comments and suggestions from the public are encouraged and should be received by the contact person or email listed below prior to the opening of the meeting or no later than the end of July 2002.

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Persons anticipating attending the meeting are requested to send written notification by June 22, 2002, including name, organization (if applicable), address, phone, fax, and e-mail address.

CONTACT PERSON FOR MORE INFORMATION: Vickie Garrett, Antimicrobial Resistance, Office of the Director, NCID, CDC, Mailstop C–12, 1600 Clifton Road, NE, Atlanta, GA 30333; telephone 404–639–2603; fax 404–639–4197; or e-mail *aractionplan@cdc.gov*.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: April 11, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

Dated: April 16, 2002.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

Dated: April 26, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11361 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02127]

Grants for Acute Care, Rehabilitation and Diability; Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a grant program for Grants for Acute Care, Rehabilitation and Disability Prevention Research. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, "Program Requirements."

2. Build the scientific base for the prevention and control of injury and disability.

3. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, health care research, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

4. Encourage investigators to propose research that involves intervention development and testing as well as research on methods, to encourage individuals, organizations, or communities to adopt and maintain effective intervention strategies.

B. Eligible Applicants

Applications may be submitted by public and private non-profit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, and women-owned businesses.

Note: Title 2 of the United States code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury control research in peer-reviewed journals.

3. Effective and well defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury control research projects as defined under Attachment 2 (1.a–c). The attachment is contained in the application package.

5. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading, "Program Requirements."

C. Availability of Funds

Approximately $500,000 is available in FY 2002 to fund approximately two awards.

It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. The maximum funding level will not exceed $250,000 (including both direct and indirect costs) per year or $750,000 for the three-year project period.

Consideration will also be given to current grantees who submit a competitive supplement requesting one year of funding to enhance or expand existing projects, or to conduct one-year pilot studies. These awards will not exceed $150,000, including both direct and indirect costs. Supplemental awards will be made for the budget period to coincide with the actual budget period of the grant, and are based on the availability of end of fiscal year funds.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for either Research Activity 1 or Research Activity 2:

1. Develop and evaluate protocols that provide onsite interventions in acute care settings or linkages to off-site services for patients at risk of injury or psychosocial problems following injury (See Attachment 3 in the application kit).

2. Develop and apply methods for calculating population-based estimates of the incidence, costs, and long-term consequences of nonhospitalized traumatic brain injury (TBI) and spinal cord injury (SCI) (See Attachment 3 in the application kit).

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information: Name of the principal investigator and a brief description of the scope and intent of the proposed research work.

Application

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation, and budget. Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (*see* Attachment 4 in the application kit), and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and should seek creative approaches that will contribute to a national program for injury control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff, regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups. To exercise this option: On the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 31, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*.

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 PM Eastern Time, June 14, 2002, submit the application to: Technical Information Management-PA02127, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: letters of intent and applications shall be considered as meeting the deadline if they are received before 5 PM Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the "Eligible Applicants" Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

If end of fiscal year funds are available to support research work or activities not previously approved by the IRGRC, competitive supplemental grant awards may be made. Competitive

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supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the design of the study is adequate to measure differences when warranted.

iv. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal *ex officio* members will be encouraged to participate in deliberations when applications address overlapping areas of research interest, so that unwarranted duplication in federally-funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal *ex officio* members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as those considered by the SPRS.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review, including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities delineated in the National Research Agenda.

d. Budgetary considerations.

3. *Continued Funding.* Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress report,

2. A financial status report, no more than 90 days after the end of the budget period,

3. Final financial report and performance report, no more than 90 days after the end of the project period,

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.*, state injury prevention program staff, community groups, public health injury prevention practioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each *see* Attachment 1 of the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) [42 U.S.C. 241(a)] of the Public Health Service Act, and section 391(a) [42 U.S.C. 280(b)] of the Public Service Health Act, as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding Opportunities" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146. Telephone number (770) 488–2751. e-mail address: *vbk5@cdc.gov.*

For program technical assistance, contact: Sharon Martin, Deputy Director, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE., Mailstop K–58, Atlanta, GA 30341–3724. Telephone number: (770) 488–4265. e-mail address: *sat5@cdc.gov.*

Dated: May 2, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11360 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02126]

Grants for Dissemination Research of Effective Interventions To Prevent Unintentional Injuries; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for Grants for Dissemination Research of Effective Interventions to Prevent Unintentional Injuries. This program addresses the "Healthy People 2010" focus area of Injury and Violence Prevention.

The purposes of the program are to:

1. Solicit research applications that address the priorities reflected under the heading, "Program Requirements."

2. Build the scientific base for the prevention of unintentional injuries.

3. Encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, health care research, behavioral and social sciences, and others, to undertake research to prevent and control injuries.

4. Encourage investigators to propose research that involves the development and testing of dissemination strategies to stimulate individuals, organizations, or communities to adopt and maintain effective interventions.

5. Advance the practice of public health and policy in order to promote health and prevent injury with findings from this these projects.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions and institutes, hospitals, managed care organizations, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small minority, and women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applications that are incomplete or non-responsive to the below requirements will be returned to the applicant without further consideration. The following are applicant requirements:

1. A principal investigator who has conducted research, published the findings in peer-reviewed journals, and has specific authority and responsibility to carry out the proposed project.

2. Demonstrated experience on the applicant's project team in conducting, evaluating, and publishing injury

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prevention and dissemination research in peer-reviewed journals.

3. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

4. The ability to carry out injury prevention and dissemination research projects as defined under Attachment 2 (1.a–d). The attachment is contained in the application kit.

5. The overall match between the applicant's proposed theme and research objectives, and the program interests as described under the heading, "Program Requirements."

C. Availability of Funds

Approximately $500,000 is available in FY 2002 to fund approximately 2–3 awards for unintentional injury research grant projects addressing dissemination research on home, community, sports/recreation or transportation injury prevention interventions. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12 month budget period within a project period of up to three years. The maximum funding level for each project will not exceed $250,000(including both direct and indirect costs) per year or $750,000 for a three year project period. The National Center for Injury Prevention and Control (NCIPC) will also consider applications with project periods of one and two years, and for smaller funding amounts.

Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Continuation awards within the project period will be made based on satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops (travel expenses for this annual one day meeting should be included in the applicant's proposed budget), and the achievement of work plan milestones reflected in the continuation application.

Note: Grant funds will not be made available to support the provision of direct care. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

The NCIPC is soliciting research applications that will help expand and advance our understanding of dissemination practices that maximize the uptake, use, and maintenance of effective injury prevention practices and policies. In conducting activities to achieve the purpose of this program, the recipient will be responsible for either Research Activity 1 or Research Activity 2:

1. Evaluate barriers and facilitators to increase the dissemination and use of effective interventions to prevent injuries at home, in the community, in motor vehicle transportation or in sports and recreation (See Attachment 3 entitled "Programmatic Interests" in the application kit for additional information).

2. Design and test theory-based strategies for dissemination of effective interventions (See Attachment 3 entitled "Programmatic Interests" in the application kit for additional information).

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double-spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the announcement and should include the following information: name of the principal investigator and a brief description of the scope and intent of the proposed research work.

Applications

The program announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation, and budget. Applications should follow the PHS–398 (Rev. 5/2001) application and Errata Sheet (see Attachment 4 in the application kit), and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, disability, and economic losses. This focus should be based on recommendations in "Healthy People 2010" and should seek creative approaches that will contribute to a national program for injury prevention and control.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence. A comprehensive evaluation plan is an essential component of the application.

4. A description of the principal investigator's role and responsibilities.

5. A description of all the project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each person will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include commitments of support and a clear statement of their roles.

8. A detailed first year's budget for the grant with future annual projections, if relevant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries within three to five years from the project start-up.

An applicant organization has the option of having specific salary and fringe benefit amounts for individuals omitted from the copies of the application which are made available to outside reviewing groups.

To exercise this option: on the original and five copies of the application, the applicant must use asterisks to indicate those individuals for whom salaries and fringe benefits are not shown; however, the subtotals must still be shown. In addition, the applicant must submit an additional copy of page 4 of Form PHS–398, completed in full, with the asterisks replaced by the salaries and fringe benefits. This budget page will be reserved for internal staff use only.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 31, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:

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Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 PM Eastern Time, June 14, 2002, submit the application to: Technical Information Management—PA02126, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5:00 PM Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified at of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC. CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of no less that three reviewers with appropriate expertise will review all applications for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. Ethical Issues. What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: i. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

ii. The proposed justification when representation is limited or absent.

iii. A statement as to whether the design of the study is adequate to measure differences when warranted.

iv. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

g. *Study Samples.* Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for sharing the research findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

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2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review and will receive modified briefing books (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal ex officio members will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010" and the Institute of Medicine report, "Reducing the Burden of Injury."

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific, and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with an original plus two copies of:

1. Annual progress reprts.

2. A financial status report, no more than 90 days after the end of the budget period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each see Attachment 1 of the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) [42 U.S.C. 241(a)] of the Public Health Service Act and section 391 (a) [42 U.S.C. 280(b)] of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding Opportunities" then "Grants and Cooperative Agreements."

For business management technical assistance, contact:

Van A. King, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341–4146, Telephone number (770) 488–2751, e-mail address: vbk5@cdc.gov.

For program technical assistance, contact: Sharon Martin, Deputy Director, Office of Research Grants, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mailstop K–58, Atlanta, GA 30341–3724, Telephone number: (770) 488–4265, e-mail address: sat5@cdc.gov.

Dated: May 2, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11362 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02073]

Traumatic Brain Injury(TBI) Follow-Up Registry and Surveillance of TBI in the Emergency Department (ED); Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) and the Social Security Administration (SSA), announce the availability of fiscal year (FY) 2002 funds for a cooperative agreement for a TBI Follow-up Registry and Surveillance of TBI in the ED. This Program addresses the "Healthy People 2010" focus area for Injury and Violence Prevention. For a copy of "Healthy People 2010", visit the Internet site: *http://www.health.gov/healthypeople.*

The purpose of this program is to fund a follow-up registry that collects and analyzes information on outcomes of TBI and develop existing surveillance of TBI in the ED. The goal of both programs is to produce data of demonstrated quality that will be useful to State injury control programs and other State agencies, and document the longer term effects of TBI, including disability.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal organizations, small, minority, and women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $565,000 (including direct and indirect costs) is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 1, 2002 and will be made for a 12 month budget period, within a project period of up to three years. Funding estimates may change.

A continuation award within the approved project period will be on the basis of satisfactory progress as evidenced by required reports, the achievement of work plan milestones, and the availability of Federal funds.

1. Use of Funds

Funds awarded may not be used to supplant funds available from other sources to the recipient to conduct similar activities, not be used to provide patient care or management and, not to be used for construction purposes, rental of office space, or for the purchase or rental of furniture. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement, dated April 1, 1994), as necessary to meet the requirements of the program and strengthen the overall application.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Develop and implement a system for collecting data on pre-injury characteristics, information about acute and other care received and post-injury outcomes for a sample of people, including prisoners, identified through an existing TBI Surveillance System, and assess these outcomes at annual intervals. This includes identifying the sample, locating prospective participants and tracking them over time, abstracting pertinent medical record data, developing or modifying an existing questionnaire, and conducting telephone interviews.

b. Conduct hospital-based ED surveillance of TBI, consistent with standard definitions and methods for CNS surveillance, described in the current CDC "Annual Data Submission Standards for Central Nervous System Injury Surveillance." (See Section J) This includes linking and unduplicating data obtained from emergency departments, including data elements that describe diagnosis, demographics, external cause, and survival status.

c. Convene meeting(s) of experts and others to advise on study goals, objectives, methods, and analysis of the data.

d. Compile follow-up data each year.

e. Analyze and interpret the data and report findings.

f. Evaluate the quality and completeness of the data.

g. Conduct yearly evaluations of the surveillance system to assess the predictive value positive and sensitivity of case ascertainment as well as the completeness and validity of the data collected.

h. Link surveillance activities and findings to State injury prevention and control activities.

i. Document the study methods.

j. Develop a research protocol with assistance from CDC for Institutional Review Board (IRB) reviews by all cooperating institutions participating in the research project.

2. CDC Activities

Provide technical assistance in conjunction with SSA where applicable and as necessary for effective project planning and management. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project.

a. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

d. Collaborate in the analysis of data and reporting of findings.

e. Provide technical assistance, as requested, to evaluate the surveillance system for completeness and validity.

f. Convene monthly conference calls with the recipient and SSA representative(s) to review progress.

g. Collaborate with the recipient and SSA representative(s) in the analysis of data on employment after TBI.

h. Participate in discussions with the recipient and SSA representative(s) on the feasibility of (a) tracking people with TBI who receive SSA, and (b) adding new questions on employment to the follow-up registry telephone interview.

E. Content

Applications The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the evaluation criteria listed, so it is important to follow the criteria in laying out your program plan. The narrative (excluding budget narrative and any appendices) should be no more than 30 double spaced pages, printed on one side, with one inch margins, and no smaller than 12 point unreduced fonts.

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Number each page consecutively and provide a complete table of contents.

The narrative should include:

1. Executive Summary (one page, may be single spaced). This section should briefly summarize:

a. Amount of federal assistance requested;

b. Existing capacity;

c. Key objectives and activities proposed.

2. Proposal Narrative.

a. Introduction, statement of need, proposed goals and objectives, and program plan.

b. Existing program and capacity.

c. Proposed methods and activities.

d. Project management and project staff.

e. Proposed methods to evaluate the attainment of objectives.

3. Budget Narrative.

4. Human Subjects.

5. Appendices, which may include letters of commitment from key collaborators, resumes of key staff, brief summary reports of analyses of TBI surveillance data.

F. Submission and Deadline

Application

Submit the original and 2 copies of PHS 5161–1 (OMB Number 0920–0428). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*
Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 p.m. Eastern Time, June 15, 2002, submit the application to the Technical Information Section 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline

Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC or Agency for Toxic Substance and Disease Registry ATSDR). Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored; however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)
Does the application adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research? This includes:

A. The proposed plan for the inclusion of both sexes and racial and the ethnic minority populations for appropriate representation.

B. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

Applications judged to be noncompetitive will be withdrawn from further consideration and CDC will promptly notify the principal investigator/Program director and the official signing or the applicant organization.

Awards will be determined by the Director of the National Center for Injury Prevention and Control (NCIPC) based on priority scores assigned to applications by the Disease, Disability, and Injury Prevention and Control Special Emphasis Panel (SEP), consultation with NCIPC senior staff, and the availability of funds. All proposals will be reviewed using the current National Institutes of Health (NIH) priority scoring system to determine the technical and scientific quality of the proposal. Factors to be considered will include:

1. Need for data on TBI incidence and outcomes: The extent to which the applicant documents the need for the project to address a key public health issue and inform prevention and/or service activities.

2. Goals and objectives: The extent to which the project goals and objectives are relevant, specific, achievable, measurable, time-linked and can be addressed through the proposed methods.

3. Existing TBI Surveillance Program and Capacity: The extent to which the applicant describes an effective incidence surveillance system for TBI and provides the following:

a. Case definition for TBI.

b. Description of the source(s) of TBI case reporting.

c. Documentation of the timeliness and completeness of case ascertainment and other qualitative attributes of the system.

d. Summary of current surveillance data (i.e., 1999 or 2000).

e. Description of the prior usefulness of the system.

4. Capacity for conducting collaborative activities:

a. The analysis of employment data.

b. Adding employment questions.

c. The potential for tracking people with TBI receiving SSA assistance.

5. Methods and Activities:

a. The extent to which the proposed methods and activities can achieve the proposed objectives, consistent with the purposes of this Program Announcement.

b. The extent to which clear explanations of appropriate methods are described for the following: addressing case definition(s), case ascertainment, including identification and contacting of prisoners, TBI participant tracking, data elements, sources and availability of data, data collection, including methods for interviewing prisoners, protection of confidentiality, data processing and analysis, and a brief summary of methods for collaborative activities with the SSA.

c. The extent to which the operational plan and timetable are realistic, given available resources.

6. Management and Staffing:

a. The extent to which the scientific resources for project planning and data management/analysis are demonstrated within the applicant's organization or through collaboration with universities or other agencies.

b. The extent to which proposed staffing, staff qualifications and experience, and project organization indicate ability to accomplish the objectives of the program.

7. Evaluation:

a. The degree to which the applicant includes plans to evaluate the attainment of proposed objectives and the quality of the data collected.

b. The SEP shall assure that measures set forth in the application are in accordance with CDC's performance plans.

8. Human Subjects:

The extent to which the applicant adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects, including those in subpart C dealing with the protection of prisoners as research participants. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

C. A statement as to whether the design of the study is adequate to measure differences when warranted.

D. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or communities and recognition of mutual benefits.

9. Budget:

a. The extent to which the budget is reasonable, clearly justified, and consistent with stated objectives and proposed activities described in this announcement.

b. The extent to which the budget for collaborative activities with the SSA is clearly justified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with:

1. An original, plus two copies, and a diskette copy of semi-annual progress reports.

2. Financial status reports, no more than 90 days after the end of each budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 317(k)(2) of the Public Health Service Act, [42 U.S.C.247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

The current CDC Annual Data Submission Standards for Central Nervous System Injury Surveillance can be obtained from Jacqui Butler at (770) 488–1496.

To obtain business management technical assistance contact: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Suite 3000, Atlanta, GA 30341–4146, Telephone: (770) 488–2721, Fax: (770) 488–2777, Email address: *nfp6@cdc.gov.*

For program technical assistance, contact: Joseph Russel, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE, Mailstop F41, Atlanta, GA 30341–3724, Telephone: (770) 488–1042, Fax: (770) 488–4338, Email address: *nzr4@cdc.gov.*

Dated: May 2, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

Addendum

Background

TBI, a preventable disabling condition, is an important public health problem in the United States that is estimated to result in the annual occurrence of approximately 1,000,000 ED visits, 250,000 hospital admissions, 50,000 deaths, and the onset of long-term disability in more than 80,000 people.

TBI surveillance provides essential information for primary prevention (avoiding the occurrence of TBI) and valuable information for secondary prevention (mitigating the severity and sequelae of TBI). TBI surveillance also can provide a foundation for population-based TBI registries. Such registries enable the assessment of the burden of TBI related disability and provide essential information for planning programs to provide medical care and services for people with TBI sequelae. CDC has promoted TBI surveillance through funds provided to four States since 1995 (Program Announcement 526 in 1995 and Program Announcement 98022 in 1998) and eleven more States since 1997 (Program Announcement 716).

Although there are increasing data to describe the current incidence and etiology of TBI, little is known, on a population basis, about the outcomes and secondary conditions experienced by persons who survive traumatic brain injury. These outcomes include: their impairments, disabilities (also known as functional limitations or decreased activities), and participation restrictions, (including major roles such as work or school); the occurrence of secondary conditions (i.e., additional physical or mental health conditions that occurs as a result of having a primary disabling condition); and the need for and use of post-acute medical, rehabilitation, and other services. In fact, most of what is known about outcomes is based on studies that rely on case series methodology, small regional samples, and anecdotal reports. Greater understanding of these issues is important for several reasons: First, a better understanding of outcomes will add to our knowledge about the public health impact and societal costs associated with disabling injuries. Second, a better understanding of factors associated with increased risk of disability and decreased participation could lead to improved acute care and rehabilitation interventions aimed at reducing these adverse outcomes and secondary conditions. Third, little is known about the needs for services and barriers to receiving them following TBI.

In 1995, under Announcement 526—Part II, CDC funded one State (Colorado) to develop a full-scale population-based registry and follow-up study of persons with TBI (aged 16 years or older) to assess a wide range of outcomes and the need for, and barriers to receiving services in the year following injury, and in subsequent years. In 1998, under Announcement 98022—Part II, funding to Colorado was continued and a second state, South Carolina was funded to develop a similar registry, in collaboration with the Colorado project. In 2000, the Colorado project was completed and the SC project was continued.

Key References

U.S. Department of Health and Human Services. Healthy People 2010. Tracking.

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Healthy People 2010. Conference Edition November 30, 1999.

Institute of Medicine. Enabling America Assessing the Role of Rehabilitation Science and Engineering. Brandt EN, Pope AM, Editors. National Academy Press, Washington, DC 1997. Published epidemiological studies of TBI are also reviewed in the section entitled "Epidemiology of Traumatic Brain Injury in the United States" located at the Internet Website of the CDC National Center for Injury Prevention and Control <*http://www.cdc.gov/ncipc/dacrrdp/tbi.htm*>.

Definitions:

Traumatic brain injury (TBI) and essential data elements for TBI surveillance are fully defined in CDC's Guidelines for Surveillance of Central Nervous System Injury. (For ordering a copy of the Guidelines, see Section J.—Where to Obtain Additional Information.)

Surveillance is the ongoing, systematic collection, analysis, and interpretation of health data necessary for designing, implementing, and evaluating public health programs.

Impairment: Any loss or abnormality of physiological, or anatomical structure or function.

Restriction in Activity (Disability): Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

Restriction in participation (Handicaps): a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

A population-based follow-up system is defined as a system of ongoing registration of, and collection of information about, all or a representative sample of all cases of a condition in a defined population, such that cases can be related to the population base.

Elements of Disability:

Impairment: Any loss or abnormality of physiological, or anatomical structure or function.

Restriction in Activity (Disability): Any restriction or lack (resulting from an impairment) of ability to perform an activity in the manner or within the range considered normal for a human being.

Restriction in participation (Handicaps): a disadvantage for a given individual, resulting from an impairment or a disability, that limits or prevents the fulfillment of a role that is normal (depending on age, sex, and social and cultural factors) for that individual.

[FR Doc. 02–11359 Filed 5–7–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Center for Health Statistics; ICD–9–CM E Code Revisions

AGENCY: National Center for Health Statistics, Centers for Disease Control and Prevention (CDC), HHS.

ACTION: Notice.

SUMMARY: The National Center for Health Statistics has approved the following expansion to the External Cause Codes in the International Classification of Diseases, Ninth-Revision, Clinical Modification (ICD–9–CM). These ICD–9–CM E-Code revisions will become effective October 1, 2002. The official government version of the ICD–9–CM that will include all of the code revisions can be found on the ICD–9–CM CD–ROM available through the Government Printing Office. Guidelines for the use of the new E-codes will appear on the CD–ROM and on the NCHS website *http://www.cdc.gov/nchs/icd9.htm*.

E885.0 Fall from (nonmotorized) scooter
E922.5 Accidental injury caused by paintball gun
E955.7 Suicide/self-inflicted injury caused by paintball gun
E979.0 Terrorism involving explosion of marine weapons
E979.1 Terrorism involving destruction of aircraft
E979.2 Terrorism involving other explosions and fragments
E979.3 Terrorism involving fires, conflagration and hot substances
E979.4 Terrorism involving firearms
E979.5 Terrorism involving nuclear weapons
E979.6 Terrorism involving biological weapons
E979.7 Terrorism involving chemical weapons
E979.8 Terrorism involving other means
E979.9 Terrorism, secondary effects
E985.7 Injury caused by paintball gun, undetermined whether accidentally or purposely inflicted
E999.0 Late effect of injury due to war operations
E999.1 Late effect of injury due to terrorism

FOR FURTHER INFORMATION CONTACT: Donna Pickett, R.H.I.A., Co-chair, ICD–9–CM Coordination and Maintenance Committee, National Center for Health Statistics, CDC, telephone (301)–458–4200.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities, for both the Centers for Disease Control and Prevention and the Agency for Toxic Substances and Disease Registry.

Dated: May 2, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11358 Filed 5–7–02; 8:45 am]

BILLING CODE 4160–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

National Toxicology Program (NTP); National Institute of Environmental Health Sciences (NIEHS)

The NTP Center for the Evaluation of Risks to Human Reproduction (CERHR) *Expert Panel Report on the Developmental and Reproductive Toxicity of Methanol:* Notice of Availability and Request for Public Comments

Summary

Notice is hereby given of the availability of the *Expert Panel Report on the Developmental and Reproductive Toxicity of Methanol.* This report includes the summaries and conclusions of the expert panel's evaluation of the scientific data for potential reproductive and/or developmental hazards associated with exposure to methanol. The CERHR held this expert panel meeting in October 2001. CERHR is seeking public comment on these reports and additional information about recent, relevant toxicology or human exposure studies.

Availability of Reports

The expert panel report is available electronically on the CERHR web site (*http://cerhr.niehs.nih.gov*) and in printed copy by contacting the CERHR (PO Box 12233, MD EC–32, Research Triangle Park, NC 27709; telephone: (919) 541–3455; fax: (919) 316–4511; or e-mail: *shelby@niehs.nih.gov*).

Request for Public Comments

The CERHR invites public comments on the expert panel report and input regarding any recent, relevant toxicology or human exposure studies. The CERHR asks that all comments and other information be submitted to the CERHR at the address above by July 8, 2002.

All public comments received by this date will be reviewed and included in the final NTP–CERHR report on methanol to be prepared by NTP staff. The NTP–CERHR report will include the expert panel report, public comments received on the report, and an NTP brief. The brief will provide the NTP's interpretation of the potential for adverse reproductive and/or developmental effects to humans from exposure to methanol. The NTP will transmit the NTP–CERHR report to the appropriate federal and state agencies, the public, and the scientific community.

Background

A 12-member expert panel composed of scientists from state and federal governments, universities, and industry conducted an evaluation of the reproductive and developmental toxicities of methanol (**Federal Register** Vol. 66, No. 136, pp. 37047–37048, July 16, 2001). Public deliberations by the panel took place October 15–17, 2001 at the Radisson Hotel Old Town in Alexandria, Virginia. Following the October meeting, the draft expert panel report was revised to incorporate the panel's conclusions and subsequently reviewed by the Methanol Expert Panel, NTP scientists, and CERHR personnel.

Methanol (CASRN: 67–56–1) is a commercially important, high production volume chemical (2.2 billion gallons, US production, 1998), with high potential for occupational, consumer, and environmental exposure. Methanol is used in chemical syntheses and as an industrial solvent. It is found in a variety of consumer products such as paints, antifreeze, cleaning solutions, and adhesives and is a by-product of sewage treatment, fermentation, and paper production. Methanol is used in racing car fuels, and there is the potential for future, expanded use of methanol as a vehicle fuel or fuel additive.

Additional Information About CERHR

The NTP and the NIEHS established the NTP CERHR in June 1998 (**Federal Register** Vol. 63, No. 239, p. 68782, December 1998). The purpose of the CERHR is to provide scientifically based, uniform assessments of the potential for adverse effects on reproduction and development caused by agents to which humans may be exposed. Further information on the CERHR's chemical review process including how to nominate chemicals for evaluation and scientists for the expert registry can be obtained from its web site (*http://cerhr.niehs.nih.gov*) or by contacting the CERHR directly (see address above). The CERHR also serves as a resource for information on various environmental exposures and their potential to affect pregnancy and child development. The web site has information about common concerns related to fertility, pregnancy and the health of unborn children and links to other resources for information about public health.

Dated: May 1, 2002.

Samuel H. Wilson,

Deputy Director, National Institute of Environmental Health Sciences.

[FR Doc. 02–11522 Filed 5–7–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: 2003 National Survey on Drug Use and Health—(0930–0110, Revision)—The National Survey on Drug Use and Health (NSDUH), formerly the National Household Survey on Drug Abuse (NHSDA), is a survey of the civilian, noninstitutionalized population of the United States 12 years old and older. The data are used to determine the prevalence of use of tobacco products, alcohol, illicit substances, and illicit use of prescription drugs. The results are used by SAMHSA, ONDCP, Federal government agencies, and other organizations and researchers to establish policy, direct program activities, and better allocate resources.

For the 2003 NSDUH, additional questions are being planned regarding types of schooling (e.g., public versus private). Several questions using "item count" methodology to estimate use of specific hard-core drugs are slated to be removed. The remaining modular components of the questionnaire will remain essentially unchanged except for minor modifications to wording.

As with all NSDUH/NHSDA surveys conducted since 1999, the sample size of the survey for 2003 will be sufficient to permit prevalence estimates for each of the fifty states and the District of Columbia. The total annual burden estimate is shown below:

	Number of respondents	Responses per respondent	Average burden per response (in hrs.)	Total burden (hrs.)
Household Screening	202,500	1	0.083	16,808
Interview	67,500	1	1.0	67,500
Screening Verification	6,176	1	0.067	414
Interview Verification	- 10,125	1	0.067	678
Total	202,500			85,400

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Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 2, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11363 Filed 5–7–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Notice of Meeting of the Advisory Committee for Women's Services

Pursuant to Public Law 92–463, notice is hereby given of the teleconference meeting of the Advisory Committee for Women's Services of the Substance Abuse and Mental Health Services Administration (SAMHSA) in May 2002.

The teleconference meeting of the Advisory Committee for Women's Services will include a discussion of SAMHSA's June 19–20, 2002 Joint Council Meeting, SAMHSA's Delayering and Restructering activities, policy and program issues relating to women's substance abuse and mental health service needs, HIV/AIDS Data Collection processes and other policy issues.

A summary of the meeting and/or a roster of committee members may be obtained from: Nancy P. Brady, Executive Secretary, Advisory Committee for Women's Services, Office for Women's Services, SAMHSA, Parklawn Building, Room 13–99, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–5184.

Attendance by the public will be limited to space available. Public comments are welcome. Please communicate with the individual listed as contact below to make arrangements to comment or to request special accommodations for persons with disabilities.

Substantive information may be obtained from the contact whose name and telephone number is listed below.

Committee Name: Advisory Committee for Women's Services.

Meeting Date(s): May 7, 2002.

Place: 5600 Fishers Lane, Room 12C–06, Rockville, MD 20857.

Type: Open: May 7, 2002—4–5:30 p.m.

Contact: Nancy P. Brady, Executive Secretary, Telephone: (301) 443–5184 and Fax: (301) 443–8964.

This notice is being published less than 15 days prior to the meeting due to the urgent need for the Advisory Committee to be notified of the Restructering Delayering activities of SAMHSA and the immediate impact of these activities on the Committee.

Dated: May 2, 2002.

Toian Vaughn,

Committee Management Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11379 Filed 5–7–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4736–N–03]

Notice of Proposed Information Collection for Public Comment—Public Housing Financial Management Template

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below will be submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

DATES: *Comments Due Date:* July 8, 2002.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control number and should be sent to: Mildred M. Hamman, Reports Liaison Officer, Public and Indian Housing, Department of Housing and Urban Development, 451 7th Street, SW., Room 4238, Washington, DC 20110–5000.

FOR FURTHER INFORMATION CONTACT: Mildred M. Hamman, (202) 708–3642, extension 4128, for copies of the proposed forms and other available documents. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Department will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35, as amended).

This Notice is soliciting comments from members of the public and affected agencies concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated collection techniques or other forms of information technology; e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Public Housing Financial Management Template.

OMB Control Number: 2577–(Formerly 2535–0107).

Description of the need for the information and proposed use: The Uniform Financial Reporting Standards (UFRS) for HUD Housing Programs requires Public Housing Agencies (PHAs) to submit financial data electronically, using Generally Accepted Accounting Principles (GAAP), in a prescribed format. Electronic submission of this data requires the use of a template. The Public Housing Financial Management template includes updates that increase the efficiency of data collection and reduces the burden hours for the respondents. HUD will continue to use the financial information it collects from PHAs to evaluate their financial condition. Requiring PHAs to report electronically, in a prescribed HUD format, and using the GAAP basis of accounting has enabled HUD to provide a more comprehensive financial assessment of the PHAs receiving federal funds from HUD. The Real Estate Assessment Center responsibility for this collection of information was transferred to the Assistant Secretary for Public and Indian Housing.

Agency form numbers, if applicable: Not applicable.

Members of affected public: Public Housing Financial Management Template: Local, State, or Tribal Governments, Not-for-profit Institutions.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: Public Housing Financial Management Template: 3,173 PHAs; annual submission per PHA; average hours for PHA response is 10 hours; the total reporting burden is 31,961 hours.

Status of the proposed information collection: Revision of a currently approved collection.

Authority: Section 3506 of the paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: April 30, 2002.

Michael Liu,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 02–11322 Filed 5–7–02; 8:45 am]

BILLING CODE 4210–33–M

DEPARTMENT OF THE INTERIOR

Office of Wildland Fire Coordination

[FA 108 2810 HT 001R]

Notice of Meeting, Joint Fire Science Program Stakeholder Advisory Group

AGENCY: Office of Wildland Fire Coordination, Interior.

ACTION: Notice of meeting.

SUMMARY: The Joint Fire Science Program Stakeholder Advisory Group will conduct a meeting to assess past and current research and to identify priorities for future research. The meeting is open to the public.

DATES: The meeting will convene on Monday, June 10, 2002 at 8 a.m. and continue until 4:30 p.m. The meeting will resume Tuesday, June 11, 2002 from 8 a.m. to 3:30 p.m. Written material and requests to make oral presentations should reach the Department of the Interior, at the address below, on or before June 3, 2002.

ADDRESSES: The meeting will be held at the Westcoast ParkCenter Suites Hotel, 424 East ParkCenter Boulevard, Boise, ID 83706. Written material and requests to make oral presentations should be sent to Tim Hartzell, Office of Wildland Fire Coordination, MS–3060 MIB, Department of the Interior, 1849 C Street, NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Tim Hartzell, Designated Federal Official; telephone (202) 606–3447; fax: (202) 606–3150; email: *Erica_Kim@blm.gov.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2. Additional information about the Joint Fire Science Program Stakeholder Advisory Group, including any revised agenda for the June 10 and 11 meeting that occurs after this **Federal Register** notice is published, may be found on the World Wide Web at *http://www.nifc.gov/joint_fire_—sci/SHAG/facaind.htm.*

Draft Agenda of the June 10 and 11, 2002 Meeting

A. Welcome to Boise meeting.

B. Preliminary results from Joint Fire Science Program (JFSP) review.

C. JFSP Governing Board response to previous Stakeholder Group recommendations.

D. Results of JFSP Principal Investigator workshop (held March 10–14, 2002).

E. Additional Stakeholder Group recommendations for the Governing Board.

F. JFSP research project presentations.

G. Discussion of fire-related specialties (i.e. prevention and education, preparedness and suppression, fuels management, land stabilization & rehabilitation, and the state view.

H. National Fire Plan.

I. *Discussion:* Cohesive Strategy (needs for fuels work).

J. *Discussion:* Landfire (one method to achieve this need).

K. *Discussion:* How to use the data and compile the information (possible solution for need).

L. Social science report (*Burning Questions*) to the National Wildfire Coordinating Group, implementation plan for social science report, and Interagency Fire Research Coordination Council.

M. Awareness strategy for JFSP.

N. Technology transfer for JFSP-funded products.

O. Time for public input (presentations will be limited to 5 minutes).

This meeting is open to the public. At the discretion of the Designated Federal Official, members of the public may make oral presentations during the meeting. Persons wishing to make oral presentations should notify Tim Hartzell no later than June 3, 2002. If a person submitting material would like a copy distributed to each member of the committee in advance of the meeting, that person should submit 40 copies to Tim Hartzell no later than June 3, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities, or to request special assistance at the meeting, contact Tim Hartzell.

Dated: May 2, 2002.

Tim C. Hartzell,

Director, Office of Wildland Fire Coordination, Department of the Interior.

[FR Doc. 02–11456 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–DW–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of Draft Comprehensive Conservation Plan and Environmental Assessment for Minnesota Valley National Wildlife Refuge and Minnesota Valley Wetland Management District, Bloomington, MN

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to the Refuge Improvement Act of 1997, the U.S. Fish and Wildlife Service has published a draft Comprehensive Conservation Plan and Environmental Assessment for Minnesota Valley national Wildlife Refuge (Refuge), which includes the Minnesota Valley Wetland Management District (District). This combined Plan describes how the Service intends to manage the Refuge and District for the next 15 years.

DATES: Submit written comments by July 1, 2002. All comments should be addressed to Minnesota Valley National Wildlife Refuge, Attn: CCP Comment, 3815 East 80th Street, Bloomington, Minnesota 55425–1600, or direct e-mail to *r3planning@fws.gov.* Comments may also be submitted through the Service's regional Web site at *http://midwest.fws.gov/planning.*

ADDRESSES: A draft Plan or summary may be obtained by writing to the Refuge or submitting a request electronically. These documents will also be made available in portable document format (pdf) on the U.S. Fish and Wildlife Service Web site at: *http//midwest.fws.gov/planning.* Address requests to: Minnesota Valley National Wildlife Refuge, 3815 East 80th Street, Bloomington, Minnesota 55425–1600, or direct e-mail to *r3planning @fws.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information on the Draft Minnesota Valley NWR and Wetland Management District Comprehensive Conservation Plan, contact Rick Schultz, Refuge Manager, at the address above or call the Refuge at 952/858–0701.

SUPPLEMENTARY INFORMATION: In 1997, Congress mandated that the Service prepare a comprehensive conservation plan for each refuge within the National

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Wildlife Refuge System. Comprehensive conservation plans guide management decisions over the course of 15 years. The Minnesota Valley NWR and District Plan identifies goals and objectives for habitat management, land protection and wildlife-dependent recreation, as well as strategies for achieving those goals and objectives.

Dated: April 12, 2002.

William F. Hartwig,

Regional Director.

[FR Doc. 02–11332 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Application for Endangered Species Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of application for endangered species permit.

SUMMARY: The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*).

DATES: Written data or comments on these applications must be received, at the address given below, by June 7, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Victoria Davis, Permit Biologist). Telephone: 404/679–4176; Facsimile: 404/679–7081.

FOR FURTHER INFORMATION CONTACT: Victoria Davis, Telephone: 404/679–4176; Facsimile: 404/679–7081.

SUPPLEMENTARY INFORMATION: If you wish to comment, you may submit comments by any one of several methods. You may mail comments to the Service's Regional Office (*see* **ADDRESSES**). You may also comment via the internet to "*victoria_davis@fws.gov.*" Please submit comments over the internet as an ASCII file avoiding the use of special characters and any form of encryption. Please also include your name and return address in your internet message. If you do not receive a confirmation from the Service that we have received your internet message, contact us directly at either telephone number listed above (*see* **FOR FURTHER INFORMATION CONTACT**). Finally, you may hand deliver comments to the Service office listed below (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address from the administrative record. We will honor such requests to the extent allowable by law. There may also be other circumstances in which we would withhold from the administrative record a respondent's identity, as allowable by law. If you wish us to withhold your name and address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

TE051013–0

Applicant: Jeff Glitzenstein, Tallahassee, Florida.

The applicant requests authorization to remove and reduce to possession seeds of *Schwalbea americana*, American chaffseed, for the purposes of re-establishing a population at Roy's Place, Francis Marion National Forest, Berkeley, South Carolina. After a control burn, one capsule will be taken from twenty plants at the donor site (intersection of Roy's Place Road and Witherbee Road).

TE054524–0

Applicant: Environmental Laboratory, U.S. Army Corps of Engineers, Research and Development Center, Chester O. Martin, Vicksburg, Mississippi.

The applicant requests authorization to take (survey, capture, identify, and release) the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) to investigate the impacts of military noise on the auditory systems and behavior of endangered bat species. The study will use a combination of sampling and data collection techniques, including mist netting, radio telemetry, thermal infrared imaging, and ultrasonic sound detection. The proposed activities will take place on the following two installations: Fort Knox, Meade, Bullit, and Jefferson Counties, Kentucky and Fort Campbell, Trigg County, Kentucky.

Applicant: USDA, Forest Service, South Research Station, Susan Loeb, Clemson, South Carolina, TE055190–0.

The applicant requests authorization to take (survey, capture, identify, band, radio-tag, and release) the gray bat (*Myotis grisescens*) and Indiana bat (*Myotis sodalis*) for the following reasons: To determine characteristics of trees used as primary and alternate Indiana bat maternity roost sites; to determine stand and landscape characteristics associated with roost trees; to determine tree, stand, and landscape characteristics that may be important in roost site selection; and to develop models of Indiana bat roosting habitat using both logistic regression and Mahalanobis distance statistics. The proposed activities will take place in North Carolina, South Carolina, Kentucky, Georgia, Florida, Virginia, Arkansas, Alabama, and Tennessee.

Applicant: Nick Haddad, North Carolina State University, Raleigh, North Carolina, TE054973–0.

The applicant requests authorization to take (survey, capture, mark, recapture, and release) the Saint Francis' Satyr (*Neonympha mitchellii francisci*) to identify the plants used for food, to monitor efforts to determine the long-term viability of existing populations, to assess the importance of habitat corridors, and to assess the importance of large populations to sustain smaller populations outside of the impact areas. The proposed activities will take place on the Fort Bragg military base, Cumberland and Hoke Counties, North Carolina.

Applicant: Alabama Division of Wildlife and Freshwater Fisheries, Jeffery T. Garner, Florence, Alabama, TE054999–0.

The applicant requests authorization to take (remove, tag, exam, measure, sex, and translocate) the Anthony's riversnail (*Athearnia anthonyi*), Dromedary pearlymussel (*Dromus dromas*), Oystershell pearlymussel (*Epioblasma capsaeformis*), and Birdwing pearlymussel (*Lemiox rimosus*) to test the suitability of habitat for these species, prior to wide-scale introductions of cultured juveniles and/or transplanted adults. The proposed collection activities will take place from Limestone Creek, Limestone County, Alabama; Clinch River, Hancock County, Tennessee; and the Duck River, Marshall County, Tennessee. The release activities will take place in the Tennessee River, downstream of Wilson Dam, Lauderdale and Colbert Counties, Alabama.

Applicant: Phyllis Jean Deitschell, Clinic for the Rehabilitation of Wildlife, Inc., Sanibel, Florida TE054963–0.

The applicant requests authorization to take (receive, hold temporarily, transport, rehabilitate medically for injury or illness, release, and euthanize) the Loggerhead sea turtle (*Caretta caretta*), Green sea turtle (*Chelonia mydas*), Leatherback sea turtle (Dermochelys coriacea), Kemp's ridley sea turtle (*Lepidochelys kempii*), and Hawksbill sea turtle (*Eretmochelys imbricata*). The rehabilitation activities will take place at the Clinic for the Rehabilitation of Wildlife, Inc., Sanibel, Florida.

TE055698–0.

Applicant: Alabama Natural Heritage Program, James C. Godwin, Montgomery, Alabama.

The applicant requests authorization to take (survey, mark nest, and nest manipulation) the Alabama red-bellied turtle (*Pseudemys alabamensis*) to identify the factors that affect nest success of the Alabama red-bellied turtle, to recommend methods to improve nest success, and to locate new nesting sites. The proposed activities will take place in the Tensaw River, Mobile River Basin, north end of Gravine Island, Baldwin County, Alabama.

TE055179–0

Applicant: Michael David Warriner, Arkansas Natural Heritage Commission, Little Rock, Arkansas.

The applicant requests authorization to take (survey, capture, determine sex, mark, and release) the American burying beetle (*Nicrophorus americanus*) to monitor existing populations and to conduct searches for additional populations. The proposed activities will occur in the Cherokee Prairie Natural Area and the H.E. Flanagan Prairie Natural Area, Franklin County, Arkansas.

TE054974–0

Applicant: EcoScience Corporation, Gerald Mc Crain, Raleigh, North Carolina.

The applicant requests authorization to take (harass, capture, and release) the Saint Francis' satyr (*Neonympha mitchellii francisci*) to conduct presence/absence of species in areas where development is proposed or to determine species presence/absence in areas where a faunal inventory has been requested. The proposed activities will occur throughout the state of North Carolina.

TE055089–0

Applicant: Western Kentucky University, Scott A. Grubbs, Bowling Green, Kentucky.

The applicant requests authorization to take (remove, tag, exam, measure, sex, and translocate) the fanshell (*Cyrogenia stegaria*), Northern riffleshell (*Epioblasma torulosa rangiana*), ring pink (*Obovaria retuse*), clubshell (*Pleurobema clava*), and rough pigtoe (*Pleurobema plenum*) to continue the long-term biological monitoring program initiated by Schuster et al. and to assess the impact of Lock and Dam #6 on the structure of the macro-invertebrate community inhabiting the Green River and Nolin River in Mammoth Cave National Park, Kentucky.

Dated: April 22, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11365 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permit

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of receipt of applications for permit.

SUMMARY: The public is invited to comment on the following applications to conduct certain activities with endangered species and/or marine mammals.

DATES: Written data, comments or requests must be received by June 7, 2002.

ADDRESSES: Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents within 30 days of the date of publication of this notice to: U.S. Fish and Wildlife Service, Division of Management Authority, 4401 North Fairfax Drive, Room 700, Arlington, Virginia 22203; fax 703/358–2281.

FOR FURTHER INFORMATION CONTACT: Division of Management Authority, telephone 703/358–2104.

SUPPLEMENTARY INFORMATION:

Endangered Species

The public is invited to comment on the following application(s) for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*). Written data, comments, or requests for copies of these complete applications should be submitted to the Director (address above).

PRT–056064

Applicant: Wayne G. Lyster, III, Versailles, KY

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

PRT–056065

Applicant: Wesley K. Winn, Baytown, TX, PRT–056065.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus pygargus dorcas*) culled from a captive herd maintained under the management program of the Republic of South Africa for the purpose of enhancement of the survival of the species.

The U.S. Fish and Wildlife Service has information collection approval from OMB through March 31, 2004, OMB Control Number 1018–0093. Federal Agencies may not conduct or sponsor and a person is not required to respond to a collection of information unless it displays a current valid OMB control number.

Dated: April 26, 2002.

Michael S. Moore,

Senior Permit Biologist, Branch of Permits, Division of Management Authority.

[FR Doc. 02–11399 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Availability, Initial Restoration and Compensation Determination Plan (RCDP) for the August 27, 1998, Clinch River Chemical Spill in Tazewell County, VA

AGENCY: Fish and Wildlife Service, Department of the Interior.

ACTION: Notice of availability.

SUMMARY: The U.S. Fish and Wildlife Service (FWS), on behalf of the U.S. Department of the Interior (DOI), announces the release for public review of the Initial Restoration and

Compensation Determination Plan (RCDP) for the August 27, 1998, Clinch River Chemical Spill in Tazewell County, Virginia. The RCDP describes the trustee's proposal to restore natural resources injured as a result of a release of hazardous substances.

DATES: Written comments must be submitted on or before June 30, 2002.

ADDRESSES: Requests for copies of the RCDP may be made to the U.S. Fish and Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Written comments or materials regarding the RCDP should be sent to the same address.

FOR FURTHER INFORMATION CONTACT: John Schmerfeld, U.S. Fish and Wildlife Service, 6669 Short Lane, Gloucester, Virginia 23061. Interested parties may also call 804–693–6694 x107 for further information.

SUPPLEMENTARY INFORMATION: On August 27, 1998, a tanker truck overturned on U.S. Route 460 in Tazewell County, Virginia. The truck released approximately 1,350 gallons of Octocure 554-revised, a rubber accelerant, into an unnamed tributary about 530 feet from its confluence with the Clinch River. The spill turned the river a snowy white color and caused a significant fish kill. The spill also killed aquatic benthic macroinvertebrates for about 6.6 miles downstream. Using a conservative correction factor, an estimated 18,600 or more freshwater mussels were killed by the spill, including 750 individuals of 3 federally endangered mussel species. This spill is likely the single largest take of federally listed endangered species since the enactment of the Endangered Species Act. This spill destroyed one of the last two known remaining reproducing populations of the critically endangered tan riffleshell mussel.

Under the authority of the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.*, "natural resource trustees may assess damages to natural resources resulting from a discharge of oil or a release of a hazardous substance * * * and may seek to recover those damages." Natural resource damage assessments (NRDA) are separate from the cleanup actions undertaken at a hazardous waste or spill site, and provide a process whereby the natural resource trustees can determine the proper compensation to the public for injury to natural resources. The NRDA process seeks to: (1) Determine whether injury to, or loss of, trust resources has occurred; (2) ascertain the magnitude of the injury or loss; (3) calculate the appropriate compensation for the injury, including the cost of restoration; and (4) develop a restoration plan that will restore, rehabilitate, replace and/or acquire equivalent resources for injured or lost resources.

The DOI is the sole acting federal natural resource trustee for this case. The DOI has designated the FWS to act as its authorized official with regard to this case. An assessment plan (AP) was developed by the FWS with public input in April 2001. The AP outlined a set of studies that were designed to identify and quantify natural resource injuries that resulted from the August 27, 1998 release. The assessment phase of this NRDA has been completed and the results of all injury assessment studies have been reviewed by the FWS. This RCDP has been developed in order to publish the results of the injury assessment studies and to consider a number of restoration alternatives that will make the public whole again for their natural resource loss. Cost estimation methodologies and general environmental consequences of each restoration alternative are considered and a preferred restoration alternative is proposed. The proposed preferred alternative includes propagation of freshwater mussels, riparian habitat protection, and community education.

Interested members of the public are invited to review and comment on the RCDP. Copies of the RCDP are available for review at the FWS's Virginia Field Office in Gloucester, Virginia and at the FWS's Southwestern Virginia Field Office located at 330 Cummings Street, Suite A, Abingdon, Virginia 24210. Written comments will be considered and addressed in the final RCDP.

Author: The primary author of this notice is John Schmerfeld, U.S. Fish & Wildlife Service, Virginia Field Office, 6669 Short Lane, Gloucester, Virginia 23061.

Authority: The authority for this action is the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 as amended, commonly known as Superfund, (42 U.S.C. 9601 *et seq.*) and the Natural Resource Damage Assessment Regulations found at 43 CFR, part 11.

Dated: April 24, 2002.

Mamie A. Parker,

Regional Director, Region 5, U.S. Fish and Wildlife Service, DOI Designated Authorized Official.

[FR Doc. 02–11364 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Proposed Safe Harbor Agreement for Robert Mondavi Winery, San Luis Obispo County, California

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability.

SUMMARY: This notice advises the public that Robert Mondavi Winery (Applicant) has applied to the Fish and Wildlife Service (Service) for an enhancement of survival permit pursuant to section 10(a)(1)(A) of the Endangered Species Act of 1973, as amended (Act). The permit application includes a proposed Safe Harbor Agreement (Agreement) between the Applicant and the Service. The Agreement provides for management measures to aid in the conservation of the threatened California red-legged frog (*Rana aurora draytonii*), the endangered least Bell's vireo (*Vireo bellii pusillus*), and the endangered Southwestern willow flycatcher (*Empidonax traillii extimus*) on a vineyard property operated by the Applicant in San Luis Obispo County, California. The proposed duration of both the Agreement and permit is 33 years.

The Service has made a preliminary determination that the proposed Agreement and permit application are eligible for categorical exclusion under the National Environmental Policy Act of 1969 (NEPA). The basis for this determination is contained in an Environmental Action Statement, which also is available for public review.

DATES: Written comments must be received by 5:00 p.m. on June 7, 2002.

ADDRESSES: Comments should be addressed to Field Supervisor, Ventura Fish and Wildlife Office, 2493 Portola Road, Ventura, California 93003, facsimile number (805) 644–3958 (see Public Review and Comment section below).

FOR FURTHER INFORMATION CONTACT: Valary Bloom, Fish and Wildlife Biologist, at the above address or by calling (805) 644–1766.

SUPPLEMENTARY INFORMATION:

Background

Under a Safe Harbor Agreement, participating landowners voluntarily undertake management activities on their property to enhance, restore, or maintain habitat benefitting species listed under the Act. Safe Harbor Agreements encourage private and other non-Federal property owners to implement conservation efforts for listed species by assuring property owners they will not be subjected to increased property use restrictions if their efforts attract listed species to their property or increase the numbers or distribution of listed species already on their property. Application requirements and issuance criteria for enhancement of survival permits through Safe Harbor Agreements are found in 50 CFR 17.22(c). The Applicant has developed the proposed Agreement for the conservation of the California red-legged frog, least Bell's vireo, and Southwestern willow flycatcher on Mondavi's Cuesta Ridge Vineyard in San Luis Obispo County, California. The Agreement calls for the implementation of a riparian restoration project along an approximately 2-kilometer segment of an ephemeral stream known as Taco Creek.

The proposed riparian restoration program consists of efforts to reduce or eliminate yellow starthistle and other non-native vegetation, establish native riparian vegetation in which least Bell's vireos and Southwestern willow flycatchers may nest, and enhance pools to create desirable breeding conditions for the California red-legged frog. The Agreement also contemplates the possibility of measures to reduce competition from non-native bullfrogs and nest parasitism by brown-headed cowbirds.

Although no least Bell's vireos, Southwestern willow flycatchers, or California red-legged frogs are currently known to be in the immediate vicinity of the project area, the proposed project is designed to produce a conservation benefit for each of these species. The least Bell's vireo and Southwestern willow flycatcher are both threatened with loss and degradation of the riparian habitats with which they are obligatorily (vireo) and strongly (flycatcher) associated. Both species are likely to benefit through the provision of suitable habitat into which dispersing individuals from expanding populations elsewhere can move. The California red-legged frog is threatened by the loss or degradation of native riparian habitat, and predation by or competition with non-native species, most especially the bullfrog. The Agreement is likely to result in enhanced breeding habitat for the frog, improved cover in and near that habitat, and reduced threats from bullfrogs.

The conservation measures set forth in the Agreement are expected to result in the following net conservation benefits to the covered species: (1) Increased availability of suitable breeding and foraging habitat through planting of native riparian vegetation and control of non-native weedy species; (2) reduced fragmentation, and increased connectivity of populations in the general area; (3) reduced numbers of non-native bullfrogs in the general vicinity of the project; (4) reduced threat of nest parasitism by brown-headed cowbirds; (5) likelihood of increased population sizes of the covered species in the general area; and (6) insurance against the loss of these species in the general area as a result of habitat loss or other factors elsewhere.

Consistent with the Service's Safe Harbor policy and regulations, the Service proposes to issue a permit to the Applicant authorizing incidental take as a result of normal viticultural activities on the enrolled property. Normal viticultural activities include planting, harvesting, weed and insect control, pruning, mowing, discing, operation of vehicles and farm equipment, and similar activities. The permit would also authorize take incidental to the habitat restoration and maintenance activities planned for the Taco Creek project area, including weed control and planting of native vegetation, pool enhancement, bullfrog control, etc.

This Agreement and permit will also allow the Applicant to remove the habitat improvements and return the area to its prior, or baseline condition at the end of the term of the Agreement, if so desired by the Applicant.

The Service has made a preliminary determination that approval of the Agreement qualifies as a categorical exclusion under the NEPA, as provided by the Department of Interior Manual (516 DM 2, Appendix 1 and 516 DM 6, Appendix 1) based on the following criteria: (1) Implementation of the Agreement would result in minor or negligible effects on federally listed, proposed, and candidate species and their habitats; (2) implementation of the Agreement would result in minor or negligible effects on other environmental values or resources; and (3) impacts of the Agreement, considered together with the impacts of other past, present and reasonably foreseeable similarly situated projects would not result, over time, in cumulative effects to environmental values or resources which would be considered significant. This is more fully explained in our Environmental Action Statement.

Based upon this preliminary determination, we do not intend to prepare further NEPA documentation. The Service will consider public comments in making its final determination on whether to prepare such additional documentation.

Public Review and Comments

Individuals wishing copies of the permit application, the Environmental Action Statement, or copies of the full text of the Agreement, including a map of the proposed permit area, references, and legal descriptions of the proposed permit area, should contact the office and personnel listed in the **ADDRESSES** section above. Documents also will be available for public inspection, by appointment, during normal business hours at the Ventura Fish and Wildlife Office (**ADDRESSES** section above).

The Service provides this notice pursuant to section 10(c) of the Act and pursuant to implementing regulations for NEPA (40 CFR 1506.6). All comments received on the permit application and Agreement, including names and addresses, will become part of the Administrative record and may be released to the public. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comment. Anonymous comments will not be considered. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, are available for public inspection in their entirety.

We will evaluate the permit application, the Agreement, and comments submitted thereon to determine whether the application meets the requirements of section 10(a) of the Act and NEPA regulations. If the requirements are met, the Service will sign the proposed Agreement and issue an enhancement of survival permit under section 10(a)(1)(A) of the Act to the Applicant for take of the three covered species incidental to otherwise lawful activities of the project. The Service will not make a final decision until after the end of the 30-day comment period and will fully consider all comments received during the comment period.

Dated: May 1, 2002.

Mary Ellen Mueller,

Manager, California/Nevada Operations Office, Sacramento, California.

[FR Doc. 02–11340 Filed 5–7–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Intent To Prepare a Comprehensive Conservation Plan and Environmental Impact Statement for Back Bay National Wildlife Refuge

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) intends to gather information necessary to prepare a Comprehensive Conservation Plan (CCP) and Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act and its implementing regulations. A CCP will be prepared for Back Bay National Wildlife Refuge (NWR) located within the City of Virginia Beach, Virginia. A Wilderness Review of Back Bay NWR will also be completed concurrently in accordance with the Wilderness Act of 1964, as amended and Refuge Planning Policy 602 FW Chapters 1, 2, and 3. The Service is furnishing this notice in compliance with the National Wildlife Refuge System Administration Act of 1966, as amended (16 U.S.C. 668dd *et seq.*): (1) To advise other agencies and the public of our intentions; and (2) to obtain suggestions and information on the scope of issues to include in the environmental documents.

ADDRESSES: Address comments, questions, and request for more information to the following: Refuge Manager, Back Bay National Wildlife Refuge, 4005 Sandpiper Road, Virginia Beach, VA 23456–4325, 757–721–2412.

SUPPLEMENTARY INFORMATION: By Federal law, all lands within the National Wildlife Refuge System are to be managed in accordance with an approved CCP. The CCP guides management decisions and identifies refuge goals, long-range objectives, and strategies for achieving refuges purposes. The planning process will consider many elements including habitat and wildlife management, habitat protection and acquisition, public uses, and cultural resources. Public input into this planning process is essential. The CCP will provide other agencies and the public with a clearer understanding of the desired future conditions for Back Bay National Wildlife Refuge and how the Service will implement management strategies.

The Service has already held a series of local public meetings in Virginia Beach during January 2002 to solicit comments. The Service will continue to solicit public input via open houses, public meetings, workshops, and written comments. Special mailings, newspaper articles, and announcements will inform people of the time and place of additional opportunities for public input to the CCP. Back Bay NWR encompasses over 8,700 acres of beach, dunes, woodland, farm fields, and marsh habitats. Comments on the protection of threatened and endangered species and migratory birds, and the protection and management of their habitats will be solicited as part of the planning process. A Draft CCP and EIS are planned for public review in 2003.

Review of the project will be conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4321 *et seq.*), NEPA Regulations (40 CFR Parts 1500–1508), other appropriate Federal laws and regulations, and Service policies and procedures for compliance with those regulations.

Mamie A. Parker,

Regional Director, U.S. Fish and Wildlife Service, Hadley, Massachusetts.

[FR Doc. 02–11326 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Letters of Authorization To Take Marine Mammals

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of issuance of letters of authorization to take marine mammals incidental to oil and gas industry activities.

SUMMARY: In accordance with section 101(a)(5)(A) of the Marine Mammal Protection Act of 1972, as amended, and the U.S. Fish and Wildlife Service implementing regulations [50 CFR 18.27(f)(3)], notice is hereby given that the following Letters of Authorization to take polar bears incidental to oil and gas industry exploration activities in the Beaufort Sea and adjacent northern coast of Alaska have been issued to the following companies:

Company	Activity	Location	Date issued
ExxonMobil	Exploration	Gwydyr Bay	April 2, 2002.
Phillips Alaska, Inc.	Exploration	Puviaq	April 3, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Schliebe at the U.S. Fish and Wildlife Service, Marine Mammals Management Office, 1011 East Tudor Road, Anchorage, Alaska 99503, (800) 362–5148 or (907) 786–3812.

SUPPLEMENTARY INFORMATION: The Letter of Authorization is issued in accordance with U.S. Fish and Wildlife Service Federal Rules and Regulations "Marine Mammals; Incidental Take During Specified Activities (65 FR 16828; March 30, 2000)."

Dated: April 11, 2002.

David B. Allen,

Regional Director.

[FR Doc. 02–11382 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Annual National Earthquake Hazards Reduction Program Announcement.

OMB approval number: 1028–0051.

Abstract: Respondents submit proposals to support research in earthquake hazards and earthquake prediction to earth-science data and information essential to mitigate earthquake losses. This information will be used as the basis for selection and award of projects meeting the program objectives. Annual or final reports are required on each selected performance.

Bureau form number: None.

Frequency: Annual proposals, annual or final reports.

Description of respondents: Educational institutions, profit and non-profit organizations, individuals, and agencies of local or State governments.

Annual responses: 300.

Annual burden hours: 12,000 hours.

Bureau clearance officer: John Cordyack, 703–648–7313.

Dated: April 23, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–11366 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Proposed Information Collection To Be Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal to extend the collection of information described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

Specific public comments are requested as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Earthquake Report.

OMB approval number: 1028–0048.

Abstract: Respondents supply information on the effects of the shaking from a earthquake—on themselves personally, buildings and their effects, other man-made structures, and ground effects such as faulting or landslides. This information will be used in the study of the hazards from earthquakes and used to compile and publish the annual USGS publication "United States Earthquakes".

Bureau form number: 9–3013.

Frequency: After each earthquake.

Description of respondents: State and local employees; and, the general public.

Estimated completion time: 0.1 hours.

Annual responses: 750.

Annual burden hours: 75 hours.

Bureau clearance officer: John Cordyack 703–648–7313.

Dated: April 23, 2002.

P. Patrick Leahy,

Associate Director for Geology.

[FR Doc. 02–11367 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Request for Public Comments on Information Collection To Be Submitted to OMB for Review Under the Paperwork Reduction Act

A request extending the information collection described below will be submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made within 60 days directly to the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313.

As required by OMB regulations at 5 CFR 1320.8(d)(1), the U.S. Geological Survey solicits specific public comments as to:

1. Whether the collection of information is necessary for the proper performance of the functions on the bureaus, including whether the information will have practical utility;
2. The accuracy of the bureau's estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;
3. The quality, utility, and clarity of the information to be collected; and
4. How to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other forms of information technology.

Title: Frogwatch USA.

Current OMB Approval Number: 1028–0072.

Summary: The collection of information referred herein applies to a World-Wide Web site that permits individuals to submit records of the number of calling amphibians at wetlands. The Web site is termed Frogwatch USA. Information will be used by scientists and federal, state, and local agencies to identify wetlands showing significant declines in populations of amphibians.

Estimated Annual Number of Respondents: 500.

Estimated Annual Burden Hours: 3,625 hours.

Affected Public: Primarily U.S. residents.

For Further Information Contact: To obtain copies of the survey, contact the Bureau clearance officer, U.S. Geological Survey, 807 National Center, 12201 Sunrise Valley Drive, Reston, Virginia, 20192, telephone (703) 648–7313, or see the website at *www.mp2-pwrc.usgs.gov/frogwatch/.*

Dated: April 24, 2002.

Dennis B. Fenn,

Associate Director for Biology.

[FR Doc. 02–11368 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–Y7–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Submission of Information Collection to the Office of Management and Budget for Review Under the Paperwork Reduction Act

AGENCY: Bureau of Indian Affairs, Interior.

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ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, this notice announces that the Bureau of Indian Affairs has submitted to the Office of Management Budget a request for approval and renewal of information collections, OMB Control No. 1076–0094, Law and Order on Indian Reservations, 25 CFR part 11, subpart F.

DATES: Written comments must be submitted by June 7, 2002.

ADDRESSES: Written comments are to be mailed to Office of Management and Budget, Docket Library, Room 10102, Attn.: Desk Officer for the Department of the Interior, 725 17th Street NW, Washington, DC 20503. Please send a copy to Ralph Gonzales, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW, MS 4660–MIB, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Ralph Gonzales, (202) 208–4401.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Bureau of Indian Affairs, Department of the Interior, must collect personal information to carry out the requirements of Title 25, § 11.600 (c)—Marriage, and Title 25, § 11.606 (c)—Dissolution of Marriage. Basic information is requested of applicants for the issuance of a marriage license or for the dissolution of a marriage by a Court of Indian offenses under 25 CFR part 11. Information is collected by the Clerk of the Court of Indian Offenses in order for the Court to issue a marriage license or dissolve a marriage. The information is collected on an application requesting only basic information necessary for the Court to properly dispose of the matter.

II. Method of Collection

The information is collected on an application for the marriage license or for a dissolution of marriage.

III. Information Collected

Courts of Indian Offenses (CFR Courts) have been established on certain Indian reservation under the authority vested in the Secretary of the Interior by 5 U.S.C. 301 and 25 U.S.C. 2 and 9; and 25 U.S.C. 13, which authorizes appropriations for "Indian judges." See Tillett v. Hodel, 730 F.Supp. 381 (W.D. Okla. 1990), aff'd 931 F.2d 636 (10th Cir. 1991) United States v. Clapox, 13 Sawy. 349, 35 F. 575 (D.Ore. 1888). The CFR Courts provide adequate machinery for the administration of justice for Indian tribes in those areas where tribes retain jurisdiction over Indians and is exclusive of state jurisdiction but where tribal courts have not been established to exercise that jurisdiction. Accordingly, CFR Courts exercise jurisdiction under part 11 of Title 25 Code of Federal Regulations. Domestic Relations are governed by 25 CFR 11.600 which authorizes the CFR Court to conduct marriages and dissolve marriages. In order to be married in a CFR Court a marriage license must be obtained (25 CFR 11.600, 601). To comply with this requirement an applicant must respond to the following six questions found at 25 CFR 11.600(c):

(c) A marriage license application shall include the following information:

(1) Name, sex, occupation, address, social security number, and date and place of birth of each party to the proposed marriage;

(2) If either party was previously married, his or her name, and the date, place, and court in which the marriage was dissolved or declared invalid or the date and place of death of the former spouse;

(3) Name and address of the parents or guardian of each party;

(4) Whether the parties are related to each other and, if so, their relationship; and

(5) The name and date of birth of any child of which both parties are parents, born before the making of the application, unless their parental rights and the parent and child relationship with respect to the child have been terminated.

(6) A certificate of the results of any medical examination required by either applicable tribal ordinances, or the laws of the State in which the Indian country under the jurisdiction of the Court of Indian Offenses is located.

For the purposes of § 11.600, Marriage, Social Security number information is requested to confirm identity. Previous marriage information is requested to avoid multiple simultaneous marriages, and to ensure that any pre-existing legal relationships are dissolved. Information on consanguinity is requested to avoid conflict with state or tribal laws against marriages between parties who are related by blood as defined in such laws. Medical examination information may be requested if required under the laws of the state in which the Court of Indian offenses is located.

To comply with the requirement for dissolution of marriage an applicant must respond to the following six questions found at 25 CFR 11.606(c):

(1) The age, occupation, and length of residence within the Indian country under the jurisdiction of the court of each party;

(2) The date of the marriage and the place at which it was registered;

(3) That jurisdictional requirements are met and that the marriage is irretrievably broken in that either (i) the parties have lived separate and apart for a period of more than 180 days next preceding the commencement of the proceeding or (ii) there is a serious marital discord adversely affecting the attitude of one or both of the parties toward the marriage, and there is no reasonable prospect of reconciliation;

(4) The names, age, and addresses of all living children of the marriage and whether the wife is pregnant;

(5) Any arrangement as to support, custody, and visitation of the children and maintenance of a spouse; and

(6) The relief sought.

For the purposes of § 11.606, Dissolution proceedings, information on occupation and residency is necessary to establish court jurisdiction. Information on the status of the parties, whether they have lived apart 180 days or if there is serious marital discord warranting dissolution, is necessary for the court to determine if dissolution is proper. Information on the children of the marriage, their ages and whether the wife is pregnant is necessary for the court to determine the appropriate level of support that may be required from the non-custodial parent.

Description of the need for the information and proposed use of the information: The information is submitted in order to obtain or retain a benefit, namely, the issuance of a marriage license or a decree of dissolution of marriage from the Court of Indian Offenses.

Affected entities: Indian applicants that are under the jurisdiction of one of the 24 established Courts of Indian Offenses are entitled to receive the benefit of this action by the Court.

Estimated number of respondents: Approximately 260 applications for a marriage license or petition for dissolution of marriage will be filed in the 24 Courts of Indian Offenses annually.

Proposed frequency of responses: On occasion as needed.

Burden: The average burden of submitting a marriage license or petition for dissolution of marriage is 15 minutes per application. The total annual burden is estimated as 65 hours.

Estimated cost: There are no costs to consider, except estimated costs of $100 per court annually, for the material supplies and staff time required by the Court of Indian Offenses.

IV. Request for Comments

The Department of the Interior invites comments sent to the Office of Management and Budget on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden (including the hours and cost) of the proposed collection of information, including the validity of the methodology and assumption used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Our request for comments was published in the **Federal Register** on January 23, 2002 (67 FR 3226). No comments were received.

An agency may not conduct or sponsor, and a person is not required to respond to a collection of information, unless it displays a currently valid Office of Management and Budget control number.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–11470 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Determination of Trust Land Acquisition; Correction and Clarification

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of correction and clarification.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** of March 11, 2002, a notice on the Wyandotte Tribe of Oklahoma. This document corrects a discrepancy and clarifies language in the notice published in the **Federal Register** on March 11, 2002 (67 FR 10926).

FOR FURTHER INFORMATION CONTACT: George T. Skibine, Director, Office of Indian Gaming Management, Bureau of Indian Affairs, MS–2070 MIB, 1849 C Street NW., Washington, DC 20240; Telephone (202) 219–4066 (this is not a toll-free number); Telefax (202) 273–3153.

Correction

In the **Federal Register** of March 11, 2002, in FR Doc. 02–5760, on page 10926, in the second column under the heading "Background," the notice incorrectly stated in the last paragraph that "* * * the initial $100,000 investment was $121,170 at the time of the land purchase." The sentence is corrected to read "* * * the initial $100,000 investment was $212,170 at the time of the land purchase."

Clarification

In the first column under the heading "Summary," the words "land settlement claim" are removed from the text. In the second column under the heading "Determination," the first sentence is modified to read as follows: The Secretary of the Interior has determined that Public Law 98–602 funds were used to purchase the Shriner's Property in Kansas City, Kansas. This clarification is necessary to underscore that the notice should not be interpreted as a determination by the Secretary of the Interior that the Wyandotte Tribe is entitled to conduct gaming activities on the Shriner's Property pursuant to the "settlement of a land claim" exception to the gaming prohibition on land acquired in trust after October 17, 1988, contained in Section 20 of the Indian Gaming Regulatory Act. Attorneys for the Wyandotte Tribe have advised attorneys for the Department of the Interior and the Department of Justice that the Wyandotte Tribe intends to request the Department of the Interior and the National Indian Gaming Commission to decide whether the Shriner's Property comes within the "settlement of a land claim" exception in 25 U.S.C. 2719(b)(1)(B)(i).

Dated: April 26, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–11380 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–4N–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–933–02–1320–EL; COC 66126]

Colorado; Notice of Invitation for Coal Exploration License Application, Bowie Resources, Limited

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Bowie Resources, Limited in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Delta County, Colorado:

T. 12 S., R. 91 W., 6th P.M.
- Sec. 14, lots 7, 8, excluding HES 58, S½S½, NE¼SW¼, and NW¼SE¼;
- Sec. 22, S½;
- Sec. 23, lots 1–7, inclusive, excluding HES 133 & 161, W½, and NW¼SE¼;
- Sec. 26, lots 1–5, inclusive, excluding HES 133 & 134, W½, and N½SE¼;
- Sec. 27, all;
- Sec. 28, S½;
- Sec. 29, SE¼;
- Sec. 32, lots 1,2, 7–10, inclusive, 15,16, and NE¼;
- Sec. 33, lots 4,5,12,13, N½N½, and SW¼NW¼;
- Sec. 34, N½N½.

The area described contains approximately 3,788.18 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 66126 at the Bureau of Land Management (BLM), Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Uncompahgre Field Office, 2505 So. Townsend Ave., Montrose, Colorado 81641.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register:** Karen Magallanes, Solid Minerals Staff, Resource Services, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215; and Keith Seiber, President, Bowie Resources, Limited, P.O. Box 483, Paonia, Colorado 81428. Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and

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with any other party or parties who elect to participate.

Dated: March 25, 2002.

Karen Magallanes,

Solid Minerals Staff, Resource Services.

[FR Doc. 02–11438 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–921–02–1320–EL–P; NDM 91647]

Notice of Coal Lease Application—NDM 91647—The Falkirk Mining Co.

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice.

SUMMARY: Notice of The Falkirk Mining Company's Coal Lease Application NDM 91647 for certain coal resources within the Falkirk Mine.

The land included in Coal Lease Application NDM 91647 is located in McLean County, North Dakota, and is described as follows:

T. 146 N., R. 82 W., 5th P. M.

Sec. 34: NW¼SW¼.

The 40.00-acre tract contains an estimated 298,914 tons of recoverable coal reserves.

The application will be processed in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (30 U.S.C. 181, *et seq.*), and the implementing regulations at 43 CFR part 3400. A decision to allow leasing of the coal reserves in said tract will result in a competitive lease sale to be held at a time and place to be announced through publication pursuant to 43 CFR part 3422.

SUPPLEMENTARY INFORMATION: The Falkirk Mining Company is the operator of the Falkirk Mine. The entire area included within this lease application lies within the Falkirk Mine's NAFK–8705 permit area.

The area applied for would be mined as an extension of the Falkirk Mine and would utilize the same methods as those currently being used. The lease being applied for can extend the life of the mine by about 1 month and enable recovery of coal that might never be mined if not mined as a logical extension of current pits.

Notice of Availability: The application is available for review between the hours of 9 a.m. and 4 p.m. at the Bureau of Land Management, Montana State Office, 5001 Southgate Drive, Billings, Montana 59101, and at the Bureau of Land Management, Dakotas District Office, whose address is 2033 Third Avenue West, Dickinson, North Dakota 58601–2619, between the hours of 8 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Rebecca Good, Coal Coordinator, at telephone 406–896–5080, Bureau of Land Management, Montana State Office, 5001 Southgate Drive, P.O. Box 36800, Billings, Montana 59107–6800.

Dated: April 10, 2002.

Randy D. Heuscher,

Chief, Branch of Solid Minerals.

[FR Doc. 02–11430 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–010–1990–EX]

Record of Decision; South Operations Area Project Amendment, Eureka Co., NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to Section 202 of the National Environmental Policy Act of 1969, an Environmental Impact Statement (EIS) has been prepared, under third party contract, by the Bureau of Land Management (BLM), Elko Field Office. The EIS was prepared to analyze impacts and alternatives for Newmont Mining Corporation's proposed South Operations Area Project Amendment. The proposed project expansion would result in disturbance of an additional 1392 acres of federal and private lands located in Eureka County, Nevada. The Final EIS was released for public review April 26, 2002. The Record of Decision (ROD) was signed by the Elko Field Office Manager May 31, 2002, approving the proposed project and incorporating mitigating modifications analyzed under the proposed action.

Copies of the ROD can be obtained from the Elko Field Office at 3900 Idaho Street, Elko, Nevada, or by calling (775) 753–0200 and requesting a copy of the document. It may also be downloaded from the Elko Field office internet site at www.nv.blm.gov/elko. Additionally, a copy of the ROD will be mailed to individuals, agencies or companies that commented during the scoping process, or on the Draft and Final EIS.

EFFECTIVE DATES: Parties adversely affected by the Record of Decision have 30 days, from the date of publication of this notice, to file a Notice of Appeal in the office which issued this decision (43 CFR 4.411 and 4.413). The decision to approve the mining operation is in full force and effect, effective on the date of signing of the Record of Decision. A petition for a stay of the decision must be filed in accordance with the above cited regulations.

ADDRESSES: A copy of the Record of Decision can be obtained from: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, Nevada 89801. A notice of Appeal should be addressed to: Bureau of Land Management, Elko Field Office, 3900 Idaho Street, Elko, NV 89801, and a copy to: Office of the Regional Solicitor, Salt Lake City Federal Building, 125 South State Street, Salt Lake City, UT 84138.

FOR FURTHER INFORMATION CONTACT: Roger Congdon, Project Coordinator, Elko Field Office, Bureau of Land Management, 3900 Idaho Street, Elko, Nevada 89801, (775) 753–0200.

Robert V. Abbey,

State Director, Nevada.

[FR Doc. 02–11443 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–080–1310–DO]

Inland Resources, Inc. Monument Butte-Myton Bench Oil Field Development, Duchesne and Uintah Counties, UT, Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Vernal Field Office, Interior.

ACTION: Notice of Intent to prepare an Environmental Impact Statement (EIS) on the Inland Resources, Inc. Monument Butte-Myton Bench Oil Field Development, Duchesne and Uintah Counties, Utah.

SUMMARY: Pursuant to section 102 (2) (C) of the National Environmental Policy Act of 1969, the Bureau of Land Management (BLM), Vernal Utah Field Office will be writing an EIS on proposed expansion of existing oil field development operations. The EIS area encompasses approximately 65,500 acres in the greater Monument Butte-Myton Bench oil and gas production region. The project is located primarily on BLM administered lands (59,757 acres). The project area also includes lands administered by the State of Utah (5,777 acres), and several private landowners (41 acres). Inland operates the majority of the mineral lease rights underlying both the public and private lands.

As part of a successful application of waterflood technology, the proponent proposed to expand its waterflood operations by drilling 600 to 900 additional wells within the Monument Butte-Myton Bench oil field through the year 2015. Based on a 40 acre spacing pattern, Inland Resources, Inc. would drill approximately 50 percent of the wells as producing wells and 50 percent as water injection wells. The water injection wells would allow reservoir pressure to be managed and oil recovery to be maximized. Estimated new surface disturbance for the project would include 1,710 acres. The existing road network within the project area would provide the primary access routes to the new well sites. No additional compression facilities is expected to be required to accommodate the new wells.

Major issues include potential impacts to status plants and animals, air quality, and soils. Alternatives identified at this time include the proposed action and the no action alternatives.

DATES: This notice announces the public scoping process. Comments on issues can be submitted in writing to the address listed below. All public meetings will be announced through the local news media, and the BLM Vernal Field Office web site (*www.blm.gov/utah/vernal*) at least 15 days prior to the event.

Public Participation: Public meetings will be held during the scoping period. In order to ensure local community participation and input, public meeting locations will be in Duchesne and Uintah Counties, Utah. In addition, formal opportunities for public participation will be provided through comment on the alternatives and upon publication of the BLM draft EIS.

ADDRESSES: Written comments should be sent to the Environmental Coordinator, Bureau of Land Management, Vernal Field Office, 170 South 500 East, Vernal, Utah 84078; Fax 435–781–4410. Documents pertinent to this proposal may be examined at the Vernal Field Office located in Vernal, Utah. Comments, including names and street addresses of respondents, will be available for public review at the Vernal Field Office located in Vernal, Utah during regular business hours 7:30 a.m. to 4:30 p.m., Monday through Friday, except holidays , and may be published as part of the EIS. Individual respondents may request confidentially. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Duane De Paepe, Telephone 435–781–4403, or e-mail *ddepaepe@ut.blm.gov.*

SUPPLEMENTARY INFORMATION: The management of BLM public lands and resources encompassed by the project area is directed and guided by the BLM's Record of Decision for the Diamond Mountain Resource Management Plan. The majority of the proposed project lies within an area that was previously partially developed for oil and gas production and is designated as Category 2 for oil and gas leasing by the BLM. Category 2 areas are those that are open to oil and gas leasing with stipulations to protect sensitive surface resources.

Authority: Pub. L. 94–579, 43 CFR 8364.1.

Dated: March 18, 2002.

Sally Wisely,

State Director.

[FR Doc. 02–11435 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–029–02–1610–DO–082L]

Notice of Intent To Prepare Plan Amendments to the 1995 Fort Greely Resource Management Plan and 1995 Fort Wainwright Resource Management Plan and Associated Environmental Assessments (EAs)

AGENCY: Northern Field Office, Bureau of Land Management, Fairbanks, Alaska, Interior.

ACTION: Notice of intent to prepare plan amendments to the 1995 Fort Greely Resource Management Plan (RMP) and 1995 Fort Wainwright RMP and associated Environmental Assessments (EAs).

SUMMARY: This document provides notice that the Bureau of Land Management (BLM) intends to prepare two plan amendments with associated EAs. BLM will work closely with the U.S. Army, Alaska (USARAK) while developing the amendments. The amendments will encompass approximately 624,000 acres for Fort Greely and 248,000 acres for Fort Wainwright. The affected lands are on the Fort Greely military withdrawal near the town of Delta Junction, Alaska, and on the Fort Wainwright withdrawal near Fairbanks, Alaska. The amendments will fulfill the needs and obligations set forth by the National Environmental Policy Act, the Federal Land Policy and Management Act, and Pub. L. 106–65, BLM and USARAK management policies. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates the public scoping process to identify planning issues and to develop planning criteria.

DATES: The scoping comment period will commence with the publication of this notice. Formal scoping will end 60 days after publication of this notice. Comments on issues and planning criteria should be received on or before the end of the scoping period at the address listed below.

Public Participation: Two public meetings will be held during the scoping and preparation period. These meetings will be held in Fairbanks and Delta Junction, Alaska. Early participation by all those interested is encouraged. At least 15 days public notice will be given for activities where the public is invited to attend. Written comments will be accepted throughout the amendment process at the address shown below. Meetings will be announced through the local news media.

ADDRESSES: Written comments should be sent to Northern Field Office, Bureau of Land Management, 1150 University Avenue, Fairbanks, Alaska 99709–3844, attention Gary Foreman. Documents pertinent to these amendments may be examined at the Northern Field Office located in Fairbanks, Alaska. Comments, including names and street addresses of respondents, will be available for public review at the Northern Field Office during regular business hours 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the EAs. Individual respondents may request confidentiality. If you wish BLM to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and

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from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Gary Foreman, Telephone (907) 474–2339.

SUPPLEMENTARY INFORMATION: The RMPs for Fort Greely and Fort Wainwright were signed in 1995. Recently evaluations of the RMPs were performed and three issues were found that require amendments to the 1995 RMPs. These issues are: (1) The withdrawals have been extended for an additional 25 years; (2) Through their planning, USARAK is recommending some changes to vehicle access designations within the withdrawal areas; (3) BLM has drafted new land health standards and will implement them if they are approved in time for these amendments.

Additional issues to be addressed in these amendments can be submitted to the BLM by interested agencies, groups, and individuals throughout the planning process.

Robert W. Schneider,

Field Manager, Northern Field Office, Bureau of Land Management.

[FR Doc. 02–11440 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–32–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM 050–02–1610–DO]

Notice of Intent to Prepare a Resource Management Plan Revision/ Environmental Impact Statement

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of Intent to prepare a Resource Management Plan (RMP) revision and associated Environmental Impact Statement (EIS), Socorro Field Office, New Mexico.

SUMMARY: Pursuant to section 202 of the Federal Land Policy and Management Act of 1976 (FLPMA) and section 102 (2)(C) of the National Environmental Policy Act of 1969 (NEPA), the Bureau of Land Management (BLM), Socorro Field Office will prepare an RMP Revision and complete an EIS on the Revision for approximately 1.5 million acres of public lands managed by the Socorro Field Office in west-central New Mexico, located within Socorro and Catron Counties. The revised land use plan will guide resource management in these areas into the foreseeable future. The RMP Revision will be prepared under guidance provided through 43 CFR part 1600 (BLM Planning Regulations). The BLM will work closely with interested parties to identify issues, resolve disputes, and develop management actions that are best suited to the management of the resources and the needs of the public. This collaborative process will take into account local, regional, and national concerns. This Notice formally initiates the public Scoping process to identify planning issues and to review preliminary planning criteria.

DATES: The Scoping comment period will commence with the publication of this Notice and Scoping comments would be most effective if received not later than 30 days after the last public meeting. Meetings and comment closing dates will be announced through local news media, newsletters, and the BLM Web site: *http://www.nm.blm.gov.*

ADDRESSES: Written comments should be sent to "RMP COMMENTS", BLM, Socorro Field Office, 198 Neel Ave., NW, Socorro, NM, 87801, Fax: 505–835–0223. Documents pertinent to this proposal may be examined at the Socorro Field Office. Comments, including names and street addresses of respondents, will be available for public review at the Socorro Field Office during regular business hours, 8 a.m. to 4:30 p.m., Monday through Friday, except holidays, and may be published as part of the RMP/EIS. Individual respondents may request confidentiality. If you wish to withhold your name or address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: For further information and/or to have your name added to our mailing list, contact Charles Carroll, Planning and Environmental Coordinator, BLM, Socorro Field Office, 198 Neel Ave., NW, Socorro, NM, 87801, phone: 505–838–1278.

SUPPLEMENTARY INFORMATION: Opportunities to participate will occur throughout the planning process. To ensure local community participation and input, public scoping meetings will be held, at a minimum, in three towns strategically located in or near the planning area. Early participation by all interested parties is encouraged and will help guide the planning process and determine the future management of public lands. At least 15 days public notice in local news media will be given for activities where the public is invited to attend. The minutes and list of attendees for each meeting will be available to the public and open for 30 days to any participant who wishes to clarify their views. Written comments will be accepted throughout the planning process at the address shown above. Additional formal opportunities for public participation and comment will be provided upon publication of the draft RMP Revision and draft EIS.

Preliminary issues and management concerns have been identified by BLM personnel, other agencies, and in meetings with individuals and user groups. The preliminary issues are: Management of public land resources at the watershed level; off-highway vehicle management; fluid and solid mineral development; effects of urban interface; land tenure adjustments; status of Areas of Critical Environmental Concern; identification of resource values on recently acquired public lands; and public interest/benefits with regard to recent cultural/recreation initiatives—*e.g.*, El Camino Real International Heritage Center, Fort Craig, El Camino Real National Historic Trail, etc.

Preliminary Management Concerns include: Management of current/future special status species; maintaining government-to-government relationships with tribal governments; effect on disproportionate impacts to disadvantaged communities resulting from execution of land management decisions (Environmental Justice Executive Order 12898); the potential for the spread of noxious weeds; and the management of designated streams (Clean Water Act, Section 303–d). Public comments on the issues will be placed in one of three categories: (1) Issues to be resolved in the plan; (2) issues resolved through policy or administrative action; or (3) issues beyond the scope of this plan. The public is encouraged to help identify issues, questions, and concerns during the scoping phase.

Planning Criteria will be developed during public scoping to help guide the planning effort. Preliminary Planning Criteria being considered for the Socorro planning effort include: Recognize valid existing rights; comply with existing law, executive orders, regulation, and BLM policy and program guidance; seek public input; consider adjoining non-public lands when making management decisions to minimize land use conflicts; consider planning jurisdictions of other federal agencies, and state, local and tribal governments; develop reasonable and sound alternatives; use current scientific data to evaluate appropriate management strategies; analyze socioeconomic effects of alternatives along with the environmental effects; carry forward valid analysis from existing documents; and consider public welfare and safety.

The Socorro Field Office borders the Cibola, Apache, and Gila National Forests, the Alamo Navajo Reservation, the White Sands Missile Range, and the Sevilleta and Bosque del Apache National Wildlife Refuge. Elevations in the area range approximately 4,600 feet along the Rio Grande to over 8,500 feet on Pelona Mountain.

The Socorro Field Office is presently managed under the Socorro RMP (1989, as amended). Information and decisions from the existing Socorro RMP will be reviewed and incorporated in this plan revision to the extent possible.

Management will continue under the Socorro RMP until the revised RMP is approved.

Dated: March 27, 2002.

Richard A. Whitley,

New Mexico Associate State Director.

[FR Doc. 02–11442 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–110–1060–JJ]

Public Hearings Addressing the Use of Helicopters and Motorized Vehicles During the Capture of Wild Horses

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of public hearings.

SUMMARY: Two public hearings addressing the use of motorized vehicles and helicopters during the capture of wild horses have been scheduled in Colorado in 2002. One hearing will address use in the Piceance-East Douglas Herd Management Area, White River Field Office, Meeker, Colorado; a second hearing will address use in the Little Book Cliffs Wild Horse Range, Grand Junction Field Office, Grand Junction, Colorado.

DATES: The public hearings will be held in May and June, 2002. The White River and Grand Junction field offices will publish exact dates and times for these hearings through public notices, local newspaper announcements and mailings.

ADDRESSES: The hearings will be held at the following locations:

1. White River Field Office; 73544 Highway 64; Meeker, Colorado
2. Grand Junction Field Office; 2815 H Road, Grand Junction, Colorado

SUPPLEMENTARY INFORMATION: The Piceance-East Douglas wild horse gather is scheduled for completion between June 15, 2002 and September 30, 2002.

The Bookcliffs Wild Horse Range wild horse gather is scheduled for completion between June 15, 2002 and September 30, 2002.

For additional information regarding the Meeker, Colorado public hearing contact James Cagney, Associate Field Manager, at 970–878–3803. For further information regarding the Grand Junction, Colorado public hearing contact Gerald Thygerson, Wild Horse Specialist, at 970–244–3000.

Dated: March 15, 2002.

Vernon Rholl,

Acting Field Office Manager.

[FR Doc. 02–11437 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; NVN–59476]

Expiration of Public Land Order No. 7253 and Opening of Land; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Public Land Order No. 7253, which withdrew 21,969.012 acres of public land from surface entry and mining, expired on April 7, 2002. The withdrawal was not extended because land use planning to demonstrate a need for continuation of the withdrawal was not completed. This notice will open the land to surface entry and mining.

EFFECTIVE DATE: June 7, 2002.

FOR FURTHER INFORMATION CONTACT: Jo Ann Hufnagle, Carson City Field Office, 5665 Morgan Mill Road, Carson City, Nevada 89701, 775–885–6000.

SUPPLEMENTARY INFORMATION: On April 7, 2002, Public Land Order No. 7253 expired under it own terms. The purpose of this withdrawal was to protect recreational, cultural, wildlife, riparian, and watershed values in the Pah Rah Range while the Bureau of Land Management completed land use planning for the land. The withdrawal was not extended because land use planning to demonstrate a need for continuation of the withdrawal was not completed. The land included in the withdrawal was described in the public land order published as FR Doc. 97–8960, 62 FR 16866–16867, April 8, 1997.

At 9 a.m. on June 7, 2002, the land described in Public Land Order No. 7253 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. June 7, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 9 a.m. on June 7, 2002, the land described in Public Land Order No. 7253 will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1994), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: April 5, 2002.

John O. Singlaub,

Manager, Carson City Field Office.

[FR Doc. 02–11444 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID–074–1210–PA–241E]

Final Recreation Use Restrictions, ID

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Final Supplementary Rules: Restrictions adjacent to and within the Sand Mountain WSA, Idaho.

SUMMARY: In accordance with 43 CFR 8341.1 and 8365.1–6, the Bureau of Land Management (BLM) proposes to make permanent the temporary restrictions currently in place within the

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Sand Mountain Wilderness Study Area. The temporary restrictions have been in place since 1992 for motor vehicle use, and since 1999 for uses at Egin Lakes Access and Red Road Recreation sites.

DATES: Comments on the direct final rule must be received or postmarked by June 7, 2002 to be assured consideration. If the BLM does not receive any substantive comments in opposition (i.e., comments showing that the regulatory revisions will adversely impact an individual or entity, the environment, or the public interest), the proposed revisions will become a final rule at the end of the designated comment period on June 7, 2002 without further notice. If we receive any adverse comments, BLM will review the comments, make any appropriate changes and republish the revisions as a proposed rule.

ADDRESSES: Bureau of Land Management, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401. Telephone (208) 524–7500.

SUPPLEMENTARY INFORMATION: A direct final rule means the rule will be a final rule at the end of the published comment period, unless we receive substantive comment during the comment period indicating that the direct final rule will adversely affect an individual or entity, the environment, or the public interest (5 U.S.C. 553). If we receive any substantive adverse comments, this rule will not become final. BLM will respond to all such comments in a further rulemaking and make a decision regarding the contentious parts of the rule at a later time. Otherwise, this rule will become effective without further notice on June 7, 2002. These rules have been in place for several years, with ample opportunity for the public to raise concerns to BLM about them.

The Sand Mountain Wilderness Study Area (WSA) includes 21,000 acres of public land that is part of the larger St. Anthony Sand Dunes Special Recreation Management Area (SRMA) in Fremont and Jefferson Counties, ID. BLM established various restrictions within the WSA and SRMA by publishing several **Federal Register** notices, as listed below. The temporary restrictions were extended in July 2001 (66 FR 35661). They include the following notices:

- Notice of restricted motor vehicle use (57 FR 36405)
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area, Idaho (64 FR 27804)
- Notice of Recreation Use Restrictions and Regulations for Egin Lakes Access and Red Road Recreation Sites Adjacent and Within the Sand Mountain Wilderness Study Area, Idaho (64 FR 46935)

Supplementary Rules for the Sand Mountain Wilderness Study Area (WSA)

The following supplementary rules apply within the WSA:

1. Lands within the WSA are restricted to unlicenced off-road vehicles, including ATVs (3 and 4-wheelers), off-road motorcycles, off-road jeeps, sand dune buggies/rails and other off-road sand vehicles. All licensed vehicles are prohibited, including passenger automobiles, passenger pick-ups, pick-up campers, camp trailers, self-contained campers and similar vehicles.
2. All permitted use must occur on the open sand areas or on designated roads or trails.
3. Glass containers for food and beverages are prohibited within the WSA boundaries.
4. Safety equipment such as helmets, boots, and protective clothing, are strongly recommended.
5. Each vehicle is required to have a "whip flag" not less than 6 feet in length with brightly colored material on the end of the flag.
6. Open campfires are prohibited within the WSA, except in the designated Red Road Open Sand Campfire Area. Within the Red Road Open Sand Campfire Area, burning any foreign material other than wood in all campfires is prohibited. This prohibition includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.
7. Use of personal water craft or other motorized vehicle or craft is prohibited on any body of water within the WSA.

The following supplementary rules apply within the SRMA:

1. Quiet hours will be observed within the Egin Lakes Access Site and Red Road Recreation Area from 11 p.m. to 7 a.m. nightly.
2. Burning any foreign material other than wood in all campfires is prohibited. This prohibition includes, but is not limited to pallets, treated lumber, tires, glass, aluminum, etc.
3. Engaging in fighting is prohibited.
4. Addressing any offensive, derisive, or annoying communication that has a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed, is prohibited.
5. No person under the age of twenty-one (21) shall possess or consume any alcoholic beverage, as defined by Idaho Code Title 23–105.

These restrictions are intended to reduce the possibility of injury to individuals, or damage to the natural resources within the WSA and the SRMA. Recreational use on the St. Anthony Sand Dunes has increased more than 1000 percent since 1984, with an estimated 150,000 visitors last season. The restrictions will be cited under Title 43 CFR 8364.1, Access Restrictions; and 8365.1–6, Visitors Services, Rules of Conduct, Supplementary Rules. Violations of these restrictions is punishable by a fine not to exceed $1000 and/or imprisonment not to exceed 12 months.

Maps of the areas where the restrictions and regulations apply are available at the Idaho Falls Field Office. Signs with the rules and regulations are posted at all entrances into the WSA as well as at the recreation sites and areas. For more complete information on these restrictions, please refer to the previously mentioned **Federal Register** notices.

FOR FURTHER INFORMATION CONTACT: Bill Boggs, Bureau of Land Management, Upper Snake River District, Idaho Falls Field Office, 1405 Hollipark Drive, Idaho Falls, Idaho 83401, (208) 524–7527.

Dated: December 19, 2001.

Joe Kraayenbrink,

Idaho Falls Field Manager.

[FR Doc. 02–11439 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–GG–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–090–1430EU]

Notice of Intent To Prepare an Amendment to the Judith-Valley-Phillips Resource Management Plan and Associated Environmental Assessment, Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an amendment to the Judith-Valley-Phillips Resource Management Plan and associated Environmental Assessment, Montana.

SUMMARY: The Bureau of Land Management's Malta Field Office will consider amending the September 1994 Judith-Valley-Phillips Resource Management Plan (RMP), (RMP) to address a land exchange with the Valley County Commissioners. An environmental assessment (EA) will analyze the categorization of 0.179 acres of public land within the city limits of Glasgow, MT as a disposal parcel which would be exchanged for 640 acres of county land.

DATES: Comments and recommendations on the amendment under consideration should be received on or before June 7, 2002. Comments, including names and street addresses of respondents, will be available for public review at the Malta Field Office, during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

ADDRESSES: Address all written comments to Bureau of Land Management, Malta Field Office, 501 South 2nd Street East, HC 65, Box 5000, Malta, Montana 59538–0047.

FOR FURTHER INFORMATION CONTACT: Bruce W. Reed, 406–654–5100.

SUPPLEMENTARY INFORMATION: The public land to be addressed in the EA is within the City of Glasgow, MT at 731 1st Avenue South. Valley County intends to use the site which contains a metal building as a bus barn for the Valley County Transit system which is primarily for the benefit of senior citizens. The public land is not currently identified for disposal in the RMP. The county land is located adjacent to the Bitter Creek Wilderness Study Area and the proposed Bitter Creek Area of Critical Environmental Concern.

Dated: February 21, 2002.

(Authority: Sec. 202, Pub. L. 94–579, 90 Stat. 2747 (43 U.S.C. 1712))

Bruce W. Reed,

Field Manager, Bureau of Land Management.

[FR Doc. 02–11432 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT–050–1430–DB–24–1A]

Notice of Intent to Amend the Mountain Valley Management Framework Plan

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to amend the Mountain Valley Management Framework Plan and prepare an environmental assessment.

SUMMARY: This Notice of Intent is to advise the public that the Utah Richfield Field Office, Bureau of Land Management (BLM) intends to consider a proposal which would require amending an existing planning document.

The BLM is proposing to amend the Mountain Valley Management Framework Plan which includes public lands in Sevier County, Utah. The purpose of the amendment would be to identify certain lands as suitable for direct sale pursuant to Section 203 of the Federal Land Policy and Management Act of 1976. The lands under consideration for being identified for direct sale comprise 440.85 acres described as follows: T. 22 S., R. 1 W., SLB&M, Section 1, Lots 1–4, S½N½, N½SW¼, SW¼SW¼.

DATES: The comment period for this proposed plan amendment will commence with publication of this notice. Comments must be made within 30 days of this publication in the **Federal Register**.

ADDRESSES: Comments on the proposed plan amendment should be sent to Jerry Meredith, Acting Richfield Manager, 150 East 900 North, Richfield, Utah 84701. Comments, including names and address of respondents will be available for public review at the BLM Richfield Field Office and may be published as part of the Environmental Assessment and other related documents. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review and disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written request. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Jerry Meredith, Acting Richfield Field Office Manager, 150 East 900 North, Richfield, Utah 84701. Existing planning documents and information are available at the above address or telephone (801) 896–1500.

SUPPLEMENTARY INFORMATION: The existing plan does not identify these lands for disposal. However, because of the resource values and public values and objectives involved, the public interest may well be served by sale of these lands. An environmental assessment will be prepared by an interdisciplinary team to analyze the impacts of this proposal and alternatives.

Dated: March 29, 2002.

Robert A. Bennett,

Acting State Director.

[FR Doc. 02–11434 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–500–2824–DD]

Notice of Intent To Prepare a Fire and Fuels Management Plan and Amend the San Luis Resource Management Plan

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Intent To prepare a Fire and Fuels Management Plan Amendment and an Environmental Assessment (EA) for the San Luis Resource Management Plan (RMP).

SUMMARY: This document provides notice that BLM intends to prepare a Fire and Fuels Management Plan Amendment, with an associated EA, for the San Luis Valley. The Del Norte, La Jara, and Saguache Field Offices administer approximately 530,000 acres of public lands in Alamosa, Conejos, Rio Grande, and Saguache Counties in south-central Colorado. The BLM will work closely with interested parties to identify the management decisions that are best suited to the needs of the public. This collaborative process will take into account local, regional, and national needs and concerns. This notice initiates public review of the proposed issues to be addressed and the planning criteria.

DATES: The review period will last 45 days from the publication of this notice. To be most useful, comments should be received on or before the end of the review period at the addresses listed below. To ensure local community participation and input, public workshops will be held during the

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review period in Alamosa and Saguache. Specific dates and locations for public participation will be published in local papers and broadcast on local community calendars at a later date.

ADDRESSES: If you wish to comment, request additional information, or request to be put on the mailing list, you may do so by any of several methods. You may mail, hand deliver, or call your comments or requests to: Tom Goodwin, Field Manager, Saguache Field Office, 46525 Highway 114, PO Box 67, Saguache, CO 81149, (719) 655–2547; or Neal Beetch, Project Manager, La Jara Field Office, 15571 County Road T5, La Jara, CO 81140, (719) 274–6301. You may also comment via email to: *rgfo_comments@blm.gov*. Please submit email comments avoiding the use of special characters and any form of encryption. Please include your name and address in your email message.

Comments, including names and street addresses of respondents, will be available for public review at the BLM offices listed above during regular business hours. Individual respondents may request confidentiality. If you wish to withhold your name and/or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. We will not, however, consider anonymous comments. All submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be made available for public inspection in their entirety.

FOR FURTHER INFORMATION CONTACT: Tom Goodwin, Field Manager, or Neal Beetch, Project Manager at the addresses or phone numbers listed above.

SUPPLEMENTARY INFORMATION: The proposed plan amendment will: establish resource area-wide objectives for fire and fuels; delineate fire management areas; identify broad vegetation treatments; and identify general restrictions on fire management practices. BLM has identified general issues anticipated for this planning effort, including: protection of human life; protection of property; protection of natural/cultural resources; integration of fire and resource management; air quality; and wildlife habitat. These issues, along with others that may be identified through public participation, will be considered during the planning process. BLM has also identified preliminary planning criteria to guide the planning process, including compliance with all legal mandates of the Federal Land Policy and Management Act of 1976 (FLPMA), the National Environmental Policy Act of 1969 (NEPA), the Federal Advisory Committee Act, the Administrative Procedures Act, and the BLM planning regulations in 43 CFR part 1600, as well as consistency with fire plans of other agencies and State and local jurisdictions.

Existing information will be used to develop the plan amendment and EA. Selectable alternatives must contribute to the achievement of public land health standards and to the protection of communities at risk from catastrophic wildfire.

The planning process will utilize a collaborative approach. This will allow the public, tribes, State and Federal agencies, local elected officials, and BLM specialists to participate in identifying issues and developing and analyzing alternatives. In addition to the initial public comment period and workshops, the public will also be invited, through a **Federal Register** notice, local newspapers, and mailings, to review the proposed plan and provide comments. The Governor of Colorado, County Commissioners for Alamosa, Conejos, Rio Grande, and Saguache counties, and potentially affected members of the public will be notified of all meetings and comment periods. Agency representatives and interested persons are invited to visit with BLM officials at any time during the planning process.

Roy L. Masinton,

Front Range Center Manager.

[FR Doc. 02–11436 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–JB–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–1430–ET; N–75209]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw a 2,303.61 acres of public lands from surface entry and mining for a period of 20 years to protect public health and safety from lands contaminated by previous mining operations. This notice closes the lands from surface entry and mining for up to 2 years while various studies and analyses are made to make a final decision on the withdrawal application.

DATES: Comments and requests for a meeting should be received on or before August 6, 2002.

ADDRESSES: Comments and meeting requests should be sent to the Nevada State Director, BLM, 1340 Financial Blvd., P.O. Box 12000, Reno, Nevada 89520–0006.

FOR FURTHER INFORMATION CONTACT: Dennis J. Samuelson, BLM Nevada State Office, 775–861–6532.

SUPPLEMENTARY INFORMATION: On March 25, 2002, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public lands from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T 10 N., R. 35 E.,
Sec. 1, lots 1, 8, 9, 16, 17, and E½SE¼;
T. 10 N., R. 36 E.,
Sec. 4, lots 9 to 14, inclusive, lots 16 to 20, inclusive, W½SW¼, W½E½SW¼, N½NE¼NE¼SW¼, N½SE¼SE¼SW¼, and S½NE¼SE¼SW¼;
Sec 6;
Sec. 9, lots 1 to 4, inclusive, SW¼NE¼NE¼, SE¼NE¼, S½NE¼SW¼NE¼, S½SE¼SW¼NE¼, W½NW¼NE¼NW¼, SW¼NE¼NW¼, NW¼NW¼, N½SW¼NW¼, N½SE¼NW¼, SW¼SW¼NW¼, NE¼SE¼SW¼NW¼, NW¼SE¼SW¼NW¼, SW¼SE¼SW¼NW¼, NW¼NE¼NW¼SW¼, SW¼NE¼NW¼SW¼, SE¼NE¼NW¼SW¼, NW¼NW¼SW¼, S½ NW¼SW¼, SW¼SW¼, S½N½SE¼SW¼, and S½SE¼SW¼;
Sec. 10, NW¼SW¼, NE¼SW¼SW¼, N½NW¼SW¼SW¼, S½SW¼SW¼, and SE¼SW¼;
Sec. 15, N½;
sec. 16, N½NW¼SW¼, SE¼NE¼NE¼, W½SW¼NE¼, SE¼SW¼NE¼, SE¼SE¼NE¼, and E½SE¼NE¼.

The areas described aggregate 2,303.61 acres in Nye and Mineral Counties, Nevada.

The purpose of the proposed withdrawal is to protect the public safety as well as to prevent the filing of mining claims which would interfere with the reclamation of the Paradise Peak Mine site. The Paradise Peak Mine was the site of mining and milling operations for many years. Operations have ceased and the operator has filed for bankruptcy. This area is known to contain residue of mercury and other heavy metals that can be hazardous to public users. The Bureau of Land Management has collected the bond money and intends to reclaim the site. A withdrawal would preclude the filing of mining and mill site claims while the site is being reclaimed.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Nevada State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Nevada State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting. The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Other uses which will be permitted during this segregative period are rights-of-way, leases, and permits.

Dated: April 10, 2002.

Jim Stobaugh,

Lands Team Lead.

[FR Doc. 02–11433 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

[OMB Control Number 1010–0107]

Agency Information Collection Activities: Submitted for Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of a revision of a currently approved information collection (OMB Control Number 1010–0107).

SUMMARY: To comply with the Paperwork Reduction Act (PRA) of 1995, we are submitting to OMB for review and approval an information collection request (ICR) titled "30 CFR part 218, Subpart B—Oil and Gas, General" (formerly titled "Designation of Royalty Payment Responsibility"). We are also soliciting comments from the public on this ICR.

DATES: Submit written comments on or before June 7, 2002.

ADDRESSES: Submit written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for the Department of the Interior (OMB Control Number 1010–0107), 725 17th Street, NW, Washington, DC 20503. Also, submit copies of your written comments to Carol Shelby, Regulatory Specialist, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, Colorado 80225. If you use an overnight courier service, MMS's courier address is Building 85, Room A–614, Denver Federal Center, Denver, Colorado 80225.

FOR FURTHER INFORMATION CONTACT: Carol Shelby, Regulatory Specialist, phone (303) 231–3151 or FAX (303) 231–3385.

SUPPLEMENTARY INFORMATION:

Title: 30 CFR Part 218, Subpart B—Oil and Gas, General.

OMB Control Number: 1010–0107.

Bureau Form Numbers: Forms MMS–4425 and MMS–4280.

Abstract: The Department of the Interior (DOI) is responsible for matters relevant to mineral resource development on Federal and Indian lands and the Outer Continental Shelf (OCS). The Secretary of the Interior is responsible for managing the production of minerals from Federal and Indian lands and the OCS, collecting royalties from lessees who produce minerals, and distributing the funds collected in accordance with applicable laws. The Secretary also has an Indian trust responsibility to manage Indian lands and seek advice and information from Indian beneficiaries. MMS performs the royalty management functions for the Secretary.

The Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA), Public Law 104–185, as corrected by Public Law 104–200, established that owners of operating rights or lease record title (referred to as "lessees") are responsible for making royalty and related payments on Federal oil and gas leases. It is common, however, for a payor rather than a lessee to make these payments. When a payor makes payments on behalf of a lessee, RSFA requires that the lessee designate the payor as its designee and notify MMS of this arrangement in writing. These RSFA requirements are codified in 30 CFR 218.52. MMS designed Form MMS–4425, Designation Form, to contain all the information necessary for lessees to comply with these RSFA requirements. We are proposing a minor revision to Form MMS–4425 to remove the field for revenue source code. This revision is necessary to make Form MMS–4425 compatible with other forms, such as the Form MMS–2014, Report of Sales and Royalty Remittance, that were revised as a result of a major reengineering of MMS's financial and compliance processes and the procurement of a new computer system.

Regulations at 30 CFR 218.53 provide requirements that payors must follow to recoup overpayments on Indian mineral leases. These regulations are necessary for MMS to carry out its Indian trust responsibilities. Generally, a payor may recoup an overpayment on Form MMS–2014 against the current month's royalties or other revenues owed on the same Tribal lease. However, 30 CFR 218.53(b) allows payors with written permission from the Tribe to recoup overpayments in the same month against a different lease for which the Tribe is the lessor. The payor must furnish a copy of the Tribe's written permission to MMS.

The Federal Oil and Gas Royalty Management Act of 1982 (FOGRMA) at 30 U.S.C. 1723, authorizes the Secretary of the Interior to pay a reward to certain individuals who provide information to the Government leading to the recovery of royalty or other payments owed to the United States from oil and gas leases on Federal lands or the Outer Continental Shelf. Criteria and procedures covering claims for, and payment of, rewards are provided at 30 CFR 218.57. In order to claim a reward, individuals must voluntarily, and of their own initiative, submit Form MMS–4280, Application for Reward for Original Information, to MMS.

Submission of the information in this collection is necessary to comply with FOGRMA and RSFA requirements and to carry out MMS's Indian trust responsibilities. Proprietary information that is submitted is protected, and there are no questions of a sensitive nature included in this information collection.

Frequency: On occasion.

Estimated Number and Description of Respondents: 1,607 oil and gas reporters.

Estimated Annual Reporting and Recordkeeping "Hour" Burden: 1,207 hours. See the following chart for a breakdown of the burden estimate by CFR section and paragraph.

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30 CFR section	Reporting requirement	Burden hours per response	Annual number of responses	Annual burden hours
218.52(a), (c), and (d) ...	If you are a lessee under 30 U.S.C. 1701(7), and you want to designate a person to make all or part of the payments due under a lease on your behalf * * * you must notify MMS * * * in writing of such designation * * *. If you want to terminate a designation * * * you must provide [notice] to MMS in writing * * *. MMS may require you to provide notice when there is a change in your record title or operating rights ownership.	.75	1,600	1,200
218.53(b)	With written permission authorized by tribal statute or resolution, a payor may recoup an overpayment against royalties or other revenues owed * * * under other leases * * * A copy of the tribe's written permission must be furnished to MMS * * *.	1	6	6
218.57(a) and (b)	If a person has any information he or she believes would be valuable to MMS, that person * * * should submit the information in writing, in the form of a letter * * * The informant should provide all data * * * To file a claim for reward, the informant must: (i) Notify the Director, MMS * * * that he/she is claiming a reward. (ii) Request an Application for Reward for Original Information" (Form MMS–4280) * * * File a claim for reward by completing Form MMS–4280, sign it * * * and mail or deliver it in person to the Director * * * The person should attach proof to the claim that he or she is the person who gave the information * * *.	1	1	1
Total	.....	.....	1,607	1,207

Estimated Annual Reporting and Recordkeeping "Non-hour" Burden: We have identified no "non-hour cost" burden.

Comments: Section 3506(c)(2)(A) of the PRA (44 U.S.C. 3501, *et seq.*) requires each agency "* * * to provide notice * * * and otherwise consult with members of the public and affected agencies concerning each proposed collection of information * * *." Agencies must specifically solicit comments to (a) evaluate whether the proposed collection of information is necessary for the agency to perform its duties, including whether the information is useful; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the quality, usefulness, and clarity of the information to be collected; and (d) minimize the burden on the respondents, including the use of automated collection techniques or other forms of information technology.

To comply with the public consultation process, on January 16, 2002, we published a **Federal Register** notice (67 FR 2235) with the required 60-day comment period announcing that we would submit this ICR to OMB for approval. We did not receive any comments on the notice. We will provide a copy of the ICR to you without charge upon request.

If you wish to comment in response to this notice, please send your comments directly to the offices listed under the **ADDRESSES** section of this notice. OMB has up to 60 days to approve or disapprove the information collection but may respond after 30 days. Therefore, to ensure maximum consideration, OMB should receive your comments by June 7, 2002. The PRA provides that an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Public Comment Policy: We will make copies of these comments, including names and home addresses of respondents, available for public review during regular business hours at our offices in Lakewood, Colorado.

Individual respondents may request that we withhold their home address from the record, which we will honor to the extent allowable by law. There may be circumstances in which we would withhold from the record a respondent's identity, as allowable by the law. If you wish us to withhold your name and/or address, you must state this prominently at the beginning of your comments. However, we will not consider anonymous comments. We will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety.

MMS Information Collection Clearance Officer: Jo Ann Lauterbach, telephone (202) 208–7744

Dated: April 12, 2002.

Lucy Querques Denett,

Associate Director for Minerals Revenue Management.

[FR Doc. 02–11478 Filed 5–7–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–747 (Review)]

Fresh Market Tomatoes From Mexico

AGENCY: International Trade Commission.

ACTION: Scheduling of a full five-year review concerning the suspended antidumping duty investigation on fresh market tomatoes from Mexico.

SUMMARY: The Commission hereby gives notice of the scheduling of a full review pursuant to section 751(c)(5) of the Tariff Act of 1930 (19 U.S.C. 1675(c)(5)) (the Act) to determine whether termination of the suspended antidumping duty investigation on fresh market tomatoes from Mexico would be likely to lead to continuation or recurrence of material injury within a reasonably foreseeable time. For further information concerning the conduct of this review and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A, D, E, and F (19 CFR part 207).

EFFECTIVE DATE: May 2, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202–205–3200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS-ON-LINE) at *http://dockets.usitc.gov/eol/public.*

SUPPLEMENTARY INFORMATION:

Background

On January 4, 2002, the Commission determined that responses to its notice of institution of the subject five-year review were such that a full review pursuant to section 751(c)(5) of the Act should proceed (67 FR 3229, January 23, 2002). A record of the Commissioners' votes, the Commission's statement on adequacy, and any individual Commissioner's statements are available from the Office of the Secretary and at the Commission's web site.

Participation in the Review and Public Service List

Persons, including industrial users of the subject merchandise and, if the merchandise is sold at the retail level, representative consumer organizations, wishing to participate in this review as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules, by 45 days after publication of this notice. A party that filed a notice of appearance following publication of the Commission's notice of institution of the review need not file an additional notice of appearance. The Secretary will maintain a public service list containing the names and addresses of all persons, or their representatives, who are parties to the review.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this review available to authorized applicants under the APO issued in the review, provided that the application is made by 45 days after publication of this notice. Authorized applicants must represent interested parties, as defined by 19 U.S.C. § 1677(9), who are parties to the review. A party granted access to BPI following publication of the Commission's notice of institution of the review need not reapply for such access. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in the review will be placed in the nonpublic record on July 12, 2002, and a public version will be issued thereafter, pursuant to section 207.64 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with the review beginning at 9:30 a.m. on August 2, 2002, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before July 29, 2002. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on July 31, 2002, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), 207.24, and 207.66 of the Commission's rules. Parties must submit any request to present a portion of their hearing testimony *in camera* no later than 7 days prior to the date of the hearing.

Written Submissions

Each party to the review may submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.65 of the Commission's rules; the deadline for filing is July 24, 2002. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.24 of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.67 of the Commission's rules. The deadline for filing posthearing briefs is August 13, 2002; witness testimony must be filed no later than three days before the hearing. In addition, any person who has not entered an appearance as a party to the review may submit a written statement of information pertinent to the subject of the review on or before August 15, 2002. On September 4, 2002, the Commission will make available to parties all information on which they have not had an opportunity to comment. Parties may submit final comments on this information on or before September 6, 2002, but such final comments must not contain new factual information and must otherwise comply with § 207.68 of the Commission's rules. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the Commission's rules, each document filed by a party to the review must be served on all other parties to the review (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This review is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.62 of the Commission's rules.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11481 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–1010 (Preliminary)]

Lawn and Garden Steel Fence Posts From China

AGENCY: International Trade Commission.

ACTION: Institution of antidumping investigation and scheduling of a preliminary phase investigation.

SUMMARY: The Commission hereby gives notice of the institution of an investigation and commencement of preliminary phase antidumping investigation No. 731–TA–1010 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) (the Act) to determine whether there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury, or the establishment of an

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industry in the United States is materially retarded, by reason of imports from China of lawn and garden steel fence posts, provided for in subheading 7326.90.85 or 7308.90 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. Unless the Department of Commerce extends the time for initiation pursuant to section 732(c)(1)(B) of the Act (19 U.S.C. 1673a(c)(1)(B)), the Commission must reach a preliminary determination in antidumping investigations in 45 days, or in this case by June 17, 2002. The Commission's views are due at Commerce within five business days thereafter, or by June 24, 2002.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's rules of practice and procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Fred Ruggles (202–205–3187), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on May 1, 2002, by Steel City Corporation Youngstown, OH.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven days after publication of this notice in the **Federal Register**. Industrial users and (if the merchandise under investigation is sold at the retail level) representative consumer organizations have the right to appear as parties in Commission antidumping investigations. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this investigation available to authorized applicants representing interested parties (as defined in 19 U.S.C. 1677(9)) who are parties to the investigation under the APO issued in the investigation, provided that the application is made not later than seven days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on May 22, 2002, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Fred Ruggles (202–205–3187) not later than May 20, 2002, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before May 28, 2002, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules. The Commission's rules do not authorize filing of submissions with the Secretary by facsimile or electronic means.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of title VII of the Tariff Act of 1930; this notice is published pursuant to § 207.12 of the Commission's rules.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11480 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–995 (Preliminary)]

Oil Country Tubular Goods From Columbia

AGENCY: International Trade Commission.

ACTION: Notice of withdrawal of petition in antidumping investigation.

SUMMARY: On April 11, 2002, the Department of Commerce and the Commission received a letter from petitioners in the subject investigation (IPSCO Tubulars, Inc., Koppel Steel Corp., a division of NS Group; Maverick Tube Corp.; Newport Steel Corp., a division of NS Group; and United States Steel Corp.) withdrawing their petition on Colombia. Commerce did not initiate an investigation on Colombia as provided for in section 732(c) of the Tariff Act of 1930 (19 U.S.C. 1673a(c)). Accordingly, the Commission gives notice that its antidumping investigation concerning oil country tubular goods from Colombia (Investigation No. 731-TA–995 (Preliminary)) is discontinued.

EFFECTIVE DATE: April 29, 2002.

FOR FURTHER INFORMATION CONTACT: Larry Reavis (202–205–3185), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server (http://www.usitc.gov). The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at http://dockets.usitc.gov/eol/public.

Issued: May 3, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11479 Filed 5–7–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Civil Division

Agency Information Collection Activities Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: reinstatement with change, of a previously approved collection for which approval has expired; claims under the Radiation Exposure Compensation Act.

The Department of Justice (DOJ), Civil Division has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** on March 1, 2002, Volume 67, Number 41, Pages 9467–9468 allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 7, 2002. This process is conducted in accordance with 5 CFR 1320.10. Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally comments may be submitted to OMB via facsimile to (202) 395–5806.

Written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and the assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of the appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement with change, of a previously approved collection for which approval has expired.

(2) *Title of the Form/Collection:* Claims Under the Radiation Exposure Compensation Act

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. Torts Branch, Civil Division, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Individuals who resided near the Nevada Test Site; former uranium miners and millers; individuals formerly employed in the transport of uranium or vanadium-uranium ore; and, individuals who participated onsite in an atmospheric nuclear test. *Other:* None. *Abstract:* This form collects information to determine whether an individual is entitled to compensation under the Radiation Exposure Compensation Act, 42 U.S.C.A. section 2210 note (West Supp. 2001).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* 3000 responses are estimated annually with an average of 2.5 hours per response.

(6) *An estimation of the total public burden (in hours) associated with the collection:* 7500 hours annually.

If additional information is required contact: Robert B. Briggs, Department Clearance Officer, Information Management and Security Staff, Justice Management Division, United States Department of Justice, Patrick Henry Building, Suite 1600, D. Street, NW., Washington, DC 20530.

Dated: May 1, 2002.

Robert B. Briggs,

Department Clearance Officer: Department of Justice.

[FR Doc. 02–11422 Filed 5–7–02; 8:45 am]

BILLING CODE 4410–12–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, is conducting a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed collections of information in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of the collection requirements on respondents can be properly assessed. Through this notice, the Employment and Training Administration is soliciting comments concerning a proposed new collection of data on self-services provided by states and local workforce areas under the Workforce Investment Act and Wagner-Peyser.

A copy of the proposed survey can be obtained by contacting the office listed below in the **ADDRESSES** section of this notice.

DATES: Written comments must be submitted to the office listed in the **ADDRESSES** section below on or before July 8, 2002.

ADDRESSES: Esther Johnson, U.S. Department of Labor, Employment and Training Administration, Office of Policy and Research, 200 Constitution Ave, NW., Room N–5637, Washington, DC 20210, (202) 693–3165 (this is not a toll free number), *ERJOHNSON@doleta.gov.*

SUPPLEMENTARY INFORMATION:

I. Background

The Department of Labor's Employment and Training

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Administration (ETA) seeks to collect data from local workforce investment areas on the self-services they make available under the Workforce Investment Act (WIA) and Wagner-Peyser Act (W–P). The data ETA seeks to collect will provide a national snapshot of the self-service tools and resources available in local workforce areas and the systems and mechanisms that areas use to track customers' usage, outcomes, and satisfaction with those services. The data will also be used to select a sample of states and local areas for subsequent in-depth scrutiny, so that the quality and cost-effectiveness of self-services can be analyzed.

Collecting this information is important because self-services—including informational and self-help core services authorized by WIA and self-directed labor exchange services provided as part of W–P—have become an important feature of the nation's workforce development system. Over the past decade, substantial amounts of resources have been expended in developing the infrastructure to support self-services, such as by establishing physical facilities in which "Resource Rooms" can be housed, developing an array of tools and resources to meet diverse needs, ensuring that these resources are user-friendly and are accessible from remote locations, and promoting access and use for customers with special needs. Moreover, the pace of investments has dramatically quickened since the enactment of WIA. It is expected that self-services must be an essential feature of every one of the nation's comprehensive One-Stop centers. WIA requires that access to these services must be universally available without eligibility restrictions.

Moreover, self-services are expected to play a critical role in meeting the nation's workforce development needs. The vision at the heart of WIA is that all adults should have easy access to an array of high-quality resources and information tools that they can use to make informed career decisions and that, more generally, will improve the efficiency of the labor market. Given WIA's emphasis on universal access and the limited public funding available to support staff-intensive workforce development systems, self-services become a critical means by which this vision can be realized.

Currently, however, little is known about the types of self-service systems that have been established, how frequently customers use self-services and for what purposes, whether they are satisfied with the tools at their disposal, and whether use of these services improves their employment outcomes. This information vacuum occurs partly because users of self-services are not required to become registrants under either WIA or W–P, and these services are thus not covered by the programs' reporting requirements.

To fill the information gap, ETA is embarking on two data collection efforts focused on self-services. One, covered by a previous **Federal Register** notice (67 FR 2244, January 16, 2002), is designed to yield a national estimate of the number of job seekers who use self-services. A second effort, to which this notice applies, will entail a questionnaire administered to the largest One-Stop operator in each of the nation's local workforce areas to determine the self-service tools and resources they have available and identify which of them have mechanisms in place to track customer usage and outcomes. In addition to being important information in its own right, the results will be used to select a sample of local areas for further scrutiny through site visits (so that the quality of self-services can be assessed), and so that a quantitative analysis of the outcomes associated with self-services can be conducted.

II. Review Focus

The Department of Labor is particularly interested in comments that: (a) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information has practical utility; (b) evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) enhance the utility, quality and clarity of the information to be collected; and (d) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

III. Current Actions

The Department of Labor's Employment and Training Administration will be seeking Office of Management and Budget (OMB) approval to administer a questionnaire to the largest One-Stop operator in each of the nation's local workforce investment areas on the types of self-services they offer and whether they have mechanisms in place to track customers' usage patterns and outcomes. The data will be used to provide a national snapshot of self-service systems and to select a sample of states and local areas for subsequent in-depth study, through site visits and a quantitative analysis of customers' outcomes.

Agency: Employment and Training Administration.

Type of Review: New.

Title: Local Area Survey of Self-Services.

Affected Public: Local workforce investment areas.

Total Respondents: 605.

Frequency: Twice.

Total Responses: 1,210.

Average Time per Response: 30 minutes.

Estimated Total Burden Hours: 605.

Total Burden Cost for Capital and Startup: $0.

Total Burden Cost for Operation and Maintenance: $0.

Comments submitted in response to this comment request will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

Signed at Washington, DC this 2nd day of May, 2002.

Gerard F. Fiala,

Administrator.

[FR Doc. 02–11385 Filed 5–7–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

[Docket No. NRTL4–93]

Underwriters Laboratories Inc., Renewal and Expansion of Recognition

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Notice.

SUMMARY: This notice announces the Agency's final decision on the application of Underwriters Laboratories Inc. for renewal of its recognition as a Nationally Recognized Testing Laboratory, under 29 CFR 1910.7, and the related applications of Underwriters Laboratories Inc. for expansion of its recognition to include additional sites and test standards.

EFFECTIVE DATE: The renewal is effective on May 8, 2002 and will be valid until May 8, 2007, unless terminated or modified prior to that date, in accordance with 29 CFR 1910.7. The renewal incorporates the expansion.

FOR FURTHER INFORMATION CONTACT: Bernard Pasquet, Office of Technical Programs and Coordination Activities, NRTL Program, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N3653, Washington, DC. 20210, or phone (202) 693–2110.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

The Occupational Safety and Health Administration (OSHA) hereby gives notice of the renewal and expansion of recognition of Underwriters Laboratories Inc. (UL) as a Nationally Recognized Testing Laboratory (NRTL). UL's expansion covers the use of two additional sites and additional test standards. The NRTL's scope of recognition may be found in the following OSHA informational web page: *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html*. The information on this page will be updated in the very near future to include the recognitions granted in this notice.

OSHA recognition of an NRTL signifies that the organization has met the legal requirements in Section 1910.7 of Title 29, Code of Federal Regulations (29 CFR 1910.7). Recognition is an acknowledgment that the organization can perform independent safety testing and certification of the specific products covered within its scope of recognition and is not a delegation or grant of government authority. As a result of recognition, employers may use products "properly certified" by the NRTL to meet OSHA standards that require testing and certification.

The Agency processes applications by an NRTL for initial recognition or for expansion or renewal of this recognition following requirements in Appendix A to 29 CFR 1910.7. This appendix requires that the Agency publish two notices in the **Federal Register** in processing an application. In the first notice, OSHA announces the application and provides its preliminary finding and, in the second notice, the Agency provides its final decision on the application. These notices set forth the NRTL's scope of recognition or modifications of that scope. We maintain an informational web page for each NRTL, which details its scope of recognition. These pages can be accessed from our web site at *http://www.osha-slc.gov/dts/otpca/nrtl/index.html*.

When OSHA published its regulations for the NRTL Program at 29 CFR 1910.7, it temporarily recognized UL as a nationally recognized testing laboratory for a five year period from June 13, 1988, through June 13, 1993 (see Appendix A to 1910.7). In Appendix A, OSHA also required that UL apply for renewal of its OSHA recognition at the end of this temporary period. UL did apply for the renewal, which OSHA announced in March 29, 1995 (60 FR 16171). In its renewal application, UL stated that it was founded in 1894. It also stated that its "principal activity is investigating the safety of many kinds of products, including electrical and electronic equipment and products," and a number of other products and systems. The Agency granted UL's renewal for a period of five years ending on June 29, 2000.

Appendix A to 29 CFR 1910.7 stipulates that the period of recognition of an NRTL is five years and that an NRTL may renew its recognition by applying not less than nine months, nor more than one year, before the expiration date of its current recognition. UL submitted a request, dated September 17, 1999 (see Exhibit 23), to renew its recognition, within the time allotted, and UL retains its recognition pending OSHA's final decision in this renewal process. UL's existing scope of recognition consists of the facilities already recognized and the supplemental programs, as listed below, and the test standards listed under *Renewal of Recognition* below.

UL also submitted requests, dated June 6, and October 5, 2000 (see Exhibits 23–1 and 23–2), to expand its recognition to include the two additional sites listed below. Moreover, UL submitted a request, dated March 29, 2001 (see Exhibit 23–3), to expand its recognition to include 142 additional test standards. The OSHA NRTL Program staff determined that 64 of those test standards, listed below under *Expansion of Recognition*, will be included in UL's scope of recognition. We could not approve the remaining test standards for various reasons, primarily because we determined that they did not meet our approval criteria or our requirements for "appropriate test standards," within the meaning of 29 CFR 1910.7(c). The staff makes such determinations in processing applications from any NRTL.

In processing UL's renewal request, OSHA NRTL Program staff performed an on-site review of UL's Northbrook facility on July 16–20, 2001. In processing UL's expansion requests to include the additional sites, OSHA NRTL Program staff performed an on-site review of the facility in Ontario on January 22–25, 2001, and a similar review of the facility in Tokyo on March 12–15, 2001. In the on-site review reports (see Exhibits 24, 24–1, and 24–2), the program staff recommended a "positive finding," which means a positive recommendation to the Assistant Secretary regarding the applications.

OSHA published the required notice in the **Federal Register** on March 18, 2002 (67 FR 12054), to announce UL's renewal and expansion requests. This notice included a preliminary finding that UL could meet the requirements in 29 CFR 1910.7 for renewal and expansion of its recognition and invited public comment by April 2, 2002. OSHA received no comments concerning this notice.

The previous notice published by OSHA for UL's recognition covered an expansion of recognition to include additional sites, which became effective on December 7, 1999 (64 FR 68389). The other **Federal Register** notices related to UL's recognition that OSHA has published since UL's previous renewal addressed an expansion for additional standards, which OSHA announced on November 21, 1997 (62 FR 62359) and granted on June 24, 1999 (64 FR 33913). The renewal incorporates all of these recognitions granted to UL, including the expansion being granted in this notice.

You may obtain or review copies of all public documents pertaining to the UL applications by contacting the Docket Office, Occupational Safety and Health Administration, U.S. Department of Labor, 200 Constitution Avenue, NW, Room N2625, Washington, DC 20210. You should refer to Docket No. NRTL4–93, the permanent record of public information on the UL recognition.

The current address of the UL facilities (sites) already recognized by OSHA are:

Underwriters Laboratories Inc., 333 Pfingsten Road, Northbrook, Illinois 60062

Underwriters Laboratories Inc., 1285 Walt Whitman Road, Melville, Long Island, New York 11747

Underwriters Laboratories Inc., 1655 Scott Boulevard, Santa Clara, California 95050

Underwriters Laboratories Inc., 12 Laboratory Drive, P.O. Box 13995, Research Triangle Park, North Carolina 27709

Underwriters Laboratories Inc., 2600 N. W. Lake Road, Camas, Washington, 98607

UL International Limited, Veristrong Industrial Centre, Block B, 14th Floor, 34 Au Pui Wan Street, Fo Tan Sha Tin, New Territories, Hong Kong

UL International Services, Ltd., Taiwan Branch, 4th Floor, 260 Da-Yeh Road, Pei Tou District Taipei City, Taiwan

UL International Demko A/S, Lyskaer 8, P.O. Box 514, DK–2730, Herlev, Denmark

Underwriters Laboratory International (U.K.) Ltd., Wonersh House, The

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Guildway, Old Portsmouth Road, Guildford, Surrey GU3 1LR, United Kingdom

Underwriters Laboratory International Italia S.r.l., Via Archimede 42, 1–20041 Agrate Brianza, Milan, Italy; Testing facility: Z.I. Predda Niedda st. 18, I–07100, Sassari, Italy

The current addresses of the two additional UL sites covered by the expansion requests and now being recognized are:

Underwriters Laboratories of Canada, 7 Crouse Road, Scarborough, Ontario, Canada MIR 3A9

UL Japan Co., Ltd., Shimbashi Ekimae Bldg.—1 Gohkan, 4th floor, Room 402, 2–20–15 Shimbashi Minato Ku, Tokyo 105–0004, Japan

Programs and Procedures

The renewal of recognition includes UL's continued use of the following supplemental programs and procedures based upon the criteria detailed in the March 9, 1995 **Federal Register** notice (60 FR 12980, 3/9/95). This notice lists nine (9) programs and procedures (collectively, programs), eight of which an NRTL may use to control and audit, but not actually to generate, the data relied upon for product certification. An NRTL's initial recognition will always include the first or basic program, which requires that all product testing and evaluation be performed in-house by the NRTL that will certify the product. OSHA has already recognized UL for these programs. See *http://www.osha-slc.gov/dts/otpca/nrtl/ul.html.*

Program 2: Acceptance of testing data from independent organizations, other than NRTLs.

Program 3: Acceptance of product evaluations from independent organizations, other than NRTLs.

Program 4: Acceptance of witnessed testing data.

Program 5: Acceptance of testing data from non-independent organizations.

Program 6: Acceptance of evaluation data from non-independent organizations (requiring NRTL review prior to marketing).

Program 7: Acceptance of continued certification following minor modifications by the client.

Program 8: Acceptance of product evaluations from organizations that function as part of the International Electrotechnical Commission Certification Body (IEC-CB) Scheme.

Program 9: Acceptance of services other than testing or evaluation performed by subcontractors or agents.

OSHA developed these programs to limit how an NRTL may perform certain aspects of its work and to permit the activities covered under a program only when the NRTL meets certain criteria. In this sense, they are special conditions that the Agency places on an NRTL's recognition. OSHA does not consider these programs in determining whether an NRTL meets the requirements for recognition under 29 CFR 1910.7. However, these programs help to define the scope of that recognition.

Final Decision and Order

The NRTL Program staff has examined the applications, the assessor's reports, and other pertinent information. Based upon this examination and the assessor's recommendations, OSHA finds that Underwriters Laboratories Inc. has met the requirements of 29 CFR 1910.7 for renewal and expansion of its NRTL recognition. The renewal and expansion apply to the sites listed above. In addition, the renewal and expansion cover the test standards listed below and are subject to the limitations and conditions, also listed below. Pursuant to the authority in 29 CFR 1910.7, OSHA hereby renews and expands the recognition of UL, subject to these limitations and conditions.

Limitations

Renewal of Recognition

OSHA limits the renewal of recognition of UL to the 10 sites listed above. In addition, similar to other NRTLs that operate multiple sites, the Agency's recognition of any UL testing site is limited to performing testing to the test standards for which OSHA has recognized UL and for which the site has the proper capability and control programs. OSHA further limits the renewal of recognition of UL to testing and certification of products for demonstration of conformance to the following 638 test standards, which OSHA has previously recognized for UL. Except as explained below (see paragraph immediately following listing of standards), all these standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI C37.013 [1] AC High-Voltage Generator Circuit Breakers Rated on a Symmetrical Current Basis
ANSI C37.13 [1] Low Voltage AC Power Circuit Breakers Used in Enclosures
ANSI C37.14 [1] Low Voltage DC Power Circuit Breakers Used in Enclosures
ANSI C37.17 [1] Trip Devices for AC and General Purpose DC Low-Voltage Power Circuit Breakers
ANSI C37.18 [1] Enclosed Field Discharge Circuit Breakers for Rotating Electric Machinery
ANSI C37.20.1 [1] Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
ANSI C37.20.2 [1] Metal-Clad and Station-Type Cubicle Switchgear
ANSI C37.20.3 [1] Metal-Enclosed Interrupter Switchgear
ANSI C37.21 [1] Control Switchboards
ANSI C37.29 [1] Low-Voltage AC Power Circuit Protectors Used in Enclosures
ANSI C37.38 [1] Gas-Insulated, Metal-Enclosed Disconnecting, Interrupter and Grounding Switches
ANSI C37.42 [1] Distribution Cutouts and Fuse Links
ANSI C37.44 [1] Distribution Oil Cutouts and Fuse Links
ANSI C37.45 [1] Distribution Enclosed Single-Pole Air Switches
ANSI C37.46 [1] Power Fuses and Fuse Disconnecting Switches
ANSI C37.47 [1] Distribution Fuse Disconnecting Switches, Fuse Supports, and Current-Limiting Fuses
ANSI C37.50 [1] Low-Voltage AC Power Circuit Breakers Used in Enclosures—Test Procedures
ANSI C37.51 [1] Metal-Enclosed Low-Voltage AC Power Circuit-Breaker Switchgear Assemblies—Conformance Test Procedures
ANSI C37.52 [1] Low-Voltage AC Power Circuit Protectors Used in Enclosures—Test Procedures
ANSI C37.53.1 [1] High-Voltage Current Motor-Starter Fuses—Conformance Test Procedures
ANSI C37.54 [1] Indoor Alternating-Current High Voltage Circuit Breakers Applied as Removable Elements in Metal-Enclosed Switchgear Assemblies-Conformance Test Procedures
ANSI C37.55 [1] Metal-Clad Switchgear Assemblies—Conformance Test Procedures
ANSI C37.57 [1] Metal-Enclosed Interrupter Switchgear Assemblies—Conformance Testing
ANSI C37.58 [1] Indoor AC Medium-Voltage Switches for Use in Metal-Enclosed Switchgear—Conformance Test Procedures
ANSI C37.60 [1] Overhead, Pad-Mounted, Dry-Vault, and Submersible Automatic Circuit Reclosers and Fault Interrupters for AC Systems
ANSI C37.66 [1] Oil-Filled Capacitor Switches for Alternating-Current Systems—Requirements
ANSI C37.71 [1] Three Phase, Manually Operated Subsurface Load Interrupting Switches for Alternating-Current Systems
ANSI C37.72 [1] Manually-Operated Dead-Front, Pad-Mounted Switchgear with Load-Interrupting Switches and Separable Connectors for Alternating-Current System

ANSI C37.90 [1] Relays and Relay Systems Associated with Electric Power Apparatus
ANSI C37.121 [1] Unit Substations—Requirements
ANSI C37.122 [1] Gas-Insulated Substations
ANSI C57.12.00 [1] Distribution, Power and Regulating Transformers—General Requirements
ANSI C57.12.13 [1] Liquid-Filled Transformers Used in Unit Installations including Unit Substations—Conformance Requirements
ANSI C57.12.20 [1] Overhead-Type Distribution Transformers, 500 kVA and Smaller
ANSI C57.12.21 [1] Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with High Voltage Bushings; 167 kVA and Smaller
ANSI C57.12.22 [1] Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers with High Voltage Bushings; 2500 kVA and Smaller
ANSI C57.12.23 [1] Underground-Type Self-Cooled, Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
ANSI C57.12.24 [1] Underground-Type Three-Phase Distribution Transformers, 2500 kVA and Smaller
ANSI C57.12.25 [1] Pad-Mounted Compartmental-Type Self-Cooled Single-Phase Distribution Transformers with Separable Insulated High-Voltage Connectors; 167 kVA and Smaller
ANSI C57.12.26 [1] Pad-Mounted Compartmental-Type, Self-Cooled, Three-Phase Distribution Transformers for use with Separable Insulated High-Voltage Connectors; 2500 kVA and Smaller
ANSI C57.12.27 [1] Liquid-Filled Distribution Transformers Used in Pad-Mounted Installations, Including Unit Substations—Conformance Requirements
ANSI C57.12.28 [1] Switchgear and Transformers—Pad-Mounted Equipment—Enclosure Integrity
ANSI C57.12.40 [1] Three Phase Secondary Network Transformers, Subway and Vault Types (Liquid Immersed); 2500 kVA and Smaller
ANSI C57.12.50 [1] Ventilated Dry-Type Distribution Transformers, 1 to 500 kVA, Single-Phase; and 15 to 500 kVA, Three Phase
ANSI C57.12.51 [1] Ventilated Dry-Type Power Transformers 501 kVA and Larger, Three-Phase
ANSI C57.12.52 [1] Sealed Dry-Type Power Transformers, 501 kVA and Larger, Three-Phase
ANSI C57.12.55 [1] Dry-Type Transformers in Unit Installations, Including Unit Substations—Conformance Requirements
ANSI C57.12.57 [1] Ventilated Dry-Type Network Transformers 2500 kVA and Below, Three-Phase
ANSI C57.13 [1] Instrument Transformers—Requirements
ANSI C57.15 [1] (1) Step-Voltage and Induction-Voltage Regulators
ANSI C57.21 [1] Shunt Reactors Over 500 kVA
ANSI C62.1 [1] Gapped Silicon-Carbide Surge Arresters for AC Power Circuits
ANSI C62.11 [1] Metal Oxide Surge Arresters for AC Power Circuits
ANSI K61.1 Storage and Handling of Anhydrous Ammonia (CGA G–2.1)
ANSI Z21.1b Household Cooking Gas Appliances
ANSI Z21.5.1 Gas Clothes Dryers—Type 1
ANSI Z21.5.2 Gas Clothes Dryers—Type 2
ANSI Z21.10.1 Gas Water Heaters—Automatic Storage Type Water Heaters with Inputs of 70,000 Btu Per Hour or Less
ANSI Z21.10.2 Water Heaters—Sidearm Type Water Heaters
ANSI Z21.10.3 Water Heaters—Circulating Tank, Instantaneous and Large Automatic Storage Type Water Heaters
ANSI Z21.11.1 Gas-Fired Room Heaters—Vented Room Heaters
ANSI Z21.11.2 Gas-Fired Room Heaters—Unvented Room Heaters
ANSI Z21.12 Listing Requirements for Draft Hoods
ANSI Z21.13 Gas-Fired Low-Pressure Steam and Hot Water Heating Boilers
ANSI Z21.14 Approval Requirements for Industrial Gas Boilers
ANSI Z21.15 Manually Operated Gas Valves
ANSI Z21.16 Gas Unit Heaters
ANSI Z21.17 Domestic Gas Conversion Burners
ANSI Z21.18 Gas Appliance Pressure Regulators
ANSI Z21.19 Refrigerators Using Gas Fuel
ANSI Z21.20 Automatic Gas Ignition Systems and Components
ANSI Z21.21 Automatic Valves for Gas Appliances
ANSI Z21.22 Relief Valves and Automatic Gas Shutoff Devices for Hot Water Supply System
ANSI Z21.23 Gas Appliance Thermostats
ANSI Z21.24 Metal Connectors for Gas Appliances
ANSI Z21.29 Listing Requirements for Furnace Temperature Limit Controls and Fan Controls
ANSI Z21.35 Gas Filters on Appliances
ANSI Z21.37 Approval Requirements for Dual Oven Type Combination Gas Ranges
ANSI Z21.40.1 Gas-Fired Absorption Summer Air Conditioning Appliances
ANSI Z21.41 Quick-Disconnect Devices for Use with Gas Fuel
ANSI Z21.42 Gas-Fired Illuminating Appliances
ANSI Z21.45 Flexible Connectors of Other Than All-Metal Construction for Gas Appliances
ANSI Z21.47 Gas-Fired Gravity and Forced Air Central Furnaces
ANSI Z21.48 Gas-Fired Gravity and Fan Type Floor Furnaces
ANSI Z21.49 Gas-Fired Gravity and Fan Type Vented Wall Furnaces
ANSI Z21.50 Vented Decorative Gas Appliances
ANSI Z21.53 Gas-Fired Heavy Duty Forced Air Heaters
ANSI Z21.54 Gas Hose Connectors for Portable Outdoor Gas-Fired Appliances
ANSI Z21.55 Gas-Fired Sauna Heaters
ANSI Z21.56 Gas-Fired Pool Heaters
ANSI Z21.57 Recreational Vehicle Cooking Gas Appliances
ANSI Z21.58 Outdoor Cooking Gas Appliances
ANSI Z21.60 Decorative Gas Appliances for Installation in Vented Fireplaces
ANSI Z21.61 Gas-Fired Toilets
ANSI Z21.66 Automatic Vent Damper Devices for Use With Gas-Fired Appliances
ANSI Z21.69 Connectors for Movable Gas Appliances
ANSI Z21.70 Earthquake Actuated Automatic Gas Shutoff Systems
ANSI Z21.74 Portable Refrigerators for Use With HD–5 Propane Gas
ANSI Z21.76 Gas-Fired Unvented Catalytic Room Heaters for Use With Liquefied Petroleum (LP) Gases
ANSI Z83.3 Gas Utilization Equipment in Large Boilers
ANSI Z83.4 Direct Gas-Fired Make-Up Air Heaters
ANSI Z83.6 Gas-Fired Infrared Heaters
ANSI Z83.7 Gas-Fired Construction Heater
ANSI Z83.8 Gas Unit Heaters
ANSI Z83.10 Separated Combustion System Central Furnaces
ANSI Z83.11 Gas Food Service Equipment—Ranges and Unit Broilers
ANSI Z83.17 Direct Gas Fired Door Heaters
ANSI Z83.18 Direct Gas Fired Industrial Air Heaters
UL 1 Flexible Metal Conduit
UL 3 Flexible Nonmetallic Tubing for Electric Wiring
UL 4 Armored Cable
UL 5 Surface Metal Raceways and Fittings

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UL 5A Nonmetallic Surface Raceways and Fittings
UL 5B Strut-Type Channel Raceways and Fittings
UL 6 Rigid Metal Conduit
UL 8 Foam Fire Extinguishers
UL 9 Fire Tests of Window Assemblies
UL 10A Tin-Clad Fire Doors
UL 10B Fire Tests of Door Assemblies
UL 13 Power-Limited Circuit Cables
UL 14B Sliding Hardware for Standard, Horizontally Mounted Tin-Clad Fire Doors
UL 14C Swinging Hardware for Standard Tin-Clad Fire Doors Mounted Singly or In Pairs
UL 17 Vent or Chimney Connector Dampers for Oil-Fired Appliances
UL 20 General-Use Snap Switches
UL 21 LP-Gas Hose
UL 22 Amusement and Gaming Machines
UL 25 Meters for Flammable and Combustible Liquids and LP-Gas
UL 30 Metal Safety Cans
UL 33 Heat Responsive Links for Fire-Protection Service
UL 38 Manually Actuated Signalling Boxes for Use With Fire Protective Signalling Systems
UL 44 Rubber-Insulated Wires and Cables
UL 45 Portable Electric Tools
UL 48 Electric Signs
UL 50 Enclosures for Electrical Equipment
UL 51 Power-Operated Pumps for Anhydrous Ammonia and LP-Gas
UL 58 Steel Underground Tanks for Flammable and Combustible Liquids
UL 62 Flexible Cord and Fixture Wire
UL 65 Electric Wired Cabinets
UL 67 Electric Panelboards
UL 69 Electric Fence Controllers
UL 73 Electric-Motor-Operated Appliances
UL 79 Power-Operated Pumps for Petroleum Product Dispensing Systems
UL 80 Steel Inside Tanks for Oil Burner Fuel
UL 82 Electric Gardening Appliances
UL 83 Thermoplastic-Insulated Wires and Cables
UL 87 Power-Operated Dispensing Devices for Petroleum Products
UL 92 Fire Extinguisher and Booster Hose
UL 94 Tests for Flammability of Plastic Materials for Parts in Devices and Appliances
UL 96 Lightning Protection Components
UL 98 Enclosed and Dead-Front Switches
UL 104 Elevator Door Locking Devices and Contacts
UL 109 Tube Fittings for Flammable and Combustible Fluids, Refrigeration Service, and Marine Use
UL 122 Photographic Equipment
UL 123 Oxy-Fuel Gas Torches
UL 125 Valves for Anhydrous Ammonia and LP-Gas (Other Than Safety Relief)
UL 130 Electric Heating Pads
UL 132 Safety Relief Valves for Anhydrous Ammonia and LP-Gas
UL 141 Garment Finishing Appliances
UL 142 Steel Aboveground Tanks for Flammable and Combustible Liquids
UL 144 Pressure Regulating Valves for LP-Gas
UL 147 LP- and MPS-Gas Torches
UL 147A Nonrefillable (Disposable) Type Fuel Gas Cylinder Assemblies
UL 147B Nonrefillable (Disposable) Type Metal Container Assemblies for Butane
UL 150 Antenna Rotators
UL 153 Portable Electric Lamps
UL 154 Carbon Dioxide Fire Extinguishers
UL 155 Tests for Fire Resistance of Vault and File Room Doors
UL 162 Foam Equipment and Liquid Concentrates
UL 174 Household Electric Storage-Tank Water Heaters
UL 180 Liquid-Level Indicating Gauges and Tank-Filling Signals for Petroleum Products
UL 181 Factory-Made Air Ducts and Air Connectors
UL 183 Manufactures Wiring Systems
UL 187 X-Ray Equipment
UL 193 Alarm Valves for Fire-Protection Service
UL 194 Gasketed Joints for Ductile-Iron Pipe and Fittings for Fire Protection Service
UL 197 Commercial Electric Cooking Appliances
UL 198B Class H Fuses
UL 198C High-Interrupting-Capacity Fuses, Current Limiting Type
UL 198D High-Interrupting-Capacity Class K Fuses
UL 198E Class R Fuses
UL 198F Plug Fuses
UL 198G Fuse for Supplementary Overcurrent Protection
UL 198H Class T Fuses
UL 198L DC Fuses for Industrial Use
UL 199 Automatic Sprinklers for Fire-Protection Service
UL 201 Standard for Garage Equipment
UL 203 Pipe Hanger Equipment for Fire-Protection Service
UL 207 Nonelectrical Refrigerant Containing Components and Accessories
UL 209 Cellular Metal Floor Electrical Raceways and Fittings
UL 213 Rubber Gasketed Fittings for Fire-Protection Service
UL 217 Single and Multiple Station Smoke Detectors
UL 218 Fire Pump Controllers
UL 224 Extruded Insulating Tubing
UL 228 Door Closers-Holders, and Integral Smoke Detectors
UL 231 Electrical Power Outlets
UL 234 Low Voltage Lighting Fixtures for Use in Recreational Vehicles
UL 244A Solid-State Controls for Appliances
UL 248–1 Low-Voltage Fuses—Part 1: General Requirements
UL 248–2 Low-Voltage Fuses—Part 2: Class C Fuses
UL 248–3 Low-Voltage Fuses—Part 3: Class CA and CB Fuses
UL 248–4 Low-Voltage Fuses—Part 4: Class CC Fuses
UL 248–5 Low-Voltage Fuses—Part 5: Class G Fuses
UL 248–6 Low-Voltage Fuses—Part 6: Class H Non-Renewable Fuses
UL 248–7 Low-Voltage Fuses—Part 7: Class H Renewable Fuses
UL 248–8 Low-Voltage Fuses—Part 8: Class J Fuses
UL 248–9 Low-Voltage Fuses—Part 9: Class K Fuses
UL 248–10 Low-Voltage Fuses—Part 10: Class L Fuses
UL 248–11 Low-Voltage Fuses—Part 11: Plug Fuses
UL 248–12 Low-Voltage Fuses—Part 12: Class R Fuses
UL 248–13 Low-Voltage Fuses—Part 13: Semiconductor Fuses
UL 248–14 Low-Voltage Fuses—Part 14: Supplemental Fuses
UL 248–15 Low-Voltage Fuses—Part 15: Class T Fuses
UL 248–16 Low-Voltage Fuses—Part 16: Test Limiters
ANSI/NEMA 250 Enclosures for Electrical Equipment
UL 250 Household Refrigerators and Freezers
UL 252 Compressed Gas Regulators
UL 252A Compressed Gas Regulator Accessories
UL 260 Dry Pipe and Deluge Valves for Fire-Protection Service
UL 262 Gate Valves for Fire-Protection Service
UL 268 Smoke Detectors for Fire Protective Signalling Systems
UL 268A Smoke Detectors for Duct Application
UL 291 Automated Teller Systems
UL 294 Access Control System Units
UL 296 Oil Burners
UL 296A Waste Oil-Burning Air-Heating Appliances
UL 297 Portable Medium-Pressure Acetylene Generators
UL 298 Portable Electric Hand Lamps
UL 299 Dry Chemical Fire Extinguishers
UL 300 Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Areas

UL 305 Panic Hardware
UL 307B Gas Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 310 Electrical Quick-Connect Terminals
UL 312 Check Valves for Fire-Protection Service
UL 325 Door, Drapery, Gate, Louver, and Window Operators and Systems
UL 330 Gasoline Hose
UL 331 Strainers for Flammable Fluids and Anhydrous Ammonia
UL 343 Pumps of Oil-Burning Appliances
UL 346 Waterflow Indicators for Fire Protective Signaling Systems
UL 347 High-Voltage Industrial Control Equipment
UL 351 Electrical Rosettes
UL 353 Limit Controls
UL 355 Electric Cord Reels
UL 360 Liquid Tight Flexible Steel Conduit
UL 363 Knife Switches
UL 365 Police Station Connected Burglar Alarm Units and Systems
UL 372 Primary Safety Controls for Gas- and Oil-Fired Appliances
UL 378 Draft Equipment
UL 385 Play Pipes for Water Supply Testing in Fire Protection Service
UL 391 Solid-Fuel and Combination-Fuel Control and Supplementary Furnaces
UL 393 Indicating Pressure Gauges for Fire Protection Service
UL 399 Drinking-Water Coolers
UL 404 Gauges, Indicating Pressure, for Compressed Gas Service
UL 407 Manifolds for Compressed Gases
UL 412 Refrigeration Unit Coolers
UL 414 Electrical Meter Sockets
UL 416 Refrigerated Medical Equipment
UL 427 Refrigerating Units
UL 429 Electrically Operated Valves
UL 430 Electric Waste Disposers
UL 443 Steel Auxiliary Tanks for Oil-Burner Fuel
UL 444 Communications Cables
UL 448 Pumps for Fire Protection Service
UL 452 Antenna Discharge Units
UL 464 Audible Signal Appliances
UL 466 Electric Scales
UL 467 Electrical Grounding and Bonding Equipment
UL 469 Musical Instruments and Accessories
UL 471 Commercial Refrigerators and Freezers
UL 474 Dehumidifiers
UL 482 Portable Sun/Heat Lamps
UL 484 Room Air Conditioners
UL 486A Wire Connectors and Soldering Lugs for Use With Copper Conductors
UL 486B Wire Connectors for Use With Aluminum Conductors
UL 486C Splicing Wire Connectors
UL 486D Insulated Wire Connectors for Use With Underground Conductors
UL 486E Equipment Wiring Terminals for Use With Aluminum and/or Copper Conductors
UL 489 Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
UL 493 Thermoplastic-Insulated Underground Feeder and Branch-Circuit Cables
UL 495 Power-Operated Dispensing Devices for LP-Gas
UL 496 Edison-Base Lampholders
UL 497 Protectors for Communication Circuits
UL 497A Secondary Protectors for Communication Circuits
UL 497B Protectors for Data Communication and Fire Alarm Circuits
UL 498 Attachment Plugs and Receptacles
UL 499 Electric Heating Appliances
UL 506 Specialty Transformers
UL 507 Electric Fans
UL 508 Electric Industrial Control Equipment
UL 508C Power Conversion Equipment
UL 510 Insulating Tape
UL 511 Porcelain Electrical Cleats, Knobs, and Tubes
UL 512 Fuseholders
UL 514A Metallic Outlet Boxes, Electrical
UL 514B Fittings for Conduit and Outlet Boxes
UL 514C Nonmetallic Outlet Boxes, Flush-Device Boxes and Covers
UL 521 Heat Detectors for Fire Protective Signaling Systems
UL 525 Flame Arresters for Use on Vents of Storage Tanks for Petroleum Oil and Gasoline
UL 539 Single and Multiple Station Heat Detectors
UL 541 Refrigerated Vending Machines
UL 542 Lampholders, Starters, and Starter Holders for Fluorescent Lamps
UL 544 Electric Medical and Dental Equipment
UL 551 Transformer-Type Arc-Welding Machines
UL 555 Fire Dampers
UL 555S Leakage Rated Dampers for Use in Smoke Control Systems
UL 558 Industrial Trucks, Internal Combustion Engine-Powered
UL 561 Floor Finishing Machines
UL 563 Ice Makers
UL 565 Liquid Level Gauges and Indicators for Anhydrous Ammonia and LP-Gas
UL 567 Pipe Connectors for Flammable and Combustible Liquids and LP-Gas
UL 569 Pigtails and Flexible Hoses
UL 574 Electric Oil Heater
UL 583 Electric-Battery-Powered Industrial Trucks
UL 588 Christmas-Tree and Decorative-Lighting Outfits
UL 603 Power Supplies for Use With Burglar-Alarm Systems
UL 609 ocal Burglar-Alarm Units and Systems
UL 621 Ice Cream Makers
UL 626 2½ Gallon Stored Pressure Water Type Fire Extinguishers
UL 632 Electrically Actuated Transmitters
UL 634 Connectors and Switches for Use With Burglar-Alarm Systems
UL 635 Insulating Bushings
UL 636 Holdup Alarm Units and Systems
UL 639 Intrusion-Detection Units
UL 644 Container Assemblies for LP-Gas
UL 651 Schedule 40 and 80 Rigid PVC Conduit
UL 651A Type EB and A Rigid PVC Conduit and HDPE Conduit
UL 664 Commercial (Class IV) Electric Dry-Cleaning Machines
UL 668 Hose Valves For Fire Protection Service
UL 674 Electric Motors and Generators for Use in Hazardous (Classified) Locations
UL 676 Underwater Lighting Fixtures
UL 680 Emergency Vault Ventilators and Vault Ventilating Parts
UL 681 Installation and Classification of Mercantile and Bank Burglar-Alarm Systems
UL 696 Electric Toys
UL 697 Toy Transformers
UL 698 Industrial Control Equipment for Use in Hazardous (Classified) Locations
UL 705 Power Ventilators
UL 710 Grease Extractors for Exhaust Ducts
UL 711 Rating and Fire Testing of Fire Extinguishers
UL 719 Nonmetallic Sheathed Cables
UL 726 Oil-Fired Boiler Assemblies
UL 727 Oil-Fired Central Furnaces
UL 729 Oil-Fired Floor Furnaces
UL 730 Oil-Fired Wall Furnaces
UL 731 Oil-Fired Unit Heaters
UL 732 Oil-Fired Water Heaters
UL 733 Oil-Fired Air Heaters and Direct-Fired Heaters
UL 745–1 Portable Electric Tools
UL 745–2–1 Particular Requirements of Drills
UL 745–2–2 Particular Requirements for Screwdrivers and Impact Wrenches
UL 745–2–3 Particular Requirements for Grinders, Polishers, and Disk-Type Sanders
UL 745–2–4 Particular Requirements for Sanders

UL 745–2–5 Particular Requirements for Circular Saws and Circular Knives
UL 745–2–6 Particular Requirements for Hammers
UL 745–2–8 Particular Requirements for Shears and Nibblers
UL 745–2–9 Particular Requirements for Tappers
UL 745–2–11 Particular Requirements for Reciprocating Saws
UL 745–2–12 Particular Requirements for Concrete Vibrators
UL 745–2–14 Particular Requirements for Planers
UL 745–2–17 Particular Requirements for Routers and Trimmers
UL 745–2–30 Particular Requirements for Staplers
UL 745–2–31 Particular Requirements for Diamond Core Drills
UL 745–2–32 Particular Requirements for Magnetic Drill Presses
UL 745–2–33 Particular Requirements for Portable Bandsaws
UL 745–2–34 Particular Requirements for Strapping Tools
UL 745–2–35 Particular Requirements for Drain Cleaners
UL 745–2–36 Particular Requirements for Hand Motor Tools
UL 745–2–37 Particular Requirements for Plate Jointers
UL 746A Polymeric Materials—Short Term Property Evaluations
UL 746B Polymeric Materials—Long Term Property Evaluations
UL 746C Polymeric Materials—Use in Electrical Equipment Evaluations
UL 746E Polymeric Materials—Industrial Laminates, Filament Wound Tubing, Vulcanized Fibre, and Materials Used in Printed Wiring Boards
UL 749 Household Dishwashers
UL 751 Vending Machines
UL 753 Alarm Accessories for Automatic Water-Supply Control Valves for Fire-Protection Service
UL 756 Coin and Currency Changers and Actuators
UL 763 Motor-Operated Commercial Food Preparing Machines
UL 773 Plug-In Locking-Type Photocontrols for Use With Area Lighting
UL 773A Nonindustrial Photoelectric Switches for Lighting Control
UL 775 Graphic Arts Equipment
UL 778 Motor-Operated Water Pumps
UL 781 Portable Electric Lighting Units for Use in Hazardous (Classified) Locations
UL 783 Electric Flashlights and Lanterns for Use in Hazardous Locations, Class I, Group C and D
UL 791 Residential Incinerators
UL 795 Commercial-Industrial Gas-Heating Equipment
UL 796 Printed-Wiring Boards
UL 797 Electrical Metallic Tubing
UL 810 Capacitors
UL 813 Commercial Audio Equipment
UL 814 Gas-Tube-Sign and Ignition Cable
UL 817 Cord Sets and Power-Supply Cords
UL 823 Electric Heaters for Use in Hazardous (Classified) Locations
UL 826 Household Electric Clocks
UL 827 Central Stations for Watchman, Fire-Alarm, and Supervisory Services
UL 834 Heating, Water Supply, and Power Boilers—Electric
UL 842 Valves for Flammable Fluids
UL 844 Electric Lighting Fixtures for Use in Hazardous (Classified) Locations
UL 845 Electric Motor Control Centers
UL 854 Service Entrance Cable
UL 857 Electric Busways and Associated Fittings
UL 858 Household Electric Ranges
UL 858A Safety-Related Solid-State Controls for Electric Ranges
UL 859 Personal Grooming Appliance
UL 860 Pipe Unions for Flammable and Combustible Fluids and Fire Protection Service
UL 863 Electric Time-Indicating and -Recording Appliances
UL 864 Control Units for Fire-Protective Signaling Systems
UL 867 Electrostatic Air Cleaners
UL 869A Reference Standard for Service Equipment
UL 870 Wireways, Auxiliary Gutters, and Associated Fittings
UL 873 Electrical Temperature-Indicating and -Regulating Equipment
UL 875 Electric Dry Bath Heaters
UL 877 Circuit Breakers and Circuit-Breaker Enclosure for Use in Hazardous (Classified) Locations
UL 879 Electrode Receptacles for Gas-Tube Signs
UL 884 Underfloor Electrical Raceways and Fittings
UL 886 Electrical Outlet Boxes and Fittings for Use in Hazardous (Classified) Locations
UL 887 Delayed-Action Timelocks
UL 891 Dead-Front Electrical Switchboards
UL 894 Switches for Use in Hazardous (Classified) Locations
UL 900 Test Performance of Air-Filter Units
UL 910 Test Method for Fire and Smoke Characteristics of Electrical and Optical Fiber Cables
UL 913 Intrinsically Safe Apparatus and Associated Apparatus for Use in Class I, II, and III, Division I, Hazardous (Classified) Locations
UL 916 Energy Management Equipment
UL 917 Clock-Operated Switches
UL 921 Commercial Electric Dishwashers
UL 923 Microwave Cooking Appliances
UL 924 Emergency Lighting and Power Equipment
UL 935 Fluorescent-Lamp Ballasts
UL 943 Ground-Fault Circuit Interrupters
UL 961 Hobby and Sports Equipment
UL 964 Electrically Heating Bedding
UL 969 Marking and Labeling Systems
UL 977 Fused Power-Circuit Devices
UL 982 Motor-Operated Food Preparing Machines
UL 983 Surveillance Cameras
UL 984 Hermetic Refrigerant Motor-Compressors
UL 985 Household Fire Warning System Units
UL 987 Stationary and Fixed Electric Tools
UL 991 Tests for Safety-Related Controls Employing Solid-State Devices
UL 998 Humidifiers
UL 1002 Electrically Operated Valve for Use in Hazardous (Classified) Locations
UL 1004 Electric Motors
UL 1005 Electric Flatirons
UL 1008 Automatic Transfer Switches
UL 1010 Receptacle-Plug Combinations for Use in Hazardous (Classified) Locations
UL 1012 Power Supplies
UL 1017 Electric Vacuum Cleaning Machines and Blower Cleaners
UL 1018 Electric Aquarium Equipment
UL 1020 Thermal Cutoffs for Use in Electrical Appliances and Components
UL 1022 Line Isolated Monitors
UL 1023 Household Burglar-Alarm System Units
UL 1026 Electric Household Cooking and Food-Serving Appliances
UL 1028 Electric Hair-Clipping and -Shaving Appliances
UL 1029 High-Intensity Discharge Lamp Ballasts
UL 1030 Sheathed Heater Elements
UL 1034 Burglary Resistant Electric Locking Mechanisms
UL 1037 Antitheft Alarms and Devices
UL 1042 Electric Baseboard Heating Equipment
UL 1047 Isolated Power Systems Equipment
UL 1053 Ground-Fault Sensing and Relaying Equipment
UL 1054 Special-Use Switches
UL 1058 Halogenated Agent Extinguishing System Units
UL 1059 Terminal Blocks
UL 1062 Unit Substations
UL 1063 Machine-Tool Wires and Cables
UL 1066 Low-Voltage AC and DC power Circuit Breakers Used in Enclosures

UL 1069 Hospital Signaling and Nurse Call Equipment
UL 1072 Medium Voltage Power Cables
UL 1075 Gas Fired Cooling Appliances for Recreational Vehicles
UL 1076 Proprietary Burglar-Alarm Units and Systems
UL 1077 Supplementary Protectors for Use in Electrical Equipment
UL 1081 Electric Swimming Pool Pumps, Filters and Chlorinators
UL 1082 Household Electric Coffee Makers and Brewing-Type Appliances
UL 1083 Household Electric Skillets and Frying-Type Appliances
UL 1086 Household Trash Compactors
UL 1087 Molded-Case Switches
UL 1088 Temporary Lighting Strings
UL 1090 Electric Snow Movers
UL 1091 Butterfly Valves for Fire Protection Service
UL 1093 Halogenated Agent Fire Extinguishers
UL 1097 Double Insulation Systems for Use in Electrical Equipment
UL 1203 Explosion-Proof and Dust-Ignition-Proof Electrical Equipment for Use in Hazardous (Classified) Locations
UL 1206 Electric Commercial Clothes-Washing Equipment
UL 1207 Sewage Pumps for Use in Hazardous (Classified) Locations
UL 1230 Amateur Movie Lights
UL 1236 Electric Battery Chargers
UL 1238 Control Equipment for Use With Flammable Liquid Dispensing Devices
UL 1240 Electric Commercial Clothes-Drying Equipment
UL 1241 Junction Boxes for Swimming Pool Lighting Fixtures
UL 1242 Intermediate Metal Conduit
UL 1244 Electrical and Electronic Measuring and Testing Equipment
UL 1247 Diesel Engines for Driving Centrifugal Fire Pumps
UL 1248 Engine-Generator Assemblies for Use in Recreational Vehicles
UL 1254 Pre-Engineered Dry Chemical Extinguishing System Units
UL 1261 Electric Water Heaters for Pools and Tubs
UL 1262 Laboratory Equipment
UL 1270 Radio Receivers, Audio Systems, and Accessories
UL 1277 Electrical Power and Control Tray Cables With Optional Optical-Fiber Members
UL 1278 Movable and Wall- or Ceiling-Hung Electric Room Heaters
UL 1283 Electromagnetic-Interference Filter
UL 1286 Office Furnishings
UL 1310 Direct Plug-In Transformer Units
UL 1313 Nonmetallic Safety Cans for Petroleum Products
UL 1314 Special-Purpose Containers
UL 1316 Glass-Fiber-Reinforced Plastic Underground Storage Tanks for Petroleum Products
UL 1322 Fabricated Scaffold Planks and Stages
UL 1323 Scaffold Hoists
UL 1332 Organic Coatings for Steel Enclosures for Outdoor Use Electrical Equipment
UL 1363 Temporary Power Taps
UL 1409 Low-Voltage Video Products Without Cathode-Ray-Tube Displays
UL 1410 Television Receivers and High-Voltage Video Products
UL 1411 Transformers and Motor Transformers for Use in Audio-, Radio-, and Television-Type Appliances
UL 1412 Fusing Resistors and Temperature-Limited Resistors for Radio-, and Television-Type Appliances
UL 1413 High-Voltage Components for Television-Type Appliances
UL 1414 Across-the-Line, Antenna-Coupling, and Line-by-Pass Capacitors for Radio- and Television-Type Appliances
UL 1416 Overcurrent and Overtemperature Protectors for Radio- and Television-Type Appliances
UL 1417 Special Fuses for Radio- and Television-Type Appliances
UL 1418 Implosion-Protected Cathode-Ray Tubes for Television-Type Appliances
UL 1419 Professional Video and Audio Equipment
UL 1424 Cables for Power-Limited Fire-Protective-Signaling Circuits
UL 1429 Pullout Switches
UL 1431 Personal Hygiene and Health Care Appliances
UL 1433 Control Centers for Changing Message Type Electric Signs
UL 1436 Outlet Circuit Testers and Similar Indicating Devices
UL 1437 Electrical Analog Instruments, Panelboard Types
UL 1441 Coated Electrical Sleeving
UL 1445 Electric Water Bed Heaters
UL 1446 Systems of Insulating Materials—General
UL 1447 Electric Lawn Mowers
UL 1448 Electric Hedge Trimmers
UL 1449 Transient Voltage Surge Suppressors
UL 1450 Motor-Operated Air Compressors, Vacuum Pumps and Painting Equipment
UL 1453 Electric Booster and Commercial Storage Tank Water Heaters
UL 1459 Telephone Equipment
UL 1468 Direct-Acting Pressure-Reducing and Pressure-Control Valves for Fire Protection Service
UL 1472 Solid-State Dimming Controls
UL 1474 Adjustable Drop Nipples for Sprinkler Systems
UL 1478 Fire Pump Relief Valves
UL 1480 Speakers for Fire Protective Signaling Systems
UL 1481 Power Supplies for Fire Protective Signaling Systems
UL 1484 Residential Gas Detectors
UL 1486 Quick Opening Devices for Dry Pipe Valves for Fire-Protection Service
UL 1492 Audio and Video Equipment
UL 1557 Electrically Isolated Semiconductor Devices
UL 1558 Metal-Enclosed Low-Voltage Power Circuit Breaker Switchgear
UL 1559 Insect-Control Equipment, Electrocution Type
UL 1561 Large General Purpose Transformers
UL 1562 Transformers, Distribution, Dry Type—Over 600 Volts
UL 1563 Electric Hot Tubs, Spas, and Associated Equipment
UL 1564 Industrial Battery Chargers
UL 1565 Wire Positioning Devices
UL 1567 Receptacles and Switches Intended for Use With Aluminum Wire
UL 1569 Metal-Clad Cables
UL 1570 Fluorescent Lighting Fixtures
UL 1571 Incandescent Lighting Fixtures
UL 1572 High Intensity Discharge Lighting Fixtures
UL 1573 Stage and Studio Lighting Units
UL 1574 Track Lighting Systems
UL 1577 Optical Isolators
UL 1581 Reference Standard for Electrical Wires, Cables, and Flexible Cords
UL 1585 Class 2 and Class 3 Transformers
UL 1594 Sewing and Cutting Machines
UL 1598 Luminaries
UL 1604 Electrical Equipment for Use in Class I and II, Division 2 and Class III Hazardous (Classified) Locations
UL 1610 Central-Station Burglar-Alarm Units
UL 1635 Digital Burglar Alarm Communicator System Units
UL 1637 Home Health Care Signaling Equipment
UL 1638 Visual Signaling Appliances
UL 1647 Motor-Operated Massage and Exercise Machines
UL 1651 Optical Fiber Cable
UL 1660 Liquid-Tight Flexible Nonmetallic Conduit
UL 1662 Electric Chain Saws
UL 1664 Immersion-Detection Circuit-Interrupters
UL 1666 Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts
UL 1673 Electric Space Heating Cables

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UL 1676 Discharge Path Resistors
UL 1682 Plugs, Receptacles, and Cable Connectors, of the Pin and Sleeve Type
UL 1684 Reinforced Thermosetting Resin Conduit
UL 1690 Data-Processing Cable
UL 1692 Polymeric Materials—Coil Forms
UL 1693 Electric Radiant Heating Panels and Heating Panel Sets
UL 1694 Tests for Flammability of Small Polymeric Component
UL 1703 Flat Plate Photo Voltaic Modules and Panels
UL 1711 Amplifiers for Fire Protective Signaling Systems
UL 1726 Automatic Drain Valves for Standpipe Systems
UL 1727 Commercial Electric Personal Grooming Appliances
UL 1730 Smoke Detector Monitors and Accessories for Individual Living Units of Multifamily Residences and Hotel/Motel Rooms
UL 1738 Venting Systems for Gas-Burning Appliances, Categories II, III, and IV
UL 1739 Pilot-Operated Pressure-Control Valves for Fire-Protection Service
UL 1740 Industrial Robots and Robotic Equipment
UL 1767 Early-Suppression Fast-Response Sprinklers
UL 1769 Cylinder Valves
UL 1773 Termination Boxes
UL 1776 High-Pressure Cleaning Machines
UL 1778 Uninterruptible Power Supply Equipment
UL 1786 Nightlights
UL 1795 Hydromassage Bathtubs
UL 1812 Ducted Heat Recovery Ventilators
UL 1815 Nonducted Heat Recovery Ventilators
UL 1821 Thermoplastic Sprinkler Pipe and Fittings for Fire Protection
UL 1838 Low Voltage Landscape Lighting Systems
UL 1863 Communication Circuit Accessories
UL 1876 Isolating Signal and Feedback Transformers for Use in Electronic Equipment
UL 1889 Commercial Filters for Cooking Oil
UL 1917 Solid-State Fan Speed Controls
UL 1950 Information Technology Equipment Including Electrical Business Equipment
UL 1951 Electric Plumbing Accessories
UL 1963 Refrigerant Recovery/Recycling Equipment
UL 1971 Signaling Devices for the Hearing Impaired
UL 1977 Component Connectors for Use in Data, Signal, Control and Power Applications
UL 1981 Central Station Automation Systems
UL 1993 Self-Ballasted Lamps and Lamp Adapters
UL 1994 Low-Level Path Marking and Lighting Systems
UL 1995 Heating and Cooling Equipment
UL 1996 Duct Heaters
UL 2006 Halon 1211 Recovery/Recharge Equipment
UL 2021 Fixed and Location-Dedicated Electric Room Heaters
UL 2024 Optical Fiber Cable Raceway
UL 2034 Single and Multiple Station Carbon Monoxide Detectors
UL 2044 Commercial Closed Circuit Television Equipment
UL 2061 Adapters and Cylinder Connection Devices for Portable LP-Gas Cylinder Assemblies
UL 2083 Halon 1301 Recovery/Recycling Equipment
UL 2085 Insulated Aboveground Tanks for Flammable and Combustible Liquids
UL 2096 Commercial/Industrial Gas and/or Gas Fired Heating Assemblies with Emission Reduction Equipment
UL 2097 Reference Standard for Double Insulation Systems for Use in Electronic Equipment
UL 2106 Field Erected Boiler Assemblies
UL 2111 Overheating Protection for Motors
UL 2157 Electric Clothes Washing Machines and Extractors
UL 2158 Electric Clothes Dryers
UL 2161 Neon Transformers and Power Supplies
UL 2250 Instrumentation Tray Cable
UL 2601–1 Medical Electrical Equipment, Part 1: General Requirements for Safety
UL 3044 Surveillance Closed Circuit Television Equipment
UL 3101–1 Electrical Equipment for Laboratory Use; Part 1: General Requirements
UL 3111–1 Electrical Measuring and Test Equipment; Part 1: General Requirements
UL 6500 Audio/Video and Musical Instrument Apparatus for Household, Commercial, and Similar General Use
UL 8730–1 Electrical Controls for Household and Similar Use; Part 1: General Requirements
UL 8730–2–3 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Ballasts for Tubular Fluorescent Lamps
UL 8730–2–4 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Thermal Motor Protectors for Motor Compressors or Hermetic and Semi-Hermetic Type
UL 8730–2–7 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Timers and Time Switches
UL 8730–2–8 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Electrically Operated Water Valves

Restrictions/Limitations on Recognition

[1] These standards are approved for equipment or materials intended for use in commercial and industrial power system applications. These standards are not approved for equipment or materials intended for use in installations that are excluded from the provisions of Subpart S in 29 CFR 1910 by Section 1910.302(a)(2).

Note: Testing and certification of gas operated equipment is limited to equipment for use with "liquefied petroleum gas" ("LPG" or "LP-Gas")

At the time of preparation of the preliminary notice, some of the test standards for which OSHA currently recognizes UL, and which are listed above, have been withdrawn or replaced by the standards developing organization. Under OSHA policy regarding such withdrawn or replaced test standards, OSHA can no longer recognize the NRTL for the test standards, but the NRTL may request recognition for comparable test standards, i.e., other appropriate test standards covering similar types of product testing. However, a number of other NRTLs also are recognized for these withdrawn or replaced standards. As a result, OSHA will publish a separate notice to make the appropriate substitutions for UL and the other NRTLs that were recognized for these standards. However, see footnote (3) at the end of list of standards under the *Expansion of Recognition* section below.

OSHA's recognition of UL, or any NRTL, for a particular test standard is limited to equipment or materials (i.e., products) for which OSHA standards require third party testing and certification before use in the workplace. Consequently, an NRTL's scope of recognition excludes any product(s) falling within the scope of a test standard for which OSHA has no NRTL testing and certification requirements.

Many of the Underwriters Laboratories (UL) test standards listed above, and listed later in this notice, are approved as American National Standards by the American National Standards Institute (ANSI). However, for convenience in compiling the list, we use the designation of the standards developing organization (*e.g.*, UL 1004) for the standard, as opposed to the ANSI designation (*e.g.*, ANSI/UL 1004). Under our procedures, an NRTL recognized for an ANSI-approved test standard may use either the latest proprietary version of the test standard or the latest ANSI version of that standard, regardless of whether it is currently recognized for the proprietary or ANSI version. Contact ANSI or the ANSI web site (http://www.ansi.org) and click "NSSN" to find out whether or not a test standard is currently ANSI-approved.

Expansion of Recognition

OSHA limits the expansion of recognition to the two additional sites located in Tokyo, Japan, and in Ontario, Canada, as listed earlier in this notice. These sites are wholly owned or controlled by UL. As stated under the renewal section above, the Agency's recognition of any UL testing site is limited to performing testing to the test standards for which OSHA has recognized UL and for which the site has the proper capability and control programs. In addition, OSHA would permit the two sites to use all eight of the "supplemental" programs, listed earlier in this notice, as do the 10 sites already recognized.

OSHA further limits the expansion to testing and certification of products for demonstration of conformance to the following 64 test standards, and OSHA has determined the standards are "appropriate," within the meaning of 29 CFR 1910.7(c).

ANSI/ASME A17.5 Elevators and Escalator Electrical Equipment
ANSI/BHMA A156.3 Exit Devices
ANSI C12.1 Code for Electricity Meters
ANSI Z21.1 Household Cooking Gas Appliances
ANSI/NFPA 11 Low Expansion Foam and combined Agent Systems
ANSI/NFPA 11A Medium- and High-Expansion Foam Systems
ANSI/NFPA 12 Carbon Dioxide Extinguishing Systems
ANSI/NFPA 12A Halon 1301 Fire Extinguishing Agent Systems
ANSI/NFPA 13 Installation of Sprinkler Systems
ANSI/NFPA 17 Dry Chemical Extinguishing Systems
ANSI/NFPA 20 Centrifugal Fire Pumps
ANSI/NFPA 72 Installation, Maintenance, and Use of Protective Signaling Systems
UL 6A Electrical Rigid Metal Conduit—Aluminum, Bronze, and Stainless Steel
UL 10C Positive Pressure Fire Tests of Door Assemblies
UL 198M Mine-Duty Fuses
UL 307A Liquid Fuel-Burning Heating Appliances for Manufactured Homes and Recreational Vehicles
UL 497C Protectors for Coaxial Communications Circuits
UL 498A Current Taps and Adapters
UL 514D Cover Plates for Flush-Mounted Wiring Devices
UL 536 Flexible Metallic Hose
UL 606 Linings and Screens for Use with Burglar-Alarm Systems
UL 641 Type L Low-Temperature Venting Systems
UL 651B Continuous Length HDPE Conduit
UL 698A Industrial Control Panels Relating to Hazardous (Classified) Locations
UL 789 Indicator Posts for Fire-Protection Service
UL 797A Electrical Metallic Tubing—Aluminum
UL 896 Oil-Burning Stoves
UL 963 Sealing, Wrapping, and Marking Equipment
UL 1425 Cables for Non-Power Limited Fire-Alarm Circuits
UL 1434 Thermistor-Type Devices
UL 1482 Solid-Fuel Type Room Heaters
UL 1640 Portable Power Distribution Equipment
UL 1653 Electrical Nonmetallic Tubing
UL 1655 Community-Antenna Television Cables
UL 1681 Wiring Device Configurations
UL 1686 Pin and Sleeve Configurations
UL 1699 Arc-Fault Circuit-Interrupters
UL 1741 Inverters, Converters, and Controllers for Use in Independent Power Systems
UL 1887 Fire Test of Plastic Sprinkler Pipe for Flame and Smoke Characteristics
UL 2017 General Purpose Signaling Devices and Systems [1]
UL 2089 Vehicle Battery Adapters [2]
UL 2125 Motor-Operated Air Compressors for Use in Sprinkler Systems
UL 2127 Inert Gas Clean Agent Extinguishing System Unit
UL 2166 Halocarbon Clean Agent Extinguishing System Units
UL 2200 Stationary Engine Generator Assemblies
UL 2202 Electric Vehicle (EV) Charging System Equipment
UL 2227 Overfilling Prevention Devices
UL 3121–1 Process Control Equipment
UL 3101–2–20 Electrical Equipment for Laboratory Use, Part 2: Laboratory Centrifuges
UL 60950 Information Technology Equipment [3]
UL 8730–2–6 Automatic Electrical Controls for Household and Similar Use; Part 2: Particular Requirements for Automated Electrical Pressure Sensing Controls Including Mechanical Requirements
UL 8730–2–9 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Temperature Sensing Controls
UL 8730–2–14 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electric Actuators
UL 60335–1 Safety of Household and Similar Electrical Appliances, Part 1: General Requirements
UL 60335–2–34 Household and Similar Electrical Appliances, Part 2: Particular Requirements for Motor-Compressors
UL 60730–1 Automatic Electrical Controls for Household and Similar Use, Part 1: General Requirements
UL 60730–2–3 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Protectors for Ballasts for Tubular Fluorescent Lamps
UL 60730–2–4 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Thermal Motor Protectors for Motor-Compressors of Hermetic and Semi-Hermetic Type
UL 60730–2–10 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Motor Starting Relays
UL 60730–2–11 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Energy Regulators
UL 60730–2–12 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Electrically Operated Door Locks
UL 60730–2–13 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Humidity Sensing Controls
UL 60730–2–16 Automatic Electrical Controls for Household and Similar Use, Part 2: Particular Requirements for Automatic Electrical Water Level Operating Controls of the Float Type for Household and Similar Applications
UL 61058–1 Switches for Appliances

[1] Limited to electrical portions only.
[2] This standard is approved for testing and certification of products for use within recreational vehicles and mobile homes.
[3] This standard replaces UL 1950. Upon publication of this final notice, the web page of all other NRTLs currently recognized for

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UL 1950 also will be updated to include UL 60950, due to earlier requests received from some of these other NRTLs for recognition of UL 60950.

Conditions

Underwriters Laboratories Inc. must also abide by the following conditions of the recognition, in addition to those already required by 29 CFR 1910.7:

OSHA must be allowed access to the UL facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If UL has reason to doubt the efficacy of any test standard it is using under this program, it must promptly inform the organization that developed the test standard of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

UL must not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, UL agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

UL must inform OSHA as soon as possible, in writing, of any change of ownership, facilities, or key personnel, and of any major changes in its operations as an NRTL, including details;

UL will continue to meet all the terms of its recognition and will always comply with all OSHA policies pertaining to this recognition; and

UL will continue to meet the requirements for recognition in all areas where it has been recognized.

Signed at Washington, DC, this 1st day of May, 2002.

John L. Henshaw,

Assistant Secretary.

[FR Doc. 02–11384 Filed 5–7–02; 8:45 am]

BILLING CODE 4510–26–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2003 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Civil Legal Services; correction.

SUMMARY: The Legal Services Corporation (LSC) published a notice in the **Federal Register** of April 22, 2002 (67 FR 19597) concerning the availability of competitive grant funds for the provision of civil legal services to low income people. The notice contained incorrect service area codes for the state of Louisiana. The correct service area codes for the state of Louisiana are LA–1 and LA–12.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance by FAX at (202)336–7272, by e-mail at *competition@lsc.gov*, or visit the LSC Web site at *www.ain.lsc.gov*.

ADDRESSES: Legal Services Corporation—Competitive Grants, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation (LSC) published a notice in the **Federal Register** of April 22, 2002 (67 FR 19597) concerning the availability of competitive grant funds for the provision of civil legal services to low income people. The notice contained incorrect service area codes for the state of Louisiana. The correct service area codes for the state of Louisiana are LA–1 and LA–12.

The Request for Proposals (RFP) is available at *www.ain.lsc.gov*. Applicants must file a Notice of Intent to Compete (NIC) to participate in the competitive grants process. Applicants competing for service areas in Louisiana must file the NIC by May 24, 2002, 5:00 p.m. ET. The due date for filing grant proposals for service areas in Louisiana is June 24, 2002, 5:00 p.m. ET.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials. LSC will not FAX the RFP to interested parties.

Service area descriptions are available from Appendix A of the RFP. Interested parties are asked to visit *www.ain.lsc.gov* regularly for updates on the LSC competitive grants process.

Michael A. Genz,

Director, Office of Program Performance, Legal Services Corporation.

[FR Doc. 02–11350 Filed 5–7–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL CREDIT UNION ADMINISTRATION

Guidelines for Ensuring the Quality of Disseminated Information

AGENCY: National Credit Union Administration (NCUA).

ACTION: Notice and request for comment.

SUMMARY: NCUA is soliciting comments on proposed guidelines for ensuring the quality of disseminated information. The guidelines are being developed in response to Office of Management and Budget (OMB) issued government-wide guidelines. The notice states some of the basic features of how NCUA will address the OMB guidelines and includes NCUA's draft guidelines.

DATES: Comments must be received on or before June 1, 2002.

ADDRESSES: Comments should be directed to Becky Baker, Secretary of the Board. Mail or hand-deliver comments to: National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Fax comments to (703) 518–6319. E-mail comments to *regcomments@ncua.gov*. Please send comments by one method only.

FOR FURTHER INFORMATION CONTACT: The proposed draft guidelines are available at *www.ncua.gov*. For additional information contact Neil McNamara, Deputy Chief Information Officer, Office of the Chief Information Officer at the above address or telephone number: (703) 518–6440 or Mary F. Rupp, Staff Attorney, Office of General Counsel, at the above address or telephone number: (703) 518–6540.

SUPPLEMENTARY INFORMATION:

Background

Section 515 of the Treasury and General Appropriations Act for Fiscal Year 2001 (Pub. L. No 106–554, 114 Stat. 2763) directs each agency subject to the Paperwork Reduction Act (44 U.S.C. chapter 35) to issue customized guidelines for ensuring the quality of the information it disseminates. The agencies are to base their guidelines on final guidelines issued by OMB and to post proposed guidelines by May 1, 2002. 67 FR 8452 (February 22, 2002).

The goal of these guidelines is to ensure that information disseminated by the NCUA Board is: useful to the intended users of the information; presented in an accurate, clear, complete and unbiased manner; and protected from unauthorized access or revision. Section 515 also requires the agencies to include in their guidelines "administrative mechanisms allowing affected persons to seek and obtain correction of information maintained and disseminated by the agency."

Draft Guidelines

Policy

NCUA will undertake to ensure that the information it disseminates to the public is objective (accurate, clear, complete, and unbiased), useful and has integrity. Most information disseminated by NCUA is subject to the basic standard described in these guidelines. Additional levels of quality standards are adopted as appropriate for specific categories of disseminated information. The OMB guidelines require "influential scientific, financial or statistical information" to meet a higher standard of quality. OMB defines "influential" to mean, "the agency can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions." *Id.* at 8455. Influential information disseminated by NCUA is subject to a level higher than the basic standard. The NCUA's Chief Information Officer (CIO) serves as the agency official charged with overseeing the agency's compliance with OMB guidelines for the quality of information disseminated by NCUA.

Scope

NCUA will review all information disseminated for its quality before it is disseminated. The agency's pre-dissemination review and the guidelines in this document will apply to information that the agency first disseminates on or after October 1, 2002. The agency's administrative mechanism for correcting information will apply to information that the agency disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

These guidelines apply to NCUA information dissemination in all media and formats, including print, electronic, audio/visual, or some other form. Information includes books, papers, CD–ROMs, electronic documents, or other documentary material disseminated to the public by NCUA. The guidelines apply to information disseminated by NCUA from a web page, but they do not apply to hyperlinks from NCUA's web site to information that others disseminate. Nor do the guidelines apply to opinions if it is clear that what is being offered is someone's opinion, rather than fact or the agency's views. The guidelines do not apply to distribution limited to correspondence with individuals or persons, press releases, archival records, library holdings, public filings, subpoena, or adjudicative processes. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Dissemination means agency initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of governmental information; or responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

Process for Ensuring Quality of Information at the Basic Standard

The section 515 guidelines issued by OMB focus primarily on the dissemination of substantive information, for example, reports, studies and summaries, rather than information pertaining to basic agency operations. NCUA reviews all information before dissemination to assure that it meets the basic quality standard. Most information disseminated by NCUA does not require the higher standard of review associated with influential information.

As stated in the Policy section of these guidelines, NCUA's basic quality standard for information involves objectivity, utility, and integrity. Objectivity involves two distinct elements: presentation and substance. Objective presentation means the information is presented within a proper context to ensure an accurate, clear, complete and unbiased presentation. Objective substance means the data, the analytical process, and the resulting reports are accurate, reliable and unbiased. To the extent possible, and consistent with confidentiality protections, NCUA will identify the source of disseminated information so the public can assess whether the information is objective. The utility of information refers to its usefulness to its intended users, including the public. Integrity refers to the security of information, in other words, the protection of information from unauthorized access or revision.

NCUA's CIO is charged with primary oversight responsibility for assuring that all disseminated information meets the basic quality standard. The CIO relies on the Office Director with primary responsibility for the disseminated information to ensure that the pre-dissemination review process is performed and documented at a level appropriate for the type of information disseminated.

The Office Directors will use internal peer reviews and other review mechanisms to ensure that disseminated information is objective, unbiased, and accurate in both presentation and substance. The approval of information before dissemination will be documented. This documentation may include routing slips, clearance forms, e-mails and other approval mechanisms currently used to assure the quality of disseminated information.

The Office Director with primary responsibility is also responsible for ensuring the utility and integrity of the information disseminated by his or her office.

Information is useful only if it can be retrieved. Therefore, the Office Director should ensure that information published on the NCUA's website is retrievable by the public.

The security and integrity of agency information is addressed in NCUA Instruction No. 13500.04, "Agency-Wide Information Security Policy & Procedures" and the NCUA Agency-wide electronic systems records retention schedule. Office Directors are responsible for ensuring that information is protected from unauthorized revision, falsification, corruption, and intentional or inadvertent destruction. In particular, the originating Office Director is responsible for ensuring that the record copy of information products is filed in the appropriate official record keeping system and included in an approved records retention schedule. All NCUA employees are responsible for following security procedures intended to safeguard sensitive information. The originating Office Directors are required to review and update the security plans for their systems each year. The CIO provides an ongoing security-training program for agency staff. NCUA also has a comprehensive internal control program, including management, operational and technical controls, designed to protect the integrity of agency systems and information. The CIO, the Information Security Officer, and the Records Officer of NCUA advise the Office Directors and other employees, as needed on the implementation of appropriate security and records management procedures.

The originating Office Director is to review disseminated information on a regular basis, including information on the NCUA website, to ensure that information is current, timely, and correct.

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Process for Ensuring Quality of Information at a Level Higher Than the Basic Standard

Some of the information disseminated by NCUA is influential, meaning that the "information will have or does have a clear and substantial impact on important public policies or important private sector decisions." *Id.* at 8455.

OMB has instructed the agency's to take into account their mission in determining whether the information they disseminate is influential. NCUA's primary mission is to ensure the safety and soundness of federally insured credit unions. NCUA collects financial data from credit unions and produces statistical reports based on that data. This information is potentially influential. Both the individual credit union data and the statistical reports are made available to the public. These reports assist the NCUA in its functions as regulator and insurer, as well as credit unions and the public in their financial decisions. The information is considered influential if important public policies or important private sector decisions are made based on it. To ensure the accuracy of the original data, NCUA staff or the appropriate state regulator reviews it for accuracy. The data is then collected by NCUA's Office of Examination and Insurance (E&I) and reviewed for discrepancies. E&I then prepares summary statistical and trend reports for distribution to the general public. The original data on which these statistical and trend reports are based is available to the public, making the statistical and trend reports reproducible. Every possible step is taken to ensure the accuracy of the underlying data. The computer program used by credit unions for their initial submission of the call report data is designed to detect errors before submission. Next, the credit union's examiner or the appropriate state regulator reviews the call report to assure that the information is accurate. Finally, the information is reviewed by E&I to detect any errors. With these steps in place, NCUA is assuring the accuracy and reproducibility of information that is potentially influential.

Administrative Correction Methods

Background

NCUA has developed a procedure to seek correction of information under Section 515. These procedures are designed to be flexible, appropriate to the nature and timeliness of the information disseminated and incorporated into NCUA's information resources management and administrative practices. An affected person may request correction of information disseminated by NCUA. An affected person means anyone who may benefit or be harmed by the disseminated information. Documents and information disseminated but neither authored by NCUA nor adopted as representing NCUA's views are not covered by these guidelines.

Procedure

An affected person may submit his or her request to NCUA's CIO and the CIO will forward it to the appropriate NCUA Office Director for a determination. All requests should be addressed to: Chief Information Officer, Office of Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314–3428.

The request should state that the correction of information is submitted under section 515 of Public Law 106–554 and include the requester's name and mailing address. The request should describe the information asserted to be incorrect, including the name of the report or data product where the information is located, the date of issuance, and a detailed description of the information to be corrected. The request should also state specifically why the information should be corrected, and if possible, recommend specifically how it should be corrected, and provide any supporting documentary evidence, such as comparable data or research results on the same topic to help in the review of the request.

If the Office Director determines that a request does not reasonably describe the disseminated information the requester asserts to be incorrect, the Office Director will either advise the requester what additional information is needed to identify the particular information or otherwise state why the request is insufficient.

The Office Director will coordinate with the appropriate NCUA officials to determine whether or not to correct information. The nature, influence, and timeliness of the information involved, the significance of the correction on the use of the information, and the magnitude of the correction will determine the level of review and the degree and manner of any corrective action.

The Office Director will respond to a request within 60 business days. The response will explain the findings of the review and the actions NCUA will take. If NCUA denies the request, the response will explain the right to an appeal and how to apply for it. The Office Director may extend the 60 days for up to 30 more business days. If extended, the Office Director will send an interim response that states why more time is needed and when a response may be expected. The 60-day response period begins on the day the request is received by the CIO.

A denial of a request to correct a record may be appealed to the CIO within 30 business days of the date of the denial letter. Appeals must be in writing, state the basis for the appeal, and provide any supporting documentation. Appeals must be addressed to the Chief Information Officer, Office of the Chief Information Officer, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314–3428. Appeals must be decided within 60 business days unless the CIO, for good cause, extends the period for an additional 30 business days. The CIO will notify the appellant whether his or her request was granted or denied and what corrective action if any, the NCUA will take.

These procedures for correcting information will apply to information that NCUA disseminates on or after October 1, 2002, regardless of when the agency first disseminated the information.

Annual Reports to OMB

NCUA will submit an annual fiscal year report to OMB providing information, both quantitative and qualitative, on the number, nature and resolution of complaints received by the agency regarding the accuracy of information it disseminates. The report is to be submitted on an annual fiscal year basis no later than January 1 of the following year. The first report will cover fiscal year 2003 and will be submitted to OMB by January 1, 2004.

Definitions

1. *Dissemination* means NCUA initiated or sponsored distribution of information to the public. Dissemination does not include distribution limited to government employees or agency contractors or grantees; intra-agency or inter-agency use or sharing of government information; and responses to requests for agency records under the Freedom of Information Act, the Privacy Act, the Federal Advisory Committee Act or other similar law.

2. *Influential* means that NCUA can reasonably determine that dissemination of the information will have or does have a clear and substantial impact on important public policies or important private sector decisions.

3. *Information* means any communication or representation of knowledge such as fact or data, in any medium or form, including textual, numerical, graphic, cartographic, narrative or audiovisual forms, whether on paper, film or electronic media and whether disseminated via fax, recording, machine readable data or website. This definition includes information from NCUA's web page, but does not include the provision of hyperlinks to information that others disseminate. It also does not include distribution limited to correspondence with individuals or persons, press releases, archival records, public filings, subpoenas, adjudicative processes or opinions, unless that opinion is the NCUA's official point of view.

4. *Integrity* refers to the security of information—protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification.

5. *Objectivity* involves two distinct elements, presentation and substance. Objectivity in presentation requires NCUA to present disseminated information in an accurate, clear, complete, and unbiased manner. To accomplish this, NCUA must assure that the information is presented within a proper context. NCUA will identify the sources of the disseminated information (to the extent possible, consistent with confidentiality protections) and, in a financial or statistical context, the supporting data and models, so that the public can assess for itself whether there may be some reason to question the objectivity of the sources. Where appropriate, data will have full, accurate, transparent documentation, and error sources affecting data quality will be identified and disclosed to users.

Objectivity in substance requires NCUA to disseminate accurate, reliable and unbiased information. To accomplish this, in a financial or statistical context, NCUA must assure that sound statistical and research methods are used to generate the original and supporting data and the conclusions that flow from the data. If NCUA disseminates influential information, it must assure that its conclusions are capable of being substantially reproduced.

6. *Quality* is an encompassing term comprising utility, objectivity, and integrity. Therefore, the guidelines sometimes refer to these four terms collectively, as "quality."

7. *Reproducibility* means that information is capable of being substantially reproduced subject to an acceptable degree of imprecision.

8. *Utility* refers to the usefulness of the information to its intended users, including the public. In assessing the usefulness of information that NCUA disseminates to the public, NCUA will consider the uses of the information not only from the perspective of the agency but also from the perspective of the public. As a result, when transparency of information is relevant for assessing the information's usefulness from the public's perspective, NCUA will take care to ensure that transparency has been addressed in its review of the information. Transparency refers to a clear description of the methods, data sources, assumptions, outcomes and related information that will allow a data user to understand how information was produced.

Authorities: Section 515 of the Treasury and General Government Appropriations Act for Fiscal Year 2001 (Pub. L. 106–554; H.R. 5658) and the Office of Management and Budget Final Guidelines, 67 FR 369, January 3, 2002.

By the National Credit Union Administration Board on April 29, 2002.

Becky Baker,

Secretary of the Board.

[FR Doc. 02–11330 Filed 5–7–02; 8:45 am]

BILLING CODE 7535–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Combined Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that three meetings of the Combined Arts Advisory Panel to the National Council on the Arts (Creativity and Organizational Capacity categories) will be held at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW, Washington, DC, 20506 as follows:

Design: June 13–14, 2002, Room 716. A portion of this meeting, from 1 p.m. to 2 p.m. on June 14th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6 p.m. on June 13th and from 9 a.m. to 1 p.m. and 2 p.m. to 5 p.m. will be closed.

Visual Arts: June 25–27, 2002, Room 716. A portion of this meeting, from 1:30 p.m. to 2:30 p.m. on June 27th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9 a.m. to 6:30 p.m. on June 25th and 26th and from 9 a.m. to 1:30 p.m. and 2:30 p.m. to 6 p.m. on June 27th, will be closed.

Museums: July 23–26, 2002, Room 716. A portion of this meeting, from 9 a.m. to 10 a.m. on July 26th, will be open to the public for policy discussion. The remaining portions of this meeting, from 9:00 a.m. to 6:30 p.m. on July 23rd, from 9 a.m. to 5:30 p.m. on July 24th and 25th, and from 10 a.m. to 12 p.m. on July 26th, will be closed.

The closed portions of these meetings are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of May 22, 2001, these sessions will be closed to the public pursuant to (c)(4)(6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels that are open to the public, and, if time allows, may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of AccessAbility, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW, Washington, DC 20506, 202/682–5532, TDY–TDD 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Office of Guidelines & Panel Operations, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5691.

Dated: May 2, 2002.

Kathy Plowitz-Worden,

Panel Coordinator, Panel Operations, National Endowment for the Arts.

[FR Doc. 02–11387 Filed 5–7–02; 8:45 am]

BILLING CODE 7536–01–P

NUCLEAR REGULATORY COMMISSION

Agency Information Collection Activities: Submission for the Office of Management and Budget (OMB) Review; Comment Request

AGENCY: Nuclear Regulatory Commission (NRC).

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ACTION: Notice of the OMB review of information collection and solicitation of public comment.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35). The NRC hereby informs potential respondents that an agency may not conduct or sponsor, and that a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

1. *Type of submission, new, revision, or extension:* Extension.

2. *The title of the information collection:* NRC Form 64, "Travel Voucher" (Part 1); NRC Form 64A, "Travel Voucher" (Part 2); and NRC Form 64B, "Optional Travel Voucher" (Part 2).

3. *The form number if applicable:* NRC Form 64; NRC Form 64A and NRC Form 64B.

4. *How often the collection is required:* On occasion.

5. *Who will be required or asked to report:* Contractors, consultants and invited NRC travelers who travel in the course of conducting business for the NRC.

6. *An estimate of the number of responses:* 100.

7. *The estimated number of annual respondents:* 100.

8. *An estimate of the total number of hours needed annually to complete the requirement or request:* 100 hours (one hour for each form).

9. *An indication of whether Section 3507(d), Pub. L. 104–13 applies:* Not applicable.

10. *Abstract::* As a part of completing the travel process, the traveler must file travel reimbursement vouchers and trip reports. The respondent universe for the above forms include consultants and contractors and those who are invited by the NRC to travel, e.g., prospective employees. Travel expenses that are reimbursed are confined to those expenses essential to the transaction of official business for an approved trip.

A copy of the final supporting statement may be viewed free of charge at the NRC Public Document Room, One White Flint North, 11555 Rockville Pike, Room O–1 F23, Rockville, MD 20852. OMB clearance requests are available at the NRC World Wide Web site: *http://www.nrc.gov/public-involve/doc-comment/omb/index.html.* The document will be available on the NRC home page site for 60 days after the signature date of this notice.

Comments and questions should be directed to the OMB reviewer listed below by June 7, 2002: Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given to comments received after this date. Bryon Allen, Office of Information and Regulatory Affairs (3150–0192), NEOB–10202, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3087.

The NRC Clearance Officer is Brenda Jo. Shelton, 301–415–7233.

Dated at Rockville, Maryland, this 2nd day of May, 2002.

For the Nuclear Regulatory Commission.

Brenda Jo. Shelton,

NRC Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11375 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–315 AND 50–316]

Indiana Michigan Power Company; Donald C. Cook Nuclear Plant Units 1 and 2; Notice of Consideration of Approbal of Application Regarding Proposed Corporate Restructuring and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an order under 10 CFR 50.80 approving the indirect transfer of Facility Operating Licenses Nos. DPR–58 and DPR–74 for the Donald C. Cook Nuclear Plant, Units 1 and 2, held by Indiana Michigan Power Company (I&M, the licensee), as the owner and licensed operator. The indirect transfer would occur as a result of a proposed corporate restructuring, under which an affiliate company, Central and South West Corporation (CSW), would become the direct parent company of I&M. I&M and CSW are currently wholly-owned, direct subsidiaries of American Electric Power Company (AEP). AEP is a registered holding company under the Public Utility Holding Company Act of 1935, as amended. Upon the completion of the restructuring, CSW will remain a wholly-owned, direct subsidiary of AEP, while I&M will be a wholly-owned, direct subsidiary of CSW. Thus, I&M will become an indirect subsidiary of AEP.

According to an application for approval filed by the licensee, the proposed action will not involve any transfer of the assets of I&M, which will continue to be the licensee, responsible for the operation, maintenance, and eventual decommissioning of Donald C. Cook Nuclear Plant, Units 1 and 2. No physical changes to the Donald C. Cook Nuclear Plant facility, changes to the License or Technical Specifications or operational changes are being proposed in the application.

Pursuant to 10 CFR 50.80, no license, or any right thereunder, shall be transferred, directly or indirectly, through transfer of control of the license, unless the Commission shall give its consent in writing. The Commission will approve an application for the indirect transfer of a license, if the Commission determines that the underlying transaction effecting the indirect transfer will not affect the qualifications of the holder of the license, and that the transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission pursuant thereto.

The filing of requests for hearing and petitions for leave to intervene, and written comments with regard to the license transfer application, are discussed below.

By May 28, 2002, any person whose interest may be affected by the Commission's action on the application may request a hearing and, if not the applicant, may petition for leave to intervene in a hearing proceeding on the Commission's action. Requests for a hearing and petitions for leave to intervene should be filed in accordance with the Commission's rules of practice set forth in Subpart M, "Public Notification, Availability of Documents and Records, Hearing Requests and Procedures for Hearings on License Transfer Applications," of 10 CFR part 2. In particular, such requests and petitions must comply with the requirements set forth in 10 CFR 2.1306, and should address the considerations contained in 10 CFR 2.1308(a). Untimely requests and petitions may be denied, as provided in 10 CFR 2.1308(b), unless good cause for failure to file on time is established. In addition, an untimely request or petition should address the factors that the Commission will also consider, in reviewing untimely requests or petitions, set forth in 10 CFR 2.1308(b)(1)–(2).

Requests for a hearing and petitions for leave to intervene should be served upon Jeffrey D. Cross, *Esq.*, General Counsel, 1 Riverside Plaza, Columbus, Ohio 34215 (tel: 614–223–2580; fax: (614) 223–1560; e-mail: *jdcross@AEP.COM);* and the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555 (e-mail address for filings regarding license transfer cases only: *OGCLT@NRC.gov);* and the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, in accordance with 10 CFR 2.1313.

The Commission will issue a notice or order granting or denying a hearing request or intervention petition, designating the issues for any hearing that will be held and designating the Presiding Officer. A notice granting a hearing will be published in the **Federal Register** and served on the parties to the hearing.

As an alternative to requests for hearing and petitions to intervene, by June 7, 2002, persons may submit written comments regarding the license transfer application, as provided for in 10 CFR 2.1305. The Commission will consider and, if appropriate, respond to these comments, but such comments will not otherwise constitute part of the decisional record. Comments should be submitted to the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, and should cite the publication date and page number of this **Federal Register** notice.

For further details with respect to this action, see the application dated March 28, 2002, available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html.* Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by e-mail to *pdr@nrc.gov.*

Dated at Rockville, Maryland this 1st day of May, 2002.

For the Nuclear Regulatory Commission.

John Stang,

Project Manager, Section I, Project Directorate III, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11374 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on Planning and Procedures; Notice of Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on May 30, 2002, Room T–2B1, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS, and information the release of which would constitute a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Thursday, May 30, 2002—9:30 a.m. until 12 Noon

The Subcommittee will discuss proposed ACRS activities and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the Designated Federal Official, Sam Duraiswamy (telephone: 301/415–7364) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any changes in schedule that may have occurred.

Dated: May 2, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–11371 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations; Notice of Meeting

The ACRS Subcommittees on Reliability and Probabilistic Risk Assessment and on Plant Operations will hold a joint meeting on May 30, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, May 30, 2002—1 p.m. Until 5 p.m.

The Subcommittees will review the staff's initiatives to integrate the NRC program for risk-based analysis of reactor operating experience into the reactor oversight process, specifically the development of reliability/availability performance indicators and industry trends. The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff

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and other interested persons regarding these matters. Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the Designated Federal Official, Ms. Maggalean W. Weston (telephone: 301–415–3151) or Mr. August W. Cronenberg, Senior Staff Engineer (telephone 301–415–6809) between 7:30 a.m. and 4:15 p.m. (EDT). Persons planning to attend this meeting are urged to contact one of the above named individuals one or two working days prior to the meeting to be advised of any potential changes to the agenda, etc., that may have occurred.

Dated: April 30, 2002.

Sher Bahadur,

Associate Director for Technical Support, ACRS/ACNW.

[FR Doc. 02–11372 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants; Addenda to NUREG–0654/FEMA–REP–1,Revision 1

AGENCIES: Nuclear Regulatory Commission, Federal Emergency Management Agency.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) and the Federal Emergency Management Agency (FEMA) have issued an Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." This NUREG is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants and is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants.

EFFECTIVE DATE: March, 2002.

The Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, also is available electronically by visiting NRC's home page (*http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/*) or FEMA's home page (*http://www.fema.gov/pte/rep/*).

A copy of the Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, is available for a fee in the NRC Public Document Room, 11555 Rockville Pike, Rockville, Maryland, Room O1F21.

FOR FURTHER INFORMATION CONTACT: Kathy Halvey Gibson, Chief, Emergency Preparedness and Health Physics Section, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 415–1086; electronic mail address: *khg@nrc.gov* or Vanessa E. Quinn, Chief, Radiological Emergency Preparedness Branch, Technological Services Division, Office of National Preparedness, Federal Emergency Management Agency, Washington, DC 20472, telephone (202) 646–3664; electronic mail address: *vanessa.quinn@fema.gov*.

SUPPLEMENTARY INFORMATION: This notice announces the availability of the Addenda to NUREG–0654/FEMA–REP–1, Rev. 1, "Criteria for Preparation and Evaluation of Radiological Emergency Response Plans and Preparedness in Support of Nuclear Power Plants." NUREG–0654/FEMA–REP–1, Rev. 1, was issued in November 1980 and is the basic emergency planning guidance document for radiological emergency planning and preparedness for commercial nuclear power plants. NUREG–0654/FEMA–REP–1, Rev. 1, is used by licensees and by State and local government emergency response agencies to develop and maintain radiological emergency plans for nuclear power plants. NUREG–0654/FEMA–REP–1, Rev. 1, is also used by staff of the NRC and FEMA to review, respectively, licensee and State and local government radiological emergency plans and preparedness, and to make findings and determinations regarding the adequacy of these plans. As part of FEMA's strategic review of its radiological emergency preparedness program, FEMA and NRC staff determined that it was not necessary to revise NUREG–0654/FEMA–REP–1, Rev. 1, but that to enhance its usefulness, the outdated citations in the document should be replaced with updated citations through means of an addenda. An initial version of the addenda was posted on the FEMA web site and provided to the member agencies of the Federal Radiological Preparedness Coordinating Committee for comment.

Additionally, a draft version of the addenda was provided to all stakeholders for comment on March 26, 2001. Comments received were incorporated as appropriate in the final addenda.

Dated at Rockville, Maryland, this 4th day of April, 2002.

For the Nuclear Regulatory Commission.

Glenn M. Tracy,

Chief, Reactor Safeguards, Radiation Safety and Emergency Preparedness Branch, Office of Nuclear Reactor Regulation, Nuclear Regulatory Commission.

For the Federal Emergency Management Agency on April 17, 2002.

Bruce Baughman,

Director, Office of National Preparedness, Federal Emergency Management Agency.

[FR Doc. 02–11373 Filed 5–7–02; 8:45 am]

BILLING CODE 7590–01–P

POSTAL SERVICE

Notice of Ratemaking Summit Co-Sponsored by Postal Service and Postal Rate Commission

AGENCY: Postal Service.

ACTION: Notice of Meeting.

SUMMARY: The Postal Service and the Postal Rate Commission will jointly sponsor a Ratemaking Summit at the Postal Service's Bolger Academy to consider how the process and approach for changing postal rates in major "omnibus" rate cases can be improved. All interested parties are invited to register and attend. Whether or not they attend, interested parties are also invited to submit a summary of priority issues they believe should be discussed.

DATES: The Ratemaking Summit will be held on Tuesday, May 28, 2002. Interested parties should submit to Jacquelyn Gilliam (address below) issue summaries and indicate whether they intend to attend by 5 p.m. on Friday, May 10.

ADDRESSES: The Postal Service Center for Leadership Development (Bolger Academy) is located at 9600 Newbridge Drive, Potomac, Maryland 20858–4320.

FOR FURTHER INFORMATION CONTACT: Jacquelyn Gilliam, Secretary to the CMO, U.S. Postal Service, 1735 N. Lynn Street, Room 6012, Arlington, Virginia 22209–6000. Telephone: (703) 292–3677. Email: *jgillia2@email.usps.gov*.

SUPPLEMENTARY INFORMATION: The U.S. Postal Service and the Postal Rate Commission hereby announce that they are jointly sponsoring a Ratemaking Summit to be held on Tuesday, May 28, 2002, at the Bolger Academy, 9600 Newbridge Drive, Potomac, Maryland. Continental breakfast will be served starting at 8 a.m. and the Summit will begin at 9 a.m. and conclude at 4:30 p.m.

The Summit will focus on how the process and approach for establishing and changing postal rates in major "omnibus" cases can be improved. If this Summit is successful, the Postal Service and the Postal Rate Commission may sponsor additional meetings to address other ratemaking issues.

The Postal Service and the Postal Rate Commission invite all interested persons to share their views of what they want from the ratemaking process. Discussions will follow on potential changes that could not only satisfy the statutory obligations of the Commission and the Postal Service, but also make the omnibus ratemaking process more responsive to the needs of all affected interests, with particular focus on business and individual mailers.

In order to help make the Summit discussion as responsive and as practically useful as possible, the Commission and the Postal Service invite interested parties to submit a short summary of priority issues (no longer than two pages) related to omnibus rate cases that they believe should be discussed. The Postal Service and the Commission will use these summaries in developing a Summit agenda.

For purposes of preparing the agenda, as well as planning meeting space and refreshments, interested parties must indicate their intention to attend, as well as submit any issue summaries, to the Postal Service no later than 5:00 p.m. on Friday, May 10. Please respond to: Jacquelyn Gilliam, Secretary to the CMO, US Postal Service, 1735 N Lynn St, Rm 6012, Arlington VA 22209–6000; or Email to: *jgillia2@email.usps.gov*. Before the meeting, an agenda and directions to the Bolger Academy will be sent to all who have stated an intention to attend. Those wishing to reserve a room at the Bolger Academy the night before the Summit should call (301) 983–7000 to make a reservation. To ensure efficient handling, interested parties are requested to submit issue summaries and indicate a desire to attend using the following format:

Ratemaking Summit

Name: _____
Address: _____
Phone Number: _____
Email Address: _____

___ I will attend the May 28, 2002 Ratemaking Summit.
___ I will not attend the May 28, 2002 Ratemaking Summit.

I believe that the following issues related to the process for deciding omnibus rate cases should be discussed at the Summit:

[Insert suggestions.]

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–11643 Filed 5–6–02; 2:37 pm]

BILLING CODE 7710–12–P

SECURITIES AND EXCHANGE COMMISSION

Proposed Collection; Comment Request

Upon Written Request, Copies Available From: Securities and Exchange Commission, Office of Filings and Information Services, Washington, DC 20549.

Extension: Rule 15c3–1 SEC File No. 270–197, OMB Control No. 3235–0200; Rule 17a–10 SEC File No. 270–154, OMB Control No. 3235–0122; Rule 17a–19 and Form X–17a–19, SEC File No. 270–148, OMB Control No. 3235–0133; Form BDW SEC File No. 270–17, OMB Control No. 3235–0018.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget for extension and approval.

Rule 15c3–1 (17 CFR 240.15c3–1) under the Securities Exchange Act of 1934 ("Exchange Act") requires a broker or dealer registered with the Commission to maintain at all times sufficient liquid assets in excess of liabilities to promptly satisfy the claims of customers in the event the broker or dealer fails. The rule facilitates monitoring the financial condition of brokers and dealers by the Commission and the various self-regulatory organizations. There are approximately 8,000 broker-dealer respondents registered with the Commission who incur an aggregate burden of 950 hours per year to comply with this rule.

Rule 17a–10 (17 CFR 240.17a–10) under the Exchange Act requires broker-dealers that are exempted from the filing requirements of paragraph (a) of Rule 17a–5 (17 CFR section 240.17a–5) to file with the Commission an annual statement of income (loss) and balance sheet. It is anticipated that approximately 1,100 broker-dealers will spend 12 hours per year complying with Rule 17a–10. The total burden is estimated to be approximately 13,200 hours.

Rule 17a–19 (17 CFR 240.17a–19) and Form X–17A–19 of the Exchange Act requires National Securities Exchanges and Registered National Securities Associations to file a Form X–17A–19 with the Commission within 5 days of the initiation, suspension or termination of a member in order to notify the Commission that a change in designated examining authority may be necessary.

It is anticipated that approximately eight National Securities Exchanges and Registered National Securities Associations collectively will make 2,600 total annual filings pursuant to Rule 17a–19 and that each filing will take approximately 15 minutes. The total burden is estimated to be approximately 650 total annual hours.

Fully registered broker-dealers and notice-registered broker-dealers use Form BDW (17 CFR 249.501a) to withdraw from registration with the Commission, the self-regulatory organizations, and the states. It is estimated that approximately 900 fully registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW via the internet with Web CRD, a computer system operated by the National Association of Securities Dealers, Inc. that maintains information regarding fully registered broker-dealers and their registered personnel. It is further estimated that 140 futures commission merchants that are notice-registered broker-dealers annually will incur an average burden of 15 minutes, or 0.25 hours, to file for withdrawal on Form BDW by sending the completed Form BDW to the National Futures Association, which maintains information regarding notice-registered broker-dealers on behalf of the Commission. The annualized compliance burden per year is 260 hours.

Written comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Consideration will be given to comments and suggestions submitted in writing within 60 days of this publication.

Direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange

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Commission, 450 5th Street, NW., Washington, DC 20549.

Dated: April 30, 2002.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11337 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45858; File No. SR–Amex–2002–02]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the American Stock Exchange LLC Amending Exchange Equities and Options Rules to Provide for Decimal Pricing

May 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on January 14, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. On March 18, 2002, the Amex amended the proposed rule change.[3] The Amex again amended the proposal on April 18, 2002.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to amend its equities and options rules to provide for decimal pricing. The text of the proposed rule change, as amended, is available at the Amex and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Geraldine Brindisi, Vice President and Corporate Secretary, Amex, to Alton S. Harvey, Assistant Director, Division of Market Regulation ("Division"), Commission, dated March 14, 2002 ("Amendment No. 1"). In Amendment No. 1, the Amex made technical corrections to the proposed rule text.

[4] *See* letter from Claire P. McGrath, Senior Vice President and Deputy General Counsel, Amex, to Alton S. Harvey, Assistant Director, Division Commission, dated April 17, 2002 ("Amendment No. 2"). In Amendment No. 2, the Amex: (1) deleted the term "Trading Increment" from Amex Rule 1000, Commentary .03(e) and Amex Rule 1000A, Commentary, .02(e); and (2) amended Amex Rule 952(a) to replace the term "trading increments" with "quoting increments."

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to amend its equities and options rules to provide for decimal pricing, in accordance with the Commission's order requiring self-regulatory organizations to submit rule filings regarding decimal pricing pursuant to Section 19(b)(2) of the Act by January 14, 2002,[5] and with the Commission's June 8, 2000 order establishing the framework for decimal pricing.[6] On August 7, 2000, the Amex filed with the Commission amendments to its rules to accommodate quoting in decimals in equities and options [7] in accordance with the Decimals Implementation Plan for the Equities and Options Markets submitted to the Commission on July 26, 2000 (the "Plan").[8] The Exchange began phasing in decimal quoting in equities and options on August 28, 2000, and began quoting all equities and options overlying exchange-listed stocks in decimals on January 29, 2001. Options overlying Nasdaq stocks began a phased-in conversion to decimal quoting on March 12, 2001, with full conversion to decimal quoting in options overlying Nasdaq stocks on April 9, 2001.

The Exchange proposes to continue the current minimum price variation ("MPV") for equities and options included in SR–Amex–2000–41,[9] of: $.01 MPV for equities, exchange traded funds and trust issued receipts; $.05 MPV for option issues quoted under $3 a contract; and $.10 MPV for option issues quoted at $3 a contract or greater. The proposed changes, therefore, primarily delete references to quoting in fractions that were retained in SR–Amex–2000–41 [10] to accommodate securities that continued quoting in fractions during the phase-in of full decimalization.

The Amex proposes to amend the following rules:

Amex Rule 25. Cabinet Trading of Equity and Derivative Securities. Commentary .01 is proposed to be amended to replace 1/256 of $1.00 with $.01 as the minimum price which can be defined in a computer-readable format by the Exchange's market data system to the facilities of the Consolidated Tape and Consolidated Quotations Systems.

Amex Rule 103. General Floor Prohibitions. The Commentary .03 example is proposed to be amended to delete the reference to 25⅛ and to Amex Rule 127. A number of the Exchange's previous rule changes, included in SR–Amex–2000–41,[11] referred to Amex Rule 127 in so far as Amex Rule 127 provided that securities not subject to decimal pricing under the phase-in would continue to be subject to the specified minimum fraction. Because previous rule changes maintained references to both fractions and decimals to accommodate quoting in both under the pilot, a number of the following rule changes delete references to Amex Rule 127.

Amex Rule 109. "Stopping" Stock. This rule is proposed to be amended to delete reference to Amex Rule 127.

Amex Rule 127. MPVs. This rule is proposed to be amended to provide that the MPV for dealings in equity securities shall be one cent ($.01). Rule language stating that different minimum fractional changes that may be fixed by the Exchange is proposed to be deleted. Commentary .01, which refers to the phase-in of decimal pricing under the Plan as well as continued quoting in fractions of equities not subject to decimal pricing, is proposed to be deleted. The proposed rule change would also delete Commentary .02 referring to quoting in 1/32 or 1/64 of specified Index Fund Shares and Portfolio Depositary Receipts; and Commentary .03 referring to quoting in 1/16 or 1/64 of specified Index Fund Shares. Commentary .04 relating to trading on the Floor in 1/32 or 1/64 to match bids and offers displayed by other markets to prevent trade-throughs would also be deleted.

Amex Rule 132. Price Adjustment of Open Orders on "Ex-Date." This rule is proposed to be amended to substitute "one cent increment" for "MPV" and would delete reference to Amex Rule 127.

Amex Rule 134. Cash, Next Day and Seller's Option Transactions. This rule is proposed to be amended to delete reference to ⅛ point and to Amex Rule 127.

Amex Rule 154. Orders Left with Specialist. This rule is proposed to be amended to delete reference to ⅛ point or higher for securities quoting in fractions and reference to Amex Rule 127.

Amex Rule 1000. Portfolio Depositary Receipts. Commentary .03 to this rule is proposed to be amended to delete reference to minimum trading increment of 1/64, replacing it with an MPV of one cent ($.01).

Amex Rule 1000A. Index Fund Shares. Commentary .02 to this rule is proposed to be amended to delete reference to 1/16, 1/32, and 1/64 minimum trading increments, and replace them with an MPV of one cent ($.01).

Amex Rule 918. Trading Rotations, Halts and Suspensions; Amex Rule 952. MPVs;

Amex Rule 958. Options Transactions of Registered Traders; and Amex Rule 951C. Premium Bids and Offers. These rules are proposed to be amended to delete references to options series quoting in fractions and to the phase-in of decimals quoting under the Plan.

Amex Rule 903G. Terms of FLEX Options. This rule is proposed to be amended to clarify that exercise prices and premiums for FLEX options are to be rounded to the nearest MPV as set forth in Amex Rule 952.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,[12] in general, and furthers the objectives of Section 6(b)(5) of the Act,[13] in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and to protect investors and the public interest.

[5] *See* Securities Exchange Act Release No. 44846 (September 25, 2001), 66 FR 49983 (October 1, 2001).

[6] *See* Securities Exchange Act Release No. 42914 (June 8, 2000), 65 FR 38010 (June 19, 2000).

[7] *See* Securities Exchange Act Release No. 43231 (August 30, 2000), 65 FR 54574 (September 8, 2000) (SR–Amex–2000–41).

[8] *See* letter from Dennis L. Covelli, Vice President, New York Stock Exchange, Inc. to Annette Nazareth, Director, Division, Commission, dated July 25, 2000.

[9] *See supra* note 7.

[10] *Id.*

[11] *Id.*

[12] 15 U.S.C. 78f(b).

[13] 15 U.S.C. 78f(b)(5).

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal offices of the Exchange. All submissions should refer to File No. SR–Amex–2002–02 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11338 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45864; File No. SR–Amex–2002–33]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by American Stock Exchange LLC Relating to Proprietary Order Routing Facilities for Amex Listed Options

May 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 16, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by Amex. Amex submitted Amendment No. 1 to the proposed rule change on April 30, 2002.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance ofthe Proposed Rule Change

Amex proposes to permit members to use, on an interim basis, facilities that are not owned or operated by the Exchange ("Proprietary Facilities") to transmit orders electronically from the Amex floor to other exchanges and to receive orders transmitted electronically to the Amex floor from other exchanges for the purchase or sale of Amex listed options until the complete implementation of the permanent intermarket linkage in the options market ("Permanent Options Linkage").[4] Below is the text of the

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] In Amendment No. 1, the Exchange proposed Commentary .06 to Amex Rule 220. *See* letter from Geraldine M. Brindisi, Vice President and Corporate Secretary, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 29, 2002 ("Amendment No. 1").

[4] The Commission approved the Plan for the Purpose of Creating and Operating an Intermarket

Continued

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proposed rule change. Proposed new language is italicized.

Communications to and on the Floor

Rule 220. (No change).

* * * Commentary

.01 through .05 (No change).

.06 Proprietary Facilities for Routing Options Orders. With the prior written approval of the Exchange, a member or member organization may establish and maintain facilities that are not owned or operated by the Exchange ("Proprietary Facilities") to transmit orders electronically from the Amex Floor to other exchanges and to receive orders transmitted electronically to the Amex Floor from other exchanges for the purchase or sale of Amex listed options until the permanent Options Linkage is established. Such Proprietary Facilities may not be used for transmitting orders for listed equities and ETFs as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Amex included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. Amex has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange believes that until a Permanent Options Linkage is implemented, Amex should permit member firms to establish Proprietary Facilities to route orders in Amex listed options to and from the Exchange. This could facilitate member firm compliance with best execution obligations. Once the Permanent Options Linkage is implemented, however, the Exchange believes that, for reasons of regulatory oversight, a single mechanism for routing orders between options exchanges is preferable to a number of different proprietary systems. Management, accordingly, is proposing to terminate the ability of members to use Proprietary Facilities to route orders in Amex listed options to and from the Exchange once the Options Linkage is implemented. The proposed Proprietary Facilities could not be used for listed equities and Exchange-Traded Funds as the Intermarket Trading System serves as the mechanism for routing trading interest in these securities between exchanges.

2. Statutory Basis

Amex believes that the proposed rule change is consistent with Section 6(b) of the Act,[5] in general, and furthers the objectives of Section 6(b) of the Act,[6] in particular, because it is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which Amex consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2002–33 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11393 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45867; File No. SR–DTC–2001–19]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing of Proposed Rule Change Relating to Automated Corporation Action Program Applicable to the Exercise of Warrants, Conversions, and Put Option Privileges

May 2, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 18, 2001, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which items have been prepared primarily by DTC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested parties.

Options Linkage in July 2000. *See* Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

[5] 15 U.S.C. 78f(b).

[6] 15 U.S.C. 78f(b)(5).

[7] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change involves DTC's new Automated Corporation Action Program ("ACAP") applicable to the exercise of warrants, conversions, and put option privileges (collectively "reorganization events").[2]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, DTC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of these statements.[3]

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Commission has proposed for comment amendments to Rule 17Ad–14 under the Act[4] that will expand the scope of the rule to include reorganization events in addition to tender offers and exchange offers.[5] Under the proposed changes to Rule 17Ad–14, reorganization agents acting on behalf of issuers in connection with reorganization events which involve the exercise of warrant, conversion, or put option privileges on securities on deposit at DTC (a "qualified registered securities depository" as defined in Rule 17Ad–14) would be required to establish an account at DTC to receive the subject securities from DTC participants by book-entry deliveries. In addition, the agents would not be permitted to require DTC to deliver securities certificates prior to the third business day following the expiration date of the reorganization event. These proposed changes to Rule 17Ad–14 would subject reorganization events involving the exercise of warrants, conversions, and put option privileges to requirements under Rule 17Ad–14 similar to those that currently apply to tender offers and exchange offers.

DTC proposes to establish procedures and a master agreement for ACAP which will govern participants' exercises of warrants, conversions, and put options privileges that DTC has made eligible for ACAP. Tender offers and exchange offers will continue to be processed through DTC's Automated Tender Offer Program. Prior to making a reorganization event eligible for ACAP, DTC and the agent will have entered into an agreement that provides that DTC's ACAP procedures are applicable to the event.[6]

Under the ACAP procedures, participants wishing to exercise warrant, conversion, or put option privileges in a reorganization event that has been made eligible for ACAP will transmit the acceptance to DTC. DTC will transmit the instruction to the agent in the form of a DTC "agent's message" and will effect a book-entry delivery of the subject securities to the account of the agent maintained at DTC for this purpose no later than the prescribed deadline for the event. The book-entry delivery will constitute the delivery of the securities required by the terms of the reorganization event. DTC will deliver the certificates evidencing the subject securities no later than three business days after the applicable deadline.

Under the ACAP procedures, DTC's delivery of the agent's message to the reorganization agent will satisfy the terms of the reorganization event as to the execution date and the delivery of either (1) the subscription/conversion/put option form by a DTC participant or (2) an instruction letter to cover a protect if the reorganization agent has accepted a notice of guaranteed delivery from a DTC participant outside of DTC.[7]

If DTC presents a certificate to the reorganization agent which the agent determines to be non-transferable, DTC will within three business days after notice from the agent either (i) put the certificate into transferable form or replace it with a transferable certificate for the same quantity of that issue of securities or (ii) return to the agent all funds and all securities of other issues paid to and issued to DTC in exchange for the non-transferable certificate. If a cash dividend or interest payment is payable on the non-transferable certificate during such three business day period, the agent may deduct the amount of the payment on the non-transferable certificate from the total payment due to DTC with respect to that issue of securities. As is generally the case with securities certificates deposited with DTC, DTC will resolve any problems relating to a non-transferable certificate with the participant that deposited the securities.

The proposed rule change is consistent with the requirements of Section 17A(b)(3)(A) of the Act and the rules and regulations thereunder applicable to DTC because it will further automate the processing of reorganization events by book-entry movements of securities and will reduce reliance on multiple movements of physical securities certificates in advance of the reorganization event and therefore increase the efficiency and reliability of processing with a decreased risk of loss due to lost or stolen certificates.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The proposed rule change was developed through discussions with representatives of DTC participants and the Securities Transfer Association, Inc. Written comments on the ACAP procedures from DTC participants or others have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change or

[2] A copy of the text of DTC's proposed rule change and the attached exhibits are available at the Commission's Public Reference Section or through DTC.

[3] The Commission has modified the text of the summaries prepared by DTC.

[4] 17 CFR 240.17Ad–14.

[5] Securities Exchange Act Release No. 40386 (August 31, 1998), 63 FR 47209 [File No. S7–25–98].

[6] DTC and the reorganization agent will enter into a master agreement, the terms of which will apply to all reorganization events thereafter made eligible for ACAP. When ACAP is fully automated, it is contemplated that DTC's Participant Terminal System ("PTS") or other electronic means will be used to confirm the agreement between DTC and the reorganization agent with respect to each reorganization event and to confirm any special procedures applicable to an event. Prior to completion of ACAP system automation, event information may be exchanged by telephone, fax, or e-mail.

[7] Notices of guaranteed delivery issued by DTC participants in connection with protect periods in reorganization events may also be transmitted through ACAP upon completion of ACAP automation.

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(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of DTC. All submissions should refer to File No. SR–DTC–2001–19 and should be submitted by May 29, 2002.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11395 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45857; File No. SR–ISE–2002–12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the International Securities Exchange LLC Relating to Fee Changes

May 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 23, 2002, the International Securities Exchange LLC ("ISE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which the ISE has prepared. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The ISE is proposing to clarify the manner in which the ceiling on its payment-for-order-flow program will operate. The ceiling for each fund is set at $650,000. The payment for order flow fee would be suspended for a group of options when the fund balance for the group exceeds $650,000, but would be reinstated when any such fund balance falls below $650,000. The text of the proposed rule change is available at the ISE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the ISE included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it had received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The ISE has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to clarify the manner in which the ceiling on the ISE's payment for order flow program will operate. In SR–ISE–2002–09,[3] the ISE lowered the ceiling from $750,000 to $650,000 for each of the ten payment-for-order-flow funds that it maintains.[4] The ISE did not specify in that filing that the fee would be reinstated if a fund balance falls below the ceiling. This proposed rule change provides that clarification.

The basis for this proposed rule change is the requirement under Section 6(b)(4) of the Act[5] that an exchange have an equitable allocation of reasonable dues, fees and other charges among its members and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The ISE believes that the proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The ISE has not solicited, and does not intend to solicit, comments on this proposed rule change. The ISE has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change has become effective pursuant to Section 19(b)(3)(A) of the Act[6] and Rule 19b–4(f)(2)[7] because it changes an ISE fee. At any time within 60 days after the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45772 (April 17, 2002), 67 FR 20563 (April 25, 2002). *See also* Securities Exchange Act Release No. 45128 (December 4, 2001), 66 FR 64325 (December 12, 2001) (establishing the original $750,000 ceiling).

[4] Under ISE Rule 802(b), the ISE has divided the options it trades into ten groups, with one Primary Market Maker assigned to each group. The ISE maintains a payment-for-order-flow fund for each group, consisting of the fees collected from market makers trading options in that group. The Primary Market Maker for the group is responsible for arranging and making all payments to Electronic Access Members for order flow sent to the ISE in options in that group.

[5] 15 U.S.C. 78f(b)(4).
[6] 15 U.S.C. 78s(b)(3)(A).
[7] 17 CFR 19b–4(f)(2).

the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to ISE–2002–12 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11339 Filed 5–7–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45861, File No. SR–MSRB–2002–04]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change by the Relating to Rule G–14, on Reports of Sales or Purchases

May 1, 2002.

On March 27, 2002 the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–04) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposed rule change relates to MSRB Rule G–14, on reports of sales or purchases, to increase transparency in the municipal securities market. The proposed rule change does not change the wording of Rule G–14.

The Commission published the proposed rule change in the **Federal Register** on April 4, 2002. The Commission received five comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The Board has a long-standing policy to increase price transparency in the municipal securities market, with the ultimate goal of disseminating comprehensive and contemporaneous pricing data. One product of the Board's Transaction Reporting Program is its Daily Transaction Report (the "Report"), which has been provided to subscribers each day since January 2000. The report is made available each morning by 7:00 am and includes details of transactions in municipal securities which were "frequently traded" the previous business day. Since the beginning of the Transaction Reporting Program in 1995, "frequently traded" securities have been defined as those that were traded four or more times on a given business day.

Since 1995, the Board has made ongoing efforts to increase price transparency in the municipal securities market in measured steps, culminating in comprehensive, real-time price transparency. The first price transparency report, begun in 1995, was a T+1 report that summarized inter-dealer trades in frequently traded municipal securities. In 1998, the Board added customer trades to the T+1 summary reports, and in January 2000 began publishing individual transaction data on frequently traded securities in addition to summarizing their high, low and average prices. The Board has also introduced "comprehensive" transaction reports for this market, which list all municipal securities transactions (regardless of frequency of trading), but which are available no less than two weeks after trade date.[3]

At this time, the Board believes that the next appropriate step in this process is to change the threshold for determining that a municipal security is "frequently traded" for purposes of the T+1 transparency report. The proposed rule change would lower the threshold from four to three trades per day. By lowering the threshold, the proposal would increase substantially the proportion of municipal securities market activity that is reported on the day after trading. The present report, with a threshold of four or more trades per day, includes an average of 11,600 trades in 1,100 different issues, with a total par value of about 3.9 billion dollars. Under the proposed threshold, the report is expected to include an average of 14,400 trades in 2,600 issues, with a total par value of about 5.2 billion dollars. This represents a 24 percent increase in the number of trades reported, a more-than-twofold increase in the number of issues reported, and a 33 percent increase in par value reported.[4]

The enhanced Daily Transaction Report with the three-trade threshold will replace the current report and will be available each day to subscribers via the Internet.[5] Subscribers to the current Service receive the report free of charge, and their subscriptions will continue with implementation of the proposed Service. New subscriptions will be available free to parties who sign a subscription agreement. In addition, recent reports will continue to be available for examination, also free of charge, at the Board's Public Access Facility in Alexandria, VA.

II. Summary of Comments

The Commission received seven comment letters, from two persons, on the proposal.[6] One of the seven comment letters expressed support for the forgoing proposed rule change. The other six comment letters opposed the proposal.

The comment letter received from TBMA, commends the MSRB's proposed initiative as a mechanism to increase transparency in the municipal securities market.[7] The letter expresses that decreasing the threshold from four to three trades will provide more reliable indicators of market price while avoiding the dissemination of misleading prices from isolated transactions. However, the letter cautioned that reporting isolated trades, bonds that trade only once or twice on a given day, may require greater MSRB evaluation.

The six comment letters received from Municipalbonds.com criticized the MSRB's proposed rule change as ineffective. In general, the letters from Municipalbonds.com expressed that more attention should be given to the price reporting system by releasing all information, including identities, which correlates with the trade.[8] The first comment letter received from Municipalbonds.com stated that more transaction information is "useless" if the daily transaction reports "are not being ruled on, watched or utilized by appropriate oversight or enforcement

[8] 17 CFR 200.30–3(a)(12).
[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.

[3] The first comprehensive report was introduced in October 2000 and listed all trades after a one month delay. The latest comprehensive report began operation in November 2001 and has a two-week delay. *See* Release No. 34–44894, 66 FR 51485 (October 9, 2001).

[4] These data are based upon market activity from April 1, 2001 through July 31, 2001.

[5] The enhanced report will be available to subscribers as soon as practical after SEC approval of the proposed rule change. It is estimated that the period between approval and implementation will not exceed two weeks.

[6] *See* letter from John M. Ramsey, Vice President and Senior Regulatory Counsel, The Bond Market Association ("TBMA"), to Jonathan G. Katz, Secretary, Commission, dated April 24, 2002; three electronic letters from Kevin Olson, Municipalbonds.com, to SEC Commissioners, dated April 19, 2002; electronic letter from Kevin Olson, Municipalbonds.com, to Commissioners, dated April 11, 2002; and two electronic letters from Kevin Olson, Municipalbonds.com, dated April 10, 2002.

[7] *See* letter from TBMA, note 6, *supra.*

[8] *See* letters from Municipalbonds.com, note 6, *supra.*

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authorities".[9] The same comment letter offered two alternative considerations "to facilitate fair pricing" such as, initiating "a system of identified * * * market makers for any, all or specific municipal bonds' or requiring municipal securities traders to "inform or quote two-sided markets instead of just their bid or offer side."[10]

Subsequent letters sent from Municipalbonds.com continued to address reporting inefficiencies. In addition to the two alternatives discussed above, Municipalbonds.com challenged the MSRB to respond to the problem of reporting errors, which Municipalbonds.com has identified.[11]

III. Discussion

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act and the rules and regulations thereunder, which govern the MSRB.[12] The language of Section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national system, and, in general, to protect investors and the public interest.[13]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G–14, on professional qualifications, which relates to municipal fund securities limited principals, meets the statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of Section 15B(b)(2)(C) of the Exchange Act, set forth above.

[9] *See* letter from Municipalbonds.com dated April 10, 2002, note 6, *supra*.

[10] *Id.*

[11] See letters from Municipalbonds.com, dated April 19, 2002, note 6, *supra*.

[12] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[13] 15 U.S.C. 78o–4(b)(2)(C).

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Exchange Act,[14] that the proposed rule change (File No. SR–MSRB–2002–04) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[15]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11394 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45862; File No. SR–Phlx–2002–22]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend Its Pilot Program to Disengage Its Automatic Execution System ("AUTO–X") for a Period of Thirty Seconds After the Number of Contracts Automatically Executed In a Given Option Meets the AUTO–X Minimum Guarantee for that Option

May 1, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 8, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal, on an accelerated basis, for an additional six-month pilot, expiring on November 30, 2002.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to extend, for an additional six months, its pilot program effecting a systems change to AUTO–X, the automatic execution feature of the Exchange's Automated Options Market System ("AUTOM"),[3] that would disengage AUTO–X for a period of thirty seconds after the number of contracts automatically executed in a given option meets the AUTO–X minimum guarantee for that option. The pilot program was originally approved on a six-month basis for a limited number of eligible options,[4] and subsequently extended for an additional six-month period.[5] Subsequently, the number of options eligible for the pilot was expanded to include all Phlx-traded options.[6] As of December 1, 2001, the pilot was again extended for an additional six-month period, which is scheduled to expire on May 31, 2002.[7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to extend the pilot program for an additional six-month period. On December 1, 2000, the Initial Pilot Program became effective.[8] The pilot program was then extended several times and is currently scheduled to end on May 31, 2002.[9] The pilot program includes the following features:

[13] 15 U.S.C. 78o–4(b)(2)(C).

[14] 15 U.S.C. 78s(b)(2).

[15] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] AUTOM is the Exchange's electronic order

the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually, or certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange's trading floor.

[4] *See* Securities Exchange Act Release No. 43652 (December 1, 2000), 65 FR 77059 (December 8, 2000) (SR–Phlx–00–96) ("Initial Pilot Program").

[5] *See* Securitie . Exchange Act Release No. 44362 (May 29, 2001), 66 FR 30037 (June 4, 2001) (SR–Phlx–2001–56).

[6] *See* Securities Exchange Act Release No. 44760 (August 31, 2001), 66 FR 47253 (September 11, 2001) (SR–Phlx–2001–79).

[7] *See* Securities Exchange Act Release No. 45090 (November 21, 2001), 66 FR 59834 (November 30, 2001) (SR–Phlx–2001–100).

[8] *See supra* note 4.

[9] *See supra* note 7.

• Once an automatic execution occurs in an option via AUTO–X, the system would begin a "counting" program, which would count the number of contracts executed automatically for that option, up to the AUTO–X guarantee, regardless of the number of executions.

• When the number of contracts executed automatically for that option meets the AUTO–X guarantee within a fifteen second time frame, the system would cease to automatically execute for that option, and would drop all AUTO–X eligible orders in that option for manual handling by the specialist for a period of thirty seconds to enable the specialist to refresh quotes in that option.[10]

• Upon the expiration of thirty seconds, automatic executions would resume and the "counting" program would be set to zero and begin counting the number of contracts executed automatically within a fifteen second time frame again, up to the AUTO–X guarantee.

• Again, when the number of contracts automatically executed meets the AUTO–X guarantee within a fifteen second time frame, the system would drop all subsequent AUTO–X eligible orders for manual handling by the specialist for a period of thirty seconds.

A significant purpose of this pilot program is to enable the Exchange to move towards the dissemination of options quotations with size.[11] The "counting" feature of the pilot program functions to disengage AUTO–X for a period of thirty seconds in a given option once the number of contracts automatically executed meets the AUTO–X guarantee for that option within a fifteen-second time frame. A similar "counting" mechanism is expected to be utilized upon the implementation of the systems necessary for the dissemination of options quotations with size. Thus, the proposed extension of the pilot program should allow the Exchange to continue its efforts in the process of moving towards the implementation of quotations with size.

The Exchange believes that an extension of the pilot program would enable specialists to continue to provide fair and orderly markets during peak market activity by manually executing orders at correct market prices and refreshing quotations to reflect market demand.

In addition, the Exchange recognizes that the Commission has inquired into the possibility of re-engaging AUTO–X in less than thirty seconds once the specialist revises the quote. The Exchange's Financial Automation, Legal, and Regulatory staff have begun to review the issue, specifically as to whether it is feasible to re-engage AUTO–X for an entire issue based upon the revision of a quotation in one single series.[12] The Exchange notes that the Commission has informed the Exchange that it would not grant the pilot program permanent approval unless the Exchange addresses this issue. Because the Exchange's proposal to define the disseminated size for options quotations to reflect bids and offers of limit orders on the book has not yet been approved by the Commission, the Exchange proposes to extend the pilot for an additional six months in lieu of seeking permanent approval of the pilot. The Exchange believes that, with the ultimate implementation of the second phase of the dissemination of quotes with size, the Exchange should, over the proposed additional six-month pilot period, be able to more accurately assess its ability to re-engage AUTO–X in an entire class of options upon the revision of a quote in a single option series.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[13] in general, and with Section 6(b)(5) in particular,[14] in that it is designed to perfect the mechanism of a free and open market and a national market system, protect investors and the public interest and promote just and equitable principles of trade by enabling Exchange specialists to maintain fair and orderly markets during periods of peak market activity.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

The Exchange did not receive or solicit any written comments on the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–Phlx–2002–22 and should be submitted by May 29, 2002.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[15] In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act, which requires that the rules of an exchange be designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national securities

[10] Any orders delivered in excess of the minimum AUTO–X guarantee will be executed to the guaranteed amount and the excess will be dropped to the specialist for manual execution. *See* Initial Pilot Program, *supra* note 4.

[11] Currently, the size of any disseminated bid or offer by the Exchange is equal to the AUTO–X guarantee for the quoted option, except that the disseminated size of bids and offers of limit orders on the book is ten contracts and shall be firm regardless of the actual size of such orders. *See* Exchange Options Floor Procedure Advice F–7. The Exchange has established this rule setting forth the size for which its quotes are firm, and periodically publishes that size in accordance with recently amended Rule 11Ac1–1 under the Act ("Quote Rule"), setting forth firm quote requirements for responsible brokers or dealers quoting options. *See* Securities Exchange Act Release No. 44145 (April 2, 2001), 66 FR 18662 (April 10, 2001) (SR–Phlx–01–37). The Exchange represents that the current pilot is designed, in part, to enable the Exchange to roll out the system designed to decrement the disseminated size of Exchange quotes once such system is deployed.

[12] Under Phlx's current pilot program, AUTO–X is programmed to re-engage after thirty seconds, regardless of whether the specialist has updated its quote prior to that period of time.

[13] 15 U.S.C. 78f.

[14] 15 U.S.C. 78f(b)(5).

[15] In approving this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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system, and protect investors and the public interest.[16] The Commission believes that an extension of the pilot program for an additional six months should help the Exchange to prepare for disseminating options quotes with size. In addition, the Commission believes that the proposal may assist specialists in maintaining fair and orderly markets during periods of peak market activity.

The Commission notes that the Exchange is attempting to address its concern regarding the feasibility of re-engaging AUTO–X for a particular issue prior to thirty seconds if the quote has been revised by the specialist before that time period. Consequently, the Commission believes that extending the pilot program for an additional six months should enable the Phlx to further evaluate the effect of disengaging AUTO–X under certain circumstances.

The Commission notes that the Exchange has represented that it will continue to evaluate the pilot program by reviewing specialists' performance, and by monitoring any complaints relating to the pilot program.[17] Furthermore, the Commission notes that the Exchange has represented that it will continue to post on its website a list of options included in the pilot program, as well as issue a circular to this effect to members, member organizations, participants, and participant organizations explaining the pilot program and the circumstances in which the AUTO–X system will not be available for customer orders.[18]

Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Act,[19] for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. The Commission recognizes that during the last six-month extension of the pilot program, the Phlx has received no complaints from customers, floor traders, or member firms. The Commission believes that granting accelerated approval to extend the pilot program for an additional six months will allow Phlx to continue, without interruption, the existing operation of its AUTO–X system.

[16] 15 U.S.C. 78f(b)(5).

[17] Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division of Market Regulation ("Division"), Commission, on April 30, 2002.

[18] *Id.* Phlx also represented that it would include language in its circular clarifying that AUTO–X will not be re-engaged until the expiration of the thirty second period, even after a quote is revised. Telephone conversation between Richard S. Rudolph, Counsel, Phlx, and Sapna C. Patel, Attorney, Division, Commission, on April 30, 2002.

[19] 15 U.S.C. 78s(b)(2).

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[20] that the proposed rule change (SR–Phlx–2002–22), is hereby approved on an accelerated basis, as a six-month pilot, scheduled to expire on November 30, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11392 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

[20] *Id.*

[21] 17 CFR 200.30–3(a)(12).

SELECTIVE SERVICE SYSTEM

Computer Matching Between the Selective Service System and the Department of Education

AGENCY: Selective Service System.

ACTION: Notice.

In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), as amended by the Computer matching and Privacy Protection Act of 1988 (Public Law 100–503), and the Office of Management and Budget (OMB) Guidelines on the Conduct of Matching Programs (54 FR 25818 (June 19, 1989)), and OMB Bulletin 89–22, the following information is provided:

1. Name of participating agencies. The Selective Service System (SSS) and the Department of Education (ED).

2. Purpose of the match. The purpose of this matching program is to ensure that the requirements of Section 12(f) of the Military Selective Service Act [50 U.S.C. App. 462(f)] are met.

3. Authority for conducting the matching program. Computerized access to the Selective Service Registrant Registration Records (SSS 10) enables the U.S. Department of Education to confirm the registration status of applicants for assistance under Title IV of the Higher Education Act of 1965 (HEA), as amended (20 U.S.C. 1070 *et. seq.*). Section 12(f) of the Military Selective Service Act, as amended [50 U.S.C. App. 462(f)], denies eligibility for any form of assistance or benefit under Title IV of the HEA to any person required to present himself and submit to registration under Section 3 of the Military Selective Service Act who fails to do so in accordance with that section and any rules and regulations issued under that section. In addition, the Military Selective Service Act and section 484(n) of the HEA which allows the data match to fulfill the statement requirement specifies that any person required to present himself and submit to registration under Section 3 of the Military Selective Service Act file a statement that he is in compliance with the Military Selective Service Act. Furthermore, Section 12(f)(3) of the Military Selective Service Act authorizes the Secretary of Education, in agreement with the Director of the Selective Service, to prescribe methods for verifying the statements of compliance filed by students.

Section 484(n) of the Higher Education Act of 1965, as amended (20 U.S.C. 1091), requires the Secretary of Education to conduct data base matches with the Selective Service System, using common demographic data elements, to enforce the Selective Service registration provisions of the Military Selective Service Act [50 App. U.S.C. 462(f)], and further states that appropriate confirmation of person's registration shall fulfill the requirement to file a separate statement of compliance.

4. Categories of records and individuals covered.

1. Federal Student Aid Application File (18–11–01). Individuals covered are men born after December 31, 1959, but at least 18 years old by June 30 of the applicable award year.

2. Selective Service Registration Records (SSS 10).

5. Inclusive dates of the matching program. Commence on July 1, 2002 or 40 days after copies of the matching agreement are transmitted simultaneously to the Committee on Governmental Affairs of the Senate, the Committee on Government Operations of the House of Representatives, and the Office of Management and Budget, whichever is later, and remain in effect for eighteen months unless earlier terminated or modified by agreement of the parties.

6. Address for receipt of public comments or inquires. Willie L. Blanding, Jr., Director of Operations, 1515 Wilson Boulevard, Arlington, VA 22209–2425.

Dated: April 30, 2002.

Alfred Rascon,

Director.

[FR Doc. 02–11461 Filed 5–7–02; 8:45 am]

BILLING CODE 8015–01–M

DEPARTMENT OF STATE

[Public Notice 3981]

Notice of Meetings of the United States International Telecommunication Advisory Committee; ITU Council Agenda

The Department of State announces a meeting of the U.S. International Telecommunication Advisory Committee. The purpose of the Committee is to advise the Department on policy and technical issues with respect to the International Telecommunication Union (ITU).

• The ITAC will meet to debrief the just-completed ITU Council meeting from 2 to 4 on May 21, 2002 at the Department of State in room 1408.

Persons intending to attend the meeting should send a fax to (202) 647–7407 not later than 24 hours before the meeting. On this fax, please include the name of the meeting, your name, social security number, date of birth and organization. One of the following valid photo identifications will be required for admittance: U.S. driver's license with your picture on it, U.S. passport, or U.S. Government identification (company ID's are no longer accepted by Diplomatic Security). Directions to the meeting location and on which entrance to use may be determined by calling the ITAC Secretariat at (202) 647–2592 or email to worsleydm@state.gov. Attendees may join in the discussions, subject to the instructions of the Chair. Admission of participants will be limited to seating available.

Daled: April 30, 2002.

Cecily C. Holiday,

Director, Telecommunication Development, Department of State.

[FR Doc. 02–11446 Filed 5–7–02; 8:45 am]

BILLING CODE 4710–45–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

Voluntary Intermodal Sealift Agreement (VISA)

AGENCY: Maritime Administration, DOT.

ACTION: Notice of open season for enrollment in fiscal year (FY) 2003 VISA Program.

Introduction

The VISA program was established pursuant to section 708 of the Defense Production Act of 1950, as amended (DPA), which provides for voluntary agreements for emergency preparedness programs. VISA was approved for a two year term on January 30, 1997, and published in the **Federal Register** on February 13, 1997, (62 FR 6837). Approval was extended through February 13, 2003, and published in the **Federal Register** on February 20, 2001 (66 FR 10938).

As implemented, VISA is open to U.S.-flag vessel operators of militarily useful vessels, including bareboat charter operators if satisfactory signed agreements are in place committing the assets of the owner to the bareboat charterer for purposes of VISA. While tug/barge operators must own or bareboat charter barges committed to the VISA program, it is not required that these operators commit tug service through bareboat charter or ownership arrangements. Time charters of U.S.-flag tugs will satisfy commitments to the VISA program. By order of the Maritime Administrator on August 4, 1997, participation of U.S.-flag deepwater tug/barge operators in VISA was encouraged. Voyage, and space charterers are not considered U.S.-flag vessel operators for purposes of VISA eligibility.

VISA Concept

The mission of VISA is to provide commercial sealift and intermodal shipping services and systems, including vessels, vessel space, intermodal systems and equipment, terminal facilities, and related management services, to the Department of Defense (DOD), as necessary, to meet national defense contingency requirements or national emergencies.

VISA provides for the staged, time-phased availability of participants' shipping services/systems to meet contingency requirements through prenegotiated contracts between the Government and participants. Such arrangements are jointly planned with the Maritime Administration (MARAD), U.S. Transportation Command (USTRANSCOM), and participants in peacetime to allow effective and best valued use of commercial sealift capacity, to provide DOD assured contingency access, and to minimize commercial disruption, whenever possible.

VISA Stages I and II provide for prenegotiated contracts between the DOD and participants to provide sealift capacity to meet all projected DOD contingency requirements. These contracts are executed in accordance with approved DOD contracting methodologies. VISA Stage III will provide for additional capacity to the DOD when Stage I and II commitments or volunteered capacity are insufficient to meet contingency requirements, and adequate shipping services from non-participants are not available through established DOD contracting practices or U.S. Government treaty agreements.

FY 2003 VISA Enrollment Open Season

The purpose of this notice is to invite interested, qualified U.S.-flag vessel operators that are not currently enrolled in the VISA program to participate in the program for FY 2003 (October 1, 2002 through September 30, 2003). Current participants in the VISA program are not required to apply for FY 2003 reenrollment, as VISA participation will be automatically extended for FY 2003. This is the fifth annual enrollment period since the commencement of the VISA program. The annual enrollment was initiated because VISA has been fully integrated into DOD's priority for award of cargo to VISA participants. It is necessary to link the VISA enrollment cycle with DOD's peacetime cargo contracting cycle.

New VISA applicants are required to submit their applications for the FY 2003 VISA program as described in this Notice no later than May 31, 2001. This alignment of VISA enrollment and eligibility for VISA priority will solidify the linkage between commitment of contingency assets by VISA participants and receiving VISA priority consideration for the award of FY 2003 DOD peacetime cargo.

This is the only planned enrollment period for carriers to join VISA and derive benefits for DOD peacetime contracts during FY 2003. The only exception to this open season period for VISA enrollment will be for a non-VISA carrier that reflags a vessel into U.S. registry. That carrier may submit an application to participate in the VISA program at any time upon completion of reflagging.

Advantages of Peacetime Participation

Because enrollment of carriers in VISA provides the DOD with assured access to sealift services during contingencies based on a level of commitment, as well as a mechanism for joint planning, the DOD awards peacetime cargo contracts to VISA participants on a priority basis. This applies to liner trades and charter contracts alike. Award of DOD cargoes to meet DOD peacetime and contingency requirements is made on the basis of the following priorities:

• U.S.-flag vessel capacity operated by VISA participants, and U.S.-flag Vessel Sharing Agreement (VSA) capacity held by VISA participants.

• U.S.-flag vessel capacity operated by non-participants.

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- Combination U.S.-flag/foreign-flag vessel capacity operated by VISA participants, and combination U.S.-flag/foreign-flag VSA capacity held by VISA participants.
- Combination U.S.-flag/foreign-flag vessel capacity operated by non-participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by VISA participants.
- U.S.-owned or operated foreign-flag vessel capacity and VSA capacity held by non-participants.
- Foreign-owned or operated foreign-flag vessel capacity of non-participants.

Participants

Any U.S.-flag vessel operator organized under the laws of a state of the United States, or the District of Columbia, who is able and willing to commit militarily useful sealift assets and assume the related consequential risks of commercial disruption, may be eligible to participate in the VISA program. While vessel brokers and agents play an important role as a conduit to locate and secure appropriate vessels for the carriage of DOD cargo, they may not become participants in the VISA program due to lack of requisite vessel ownership or operation. However, brokers and agents should encourage the carriers they represent to join the program.

Commitment

Any U.S.-flag vessel operator desiring to receive priority consideration in the award of DOD peacetime contracts must commit no less than 50 percent of its total U.S.-flag militarily useful capacity in Stage III of the VISA program. A participant desiring to bid on DOD peacetime contracts will be required to provide commitment levels to meet DOD-established Stages I and/or II minimum percentages of the participant's military useful, oceangoing U.S-flag fleet capacity on an annual basis. The USTRANSCOM and MARAD will coordinate to ensure that the amount of sealift assets committed to Stages I and II will not have an adverse national economic impact. To minimize domestic commercial disruption, participants operating vessels exclusively in the domestic Jones Act trades are not required to commit the capacity of those U.S. domestic trading vessels to VISA Stages I and II. Overall VISA commitment requirements are based on annual enrollment.

In order to protect a U.S.-flag vessel operator's market share during contingency activation, VISA allows participants to join with other vessel operators in Carrier Coordination Agreements (CCA's) to satisfy commercial or DOD requirements. VISA provides a defense against antitrust laws in accordance with the DPA. CCA's must be submitted to MARAD for coordination with the Department of Justice for approval, before they can be utilized.

Compensation

In addition to receiving priority in the award of DOD peacetime cargo, a participant will receive compensation during contingency activation. During enrollment, each participant may choose a compensation methodology which is commensurate with risk and service provided. The compensation methodology selection will be completed with the appropriate DOD agency.

Enrollment

New applicants may enroll by obtaining a VISA application package (Form MA–1020 (OMB Approval No. 2133–0532)) from the Director, Office of Sealift Support, at the address indicated below. Form MA–1020 includes instructions for completing and submitting the application, blank VISA Application forms and a request for information regarding the operations and U.S. citizenship of the applicant company. A copy of the February 20, 2001 VISA will also be provided with the package. This information is needed in order to assist MARAD in making a determination of the applicant's eligibility. An applicant company must be able to provide an affidavit that demonstrates that the company is a citizen of the United States, at least for purposes of vessel documentation, within the meaning of 46 U.S.C., section 12102, and that it owns, or bareboat charters and controls, oceangoing, militarily useful vessel(s) for purposes of committing assets to VISA. As previously mentioned, VISA applicants must return the completed VISA application documents to MARAD not later than May 31, 2002. Once MARAD has reviewed the application and determined VISA eligibility, MARAD will sign the VISA application document which completes the eligibility phase of the VISA enrollment process.

In addition, the applicant will be required to enter into a contingency contract with the DOD. For the FY 2003 VISA open season, and prior to being enrolled in VISA, eligible VISA applicants will be required to execute a joint VISA Enrollment Contract (VEC) with the DOD [Military Traffic Management Command (MTMC) and Military Sealift Command (MSC)] which will specify the participant's Stage III commitment for FY 2003. Once the VEC is completed, the applicant completes the DOD contracting process by executing a Drytime Contingency Contract (DCC) with MSC (for Charter Operators) and/or as applicable, a VISA Contingency Contract (VCC) with MTMC (for Liner Operators). Upon completion of the DOD contingency contract(s), the Maritime Administrator will confirm the participant's enrollment by letter agreement, with a copy to all appropriate parties.

FOR ADDITIONAL INFORMATION AND APPLICATIONS CONTACT: Frances M. Olsen, Chief, Division of Sealift Programs, U.S. Maritime Administration, Room 7307, 400 Seventh Street, SW, Washington, DC 20590. Telephone (202) 366–2323. Fax (202) 493–2180. Other information about the VISA can be found on MARAD's Internet Web Page at *http://www.marad.dot.gov.*

By Order of the Maritime Administrator.
Dated: May 3, 2002.

Murray A. Bloom,
Acting Secretary, Maritime Administration.

[FR Doc. 02–11457 Filed 5–7–02; 8:45 am]
BILLING CODE 4910–81–P

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

[Docket No. 944; ATF O 1130.31]

Delegation of the Director's Authorities in 27 CFR Part 44, Exportation of Tobacco Products and Cigarette Papers and Tubes, Without Payment of Tax, or With Drawback of Tax

To: All Bureau Supervisors

1. *Purpose.* This order delegates certain authorities of the Director to subordinate ATF officials and prescribes the subordinate ATF officials with whom persons file documents which are not ATF forms.

2. *Background.* Under current regulations, the Director has authority to take final action on matters relating to exportation of tobacco products and cigarette papers and tubes, without payment of tax, or with drawback of tax. The Bureau has determined that certain of these authorities should, in the interest of efficiency, be delegated to a lower organizational level.

3. *Cancellation.* ATF O 1100.102A, Delegation Order—Delegation to the Associate Director (Compliance Operations) of Authorities of the Director in 27 CFR part 290, Exportation of Tobacco Products, dated 2/28/84, is canceled.

4. *Delegations.* Under the authority vested in the Director, Bureau of Alcohol, Tobacco and Firearms, by Treasury Department Order No. 120–01 (formerly 221), dated June 6, 1972, and by 26 CFR 301.7701–9, this ATF order delegates certain authorities to take final action prescribed in 27 CFR part 44 to subordinate officials. Also, this ATF order prescribes the subordinate officials with whom applications, notices, and reports required by 27 CFR part 44, which are not ATF forms, are filed. The attached table identifies the regulatory sections, authorities and documents to be filed, and the authorized ATF officials. The authorities in the table may not be redelegated.

5. *Questions.* If you have questions about this order, contact the Regulations Division (202–927–8210).

Bradley A. Buckles,
Director.

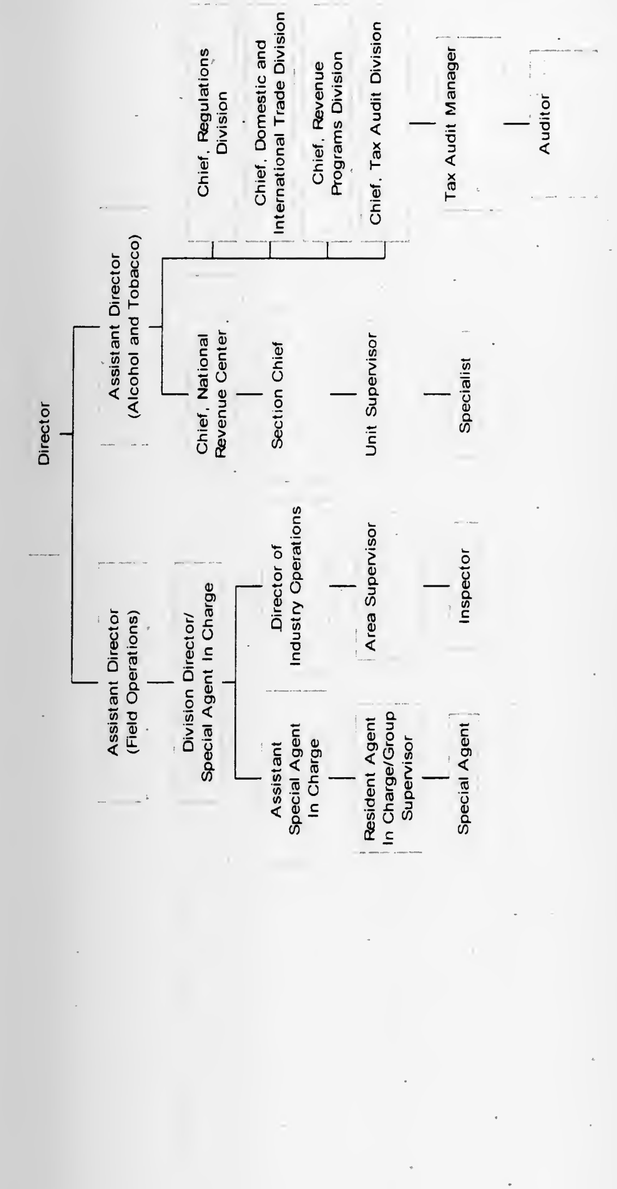
Regulatory section	Officer(s) authorized to act or receive document
§44.2(a)	Chief, Regulations Division, Chief, Domestic and International Trade Division, or Chief, Revenue Programs Division.
§44.35(c)	Inspector, Specialist, Auditor or Special Agent.
§44.62	Area Supervisor.
§44.66	Unit Supervisor, National Revenue Center (NRC).
§44.70	Inspector, Specialist, Auditor or Special Agent.
§44.71	Inspector, Specialist, Auditor or Special Agent.
§44.72	Chief, Regulations Division. If alternate method or procedure does not affect an ATF approved formula, or import or export recordkeeping, Chief, NRC, may act upon the same method or procedure that has been approved by the Chief, Regulations Division.
§44.73	Director of Industry Operations.
§44.83	Unit Supervisor, NRC.
§44.84	Unit Supervisor, NRC.
§44.91	Unit Supervisor, NRC, or Area Supervisor.
§44.92	Specialist, NRC, to cause investigation. Director of Industry Operations to give notice and to deny.
§44.93	Section Chief, NRC, upon recommendation of Area Supervisor, to issue permit. Inspector, Specialist, Auditor or Special Agent to inspect permit.
§44.104	Unit Supervisor, NRC.
§44.105	Unit Supervisor, NRC.
§44.106	Unit Supervisor, NRC.
§44.112	Area Supervisor.
§44.121(b)	Section Chief, NRC.
§44.123	Unit Supervisor, NRC.
§44.124	Unit Supervisor, NRC, or Area Supervisor to require bond. Section Chief, NRC, to approve.
§44.125	Unit Supervisor, NRC, or Area Supervisor to require bond. Section Chief, NRC, to approve request from surety.
§44.127	Section Chief, NRC.
§44.129(a)	Section Chief, NRC.
§44.142(e)	Inspector, Specialist, Auditor or Special Agent.
§44.143(b)	Inspector, Specialist, Auditor or Special Agent.
§44.145	Section Chief, NRC, or Area Supervisor.
§44.147	Inspector, Specialist, Auditor or Special Agent.
§44.150	Section Chief, NRC, or Area Supervisor.
§44.152	Area Supervisor to whom report is made. To act on claim and to notify, Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§44.153	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§44.154	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§44.161	Unit Supervisor, NRC, with whom documents are filed and to terminate bond liability.
§44.162	Director of Industry Operations.
§44.184	Chief, Regulations Division.
§44.199	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§44.200	Unit Supervisor, NRC.
§44.201	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§44.202	Unit Supervisor, NRC.
§44.203	Unit Supervisor, NRC.
§44.204	Unit Supervisor, NRC.
§44.205(b)(3)	Unit Supervisor, NRC.
§44.206	Unit Supervisor, NRC.
§44.207	Unit Supervisor, NRC.
§44.207a	Unit Supervisor, NRC.
§44.208	Unit Supervisor, NRC.
§44.209	Unit Supervisor, NRC.
§44.210	Unit Supervisor, NRC.
§44.212	Unit Supervisor, NRC.
§44.213	Area Supervisor with whom notice is filed and to assign. Inspector, Specialist, Auditor or Special Agent to supervise. Unit Supervisor, NRC, with whom ATF form is filed.
§44.222	Area Supervisor to detail and assign. Inspector, Specialist, Auditor or Special Agent to supervise.
§44.223	Section Chief, NRC, to approve bond. Unit Supervisor, NRC, with whom claim is filed. Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.

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Regulatory section	Officer(s) authorized to act or receive document
§ 44.224	Inspector, Specialist, Auditor or Special Agent.
§ 44.225	Inspector, Specialist, Auditor or Special Agent.
§ 44.226	Unit Supervisor, NRC.
§ 44.227	Unit Supervisor, NRC.
§ 44.228	Unit Supervisor, NRC, with whom certificate is filed.
§ 44.229	Unit Supervisor, NRC, with whom application is filed.
§ 44.230	Unit Supervisor, NRC.
§ 44.231	Unit Supervisor, NRC.
§ 44.232	Unit Supervisor, NRC, for claim of $10,000 or less, Section Chief, NRC, for claim of more than $10,000 but not more than $100,000 or Chief, NRC, for claim of more than $100,000.
§ 44.242	Unit Supervisor, NRC.
§ 44.244	Unit Supervisor, NRC.
§ 44.245	Unit Supervisor, NRC, or Area Supervisor, to require bond. Section Chief, NRC, to approve bond.
§ 44.246	Unit Supervisor, NRC, or Area Supervisor, to require bond. Section Chief, NRC, to approve bond termination.
§ 44.257	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.
§ 44.258	Unit Supervisor, NRC.
§ 44.259	Unit Supervisor, NRC.
§ 44.260	Unit Supervisor, NRC.
§ 44.261	Unit Supervisor, NRC.
§ 44.262	Unit Supervisor, NRC.
§ 44.263	Unit Supervisor, NRC.
§ 44.264	Unit Supervisor, NRC.
§ 44.264a	Unit Supervisor, NRC.
§ 44.265	Unit Supervisor, NRC.
§ 44.266	Inspector, Specialist or Special Agent.
§ 44.267	Unit Supervisor, NRC, with whom form is filed. Inspector, Specialist, Auditor or Special Agent to inspect.

BILLING CODE 4810-31-P

ATF Organization



This is not a complete organizational chart of ATF

[FR Doc. 02-11259 Filed 5-7-02; 8:45 am]

BILLING CODE 4810-31-C

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DEPARTMENT OF THE TREASURY

Community Development Financial Institutions Fund

ACTION: Notice and request for comments.

SUMMARY: The proposed information collection requirement, concerning a study by the Community Development Financial Institutions Fund (the Fund) regarding the need for, and the feasibility of, selling loans made by Community Development Financial Institutions (CDFIs) on a secondary market, will be submitted to the Office of Management and Budget (OMB) for review as required by the Paperwork Reduction Act. The Fund is soliciting public comments on the subject proposal.

DATES: Written and electronic comments on the subject proposal must be submitted to the Fund by July 8, 2002, to be assured of consideration.

ADDRESSES: Interested persons are invited to submit comments regarding the subject proposal. Comments should refer to the proposal by name and should be sent by mail to: Office of Legal Counsel, CDFI Fund, 601 Thirteenth Street, NW, Suite 200, Washington DC 20005; by e-mail to *cdfihelp@cdfi.treas.gov;* or by facsimile at (202) 622–8244. This is not a toll free number.

FOR FURTHER INFORMATION CONTACT: Donna Fabiani, Financial Strategies and Research Unit, CDFI Fund, 601 Thirteenth Street, NW, Suite 200, Washington DC 20005; telephone number 202/622–8575. This is not a toll free number. Copies of the proposed survey form and other available information may be obtained from Ms. Fabiani.

SUPPLEMENTARY INFORMATION: The Fund will submit the proposed information collection to OMB for review, as required by the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35, as amended). This notice is soliciting comments from members of the public and affected organizations concerning the proposed collection of information to: (1) Evaluate whether the proposed collection of information is necessary to proper performance of the functions of the Fund, including whether the information will have practical utility; (2) evaluate the accuracy of the Fund's estimate of the burden of the proposed collection of information; (3) enhance the quality, utility and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

This Notice also lists the following information:

Title of Proposal: Secondary Market Survey of Community Development Financial Institutions.

Description of the need for information and proposed use: The Fund, a wholly owned government corporation within the Department of the Treasury, is conducting, through a contract with Abt Associates Inc., a study of the need for, and feasibility of, developing a secondary market for loans made by CDFIs. A key component of the feasibility study is gathering data, through a survey, on the loans made by CDFIs to determine whether it would be feasible for such loans to be sold in a secondary market and the potential size of this market. It is also crucial to understand the projected capital needs of these institutions to assess whether a secondary market would be beneficial to them. The survey will address both of these issues. The survey will include questions that will enable the Fund to undertake an analysis of the risk characteristics and pricing of CDFI loans to evaluate the potential for sale in a secondary market. The survey will also pose questions about current capital available, projected growth, anticipated capital needs and sources, current and potential use of a secondary market, and characteristics of individual loans. The data gathered through the survey will be used by the Fund to assess the feasibility of developing a secondary market for loans made by CDFIs.

Members of the affected public: Staff from up to 325 CDFIs that have received awards from the Fund through the Core Component of the CDFI Program (an award program administered by the Fund) will be asked to respond to the survey.

Estimation of the total number of hours needed to prepare the information collection including number of respondents, frequency of response, and hours of response: The researchers will administer a one-time mail survey with telephone follow-up to staff from each of the CDFIs to be surveyed. Completing each survey is estimated to take 5 hours, for a total maximum burden hour estimate of 1,625 hours.

Total Estimated Annual Burden Hours: 1,625 (one time).

Status of the proposed information collection: Pending OMB approval.

Authority: The Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35, as amended.

Dated: May 2, 2002.

Tony T. Brown,

Director, Community Development Financial Institutions Fund.

[FR Doc. 02–11351 Filed 5–7–02; 8:45 am]

BILLING CODE 4810–70–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 843

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 843, Claim for Refund and Request for Abatement.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Claim for Refund and Request for Abatement.

OMB Number: 1545–0024.

Form Number: 843.

Abstract: Internal Revenue Code section 6402, 6404, and sections 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, individuals or households, not-for-profit institutions, farms, and state, local or tribal governments.

Estimated Number of Responses: 545,500.

Estimated Time Per Respondent: 1 hr., 33 min.

Estimated Total Annual Burden Hours: 845,525.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11473 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 5713 and Schedules A, B, and C (Form 5713)

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 5713, and Schedules A, B, and C (Form 5713), International Boycott Report.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form and instructions should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: International Boycott Report.

OMB Number: 1545–0216.

Form Number: 5713, and Schedules A, B, and C (Form 5713).

Abstract: Form 5713 and related Schedules A, B, and C are used by any entity that has operations in a "boycotting" country. If that entity cooperates with or participates in an international boycott, it may lose a portion of the following benefits: the foreign tax credit, deferral of income of a controlled foreign corporation, deferral of income of a domestic international sales corporation, or deferral of income of a foreign sales corporation. The IRS uses Form 5713 to determine if any of these benefits should be lost. The information is also used as the basis for a report to the Congress.

Current Actions: There are no changes being made to the forms at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, and individuals.

Estimated Number of Respondents: 3,875.

Estimated Time Per Respondent: 26 hours, 54 minutes.

Estimated Total Annual Burden Hours: 104,236.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11474 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 2678

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort

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to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 2678, Employer Appointment of Agent.

DATES: Written comments should be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the form should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Employer Appointment of Agent.

OMB Number: 1545–0748.

Form Number: 2678.

Abstract: Internal Revenue Code section 3504 authorizes a fiduciary, agent or other person to perform acts of an employer for purposes of employment taxes. Form 2678 is used to empower an agent with the responsibility and liability of collecting and paying the employment taxes including backup withholding and filing the appropriate tax return.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations, not-for-profit institutions, farms and the Federal Government.

Estimated Number of Respondents: 95,200.

Estimated Time Per Respondent: 30 minutes.

Estimated Total Annual Burden Hours: 47,600.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 2, 2002.

Glenn P. Kirkland,

IRS Reports Clearance Officer.

[FR Doc. 02–11475 Filed 5–7–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Research and Development Office

Government-Owned Invention for Licensing

AGENCY: Research and Development Office, VA.

ACTION: Notice of government-owned invention available for licensing.

SUMMARY: The invention listed below by the U.S. Government, as represented by the Department of Veterans Affairs, is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious Commercialization of results of Federally-funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on the invention may be obtained by writing to: Mindy Aisen, MD, Department of Veterans Affairs, Director, Technology Transfer Program, Research and Development Office, 810 Vermont Avenue, NW, Washington, DC 20420; Fax (202) 275–7228; e-mail at *mindy.aisen@mail.va.gov.*

Any request for information should include the number and title for the relevant Invention as indicated below. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20031.

SUPPLEMENTARY INFORMATION: The invention available for licensing is: PCT/US01/11834."Compositions and Methods for Tissue Preservation".

Dated: May 1, 2002.

Anthony J. Principi,

Secretary, Department of Veterans Affairs.

[FR Doc. 02–11447 Filed 5–7–02; 8:45 am]

BILLING CODE 8320–01–M

Federal Register

Wednesday,
May 8, 2002

Part II

Securities and Exchange Commission

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Incorporated To Establish Rules for a Screen-Based Trading System Known as CBOE*direct*; Notice

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45829; File No. SR–CBOE–00–55]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment Nos. 1, 2, and 3 Thereto by the Chicago Board Options Exchange, Incorporated To Establish Rules for a Screen-Based Trading System Known as CBOE*direct*

April 25, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 9, 2000, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. CBOE submitted Amendment Nos. 1, 2, and 3 to the proposal on October 29, 2001; April 2, 2002; and April 19, 2002, respectively.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

CBOE proposes to adopt rules governing its screen-based trading system, known as CBOE*direct*, which will initially be used to trade options only when the open outcry option market is not open. The text of the proposed rule change, as amended, is set forth below. All of the text below would be new CBOE rules; this proposal would not amend or delete any existing CBOE rule.

* * * * *

Chapter XL

Introduction

The rules in Chapters XL (40) through XLIX (49) are applicable only to trading on the Exchange's screen based trading system. Trading of securities on the screen based trading system shall also be subject to the rules in Chapters I through XXVII to the same extent such rules apply to the trading of the products to which those rules apply, in some cases supplemented by the rules in Chapters 40 through 49, except for rules that have been replaced by rule in Chapters 40 through 49 and except where the context otherwise requires. Whenever a rule in Chapters 40 through 49 supplements or, for purposes of trading on the screen based trading system replaces such rules in Chapters I through XXVII, that fact is indicated following the rule in these Chapters 40 through 49. Appendix A to the screen based trading rules lists the rules in Chapters I (1) through XXVII (27) that are applicable to the trading on the screen based trading system. Where appropriate, Appendix A also indicates that a rule in Chapter 1 through 27 has been supplemented by a rule in these screen based trading rules. All references in the rules in Chapters 1 through 27 to the Exchange shall mean SBT System also unless the context dictates otherwise.

* * * * *

Definitions

Rule 40.1

(a) For purposes of the rules governing the use of the Exchange's Screen Based Trading System, any term defined in Article I of the Constitution or in Rule 1.1 and not otherwise defined in Chapters 40 through 49 shall have the meaning assigned to such term in either Article I or in Rule 1.1.

SBT System

(b) "Screen Based Trading System" or "SBT System" means the electronic system administered by the Exchange which performs the functions set out in Exchange rules including controlling, monitoring, and recording trading by members through SBT workstations and trading between members.

Application Program Interface

(c) "Application Program Interface" or "API" means the computer program that allows Traders on their own computers or on CBOE or third-party vendor-supplied workstations to interface with the SBT System.

SBT Book

(d) "SBT Book" means all unexecuted orders, other than spread orders, currently held by the SBT System.

SBT Spread Book

(e) "SBT Spread Book" means all unexecuted spread orders, currently held by the SBT System.

SBT Workstation

(f) "SBT workstation" means a computer connected to the SBT System for the purposes of trading pursuant to the rules in these Chapters 40 through 49.

Trading Official

(g) "Trading Official" means an Exchange employee or member who is granted certain duties under these Rules to take actions affecting either the operation of the SBT System or to take actions affecting the responsibilities of SBT Traders.

SBT Trader

(h) "SBT Trader" means an individual member who or member organization which has the right to trade on the SBT System.

Market Turner

(i) "Market Turner" means an SBT Trader who was the first to enter an order (quote) at a better price than the previous best book price and the order (quote) is continuously in the market until the particular order trades. There may be a Market Turner for each price at which a particular order trades.

Legal Width Market

(j) "Legal Width Market" means a bid and offer for a prescribed size or greater that is at or within the prescribed width as set forth in Rule 44.4. While a legal width market is equivalent to the "maximum quote width" in width, Rule 44.4 requires that an SBT market-maker enter both the bid and offer to receive credit for the quote. A legal width market can be established by a bid and offer that are entered by two different SBT Traders.

Extended Trading Hour Session

(k) "Extended Trading Hour Session" or "ETH Session" is any period of time during which the SBT System is open for trading other than the regular trading hour session for those products traded during the ETH session.

* * * * *

Application of Other Rules

Rule 40.2

(a) To the extent the rules in Chapters I through XXXI are applicable to trading on the SBT System (as indicated by the context or by Appendix A to these Chapters XL through XLIX), the terms used in Chapters I through XXXI should be read to have the following meanings where appropriate:

(1) "Floor" should be read to mean SBT System.

(2) "Floor Official" should be read to mean Trading Official.

(3) "Appropriate Floor Procedure Committee" should be read to mean "appropriate SBT Trading Committee."

(4) "Floor Broker" should be read to mean "SBT Broker."

(5) "Market-Maker" should be read to mean "SBT Market-Maker."

(6) "DPM" should be read to mean "SBT DPM."

(b) References in rules to "the Exchange" should be read to include the SBT System where appropriate.

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Chapter XLI

Market Participants, Market Access and Securities Dealt In

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Market Participants

Rule 41.1

(a) The SBT Traders in the SBT System shall be:

(1) SBT Market-Makers—members who are either SBT Standard Market-Makers, SBT Lead Market-Makers or SBT Designated Primary Market-Makers;

(2) SBT Standard Market-Makers—members who have agreed to fulfill certain market making obligations thus qualifying for defined benefits;

(3) SBT Lead Market-Makers—SBT Standard Market Makers who have a higher level of market-maker obligations and a greater level of benefits for those classes in which they act as SBT Lead Market-Makers. SBT Lead Market-Makers generally act in such capacity on a rotating basis;

(4) SBT Designated Primary Market-Makers—members who are qualified and obligated to fulfill a higher level of market-maker obligations than SBT Standard Market-Makers thus qualifying for a greater level of defined benefits;

(5) SBT Brokers—members who enter orders as agents for accounts other than accounts of SBT Market-Makers;

(6) Proprietary Traders—members who enter orders as principal for non-market-maker proprietary accounts;

(b) Other users of the SBT System are:

(1) Clearing Firm Users—members who monitor and regulate the activities of traders trading through the clearing firm;

(2) SBT System Operators/Administrators—Exchange employees who support the operation of the system.

* * * * *

Registration of Membership

Rule 41.2

Any Exchange member who chooses to participate on the SBT System must apply with the Membership Committee to act as an SBT Market-Maker, SBT Broker, or Proprietary Trader. The Membership Committee shall be responsible for approving applications of Exchange members as an SBT Market-Maker, SBT Broker, or Proprietary Trader for the SBT System.

* * * * *

Communication Access

Rule 41.3

The connection point for any SBT workstation must be in the United States except as otherwise provided for by the Board. The Exchange may limit the locations of any SBT workstations to specified locations or cities if necessary to ensure the operational integrity of the System.

* * * * *

Replacement Traders

Rule 41.4

(a) If the SBT System is so enabled to recognize Replacement Traders, Individual SBT Market-Makers may nominate a Replacement Trader that must be qualified and registered with the Exchange as such. The Membership Committee shall be responsible for qualifying and approving Replacement Traders. Replacement Traders for a nominee of a member firm must be nominees of the same firm or must have their memberships registered for the same firm.

(b) When an SBT Market-Maker logs off the SBT System, he may first choose to transfer his position to a Replacement Trader. Any quotes transferred in that manner will retain their priority.

* * * * *

Chapter XLII

Trading Day and States of Operation

* * * * *

Days and Hours of Business

Rule 42.1

The days and hours of business shall be determined in accordance with the applicable rules for the type of product; *e.g.*, equity options—Rule 6.1, index options—Rule 24.6, etc. The Board of Directors may determine to approve hours of trading and days of operation for categories of products traded on the SBT System that are different than those approved for trading on the Exchange's open outcry system on the Exchange floor.

* * * * *

States of Operation

Rule 42.2

(a) Pre-Opening. Pre-opening is some pre-determined period of time (as described in Rule 42.3), as determined by the Exchange, prior to the opening during which the SBT System will accept orders and quotes, but during which no trading will take place.

(b) Opening. During the Opening State, the System will accept orders and quotes for some period of time (as described in Rule 42.3) as determined by the Exchange. At the end of that period of time, quotes and orders will be accepted for some period of time (but will not be included in the opening trade). During this time, the length of which is determined by the Exchange, opening prices are established. At the end of the Opening State, the System will complete the opening trades, if any, and then change the state of the class to Trading.

(c) Trading. During Trading, the series will trade freely and orders and quotes will be accepted.

(d) Trading Halts. During Trading Halts as declared in accordance with Rule 43.4(b), orders are accepted by the System. The class will have to go through the pre-opening and opening procedures before it reverts to the state of Trading.

(e) Closed. The System changes the state to Closed at a predetermined time dependent on the closing time of the underlying security. Trading is stopped but the System continues to accept certain types of orders to allow SBT Traders to maintain their orders. At some designated time the System stops accepting orders and performs end-of-day procedures as described in Rule 42.4.

* * * * *

Opening and Closing Rotation Procedures

Rule 42.3

(a) For some period of time before the opening (as determined by the Exchange) in the underlying security, the SBT System will accept orders and quotes. Spread orders and contingency orders (except "opening only" orders) do not participate in the opening. The SBT System will disseminate information about resting orders in the SBT Book that remain from the prior business day and any orders sent in before the opening. After the primary market for the underlying security disseminates the opening trade or the

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letters from Angelo Evangelou, Legal Division, CBOE, to Nancy Sanow, Division of Market Regulation ("Division"), Commission, dated October 25, 2001 ("Amendment No. 1"); April 1, 2002 ("Amendment No. 2"); and April 18, 2002 ("Amendment No. 3"). In Amendment No. 1, CBOE substantially revised the proposed rule change; the proposed rule text and description of the proposal submitted as part of Amendment No. 1 supercedes those provisions of the original submission. In Amendment No. 2, CBOE substantially revised its proposed trade nullification rule for CBOE*direct*. In Amendment No. 3, CBOE further modified the proposed trade nullification rule.

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opening quote for the underlying security, the SBT System sends a notice to SBT Market-Makers with an appointment in that class of options who may then submit their opening quotes. If there is an SBT Designated Primary Market-Maker ("SBT DPM") or an SBT Lead Market-Maker ("SBT LMM") in the particular option class, the SBT DPM or SBT LMM must enter opening quotes. Standard SBT Market-Makers may but are not required to enter an opening quote unless required by the procedure described in paragraph (b) below. The SBT System will begin the Opening Procedure at a randomly selected time within a number of seconds after the receipt of the underlying security's opening price. In the case of trading during an ETH session, the System may open the class without having received the underlying security's opening price. Spread orders and contingency orders do not participate in the opening trade or in the determination of the opening price.

(b)(1) For series that have no SBT Market-Makers with appointments logged on to the System and no SBT Market-Makers without appointments providing pre-opening quotes, the System will issue an alert message to the Help Desk at a prescribed time before the open. The Help Desk may contact SBT Market-Makers with an appointment to request that the Market-Makers log on and prepare to quote any series in the class. If a sufficient number of SBT Market-Makers can not be encouraged to log on, then the Help Desk may have the Opening Notice sent to some or all other SBT Market-Makers logged on to the System. A Special Request for Quote, which may be sent to the SBT Market-Makers with an appointment, is an RFQ that will require a response.

(2) For series where SBT Market-Makers have logged on but have not responded to the Opening Notice, and where no non-appointed SBT Market-Makers have provided pre-opening quotes, the System will send an alert message to the Help Desk and a Special RFQ to those SBT Market-Makers with an appointment.

(c) From some time after the Opening Notice is sent, the SBT System will calculate and provide the Expected Opening Price ("EOP") given the current resting orders during an EOP Period. The EOP Period shall be a time established by the appropriate SBT Trading Committee and shall be no less than five seconds and no more than one minute. The EOP is that price at which the greatest number of orders in the SBT Book would be traded. The EOP will be re-calculated and disseminated every few seconds. During this time after the Opening Notice is sent, quotes and orders may be submitted without restriction. An EOP can only be calculated if an opening trade is possible. An opening trade is possible if: (i) the SBT Book is crossed (highest bid is higher than the lowest offer), locked (highest bid equals lowest offer), or there are market orders in the SBT Book, and (ii) at least one quote is present that is at or within the legal width market and of the prescribed minimum size as set forth in Rule 44.4.

(d) After the EOP Period, the System will enter a Lock Interval during which quotes and orders may be submitted but they are not included in the opening trade. The Lock Interval shall be a period of time not to exceed four seconds. The SBT System will establish the opening price at this time during its Opening Procedure. The System will process the series of a class in a random order. The opening price of a series is the "market-clearing" price which will leave bids and offers which cannot trade with each other. In determining the priority of orders to be filled, the SBT System will give priority to market orders first, then to limit orders whose price is better than the opening price and entered before the Lock Interval, and then to resting orders at the opening price and entered before the Lock Interval. One or more series of a class may not open because of conditions cited in paragraph (f) of this Rule. Orders entered during the Lock Interval will be eligible to be traded (according to the time priority in which they were entered) after the System enters the Trading State.

(e) As the opening price is determined by series, the System will change the product state of the series to Trading, and disseminate to OPRA and to the SBT participants the opening quote and the opening trade price, if any. Quotes and orders entered during the Lock Interval will then be submitted to the SBT Book in the order of their arrival.

(f) The System will not open a series if one of the following conditions is met:

(1) There is no quote from any SBT Market-Maker that provides a legal width market;

(2) The opening price is not within an acceptable range (as determined by the appropriate SBT Trading Committee) compared to the highest quote offer and the lowest quote bid (*e.g.*, the upper boundary of the acceptable range may be 125% of the highest quote offer and the lower boundary may be 75% of the lowest quote bid); or

(3) The opening trade would leave a market order imbalance (*i.e.*, there are more market orders to buy or to sell for the particular series than can be satisfied by the limit orders and the market orders on the opposite side).

(g) If one of the conditions in paragraph (f) of this Rule is met, the System will not open the series but will send a Request for Quote ("RFQ") with no size, except when the condition in (f)(3) is met. In this case, the RFQ will include a size equal to the market order imbalance and the direction (buy or sell) of the imbalance. At the end of the RFQ period, the System will put the series into Opening Rotation. The System will repeat this process until the series is open.

(h) Two Trading Officials may deviate from the standard manner of the opening procedure, including delaying the opening in any option class, when they believe it is necessary in the interests of a fair and orderly market.

(i) The procedure described in this Rule may be used to reopen a class after a trading halt.

(j) Closing Rotation Procedure. The procedure described in this Rule may be employed after the end of the normal close of any trading session whenever the Exchange concludes that such action is appropriate in the interests of a fair and orderly market. The factors that may be considered in holding a closing rotation procedure include, but are not limited to, whether there has been a recent opening or reopening of trading in the underlying security, a declaration of a fast market, or a need for a closing procedure in connection with expiring individual stock options, an end of the year procedure, or the restart of a procedure which is already in progress. The decision to employ a closing rotation procedure in non-expiring options shall be disseminated prior to the commencement of such procedure.

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End of Day/Session Process

Rule 42.4

The System will automatically delete expiring orders (*i.e.*, day orders and session orders) and expiring GTC (Good-'til-Canceled) orders after the close. If an option class is traded on both the SBT System during an Extended Trading Hours session and also on the Exchange during different trading hours then orders eligible to be traded in the next or a future session may be passed by the System from one book to the next appropriate book, *e.g.*, orders may be passed from the SBT Book to the regular book or from the regular book to the SBT Book as appropriate.

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Chapter XLIII

Trading Rules and Processing of Orders

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Matching Algorithm/Priority

Rule 43.1

(a) *Generally.* The appropriate SBT Trading Committee will determine to apply, for each class of options, one of the following rules of trading priority. The Exchange will issue a Regulatory Circular periodically which will specify which priority rules will govern which classes of options any time the appropriate Committee changes the priority.

(1) *Price-Time Priority.* Under this method, resting orders in the book are prioritized according to price and time. If there are two or more orders at the best price then priority is afforded among these orders in the order in which they were received by the SBT System.

(2) *Combined Price-Time and Size Priority.* Under this method, resting orders in the book are prioritized according to price. If there are two or more orders at the best price then trades are allocated proportionally according to size (in a pro rata fashion). The executable quantity is allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there are two market participants that both are entitled to an additional ½ contract and there is only one contract remaining to be distributed, the additional contract will be distributed to the market participant whose quote or order has time priority.

(b) *Additional Priority Overlays.* In addition to the base allocation methodologies set forth above, the appropriate SBT Trading Committee may determine to apply, on a class-by-class basis, any or all of the following designated market participant overlay priorities in a sequence determined by the appropriate SBT Trading Committee. The Exchange will issue a Regulatory Circular periodically which will specify which classes of options are subject to these additional priorities as well as any time the appropriate SBT Trading Committee changes these priorities.

(1) *Public Customer.* When this priority overlay is in effect and no other priority overlays are in effect, the highest bid and lowest offer shall have priority except that public customer orders shall have priority over non-public customer orders at the same price. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In either case, if there are two or more public customer orders for the same options series at the same price, priority shall be afforded to such public customer orders in the sequence in which they are received by the System, even if the Combined Price-Time and Size Priority allocation method is the chosen allocation method.

(2) *Market Turner.* When this priority overlay is in effect and no other priority overlays are in effect, the Market Turner has priority at the highest bid or lowest offer that he established. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In either case, the Market Turner priority at a given price remains with the order once it is earned. For example, if the market moves in the same direction as the direction in which the order from the Market Turner moved the market, and then the market moves back to the Market Turner's original price, then the Market Turner retains priority at the original price.

(3) *Trade Participation Right.* SBT Designated Primary Market-Makers or SBT Lead Market-Makers may be granted trade participation rights pursuant to the provisions of Chapter 44 that will provide for priority over non-public customer and/or customer orders up to the applicable participation right percentage designated pursuant to the provisions of Chapter 44. If other priority overlays are also in effect, priority is established in the sequence designated by the appropriate SBT Trading Committee. In allocating the participation right, all of the following shall apply:

(i) To be entitled to their participation right, a DPM's/LMM's order and/or quote must be at the best price.

(ii) A DPM/LMM may not be allocated a total quantity greater than the quantity that the DPM/LMM is quoting (including orders not part of quotes) at that price. Additionally, a DPM/LMM may not be allocated a total quantity that represents a greater percentage than the DPM's/LMM's percentage of the total size at the best price before the participation right was applied.

(iii) If the trade participation right priority and the Market Turner priority are both in effect and the DPM/LMM is the Market Turner, the Market Turner priority will not be applicable.

(iv) In establishing the counterparties to a particular trade, the DPM's/LMM's participation right must first be counted against the DPM's/LMM's highest priority bids or offers.

(c) *Contingency Orders.* Regardless of the allocation method in place, contingency orders are placed last in priority order, regardless of when they were entered into the SBT System. A contingency order that was entered before a limit order for the same series at the same price will be treated as if it were entered after the limit order. If customer priority is afforded to a particular option class, customer contingency orders will have priority over non-public customer contingency orders but behind all other orders.

(d) *Spread Orders.* Spread orders will not be afforded priority according to this Rule 43.1 but will be handled as provided in Rule 43.10.

(e) *Regenerated Quotes.* Notwithstanding anything to the contrary in this Rule, if a Market-Maker has the SBT System regenerate his quote in accordance with Rule 44.5(b) after the Market-Maker's bid or offer has been filled, then that portion of the regenerated quote equal to the original size executed against that Market-Maker's bid or offer takes priority over all other orders at the regenerated price except public customer orders, if public customer priority is applicable to that class of options. The portion of the regenerated quote that is not executed will be placed in a priority position consistent with the time the quote was regenerated.

(f) *Cancel/Replace Orders.* Depending on how a quote or order is modified the quote or order may change priority position as follows:

(1) If the price is changed, the changed side loses position and is placed in a priority position behind all orders of the same type (*i.e.*, customer or non-customer) at the same price.

(2) If one side's quantity is changed, the unchanged side retains its priority position.

(3) If the quantity of one side is decreased, that side retains its priority position.

(4) If the quantity of one side is increased, that side loses its priority position and is placed behind all orders of the same type at the same price.

(g) *Priority of Market Orders and Limit Orders.* As further described in the Rules governing the execution of market orders and limit orders, market orders generally have execution priority over limit orders. However, if there is not a legal width market available when a market order is entered, an RFQ will be sent for the market order. During the pendency of the RFQ process, a limit order may be executed ahead of the market order if an order is entered on the other side of the market which satisfies the order's limit before any of

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the conditions are satisfied that would allow the market order to trade.

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Types of Orders Handled

Rule 43.2

(a) At the discretion of the appropriate SBT Trading Committee, and once the System is so enabled, any of the following types of orders may be accommodated on the SBT System:

(1) *Market Order.* A market order is an order to buy or sell a stated number of option contracts at the best price available in the market.

(2) *Limit order.* A limit order is an order to buy or sell a stated number of option contracts at a specified price, or better.

(3) *Cancel order.* A cancel order is an order that cancels partially or fully an existing buy or sell order.

(4) *Cancel Replace Order.* A cancel replace order is an order to cancel fully an existing buy or sell order and replace it with a new order that has a different quantity or a different price.

(5) *Day order.* A day order is an order that remains in the SBT Book until it either trades or expires at the end of the day it was entered. The System may recognize different types of day orders as indicated in Rule 43.3.

(6) *Good-for-Session order.* A Good-for-Session order remains in either the SBT Book or the auction market book until it either trades or expires at the end of the SBT Trading session or the auction market session, as appropriate. (See interpretations to Rule 43.3).

(7) *Good-'til-Canceled order.* A Good-'til-Canceled order remains in the SBT Book until either it trades, is withdrawn by the submitting trader or his firm, or the option expires. The System may recognize different types of Good-'til-Canceled orders as indicated in Rule 43.3.

(8) *Spread order.* A spread order is an order accommodated by the SBT System and as defined in the rule governing the execution of spread orders.

(9) *Contingency order.* A contingency order is a limit or market order to buy or sell that is contingent upon a condition being satisfied while the order is held in the Book for execution.

(A) *Opening Only.* An Opening Only order may be a market order or a limit order that may be accepted when the System is in the Pre-Opening, Trading Halt, and Closed States. An opening only order either will be executed on the opening or canceled.

(B) *All or None.* An all or none order is an order which is to be executed in its entirety at its limit price.

(C) *Fill-or-Kill Order.* A fill-or-kill order is an order which is to be executed in its entirety within a short period of time after its receipt. If the order is not so executed, it is canceled.

(D) *Immediate-or-Cancel Order.* An immediate-or-cancel order is a market or limit order which is to be executed in whole or in part within a short period of time after it is received by the SBT System. Any portion not so executed is to be treated as canceled.

(E) *Minimum Volume Order.* A minimum volume order is an order where the fill should at least equal the minimum volume specified, which is an amount less than the total volume of the order.

(F) *Stop (stop-loss) Order.* A stop order is an order to buy or sell when the market for a particular option contract reaches a specified price. A stop order to buy becomes a market order when the option contract trades or is bid at or above the stop price. A stop order to sell becomes a market order when the option contract trades or is offered at or below the stop price.

(G) *Stop-limit Order.* A stop-limit order is an order to buy or sell when the market for a particular option contract reaches a specified price. A stop-limit order to buy becomes a limit order when the option contract trades or is bid at or above the stop-limit price. A stop-limit order to sell becomes a limit order when the option contract trades or is offered at or below the stop-limit price.

(H) *Market-on-close Order.* A market-on-close order is a market or limit order that is to be executed during some defined period of time prior to the close and should be filled at or near to the Closing price for the particular series of option.

(10) Any other order type that the Exchange decides to permit to be entered on the SBT System.

(b) The appropriate SBT Trading Committee may determine to provide for only certain of these order types to be available during an extended trading hour session, even if these order types are available during regular trading hours. For example, the appropriate SBT Trading Committee may determine not to allow for the entry of market orders during an extended trading hour session.

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Order Types Accepted at Various Product States

Rule 43.3

(a) The appropriate SBT Trading Committee shall determine which order types may be accepted at various product states and session states.

(b) Once the System is enabled to receive such categories of day and good 'til canceled ("GTC") orders, customers may specify that their day orders or GTC orders are to be transferred between one trading session and the next and may determine to have the orders represented only during ETH sessions or only during auction market sessions or both. The customer may specify his preferences for the representation of his order by using codes published by the Exchange for that purpose.

* * * *Interpretations and Policies:*

.01 The Exchange will provide for the following "time in force" codes for orders entered over the Exchange's interface: (1) DAA—this indicates the order is to be represented only in the AM ETH session; (2) DAY—this indicates the order is to be represented only during the current Regular Trading Hour ("RTH") session; and (3) GTC—this indicates the order is to be represented in all RTH sessions until it is traded, canceled or expired.

.02 Once the System is so enabled to recognize such codes, the Exchange will provide for the following for orders entered over the Exchange's interface: (1) DAP—this indicates the order is to be represented only in the PM ETH session; (2) DAX—this indicates the order is to be represented during all sessions during the current trading day; and (3) GTX—this indicates the order is to be represented during all sessions until it is traded, canceled, or expired.

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Unusual Market Conditions

Rule 43.4

(a) *Fast Markets.* A fast market may be declared by (A) the SBT System automatically or (B) by two Trading Officials whenever in the judgment of those Trading Officials, due to an influx of orders or other conditions or circumstances, the interest of maintaining a fair and orderly market so requires. A "fast market" may be declared in one or more option classes or for the SBT System in its entirety. Once a fast market has been declared either by the SBT System or by Trading Officials, a systemwide notification message will be sent. When Trading Officials declares a fast market or when the SBT System declares a fast market, two Trading Officials may take any action the Trading Officials deem necessary to maintain a fair and orderly market including changing the bid-ask width requirement as set forth in Rule 44.4.

(1) *SBT System Declaration.* The SBT System may declare a fast market for a class or classes when the System has lost an underlying security feed, *e.g.*, SIAC or Nasdaq feed. Regular trading conditions may be resumed when the underlying security feed has been restored or whenever a Trading Official believes that such action is warranted.

(2) *Trading Official Declaration.* In declaring a fast market, among the conditions which the Trading Officials may consider are loss of an underlying security feed, impending news, increases in trading volume that has the capability to interfere with the operation of the System, increase in volatility that has the capability to interfere with the operation of the System, and for any other reason to maintain a fair and orderly market. Regular trading conditions may be resumed whenever two Trading Officials believe that such action is warranted.

(b) *Trading Halts.* A trading halt may be declared (A) automatically by the SBT System or (B) by two Trading Officials whenever the conditions, in the Trading Officials' judgment, can not be managed by means available through the operation of paragraph (a) of this Rule.

(1) *SBT System Declaration.* With respect to stock options, the SBT System may declare a trading halt, when a trading halt has been declared for the underlying security in the primary market. When the SBT System is operated during Extended Trading Hours, there may not be a primary market trading the underlying security. In such cases, the SBT System may or may not declare a trading halt if the underlying security has been halted on one or more of the markets trading the underlying security. The appropriate SBT Trading Committee will determine in advance from time to time whether to have the system automatically halt trading on the options if the trading in the underlying has been halted in a market trading the underlying during an ETH session.

(2) *Trading Official Declaration.*

(A) With respect to options on equity securities, two Trading Officials may declare a trading halt for any of the following reasons:

(i) There was no last sale and/or quotation dissemination by the Exchange or by OPRA;

(ii) The primary market halts trading in one or more stocks for regulatory reasons;

(iii) The primary market halts trading in one or more stocks for non-regulatory reasons;

(iv) The primary market halts trading floor-wide;

(v) The primary market is open but is unable to disseminate last sale or quotation information;

(vi) Dissemination of news after or near to the close of trading in the primary market;

(vii) Opening of the underlying security has been delayed because of unusual circumstances;

(viii) Loss of the underlying security feed, *e.g.*, SIAC or NASDAQ feed;

(ix) SBT System or CBOE systems failure;

(x) Opening has not been completed or other factors affect the status of the opening;

(xi) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(B) With respect to index options, two Trading Officials may declare a trading halt for any of the following reasons:

(i) Activation of price limits on future exchanges;

(ii) One or some of the stocks underlying the index is/are not trading;

(iii) The current calculation of the index derived from the current market prices of the stocks is not available;

(iv) The opening has not been completed or other factors affect the status of the opening;

(v) Other unusual conditions or circumstances detrimental to the maintenance of a fair and orderly market are present.

(C) With respect to any class of products not specified above, two Trading Officials may declare a trading halt for any unusual conditions or circumstances that the Trading Officials deem to be detrimental to the maintenance of a fair and orderly market.

(3) *Resumption of Trading.* Whenever trading has been halted, whether by the system or by the action of Trading Officials, trading may be resumed whenever two Trading Officials determine that a fair and orderly market may be maintained.

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Trade Nullification Procedures

Rule 43.5

(a) *Negotiated Trade Nullification.* A trade on the SBT System may be nullified if the parties to the trade agree to the nullification. Negotiation may be conducted through the SBT System's messaging facility that would allow a trade party to exchange messages with his contra-parties in a particular trade. The SBT System will preserve the anonymity of the parties although a party may voluntarily disclose his identity to the other parties. When all parties to a trade have agreed to a trade nullification, one party must contact the Help Desk which will confirm the agreement and perform the following procedure:

(1) Nullify the trade in the matched trade system;

(2) notify all parties involved;

(3) disseminate cancellation information in prescribed OPRA format; and

(4) reestablish order(s) and their respective priorities in the SBT Book on a best efforts basis.

(b) *Mandated Trade Nullification.* An SBT Trader may have a trade nullified by two Trading Officials if: (i) a documented request is made within five minutes of execution or, if the request is on behalf of a public customer order, within fifteen minutes of execution; and (ii) the trade resulted from: (A) a disruption or malfunction of an Exchange execution, dissemination, or communication system; (B) an erroneous print disseminated by the underlying market which is later cancelled or corrected by that underlying market; or (C) an erroneous quote in the Primary Market (as defined in Rule 1.1) for the underlying security as defined below.

For purposes of this Rule, an erroneous quote in the Primary Market for an underlying security is a quote that has a width of at least $1.00 and has a width at least five times greater than the average quote width for such underlying security during the time period encompassing two minutes before and after the dissemination of such quote. The average quote width shall be determined by adding the quote widths of each separate quote during the four minute time period referenced above (excluding the quote in question) and dividing by the number of quotes during such time period (excluding the quote in question).

Upon the nullification of a trade, the Help Desk will perform the following procedure:

(1) Notify all parties involved;

(2) disseminate cancellation information in prescribed OPRA format; and

(3) reestablish order(s) and their respective priorities in the SBT Book on a best efforts basis.

Nothing in this Rule should be construed to prohibit the contra-party of the trade (*i.e.*, that party who traded against the party that initiated the nullification) to seek to recover any loss incurred due to a change in the price in the underlying during the period from the trade to a reasonable amount of time (for unwinding the transaction) after the nullification notification. The recovery of any loss may be sought by any legal means including arbitration.

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(c) *Reinstatement of Orders in a Nullified Trade.* All orders that were executed in a nullified trade will be reinstated along with their original entry time and price except for the following:

(1) An order of a party requesting a nullification;

(2) a market order;

(3) an order that was originally one side of a quote;

(4) a contingency order; and

(5) an order of a party who does not want the order to be reinstated.

A reinstated order is treated like any incoming order except it retains its original order entry time. If the reinstated order is the first in time priority, the order will receive market turner priority. If there is a market turner order at the same price level with lower time priority, that other order loses its market turner priority.

(d) *Spread Orders.* If so enabled, the System will provide for the possibility of nullifying trades of spread orders.

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Order Entry and Maintenance

Rule 43.6

(a) *Spread Order Entry.* Once the SBT System is so enabled, Traders will have the ability to enter spread orders whose legs are options of the same underlying security.

(b) *Order Maintenance.* A Trader may display the status of his working or active orders (submitted to the SBT Book and SBT Spread Book, if applicable). A Trader may keep orders in the System that are inactive and may activate them when desired. A Trader may update (cancel/replace) the order; cancel the order or a group of orders; or activate or inactivate an order or a group of orders. When a Trader logs off the SBT System his orders will remain on the SBT Book or SBT Spread Book, if applicable.

(c) *Limitations on Orders.* Order providers (SBT Brokers and Proprietary Traders) will be prohibited from entering limit orders in the same options series, for the accounts or accounts of the same or related beneficial owners, in such a manner that the Order Provider or the beneficial owner(s) effectively is operating as a Market-Maker by holding itself out as willing to buy and sell options contracts on a regular or continuous basis. In determining whether an Order Provider or beneficial owner effectively is operating as a Market-Maker, the Exchange will consider, among other things: the simultaneous or near-simultaneous entry of limit orders to buy and sell the same option series during the same day; the multiple acquisition and liquidation of positions in the same option series during the same day; and the entry of multiple limit orders at different prices in the same options series.

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Market Order Processing

Rule 43.7

(a)(1) If a legal width market exists for a particular option, even if established by a pair of unrelated bids and offers for a size less than required of SBT Market-Makers to meet their quote requirement, the SBT System will match market orders against orders at the best price in the Book and against the other orders behind the best price at varying prices until the order is fully executed or until a legal width market no longer exists.

(2) If there is not a legal width market when the order is entered in the System or if any portion of the market order is not executed because there is no longer a legal width market, then the System will hold the order (or any remaining portion of the order) in queue, send a Request for Quote ("RFQ") to SBT Market-Makers currently providing quotes in the class (which will be handled as described in paragraph (a)(3) below), and send a notice to the originator of the order about the order status.

(3) An RFQ sent pursuant to paragraph (a)(2) will include the market order quantity, but not whether the order is a buy or a sell. RFQ responses will be sent to the SBT Book. Once the responses are sent to the SBT Book the orders may trade with resting orders unless the market order trades against that order first when one of the below conditions are met. The market order will be executed if any one of the following conditions becomes true:

(A) During the RFQ expiration response time, if the best quote width (*i.e.*, the spread between the best bid and offer) becomes a certain prescribed percentage (*e.g.*, 75%)—as set by the appropriate SBT Trading Committee—of the legal width market, the System will execute the market order against the quote and any other eligible booked order (*i.e.*, an order on the book with a limit price that allows that order to trade against the market order) until the order is filled or the legal width market no longer exists. If there is volume remaining in the market order, the System will hold the market order in queue again, send another RFQ, and send a notice to the originator about the order status.

(B)(i) If the System receives a limit order on the same side of the market as the market order that could match the best bid or offer and at least one legal width quote has been received, then the System will execute the market order against the best bid/offer. If there is no legal width quote then the limit order that is entered is filled ahead of the market order.

(ii) If one or more incoming RFQ responses could execute against a market order as well as any limit orders that are already on the book ("older limit orders") at a particular price, then:

(aa) If the incoming RFQ response(s) is (are) of large enough quantity to fill all the older limit orders and the market order, then all those orders will be filled at the price of the older limit orders.

(bb) If the incoming RFQ response(s) is (are) not large enough to fill the market order and all the older limit orders, the market order will be executed at the minimum price interval (*i.e.*, the minimum price differential which may exist between two orders) ahead of the older limit orders.

(C) When a certain prescribed percentage of the market-makers currently providing quotes in the class (the percentage to be set by the appropriate SBT Trading Committee) (*e.g.*, 50%) have responded to the RFQ with legal width markets or when the RFQ period expires and there is at least one quote response, the System will execute the market order against orders in the SBT Book. A response will count toward the percentage requirement even if the quotes are traded against orders in the book before all orders that constitute the percentage requirement have been received. If there is volume remaining in the market order, the System will hold the order in queue and repeat the RFQ cycle again. The System will also send a notice to the originator of the order status and give him the option to cancel the order.

(4) When a market order can be executed under the conditions cited in sub-paragraphs (3)(A) through (C) above and there is one or more market orders on the opposite side, the System will cross the market orders at a price as determined as follows:

(A) At the middle of the best bid-offer in the Book if the middle price is a legal price; or

(B) If the middle price is not a legal price, at the next legal price from the middle that is closer to the last trade price of the series.

(C) For purposes of this sub-paragraph (a)(4), "legal price" means a price that may be entered on the SBT System.

(b) If the RFQ period expires and there is no RFQ response, the System will continue to hold the market order, repeat the RFQ cycle, send a notice to the originator of the order, and send an alert message to the Help Desk so that the Help Desk may solicit quotes from the market-makers. The Help Desk may require a response from the Market-Makers.

(c) If a market order for a certain series becomes subject to an RFQ as described in paragraph (a) above, then subsequent market orders for the same series and side are queued to ensure that these incoming market orders are processed in time sequence. Market orders for the same series but opposite side would be processed normally. Other orders that are not market orders would be routed to the SBT Book.

(d) *Trading Halts.* When trading is halted in the series while a market order is on hold waiting for RFQ responses, the SBT System will do the following: If the market order is a GTC order, the System will hold and execute it at the next opening, in the same day or the next day. If it is a day order, the System executes it at re-opening if trading resumes for the same day. If trading does not resume, the System purges it as part of the end-of-day procedure for purging day orders.

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Processing of Limit Orders

Rule 43.8

Until the System is enabled to provide price protection as set forth in Rule 43.8A, after the opening, upon being entered into the SBT System, limit orders will be matched against the best prices available in the SBT Book under the priority rules set forth in Rule 43.1. If there are no orders in the SBT Book that match the limit order when it is entered, the limit order will be held and displayed in the SBT Book and may be traded against later submitted orders.

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Price Protection of Limit Orders

Rule 43.8A

(a) When the System is so enabled, and to the extent that the appropriate SBT Trading Committee has determined to apply the protection to the particular options class, the System will protect a limit order by automatically executing it against the best bid/ask only if one or both of the following conditions is met:

(1) A legal width market exists for that series; or

(2) The limit price on the order is between the bid of the series with the same expiration month and one strike price lower and the offer of the series with the same expiration month and one strike price higher and a legal width market exists for both of these series.

(b) If a limit order can execute against the best bid/ask and neither of the conditions set forth in paragraph (a)(1) or (a)(2) is met, the System puts the order in queue and sends an RFQ. The RFQ will include the order quantity but not whether the order is a buy or sell. Quote responses are exposed in the SBT Book as they are received. The SBT Trader whose link to the SBT System is through the API and who has submitted the limit order may override the RFQ and determine to enter the limit order into the SBT Book.

(c) If the limit order's price prevents it from matching with the best bid/ask, the System will place the order in the Book in its appropriate priority position.

(d) If the submitting SBT Trader does not override the RFQ pursuant to paragraph (b), the System will execute the limit order after one of the following conditions becomes true:

(1) During the RFQ response time, if the best quote width becomes a certain prescribed percentage (*e.g.*, 75%)—as set by the appropriate SBT Trading Committee—of a legal width market, the System shall execute the limit order against the quote and any other eligible Booked order. If there is volume remaining in the limit order, the System will hold the limit order in the SBT Book and send a notice to the originator about the order status.

(2) If an incoming market or limit order is received (independent of the RFQ responses) on the opposite side that would match the original limit order and if a legal width market exists for the series, then the System will match the limit order with the best bid/ask. If there is volume remaining in the limit order, the System will hold the limit order in the SBT Book.

(3) When a certain prescribed percentage of the SBT Market-Makers currently providing quotes in that class (the percentage to be set by the appropriate SBT Trading Committee), have responded to the RFQ or when the RFQ period expires and there is at least one quote response, the System will execute the limit order against the SBT Book. If there is volume remaining in the limit order, the System will hold it in the SBT Book. The System will also send a notice to the originator of the order status and give him the option to cancel the order.

(e) If a limit order for a certain series is queued, subsequent limit orders for the same series and side are queued behind the first one to ensure that they are processed in time sequence. Market orders for the same series and side also will be queued. If a legal width market remains upon completion of the limit order processing the market order will be executed against orders resting in the Book. If there is not a legal width market, market order processing will begin in accordance with Rule 43.7.

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Processing of Contingency Orders

Rule 43.9

Contingency orders will be handled by the SBT System as described below. As described in Rule 43.2, for purposes of determining priority, a contingency order that is entered before a limit order with no contingency at the same price and for the same series will nonetheless be treated as if it were entered after the limit order. The SBT System will notify the originator of the order if the contingency order expires or is canceled. Contingency orders except Immediate or Cancel orders will not be disseminated as part of the best bid/ask to OPRA. The SBT System may disseminate to certain SBT Traders a contingency count that includes All or None, Fill or Kill, and Minimum Volume order information. The following contingency orders will be handled by the SBT System as described below once the SBT System is so enabled to handle such contingency orders.

(a) *Opening Only Order.* The order will be executed during the Opening State if there are orders to execute it against. The order or any unexecuted portion will expire after the opening trade or after the opening quote is disseminated.

(b) *All or None Order.* An all or none ("AON") order will only be executed if it can be executed in its entirety. The order will remain in the Book until filled or canceled.

(c) *Fill or Kill Order.* A fill or kill ("FOK") order has a time contingency and must be fully filled within a period of time, or the System automatically cancels the order. The SBT System will attempt to execute the full quantity of the FOK order upon receipt. If the FOK order is at the best price, and there is a legal width market, and it cannot be filled fully, the System will indicate its presence to certain SBT Traders by disseminating its quantity for the Time Contingency Period (*e.g.*, five seconds) as determined by the appropriate SBT Trading Committee. If the FOK order does not equal or better the market, *e.g.*, if it is a buy order lower than the best bid or a sell order higher than the best offer, the System will reject the order.

(d) *Immediate or Cancel Order.* An Immediate or Cancel ("IOC") order has a time contingency and must be filled fully or partially within a period of time, or the System automatically cancels the remainder. If the IOC order is at the best price, and there is a legal

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width market, and it cannot be filled fully, the System will indicate its presence to certain SBT Traders by disseminating its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the IOC order does not equal or better the market, e.g., if it is a buy order lower than the best bid or a sell order higher than the best offer, the System will reject the order. The SBT System will cancel the residual order volume after the Time Contingency Period, if the IOC order has not been executed completely.

(e) *Minimum Volume Order.* A Minimum Volume ("MIN") order may be accepted by the SBT System at any time. The MIN order has two quantities specified: the total quantity and the minimum acceptable quantity that can be filled. The fill must be at least equal to the minimum quantity specified. The SBT System will attempt to execute at least the minimum volume specified against orders in the Book. If the minimum volume is not executed, the order will remain in the Book.

(f) *Stop Order.* A Stop order to buy becomes a market order when the product trades or is bid at or above the stop price. A Stop order to sell becomes a market order when the product trades or is offered at or below the stop price.

(g) *Stop Limit Order.* A Stop Limit order has two prices, the stop-limit price and the limit price. A stop-limit order to buy becomes a limit order at the second price when the product trades or is bid at or above the stop-limit price (first price). A stop-limit order to sell becomes a limit order at the second price when the product trades or is offered at or below the stop-limit price (first price).

(h) *Market On Close Order.* A Market on Close ("MOC") order may be received at any time up to some period of time before the closing period (*e.g.*, four minutes before the close) and is executable only during a pre-defined period of time prior to the close (*e.g.*, two minutes prior to the close). When an MOC order is present, the System will send an RFQ for it at a pre-defined time before the close; the time before the close to be determined by the appropriate SBT Trading Committee. The order is canceled after closing if it is not filled.

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Processing of Spread Orders

Rule 43.10

(a) When the System is so enabled, the System will support the following types of spread orders ("Spread Orders"): (1) two-legged spreads where the ratio is 1:1 and 1:2; (2) three-legged spreads where the ratio is 1:1:1 or 1:2:1; (3) four-legged spreads where the ratio is 1:1:1:1; and (4) any spread type approved by the appropriate SBT Trading Committee.

(b) The System will treat each spread order as a unique product and will assign each a unique product name. Data about the resulting spread product will be disseminated at the point of creation to all SBT Traders. The System will maintain a Book for every unique spread, with bids and offers for individual spread packages. The System will keep track of and disseminate the best bid and offer for every unique spread.

(c) An SBT Trader submitting a spread order may change the net price, the multiplier or the quantity of the spread, the time in force, and any contingency.

(1) An increase in the multiplier or quantity changes the order's priority;

(2) A decrease in the multiplier or quantity does not change its priority position;

(d) A spread order may trade only if all of its legs have legal width markets and if only one leg trades at a price ahead of orders in the Book at the same price.

(e) When the spread is traded, the System will do the following:

(1) Disseminate to the order source the fill report for the spread, but not the individual legs;

(2) Disseminate to the designated back office the fill reports for the individual legs; and

(3) Disseminate the last sale reports to OPRA (or any other securities information processor that is being employed by the Exchange) for the individual legs, with some indication that the last sale is part of a spread trade.

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Processing of Requests for Quotes

Rule 43.11

(a) *Submission of RFQs.*

(1) Any SBT Trader may initiate a Request for Quote (RFQ) for a series. The SBT Trader may specify a size at his option. The System will send the RFQ to the Market Makers who are currently providing quotes in that class.

(2) The SBT System will also automatically send an RFQ when the SBT System receives a market order and the current market width is wider than the Exchange prescribed width as set forth in Rule 44.4.

(b) *Response to RFQs.* RFQs may be submitted by an SBT Trader or an RFQ may be initiated by the System as otherwise described in the Rules. In either event, the RFQ has an expiration period for the Market-Makers to respond to the RFQ. Market-Makers must respond to RFQs in accordance with their obligations set forth in Rule 44.4(b).

(c) *Processing of RFQ Responses.* RFQ responses (quotes) are submitted to the Book and exposed as they arrive.

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Crossing Trades

Rule 43.12

(a) *Crossing Mechanism.* Once the System is so enabled to provide for it, the Crossing Mechanism is a process by which an SBT Broker can facilitate orders or cross two orders.

(1) An SBT Broker must submit to the System an RFQ designating a size equal to the quantity to be crossed.

(2) SBT Traders will have an RFQ response period for a length of time established by the SBT Trading Committee in order to enter orders or quotes that improve upon the market.

(3) Within a time period after the RFQ was sent, with such time period to be established by the SBT Trading Committee, the terms of the cross transaction have to be entered. The required terms include the terms of the original order and the proposed facilitation order (or two original orders), a proposed crossing price, the quantity of the original order which the SBT Broker is willing to facilitate (in the case of a facilitation cross), and an indication of which order is to be exposed to the market (in the case of cross of two original orders). The customer order will be the exposed order in a facilitation cross.

(4) The following two conditions must be satisfied at the time the cross transaction is entered or the System will reject the cross transaction: (A) a legal width market must exist for the particular series to be crossed and (B) the proposed cross price must be between the best bid and offer displayed by the System.

(5) After accepting the cross transaction, the System will immediately cross the two orders for the guaranteed crossing percentage (which is established at 40%) of the overall crossing quantity. The System exposes the remaining volume of the designated order in the book for a crossing period of twenty seconds. The order's price and the remaining quantity are disclosed but there is no indication that the order is part of an impending cross. The System places the opposite order on hold as a shadow order that is not visible except to the submitter.

(6) As long as the exposed order is the highest priority order at the best price, other SBT Traders can trade against the exposed order during the crossing period. If the exposed order is fully filled by other traders, the System cancels the remaining quantity of the shadow order and sends the SBT Broker a message that the crossing transaction is completed.

(7) At the end of the crossing period (if the order has not yet been fully traded), if the exposed order is at the best price and has the highest priority, then the System fills the remainder of the order against the shadow order. The System cancels the remainder of the shadow order and sends the crossing firm a message that the crossing transaction is completed. If the exposed order has quantity remaining and it is not the highest priority order at the market, then the System automatically cancels the remainder of the exposed order and the shadow order and sends the SBT Broker a message that the crossing transaction is completed.

(b) Rule 43.12A will apply until the System is so enabled to provide for this Crossing Mechanism.

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Interim Crossing Procedure

Rule 43.12A

(a) An SBT Broker who wishes to cross two original orders or to facilitate an original order must first send an RFQ with the size of the orders to be crossed. The RFQ response period will be established by the appropriate SBT Trading Committee and shall initially be set at thirty seconds.

(b) At the end of this RFQ response period and within twenty seconds or some other period of time established by the appropriate SBT Trading Committee, the SBT Broker must expose one of the orders to the Book.

(c) If the exposed order has not been completely taken out by other SBT Traders at the end of a period after the order was entered, then the SBT Broker may enter the opposite order to cross the balance of the exposed order. The period of time shall be established by the appropriate SBT Trading Committee and shall initially be set at ten seconds.

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Prohibited Conduct Related to Cross Transactions

Rule 43.12B

(a) It will be a violation of Rule 43.12 and of Rule 43.12A for an SBT Broker to be a party to any arrangement designed to circumvent Rule 43.12 or Rule 43.12A by providing an opportunity for a customer to regularly execute against agency orders handled by the SBT Broker immediately upon their entry into the System.

(b) It will be a violation of Rule 43.12 or of Rule 43.12A for an SBT Broker to cause the execution of an order it represents as agent on the Exchange by orders it solicited from Members and non-member broker-dealers to transact with such orders, whether such solicited orders are entered into the System directly by the SBT Broker or by the solicited party (either directly or through another Member), if the Member fails to expose orders on the Exchange as required by Rule 43.12 or Rule 43.12A.

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Responsible Traders

Rule 43.13

(a) *Defined.* A Responsible Trader is an individual who is responsible for each and every order submitted to the SBT System on behalf of a particular SBT Trader. There must be a Responsible Trader registered with the Exchange for every member. The Responsible Trader must be approved by the Membership Committee and must satisfy any qualification standards set by the Exchange.

(b) The Responsible Trader will be required to:

(1) have full control over access to the SBT System and over the ability to submit orders using the member's access right;

(2) be fully aware of orders submitted using the member's access right (although the business might have originated from another source); and

(3) have the ability to adjust or withdraw any order.

(c) A Responsible Trader can be charged for violations of Exchange rules resulting from any submission of an order made on behalf of the particular member.

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Chapter XLIV—SBT Market-Makers and Designated Market-Makers

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Section A: Market-Makers

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SBT Market-Maker-Defined

Rule 44.1

An SBT Market-Maker for purposes of the rules in Chapter XL through LIX is an individual (either a member or nominee of a member organization or a member who has registered his or her membership for a member organization) who is registered with the Exchange for the purpose of making transactions as a dealer-specialist in the SBT System in accordance with the provisions of this Chapter. Registered SBT Market-Makers are designated as specialists on the Exchange for all purposes under the Securities Exchange Act of 1934 and the Rules and Regulations thereunder. Only transactions that are (i) transacted on the SBT System or (ii) that qualify under Rule 8.1 shall count as Market-Maker transactions for purposes of this Chapter and Rules 8.1 and 12.3(b)(2). An SBT Market-Maker may be either: an SBT Standard Market-Maker, an SBT Lead Market-Maker or an SBT Designated Primary Market-Maker.

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Registration of Market-Makers

Rule 44.2

(a) An applicant for registration as an SBT Market-Maker shall file his application in writing with the Membership Department on such form or forms as the Exchange may prescribe. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's ability as demonstrated by his passing an examination prescribed by the Exchange, and such other factors as the Committee deems appropriate. After reviewing the application, the Committee shall either approve or disapprove the applicant's registration as an SBT Market-Maker.

(b) The registration of any person as an SBT Market-Maker may be suspended or terminated by the appropriate Market Performance Committee upon a determination that such person has failed to properly perform as an SBT Market-Maker.

(c) Any member or prospective member adversely affected by a determination of the appropriate Market Performance Committee under this Rule may obtain a review in accordance with the provisions of Chapter XIX.

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Appointment of SBT Market-Makers

Rule 44.3

(a) On a form or forms prescribed by the Exchange, a registered SBT Market-Maker may apply for an Appointment (having the obligations of Rule 44.4) in one or more classes of option contracts traded on the SBT System. From among those SBT Market-Makers registered, the appropriate Market Performance Committee shall ordinarily make two or more Appointments for each class of option contracts traded on the System. In making such Appointments, the Committee shall give attention to (1) the preference of registrants; (2) the maintenance and enhancement of

competition among SBT Market-Makers in each class of options; and (3) assuring that financial resources available to an SBT Market-Maker enable him to satisfy the obligations set forth in Rule 44.4 with respect to each class of option contracts to which he is appointed. The appropriate Market Performance Committee may arrange two or more classes of options into groupings and make Appointments to those groupings rather than to individual classes. The appropriate Market Performance Committee may suspend or terminate any Appointment of an SBT Market-Maker under this Rule and may make additional Appointments whenever, in the Committee's judgment, the interests of a fair and orderly market are best served by such action.

(b) An SBT Market-Maker's refusal to accept an Appointment may be deemed sufficient cause for termination or suspension of an SBT Market-Maker's registration.

(c) The appropriate Market Performance Committee may limit the number of classes which an SBT Market-Maker may trade outside of his Appointment either on the floor of the Exchange or on the SBT System on a daily basis or for some other designated period of time. Unless exempted by the appropriate Market Performance Committee, to the extent an SBT Market-Maker trades in an option class outside his Appointment, that SBT Market-Maker becomes subject to the requirements of Rule 44.4 for that option class for that day or for a designated period as determined by the appropriate Market Performance Committee.

(d) The appointment of an SBT Market-Maker to an option class traded on the System will not count against that Member's limit of ten trading stations to which that Member may be appointed pursuant to Rule 8.3(c).

* * * *Interpretations and Policies:*

.01 SBT Lead Market-Makers. A member organization desiring to be approved to act as an SBT LMM shall file an application with the Exchange on such form or forms as the Exchange may prescribe. The appropriate Market Performance Committee may appoint one or more SBT LMMs to an option class traded on the System if those option classes have not been assigned to an SBT DPM. If the appropriate Market Performance Committee appoints more than one SBT LMM per trading session to an option class traded on the System, the appointed SBT LMMs will function as SBT LMMs on a rotating basis in accordance with a schedule set by the appropriate Market Performance Committee. SBT LMMs will have the obligations of SBT Market-Makers plus those additional obligations set forth in Interpretation .01 to Rule 44.4.

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Obligations of SBT Market-Makers

Rule 44.4

(a) *General.* Transactions of an SBT Market-Maker should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no SBT Market-Maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings.

(b) *RFQ Response.* With respect to each class of option contracts for which he holds an Appointment under Rule 44.3 and for any other classes that he trades as required by Rule 44.3(c), an SBT Market-Maker has an obligation to respond to that percentage of RFQs as determined by the appropriate Market Performance Committee with a two-sided market at or within the widths prescribed in the table below within the amount of time specified by the appropriate Market Performance Committee from the time the RFQ is entered. The SBT Market-Maker shall specify the size at which he is willing to trade the series. The size shall not be less than a minimum specified by the appropriate Market Performance Committee. The SBT Market-Maker responding to the RFQ is required to maintain a continuous market in that series for a subsequent 30-second period (or for some other time specified by the appropriate Market Performance Committee) or until his quote is filled. An SBT Market-Maker may change his quotes during this subsequent 30-second period but he may not cancel them without replacing them. If the SBT Market-Maker does cancel without replacing the quote his response to the RFQ will not count toward the SBT Market-Maker's percentage requirement set forth in this paragraph (b). An SBT Market-Maker will be considered to have responded to the RFQ if he has a quote in the market for the series at the time the RFQ is received and he maintains it for the appropriate period of time. An SBT Market-Maker must respond to a percentage, to be established by the appropriate Market Performance Committee, of the Special RFQs that the SBT Market-Maker is sent. The bid/ask differentials listed in the table below shall not apply to in-the-money series where the underlying securities market is wider than the widths set forth below. For those series, the bid/ask differential may be as wide as the quotation on the primary market of the underlying security.

Bid range	Maximum allowable quote spread
Less than $2.00	$0.25
$2.00–$5.00	0.40
$5.01–$10.00	0.50
$10.01–$20.00	0.80
$20.01–higher	1.00

(c) *Classes of Option Contracts Other than those to which Appointed.* With respect to classes of option contracts in which he does not hold an Appointment, an SBT Market-Maker should not engage in transactions for an account in which he has an interest which are disproportionate in relation to, or in derogation of, the performance of his obligations as specified in paragraph (b) of this Rule with respect to those classes of option contracts to which he does hold an Appointment. Whenever an SBT Market-Maker submits a two-sided quote in an option class to which he is not appointed, he must fulfill the obligations established by paragraph (b) of this Rule for the rest of that trading session.

(d) *Obligations during an ETH Session.* Depending upon the liquidity in any of the underlying markets during an ETH session, the appropriate Market Performance Committee may determine not to impose an RFQ response requirement upon SBT market-makers or may impose a different RFQ response rate than is applicable during the regular trading hours.

(e) *Exemptions.* The appropriate Market Performance Committee may establish bid/ask widths different than those specified above for one or more option series. The appropriate Market Performance Committee may also vary the RFQ response rate on a series-by-series basis. Two Trading Officials may also vary the bid/ask differences or the RFQ response rate in the event of unusual market conditions

* * * *Interpretations and Policies:*

.01 SBT Lead Market-Makers.

(a) Each SBT LMM shall fulfill all of the obligations of an SBT Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities appointed to the SBT LMM, during such SBT LMM's rotation(s) as an LMM:

(1) Assure that its disseminated market quotations are accurate;

(2) provide opening quotes for all series in its appointed classes;

(3) trade in all securities appointed to the SBT LMM only in the capacity of an SBT LMM and not in any other capacity;

(4) handle orders that are not executed on the System due to the fact that there is a better quote on another market;

(5) respond to a percentage of the RFQs at a rate as designated by the appropriate Market Performance Committee. The appropriate Market Performance Committee may also require that an SBT LMM provide continuous quotes in some or all of the series of the classes appointed to an SBT LMM; and

(6) supervise all persons associated with the SBT LMM to assure compliance with the Rules.

(b) Subject to the review of the Board of Directors, the appropriate Market Performance Committee may establish from time to time a participation entitlement formula that is applicable to all SBT LMMs. The maximum guaranteed percentage entitlement for an SBT LMM shall be 40%, although the participation of an SBT LMM on any particular trade may be greater if the applicable allocation and priority rules provide for a pro rata distribution. To the extent established pursuant to this paragraph and pursuant to the applicable trading allocation and priority rules, each SBT LMM shall have a right to participate for its own account with the other SBT Traders in transactions in securities appointed to the SBT LMM that occur at the SBT LMM's previously established bid or offer whether the bid or offer was established by a quote or an order. The appropriate Market Performance Committee may determine whether the participation entitlement shall be applicable to the opening transaction.

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Quote Maintenance

Rule 44.5

(a) *Generally.* An SBT Market-Maker will have the following functional capabilities for maintaining his quotes in the SBT Book:

(1) An SBT Market-Maker may delete or cancel a specific quote;

(2) An SBT Market-Maker may delete or cancel all of his quotes in a specified class, or all of his quotes in all classes;

(3) An SBT Market-Maker may inactivate his quotes for a certain period of time, if the System is so enabled; and

(4) An SBT Market-Maker may cancel/replace or update an existing quote.

(b) *Automatic Quote Regeneration.* Once the System is so enabled to provide this function, an SBT Market-Maker may have the SBT System regenerate his quote when his bid or offer is filled. The SBT System will regenerate a new quote where the bid/offer is a pre-defined number of ticks worse than the previous bid/offer (the number of ticks will be defined by the SBT Market-Maker) and the size of the quote will be set by the SBT Market-Maker. The priority of the regenerated quote will be as described in Rule 43.1(e). When a bid/offer is regenerated the designated number of ticks worse than the previous bid/offer, the SBT System will keep the opposite side at the same price unless the resulting spread is wider than the Exchange prescribed width as set forth in Rule 44.4. If the resulting spread would be wider, then the SBT System will adjust the opposite side's price (cancel/replace the old order) (i) to keep the same spread before the regeneration, or (ii) adjust it to bring the spread to the Exchange prescribed width, as determined by the SBT Market-Maker.

(c) *Quote Risk Monitor Function.* The SBT System will provide for an SBT Market-Maker to establish a contract volume limit for a class for a period of time designated by the SBT Market-Maker. If trades against an SBT Market-Maker's quotes in that class exceed the established volume limit within the designated period of time (*e.g.*, 200 contracts within the most recent ten second period), then the SBT System will cancel the SBT Market-Maker's remaining quotes for that class. The appropriate Market Performance Committee may establish minimum volume limits and minimum time periods for all SBT Market-Makers. The System will not consider trades the SBT Market-Maker initiates by hitting a bid or taking an offer in determining whether the volume limit is exceeded.

(d) *Managing Quote Traffic.* The Exchange may set limits on the quote traffic that is sent to the SBT System to prevent the SBT System from becoming overloaded.

(e) *Logoff.* An SBT Market-Maker's logoff from the SBT System will cause the System to delete all his quotes from the SBT Book. Non-quote orders will remain in the Book unless they are expiring orders.

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Market-Making through an API

Rule 44.6

The Exchange may limit the number of Market-Makers that may access the SBT System through an API (or the number of messages sent by Market-Makers accessing the System through an API) in order to protect the integrity of the System. In addition, the Exchange may impose restrictions on the use of a computer connected through an API if it believes such restrictions are necessary to ensure the proper performance of the System.

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Rule 44.7–44.9 Reserved

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Section B: SBT Designated Primary Market-Makers

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SBT DPM Defined

Rule 44.10

An "SBT Designated Primary Market-Maker" or "SBT DPM" is a member organization that is approved by the Exchange to function on the SBT System in allocated securities as an SBT Market-Maker (as defined in Rule 44.1) with the additional obligations provided for in this Section B of Chapter 44. Determinations concerning whether to grant or withdraw the approval to act as an SBT DPM are made by the appropriate SBT DPM Appointments Committee ("SBT DPM Committee") in accordance with Rules 44.12. SBT DPMs are allocated securities by the appropriate Allocation Committee in accordance with Rule 8.95.

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SBT DPM Designees

Rule 44.11

(a) An SBT DPM may act as an SBT DPM solely through its SBT DPM Designees. An "SBT DPM Designee" is an individual who is approved by the SBT DPM Committee to represent an SBT DPM in its capacity as an SBT DPM. The SBT DPM Committee may subclassify SBT DPM Designees and require that certain SBT DPM Designees be subject to specified supervision and/or be limited in their authority to represent a SBT DPM.

(b) Notwithstanding any other rules to the contrary, an individual must satisfy the following requirements in order to be an SBT DPM Designee of an SBT DPM:

(1) The individual must be a member of the Exchange;

(2) the individual must be a nominee of the SBT DPM or of an affiliate of the SBT DPM or must own a membership that has been registered for the SBT DPM or for an affiliate of the SBT DPM;

(3) the individual must be registered as an SBT Market-Maker pursuant to Rule 44.1;

(4) on such form or forms as the Exchange may prescribe, the SBT DPM must authorize the individual to enter into Exchange transactions on behalf of the SBT DPM in its capacity as an SBT

DPM, must authorize the individual to represent the SBT DPM in all matters relating to the fulfillment of the SBT DPM's responsibilities as an SBT DPM, and must guaranty all obligations arising out of the individual's representation of the SBT DPM in its capacity as an SBT DPM in all matters relating to the Exchange; and

(5) the individual must be approved by the SBT DPM Committee to represent the SBT DPM in its capacity as an SBT DPM.

Notwithstanding the provisions of sub-paragraph (b)(2) of this Rule, the SBT DPM Committee shall have the discretion to permit an individual who is not affiliated with an SBT DPM to act as an SBT DPM Designee for the SBT DPM on an emergency basis provided that the individual satisfies the other requirements of sub-paragraph (b) of this Rule.

(c) The approval of an individual to act as an SBT DPM Designee shall expire in the event the individual does not have trading privileges on the Exchange for a six month time period.

(d) An SBT DPM Designee of an SBT DPM may not trade as a Market-Maker in securities allocated to the SBT DPM unless the SBT DPM Designee is acting on behalf of the SBT DPM in its capacity as an SBT DPM.

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Approval To Act as an SBT DPM

Rule 44.12

(a) A member organization desiring to be approved to act as an SBT DPM shall file an application with the Exchange on such form or forms as the Exchange may prescribe.

(b) The SBT DPM Committee shall determine the appropriate number of approved SBT DPMs. Each SBT DPM approval shall be made by the SBT DPM Committee from among the SBT DPM applications on file with the Exchange, based on the SBT DPM Committee's judgment as to which applicant is best able to perform the functions of an SBT DPM. Factors to be considered in making such a selection may include, but are not limited to, any one or more of the following:

(1) Adequacy of capital;

(2) operational capacity;

(3) trading experience of and observance of generally accepted standards of conduct by the applicant, its associated persons, and the SBT DPM Designees who will represent the applicant in its capacity as an SBT DPM;

(4) number and experience of support personnel of the applicant who will be performing functions related to the applicant's SBT DPM business;

(5) regulatory history of and history of adherence to Exchange Rules by the applicant, its associated persons, and the SBT DPM Designees who will represent the applicant in its capacity as an SBT DPM;

(6) willingness and ability of the applicant to promote the Exchange as a marketplace;

(7) performance evaluations conducted pursuant to Exchange rules; and

(8) in the event that one or more shareholders, directors, officers, partners, managers, members, SBT DPM Designees, or other principals of an applicant is or has previously been a shareholder, director, officer, partner, manager, member, SBT DPM Designee, DPM Designee, or other principal in another SBT DPM or DPM, adherence by such SBT DPM to the requirements set forth in Exchange rules regarding DPM or SBT DPM responsibilities and obligations during the time period in which such person(s) held such position(s) with the SBT DPM or DPM.

(c) Each applicant for approval as an SBT DPM will be given an opportunity to present any matter which it wishes the SBT DPM Committee to consider in conjunction with the approval decision. The SBT DPM Committee may require that a presentation be solely or partially in writing, and may require the submission of additional information from the applicant or individuals associated with the applicant. Formal rules of evidence shall not apply to these proceedings.

(d) In selecting an applicant for approval as an SBT DPM, the SBT DPM Committee may place one or more conditions on the approval, including, but not limited to, conditions concerning the capital, operations, or personnel of the applicant and the number or type of securities which may be allocated to the applicant.

(e) Each SBT DPM shall retain its approval to act as an SBT DPM until the SBT DPM Committee relieves the SBT DPM of its approval and obligations to act as an SBT DPM or the SBT DPM Committee terminates the SBT DPM's approval to act as an SBT DPM.

(f) If a member organization resigns as an SBT DPM or if the SBT DPM Committee terminates or otherwise limits its approval to act as an SBT DPM, the SBT DPM Committee shall have the discretion to do one or both of the following:

(1) Approve an interim SBT DPM, pending the final approval of a new SBT DPM pursuant to paragraphs (a) through (d) of this Rule; and

(2) allocate on an interim basis to another SBT DPM or to other SBT DPMs the securities that were allocated to the affected SBT DPM, pending a final allocation of such securities pursuant to Rule 8.95.

Neither an interim approval or allocation made pursuant to this paragraph (f) should be viewed as a prejudgment with respect to the final approval or allocation.

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Conditions on the Allocation of Securities to SBT DPMs

Rule 44.13

The SBT DPM Committee may establish (i) restrictions applicable to all SBT DPMs on the concentration of securities allocable to a single SBT DPM and to affiliated SBT DPMs and (ii) minimum eligibility standards applicable to all SBT DPMs which must be satisfied in order for an SBT DPM to receive allocations of securities, including but not limited to standards relating to adequacy of capital and number of personnel.

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Termination, Conditioning, or Limiting Approval to Act as a DPM

Rule 44.13A

(a) The SBT DPM Committee may terminate, place conditions upon, or otherwise limit a member organization's approval to act as an SBT DPM under any one or more of the following circumstances:

(1) If the member organization incurs a material financial, operational, or personnel change;

(2) if the member organization fails to comply with any of the requirements under this Section B of Chapter XLIV or the applicable provisions of Section B of Chapter VIII or fails to adequately satisfy the standards of performance under Rule 8.88(a);

(3) if for any reason the member organization should no longer be eligible for approval to act as a DPM or to be allocated a particular security or securities.

Before the MTS Committee takes action to terminate, condition, or otherwise limit a member organization's approval to act as an SBT DPM, the member organization will be given notice of such possible action and an opportunity to present any matter which it wishes the MTS Committee to consider in determining whether to take such action. Such proceedings shall be conducted in the same manner as SBT DPM Committee proceedings concerning SBT DPM approvals which are governed by Rule 44.12(c).

(b) Notwithstanding the provisions of paragraph (a) of this Rule, the SBT DPM Committee has the authority to immediately terminate, condition, or otherwise limit a member organization's approval to act as an SBT DPM if it incurs a material financial, operational, or personnel change warranting such action or if the member organization fails to comply with any of the financial requirements of Rule 8.86.

(c) Limiting a member organization's approval to act as an SBT DPM may include, among other things, limiting or withdrawing the member organization's SBT DPM participation entitlement provided for under Rule 44.15, withdrawing the right of the member organization to act in the capacity of an SBT DPM in a particular security or securities which have been allocated to the member organization, and/or requiring the relocation of the member organization's SBT DPM operation on the Exchange's trading floor.

(d) If a member organization's approval to act as an SBT DPM is terminated, conditioned, or otherwise limited by the SBT DPM Committee pursuant to this Rule, the member organization may seek review of that decision under Chapter XIX of the Rules.

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SBT DPM Obligations

Rule 44.14

(a) Each SBT DPM shall fulfill all of the obligations of an SBT Market-Maker under the Rules, and shall satisfy each of the following requirements, in respect of each of the securities allocated to the DPM:

(1) Assure that its disseminated market quotations are accurate;

(2) Provide opening quotes for all series in its allocated classes;

(3) Trade in all securities allocated to the SBT DPM only in the capacity of an SBT DPM and not in any other capacity;

(4) Handle orders that are not executed on the System due to the fact that there is a better quote on another market;

(5) Respond to a percentage of the RFQs at a rate as designated by the appropriate Market Performance Committee. The appropriate Market Performance Committee may also require that an SBT DPM provide continuous quotes in some or all of the series of the classes assigned to an SBT DPM; and

(6) Segregate in a manner prescribed by the appropriate SBT DPM Committee (A) all transactions consummated by the SBT DPM in securities allocated to the SBT DPM and (B) any other transactions consummated by or on behalf of the SBT DPM that are related to the SBT DPM's DPM business.

To the extent that there is any inconsistency between the specific obligations of an SBT DPM set forth in sub-paragraphs (a)(1) through (a)(5) of this Rule and the general obligations of an SBT Market-Maker under the Rules, sub-paragraphs (a)(1) through (a)(5) of this Rule shall govern.

(b) *Other Obligations.* In addition to the obligations described in paragraph (a) of this Rule, an SBT DPM shall fulfill each of the following obligations:

(1) Act to increase the Exchange's order flow in the securities which are allocated to the SBT DPM and respond to competitive developments by improving market quality and service and otherwise acting to increase the Exchange's market share in those securities;

(2) Promptly inform the SBT DPM Committee of any desired change in the SBT DPM Designees who represent the SBT DPM in its capacity as an SBT DPM and of any material change in the financial or operational condition of the SBT DPM;

(3) Supervise all persons associated with the SBT DPM to assure compliance with the Rules;

(4) Continue to act as an SBT DPM and to fulfill all of the SBT DPM's obligations as an SBT DPM until the SBT DPM Committee relieves the SBT DPM of its approval and obligations to act as an SBT DPM or the SBT DPM Committee terminates the SBT DPM's approval to act as an SBT DPM; and

(5) Segregate in a manner prescribed by the appropriate SBT DPM Committee the SBT DPM's business and activities as an SBT DPM from the SBT DPM's other business and activities.

(c) *Obligations of SBT DPM Associated Persons.* Each person associated with an SBT DPM shall be obligated to comply with the provisions of this Rule when acting on behalf of the SBT DPM.

* * * * *

Participation Entitlement of SBT DPMs

Rule 44.15

(a) Subject to the review of the Board of Directors, the SBT DPM Committee may establish from time to time a participation entitlement formula that is applicable to all SBT DPMs. The maximum guaranteed percentage entitlement for an SBT DPM shall be 40%, although the participation of an SBT DPM on any particular trade may be greater if the applicable allocation and priority rules provide for a pro rata distribution.

(b) To the extent established pursuant to paragraph (a) of this Rule and pursuant to the applicable trading allocation and priority rules, each SBT DPM shall have a right to participate for its own account with the other SBT Traders in transactions in securities allocated to the SBT DPM that occur at the SBT DPM's previously established bid or offer whether the bid or offer was established by a quote or an order. The SBT DPM Committee may determine whether the participation entitlement shall be applicable to the opening transaction.

* * * * *

Allocation of SBT DPMs

Rule 44.16

Different members may be allocated the same class for different trading sessions, that is, an SBT DPM may be allocated a particular option class in one trading session but not another. Also, the appropriate SBT DPM Committee may allocate classes to SBT DPMs on a rotating basis such that the SBT DPM assigned to a particular option class for a particular trading session rotates between two or more SBT DPMs on a periodic basis.

* * * * *

Chapter XLV

Section A: SBT Brokers

SBT Broker Defined

Rule 45.1

An SBT Broker is an individual (either a member or a nominee of a member organization) who is registered with the Exchange for the purpose of accepting and executing orders received from members, from registered broker-dealers, or from public customers on the SBT System. An SBT Broker shall not accept an order from any source other than a member or a registered broker-dealer unless he is either the nominee of, or has registered his individual membership for, a member organization approved to transact business with the public in accordance with Rule 9.1. In the event the organization is approved pursuant to Rule 9.1, an SBT Broker who is the nominee of, or who has registered his individual membership for such organization, may then accept orders directly from public customers where (i) the organization clears and carries the customer account or (ii) the organization has entered into an agreement with the public customer to execute orders on its behalf. Among the requirements an SBT Broker must meet in order to register pursuant to Rule 9.1 is the successful completion of an examination for the purpose of

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demonstrating an adequate knowledge of the securities business.

* * * * *

Registration of SBT Brokers

Rule 45.2

(a) An applicant for registration as an SBT Broker shall file his application in writing with the Membership Department on such form or forms as the Exchange may prescribe. Applications shall be reviewed by the Membership Committee, which shall consider an applicant's ability as demonstrated by his passing an examination prescribed by the Exchange, and such other factors as the Committee deems appropriate. After reviewing the application, the Committee shall either approve or disapprove the applicant's registration as an SBT Broker.

(b) The registration of any person as an SBT Broker may be suspended or terminated by the appropriate Market Performance Committee upon a determination that such person has failed to properly perform as an SBT Broker.

(c) Any member or prospective member adversely affected by a determination of the appropriate Market Performance Committee under this Rule may obtain a review in accordance with the provisions of Chapter XIX.

(d) An SBT Broker must receive authorization, in a manner prescribed by the Exchange, by a clearing member prior to entering orders for a clearing member.

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Rule 45.3 to Rule 45.10 Reserved

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Section B: Clearing Firm Broker Functions

Clearing Firm Broker Functions

Rule 45.11

(a) *Defined.* A Clearing Firm Broker is an individual who represents the Clearing Firm of a particular SBT Market-Maker and has the authority to take certain actions with respect to that SBT Market-Maker's use of the SBT System.

(b) *Forced Logout of Trader.* The Clearing Firm User may request the Help Desk to logout an SBT Market-Maker. Upon the logout of an SBT Market-Maker, the System cancels all the quotes for that SBT Market-Maker. The logout can also be used to cancel all the trader's regular orders and de-authorize the trader as a user. In the event the trader has been de-authorized, the System will not permit an SBT Market-Maker who has been forcibly logged out to log in again until he is re-authorized as an SBT Trader by the Clearing Firm User.

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Chapter XLVI

System Operator/Administrator Functions and Data Dissemination Functions

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Quote and Trading Information

Rule 46.1

(a) *Internal Dissemination of Quote.* The SBT System will disseminate the best bid and offer internally. As each new limit order (whether as an order or as part of a market-maker quote) is entered into the SBT System, the best bid and offer displayed in the System is updated to the extent the new bid or offer improves the previously displayed bid or offer. The SBT System will send quote/order information—series, price, size, and order source (Market-Maker, customer, or non-customer professional order)—to the SBT workstations that are trading a given class. The SBT System will also provide the current best bid or offer in any other market, as such best bids or offers are identified in the System.

(b) *Internal Dissemination of Price/Last Sale.* The SBT System may disseminate internally to subscribers that have indicated interest in a given class last sale information including series, price, and size. All SBT Market-Makers assigned to a given class will be provided this information but other individuals and firms may subscribe to this information as well.

(c) *Booked Order Dissemination.* When an SBT Trader or authorized access point requests information for an option class, the SBT System will provide the information which presents the Book's best bids, asks, and their total volumes for each series of the class requested. The Exchange may delete or add categories of disseminated information as it deems appropriate.

(d) *Book Depth.* Upon request, SBT Traders can access from the SBT System market depth information including the aggregate size and the number of contracts at each price. The Exchange may charge fees for access to this information. The information may not be provided upon request if the Exchange believes that it could lead to degradation of the service of the SBT System.

* * * * *

Dissemination of Market Information

Rule 46.2

The SBT System will disseminate quote and trade (last sale) information externally. Series, price and size will be disseminated for trades. Series and price and size will be disseminated for quotes. Every best Book bid or ask change will generate a quote report. The SBT quote width may be wider than the legal width market because two unrelated orders, separated by more than the legal width market, may be the best orders, causing the System to send their prices as the best quote.

* * * * *

Proprietary Information of the Exchange

Rule 46.3

Information sent over the Exchange's SBT System to the SBT Traders and participants is proprietary information of the Exchange and may not be distributed or shared without written permission of the Exchange.

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Chapters XLVII to XLIX [Reserved]

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Appendix A—Applicability of Rules of the Exchange

This Appendix lists the rules in Chapters I (1) through XXVII (27) of the rules of the Exchange that apply to the trading of products on the Exchange's screen based trading system. Where a rule in Chapters 1 through 27 is supplemented by a rule in Chapters 40 through 49, that fact is so indicated.

Existing rule	Supplemented by
Chapter I—Definitions	
1.1 Definitions	40.1

Existing rule	Supplemented by
Chapter II—Organization and Administration	
Part A: Committees	
2.1 Committees of the Exchange	
Part B: Departments	
2.15 Departments of Exchange	
Part C: Dues, Fees and Other Charges	
2.20 Membership Dues	
2.21 Charge on Net Commissions	
2.22 Other Fees or Charges	
2.23 Liability for Payment	
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3.5 Denial of and Conditions to Membership and Associations	
3.6 Persons Associated With Member Organizations	
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3.7 Certain Documents Required of Members, Applicants and Associated Persons	
3.8 Nominees and Members Who Register Their Memberships for Member Organizations	
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3.16 Special Provisions Regarding Chicago Board of Trade Exerciser Memberships	
3.17 Leased Memberships	
3.18 Members and Associated Persons Who Are or Become Subject to a Statutory Disqualification	
3.19 Termination from Membership	
3.20 Dissolution and Liquidation of Member Organizations	
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4.10 Other Restrictions on Members	
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4.12 Exercise limits	
4.13 Reports related to position limits	
4.14 Liquidation of positions	
4.15 Limit on outstanding uncovered short position	
4.16 Other restrictions on options transactions and exercises	
4.18 Prevention of misuse of material, nonpublic information	
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5.1 Designation of securities	
5.2 Rights and obligations of holders and writers	
5.3 Criteria for underlying securities	
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6.7A Legal proceedings against Exchange directors, officers, employees or agents	
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Section C: Trading Practices and Procedures	
6.40 Unit of trading	
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8.8 Restriction on Acting as Market-Maker and Floor Broker	
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Existing rule	Supplemented by
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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CBOE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed rule change sets forth rules governing the Exchange's screen-based trading ("SBT") system ("SBT System" or "System"), known as CBOE*direct*. CBOE*direct* will supplement the Exchange's floor-based open outcry auction market. Although it has been designed to be able to trade options during the regular trading hours or during extended trading hours, CBOE*direct* initially will be used to trade only during hours when the open outcry auction market is not open.[4]

CBOE's existing rules would govern trading on the SBT System, except as those rules are superseded or supplemented by the rules in Chapters XL through XLIX. CBOE is presently proposing to adopt SBT rules in Chapters XL through XLVI and would reserve Chapters XLVII through XLIX for future SBT rules, if it became necessary to adopt additional rules.

a. Basics of the SBT System

Unlike with the open outcry auction market, execution priority of orders in CBOE*direct* would not necessarily depend on originator type (*e.g.*, market maker, customer, firm, or broker-dealer). As discussed further below, orders would be executed on the System using either a strict price/time priority or a price/time pro rata allocation procedure. However, the Exchange's SBT Trading Committee would have the authority to overlay customer priority on either of these two allocation procedures. In addition, the SBT Trading Committee would have authority to allocate a trade participation right to an SBT Designated Primary Market Maker ("SBT DPM") or an SBT Lead Market Maker ("SBT LMM").[5] The initial SBT DPM/LMM participation entitlement percentage would be 30%, which CBOE would indicate in a circular distributed to the Exchange's membership. It is possible that the SBT Trading Committee might provide for different priority methods for different option classes at the same time. By doing so, the SBT Trading Committee could tailor the particular priority method to the particular option class (since the trading in different classes can vary), meet changes in priority structures put in place at competing exchanges, and experiment to determine which priority methods attract the most customer demand. CBOE has represented that, in any event, it would publicize the type of priority structure that applied to each particular option class so that all market participants were able to know what would be the relative priority of their orders for any particular option class.

As currently designed, CBOE*direct* would disclose neither the source of an order nor the contra-parties to a trade, except as identities of the trade participants might be revealed in connection with trade nullification procedures set forth in the proposed rules.

A number of SBT Standard Market Makers would be assigned to each class traded on CBOE*direct*. An SBT DPM also might be assigned to a class traded on the System and, if one were so assigned, would be obligated to provide opening quotes for all the series in its assigned classes. If no SBT DPM had been assigned to a particular trading class, the SBT Standard Market Makers would be obligated to provide opening quotes.[6] In addition, SBT Market Makers (either SBT Standard Market Makers, SBT DPMs, or SBT LMMs) assigned to a class would be obligated to respond to a certain minimum percentage of request for quotes ("RFQs") in their assigned classes.[7] If CBOE*direct* were used during extended trading hours when there was little liquidity in the underlying market, the appropriate Market Performance Committee or two Trading Officials could exempt the market makers from providing opening quotes or responding to RFQs. SBT Standard Market Makers, SBT DPMs, and SBT LMMs would have other obligations as further described below and in the proposed rules.

Only SBT Market Makers (including SBT DPMs/LMMs) could enter quotes. Order providers (SBT Brokers and Proprietary Traders) would be prohibited from entering limit orders in the same options series, for the accounts or accounts of the same or related beneficial owners, in such a manner that the order provider or the beneficial owner(s) effectively would be operating as a market maker by holding itself out as willing to buy and sell option contracts on a regular or continuous basis. Market maker quotes would be entered as two simultaneous orders (a buy order and a sell order) with any width. For a quote to count towards an SBT Market Maker's quote obligations (*i.e.*, the RFQ response requirement or continuous quote requirement), a quote would have to be no wider than a prescribed width and for an amount equal to or greater than some prescribed size. All market participants, including SBT Market Makers, could submit regular orders, for any class.

CBOE*direct* would accept market maker, firm, and broker-dealer orders in addition to public customer orders.

Spread orders and certain contingency orders also would be accepted.

Customer, firm, and broker-dealer orders could be submitted through an SBT workstation, the current wire order facility (used to send orders to the Exchange's open outcry auction market), or through a computer-to-computer link using CBOE's new application program interface ("API"). CBOE has stated that it might limit the number of market makers that could access CBOE*direct* through an API in order to protect the integrity of the System. In addition, CBOE has stated that it might impose restrictions on the use of a computer connected through an API if it believed such restrictions were necessary to ensure the proper performance of the System. CBOE has represented that these limitations would be only for the purpose of protecting the integrity of the System and would not be used in a discriminatory or arbitrary fashion.

Market maker orders and quotes could be submitted through an SBT workstation or the API.

Book depth and other market information would be available to all participants, although fees might be charged for access to certain of the information. CBOE has represented that these fees would be charged in a non-discriminatory manner and set at a level to ensure that the performance of the System did not become degraded.

Both opening and closing procedures would be handled automatically. SBT Market Makers assigned to a class would participate in the opening trade on an individual basis by providing their own quotes. SBT DPMs would be obligated to provide their opening quotes. The System would determine automatically the opening price that would clear the market and trade the maximum quantity at the open.[8] Spread orders and contingency orders (except for "opening only" orders) would not participate in the opening trade or in the determination of the opening price.[9] CBOE believes that the exclusion of these order types from the opening process would not only simplify the process for completing the opening, but also be consistent with the operation of the System which treats spread orders separately from other orders. Market participants wishing to have their spread orders represented in the opening could separate the order into distinct legs which could be represented in the opening. Likewise, market participants wishing to trade a contingency order could choose not to impose the contingency until after the opening if they wanted to attempt to participate in the opening.

In CBOE*direct*, the series of a class would not have to open all at the same time. Those that could open would be opened and those that could not open because of some reason (*e.g.*, market order imbalance) would cycle through the pre-opening and opening rotation procedures until they could open.

Unlike with the open outcry system, a CBOE autoquote facility would not be available to SBT Market Makers. However, CBOE anticipates that SBT Market Makers might use their proprietary autoquote systems to submit quotes through the API.

SBT Traders could trade from their offices or from any location where they had a workstation and communication link to the Exchange. An SBT Trader would have to be assigned a membership in order to trade on the System. However, current membership rules, which are applicable to the SBT System, provide for a different trader to use the regular trader's seat in certain situations. SBT Traders could avail themselves of current CBOE Rule 3.8, which allows a nominee of a firm to transfer onto a seat that is generally used by another nominee of the same firm. A firm would thereby be permitted to allow one nominee to trade on the seat during regular trading hours and a different nominee to trade on the seat during a CBOE*direct* extended trading hour session.

Other users of the System—besides SBT Market Makers and SBT Brokers—would include Proprietary Traders, Clearing Firm Users, and SBT System Operators/Administrators. Proprietary Traders would be members who entered orders as principal for non-market-maker proprietary accounts. Clearing Firm Users would be members who monitored and regulated the activities of SBT Traders trading through the clearing firm of the Clearing Firm User. SBT System Operators/Administrators would be Exchange employees who supported the operation of the System.

Extended Trading Hour Session

Initially, CBOE*direct* is intended to be used to trade options only during one or more extended trading hour ("ETH") sessions and not during the regular trading hour ("RTH") session during which options are currently traded on the Exchange. At this time, CBOE

[4] On September 7, 2001, CBOE submitted to the Commission a Form PILOT with respect to CBOE*direct*, pursuant to Rule 19b–5 under the Act, 17 CFR 240.19b–5. A self-regulatory organization may commence operation of a pilot trading system 20 days after filing a Form PILOT. *See* 17 CFR 240.19b–5(e)(1). CBOE commenced operation of a SBT System on October 26, 2001. Rule 19b–5 requires a self-regulatory organization, within two years of commencing operations of the pilot trading system, to file a proposed rule change—pursuant to Section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2)—to obtain permanent authority to operate that system. *See* 17 CFR 240.19b–5(f)(1). The present filing (SR–CBOE–00–55) was submitted pursuant to the requirement.

[5] Although the maximum guaranteed percentage entitlement for an SBT DPM/LMM would be 40%, the participation of an SBT DPM/LMM on any particular trade may be greater if the applicable allocation and priority rules so provide.

[6] The appropriate Market Performance Committee also might appoint an SBT LMM on a rotating basis which, like an SBT DPM, would have an obligation to provide opening quotes and to respond to RFQs at a higher rate than standard SBT Market Makers. Also an SBT LMM, like an SBT DPM, might have a guaranteed participation right for trades executed at its previously established quote. Initially, the guaranteed participation rate for SBT LMMs would be 30%. CBOE has stated that it would issue a circular to its membership indicating this participation rate. SBT LMMs also might have a continuous quoting obligation.

[7] Under the present open outcry system, a market maker is obligated, among other things, to compete with other market to improve markets in all series of option classes at the station where the market maker is present; to make markers which, absent changed market conditions, will be honored to a reasonable number of contracts in all series of option classes at the station where the market maker is present; and to update quotations in response to changed market conditions in all series of option classes at the station where the market maker is present. As a practical, however, quotes in all of the thousands of series trades at one station are provided by an autoquote system, while the market makers will verbally update and improve a number of the series on a periodic basis. It is possible for a market maker in the open outcry system, however, to avoid actively updating quotes, although CBOE does have a number of means to monitor for compliance. It would not be possible for an SBT Market Maker to avoid its obligations, as the System would monitor compliance and keep track of every response an SBT Market Maker had submitted.

CBOE anticipates that a number of SBT Market Makers would choose to provide continuous quotes, although the Exchange would not require them to do so. CBOE believes, however, that the quotes stream that would be produced if all market makers were required to provide continuous quotes for such a large number of series as might be listed on the System would overwhelm the quote dissemination systems currently in place at the Options Price Reporting Authority ("OPRA") and a third-party quote vendors. CBOE doubts whether there would be any benefit from imposing such a requirement.

[8] Today in the open outcry system, CBOE employs a Rapid Opening System ("ROS") to open some classes in a quick and automated fashion.

[9] The Commission notes that proposed CBOE Rule 42.3, *Opening and Closing Rotation Procedures*, is not consistent with its position in order approving CBOE's Rapid Opening System ("ROS") pilot program that non-bookable orders should be incorporated into ROS. *See* Securities Exchange Act Release No. 41033 (February 9, 1999), 64 FR 8156 (February 18, 1999).

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intends to trade a number of index option products during a morning session from 7 a.m. to 8:15 a.m. Central Time, before the normal opening for the open outcry auction market at 8:30 a.m. CBOE has not finalized the products that will be traded on the System, but as of April 24, 2002, the only products trading on CBOE*direct* were all series (except LEAPS) of options on the Standard & Poor's 100 index ("OEX"), the Russell 2000 ("RUT"), and the Dow Jones Industrial Average ("DJX").[10] Of course, the trading hours during which the System is used and the products traded on the System could change at any time based upon the competitive landscape, the interests of the Exchange's membership, and customer demand. At this time, CBOE intends to provide OPRA reports of quote and last sale during the ETH session(s) different from those sent during the RTH session so that the reports could be easily distinguished. The trading symbols for the classes would, however, be identical during the RTH and ETH sessions, and the contracts traded in both sessions would be fungible.

Initially, the System would not provide for the passing of orders between the ETH session and the RTH session. "Time in force" indicators would be used on orders routed to the Exchange to indicate whether the order was to be represented in the ETH session or the RTH session. Eventually, the System would allow for a variety of "time in force" codes that would provide for the order to be represented in more than one or all of the sessions of a current trading day. As a protection to customers and firms, CBOE would limit the time frames during which order types could be submitted to the Exchange, such that any order submitted would have to be designated for the current or next trading session of the current trading day.

Initially, during the ETH period, CBOE expects to require SBT DPMs/LMMs to continuously quote all series in the front two months and all series that are no more than 5% in-the-money or out-of-the-money. For those series that would not be continuously quoted, CBOE expects to impose an 85% RFQ response rate on SBT DPMs/LMMs and a 10% RFQ response rate on standard SBT Market Makers. The RFQ response rate would be calculated over a monthly period.

[10] Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Nancy Sanow, Division, Commission, on April 24, 2001.

Definitions and Application of Other Rules

The Exchange has proposed a definitional rule, CBOE Rule 40.1, to define those terms that are unique to the SBT System.

- "Screen Based Trading System" or "SBT System" would be defined as the electronic system administered by the Exchange that would perform the functions set out in Exchange rules including controlling, monitoring, and recording trading by members through SBT workstations and trading between members.
- "Application Program Interface" or "API" would mean the computer program that would allow SBT Traders on their own computers or on CBOE- or vendor-supplied workstations to interface with the SBT System.
- "SBT Book" would mean all unexecuted orders, other than spread orders, currently held by the SBT System.
- "SBT Spread Book" would mean all unexecuted spread orders currently held by the SBT System.
- "SBT workstation" would mean a computer workstation connected to the SBT System for the purposes of trading pursuant to the rules in proposed Chapters XL through XLIX.
- "Trading Official" would mean an Exchange employee or member who is granted certain duties under these rules to take actions affecting either the operation of the SBT System or the responsibilities of SBT Traders.[11]
- "SBT Trader" would mean an individual or organization that had the right to trade on the SBT System.
- "Market Turner" would mean an SBT Trader who was the first SBT Trader to enter an order (quote) at a better price than the previous best book price prior to the trading of an order, and the order (quote) was continuously in the market until the particular order traded.
- "Legal Width Market" would mean a bid and offer that was at or within the prescribed width as set forth in proposed CBOE Rule 44.4. For most purposes under these rules, a legal width market could be established by a bid from one SBT Trader and an offer from a different SBT Trader.

The Exchange also has proposed CBOE Rule 40.2, which would specify that, to the extent that existing Chapters I through XXVII of the CBOE rules are applicable to trading on the SBT System (as indicated by the context or by Appendix A to the SBT rules), the terms used in Chapters I through XXVII should be read to have the following meanings where appropriate:

- "Floor" should be read to mean SBT System;
- "Floor Official" should be read to mean Trading Official;
- "Appropriate Floor Procedure Committee" should be read to mean "appropriate SBT Trading Committee;"
- "Floor Broker" should be read to mean "SBT Broker" where appropriate;
- "Market-Maker" should be read to mean "SBT Standard Market-Maker," "SBT LMM," or "SBT DPM," as appropriate; and
- References in rules to "the Exchange" should be read to include the SBT System, where appropriate.

Any Exchange member who chose to participate on the SBT System could register with the Membership Committee as an SBT Market Maker (who could then act as an SBT Standard Market Maker, SBT LMM, or SBT DPM), SBT Broker, or Proprietary Trader. The Membership Committee would be responsible for approving applications of Exchange members as an SBT Market Maker, SBT Broker, or Proprietary Trader for the SBT System.

Once the SBT System had been enabled to recognize Replacement Traders, individual SBT Market Makers could nominate a Replacement Trader who would have to be qualified and registered with the Exchange as such. The Membership Committee would be responsible for qualifying and approving Replacement Traders. Replacement Traders for a nominee of a member firm would have to be nominees of the same firm or have their memberships registered for the same firm. When an SBT Market Maker logged off the SBT System, it could first choose to transfer its position to a Replacement Trader. Any quote transferred in that manner would retain its priority.

Access

For purposes of the SBT System that would be used during an ETH session, a member could use its membership to trade during the ETH session. As mentioned previously, a member organization also could have a different nominee use its membership to trade on the SBT System, pursuant to existing CBOE Rule 3.8.

Types of SBT System Users

As mentioned above, there would be a number of types of users of SBT workstations: SBT Market Makers

[11] The Commission notes that there are several instances in the proposed rules where "two Trading Officials" or "Trading Officials" or "Exchange Officials" would be able to take various actions. The Commission believes that, in certain proposed rules, the discretion afforded to "Trading Officials" or "Exchange Officials" may be overbroad.

(including Standard SBT Market Makers, SBT LMMs, and SBT DPMs); Proprietary Traders; Clearing Firm Users; and SBT System Operators/Administrators.

Market makers would operate the SBT workstation for the following functions:

- Enter, cancel, cancel/replace, and maintain two-sided quotes;
- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Respond to RFQs;
- Communicate with contra-parties for nullifying trades; and
- Set up defaults or preferences.

SBT Brokers and Proprietary Traders would operate the SBT workstations for the following functions:

- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Enter cross-notification and cross-execution orders;
- Communicate with contra-parties for nullifying trades; and
- Set up defaults or preferences.

Orders from SBT Brokers and Proprietary Traders could be entered through the Exchange's existing member firm front-end system. CBOE estimates that, initially, 80% of retail orders for SBT products would continue to be submitted as wire orders via ORS. The remaining 20%—composed of contingency orders, spread orders, and orders that would have to be "worked"—are currently transmitted to the floor by phone. For SBT products, this 20% would be submitted via the SBT workstations or through the API.

Clearing Firm Users would regulate the activities of SBT Market Makers that cleared through them. They would use the SBT workstation for the following functions:

- Set the volume limit of market maker orders, by class; and
- Force the logout of a market maker.

SBT System Operators/Administrators would operate workstations located at the Exchange or elsewhere for the following support functions:

- Start/stop the SBT System;
- Start/stop trading by class, by underlying security, or for the entire market;
- Add/change/delete trader IDs to the System;
- Add/change/delete products;
- Change market status such as open, closed, fast market, halt, *etc.* by class, by underlying security, or for the entire market;
- Determine the operating status of any workstation in the network;
- Send automated broadcasts of canned administrative messages to e-mail, fax, voice recording, trading groups, CBOE webpage, and SBT blackboard;
- Send text message to a trader or group of traders;
- Maintain class groups and market maker assignments to classes;
- Maintain market maker profiles which will identify the accounts where trades will settle;
- Maintain relationships between brokers and their executing firms/give-up firms;
- Monitor the log-in status of traders by class;
- Display operating status of various SBT System services;
- Display by class assigned and logged-in market makers;
- Display un-responded RFQs, including source of the RFQ;
- Display a trader's preferences;
- Enter, update, and display a market maker's appointments;
- Display a given terminal's activity for troubleshooting;
- Display trade log by trader ID of today's trades;
- Exercise full SBT workstation functionality by using a test product;
- Display a screen from a particular trader's point of view;
- Bust a trade;
- Force the logout of a market maker in response to a request from a clearing firm;
- Change Exchange-wide trading parameters; and
- Any other function provided for by the Exchange.

b. States of Operation

During the day, a particular class may be in one of the following states of operation: Pre-opening, Opening, Trading, Halted, and Closed.

Pre-opening. At this state, the System would accept quotes and orders, except time contingency and crossing orders, but no trading would take place. The System would provide market data, including data on any resting orders from the previous day and orders submitted before the opening, which could be viewed by any SBT Trader who subscribed to the data for that particular class.

Opening. The opening would be conducted using a "maximum contract volume traded" procedure. Under this procedure, when the primary market disseminated the underlying security's opening trade or opening bid and ask, the class would go into a second Pre-opening phase.[12] The System would send out an Opening Notice (*i.e.*, an RFQ) to SBT Market Makers that were assigned to that class to solicit their opening quotes.

The System would continue to accept quotes and orders, except time contingency and crossing orders, during this state. At the end of this Pre-opening time period, the System would go into an Opening where it would establish an opening price for each series, complete the opening trade, if any, and then change the state of the class to Trading.

Trading. During this state, the series would trade freely. All order types and quotes would be accepted during the Trading state, except for Opening-only contingency orders.

Halted. A particular class or all of the classes traded on CBOE*direct* could be placed in a Halted state for various reasons. The most common reason would be that the primary exchange had halted trading of the underlying security, or no underlying security prices or quotes were being received by the System. The System would send status alerts to OPRA for a product that had been halted. A product would have to go through the Pre-opening and Opening rotation procedures before it reverted to Trading after being Halted. When the System is operated during an ETH session, there might not be a primary market trading the underlying security. In such cases, the System might or might not automatically declare a trading halt if the underlying security had been halted on one or more of the markets trading the underlying security. The appropriate SBT Trading Committee would determine in advance from time to time whether to have the System automatically halt trading on the options if trading in the underlying had been halted in a market trading the underlying during an ETH session.

Closed. The System would change the state to Closed at a pre-determined time. Trading would be stopped but the System would continue to accept certain order types to allow traders to maintain their orders. At some designated time, the System would stop accepting orders and would enter into end-of-session procedures such as the purging of expiring orders (*e.g.*, day orders, if the System was used during the traditional trading hours), and reporting of Nothing Done order status to member firms.

Extended Trading Hours

During extended trading hours (*i.e.*, that period of time outside of the normal

[12] CBOE anticipates that, with index options trading during the ETH sessions, the Exchange's Help Desk would declare that the particular class was open at some point after the opening time since there would not be an underlying security price disseminated.

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trading hours, when CBOE*direct* would be used to trade options), the same states of operation would be employed. Initially, the System would accept only limit orders during the ETH period and would not accept market orders or certain contingency orders. The obligations of SBT DPMs/LMMs and Standard SBT Market Makers might be reduced during the ETH period because of the possibility that liquidity in the underlying securities might be severely reduced during this period of time.

Unusual Market Conditions

CBOE*direct* would be capable of declaring both fast markets and trading halts upon the occurrence of certain events, as detailed in proposed CBOE Rule 43.4. Additionally, proposed CBOE Rule 43.4 would supplement the current unusual market condition rule, CBOE Rule 6.6.[13] Proposed CBOE Rule 43.4 would describe the reasons why a Trading Official may determine to declare either a fast market or a trading halt. As with existing CBOE Rule 6.6, once a fast market has been declared, Trading Officials could take such actions as they deemed necessary to maintain a fair and orderly market. Upon the declaration of a fast market, Trading Officials could widen permissible bid/ask spreads by which a market maker must quote in order to receive credit for meeting its quote obligations and the suspend the firm quote obligations pursuant to existing CBOE Rule 8.51.

c. Trade Allocation

Orders would be filled in CBOE*direct* according to the market order processing and limit order processing rules described below. The appropriate SBT Trading Committee would have the authority to apply one of various types of trade allocation methodologies. The System would send fill reports for executed orders to the SBT workstations for display to the traders or to ORS for sending fill reports for wire orders. Executed orders would be sent to the Exchange's Trade Match System as a matched trade.

There would be two basic types of trade allocation methodologies: price-time and price-time pro rata. On top of these may be overlaid optional priorities for public customers, the Market Turner, and/or the SBT DPM/LMM.[14] The appropriate SBT Trading Committee would apply, for each class of options, one of the rules of trading priority discussed below. CBOE has stated that it would issue a Regulatory Circular periodically that would specify which priority rules would govern which classes of options any time the appropriate committee changed the priority.

Price-Time Priority. Under this method, resting orders in the SBT Book would be prioritized according to price and time. If two or more orders were at the best price, priority among these orders would be afforded in the order in which they were received by the System.

Price-Time Pro Rata Allocation.[15] Under this allocation methodology, resting orders in the SBT Book would be prioritized according to price. If there were two or more orders at the best price, trades would be allocated proportionally according to size (in pro rata fashion). The executable quantity would be allocated to the nearest whole number, with fractions ½ or greater rounded up and fractions less than ½ rounded down. If there were two market participants that were both entitled to an additional ½ contract and there were only one contract remaining to be distributed, the additional contract would be distributed to the market participant whose quote or order had time priority.

Additional Priority Overlays. In addition to the basic allocation methodologies set forth above, the appropriate SBT Trading Committee could determine to apply, on a class-by-class basis, any or all of the following designated market participant overlay priorities, in a sequence determined by the appropriate SBT Trading Committee.

(1) *Public Customer.* If this priority overlay were in effect and no other priority overlays were in effect, the highest bid and lowest offer would have priority, except that a public customer order would have priority over a non-public customer order at the same price. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, if there were two or more public customer orders for the same options series at the same price, priority would be afforded to such public customer orders in the sequence in which they had been received by the System, even if the price-time pro rata allocation method were the chosen allocation method.

(2) *Market Turner.* If this priority overlay were in effect and no other priority overlays were in effect, the Market Turner would have priority at the highest bid or lowest offer that it had established. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In either case, the Market Turner priority at a given price would remain with the order once it had been earned. For example, if the market moved in the same direction as the direction in which the order from the Marker Turner had moved the market and then the market moved back to the Market Turner's original price, the Market Turner would retain priority at the original price.

(3) *Trade Participation Right ("TPR").* SBT DPMs/LMMs could be granted trade participation rights that would provide for priority over non-public customer and/or customer orders up to the applicable participation right percentage designated pursuant to the provisions of proposed Chapter XLIV. If other priority overlays were also in effect, priority would be established in the sequence designated by the appropriate SBT Trading Committee. In allocating the participation right, all of the following would apply:

(i) To be entitled to its participation right, the order and/or quote of the SBT DPM/LMM would have to be at the best price.

(ii) An SBT DPM/LMM could not be allocated a total quantity greater than the quantity that the SBT DPM/LMM was quoting (including orders not part of quotes) at that price. Additionally, an SBT DPM/LMM could not be allocated a total quantity that represented a greater percentage than the SBT DPM's/LMM's percentage of the total size[16] at the best price before the participation right had been applied.

(iii) If the trade participation right priority and the Market Turner priority were both in effect and the SBT DPM/LMM were the Market Turner, the Market Turner priority would not be applicable.

(iv) In establishing the counterparties to a particular trade, the SBT DPM/LMM participation right would first be counted against the highest priority bids or offers of the SBT DPM/LMM.

Contingency Orders. Contingency orders would be placed last in priority order, regardless of when they were entered into CBOE*direct* or which allocation method was in place. A contingency order that was entered before a limit order for the same series at the same price would be treated as if it were entered after the limit order. If customer priority were afforded to a particular option class, customer contingency orders would have priority over non-public customer contingency orders.

Spread Orders. Spread orders would not be afforded priority according to proposed CBOE Rule 43.2, but would be handled as provided in proposed CBOE Rule 43.8.

Below are examples of how trades would be allocated under the different priority allocation methods.

Price-Time Allocation

Example 1. The SBT DPM's TPR share is 30%. In this example the allocation gives the DPM its TPR share only. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM as second. Assume that there is an incoming market order to sell 20.

Book's Resting Bids:

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
							20	
3	Customer	1	5	5			15	
8	Customer	2	1	1			14	
9	Customer	3	4	4			10	
					3.0	3	7	1
1	MM1	4	10	7			0	2
2	DPM bid1	5	10	3		−3		3
4	B/D1	6	10					
5	DPM bid2	7	50					
6	MM2	8	10					
7	MM3	9	10					
	Total		110					

Notes

1. The DPM TPR share is 30%. The DPM is allocated 3 contracts, leaving 7 for price-time allocation.

2. The first order, MM1, is partially filled with 7, leaving 0.

3. The DPMbid1 order is partially filled with 3 from the TPR allocation.

Example 2. The SBT DPM's TPR share is 30%. In this example, the allocation gives the DPM its TPR share plus a partial fill of its order in time sequence. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM priority as second. Assume that there is an incoming market order to sell 80.

Book's Resting Bids:

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
							80	
3	Customer	1	5	5			75	
8	Customer	2	1	1			74	
9	Customer	3	4	4			70	
					21.0	21	49	1
1	MM1	4	10	10			39	2
2	DPM bid1	5	10	10		−10	39	3
4	B/D1	6	10	10			29	4
5	MM2	8	10	10			19	5
6	MM3	9	10	10			9	6
7	DPM bid2	7	50	20		−11	0	7

Notes

1. The DPM's TPR share is 30%. The DPM is allocated 21 contracts, leaving 49 for price-time allocation.

2. The first non-customer order, MM1, is filled with 10, leaving 39.

3. The DPMbid1 order has been fully filled with 10 from the TPR allocation of 21. The quantity for price-time allocation remains unchanged at 39.

4. The B/D1 order is filled with 10, leaving 29.

5. The MM2 order is filled with 10, leaving 19.

6. The MM3 order is filled with 10, leaving 9.

7. The DPMbid2 order is partially filled with 20, which comes from the TPR remainder of 11 plus the remainder of 9.

Example 3. The SBT DPM's TPR share is 30%. In this example, the allocation gives the DPM its TPR share only. Assume that, within the price-time allocation procedure, customer priority is specified as first and DPM priority as second. Assume that there is an incoming market order to sell 80.
DPM share = 30% × 70 = 21.0

Book's Resting Bids:

[13] The Commission notes that a responsible broker or dealer is relieved of its firm quote obligations under CBOE Rule 8.51 as well as Rule 11Ac1–1 under the Act, 17 CFR 240.11Ac1–1 ("Firm Quote Rule"), if there are unusual market conditions such that the exchange is incapable of collecting, processing, and making available to quotation vendors the data required to be available under the Firm Quote Rule in a manner that accurately reflects the current state of the market on such exchange.

[14] The Commission notes that, under the proposed CBOE*direct* rules, public customers may not necessarily receive the highest allocation priority, depending on the priority structure authorized by the appropriate SBT Trading Committee. The Commission requests commenters views regarding the proposed rules that would govern allocation priority for CBOE*direct* transactions.

[15] In the draft notice prepared by CBOE, the "Price-Time Pro Rata" allocation method is sometimes referred to as "Combined Price-Time and Size Priority." For the sake of clarity, only the term "Price-Time Pro Rata" is being used in this notice.

[16] "Total size" in this context means the quantity of contracts that would remain after the interest of any participant with a higher priority had been satisfied. Telephone conversation between Nancy Sanow, Ira Brandriss, and Michael Gaw, Division, Commission, and Angelo Evangelou, Legal Division, CBOE, on April 5, 2002 ("Telephone conversation of April 5, 2002").

Time	Category	Fill seq.	Bid qty.	Fills	DPM share n (30%)	DPM allocation	Remaining qty.	Notes
						80		
3	Customer	1	5	5			75	
8	Customer	2	1	1			74	
9	Customer	3	4	4			70	
					21.0	21	49	1
1	MM1	4	10	10			39	2
2	DPM bid1	5	10	10		−10	39	3
4	B/D1	6	100	39			0	4
5	DPM bid2	7	50	11		−11	0	5
6	MM2	8	100				0	
7	MM3	9	10			0		
	Total		290					

Notes

1. The DPM TPR share is 30%. The DPM is allocated 21 contracts, leaving 49 for price-time allocation.
2. The first order, MM1, is filled with 10, leaving 39.
3. The DPM bid1 order is fully filled with 10 from the TPR allocation of 21. The quantity for price-time allocation is 39.
4. The B/D1 order is filled partially with 39, leaving 0.
5. The DPMbid2 order is partially filled with 11, which comes from the TPR remainder.

Price-Time Pro Rata Allocation

The SBT Book would store the orders from the best price to the worst. At each price level, the orders would be sorted in time sequence. Trades would be allocated in a manner that provided incentives to create deeper and tighter markets.

As discussed above, under the price-time pro rata allocation procedure, three optional priorities—customer priority, SBT DPM/LMM trade participation right, and Market Turner—could be specified, as well as their priority with respect to each other.

- *Customer Priority.* Customer priority, if it were provided, is recommended to be absolute. If customer priority were granted, customer orders would be filled ahead of any other order. Within the group of customer orders, the orders would be prioritized by time.
- *Market Turner.* The order that improves the market would earn Market Turner priority.
- *Trade Participation Rights.* To receive its TPR share, the SBT DPM/LMM would have to have a quote and/or order at the best price. The TPR would be calculated as a percentage—a minimum of *n* (30%)—of the remaining quantity after all higher priority orders (*e.g.*, customer) had been filled completely. The minimum TPR quantity would be allocated to the SBT DPM/LMM up to its size. If there were a remaining executable quantity, orders of lower priority than the SBT DPM/LMM (*e.g.*, Market Turner) would be filled completely. If there were remaining executable quantity, the remaining quote and/or order quantities of the SBT DPM/LMM, if any, would participate in the pro rata allocation of the remainder to the orders at the best price. However, the maximum participation quantity of the SBT DPM/LMM would be limited to its original pool share of the quantity before the minimum TPR quantity was calculated. In addition, if the Market Turner were an SBT DPM/LMM, that priority would be ignored. This algorithm is illustrated in examples 1 to 6 below.

Price-Time Pro Rata Example 1. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting less than its maximum possible allocation (*i.e.*, original pool percentage share). Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled because the DPM gets its fill from a two-step allocation: First, from its TPR share and, second, from the pro rata calculation.

Assume there is an incoming market order to sell 20.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	10

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Fills	DPM 30% alloc.	Remaining qty	Notes
							20	
						6	14	1
MT	1	10			10		4	2
DPM size	2	65	59	3	9	−6	1	3
B/D1	3	20	20	1	1		0	4
MM2		5	5	0	0		0	4
MM3		10	10	0	0		0	4
Total		110	94	4	20			

DPM Pool % = (65/110) = 59.1%
DPM Max. Share, P = (65/110) × 20 = 11.8 or 12
DPM Min. Share, M = (0.3 × 20) = 6.0 or 6
Potential additional DPM share = 6

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 12 contracts. The DPM minimum TPR share is 30% of 20, or 6 contracts. The potential additional DPM share is (P–M), or (12 – 6) or 6 contracts. To begin, the DPM TPR share of 6 is allocated, leaving 14.
2. The Market Turner is fully filled with 10, leaving 4.
3. The pro rata distribution of the remainder of 4 is calculated, using the remaining order sizes in the pool. The DPM's pro rata share is 3. Since 3 + 6 (M) is not greater than P(12), the pro rata shares are allocated. The DPM is allocated its pro rata share of 3.
4. B/D1 gets its pro rata share of 1. The other two orders get zero pro rata shares.

Price-Time Pro Rata Example 2. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting its maximum possible allocation (*i.e.*, original pool percentage share). Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled.

Assume there is an incoming market order to sell 85.

Time	Category	Bid qty.
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty.	Bids for P.R. #1	Pro rata alloc. #1	Bids for P.R. #2	Pro rata alloc. #2	Fills	DPM 30% alloc.	Remaining qty.	Notes
									85	
								26	59	1
MT	1	10					10		49	2
DPM size	2	65	39	26			50	−26	25	3
B/D1	3	20	20	13	20	14	14		11	4
MM2	3	5	5	3	5	4	4		7	4
MM3	3	10	10	7	10	7	7		0	4
Total		110	74	49	35	25	85			

DPM Pool % = (65/110) = 59.1%
DPM Max. Share, P = (65/110) × 85 = 50.2 or 50
DPM Min. Share, M = (0.3 × 85) = 25.5 or 26
Potential additional DPM share = 24

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 50 contracts. The DPM minimum TPR share is 30% of 85, or 26 contracts. The potential additional DPM share is (P–M), or (50 – 26) or 24 contracts. To begin, the DPM TPR share of 26 is allocated, leaving 59.
2. The Market Turner is fully filled with 10, leaving 49.
3. The pro rata distribution of the remaining 49 is done. The DPM's pro rata share is 26. Giving the DPM 26 more would put its fill (26 + 26 = 52) greater than its original pool share of 50 (P). Therefore, the DPM is filled only up to 50. This takes 24 out of 49, leaving 25.
4. A second pro rata calculation is done to distribute the remainder of 25 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 3. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the Market Turner and the DPM are both filled, with the DPM getting less than its minimum TPR of *n* (30%) because of its size. Note that the DPM has two orders. For this allocation method, the DPM size is aggregated and filled after the Market Turner is filled.

Time	Category	Bid qty
1	MT	20
2	DPM bid1	10
3	B/D1	35
4	DPM bid2	10
5	MM2	25
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty.	Bids for P.R. #1	Prorata alloc #1	Fills	DPM 30% alloc.	Remaining qty.	Notes
							85	
						20	65	1
MT	1	20			20		45	2
DPM size	2	20			20	−20	45	3
B/D1	3	35	35	23	23		22	4
MM2	3	25	25	16	16		6	4
MM3	3	10	10	6	6		0	4
Total		110	70	45	85			

DPM Pool % = (20/110) = 18%
DPM Max. Share, P = (20/110) × 85 = 15.5 or 16
DPM Min. Share, M = (0.3 × 85) = 25.5 or 26
Actual DPM share, limited by his size = 20

Notes

1. The DPM pool share is 20/110 or 18.2%, or a maximum allocation of 16 contracts. The DPM TPR share is 30% of 85, or 26 contracts. However, the DPM is allocated only up to its size of 20, leaving 65.
2. The Market Turner is fully filled with 20, leaving 45.
3. The DPM is filled with its allocation of 20. The remainder stays at 45 because 45 already account for the DPM allocation.
4. A second pro rata calculation is done to distribute the remainder of 45 to the non-DPM orders in the pool.

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Price-Time Pro Rata Example 4. Assume that priority is (1) customer, (2) DPM, (3) Market Turner. No customer orders are included to simplify the example. In this example, the DPM is also the Market Turner. The Market Turner priority is ignored if the Market Turner order is a DPM order.

Time	Category	Bid qty
1	DPM bid1	15
2	B/D1	20
3	DPM bid2	50
4	MM2	15
5	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									85	
								26	59	1
DPM MT	1	15					0		59	2
DPM size	2	65	39	27			50	−26	35	3
B/D1	3	20	20	14	20	16	16		19	4
MM2	4	15	15	11	15	11	11		8	4
MM3	5	10	10	7	10	8	8		0	4
Total		110	84	59	45	35	85			

DPM Pool % = (65/110) = 59.1%
DPM Max. Share, P = (65/110) × 85 = 50.2 or 50
DPM Min. Share, M = (0.3 × 85) = 25.5 or 26
Potential additional DPM share = 24

Notes

1. The DPM pool share is 65/110 or 59.1%, or a maximum allocation of 50 contracts. The DPM minimum TPR share is 30% of 85, or 26 contracts. The potential additional DPM share is (P − M), or (50 − 26) = 24 contracts. To begin, the DPM TPR share of 26 is allocated, leaving 59.

2. Since the Market Turner is a DPM order, the Market Turner order of 15 is not filled, leaving 59.

3. The pro rata distribution of 59 is calculated. The DPM's pro rata share is 27. Giving the DPM 27 more puts its fill (26 + 27 = 53), greater than its pool share of 50. The DPM pro rata share is then limited to 24, leaving 35.

4. A second pro rata calculation is done to distribute the remainder of 35 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 5. Assume that priority is (1) customer, (2) Market Turner, (3) DPM. No customer orders are included to simplify the example.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	15
3	B/D1	20
4	DPM bid2	50
5	MM2	5
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									20	
MT	1	10					10	3	7	1
DPM size	2	65	62	5			7	−3	3	2
B/D1	3	20	20	1	20	2	2		1	3
MM2	4	5	5	0	5	0	0		1	3
MM3	5	10	10	1	10	1	1		0	3
Total		110	97	7	35	3	20			

DPM Pool % = (65/100) = 65.0%
DPM Max. Share, P = (65/100) × 10 = 6.5 or 7
DPM Min. Share, M = (0.3 × 10) = 3.0

Notes

1. The Market Turner is fully filled with 10, and the DPM is allocated its 30% or 3, leaving a remainder of 7.

2. The pro rata distribution of the remaining 7 is done. The DPM's pro rata share is 5. Giving the DPM 5 more would put its fill (3 + 5 = 8) greater than its original pool share of 7 (P). Therefore, the DPM is filled only up to 7. This takes 4 from 7, leaving 3.

5. A second pro rata calculation is done to distribute the remainder of 3 to the non-DPM orders in the pool.

Price-Time Pro Rata Example 6. Assume that priority is (1) customer, (2) Market Turner, (3) DPM. No customer orders are included to simplify the example. In this case, the DPM's original pool share is less than its minimum 30% TPR share. The DPM's participation is limited to the 30% TPR share.

Time	Category	Bid qty
1	MT	10
2	DPM bid1	10
3	B/D1	20
4	DPM bid2	10
5	MM2	50
6	MM3	10
	Total	110

Category	Fill seq.	Bid qty	Bids for P.R. #1	Pro rata alloc #1	Bids for P.R. #2	Pro rata alloc #2	Fills	DPM 30% alloc.	Remaining qty	Notes
									20	
MT	1	10					10	3	7	1
DPM size	2	20	17	1			3	−3	7	2
B/D1	3	20	20	2	20	2	2		5	3
MM2	4	50	50	3	50	4	4		1	3
MM3	5	10	10	1	10	1	1		0	3
Total		110	97	7	80	7	20			

DPM Pool % = (20/100) = 20.0%
DPM Pool Share, P = (20/100) × 10 = 2.0
DPM Min. Share, M = (0.3 × 10) = 3.0

Notes

1. The Market Turner is fully filled with 10, and the DPM is allocated its 30% or 3, leaving a remainder of 7.

2. The pro rata distribution of the remaining 7 is done. The DPM's pro rata share is 1. Giving the DPM 1 more would put its fill (3 + 1 = 4), greater than its original pool share of 2 (P) or its TPR share of 3. Therefore, the DPM gets zero additional contracts.

3. A second pro rata calculation is done to distribute the remainder of 7 to the non-DPM orders in the pool.

Pro Rata Calculation Example. Remaining quantity of 49 is to be allocated to four orders as shown below.

Alloc. % = (Order Qty × 100/Total Order Qty)
Calc. Qty = (Alloc. %) × Remaining Quantity
Alloc. Qty = Calc. Qty rounded up/down

In each step the allocated quantity is determined for one order. See the Final Allocations where the "Calc. Qty" is rounded up/down to the "Alloc. Qty." In the last step, the "Alloc. Qty" for the two last orders is determined.

		Order 1	Order 2	Order 3	Order 4	Total order qty	Remaining qty to allocate
Step 1	Order qty	20	39	5	10	74	49
	Alloc. %	27.0	52.7	6.8	13.5		
	Calc. qty	13.2	25.8	3.3	6.6		
Step 2	Order qty		39	5	10	54	36
	Alloc. %		72.2	9.3	18.5		
	Calc. qty				26.0	3.3	6.7
Step 3	Order qty			5	10	15	10
	Alloc. %			33.3	66.7		
	Calc. qty			3.3	6.7		
Final Allocations							
Step 1	Alloc. qty	13				13	
Step 2	Alloc. qty		26			26	
Step 3	Alloc. qty			3	7	10	
				Total allocated qty =		49	

d. Crossing Orders

Interim Procedure. Initially, an SBT Trader would be able to cross orders only after giving all other market participants an opportunity to trade against the orders. Pursuant to proposed CBOE Rule 43.12A, if an SBT Broker held orders to buy and sell the same option series and wanted to cross such orders, the SBT Broker would first have to send an RFQ with the size of the orders to be crossed. The RFQ response period would be for a period of time established by the appropriate SBT Trading Committee and initially would be set at 30 seconds.[17]

At the end of this RFQ response period and by the end of a second time period of 20 seconds or some other duration as established by the appropriate SBT Trading Committee, the SBT Broker would have to expose one of the orders to the SBT Book. If the SBT Broker had two customer orders to cross, the broker would use his or her discretion to determine which of the orders to expose to the SBT Book. Both orders would receive price improvement, however, because the cross would have to be consummated between the best bid and offer. After the SBT Broker had entered the order to be exposed on the book, other SBT Traders would have a specified time period in which to trade against it. This time period would be established by the appropriate SBT Trading Committee and initially would be set at ten seconds.[18] If the exposed order were not completely taken out by other SBT Traders at the end of this period, the SBT Broker could enter the opposite order to cross any balance of the exposed order that remained.[19]

An SBT DPM/LMM would not be entitled to receive its participation right on a cross transaction executed pursuant to proposed CBOE Rule 43.12,

[17] CBOE has advised that it intends to amend the proposed rule change to establish a minimum time period for response to the RFQ. Telephone conversation of April 5, 2002.

[18] *Id.*

[19] *Id.*

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Crossing Mechanism, or 43.12A, *Interim Crossing Procedure*, because the trade would necessarily occur at a price between the best bid and offer previously established.

It would be a violation of proposed CBOE Rule 43.12 (described below) or of proposed CBOE Rule 43.12A for an SBT Broker to be a party to any arrangement designed to circumvent CBOE Rule 43.12 or Rule 43.12A by providing an opportunity for a customer to regularly execute against agency orders handled by the SBT Broker immediately upon their entry into the System.

It also would be a violation of proposed CBOE Rules 43.12 or 43.12A for an SBT Broker to cause the execution of an order it had represented as agent on the Exchange by orders it solicited from members and non-member broker-dealers to transact with such orders, whether such solicited orders were entered into the System directly by the SBT Broker or by the solicited party (either directly or through another member), if the member failed to expose orders on the Exchange as required by proposed CBOE Rules 43.12 or 43.12A.

CBOE has represented that it would surveil for instances where an SBT Broker had entered orders that were executed against each other without being executed pursuant to proposed CBOE Rules 43.12 or 43.12A. CBOE believes that this activity would be relatively simple for it to identify.

Crossing Mechanism. CBOE has stated that the System would eventually provide for a participation right for SBT Brokers wishing to cross orders. Once the System has been enabled to provide for such right, the Crossing Mechanism would be a process by which an SBT Broker could facilitate an original order or cross two original orders.[20] The Crossing Mechanism would permit an SBT Broker, after requesting and receiving a market from other SBT Traders through the RFQ process, to cross a guaranteed percentage of an original customer order with a facilitation order or second customer order at a price that improved upon the market that the SBT Broker had received. The Crossing Mechanism would then expose the remaining portion of the original order to other SBT Traders, giving them an opportunity to trade against it, ahead of the SBT Broker, within a specified time period of 20 seconds.

As with the Interim Procedure, to use the Crossing Mechanism, an SBT Broker would first have to submit to the System an RFQ designating a size equal to the quantity to be crossed. SBT Traders would then have an RFQ response period for a length of time established by the SBT Trading Committee to enter orders or quotes that matched or improved upon the existing quotations on the System.[21]

At the end of the RFQ response period and by the end of the second time period to be established by the SBT Trading Committee (likely to be 20 seconds), the SBT Broker would have to enter the terms of the proposed cross transaction.[22] The required terms would include the terms of the original order and the proposed facilitation order (or two original orders), a proposed crossing price, the quantity of the original order that the SBT Broker would be willing to facilitate (in the case of a facilitation cross), and an indication of which order is to be exposed to the market (in the case of a cross of two original orders)—*i.e.*, after the guaranteed crossing percentage had been applied as described below. The customer order would be the exposed order in a facilitation cross.

The following two conditions would have to be satisfied at the time the cross transaction was entered or the System would reject the cross transaction: (1) A legal width market would have to exist for the particular series to be crossed, and (2) the proposed cross price would have to be between the best bid and offer displayed by the System.

If all the terms were properly entered and the two aforementioned conditions were satisfied, the System would immediately cross the two orders up to the amount of the guaranteed crossing percentage (*i.e.*, 40%) of the crossing quantity. For example, if the crossing quantity were 1,000 and the guaranteed crossing percentage were 40%, the System immediately would trade 400. After this immediate execution of the guaranteed percentage of the cross, the System would expose the remaining volume of the original customer order in the SBT Book at the same price for a period of 20 seconds.[23] During this period, the other SBT Traders would be given the opportunity to trade against the remaining 60% of the original order ahead of the submitting SBT Broker, while the System placed the opposite order on hold as a shadow order that would not be visible except to the submitter.[24] The exposed order's price and quantity would be disclosed but the System would not indicate that the order was part of an overall crossing transaction, 40% of which had already been executed, and the remaining part of which would be pending as a cross of the exposed order with the shadow order.[25]

As long as the exposed order was the highest priority order at the best price, other SBT Traders could trade against the exposed order during the 20-second exposure period. If the exposed order were fully filled by other traders, the System would cancel the remaining quantity of the shadow order and send the crossing firm a message that the crossing transaction was completed.

At the end of the exposure period, if the exposed order had quantity remaining and if it were at the best price and had the highest priority, the System would fill the remainder of the order with the shadow order. The System would cancel the remaining quantity of the shadow order and send the crossing firm a message that the crossing transaction was completed. If the exposed order had quantity remaining and it were not the highest priority order at the market (*i.e.*, it were not the highest bid/lowest offer), the System automatically would cancel the remainder of the exposed order and send the SBT Broker a message that the crossing transaction was completed.

For example, assume the exposed (customer) order buy quantity is 1,000 and 500 were filled before the end of the exposure period. If the order were at the best price and had the highest priority, the remaining 500 would be filled by the shadow (firm) order at the crossing price. However, if the exposed order were not at the best price or did not have the highest priority at its price, the remaining 500 of the exposed order would be canceled.

Proposed CBOE Rule 43.12A would apply until the System has been enabled to provide for this Crossing Mechanism.

[20] CBOE has advised that it intends to amend the proposed rule change to establish a minimum eligible order size for transactions using the Crossing Mechanism. *Id.*

[21] CBOE has advised that it intends to amend the proposed rules change to establish a minimum time period for response to the RFQ. *Id.*

[22] *Id.*

[23] In the example above, the System would show only an order for 600 contracts, and the original size of 1,000 would not be exposed to the other SBT Traders. However, a trade of 400 contracts at the crossing price would appear on the tape of the reported trades.

[24] CBOE has advised that it intends to amend the proposed rule change to incorporat e an interpretation advising that it would be a violation of an SBT Trader's duty of best execution to its customer if it were to cancel a crossing transaction to avoid execution of the order at a better price. Telephone conversation of April 5, 2002.

[25] *Id.*

e. Market Order Processing

Proposed CBOE Rule 43.7 would govern the processing of market orders on CBOE*direct*. CBOE has stated that, in developing the market order processing rules, it sought to balance two customer protection interests: (1) Ensuring that an order is executed against current quotes, and (2) ensuring that an order is executed quickly.[26] To ensure the order is executed against current quotes, the System would protect a market order by automatically executing it against the best bid/ask only if there were a legal width market.[27] The System would match market orders against orders at the best price in the SBT Book and against the other orders behind the best price at varying prices until, after trading against the bids or offers, a legal width market no longer existed.

If there were no legal width market when the order was entered in the System, or if any portion of the market order were not executed because there were no longer a legal width market, the System would hold the order (or any remaining portion of the order) in queue, send an RFQ to SBT Market Makers currently providing quotes, and send a notice to the originator of the order about the order status.

An RFQ sent pursuant to these procedures would include the market order quantity but not whether the order was a buy or a sell. RFQ responses would be sent to the SBT Book. From this point, the System would attempt to execute the market order if any one of the following conditions became true (as specified in proposed CBOE Rule 43.7):[28]

1. During the RFQ expiration response time, if the best quote width became a certain prescribed percentage (*e.g.*, 75%)—as set by the appropriate SBT Trading Committee—of the legal width market.[29]

2: If an incoming immediately executable limit order were received on the same side of the market as the market order and at least one legal width quote were received.[30]

3. If a certain prescribed percentage of the market makers currently providing quotes in the class—the percentage to be set by the appropriate SBT Trading Committee—had responded to the RFQ.

4. If the RFQ period expired and there were at least one quote response.

5. If one or more market orders were entered on the opposite side and there were a legal width market at the time the particular order arrived.

If any of the above conditions were met, the System would execute the market order against orders in the SBT Book or immediately against an incoming market order on the opposite side. If there were volume remaining in the market order, the System would hold it in queue and repeat the RFQ cycle. The System also would send a notice to the originator of the order status and give the originator the option to cancel the order.

If the RFQ period expired and there were no RFQ response, the System would send an alert message to the Help Desk. The Help Desk could solicit quotes from the SBT Market Makers and require a response from them.

The following describes the price at which the System would execute the market order. If the System were executing the market order against a market order that had been entered on the opposite side at the time a legal width market was present, the System would cross the market orders at a price between the bid and offer, as further described in proposed CBOE Rule 43.7.

If an incoming RFQ response could execute against a market order as well as older limit orders (at a particular price), then:

1. If the incoming RFQ response were of large enough quantity to fill all the older limit orders and the market order, all of those orders would be filled at the price of the older limit orders.

2. If the incoming RFQ response were not large enough to fill all of the older limit orders, the market order would be executed at the minimum price interval ahead of the older limit orders.[31]

If a market order for a certain series became subject to an RFQ as described above, then subsequent market orders for the same series and side would be queued to ensure that these incoming market orders were processed in time sequence.

If trading were halted while a market order was on hold waiting for RFQ responses, the SBT System would do the following:

1. If the market order were a GTC order, the System would hold and execute it at the next opening, in the same day or the next day.

2. If the market order were a day order, the System would execute it at re-opening if trading resumed for the same day.

3. If trading did not resume, the System would purge the market order as part of the end-of-day procedure for purging day orders.

Market Order Processing Examples

Example 1. When the System receives a market order, it would check for the presence of a legal width market. If there were no legal width market, the System automatically would hold the market order in queue and send an RFQ. If a legal width market existed, the market order would execute against the best order in the SBT Book and against the other orders behind the best, at varying prices until the market order was fully filled or until a legal width market no longer existed.

Assume there are six SBT Market Makers assigned to the product. The maximum allowable quote width, and the legal width market, for a bid range of $5.01 to $10.00 is $0.50. The SBT Book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
5	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

A market order to buy 35 arrives.

Since a legal width market exists (6.75 − 6.25 = 0.50), the market order is filled with 10 at 6.75, leaving 25 to be executed. Now, the market width is no longer standard (6.90 − 6.25 = 0.65, *i.e.*, wider than the 0.50 allowed). The System places the remaining 25 contracts of the market order on hold and automatically issues an RFQ for a quantity of 25.

The System reports the best quote to OPRA as 6.25 − 6.90, 5 × 20. The market order is not exposed in the SBT Book. The book now looks as follows:

[26] In most cases, at least if the System were used during an RTH session, market orders would execute immediately because CBOE expects there would be a legal width market for most series at most times.

[27] A pair of unrelated bid and offer orders, whose sizes may be less than the minimum quote size, separated by the Exchange-prescribed width, would be sufficient to trigger the trade of an incoming market order. It would not be necessary to have a standard quote (*i.e.*, a pair of bid and ask orders that are part of the same quote) meeting the minimum quote size and the prescribed width requirements.

[28] In determining to provide for an execution upon the occurrence of any of these particular events, CBOE sought to balance the interests of the Exchange's customers in receiving a quick and certain execution against the desire of the Exchange and the interests of its customers in ensuring that executions occur only in circumstances where there is a high level of market participation and/or liquidity.

[29] CBOE believes that this condition would help to minimize the queuing time of the market order.

[30] CBOE believes that this condition would prevent the later-arriving limit order from executing ahead of the market order, thus preserving time priority. Under this condition, if no quote had been received, the limit order would execute ahead of the market order.

[31] CBOE believes that this condition would prevent a violation of time priority because the market order would be executed at a price to which the limit order would not be entitled.

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MARKET ORDER FOR 25

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
5	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

Example 2. The System would expose the incoming quotes (*i.e.*, RFQ responses) in the SBT Book. During the RFQ expiration time, if the best quote width became the designated percentage of the legal quote width (e.g., 75%) or less, the System would execute the market order against the quote and any other eligible booked order until the order were fully filled or until the legal width market no longer existed. If the latter occurred, the System would hold the market order in queue again, send an RFQ, and send a notice to the originator about the order status.

Continuing with the example from above, assume the first quote, 6.25 – 6.75, 10 × 10, arrives. The market order does not trade even if the market is legal width (6.75 – 6.25 = 0.50) because none of the requirements is met. The market width is not 75% (assuming this is the designated percentage) or less of the legal width market. In addition, 50% (*i.e.*, 3) or more of the market makers have not responded. Finally, the RFQ response time has not expired. This rule would protect the market order by ensuring that it did not trade against the first quote that came in that could have a standard width yet be off the market expressed by the other market makers. The System reports the best quote to OPRA as 6.25 – 6.75, 15 × 10.

The SBT Book now looks as follows:

MARKET ORDER FOR 25

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
5	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

Now assume a second quote, 6.25 – 6.55, 10 × 10 arrives. Since the market width is now 0.30 (*i.e.*, 60% of the legal width market), the market order trades with the best order on the opposite side and any other orders behind it, until the market width is no longer standard. The market order is filled for 10 at 6.55, then for 10 more at 6.75.[32] The System then automatically issues a second RFQ for the remaining quantity of 5. The System reports the best quote to OPRA as 6.25 – 6.90, 25 × 20. The book now looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
25	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

Now assume that a quote, 6.25 – 6.75, 10 × 10, arrives. Again, the market order does not trade even if a legal width market exists. Only one market maker of six has responded. The quote width is not 75% or less of the legal width market. The System reports the best quote to OPRA as 6.25 – 6.75, 35 × 10. The book now looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25	.....	.....
25[33]	6.20	.....	.....
5	5.95	.....	.....

Example 3. If the System received a limit order on the same side of the market as the market order that could match the best bid/offer and at least one quote had been received, creating a legal width market, the System would execute the market order against the best bid/offer. The market order would trade ahead of the just-arrived limit order because it had time priority. The presence of a legal width market coupled with a limit order on the same side as the market order, ready to trade against the best opposite side order, would protect the market order from trading at an unreasonable price. If there were no legal width market, the market order would be "protected" from trading and the limit order would be filled ahead of the market order.

Continuing with the example above, assume a limit order to buy 10 at 6.75 arrives. The buy limit order matches the best offer and there is a legal width market. Therefore, the market order trades against 5 of the best offer of 6.75. The limit order to buy then trades with the remaining 5 offered at 6.75. The System reports the best quote to OPRA as 6.75 – 6.90, 5 × 20. The book now looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
5	6.75	.....	.....
35	6.25	.....	.....
25	6.20	.....	.....
5	5.95	.....	.....

Example 4. If an incoming RFQ response could execute against a market order as well as older limit orders (*i.e.*, limit orders that were on the SBT Book before the market order was entered) at a particular price, then, if the incoming RFQ response were of large enough quantity to fill all the older limit orders and the market order, all of those orders would be filled at the price of the older limit orders.

Assume that a market order for 5 is on hold and that the bids for 6.25 are older than the market order. Assume that the book looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25	.....	.....
25	6.15	.....	.....
5	5.95	.....	.....

Now assume that a quote of 6.00 – 6.20, 50 × 50 arrives. The market is crossed for an instant at 6.25 – 6.20, 35 × 50. The System does not report this instantaneous best quote to OPRA. It will send a best quote report after the cross is traded out (which will happen immediately). Since the 50 offered at 6.20 could fill all the limit orders to buy at 6.25 and the market order (total quantity of 35+5) at 6.25, then the market order is filled at 6.25. When the market is crossed the execution price is the price of the older order. The System reports the best quote to OPRA as

[32] CBOE believes that it is appropriate for a portion of the balance of the market order to execute at a price outside of the designated percentage of the legal width market in accordance with the market order processing procedures because, among other things: (1) An opportunity was provided for additional market participants to submit quotes priced within the designated percentage of the legal width market; (2) continuing to hold the balance of the order would cause unnecessary queuing of marketable orders; and (3) under CBOE market order processing procedures, no portion of the market order would be executed outside of a legal width market. Further, CBOE notes that, for multiply listed option classes, NBBO considerations would also protect the market order. E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated November 13, 2001.

[33] Exhibit 1 of Amendment No. 1 contains a typographical error, and this figure was incorrectly reported as 30. CBOE has confirmed that 25 is in fact the correct figure. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 9, 2001.

6.15 – 6.20, 25 × 10. The book now looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
		6.20	10
25	6.15	.....	.....
50	6.00	.....	.....
5	5.95	.....	.....

Example 5. If an incoming RFQ response were not large enough to fill all the older limit orders, the market order would be executed at the minimum price interval ahead of the older limit orders. Executing at a better price would enable the market order to trade ahead of the older limit order, thus preserving time priority.

Assume that there is a market order to buy 5 on hold and that the bids at 6.25 are older than the market order. Assume that the book looks as follows:

MARKET ORDER OF 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
35	6.25	.....	.....
25	6.15	.....	.....
5	5.95	.....	.....

Now assume that a quote 6.00 – 6.25, 10 × 10 arrives. The market is locked for an instant at 6.25 – 6.25, 35 × 10. The System does not report the instantaneous best quote to OPRA (because the quote will be traded instantly). The System will send a best quote report after the locked market is traded out. Because the 10 traded at 6.25 could not fill all the limit orders to buy at 6.25 and the market order (total quantity of 35 + 5 = 40) at 6.25, then the market order is filled at 6.30, one minimum tick ahead of the older limit orders at 6.25.[34] The remaining 5 offered at 6.25 trades with 5 of the older limit orders to buy at 6.25. The System reports the best quote to OPRA as 6.25 – 6.75, 30[35] × 10. The resulting book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5

[34] CBOE assumes the minimum tick for purposes of this example is $0.05.

[35] Exhibit 1 of Amendment No. 1 contains a typographical error, and this figure was incorrectly reported as 35. CBOE has confirmed that 30 is in fact the correct figure. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 9, 2001.

Book bid size	Book bid	Book ask	Book ask size
		6.90	20
		6.75	10
30[36]	6.25	.....	.....
25	6.15	.....	.....
10	6.00	.....	.....
5	5.95	.....	.....

Example 6. If the older limit order is a Fill or Kill ("FOK") order or an All or None ("AON") contingency order and the just-arrived order could trade with the contingency order, the market order would be executed at the price of the contingency order. The market order need not trade at a minimum price interval to step ahead of the older contingency order because contingency orders would have to yield priority to market orders even if they were received before the market order.

Assume that there is a market order to buy 5 on hold. Assume that the 10 bid at 6.25 is older than the market order and that this bid is a FOK or an AON contingency order. The System reported the best quote to OPRA as 6.20 – 6.75, 25 × 10. Note that the FOK or AON contingency order does not affect the best quote report sent to OPRA. Only limit orders and IOC orders are reflected in the best quote report sent to OPRA. Assume the book looks as follows:

MARKET ORDER FOR 5

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
10	6.25	.....	.....
25	6.20	.....	.....
6	5.95	.....	.....

Now assume that a quote 6.00 – 6.25, 10 × 10 arrives. Because the 10 offered at 6.25 could not fill all the older limit orders and the market order (total quantity of 10 + 5 = 15) at 6.25, the market order is filled at 6.25, at the price of the contingency order. Now the book looks as follows:

Book bid size	Book bid	Book ask	Book ask size
		6.95	5
		6.90	20
		6.75	10
		6.25	5
10	6.25	.....	.....
25	6.20	.....	.....
10	6.00	.....	.....
5	5.95	.....	.....

The book is displayed as locked because the 10 AON or FOK bid at 6.25 has to be filled in its entirety. Note that only the SBT Traders using the System are aware of this lock condition. The System reports to OPRA a best quote of 6.20 – 6.25, 25 × 5.

To summarize, if the designated percentage (*e.g.*, 50%) of the assigned market makers had responded to the RFQ or if the RFQ period had expired and there were at least one standard quote response, the System would execute the market order against the book. If there were volume remaining in the market order, the System would hold it in queue and repeat the RFQ cycle. The System also would send a notice to the originator of the order status and give the originator the option to cancel the order.

If the RFQ expired and there were no RFQ response, the System would continue to hold the market order, repeat the RFQ cycle, send a notice to the originator about the order status, and send an alert message to the Help Desk about the lack of an RFQ response. The originator of the order could cancel the order if the originator wished. The Help Desk would contact the assigned market makers.

If the market order could be executed under the conditions cited above and there were one or more market orders on the opposite side, the System would cross the market orders at a price determined as follows:

1. At the middle of the best bid/offer in the book if the middle price were a legal price (*i.e.*, a price that could be quoted in the System).

2. If the middle price were not a legal price, at the next legal price from the middle that was closer to the last trade price of the product.

f. Limit Order Processing

Until CBOE*direct* is enabled to provide price protection under proposed CBOE Rule 43.8A, after the opening, upon being entered into the System, limit orders would be matched against the best prices available in the SBT Book under the priority rules set forth in proposed CBOE Rule 43.1. If there were no orders in the SBT Book that matched the limit order when it was entered, the limit order would be held in the book and could be traded against later submitted orders.

When CBOE*direct* is enabled to provide price protection, the System would protect limit orders by automatically executing the limit order against the best bid/ask only if one or both of the following conditions were met:

1. A legal width market existed for that series; or

2. The limit price on the order was between the bid of the series with the same expiration month and one strike price lower and the offer of the series

[36] 36 *See id.*

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with the same expiration month and one strike price higher, and a legal width market existed for both of these series.

Example: Assume the SBT Book looks like the following:

Series	Size	Bid	Ask	Size
July 50	10	*10	11	20
July 55	.....	.....	9.75	10
July 60	50	1.5	*1.75	25

*The marked (*) prices set the range for an acceptable execution price.

A limit order to buy 10 July 55s at 9.75 is entered. This trade would be executed at 9.75 because the price of execution is between the bid of the July 50s (the next lower strike) and the offer of the July 60s (the next higher strike).

If a limit order could execute against the best bid/ask and neither of the conditions set forth above were met, a message would be sent stating that an RFQ would be generated. The RFQ would include the order quantity, but not whether the order was a buy or sell. Quote responses would be exposed in the book as they were received. The SBT Trader linked to CBOE*direct* through the API could direct the System to override the RFQ and determine to enter the limit order into the SBT Book and possibly trade against standing orders or subsequent orders in the book, although there might not be a legal width market at the time. If the limit order's price prevented it from matching with the best bid/ask, the System would place the order in the SBT Book in its appropriate priority position.

Subject to the details set forth in proposed CBOE Rule 43.8A, when the limit order price protection feature has been implemented, the System would execute the limit order after either one of the following conditions became true:

1. During the RFQ response time, if the best quote width became a certain prescribed percentage (*e.g.*, 75%)—as set by the appropriate SBT Trading Committee—of a legal width market, the System would execute the limit order against the quote and any other eligible booked order.

2. If an incoming market or limit order were received (independent of the RFQ responses) on the opposite side that would match the original limit order and if a legal width market existed for the series, the System would match the limit order with the incoming order.

3. When a certain prescribed percentage of the SBT Market Makers currently providing quotes in that class—the percentage to be set by the appropriate SBT Trading Committee—had responded to the RFQ, or when the RFQ period expired and there were at least one quote response, the System would execute the limit order against the SBT Book.

If a limit order for a certain series were queued, subsequent limit orders for the same series and side would be queued behind the first one to ensure that they were processed in time sequence. Market orders for the same series and side would be queued. If a legal width market remained upon completion of limit order processing, the market order would be executed against orders resting in the book. If there were not a legal width market, market order processing would begin in accordance with Exchange rules.

g. Contingency Order Processing

CBOE has asserted that CBOE*direct* eventually would be enabled to handle a number of types of contingency orders pursuant to the terms of proposed CBOE Rule 43.9. A contingency order that had been entered before a limit order with no contingency at the same price and for the same series would nonetheless be treated as if it were entered after that limit order. The System would notify the originator of the order if the contingency order expired or were canceled. The System would handle the following contingency orders as described below once it had been enabled to handle such contingency orders.

1. *Opening Only Order.* The System would accept an opening only order only during the Pre-opening, Halted, or Closed states. The order would be executed during the Opening state if there were orders to execute it against. The order or any unexecuted portion thereof would expire after the opening trade or after the opening quote had been disseminated.

2. *All or None Order.* An AON order would be executed only if it could be executed in its entirety. The order would remain in the book until filled or canceled. An AON order would not be disseminated as part of the best bid/ask.

3. *Fill or Kill Order.* An FOK order has a time contingency and would have to be fully filled within a period of time, or the System automatically would cancel the order. The System would attempt to execute the full quantity of the FOK order upon receipt. If the FOK order were at the best price and there were a legal width market, and it could not be filled fully, the System would indicate its presence to SBT Traders by displaying its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the FOK order did not equal or better the market (i.e., if it were a buy order lower than the best bid or a sell order higher than the best offer), the System would reject the order.

4. *Immediate or Cancel ("IOC") Order.* An IOC order has a time contingency and would have to be filled fully or partially within a period of time, or the System automatically would cancel the remainder. If the IOC order were at the best price and there were a legal width market, and it could not be filled fully, the System would indicate its presence to SBT Traders by displaying its quantity for the Time Contingency Period as determined by the appropriate SBT Trading Committee. If the IOC order did not equal or better the market (*i.e.*, if it were a buy order lower than the best bid or a sell order higher than the best offer), the System would reject the order. The System would cancel the residual order volume after the IOC process period, if the IOC order had not been executed completely.

5. *Minimum Volume ("MIN") Order.* A MIN order could be accepted by the System at any time. A MIN order would have two quantities specified: the total quantity and the minimum acceptable quantity that can be filled. The fill would have to equal at least the minimum quantity specified. The System would attempt to execute at least the minimum volume specified against orders in the book. If the minimum volume were not executed, the order would remain in the book.

6. *Stop Order.* A stop order to buy becomes a market order when the product trades or is bid at or above the stop price. A stop order to sell becomes a market order when the product trades or is offered at or below the stop price. The System would not display a stop order to anyone other than the originator of the order, except as part of the contingency count in the book depth information.

7. *Stop Limit Order.* A stop limit order has two prices: the stop limit price and the limit price. A stop limit order to buy becomes a limit order at the second price when the product trades or is bid at or above the stop limit price (first price). A stop limit order to sell becomes a limit order at the second price when the product trades or is offered at or below the stop limit price (first price). The System would not display a stop limit order to anyone other than the originator of the order, except as part of the contingency count in the book depth information.

8. *Market On Close ("MOC") Order.* An MOC order is executable only during some defined period of time prior to the close. If there were no legal width market when an MOC was received, an RFQ would be sent at a certain amount of time before the Closing, as determined by the appropriate SBT Trading Committee. If no RFQ response were received, the order would be canceled after Closing.

h. Processing of Spread Orders

Proposed CBOE Rule 43.10 would govern the processing of spread orders. The System initially would support the following types of spread orders ("Spread Orders") only:

1. Two-legged spreads where the ratio is 1:1 and 1:2;
2. Three-legged spreads where the ratio is 1:1:1 or 1:2:1;
3. Four-legged spreads where the ratio is 1:1:1:1; and
4. Any other spread type approved by the appropriate SBT Trading Committee.

The System would treat each spread order as a unique product and would assign each a unique product name. The System would maintain a book for every unique spread product with bids and offers for individual spread packages. The System would keep track of and disseminate internally the best bid and offer for every unique spread to SBT Traders.

i. Processing of Requests for Quotes

Proposed CBOE Rule 43.11 would govern the processing of RFQs. Any SBT Trader could initiate an RFQ for a series. The SBT Trader could specify a size at his or her option but would not specify whether the RFQ is for a buy or sell. The System would send the RFQ to the SBT Market Makers who were currently providing quotes in that class. The System also would automatically send an RFQ when it received a market order and the current market width was wider than the Exchange-prescribed width, as set forth in proposed CBOE Rule 43.5.

An RFQ would have an expiration period for the SBT Market Makers to respond. SBT Market Makers would be required to respond to RFQs in accordance with obligations set forth in proposed CBOE Rule 44.4(b)(ii). RFQ responses would be submitted to the SBT Book and would be exposed as they arrived.

j. Trading Directly Against Orders in the Book

CBOE*direct* would provide SBT Traders the means to electronically hit a bid or take an offer. An SBT Trader could do a full or partial execution of an existing bid or offer.

1. *Hit the Bid.* If the bid were no longer available for trading (*e.g.*, because the bid had been hit by another trader), the System would book the full order (*i.e.*, the order entered to hit the bid) as a day or IOC order at the discretion of the trader. If another trader had not hit the bid, the results of the trader's attempt to hit the bid would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of bid orders at bid price.
None	Lower	Partial execution of bid orders at bid price.
None	Higher	Full execution of bid orders at bid price and book new order to sell at bid price with remaining quantity.
Lower	None	Full execution of bid orders at bid price.
Lower	Lower	Partial execution of bid orders at bid price.
Lower	Higher	Full execution of bid orders at the bid price and new order to sell with remaining quantity that could either execute against lower bid orders, if any, or be booked.
Higher	Any	No execution, book new order to sell.

2. *Take the Offer.* If the offer were no longer available for trading (*e.g.*, because the offer had been taken by another trader), the System would book the full order (*i.e.*, the order entered to take the offer) as a day or IOC order at the discretion of the trader. If another trader had not taken the offer, the results of the trader's attempt to take the offer would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of offer orders at offer price.
None	Lower	Partial execution of offer orders at offer price.
None	Higher	Full execution of offer orders at offer price and book new order to buy at offer price with remaining quantity.
Higher	None	Full execution of offer orders at offer price.
Higher	Lower	Partial execution of offer orders at offer price.
Higher	Higher	Full execution of offer orders at the offer price and new order to buy with remaining quantity that could either execute against higher offer orders, if any, or be booked.
Lower	Any	No execution, book new order to buy.

3. *Hit the Debit Spread.* If the debit spread were no longer available for trading (*e.g.*, because the debit spread had been traded by another trader), the System would book the new spread order (*i.e.*, the order entered to take the offer), as a new GTC credit spread order. If debit spread were still available, the results of the trader's attempt to "hit the debit spread" would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of spread order at spread price.

Change to price field	Change to quantity field	Results
None	Lower	Partial execution of spread order at spread price.
None	Higher	Full execution of original spread order at spread price and book new credit spread at spread price with remaining quantity.
Lower	None	Full execution of spread order at the original spread price.
Lower	Lower	Partial execution of spread order at original spread price.
Lower	Higher	Full execution of spread order at the original spread price and new credit spread order at the lower price with remaining quantity that could either execute against lower debit spread orders, if any, or be booked.
Higher	Any	No execution, book new credit new spread order at entered price.

1. *Take the Credit Spread.* If the credit spread were no longer available for trading (*e.g.*, because the credit spread had been traded by another trader), the System would book the new spread order (*i.e.*, the order entered to trade the spread) as a GTC debit spread order. If the credit spread were still available, the results of the trader's attempt to "take the credit spread" would be as follows:

Change to price field	Change to quantity field	Results
None	None	Full execution of spread order at spread price.
None	Lower	Partial execution of spread order at spread price.
None	Higher	Full execution of spread order at spread price and book new debit spread order at spread price with remaining quantity.
Higher	None	Full execution of spread order at the original spread price.
Higher	Lower	Partial execution of spread order at original spread price.
Higher	Higher	Full execution of spread order at the original spread price and new debit spread order with remaining quantity that could either execute against higher credit spread orders, if any, or be booked.
Lower	Any	No execution, book new debit spread order at entered price.

k. Intermarket Price Protection

When CBOE *direct* is enabled to provide such protection, public customer orders would not be automatically executed at prices inferior to the best bid or offer on another national securities exchange, as those best prices would be identified by the System. The System would allow the SBT DPM/LMM[37] to specify its parameters for automatic step-up, perform the automatic step-up when the NBBO was away, and send orders away to the NBBO exchange. The SBT DPM/LMM could establish different parameters for different classes to which it had been assigned. CBOE has represented that it would not trade any multiply listed options on the System unless the Exchange had procedures to handle executions that occur at prices inferior to the best bid or offer on another national securities exchange, as those best prices are identified by the System.[38]

l. Market Maker Obligations and Benefits

Option classes would be assigned to SBT Market Makers in the same way they are assigned today in the open outcry system. It is possible, however, that different members would be assigned to be the SBT DPM for the same option class for different trading sessions (*i.e.*, an SBT DPM could be assigned to a particular option class in one trading session but not another). Also, the appropriate Market Performance Committee could appoint SBT LMMs on a rotating basis such that the SBT LMM assigned to a particular option class for a particular trading session would rotate between two or more SBT LMMs after a designated period of time.

Unlike in open outcry, there would not necessarily be a continuous quoting obligation; however, also unlike in open outcry, the majority of market makers logged onto the System would be required to provide their own independent quote in response to a specified percentage of RFQs. CBOE anticipates that active products would be quoted competitively and continuously by multiple market makers while inactive products would be quoted through RFQs. The appropriate Market Performance Committee would have the authority to recommend, and the board of directors of the Exchange to vary, the RFQ response rates to ensure that quality markets were available before an order executed. In addition, as stated earlier, the appropriate Market Performance Committee or two Trading Officials could exempt SBT Market Makers from the requirement to respond to RFQs and to provide opening quotes if the System were being used during a time when there was little liquidity in the underlying securities (*i.e.*, during an ETH session).

i. Market-Maker Obligations

In addition to the other market maker obligations set forth in proposed CBOE Rule 44.4, a Standard SBT Market Maker would be obligated to respond to a designated percentage of RFQs for the series in its assigned classes. The appropriate Market Performance Committee would decide the applicable percentage. In addition, an SBT DPM/LMM would be obligated, among other things, to provide opening quotes for all series in assigned classes and to respond to a certain percentage of RFQs (as determined by the appropriate Market Performance Committee) for the series in assigned classes.

RFQ Response Rate. For each series that an SBT Market Maker had been obligated to quote via RFQ, the System would calculate at the end of the day the market maker's RFQ response rate. The response rate would be computed as the number of times the market maker responded with an acceptable quote within a designated number of seconds (as determined by the SBT Trading Committee), divided by the number of RFQs to which the market maker was obligated to respond, expressed in percentage terms.

The appropriate Market Performance Committee would set the percentage of RFQs to which a market maker would be required to respond to ensure that a high quality of markets were available before any order was executed. CBOE anticipates that the Market Performance Committee would establish the RFQ response rate at a fairly high percentage, although it is likely to be much lower during an ETH session. To be credited toward a market maker's percentage requirement, the following requirements would have to be met: (1) The market maker must respond to the RFQ within a designated number of seconds (as established by the appropriate Market Performance Committee); (2) the quote width must be equal or narrower than the prescribed legal width market (as it may have been adjusted by the appropriate Market Performance Committee); (3) the quote size must be at least equal to the specified minimum size (established by the appropriate Market Performance Committee); and (4) the SBT Market Maker must provide a continuous market for 30 seconds, unless the SBT Market Maker's quote is filled in the meantime. The market maker could change its quote during this period but could not cancel it if the quote were to count toward the market maker's RFO percentage response requirement.

The System would send duplicate RFQs, which are RFQs for a series for which an RFQ was outstanding. Duplicate RFQs would be sent in order to give the SBT Market Maker an indication of the increasing level of interest in the product. SBT Market Makers would not be obligated to respond to each duplicate RFQ for a particular series in order to satisfy their percentage response requirement. The SBT Market Maker would be obligated to respond only once to the group of duplicate RFQs. For example, if two RFQs for a series were sent by the System within the life of the initial RFQ, there would be the first RFQ and two duplicates. The SBT Market Maker would be obligated to respond only once to all three to satisfy its percentage response requirement with respect to all three.

RFQ responses (*i.e.*, quotes) would be submitted to the SBT Book and exposed as they arrived.

The RFQ response rate would be calculated on a daily basis and cumulated over the evaluation period (weekly, monthly, or quarterly).

To avoid the unreasonable use of the RFQ process and in order to maintain reasonable loads on the System capacity, the System would monitor the ratio of RFQs to trades generated by each trader. CBOE has stated that it might impose a non-discriminatory charge per RFQ above a certain ratio.[39]

ii. Market Maker Benefits

Both Standard SBT Market Makers and SBT DPMs/LMMs could be entitled to a reduction in fees for market data regarding, for example, book depth and underlying security data. SBT DPMs/LMMs also could receive the additional benefit of a trade participation right for trades done at their quoted bid or offer.

m. Quote Entry

SBT Market Makers could enter quotes in two ways: manually or through an autoquote facility. A quote would exist as a pair of bid and ask day orders in the SBT Book. An SBT Market Maker could have only a single quote for any particular option series (*i.e.*, the System would process a new quote as a cancel/replace of the old quote). An SBT Market Maker could, however, enter other orders in the same series for which it had a quote.

The System would recognize and remember which orders were plain orders (*i.e.*, unrelated to quotes) and which orders were part of a quote. Distinguishing between quotes and orders in this manner would allow the System to monitor how SBT Market Makers were fulfilling their obligation to respond to RFQs and also would allow for quotes to be regenerated automatically as described below.

In the special case where an SBT Trader had half a quote in the market (*i.e.*, its bid or ask had been hit) and it wanted to keep the remaining side, the System would allow the market maker to update only the missing side. In the case where the market maker was updating only one side of a quote, the System would allow the market maker to enter a quote with one side updated and the other side unchanged, and update only the changed side. In these two cases, the market maker might not want to replace the bid/ask it already had in the market because that order had price/time priority.

n. Quote Maintenance

An SBT Market Maker would have the following functional capabilities for maintaining its quotes in the SBT Book: (1) Cancel a specific quote; (2) cancel all of its quotes in a specified class, or all quotes in all classes; (3) cancel/replace or update an existing quote; and (4) inactivate its quotes for a certain period of time. An update would not necessarily cause the order to lose its priority position. An order would be considered to have undergone a cancel/replace if its position had changed due to a price change or quantity increase.

Depending on how a quote was modified, the order's position could change as follows:

1. If the price were changed, the changed side would lose priority position and the order would go behind all orders at the same price.

2. If one side's quantity were changed, the unchanged side would retain priority position.

3. If the order's quantity were decreased, the order would retain position.

4. If the order's quantity were increased, the order would lose position and the order would go behind all orders at the same price.

Cancel a Quote. If the cancel arrived in the SBT Book after one or both sides of the quote had been partially executed, the System would cancel the remainder and return a "too late to cancel" message for the filled quantity.

Inactivate All Quotes. There is a difference between canceling quotes and inactivating quotes. "Cancel" would permanently delete the SBT Market Maker's quotes from the SBT Book. "Inactivate" would remove the SBT Market Maker's quotes temporarily from the SBT Book without deleting them. CBOE anticipates that the System ultimately would provide for such orders to be available for a specified time for "activation" or re-submission to the SBT Book without manual re-entry.

Quote Risk Monitor Function. CBOE believes that the quote risk monitor function would provide benefits to both the customers and SBT Market Makers. For the customer, CBOE expects that markets would be deeper and more liquid—with quotes of larger size and more market makers providing quotes—because market makers would have

[37] In the original draft notice, CBOE discussed the handling of orders when there are better prices on away markets only with respect to SBT DPMs. CBOE has confirmed that this discussion also applies to SBT LMMs. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Michael Gaw, Division, Commission, on November 16, 2001.

[38] The Commission notes that the proposed rule change does not address how the System (or SBT DPM/LMMs assigned to option classes on the System) would handle orders when there is a better price in another market. CBOE has advised that, initially, CBOE*direct* will be employed to trade only option classes that are not multiply listed; consequently, it does not need to address this issue at this time. CBOE has represented that, to comply with its obligations under the Linkage Plan Order, *see* Securities Exchange Act Release No. 43086, 65 FR 48023 (August 4, 2000); Securities Exchange Act Release No. 43573 (November 16, 2000), 65 FR 70851 (November 28, 2000); Securities Exchange Act Release No. 43574 (November 16, 2000), 65 FR 70850 (November 28, 2000), it would amend the CBOE*direct* rules to address better prices on other markets prior to employing the System to trade multiply listed option classes. Telephone conversation of April 5, 2002.

[39] *See* Securities Exchange Act Release No. 45075 (November 16, 2001), 66 FR 59038 (November 26, 2001) (SR–CBOE–2001–57) (establishing fees for excessive RFQs). *But see* Securities Exchange Act Release No. 45231 (January 3, 2002), 67 FR 1382 (January 10, 2002) (rescinding SR–CBOE–2001–57).

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better control of their risk and, therefore, would be more willing to quote aggressively. SBT Market Makers would be able to control their risk after they had traded a certain number of contracts.

CBOE has stated that SBT Market Makers that would provide quotes on the System would be exposed to certain types of risks different than those who trade in open outcry. For example, a market maker on CBOE*direct* could have a large number of its bids hit by a set of incoming orders within a few seconds if the bids were the best available or close to the best available. The market maker could, thus, be subject to taking on a large position before it could react and change its quotes. In open outcry, a market maker is often better able to manage its risk because it can change its market at the point that it believes that the orders that have been traded on one side of the market justify such a move.[40]

To encourage market makers to provide deep and liquid markets on CBOE*direct*, the quote risk monitor feature would automatically delete a market maker's quotes from a class when the System determined that its resting orders (quotes) had been filled within a defined period of time (*e.g.*, the most recent ten-second period) for a defined number of contracts. When the System deletes a market maker's quotes in a particular class, the System would notify the market maker to give it a chance to react and update its quotes.

In determining whether to delete a particular market maker's quotes pursuant to this feature, the System would consider only trades with the market maker's resting quotes, not trades that the market maker had initiate by hitting a bid or taking an offer. The function also would take effect even if the incoming orders were uncoordinated (*i.e.*, coming from one or more sources). The time period within which the trade takes place and the net contract volume would be configurable by the SBT Market Maker for each class.

Automatic Quote Regeneration. CBOE*direct* has been designed to allow for an SBT Market Maker's quotes to be automatically regenerated, although this feature is not yet available as part of the CBOE*direct* pilot program.[41] This feature would make certain that an SBT Market Maker could maintain continuous quotes in the System and retain priority for those quotes not traded. The SBT Market Maker would be able to request the System to regenerate its quote when its bid or offer had been filled. The System would regenerate a new quote where the bid/offer was a pre-defined number of ticks worse than the prior bid/offer that was filled, and the size for the bid/offer would be the default size that the market maker had established.

When a bid/offer is regenerated, the System would keep the opposite side at the same price unless the resulting spread would be wider than the prescribed legal width market. If the resulting spread was wider than the Exchange-prescribed width, the System would adjust the opposite side's price (*i.e.*, cancel/replace the old order) to keep the same spread before the regeneration, or adjust it to bring the spread to the legal width market. The market maker would have to make this choice as a pre-defined selection when it specifies its defaults for quote regeneration.

Except under one circumstance, the System would position the regenerated quote based on price/time priority. This exception would provide for the regenerated quote to move ahead of other orders in priority position. If the regenerated quote (order) could immediately execute against the same order that traded against the original quote, that portion of the regenerated quote (order) equal to the original size executed would go ahead of all orders at the regenerated price and would be executed. The System would position the rest of the regenerated quote based on price/time priority.

Example. Assume the System receives a market order for 20 contracts that is traded against a quote for 5 contracts at a bid of 5.50. The market order still has 15 contracts left to be filled. There are no other resting orders at the execution price. The regenerated bid for 10 (*i.e.*, the default quote size for the market maker who had bid at 5.50) is at the next lower price, 5.45 with other standing orders. The portion of the regenerated bid that is equal to the original execution size (*i.e.*, 5) is placed ahead of all orders at the regenerated price and receives first execution priority. The remaining portion of the regenerated bid (*i.e.*, 5) is positioned behind all other resting orders at 5.45.[42]

Managing Autoquote Traffic. Proposed CBOE Rule 44.6 would provide that the Exchange may limit the number of market makers that may access CBOE*direct* through an API, or the number of messages sent by market makers accessing the System through an API, in order to protect the integrity of the System. In addition, CBOE has proposed to be able to impose restrictions on the use of a computer connected through an API if it believed such restrictions were necessary to ensure the proper performance of the System. CBOE has represented that these proposed restrictions are not intended to permit the Exchange to discriminate against certain traders but would be used pursuant to some objective measure to limit the messages sent through the API, if necessary.

CBOE does not intend to allocate bandwidth to each SBT Trader (*i.e.*, the System would not programmatically limit the number of messages that a trader may send). To minimize the potential of a particular SBT Trader from unnecessarily burdening the System, CBOE has proposed to be able to do one or both of the following: (1) Specify the number of quotes over a certain time period that may be sent free by an SBT Trader, or (2) impose a fee per message for sending a number that is clearly above the free number and for producing a ratio of quotes to trades over a certain time period that is higher than what would be considered a reasonable ratio.[43] For example, assume that the free number is 4,000 quotes per class per day and the reasonable ratio of quotes to trades is 50:1. A fee might be assessed such that an SBT Market Maker is charged for every quote above 4,000 if the ratio is between 56:1 and 65:1, and two pennies per message if the ratio is between 66:1 and 75:1, *etc.* CBOE believes that this fee would provide an incentive to market makers to provide aggressive and narrow quotes that are likely to trade against orders sent to the System. This fee would, therefore, supplement the market maker quote obligations by providing for market makers not only to provide quotes but also to ensure their quotes are reasonably likely to trade.

CBOE also may implement a message throttle in the API to further limit the potential harm to the System from quote traffic. CBOE has represented that any measures used to throttle quotes or to limit quotes would be objective measures imposed in a non-discriminatory manner.

[40] CBOE has noted that, to the extent there is an automatic execution system (*e.g.*, RAES) that is available in the open outcry market, the market makers logged onto the automatic execution system are subject to the same kind of risks as market makers on an SBT System.

[41] E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated April 25, 2002.

[42] This example has been corrected slightly from the example provided in Exhibit 1 of Amendment No. 1 to reflect decimalized rather than fractional prices. E-mail from Angelo Evangelou, Legal Division, CBOE, to Michael Gaw, Division, Commission, dated November 16, 2001.

[43] The Commission notes that any proposed rule change relating to fees must be filed with the Commission pursuant to Section 19(b) of the Act, 15 U.S.C. 78s(b). After such a filing has been made, the Commission would consider whether the proposed fee was consistent with the Act.

o. Order Entry

All SBT Traders, including SBT Market Makers, would be able to enter orders for any class. These orders would be plain orders, handled differently by the System from orders that are part of market maker quotes.

Order Status and Maintenance. An SBT Market Maker would have the capability to display the status of its active orders (submitted to the SBT Book), both regular and quote-related orders. It also would have the capability to keep orders in the System that were inactive (*i.e.*, not in the SBT Book). An SBT Market Maker could inactivate some or all of its quotes but keep them in the System so it could activate them again when it wanted to get back into the market.

Spread Order Entry. Any SBT Trader would have the capability to enter spread orders. The System would support spread orders whose legs were options of the same underlying security. The System would provide support for the most common, two-legged spread orders: vertical, combo, straddle, and time. The System also would allow a market maker to enter a customized spread order with more than two legs. The System would calculate and display the current bid and offer for the spread with a net credit or debit indication, if a market were available for each leg.

p. SBT Brokers

An SBT Broker would be an individual (either a member or a nominee of a member organization) who was registered with the Exchange for the purpose of accepting and executing orders received from members, registered broker-dealers, or public customers on CBOE*direct*. As with brokers operating in the Exchange's auction market, an SBT Broker would not be permitted to accept an order from any source other than a member or a registered broker-dealer, unless it were either the nominee of, or had registered its individual membership for, a member organization approved to transact business with the public in accordance with CBOE Rule 9.1.

SBT Brokers would have the same obligations as brokers on the Exchange's auction market to use due diligence in the representation of orders for which they were agent. SBT Brokers and Proprietary Traders could use the SBT workstations or API to perform the following functions:

- Enter, cancel, cancel/replace, and maintain orders;
- Hit bids and take offers;
- Submit RFQs;
- Enter cross notifications and cross execution orders; and
- Set up defaults or preferences.

The Exchange could provide other means for the submission of orders or other functions other than through the use of the SBT workstations or API.

q. Clearing Firm Brokers

Proposed CBOE Rule 45.11 would govern the functions of Clearing Firm Brokers. A Clearing Firm Broker would be an individual who represented the Clearing Firm of a particular SBT Market Maker and had the authority to take certain actions with respect to that SBT Market Maker's use of the SBT System.

A Clearing Firm Broker could request the CBOE Help Desk to force the logout of a trader when, for example, that trader had financial difficulty. The forced logout of a trader also could be necessary when the trader is having technical difficulties that prevent the trader from logging off on his or her own. The System would provide two options for logging out an SBT Trader: (1) Force logout, and (2) force logout and disable. "Force logout" would log out the trader, cancel all of the trader's quotes, leave the trader's regular orders unchanged, and would not affect the trader's ability to log in. This option would be used for situations where the trader could not log out on his or her own for any reason. "Force logout and disable" would log out the trader, cancel all of the trader's quotes, cancel all the trader's regular orders, and de-authorize the trader as a user. The Help Desk would have to re-enable the trader before he or she could log in again under this second option. In this case, the Clearing Firm could have another trader trade the logged out trader's account for some period of time to manage the positions.

r. Data Dissemination

Internal Dissemination of Quote and Best Bid and Offer. CBOE*direct* would disseminate the best bid and offer internally. As each new limit order (whether as an order or as part of a market maker quote) was entered into the SBT System, the best bid and offer displayed in the System would be updated to the extent the new bid or offer changed the previously displayed bid or offer. The System would send quote/order information—series, price, size, and order source (market maker, customer, or non-customer professional order)—to the SBT workstations that were trading a given class. The System also would provide the current best bid or offer in any other market as such best bids and offers were identified in the System.

Internal Dissemination of Price/Last Sale. CBOE*direct* would disseminate internally to SBT Market Makers appointed to a given class, and to all subscribers' workstations that have indicated interest in a given class, last sale information including series, price, and size.

Booked Order Dissemination. When an SBT Trader or subscriber requests market data for an option class, CBOEdirect would provide the SBT Book's best bids, asks, and their total volumes for each series of the class requested. The data also would include the last sale, day's trade volume, and the SBT Trader's orders for each series. CBOE could delete or add information to the market data disseminated as it deemed appropriate. The market data would be accessible to any SBT Trader, although the Exchange could charge varying fees to different categories of traders for access to the information.

Book Depth Data. Upon request, traders could access from the System market depth information, including the aggregate size and the number of contracts at each price. CBOE could charge fees for access to this information. The information might not be provided upon request if the Exchange believed that it could lead to degradation of the System.

Dissemination to OPRA. CBOE*direct* would disseminate quote and trader (*i.e.*, last sale) information externally to OPRA and/or to some other distribution network to the extent permitted by agreement or by rule. Series, price, and size would be disseminated for trades. Series and price would be disseminated for quotes. Quote size also would be disseminated if OPRA were capable of accepting quotes with size. Every best book bid/ask change would generate a quote report to OPRA and/or some other network. The CBOEdirect quote might not have a bid/ask spread that was equal to or narrower than the Exchange-prescribed spread because two unrelated orders, separated by more than the Exchange-prescribed spread, might be the best orders, causing the System to send their prices as the best quote. Changes in best quote and size due to AON or FOK contingency orders would not update quotes in OPRA. CBOE has stated that it would notify recipients that information sent over the System to SBT workstations would be considered proprietary information of the Exchange and could not be distributed or shared without written permission of the Exchange.

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2. Statutory Basis

CBOE believes the proposed rule change would provide for a fair and innovative electronic medium for the trading of securities options that will be registered by the established procedures and personnel of the Exchange. Accordingly, CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act [44] in general, and furthers the objectives of Section 6(b)(5) [45] in particular, in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE does not believe that the proposed rule change would impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulation Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

[44] 15 U.S.C. 78f(b).
[45] 15 U.S.C. 78f(b)(5).

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or with such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change; or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. In particular, the Commission requests commenters to address the proposed trade nullification procedures, crossing procedures, and allocation methodologies, especially the proposal that customer orders may not necessarily be accorded the highest priority. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filings will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–00–55 and should be submitted by May 29, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[46]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11098 Filed 5–7–02; 8:45 am]

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[46] 17 CFR 200.30–3(a)(12).

Federal Register

Wednesday,
May 8, 2002

Part III

Department of Energy

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35
Revised Public Utility Filing Requirements; Final Rule

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 2 and 35

[Docket No. RM01–8–000; Order No. 2001]

Revised Public Utility Filing Requirements

Issued April 25, 2002.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: In this final rule, the Federal Energy Regulatory Commission (Commission) is amending its filing requirements for public utilities under the Federal Power Act (FPA) to require public utilities to electronically file Electric Quarterly Reports summarizing the contractual terms and conditions in their agreements for all jurisdictional services (including market-based power sales, cost-based power sales, and transmission service) and transaction information for short-term and long-term market-based power sales and cost-based power sales during the most recent calendar quarter. Under this rule, public utilities may file standard forms of service agreements for Commission approval for all cost-based transmission and power sales services they offer under 18 CFR part 35 and will file agreements for such services provided under this Part that do not conform to an applicable standard form of service agreement. Executed market-based power sales agreements need not be filed.

The procedures adopted in this rule will replace the current procedure whereby public utilities file short-term and long-term service agreements for market-based sales of electric energy, service agreements for generally applicable services, such as point-to-point transmission service, and Quarterly Transaction Reports summarizing their short-term sales and purchases of power at market-based rates. This rule also further clarifies the book outs that must be reported in Electric Quarterly Reports. Implementation of the reporting requirements will take place in two phases: an interim phase through October 31, 2002, and a final phase thereafter.

This rule will make available for public inspection, in a convenient form and place all relevant information relating to public utility rates, terms, and conditions of service; ensure that information is available in a standardized, user friendly format; and meet the Commission's electronic filing option obligation.[1] These actions also will allow the public to better participate in and obtain the full benefits of wholesale electric power markets while minimizing the reporting burden on public utilities.

EFFECTIVE DATE: This final rule will become effective on July 8, 2002.

FOR FURTHER INFORMATION CONTACT:

H. Keith Pierce (Technical Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0525.

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–0321.

Barbara D. Bourque (Information Technology Information), Office of Markets, Tariffs, and Rates, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, (202) 208–2338.

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Before Commissioners: Pat Wood, III, Chairman; William L. Massey, Linda Breathitt, and Nora Mead Brownell.

1. Introduction

2. On July 26, 2001, the Commission issued a Notice of Proposed Rulemaking (NOPR) that proposed a change in the reporting requirements for jurisdictional public utilities. Specifically, the NOPR proposed to eliminate the requirements for filing the following documents: (1) Short-term and long-term service agreements[2] for market-based sales of electric energy; (2) agreements for generally applicable services, such as point-to-point transmission service, for which a public utility has a standard form of service agreement under its tariff; and (3) Quarterly Transaction Reports summarizing short-term purchases and sales of power at market-based rates.[3]

3. The NOPR proposed replacing these filings with an electronic filing to the Commission, known as the Index of Customers,[4] summarizing the contractual terms and conditions in each utility's agreements for jurisdictional service—that is, for market and cost-based power sales and transmission service—and transaction information for each utility's short and long-term power sales during the most recent calendar quarter. The NOPR also proposed that each utility would post its Index of Customers on its Internet web site. Comments in response to the NOPR were due by October 5, 2001. In response to the NOPR, comments were filed by 39 respondents.[5]

4. Existing filing requirements, the proposed filing requirements, and the filing requirements being adopted in this final rule are illustrated by the two tables below. Table 1 summarizes the Commission's current filing requirements.

5. TABLE 1.—SUMMARY OF CURRENT FILING REQUIREMENTS UNDER OPEN ACCESS AND COST-BASED TARIFFS, AND UNDER MARKET-BASED RATE AUTHORITY

Type of tariff or rate schedule	Filing party	Long-term service agreements	Short-term service agreements	Quarterly transaction reports
Open Access Transmission Tariff	Non-marketer Public Utility	x	x	
Cost-Based Power Sales Tariff	Non-marketer Public Utility	x	x	
Market-Based Power Sales Tariff	Non-marketer Public Utility	x	x	x
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer	o[1]		x

Legend: "x" means agreement or report is required to be filed, "o" means requirement to file is in abeyance.

[1] *Southern Company Services, Inc. et al.*, 76 FERC ¶61,321 (1996); 87 FERC ¶61,214 at 61,849 (1999), *reh'g pending (Southern)*, rescinded on a prospective basis previously-granted waivers of the requirement that power marketers file long-term service agreements, effective thirty days after the issuance of a final order in that proceeding. The Commission delayed the effectiveness of this finding until the issuance of a final order in the *Southern* proceeding. In an order being issued concurrently with this rule, there rehearings are being denied as moot.

6. Table 2 summarizes the filing requirements proposed in the NOPR and adopted in this rule.

7. TABLE 2.—SUMMARY OF PUBLIC UTILITY FILING REQUIREMENTS PROPOSED IN THE NOPR AND ADOPTED IN THIS FINAL RULE

Type of tariff or rate schedule	Filing party	Do standard forms of service agreements apply?	Are conforming service agreements to be filed?	Are nonconforming service agreements to be filed?	Reported in electric quarterly reports[1]
Open Access Transmission Tariff.	Non-marketer Public Utility	Yes	No	Yes	C
Cost-Based Power Sales Tariff.	Non-marketer Public Utility	Yes	No	Yes	C, T
Other Generally Applicable Services.	Non-marketer Public Utility	Yes	No	Yes	C
Market-Based Power Sales Tariff or Rate Schedule.	Affiliated or Unaffiliated Power Marketer.	No	N/A	N/A	C, T
Market-Based Power Sales Tariff.	Non-marketer Public Utility	No	N/A	N/A	C, T

Legend: "N/A" means not applicable, "C" means file contract data, "T" means file transaction data.

[1] Referred to in NOPR as the Index of Customers

[1] Under the Government Paperwork Elimination Act, Pub. L. No. 105–277, sections 1702–1704, the Commission is required to develop electronic filing options by October 2003.

[2] All references to "agreements" in this rule include all the forms an agreement may take under 18 CFR 35.2(b), including contracts, purchase or sales agreements, lease of facilities, *etc.*

[3] Revised Public Utility Filing Requirements, 66 FR 40929, FERC Stats. & Regs., Proposed Regulations, ¶ 34,554 at 34,056–57 (2001).

[4] As discussed below, the Commission is changing the name "Index of Customers" to "Electric Quarterly Report." Thus, when we discuss the NOPR and Data Sets Order proposals, and comments in response thereto, we will refer to the Index of Customers, but when we refer to the filing requirements adopted in this final rule we refer to the Electric Quarterly Report.

[5] Attachment A lists the persons and entities who filed comments in response to the NOPR and the abbreviations used to identify them.

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8. On December 20, 2001, the Commission issued an order seeking comment on the specific data elements that public utilities would report in the Index of Customers.[6-8] These items were generally described in the NOPR, but the Data Sets Order provided more specificity as to the actual information in each data field. The Data Sets Order also clarified that any "book out or net out based on the physical characteristics * * * of the transactions must be reported as separate transactions"[9] and that utilities would be required to "report book outs and net outs of physical transactions on a disaggregated basis showing each individual leg of the transaction that generated the book out or net out."[10] Finally, the Data Sets Order declined to postpone action on a final rule pending the Commission's completion of a review of the information needed for market monitoring purposes.[11] Comments in response to the Data Sets Order were due by January 28, 2002. In response to the Data Sets Order, comments were filed by 19 respondents.[12]

9. Discussion

10. Overview

11. The Commission's Part 35 regulations, 18 CFR Part 35, implement FPA section 205(c), which allows the Commission to prescribe the rules and regulations under which public utilities shall file with the Commission schedules showing their rates, terms, and conditions of jurisdictional services.[13]

12. In its July 26, 2001 NOPR, the Commission proposed to revamp its filing requirements to improve the quality and accessibility of information available to the public and the Commission, while at the same time reducing the filing and reporting burden on public utilities. The Commission specifically examined the filing requirements under Part 35 of the Commission's regulations applicable to the filing of service agreements by traditional public utilities, and the filing of Quarterly Transaction Reports by traditional public utilities and power marketers with a view towards making these filings less burdensome and more usable and understandable. For the most part, based on comments received on the NOPR, the Commission has decided to retain the reported data currently reported for both traditional public utilities and power marketers. However, through this final rule, the Commission will change the format through which these entities will satisfy their FPA section 205(c) reporting responsibilities for filing agreements.

13. The revised filing requirements the Commission is adopting here are one part of a larger and on-going assessment of information needs for regulating and monitoring current and evolving energy markets. The final rule is part of a comprehensive review of information and reporting requirements the Commission is undertaking to assess the adequacy of energy market infrastructure, the adequacy of the supply of electricity and natural gas, the efficiency of market rules and industry compliance with them.

14. The revised filing requirements will allow the Commission to perform its historic regulatory functions over transmission and cost-based power sales while providing information on market-based power sales in a usable format. This will also better allow customers and the Commission to identify situations that indicate the possible exercise of market power that warrant specific investigation. The importance of these goals requires the issuance of this final rule now, before the Commission completes the comprehensive information needs assessment.

15. The revised filing requirements also reflect the Commission's commitment to using information technology to both reduce the burden on reporting entities and to increase the usefulness of the data reported. In Order No. 619,[14] the Commission established an electronic filing initiative to meet the goals of the Government Paperwork Elimination Act, which directs agencies to provide for the optimal use and acceptance of electronic documents and signatures and electronic record-keeping, where practical, by October 2003.[15] Similarly, Office of Management and Budget (OMB) Circular A–130 requires agencies to use electronic information collection techniques where such means will reduce the burden on the public, increase efficiency, reduce costs and help provide better service.

16. The regulations the Commission is adopting here meet these goals by replacing paper filings with electronic filings that will be easy for customers to access and use. The Commission has also decided to establish a place on its own web site for the posting of Electric Quarterly Reports, which will make the reports of all public utilities easily accessible in one place and eliminate the burden on public utilities of having to maintain postings on their own web sites.

17. The revised filing requirements also reflect the Commission's careful balancing of the need for data transparency against the concern that price information can be used for anti-competitive purposes. The Electric Quarterly Reports will be filed 30 days after each calendar quarter. This time delay will greatly reduce the usefulness of the data as a tool for collusion but gives customers data they need for long-term decision making.

18. The proposals adopted in this final rule have five main features. First, public utilities that have standard forms of agreements in their transmission, cost-based power sales tariffs, or tariffs for other generally applicable services will no longer file conforming agreements with the Commission. The filing requirements of FPA section 205(c) will be satisfied by the standard forms of agreements and by the electronic filing of Electric Quarterly Reports. Electric Quarterly Reports will be filed with the Commission, and the Commission will post them on FERC's Internet web site.

19. Second, agreements for transmission, cost-based power sales, and other generally applicable services that do not conform to an applicable standard form of agreement in a public utility's tariff, including agreements with individualized terms and conditions or unexecuted agreements for any service, must continue to be filed with the Commission for approval before going into effect.

[6-8] Revised Public Utility Filing Requirements, 67 FR 67134, FERC Stats. & Regs. ¶ 35,541 (2001) (Data Sets Order).

[9] FERC Stats. & Regs. ¶ 35,541 at 35,806. As explained in the Data Sets Order and as further discussed below, "book outs" occur when the cumulative effect of a number of separate power sales between two parties is such that they mutually agree to exchange their obligations to physically deliver power to each other, while maintaining all their other obligations, including payment. "Net outs" are an accounting device to minimize offsetting payments.

[10] *Id.*

[11] *Id.* at 35,804.

[12] Attachment A also lists the persons and entities who filed comments in response to the Data Sets Order and the abbreviations used to identify them.

[13] Section 205(c) of the FPA provides:

Under such rules and regulations as the Commission may prescribe, every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.

[14] Electronic Filing of Documents, Final Rule, 65 FR 57088, FERC Stats. & Regs., Regulations Preambles 1996–2000, ¶ 31,107 (2000).

[15] Pub. L. 105–277, Sections 1702–1704.

20. Third, the standard forms of service agreements are not applicable to market-based rate agreements. Public utilities will continue to file requests for market-based rate authority on a case-by-case basis, and agreements under the umbrella tariffs approved in these cases need not be filed with the Commission. However, public utilities (both traditional utilities and power marketers) will include data about their market-based power sales in their Electric Quarterly Reports.

21. Fourth, the Electric Quarterly Report will include contract data and transaction data. The transaction data will provide information about all the power sales the public utility made during the reporting period.

22. For the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, *www.ferc.gov*) using the link labeled e-Filing. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002. The public will be able to view and download filed documents from the FERC Internet site using either the RIMS or FERRIS document management systems. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports. For reports filed after October 31, 2002, this filing format will be replaced by a relational database now under development. The final format will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

23. Fifth, in the Data Sets Order, we clarified that we were seeking additional information on book outs and net outs. In this final rule, in response to comments on this issue, we further clarify the book out information that must be reported and drop the requirement to report net outs.

24. The reporting of disaggregated book outs and transaction data for cost-based power sales are new reporting requirements. The burden associated with reporting these data are reflected in the burden estimate and is more than offset by the burden reductions achieved by the reduction in required filings.

25. Regarding the specific data sets adopted in this final rule, we have made only minor revisions to the data sets proposed for comment in the Data Sets Order. These changes for the most part further reduce the amount of data that must be filed in the Electric Quarterly Reports. With these exceptions, the data sets change only the format and not the substance of data to be reported.

26. The current requirements for public utilities to file agreements and Quarterly Transaction Reports detailing their market-based rate transactions are rescinded as of July 1, 2002. Public utilities may begin to file their standard forms of service agreements for Commission approval immediately.[16] Finally, the Commission will take a further look at filing requirements when it completes its Standard Market Design initiative. We will ensure that the data public utilities report are consistent with and support a standard market design.

27. Justification for Actions Taken in this Final Rule

28. This rulemaking was initiated in response to the dramatic changes that have occurred in the electric power industry in recent years as a result of numerous factors, including the onset of open access transmission under Order Nos. 888 and 889[17] and the Commission's approval of umbrella tariffs under which public utilities may make wholesale sales of power at market-based rates. Each of these market-based rate authorizations contained the condition that the public utility (whether a traditional utility or a power marketer) would file Quarterly Transaction Reports detailing the short-term power sales they had made during the period. In addition, traditional utilities were required to file their long-term and short-term service agreements with the Commission. Further, although the Commission had determined that power marketers would file their long-term service agreements with the Commission for approval, this requirement has not yet gone into effect, pending issuance of a further order in the *Southern* proceeding.[18]

29. While the industry has changed dramatically since public utilities began making wholesale power sales at market-based rates, the Commission's filing requirements have not been changed to keep abreast of new developments. The volume of transactions taking place has grown significantly. Moreover, the quality of information provided in quarterly transaction reports has proven to be inconsistent and not always sufficiently informative for the Commission and the public. The number of service agreement filings have also increased. The Commission estimates that, based on the number of filings in Fiscal Year 2000, approximately 2500 annual filings would be eliminated, although this amount will vary from year to year. These factors led the Commission to initiate this proceeding to revise the Commission's filing requirements to improve the quality and accessibility of information available to the public and to the Commission, while at the same time reducing the burden on filing public utilities.

30. We believe that with issuance of this final rule, we accomplish these goals. We note, however, that as actual experience is gained in implementing these procedures, we will be receptive to consensus suggestions that would improve the Data Sets and to recommendations on other technical matters.[19]

31. The revised public utility filing requirements adopted in this final rule create a level playing field vis a vis the filing requirements applicable to traditional utilities and power marketers. While the data to be reported in the data sets reduces public utilities'

[16] Public utilities may wish to file their proposed standard forms of agreements for Commission approval as soon as possible. Until a public utility has standard forms of agreement in place for transmission (OATT), cost-based power sales and other generally applicable services, it must continue filing agreements for those services.

[17] *See* Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities, Order No. 888, 61 FR 21540 (May 10, 1996), FERC Stats. & Regs. ¶ 31,036 *order on reh'g*, Order No. 888–A, 62 FR 12274 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,048 (1997), *order on reh'g*, Order No. 888–B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888–C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom.*, Transmission Access Study Group, *et al.* v. Federal Energy Regulatory Commission, No. 97–1715 (D.C. Cir. 2000), *aff'd sub nom.*, New York v. FERC, 122 S. Ct. 1012 (2002); Open Access Same-Time Information System and Standards of Conduct, Order No. 889, 61 FR 21737 (May 10, 1996), FERC Stats. & Regs. ¶ 31,035 (Apr. 24, 1996), *order on reh'g*, Order No. 889–A, 62 FR 12484 (Mar. 14, 1997), FERC Stats. & Regs. ¶ 31,049 (1997), *order on reh'g*, Order No. 889–B, 81 FERC ¶ 61,253 (1997), *order on reh'g*, Order No. 889–C, 82 FERC ¶ 61,046 (1998).

[18] *See* note 6, *supra*.

[19] In Electricity Market Design and Structure, 97 FERC ¶ 61,289 (2001), the Commission invited industry to propose a single organization to make recommendations on electric standards. This organization could recommend further revisions to the data sets in the future, if needed. The Commission has not yet made any decisions on a standards-setting organization.

overall reporting burden as compared to existing requirements, it is hoped that the Electric Quarterly Reports' more accessible format will make the information more useful to the public and the Commission and will better fulfill the public utilities' responsibility under FPA section 205(c) to have rates on file in a convenient form and place. The data should provide greater price transparency, promote competition, enhance confidence in the fairness of markets, and provide a better means to detect and discourage discriminatory practices.

32. The reason we are collecting information about book outs is because these transactions, at a minimum, relate to sales for resale of electric energy in interstate commerce, and the information will provide the Commission and the public with a more complete picture of wholesale market activities which affect jurisdictional services and rates, thereby helping to monitor for any market power and to ensure that customers are protected from improper conduct.

33. Likewise, we are collecting information about cost-based power sales to obtain a more comprehensive picture of matters under our jurisdiction. Currently, we are receiving transaction reports about market-based transactions only. While we review the terms and conditions of cost-based power sale agreements, we have had an information void regarding the actual sales and rates that take place under those agreements. We now fill that void.

34. Commenters such as NARUC, PJM, and TDUS applaud the Commission's initiative and the enhanced price transparency the rule will foster. Other commenters express concern that disclosure of the data reported in the Index of Customers will harm them and the market. They also contend the rule is burdensome, although they are much more concerned about confidential treatment. After reviewing these arguments in detail, we find that confidentiality is not warranted. The Commission's primary focus is on implementing section 205(c), promoting competition and protecting customers, and not on protecting competitors. Because almost all the data that will be reported in Electric Quarterly Reports are already publicly available [20] and will be 30–120 days old when reported, negative competitive impact from disclosure is minimized.

[20] *See* Attachment B.

35. Response to Comments

36. Reasons for Data Collection

37. Price Transparency and FPA Section 205 Filing Requirements

38. Comments

39. Numerous commenters state that posting or reporting price information regarding sales at market-based rates is unnecessary. Engage states that the Commission has not articulated a sound basis for imposing "greater" reporting obligations on public utilities. It argues that, unless the Commission shows there is a specific need for more information or transparency, it is premature to burden the industry with having to provide it.[21] EEI and others [22] argue that there is a mismatch between the data requested and the ends to which they will be used.[23]

40. SCE&G and others note that the Commission only grants market-based rate authority to those entities that lack market power in the relevant geographic and product markets. Thus, they argue, the rates charged by these entities are deemed to reflect the operation of market forces in a competitive market and are inherently just and reasonable. They further argue that, if a customer believes otherwise, it can always use the FPA section 206 complaint procedures or the Commission can institute its own investigation. SCE&G argues that FPA section 206 investigations and the higher standard for approving applications for market-based rate authorization [24] make it unnecessary for the Commission to require the posting of data on individual market-based transactions.[25]

41. Williams and others argue that the Commission has flexibility in satisfying the FPA section 205 requirements for filing and posting of terms, conditions and rates. These commenters argue that the data required to satisfy the FPA section 205 requirements are different from those required to monitor the market, and the two should not be mixed. They state that the Commission's precedent for the filing of individual agreements was based on a narrow justification.[26] They argue that the current transaction reports filed by power marketers more than satisfy the needs of FPA section 205. They argue that, if stricter reporting is needed from traditional utilities, this is not an adequate reason to burden power marketers.[27]

42. By contrast, APPA states that the Index of Customers "will afford substantial savings to filing utilities, impose uniform requirements on all types of public utilities, and provide much needed data to customers and the public in a much more accessible format." [28]

43. Commission Conclusion

44. The Commission concludes that the reporting requirements adopted in this final rule are consistent with public utilities' filing obligations under FPA section 205(c). These requirements will provide transparency of prices and other information for both market-based and cost-based transactions. As shown on Table 1, different types of filing requirements currently apply to public utilities depending on whether the seller is a traditional utility or a power marketer, on whether the sale is short-term or long-term, and on whether the sale is market-based and cost-based. Based on the increase in transactions and the current state of information technology, we believe that the new reporting and filing formats are a better way to satisfy FPA section 205(c) both substantively and procedurally (*i.e.*, electronically rather than through paper formats). The current transaction reporting was designed at a time when market-based rates made up a very small part of trade in the electric power industry and the Internet was not a primary means of transferring and sharing information. We agree with APPA that the electronic filing of what we are now referring to as the Electric Quarterly Report will enhance the public availability of transaction information and secondarily will provide useful information for the Commission's market oversight and monitoring efforts.

45. Attachment B, adapted from Attachment A to the Data Sets Order, shows all the data elements required to be reported in Electric Quarterly Reports and also identifies existing Commission regulations and orders that require the filing and public disclosure of the same data.

46. The argument that the reporting requirements are not necessary because the Commission has approved the rates as just and reasonable overlooks several points. The Commission has held that the approval or acceptance of an umbrella market-based rate tariff, in conjunction with the filing of quarterly reports, satisfies public utilities' filing obligations under FPA section 205(c).[29] The Commission has considerable discretion as to both the content and timing of filing requirements under section 205(c) and we conclude that the transparent price data required by section 205(c) and as reflected in this rule will better help the Commission in monitoring the reasonableness of prices and undue discrimination in the marketplace and also assist the public in filing complaints.[30] Without good information about energy transactions, it is difficult for anyone to prepare a well-documented complaint. In addition, an important goal of this rule is to convert the Commission's existing agreement filing and transaction data filing requirements into an electronic format. For these reasons, we believe that having these data reported, and having them reported in a more accessible format, will benefit the development of robust power markets and provide better protection of customers.

47. Information about Cost-based Transactions under Section 205(c) of the FPA

48. Comments

49. Whereas many commenters opposed the collection and publication of market-based power sales data, AEP, FPL and Consumers Energy argue that the Commission need not collect data about their cost-based power sales agreements. These commenters argue that actual rate and transaction data are not currently reported about cost-based power sales and, as the Commission's current filing requirements satisfy the requirements of FPA section 205(c), this shows that these data need not be reported to satisfy the FPA. They argue that confidentiality arguments are equally applicable to cost-based agreements,[31] and argue that the data are not needed for market monitoring, as the maximum rates are cost-based. They argue, further, that these rates have been reviewed by the Commission, and they are not the result of market power. They also point out that, if the Commission were not to adopt the proposed rule, it would still have authority to request the necessary data to fulfill its market monitoring functions for cost-based power sales agreements.[32] They argue that the Commission has the discretion to determine what is necessary to satisfy the filing requirements of the FPA, and has used that discretion many times in the past.[33] They argue that nothing has changed, nor are there any public policy reasons for the reporting of cost-based transactions.[34] NYSEG argues that pre-2000 agreements should not be reported.[35] Likewise, Pinnacle states that the Index of Customers should be filed only on a go forward basis.

50. Commission Conclusion

51. FPL is correct that the Commission does not currently require public utilities to report transaction data on cost-based power sales. However, this does not mean that the Commission is precluded from determining that reporting of this information is appropriate under the FPA.

52. We disagree with the assertion that nothing has changed to warrant reporting about cost-based rate transactions. First, the volume of trade and the variety of products and services sold in wholesale markets has increased significantly since the time the current requirements for reporting cost-based transactions were designed. Second, only with the advent of sophisticated business information systems and the ease of information transfer and sharing on the Internet has it become practical to make actual rate information open to public inspection for many of these transactions. Moreover, there are a number of "cost-based" rate agreements on file at the Commission for which the actual rate is not specified. These agreements include split-the-savings rates, discounts below a maximum rate, and formula rates. Under the new filing requirements, the actual rate being charged under these agreements will now be reported. We conclude that cost-based transaction data should be filed to provide the public with more accurate information as to the rates actually charged.

53. We also reject the suggestion that pre-2000 agreements need not be reported or that the data need only be filed on a go forward basis. The reporting requirement is for any agreement in existence (not expired) as of the reporting period. Contract data for pre-2000 agreements will be included in each public utility's Electric Quarterly Report filed using the final software now under development, and without subsequent revision will remain included in all subsequent Electric Quarterly Reports until the agreement is terminated. The Commission is trying to create a comprehensive picture of all jurisdictional sales. Eliminating pre-2000 data would prevent that from happening. To avoid imposing an additional burden on industry, the pre-2000 contract data will not be collected before the final software is fully developed and implemented.

54. The Transaction Data Will Also Be Useful for Market Monitoring Purposes.

55. Comments

56. EEI and others argue that the Commission is seeking transaction data to conduct market monitoring functions and that the data will not be useful in that endeavor [36]. Edison Mission states that it is unclear how these particular data sets achieve the Commission's objectives and that this exemplifies the continuing dissonance between the policy objectives of the Commission and the proposed data sets, and underscores its position that the administrative burden associated with the reporting requirements outweighs any expected benefits.[37]

57. EEI states that there is a danger in isolating segments of the wholesale industry and imposing reporting requirements that other segments do not have.[38] As an example, EEI states that public power utilities do not have to report, and, as "recently been borne out," public power utilities may manipulate the market.[39] Similarly, APGI states that the California and Pacific Northwest refund proceedings make clear that many of the significant players in the bulk power markets are not subject to the Commission's jurisdiction and would not file an Index of Customers under the Commission's proposals. APGI argues that incomplete data will make analysis of the markets for legitimate purposes difficult because the market data will be incomplete. EEI and Southern contend that streamlining filings and market monitoring cannot be separated. Therefore, EEI and Southern contend, the Commission should focus on the larger and more important market monitoring issue.[40] EEI contends that the need for and type of information required will become apparent once

[21] Engage NOPR Comments at 4.

[22] Morgan Stanley, Reliant, APGI, AEP, Dynegy, Engege, Excelon, SCE&G, Tenaska.

[23] EEI NOPR Comments at 7.

[24] SCE&G (NOPR comments at 4) cites a Staff Position Paper in Docket No. EX01–4–000 issued on October 1, 2001, as supporting more stringent standards for approving market-based rates.

[25] SCE&G NOPR Comments at 4, 5.

[26] Williams NOPR Comments at 26.

[27] Williams NOPR Comments at 25.

[28] APPA NOPR Comments at 1.

[29] *See* Power Company of America, L.P. v. FERC, 245 F.3d 839, 845–846 (D.C. Cir. 2001), which affirmed the termination of short-term market-based power sales by power marketers without 60-days' prior notice. Prior notice was not required because the agreements were not required to be filed. Instead, power marketers file umbrella tariffs and after-the-fact quarterly reports.

[30] Any provisions in agreements that purport to bind the Commission to a standard other than the just and reasonable standard of FPA section 206, and that are not explicitly ruled upon and accepted by the Commission, will not be binding on the Commission.

[31] FPL NOPR Comments at 1, 5, 7–8.

[32] FPL NOPR Comments at 4.

[33] FPL NOPR Comments at 5–6.

[34] FPL NOPR Comments at 6–7.

[35] NYSEG Data Sets Comments at 1.

[36] EEI NOPR Comments at 9.

[37] Edison Mission Data Sets Comments at 4.

[38] EEI NOPR Comments at 9.

[39] EEI NOPR Comments at 9.

[40] EEI NOPR Comments at 10.

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markets are in place.[41] EEI contends that the transaction data are irrelevant, if not placed in the context of barriers to entry, load response, and net long versus net short trades.

58. Dynegy suggests that, in lieu of the transaction data proposed in the NOPR, the Commission should consider alternative means of monitoring the market, such as its Dynegy Direct on-line trading platform. These platforms, which Dynegy states the Commission has access to, provide real-time gas and electric commodity price information from around the country. Dynegy states that the Commission should make use of this meaningful information as opposed to the meaningless transaction data.[42] Enron suggests market monitoring would be better served if the Commission required the posting of outages, load flow studies, generation injection, consumption at nodes, and transmission system configuration. Such physical data, Enron contends, provide a better basis for price determination.[43] Enron also notes that the Commission's market monitoring goals may be better served by the removal of market barriers and the implementation of clear and consistent interconnection policies rather than adopting new reporting requirements.[44] Duke summarized its stance by recommending that the Commission should narrow its focus on information collected, and instead focus more on "global market trends" to monitor the markets.[45]

59. Commission Conclusion

60. While the Commission agrees that the reporting of transaction data proposed in this rulemaking may be used to help monitor the market, this is but a small piece of a much larger information assessment and monitoring effort the Commission will undertake. The Commission is already comprehensively assessing what information is currently filed by all the entities we regulate (electric, gas, and oil), what we no longer need to have filed for market monitoring purposes, and what will be needed in the future for comprehensive market monitoring purposes. The primary purposes of the reporting requirements adopted in this rule are to streamline and refine the current reporting requirements for public utilities and assure greater consistency in public utility compliance with FPA section 205(c).

[41] EEI NOPR Comments at 10.
[42] Dynegy NOPR Comments at 7.
[43] Enron NOPR Comments at 9.
[44] Enron NOPR Comments at 10.
[45] Duke Data Sets Comments at 7.

61. EEI is correct that the transaction data reporting does not cover all transactions, *i.e.*, sales made by entities not subject to the Commission's rate jurisdiction under FPA sections 205 and 206. Congress has determined that FPA section 205(c) requirements extend only to public utility sellers. This rule is consistent with the Commission's statutory authority under FPA section 205(c). Moreover, while these limitations affect the secondary benefits of the proposal (*i.e.*, market monitoring) they do not interfere with the primary benefit of the proposal (*i.e.*, enhancing the rate information disclosed to the public under FPA section 205(c)).

62. The Commission will consider the commenters' suggestions on approaches to market oversight as it continues to expand this function. However, with respect to the commenters' suggestion that we rely on a single trading platform for our market monitoring data, while we believe that such platforms provide excellent real-time market data, they represent only one of the many sources of data that will support an effective market monitoring function.

63. The Commission Will Not Defer Action Until Completion of a Comprehensive Review of Market Monitoring Functions.

64. A number of commenters argued that the Commission should postpone action on a final rule until we complete a comprehensive assessment of our market monitoring efforts. In response to these arguments, the Data Sets Order included the following statement:

> [w]e find these arguments without merit because, although the Commission has not completed its comprehensive review of market monitoring data, we believe that the information proposed to be reported would be the minimum needed for market monitoring purposes, even if we later determine that additional data also will be necessary. Moreover, as we noted in the NOPR, we believe that the proposed reporting requirements would improve the quality of information reported to the Commission by prescribing that public utilities report information in a consistent, accessible format.[46]

65. Commission Conclusion

66. As noted above, the Commission is currently performing a comprehensive analysis of current information filings and what will be needed in the future. Theoretically, it may be preferable to wait and undertake the Part 35 "clean-up" at the same time. However, as a practical matter we are faced with a very rapidly changing marketplace and a lack of quality and consistency in what public utilities currently are filing pursuant to their market-based rate authorizations. The comprehensive information assessment we are undertaking will take more time to complete and we cannot afford to delay implementation of any realignment of our filing requirements, in light of current market conditions, including recent market dysfunctions in the West and major utility bankruptcies.

[46] Data Sets Order. FERC Stats. & Regs. ¶35,541 at 35,804.

67. We reject the implication that the Commission cannot justify revising its reporting requirements unless it undertakes a comprehensive review of its market monitoring program. Commission reporting requirements rarely, if ever, spring from a single, comprehensive initiative. They evolve over time as the Commission's experience and understanding grows. For example, the Commission's requirements for market-based rates have evolved over the past 14 years and continue to change.[47] If the Commission had to wait until all things were known or decided before taking its first step, it would not be able to adequately protect customers pursuant to its statutory obligations under the FPA.

68. Further, as the Commission develops its market oversight and monitoring functions, we will explore what additional information is needed to enhance our market monitoring abilities, including ways to obtain relevant information about transactions in which non-public utilities are sellers. But we will not delay implementing the improved data reporting requirements adopted in this rule simply because non-public utilities are not covered by the rule. The Commission is aggressively pursuing the important market monitoring issues raised by EEI and Southern. However, although this information is likely to be a core component of the Commission's market monitoring program, our adoption of this final rule need not await these developments.

69. Finally, while the FPA's long-standing statutory mandate is unchanged, the Commission must adapt its filing requirements for public utilities to keep pace with recent growth in the number of transactions and in available information technology. The revised filing requirements promulgated in this final rule are needed so that the Commission can continue to properly fulfill its statutory responsibilities.

[47] *E.g.*, Investigation of Terms and Conditions of Public Utility Market-Based Rate Authorization, 97 FERC ¶ 61,220 (2001).

70. Electric Quarterly Reports Will Be Implemented in Two Phases

71. Comments

72. Several commenters[48] note that the Commission has not issued the Index of Customers Manual and ask the Commission for a Technical Conference. EEI, Southern, and Enron[49] request participation in the Technical Working Groups that the Commission suggested might follow issuance of the NOPR. EEI and Southern request that the Technical Working Groups include industry representatives. These representatives, EEI states, can also provide the Commission with input as to the impact Index of Customers will have on the industry.[50] EEI suggests Technical Working Group topics could include: how to report prices based on indices;[51] how to report pricing information not available until after the reporting period; how to report blended prices; how to report long-term agreements filed with the Commission; and settlement agreements/grandfather agreement reporting.[52] FirstEnergy supports EEI's position but believes that the Technical Working Groups should meet before issuance of a final rule.[53]

73. EEI is concerned that the NOPR is unclear about the parameters of the data to be reported. For example, EEI seeks clarification as to which services and/or markets must be reported: long and/or short-term; day ahead, 10-hour ahead, hour ahead, 10-minute ahead and/or 5-minute ahead markets; ancillary services; and new services.[54] Consumers Energy states several of the data sets would be difficult to obtain, such as buyers' DUNS numbers.[55]

74. Commission Conclusion

75. These comments were filed in response to the NOPR. The issuance of the Data Sets Order, issued subsequent to the NOPR, resolved a number of these questions, clarified issues about the data sets, and gave the content information that a manual would have had.

76. Before the final software for the Electric Quarterly Report is implemented, there will be an opportunity for utilities to test it and provide feedback. Instructions for the final format of the Electric Quarterly Report will be issued with the implementation of the software. This matter is further discussed in the implementation section. Issuance of this final rule need not await these developments. As discussed above, the Electric Quarterly Reports for the filing periods ending July 31, 2002 and October 31, 2002, will use the FERC electronic filing system (available on the FERC Internet Web site, *www.ferc.gov*) using the link labeled e-Filing. A sample Microsoft Excel format document will be posted on the FERC internet site prior to the filing period ending July 31, 2002. In the near future, the Commission will issue an instruction manual to govern the filing of the July 31, 2002 and October 31, 2002 Electric Quarterly Reports.

77. Confidentiality Issue

78. While NARUC, TDUS, and PJM support the Commission's proposals and the enhanced price transparency they will bring about, other commenters argue that we should extend confidential treatment to cover market-based transactions to prevent harm to competitors and to the market generally.

79. The Commission finds that the disclosure requirements proposed in the NOPR are appropriate to give customers better information to benefit from competitive power markets, and the disclosure requirements adopted in this rule differ from the proposals in the NOPR in only one respect. Points of Delivery (PODs) will be reported at the level of detail specified in the agreement. With this change, the Commission believes that the information that will be disclosed better fulfills the mandate of FPA section 205(c) to make rate and agreement information available to the public "in a convenient form and place," and will enhance competitive markets.

80. The Transaction-Specific Information Is Not Commercially Sensitive and Will Not Be Given Confidential Treatment

81. Comments

82. Some commenters applaud the Commission's efforts to make public utility rate filings more transparent. For example, NARUC states that competition and robust markets demand more, not less, transparency of data. It applauds FERC for giving priority to this issue and states that the greater transparency that the Commission's proposals will provide will be helpful not only to the Commission, but to state Commissions and the public.[56] NARUC states that transparency is important to ensure well-functioning electricity markets and to ensure the integrity of electricity markets.[57] Likewise, TDUS states that there is a need for greater data transparency in competitive wholesale markets.[58] PJM also states its support for the Commission's proposals and for the level of detail provided by the proposed data sets.[59] PJM states that the "principle benefit of the proposed rulemaking is its potential to make more market information public and to make it available in a much more accessible, convenient, and usable form." PJM views this as helpful to its own market monitoring activities and as even more important to the public interest than the burden reductions achieved by the rule.[60]

83. Southern and others argue[61] that disclosure of data on power sales could cause competitive harm, and that there is no countervailing policy requiring disclosure.[62] Williams argues that the proposed mandatory disclosure of sensitive and confidential commercial and financial information would create unwarranted market risks and may undermine competition.[63]

84. Southern contends that competitors would be harmed by "their competitors" free access to information about their supply curve and about their innovative product and marketing efforts that directly benefit their customers."[64] Southern contends this would harm customers because public utilities will be less likely to engage in such innovative efforts.[65] Moreover, Southern argues customers are likely to be harmed by the disclosure of information about the prices they will pay and because the required disclosures will facilitate collusion among suppliers on output and pricing decisions.[66] In addition, National Grid

[48] EEI, Southern, Enron, FirstEnergy, PSEG, Consumers Energy.
[49] EEI NOPR Comments at 2, Southern NOPR Comments at 19, Enron NOPR Comments at 6, 7.
[50] EEI NOPR Comments at 6.
[51] EEI NOPR Comments at 6.
[52] EEI NOPR Comments at 7.
[53] First Energy NOPR Comments at 3.
[54] EEI NOPR Comments at 8.
[55] Consumers Energy NOPR Comments at 5. "DUNS numbers" refer to the Data Universal Numbering System, maintained by Dunn and Bradstreet.

[56] NARUC Data Sets Comments at 2–3.
[57] *Id.*
[58] TDUS NOPR Comments at 8, 9.
[59] PJM Data Sets Comments at 2.
[60] *Id.*
[61] Southern NOPR Comments at 5, 9, FP&L, NOPR Comments at 3, Mirant NOPR Comments at 1, Pinnacle NOPR Comments at 8–10, PSEG NOPR Comments at 4, 10–12.
[62] Southern NOPR Comments at 5, 9.
[63] Williams NOPR Comments at 1, 11–14.
[64] Southern NOPR Comments at 4. An example of a "supply curve" can be found in Atlantic City Electric Company and Delmarva Power & Light Company, 80 FERC ¶ 61,126 at 61,406 (1997) where the applicants listed all of the generating units that were their potential suppliers in ascending cost order and referred to this list as the suply curve.
[65] Southern NOPR Comments at 4, Williams NOPR Comments at 16–17. CMS, Reliant, EEI, and Tenaska make similar claims.
[66] Southern NOPR Comments at 4, Williams NOPR Comments at 17–19.

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argues that the regulated industry has invested large sums in the development of trading strategies and risk management tools and this should not be made available to free rider competitors.[67]

85. Williams argues[68] that the Commission must exercise its broad discretion under FPA section 205(c) in a manner that not only respects its obligations under that provision but also its obligations under Freedom of Information Act (FOIA)[69] and the Trade Secrets Act.[70] Williams further argues that the Trade Secrets Act prohibits the public release of information qualifying under FOIA Exemption 4, *i.e.*, the exemption for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." Thus, Williams argues that any rule that mandates public disclosure without exception, thereby removing an entity's opportunity to show that the information is exempt under FOIA and protected from disclosure by the Trade Secrets Act, is necessarily unlawful.[71]

86. SCE&G fears that with transaction data available in electronic format, public utilities will have the ability to develop an accurate understanding of the trading policies, strategies, and practices of their competitors. Thus, allowing unfettered access to such data, could have the effect of changing the behavior of market participants to the detriment of the market and consumers. For example, it argues that public utilities might refrain from conducting transactions or signing service agreements with new customers near the end of a reporting quarter and instead wait until a new quarter has begun in order to delay the availability of information to its competitors.[72]

87. Commission Conclusion

88. The argument that the rule calls for the disclosure of commercially sensitive information that should be given confidential treatment overlooks the key fact that nearly all of the information claimed to be confidential is already being publicly disclosed on a quarterly basis pursuant to the Commission's regulations and as set forth in prior determinations.[73] This can best be illustrated by Attachment B to this rule, a table demonstrating that, in main part, the information to be reported in Electric Quarterly Reports is currently required to be reported quarterly by public utilities and publicly disclosed.

89. The Data Set Order established two new data elements: DUNS number, and the contact's e-mail address. No objections were made to either of these being made publicly available.

90. The OASIS S&P Document requires the reporting of customers' DUNS numbers as part of OASIS' electronic data interchange information. The Commission will now also require DUNS numbers for all customers and sellers reported in Electric Quarterly Reports. This puts both the power sale and the transmission reporting requirements on the same basis. The Commission is using public utility DUNS numbers to reduce possible confusion among similarly named, but different, providers of service. DUNS are available at no cost.[74]

91. The Commission is also requiring for the first time the contact's e-mail address. The Commission is proposing that utilities will file Electric Quarterly Reports using the Internet. E-mail uses the Internet, and it is a common business tool available to the industry. E-mail will facilitate any discussions between the Commission and the public with regard to the formatting or completeness of the filed material.

92. The controversy over disclosure is limited to those that concern rates and does not concern the new elements. But FPA section 205(c) requires public utilities to disclose their rates and contracts for all transmission and sales subject to the jurisdiction of the Commission. As a result, these rate elements as well as the data public utilities currently file are not protected from disclosure under Exemption 4 of the FOIA or by the Trade Secrets Act. Although the Commission has discretion to determine the time and form for disclosure, the underlying decision to disclose rate and contract information was made by Congress.

93. Because nearly all of the information at issue is already publicly available, we give little credence to predictions of competitive harm, based on conjecture, and which are not supported by evidence of actual harm from the Commission's current reporting requirements. Moreover, the allegations of harm are exactly the kind of "conclusory and generalized allegations of substantial competitive harm" that do not suffice to show substantial harm to a company's competitive position or to competition in general.[75]

94. We also disagree with predictions that disclosure would be harmful to the market generally. To the contrary, we believe that disclosure will promote competition and make the market operate more efficiently. We agree with NARUC that competitive and robust markets demand more, not less, transparency of data and this final rule advances that goal. As to concerns that disclosure might lead to illegal price fixing and collusion, the Commission and other federal agencies will take strong actions if public utilities engage in such illegal acts. However, we reject the arguments that this will be the outcome of providing the public with better price information. To the contrary, the data will help the Commission and the public detect instances of undue discrimination and abuses of market power.

95. Although nearly all of the information at issue is already publicly available under the Commission's existing filing requirements, with the requirements we are adopting in this final rule, the public will be provided with better access to the information and the format will make the information more consistent and understandable. As a result, we find that the filing requirements we are adopting in this final rule better meet the statutory requirement of FPA section 205(c) to make rate information accessible in a convenient place and form.

96. Our decision to disclose rate information is consistent with judicial directives to focus on the needs of the overall market, rather than focusing on protecting the interests of individual competitors within the market.[76] For example, in *Alabama Power Company* v. *FPC*, 511 F.2d 383, 390–91, (D.C. Cir. 1974) (*Alabama Power*), the court affirmed the Commission's refusal to amend a rule that required affected utilities to publicly disclose their monthly Form No. 423 reports of fuel purchases. The court in *Alabama Power* considered various arguments that "disclosure of information would lead to bargaining disadvantages in future fuel contract negotiations,"[77] as well as opposing arguments that any bargaining disadvantage as a result of disclosure would merely reflect the removal of information imperfections in an otherwise competitive market thereby facilitating efficient allocation of resources.[78]

97. The court concluded that the dissemination of information in a competitive market tends to "facilitate prompt adjustment to the market clearing price by all parties to transactions."[79] Here, commenters opposing disclosure fear that, by making this information more accessible and easy to understand, its disclosure will take on added importance. However, easy access to contract and transaction data will give customers a basis on which to compare a variety of suppliers and monitor for market power and anti-competitive behavior. This information will allow customers to reap further benefits from open access transmission by giving them improved tools to use in making buying decisions. In addition, the Commission hopes that making this information more understandable and accessible will promote competition and confidence in the fairness of the market.

98. Disclosure will help the public detect and bring to the Commission's attention any instances of undue preferences, discrimination, or market power abuse by public utilities[80] and will promote confidence in the fair operation of the market. Moreover, the mere fact that this scrutiny will occur will have a prophylactic effect and discourage improper conduct. However, the Commission can only take action to remedy abuses, if the Commission has available adequate information to detect them. In our view, the benefits of disclosure strongly outweigh the generalized claims of potential harm to competitors, unsupported by actual evidence of harm to competitors or to the market.[81]

99. There Is Good Reason to Treat Data in Electric Quarterly Reports Differently than Natural Gas Sales Data

100. Comments

101. Southern cites the Commission's *Reporting of Natural Gas Sales to the California Market*, 96 FERC ¶ 61,119 at 61,466–68 (2001) *order on reh'g*, 97 FERC ¶ 61,029 (2001) (*California Gas Order*), where the Commission found that gas sellers' contract and transaction data fall under FOIA Exemption No. 4 as trade secrets and commercial or financial information obtained from a person and privileged or confidential; and that potential harm from public disclosure outweighs any public interest.[82] Similarly, Mirant argues that these kinds of data are treated confidentially by the Department of Energy, PJM Interconnection LLC, New York ISO, ISO New England, and the California ISO.[83] Thus, they argue that the Commission should make the same finding here.[84]

102. Commission Conclusion

103. The Commission found that gas sellers' contract and transaction data could be considered trade secrets and commercial or financial information and that disclosure is likely to cause substantial harm to the competitive position of the person from whom the information was obtained. The Commission then found that the potential of competitive harm from public disclosure outweighs any public interest in disclosure of data concerning individual sales transactions, and stated that the Commission would not disclose individual sales information to the public.[85] The finding of competitive harm, however, was based on the unregulated nature of much of the data sought there. In the *California Gas Order*, we acknowledged that not all parties from whom information was requested were jurisdictional under the Natural Gas Act. We further acknowledged that it was likely many of the gas sales for which information was requested were not or are no longer jurisdictional services under the Natural Gas Act. Confidential treatment of natural gas sales data was necessary in the *California Gas Order* to encourage non-jurisdictional entities to provide data to the Commission.

104. By contrast, the regulations and reporting requirements adopted in this final rule apply only to public utilities and are being adopted pursuant to FPA section 205(c). Under this statutory authority, the Commission is prescribing rules and regulations for the format jurisdictional public utilities must follow when they file with the Commission data related to their jurisdictional activities. The Commission is not applying this rule to non-public utilities or non-jurisdictional services.

105. The purpose of the instant rule differs from the purpose of the *California Gas Order* proceeding. The *California Gas Order* had the limited objective of requesting data from the industry to aid in prescribing rules and regulations necessary to carry out the Commission's responsibilities, and seeking information to serve as a basis for recommending further legislation to the Congress. The Commission terminated the data collection upon determining the conditions no longer required additional reports.[86] This is in contrast to the purpose of this rule, which is to establish rules and regulations governing the required format and content of contract and transaction data for purposes of reporting and public disclosure pursuant to FPA section 205(c). In these circumstances, there is a reasoned basis for treating electricity sales differently from the cited natural gas sales.

106. Similarly, information collected by the Department of Energy is pursuant to different statutory authority. Although ISOs keep bid data information confidential for six months, this rule does not require the reporting of bid data.

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[67] National Grid NOPR Comments at 5.

[68] Williams NOPR Comments at 4.

[69] 5 U.S.C. 552 (1994).

[70] 18 U.S.C. 1905 (1994).

[71] Williams NOPR Comments at 3–4, 20–24.

[72] SCE&G NOPR Comments at 6.

[73] Attachment B identifies the relevant Commission regulations and prior determinations that each data element is to be made publicly available.

[74] DUNS numbers are available at http://www.dnb.com.

[75] *See, e.g.*, Center for Auto Safety v. NHTSA, 244 F.3d 144, 148 (D.C. Cir. 2001) (*Center for Auto Safety*). Commercial information is "confidential" under Exemption 4 of FOIA if its disclosure is likely either to: (1) Impair the government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. As to "substantial harm," a company making this claim must "show with 'sufficiently specific' evidence that disclosure is likely to cause substantial competitive harm." A company "need not conduct a sophisticated economic analysis of the likely effects of disclosure," but "conclusory and generalized allegations of substantial competitive harm" will not suffice.

[76] *See* Open Access Same-Time Information System and Standards of Conduct, 83 FERC ¶ 61,360 at 62,456 & n.48 (1998) in which similar concerns led us to unmask source and sink data reported on utilities' OASIS sites.

This focus on the competitive process, rather than on the fortunes of particular competitors was also present in Town of Concord v. Boston Edison Company, 915 F.2d 17 (1st Cir. 1990), *cert. denied*, 499 U.S. 931 (1990), where the court found that, a practice is not "anticompetitive" simply because it harms competitors. After all, almost all business activity, desirable and undesirable alike, seeks to advance a firm's fortunes at the expense of its competitors. Rather, a practice is "anticompetitive" only if it harms the competitive process. It harms that process when it obstructs the achievement of competition's basic goals—lower prices, better products, and more efficient production methods. [915 F.2d at 21, 22.]

[77] *Alabama Power*, 511 F.2d at 390.

[78] *Id.*

[79] *Id.* at 391, n.13.

[80] We note that the Supreme Court recently affirmed the Commission's Order No. 888 and the Commission's authority to remedy undue discrimination in the provision of interstate transmission services. *See* note 17, *supra*. The Commission is equally concerned about undue discrimination in wholesale power sales and in the provision of other jurisdictional services.

[81] The Commission recognizes that any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is exempt from the mandatory public disclosure requirements of the Freedom of Information Act. *See* 18 CFR 388.112. Nevertheless, as explained, the information required to be filed by this rule must be public to achieve the purpose of its being filed in the first instance. Therefore, our expectation is that the Commission will deny requests for confidential treatment of these materials.

[82] Southern NOPR Comments at 8, 19–24.

[83] Mirant NOPR Comments at 2, 5–7, 9–11.

[84] AEP NOPR Comments at 5,7, EEI NOPR Comments at 4, FP&L NOPR Comments at 3, Reliant NOPR Comments at 3.

[85] 96 FERC at 61,466–468.

[86] Reporting of Natural Gas Sales to the California Market, notice of decision not to seek extension of reporting requirement, 67 FR 5585, 98 FERC ¶ 61,251 (January 30, 2002).

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107. Transparency Regarding the Rates, Terms, and Conditions of Market-based Power Sales

108. Southern argues that the NOPR fails to consider that market-based rates have only been granted in instances where the Commission has found that an entity lacks market power to manipulate markets or act in an anti-competitive manner.[87] Thus, it argues, no across-the-board rule is needed covering a utility's wholesale power sales functions.

109. Commission Conclusion

110. When a public utility applies for authority to make wholesale sales at market-based rates, it presents evidence that it either lacks market power or has taken adequate steps to mitigate its market power.[88]

111. However, the Commission's market-based rate findings do not absolve the Commission from its continuing responsibility to assure that rates are just and reasonable. Because the Commission is concerned that circumstances may change, it imposes standard conditions on every market-based rate approval. The standard conditions include: the requirement to file Quarterly Transaction Reports, which are made available for public review; and the requirement to submit data on a triennial basis to confirm that the public utility continues to lack (or has mitigated) market power. The Electric Quarterly Reports will enable the Commission and others to ensure that market-based rates remain justified over time.

112. Disclosure Does Not Compromise National Security

113. EEI argues that the Commission needs to be sensitive to possible national security consequences from revealing vulnerabilities in the nation's infrastructure.[89]

114. Commission Conclusion

115. The Commission takes concerns about revealing vulnerabilities in the nation's infrastructure very seriously. Indeed, the Commission issued a policy statement in Docket No. PL02–1 on October 11, 2001, announcing the removal from the Internet and the Public Reference Room of certain documents such as oversized maps that detail the specifications of energy facilities.[90] Subsequently, on December 16, 2001, the Commission issued a Notice of Inquiry on the possibility of amending its rules to address the public availability of critical energy infrastructure information.[91] The information at issue here, however, does not present comparable concerns, as it does not reveal any system vulnerabilities. We therefore will not grant confidential treatment to Electric Quarterly Reports on this basis.

116. Proposals That Would Avoid Disclosure of Transaction-Specific Data Are Inadequate

117. CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. CMS argues that this policy should be retained, because a fully competitive power market has not yet emerged.[92] Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.[93]

118. Williams argues that, in lieu of adopting the proposals in the NOPR, the Commission should make only the reporting requirements currently applicable to power marketers applicable to non-marketers.[94]

119. SCE&G suggests the Commission lengthen the time before transactions must be reported. It argues that this would help to alleviate concerns over the harm to competitors caused by the dissemination of sensitive data.[95] Engage argues that the Commission should extend the reporting interval from quarterly to semi-annually and not require disclosure until (30) days after a transaction is completed.[96] Excelon argues that the Commission should ensure that data reported is current enough for market analysis, but stale enough to prevent harm to competitors filing the information.[97] Another suggested alternative is to have public disclosure of aggregated data.[98] Advocates of this approach argue that disaggregating data regarding individual sale transactions offers no benefit.[99]

120. Commission Conclusion

121. None of these suggested alternatives is adequate to meet the goals the Commission is seeking to accomplish in this rulemaking. Customers need data about power sales to realize the competitive advantages of open access transmission and to have confidence that markets are competitive. First, as to Williams' suggestion to disclose only summary data, this argument is based on the false premise that power marketers' quarterly transaction reports currently are limited to summary and aggregated data.[100]

122. Second, the suggestion to extend the lag before the information becomes publicly available overlooks the fact that the existing Quarterly Transaction Reports and the Electric Quarterly Reports that will replace them already create a lag of 30–120 days. This lag reduces any potential harm to competitors that could result from the disclosure of price data.

123. Nor will the Commission allow the data to be aggregated. Customers of market-based rate transactions are not each charged the same rate. Aggregated data do not provide sufficient disclosure of rates to the public. Further, market power is possible not just over a market area. It can also be exercised over individual customers. Aggregated data would prevent customers from detecting (and filing a complaint with the Commission about) improper conduct and would be less helpful in promoting competition. We conclude that section 205(c) does not allow the aggregation of this information. [101]

124. Moreover, aggregated data have never been allowed by the Commission for power marketers' Quarterly Transactions Reports. In *Enron*,[102] Enron requested (1) waiver of detailed purchase and sales transactions, and (2) permission to report the data on an aggregate basis (*i.e.*, without identifying the other parties or the terms of the individual transactions) or to file on a confidential basis.[103]

125. The Commission denied Enron's waiver requests and directed Enron to submit a quarterly informational filing on an unaggregated, public basis. Specifically, we stated:

[w]e will deny Enron's request to modify the reporting requirement in any way. Enron misreads the Commission's purpose in requiring quarterly reporting of a marketer's transactions. None of our orders indicates that the purpose for requiring information from power marketers is to assess the size and strength of the market. On the contrary, the Commission has indicated that informational filings are necessary so that the marketer's rates will be on file as required by section 205(c) of the FPA, 16 U.S.C. § 824d(c), to evaluate the reasonableness of the charges, and to provide for ongoing monitoring of the marketer's ability to exercise market power * * *.

With respect to Enron's request that its informational filings be afforded confidential treatment, we note that we previously denied a similar request in *National Electric Associates Limited Partnership*, 50 FERC ¶ 61,378 (1990). In that case, the marketer sought to reserve the right to seek confidential treatment of its informational reports. The Commission rejected this request, stating that section 205(c) of the FPA requires all public utilities, including power marketers, to file with the Commission for public inspection all rates, charges, classifications and practices, as well as any contracts that affect or relate to such charges, classifications and practices. For the same reason, we will deny Enron's request for confidentiality.[104]

126. On August 9, 1994, in *Heartland Energy Services, Inc.*, 68 FERC ¶ 61,223 (1994), the Commission held Heartland, an affiliate of Wisconsin Power and Light Company, to the reporting standards in *Enron*.[105] Heartland's filing was the first application by an affiliated power marketer for open-ended authorization to transact at market-based rates.

127. The Commission also rejected the use of aggregated data in *Commonwealth Electric Company*, 78 FERC ¶ 61,191 (1997). In this order, the Commission directed the reporting of prices for short-term transactions and the reporting of separate prices for wholesale generation, transmission and ancillary services in the quarterly reports. Pursuant to Order Nos. 888 and 888–A, the Commission stated:

[a]ccordingly, we will direct the Applicants to revise their market-based power sales tariffs to state explicitly separate prices for generation, transmission and ancillary services.[106]

128. Further, the Commission stated:

[W]e are permitting the Applicants to report prices for short-term transactions * * * in quarterly summaries * * * the separate prices for the unbundled services in such short-term transactions should be included in those quarterly summaries.[107]

129. Therefore, the requirement to report disaggregated data is not new, and this final rule merely continues our prior practice.

130. Power Marketers and Traditional Utilities Are Treated Equally

131. Williams suggests, as an alternative to disclosure, that, if the Commission wishes to streamline its reporting requirements and move toward a uniform system applicable to power marketers and traditional utilities alike, it could merely extend the requirement to file quarterly transaction reports, currently applicable to power marketers, to non-marketers. This approach, it argues, would achieve true efficiency while protecting confidential data and promoting competition.[108]

132. Conversely, CMS argues that, in devising filing rules for power marketers, the Commission determined that, to encourage the emergence of a competitive wholesale power market, power marketers would not be required to follow the same filing requirements as traditional utilities. This policy should be retained, because a fully competitive power market has not yet emerged.[109] Morgan Stanley argues that power marketers should be allowed to file certain transaction information on a confidential basis.[110]

133. Commission Conclusion

134. In this rulemaking, the Commission affirms the principles outlined in *Southern*. We agree with Williams that there should be consistent reporting requirements for both power marketers and traditional utilities. We will apply equal filing requirements for both traditional utilities and power marketers. These filing requirements will provide information consistent with the requirements of FPA section 205(c). The public interest in the disclosure of the information to be reported is the same regardless of whether the agreements and power sales at issue are made by power marketers or traditional utilities.

135. However, this in no way eliminates the need to improve our existing Quarterly Transaction Reports. While the Commission could, on a case by case basis, address the inconsistencies and inadequacies of current quarterly transaction filings, we believe it would be more productive and efficient to correct the problems we are experiencing regarding the quality of Quarterly Transaction Reports by replacing them with the Electric Quarterly Reports mandated by this rule.

136. Burden Issue

137. *The Information Collections Do Not Impose an Unreasonable Burden*

138. Comments

139. NARUC states that competition and robust markets demand more, not less, transparency of data and it applauds the Commission for giving priority to this issue.[111] It also endorses reducing the number of routine agreements to be processed by the Commission so that greater resources can be devoted to the complex and important issues that arise in competitive markets. These resources are needed, NARUC states, because "achieving well-functioning electricity markets will require diligent oversight by both FERC and State utility commissions."[112] PJM agrees that the revised filing requirements will achieve reductions in the administrative burdens on the Commission and regulated companies, but views these as less important than the greater public benefit that will result from making market information available in a much more accessible, convenient, and usable form.[113]

140. The California Commission argues that the Commission's electronic filing requirements should complement, not replace, the Commission's existing filing requirements. The California Commission would have public utilities file Indexes of Customers, but would also retain the current requirement for public utilities to file for approval of all new agreements, with notice to the public, so that third parties such as state Commissions can review those agreements before they become effective, and file protests where appropriate.

141. By contrast, many commenters (*e.g.*, EEI, Avista, Puget, Wisconsin, and Otter Tail) state that the transaction data required by this rule is a large increase in content and detail as compared to the data currently required in power marketers' Quarterly Transaction Reports. While they support efforts to minimize the reporting burden and to modernize data collection methods in general, they state that the Index of Customers will not achieve these goals. Avista, in a representative comment states:

[f]ar from 'minimizing the reporting burden on public utilities,' the December 20 Order imposes a reporting requirement template

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[87] Southern NOPR Comments at 18.

[88] *See, e.g.*, Pinnacle West Capital Corp., Arizona Public Service Company and APS Energy Services Company, Inc., 91 FERC ¶ 61,290 (2000), *reh'g denied*, 95 FERC ¶ 61,300 (2001) and Pinnacle West Energy Corp., 92 FERC ¶ 61,248 (2000), *reh'g denied*, 95 FERC ¶ 61,301 (2001).

[89] EEI NOPR Comments at 5–6.

[90] *See* Treatment of Previously Public Documents, 97 FERC ¶ 61,030 (2001).

[91] *See* 67 FR 3129 (Jan. 23, 2002).

[92] CMS NOPR Comments at 4.

[93] Morgan Stanley NOPR Comments at 9.

[94] Williams NOPR Comments at 4.

[95] SCE&G NOPR Comments at 8, 9.

[96] Engage NOPR Comments at 11.

[97] Excelon NOPR Comments at 6.

[98] Enron NOPR Comments at 9, PSEG NOPR Comments at 5, Pinnacle NOPR Comments at 9–10.

[99] EEI NOPR Comments at 7.

[100] *See* Enron Power Marketing, 65 FERC ¶ 61,305 at 62,406 (1993) (*Enron*), where the Commission denied Enron's request to file aggregated data in Quarterly Transaction Reports.

[101] *See* Maislin Industries U.S. Inc. v. Primary Steel, Inc., 497 U.S. 116 (1990) (*Maislin*) and Southwestern Bell Corp. v. FCC, 43 F.3d 1515 (D.C. Cir. 1995) (*Southwestern Bell*).

[102] *Id.*

[103] *Id.* at 62,404.

[104] 65 FERC at 62,406.

[105] *See also* LG&E Power Marketing, Inc., 68 FERC ¶ 61,247 (1994) and Detroit Edison Company, *et al.*, 80 FERC ¶ 61,348 (1997).

[106] 78 FERC at 61,813.

[107] 78 FERC at 61,813.

[108] Williams NOPR Comments at 2, 4.

[109] CMS NOPR Comments at 5.

[110] Morgan Stanley NOPR Comments at 8, 9.

[111] NARUC Data Sets Comments at 2–3.

[112] *Id.* at 2.

[113] PJM Data Sets Comments at 2.

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that will create undue burdens on public utilities and will result in the disclosure of commercially sensitive information. Thus, it is clear that the Commission's efforts to 'streamline' regulations in this proceeding is likely to have a detrimental effect on wholesale electric power markets, and should be modified * * *.[114]

142. Likewise, Wisconsin Electric states that,

[t]he proposal will require significant efforts on the part of [the utility] * * * to convert all of the relevant data, which is currently maintained in disparate databases, into the format requested by the Commission. It will also require that Wisconsin Electric expend significant resources to develop and maintain the database necessary to post the relevant information on its Web site. [115]

143. Puget and Avista state that the Commission:

has greatly underestimated the potential reporting burden of the proposed requirements and the complexity and cost inherent in posting such large volumes of data on utility web sites. FERC should reduce the number of proposed data elements and eliminate or significantly simplify the requirement to post information on utility web sites.[116]

144. Otter Tail argues that the filing requirements would be onerous for small entities.[117] Edison Mission states that the three year requirements for maintaining the information in a database adds to the cost.[118]

145. Commission Conclusion

146. We believe the views expressed by NARUC, TDUS, and PJM more accurately assess the burdens and benefits of this final rule than those argued by other commenters.

147. The Commission has balanced the need for data with efforts to minimize the burden on filers. Specific comments about the burden of creating an electronic file, creating an electronic file of transaction data, web-site development and maintenance, and data retention requirements are discussed below.

148. We acknowledge that the filing of transaction data for cost-based power sales will create an additional burden. However, this burden will be offset by the fact that conforming service agreements will no longer be filed. In addition, the lack of a standard format in the current Quarterly Transaction Reports has led to power marketers to submit their reports using a multitude of formats. To the extent power marketers use the same format for each quarter's filing, they will have to expend time and effort to map their data into the new required format. But once a utility's system is mapped to the interim and final formats, the burden will be reduced. There will be no more paper to print, mail or file. The public utilities will be able to file Electric Quarterly Reports with the Commission electronically over the Internet. [119]

149. The burden of electronically filing contract data each quarter is less onerous than the current requirements to file executed copies of all service agreements. Since the system is being designed so contract data need only be entered once, after the initial filing, only certain data about new agreements and terminations will have to be reported. In comparison, under our current filing requirements, each service agreement must be filed as a rate filing within 30 days of commencement of service. Specifically, 18 CFR 35.7 and 35.8 currently require that a filer submit an original and five copies of a filing to the Commission. Each copy must contain a number of components: first, the formal letter of transmittal; second, all other materials and information required by these regulations (e.g., the executed service agreements); third, a form of notice for the **Federal Register**; and, finally, a copy of the same notice in electronic format (in ASCII text or WordPerfect 8.0 format) on a 3½" diskette. Also, the filer must serve a copy of the filing to the public utility's jurisdictional customers (including: other parties receiving service from the public utility, state public service commissions, other government agencies, *etc.*).

150. The current filing requirements for service agreements are based on the use of paper copies and are burdensome to both the filing parties and the Commission. The replacement of this archaic paper format will reduce the burden on filing utilities and the burden on the Commission of processing those filings.

151. The use of Electric Quarterly Reports will also avoid critical time delays. Incomplete filings have been a burden for both the filers and the Commission, due to lost time in processing and issuance of decisions. Omission of any required item could hold up the acceptance and processing of the filing (e.g., if the filer omits the diskette, the processing stops and a request by the Commission to the filer for a proper submittal of the diskette is triggered). The filer must then be notified and resubmit the missing component(s) of the filing.

152. With the implementation of the revised filing requirements adopted in this rule, the processing of applications for approval will become much more streamlined. The resources currently devoted to processing paper filings involving routine noncontroversial matters will be freed up and available for further review and evaluation of nonconforming rate filings, enhanced market oversight, and other important matters. Currently, the Commission receives approximately 2,500 service agreement filings per year that would be eliminated by this order.[120]

153. We reject the suggestion by the California Commission that the Index of Customers (*i.e.*, the Electric Quarterly Report) should accompany and not replace current rate filings. This proposal would not accomplish the Commission's objective of streamlining the process. Instead, it would increase the reporting burden on public utilities and would retain the Commission's current administrative burden of processing these filings without enhancing the level of review. Moreover, the filing of standard forms of agreements will provide a safeguard to ensure that conforming agreements do not contain unreasonable terms and conditions.

154. Some commenters offer to aggregate the data, which would be an additional step on their part, at the same time that they object to the reporting unaggregated data as being too burdensome. They also state that they could cope with the reporting requirements, if the data are kept confidential. These inconsistent arguments suggest that the objections raised concerning the reporting burden reflect actual disagreement with other aspects of the rule (*i.e.*, confidentiality).

155. Moreover, maintaining the status quo for the current Quarterly Transaction Report is not a viable option. The Government Paperwork Elimination Act, Pub. L. No. 105–277, sections 1702–1704, requires that every agency develop electronic filing options by October 2003 for all of the data it requires to be submitted. Therefore, the Commission is required to move to an electronic filing format for all of its data, including Quarterly Transaction Reports, which currently are filed on paper. With a few exceptions discussed elsewhere, this data collection primarily involves an adaptation of our current filing requirements to an electronic format. Moreover, public utilities are currently converting their data from different formats, often electronic, to a paper format to file with the Commission. They will now file electronically, thereby eliminating the step of making paper filings, and their filing burden will be reduced.

156. Several commenters expressed concerns over the expense of developing web sites to capture and display Index of Customers data. The Commission recognizes that this requirement would be a duplication of the data we will maintain on our own web site.

Therefore, we will eliminate the requirement for each company to develop and maintain an information site. An added benefit is that having one central location for the data will make it easy for the public to find and research power prices. Although the Commission will post the data, this does not eliminate the FPA section 205(c) requirement for public utilities to have actual agreements available for public inspection at their business locations.

157. Numerous commenters contend that the amount of data requested represents an increase in burden over the current requirements. We disagree.

158. In *Citizens Power & Light Corporation*, 48 FERC ¶ 61,210 (1989) (*Citizens Power*), the Commission stated that:

Citizens Power must make informational filings describing its purchase and sale contracts for generation and transmission. These filings will be used to monitor Citizens Power's ability to exercise market power * * * The informational filings will also be used to monitor the rates being paid to Citizens.[121]

Citizens Power also stated that, for each purchase contract and sale contract, Citizens should provide the following information:

For each purchase contract and sale contract, Citizens Power should provide the following information: the buyer's or seller's name; a brief description of the service, including degree of firmness; the delivery points for each service; the price of each service; the quantities to be served or purchased; the contract's duration; * * * and any other attributes of the product being purchased or sold which contribute to its market value. Citizens Power shall file this contract information quarterly as to all contracts signed within the time period. Citizens Power must file this information within thirty days of the end of each quarterly period.[122]

Thus, it can be seen that reporting this information is not a new requirement.

159. In *Southern II*, the Commission provided that power marketers need only report a limited data set in the Quarterly Transaction Report for short-term power sales.[123] The Commission, in the NOPR, proposed to retain the data reporting distinctions for short-term sales. This final rule does not change the data burden for short-term transactions.

160. As shown in Attachment B, all of the data requested for transactions reported in Electric Quarterly Reports are currently required of utilities selling at market-based rates, with the exception of contact e-mail address, company DUNS number, transaction identification, and a contract ID number. The reporting of cost-based transactions and book outs are new requirements and are discussed below. Offsetting those additions, the current requirement to report purchase data is being eliminated.

161. Finally, Otter Tail comments that the proposed rule would be prejudicial and burdensome to small entities. In *Southern*, the Commission removed the waiver commonly granted market-based rate power sellers, and required them to follow the same Part 35 filing requirements all public utilities, both large and small, have had to abide by for decades. The Commission believes that filing Electric Quarterly Reports constitutes a lesser burden for market-based rate agreements than the burden required by the current Part 35 filing requirements.

162. Consistent with the Paperwork Reduction Act, the Filing Requirements Are the Least Burdensome Possible

163. Comments

164. EEI argues that the Paperwork Reduction Act requires the Commission to design reporting requirements that are the least burdensome possible and that the Commission's proposal does not accomplish this.[124]

165. Commission Conclusion

166. We agree with EEI that, under the Paperwork Reduction Act, the Commission is required to minimize the reporting burden it imposes on the regulated community and to explain the need for proposed new information requests. But as shown on Attachment B, *infra*, almost all of the information that will be reported in Electric Quarterly Reports is currently filed in paper format and an electronic filing will reduce the burden. In addition, by including data in Electric Quarterly Reports, public utilities will no longer file conforming service agreements, Quarterly Transaction Reports or purchase data. Moreover, we believe we have shown that the proposed changes in transaction reporting are consistent with FPA section 205(c) and will help ensure that rates are and remain just and reasonable. For example, the Commission is no longer requiring purchase data. This rule also gives us the opportunity to make use of current technology to enhance the usefulness of the data.

167. The Information Reported Will Be Useful

168. Comments

169. PSEG states that Index of Customers filings, as proposed, would constitute a "data dump."[125] PSEG and Reliant ask, for example, what use are prices that change by the minute or hour?[126]

170. Commission Conclusion

171. It is true that the volume of transactions in electric power markets is extensive and growing. This will produce a large number of reported transactions. Even so, the proposed reporting requirements are likely to reduce reporting burden with a standard electronic reporting format. We reject the contention that this reporting requirement would only produce a data dump. The reason for the specific formatting of the data is to enable Commission staff and other interested parties to perform analyses of the data.

172. Uniform Data Sets Are Needed

173. Comments

174. Avista states that it does not currently maintain its data in the format that the template requires. It states that many of the elements are not maintained in electronic format and compiling the data will be both costly and labor intensive. [127]

175. Commission Conclusion

176. We acknowledge that not all public utilities are currently keeping their data in formats that match the data sets adopted in this rule. This current chaotic diversity, however, may explain why the current quarterly transaction reports are so inconsistent and why uniform data sets are so necessary. Because some of the contract data elements may not currently be in

[114] Avista Data Sets Comments at 1.
[115] Wisconsin Electric Data Sets Comments at 1.
[116] Puget Data Sets Comments at 4.
[117] Otter Tail Data Sets Comments at 2.
[118] Edison Mission Data Sets Comments at 3.
[119] Because informational filings are Class I filings under our fee structure, no filing fees are currently applicable.
[120] NOPR at 34,075.
[121] 48 FERC at 61,778.
[122] "In deciding that informational filings are to be made on a quarterly basis, we have balanced the need to ensure that the data are not stale for purposes of any market analysis, against the desire that Citizens Power not be competitively disadvantaged by having to file sensitive marketing information while it might still be useful to Citizens Power's competitors." 48 FERC at 61,778.
[123] Southern Company Services, Inc., 75 FERC ¶ 61,130 at 61,444–445 (1996) (*Southern II*).
[124] EEI Data Sets Comments at 4.
[125] In other words, it would be filed, but it would never be of any use or even looked at.
[126] PSEG NOPR Comments at 8–9.
[127] Avista Data Sets Comments at 6.

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utilities' computer systems, we will be providing in the final format (for Electric Quarterly Reports due on January 31, 2003 and thereafter) a user-friendly application through which the data can be entered.

177. Reporting the Termination Dates of Agreements, Instead of Filing Notices of Termination, Constitutes a Significant Burden Reduction

178. Comments

179. Duke argues that the data element for "actual_termination_dt" is burdensome because it seeks data that Duke does not currently collect. Duke argues that this information can only be produced if Duke manually monitors each and every transaction to determine if the transaction ends prior to the agreed time and date.[128]

180. Commission Conclusion

181. Duke's understanding of the data reported in this data element is incorrect. The actual termination date to be reported in Electric Quarterly Reports refers to the dates when public utilities' agreements terminate. As proposed in the NOPR,[129] reporting this data element in Electric Quarterly Reports replaces the existing requirement that public utilities file notices of termination requesting approval to terminate their agreements and a cancellation sheet.[130] Thus, this item yields a burden reduction, not an increase.

182. Data Will Be Collected Efficiently, Without Duplicate Entries

183. Comments

184. Constellation states that the data sets in Appendices A and B of the Data Sets Order did not eliminate duplication in required data elements as promised by the Commission's NOPR. Constellation notes that the Appendices identify multiple data elements as required for both contract and transaction data sets. Further, it argues, the Data Sets Order provided no instructions on how to report these fields without duplication.[131]

185. Commission Conclusion

186. Although some data elements are related to both contract and transaction data, this does not mean that they will necessarily be entered twice. The software being developed for the final format of the Electric Quarterly Reports will use a relational database, so one data entry (*e.g.*, company name) will automatically show up in both the contract data and transaction data portions of the Electric Quarterly Report without duplicate data entries being made. This feature will not be implemented for the July 31 and October 31, 2002 periods. For these periods, the individual files will be posted on the Commission's website.

187. Filing Procedures and Related Issues

188. All Unexecuted and Nonstandard Non-Market-Based Rate Agreements Are Nonconforming Agreements and Must Be Filed with the Commission for Approval

189. In the NOPR, we proposed to revise 18 CFR 35.1 to add paragraph (g). The NOPR proposed that agreements that conform to approved forms of service agreements in a public utility's tariff and any market-based rate agreement need not be filed with the Commission.

190. Comments

191. Southern argues that the filing of agreements is unnecessary for negotiated, bilateral market-based sales now that purchasers have numerous choices and agreements are negotiated under market-based umbrella tariffs and service agreements.[132]

192. Other commenters raise concerns about unexecuted and nonstandard agreements. Calpine urges that all unexecuted and nonstandard agreements continue to be filed with the Commission to help the Commission remedy instances of discrimination.[133] Otherwise, Calpine states, the proposed regulation could have the unintended effect of increasing opportunity for discrimination. Calpine is concerned that case-by-case review of interconnection agreements could lead to disparate treatment.[134] Engage states that, in the event of an FPA-related dispute, the Commission should honor any negotiated terms for dispute resolution contained in a power agreement. Engage further argues that the Commission should confirm that it will honor such negotiated dispute resolution procedures and not open itself to forum shopping by any of the parties.[135] TDUS states that executed service agreements must be made available to customers, such as through a central clearinghouse. In addition, TDUS states that "material deviations" must be clearly spelled out. Third parties should be able to object to terms and conditions to the Commission.[136]

193. National Grid states nonstandard agreements should be permitted to be posted in PDF on utilities' web sites and filed electronically with the Commission, and the Commission would then put the file in RIMS.[137]

194. The California Commission argues that the electronic filing requirements should complement, not replace, the Commission's existing filing requirements. Otherwise, the burden would be put on third parties, such as state Commissions to challenge the reasonableness of contracts in FPA section 206 proceedings.

195. Commission Conclusion

196. We believe that, because the Commission will review the reasonableness of the terms and conditions of the standard agreements for transmission, cost-based sales, and other generally applicable services, and because utilities will be required to retain copies of these agreements and make them available for public inspection and copying, the requirement for public utilities to file all individual service agreements with the Commission can be eliminated so long as those agreements are consistent with a public utility's applicable approved standard forms of service agreements. However, if an agreement does not precisely match the applicable standard form of service agreement, or if the agreement is unexecuted, it is necessarily nonconforming and must be filed individually for Commission approval. Given these safeguards, we do not believe that the proposals adopted in this rule in any way compromise the Commission's ability to review substantive issues.

197. It is true that conforming agreements will not be filed before becoming effective. Thus, third parties will first learn of them when they are reported in a public utility's Electric Quarterly Report. It is also true that, a third party (such as the California Commission) finding the agreement objectionable would have the option of filing a complaint, but not a protest. The opportunity to file a protest would come earlier in the process, when the public utility submits its standard forms of agreement or market-based rate tariff for Commission approval. In response to such filings, third parties may protest any terms and conditions in those proposed standard forms that they find objectionable.[138] Moreover, if a public utility fails to file an agreement on the incorrect assumption that it is a conforming agreement, it does so without Commission approval.

198. Excelon and Calpine are concerned that the revised filing requirements will change utilities' obligations to file with the Commission or change the Commission's review process for non-market-based agreements that do not conform to a standard form of service agreement. However, that is not the case. There is nothing is this proceeding proposing any change on how the Commission will process, analyze and review unexecuted and/or nonconforming agreements.[139] The regulation specifically requires that utilities must continue to file unexecuted and nonconforming agreements with the Commission under the existing and otherwise unchanged filing requirements of Part 35.

199. TDUS states that the Commission should define material deviations from the cost-based standard form of service agreement. The Commission does not believe it is appropriate to try to enumerate all the potential variations to a standard form of service agreement. Public utility services are diverse and will require significant differences in form, structure and elements that may be negotiated without prior Commission review. This issue may be addressed as standard forms of service agreements are proposed by the public utilities and are reviewed by the Commission.

200. Calpine is concerned as to the impact this proposed regulation may have on Commission review of interconnection agreements. Part 35 of the Commission's regulations does not make a distinction between an interconnection agreement and other agreements for services that must be filed in conformance with this part of the Commission's regulations. If an interconnection agreement conforms with a Commission approved standard form of interconnection agreement,[140] the utility does not have to file it with the Commission, but it must be reported in Electric Quarterly Reports. The Commission will review any proposed standard form of service agreement to ensure that the terms are just and reasonable, and not unduly discriminatory or preferential.

201. National Grid argues that nonstandard agreements should be permitted to be posted on utilities' web sites and filed electronically with the Commission. The Commission has no objection to utilities posting either standard or nonstandard agreements on their Web sites. The Commission has initiated other proceedings in preparation of receiving rate filings and tariff sheets electronically.[141] However, this is beyond the scope of this proceeding.

202. Scope of Standard Service Agreements

203. In the NOPR, we proposed adoption of § 35.10a, containing guidelines for the inclusion of a standard form of service agreement in a public utility's tariff. We proposed that the standard agreement format for each service must describe the service to be rendered and must provide spaces for the insertion of the customer's name, effective date, expiration date, and term. Depending on the type of agreement, spaces for other information may also be included, as appropriate. For example, spaces may be provided for receipt and delivery points, contract quantity, and other specifics of each transaction. New standard agreements must be filed in accordance with the form and style required of rate schedule filings.

204. Comments

205. Pinnacle states that streamlined OATT agreements would be beneficial. Wisconsin argues that the Commission should clarify that all generally applicable services offered under a tariff may be included in the form of service agreements under that tariff.

206. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer specific, conditions.[142]

207. Commission Conclusion

208. Pinnacle's and Wisconsin's concerns about the content and scope of standard forms of service agreements are beyond the scope of this rulemaking. The Commission has already prescribed the OATT standard forms of service agreements in Order No. 888. The Commission has also approved other standard forms of service agreements as part of utilities' individual tariffs and rate schedules. This rulemaking was not intended to reexamine those standard forms of service agreements.

209. Just as the Commission is not reexamining standard forms of service agreements already found to be consistent with the FPA, the Commission's regulations and policy, this rulemaking is not adopting a rule or finding that predetermines whether a particular standard form of service agreement is just and reasonable. Utilities must file and support their proposed standard forms of service agreements. The Commission will review these filings consistent with the FPA, the Commission's regulations and Commission policy in the same manner as it did prior to this rulemaking.

210. EEI requests an opportunity to discuss with Commission staff opportunities to further reduce service agreement filings with nonstandard, customer-specific conditions. EEI and public utilities are welcome to discuss their ideas with Commission staff, consistent with 18 CFR 35.6.

211.Duration of Requirement to Report Data

212. Comments

213. Engage states that the NOPR is unclear as to whether the Commission intends that public utilities post the terms of the agreements when negotiated or only after performance commences. Engage urges that postings about a transaction not be required until performance commences.[143] Edison Mission argues that,

> FERC does not need contract-specific data for the life of the contract in order to satisfy market monitoring or legitimate filing requirements. A shorter time frame on which contract information is to be provided, as well as reasonable limits on long-term contract information, is more appropriate.[144]

214. Southern asks the Commission to clarify that umbrella agreements that have not experienced a transaction need not be included in Index of Customers. Southern explains that these umbrella agreements are non-transactional. They are merely authorizing agreements that

[128] Duke Energy NOPR Comments at 6,7.

[129] NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,068.

[130] Similarly, the 60-day notice provisions for new filings is inapplicable to conforming agreements that are not filed.

[131] Constellation Data Sets Comments at 6.

[132] Southern NOPR Comments at 4.

[133] Although Calpine's particular concern is with transmission and interconnection agreements, it also expresses support for the continued filing of all unexecuted and nonconforming agreements. Calpine NOPR Comments at 6.

[134] Calpine NOPR Comments at 5–6.

[135] Engage NOPR Comments at 8–8.

[136] TDUS NOPR Comments at 5–6.

[137] National Grid NOPR Comments at 5.

[138] This is the same procedure that the Commission uses regarding conforming gas transportation agreements reported in the gas Index of Customers. *See, e.g.*, ANR Pipeline Company, 97 FERC ¶ 61,224 at 62,022 (2001), where the Commission explained that interested parties have an opportunity to review whether standard forms of agreement are just and nondiscriminatory before they are approved and thus, there is no need to review conforming agreements to determine if they comply with requirements of the NGA. By contrast, nonconforming agreements are individually filed and carefully reviewed before approval.

[139] Engage's request for the Commission to presume any negotiated term and condition of service is just and reasonable goes beyond the scope of this proceeding.

[140] *See* Standardization of Generator Interconnection Agreements and Procedures, *Notice of Proposed Rulemaking*, Docket No. RM02–1–000, which is being issued concurrently with this rule.

[141] *See* Docket No. RM01–5–000, where Electronic Tariff Filings, Notice of Inquiry and Informational Conference, 66 FR 15673, FERC Stats. & Regs. ¶ 61,270 (2001) was issued and Docket Nos. RM00–12–000, where Order No. 619, *supra* at n.14, was issued.

[142] EEI NOPR Comments at 14.

[143] Engage NOPR Comments at 6.

[144] Edison Mission Data Sets Comments at 5.

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allow the customer to later submit specific requests for that type of service.

215. Commission Conclusion

216. In response to comments from Engage and Southern, we clarify that under this rule, the requirement to file contract data and transaction data begins with the first Electric Quarterly Report filed after service commences under an agreement, and continues until the Electric Quarterly Report filed after the agreement expires or by order of the Commission. We reject Edison Mission's suggestion that contract data should be reported only in the quarter when the agreement is entered. Removing information about agreements that are still in effect does not adequately comply with the requirements of FPA section 205(c). Moreover, once the data are entered into an Electric Quarterly Report, it takes no work to retain this information in subsequent Electric Quarterly Reports.

217. Umbrella agreements are commonly filed under market-based rate tariffs. They allow the parties to transact business from time to time without waiting to obtain specific approval for each transaction. These agreements may "sit on the shelf" until such time as the customer requests service. Under the this rule, umbrella agreements are first reported in the first Electric Quarterly Report filed after service commences. The Commission agrees with Southern that agreements for which service has not commenced as of the reporting period do not have to be reported in Electric Quarterly Reports. However, once reported, the contract data continues to be reported in all subsequent Electric Quarterly Reports until the agreement terminates by its own terms or by order of the Commission, even if no further transactions occur under the agreement.

218. Consequences of Noncompliance

219. Comments

220. TDUS states that the Commission should clarify the penalties for failure to comply with the new filing requirements. [145] APPA states that the Final rule should outline the Commission's plan for auditing the Index of Customers for accuracy.[146] Similarly, TDUS is concerned with the apparent self-policing of the filed reports.[147] EEI expressed concern with the potential penalties should a utility's Index of Customers contain inadvertent or inconsequential omissions.[148]

[145] TDUS NOPR Comments at 8.
[146] APPA NOPR Comments at 4.
[147] TDUS NOPR Comments at 8.
[148] EEI NOPR Comments at 9.

221. Commission Conclusion

222. While the Commission is not proposing any specific audit procedures as a part of this rulemaking, the Commission expects to audit utilities' reports either as the result of a filed complaint or on our own initiative. This does not mean, however, that there are no incentives for utilities to make full and complete reports, or that there are no consequences for failing to make complete or accurate reports. Electric Quarterly Reports are intended to satisfy the FPA section 205(c) filing requirements. If utilities are found to have violated the requirements of the Commission's regulations, the Commission will not hesitate to impose remedies, as appropriate. If a public utility has not received approval for a cost-based rate transaction and neglects to include in its Electric Quarterly Report relevant contract data, the Commission may determine that the agreement was not on file and adjust the rate in that agreement as appropriate.[149] If a public utility fails to file a Electric Quarterly Report (without an appropriate request for extension), or fails to report an agreement in a report, that public utility may forfeit its market-based rate authority and may be required to file a new application for market-based rate authority if it wishes to resume making sales at market-based rates.

223. The Electric Quarterly Reports are designed to satisfy the FPA section 205(c) requirements. For power marketers, the Electric Quarterly Report is intended to replace the current filing of Quarterly Transaction Reports summarizing their market-based rate transactions and the filing of long-term agreements. Electric Quarterly Reports are also intended to replace the Quarterly Transaction Reports and rate filings required of traditional utilities with market-based rate authority. Once this rule becomes effective, the requirement to comply with this rule will supersede the conditions in public utilities' market-based rate authorizations and failure to comply with the requirements of this rule will subject public utilities to the same consequences they would face for not satisfying the conditions in their rate authorizations, including possible revocation of their authority to make wholesale power sales at market-based rates.

[149] *See, e.g.*, Central Maine Power Company, 56 FERC ¶ 61,200, Order on Rehearing, 57 FERC ¶ 61,083 (1991), where the Commission established a policy that remedies would be provided in instances of late-filed agreements.

224. This Rule Does Not Nullify Existing Tariff Conditions or System Agreements

225. Comments

226. WSPP asks for clarification of whether it must continue to comply with the reporting requirements currently in its tariff. It also asks for clarification of whether it should file a joint Index of Customers on behalf of its members, or should they individually file for themselves. WSPP also asks whether any postings will be required on the WSPP web site as a result of this NOPR.

227. Commission Conclusion

228. WSPP's tariff contains a requirement for it to file certain margin data. This requirement was imposed in 1991. In Docket No. ER91–195–035, WSPP asked the Commission to rescind this requirement because it is not required of other comparable entities. WSPP's request is being addressed in an order being issued in Docket No. ER91–195–035 concurrently with this rule.

229. Each WSPP member has its own tariff on file with the Commission, and each WSPP member must satisfy the various reporting requirements for utilities. The proposed regulations do not change the nature of the relationship between organizations, such as WSPP, and their members or agency arrangements, such as Southern Services, Inc., have with its affiliated utilities.

230. We also note that the current Commission orders granting market-based rate authority each contain a requirement to report any material changes in circumstances. This rule does not rescind this requirement.

231. Timing and Frequency for Filing Electric Quarterly Reports

232. The NOPR proposed, in § 35.10b(a), that the Index of Customers must be filed quarterly 30 days after the end of the reporting quarter.

233. Comments

234. PJM supports the NOPR proposals, but would have Index of Customers filed monthly rather than quarterly. It takes this view because this would make the data more useful for market monitoring purposes. [150] Likewise, TDUS is concerned that the three month time gap in reporting the agreements will inhibit the public from discovering potential reporting or contracting problems in a timely fashion. In addition, TDUS suggests that public utilities should post a downloadable and searchable copy of

[150] PJM Data Sets Comments at 2.

each service agreement referenced in their Index of Customers within five days after they become effective.[151]

235. Commission Conclusion

236. The Commission will not adopt PJM's proposal. We are not prepared to impose this additional burden at this time because it is not necessary to switch from quarterly to monthly reporting to meet the Commission's objectives in this rulemaking.

237. However, the Commission is not finished with its review of its market monitoring data requirements. This may require re-examination of whether Electric Quarterly Reports should be filed on a quarterly basis or on some other basis. This examination would occur at a later date as part of the Commission's ongoing review of its market monitoring responsibilities.

238. Use of Utility Web Sites

239. The NOPR addressed the use of OASIS or other public utility web sites to post Index of Customers filings in two provisions (§§ 35.10(b) and 37.6(g)). In § 35.10b(b), the NOPR proposed that each public utility with an OASIS web site post its Index of Customers in the portion of its OASIS web site that is accessible to the public without registration or fee. We proposed that each public utility that does not have an OASIS web site shall post its Index of Customers on a web site that also is accessible to the public without registration or fee. We explained that, in the alternative, we would consider allowing the use of a joint web site so that data about numerous public utilities could be found at one common site.

240. In addition, we proposed to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. The information would be required to be available for online review, copying or download. Index of Customers filings would remain posted at the same location for three years after they are filed.

241. Comments

242. Various commenters raised objections to the use of OASIS and other web sites as locations to post Electric Quarterly Reports. Midwest ISO suggests a two year retention period, instead of the three years proposed in § 35.10b(d), to reduce posting burden.

[151] TDUS NOPR Comments at 4, 7.

243. Commission Conclusion

244. The Commission has reconsidered the use of OASIS and other web sites to post Electric Quarterly Reports and has decided that it will be more efficient to maintain a single web site for Electric Quarterly Reports at FERC's Internet site rather than to require each utility to maintain its own site. Thus, the Commission will not adopt the proposed revisions on this subject. These changes make MISO's comment moot. The existing requirements for public utilities to retain copies of their contracts and other data are unchanged by this rule.[152]

245. Procedures for Cancelling Expiring Agreements

246. Comments

247. Southern supports the proposal that a utility would merely delete from its Index of Customers canceled and terminated agreements that expire by their own terms instead of having to make a separate filing with the Commission.[153] TDUS suggests that cancellations of service agreements that do not expire of their own terms should be filed with the Commission.[154]

248. Commission Conclusion

249. Under this rule, agreements that conform to approved standard forms of service agreement and market-based rate agreements may terminate by their own terms without the need for the public utility to file a notice of cancellation or cancellation tariff sheet with the Commission. The public utility simply removes the agreement from its Electric Quarterly Report the quarter after it terminates.[155] For agreements that remain in public utilities' Commission-maintained tariffs after the implementation date of this rule (basically non-conforming agreements), public utilities also must comply with the requirements to file a notice of cancellation and a cancellation tariff sheet. TDUS' request assumes that there is no consent between the parties to terminate a service. All proposals to change terms of an agreement without the consent of the customer must be filed with the Commission. Additionally, if an agreement terminates on a date other than the original agreement termination date (for instance, due to extension provisions being executed or termination by mutual agreement), the utility must enter the actual termination date in the subsequent Electric Quarterly Report, regardless of whether that agreement is a conforming agreement, a non-conforming agreement, or a market-based rate agreement.

250. If an agreement terminates on a date within the reporting quarter, the utility must enter the actual termination date in the Electric Quarterly Report for that calendar quarter, and remove the agreement from the subsequent Electric Quarterly Report.

251. Data to Be Filed in Electric Quarterly Reports

252. In the NOPR, the Commission provided a general description of the data to be reported in Index of Customers filings. In the Data Sets Order, the Commission added specific details about the exact data definitions and data elements to be used in Index of Customers filings. These data fall into two main categories, contract data and transaction data. The Data Sets Order also clarified the Commission's policy regarding the reporting of book outs and net outs. The Data Sets Order invited comment on these issues. In the discussion below, we will address each of the issues raised by the commenters.

253. Transaction Data

254. Public Utilities Will Report Actual Prices for All Transactions, Including Those Lasting Less than One Day

255. Comments

256. AEP states that the Commission's decision to allow marketers to report only the high, low and average price for transactions shorter than one day is "somewhat of an improvement."[156]

257. PJM recommends that hourly reporting along with the actual transaction specific data is essential for market development and analysis. PJM supports hourly reporting of transaction data as essential to be combined with load data that is already, or will soon be, publically available in areas with structured markets.[157] It argues that reporting only high, low and weighted average prices does not give sufficient information needed for understanding, characterizing and monitoring markets.[158]

258. Consumers asks if there are a limited number of price changes, could the reporting utility report real data that

[152] *See* 18 CFR 125.3, which provides that contracts are to be retained for the later of 4 years after they expire, or until all proceedings or disputes are concluded.
[153] Southern NOPR Comments at 27.
[154] TDUS NOPR Comments at 5–6.
[155] The simplified termination procedures will not apply to agreements entered into before the final software is developed and ready for implementation. Further instructions on this issue will be included in a subsequent order.
[156] AEP Data Sets Comments at 4.
[157] PJM Data Sets Comments at 1.
[158] PJM Data Sets Comments at 1–2.

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would be more useful and easier to provide?[159]

259. Commission Conclusion

260. As stated, section 205(c) of the FPA requires that "every public utility shall file with the Commission, within such time and in such form as the Commission may designate, and shall keep open in convenient form and place for public inspection schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges. . . ." The Commission concludes that public utilities reporting the actual rates charged for transactions lasting less than a day complies with the requirements of section 205(c) of the FPA.[160]

261. We agree with PJM that reporting actual prices would actually be less burdensome than reporting the prices of transactions lasting less than one day on a high, low, and weighted average basis (when the prices change during the day) because the data could be reported as is, without the extra steps of identifying the high and low prices and computing the weighted average. This was confirmed in site visits conducted by Staff to observe how these data are currently maintained.

262. Report Reactive Power as an Ancillary Service

263. Comments

264. Consumers is not clear how or where to report reactive power. Consumers suggests that the option of using "NA" for appropriate fields, such as in rates, should be available.[161]

265. Commission Conclusion

266. Reactive power will be reported as an ancillary service. If reactive power service is rendered, required contract data summarizing the terms and conditions applicable to this service should be provided. When a service is not provided, we agree that the use of "NA" in certain fields will be permissible.

267. Report Transaction Data for Ancillary Services Associated with Power Sales

268. Comments

269. Southern seeks clarification that no transaction information is required for OATT ancillary services.[162]

270. Commission Conclusion

271. We clarify that ancillary service transaction data associated with transmission need not be reported when the transmission services are provided on an unbundled basis.

272. On the other hand, ancillary service transaction data associated with power sales are currently required to be filed in Quarterly Transaction Reports and the requirement to file these data is retained in this rule.[163] This matter is discussed in *Commonwealth Electric Company*, 78 FERC ¶ 61,191 at 61,813 (1997), where we stated,

> [t]he prices for wholesale generation, transmission and *ancillary services must be separately stated* for sales under requirements or coordination contracts executed after July 9, 1996. [Emphasis added.]

273. Book Outs

274. Defining Book Outs

275. Comments

276. Commenters recommend that the Commission eliminate the proposed requirement to file information pertaining to the offsetting of transactions (called book outs). Commenters argue that the Commission's characterization of book outs in the NOPR is inaccurate and unclear, that it fails to adequately distinguish between physical and financial transactions, and that it shows a fundamental misunderstanding of the market and what these transactions really are.

277. Wisconsin states that book outs more closely resemble financial transactions that the Commission has exempted from its reporting requirements. Others argue that book outs are purely financial transactions and, as a result, are beyond our jurisdiction. Commenters claim that the proposal to require marketers to report book outs ignores Commission precedent that only transactions that go to physical delivery are subject to our jurisdiction.[164]

278. Commission Conclusion

279. As we explained in the Data Sets Order, a "book out" is the offsetting of opposing buy-sell transactions. The Data Sets Order gave the simplified example of a sale of 100 MW of power from A to B and a sale of 90 MW of power from B to A, which would result in these transactions being booked-out and treated as a 10 MW sale from A to B. These book out transactions are currently being reported, without objection, in Quarterly Transaction Reports, albeit in aggregated form. The Data Sets Order proposed that, under this hypothetical situation, public utilities would report both the 100MW and 90MW sales, and not just the 10MW delivered.

280. Typically, however, book outs involve a chain of transactions (*e.g.*, A sells 50MW of power to B, B sells 55MW of power to C, C sells 60MW of power to A). Under this hypothetical, if no further transactions were made, 50MW would be booked out, B would deliver 5MW to C, and C would deliver 10MW to A. If the parties wished to use book outs to avoid making physical transmission for power deliveries, A could sell an additional 10MW of power to B and B could sell an additional 5 MW of power to C, in which case all three transactions would be booked out in their entirety and all delivery obligations would be offset, although all other obligations under the agreements, including payment, would remain in effect.

281. Now that the Commission is considering requiring book outs to be reported on a disaggregated basis, objections are being raised arguing that the Commission lacks jurisdiction over these transactions, unless they result in an actual physical delivery of power. We find that these objections focus on the wrong issue and are without merit. The Commission is not here asserting (or disclaiming) jurisdiction over the underlying sales transactions. Instead, the Commission is deciding what information must be reported to us by public utilities.

282. The power sales that make up book out transactions on their face typically are for the sale for resale of electric energy in interstate commerce by a public utility. The buyer, seller, price, quantity and other agreement details in such agreements are indistinguishable from those in any other power sale agreement. The agreements obligate the seller to provide power and obligate the buyer to pay the agreed-on prices. Only after there are subsequent offsetting agreements entered (as shown in the illustration above) such that deliveries can be offset, does the book out result.

283. In *Prior Notice and Filing Requirements Under Part II of the Federal Power Act*, 64 FERC ¶61,139, at 61,986 , *order on reh'g*, 65 FERC ¶ 61,081 (1993) (*Prior Notice Order*), the Commission explained that FPA section 205(a) gives the Commission authority to ensure that:

> [a]ll rates and charges made, demanded, or received by any public utility *for or in connection with* the transmission or sale of electric energy subject to the jurisdiction of the Commission, and all rules and regulations *affecting or pertaining to* such rates or charges shall be just and reasonable * * *. [Emphasis in original.]

In addition, FPA section 205(c) requires all public utilities to file:

> schedules showing all rates and charges for any transmission or sale subject to the jurisdiction of the Commission, and the classification, practices, and regulations affecting such rates and charges, *together with all contracts which in any manner affect or relate to such rates, charges, classifications, and services.* [Emphasis added].

The Commission recognizes that this provision has the potential to be interpreted very broadly. Thus, we have devised a "rule of reason" to identify the agreements that must be filed under this provision.[165]

284. As we stated in the *Prior Notice Order:*

> [a]scertaining the extent of what the industry must file [under FPA section 205] depends on how expansively we define the terms "for," "in connection with," "affect/affecting," "pertaining to," and "relate to." [166]

We further stated that, as a general matter, the Commission typically requires parties to file arrangements involving, among other matters, "a public utility selling or exchanging wholesale power in interstate commerce." [167]

285. We believe that the power sales transactions that make up book out transactions fall within this category and should be reported to us. As noted above, the agreements obligate the parties to deliver power at a specified price and, but for the subsequent offsetting power sales, transmission of power would be made. Moreover, such transactions in the marketplace plainly affect or relate to those transactions and the prices paid for power sales that do go to delivery. Thus, under FPA section 205(c), we find that the power sales transactions that make up book out transactions must be reported to us in Electric Quarterly Reports.[168]

286. Reporting Book Outs Is Not Unduly Burdensome

287. Comments

288. Commenters claim that reporting book outs would be burdensome and unreasonable and would not provide data that is meaningful or useful. Commenters claim that the proposal shows a fundamental misunderstanding of the types and volume of purchase/sales transactions occurring on a daily basis in electricity markets. Commenters argue that the volume of sale/purchase transactions typically exceeds the volume of power delivered by three or four fold or more in today's liquid markets.

289. Commission Conclusion

290. Although we acknowledge that the number of market-based transactions taking place daily is large, we do not believe that this provides an adequate reason not to report them. The transacting entities are fully capable of keeping track of their own transactions, if for no other purpose than billing. Nothing presented by commenters shows that the incremental burden of making the information available would be significant. In this regard, none of the commenters gave any specific examples or explanations of how or why reporting book outs would be burdensome. Although a majority of market-based transactions at issue are delivered without physical transmission, there is physical delivery. The two sellers each physically deliver power when they exchange the power each produces.

291. We are amenable to working with the industry to come up with the most convenient format and meaningful way of presenting/transferring the data. But the Commission is charged with oversight of electric power markets, and we cannot perform this function adequately if we lack important information about how that market functions. We conclude that the transactions underlying the book outs must be reported if we are to adequately monitor wholesale markets, sellers in those markets and wholesale prices for electric energy.

292. Report Book Outs on a Disaggregated Basis

293. Virginia Power argues that book outs, if reported at all, should be reported in the aggregate because public disclosure of book outs of physical transactions reveals the negotiating positions of the parties and this would undermine competition. Other commenters add that utilities that aggregate their book outs would face the added burden of maintaining two sets of books—one for the Commission's filing requirements and one for accounting and billing purposes.

294. We will deny this request, consistent with our rulings in *Citizens Power*, where we directed information about wholesale power sales to be made on a disaggregated basis. [169]

295. Contract Data Requirement

296. All of the Contract Terms and Conditions To Be Reported Are Identified in the Data Elements

297. Comments on the contract data requirements focused on two major areas, identifying: (1) what contracts would be included in Electric Quarterly Reports and (2) specific perceived problems with the proposed contract data sets.

298. Comments

299. Excelon argues [170] that the requirement to include all terms and conditions in contract data reported in the Index of Customers is burdensome. From its comments, we surmise that it is concerned about reporting contractual terms and conditions beyond the data sets identified in the NOPR.

300. Commission Conclusion

301. If we have accurately interpreted commenter's concerns, we can alleviate this by clarifying that only the terms and conditions contained in Electric Quarterly Report data elements need be reported in Electric Quarterly Reports.

302. Data Elements Issues

303. Consistency with the OASIS Standards and Communications Protocols Document

304. Comments

305. Southern notes that in the NOPR, the Commission proposed to follow, to the greatest extent possible, the data element names and definitions contained in the Commission-approved

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[159] Consumers Data Sets Comments at 6.

[160] The courts have repeatedly emphasized the importance of statutory requirements to have rates on file as a critical component of complaint-based statutory enforcement mechanisms. In *Maislin*, the Supreme Court rejected an Interstate Commerce Commission policy permitting carriers to charge undisclosed negotiated rates, finding that disclosure of rates was required both to allow the agency to review the rates and to allow other shippers to know whether they should challenge a carrier's rates as discriminatory. 497 U.S. at 132. *See also Southwestern Bell* 43 F.3d at 1524, and MCI v. AT&T, 512 U.S. 218, 230 (1994).

[161] Consumers Data Sets Comments at 2–4.

[162] Southern NOPR Comments at 28–29.

[163] This occurs in instances when the power is sold in a bundled transaction covering the underlying power sales and any ancillary services associated with transmission of the power.

[164] In support of this claim, they cite Morgan Stanley Capital Group, Inc. (*Morgan Stanley 1*), 69 FERC ¶ 61,175 (1994), *order on reh'g*, 72 FERC ¶ 61,082 (1995) (*Morgan Stanley 2*); and Annual Charges Under the Omnibus Budget Reconciliation Act of 1986, 67 FERC ¶ 61,074 (1999) (*Annual Charges*).

[165] *See, e.g.*, PJM Interconnection, L.L.C., *et al.*, FERC ¶61,251 at 61,894–95, *reh'g denied* 95 FERC ¶61,333 at 62,186 (2001); Western Systems Coordinating Council, 87 FERC ¶61,060 at 61,233–34 (1999); Public Service Company of Colorado, 67 FERC ¶61,371 at 62,267 (1994).

[166] *Prior Notice Order*, 64 FERC at 61,986.

[167] *Id.*

[168] In the Data Sets Order, FERC Stats. & Regs. ¶ 35,541 at 35,806, we also proposed the reporting of "net outs." However, in consideration of the comments, we are withdrawing this proposal.

[169] 48 FERC at 61,776.

[170] Excelon Data Sets Comments at 2.

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OASIS Standards and Communications Protocols Document, version 1.4 (OASIS S&CP Document). Southern contends that, notwithstanding this commitment, the Commission's Data Sets Order proposes data set names, definitions and formats that differ from their OASIS counterparts.[171] Southern argues that these discrepancies and differences may inhibit the construction of better reporting systems, and will create inefficiencies, undue burden, questionable data, and slower response times. Southern suggests that the Commission reconcile its Index of Customers data sets with its OASIS counterparts so that Index of Customers filings can be integrated with OASIS filings. Southern strongly opposes the imposition of another data set on top of the OASIS data set. Southern states that the Commission should work with the OASIS collaborative group as the Commission once suggested.[172]

306. Commission Conclusion

307. First, although we attempted to draft the Electric Quarterly Report data elements to match their OASIS counterparts wherever possible, as discussed in the Data Sets Order, certain apparent discrepancies were unavoidable because the OASIS data elements are exclusively designed to report on transmission-related transactions while the Electric Quarterly Report data elements must cover an entire range of transactions under 18 CFR Part 35. Southern states that the Commission should have used more of the OASIS S&CP data elements and their definitions than proposed in the Data Sets Order. However, the OASIS S&CP data set does not contain all the data elements or definitions that the Commission requires for contract data reported in Electric Quarterly Reports. For example, the OASIS S&CP product definitions are limited to those services under the OATT. However, public utilities provide many more jurisdictional services than those. An example of an element that is not in OASIS is the agreement termination date agreed on in the agreement.

308. As a result, Electric Quarterly Reports will include product definitions and termination data that are not in OASIS. The Commission believes that the resulting data set will not establish a new layer of data definitions on top of the existing S&CP data set. Rather, the Commission is expanding the S&CP data set as necessary to collect the contract data.

309. Deleted Data Elements

310. Comments

311. The Commission needs to clarify whether the data elements "point_of_receipt_control_area" and "point_of_receipt_specific_loc" apply to both sales and transmission services. It is Constellation's understanding that market-based sellers are required to report sales, not purchases, and, if this is indeed the case, Constellation sees no reason why a report of sales transactions should require receipt points. According to Constellation, reporting receipt points only makes sense for transmission.[173]

312. AEP proposes that the requirements to report Point of Receipt (POR) and Point of Delivery (POD) be replaced by identification of the NERC region of the transaction.[174] AEP argues that POR does not yield information that is useful in terms of examining the economics of a transaction because: (1) The POR could easily change on a daily basis depending on the requirements of scheduling needed to complete the transaction; (2) a seller with a defined POD may not have any control over the POR from which the seller's supplier chooses to deliver the energy; (3) each participant in the chain is unlikely to agree upon which of its transactions its upstream or downstream supplier is identifying;[175] (4) it would be difficult from a systems perspective to match daily physical schedules with term power sales in a meaningful manner other than by providing NERC tags for each day of physical flow and even then buyers and sellers are unlikely to agree on which specific agreement is moving from POR to POD because in practice they are not identified in such a manner to buyer to seller.[176] Consumers questions how PORs and PODs are to be provided on market-area and multiple point agreements.[177]

313. Commission Conclusion

314. We agree with the point made by Constellation. Since we are not collecting data on purchases, we will not require point of receipt (POR) data for power sales transactions. However, POR and POD information will be required for contract data. In response to Consumers' question, multiple POR and POD points will be allowed to be entered in the Electric Quarterly Report system, thus multiple points are accommodated. POR and POD should be reported the way it is written in the agreement. If, for example, the agreement lists the information at the Control Area level, then the use of the POR or POD control area data element will be accepted. If the agreement specifies a specific location, then respondents should use the POR or POD specific location data element. This is consistent with OASIS standards.

315. Transaction End Date.

316. Comments

317. Consumers argues that providing transaction end date would "discourage long term transactions and unnecessarily divulge proprietary information about Buyers' and Sellers' positions for future quarters."[178]

318. Commission Conclusion

319. The transaction end date does not provide sensitive proprietary information because it is reported on an historic basis. It is reported as the latter of the actual transaction end date or the last day of the quarter * * *. Therefore, Consumers' concerns are unwarranted.

320. Cancellation Date

321. The Commission will eliminate the "cancellation_of_contract" data element. When an agreement expires, the actual termination date will be entered into the contract data. Therefore, the "cancellation_of_contract" data element provides redundant data. Signatories to an agreement will receive notice pursuant to the terms of the agreement, and cancellations without the other parties' consent must be individually filed with the Commission for approval.

322. Other Services

323. Comments

324. Southern states the reference in the NOPR to "other services" should be clarified to be ancillary services under the OATTs because those are the only services provided under those tariffs other than transmission services.[179]

325. Commission Conclusion

326. That was not the intent of this reference. The ancillary services definitions already exist in the OASIS S&CP, and the Commission proposes to adopt those definitions. However, the OASIS S&CP service definitions were limited to OATT services performed through the OASIS. The Commission's

[171] Southern provides an example of "increment_peaking_name." Southern states that Appendix B definition defines the field length as 15 characters, whereas the associated OASIS S&CP data element of "TS_PERIOD" is 20 characters.

[172] Southern Data Sets Comments at 3–5.

[173] Constellation Data Sets Comments at 7.

[174] AEP Data Sets Comments at 5.

[175] AEP Data Sets Comments at 6.

[176] AEP Data Sets Comments at 6–7.

[177] Consumers Data Sets Comments at 2–4.

[178] Consumers Data Sets Comments at 5.

[179] Southern NOPR Comments at 28–29.

Electric Quarterly Reports will require reports on many other types of jurisdictional services. The Commission was simply indicating other services could be defined for the purposes of completing Electric Quarterly Reports data fields.

327. Future Revisions to Data Elements

328. We invited comments as to whether the same voluntary industry working group(s) that seek industry consensus and periodically recommend revisions to the OASIS S&CP Document would be available to aid the Commission in developing and maintaining the various codes for Index of Customers Data Sets, or whether another approach would be preferable. Southern, EEI and others encouraged the Commission to consult with the industry to establish the initial Index of Customers data elements and any subsequent modifications. The Commission has determined the data elements it requires to be filed, but we recognize that several of the data element definitions will require updating as new and unique types of services are introduced to the market. The Commission recognized this possibility when we proposed using OASIS S&CP, version 1.4's "{Registered}" variable. The Commission prefers that the industry create standard definitions. The OASIS community currently maintains the definitions through variable registration on TSIN.COM. The Commission invites the industry to expand the use of this mechanism to include non-OATT services.

329. While we are today issuing our final rule in this proceeding, we are not yet implementing the final format for Electric Quarterly Reports because further work on software development remains to be completed. As a result, there is a short window of opportunity if the industry is able to make consensus recommendations for minor revisions to the Electric Quarterly Report data elements that would better match the data elements used in the OASIS S&CP Document. As we noted above, the Commission is looking for a single group to emerge to tackle the development of uniform industry standards. When such a group is in place, it would be the proper group to address this issue.

330. Role of RTOs

331. Comments

332. EEI asks what reporting requirements will the RTOs be required to satisfy? EEI argues that the Commission should delineate differences between transmission providers and RTOs. EEI, Enron, and Illinois Power argue that the NOPR may be premature and should be delayed until there has been more progress with RTOs and the Commission has established standards for the RTOs. They argue that the proposed regulations may become outdated with formation of RTOs. Illinois Power also argues that delaying the implementation of the rulemaking until after RTOs become functional will relieve transmission providers, such as itself, of the burden of having to electronically file its transmission contract information. In the alternative, Illinois Power asks that the Commission give transmission utilities who are actively engaged in good faith efforts to become part of an RTO an exemption from filing electronically.[180]

333. Commission Conclusion

334. Some commenters request clarification as to the role of RTOs in filing transmission and sales contract data and transaction data. RTOs, as public utilities, are required to abide by the provisions of Part 35 of the Commission's regulations, except where specifically exempted. Under § 35.34(k) of the Commission's regulations, 18 CFR 35.34(k), an RTO must administer its own transmission tariff, which includes transmission and ancillary services under its OATT. The requirements of this rule do not create any conflict or ambiguity as to the responsibilities of RTOs to file and report transmission agreements consistent with Part 35. RTOs are responsible under Part 35 of the Commission's regulations for making tariff filings and following related reporting requirements.

335. The NOPR did not distinguish between an RTO and a traditional public utility concerning the requirement to report power sale transaction data. To the extent that an RTO makes wholesale power sales or transmission sales, these sales are subject to the same reporting requirements that would be applicable to any other public utility. To the extent that an RTO facilitates transactions by its members but title to the power never passes to or from the RTO, these transactions would be reported by the parties making the sales and not by the RTO itself.[181]

336. Public utilities making power sales to an RTO, or though an RTO's power market, must report their power sales agreements and transaction data pursuant to § 35.10b. However, this rule does not prevent an RTO from filing power sales transaction information on behalf of its members or participants as an agent, if authorized by its members or participants to do so.

337. The commenters also suggest that the Commission delay the electronic filing of transmission contract data until the RTOs are either more fully defined or operating. The Commission denies this suggestion.

338. Section By Section Revisions

339. Deletion of § 2.8

340. In the NOPR, we proposed to delete 18 CFR § 2.8, concerning the simplification of public utility rate schedule filings, because that regulation has been superceded by the regulations promulgated by Order No. 614 and is no longer necessary. No comments were filed addressing this proposal. The Commission adopts the change as final.

341. Revised Heading for 18 CFR Part 35

342. In the NOPR, we proposed to revise the heading of 18 CFR Part 35 to reflect that 18 CFR Part 35 will now cover the filing of both rate schedules and tariffs. No comments were filed addressing this proposal. The Commission adopts the change as final.

343. Revisions to § 35.1—Conforming Service Agreements

344. In the NOPR, we proposed that conforming cost-based agreements and all market-based rate agreements would not be filed with the Commission. After a review of the comments on this issue, we concluded that we would adopt the NOPR proposal in this rule. Thus, we will adopt as final the same regulatory text we proposed in the NOPR.

345. Revisions to § 35.10a—Forms of Service Agreements

346. No comments were filed on this provision. We will revise the section as needed to reflect the name change from Index of Customers to Electric Quarterly Report. The Commission revised the first two sentences in (a) to remove redundant phrases.

347. Revisions to § 35.10b (a)—Electric Quarterly Reports

348. In the NOPR, we proposed adoption of § 35.10b(a), which stated that each public utility shall file, in an electronic format, an updated "Index of

[180] EEI NOPR Comments at 16, Illinois Power NOPR Comments at 2–3, Enron NOPR Comments at 3, 4.

[181] The Commission will require PJM, ISO-New England, Inc., New York Independent System Operator, L.L.C. and the California ISO to follow the same reporting requirements as an RTO. The Commission will address particular filing requirements for auctions in the Standard Market Design proceeding in Docket No. RM01–12–000.

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Customers" with the Commission on a quarterly basis. We will revise the provision to reflect the name change from "Index of Customers" to "Electric Quarterly Report." We also will revise the provision to delete the reference to an Instruction Manual. Although the Commission will be issuing an Instruction Manual in the near future, this manual will only apply to the Electric Quarterly Reports for the periods ending July 31, 2002 and October 31, 2002. Thereafter, this filing format will be replaced by a relational database now under development, which will be implemented in a subsequent order. The final format will not require a formal, separate Instruction Manual Document. It will use software that will be explained in guidance provided on the FERC web site. Thus, there is no need for the regulations to reference the Instruction Manual.

349. Revisions to §§ 35.10b(b), (c) and (d)

350. In § 35.10b(b) and (c), the NOPR proposed rules governing the utility's display of its web site address. The retention period for postings was covered in § 35.10(d). Given the Commission's findings that the Electric Quarterly Reports will be centrally posted by the Commission, we will not adopt these provisions.

351. Revisions to § 37.6

352. In the NOPR, we proposed to revise § 37.6 to add paragraph (h) that would require OASIS sites to include Index of Customers postings that would be available to the public without registration or fee. As discussed above, the Commission has reconsidered this issue and we will not make any revisions to § 37.6.

353. Revisions to Data Sets

354. Several data elements have been changed from what was issued in the Data Sets Order.
Company_web_site_address has been eliminated as we are not requiring each utility to post its Electric Quarterly Report data on its web site.
Cancellation_of_contract has been eliminated because that information can be derived from other data elements.
Product_sub_type_name has been eliminated to simplify the filing requirement. Rate_min and rate_max will be used for contract data only as we will be collecting actual rates for transactions in the Electric Quarterly Report. Point_of_receipt_control_area and point_of_receipt_specific_loc will be used for contract data only as we are not collecting transaction data on purchases, just sales.
Product_type_name will be collected for contract data only in order to simplify the transaction portion of the Electric Quarterly Report. The Transaction ID was added as a unique reference number assigned by a seller for each transaction.

355. Implementation

356. In the NOPR, we explained that we planned to "complete work on developing software and an instruction manual for completing Index of Customers filings by the time we issued a final rule in this proceeding." [182] We also stated that "the requirement to file Quarterly Transaction Reports will continue until we issue a final rule" and that, "[t]hereafter, these filings would be superseded by the Index of Customer filings." [183] Although this final rule has been completed and is being issued, further time will be needed before the software can be completed. The software will need to be thoroughly tested before it can be implemented.

357. Consequently, for the filing periods ending July 31, 2002 and October 31, 2002, respondents will use the FERC electronic filing system (available on the FERC Internet site, *www.ferc.gov*) using the link labeled e-Filing to file transaction data and contract data. Contract data for agreements entered into between April 1, 2002 and June 30, 2002 will be reported in the July 31, 2002 filing and thereafter. Contract data for agreements entered into between July 1, 2002 and September 30, 2002 will be reported in the October 31, 2002 filing and thereafter. Electric Quarterly Reports filed on July 31, 2002 will include transaction data for all power sales made between April 1, 2002 and June 30, 2002. Electric Quarterly Reports filed on October 31, 2002 will include transaction data for all power sales made between July 1, 2002 and September 30, 2002.

358. When submitting the July 31, 2002 and October 31, 2002 Electric Quarterly Reports, Respondents will file documents in either Microsoft Excel or ASCII Comma Separated Values (CSV) format. A sample Microsoft Excel format document will be posted on the FERC internet site before the first report is due on July 31, 2002. The public will be able to view and download filed documents from the FERC internet site using either the RIMS or FERRIS document management systems. For filings after October 31, 2002, this filing format will be replaced by the more advanced, relational database now under development. This will be implemented in a subsequent order. The final format will incorporate the same data sets adopted in this rule.

359. Once the software for the relational database is developed, the Commission will work with a number of public utilities to test the software and posting procedures after issuance of this final rule. During this testing period, the Commission will issue the formats and instructions for filing Electric Quarterly Reports using the software, and make the Electric Quarterly Report software available for download from the FERC Web site. Once testing is successfully completed, the Commission will issue an order requiring subsequent Electric Quarterly Reports to be filed using the software.

360. The NOPR further proposed that at the time public utilities make their initial Index of Customers filings under the final rule, they will also be required to identify the service agreements in their tariffs currently on file with the Commission that conform to the standard forms of service agreements. The Commission will implement this procedure only after the final software format is implemented and will discuss this issue further in the order implementing the final software format. Once the final software format is implemented, the Commission will remove, as redundant, those conforming service agreements from the Commission-maintained tariff. Removal of these agreements from the Commission-maintained version of the public utility's tariff is simply an administrative function. It does not terminate, cancel or in any way change the terms, conditions, rates or effectiveness of these agreements. Service agreements that remain in a public utility's tariff at the Commission will continue to be subject to the filing, format, and designation requirements of Part 35.

361. Regulatory Flexibility Act Certification

362. The Commission adheres to its certification in the NOPR that this rule will not have a significant economic impact on a substantial number of small entities. As we stated in the NOPR, the rule will be applicable to all public utilities. While we do not foresee that the rule will have a significant economic impact on a substantial number of small entities, as most entities subject to the rule would not be small entities within the meaning of the Regulatory Flexibility Act ("RFA"), we will consider granting waivers in appropriate circumstances. In fact, by eliminating the requirement to file most service agreements in paper format, this rule should reduce the economic impact on most entities. Accordingly, no regulatory flexibility analysis is required pursuant to section 603 of the RFA.

[182] NOPR, FERC Stats. & Regs. ¶ 32,554 at 34,073.
[183] *Id.*

363. Environmental Statement

364. Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[184] However, in 18 CFR 380.4(a)(5), we categorically excluded the type of information gathering required in this rule from the requirement to prepare an environmental impact statement. Thus, we affirm the finding we made in the NOPR that this final rule does not impose any requirements that might have a significant effect on the human environment and find that no environmental impact statement concerning this rule is required.

365. Public Reporting Burden and Information Collection Statement

366. In this final rule, we revise the filing requirements for public utilities to substitute the electronic filing of an Electric Quarterly Reports each calendar quarter for the current submittal of conforming individual service agreements, and quarterly reports summarizing the utilities' market-based rate transactions.[185]

367. This final rule is being submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the Paperwork Reduction Act of 1995. The Commission identifies the information provided under Part 35 as FERC–516.

368. *Information Collection Statement:*

369. *Title:* FERC–516, Electric Rate Schedule Filings.

370. *Action:* Final Rule.

371. *OMB Control No:* 1902–0096.

372. *Respondents:* public utilities.

373. *Frequency of Responses:* Quarterly.

374. *Necessity of the information:* This final rule prescribes the information and procedures by which public utilities file with the Commission and present to the public the agreements and transactions under which power sales were made during the previous calendar quarter pursuant to the requirements of section 205(c) of the FPA. The revisions adopted in this rule will reduce the regulatory and administrative burden associated with processing public utilities' service agreement filings, improve public access to pertinent information on public utility rates and services and keep pace with changing market conditions.

375. *Burden Statement:* The burden issue can be divided into two categories: initial start-up and ongoing filing requirements thereafter.

376. The Commission recognizes that there will be a burden involved in the initial start-up associated with filing Electric Quarterly Reports. This burden includes: the set-up of software on the utilities' computers; the initial entry of the contract data (this may range from a single rate schedule for a power marketer to over one hundred agreements for some traditional utilities); and, for companies with numerous transactions, the mapping of the transaction data from their internal computer systems into the format required by the Commission. For this start-up filing burden we estimate that the average burden for companies with minimal contract data and less than fifty (50) transactions per quarter (presuming they will enter their transactions manually into the software rather than mapping their systems) will average eighteen hours per utility. For utilities with more contracts and a greater number of transactions, we estimate that the average set-up burden will be 230 hours.

377. For the ongoing effort involved in filing the Electric Quarterly Report each subsequent quarter, the burden should be minimal. Contract additions and updates will be entered manually with minimal burden (much less than the current burden) and filing of transaction data will be totally automated for companies which have mapped their systems to the required format, and similar to the current burden for the utilities which enter the data manually.

378. Public reporting burden for this collection is estimated as:

CURRENT REQUIREMENTS

Companies		Quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours
Utilities	216	840	6	1800	3	10440
Marketers	648	2592	6	200	3	16152
						26592

NEW REQUIREMENTS
[excluding initial set-up burden]

Companies		Electric quarterly reports	Hours per filing	Service agreements	Hours per filing	Total hours	Net difference
Utilities	216	840	1	0	.....	840	–9600
Marketers	648	2592	2	0	.....	5184	10968
						6024	20568

[184] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs., Regulations Preambles 1986–90 ¶ 30,783 (Dec. 10, 1987) (*codified at* 18 CFR part 380).

[185] A fuller description of the differences between the Commission's previous filing requirements and the filing requirements directed by this final rule, see Tables 1 and 2 and the accompanying text, *supra*.

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CURRENT REQUIREMENTS

Companies	Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours	
Utilities	216	840	6	1800	3	10440
Marketers	648	2592	6	200	3	16152
						26592

NEW REQUIREMENTS
[excluding initial set-up burden]

Companies	Electric Quarterly Reports	Hours per Filing	Service Agreements	Hours per Filing	Total Hours	Net Difference	
Utilities	216	840	1	0		840	–9600
Marketers	648	2592	2	0		5184	10968
					6024	20568	

SET-UP BURDEN

Companies		Hours	Total hours
Utilities	216	230190	49,680
Marketers	648	18	11664
Totals	864	248	61,344

378a. Information Collection Costs: The Commission estimates the costs to comply with these requirements are as follows:

Annualized Capital/Startup Costs: $3,451,957 (61,344 hours 2,080 hours per year × $117,041)

Annualized Costs (Operations & Maintenance): $338,969 (6,024 hours ÷ 2080 hours × $117,041)

Current annualized costs: $1,496,324 (26,592 hours ÷ 2,080 hours × $117,041)

The estimated annual total savings to respondents is approximately $1,000,000 on a recurring basis. The collection of information as proposed in the NOPR was submitted to OMB under provisions of the Paperwork Reduction Act. OMB took no action on the NOPR pending a final determination with the issuance of the final rule. Several of the comments in response to the NOPR did raise the issue of the burden that would be imposed by this rule. The Commission is responding to these comments in modifications it has made to its earlier proposals in the NOPR and directly in the preamble of this rule.

379. Internal Review

380. The Commission has conducted an internal review of the public reporting burden associated with this collection of information and has assured itself, by means of its internal review, that there is specific, objective support for this information burden estimate. Moreover, the Commission has reviewed the collection of information required by this rule and has determined that the collection of information is necessary and conforms to the Commission's plan, as described in this order, for the collection, efficient management, and use of the required information.[186]

381. OMB regulations[187] require OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule will be submitted to OMB for review. Interested persons may obtain information on the reporting requirements by contacting the following: Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of the Chief Information Officer, Phone: (202) 208–1415, fax: (202) 208–2425, E-mail: *michael.miller@ferc.gov*.

382. Persons wishing to comment on the collections of information required by this rule should direct their comments to the Desk Officer for FERC, OMB, Room 10202 NEOB, Washington, DC 20503, phone 202–395–7318, facsimile 202–395–7285. Comments must be filed with OMB within 30 days of publication of this document in the **Federal Register**. Three copies of any comments filed with the Office of Management and Budget also should be sent to the following address: Ms. Magalie Roman Salas, Secretary, Federal Energy Regulatory Commission, Room 1A, 888 First Street, NE., Washington, DC 20426. For further information on the reporting requirements, contact Michael Miller at (202) 208–1415.

[186] *See* 44 U.S.C. 3506(c).

[187] 5 CFR 1320.11.

383. Document Availability

384. In addition to publishing the full text of this document in the **Federal Register**, the Commission provides all interested persons an opportunity to view and/or print the contents of this document via the Internet through FERC's Home Page *http://www.ferc.gov* and in FERC's Public Reference Room during normal business hours (8:30 A.M. to 5:00 P.M. Eastern time) at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

385. From FERC's Home Page on the Internet, this information is available in both the Commission's Issuance Posting System (CIPS) and the Records and Information Management System (RIMS):

—CIPS provides access to the texts of formal documents issued by the Commission since November 14, 1994.

—CIPS can be accessed using the CIPS link or the Energy Information Online icon.

—The full text of this document will be available on IPS in ASCII and WordPerfect 8.0 format for viewing, printing, and/or downloading.

386. RIMS contains images of documents submitted to and issued by the Commission after November 16, 1981. Documents from November 1995 to the present can be viewed and printed from FERC's Home Page using the RIMS link or the Energy Information Online icon. Descriptions of documents back to November 16, 1981, are also available from RIMS-on-the-Web; requests for copies of these and other older documents should be submitted to the Public Reference Room.

387. User assistance is available for RIMS, CIPS, and the Commission's web site during normal business hours from our Help line at (202) 208–2222 (e-mail to *Webmaster@ferc.fed.us*) or the Public Reference Room at (202) 208–1371 (e-mail to *public.referenceroom@ferc.fed.us*).

388. During normal business hours, documents can also be viewed and/or printed in FERC's Public Reference Room, where RIMS, CIPS, and the FERC Web site are available. User assistance is also available.

389. Effective Date and Congressional Notification

This final rule will take effect on July 8, 2002. The Commission has determined, with the concurrence of the Administrator of the Office of Information and Regulatory Affairs, of the Office of Management and Budget, that this rule is not a "major rule" within the meaning of section 251 of the Small Business Regulatory Enforcement Fairness Act of 1996.[188] The Commission will submit the Final rule to both houses of Congress and the General Accounting Office.[189]

List of Subjects

18 CFR Part 2

Administrative practice and procedure, Electric power, Natural gas, Pipelines, Reporting and recordkeeping requirements.

18 CFR Part 35

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

By the Commission.

Linwood A. Watson, Jr.,

Deputy Secretary.

In consideration of the foregoing, the Commission amends parts 2 and 35 in Chapter I, Title 18, Code of Federal Regulations, as follows:

PART 2—GENERAL POLICY AND INTERPRETATIONS

1. The authority citation for part 2 continues to read as follows:

Authority. 5 U.S.C. 601; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 792–825y, 2601–2645; 42 U.S.C. 4321–4361, 7101–7352.

§ 2.8 [Removed]

2. Section 2.8 is removed and reserved.

PART 35—FILING OF RATE SCHEDULES AND TARIFFS

3. The authority citation for part 35 continues to read as follows:

Authority. 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352.

4. The heading for part 35 is revised as set forth above.

5. In § 35.1, the heading is revised and paragraph (g) is added to read as follows:

§ 35.1 Application; obligation to file rate schedules and tariffs.

* * * * *

(g) For the purposes of paragraph (a) of this section, any agreement that conforms to the form of service agreement that is part of the public utility's approved tariff pursuant to § 35.10a of this chapter and any market-based rate agreement pursuant to a tariff shall not be filed with the Commission. All agreements must, however, be retained and be made available for public inspection and copying at the public utility's business office during regular business hours and provided to the Commission or members of the public upon request. Any individually executed service agreement for transmission, cost-based power sales, or other generally applicable services that deviates in any material respect from the applicable form of service agreement contained in the public utility's tariff and all unexecuted agreements under which service will commence at the request of the customer, are subject to the filing requirements of this part.

6. Add § 35.10a to read as follows:

§ 35.10a Forms of service agreements.

(a) To the extent a public utility adopts a standard form of service agreement for a service other than market-based power sales, the public utility shall include as part of its applicable tariff(s) an unexecuted standard service agreement approved by the Commission for each category of generally applicable service offered by the public utility under its tariff(s). The standard format for each generally applicable service must reference the service to be rendered and where it is located in its tariff(s). The standard format must provide spaces for insertion of the name of the customer, effective date, expiration date, and term. Spaces may be provided for the insertion of receipt and delivery points, contract quantity, and other specifics of each transaction, as appropriate.

(b) Forms of service agreement submitted under this section shall be in the same format prescribed in § 35.10(b) for the filing of rate schedules.

7. Add § 35.10b to read as follows:

§ 35.10b Electric Quarterly Reports.

Each public utility shall file an updated Electric Quarterly Report with the Commission covering all services it provides pursuant to this part, for each of the four calendar quarters of each year, in accordance with the following schedule: for the period from January 1 through March 31, file by April 30; for the period from April 1 through June 30, file by July 31; for the period July 1 through September 30, file by October 31; and for the period October 1 through December 31, file by January 31. Electric Quarterly Reports must be prepared in conformance with the Commission's software and guidance posted and available for downloading from the FERC Web site (*http://www.ferc.gov*).

Note: The following attachments will not be published in the Code of Federal Regulations.

ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
Alcoa Power Generating, Inc. (APGI)	X	
American Electric Power System (AEP)	X	X
American Public Power Association (APPA)	X	
American Transmission Company, LLC	X	
Avista Energy, Inc. (Avista)		X
Calpine Corporation (Calpine)	X	
Carolina Power & Light Company (Carolina)		X
CLECO Corporation (CLECO)	X	

[188] 5 U.S.C. 804(2).

[189] 5 U.S.C. 801(a)(1)(A).

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ATTACHMENT A.—LIST OF COMMENTERS TO NOPR AND DATA SETS ORDERS (ALONG WITH ABBREVIATIONS USED TO IDENTIFY THEM)—Continued

Commenter/abbreviation	Filed comments on	
	NOPR	Data sets order
CMS Marketing, Services, and Trading Company and CMS Generation Co. (CMS)	X	
Constellation Power Source, Inc. (Constellation)	X	X
Consumers Energy Company (Consumers Energy)	X	X
Duke Energy (Duke)	X	X
Dynegy, Inc. (Dynegy)	X	X
Edison Electric Institute (EEI)	X	X
Edison Mission Energy (Edison Mission)		X
Electric Power Supply Association (EPSA)	X	X
Engage Energy America LLC (Engage)	X	
Enron Power Marketing, Inc. (Enron)	X	
Excelon Corporation, et al. (Excelon)	X	
FirstEnergy Corp. (FirstEnergy)	X	
Florida Power and Light Co. (FP&L)	X	
Illinois Power Company (Illinois Power)		X
Midwest Independent Transmission System Operator, Inc. (Midwest ISO)	X	
Minnesota Power	X	
Mirant	X	
Morgan Stanley Capital Group, Inc. (Morgan Stanley)	X	
National Association of Regulatory Utility Commissioners (NARUC)	X	
National Grid USA (National Grid)	X	
New York State Electric & Gas Corporation (NYSEG)		X
Oklahoma Gas and Electric Company (OK G&E)	X	
Otter Tail Power Company (Otter Tail)	X	
Pinnacle West Companies (Pinnacle)	X	
PJM Interconnection, L.L.C. (PJM)	X	X
PSEG Service Electric and Gas Co., et al. (PSEG)	X	X
Public Utilities Commission of California (California Commission)	X	
Puget Sound Energy, Inc. (Puget Sound)		X
Reliant Resources, Inc. (Reliant)	X	X
South Carolina Electric & Gas Company (SCE&G)	X	
Southern Company Services, Inc., et al. (Southern)	X	X
Tenaska, Inc., et al. (Tenaska)	X	
Tractebel North America, Inc. (Tractebel)		X
Transmission Dependent Utility Systems (TDUS)	X	
Virginia Electric and Power Company (VEPCO)		X
Western Systems Power Pool, LLC (WSPP)	X	
Williams Energy Marketing & Trading Company (Williams)	X	
Wisconsin Electric Power Company (WEPCO)		X
Wisconsin Public Service Company, et al. (Utility Coalition)	X	
Xcel Energy Services Inc. (Xcel)	X	

SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Transaction data	Commission requirement
1. company_name	X	385.203(a)(10)	X	Seller: 385.203(a)(2) and (b)(1) Customer: 35.10(a).	X	Seller and Customer: *Citizens* 48 FERC ¶61,210. (1989) (*Citizens.*)
2. company_duns	X		X	OATT Customer: 37.5(b)(2) and (b)(3) [OASIS data element].	X	
3. contact_name	X	385.203(a)(10) and (b)(3)				
4. contact_title	X	385.203(a)(10) and (b)(3)				
5. contact_address	X	385.203(a)(10) and (b)(3)				
6. contact_city	X	385.203(a)(10) and (b)(3)				
7. state_fk	X	385.203(a)(10) and (b)(3)				
8. contact_zip	X	385.203(a)(10) and (b)(3)				
9. country_name	X	385.203(a)(10) and (b)(3)				
10. contact_phone	X	385.203(a)(10) and (b)(3)				
11. contact_email	X	New requirement				
12. filing_quarter	X	385.203(a)(6) and *Citizens*				
13. contract_affiliate			X	OATT Customer: 35.28(c) [tariff req't] 37.5(b)(2) and (b)(3) [OASIS data element].		
14. ferc_tariff_reference			X	35.9(a); 385.203(a)(1)		Y[1].
15. contract_service_agreement_id.			X	35.9(a)		Y.
16. contract_execution_dt			X	35.1(a), 35.12(a), 35.13(b)(6)		
17. contract_commencement_dt			X	35.9(b)(4), 35.12(a), 35.13(b)(2)		

SUMMARY OF REQUIRED DATA SETS—ATTACHMENT B—Continued

Data collected (field names)*	Id's filer	Commission requirement	Contract data	Commission requirement	Transaction data	Commission requirement
18. contract_termination_dt			X	35.1(a) and (d) 35.12(a), 35.13(b)(6).		*Citizens.*
19. actual_termination_dt			X	35.15, 35.16		
20. class_name			X	35.1(a), 35.12(a) 35.13(b)(4) and (6).	X	*Citizens.*
21. quantity			X	35.1(a), 35.12, 35.13(a), (b)(6) and (c).		
22. rate			X	35.1(a), 35.12, 35.13(a), and (c)	X	*Citizens.*
23. rate_min			X	35.1(a), 35.12, 35.13(a) and (c).		
24. rate_max			X	35.1(a), 35.12, 35.13(a) and (c)		
25. rate_desc			X	35.1(a), 35.12(b), 35.13(a) and (c).		*Citizens.*
26. units			X	35.1(a), 35.12, 35.13(a), (b) and (c).	X	*Citizens.*
27. point_of_delivery_control_area.			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	*Citizens.*
28. point_of_delivery_specific_loc			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).	X	*Citizens.*
29. point_of_receipt_control_area			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).		
30. point_of_receipt_specific_loc			X	35.1(a), 35.12, 35.13(a)(2)(6)(iii) and (b)(6).		
31. begin_date			X	35.1(a), 35.12(a), 35.13(b)(6)		
32. end_date			X	35.1(a), 35.12(a), 35.13(b)(6)		
33. extensionprovisiondesc			X	35.1(a), 35.12(a), 35.13(b)(4) and (6).		*Citizens.*
34. incrementname			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
35. increment_peaking_name			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
36. product_name			X	35.1(a), 35.12(a), 35.13(b)(4)	X	*Citizens.*
37. product_type_name			X	35.1(a), 35.12(a), 35.13(b)(4)		
38. term_name			X	35.1(a), 35.12(a), 35.13(b)(4) and (6).	X	
39. transaction_end_dt					X	*Citizens.*
40. total_transmission_charge					X	*Citizens.*
41. total_transaction_ charge					X	Short-term: *Southern II*, 75 FERC ¶61,130 (1996).
42. transaction_begin_dt					X	*Citizens.*
43. transaction_quantity					X	*Citizens.*
44. transaction_id					X	New requirement.

*The data set field names are defined in Appendix A of the Data Sets Order and use the following abbreviations: id=identifier, dt=date, desc=description, loc=location, fk=foreign key.

[1] Data elements marked with a "Y" will be included as transaction data in interim filings. Thereafter, they will be reported as contract data.

HEADER INFORMATION

Information	Definition
filing agent company name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
respondent company name	
seller company name	
seller DUNS number	DUNS Number for Company Unique Identification.
contact name	Name of contact(s) for the filing (may be from the filer, respondent, and/or seller).
contact title	Title of contact.
contact address	Street address for contact.
contact city	Contact city.
state	Two character state or province abbreviation.
contact zip	Contact zip code.
country name	Country (USA, Canada, or Mexico) for contact address.
contact phone	Phone number of contact.
contact email	E-mail address of contact.
filing quarter	The period for which the Electric Quarterly Report is being submitted.

CONTRACT INFORMATION

seller company name	Name of company (For consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name	
customer DUNS number	DUNS Number for Company Unique Identification.
contract affiliate	This is a flag to determine if the customer is an affiliate. Set to Yes if the customer is an affiliate of the provider.
FERC tariff reference	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126.".
contract service agreement id	Unique identifier for the contract used by the seller.
contract execution date	Date contract was signed by contracting parties.

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HEADER INFORMATION—Continued

Information	Definition
contract commencement date	Date service under the contract commenced.
contract termination date	Specified contract termination date.
actual termination date	If parties terminate the contract at a date different from that specified in the contract, then the date must be specified here.
class name	Transmission service class provided as defined in OASIS. Name of class. Valid entries are "Firm, Non-Firm, "TTC", "Secondary", "N/A", or {registered}.
extension provision description	Description ol extension provision. This field would contain Text—for example "Automatically renewed until canceled.".
product type name	The "Product type name" includes: T = Electric Transmission, MB = Market

ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C

Information	Definition
CONTRACT INFORMATION	
	Based Power, CB = Cost Based Power, S = Services—Other, or {registered}
term name	Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year).
increment name	Name ot increment. The increment selected would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
product name	A product is something being bought and sold, a type of service or standard agreement.
	Examples: Point-To-Point; Network; Capacity; Installed Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Market Based Power Sale; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; Interconnection Agreements; System Impact and/or Facilities Study Charge(s); Direct Assignment Facilities Charge {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
quantity	Product quantity for the contract item identified.
rate	Rate charged for this product per unit. Used when a single rate is designated for a product.
rate minimum	Minimum rate to be charged per the contract, if a range is specified.
rate maximum	Maximum rate to be charged per the contract, if a range is specified.
rate description	Text description of rate. May reference FERC tariff, or, description if a discounted or negotiated rate, include algorithm.
units	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of receipt control area	Point of receipt control area. Examples include "AEP", "JACK", "FE". (These values will match what is provided area for in the OASIS.)
point of delivery control area	Point of delivery control area. Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS).
point of receipt specific location	The specific location for the point of receipt (POR) as spelled out in the contract. Examples include a named sub-station or generation plant.
point of delivery specific location	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include a named sub-station or generation plant.
begin date	Beginning date of for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
end date	Ending date for the product specified (this should be specified here as explicitly as it is specified in the contract, i.e., yyyy+mo+dd+hh+mm+ss+tz). TZ=time zone.
TRANSACTION INFORMATION	
seller company name	Name of company (for consistency sake, it must be represented the same as it is listed in the DUNS Report.)
customer company name	
customer DUNS number	DUNS Number for Company Unique Identification.
contract service agreement id	Unique identifier for the contract used by the seller.
transaction id	Unique reference number assigned by the seller for each transaction.
class name	Name of class. Valid entries are "Firm", "Non-Firm", "Secondary", "N/A", or {registered}.
product name	A product is something being bought and sold, a type of service or standard agreement.

ELECTRIC QUARTERLY REPORT DATA DESCRIPTION—ATTACHMENT C—Continued

Information	Definition
	Examples: Energy; Capacity; SC—Scheduled system control and dispatch; RV—Reactive supply and vol. control; RF—Regulation and freq. response; EI—Energy imbalance; SP—Spinning reserve; SU—Supplemental reserve; DT—Dynamic Transfer; TL—Real Power Transmission Loss; BS—System Black Start Capability; Must Run Unit; Cost Based Power Sale; Economy Power Sale; Emergency Power Sale; General Purpose Power Sale; Unit Power Sales; Border Sales; Specialized affiliate transactions; {registered} (New products may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
term name	Name for term. LT = Long-Term (>= one year), ST= Short- Term (< one year).
transaction begin date	Transaction begin date must be prior to the end of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction end date	Transaction end date and time must be after the beginning of the reporting quarter. Date must contain hours, minutes, seconds, and time zone (MM.DD.YYYY.HH.MM.SS.TZ). Where minutes and seconds are not provided, default to zeros.
transaction quantity	The quantity of the product in this transaction. This quantity could be a whole number or it could include decimals.
rate	Rate charged for this item per unit. Used with contract data when a single rate is designated for a product. Used with transaction data to designate the transaction period's actual rate.
units	The unit of measurement for the quantity and rates represented. Examples include KW, MW and MWH.
point of Point of delivery control area.	Examples include "AEP", "JACK", and "FE". (These values will match what is provided for in the OASIS.)
point of delivery specific location	The specific location for the point of delivery (POD) as spelled out in the contract. Examples include named sub-station or generation plant.
increment name	Name of increment which would be one of the following: H = Hourly, D = Daily, W = Weekly, M = Monthly, Y = Yearly (or Annually) or {Registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
increment peaking name	Name for increment peaking. For products, services or transaction that are identified as "P" = on Peak, "OP" = Off-Peak, "FP" = Full Period, "NA" = Not Applicable for this product, service or transaction; or {registered}. (New items may be included in this list provided they are registered with FERC prior to their inclusion in the filing.)
total transmission charge	State N/A if transmission is not provided by the selling entity, else this represents the total transmission charge associated with the identified power sale transaction.
total transaction charge	Total revenue for transaction, including for the commodity and all other services related to the commodity charge sale under the terms of the contract, including bundled ancillary and transmission services provided by the respondent or others. This is in dollars and cents.
FERC tariff reference	Valid Entries: FERC's designation, e.g., "FERC Electric Tariff, Second Revised Volume No. 5, Schedule 2;" or "FERC Electric Rate Schedule No. 126."[1]

[1] This data element will be included as transaction data in interim filings. Thereafter, it will be reported as contract data.

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Part IV

Securities and Exchange Commission

17 CFR Parts 270 and 274

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate and Transactions of Investment Companies With Portfolio and Subadvisory Affiliates; Final Rule and Proposed Rule

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 270 and 274

[Release No. IC–25560; File No. S7–20–00]

RIN 3235–AH57

Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Final rule.

SUMMARY: The Commission is adopting amendments to the rule under the Investment Company Act of 1940 that permits a registered investment company ("fund") that has certain affiliations with an underwriting participant to purchase securities during an offering. The amendments expand the exemption provided by the rule to permit a fund to purchase U.S. government securities in a syndicated offering. These amendments are intended to respond to recent changes in the method of offering certain U.S. government securities.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Hester M. Peirce, Senior Counsel, or C. Hunter Jones, Assistant Director, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Commission today is adopting amendments to rule 10f–3 [17 CFR 270.10f–3] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act" or "Act").[1]

I. Discussion

Section 10(f) of the Investment Company Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter[2] for the security ("affiliated underwriter").[3] Rule 10f–3 permits a fund to purchase securities in a transaction that section 10(f) would prohibit, if certain conditions are met.[4] The conditions of rule 10f–3 are designed to limit the purchases made under the rule to those that are not likely to raise the concerns that section 10(f) was enacted to address, and are thus consistent with the protection of investors.[5]

When the Commission first adopted rule 10f–3 in 1958, one of the conditions of the rule was that the securities be registered under the Securities Act as part of a public offering.[6] Since then, in response to changes in the methods of offering securities and other developments, we have revised the rule to permit the purchase of additional types of securities that are not registered under the Securities Act, such as municipal securities and securities offered privately to institutional buyers. We determined that the circumstances in which these securities generally are offered, including the availability of relevant information about the issuer and the establishment of a uniform offering price, would serve to protect funds.[7]

Government securities,[8] such as securities issued by agencies or instrumentalities of the U.S. government,[9] are not included in the types of securities that rule 10f–3 permits affiliated funds to purchase. In the past, there was little need to exempt the purchase of these securities because they generally were not offered through "selling syndicates" or underwritings that invoke the restrictions of the Act. In recent years, however, government-sponsored enterprises ("GSEs") have begun to sell securities through underwriting or selling syndicates, and we received a request to broaden the scope of the rule to permit funds to purchase these securities when, due to

[1] Unless otherwise noted, all our references to "rule 10f–3" or any paragraph of the rule will be to 17 CFR 270.10f–3.

[2] *See* section 2(a)(29) of the Investment Company Act [15 U.S.C. 80a–2(a)(29)] (definition of principal underwriter).

[3] Section 10(f) [15 U.S.C. 80a–10(f)] prohibits the purchase of a security if a principal underwriter of the security is an officer, director, member of an advisory board, investment adviser, or employee of the fund, or is a person of which any such officer, director, member of an advisory board, investment adviser, or employee is an affiliated person. In this Release, we refer to a person that falls within one of these categories as an "affiliated underwriter." Thus, as used in this release, the term includes a narrower set of relationships than "affiliated person," which is defined in section 2(a)(3) of the Investment Company Act [15 U.S.C. 80a–2(a)(3)]. Similarly, in this Release, when we refer to a fund that is subject to section 10(f) as a result of its relationship with an "affiliated underwriter," we use the term "affiliated fund."

[4] Rule 10f–3 currently permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 ("Securities Act") [15 USC 77a–aa], are municipal securities with certain credit ratings, or are offered in certain foreign or private institutional offerings; (ii) certain conditions with respect to timing and price are satisfied; (iii) the issuer has been in operation for at least three years prior to the offering; (iv) the offering involves a "firm commitment" underwriting; (v) the underwriters' commission is reasonable and fair; (vi) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (vii) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (viii) if the securities are municipal securities, the purchase is not a group sale; and (ix) the fund reports the transactions to the Commission and maintains a written record of each transaction; and (x) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b). The Commission last amended rule 10f–3 in January 2001 to require, as a condition of relief, that a majority of the directors not be interested persons of the fund, that those directors select and nominate other disinterested directors, and that any legal counsel to the disinterested directors be an independent legal counsel. *See* Role of Independent Directors of Investment Companies, Investment Company Act Release No. 24816 (Jan. 2, 2001) [66 FR 3734 (Jan. 16, 2001)].

[5] *See, e.g.*, Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775, at text following nn. 6–7 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] ("1997 Release").

[6] *See* Adoption of Rule N–10f–3 Permitting Acquisition of Securities of Underwriting Syndicate Pursuant to Section 10(f) of the Investment Company Act of 1940, Investment Company Act Release No. 2797 (Dec. 2, 1958) ("1958 Adopting Release"). This condition served to assure that the fund did not purchase the securities through a private placement, and provided the basis for other conditions of the rule concerning the timing and conduct of the public offering.

[7] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting Syndicate, Investment Company Act Release No. 21838, at nn. 31–51 and accompanying text (Mar. 21, 1996) [61 FR 13620 (Mar. 27, 1996)]. We reasoned that, even though these securities are not registered under the Securities Act, they "would be widely distributed, a wide range of market participants would agree that the offering price of the securities was fair, and that a secondary market for the securities would likely develop." *Id.* at text following n. 33. In addition, the other protections of rule 10f–3 continued to apply to purchases of these types of securities.

[8] The term "government security" is defined by the Investment Company Act as "any security issued or guaranteed as to principal or interest by the United States, or by a person controlled or supervised by and acting as an instrumentality of the Government of the United States pursuant to authority granted by the Congress of the United States; or any certificate of deposit for any of the foregoing." 15 U.S.C. 80a–2(a)(16). Government securities are exempt from the registration requirements of the Securities Act and from the reporting and other requirements of the Securities Exchange Act of 1934 ("Exchange Act"). *See* 15 U.S.C. 77c(a)(2), 78c(a)(12)(A). Offers of or transactions in government securities are subject, however, to the anti-fraud provisions of the Securities Act and Exchange Act. *See* 15 U.S.C. 77q(c), 78j(b).

[9] Government securities may be issued by government-sponsored enterprises ("GSEs") such as the Federal National Mortgage Association ("FNMA") and by government corporations such as the Federal Deposit Insurance Corporation. *See* 31 U.S.C. 9101(1) (definition of "government corporation"); Frank J. Fabozzi and Michael J. Fleming, *U.S. Treasury and Agency Securities in The Handbook of Fixed Income Securities* 175, 191–96 (Frank J. Fabozzi, ed., 2001) (discussing "agency" securities issuers, including GSEs and government corporation issuers).

the affiliations of underwriters, the Act would prohibit such a purchase.[10]

In November 2000 we proposed to amend rule 10f–3 to permit the purchase of government securities.[11] We observed in our release that government securities are offered under circumstances that appear to serve, in conjunction with the other conditions of rule 10f–3, to protect funds from the risks that section 10(f) addresses.[12] Commenters supported the proposed amendments.[13] Today we are adopting the amendments as proposed.[14]

When we proposed the amendment to rule 10f–3 concerning government securities, we also proposed to amend the condition of the rule that limits the percentage of securities that an affiliated fund, together with any other fund advised by the affiliated fund's adviser, may purchase in an offering ("percentage limit"). The amendments would have required that the purchases of an affiliated fund, for purposes of meeting the percentage limit, also be aggregated with purchases of any other account over which the fund's adviser had discretionary authority or control.

A number of commenters raised questions about our proposed amendment to the percentage limit of rule 10f–3. These comments raise larger issues of the Commission's regulation of affiliated transactions, which we discuss in a companion release we are issuing today.[15] Therefore we are not adopting the amendments to rule 10f–3 related to the percentage limit, but are proposing in the companion release to amend the rule to address a number of complex issues arising under that provision of the rule.

II. Effective Date

The amendments to rule 10f–3 and the instructions to Form N–SAR will be effective May 10, 2002. This effective date is less than 30 days after publication so that funds and advisers may benefit sooner from the rule amendments.[16]

III. Cost-Benefit Analysis

The Commission is sensitive to the costs and benefits that result from its rules. In the Proposing Release, we requested comment and specific data regarding the costs and benefits of the proposed amendments. The comments we received are discussed below.

A. Benefits

The amendments to rule 10f–3 to permit the purchase of government securities will enable funds to purchase securities during the existence of a syndicate in which an affiliated underwriter participates, without having to seek an exemptive order from the Commission.[17] We believe that fund investors could benefit from enhanced fund performance as a result of funds' easier access to primary offerings of government securities.[18] A number of commenters confirmed that expanding rule 10f–3 to include government securities would benefit affiliated funds and their shareholders by enhancing the investment opportunities available to them.[19] Certain protective conditions in rule 10f–3 will serve to safeguard shareholders' interests.[20]

B. Costs

We received no comments or data on the cost of extending rule 10f–3 to the purchase of government securities. We anticipate that funds will incur and pass on to investors only minimal costs as a result of the amendments that we are adopting. Further, funds will avoid the cost of forgoing investments in government securities sold in syndicates in which an affiliated underwriter is participating or the cost of filing an application for exemptive relief in order to make those purchases.[21] Funds that currently rely on rule 10f–3 to purchase securities[22] will incur costs in adjusting their procedures to allow for the purchase of government securities.[23] Funds also will incur costs of checking each transaction for compliance with the rule's conditions and keeping records of each transaction.[24] The fund's board also will review

[10] *See* Memorandum from the law firm of Brown & Wood to the Division of Investment Management, Securities and Exchange Commission (1998) (available to the public in File No. S7–20–00).

[11] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)] ("Proposing Release").

[12] *See id.* at text accompanying nn. 17–20. The amendments we adopt today should not be interpreted to confer on securities issued by GSEs a greater level of federal government backing than is afforded to them by law. *See, e.g.*, The Federal Housing Enterprises Safety and Security Act of 1992, Pub. L. No. 102–550, § 1302, 106 Stat. 3941 ("neither [the Federal National Mortgage Association nor the Federal Home Loan Mortgage Corporation] * * *, nor any securities or obligations issued by the enterprises * * *, are backed by the full faith and credit of the United States."). *See generally* Fabozzi and Fleming, *supra* note 9, at 188 ("Agency securities are not typically backed by the full faith and credit of the U.S. government, as is the case with Treasury Securities.").

[13] The commenters included one individual, three trade associations, two investment advisers, and three law firms. The comment letters are available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington DC (File No. S7–20–00).

[14] We are also amending the instructions to Form N–SAR to correspond with the rule. Sub-Item 77O of the instructions, which governs the reporting of rule 10f–3 transactions on Form N–SAR, refers to "the determination described in paragraph (h)(3) of rule 10f–3." A technical amendment to this Sub-Item will update the instruction to refer instead to "the determination described in paragraph (b)(10)(iii) of rule 10f–3."

[15] *See* Transactions of Investment Companies with Portfolio and Subadvisory Affiliates, Investment Company Act Release No. 25557 (April 30, 2002).

[16] *See* 5 U.S.C. 553(d)(1) (permitting a rule to become effective less than 30 days after publication if it "grants or recognizes an exemption or relieves a restriction").

[17] The staff estimates, based on conversations with representatives of funds, that the average cost of filing an exemptive application can range from $20,000 to $80,000, depending on the complexity of the issues addressed in the application.

[18] Although the staff is unable to determine what percentage of mutual fund assets are currently invested in government securities, in calendar year 2000, assets in long-term U.S. government bond funds totaled $309,446,000,000. *See* Investment Company Institute, Mutual Fund Fact Book at 71 (2001).

[19] The amendments may contribute to the competitiveness and efficiency of the government securities market by expanding the pool of potential buyers.

[20] These conditions govern, among other things, (i) the timing and price of the purchase; (ii) the length of time that the issuer has been in operation; (iii) the nature of the underwriting, *i.e.*, it must be a "firm commitment" underwriting; (iv) the underwriters' commission; (v) the percentage of the underwriting that is purchased; (vi) the syndicate member from which the securities are purchased; (vii) board oversight of rule 10f–3 transactions; (viii) the composition of the fund's board; and (ix) reporting and recordkeeping. *See* rule 10f–3(b).

[21] *See supra* note 17.

[22] The staff anticipates that in almost all instances, the funds that will purchase government securities also purchase other securities under rule 10f–3 because the underwriters that participate in the sale of government securities also participate in the sale of other types of securities.

[23] The staff estimates, based on telephone interviews with fund representatives, that a compliance attorney would spend approximately eight hours revising the procedures, at a cost of approximately $496, and the board would spend approximately one hour considering and approving the changes, at a cost of $2000. Thus, assuming that half of the 410 funds that rely on rule 10f–3 now, purchase government securities under the amended rule, funds will spend a total of $511,680 revising their procedures. The staff also estimates that funds may spend time retraining fund personnel responsible for rule 10f–3 compliance after the amendment of the rule 10f–3 procedures, but expects that the time spent will be minimal. The hour estimates for various tasks and the cost of fund board meetings used in this Release are based on conversations between the staff and representatives of funds. The hourly rates for fund personnel used in this Release are derived from salaries reported for personnel outside New York City in these publications: Securities Industry Association, *Management and Professional Earnings in the Securities Industry* (2000) and Securities Industry Association, *Office Salaries in the Securities Industry* (2000).

[24] The staff estimates, based on telephone interviews with fund representatives, that fund personnel on average will spend approximately one hour per transaction, at a cost of $44.87, completing these tasks, and, assuming that there are 205 government securities transactions, funds will annually spend in the aggregate approximately $9,198.

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government securities purchases as part of its quarterly review of rule 10f–3 transactions, and the fund will report these purchases along with other rule 10f–3 transactions to the Commission on Form N–SAR, but these tasks are unlikely to measurably increase costs.

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation. The Commission has considered these factors.

As discussed above, the Commission anticipates that the new rule will expand funds' opportunities to invest in government securities by permitting funds to purchase these securities from affiliated underwriters without obtaining an exemptive order. This change could enhance competition in the sale of government securities and have a positive effect on efficiency in the government securities markets. The amendments are unlikely to have a measurable effect on capital formation.

V. Paperwork Reduction Act

As explained in the Proposing Release, certain provisions of the amendments to rule 10f–3 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] ("PRA"). We submitted these requirements to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The title for the collection of information is "Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate." An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number. The OMB control number for rule 10f–3 is 3235–0226.

As discussed above, today we are adopting only the proposed amendments to rule 10f–3 that will expand the rule's exemptive relief to permit a fund to purchase government securities under the conditions of the rule. [25] None of the commenters addressed the Paperwork Reduction Act burden associated with these amendments.

As part of a general review of the information collection burdens in rule 10f–3,[26] we have updated our burden estimate with respect to the amendments that we are adopting today. It is the staff's belief that half of the 410 funds that currently rely on the rule may rely on rule 10f–3 to purchase government securities.[27] We estimate, based on the relatively limited number of government securities issuances, that each of these funds will engage in an average of one purchase of government securities per year. We estimate that fund personnel will spend thirty minutes before and thirty minutes after each transaction compiling a record of the transaction.[28] Thus, we anticipate that funds annually will expend a total of approximately 205 hours on recordkeeping in connection with purchases of government securities under rule 10f–3.[29] The staff does not believe that there would be any additional information collection burden attributable to these amendments.[30] The staff further estimates that there will be no cost burden associated with these amendments, apart from the cost associated with the hourly burden identified above.

The collections of information in rule 10f–3 are necessary to facilitate review of transactions that proceed under the rule by fund boards and by the Commission. Information required to be filed with Form N–SAR is public and therefore will not be kept confidential. If any other records required to be kept under these rules are requested by and submitted to the Commission, they will be kept confidential to the extent permitted by relevant statutory and regulatory provisions.

VI. Final Regulatory Flexibility Analysis

The Commission has prepared this Final Regulatory Flexibility Analysis ("FRFA") in accordance with 5 U.S.C. 604. A summary of the Initial Regulatory Flexibility Analysis ("IRFA"), which was prepared in accordance with 5 U.S.C. 603, was published in the Proposing Release. We did not receive any comments on the IRFA or on the effect on small entities of the amendments that we are adopting today.

A. Need for Rule 10f–3 and the Amendment

Section 10(f) prohibits affiliated funds from purchasing securities during the existence of an underwriting or selling syndicate for the securities, and authorizes the Commission to exempt transactions by rule or order from the prohibition. The Commission adopted rule 10f–3 to permit a fund to purchase securities from an unaffiliated member of an underwriting or selling syndicate when an affiliated underwriter is a member of the underwriting or selling syndicate. The amendments to rule 10f–3, in response to the decision by certain GSEs to sell their securities through syndicated underwritings, permit funds to rely on the rule to purchase government securities.[31]

B. Significant Issues Raised by Public Comment

Commenters did not raise any significant issues in response to the IRFA.

C. Small Entities Subject to the Rules

A small business or small organization (collectively, "small entity") for purposes of the Investment Company Act is a fund that, together with other funds in the same group of related investment companies, has net assets of $50 million or less as of the end of its most recent fiscal year.[32] Of approximately 3,650 active funds, approximately 200 are small entities. We believe that the amendments would increase flexibility for all funds, including small entities, and would not unduly burden small entities.[33]

[25] The revised burden estimates contained in this release, therefore, do not include any burden attributable to the proposed changes in the percentage limit.

[26] In compliance with the Paperwork Reduction Act and the OMB's implementing regulations, the staff conducts triennal reviews of the information collection burdens in its rules.

[27] This estimate is based, in part, on the fact that each of the GSEs that currently sells securities in syndicated offerings has identified a large group of dealers to serve as underwriters, many of which are affiliated underwriters of one or more fund families.

[28] These estimates are based on telephone interviews with fund representatives about rule 10f–3 transactions in other types of securities.

[29] When the Commission proposed the amendments, the staff estimated that the annual recordkeeping burden would increase for each of the estimated seventy funds that would purchase government securities under the rule by approximately 0.25 hours per fund per year and for all funds by approximately 17.5 hours (70 funds x 0.25 = 17.5 hours).

[30] Specifically, the staff does not believe that the addition of government securities would increase the time fund personnel and fund boards would spend compiling and reviewing quarterly reports or reporting rule 10f–3 transactions on Form N–SAR. Although funds would have to modify their rule 10f–3 procedures to accommodate government securities transactions, periodic modifications in response to rule and policy changes are already reflected in the staff's current PRA estimate for rule 10f–3.

[31] *See supra* Section I.

[32] Rule 0–10 [17 CFR 270.0–10].

[33] The number of small entities that will rely on the amended rule to purchase government securities depends on many factors, including the investment objectives of the small entities, the availability of alternative investments, and the frequency with which government securities are offered through affiliated underwriting syndicates. We did not receive any comments in response to our request in the Proposing Release for comment on the number of small entities that would be affected by the proposed amendments.

D. Projected Reporting, Recordkeeping, and Other Compliance Requirements

A fund that relies on the exemption in rule 10f–3 to purchase securities (including government securities) must comply with the conditions in the rule, regardless of whether the fund is a small entity. The fund board must approve procedures under which rule 10f–3 transactions will be effected and amend those procedures as necessary. Compliance personnel and portfolio managers must determine whether a proposed purchase will comply with the rule's conditions, collect and retain for six years certain information about each rule 10f–3 transaction, and report each rule 10f–3 transaction on Form N–SAR. Quarterly, the fund's board must review all rule 10f–3 transactions, including purchases of government securities, that have taken place.

E. Agency Action To Minimize Effect on Small Entities

The Commission has considered alternatives to the amendments that would accomplish the objectives of the rule and minimize the impact on small entities. These include: (i) The establishment of differing compliance requirements that take into account the resources available to small entities; (ii) the clarification, consolidation, or simplification of compliance requirements under the rule for small entities; (iii) the use of performance rather than design standards; and (iv) an exemption from coverage of the rule, or any part of the rule, for small entities.

The amendments to rule 10f–3 are designed to enhance the ability of funds, including small entities, to purchase government securities during the existence of an underwriting or selling syndicate in which an affiliated underwriter participates without subjecting funds to requirements other than those already in the rule. Compliance with the rule's conditions is voluntary; small entities (like other funds) that do not rely on the rule may instead apply for an individual exemptive order from the Commission.

The establishment of different compliance or reporting requirements for small entities would conflict with the principles underlying section 10(f), which was intended primarily to prohibit the dumping of otherwise unmarketable securities on funds by their affiliated underwriters, and rule 10f–3, which was designed to permit securities transactions under conditions in which such dumping would not occur. Because a fund of any size could potentially be the object of dumping, small entities should be subject to the rule's protective conditions along with other funds.[34] Likewise, the Commission could not further clarify, consolidate, or simplify the compliance requirements of rule 10f–3 for the benefit of small entities without compromising the protection for the investors in these entities.[35] The amendments embody performance standards because they expand the availability of rule 10f–3 to a class of securities that are offered under circumstances that appear to serve, in conjunction with the other conditions of rule 10f–3, to protect funds from the risks that section 10(f) addresses. Further use of performance standards would be inconsistent with rule 10f–3, which employs carefully crafted safeguards to prevent abuses. Because rule 10f–3 permits transactions to take place that otherwise would be prohibited, small entities benefit from being able to take advantage of the rule, and the regulatory alternative of exempting small entities from the rule's coverage is not applicable.

VII. Statutory Authority

The Commission is amending rule 10f–3 under the authority set forth in sections 10(f), 31(a) and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), 80a–37(a)].

List of Subjects in 17 CFR Parts 270 and 274

Investment companies, Reporting and recordkeeping requirements, Securities.

Text of Rule Amendments

For the reasons set out in the preamble, Title 17, Chapter II of the Code of Federal Regulations is amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for Part 270 continues to read, in part, as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

[34] These protective conditions are set forth above. *See supra* note 4.

[35] The Commission intends, however, to issue a small business compliance guide, which should assist funds that are small entities in complying with the rule.

2. Section 270.10f–3 is amended by revising paragraphs (b)(1) and (b)(4) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

* * * * *

(b) *Conditions.* Any purchase of securities by a registered investment company prohibited by section 10(f) of the Act (15 U.S.C. 80a–10(f)) will be exempt from the provisions of that section if the following conditions are met:

(1) *Type of Security.* The securities to be purchased are:

(i) Part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a—aa) that is being offered to the public;

(ii) Part of an issue of government securities, as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16));

(iii) Eligible Municipal Securities;

(iv) Securities sold in an Eligible Foreign Offering; or

(v) Securities sold in an Eligible Rule 144A Offering.

* * * * *

(4) *Continuous operation.* If the securities to be purchased are part of an issue registered under the Securities Act of 1933 (15 U.S.C. 77a–aa) that is being offered to the public, are government securities (as defined in section 2(a)(16) of the Act (15 U.S.C. 80a–2(a)(16))), or are purchased pursuant to an Eligible Foreign Offering or an Eligible Rule 144A Offering, the issuer of the securities must have been in continuous operation for not less than three years, including the operations of any predecessors.

* * * * *

PART 274—FORMS PRESCRIBED UNDER THE INVESTMENT COMPANY ACT OF 1940

3. The authority citation for part 274 continues to read as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 78c(b), 78*l*, 78m, 78n, 78o(d), 80a–8, 80a–24, and 80a–29, unless otherwise noted.

4. Form N-SAR (referenced in § 274.101) is amended by revising the Instruction for Sub-Item 77O to read as follows:

Note: The text of Form N-SAR does not and these amendments will not appear in the Code of Federal Regulations.

Form N–SAR

* * * * *

Instructions to Specific Items

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SUB-ITEM 77O: Transactions effected pursuant to Rule 10f–3

Rule 10f–3 (17 CFR 270.10f–3) provides a limited exemption from section 10(f) of the Act, provided, *inter alia*, that all transactions effected pursuant to the rule are reported on Form N-SAR. If any such transactions were effected during the reporting period, this item should be checked and an exhibit attached setting forth from whom the securities were acquired, the identity of the underwriting syndicate's members, the terms of the transaction, and the information or materials upon which the determination described in paragraph (b)(10)(iii) of rule 10f–3 was made.

* * * * *

By the Commission.

Dated: April 30, 2002.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11227 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 270

[Release No. IC–25557, File No. S7–13–02]

RIN 3235–AI28

Transactions of Investment Companies With Portfolio and Subadvisory Affiliates

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing amendments to rules under the Investment Company Act of 1940 to expand the current exemptions for investment companies ("funds") to engage in transactions with "portfolio affiliates"—companies that are affiliated with the fund solely as a result of the fund (or an affiliated fund) controlling them or owning more than five percent of their voting securities. The Commission is also proposing one new rule and several rule amendments to permit funds to engage in transactions with subadvisers of affiliated funds. The proposals respond to the growth of investment companies and changes in the organization of funds; they are designed to permit transactions between funds and certain affiliated persons under circumstances where it is unlikely that the affiliate would be in a position to take advantage of the fund.

DATES: Comments must be received on or before July 19, 2002.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–13–02; this file number should be included on the subject line if E-mail is used. Comment letters will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Electronically submitted comment letters also will be posted on the Commission's Internet Web site (*http://www.sec.gov.*) [1]

FOR FURTHER INFORMATION CONTACT: William C. Middlebrooks, Jr., Attorney, or Martha B. Peterson, Special Counsel, at (202) 942–0690, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0506.

SUPPLEMENTARY INFORMATION: The Securities and Exchange Commission today is requesting public comment on proposed rule 17a–10 [17 CFR 270.17a–10] and proposed amendments to rules 10f–3 [17 CFR 270.10f–3], 12d3–1 [17 CFR 270.12d3–1], 17a–6 [17 CFR 270.17a–6], 17d–1 [17 CFR 270.17d–1], and 17e–1 [17 CFR 270.17e–1] under the Investment Company Act of 1940 [15 U.S.C. 80a] ("Investment Company Act" or "Act"). [2]

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I. Discussion

The Investment Company Act restricts a wide range of transactions and arrangements involving investment companies ("funds") [3] and their affiliated persons. These restrictions lie at the heart of the Act, and are designed to prevent affiliated persons from managing the fund's assets for their own benefit, rather than for the benefit of the fund's shareholders.[4] Affiliated persons of a fund include (i) its investment adviser and any subadvisers, (ii) companies the fund controls or five percent (or more) of whose securities are held by the fund ("portfolio affiliates"), (iii) persons who control the fund, and (iv) persons who are under common control with the fund.[5] Many of the restrictions on transactions and arrangements with fund affiliates apply not only to affiliated persons of the fund ("first-tier" affiliates), but also to affiliated persons of those persons ("second-tier" affiliates).[6]

Provisions of the Act and our rules restricting transactions or arrangements with affiliated persons include:

- Section 17(a), which prohibits affiliated persons of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls; [7]

[1] We do not edit personal, identifying information, such as names or E-mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

[2] Unless otherwise noted, when we refer to rules 10f–3, 12d3–1, 17a–6, 17d–1, or 17e–1, or any paragraph of those rules, we are referring to the following sections of the Code of Federal Regulations in which each of these rules is published: 17 CFR 270.10f–3, 17 CFR 270.12d3–1, 17 CFR 270.17a–6, 17 CFR 270.17d–1, or 17 CFR 270.17e–1 respectively.

[3] We use the term "fund" throughout this release to refer to registered investment companies, series of registered investment companies that are series companies, and business development companies, which are unregistered investment companies.

[4] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 37 (1940) (Statement of Commissioner Healy).

[5] The Act defines an "affiliated person" of another person as (A) any person directly or indirectly owning, controlling, or holding with power to vote, five percent or more of the outstanding voting securities of such other person; (B) any person five percent or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by such other person; (C) any person directly or indirectly controlling, controlled by, or under common control with such other person; (D) any officer, director, partner, copartner, or employee of such other person; (E) if such other person is a fund, any investment adviser of the fund or any member of its advisory board; and (F) if such other person is an unincorporated fund, not having a board of directors, the depositor of the fund. 15 U.S.C. 80a–2(a)(3). The term "control" means the power to exercise a controlling influence over the management or policies of a company, unless such power is solely the result of an official position with such company. Any person who owns beneficially, either directly or through one or more controlled companies, more than 25 percent of the voting securities of a company is presumed to control such company. 15 U.S.C. 80a–2(a)(9).

[6] A fund's investment adviser is, for example, a first-tier affiliate of the fund. A company that owns five percent of the voting securities of the fund's investment adviser is a second-tier affiliate of the fund. The prohibitions of the Act extend to second-tier affiliates to make those prohibitions more difficult to circumvent. *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 261 (1940) (Statement of David Schenker).

[7] 15 U.S.C. 80a–17(a). The prohibition in section 17(a) also extends to promoters and principal underwriters for the fund and persons affiliated with the promoters and principal underwriters. Section 17(a) was recently amended to make it

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- Section 17(d), and rule 17d–1 thereunder, which prohibit affiliated persons of a fund from participating with the fund in any joint enterprise or other joint arrangement or profit-sharing plan;[8]
- Section 10(f), which prohibits a fund from purchasing securities in a primary offering if certain affiliated persons of the fund are members of the underwriting or selling syndicate;[9]
- Section 17(e), which limits the remuneration that affiliated persons of a fund may receive in transactions involving the fund, and companies that the fund controls; and[10]
- Section 12(d)(3) and rule 12d3–1, which together prohibit a fund from acquiring securities issued by, among others, its own investment adviser.[11]

Since 1940, the number of persons who are either first-tier or second-tier affiliates of a fund has grown markedly for a number of reasons. First, as funds have grown larger, they are more likely to own positions in excess of five percent of the voting securities of an issuer, creating "portfolio affiliates."[12] Second, many funds today use subadvisers to help manage fund assets, making each subadviser an affiliate of the fund and persons affiliated with each subadviser second-tier affiliates of the fund.[13] Third, most funds are today organized into complexes under the common control of an adviser (or other person), making each fund an affiliated person of all of the other funds in the complex.[14] When multiple funds with subadvisers and portfolio affiliates are under common control, the number of potential first- and second-tier affiliated persons can be quite large.[15]

The growth in the number of first-tier and second-tier affiliates of funds has resulted in an increasing number of persons with whom funds may not enter into transactions or arrangements under the Act. Many of these affiliated persons, however, have neither the ability nor the incentive to take advantage of the fund.[16] Accordingly, we have issued a number of exemptive orders permitting transactions when we have determined that the exemption is in the public interest, and consistent with the protection of investors and the purposes of the Act.[17]

We are today proposing one new rule and revisions to several current rules that would codify the terms of many of these orders.[18] The proposed rule and rule amendments are designed to permit funds to engage in transactions and arrangements with affiliated persons that are not likely to raise the concerns that the Act was intended to address.[19]

unlawful for a first-or second-tier affiliate to lend money or other property to a fund, or a company controlled by a fund, in contravention of such rules, regulations, or orders as the Commission, after consultation with and taking into consideration the views of the Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act [12 U.S.C. 1813]), issues consistent with the protection of investors. 15 U.S.C. 80a–17(a)(4) (effective May 12, 2001). The Commission has not yet issued any rules or orders under this section. Section 17(a) applies to transactions between, among others, a fund and its portfolio affiliates. *SEC v. General Time*, 407 F.2d 65, 68 (2d Cir. 1968); Talley Industries, Inc., Investment Company Act Release No. 5953 (Jan. 9, 1970).

[8] Section 17(d) of the Act makes it unlawful for first- and second-tier affiliates of a fund, the fund's principal underwriters, and affiliated persons of the fund's principal underwriters, acting as principal, to effect any transaction in which the fund or a company controlled by the fund is a joint or a joint and several participant "in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered or controlled company on a basis different from or less advantageous than that of such other participant." 15 U.S.C. 80a–17(d). Rule 17d–1(a) prohibits first- and second-tier affiliates of a fund, the fund's principal underwriter, and affiliated persons of the fund's principal underwriter, acting as principal, from participating in or effecting any transaction in connection with any joint enterprise or other joint arrangement or profit-sharing plan in which any such fund or company controlled by a fund is a participant "unless an application regarding such joint enterprise, arrangement or profit-sharing plan has been filed with the Commission and has been granted." Section 17(d) and rule 17d–1 apply to joint transactions of funds and, among others, their portfolio affiliates. *SEC v. Talley Industries*, 399 F2d 396, 402 (2d Cir. 1968).

[9] 15 U.S.C. 80a–10(f).

[10] Section 17(e)(1) of the Act prohibits an affiliated person acting as agent from accepting any compensation from any source (other than a regular salary or wage from a fund) for the purchase or sale of property to or for the fund, or companies controlled by the fund, except in the course of the person's business as an underwriter or broker. Section 17(e)(2) of the Act limits the remuneration that a person may receive when acting in reliance on section 17(e)(1)'s exemption for the brokerage business. 15 U.S.C. 80a–17(e).

[11] Section 12(d)(3) of the Act generally prohibits any fund, and any company or companies controlled by a fund, from purchasing or acquiring any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is either an investment adviser of an investment company or an investment adviser registered under the Investment Advisers Act of 1940. 15 U.S.C. 80a–12(d)(3), referring to 15 U.S.C. 80b. Rule 12d3–1 provides an exemption from this general prohibition, but the exemption does not extend to the acquisition of a general partnership interest or a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter. *See* rule 12d3–1(c).

[12] Average assets per fund grew from $346 million in 1990 to $852 million in 2000. Investment Company Institute, Mutual Fund Fact Book 63 (2001) ("ICI Fact Book"). Schedule 13D and 13G Reports (17 CFR 240.13d–101 and 13d–102) (reporting ownership of more than five percent of the voting stock of a security traded on an exchange) by funds grew during the same period from 510 (reporting ownership by approximately 65 funds in 450 issuers) to 1,378 (reporting ownership by 190 funds in 875 issuers).

[13] Of the approximately 9,700 portfolios of open-end and closed-end investment companies reporting information on Form N-SAR [17 CFR 274.101] during the first six months of 2001, approximately 1,900 reported using at least one subadviser, and 520 reported using two or more subadvisers.

[14] In 2000 there were 431 fund complexes. ICI Fact Book, *supra* note 12, at 63. Funds in a fund complex are under the common control of an investment adviser or other person when the adviser or other person exercises a controlling influence over the management or policies of the funds. 15 U.S.C. 80a–2(a)(9). *See supra* note 5. Not all advisers control the funds they advise. The determination of whether a fund is under the control of its adviser, officers, or directors depends on the relevant facts and circumstances. *See* Investment Company Mergers, Investment Company Act Release No. 25259 (Nov. 8, 2001) [66 FR 57602 (Nov. 15, 2001)] at n.11. Throughout this release we presume that the funds in a fund complex are under common control as funds that are *not* affiliated persons will not require and thus will not rely on most of the proposed exemptions. The exception is the exemption for transactions restricted by section 10(f) of the Act, which we describe in section I.B.3.

[15] For example, in a fund complex with five funds controlled by a single investment adviser, if each fund has one subadviser and one portfolio affiliate, then every fund would have seven first-tier affiliates (one adviser, one subadviser, one portfolio affiliate, and four affiliated funds) and eight second-tier affiliates (four subadvisers of affiliated funds and four portfolio affiliates of affiliated funds).

[16] For example, in a fund complex where multiple funds are under common control but are managed by different subadvisers, each subadviser is a first-tier affiliate of any fund that it advises, and a second-tier affiliate of all of the other funds. The restrictions on affiliate transactions apply to dealings between a fund and the subadvisers that are its second-tier affiliates even if the fund's own subadviser is a business competitor of the second-tier affiliate subadvisers.

[17] These orders have been issued pursuant to our authority under sections 6(c), 10(f), and 17(b) of the Act. 15 U.S.C. 80a–6(c), 80a–10(f), and 80a–17(b). *See, e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); Frank Russell Investment Co., Investment Company Act Release Nos. 24820 (Jan. 3, 2001) [66 FR 2031 (Jan. 10, 2001)] (notice) and 24847 (Jan. 30, 2001) (order); SEI Investments Management Corporation, Investment Company Act Release Nos. 24430 (Apr. 28, 2000) [65 FR 26246 (May 5, 2000)] (notice) and 24463 (May 23, 2000) (order); North American Security Trust, Investment Company Act Release Nos. 18860 (Jul. 22, 1992) [57 FR 33540 (Jul. 29, 1992)] (notice) and 18899 (Aug. 18, 1992) (order); State Street Bank and Trust Co., Investment Company Act Release Nos. 19784 (Oct. 13, 1993) [58 FR 53983 (Oct. 19, 1993)] (notice) and 19844 (Nov. 9, 1993) (order).

[18] We are also taking this opportunity to redraft in plain English the rules that permit funds to enter into transactions and arrangements with their portfolio affiliates.

[19] Today's proposal responds, in part, to a rulemaking petition submitted by the Investment Company Institute to the Commission in December 1998 ("ICI Petition"). A copy of that petition is available in the Commission's Public Reference Room, 450 5th Street, NW, Washington, DC (File No. S7–13–02). In November 2000 we proposed to amend rule 10f–3 to expand the exemption provided by the rule to permit a fund to purchase government securities in a syndicated offering. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775 (Nov. 29, 2000) [65 FR 76189 (Dec. 6, 2000)]. We are reproposing certain aspects of the rule 10f–3 proposal in this Release, and are adopting other aspects of that proposal in a companion release that we are issuing today. *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 25560 (April 30, 2002).

[20] The rules were designed to exempt transactions and arrangements from the prohibitions of section 17 when neither the parties to the transaction, nor any person with a financial interest in a party to the transaction, has the potential to overreach the investment company. *See* Investment Company Act Release No. 10698 (May 17, 1979) [44 FR 29908 (May 23, 1979)].

[21] Thus, for example, under current rule 17a–6 a fund whose first-tier portfolio affiliate merges with another company in which the fund invests may receive shares of the acquiring company (in exchange for its shares of the acquired company) in connection with the merger. However, the rule does not permit an identical transaction in which the acquiring company is an affiliated person of another fund in the fund complex. *See* Longleaf Partners Funds Trust, SEC Staff No-Action Letter (Apr. 9, 2001).

A. Portfolio Affiliates

Rules 17a–6 and 17d–1(d)(5) permit a fund and its portfolio affiliates to engage in principal transactions and enter into joint arrangements that would otherwise be prohibited by section 17(a), or by section 17(d) and rule 17d–1(a). Under the rules, a fund may enter into a principal transaction or a joint arrangement with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other affiliated persons of the fund (*e.g.*, the fund's adviser, persons controlling the fund, and persons under common control with the fund) ("Prohibited Participants") are not parties to the transaction and do not have a financial interest in a party to the transaction.[20]

1. Second-Tier Affiliates

Rules 17a–6 and 17d–1(d)(5) give broad exemptions that permit transactions and arrangements involving a fund and its own portfolio affiliates, but do not extend to identical transactions or arrangements involving portfolio affiliates of funds under common control with the fund. As a result, a fund may be able to enter into a transaction or arrangement with its own portfolio affiliate (a first-tier affiliate), but not with a portfolio affiliate of another fund in the same complex (a second-tier affiliate).[21]

Fund complexes and series companies were relatively uncommon when we amended rules 17a–6 (in 1964)[22] and 17d–1(d)(5) (in 1974)[23] to permit funds to engage in principal transactions and joint arrangements with their portfolio affiliates.[24] Transactions and arrangements between a fund and its second-tier portfolio affiliates do not appear to raise concerns that are different from those raised by transactions and arrangements between a fund and its first-tier portfolio affiliates. Therefore, we are proposing to amend rules 17a–6 and 17d–1 to permit a fund to engage in principal transactions or enter into joint arrangements with its second-tier portfolio affiliates under the same conditions as with first-tier portfolio affiliates.[25]

We request comment on our proposal to expand the exemptive relief provided in rules 17a–6 and 17d–1(d)(5). Do arrangements and transactions with second-tier portfolio affiliates raise investor protection issues not present in arrangements and transactions with first-tier portfolio affiliates? If so, should exemptive relief for transactions and arrangements involving second-tier portfolio affiliates be subject to any additional conditions?

[22] We adopted rule 17a–6 in 1961 to provide small business investment companies licensed by the United States Small Business Administration with an exemption from section 17(a)(1) and section 17(a)(3) for certain transactions with their portfolio affiliates. Investment Company Act Release No. 3361 (Nov. 17, 1961) [26 FR 11238 (Nov. 29, 1961)]. We amended the rule in 1964 to exempt from section 17(a) additional persons and transactions, including transactions involving all other types of investment companies and their portfolio affiliates that were "non-public" companies, and again in 1979 to extend the rule to transactions with portfolio affiliates that are public companies. Investment Company Act Release Nos. 3968 (Apr. 29, 1964) [29 FR 6152 (May 9, 1964)] and 10828 (Aug. 13, 1979) [44 FR 48657 (Aug. 20, 1979)].

[23] We amended rule 17d–1 in 1974 to permit joint transactions under conditions similar to those imposed by rule 17a–6. Adoption of Amendment to Rule 17d–1 Under the Investment Company Act of 1940 Exempting Certain Joint Transactions Involving Registered Investment Companies, Including SBIC Stock Option Plans, From the Application Requirements of the Rule, Investment Company Act Release No. 8542 (Oct. 15, 1974) [39 FR 37971 (Oct. 25, 1974)].

[24] In 1958 there were only five "multi-fund" open-end investment companies (series companies) and 29 "multi-company groups" (fund complexes). Wharton School of Finance and Commerce, A Study of Mutual Funds, H.R. Rep. No. 2274, 87th Cong., 2d Sess. 6, 42 (1962). As recently as 1980 few management investment companies were organized as series companies and there were only 120 fund complexes. ICI Fund Fact Book, *supra* note 12, at 63; Securities and Exchange Commission Annual Report for 1980, 48th Annual Report. In 2000, approximately 1,400 management investment companies were organized as series companies (with 7,000 portfolios) and there were approximately 430 fund complexes. ICI Fund Fact Book, *supra* note 12, at 63; Reports on Form N–SAR [17 CFR 274.101].

[25] Proposed rules 17a–6(a) and 17d–1(d)(5).

2. Financial Interests

As discussed above, our exemptions for transactions or arrangements with portfolio affiliates are unavailable if certain other affiliated persons have a "financial interest" in a party to the transaction (other than the fund).[26] Our rules do not explain what constitutes a "financial interest" in a party. Instead, the rules provide a list of interests that are deemed not to be "financial interests."[27]

We are concerned that the rules, as currently drafted, do not (and cannot) anticipate every remote or minor interest in a party to a transaction, and thus they may prohibit many transactions with portfolio affiliates even though the affiliated person's financial interest is unlikely to present an incentive for overreaching the fund. We are therefore proposing to amend rules 17a–6 and 17d–1(d)(5) to provide that, in addition to the interests currently deemed not to be "financial interests," the term "financial interest" does not include any interest that the fund's board of directors, including a majority of the directors who are not interested persons of the fund, finds to be not material.[28]

We are also proposing to amend our rules to make them consistent with one another with regard to the time period for which a Prohibited Participant's financial interest will result in loss of the rules' exemption.[29] Under the proposed amendments, the exemptions under both rules 17a–6 and 17d–1(d)(5) will be available unless a Prohibited Participant (i) has a financial interest in a party at the time of the fund's participation in the transaction or arrangement, (ii) had a financial interest in a party within the six months preceding the fund's participation, or (iii) will obtain a financial interest in a party pursuant to an arrangement in existence at the time of the fund's participation.[30]

[26] Rules 17a–6(a)(5)(ii) and 17d–1(d)(5)(i).

[27] Rules 17a–6(b)(1) and 17d–1(d)(5)(iii).

[28] Proposed rules 17a–6(b)(1)(i)(H) and 17d–1(d)(5)(ii)(A)(*8*). Our proposed amendments would also require that the directors record the basis for their finding in the minutes of the board's meeting. *Id.*

[29] Rule 17a–6 is not available if a Prohibited Participant "has, or within six months prior to the transaction had * * * or pursuant to an arrangement will acquire" a financial interest in a party to the transaction. Rule 17a–6(a)(ii). Rule 17d–1(d)(5) is not available if a Prohibited Participant "is, was or proposes to be" a participant in the joint enterprise through a financial interest in a person "who is, was or will be" a participant in the joint enterprise. Rule 17d–1(d)(5)(i).

[30] Proposed rules 17a–6(b)(1)(ii) and 17d–1(d)(5)(ii)(B). Rule 17d–1(d)(6) includes references to the Prohibited Participants identified in current

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We request comment on our proposed amendments regarding the financial interests of Prohibited Participants. Should Prohibited Participants be permitted to have an interest in parties to the transaction or arrangement if the interest is not material? Should the rules provide a standard against which directors should determine whether an interest is not material?[31] If so, what should the standard be?

3. Percentage Limits on Investment in Joint Enterprise

A fund, or a company that a fund controls, may commit no more than five percent of its assets to a joint enterprise with a portfolio affiliate.[32] When we amended rule 17d–1 to permit funds to engage in joint enterprises with portfolio affiliates, we were concerned that a fund that committed a significant percentage of its assets to a joint enterprise could be susceptible to disadvantage or unfair treatment.[33] As a result, we decided to continue to review those transactions by considering exemptive relief on a case-by-case basis. There is no comparable limitation for principal transactions with portfolio affiliates, however, and it is not clear that the limit continues to serve a useful purpose. We therefore are proposing to amend rule 17d–1(d)(5) to eliminate the rule's percentage limit.[34] We request comment on this amendment. Is there any specific harm that could result from elimination of the limit?

B. Subadviser Affiliates

As we discussed above, funds today are typically organized, operated, and controlled by an investment adviser that advises a number of other funds in a fund complex. That adviser may be assisted by one or more subadvisers, which may provide general advisory assistance or may manage a discrete portion of the fund's portfolio and have no responsibilities with respect to the rest of the fund.[35] Each subadviser is a first-tier affiliate of any fund it advises and a second-tier affiliate of each fund in the fund complex that it does not advise.[36] Section 17(a) of the Act prohibits the common adviser (a first-tier affiliate) and each fund's own subadviser (a first-tier affiliate), as well as *each* subadviser of the other funds (second-tier affiliates) from entering into principal transactions with the fund.[37] Section 17(e) restricts the remuneration the common adviser, each fund's own subadviser, and the subadvisers of the other funds may receive in transactions involving the fund and companies that the fund controls.[38] Section 10(f) prohibits each fund from purchasing securities in any primary offering in which the underwriting or selling syndicate includes the common adviser, the fund's own subadviser, or any person with which these advisers are affiliated.[39] Section 12(d)(3) and rule 12d3–1 prohibit each fund from acquiring securities issued by the common adviser or its own subadvisers.[40]

Ordinarily a subadviser has little power to overreach those funds, or portions of a fund, with which it is affiliated but which it does not advise. We have, therefore, issued a number of orders exempting subadvisers and funds from sections 17(a), 17(e), 10(f), and 12(d)(3) in order to permit subadvisers to engage in transactions with affiliated funds when they are not in a position to influence the fund's decision to participate in the transaction.[41] Today we are proposing to codify these orders in one new rule and three rule amendments. The new rule and amendments will permit these transactions and arrangements to go forward without the expense and delay of obtaining an exemptive order from the Commission.

1. Principal Transactions With Subadvisers: Section 17(a)

Section 17(a) of the Act prohibits a subadviser that is a first-or second-tier affiliate of a fund from borrowing money or other property from, or selling or buying securities or other property to or from the fund, or any company that the fund controls.[42] We are proposing a new rule 17a–10 that would permit a subadviser of a fund to enter into transactions with (i) funds the subadviser does not advise but which are affiliated persons of a fund it does advise (*e.g.*, other funds in the fund complex), and (ii) funds the subadviser does advise, but with respect to portions of the subadvised fund for which the subadviser does not provide investment advice.[43] The proposed exemption would be subject to conditions, discussed below, designed to limit its availability to circumstances in which the subadviser is unable to influence the management of the fund, or portion of the fund, that participates in the transaction ("participating fund" or "participating portion").

First, the rule would require that the subadvisory relationship be the sole reason why section 17(a) prohibits the transaction (*e.g.*, that the subadviser not be an affiliated person of the participating fund's investment advisers, officers, directors, promoters, or underwriters).[44] Second, the rule would require the participating subadviser and any subadviser of the participating fund or portion to be prohibited by their advisory contracts from consulting with each other concerning securities transactions of the participating fund or portion.[45] These conditions, which have been conditions of our exemptive orders permitting subadvisers to engage in principal transactions with funds with which they are affiliated, are designed to limit the rule's exemption to those transactions in which the subadviser has no incentive or ability to influence the investment decisions made on behalf of the fund or portion of the fund that participates in the transaction.

We are not proposing to prohibit subadvisers and principal advisers from consulting with each other, although subadvisers and their affiliated persons would be able to enter into affiliated transactions and arrangements with a fund (or a portion of a fund) that the principal adviser advises. Application of such a condition could interfere with the principal adviser's duty to supervise the performance of the subadviser.[46] Nevertheless, the principal adviser, as a fiduciary to the fund, could not lawfully collaborate with subadvisers for the purpose of overreaching the fund. We request comment whether, in light of our decision not to impose a communication barrier, we should not permit subadvisers and their affiliates from entering into transactions with funds or portions of funds advised by a principal adviser.

We request comment in general on our proposal to permit funds to engage in principal transactions with subadvisers (and their affiliated persons) that are affiliated with the fund, but which are not in a position to influence the fund's conduct. Are the proposed conditions sufficient to protect the fund from overreaching or self-dealing by subadvisers? Are any of the proposed conditions unnecessary? Should the proposed exemption be subject to additional conditions, such as conditions that would prevent a subadviser from influencing the principal adviser to coordinate the actions of the other subadvisers? Is this likely?

2. Transactions With Subadvisers as Brokers: Section 17(e)

Section 17(e)(2) of the Act generally limits the remuneration that a first- or second-tier affiliate of a fund may receive for effecting purchases and sales of securities on a securities exchange on behalf of the fund, or a company the fund controls, to the "usual and customary broker's commission."[47] The limits of section 17(e)(2) apply to purchases and sales made on behalf of a fund by the fund's subadviser (a first-tier affiliate), affiliates of the subadviser (second-tier affiliates), and subadvisers of funds under common control with the fund (second-tier affiliates).

Rule 17e–1 describes the circumstances in which remuneration received by an affiliated person of a fund qualifies as the "usual and customary broker's commission." The rule, among other things, requires that the fund's board of directors review transactions to determine that they comply with procedures adopted by the board to ensure that the remuneration received by the affiliated person does not exceed the usual and customary broker's commission ("review requirement").[48] In addition, the fund must maintain a record of the transactions ("recordkeeping requirement").[49] The review and recordkeeping requirements of rule 17e–1 were designed to permit fund directors and our examinations staff to monitor the reasonableness and fairness of remuneration received by affiliated persons of the fund.[50] We are proposing to amend rule 17e–1 to permit an affiliated subadviser of a fund to receive remuneration for service as a broker without complying with these conditions, in circumstances in which the subadviser has very limited ability to influence decisions regarding the purchase and sale of fund securities.[51] Under our proposal, funds would not have to comply with rule 17e–1's review and recordkeeping requirements in circumstances, and subject to conditions, identical to those in which a subadviser could engage in a principal transaction with an affiliated fund under proposed rule 17a–10.[52]

The proposed amendments would relieve funds and subadvisers from the review and recordkeeping requirements when the relationship between the subadviser and fund is sufficiently remote to make it unlikely that the subadviser could directly or indirectly cause the fund to pay an unreasonable or unfair commission.[53] We request commenters to address our proposal to exempt brokerage transactions between funds and certain affiliated subadvisers from rule 17e–1's review and recordkeeping requirements.

3. Purchases During Primary Offering Underwritten by Subadvisers: Section 10(f)

Section 10(f) of the Act prohibits a fund from purchasing any security during an underwriting or selling syndicate if the fund has certain affiliated relationships with a principal underwriter for the security.[54] The

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rule 17d–1(d)(5)(i) and to the definition of "financial interest" in current rule 17d–1(d)(5)(iii). We are proposing to amend rule 17d–1(d)(6) to conform these references to rule 17d–1(d)(5) as proposed to be amended.

[31] *Compare* rule 15a–4(b)(2)(v) [17 CFR 270.15a–4(b)(2)(v)] (board of directors must find differences between interim advisory contract and previous contract to be immaterial) *with* rule 0–1(a)(6)(i)(A) [17 CFR 270.0–1(a)(6)(i)(A)] (majority of disinterested directors must reasonably determine in the exercise of their judgment that any representation of the fund's investment adviser, principal underwriter, administrator, or any of their control persons, since the beginning of the fund's last two completed fiscal years, is or was sufficiently limited that it is unlikely to adversely affect the professional judgment of person providing legal representation to the disinterested directors).

[32] Rule 17d–1(d)(5)(ii) (In a joint enterprise, other than a merger of portfolio affiliates, neither a fund nor a company that a fund controls may commit in excess of five percent of its assets, except that a fund which is licensed by the Small Business Administration (SBA) under the Small Business Investment Act of 1958 may not commit more than 20 percent of its paid-in capital and surplus.)

[33] *See* Notice of Proposal to Amend Rule 17d–1 Under the Investment Company Act of 1940 to Exempt Certain Joint Transactions Involving Registered Investment Companies, Including SBIC Stock Option Plans, From the Application Requirements of the Rule, Investment Company Act Release No. 8273 (Mar. 14, 1974) [39 FR 11312 (Oct. 25, 1974)].

[34] A fund licensed by the Small Business Administration under the Small Business Investment Act of 1958 would, however, still be subject to all SBA regulations regarding the percentage of its paid-in capital and surplus it could commit to a joint enterprise. *See* 13 CFR 107.740.

[35] *See* Benjamin J. Haskin, *Hiring and Oversight of Sub-Advisers*, 5 The Investment Lawyer 8, 11 (1998) (describing subadvisory arrangements generally).

[36] A subadviser is an "investment adviser" for purposes of the Act, which defines a fund's "investment adviser" as a person (other than a bona fide officer, director, trustee, member of an advisory board, or employee of the fund) who regularly furnishes advice to the fund with respect to the desirability of investing in, purchasing, or selling securities or other property, or is empowered to determine what securities or other property are to be purchased or sold by the fund. 15 U.S.C. 80a–2(a)(20). The investment adviser may act pursuant to a contract with a fund [15 U.S.C. 80a–2(a)(20)(A)] or pursuant to a contract with an investment adviser that has contracted with the fund. 15 U.S.C. 80a–2(a)(20)(B).

[37] The section also prohibits principal transactions between the fund and affiliates of the common adviser (second-tier affiliates) and affiliates of the fund's own subadviser (second-tier affiliates).

[38] The prohibition in section 17(e) also extends to affiliates of the common adviser and the fund's subadviser.

[39] A fund therefore is prohibited from purchasing securities in an offering in which a participant in the underwriting or selling syndicate is under common control with the fund's adviser.

[40] A fund is also prohibited from acquiring securities issued by an affiliated person of the common adviser or an affiliated person of the fund's subadviser if the affiliated person is a broker, dealer, investment adviser, or engaged in the business of underwriting.

[41] *See, e.g.*, CDC IXIS Management Advisers, L.P. *et al.*, Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); AMR Investment Services Trust, *et al.*, Investment Company Act Release Nos. 23773 (Apr. 7, 1999) [64 FR 18454 (Apr. 14, 1999)] (notice) and 23823 (May 4, 1999) (order); North American Security Trust, Investment Company Act Release Nos. 18860 (Jul. 22, 1992) [57 FR 33540 (July 29, 1992)] (notice) and 18899 (Aug. 18, 1992) (order); State Street Bank and Trust Co., Investment Company Act Release Nos. 19784 (Oct. 13, 1993) [58 FR 53983 (Oct. 19, 1993)] (notice) and 19844 (Nov. 9, 1993) (order).

[42] *See supra* note and accompanying text.

[43] This second category of relief would thus be available only when a fund has one or more subadvisers that are responsible for managing a discrete portion of the fund's assets. The rule would permit the adviser of one portion of the fund to direct that portion to engage in a principal transaction with the subadviser of another portion of the fund's assets. *See* discussion below.

[44] Proposed rule 17a–10(a)(1).

[45] Proposed rule 17a–10(a)(2). We are not proposing to extend this condition to the fund's principal adviser, although subadvisers and their affiliated persons would be permitted to rely on the rule to enter into transactions and arrangements with a fund or portion of a fund with respect to which the principal adviser alone provides investment advice. We are concerned that in the context of the relationship between a principal adviser and a subadviser the condition could be interpreted in a manner inconsistent with the principal adviser's duty to oversee the conduct of subadvisers. Nonetheless, the principal adviser remains a fiduciary of the fund and may not collaborate with fund subadvisers for the purpose of overreaching the fund.

[46] *See* Western Asset Management Co. and Legg Mason Fund Adviser, Inc., Investment Advisers Act Release No. 1980 (Sept. 28, 2001).

[47] Section 17(e)(2) limits the remuneration that any affiliated broker of a fund may receive in connection with a securities transaction to (A) the usual and customary broker's commission for transactions effected on an exchange, (B) two percent of the sales price for secondary distribution, and (C) one percent of the purchase or sale price for other purcheses or sales.

[48] Rule 17e–1(a) and (b). The rule also requires that a majority of the directors of the fund not be "interested persons" of the fund, that those directors select and nominate any other disinterested directors, and any person who acts as legal counsel for the disinterested directors be an independent legal counsel. Rule 17e–1(c). Section 2(a)(19) identifies persons who are "interested persons" of a fund. 15 U.S.C. 80a–2(a)(19).

[49] Rule 17e–1(d).

[50] Agency Transactions by Affiliated Persons on a Securities Exchange, Investment Company Act Release No. 10605 (Feb. 27, 1979) [44 FR 12202 (Mar. 6, 1979)] at n.10 and accompanying text.

[51] Funds are required to retain certain records of brokerage orders by or on behalf of the fund. *See* rule 31a–1(b)(5) [17 CFR 270.31a–1(b)(5)]. Our proposal is not intended to affect these or other recordkeeping requirements not included within rule 17e–1.

[52] Proposed rules 17e–1(b)(3) and (d)(2). *See supra* Section I.B.1 (discussing conditions in proposed rule 17a–10).

[53] Fund directors may, however, wish to continue to review these transactions as a matter of good business practice.

[54] Section 10(f), in relevant part, prohibits a registered investment company from knowingly

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section protects fund shareholders by preventing an affiliated underwriter from placing or "dumping" unmarketable securities with the fund.[55] Rule 10f–3 provides an exemption from the prohibition in section 10(f) if certain conditions are satisfied.[56] One of the key conditions is that a fund relying on the rule, together with any other fund advised by the fund's adviser, purchase no more than 25 percent of the offering ("percentage limit").[57] The purpose of the percentage limit is to provide an indication that a significant portion of the offering is being purchased by persons acting independently of the adviser. The existence of these purchasers suggests that the price of the securities is based on market forces and demonstrates that the securities are not being "dumped."[58]

When a fund has multiple subadvisers, section 10(f) can limit significantly the fund's ability to purchase securities in a primary offering.[59] A fund is subject to the prohibition in section 10(f) if *any* of its subadvisers participate in the underwriting or selling syndicate (or are affiliated persons of participants), whether or not the subadviser that *recommends* the purchase is participating. Moreover, in order for a fund to rely on the exemption in rule 10f–3, the aggregate purchases by *all* of the funds advised by *each* of the fund's subadvisers (as well as *all* of the funds advised by the fund's principal adviser) must comply with the rule's percentage limit.

We have issued a number of exemptive orders to permit funds to purchase securities during an underwriting or selling syndicate in which one of its subadvisers is a participant,[60] when the adviser recommending the purchase is not a participant in the syndicate.[61] These orders also permit a fund to purchase securities in reliance on rule 10f–3 without aggregating purchases by portions of the fund advised by advisers that are not participants in the syndicate. We concluded that, in these circumstances, an exemption from section 10(f) is consistent with the protection of investors because a subadviser that participates in an underwriting or selling syndicate has little opportunity to "dump" securities into funds or portions of a fund's portfolio that the subadviser does not advise. Moreover, we concluded that purchases recommended by an adviser that is not a participant in the underwriting (and not influenced by participants in the underwriting) should be considered purchases independent of the adviser participating in the underwriting. Today we are proposing amendments to rule 10f–3 to codify many of the terms of these orders.

The proposed amendments to rule 10f–3 would deem each of the series of a series company and the "managed portions"[62] of a fund portfolio ("series" or "portion") to be separate registered investment companies for purposes of section 10(f) and rule 10f–3.[63] The amendments would exempt a purchase of securities by an investment company from the prohibition in section 10(f), if the purchase would not be prohibited if each series or portion were separately registered.[64] The proposed amendments are designed to exempt funds from the prohibition in section 10(f) when that prohibition is triggered by the participation in an underwriting or selling syndicate of a person who is not in a position to influence the fund's investment decisions.[65]

We are proposing additional amendments to rule 10f–3 that would revise the way funds are required to aggregate purchases to determine compliance with the percentage limits of rule 10f–3. Currently, a fund is required to aggregate all of its purchases with those of any other fund advised by its investment adviser.[66] As a result, a fund that is a series must aggregate purchases by all of the other series if the fund's subadviser participates in the underwriting, but the fund need not aggregate purchases made by, for example, a hedge fund advised by the participating subadviser.

The rule appears to be both too broad (in that in requires aggregation of purchases that are not influenced by participants in the underwriting) and too narrow (in that it does not require aggregation of purchases by accounts controlled by the adviser participating in the underwriting). Therefore, we are proposing to amend rule 10f–3 to require the aggregation of purchases by funds that are advised, and accounts that are controlled, by an investment adviser that is a participant in the underwriting or selling syndicate.[67] If multiple investment advisers provide investment advice to a fund (e.g., a principal adviser and one or more subadvisers) but only one of those advisers is a participant in the underwriting or selling syndicate, rule 10f–3's percentage limit would apply only to purchases by the funds and accounts of the participating investment adviser.[68] We request comment on our proposal to amend rule 10f–3.

As discussed above, the proposed percentage limit would encompass purchases by the *accounts* controlled by a fund's investment adviser, as well as the funds advised by the adviser. We initially proposed this amendment in 2000 because we were concerned that rule 10f–3's percentage limit may not provide reliable evidence of a market for the security if most or all of the offering is purchased by fund and non-fund clients of an adviser participating in the underwriting or selling syndicate.[69] While several commenters objected to the proposal, none addressed the policy concerns behind the proposal.[70] We are re-proposing the amendment today in light of the other changes we are proposing to the rule. We request comment on rule 10f–3's percentage limit under these circumstances. Do the other changes we are proposing to rule 10f–3 warrant further changes in the rule?

4. Ownership of Securities Issued by Subadvisers: Section 12(d)(3)

Section 12(d)(3) of the Act generally prohibits funds, and companies controlled by funds, from purchasing securities issued by a registered investment adviser, broker, dealer, or underwriter ("securities-related businesses").[71] Rule 12d3–1 permits a fund to invest up to five percent of its assets in securities of an issuer deriving more than fifteen percent of its gross revenues from securities-related businesses,[72] but a fund may not rely on rule 12d3–1 to acquire securities of its own investment adviser or any affiliated person of its own investment adviser.[73] Thus, a fund may not acquire securities issued by any of its subadvisers, or their affiliated persons.[74]

We have issued several orders exempting funds from the prohibition in section 12(d)(3) to permit them to use rule 12d3–1 to purchase securities issued by fund subadvisers when the subadviser was not in a position to influence the decision by the fund to purchase the securities.[75] We are today proposing to amend rule 12d3–1 to codify these orders and permit a fund to acquire securities issued by one of its subadvisers (or an affiliated person of one of its subadvisers) subject to the same conditions as the other rules we are proposing that would permit transactions with subadvisers and which we discuss above.[76] The rule would be available only to a subadviser that provides investment advice with respect to a discrete portion of the fund's portfolio, and that is not an affiliated person of the adviser causing the fund to purchase the securities.[77] We request comment on our proposal to amend rule 12d3–1.

II. General Request for Comment

We request comment on the proposed rules and proposed rule amendments that are the subject of this Release, suggestions for additional provisions or changes to the rules, and comments on other matters that might have an effect on the proposals contained in this Release. We encourage commenters to provide data to support their views.

III. Cost-Benefit Analysis

We are sensitive to the costs and benefits that result from our rules. The Act and our rules restrict the ability of a first-or second-tier affiliate of a fund to engage in various types of transactions involving the fund, and companies that the fund controls, without first obtaining an exemptive order from the Commission. The proposed rule and amendments would expand the circumstances under which portfolio companies and subadvisers that are affiliated persons of funds may engage in otherwise prohibited transactions with those funds without first obtaining an exemptive order. We have identified certain costs and benefits, which are discussed below, which may result from the proposed rule and rule amendments. As the proposed rule and rule amendments are exemptive, rather than prescriptive, funds and their affiliated persons are not required to rely on them. Therefore, we assume that funds will only rely on the provisions of the proposed rule and rule amendments if the anticipated benefits from such actions would exceed the anticipated costs. We request comment on the costs and benefits of the proposed rule and amendments. We encourage commenters to identify, discuss, analyze, and supply relevant data regarding these or any additional costs and benefits.

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purchasing or otherwise acquiring, during the existence of any underwriting or selling syndicate, any security (except a security of which the company is the issuer) a principal underwriter of which is an officer, director, member of an advisory board, investment adviser, or employee of the company, or any person of which any of the foregoing are affiliated persons.

[55] *See Investment Trusts and Investment Companies: Hearings on S. 3580 Before a Subcomm. of the Senate Comm. On Banking and Currency*, 76th Cong., 3d Sess. 35 (1940) (Statement of Commissioner Healy); Exemptioo for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775, *supra* note 19, at n.4 and accompanying text; Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 22775 (July 31, 1997) [62 FR 42401 (Aug. 7, 1997)] at n.1 and accompanying text.

[56] Rule 10f–3 permits a fund to purchase securities in a transaction that otherwise would violate section 10(f) if, among other things: (i) The securities either are registered under the Securities Act of 1933 [15 U.S.C. 77a–aa), are part of an issue of government securities, are municipal securities with certain credit retings, or are offered in certain foreign or private institutional offerings; (ii) the offering involves a "firm commitment" underwriting; (iii) the fund (together with other funds advised by the same investment adviser) purchases no more than 25 percent of the offering; (iv) the fund purchases the securities from a member of the syndicate other than its affiliated underwriter; (v) the fund's directors have approved procedures for purchases under the rule and regularly review the purchases to determine whether they have complied with the procedures. *See* rule 10f–3(b).

[57] Rule 10f–3(b)(7).

[58] *See* Exemptioo for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, Investment Company Act Release No. 24775, *supra* note 19, at n.22 and accompanying text.

[59] A fund may have multiple subadvisers because more than one subadviser has been retained to provide investment advice with respect to various portions of the fund. A fund may also have multiple subadvisers because the fund is one of several portfolios of a series company, and different subadvisers provide investment advice with respect to the assets of the different portfolios.

[60] Unless otherwise noted, we will refer to a subadviser that is a principal underwriter, or an affiliated person of a principal underwriter of a security, as a "participant" in the underwriting or selling syndicate.

[61] See, *e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061(July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order); AB Funds Trust, et al., Investment Company Act Release Nos. 24999 (June 7, 2001) [66 FR 31953 (June 13, 2001)) (notice) and 25054 (June 29, 2001) (order).

[62] A portion of a fund's portfolio would be a "managed portion" if it is a discrete portion of the portfolio for which a subadviser is responsible for providing investment advice, and the subadviser (i) does not provide investment advice with respect to any other portion of the fund's portfolio, (ii) is prohibited by its advisory contract from consulting with any other investment adviser of the investment company that is a principal underwriter or affiliated person of a principal underwriter concerning securities transactions of the fund, and (iii) is not an affiliated person of any other investment adviser, or any promoter, underwriter, officer, director, member of an advisory board, or employee of the investment company. Proposed rule 10f–3(a)(6).

[63] Proposed rule 10f–3(b).

[64] *Id.*

[65] The proposed amendments to rule 10f–3 would effectively permit a fund that is a series in a series company to purchase securities during an underwriting or selling syndicate in which an officer, director, member of an advisory board, investment adviser, or employee of a series other than the purchasing series is (or is an affiliated person of) a participant. The proposed amendments would also permit a fund to purchase securities during a syndicate in which an investment adviser of the fund is (or is an affiliated person of) a participant, if the investment adviser does not provide investment advice (or have the opportunity to influence investment decisions) for the portion of the fund's assets for which the securities are purchased.

[66] Rule 10f–3(b)(7).

[67] Proposed rule 10f–3(c)(7).

[68] *Id.* If more than one investment adviser of a fund is a participant in the underwriting or selling syndicate then the percentage limit would apply independently with respect to each such investment adviser. Proposed rule 10f–3(c)(7)(iii). The percentage limit would not apply at all if a fund is prohibited from purchasing a security because a person other than the fund's investment adviser (e.g., an officer, director, or employee of the fund) is a participant in the underwriting or selling syndicate. Proposed rule 10f–3(c)(7)(ii).

[69] *See* Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate, *supra* note.

[70] Several commenters opposed the proposed amendment on the grounds that it could limit funds' access to primary offerings.

[71] With minor exceptions, section 12(d)(3) prohibits a fund from purchasing or otherwise acquiring "any security issued by or any other interest in the business of any person who is a broker, a dealer, is engaged in the business of underwriting, or is [an] investment adviser."

[72] Paragraph (a) of rule 12d3–1 permits a fund to acquire any security issued by any person that, in its most recent fiscal year, derived 15 percent or less of its gross revenues from securities-related activities unless the fund would control such person after the acquisition. Paragraph (b)(3) of rule 12d3–1 permits a fund to invest up to five percent of the value of its total assets in the securities of an issuer that derives more than 15 percent of its gross revenues from securities-related activities. Rule 12d3–1(d)(1) defines "securities related activities" as a person's activities as a broker, a dealer, an underwriter, an investment adviser registered under the Investment Advisers Act of 1940 [15 U.S.C. 80b], or an investment adviser to a registered investment company.

[73] Rule 12d3–1(c) provides that the rule does not exempt the acquisition of a security issued by the acquiring company's investment adviser, promoter, or principal underwriter, or any affiliated person of such investment adviser, promoter, or principal underwriter. Rule 12d3–1(d)(8) provides that any class or series of an investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series, shall be treated as if it is a registered investment company. Accordingly, a fund that is a series of a series company may rely on rule 12d3–1 to purchase securities issued by subadvisers (and persons affiliated with those subadvisers) of the other series of the series company.

[74] Congress adopted section 12(d)(3) for two purposes: (i) To limit the exposure of funds to the entrepreneurial risks peculiar to investing in securities-related businesses and (ii) to prevent potential conflicts of interest and certain reciprocal practices. *See Investment Trusts and Investment Companies, Hearings on S. 3580 before a Subcomm. Of the Comm. On Banking and Currency*, 76th Cong., 3d Sess. 243 (1940). In 1940 most securities-related businesses were organized as privately held general partnerships. If a securities-related business failed, the fund, as a general partner, could have been held accountable for the partnership's liabilities. Rule 12d3–1 preserves these purposes: rule 12d3–1(c) effectively precludes a fund from acquiring, regardless of the source of its revenues, a general partnership interest in a broker, dealer, investment adviser, or underwriter. Today, however, virtually all securities firms are organized as corporations and not as general partnerships.

[75] *See, e.g.*, CDC IXIS Asset Management Advisers, L.P., Investment Company Act Release Nos. 25061 (July 12, 2001) [66 FR 37497 (July 18, 2001)] (notice) and 25103 (Aug. 8, 2001) (order).

[76] Proposed rule 12d3–1(c)(3). *See* sections I.B.1. and I.B.3. of this Release (discussing proposed new rule 17a–10 and proposed amendments to rule 10f–3).

[77] Proposed rule 12d3–1(c)(3)(i) and (ii). The ownership limits in rule 12d3–1(a) and (b) would continue to apply to the fund as a whole.

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A. Benefits

1. In General

We anticipate that funds, their shareholders, and their advisers and other affiliated persons would benefit from the proposed rule and amendments. As discussed earlier, the number of persons that are affiliated persons of funds has increased markedly since 1940.[78] As a result, there is an increasing number of persons with which funds may not enter into transactions under the Act, but which have neither the ability nor an incentive to take advantage of the funds. The Act authorizes us to issue orders providing exemptive relief from the restrictions on affiliate transactions, but the process for obtaining such an exemption imposes direct and indirect costs on funds. The proposed rules and amendments each will benefit funds, their shareholders, and their affiliated persons by eliminating these direct and indirect costs.

The most direct cost of the application process is the cost of filing the application itself. From 1996 to 2001, we received twenty-one applications for exemptions from sections 17(a), 17(d), 17(e), 10(f), and 12(d)(3) that involved transactions of funds with portfolio and subadvisory affiliates. Based on discussions with industry representatives, our staff estimates the average cost of filing an application to be approximately $20,000 when the application involves relatively simple issues, and up to $80,000 for applications involving complex, novel issues. Thus, we estimate the cost of filing applications for these exemptions since 1996 to be between $420,000 to $1,680,000. Funds also commonly incur the cost of filing one or more amendments after the initial application. One benefit of our proposal would be elimination of these direct costs.

The application process also produces indirect costs, as funds forego beneficial transactions rather than undertake to obtain an exemptive order. Funds may forgo transactions either because the anticipated benefit of the transaction does not exceed the cost of obtaining an exemptive order, or because the transaction is time-sensitive, and it is not feasible for a fund to obtain an exemptive order quickly enough to be able to enter into the transaction. For applications since 1996, the time between the filing of an application and the granting of an exemptive order has ranged from four months for a relatively straightforward application that added parties to an earlier exemptive order,[79] to 17 months for a more complicated application requiring several amendments.[80] Encouraging beneficial transactions by eliminating these potentially significant costs and delays would be a further benefit of our proposal.

Furthermore, eliminating direct and indirect costs of the application process may reduce factors that discriminate against smaller funds and smaller transactions. The direct cost and delay imposed by the application process may discourage smaller funds from applying for exemptions to a greater extent than larger funds, since a larger fund may be more willing to pay direct costs and wait for approval of exemptions. Funds of any size may have a disincentive to enter into smaller transactions if the cost of obtaining an exemptive order represents a greater proportion of the expected benefits of a smaller transaction than a larger one. Elimination of these factors would reduce ways in which currently there may be a disproportionate adverse effect on smaller funds and a distortion of investment decisions of funds away from smaller transactions.

2. Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) regarding transactions and joint arrangements with second-tier portfolio affiliates may expand the range of possible partners with which funds may enter into transactions and joint arrangements. Funds, second-tier portfolio affiliates, and their shareholders each may benefit from the transactions and arrangements made possible by the proposed amendments. It may not be possible to quantify this benefit, since it varies on a case-by-case basis depending on the characteristics of individual transactions and joint arrangements and on the extent to which funds involved in such transactions have second-tier portfolio affiliates. Moreover, any benefits would have to be measured against the benefits of alternative transactions or joint arrangements that may have been entered into. We request comment on the nature and potential magnitude of this benefit.

Amending rules 17a–6 and 17d–1(d)(5), to provide that the term "financial interest" does not include interests that the fund's board of directors finds to be not material, may expand the range of possible partners for transactions and joint arrangements with funds by making the rules' exemptions more widely available.[81] So too may the proposed removal of rule 17d–1(d)(5)'s condition limiting a fund to committing no more than five percent of its assets in any given joint enterprise.[82] These amendments may, thus, expand the scope of the exemptions for transactions or joint arrangements with both first- and second-tier portfolio affiliates, to the additional benefit of funds, their portfolio affiliates, and their shareholders. We request comment on the nature and potential magnitude of this benefit.

3. Subadvisory Affiliates

Principal Transactions

Proposed rule 17a–10 may benefit subadvisers, affiliated funds of a subadvised fund, and portions of the subadvised fund for which the subadviser does not provide investment advice by broadening investments options available to those persons. The restrictions that the Act currently places on transactions with affiliated persons limit the potential trading partners available to buyers and sellers. By allowing a subadviser of a fund to enter into principal transactions with (i) affiliated funds of the subadvised fund and (ii) those portions of the subadvised fund for which the subadviser does not provide investment advice, proposed rule 17a–10 would allow each party to enter into transactions with a wider range of funds. By broadening the markets available to both buyers and sellers, proposed rule 17a–10 may permit sellers to obtain more favorable pricing, and make a wider range of investment options available to buyers. It may not be possible to quantify this benefit, as it depends on the characteristics of individual transactions and on the extent to which funds involved in such transactions have subadvisory affiliates. We request comment on the nature and potential magnitude of this benefit.

Brokerage Transactions

Proposed rule 17e–1 would, under certain circumstances, permit subadvisers and their affiliated persons to receive remuneration when acting as broker for an affiliated fund, without complying with all of the rule's conditions. The rule requires, among other things, that fund directors review the transaction, and that funds maintain records of the transaction. Proposed rule 17e–1 would exempt funds from these requirements in circumstances identical to those in which proposed rule 17a–10 would permit a subadviser or its affiliates to engage in a principal transaction with an affiliated fund.[83] Our staff estimates that boards of directors of funds that employ affiliated brokers currently spend approximately 12.5 meeting hours per year per fund conducting the required review. Our staff further estimates that a fund that uses in-house counsel to assist fund directors in reviewing these transactions incurs a cost of $775 per year for counsel, based on an hourly cost for in-house counsel of $62 per hour. Funds incur the additional incremental cost of maintaining records of the transaction. The proposed amendments to rule 17e–1 may benefit funds and their shareholders by allowing funds to avoid these tasks and expenses.

Purchases During Primary Offerings Underwritten by Affiliated Subadvisers

The proposed amendments to rule 10f–3 may benefit funds by broadening their investment options. The Act prohibits a series of a series company from purchasing securities during an underwriting or selling syndicate of which an adviser to any of the series is a member. By providing that, for purposes of section 10(f) and rule 10f–3, a series of a series company is a separate investment company, the proposed amendments to rule 10f–3 could broaden (i) the investment opportunities available to such funds and (ii) the range of possible purchasers when a subadviser participates in an underwriting syndicate. Funds, fund shareholders, and subadvisers all may benefit from the proposed rule. As with proposed rule 17a–10, it may not be possible to quantify this benefit. We request comment on the nature and potential magnitude of this benefit.

The Act also does not distinguish between a fund with multiple subadvisers that manage discrete portions of its portfolio, and a fund whose subadvisers manage the portfolio in its entirety. The proposed amendments to rule 10f–3 that would deem separately managed portions of a fund's portfolio to be separate investment companies for purposes of section 10(f) and rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio. Quantifying the potential magnitude of this benefit may not be possible. We request comment on the nature and potential magnitude of this benefit.

The proposed amendments to rule 10f–3 regarding the rule's percentage limits also may broaden the investment options available to funds. The Act currently does not distinguish between purchases by funds or portions of funds that are recommended by a subadviser that is (or is an affiliated person of) a participant in the underwriting or selling syndicate and purchases by funds or portions of funds for which other subadvisers provide investment advice. By providing that the percentage limit of rule 10f–3 applies only to purchases by funds, portions of funds, and accounts for which participants provide investment advice, the proposed amendments to rule 10f–3 may increase the investment opportunities of a fund with multiple subadvisers that manage discrete portions of its portfolio. It may not be possible to quantify the potential magnitude of this benefit. We request comment on the nature and potential magnitude of this benefit.

4. Ownership of Securities Issued by Subadvisers

The proposed amendments to rule 12d3–1 may also benefit funds by broadening their investment options. The restrictions that the Act and rule 12d3–1 currently place on purchases by a fund of securities of its own investment adviser or any affiliated person of its own investment adviser may significantly limit the options available to a fund among securities issued by securities-related businesses, if the fund is advised by multiple investment advisers. Amending rule 12d3–1 to permit a fund to acquire securities issued by one of its subadvisers, or an affiliated person of one of its subadvisers, when the subadviser is not in a position to influence the decision by the fund to purchase the securities, may increase the investment opportunities of these funds. Quantifying the potential magnitude of this benefit also may not be possible. We request comment on the nature and potential magnitude of this benefit.

B. Costs

The Commission anticipates that funds, their shareholders, and their advisers and other affiliated persons may incur certain costs from the proposed new rule and amendments. These persons may incur certain direct costs of complying with the proposed new rule and amendments. The exemptions in the proposed new rule and amendments also may encourage shifts in market behavior that would create direct and indirect costs for certain entities. Furthermore, the exemptions may allow funds to proceed with disadvantageous transactions that existing restrictions would have prevented.

1. Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) would exempt currently prohibited transactions from the restrictions of sections 17(a) and 17(d) and rule 17d–1. We do not anticipate that there will be any costs associated with the rule amendments, other than a cost associated with the proposed provision that a fund's board of directors may find that an interest is not material and hence not a "financial interest." As a fund may only avail itself of the benefit of this aspect of the proposal if the fund directors make certain findings, and record the basis for those findings in their minutes, the benefit of the proposal is offset to some extent by the cost to the fund of the board fulfilling its obligations. Based on discussions with industry representatives, our staff estimates that reviewing the materiality of a Prohibited Participant's interest in a party to the transaction and recording the basis for those findings would require approximately 11.2 hours and $1,140 per meeting, in addition to the discussions that occur during the board meeting. This cost may partially offset the benefits of the exemption, including the direct benefit of allowing a fund to forego the cost of applying for exemptive relief from the restrictions of section 17(a) and rule 17d–1. We assume that if the cost of holding such a meeting exceeds the benefit to the fund, the fund will either forgo the opportunity to engage in the transaction or require the Prohibited Participant to divest itself of its interest.

2. Subadvisory Affiliates

In complying with the requirements of proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1 and availing themselves of their benefits, a fund and its advisers and subadvisers may incur

[78] *Supra* notes 12–14.

[79] *See* Mercury Asset Management International Ltd., Investment Company Act Release Nos. 23867 (June 9, 1999) [64 FR 32073 (June 15, 1999)] (notice) (application was originally filed Mar. 3, 1999) and 23887 (July 1, 1999) (order).

[80] *See* Frank Russell Investment Company et al., Investment Company Act Release Nos. 24820 (January 3, 2001) [66 FR 2031 (Jan. 10, 2001)] (notice) (application was originally filed Aug. 21, 1999) and 24847 (Jan. 30, 2001) (order).

[81] Expansion of the exemption in this manner may also impose costs by eliminating what has been a "bright line" prohibition and expanding the opportunities for harmful transactions. Commenters addressing the benefits of the rule's expansion should also address the potential costs.

[82] Rule 17d–1(d)(5)(ii).

[83] Despite the proposed removal of some aspects of board review required by rule 17e–1, it may be prudent for fund directors to continue to oversee and review the proposed exempted transactions as a matter of course. We would not, however, view any such additional oversight as a cost attributable to the proposed amendments to rule 17e–1.

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direct costs that would partially offset those benefits. In order for a fund to rely on the exemptions in the proposed rule and amendments, the fund's advisory contracts must include certain provisions, which they may not currently include. Since such contracts generally are subject to renewal at regular intervals, additional administrative cost may not be required to add such provisions. If adopted, we would not view the required changes to subadviser contracts to be material and, as a result, funds would not have to obtain shareholder approval of the change. Based on discussions with industry representatives, the staff estimates that drafting and executing revised subadvisory contracts would require approximately 6 hours. Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the proposed exemptions, the proposed rule and rule amendments would create an estimated initial one-time cost of approximately $836,000.

Proposed rule 17e–1 may result in increased costs to funds as a result of higher brokerage commissions. By exempting the commissions paid to certain affiliated subadvisers from the requirement for scrutiny by the board of directors, proposed rule 17e–1 may allow a rise in brokerage commissions, at the expense of the fund and its shareholders. Whether this increased cost would occur depends on the extent to which the scrutiny currently required of boards of directors has resulted in findings that commissions to be paid by funds are excessive. We request comment on the frequency of boards of directors making such findings, and the magnitude of the effect of such findings on brokerage commissions.

The proposed amendments to rule 10f–3 may encourage division of funds into discrete parts managed by multiple subadvisers. A fund that is advised by subadvisers that participate, or are affiliated with persons that participate, in underwriting syndicates may have an incentive to reorganize in order to take advantage of the opportunity to have a part of the fund purchase securities during the syndicate. Likewise, a fund that is advised by a subadviser that participates in underwriting syndicates may have an incentive to reorganize in order to comply with the percentage limit of rule 10f–3 and take advantage of the opportunity to purchase securities in reliance on that rule's exemption. Such a development would benefit subadvisers, but the use of additional subadvisers could also result in increased costs to funds and their shareholders.

C. Request for Comment

We request comment on the potential costs and benefits identified in the proposal and any other costs or benefits that may result from the proposed rules and amendments. We request comments on the anticipated costs and benefits of the proposed new rule 17a–10 and the proposed amendments to rules 10f–3, 17a–6, 17d–1(d)(5), 17e–1, and 12d3–1 as compared with the costs and benefits of the Act without proposed rule 17a–10 and of rules 10f–3, 17a–6, 17d–1, 17e–1, and 12d3–1 in their current forms. For purposes of the Small Business Regulatory Enforcement Fairness Act of 1996, [84] the Commission also requests information regarding the proposed impact of the proposed rule on the economy on an annual basis. Commenters are requested to provide data to support their views.

IV. Consideration of Promotion of Efficiency, Competition, and Capital Formation

Section 2(c) of the Investment Company Act requires the Commission, when engaging in rulemaking that requires it to consider or determine whether an action is necessary or appropriate in the public interest, to consider whether the action will promote efficiency, competition, and capital formation.[85]

Portfolio Affiliates

The proposed amendments to rules 17a–6 and 17d–1(d)(5) would expand the circumstances under which funds, and companies they control, could enter into principal transactions and joint arrangements with portfolio affiliates without first obtaining an exemptive order from the Commission. The proposed amendments would permit funds and their controlled companies to engage in otherwise prohibited transactions with: (i) A wider array of first-tier portfolio affiliates than the rules currently permit; and (ii) certain second-tier portfolio affiliates. [86] We anticipate that the proposed amendments will promote efficiency and competition. The Act's restrictions on transactions involving funds and their affiliated persons respond to market failures that can occur when an affiliated person, in a position to influence the management of a fund, causes the fund to behave in a manner that benefits the affiliated person, rather than the shareholders of the fund. The proposed amendments to rules 17a–6 and 17d–1(d)(5) would permit market forces to operate to allocate resources in circumstances where market failure is unlikely because the affiliated person is not in a position to influence fund management. The proposed amendments to rules 17a–6 and 17d–1(d)(5) are unrelated to, and we believe will have no effect on, capital formation.

Subadvisory Affiliates

The proposed amendments to rules 17e–1, 10f–3, and 12d3–1 and proposed new rule 17a–10 would permit funds, and companies controlled by funds, to engage in transactions with subadvisers that are affiliated persons of the fund, but which are not in a position to influence the fund's decision to participate in the transaction. The proposed rule and amendments would permit, in limited circumstances, funds, and companies controlled by funds, to: (i) Engage in principal transactions with such subadvisers, (ii) purchase securities during a primary offering in which such subadvisers participate (or are affiliated with persons that participate) in the underwriting or selling syndicate, and (iii) purchase securities issued by such subadvisers. The proposed amendments to rule 17e–1 would permit, in limited circumstances, an affiliated subadviser acting as broker to receive remuneration without complying with certain conditions of the rule. As in the case of the proposed amendments to rules 17a–6 and 17d–1(d)(5), we anticipate that the proposed rules and rule amendments will promote efficiency and competition by permitting market forces to operate in circumstances where there is limited chance of market failure. We also believe that the proposed amendments to rule 10f–3 may enhance capital formation by enabling funds to purchase securities during primary offerings, when they would otherwise be prohibited from doing so without a Commission exemptive order.

The proposed rule and amendments may, however, adversely affect competition by promoting increased concentration of the market for subadvisory services. Proposed rule 17a–10 may reduce or eliminate any incentive to select subadvisers specifically because they are not affiliated with a large number of funds, which may encourage funds to shift subadvisory business toward certain particularly successful subadvisers. The proposed amendments to rule 10f–3 may remove an incentive to select subadvisers that are not either major participants or affiliated with major participants in the underwriting business. By removing disincentives against market concentration, these proposed rules may have the effect of encouraging the market for subadvisory services to concentrate in a smaller set of subadvisers.

The Commission requests comments on whether the proposed rule amendments, if adopted, would promote efficiency, competition, and capital formation. Will the proposed amendments materially affect the number of transactions involving funds, their controlled companies, and affiliated persons of funds? Will any costs that result from the proposed amendments affect efficiency, competition, or capital formation? We will consider any comments in satisfying our responsibilities under section 2(c) of the Investment Company Act. We request commenters to provide empirical data and other factual support for their views to the extent possible.

V. Paperwork Reduction Act

Certain provisions of proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, 17a–6, 17d–1, and 17e–1 contain "collection of information" requirements within the meaning of the Paperwork Reduction Act of 1995 [44 U.S.C. 3501–3520] ("PRA"). The Commission is submitting the proposed collections of information to the Office of Management and Budget ("OMB") for review in accordance with 44 U.S.C. 3507(d) and 5 CFR 1320.11. The titles for the collections of information are: (i) "Rule 10f–3 under the Investment Company Act of 1940, Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate'; (ii) "Rule 12d3–1 under the Investment Company Act of 1940, Exemption of acquisitions of securities issued by persons engaged in securities related businesses'; (iii) "Rule 17a–6 under the Investment Company Act of 1940, Exemption for transactions with portfolio affiliates'; (iv) "Rule 17a–10 under the Investment Company Act of 1940, Exemption for transactions with certain subadvisory affiliates'; (v) "Rule 17d–1 under the Investment Company Act of 1940, Applications regarding joint enterprises or arrangements and certain profit-sharing plans'; and (vi) "Rule 17e–1 under the Investment Company Act of 1940, Brokerage transactions on a securities exchange". An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid control number.[87]

A. Portfolio Affiliates

Rules 17a–6 and 17d–1

Under rules 17a–6 and 17d–1, a fund or company controlled by a fund may enter into principal and joint transactions with a portfolio affiliate, or an affiliated person of a portfolio affiliate, as long as certain other Prohibited Participants are not parties to the transaction and do not have a financial interest in a party to the transaction. Rules 17a–6 and 17d–1 include a list of interests that are not "financial interests" for purposes of the rule.[88] We are proposing to amend that list to provide that "financial interest" does not include an interest that the fund's board of directors finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.[89] This aspect of the proposed amendments would create a paperwork burden.

Based on public filings with the Commission, the Commission's staff estimates that 200 registered investment companies are affiliated persons of 900 issuers as a result of the investment company's ownership or control of the issuer's voting securities, and that there are approximately 1,400 such affiliate relationships.[90] The staff estimates that annually there will be a total of 1,400 principal transactions under rule 17a–6 [91] and 1,400 joint arrangements under rule 17d–1(d)(5),[92] and that for each rule approximately 420 transactions or arrangements will result in a paperwork burden.[93]

The Commission staff estimates that compliance with the proposed amendments would impose a burden of .2 hours for each transaction for which there is a paperwork burden.[94] Therefore we estimate 84 burden hours to be associated with the proposed amendments to rule 17a–6 annually and 84 burden hours to be associated with the proposed amendments to rule 17d–1 annually.

B. Subadviser Affiliates

The Commission staff estimates that 1,900 portfolios of approximately 800 investment companies use the services of one or more subadvisers.[95] Based on discussions with industry representatives, the Commission staff estimates that it will require approximately 6 hours to draft and execute revised subadvisory contracts (5 staff attorney hours, 1 supervisory attorney), in order for funds and subadvisers to be able to rely on the exemptions in proposed rule 17a–10 and the proposed amendments to rule 10f–3, 17e–1, and 12d3–1.[96] Assuming that all funds that are advised by subadvisers modify their advisory contracts in order that they and their affiliated funds may rely on the proposed exemptions, the proposed rule and rule amendments would create an estimated initial one-time burden of approximately 11,400 burden hours.

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[84] Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

[85] 15 U.S.C. 80a–2(c).

[86] An additional proposed change to rule 17d–1(d)(5) would remove existing limitations regarding the percentage of a fund's assets that the fund could commit to a joint enterprise. If adopted, this amendment would bring rule 17d–1(d)(5) into line with rule 17a–6, which has no such limitations. Rule 17d–1(d)(5)(ii).

[87] Rule 10f–3 (OMB Control No. 3235–0226) was adopted pursuant to authority set forth in sections 10(f), 31(a), and 38(a) of the Investment Company Act [15 U.S.C. 80a–10(f), 80a–30(a), and 80a–37(a)]. Rule 12d3–1 was adopted pursuant to authority set forth in sections 6(c) and 38(a) of the Act. [15 U.S.C. 80a–6(c)]. Rule 17a–6 was adopted pursuant to authority set forth in sections 6(c), 17(b), 31(a), and 38(a) of the Act [15 U.S.C. 80a–17(b)]. Rule 17d–1 was adopted pursuant to authority set forth in sections 6(c), 17(d), and 38(a). Rule 17e–1 (OMB Control No. 3235–0217) was adopted pursuant to authority set forth in sections 6(c), 31(a), and 38(a) of the Act.

[88] *See supra* note 26.

[89] Proposed rules 17a–6(b)(1)(H) and 17d–1(d)(6). Collection of this information is necessary to obtain the benefit of the exemption in the proposed rule amendments.

[90] *See supra* note 12. For purposes of this analysis, the staff estimates that investment companies will enter into one principal transaction and one joint arrangement each year with each of their portfolio affiliates, and that in thirty percent of those transactions and arrangements a Prohibited Participant will have a financial interest in a party to the transaction that the board of directors of the affected investment company will consider for purposes of determining whether that financial interest is material.

[91] 1,400 affiliate relationships × 1 principal transaction per year = 1,400 transactions under rule 17a–6.

[92] 1,400 affiliate relationships × 1 joint arrangement per year = 1,400 joint arrangements under rule 17d–1(d)(5). In addition to expanding fund business opportunities by allowing funds to transact with a wider range of portfolio affiliates, we are also proposing to eliminate the limit imposed by rule 17d–1(d)(5) on the percentage of assets a fund can commit to any given joint enterprise. Rule 17d–1(d)(5)(ii). The staff does not anticipate that allowing funds to increase the size of their commitment to a joint transaction will result in an increase in the expected number of such transactions.

[93] 1,400 transactions or arrangements × .30 (percentage of transactions or arrangements in which a Prohibited Participant is assumed to have a financial interest) = 420.

[94] The staff estimates the hourly burden to comply with the board of director's obligation to make a finding as to the materiality of a prohibited person's financial interest in a transaction to be 11 hours. The staff estimates that funds will spend .2 hours complying with the requirement that the basis for the board's findings be recorded in the minutes of its meeting.

[95] *See supra* note 13.

[96] The fund's advisory contracts must include these conditions in order for the fund to obtain the benefit of the exemptions in the proposed rule and rule amendments.

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The total estimated first year cost of these burden hours is $836,000.[97]

ESTIMATED ONE TIME BURDEN HOURS AND COST OF SUBADVISORY RULE AND AMENDMENTS

Number of funds modifying contracts	Staff attorney hours	Supervisory attorney hours	Total burden hours	Cost per staff attorney hour	Cost per supervisory attorney hour	Total cost of burden hours
1,900	5	1	11,400	$62	$130	$836,000

Proposed rule 17a–10 and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1 would require virtually identical modifications to fund advisory contracts. The Commission staff assumes that funds will rely equally on the exemptions in all of these rules, and therefore the burden hours associated with the required contract modifications should be apportioned equally among the four rules. Therefore the estimated one-time burden hours associated with rules 17a–10, 10f–3, 12d3–1, and 17e–1 are 2,850 hours for each rule (11,400 total burden hours for all of the rules/four rules), and the estimated one-time cost of these burden hours is $209,000 for each rule ($836,000/four rules).[98]

The staff estimates that a total of 60 funds will enter into subadvisory agreements each year after the first year in which the proposed rule and rule amendments are adopted.[99] Assuming that each of these funds enters into a contract that permits it and its affiliated funds to rely on the exemptions in proposed rule 17a–10, and the proposed amendments to rules 10f–3, 12d3–1, and 17e–1, an estimated 360 burden hours (90 hours per rule) will be associated with these rules annually, with an associated cost of $26,400 ($6,600 per rule).[100]

Rule 17e–1

Based on an analysis of investment company filings, the staff estimates that approximately 293 investment companies use at least one affiliated broker and that each of these investment companies spends an estimated 12.5 hours per year (at a cost of $775 per year) complying with rule 17e–1's requirements that (i) the fund retain records of transactions entered into pursuant to the rule ("recordkeeping requirement"), and (ii) the fund's directors review those transactions quarterly ("review requirement").[101] Based on conversations with representatives of investment companies, the staff estimates that the proposed amendments to rule 17e–1 would exempt approximately 40 percent of transactions that occur under rule 17e–1 from the rule's recordkeeping and review requirements. The Commission staff estimates, therefore, that the proposed amendments to rule 17e–1 would, in this respect, *decrease* the rule's information collection burden to 2,200 hours [102] and $136,422 per year.[103]

ESTIMATED REDUCTION IN BURDEN HOURS AND COST OF RULE 17E–1 (EFFECT OF EXEMPTION FROM REVIEW AND RECORDKEEPING REQUIREMENTS)

	Number of funds relying on rule 17e–1	Number of funds subject to record-keeping and review requirements	Burden hours of record-keeping and review requirements	Total burden hours of recordkeeping and review requirements	Cost per hour of record-keeping and review requirements	Total cost of burden hours
Current Rule	293	293	12.5	3,663	$62	$227,106
As proposed to be amended	293	176	12.5	2,200	62	136,422

This reduction will be offset to some extent by the increase in estimated burden hours described above with respect to the required modifications of the funds' investment advisory contract. Therefore rule 17e–1, as proposed to be amended, would impose an estimated burden of 5,050 hours ($345,400) in the first year after the amendments are adopted, and an estimated burden of 2,290 hours ($143,000) in subsequent years.

C. Request for Comments

We request comments on the accuracy of our estimates. Pursuant to 44 U.S.C. 3506(c)(2)(B), the Commission solicits comments to: (i) Evaluate whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (ii) evaluate the accuracy of the Commission's estimate of the burden of the proposed collections of information; (iii) determine whether there are ways to enhance the quality, utility, and clarity of the information to be collected; and (iv) evaluate whether there are ways to minimize the burden of the collections of information on those who are to respond, including through the use of automated collection techniques or other forms of information technology.

Persons wishing to submit comments on the collection of information requirements of the proposed rules and rule amendments should direct them to the Office of Management and Budget, Attention Desk Officer of the Securities and Exchange Commission, Office of Information and Regulatory Affairs, Room 10202, New Executive Office Building, Washington, DC 20503, and should send a copy to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609, with reference to File No. S7–13–02. OMB is required to make a decision concerning the collections of information between 30 and 60 days after publication of this Release; therefore a comment to OMB is best assured of having its full effect if OMB receives it within 30 days after publication of this Release. Requests for materials submitted to OMB by the Commission with regard to these collections of information should be in writing, refer to File No. S7–13–02, and be submitted to the Securities and Exchange Commission, Records Management, Office of Filings and Information Services, 450 Fifth Street, NW., Washington, DC 20549.

VI. Summary of Initial Regulatory Flexibility Analysis

We have prepared an Initial Regulatory Flexibility Analysis ("IRFA") in accordance with 5 U.S.C. 603 regarding the proposed rule 17a-10 and the proposed amendments to rules 10f-3, 12d3–1, 17a-6, 17d-1, and 17e-1 under the Investment Company Act. The following summarizes the IRFA.

The IRFA summarizes the background of the proposed amendments. The IRFA also discusses the reasons for the proposed amendments and the objectives of, and legal basis for, the amendments. Those items are discussed above in the Release.

The IRFA discusses the effect of the proposed amendments on small entities. For purposes of the Regulatory Flexibility Act, a fund is a small entity if the fund, together with other funds in the same group of related funds, has net assets of $50 million or less as of the end of its most recent fiscal year.[104] An investment adviser is a small entity if it (i) manages less than $25 million in assets, (ii) has total assets of less than $5 million on the last day of its most recent fiscal year, and (iii) does not control, is not controlled by, and is not under common control with another investment adviser that manages $25 million or more in assets, or any person (other than a natural person) that had total assets of $5 million or more on the last day of the most recent fiscal year.[105] A portfolio company (i.e., a company in which a fund invests) is a small entity if its total assets on the last day of its most recent fiscal year were $5 million or less.[106] The staff estimates, based upon Commission filings, that there are approximately 3,650 active registered management investment companies, of which approximately 200 are small entities, and may rely on the rule if they satisfy its conditions. The staff further estimates that there are approximately 7,560 registered investment advisers, of which approximately 430 are small entities.[107]

The IRFA states that proposed amendments to rules 17a–6 and 17d–1 would impose recordkeeping requirements on funds that engage in principal transactions or joint arrangements in reliance on the rule, when a Prohibited Participant has an interest in a party to the transaction or arrangement that is not material, in that the board of directors of the fund would be required to record in the minutes of its meetings the basis for the board's finding that the Prohibited Participant's interest is not material. The IRFA further explains that the exemptions in proposed rule 17a-10 and the proposed amendments to rules 10f-3, 12d3–1, and 17e–1 would be conditioned on the funds' advisory contracts including certain provisions.

The IRFA explains that we have not identified any federal rules that duplicate or conflict with the proposed rule and rule amendments. The IRFA states that the Regulatory Flexibility Act directs the Commission to consider significant alternatives that would accomplish the stated objectives, while minimizing any significant economic impact on small entities. The overall impact of the amendments would be to decrease the burdens on all entities, including small entities, because the burdens under the proposed amendments should be more than offset by the elimination of existing requirements. Therefore, the potential impact of the amendments on small entities should not be significant. For these reasons, alternatives to the proposed amendments and proposed new rule are unlikely to minimize any impact that the proposed amendments may have on small entities.[108]

We encourage comment with respect to any aspect of the IRFA. We specifically request comment on the number of small entities that would be affected by the proposed rule amendments, and the likely impact of the proposal on small entities. Commenters are asked to describe the nature of any impact and provide empirical data supporting the extent of the impact. These comments will be considered in connection with the adoption of the rule amendments, and will be placed in the same public file as comments on the proposed amendments themselves. A copy of the IRFA may be obtained by contacting William C. Middlebrooks, Jr., Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0506.

VII. Statutory Authority

The Commission is proposing amendments to rules 10f-3, 12d3–1, 17a-6, 17d-1, and 17e-1 and new rule 17a-10 under the Investment Company Act pursuant to authority set forth in sections 6(c), 10(f), 17(b), 17(d), 31(a), and 38(a) of the Investment Company Act.

List of Subjects

17 CFR Part 270

Investment companies; reporting and recordkeeping requirements; securities.

Text of Proposed Rules

For reasons set forth in the preamble, Title 17, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 270—RULES AND REGULATIONS, INVESTMENT COMPANY ACT OF 1940

1. The authority citation for part 270 continues to read in part as follows:

Authority: 15 U.S.C. 80a–1 *et seq.*, 80a–34(d), 80a–37, 80a–39, unless otherwise noted;

* * * * *

2. Section 270.10f–3 is amended by:

a. Redesignating paragraph (b) as paragraph (c);

b. Adding paragraphs (a)(6), (a)(7), (a)(8), and new paragraph (b);

c. Revising the paragraph heading in newly redesignated paragraph (c); and

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[97] (5 hours ×$62 = $310) + (1 hour ×$130 = $130) = $440. (5 attorney hours, 1 deputy general counsel hour). $440 ×1,900 funds=$ 836,000.

[98] The proposed amendments to rule 17e–1 will also, as discussed below, decrease the burden hours associated with that rule.

[99] Based on an analysis of investment company filings, the staff estimates that approximately 250 funds are created annually. Assuming that the number of these funds that will use the services of subadvisers is proportionate to the number of funds that currently use the services of subadvisers, then approximately 50 new funds will enter into subadvisory agreements each year. The Commission staff estimates, based on an analysis of investment company filings, that an additional 10 funds, currently in existence, will employ the services of subadvisers for the first time each year.

[100] 6 hours × 60 funds=360 total hours. $440 × 60 funds= $26,400.

[101] In calculating the total annual cost of complying with amended rule 17e–1, the Commission staff assumes that the entire burden would be attributable to professionals with an average hourly wage rate of $62 per hour.

[102] 293 transactions × 12.5 hours = 3,663 hours if adopted; 60% of the 293 transactions (or 176 transactions) would proceed under rule 17e–1. 176 transactions (60% of the 293 transactions anticipated to be impected by rule) × 12.5 hours = 2,200 hours.

[103] 3,663 hours × $62 = $227,106; 2,200 hours × $62 = $136,422.

[104] 17 CFR 270.0–10.

[105] 17 CFR 275.0–7.

[106] 17 CFR 240.0–10.

[107] We estimate that 875 issuers are portfolio affiliates of funds. *See supra* note 12. We are unable to estimate the number of these issuers that are small entities.

[108] Alternatives in this category would include: (i) Establishing different compliance or reporting standards that take into account the resources available to small entities; (ii) clarifying, consolidating or simplifying the compliance requirements for small entities; (iii) using performance rather than design standards; and (iv) exempting small entities from coverage of all or part of the rule.

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d. Revising newly redesignated paragraph (c)(7) to read as follows:

§ 270.10f–3 Exemption for the acquisition of securities during the existence of an underwriting or selling syndicate.

(a) * * *

(6) *Managed Portion* of a portfolio of a registered investment company means a discrete portion of a portfolio of a registered investment company for which a Subadviser is responsible for providing investment advice, provided that:

(i) The Subadviser is not an affiliated person of any investment adviser, promoter, underwriter, officer, director, member of an advisory board, or employee of the registered investment company; and

(ii) The Subadviser's advisory contract:

(A) Prohibits it from consulting with any subadviser of the investment company that is a principal underwriter or an affiliated person of a principal underwriter concerning securities transactions of the investment company; and

(B) Limits its responsibility in providing advice to providing advice with respect to such portion.

(7) *Series of a Series Company* means any class or series of a registered investment company that issues two or more classes or series of preferred or special stock, each of which is preferred over all other classes or series with respect to assets specifically allocated to that class or series.

(8) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

(b) *Exemption for purchases by Series Companies and Investment Companies with Managed Portions.* For purposes of this section and section 10(f) of the Act (15 U.S.C. 80a–10(f)), each Series of a Series Company, and each Managed Portion of a portfolio of a registered investment company, is deemed to be a separate investment company. Therefore, a purchase or acquisition of a security by a registered investment company is exempt from the prohibitions of section 10(f) of the Act if section 10(f) of the Act would not prohibit such purchase if each Series and each Managed Portion of the company were a separately registered investment company.

(c) *Exemption for other purchases.*

* * *

(7) *Percentage limit.* (i) *Generally.* The amount of securities of any class of such issue to be purchased by the investment company, aggregated with purchases by any other investment company advised by the investment company's investment adviser, and purchases by any other account over which such adviser has discretionary authority or otherwise exercises control, does not exceed the following limits:

(A) If purchased in an offering other than an Eligible Rule 144A Offering, 25 percent of the principal amount of the offering of such class; or

(B) If purchased in an Eligible Rule 144A Offering, 25 percent of the total of:

(*1*) The principal amount of the offering of such class sold by underwriters or members of the selling syndicate to qualified institutional buyers, as defined in § 230.144A(a)(1) of this chapter; plus

(*2*) The principal amount of the offering of such class in any concurrent public offering.

(ii) *Exemption from percentage limit.* The requirement in paragraph (c)(7)(i) of this section applies only if the investment adviser of the investment company is, or is an affiliated person of, a principal underwriter of the security; and

(iii) *Separate aggregation.* The requirement in paragraph (c)(7)(i) of this section applies independently with respect to each investment adviser of the investment company that is, or is an affiliated person of, a principal underwriter of the security.

* * * * *

3. Section 270.12d3–1 is amended by revising paragraph (c) and adding paragraph (d)(9) before the Note:

§ 270.12d3–1 Exemption of acquisitions of securities issued by persons engaged in securities related businesses.

* * * * *

(c) Notwithstanding paragraphs (a) and (b) of this section, this section does not exempt the acquisition of:

(1) A general partnership interest; or

(2) A security issued by the acquiring company's promoter, principal underwriter, or any affiliated person of such promoter, or principal underwriter; or

(3) A security issued by the acquiring company's investment adviser, or an affiliated person of the acquiring company's investment adviser, other than a security issued by a Subadviser or an affiliated person of a Subadviser of the acquiring company provided that:

(i) *Prohibited relationships.* The Subadviser that is (or whose affiliated person is) the issuer is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the acquiring company that is acquiring the securities, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the acquiring company;

(ii) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) the issuer, and any Subadviser that is advising the portion of the acquiring company that is purchasing the securities:

(A) Prohibit them from consulting with each other concerning securities transactions for the acquiring company, other than for purposes of complying with the conditions of paragraphs (a) and (b) of this section; and

(B) Limit their responsibility in providing advice with respect to a discrete portion of the acquiring company's portfolio.

(d) * * *

(9) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

* * * * *

4. Section 270.17a–6 is revised to read as follows:

§ 270.17a–6 Exemption for transactions with portfolio affiliates.

(a) *Exemption for transactions with portfolio affiliates.* A transaction to which a Fund, or a company controlled by a Fund, and a Portfolio Affiliate of the Fund are parties is exempt from the provisions of section 17(a) of the Act (15 U.S.C. 80a–17(a)), provided that none of the following persons is a party to the transaction, or has a direct or indirect Financial Interest in a party to the transaction other than the Fund:

(1) An officer, director, employee, investment adviser, member of an advisory board, depositor, promoter of or principal underwriter for the Fund;

(2) A person directly or indirectly controlling the Fund;

(3) A person directly or indirectly owning, controlling or holding with power to vote five percent or more of the outstanding voting securities of the Fund;

(4) A person directly or indirectly under common control with the Fund, other than:

(i) A Portfolio Affiliate of the Fund; or

(ii) A Fund whose sole interest in the transaction is an interest in a Portfolio Affiliate of the Fund; or

(5) An affiliated person of any of the persons mentioned in paragraphs (a)(1)–(4) of this section, other than the Fund or a Portfolio Affiliate of the Fund.

(b) *Definitions.*

(1) *Financial Interest.*

(i) The term *Financial Interest* as used in this section does not include:

(A) Any interest through ownership of securities issued by the Fund;

(B) Any interest of a wholly-owned subsidiary of a Fund;

(C) Usual and ordinary fees for services as a director;

(D) An interest of a non-executive employee;

(E) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(F) An interest of a bank arising from a loan or account made or maintained by it in the ordinary course of business to or with a natural person, unless it arises from a loan to a person who is an officer, director or executive of a company which is a party to the transaction, or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a party to the transaction;

(G) An interest acquired in a transaction described in paragraph (d)(3) of § 270.17d–1; or

(H) Any other interest that the board of directors of the Fund, including a majority of the directors who are not interested persons of the Fund, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(ii) A person has a Financial Interest in any party in which it has a Financial Interest, in which it had a Financial Interest within six months prior to the transaction, or in which it will acquire a Financial Interest pursuant to an arrangement in existence at the time of the transaction.

(2) *Fund* means a registered investment company or separate series of a registered investment company.

(3) *Portfolio Affiliate of a Fund* means a person that is an affiliated person (or an affiliated person of an affiliated person) of a Fund solely because the Fund, a Fund under common control with the Fund, or both:

(i) Controls such person (or an affiliated person of such person); or

(ii) Owns, controls, or holds with power to vote five percent or more of the outstanding voting securities of such person (or an affiliated person of such person).

5. Section 270.17a–10 is added to read as follows:

§ 270.17a–10 Exemption for transactions with certain subadvisory affiliates.

(a) *Generally.* A person that is prohibited by section 17(a) of the Act (15 U.S.C. 80a–17(a)) from entering into a transaction with a Fund solely because such person is, or is an affiliated person of, a Subadviser of the Fund, or a Subadviser of a Fund that is under common control with the Fund, may nonetheless enter into such transaction, if:

(1) *Prohibited relationship.* The person is not, and is not an affiliated person of, an investment adviser responsible for providing advice with respect to the portion of the Fund for which the transaction is entered into, or of any promoter, underwriter, officer, director, member of an advisory board, or employee of the Fund.

(2) *Advisory contract.* The advisory contracts of the Subadviser that is (or whose affiliated person is) entering into the transaction, and any Subadviser that is advising the fund (or portion of the fund) entering into the transaction:

(i) Prohibit them from consulting with each other concerning securities transactions for the Fund; and

(ii) If both such Subadvisers are responsible for providing investment advice to the Fund, limit their responsibility in providing advice with respect to a discrete portion of the Fund's portfolio.

(b) *Definitions.*

(1) *Fund* means a registered investment company and includes a separate series of a registered investment company.

(2) *Subadviser* means an investment adviser as defined in section 2(a)(20)(B) of the Act (15 U.S.C. 80a–2(a)(20)(B)).

6. Section 270.17d–1 is amended by revising paragraphs (d)(5) and (d)(6) to read as follows:

§ 270.17d–1 Applications regarding joint enterprises or arrangements and certain profit-sharing plans.

* * * * *

(d) * * *

(5) Any joint enterprise or other joint arrangement or profit-sharing plan ("joint enterprise") in which a registered investment company or a company controlled by such a company, is a participant, and in which a Portfolio Affiliate (as defined in § 270.17a–6(b)(3)) of such registered investment company is also a participant, provided that:

(i) None of the persons identified in § 270.17a–6(a) is a participant in the joint enterprise, or has a direct or indirect Financial Interest in a participant in the joint enterprise (other than the registered investment company);

(ii) *Financial Interest.*

(A) The term *Financial Interest* as used in this section does not include:

(*1*) Any interest through ownership of securities issued by the registered investment company;

(*2*) Any interest of a wholly-owned subsidiary of the registered investment company;

(*3*) Usual and ordinary fees for services as a director;

(*4*) An interest of a non-executive employee;

(*5*) An interest of an insurance company arising from a loan or policy made or issued by it in the ordinary course of business to a natural person;

(*6*) An interest of a bank arising from a loan to a person who is an officer, director, or executive of a company which is a participant in the joint transaction or from a loan to a person who directly or indirectly owns, controls, or holds with power to vote, five percent or more of the outstanding voting securities of a company which is a participant in the joint transaction;

(*7*) An interest acquired in a transaction described in paragraph (d)(3) of this section; or

(*8*) Any other interest that the board of directors of the investment company, including a majority of the directors who are not interested persons of the investment company, finds to be not material, provided that the directors record the basis for that finding in the minutes of their meeting.

(B) A person has a Financial Interest in any party in which it has a Financial Interest, in which it had a Financial Interest within six months prior to the investment company's participation in the enterprise, or in which it will acquire a Financial Interest pursuant to an arrangement in existence at the time of the investment company's participation in the enterprise.

(6) The receipt of securities and/or cash by an investment company or a controlled company thereof and an affiliated person of such investment company or an affiliated person of such person pursuant to a plan of reorganization: *Provided*, That no person identified in § 270.17a–6(a)(1) or any company in which such a person has a direct or indirect Financial Interest (as defined in paragraph (d)(5)(iii) of this section):

* * * * * *

7. Section 270.17e–1 is amended by revising paragraphs (b)(3) and (d) to read as follows:

§ 270.17e–1 Brokerage transactions on a securities exchange.

* * * * * *

(b) * * *

(3) Determines no less frequently than quarterly that all transactions effected pursuant to this section during the preceding quarter (other than transactions in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) were effected in compliance with such procedures;

* * * * * *

(d) The investment company:

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(1) Shall maintain and preserve permanently in an easily accessible place a copy of the procedures (and any modification thereto) described in paragraph (b)(1) of this section; and

(2) Shall maintain and preserve for a period not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a record of each such transaction (other than any transaction in which the person acting as broker is a person permitted to enter into a transaction with the investment company by § 270.17a–10) setting forth the amount and source of the commission, fee or other remuneration received or to be received, the identity of the person acting as broker, the terms of the transaction, and the information or materials upon which the findings described in paragraph (b)(3) of this section were made.

Dated: April 30, 2002.

By the Commission.

Jill M. Peterson,

Assistant Secretary.

[FR Doc. 02–11228 Filed 5–7–02; 8:45 am]

BILLING CODE 8010–01–P



Federal Register

Wednesday,
May 8, 2002

Part V

Department of Education

34 CFR Part 106

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance; Proposed Rule

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DEPARTMENT OF EDUCATION

34 CFR Part 106

RIN 1870–AA11

Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance

AGENCY: Office for Civil Rights, Department of Education.

ACTION: Notice of intent to regulate.

SUMMARY: The Secretary provides notice that the Secretary intends to propose amendments to the regulations implementing Title IX of the Education Amendments of 1972 to provide more flexibility for educators to establish single-sex classes and schools at the elementary and secondary levels. The purpose of the amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. We want to permit appropriate latitude for innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the purposes of the Title IX statute and the Constitution. We are issuing a notice of intent to regulate (NOIR) to ensure adequate public input regarding these important and sensitive issues.

DATES: We must receive your comments on or before July 8, 2002.

ADDRESSES: Address all comments about our intent to regulate to Gerald A. Reynolds, Assistant Secretary for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5000, Mary E. Switzer Building, Washington, DC 20202–1100. For all comments submitted by letter, you should include the term "Single-sex Notice of Intent Comments."

If you prefer to send your comments through the Internet, use the following address: ocr@ed.gov.

You should include the term "Single-sex Notice of Intent Comments" in the subject line of your electronic message.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036, Mary E. Switzer Building, Washington, DC 20202–1100. Telephone: (202) 205–8635 or 1–800–421–3481.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172. For additional copies of this document, you may call OCR's Customer Service Team at (202) 205–5413 or 1–800–421–3481. The notice of intent will also be available at OCR's site on the Internet at: *www.ed.gov/ocr.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION:

Background

Title IX of the Education Amendments of 1972 (Title IX) prohibits discrimination on the basis of sex in education programs and activities that receive Federal financial assistance. 20 U.S.C. 1681(a). Title IX is implemented through regulations by agencies providing Federal assistance to education programs and activities. 20 U.S.C. 1682. Our current Title IX regulations were issued by our predecessor agency, the Department of Health, Education, and Welfare (HEW), and became effective July 21, 1975.[1] The statute and implementing regulations contain specific provisions regarding single-sex classes, programs, and activities (classes) and single-sex schools. These existing requirements are discussed in detail in a separate document published elsewhere in this issue of the **Federal Register**, entitled "Guidelines on current title IX requirements related to single-sex classes and schools." The No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Education Act of 1965, requires the Secretary to issue these guidelines not less than 120 days from the date of enactment.

The legal and educational issues surrounding single-sex classes and schools are complex and sensitive and require consultations with other Federal agencies, including the Department of Justice, as well as input from parents, community leaders, school districts, and interested individuals and organizations. This NOIR is intended to begin the process of public input on these important issues.

The use of single-sex classes and schools can reflect important and legitimate efforts to improve educational outcomes for all students. Rather than being motivated by outdated notions regarding the limitations or limited goals of members of one sex, some of these efforts aim to provide new and better ways to help all students learn and meet high standards. We expect that any proposal to amend or clarify the Title IX regulations would apply only to nonvocational elementary and secondary schools and classes. This is where the need for flexibility to respond to students' diverse educational needs is most prevalent.

Invitation To Comment

Single-sex classes: We want to permit appropriate latitude for schools to implement innovative efforts to help children learn and to expand the choices parents have for their children's education consistent with the Title IX statute and the Constitution.[2] We recognize that to promote excellence and innovation, consistent with the purposes of the No Child Left Behind Act of 2001, it is important that parents have an opportunity to choose an educational program that best fits the needs of their children and that educators have an array of educational options to meet the diverse needs of this nation's students. We are also mindful of congressional concerns—at the time of Title IX's enactment—that some coeducational institutions used sex-based policies and practices that reflected outdated and stereotyped notions of the differences between the sexes and of the limited abilities of girls and women. *See e.g.*, 118 Cong. Rec. 5804–08. In developing a regulatory proposal, we will ensure that educational opportunities are not limited to students based on sex and that single-sex classes are not based on sex-role stereotypes.

We invite comments on whether, and under what circumstances, schools should be permitted to offer single-sex classes under the Title IX regulations. The Secretary specifically invites advice and recommendations from States and local administrators, parents, teachers, community leaders, paraprofessionals, members of local boards of education, charter school operators and public chartering agencies, civil rights groups, and education organizations. We are particularly interested in comments on the criteria that should be used by schools and the Department in determining the sufficiency of educational justifications for single-sex classes and in examples of educational justifications that would meet the proposed criteria. The following are some questions intended to guide your comments:

(1) Should a school district have to explain the benefits of single-sex classes for its students? If so, what kinds of explanations would be adequate? To what extent should these explanations be supported by scientifically based research, assessments of the needs of local students, or other reliable evidence?

(2) Assuming that a school district provides a single-sex class to students of one sex, would it be possible for a coeducational class to provide equal opportunity for students of the other sex? If so, under what circumstances?

(3) If it is not possible for a coeducational class to provide equal opportunity for students of the other sex, and a single sex class would be required, what happens if there is little interest in a single-sex class among students of one sex?

(4) Must student assignments to single-sex classes always be voluntary? If not, when are mandatory assignments permissible?

(5) Are there any classes that should not be permitted to be single-sex? For example, at the time that Title IX was enacted, Congress was particularly concerned about discrimination in single-sex vocational education classes and sex-segregated physical education classes (although students could be separated by sex in physical education classes involving contact sports.)

Single-sex schools: Because of the statutory exemption for single-sex admissions policies of single-sex elementary and secondary schools, which is reflected in the Title IX regulations, a school district does not need to provide the Department with a justification for offering a single-sex school. There is already flexibility in the regulations for allowing school districts to offer single-sex nonvocational schools as long as certain conditions are met. (See the "Guidelines on current title IX requirements related to single-sex classes and schools" for a more complete discussion regarding the need for certain regulations in this area.) However, we are interested in receiving comments on the following issues:

(1) If a school district provides a single-sex school to students of one sex, would it be possible for a coeducational school to provide equal opportunity for students of the other sex? If so, under what circumstances?

(2) Are there special considerations with regard to single-sex charter schools or magnet schools? Should a school district, State, or chartering agency be required to offer a school for students of the other sex? If so, under what circumstances?

(3) Given the Supreme Court's decision in *United States* v. *Virginia*, 518 U.S. 515 (1996), should a school district that establishes single-sex schools or classes for one sex be required to establish schools or classes for the other sex that are "comparable" or that meet some other standard?

(Note: With this question, we seek input regarding classes as well as schools.)

During and after the comment period, you may inspect all public comments received in response to this notice in room 5036, Mary E. Switzer Building, 330 C Street, SW., Washington, DC, between the hours of 9:30 a.m. and 5 p.m., Eastern time, Monday through Friday of each week except Federal holidays.

Assistance to Individuals With Disabilities in Reviewing the Rulemaking Record

On request, we will supply an appropriate aid, such as a reader or print magnifier, to an individual with a disability who needs assistance to review the comments or other documents in the public rulemaking record for this NOIR. If you want to schedule an appointment for this type of aid, please contact the person listed under **FOR FURTHER INFORMATION CONTACT.**

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Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: www.access.gpo.gov/nara/index.html.

After we review comments on this notice, we will publish a proposed amendment to the Title IX regulations for public comment.

Authority: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–11476 Filed 5–7–02; 8:45 am]

BILLING CODE 4000–01–P

[1] The HEW regulations were the result of an extensive public comment process and congressional review. HEW received and considered more than 9700 comments before issuing the final regulations. After the final regulations were issued, but before they became effective, Congress held 6 days of hearings to examine whether the regulations were consistent with the statute. *See* Sex Discrimination Regulations: Hearings before the Subcomm. on Postsecondary Education of the House Comm. on Education and Labor, 94th Cong., 1st Sess. (1975) ("Regulations Review Hearings").

[2] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. *United States* v. *Virginia*, 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); *Mississippi University for Women* v. *Hogan*, 458 U.S. 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

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Federal Register

Wednesday,
May 8, 2002

Part VI

Department of Education

Office for Civil Rights; Single-Sex Classes and Schools: Guidelines on Title IX Requirements; Notice

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DEPARTMENT OF EDUCATION

Office for Civil Rights; Single-Sex Classes and Schools: Guidelines on Title IX Requirements

AGENCY: Department of Education.

ACTION: Guidelines on current title IX requirements related to single-sex classes and schools.

SUMMARY: On January 8, 2002, the President signed into law the No Child Left Behind Act of 2001, which reauthorized the Elementary and Secondary Act of 1965. Section 5131(a)(23) of the Elementary and Secondary Education Act allows local educational agencies (LEAs) to use Innovative Programs funds to support same-gender schools and classrooms consistent with applicable law. It also requires the Department, within 120 days of enactment, to issue guidelines for LEAs regarding the applicable law on single-sex classes and schools. This notice fully implements Congress's mandate by describing and explaining the current statutory and regulatory requirements relating to single-sex classes and schools.

FOR FURTHER INFORMATION CONTACT: Jeanette J. Lim, Office for Civil Rights, U.S. Department of Education, 400 Maryland Avenue, SW., room 5036, Mary E. Switzer Building, Washington, DC 20202–2899. Telephone: (202) 205–8635 or 1–800–421–3481.

If you use a telecommunications device for the deaf (TDD), you may call 1–877–521–2172. For additional copies of this document, you may call OCR's Customer Service Team at (202) 205–5413 or 1–800–421–3481. These Guidelines will also be available at OCR's site on the Internet at: *www.ed.gov/ocr.*

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: This notice implements Congress's mandate in the No Child Left Behind Act of 2001 (NCLB Act) to provide guidelines to LEAs regarding the applicable law on single-sex classes and schools. *See* Pub. L. 107–110, Sec. 5131(a)(23), 5131(c).

Elsewhere in this issue of the **Federal Register** is a notice of intent to regulate (NOIR), which invites comment on our intention to amend the current regulations implementing Title IX of the Education Amendments of 1972 (Title IX) related to elementary and secondary single-sex classes and schools to provide more flexibility to educators. The purpose of these amendments would be to support efforts of school districts to improve educational outcomes for children and to provide public school parents with a diverse array of educational options that respond to the educational needs of their children, while at the same time ensuring appropriate safeguards against discrimination. The NOIR is intended to begin this process and ensure adequate public input on these important and sensitive issues.

Guidelines on Current Title IX Requirements

Single-sex classes: The Title IX statute generally prohibits sex-based discrimination in education programs or activities receiving Federal financial assistance. Specifically, it states that no person in the United States, on the basis of sex, can be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. 20 U.S.C. 1681.

Section 1681(a) of Title IX contains two limited exceptions relating to classes or activities within primary and secondary schools that otherwise are coeducational. Subsection 1681(a)(7)(B) of Title IX exempts any program or activity of any secondary school or educational institution specifically intended for the promotion of any Boys State conference, Boys Nation conference, Girls State conference, or Girls Nation conference or for the selection of students to attend such a conference. Subsection 1681(a)(8) of Title IX states that the law does not preclude father-son or mother-daughter activities at an educational institution. However, if those activities are provided for students of one sex, opportunities for reasonably comparable activities must be provided for students of the other sex. Accordingly, these activities are permitted on a single-sex basis if the requirements of the statute are met.[1]

Our current Title IX regulations generally prohibit single-sex classes or activities. The regulations in 34 CFR 106.34 state—

> A recipient shall not provide any course or otherwise carry out any of its education program or activity separately on the basis of sex, or require or refuse participation therein by any of its students on such basis, including health, physical education, industrial, business, vocational, technical, home economics, music, and adult education courses.

Our regulations contain two categorical exceptions for specific types of classes or portions of classes that may be segregated by sex. Those exceptions are: (1) Physical education classes during participation in sports "the purpose or major activity of which involves bodily contact" (34 CFR 106.34(c)); and (2) "[p]ortions of classes in elementary and secondary schools which deal exclusively with human sexuality." (34 CFR 106.34(e)). In addition separation of students by sex is permitted if it constitutes remedial or affirmative action. 34 CFR 106.3.[2]

Single-sex schools: The Title IX statute exempts from its coverage the admissions practices of non-vocational elementary and secondary schools.[3]

Accordingly, the regulations do not prohibit recipients from adopting single-sex admissions policies in non-vocational elementary and secondary schools. *See* 34 CFR 106.15(d). However, the regulations specifically provide that an LEA may "exclude any person from admission" to a non-vocational elementary or secondary school "on the basis of sex" only if "such recipient otherwise makes available to such person, pursuant to the same policies and criteria of admission, courses, services, and facilities comparable to each course, service, and facility offered in or through such schools." (34 CFR 106.35(b))[4] In other words, under the current regulations, an LEA cannot use a single-sex admissions policy—which is not itself subject to Title IX's prohibition—as the predicate for otherwise causing students, on the basis of sex, to be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance. For example, school districts may not establish a single-sex school for one sex that provides the district's only performing arts curriculum. Students of the other sex also must have access to a comparable school with that curriculum. It has been our longstanding interpretation, policy, and practice to require that the "comparable school" must also be single-sex.

An LEA may offer a single single-sex school if such an action constitutes remedial or affirmative action. (34 CFR 106.3) In addition, while the statutory exemption precludes the Department from examining an LEA's justification for a single-sex school, LEAs also should be aware of constitutional requirements in this area.[5] LEAs may be challenged in court litigation on constitutional grounds.

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Authority: 20 U.S.C. 1681, 1682.

Dated: May 3, 2002.

Rod Paige,

Secretary of Education.

[FR Doc. 02–11477 Filed 5–7–02; 8:45 am]

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[1] The statue also exempts activities of educational institutions controlled by religious organizations to the extent that the application of Title IX would be inconsistent with the religious tenets of the organizations 20 U.S.C. 1681(a)(3).

[2] The current regulations also permit recipients to group students in physical education classes and activities by ability as assessed by objective standards of individual performance developed and applied without regard to sex (34 CFR 106.34(b)) and to "make requirements based on vocal range or quality which may result in a chorus or choruses of one or predominantly one sex." (34 CFR 106.34(f)).

[3] Section 1681(a)(1) of Title IX states that in regard to admissions to educational institutions, the law applies only to institutions of vocational education, professional education, and graduate higher education, and to public institutions of undergraduate higher education. As such, non-vocational elementary and secondary schools are exempt.

[4] These provisions on single-sex schools do not apply to private elementary and secondary schools.

[5] The Supreme Court has decided two significant constitutional cases specifically regarding single-sex education. *United States* v. *Virginia*, 518 U.S. 515 (1996) (State-sponsored, male-only military college violated Equal Protection Clause); *Mississippi University for Women* v. *Hogan*, 458 US 718 (1982) (State-sponsored, female-only nursing school violated the Equal Protection Clause.)

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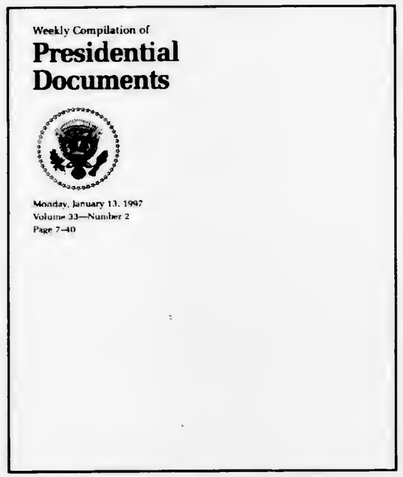
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Small Business Week, 2002

By the President of the United States of America

A Proclamation

The strength of our economy is built on the creativity and entrepreneurship of our people. Those who own and operate our Nation's 25 million small businesses make a vital contribution to our prosperity through their ongoing work to create new technologies, products, and services. These hardworking men and women and their employees define the American spirit through their innovation, dedication, and determination.

The tragedy of September 11, 2001, greatly affected our Nation and our economy; but our economy is recovering and remains fundamentally sound. In the aftermath of the terrorist attacks, the business community rose to this challenge by volunteering their time and services to help with the relief and rebuilding efforts in New York City and Washington, D.C. This compassionate spirit demonstrated America's true character.

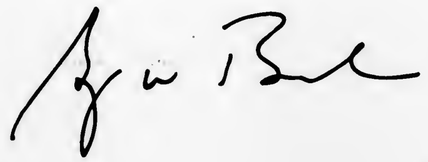
To help businesses recover from September 11, my Administration has made more than $520 million in disaster loans available to business owners nationwide. I also remain committed to a domestic policy that stimulates economic growth, boosts consumer purchasing power, and creates a level playing field. Our efforts to lower taxes, enact reasonable regulations, and reduce tariffs and other barriers to free trade will increase the competitive position of our small businesses. To further encourage economic growth, I recently signed into law the Job Creation and Worker Assistance Act of 2002. The Act helps to create more jobs across our country by providing tax incentives for companies to expand and create jobs by investing in facilities and equipment. This action will lead to more opportunities in manufacturing, high-tech sectors, and our small businesses. I am also committed to achieve a permanent repeal of the death tax and the permanent extension of tax relief to help ensure the strength and survival of small businesses.

America's small business owners represent more than 99 percent of all employers and their businesses employ more than half of the private work force. These entrepreneurs who create more than 66 percent of the new jobs nationwide and generate more than 50 percent of the Nation's gross domestic product growth are critical to our country's prosperity and the well-being of our communities. We salute these employers by celebrating Small Business Week and recognizing their contributions to all Americans.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 5 through May 11, 2002, as Small Business Week. I call on all Americans to observe this week with appropriate ceremonies, activities, and programs that celebrate the achievements of small business owners and encourage and foster the development of new enterprises.

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IN WITNESS WHEREOF, I have hereunto set my hand this third day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11780
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7556 of May 6, 2002

National Tourism Week, 2002

By the President of the United States of America

A Proclamation

For hundreds of years, people across our Nation and around the world have enjoyed traveling across America to visit our magnificent cities, parks, museums, and countless other natural, historic, and cultural sites. Our land provides endless opportunities to learn as well as to enjoy our Nation's immense variety of attractions.

The travel and tourism industry represents a vital part of the American economy. The Department of Commerce estimates that in 2001 the travel and tourism industry generated more than $90 billion in export revenue and provided a $7.7 billion balance of trade surplus. Preliminary numbers show that last year, the industry created approximately $545 billion in total travel expenditures and provided $94 billion in tax revenue to local, State, and Federal governments. As one of our Nation's largest employers, travel and tourism supports more than 7 million jobs.

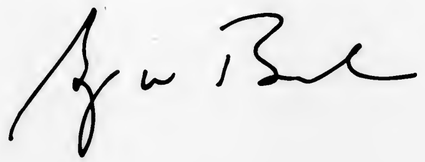
During National Tourism Week 2002, we recognize the significance of this important industry to our economy and for the lives of all Americans. In the aftermath of the tragic attacks of September 11, 2001, the travel and tourism industry contributed to our country's efforts to persevere through this challenging time. As we have encouraged people to resume the regular course of their lives, Americans and visitors from around the world have responded by traveling to and enjoying the beauty of our Nation.

During this observance, I urge all Americans and people around the globe to travel to and within our country to experience the hospitality and quality of our Nation's great destinations.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 5–11, 2002, as National Tourism Week. In recognition of the significance of the travel and tourism industry in the lives of citizens of our Nation and to visitors from abroad, I call upon all Americans to mark this observance with activities that highlight this important industry.

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IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–11781
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

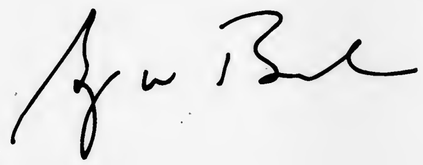
Order of May 6, 2002

Designation Under Executive Order 12958

In accordance with the provisions of section 1.4 of Executive Order 12958 of April 17, 1995, entitled "Classified National Security Information," I hereby designate the Administrator of the Environmental Protection Agency to classify information originally as "Secret."

Any delegation of this authority shall be in accordance with section 1.4(c) of Executive Order 12958.

This order shall be published in the **Federal Register**.



THE WHITE HOUSE,
May 6, 2002.

[FR Doc. 02–11782
Filed 5–8–02; 8:45 am]
Billing code 3195–01–P

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Rules and Regulations

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–50–AD; Amendment 39–12742; AD 2002–09–09]

RIN 2120–AA64

Airworthiness Directives; Honeywell International, Inc., (Formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) Former Military T53 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines. This amendment requires conducting a revised operating cycle count (prorate) and initial and repetitive inspections for cracks of centrifugal compressor impellers. This amendment is prompted by a report of a military surplus helicopter that experienced low-cycle fatigue failure of the centrifugal compressor impeller, resulting in an uncontained engine failure. The actions specified by this AD are intended to prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, in-flight engine shutdown, or damage to the helicopter.

DATES: Effective date June 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Baitoo, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3960 Paramount Blvd., Lakewood, CA 90712–4137; telephone: (562) 627–5245, fax: (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that is applicable to Honeywell International, Inc., (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines was published in the **Federal Register** on August 16, 2001(66 FR 42970). That action proposed to require conducting a revised operating cycle count (prorate) and initial and repetitive inspections for cracks of centrifugal compressor impellers in accordance with AlliedSignal, Inc. SB's T53–L–13B–0108, Revision 1, dated November 22, 1999; T53–L–13B/D–0108, Revision 1, dated November 22, 1999; T53–L–703–0108, Revision 1, dated November 22, 1999 and Honeywell International Inc. SB's T53–L–13B–0020, Revision 2, dated April 25, 2001; T53–L–13B/D–0020, Revision 1, dated April 25, 2001; and T53–L–703–0020, Revision 1, dated April 25, 2001.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter believes that the AD is unnecessary. The FAA does not agree. The AD was prompted by a report of a military surplus helicopter that experienced low-cycle fatigue of the centrifugal compressor impeller, resulting in an uncontained engine failure.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

The FAA estimates that there are approximately 300 Lycoming former military T53 series turboshaft engines installed on helicopters of U.S. registry, that would be affected by this AD. The FAA also estimates that it would take approximately 8 work hours per engine to accomplish an initial or repetitive inspection of the centrifugal compressor impeller, and that the average labor rate is $60 per work hour. No additional work hour cost would be incurred if the centrifugal compressor impeller is replaced during normal engine disassembly. Based on these figures, the total labor cost impact of the AD on U.S. operators for an inspection is estimated to be $144,000. The FAA estimates that operators will perform two inspections annually, and that the total annual labor cost for inspections is estimated to be $288,000. The cost of a replacement centrifugal compressor impeller is estimated to be $22,037. Assuming a loss of 50% of the life of each disk by the prorate, the total annual cost of the proposed AD on U.S. operators is estimated to be $3,593,550.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the

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Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding a new airworthiness directive to read as follows:

2002–09–09 Honeywell International, Inc.: Amendment 39–12742. Docket No. 2000–NE–50–AD.

Applicability

This airworthiness directive (AD) is applicable to Honeywell International, Inc. (formerly AlliedSignal, Inc., Textron Lycoming, Avco Lycoming, and Lycoming) former military T53 series turboshaft engines with centrifugal compressor impellers part numbers (P/N's) 1–100–078–07 or 1–100–078–08 installed. These engines are installed on, but not limited to, Bell Helicopter Textron manufactured AH–1, UH–1, and SW–204/205 (UH–1) series surplus military helicopters that have been certified in accordance with §§ 21.25 or 21.27 of the Federal Aviation regulations (14 CFR 21.25 or 21.27).

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent centrifugal compressor impeller failure, which can result in an uncontained engine failure, in-flight engine shutdown, or damage to the helicopter, do the following:

Centrifugal Compressor Impeller Revised Operating Cycle Count

(a) Within 25 operating cycles or 7 calendar days, whichever occurs first, after the effective date of this AD, do a revised centrifugal compressor impeller operating cycle count (prorate) in accordance with the accomplishment instructions of Honeywell International, Inc. Service Bulletin (SB) No. T53–L–13B–0020, Revision 3, dated October 25, 2001, for T53–L–13B Lycoming engines, SB No. T53–L–13B/D–0020, Revision 1, dated April 25, 2001 for T53–L–13B/D Lycoming engines, and SB No. T53–L–703–0020, Revision 1, dated April 25, 2001 for T53–L–703 Lycoming engines.

(b) Following the revised operating cycle count required by paragraph (a) of this AD, remove from service installed centrifugal compressor impellers that exceed their life limit or whose life cannot be determined, within 50 hours time-in-service (TIS), or 25 operating cycles, whichever occurs first and replace with a serviceable part that does not exceed the life limit.

(c) Installation of uninstalled centrifugal compressor impellers that exceed their life limit, which is revised in accordance with paragraph (a) of this AD is prohibited.

Centrifugal Compressor Impeller Inspections

(d) Following the revised operating cycle count required by paragraph (a) of this AD, inspect centrifugal compressor impellers, part numbers (P/N's) 1–100–078–07 and 1–100–078–08, in accordance with the accomplishment instructions of AlliedSignal, Inc. SB No. T53–L–13B–0108, Revision 1, dated November 22, 1999, for T53–L–13B Lycoming engines; SB No. T53–L–13B/D–0108, Revision 1, dated November 22, 1999 for T53–L–13B/D Lycoming engines; or SB No. T53–L–703–0108, Revision 1, dated November 22, 1999 for T53–L–703 Lycoming engines, as follows:

(1) For centrifugal compressor impellers with equal to or greater than 4,600 cycles-in-service (CIS), initially inspect within 200 CIS after the effective date of this AD.

(2) For those centrifugal compressor impellers with less than 4,600 CIS, initially inspect no later than 4,800 CIS.

(3) Centrifugal compressor impellers found cracked must be removed from service prior to further flight and replaced with a serviceable part.

(4) If no cracks are detected, perform repetitive inspections of the centrifugal compressor impellers at intervals not to exceed 500 CIS since last inspection.

Alternative Methods of Compliance

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators must submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(g) The inspection must be done in accordance with the following Honeywell International Inc. (HII) and AlliedSignal, Inc. (ASI) service bulletins:

Document No.	Pages	Revision	Date
HII, SB No. T53–L–13B–0020	All	3	Oct. 25, 2001.
Total pages 13			
HII, SB No. T53–L–13B/D–0020	All	1	April 25, 2001.
Total pages 12			
HII, SB No. T53–L–703–0020	All	1	April 25, 2001.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–13B–0108	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–13B/D–0108	2	1	Nov. 22, 1999.
	3–12	Original	July 22, 1999.
Total pages 12			
ASI	1	Original	July 22, 1999.
SB No. T53–L–703–0108	2	1	Nov. 22, 1999.

Document No.	Pages	Revision	Date
Total pages 12	3–12	Original	July 22, 1999.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell International, Inc., Attn: Data Distribution, M/S 64–3/2101–201, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone: (602) 365–2493; fax: (602) 365–5577. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date.

(h) This amendment becomes effective on June 13, 2002.

Issued in Burlington, Massachusetts, on April 29, 2002.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11216 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NE–08–AD; Amendment 39–12741; AD 2002–09–08]

RIN 2120–AA64

Airworthiness Directives; Hartzell Propeller, Inc. Compact Series Propellers

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), that is applicable to Hartzell models ( )HC-( )( )Y( )-( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. That AD currently requires initial and repetitive blade inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius; blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This amendment requires initial blade inspections, with no repetitive inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed. This amendment is prompted by FAA reviews of propeller service histories since the issuance of AD 77–12–06R2. The actions specified by this AD are intended to prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control.

DATES: Effective date June 13, 2002. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of June 13, 2002.

ADDRESSES: The service information referenced in this AD may be obtained from Hartzell Propeller Inc., One Propeller Place, Piqua, Ohio 45356–2634, telephone (937) 778–4200; fax (937) 778–4391. This information may be examined, by appointment, at the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tomaso DiPaolo, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Small Airplane Directorate, 2300 E. Devon Ave., Des Plaines, IL 60018; telephone (847) 294–7031; fax (847) 294–7834.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) by superseding AD 77–12–06R2, Amendment 39–3097 (42 FR 63165, December 15, 1977), which is applicable to Hartzell models ( )HC-( )( )Y( )-( )( )( ) compact series, constant speed or feathering propellers with Hartzell manufactured "Y" shank blades was published in the **Federal Register** on November 20, 2001 (66 FR 58077). That action proposed to require initial blade inspections, with no repetitive inspections; rework of all "Y" shank blades including cold rolling of the blade shank retention radius, blade replacement and modification of pitch change mechanisms for certain propeller models; and changing the airplane operating limitations with specific models of propellers installed.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Economic Analysis

At the time the existing AD was issued, there were about 55,000 propellers of the affected design in the worldwide fleet. The FAA estimated that there were 35,750 propellers installed on airplanes of U.S. registry. The FAA expects that all of the affected propellers should have already been inspected to comply with the existing AD's requirements to inspect, and rework or replace the blades. If these actions have not already been done, then the total cost to comply with this AD is estimated to be $700 per propeller.

Regulatory Analysis

This final rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with state authorities prior to publication of this final rule.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

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List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–2922 (42 FR 31152, June 20, 1977), Amendment 39–3018 (42 FR 42191, August 22, 1977), and Amendment 39–3097 (42 FR 63165, December 15, 1977) and by adding a new airworthiness directive, Amendment 39–12741, to read as follows:

2002–09–08 Hartzell Propellers, Inc.: Amendment 39–12741. Docket No. 2000–NE–08–AD. Supersedes AD 77–12–06R2, Amendment 39–3097.

Applicability

This airworthiness directive (AD) is applicable to Hartzell Propellers, Inc. Models ( )HC-( )( )Y( )-( )( )( ) compact series constant speed or feathering propellers with Hartzell manufactured "Y" shank blades. These propellers are used on but not limited to the following airplanes:

Aermacchi S.pA. (formerly Siai-Marchetti) S–208
Aero Commander 200B and 200D
Aerostar 600
Beech 24, 35, 36, 45, 55, 56TC, 58, 60, and 95
Bellanca 14 and 17 series
Cessna 182 and 188
Embraer EMB–200A
Maule M5
Mooney M20 and M22
Pilatus Britten Norman, or Britten Norman BN–2, BN–2A, and BN–2A–6
Piper PA–23, PA–24, PA–28, PA–30, PA–31, PA–32, PA–34, PA–36, and PA–39
Pitts S–1T and S–2A
Rockwell 112, 114, 200, 500, and 685 series

Note 1: This AD applies to each propeller identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For propellers that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done. Propeller maintenance records showing compliance with AD 77–12–06R2 is an indication that compliance was previously done.

To prevent failure of the propeller blade from fatigue cracks in the blade shank radius, which can result in damage to the airplane and loss of airplane control, do the following:

(a) Propellers are considered in compliance with the one-time inspection and rework requirements only, of this AD if:

(1) All blades are serial number D47534 and above, or

(2) All blades are identified with the letters "PR" or "R" or "SP–P" ink-stamped on the camber side, or the letters "SP", "RD" or "SP–P" metal-stamped on the blade butt.

Models ( )HC-( )( )Y( ) Compact Series "Y" Shank Propellers

(b) If propellers models ( )HC-( )( )Y( ) have not been inspected and reworked in accordance with AD 77–12–06R2, then before further flight, do a one-time action to remove, inspect, rework or replace blades if necessary in accordance with Hartzell Service Bulletin (SB) No.118A, dated February 15, 1977.

Note 2: One requirement in SB No. 118A is the cold rolling of the propeller blade shank. This is a critical requirement in the prevention of cracks in the blade. Propeller repair shops must obtain and maintain proper certification to perform the cold rolling procedure. For a current list of propeller overhaul facilities approved to perform the blade shank cold rolling procedure, contact Hartzell Product Support, telephone: (937) 778–4200. Not all propeller repair facilities have the equipment to properly perform a cold roll of the blade shanks. In addition, any rework in the blade shank area will also necessitate the cold rolling of the blade shank area, apart from the one-time cold rolling requirement of this AD.

Instrument Panel Modifications

(c) If airplanes with propeller models ( )HC–C2YK-( )( )( ) / ( )( )7666A-( ), installed on (undampered) 200 horsepower Lycoming IO–360 series engines, have not been modified in accordance with AD 77–12–06R2, then modify the airplane instrument panel according to the following subparagraphs before further flight. Airplanes include, but are not limited to, Mooney M20E and M20F (normal category), Piper PA–28R–200 (normal category), and Pitts S–1T and S–2A (acrobatic category).

(1) For normal category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm."

(2) For utility and acrobatic category airplanes, before further flight, remove the present vibration placard and affix a new placard near the engine tachometer that states:

"Avoid continuous operation:
Between 2000 and 2350 rpm.
Above 2600 rpm in acrobatic flight."

(3) For normal category airplanes, re-mark the engine tachometer face or bezel with a red arc for the restricted engine speed range, between 2000 and 2350 rpm.

(4) For acrobatic and utility airplanes, re-mark the engine tachometer face or bezel with a red arc for each restricted engine speed range, i.e., between 2000 and 2350 rpm and between 2600 and 2700 rpm (red line).

Models ( )HC–C2YK-( )( )( ) / ( )( )8475( )-( ) or ( )( )8477( )-( ) Propellers

(d) If propeller models ( )HC–C2YK-( )( ) / ( )( )8475( )-( ) or ( )( )8477( )-( ) have not been inspected and reworked in accordance with AD 74–15–02, then do the following maintenance before further flight.

(1) Remove propeller from airplane.

(2) Modify pitch change mechanism, and replace blades with equivalent model blades prefixed with letter "F" in accordance with Hartzell Service Letter No. 69, dated November 30, 1971 and Hartzell SB No. 101D, dated December 19, 1974.

(3) Inspect and repair or replace, if necessary, in accordance with Hartzell SB No. 118A, dated February 15, 1977.

Alternative Methods of Compliance

(e) Alternative methods of compliance to Hartzell Service Bulletin No. 118A are Hartzell Service Bulletin No.'s 118B, 118C, 118D, and Hartzell Manual 133C. Alternative method of compliance to Hartzell SB No. 101D is Hartzell Manual 133C. No adjustment in the compliance time is allowed. Any requests for an alternative method of compliance that provides an acceptable level of safety may be used if approved by the Manager, Chicago Aircraft Certification Office (ACO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Chicago ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, Chicago ACO.

Special Flight Permits

(f) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be done.

Documents That Have Been Incorporated By Reference

(g) The inspections must be done in accordance with the following Hartzell Propeller, Inc. service bulletins (SB's) and service letter (SL):

Document No.	Pages	Revision	Date
SB No. 101D Total pages: 2.	All	D	December 19, 1974.
SB No. 118A Total pages: 16	All	A	February 15, 1977.
SL No. 69 Total pages: 2	All	1	November 30, 1971.

These incorporations by reference were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Hartzell Propeller, Inc., One Propeller Place, Piqua, Ohio 45356–2634; telephone (937) 778–4200; fax (937) 778–4391. Copies may be inspected, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

Effective Date

(h) This amendment becomes effective on June 13, 2002.

Issued in Burlington, Massachusetts, on April 24, 2002.

Marc J. Bouthillier,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11251 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–CE–13–AD; Amendment 39–12745; AD 2002–09–12]

RIN 2120–AA64

Airworthiness Directives; Raytheon Aircraft Company Beech Model C90 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Raytheon Aircraft Company (Raytheon) Beech Model C90 airplanes. This AD requires you to inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets, and requires you to install rivets if they do not exist or are the wrong size or type. This AD is the result of Raytheon identifying several instances where rivets were either missing or were the wrong size or type on these airplanes. The actions specified by this AD are intended to correct the installation of rivets in the LH and RH nacelle and spar assembly. These rivets must be present and have the correct dimension in order to prevent reduced structural integrity, which could result in structural failure and possible loss of control of the airplane.

DATES: This AD becomes effective on June 21, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of June 21, 2002.

ADDRESSES: You may get the service information referenced in this AD from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085; telephone: (800) 429–5372 or (316) 676–3140. You may view this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2001–CE–13–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the **Federal Register,** 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Steve Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

Raytheon has identified several instances of rivets not being installed and/or the wrong size or type installed during the manufacturing process on the nacelles and spar assembly of the Model C90A airplanes. This conclusion is the result of a quality control problem.

At least 20 airplanes have been found with this condition. The number and location of the missing rivets and incorrectly installed rivets may vary from airplane to airplane.

What Is the Potential Impact if FAA Took No Action?

This condition, if not detected and corrected, could result in reduced structural integrity. This could lead to critical structural failure with consequent loss of airplane control.

Has FAA Taken Any Action to This Point?

We issued a proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to certain Raytheon Beech Model C90 airplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on November 26, 2001 (66 FR 58983). The NPRM proposed to require you to inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets and would require you to install rivets if they do not exist or are the wrong size or type.

Was the Public Invited To Comment?

The FAA encouraged interested persons to participate in the making of this amendment. We did not receive any comments on the proposed rule or on our determination of the cost to the public.

FAA's Determination

What Is FAA's Final Determination on This Issue?

After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We have determined that these minor corrections:

—Provide the intent that was proposed in the NPRM for correcting the unsafe condition; and

—Do not add any additional burden upon the public than was already proposed in the NPRM.

Cost Impact

How Many Airplanes Does This AD Impact?

We estimate that this AD affects 381 airplanes in the U.S. registry.

What Is the Cost Impact of This AD on Owners/Operators of the Affected Airplanes?

We estimate the following costs to accomplish the inspection:

Labor cost	Parts cost	Total cost per airplane	Total cost on U.S. operators
35 workhours × $60 per hour = $2,100	No parts required for the inspection	$2,100	$2,100 × 381 = $800,100

We estimate the following costs to accomplish any necessary replacements that will be required based on the results of the inspection. We have no way of determining the number of airplanes that may need such replacements:

Labor cost	Parts cost	Total cost per airplane
40 workhours × $60 per hour = $2,400	$50	$2,400 + $50 = $2,450

The manufacturer will provide warranty credit for labor and parts to the extent noted under MANPOWER and MATERIAL in Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000.

Compliance Time of This AD

Why Is the Compliance Time of This AD Presented in Both Hours Time-in-Service (TIS) and Calendar Time?

The unsafe condition on these airplanes is not a result of the number of times the airplane is operated. Airplane operation varies among operators. For example, one operator may operate the airplane 50 hours TIS in 3 months while it may take another 12 months or more to accumulate 50 hours TIS. For this reason, the FAA has determined that the compliance time of this AD should be specified in both hours time-in-service (TIS) and calendar time in order to assure this condition is not allowed to go undetected over time.

Regulatory Impact

Does This AD Impact Various Entities?

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

Actions	Compliance	Procedures
(1) Insert Raytheon Temporary Changes TC3 (Log of Temporary Changes) into the Limitations Section of the Pilot's Operating Handbook (POH).	Within the next 10 hours time-in-service (TIS) after June 21, 2002 (the effective date of this AD) until compliance with paragraphs (d)(2) and (d)(3) of this AD, unless already accomplished.	Anyone who holds at least a private pilot certificate, as authorized by Section 43.7 of the Federal Aviation Regulations (14 CFR 43.7), may incorporate the pilot's operating handbook (POH) revision required by this AD. You must make an entry into the compliance with the aircraft records that shows compliance with this AD, in accordance with section 43.9 of the Federal Aviation Regulations (14 CFR 43.9).
(2) Inspect the left-hand (LH) and right-hand (RH) nacelle and spar assembly for the existence of rivets and installed rivets that are the wrong size and/or type.	Within the next 400 hours time-in-service (TIS) or within 12 calendar months after June 21, 2002 (the effective date of this AD), whichever occurs first, unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, and the applicable maintenance manual.

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new AD to read as follows:

2002–09–12 Raytheon Aircraft Company: Amendment 39–12745; Docket No. 2001–CE–13–AD.

(a) *What airplanes are affected by this AD?* This AD affects the following Beech Model C90A airplanes that are certificated in any category:

Serial Numbers

LJ–1157 through LJ–1276, LJ–1278 through LJ–1537, and LJ–1540.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to correct the installation of rivets in the left-hand and right-hand nacelle and spar assembly. These rivets must be present and have correct dimensions in order to prevent reduced structural integrity, which could result in structural failure and possible loss of control of the airplane.

(d) *What actions must I accomplish to address this problem?* To address this problem, you must perform the following, unless already accomplished:

Actions	Compliance	Procedures
(3) Install rivets where rivets are missing and replace rivets that are the wrong size and/or type with the correct rivet.	Prior to further flight after the inspection required in paragraph (d)(2) of this AD, unless already accomplished.	In accordance with the Accomplishment Instructions section of Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, and the applicable maintenance manual.

Note 1: Although not required by this AD, Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000, recommends inspecting the airplane in accordance with the Hard Landing Inspection procedure, Chapter 5–50–00, Beech King Air 90 Maintenance Manual, if the airplane should experience a hard landing prior to the repair required by this AD. If serious structural damage occurred, contact Raytheon Technical Support for assistance.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita Aircraft Certification Office (ACO), approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note 2: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Steve Potter, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone: (316) 946–4124; facsimile: (316) 946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Raytheon Mandatory Service Bulletin SB 54–3308, Issued: October, 2000. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Raytheon Aircraft Company, P.O. Box 85, Wichita, Kansas 67201–0085. You can look at copies at the FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on June 21, 2002.

Issued in Kansas City, Missouri, on April 30, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11333 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–CE–17–AD; Amendment 39–12746; AD 2002–09–13]

RIN 2120–AA64

Airworthiness Directives; Cessna Aircraft Company Model CESSNA 441 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Cessna Aircraft Company (Cessna) Model CESSNA 441 airplanes. This AD requires you to do a one-time inspection of the fuel boost pump wiring inside and outside the boost pump reservoir, and repair or replace the wiring as necessary. This AD is the result of several reports of chafing and/or arcing of the fuel boost pump wiring inside and outside the fuel pump reservoir. The actions specified by this AD are intended to detect and correct chafing and/or arcing boost pump wiring, which could result in arcing within the wing fuel storage system. Such failure could lead to ignition of explosive vapor within the fuel storage system.

DATES: This AD becomes effective on May 31, 2002.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulation as of May 31, 2002.

The Federal Aviation Administration (FAA) must receive any comments on this rule on or before July 8, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: *9-ACE-7-Docket@faa.gov*. Comments sent electronically must contain "Docket No. 2002–CE–17–AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get the service information referenced in this AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002–CE–17–AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW, suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

SUPPLEMENTARY INFORMATION:

Discussion

What Events Have Caused This AD?

The FAA has received evidence of chafing and/or arcing of the electrical wiring leading to the fuel boost pump reservoir. Further investigation revealed confirmed reports of chafing and/or arcing of the fuel boost pump wiring inside the fuel pump reservoir that supplies fuel to each engine.

What Are the Consequences if the Condition Is Not Corrected?

This condition, if not corrected, could result in ignition of explosive vapor within the fuel storage system.

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Is There Service Information That Applies to This Subject?

Cessna has issued Conquest Service Bulletin No. CQB02–1R1, Revision 1, dated April 22, 2002.

The service bulletin includes procedures for:

—Inspecting the 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage; and

—Repairing or replacing the chafed or damaged wiring as necessary.

The FAA's Determination and an Explanation of the Provisions of This AD

What Has FAA Decided?

The FAA has reviewed all available information, including the service information referenced above; and determined that:

—The unsafe condition referenced in this document exists or could develop on other Cessna Model CESSNA 441 airplanes of the same type design;

—The actions specified in the previously-referenced service information (as specified in this AD) should be accomplished on the affected airplanes; and

—AD action should be taken in order to correct this unsafe condition.

What Does This AD Require?

This AD requires you to: (1) Do a one-time inspection of the electrical wiring going to the fuel boost pump reservoir and the boost pump wiring inside the reservoir, and (2) repair or replace the wiring as necessary.

In preparation of this rule, we contacted type clubs and aircraft operators to obtain technical information and information on operational and economic impacts. We did not receive any information through these contacts. If received, we would have included, in the rulemaking docket, a discussion of any information that may have influenced this action.

The FAA is not including a repetitive inspection requirement in this AD. The Administrative Procedure Act does not permit the FAA to "bootstrap" a long-term requirement into an urgent safety of flight action where the rule becomes effective at the same time the public has the opportunity to comment. The short-term action and the long-term action are analyzed separately for justification to bypass prior public notice.

After issuing this AD, the FAA may initiate further AD action (notice of proposed rulemaking followed by a final rule) to require these inspections to be repetitive. Credit will be given in any subsequent action for the initial inspection done under this AD.

Will I Have the Opportunity To Comment Prior to the Issuance of the Rule?

Because the unsafe condition described in this document could result in ignition of explosive vapor within the fuel storage system, we find that notice and opportunity for public prior comment are impracticable. Therefore, good cause exists for making this amendment effective in less than 30 days.

Comments Invited

How Do I Comment on This AD?

Although this action is in the form of a final rule and was not preceded by notice and opportunity for public comment, FAA invites your comments on the rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES.** We will consider all comments received on or before the closing date specified above. We may amend this rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of the AD I Should Pay Attention to?

We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that summarizes each FAA contact with the public that concerns the substantive parts of this AD.

How Can I Be Sure FAA Receives My Comment?

If you want us to acknowledge the receipt of your comments, you must include a self-addressed, stamped postcard. On the postcard, write "Comments to Docket No. 2002–CE–17–AD." We will date stamp and mail the postcard back to you.

Compliance Time of This AD

What Is the Compliance Time of This AD?

The compliance time of this proposed AD is within the next 25 hours time-in-service (TIS) or 60 calendar days, whichever occurs first, after the effective date of this AD.

Why Is the Compliance Time of This AD Presented in Both Hours TIS and Calendar Time?

The affected airplanes are used in general aviation operations. Those operators may accumulate 25 hours TIS on the airplane in less than 60 calendar days and many owners have numerous affected airplanes. We have determined that the dual compliance time:

—Gives all owners/operators of the affected airplanes adequate time to schedule and do the actions in this AD; and

—Ensures that the unsafe condition referenced in this AD will be corrected within a reasonable time period without inadvertently grounding any of the affected airplanes.

Regulatory Impact

Does This AD Impact Various Entities?

These regulations will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, FAA has determined that this final rule does not have federalism implications under Executive Order 13132.

Does This AD Involve a Significant Rule or Regulatory Action?

We have determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a significant regulatory action under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket (otherwise, an evaluation is not required). A copy of it, if filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, under the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. FAA amends § 39.13 by adding a new airworthiness directive (AD) to read as follows:

2002–09–13 Cessna Aircraft Company: Amendment 39–12746; Docket No. 2002–CE–17–AD.

(a) *What airplanes are affected by this AD?* This AD applies to the following airplane models and serial numbers that are certificated in any category:

Model	Serial Nos.
CESSNA 441	0001 through 0362; and 698.

(b) *Who must comply with this AD?* Anyone who wishes to operate any of the airplanes identified in paragraph (a) of this AD must comply with this AD.

(c) *What problem does this AD address?* The actions specified by this AD are intended to detect and correct chafing and/or arcing boost pump wiring, which could result in arcing within the wing fuel system. Such failure could lead to ignition of explosive vapor within the fuel storage system.

(d) *What must I do to address this problem?* To address this problem, you must accomplish the following actions:

Actions	Compliance	Procedures
(1) Inspect the 5718106–1 wire harness and fuel boost pump lead wires for chafing or damage.	Within the next 25 hours time-in-service (TIS) after May 31, 2002 (the effective date of this AD) or 60 days after May 31, 2002 (the effective date of this AD), whichever occurs first.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.
(2) If any wire harness or fuel boost pump lead wires are found chafed or damaged during the inspection required in paragraph (d)(1) of this AD, repair or replace the harness or lead wires.	Before further flight, after the inspection required in paragraph (d)(1) of this AD.	In accordance with Cessna Conquest Service Bulletin No.: CQB02–1R1, Revision 1, dated April 22, 2002.

(e) *Can I comply with this AD in any other way?* You may use an alternative method of compliance or adjust the compliance time if:

(1) Your alternative method of compliance provides an equivalent level of safety; and

(2) The Manager, Wichita ACO, approves your alternative. Submit your request through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: This AD applies to each airplane identified in paragraph (a) of this AD, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if you have not eliminated the unsafe condition, specific actions you propose to address it.

(f) *Where can I get information about any already-approved alternative methods of compliance?* Contact Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316–946–4145; facsimile: 316–946–4407.

(g) *What if I need to fly the airplane to another location to comply with this AD?* The FAA can issue a special flight permit under sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate your airplane to a location where you can accomplish the requirements of this AD.

(h) *Are any service bulletins incorporated into this AD by reference?* Actions required by this AD must be done in accordance with Cessna Conquest Service Bulletin No. CQB02–1R1, Revision 1, dated April 22, 2002. The Director of the Federal Register approved this incorporation by reference under 5 U.S.C. 552(a) and 1 CFR part 51. You can get copies from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517–5800; facsimile: (316) 942–9006. You may view this information at FAA, Central Region, Office of the Regional Counsel, 901 Locust, Room 506, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) *When does this amendment become effective?* This amendment becomes effective on May 31, 2002.

Issued in Kansas City, Missouri, on May 1, 2002.

Michael Gallagher,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11523 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–13–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1240

[Notice (02–054)]

RIN 2700–AC47

Inventions and Contributions

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Final rule.

SUMMARY: NASA is amending its regulation to provide definitions, to add a new category of initial awards for release of software, to provide initial awards for the issuance of patents based upon continuation-in-part and divisional patent applications, to increase the amount of certain awards, and to change delegations of authority from the NASA Administrator.

EFFECTIVE DATE: May 9, 2002.

ADDRESSES: Inventions and Contributions Board, Code RI, National Aeronautics and Space Administration, Washington, DC 20546–0001.

FOR FURTHER INFORMATION CONTACT: Mr. Walter D. Hussey Director of Staff; Inventions and Contributions Board, 202–358–2468.

SUPPLEMENTARY INFORMATION: To aid the NASA Inventions and Contributions Board in processing applications for awards, all applications must now be submitted using electronic media.

NASA now provides initial awards for the filing of a non-provisional U.S. patent application, or upon the issuance of a patent for a continuation-in-part or a divisional patent application, for an invention made and reported by an employee of NASA or an employee of a NASA contractor. The amounts of these awards are at least $1,000 for a sole inventor and at least $500 for each joint inventor. Also, no additional award is authorized for a continuation of a patent application where an initial award was authorized for the parent application and the parent application will be or has been abandoned. Furthermore, initial awards are not authorized for provisional applications under 35 U.S.C

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111(b) or reissue applications under 35 U.S.C. 251.

Initial awards are authorized for the approved release to a qualified user of a software package based on an innovation made and reported by an employee of NASA or a NASA contractor. The amounts of these initial awards are at least $1,000 for a sole innovator and at least $500 for joint innovators. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on an evaluation of the technical and commercial merits of the innovation. No contribution may receive an award unless NASA has an ownership interest in the software, the software is of commercial quality, the software has been verified, and the software has been distributed to qualified users. Lastly, awards for software release are not eligible to receive a Selected Tech Brief award based upon the publication of an announcement of availability in "NASA Tech Briefs."

Initial awards for the publication of a selected innovation in "NASA Tech Briefs" has been increased to at least $350 from the previous amount of at least $150.

The Board will now recommend an award for a contribution to NASA, where upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $500. Previously, the threshold was set at $250.

The maximum amount that may be paid for any innovation within any single category of initial award may not exceed $5,000.

The Associate Administrator for Aerospace Technology, and the Chairperson, Inventions and Contributions Board, are both delegated authority to execute grants of awards for scientific and technical contributions to NASA not to exceed $2,000 per contributor. Also, the Chairperson, Inventions and Contributions Board, is delegated the authority to make initial awards.

Lastly, a definitions section has been added to this subpart.

List of Subjects in 14 CFR Part 1240

Decorations, Medals, Awards, Government contracts, Government employees, Inventions and patents.

For reasons set out in the Preamble, 14 CFR part 1240 is revised to read as follows:

PART 1240—INVENTIONS AND CONTRIBUTIONS

Subpart 1—Awards for Scientific and Technical Contributions

Sec.

1240.100 Purpose.
1240.101 Scope.
1240.102 Definitions
1240.103 Criteria.
1240.104 Applications for awards.
1240.105 Special procedures—NASA and NASA contractor employees.
1240.106 Review and evaluation of contribution.
1240.107 Notification by the Board.
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1240.111 Release.
1240.112 Presentation of awards.
1240.113 Financial accounting.
1240.114 Delegation of authority.

Authority: Section 306 of the National Aeronautics and Space Act of 1958, as amended (42 U.S.C. 2458), and the Federal Technology Transfer Act of 1986, sec. 12, 15 U.S.C. 3710b(1).

Subpart 1—Awards for Scientific and Technical Contributions

§ 1240.100 Purpose.

This subpart prescribes procedures for submitting applications for monetary awards to the Administrator of NASA for scientific and technical contributions which have significant value in the conduct of aeronautical and space activities pursuant to 42 U.S.C. 2458, and establishes the awards program consistent with the Federal Technology Transfer Act of 1986, section 12, 15 U.S.C. 3710b(1).

§ 1240.101 Scope.

This subpart applies to any scientific or technical contribution, whether or not patentable, which is determined by the Administrator after referral to the Inventions and Contributions Board to have significant value in the conduct of aeronautical and space activities for which an application for award has been submitted to NASA under 42 U.S.C. 2458.

§ 1240.102 Definitions.

As used in this subpart:

(a) *Administrator* means the Administrator of the National Aeronautics and Space Administration.

(b) *Board* means the NASA Inventions and Contributions Board.

(c) *Chairperson* means the Chairperson of the NASA Inventions and Contributions Board.

(d) *Commercial quality* refers to computer software that is not in an experimental or beta phase of development, that performs in accordance with its specifications, and includes documentation describing the software's form and function.

(e) *Contract* means any contract, agreement, understanding, or other arrangement with NASA or another Government Agency on NASA's behalf, including any assignment, substitution of parties, or subcontract executed or entered into thereunder.

(f) *Contractor* means the party who has undertaken to perform work under a contract or subcontract.

(g) *Innovation* means a mathematical, engineering or scientific concept, idea, design, process, or product, reported as new technology on NASA Form 1679.

(h) *Innovator* means any person listed as a contributor, inventor, or author of an innovation.

(i) *Invention* includes any act, method, process, machine, manufacture, design, or composition of matter, or any new and useful improvement thereof, or any variety of plant, which is or may be patentable under the patent laws of the United States or any foreign country.

(j) *Qualified User* means any person that has legally acquired computer software and has the right to use it for a legal purpose.

(k) *Verified* means passing rigorous testing to ascertain whether the functionality claimed in the innovation's documentation is realized.

§ 1240.103 Criteria.

(a) Only those contributions to NASA which have been:

(1) Used in a NASA program or adopted or sponsored or supported by NASA, and

(2) Found to have significant value in the conduct of aeronautical and space activities, will be recommended for award under this subpart.

(b) In determining the amount, terms, and conditions of any award, the following criteria will be considered:

(1) The value of the contribution to the United States;

(2) The aggregate amount of any sums which have been expended by the applicant for the development of such contribution;

(3) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contributions by the United States; and

(4) Such other factors as the Administrator shall determine to be material.

§ 1240.104 Applications for awards.

(a) *Eligibility.* Applications for award may be submitted by any person

including any individual, partnership, corporation, association, institution, or other entity.

(b) *Information required.* Applications for award should be addressed to the Inventions and Contributions Board (herein referred to as the Board), National Aeronautics and Space Administration, Washington, DC 20546–0001, and will contain:

(1) The name and address of the applicant, the person's relationship to the contributor if the contribution is made by one other than the applicant, and the names and addresses of any others having information as to the value or usage of the contribution;

(2) A complete written description of the contribution, in the English language, using electronic media, accompanied by drawings, sketches, diagrams, or photographs illustrating the nature of the contribution and the technical and scientific principles upon which it is based, any available test or performance data or observations of pertinent scientific phenomena, and the aeronautics or space application of the contribution;

(3) The date and manner of any previous submittal of the contribution to any other United States Government agency, and the name of such agency;

(4) The aggregate amount of any sums which have been expended by the applicant for the development of the contribution;

(5) The nature and extent of any known use of the contribution by the United States and by any agency of the United States Government;

(6) The amount of any compensation (other than salary received for services rendered as an officer or employee of the Government) previously received by the applicant for or on account of the use of such contribution by the United States;

(7) Identification of any United States and foreign patents applied for or issued relating to the contribution; and

(8) An agreement to surrender all claims which such applicant may have for the use of such contribution by the Government.

(c) *General.* (1) Each contribution will be made the subject of a separate application in order that each contribution may be evaluated individually.

(2) Material constituting a possible hazard to safety or requiring unusual storage facilities should not be submitted, and will not be accepted. Models or intricate exhibits demonstrating the contribution will not be accepted unless specifically requested by the Board. In those few cases where such models or exhibits have been submitted pursuant to a request made by the Board, the same will be returned to the applicant upon written request from the applicant.

(3) It is the policy of the Board to use or disclose information contained in applications for awards for evaluation purposes only. Applications for awards submitted with restrictive legends or statements differing from this policy will be treated in accordance with the Board's policy.

§ 1240.105 Special procedures—NASA and NASA contractor employees.

(a) A NASA Headquarters office, a NASA field installation, or a NASA contractor may submit to the Board an application for an award identifying the originator(s) of any scientific or technical contribution conceived or developed during the performance of a NASA program or contract, and which is considered to be of value in advancing the state of knowledge in space or aeronautical activities, whether or not the contribution is the subject of a NASA Tech Brief, software approved for public release, or of a U.S. patent application.

(b) The Board will recommend to the Administrator or a designee that an initial award of at least $1,000 be granted to a sole inventor, or $500 each to joint inventors, upon submittal of NASA Form 1688 by either the Associate General Counsel for Intellectual Property, for an invention made and reported by a NASA Headquarters employee or an employee of a NASA Headquarters contractor, or a patent counsel at a NASA field installation for an invention made and reported by an employee of that installation or by an employee of an installation contractor, has filed a nonprovisional U.S. patent application or that a continuation-in-part or divisional patent has been issued. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the invention. No additional award will be given for a continuation patent application where an initial award was authorized for the parent application and this parent application will be or has been abandoned. In addition, initial awards will not be granted for provisional applications under 35 U.S.C. 111(b) or reissue applications under 35 U.S.C. 251.

(c) When the Board receives written notice (NASA Form 1688) that a NASA Center has approved for release to qualified users a software package based on an innovation made and reported by an employee of NASA or a NASA contractor on NASA Form 1679, the Board will recommend to the Administrator or designee that an initial award of at least $1,000 be granted to a sole innovator, and an award of at least $500 will be granted to each originator of the innovation if there is more than one. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation. No contribution may receive this award unless:

(1) NASA has an ownership interest in the software; i.e., NASA has the unrestricted use of the software in perpetuity at no charge from any other entity;

(2) The software is of commercial quality; i.e., is not in experimental or beta phases of development and includes documentation, either in paper or electronic formats, describing the software's form and function;

(3) The software has been verified to perform the functions claimed in its documentation on the platform for which it was designed without harm to the systems or data contained within; and,

(4) The software has been distributed to qualified users upon the written approval for release by Center management.

(d) Software dissemination awards are not eligible to receive selected Tech Brief awards based upon the publication of an announcement of availability in "NASA Tech Briefs."

(e) When the Board receives written notice (NASA Form 1688) that a NASA Center has approved for publication a selected NASA Tech Brief based on an innovation made and reported by an employee of NASA or a NASA contractor on NASA Form 1679, the Board will recommend to the Administrator or designee that an initial award of at least $350 be granted, and an award of at least that amount will be granted to each originator of the innovation. The Board is authorized to recommend a supplemental monetary award in an amount that will be based on the evaluation of the technical and commercial merits of the innovation.

(f) When a selected NASA Tech Brief has been approved for publication, and/or a NASA Center has approved the release of a software package, and/or the filing of a U.S. patent application has been authorized for the same contribution, the initial awards authorized in paragraphs (b), (c), and (e) of this section will be cumulative.

(g) Initial awards authorized in paragraphs (b), (c), and (e) of this

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section may not exceed a total of $5,000 per category. Such cases, wherein a large number of multiple innovators are contributors, must be submitted for formal evaluation by the Board on a NASA Form 1329 or 1329A.

(h) Awards authorized in paragraphs (a), (b), (c), and (e) of this section will not be granted to a contributor who has previously received full compensation for, or on account of, the use of such a contribution by the United States.

(i) If a contribution, as first reported and evaluated, is judged not to merit a supplemental award, as provided for in paragraphs (a), (b), (c), or (e) of this section, or the contribution is later proved to be of more significant value, it may be submitted for reevaluation on NASA Form 1329A. Responsible NASA and NASA contractor officials are encouraged to periodically review such reported contributions, and to resubmit them for reconsideration through the same channels as originally reported.

§ 1240.106 Review and evaluation of contribution.

(a) A contribution will be initially reviewed by the Board on the basis of the material submitted by the applicant under § 1240.104(b).

(b) If it is determined that the contribution has been used in a NASA program, or adopted or sponsored or supported by NASA, the contribution will be evaluated for its significant value in the conduct of aeronautical or space activity.

(c) The Board will recommend an award for such contribution when, upon evaluation of its scientific and technical merits, it is determined to warrant an award of at least $500.

§ 1240.107 Notification by the Board.

(a) With respect to each completed application where the Board has recommended to the Administrator the granting of an award, and the Administrator has approved such award, the Board will notify the applicant of the amount and terms of the award. In the case of NASA employees or employees of NASA contractors, such notification will normally be made through the appropriate NASA field installation representative.

(b) Except for applications from NASA employees or employees of NASA contractors, where the Board does not propose to recommend to the Administrator the granting of an award, a notification will be provided which includes a brief statement of the reasons for such decision.

§ 1240.108 Reconsideration.

(a) In those cases where the Board does not recommend an award, the applicant may, within such period as the Board may set but in no event less than 30 days from notification, request reconsideration of the Board's decision.

(b) If reconsideration has been requested within the prescribed time, the applicant will, within 30 days from the date of the request for reconsideration, or within any other time as the Board may set, file its statement setting forth the issues, points, authorities, arguments, and any additional material on which it relies.

(c) Upon filing of the reconsideration statement by the applicant, the case will be assigned for reconsideration by the Board upon the contents of the application, the record, and the reconsideration statement submitted by the applicant.

(d) If after reconsideration, the Board again does not propose to recommend the granting of an award, the applicant, after such notification by the Board, may request an oral hearing within the time set by the Board.

(e) An oral hearing without reconsideration may be granted upon determination of the Chairperson that good cause exists to do so.

§ 1240.109 Hearing procedure.

(a) An Oral hearing held by the Board will be in accordance with the following procedures:

(1) If the applicant requests a hearing within the time set in accordance with § 1240.108(d) or (e), the Board will set a place and date for such hearing and notify the applicant.

(2) The applicant may be represented by an attorney or any other appropriately designated person.

(3) Hearings will be open to the public unless the applicant requests that a closed hearing be held.

(4) Hearings may be held before the full membership of the Board or before any panel of Board members designated by the Chairperson.

(5) Hearings will be conducted in an informal manner with the objective of providing the applicant with a full opportunity to present evidence and arguments in support of the application. Evidence may be presented through means of such witnesses, exhibits, and visual aids as are arranged for by the applicant. While proceedings will be ex parte, members of the Board and its counsel may address questions to witnesses called by the applicant, and the Board may, at its option, utilize the assistance and testimony of technical advisors or other experts.

(6) Subject to the provisions of § 1240.104(c)(2), the applicant will submit a copy of any exhibit or visual aid utilized unless otherwise directed by the Board. The Board may, at its discretion, arrange for a written transcript of the proceedings and a copy of such transcript will be made available by the recorder for purchase by the applicant.

(7) No funds are available to defray traveling expenses or any other cost incurred by the applicant.

§ 1240.110 Recommendation to the Administrator.

Upon a determination by the Board that a contribution merits an award, the Board will recommend to the Administrator or a designee the terms and conditions of the proposed award, including a specific amount and distribution thereof for any multiple contributors. The recommendation of the Board to the Administrator or designee will reflect the views of the majority of the Board members. Dissenting views may be transmitted with the majority opinion.

§ 1240.111 Release.

Under subsection 306(b)(1) of the National Aeronautics and Space Act of 1958, as amended, no award will be made to an applicant unless the applicant submits a duly executed release, in a form specified by the Administrator, of all claims the applicant may have to receive any compensation (other than the award recommended) from the United States Government for use of the contribution or any element thereof at any time by or on behalf of the United States, or by or on behalf of any foreign government pursuant to any existing or future treaty or agreement with the United States, within the United States, or at any other place.

§ 1240.112 Presentation of awards.

(a) Monetary awards and accompanying written acknowledgments to employees of NASA will be presented in a formal ceremony by the appropriate Official-in-Charge at the Headquarters Office, or by the Director of the cognizant field installation or designee.

(b) Monetary awards and accompanying written acknowledgments to employees of NASA contractors will be forwarded to contractor officials for suitable presentation.

§ 1240.113 Financial accounting.

(a) An Award Check Receipt (NHQ DIV Form 622), which accompanies the transmittal of each group of award checks from the Board will be dated and signed by the responsible NASA Center representative and returned to the Board without delay.

(b) Not later than December 10 of each year, the responsible field installation official will submit a report certifying that all award checks, which were issued and received by the field installation during the year, have been delivered to the proper employees of NASA and employees of NASA contractors. In the case of those checks that have not been delivered by December 10, the certification report will be accompanied by all undelivered checks and a brief explanation of the reasons for the failure to make delivery. This annual certification report is essential in order to ensure that income and withholding tax totals for all awardees are correct and complete at the close of each calendar year.

§ 1240.114 Delegation of authority.

(a) The Associate Administrator for Aerospace Technology and the Chairperson, Inventions and Contributions Board, are delegated authority to execute grants of awards for significant scientific or technical contributions not exceeding $2,000 per contributor, when in accordance with the recommendation of the Board and in conformity with applicable law and regulations.

(b) The Chairperson, Inventions and Contributions Board, is delegated authority to execute grants of initial awards upon the decision to file for a U.S. patent application, release software to qualified users, and/or upon approval to publish a selected NASA Tech Brief.

(c) No redelegation is authorized except by virtue of succession.

(d) The Chairperson, Inventions and Contributions Board, will ensure that feedback is provided so that the Administrator, through official channels, is immediately informed of significant actions, problems, or other matters of substance related to the exercise of the authority delegated in this section.

Dated: May 2, 2002.

Sean O'Keefe,

Administrator.

[FR Doc. 02–11513 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 80N–0280]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that a certain ingredient in over-the-counter (OTC) drug products is not generally recognized as safe and effective or is misbranded. FDA is issuing this final rule after considering the reports and recommendations of various OTC drug advisory review panels and public comments on proposed agency regulations. This final rule addresses the ingredient octoxynol 9, considered in the rulemaking for OTC vaginal contraceptive drug products. Based on the failure of interested parties to submit new data or information to FDA under the proposed regulation, the agency has determined that the presence of this active ingredient in an OTC drug product would result in that drug product not being generally recognized as safe and effective for its intended use or would result in misbranding. This final rule is part of FDA's ongoing OTC drug product review.

DATES: This regulation is effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Helen Cothran, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under § 330.10(a)(7)(ii) (21 CFR 330.10(a)(7)(ii)) a final rule on the status of certain OTC drug Category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (Category II or III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of May 10, 1993 (58 FR 27636), FDA published a final rule establishing that certain additional active ingredients in OTC drug products are not generally recognized as safe and effective or are misbranded. That final rule included active ingredients from a number of OTC drug rulemakings that were not covered by the November 7, 1990, final rule (see table I of the May 10, 1993, final rule (58 FR 27636 at 27639 to 27641) for a list of OTC drug rulemakings and active ingredients covered by that final rule).

In the proposed rulemaking for OTC vaginal contraceptive drug products (45 FR 82014, December 12, 1980), the Advisory Review Panel on OTC Contraceptives and Other Vaginal Drug Products (the Panel) placed nonoxynol 9 and octoxynol 9 in Category I (safe and effective), placed phenylmercuric acetate, phenylmercuric nitrate, and other compounds containing mercury in Category II for safety, and placed dodecaethylene glycol monolaurate (polyethylene glycol 600 monolaurate), laureth 10S, and methoxypolyoxyethylene glycol 550 laurate in Category III for efficacy. In the preamble to the Panel's report (45 FR 82014), the agency stated that clinical trials of each product or final formulation may be the only certain predictor of its effectiveness in humans. The agency further stated that if clinical trials are necessary, manufacturers may be required to submit a new drug application (NDA) or supplement an existing NDA. The agency stated that it would announce its decision in a separate **Federal Register** document or in the tentative final order.

In the proposed rule for OTC vaginal contraceptive drug products (60 FR 6892, February 3, 1995), the agency proposed that manufacturers of OTC vaginal contraceptive drug products obtain approved applications for marketing of their products. The agency took this action because the evidence currently available shows that effectiveness of these products is dependent upon the final formulation and clinical studies in humans are needed to establish the effectiveness of the active ingredients in OTC vaginal contraceptive drug products. Therefore, each product must be tested in appropriate clinical trials under actual conditions of use. FDA encouraged manufacturers to consult with the agency regarding testing and the

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submission of applications as soon as possible. In the proposed rule, all of the ingredients evaluated by the Panel were considered nonmonograph for reasons of safety and/or effectiveness.

In response to this proposed rule, the agency received no comments or data relating to the safety and effectiveness of any of the Panel's Category II or III ingredients. Therefore, in the**Federal Register** of April 22, 1998 (63 FR 19799), the agency issued a final rule regarding the nonmonograph status of these Category II and III ingredients. Based on the absence of substantive comments in opposition to the agency's proposed nonmonograph status for these ingredients, as well as the failure of interested parties to submit new data or information to FDA under the regulation, the agency determined that the presence of these ingredients in an OTC drug product would result in the drug product not being generally recognized as safe and effective or would result in misbranding.

In response to the proposed rule, the agency was informed of ongoing clinical trials involving nonoxynol 9 (Refs. 1, 2, and 3). However, the agency is not aware of any clinical trials, nor have any comments or data on octoxynol 9 been submitted to the agency since the proposed rule. Accordingly, FDA concludes that octoxynol 9 has not been shown to be generally recognized as safe and effective for its intended use as a vaginal contraceptive and should be eliminated from OTC drug products 6 months after the publication of this final rule in the **Federal Register**, regardless of whether further testing is undertaken to justify future use. Publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a NDA that may provide for prescription or OTC marketing status (see part 314 (21 CFR part 314)).

The monograph or new drug status of nonoxynol 9 will be addressed after completion and analysis of the ongoing clinical trials. This final rule for octoxynol 9 does not affect the current marketing status of nonoxynol 9 as an OTC vaginal contraceptive.

II. The Agency's Final Conclusions on Certain OTC Drug Category II and III Ingredients

For the reasons discussed in section I of this document, the agency has determined that octoxynol 9 should be deemed not generally recognized as safe and effective for OTC use before a final rule is established for OTC vaginal contraceptive drug products. Accordingly, any drug product containing octoxynol 9 and labeled for OTC use as a vaginal contraceptive or spermicide will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. This applies to any OTC drug product containing octoxynol 9 and labeled for use as a vaginal contraceptive or vaginal spermicide that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce cannot be repackaged or relabeled after the effective date of the rule. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

III. Analysis of Impacts

FDA has examined the impacts of the final rule under Executive Order 12866, the Regulatory Flexibility Act (5 U.S.C. 601–612), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. Further, since this final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to finalize the proposed nonmonograph status of octoxynol 9 in order to expedite completion of the OTC drug review. There are a limited number of products currently marketed that will be affected by this rule. The agency's Drug Listing System identifies two manufacturers of OTC vaginal contraceptive drug products containing octoxynol 9, although there may be some additional products that are not currently included in the agency's system. One manufacturer markets four products and the other manufacturer markets one product, for a total of five products. At least one of the manufacturers is considered a small entity, using the U.S. Small Business Administration designation for this industry (750 employees).

Manufacturers of these products will no longer be able to market products containing octoxynol 9 after the effective date of this final rule. One of the manufacturers of octoxynol 9 also produces products that contain nonoxynol 9, which is currently being tested in clinical trials. Other manufacturers will be able to reformulate vaginal contraceptive drug products that contain octoxynol 9 and continue to market them with nonoxynol 9, pending completion of the final rule for these products. The agency estimates the cost of reformulation and relabeling to range from $100,000 to $500,000 per product. Using the midpoint of the cost estimate implies total costs up to $1.5 million. However, the agency believes the total costs will be smaller because all currently marketed products may not be reformulated. The manufacturers have known since the publication of the proposed rule in the **Federal Register** of February 3, 1995, that if adequate data from clinical trials were not submitted to support safety and effectiveness, cessation of marketing of the current products would be required when the final rule is published. Generally, when safety is not a concern, manufacturers will continue to market products that they know will become nonmonograph for as long as legally possible to maximize their profits for that product line.

The agency considered but rejected not acting on this ingredient in advance of the completion of the final rule on OTC vaginal contraceptive drug products. The ongoing clinical trials involving nonoxynol 9 are not expected to be completed for a period of time. However, safety and effectiveness have not been established for octoxynol 9 and no testing is currently being done. Therefore, the agency concludes that consumers will benefit from the early removal from the marketplace of products containing octoxynol 9.

Because so few small firms will be affected, the agency certifies that there will not be a significant economic impact on a substantial number of small firms.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

VII. References

The following references are on display in the Dockets Management Branch (address above) under Docket No. 80N–0280 and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. FDA, Transcript of Joint Meeting of the Nonprescription Drugs, Reproductive Health Drugs, Anti-Infective Drugs and Antiviral Drugs Advisory Committees, November 22, 1996, pp. 86–99, in OTC Vol. 11ATFM2.

2. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 6.

3. Letter from D. L. Bowen, FDA, to R. W. Soller, Nonprescription Drug Manufacturers Association, coded LET 7.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding a paragraph heading (a)(28)(i) after the existing paragraph heading, by adding paragraphs (a)(28)(ii) and (d)(36), by revising paragraph (d)(28), and by adding and reserving paragraphs (d)(34) and (d)(35) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(28) *Vaginal contraceptive drug products*—(i) *Approved as of October 22, 1998.* * * *

(ii) *Approved as of* November 5, 2002. Octoxynol 9

* * * * *

(d) * * *

(28) October 22, 1998, for products subject to paragraphs (a)(27) and (a)(28)(i) of this section.

* * * * *

(34) [Reserved]

(35) [Reserved]

(36) November 5, 2002, for products subject to paragraph (a)(28)(ii) of this section.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11511 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 78N–036L]

RIN 0910–AA01

Status of Certain Additional Over-the-Counter Drug Category II and III Active Ingredients

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule stating that the stimulant laxative ingredients aloe (including aloe extract and aloe flower extract) and cascara sagrada (including casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract) in over-the-counter (OTC) drug products are not generally recognized as safe and effective or are misbranded. This final rule is part of FDA's ongoing OTC drug product review.

DATES: This rule is effective November 5, 2002.

FOR FURTHER INFORMATION CONTACT: Gerald M. Rachanow, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2307.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of November 7, 1990 (55 FR 46914), FDA published under 21 CFR 330.10(a)(7)(ii) a final rule on the status of certain OTC drug category II and III active ingredients. That final rule declared as not generally recognized as safe and effective certain active ingredients that had been proposed as nonmonograph (category II or III) under the agency's OTC drug review. The periods for submission of comments and new data following the publication of a notice of proposed rulemaking had closed and no significant comments or new data had been submitted to upgrade the status of these ingredients. In each instance, a final rule for the class of ingredients involved had not been published to date.

In the **Federal Register** of June 19, 1998 (63 FR 33592), FDA reopened the administrative record and reclassified the stimulant laxative ingredients aloe, bisacodyl, cascara sagrada (including casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract), and senna (including sennosides A and B) from category I (monograph) to category III (more data needed). The agency requested mutagenicity, genotoxicity, and carcinogenicity data on aloe and cascara sagrada ingredients and carcinogenicity data on bisacodyl and senna. The agency recommended that persons interested in testing these drugs consult the agency before initiating any studies and stated that these ingredients would be placed in category II (nonmonograph) in a final rule if data were not provided. The agency has received data on bisacodyl and senna, which will be discussed in future issues of the **Federal**

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Register. However, no comments or data were submitted for aloe or cascara sagrada ingredients.

Accordingly, aloe and cascara sagrada ingredients will not be included in the final monograph for OTC laxative drug products because they have not been shown to be generally recognized as safe and effective for their intended use. These ingredients should be eliminated from OTC laxative drug products 180 days after the date of publication of this final rule, regardless of whether further testing is undertaken to justify future use.

The agency points out that publication of this final rule does not preclude a manufacturer's testing an ingredient. New, relevant data can be submitted to the agency at a later date as the subject of a new drug application that may provide for prescription or OTC marketing status. (See part 314 (21 CFR part 314).) As an alternative, where there are adequate data establishing general recognition of safety and effectiveness, such data may be submitted in an appropriate citizen petition to amend a monograph. (See § 10.30 (21 CFR 10.30).)

II. The Agency's Final Conclusions

Based on the lack of data and information and the failure of interested persons to submit any new data from carcinogenicity studies, the agency has determined that the stimulant laxative ingredients aloe (including aloe extract and aloe flower extract) and cascara sagrada (including casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, and cascara sagrada fluidextract) should be deemed not generally recognized as safe and effective for OTC use before a final monograph is established for OTC laxative drug products. The agency is reclassifying these ingredients to category II (nonmonograph) and is adding them to the list of stimulant laxative ingredients for which the data are inadequate to establish general recognition of safety and effectiveness for such use in § 310.545(a)(12)(iv) (21 CFR 310.545(a)(12)(iv)) at new § 310.545(a)(12)(iv)(C).

Accordingly, any drug product containing any of these aloe or cascara sagrada ingredients and labeled for OTC laxative use will be considered nonmonograph and misbranded under section 502 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352) and a new drug under section 201(p) of the act (21 U.S.C. 321(p)) for which an approved application under section 505 of the act (21 U.S.C. 355) and part 314 of the regulations is required for marketing. This applies to any OTC drug product containing any of these aloe or cascara sagrada ingredients and labeled for laxative use that is initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule. Further, any OTC drug product that was previously initially introduced or initially delivered for introduction into interstate commerce cannot be repackaged or relabeled after the effective date of the rule. Manufacturers are encouraged to comply voluntarily with the rule at the earliest possible date.

III. Analysis of Impacts

FDA has examined the impacts of this final rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1501 *et seq.*). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant economic impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency concludes that this final rule is consistent with the principles set out in the Executive order and in these two statutes. In accordance with Executive Order 12866, FDA previously analyzed the potential economic effects of this final rule. As stated in the proposal (63 FR 33592 at 33594), the agency believed then that the rule would not be a significant regulatory action as defined by the Executive order. The agency has not received any new information or comments altering its previous expectations. Further, since this final rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation, FDA need not prepare additional analyses under the Unfunded Mandates Reform Act.

The purpose of this final rule is to act on the nonmonograph status of certain stimulant laxative ingredients in advance of finalization of other monograph conditions in order to expedite completion of the OTC drug review. Products containing these ingredients will need to be reformulated to delete and/or replace the ingredient(s) with another laxative active ingredient. There are a number of acceptable laxative active ingredients in proposed part 334 (50 FR 2124 at 2152, January 15, 1985) that could be used. The reformulated products will also require relabeling.

The agency's Drug Listing System (DLS) identifies approximately 15 OTC laxative drug products that contain aloe (including aloe extract and aloe flower extract) and 160 OTC laxative drug products that contain cascara sagrada ingredients. Six products contain both aloe and cascara or casanthranol and appear on both lists. Approximately 125 products contain casanthranol and docusate sodium, a proposed monograph laxative ingredient. These combination products could be reformulated to eliminate the casanthranol, replace the casanthranol with sennosides A and B or sodium carboxymethylcellulose (proposed monograph combinations with docusate sodium in § 334.30(i)(3) and (j) (58 FR 46589 at 46595, September 2, 1993)), or possibly increase the quantity of docusate sodium in the product, in conformance with the proposed monograph.

The cost to reformulate a product will vary greatly, based on: The nature of the change in formulation, the product, the process, and the size of the firm. Based on the reformulation options discussed previously in this document, most firms should not need to change their dosage form. However, they will have to redo the validation (product, process, new supplier), conduct stability tests, and change master production records in order to ensure compliance with current good manufacturing practice. (See section 501(a)(1)(B) of the act (21 U.S.C. 351(a)(1)(B)) and parts 210 and 211) (21 CFR parts 210 and 211).)

The DLS indicates that approximately 35 manufacturers and 70 distributors/repackers/relabelers market these 170 products. Most firms have only one or two products and should not incur substantial economic expense should they choose to reformulate or discontinue their product(s). The 35 manufacturers will incur the majority of the costs to reformulate and relabel products.

The agency estimates the range of reformulation costs is from $100,000 to $500,000 per product. As most affected firms have only one or two products containing these ingredients, the midpoint of the cost estimate for reformulation implies total costs of $300,000 to $600,000 per firm. If all manufacturers decide to reformulate, about 56 products would be affected. Using the midpoint of the estimated cost to reformulate ($300,000) implies total costs of $16.8 million. However, the agency believes the total costs will be lower because not all firms will choose to reformulate. Some firms may choose to discontinue a product line if sales are too low to justify the added cost of reformulation and/or they may place their market emphasis on other OTC laxative drug products. The lost sales from the products containing nonmonograph ingredients may be offset by sales of the substitute products containing monograph ingredients. In addition, firms have been aware of the proposed nonmonograph status of these products since 1998 and have not submitted data to the agency. While this final rule may cause firms to discontinue marketing or to reformulate some products prior to issuance of the final monograph, these firms have known for some time that if adequate data were not submitted to support safety, cessation of marketing of the current products would be required, in any event, when the final monograph is published.

The agency estimates that the average cost to relabel OTC drug products is about $3,600. The agency is unsure of how many products will require new labeling. If all of the 170 products are reformulated and are still marketed, then the one-time costs to relabel would be $612,000. The estimated total one-time reformulation and relabeling cost would be $17.8 million.

The agency considered but rejected not acting on these ingredients in advance of the finalization of other monograph conditions. As firms have not submitted the requested safety data, these ingredients will not be included in the final monograph when completed. The agency has determined that there is no reason to allow continued marketing of OTC laxative drug products containing any of these ingredients. Consumers will benefit from the early removal from the marketplace of products containing ingredients for which safety has not been established. Consumers can then purchase products containing only ingredients proposed for monograph status. Manufacturers who choose to reformulate or replace affected products will be able to use alternate ingredients, as discussed previously in this document, that are proposed as monograph conditions without incurring any additional expense of clinical testing for those ingredients.

Because these products must be manufactured in compliance with the pharmaceutical current good manufacturing practices (parts 210 and 211), all firms have the necessary skills and personnel to perform the tasks of reformulation, validation, and relabeling either in-house or by contractual arrangement. No additional professional skills are needed. No other Federal rules duplicate, overlap, or conflict with this rule.

The agency has considered the burden to small entities and identified reformulation options available to them. Nevertheless, some entities may incur significant impacts, especially private label manufacturers that provide labeling for a number of the affected products. This economic analysis, together with other relevant sections of this document, serves as the agency's final regulatory flexibility analysis, as required under the Regulatory Flexibility Act.

IV. Paperwork Reduction Act of 1995

This final rule contains no collections of information. Therefore, clearance by the Office of Management and Budget under the Paperwork Reduction Act of 1995 is not required.

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this final rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency has concluded that the rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement is not required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: 21 U.S.C. 321, 331, 351, 352, 353, 355, 360b–360f, 360j, 361(a), 371, 374, 375, 379e; 42 U.S.C. 216, 241, 242(a), 262, 263b–263n.

2. Section 310.545 is amended by adding paragraphs (a)(12)(iv)(C) and (d)(30) to read as follows:

§ 310.545 Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses.

(a) * * *

(12) * * *

(iv)(C) *Stimulant laxatives—Approved as of* November 5, 2002.

Aloe ingredients (aloe, aloe extract, aloe flower extract)	
Cascara sagrada ingredients (casanthranol, cascara fluidextract aromatic, cascara sagrada bark, cascara sagrada extract, cascara sagrada fluidextract).	

* * * * *

(d) * * *

(30) November 5, 2002, for products subject to paragraph (a)(12)(iv)(C) of this section.

* * * * *

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11510 Filed 5–8–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 286

DoD Freedom of Information Act (FOIA) Program

AGENCY: Department of Defense.

ACTION: Final rule; amendment.

SUMMARY: The search and review rates for processing Freedom of Information Act (FOIA) requests within the Department of Defense are being increased at the recommendation of the General Accounting Office (GAO). FOIA

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requesters will incur more direct costs for search and review, if applicable.

DATES: This rule is effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: D. Maier, (703) 697–1160.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 286

Freedom of Information.

Accordingly, 32 CFR part 286 is amended as follows:

PART 286—DOD FREEDOM OF INFORMATION ACT PROGRAM REGULATION

1. The authority citation continues to read as follows:

Authority: 5 U.S.C. 552.

2. In § 286.29, the tables in paragraphs (b)(1) and (d) are revised to read as follows:

§ 286.29 Collection of fees and fee rates.

* * * * *

(b) * * *

(1) * * *

Type	Grade	Hourly Rate
Clerical	E1–E9/GS1–GS8.	$20.00
Professional	O1–O6/GS9–GS15.	44.00
Executive	ES1–ES6/O7–O10.	75.00
Contractor		44.00

* * * * *

(d) * * *

Type	Grade	Hourly Rate
Clerical	E1–E9/GS1–GS8.	$20.00
Professional	O1–O6/GS9–GS15.	44.00
Executive	ES1–ES6/O7–O10.	75.00
Contractor		44.00

* * * * *

Dated: May 1, 2002.

Patricia Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11381 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–048]

RIN 2115–AA97

Security Zone; St. Croix, U.S. Virgin Islands

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is removing the security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands. The zones were created for national security reasons and to protect the public and port of Limetree Bay (HOVENSA) from subversive acts. The zone is no longer needed because the HOVENSA facility has upgraded security measures, installed controlled access points and implemented internal security procedures for permitting crewmembers to leave vessels moored at their facility.

DATES: Temporary § 165.T07–002 is removed effective May 9, 2002.

ADDRESSES: Documents mentioned in this preamble as being available in the docket are part of docket [CGD07–01–048] and are available for inspection or copying at Marine Safety Office San Juan, San Martin Street #90, RODVAl Building, Suite 400, Guaynabo, PR 00968 between 7 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander Robert Lefevers, U.S. Coast Guard Marine Safety Office, San Juan, Puerto Rico, (787) 706–2444.

SUPPLEMENTARY INFORMATION:

Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that publishing an NPRM is unnecessary because this rule removes temporary security zones that are no longer needed because the HOVENSA facility has implemented internal security procedures for deciding which crewmembers are permitted to leave their vessels and enter the facility's property. For the same burden-lifting reason, under 5 U.S.C. 553(d)(3), we find good cause exists to make this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 28, 2001, the first in a series of temporary rules creating security zones around commercial tank and freight vessels moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands was published in the **Federal Register** (66 FR 49534). The zones created by that first rule were scheduled to terminate October 15, 2001, but they were revived twice—by a temporary rule issued in October 2001 (that was sent to Washington, D.C. for publication in the **Federal Register** but that was delayed in the mail [CGD07–01–125; 67 FR 9194, 9197, February 28, 2002]), and another issued in January 2002 (67 FR 4911, February 1, 2002).

When it was issued, the current temporary rule that created temporary section 165.T07–002 of Title 33 of the Code of Federal Regulations, was scheduled to expire on June 15, 2002. Temporary section 165.T07–002 requires all persons aboard commercial tank and freight vessels to remain onboard when moored at the HOVENSA facility in St. Croix, U.S. Virgin Islands unless they have permission from the Captain of the Port to transit the security zone around the vessel.

These security zones were needed to prevent subversive acts and to protect the public and the port of HOVENSA. The security zones are no longer needed because HOVENSA has implemented internal security procedures for deciding which persons can depart the vessels moored at their facility. Therefore, the Coast Guard is removing this security zone regulation effective May 9, 2002.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979).

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities because this rule removes an obsolete safety zone.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they could better evaluate its effects on them and participate in the rulemaking process. Small entities may contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding and participating in this rulemaking. We also have a point of contact for commenting on actions by employees of the Coast Guard. Small business may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with Federal regulations to the Small Business and Agriculture Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or safety that may disproportionately affect children.

Environment

The Coast Guard has considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.lC, this proposed rule is categorically excluded from further environmental documentation.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action.

Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165— REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

§ 165.T07–002 [Removed]

2. Section 165.T07–002 is removed.

Dated: April 18, 2002.

J.A. Servidio,

Commander, U.S. Coast Guard, Captain of the Port.

[FR Doc. 02–11619 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF DEFENSE

Department of the Army, Corps of Engineers

33 CFR Part 323

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 232

[FRL 7209–2]

Final Revisions to the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material"

AGENCIES: U.S. Army Corps of Engineers, Department of the Army, DoD; and Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Army Corps of Engineers (Corps) and the Environmental Protection Agency (EPA) are promulgating a final rule to reconcile our Clean Water Act (CWA) section 404 regulations defining the term "fill material" and to amend our definitions of "discharge of fill material." Today's final rule completes the rulemaking process initiated by the April 20, 2000, proposal in which we jointly proposed to amend our respective regulations so that both agencies would have identical definitions of these key terms. The proposal was intended to clarify the Section 404 regulatory framework and

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generally to be consistent with existing regulatory practice. Today's final rule satisfies those goals.

Today's final rule defines "fill material" in both the Corps' and EPA's regulations as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water. The examples of "fill material" identified in today's rule include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. This rule retains the effects-based approach of the April 2000 proposal and reflects the approach in EPA's longstanding regulations. Today's final rule, however, includes an explicit exclusion from the definition of "fill material" for trash or garbage.

Today's final rule also includes several clarifying changes to the term "discharge of fill material." Specifically, the term "infrastructure" has been added in several places following the term "structure" to further define the situations where the placement of fill material is considered a "discharge of fill material." In addition, the phrases "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills" and "placement of overburden, slurry, or tailings or similar mining-related materials" have been added to the definition of "discharge of fill material" to provide further clarification of the types of activities regulated under section 404.

As indicated in the proposal, as a general matter, this final rule will not modify existing regulatory practice. Today's final rule, which establishes uniform language for the Corps' and EPA's definitions of "fill material" and "discharge of fill material," will enhance the agencies' ability to protect aquatic resources by ensuring more consistent and effective implementation of CWA requirements.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: For information on today's rule, contact either Mr. Thaddeus J. Rugiel, U.S. Army Corps of Engineers, ATTN CECW–OR, 441 "G" Street, NW., Washington, DC 20314–1000, phone: (202) 761–4595, e-mail address: *thaddeus.j.rugiel@hq02.usace.army.mil*, or Ms. Brenda Mallory, U.S. Environmental Protection Agency, EPA West, Office of Wetlands, Oceans and Watersheds (4502T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460, phone: (202) 566–1368, e-mail address: *mallory.brenda@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

A. Potentially Regulated Entities

Persons or entities that discharge material to waters of the U.S. that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of any portion of a water of the U.S. could be regulated by today's rule. The CWA generally prohibits the discharge of pollutants into waters of the U.S. without a permit issued by EPA, or a State or Tribe approved by EPA under section 402 of the Act, or, in the case of dredged or fill material, by the Corps or an approved State or Tribe under section 404 of the Act. Today's final rule addresses the CWA section 404 program's definitions of "fill material" and "discharge of fill material," which are important for determining whether a particular discharge is subject to regulation under CWA section 404. Today's final rule reconciles EPA's and the Corps' differing definitions of "fill material" and provides further clarification for the regulated public on what constitutes a "discharge of fill material." Examples of entities potentially regulated include:

Category	Examples of potentially regulated entities
State/Tribal governments or instrumentalities.	State/Tribal agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Local governments or instrumentalities.	Local governments or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Federal government agencies or instrumentalities.	Federal government agencies or instrumentalities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Industrial, commercial, or agricultural entities.	Industrial, commercial, or agricultural entities that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.
Land developers and landowners.	Land developers and landowners that discharge material that has the effect of replacing any portion of a water of the U.S. with dry land or changing the bottom elevation of a water of the U.S.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities that are likely to be regulated by this action. This table lists the types of entities that we are now aware of that could potentially be regulated by this action. Other types of entities not listed in the table also could be regulated. To determine whether your organization or its activities are regulated by this action, you should carefully examine the applicability criteria in sections 230.2 of Title 40 and 323.2 of Title 33 of the Code of Federal Regulations, as well as the preamble discussion in Section II of today's final rule. If you have questions regarding the applicability of this action to a particular entity, consult the persons listed in the preceding section entitled **FOR FURTHER INFORMATION CONTACT.**

B. Summary of Regulatory History Leading to Final Rule and Related Litigation

The CWA governs the "discharge" of "pollutants" into "navigable waters," which are defined as "waters of the United States." Specifically, Section 301 of the CWA generally prohibits the discharge of pollutants into waters of the U.S., except in accordance with the requirements of one of the two permitting programs established under the CWA: Section 404, which regulates the discharge of dredged or fill material, or sction 402, which regulates all other pollutants under the National Pollutant Discharge Elimination System (NPDES) program. Section 404 is primarily administered by the Corps, or States/Tribes that have assumed the program pursuant to section 404(g), with input and oversight by EPA. In contrast, Section 402 and the remainder of the CWA are administered by EPA or approved States or Tribes. The CWA defines the term "pollutant" to include

materials such as rock, sand, and cellar dirt that often serve as "fill material." The CWA, however, does not define the terms "fill material" and "discharge of fill material," leaving it to the agencies to adopt definitions consistent with the statutory framework of the CWA.

Prior to 1977, both the Corps and EPA had defined "fill material" as "any pollutant used to create fill in the traditional sense of replacing an aquatic area with dry land or of changing the bottom elevation of a water body for any purpose. * * *" 40 FR 31325 (July 25, 1975); 40 FR 41291 (September 5, 1975).

In 1977, the Corps amended its definition of "fill material" to add a "primary purpose test," and specifically excluded from that definition material that was discharged primarily to dispose of waste. 42 FR 37130 (July 19, 1977). This change was adopted by the Corps because it recognized that some discharges of solid waste materials technically fit the definition of fill material; however, the Corps believed that such waste materials should not be subject to regulation under the CWA section 404 program. Specifically, the Corps' definition of "fill material" adopted in 1977 reads as follows:

> (e) The term "fill material" means any material used *for the primary purpose* of replacing an aquatic area with dry land or of changing the bottom elevation of an [sic] water body. The term does not include any pollutant discharged into the water primarily to dispose of waste, *as that activity is regulated under section 402 of the Clean Water Act.*" 33 CFR 323.2(e) (2001)(emphasis added).

EPA did not amend its regulations to adopt a "primary purpose test" similar to that used by the Corps. Instead, the EPA regulations at 40 CFR 232.2 defined "fill material" as "any 'pollutant' which replaces portions of the 'waters of the United States' with dry land or which changes the bottom elevation of a water body *for any purpose*" (emphasis added). EPA's definition focused on the effect of the material (an effects-based test), rather than the purpose of the discharge in determining whether it would be regulated by section 404 or section 402.

C. April 2000 Proposal

These differing definitions of "fill material" have resulted in some confusion for some members of the regulated community which has not promoted effective implementation of the CWA. *See* 65 FR at 21294. As a result, in April 2000, the agencies proposed revisions to their respective definitions of "fill material" and "discharge of fill material," adopting a single effects-based definition similar to that in EPA's regulations. The April 2000 proposed rule defined "fill material" as material that has the effect of replacing any portion of a water of the U.S. with dry land, or changing the bottom elevation of any portion of a water of the U.S. The agencies believe that an effects-based definition is, as a general matter, the most effective approach for identifying discharges that are regulated as "fill material" under section 404. Thus, the proposal removed from the Corps" definition the "primary purpose" test and the provision excluding pollutants discharged into water primarily to dispose of waste.

The April 2000 proposal also would have excluded from the definition discharges subject to an EPA proposed or promulgated effluent limitation guideline or standard under CWA sections 301, 304, 306, or discharges covered under a NPDES permit under CWA section 402. Finally, the April 2000 proposal solicited comments on the idea of the agencies creating an "unsuitable fill" category in the regulations that would identify materials that the Corps District Engineer could determine were not appropriate as fill material and, consequently, refuse to process an application seeking authorization to discharge such material.

In the preamble for the April 2000 proposal, the agencies discussed the need to address the confusion created by the agencies' differing definitions. While in practice some Corps Districts and EPA Regions have developed consistent approaches for determining whether proposed activities would result in a discharge of fill material, national uniformity will ensure better environmental results. Moreover, two judicial decisions discussed in the April 2000 proposal, *Resource Investments Incorporated* v. *U.S. Army Corps of Engineers*, 151 F. 3d 1162 (9th Cir. 1998) ("*RII*") and *Bragg* v. *Robertson*, (Civil Action No. 2:98–636, S.D. W. Va.), *vacated on other grounds*, 248 F. 3d 275 (4th Cir. 2001) ("*Bragg*"), indicate that the differing EPA and Corps definitions can result in judicial decisions that further confuse the regulatory context. *See* 65 FR at 21294–95. The clarification in the April 2000 proposal was intended to promote clearer understanding and application of our regulatory programs.

With respect to the term "discharge of fill material," the April 2000 proposal also included several clarifying changes. Unlike the definition of "fill material," EPA's and the Corps" then-existing regulations defining the term "discharge of fill material" were substantively identical. The proposed changes to the term were intended to provide further clarification of the issue. Specifically, the proposal provided for adding two phrases to the definition: (1) "Placement of fill material for construction or maintenance of liners, berms, and other infrastructure associated with solid waste landfills; and (2) "placement of coal mining overburden."

As summarized in more detail in the U.S. Army Corps of Engineers' and Environmental Protection Agency's Response to Comments on the April 20, 2000, Proposed Rule Revising the Clean Water Act Regulatory Definitions of "Fill Material" and "Discharge of Fill Material," dated May 3, 2002 ("Response to Comments"), we received a number of comments addressing these proposed changes. The comments and the above-referenced document are part of the administrative record for this rule and are available from either agency. *See* the section entitled **FOR FURTHER INFORMATION CONTACT.**

II. Discussion of Final Rule

A. Overall Summary of Comments

We received over 17,200 comments on the proposed rule, including several hundred late comments, most of which consisted of identical or substantially identical e-mails, letters, and postcards opposing the rule. (In April 2002, an additional several thousand letters and e-mails were sent opposing the adoption of a rule similar to the proposal.) Approximately 500 of the original comments consisted of more individualized letters, with a mixture of those comments supporting and opposing the rule. The comments of environmental groups and the various form letters were strongly opposed to the proposal, in particular, the elimination of the waste exclusion and the discussion in the preamble regarding treatment of unsuitable fill material. Except for several landfill representatives, comments from the regulated community generally supported the proposal, in particular, the fact that the rule would create uniform definitions of "fill material" for the Corps" and EPA's rules and maintain regulation of certain discharges under section 404 as opposed to section 402 of the CWA. A detailed discussion of the issues raised in the comments and the agencies' responses can be found in the Response to Comments document.

The April 2000 proposal would have achieved four major outcomes and these were the focus of many of the comments. These outcomes were (1) Conforming the EPA and Corps definitions of "fill material" to one another; (2) adopting an effects-based

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test, as opposed to the Corps' primary purpose test, for defining "fill material;" (3) eliminating the waste exclusion from the Corps" regulation; and (4) soliciting comments on whether to develop a definition for "unsuitable fill material." A summary of comments relating to these four issues and our responses are discussed in section II.B of this preamble, which describes today's final rule.

In addition, comments asserted the need for the agencies to prepare an environmental impact statement (EIS) in order to comply with the National Environmental Policy Act; and questioned the consistency of the April 2000 proposal with the CWA, existing judicial decisions, and agency guidance documents. These comments are addressed in this section of the preamble.

With respect to the need for an EIS, many of the comments opposing the adoption of the rule argued that an EIS should have been prepared, particularly to address the impacts of eliminating the waste exclusion. Supporters of an EIS rejected the notion that the issues will be addressed in the individual permit situations. First, they pointed out that many of the mining activities have historically been permitted under the nationwide permit program where truncated environmental review occurs and no individual NEPA analysis is undertaken. Second, they argued that the cumulative impacts often are not appropriately addressed in this context. As described in section III. J of this final preamble and in the Response to Comments document, the agencies have concluded that preparation of an EIS is not required for this rule pursuant to NEPA. While supporters of an EIS suggest that finalizing this rule will result in significant new discharges that previously would not have occurred, that is not the case. Although the rule will clarify the appropriate regulatory framework, we do not expect there to be any significant change in the nature and scope of discharges that will occur.

Finally, a number of comments asserted that the proposal should not be finalized because it violated the then-existing law (*e.g.*, CWA, *Bragg*, and *RII*). Other comments argued that the proposal was consistent with the CWA and current regulatory practice. We do not agree that the proposal or today's final rule violate the CWA or any other law. Moreover, we believe that agencies have an obligation to take whatever steps may be necessary, including making revisions to their regulations, to ensure that their programs are appropriately implementing statutory mandates. As indicated, the Corps and EPA believe that the current inconsistency between their respective definitions of "fill material" is impeding the effective implementation of the section 404 program. Under those circumstances, we believe that a change in the regulatory language is justified and that by adopting the substance of EPA's longstanding definition, we are minimizing potential confusion and disruption to the program, while remaining consistent with the CWA. We agree with those comments that recognize the consistency of our action with the CWA and current practice. As described in more detail in the Response to Comments document and sections II. B and D of this preamble, today's final rule clarifies the governing regulatory framework in a manner consistent with the CWA and existing practice.

B. Discussion of the Final Rule

1. Definition of "Fill Material"

Today's final rule modifies both the EPA's and Corps' existing definitions of "fill material" and has retained the effects-based approach set forth in the proposal. The final rule defines "fill material" as material placed in waters of the U.S. where the material has the effect of either replacing any portion of a water of the United States with dry land or changing the bottom elevation of any portion of a water. The examples of "fill material" identified in today's rule include rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in waters of the U.S. The proposed rule only specifically identified rock, earth and sand as examples, but the preamble made it clear that these were merely illustrative. In addition, in the preamble to the proposal, we indicated that wood chips, coal mining overburden, and similar materials would also constitute "fill material" if they had the effect of fill. As a result of questions raised in the comments about the scope of the term "fill material," we have included additional examples in the final rule, several of which were discussed in the proposed preamble. We believe that these additional examples will further clarify the rule.

Although today's final rule adopts a general effects-based approach for defining "fill material," it specifically excludes trash or garbage. Today's final rule does not modify any other Section 404 jurisdictional terms or alter any procedures governing the individual or general permit processes for Section 404 authorizations, requirements under Section 402, or the governing permit programs. Following is a summary of the actions that the agencies have taken in response to public comments.

a. Reconciling Agencies' Definitions

The majority of the comments from both the environmental and industry perspectives addressing the issue of whether the agencies should have identical definitions expressed the general view that the agencies should have the same definitions for the key jurisdictional terms "fill material" and "discharge of fill material." Many of the comments also noted that the differences between the Corps' and EPA's rules have historically caused confusion for the regulated community. Several asserted that despite differences in the regulatory language, some Corps Districts have been applying an effects-based test for some time. As described in the Response to Comments document, the agencies agree with those comments supporting the promulgation in both the Corps' and EPA's regulations of a uniform definition for the terms "fill material" and "discharge of fill material." Today's final rule achieves this result.

b. Effects-Based Test

Most of the comments supported the proposed rule's use of an effects-based test similar to EPA's longstanding definition for defining "fill material" and the elimination of the "primary purpose" test from the Corps regulations. Those disagreeing with such an approach gave a variety of reasons including, the lack of any demonstrated justification that eliminating the primary purpose test from the Corps' regulation was necessary; the existence of similar purpose tests in other statutes involving waste materials as well as in the Section 404(b)(1) Guidelines as demonstrating that such tests need not be unwieldy; the existence of alternative ways of addressing the issues of concern without resorting to this rule change; and concerns about the inappropriate expansion of section 404 jurisdiction. As will be explained, the agencies are not persuaded by these arguments.

First, we believe that the objective standard created by the effects-based test will yield more consistent results in determining what is "fill material" and will provide greater certainty in the implementation of the program. We believe that these benefits provide sufficient justification for today's rule change. In addition, although similar "purpose" tests may be used under other statutes and even under the section 404 program, this does not negate the difficulties we have faced in applying the primary purpose test, as well as some confusion that has resulted from the use of the subjective primary purpose test in the section 404 jurisdictional context. An objective, effects-based standard also helps ensure that discharges with similar environmental effects will be treated in a similar manner under the regulatory program. The subjective, purpose-based standard led in some cases to inconsistent treatment of similar discharges, a result which hampers effective implementation of the statute.

Moreover, we believe there is an important distinction between the use of a purpose test here, where it determines the basic jurisdiction of the section 404 versus the section 402 program, and its use in the other contexts, such as in the evaluation of whether alternatives to a discharge of dredged material are "practicable" within the meaning of the section 404(b)(1) Guidelines. See 40 CFR 230.10(a)(2). The use of project purpose in the latter case is appropriate because it would make no sense to consider an alternative "practicable" if it did not satisfy the basic or overall purpose of the project proposed by the applicant. The definition of fill material, on the other hand, determines which legal requirements must be met for a discharge to be authorized under the statute. In that circumstance, we believe it is important to use an objective, effects-based test that ensures consistent treatment of like discharges, and prevents uncertainty for the regulated community as to what regulatory program applies to particular discharges. Moreover, we disagree that alternatives other than a rulemaking could have adequately addressed the agencies' concerns since the facial differences in our regulations could only be completely reconciled by revising the rules. In addition, the agencies previously had attempted to clarify their interpretation of the rules in a 1986 Memorandum of Agreement (MOA). Nevertheless, issues persisted.

Finally, we disagree that the rule causes an inappropriate expansion of section 404 jurisdiction. The CWA does not limit section 404 jurisdiction over fill material to materials meeting the primary purpose test. The "primary purpose test" is a regulatory definition and within the agencies province to modify as long as the modification is consistent with the CWA. In sum, as described in the Response to Comments document, the final rule, just as the proposal, adopts an effects-based approach to defining fill material. We believe the clarity and consistency created by the agencies relying on a more objective test for defining these key jurisdictional terms will result in more effective regulation under the CWA.

c. Elimination of Waste Exclusion

Many comments opposed the proposal to eliminate the waste exclusion from the Corps' regulation. Some of these comments recommended that, in addition to the effects-based test, the agencies should include a general exclusion from the definition of "fill material" for any discharge of "waste." These comments asserted that such an approach provides the advantages of EPA's effects-based approach while more effectively implementing the Corps' exclusion of waste material from regulation under section 404. Some of the comments argued that the proposed rule's deletion of the waste exclusion language from the Corps' regulations violates the CWA. According to these comments, while waste material can permissibly be covered by section 404 when it is placed in waters for a beneficial purpose, the CWA categorically prohibits authorizing such discharges under section 404 when their purpose is waste disposal. These comments pointed to the decisions in *RII* and *Bragg* to argue that all waste material is outside the scope of section 404.

These comments do not object to, nor claim that the CWA prohibits, issuance of a section 404 permit for waste material discharged into waters of the U.S. under all circumstances. Where waste is discharged for a purpose other than waste disposal (e.g., to create fast land for development), these comments acknowledged that the Corps' issuance of a section 404 permit in accordance with the section 404(b)(1) Guidelines adequately protects the environment and is consistent with the CWA. On this point, we agree. However, where the identical material—with identical environmental effects—is discharged into waters for purposes of waste disposal, the comments contend that issuance of a section 404 permit in accordance with the Guidelines would neither protect the environment nor be allowed by the CWA. Here, we disagree.

Simply because a material is disposed of for purposes of waste disposal does not, in our view, justify excluding it categorically from the definition of fill. Some waste (e.g., mine overburden) consists of material such as soil, rock and earth, that is similar to "traditional" fill material used for purposes of creating fast land for development. In addition, other kinds of waste having the effect of fill (e.g., certain other mining wastes) can, unlike trash or garbage, be indistinguishable either upon discharge or over time from structures created for purposes of creating fast land. Given the similarities of some discharges of waste to "traditional" fill, we believe that a categorical exclusion for waste would be over-broad. Instead, where a waste has the effect of fill, we believe that regulation under the section 404 program is appropriate.

This does not mean, however, that today's rule opens up waters of the U.S. to be filled for any waste disposal purposes. As explained previously, today's rule is generally consistent with current agency practice and so it does not expand the types of discharges that will be covered under section 404. The section 404(b)(1) Guidelines provide for a demonstration that there are no less damaging alternatives to the discharge, and that all appropriate and practicable steps have been taken to avoid, minimize and compensate for any effects on the waters. We recognize that, some fill material may exhibit characteristics, such as chemical contamination, which may be of environmental concern in certain circumstances. This is true under either a primary purpose or effects based definition of fill material. The section 404 permitting process, however, is expressly designed to address the entire range of environmental concerns arising from discharges of dredged or fill material. See 40 CFR Part 230, subparts C-G (containing comprehensive provisions for addressing physical, chemical and biological impacts of discharges).

The 404(b)(1) guidelines provide a comprehensive means of evaluating whether any discharge of fill material, regardless of its purpose, is environmentally acceptable and therefore may be discharged in accordance with the CWA. Where the practicable alternatives test has been satisfied and all practicable steps have been taken both to minimize effects on the aquatic environment and to compensate for the loss of aquatic functions and values, we believe the section 404 permitting process is adequate to ensure protection of the aquatic ecosystem for any pollutant that fills waters. There is no environmental basis for contending that the sufficiency of the permitting process to protect waters of the U.S. depends on the purpose of the discharge.

The position reflected in some of the comments appears to be based on the contention that Congress did not intend for waste disposal to be a permissible purpose of discharging pollutants into waters of the U.S. While we agree that

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Congress wanted to prevent utilization of waters as unlicensed dumping grounds for waste material, the Act as a whole is focused primarily on discharges of waste material, as shown by the Act's definition of pollutant, which includes solid waste, sewage, garbage, discarded equipment, industrial, municipal and agricultural waste. *See* CWA section 502(6). While the elimination of all discharges is an important goal of the Act (*see* CWA section 101(a)(1)), the Act seeks to meet that goal not by banning discharges of waste outright, but by imposing carefully tailored restrictions on discharges of pollutants based on factors such as the impact of the discharge on the receiving water, availability of treatment technologies, cost, and the availability of alternatives to the discharge. *See, e.g.*, CWA sections 301(b), 304(b) (requiring discharges to meet technology-based effluent limitations guidelines and standards); section 306(a)(1) (defining new source performance standard to include no discharge of pollutants "where practicable"); section 301(b)(1)(C) (requiring dischargers to comply with any more stringent limitations necessary to meet water quality standards); sections 404(b)(1) and 403(c)(1)(F) (requiring that 404(b)(1) Guidelines be based on section 403(c) criteria, which include consideration of "other possible locations" of disposal).

Nor do we think that there is any indication that Congress intended to exclude discharges for purposes of waste disposal entirely from coverage under section 404. For example, section 404 applies to "dredged material" (referred to as dredged "spoil" in the definition of pollutant in section 502(6)), which is typically discharged not for any beneficial purpose, but as a waste product from a dredging operation. Moreover, section 404(a) authorizes the Corps to issue permits for discharges of dredged or fill material at specified "disposal" sites. Congress' use of the word "disposal" supports the reasonableness of our view that regulating waste material having the effect of fill under section 404 is consistent with the Act.

We also disagree with the interpretation of some of the comments on the *RII* and *Bragg* decisions as mandating that the Corps retain the current exclusion of waste disposal in the definition of fill material. We note first that the decision of the district court in *Bragg* has been vacated by the Fourth Circuit on 11th amendment grounds. *Bragg* v. *Robertson*, 72 F. Supp. 2d 642 [S.D. W. Va. 1999), *rev'd*, 248 F. 3d 275 (4th Cir. 2001). In any event, both *Bragg* and *RII* applied the Corps' then-existing definition of fill material to conclude that certain discharges were not covered by section 404. Nothing in those decisions suggests that the Act itself precluded the regulation of waste materials with the effect of fill under section 404. See section II. D. of this preamble for further discussion of the *RII* decision. While we agree that trash or garbage generally should be excluded from the definition of fill material (for the reasons explained in section II.B.1d of this preamble), we do not agree that an exclusion for all waste is appropriate and have not included such a provision in today's rule. These issues are discussed in section II.B.1d of the preamble and are addressed more fully in the Response to Comments document.

d. Trash or Garbage

The agencies have added an exclusion for trash or garbage to the definition of "fill material" for several reasons. First, the preamble to the proposed rule and many of the comments recognized that trash or garbage, such as debris, junk cars, used tires, discarded kitchen appliances, and similar materials, are not appropriately used, as a general matter, for fill material in waters of the U.S. In particular, we agree that the discharge of trash or garbage often results in adverse environmental impacts to waters of the U.S. by creating physical obstructions that alter the natural hydrology of waters and may cause physical hazards as well as other environmental effects. We also agree that these impacts are generally avoidable because there are alternative clean and safe forms of fill material that can be used to accomplish project objectives and because there are widely available landfills and other approved facilities for disposal of trash or garbage.

Accordingly, a party may not obtain a section 404 permit to dispose of trash or garbage in regulated waters. Because the discharge of any pollutant into jurisdictional waters is prohibited under CWA section 301 except in accordance with a permit issued under sections 404 or 402, section 402 would govern such discharges. For many of the reasons identified in this preamble, such as the physical obstruction and hazards that such materials would create in waters of the U.S., we would emphasize that trash or garbage are unlikely to be eligible to receive a permit under the section 402 regulatory program. We also note that where such materials are placed in waters of the U.S. without a permit, EPA or an approved State/Tribal agency with permitting authority, remains the lead enforcement agency. Today's rule does not affect the application of section 402 of the CWA to discharges of pollutants other than fill material that may be associated with such things as solid waste landfill structures and mine impoundments. Where such structures release pollutants into waters of the U.S., a permit under section 402 of the CWA is required that will ensure protection of any downstream waters, including compliance with State water quality standards.

While the agencies have generally excluded materials characterized as trash or garbage from the definition of "fill material," we agree that there are very specific circumstances where certain types of material that might otherwise be considered trash or garbage may be appropriate for use in a particular project to create a structure or infrastructure in waters of the U.S. In such situations, this material would be regulated as fill material. Such material would have to be suitably cleaned up and not include constituents that would cause significant environmental degradation. An example would be where recycled porcelain fixtures are cleaned and placed in waters of the U.S. to create environmentally beneficial artificial reefs. Such material would not be considered trash or garbage and thus would not be subject to the exclusion. The agencies believe that this is appropriate, and even environmentally beneficial, in situations where (1) the otherwise excluded materials are being placed in waters of the U.S. in a manner consistent with traditional uses of fill material to create a structure or infrastructure, (2) the material's characteristics are suitable to the project purpose, and (3) the review under section 404 can effectively ensure that the material will not cause or contribute to significant environmental degradation.

We also note that as stated in the preamble to the proposal, it is important to draw a clear distinction between solid waste discharged directly into waters of the U.S. and sanitary solid waste landfills. With respect to solid waste landfills, the liners, berms, and other infrastructure that are constructed of fill materials in waters of the U.S. are regulated under section 404 of the CWA. In the case of a landfill that has received a section 404 permit for the placement of berms, dikes, liners and similar activities needed to construct the facility, the subsequent disposal of solid waste into the landfill, while subject to regulation under the RCRA, would not be subject to regulation under the CWA because the constructed facility is not waters of the U.S. As with current practice, discharges of leachate from landfills into waters of the U.S. would remain subject to CWA section 402. Today's final rule does not change this general regulatory framework for landfills. *See* section II D of this preamble for further discussion.

e. Unsuitable Fill Material

With respect to developing a potential definition of "unsuitable fill material," there was almost unanimous opposition to the unsuitable fill concept as discussed in the preamble. Some comments viewed it as an inadequate substitute for the elimination of the waste exclusion. Others argued that having an unsuitable fill provision would be a good idea but that it would need to be much broader and to specifically include mining-related wastes. These commenters also objected to leaving the question of whether something was "unsuitable fill material" to the discretion of the District Engineer. Some comments expressed concern that the definition of unsuitable fill material focused on materials that have a potential to leach or that have toxic constituents in toxic amounts. They argued that the definition could result in prohibiting activities that with appropriate permit terms and conditions potentially are allowable under section 404. They also argued that such issues should be addressed in the context of the permitting process and should not result in the permit application being rejected. As described in the Response to Comments document, the agencies have not included an unsuitable fill category in the final rule but, as discussed, the final rule does narrow the scope of "fill material" by excluding trash or garbage.

f. Effluent Guideline Limitations and 402 Permits

In addition to the changes already discussed in this preamble, today's final rule also deletes the exclusion contained in the proposal for discharges covered by effluent limitation guidelines or standards or NPDES permits. Several of the comments raised concerns that the exclusion included in the proposed definition for discharges covered by proposed or existing effluent limitation guidelines or standards or NPDES permits was vague and would result in uncertainty with respect to the regulation of certain discharges. Other comments stated that it was inappropriate for rule language to allow reliance on proposed effluent limitation guidelines or standards before they are promulgated as a final rule. In addition, including the language in the actual rule could raise questions as to whether the reference to effluent guidelines was meant to refer only to those in existence at the time today's rule was promulgated or whether the reference was prospective.

In light of the concerns and confusion associated with the proposed provision, we have decided to delete it from the rule. However, although we have removed the language in question from the rule itself, we emphasize that today's rule generally is intended to maintain our existing approach to regulating pollutants under either section 402 or 404 of the CWA. Effluent limitation guidelines and new source performance standards ("effluent guidelines") promulgated under section 304 and 306 of the CWA establish limitations and standards for specified wastestreams from industrial categories, and those limitations and standards are incorporated into permits issued under section 402 of the Act. EPA has never sought to regulate fill material under effluent guidelines. Rather, effluent guidelines restrict discharges of pollutants from identified wastestreams based upon the pollutant reduction capabilities of available treatment technologies. Recognizing that some discharges (such as suspended or settleable solids) can have the associated effect, over time, of raising the bottom elevation of a water due to settling of waterborne pollutants, we do not consider such pollutants to be "fill material," and nothing in today's rule changes that view. Nor does today's rule change any determination we have made regarding discharges that are subject to an effluent limitation guideline and standards, which will continue to be regulated under section 402 of the CWA. Similarly, this rule does not alter the manner in which water quality standards currently apply under the section 402 or the section 404 programs.

2. Definition of "Discharge of Fill Material"

Most of the comments addressing "discharge of fill material" supported the inclusion of items related to solid waste landfills, although several asserted that the regulation of discharges associated with solid waste landfills was inconsistent with the court's decision in *Resource Investments Inc.* v. *U.S. Army Corps of Engineers*, 151 F.3d 1162 (9th Cir. 1998). See detailed discussion in section II. D of this final preamble. With respect to the placement of coal mining overburden, two diametrically opposed views were reflected in the comments. Many of the comments argued that coal overburden was "waste" material and that allowing such discharges was a violation of the CWA. In contrast, other comments argued that focusing on "coal mining overburden" was confusing, because it created the impression that the overburden or similar materials from other mining processes may not be regulated as "discharges of fill material."

Today's final rule responds to the comments in the following ways. First, the agencies continue to agree with those comments that supported including the placement of material associated with construction and maintenance of solid waste landfills and related facilities in the discharge of fill material. For the reasons discussed in section II. D of this final preamble and in the Response to Comments document, we do not agree that we are precluded by the *RII* decision from issuing a rule that defines "fill material" or the "discharge of fill material" as encompassing discharges associated with the construction of solid waste landfill infrastructures. Second, the agencies have modified the "placement of coal mining overburden" to read "placement of overburden, slurry, or tailings or similar mining-related materials." The language in today's final rule will clarify that any mining-related material that has the effect of fill when discharged will be regulated as "fill material." We made this clarification because it was clear from the comments that some were reading the examples we identified as an exclusive list. The general intent of this rule is to cover materials that have the effect of fill, not simply to focus on any one industrial activity. We believe that the additional mining related examples will address the confusion reflected in the comments. Finally, as discussed in section II.B.1.c of this preamble, we do not agree that the CWA contains a blanket prohibition precluding discharges of "waste" materials in to waters of the U.S. Instead, the Act establishes the framework for regulating discharges into waters and we believe the section 404 program is the most appropriate vehicle for regulating overburden and other mining-related materials. Several other minor changes, editorial in nature, have also been made in today's final rule.

C. Appropriate Reliance on the Environmental Reviews Conducted by Other Federal or State Programs

As indicated, today's rule is designed to improve the effective implementation of the section 404 program by having the Corps and EPA adopt a single, uniform definition for these key jurisdictional terms. We also believe

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that we can improve the effective implementation of the program by placing greater emphasis on coordination among the Federal agencies and with relevant State and Tribal programs. There are numerous examples of where the agencies can effectively work together and with other State, Tribal and Federal programs in the review of proposed projects that involve a section 404 discharge to jointly develop information that is relevant and reliable. Projects involving discharges to waters of the U.S. are often subject to review under other Federal and State permit programs, including the RCRA, the Surface Mining Control and Reclamation Act (SMCRA), the Coastal Zone Management Act (CZMA), CWA Section 402 NPDES, and others. Examples where closer coordination may be beneficial include the review of proposed solid waste landfills under the CWA and RCRA, proposed highway projects under the CWA and NEPA, proposed mining projects under the CWA and SMCRA, and proposed coastal restoration projects under the CWA and CZMA.

As EPA and the Corps implement today's rule, we will be placing even greater emphasis on effective coordination with other relevant State, Tribal and Federal programs and, consistent with our legal responsibilities, on reliance, as appropriate, on the information developed and conclusions reached by other agencies to support the decisions required under these programs and ours. We are confident that this coordination will serve to make the implementation of today's rule and, more broadly, the CWA section 404 program, more effective, consistent and environmentally protective.

Some comments expressed concern that an effects-based approach to the definition of "fill material" would result in a duplication of effort among Federal programs and an increased workload for the Corps. We believe that more effective coordination among the State, Tribal and Federal agencies and appropriate reliance on the analyses of other agencies will help significantly to address these concerns.

First, it is important to note that EPA and Corps regulations encourage coordination and allow for appropriate reliance on relevant information and analyses developed under other programs to help satisfy section 404 program requirements. In the most effective circumstances, the Corps is able to coordinate with other relevant State, Tribal and Federal agencies before and during project review to identify the most efficient and effective role for each agency and ensure mutual reliance on information and analyses, particularly where that reliance is consistent with individual agency expertise and experience. For example, for many years, subject to advice from EPA, the Corps has relied on State determinations regarding water quality matters, as those State determinations are reflected in State CWA section 401 water quality certifications (see 33 CFR 320.4(d)). Such Corps reliance on State water quality determinations will continue for discharges associated with activities such as mining and solid waste landfills. In regulating discharges associated with mining, close coordination with the State, Tribal and Federal entities responsible for implementation of SMCRA, CWA section 401 and section 402 will enable the Corps to take advantage of the specialized expertise of the agencies as the Corps completes the section 404 review. Such coordination also helps to reduce the costs associated with project reviews, promotes consistent and predictable decision-making, and ultimately ensures the most effective protection for human health and the environment. EPA and the Corps anticipate that Corps District offices will rely on State/Federal site selection under SMCRA regarding the siting of coal mining related discharges to the extent allowed under current law and regulations. Similarly, the Corps will make full use of State RCRA information regarding the siting, design and construction of solid waste landfills, and will defer to those State decisions to the extent allowed by current law and regulation.

Both agencies recognize, however, that the Corps is ultimately responsible under the CWA for making the required determinations that support each permit decision based on the Corps' independent evaluation of the record. The Corps itself determines the extent of deference to information generated from other programs including, for example, site selection under SMCRA and RCRA, that is appropriate on a case-by-case basis. Ultimately the Corps is relying on, rather than relinquishing to, these other sources of information as a record is developed and the Corps makes the determinations required by the Section 404 regulatory program. For example, the Corps will make full use of State site selection decisions under SMCRA (*e.g.*, coal slurry impoundments) and RCRA (*e.g.*, solid waste landfills), but the Corps will independently review those decisions and the State processes that generated them, to ensure that any Corps permit decision for a discharge site will fully comply with NEPA, the section 404(b)(1) Guidelines, and other relevant legal requirements. The Corps and EPA believe that effective coordination with other State and Federal agencies and the information they develop will help the Corps continue to make more timely, consistent and environmentally protective permit decisions.

D. The Final Rule and the Resource Investments Decision

In *Resource Investments Inc* v. *Corps*, 151 F.3d 1162 (9th Cir. 1998), the Ninth Circuit held that the Corps lacked the authority to regulate a solid waste landfill in waters of the U.S. The court found that: (1) Neither the solid waste itself nor the liner consisting of layers of gravel and low-permeability soil constituted "fill material" under Corps regulations; and (2) because of the potential for inconsistent results if landfills were regulated under both section 404 of the CWA and Subtitle D of RCRA, requiring these facilities to be subject solely to RCRA would "harmonize" the statutes.

We discussed this decision in the preamble to the proposed rule as an example of some of the confusion engendered by the "primary purpose" test. The court found in *RII* that the liner was not fill material because its primary purpose was not to replace an aquatic area with dry land or change the bottom elevation of a waterbody, "but rather to serve as a leak detection and collection system." 151 F.3d at 1168. We explained in the proposal that fills typically serve some other purpose than just creating dry land or raising a water's bottom elevation and that, if the court's reasoning were taken to its logical conclusion, many traditional fills in waters of the U.S. would not be subject to section 404.

Some commenters objected to our proposal not to follow the decision in *RII* in this rulemaking. They criticized the proposal as an improper attempt to "override" or "overrule" the Ninth Circuit's decision, particularly within the Ninth Circuit where the decision is binding. They also argued that the proposed rule failed to address the potential for duplication and inconsistency in decision-making by State and Federal agencies identified in *RII*.

In our view, these comments raise two distinct issues. The first is whether we should follow the *RII* decision outside the Ninth Circuit and cease regulating discharges associated with the construction of solid waste landfills under section 404. The second issue is whether *RII* precludes us from

regulating discharges associated with construction of solid waste landfill structures within the Ninth Circuit, even after today's rule. We address each of these issues in turn.

Regarding the first question, we note first that, after *RII* was decided, we chose not to acquiesce in the decision outside the Ninth Circuit. While we agreed that the solid waste disposal placed in a landfill is not fill material (and such waste continues to be excluded under today's rule), we believed that the court misapplied the primary purpose test in the Corps' regulations, and that the court's conclusion that RCRA supplanted CWA regulation was contrary to Congressional intent. See *Resource Investments Inc. et al.* v. *Corps*, No. 97–35934 (Government's Petition for Rehearing and Suggestion for Rehearing En Banc, September 30, 1998). Thus, after the court decided *RII*, the Corps has continued to issue section 404 permits for the construction of solid waste landfill infrastructures outside the Ninth Circuit.

After considering public comments, we continue to decline to follow *RII* outside the Ninth Circuit and have, therefore, maintained the approach in the proposed rule to the regulation of solid waste landfills. The revisions to the Corps' definition of fill material in today's rule address the basis for the court's holding that the landfill did not involve the discharge of fill material under section 404. For the reasons explained elsewhere in today's notice, we believe that an effects-based test is the appropriate means of evaluating whether a pollutant is "fill material" and should be regulated under section 404 as opposed to section 402 of the CWA. The placement of berms, liners and other infrastructure (such as roads) associated with construction of a solid waste landfill in waters of the U.S. has the effect of replacing water with dry land or raising the bottom elevation of a water. Therefore, under today's rule, they constitute fill material. Such discharges are indistinguishable from similar discharges associated with other construction activity, which the Corps has always regulated as fill under section 404. *See* 40 CFR 232.2; 33 CFR 323.2 (defining "discharge of fill material," to include "fill that is necessary for the construction of any structure in a water of the U.S.; the building of any structure or impoundment requiring rock, sand, dirt or other material for its construction; site-development fills for recreational, industrial, commercial, residential and other uses; causeways or road fills; * * *"). We have amended our definition of this term to include the "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills." That amendment does not change substantively the prior definition, but merely adds solid waste landfills as an example to make clear that it constitutes a "discharge of fill material." Thus, under our new regulations, discharges associated with the creation of solid waste landfill structures clearly constitute "fill material."

To the extent some commenters asserted that revising our regulation was an improper attempt to "overrule" or "override" this holding in *RII*, we disagree. The court's analysis of the "fill material" in *RII* was based entirely on the Corps regulations as they existed at that time, and not upon the interpretation of the CWA itself. Moreover, the CWA does not define "fill material." Therefore, both the statute and the Ninth Circuit's decision leave us the discretion to adopt a reasonable definition consistent with the statutory scheme. We have explained elsewhere why we believe today's definition of fill is reasonable and appropriate under the CWA. To the extent today's rule has the practical effect of "overriding" this aspect of the court's decision in *RII*, that is neither remarkable nor inappropriate, since it is entirely proper for agencies to consider and, if appropriate, revise their regulations in light of judicial interpretation of them.

For purposes of deciding whether to apply the *RII* decision outside the Ninth Circuit, we have also evaluated the second basis for the court's decision—that regulation solely under Subtitle D of RCRA instead of section 404 would "harmonize" the statutes and avoid necessary duplication. We decline to follow that holding both on legal and policy grounds. First, we believe, notwithstanding *RII*, that eliminating the CWA permitting requirement on the grounds that an activity is regulated under RCRA is contrary to Congressional intent in both statutes. Second, we do not agree with the court that regulation under Subtitle D and section 404 would constitute unnecessary duplication, in light of the distinct purposes served by these authorities, the differing Federal roles under the two statutes, and our clarification in today's rulemaking of our intent to give all appropriate deference to State RCRA decision-making in the section 404 permitting process.

We first do not agree with the court's legal reasons for concluding that regulation under Subtitle D of RCRA supplants CWA regulation. The CWA prohibits the discharge of any pollutant into waters of the U.S. without a permit under the Act. *See* CWA section 301(a). Even though an activity associated with a discharge may be regulated under other Federal or State authorities, we believe there is not any basis to conclude that such regulation by itself makes section 301(a) of the Act inapplicable to a discharge of a pollutant into waters of the U.S. In effect, the court concluded that enactment of a regulatory scheme under Subtitle D of RCRA impliedly repealed the statutory permit requirement under the CWA. But "the intention of the legislature to repeal must be clear and manifest." *Radzanower* v. *Touche Ross & Co.*, 426 U.S. 148, 154 (1976), and the court must conclude that the two acts are in irreconcilable conflict or that the later act covers the whole subject of the earlier one and is clearly intended as a substitute. *Id.* The court in *RII* did not, and could not, make these findings.

In fact, Congress itself made precisely the opposite findings when it enacted RCRA. Section 1006(a) states:

> Nothing in this chapter shall be construed to apply to (or to authorize any State, interstate, or local authority to regulate) any activity or substance which is subject to the [CWA] except to the extent such application (or regulation) is not inconsistent with the requirements of (the CWA).

This provision precludes regulation of solid waste landfills under Subtitle D in a manner inconsistent with the requirements of the CWA. In our view, it is plainly "inconsistent" with the requirements of the CWA to hold that regulation under RCRA eliminates CWA permitting requirement altogether.

Instead, the court relied upon certain Corps regulations, statements by Corps officials and a 1986 interagency MOA. The court first stated that applying section 404 to solid waste landfills was "unreasonable" because there would be "potentially inconsistent results" where both the State and the Corps were applying the same criteria in regulating solid waste landfills. 151 F.3d at 1169. The court held that this "regulatory overlap is inconsistent with Corps regulations stating that "the Corps believes that State and Federal regulatory programs should complement rather than duplicate one another.'" 33 CFR 320.1(a)(5). In addition, the court cited statements by the Corps in a 1984 letter to EPA stating that EPA was in a better position than the Corps to regulate solid waste landfills. Finally, the court cited the 1986 MOA between the Corps and EPA.

However, none of these "authorities" purport to modify the statutory

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permitting requirements of the CWA, nor could they. The Corps' regulation cited by the court is simply a statement of the Corps' policy objective of working in concert with State regulatory programs, an important and continuing Corps objective that was discussed previously. The Corps' letter and the MOA reflected our efforts to manage our programs in light of our differing definitions of fill material, but did not speak to the CWA statutory permitting requirement. The court also misconstrued the 1986 MOA entered into by EPA and the Corps as indicating we intended to make the regulation of solid waste facilities within "the sole purview of the EPA and affected states" after EPA promulgated certain Subtitle D regulations. 151 F.3d at 1169. In fact, we stated,

> EPA and Army agree that consideration given to the control of discharges of solid waste both in waters of the United States and upland should take into account the results of studies being implemented under the 1984 Hazardous and Solid Waste Amendments (HSWA) to the Resource Conservation and Recovery Act (RCRA), signed into law on November 8, 1984. . . .
>
> Unless extended by mutual agreement, the agreement will expire at such time as EPA has accomplished specified steps in its implementation of RCRA, at which time the results of the study of the adequacy of the existing Subtitle D criteria and proposed revisions to the Subtitle D criteria for solid waste disposal facilities, including those that may receive hazardous household wastes and small quantity generator waste, will be known. In addition, data resulting from actions under the interim agreement can be considered at that time.

It should be noted that this MOA is about the regulation of solid waste disposal, not about the construction of infrastructure, including solid waste landfill infrastructure, that involves discharges of fill material to waters of the U.S. We did not address in the MOA how solid waste landfills would be regulated after EPA completed its study and certain RCRA regulations, but said only that these developments would "be taken into account" as we decided how to address these discharges in the future. Thus, in addition to the inability of the agencies as a legal matter to modify the CWA statutory permitting requirement through an MOA, we expressly reserved any judgment about the appropriate regulatory approach to be taken after certain actions were taken under RCRA. The court appears to have assumed that the MOA expired after we completed the specified steps under RCRA, and that regulatory authority over solid waste landfills thereafter became the sole purview of RCRA. In fact, the MOA did not expire, and it has continued to provide the framework for regulation of solid waste landfills under section 404 of the CWA. See Memorandum of John F. Studt, U.S. Army Corps of Engineers, May 17, 1993 (stating "the subject MOA remains effective in its entirety until further notice" and noting that this position was coordinated with EPA).

We conclude, therefore, that it would be contrary to the language and intent of both the CWA and RCRA to conclude that RCRA subtitle D supplants the CWA permitting requirement for discharges into waters of the U.S. associated with the construction of solid waste landfills. The different Federal roles in the permitting schemes in these statutes supports this conclusion. Subtitle D provides that each State will "adopt and implement a permit program or other system of prior approval and conditions" to assure that each solid waste management facility within the State "will comply" with criteria established by EPA for the siting, design, construction, operation and closure of solid waste landfills. RCRA section 4005(c)(1)(B). States are required to submit permit programs for EPA to review and EPA is required to "determine whether each State has developed an adequate program" to ensure compliance with EPA's Subtitle D regulations. RCRA section 4005(c)(1)(B) and (C). However, RCRA does not grant to EPA authority to issue permits for solid waste landfills, review State permitting decisions or enforce Subtitle D requirements in States with approved programs. The court in *RII* appeared to misunderstand EPA's authorities under Subtitle D of RCRA when it stated that EPA would be the permitting authority in the absence of an approved State program. *See* 151 F.3d 1169 ("we hold that when a proposed project affecting a wetlands area is a solid waste landfill, the *EPA* (or the approved State program) . . . will have the permit authority under RCRA.") (Emphasis added); 151 F.3d at 1167 ("RCRA gives the EPA authority to issue permits for the disposal of solid waste, but allows states to substitute their own permit programs for the Federal program if the State program is approved by EPA."). While this authority exists with regard to disposal of hazardous waste under Subtitle C of RCRA, EPA does not have this authority with regard to disposal of non-hazardous solid waste under Subtitle D.

In contrast, the CWA requires either a Federal permit for discharges of pollutants into waters of the U.S., or issuance of a permit by a State/Tribe with an approved program, subject to EPA's authority to object to a permit where EPA finds it fails to meet the guidelines and requirements of the CWA. CWA sections 402(d); 404(j). EPA also has authority under the CWA to enforce conditions in Federal or State permits under the Act. CWA section 309.

These contrasting statutory schemes support the conclusion that eliminating CWA authority over discharges of fill material associated with construction of solid waste landfills would mean a significant departure from the statutory structure created by Congress in the CWA, a scheme which Congress expressly sought to preserve when it adopted RCRA. *See* RCRA section 1006(a). This does not mean that we view the Federal role as one of second-guessing every decision made by State regulatory authorities under RCRA. To the contrary, both RCRA and the CWA reflect a strong presumption in favor of State-administered regulatory programs. As discussed elsewhere, we intend to rely on State decision-making under RCRA to the extent allowed under current law and regulations. However, we believe that eliminating a Federal role entirely on these matters is neither appropriate nor consistent with Congressional intent under RCRA or the CWA.

Thus, we decline to follow the decision in *RII* outside the Ninth Circuit because we conclude there is not an adequate legal basis on which to conclude that discharges of pollutants associated with solid waste landfills no longer need to be authorized by a CWA permit solely because the project receives a permit under Subtitle D of RCRA.

We nonetheless share the basic policy perspective expressed by the court in *RII* about the need to avoid unnecessary duplication and potential inconsistent application of regulatory programs under the CWA and RCRA. In fact, RCRA expressly vests EPA with the responsibility to "integrate all provisions of (RCRA) for purposes of administration and enforcement and (to) avoid duplication, to the maximum extent practicable, with the appropriate provisions of the * * * (CWA). * * * Such integration shall be effected only to the extent that it can be done in a manner consistent with the goals and policies of this chapter and the CWA. * * *" RCRA section 1006(b). EPA has sought such integration first by promulgating location restrictions for landfills that are consistent with the criteria for issuance of section 404 permits. See 40 CFR 258.12; 230.10. Among other requirements, a landfill may not be located in wetlands unless it is demonstrated to the State that there are not less environmentally damaging practicable alternatives, the facility will not cause significant degradation of wetlands, and that appropriate and practicable steps have been taken to mitigate the loss of wetlands from the facility. However, EPA never purported to substitute Subtitle D regulation for the CWA permitting requirement, a result that would violate both section 1006(a) and (b). Instead, the Subtitle D RCRA regulations make clear that owners or operators of municipal solid waste landfills "must comply with any other applicable Federal rules, laws, regulations, or other requirements." 40 CFR 258.3. At the time EPA promulgated this regulation, the agency expressly noted that such requirements include those arising under the CWA. *See* 56 FR 51042 (October 9, 1991).

We do not believe, however, that the Subtitle D and section 404 programs are redundant. Rather, each program has a distinct focus. The State RCRA permitting process addresses a much broader range of issues, including technical operating and design criteria, ground water monitoring, corrective action, closure and post-closure care and financial assurances. In contrast, the section 404 process is focused exclusively on the impacts of discharges of dredged or fill material on the aquatic ecosystem, and ways of ensuring that those impacts are avoided, minimized and compensated. Because of the Corps' expertise in protecting aquatic ecosystems, we have found that State RCRA permitting agencies often incorporate by reference the requirements of section 404 permits. (For example, the State RCRA permit for the *RII* landfill required the applicant to implement the wetlands and mitigation plan to be approved by the Corps through the 404 permit process.) We believe that, in these and other ways, State and Federal permitting authorities can create efficiencies by relying on each other's expertise in making regulatory decisions.

We intend to make additional efforts to avoid unnecessary duplication in the Federal and State permitting process. As explained in section II. C of this final preamble, we intend that the Corps will rely on decisions by the State RCRA authority about the siting, design and construction of solid waste landfills in waters of the U.S. to the extent allowed by law and regulations. Appropriate deference to State decision-making will help avoid duplication, while still ensuring that the Corps fulfills its responsibilities to authorize discharges of fill material associated with solid waste landfills in accordance with CWA requirements.

This does not mean that, in every single case, State and Federal decision-makers will agree on whether a particular project or configuration is environmentally acceptable. Nevertheless, instances of disagreement have been rare. We intend to further enhance our efforts to ensure effective coordination between State and Federal officials. However, we do not agree with the court in *RII* that the only way to avoid unnecessary duplication is to eliminate the CWA permitting requirement altogether.

We next address commenters' assertions that the decision in *RII* continues to preclude us from regulating solid waste landfills under section 404 within the Ninth Circuit. These comments also argue that, given the "statutory" basis for the court's decision, we cannot change the result in the Ninth Circuit through this rulemaking.

As noted in this preamble, the court construed administrative materials of the Corps and EPA as supporting the conclusion that the agencies did not intend to regulate solid waste landfills under section 404 of the CWA. In light of this agency intent, the court concluded that subjecting landfills to regulation solely under RCRA would "harmonize" the statutes and "give effect to each [statute] while preserving their sense and purpose." 151 F.3d at 1169. The court found that this harmonization "is consistent with the sense of the CWA that discharges of solid waste materials are beyond the scope of section 404 . . . and avoids unnecessary duplication of Federal and State efforts in the area of wetlands protection." *Id.*

We again emphasize the distinction between "discharges of solid waste material," as referenced by the court and discharges of fill material associated with the construction of infrastructure. In this rulemaking, we have clarified that discharges having the effect of raising the bottom elevation of a water or replacing water with dry land, including fill used to create landfills such as liners, berms and other infrastructure associated with solid waste landfills are discharges of fill material subject to the section 404 program. Therefore, we have altered the landscape as understood by the court in *RII* (i.e., that these facilities were entirely outside the intended purview of section 404). We do not agree with commenters who argued that there was a "statutory" basis to the court's decision in the sense that the holding of the decision turned on an interpretation of Congressional intent in the CWA or RCRA. The court did not cite any provision of the CWA or RCRA to support its conclusions. Rather, the court derived the "sense and purpose" of the CWA based on agency regulations, guidance and correspondence. By clarifying the scope of section 404 authorities in this rulemaking, we have altered the "sense and purpose" of the CWA underlying the court's conclusion that regulation solely under RCRA would "harmonize" the statutes. Because the premises before the court have changed, we do not view the court's decision as continuing to bar the regulation under section 404 of discharges associated with solid waste landfills within the Ninth Circuit. At a minimum, today's rule calls into question the continuing vitality of the court's reasoning and conclusions and, should a case be brought within the Ninth Circuit challenging our authority to regulate solid waste landfills, we would ask the court to address the question anew in light of the clarification of our authorities in today's rule.

III. Administrative Requirements

A. Plain Language

In compliance with the principle in Executive Order 12866 regarding plain language, this preamble is written using plain language. Thus, the use of "we" in this notice refers to EPA and the Corps, and the use of "you" refers to the reader. We have also used active voice, short sentences, and common every day terms except for necessary technical terms.

B. Paperwork Reduction Act

This action does not impose any new information collection burden under the provisions of the Paperwork Production Act, 44 U.S.C. 3501 *et seq.* This rule merely reconciles EPA and Corps CWA section 404 regulations defining the term "fill material" and amends our definitions of "discharge of fill material." Thus, this action is not subject to the Paperwork Reduction Act.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of

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information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are displayed in 40 CFR part 9 and 48 CFR chapter 15. For the CWA section regulatory 404 program, the current OMB approval number for information requirements is maintained by the Corps of Engineers (OMB approval number 0710–0003, expires December 31, 2004).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), EPA and the Corps must determine whether the regulatory action is "significant" and therefore subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or Tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action" in light of the provisions of paragraph (4) above. As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

D. Executive Order 13132

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA and the Corps to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have Federalism implications." "Policies that have Federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This final rule does not have Federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or Section 404. It is generally consistent with current agency practice and does not impose new substantive requirements. Within California, Oregon, Washington, Idaho, Wyoming, Nevada, Arizona, Hawaii, Guam, and the Northern Mariana Islands, after today's rule, the Corps will again be issuing Section 404 permits for the construction of solid waste landfills in waters of the U.S., which the Corps had ceased doing after the decision in *RII* (the decision did not affect the permitting requirement outside these states). *See* section II. D. of this preamble. However, resuming the issuance of section 404 permits for construction of solid waste landfills in waters of the U.S. in these areas does not have Federalism implications. None of the States within the Ninth Circuit will incur administrative costs as a result of today's rule, because none currently administer the section 404 program and, in any event, the administrative costs of permitting solid waste landfills are minimal in the context of the overall section 404 permitting program. In addition, this change does not impose any additional substantive obligations on State or local governments seeking to construct solid waste landfills in waters of the U.S. since Subtitle D of RCRA currently requires such facilities to meet comparable conditions for receiving a section 404 permit. *See* section II. D of this preamble. Finally, we do not believe that requiring any State or local governments seeking to construct solid waste landfills in waters of the U.S. to undergo the Section 404 permitting process itself will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Thus, Executive Order 13132 does not apply to this rule.

E. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice-and-comment rulemaking requirements under the Administrative Procedure Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations and small governmental jurisdictions.

For purposes of assessing the impacts of today's rule on small entities, a small entity is defined as : (1) A small business based on SBA size standards; (2) a small governmental jurisdiction that is a government of a city, county, town, school district, or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

After considering the economic impacts of today's final rule on small entities, we certify that this action will not have a significant economic impact on a substantial number of small entities. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore would not have a significant economic impact on a substantial number of small entities.

F. Unfunded Mandates Reform Act

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and Tribal governments and the private sector. Under section 202 of the UMRA, the agencies generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and Tribal governments, in the aggregate, or to the private sector, of $100 million or more in any one year. Before promulgating an EPA or Corps rule for which a written statement is needed, section 205 of the UMRA generally requires the agencies to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows EPA and the Corps to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator and Secretary of the Army publish with the final rule an explanation why that alternative was not adopted. Before EPA or the Corps establishes any regulatory requirements that may significantly or uniquely affect small governments, including Tribal governments, they must have developed under section 203 of the UMRA a small government agency plan. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of EPA or Corps regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and Tribal governments, in the aggregate, or the private sector in any one year. Thus, today's rule is not subject to the requirements of sections 202 and 205 of the UMRA. For the same reasons, we have determined that this rule contains no regulatory requirements that might significantly or uniquely affect small governments. Thus today's rule is not subject to the requirements of section 203 of UMRA.

G. National Technology Transfer and Advancement Act

As noted in the proposed rule, Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (the NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note) directs us to use voluntary consensus standards in our regulatory activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (*e.g.*, materials specifications, test methods, sampling procedures, and business practices) that are developed or adopted by voluntary consensus standards bodies. The NTTAA directs us to provide Congress, through OMB, explanations when we decide not to use available and applicable voluntary consensus standards.

This rule does not involve technical standards. Therefore, we did not consider the use of any voluntary consensus standards.

H. Executive Order 13045

Executive Order 13045: "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by us.

This final rule is not subject to the Executive Order because it is not economically significant as defined in Executive Order 12866. In addition, it does not concern an environmental or safety risk that we have reason to believe may have a disproportionate effect on children.

I. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires the agencies to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

Today's rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Currently, under the CWA, any discharge of pollutants into waters of the U.S. requires a permit under either section 402 or 404 of the CWA. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. It is generally consistent with current agency practice and does not impose new substantive requirements. Within California, Oregon, Washington, Idaho, Wyoming, Nevada, Arizona, Hawaii, Guam, and the Northern Mariana Islands, after today's rule, the Corps will again be issuing Section 404 permits for the construction of solid waste landfills in waters of the U.S., which the Corps had ceased doing after the decision in *RII* (the decision did not affect the permitting requirement outside these states). *See* section II. D. of this preamble. However, resuming the issuance of section 404 permits for construction of solid waste landfills in waters of the U.S. in these areas does not have tribal implications. No tribes within the Ninth Circuit will incur administrative costs as a result of today's rule, because none currently administer the section 404 program and, in any event, the administrative costs of permitting solid waste landfills are minimal in the context of the overall section 404 permitting program. In addition, this change does not impose any additional substantive obligations on any Tribe seeking to construct solid waste landfills in waters of the U.S. since Subtitle D of RCRA currently requires such facilities to meet comparable conditions for receiving a section 404 permit. *See* section II.D. of this preamble. Finally, we do not believe that requiring any tribal government seeking to construct solid waste landfills in waters of the U.S. to undergo the Section 404 permitting process itself will have substantial direct effects on one or more Indian

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tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes. Thus, Executive Order 13175 does not apply to this rule.

J. Environmental Documentation

As required by the NEPA, the Corps prepares appropriate environmental documentation for its activities affecting the quality of the human environment. The Corps has prepared an environmental assessment (EA) of the final rule. The Corps' EA ultimately concludes that, since the adoption of this rule will not significantly affect the quality of the human environment, the preparation and coordination of an EIS is not required. The EA, included in the administrative record for today's rule, explains the rationale for the Corps' conclusion.

K. Congressional Review Act

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. We will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective June 10, 2002.

L. Executive Order 12898

Executive Order 12898 requires that, to the greatest extent practicable and permitted by law, each Federal agency must make achieving environmental justice part of its mission. Executive Order 12898 provides that each Federal agency conduct its programs, policies, and activities that substantially affect human health or the environment in a manner that ensures that such programs, policies, and activities do not have the effect of excluding persons (including populations) from participation in, denying persons (including populations) the benefits of, or subjecting persons (including populations) to discrimination under such programs, policies, and activities because of their race, color, or national origin.

Today's rule is not expected to negatively impact any community, and therefore is not expected to cause any disproportionately high and adverse impacts to minority or low-income communities. Today's rule relates solely to whether a particular discharge is appropriately authorized under section 402 or section 404 of the Clean Water Act. Moreover, the proposed allocation of authority between these programs is generally consistent with existing agency practice.

M. Executive Order 13211

This rule is not a "significant energy action" as defined in Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. Today's rule conforms our two regulatory definitions of "fill material" and thereby clarifies whether a particular discharge is subject to regulation under section 402 or section 404. Today's rule is generally consistent with current agency practice, does not impose new substantive requirements and therefore will not have a significant adverse effect on the supply, distribution, or use of energy.

List of Subjects

33 CFR Part 323

Water pollution control, Waterways.

40 CFR Part 232

Environmental protection, Intergovernmental relations, Water pollution control.

Corps of Engineers

33 CFR Chapter II

Accordingly, as set forth in the preamble 33 CFR part 323 is amended as set forth below:

PART 323—[AMENDED]

1. The authority citation for part 323 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 323.2 as follows:

a. Paragraph (e) is revised.

b. In paragraph (f), in the second sentence: add the words "or infrastructure" after the words "for the construction of any structure"; add the word ", infrastructure," after the words "building of any structure"; remove the words "residential, and" and add in their place the words "residential, or"; and add the words "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;" after the words "utility lines;".

The revision reads as follows:

§ 323.2 Definitions.

* * * * *

(e)(1) Except as specified in paragraph (e)(3) of this section, the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

* * * * *

Dated: May 3, 2002.

Dominic Izzo,

Principal Deputy Assistant Secretary of the Army (Civil Works), Department of the Army.

Environmental Protection Agency

40 CFR Chapter I

Accordingly, as set forth in the preamble 40 CFR part 232 is amended as set forth below:

PART 232—[AMENDED]

1. The authority citation for part 232 continues to read as follows:

Authority: 33 U.S.C. 1344.

2. Amend § 232.2 as follows:

a. The definition of "Fill material" is revised.

b. In the definition of "Discharge of fill material", in paragraph (1): add the words "or infrastructure" after the words "for the construction of any structure"; add the word ", infrastructure," after the words "building of any structure"; remove the words "residential, and" and add in their place the words "residential, or"; and add the words "placement of fill material for construction or maintenance of any liner, berm, or other infrastructure associated with solid waste landfills; placement of overburden, slurry, or tailings or similar mining-related materials;" after the words "utility lines;".

The revision reads as follows:

§ 232.2 Definitions.

* * * * *

Fill material. (1) Except as specified in paragraph (3) of this definition, the term fill material means material placed in waters of the United States where the material has the effect of:

(i) Replacing any portion of a water of the United States with dry land; or

(ii) Changing the bottom elevation of any portion of a water of the United States.

(2) Examples of such fill material include, but are not limited to: rock, sand, soil, clay, plastics, construction debris, wood chips, overburden from mining or other excavation activities, and materials used to create any structure or infrastructure in the waters of the United States.

(3) The term fill material does not include trash or garbage.

* * * * *

Dated: May 3, 2002.

Christine Todd Whitman,

Administrator, Environmental Protection Agency.

[FR Doc. 02–11547 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–92–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT–001–0037a; FRL–7206–8]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Great Falls Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: On February 9, 2001, the Governor of Montana submitted a request to redesignate the Great Falls "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is approving the Great Falls CO redesignation request and the maintenance plan.

DATES: This direct final rule is effective on July 8, 2002, without further notice, unless EPA receives adverse comments by June 10, 2002. If adverse comment is received, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to:

Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the following offices:

United States Environmental Protection Agency, Region VIII, Air and Radiation Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466; and, United States Environmental Protection Agency, Air and Radiation Docket and Information Center, 401 M Street, SW, Washington, DC 20460.

Copies of the State documents relevant to this action are available for public inspection at: Montana Air and Waste Management Bureau, Department of Environmental Quality, P.O. Box 200901, Helena, Montana, 59620–0901.

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number: (303) 312–6479.

SUPPLEMENTARY INFORMATION: Throughout this document wherever "we", "us", or "our" are used we mean the Environmental Protection Agency.

I. What Is the Purpose of This Action?

In this action, we are approving a change in the legal designation of the Great Falls area from nonattainment for CO to attainment and we're approving the maintenance plan that is designed to keep the area in attainment for CO for the next 10 years.

We originally designated the Great Falls area as nonattainment for CO under the provisions of the 1977 Clean Air Act (CAA) Amendments (see 43 FR 8962, March 3, 1978). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted (Pub. L. 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q). Under section 107(d)(1)(C) of the CAA, we designated the Great Falls area as nonattainment for CO because the area had been previously designated as nonattainment before November 15, 1990. The Great Falls area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.[1]

Under the CAA, designations can be changed if sufficient data are available to warrant such changes and if certain other requirements are met. See CAA section 107(d)(3)(D). Section 107(d)(3)(E) of the CAA provides that the Administrator may not promulgate a redesignation of a nonattainment area to attainment unless:

(i) the Administrator determines that the area has attained the national ambient air quality standard;

(ii) the Administrator has fully approved the applicable implementation plan for the area under CAA section 110(k);

(iii) the Administrator determines that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan and applicable Federal air pollutant control regulations and other permanent and enforceable reductions;

(iv) the Administrator has fully approved a maintenance plan for the area as meeting the requirements of CAA section 175A; and,

(v) the State containing such area has met all requirements applicable to the area under section 110 and part D of the CAA.

Before we can approve the redesignation request, we must decide that all applicable State Implementation Plan (SIP) elements have been fully approved. Approval of the applicable SIP elements may occur prior to final approval of the redesignation request or simultaneously with final approval of the redesignation request. We note there are no outstanding SIP elements necessary for the Great Falls redesignation.

II. What Is the State's Process To Submit These Materials to EPA?

Section 110(k) of the CAA sets out provisions governing our actions on submissions of revisions to a SIP. The CAA also requires States to observe certain procedural requirements in developing SIP revisions for submittal to EPA. Section 110(a)(2) of the CAA requires that each SIP revision be adopted after reasonable notice and public hearing. This must occur prior to the revision being submitted by a State to us.

The Montana Department of Environmental Quality (DEQ) held a public hearing on December 19, 2000,

[1] The EPA describes areas as "not classified" if they were designated nonattainment both prior to enactment and (pursuant to CAA section 107(d)(1)(C)) at enactment, and if the area did not violate the primary CO NAAQS in either year for the 2-year of 1988 through 1989. Refer to the "General Preamble for the Implementation of Title of the Clean Air Act Amendments of 1990", 57 FR 13498, April 16, 1992. See specifically 57 FR 13535, April 16, 1992.

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for the Great Falls CO redesignation request and maintenance plan. The redesignation request and maintenance plan were adopted by the Montana DEQ directly after the hearing and became State effective December 19, 2000. These SIP materials were submitted by the Governor to us on February 9, 2001. We have evaluated the Governor's submittal and have determined that the State met the requirements for reasonable notice and public hearing under section 110(a)(2) of the CAA.

As required by under section 110(k)(1)(B) of the CAA, we reviewed these SIP materials for conformance with the completeness criteria in 40 CFR part 51, appendix V and determined that the Governor's February 9, 2001, submittal was administratively and technically complete. Our completeness determination was sent on March 16, 2001, through a letter from Jack W. McGraw, Acting Regional Administrator, to Governor Judy Martz.

III. EPA's Evaluation of the Redesignation Request and Maintenance Plan

EPA has reviewed the State's redesignation request and maintenance plan and believes that approval of the request is warranted, consistent with the requirements of CAA section 107(d)(3)(E). The following are descriptions of how the section 107(d)(3)(E) requirements are being addressed.

(a) *Redesignation Criterion:* The Area Must Have Attained The Carbon Monoxide (CO) NAAQS.

Section 107(d)(3)(E)(i) of the CAA states that for an area to be redesignated to attainment, the Administrator must determine that the area has attained the applicable NAAQS. As described in 40 CFR 50.8, the national primary ambient air quality standard for carbon monoxide is 9 parts per million (10 milligrams per cubic meter) for an 8-hour average concentration not to be exceeded more than once per year. 40 CFR 50.8 continues by stating that the levels of CO in the ambient air shall be measured by a reference method based on 40 CFR part 50, Appendix C and designated in accordance with 40 CFR part 53 or an equivalent method designated in accordance with 40 CFR part 53. Attainment of the CO standard is not a momentary phenomenon based on short-term data. Instead, we consider an area to be in attainment if each of the CO ambient air quality monitors in the area are doesn't have more than one exceedance of the CO standard over a one-year period. 40 CFR 50.8 and 40 CFR part 50, appendix C. If any monitor in the area's CO monitoring network records more than one exceedance of the CO standard during a one-year calendar period, then the area is in violation of the CO NAAQS. In addition, our interpretation of the CAA and our national policy, as presented in the September 4, 1992, John Calcagni policy memorandum entitled "Procedures for Processing Requests to Redesignate Areas to Attainment" (hereafter referred to as the "Calcagni Memorandum"), has been that an area seeking redesignation to attainment must show attainment of the CO NAAQS for at least a continuous two-year calendar period. In addition, the area must continue to show attainment through the date that we promulgate the redesignation to attainment in the **Federal Register**.

Montana's CO redesignation request for the Great Falls area is based on an analysis of quality assured ambient air quality monitoring data that are relevant to the redesignation request. Ambient air quality monitoring data for consecutive calendar years 1988 through 2000, and preliminary data from 2001, show a measured exceedance rate of the CO NAAQS of 1.0 or less per year, per monitor, in the Great Falls s nonattainment area. These data were collected and analyzed as required by EPA (see 40 CFR 50.8 and 40 CFR part 50, appendix C) and have been archived by the State in EPA's Aerometric Information and Retrieval System (AIRS) national database. Further information on CO monitoring is presented in Section 7.10.2 of the State's maintenance plan. We have evaluated the ambient air quality data and has determined that the Great Falls area has not violated the CO standard and continues to demonstrate attainment.

Because the Great Falls nonattainment area has quality-assured data showing no violations of the CO NAAQS for 1997, 1998, and 1999, the years the State used to support the redesignation request, the Great Falls area has met the first component for redesignation. demonstration of attainment of the CO NAAQS. We note that the State of Montana has also committed in Section 7.10.6.3 of the maintenance plan to the necessary continued operation of the CO monitors in compliance with all applicable federal regulations and guidelines.

(b) *Redesignation Criterion:* The Area Must Have Met All Applicable Requirements Under Section 110 And Part D Of The CAA.

To be redesignated to attainment, section 107(d)(3)(E)(v) requires that an area must meet all applicable requirements under section 110 and part D of the CAA. We interpret section 107(d)(3)(E)(v) to mean that for a redesignation to be approved by us, the State must meet all requirements that applied to the subject area prior to or at the time of the submission of a complete redesignation request. In our evaluation of a redesignation request, we don't need to consider other requirements of the CAA that became due after the date of the submission of a complete redesignation request.

1. CAA Section 110 Requirements

On January 10, 1980, we approved revisions to Montana's SIP as meeting the requirements of section 110(a)(2) of the CAA (see 45 FR 2034). Although section 110 of the CAA was amended in 1990, most of the changes were not substantial. Thus, we have determined that the SIP revisions approved in 1980 continue to satisfy the requirements of section 110(a)(2). For further detail, please see 45 FR 2034. In addition, we have analyzed the SIP elements that we are approving as part of this action and we have determined they comply with the relevant requirements of section 110(a)(2).

2. Part D Requirements

The Great Falls area was originally designated as nonattainment for CO on September 9, 1980 (see 45 FR 59315). Montana's CAA Part D plan for attainment of the CO standards in the Great Falls area was submitted to EPA on March 28, 1986. On January 26, 1987, EPA proposed approval of Montana's revision to the State Implementation Plan (see 52 FR 2732). However, in 1987, Great Falls recorded a violation of the CO standard. On May 26, 1988, EPA sent a letter to the Governor, in accordance with section 110(k)(5) of the CAA, that required the State to submit a SIP revision for the Great Falls area. On September 7, 1990, EPA proposed disapproval of the Montana CO SIP, for the Great Falls area, for failure to demonstrate attainment. No final action was taken on this proposed rule. Also on September 7, 1990, EPA approved a CO control measure for the Great Falls area, that strengthened the State's SIP, by approving a permit that was issued by the State to the Montana Refining Company (see 55 FR 36812).

EPA had begun development of its forthcoming post-1987 policy for carbon monoxide; however, we did not finalize our post-1987 policy for CO because the Clean Air Act (CAA) was amended on November 15, 1990. Under section 107(d)(1)(C) of the CAA, we designated the Great Falls area as nonattainment for CO because the area had been

previously designated nonattainment before November 15, 1990. As stated previously, the Great Falls area was classified as a "not classified" CO nonattainment area as the area had not violated the CO NAAQS in 1988 and 1989.

Before the Great Falls not classified CO nonattainment area may be redesignated to attainment, the State must have fulfilled the applicable requirements of part D. Under part D, an area's classification indicates the requirements to which it will be subject. Subpart 1 of part D sets forth the basic nonattainment requirements applicable to all nonattainment areas, whether classified or nonclassifiable.

The relevant Subpart 1 requirements are contained in sections 172(c) and 176. The April 16, 1992, General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (see 57 FR 13498; hereafter referred to as the "General Preamble of April 16, 1992") provides our interpretations of the CAA requirements for not classified CO areas (see specifically 57 FR 13535):

> "Although it seems clear that the CO-specific requirements of subpart 3 of part D do not apply to CO "not classified" areas, the 1990 CAAA are silent as to how the requirements of subpart 1 of part D, which contains general SIP planning requirements for all designated nonattainment areas, should be interpreted for such CO areas. Nevertheless, because these areas are designated nonattainment, some aspects of subpart 1 necessarily apply."

Under section 172(b), the applicable section 172(c) requirements, as determined by the Administrator, were due no later than three years after an area was designated as nonattainment under section 107(d) of the amended CAA (see 56 FR 56694, November 6, 1991). In the case of the Great Falls area, the due date was November 15, 1993. As the Great Falls CO redesignation request and maintenance plan were not submitted by the Governor until February 9, 2001, the General Preamble of April 16, 1992, provides that the applicable requirements of CAA section 172 are 172(c)(3) (emissions inventory), 172(c)(5)(new source review permitting program), and 172(c)(7)(the section 110(a)(2) air quality monitoring requirements)). See 57 FR 13535, April 16, 1992. We have determined that Part D requirements for Reasonably Available Control Measures (RACM), an attainment demonstration, reasonable further progress (RFP), and contingency measures (CAA section 172(c)(9)) are not applicable to not classified CO areas. See 57 FR 13535, April 16, 1992. It is also worth noting that we have interpreted the requirements of sections 172(c)(1) (reasonable available control measures—RACM), 172(c)(2) (reasonable further progress—RFP), 172(c)(6)(other measures), and 172(c)(9)(contingency measures) as being irrelevant to a redesignation request because they only have meaning for an area that is not attaining the standard. See the General Preamble of April 16, 1992, and the Calcagni Memorandum. Finally, the State has not sought to exercise the options that would trigger sections 172(c)(4)(identification of certain emissions increases) and 172(c)(8)(equivalent techniques). Thus, these provisions are also not relevant to this redesignation request.

Section 176 of the CAA contains requirements related to conformity. Although our regulations (see 40 CFR 51.396) require that states adopt transportation conformity provisions in their SIPs for areas designated nonattainment or subject to an EPA-approved maintenance plan, we have decided that a transportation conformity SIP is not an applicable requirement for purposes of evaluating a redesignation request under section 107(d) of the CAA. This decision is reflected in our 1996 approval of the Boston carbon monoxide redesignation. (See 61 FR 2918, January 30, 1996.)

The applicable requirements of CAA section 172 are discussed below.

A. Section 172(c)(3)—Emissions Inventory

Section 172(c)(3) of the CAA requires a comprehensive, accurate, current inventory of all actual emissions from all sources in the Great Falls nonattainment area. Our interpretation of the emission inventory requirement for "not classified" CO nonattainment areas is detailed in the General Preamble of April 16, 1992. We determined that an emissions inventory is specifically required under CAA section 172(c)(3) and is not tied to an area's proximity to attainment. We concluded that an emissions inventory must be included as a revision to the SIP and was due 3 years from the time of the area's designation. For "not classified" CO areas, this date became November 15, 1993. To address the section 172(c)(3) requirement for a "current" inventory, EPA interpreted "current" to mean calendar year 1990 (see 57 FR 13502, April 16, 1992).

On July 18, 1995, the Governor submitted to us the 1990 base year inventory for the Great Falls CO nonattainment area. We approved this 1990 base year CO emissions inventory on December 15, 1997 (see 62 FR 65613.)

B. Section 172(c)(5)—New Source Review (NSR)

The CAA requires all nonattainment areas to meet several requirements regarding NSR, including provisions to ensure that increased emissions will not result from any new or modified stationary major sources and a general offset rule. The State of Montana has a fully-approved NSR program (60 FR 36715, July 18, 1995) that meets the requirements of CAA section 172(c)(5). The State also has a fully approved Prevention of Significant Deterioration (PSD) program (60 FR 36715, July 18, 1995) that will apply after the redesignation to attainment is approved by EPA.

C. Section 172(c)(7)—Compliance With CAA section 110(a)(2): Air Quality Monitoring Requirements

According to our interpretations presented in the General Preamble of April 16, 1992, "not classified" CO nonattainment areas should meet the "applicable" air quality monitoring requirements of section 110(a)(2) of the CAA as explicitly referenced by sections 172(b) and (c) of the CAA. With respect to this requirement, the State indicates in Section 7.10.2 ("Ambient Air Quality Data") of the maintenance plan, that relevant ambient CO monitoring data have been properly collected and uploaded to EPA's Aerometric Information and Retrieval System (AIRS) for the Great Falls area. Air quality data for 1998 and 1999 are included in Section 7.10.2A of the maintenance plan. We have more recently polled the AIRS database and has verified that the State has also uploaded additional quality-assured ambient CO data through 2000. Additional, preliminary data also include CO values through 2001. The data in AIRS indicate that the Great Falls area has shown, and continues to show, attainment of the CO NAAQS.

Information concerning CO monitoring in Montana is included in the Monitoring Network Review (MNR) prepared by the State and submitted to EPA. EPA personnel have concurred with Montana's annual network reviews and have agreed that the network remains adequate. Finally, in Section 7.10.6.3 of the maintenance plan, the State commits to the continued operation of the existing Great Falls CO monitoring network, according to all applicable Federal regulations and guidelines, even after the Great Falls area is redesignated to attainment for CO.

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(c) *Redesignation Criterion:* The Area Must Have A Fully Approved SIP Under Section 110(k) Of The CAA.

Section 107(d)(3)(E)(ii) of the CAA states that for an area to be redesignated to attainment, it must be determined that the Administrator has fully approved the applicable implementation plan for the area under section 110(k).

Based on the approval into the SIP of provisions under the pre-1990 CAA, our prior approval of a SIP revision required under the 1990 amendments to the CAA, and our approval of the State's commitment to maintain an adequate monitoring network (contained in the maintenance plan), we have determined that, as of the date of this **Federal Register** action, Montana has a fully approved CO SIP under section 110(k) for the Great Falls CO nonattainment area.

(d) *Redesignation Criterion:* The Area Must Show That The Improvement In Air Quality Is Due To Permanent And Enforceable Emissions Reductions.

Section 107(d)(3)(E)(iii) of the CAA provides that for an area to be redesignated to attainment, the Administrator must determine that the improvement in air quality is due to permanent and enforceable reductions in emissions resulting from implementation of the applicable implementation plan (Great Falls CO revision as approved on September 7, 1990, see 55 FR 36812), implementation of applicable Federal air pollutant control regulations, and any other permanent and enforceable reductions.

The necessary CO emissions reductions for the Great Falls area were primarily achieved through the Federal Motor Vehicle Control Program (FMVCP).

In general, the FMVCP provisions require vehicle manufacturers to meet more stringent vehicle emission limitations for new vehicles in future years. These emission limitations are phased in (as a percentage of new vehicles manufactured) over a period of years. As new, lower emitting vehicles replace older, higher emitting vehicles ("fleet turnover"), emission reductions are realized for a particular area such as Great Falls. For example, EPA promulgated lower hydrocarbon (HC) and CO exhaust emission standards in 1991, known as Tier I standards for new motor vehicles (light-duty vehicles and light-duty trucks) in response to the 1990 CAA amendments. These Tier I emissions standards were phased in with 40% of the 1994 model year fleet, 80% of the 1995 model year fleet, and 100% of the 1996 model year fleet. The benefits to the Great Falls CO area of the FMVCP are further presented in section 7.10.4. of the maintenance plan.

We have evaluated the identified control measure, the 1990 base year emission inventory, and the 1996 attainment year emission inventory, and have concluded that the improvement in air quality in the Great Falls nonattainment area has resulted primarily from emission reductions from the FMVCP Federal control measure.

(e) *Redesignation Criterion:* The Area Must Have A Fully Approved Maintenance Plan Under CAA Section 175A.

Section 107(d)(3)(E)(iv) of the CAA provides that for an area to be redesignated to attainment, the Administrator must have fully approved a maintenance plan for the area meeting the requirements of section 175A of the CAA.

Section 175A of the CAA sets forth the elements of a maintenance plan for areas seeking redesignation from nonattainment to attainment. For areas such as Great Falls that are utilizing EPA's limited maintenance plan approach, as detailed in the EPA guidance memorandum entitled "Limited Maintenance Plan Option for Nonclassifiable CO Nonattainment Areas" from Joseph Paisie, Group Leader, Integrated Policy and Strategies Group, Office of Air Quality and Planning Standards, dated October 6, 1995 (hereafter referred to as "Paisie Memorandum"), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable areas if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., a design value at or below 7.65 ppm, or 85% of the CO NAAQS, based on the 8 consecutive quarters—2 years of data—used to determine attainment). There is no requirement to project emissions over the maintenance period. EPA believes if the area begins the maintenance period at or below 85 percent of CO NAAQS, the continued applicability of PSD requirements, any control measures already in the SIP, and Federal measures, should provide adequate assurance of maintenance over the initial 10-year maintenance period. In addition, the design value for the area must continue to be at or below 7.65 ppm until the time of final EPA action on the redesignation. The method for calculating the design value is presented in the June 18, 1990, EPA guidance memorandum entitled "Ozone and Carbon Monoxide Design Value Calculations", from William G. Laxton, Director of the OAQPS Technical Support Division, to Regional Air Directors (hereafter referred to as the "Laxton Memorandum".)

In the case of a nonclassifiable area applying for a limited maintenance plan, all the monitors must have a separate design value calculated and the highest design value must be at or below 7.65 ppm. Should the design value for the area exceed 7.65 ppm prior to final EPA action on the redesignation, then the area no longer qualifies for the limited maintenance plan and must instead submit a full maintenance plan as described in the Calcagni Memorandum.

Eight years after our approval of this redesignation, the State must submit a revised maintenance plan that demonstrates continued maintenance of the CO NAAQS for 10 years following the initial ten-year maintenance period. To address the possibility of future NAAQS violations, the maintenance plan must contain contingency measures, with a schedule for adoption and implementation, that are adequate to assure prompt correction of a violation. In addition, EPA issued further maintenance plan interpretations in the General Preamble of April 16, 1992, the Calcagni Memorandum, and the Paisie Memorandum.

In this direct final rulemaking action, we are approving the State of Montana's limited maintenance plan for the Great Falls nonattainment area because EPA has determined, as detailed below, that the State's maintenance plan submittal meets the requirements of section 175A of the CAA and is consistent with the documents referenced above. Our analysis of the pertinent maintenance plan requirements, with reference to the Governor's February 9, 2001, submittal, is provided as follows:

1. Emissions Inventory—Attainment Year

Our interpretations of the CAA section 175A maintenance plan requirements for a limited maintenance plan are described in the Calcagni Memorandum and Paisie Memorandum as referenced above. The State is to develop an attainment year emissions inventory to identify a level of emissions in the area which is sufficient to attain the CO NAAQS. This inventory is to be consistent with EPA's most recent guidance on emissions inventories for nonattainment areas available at the time [2] and should represent emissions during the time period associated with the monitoring data showing attainment.

The maintenance plan that the Governor submitted on February 9, 2001, included a comprehensive inventory of CO emissions for the Great Falls area for a typical CO season day in 1996. This inventory includes emissions from stationary point sources, area sources, non-road mobile sources, and on-road mobile sources. The State selected 1996 as the year from which to develop the attainment year inventory as it correlated with other inventory work that the State was proceeding with. The use of a 1996 inventory is acceptable to us as it represents a recent year for which the Great Falls area was showing attainment for the CO NAAQS. We note, and as archived in our Aerometric Information Retrieval System (AIRS) national database, that the Great Falls area has actually continuously demonstrated attainment of the CO NAAQS since 1988. Further, use of the 1996 attainment year conforms with the requirements in both the Calcagni Memorandum and Paisie Memorandum.

A more detailed description of the 1996 attainment year inventory is documented in the maintenance plan, section 7.10.6.1, and in the State's Technical Support Document (TSD). The State's submittal contains detailed emission inventory information for the Great Falls area that was prepared in accordance with EPA guidance.

We note in the maintenance plan, section 7.10.6.1, and the State's TSD that the State elected to perform a more comprehensive gridded emission inventory that not only contained emissions from the Great Falls nonattainment area, but also emissions from the nearby communities of Black Eagle and Laurel Rainbow which may impact the Great Falls area. This was denoted as the "Great Falls CO Emission Inventory Study Area." The total CO emissions for all three communities, as provided in the maintenance plan and in Table 5.1.b of the State's TSD, were 53,945.52 kilograms per day or 59.47 tons per day. We note, however, for the purposes of the redesignation to attainment, only CO emissions from the actual Great Falls nonattainment area (the 10th Avenue corridor) are necessary. As it would have been very difficult to only isolate the emissions from the specific and small Great Falls nonattainment boundary, we will accept the State's emissions from the Great Falls Study Area as addressing the attainment inventory requirement.

Therefore, we are archiving the Great Falls Study Area's summary CO emission figures from the 1996 attainment year, that includes the specific Great Falls nonattainment area, in Table II.–2 below.

TABLE II.–2—SUMMARY OF 1996 CO EMISSIONS

[Tons Per Day] for the Great Falls Study Area*

Point sources	Area sources	On-road mobile	Non-road mobile	Total
0.20	6.57	46.73	5.98	59.48

*Note: The Great Falls 1996 attainment year inventory figures were presented in the maintenance plan and the State's TSD in kilograms per day (kg/day). For the reader's convenience, we have converted kg/day to tons per day (TPD) by multiplying kg/day by 0.0011025 tons per kg.

2. Demonstration of Maintenance

As described in our October 6, 1995, limited maintenance plan guidance memorandum (Paisie Memorandum), the maintenance plan demonstration requirement is considered to be satisfied for nonclassifiable CO areas (such as Great Falls) if the monitoring data show that the area is meeting the air quality criteria for limited maintenance areas (i.e., equal to or less than a 7.65 ppm design value). There is no requirement to project emissions over the maintenance period. EPA believes that if an area begins the maintenance period at or below 85 percent of the CO NAAQS (7.65 ppm), the continued application of control measures already in the SIP, PSD requirements, and Federal measures provides adequate assurance of maintenance over the initial 10-year maintenance period.

As presented in section 7.10.6.2 and in Table 7.10.6.2.A of maintenance plan, the CO design value for the Great Falls area is 4.5 ppm which is below the limited maintenance plan requirement of 7.65 ppm. Therefore, the Great Falls area has adequately demonstrated maintenance.

3. Monitoring Network and Verification of Continued Attainment

The October 6, 1995, Paisie Memorandum for limited maintenance plan areas states that to verify the attainment status of an area, such as Great Falls, over the maintenance period, the maintenance plan should contain provisions for the continued operation of an appropriate, EPA-approved air quality monitoring network in accordance with 40 CFR part 58.

This requirement is met in section 7.10.6.3 of the Great Falls maintenance plan. This section states that the Montana Department of Environmental Quality (MDEQ) has operated and will continue to operate the Great Falls monitoring network in full accordance with the provisions of 40 CFR part 58 and the EPA-approved Montana Quality Assurance Project Plan. The MDEQ will also analyze the monitoring data to verify continued attainment of the CO NAAQS for the Great Falls area. The above air quality monitoring commitment by the State, which will be enforceable by EPA after this final approval of the Great Falls maintenance plan SIP revision, is deemed adequate by EPA.

4. Contingency Plan

Section 175A(d) of the CAA requires that a maintenance plan include contingency provisions. To meet this requirement, the State has identified appropriate contingency measures along with a schedule for the development and implementation of such measures. As stated in section 7.10.6.4 of the maintenance plan, the State will use an exceedance of the CO NAAQS as the trigger for adopting specific contingency measures for the Great Falls area. The State indicates that notification to EPA, and other affected governments, of the exceedance will occur within 60 days. Upon notification of a CO NAAQS exceedance, the MDEQ and Cascade City-County Health Department (CCCHD) will convene to recommend an appropriate contingency measure or measures that would be necessary to

[2] The October 6, 1995, limited maintenance plan guidance memorandum states that current guidance on the preparation of emissions inventories for CO areas is contained in the following documents: "Procedures for the Preparation of Emission Inventories for Carbon Monoxide and Precursors of Ozone: Volume I" (EPA–450/4–91–016), and "Procedures for Emission Inventory Preparation: Volume IV, Mobile Sources" (EPA–450/4–81–026d revised).

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avoid a violation of the CO NAAQS standard. The necessary contingency measure(s) will then be proposed for local adoption. The local adoption process will be completed within three months of the exceedance notification. Full implementation of the locally adopted contingency measure(s) will be achieved within one year after the recording of a CO NAAQS violation.

The potential contingency measures, identified in section 7.10.6.4.C of the Great Falls maintenance plan, include implementation of an oxygenated fuels program with local regulations in Great Falls or Cascade County area for the winter months of November, December, and January and establishing a high pollution day episodic woodburning curtailment program. A more complete description of the triggering mechanism and these contingency measures can be found in section 7.10.6.4 of the maintenance plan.

Based on the above, we find that the contingency measures and procedures provided in the State's maintenance plan for Great Falls are sufficient and meet the requirements of section 175A(d) of the CAA and the Paisie Memorandum for CO limited maintenance plans.

5. Subsequent Maintenance Plan Revisions

The State of Montana has committed to submit a future, revised maintenance plan for the Great Falls area. This commitment is contained in section 7.10.6.4.D of the Great Falls maintenance plan and meets the requirements of the CAA and EPA. Section 7.10.6.4.D states that eight years after EPA redesignates the Great Falls area to attainment, the State commits to submit to EPA a revised maintenance plan that will provide maintenance of the CO NAAQS for an additional 10 years after the expiration of the initial maintenance period.

IV. Conformity

Because the Great Falls area qualified for and utilized EPA's limited maintenance plan national policy (Paisie Memorandum), special conformity provisions apply as indicated below in an excerpt from such policy:

"e. Conformity Determinations Under Limited Maintenance Plans.

The transportation conformity rule (58 FR 62188; November 24, 1993) and the general conformity rule (58 FR 63214; November 30, 1993) apply to nonattainment areas and maintenance areas operating under maintenance plans. Under either rule, one means of demonstrating conformity of Federal actions is to indicate that expected emissions from planned actions are consistent with the emissions budget for the area. Emissions budgets in limited maintenance plan areas may be treated as essentially not constraining for the length of the initial maintenance period because it is unreasonable to expect that such an area will experience so much growth in that period that a violation of the CO NAAQS would result. In other words, EPA would be concluding that emissions need not be capped for the maintenance period. Therefore, in areas with approved limited maintenance plans, Federal actions requiring conformity determinations under the transportation conformity rule could be considered to satisfy the "budget test" required in sections 93.118, 93.119, and 93.120 of the rule. Similarly, in these areas, Federal actions subject to the general conformity rule could be considered to satisfy the "budget test" specified in section 93.158(a)(5)(i)(A) of the rule."

In addition, for Great Falls, Federal actions are also considered to satisfy the transportation conformity rule's requirements for expeditious implementation of transportation control measures (TCM) because there are no TCMs in the Great Falls CO SIP element. Transportation plans, transportation improvement programs, and Federal projects still require conformity determinations in order to proceed and Federal projects are still subject to the hotspot modeling requirements of the transportation conformity rule.

V. Consideration of CAA Section 110(l)

Section 110(l) of the CAA states that a SIP revision cannot be approved if the revision would interfere with any applicable requirement concerning attainment and reasonable further progress towards attainment of a NAAQS or any other applicable requirements of the CAA. As stated above, the Great Falls area has shown continuous attainment of the CO NAAQS since 1988 and has met the applicable Federal requirements for redesignation to attainment. We note that redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area. In view of the Great Falls area's continuous attainment of the CO NAAQS and because the final approval of the redesignation and maintenance plan do not create any new requirements, we have concluded that our approval of the Great Falls redesignation to attainment and the area's maintenance plan meet the intent of section 110(l) of the CAA.

VI. Final Action

In this action, EPA is approving the Great Falls carbon monoxide redesignation request to attainment and the maintenance plan.

EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. However, in the proposed rules section of this **Federal Register** publication, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision should adverse comments be filed. This rule will be effective July 8, 2002, without further notice unless the Agency receives adverse comments by June 10, 2002.

If EPA receives such comments, then EPA will publish a timely withdrawal of the direct final rule informing the public that the rule will not take effect. All public comments received will then be addressed in a subsequent final rule based on the proposed rule. The EPA will not institute a second comment period on this rule. Any parties interested in commenting on this rule should do so at this time. If no such comments are received, the public is advised that this rule will be effective on July 8, 2002, and no further action will be taken on the proposed rule.

Administrative Requirements

(a) Executive Order 12866

The Office of Management and Budget (OMB) has exempted this regulatory action from Executive Order 12866, entitled "Regulatory Planning and Review."

(b) Executive Order 13045

Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

(c) Executive Order 13132

Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612 (Federalism) and 12875 (Enhancing the Intergovernmental Partnership). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely approves state rules implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. In addition, redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Thus, the requirements of section 6 of the Executive Order do not apply to this rule.

(d) Executive Order 13175 (Consultation and Coordination with Indian Tribal Governments)

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications."

This direct final rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

(e) Executive Order 13211 (Energy Effects)

This rule is not subject to Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

(f) Regulatory Flexibility

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This final approval will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the SIP final approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities. Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.*, v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2). Redesignation of an area to attainment under sections 107(d)(3)(D) and (E) of the Clean Air Act does not impose any new requirements. Redesignation to attainment is an action that affects the legal designation of a geographical area and does not impose any regulatory requirements. Therefore, because the final approval of the redesignation does not create any new requirements, I certify that the final approval of the redesignation request will not have a significant economic impact on a substantial number of small entities.

(g) Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to the private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that this final approval action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

(h) Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. section 804(2). This rule will be effective July 8, 2002.

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(i) National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

The EPA believes that VCS are inapplicable to this action. Today's action does not require the public to perform activities conducive to the use of VCS.

(j) Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 8, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2) of the Clean Air Act.)

List of Subjects

40 CFR Part 52

Environmental protection, Air pollution control, Carbon Monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

40 CFR Part 81

Air pollution control, National parks, Wilderness areas.

Dated: April 29, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

Chapter I, title 40, parts 52 and 81 of the Code of Federal Regulations are amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart BB—Montana

2. Section 52.1373 is amended by adding paragraph (c) to read as follows:

§ 52.1373 Control strategy: Carbon monoxide.

* * * * *

(c) Revisions to the Montana State Implementation Plan, Carbon Monoxide Redesignation Request and Maintenance Plan for Great Falls, as adopted by the Montana Department of Environmental Quality on December 19, 2000, State effective December 19, 2000, and submitted by the Governor on February 9, 2001.

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 81.327, the table entitled "Montana—Carbon Monoxide" is amended by revising the entry for "Great Falls Area" to read as follows:

§ 81.327 Montana.

* * * * *

MONTANA—CARBON MONOXIDE

Designated area	Designation		Classification	
	Date[1]	Type	Date[1]	Type
. . .	. . .	. . .	. . .	. . .
Great Falls Area Cascade County (part). Great Falls designated area: North boundary—9th Avenue South or its straight line extension; East boundary—54th Street South or its straight line extension; South boundary—11th Avenue South or its straight line extension; West boundary—2nd Street South or its straight line extension.	July 8, 2002	Attainment		
. . .	. . .	. . .	. . .	. . .

[1] This date is November 15, 1990, unless otherwise noted.

* * * * *

[FR Doc. 02–11448 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AG47

Non-Recourse Cotton Loan and Loan Deficiency Payment Programs; Upland Cotton First Handler Marketing Certificate Program; Seed Cotton Loan Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: Changes are proposed to regulations for the upland cotton non-recourse loan and loan deficiency payment programs and the seed cotton loan program. Specifically, the proposed changes would: require that lists of cotton bales provided to the Commodity Credit Corporation (CCC) as the basis for loan deficiency payments be submitted in an electronic format provided by CCC; require that cotton classification information be provided to CCC as a condition of eligibility for a marketing assistance loan or loan deficiency payment for such cotton; change the effective time of the announced world market price for upland cotton from 5 p.m. eastern time each Thursday to 12:01 a.m. eastern time each Friday; provide for CCC to use Electronic Agent Designations when authorized by a producer as the basis for loan redemptions and release of loan collateral; establish that any quantity of cotton for which a seed cotton loan is requested cannot be subject at the same time to a request for a loan deficiency payment or lock-in of the adjusted world price; establish that for a bale of cotton to be eligible for a loan or loan deficiency payment it shall not be compressed to a density defined as a flat or modified flat bale by the Joint Cotton Industry Bale Packaging Committee; and, remove and reserve all regulations that provide for the Upland Cotton First Handler Marketing Certificate Program. Additionally, a number of editorial changes are incorporated to improve the precision of the regulations.

DATES: Submit comments on this regulation on or before July 8, 2002 to be assured of consideration. Comments on the information collection must be received on or before July 8, 2002 to be assured of consideration.

ADDRESSES: Address all comments concerning this proposed rule to Gene S. Rosera, USDA/Farm Service Agency, 1400 Independence Avenue, SW, STOP 0512; Washington, DC 20250–0512. Comments may be submitted by e-mail to: *gene_rosera@wdc.fsa.usda.gov*. All comments received in connection with this rule will be available for public inspection 7:30 a.m.–4:00 p.m., eastern time, except holidays, at 1400 Independence Avenue, SW., Room 4089, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Gene S. Rosera at (202) 720–8481 or e-mail at *gene_rosera@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION

Executive Order 12866

This rule is issued in conformance with Executive Order 12866 and has been determined to be significant and has been reviewed by the Office of Management and Budget (OMB).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule because the Farm Service Agency (FSA) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this program, as a whole, will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement for the program is needed.

Executive Order 12988

This rule has been reviewed in accordance with Executive Order 12988. The provisions of this rule preempt State laws to the extent such laws are inconsistent with the provisions of this rule. Before any legal action may be brought regarding determinations of this rule, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which require intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3014, subpart V, published at 48 FR 29115 (June 24, 1983).

The Unfunded Mandates Reform Act of 1995

This rule contains no Federal mandates under the regulatory provisions of Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) for State, local, and tribal governments or the private sector. Thus, this rule is not subject to the requirements of sections 202 and 205 of the UMRA.

Executive Order 12612

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rule will not have a substantial direct effect on States or their political subdivisions, or on the distribution of power and responsibilities among the various levels of government.

Paperwork Reduction Act

This proposed rule would require that cotton bale identity and classification information currently provided in support of applications for loans and loan deficiency payments be provided by electronic media (diskette or electronic submission) in the format established by CCC. Currently, this required information is submitted electronically by virtually all cotton ginners or providers of warehouse receipts. However, a few submissions of this information still occur by paper copy. CCC proposes, starting with the 2002 crop, that all such bale identity and classification information be submitted electronically. This rule further proposes establishment and use of an industry-maintained electronic record as an alternative to the use of the CCC–605, Designation of Agent-Cotton. Therefore, the Farm Service Agency is proposing to revise the information collections currently approved in support of the cotton loan and loan deficiency payment programs under the

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Office of Management and Budget (OMB) control numbers 0560–0074 and 0560–0129.

Title: Loan Deficiency Payments.

OMB Control Number: 0560–0129.

Expiration Date of Approval: March 31, 2004.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information collection under OMB Control Number 0560–0129 includes requirements for processing applications for cotton loan deficiency payments. Some of this information identifies the cotton by ginner or warehouse receipt numbers, location, and weight and classification information. This proposal does not add to any current information collection requirements but would establish a requirement that, starting with the 2002 crop, the identifying and classification information be provided solely by electronic media (diskette or electronic submission) in a format prescribed by CCC. For the 2000 crop, about 99 percent of all 970 cotton ginners used CCC's prescribed electronic format to submit this required bale information (commonly referred to as gin-tag lists) on behalf of producers. The adoption of electronic media by the few remaining ginners is occurring due to industry demands for improved records management and recent developments of electronic trading of cotton. This proposal for CCC to accept only electronic bale information complements this industry trend and will greatly increase the speed and accuracy of CCC's benefits delivery. For the 1998 through 2000 crops, the average number of loan deficiency payment requests was about 74,100 per year, but those applications required the entry of bale-specific information for an average 5.7 million bales each year. Depending on the marketing position of their cotton, producers submit applications using either CCC-Cotton AA, Upland Cotton Producer's Loan Deficiency Payment Application and Certification, or CCC–709, Direct Loan Deficiency Payment Agreement.

Estimate of Burden: Public reporting burden for this collection of information is estimated to average 0.25 hours per response.

Respondents: Cotton producers and designated agents of cotton producers.

Estimated Number of Respondents: 2,035,000.

Estimated Number of Responses: 6,105,000.

Estimated Total Annual Burden on Respondents: 4,198,750 hours.

Title: Regulations Governing CCC Nonrecourse Cotton Loan Program for 1996 and Subsequent Crops.

OMB Control Number: 0560–0074.

Expiration Date of Approval: January 31, 2005.

Type of Request: Revision of Currently Approved Information Collection.

Abstract: The information collection under OMB Control Number 0560–0074 addresses a number of application and other forms related to loans for seed and lint cotton. This proposed revision would establish an electronic alternative to the use of CCC–605, Designation of Agent—Cotton. Producers use the CCC–605 to authorize and designate an entity to redeem all or a portion of the collateral of a specified loan on behalf of the producer. This CCC–605 is subsequently presented by the agent to CCC in order to redeem and receive any loan collateral. Starting with the 2002 crop; CCC expects to accept requests to exchange commodity certificates for cotton loan collateral through the Cotton Online Processing System (COPS). This process will be nearly paperless except that the producer's agent must still present the CCC–605 to the appropriate county FSA office for verification. To eliminate the delay created by the delivery of the paper CCC–605, FSA proposes to establish use of an Electronic Agent Designation (EAD). An EAD is an electronic record that: (1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specified loan, (2) is maintained by providers of electronic warehouse receipts, and (3) a producer may authorize CCC to use as the basis for the redemption and release of loan collateral. Use of the EAD by any producer will be optional but it is proposed that CCC must have the producer's written request and authorization to use this electronic record as the basis for accepting repayment from an agent and releasing the loan collateral. The designated agents of producers who provide CCC with such authorizations will not need to present paper CCC–605's for verification. The agent-designation in the EAD will be established or revised according to provisions established by each provider of cotton warehouse receipts. Because use of the EAD eliminates use of the CCC–605 by the producers' agents, CCC estimates substantial reductions to the information collection estimate of OMB Control Number 0560–0074.

Estimate of Burden: The Public reporting burden for this collection of information is estimated to average 0.036 hours per response.

Respondents: Cotton producers and designated agents of cotton producers.

Estimated Number of Respondents: 85,000.

Estimated Number of Responses: 306,282.

Estimated Total Annual Burden on Respondents: 11,002 hours.

Comments are sought on these revisions to currently approved information collections including: (a) The accuracy of the agency's estimate of burden including the validity of the assumptions used; (b) whether requiring electronic submission of bale information will generate improvements in the speed and accuracy of delivering loans and loan deficiency payments to cotton producers; (c) whether this proposal generates any additional or unreasonable burden on the respondents compared with the existing option of submitting the required information by a paper record; and (d) any comments regarding the appropriateness and use of the EAD.

These comments should be sent to the Desk Officer for Agriculture, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Gene S. Rosera, USDA/Farm Service Agency, 1400 Independence Avenue, SW., STOP 0512; Washington, DC 20250–0512. Comments may be submitted by e-mail to: *gene_rosera@wdc.fsa.usda.gov*. Comments regarding paperwork burden will be summarized and included in the request for OMB approval of the information collection.

Background

In this notice, a number of changes are proposed to 7 CFR part 1427, which provides for the administration of the upland cotton non-recourse loan and loan deficiency payment programs. Many of the proposed changes are of an editorial nature to improve the precision of the regulations and, as such, do not affect information collection, producer eligibility or benefit levels, or program outlays.

There are three proposals to amend regulations in Subpart A that would affect the benefit application process. These changes are being proposed to improve the accuracy and timeliness of producer transactions, to reduce delays associated with loan collateral release, and to reduce costs associated with loan redemptions borne by the Commodity Credit Corporation (CCC) and the cotton industry.

The first of these proposals would provide that all lists of cotton bales delivered to CCC must be presented in the CCC-designated electronic format.

CCC proposes to implement this requirement starting with the 2002 crop.

Bale lists are usually provided to CCC by ginners on behalf of the producer and are the production evidence upon which loan deficiency payments are calculated. Virtually all ginners currently provide such lists on a diskette or by e-mail in a format defined by CCC. However, out of an estimated 970 ginners for the 2000 crop, about 30 submitted lists that were not in the CCC electronic format. Such non-formatted lists must be manually entered into the CCC computer system before benefits can be computed. This manual entry process is prone to error compared with use of electronic lists, and the time needed to enter such lists delays payments to the producer of that cotton as well as others.

CCC calculated loan and repayment rates, or loan deficiency payments, for about 17.3 million individual bales of 2000-crop cotton. During the post-harvest period, the administrative burden associated with loan and loan deficiency payments ordinarily delays benefits delivery, in some counties for weeks, even when bale lists are received electronically. The manual entry of a bale list during this period further delays payments to many producers. CCC proposes to require all gins to submit bale lists using the CCC electronic format to reducing these delays. To comply with this requirement, the few ginners that are not using the electronic format may need additional software, or have electronic bale lists transmitted by other entities. Comments are specifically requested as to the reasonableness of this proposal to require bale lists in electronic format.

The second proposal would amend 7 CFR 1427.5, general eligibility requirements, to require cotton to be represented by classification information provided by the producer, in a format provided by CCC, for the cotton to be eligible for either a loan or loan deficiency payment. The requirement for classification information for loan deficiency payments is already included in 7 CFR 1427.23(b)(5), but is not explicitly stated as an eligibility requirement for loans. CCC proposes to implement this change starting with the 2002 crop.

Classification information is generated in an electronic format by the Agricultural Marketing Service (AMS) and is available to producers by several means, including a printed record or diskette. Most commonly, the data are obtained by the producer's ginner or warehouse as an electronic file from the central AMS database and then entered onto either the warehouse receipt or bale list presented to CCC for a loan or loan deficiency payment. Although this information is commonly transferred electronically, it is available to producers in printed form from either AMS, the ginner, or from CCC. When such information is omitted from a warehouse receipt or a bale list, CCC's process for providing the requested benefit is significantly delayed by the time required to obtain the information from AMS and to make manual entries. The manual process increases data entry errors and erroneous payments. To speed the delivery of benefits to all producers and to reduce errors, CCC proposes that all loan and loan deficiency payment applications be supported by bale identification and classing information in an electronic format. Because the use and transfer of electronic records is a common cotton industry practice, the use of electronic records for CCC benefits applications seems appropriate and not burdensome to producers or ginners. Extending this requirement for classification information to all cotton is also consistent with CCC's policy of requiring grading information for warehouse-stored wheat, feed grains, rice, and oilseeds. Comments are requested as to any particular burdens for cotton producers or ginners that may result from establishing this requirement for electronic identity and classification information for all cotton presented to CCC for either a loan or loan deficiency payment.

The third proposal would change the effective time of the adjusted world price (AWP) from 5 p.m. eastern time each Thursday to 12:01 a.m. eastern time each Friday. The announcement time of the AWP would remain unchanged at 5 p.m. each Thursday but a single cotton AWP would be effective from start of business each Friday through the close of business each Thursday. CCC proposes to implement this proposal upon publication of a final rule change, meaning that this proposal would be implemented during the 2002-crop marketing year.

This change in effective time is being proposed due to the benefits to CCC and the cotton industry of having only one price effective each day of the week. Under existing rules for upland cotton, two different world prices are effective each Thursday, one for business hours up to 3:59 p.m. eastern time and the second price beginning at 5 p.m. eastern time for the remainder of the day. Current rules further provide that loan repayments or requests for loan deficiency payments are not accepted by CCC during the hour preceding the AWP announcement. This practice was originally established in 1992 as an effort to reduce administrative pressures that occurred at county Farm Service Agency offices after the AWP increases. Over time, as cotton producers have become informed of daily changes to the world price level, those pressures have largely been eliminated, but the inefficiencies that result from having two prices effective on a single day remain.

Under the current rules, merchants must arrange for all Thursday loan repayments to be delivered by the midday deadline that varies by time zone. Pacific-time transactions are subject to a 1 p.m. deadline and bankers' hours may further restrict transactions. Cooperatives unable to transfer payments during morning hours are now required to separately submit notifications of pending loan redemptions to FSA. These submissions should be reduced if not eliminated under this proposal and merchants repaying loans in multiple counties should benefit from having a full work day for such transactions. The current policy of having identical announcement and effective times for the AWP was partly based on the concern that unfair advantages might result for businesses in western time zones if the announcement and effective times were different or if the AWP were based on the discretionary "Step 1" adjustment that could not be anticipated. These concerns should be resolved with the advent of centralized certificate redemptions through the Cotton Online Processing System(COPS) that will become available before this proposal to change the effective AWP time would be implemented. COPS will be available during uniform hours regardless of time zones. This proposed change in the effective time of the AWP is not estimated to change program outlays. Comments are requested as to whether this proposal should be implemented and as to an appropriate period of time for advance notification of such change.

This proposed rule would also define and establish regulations for use of an Electronic Agent Designation (EAD). An EAD is an electronic record established and maintained by providers of electronic warehouse receipts that identifies the agent designated by a producer to have authority to redeem specific loan collateral on behalf of the producer. This proposed regulation would provide the basis for a producer to authorize CCC to use this electronic record as the basis for accepting loan repayments from their agents. It is proposed that CCC would implement

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use of the EAD for the 2002 crop of cotton pending finalization of needed software and training.

It is common practice for agents authorized by producers to repay cotton loans on behalf of those producers. Current regulations allow producers to voluntarily designate agents using CCC–605, Designation of Agent-Cotton. This form must be presented to the County FSA Service Center for the designated agent to repay the loan. For the EAD to be used, cotton producers would authorize CCC to use the EAD as the basis for accepting loan repayments from the producer's agent. Producers would be able to cancel this authorization by providing written notice to CCC.

FSA has developed a web-based process within COPS that will greatly streamline loan repayments starting with the 2002 crop. Under this system, and with the use of EAD's, agents will be able to redeem loan collateral without having to physically deliver funds and copies of the CCC–605 to multiple FSA offices. The authorization to use EAD's will allow CCC to speed loan redemptions and collateral release. The speed of fund transfers and release of loan collateral will be greatly increased, and county FSA offices will have fewer loan repayment transactions to manually process. The value of cotton marketed under this procedure may be enhanced due to the speed of collateral release by CCC compared to current procedures. Over time, the loan redemption process within COPS by agents is expected to become the preferred process for loan redemptions because of its reduced administrative costs to merchants and the quicker release of loan collateral compared to current repayment procedures.

The designation of agents and the use of the EAD will be entirely voluntary. Producers who elect to designate agents but who do not want to authorize use of the EAD will continue to have the option of using the CCC–605 for that purpose. In such cases, as under current procedures, the CCC–605 will have to be returned to CCC before the loan can be repaid by an agent.

Implementing the EAD will not affect the level of loans or net loan outlays. FSA will benefit due to the reduced county-office workload associated with loan redemptions. Comments are requested on the implementation of the EAD. Specifically, comments are requested as to any problems that may arise if its use becomes available after the start of the 2002 cotton marketing year.

This proposed rule would delete regulations at 7 CFR part 1427, subpart B, because regulations of this subpart no longer apply to the cotton program. When the cotton marketing loan program started, the minimum loan repayment rate was initially established at no less than 70 percent of the loan level. If the world price fell below that minimum level, then the difference between the world price and the minimum loan repayment level was payable by the first handler marketing certificates provided by regulations at subpart B. There is no longer any statutory minimum to the loan repayment rate and, accordingly, the regulations at 7 CFR part 1427, subpart B can be removed. Comments are requested regarding the removal of these regulations.

This proposed rule would establish in subpart D an additional requirement for eligibility for the seed cotton loan program. The proposed rule would establish that cotton for which a loan deficiency payment has been requested would be ineligible for a seed cotton loan. This proposal is consistent with the eligibility requirements of other cotton and commodity programs to assure that duplicate benefits are not provided for an eligible commodity. CCC proposes to make this change effective upon publication of a final regulation during the 2002 cotton marketing year. Comments are requested regarding this additional eligibility requirement for the seed cotton loan.

This proposed rule would establish as a condition of eligibility for a loan or loan deficiency payment that cotton not be compressed to a density defined as a "flat" or "modified flat" bale by the Joint Cotton Industry Bale Packaging Committee. Such bales are generally not acceptable to most cotton buyers and ordinarily must be re-compressed to standard dimensions and densities to be marketable. As a result, CCC bears the expense of moving, re-compressing, and re-identifying such cotton to make it merchantable if it is delivered to CCC in satisfaction of a loan obligation. Because such bales are not commonly merchantable "as is", it is appropriate that any such bales are not provided loan eligibility. Comments are requested regarding discontinuing loan eligibility for flat and modified flat bales.

List of Subjects in 7 CFR Part 1427

Cotton, Loan program-agriculture, Packaging and containers, Price support programs, Reporting and recordkeeping requirements.

Accordingly, FSA proposes to amend 7 CFR part 1427 as follows.

PART 1427—COTTON

1. The authority citation for part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7237; and 15 U.S.C. 714b and 714c.

2. Revise § 1427.3 to read as follows:

§ 1427.3 Definitions.

The definitions set forth in this section shall be applicable for all purposes of program administration regarding the cotton loan and loan deficiency payment programs. The terms defined in parts 718 of this title and 1412 of this chapter shall also be applicable.

Approved cooperative marketing association (CMA) means a cooperative marketing association approved in accordance with part 1425 of this chapter and which has executed Form CCC-Cotton G, Cotton Cooperative Loan Agreement.

Charges means all fees, costs, and expenses incurred by CCC in insuring, carrying, handling, storing, conditioning, and marketing the cotton tendered to CCC for loan. Charges also include any other expenses incurred by CCC in protecting CCC's or the producer's interest in such cotton.

Cotton means upland cotton and extra loan staple cotton meeting the definition set forth in the definitions of "upland cotton" and "extra long staple (ELS) cotton" in this section, respectively, and excludes cotton not meeting such definitions.

Cotton clerk means a person approved by CCC to assist producers in preparing loan and loan deficiency documents.

Cotton commercial bank means the bank designated as the financial institution for a CMA or loan servicing agent.

Electronic Agent Designation is an electronic record that: (1) Designates the entity authorized by a producer to redeem all of the cotton pledged as collateral for a specified loan, (2) Is maintained by providers of electronic warehouse receipts, and (3) A producer may authorize CCC to use as the basis for the redemption and release of loan collateral.

Extra long staple cotton (ELS) means any of the following varieties of cotton which is produced in the United States and is ginned on a roller gin:

(1) American-Pima;

(2) All other varieties of the Barbadense species of cotton, and any hybrid thereof; and

(3) Any other variety of cotton in which one or more of these varieties predominates.

False Packed Cotton means cotton in a bale: Containing substances entirely foreign to cotton; containing damaged cotton in the interior with or without any indication of the damage on the exterior; composed of good cotton on the exterior and decidedly inferior cotton in the interior, but not detectable by customary examination; or, containing pickings or linters worked into the bale.

Financial institution means:

(1) A bank in the United States which accepts demand deposits; and

(2) An association organized pursuant to Federal or State law and supervised by Federal or State banking authorities.

Form A loan means a non-recourse loan executed on Form CCC—Cotton A, Cotton Producer's Note and Security Agreement.

Form G loan means a non-recourse loan to a CMA on eligible cotton delivered to the CMA by eligible members of the CMA.

Lint cotton means cotton that has passed through the ginning process.

Loan servicing agent means a legal entity that enters into a written agreement with CCC to act as a loan servicing agent for CCC in making and servicing Form A cotton loans. The loan servicing agent may perform, on behalf of CCC, only those services which are specifically prescribed by CCC including, but not limited to, the following:

(1) Preparing and executing loan and loan deficiency payment documents;

(2) Disbursing loan and loan deficiency payment proceeds;

(3) Handling re-concentration of cotton in accordance with § 1427.16;

(4) Accepting loan repayments;

(5) Handling documents involved with forfeiture of loan collateral to CCC; and

(6) Providing loan, loan deficiency payment, and accounting data to CCC for statistical purposes.

Seed cotton means cotton which has not passed through the ginning process.

Upland cotton means planted and stub cotton which is produced in the United States from other than pure strain varieties of the Barbadense species, any hybrid thereof, or any other variety of cotton in which one or more of these varieties predominates.

Warehouse receipt means a receipt issued with respect to a bale of cotton by a warehouse with an existing cotton storage agreement, approved by CCC, in accordance with §§ 1427.1081 through 1427.1089, which is:

(1) A negotiable, machine card type warehouse receipt that is pre-numbered and pre-punched;

(2) An electronic warehouse receipt record issued by such warehouse recorded in a central filing system or systems maintained in one or more locations which are approved by FSA or CCC to operate such system; or

(3) Other such acceptable evidence of title, as determined by CCC.

3. Amend § 1427.5 by revising paragraphs (a)(1), (b)(5), (b)(6), (b)(9), (b)(10)(i), (b)(11)(ii), (b)(12), (c), (d), (e)(2)(iii)(E), (e)(2)(iii)(F), and adding paragraph (b)(13) to read as follows:

§ 1427.5 General eligibility requirements.

(a) * * *

(1) Form A loan documents or loan deficiency payment applications must be signed by the producer and delivered with acceptable production evidence to applicable county office or loan servicing agent. Such delivery, in the case of submissions by cotton clerks, must occur within 15 calendar days after the producer signs such documents and within the period of loan availability. A producer must request loans and loan deficiency payments:

* * * * *

(b) * * *

(5) Not be compressed to a density defined as a "flat" or "modified flat" bale by the Joint Cotton Industry Bale Packaging Committee;

* * * * *

(9) Weigh at least 325 pounds net weight; bales of more than 600 pounds may be pledged for loan at 600 pounds;

* * * * *

(10) * * *

(i) Copies of the applicable crop year specifications for cotton bale packaging materials published by the Joint Cotton Industry Bale Packaging Committee are available upon request at the county office and at the following address: Joint Cotton Industry Bale Packaging Committee, National Cotton Council of America, P.O. Box 12285, Memphis, Tennessee 38112. Copies may be inspected at the South Agriculture Building, Room 4089 A, 1400 Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, and at an internet website announced by CCC.

* * * * *

(11) * * *

(ii) Who has entered into CCC–809, Cooperating Ginners' Bagging and Bale Ties Certification and Agreement, or certified that the bale is wrapped with bagging and bale ties meeting the requirements of paragraph (b)(10) of this section;

(12) Be production from acreage that has been reported timely in accordance with part 718 of this title; and

(13) Be represented by identity and classification information provided by the producer by electronic media, in a format provided by CCC, at the time a loan or loan deficiency payment is requested.

(c) In addition to the requirements of paragraph (b) of this section, for ELS cotton the bale must:

(1) Be a color grade, staple length, and leaf specified in the schedule of loan rates for ELS cotton and of a staple length of not less than 44/32 inch, and

(2) Not have a micronaire reading of 2.6 or less.

(d) In addition to the requirements of paragraph (b) of this section, for upland cotton the bale must:

(1) Have been produced on a farm with a production flexibility contract in accordance with part 1412 of this chapter;

(2) Have been graded by using a High Volume Instrument;

(3) Be a grade, staple length, strength, micronaire and leaf specified in the schedules of premiums and discounts for grade, staple length, strength, micronaire and leaf for upland cotton; and

(4) Have a level of extraneous matter specified in the schedule of discounts for extraneous matter for upland cotton.

* * * * *

(e) * * *

(2) * * *

(iii) * * *

(E) Must be presented with any request to redeem loan collateral at the county office or loan servicing agent where the loan originated, if the agent or subsequent agent exercises any authority granted by the producer, unless the producer provides authorization to CCC to use, in place of the original CCC–605, an electronic agent designation as the basis for accepting redemption of some or all bales of the specified loan; and

(F) May be canceled by the producer by providing the custodial office a written request signed and dated by the producer showing the name of the agent, the loan number, and the bales applicable to the Form CCC–605. The effective date of the cancellation shall be the date the request is received by the custodial office. If CCC has been authorized by a producer to use an electronic agent designation, the producer's cancellation of his authorization for CCC to use such electronic designation of agent shall be effective when CCC receives verification from the provider of the warehouse receipts maintaining the electronic agent designation record that such record has been voided.

* * * * *

4. Amend § 1427.6 by revising paragraph (b) to read as follows:

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§ 1427.6 Disbursement of loans.

* * * * *

(b) Loan proceeds may be disbursed by CCC or a cotton commercial bank.

* * * * *

5. Amend § 1427.9 by revising paragraph (a) to read as follows:

§ 1427.9 Classification of cotton.

(a) References made to "classification" in this subpart shall include color grade, staple length, leaf, extraneous matter, and micronaire, and for upland cotton, strength readings. All cotton tendered for loan must be classed by an Agricultural Marketing Service (AMS) Cotton Classing Office or other entity approved by CCC and tendered on the basis of such classification.

* * * * *

6. Amend § 1427.11 as follows:

a. By adding paragraph (a)(4);

b. Revising paragraphs (c)(1);

c. Removing paragraph (c)(2);

d. Redesignating paragraph (c)(3) as paragraph (c)(2); and

e. Revising paragraph (f).

The addition and revisions read as follows:

§ 1427.11 Warehouse receipts.

(a) * * *

(4) Contain classification information for the bale.

* * * * *

(c)(1) Each receipt in its written or printed terms may contain the tare weight and must contain the net weight of the bale represented thereby. The net weight shown on the warehouse receipt shall be the difference between the gross weight as determined by the warehouse at the warehouse site and the tare weight. The warehouse receipt may show the net weight established at a gin if:

(i) The gin is in the immediate vicinity of the warehouse and is operated under common ownership with such warehouse, or in any other case in which the showing of gin weights on the warehouse receipts is approved by CCC; and

(ii) Gin weights are permitted by the licensing authority for the warehouse.

* * * * *

(f) In any case where loan collateral is forfeited, any unpaid storage or receiving charges, not to exceed the amount that accrued from the date that all necessary documents were received by CCC to the maturity date, will be paid to the warehouse by CCC after loan maturity or as soon as practicable after the cotton is ordered shipped by CCC.

* * * * *

7. Amend § 1427.13 by revising paragraph (e)(1) to read as follows:

§ 1427.13 Charges and interest.

* * * * *

(e) * * *

(1) All warehouse storage charges associated with the forfeited cotton that accrued before the date that all required documents are provided to CCC; and

(2) Any accrued warehouse receiving charges associated with the forfeited cotton, including, if applicable, charges for new ties as specified in § 1427.11.

* * * * *

8. Section 1427.19 is revised to read as follows:

§ 1427.19 Repayment of loans and certificate exchanges.

(a) Warehouse receipts will not be released except as provided in this section.

(b) A producer or agent or subsequent agent authorized on Form CCC–605 or otherwise may redeem one or more bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section. CCC, upon proper payment for the amount due, shall release the warehouse receipts applicable to such cotton.

(c) An agent or subsequent agent whose authorization by a producer to redeem loan collateral is recorded in an Electronic Agent Designation may redeem all bales of cotton pledged as collateral for a loan by payment to CCC of an amount applicable to the bales of cotton being redeemed determined in accordance with this section.

(d) A producer or agent or subsequent agent authorized on Form CCC–605 or whose authorization is recorded in an Electronic Agent Designation, may repay the loan amount for one or more bales of cotton pledged as collateral for a loan:

(1) For upland cotton, at a level that is the lesser of:

(i) The loan level and charges, plus interest determined for such bales; or

(ii) The adjusted world price, as determined by CCC in accordance with § 1427.25, in effect on the day the repayment is received by the county office, loan servicing agent, or servicing agent bank that disbursed the loan.

(2) For ELS cotton, by repaying the loan amount and charges, plus interest determined for such bales.

(e) CCC shall determine and publicly announce the adjusted world price for each crop of upland cotton on a weekly basis.

(f) The difference between the loan level, excluding charges and interest, and the loan repayment level is the market gain. The total amount of any market gain realized by a person is subject to the payment limitation provided in part 1400 of this chapter.

(g) Repayment of loans will not be accepted after CCC acquires title to the cotton in accordance with § 1427.7.

(h) If the upland cotton pledged as collateral is eligible to be repaid at a rate less than the loan level and charges, plus interest, and the adjusted world price determined in accordance with § 1427.25 is:

(1) Below the national average loan rate for upland cotton, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605 the warehouse storage charges which have accrued, with respect to the cotton pledged as collateral for such loan, during the period the cotton was pledged for loan;

(2) Above the national average loan rate by less than the sum of the accrued interest and warehouse storage charges, that accrued during the period the cotton was pledged for loan, CCC will pay at the time of loan repayment to the producer or agent or subsequent agent authorized on Form CCC–605, that portion of the warehouse storage charges, that accrued during the period the cotton was pledged for loan, that are determined to be necessary to permit the loan to be repaid at the adjusted world price without regard to any warehouse charges that accrued before the cotton was pledged for loan; or

(3) Above the national average loan rate by as much as or more than the sum of the accrued interest and warehouse storage charges that accrued during the period the cotton was pledged for loan, CCC shall not pay any of the accrued warehouse storage charges.

9. Section 1427.23 is amended by revising paragraphs (b)(2), (b)(4), (b)(5), (c), and (f) and by removing paragraph (g), to read as follows:

§ 1427.23 Cotton loan deficiency payments.

* * * * *

(b) * * *

(2) Agree to forgo obtaining such loans unless denied a loan deficiency payment due to payment limitation;

* * * * *

(4) Provide warehouse receipts or, as determined by CCC, a list in an electronic format prescribed by CCC of gin bale numbers for such cotton showing, for each bale, the net weight established at the gin and classing information for such quantity in accordance with § 1427.9;

(5) For loan deficiency payment requests and requests for locking-in the adjusted world price for seed cotton prior to ginning, provide identifying numbers for cotton modules or other storage units that will correspond to the gin-assigned bale numbers for which the loan deficiency payments are requested; and

* * * * *

(c) Subject to the availability of funds and limitations on payments set out elsewhere, the loan deficiency payment applicable to a crop of cotton shall be computed by multiplying the applicable loan deficiency payment rate, as determined in accordance with paragraph (d) of this section, by the quantity of the crop the producer is otherwise eligible to pledge as collateral for a loan in accordance with § 1427.8(b).

* * * * *

(f) If the producer enters into an agreement with CCC on or before the date of ginning a quantity of eligible upland cotton, and the producer has the beneficial interest in such quantity as determined in accordance with § 1427.5(c), on the date the cotton was ginned, the loan deficiency payment rate applicable to such cotton will be the loan deficiency payment rate:

(1) Based on the date the cotton was ginned if payment application is made using CCC–709;

(2) Based on the date a complete payment request including production evidence is submitted, if the request is made after ginning using CCC-Cotton AA;

(3) Based on the date of request for lock-in of the adjusted world price if the request is made before ginning of the cotton that is identified by gin-supplied module or other storage unit number using CCC-Cotton AA. In such cases, the producer must meet all the other requirements in paragraph (b) on or before the final date to apply for a loan deficiency payment in accordance with § 1427.5.

10. Amend § 1427.25 by revising paragraph (e) to read as follows:

§ 1427.25 Determination of the prevailing world market price and the adjusted world price for upland cotton.

* * * * *

(e) The adjusted world price for upland cotton as determined in accordance with paragraph (c) of this section, and the amount of the additional adjustment as determined in accordance with paragraph (f) of this section, shall be announced, to the extent practicable, at 5 p.m. eastern time each Thursday continuing through the last Thursday of July 2003. The adjusted world price and the amount of the additional adjustment will be effective at 12:01 a.m. eastern time each Friday and will remain in effect for a period as announced by CCC. In the event that Thursday is a non-workday, the determination will be announced and will be effective, to the extent practicable, at 8 a.m. eastern time the next workday.

§§ 1427.50–1427.58 [Removed and reserved]

11. Remove and reserve subpart B consisting of § 1427.50 through § 1427.58.

12. Amend § 1427.165 by adding new paragraph (a)(8) to read as follows:

§ 1427.165 Eligible seed cotton.

(a) * * *

(8) Not be cotton for which a loan deficiency payment or a lock-in of the adjusted world price has been requested.

* * * * *

Signed at Washington, DC, on April 30, 2002.

James R. Little,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–11352 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 3, 236, 240, and 241

[INS No. 1847–97; AG Order No. 2579–2002]

RIN 1115–AE82

Requiring Aliens Ordered Removed from the United States To Surrender To the Immigration and Naturalization Service for Removal

AGENCY: Immigration and Naturalization Service, Justice, and Executive Office for Immigration Review, Justice.

ACTION: Proposed rule.

SUMMARY: This supplementary proposed rule would amend the regulations of the Immigration and Naturalization Service (Service) and the Executive Office for Immigration Review (EOIR) by requiring aliens subject to a final order of removal to surrender themselves to the Service. This rule also establishes procedures for surrender and provides that aliens violating those procedures will be denied certain discretionary immigration benefits.

DATES: Written comments must be submitted on or before June 10, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division (HQRFS), Immigration and Naturalization Service, 425 I Street, NW, Room 4034, Washington, DC 20536. To ensure proper handling please reference INS No. 1847–97 on your correspondence. You may also submit comments electronically to the Service at *insregs@usdoj.gov*. When submitting comments electronically please include INS No. 1847–97 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Lisa Batey, Office of the General Counsel, Immigration and Naturalization Service, 425 I Street NW, Room 6100, Washington, DC 20536, telephone (503) 231–4049, or Cristina Hamilton, Office of the General Counsel, at (202) 514–2895. For matters relating to the Executive Office for Immigration Review: Chuck Adkins-Blanch, General Counsel, Executive Office for Immigration Review, 5107 Leesburg Pike, Suite 2600, Falls Church, VA 22041, telephone (703) 305–0470.

SUPPLEMENTARY INFORMATION:

I. Background

On September 4, 1998, the Department of Justice (Department) published a proposed rule in the **Federal Register** at 63 FR 47205, providing procedures that must be followed by an alien subject to a final order of removal. After a careful review, the Department is publishing a supplementary proposed rule on these issues. This rule is substantially the same as that proposed by former Attorney General Janet Reno, with some changes discussed herein. One principal change is that the requirements of this rule will not be limited only to aliens who are served with a Notice to Appear after the effective date of this rule; such a limitation, as stated in the 1998 proposed rule, would unnecessarily impair the effectiveness of this rule. Instead, this rule provides that the requirements of this rule shall also be applied to aliens who are currently in immigration proceedings, as long as they receive the requisite notice. Moreover, this supplementary proposed rule reflects a renumbering of the new regulatory provisions in light of other new sections that the Service has added to 8 CFR part 241 after the proposed rule was published.

What Is the Purpose of This Supplementary Proposed Rule?

The purpose of this supplementary proposed rule is to establish procedures requiring aliens who have received a final order of removal to surrender to the Service for removal from the United

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States. The rule establishes procedures for surrender and provides that persons violating these procedures will be denied certain discretionary immigration benefits. Section 241(a) of the Immigration and Nationality Act (Act), as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), generally requires the detention and removal of aliens subject to a final order of removal within 90 days. Many aliens, however, are not in Service custody at the time the order of removal becomes administratively final. In the past, fully "89 percent of non-detained aliens with final orders of [removal] failed to surrender for deportation when ordered to do so." 62 FR 48183 (Sept. 15, 1997) (background information relating to detention under the Transition Period Custody Rules, citing to Report #I–96–03 issued in March 1996 by the Department's Office of the Inspector General).

This rule would provide that an alien not detained at the time an order of removal becomes final has an affirmative legal obligation to surrender thereafter for removal, and would provide an incentive for compliance by denying future discretionary relief for absconding aliens who fail to comply.

Who Will Be Affected by This Rule When It Is Finalized?

This rule would apply to those aliens who receive notice at any point in immigration proceedings of their duty to surrender following any final order of exclusion, deportation, or removal, and of the consequences of failing to surrender. Aliens placed in removal proceedings after the effective date of any final rule based on this regulation will be served written notice of the duty to surrender in the Notice to Appear. Aliens who are already in proceedings on the effective date of this rule when it is published as a final rule will receive notice of the duty to surrender, and the consequences of failure to surrender, by one of several methods, such as (1) from the immigration judge, (2) from the Board of Immigration Appeals at the time the Board issues a written order of removal, (3) from the district director prior to any release from custody, or (4) in any other manner whereby such written notice may be effectuated. In order to ensure that aliens receive proper notice, this rule provides that such notice will be provided at several points in the immigration enforcement process. However, once notice is provided by any means, no other notice shall be legally required.

How Would This Rule Affect Aliens With Final Removal Orders?

This supplementary proposed rule would apply to all aliens who received the requisite notice under this rule, at any stage of the immigration enforcement process, regarding the obligation to surrender to the Service, and the consequences of failing to surrender when required. Such aliens, if they are not within the custody of the Service at the time, must surrender to the Service within 30 days of the issuance of an administratively final order of removal by either an immigration judge or the Board of Immigration Appeals. An alien who has been granted voluntary departure is given an order of removal that automatically becomes administratively final if the alien does not depart under the grant of voluntary departure. If an alien does not voluntarily depart he or she is also required to surrender to the Service. Aliens granted voluntary departure must surrender for removal on the first business day following the date the alternate order of removal becomes effective. It is important to note that nothing in this rule restricts the Service's authority to arrest and remove an alien with a final order of removal at any time, unless a federal court has stayed that final order.

The Service also notes that aliens subject to a final order of removal are already obligated under section 241(a)(1)(C) of the Act and 8 CFR 241.4(g) to make application in good faith for travel documents, and that any failure to undertake this and other affirmative obligations tolls the removal period during which detention is mandated. See 66 FR 56967 (Nov. 14, 2001).

Where Must the Alien Go To Surrender?

This supplementary proposed rule would require the alien to surrender to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. The Service may designate an alternate location for surrender upon providing notice to the alien.

What Are the Consequences for an Alien Who Fails To Surrender as Required?

This supplementary proposed rule provides that an alien who fails to surrender, as required, will be denied discretionary relief from removal by the Attorney General under sections 208(b) (asylum), 212(h) (waiver of inadmissibility for criminal convictions), 212(i) (waiver of inadmissibility for fraud), 240A (cancellation of removal), 240B (voluntary departure), 245 (adjustment to status of a lawful permanent resident), 248 (change of nonimmigrant status) and 249 (registry) of the Act at any time while he or she remains in the United States, and for a period of ten years after the alien's departure from the United States. These consequences will apply to all aliens who fail to surrender, when required, after having received the requisite notice under this rule at any stage of the immigration enforcement process.

Entirely apart from the provisions of this rule, the Service notes that any alien who fails to surrender when required may also be subject to other sanctions under the existing laws, including criminal prosecution under section 243 of the Act or civil penalties under section 274D of the Act.

Can the Denial of Discretionary Relief Be Waived?

This supplementary proposed rule would provide the district director with discretion to waive the denial of discretionary relief, as provided under § 241.17(c), if the alien demonstrates that the failure to surrender was due to exceptional circumstances and that he or she appeared as soon as possible thereafter as circumstances allowed. This rule incorporates the statutory definition of exceptional circumstances at section 240(e)(1) of the Act, which is narrow and does not include ignorance of the law or reliance on advice of counsel or of any other individual.

What Effect Would an Alien's Failure To Surrender Have on Motions To Reopen or Reconsider Removal Proceedings?

Pursuant to the changes proposed by the Department, removal proceedings would not be reopened in the case of an alien who failed to surrender for removal unless the alien can demonstrate by clear and convincing evidence both that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act, and that he or she actually surrendered for removal as soon as possible after the circumstances that prevented timely surrender had passed. Any alien seeking to file a motion to reopen or reconsider must also satisfy the legal and time requirements of § 3.2, for cases before the Board of Immigration Appeals, or § 3.23, for cases before the Immigration Court, as applicable.

Are There Any Other Requirements Under This Rule?

The amendments contained in this supplementary proposed rule would prohibit an alien's release from Service custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with the rule. All aliens seeking voluntary departure are also required to agree to surrender for removal as a condition to being granted that form of relief if they fail to voluntarily depart.

Did the Department Receive Comments on the Proposed Rule?

The Department set a 60-day public comment period that ended on November 3, 1998. The Department received four public comments on the proposed rule. The following is a discussion of those comments and the Department's response.

Discussion of Comments and Changes From the Proposed Rule

Length of Surrender Period

Two commenters raised concerns with the length of the proposed 10-day surrender period. One commenter suggested that 10 days is an insufficient period of time for an alien who has moved away to report to the Service district office with jurisdiction over the location where the removal proceedings were completed. The other commenter pointed out that decisions from the Board of Immigration Appeals do not always arrive within 10 days of the date of the order, thus making it impossible for an alien to report within the proposed 10-day surrender period as required by the regulation. The commenter suggested that a 30-day period to ensure sufficient mailing time would be more appropriate.

The Department has carefully considered these concerns, and has amended this supplementary proposed rule to provide for a 30-day surrender period.

Location for Surrender

One commenter indicated a concern with the requirement under § 241.13 of the proposed rule (now renumbered as § 241.16) that the alien must surrender to the Service district office with jurisdiction over the location where removal proceedings were completed. The commenter proposed that aliens be allowed to surrender to any Service district office. In contrast, another comment, signed by seven surety companies, objected to the suggestion that the Service could change the location for surrender, as this could impose additional compliance costs on the surety provider.

The recommendation to allow aliens to surrender to any Service district office has some merit, but is not easily reconciled with logistical considerations, the obligation to make most efficient use of Service resources, and the expectations of surety providers. The designated district office will have the alien's file and the necessary documentation for his or her removal. The designated office will also be prepared to house the alien pending removal, or make arrangements as needed. For these reasons, the Department has retained in these rules the requirement to surrender at the designated district office, but has made allowance in the rule under appropriate circumstances for the district director, in his or her discretion, to agree to an alternate site.

Tolling of the Surrender Period for Federal Court Review

One commenter questioned why the surrender period is tolled pending an appeal to the Board of Immigration Appeals, but not pending a petition for review in federal court. The answer has to do with the administrative finality of the order. An order of removal on appeal to the Board of Immigration Appeals is not a final administrative order. Execution of the order is automatically stayed pending disposition of the appeal.

The filing of a petition for review in federal court, on the other hand, does not result in an automatic stay of the removal order. The alien must specifically request a stay of removal. *See* Fed. R. App. P. 18. The alien must also notify the Service that such a stay is being sought. Should a stay be granted, the order cannot be executed and the duty to surrender is suspended. Likewise, if a stay is ordered pending a motion to reopen, the order cannot be executed and the duty to surrender is suspended. The alien's duty to surrender to the Service within 30 days begins anew on the day the stay is lifted.

Denial of Discretionary Relief

One commenter opposed the inclusion of sections 208, 212(h), and 212(i) of the Act as forms of relief from removal that the Attorney General will deny, as a matter of discretion, to aliens who fail to surrender as required. Sections 240(b)(7) and 240B(d) of the Act bar an alien who fails to appear for proceedings or who fails to depart pursuant to a voluntary departure order from any further relief under sections 240A, 240B, 245, 248, and 249 of the Act for a period of 10 years. The commenter argues that including discretionary denials of relief under the three additional provisions is not permitted by the statute, nor is the discretionary denial of asylum consistent with treaty obligations and Congressional intent.

The Department reiterates its position that denying discretionary forms of relief to those aliens who disobey the law by failing to surrender is a rational exercise of the Attorney General's discretion, and a regulatory provision reflecting that result is a proper means for the Attorney General to exercise that discretion. The Supreme Court has recognized that an agency head "has the authority to rely on rulemaking to resolve certain issues of general applicability unless Congress clearly expresses an intent to withhold that authority." *Lopez* v. *Davis*, 531 U.S. 230, 244 (2001), quoting *American Hospital Assn.* v. *NLRB*, 499 U.S. 606, 612 (1991); *see also, Yang* v. *INS*, 79 F.3d 932, 936 (9th Cir. 1996). Moreover, sections 212(h) and 212(i) of the Act are waiver provisions, not independent forms of relief, and as such would be unavailable to any alien who was denied the other forms of relief.

Even prior to this supplementary proposed rule, case law has established that an alien who fails to report to the Service following notification that his or her deportation has been scheduled does not merit the favorable exercise of discretion required for reopening deportation proceedings. *See, e.g., Matter of Barocio*, 19 I.&N. Dec. 255, 258 (BIA 1985); *see also Sequeira-Solano* v. *INS*, 104 F.3d 278, 279 (9th Cir. 1997) ("The BIA correctly found that Sequeira-Solano [by failing to surrender] had put himself in defiance of our immigration laws and therefore concluded that his [motion] for reopening [to apply for suspension of deportation] did not merit favorable consideration."); *Zapon* v. *Dep't of Justice*, 53 F.3d 283, 285 (9th Cir. 1995) (United States was "substantially justified" in opposing fugitives' efforts to obtain a stay of deportation, supporting the denial of their application for award of attorneys fees under Equal Access to Justice Act); *Bar-Levy* v. *Dep't of Justice*, 990 F.2d 33, 35 (2d Cir. 1993) ("An alien who is a fugitive from a deportation order should thus not be permitted to pursue an appeal of the deportation order or a denial of his application for a waiver of deportation."), *following Arana* v. *INS*, 673 F.2d 75, 77 (3d Cir. 1982) (per curiam).

The obligation to surrender for removal is not a new one, and failure to comply with this obligation is a

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significant flaunting of U.S. law for which the denial of all discretionary relief—including asylum—is an appropriate response. Nothing in this rule affects an alien's eligibility for withholding of deportation, when required by law.

District Director's Discretion

Two commenters raised questions regarding § 241.15(c) (now renumbered as § 241.18(c)) of the proposed rule. One commenter suggested that it was unclear exactly as to the scope of the consequences of failing to surrender in this section. The section has been amended to clarify that the consequences of failing to surrender, after having received notice of the duty to surrender, can be found in § 241.18(c). The other commenter appeared to be concerned with the fact that this section provides that the decision to waive the denial of relief is left to the sole discretion of the district director. The commenter argued that "a regulation cannot dictate what is the adjudicator's 'sole and unreviewable discretion.'"

The Supreme Court has upheld an agency's ability to utilize regulations as an exercise of discretionary authority. *See, e.g., Lopez* v. *Davis*, 531 U.S. 230, 244 (2001). In this case, however, proposed § 241.18(c) does not dictate precisely how the district director must exercise his or her discretion. It simply provides that the discretionary decision to waive the consequences under § 241.18(c) of the alien's failure to surrender is to be made by the district director, if the alien demonstrates that his or her failure to surrender was a result of exceptional circumstances as defined in section 240(e)(1) of the Act and that the alien surrendered himself or herself to the Service as soon as those exceptional circumstances ceased to exist.

Retroactive Effect

One commenter remarked that the prospective nature of the rule was not stated in the proposed rule. Rulemaking is presumed to be prospective in nature, and a clear statement is required only if the rule is intended to have retroactive application. Nonetheless, in the interest of clarity, the notice provisions of § 241.17 specify that the denial of discretionary relief for failure to surrender, as provided in § 241.18(c), will be invoked only where the alien had received written notice of the surrender obligation and the consequences under § 241.18(c) of failure to surrender.

Bonds

Three of the four comments were submitted by surety companies who post immigration bonds, or their representatives. These commenters strongly criticized the proposed rule, contending that the proposals violate the spirit, intent, and express wording of the June 22, 1995 settlement agreement in the case of *Amwest Surety Insurance Co.* v. *Reno*, Civil No. 93–2356 JSL (Shx) (C.D. Cal.). In that agreement, the Service agreed to send notice of the date and time to report for deportation to the bond obligor at least 3 days prior to sending such notice to the alien. While the settlement agreement applied only to bonds underwritten by the plaintiffs, the Service as a matter of policy decided to apply the terms of the settlement agreement to all other companies underwriting immigration bonds.

The Department has carefully considered the effects of that policy and has determined that the policy should be modified for all bonds posted after the effective date of this rule.

The commenters assert that, by equating the final order of removal to the notice to surrender and mailing it directly to the alien, the proposed rule would deprive the obligor of its contractual right to advance notice. The commenters further argue that the proposed rule would deprive the obligor of its ability to surrender the alien for removal as the obligor would only be notified to surrender the alien for removal only after he or she has failed to surrender as required. By that time, the administrative penalties, civil fines, and criminal consequences have all attached. No alien, according to the commenters, will be willing to surrender at that point.

The commenters assert that the proposed rule is an improper attempt by the Department to extend the 90-day removal period by labeling an alien who fails to surrender as a "fugitive from justice," thus subject to continued detention. The commenters also argue that § 241.13(h) of the proposed rule (now renumbered as § 241.16(j)), which allows the Service to unilaterally alter the surrender terms, e.g., designate an alternate surrender location, could unlawfully increase the risks or duties of the obligor under the contract it executes with the alien.

The Department is cognizant of its contractual duties and has carefully considered the points raised in these comments. The Department will abide by the settlement agreement with regard to all bond contracts entered into prior to the effective date of the final rule. The Service will continue to send form I–340, Notice to Obligor to Produce Alien, as agreed in the settlement agreement, to sureties of any bond posted prior to the effective date of this rule when it is published as a final rule.

However, the settlement agreement was based upon the Act as it existed prior to the passage of the IIRIRA, which mandated detention of certain aliens during the post-order removal period. The settlement agreement has been affected by IIRIRA, and more recently by judicial decisions such as *Zadvydas* v. *Davis*, 533 U.S. 678 (2001), and the resulting changes in regulations published at 66 FR 56967 (Nov. 14, 2001) (codified at §§ 241.4, 241.13 and 241.14). These changes in the legal landscape necessitate revision to the way the Service handles bonds.

Revisiting the bond contract and procedures is also necessary to ensure the efficient use of Service resources, particularly with the growing removal caseload and competing government priorities after the events of September 11, 2001. Moreover, technological advances, such as the availability of information on the status of cases from EOIR's automated information line, 1–800–898–7180, make it reasonable to expect that surety companies monitor the surrender obligations of their clients in new cases.

In response to the concerns of the surety companies, this supplementary proposed rule would extend the surrender period to 30 days. The Department is in the process of revising form I–352, Immigration Bond, to more accurately reflect the current legal and procedural requirements and this supplementary proposed rule.

Regulatory Flexibility Act

The Attorney General, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this regulation and, by approving it, certifies that this rule will not have a significant economic impact on a substantial number of small entities because it affects the legal obligations of individual aliens ordered removed from the United States, not small entities. Although this rule will have an impact on surety companies by altering the terms of future bond contracts, the impact and number of surety companies affected will not be substantial.

Unfunded Mandates Reform Act of 1995

This rule will not result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year, and it will not significantly or uniquely affect small governments. Therefore, no actions were deemed necessary under the provisions of the Unfunded Mandates Reform Act of 1995.

Small Business Regulatory Enforcement Fairness Act of 1996

This rule is not a major rule as defined by the Small Business Regulatory Enforcement Act of 1996 (5 U.S.C. 804(2)). This rule will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based companies to compete with foreign-based companies in domestic and export markets.

Executive Order 12866

This rule is considered by the Department of Justice to be a "significant regulatory action" under Executive Order 12866, section 3(f), Regulatory Planning and Review. Accordingly, this regulation has been submitted to the Office of Management and Budget for review.

Executive Order 13132

This rule will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with section 6 of Executive Order 13132, it is determined that this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement.

Executive Order 12988

This rule meets the applicable standards set forth in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform.

Paperwork Reduction Act

This rule requires a revision to an existing information collection (Form I–352). This revision will be submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Aliens, Immigration, Organization and functions (Government agencies).

8 CFR Part 236

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 240

Administrative practice and procedure, Aliens, Immigration.

8 CFR Part 241

Administrative practice and procedure, Aliens, Immigration.

Accordingly chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 is revised to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1101 note, 1103, 1231, 1252 note, 1252b, 1253, 1324b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950; 3 CFR, 1949–1953 Comp., p. 1002; section 203 of Pub. L. 105–100, 111 Stat. 2196–200; sections 1506 and 1510 of Pub. L. 106–386, 114 Stat. 1527–29, 1531–32; section 1505 of Pub. L. 106–554, 114 Stat. 2763A–326 to –328.

2. Section 3.1 is amended by adding one sentence at the end of paragraph (f) to read as follows:

§ 3.1 General authorities.

* * * * *

(f) * * * The decision shall include notice of the duty to surrender and the consequences of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

3. Section 3.2 is amended by adding paragraph (c)(5) to read as follows:

§ 3.2 Reopening or reconsideration before the Board of Immigration Appeals.

* * * * *

(c) * * *

(5) (i) Notwithstanding the limitations of paragraph (c)(1) of this section, a motion to reopen removal proceedings will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(*1*) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(*2*) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (c)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

* * * * *

4. Section 3.23 is amended by adding paragraph (b)(5) to read as follows:

§ 3.23 Reopening or reconsideration before the Immigration Court.

* * * * *

(b) * * *

(5) *Failure to surrender for removal.* (i) Notwithstanding the requirements of paragraph (b)(1) of this section, a motion to reopen or reconsider will not be granted in the case of an alien who failed to surrender for removal in accordance with § 241.16 of this chapter, unless:

(A) The district director waived the consequences under § 241.18(c) for failing to surrender for removal, in accordance with § 241.18(c)(2) of this chapter; or

(B) The alien presents documentary evidence that demonstrates, by clear and convincing evidence, that:

(*1*) The failure to surrender for removal was due to exceptional circumstances as defined in section 240(e)(1) of the Act; and

(*2*) The alien surrendered for removal as soon as possible after the circumstances that prevented a timely surrender had passed.

(ii) Nothing in paragraph (b)(5)(i)(B) of this section may be construed as providing the right to reopen a proceeding solely to consider whether an alien complied with the duty to surrender for removal, or whether exceptional circumstances excuse the alien's failure to do so.

5. Section 3.37 is amended by adding a new paragraph (c) to read as follows:

§ 3.37 Decisions.

* * * * *

(c) All oral and written decisions of the Immigration Judge will include notice of the duty to surrender and the consequences of failure to surrender, when required, in accordance with §§ 241.16 through 241.19 of this chapter.

PART 236—APPREHENSION AND DETENTION OF INADMISSIBLE AND DEPORTABLE ALIENS; REMOVAL OF ALIENS ORDERED REMOVED

6. The authority citation for part 236 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1224, 1225, 1226, 1227, 1231, 1362; 18 U.S.C. 4002, 4013(c)(4); 8 CFR part 2.

7. Section 236.1 is amended by adding one sentence at the end of paragraph (c)(1)(i) to read as follows:

§ 236.1 Apprehension, custody, and detention.

* * * * *

(c) * * *

(1) * * *

(i) * * * No alien may be released from custody unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter should the alien become subject to a final order of removal, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

PART 240—PROCEEDINGS TO DETERMINE REMOVABILITY OF ALIENS IN THE UNITED STATES

8. The authority citation for part 240 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1224, 1225, 1226, 1227, 1231, 1251, 1252 note, 1252a, 1252b, 1253, 1362; secs. 202 and 203, Pub. L. 105–100 (111 Stat. 2160, 2193); sec. 902, Pub. L. 105–277 (112 Stat. 2681); 8 CFR part 2.

9. Section 240.26 is amended by adding one sentence at the end of paragraph (a), to read as follows:

§ 240.26 Voluntary departure—authority of the Executive Office for Immigration Review.

(a) * * * In addition, no alien may be granted voluntary departure unless the alien agrees in writing or otherwise on the record to surrender for removal in accordance with § 241.16 of this chapter if the alien fails to depart voluntarily within the time allowed, and the alien has been advised of the consequences under § 241.18(c) of failure to surrender when required, in accordance with §§ 241.16 through 241.19 of this chapter.

* * * * *

PART 241—APPREHENSION AND DETENTION OF ALIENS ORDERED REMOVED

10. The authority citation for part 241 is revised to read as follows:

Authority: 5 U.S.C. 301, 552, 552a; 8 U.S.C. 1103, 1182, 1223, 1224, 1225, 1226, 1227, 1231, 1253, 1255, 1330, 1362; 18 U.S.C. 4002, 4013(c)(4); sec. 303(b) of Div. C of Pub. L. 102–208; 8 CFR part 2.

11. In part 241, subpart A, add § 241.16 to read as follows:

§ 241.16 Duty to surrender.

(a) *In general.* An alien subject to a final order of removal shall be taken into custody by the Service and removed. If not in the custody of the Service, however, an alien subject to a final order of removal issued in proceedings and who has received notice of the duty to surrender as set forth in § 241.17 must surrender for removal as provided in this section. Such surrender must be made during regular business hours to the Detention and Removal Program of the Service district office with jurisdiction over the place where the immigration judge completed the removal proceeding. Nothing in this part shall be construed as limiting the Service's authority to enforce a final order of removal at any time.

(b) *Final order by an immigration judge—(1) Aliens waiving appeal and aliens ordered removed in absentia.* Any alien who, upon issuance of the order of removal by an immigration judge, waives appeal of the order, and any alien who is ordered removed *in absentia*, must surrender for removal within 30 calendar days of the date of the order.

(2) *Aliens reserving appeal.* Any alien who, upon issuance of the order of removal by an immigration judge, reserves appeal, must surrender for removal within 30 calendar days of the date when the appeal period expires, unless he or she files a timely appeal, or within 30 calendar days of the date of any subsequent waiver or withdrawal of the appeal.

(c) *Final order by the Board of Immigration Appeals.* Any alien who becomes subject to an order of removal, or an order dismissing an appeal from an order of removal, issued by the Board of Immigration Appeals must surrender for removal within 30 calendar days of the date of the Board's order.

(d) *Voluntary departure.* Notwithstanding paragraphs (b) and (c) of this section, any alien granted voluntary departure who becomes subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure, must surrender for removal on the next business day following such a failure.

(e) *Aliens in custody.* (1) Any alien who becomes subject to a final order of removal while in Service custody is thereby relieved of the duty to surrender for removal under this section.

(2) Any alien who becomes subject to a final order of removal while incarcerated in a local, State, or Federal facility must surrender for removal within 30 calendar days of the alien's release from that facility, without regard to whether the alien is released on parole, supervised release, or probation, and without regard to whether the alien may be arrested or imprisoned again for the same offense, unless the alien is detained by the Service at the time he or she is released. If the Service detains the alien at the time of release from a local, State, or Federal facility, the alien is thereby relieved of the duty to surrender for removal pursuant to this section.

(f) *Other orders of removal.* Any alien who is ordered removed, other than by an immigration judge or the Board of Immigration Appeals, must surrender for removal to the Service district office with jurisdiction over the place where the alien was ordered removed within 30 calendar days of the date that the order becomes final.

(g) *Requests for relief subsequent to final order of removal.* An application for discretionary or other relief, including a motion to reopen, submitted to the Service, an immigration judge, or the Board of Immigration Appeals, by an alien who is the subject of a final order of removal, will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written decision granting the requested relief. A request for modification of the surrender terms submitted by an alien to the Service will have no effect on an alien's duty to surrender, unless the alien presents, prior to the expiration of the period to surrender, a written response granting the requested relief.

(h) *Stay pending federal court review.* Filing of a petition for federal court review or a writ of habeas corpus with respect to an administratively final removal order will have no effect on an alien's duty to surrender for removal. If the federal court issues a stay of the removal order pending review, the alien's duty to surrender will also be suspended for the duration of the stay. The 30-day period for surrender will begin again on the day that the federal court stay is lifted.

(i) *Weekends and holidays.* If the last permissible day to surrender for removal falls on a Saturday, Sunday, Federal holiday, or other day when the Service office designated for surrender is closed, the alien must surrender for removal on the first business day thereafter.

(j) *Alternative surrender terms.* Nothing in this part may be construed as limiting the Service's authority, in its sole and unreviewable discretion, to impose surrender requirements in addition to or varying from those generally applicable under this section. Changes to the surrender requirements may be made by mutual consent of the parties or, if without the alien's consent, the Service shall notify the alien in person or by regular mail at the last address given to the Service by the alien. This notice requirement shall not affect the Service's ability to arrest and remove an alien described in section 241(a) of the Act at any time.

12. In part 241, subpart A, add § 241.17 to read as follows:

§ 241.17 Notice of duty to surrender.

(a) *Notice to Appear.* As of the effective date when this rule is published as a final rule, the Notice to Appear, Form I–862, will contain written notice of the duty to surrender after the issuance of a final order of removal and the consequences of failure to surrender when required.

(a) *Immigration judge.* (1) The immigration judge will inform the alien orally or in writing that, if the alien fails to appear for a hearing, and thereby becomes subject to a final order of removal, the alien will be required to surrender for removal and the consequences of failure to surrender when required.

(2) In any case in which an immigration judge renders a decision, whether or not adverse to the alien, the immigration judge will inform the alien orally or in writing of the duty to surrender for removal and the location to which the alien must surrender in the event that the alien becomes subject to a final order of removal, and the consequences of failure to surrender when required.

(c) *Board of Immigration Appeals.* Orders of removal and orders dismissing an appeal from an order of removal issued by the Board of Immigration Appeals will be accompanied by written notice of the duty to surrender for removal, and the consequences of failure to surrender when required.

(d) *Upon release from custody.* As a condition of release from custody, whether under terms directed by the Service or subsequent to redetermination by an immigration judge or the Board of Immigration Appeals, the alien released must agree in writing or otherwise on the record to surrender for removal if the alien becomes subject to a final order of removal. No alien will be released from custody without agreeing to surrender for removal as required by this part.

(e) *Upon grant of voluntary departure.* No alien may be granted voluntary departure, whether by an immigration judge or the Board of Immigration Appeals, unless the alien agrees in writing or otherwise on the record to surrender for removal as provided under § 241.16(c), should the alien become subject to an alternate order of removal due to failure to depart as directed, failure to pay a bond in connection with voluntary departure, or failure to comply with any other required condition or term in connection with voluntary departure.

(f) *Effectuating notice of duty to surrender.* An alien will be on notice of the provisions of this section, including penalties for failure to surrender, upon service of any written notice that the alien has a duty to surrender. Aliens placed in proceedings after the effective date when this rule is published as a final rule will be served written notice of the duty to surrender in the Notice to Appear pursuant to section 239(a)(1) of the Act. Aliens who have been served with a Notice to Appear prior to the effective date when this rule is published as a final rule will be served with written notice in one of the ways described in paragraphs (b) through (e) of this section or in any other manner whereby such written notice may be effectuated. Service of the written notice will be accomplished either by hand-delivery or by mailing to the alien's last-known address as reported by the alien to the Service or EOIR. Once notice is served as described in this section, no other notice is required, even though the alien may receive more than one notice from the Service and EOIR. If the address of the Service district office to which the alien is required to surrender changes subsequent to issuance of notice under this section, it is the alien's duty to determine the new address and surrender to that location.

13. In part 241, subpart A, add § 241.18 to read as follows:

§ 241.18 Consequences of failure to surrender for removal; exception; waiver.

(a) *Liability.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law:

(1) Is subject to criminal prosecution under section 243 of the Act; and

(2) Is subject to civil penalties under section 274D of the Act.

(b) *Consent to reapply.* The fact that the alien failed to surrender for removal as required by this part shall be a serious adverse factor when considering a subsequent application for consent to reapply for admission to the United States.

(c) *Denial of discretionary relief.* An alien who fails to surrender for removal as required by this part, and remains in the United States in violation of law, after having received notice of the duty to surrender as provided in § 241.17, will be denied discretionary relief under sections 208(b), 212(h), 212(i), 240A, 240B, 245, 248, and 249 of the Act while the alien remains in the United States, and for a period of 10 years after the alien's departure or removal.

(1) *Exception.* An alien who fails to surrender for removal as required by this part may be granted the relief specified in this paragraph (c) for which the alien is otherwise eligible, if the underlying proceeding was reopened by the Board of Immigration Appeals in accordance with § 3.2(c)(5) of this chapter or an immigration judge in accordance with § 3.23(b)(5) of this chapter, provided that the alien does not again fail to surrender for removal subsequent to reopening of the underlying proceeding.

(2) *Waiver.* The consequences of failing to surrender specified in this paragraph (c) may be waived in the sole and unreviewable discretion of the district director, if the alien surrenders for removal as soon as possible thereafter, and at that time presents documentary evidence that demonstrates, by clear and convincing evidence, that the failure to surrender was due to exceptional circumstances as defined in section 240(e)(1) of the Act. Exceptional circumstances do not include reliance on advice of counsel or any other individual, and no waiver is available based on such reliance.

14. In part 241, subpart A, add § 241.19 to read as follows:

§ 241.19 Construction.

(a) *Order of removal.* For purposes of § 241.16, § 241.17, and § 241.18, the term "order of removal" shall apply to orders issued pursuant to the Act as amended by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, including, but not limited to, section 309 therein.

(b) *Detainers.* Nothing in this part may be construed to relieve local, State, or Federal authorities from complying with the terms of a lawfully issued Service detainer.

(c) *Service.* For purposes of § 241.16, § 241.17, and § 241.18, in the case of an alien who is not personally served with an order of removal, service by first class mail to the last address provided by the alien in accordance with section

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239(a)(1)(F) of the Act, or part 3 or part 265 of this chapter shall be sufficient.

(d) *Effect on existing bonds.* For all immigration bonds posted prior to the effective date of this rule when it is published as a final rule, the Service will make demand on the obligor on Form I–340 by mail to the address furnished on Form I–352 (unless the obligor is present and the demand can be served on the obligor in person), requiring the obligor to produce the alien at a time, date and place certain not later than the final date of the surrender period. The I–340 shall be mailed (or delivered in person) as soon as practicable after receipt of the final order from the immigration judge or the Board of Immigration Appeals.

(e) *Change in handling of new bonds.* For all immigration bonds posted after the effective date of this rule when it is published as a final rule, the bond will be deemed to have been breached when the alien fails to surrender within the 30-day surrender period. It is the duty of the obligor(s) to monitor the status of proceedings against the alien and ensure that the alien surrenders within the 30-day surrender period.

(f) *Construction in relation to post-order custody rules.* An alien's duty to surrender, as set forth in § 241.16, § 241.17, and § 241.18, is an affirmative obligation. The failure to comply with this obligation shall be considered a failure to comply for purposes of custody determinations pursuant to § 241.4.

Dated: April 30, 2002.

John Ashcroft,

Attorney General.

[FR Doc. 02–11141 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–10–P

FEDERAL ELECTION COMMISSION

11 CFR Part 110

[Notice 2002–6]

Candidate Debates

AGENCY: Federal Election Commission.

ACTION: Petition for Rulemaking; Notice of Availability.

SUMMARY: On April 10, 2002, the Commission received a Petition for Rulemaking from several major news organizations that are listed below. The petitioners urge the Commission to amend its rules to explicitly state that the sponsorship by a news organization (or a related trade association) of a debate between political candidates does not constitute an illegal corporate campaign contribution or expenditure in violation of the Federal Election Campaign Act of 1971, as amended ("the Act") and that the Commission would have no jurisdiction over such sponsorship. This petition is available for inspection in the Commission's Public Records Office through its Faxline service, and on the Commission's Web site at *www.fec.gov.*

DATES: Statements in support of or in opposition to the petition must be filed on or before June 10, 2002.

ADDRESSES: All comments should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Electronic mail comments should be sent to *debate02noa@fec.gov.* Written comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its Web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Mr. Michael Marinelli, Staff Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On April 10, 2002, the Commission received a Petition for Rulemaking from CBS Broadcasting Inc.; American Broadcasting Companies Inc.; Belo Corp.; Cox Enterprises, Inc.; Gannett Co., Inc.; the National Association of Broadcasters; National Broadcasting Co., Inc.; News America Incorporated; The New York Times Company; Post-Newsweek Stations, Inc.; the Radio and Television News Directors Association; the Society of Professional Journalists; and Tribune Company regarding the Commission's candidate debate regulations at 11 CFR 110.13. Paragraph (c) of section 110.13 states, *inter alia,* that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate." *Id.* The petition asserts that this regulation should be repealed. It argues that any regulation of the sponsorship by news organization (or a related trade association) is contrary to the clear intent of the U.S. Congress, irreconcilable with other FEC decisions, in conflict with the regulatory decisions of the Federal Communications Commission and unconstitutional. The petition urges the Commission to draft new regulations that explicitly declare such sponsorship is legal under the Act and to refrain from any further regulatory jurisdiction over the sponsorship of a candidate debate by a news organization or trade association of members of the press.

Copies of the petitions are available for public inspection in the Commission's Public Records Office, 999 E Street, NW., Washington, DC 20463, Monday through Friday between the hours of 9 a.m. and 5 p.m. Copies of the petitions can also be obtained at any time of the day and week from the Commission's home page at *www.fec.gov,* or from the Commission's Faxline. To obtain copies of the petitions from Faxline, dial (202) 501–3413 and follow the Faxline service instructions. Request document # to receive the petition.

All statements in support of or in opposition to the petition should be addressed to Ms. Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Commission's postal service address: Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Faxed comments should be sent to (202) 219–3923. Commenters submitting faxed comments should also submit a printed copy to the Commission's postal service address to ensure legibility. Comments may also be sent by electronic mail to *debates02noa@fec.gov.* Commenters sending comments by electronic mail must include their full name, electronic mail address and postal service address within the text of their comments. All comments, regardless of form, must be submitted by June 10, 2002. Commenters are strongly encouraged to send comments electronically to ensure timely receipt and consideration.

Consideration of the merits of the petition will be deferred until the close of the comment period. If the Commission decides that the petition has merit, it may begin a rulemaking proceeding. Any subsequent action taken by the Commission will be announced in the **Federal Register**.

Dated: May 6, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–11628 Filed 5–8–02; 8:45 am]

BILLING CODE 6715–01–P

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1500

Baby Walkers; Termination of Rulemaking

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of rulemaking.

SUMMARY: In August of 1994 the U.S. Consumer Product Safety Commission (CPSC or Commission) published an advance notice of proposed rulemaking under authority of the Federal Hazardous Substances Act (FHSA) stating that it had reason to believe that baby walkers might present an unreasonable risk of injury or death due to stair falls. 59 FR 39306.

The Commission now has information that demonstrates that currently available baby walkers do not present "an unreasonable risk of personal injury" due to stair falls. A finding of unreasonable risk of personal injury is a necessary prerequisite under the FHSA for the Commission to declare an article intended for use by children to be a hazardous substance due to a mechanical hazard.

The FHSA also prohibits the Commission from declaring that an article intended for use by children presents a mechanical hazard if there is an adopted and implemented voluntary standard that addresses the risk unless it can make, inter alia, one or more of the following findings. One is that compliance with the standard will not adequately reduce or eliminate the risk. Another is that it is unlikely that there will be substantial compliance with the standard.

The Commission finds that currently available information demonstrates that the existing voluntary standard adequately reduces the risk of injury associated with the use of baby walkers. Testing has demonstrated that walkers complying with the voluntary standard are unlikely to fall down stairs. Baby walker-related stair fall injuries have declined substantially as walkers that comply with the voluntary standard have become more widespread in the marketplace. The Commission finds further that there is presently substantial compliance with the voluntary standard (99% according to surveys). The Commission finds further that, because the industry is dominated by five large manufacturers, all of which are presently producing walkers that comply with the voluntary standard, there likely will be substantial compliance with the voluntary standard in the future.

Accordingly, the Commission has terminated the baby walker regulatory proceeding.

Termination of the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

FOR FURTHER INFORMATION CONTACT: Barbara J. Jacobson, Directorate for Health Sciences, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0477, ext. 1206; e-mail: *bjacobson@cpsc.gov*

SUPPLEMENTARY INFORMATION:

A. The Product

A baby walker is a device that supports a child so that the child can use its feet to move around before, or while, learning to walk. A baby walker generally consists of a fabric seat with leg openings mounted to a rigid plastic deck. The deck is attached to a base that usually has wheels to make it mobile. A walker generally can be folded for storage, and may have a feeding tray, adjustable seat height and a bouncing mechanism. Activity toys may be attached to the tray, and some walkers have wheel lock mechanisms.

B. Background of the Rulemaking

The Commission initiated the proceeding to address baby walker stair falls with an advance notice of proposed rulemaking (ANPR) in August 1994. 59 FR 39306. This proceeding had no effect on the existing baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4) previously promulgated under authority of the FHSA. These requirements remain in full force and effect.

At the time the ANPR was issued, baby walkers were associated with a higher number of injuries than any other type of nursery product. The majority of the injuries occurred as a result of children falling down stairs while in baby walkers.

Thirteen comments were received in response to the ANPR. Seven commenters supported a mandatory rulemaking. Six commenters were opposed to a mandatory rulemaking. Five of the commenters who opposed the mandatory rulemaking requested that any new baby walker requirements be developed through the ASTM voluntary standards setting process.

After publication of the ANPR, Commission staff worked with the ASTM Walker Subcommittee to add new performance requirements to the voluntary walker standard to address the stair fall hazard. A revised ASTM F977 standard incorporating these improvements received final ASTM approval on October 10, 1996 and was published in early 1997.[1]

C. Relevant Statutory Provisions

The CPSC baby walker proceeding was conducted pursuant to the FHSA. 15 U.S.C. 1261 *et seq.* Section 2(f)(1)(D) of the FHSA defines "hazardous substance" to include any toy or other article intended for use by children that the Commission determines, by regulation, presents an electrical, mechanical, or thermal hazard. 15 U.S.C. 1261(f)(1)(D). An article may present a mechanical hazard if its design or manufacture presents an unreasonable risk of personal injury or illness during normal use or when subjected to reasonably foreseeable damage or abuse. Among other things, a mechanical hazard could include a risk of injury "(5) from lack or insufficiency of controls to reduce or stop motion, * * * or (9) because of any other aspect of the article's design or manufacture." 15 U.S.C. 1261(s). Thus, in this proceeding, for the Commission to declare baby walkers to be hazardous substances due to a mechanical hazard, it would find that currently available baby walkers pose an unreasonable risk of personal injury as a result of "lack or insufficiency of controls to reduce or stop motion."[2]

Section 3(i)(2) of the FHSA prohibits the Commission from making a determination that an article intended for use by children presents a mechanical hazard, and therefore is a banned hazardous substance by operation of law, if there is an adopted and implemented voluntary standard that addresses the risk in question unless it can make, inter alia, one or more of the following findings.[3] 15

[1] Copies of ASTM F977–00 Standard Consumer Safety Specification for Infant Walkers are available from ASTM. The URL for the ASTM world wide web site is: *www.astm.org*

[2] Under section 2(q)(1)(A) of the FHSA, a toy, or other article intended for use by children which is a hazardous substance is also a "banned hazardous substance." 15 U.S.C. 1261(q)(1)(A).

[3] The FHSA contains two other pertinent constraints on Commission action in the face of voluntary standards activities, neither of which is apropos here. The first directs the Commission to consider publishing as a proposed CPSC regulation an adequate existing standard submitted to it during the period specified in an advance notice of proposed rulemaking (ANPR). 15 U.S.C. 1262(g)(1). No such standard was submitted in response to the August 1994 ANPR. The second requires the Commission to terminate the rulemaking proceeding and rely on an adequate existing voluntary standard developed in response to a commitment and schedule for development thereof

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U.S.C. 1262(i)(2). One is that compliance with the standard is not likely to eliminate or adequately reduce the risk. 15 U.S.C. 1262(i)(2)(A)(i). Another is that it is unlikely that there will be substantial compliance with the voluntary standard. 15 U.S.C. 1262(i)(2)(A)(ii).

D. There Has Been a Significant Reduction in the Risk of Injury From Baby Walkers Since 1995

Based on data from the Commission's National Electronic Injury Surveillance System (NEISS), baby walker-related injuries have dropped 63 percent since 1995, from 20,100 emergency room treated injuries to 7,400.[4] The number of U.S. live births has increased slightly, approximately 4%, since 1995. Comparing the estimated number of injuries over the same time period, the rate of injury per 1,000 live births has dropped 65% from 1995 to 2000.

CPSC received two reports of baby walker-related deaths in 2001, the first reports of baby walker deaths since 1997. The deaths were from head injuries incurred from falls down stairs. Investigations showed that both walkers were older-style walkers manufactured before the stair-fall improvements were incorporated into ASTM voluntary standard F977, Standard Consumer Safety Specification for Infant Walkers.

The Commission concludes that the consistent decrease in injuries would preclude a finding that currently available walkers present "an unreasonable risk of personal injury." 15 U.S.C. 1261(s).

E. ASTM Voluntary Standard F977–00

Beginning in 1994, after publication of the ANPR, CPSC staff worked with the ASTM Walker Subcommittee to add new performance requirements to the voluntary walker standard to address the stair fall hazard. The new performance requirements passed final ASTM balloting in August 1996, received final approval on October 10, 1996, and the revised F977 standard was published by ASTM in early 1997.

The revised standard incorporates a performance test methodology that simulates a child in a walker moving across the floor, through a doorway, and to a stairway. A dummy represents a child in the walker. The walker is tested facing forward, backward, and sideways. If the walker passes through the 36-inch wide opening at the end of a test table and falls off the table, the walker fails to meet the performance requirements. If the walker stops at the edge of the test table and any part of the walker extends over the edge of the table, a tip-over test is performed. The walker fails to meet the requirements of the ASTM standard if it then falls off the table during the tip-over test.

The performance test parameters were selected to be representative of stringent conditions, including use of test dummy weights that reflect both ends of the weight range of children 6–15 months old expected to use walkers and maximum expected walker speeds, child strength capabilities, and tip-over conditions.

The CPSC staff conducted two 6-month special studies of walker-related incidents from November 1, 1999 through April 30, 2000 and November 1, 2000 through April 30, 2001 to identify the types of walkers involved in recent stair fall incidents. The results of those studies indicate that most of the recent stair fall incidents involve older walkers not meeting the revised F977 standard. In light of the results of this study, a Commission finding that compliance with ASTM standard F977 is not likely to eliminate or adequately reduce the risk could not be justified. 15 U.S.C. 1262(i)(2)(A)(i).

F. Compliance With ASTM Standard F977

According to information provided to CPSC staff by the Juvenile Products Manufacturers Association (JPMA), all five domestic walker manufacturers comply with the revised ASTM standard. CPSC staff estimates that more than 99 percent of all baby walkers sold in the U.S. between 1997 and 2001 were in compliance with the revised ASTM standard. The JPMA also indicates that 98 percent of the baby walkers currently available for sale in the U.S. comply with revised ASTM standard F977. Apparently, the remaining small percentage of non-complying walkers is imported by small firms. Thus the Commission could not at this time support a finding that it is unlikely that there will be substantial compliance with ASTM F977.

G. Conclusion

As a result of the foregoing analysis, the Commission has made a decision to terminate the baby walker stair fall rulemaking.

To avoid any potential misunderstanding, it is again reiterated that the Commission decision to terminate the baby walker stair fall proceeding has no effect on the FHSA baby walker mechanical injury prevention and labeling requirements at 16 CFR 1500.18(a)(6) and 1500.86(a)(4). These requirements remain in full force and effect.

Dated: May 2, 2002.

Todd A. Stevenson,

Secretary, Consumer Product Safety Commission.

[FR Doc. 02–11327 Filed 5–8–02; 8:45 am]

BILLING CODE 6355–01–P

submitted to it during the period specified in an ANPR. 15 U.S.C. 1262(g)(2). No such commitment and schedule were received in response to the 1994 ANPR.

[4] Memorandum from Debra Sweet, Division of Hazard Analysis, Directorate for Epidemiology, to Barbara Jacobson, Project Manager for Baby Walkers, Directorate for Health Sciences, Baby Walker-Related Deaths and Injuries, March 13, 2002. This and other materials relevant to this proceeding are available on the CPSC website at *www.cpsc.gov*

DEPARTMENT OF JUSTICE

28 CFR Part 16

[AAG/A Order No. 266–2002]

Privacy Act of 1974; Implementation

AGENCY: Department of Justice.

ACTION: Proposed rule.

SUMMARY: The Department of Justice, Bureau of Prisons, proposes to exempt a Privacy Act system of records from the following subsections of the Privacy Act: (e)(1) and (e)(5). This system of records is the "Inmate Central Records System, (JUSTICE/BOP–005)", as modified and described in today's notice section of the **Federal Register**. This system continues to be exempted from the subsections of the Privacy Act enumerated in 28 CFR 16.97(a) and (b), as previously promulgated.

The additional exemptions are necessary to preclude the compromise of institution security, to better ensure the safety of inmates, Bureau personnel and the public, to better protect third party privacy, to protect law enforcement and investigatory information, and/or to otherwise ensure the effective performance of the Bureau's law enforcement functions.

DATES: Submit any comments by July 8, 2002.

ADDRESSES: Address all comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

FOR FURTHER INFORMATION CONTACT: Mary Cahill, (202) 307–1823.

This order relates to individuals rather than small business entities. Nevertheless, pursuant to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601–612, this order will not have a significant economic impact on a substantial number of small entities.

List of Subjects in Part 16

Administrative practices and procedure, Freedom of Information Act, Government in the Sunshine Act, and Privacy Act.

Pursuant to the authority vested in the Attorney General by 5 U.S.C. 552a and delegated to me by Attorney General Order No. 793–78, it is proposed to amend 28 CFR part 16 as follows:

1. The authority for part 16 continues to read as follows:

Authority: 5 U.S.C. 301, 552, 552a, 552b(g) and 553; 18 U.S.C. 4203(a)(1); 28 U.S.C. 509, 510, 534; 31 U.S.C. 3717 and 9701.

2. It is proposed to amend § 16.97 by adding paragraphs (j) and (k) to read as follows:

§ 16.97 Exemption of Federal Bureau of Prisons Systems—limited access.

* * * * *

(j) The following system of records is exempted pursuant to 5 U.S.C. 552a(j) from subsections (e)(1) and (e)(5): Bureau of Prisons Inmate Central Records System, (JUSTICE/BOP–005).

(k) These exemptions apply only to the extent that information in this system is subject to exemption pursuant to 5 U.S.C. 552a(j). Where compliance would not appear to interfere with or adversely affect the law enforcement process, and/or where it may be appropriate to permit individuals to contest the accuracy of the information collected, e.g. public source materials, or those supplied by third parties, the applicable exemption may be waived, either partially or totally, by the Bureau. Exemptions from the particular subsections are justified for the following reasons:

(1) From subsection (e)(1) to the extent that the Bureau may collect information that may be relevant to the law enforcement operations of other agencies. In the interests of overall, effective law enforcement, such information should be retained and made available to those agencies with relevant responsibilities.

(2) From subsection (e)(5) because in the collection and maintenance of information for law enforcement purposes, it is impossible to determine in advance what information is accurate, relevant, timely and complete. Data which may seem unrelated, irrelevant or incomplete when collected may take on added meaning or significance during the course of an investigation or with the passage of time, and could be relevant to future law enforcement decisions. In addition, because many of these records come from the courts and other state and local criminal justice agencies, it is administratively impossible for them and the Bureau to ensure compliance with this provision. The restrictions of subsection (e)(5) would restrict and delay trained correctional managers from timely exercising their judgment in managing the inmate population and providing for the safety and security of the prisons and the public.

* * * * *

Dated: April 26, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

[FR Doc. 02–11579 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–05–P

POSTAL SERVICE

39 CFR Part 265

Release of Information

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule changes the procedures for the release of information about holders of postage meter licenses. The procedures are necessary to ensure individual privacy while providing for the release of information needed for customer protection.

DATES: The Postal Service must receive your comments on or before June 10, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, Virginia 22209–6050. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, 703–292–3782, or by fax, 703–292–4050.

SUPPLEMENTARY INFORMATION: The current regulation that provides for the release of the name and address of a holder of a postage meter permit or license was adopted for consumer protection reasons at a time when postage meters were used almost exclusively by businesses or firms. Circumstances have changed, however, and individuals now hold meter licenses as well. The new procedures for releasing the name and address of a particular holder of a postage meter license will ensure that legitimate expectations of individual privacy are met, while providing for the release of information needed for consumer protection. The new procedures remove the processing of requests for information about meter license holders from field locations and enables Postage Technology Management at Postal Service Headquarters to ensure that information is released appropriately. The current regulation refers to information on a postage meter "permit." There is no "permit" to use a postage meter issued by the Postal Service. The Postal Service issues postage meter licenses to postage meter users. The amendment revises the terminology to reflect correct usage. Since the possession of leased postage meters can change over time, the Postal Service is requesting that the original or a photocopy of the envelope or wrapper bearing the relevant postage meter indicium be submitted with the request for information to validate the accuracy of the request and to ensure that the correct meter license holder is identified. The Postal Service is requesting that a copy or description of the contents of the mailpiece also be submitted to support that the sender is a business or firm and not an individual.

List of Subjects in 39 CFR Part 265

Administrative practice and procedure, Postal Service.

The Amendment

For the reasons set out in this document, the Postal Service is amending 39 CFR part 265 as follows:

PART 265—RELEASE OF INFORMATION

1. The authority citation for 39 CFR part 265 continues to read as follows:

Authority: 5 U.S.C. 552; 5 U.S.C. App. 3, 39 U.S.C. 401, 403, 410, 1001, 2601.

2. Amend § 265.6 by revising paragraphs (d) introductory text and (d)(2); by redesignating paragraphs (d)(3) through (d)(8) as paragraphs (d)(4) through (d)(9), respectively; and by adding a new paragraph (d)(3) to read as follows:

§ 265.6 Availability of Records.

* * * * *

(d) *Disclosure of names and addresses of customers.* Upon request, the names and addresses of specifically identified postal customers will be made available only as follows:

* * * * *

(2) *Name and address of permit holder.* The name and address of the holder of a particular bulk mail permit, permit imprint or similar permit (but not including postage meter licenses), and the name of any person applying for a permit in behalf of a holder, will be

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furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9. For the name and address of a postage meter license holder, see paragraph (d)(3) of this section. (Lists of permit holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

(3) *Name and address of postage meter license holder.* The name and address of the holder of a postage meter license authorizing use of a postage meter printing a specified indicium, will be furnished to any person upon the payment of any fees authorized by paragraph (b) of § 265.9, provided the holder is using the license for a business or firm. The request for this information must be sent to the manager of Postage Technology Management, Postal Service Headquarters. The request must include the original or a photocopy of the envelope or wrapper on which the meter indicium in question is printed, and a copy or description of the contents to support that the sender is a business or firm and not an individual. (Lists of postage meter license holders may not be disclosed to members of the public. See paragraph (e)(1) of this section.)

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–11507 Filed 5–8–02; 8:45 am]

BILLING CODE 7710–12–P

POSTAL SERVICE

39 CFR Part 501

Authorization To Manufacture and Distribute Postage Meters

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the regulations for inspecting postage meter production facilities that are located outside the continental United States. This proposed rule intends to require the manufacturer to reimburse the Postal Service for costs incurred by required inspections of production facilities located outside the continental United States.

DATES: The Postal Service must receive your comments on or before June 10, 2002.

ADDRESSES: Mail or deliver written comments to the manager, Postage Technology Management, 1735 N Lynn Street, Room 5011, Arlington, Virginia 22209–6050. You can view and copy all written comments at the same address between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Wayne Wilkerson, 703–292–3782, or by fax 703–292–4050.

SUPPLEMENTARY INFORMATION: Title 39, Code of Federal Regulations (CFR) part 501, Authorization to Manufacture and Distribute Postage Meters, requires the Postal Service to inspect meter production facilities to determine if the facilities satisfy Postal Service requirements for meter and component security and production quality. A manufacturer may have valid business reasons for selecting a particular location for its production facilities. However, when a manufacturer chooses to locate these facilities outside the continental United States, conducting the required inspections of such facilities places an undue cost burden on the Postal Service. The Postal Service is requiring the manufacturer to reimburse such costs.

Notice and Comment

Although exempt from the notice and comment requirements of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Code of Federal Regulations (CFR).

List of Subjects in 39 CFR Part 501

Administrative practice and procedure, Postal Service.

For the reasons set out in this document, the Postal Service is proposing to amend 39 CFR part 501 as follows:

PART 501—AUTHORIZATION TO MANUFACTURE AND DISTRIBUTE POSTAGE METERS

1. The authority citation for part 501 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 410, 2601, 2605; Inspector General Act of 1978, as amended (Pub. L. 95–452, as amended), 5 U.S.C. App. 3.

2. Amend § 501.2 by revising the introductory paragraph and paragraphs (c) and (d) to read as follows:

§ 501.2 Manufacturer qualification.

Any concern wanting authorization to manufacture and/or lease postage meters for use by licensees under *Domestic Mail Manual* P030 must:

* * * * *

(c) Have, or establish, and keep under its supervision and control adequate production facilities suitable to carry out the provisions of §§ 501.15 through 501.21 to the satisfaction of the Postal Service. The production facilities must be subject to unannounced inspection by representatives of the Postal Service. If the provider's production facilities are located outside the continental United States, the provider shall be responsible for all reasonable and necessary costs incurred by the Postal Service to conduct the inspections.

(d) Have, or establish, and keep under its active supervision and control adequate facilities for the control, distribution, and maintenance of meters and their replacement or secure disposal or destruction when necessary.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 02–11506 Filed 5–8–02; 8:45 am]

BILLING CODE 7710–12–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[MT–001–0037b; FRL–7208–9]

Approval and Promulgation of Air Quality Implementation Plans; State of Montana; Great Falls Carbon Monoxide Redesignation to Attainment and Designation of Areas for Air Quality Planning Purposes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On February 9, 2001, the Governor of Montana submitted a request to redesignate the Great Falls "not classified" carbon monoxide (CO) nonattainment area to attainment for the CO National Ambient Air Quality Standard (NAAQS). The Governor also submitted a CO maintenance plan. In this action, EPA is proposing approval of the Great Falls CO redesignation request and the maintenance plan. In the Final Rules Section of this **Federal Register**, EPA is approving the State's redesignation request and State Implementation Plan (SIP) revision, involving the maintenance plan, as a direct final rule without prior proposal because the Agency views the redesignation and SIP revision as noncontroversial and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Comments on this proposed rule must be received in writing by June 10, 2002.

ADDRESSES: Written comments may be mailed to: Richard R. Long, Director, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466.

Copies of the documents relevant to this action are available for public inspection between 8:00 a.m. and 4:00 p.m., Monday through Friday at the following office:

United States Environmental Protection Agency, Region VIII, Air Program, 999 18th Street, Suite 300, Denver, Colorado 80202–2466

FOR FURTHER INFORMATION CONTACT: Tim Russ, Air and Radiation Program, Mailcode 8P–AR, United States Environmental Protection Agency, Region VIII, 999 18th Street, Suite 300, Denver, Colorado 80202–2466, Telephone number (303) 312–6479.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule, of the same title, published in the rules section of this **Federal Register**.

Dated: April 29, 2002.

Robert E. Roberts,

Regional Administrator, Region VIII.

[FR Doc. 02–11449 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–979, MB Docket No. 02–92, RM–10363]

Digital Television Broadcast Service; Albany, NY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Clear Channel Broadcasting Licenses, Inc., licensee of station WXXA–TV, NTSC channel 23, Albany, New York, requesting the substitution of DTV channel 7 for DTV channel 4. DTV Channel 7 can be allotted to Albany, New York, in compliance with the principle community coverage requirements of section 73.625(a) at reference coordinates (42–37–31 N. and 74–00–38 W.). However, since the community of Albany is located within 400 kilometers from the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment. As requested, we propose to allot DTV Channel 7 to Albany with a power of 10 and a height above average terrain (HAAT) of 434 meters.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John M Burgett, Wiley, Rein & Fielding LLP, 1776 K Street, NW., Washington, DC 20006 (Counsel for Clear Channel Broadcasting Licenses, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–92, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334, and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under New York is amended by removing DTV Channel 4 and adding DTV Channel 7 at Albany.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Medio Bureau.

[FR Doc. 02–11607 Filed 5–8–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–978, MB Docket No. 02–91, RM–10411]

Digital Television Broadcast Service; Cheboygan, MI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by WPBN/WTOM License Subsidiary, Inc., licensee of station WTOM–TV, proposing the substitution of DTV channel 35 for station WTOM–TV's assigned DTV channel 14. DTV Channel 35 can be allotted to at reference coordinates (45–39–01 N. and 84–20–37 W.) with a power of 80, a height above average terrain HAAT of 168 meters. However, since the community of Cheboygan is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Jonathan D. Blake, Covington & Burling, 1201 Pennsylvania Avenue, NW, Washington, DC 20004 (Counsel for WPBN/WTOM License Subsidiary, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–91, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, S.W., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Michigan is amended by removing DTV channel 14 and adding DTV channel 35 at Cheboygan.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11606 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–977, MB Docket No. 02–90, RM–10409]

Digital Television Broadcast Service; Odessa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Midessa Television Company, licensee of station KWES–TV, NTSC channel 9, Odessa, Texas, proposing the substitution of DTV channel 13 for station KWES-TV's assigned DTV channel 15. DTV Channel 13 can be allotted to Odessa at reference coordinates 31–59–17 N. and 102–52–41 W. with a power of 25.1, a height above average terrain HAAT of 397 meters. Since the community of Odessa is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David D. Oxenford, Shaw Pittman LLP, 2300 N. Street, NW., Washington, DC 20037–1128 (Counsel for Midessa Television Company).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–90, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel 15 and adding DTV channel 13 at Odessa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11608 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–982, MB Docket No. 02–95, RM–10421]

Digital Television Broadcast Service; Odessa, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by the Odessa Junior College District, proposing the substitution of DTV channel *38 for DTV channel *22 for station KOCV–TV at Odessa. DTV Channel *38 can be allotted to at reference coordinates 31–51–58 N. and 102–22–48 W. with a power of 500, a height above average terrain HAAT of 82 meters. Since the community of Odessa is located within 275 kilometers of the U.S.-Mexican border, concurrence from the Mexican government must be obtained for this allotment.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (except in broadcast allotment proceedings). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks, 1920 N Street, NW., Suite 300, Washington, DC 20036–3860 (Counsel for Odessa Junior College District).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–95, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding. Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Television, Digital television broadcasting.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

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PART 73—TELEVISION BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel *22 and adding DTV channel *38 at Odessa.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11609 Filed 5–8–02; 8:45 am]

BILLING CODE 6712–01–U

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[I.D. 042402B]

Sea Turtle Conservation; Activities Related to Fishing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS); request for written comments; extension of comment period on application for Incidental Take Permit (ITP).

SUMMARY: The National Marine Fisheries Service (NMFS) announces its intent to prepare an EIS to assess the potential impacts on the human environment of sea turtle interactions with fishing activities in Hawaii State waters associated with an application for an individual ITP submitted by the State of Hawaii Department of Land and Natural Resources. NMFS is responsible for analyzing these permit applications and authorizing those which meet legal requirements. NMFS also announces the extension of the comment period on the ITP application.

DATES: Written comments on fisheries/sea turtle interactions or other information that NMFS should consider in preparing the EIS, as well as written comments from interested parties on the permit application and conservation plan are requested and must be received no later than 5 p.m. Eastern daylight time on or before June 10, 2002.

ADDRESSES: Comments on the proposal to prepare an EIS, comments on the application for an individual ITP, and requests for copies of the application for the individual ITP should be sent to: Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet. Notice of public meetings will be announced at a later date through notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Margaret Akamine Dupree (ph. 808–973–2935, fax 808–973–2941, e-mail *Margaret.Dupree@noaa.gov*) or Therese Conant (ph. 301–713–1401, fax 301–713–0376, e-mail *Therese.Conant@noaa.gov*).

SUPPLEMENTARY INFORMATION:

Background

All sea turtles that occur in U.S. waters are listed as either endangered or threatened under the Endangered Species Act (ESA). The leatherback (*Dermochelys coriacea*) and hawksbill (*Eretmochelys imbricata*) are listed as endangered. Loggerhead (*Caretta caretta*) and green (*Chelonia mydas*) turtles are listed as threatened, except for populations of green turtles in Florida and on the Pacific coast of Mexico, which are listed as endangered. Olive ridley (*Lepidochelys olivacea*) turtles are listed as threatened, except for populations of olive ridley turtles on the Pacific coast of Mexico, which are listed as endangered.

Under the ESA and its implementing regulations, taking sea turtles—even incidentally—is prohibited, with exceptions identified in 50 CFR 223.206. Reduction of the incidental capture of sea turtles as a result of fishery operations and amelioration of the impacts of this interaction is an important aspect of sea turtle recovery efforts.

Pursuant to the ESA, the State of Hawaii has submitted an application to NMFS for an individual ITP for listed sea turtles in inshore marine fisheries in the Hawaiian islands managed by the State of Hawaii. The application for an ITP was made available to the public through an earlier **Federal Register** notice of availability (67 FR 16367, April 5, 2002), which established a comment period on the application of April 5, 2002 to May 6, 2002. Sea turtle interactions with fishing gear associated with the Hawaii-managed fisheries are known to occur, resulting in the take of threatened and endangered sea turtles. The extent and impact that will likely result from this incidental take must be analyzed and, if appropriate, authorized through section 10 of the ESA. An ITP cannot be authorized unless the applicant submits a conservation plan, and unless it can be determined that with respect to the permit application and the related conservation plan that (1) the taking will be incidental, (2) the applicant will, to the maximum extent practicable, minimize and mitigate the impacts of such taking, (3) the applicant will ensure that adequate funding for the plan will be provided, (4) the taking will not appreciably reduce the likelihood of the survival and recovery of the species in the wild, and (5) any other measures or assurances required by NMFS as being necessary or appropriate for purposes of the conservation plan will be met.

NMFS has determined that an environmental impact analysis of the incidental take of sea turtles which would be authorized by the issuance of an ITP for the marine inshore fisheries managed by the State of Hawaii is necessary under the National Environmental Policy Act (NEPA). Based on comments received through this notification, NMFS intends to schedule scoping meetings at a later date that would support preparation of an EIS.

NMFS is seeking input from fishermen, sea turtle experts, non-governmental organizations (NGOs), academia, state representatives, and the public on the Hawaii fisheries and is requesting information on fisheries interactions with sea turtles as well as the identification of missing data. The purpose of this notice is to: (1) inform the interested public of the intent to prepare this EIS, (2) request public participation and comments, and (3) extend the comment period on the application for the ITP to allow more time for comment on it. If authorization of an ITP is appropriate, it will proceed in accordance with the provisions specified in the ESA.

Dated: May 6, 2002.

Wanda Cain,

Acting Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–11636 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 020325070–2102–02; I.D. 031202B]

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Shrimp Fishery of the Gulf of Mexico; Suspension of the 2002 Texas Closure

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agency action; withdrawal of proposed rule.

SUMMARY: In light of NMFS economic analysis and public comments received about the proposed rule, NMFS is withdrawing the proposed rule that, if implemented, would have suspended, for the 2002 season, regulations that close the exclusive economic zone (EEZ) off Texas to shrimp trawling from 30 minutes after official sunset on May 15 to 30 minutes after official sunset on July 15, each year (i.e., the Texas closure). The withdrawal is discussed further below. In withdrawing the proposed rule, NMFS hereby notifies the public that the Texas closure regulations will remain in effect for the 2002 fishing year.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone: 727–570–5305, fax: 727–570–5583, e-mail: steve.branstetter@noaa.gov.

SUPPLEMENTARY INFORMATION: The fishery for shrimp in the Gulf of Mexico EEZ is managed under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council), approved by NMFS, and implemented under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by regulations at 50 CFR part 622.

Amendment 5 to the FMP provides the NMFS Southeast Regional Administrator (RA) with the opportunity, after determining that benefits may be increased or adverse impacts be decreased, to either: (1) modify the geographical scope of the extent of the Texas closure, or (2) eliminate the Texas closure for one season.

Based on public testimony at its January 21–24, 2002, meeting, the Council voted to recommend that NMFS suspend regulations at 50 CFR 622.34(h) implementing the Texas closure for one season. A proposed rule describing the action was published in the **Federal Register** on April 5, 2002 (67 FR 16359), with comments accepted from the public through April 22, 2002.

An environmental assessment (EA), including an informal section 7 Consultation under the Endangered Species Act, concluded that total shrimp fishing effort does not change substantially because of the Texas closure. During the closure, vessels shift their effort to adjacent Federal waters off Louisiana, and when Texas waters (both territorial and Federal) re-open, those vessels move back to Texas waters. Given that the catch and bycatch species in this fishery have wide-ranging distributions, those species continue to be impacted at a relatively constant rate. Therefore, NMFS concluded that the proposed action to suspend the Texas closure would not alter the impacts on the stocks of target and non-target species, and would not have a significant impact on the human environment.

Using data through 2001, and assuming similar conditions would persist during 2002, NMFS' Regulatory Impact Review (RIR) of the proposed action forecasted that a suspension of the Texas closure for the 2002 fishing season would increase total producer surplus (total revenue–total variable cost, i.e., a proxy for profit) by approximately $15–$19 million. Nevertheless, total harvest and revenues were forecasted to decline if the closure were suspended.

Substantial public comment was received during the comment period on the proposed rule, and given that the Council's intent behind the regulations is based on the economic conditions facing the industry, the position of the industry itself regarding the value of the Texas closure weighed heavily in the final determination. Substantial numbers of industry comments opposing the suspension were received, which indicated to NMFS that there is no uniform industry position regarding the proposed action. Therefore, given that the RIR indicated that the average producer surplus for large vessels (those most likely to fish in the EEZ) was projected to decline by 30 percent or more, NMFS determined that, over the entire year, it is unlikely that there is any substantial economic benefit or decrease in adverse economic impacts to the fishery as a whole associated with the suspension of the Texas closure. NMFS also considered several problems identified by the U.S. Coast Guard during the Council's deliberations on the proposed action. It would be difficult for the state of Texas to enforce its 9-nautical mile (nm) closure if NMFS were to suspend the closure of Federal waters. Vessels would be able to enter the closed area and fish and quickly return to open Federal waters.

Withdrawal of Notice of Proposed Rulemaking

For reasons stated in the preamble, the notice of proposed rulemaking that was published in the **Federal Register** on April 5, 2002 (67 FR 16359), is withdrawn. Regulations implementing the Texas closure will remain in effect.

Comments and Responses

A wide range of opinions were expressed by the public regarding the proposed rule. Two Texas-based shrimp associations, and 29 individuals associated with the Texas shrimp industry, submitted either individual letters or multiple-signature petitions indicating their preference to suspend the Texas closure. By contrast, a total of 158 Texas-based members of the shrimp industry submitted individual letters or multiple-signature petitions opposing the proposed rule. Individuals submitted 232 individual letters and one petition containing 39 signatures opposing the proposed rule. Additionally, three environmental organizations and the Fish and Wildlife Service of the Department of Interior commented in opposition to the proposed rule. The Texas Parks and Wildlife Department commented regarding the content of the preamble of the proposed rule. Several hundred form letters stating opposition to the proposed rule were also received following the closure of the comment period.

Comment 1: Industry comments received in support of the proposed rule noted that recent economic downturns, stemming from additional closures of Texas territorial waters, an over-abundance of a variety of sizes of imported shrimp, and a general downward trend in the U.S. economy following the events of September 11, 2001, have resulted in economic hardship for several shrimp vessel owners, vessel crews, shoreside processing facilities and shoreside support facilities such as dry docks and supply houses. Comments in support of the suspension specifically focused on the recent actions by Texas Parks and Wildlife Department to extend, from February 15 to May 15, the closed season in Texas territorial waters of the Southern Shrimp Zone (from Corpus Christi Pass (27°40′34″ N. lat.) south to the Mexican border and within 5 nm of

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the coastline). Commenters indicated that this extension of the state closed period had severely impacted the economics of vessels homeported in southern Texas areas. The commenters indicated that suspension of the Texas closure would enable shrimp fishermen to continue harvesting marketable-sized shrimp, thus providing income and employment during a period when Texas ports are normally void of activity. They stated that suspension of the closure would also reduce the pulse fishing and concentration of Texas and out-of-state vessels that occurs on the re-opening of Texas waters and that these reductions of concentrated effort would be less damaging to habitat and have a lesser impact on bycatch species.

In contrast, over 150 comments from shrimp vessel owners, crews, and support personnel, who are based in southern Texas ports, opposed the suspension of the closure. These industry participants stated that prices for small shrimp are at their lowest in recent history because of an over-abundance of small-sized imported and farm-raised shrimp in cold storage. Additionally, fuel prices are rising. Maintaining the Texas closure would allow the shrimp a chance to grow and provide better revenues to the shrimp industry for the 2002 season.

Response: The Texas closure, as established by the Council, is intended to increase yield to the fishery by deferring the harvest of shrimp until they reach a larger, more valuable size. NMFS has determined that the Texas closure does not have a direct biological effect on the stocks; its impacts and its intended effect are to produce economic benefits to the shrimp industry. In accordance with the FMP, the RA may, after determining that benefits may be increased or adverse impacts be decreased, adjust the timing or extent of the Texas closure.

The RIR projected that, if the closure were suspended, the average per-vessel producer surplus for the small vessel fleet would have increased by 86 percent, while that of large vessels would have declined by 30 percent. Even with a redistribution of benefits, total harvest and revenues were forecast to decline if the closure were suspended.

Public comment from shrimp industry participants was strongly divided as to the potential benefits and impacts of suspending the Texas closure for the 2002 season. Because large vessels are more likely to fish in the EEZ, and are forecast to have a decline of producer surplus of as much as 30 percent (or more), NMFS has determined that it is unlikely that there are substantial economic benefits, or a decrease in adverse economic impacts, associated with the suspension of the Texas closure. Given that fact, along with issues of enforceability of a 9-nm closure of Texas territorial waters (see Comment 3), NMFS has decided to withdraw the proposed rule.

Comment 2: There is no concrete information that suspending the closure would increase revenues to the shrimping industry. The model was not capable of allowing shrimp prices to change with harvest quantities so the forecasts were based on an unrealistic restriction compared to the real world.

Response: All models require assumptions to accommodate data gaps or logistic issues associated with matching the model to the data. The economic model used to forecast the predicted responses cannot guarantee that the predictions will be met. Nevertheless, the model and the RIR were based on the best scientific information available to NMFS at the time.

Comment 3: With only a 9–nm closure, enforcement will be difficult and poaching (fishing inside the closed territorial waters) will increase. The 15-nm closures of the late 1980's led to numerous violations where vessels would enter the closed area from the EEZ to fish illegally with the opportunity to quickly return to open Federal waters. Enforcement of the limited closure was difficult. Under a full 200–nm closure, any vessel found fishing off Texas would be in violation of the closure. Under a limited closure such as the proposed suspension of the EEZ closure, it would be difficult to determine if a vessel had been fishing inside the 9–nm closure limit.

Response: NMFS agrees, and this was a contributing factor in making a determination to withdraw the proposed rule. NMFS recognizes that maintaining the status quo of a 200-nm closure will ease enforcement issues.

Comment 4: There was limited public notice regarding the Council's intent to consider suspending the Texas closure at its January 2002 meeting. The Council's decision to seek suspension of the Texas closure was made with no proposal document and no review and analysis by the scientific and socio-economic committees charged to advise the Council on its management decisions. A total of 172 comments were received stating that there had not been sufficient time to allow adequate public input to the process. One environmental group that testified before the Council in January 2002, commented that the proposed rule may not have adequately met the requirements of the Magnuson-Stevens Act regarding adequate public notice.

Response: The Magnuson-Stevens Act, in section 302(i), requires that Councils provide timely public notice of each regular meeting, including the time, place and agenda of the meeting. The Council annually reviews the results of the previous year's Texas closure at its January meeting and then votes on whether or not to continue the closure for the upcoming year. The Council publicly announced a tentative agenda, including consideration of this action, for its upcoming January 2002 meeting in its September-December 2001 newsletter. A final meeting announcement, including an agenda, was distributed to the general public in a news bulletin dated December 26, 2001. A meeting notice, including an agenda, was additionally published in the **Federal Register** (67 FR 717, January 7, 2002).

Based on the framework established in the FMP and its amendments, the Council may use its Scientific and Statistical Committee and Advisory Panel (AP) to review and advise on the findings of the NMFS assessment. For the proposed action, the Council considered the review and position of the AP in its deliberations, along with public testimony. The framework establishes that the RA shall have the authority, after consultation with the Council, to implement action to revise the existing management measure through the regulatory amendment process.

The Magnuson-Stevens Act requires (section 304(b)(1)(A)) that NMFS announce the availability of all proposed actions with a comment period of 15 days to 60 days. NMFS believes that the substantial number of comments received, from a diverse cross-section of interests, indicates that adequate time was allowed for public input regarding the proposed action. All totaled, 462 comments were received during the 15-day comment period on the proposed rule, and several hundred form letters were received during the few days immediately following the closure of the comment period.

Comment 5: The State of Texas and two environmental groups noted that in contrast to statements in the preamble of the proposed rule, the regulations limiting shrimping in Texas territorial waters are not recent actions. Territorial closures have been in effect since 1959. The only recent change in the regulations was an extension of the night-time closure in the Southern Shrimp Zone from December 15 February 15 to December 15 to May 15 each year.

Response: NMFS is aware of the long-standing regulations regarding shrimp fishing in the territorial waters of Texas. The preamble of the proposed rule attempted to reflect the positions put forth by public testimony at the January 2002 Council meeting that provided the impetus for the Council's action. The rationale for the proposed rule was prefaced with this background material: "However, over time, several other regulations have been implemented that, according to the shrimp industry, have reduced the benefits (and need for) the Texas closure." (67 FR 16359, April 5, 2002). The preamble later stated in the introduction to the Analysis and Justification section (67 FR 16359–60, April 5, 2002) "Participants in the shrimp fishery indicated that the economic impacts imposed by other state-mandated closures off Texas would be exacerbated by an additional closure of the EEZ off Texas, which would result in the capture of even more large shrimp. Therefore, the industry would prefer to suspend the Texas closure for 2002 and have the opportunity to harvest smaller shrimp."

Nevertheless, public comment on the proposed rule from shrimp industry participants was strongly divided as to the potential benefits and impacts of suspending the Texas closure for the 2002 season. The conclusions of the RIR also suggested that rather than alleviating adverse economic conditions in the fishery, suspending the closure would perpetuate and probably exacerbate them.

Comment 6: The proposed rule states the suspension is necessary to mitigate adverse impacts of the closures in the territorial waters off Texas, as proposed by the shrimp industry. In proposing to suspend the Texas closure, based on the request of some regulated parties, NMFS has abdicated its responsibilities under the Magnuson-Stevens Act to manage the shrimp fishery for conservation purposes. The proposal appears to violate national standard (NS) 1, to achieve optimum yield, NS 2, that actions be based on the best available scientific information, NS 5, prohibiting measures that have economic allocation as their sole purpose, and NS 9, which requires minimization of bycatch and bycatch mortality to the extent practicable.

Two comments suggested that the proposed rule and supporting EA and RIR did not provide required analysis needed under the Endangered Species Act (ESA), the Magnuson-Stevens Act, and the National Environmental Policy Act. The informal section 7 of the ESA consultation is inadequate and inconsistent with NMFS' previous findings that indicate the need for a formal Section 7 consultation regarding adjustments to the Texas closure.

Finally, one commenter noted that the existing March 24, 1998, Biological Opinion concluded that strandings of sea turtle species in Texas continue to drop during the period that offshore waters are closed to shrimping and therefore mortalities in nearshore waters remain closely associated with the shrimp fishery.

Response: The impacts identified by the public at its January 2002 meeting were the impetus for the Council's decision to request that NMFS suspend the Texas closure regulations. In reviewing the Council's request, NMFS carefully analyzed the request and associated impacts and determined that the proposed rule was sufficiently in conformance with the FMP, the FMP amendments, the Magnuson-Stevens Act, and other applicable laws to be published for public comment.

The previous ESA section 7 consultations considered the effect of shrimp fishing in the EEZ off Texas in a time period before turtle excluder devices (TEDs) were mandated for use. Reasonable and prudent alternatives were proposed in the 1986 Biological Opinion to mitigate the impacts of the limited closed area. Those findings have since been updated for the current fishery, in which TEDs are mandated for use.

The 1998 Biological Opinion is not inconsistent with NMFS current findings on the proposed action. For most of the Texas coast, the 10-fathom (18.3-meter) contour roughly approximates the 9-nm territorial sea; thus, the statement of the relationship of turtle mortalities and nearshore waters is consistent with NMFS current determination that continued protection of sea turtles would be afforded from the closure of Texas territorial waters.

The informal section 7 consultation is based on adequate consideration of relevant information. That review, completed on March 8, 2002, concluded the following points:

Although the Texas closure provides a documented reduction in turtle strandings, the pulse fishing that occurs with the re-opening in July subjects turtles to an even greater fishing pressure and potential for fishing related mortalities.

NMFS data indicate that the Texas closure does not reduce overall fishing effort, but displaces that effort to other areas, most notably to Louisiana offshore waters. Stranding data imply that turtle mortalities do transfer to the Louisiana coast after the normal May 15 closure.

Previous studies on sea turtle catch per unit effort is essentially the same between the western Gulf (Texas) and north-central Gulf (Louisiana through the Florida Panhandle). Therefore, the level of trawler-turtle interactions that occur should be a function of total shrimping effort and would not be affected by a shift in that effort away from the Texas coast to other parts of the northern Gulf.

Comment 7: The proposed rule states that the majority of turtle interactions occur in state waters off Texas. The TPWD letter suggested that loggerhead turtles, a species which occurs more frequently further offshore, are the most common turtle recorded in the Strandings Network. The U.S. Fish and Wildlife Service noted that turtles are found in offshore waters during May through July and that a suspension of the closure would increase the probability of a turtle-trawler interaction in the offshore waters off Texas.

Response: NMFS recognizes that turtles are widely distributed, but two studies, one by NMFS in 1987 and one by the Gulf and South Atlantic Fisheries Foundation, Inc. in 1998, using shrimp trawls without turtle excluder devices, indicated that the majority of turtle interactions occurred in waters less than 10 fathoms (18.3 m) deep. For much of the Texas coast, the 10-fathom (18.3 m) contour approximates the 9– nm closure of Texas territorial waters. In combination, those two studies captured 45 turtles in waters less than 10 fathoms (18.3 m) deep, and 22 of those were loggerhead turtles. Therefore, the occurrence of loggerhead turtles in the strandings data does not necessarily indicate an offshore interaction.

Comment 8: NMFS failed to adequately assess the impact of the proposed action on essential fish habitat. Common sense would suggest that allowing trawling to occur where it had not occurred before would result in some adverse habitat effects and increase bycatch.

Response: NMFS presented information in the EA summarizing the results of previous studies regarding shrimp effort and the effect of seasonal and area closures on that effort. Those studies concluded that the seasonal or area closures do not reduce overall fishing effort, but displace that effort to other areas. The EA (see Section 2.2) noted that during the Texas closure, shrimp effort noticeably shifts to Louisiana offshore waters. That effort then shifts back to the Texas EEZ with the re-opening of Texas waters. This is not habitat that is normally closed. Shrimping occurs throughout the EEZ off Texas except for the time of the

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Texas closure. Thus, no additional impacts to essential fish habitat were expected to occur had NMFS suspended the regulations to close the EEZ.

Comment 9: Allowing the harvest of smaller shrimp could lead to growth overfishing of penaeid shrimp stocks. One comment included detailed discussions regarding data limitations that impact NMFS' assessments on the status of the penaeid shrimp stocks that would restrict NMFS in its ability to determine whether the shrimp stocks are currently overfished or undergoing overfishing. Ignoring evidence that growth overfishing was occurring could lead to recruitment overfishing. The commenter provided several suggestions, and an alternative methodology, to estimate shrimp mortality, fishing effort, and reduce errors in future assessments.

Response: NMFS agrees that there are uncertainties surrounding any fishery-dependent data, and has made efforts to reduce any potential bias in the data. For any analysis, there are alternative methodologies that may have equal scientific validity. NMFS analyses are tailored to match the existing, and admittedly sometimes limited, database. All assessments of the status of the various penaeid shrimp stocks have produced results that indicate the stocks to be above the established recruitment overfishing index levels (i.e., no recruitment overfishing has occurred). The Council recently submitted Amendment 11 to the FMP, which included a proposed action to permit shrimp vessels that intend to fish in the EEZ of the Gulf of Mexico. If this proposed action is approved by NMFS, it will provide a mechanism by which to achieve a more accurate and precise estimate of shrimp effort, shrimp fishing mortality, and the status of the stocks.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 3, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11508 Filed 5–3–02; 3:51 pm]

BILLING CODE 3510–22–S

Notices

Federal Register

Vol. 67, No. 90

Thursday, May 9, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

AGENCY FOR INTERNATIONAL DEVELOPMENT

Notice of Public Information Collection Requirements Submitted to OMB for Review

SUMMARY: U.S. Agency for International Development (USAID) has submitted the following information collection to OMB for review and clearance under the Paperwork Reduction Act of 1995, Public Law 104– Comments regarding this information collection are best assured of having their full effect if received within 30 days of this notification. Comments should be addressed to: Desk Officer for USAID, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Washington DC 20503. Copies of submission may be obtained by calling (202) 712–1365.

SUPPLEMENTARY INFORMATION:

OMB Number: OMB 0412–0552.

Form Number: N/A.

Title: Financial Status Report.

Type of Submission: Renewal of Information Collection.

Purpose: In its appropriations act, Congress always requests country level financial expenditure data in order to determine whether funds appropriated to the Agency are being used for their intended purpose and are not used to support activities that are not in the US National Interest. Generally, this has been fairly straightfoward for assistance recipients who work specifically in one country, but harder to capture in the cases where recipients operate at a regional scale. Therefore, for each country where USAID spends money, careful review is necessary in order to be able to certify that funds expended do not go into programs where funding is prohibited, restricted or limited. Financial expenditure data by country is used by the agency to meet several reporting requirements for Congress. Country specific financial expenditure data is also used to determine whether the agency is meeting Congressional ceilings and earmarks. In addition, Congressional notification is required for activities in certain countries (Burma, Cambodia, Colombia, Democratic Republic of Congo, etc), as well as activities covering certain subject matter such as activities promoting country participation in the Kyoto Protocol, use of notwithstanding authority for supporting energy programs aimed at reducing greenhouse gas emissions. In each case, Congress request to know the amount of taxpayer dollars that is expended by the program or in the specific country.

USAID currently requires grant and cooperative agreement recipients who work in multiple countries to provide expenditure reports by country. The purpose of this notice is to extend the class deviation to the statute from the Office of Management and Budget in accordance with 22 CFR 226.4. The information is being collected so that USAID can ensure programs do not fund activities in countries where the United States Congress has prohibited or fund programs where Congress has limited the types of activities that my be funded.

Annual Reporting Burden:

Respondents: 80.

Total annual responses: 320.

Total annual hours requested: 800 hours.

Dated: May 3, 2002.

Cynthia Staples,

Acting Chief, Information and Records Division, Office of Administrative Services, Bureau for Management.

[FR Doc. 02–11612 Filed 5–8–02; 8:45 am]

BILLING CODE 6116–01–M

DEPARTMENT OF AGRICULTURE

Food Safety Inspection Service

[Docket No. 02–011N]

Nominations for Membership on the National Advisory Committee on Microbiological Criteria for Foods

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture (USDA) is soliciting nominations for membership on the National Advisory Committee on Microbiological Criteria for Foods (NACMCF). Nominations for membership are being sought from individuals with scientific expertise in the fields of epidemiology, food technology, microbiology (food, clinical, and predictive), risk assessment, infectious disease, biostatistics, and other related sciences. Persons from State and Federal governments, industry, consumer groups, and academia, as well as all other interested persons, are invited to submit nominations.

DATES: The nominee's typed resume or curriculum vitae may be received for 30 days from the date of publication in the **Federal Register**.

ADDRESSES: Nominations should be sent to Ms. Karen Thomas, Advisory Committee Specialist, USDA, FSIS, Room 333 Aerospace Center, 1400 Independence Avenue, SW., Washington, DC 20250–3700.

FOR FURTHER INFORMATION CONTACT: Ms. Karen Thomas, Advisory Committee Specialist, at the above address or by telephone 202–690–6620 or FAX 202–690–6634.

SUPPLEMENTARY INFORMATION:

Background

The NACMCF was established in March 1988, in response to a recommendation in a 1985 report of the National Academy of Sciences Committee on Food Protection, Subcommittee on Microbiological Criteria, "An Evaluation of the Role of Microbiological Criteria for Foods." The current Charter for the NACMCF and other information about the Committee are available for viewing on the NACMCF homepage at *www.fsis.usda.gov/ophs/nacmcf/*.

The Committee provides scientific advice and recommendations to the Secretary of Agriculture and the Secretary of Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed. For example, the Committee assists in the development of criteria for microorganisms that indicate whether food has been processed under sanitary conditions.

Appointments to the Committee will be made by the Secretary of Agriculture after consultation with the Secretary of Health and Human Services to ensure that recommendations made by the

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Committee take into account the needs of the diverse groups served by the Department. Membership shall include, to the extent practicable, individuals with demonstrated ability to represent minorities, women, and persons with disabilities. Nominees who are selected will be required to submit a Financial Disclosure form AD–755, available on-line at:
www.fsis.usda.gov/ophs/nacmcf/.

Given the complexity of issues, the full Committee expects to meet at least once yearly and the meetings will be announced in the **Federal Register**. The subcommittees will meet as frequently as deemed necessary by the chairperson and will be held as working group meetings in an open public forum. The subcommittee meetings will not be announced in the **Federal Register**. FSIS will announce the agenda and subcommittee working group meetings through the Constituent Update available on-line at *www.fsis.usda.gov*. NACMCF holds subcommittee working groups in order to accomplish the work of NACMCF; all work accomplished by the subcommittees is reviewed and approved by the full Committee during a **Federal Register** announced public meeting of the full Committee. The subcommittee may invite technical experts to present information for consideration by the subcommittee. All data and records available to the subcommittee are expected to be available to the public at the time the full Committee reviews and approves the work of the subcommittee.

Appointment to the Advisory Committee is a two-year term; renewable for three consecutive terms. Members must be prepared to work outside of scheduled Committee and subcommittee meetings, and may require document preparation. Committee members serve on a voluntary basis; however, travel reimbursement and per diem is available.

Additional Public Notification

Public awareness of all segments of rulemaking and policy development is important. Consequently, in an effort to better ensure that minorities, women, and persons with disabilities are aware of this notice, FSIS will announce it and provide copies of this **Federal Register** publication both on the FSIS and NACMCF web pages and in the FSIS Constituent Update. FSIS provides a weekly FSIS Constituent Update, which is communicated via fax to over 300 organizations and individuals. In addition, the update is available on-line through the FSIS web page located at *http://www.fsis.usda.gov*. The update is used to provide information regarding FSIS policies, procedures, regulations, **Federal Register** notices, FSIS public meetings, recalls, and any other types of information that could affect or would be of interest to our constituents/stakeholders. The constituent fax list consists of industry, trade, and farm groups, consumer interest groups, allied health professionals, scientific professionals, and other individuals that have requested to be included. Through these various channels, FSIS is able to provide information to a much broader, more diverse audience. For more information and to be added to the constituent fax list, fax your request to the Congressional and Public Affairs Office, at (202) 720–5704.

Done at Washington, DC on: May 6, 2002.

William J. Hudnall,

Acting Administrator.

[FR Doc. 02–11626 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–DM–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fishlake National Forest, Intermountain Region, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plan (Forest Plan) for the Fishlake National Forest.

SUMMARY: This notice announces the intent of the Fishlake National Forest to revise their Land and Resource Management Plan (Forest Plan) under the 1982 planning regulations (36 CFR part 219). Initial steps of the revision process will focus on information needs, organizing the revision team, resource inventory reviews, and establishing a Forest Plan revision mailing list. Public involvement is critical and will be requested throughout the revision effort.

ADDRESSES: Send written comments concerning this notice and requests to be added to the Forest Plan revision mailing list to Mary Erickson, Forest Supervisor, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

FOR FURTHER INFORMATION CONTACT: Frank Fay, Land Management Planner, Fishlake National Forest, 115 East 900 North, Richfield, UT 84701.

SUPPLEMENTARY INFORMATION: The Forest Plan for the Fishlake National forest was completed in June, 1986 and will remain in effect and continue to be implemented until the Plan is revised. In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" was issued at the beginning of the forest planning process. This Notice addresses initiation of revision with a focus on information needs, resource inventory reviews, organizing the revision team, and working with the public. Once the scope of the revision is better understood the Forest will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regulations (36 CFR 219). The Forest Service is preparing new draft planning regulations expected to be issued in the Spring of 2002. Since these new regulations will reflect the latest national thinking on land and resource management planning, the Forest will seriously consider switching to, and completing the forest plan revision under, the new regulations when they are finalized. An additional Notice will be issued if the Forest decides to switch.

Authority: 40 CFR 1501.7 and 1508.22; Forest Service Handbook 1909.15, Section 21.

Dated: April 26, 2002.

Mary C. Erickson,

Forest Supervisor.

[FR Doc. 02–11112 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Grain Inspection, Packers and Stockyards Administration

Advisory Committee Meeting

Pursuant to the provisions of section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of the following committee meeting:

Name: Grain Inspection Advisory Committee.

Date: May 15–16, 2002.

Place: Radisson Hotel Memphis Downtown, 185 Union, Memphis, Tennessee 38103.

Time: 7:30 a.m.–5 p.m. on May 15, and 7:30 a.m.–12 (Noon) on May 16, 2002.

Purpose: To provide advice to the Administrator of the Grain Inspection, Packers and Stockyards Administration (GIPSA) with respect to the implementation of the U.S. Grain Standards Act (7 U.S.C. 71 *et seq.*).

The agenda will include a review and discussion of GIPSA's financial status and of the December 2001 Advisory Committee Resolutions. GIPSA will provide updates on the financial performance of its field offices; on various grain inspection topics such as wheat dockage, factor determinations, electronic certification, and soybean test weight; on working toward international uniformity in definition and in measurement technology; on promoting the accuracy of biotechnology testing, and on evaluating the feasibility of using contractors to provide inspection services under the Agricultural Marketing Act. Discussions and updates also will be provided on the recommendations made in the quality assurance/quality control and oversight study; and on any other related issues concerning the delivery of grain inspection and weighing services to American agriculture.

Public participation will be limited to written statements, unless permission is received from the Committee chairman to orally address the Committee. Persons, other than members, who wish to address the Committee or who wish to submit written statements before or after the meeting should contact the Donna Reifschneider, Administrator, GIPSA, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 3601, Washington, DC 20250–3601, telephone (202) 720–0219 or FAX (202) 205–9237.

The meeting will be open to the public. Persons with disabilities who require alternative means of communication of program information or related accommodations should contact Joanne Peterson, telephone (202) 720–8087 or FAX (202) 690–2755.

Dated: April 29, 2002.

Donna Reifschneider,

Administrator, Grain Inspection, Packers and Stockyards Administration.

[FR Doc. 02–11543 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–EN–U

DEPARTMENT OF AGRICULTURE

Rural Housing Service

Notice of Funds Availability (NOFA) Inviting Applications for the Rural Community Development Initiative (RCDI); Correction

AGENCY: Rural Housing Service, USDA.

ACTION: Correction.

SUMMARY: The Rural Housing Service (RHS) is correcting a notice published April 3, 2002 (67 FR 15777–15786). This action is taken to correct the omission of a comma in the definition of an intermediary. This omission limited the groups eligible to be an intermediary. This correction will carry out the intent of the statutory language. This action is also taken to correct the documentation required for a nonprofit organization to prove their nonprofit status. The original notice required a 501(c)(3) letter from the Internal Revenue Service (IRS) designating their nonprofit status. This correction will allow nonprofit organizations to provide a letter from IRS, a Certificate of Good Standing from the Secretary of State where the entity is located, or other valid documentation of their nonprofit status.

Accordingly, the notice published April 3, 2002 (67 FR 15777–15786) is corrected as follows:

On page 15778, in the first column, in the seventh paragraph under the heading "Definitions for RCDI Purposes," the definition for "Intermediary" should read "*Intermediary*—a qualified private, nonprofit or public (including tribal) organization that provides financial and technical assistance to multiple recipients. The applicant entity must have been organized for a minimum of three years."

On page 15778, in the second column, in the second paragraph, the definition for "Nonprofit organization" should read "*Nonprofit organization*—a private, community-based housing or community development entity with evidence of their nonprofit status. Examples of valid documentation of nonprofit status include, but are not limited to, a letter from the Internal Revenue Service (IRS) or a Certificate of Good Standing from the Secretary of State where the entity is located."

On page 15778, in the second column, under the heading "Eligibility Requirements," number "4" should read "4. Documentation must be submitted to verify recipient eligibility. Acceptable documentation varies depending on the type of recipient: a letter from the IRS, Certificate of Good Standing from the Secretary of State, or other valid documentation of nonprofit status is required for nonprofit recipients; for low-income community recipients, the Agency needs (a) evidence that the entity is a public body and (b) census data verifying that the median household income of the community, where the office receiving the financial and technical assistance is located, is at, or below, 80 percent of the state or national median household income; for federally recognized tribes, the Agency needs the page listing their name from the current **Federal Register** list of tribal entities recognized and eligible for funding services (see the definition of federally recognized tribes for details on this list).

On page 15778, in the third column, number "14" should read "14. A nonprofit recipient must provide evidence that they are a valid nonprofit when the intermediary applies for the RCDI grant. Organizations with pending requests for nonprofit designations are not eligible."

On page 15779, in the third column, under the heading "Application Selection Process," number "2" should read "2. Applicants failed to provide evidence of recipient's status (*e.g.*, documentation supporting nonprofit designation)."

On page 15782, in the third column, number "7.a." should read "a. Nonprofits—provide a valid letter from the IRS, Certificate of Good Standing from the Secretary of State, or other valid documentation of nonprofit status."

Dated: May 3, 2002.

Arthur A. Garcia,

Administrator, Rural Housing Service.

[FR Doc. 02–11637 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–XV–P

DEPARTMENT OF COMMERCE

Census Bureau

Business and Professional Classification Report

ACTION: Proposed collection; comment request.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Carol S. King, U.S. Census Bureau, Room 2651–3, Washington, DC 20233, (301) 457–2675.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Census Bureau sponsors the SQ–CLASS, "Business and Professional Classification Report", to collect information needed to keep the retail,

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wholesale, and service samples current with the business universe. Because of rapid changes in the marketplace caused by the emergence of new businesses, the deaths of others, transfer of ownership, mergers, and so forth, on a quarterly basis the Census Bureau canvasses a sample of new Employer Identification Numbers (EINs) obtained from the Internal Revenue Service (IRS) and the Social Security Administration (SSA). Each selected firm is canvassed once for kind of business classification, measure of size, and company affiliation on the establishments associated with the new EIN. In essence, from the perspective of the business firm, this is a one time collection of data. A different sample of EINs is canvassed four times a year.

We are revising the SQ–CLASS to improve the flow of the questions as well as to provide information needed to assign kind-of-business codes based on the North American Industry Classification System (NAICS).

II. Method of Collection

We collect this information by mail, fax, and telephone follow-up.

III. Data

OMB Number: 0607–0189.
Form Number: SQ–CLASS.
Type of Review: Regular Submission.
Affected Public: Retail, Wholesale and Service firms in the United States.
Estimated Number of Respondents: Annually, approximately 42,000.
Estimated Time Per Response: 13 minutes.
Estimated Total Annual Burden Hours: 9,101.
Estimated Total Annual Cost: The cost to the respondent for fiscal year 2003 is estimated to be $190,302.
Respondent's Obligation: This collection of information is voluntary.
Legal Authority: Title 13, United States Code, Section 182.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including automated collection techniques or other forms of information technology.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of this information collection. They also will become a matter of public record.

Dated: May 6, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11614 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 21–2002]

Foreign-Trade Zone 113—Midlothian, TX; Request for Processing Authority, Siemens Westinghouse Power Corporation (Industrial Power Generating Equipment)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Trade Zone Operations, Inc., operator of FTZ 113, pursuant to section 400.28(a)(2) of the Board's regulations (15 CFR part 400), requesting authority on behalf of Siemens Westinghouse Power Corporation (SWPC) to process foreign-origin and domestic industrial power generating equipment under FTZ procedures within FTZ 113. It was formally filed on April 29, 2002.

SWPC is a producer of large industrial power generating turbines and generators that are installed in combined-cycle power plants operated by electric generation utilities. In the proposed processing activity (as defined in § 400.2(l)), foreign-origin steam turbines with a capacity of greater than 40 megawatts (HTSUS 8406.81.1070) would be admitted to the zone under nonprivileged foreign status (19 CFR 146.42) and U.S.-produced electric generators would be admitted under domestic status on a nonconcurrent basis. The turbines and generators would then be transferred from the zone in a combined Customs entry under the classification of electric generating sets (HTSUS 8502.39.0000), as provided by specific Customs rulings. The company indicates that this activity would occur on a recurring regular basis.

FTZ procedures would exempt SWPC from Customs duty payments on the foreign power generation turbines processed for export as electric generating sets. On withdrawals from the zone for Customs entry, SWPC would be able to elect the duty rate that applies to electric generator sets (2.5%) for the foreign turbines (6.7%). The application indicates that the savings from FTZ procedures would help improve the SWPC's international competitiveness.

Public comment on the application is invited from interested parties. Submissions (original and three copies) shall be addressed to the Board's Executive Secretary at the following addresses:

1. Submissions via Express/Package Delivery Services: Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building-Suite 4100W, 1099 14th Street, NW., Washington, DC 20005; or,

2. Submissions via the U.S. Postal Service: Foreign-Trade Zones Board, U.S. Department of Commerce, FCB–4100W, 1401 Constitution Ave., NW., Washington, DC 20230.

The closing period for their receipt is June 24, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 8, 2002).

A copy of the application will be available for public inspection at the Office of the Foreign-Trade Zones Board's Executive Secretary at address No. 1 listed above.

Dated: April 29, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–11642 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

Bureau of Industry and Security

Firearms Convention; Proposed Collection Comment Request

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, DOC Paperwork Clearance Officer, (202) 482–3129, Department of Commerce, Room 6608, 14th and Constitution Avenue, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Marna Hayes, BIS ICB Liaison, (202) 482–5211, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

I. Abstract

The OAS Model Regulations and the Firearms Convention require the government of importing States to issue an Import Certificate to the importer of firearms and the government of exporting States to issue licenses for the firearms.

This rule imposes two information collection requirements. The first requirement is the import certificate as support documentation for exports destined to Convention Signatories. The second requirement is the imposition of a licensing requirement for Firearms Convention items destined to Canada, a Convention Signatory. Previously, such items were exported to Canada without a license.

II. Method of Collection

Written notification and recordkeeping.

III. Data

OMB Number: 0694–0114.
Form Number: BXA–748P. Although the name of the agency has changed to the Bureau of Industry and Security (BIS), we will continue to use previous forms until the stock is depleted.
Type of Review: Regular submission for extension of a currently approved collection.
Affected Public: Individuals, businesses or other for-profit and not-for-profit institutions.
Estimated Number of Respondents: 833.
Estimated Time Per Response: 5 to 90 minutes per response.
Estimated Total Annual Burden Hours: 176.
Estimated Total Annual Cost: No capital expenditures are required.

IV. Request for Comments

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they will also become a matter of public record.

Dated: May 6, 2002.

Madeleine Clayton,

Departmental Forms Clearance Officer, Office of Chief Information Officer.

[FR Doc. 02–11613 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–33–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–357–816]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Negative Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Argentina

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value and preliminary negative determination of critical circumstances.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Argentina are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. In addition, we preliminarily determine that critical circumstances do not exist for imports of cold-rolled carbon steel flat products from Argentina.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: J. David Dirstine, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4033.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to the regulations at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 54198 (October 26, 2001) ("*Initiation Notice*")), the following events have occurred.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of certain cold-rolled steel products from Argentina are materially injuring the United States industry (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 57985 (November 19, 2001)).

On November 29, 2001, we selected the largest producer/exporter of cold-rolled steel from Argentina as a mandatory respondent in this proceeding. (See Memorandum to Laurie Parkhill, Director Office 3, from The Team regarding Selection of Respondents dated November 29, 2001, for further details.) We issued the antidumping questionnaire to Siderar S.A.I.C. ("Siderar") on November 29, 2001.

On December 7, 2001, the petitioners[1] alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of cold-rolled carbon steel flat products from Argentina, Australia, China, India, the Netherlands, Russia, South Africa, South Korea, and Taiwan. On December 14, 2001, the petitioners supplemented

[1] The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

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their December 7, 2001, submission with additional information.

During the period January through April 2002, the Department received responses to sections A, B, and C, of the Department's original and supplemental questionnaires from Siderar.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002)).

On February 15, 2002, we received an allegation from the petitioners that Siderar sold cold-rolled products in Argentina at prices below the cost of production during the period of investigation. Based on our analysis of the allegation we determined that there are reasonable grounds to believe or suspect that Siderar had made home-market sales below its cost of production and on March 15, 2002, we initiated a sales-below-cost investigation of Siderar's home-market sales.

In accordance with 19 CFR 351.206(c)(2)(i), because the petitioners submitted the critical circumstances allegation more than twenty days before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances determination not later than the date of the preliminary determination. A full discussion of our analysis may be found below and in the critical circumstances memorandum from Richard W. Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determination of Critical Circumstances—Argentina*). A public version of this memorandum is on file at the Import Administration Central Records Unit, in Room B–099 of the Department of Commerce Building.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 18, 2002, Siderar requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) Siderar accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to this notice.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Argentina to the United States were made at less than fair value ("LTFV"), we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs or CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painting, carbon level, quality, yield strength, minimum thickness, thickness tolerance, edge finish, form, leveling, annealing, and surface finish.

Export Price

In accordance with section 772(a) of the Act, we calculated EP for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation or to an unaffiliated purchaser for exportation to the United States. We based EP on the packed delivered price to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from port to the customer).

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States, before or after the date of importation, by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to an unaffiliated purchaser.

We based CEP on packed FOB prices to unaffiliated purchasers in the United States. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act. These included, where appropriate, domestic inland freight (i.e., inland freight expense from plant/warehouse to port of exit), ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. stevedoring and wharfage charges, and U.S. inland freight expenses (*i.e.*, freight from port to customer). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.*, imputed credit costs) and indirect selling expenses (*e.g.*, inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we reduced the starting price further by an amount for profit to arrive at the CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Siderar on its sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales. *See* Antidumping Duty Investigation on Cold-Rolled Carbon Steel Flat Products from Argentina—Preliminary Determination Analysis Memorandum for Siderar S.A.I.C. ("Siderar") from J. David Dirstine to File, dated April 26, 2002 ("Preliminary Analysis Memorandum").

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market is viable for the respondent.

B. Cost-of-Production Analysis

Based on our analysis of a sales-below-cost allegation submitted by the petitioners on February 15, 2002, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their cost of production (COP) in accordance with section 773(b)(2)(A)(i) of the Act. Accordingly, pursuant to section 773(b) of the Act, we initiated an investigation of sales-below-cost for Siderar to determine whether sales were made at prices below their respective COP (*see* letter to Siderar from Laurie Parkhill, Office Director, AD/CVD Enforcement, dated March 15, 2002).

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A") and interest expenses (*see* "Test of Home-Market Sales Prices" section below for treatment of home-market selling expenses). We relied on the COP data submitted by Siderar except as noted below.

A. We adjusted the reported transfer price for certain raw material inputs purchased from an affiliated company to reflect the market price for such inputs which, in turn, increased the total cost of manufacturing of each model.

B. We have adjusted the total cost of manufacture upward to reflect the difference between product-specific and product grouping or product "family" costs at the two plants where Siderar produced the subject merchandise. Siderar did not provide product-specific costs for the products produced at one of its plants, as we had requested, and we found that, for products where we had both product-specific and product-"family" costs, the "family'-specific costs were understated in comparison to the product-specific costs.

C. We revised Siderar's G&A rate calculation to include other ordinary income, certain expense amounts, and termination of employee costs.

D. We recalculated Siderar's financial-expense ratio. We divided the net interest expense reported on the financial statements (financial and holding results generated by liabilities less those generated by assets) by the cost of sales.

See Memorandum from Laurens van Houten to Neal Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination ("Cost Calculation Memorandum").

2. Test of Home Market-Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home-market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable billing adjustments, movement charges, rebates, discounts, direct and indirect selling expenses, and packing expenses. In determining whether to disregard home-market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C) of the Act, where less than 20 percent of the respondent's sales of a given product during the POI are at prices less than the COP, we do not disregard any below-cost sales of that product because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Siderar's home-market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act. For those U.S. sales of subject merchandise for which there were no comparable home-market sales in the ordinary course of trade (*e.g.*, at above-cost prices), we compared those sales to constructed value ("CV"), in accordance with section 773(a)(4) of the Act.

4. Calculation of Constructed Value

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for Siderar, when sales of comparison products could not be found, either because there were no sales of a comparable product or all sales of the comparable products failed the COP test, we based NV on CV.

In accordance with section 773(e)(1) and (e)(2)(A) of the Act, we calculated CV based on the sum of the cost of materials and fabrication for the subject merchandise, plus amounts for selling expenses, G&A, interest, profit, and U.S. packing costs. We calculated the cost of materials and fabrication based on the methodology described in the "Calculation of COP" section of this notice. In accordance with section 773(e)(2)(A) of the Act, we based selling expenses, G&A, and profit on the amounts incurred and realized by the company in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign market.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their

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equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying LOTs for EP and comparison-market sales (i.e., NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. See *Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV level of trade is more remote from the factory than the CEP level of trade and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from Siderar regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Siderar's LOT findings are summarized below.

Siderar reported two channels of distribution in the home market—steel service centers (*i.e.*, distributors) and end-users. The selling activities associated with all sales were similar (*e.g.*, freight and delivery arrangements, inventory maintenance, market research, sales forecasting and after-sales service) and, based on our analysis of the selling activities, we considered the two channels of distribution to constitute one LOT.

In the U.S. market, Siderar reported two channels of distribution (*i.e.*, CEP sales to its U.S. affiliate, Siderca Corporation, who sells "back-to-back" to unaffiliated U.S. customers and maintains no inventory), and EP sales to unaffiliated customers in the United States. After making deductions pursuant to section 772(d) of the Act, we found that Siderar performed basically the same sales functions for both channels of distribution in the U.S. market (*e.g.*, inventory maintenance, sales forecasting and after-sales service, market research, and freight and delivery arrangements) and we considered both of these channels to be the same LOT.

Because the selling activities associated with the home-market LOT were not substantially different from than those associated with the U.S. LOT, we considered the home-market LOT to be the same as the U.S. LOT. Therefore, no LOT adjustment was necessary and we made no CEP-offset adjustment to NV.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for rebates. We also made deductions for movement expenses (*i.e.*, inland freight expense from plant/warehouse to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and we adjusted for differences in merchandise where we were unable to match identical products. We also deducted home-market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, in accordance with section 773(a)(6)(B)(iii) of the Act, we made a reduction to NV for the amount of the indirect tax ("reintegro") not collected on exports of subject merchandise to the United States.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

Section 733(e)(1) of the Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine the following information: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, section 351.206(h)(2) of the Department's regulations provides that, "In general, unless the imports during the "relatively short period" have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' submissions of December 7, 2001, and January 14, 2002; (2) new evidence obtained since the initiation of the less-than-fair-value ("LTFV") investigations (*i.e.*, additional import statistics released by the Census Bureau); and (3) the ITC's affirmative preliminary injury determination (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, International Trade Commission Investigations Nos. 701–TA–422–425 and 731–TA–964–983 Preliminary Determination, 66 FR 57985 (November 19, 2001)).

History of Dumping

In determining whether a history of dumping and material injury exists, the Department generally considers current or recent antidumping duty orders on the subject merchandise from the country in question in the United States and current orders in any other country. *See Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002) (*Carbon and Alloy Steel Wire Rod*). Because we are not aware of any existing antidumping order in any country on cold-rolled carbon steel flat products from Argentina, we do not find a history of dumping from Argentina, pursuant to section 733(e)(1)(A)(i) of the Act. However, the Department may look to the second criterion for determining whether importers knew or should have known that exporters were selling subject merchandise from Argentina at LTFV prices.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling cold-rolled steel at less than fair value, the Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. *See Carbon and Alloy Steel Wire Rod*, 67 FR 6224, 6225.

The Department normally bases its decision with respect to knowledge on the margins determined in the preliminary determination. Therefore, for purposes of this preliminary determination of critical circumstances, we are relying on the margin calculated for Siderar for this preliminary determination. Because this margin is greater than 25 percent (see "Suspension of Liquidation" section below) in the case of Argentina, which has both EP and CEP sales, we find that there is a reasonable basis to impute knowledge of dumping with respect to imports from Argentina.

Material Injury

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of dumped imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In this case, the ITC preliminarily found that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise from South Africa. *See Determinations and Views of the Commission*, Investigations Nos. 701–TA–422–425 and 731–TA–964–983, Publication 3471 (November 2001) (*ITC Determination*). Due to the ITC's finding of material injury, we preliminarily determine that there is a reasonable basis to believe or suspect that importers knew or should have known that imports of cold-rolled steel from Argentina were likely to cause material injury.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (i.e., the "base period") to a comparable period of at least three months following the filing of the petition (i.e., the "comparison period"). However, as stated in 19 CFR 351.206(i), "if the Secretary finds importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. We used company-specific shipment data and determined that there were no massive imports. We also found no massive imports for companies in the all other category. For a detailed analysis, see the memorandum from Richard Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determination of Critical Circumstances—Argentina*).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Siderar	70.56
All Others	**70.56

**As Siderar was the only respondent that we investigated, we used Siderar's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to 735(b)(2) the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

[2] The marketing process in the United States and comparison markets begin with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled steel product functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

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Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination by no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix

Scope of the Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products, neither clad, plated, nor coated with metal, but whether or not annealed, painted, varnished, or coated with plastics or other non-metallic substances, both in coils, 0.5 inch wide or wider, (whether or not in successively superimposed layers and/or otherwise coiled, such as spirally oscillated coils), and also in straight lengths, which, if less than 4.75 mm in thickness having a width that is 0.5 inch or greater and that measures at least 10 times the thickness; or, if of a thickness of 4.75 mm or more, having a width exceeding 150 mm and measuring at least twice the thickness. The products described above may be rectangular, square, circular or other shape and include products of either rectangular or non-rectangular cross-section.

Specifically included in this scope are vacuum degassed, fully stabilized (commonly referred to as interstitial-free (IF)) steels, high strength low alloy (HSLA) steels, and motor lamination steels. IF steels are recognized as low carbon steels with micro-alloying levels of elements such as titanium and/or niobium added to stabilize carbon and nitrogen elements. HSLA steels are recognized as steels with micro-alloying levels of elements such as chromium, copper, niobium, titanium, vanadium, and molybdenum. Motor lamination steels contain micro-alloying levels of elements such as silicon and aluminum.

Steel products included in the scope of this investigation, regardless of definitions in the HTSUS, are products in which: (1) Iron predominates, by weight, over each of the other contained elements; (2) the carbon content is 2 percent or less, by weight, and; (3) none of the elements listed below exceeds the quantity, by weight, respectively indicated: 1.80 percent of manganese, or 2.25 percent of silicon, or 1.00 percent of copper, or 0.50 percent of aluminum, or 1.25 percent of chromium, or 0.30 percent of cobalt, or 0.40 percent of lead, or 1.25 percent of nickel, or 0.30 percent of tungsten, or 0.10 percent of molybdenum, or 0.10 percent of niobium (also called columbium), or 0.15 percent of vanadium, or 0.15 percent of zirconium.

All products that meet the written physical description, and in which the chemistry quantities do not exceed any one of the noted element levels listed above, are within the scope of this investigation unless specifically excluded. The following products, by way of example, are outside and/or specifically excluded from the scope of this investigation:

- *SAE grades* (formerly also called AISI grades) above 2300;
- *Ball bearing steels*, as defined in the HTSUS;
- *Tool steels*, as defined in the HTSUS; Silico-manganese steel, as defined in the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are grain-oriented;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level exceeding 2.25 percent;
- *All products (proprietary or otherwise) based on an alloy ASTM specification* (sample specifications: ASTM A506, A507);
- *Non-rectangular shapes*, not in coils, which are the result of having been processed by cutting or stamping and which have assumed the character of articles or products classified outside chapter 72 of the HTSUS;
- *Silicon-electrical steels*, as defined in the HTSUS, that are not grain-oriented and that have a silicon level less than 2.25 percent, and (a) fully-processed, with a core loss of less than 0.14 watts/pound per mil (0.001 inch), or (b) semi-processed, with core loss of less than 0.085 watts/pound per mil (0.001 inch);
- *Certain shadow mask steel*, which is aluminum killed cold-rolled steel coil that is open coil annealed, has an ultra-flat, isotropic surface, and which meets the following characteristics:

Thickness: 0.001 to 0.010 inch
Width: 15 to 32 inches

Chemical Composition:

Element	C
Weight %	<0.002%

- *Certain flapper valve steel*, which is hardened and tempered, surface polished, and which meets the following characteristics:

Thickness: ≤1.0 mm
Width: ≤152.4 mm
Chemical Composition:

Element	C	Si	Mn	P	S
Weight%	0.90–1.05	0.15–0.35	0.30–0.50	≤0.03	≤0.006

Mechanical Properties:

Tensile Strength	≥162 Kgf/mm²

Hardness	≥475 Vickers hardness number

Physical Properties:

Flatness	<0.2% of nominal strip width

Microstructure: Completely free from decarburization. Carbides are spheroidal and fine within 1% to 4% (area percentage) and are undissolved in the uniform tempered martensite.
Non-metallic Iclusion:

	Area percentage
Sulfide Inclusion	≤0.04 %
Oxide Inclusion	≤0.05%

Compressive Stress: 10 to 40 Kgf/mm²
Surface Roughness:

Thickness (mm)	Roughness (μm)
t ≤0.209	Rz ≤0.5
0.209< t ≤0.310	Rz ≤0.6
0.310< t ≤0.440	Rz ≤0.7
0.440< t ≤0.560	Rz ≤0.8
0.560< t	Rz ≤1.0

- *Certain ultra thin guage steel strip*, which meets the following characteristics:

Thickness: ≤0.100 mm ± 7%
Width: 100 to 600 mm
Chemical Composition:

Element	C	Mn	P	S	A1	Fe
Weight %	≤0.07	0.2–0.5	≤0.05	≤0.05	≤0.07	Balance

Mechanical Properties:

Hardness	Full Hard (Hv 180 minimum)
Total Elongation	<3%
Tensile Strength	600 to 850 N/mm

Physical Properties:

Surface Finish	≤0.3 micron
Camber (in 2.0 m)	<3.0 mm
Flatness (in 2.0 m)	≤0.5 mm
Edge Burr	<0.01 mm greater than thickness
Coil Set (in 1.0 m)	<75.0 mm

- *Certain silicon steel*, which meets the following characteristics:

Thickness: 0.024 inch ± .0015 inch
Width: 33 to 45.5 inches
Chemical Composition:

Element	C	Mn	P	S	Si	Al
Min. Weight %					0.65	
Max. Weight %	0.004	0.4	0.09	0.009		0.4

Mechanical Properties:

Hardness	B 60–75 (AIM 65)

Physical Properties:

Finish	Smooth (30–60 microinches)
Gamma Crown (in 5 inches)	0.0005 inch, start measuring one-quarter inch from slit edge
Flatness	20 I–UNIT max
Coating	C3A–.08A max. (A2 coating acceptable)
Camber (in any 10 feet)	1/16 inch
Coil Size I.D.	20 inches

Magnetic Properties:

Core Loss (1.5T/60 Hz) NAAS	3.8 Watts/Pound max
Permeability (1.5T/60 Hz) NAAS	1700 gauss/oersted typical 1500 minimum

• *Certain aperture mask steel*, which has an ultra-flat surface flatness and which meets the following characteristics:
Thickness: 0.025 to 0.245 mm
Width: 381–1000 mm
Chemical Composition:

Element	C	N	Al
Weight %	<0.01	0.004 to 0.007	<0.007

• *Certain annealed and temper-rolled cold-rolled continuously cast steel*, which meets the following characteristics:
Chemical Composition:

Element	C	Mn	P	S	Si	Al	As	Cu	B	N
Min. Weight %	0.02	0.20				0.03				0.003
Max. Weight %	0.06	0.40	0.02	0.023 (Aiming 0.018 Max.)	0.03	0.08 (Aiming 0.05)	0.02	0.08		0.008 (Aiming 0.005)

Non-metallic Inclusions: Examination with the S.E.M. shall not reveal individual oxides >1 micron (0.000039 inch) and inclusion groups or clusters shall not exceed 5 microns (0.000197 inch) in length.
Surface Treatment as follows: The surface finish shall be free of defects (digs, scratches, pits, gouges, slivers, etc.) and suitable for nickel plating.
Surface Finish:

	Roughness, RA Microinches (Micrometers)		
	Aim	Min.	Max.
Extra Bright	5 (0.1)	0 (0)	7 (0.2)

• *Certain annealed and temper-rolled cold-rolled continuously cast steel*, in coils, with a certificate of analysis per Cable System International ("CSI") Specification 96012, with the following characteristics:
Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties:

Base Weight	55 pounds
Theoretical Thickness	0.0061 inch (±10 percent of theoretical thickness)
Width	31 inches
Tensile Strength	45,000–55,000 psi
Elongation	minimum of 15 percent in 2 inches

• *Concast cold-rolled drawing quality sheet steel*, ASTM a-620–97, Type B, or single reduced black plate, ASTM A–625–92, Type D, T–1, ASTM A–625–76 and ASTM A–366–96, T1–T2–T3 Commercial bright/luster 7a both sides. RMS 12 maximum. Thickness range of 0.0088 to 0.038 inches, width of 23.0 inches to 36.875 inches.

• *Certain single reduced black plate*, meeting ASTM A–625–98 specifications, 53 pound base weight (0.0058 inch thick) with a Temper classification of T–2 (49–57 hardness using the Rockwell 30 T scale).
• *Certain single reduced black plate*, meeting ASTM A–625–76 specifications, 55 pound base weight, MR type matte finish, TH basic tolerance as per A263 trimmed.

• *Certain single reduced black plate*, meeting ASTM A–625–98 specifications, 65 pound base weight (0.0072 inch thick) with a Temper classification of T–3 (53–61 hardness using the Rockwell 30 T scale).
• *Certain cold-rolled black plate bare steel strip*, meeting ASTM A–625 specifications, which meet the following characteristics:

Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.02	0.05

Physical and Mechanical Properties:

Thickness	0.0058 inch ±0.0003 inch
Hardness	T2/HR 30T 50–60 aiming

Elongation	≥15%
Tensile Strength	51,000.0 psi ±4.0 aiming

• *Certain cold-rolled black plate bare steel strip*, in coils, meeting ASTM A–623, Table II, Type MR specifications, which meet the following characteristics:
Chemical Composition:

Element	C	Mn	P	S
Max. Weight %	0.13	0.60	0.04	0.05

Physical and Mechanical Properties:

Thickness	0.0060 inch (±0.0005 inch)
Width	10 inches (+ ¼ to ⅜ inch/– 0)
Tensile Strength	55,000 psi max.
Elongation	Minimum of 15 percent in 2 inches

• *Certain "blued steel" coil* (also known as "steamed blue steel" or "blue oxide"), with a thickness of 0.30 mm to 0.42 mm and width of 609 mm to 1219 mm, in coil form;

• *Certain cold-rolled steel sheet*, coated with porcelain enameling prior to importation, which meets the following characteristics:
Thickness (nominal): ≤0.019 inch
Width: 35 to 60 inches
Chemical Composition:

Element	C	O	B
Max. Weight %	0.004		
Min. Weight %		0.010	0.012

• *Certain cold-rolled steel*, which meets the following characteristics:
Width: >66 inches
Chemical Composition:

Element	C	Mn	P	Si
Max. Weight %	0.07	0.67	0.14	0.03

Physical and Mechanical Properties:

Thickness Range (mm)	0.800–2.000
Min. Yield Point (MPa)	265
Max Yield Point (MPa)	365
Min. Tensile Strength (MPa)	440
Min. Elongation %	26

• *Certain band saw steel*, which meets the following characteristics:
Thickness: ≤ 1.31 mm
Width: ≤ 80 mm
Chemical Composition:

Element	C	Si	Mn	P	S	Cr	Ni
Weight %	1.2 to 1.3	0.15 to 0.35	0.20 to 0.35	≤0.03	≤0.007	0.3 to 0.5	≤0.25

Other properties:
Carbide: Fully spheroidized having >80% of carbides, which are ≤ 0.003 mm and uniformly dispersed

Surface finish: Bright finish free from pits, scratches, rust, cracks, or seams Smooth edges.
Edge camber (in each 300 mm of length): ≤ 7 mm arc height

Cross bow (per inch of width): 0.015 mm max.
• *Certain transformation-induced plasticity (TRIP) steel*, which meets the following characteristics:

Variety 1

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.09	1.0	0.90

Max. Weight %	0.13	2.1	1.7

Physical and Mechanical Properties:

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	320
Max Yield Point (MPa)	480
Min. Tensile Strength (MPa)	590
Min. Elongation %	24 (if 1.000–1.199 thickness range)
	25 (if 1.200–1.599 thickness range)
	26 (if 1.600–1.999 thickness range)
	27 (if 2.000–2.300 thickness range)

Variety 2

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.12	1.5	1.1
Max. Weight %	0.16	2.1	1.9

Physical and Mechanical Properties:

Thickness Range (mm)	1.000–2.300 (inclusive)
Min. Yield Point (MPa)	340
Max Yield Point (MPa)	520
Min. Tensile Strength (MPa)	690
Min. Elongation %	21 (if 1.000–1.199 thickness range) 22 (if 1.200–1.599 thickness range)
	23 (if 1.600–1.999 thickness range)
	24 (if 2.000–2.300 thickness range)

Variety 3

Chemical Composition:

Element	C	Si	Mn
Min. Weight %	0.13	1.3	1.5
Max. Weight %	0.21	2.0	2.0

Physical and Mechanical Properties:

Thickness Range (mm)	1.200–2.300 (inclusive)
Min. Yield Point (MPa)	370
Max Yield Point (MPa)	570
Min. Tensile Strength (MPa)	780

Min. Elongation %	18 (if 1.200–1.599 thickness range)
	19 (if 1.600–1.999 thickness range)
	20 (if 2.000–2.300 thickness range)

- *Certain cold-rolled steel*, which meets the following characteristics:

Variety 1

Chemical Composition:

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.10	0.40	0.10	0.35

Physical and Mechanical Properties:

Thickness Range (mm)	0.600–0.800
Min. Yield Point (MPa)	185
>Max Yield Point (MPa)	285
Min. Tensile Strength (MPa)	340
Min. Elongation	31 (ASTM standard 31% = JIS standard 35%)

Variety 2

Chemical Composition:

Element	C	Mn	P	Cu
Min. Weight %				0.15
Max. Weight %	0.05	0.40	0.08	0.35

Physical and Mechanical Properties:

Thickness Range (mm)	0.800–1.000
Min. Yield Point (MPa)	145
Max Yield Point (MPa)	245
Min. Tensile Strength (MPa)	295
Min. Elongation %	31 (ASTM standard 31% = JIS standard 35%)

Variety 3

Chemical Composition:

Element	C	Si	Mn	P	S	Cu	Ni	Al	Nb, V, Ti, B	Mo
Max. Weight %	0.01	0.05	0.40	0.10	0.023	0.15–.35	0.35	0.10	0.10	0.30

Physical and Mechanical Properties:

Thickness (mm)	0.7
Elongation %	≥35

- *Porcelain enameling sheet*, drawing quality, in coils, 0.014 inch in thickness, +0.002, -0.000, meeting ASTM A–424–96 Type 1 specifications, and suitable for two coats.
- *Porcelain enameling sheet* whether or not coated prior to importation with the following additional characteristics:

Cold-rolled steel for porcelain enameling, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1,524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010 percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after

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annealing, with flat defined as less than or equal to 1 I unit with no coil set.

The merchandise subject to this investigation is typically classified in the HTSUS at subheadings: 7209.15.0000, 7209.16.0030, 7209.16.0060, 7209.16.0090, 7209.17.0030, 7209.17.0060, 7209.17.0090, 7209.18.1530, 7209.18.1560, 7209.18.2550, 7209.18.6000. 7209.25.0000, 7209.26.0000, 7209.27.0000, 7209.28.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.23.1500, 7211.23.2000, 7211.23.3000, 7211.23.4500, 7211.23.6030, 7211.23.6060, 7211.23.6085, 7211.29.2030, 7211.29.2090, 7211.29.4500, 7211.29.6030, 7211.29.6080, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7225.19.0000, 7225.50.6000, 7225.50.7000, 7225.50.8010, 7225.50.8085, 7225.99.0090, 7226.19.1000, 7226.19.9000, 7226.92.5000, 7226.92.7050, 7226.92.8050, and 7226.99.0000.

Although the HTSUS subheadings are provided for convenience and Customs purposes, the written description of the merchandise under investigation is dispositive.

Scope Issues

In the *Initiation Notice*, we invited all interested parties to raise issues and comment regarding the product coverage under the scope of these investigations. We received numerous comments, including scope clarification and scope exclusion requests. The requests covered approximately 80 cold-rolled steel products.

In our review of the comments, we found that, in the overwhelming majority of the cases, parties disagreed on whether or not the exclusion should be granted. Both requesters and petitioners provided factual information and argument in support of their position. We are currently analyzing the information provided.

All parties, however, have agreed to the exclusion from the scope of these investigations of porcelain enameling sheet. This exclusion covers the following product:

Porcelain enameling sheet whether or not coated prior to importation with the following additional characteristics:

Porcelain enameling cold-rolled sheet, the foregoing being continuous annealed cold-reduced steel with a nominal thickness of not more than 0.48 mm and widths from 762 mm to 1.524 mm, having a chemical composition, by weight, of not more than 0.004 percent carbon, nor more than 0.010 percent aluminum, 0.006 percent or more of nitrogen, 0.012 percent or more of boron, and more than 0.005 percent silicon, and 0.010 percent or more of oxygen; having no intentional addition of and less than 0.002 percent by weight of titanium, no intentional addition of and less than 0.002 percent by weight of vanadium, no intentional addition of and less than 0.002 percent by weight of niobium, and no intentional addition of and less than 0.002 percent of antimony; having a yield strength of from 179.3 MPa to 344.7 MPa, a tensile strength of from 303.7 MPa to 413.7 MPa, a percent of elongation of from 28 percent to 46 percent on a standard ASTM sample with a 5.08 mm gauge length; for Fishscale resistance; hydrogen traps provided; with a product shape of flat after annealing, with flat defined as less than or equal to 1 I unit with no coil set.

Therefore, with regard to porcelain enameling cold-rolled sheet, we have amended the scope of these investigations to exclude this product as described above (see preceding *Scope of the Investigations* section). We will instruct Customs accordingly.

With regard to all other products for which an exclusion was requested, we have determined that it is not practicable for the Department to complete the analysis of each request by the issuance of the notice of preliminary determination. This is due to a number of factors, including the large number of requests and the complexity of the issues involved. We will issue a decision memorandum containing the Department's preliminary determination on all product exclusion requests submitted in the course of these investigations at the earliest possible date but not later than May 24, 2002.

We invite parties to comment on our preliminary determination on this issue. Parties will have three weeks to comment from the date of issuance of the memorandum.

[FR Doc. 02–11182 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–602–804]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Australia

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651 or Mark Manning at (202) 482–5253, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Australia are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the **Suspension of Liquidation** section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2002, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 3001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 19, 2001, the Department issued a complete antidumping questionnaire to Broken Hill Propriety Limited Steel (BHP JLA), and BHP Steel Americas (BHPSA)

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel Inc., and Weirton Steel Corporation (collectively, the petitioners).

(collectively known as BHP).[2] We issued a corrected version of appendix V with revised product characteristic variables on November 26, 2001. BHP submitted its Section A response on December 10, 2001. On December 21, 2001, the Department issued a Section A supplemental questionnaire. On January 14, 2002, BHP submitted its responses to the Department's Sections B and C questionnaire, as well as the Section A supplemental questionnaire. On February 21, 2002, the Department issued a Sections A, B, and C supplemental questionnaire. BHP submitted its response to the Department's Sections A, B, and C supplemental questionnaire on March 18, 2002. On March 28, 2002, BHP submitted its supplemental B and C narrative responses for sales of strapping steel and tin mill black plate.

Based on our analysis of a sales below cost allegation submitted on February 4, 2002 (and revised on February 20, 2002), we found that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a sales-below-cost investigation. *See* Memorandum to Holly A. Kuga, "Bethlehem Steel Corporation, National Steel Corporation, and United States Steel Corporation (petitioners) Allegation of Home Market Sales Below the Cost of Production (Sales-Below-Cost) for Broken Hill Proprietary Steel (JLA) Pty Ltd. (BHP)," *(Cost Memorandum)* (March 8, 2002), on file in the Central Records Unit (CRU), Room B–099 of the main Department of Commerce building. On March 11, 2002, we notified BHP of our decision to initiate a sales-below-cost investigation and instructed BHP to respond to Section D of the questionnaire, which was provided to BHP in the original questionnaire on November 19, 2001. BHP submitted its Section D response on March 29, 2002.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 36 (February 22, 2002).

In two letters dated April 23, 2002, BHP notified the Department of its intent to not participate further in the investigation and requested to withdraw its data from the record of the investigation. The Department is sending a letter to BHP certifying the removal and destruction of all proprietary copies of BHP's questionnaire responses.

Critical Circumstances

In a letter dated December 7, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from Australia. On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel from Australia. *See Memorandum From Bernard Carreau to Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On April 23, 2002, BHP notified the Department that it did not intend to participate further in the Department's investigation and requested the return of all of its data. BHP was notified by the Department in all of our correspondence concerning the due dates for submitting data that failure to submit the requested information by the date specified may result in use of the FA, as required by section 776(c) of the Act and section 351.308 of the Department's regulations. *See* letters from the Department to BHP dated December 7, 2001; December 21, 2001; December 28, 2001; January 4, 2002; February 21, 2002; March 7, 2002; March 22, 2002; and April 17, 2002.

As described above, BHP withdrew its response to the Department's questionnaire. Because BHP withheld information requested by the Department essential to the calculation of dumping margins, pursuant to section 776(a)(2) of the Act, we have applied FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). As a general matter, it is reasonable for the Department to assume that BHP possessed the records necessary for the Department to complete its investigation since it provided a nearly complete response before withdrawing it from the record. Therefore, by withdrawing the information the Department requested, BHP failed to cooperate to the best of its ability. As BHP failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 24.06 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "information derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose *see Australia Initiation Checklist* (*Initiation Checklist*) on file in the CRU for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import value (AUV) data for one HTSUS category that accounted for a large portion of imports of subject merchandise from Australia during the period. The petitioners made no adjustments to EP because using an unadjusted AUV as the export price is a conservative methodology. Our review of the EP calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculation in the petition is from public sources and concurrent, for the most part, with the POI. Consequently we consider EPs which are based on U.S. customs data corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

Normal Value

The petitioners calculated NV from price information obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners made no adjustment to NV. With regard to the NV contained in the petition, the Department has no useful information from the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. *See Initiation Checklist.*

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance, the Department need not prove that the facts available are the best alternative information." Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with section 776(c) of the Act, we consider the margins in the petition to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to BHP, the Department applied the petition rate of 24.06 percent.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that the Department may weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-price dumping margin, there are no additional estimated margins available with which to create the "all others" rate. Therefore, we applied the petition margin of 24.06 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001).

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Australia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after this preliminary determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding in this case, and in accordance with section 733(e) of the Act, we are directing the U.S. Customs Service (U.S. Customs) to suspend liquidation of all entries of cold-rolled steel from Australia that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We are also instructing U.S. Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
BHP	24.06
All Others	24.06

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Australia, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calender days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Australia no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11183 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–423–811]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Belgium

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of Sales at Less Than Fair Value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from Belgium are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Lyman Armstrong or Cindy Lai Robinson, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3601 or (202) 482–3797, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium,*

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

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Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to Sidmar, N.V.[2] The petitioners made an allegation of sales below cost of production ("COP") in the petition. Based on the factual information contained in the petition, we found "reasonable grounds to believe or suspect" that sales below cost occurred. *See Initiation Notice* 66 FR at 54212–13. Accordingly, the Department initiated the requested country-wide cost investigation.

On November 29, 2001, we confirmed our selection of Sidmar, the largest producer/exporter of cold-rolled steel from Belgium, as the sole mandatory respondent in this proceeding. *See* Memorandum from Mark Young to Melissa Skinner, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Belgium—Selection of Respondents," dated November 29, 2001, on file in the Central Records Unit, room B–099, of the Department's main building (the "CRU").

During the period December 2001 through January 2002, the Department received questionnaire responses from Sidmar and its affiliated U.S. importer, TradeARBED, Inc. ("TANY") (collectively "Sidmar"). The Department issued supplemental questionnaires on February 20 and 28, 2002, and the responses were received on March 20 and 29, 2002.

On January 23, 2002, Sidmar requested that the Department permit it to exclude sales of full-hard coils which were further annealed and skinpassed by its affiliated mill, Laminoir de Dudelange ("LDD"), and then imported by its affiliated U.S. processor, J&F Steel Corp. ("J&F"). Petitioners Bethlehem Steel Corporation, National Steel Corp., Nucor Corp., and United States Steel Corporation submitted their comments to oppose the exclusion of sales on February 1, 2002. Petitioners provided additional pre-preliminary comments on April 5, 2002. For further discussion, *see* the Calculation Memorandum from Lyman Armstrong to the File for the Preliminary Determination of Certain Cold-Rolled Carbon Steel Flat Products from Belgium, dated April 26, 2002 ("Sales Calculation Memorandum").

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 66 FR at 8227 (February 22, 2002)).

On April 16, 2002, the Department issued supplemental Sections D and E questionnaires. The responses were received on April 22, 2002.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, Sidmar, on April 25, 2002. In its request, Sidmar consented to the extension of provisional measures to no longer than six months.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Belgium to the United States were made at LTFV, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

For the price to the United States, we used CEP in accordance with section 772(b) of the Act because all sales to the first unaffiliated purchaser took place in the United States. Specifically, all of Sidmar's sales to the United States during the POI were made by its U.S. affiliates, TANY and J&F. Furthermore, some of Sidmar's CEP sales were further manufactured by J&F in the United States. For these sales we used the price to the first unaffiliated customer and deducted the costs of further manufacturing, in accordance with section 772(d)(2) of the Act. To calculate further manufacturing costs, we used the information in Sidmar's Sections G and E responses, except in the following instances where the data were not properly quantified or valued: (1) we increased the reported further manufacturing costs to include freight from the port to the processor when determining profit and cost to be deducted from CEP. *See* Memorandum from Peter Scholl to Neal Halper, Director, Office of Accounting, dated April 26, 2002, "Cost of Production and Constructed Value (CV) Calculation Adjustments for the Preliminary Determination" ("Cost Calculation Memorandum").

We based CEP on the packed CIF or delivered prices to the first unaffiliated customer in the United States. Where appropriate, we reduced these prices to reflect discounts and rebates, and made billing adjustments.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties (including harbor maintenance fees and merchandise processing fees), and U.S. inland freight expenses (freight from warehouse to the customer and freight from port to warehouse).

In accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit, warranties, and commissions paid to unaffiliated sales agents). In addition, we deducted indirect selling expenses that related to economic activity in the United States such as inventory carrying costs and other indirect selling expenses, incurred by affiliated U.S. distributors. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. For further discussion, *see* the *Sales Calculation Memorandum*.

We have excluded Sidmar sales of full-hard coils which were further annealed and skinpassed by its affiliated mill, LDD, in Luxembourg and then imported by its affiliated U.S. processor, J&F. Sidmar stated that it and J&F were unable to determine the appropriate product matching characteristics for sales of material processed by LDD because LDD does not have the same order management system used by Sidmar. With the plant order number, Sidmar determined the appropriate product matching characteristics for the imported coil based on mill production records. Because LDD does not have the same order management system, it is unable to link its production records to J&F invoices. Moreover, LDD does not have a reliable method for linking its own sales of further manufactured products to specific coils purchased from SIDMAR. Therefore, because these sales accounted for such a small portion of U.S. sales we excused Sidmar from reporting them. For further discussion, *see* the *Sales Calculation Memorandum*.

For those U.S. sales for which Sidmar did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, April 26, 2002) in the calculation of imputed credit expenses. In addition, for the sales for which Sidmar did not report a date of shipment, we have used the invoice date for purposes of calculating credit expenses. For further discussion, *see* the *Sales Calculation Memorandum*.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see Initiation Notice*, 66 FR at 54198).

2. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). We relied on the COP information submitted by Sidmar with the exception of certain production inputs which were obtained from affiliated parties at less than market value. For these inputs, we adjusted the

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information about the cost of production of merchandise sold in the foreign market and the constructed value of merchandise sold in or to the United States. Section E requests information about further manufacturing or assembly in the United States prior to delivery to unaffiliated United States customers.

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reported cost to reflect market value. *See* the *Cost Calculation Memorandum*.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Sidmar's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's length. We made deductions, where appropriate, from the starting price for early payment discounts, billing adjustments, and rebates. We also made deductions for movement expenses, including inland freight (plant to distribution warehouse, plant/warehouse to customer, and affiliated reseller to customer), inland insurance, and warehousing under section 773(a)(6)(B)(ii) of the Act. We made circumstance of sale ("COS") adjustments, in accordance with section 773(a)(6)(C)(iii) of the Act, for direct selling expenses, including warranty expenses, credit expenses, and other direct selling expenses. *See* the *Sales Calculation Memorandum*.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). *See Level of Trade* section below. We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP. *See* the *Sales Calculation Memorandum*.

We have excluded Sidmar's sales of non-prime merchandise in the home market for which Sidmar was unable to identify their product characteristics. These sales represented a small portion of Sidmar's home market sales. For further discussion, *see* the *Sales Calculation Memorandum*.

E. Normal Value Based on CV

Section 773(a)(4) of the Act provides that where NV cannot be based on comparison market sales, NV may be based on CV. Accordingly, for those models of cold-rolled steel products for which we could not determine the NV based on comparison market sales, either because there were no sales of a comparable product or all sales of the comparable product failed the COP test, we based NV on CV. Section 773(e)(1) of the Act provides that the CV shall be based on the sum of the cost of material and fabrication for the imported merchandise, plus amounts for selling, general and administrative ("SG&A") expenses, profit and U.S. packing costs. We calculated the cost of material and fabrication based on the methodology described in calculation of *Cost of Production* section, above. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred by Sidmar in connection with the production and sale of the foreign like product in the comparison market. We used U.S. packing costs as described in the Constructed Export Price section above.

For price-to-CV comparisons, we made adjustments to CV in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. Where we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses and added U.S. selling expenses. Where appropriate we applied the CEP offset for price-to-CV comparisons, *see* the *Level of Trade* section below.

F. Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. With respect to U.S. price and CEP transactions, the LOT is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than CEP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level, and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR at 61731 (November 19, 1997).

Sidmar reported two customer categories (*i.e.*, distributors and original equipment manufacturers) and five channels of distribution in the home market: (1) Sales made by Sidmar, through its affiliated sales agent Sidstahl Belgium, N.V. ("Sidstahl"), directly to unaffiliated distributors or end users (Channel 1); (2) sales made by Sidmar's affiliated producer Europese Staal Prefabricate, N.V. ("ESP") directly to its affiliated and unaffiliated distributors and unaffiliated end-users (Channel 2); (3) sales made by Sidmar, through its affiliated sales agent Sidstahl, as consignment sales, to unaffiliated end-users (Channel 3); (4) sales made by Sidmar to unaffiliated and affiliated end-users (Channel 4); (5) and sales made by Sidmar's affiliated producer ESP, as consignment sales, to unaffiliated end-users (Channel 5).

We determined that Sidmar sold merchandise at one LOT in the home market during the POI. The Department found minimal distinctions in the selling activities and associated expenses between Channels 1 through 5. Based on these differences, we concluded that one LOT existed in the home market. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, please *see* the *Sales Calculation Memorandum* for a detailed explanation of this issue.

Sidmar reported two customer categories (*i.e.*, original equipment manufacturers and service centers/distributors) and two channels of distribution in the United States: (1) CEP sales made by Sidmar, through its affiliated U.S. importer TANY, to unaffiliated service centers (Channel 6), and (2) CEP sales made by Sidmar, through its affiliated U.S. importer and further processor, J&F, to unaffiliated end users (Channel 7). We examined the selling functions performed by Sidmar on behalf of J&F and TANY and found only one level of trade.

In order to determine whether separate LOTs actually existed between the U.S. and home market, we reviewed the selling activities associated with each channel of distribution. We determined that fewer and different selling functions were performed for Sidmar's CEP sales than for sales in the home market and these differences are substantial. We therefore determined that Sidmar's CEP sales and home market sales were made at different marketing stages and thus at different LOTs. Accordingly, we examined whether a LOT adjustment was appropriate. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. *See* section 773(a)(1) of the Act; 19 CFR 351.412(b). However, where the available data does not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). Because the LOT of the U.S. sales is different than the home market LOT and there is no home market LOT comparable to that of the CEP sales, there is no reliable basis for quantifying a LOT adjustment in accordance with section 773(a)(7)(A) of the Act. Further, we found that the home market sales were at a more advanced stage of distribution compared to sales to the U.S. LOT. Therefore, a CEP offset was applied to NV for the NV–CEP comparisons. Because the large number of channels of distribution and selling expenses involved in this analysis presents difficulty in providing an adequate summary in this notice, *see* the *Sales Calculation Memorandum* for a detailed explanation of our analysis.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price or constructed export price, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margin is as follows:

Exporter/Manufacturer	Weighted-average margin percentage
Sidmar, N.V.	11.66
All Others	11.66

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11184 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–351–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. Since we are postponing the final determination, we will make our final determination not later than 135 days after the date of publication of this preliminary determination in the **Federal Register**.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin or Elizabeth Eastwood, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–0656 or (202) 482–3874, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Brazil are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Background

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (Oct. 26, 2001) (*Initiation Notice*). The following events have occurred since the initiation.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that imports of certain cold-rolled carbon steel flat products from Brazil are materially injuring the United States industry (*see* ITC Investigation Nos. 701–TA–422–425 and 731–TA–964–983 (Publication No. 3471)).

On November 16, 2001, we selected Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) (collectively "USIMINAS/COSIPA") as the mandatory respondents in this proceeding.[2] For further discussion, see the November 16, 2001, memorandum from the Team to Louis Apple entitled, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Brazil—Selection of Respondents" (the respondent selection memorandum). We subsequently issued antidumping questionnaires to USIMINAS/COSIPA on November 16, 2001. We issued a corrected version of the questionnaire appendix V with revised product characteristic variables on November 26, 2001.

During the period December 2001 through April 2002, we received responses from USIMINAS/COSIPA to the Department's original and supplemental questionnaires.[3]

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (Feb. 22, 2002).

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, "the petitioners").

[2] For purposes of this proceeding, we are treating these companies as the same entity. *See* the "Affiliated Respondents" section of this notice.

[3] The last of these responses was submitted on April 24, 2002, and consequently was received too late to use in the preliminary determination. We intend to verify this information, however, and consider it for purposes of the final determination.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on April 5, 2002, the respondent requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register**. In a request on April 19, 2002, the respondent consented to the extension of provisional measures to no longer than six months. In accordance with 19 CFR 351.210(b), because our preliminary determination is affirmative, because no compelling reasons for denial exist, and because the exporter accounts for a significant proportion of exports of subject merchandise, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Furthermore, any provisional measures imposed by this investigation have been extended from a four-month period to not more than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Fair Value Comparisons

To determine whether sales of certain cold-rolled carbon steel flat products from Brazil to the United States were made at LTFV, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by USIMINAS/COSIPA in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish.

In certain instances, however, USIMINAS/COSIPA did not provide sufficient information to calculate a margin for the reported U.S. products. Specifically, USIMINAS/COSIPA did not report cost data for certain home market products, and it reported incomplete cost data for other products. Section 776(a)(2) of the Act provides that if an interested party or any other person (A) withholds information that has been requested by the administering authority; (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding under this title; or (D) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the administering authority shall, subject to section 782(d) of the Act, use the facts otherwise available in reaching the applicable determination under this title.[4] Section 776(b) of the Act further provides that adverse inferences may be used when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

In this case, we find that USIMINAS/COSIPA withheld cost data requested by the Department for certain products and failed to provide complete and usable cost data for others. Because: (1) We informed USIMINAS/COSIPA of the deficiencies in its data and provided it an opportunity to remedy them in a supplemental questionnaire (pursuant to section 782(d) of the Act); and (2) USIMINAS/COSIPA did not provide the information requested or provided information that was so incomplete that it could not be used (within the meaning of section 782(e) of the Act), we are resorting to facts otherwise available pursuant to section 776(a)(2)(A) of the Act. Further, the cost data that USIMINAS/COSIPA did not provide for these products was provided for numerous other products. USIMINAS/COSIPA did not indicate or explain why it was not possible to provide this information for the products in question. Therefore, we conclude that USIMINAS/COSIPA could have provided the necessary data but chose not to, thereby failing to cooperate to the best of its ability within the meaning of section 776(b) of the Act. Accordingly, we have based the margin for U.S. products which match to the products in question on adverse facts available. As adverse facts available, we have assigned the highest non-aberrational margin calculated for any other U.S. product, in accordance with our practice. *See, e.g., Static Random Access Memory Semiconductors From Taiwan; Final Results of Antidumping Duty New Shipper Review*, 65 FR 12214 (Mar. 8, 2000) and accompanying decision memorandum at *Comment 1*; *Final Determination of Sales at Less than Fair Value: Stainless Steel Sheet and Strip in Coils from Germany*, 64 FR 30710, 30732 (June 8, 1999); *Notice of Final Determination of Sales at Less Than Far Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Japan*, 64 FR 24329, 24361–24362 (May 6, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61747 (Nov. 19, 1997); and *Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833, 48839 (Sept. 20, 1993). In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the purposes of the adverse facts available rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner. We also sought a margin that is indicative of USIMINAS/COSIPA's customary selling practices and is rationally related to the transactions to which the adverse facts available are being applied. To that end, we selected the highest margin for an individual product in a commercial quality that fell within the mainstream of USIMINAS/COSIPA's transactions (i.e., transactions that reflect sales of products that are representative of the broader range of models used to determine normal value).

For further discussion, see the memorandum entitled "Concurrence Memorandum for the Preliminary Determination in the Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Brazil," dated April 26, 2002 (the concurrence memorandum).

[4] Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) of the Act provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, and is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, the statute requires the Department to use the information, if it can do so without undue difficulties.

Affiliated Respondents

In the last cold-rolled investigation for Brazil, the Department treated USIMINAS and COSIPA as affiliated parties and collapsed these entities. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 65 FR 5554, 5562 (Feb. 4, 2000). In the respondent selection memorandum, the Department stated that it intended to treat these companies as affiliated producers. Neither USIMINAS nor COSIPA

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commented on our intention to treat them as affiliated producers. Therefore, we have continued to treat USIMINAS and COSIPA as a single entity and to calculate a single margin for them.

Export Price

In accordance with section 772(a) of the Act, we based our calculations on EP because the subject merchandise was sold by the producer or exporter directly to the first unaffiliated purchaser in the United States prior to importation. In cases where the date of shipment preceded the date of invoice reported by USIMINAS/COSIPA, we used the date of shipment as the date of sale because the terms of sale were established on that date.

We based EP on the packed delivered prices to unaffiliated purchasers in the United States. We increased U.S. price by the amount of the export subsidy found in the companion countervailing duty investigation on certain cold-rolled carbon steel flat products from Brazil. *See Notice of Preliminary Affirmative Countervailing Duty Determination and Alignment with Final Antidumping Duty Determinations: Certain Cold-Rolled Carbon Steel Flat Products from Brazil*, 67 FR 9652 (Mar. 4, 2002). Where appropriate, we made adjustments for discounts. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign brokerage and handling, ocean freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties.

For those movement expenses provided by affiliated parties, we assigned the highest amount reported for each mill because USIMINAS/COSIPA did not demonstrate that these expenses were incurred at arm's length, despite a request that it do so. In addition, for USIMINAS, we used the highest international freight amounts reported for each vessel because USIMINAS indicated in its supplemental response that these expenses do not vary by vessel. *See* the April 26, 2002, memorandum from Irina Itkin to the file entitled "Calculations Performed for Usinas Siderurgicas de Minas Gerais (USIMINAS) and Companhia Siderurgica Paulista (COSIPA) in the Preliminary Determination of the Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from Brazil" (the sales calculation memorandum).

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Cost of Production Analysis

Based on the cost allegation submitted by the petitioners on January 22, 2002, the Department found reasonable grounds to believe or suspect that the respondent had made sales in the home market at prices below their cost of production (COP), in accordance with section 773(b)(2)(A)(i) of the Act. As a result, on February 12, 2002, the Department initiated an investigation to determine whether the respondent made home market sales during the POI at prices below their respective COPs within the meaning of section 773(b) of the Act. *See* Memorandum from LaVonne Jackson to Neal Halper, Director, Office of Accounting, entitled "Petitioners' Allegation of Sales Below the Cost of Production for Usinas Siderurgicas de Minas Gerais, SA ("USIMINAS") and Companhia Siderurgica Paulista ("COSIPA")," dated February 12, 2002.

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses (G&A), including interest expenses (see the "Test of Home Market Sales Prices" section below for the treatment of home market selling expenses). We relied on the COP data submitted by USIMINAS/COSIPA except as noted below.

1. As discussed above, we applied adverse facts available to USIMINAS's reported costs because USIMINAS disregarded the Department's instructions to report its costs based on the POI. As adverse facts available, we increased the cost of manufacture (COM) of all products produced by USIMINAS. We based this increase on the highest percentage difference between USIMINAS's product-specific COMs and COSIPA's product-specific COMs (where COSIPA's COM exceeded USIMINAS's and where the products were produced by both USIMINAS and COSIPA).

2. We adjusted USMINAS/COSIPA's reported COP to exclude PIS and COFINS taxes. *See* the "Calculation of Normal Value Based on Comparison Market Prices" section of this notice, below, for further discussion.

3. We adjusted USMINAS/COSIPA's GNA expense ratio to include goodwill amortization expenses, as well as the depreciation expenses of an idled asset.

4. We adjusted USIMINAS and COSIPA's reported financial expense ratio to exclude the portion of the reported financial income offset related to long-term interest bearing assets. We based the excluded amount on the ratio of long-term interest bearing assets to total interest bearing assets.

See the April 26, 2002, memorandum from LaVonne Jackson to Neal Halper entitled "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Results" referencing the Antidumping Duty Investigation of Certain Cold-Rolled Carbon-Quality Steel Products from Brazil (the cost calculation memorandum) for further discussion.

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, selling expenses, and packing expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of a respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of USIMINAS/COSIPA's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

C. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade (LOT) as the EP or CEP LOT. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (Nov. 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[5] including selling functions,[6] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[7]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP LOT, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

USIMINAS/COSIPA claimed that it made home market sales at two levels of trade. We analyzed the information on the record and found that USIMINAS/COSIPA performed different marketing functions in selling to its home market customers (*i.e.*, the affiliated resellers provided many services to their customers, while the mills only provided minimal services). Therefore, we determined that USIMINAS/COSIPA made home market sales at two levels of trade.

In the United States, USIMINAS/COSIPA reported that it made EP sales at one level of trade. Our analysis showed that USIMINAS/COSIPA's EP sales were made at one level of trade and we find that these sales were made at the same level of trade as the mill direct sales in the home market. Accordingly, where possible, we matched EP sales to home market mill direct sales and made no LOT adjustment because the sales were made at the same LOT. Where we matched EP sales to affiliated reseller home market sales, we made a LOT adjustment in accordance with section 773(a)(7)(A) of the Act because we found that there was a pattern of consistent price differences between the two home market LOTs.

For a detailed explanation of this analysis, see the concurrence memorandum.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length, adjusted for billing errors and discounts. We made deductions from the starting price for taxes in accordance with section 773(a)(6)(B)(iii) of the Act. *See Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 18165 (April 15, 2002). We recalculated certain taxes because USIMINAS/COSIPA did not consistently report them. In addition, we disallowed an adjustment for certain discounts for USIMINAS and Rio Negro because they were not reported on a customer-specific basis as requested in our supplemental questionnaire. For further discussion, see the sales calculation memorandum.

We also made deductions for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer), warehousing and inland insurance under section 773(a)(6)(B)(ii) of the Act. For those freight expenses provided by an affiliated freight supplier, we assigned the lowest reported freight expense amount because USIMINAS/COSIPA did not provide evidence that these expenses were incurred at arm's length, despite a request that it do so. *See* the sales calculation memorandum.

In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses (offset by interest revenue), certain warranty expenses, and commissions. We adjusted the reported credit expenses as follows: 1) for COSIPA, we assigned the negative weighted-average of the credit expenses reported in the home market sales listings for those sales which were paid in advance of shipment because COSIPA provided insufficient information to calculate the actual credit amounts; 2) for USIMINAS, Rio Negro, Fasal, and Dufer, we recalculated credit expenses using the short-term borrowing rate of COSIPA because these companies did not have short-term borrowings during the POI; and 3) for USIMINAS, we also recalculated the

[5] The marketing process in the United States (for EP) and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[6] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled carbon steel flat products selling functions into six major categories: freight and delivery, advertising and sales promotion, sales and marketing support, inventory maintenance, warranty service, and technical service.

[7] Where NV is based on constructed value (CV), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

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reported U.S. credit expenses using the date that the merchandise left the factory, rather than the date of the bill of lading, as the date of shipment. Regarding home market warranty expenses, USIMINAS/COSIPA based the amount of these expenses on the sales value of returned merchandise. We disallowed these expenses because USIMINAS/COSIPA also reported the resales of the returned merchandise in its home market sales listing. *See* the sales calculation memorandum. Regarding commissions, USIMINAS/COSIPA incurred commissions only in the home market. Therefore, we offset home market commissions by the lesser of the commission amount or U.S. indirect selling expenses.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We disallowed certain packing expenses for USIMINAS/COSIPA's home market resellers because these expenses were aberrationally high in comparison to other packing expenses and were not explained by the respondent. *See* the sales calculation memorandum.

E. Arm's-Length Sales

USIMINAS/COSIPA reported sales of the foreign like product to affiliated customers. To test whether these sales to affiliated customers were made at arm's length, where possible, we compared the prices of sales to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, and packing. Where the price to the affiliated party was, on average, 99.5 percent or more of the price to unaffiliated parties, we determined that sales made to the affiliated party were at arm's length. Consistent with section 351.403(c) of the Department's regulations, we excluded from our analysis those sales where the price to the affiliated parties was less than 99.5 percent of the price to the unaffiliated parties.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Brazil entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
USIMINAS/COSIPA	43.34
All Others	43.34

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties to the proceeding in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the publication of this notice in the **Federal Register**.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11185 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–427–822]

Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at not less than fair value.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Angelica Mendoza, John Drury or Abdelali Elouaradia at (202) 482–3019, (202) 482–0195 and (202) 482–1374, respectively; AD/CVD Enforcement, Office 8, Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to the regulations at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from France are not being sold, or are not likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping duty investigations of cold-rolled steel from a number of countries, including France. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198, (October 26, 2001) (Initiation Notice). Also on October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like product in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective costs of production (COP) within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated country-wide cost investigations on sales of the foreign like product in these markets. The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., Weirton Steel Corporation, and United States Steel Corporation. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. See Initiation Notice at 54198. From October 30, 2001, through November 8, 2001, petitioners filed comments proposing clarifications to the scope of these investigations. Also, from November to December 2001, the Department received numerous responses from interested parties aimed at clarifying the scope of the investigations.

On October 30, 2001, the Department issued a letter to interested parties in all of the concurrent cold-rolled steel antidumping investigations, providing an opportunity for comment on the Department's proposed model matching characteristics and hierarchy. On November 8, 2001, petitioners and the Usinor Group (Usinor) submitted comments on the Department's request for information. For purposes of the antidumping duty questionnaires subsequently issued by the Department to the respondents, no changes were made to the product characteristics or the hierarchy of those characteristics from those originally proposed by the Department in its October 18, 2001, letter.

On November 13, 2001, the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination on imports of subject merchandise from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. On November 20, 2001, the ITC published its preliminary determination determining that there is a reasonable indication that the United States industry producing cold-rolled steel is materially injured or threatened with material injury by reason of imports of the subject merchandise from cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. See Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On December 3, 2001, we selected the largest producer/exporter of cold-rolled steel, Usinor, from France as the mandatory respondent in this proceeding. For further discussion, see Memorandum from Nancy Decker and Angelica Mendoza to Richard O. Weible, Selection of Respondent(s), dated December 3, 2001.

The Department subsequently issued its antidumping duty questionnaire to Usinor on November 16, 2001. The questionnaire was divided into five parts, in which we requested that Usinor respond to Section A (general information, corporate structure, sales practices, and merchandise produced), Section B (home market or third-country sales), Section C (U.S. sales), Section D (cost of production/constructed value), and Section E (further manufacturing) where appropriate. The Department also issued corrected pages of the model matching criteria on November 26, 2001.

On December 26, 2001, the Department received Usinor's response to Section A of the questionnaire. On January 14, 2002, we received Usinor's response to Sections B through D of the Department's questionnaire.

On January 7, 2002, petitioners filed comments on Usinor's Section A response, and also requested that the Department require Usinor to report the resales of cold-rolled steel made by its affiliated steel service centers (SSCs). On January 17, 2002, Usinor submitted rebuttal comments. On January 31, 2002, we issued a letter requesting Usinor to report in its Section B response the sales made by five of its affiliated SSCs (Cisatol, Service Acier Rhenan (SAR), Société Lorraine de Produits Metallurgiques (SLPM), Sotracier, and Produits d'Usines Metallurgiques (PUM)) to the first unaffiliated end-customer. On January 28, 2002, and January 29, 2002, petitioners filed comments on Usinor's Section B through D response.

On January 18, 2002, we issued a supplemental questionnaire for deficiencies in Usinor's Section A response. On February 12, 2002, we issued a supplemental questionnaire for deficiencies in Usinor's Section B and C responses. On February 28, 2002, we issued a supplemental questionnaire for deficiencies found in Usinor's supplemental Section D response.

On January 31, 2002 and February 8, 2002, petitioners requested that the Department collapse Usinor's affiliated producers and SSCs of cold-rolled steel for this proceeding. On February 26, 2002, the Department determined to collapse eight of Usinor's affiliated producers (Sollac Atlantique S.A.

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(Atlantique), Sollac Lorraine S.A. (Lorraine), Sollac Méditerranée (Méditerranée), PUM, Usinor Packaging S.A. (Packaging), Etilam, Beautor S.A., and Haironville) into a single entity for purposes of this investigation. For further discussion, see Memorandum on Collapsing from John Drury and Angelica Mendoza through Richard O. Weible to Joseph A. Spetrini, dated February 26, 2002 (Collapsing Memo).

On February 11, 2002, we received Usinor's response to our supplemental Section A questionnaire. On February 14, 2002, we issued a letter requesting that Usinor report the order date associated with all invoiced sales of subject merchandise made during the POI. We received Usinor's responses to the Department's January 31, 2002, February 12, 2002, and February 14, 2002, requests for information on March 5, 2002.

On February 25, 2002, we issued a second supplemental questionnaire for deficiencies found in Usinor's supplemental Section A response. We received Usinor's response on March 13, 2002.

On March 28, 2002, we received Usinor's response to our supplemental questionnaire on Section D. Usinor also submitted new home market and U.S. sales databases to (1) incorporate a small quantity of home-market sales of second-quality merchandise sold by Haironville (affiliated cold-rolled steel producer) to affiliated home-market customers, and (2) to remove a small quantity of sales made by Etilam (affiliated cold-rolled steel producer) of "shadow mask steel" (*i.e.*, non-subject merchandise) that were incorrectly included in the home market and U.S. sales databases. On April 15, 2002, we issued a second supplemental questionnaire for deficiencies found in Usinor's supplemental Section D response. We received Usinor's response on April 17, 2002.

On April 23, 2002, the Department issued Usinor a second supplemental questionnaire for deficiencies found in its March 5, 2002 and March 28, 2002 (with respect to its revised sales databases) questionnaire responses. The response to this request for information is due after our preliminary determination.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. On February 14, 2002, we postponed the preliminary determination until no later than April 26, 2002. See Certain Cold Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations, 67 FR 8227 (February 22, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 28, 2001), and is in accordance with section 351.204(b)(1) of the Department's regulations.

Scope of Investigations

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in section 782(i), the administering authority * * * shall, subject to section 782(d), use the facts otherwise available in reaching the applicable determination under this title." The statute requires that certain conditions be met before the Department may resort to the facts otherwise available. Where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Briefly, section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Usinor's Downstream Sales

On November 16, 2001, the Department issued Usinor its standard antidumping questionnaire. That questionnaire explicitly instructed Usinor to report sales from affiliated SSCs to the unaffiliated customers. We also directed Usinor to contact the agency official in charge in writing immediately if sales to all affiliated customers constituted less than five percent of total sales, or if Usinor was unable to collect the necessary information.

On December 26, 2001, Usinor stated, in its original Section A response, that it would not report the sales of subject merchandise made by its affiliated SSCs for three reasons: (1) the merchandise sold by these entities is not comparable to merchandise sold in the U.S. market; (2) the records for these sales transactions are not accessible by Usinor, as the affiliated SSCs use incompatible computer systems, distinct software, and different file structures, and therefore, it would be inordinately difficult to report these transactions; and (3) lastly, Usinor believed that the prices for the sales to the affiliated service centers were comparable to the prices for the sales to unaffiliated customers.

On January 7, 2002, petitioners requested that the Department require Usinor to report Section B responses for all sales transactions of cold-rolled steel made by its affiliated SSCs to the first unaffiliated customer. On January 16, 2002, the Department met with counsel for Usinor to discuss issues relating to the reporting of its downstream sales to unaffiliated customers (*see* Letter from Abdelali Elouaradia to Jeffrey Winton dated January 18, 2002 (Reporting Letter)). On January 17, 2002, Usinor reiterated that it did not believe that any of its affiliated service centers should be required to report their resales. Usinor also requested that the Department limit its reporting requirements on this matter to avoid a disproportionate and unreasonable burden. Usinor proposed that it be required to report sales of cold-rolled steel made by only four of its affiliated service centers because these sales accounted for most of the purchases of subject merchandise from Usinor mills by affiliated service centers. Usinor further noted that the sales made by the remaining affiliated service centers accounted for less than five percent of total home-market sales. On January 31, 2002, the Department issued a letter requesting Usinor to resubmit its Section B response to the questionnaire and include sales made by five of its affiliated SSCs to the first unaffiliated customer. For further details, see the Department's letter dated January 31, 2002. On February 28, 2002, the Department requested that Usinor report cost information associated with the sales transactions made by the five affiliated SSCs.

On March 5, 2002, Usinor submitted Section B responses for sales made by five of its affiliated SSCs to unaffiliated customers. On March 18, 2002, petitioners filed comments on the responses made by Usinor's affiliated SSCs, noting that these sales of cold-rolled steel included sales made to affiliated customers. Petitioners further noted that sales made by Usinor to affiliated SSCs that are exempted from reporting their resales failed the arm's-length test and, therefore, the Department should apply facts available for these sales. As noted in the Department's January 31, 2002, letter, we determined that because these entities accounted for less than five percent of home market sales, Usinor did not have to report these resales. For the purposes of our preliminary determination, we are excluding from our margin analysis the sales made to these entities by Usinor that fail our arm's length or cost tests.

On March 28, 2002, Usinor submitted the requested cost information associated with sales of cold-rolled steel made by affiliated SSCs. On April 2, 2002, petitioners contended that Usinor submitted an incomplete and unusable response with regard to its downstream sales by SSCs and that the Department should apply adverse facts available in for these sales. On April 4, 2002, Usinor explained that in some instances, because one of the reporting affiliated service centers purchased merchandise from another reporting affiliated reseller, both the initial sale from the supplying reseller to the other, and any subsequent sale from the purchasing reseller to its customer, have been reported. Usinor further explained that as a result of such transactions its home market database includes the SSCs' sales of subject merchandise that had been purchased from affiliated mills and sales of subject merchandise that had been purchased from other affiliated SSCs. For purposes of our preliminary margin analysis, we have excluded all sales made by the five affiliated SSCs to each other and to affiliated mills (see Memorandum to the File regarding Antidumping Duty Investigation on Certain Cold-Rolled Carbon Steel Flat Products from France; Preliminary Determination Analysis for the Usinor Group, dated April 26, 2002, (Sales Analysis Memo)). Usinor also indicated in its April 4, 2002, letter that it had included resales of cold-rolled steel made by the five affiliated SSCs to other affiliated entities that appear to have resold some or all of such merchandise in the home market. Usinor therefore failed to report certain downstream resales of cold-rolled steel (those resales made by the SSCs' affiliated customers) to the first unaffiliated customer.

Because Usinor failed to fully provide all downstream sales to unaffiliated customers pursuant to the Department's request for this information, we preliminarily find, in accordance with section 776(a) of the Act, that the use of partial adverse facts available is appropriate for Usinor. Further, Usinor's failure to provide adequate explanations for its inability to provide the requested information indicates that Usinor has not acted to the best of its ability in responding to the Department's request for information. Therefore, the Department has also determined that Usinor has not acted to the best of its ability, and thus, application of an adverse inference is warranted, pursuant to section 776(b) of the Act. Accordingly, we have applied the highest gross unit price of subject merchandise sold to unaffiliated customers by model to those sales of cold-rolled steel made by the five affiliated resellers to affiliated customers by model that fail the arm's-length test. For those sales that did not have a model match, we applied the weighted-average gross unit price for those models with a match. (See Sales Analysis Memo.)

Credit Expense

During this proceeding, the Department gathered information from Usinor regarding the date of payment used to calculate its per unit credit expense. On January 14, 2002, Usinor reported as the date of payment for U.S. sales the date on which it actually received payment, according to its accounts receivables ledger, from its unaffiliated customer. Usinor also reported that, for its U.S. sales of cold-rolled steel made during the POI through its affiliated "super distributor" (Usinor Steel Corporation, Inc. (USC)), it sold its accounts receivables to an affiliated financing company. After subsequent supplemental questionnaires, we learned that not only did USC sell its accounts receivables to an affiliated financing company, but in turn its affiliated financing company sold these accounts receivables to an unaffiliated funding company. On March 5, 2002, as requested by the Department, Usinor reported the date on which USC sold its accounts receivables to its affiliated financing company.

However, Usinor has failed to provide the Department the information necessary to allow us to understand the relationship between USC's affiliated financing company and the unaffiliated funding company, and the terms at which its affiliated financing company transfers title to the accounts receivable to this unaffiliated funding company. We preliminarily find, in accordance with section 776(a) of the Act, that the use of neutral facts available is appropriate for Usinor where Usinor has failed to provide us with the appropriate date of payment for its CEP sales made by USC in the United States. Therefore, based on the facts otherwise available, we are preliminarily calculating the credit period as the payment term applicable to each U.S. sale of cold-rolled steel made through USC where the difference between the reported payment date and the shipment date (i.e., sale date) is less than the indicated payment term. Accordingly, for such instances, we have recalculated Usinor's imputed credit expense using this calculated credit period (*see* Sales Analysis Memo).

Movement Expenses

In some instances, Usinor did not report an expense associated with the movement of subject merchandise for sale in the home market and the United States and/or Usinor provided an estimated cost adjusted for a variance between its estimated and actual total expenses. Usinor stated that it was unable to systematically link the movement expenses in question to transaction-specific invoices. It is the Department's practice and preference to use actual expenses for its margin calculations. We preliminarily find, in accordance with section 776(a) of the Act, that the use of facts otherwise available is appropriate for Usinor where Usinor has failed to provide us

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with the actual expenses associated with the movement of its sales of cold-rolled steel during the POI in the home market and United States. Accordingly, for purposes of our preliminary determination, we applied a weighted-average movement expense using actual expenses provided by Usinor for those instances in which Usinor failed to report an expense or reported an adjusted estimated expense.

Product Comparisons

Pursuant to section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on fourteen criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether hardened or not; whether painted with poly vinylidene fluoride, other paint, or not; carbon content level; quality; yield strength; thickness; thickness tolerance; width; whether mill, slit, deburred edged, or other edge; whether coiled or cut sheet; whether temper-rolled or not temper-rolled; whether stretch or tension leveled or not; whether annealed open coil, other annealed, or not annealed; and whether finished with bright, embossed/texturized, or matte surface. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics and characteristic subcategories indicated in the Department's November 16, 2001 questionnaire.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from France to the United States were made at less than fair value, we compared constructed export price (CEP) and export price (EP), where appropriate, to the normal value (NV), as described in the "Constructed Export Price," "Export Price," and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs and EPs, where appropriate, for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Usinor reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Usinor stated that the invoice date best reflects the date on which the material terms of sale are established and that it is possible for the quantity, price or other terms of sale to be modified between order date and invoice date.

On January 7, 2002, petitioners requested that the Department require Usinor to report the frequency of changes made to a particular order between the order date and sale date. On February 14, 2002, the Department requested that Usinor submit the order date for all sales made during the POI. On March 5, 2002, Usinor reported the order date for all sales made during the POI in its home market and U.S. databases. Usinor indicated that for the most part when an order is modified, the original information recorded in the company's normal computer systems is written over with the new information, and the original record is not maintained. Usinor explained that for some of its reported sales transactions it is possible to determine that the record has been modified. However, Usinor further explained that it is not possible to determine which fields within the order have changed. Usinor concluded that the frequency of changes in price, quantity, or specifications between the initial order date and the final invoice date cannot be separately measured.

The Department is preliminarily using the invoice date as the date of sale for both home market and U.S. sales. We intend to examine this issue at verification, and will incorporate our findings in our analysis for the final determination.

In both the home and U.S. markets, Usinor had consignment sales in which subject merchandise was shipped to a storage facility at the customer's location. On February 12, 2002, the Department requested that Usinor report the date of sale as the date of shipment if the date of invoice is after the date of shipment for consignment sales transactions. For home market consignment sales, Usinor failed to comply with the Department's request, although for consignment sales made in the United States, Usinor reported, as requested, the date of shipment as the date of sale. For consignment sales made in the home market, we preliminarily determine that the date of shipment is the date of sale. For further details, see Sales Analysis Memo.

Export Price

We used EP methodology in accordance with section 772(a) of the Act for sales where Usinor sold the merchandise under investigation before the date of importation directly to an unaffiliated purchaser in the United States. We based EP on packed prices to the first unaffiliated customer. In accordance with section 772(c)(2), we made deductions from the starting price for movement expenses, including foreign inland freight, inland insurance, foreign brokerage and handling, international freight, marine insurance, and U.S. customs duty.

Constructed Export Price

Usinor reported as CEP transactions all sales of subject merchandise to its affiliated trading company, USC. USC then resold the subject merchandise to unaffiliated customers in the United States.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales made by USC to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, foreign inland insurance, foreign brokerage and handling, international freight, marine insurance, U.S. inland freight, U.S. inland insurance, other U.S. transportation fees, and U.S. customs duty. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including commissions, direct selling expenses (warranty expenses and credit expenses), U.S. inventory carrying costs, and U.S. indirect selling expenses. For CEP sales, we also made an adjustment for profit in accordance with section 772(d)(3) of the Act. For sales of cold-rolled steel that were coded as non-prime, we re-coded these sales as prime as Usinor did not provide sufficient evidence showing that these sales are actually of non-prime merchandise (*see* Sales Analysis Memo). We also removed all canceled sales from our analysis (*see* Sales Analysis Memo). For further information on adjustments made to our margin calculation please *see* Sales Analysis Memo.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. As Usinor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade. For those instances in which Usinor did not report a payment date with respect to its home market sales which have not been paid, we assigned the date of this preliminary determination (April 26, 2002) as the date of payment (*see* Sales Analysis Memo). For warranty expenses that were reported for Usinor's sales of cold-rolled steel produced by Atlantique, Lorraine, and Etilam, we multiplied the gross unit price by the calculated product family and customer-specific warranty expenses (reported by Usinor in its Appendix SB–12 and Appendix SB–14, respectively, dated March 5, 2002). For further information on adjustments made to our margin calculation *see* Sales Analysis Memo.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated service centers and end-users are made at arm's-length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's length prices. *See* 19 CFR 351.403(c); *see* also Antidumping Duties; Countervailing Duties Final Rule, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that French producers had made sales of cold-rolled steel in the home market at prices below the cost of producing the merchandise, in accordance with section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of section 773(b) of the Act. We conducted the COP analysis described below.

In accordance with section 773(b)(3) of the Act, we calculated a weighted average COP based on the sum of Usinor's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (SG&A) including, interest expenses, and packing costs.

We relied on information from Usinor's section D questionnaire responses to calculate COP, except for the following changes: (1) Revised the total cost of manufacturing to include a cost classification variance between the financial and cost accounting systems for three of the collapsed companies (Atlantique, Lorraine, and Packaging); (2) included inland freight, inventory carrying cost, indirect selling and packing expenses between Usinor and its affiliates in the COP of the affiliated resellers, for the merchandise under consideration that was further manufactured by affiliates prior to sale to an unaffiliated party; (3) adjusted the reported value of slab and coil inputs obtained from affiliated parties to reflect the higher of transfer or market price; (4) revised the per-unit SG&A expenses to include application of the SG&A rate to the yield loss variable for the affiliated resellers; (5) revised the SG&A rate calculations to include certain expenses classified as extraordinary in the numerators, for Atlantique, Lorraine, Packaging, and Beautor. For Atlantique, Lorraine, and Packaging, we also revised the SG&A rate calculations to include foreign exchange losses and miscellaneous SG&A related accruals and provisions; (6) revised Etilam's SG&A rate calculation to exclude net exchange gains on accounts receivables from the numerator; (7) revised the unabsorbed SG&A costs rate calculation to exclude transportation costs from the denominator; (8) revised the financial expense rate calculation to exclude research and development costs from the denominator (the COP and CV files submitted by respondent did not reflect the submitted financial expense rate); and (9) based the difference in merchandise adjustment on the total cost of manufacturing rather than variable cost of manufacturing since certain fixed costs were included in variable costs in the affiliated resellers' COP and CV files, for the merchandise under consideration that was further manufactured by affiliates prior to sale to an unaffiliated party. For further details, *see* Memorandum from Heidi Schriefer to Neal Halper, dated April 26, 2002, Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (Cost Calculation Memo). We compared the weighted-average COP for Usinor to home market sales prices of the foreign like product, as required under section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Usinor's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of Usinor's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with section773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Constructed Value

In accordance with section 773(e)(1) of the Tariff Act, we calculated CV, where applicable, based on the sum of respondent's cost of materials, fabrication, SG&A including, interest expenses, and profit. We made the same

adjustments to the submitted CV data as noted above in the "Cost of Production" section. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Usinor in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country.

Price-to-Price Comparisons

We calculated NV for Usinor on prices of home market sales that passed the COP test. We made adjustments for billing adjustments and discounts. We made deductions, where appropriate, for warehousing, foreign inland freight, freight adjustments, and inland insurance, pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We have removed sales transactions that were identified as sample or testing/evaluation sales from our margin calculation (see Sales Analysis Memo). Usinor reported that, during the POI, it paid affiliated sales agents commissions for their handling of some cold-rolled steel sales in home market and United States. During the course of this proceeding, the Department requested that Usinor provide evidence for the record showing that these transactions were made at arm's length. With respect to commissions paid for sales of cold-rolled steel made in the home market, Usinor reported commissions paid to its affiliated selling agents. However, Usinor reported actual selling expenses incurred by its affiliated selling agents with respect to sales of cold-rolled steel made in the United States. We preliminarily find that Usinor has not sufficiently demonstrated that the reported commissions it paid to affiliated selling agents were made at arm's length. Therefore, we did not make adjustments for commissions in the home market. There was one more instance in which the Department preliminarily denied Usinor an adjustment to its NV. Due to the proprietary nature of this adjustment, we have explained this calculation in our preliminary analysis memo (see Sales Analysis Memo). We also excluded all intra-company transactions made between collapsed entities and all sales by the affiliated SSC's to other affiliated producers or SSCs that have already reported the resales to the first unaffiliated customer.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with section 773(a)(2)(A) of the Act, we based SG&A expense, interest, and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in France. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than U.S. sales, we examine whether the respondent's sales involved different marketing stages (or their equivalent) based on the channel of distribution, customer categories, and selling functions (or services offered) to each customer or customer category, in both markets. If the comparison market sales are made at different LOTs and the difference affects price comparability, as manifested in a pattern of consistent price differences between LOTs, and if the comparison market sale is at a different LOT from the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV is determined at a LOT at a more advanced stage of marketing than the CEP LOT, and despite the fact that the respondent has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability, the Department will grant a CEP offset. See section 351.412(f)(1) of the Department's regulations.

In the home market, Usinor made sales to unaffiliated and affiliated end-users, unaffiliated distributors, and affiliated and unaffiliated SSCs. Usinor claims five channels of distribution with respect to these sales: (1) Sales shipped from the mill directly to unaffiliated end-users, distributors or service centers; (2) consignment sales, in which the merchandise is shipped to a storage location at the customer's site; (3) sales from the mills to affiliated producers of downstream products that processed the products into non-subject products prior to sale to the first unaffiliated customer; (4) sales from the mills to affiliated service centers, which generally processed the merchandise into slit strip or cut-to-length sheets, and then sold the processed strips and sheets to affiliated or unaffiliated customers; and (5) sales by affiliated service centers to unaffiliated customers. Usinor claimed two LOTs in the home market: LOT 1 includes direct and consignment sales to unaffiliated end-users, unaffiliated distributors, affiliated and unaffiliated steel service centers, and affiliated customers that used cold-rolled steel as an input for the production of downstream products by Usinor's producing mills; and LOT 2 includes direct sales to affiliated and unaffiliated end-users, and affiliated steel service centers by Usinor's affiliated SSCs.

In the U.S. market, Usinor made sales to unaffiliated end-users and affiliated steel service centers. Usinor claims two channels of distribution with respect to these sales: (1) direct shipment sales; and (2) consignment sales. Usinor claims two LOTs in the U.S.: LOT 1 includes direct and consignment sales made by USC; and LOT 2 includes direct sales made by Usinor.

On February 26, 2002, the Department determined to collapse the eight Usinor affiliated producers (Atlantique, Lorraine, Méditerranée, Packaging, Etilam, Beautor, Haironville and PUM) into a single entity for purposes of this investigation. (*See* Collapsing Memo.) Therefore, for our preliminary LOT analysis we have considered there to be only four channels of distribution in the home market: (1) Direct sales to unaffiliated customers (*i.e.*, end-users, distributors, and SSCs); (2) consignment sales to unaffiliated customers; (3) sales to affiliated SSCs (that were excluded from reporting their resales—*see* Reporting Letter); and (4) sales made by the five affiliated SSCs to unaffiliated customers (*i.e.*, end-users, distributors, and service centers).

Usinor claims that CEP sales (those sales made through its affiliated trading company, USC) were made at a LOT more removed than the LOT of the home market sales made by its affiliated SSCs to unaffiliated customers. Usinor requests that the Department grant a CEP offset on all CEP sales, as Usinor's CEP sales cannot be compared to home market sales at the same LOT.

In determining whether a separate LOT actually existed in the home market, we first examined if sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution by Usinor and its unaffiliated customers and the affiliated service centers to their unaffiliated customers. Normally, stages of marketing focus on whether sales are to SSCs or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Usinor's sales shipped from the mill directly, or on consignment basis to its unaffiliated customers (all customer categories), are made at the same stage of marketing as sales made by its affiliated service centers to their unaffiliated customers.

In further analyzing Usinor's LOT claims in the home market, we reviewed available information on the record about the company's selling functions performed in the home market. Usinor identified 20 different selling functions (*see* Exhibit SSA–4 of Usinor's March 13, 2002, second supplemental Section A response) associated with its sales to unaffiliated customers.

Next, we examined whether these selling functions are provided consistently to Usinor's four categories of customers in the home market, finding that all selling functions were provided to the same degree (*i.e.*, high level of activity) to all customer categories (*i.e.*, end-users, distributors, and SSCs), except for post-sale warehousing for consignment sales, visiting customers and promoting products for sales to affiliated service centers. In this case, we do not consider the difference in selling functions to be a significant difference considering that the majority of sales made in the home market were non-consignment sales and post-sale warehousing is only one selling function out of a total of twenty offered selling functions. Therefore, we preliminarily determine that only one LOT existed for Usinor in the home market.

In determining whether separate LOTs actually existed in the U.S. market, we first examined whether Usinor's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Usinor and its unaffiliated customers. As noted above, generally the stages of marketing focus on whether sales are to SSCs or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Usinor's cold-rolled steel sales shipped directly from the mill to unaffiliated customers may be at a different stage of marketing than its sales made through USC. This would indicate that Usinor has two U.S. LOTs.

In determining whether the LOT in the home market is at a more removed LOT than LOT 1 that exists in the United States, as Usinor claims, we examined the selling functions performed by Usinor for CEP sales. According to Usinor, the selling functions that were provided for its CEP sales were the same as those provided in the home market, except for administrative support. We noted that the level at which the selling functions were performed by Usinor were not common to its CEP and home market sales (*e.g.*, customer sales contact, production planning and order evaluation, warranty claims, technical service, and freight and delivery services were provided to home market sales, but not to CEP sales). Consequently, we preliminarily determine that Usinor provided significantly different selling functions in the home market than those in the U.S. market for CEP sales.

With respect to its sales made at LOT 2, based on EP, in the United States, we noted insignificant differences in the level at which certain selling functions were performed (*i.e.*, product brochures, general inventory maintenance) and thus, found these selling functions to be comparable to the home market LOT, and therefore no LOT adjustment was needed.

We next examined whether a LOT adjustment was appropriate when Usinor's CEP sales are compared to the home market LOTs. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found only one LOT in the home market. Instead, because we determined that all of Usinor's home market sales were made at levels of trade more advanced than the LOT of Usinor's U.S. sales, we granted a CEP offset and applied this to comparisons between Usinor's CEP sales and all home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Tariff Act.

Verification

As provided in section 782(i) of the Act, we intend to verify all information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(b)(3) of the Act, the Department will disregard any weighted-average dumping margin that is zero or de minimis, *i.e.* less than 2 percent ad valorem. Based on our preliminary margin calculation, we will not direct the U.S. Customs Service to suspend liquidation of any entries of cold-rolled steel from France as described in the "Scope of Investigation" section, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Department does not require any cash deposit or posting of a bond for this preliminary determination. The weighted-average dumping margin in the preliminary determination is as follows:

Exporter/manufacturer	Weighted average margin (percentage)
Usinor Group	1.97*

*De minimis.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, within 75 days after the date of our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for

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submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination no later than 75 days after the date of this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11186 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–834]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Cold-Rolled Carbon Steel Flat Products From Germany

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Charles Rast at (202) 482–1324, Anya Naschak at (202) 482–6375, Shireen Pasha at (202) 482–0193, or Abdelali Elouaradia at (202) 482–1374, Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce's (Department) regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that cold-rolled carbon steel flat products (cold-rolled steel) from Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 733(b) of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping duty investigations of imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. *See Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198, (October 26, 2001) (Initiation). Also on October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like products in the markets of Belgium, France, Germany, India, Japan, Korea, the Netherlands, Thailand, and Turkey were made at prices below their respective costs of production (COP) within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated country-wide cost investigations on sales of the foreign like products in these markets. Since the initiation of this investigation the following events have occurred.

The Department set aside a period for all interested parties to raise issues regarding product coverage. From October 30, 2001 through November 8, 2001, National Steel Corporation, Bethlehem Steel Corporation, LTV Steel Company, Inc., United States Steel Corporation, Nucor Corporation (collectively petitioners), and Kern Liebers USA, Inc., filed comments proposing clarifications to the scope of these investigations. Also, from November to December 2001, the Department received numerous responses from interested parties aimed at clarifying the scope of the investigations.

On November 13, 2001 the United States International Trade Commission (ITC) notified the Department of its affirmative preliminary injury determination in this case.

The Department subsequently issued sections A through E of its antidumping questionnaire to Thyssen Krupp Stahl AG (TKS) on November 16, 2001. The Department also issued corrected pages of the model matching criteria on November 26, 2001.

On December 5, 2001, December 14, 2001, and February 8, 2002, TKS provided some information regarding certain home market downstream sales and home market sales of subject merchandise by two affiliated producers, and requested that the Department exempt it from reporting further information on these sales. On December 12, 2001 and December 27, 2001 in response to TKS' requests, and on February 15, 2002 (in the Department's supplemental sections B and C questionnaire), the Department indicated in writing that TKS should fully report these home market sales.

TKS and its affiliated companies Thyssen Krupp Stahl North America (TKSNA) and Thyssen Inc. (TINC) (collectively Thyssen) submitted their response to section A of the questionnaire on December 21, 2001. On January 14, 2002, we received responses to sections B through E of the questionnaire from Thyssen.

Petitioners filed comments on Thyssen's section A questionnaire response on January 7, 2002. They filed comments on sections B through E of the questionnaire on January 28, 2002.

The Department issued a supplemental questionnaire for section A to Thyssen on January 18, 2002. On February 15, 2002, we issued supplemental questionnaires for sections B through E to Thyssen.

Thyssen submitted its response to the supplemental section A questionnaire on February 8, 2002. We received Thyssen's response to the supplemental sections B through E questionnaires on March 19, 2002.

Petitioners filed comments on Thyssen's supplemental section A questionnaire response on February 15, 2002, and February 22, 2002. Petitioners filed additional comments on Thyssen's questionnaire responses on March 28, 2002, April 1, 2002, April 5, 2002, and April 12, 2002.

The Department issued a second supplemental questionnaire to Thyssen for section A on February 28, 2002. Thyssen submitted its response on March 19, 2002. Thyssen filed additional comments on April 10, 2002.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to Section 733(c)(1)(A) of the Act. On February 14, 2002, we postponed the preliminary determination until no later than April 26, 2002. *See Certain Cold Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela; Notice of Postponement of Preliminary Determinations in Antidumping Duty Investigations*, 67 FR 8227 (February 22, 2002).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 28, 2001), and is in accordance with Section 351.204(b)(1) of the Department's regulations.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to Section 735(a)(2) of the Act, on April 19, 2002, Thyssen requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination by sixty (60) days, and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because: (1) Our preliminary determination is affirmative, (2) Thyssen accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

In accordance with Section 776(a) of the Act, we preliminarily determine that the use of partial "facts available" is warranted for purposes of calculating Thyssen's dumping margins. Section 776(a)(2)(A) of the Act provides that "if any interested party or any other person—(A) withholds information that has been requested by the administering authority * * *, (B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of Section 782, (C) significantly impedes a proceeding under this title, or (D) provides such information but the information cannot be verified as provided in Section 782(i), the administering authority * * * shall, subject to Section 782(d), use the facts otherwise available in reaching the applicable determination under this title."

In addition, Section 776(b) of the Act provides that adverse inferences may be used in selecting the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with requests for information. See also Statement of Administrative Action accompanying the URAA, H.R. Rep. No. 103–316, vol. 1, at 870 (1994) (SAA).

Where the Department determines that a response to a request for information does not comply with the request, Section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party the opportunity to remedy or explain the deficiency. If the party fails to remedy the deficiency within the applicable time limits, the Department may, subject to 782(e), disregard all or part of the original and subsequent responses, as appropriate. Section 782(e) provides that the Department "shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority" if the information is timely, can be verified, is not so incomplete that it cannot be used, and if the interested party acted to the best of its ability in providing the information. Where all of these conditions are met, and the Department can use the information without undue difficulties, the statute requires it to do so.

Thyssen has refused after repeated requests (in the original questionnaire, two subsequent letters, a supplemental questionnaire, and meetings with Department personnel) by the Department to report its downstream sales by affiliated resellers in the home market, even though Thyssen's sales to its affiliates fail the arm's-length test and the data supplied by Thyssen does not demonstrate that these downstream sales will not match to U.S. sales (see Sales Analysis Memorandum dated April 26, 2002 (Sales Analysis Memo)). For downstream sales by three of Thyssen's affiliated service centers, Thyssen only provided an abbreviated sales listing limited to customer code, consignee, order number, invoice number, material number, material code, width, quantity, value, and plant. The partial downstream sales information provided by Thyssen is not sufficient for the Department's model match or margin calculation purposes. Specifically, Thyssen has failed to provide any model match characteristics for any of its reported downstream sales, other than the "width" criterion, which is eighth in importance in the model match hierarchy out of fourteen total characteristics. The information provided by Thyssen regarding these sales indicates that the resales fall within certain width ranges as defined by the Department's model matching criteria. Because Thyssen also made sales in the United States within these same width ranges, the Department is unable to determine with certainty whether a substantial portion of Thyssen's downstream sales potentially match to U.S. sales sold in those widths. Further, Thyssen has provided no selling expense information whatsoever for its reported downstream sales. Therefore, the Department is unable to

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determine with certainty the potential distortive effect of these unreported downstream sales on the normal values of home market sales.

Similarly, for U.S. sales, Thyssen has reported only partial information for certain "further processed" U.S. sales made through one affiliate. Thyssen maintained that the Department should apply the special rule in Section 772(e) of the Act, thereby excusing Thyssen from reporting complete sales information for these further processed sales by a single affiliate. However, the information provided to the Department to date by Thyssen does not demonstrate that the value added in the United States is likely to "exceed substantially the value of the subject merchandise," which the Department has determined to be a value added of "at least 65 percent of the price charged to the first unaffiliated purchaser for the merchandise as sold in the United States" (*see* 19 CFR 351.402(c)(2)). Therefore, Thyssen does not qualify for the special rule in Section 772(e) of the Act.

Accordingly, the Department requested that Thyssen report all complete sales and further manufacturing information for all further manufactured sales made through this one affiliate. Thyssen provided purchase orders, production costs, shipment records, a narrative methodology for calculating the adjustments and expenses requested by the Department in its section C questionnaire for these further manufactured sales, but these sales were not included in their revised sales database. Thyssen also supplied a cross-reference to the numerous invoices needed for the Department to calculate these expenses for margin calculation purposes. However, Thyssen did not provide information on the further manufacturing process, financial statements, or balance sheets necessary for properly analyzing the information that was provided.

Therefore, for purposes of the preliminary determination, the Department has determined that Thyssen has not provided all information necessary to this investigation. Consequently, the application of partial facts available is appropriate with respect to downstream sales by Thyssen's affiliated resellers in the home market, and to sales by one affiliated further processor in the U.S. market. Moreover, the pervasive level of deficiencies in Thyssen's questionnaire responses, as well as Thyssen's failure to provide adequate explanations for its claimed inability to provide requested information or in proffering reasonable alternative methodologies for reporting data it deemed too "burdensome" to provide indicates that Thyssen has not acted to the best of its ability in responding to the Department's questionnaires. Therefore, the Department is applying an adverse inference, pursuant to Section 776(b).

As facts available for the missing downstream sales, we have segregated the home market sales into width ranges and calculated the highest gross unit price (GRSUPRH) reported by control number (CONNUM) for sales in specific width ranges separately, where there are potential matches to Thyssen's U.S. sales. These width ranges correspond to a portion of the widths sold by Thyssen's affiliated service centers (*see* Thyssen's March 19, 2002 supplemental section B response). In addition, we have determined to apply the lowest or highest adjustments—whichever is adverse—for the CONNUMs defined above. The highest GRSUPRH and the adverse adjustments were applied to all sales within those width ranges and the revised amounts were used to calculate normal value (NV).

For sales by one of Thyssen's affiliated U.S. resellers that Thyssen failed to report as discussed above, we have identified the highest non-aberrational margin for prime sales in the U.S. market and applied the resulting margin to all sales to the one U.S. affiliated reseller as a surrogate for the unreported further processed sales.

Product Comparisons

Pursuant to Section 771(16) of the Act, all products produced by the respondent that are within the scope of the investigation, as specified in the scope section, and were sold in the comparison market during the POI, are considered to be foreign like products. We have relied on fourteen criteria, in descending order of importance, to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: whether hardened or not; whether painted with poly vinylidene floride, other paint, or not; carbon content level; quality; yield strength; thickness; thickness tolerance; width; whether mill, slit, deburred edged, or other edge; whether coiled or cut sheet; whether temper rolled or not temper rolled; whether stretch or tension leveled or not; whether annealed open coil, other annealed, or not annealed; and whether finished with bright, embossed/texturized, or matte surface. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product, based on the characteristics and characteristic subcategories indicated in the Department's November 16, 2001, questionnaire.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Germany to the United States were made at less than fair value, we compared constructed export price (CEP) to the normal value (NV), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with Section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average CEPs for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Thyssen reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Thyssen stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity can and do change between order date and invoice date. However, petitioners have alleged that the sales documentation indicates that the order date appears to be the date when the material terms of sale are set for the majority of Thyssen's sales of cold-rolled steel. Consequently, on January 18, 2002, and February 15, 2002, the Department requested that Thyssen provide additional information concerning the nature and frequency of price and quantity changes occurring between the date of order and date of invoice. We also asked Thyssen to report order date for all home market and U.S. sales and to ensure that all sales with order or invoice dates within the POI are reported.

On March 19, 2002, Thyssen reiterated that invoice date is the appropriate date of sale and stated that it is unable to gather the data within a reasonable period of time and that Thyssen did not maintain the appropriate order date information in the normal course of business in its computer system. Thyssen did not report order date for home market sales or U.S. sales. For purposes of the preliminary determination, the Department has decided to use Thyssen's reported invoice date as the date of sale for both home market and U.S. sales. We intend to fully examine this issue at verification, and we will incorporate our findings, as appropriate, in our analysis for the final determination. If we determine that order confirmation, or another date other than invoice date, is the appropriate date of sale, we may resort to facts available for the final determination to the extent that this information has not been reported.

Constructed Export Price

Thyssen reported as CEP transactions all sales of subject merchandise to TKSNA and TINC. TKSNA and TINC then resold the subject merchandise to affiliated and unaffiliated customers in the United States.

We calculated CEP, in accordance with subsection 772(b) of the Act, for those sales made by TKSNA and TINC to unaffiliated purchasers in the United States. We based CEP on the packed, delivered, duty paid prices to unaffiliated purchasers in the United States. We made adjustments for discounts and rebates, where applicable. We also made deductions for freight charged to the customer and other movement expenses in accordance with Section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, international freight, marine insurance, U.S. inland freight, U.S. warehousing, other U.S. transportation expenses, and U.S. duty. In accordance with Section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit and warranty expenses), inventory carrying costs, and indirect selling expenses. In accordance with Section 772(d)(2) of the Act, we deducted the cost of further manufacturing. For CEP sales, we also made an adjustment for profit in accordance with Section 772(d)(3) of the Act. As noted above, the Department has applied partial facts available for one U.S. processor that further processes material. For sales other than for the single affiliated further processor for which we applied partial facts available and adjusted the amounts reported, we made an adjustment for those sales in which material was sent to U.S. processors to be further processed based on the transaction-specific further-processing amounts reported by Thyssen. In addition, the entities TKSNA and TINC performed some further manufacturing of some of Thyssen's U.S. sales. For these sales, we deducted the cost of further processing in accordance with Section 772(d)(2) of the Act. In calculating the cost of further manufacturing for TKSNA and TINC, we relied upon the further manufacturing information provided by Thyssen.

Normal Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with Section 773(a)(1)(C) of the Act. As Thyssen's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. We have also made adjustments to NV for certain discounts and adjustments. For one home market discount, a trader discount, which Thyssen states is granted only to trading company/service centers for sales through such companies, we have revised the application of this discount and applied it only to home market sales to trading companies/service centers (*see* Thyssen's March 19, 2002 supplemental B–C response, at page 58; and *see* Sales Analysis Memo). For the interest rate used in calculating U.S. credit and U.S. inventory carrying cost expenses, we have revised this rate to represent the actual short-term borrowing rate incurred by Thyssen during the POI, without making an adjustment for interest income. In addition, we have reclassified Thyssen's claimed home market sales adjustment for inland freight, mill to company border, as a cost of production (*see* Sales Analysis Memo). Therefore, except as noted above, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-Length Test

To test whether sales to affiliated end-user customers are made at arm's length prices, we compare, on a model-specific basis, the prices of sales to affiliated customers with sales to unaffiliated customers net of all movement charges, billing adjustments, discounts, direct selling expenses, and packing. Where, for the tested models of foreign like product, prices to the affiliated party are on average 99.5 percent or more of the price to unaffiliated parties, we determine that such sales are made at arm's-length prices. *See* 19 CFR 351.403(c); *see* also *Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27355 (May 19, 1997).

If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102. Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

Cost of Production Analysis

Based on our analysis of the cost allegations submitted by petitioners in the original petition, the Department found reasonable grounds to believe or suspect that German producers had made sales of cold-rolled steel in the home market at prices below the cost of producing the merchandise, in accordance with Section 773(b)(2)(A)(i) of the Act. As a result, the Department initiated an investigation to determine whether respondents made home market sales during the POI at prices below their cost of production (COP) within the meaning of Section 773(b) of the Act. We conducted the COP analysis described below.

In accordance with Section 773(b)(3) of the Act, we calculated a weighted average COP based on the sum of Thyssen's cost of materials and fabrication for the foreign like product, plus an amount for home market selling, general and administrative expenses (SG&A), including interest expenses, and packing costs.

In accordance with Sections 773(f) (2) and (3) of the Act, the major input rule, we have adjusted the reported value of slab inputs obtained from affiliated parties to reflect the higher of the affiliates cost of production, the transfer or the market price (*see* Section 351.407(b) of the Department's regulations). We have also revised the general and administrative (G&A) numerator to include the net loss on the sale of assets, wages and salaries, allocations for reserves and other miscellaneous expenses. We revised the financial expense rate calculation to include miscellaneous financial expenses, foreign exchange losses, and we have excluded other interest income and income from other securities from the numerator of the calculation. We revised Thyssen's total cost of manufacturing to include certain costs claimed as freight expense by Thyssen. Based on the Department's normal practice, we have calculated a G&A expense rate for Thyssen's U.S. further manufacturers as a percentage of the manufacturers conversion cost from their fiscal year end financial statements (see Sales Analysis Memo; and see Cost

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Analysis Memorandum, dated April 26, 2002).

We used the information except as noted above from Thyssen's section D questionnaire responses to calculate COP. We compared the weighted-average COP for Thyssen to home market sales prices of the foreign like product, as required under Section 773(b) of the Act. In determining whether to disregard home market sales made at prices less than the COP, we examined whether such sales were made: (1) In substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time in accordance with Sections 773(b)(1)(A) and (B) of the Act. On a product-specific basis, we compared the COP to home market prices, less any applicable movement charges, billing adjustments, and discounts and rebates.

Pursuant to Section 773(b)(2)(C)(i) of the Act, where less than twenty percent of Thyssen's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in substantial quantities. Where twenty percent or more of Thyssen's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in substantial quantities, in accordance with Section 773(b)(2)(C)(i) of the Act, within an extended period of time. In such cases, because we compared prices to weighed average COPs for the POI, we also determined that such sales were not made at prices that would not permit recovery of all costs within a reasonable period of time, in accordance with Section 773(b)(2)(D) of the Act. Therefore, we disregarded those below-cost sales.

Constructed Value

In accordance with Section 773(e)(1) of the Tariff Act, we calculated CV, where applicable, based on the sum of respondent's cost of materials, fabrication, SG&A, including interest expenses, and profit. In accordance with Section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Thyssen in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the foreign country. We used the CV data Thyssen supplied in its section D questionnaire responses, adjusted as noted in the COP Analysis section above.

Price-to-Price Comparisons

We calculated NV for Thyssen based on prices of home market sales that passed the COP test and after applying partial facts available to GRSUPRH and sales adjustments as described above in the Facts Available section. We made adjustments for billing adjustments and discounts. We made deductions, where appropriate, for warehousing, foreign inland freight, freight adjustments, and inland insurance, pursuant to Section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in physical characteristics of the merchandise pursuant to Section 773(a)(6)(C)(ii) of the Act, as well as for differences in circumstances of sale (COS) in accordance with Section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments for imputed credit expenses and warranties. Finally, we deducted home market packing costs in accordance with Section 773(a)(6)(A) and (B) of the Act. For additional adjustments made to NV, please see the Normal Value section above.

Price-to-CV Comparisons

In accordance with Section 773(a)(4) of the Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise. We calculated CV based on the costs of materials and fabrication employed in producing the subject merchandise, SG&A, and profit. In accordance with Section 773(a)(2)(A) of the Act, we based SG&A expense and profit on the amounts incurred and realized by the respondent in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Germany. For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with Section 773(a)(8) of the Act. When we compared CV to CEP, we deducted from CV the weighted-average home market direct selling expenses.

Level of Trade

In accordance with Section 773(a)(1)(B) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, is that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For CEP, it is the level of the constructed sale from the exporter to the importer

To determine whether NV sales are at a different LOT than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution. If the comparison market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under Section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affect price comparability, we adjust NV under Section 773(A)(7)(B) of the Act (the CEP offset provision) (*see, e.g., Certain Carbon Steel Plate from South Africa, Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In the home market, Thyssen made sales to distributors and end-users. The company claims three channels of distribution with respect to these sales: sales shipped from the mill to the customer (*e.g.*, sales to automotive, other end-users, service centers); sales shipped from the mill to the warehouse for just in time delivery (*e.g.*, sales to automotive customers only); sales made via e-commerce (*e.g.*, sales to other end-users, sales to service centers). Thyssen claims four LOTs in the home market: (1) Sales to Thyssen's affiliated trading company/service centers (*i.e.*, the producing mills sell to service centers, which resell the merchandise in original form or following further processing); (2) sales to automotive customers (*i.e.*, sales sold directly to automotive customers held in consignment warehouses until firm release); (3) sales to other end-user customers (*i.e.*, sales shipped directly from the mill); (4) sales from affiliated service centers to their customers (*i.e.*, sales of Thyssen merchandise through its affiliated service centers to unaffiliated customers).

In the U.S. market, Thyssen reported sales made to its affiliated companies TKSNA and TINC, claiming three channels of distribution for these sales: (1) Sales from warehouse stock (*i.e.*, sales shipped from inventory maintained in a district warehouse to unaffiliated U.S. distributor and end-user customers); (2) further manufactured sales from warehouse stock; and (3) produced to order sales from warehouse stock. Thyssen claims one LOT in the U.S.: CEP sales by TINC and TKSNA to U.S. customers. Thyssen claims that CEP sales were made at a LOT more removed than the LOT of all home market sales. Thyssen requests that the Department grant a CEP offset on all CEP sales, as Thyssen's CEP sales cannot be compared to home market sales at the same LOT.

In determining whether separate LOT actually existed in the home market, we first examined if Thyssen's sales involved different marketing stages (or their equivalent) and selling functions along the chain of distribution between Thyssen and its unaffiliated customers. Normally, stages of marketing focus on whether sales are to service centers or end-users, in some instances taking into account whether or not sales are made through intermediate parties. On this basis, it appears that Thyssen's sales shipped from the mill to automotive and other end-users as well as sales shipped from the mill to the warehouse for just-in-time delivery (to automotive customers) may be at a different stage of marketing than its sales shipped from the mill to affiliated customers for resale because the latter sales are made to an affiliated intermediary before being sold to the end consumer of the product. Sales made via e-commerce would also not be considered a different stage of marketing, as these sales are made to both end users and intermediary companies (both affiliated and unaffiliated). This would indicate that Thyssen has, at most, two home market LOTs.

In further analyzing Thyssen's LOT claims in the home market, we reviewed available information on the record about the company's selling functions performed in the home market. Thyssen identified 27 different selling functions (see Exhibit A–67 of Thyssen's December 21, 2002, section A response) associated with its sales to affiliated and unaffiliated customers. We closely examined these functions and concluded that further processing does not appear to be a selling function relevant to the Department's LOT analysis. We also decided to combine several other functions because we found that they were not sufficiently different to warrant being treated as unique selling functions. Thus, we consolidated accounts receivable maintenance, order input, order processing, and payment processing and order evaluation and sale servicing into two single categories. As a result of our analysis, we concluded that Thyssen performed 22 separate selling functions in its home market, rather than 27.

Next, we examined whether these selling functions are provided consistently to Thyssen's categories of customers in the home market, finding that the following two functions were provided to all customer categories: freight and delivery arrangements and warranty. Of the remaining 20 selling functions, we noted the following differences: small quantity deliveries were only provided for service center resales; just in time warehousing was only provided for automotive sales; technical advice, post sale technical assistance, customer contacts, customer entertainment, trade association participation, trade fairs, advertising, customer symposiums, sales solicitation new customers, research and development, unpaid invoice follow-up, and inventory maintenance are provided on a limited basis to trading companies and service centers; new product development through early vendor involvement, performance testing, strategic planning, and government regulation advice are not provided to trading companies and service centers. Thyssen indicates that sales to automotive customers are provided more intensive technical assistance and just-in-time warehousing services than are provided to any other of its customer categories. However, based on the information on the record, it does not appear that the services provided to automotive customers differ significantly from the services provided to Thyssen's affiliated service center resale customers.

In conclusion, while Thyssen claimed differences in selling functions in connection with each level of trade, we find that the actual differences in selling functions between affiliated service center resales, automotive, and other end-user channels are relatively minor. Thus, we conclude, based on the information provided by Thyssen in its questionnaire responses, that Thyssen did not adequately support these claims. Therefore, we preliminarily determine that only two LOTs existed for Thyssen in the home market.

In determining whether the single LOT in the U.S. market is at a less remote level of trade than the LOTs that exist in the home market, as Thyssen claims, we examined the selling functions performed by Thyssen for CEP sales. According to Thyssen, the following selling functions were provided for its CEP sales: limited performance testing, strategic planning, research and development, technical advice, customer contacts and customer entertainment, warranty and freight and delivery arrangements. We also noted that there were some selling functions performed by Thyssen that were provided to home market customers but not to its CEP sales (*e.g.*, just-in-time warehousing, new product development, post-sale technical assistance, sales solicitation new customers, trade association participation, trade fairs, advertising, customer symposiums, inventory maintenance, unpaid invoice follow-up, and government regulation advice). Consequently, we preliminarily determine that Thyssen provided significantly different selling functions in the home market than those in the U.S. market for CEP sales.

We next examined whether a LOT adjustment was appropriate when Thyssen's CEP sales are compared to the home market levels of trade. The Department makes this adjustment when it is demonstrated that a difference in LOTs affects price comparability. However, where the available data do not provide an appropriate basis upon which to determine a LOT adjustment, and where the NV is established at a LOT that is at a more advanced stage of distribution than the LOT of the CEP transactions, we adjust NV under Section 773(a)(7)(B) of the Act (the CEP offset provision). In the instant case, we were unable to quantify the LOT adjustment in accordance with Section 773(a)(7)(A) of the Act, as we found that none of the LOTs in the home market matched the LOT of the CEP transactions. Because of this, we were unable to calculate a LOT adjustment. Instead, because we determined that all of Thyssen's home market sales were made at levels of trade more advanced than the LOT of Thyssen's U.S. sales, we granted a CEP offset and applied this to comparisons between Thyssen's CEP sales and all home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with Section 773A(a) of the Tariff Act.

Verification

As provided in Section 782(i) of the Act, we intend to verify all information to be used in making our final determination.

All Others

Pursuant to Sections 733(d)(1)(A)(ii) and 735(c)(5)(A) of the Act, the estimated all-others rate is equal to the estimated weighted-average dumping margin established for Thyssen, the only exporter/producer investigated.

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Suspension of Liquidation

In accordance with Section 733(d)(2) of the Act, the Department will direct the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel producers from Germany, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the U.S. Customs Service to require a cash deposit or posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins in the preliminary determination are as follows:

Exporter/manufacturer	Weighted average margin (percentage)
Thyssen	14.52
All Others	14.52

ITC Notification

In accordance with Section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine, before the later of 120 days after the date of this preliminary determination or 45 days after our final determination, whether these imports are materially injuring, or threatening material injury to, the U.S. industry.

Public Comment

Case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. In the event that the Department receives requests for hearings from parties to several cold-rolled steel cases, the Department may schedule a single hearing to encompass all those cases. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time. Interested parties, who wish to request a hearing, or participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 135 days after the date of the publication of this preliminary determination.

This determination is issued and published in accordance with Sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11187 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–533–826]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Paige Rivas at (202) 482–0651 or Mark Manning at (202) 482–5253, AD/CVD Enforcement Office IV, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from India are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 3001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice.*

On November 20, 2001, the Department issued a complete antidumping questionnaire to Ispat Industries, Ltd. (Ispat).[2] *See Memorandum to Holly A. Kuga, Selection of Respondents for the Antidumping Investigation of Certain Cold-Rolled Carbon Steel Flat Products from India (Respondent Selection Memo)* (November 20, 2001).

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 36 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we found that nine producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Ispat represented over half of the imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. *See Respondent Selection Memo.* Therefore, we designated Ispat as the mandatory respondent and sent it the antidumping questionnaire.

Critical Circumstances

In a letter dated December 7, 2001, the petitioners alleged that there is a reasonable basis to believe or suspect that critical circumstances exist with respect to imports of cold-rolled steel from India. On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel from India. *See Memorandum From Bernard Carreau to Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 20, 2001, the Department issued an antidumping questionnaire to Ispat. Section A was due on December 10, 2001, and Sections B-D were due on December 26, 2001. On November 28, 2001, and December 11, 2001, Ispat notified the Department that it did not intend to respond to the Department's questionnaire. Ispat asserted that its sales to the United States were insignificant and asked the Department to exclude it from the investigation. In letters dated December 6, 2001, and January 10, 2002, Ispat was informed that the Department continued to consider Ispat a mandatory respondent in this investigation. As stated in the *Respondent Selection Memo*, the Department found that Ispat was the largest exporter of subject merchandise during the POI and, therefore, designated Ispat as a mandatory respondent. *See Respondent Selection Memo.* In addition, the Department informed Ispat that it would attempt to accommodate any difficulties that Ispat had in answering the questionnaire, and would consider any suggestions Ispat provided as to alternative methods for submitting the requested information. The Department also advised Ispat that failure to submit the requested information by the date specified might result in use of the FA under section 776 of the Act and section 351.308 of the Department's regulations.

Although we requested that Ispat suggest alternative methods for submitting the requested information, it did not submit a response to that

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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request. Furthermore, Ispat did not respond to the sections A, B, C, and D by the respective due dates, nor did the company request that the Department grant any extension of the deadlines to respond. Rather, Ispat did not respond to the Department's requests for information at all.

As described above, Ispat failed to provide a response to the Department's questionnaire despite the Department's willingness to consider alternative methods for submitting the information. Because Ispat failed to provide any of the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied the FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). Ispat was notified in the Department's questionnaire and in additional letters that failure to submit the requested information by the date specified might result in use of the FA. Moreover, Ispat failed to offer any alternative methods for submitting the requested information. As a general matter, it is reasonable for the Department to assume that Ispat possessed the records necessary for this investigation and that by not supplying the information the Department requested, Ispat failed to cooperate to the best of its ability. As Ispat failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 153.65 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "{i}nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see India Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and CV calculations on which the margin in the petition was based.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition. It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information." Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Export Price

With respect to the margin in the petition, EP was based on an offer for sale of two types of Indian cold-rolled steel in the United States. The petitioners calculated a net EP by deducting port charges, freight charges, shipping charges, customs duties, and trading company mark-up. Our review of the EP calculations indicated that the information in the petition has probative value, as the information included in the margin calculations in the petition is from actual source documents and is concurrent, for the most part, with the POI.

Normal Value

The petitioners calculated normal value (NV) from price information obtained from foreign market research for grades and sizes of cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners made no adjustment to NV. The grade and size of this merchandise was comparable to the merchandise offered for sale that was used as the basis of EP. In addition, the home market price quote was contemporaneous with the U.S. offer for sale obtained by the petitioners.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below COP within the meaning of section 773(b) of the Act. COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, and packing. To calculate the foreign producers' COP, the petitioners used publicly available data obtained from Ispat's March 31, 2001, financial statements for the cost of the raw material input, hot-rolled coil, and SG&A expenses. The petitioners' used their own information, adjusted for known differences between costs in the United States and India, for the cost of transforming the hot-rolled coil into subject merchandise. Because Ispat does not separately report depreciation attributable to the company's cold-rolling operations in its financial statements, the petitioners excluded Ispat's depreciation relative to cold-rolling from the calculation of COP.

Because the Indian price of cold-rolled carbon steel flat products is below the COP, the petitioners also based NV on CV, pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM and SG&A expenses used to compute home market COP, and included an amount for profit. Because Ispat reported a net loss for the year, the petitioners based the amount for profit on the 2001 financial statements of a company in the same general industry, Tata Iron and Steel Company, Ltd. (TISCO). For initiation purposes, we conservatively recalculated CV by including Ispat's zero profit. This allowed the Department to obtain SG&A expenses, financial expenses, and profit from the same source financial statements. However, we also stated that if we need to rely on the use of facts otherwise available in the future, we would then pursue alternative methods for computing the profit rate. *See Initiation Checklist* at 7.

For purposes of this preliminary determination, pursuant to section 773(e)(2)(B)(iii) of the Act, we calculated CV by including a positive amount for profit. Because the only information on the record concerning the profit of a company other than Ispat in the same general industry is from the petition, we included the same amount for profit as done by the petitioners. The estimate dumping rate using TISCO's profit is 153.65 percent, which is also the petition rate.

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the affidavit provided by the U.S. surrogate. Where applicable, we corroborated the petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to Ispat, the Department applied the petition rate of 153.65 percent.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only an estimated price-to-CV dumping margin, there are no additional estimated margins available with which to create the "all others" rate. In this case, we have determined that the only reasonable method is to use the single margin alleged in the petition, which was also the source of our facts available margin for Ispat. Therefore, we applied the petition margin of 153.65 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001).

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for India when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding in this case, and in accordance with section 733(e) of the Act, we are directing U.S. Customs to suspend liquidation of all entries of cold-rolled steel from India that are entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date of publication of this notice in the **Federal Register**. We are also instructing U.S. Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below.

These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Ispat Industries, Ltd. (Ispat)	153.65
All Others	153.65

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from India, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calender days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral

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presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from India no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11188 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–859]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Sally C. Gannon at (202) 482–0162, Mark Hoadley at (202) 482–0666, or Julio Fernandez at (202) 482–0190, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Japan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice.*

On November 20, 2001, the Department issued Section A antidumping questionnaires to four producers/exporters of subject merchandise, Sumitomo Metal Industries, Ltd. (Sumitomo), NKK Corporation (NKK), Nippon Steel Corporation (Nippon), and Kawasaki Steel Corporation (Kawasaki), requesting that they respond to part 1 of Section A, *i.e.*, the total quantity and value of sales of subject merchandise to the United States, the home market, and to third countries, within 10 days (November 30, 2001). We requested that they complete the remainder of Section A by December 11, 2001.[2] Additionally, the Department issued a request to the Embassy of Japan for information regarding the quantity and value of sales of subject merchandise to the United States for all known producers/exporters. The Department received responses to part 1 of the Section A questionnaire from NKK and Kawasaki on November 30, 2001, but not from Sumitomo or Nippon. On November 30, 2001, Nippon requested, and the Department granted, an extension of the deadline for submitting its response to part 1 of Section A of the Department's questionnaire until December 5, 2001. On December 4, 2001, Sumitomo and Nippon each informed the Department by telephone that they would not be responding to any part of the Department's questionnaire. *See Memorandum to the File from Mark Hoadley through Sally Gannon, Regarding Certain Cold-Rolled Carbon Steel Flat Products from Japan* (December 5, 2001). On December 7, 2001, the Department received quantity and value information from the Embassy of Japan for the four producers/exporters named above and for two additional companies: Nisshin Steel Co., Ltd. and Kobe Steel, Ltd. Also on December 7, 2001, the Department received a request from Kawasaki that the deadline for its submission of the remainder of Section A be extended to December 18, 2001. We granted the extension.

On December 17, 2001, based on the information received on the record, the Department selected Kawasaki and Nippon as mandatory respondents in this investigation and requested that they complete Sections B through E of the antidumping questionnaire. Refer to *Selection of Respondents* section below. We set a deadline of January 21, 2001, for Sections B through E.

On December 18, 2001, the Department received a Section A response from Kawasaki. On January 4, 2001, the Department issued a supplemental questionnaire to

[1] The petitioners in this investigation are Bethlehem Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

Kawasaki, pertaining to its December 18 response. We set a deadline of January 18, 2002 to respond to this supplemental questionnaire. The Department never received a response to Sections A through E or requests for extensions from Nippon, and never received a response to the supplemental questionnaire, Sections B through E, or requests for extensions from Kawasaki. On January 18, 2002, Kawasaki submitted a letter informing the Department that it would not be responding further to the Department's questionnaire.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined. Using company-specific export data for the POI provided by the Embassy of Japan in its December 7, 2001 submission, we found that six producers/exporters exported cold-rolled steel to the United States during the POI. According to the data provided by the Embassy, Kawasaki and Nippon combined represented over 60 percent of the imports during the POI. Due to limited resources, we determined that we could only investigate these two largest producers/exporters. Therefore, we designated Kawasaki and Nippon as the mandatory respondents. *See Memorandum to Barbara Tillman from the Team, Regarding Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Japan; Selection of Mandatory Respondents* (December 17, 2001) (*Respondent Selection Memo*).

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 20, 2001, the Department issued Section A of the antidumping questionnaires to Kawasaki and Nippon. The Section A response was due on December 11, 2001. We issued Sections B–E on December 17, 2001, to both companies with a due date of January 21, 2002, and a supplemental to Kawasaki on its Section A response on January 4, 2002, with a due date of January 18, 2002. Furthermore, we granted an extension until December 18, 2001, to Kawasaki to submit its Section A response, the only extension request we received from either of these two parties. Nevertheless, Kawasaki responded only to Section A of our antidumping questionnaire, and Nippon failed to respond to any part of the questionnaire. As stated in the *Respondent Selection Memo*, the Department found that Kawasaki and Nippon were the largest producers/exporters of subject merchandise during the POI and, therefore, designated them as mandatory respondents. *See Respondent Selection Memo.* In addition, the Department informed both companies that it would attempt to accommodate any difficulties that they had in answering the questionnaire. The Department also informed both companies that failure to submit the requested information by the date specified might result in use of FA.

Although we informed both companies that we would attempt to accommodate any difficulties that they had in answering the questionnaire, only Kawasaki submitted an extension request, and only for the original Section A response. Neither party made any additional contact with the Department to request an extension, or to suggest any alternative methods of providing the requested information that would accommodate any difficulties they might have experienced, or expected to experience, in responding to the questionnaires.

As described above, Kawasaki and Nippon failed to provide full responses to the Department's questionnaire despite the Department's willingness to accommodate their difficulties. Because they failed to provide the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied the FA to determine their dumping margins.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and*

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Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). Kawasaki and Nippon were notified twice in the Department's questionnaires that failure to submit the requested information by the date specified might result in use of FA. As described above, Kawasaki and Nippon failed to contact the Department to express any difficulties they might have been experiencing or to suggest how we might accommodate them in overcoming these difficulties, with the exception of Kawasaki's single extension request, which we granted. As a general matter, it is reasonable for the Department to assume that Kawasaki and Nippon possessed the records necessary for this investigation, and that by not supplying the information the Department requested, they failed to cooperate to the best of their ability. As both companies failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 115.22 percent, the highest rate derived from the petition. *See Initiation Notice.*

3. Corroboration of AFA Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Japan Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based.

a. *Export Price*

With respect to the margins in the petition, EP was based on a sales offer obtained by petitioners and documented in the petition. We compared price quotes for two different products contained in the offer with contemporaneous, average per-unit customs import values (AUV) for the two ten-digit HTSUS categories matching the two products. We noted that the U.S. price quotes were well within the range of the AUVs reported by U.S. Customs. The petition also contained public U.S. Customs data supporting the conclusion that these two products accounted for a substantial share (over 40 percent) of the products sold by Japan in the United States during the POI and, thus, are representative of Japanese imports as a whole. The petition also contains current, supporting documentation for adjustments made to EP, including U.S. customs data used to calculate the cost of international freight and the amount of customs duties.

b. *Normal Value (NV)*

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products used as the basis for EP. The petitioners made no adjustment to NV.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below the cost of production (COP) within the meaning of section 773(b) of the Act. COP consists of the cost of manufacturing (COM), selling, general, and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted, using publicly available data, for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and Japan. To calculate SG&A, the petitioners relied upon amounts reported in a Japanese company's unconsolidated 2001 financial statements. For interest expense, the petitioners used the Japanese company's consolidated 2001 financial statements. Because the Japanese home market price in the petition of cold-rolled steel products was below the COP, the petitioners also based NV on constructed value (CV), pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM and SG&A expenses used to compute home market COP, and included an amount for profit. For profit, the petitioners relied upon amounts reported in the Japanese steel producer's unconsolidated 2001 financial statements. *See Initiation Checklist.*

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the affidavit provided by the U.S. surrogate. Where applicable, we corroborated the petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to Kawasaki and Nippon, the Department decided to apply the CV margin rate of 115.22 percent, which is the highest estimated dumping margin calculated by the petitioners in the petition of this investigation. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis* or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "all others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada (Plate from Canada)*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy (Plate from Italy)*, 64 FR 15458, 15459 (March 21, 1999). For purposes of this preliminary determination, we are basing the "all others" rate on the simple average of margins in the petition, which is 112.56 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all entries of cold-rolled steel from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Kawasaki Steel Corporation	115.22
Nippon Steel Corporation	115.22
All Others	112.56

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Unless otherwise directed by the Department, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Japan no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11189 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–580–848]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from Korea are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Ledgerwood or Mark Young, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3836 or (202) 482–6397, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR part 351 (April 2001).

Case History

On October 18, 2001, the Department initiated antidumping duty investigations on cold-rolled steel (*See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001)) (*Initiation Notice*).

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On October 18, 2001, based on information provided in the petition, we found "reasonable grounds to believe or suspect" that sales of the foreign like products in Korea were made at prices below the cost of production ("COP") within the meaning of section 773(b)(2)(A)(i) of the Act. Accordingly, the Department initiated a country-wide cost investigation on sales of the foreign like products in this market. Since the initiation of this investigation the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001 from the petitioners and respondents. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to Pohang Iron & Steel CO. Ltd. ("POSCO") and Dongbu Steel Co., Ltd., ("Dongbu").[1] The petitioners made an allegation of sales below COP in the petition. Based on the factual information contained in the petition, we found "reasonable grounds to believe or suspect" that sales below cost occurred. *See Initiation Notice* 66 FR at 54212–13. Accordingly, the Department initiated the requested country-wide cost investigation.

On November 29, 2001, we made a final determination and consequently selected POSCO and Dongbu, the largest two producers/exporters of cold-rolled steel from Korea, as the mandatory respondents in this proceeding. For further discussion, see the memorandum to Melissa Skinner, Director, Office 6, from Mark Young: *Selection of Respondents*, dated November 29, 2001 ("*Selection of Respondents Memo*").

On December 7, 2001, and January 14, 2002, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Company[2] made submissions requesting that the Department make an expedited finding that critical circumstances exist with respect to imports from Korea. *See* Critical Circumstances section below for further discussion.

During the period December 2001 through April 2002, the Department received responses from POSCO and Dongbu regarding the Department's original and supplemental questionnaires.

On February 5, 2002, the respondents submitted comments regarding petitioners' December 7, 2001 and January 14, 2002 letters alleging that critical circumstances exist with respect to imports of subject merchandise from Korea. Respondents' comments regarding POSCO were inadvertently omitted from the Departments' preliminary determination of critical circumstances (*see Critical Circumstances* section, *infra*). Accordingly, we addressed respondents' comments through a memo to the file. *See Memorandum to File, from Mark Manning: Respondents' Arguments Concerning the Preliminary Determination of Affirmative Critical Circumstances*, dated April 26, 2002. Moreover, on April 12, 2002 the petitioners' submitted a letter with additional comments in support of their request for an expedited finding that critical circumstances exist. However, the petitioners' letter arrived after our preliminary critical circumstance finding had been signed, therefore we will address petitioners' comments in our final determination.

On February 7, 2002, pursuant to 19 CFR 351.205(e), Bethlehem Steel Corporation, National Steel Corp., and United States Steel Corporation made a timely request to postpone the preliminary determination. We granted this request on February 22, 2002, and postponed the preliminary determination until no later than April 26, 2001. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).)

On April 3, 16, and 18, 2002, petitioners submitted comments regarding POSCO's U.S. selling practices through a Korean trading company and both companies' U.S. affiliates (*i.e.*, "U.S. Channel 3" sales). On April 11, 2002, POSCO submitted comments in rebuttal to petitioners' April 3, 2002 comments. *See* "POSCO's U.S. Channel 3 Sales" in the Export Price section below for further discussion.

On April 9, 2002, petitioners submitted comments on POSCO and its affiliates. On April 12 and 15, 2002, petitioners submitted comments on Dongbu and its affiliates.

On April 15, 2002, respondents submitted rebuttal comments to the petitioners' April 9, 2002 submission regarding POSCO. On April 18, 2002, respondents submitted rebuttal comments to the petitioners' April 12 and 15, 2002 submission regarding Dongbu.

On April 17, 2002, respondents submitted comments on the Department's preliminary determination of critical circumstances (*see Critical Circumstances* section, *infra*).

On April 18, 2002, petitioners submitted comments on POSCO's April 11, 2002 rebuttal comments.

Critical Circumstances

On April 10, 2002, the Department preliminarily determined that critical circumstances exist with respect to all imports of cold-rolled steel from Korea except for those from Dongbu, (*i.e.*, POSCO and all others). *See Memorandum From Bernard Carreau to Faryar Shirzad Re: Preliminary Affirmative Determinations of Critical Circumstances; see also Notice of Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) (*Critical Circumstances Notice*).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonable be examined. Using company-specific export data for the period of investigation ("POI"), which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States number that corresponds to the subject merchandise, we found that thirty producers/exporters from Korea may have exported cold-rolled steel to the Untied States during the POI. According to the data on the record, POSCO and Dongbu represented more than 80 percent of the imports during the POI. Due to limited resources, we determined that we could only investigate the two largest producers/exporters. See, *Selection of Respondents Memo*. Therefore, we designated POSCO and Dongbu as the mandatory respondents and sent both companies the Department's antidumping questionnaire.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Korea to the United States were made at LTFV, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "Export Price," "Constructed Export Price," and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs and CEPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondents in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, paint, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, surface finish, specification, and grade or type.

Export Price

We calculated EP for POSCO and Dongbu, in accordance with section 772(a) of the Act, for those sales where the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States, based on the facts of record. We based EP on the packed delivered price to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors and freight revenue. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, ocean freight, marine insurance, U.S. brokerage and handling (including bank and wharfage charges for POSCO), and U.S. customs duties (including harbor maintenance fees and merchandise processing fees).

POSCO's "U.S. Channel 3" EP Sales

On April 3, 16, and 18, 2002, petitioners submitted comments regarding POSCO's U.S. selling practices through a Korean trading company and both companies' U.S. affiliates, expressing concern that POSCO may have dumped subject merchandise through a particular channel by way of a middleman or other questionable means (*i.e.*, "U.S. Channel 3" sales). On April 11, 2002, POSCO submitted comments in rebuttal to petitioners' April 3, 2002 comments.

The petitioners state that the Department needs to collect additional data to evaluate POSCO's "U.S. Channel 3" transactions in greater detail. Moreover, petitioners claim the data and analysis POSCO submitted in its April 11, 2002 submission indicate that POSCO has the ability to provide the Department with the information and data it needs to adequately address the issues raised about these sales. On April 17, 2002, the Department issued a supplemental questionnaire to POSCO which specifically addresses the Department's concerns about these sales. POSCO's reply to this request for information was not available in time for purposes of making our preliminary determination, but we will continue to collect information as necessary and parties are encouraged to comment on this topic for the final determination.

Constructed Export Price

For POSCO and Dongbu, in accordance with section 772(b) of the Act, we calculated CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter.

We based CEP on the packed delivered prices to unaffiliated purchasers in the United States. Where appropriate, we made adjustments for price-billing errors. We also made deductions for movement expenses, in accordance with section 772(c)(2)(A) of the Act; these included, where appropriate, foreign inland freight, ocean freight, marine insurance, U.S. brokerage and handling, and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). For further discussion,

[1] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests the cost of production and constructed value for the subject merchandise that the company sold and/or produced during the POI. The costs reported in a section D response are reported on a product specific basis (*i.e.*, CONNUM specific basis).

[2] The complete list of petitioners in this investigation are: Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation, (collectively "the petitioners").

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see the Sales Calculation Memorandum, dated April 26, 2002 ("Calculation Memorandum"). In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (commissions and imputed credit costs), and indirect selling expenses (including inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by POSCO and Dongbu, respectively, and their affiliates on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared each respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(B) of the Act. Because each respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's Length Test

For POSCO sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, for both Dongbu and POSCO we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that POSCO and Dongbu were selling cold-rolled steel in the home market at prices below their respective COPs. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see Initiation Notice* at 66 FR 54198, 54206).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses). We relied on the COP data submitted by each respondent except for the following adjustments:

Dongbu

1. We adjusted Dongbu's reported G&A expense to exclude gain on sale of land from the calculation of the G&A expense rate.

2. We adjusted Dongbu's reported interest expense rate. We used Dongbu's consolidated audited financial statements figures in the calculation of the interest expense rate.

POSCO

1. We revised POSCO's reported G&A expenses to exclude the gains on disposition of marketable securities, the gains on valuation of marketable securities, and the reversal of the allowance for bad debt. We also included foreign currency exchange gains on accounts payable and other foreign currency exchange losses in the reported G&A expense to calculate the G&A expense rate.

2. We revised POSCO's reported consolidated financial expense to include foreign currency exchange losses from loans payable and foreign currency exchange gains from cash to calculate the financial expense rate. *See* Memorandum from Ji Young Oh and Ernest Gziryan to Neal Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination ("Cost Calculation Memorandum").

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sales prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made (1) within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of POSCO's and Dongbu's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers. We made deductions, where appropriate, from the starting price for early payment discounts. We also made deductions for movement expenses, including inland freight (plant to distribution warehouse, plant/warehouse to customer, and affiliated reseller to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses and commissions.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. Finally, for comparisons to POSCO's CEP sales, we made a CEP offset pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f). We calculated the CEP offset as the lesser of the indirect selling expenses on the comparison-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.; See also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62.FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system, for each respondent, in each market (*i.e.*, the "chain of distribution"),[3] including selling functions, class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (*i.e.*, NV based on either home market or third country prices[4]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, Court Nos. 00–1058, 00–1060 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales to sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act if the difference in level of trade is demonstrated to affect price comparability. For CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT, and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.*, no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

We obtained information from each respondent regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by each respondent for each channel of distribution. Company-specific LOT analyses containing business proprietary information are incorporated into the company-specific calculation memoranda. Company-specific LOT findings are summarized below.

1. *POSCO*

POSCO reported home market sales through three channels of distribution and to three customer categories. We examined the chain of distribution and the selling activities associated with sales reported by POSCO to each of its customer categories in the home market. We found that these three categories (service centers, trading companies, and end-users) did not differ significantly from each other with respect to selling activities,[5] although there were slight differences between them for meeting with customers and inventory management. *See* Appendix A–6 of POSCO's response to the Department's questionnaire, dated December 14, 2001. Based on our overall analysis, we found that POSCO performs virtually the same selling functions with the same intensity for all its home market customers regardless of their channel of distribution in the home market. Therefore, we preliminarily determine that POSCO made home market sales at one LOT during the POI.

In the U.S. market, POSCO made EP and CEP sales through three channels of distribution and one customer category (trading companies). We examined the chain of distribution and the selling activities associated with sales reported by POSCO to trading companies in the U.S. market. The information on the record demonstrates that the selling activities that POSCO reported for its sales through U.S. channels 1 and 2 (*i.e.*, POSCO's CEP sales) differed significantly from its sales through U.S. channel 3 (*i.e.*, POSCO's EP sales). In particular, for POSCO's EP sales, POSCO performs all categories of selling functions. However, for POSCO's CEP sales, there are several selling functions that POSCO's U.S. affiliate, Pohang Steel America Corp. ("POSAM") is heavily involved in and performs exclusively: POSAM negotiates the sales terms, meets with customers, invoices unaffiliated customers, performs market research, handles importation documents, serves as importer of record, pays U.S. customs duties and wharfage, and extends credit for CEP sales.

Based on our overall analysis, we found that the three U.S. market sales channels constituted two different levels of trade (U.S. LOT 1 for U.S. channels 1 and 2, and U.S. LOT 2 for channel 3). We then compared the U.S. LOTs to the home market LOT. We preliminarily determine that U.S. channel 3 and home market channels 1, 2, and 3 are at the same LOT because the selling functions that POSCO provides are virtually the same in both markets and do not vary according to whether subject merchandise is

[3] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[4] Where NV is based on constructed value ("CV"), we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

[5] POSCO performs the following selling functions in the home market: Negotiates sales price, invoices customers, meets with customers, freight and delivery arrangement, inventory maintenance, technical advice, arranging customer credit, market research, warranty services, engineering services, research and development, technical programs, advertising, and packing services.

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ultimately destined for the U.S. market or the home market. Thus, we matched U.S. LOT 2 sales with sales in the home market and made no LOT adjustment.

U.S. LOT 1 (*i.e.*, POSCO's CEP sales) differed considerably from the home market LOT with respect to selling activities. As noted above, approximately half of the U.S. selling functions, otherwise performed by POSCO, were performed by POSAM. The information on the record demonstrates that the selling activities that POSCO reported for its sales through U.S. channels 1 and 2 (*i.e.*, POSCO's CEP sales) differed significantly from its sales through U.S. channel 3 (*i.e.*, POSCO's EP sales). In particular, for POSCO's EP sales, POSCO performs all categories of selling functions. However, for POSCO's CEP sales, of the selling functions noted above, POSAM is heavily involved and performs exclusively the following: POSAM negotiates the sales terms, meets with customers, invoices unaffiliated customers, performs market research, handles importation documents, serves as importer of record, pays U.S. customs duties and wharfage, and extends credit for CEP sales. Thus, we found POSCO's U.S. LOT 1 (*i.e.*, CEP sales) to be different from the home market LOT and to be at a less advanced LOT than that of the home market LOT. Furthermore, we have no other information on the record that provides an appropriate basis for quantifying the difference in selling functions performed in either market in order to determine an LOT adjustment.

Thus, in accordance with section 773(a)(7)(B) of the Act and as set forth in 19 CFR 351.412(f), a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability. Since we have found that to be the case here with respect to POSCO, in accordance with 19 CFR 351.412(f), we are granting POSCO a CEP offset.

2. *Dongbu*

Dongbu reported home market sales through two channels of distribution and to two customer categories. We examined the chain of distribution and the selling activities associated with sales reported by Dongbu to each of its customer categories in the home market. The information on the record demonstrates that Dongbu performs virtually the same selling functions across all home market channels of distribution and customer categories.[6] *See* page A–12 of Dongbu's section A response to the Department's questionnaire, dated December 14, 2001, as well as Dongbu's March 22, 2002 supplemental response at Exhibit A–22. Based on our overall analysis, we found that Dongbu performs virtually the same selling functions with the same intensity for all its customers regardless of the channel of distribution, although there were slight differences between them in terms of the sale process (*i.e.*, sales price is determined through: (1) Typical customer/seller negotiation; or (2) via internet auction bidding process). Therefore, we preliminarily determine that Dongbu made home market sales at one LOT during the POI.

In the U.S. market, Dongbu and Dongbu U.S.A. made EP and CEP sales through four channels of distribution and to three customer categories (*i.e.*, distributors, service centers, or end users). We examined the chain of distribution and the selling activities associated with sales reported by Dongbu and Dongbu U.S.A. to distributors, service centers, and end users in the U.S. market. The information on the record demonstrates that the selling activities reported by Dongbu through U.S. channels 1 and 2 differed only slightly from U.S. channels 3 and 4. Basically, Dongbu's U.S. channels 1 and 2 involved its U.S. sales affiliate, Dongbu U.S.A. (*i.e.*, they are CEP sales), while Dongbu's U.S. channels 3 and 4 did not involve its U.S. sales affiliate, (*i.e.*, EP sales). In particular, for Dongbu's EP sales, Dongbu performs all categories of selling functions. However, for Dongbu's CEP sales, of the selling functions performed for U.S. sales, the majority are performed by Dongbu.[7] Thus, based on our overall analysis of the facts currently on the record, we found that Dongbu's four U.S. sales channels constituted a single LOT (*i.e.*, U.S. LOT 1 for U.S. channels 1, 2, 3, and 4).

Moreover, we have preliminarily determined that Dongbu's home market and U.S. LOTs are the same because the selling functions that Dongbu provides are nearly the same in each market and do not vary significantly between markets. *See* Dongbu's March 22, 2002 supplemental response at Exhibit A–22 for further discussion. Thus no LOT adjustment or CEP offset is warranted.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Korea when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days (unless postponed) after this preliminary determination.

Suspension of Liquidation

Based on our preliminary affirmative critical circumstances finding with respect to all imports of subject merchandise, except those produced or exported by Dongbu, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register** (*see* Critical Circumstances Notice). Furthermore, in accordance with section 733(d)(2) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all imports of subject merchandise by Dongbu that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**.

We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP or CEP, as appropriate, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice.

The weighted-average dumping margin are as follows:

Exporter/manufacturer	Weighted-average margin percentage
POSCO	5.25
Dongbu	19.03
All Others	13.84

[6] Dongbu performs the following selling functions in the home market: Inventory maintenance, after sales service, warranties, inland freight, sales price negotiation, invoicing, and arranging customer credit.

[7] The selling functions Dongbu performs for its U.S. CEP sales are: Inventory maintenance, after sales service, warranty services, inland freight in Korea, Korean customs clearance, and international freight.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 75 days (unless postponed) after this preliminary determination. This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11190 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–614–803]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From New Zealand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Salim Bhabhrawala or Tracy Levstik, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–1784 or (202) 482–2815, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations refer to the regulations codified at 19 CFR Part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from New Zealand are being sold, or are likely to be sold, in the United States at less than fair value, as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the Suspension of Liquidation section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of this investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners and respondents. On November 26, 2001, we informed NZS of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is being materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of certain cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

The Department issued an antidumping questionnaire to BHP New Zealand Steel Limited (NZS) on November 19, 2001.[2] During the period December 2001 through March 2002, the Department received responses to the Department's original and supplemental questionnaires.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation, (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

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preliminary determination. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until no later than April 26, 2002. (*See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8277 (February 22, 2002)).

On March 25, 2002, the petitioners requested that the Department initiate a sales-below-cost investigation of NZS. We did so on April 19, 2002.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, NZS, on April 24, 2002. In its request, NZS consented to the extension of provisional measures to no longer than six months.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the POI, which we obtained from a variety of sources under the Harmonized Tariff Schedules of the United States (HTSUS) numbers that correspond to the subject merchandise, we found that there was one producer/exporter, NZS, who may have exported cold-rolled steel to the United States during the POI. Therefore, we designated NZS as the only mandatory respondent and sent it the Department's antidumping questionnaire.

Use of Facts Available

In accordance with section 776(a) of the Act, we have preliminarily applied partial adverse facts available to NZS for purposes of determining normal value (NV). Given that NZS failed to report the downstream sales for an affiliated reseller as we requested in our original section A questionnaire and supplemental section A questionnaire, we have preliminarily determined that NZS did not act to the best of its ability. Therefore, we have applied partial adverse facts available for sales made by the affiliated reseller, pursuant to section 776(b) of the Act. Due to the proprietary nature of the documentation supporting this issue, for further discussion, *see* the Memorandum to Faryar Shirzad from Bernard Carreau Re: Use of Facts Available for NZS for the Preliminary Determination in the 2000–2001 Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from New Zealand, dated April 26, 2002.

As adverse facts available, for each model sold to the affiliated reseller, we have used the highest home-market price of a product NZS sold to unaffiliated customers for the same model during the period of investigation to represent the downstream sales prices made to unaffiliated customers in the home market. (*See Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Preliminary Results of Antidumping Duty Administrative Reviews, Partial Recession of Administrative Reviews, and Notice of Intent To Revoke Orders in Part*, 66 FR 8931 (February 5, 2001)).

The facts available methodology used in this preliminary determination assumes that the products sold to the reseller are an appropriate surrogate for those sold by the reseller to the first unaffiliated customer. We note, however, that it appears that the affiliated reseller may engage in further processing of the cold-rolled products it purchases from NZS. Specifically, NZS has stated that the affiliated reseller "further processes the cold rolled coil it purchases by slitting and/or cutting the coils into sheets." [3] We will continue to evaluate the information available, and, as appropriate, we may reconsider our facts available methodology and selection for the final determination.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from New Zealand by NZS to the United States were made at LTFV, we compared the constructed export price (CEP) to the normal value (NV), as described in the *Constructed Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to weighted-average NVs.

[3] See NZS' section A submission of December 10, 2001, at page A–19.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by NZS in the home market during the POI that fit the description in the *Scope of Investigation* section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondent in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

In accordance with section 772(b) of the Act, we CEP for those sales where the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter, or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. In this case, we calculated CEP based on the packed prices charged to the first unaffiliated customer in the United States. We found that all of NZS' U.S. sales are CEP sales because the merchandise was sold through NZS' U.S. affiliate, BHP Steel Americas Inc. (BHPSA) in the United States, within the meaning of section 772(b) of the Act. These sales are properly classified as CEP sales because they were made after the date of importation.We made deductions from the starting price, where appropriate, in accordance with section 772(c)(2)(A) of the Act. These deductions included foreign inland freight, international freight, marine insurance, U.S. brokerage and handling and U.S. customs duties (including harbor maintenance fees and merchandise processing fees). In addition, in accordance with section 772(d)(1) of the Act, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, specifically, indirect selling expenses (including inventory carrying costs), credit expense and warranty expense.

For those U.S. sales for which NZS did not report a date of payment, we have used the signature date of the preliminary determination (*i.e.*, April 26, 2002) in the calculation of imputed credit expenses. In addition, we used NZS' revised weighted average interest rate, which correctly used the Federal Reserve's weighted-average data for commercial and industrial loans of one-month's to one-year's duration, to calculate credit expense in the U.S. market.[4] For further discussion, see the Memorandum to the File from Tracy Levstik and Salim Bhabhrawala Re: Calculations Performed for NZS for the Preliminary Determination in the 2000–2001 Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from New Zealand, dated April 26, 2002. Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using NZS' financial statements pursuant to 19 CFR 351.402(d)(2) of the Act.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, rebates and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of the Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR at 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* ("Antidumping Duties"), 62 FR at 27295, 27355–56 (May 19, 1997). *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56. None of NZS' sales to its affiliated reseller passed the arm's-length test.

C. Cost of Production Analysis

On March 25, 2002, the petitioners made a timely sales below cost allegation against NZS. Based on the allegation and in accordance with section 773(b)(2)(A)(i) of the Act, we found reasonable grounds to believe or suspect that sales of cold-rolled steel from New Zealand were made at prices below the COP. *See* the Memorandum to Gary Taverman from the Team Re: The Petitioners' Allegation of Sales Below the Cost of Production for BHP New Zealand Steel Limited (NZS), dated April 19, 2002. As a result, the Department is conducting an investigation to determine whether NZS made sales in the home market at prices below the COP during the POI within the meaning of section 773(b) of the Act. On April 19, 2002, we instructed NZS to complete a section D questionnaire. Given the proximity of the preliminary determination, we did not receive NZS' section D response in time to analyze it for the preliminary determination, but will do so for the final determination.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on packed prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length in New Zealand. We adjusted, where applicable, the starting price for discounts and rebates. We made deductions for movement expenses, including inland freight (plant to distribution warehouse and plant/warehouse to customer) and warehousing under section 773(a)(6)(B)(ii) of the Act. In addition, where applicable, we made adjustments for differences in circumstances of sale (COS) pursuant to section 773(a)(6)(C)(iii) of the Act. No other adjustments to NV were claimed or allowed.

[4] See NZS' submission of April 12, 2002, at page 12.

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E. Level of Trade/Constructed Export Price Offset

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we calculate NV based on sales in the comparison market at the same level of trade (LOT) as the U.S. transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997) (*Steel Plate from South Africa*). To determine whether the comparison market sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (i.e. the chain of distribution), including the selling functions, class of customer (customer category), and the level of selling expenses for each type of sale.

The NV LOT is that of the starting-price sales in the comparison market, or when NV is based on CV, that of the sales from which we derive selling, general and administrative (SG&A) expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP-offset provision). *See Steel Plate from South Africa*.

In implementing these principles in this investigation, we obtained information from NZS about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by the respondent for each channel of distribution. Generally, if the reported LOTs are the same, the functions and activities of the seller should be similar. Conversely, if a party reports LOTs that are different for different categories of sales, the functions and activities may be dissimilar.

NZS reported two channels of distribution in the home market, with two customer categories (*i.e.*, distributors and original equipment manufacturers (OEMs)). The first home market channel of distribution, coded in its submissions as channel 2, included sales made by NZS to unaffiliated home market distributors and OEMs. The second home market channel of distribution, coded in its submissions as channel 3, included sales made by NZS to an affiliated reseller (until October 23, 2000) and to unaffiliated home market OEMs. According to NZS, "there is no difference between channels 2 and 3 * * * (NZS) created channel 3 for the response to show affiliated sales * * * separately."[5] We compared these two channels of distribution and determined that sales to the two customer categories in both channels were the same in all respects except regarding the determination of sales prices. NZS maintains supply agreements with distributors and uses a set price list and volume rebate structure whereas for its OEM customers, NZS negotiates price and rebates on a sale-specific basis. Due to the fact that these channels are the same with respect to all other selling activities, that is, forecasting and planning services, account management and sales support, product development and marketing support, order processing, managing customer complaints and technical support, and freight, warehousing and delivery services, we preliminarily determine that home market sales in these two channels of distribution constitute a single LOT.

In the U.S. market, all of NZS' sales are CEP sales. NZS reported that its CEP sales are through one channel of distribution (coded in its submissions as channel 1), that is, they are BHPSA's sales to unaffiliated U.S. customers. The selling activities performed for the channel include forecasting and planning sales (performed by NZS and BHPSA), account management and sales support (performed by NZS and BHPSA), order processing between NZS and BHPSA (performed by NZS and BHPSA), order processing between BHPSA and unaffiliated customers (performed by BHPSA), and managing customer complaints (NZS and BHPSA). We therefore preliminarily conclude that NZS had only one LOT for its CEP sales.

In determining whether separate levels of trade actually existed between CEP sales and home market sales, we examined the chains of distribution, customer categories, and selling functions related to these sales reported in the home market and the United States. In determining LOTs for CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. After making CEP deductions from the end user price, we noted that the only difference was related to product development and marketing support services offered only in the home market and not for CEP sales. *See* section 773(a)(7)(A) of the Act. On this basis, it appears that the LOT of NZS' home market sales do not involve significantly different selling functions than the LOT of the CEP sales, and that the distinctions do not constitute a difference in LOT between sales in the two markets. Therefore, we preliminarily determine that no LOT adjustment or CEP offset is warranted.

[5] See NZS' supplemental A response of January 31, 2002 at page 27.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as obtained from the Federal Reserve Bank (the Department's preferred source for exchange rates).

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from New Zealand, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated below. These instructions suspending liquidation will remain in effect until further notice.

Exporter/producer	Weighted-average margin percentage
BHP New Zealand Steel Limited (NZS)	7.10
All Others	7.10

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(3) of the Act, the ITC will determine within 75 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

All parties will be notified of the specific schedule for submission of case and rebuttal briefs. In general, case briefs for this investigation must be submitted to the Department no later than one week after the issuance of the verification report. Rebuttal briefs must be filed within five days after the deadline date for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11191 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–872]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination in the less-than-fair-value investigation of certain cold-rolled carbon steel flat products from the People's Republic of China.

SUMMARY: The Department of Commerce ("the Department") has preliminarily determined that imports of certain cold-rolled carbon steel flat products ("cold-rolled steel") from the People's Republic of China ("PRC") are being, or are likely to be, sold in the United States at less than fair value ("LTFV").

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Carrie Blozy at 202–482–0165 or Stephen Shin at 202–482–0413, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background

On October 18, 2001, the Department initiated antidumping duty investigations to determine whether imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at LTFV. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) ("Initiation Notice"). The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. LTV Steel Company, Inc. is no longer an active petitioner in these investigations.[1]

On November 19, 2001, the International Trade Commission ("ITC") published its determination that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of cold-rolled steel from all of these countries. See Certain Cold-Rolled Carbon Steel Products From Argentina, Australia, Belgium, Brazil; China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On October 26, 2001, the Department sent letters requesting the quantity and value of shipments of subject merchandise exported to the United States during the period January 1, 2001, through June 30, 2001, to the Embassy of the People's Republic of China, Sichuan Chuaton Changcheng Special Steel Group Co. Ltd., Laiwu Steel Group Ltd., Wuhan Iron and Steel Group Co., Benxi Iron and Steel Co., Shanghai Baosteel Group Corp. ("Baosteel"), and Shanghai Pudong Iron and Steel Group Co., Ltd. On November 8, 2001, Baosteel submitted quantity and value information. We received no other responses to this request.

On November 23, 2001, Pangang Group International Economic & Trading Corp. ("Pangang") submitted a letter which requested that it be treated as a respondent in this investigation. On

[1] Effective January 1, 2002, the party previously known as "United States LLC" changed its name to "United States Steel Corporation."

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November 27, 2001, the Department issued its antidumping questionnaire to the Government of the PRC and issued courtesy copies to the six exporters/producers identified in the petition and to Pangang. The Department only received a response to its questionnaire from Pangang. On December 18, 2001, Baosteel submitted a letter to the Department which stated that it was not going to participate in the instant investigation.

On February 22, 2002, the Department postponed the preliminary determination in this investigation to April 26, 2002. See Postponement of Preliminary Determinations of Antidumping Duty Investigations; Certain Cold-Rolled Carbon Steel Flat Products from Argentina, et al., 67 FR 8227 (February 26, 2002).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") for this investigation corresponds to the two most recent fiscal quarters prior to the filing of the petition, i.e., January 1, 2001 through June 30, 2001.

Critical Circumstances

On November 29, 2001, and December 7, 2001, four of the petitioners in the investigation (Nucor Corporation, Steel Dynamics Inc., WCI Steel Inc., and Weirton Steel Company) submitted an allegation of critical circumstances with respect to imports of cold-rolled steel from the PRC and requested an expedited decision in the matter. On April 10, 2002, the Department issued its preliminary affirmative determination that critical circumstances exist with respect to imports of cold-rolled steel from the PRC. See Memorandum to Faryar Shirzad from Joseph A. Spetrini: Preliminary Affirmative Determinations of Critical Circumstances (April 10, 2002); and Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157 (April 18, 2002) ("Critical Circumstances Notice").

Nonmarket Economy Country Status

The Department has treated the PRC as a nonmarket economy ("NME") country in all past antidumping investigations. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Bulk Aspirin From the People's Republic of China, 65 FR 33805 (May 25, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Certain Non-Frozen Apple Juice Concentrate from the People's Republic of China, 65 FR 19873 (April 13, 2000); Notice of Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products from the People's Republic of China, 66 FR 49632 (September 28, 2001) ("Hot-Rolled Steel from the PRC"). This NME designation remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. No party has sought revocation of the NME status in this investigation. Therefore, in accordance with section 771(18)(C) of the Act, we will continue to treat the PRC as a NME country.

When the Department is investigating imports from a NME, section 773(c)(1) of the Act directs us to base the normal value ("NV") on the NME producer's factors of production, valued in a comparable market economy that is a significant producer of comparable merchandise. The sources of individual factor prices are discussed under the "Normal Value" section, below. Furthermore, no interested party has requested that we treat the cold-rolled steel industry in the PRC as a market-oriented industry and no information has been provided that would lead to such a determination. Therefore, preliminarily we have continued to treat the PRC as a NME.

Separate Rates

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control, and assigns separate rates only if the respondent demonstrates the absence of both de jure and de facto governmental control over export activities. See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China, 61 FR 19026, 19027 (April 30, 1996). Pangang has provided the requested company-specific separate-rates information and has indicated that there is no element of government ownership or control. Based on Pangang's claim, we considered whether it is eligible for a separate rate.

The Department's separate-rate test is unconcerned, in general, with macroeconomic/ border-type controls (e.g., export licenses, quotas, and minimum export prices), particularly if these controls are imposed to prevent dumping. The test focuses, rather, on controls over the investment, pricing, and output decision-making process at the individual firm level. See Certain Cut-to-Length Carbon Steel Plate from Ukraine: Final Determination of Sales at Less than Fair Value, 62 FR 61754, 61757 (November 19, 1997); Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the People's Republic of China: Final Results of Antidumping Duty Administrative Review, 62 FR 61276, 61279 (November 17, 1997); and Honey from the People's Republic of China: Preliminary Determination of Sales at Less than Fair Value, 60 FR 14725, 14726 (March 20, 1995).

To establish whether a firm is sufficiently independent from government control to be entitled to a separate rate, the Department analyzes each exporting entity under a test arising out of the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China, 56 FR 20588 (May 6, 1991), as modified by Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Under the separate-rates criteria, the Department assigns separate rates in NME cases only if the NME respondents can demonstrate the absence of both de jure and de facto governmental control over export activities. See Silicon Carbide and Final Determination of Sales at Less Than Fair Value: Furfuryl Alcohol from the People's Republic of China, 60 FR 22545 (May 8, 1998).

1. Absence of De Jure Control

The Department considers the following de jure criteria in determining whether an individual company may be granted a separate rate: (1) An absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; and (3) any other formal measures by the government decentralizing control of companies.

Pangang has placed on the record a number of documents to demonstrate the absence of de jure control, including the "Company Law of the People's Republic of China." In prior cases, the Department has analyzed this law and found that it establishes an absence of de jure control. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Partial-Extension Steel Drawer Slides with Rollers from the People's Republic of China, 60 FR 54472, 54474 (October 24, 1995). We have no information in this proceeding which would cause us to reconsider this determination.

2. Absence of De Facto Control

The Department typically considers four factors in evaluating whether each respondent is subject to de facto governmental control of its export functions: (1) Whether the export prices are set by, or subject to, the approval of a governmental authority; (2) whether the respondent has authority to negotiate and sign contracts, and other agreements; (3) whether the respondent has autonomy from the government in making decisions regarding the selection of its management; and (4) whether the respondent retains the proceeds of its export sales and makes independent decisions regarding disposition of profits or financing of losses.

As stated in previous cases, there is some evidence that certain enactments of the central government of the PRC have not been implemented uniformly among different sectors and/or jurisdictions in the PRC. See Silicon Carbide. Therefore, the Department has determined that an analysis of de facto control is critical in determining whether respondents are, in fact, subject to a degree of governmental control which would preclude the Department from assigning separate rates.

Pangang asserted the following: (1) There is no government participation in setting export prices; (2) its managers have authority to bind sales contracts; (3) it does not have to notify any government authorities of its management selection, and (4) there are no restrictions on the use of its export revenue and it is responsible for financing it own losses. Additionally, Pangang's questionnaire response does not suggest that pricing is coordinated among exporters. Furthermore, our analysis of Pangang's questionnaire response reveals no other information indicating government control. Therefore, based on the information provided, we preliminarily determine that there is an absence of de facto governmental control of Pangang's export functions. Consequently, we preliminarily determine that the respondent has met the criteria for the application of a separate rate.

The PRC-Wide Rate

In NME cases, it is the Department's policy to assume that all exporters located in the NME comprise a single exporter under common control, the "NME entity." This presumption can be rebutted. The Department assigns a single NME rate to the NME entity unless an exporter can demonstrate eligibility for a separate rate. All exporters were given the opportunity to respond to the Department's questionnaire. As explained above, we received a timely Section A response from Pangang. Our review of U.S. import statistics, however, reveals that Pangang did not account for all imports of subject merchandise into the United States from the PRC. One producer/exporter of the subject merchandise, Baosteel, reported quantity and value information, but later submitted a letter to the Department announcing its intent not to participate in the investigation. We received no responses from other exporters to whom we sent requests for information. For this reason, we preliminarily determine that the majority of PRC exporters of cold-rolled steel failed to respond to our questionnaire. Consequently, we are applying adverse facts available (see below) to determine the single antidumping rate—the PRC-wide rate—applicable to all other exporters in the PRC based on our presumption that those respondents who failed to demonstrate entitlement to a separate rate constitute a single enterprise under common control by the PRC government. See, e.g., Final Determination of Sales at Less Than Fair Value: Synthetic Indigo from the People's Republic of China, 65 FR 25706, 25707 (May 3, 2000). The PRC-wide rate applies to all entries of subject merchandise except for entries from Pangang.

Use of Facts Otherwise Available

Section 776(a)(2) of the Act provides that, if an interested party withholds information that has been requested by the Department, fails to provide such information in a timely manner or in the form or manner requested, significantly impedes a proceeding under the antidumping statute, or provides information which cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination. As explained above, the majority of exporters of the subject merchandise failed to respond to the Department's request for information. The failure of theses exporters to respond also significantly impede this proceeding. Pursuant to section 776(a) of the Act, in reaching our preliminary determination, we have used total facts available for the PRC-wide rate because these entities did not respond.

In addition, section 776(b) of the Act provides that, if the Department finds that an interested party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," the Department may use information that is adverse to the interests of that party as facts otherwise available. Adverse inferences are appropriate "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See Statement of Administrative Action ("SAA") accompanying the URAA, H.R. Doc. No. 316, 103d Cong., 2d Session at 870 (1994). Furthermore, "affirmative evidence of bad faith on the part of the respondent is not required before the Department may make an adverse inference." See Antidumping Duties; Countervailing Duties; Final Rule, 62 FR 27296, 27340 (May 19, 1997). The complete failure of these exporters to respond to the Department's requests for information constitutes a failure to cooperate to the best of their ability. In regard to Baosteel, though the company initially provided quantity and value information, the company subsequently indicated in a December 18, 2001 letter to the Department that it would not participate in the investigation. This conduct constitutes a failure of Baosteel to cooperate to the best of its ability. Therefore, pursuant to section 776(b) of the Act, the Department preliminarily finds that, in selecting from among the facts available, an adverse inference is appropriate.

An adverse inference may include reliance on information derived from the petition, the final determination in the investigation, any previous review, or any other information placed on the record. See section 776(b) of the Act. However, section 776(c) provides that, when the Department relies on secondary information rather than on information obtained in the course of an investigation or review, the Department shall, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal. The SAA states that the independent sources may include published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation or review. See SAA at 870. The SAA clarifies that "corroborate" means that the Department will satisfy

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itself that the secondary information to be used has probative value. Id. As noted in Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews, 61 FR 57391, 57392 (November 6, 1996), to corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information used.

For our preliminary determination, as adverse facts available, we have used the highest rate calculated for a respondent, *i.e.*, the rate calculated for Pangang. In an investigation, if the Department chooses as facts available a calculated dumping margin of another respondent, the Department will consider information reasonably at its disposal as to whether there are circumstances that would indicate that using that rate is appropriate. Where circumstances indicate that the selected margin may not be appropriate, the Department will attempt to find a more appropriate basis for facts available. *See, e.g., Fresh Cut Flowers from Mexico; Final Results of Antidumping Duty Administrative Review*, 61 FR 6812, 6814 (February 22, 1996) (the Department disregarded the highest margin as adverse best information available because the margin was based on another company's uncharacteristic business expense resulting in an unusually high margin). In this investigation, there is no indication that Pangang's calculated margin is inappropriate to use as adverse facts available.

Accordingly, for the preliminary determination, the PRC-wide rate is 129.85 percent. Because this is a preliminary margin, the Department will consider all margins on the record at the time of the final determination for the purpose of determining the most appropriate final PRC-wide margin.

Fair Value Comparisons

To determine whether sales of cold-rolled steel to the United States by Pangang were made at less than fair value, we compared export price ("EP") to NV, as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs. We calculated weighted-average NVs.

Export Price

In accordance with section 772(a) of the Act, we used EP because the subject merchandise was sold directly to unaffiliated purchasers outside of the United States, with the knowledge that the final destination of the subject merchandise was the United States. Pangang claimed that sales to the United States went through either of two channels of trade. In the first channel, Pangang sold directly to the unaffiliated U.S. importer. In the second channel, Pangang sold through another unaffiliated party to the U.S. importer. Pangang claims that in the second channel, the U.S. importer pays the other party, who then pays Pangang. For both channels of trade, we used the price of Pangang's first sale to an unaffiliated party in, or for exportation to, the United States. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI-wide weighted-average EPs to the NVs. We calculated EP based on prices to unaffiliated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight and brokerage and handling. Because certain domestic charges, such as those for foreign inland freight and brokerage and handling, were provided by NME companies, we valued those charges based on surrogate rates from India. See the Factors-of-Production Valuation Memorandum to Edward Yang through James Doyle from Carrie Blozy and Stephen Shin, dated April 26, 2002 ("FOP Memorandum").

Normal Value

1. Surrogate Country

When the Department is investigating imports from a NME country, section 773(c)(1) of the Act directs it to base NV, in most circumstances, on the NME producer's factors of production, valued in a surrogate market-economy country or countries considered to be appropriate by the Department. In accordance with section 773(c)(4) of the Act, the Department, in valuing the factors of production, shall utilize, to the extent possible, the prices or costs of factors of production in one or more market-economy countries that are at a level of economic development comparable to the NME country and are significant producers of comparable merchandise. The sources of the surrogate factor values are discussed under the NV section below.

The Department has determined that India, Pakistan, Indonesia, Sri Lanka and the Philippines are countries comparable to the PRC in terms of economic development. See Memorandum from Jeffrey May to James Doyle, dated December 12, 2001. Customarily, we select an appropriate surrogate based on the availability and reliability of data from these countries. For PRC cases, the primary surrogate has often been India if it is a significant producer of comparable merchandise. In this case, we have found that India is a significant producer of comparable merchandise. We used India as the primary surrogate country and, accordingly, we have calculated NV using Indian prices to value the PRC producer's factors of production, when available and appropriate. We have obtained and relied upon publicly available information wherever possible. See FOP Memorandum. In accordance with 19 CFR 351.301(c)(3)(i), for the final determination in this antidumping investigation, interested parties may submit publicly available information to value the factors of production within 40 days after the date of publication of this preliminary determination.

2. Factors of Production

Section 773(c)(1) of the Act provides that the Department shall determine the NV using a factors-of-production methodology if: (1) The merchandise is exported from a NME country; and (2) the information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act. Factors of production include: (1) Hours of labor required; (2) quantities of raw materials employed; (3) amounts of energy and other utilities consumed; and (4) representative capital costs. See 773(c) of the Act. We used factors of production, reported by Pangang, for materials, energy, labor, by-products, and packing. We valued all the input factors using publicly available published information, as discussed in the "Surrogate Country" and "Factor Valuations" sections of this notice. In accordance with 19 CFR 351.408(c)(1), when a producer sources an input from a market economy and pays for it in market-economy currency, the Department employs the actual price paid for the input to calculate the factors-based NV. See also Lasko Metal Products v. United States, 437 F.3d 1442, 1445–1446 (Fed. Cir. 1994) ("Lasko"). Therefore, when Pangang had market-economy inputs and paid for these inputs in a market-economy currency, we used the actual prices paid for those inputs in our calculations.

3. Factor Valuations

In accordance with section 773(c) of the Act, we calculated NV based on factors of production reported by Pangang for the POI. To calculate NV, the reported per-unit factor quantities were multiplied by publicly available Indian surrogate values (except as noted below). In selecting the surrogate values, we considered the quality, specificity, and contemporaneity of the data. As appropriate, we adjusted imported input prices by including freight costs to make them delivered prices. For a detailed description of all surrogate values used for the respondent, see FOP Memorandum.

We added to Indian import surrogate values a surrogate freight cost using the shorter of (a) the reported distance from the domestic supplier to the factory, or (b) the distance from the nearest seaport to the factory. This adjustment is in accordance with the decision in Sigma Corporation v. United States, 117 F. 3d 1401, 1407–08 (Fed. Cir. 1997).

For those Indian Rupee values not contemporaneous with the POI, we adjusted for inflation using wholesale price indices published in the International Monetary Fund's International Financial Statistics for India. For those U.S. dollar-denominated values not contemporaneous with the POI, we adjusted for inflation using producer price indices published in the International Monetary Fund's International Financial Statistics for the United States.

Although surrogate-value data based on *Monthly Trade Statistics of Foreign Trade of India*—Volume II—Imports ("Indian Import Statistics") were provided by Pangang, we relied on more contemporaneous Indian Import Statistics (time period: April 2000 through March 2001), where available. Except as noted below, we valued raw-material inputs using the weighted-average unit import values derived from the Indian Import Statistics. When Indian Import Statistics from a contemporaneous period were not available, we used Indian Import Statistics from an earlier period.

Pangang reported that it self-produced all of its own electricity as well as the industrial gases argon, nitrogen and oxygen, which are used in the manufacture of the subject merchandise. In the antidumping investigation of hot-rolled carbon steel flat products from the PRC, the Department valued certain self-produced energy components (electricity, argon, oxygen, and nitrogen) through surrogate valuation as a finished product, rather than valuing the inputs consumed in generating each individual energy component. This was based on the fact that the financial statement of the sole surrogate company indicated that the surrogate company purchased a large portion of the inputs in question and did not appear to self-produce any of the inputs. Therefore, the valuation of the inputs consumed in generating each individual energy component would lead to mathematically incorrect results. See Hot-Rolled Steel from the PRC and accompanying Issues and Decision Memorandum at Comment 2. The Department has followed the approach established in Hot-Rolled Steel from the PRC regarding the valuation of certain self-produced energy inputs.

In its April 10, 2002, submission, Pangang argued that each of the inputs used for producing electricity, argon, nitrogen, and oxygen must be valued separately to reflect the actual production process of the subject merchandise. Pangang maintained that valuation of the finished self-produced input will significantly overstate the cost of producing the input as many of the inputs into the self-produced input are by-products or surplus inputs. Finally, Pangang argued that the reasons for using surrogate valuation to value electricity, argon, nitrogen, and oxygen in Hot-Rolled Steel from the PRC and structural steel beams from the PRC (see Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Structural Steel Beams From The People's Republic of China, 66 FR 67197, 67201 (December 28, 2001) ("Structural Steel Beams from the PRC")) do not apply in the present case. Pangang stated that because its power facilities were established decades ago, Pangang has not experienced large capital costs associated with its energy production during the POI. Pangang also asserted that to reject the use of its factors of production would amount to facts available.

In this case, as explained below, to value overhead, selling general and administrative ("SG&A"), interest, and profit, we are relying on the 2000–2001 financial statements of Steel Authority of India Limited ("SAIL") and TATA Steel ("TATA"), both of whom are Indian integrated steel producers of cold-rolled steel. The financial statements of both companies do not indicate that either self-produce argon, nitrogen, and oxygen. However, they do indicate that during the 2000–2001 financial year SAIL and TATA self-produced approximately 60 and 54 percent, respectively, of the electricity they consumed. See SAIL's financial statements at page 53 (Form A), which is attached to the FOP memorandum at Exhibit 7, and TATA's financial statements at page 14 (Form A), which is attached to petitioners' April 9, 2002, submission at Exhibit 2. For purposes of the preliminary determination we are continuing to follow our practice in Hot-Rolled Steel from the PRC and Structural Steel Beams from the PRC, and are valuing self-produced electricity, argon, nitrogen, and oxygen as finished-products, rather than valuing factor inputs going into the production of these inputs. Although the record evidence indicates that SAIL and TATA self-produced 60 and 54 percent, respectively, of their electricity, we find that potential distortion exists as Pangang self-produces all of its electricity as well as its argon, nitrogen, and oxygen. As we explained in Structural Steel Beams from the PRC, "the respondent's methodology would add needless complications to our calculation of NV and lead to potentially erroneous results."

As the basis for valuing electricity, we have relied on the 1997 data published in the International Energy Agency's publication, *Energy Prices and Taxes, Third Quarter, 2000*, and adjusted the amount for inflation. As the basis for valuing argon, nitrogen, and oxygen, we have relied on October 1996 price information from Bhoruka Gases Limited, an Indian manufacturer of industrial gases, and adjusted the amount for inflation.

Pangang reported that it purchased iron ore fines and lumps from market-economy suppliers during the POI. The Department used the weighted-average price reported by Pangang.

We valued all inputs for packing using the average-unit values derived from the Indian Import Statistics.

We used Indian transport information to value transport for raw materials. For all instances in which respondent reported delivery by truck, to calculate domestic inland freight (truck), we used a price quote obtained by the Department from an Indian trucking company for transporting materials between Mumbai and Coimbatore (1265 kilometers). We converted the Indian Rupee value to U.S. dollars and adjusted for inflation through the POI. Similarly, for domestic inland freight (rail), we used a freight rate as quoted from Indian Railway Conference Association price lists.

To value factory overhead, SG&A expenses, interest, and profit, we used financial ratios based on 2000–2001 financial information from two Indian integrated steel producers of cold-rolled steel, SAIL and TATA. In their March 26, 2001, surrogate value submission, Pangang argued that the Department should determine overhead, SG&A, and profit based on data from the Reserve Bank of India, which represents

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financial data from 947 private limited companies from the Indian metals and chemical industries. Pangang claimed that the Department should rely on the Reserve Bank data because the financial statistics of a single company will not approximate the experience of Pangang in this case as Pangang is a member of the fully integrated group of companies, which not only produces the subject merchandise, but also produces and sells a range of other chemical and steel products and provides services. In their April 9, 2002, surrogate value submission, petitioners argued that the Department should rely on the most contemporaneous information available for TATA. In the investigation of cut-to-length carbon steel plate from the PRC, the Department determined not to use data from the Reserve Bank of India, explaining, "it is the Department's preference to base SG&A and profit ratios on data from actual producers of subject merchandise in the surrogate country." See Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China, 62 FR 61964, 61969, 61970 (November 20, 1997). In their April 18, 2002 submission, the respondent argued that because TATA undertook significant capital investments during the fiscal 2000–2001 year, TATA's financial ratios are not indicative of Pangang's experience. Therefore, Pangang argued that the Department should disregard TATA's financial data.

In addition to the two potential surrogates the parties placed on the record (i.e., TATA and the Reserve Bank of Indian data), the Department located another surrogate, SAIL , and placed its financial information on the record as well. Thus, we have on the record of the investigation financial statements of two Indian producers of cold-rolled steel (i.e., SAIL and TATA). Moreover, like Pangang, both SAIL and TATA are integrated steel producers that are members of a group of companies which produce products in addition to producing the subject merchandise. See FOP Memorandum for a copy of the 2000–2001 financial information for the companies included within the SAIL and TATA Steel Groups. Because the Department prefers to base financial ratios on multiple producers from a contemporaneous period, the Department has calculated a simple average of the financial ratios of SAIL and TATA. See Brake Rotors From the People's Republic of China: Preliminary Results of Third New Shipper Review and Preliminary Results and Partial Rescission of Second Antidumping Duty Administrative Review, 64 FR 73007, 73011 (December 29, 1999). As in Hot-Rolled Steel from the PRC, we used information from TATA from profit. See the Hot-Rolled Factors-of-Production Valuation Memorandum to Edward Yang through James Doyle from Carrie Blozy, Catherine Bertrand and Doreen Chen, dated September 28, 2001.

For labor, consistent with 19 CFR 351.408(c)(3), we used the PRC regression-based wage rate at the Import Administration's home page, Import Library, Expected Wages of Selected NME Countries, revised in September 2001 (see *http://ia.ita.doc.gov/wages*). The source of the wage rate data on the Import Administration's web site is the 2000 Year Book of Labour Statistics, International Labor Organization (Geneva: 2000), Chapter 5B: Wages in Manufacturing.

For the by-products, steel slag and iron slag, we used U.S. domestic prices as surrogate values. In previous cases, the Department has determined not to value slag based on Indian Import Statistics because we found that the Indian import values were unusually high compared to the price of the subject merchandise. See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From the People's Republic of China, 66 FR 22183, 22191 (May 3, 2001) ("Hot-Rolled from the PRC Prelim"); Hot-Rolled Steel from the PRC; and Structural Steel Beams from the PRC. Consistent with these prior determinations, for purposes of the preliminary determination, the Department is valuing steel slag and iron slag based on values for slag from the U.S. Geological Survey *Minerals, Commodities Summaries* from 1998. We adjusted the value for inflation using the U.S. producer price index.

To value the by-products coke oven gas and steam, we: (1) Noted the BTU equivalent of coke oven gas or steam; (2) obtained a ratio of coke oven gas or steam to the BTU equivalent of natural gas; and (3) multiplied this ratio by the surrogate value of natural gas, which was taken from the 1999 financial report of EOG Resources, Inc. This natural gas value was also used in the investigation of hot-rolled steel from the PRC. See Hot Rolled Steel from the PRC Prelim.

We are not granting offsets for the recoveries of hot-rolled steel products and cold-rolled steel products for purposes of the preliminary determination. In its March 12, 2002, supplemental questionnaire response, Pangang explained that inferior steel products, which include hot-rolled and cold-rolled products, "are those steels in good steel quality but which sizes do not meet client needs." We find that inferior hot-rolled and cold-rolled steel products represent sales of non-prime or secondary finished product and hence cannot be classified as by-products as they are more properly considered home market sales of hot-rolled and cold-rolled steel.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the PRC when we make our final determination regarding sales at LTFV in this investigation, which, unless postponed, will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing Customs to suspend liquidation of all entries of cold-rolled steel from the PRC entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**. See Critical Circumstances Notice. We are instructing Customs to require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margins exist for the POI:

COLD-ROLLED FLAT CARBON STEEL FLAT PRODUCTS

Producer/Manufacturer/Exporter	Weighted-average margin (percent)
Pangang	129.85
PRC-Wide Rate	129.85

The PRC-wide rate applies to all entries of the subject merchandise except for entries from exporters/manufacturers that are identified individually above.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of cold-rolled steel from the PRC are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than 55 days after the date of publication of this notice. Rebuttal briefs must be limited to the issues raised in the case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held fifty-seven days after publication of this notice, at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). We will make our final determination, unless postponed, no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11192 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–821–815]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From the Russian Federation

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of the less-than-fair-value investigation of certain cold-rolled carbon steel flat products from the Russian Federation.

SUMMARY: The Department of Commerce ("Commerce") has preliminarily determined that imports of certain cold-rolled carbon steel flat products ("cold-rolled steel") from the Russian Federation ("Russia") are being, or are likely to be, sold in the United States at less than fair value ("LTFV").

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen 202–482–0409 or Aishe Allen at 202–482–0172, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On October 18, 2001, the Department initiated antidumping duty investigations to determine whether imports of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela are being, or are likely to be, sold in the United States at LTFV. See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 54198 (October 26, 2001) ("Initiation Notice"). The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation ("Petitioners").[1]

On November 13, 2001, the International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of cold-rolled steel from all of these countries. See Certain Cold-Rolled Carbon Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela, 66 FR 57985 (November 19, 2001).

On November 23, 2001, the Department issued its respondent selection memorandum, selecting JSC Severstal ("Severstal") as the sole mandatory respondent to be investigated. See Memorandum from James C. Doyle to Edward C. Yang: Selection of Respondents, at 2 (November 23, 2001) ("Respondent Selection Memo"). On November 27, 2001, the Department issued its antidumping questionnaire to Severstal and to the Government of the Russian Federation ("GOR"). The Department received no responses to the questionnaire. See Memorandum to The File from Juanita H. Chen: Failure of Respondent JSC Severstal to Respond to Questionnaire (February 4, 2002) ("Failure to Respond Memo").

On February 7, 2002, three of the petitioners requested that the Department postpone the preliminary determination by fifty days. See Letter to the Department from Bethlehem Steel Corporation, National Steel Corp., and United States Steel Corporation (February 7, 2002). On February 22, 2002, the Department postponed the preliminary determination in this investigation to April 26, 2002. See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled

[1] Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation." See letter from Skadden, Arps, Slate, Meagher & Flom LLP (February 1, 2002).

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Carbon Steel Flat Products from Argentina, et al., 67 FR 8227 (February 22, 2002).

On March 15, 2002, petitioners submitted a letter requesting that the Department apply a dumping margin based on total adverse facts available for Severstal. Petitioners argue that because Severstal failed to timely provide the information requested by the Department, as adverse facts available, the Department should apply the highest calculated dumping margin of 332.59 percent from the antidumping petition or, in the alternative, apply the highest dumping margin of 137.33 percent from the notice of initiation.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is January 1, 2001 through June 30, 2001. This period corresponds to the two most recent fiscal quarters prior to the filing of the petition (*i.e.*, September 2001).

Critical Circumstances

On November 29, 2001 and December 7, 2001, four of the petitioners in the investigation (Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Company) submitted an allegation of critical circumstances with respect to imports of cold-rolled steel from Russia and requested an expedited decision in the matter. On April 10, 2002, the Department issued its preliminary affirmative determination that critical circumstances exist with respect to imports of cold-rolled steel from Russia. *See Memorandum to Faryar Shirzad from Joseph A. Spetrini: Preliminary Affirmative Determinations of Critical Circumstances* (April 10, 2002); and *Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation*, 67 FR 19157 (April 18, 2002) ("Critical Circumstances Notice").

Nonmarket Economy Country Status

The Department has treated Russia as a nonmarket economy ("NME") country in all past antidumping investigations. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value; Solid Fertilizer Grade Ammonium Nitrate from the Russian Federation*, 65 FR 42669 (July 11, 2000); *Notice of Final Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from the Russian Federation*, 64 FR 38626 (July 19, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from the Russian Federation*, 62 FR 61787. This NME designation remains in effect until it is revoked by the Department. See section 771(18)(C) of the Act. No party has sought revocation of the NME status in this investigation.[2] Therefore, in accordance with section 771(1)(C) of the Act, we will continue to treat Russia as a NME country.

Russia-Wide Rate

In a NME proceeding, the Department presumes that all companies within the country are subject to governmental control, and assigns separate rates only if the respondent demonstrates the absence of both *de jure* and *de facto* governmental control over export activities. *See Notice of Final Determination of Sales at Less Than Fair Value: Bicycles From the People's Republic of China*, 61 FR 19026, 19027 (April 30, 1996). As no party requested that it be assigned a separate rate in this investigation, there was no demonstration of eligibility for a separate rate under the separate rates criteria. Accordingly, we preliminarily determine all exporters are subject to the Russia-wide rate.

Facts Available

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline for submission of the information, or in the form and manner requested, (C) significantly impedes a proceeding under the antidumping statute, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) of the Act, facts otherwise available in reaching the applicable determination.

[2] We note there is an ongoing inquiry into the status of Russia as a NME country, for which a hearing was conducted on March 27, 2002. Information on this separate proceeding can be found at Import Administration's website, at http://ia.ita.doc.gov/

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Given the extent to which Severstal exported cold-rolled steel from Russia during the POI, Severstal was designated as the sole mandatory respondent in the investigation. *See* Respondent Selection Memo, at 4. However, both Severstal and the GOR failed to submit any response to the Department's questionnaire. As noted in the *Failure to Respond Memo*, Severstal indicated that it did not plan to respond to the Department's NME antidumping questionnaire, with the understanding that the Department would apply facts available methodology. Without a response from Severstal to the Department's antidumping questionnaire, we have no foundation for determining a margin. Thus, the Department has applied facts available ("FA"), in accordance with section 776(a)(2) of the Act, in making our preliminary antidumping determination.

Selection of Adverse FA

In selecting from among the facts otherwise available, section 776(b) of the Act provides that if the Department finds the respondent "has failed to cooperate by not acting to the best of its ability to comply with a request for information * * * {the Department} may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review, 62 FR 53808, 53819–20 (October 16, 1997). Severstal did not attempt to respond to the Department's questionnaire, but stated outright its intention of not responding to the questionnaire at all. See Failure to Respond Memo. As a general matter, it is reasonable for the Department to assume that Severstal possessed the records necessary for this investigation, and that by not supplying any information requested by the Department, Severstal failed to cooperate to the best of its ability. Because the Department has determined Severstal failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As adverse FA, we have applied the margin from initiation (i.e., the highest margin based on the amended petition), which is 137.33 percent, as the Russia-wide rate. See AD Initiation Checklist (October 18, 2001) ("Initiation Checklist"). Pursuant to section 776(c) of the Act, the Department has corroborated the 137.33 percent margin from initiation to the extent practicable. See Total Facts Available Corroboration Memorandum (April 26, 2002). This Russia-wide rate applies to all entries of subject merchandise.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for Russia when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days after the publication of this notice in the **Federal Register**.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing Customs to suspend liquidation of all entries of cold-rolled steel from Russia entered, or withdrawn from warehouse, for consumption on or after 90 days prior to the date on which this notice is published in the **Federal Register**, in accordance with section 733(e) of the Act. See Critical Circumstances Notice. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the preliminary dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

We determine that the following percentage weighted-average margin exists for the POI:

COLD-ROLLED CARBON STEEL FLAT PRODUCTS

Producer/manufacturer/exporter	Weighted-average margin
Russia-Wide Rate	137.33%

The Russia-wide rate applies to all entries of the subject merchandise.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination whether imports of cold-rolled steel from Russia are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments must be submitted to the Assistant Secretary for Import Administration no later than 50 days after the date of publication of this notice, and rebuttal briefs no later than five business days after the deadline for submission of case briefs. Rebuttal briefs must be limited to the issues raised in the case briefs. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. Such summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 1401 Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled date.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, oral presentations will be limited to issues raised in the briefs. *See* 19 CFR 351.310(c). If this investigation proceeds normally, we will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11193 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–791–814]

Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Negative Preliminary Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination, and Preliminary Negative Preliminary Determination of Critical Circumstances.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from South Africa are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended. In addition, we preliminarily determine that critical circumstances do not exist for import of cold-rolled carbon steel flat products from South Africa.

Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Minoo Hatten, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW.,

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Washington, DC 20230; telephone: (202) 482–1690.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Background

Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 54198 (October 26, 2001) ("*Initiation Notice*")), the following events have occurred.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that imports of certain cold-rolled steel products from South Africa are materially injuring the United States industry (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, (66 FR 57985 (November 19, 2001)).

On December 5, 2001, we selected the largest producer/exporter of cold-rolled steel from South Africa as a mandatory respondent in this proceeding. For further discussion, see the Memorandum to Laurie Parkhill, Director Office 3, from The Team regarding Selection of Respondents dated December 5, 2001. We issued the antidumping questionnaire to Iscor Limited ("Iscor") on December 5, 2001.

On December 7, 2001, the petitioners [1] alleged that there is a reasonable basis to believe or suspect critical circumstances exist with respect to the antidumping investigations of cold-rolled carbon steel flat products from Argentina, Australia, China, India, the Netherlands, Russia, South Africa, South Korea, and Taiwan. On December 14, 2001, the petitioners supplemented their December 7, 2001, submission with additional information.

During the period January through April 2002, the Department received from Iscor responses to sections A, B, and C of the Department's original and supplemental questionnaires.

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002 (*Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002)).

In accordance with 19 CFR 351.206(c)(2)(i), because petitioners submitted the critical circumstances allegation more than twenty days before the scheduled date of the preliminary determination, the Department must issue the preliminary critical circumstances determination not later than the date of the preliminary determination. A full discussion of our analysis may be found in the critical circumstances section of this notice and in the critical circumstances memorandum from Richard W. Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determinations of Critical Circumstances—South Africa*). A public version of this memorandum is on file at the Import Administration Central Records Unit, in Room B–099 of the Department of Commerce Building.

Postponement of Final Determination and Extension of Provisional Measures

Pursuant to section 735(a)(2) of the Act, on April 23, 2002, Iscor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b)(2)(ii) and (e), because (1) our preliminary determination is affirmative, (2) Iscor accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value, Postponement of Final Determination and Preliminary Negative Determination of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Period of Investigation

The period of investigation ("POI") is July 1, 2000, through June 30, 2001.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from South Africa to the United States were made at less than fair value ("LTFV"), we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons for U.S. sales. We compared U.S. sales to sales of identical merchandise made in the home market. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared

[1] The petitioners in the concurrent antidumping duty investigations are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. Weirton Steel Corporation is not a petitioner in the Netherlands case. Effective January 1, 2002, the party previously known as "United States Steel LLC" changed its name to "United States Steel Corporation."

U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish.

For this preliminary determination, we did not use certain home-market sales reported by Iscor because it did not indicate the quality or yield strength for the products involved in these transactions and reported zero in the quality and yield strength fields. As a result, in the product-comparison portion of the margin program we generated missing values. In its April 8, 2002, supplemental response at pages 11 and 12, Iscor stated that it reported zero because for some orders customers did not specify a quality or yield strength for the merchandise ordered and Iscor did not keep a record of this information. We intend to examine this matter in detail at verification.

Constructed Export Price

In accordance with section 772(b) of the Act, we calculated CEP for all sales to the United States because Iscor sells all the merchandise under investigation to the United States through an affiliated company in the United States, MacSteel International USA Corp.

We based CEP on the FOB prices to unaffiliated purchasers in the United States. We made adjustments for billing adjustments. We also made deductions for movement expenses in accordance with section 772(c)(2)(A) of the Act; these deductions included, where appropriate, domestic inland freight (*i.e.*, inland freight expense from plant/warehouse to port of exit), ocean freight, marine insurance, U.S. brokerage and handling, U.S. customs duties, U.S. wharfage fees, U.S. survey fees, U.S. inland freight expenses (*i.e.*, freight from port to warehouse), and warehousing expenses. In accordance with section 772(d)(1) of the Act and 19 CFR 351.402(b), we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (*e.g.*, imputed credit costs) and indirect selling expenses (*e.g.*, inventory carrying costs).

Pursuant to section 772(d)(3) of the Act, we further reduced the starting price by an amount for profit to arrive at CEP. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Iscor and its affiliate on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales. *See Preliminary Determination Analysis Memorandum for Iscor.*

We used Iscor's reported constructed value (CV) data to calculate the CEP profit amount. In our original questionnaire dated December 5, 2001, we requested that Iscor respond to the CV portion of section D with respect to products or models sold in the United States for which it had no sales of comparable merchandise in the home or third-country market. As Iscor did not respond to the CV section of the section D, we repeated the request in a supplemental questionnaire. In response to the supplemental questionnaire, Iscor provided a response to the CV portion of the section D questionnaire. Because CV data was on the record and it is the Department's normal practice to use CV data to calculate the CEP profit amount when it is available, we used this data to calculate the CEP profit amount. By using CV data we are able to calculate a profit amount which is more specific to the merchandise under investigation than relying on a profit amount derived from the financial statements which could cover a broader range of merchandise. In using Iscor's CV data, we found that Iscor did not provide CV data for all of its U.S. products. Therefore, for this preliminary determination, and pursuant to section 776(a) of the Act, as facts available, we extracted the cost information available in the U.S. database and information provided in the CV portion of section D response to derive the CV for these sales. Prior to our final determination, we will require Iscor to provide the CV data for the products for which we currently have no CV data so that we can include this data in our calculations for the final determination.

For this preliminary determination we have not included certain expense amounts reported in the U.S. miscellaneous-expense field. In its section C questionnaire response Iscor reported certain expense amounts in the U.S. miscellaneous-expenses field. However, it did not clearly identify the nature of these expenses. In its response to our supplemental questionnaire, Iscor stated that this field is primarily comprised of brokerage fees. However, it did not provide an adequate explanation for the negative amounts reported in this field. Since Iscor did not demonstrate that it was entitled to receive this upward adjustment to U.S. price (*i.e.*, deducting the negative numbers reported in movement expense resulted in an increase in U.S. price for certain transactions) for this preliminary determination, we did not use the negative amounts reported in this field. However, because Iscor provided adequate information with regard to the positive values reported in this field, we used the positive amounts reported in this field. *See Preliminary Determination Analysis Memorandum for Iscor.*

On December 21, 2001, Iscor requested that the Department permit it to exclude from its response to the questionnaire an insignificant quantity of sales which its U.S. affiliate sold to its affiliated customer in the U.S. market as well as that affiliated customer's sales to its unaffiliated customers. The affiliated customer added value to some of the merchandise prior to resale. Iscor stated that providing sales and further-manufacturing data for such an insignificant quantity of sales would be disproportionately burdensome without having any meaningful effect on the calculation of the dumping margin. Consistent with our past practice, because the volume of these sales was small and would have a negligible impact upon the margin calculation, we granted Iscor's request. *See Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 8291, 8295 (February 19, 1999) (unchanged in the final determination). In our letter granting the request, however, we informed Iscor that this assertion is subject to verification.

Normal Value

A. Home-Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (i.e., the aggregate volume of home-market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home-market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act and 19 CFR 351.405(2). Because the respondent's aggregate volume of home-market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). See 19 CFR 412(c)(2)(2001). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *Id.*; *see* also *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997).

In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[2] including selling functions,[3] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison-market sales (*i.e.*, NV based on either home-market or third-country prices), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc. v. United States*, 243 F.3d 1301, 1314–1315 (Fed. Cir. March 7, 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV level of trade is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (i.e., no LOT adjustment was practicable), the Department will grant a CEP offset, as provided in section 773(a)(7)(B) of the Act.

We obtained information from Iscor regarding the marketing stages involved in making the reported home-market and U.S. sales, including a description of the selling activities performed by the respondent for each channel of distribution. Iscor's LOT findings are summarized below.

Iscor reported one channel of distribution in the home market with two customer categories, merchants (which included distributors, processors and service centers) and end-users. The selling activities associated with all sales were similar (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) and, based on our analysis of the selling activities, we preliminarily determine that the reported single home-market channel of distribution constitutes one LOT. Iscor reported one channel of distribution in the U.S. market, represented by its CEP sales. Iscor's CEP level of trade was its sales to its affiliated reseller. After making deductions pursuant to section 772(d) of the Act, we found that the selling functions performed by Iscor at the CEP level (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service and quality assurance) were not sufficiently different from the selling functions performed at the home-market LOT (*e.g.*, freight and delivery arrangements, order processing, inventory management, after-sales service, and quality assurance) to consider the home-market LOT to be different and at a more advanced stage of distribution than the CEP LOT. Because the sole home-market LOT was not different from the CEP LOT we did not make a LOT adjustment.

Although Iscor claimed a CEP-offset adjustment to NV, because we found the CEP LOT to be similar to the home-market LOT we made no CEP-offset adjustment.

D. Calculation of Normal Value Based on Comparison-Market Prices

We calculated NV based on "free on rail ex-works" prices to unaffiliated customers. We made adjustments, where appropriate, to the starting price for billing adjustments, interest revenue, rebates, and early-payment discounts. We also made deductions for movement expenses (*i.e.*, inland freight expense from plant/warehouse to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale for imputed credit expenses.

We also deducted home-market packing costs and added U.S. packing costs in accordance with sections 773(a)(6)(A) and (B) of the Act.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Critical Circumstances

Section 733(e)(1) of the Tariff Act provides that the Department will preliminarily determine that critical circumstances exist if there is a reasonable basis to believe or suspect that: (A)(i) There is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise; or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales; and (B) there have been massive imports of the subject merchandise over a relatively short period.

Section 351.206(h)(1) of the Department's regulations provides that, in determining whether imports of the subject merchandise have been "massive," the Department normally will examine: (i) the volume and value of the imports; (ii) seasonal trends; and (iii) the share of domestic consumption accounted for by the imports. In addition, 19 CFR 351.206(h)(2) provides that, "In general, unless the imports during the "relatively short period" have increased by at least 15 percent over the imports during an immediately preceding period of comparable duration, the Secretary will not consider the imports massive."

Section 351.206(i) of the Department's regulations defines "relatively short period" as generally the period beginning on the date the proceeding begins (*i.e.*, the date the petition is filed) and ending at least three months later. This section provides further that, if the Department "finds that importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely," then the Department may consider a period of not less than three months from that earlier time.

In determining whether the above statutory criteria have been satisfied, we examined the following information: (1) The evidence presented in the petitioners' submissions of December 7, 2001, and January 14, 2002; (2) new evidence obtained since the initiation of the less-than-fair-value (LTFV) investigations (*i.e.*, additional import statistics released by the Census Bureau); and (3) the International Trade Commission's (ITC) affirmative preliminary injury determination (*see Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, International Trade Commission Investigations Nos. 701–TA–422–425 and 731–TA–964–983 Preliminary Determination, 66 FR 57985 (November 19, 2001)).

History of Dumping

In determining whether a history of dumping and material injury exists, the Department generally considers current or recent antidumping duty orders on the subject merchandise from the country in question in the United States and current orders in any other country. *See Carbon and Alloy Steel Wire Rod From Germany, Mexico, Moldova, Trinidad and Tobago, and Ukraine: Notice of Preliminary Determination of Critical Circumstances*, 67 FR 6224 (February 11, 2002) (*Carbon and Alloy Steel Wire Rod*). Because we are not aware of any existing antidumping order in any country on cold-rolled carbon steel flat products from South Africa, we do not find a history of dumping from South Africa, pursuant to section 733(e)(1)(A)(i) of the Act. However, the Department may look to the second criterion for determining whether importers knew or should have known that exporters were selling subject merchandise from South Africa at LTFV prices.

Importer Knowledge of Injurious Dumping

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known the exporter was selling cold-rolled steel at less than fair value, the Department normally considers margins of 25 percent or more for export price (EP) sales and 15 percent or more for CEP sales sufficient to impute importer knowledge of sales at LTFV. *See Carbon and Alloy Steel Wire Rod*, 67 FR 6224, 6225.

The Department normally bases its decision with respect to knowledge on the margins determined in the preliminary determination. Therefore, for purposes of this preliminary determination of critical circumstances, we are relying on the margin calculated for Iscor for this preliminary determination. Because this margin is greater than 15 percent (see "Suspension of Liquidation" section below), in the case of South Africa, which has CEP sales, we find that there is a reasonable basis to impute knowledge of dumping with respect to imports from South Africa.

Material Injury

In determining whether there is a reasonable basis to believe or suspect that an importer knew or should have known that there was likely to be material injury by reason of dumped imports, the Department normally will look to the preliminary injury determination of the ITC. If the ITC finds a reasonable indication of present material injury to the relevant U.S. industry, the Department will determine that a reasonable basis exists to impute importer knowledge that material injury is likely by reason of dumped imports. *See Final Determination of Sales at Less Than Fair Value: Certain Cut-To-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964 (November 20, 1997). In this case, the ITC preliminarily found that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of subject merchandise from South Africa. *See Determinations and Views of the Commission*, Investigations Nos. 701–TA–422–425 and 731–TA–964–983, Publication 3471 (November 2001) (*ITC Determination*). Due to the ITC's finding of material injury, we preliminarily determine that there is a reasonable basis to believe or suspect that importers knew or should have known that imports of cold-rolled steel from South Africa were likely to cause material injury.

Massive Imports

In determining whether there are "massive imports" over a "relatively short period," pursuant to section 733(e)(1)(B) of the Act, the Department normally compares the import volumes of the subject merchandise for at least three months immediately preceding the filing of the petition (*i.e.*, the "base period") to a comparable period of at least three months following the filing of the petition (*i.e.*, the "comparison period"). However, as stated in 19 CFR 351.206(i), "if the Secretary finds importers, or exporters or producers, had reason to believe, at some time prior to the beginning of the proceeding, that a proceeding was likely, then the Secretary may consider a time period of not less than three months from that earlier time." Imports normally will be considered massive when imports during the comparison period have increased by 15 percent or more compared to imports during the base period. We used company-specific shipment data and determined that there were not massive imports either for Iscor or for "all others." For a detailed analysis, see the memorandum from Richard Moreland to Faryar Shirzad, dated April 26, 2002 (*Preliminary Negative Determinations of Critical Circumstances—South Africa*).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Iscor	43.32
All Others	[1] 43.32

[1] As Iscor was the only respondent that we used in our calculations, we used Iscor's margin as the all-others rate.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(2) of the Act, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports

[2] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[3] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized the common cold-rolled carbon steel-flat product selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

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are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held three days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, D.C. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain the following information: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

This determination is published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11194 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–469–812]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Spain

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products from Spain are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Irina Itkin at (202) 482–0656, Office of AD/CVD Enforcement, Office 2, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Spain are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (Oct. 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (Nov. 19, 2001).

On November 16, 2001, the Department issued a complete antidumping questionnaire to Aceralia.[2] *See* the memorandum from the Team to Louis Apple entitled "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain—Selection of Respondents," dated November 16, 2001 (*First Respondent Selection Memo*).

On December 13, 2001, Aceralia notified the Department that it did not make sales of subject merchandise during the Period of Investigation (POI). Rather, Aceralia stated that all of its U.S. sales during the POI consisted of either merchandise which was outside the scope of the investigation or a single trial sale of subject merchandise which was later cancelled. On December 19, 2002, we requested that Aceralia provide information on the physical characteristics of the merchandise which it claimed was outside the scope.

On December 19 and 20, 2002, the Department issued questionnaires to two additional companies believed to produce and/or export subject merchandise (*i.e.*, Laminacion y Derivados, S.A. (Layde) and Troquenor, S.A. (Troquenor), respectively). *See* the memorandum from the Team to Louis Apple entitled "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain—Selection of Respondents' dated December 19, 2001 (*Second Respondent Selection Memo*). For further discussion, see the "Selection of Respondents" section of this notice, below.

On December 21 and 27, 2001, we requested additional information from Aceralia regarding the physical characteristics of its out-of-scope merchandise. Also on these dates, we informed Aceralia that, if we determined that Aceralia did in fact make sales of subject merchandise, its response to the remaining sections of the questionnaire would continue to be due in January 2002 with no further extensions possible.

On January 11, 2002, Aceralia provided the information requested in December 2001. On January 22, 2002, we requested further clarification regarding the products exported by Aceralia during the POI. This information was received on January 29, 2002.

Also on January 22, 2002, Layde informed the Department that it had no commercial sales of subject merchandise during the POI. On January 23, 2002, we requested that Layde demonstrate that the subject merchandise exported to the United States was scrapped.

On January 29, 2002, Troquenor informed the Department that all of its exports to the United States were of hot-rolled steel products. On January 31, 2002, we requested that Troquenor provide documentation showing that this was the case. Troquenor provided this information on February 22, 2002.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (Feb. 22, 2002).

On February 11, 2002, we requested that Aceralia provide documentation showing that its sale of in-scope merchandise during the POI was cancelled and the corresponding coils were returned by the customer. On February 19, 2002, Aceralia submitted its response to this request.

Also on February 19, 2002, Layde informed the Department that it in fact sold a small quantity of subject merchandise to an unaffiliated customer during the POI. On February 22, 2002, we requested that Layde provide additional documentation regarding this transaction.

On February 28, 2002, Layde informed the Department that it would not provide any additional information in this investigation.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection; or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), which we obtained from a variety of sources under the *Harmonized Tariff Schedule of the United States* (HTSUS) number that corresponds to the subject merchandise, we found that ten producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Aceralia represented the vast majority of the imports of subject merchandise during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. Therefore, we designated Aceralia as the mandatory respondent and sent it the antidumping questionnaire. *See* the *First Respondent Selection Memo*.

On December 13, 2001, Aceralia notified the Department that it did not make sales of subject merchandise during the POI. Rather, Aceralia stated that all of its U.S. sales during the POI consisted of either merchandise which was outside the scope of the investigation or a single trial sale of subject merchandise which was later cancelled.

According to data on the record, Layde was the only other producer of subject merchandise identified in the petition, and Troquenor was the next largest producer of merchandise shown in the Customs Service data relied on previously to select Aceralia. Therefore, we designated Layde and Troquenor as additional mandatory respondents and sent them the antidumping questionnaire. *See* the *Second Respondent Selection Memo*.

On January 29, 2002, Troquenor informed the Department that it did not export any subject merchandise to the United States during the POI. Because neither Aceralia nor Troquenor had POI sales of cold-rolled steel, we are not treating them as respondents in this investigation. Therefore, the Department will apply the "all others" rate to future shipments to the United States made by these companies. For further discussion, see the memorandum from the Team to Louis Apple entitled "Analysis of Merchandise Sold by Aceralia and Troquenor During the POI in the Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain," dated April 15, 2002.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that if an interested party (A) withholds

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively "the petitioners").

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production (COP) of the foreign like product and the constructed value (CV) of the merchandise under investigation. Section E requests information on further manufacturing.

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information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On December 19, 2001, the Department issued its questionnaire to Layde. On January 22, 2002, Layde informed the Department that it had no commercial sales of subject merchandise during the POI. Subsequently, the Department requested further information regarding Layde's claims. In response to this request, Layde stated that it had sales of subject merchandise to the United States in the amount of 12.02 short tons. Upon the Department's request that it report these sales, Layde informed the Department that it no longer intended to participate in this investigation because the total quantity of its sales to the United States was negligible. *See* the February 28, 2002, letter from Layde. Because Layde failed to supply necessary information, we have applied FA to calculate the dumping margin, pursuant to section 776(a)(2)(B) of the Act.

Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (Oct. 16, 1997). The respondent was notified in the Department's questionnaires and in subsequent communications that failure to submit the requested information by the date specified might result in use of FA. As a general matter, it is reasonable for the Department to assume that Layde possessed the records necessary for this investigation and that by not supplying the information the Department requested, Layde failed to cooperate to the best of its ability. As Layde failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act.

2. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See*, Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Spain Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import values (AUV) for one ten-digit category of the HTSUS corresponding to in-scope imports from Spain during the POI. Our review of the EP calculation indicated that the information in the petition has probative value because certain information (*e.g.*, import statistics) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI. We compared the AUV data with U.S. customs data and found the price used by the petitioners to be accurate. As the AUV data is based on official statistics, no further corroboration is necessary. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (Jan. 4, 1999) (Comment 13).

Normal Value

The petitioners based normal value on a home market price quote obtained from a Spanish cold-rolled steel producer. The grade and size of this merchandise was comparable to the HTSUS classification used for purposes of EP. In addition, this price quote was contemporaneous with the AUV data used by the petitioners.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition (*e.g.* the Department attempted to locate home market prices through publically available sources (*see* the memorandum to the File from the Team entitled "Home Market Price Data From Publically-Available Sources in the Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Spain," dated April 12, 2002)).

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information."

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination.

Accordingly, in selecting AFA with respect to Layde, the Department decided to apply the margin rate of 46.20 percent, which is the estimated dumping margin calculated by the petitioners in the amended petition of this investigation. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. This provision contemplates that we weight-average margins other than zero, *de minimis*, and FA margins to establish the "all others" rate. Where the data do not permit weight-averaging such rates, the SAA, at 873, provides that we may use other reasonable methods. Because the petition contained only one estimated dumping margin, 46.20 percent, there are no additional estimated margins available with which to create an "all others" rate based on an average. Therefore, we have selected the margin of 46.20 percent as the "all others" rate. *See, e.g., Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products From Indonesia*, 66 FR 22163 (May 3, 2001).

Suspension of Liquidation

In accordance with section 733(d)(2) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise from Spain entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the EP, as indicated in the chart below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Weighted-average margin (in percent)
Laminacion y Derivados, S.A. (Layde)	46.20
All Others	46.20

Disclosure

The Department will disclose calculations performed within five days of the date of publication of this notice to the parties of the proceedings in this investigation in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Spain, case briefs must be submitted no later than 35 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five business days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Spain no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11195 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–401–807]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Sweden

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig at (202) 482–4161 or Frank Thomson at (202) 482–4793, AD/CVD Enforcement Office VI, Group II, Import Administration, Room 1870, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Sweden are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

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Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from petitioners. On November 26, 2001, we informed respondents of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 16, 2001, the Department issued an antidumping questionnaire to SSAB Svenskt Stal AB (SSAB).[2] *See Memorandum to Melissa Skinner, Selection of Respondents for the Antidumping Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Sweden (Respondent Selection Memo)* (November 29, 2001). On December 7, 2001, SSAB stated that it did not intend to participate in this investigation.

On December 4, 2001, we received a letter from AB Sandvik Steel (Sandvik) requesting to participate in the cold-rolled investigation as a voluntary respondent. On December 7, 2001, we accepted Sandvik as a voluntary respondent. In letters dated December 12, 2001, and January 3, 2002, we granted Sandvik extensions to respond to the questionnaire. We received Sandvik's Sections A, B, C and E questionnaire response on January 14, 2002. In a letter dated February 4, 2002, the petitioners requested that the Department commence a sales below cost investigation of cold-rolled steel manufactured by Sandvik.

On February 6, 2002, Sandvik informed the Department that it was withdrawing its participation in this investigation and requested that we remove its proprietary information from the official record of this proceeding and return the information to Sandvik.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the deadline for the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

On April 11, 2002, we informed SSAB that failure to submit the requested information by the date specified might result in use of the facts available (FA) under section 776 of the Act and section 351.308 of the Department's regulations.

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation (POI), based on the Harmonized Tariff Schedules of the United States (HTSUS) number that corresponds to the subject merchandise, we obtained information from a variety of sources and found that sixteen producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, SSAB represented a significantly large percent of the imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. *See Respondent Selection Memo*. Therefore, we designated SSAB as the mandatory respondent and sent it the antidumping questionnaire. On December 7, 2001, SSAB stated that it did not intend to participate in this investigation.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, please see the Scope Appendix attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information requested by the Department, (B) fails to provide such information by the deadline, or in the form or manner requested, (C) significantly impedes a proceeding, or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 16, 2001, the Department issued an antidumping questionnaire to SSAB. Section A was due on December 7, 2001, and Sections B–D were due on December 24, 2001. SSAB did not respond to the sections A, B, C, and D by the respective due dates, nor did the company request that the Department grant any extension of the deadlines to respond. On December 7, 2001, SSAB notified the Department that it did not intend to respond to the Department's questionnaire. In a letter dated April 11, 2002, we informed SSAB that failure to submit the requested information by the date specified might result in use of the FA under section 776 of the Act and section 351.308 of the Department's regulations. SSAB did not respond to the Department's requests for information at all.

As described above, SSAB failed to provide a response to the Department's questionnaire despite the Department's repeated requests for information. Because SSAB failed to provide any of the necessary information requested by the Department and significantly impeded the proceeding, pursuant to section 776(a)(2)(B) and (C) of the Act, we have applied the FA to calculate the dumping margin.

On December 7, 2001, we accepted Sandvik as a voluntary respondent. We note that 19 CFR 351.204(d)(2) of the Department's regulations states that "A voluntary respondent accepted for individual examination under subparagraph (d)(1) of this section will be subject to the same requirements as an exporter or producer initially selected by the Secretary for individual examination under section 777A(c)(2) or section 777A(e)(2)(A) of the Act, including the requirements of section 782(a) of the Act and, where applicable, the use of the facts available under section 776 of the Act and 351.308."

In letters dated December 12, 2001, and January 3, 2002, we granted Sandvik extensions to respond to the questionnaire. We received Sandvik's Sections A, B, C and E questionnaire response on January 14, 2002. After submitting a questionnaire response, on February 6, 2002, Sandvik subsequently informed the Department that it was withdrawing its participation in this investigation and requested that we remove its proprietary information from the official record of this proceeding and return the information to Sandvik.

As described above, Sandvik withdrew its participation in this investigation subsequent to being accepted as a voluntary respondent and its proprietary information has been taken off the official record of this proceeding. Thus, because Sandvik failed to provide the necessary information requested by the Department and significantly impeded the proceeding, pursuant to section 776(a)(2)(B) and (C) of the Act, we have applied the FA to calculate the dumping margin.

2. Selection of Adverse FA (AFA)

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). SSAB was notified in the Department's questionnaire and in a separate letter that failure to submit the requested information by the date specified might result in use of the FA. Sandvik was also notified in the Department's questionnaire that failure to submit the requested information by the date specified might result in use of the FA. Moreover, SSAB and Sandvik failed to offer any alternative methods for submitting the requested information. As a general matter, it is reasonable for the Department to assume that SSAB and Sandvik possessed the records necessary for this investigation and that by not supplying the information the Department requested, SSAB and Sandvik failed to cooperate to the best of their ability. As SSAB and Sandvik failed to cooperate to the best of their ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 40.54 percent, the rate derived from the petition. *See Initiation Notice.*

3. Corroboration of Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See*, Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Sweden Initiation Checklist* (*Initiation Checklist*) on file in the Central Records Unit, Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition.) In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margin in the petition was based.

Export Price

With respect to the margin in the petition, EP was based on average per-unit customs import values (AUV) for the ten-digit category of the HTSUS accounting for a significant percentage of in-scope imports from Sweden during the POI and that is comparable to the product on which the normal value price quote information is based. Our review of the EP calculation indicated

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that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculation in the petition is from public sources concurrent, for the most part, with the POI. We compared the export prices contained in the petition with U.S. Census values for the same HTSUS categories and found the export prices suggested in the petition to be reasonable and, therefore, corroborated for purposes of calculating a facts available margin. Export prices which are based on U.S. customs data are considered corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

Normal Value

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products exported to the United States which serve as the basis for EP. The petitioners deducted freight cost from the home market price.

The Department was provided with no useful information by the respondents or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

It is worth noting that the implementing regulation for section 776 of the Act states, "(t)he fact that corroboration may not be practicable in a given circumstance will not prevent the Secretary from applying an adverse inference as appropriate and using secondary information in question." *See* 19 CFR 351.308(c). Additionally, the SAA at 870 specifically states that where "corroboration may not be practicable in a given circumstance," the Department need not prove that the facts available are the best alternative information."

Therefore, based on our efforts, described above, to corroborate information contained in the petition, and in accordance with 776(c) of the Act, we consider the margins in the petitions to be corroborated to the extent practicable for purposes of this preliminary determination. Our findings are outlined below.

Accordingly, in selecting AFA with respect to SSAB and Sandvik, the Department decided to apply the margin rate of 40.54 percent. *See Initiation Notice.*

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "all others" rate for exporters and producers not individually investigated. In this case, we have determined that the only reasonable method is to use the single margin alleged in the petition, which was also the source of our facts available margin for SSAB and Sandvik. Therefore, we applied the margin of 40.54 percent as the "all others" rate. *See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon-Quality Steel Plate Products from India*, 64 FR 73126 (December 29, 1999); and *Notice of Final Determination of Sales at Less than Fair Value: Welded Large Diameter Line Pipe from Mexico*, 67 FR 566, 567–68 (January 4, 2002).

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel from Sweden that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
SSAB Svenskt Stal AB	40.54
AB Sandvik Steel	40.54
All Others	40.54

Disclosure

Within five days of the date of publication of this notice, the Department will disclose its calculations to the parties to this proceeding in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

For the investigation of cold-rolled steel from Sweden, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five calendar days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in an investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of cold-rolled steel from Sweden no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11196 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–583–839]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Taiwan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Christopher Riker or Martin Claessens, AD/CVD Enforcement Office V, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0186 or (202) 482–5451, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce (Department's) regulations are to 19 CFR part 351 (April 2001).

SUPPLEMENTARY INFORMATION:

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Taiwan are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margin of sales at LTFV is shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] Since the initiation of this investigation (*Initiation of Antidumping Duty Investigations: Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russian, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001)) (*Initiation Notice*), the following events have occurred.

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria on November 8, 2001. On November 8, 2001, we received model match comments from the petitioners and CSC. On November 26, 2001, we informed CSC and Kao Hsing of our revised model match criteria.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 23, 2001, we selected as mandatory respondents China Steel Corporation including its affiliate Yieh Loong Enterprise Co. Ltd. (Yieh Loong) (collectively CSC) and Kao Hsing Chang Iron & Steel Corporation (Kao Hsing), companies which we believed to be the two largest producers/exporters of certain cold-rolled carbon steel products in Taiwan, as the mandatory respondents in this proceeding. For further discussion, *see* Respondent Selection Memorandum dated November 23, 2001. However, after receiving revised shipment data from the American Institute in Taiwan, the Department amended its respondent selection memorandum and added Ton Yi Industrial Corporation (Ton Yi) to the list of mandatory respondents selected in this investigation. For further discussion, *see* Amended Respondents Selection Memorandum dated November 29, 2001. Questionnaires were issued to CSC on November 20, Kao Hsing on November 23, and Ton Yi on November 29, 2001.[2]

On December 7, 2001, the petitioners filed an allegation of critical circumstances with respect to imports of cold-rolled steel from Taiwan

During the period December 2001 through April 2002, the Department received responses to the original and supplemental questionnaires from CSC. To date, we have not received any information from either Kao Hsing or Ton Yi. On January 4, 2002, we sent letters to both companies informing them that, while we had confirmed that they had received our questionnaire, we had not yet received a response. These letters also went without response, and we have determined that we have no choice but to apply total adverse facts available to these respondents. (For a more detailed explanation, *see* the *Application of Facts Available* section, below.)

On February 7, 2002, pursuant to 19 CFR 351.205(e), the petitioners made a timely request to postpone the preliminary determination. We granted this request on February 14, 2002, and postponed the preliminary determination until no later than April 26, 2002. *See Notice of Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

On February 8, 2002, the petitioners requested the Department initiate a sales-below-cost investigation of CSC, and requested that the Department solicit CSC's response to section D of the Department's questionnaire. On February 21, 2002, the Department determined that there were reasonable grounds to believe or suspect that CSC made sales of the foreign like product at prices below its cost of production, within the meaning of section 773(b) of the Act and requested that CSC respond to section D of the questionnaire. CSC responded to the Department's request in a timely manner on March 20, 2002.

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market. Section C requests a complete listing of U.S. sales. Section D requests information on the cost of production of the foreign like product and the constructed value of the merchandise under investigation.

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Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producer/exporters of subject merchandise, section 777A(c)(2) of the Act permits us to investigate either: (1) A sample of exporters, producers, or types of products that is statistically valid, based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data and U.S. Customs Service import data for the POI, we found that CSC, Kao Hsing and Ton Yi accounted for a majority of the imports during the POI. *See*, Respondent Selection Memorandum dated November 23, 2001; *see also*, Amended Respondents Selection Memorandum dated November 29, 2001. Therefore, as previously stated, we designated these three companies as the mandatory respondents and sent to them the Department's antidumping questionnaire.

Period of Investigation

The period of investigation (POI) is July 1, 2000, through June 30, 2001.

Postponement of Final Determination and Extension of Provisional Measures

Section 735(a)(2) of the Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative preliminary determination, a request for such postponement is made by exporters who account for a significant proportion of exports of the subject merchandise. Section 351.210(e)(2) of the Department's regulations requires that exporters requesting postponement of the final determination must also request an extension of the provisional measures referred to in section 733(d) of the Act from a four-month period until not more than six months. We received a request to postpone the final determination from the respondent, CSC, on April 25, 2002. In its request, CSC consented to the extension of provisional measures to no longer than the date of the final determination.

Since this preliminary determination is affirmative, the request for postponement is made by an exporter that accounts for a significant proportion of exports of the subject merchandise, and there is no compelling reason to deny the respondent's request, we have extended the deadline for issuance of the final determination until the 135th day after the date of publication of this preliminary determination in the **Federal Register** and have extended provisional measures to no longer than six months.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available

1. Application of Facts Available

Section 776(a)(2) of the Act provides that, if an interested party: (A) Withholds information requested by the Department; (B) fails to provide such information by the deadline, or in the form or manner requested; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and, (5) the information can be used without undue difficulties.

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference, if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. Furthermore, section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Rep. No. 103–316 at 870 (1994).

In accordance with section 776(a)(2), 776(b), and 782(d) and (e) of the Act, for the reasons briefly explained below, we preliminarily determine that the use of total adverse facts available is warranted with respect to Kao Hsing and Ton Yi.

As noted above, Kao Hsing and Ton Yi failed to provide, within the applicable deadlines, responses to the Department's questionnaire. Despite the Department's attempts to obtain Kao Hsing and Ton Yi's U.S. and home market information, both companies failed to reply. Because the requested information is crucial for purposes of preliminary dumping calculations, the Department must resort to facts otherwise available in reaching its preliminary determination, pursuant to section 776(a)(2)(A), (B) and (C).

We also find that the application of an adverse inference in this case is appropriate, pursuant to section 776(b) of the Act. As discussed above, both Kao Hsing and Ton Yi failed to provide the critical data requested, despite the Department's clear directions in the original questionnaire. Furthermore, neither Kao Hsing nor Ton Yi made any effort to provide an explanation or propose an alternate form of submitting the required data. In fact, neither company has responded to the Department's letter of January 4, 2002, in which the Department reminded both companies that it had not received a response to its request for information. For these reasons, we find that neither Kao Hsing nor Ton Yi has acted to the best of its ability in responding to the Department's request for information, and that, consequently, an adverse inference is warranted under section 776(b) of the Act. *See, e.g., Notice of Final Determination of Sales at Less than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000) (the Department applied total adverse facts available where respondent failed to respond to the antidumping questionnaires).

Accordingly, in selecting adverse facts available with respect to Kao Hsing and Ton Yi, the Department determined to apply a margin rate of 16.80 percent, the highest margin alleged for Taiwan in the petitioners' September 28, 2001 petition. (For a more detailed analysis of the particulars and application of facts available, *see* the Application of Facts Available for Kao Hsing and Ton Yi memorandum dated April 26, 2002.)

2. Corroboration of Information

Section 776(b) of the Act states that an adverse inference may include reliance on information derived from the petition. *See also* SAA at 829–831. Section 776(c) of the Act provides that, when the Department relies on secondary information (such as the petition) in using the facts otherwise available, it must, to the extent practicable, corroborate that information from independent sources that are reasonably at its disposal.

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (*see* SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (*see* SAA at 870).

To determine the probative value of the margins in the petition for use as adverse facts available for purposes of this determination, we examined evidence supporting the calculations in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and normal value (NV) calculations on which the margins in the petition were based. Our review of the EP and NV calculations indicated that the information in the petition has probative value, as certain information included in the margin calculations in the petition is from public sources concurrent, for the most part, with the relevant POI. For purposes of the preliminary determination, we attempted to further corroborate the information in the petition. We re-examined the EP and NV data which formed the basis for the highest margin in the petition in light of information obtained during the investigation and, to the extent practicable, found that it has probative value (*see* the April 26, 2002, memorandum to the file regarding *Application of Facts Available for Kao Hsing Chang Iron & Steel Corporation and Ton Yi Industrial Corporation*).

Accordingly, in selecting adverse facts available with respect to Kao Hsing and Ton Yi, the Department determined to apply a margin rate of 16.80 percent, the highest margin alleged for Taiwan in the petition.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Taiwan by CSC to the United States were made at LTFV, we compared the EP to the NV, as described in the *Export Price* and *Normal Value* sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average EPs to weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by the respondent in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining the appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade, In making product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering, painted, carbon level, quality, yield strength, minimum thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing and surface finish.

1. Kick-off pup coil sales

CSC argues that home market sales of "kick-off pup coil" are outside the ordinary course of trade. Specifically, CSC argues that no physical characteristics are maintained for these products because they are the tail and end parts of the coils that are not produced to order and are considered to be of a lesser quality than both secondary or salvage merchandise. Additionally, sales of this merchandise constitute an extremely small portion of CSC's sales and were only made in the home market. As such, for the preliminary determination the Department has excluded sales of the aforementioned merchandise from its analysis. However, the Department intends to verify the accuracy of the information submitted on the record as it pertains to sales of kick-off pup coils and will revise its position if necessary for purposes of the final determination.

2. Carbon Quality

CSC created an additional field in its sales databases requesting that the Department further distinguish grades of commercial quality cold-rolled products. Specifically, CSC requested that the Department accept three subcategories of commercial steel, "CQ1," "CQ2," and "CQS."[3] CSC argued that these three subcategories represent "three separate internal standards" which correspond to distinct sets of mechanical and chemical properties. CSC argues that each subcategory represents a different hardness level, corresponding to carbon content. Additionally, CSC created additional subcategories for other qualities of commercial steels that fall under different hardness levels than three previously mentioned subcategories.

The petitioners argue that it is not the Department's normal practice to allow companies to change reporting criteria based on their own internal product coding system, and that the differences in mechanical and chemical properties are broken out in various other fields.[4] As such, the petitioners argue that the Department should reject CSC's suggestion and continue to use the information originally requested in the questionnaire.

For purposes of the preliminary determination, we have not granted CSC's request to amend the reporting requirements for the quality field. It is the Department's position that the hardness specifications can be distinguished through CSC's response to other fields, including annealing, temper rolling and yield strength. Therefore, we continue to believe that the Department's initial reporting requirements remain appropriate.

Export Price

For the price to the United States, we calculated EP, based on the packed prices charged to the first unaffiliated customer in the United States, pursuant to section 772(a) of the Act because the subject merchandise was either first sold by the exporter or producer outside the United States to an unaffiliated purchaser for exportation to the United States before the date of importation, or to an unaffiliated purchaser for exportation to the United States.

In accordance with section 772(c)(2) of the Act, we reduced the EP by movement expenses, where appropriate.

[3] *See* Letter to the Department of Commerce from China Steel Corporation regarding product characteristics (November 6, 2001); *see also* sections B and C questionnaire response submitted by CSC and Yieh Loong at B–6 and B–7 (January 22, 2002).

[4] *See* Letter to the Department of Commerce from Bethlehem Steel Corporation, National Steel Corporation and United States Steel Corporation regarding comments on the sales information submitted by CSC and Yieh Loong at 6 and 7 (April 8, 2002).

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Normal Value

A. Home Market Viability

To determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV, we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable for the respondent.

B. Arm's-Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts and packing pursuant to section 773(a)(6) of the Act. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determine that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule* (Antidumping Duties), 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR 27355–56.

C. Cost of Production Analysis

Based on our analysis of an allegation filed by the petitioners,[5] we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a company-specific sales-below-cost investigation to determine whether sales were made at prices below their respective COPs (*see* memo from Nancy Decker and Martin Claessens to Gary Taverman (February 21, 2002)).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for selling, general and administrative expenses (SG&A), including interest expenses, and home market packing costs (*see Test of Home Market Sales Prices* section below for treatment of home market selling expenses). We relied on the COP data submitted by CSC, except as noted below.

a. During the period of investigation, Yieh Loong purchased from an affiliate slabs used in the production of subject merchandise. In accordance with section 773(f)(2), we adjusted the reported transfer price to reflect the market price of the slabs.

b. We revised CSC's SG&A rate calculation to exclude the following non-operating revenue items: rent revenue/income, gain on long-term investment, gain on physical inventory, revenue from sale of scrap, and revenue from sale of fines. We also included the "depreciation from manage other assets" which was listed as a non-operating expense item and disallowed the "loss for market price decline inventory" which appears as a reduction in non-operating expenses.

c. We revised Yieh Loong's SG&A rate calculation to exclude rental income and exchange gain.

See Memorandum from Laurens van Houten to Neal Halper, Director, Office of Accounting, regarding the Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination (April 26, 2002).

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales were made: (1) Within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of CSC's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Home Market Prices

We based home market prices on packed prices to unaffiliated purchasers in Taiwan. We adjusted, where applicable, the starting price for discounts and rebates. We made adjustments for any differences in packing and deducted home market movement expenses and domestic brokerage and handling, pursuant to sections 773(a)(6)(A) and 773(a)(6)(B)(ii) of the Act. We also made circumstance of sale (COS) adjustments, where applicable, by deducting direct selling expenses incurred for home market sales (*e.g.*, credit expenses, inventory maintenance, warranty expenses and technical services). Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411.

E. Calculation of Normal Value Based on Constructed Value

Section 773(a)(4) of the Act provides that, where NV cannot be based on comparison-market sales, NV may be based on constructed value (CV). Accordingly, for those models of cold-rolled steel for which we could not determine the NV based on comparison-market sales, either because there were no sales of a comparable product or all sales of the comparison products failed the COP test, we based NV on CV.

Section 773(e)(1) of the Act provides that CV shall be based on the sum of the cost of materials and fabrication for the imported merchandise plus amounts for selling, general, and administrative expenses (SG&A), profit, and U.S. packing expenses. We calculated the cost of materials and fabrication based on the methodology described in the COP section of this notice. We based CSC's and Yieh Loong's respective SG&A and profit on the actual amounts incurred and realized by each in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the comparison market, in accordance with section 773(e)(2)(A) of the Act.

We made adjustments to CV for differences in the COS in accordance with section 773(a)(8) of the Act and 19 CFR 351.410. These involved the deduction from CV of direct selling expenses incurred on home market sales (*e.g.*, credit expenses, inventory maintenance, warranty expenses and technical services).

F. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP or CEP transaction. The NV LOT is that of the starting-price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP sales, the U.S. LOT is also the level of the starting-price sale, which is usually from exporter to importer. For CEP transactions, it is the level of the constructed sale from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP or CEP transactions, we examine stages in the marketing process and selling functions along the distribution chain between the producer and the unaffiliated customer. If the comparison market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in the levels between NV and CEP affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (*i.e*, the CEP-offset provision). *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61733, 61746 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from CSC about the marketing stages involved in the reported U.S. and home market sales, including a description of the selling activities performed by CSC for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments.

The respondents reported two separate channels of distribution in the home market, sales through an unaffiliated coil center, and sales directly to an end-user. While CSC claimed two home market channels of distribution, we preliminarily determine that it is more appropriate to consider their home market sales to have been made via a single channel of distribution, *i.e.*, direct from the factory, albeit to two different customer categories (coil center and end-user). Nevertheless, regardless of the channel of distribution or customer category, all home market transactions received inventory maintenance, warranty services, technical advice, delivery arrangement services and sales support. Therefore, we have determined that there is a single LOT for all sales in the home market.

For sales to the United States, CSC's EP sales were made through one channel of distribution, sales to an unaffiliated trading company or U.S. importer. CSC provided delivery arrangements and warranty service arrangements to its U.S. customer. Our examination of the selling functions, selling expenses and customer categories involved in home market and U.S. sales indicates that home market sales were made at a level more remote from the factory than the level of the EP transactions. However, because there was a single home market LOT, there is no information available with which to determine a pattern of consistent price differences between the sales on which normal value is based and home market sales at the LOT of the export transactions. Further, we do not have information that would allow us to examine pricing patterns based on the respondent's sales of other products, and there are no other respondents or other record information on which such an analysis could be based. Therefore, all available home market sales have been considered in making our product matches and no LOT adjustment has been made.

Currency Conversion

We made currency conversions in accordance with section 773A of the Act based on daily exchange rates as certified by the Federal Reserve Bank.

Critical Circumstances

Of the petitioners, Nucor Corporation, Steel Dynamics, Inc., WCI Steel, Inc., and Weirton Steel Corporation filed an allegation of critical circumstances with respect to imports of cold-rolled steel from Taiwan on December 7, 2001. Inasmuch as the petitioners submitted critical circumstances allegations more than 20 days before the scheduled date of the preliminary determination, section 351.206(c)(2)(i) of the Department's regulations provides that we must issue our preliminary critical circumstances determinations not later than the date of the preliminary determination.

If critical circumstances are alleged, section 733(e)(1) of the Act directs the Department to examine whether there is a reasonable basis to believe or suspect that: (A)(i) {t}here is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or (ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and there was likely to be material injury by reason of such sales, and (B) there have been massive imports of the subject merchandise over a relatively short period.

In order to demonstrate a history of dumping and material injury with respect to Taiwan, the petitioners cite to the September 10, 2001, final dumping determination issued by the Canada Customs and Revenue Agency (CCRA), where the CCRA found that Taiwanese steel had been dumped in Canada at an average margin of 28.71 percent. In addition, the petitioners cite to a newspaper that claims that the Thai steel industry is collecting information on possible dumping by companies from several countries, including Taiwan. *See* the Petition at Exhibit II–52.

In evaluating the evidence supplied by the petitioners, we note that on October 9, 2001, the Canadian International Trade Tribunal (CITT) issued a final injury determination which found that imports of cold-rolled

[5] See Letter from the petitioners to the Department (February 8, 2002).

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steel from several countries, including Taiwan, have not caused injury or retardation and are not threatening to cause injury to the domestic industry. Since the CITT issued a negative final injury determination, we find that the Canadian cold-rolled steel antidumping duty investigation does not constitute a history of dumping and material injury. Furthermore, the newspaper article discussing the Thai steel industry's intention of naming Taiwan in a potential antidumping duty petition with the Government of Thailand is not evidence of a history of dumping and material injury. Because we are not aware of any existing or recent antidumping order for Taiwan in the United States or any other country, the Department finds that there is no history of dumping and material injury for cold-rolled steel imports from Taiwan.

The Department normally considers margins of 25 percent or more for EP sales sufficient to impute importer knowledge of sales at LTFV. We have calculated a preliminary margin of 3.15 percent for CSC. With regard to Kao Hsing and Ton Yi, we note that the margin relied upon for the initiation of this investigation, and assigned to these non-responding companies as adverse facts available, was 16.80 percent. This margin, based on an analysis conducted by the petitioners, was conducted with the understanding that cold-rolled steel from Taiwan is sold to unaffiliated trading companies for export to the United States. Finally, with regard to the "All Others" category, it is the Department's practice to conduct its critical circumstances analysis of companies in this category based on the experience of the investigated companies. Therefore, in this case, we have assigned the "all others" category the same rate as was calculated for CSC. Because the petition margin for Taiwan was 16.80 percent, and the calculated rate for CSC is 3.15 percent, the margins fall below the 25 percent threshold we use to impute importer knowledge of sales at LTFV in EP price situations. Therefore, the requirements of the provision in section 733(e)(1)(A)(ii) of the Act are not satisfied.

Given that Taiwan had no history of dumping and that the threshold to impute importer knowledge of sales at LTFV was not met, we preliminarily find no critical circumstances for Taiwan in this investigation.

Verification

In accordance with section 782(i) of the Act, we intend to verify information to be used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all entries of certain cold-rolled carbon steel flat products from Taiwan, that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the normal value exceeds the EP or CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

The weighted-average dumping margins are as follows:

Exporter/producer	Margin (percentage)
China Steel Corp./Yieh Loong	3.15
Kao Hsing Chang Iron & Steel	16.80
Ton Yi Industrial	16.80
All Others	3.15

With respect to the "all others" rate, section 735(c)(5)(A) of the Act requires that the "all others" rate equal the weighted average of the estimated weighted-average rates established for exporters and producers individually investigated, excluding any zero and de minimis margins and margins based entirely on facts available. Because two of the companies have a rate based entirely on facts available, we have assigned the calculated rate for CSC as the "All Others" rate.

Disclosure

In accordance with 19 CFR 351.224(b), the Department will disclose to the parties of this proceeding within five days of the date of publication of this notice calculations performed in this investigation.

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our preliminary determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

All parties will be notified of the specific schedule for submission of case and rebuttal briefs. In general, case briefs for this investigation must be submitted no later than one week after the issuance of the verification reports. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by any interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will issue our final determination no later than 135 days after the date of publication of this notice in the **Federal Register**.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11197 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–549–819]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products From Thailand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Maureen Flannery at (202) 482–3020, Matthew Renkey at (202) 482–2312, or Elfi Blum at (202) 482–0197, Office of AD/CVD Enforcement VII, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to Department of Commerce (Department) regulations refer to the regulations codified at 19 CFR part 351 (April 2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Thailand are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the *Suspension of Liquidation* section of this notice.

Case History

This investigation was initiated on October 18, 2001.[1] *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) (*Initiation Notice*). Since the initiation of the investigation, the following events occurred.

On November 13, 2001, the United States International Trade Commission (ITC) preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured, or threatened with material injury, by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

Based on our analysis of an allegation contained in the petition, we found at the initiation of this investigation that there were reasonable grounds to believe or suspect that the respondent's sales of the subject merchandise in its comparison market were made at prices below its cost of production (COP). Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation. *See Initiation Notice.*

On November 19, 2001, the Department issued Sections A–E of its antidumping duty questionnaire to Thai Cold Rolled Steel Sheet Public Company Limited (TCR). Additionally, the Department issued a request to the Embassy of Thailand for information regarding the quantity and value of sales of subject merchandise to the United States for all known producers/exporters of subject merchandise in Thailand. The Department received a request from TCR for an extension to file Section A on December 4, 2001, and the Department granted an extension of the deadline for submitting the response to Section A of the Department's questionnaire until noon December 17, 2001.

On December 11, 2001, the Department determined that TCR would be the only mandatory respondent in this investigation. Refer to *Selection of Respondents* section below. On December 17, 2001, the Department received TCR's response to Section A of the questionnaire. On December 19, 2001, TCR requested an extension to file its responses to Sections B through E, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until noon, January 17, 2002. The Department issued a supplemental questionnaire regarding TCR's Section A response on December 21, 2001. TCR requested, and the Department granted an extension to file the response to the supplemental Section A questionnaire until January 11, 2002. On January 17, 2002, six days after the filing deadline for the response to the Department's supplemental questionnaire to Section A, and the extended due date for its responses to Sections B through E, TCR informed the Department that it had decided not to respond to continued requests for information or participate in verification in this antidumping investigation.

On February 7, 2002, the petitioners requested a postponement of the preliminary determination in this investigation. On February 22, 2002, the Department published a **Federal Register** notice postponing the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614–803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

Selection of Respondents

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of the subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777A(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can be reasonably examined. Using import data from the U.S. Customs Service, we found multiple exporters of cold-rolled steel to the United States during the period of investigation (POI). According to this data, TCR, together with its affiliated trading company, accounted for significantly more than 60 percent of all known exports of the subject merchandise during the POI from Thailand. Due to limited resources,

[1] The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, National Steel Corporation, Nucor Corporation, Steel Dynamics, Inc., United States Steel Corporation, WCI Steel, Inc., and Weirton Steel Corporation (collectively, the petitioners).

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we determined that we could only investigate the largest producer/exporter. Therefore, we designated TCR as the only mandatory respondent. *See* the memorandum entitled *Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from Thailand—Respondent Selection* (December 11, 2001) (*Respondent Selection Memo*).

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001).

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Facts Available (FA)

1. Application of FA

Section 776(a)(2) of the Act provides that, if an interested party (A) withholds information that has been requested by the Department; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the antidumping statue; or (D) provides such information but the information cannot be verified, the Department shall use, subject to sections 782(d) and (e) of the Act, facts otherwise available in reaching the applicable determination.

Pursuant to section 782(e) of the Act, the Department shall not decline to consider submitted information if all of the following requirements are met: (1) The information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

On November 19, 2001, the Department issued sections A–E of its antidumping duty questionnaire to TCR. The Department received a request for an extension to file Section A on December 4, 2001, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until December 17, 2001. On December 19, 2001, TCR requested an extension to file its responses to Sections B through E, and the Department granted an extension of the deadline for submitting its response to the Department's questionnaire until January 17, 2002. The Department issued a supplemental questionnaire regarding TCR's Section A response on December 21, 2001. TCR requested, and the Department granted, an extension to file the response to the supplemental Section A questionnaire until January 11, 2002. As stated in the *Respondent Selection Memo*, the Department found that TCR was the largest producer/exporter of the subject merchandise and, therefore, designated it as the sole mandatory respondent. *See Respondent Selection Memo*. In addition, the Department informed TCR that it would attempt to accommodate any difficulties it had in answering the questionnaire. The Department also informed TCR that failure to submit the requested information by the date specified might result in use of FA.

Although we informed TCR that we would attempt to accommodate any difficulties it had in answering the questionnaire, and granted its three extension requests, TCR only responded to Section A of the Department's questionnaire. TCR made no additional contact with the Department to request further extensions, or to suggest any alternative methods of providing the requested information that would accommodate any difficulties it might have experienced, or expected to experience, in responding to the questionnaires.

On January 17, 2002, six days after the filing deadline for the response to the Department's supplemental questionnaire to Section A, and the extended due date for its responses to Sections B through E, TCR informed the Department that it had decided not to respond to continued requests for information or participate in verification in this antidumping investigation. On March 6, 2002, petitioners submitted comments highlighting TCR's failure to submit information requested by the Department. As adverse FA (AFA), petitioners suggested that we apply the highest margin from the original petition, 150.26 percent. Alternatively, petitioners suggested that the Department apply the highest rate from the *Initiation Notice*, 142.78 percent, which was based on petitioners' October 12, 2001 amendment to the petition.

As described above, TCR failed to provide a full response to the Department's questionnaires despite the Department's willingness to accommodate its difficulties. Because TCR failed to provide the necessary information requested by the Department, pursuant to section 776(a)(2)(B) of the Act, we have applied FA to determine its dumping margin.

2. Selection of AFA

In selecting from among the facts otherwise available, section 776(b) of the Act authorizes the Department to use an adverse inference if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with the request for information. *See, e.g., Certain Welded Carbon Steel Pipes and Tubes From Thailand: Final Results of Antidumping Duty Administrative Review*, 62 FR 53808, 53819–20 (October 16, 1997). TCR was notified twice in the Department's questionnaires that failure to submit the requested information by the date specified might result in the use of FA. As described above, prior to withdrawing, TCR failed to contact the Department to express any difficulties it might have been experiencing or to suggest how we might accommodate it in overcoming these difficulties, with the exception of its three extension requests, which we granted. As a general matter, it is reasonable for the Department to assume that TCR possessed the records necessary for this investigation, and that by not supplying the information requested, it failed to cooperate to the best of its ability. Since TCR failed to cooperate to the best of its ability, we are applying an adverse inference pursuant to section 776(b) of the Act. As AFA, we have used 142.78 percent, the highest rate at which we initiated. *See Initiation Notice*.

3. Corroboration of AFA Information

Section 776(b) of the Act authorizes the Department to use as AFA information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or any other information placed on the record.

Section 776(c) of the Act requires the Department to corroborate, to the extent practicable, secondary information used as FA. Secondary information is defined as "[i]nformation derived from the petition that gave rise to the investigation or review, the final determination concerning the subject merchandise, or any previous review under section 751 concerning the subject merchandise." *See* Statement of Administrative Action (SAA) accompanying the URAA, H.R. Doc. No. 103–316 at 870 (1994) and 19 CFR 351.308(d).

The SAA clarifies that "corroborate" means that the Department will satisfy itself that the secondary information to be used has probative value (see SAA at 870). The SAA also states that independent sources used to corroborate such evidence may include, for example, published price lists, official import statistics and customs data, and information obtained from interested parties during the particular investigation (see SAA at 870).

In order to determine the probative value of the margins in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculations in the petition. We reviewed the adequacy and accuracy of the information in the petition during our pre-initiation analysis of the petition, to the extent appropriate information was available for this purpose (*see Thailand Initiation Checklist* on file in the Central Records Unit (*Initiation Checklist*), Room B–099, of the Main Commerce Department building, for a discussion of the margin calculation in the petition). In addition, in order to determine the probative value of the margin in the petition for use as AFA for purposes of this determination, we examined evidence supporting the calculation in the petition. In accordance with section 776(c) of the Act, to the extent practicable, we examined the key elements of the export price (EP) and Normal Value (NV) calculations on which the margins in the petition were based.

a. Export Price

With respect to the margins in the petition, EP was based on average per-unit customs import values (AUV) for the two ten-digit categories of the Harmonized Tariff Schedule of the United States (HTSUS) accounting for a significant percentage of in-scope imports from Thailand during the POI. Our review of the EP calculation indicated that the information in the petition has probative value, as certain information (*e.g.*, import statistics) included in the margin calculations in the petition is from public sources concurrent with the POI. Export prices which are based on U.S. customs data are considered corroborated. *See Certain Cut-to-Length Carbon Steel Plate from Mexico: Final Results of Antidumping Duty Administrative Review*, 64 FR 76, 84 (January 4, 1999) (Comment 13).

b. Normal Value

The petitioners calculated NV from price information obtained from foreign market research for cold-rolled steel comparable to the products used as the basis for EP. The petitioners made no adjustments to NV.

With respect to NV, the petitioners also provided information demonstrating reasonable grounds to believe or suspect that sales of cold-rolled carbon steel flat products in the home market were made at prices below the COP, within the meaning of section 773(b) of the Act, and requested that the Department conduct a country-wide sales-below-cost investigation. Pursuant to section 773(b)(3) of the Act, COP consists of cost of manufacture (COM), selling, general and administrative (SG&A) expenses, and packing. The petitioners calculated COM based on their own production experience, adjusted for known differences between costs incurred to produce cold-rolled carbon steel flat products in the United States and Thailand using publicly available data. To calculate SG&A and interest, the petitioners relied upon amounts reported in TCR's 1999 financial statements. Because the Thai home market price of cold-rolled steel products in the petition was below the COP, the petitioners also based NV for sales in Thailand on constructed value (CV), pursuant to sections 773(a)(4), 773(b) and 773(e) of the Act. The petitioners calculated CV using the same COM, SG&A and interest expense figures used to compute Thai home market costs, and included in CV an amount for profit. For profit, the petitioners relied upon amounts reported in TCR's 1999 financial statements. *See Initiation Checklist*.

With respect to the CV data, we were able to corroborate the reasonableness of these data by examining the financial statements used to calculate COP and the petitioners' own information about the cost of transforming the hot-rolled coil into subject merchandise. With respect to the petitioners' own information regarding the cost of transforming the hot-rolled coil into subject merchandise, we corroborated the information by tracing the surrogate factors and values to the certification provided by the U.S. surrogate. Where applicable, we corroborated petitioners' own information adjusted for known differences with publicly available data. With regard to the CV contained in the petition, the Department was provided no useful information by the respondent or other interested parties and is aware of no other independent sources of information that would enable us to further corroborate the margin calculations in the petition.

Accordingly, in selecting AFA with respect to TCR, the Department decided to apply the CV margin rate of 142.78 percent, which is the highest estimated dumping margin calculated by the petitioners in the amendment to the petition of this investigation. *See Initiation Notice*.

All Others

Section 735(c)(5)(B) of the Act provides that, where the estimated weighted-average dumping margins established for all exporters and producers individually investigated are zero or *de minimis*, or are determined entirely under section 776 of the Act, the Department may use any reasonable method to establish the estimated "All Others" rate for exporters and producers not individually investigated. Our recent practice under these circumstances has been to assign, as the "All Others" rate, the simple average of the margins in the petition. *See Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Canada (Plate from Canada)*, 64 FR 15457 (March 31, 1999); *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Plate in Coil from Italy (Plate from Italy)*, 64 FR 15458, 15459 (March 21, 1999). For purposes of this preliminary determination, we are basing the "All Others" rate on the simple average of margins for certain products under investigation at which we initiated, which is 127.44 percent.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the U.S. Customs Service (Customs) to suspend liquidation of all entries of cold-rolled steel exported from Thailand that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We are also instructing Customs to require a cash deposit or the posting of a bond equal to the dumping margin, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.

Manufacturer/exporter	Margin (percent)
Thai Cold-Rolled Steel Sheet Public Company, Limited	142.78
All Others	127.44

Disclosure

The Department will disclose calculations performed within five days

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of the date of publication of this notice to the parties of the proceedings in these investigations in accordance with 19 CFR 351.224(b).

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threatening material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determination.

Public Comment

Unless otherwise directed by the Department, case briefs must be submitted no later than 50 days after the publication of this notice in the **Federal Register**. Rebuttal briefs must be filed within five days after the deadline for submission of case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette. Section 774 of the Act provides that the Department will hold a hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the deadline for submission of the rebuttal briefs, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and location of the hearing 48 hours prior to the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request within 30 days of the publication of this notice. Requests should specify the number of participants and provide a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination in the investigation of certain cold-rolled carbon steel flat products from Thailand no later than 75 days after the date of this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11198 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–489–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value; Certain Cold-Rolled Carbon Steel Flat Products From Turkey

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Melissa Blackledge, or Robert James at (202) 482–3518, (202) 482–1131, or (202) 482–0649, respectively; Antidumping and Countervailing Duty Enforcement Group III, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

THE APPLICABLE STATUTE AND REGULATIONS: Unless otherwise indicated, all citations to the statute are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act of 1930 (the Tariff Act) by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department of Commerce (the Department) regulations are to the regulations at 19 CFR part 351 (April 2001).

Preliminary Determinations

We preliminarily determine that certain cold-rolled carbon steel flat products (cold-rolled steel) from Turkey are being sold, or are likely to be sold, in the United States at less than fair value (LTFV), as provided in section 733 of the Tariff Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

On October 18, 2001, the Department initiated antidumping investigations of cold-rolled steel from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela. The petitioners in this investigation are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corp., NUCOR Corporation, Steel Dynamics, Inc., United States Steel LLC, WCI Steel, Inc., and Weirton Steel Corporation. *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001).

In the initiation the Department set aside a period for all interested parties to raise issues regarding product coverage. For a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination. Since the initiation of these investigations the following events have occurred.

On November 13, 2001, the United States International Trade Commission (ITC) notified the Department that it preliminarily determined there is a reasonable indication that an industry in the United States is materially injured by reason of imports of the subject merchandise from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela. *See Cold-Rolled Steel Products from Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 8, 2001, the Department issued Section A, Question 1 of the antidumping questionnaire to Borcelik Celik Sanayii ve Ticaret A.S.(Borcelik), Eregli Demir ve Celik, and Cargill Tarim Sanayii ve Ticaret, requesting volume and value information for the POI for each exporter. We received the information requested on November 22, 2001, and November 26, 2001. Based on this information, the Department selected Borcelik, the largest exporter/producer by volume and value, as the respondent in this investigation. *See* Memorandum to Joseph A. Spetrini, "Selection of Respondents," dated November 29, 2001.

Based on our examination of Turkey's inflation indices, we determined the Turkish economy was experiencing high inflation during the POI. "High inflation" is a term used to refer to a high rate of increase in price levels. Investigations involving exports from countries with highly inflationary economies require special methodologies for comparing prices and calculating constructed value and cost of production. Generally a twenty-five percent inflation rate has been used as a guide for assessing the impact of inflation on AD investigations and reviews (*see* Policy Bulletin No. 94.5, "Differences in Merchandise Calculations in Hyper-inflationary Economies," dated March 25, 1994). Based upon our examination of the consumer price and wholesale price indices, which indicated that Turkey experienced an inflation rate of over sixty percent during the POI, we find Turkey's economy experienced high inflation. *See* 2000 and 2001 issues of the International Monetary Fund's *International Financial Statistics*.

On November 30, 2001, the Department issued an antidumping questionnaire to Borcelik. We requested that Borcelik respond to sections A through D.

Respondent submitted its initial response to section A of the Department's questionnaire on December 21, 2001. We received Borcelik's sections B through D response on January 22, 2002. Petitioners filed comments regarding the section A response on January 14, 2002, and on February 11, 2002, regarding the remaining portions of respondent's questionnaire response. We issued the following supplemental questionnaires to respondent: (i) section A on February 6, 2002, and (ii) sections B, C, and D on March 5, 2002. Respondent filed a response to our section A and sections B through D supplemental questionnaires on March 1, 2002 and April 1, 2002, respectively. Petitioners filed comments regarding the section A supplemental questionnaire on April 1, 2002, and on April 12, 2002, regarding the sections B, C, and D supplemental questionnaires.

Period of Investigation

The period of investigation (POI) is July 1, 2000 through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petition (*i.e.*, September 2001), and is in accordance with our regulations. *See* section 19 CFR 351.204(b)(1) of the Department's regulations.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Product Comparisons

Pursuant to section 771(16) of the Tariff Act, all products produced by Borcelik, covered by the description in the "Scope of the Investigation" above, and sold in Turkey during the POI are considered to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We have relied on the following fourteen criteria to match U.S. sales of subject merchandise to comparison-market sales of the foreign like product: hardening and tempering, painting, carbon level, quality, yield strength, thickness, thickness tolerance, width, edge finish, form, temper rolling, leveling, annealing, and surface finish. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product on the basis of the characteristics and reporting instructions listed in the Department's November 30, 2001 questionnaire. If there was no home market foreign like product to compare to a U.S. sale, we used constructed value (CV).

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Turkey were made in the United States at less than fair value, we compared the export price (EP) to the normal value (NV), as described in the "Export Price" and "Normal Value" sections of this notice. In accordance with section 777A(d)(1)(A)(i) of the Tariff Act, we calculated weighted-average EPs for comparison to weighted-average NVs.

Because Turkey's economy experienced high inflation during the POI, as is Department practice, we limited our comparisons to home market sales made during the same month in which the U.S. sale occurred. This methodology minimizes the extent to which calculated dumping margins are overstated or understated due solely to price inflation that occurred in the intervening time period between the U.S. and home market sales.

Export Price

We calculated EP in accordance with section 772(a) of the Tariff Act because Borcelik sold the merchandise directly to the first unaffiliated purchaser in the United States prior to the date of importation, and because constructed export price (CEP) methodology was not otherwise appropriate. We based EP for Borcelik on the C&F price to unaffiliated purchasers in the United States. We made adjustments for movement expenses in accordance with section 772(c)(2)(A) of the Tariff Act; these included, where appropriate, foreign brokerage and handling, international freight, foreign inland freight, marine insurance, and import duties.

Normal Value

Home Market Viability

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Borcelik's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Tariff Act. As Borcelik's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

Affiliated-Party Transactions and Arm's-length Test

To test whether these sales were made at arm's-length prices, we compared on a model-specific basis the starting prices of sales to affiliated and unaffiliated customers net of all movement charges, discounts, direct selling expenses, and packing. Where, for the tested models of the foreign-like product, prices to the affiliated party were on average 99.5 percent or more of the price to the unaffiliated parties, we determined sales

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made to the affiliated party were at arm's length. *See* 19 CFR 351.403(c). If these affiliated party sales satisfied the arm's-length test, we used them in our analysis. Merchandise sold to affiliated customers in the home market made at non-arm's-length prices were excluded from our analysis because we considered them to be outside the ordinary course of trade. *See* 19 CFR 351.102(b). Where the exclusion of such sales eliminated all sales of the most appropriate comparison product, we made a comparison to the next most similar model.

In addition to its other home market sales, Borcelik reported the sales to it's home market affiliate, Kerim Celik Mamulleri Imalat ve Ticaret A.S. (Kerim Celik). These sales account for more than 5 percent of the total of Borcelik's home market sales during the POI. *See* 19 CFR 351.403(d). The respondent stated its affiliate, Kerim Celik, cut and slit most of the hot-rolled coils purchased from Borcelik, and the subject merchandise would have a low likelihood of matching to U.S. sales of coiled material. Since Borcelik's sales to Kerim Celik were not at arm's-length, the Department required Borcelik to report home market downstream sales by Kerim Celik for this preliminary determination. *See Antidumping Duties; Countervailing Duties Final Rule*, 62 FR 27296, 27356 (May 19, 1997).

Cost of Production Analysis

Based on our analysis of the cost allegation submitted by petitioners in the original petition, and in accordance with section 773(b)(2)(A)(i) of the Tariff Act, we found reasonable grounds to believe or suspect Turkish producers had made sales of cold-rolled steel in the home market at prices below the cost of production (COP). As a result, the Department initiated an investigation to determine whether Borcelik made home market sales during the POI at prices below their respective COP, within the meaning of section 773(b) of the Tariff Act. We conducted the COP analysis described below.

A. Calculation of COP

In accordance with section 773(b)(3) of the Tariff Act, we calculated a weighted-average COP based on the sum of Borcelik's cost of materials and fabrication for the foreign like product, plus an amount for home-market SG&A expenses, interest expenses, and packing costs. We relied on the COP data provided by Borcelik in its original and supplemental section D cost questionnaire responses except for the following change. We deducted packing expenses from the denominators in the general and administrative and financial expense rate calculations. *See* Memorandum from Gina K. Lee to Neal M. Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Adjustments for Preliminary Determination on file in room B–099 of the Main Commerce building.

B. Test of Home-Market Sales Prices

We compared the adjusted weighted-average COP for Borcelik to the home market sales of the foreign like product, as required under section 773(b) of the Tariff Act, in order to determine whether these sales had been made at prices below the COP. In determining whether to disregard home market sales made at prices below the COP, we examined whether such sales were made (1) in substantial quantities within an extended period of time, and (2) at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(1)(A) and (B) of the Tariff Act.

On a model-specific basis, we compared the revised COP to the home market prices, less any applicable movement charges, discounts, and billing adjustments. *See* section 773(f)(1)(B) of the Tariff Act.

C. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Tariff Act, where less than twenty percent of a respondent's sales of a given product were at prices less than the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where twenty percent or more of a respondent's sales of a given product during the POI were at prices less than the COP, we determined such sales to have been made in "substantial quantities" within an extended period of time. In addition, pursuant to section 773(b)(2)(D) of the Tariff Act, we also determined whether such sales were made at prices which would permit recovery of all costs within a reasonable period of time. In such a case, because we compared prices to POI-average costs, we also determined such sales were not made at prices which would permit recovery of all costs within a reasonable period of time. We disregarded the below-cost sales and used the remaining above cost sales in our analysis, in accordance with section 773(b)(1) of the Tariff Act.

We found that for certain models of cold-rolled steel, more than twenty percent of the home-market sales by Borcelik were made within an extended period of time at prices less than the COP. Further, the prices did not provide for the recovery of costs within a reasonable period of time. We therefore disregarded these below-cost sales and used the remaining sales as the basis for determining NV, in accordance with section 773(b)(1) of the Tariff Act. For those U.S. sales of cold-rolled steel for which there were no comparable home market sales in the ordinary course of trade, we compared EP to constructed value (CV) in accordance with section 773(a)(4) of the Tariff Act. *See* "Price-to-CV Comparisons," below.

D. Calculation of Constructed Value

If no sales made in the ordinary course of trade in the home market remain, NV shall be based on CV. *See* section 773(b)(1) of the Tariff Act. In accordance with section 773(e)(1) of the Tariff Act, we calculated CV based on the sum of Borcelik's cost of materials, fabrication, SG&A, interest, U.S. packing, and an amount for profit. In accordance with section 773(e)(2)(A) of the Tariff Act, we based SG&A and profit on the amounts incurred and realized by Borcelik in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in the home market. For selling expenses we used the weighted-average home market selling expenses. We used the CV data the respondent provided in its sections B through D supplemental questionnaire responses.

Price-to-Price Comparisons

We calculated NV for Borcelik based on the prices of home market sales that passed the COP test. We made deductions, where appropriate, from the starting price for billing adjustments, foreign inland insurance and inland freight, pursuant to section 773(a)(6)(B) of the Tariff Act. Where appropriate, we made adjustments for differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Tariff Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Tariff Act for differences in circumstances of sale (COS) for imputed credit expenses (offset by interest revenue) and warranties. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Tariff Act.

Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Tariff Act, we based NV on CV if we were unable to find a home market match of identical or similar merchandise within the contemporaneous period (*i.e.*, within the same month as the U.S. sale). For selling expenses, we used the weighted-average home market selling expenses. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Tariff Act. For comparisons to EP, we made COS adjustments by deducting home market direct selling expenses and adding U.S. direct selling expenses.

Level of Trade

In accordance with section 773(a)(1)(B) of the Tariff Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade (LOT) as the EP transaction. The NV LOT is that of the starting price sales in the comparison market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP the U.S. LOT is also the level of the starting price sale, which is usually from the exporter to the importer.

To determine whether NV sales are at a different LOT than EP, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer. If the comparison-market sales are at a different LOT and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison-market sales at the LOT of the export transaction, we make a LOT adjustment pursuant to section 773(a)(7)(A) of the Tariff Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731 (November 19, 1997).

In implementing these principles in this investigation, we obtained information from Borcelik about the marketing stages involved in its reported U.S. and home market sales, including a description of the selling activities performed by Borcelik for each channel of distribution. In identifying levels of trade for EP and home market sales we considered the selling functions reflected in the starting price before any adjustments. Generally, if the reported levels of trade are the same, the functions and activities of the seller should be similar. Conversely, if a party reports levels of trade that are different for different categories of sales, the functions and activities may be dissimilar.

In the home market Borcelik reported two channels of distribution (sales by Borcelik and sales through its affiliated producer/service center) and two levels of trade (unaffiliated end users and affiliated end users). For both channels of distribution in the home market, Borcelik performed similar selling functions, including providing customer advice or product information, warranty services, the coordination of freight and delivery, and advertising. While we note that inventory maintenance was provided for home market sales through the affiliated service center/reseller and the intensity of the selling activity, providing technical service, may differ, we do not agree that these variations in the selling activities supports Borcelik's claim of two distinct levels of trade in the home market.

First, we note Borcelik did not describe the selling activities for sales through its affiliated producer/service center. In addition, Borcelik provided the same sales process description for both channels of distribution; therefore, we are not persuaded that the processing of customer orders is affected by affiliation. Furthermore, Borcelik's questionnaire responses contradict its claim that the selling activity "providing technical service" is more significant with respect to affiliated producers/resellers. For example, Borcelik claims it provides more technical services to unaffiliated and affiliated end-users than to its affiliated service center/reseller. However, we note that in Borcelik's section B response, the company did not report any direct technical service expenses. Instead, Borcelik reported technical service expenses within indirect selling expenses without regard to end-users and resellers. *See* Borcelik's January 22, 2002 response on B–49. According to respondent's supplemental section A questionnaire response, "there are no customer categories to which Borcelik would not have provided technical assistance during the POI." *See* Borcelik's March 1, 2002 response on page 32. Although the respondent claims more technical assistance is provided to affiliated and unaffiliated end-users than to the service center/reseller, and inventory is maintained by the affiliated service center/reseller, we do not find that these differences support Borcelik's claim that there are two separate levels of trade in the home market. Therefore, we preliminarily determine that home market sales in the two channels of distribution constitute a single level of trade.

In the U.S. market Borcelik had only EP sales (*i.e.*, sales made directly from Borcelik to U.S. trading companies). Borcelik reported one channel of distribution for sales of subject merchandise and one level of trade (to importers) during the POI. *See* Borcelik's December 21, 2001 response at pages A–13 through A–18. We found no differences in the selling functions performed by Borcelik on sales to U.S. importers and those performed for sales in the home market. For example, on sales to both home market customers and to unaffiliated U.S. importers, Borcelik provided customer advice, product information, warranty services, technical services, and arranged freight and delivery. *See* Borcelik's December 21, 2001 response at page A–18. The Department has preliminarily determined the record does not support Borcelik's claim that home market sales through the service center are at a different LOT than the U.S. EP sales. Accordingly, because we find the U.S. EP sales and the home market sales to be at the same lot, no LOT adjustment under section 773(a)(7)(A) of the Tariff Act is warranted for Borcelik. For a more detailed discussion regarding the basis for our LOT determination, refer to our Preliminary Determination Analysis Memorandum for Borcelik, dated April 26, 2002.

Currency Conversions

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales based on the daily exchange rates from the Dow Jones Service, as published in the Wall Street Journal. The Department's preferred source for daily exchange rates is the Federal Reserve Bank. However, the Federal Reserve Bank does not track or publish exchange rates for the Turkish lira. Section 773A(a) of the Tariff Act directs the Department to use a daily exchange rate in order to convert foreign currencies into U.S. dollars unless the daily rate involves a fluctuation. It is the Department's practice to find that a fluctuation exists when the daily exchange rate differs from the benchmark rate by more than 2.25 percent. The benchmark is defined as the moving average of rates for the 40 business days immediately prior to the date of the actual daily rate to be classified. When we determine a fluctuation to have existed, we substitute the benchmark rate for the daily rate, in accordance with established practice. Further, section 773A(b) of the Tariff Act directs the Department to allow a 60-day adjustment period when a currency has undergone a sustained movement. A sustained movement has occurred when the weekly average of actual daily rates exceeds the weekly average of benchmark rates by more than five percent of eight consecutive weeks. For

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an explanation of this method, *see Policy Bulletin 96–1: Currency Conversions*, 61 FR 9434 (March 8, 1996).

Verification

Pursuant to section 782(i) of the Tariff Act, we intend to verify all information relied upon in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(2) of the Tariff Act, we are directing the Customs Service to suspend liquidation of all entries of cold-rolled steel from Turkey that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the estimated preliminary dumping margin indicated in the chart below. This suspension of liquidation will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin percentage
Borcelik Celik Sanayii ve Ticaret A.S. (Borcelik)	18.34
All Others	18.34

As Borcelik was the only respondent used in our calculations, we used Borcelik's weight-average margin as the "all others" rate.

ITC Notification

In accordance with section 733(f) of the Tariff Act, we have notified the ITC of our determination. If our final antidumping determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry. The deadline for that ITC determination would be the later of 120 days after the date of this preliminary determination or 45 days after the date of our final determinations.

Public Comment

Case briefs or other written comments in at least six copies must be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. In accordance with section 774 of the Tariff Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice, time and room to be determined, at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the case and rebuttal briefs. We intend to make our final determination no later than 75 days after the date of this preliminary determination.

This determination is published in accordance with sections 733(f) and 777(i)(1) of the Tariff Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11199 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–421–810]

Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from The Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary determination of sales at less than fair value.

SUMMARY: We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel") from the Netherlands are being, or likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733(b) of the Tariff Act of 1930, as amended.

Interested parties are invited to comment on this preliminary determination. We will make our final determination not later than 75 days after the date of this preliminary determination.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Geoffrey Craig or David Salkeld, AD/CVD Enforcement Office VI, Group II, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230; telephone: (202) 482–4161 or (202) 482–1168, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce ("Department's") regulations are to 19 CFR Part 351 (April 2001).

Case History

Since the initiation of this investigation (*Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001)) (*Initiation Notice*), the following events have occurred:

On October 31, 2001, we solicited comments from interested parties regarding the criteria to be used for model-matching purposes, and we received comments on our proposed matching criteria from petitioners on our proposed matching criteria on November 8, 2001. On November 26, 2002, we informed respondent of our revised model match criteria.

Corus Staal BV, a Dutch manufacturer of cold-rolled steel and its U.S. affiliate, Corus Steel, USA, Inc. (collectively "Corus"), requested in a November 7, 2001, letter that the Department revoke the *Initiation Notice* with respect to the Netherlands. In the alternative, Corus asked the Department to amend the *Initiation Notice* by revising the margin alleged by petitioners and to eliminate

the cost of production ("COP") investigation. On November 16, 2001, petitioners[1] rebutted Corus' argument that the Department should rescind or amend the *Initiation Notice*. *See Request to Revoke Initiation* section below.

On November 13, 2001, the United States International Trade Commission ("ITC") preliminarily determined that there is a reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports from Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela of cold-rolled steel products. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

We issued a questionnaire to Corus on November 16, 2001.[2] The petitioners made an allegation of sales below COP in the petition. The Statement of Administrative Action (SAA), submitted to the U.S. Congress in connection with the interpretation and application of the URAA provides that "new section 773(b)(2)(A) retains the current requirement that Commerce have 'reasonable grounds to believe or suspect' that below cost sales have occurred before initiating such an investigation. 'Reasonable grounds' exist when an interested party provides specific factual information on costs and prices, observed or constructed, indicating that sales in the foreign market in question are at below-cost prices." SAA, H. Doc. 103–316, Vol. 1, 103d Cong., 2d Session, at 833 (1994). We found "reasonable grounds to believe or suspect" that there were sales of the foreign like product below the COP within the meaning of section 773(b)(2)(A)(i) of the Act. *Initiation Notice*, 66 FR at 54213. Accordingly, the Department initiated the requested country-wide cost investigation.

Corus submitted its response to the section A questionnaire on December 7, 2002, and sections B–E on January 14, 2002. The Department issued supplemental questionnaires to Corus on March 6, 2002, March 13, 2002, April 17, 2002, and April 22, 2002. Corus responded to these supplemental questionnaires, except the April 17, 2002, questionnaire, and April 22, 2002, questionnaire, by April 3, 2002. The deadline for the April 17, 2002, questionnaire is April 26, 2002, and the deadline for the April 22, 2002, questionnaire is May 6, 2002.

On December 7, 2001 and January 14, 2002, the petitioners requested that the Department make an expedited finding that critical circumstances exist with respect to imports from the Netherlands. The Department preliminarily determined that critical circumstances exist with respect to imports of cold-rolled steel. *See Notice of Preliminary Determinations of Critical Circumstances: Certain Cold-Rolled Carbon Steel Flat Products From Australia, the People's Republic of China, India, the Republic of Korea, the Netherlands, and the Russian Federation, 67 FR 19157 (April 18, 2002) (Critical Circumstances Notice)*. On December 19, 2002, Corus submitted a letter regarding the *Critical Circumstances Notice*. As Corus' comments are pursuant to our request for comment on the surge analysis contained in the *Critical Circumstances Notice*, we will address Corus' December 19, 2002, letter in the final critical circumstances determination.

On February 22, 2002, the Department published a notice postponing the preliminary determination of this investigation until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations. Certain Cold-Rolled Carbon Steel Flat Products from Argentina (A–357–816), Australia (A–602–804), Belgium (A–423–811), Brazil (A–351–834), the People's Republic of China (A–570–872), France (A–427–822), Germany (A–428–834), India (A–533–826), Japan (A–588–859), Korea (A–580–848), the Netherlands (A–421–810), New Zealand (A–614-803), Russia (A–821–815), South Africa (A–791–814), Spain (A–469–812), Sweden (A–401–807), Taiwan (A–583–839), Thailand (A–549–819), Turkey (A–489–810) and Venezuela (A–307–822)*, 67 FR 8227 (February 22, 2002).

Request to Revoke Initiation

On November 7, 2001, Corus submitted a letter stating that the petition upon which the *Initiation Notice* was based was deficient in that it did not include very specific information, "reasonably available," as required by the Department's regulations (19 CFR 351.202(b)(7)), the statute (section 732(b)(1) of the Act), and U.S. international obligations (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (1994) at Article 5.2). Corus argues that the alleged dumping margin was computed from a non-representative subset of Dutch import values on the U.S. side, and from constructed value data based on non-Dutch and non-Corus specific cost data on the home market side. Further, Corus argues that the petition ignored COP data that Corus served to petitioners' counsel in the recently completed hot-rolled steel investigation. Corus argues that the Department has the obligation and authority to revoke, or in the alternative, amend the margin contained in the *Initiation Notice* and rescind the sales-below-cost investigation.

Petitioners responded in a November 16, 2001, letter that the Department should deny Corus' request because there is no requirement that the Department rescind or amend a notice of initiation because a petitioner did not utilize all information "reasonably available" to it. Petitioners contravene Corus" argument that it should have used certain public information from the hot-rolled steel investigation on the basis that said data was "unverified, uncorrected, and inaccurate."

We agree with petitioners that we should not rescind the instant investigation. As detailed in the "Initiation Checklist," we examined the data used by petitioners to calculate the alleged dumping margin. We stated that, "Based on an examination of the information submitted in the petition, adjusted where appropriate, and comparing export price ("EP") to constructed value ("CV"), we have determined that, for purposes of this initiation, there is a reasonable basis to believe or suspect that dumping has occurred." *Initiation Notice* 66 FR at 54209 (emphasis added). Moreover, Corus does not take issue with the fact that the petition contains "information reasonably available," as required by section 702(c)(1)(A) of the Act. Corus' assertion that there is additional public information reasonably available which petitioner did not use to calculate the

[1] The petitioners are Bethlehem Steel Corporation, LTV Steel Company, Inc., National Steel Corporation, Nocor Corporation, Steel Dynamics, Inc., United States Steel LLC and WCI Steel, Inc. (collectively, the petitioners).

[2] Section A of the questionnaire requests general information concerning a company's corporate structure and business practices, the merchandise under investigation that it sells, and the manner in which it sells that merchandise in all of its markets. Section B requests a complete listing of all home market sales, or, if the home market is not viable, of sales in the most appropriate third-country market (this section is not applicable to respondents in non-market economy (NME) cases). Section C requests a complete listing of U.S. sales. Section D requests the cost of production and constructed value related to the merchandise under investigation. Section E requests data related to cost of further manufacturing or assembly performed in the United States of the merchandise under investigation.

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alleged margin does not render the petition insufficient.

Corus argues that, as an alternative to revoking the initiation, we should amend the margin contained in the petition. However, the alleged margin (assuming it is above *de minimis* or zero) is relevant only inasmuch as it is sufficient to initiate the investigation. We stated in the *Initiation Notice*, 66 FR at 54205 that, "Should the need arise to use any of this information as facts available under section 776 of the Act in our preliminary or final determinations, we may re-examine the information and revise the margin calculations, if appropriate." In the instant investigation, we have not used facts available to calculate the margin for the preliminary determination. Thus, there is no further relevance to the petition margin.

Scope of Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Selection of Respondent

Section 777A(c)(1) of the Act directs the Department to calculate individual dumping margins for each known exporter and producer of subject merchandise. Where it is not practicable to examine all known producers/exporters of subject merchandise, section 777(A)(c)(2) of the Act permits the Department to investigate either (1) a sample of exporters, producers, or types of products that is statistically valid based on the information available at the time of selection, or (2) exporters and producers accounting for the largest volume of the subject merchandise that can reasonably be examined. Using company-specific export data for the period of investigation ("POI"), which we obtained from a variety of sources under the Harmonized Tariff Schedule of the United States (HTSUS) number that corresponds to the subject merchandise, we found that thirteen producers/exporters may have exported cold-rolled steel to the United States during the POI. According to data on the record, Corus was the largest exporter/producer of imports during the POI. Due to limited resources, we determined that we could only investigate this one largest producer/exporter. On November 29, 2001, we confirmed our selection of Corus, the largest producer/exporter of cold-rolled steel from the Netherlands, as the sole mandatory respondent in this proceeding. *See* Memorandum from James Terpstra to Melissa Skinner, "Antidumping Duty Investigation of Cold-Rolled Carbon Steel Flat Products from the Netherlands—Selection of Respondents," dated November 29, 2001, on file in the Central Records Unit ("CRU"), room B–099, of the Department's main building.

Period of Investigation

The POI is July 1, 2000, through June 30, 2001. This period corresponds to the four most recent fiscal quarters prior to the month of the filing of the petitioners (*i.e.*, September 2001).

Fair Value Comparisons

To determine whether sales of cold-rolled steel from the Netherlands to the United States were made at LTFV, we compared the constructed export price ("CEP") to the normal value ("NV"), as described in the "Constructed Export Price" and "Normal Value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we compared POI weighted-average CEPs to POI weighted-average NVs.

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced and sold by Corus in the home market during the POI that fit the description in the "Scope of Investigation" section of this notice to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales made in the home market, where appropriate. Where there were no sales of identical merchandise in the home market made in the ordinary course of trade to compare to U.S. sales, we compared U.S. sales to sales of the most similar foreign like product made in the ordinary course of trade. In making the product comparisons, we matched foreign like products based on the physical characteristics reported by the respondents in the following order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling; annealing; and surface finish.

Constructed Export Price

Corus reported as CEP transactions its sales of subject merchandise sold through Rafferty-Brown Steel Company of Connecticut and Rafferty-Brown Steel Company of North Carolina (collectively, "RBN"), two affiliated steel service centers which further manufacture flat-rolled steel products.

Corus reported the remaining sales as EP transactions which it described as "direct sales." These reported EP sales were shipped from Corus to the unaffiliated U.S. customer. For these reported EP sales, Corus' U.S. affiliate, Corus USA ("CSUSA"), acted as a selling agent. We have preliminarily reclassified Corus" reported EP sales as CEP sales, because the agreement for sale occurred in the United States between CSUSA and the unaffiliated customer. CSUSA provides the final written confirmation of the agreement, establishing the agreed prices and quantities, to the U.S. customer. Thus, in accordance with section 772(b) of the Act, we calculated CEP for all of Corus' U.S. sales because the merchandise was sold (or agreed to be sold) in the United States before or after the date of importation by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter. For further discussion, *see* Memorandum from Geoffrey Craig to James Terpstra, "Preliminary Determination Calculation Memorandum-Corus Staal BV" dated April 26, 2002 ("Calculation Memo"). This reclassification is consistent with the Department's recent determination in the LTFV investigation of hot-rolled steel from the Netherlands, in which Corus was a respondent. *See Notice of Final Determination of Sales at Less Than Fair Value; Certain Hot-Rolled Carbon Steel Flat Products From The Netherlands*, 66 FR 50408 (October 3, 2001).

We based CEP on the packed CIF, ex-factory, FOB, or delivered prices to the first unaffiliated customer in, or for exportation to, the United States. Where appropriate, we reduced these prices to reflect discounts. We deducted billing adjustments (upward adjustments were reported as negative amounts and downward adjustments to the gross unit price were reported as positive amounts). We added to the gross unit price an amount equal to the freight revenue that Corus received from U.S. customers as reimbursement for freight expenses.

In accordance with section 772(c)(2) of the Act, we made deductions, where appropriate, for movement expenses including inland freight from plant to

port of exportation, foreign brokerage, handling and loading charges, international freight, marine insurance, U.S. duties, and U.S. inland freight expenses (freight from port to the customer).

For CEP, in accordance with section 772(d)(1) of the Act, where appropriate, we deducted from the starting price those selling expenses that were incurred in selling the subject merchandise in the United States, including direct selling expenses (cost of credit and warranties). In addition, we deducted indirect selling expenses that related to economic activity in the United States. These expenses include certain indirect selling expenses incurred by Corus' U.S. affiliates, CSUSA and RBN. We also deducted from CEP an amount for profit in accordance with sections 772(d)(3) and (f) of the Act. In accordance with section 772(f) of the Act, we calculated the CEP profit rate using the expenses incurred by Corus and its affiliates on their sales of the subject merchandise in the United States and the foreign like product in the home market and the profit associated with those sales.

We deducted the cost of further manufacturing for sales of subject merchandise to which value was added in the United States by RBN prior to sale to unaffiliated customers, in accordance with section 772(d)(2) of the Act.

We also recalculated the imputed credit expense for those sales for which Corus has not received payment. On December 19, 2001, Corus requested that it be exempt from reporting sales by two affiliated U.S. re-sellers, GalvPro LP ("GalvPro") and Apollo Metals, to the first unaffiliated customer. Corus, instead, reported sales by Corus to GalvPro and by RBN to Apollo Metals. With respect to sales by Apollo Metals, consistent with our past practice, because the volume of these sales was very small, we are granting Corus' request. *See Preliminary Determination of Sales at Less Than Fair Value: Hot-Rolled Flat-Rolled Carbon-Quality Steel Products From Japan*, 64 FR 8291, 8295 (February 19, 1999) (unchanged in the final determination). With respect to GalvPro, we are in the process of obtaining additional information in order to decide whether Corus must report sales by GalvPro. *See* Calculation Memo.

Normal Value

A. Home Market Viability

In order to determine whether there is a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product is equal to or greater than five percent of the aggregate volume of U.S. sales), we compared the respondent's volume of home market sales of the foreign like product to the volume of U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because the respondent's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales for the subject merchandise, we determined that the home market was viable.

A. Arm's Length Test

Sales to affiliated customers for consumption in the home market which were determined not to be at arm's length were excluded from our analysis. To test whether these sales were made at arm's length, we compared the prices of sales of comparison products to affiliated and unaffiliated customers, net of all movement charges, direct selling expenses, discounts, and packing. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, where the prices to the affiliated party were on average less than 99.5 percent of the prices to unaffiliated parties, we determined that the sales made to the affiliated party were not at arm's length. *See e.g., Notice of Final Results and Partial Rescission of Antidumping Duty Administrative Review: Roller Chain, Other Than Bicycle, From Japan*, 62 FR 60472, 60478 (November 10, 1997), and *Antidumping Duties; Countervailing Duties: Final Rule ("Antidumping Duties")*, 62 FR 27295, 27355–56 (May 19, 1997). We included in our NV calculations those sales to affiliated customers that passed the arm's-length test in our analysis. *See* 19 CFR 351.403; *Antidumping Duties*, 62 FR at 27355–56.

B. Cost of Production Analysis

Based on our analysis of an allegation contained in the petition, we found that there were reasonable grounds to believe or suspect that sales of cold-rolled steel in the home market were made at prices below their COP. Accordingly, pursuant to section 773(b) of the Act, we initiated a country-wide sales-below-cost investigation to determine whether sales were made at prices below their respective COP (*see Initiation Notice* at 66 FR 54209).

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of the cost of materials and fabrication for the foreign like product, plus an amount for general and administrative expenses ("G&A"), including interest expenses, and home market packing costs (*see* "Test of Home Market Sales Prices" section below for treatment of home market selling expenses).

2. Test of Home Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the home market sales of the foreign like product, as required under section 773(b) of the Act, in order to determine whether the sale prices were below the COP. The prices were exclusive of any applicable movement charges, rebates, discounts, and direct and indirect selling expenses. In determining whether to disregard home market sales made at prices less than their COP, we examined, in accordance with sections 773(b)(1)(A) and (B) of the Act, whether such sales (1) were made within an extended period of time in substantial quantities, and (2) at prices which permitted the recovery of all costs within a reasonable period of time.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C), where less than 20 percent of the respondent's sales of a given product are at prices less than the COP, we do not disregard any below-cost sales of that product, because we determine that in such instances the below-cost sales were not made in "substantial quantities." Where 20 percent or more of a respondent's sales of a given product during the POI are at prices less than the COP, we determine that in such instances the below-cost sales represent "substantial quantities" within an extended period of time, in accordance with section 773(b)(1)(A) of the Act. In such cases, we also determine whether such sales were made at prices which would not permit recovery of all costs within a reasonable period of time, in accordance with section 773(b)(1)(B) of the Act.

We found that, for certain specific products, more than 20 percent of Corus's home market sales were at prices less than the COP and, in addition, such sales did not provide for the recovery of costs within a reasonable period of time. We therefore excluded these sales and used the remaining sales, if any, as the basis for determining NV, in accordance with section 773(b)(1) of the Act.

D. Calculation of Normal Value Based on Comparison Market Prices

We calculated NV based on delivered prices to unaffiliated customers or prices to affiliated customers that we determined to be at arm's-length. We

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made deductions, where appropriate, from the starting price for early payment discounts, rebates, and billing adjustments (downward adjustments were reported as positive values and upward adjustments were reported as negative values). We made a change to the reported rebate variable, to account for the fact that for certain observations Corus inadvertently reported billing adjustments as rebates. We also made deductions for movement expenses, including inland freight (from the factory to the point at which the merchandise leaves Corus' premises, plant to customer, and affiliated reseller to customer) under section 773(a)(6)(B)(ii) of the Act. In addition, we made adjustments under section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410 for differences in circumstances of sale ("COS") for imputed credit expenses and inventory carrying cost.

Furthermore, we made adjustments for differences in costs attributable to differences in the physical characteristics of the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We also deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act.

In a December 19, 2002 letter, Corus requested that it be exempted from reporting downstream sales by Multisteel, an affiliated service center in the Netherlands due to the small quantity of sales involved and burden placed on Multisteel to report these sales. According to 19 CFR 351.403(d), downstream sales by home market affiliates accounting for less than five percent of total sales are normally excluded from the NV calculation. *See* also section 773(a)(5) of the Act. Because the sales by Multisteel meet the five percent threshold, we are exempting Corus from reporting sales by Multisteel. For a further discussion, *see* Calculation Memo.

E. Level of Trade

Section 773(a)(1)(B)(i) of the Act states that, to the extent practicable, the Department will calculate NV based on sales at the same level of trade ("LOT") as the EP or CEP transaction. Sales are made at different LOTs if they are made at different marketing stages (or their equivalent). *See* 19 CFR 351.412(c)(2). Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there are differences in the stages of marketing. *Id.; see also Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate From South Africa*, 62 FR 61731, 61732 (November 19, 1997). In order to determine whether the comparison sales were at different stages in the marketing process than the U.S. sales, we reviewed the distribution system in each market (*i.e.*, the "chain of distribution"),[3] including selling functions,[4] class of customer ("customer category"), and the level of selling expenses for each type of sale.

Pursuant to section 773(a)(1)(B)(i) of the Act, in identifying levels of trade for EP and comparison market sales (i.e., NV based on either home market or third country prices[5]), we consider the starting prices before any adjustments. For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and profit under section 772(d) of the Act. *See Micron Technology, Inc.* v. *United States*, 243 F.3d 1301, 1316 (Fed. Cir. 2001).

When the Department is unable to find sales of the foreign like product in the comparison market at the same LOT as the EP or CEP, the Department may compare the U.S. sale to sales at a different LOT in the comparison market. In comparing EP or CEP sales at a different LOT in the comparison market, where available data make it practicable, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales only, if a NV LOT is more remote from the factory than the CEP LOT and there is no basis for determining whether the difference in LOTs between NV and CEP affected price comparability (*i.e.* no LOT adjustment was practicable), the Department shall grant a CEP offset, as provided in section 773(a)(7)(B) of the Act. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732–33 (November 19, 1997).

We obtained information from Corus regarding the marketing stages involved in making the reported home market and U.S. sales, including a description of the selling activities performed by Corus for each channel of distribution.

Corus reported home market sales through one channel of distribution (direct sales to the customer) and to two customer categories: end users and steel service centers. We examined the chain of distribution and the selling activities associated with sales reported by Corus to each of its customer categories in the home market. The information on the record demonstrates that Corus performs the same selling functions across customer categories. *See* Corus' March 27, 2002, submission at Exhibit A–8. Specifically, Corus indicated that to all home market customers, it provides: a high level of strategic and economic planning; a low level of freight/delivery arrangements, a low level of inventory and warehousing support, and a high level of quality assurance/warranty services. The only selling function in which there is a discernible difference is market research. Because Corus performs essentially identical selling functions, regardless of customer category, we have preliminarily determined that one LOT exists for Corus' home market sales.

In the U.S. market, Corus reported two channels of distribution for sales of subject merchandise during the POI (EP sales made directly from Corus to the U.S. customer and CEP sales made through affiliated service centers). For sales made directly by Corus, there were two customer categories (end users and steel service centers). As explained in the *Constructed Export Price* section above, we have reclassified reported EP sales as CEP sales.

In CEP situations, we do not determine the U.S. LOT on the basis of the CEP starting price. Rather, as described above, we determine the U.S. LOT on the basis of the CEP starting price minus the expenses and profit deducted pursuant to section 772(d) of the Act. For both channels of distribution, Corus performed similar selling functions, including strategic and economic planning, market research, technical/warranty services, and engineering/R&D/product development services. The remaining selling functions did not differ significantly by channel of distribution. Corus stated that it treats its affiliated U.S. service centers "in the same manner as all other U.S. customers for all purposes." Corus Section A response at A–29 (public version). Corus also stated that its description of selling functions for reported EP sales "should be considered as containing the information requested for Corus" sales to its affiliated U.S. customers." Id. Because channels of distribution do not qualify as separate LOTs when the selling functions performed for each channel are sufficiently similar, we have determined that one LOT exists for Corus' U.S. sales.

With regard to its reported CEP sales, respondent claims that a CEP offset is necessary because the RBN sales are made at a point in the distribution process that is less advanced than Corus' home market sales. As set forth in 19 CFR 351.412(f), a CEP offset will be granted where (1) normal value is compared to CEP sales, (2) normal value is determined to be at a more advanced LOT than the LOT of the CEP, and (3) despite the fact that the party has cooperated to the best of its ability, the data available do not provide an appropriate basis to determine whether the difference in LOT affects price comparability.

In analyzing Corus' request for a CEP offset, we found there to be few differences in the selling functions performed by Corus on sales to its affiliated importers and those performed for sales in the home market. We note that Corus performs the following functions to the same degree for both the CEP and home market LOT: strategic and economic planning; market research; technical services, and engineering/R&D/product development services. We have preliminarily determined that the record does not support Corus' claim that home market sales are at a different, more advanced LOT than the adjusted CEP sales. Thus, we are not granting a CEP offset.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 782(i) of the Act, we will verify all information relied upon in making our final determination.

Final Critical Circumstances Determination

We will make a final determination concerning critical circumstances for the Netherlands when we make our final determination regarding sales at LTFV in this investigation, which will be no later than 75 days (unless postponed) after this preliminary determination.

Suspension of Liquidation

Because of our preliminary affirmative critical circumstances finding, we are directing the U.S. Customs Service to suspend liquidation of all entries of cold-rolled steel entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days prior to the date on which this notice is published in the **Federal Register** (see Critical Circumstances Notice). We are instructing the U.S. Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the CEP, as indicated in the chart below. These instructions suspending liquidation will remain in effect until further notice.The weighted-average dumping margins are provided below:

Exporter/Manufacturer	Weighted-Average Margin Percentage
Corus Staal BV	6.38
All Others	6.38

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, pursuant to section 735(b)(2) of the Act, the ITC will determine within 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Disclosure

We will disclose the calculations used in our analysis to parties in this proceeding in accordance with 19 CFR 351.224(b).

Public Comment

Case briefs for this investigation must be submitted to the Department no later than seven days after the date of the final verification report issued in this proceeding. Rebuttal briefs must be filed five days from the deadline date for case briefs. A list of authorities used, a table of contents, and an executive summary of issues should accompany any briefs submitted to the Department. Executive summaries should be limited to five pages total, including footnotes. Public versions of all comments and rebuttals should be provided to the Department and made available on diskette.

Section 774 of the Act provides that the Department will hold a public hearing to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs, provided that such a hearing is requested by an interested party. If a request for a hearing is made in this investigation, the hearing will tentatively be held two days after the rebuttal brief deadline date at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC. 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. Oral presentations will be limited to issues raised in the briefs.

We will make our final determination no later than 75 days after this preliminary determination.

This determination is issued and published pursuant to sections 733(f) and 777(i) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11200 Filed 5–8–02; 8:45 am]

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[3] The marketing process in the United States and comparison markets begins with the producer and extends to the sale to the final user or consumer. The chain of distribution between the two may have many or few links, and the respondent's sales occur somewhere along this chain. In performing this evaluation, we considered the narrative responses of the respondent to properly determine where in the chain of distribution the sale appears to occur.

[4] Selling functions associated with a particular chain of distribution help us to evaluate the level(s) of trade in a particular market. For purposes of this preliminary determination, we have organized selling functions into four major categories: sales process and marketing support, freight and delivery, inventory and warehousing, and quality assurance/warranty services.

[5] Where NV is based on CV, we determine the NV LOT based on the LOT of the sales from which we derive selling expenses, G&A and profit for CV, where possible.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–307–822]

Notice of Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Cold-Rolled Carbon Steel Flat Products From Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Robert Bolling or Catherine Bertrand, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–3434 and (202) 482–3207, respectively.

The Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("the Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments

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made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (2001).

Preliminary Determination

We preliminarily determine that certain cold-rolled carbon steel flat products ("cold-rolled steel) from Venezuela are being, or are likely to be, sold in the United States at less than fair value ("LTFV"), as provided in section 733 of the Act. The estimated margins of sales at LTFV are shown in the "Suspension of Liquidation" section of this notice.

Case History

This investigation was initiated on October 18, 2001. *See Notice of Initiation of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products From Argentina, Australia, Belgium, Brazil, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, the People's Republic of China, the Russian Federation, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 54198 (October 26, 2001) ("Notice of Initiation"). The Department set aside a period for all interested parties to raise issues regarding product coverage. *See* Notice of Initiation, at 66 FR 54204.

On October 31, 2001, the Department requested comments from petitioners and other interested parties regarding the criteria to be used for model matching purposes. On November 8, 2001, petitioners submitted comments on our proposed model matching criteria. On November 19, 2001, the United States International Trade Commission ("ITC") notified the Department of its affirmative preliminary injury determination in this case. *See Certain Cold-Rolled Steel Products From Argentina, Australia, Belgium, Brazil, China, France, Germany, India, Japan, Korea, Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey, and Venezuela*, 66 FR 57985 (November 19, 2001).

On November 19, 2001, the Department issued an antidumping questionnaire to Siderurgica del Orinoco C.A. ("Sidor"). On December 17, 2001, Sidor submitted its response to section A of the questionnaire. Petitioners filed comments on Sidor's section A response on January 7, 2002. We issued a supplemental questionnaire for section A on January 24, 2002. Sidor submitted sections B and C response on January 22, 2002. Petitioners filed comments on Sidor's sections B and C response on February 6, 2002. We issued Sidor a supplemental questionnaire for sections B and C on February 13, 2002. On February 25, 2002, petitioners submitted supplemental section A comments. On February 27, 2002, the Department issued a second supplemental section A questionnaire. On March 13, 2002, Sidor submitted its second supplemental section A response. On March 1, 2002, and March 11, 2002, Sidor submitted its supplemental sections B and C responses. On April 1, 2002, the Department issued a supplemental questionnaire for section A, B and C. Sidor submitted its response on April 11, 2002, and April 15, 2002.

On February 7, 2002, petitioners made a timely request for a fifty-day postponement of the preliminary determination pursuant to section 733(c)(1)(A) of the Act. The Department determined that these concurrent investigations warranted the fifty-day postponement requested by petitioners. On February 14, 2002, we postponed the preliminary determination until April 26, 2002. *See Postponement of Preliminary Determinations of Antidumping Duty Investigations: Certain Cold-Rolled Carbon Steel Flat Products from Argentina, Australia, Belgium, Brazil, the People's Republic of China, France, Germany, India, Japan, Korea, the Netherlands, New Zealand, Russia, South Africa, Spain, Sweden, Taiwan, Thailand, Turkey and Venezuela*, 67 FR 8227 (February 22, 2002).

On March 14, 2002, petitioners submitted a sales below cost allegation. The Department concluded that a reasonable basis exists to believe or suspect that sales in the home market have been made at prices below the cost of production. On March 21, 2002, the Department initiated a sales below cost investigation. *See Memorandum to Edward Yang dated March 21, 2002, Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela: Analysis of Petitioners' Allegation of Sales Below the Cost of Production for Siderurgica del Orinoco C.A.* ("*Allegation of Sales Below Cost*"). On March 22, 2002, the Department instructed Sidor to respond to section D of the questionnaire. On April 5, 2002, Sidor submitted its section D response. On April 9, 2002, petitioners submitted their preliminary determination comments for sections A through C.

Postponement of Final Determination

Pursuant to section 735(a)(2) of the Act, on April 18, 2002, Sidor requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone its final determination until not later than 135 days after the date of the publication of the preliminary determination in the **Federal Register** and extend the provisional measures to not more than six months. In accordance with 19 CFR 351.210(b), because (1) our preliminary determination is affirmative, (2) Sidor accounts for a significant proportion of exports of the subject merchandise, and (3) no compelling reasons for denial exist, we are granting the respondent's request and are postponing the final determination until no later than 135 days after the publication of this notice in the **Federal Register**. Suspension of liquidation will be extended accordingly.

Period of Investigation

The period of investigation ("POI") is July 1, 2000 through June 30, 2001.

Scope of the Investigation

For purposes of this investigation, the products covered are certain cold-rolled (cold-reduced) flat-rolled carbon-quality steel products. For a full description of the scope of this investigation, as well as a complete discussion of all scope exclusion requests submitted in the context of the on-going cold-rolled steel investigations, please see the "Scope Appendix" attached to the *Notice of Preliminary Determination of Sales at Less Than Fair Value: Certain Cold-Rolled Carbon Steel Flat Products from Argentina*, published concurrently with this preliminary determination.

Fair Value Comparisons

To determine whether sales of cold-rolled steel from Venezuela to the United States were made at less than fair value, we compared the export price ("EP") or constructed export price ("CEP") to the normal value ("NV"), as described in the "export price and constructed export price" and "normal value" sections of this notice, below. In accordance with section 777A(d)(1)(A)(i) of the Act, we calculated weighted-average EPs and CEPs for comparison to weighted-average NVs.

Date of Sale

For its home market and U.S. sales, Sidor reported the date of invoice as the date of sale, in keeping with the Department's stated preference for using the invoice date as the date of sale. Sidor stated that the invoice date best reflects the date on which the material terms of sale are established and that price and/or quantity may change between order date and invoice date. *See* Sidor's section B and C response dated January 22, 2002, at B–11 and C–11.

Section 351.401(i) of the Department's regulations states that the Department will normally use the date of invoice, as recorded in the exporter's or producer's records kept in the ordinary course of business, as the date of sale. The preamble to the Final Rules (the "Preamble") provides an explanation of this policy and examples of when the Department may choose to base the date of sale on a date other than the date of invoice. *See* 62 FR at 27348–49 (May 19, 1997). In accordance with 19 CFR 351.401(i), where appropriate, we based date of sale on invoice dates recorded in the ordinary course of business by the involved sellers of the subject merchandise. However, we intend to fully verify information concerning respondent's claims that invoice date is the appropriate date of sale. Based on the outcome of our verification, we will determine whether it is appropriate to continue to use the date of invoice as the date of sale. We will consider, among other things, whether, in fact, there were any changes to the material contract terms between the original order confirmation and the date of invoice. *See e.g., Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Pure Magnesium From the Russian Federation*, 66 FR 21319 (April 30, 2001).

Product Comparisons

In accordance with section 771(16) of the Act, we considered all products produced by the respondent covered by the description in the "Scope of the Investigation" section above, and sold in the home market during the POI, to be foreign like products for purposes of determining appropriate product comparisons to U.S. sales. We compared U.S. sales to sales of identical merchandise in the comparison market made in the ordinary course of trade, where possible. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared U.S. sales to the next most similar foreign like product made in the ordinary course of trade. To determine the appropriate product comparisons, we compared the following physical characteristics of the products in order of importance: hardening and tempering; painted; carbon level; quality; yield strength; minimum thickness; thickness tolerance; width; edge finish; form; temper rolling; leveling, annealing and surface finish.

Export Price and Constructed Export Price

Where Sidor sold merchandise directly to unaffiliated purchasers in the United States, we calculated EP, in accordance with section 772(a) of the Act, because the merchandise was sold to the first unaffiliated purchaser in the United States prior to importation by the exporter or producer outside the United States, or to an unaffiliated purchaser for exportation to the United States. We based EP on the packed price to the unaffiliated customer in the United States (the starting price). We made adjustments to the starting price for billing adjustments where applicable. We deducted from the starting price, where applicable, amounts for discounts and rebates. In addition, we deducted movement expenses in accordance with section 772(c)(2)(A) of the Act, where appropriate. In this case, movement expenses include international freight, brokerage and handling charges, marine insurance, U.S. duties, and U.S. inland freight.

We calculated CEP, in accordance with subsections 772(b) of the Act, for those sales made by Siderca Corporation, Sidor's U.S. affiliate, to the first unaffiliated purchaser in the United States. We based CEP on the packed, delivered, duty paid or delivered prices to unaffiliated purchasers in the United States. We made adjustments to the starting price for billing adjustments where applicable. Where appropriate, we made deductions for discounts. We also made deductions for the following movement expenses in accordance with section 772(c)(2)(A) of the Act: international freight; marine insurance; U.S. Customs duties; brokerage and handling; and U.S. inland freight from port to warehouse. In accordance with section 772(d)(1) of the Act, we deducted those selling expenses associated with economic activities occurring in the United States, including direct selling expenses (credit and warranty expenses), inventory carrying costs, and other indirect selling expenses. We also made an adjustment for profit in accordance with section 772(d)(3) of the Act.

We recalculated the U.S. credit expense for EP sales, because Sidor reported it had no U.S. borrowings during the POI. In the event respondent has no U.S. borrowing, the Department's practice is to use a U.S. published commercial bank prime short-term lending rate. *See* Import Administration Policy Bulletin: Imputed Credit Expenses and Interest Rates (February 23, 1998). In recalculating the short-term interest rate, we used the weighted-average effective loan rate for commercial and industrial loans during the POI as reported by the U.S. Federal Reserve statistical release.

The Department is denying Sidor's claim for duty drawback for this preliminary determination because the reported duty drawback was not directly linked to the amount of duty paid on imports used in the production of merchandise for export as required by the Department's two-part test. The two-prong test which the Department considers when deciding whether to grant a duty drawback adjustment is whether the: (1) Import duty and rebate are directly linked to, and dependent upon, one another; and (2) company claiming the adjustment can show that there were sufficient imports of the imported raw materials to account for the drawback received on the exported product. *See Rajinder Pipes Ltd.* v. *United States*, 70 F. Supp. 2d 1350, 1358 (CIT 1999).

In our analysis of Sidor's duty drawback information, we found that Sidor did not provide sufficient evidence on the record to demonstrate that a direct link existed between the import duties paid and the amount rebated upon exportation of the subject merchandise. We issued Sidor the original section B and C questionnaire, followed by two supplemental questionnaires, and the information on the record is still unclear and insufficient for these reasons. First, the respondent provided a chart of the inputs it imported during the POI that were used in the production of cold-rolled steel: however this chart was not translated into English, and therefore not readable. *See* Sidor's second supplemental B and C response dated April 11, 2002 at Exhibit 11. Second, the Venezuelan regulations, that the Department requested Sidor to provide, were also not fully translated into English as required by 19 CFR 351.303(e). The company provided only one page of English translation for approximately fifty pages of Spanish text, and the translated portion was not sufficient to establish the necessary link. *See* Sidor's second supplemental B and C response dated April 11, 2002 at Exhibit 10. Third, we are also unable to tell if the respondent had a sufficient quantity of imports of the inputs in question to account for the duty drawback upon exportation of cold-rolled, as the information on the record was not translated. The Department intends to fully examine this issue at verification, and may reconsider its position for the final determination based on the results of verification.

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Normal Value

After testing home market viability and whether home market sales were at below-cost prices, we calculated NV as noted in the "Price-to-Price Comparisons" and "Price-to-CV Comparison" sections of this notice.

A. Home Market Viability

To determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating NV (*i.e.*, the aggregate volume of home market sales of the foreign like product was equal to or greater than five percent of the aggregate volume of U.S. sales), we compared Sidor's volume of home market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act. Because Sidor's aggregate volume of home market sales of the foreign like product was greater than five percent of its aggregate volume of U.S. sales of the subject merchandise, we determined that the home market was viable. Therefore, we have based NV on home market sales in the usual commercial quantities and in the ordinary course of trade.

B. Cost of Production Analysis

Based on the information contained in a timely filed cost allegation by the petitioners on March 14, 2002, the Department found reasonable grounds to believe or suspect that Sidor's sales of the foreign like product in their respective comparison markets were made at prices below the cost of production ("COP"), pursuant to section 773(b)(1) of the Act. As a result, the Department initiated a country-wide sales-below-cost investigation. *See Allegation of Sales Below Cost.*

1. Calculation of COP

In accordance with section 773(b)(3) of the Act, we calculated COP based on the sum of Sidor's cost of materials and fabrication for the foreign like product, an amount for selling, general, and administrative expenses ("SG&A") based on actual data pertaining to production and sales of the foreign like product by the exporter in question, interest expenses, and packing costs. We relied on the COP data submitted by Sidor in its section D cost questionnaire response, except as noted below.

1. We revised Sidor's G&A rate to be based on the fiscal year costs and not the POI costs, as reported.

2. We revised respondent's financial expense rate to also be based on fiscal year costs and not on POI costs, as reported. See Memorandum from Gina K. Lee to Neal M. Halper, Director, Office of Accounting, dated April 26, 2002, Re: Cost of Production and Constructed Value Adjustments for Preliminary Determination.

2. Test of Home Market Prices

On a product specific basis, we compared the weighted-average COP figures for Sidor to home market sales prices of the foreign like product, as required under section 773(b) of the Act, in order to determine whether sales had been made at prices below their COPs. In determining whether to disregard home market sales made at prices less than the COP, we examined whether: (1) Within an extended period of time, such sales were made in substantial quantities, and (2) the below-cost prices would permit the recovery of all costs within a reasonable period of time. We compared COP to home market prices, less any applicable movement charges, billing adjustments, and direct and indirect selling expenses.

3. Results of the COP Test

Pursuant to section 773(b)(2)(C)(i) of the Act, where less than 20 percent of a respondent's sales of a given product were made at prices below the COP, we did not disregard any below-cost sales of that product because we determined that the below-cost sales were not made in "substantial quantities." Where 20 percent or more of the respondent's sales of a given product during the POI were made at prices below the COP, we determined such sales to have been made in "substantial quantities" pursuant to section 773(b)(2)(C)(i) within an extended period of time, in accordance with section 773(b)(2)(B) of the Act. In such cases, because we compared prices to weighted-average COPs for the POI, we also determined that such sales were not made at prices which would permit recovery of all costs within a reasonable period of time, pursuant to section 773(b)(2)(D) of the Act. Therefore, we disregarded the below-cost sales. Where all sales of a specific product were made at prices below the COP, we disregarded all sales of that product. For those U.S. sales of subject merchandise for which there were no comparable home market sales in the ordinary course of trade, we compared the EP/CEP to CV in accordance with section 773(a)(4) of the Act.

C. Calculation of Constructed Value

In accordance with section 773(e)(1) of the Act, we calculated CV based on the sum of Sidor's cost of materials, fabrication, SG&A, including interest expenses, profit, and packing. In accordance with section 773(e)(2)(A) of the Act, we based SG&A and profit on the amounts incurred and realized by Sidor in connection with the production and sale of the foreign like product in the ordinary course of trade for consumption in Venezuela. For CV, we made the same adjustments described in the COP section above.

D. Price-to-Price Comparisons

We calculated NV for Sidor on prices of home market sales that passed the cost test. We made adjustments for billing adjustments, discounts and rebates, where appropriate. Also, we made deductions, where appropriate, for inland freight and inland toll expenses pursuant to section 773(a)(6)(B) of the Act. In addition, we made adjustments for differences in cost attributable to differences in physical characteristics of the merchandise, as well as for differences in circumstances of sale ("COS") in accordance with section 773(a)(6)(C)(iii) of the Act and 19 CFR 351.410. We made COS adjustments, where appropriate, for imputed credit, warranty expenses, and technical expenses. Finally, we deducted home market packing costs and added U.S. packing costs in accordance with section 773(a)(6)(A) and (B) of the Act. We recalculated credit expenses for those sales with missing payment date because payment has not yet been made. For sales with missing payment dates, the Department set the date of payment as the projected preliminary determination date. For further explanation, *see Analysis Memorandum from Catherine Bertrand to The File*, dated April 26, 2002.

We have analyzed Sidor's claim for other discounts. We issued Sidor the original section B and C questionnaire, followed by two supplemental questionnaires, and the information on the record is still unclear and insufficient to determine if there were discounts appropriately granted because discounts were granted substantially after invoicing had occurred. *See* Department's questionnaire to Sidor on November 19, 2001, and Department's supplemental questionnaires to Sidor on February 13, 2002 and April 1, 2002. Sidor stated that in the database field "other discounts" it reported data for two types of commercial discounts: (1) Commercial discounts, pursuant to agreements with certain clients, in which a credit note is issued after the merchandise has been shipped and invoiced and is based on commercial consideration; and (2) price adjustments which are either credit notes or debit notes correcting pricing errors in their sales orders. *See* Sidor's second supplemental B and C response dated April 11, 2002 at 4–5. As both of these discounts are reported in the same field, it is not possible to tell which type of discount is involved for each sale. Also, Sidor did not provide a copy of the agreements on which the first type of discounts is based. Furthermore, Sidor also did not fully explain the term "commercial consideration" which is the reason Sidor provided for granting the commercial discount. Therefore, because the information on the record to date is unclear and insufficient for the Department to determine what type of discount, if any, was granted, the Department is denying this discount for the preliminarily determination. The Department intends to fully examine this issue at verification, and may reconsider its position for the final determination based on the results of verification.

E. Price-to-CV Comparisons

In accordance with section 773(a)(4) of the Act, we based NV on CV when we were unable to find a home market match of such or similar merchandise. Where appropriate, we made adjustments to CV in accordance with section 773(a)(8) of the Act. For comparisons to EP, we made COS adjustments by deducting the weighted average home market selling expenses and adding U.S. direct selling expenses. Where we compared CV to CEP, we deducted from CV the average home market direct selling expenses.

F. Level of Trade

In accordance with section 773(a)(1)(B)(i) of the Act, to the extent practicable, we determine NV based on sales in the comparison market at the same level of trade ("LOT") as the EP or CEP transaction. The NV LOT is that of the starting price comparison sales in the home market or, when NV is based on CV, that of the sales from which we derive SG&A expenses and profit. For EP, the LOT is also the level of the starting price sale, which is usually from the exporter to the importer. For CEP, it is the level of the constructed sale from the exporter to the importer. To determine whether NV sales are at a different LOT than EP or CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer in the comparison market. If the comparison-market sales are at a different LOT, and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which NV is based and comparison market sales at the LOT of the export transaction, we make a LOT adjustment under section 773(a)(7)(A) of the Act. Finally, for CEP sales, if the NV level is more remote from the factory than the CEP level and there is no basis for determining whether the differences in the levels between NV and CEP sales affects price comparability, we adjust NV under section 773(a)(7)(B) of the Act (the CEP offset provision). *See Certain Cut-to-Length Carbon Steel Plate from South Africa, Notice of Final Determination of Sales at Less Than Fair Value*, 62 FR 61731 (November 19, 1997).

In this investigation, Sidor did not request a level-of-trade adjustment. To ensure that no such adjustment was necessary, in accordance with principles discussed above, we examined information regarding the distribution systems in both the United States and Venezuelan markets, including the selling functions, classes of customers and selling expenses for Sidor. *See Memorandum to Edward Yang, Antidumping Duty Investigation of Certain Cold-Rolled Carbon Steel Flat Products from Venezuela: Level of Trade Analysis* (April 26, 2002) ("*Level of Trade Memorandum*"). For its home market sales, Sidor reported two channels of distribution—to unaffiliated end users and to unaffiliated distributors. In reviewing Sidor's LOT in the home market, we asked Sidor to identify the specific differences and similarities in selling functions and/or support services between all channels of distribution in the home market and the United States. Sidor reported that it undertakes different levels of selling functions depending on whether its home market sales are made to distributors or end users. *See Level of Trade Memorandum.* Because the selling activities engaged in by Sidor differ significantly by channel of distribution, we preliminarily determine that two levels of trade exist for Sidor's home market sales. *See Level of Trade Memorandum.*

For its U.S. sales, Sidor also reported two channels of distribution. Sidor sold directly to unaffiliated trading companies and also made sales through Siderca Corporation, an affiliated U.S. company, which then sold to unaffiliated customers in the United States. We examined the claimed selling functions performed by Sidor for all U.S. sales. For sales made directly to the unaffiliated U.S. customer (EP sales), Sidor performed the same selling functions that it provided for sales made to Siderica Corporation. Sidor provided the same level of the following services for both EP and CEP sales in the U.S.: technical advice and services, visits to customers, solicitation of customer orders, market research, advertising, freight and delivery arrangements and packing.

In order to determine whether NV was established at a different LOT than CEP sales, we examined stages in the marketing process and selling functions along the chains of distribution between Sidor and its home market customers. We compared the selling functions performed for home market sales with those performed with respect to the CEP transaction, after deductions for economic activities occurring in the United States, pursuant to section 772(d) of the Act, to determine if the home market levels of trade constituted more advanced stages of distribution than the CEP level of trade. Sidor requested a CEP offset in this investigation. Sidor reported that it provided virtually no selling functions for the CEP level of trade and that, therefore, the two home market levels of trade are more advanced than the CEP level of trade. To determine whether a CEP offset was necessary, in accordance with the principles discussed above, we examined information regarding the distribution systems in both the United States and Venezuelan markets, including the selling functions, classes of customer, and selling expenses.

Based on our analysis of the channels of distribution and selling functions performed for sales in the home market and CEP sales in the U.S. market, we preliminarily find that both home market LOTs were at a more advanced stage of distribution when compared to respondent's CEP sales. *See Level of Trade Memorandum.* We were unable to quantify the LOT adjustment in accordance with section 773(a)(7)(A) of the Act, as we found that neither of the LOTs in the home market matched the LOT of the CEP transactions. Accordingly, we did not calculate a LOT adjustment. Instead, we applied a CEP offset to the NV for CEP comparisons. To calculate the CEP offset, we deducted the home market indirect selling expenses from normal value for home market sales that were compared to U.S. CEP sales. We therefore limited the home market indirect selling expense deduction by the amount of the indirect selling expenses deducted in calculating the CEP as required under section 772(d)(1)(D) of the Act.

We are unable to make a LOT adjustment for EP sales because Sidor does not sell the subject merchandise in the home market at the same LOT as that of its EP sales, and there is no data on the record that would allow the Department to establish whether there is a pattern of consistent price differences

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between sales at different levels of trade in the comparison market. Therefore, and LOT adjustment is not possible for comparisons of EP sales to home market sales.

Currency Conversion

We made currency conversions into U.S. dollars based on the exchange rates in effect on the dates of the U.S. sales, as certified by the Federal Reserve Bank, in accordance with section 773A(a) of the Act.

Verification

As provided in section 782(i) of the Act, we intend to verify all information relied upon in making our final determination.

The All Others Rate

Because the Department investigated one company, Sidor, we used Sidor's margin in this investigation as the all-others rate.

Suspension of Liquidation

In accordance with section 733(d) of the Act, we are directing the Customs Service to suspend liquidation of all imports of subject merchandise that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. We will instruct the Customs Service to require a cash deposit or the posting of a bond equal to the weighted-average amount by which the NV exceeds the export price, as indicated below. These suspension-of-liquidation instructions will remain in effect until further notice. The weighted-average dumping margins are as follows:

Exporter/manufacturer	Weighted-average margin (percent)
Sidor	72.81
All Others	72.81

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether imports of cold-rolled steel are materially injuring, or threaten material injury to, the U.S. industry.

Public Comment

Case briefs or other written comments may be submitted to the Assistant Secretary for Import Administration no later than fifty days after the date of publication of this notice, and rebuttal briefs, limited to issues raised in case briefs, no later than fifty-five days after the date of publication of this preliminary determination. A list of authorities used and an executive summary of issues should accompany any briefs submitted to the Department. This summary should be limited to five pages total, including footnotes. In accordance with section 774 of the Act, we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, any hearing will be held fifty-seven days after publication of this notice at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230, at a time and location to be determined. Parties should confirm by telephone the date, time, and location of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room 1870, within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. At the hearing, each party may make an affirmative presentation only on issues raised in that party's case brief, and may make rebuttal presentations only on arguments included in that party's rebuttal brief. *See* 19 CFR 351.310(c). We will issue our final determination in this investigation no later than 135 days after the date of publication in the **Federal Register** of the preliminary determination.

This determination is issued and published in accordance with sections 733(f) and 777(i)(1) of the Act.

Dated: April 26, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11201 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050602A]

Proposed Information Collection; Comment Request; Survey to Measure Effectiveness of Community-Oriented Policing for ESA Enforcement

AGENCY: National Oceanic and Atmospheric Administration (NOAA).

ACTION: Notice.

SUMMARY: The Department of Commerce, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3506(c)(2)(A)).

DATES: Written comments must be submitted on or before July 8, 2002.

ADDRESSES: Direct all written comments to Madeleine Clayton, Departmental Paperwork Clearance Officer, Department of Commerce, Room 6608, 14th and Constitution Avenue NW, Washington DC 20230 (or via the Internet at *Mclayton@doc.gov*).

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the information collection instrument(s) and instructions should be directed to Dayna Matthews, National Marine Fisheries Service, 510 Desmond Drive S.E. Suite 103, Lacey, WA 98503.

SUPPLEMENTARY INFORMATION:

I. Abstract

Community-oriented policing promotes the use of various resources and policing-community partnerships for developing strategies to identify, analyze, and address community law enforcement problems at their source. Recognizing the significant role non-traditional enforcement efforts play in Endangered Species Act (ESA) enforcement in the Northwest, the National Marine Fisheries Service proposes to conduct a survey to evaluate the success of its Office for Law Enforcement's community-oriented policing program for ESA enforcement for anadromous species in the Pacific Northwest.

II. Method of Collection

Information will be gathered through both voluntary self-administered surveys and in-depth interviews.

III. Data

OMB Number: 0648–0435.
Form Number: None.
Type of Review: Regular submission.
Affected Public: Individuals or households; Federal Government, State and Local Government.
Estimated Number of Respondents: 787.
Estimated Time Per Response: 20 minutes per survey; 60 minutes per interview.
Estimated Total Annual Burden Hours: 316 hours.
Estimated Total Annual Cost to Public: $0 (estimate does not include valuation of the burden hours).

IV. Request for Comments

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden (including hours and cost) of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of this information collection; they also will become a matter of public record.

Dated: May 2, 2002.

Madeleine Clayton,

Departmental Paperwork Clearance Officer, Office of the Chief Information Officer.

[FR Doc. 02–11634 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 043002C]

Taking and Importing of Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Request for nominations.

SUMMARY: The Secretary of Commerce is required by the Marine Mammal Protection Act (MMPA) to conduct specified scientific research and, by December 31, 2002, to make a finding based on the results of that research, on information obtained under the International Dolphin Conservation Program (IDCP), and on any other relevant information as to whether the intentional deployment on or the encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the eastern tropical Pacific Ocean (ETP). A proposed organized decision process (ODP) and request for public comment were published in the **Federal Register** on Feb. 15, 2002 describing information the Secretary will consider for the final finding and outlining two expert panels that will assess this information.

This notice solicits nominations for scientists to serve on two expert panels referenced in the proposed ODP: the Ecosystem Expert Panel and the Indirect Effects Expert Panel. It also describes the process NMFS will carry out to solicit nominations, select five qualified scientists for each panel, and recommend them for appointment by the Secretary. The expert panels are scheduled to meet September 4–6, 2002, in La Jolla, CA. Each expert panel will assess peer-reviewed scientific studies and other information and individually provide scientific advice to address specific issues the Secretary will be considering in making his final finding.

DATES: Nominations must be received by June 24, 2002.

ADDRESSES: Nominations should be sent to the Director, NMFS Office of Science and Technology, F/ST, 1315 East-West Highway, Silver Spring, MD, 20910. Nominations may also be sent via facsimile at 301–713–1875. Nominations will not be accepted if submitted via electronic mail or the Internet.

FOR FURTHER INFORMATION CONTACT: Nicole R. Le Boeuf, Office of Protected Resources, NMFS, 301–713–2322.

SUPPLEMENTARY INFORMATION:

Background

The MMPA, 16 U.S.C. 1361 *et seq.*, as amended by the International Dolphin Conservation Program Act (IDCPA), (Public Law 105–42), requires the Secretary of Commerce to conduct scientific research on depleted dolphin stocks in the ETP. The Dolphin Protection Consumer Information Act (16 U.S.C. 1385), as amended by the IDCPA, requires the Secretary to make a finding by December 31, 2002, based on the scientific research, information obtained under the IDCP, and any other relevant information, as to whether the intentional deployment on or encirclement of dolphins with purse seine nets is having a "significant adverse impact" on any depleted dolphin stock in the ETP. There are three depleted dolphin stocks in the ETP: northeastern offshore spotted, eastern spinner, and coastal spotted.

The Organized Decision Process

The proposed ODP provides the Secretary with a systematic approach for evaluating multiple types of data. The ODP guides the Secretary through four separate questions regarding the extent of fishery and environmental effects on depleted dolphin stocks to assist in the final decision. These questions focus on (1) the ETP Ecosystem, (2) Direct Fishing Mortality, (3) Indirect Effects, and (4) Dolphin Stock Status and Trends.

Questions and Charge to the Ecosystem Panel

The questions for the Ecosystem Panel are: during the period of the fishery, has the carrying capacity of the ETP for the three depleted dolphin stocks declined, or has the ecological structure of the ETP changed in a manner or to an extent that could impede depleted dolphin stocks from growing at rates expected in a stable ecosystem? Or has the carrying capacity increased substantially or the ecological structure changed in any way that could promote the three depleted dolphin stocks to grow at rates faster than expected in a static ecosystem?

To determine the answer to these questions, the Secretary will consider scientific information collected and/or evaluated by NMFS, as well as information rendered individually from members of a panel of independent scientific experts in biological oceanography and ecology (the Ecosystem Panel). The panel members' assessments will be based on their review of relevant oceanographic and ecosystem data (physical and biological habitat and distribution, abundance, and ecology of other organisms in the ETP) from the period of the fishery.

Question and Charge to the Indirect Effects Panel

The question for the Indirect Effects Panel is: for each depleted dolphin stock, is the estimated number of dolphins affected by the tuna fishery (considering data on sets per year, mortality attributable to the fishery, indicators of stress in blood, skin and other tissues, cow-calf separation, and other relevant indirect effects information) at a level that is cause for concern (how and to what degree)?

To determine the answer to these questions, the Secretary will consider

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scientific information collected and/or evaluated by NMFS, as well as information rendered individually from the Indirect Effects Panel. The panel will include independent scientific experts in veterinary science, physiology, and other stress-related fields. The panel members' assessments will be based on their review of relevant behavioral, ecological, immunological, pathological, and other information with respect to the three depleted dolphin stocks. For this question, the Secretary will also consider the evidence presented by the Ecosystem Panel members regarding possible changes in the carrying capacity and/or the ecosystem structure of the ETP and how it relates to adverse impacts attributable to the fishery on the dolphin stocks as described above.

Nomination Process

Any individual or organization may submit nominations for either or both of the two expert panels. Nominations should include:

1. The name of the nominee and their contact information;
2. A statement of background;
3. A statement of qualifications; and
4. The submitting person or organization's name and affiliation.

Panel Member Qualifications

Nominees must have outstanding scientific credentials relevant to the particular panel and be recognized internationally in their fields of expertise. Credentials must include: (1) doctorate degree from an accredited university or equivalent professional experience related to the questions before each panel; (2) established publication record in juried scientific journals related to the questions before each panel; (3) distinguished professional reputation. Nominees may be affiliated with international as well as domestic scientific bodies, academia, natural resource management agencies, or related organizations. Nominees must be available to travel to the expert panel meetings in La Jolla, CA, September 4–6, 2002, and they must be able to spend the necessary time in advance to prepare for the meeting.

To avoid conflicts of interest and ensure an independent panel, nominees must be able to certify and appointees must certify that they will provide their expert advice free from the influence of Government managers, the fishing industry, environmental groups, or any other interested party and that:

1. They have not received in the past 2 years funds in excess of $20 from any industry or environmental group with a vested interest in any resource for which NMFS has stewardship responsibilities, and

2. They have not received in the past 2 years funds in excess of $20 directly from NMFS via a sole-source contract, other than for invitational travel.

Selection Process

The Secretary will seek advice from professional societies on the qualifications of the nominees. A committee composed of one scientist from the Inter-American Tropical Tuna Commission, one scientist from the Marine Mammal Commission, one scientist from an independent reviewing agency, and three senior scientists from NMFS, including the Director, NMFS Office of Science and Technology, as the ex-officio chair, will select and rank qualified expert panel candidates, with advice from the professional societies. The Director will provide this committee's recommendations to the Secretary, including a ranked list of eight candidates for each panel. The Secretary will appoint two panels of five members each from the list of recommended candidates.

Format of the Expert Panel Meetings

Each panel will meet for 3 days. The first day will involve overview presentations by specialists from NMFS, research institutions, fishery management agencies, and others. The second and third days of each panel discussion will entail panel deliberations and individual drafting sessions. Within five days of the expert panel adjournment, each panel member will submit a complete individual assessment report to the Director, NMFS Office of Science and Technology, for use in the ODP. The panel member reports will be made available to the public with the final finding.

Role of Expert Panel Members

The expert panel members will agree to provide individual written assessments, explicitly addressing the relevant question, to the Secretary to assist in his determination. The panel members will base their assessments on the presentations to the panels, panel member deliberations, the peer-reviewed IDCPA science report, additional information obtained under the IDCP, and other relevant information. The use of independent expert judgment in obtaining guidance on complex and highly technical bodies of information, such as those relevant to the Ecosystem and the Indirect Effects Questions, is consistent with science-based, decision-making processes like that proposed here.

Cost Reimbursement

Panel members will be paid $600 per diem. It is anticipated that preparation will require 80 hours and the panel meeting and travel will require another 40–60 hours. In addition, all travel expenses for panel members to attend the meeting will be paid by the federal government at the prevailing government rates.

Deadline for Submission of Nominations

NMFS is soliciting nominations by June 24, 2002. See **ADDRESSES** above.

Dated: May 3, 2002.

William W. Fox, Jr.

Director, Office of Science and Technology, National Marine Fisheries Service.

[FR Doc. 02–11635 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102C]

New England Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) is scheduling a public meeting of its Research Steering Committee in May, 2002. Recommendations from the committee will be brought to the full Council for formal consideration and action, if appropriate.

DATES: The meeting will held on Thursday, May 23, 2002, at 9:30 a.m.

ADDRESSES: The meeting will be held at the Sheraton Colonial Hotel, 427 Walnut Street, Wakefield, MA 01880; telephone: (781) 245–9300.

Council address: New England Fishery Management Council, 50 Water Street, Newburyport, MA 01950.

FOR FURTHER INFORMATION CONTACT: Paul J. Howard, Executive Director, New England Fishery Management Council; (978) 465–0492.

SUPPLEMENTARY INFORMATION: On the agenda will be an update and discussion on a pilot program for a New England industry-based survey; a review and discussion of habitat research and data needs and development of a strategy to address those issues related to management needs; development of a long-range plan for fisheries research; review of comments on efforts by NMFS to expedite and clarify procedures related to their Experimental Fisheries Program.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically listed in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Paul J. Howard (see **ADDRESSES**) at least 5 days prior to the meeting dates.

Dated: May 6, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–11633 Filed 5–8–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission for OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 10, 2002.

Title and OMB Number: Defense Federal Acquisition Regulation Supplement (DFARS) Part 216, Types of Contracts, and Related Clauses at 252.216; OMB Number 0704–0259.

Type of Request: Extension.

Number of Respondents: 69.

Responses per Respondent: 1.97.

Annual Responses: 136.

Average Burden Per Response: 4.06 hours.

Annual Burden Hours: 552.

Needs and Uses: The clauses at DFARS 252.216–7000, 252.216–7001, and 252.216–7003 require contractors with fixed-price economic price adjustment contracts to submit information to the contracting officer regarding changes in established material prices or wage rates. The contracting officer uses this information to make appropriate adjustments to contract prices.

Affected Public: Business or Other For-Profit.

Frequency: On Occasion.

Respondent's Obligation: Required to Obtain or Retain Benefits.

OMB Desk Officer: Ms. Jackie Zeiher.

Written comments and recommendations on the proposed information collection should be sent to Ms. Zeiher at the Office of Management and Budget, Desk Officer for DoD, Room 10236, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11526 Filed 5–8–02; 6:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Submission of OMB Review; Comment Request

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Consideration will be given to all comments received by June 10, 2002.

Title, Form Number, and OMB Number: Continued Health Care Benefit Program (CHCBP) Application; DD Form 2837; OMB Number 0704–0364.

Type of Request: Extension.

Number of Respondents: 808.

Responses per Respondent: 1.

Annual Responses: 808.

Average Burden per Response: 15 minutes.

Annual Burden Hours: 202.

Needs and Uses: The continuing information collection requirement is necessary for individuals to apply for enrollment in the Continued Health Care Benefit Program (CHCBP). The CHCBP is a program of temporary health care benefit coverage that is made available to eligible individuals who lose health care under the Military Health System. In order to be eligible for health care coverage under CHCBP, an individual must first enroll using the DD Form 2837.

Affected Public: Individuals or Households.

Frequency: On Occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: Ms. Cristal Thomas.

Written comments and recommendations on the proposed information collection should be sent to Ms. Thomas at the Office of the Management and Budget, Desk Officer for DoD Health Affairs, Room 10235, New Executive Office Building, Washington, DC 20503.

DoD Clearance Officer: Mr. Robert Cushing.

Written requests for copies of the information collection proposal should be sent to Mr. Cushing WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202–4302.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11527 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary of Defense

Meeting of the DOD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice.

SUMMARY: The DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Wednesday, May 15, 2002.

ADDRESSES: The meeting will be held at the Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Carr, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects

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Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The AGED meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. The agenda for this meeting will include programs on Radiation Hardened Devices, Microwave Tubes, Displays and Lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. app. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11529 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Change in Meeting Date fo the DOD Advisory Group on Electron Devices

AGENCY: Department of Defense, Advisory Group on Electron Devices.

ACTION: Notice.

SUMMARY: Working Group B (Microelectronics) of the DoD Advisory Group on Electron Devices (AGED) announces a change to a closed session meeting.

DATES: The meeting will be held at 0900, Thursday, May 16, 2002.

ADDRESSES: The meeting will be held the Seaside Room, Hyatt Monterey, 1 Old Golf Course Drive, Monterey, CA 93940.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director Defense Research and Engineering (DDR&E), and through the DDR&E, to the Director Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective research and development program in the field of electron devices.

The Working Group B meeting will be limited to review of research and development programs which the military proposes to initiate with industry, universities or in their laboratories. The microelectronics area includes such programs on semiconductor materials, integrated circuits, charge coupled devices and memories. The review will include classified program details throughout.

In accordance with section 10(d) of Pub. L. No. 92–463, as amended, (5 U.S.C. App. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11530 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Meeting of the DoD Advisory Group on Electron Devices

AGENCY: Advisory Group on Electron Devices, Department of Defense.

ACTION: Notice

SUMMARY: Working Group C (Electro-Optics) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 1300, Wednesday, May 22, 2002.

ADDRESSES: The meeting will be held at Palisades Institute for Research Services, 1745 Jefferson Davis Highway, Suite 500, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Elise Rabin, AGED Secretariat, 1745 Jefferson Davis Highway, Crystal Square Four, Suite 500, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide advice to the Under Secretary of Defense for Acquisition and Technology, to the Director of Defense Research and Engineering (DDR&E), and through the DDR&E to the Director, Defense Advanced Research Projects Agency and the Military Departments in planning and managing an effective and economical research and development program in the area of electron devices.

The Working Group C meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This opto-electronic device area includes such programs as imaging device, infrared detectors and lasers. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Pub. L. 92–463, as amended, (5 U.S.C. App. sec. 10(d)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly, this meeting will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11531 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Defense Science Board (DSB) Task Force on Wideband RadioFrequency Systems will meet in closed session on June 3–4, 2002; June 24–25, 2002; July 25–26, 2002; August 29–30, 2002; September 26–27, 2002; October 21–22, 2002; and November 21–22, 2002; at Strategic Analysis Inc., 3601 Wilson Boulevard, Arlington, VA. The Task Force will review key aspects of the policy and technology issues associated with the military applications of Wideband Radio Frequency (RF) systems.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will examine. (1) Technical issues associated with the employment of Wideband RF modulation by the Department of Defense (DoD) and Defense-related agencies and its potential impact on other defense and non-Defense users of the RF spectrum; (2) technical issues associated with the employment of Wideband modulation techniques by Defense related agencies taking into account the concurrent interagency review of spectrum requirements for advanced wireless mobile services (third generation) led by the National Telecommunications and Information Administration and the Federal Communications Commission; (3) implications of the employment of Wideband modulation techniques for US policy at the forthcoming World Administrative Radio Conference; (4) technical impact of the DoD employment of Wideband RF modulation on other users of the RF spectrum; (5) the potential limitations of exploiting variable code length and bandwidth-on-demand characteristics using packet switching techniques to meet DoD's long-term communications requirements; and (6) implications for the cost and technical risk associated with the extensive use of Wideband RF modulation by the DoD.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11532 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board

AGENCY: Department of Defense.

ACTION: Notice of Advisory Committee meetings.

SUMMARY: The Defense Science Board (DSB) Task Force on Discriminate Use of Force (formerly known as the Task Force on Precision Compellence) will meet in closed session on September 25–26, 2002, and October 21–22, 2002, at SAIC, 4001 N. Fairfax Drive, Arlington, VA. The Task Force will conduct a comprehensive study of the ends and means of the nuanced use of force, in concert with coalition partners, to achieve political, economic and moral change in countries affecting US interests.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition, Technology & Logistics on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings, the Defense Science Board Task Force will survey the focused use of force so as to alter regimes' behavior, and in ways that are most promising to isolate regimes of concern from their populations and supporting organs and bureaucracies. This will include the means to acquire a well-founded conceptual delineation of targets critically important to the diplomatic, economic and military dominance of the regime. A regime's values and vulnerabilities being highly idiosyncratic, the Task Force shall select some concrete case studies for exploration in depth. These might include current rouge states, terrorist organizations, and future potential adversaries. Of particular relevance are the cleavage planes, where the discriminating use of force might divide the interests of different strata, political, ethnic or religious groups, or even personal rivalries.

In accordance with Section 10(d) of the Federal Advisory Committee Act, Pub. L. 92–463, as amended (5 U.S.C. App. II), it has been determined that these Defense Science Board Task Force meetings concern matters listed in 5 U.S.C. 552b(c)(1) and that, accordingly, these meetings will be closed to the public.

Dated: May 3, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 02–11533 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Threat Reduction Advisory Committee

AGENCY: Department of Defense, Office of the Under Secretary of Defense (Acquisition, Technology and Logistics).

ACTION: Notice of Advisory Committee meeting.

SUMMARY: The Threat Reduction Advisory Committee will meet in closed session on Thursday, July 25, 2002, at the Institute for Defense Analyses (IDA), and on Friday, July 26, 2002 in the Pentagon, Washington, DC.

The mission of the Committee is to advise the Under Secretary of Defense (Acquisition, Technology and Logistics) on technology security, counterproliferation, chemical and biological defense, sustainment of the nuclear weapons stockpile, and other matters related to the Defense Reduction Agency's mission.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. Appendix II), it has been determined that this Committee meeting concerns matters listed in 5 U.S.C. 552b(c)(1), and that accordingly the meeting will be closed to the public.

DATES: Thursday, July 25, 2002, (8 a.m. to 4 p.m.) and Friday, July 26, 2002, (8 a.m. to 9:20 a.m.)

ADDRESSES: Institute for Defense Analyses, Board Room, 4850 Mark Center Drive, Alexandria, Virginia and the USD (AT&L) Conference Room (3D1019), the Pentagon, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Contact Colonel Rick Baker, Defense Threat Reduction Agency/AST, 8725 John J. Kingman Road MS 6201, Fort Belvoir, VA 22060–6201, Phone: (703) 767–4759.

Dated: May 3, 2002.

Patricia L. Toppings,

OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 02–11528 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–M

DEPARTMENT OF DEFENSE

National Reconnaissance Office; Privacy Act of 1974; System of Records

AGENCY: National Reconnaissance Office, DoD.

ACTION: Notice to Add a System of Records.

SUMMARY: The National Reconnaissance Office is adding a system of records notice to its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 10, 2002, unless comments are received which result in a contrary determination.

ADDRESSES: National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Freimann at (703) 808–5029.

SUPPLEMENTARY INFORMATION: The National Reconnaissance Office systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on April 30, 2002, to the House Committee on Government

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Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 3, 2002.

Patricia L. Toppings,

Alternote OSD Federal Register Liaison Officer, Department of Defense.

QNRO 16

SYSTEM NAME:

Reservists Recall Files.

SYSTEM LOCATION:

Deputy Director for Military Support, Reserve Management Office, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Government and contractor personnel currently assigned to NRO who are military reservists.

CATEGORIES OF RECORDS IN THE SYSTEM:

Home information includes individual's name, address, home phone number, marital status, Social Security Number, email address, emergency contact information, whether spouse is in military service, and whether the reservist is lost from or assigned to the NRO.

Work information includes individual's title, company name, department, office, address, phone number and e-mail address, contractor status, and potential conflict of interest notes.

Reserve Assignment information includes site, manager's name, office and email address, geographic location, phone and fax numbers, and reservist's phone number.

NRO Lose information includes losing directorate and office, gaining office, location, phone number, job title; start date, duration, return date, whether mobilized or not, mobilization potential and whether voluntary or involuntary mobilization.

Qualifications and Status information includes individual's military branch status, rank, and pay grade whether officer or enlisted, promotable/selected, National Guard state, specialist code/military occupational specialty (AFSC/MOS), whether an Individual Mobilization Augmentee, duty obligation, category, specialty, and notes.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations; National Security Act of 1947 as amended; 50 U.S.C. 401 *et seq.*; E.O. 9397 (SSN); E.O. 12333.

PURPOSE(S):

Files are used to track potential and actual mobilization of reservists working in the NRO.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosure generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To other Intelligence Community agencies for the purpose of identifying individuals who are on a job rotation to the NRO who are potentially impacted if mobilization occurs.

The DoD 'Blanket Routines Uses' published at the beginning of the NRO compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper files and automated information system, maintained in computers and computer output products.

RETRIEVABILITY:

Retrieved alphabetically by individual's name.

SAFEGUARDS:

Records are stored in secure gated facility, a guard, badge, and password access protected. Access to and use of these records are limited to NRO staff whose job requirements require use of the records.

RETENTION AND DISPOSAL:

Disposition pending (until NARA approves a disposition and retention schedule, treat as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director for Military Support, Reserve Management Office, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

RECORD ACCESS PROCEDURES:

Individuals seeking to access information about themselves contained in this system should address written inquiries to the National Reconnaissance Office, Information Access and Release Center, 14675 Lee Road, Chantilly, VA 20151–1715.

Request should include the individual's full name, address, and other information identifiable from the record.

In addition, the requester must provide a notarized statement or an unsworn declaration made in accordance with 28 U.S.C. 1746, in the following format:

If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)."

If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)."

CONTESTING RECORD PROCEDURES:

The NRO rules for accessing records, for contesting contents and appealing initial agency determinations are published in NRO Directive 110–3 and NRO Instruction 110–5; 32 CFR part 326; or may be obtained from the NRO Privacy Act Coordinator, National Reconnaissance Office, 14675 Lee Road, Chantilly, VA 20151–1715.

RECORD SOURCE CATEGORIES:

Information entered into the system is supplied from the individuals themselves, Military Departments, and other Federal agencies.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–11534 Filed 5–8–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Intent To Prepare a Draft Environmental Impact Statement for Proposed Quonset/Davisville Port and Commerce Park, Narragansett Bay, North Kingstown, RI, Application for Corps Section 10/404 Individuals Permit

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The New England District, Corps of Engineers, has received an application from the State of Rhode Island, Office of the Governor, for a Corps of Engineers permit under section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act to dredge and fill navigable and non-navigable waters of the United States. The project is proposed at Quonset Point in Narragansett Bay, Rhode Island. The Corps has determined that an Environmental Impact Statement (EIS) is required for this proposed project. The applicant's stated purpose is to develop a compact, automated container facility to handle from 250,000 to 1,200,000 containers per year. The project proposes to dredge up to 6.3 million cubic yards of material from the Quonset and Davisville Channels to a depth of 52 feet, provide 4,000 linear feet of marginal wharf for container ship dockage and fill up to 115 acres of Narragansett Bay to provide lay-down area for container processing.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and Draft EIS can be answered by Mr. Greg Penta, Regulatory Division, U.S. Army Corps of Engineers, 696 Virginia Road, Concord, Massachusetts 017422751, Telephone No. (978) 3188862, or by e-mail at *gregory.r.penta@usace.army.mil.*

SUPPLEMENTARY INFORMATION: The U.S. Navy developed the Naval Air Station at Quonset Point and the Construction Battalion Center at Davisville with the onset of World War II. The Navy is still transferring portions of the 3000-acre site to the Rhode Island Port Authority and Economic Development Corporation. The applicant has indicated that the footprint of the proposed port may occupy less than 200 acres.

The applicant states that increased container terminal capacity will be of assistance to expanding national trade interests, particularly considering an expanding global market. They state that containerized cargo volumes have increased both nationally and regionally for over 20 years, are anticipated to continue to grow at steady rates, and the demand for more container handling terminals in the New England region is evident. Quonset Davisville benefits from existing airport, railway, and highway infrastructure.

The existing channels and basins were last dredged in the 1960's. Original depth were from 35 to 40 feet. The applicant has identified potential disposal sites, but has not decided upon a preferred disposal site. Deeper channels have the potential to change circulation patterns, salinity gradients, dissolved oxygen levels and consequently affect marine ecology within a Narragansett Bay. Studies such as extensive hydrodynamic modeling will be conducted to evaluate impacts. The proposed filing of between 100 to 115 acres of ocean waters, needed to accommodate port operations and container storage, is unprecedented in the Corps New England District's permitting history.

Alternatives to be addressed in the EIS will include the No Action Alternative, alternative port locations within a North American region (potentially including another Rhode Island location), to be determined during scoping, and alternative port options along the Quonset Davisville waterfront.

The EIS will analyze in depth the following significant issues and impacts associated with the construction and operation of the port: Recreational and commercial boating and fishing activities, endangered marine mammals and reptiles, aquatic and benthic habitat destruction and alteration, circulation patterns, invasive species, economics and job creation. The Corps anticipates the Draft EIS will be available for public review in the Summer of 2003.

Other Environmental Review and Consultation Requirements

To the fullest extent possible, the EIS will be integrated with analyses and consultation required by the Endangered Species Act of 1973, as amended (Pub. L. 93–205; 16 U.S.C. 1531, *et seq.*); the Magnuson-Stevens Fishery Conservation and Management Act, as amended (Pub. L. 94–265; 16 U.S.C. 1801, *et seq.*), the National Historic Preservation Act of 1966, as amended (Pub. L. 89–655; 16 U.S.C. 470. *et seq.*); the Fish and Wildlife Coordination Act of 1958, as amended (Pub. L. 85–624; 16 U.S.C. 661, *et seq.*); the Coastal Zone Management Act of 1972, as amended (Pub. L. 92–583; 16 U.S.C. 1451, *et seq.*); and the Clean Water Act of 1977, as amended (Pub. L. 92–500; 33 U.S.C. 1251, *et seq.*), Section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403 *et seq.*); and applicable and appropriate Executive Orders.

Scoping

The Corps will conduct an open scoping and public involvement process during the development of the EIS. The scoping process is the key to preparing a concise EIS and clarifying the significant issues to be analyzed in depth. Public concerns on issues, studies needed, alternatives to be examined, procedures and other related matters will be addressed during scoping. The purpose of the scoping meetings is to assist the Corps in defining the issues that will be evaluated in the EIS. All interested Federal, State and local agencies, affected Indian tribes, interested private and public organizations, and individuals are invited to attend these scoping meetings.

The first scoping meeting will be held on Tuesday, June 4, 2002, at Rhode Island College, 600 Mount Pleasant Avenue, Providence, Rhode Island in the Clarke Science Building, Room 125. Registration begins at noon at the meeting begins at 1 p.m. The second scoping meeting will be held on Thursday, June 6, 2002, at the North Kingstown High School, 150 Fairway Drive, North Kingstown, Rhode Island in the auditorium. Registration begins at 6 p.m. and the meeting begins at 7 p.m.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–11630 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–24–M

DEPARTMENT OF DEFENSE

Department of the Army; Corps of Engineers

Estuary Habitat Restoration Council; Open Meeting

AGENCY: Department of the Army, U.S. Army Corps of Engineers, DoD.

ACTION: Notice of open meeting.

SUMMARY: In accordance with Section 105(h) of the Estuary Restoration Act of 2000, (Title I, Public Law 106–457), announcement is made of the

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forthcoming meeting of the Estuary Habitat Restoration Council. The meeting is open to the public.

DATES: The meeting will be held from 10 a.m. to 12 p.m. on Wednesday, May 22, 2002.

ADDRESSES: The meeting will be in room 3M60/70, 441 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Ellen Cummings, Headquarters, U.S. Army Corps of Engineers, Washington, DC 20314–1000, (202) 761–4558; or Ms. Cynthia Garman-Squier, Office of the Assistant Secretary of the Army (Civil Works), Washington, DC (703) 695–6791.

SUPPLEMENTARY INFORMATION: The Estuary Habitat Restoration Council consists of representatives of five agencies. These are the National Oceanic and Atmospheric Administration (NOAA), Environmental Protection Agency, U.S. Fish and Wildlife Service, Department of Agriculture, and Army. Among the duties of the Council is development of a national estuary restoration strategy designed in part to meet the goal of restoring one million acres by 2010.

Items the Council will consider at this meeting include the recently published draft strategy and the development of a database of restoration project information.

Current security measures require that persons interested in attending the meeting must pre-register with us before 2 p.m. May 20, 2002. Please contact Ellen Cummings at 202–761–4558 to pre-register. When leaving a voice mail message please provide the name of the individual attending, the company or agency represented, and a telephone number, in case there are any questions. The public should enter on the "G" Street side of the GAO building. All attendees are required to show photo identification and must be escorted to the meeting room by Corps personnel. Attendee's bags and other possessions are subject to being searched. All attendees arriving between one-half hour before and one-half hour after 10 a.m. will be escorted to the hearing. Those that are not pre-registered and/or arriving later than the allotted time will be unable to attend the public meeting.

Luz D. Ortiz,

Army Federal Register Liaison Officer.

[FR Doc. 02–11629 Filed 5–8–02; 8:45 am]

BILLING CODE 3710–92–M

DEPARTMENT OF ENERGY

[DE–PS07–02ID14304]

Supporting Industries

AGENCY: Idaho Operations Office, DOE.

ACTION: Notice of availability of financial assistance solicitation.

SUMMARY: The U.S Department of Energy (DOE) Idaho Operations Office (ID) is seeking applications for cost-shared research and development of technologies which will reduce energy consumption, reduce environmental impacts and enhance economic competitiveness of two or more of the following Industry of the Future Sectors: Heat Treating, Forging, Welding, Powder Metals, and Advanced Ceramics.

DATES: The issuance date of Solicitation Number DE–PS07–02ID14304 will be on May 1, 2002. The deadline for receipt of applications will be approximately on June 28, 2002.

ADDRESSES: The solicitation in its full text will be available on the Internet at the following URL address: *http://e-center.doe.gov*. The Industry Interactive Procurement System (IIPS) provides the medium for disseminating solicitations, receiving financial assistance applications and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. An IIPS "User Guide for Contractors" can be obtained on the IIPS Homepage and then clicking on the "Help" button. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov*.

FOR FURTHER INFORMATION CONTACT: Seb Klein, Contract Specialist, *kleinsm@id.doegov*.

SUPPLEMENTARY INFORMATION: The Roadmaps are available at the following URL: *http://www.oit.doe.gov/related/related/related.shtml*. DOE anticipates making three to five awards each with a duration of four years or less. Award of a cooperative agreement under this solicitation does not commit the Government to fund any follow-on research. Successful applicants will be required to submit quarterly, annual, and final reports to DOE. The statutory authority for the program is the Federal Non-Nuclear Energy Research and Development Act of 1974 (Pub. L. 93–577). The Catalog of Federal Domestic Assistance (CFDA) Number for this program is 81.086.

Issued in Idaho Falls on April 30, 2002.

R.J. Hoyles,

Director, Procurement Services Division.

[FR Doc. 02–11610 Filed 5–8–02; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

State Energy Advisory Board; Notice of Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: This notice announces a meeting of the State Energy Advisory Board. Federal Advisory Committee Act (Public Law 92–463; 86 Stat. 770) requires that public notice be announced in the **Federal Register**.

DATES: June 20, 2002, 8 a.m. to 5 p.m. and June 21, 2002, 8 a.m. to 3 p.m.

Place: National Renewable Energy Laboratory, 1617 Cole Boulevard, Golden, CO 80401.

FOR FURTHER INFORMATION CONTACT: William J. Raup, Office of Planning, Budget, and Outreach, Energy Efficiency and Renewable Energy, U.S. Department of Energy (DOE), Washington, DC 20585, Telephone 202/586–2214.

SUPPLEMENTARY INFORMATION:

Purpose of the Board: To make recommendations to the Assistant Secretary for Energy Efficiency and Renewable Energy regarding goals and objectives and programmatic and administrative policies, and to otherwise carry out the Board's responsibilities as designated in the State Energy Efficiency Programs Improvement Act of 1990 (P.L. 101–440).

Tentative Agenda:

- STEAB Committee updates
- STEAB Draft Annual Report Review
- Open Session with Assistant Secretary David Garman
- Regional Office Update
- Presentations from NREL Personnel
- Tours of NREL Facilities
- Public Comment Period

Public Participation: The meeting is open to the public. Written statements may be filed with the Board either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact William J. Raup at the address or telephone number listed above. Requests to make oral presentations must be received five days prior to the meeting; reasonable provision will be made to include the statements in the agenda. The Chair of the Board is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes: The minutes of the meeting will be available for public review and copying within 30 days at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC, on May 6, 2002.

Rachel Samuel,

Deputy Committee Management Officer.

[FR Doc. 02–11611 Filed 5–8–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM96–1–019,

Standards For Business Practices of Interstate Natural Gas Pipelines; Notice of Compliance Filing

	Docket No.
Algonquin Gas Transmission Company	RP02–259–000
Algonquin LNG, Inc.	RP02–260–000
Alliance Pipeline L.P.	RP02–315–000
ANR Pipeline Company	RP02–287–000
ANR Storage Company	RP02–282–000
Black Marlin Pipeline Company	RP02–311–000
Blue Lake Gas Storage Company	RP02–285–000
Canyon Creek Compression Company	RP02–267–000
Carnegie Interstate Pipeline Company	RP02–273–000
Central New York Oil and Gas Company, LLC	RP02–274–000
CMS Trunkline Gas Company, LLC	RP02–304–000
CMS Trunkline LNG Company, LLC	RP02–303–000
Colorado Interstate Gas Company	RP02–295–000
Columbia Gas Transmission Corporation	RP02–254–000
Columbia Gulf Transmission Company	RP02–252–000
Cove Point LNG Limited Partnership	RP02–312–000
Crossroads Pipeline Company	RP02–255–000
Dauphin Island Gathering Partners	RP02–266–000
Destin Pipeline Company, L.L.C.	RP02–256–000
Dominion Transmission, Inc.	RP02–246–000
East Tennessee Natural Gas Company	RP02–262–000
Egan Hub Partners, L.P.	RP02–264–000
El Paso Natural Gas Company	RP02–288–000
Enbridge Pipelines (KPC)	RP02–239–000
Enbridge Offshore Pipelines (UTOS) LLC	RP02–247–000
Enbridge Pipelines (AlaTenn) Inc.	RP02–245–000
Enbridge Pipelines (Midla) Inc.	RP02–244–000
Equitrans, L.P.	RP02–278–000
Garden Banks Gas Pipeline, LLC	RP02–251–000
Granite State Gas Transmission, Inc.	RP02–253–000
Great Lakes Gas Transmission Limited Partnership	RP02–322–000
Gulf South Pipeline Company, LP	RP02–313–000
Gulf States Transmission Corporation	RP02–280–000
High Island Offshore System, L.L.C.	RP02–283–000
Honeoye Storage Corporation	RP02–300–000
Horizon Pipeline Company, L.L.C.	RP02–270–000
Iroquois Gas Transmission System, L.P.	RP02–276–000
Kern River Gas Transmission Company	RP02–237–000
Kinder Morgan Interstate Gas Transmission LLC	RP02–249–000
KO Transmission Company	RP02–316–000
Maritimes & Northeast Pipeline, L.L.C.	RP02–265–000
Midwestern Gas Transmission Company	RP02–320–000
MIGC Inc.	RP02–293–000
Mississippi Canyon Gas Pipeline, LLC	RP02–250–000
Mississippi River Transmission Corporation	RP02–298–000
Mojave Pipeline Company	RP02–294–000
National Fuel Gas Supply Corporation	RP02–319–000
Natural Gas Pipeline Company of America	RP02–269–000
Nautilus Pipeline Company, LLC	RP02–257–000
Northern Border Pipeline Company	RP02–321–000
Northern Natural Gas Company	RP02–235–000
Northwest Pipeline Corporation	RP02–308–000
Ozark Gas Transmission, L.L.C.	RP02–271–000
Panhandle Eastern Pipe Line Company	RP02–302–000
Petal Gas Storage, L.L.C.	RP02–281–000
PG&E Gas Transmission, Northwest Corporation	RP02–272–000
Pine Needle LNG Company, LLC	RP02–310–000
Portland Natural Gas Transmission System	RP02–314–000
Reliant Energy Gas Transmission Company	RP02–299–000
Sabine Pipe Line LLC	RP02–317–000
Sea Robin Pipeline Company	RP02–305–000
Southern LNG Inc.	RP02–290–000

	Docket No.
Southern Natural Gas Company	RP02–289–000
Southwest Gas Storage Company	RP02–301–000
Steuben Gas Storage Company	RP02–291–000
Stingray Pipeline Company	RP02–258–000
Tennessee Gas Pipeline Company	RP02–279–000
Texas Gas Transmission Corporation	RP02–307–000
Texas Eastern Transmission, L.P.	RP02–263–000
Trailblazer Pipeline Company	RP02–268–000
Transwestern Pipeline Company	RP02–236–000
Tuscarora Gas Transmission System	RP02–277–000
USG Pipeline Company	RP02–296–000
Vector Pipeline L.P.	RP02–292–000
Venice Gathering System, L.L.C.	RP02–275–000
Viking Gas Transmission Company	RP02–297–000
WestGas Interstate, Inc.	RP02–240–000
Williams Gas Pipelines Central, Inc.	RP02–306–000
Williston Basin Interstate Pipeline Company	RP02–261–000
Wyoming Interstate Company, Ltd.	RP02–286–000
Young Gas Storage Company, Ltd.	RP02–284–000] (Not Consolidated)

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–019, Order No. 587–N.[1] These revised tariff sheets to be effective July 1, 2002, implements Commission regulation 284.12(c)(1)(ii)(B) that requires that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The filings implement the first phase of compliance with Order No. 587–N by implementing recalls of scheduled capacity for the Timely and Evening Nomination Cycles and for recalls of unscheduled capacity at any of the four nomination cycles.

Any person desiring to become a party in a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11600 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (March 18, 2002), FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (March 11, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–79–000]

American Electric Power Service Corp., Complainant, v. Williams Energy Marketing and Trading Co. and Sempra Energy Trading Corp., Respondents; Notice of Filing

May 3, 2002.

Take notice that on May 1, 2002, American Electric Power Service Corporation (AEP) filed a Complaint against Williams Energy Marketing and Trading Co. and Sempra Energy Trading Corp. AEP Requests to hold further procedures regarding the Complaint in abeyance.

AEP states that it has served a copy of the Complaint on Respondents by express overnight delivery.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 21, 2002 . Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 21, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11585 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–60–000]

CMS Trunkline LNG Company, LLC; Notice of Site Visit

May 3, 2002.

On May 14, 2002, at 9:00 a.m., staff from the Office of Energy Projects (OEP) will conduct a pre-certification site visit of the proposed Trunkline LNG Expansion Project at CMS Trunkline LNG Company, LLC's (Trunkline LNG) existing liquefied natural gas import terminal in Calcasieu Parish, Louisiana. Representatives of Trunkline LNG will accompany the OEP staff. The purpose of the site visit is to review the existing and proposed cryogenic design and spill containment features of the LNG terminal.

All interested parties may attend the site visit. Those planning to attend must provide their own transportation. Additionally, for security reasons, anyone planning to attend must contact Trunkline LNG's, Gwen Hughes at (337) 475–4217. For further information on attending the site visit, please contact the Commission's Office of External Affairs at (202) 208–0004.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11584 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–243–000]

Destin Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on April 30, 2002, Destin Pipeline Company, L.L.C. (Destin) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, First Revised Sheet No. 4, proposed to become effective June 1, 2002.

Destin states that purpose of this filing is to revise its system map in accordance with the provisions of Section 154.106 of the Commission Regulations.

Destin states that copies of this filing are being served on all affected shippers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11603 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–242–000]

Discovery Gas Transmission LLC; Notice of Cash-Out Report

May 3, 2002.

Take notice that on April 30, 2002, Discovery Gas Transmission LLC (Discovery) filed with the Commission its annual cash-out report for the calendar year ended December 31, 2001.

Discovery states that the cash-out report reflects an estimated cumulative gain from cash-out transactions. However Discovery has requested that a waiver of section 9.9 of its tariff permit it to use the balance of the cash-out account to make necessary gas purchases. Discovery states that any remaining funds will be refunded in the subsequent reporting period.

Discovery states that copies of this filing are being mailed to its customers, state commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11602 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–248–000]

Kern River Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on April 30, 2002, Kern River Gas Transmission Company (Kern River) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, to be effective June 1, 2002:

Fifth Revised Sheet No. 71
Third Revised Sheet No. 96
Third Revised Sheet No. 98
Second Revised Sheet No. 107
Second Revised Sheet No. 108
First Revised Sheet No. 205
Original Sheet Nos. 206–213
Sheet Nos. 214–299 (Reserved)

Kern River states that the purpose of this filing is to establish an integrated tariff provision setting forth procedures for posting, bidding on, and awarding unsubscribed and expiring capacity, and for reserving capacity for future expansion projects.

Kern River states that it has served a copy of this filing upon its customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the

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Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11604 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1654–000]

Oncor Electric Delivery Company, Kiowa Power Partners, LLC; Notice of Filing

May 3, 2002.

Take notice that on May 1, 2002, Oncor Electric Delivery Company (Oncor) conditionally tendered for filing an unexecuted Interconnection Agreement (Agreement) between Oncor and Kiowa Power Partners, LLC, pursuant to Section 210, 211, and 212 of the Federal Power Act and the Offer of Settlement filed by Kiowa as part of its Application in Docket No. TX02–2–000 and later executed by Oncor.

Oncor seeks an effective date for the Agreement of the same date as the date of a final and appealable Commission Order consistent in all material respects with the proposed Order Directing Interconnection And Transmission Services And Approving Settlement attached to the Offer of Settlement in Docket No. TX02–2–000.

Oncor states that this filing has been served upon Kiowa, the Public Utility Commission of Texas, and each person designated on the official service list compiled by the Secretary for Docket No. TX02–2–000.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 13, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11592 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–80–000]

PacifiCorp, Complainant, v. Reliant Energy Services, Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Reliant Energy Services, Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002.

Copies of the complaint were served on Reliant Energy Services, Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11586 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–81–000]

PacifiCorp, Complainant, v. Morgan Stanley Capital Group Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Morgan Stanley Capital Group Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002.

Copies of the complaint were served on Morgan Stanley Capital Group Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11587 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–82–000]

PacifiCorp, Complainant, v. Williams Energy Marketing & Trading Company Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Williams Energy Marketing & Trading Company regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on Williams Energy Marketing & Trading Company and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11588 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–83–000]

PacifiCorp,, Complainant, v. El Paso Merchant Energy, L.P., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against El Paso Merchant Energy, L.P. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on El Paso Merchant Energy, L.P. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11589 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–84–000]

PacifiCorp, Complainant, v. Enron Power Marketing, Inc., Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, PacifiCorp filed a complaint against Enron Power Marketing, Inc. regarding the rates in certain 90-day contracts which call for delivery during the summer of 2002. PacifiCorp requests that the Commission set a refund effective date of July 1, 2002. Copies of the complaint were served on Enron Power Marketing, Inc. and relevant state regulatory commissions.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the

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Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–11590 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. EL00–95–000, EL00–98–000, ER02–1656–000]

San Diego Gas & Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents; Investigation of Practices of the California; Independent System Operator and the California Power Exchange; California Independent System Operator (MDO2); Amended Notice of Technical Conference and Agenda

May 3, 2002.

The Federal Energy Regulatory Commission Staff is convening a technical conference to facilitate continued discussions between the California Independent System Operator Corporation (CAISO), market participants, state agencies and other interested participants on the development of a revised market design for the CAISO. Attached is the proposed agenda for the conference. This amended notice adds Docket No. ER02–1656–000. The conference will held in San Francisco, California, at the Renaissance Parc 55 Hotel, 55 Cyril Magnin Street, San Francisco, CA, on May 9 and 10, 2002, beginning at 9 a.m.

For additional information concerning the conference, interested persons may contact Robert Pease at (202) 208–0131 or by electronic mail at "*robert.pease@ferc.gov*." No telephone communication bridge will be provided at this technical conference.

Magalie R. Salas,
Secretary.

Discussion Issues for FERC Technical Conference on California Market Design May 9–10, 2002.

1. Implementation/Redesign of Markets
   a. Day-Ahead Market
   i. Price Certainty
   ii. Date for Implementation
   iii.Market Separation
   b. Hourly Market
   i. Price Certainty
   ii. Date for Implementation
   c. 10—Minute Market
   i. Price Certainty
2. Feasible Schedules
   a. Ramping Constraints
   b. Transmission Constraints
   c. Balanced Schedules
3. Intrazonal Congestion
4. Capacity Obligations
   a. Presentation by Inter-Agency Task Force on AFEC
   b. Other Presentations
5. Process for Incorporating Stakeholder Input

[FR Doc. 02–11591 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–1–001]

Southern Natural Gas Company; Notice of Amendment

May 3, 2002.

Take notice that on April 29, 2002, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP02–1–001, an amendment to its application for abandonment authorization and for a certificate of public convenience and necessity filed on October 1, 2001 in Docket No. CP02–1–000 to modify certain of the pipeline, compression, measurement, interconnection and appurtenant facilities proposed therein, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Southern states that two of the shippers, Calpine Energy Services, L.P. and SCANA Resources, Inc., participating in the South System Expansion II Project have advised Southern that because of changes in project schedules these shippers will not need their transportation services on the dates indicated in the application. Southern states that it has agreed to assist these shippers in coordinating the availability of Transportation Demands with their revised project schedules and is proposing to reduce the size of the expansion project as well as rescheduling the construction of certain segments of the expansion project. To reflect the reduction in the quantity of firm transportation services to be included in the expansion project from 359,891 Mcf per day to 329,891 Mcf per day, Southern states that it has reduced the miles of pipeline loop as proposed in its application by 9.1 miles and the amount of compression horsepower by 12,270 horsepower.

Southern further states that it is proposing two other changes to certain of the compression and measurement facilities that are unrelated to the above changes in the shippers' project schedules. Southern states that the proposed expansion of its pipeline system will now consist of 114.2 miles of pipeline loop, 64,660 horsepower of compression, the rescheduling and rerating of certain existing compression units, the resizing of the cylinders on certain existing compression units, and the installation of certain interconnection and measurement facilities. Southern states that there are no changes to the compressor units it is proposing to abandon and that the proposed in-service dates for Phase 1 and Phase 2 remain the same, June 1, 2003 and May 1, 2004 respectively. Finally, Southern states that the total cost of the revised facilities is estimated to be $229.1 million, which is $16.4 million less than the estimated cost of the project as originally filed.

Any questions concerning this application may be directed to R. David Hendrickson, Associate General Counsel, Southern Natural Gas Company, Post Office Box 2563, Birmingham, Alabama 35202–2563, at (205) 325–7114 or fax (205) 327–2253.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 24, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11582 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–309–000]

Sunoco, Inc. (R&M), Complainant, v. Transcontinental Gas Pipe Line Corporation, Respondent; Notice of Complaint

May 3, 2002.

Take notice that on May 2, 2002, pursuant to Rule 206 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), 18 CFR 385.206, Sunoco, Inc. (R&M) (Sunoco) tendered for filing a Complaint against Transcontinental Gas Pipe Line Corporation (Transco).

Sunoco alleges that Transco has indicated its intention to terminate firm transportation service to Sunoco at certain production area receipt points in contravention of a 1992 FERC-approved settlement agreement that specifically requires Transco to provide firm transportation service at such points. Sunoco further alleges that Transco failed to provide the Commission with complete and accurate information concerning its firm service obligation to Sunoco in its abandonment application filed in Docket No. CP01–34 in which Transco requested authorization to abandon service to Sunoco at certain production area receipt points.

Sunoco requests that the Commission institute a formal investigation to scrutinize and remedy Transco's unilateral abrogation of a FERC-approved settlement agreement and related failure to disclose to the Commission all relevant facts and circumstances pertaining to its firm service obligation to Sunoco in its application seeking abandonment authorization in Docket No. CP01–34. Sunoco further requests that the Commission issue an order pursuant to Sections 5 and 16 of the Natural Gas Act requiring Transco to continue providing firm transportation service to Sunoco at all receipt points designated under its firm transportation service agreement that became effective pursuant the FERC-approved settlement agreement. Alternatively, Sunoco requests the Commission to take such action as it may deem necessary and appropriate pursuant to Sections 5 and 16 of the Natural Gas Act, to modify the settlement to restore the status quo ante and to prevent unjust enrichment to Transco by, among other things, requiring Transco to refund, with interest, take-or-pay charges paid to Transco by Sunoco pursuant to the terms of the settlement.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 22, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–11605 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN01–2–002]

Williams Gas Pipelines Central, Inc.; Notice of Filing of Refund Report

May 3, 2002.

Take notice that on April 6, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing a refund report detailing a February 23, 2001, Webb Storage Refund of $1,362,293.

Williams states that the refund reflects the amount due to storage customers as agreed to in the Stipulation and Agreement between Market Oversight and Enforcement section, Office of the General Counsel (MOE) and Williams that was approved in the "Order Approving Stipulation and Consent Agreement" issued December 26, 2000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11593 Filed 5–8–02; 8:45 am]
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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. IN01-2-003]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 3, 2002.

Take notice that on October 10, 2001, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1 the following tariff sheets to become effective November 1, 2001:

Twelfth Revised Sheet No. 6
Nineteenth Revised Sheet No. 6A

Williams states that this filing is being made pursuant to Section III, Paragraph B of the Stipulation and Agreement approved by Commission Order dated December 26, 2000 in the above-referenced docket. This paragraph required Williams to file revised storage rates reflecting the elimination of $1,584,326 (and the removal of 16.4 million dekatherms of gas) from storage rate base.

Williams states that copies of the revised tariffs are being mailed to Williams' jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 10, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11594 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EG02–110–000, et al.]

Triton Power Michigan LLC, et al.; Electric Rate and Corporate Regulation Filings

May 2, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Triton Power Michigan LLC

[Docket No. EG02–110–000]

Take notice that on April 22, 2002, Triton Power Michigan LLC (TP Michigan), with its principal place of business at c/o Jackson Power Facility, 2219 Chapin Street, Jackson, Michigan 49203, filed with the Federal Energy Regulatory Commission (Commission) a supplement to its application for a determination of exempt wholesale generator (EWG) status pursuant to Part 365 of the Commission's regulations (18 CFR 365).

TP Michigan, a Delaware special purpose limited liability company, states that it will be engaged directly and exclusively in the business of owning or operating, or both owning and operating, a 535 MW gas-fired combined cycle power generation facility located in Jackson Michigan (Facility). In its supplement to the application, TP Michigan clarifies the lease arrangement between TP Michigan and the owner of the equipment, AlphaGen Power LLC, to clearly state that TP Michigan will have care, custody, and control over the Facility and that AlphaGen will act as a passive owner.

Comment Date: May 23, 2002.

2. Southern Company Services, Inc.

[Docket No. ER02–851–004]

Take notice that on April 26, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as Southern Companies), made a filing in compliance to the following order of the Federal Energy Regulatory Commission: Southern Companies, Inc., 98 FERC ¶ 61,328 (2002) (Order). In the Order, the Commission accepted and suspended Tariff sheets, subject to refund, regarding an amendment to the Open Access Transmission Tariff of Southern Companies (FERC Electric Tariff, Fourth Revised Volume No. 5) (Tariff). The primary purpose of the amendment was to revise Southern Companies' rate for the use of its bulk transmission facilities (those rated above 44/46 kV) to adopt a formula rate. In the Order, the Commission, among other things, required Southern Companies to file the revenue comparison cost-of-service statements contained in the Commission's filing regulations. In Southern Companies' compliance filing, they tendered those statements to the Commission.

Comment Date: May 17, 2002.

3. Florida Power & Light Company

[Docket No. ER02–854–002]

Take notice that on April 26, 2002, Florida Power & Light Company (FPL) filed, pursuant to the order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the executed Interconnection and Operation Agreement between FPL and Blue Heron Energy Center, LLC.

Comment Date: May 17, 2002.

4. AES Alamitos, L.L.C.; AES Huntington Beach, L.L.C.; and AES Redondo Beach, L.L.C.

[Docket Nos. ER98–2185–000, ER98–2184–000, and ER98–2186–000]

Take notice that, pursuant to Section 205 of the Federal Power Act, and the Federal Energy Regulatory Commission's (Commission) Orders in the referenced dockets, on April 19, 2002, AES Alamitos, L.L.C., AES Huntington Beach, L.L.C., and AES Redondo Beach, L.L.C., filed Amendment No. 2 dated as of March 5, 2002, to the Capacity Sale and Tolling Agreement dated as of May 1, 1998 (Tolling Agreement), and filed executed Corporate Guarantees to replace Schedules 19.1 and 19.2 of the Tolling Agreement.

Comment Date: May 21, 2002.

5. Wolverine Power Supply Cooperative, Inc.

[Docket No. ES02–30–000]

Take notice that on April 26, 2002, Wolverine Power Supply Cooperative, Inc. (Wolverine) submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to assume long-term debt in an amount not to exceed $35,775,000, under two loan agreements with the National Rural Cooperative Finance Corporation in the amounts of $31,300,000 and $4,475,000, respectively.

Wolverine also requests waiver of the competitive bidding and negotiated placement requirements at 18 CFR 34.2.

Comment Date: May 20, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11538 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP02–4–000]

Northwest Pipeline Corporation; Notice of Availability of the Environmental Assessment for the Proposed Evergreen Expansion Project

May 3, 2002.

The staff of the Federal Energy Regulatory Commission (FERC or Commission) has prepared an environmental assessment (EA) on the natural gas pipeline facilities proposed by Northwest Pipeline Corporation (NWP) in the above-referenced docket.

The EA was prepared to satisfy the requirements of the National Environmental Policy Act. The staff concludes that approval of the proposed project, with appropriate mitigating measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The EA assesses the potential environmental effects of the construction and operation of the proposed gas pipeline and aboveground facilities including:

- Four 36-inch-diameter loops totaling approximately 27.8 miles;
- 91,580 horsepower of additional compression or other modifications at ten different compressor stations; and
- Other aboveground facilities including ten tie-in assemblies, each with a block valve and pigging facilities.

The purpose of the proposed facilities would be to provide firm transportation of natural gas to fuel combustion turbine projects under construction or planned for installation at five sites in western Washington. These turbines would add new electric power generation in the Pacific Northwest.

When existing system capacity and capacity turn back are considered, the net increase in system capacity in the Sumas to Chehalis corridor is 220,514 Dth/day. The Evergreen Expansion Project also would add approximately 57,000 Dth/day of physical north flow capacity through the Columbia Gorge corridor of the NWP system to replace approximately 52,000 Dth/day of design day displacement capacity required for existing long-term firm services and reduce the operational flow order risks for existing firm services through that corridor.

The EA has been placed in the public files of the FERC. A limited number of copies of the EA are available for distribution and public inspection at: Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 888 First Street, NE., Room 2A, Washington, DC 20426, (202) 208–1371.

Copies of the EA have been mailed to Federal, state and local agencies, public interest groups, interested individuals, newspapers, and parties to this proceeding.

Any person wishing to comment on the EA may do so. To ensure consideration prior to a Commission decision on the proposal, it is important that we receive your comments before the date specified below. Please carefully follow these instructions to ensure that your comments are received in time and properly recorded:

Send two copies of your comments to: Secretary, Federal Energy Regulatory Commission, 888 First St., NE., Room 1A, Washington, DC 20426;

- Label one copy of the comments for the attention of Gas/Hydro Group, PJ–11.3;
- Reference Docket No. CP02–4–000; and
- Mail your comments so that they will be received in Washington, DC on or before June 5, 2002.

Please note that we are continuing to experience delays in mail deliveries from the U.S. Postal Service. As a result, we will include all comments that we receive within a reasonable time frame in our final order. However, the Commission encourages electronic filing of any comments or interventions or protests to this proceeding. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.gov* under the "e-Filing" link and the link to the User's Guide. Before you can file comments you will need to create a free account which can be created by clicking on "Login to File" and then "New User Account."

Comments will be considered by the Commission but will not serve to make the commentor a party to the proceeding. Any person seeking to become a party to the proceeding must file a motion to intervene pursuant to Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.214).[1] Only intervenors have the right to seek rehearing of the Commission's decision.

Affected landowners and parties with environmental concerns may be granted intervenor status upon showing good cause by stating that they have a clear and direct interest in this proceeding which would not be adequately represented by any other parties. You do not need intervenor status to have your comments considered.

Additional information about the proposed project is available from the Commission's Office of External Affairs, at (202) 208–1088 or on the FERC Internet website (www.ferc.gov) using the "RIMS" link to information in this docket number. Click on the "RIMS" link, select "Docket #" from the RIMS Menu, and follow the instructions. For assistance with access to RIMS, the RIMS helpline can be reached at (202) 208–2222.

Similarly, the "CIPS" link on the FERC Internet website provides access to the texts of formal documents issued by the Commission, such as orders, notices, and rulemakings. From the FERC Internet website, click on the "CIPS" link, select "Docket #" from the CIPS menu, and follow the instructions. For assistance with access to CIPS, the

[1] Interventions may also be filed electronically via the Internet in lieu of paper. See the previous discussion on filing comments electronically.

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CIPS helpline can be reached at (202) 208–2222.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11583 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1895–007, South Carolina]

South Carolina Electric & Gas Company; Notice of Availability of Final Environmental Assessment

May 3, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the application for license for the Columbia Hydroelectric Project, located on the Broad and Congaree Rivers in the City of Columbia and Richland County, South Carolina, and has prepared a Final Environmental Assessment (FEA) for the project. There are no federal lands or Indian reservations occupied by project works or located within the project boundary.

The FEA contains the staff's analysis of the potential environmental impacts of the project and concludes that licensing the project, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the FEA is on file with the Commission and is available for public inspection. The FEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

For further information, contact Charles Hall at (202) 219–2853.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11595 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Settlement Agreement and Solicitation of Comments

May 3, 2002.

Take notice that the following settlement agreement has been filed with the Commission and is available for public inspection.

a. *Type of Application:* Settlement Agreement.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* January 31, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602.

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

i. *FERC Contact:* Nan Allen, (202) 219–2938, e-mail: *nan.allen@ferc.gov.*

j. *Deadline for filing comments:* 30 days from the date of this notice. Reply comments due 45 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. Madison Paper Industries (MPI) filed the Settlement Agreement on behalf of itself and the U.S. Fish and Wildlife Service; National Park Service, Bureau of Indian Affairs; Maine State Planning Office; Maine Department of Inland Fisheries and Wildlife; Maine Department of Marine Resources; Maine Department of Conservation; Maine Atlantic Salmon Commission; Town of Anson; Town of Madison; Appalachian Mountain Club; Trout Unlimited, including the Kennebec Valley Chapter of Trout Unlimited; Kennebec Valley Trails; Friends of the Kennebec Salmon; Maine Council of the Atlantic Salmon Federation; Maine Historic Preservation Commission; and American Rivers. The purpose of the Settlement Agreement is to resolve among the signatories all issues associated with issuance of new licenses for the projects regarding the projects' operations, instream flows, fish passage, flow and water level monitoring, Atlantic salmon restoration, wetlands monitoring, shoreland buffers, recreation facilities, protection of cultural resources, time to license expiration; and upgrades to the Abenaki Project. MPI requests that the Commission accept and incorporate into any new licenses for the projects the protection, mitigation, and enhancement measures stated in sections 3.0 and 4.0 of the Settlement Agreement.

l. A copy of the settlement agreement is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11596 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing with the Commission, Application and Applicant-Prepared EA Accepted for Filing, Solicitation of Motions To Intervene and Protests, Comments, and Final Recommendations, Terms and Conditions, and Prescriptions, and Intent To Prepare One Multi-Project NEPA Document

May 3, 2002.

Take notice that the following hydroelectric applications and

applicant-prepared environmental assessment have been filed with the Commission and are available for public inspection.

a. *Type of Application:* Two New Major Licenses.

b. *Project Nos.:* 2364–012 and 2365–023.

c. *Date Filed:* April 26, 2002.

d. *Applicant:* Madison Paper Industries.

e. *Name of Projects:* Abenaki and Anson Projects.

f. *Location:* On the Kennebec River, in the towns of Anson and Madison, Somerset County, Maine. The projects do not occupy any federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791 (a)—825(c).

h. *Applicant Contact:* Christopher C. Bean; Vice-President of Engineering, Maintenance, and Utilities; Main Street; P.O. Box 129, Madison, ME; (207) 696–1195. The applicant requests that copies of all correspondence be provided to Maureen Winters, Project Manager, Kleinschmidt Associates, 75 Main Street, P.O. Box 576, Pittsfield, ME 04967; (207) 487–3328.

i. *FERC Contact:* Nan Allen, (202) 219-2938, e-mail: nan.allen@ferc.gov.

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. Deadline for filing motions to intervene and protests, comments, final recommendations, terms and conditions, prescriptions and requests for cooperating agency status: July 2, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, recommendations, terms and conditions, and prescriptions may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (http://www.ferc.gov) under the "e-Filing" link.

l. These applications have been accepted for filing. At this time we do not anticipate the need for preparing a draft Environmental Assessment (EA). We intend to prepare one multi-project environmental document. The EA will include our recommendations for operating procedures and environmental enhancement measures that should be part of any new license issued by the Commission. However, should substantive comments requiring reanalysis be received on the NEPA document, we would consider preparing a subsequent NEPA document.

m. The Abenaki Project consists of: (1) A concrete gravity overflow dam with a 784-foot-long spillway section, 3-foot-high wooden flashboards, and heights from several to about 25 feet; (2) an existing 520 acre-foot reservoir; (3) an existing 830-foot-long by 160-foot-wide forebay; (4) a powerhouse containing seven turbine-generating units with a total installed capacity of 16.977 megawatts (MW) and a hydraulic capacity of 4,980 cubic feet per second (cfs); (5) a 1,950-foot-long bypass reach; (6) a 3,400-foot-long transmission line; and (7) appurtenant facilities. The project is estimated to generate an average of 85.6 million kilowattshours (kwh) annually. The dam and existing project facilities are owned by MPI.

MPI proposes to resurface the existing dam at the Abenaki Project, replace the existing wooden flashboards at the Abenaki dam with an inflatable flashboard system, install a minimum-flow release gate at the existing Abenaki dam, and install a 2.94 MW turbine/generator unit in the existing Abenaki powerhouse.

The Anson Project consists of: (1) 630-foot-long dam, a 5.6-foot-high inflatable flashboard system, and a height that varies from 10 to 36 feet; (2) an existing 5,860 acre-foot reservoir; (3) a powerhouse containing five turbine-generating units with a total installed capacity of 9 MW and a hydraulic capacity of 6,000 cfs; and (4) appurtenant facilities. The project is estimated to generate an average of 51.5 million kwh annually. The dam and existing project facilities are owned by the applicant.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at http://www.ferc.gov using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in h above.

o. Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

The Commission directs, pursuant to Section 4.34(b) of the Regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application and APEA be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project numbers of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to these applications must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this

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proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11597 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Tendered for Filing With the Commission, Solicitation of Additional Study Requests, and Establishing Procedures for Relicensing and a Deadline for Submission of Final Amendments

May 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Major License.

b. *Project No.:* 2574–032.

c. *Date Filed:* April 29, 2002.

d. *Applicant:* Merimil Limited Partnership.

e. *Name of Project:* Lockwood Project.

f. *Location:* On the Kennebec River in Kennebec County, near City of Waterville and Town of Winslow, Maine. The project does not affect federal lands.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)-825(r).

h. *Applicant Contact:* Mr. F. Allen Wiley, Kennebec Hydro Resources Inc., c/o FPL Energy Maine Hydro, LLC, 150 Main Street, Lewiston, ME 04240, (207) 795–1342.

i. *FERC Contact:* David Turner, (202) 219–2844 or *david.turner@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing additional study requests and requests for cooperating agency status:* June 28, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Additional study requests and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

l. This application is not ready for environmental analysis at this time.

m. *The existing Lockwood Project consists of:* (1) A 1,300-foot-long concrete gravity dam, consisting of three spillway sections, a small island, and the forebay headworks; (2) 450-foot-long forebay; (3) a 81.5-acre reservoir; (3) two powerhouses, one containing six vertical Francis type turbines and the second containing one horizontal variable pitch kaplan turbine, for a total installed capacity of 7,250 kilowatts; (4) about 4,225 feet of buried and overhead transmission lines; and (5) appurtenant facilities. The project is estimated to generate an average of 30,911 megawatthours annually.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. With this notice, we are initiating consultation with the *MAINE STATE HISTORIC PRESERVATION OFFICER (SHPO),* as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

p. *Procedural schedule and final amendments*: The application will be processed according to the following milestones, some of which may be combined to expedite processing:

Notice of application has been accepted for filing

Notice of NEPA Scoping (unless scoping has already occurred)

Notice of application is ready for environmental analysis

Notice of the availability of the draft NEPA document

Notice of the availability of the final NEPA document

Order issuing the Commission's decision on the application

Final amendments to the application must be filed with the Commission no later than 30 days from the issuance date of the notice of ready for environmental analysis.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11598 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Ready for Environmental Analysis and Solicitation of Comments, Recommendations, Terms and Conditions, and Prescriptions

May 3, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Original Minor License.

b. *Project No.:* P–11797–000.

c. *Date filed:* July 29, 1999.

d. *Applicant:* Grande Pointe Power Corporation.

e. *Name of Project:* Three Rivers Hydroelectric Project.

f. *Location:* On the St. Joseph River in the city of Three Rivers, St. Joseph County, Michigan. The project does not utilize federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791(a)—825(r).

h. *Applicant Contact:* Mr. Monroe E. Learn, Grand Pointe Power Corporation, 503 West Michigan Avenue, Three Rivers, MI 54601.

Ph. # 1-(616)273–8828.

i. *FERC Contact:* Mr. Sean Murphy, e-mail *sean.murphy@frec.gov* or telephone (202) 219–2964.

j. *Deadline for filing comments, recommendations, terms and conditions and prescriptions:* 60 days from the date of issuance of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426.

Comments, recommendations, terms and conditions, and prescriptions, as well as protests and interventions, may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

The Commission's Rules of Practice and Procedure require all intervenors filing documents with the Commission to serve a copy of that document on each person whose name appears on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. This application has been accepted and is ready for environmental analysis.

l. *Description of the Project:* The project consists of the following existing facilities: (1) A right earthen embankment, 750 feet long; (2) a left earthen embankment, 200 feet long; (3) a 283 foot long spillway section with 19 structural steel slide gates, each 15 feet wide and 4.8 feet high yielding an overall spillway elevation of 797.2 feet NGVD; (4) a 601-acre reservoir with a normal water surface elevation of 797.0 feet NGVD; (5) a powerhouse containing 3 vertical Francis turbines each connected to a generator unit for a total installed capacity of 900 kW; and (6) appurtenant facilities. The average annual energy generation is 3,844,920 kWh. Power generated by the project is sold to the city of Sturgis.

m. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link-select "Docket #" and follow the instructions (call 202 208–2222 for assistance). The applicant also has a copy available for inspection and reproduction at the address in item h. above.

n. Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

o. The Commission directs, pursuant to Section 4.34(b) of the Regulations (*see* order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," OR "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11599 Filed 5–8–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RM98–1–000]

Regulations Governing Off-the-Record Communications; Public Notice

May 3, 2002.

This constitutes notice, in accordance with 18 CFR 385.2201(h), of the receipt of exempt and prohibited off-the-record communications.

Order No. 607 (64 FR 51222, September 22, 1999) requires Commission decisional employees, who make or receive an exempt or a prohibited off-the-record communication relevant to the merits of a contested on-the-record proceeding, to deliver a copy of the communication, if written, or a summary of the substance of any oral communication, to the Secretary.

Prohibited communications will be included in a public, non-decisional file associated with, but not part of, the decisional record of the proceeding. Unless the Commission determines that the prohibited communication and any responses thereto should become part of the decisional record, the prohibited off-the-record communication will not be considered by the Commission in reaching its decision. Parties to a proceeding may seek the opportunity to respond to any facts or contentions made in a prohibited off-the-record communication, and may request that the Commission place the prohibited communication and responses thereto in the decisional record. The Commission will grant such requests only when it determines that fairness so requires. Any person identified below as having made a prohibited off-the-record communication should serve the document on all parties listed on the official service list for the applicable proceeding in accordance with Rule 2010, 18 CFR 385.2010.

Exempt off-the-record communications will be included in the decisional record of the proceeding, unless the communication was with a cooperating agency as described by 40 CFR 1501.6, made under 18 CFR 385.2201(e)(1)(v).

The following is a list of exempt and prohibited off-the-record communications received in the Office of the Secretary within the preceding 14 days. Copies of this filing are on file with the Commission and are available for public inspection. The documents may be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

EXEMPT

Docket No.	Date filed	Presenter or requester
1. Project Nos. 1932–004, 1933–010 and 1934–010	4–22–02	Jon Cofrancesco.
2. CP01–176–000	4–23–02	Laura Turner.*
3. CP01–176–000	4–23–02	Laura Turner.**

* Summary of 4/17 Field Visit attended by representatives of FERC, GSX–US and the U.S. Fish and Wildlife Service

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** Summary of Boat Tour of GSX Project

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–11601 Filed 5–8–02; 8:45 am]
BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–4]

Agency Information Collection Activities: Continuing Collection; Comment Request; RCRA Hazardous Waste Permit Application and Modification, Part A

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that EPA is planning to submit the following continuing Information Collection Requests (ICR) to the Office of Management and Budget (OMB): RCRA Hazardous Waste Permit Application and Modification, Part A, EPA ICR #262.10, OMB No. 2050–0034, expires on October 31,2002. Before submitting the ICR to OMB for review and approval, EPA is soliciting comments on specific aspects of the proposed information collection as described below.

DATES: Comments must be submitted on or before July 8, 2002.

ADDRESSES: Commenters must send an original and two copies of their comments referencing docket number F–2002–RWPN–FFFFF to: RCRA Docket Information Center, Office of Solid Waste (5305G), U. S. Environmental Protection Agency Headquarters (EPA, HQ) Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460. Hand deliveries of comments should be made to the Arlington, VA address below. Comments may also be submitted electronically through the Internet to : *rcra-docket@epamail.epa.gov*. Comments in electronic format should also be identified by the docket number F–2002–RWPN–FFFFF. All electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption.

Commenters should not submit any confidential business information (CBI) electronically. An original and two copies of CBI must be submitted under separate cover to: RCRA CBI Document Control Officer, Office of Solid Waste (5305W), U.S. EPA, Ariel Rios Building, 1200 Pennsylvania Avenue NW., Washington, DC 20460.

Public comments and supporting materials are available for viewing in the RCRA Information Center (RIC), located at Crystal Gateway I, First Floor, 1235 Jefferson Davis Highway, Arlington, VA. The RIC is open from 9 a.m. to 4 p.m., Monday through Friday, excluding federal holidays. To review docket materials, it is recommended that the public make an appointment by calling (703) 603–9230. The public may copy a maximum of 100 pages from any regulatory docket at no charge. Additional copies cost $0.15/page. This document and the supporting documents that detail the RCRA Permit Application and Modification, Part A ICR are also electronically available. *See* the **SUPPLEMENTARY INFORMATION** section for information on accessing them.

FOR FURTHER INFORMATION CONTACT:

RCRA Hotline

For general information, contact the RCRA Hotline at (800) 424–9346, or TDD (800) 553–7672 (hearing impaired). In the Washington, DC metropolitan area, call (703) 412–9810, or TDD (703) 412–3323.

Part A ICR Details

For more detailed information on specific aspects of the Part A information collection request, contact David Eberly by mail at the Office of Solid Waste (5303W), U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue NW, Washington, DC 20460, by phone at (703) 308–8645, or by Internet e-mail at: eberly.david@epamail.epa.gov.

SUPPLEMENTARY INFORMATION:

Internet Availability

Today's document and the supporting documents that detail the RCRA Hazardous Waste Permit Application and Modification, Part A ICR are available on the Internet at: *http//www.epa.gov/epaoswer/hazwaste/notify/index.htm*.

Note: The official record for this action will be kept in paper form and maintained at the address in the **ADDRESSES** section above.

Affected Entities: Entities potentially affected by this action are generators, transporters and owners and operators of hazardous waste management facilities.

Title: RCRA Hazardous Waste Permit Application and Modification, Part A, EPA ICR #262.10, OMB No. 2050–0034, expires on October 31, 2002.

Abstract: Section 3010 of Subtitle C of RCRA, as amended, requires any person who generates or transports regulated waste or who owns or operates a facility for the treatment, storage, or disposal (TSDF) of regulated waste to notify EPA of their activities, including the location and general description of activities and the regulated wastes handled. Section 3005 of Subtitle C of RCRA requires TSDFs to obtain a permit. To obtain the permit, the TSDF must submit an application describing the facility's operation. There are two parts to the RCRA permit application—Part A and Part B. Part A defines the processes to be used for treatment, storage, and disposal of hazardous wastes: the design capacity of such processes: and the specific hazardous wastes to be handled at the facility. Part B requires detailed site specific information such as geologic, hydrologic, and engineering data.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR Chapter 15. The Agency today begins an effort to examine the notification and Part A permit application forms and consider options for reducing their burden and increasing the usefulness of the information these forms collect. The Agency would appreciate any information on the users of this information, how they use this information, how the information could be improved, and how the burden for these forms can be reduced.

Therefore, the EPA would like to solicit comments to:

(i) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(ii) Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(iii) Enhance the quality, utility, and clarity of the information to be collected; and

(iv) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Burden Statement: The estimated average burden for renewing the existing Part A ICR is approximately 25 hours per respondent for submitting a new Part A permit application and approximately 15 hours for submitting a revised Part A permit application. The burden estimates for the Part A ICR includes time for reading the regulations, preparing and submitting initial and revised Part A permit applications, preparing and submitting justifications for changes and preparing and submitting subpart H compliance demonstrations.

For Part A permit applications, EPA estimates that the number of respondents per year is 10 for new Part A permit applications and 49 for Part A revisions. For these ICRs, collection occurs one-time per respondent, unless regulations are revised and promulgated. Timing of the submission of the notification and the Part A permit application forms are variable depending on the status of the respondent and the timing of the promulgation of the regulations. The estimated total annual burden on respondents for new and revised Part A permit applications is 893 hours. These estimates of total annual burden reflect a decrease in burden of 5.5% for Part A permit applications when compared with the previously approved ICR (1999).

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Dated: April 26, 2002.

Matthew Hale,
Acting Director, Office of Solid Waste.
[FR Doc. 02–11654 Filed 5–8–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–7]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Public Water Systems Supervision Program: Public Notification Amendment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Public Water Systems Supervision (PWSS) Program: Public Notification Amendment, OMB Control No. 2040–0090. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 0270.41 and OMB Control No. 2040–0090, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW, Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR contact Susan Auby at EPA by phone at (202) 566–1672, by e-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 0270.41. For technical questions about the ICR contact Lisa Christ at (202) 564–8354 in the Office of Ground Water Drinking Water.

SUPPLEMENTARY INFORMATION:

Title: Public Water Systems Supervision Program: Public Notification Amendment (OMB Control No. 2040–0090; EPA ICR No. 0270.41) expiring June 30, 2002. This is a request for an revision of a currently approved collection.

Abstract: The 2001 PWSS Program ICR, approved by OMB in November 2001, was the result of a consolidation of some rules and activities covered in the 1993 PWSS ICR and activities and rules previously covered in other standalone ICRs. This ICR amends the 2001 PWSS Program ICR by incorporating the Public Notification ICR (EPA ICR No. 1898.02, OMB No. 2040–0209). The amendment revises the burden estimate for public notification regulations, as required by sections 1414(a)(1) and (a)(2) of the Safe Drinking Water Act. Public water systems are required to give notification to all persons served when a violation of EPA drinking water standards occurs and for other situations posing a risk to health. EPA regulations define the form, manner, frequency, and content of the notices. Ensuring implementation of these requirements by public water systems is principally a responsibility of the States, territories and tribes that have assumed primary enforcement responsibility (primacy) for public water systems under SDWA section 1413.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on January 4, 2002 (67 FR 585–586), no comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 3.1 hours per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: Public Water Systems and Primacy Agencies.

Estimated Number of Respondents: 44,319.

Frequency of Response: varies by tier.

Estimated Total Annual Hour Burden: 785,590 hours.

Estimated Total Annualized Capitol, O&M Cost Burden: $4,731,000.

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Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 0270.41 and OMB Control No. 2040–0090 in any correspondence.

Dated: May 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–11649 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–8]

Agency Information Collection Activities: Submission for OMB Review; Comment Request; Drinking Water Customer Satisfaction Survey

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this document announces that the following Information Collection Request (ICR) has been forwarded to the Office of Management and Budget (OMB) for review and approval: Drinking Water Customer Satisfaction Survey, EPA ICR number 2016.01. The ICR describes the nature of the information collection and its expected burden and cost; where appropriate, it includes the actual data collection instrument.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: Send comments, referencing EPA ICR No. 2016.01, to the following addresses: Susan Auby, U.S. Environmental Protection Agency, Collection Strategies Division (Mail Code 2822T), 1200 Pennsylvania Avenue, NW., Washington, DC 20460; and to Office of Information and Regulatory Affairs, Office of Management and Budget (OMB), Attention: Desk Officer for EPA, 725 17th Street, NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: For a copy of the ICR, contact Susan Auby at EPA by phone at (202) 566–1672, by E-mail at *auby.susan@epamail.epa.gov*, or download off the Internet at *http://www.epa.gov/icr* and refer to EPA ICR No. 2016.01. For technical questions about the ICR contact Scott Conklin at (202) 564–4640, (202) 564–3757 (fax), by E-mail at *conklin.scott@epamail.epa.gov*.

SUPPLEMENTARY INFORMATION:

Title: Drinking Water Customer Satisfaction Survey; EPA ICR No. 2016.01. This is a new collection.

Abstract: The Office of Ground Water and Drinking Water is planning to conduct a customer satisfaction survey on the effectiveness of its right-to-know efforts required under the Safe Drinking Water Act. The Safe Drinking Water Act requires EPA to ensure drinking water information is made available to the general public. This survey will allow the EPA to evaluate current public awareness initiatives for disseminating drinking water information to the public. Conducting this survey will help the EPA assess general customer perceptions and habits concerning drinking water. By gauging the effectiveness of current outreach activities, the Agency will measure whether information efforts are meeting customer needs. The Agency will also gain insight on how to improve the way this information is disseminated in the future. The information collected will involve 1250 randomly selected adults from the general public. Of the 1250 respondents, EPA estimates that there will be approximately 250 screening-only respondents and 1000 respondents that will complete the full survey. The survey will be conducted by the Gallup organization under contract to EPA. The selected individuals will be asked specific questions concerning general consumer awareness issues, consumer confidence reports (annual water quality reports), source water assessments, and customer preferences with respect to mechanisms for receiving information. In addition, the survey asks demographic questions about factors that may be drivers of satisfaction. These factors include consumer perceptions of water quality, concerns about taste and odor, and whether consumers already drink bottled water or filter their tap water. The survey instrument is a voluntary telephone questionnaire, averaging 11 minutes, that covers approximately 26 questions. EPA will only conduct this survey once during the period for which the ICR is in effect. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for EPA's regulations are listed in 40 CFR part 9 and 48 CFR chapter 15. The **Federal Register** document required under 5 CFR 1320.8(d), soliciting comments on this collection of information was published on October 29, 2001 (66 FR 209); 62 comments were received.

Burden Statement: The annual public reporting and recordkeeping burden for this collection of information is estimated to average 11 minutes per response. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

Respondents/Affected Entities: General Public.

Estimated Number of Respondents: 1,250.

Frequency of Response: One Time Collection.

Estimated Total Annual Hour Burden: 187.5.

Estimated Total Annualized Capital, O&M Cost Burden: $0.

Send comments on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques to the addresses listed above. Please refer to EPA ICR No. 2016.01 in any correspondence.

Dated: May 2, 2002.

Oscar Morales,

Director, Collection Strategies Division.

[FR Doc. 02–11650 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7208–5]

Public Listening Sessions on EPA's Watershed Initiative

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meetings.

SUMMARY: EPA is inviting all interested members of the public to participate in one of four listening sessions on EPA's Watershed Initiative, in Washington DC.

The purpose of these sessions is to solicit ideas and suggestions on the design of the Initiative, specifically the nomination and selection processes, and the development of appropriate selection criteria. On January 25, 2002, EPA announced that the President's 2003 budget would include a request for $21 million for a new Watershed Initiative. Pending appropriations for this purpose, EPA will call for nominations and select up to 20 watershed organizations to receive grants for projects that support innovative watershed-based approaches to watershed protection. Throughout the upcoming months, EPA will be working cooperatively with the States, Tribes, local governments, and community groups to develop the proposed program.

DATES: See **SUPPLEMENTARY INFORMATION** section below for meeting dates and times.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section below for the location of the meetings.

FOR FURTHER INFORMATION CONTACT: For general information about the sessions and to register for one of the sessions, contact James Cole, Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds, by telephone at 202–566–1291 or by e-mail at *cole.james@epa.gov*. For information about the Watershed Initiative visit EPA's web site at *http://www.epa.gov/owow/watershed/* or contact Carol Peterson, Environmental Protection Agency, Office of Wetlands, Oceans, and Watersheds by telephone at 202–566–1304 or by e-mail at *peterson.carol@epa.gov*.

SUPPLEMENTARY INFORMATION:

I. Background

On January 25, 2002, EPA announced that it was including an additional $21 million in its fiscal year 2003 budget proposal for a new initiative to protect, preserve, and restore watersheds across the country. This new Watershed Initiative will seek to encourage successful watershed partnerships aimed at improving the nation's water resources. As part of this community-based effort, EPA will target up to 20 of the nation's most valued watersheds to receive a grant. In Governor Whitman's address, she stated that the Agency will be working cooperatively with Congress, States, local governments, agricultural groups, environmental groups, industry, and watershed community organizations in developing the details of how this Initiative will be designed and implemented.

In the next few weeks, EPA will publish a notice in the **Federal Register** soliciting stakeholder ideas and suggestions on possible approaches EPA might take in designing the new program. This notice will outline the Watershed Initiative, present EPA's current ideas on how the Initiative should be designed, and pose specific questions with respect to the nomination and selection processes for watershed projects. The Agency will provide the public with a 60-day review and comment period.

II. Public Listening Sessions

EPA has scheduled four stakeholder listening sessions during the month of May. It is the Agency's goal that these meetings be comprised of people from diverse interests and perspectives in the hopes of providing an opportunity for open and active discussions. The purpose of these sessions is to attain an array of opinions and viewpoints regarding the details of the Initiative on issues such as, the role of Governors and Tribal Leaders, project scope and criteria, and the nomination and selection processes. EPA will use the information solicited from the public via the **Federal Register** notice and the listening sessions to develop the Watershed Initiative.

Additional sessions may be held in June if there is sufficient interest. Space is limited to approximately 30 people per session, and registration will be on a first-come basis. All participants must register. Due to the limited seating, EPA asks that organizations wishing to attend a session send only one representative.

Meeting Information

Location: All sessions will be held in Room 1117A, EPA East Building, 1201 Constitution Avenue, NW., Washington, DC 20004.

Dates and Times

Tuesday, May 14; 8:30 a.m.–11:30 a.m.
Wednesday, May 15; 8:30 a.m.–11:30 a.m.
Wednesday, May 22; 1 p.m.–4 p.m.
Wednesday, May 29; 8:30 a.m.–11:30 a.m.

Registration: Please register at least two days prior to your session of choice by contacting Mr. James Cole at *cole.james@epa.gov* or 202–566–1291. To register, provide your name, affiliation, mailing and e-mail address, and phone number along with your first and second choice for the listening session you are interested in attending. Please also advise Mr. Cole if you have a disability and require any special accommodations; the room is wheelchair accessible.

Dated: May 3, 2002.

Robert H. Wayland III,

Director, Office of Wetlands, Oceans, and Watersheds.

[FR Doc. 02–11651 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–6]

Air Quality Criteria for Particulate Matter (External Review Draft)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of a draft for public review and comment.

SUMMARY: On or about May 8, 2002, the National Center for Environmental Assessment (NCEA), within EPA's Office of Research and Development, will make available for public review and comment a third external review draft of EPA's document *Air Quality Criteria for Particulate Matter*. Under sections 108 and 109 of the Clean Air Act, the purpose of this document is to provide an assessment of the latest scientific information on the effects of airborne particulate matter (PM) on the public health and welfare for use in EPA's current review of the National Ambient Air Quality Standards (NAAQS) for PM.

DATES: Comments on the draft document must be submitted in writing no later than July 10, 2002. Send the written comments to the Project Manager for Particulate Matter, National Center for Environmental Assessment-RTP (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

ADDRESSES: A copy of the *Air Quality Criteria for Particulate Matter (Third External Review Draft)*, consisting of two volumes, will be available on CD ROM from NCEA–RTP. Contact Ms. Diane Ray by phone (919–541–3637), fax (919–541–1818), or e-mail (*ray.diane@epa.gov*) to request the document. Please provide the document's title, *Air Quality Criteria for Particulate Matter (Third External Review Draft)*, and the EPA numbers for each of the two volumes (EPA/600/P–99/002aC, EPA/600/P–99/002bC), as well as your name and address, to properly process your request. Internet users will be able to download a copy from the NCEA home page. The URL is *http://www.epa.gov/ncea/*. Hard copies of the draft document can also be made available upon request.

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FOR FURTHER INFORMATION CONTACT: Dr. Dennis Kotchmar, National Center for Environmental Assessment-RTP (MD–52), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711; telephone: 919–541–4158; fax: 919–541–1818; e-mail: *kotchmar.dennis@epa.gov*.

SUPPLEMENTARY INFORMATION: EPA is in the process of updating and revising, where appropriate, its *Air Quality Criteria for Particulate Matter* as issued in 1996. Sections 108 and 109 of the Clean Air Act require that EPA carry out a periodic review and revision, where appropriate, of the air quality criteria and NAAQS for "criteria" air pollutants such as PM. Details of EPA's plans for the review of the NAAQS for PM were initially announced in a previous **Federal Register** notice (62 FR 55201, October 23, 1997). EPA made a First External Review Draft of the updated *Air Quality Criteria for Particulate Matter* available for review by the Clean Air Act Scientific Advisory Committee (CASAC) and members of the public in October 1999 (64 FR 57884, October 27, 1999). Following that public review period and a meeting of the CASAC in December 1999 (64 FR 61875, November 15, 1999), EPA revised the document as appropriate to incorporate CASAC and public comments, as well as to reflect many studies on the health effects of PM that were not available in time for discussion in the First External Review Draft.

EPA then made a Second External Review Draft of the *Air Quality Criteria for Particulate Matter* available for CASAC and public review in April 2001 (66 FR 18929, April 12, 2001). Following that public review period and a second CASAC meeting in July 2001 (66 FR 34924, July 2, 2001), EPA again revised the document as appropriate to incorporate CASAC and public comments and also made further revisions reflecting new studies on health effects of particulate matter that had become available between issuance of the First and Second External Review Drafts.

EPA is now making a Third External Review Draft available for CASAC and public review. A public meeting with CASAC is scheduled for July 18–19, 2002 (67 FR 15802, April 3, 2002). At the close of CASAC's review, EPA will make final revisions to complete the document.

On June 15, 2001, EPA's Office of Air Quality Planning and Standards (OAQPS) made available for public review and comment (66 FR 32621, June 15, 2001) a preliminary draft Staff Paper (SP) that drew on information in the earlier draft criteria document. The preliminary draft was also submitted to CASAC for discussion with the Committee at its July 2001 meeting. In January 2002 (67 FR 3897, January 28, 2002), OAQPS also made available for CASAC and public review and comment a draft document, *Proposed Methodology for Particulate Matter Risk Analyses for Selected Urban Areas*, which was reviewed by CASAC at a public teleconference on February 27, 2002. OAQPS is now revising the draft SP and the draft risk analyses methodology document to address CASAC and public comments and to incorporate updated information from the current draft criteria document. As in other NAAQS reviews, the SP will evaluate policy implications of key studies and other scientific information in the criteria document, identify critical elements that EPA staff believes should be considered, and present staff conclusions and recommendations for the Administrator's consideration. Dates and details of availability of the updated draft SP and methodology documents and plans for future public meetings on these documents will be published in the **Federal Register**.

Dated: May 3, 2002.

George Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–11648 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–5]

Availability of "Allocation of Fiscal Year 2002 Operator Training Grants"

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of document availability.

SUMMARY: EPA is announcing availability of a memorandum entitled "Allocation of Fiscal Year 2002 Operator Training Grants" issued on April 23, 2002. This memorandum provides National guidance for the allocation of funds used under section 104(g)(l) of the Clean Water Act. Each grant recipient will receive a copy of this document from EPA.

ADDRESSES: See **SUPPLEMENTARY INFORMATION** section for electronic access of the guidance memorandum.

FOR FURTHER INFORMATION CONTACT: Gary Hudiburgh. (202) 564–0626 or *hudiburgh.gary@epa.gov*.

SUPPLEMENTARY INFORMATION: The subject memorandum may be viewed and downloaded from EPA's homepage, *http://www.epa.gov/owm/mab/owm0320.pdf*.

Dated: April 26, 2002.

James A. Hanlon,

Director, Office of Wastewater Management.

[FR Doc. 02–11653 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–3]

Public Water Supply Supervision Program; Program Revision for the State of Oregon

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Tentative Approval.

SUMMARY: Notice is hereby given that the State of Oregon has revised its approved State Public Water Supply Supervision (PWSS) Primacy Program. Oregon has adopted drinking water regulations for disinfectants and disinfection byproducts and has adopted revisions to its surface water treatment regulations and lead and copper regulations. EPA has determined that these revisions are no less stringent than the corresponding federal regulations. Therefore, EPA intends on approving these State program revisions. This approval action does not extend to public water systems (PWSs) in Indian Country, as that term is defined in 18 U.S.C. 1151. EPA interprets its past approvals as not extending to Indian Country unless the State has made an explicit demonstration of jurisdiction over Indian Country and EPA has specifically approved the State's Drinking Water program over that area.

All interested parties may request a public hearing. A request for a public hearing must be submitted by June 10, 2002 to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by June 10, 2002, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become final and effective on June 10, 2002. Any request for a public hearing shall include the following information: (1) The name, address, and telephone number of the individual, organization, or other entity requesting a hearing; (2) a brief statement of the requesting person's interest in the Regional Administrator's determination and a brief statement of the information that the requesting person intends to submit at such hearing; (3) the signature of the individual making the request, or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday, at the following offices: Oregon Department of Human Services, Drinking Water Program, 800 N.E. Oregon Street, Portland, Oregon 97232, and U.S. Environmental Protection Agency, Region 10 Library, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Wendy Marshall, EPA Region 10, Drinking Water Unit, at the Seattle address given above; telephone (206) 553–1890.

Authority: Section 1420 of the Safe Drinking Water Act, as amended (1996), and 40 CFR part 142 of the National Primary Drinking Water Regulations.

Dated: April 25, 2002.

L. John Iani,

Regional Administrator, Region 10.

[FR Doc. 02–11652 Filed 5–8–02; 8:45 am]

BILLING CODE 6560–50–P

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Availability of Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by U.S. Equal Employment Opportunity Commission

AGENCY: Equal Employment Opportunity Commission.

ACTION: Notice.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) hereby announces the availability of its draft information quality guidelines on its website (hard copy available through its Office of Communications of Legislative Affairs) and seeks public comments on those guidelines.

DATES: *Effective Date:* May , 2002.

FOR FURTHER INFORMATION CONTACT: Lizette Molina, Special Assistant to the Director, Office of Information Resources Management, 202–663–4446, or Jay Friedman, Director of Strategic Planning and Management Controls Division, Office of Research, Information and Planning, 202–663–4094.

SUPPLEMENTARY INFORMATION: The EEOC has prepared draft Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the U.S. Equal Employment Opportunity Commission. These guidelines are available for public comment on EEOC's website *www.eeoc.gov*. Individuals without Internet access may contact EEOC's Office of Communications and Legislative Affairs at (202) 663–4900 or TTY (202) 663–4494 for a hard copy. Comments from the public regarding these draft guidelines will be accepted until June 8, 2002. Public comment regarding these guidelines may be submitted in writing to: U.S. Equal Employment Opportunity Commission, Office of Research, Information and Planning, Room 8219, Washington, DC 20507. Public comment may also be submitted via facsimile at (202) 663–4093. On the cover sheet indicate the fax is for: U.S. Equal Employment Opportunity Commission, Office of Research, Information and Planning, Room 8219. To submit comment via e-mail, contact *guidelinecomments@eeoc.gov*.

Dated: May 2, 2002.

Sallie T. Hsieh,

Director, Office of Information, Resources Management.

[FR Doc. 02–11537 Filed 5–8–02; 8:45 am]

BILLING CODE 6570–01–M

OFFICE OF SCIENCE AND TECHNOLOGY POLICY

Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by the Office of Science and Technology Policy

AGENCY: Office of Science and Technology Policy.

ACTION: Notice of guidelines and request for comments.

SUMMARY: The Office of Science and Technology Policy (OSTP) is seeking comments on its draft Information Quality Guidelines. These Information Quality Guidelines describe OSTP's pre-dissemination information quality control and an administrative mechanism for requests for correction of information publicly disseminated by OSTP. The draft Information Quality Guidelines are posted on OSTP's Web site, *http://www.ostp.gov*.

DATES: Written comments regarding OSTP's draft Information Quality Guidelines are due by June 14, 2002.

ADDRESSES: Please submit comments to Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502 by fax at (202) 456–6021. Comments can also be e-mailed to *ostpinfo@ostp.eop.gov*.

FOR FURTHER INFORMATION CONTACT: Stan Sokul, Office of Science and Technology Policy, Washington, DC 20502. Telephone: (202) 456–7116.

Dated: May 1, 2002.

Barbara Ann Ferguson,

Assistant Director for Budget and Administration, Office of Science and Technology Policy.

[FR Doc. 02–11568 Filed 5–8–02; 8:45 am]

BILLING CODE 3170–01–P

FEDERAL ELECTION COMMISSION

Sunshine Act Meeting

AGENCY: Federal Election Commission.

* * * * *

DATE & TIME: *Tuesday, May 14, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. 437g.

Audits conducted pursuant to 2 U.S.C. 437g, 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee.

* * * * *

DATE & TIME: *Thursday, May 16, 2002 at 10 a.m.*

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Final Audit Report of Bauer for President 2000, Inc.

Draft Advisory Opinion 2002–06: Green Party of California by Michael S. Wyman, Treasurer.

PERSON TO CONTACT FOR INFORMATION: Mr. Ron Harris, Press Officer Telephone: (202) 694–1220.

Mary W. Dove,

Secretary of the Commission.

[FR Doc. 02–11711 Filed 5–7–02; 10:54 am]

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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Sunshine Act Notice

TIME AND DATE: 9 a.m.. (EDI), May 20, 2002.

PLACE: 4th Floor, Conference Room, 1250 H Street, NW., Washington, DC.

STATUS: Parts will be open to the public and part closed to the public.

Matters To Be Considered

Parts Open to the Public

1. National Finance Center Record Keeping and New TSP System.
2. Congressional/Agency/Participant Liaison.
3. Benefits and Investments.
4. Participant Communications.
5. Approval of the minutes of the April 15, 2002, Board member meeting.
6. Thrift Savings Plan Activity Report by the Executive Director.
7. Approval of the Update of the FY 2002 Budget and FY 2003 Estimates.
8. Investment Policy Review.
9. Status of Audit Recommendations.

Part Closed to the Public

10. Status of Litigation.

CONTACT PERSON FOR MORE INFORMATION: Thomas J. Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: May 6, 2002.

Elizabeth S. Woodruff,

Secretary to the Board, Federal Retirement Thrift Investment Board.

[FR Doc. 02–11703 Filed 5–6–02; 5:01 pm]

BILLING CODE 6760–01–M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistnat Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Chandra L. Kennedy, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580 (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/15/2002			
20020631	Jerrold M. Jung	Peter M. Holt, a natural person	HC Industries, LLC d/b/a Holt Rental Services, LLC. Holt Company of Ohio. Holt Texas Properties, Inc.
20020633	Amarin Corporation, plc	Elan Corporation	Elan Corporation.
20020640	AOL Time Warner, Inc	America Online Latin America, Inc	America Online Latin America, Inc.
20020641	TCV IV, L.P	Netflix.com, Inc	Netflix.com, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/16/2002			
20020580	Thomson multimedia S.A	Matsushita Electric Industrial Co., Ltd	Panasonic Disc Services Corporation.
TRANSACTIONS GRANTED EARLY TERMINATION—04/17/2002			
20020529	CIENA Corporation	ONI Systems Corp.	ONI Systems Corp.
20020584	Sappi Limited	Potlatch Corporation	Potlatch Corporation.
20020638	Welsh, Carson, Anderson & Stowe IX, L.P.	Catholic Health Initiatives	St. Joseph HealthCare System.
20020647	IVAX Corporation	3M Company	3M Innovative Properties Company. Riker Laboratories.
TRANSACTIONS GRANTED EARLY TERMINATION—04/19/2002			
20020627	Apollo Investment Fund, L.P	Oak Hill Capital Partners, L.P	Heavenly Valley, Limited Partnership.
20020632	RWE Aktiengeselischaft	Innogy plc	Innogy plc.
20020643	Franzia Winery LLC	Diageo PLC	Diageo North America, Inc.
20020648	Castle Harlan Partners III, L.P	Morton's Restaurant Group, Inc.	Morton's Restaurant Group, Inc.
20020649	Clayton, Dubilier & Rice Fund VI Limited Partnership.	Clayton, Dubilier & Rice Fund V Limited Partnership.	SIRVA, Inc.
20020652	RHJ Industrial Partners, L.P	D&M Holdings, Inc	D&H Holdings, Inc.
20020653	Marantz Japan, Inc	RHJ Industrial Partners, L.P	Denon, Ltd.
20020654	Blyth, Inc.	Robert E. Kirkland	CBK Ltd. LLC.
20020661	Whitney V, L.P	US Bioservices Corporation (NEWCO)	US Bioservices Corporation (NEWCO).
20020662	Quantum Industrial Holdings Ltd	Kellogg Company	Bake-Line Products, Inc. Keebler Company.
20020664	Interpath Communications, Inc	USinternetworking, Inc	USinternetworking, Inc.
20020668	Willis Stein & Partners III, L.P	Roundy's Inc. Voting Trust	Roundy's Inc.

Trans #	Acquiring	Acquired	Entities
TRANSACTIONS GRANTED EARLY TERMINATION—04/23/2002			
20020626	Abbott Laboratories	Biocompatibles International plc	Biocompatibles Cardiovascular Inc.
20020657	Alkermes, Inc	H Group Holding, Inc	Reliant Pharmaceuticals, LLC
20020658	H Group Holding, Inc	Alkermes, Inc	Alkermes, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/24/2002			
20020625	Team Health Holdings, LLC	Spectrum Holding of Delaware, LLC	Spectrum Healthcare Services, Inc.
20020665	OJSC Svyazinvest	Golden Telecom, Inc.	Golden Telecom, Inc.
TRANSACTIONS GRANTED EARLY TERMINATION—04/26/2002			
20020610	Alice S. White Trust	Press Holding Corporation	Press Holding Corporation.
20020650	Professor Kurt Jenny	Istechnika Inc	Isotechnika International Inc.

[FR Doc. 02–11569 Filed 5–08–02; 8:45 am]

BILLING CODE 6750–01–M

GENERAL SERVICES ADMINISTRATION

Federal Supply Service; Standard Tender of Service

AGENCY: Federal Supply Service, GSA.

ACTION: Notice for comment on adoption of an interim 2 percent insurance related surcharge.

SUMMARY: In compliance with 41 U.S.C. 418b, the General Services Administration (GSA) is publishing for comment in the attachment to this Notice adoption of an interim 2 percent "insurance related surcharge" requested by the freight motor carrier industry, hereinafter referred to as transportation service provider (TSP). The surcharge will allow TSP's to recover rapidly increasing insurance premiums resulting from changes in the economy compounded by the events of September 11, 2001.

DATES: *Effective Date:* This Notice is effective May 1, 2002.

Comment Date: Please submit your comments by June 10, 2002.

Expiration Date: This Notice will expire October 31, 2002.

ADDRESSES: Mail comments to the General Services Administration, Travel and Transportation Management Division (FBL), Crystal Mall Bldg. 4, Rm. 812, 1941 Jefferson Davis Highway, Arlington, VA 22202, Attn: Raymond Price (Re: Insurance Related Surcharge Federal Register Notice).

FOR FURTHER INFORMATION CONTACT: Mr. Raymond Price, Transportation Programs Branch, by phone at 703–305–7536 or by e-mail at *raymond.price@gsa.gov.*

SUPPLEMENTARY INFORMATION: GSA, through adoption of the 2 percent surcharge reflected in the attachment to this Notice, is providing TSP participants in GSA's General Freight Standard Tender of Service relief from sudden and unforeseen increases in insurances costs that have occurred as a result of fluctuations in the economy compounded by the events of September 11th. Without this surcharge, TSP's that submit tenders for closed van, filing window controlled traffic would not be able to begin recovering the unexpected insurance cost increases until the rates they file under GSA's next Request for Offers become effective on November 1, 2002.

Tauna T. Delmonico,

Director, Travel and Transportation Management Division.

Attachment—Notice to Federal Customer Agencies and Transportation Service Providers Participating in GSA's Freight Management Program (FMP)—2 Percent Insurance Related Surcharge

In a letter to the General Services Administration (GSA) dated March 11, 2002, the Counsel for the National Motor Freight Traffic Association (NMFTA) requested that transportation service providers (TSP's) be allowed to assess a 2 percent surcharge on all domestic closed van freight shipments moving under GSA's FMP. The NMFTA made this request to help offset sudden and unforeseen increases in insurance premiums resulting from economic fluctuations compounded by the events of September 11, 2001. GSA has approved the 2 percent surcharge. As a result, effective May 1, 2002, a TSP may add to an agency's billing invoice a separate line item equivalent to 2 percent of a shipment's line-haul charge.

Identified below are timeframes during which TSP's will have their next opportunity to submit either new or supplemental electronic rate offers (see column titled "Next Open Window Filing Period"). A TSP will need to make adjustments in its rate offers during the appropriate timeframe to continue to recover its costs for any elevated insurance premiums. Consequently, effective November 1, 2002, a TSP that submits electronic tender filings no longer will be permitted to bill agencies participating in GSA's FMP for an insurance related surcharge as a separate line item.

Request for offers (RFO)	Next open window filing period	Effective date
National Industries for the Blind (NIB) and National Industries for the Severely Handicapped (NISH) issued July 6, 2001. General Request for Offers issued February 25, 2002, including:	July or August, 2002	November 1, 2002.

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Request for offers (RFO)	Next open window filing period	Effective date
—General freight rate offers (Sec. 8) —Intrastate Alaska rate offers (Sec. 8) —US Postal Service (USPS) rate offers (Sec. 9) —Fire suppression support service rate offers (Sec. 10) —Agency specific non-alternating rate offers (Sec. 11) —Federal Aviation Administration, Oklahoma City, OK, rate offers (Sec. 12) and —Agency specific alternating rate offers (Sec. 13)	August 1–September 6, 2002	November 1, 2002.
*United States Mint issued January 7, 2002	None	May 1, 2003.
*GSA Western Distribution Center, Stockton, CA issued November 9, 2001.	None	May 1, 2003.

*Neither U.S. nor GSA Western Distribution Center, Stockton, CA, RFO's contain a supplemental filing window. Effective November 1, 2002, a TSP will not be permitted to continue billing the 2 percent insurance related surcharge as a separate line item for this traffic unless it submits a request to GSA substantiating the continued need for a surcharge and GSA approves the request.

Additionally, any TSP that has a paper Optional Form 280 (OF 280) on file with GSA for domestic closed van freight shipments will need to submit a supplement to each OF 280 (with an effective date of November 1, 2002) effectively adjusting its rate offers to continue to recover the cost of any elevated insurance premiums. Consequently, effective November 1, 2002, a TSP with an OF 280 freight tender on file with GSA no longer will be allowed to bill agencies participating in GSA's FMP for an insurance related surcharge as a separate line item.

[FR Doc. 02–11638 Filed 5–8–02; 8:45 am]

BILLING CODE 6820–24–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–181]

Public Health Assessments Completed

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces those sites for which ATSDR has completed public health assessments during the period from January 2002 through March 2002. This list includes sites that are on or proposed for inclusion on the National Priorities List (NPL), and includes sites for which assessments were prepared in response to requests from the public.

FOR FURTHER INFORMATION CONTACT: Robert C. Williams, P.E., DEE, Assistant Surgeon General, Director, Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE, Mailstop E–32, Atlanta, Georgia 30333, telephone (404) 498–0007.

SUPPLEMENTARY INFORMATION: The most recent list of completed public health assessments was published in the **Federal Register** on February 22, 2002 [67 FR 8266]. This announcement is the responsibility of ATSDR under the regulation, Public Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities [42 CFR Part 90]. This rule sets forth ATSDR's procedures for the conduct of public health assessments under section 104(i) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended by the Superfund Amendments and Reauthorization Act (SARA) [42 U.S.C. 9604(i)].

Availability

The completed public health assessments and addenda are available for public inspection at the Division of Health Assessment and Consultation, Agency for Toxic Substances and Disease Registry, Building 33, Executive Park Drive, Atlanta, Georgia (not a mailing address), between 8 a.m. and 4:30 p.m., Monday through Friday except legal holidays. The completed public health assessments are also available by mail through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161, or by telephone at (703) 605–6000. NTIS charges for copies of public health assessments and addenda. The NTIS order numbers are listed in parentheses following the site names.

Public Health Assessments Completed or Issued

Between January 2002 and March 2002, public health assessments were issued for the sites listed below. Also included in this **Federal Register** Notice are public health assessments that were issued and are available for the following sites from the period of June 2001 through December 2001.

NPL Sites

Guam

Anderson Air Force Base (PB2002–102182).

Illinois

Gulf Mobile and Ohio Rail Yard (a/k/a Mobile and Ohio Railroad and Former GreenBerg Salvage Site) (PB2002–102745).

Southeast Rockford Groundwater Contamination (a/k/a Southeast Rockford Ground Water Contamination) (PB2002–102183).

Minnesota

Fridley Commons Well Field (a/k/a Fridley Commons Park Well Field) (PB2002–101743).

Montana

Upper Tenmile Creek Mining Area (PB2002–102677).

New Jersey

Iceland Coin Laundry Site (a/k/a Iceland Coin Laundry Area Groundwater Plume) (PB2002–101742).

Oklahoma

Imperial Refining Company (PB2002–101488).

Pennsylvania

Molycorp Incorporated (PB2002–102499).

Non NPL Petitioned Sites

None.

Dated: May 3, 2002.

Donna Garland,

Deputy Director, Office of Policy and External Affairs, Agency for Toxic Substances and Disease Registry.

[FR Doc. 02–11556 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–70–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02085]

Addressing Asthma From a Public Health Perspective: Implementation of State Asthma Plans; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Addressing Asthma from a Public Health Perspective. This program addresses the "Healthy People 2010" focus areas of Environmental Health, Respiratory Diseases and Occupational Safety and Health.

The purpose of this program is the to implement State Asthma Plans.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Environmental Health (NCEH): Improve state and local public health capacity to prevent and control asthma.

B. Eligible Applicants

Assistance will be provided only to the health departments of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, the Republic of Palau, and federally recognized Indian tribal governments.

If currently funded applicants under Program Announcements 99109 or 01106 Part A apply and are selected for funding under this announcement, they will lose continued funding under those Program Announcements (see Attachments I and II).

To be eligible, applicants must:

1. Submit a copy of your approved, comprehensive State Asthma Plan. Approval can be documented with a letter from the Agency's Health or Medical Director and letters from key partners or by appropriate sign-offs in the asthma plan. Plans that are pending final approval may be accepted if the draft plan is accompanied by letters from the Agency's Health or Medical Director and key partners stating their commitment to and approval of the plan, as well as a description of the plan's approval process status.

2. Have an operational surveillance system for asthma. This may be demonstrated through submission of your most comprehensive published surveillance report(s) (at least one, no more than three) that describes asthma within the jurisdiction, including, if available, a report on asthma in the Medicaid population.

These documents should be placed directly behind the face page (first page) of your application. Applications that fail to submit evidence requested above will be considered non-responsive and returned without review.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1,500,000 is available in FY 2002 to fund approximately two to four awards. It is expected that the average award will be $700,000. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

No research may be conducted as a part of this cooperative agreement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities) and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities:

a. Expand and continue existing surveillance efforts related to asthma occurrence, severity, management and other indicators in order to monitor the effectiveness of the intervention activities.

b. Conduct analysis and interpretation of surveillance data and disseminate this data through appropriate surveillance reports to local, state and federal partners and agencies.

c. Maintain existing statewide coalition and partnership activities to oversee implementation and evaluation of the state asthma plan. Expand partnership activities as appropriate.

d. Implement defined aspects of the completed state asthma plan. Assure institutionalization of asthma intervention activities.

e. Maintain existing asthma related activities currently underway in the health agency and expand as appropriate.

f. For all activities, develop and implement an evaluation plan which measures the effectiveness of your activities involved in each step indicated and document lessons learned.

g. Participate in CDC convened meetings and periodic conference calls for grantees to share experiences, data and materials.

2. CDC Activities

a. Participate with recipients in further development and enhancement of existing surveillance activities, including data collection methods and data analysis.

b. Collaborate with recipients on data analysis and interpretation of individual state surveillance data and release of surveillance reports.

c. Provide technical and scientific assistance and consultation on program development, implementation of asthma plan and intervention activities and operational issues.

d. Serve as a facilitator for communication between states to share expertise regarding various topics, including the expansion and development of partnerships, implementation of state plans, surveillance activities and others.

e. Facilitate working group conference calls with recipients.

f. Collaborate on the development of an appropriate evaluation plan which measures the effectiveness of recipient activities involved in each step indicated.

g. Convene meetings and periodic conference calls for grantees to share experiences, data and materials.

E. Content

Letter of Intent (LOI)

A nonbinding LOI is required for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two pages, single-spaced, printed on one side, with one inch margins and at least 12 point font. Your letter of intent will be used to ascertain the level of interest in this announcement and to assist in determining the size and composition of the independent review panel and should include the following information:

1. Name and address of organization.

2. Contact person and telephone number.

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Applications

The Program Announcement title and number must appear in the application. The narrative should be no more than 30 double-spaced pages, printed on one side, with one-inch margins, and at least 12 point font.

Excluding documents requested in this announcement (e.g., asthma plan, surveillance reports, letters of support, organizational chart, CVs/resumes) attachments/appendices should be limited to 20 pages. The application and attachments/appendices must be submitted unstapled, one-sided and unbound.

The applicant should document assurance of their ability to access and utilize funds, if awarded, for the purposes of this announcement.

The applicant should document assurance of the ability of project staff to travel to Atlanta to participate in the CDC National Asthma Conference and/or grantee meetings and willingness to share innovations, information, data and materials.

Include each of the following sections:

1. Description of Problem

Describe what is known of the asthma problem in the State or jurisdiction. Include a description of populations at increased risk of poorly controlled asthma within the jurisdiction (e.g., ethnic groups, socio-economic groups, geographic areas). Attach published surveillance reports that describe asthma within the jurisdiction including, if available, reports on asthma in the Medicaid population and for the enrollees of the State Children's Health Insurance Program (SCHIP).

2. Approved Asthma Plan

Describe how the asthma plan and the plan's implementation strategy were developed. Include a list of the partners that participated in the development of the plan (if not listed in the provided plan). Also, show support for the plan as demonstrated by a letter from the Agency's Health or Medical Director and from key partners. The approved plan (or attachments to that plan) must include:

a. An assessment of the asthma burden in the state/territory/tribe using population-based data.

b. Measurable objectives that address people with asthma across the state/territory/tribe and include people with asthma of all ages, race/ethnic groups and gender.

c. A description of how the plan's implementation would reach all persons with asthma in the state regardless of age, race/ethnicity or gender.

d. Proposed strategies to meet the plan's objectives, including, but not limited to, efforts to (1) expand surveillance for asthma, (2) improve provider compliance with the National Asthma Education and Prevention Program's (NAEPP) "Guidelines for the Diagnosis and Management of Asthma," (Clinical Practice Guidelines, Guidelines for the Diagnosis and Management of Asthma. National Institutes of Health (NIH), National Heart, Lung and Blood Institute. NIH Publication No. 97–4051, April 1997), (3) improve the skills of patients and families affected by asthma to manage the disease.

e. A methodology for evaluating the asthma plan's implementation and measure progress toward objectives described in "b." above.

f. An assessment of existing and needed resources to implement these strategies.

3. Partnership Oversight

Describe how the partners who developed the asthma plan will continue to work together to implement and monitor the intervention activities and modify the asthma plan over time.

4. Surveillance and Evaluation

Describe the surveillance system currently in place within the health agency and its ability to support the evaluation of asthma intervention activities and a continued planning process. All asthma indicators assessed over time should be noted including, but not limited to, prevalence, mortality, hospitalization, emergency care and measures of disease management status (refer as needed to the surveillance reports that were included under Section 1. Description of the Problem). Ability to provide measurement of progress in meeting all plan objectives should be addressed. Intentions to use Behavioral Risk Factor Surveillance System (BRFSS) asthma module(s) and the frequency of use should be included; also, plans for further development of the asthma surveillance activity should be presented in detail. Surveillance of work-related/occupational asthma is encouraged and must be discussed. This section might include the applicant's definition of work-related/occupational asthma (e.g., Surveillance of Work-Related Asthma in Selected U.S. States Using Surveillance Guidelines for State Health Departments—California, Massachusetts, Michigan and New Jersey, 1993–1995—MMWR June 25, 1999/48(SS03); 1–20). Discussion might include which existing databases will be used to collect and analyze work-related/occupational asthma.

5. Implementation of the Asthma Plan

a. Identify the specific objectives of the asthma plan that are to be focused upon and the specific intervention strategies from the plan to be implemented that will use the resources provided through this announcement. Interventions that change systems and individuals to provide improved disease management or education are preferred. Provide specific, realistic, measurable and time-phased process objectives for each of the strategies and interventions to be implemented that reflect the five-year period of this announcement. Describe how both process and outcome objectives for all activities will be evaluated and documented.

b. Demonstrate the scientific basis for proposed interventions. If proposed interventions include case management programs, assure that patients enrolled are those with moderate to severe persistent asthma and are receiving care consistent with the NAEPP Guidelines for the Diagnosis and Management of Asthma. Explain how it was decided by members of the statewide partnership group that these particular objectives and strategies will be addressed.

c. Describe which objectives and strategies from the plan are currently being addressed utilizing other resources.

d. Demonstrate that the plan addresses asthma in persons of all ages, race/ethnic groups and gender, and includes key environments in which persons with asthma spend significant time (e.g., home, school, workplace). Include a discussion on work-related/occupational asthma in the plan. This discussion might include the guidelines that the applicant will use for work-related/occupational asthma (e.g., Minimum and Comprehensive State-Based Activities in Occupational Safety and Health, June 1995—DHHS (NIOSH) Publication No. 95–107).

e. Explain how the resources from this solicitation will be utilized to leverage additional resources for implementation of other components of the plan. Explain how interventions will be institutionalized and sustained without funding under this announcement.

6. Management and Staffing for Intervention Activities

a. Describe existing asthma program staff within the health department and their management structure, the current function of the asthma staff and their role in this project plan. Provide an organizational chart for the health agency that identifies the unit(s) that will participate in the proposed activities. If plan implementation will be coordinated from an office other than within the health department, describe that office and its staff, the oversight of that office and its staff, an organizational chart and the ties of that office to the health agency.

b. Describe asthma surveillance staff and their role within the project activities. Describe all staff who will be responsible for oversight of program evaluation.

c. If intervention activities will be implemented through contracts, define the process by which these contracts will be awarded and monitored.

d. Describe staff available or to be hired for those aspects of the plan to be implemented with these resources. For each position, describe the primary roles and responsibilities over the five-year grant period.

e. Include the specific staff activities that will contribute to meeting each objective that is to be addressed. Discuss the role of the statewide partnership group in oversight of intervention activities.

f. Document assurance of ability of key project staff to travel to Atlanta to participate in the CDC National Asthma Conference and/or grantee meetings and willingness to share innovations, information, data and materials.

g. Document assurance of ability to access and utilize funds, if awarded, for the purposes of this announcement.

7. Budget

This section must include a detailed first-year budget and narrative justification and future annual projections. The applicant should describe the program purpose for each budget item. For contracts contained within the application budget, applicants should name the contractor, if known; describe the services to be performed; justify the use of a third party; and provide a breakdown or a justification for the estimated costs of the contracts, the kinds of organizations or parties to be selected, the period of performance and the method of selection. The budget should include travel for key project staff to meet once per year with CDC staff and other grantees. This section should also include a listing of other funds, outside the cooperative agreement, that will be used to support this intervention.

F. Submission and Deadline

Letter of Intent (LOI)

On or before May 24, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*

Application forms must be submitted in the following order:
Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00 pm Eastern Time June 24, 2002, submit the application to:

Technical Information Management-PA02085, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5:00 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be destroyed. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Description of the Problem (5 points)

The extent to which the agency's commitment to addressing asthma is demonstrated by accomplishments to date in understanding the problem. The extent to which the agency has been able to identify populations at increased risk and effectively disseminate and use that information in the planning process.

2. Asthma Plan (20 points)

The extent to which a wide variety of appropriate partners were engaged to develop the asthma plan; the commitment by the Agency to the implementation of this plan as demonstrated by the inclusion of a letter of support from the Agency's Health or Medical Director; the extent to which the intervention plan is supported in the community by the inclusion of letters of support from key members of the community; and the extent to which the asthma plan is comprehensive and includes the items listed in the application section for this announcement.

3. Partnership Oversight (10 points)

The extent to which appropriate partners will be a part of the implementation and oversight of the asthma plan.

4. Surveillance and Evaluation (20 points)

The current state of the asthma surveillance system; the quality and scope of surveillance reports provided; the ability to provide a measurement of progress in meeting all plan objectives; the plan for appropriate continued development of the asthma surveillance activity; and the ability to support evaluation of implementation activities.

5. Implementation of the Asthma Plan (30 points)

Clear link between the asthma plan and the proposed implementation; the appropriateness and scientific support for the proposed implementation; the involvement of statewide partners in implementation of the plan and its monitoring over time; the use of these resources to leverage additional resources for plan implementation; the plans to institutionalize specific

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interventions; specific objectives that are realistic, measurable and time phased; and clear definition of both process and outcome measures for the evaluation of implementation activities.

6. Management and Staffing for Intervention Activities (15 points)

The current functioning of asthma staff (program and surveillance) within the health agency; the description of staff to be hired or contracts to be developed; the link of staff to program objectives; and the continued role of the statewide partnership group.

7. Budget (Not scored)

The extent to which the budget is reasonable, adequately justified and consistent with the intended use of the cooperative agreement funds.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semi-annual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.) The progress reports shall include the following items:

a. A brief project description.

b. A comparison of actual accomplishments to the goals and objectives established for the period.

c. In the case that established goals and objectives may not be accomplished or are delayed; documentation of both the reason for the deviation and the anticipated corrective action or a request for deletion of the activity for the project.

d. A financial summary of obligated dollars to date as a percentage of total available dollars.

e. Other pertinent information (i.e. curriculum vitae for new key personnel).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment III of the application kit.

AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301 and 317 of the Public Health Service Act, [42 U.S.C. section 241 and 247b], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance, contact:

Sonia V. Rowell, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, Program Announcement 02085, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.
Telephone number: (770) 488–2724.
Email address: SRowell@cdc.gov.

For program technical assistance, contact:

Daniel J. Burrows, M.S., Public Health Advisor, Air Pollution and Respiratory Health Branch, National Center for Environmental Health, Centers for Disease Control and Prevention, Mailstop E–17, 1600 Clifton Rd., NE, Atlanta, GA 30333.
Telephone number: (404) 498–1004.
Email address: DBurrows@cdc.gov.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11564 Filed 5–8–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02167]

"Phase I Study To Assess The Safety, Tolerability, Immunogenicity, And Shedding Of Attenuated Measles Vaccine Administered As A Single Intranasal Dose To Healthy Adults"; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for "Phase I Study to Assess the Safety, Tolerability, Immunogenicity, and Shedding of Attenuated Measles Vaccine Administered as a Single Intranasal Dose to Healthy Adults." This program addresses the "Healthy People 2010" focus area "Immunization and Infectious Diseases" and "Medical Product Safety".

The purpose of the program is to conduct a double blinded, randomized, placebo controlled, 2-step, single-center study of intranasal administration of attenuated measles vaccine in healthy adults to assess safety and immunogenicity of vaccine, tolerability of vaccination, and shedding of vaccine virus.

Research Objectives

Primary

1. To determine the safety and tolerability of live attenuated measles vaccine administered intranasally (IN) to healthy adults.

2. To compare the serum antibody responses elicited following IN versus subcutaneous (SC) administration of live attenuated measles vaccine, using standard methods (plaque-reduction neutralization titers and ELISAs).

Secondary

1. To measure the incidence of measles vaccine viral shedding following vaccination.

2. To explore the utility of mucosal antibody measurements in evaluating responses to measles immunization.

Background

Measles continues to be a major source of morbidity and mortality in developing countries despite the availability of an effective vaccine. Expanded immunization programs are hampered by the fact that until now there has only been a parenteral vaccine available. Inappropriate vaccination procedures can lead to injection site infections, nerve damage or transmission of blood-borne pathogens.

Mucosal immunization has proven to be an effective and non-invasive manner by which to induce a local and systemic immune response. Measles immunization via aerosol has been studied extensively and has been found to be safe and effective. Previous studies of IN measles vaccination have yielded variable results attributable to varied doses and methods of administration plus interference by concomitant upper respiratory infections, making it difficult to determine if this is an effective vaccination route. No serious adverse events have been reported. Currently, the only Food and Drug

Administration (FDA) approved method for giving Measles-Mumps-Rubella (MMR) vaccination is by subcutaneous injection.

Research Plan

This is a request for proposals to conduct a phase 1, double blinded, randomly assigned, study comparing the safety, tolerability and immunogenicity of IN vs. SC administration of measles vaccine. The study must be done under an Investigational New Drug application from the FDA, as the goal is to eventually obtain FDA approval for IN vaccination with MMR vaccine. In order to maximize participant safety this request is for proposals to study only measles vaccination, and to begin with immune and semi-immune adults. The first step should include healthy measles-immune adults, the second, partially immune adults. Immune adults are those having a plaque-reduction neutralization titer of 1:120 or higher; partially immune adults are those with detectable titers that fall under 1:120. An Independent Safety Monitor (ISM) should review safety data from step 1 and determine that it is safe to continue before additional work begins with step 2. Before actually doing so, however, the grantee and researchers from the CDC should discuss the report of the ISM and the data, and agree whether or not to proceed with step 2.

Measurable outcomes of the program will be in alignment with the "Government Performance Results Act" (GPRA) performance goals for the National Immunization Program (NIP):

1. Reduce the number of indigenous cases of vaccine-preventable diseases.

2. Ensure that 2 year-olds are appropriately vaccinated.

3. Work with global partners to reduce the cumulative global measles related mortality rate.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, women-owned businesses.

Note: Title 2 of the United States Code Section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $192,000 is available in FY 2002 to fund one (1) award. It is expected that the award will be begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change. Continuation awards within an approved project period will be made on the basis of satisfactory progress, as evidenced by required reports, and the availability of funds.

Use of Funds

Funds cannot be used for construction or renovation, to purchase or lease vehicles or vans, to purchase a facility to house project staff or carry out project activities, or to supplant existing support.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities). The intention is for the Recipient and the CDC to work jointly and in collaboration in developing, executing and reporting on this project.

1. Recipient Activities

The following section describes the expected activities of the recipient:

a. Develop the study protocol, determining the approaches to take in addressing the specific aims in the program announcement.

b. Plan the analytic approach to be taken to understand and interpret the principal findings from the study.

c. Obtain IRB approval for the protocol.

d. Develop, submit and obtain an Investigational New Drug Application from the FDA for intranasal administration of measles vaccine.

e. With assistance from and in collaboration with CDC staff, develop a plan of studies for phase I/II trials of intranasal rubella and mumps vaccines, as well as further studies of intranasal measles vaccine and phase I/II trials of combined MMR vaccine.

f. Provide research pharmacist and facilities for filling nasal spray device with reconstituted measles vaccine.

g. Hire, manage and train research staff to provide clinical assessments, administer vaccine, collect samples and perform laboratory tests in compliance with Good Clinical Practice.

h. Implement the study protocol, conducting the study according to the protocol and resolving problems in study implementation as they arise.

i. Arrange for an Independent Safety Monitor to review the progress of the study and to determine if it is safe to proceed from step 1 to step 2. Before actually doing so, however, the grantee and researchers from the CDC should discuss the report of the ISM and the data, and agree whether or not to proceed with step 2.

j. Report serious and unexpected adverse events to CDC and FDA in a timely manner.

k. Perform standard measles immunogenicity assays, including ELISAs and plaque-reduction neutralization titers.

l. Perform tests of mucosal immunity.

m. Participate as authors in the preparation of manuscripts describing the results of the research.

n. Prepare reports for regulatory agencies and grantee Institutional Review Board (IRB), as necessary.

o. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of the evaluation.

2. CDC Activities

CDC staff will participate as a partner in the activities of the study, providing technical and laboratory assistance, where needed, as well as scientific collaboration.

a. Provide technical assistance and programmatic information relevant to the project.

b. Assist in the development of a research protocol for IRB review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on an annual basis until the research project is completed.

c. Assist in the performance of the study and participate, with recipient staff members, in the progression from step 1 to step 2 of the research plan (as per "i." of Recipient's Activities).

d. Participate in the development of the plan for future studies (as per "e." of Recipient's Activities).

e. Perform nucleic acid detection (RT–PCR methods) and/or viral cultures to

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detect measles vaccine virus in clinical samples.

f. Participate in the analysis and interpretation of data from the study and in presentation and publication of the findings of the research.

E. Content

The Program Announcement title and number must appear in the applications. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated on the criteria listed, so it is important to address them when describing the program plan. The narrative should be no more than 20 single-spaced pages and be printed on one side, with one-inch margins and a 12-point unreduced font.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Submit the original application and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction Sheet for PHS 398). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5 p.m. Eastern Time July 15, 2002, submit the application to the Technical Information Management Section, PA# 02167, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant or cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Applications will be evaluated against the following criteria by an independent review group appointed by CDC:

1. Understanding the Project Objectives (10 points)

The extent to which the applicant possesses an understanding of the needs and purpose of the project as demonstrated through knowledge and understanding of current research and activities being performed in this area, past studies, existing literature and the clarity and practicality of the proposed project plan.

2. Research Objectives (10 points)

The extent to which the research proposal addresses the research objectives provided in this announcement, provides a clear description of the methods to be used, and demonstrates adherence to accepted research practices as well as Good Clinical Practice. The applicant should also demonstrate that the applicant's research proposal is clear, feasible and practical.

3. Research Methods (30 points)

The adequacy of the proposed research design, approaches and methodology to carry out the research, including quality assurance procedures and plans for data management and statistical analyses:

a. Recruitment procedures, screening tests and eligibility/exclusion criteria.

b. Method for allocation of subjects to IN vs. SC immunization.

c. Method for masking investigators and participants as to vaccination group.

d. Quality assurance procedures, plans for data analysis, statistical analysis methods and study endpoints.

e. Safety assessments and reporting of adverse events.

f. Methods for testing immunogenicity of vaccine, both in serum and mucosal fluids; these should be consistent with any methods described in the research objectives of this announcement.

g. Criteria for suspending the trial or for moving from step 1 to step 2.

h. A statistical analysis plan appropriate to the primary and secondary objectives.

i. The project time line.

j. Informed consent procedures.

k. Measures of Effectiveness. The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans. (See CDC's Performance plans at website *www.cdc.gov/od/perfplan/2001perfplan.pdf).*

4. Research Population (5 points)

The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

5. Management Plan (20 points)

The soundness and feasibility of the applicant's proposed management plan for accomplishing the work expectations outlined in section D to include identification of applicant's key personnel to be assigned to the study and clear identification of their respective roles in the management and operations of the program.

6. Experience and Capabilities (25 points)

The experience, qualifications, and technical abilities of the applicant and the proposed project staff relevant to:

a. The content areas of immunizations and mucosal immunology.

b. Conducting clinical research and publishing in peer-reviewed journals.

c. Ability to recruit suitable participants.

d. Demonstrable performance of measles serologies using ELISA and plaque-reduction neutralization methods.

e. Transmission of information in a timely, efficient, secure, and accurate manner.

f. Obtaining Investigational New Drug Applications from the FDA.

g. Receiving, storing and shipping biological specimens related to this project.

7. Human Subjects (not scored)

The application should also adequately address the requirements of 45 CFR part 46 for the protection of human subjects. This should include the provision of the FWA number from the Office of Human Research Projection (OHRP).

8. Budget (not scored)

The applicant shall describe their proposed plan for managing the resources necessary to comply with the requirements specified in Section D. This shall include a description of the proposed person hours for each key individual.

9. GPRA Goals (not scored)

The applicant shall describe how their research plan meets the GPRA goals listed in Section A.

H. Other Requirements

Technical Reporting Requirements

The grantee will provide CDC with the original plus two copies of:

1. Quarterly progress reports (the results of the Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the progress report);

2. Adverse event reports (within 24 hours of discovery of adverse event);

3. Financial status report, no more than 90 days after the end of the budget period;

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment 1 of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–21 Small, Minority, and Women-Owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301, 317 and 2102 of the Public Health Service Act, 42 U.S.C. 241, 247 and 30099–2(9), as amended. The Catalog of Federal Domestic Assistance number is 93.185.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

For business management assistance contact: Peaches Brown, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. *Telephone number:* (770) 488–2738. *Email address: PRB0@cdc.gov.*

For program technical assistance, contact: Robert Perry, M.D., M.P.H., Epidemiology and Surveillance Division, National Immunization Program, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, Mailstop E–61, Atlanta, GA 30333. *Telephone number:* (404) 639–8224. *Email address: RMP9@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11558 Filed 5–8–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02098]

Expansion of HIV/AIDS Care Services in Côte d'Ivoire; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the expansion of HIV/AIDS care services in the Republic of Côte d'Ivoire.

The purpose of this cooperative agreement is to strengthen and expand the community response to Human Immunodeficiency Virus (HIV/AIDS) care services in the ten communities of Abidjan, the capital of Côte d'Ivoire, and selected secondary cities throughout the country.

B. Eligible Applicants

Applications may only be submitted by public and private non-profit and for profit-organizations, state and local governments or their bona fide agents, that currently conduct HIV/AIDS work in Côte d'Ivoire.

Applicants must have at least five years experience in HIV/AIDS work in Côte d'Ivoire including: Community mobilization for prevention of HIV/AIDS and promotion of voluntary counseling and testing; successful working relationships with both local and national government offices such as the mayors' office and the Ministries of Health and AIDS; establishment of support groups for people living with AIDS(PLWA); knowledge and understanding of resources available to create referral networks for clinical and psycho-social support for PLWA and families.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund this award. It is expected that the average award will begin on or about September 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Annual funding estimates may change.

Continuation awards within the approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

1. Use of Funds

Funds received from this announcement will not be used for the purchase of antiretroviral drugs for treatment of established HIV infection (with the exception nevirapine in Prevention of Mother to Child Transmission (PMTCT) cases and with prior written approval), occupational exposures, and non-occupational

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exposures and will not be used for the purchase of machines and reagents to conduct the necessary laboratory monitoring for patient care.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities (including program management, operations and delivery of prevention services) for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization (WHO), indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

No funds appropriated under this Act shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Collaborate with the Ministry of AIDS (MOA) and the Ministry of Health (MOH), regional health departments, and mayoral offices to carry out activities.

b. Train healthcare workers to improve quality of care for PLWHA and act as focal points for the development of PLWHA support groups.

c. Identify and train community facilitators to work with health clinics to build support group capacity to provide psycho-social support, teach skills building, and income generating activities.

d. Build capacity of support groups to facilitate community responses that include: Raising awareness of HIV/AIDS, Voluntary Counseling and Testing (VCT) services, behavior change communication for youth, home-based care, nutrition support, resource mobilization, and orphan support.

e. Establish a referral network at community health clinics and other care facilities so that people who are HIV positive can be referred to the nearest community support groups.

f. Establish a referral network at VCT centers so HIV positive people can be referred to community support groups and care and treatment centers.

g. Prepare a workplan and an annual budget for activities.

2. CDC Activities

a. Collaborate with the recipient to design and support the activities listed above.

b. Monitor project performance and budget.

c. Approve the selection of key personnel to be involved in the activities performed under this cooperative agreement.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Applications will be evaluated against the criteria listed below. Therefore, it is important to lay out your program plans accordingly. The narrative should be no more than 25 doublespaced pages, printed on one side, with one-inch margins, and unreduced font. Pages should be numbered and a complete index to the application and any appendices must be included.

The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Application Submission and Deadline

Submit the original and two copies of PHS FORM 5161–1. Forms are available in the application kit and at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo/htm.* On or before June 14, 2002 submit the application to the Technical Information Management Section, Procurement and Grants Office, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline:

Applications shall be considered as meeting the deadline if they are either:

Received on or before the deadline date; or

Sent on or before the deadline date and received in time for submission to the independent review group.

Applications which do not meet the criteria in 1. or 2. above will be considered late and will be returned to the applicant.

G. Evaluation Criteria

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Applications should consist of: Plan, Objectives, Methods, Evaluation, Budget that demonstrate/describe:

1. Understanding of the problem (20 points)

Extent to which the applicant demonstrates a clear and concise understanding of the nature of the problem described in the Purpose section of this announcement. This specifically includes description of the public health importance of the planned activities to be undertaken and realistic presentation of proposed objectives and projects.

2. Technical approach (25 points)

The extent to which the applicant's proposal includes an overall design strategy, including measurable time lines, the extent to which the proposal addresses regular monitoring and evaluation, and the potential effectiveness of the proposed activities in meeting objectives.

3. Ability to carry out the project (20 points)

The extent to which the applicant documents demonstrated capability to achieve the purpose of the project.

4. Personnel (20 points)

The extent to which professional personnel involved in this project are qualified, including evidence of experience in care and support for people living with AIDS, experience mobilizing communities, and experience as facilitators for training concerning

5. Plans for administration and management of projects (15 points)

Adequacy of the proposed plans for administering the projects.

6. Budget (Reviewed But Not Scored)

The extent to which itemized budget for conducting the project, along with justification, is reasonable and consistent with stated objectives and planned program activities.

7. Human Subjects (Reviewed But Not Scored)

The extent to which the application adequately addresses the requirements of 45 CFR 46 for the protection of human subjects.

H. Other Requirements

Provide CDC with the original plus two copies of:

1. Progress reports (semi-annual); a brief, comprehensive narrative progress report should be submitted no later than 90 days after the end of the budget period. The progress report must include the following: (a) A comparison of the actual accomplishments to the objectives established; (b) the reasons for slippage if established objectives were not met; (c) other pertinent information.

2. Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Obtain annual audit of these CDC funds (program-specific audit) by a United states based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects

AR–4 HIV/AIDS Confidentiality Provisions

AR–5 HIV Program Review Panel Requirements

AR–6 Patient Care

AR–14 Accounting Systems Requirement

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 307 of the Public Health Service Act, (42 U.S.C. section 241(a) and 242l), as amended and section 317 of the PHS Act (42 U.S.C. 247b). The Catalog of Federal Domestic Assistance number is 93.947.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov/* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Dorimar Rosado, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 1600 Clifton Road, Mailstop E–15, Atlanta, GA 30333, Telephone number: (770) 488–2782, E-Mail: *dpr7@cdc.gov*

For program technical assistance, contact: Karen Ryder, MPH, CDC/HIV 2010 Abidjan Place, Dulles, VA 20189–2010, Telephone: (225)21–25–41–89, E-Mail address: *kkr1@cdc.gov*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11551 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02161]

Support for Municipal Health Departments in Zimbabwe for Development of Innovative Programmatic Models for Prevention and Care Services for HIV/AIDS; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY 2002) funds for a cooperative agreement with the Municipal Health Departments in Zimbabwe for Development of Innovative Programmatic Models for Prevention and Care Services for HIV/AIDS.

The purpose of this cooperative agreement is to offer support to municipal health departments in Zimbabwe for implementation of innovative programs to address HIV/AIDS. Special areas of interest include projects for which access to more intensive laboratory services, clinical, or evaluation expertise that are available in a city may be needed in order to develop simplified algorithms or program models that could then be implemented more broadly in Zimbabwe. Examples include programs for delivery of highly active antiretroviral therapy (HAART), programs for the Prevention of Mother-To-Child Transmission (PMTCT). Also, developing and delivering training programs designed for the needs and convenience of private medical practitioners, who tend to be concentrated in large cities, is another target of this request for proposals from municipal health services.

B. Eligible Applicants

Municipal health departments are the sole potential applicants for this announcement for several reasons:

1. The purpose of this announcement is to establish actual programmatic, public sector models for innovative approaches to HIV care, prevention, and training within the health care system of Zimbabwe, so that only licensed, public sector providers of health care within Zimbabwe could apply. The only two other public sector-supported providers of health care in Zimbabwe, the Ministry of Health and Child Welfare (MOHCW), and the Mission Hospitals (represented by the Zimbabwe Association of Church Hospitals (ZACH), have been funded through other cooperative agreements with CDC.

2. Among the publicly supported systems of health care, Municipal Health Departments have consistently served as a source of innovation and development of models that can be readily exported to other public sector services, in particular the MOHCW.

3. At the current time, only the Municipal Health services of the major cities could possibly bring together the required expertise from the Faculty of the UZ Medical School in combination with clinical facilities and staff. Harare and Bulawayo Health Departments have long been in the forefront of innovation and training in public health in Africa. These and other city health departments are the only health system operators that are located in the major population centers where a sufficient volume of patients is available to serve as the basis for large-scale training programs.

C. Availability of Funds

Approximately $200,000 is available in FY 2002 to fund one or two awards between $50,000–$200,000 per award. It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as

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evidenced by required reports and the availability of funds.

Use of Funds

The purchase of antiretrovirals, reagents, and laboratory equipment for antiretroviral treatment projects requires pre-approval from the Global AIDS Program (GAP) headquarters.

Applicants may contract with other organizations under these cooperative agreements, however, applicants must perform a substantial portion of the activities including program management and operations and delivery of prevention services for which funds are requested.

The costs that are generally allowable in grants to domestic organizations are likewise allowable to foreign institutions and international organizations, with the following exceptions:

Indirect Costs: With the exception of the American University, Beirut, the Gorgas Memorial Institute, and the World Health Organization (WHO), indirect costs will not be paid (either directly or through a sub-award) to organizations located outside the territorial limits of the United States or to international organizations regardless of their location.

All requests for funds, including the budget contained in the application, shall be stated in U.S. dollars. Once an award is made, the Department of Health and Human Services (DHHS) will not compensate foreign grantees for currency exchange fluctuations through the issuance of supplemental awards.

Federal law requires that no funds appropriated under this cooperative agreement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient(s) will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

Implement innovative program models for prevention or care activities for HIV/AIDS, working in the framework of available national guidelines and with participation of the relevant units of the (MOHCU), in areas for which technological sophistication such as special capability in laboratory services, health informatics, evaluation capacity, specialized clinical expertise, or other services are uniquely available. Examples of such areas include, but are not limited to:

a. Programs to deliver Highly Active Antiretroviral Therapy (HAART) in African setting;

b. Programs for PMTCT of HIV infection; and

c. Pograms for multidisciplinary AIDS care for special groups (e.g., HIV-infected children or all hearing-impaired persons) that involve establishing networks of care and referral among diverse health care and social services providers.

Initiate a broad operational research program in the domain of one or more areas of innovative clinical prevention or care services. In the process of providing such care, fully document the nature and cost-effectiveness of such care and prevention strategies, and disseminate the findings. By conducting all these activities in a collaborative, multidisciplinary context, identify and develop tools to help facilitate development of reports, documents, or other products that will lead toward:

a. A resource center for developing simpler public health approaches and models, but providing expert backup and evaluation for those;

b. A referral center for difficult cases encountered in settings with less resources; and

c. A training center for scaling up the implementation nationally.

Collaborate with other CDC grantees and with CDC to identify high priority activities in the domains of clinical prevention and care services that are susceptible to a resource-intensive collaboration of diverse agencies and institutions such as are only found in larger cities. Work to develop and implement protocols that will help elucidate viable public health models for delivering such interventions in the context of public health services in Zimbabwe. Assist in developing tools for program expansion following any successful pilot activities, in collaboration with MOHCW, CDC, University of Zimbabwe, and other partners.

2. CDC Activities

Collaborate with the Recipient on designing and implementing the activities listed above, including but not limited to the provision of technical assistance to develop and implement program activities, analyses, and capacity building assistance.

When necessary, procure specific services, equipment and supplies, as well as other materials required to support implementation of activities covered under this agreement.

Monitor project and budget performance.

E. Content

Letter of Intent (LOI)

A LOI is required for this program. The narrative should be no more than two (2) double-spaced pages, printed on one side, with one-inch margins, and size 12 font. Your letter of intent will be used to help plan the review process, and should include the following information:

1. Principal Organization
2. Partners, Districts, Regions Involved
3. 500 word (or less) abstract outlining "Central Concepts" to be developed more fully in the complete application
4. 300 word (or less) statement of qualifications and capacity.
5. Estimated amount of funds to be requested.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should consist of, at a minimum, a plan, objectives, methods, evaluation and budget; and be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and 12-point font.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 14, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* On or before July 15, 2002, submit the application to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Deadline: Letters of Intent and final Applications shall be considered as meeting the deadline if they are:

Received on or before the deadline date.

Late: Letters of Intent and Applications which do not meet the above criteria will be returned to the applicant.

G. Evaluation Criteria

Note: Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC. Domains for this evaluation will include:

Understanding the Purpose of the Overall Plan of the Application (15 points)

A cogent, brief summary of critical issues; succinct, coherent understanding of the purpose of the program announcement; and cross-cutting, cost-effective approaches to responding to the announcement.

Objectives (15 points)

A translation of the general purposes of the program announcement into no more than four specific objectives, products, or outputs of the cooperative agreement.

Methods (15 points)

Enunciation of a methodology appropriate for accomplishing the Objectives outlined above.

Evaluation (15 points)

Brief explanation of how internal monitoring and evaluation of this program will contribute to strengthening and institutionalization of this program during the period of the grant.

Capacity (40 points)

Strengthening operational capacity of civil service organizations. (20 points)

Expanding prevention, care and support services provided by civil society organizations. (20 points)

Budget and Cost-effectiveness. (Reviewed but not scored)

Creative and convincing approaches to resource utilization (financial, personnel, computing, etc.) to lead to a major impact of available resources.

Human Subjects. (Reviewed but not scored)

The extent to which the application adequately addresses the requirements listed in the 45 CFR part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

1. Progress reports (annual); a brief, comprehensive narrative progress report should be submitted no later than 30 days after the end of the budget period. The progress report must include the following: (a) A comparison of the actual accomplishments to the objectives established; (b) the reasons for slippage if established objectives were not met; and (c) other pertinent information.

2. Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

3. Financial status report, no more than 90 days after the end of the budget period.

4. Final financial report and performance report, no more than 90 days after the end of the project period.

Obtain annual audit of these CDC funds (program-specific audit) by a U.S.-based audit firm with international branches and current licensure/authority in country, and in accordance with International Accounting Standards or equivalent standard(s) approved in writing by CDC.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 307 of the Public Health Service Act, (42 U.S.C. section 242l), as amended. The Catalog of Federal Domestic Assistance number is 93.118.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Dorimar Rosado, Grants Management Specialist, International & Territories Acquisition & Assistance Branch Procurement & Grants Office, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: (770) 488–2782, E-mail: *dpr7@cdc.gov*

For program technical assistance, contact: Michael St. Louis, M.D., Global AIDS Program (GAP), Zimbabwe Country Team, National Center for HIV, STD, and TB Prevention, Centers for Disease Control and Prevention (CDC), Zim-CDC AIDS Project Team, 38 Samora Machel Avenue, 2nd Floor, Harare, Zimbabwe, Telephone: 263 4 796040 796048, Fax: 263 4 796032, E-mail: *stlouism@zimcdc.co.zw*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11560 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02137]

Technology Translation and Transfer of Effective HIV Prevention Behavioral Interventions; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for the technology translation and transfer of effective HIV prevention behavioral interventions. This program addresses the "Healthy People 2010" focus area HIV. The purpose of the program is to:

1. Support translation of the protocols of effective HIV prevention interventions, whose original research was conducted with methodological rigor and which have not been packaged or widely adopted, into a package of materials that prevention providers can use to implement the interventions in their non-research field situations.

2. Support development of curricula for training provider agency staff who will implement the intervention and technical assistance guidance manuals for providing technical assistance to future adopters of the intervention.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit and for-

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profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit and for-profit organizations, faith-based organizations, State and local governments or their bona fide agents, federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations, and small, minority, women-owned businesses.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $470,000 is available in FY 2002 to fund approximately two awards. It is expected that the average award will be $215,000, ranging from $200,000 to $235,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to two years. Funding estimates may change. An application requesting greater than $235,000 (including indirect costs) will not be considered for review and will be returned to the applicant.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds. Continued funding for year two will be dependent on the completion of required activities for year one.

Use of Funds

Collection of new or supplemental intervention research data, data entry and analysis other than for process evaluation of this project, purchase of furniture or computers, and rental of facilities will not be funded under this program.

Funding Priority

CDC's intention is to support the packaging of interventions for target populations not currently represented in the Replicating Effective Programs collection of packages. This announcement is only for proposals that submit an HIV prevention intervention with demonstrated effectiveness in changing HIV/STD-related risk behavior or health outcomes. Consideration will be given to obtaining diversity of target populations among the proposals selected for funding. The following populations are of particular interest: (1) Incarcerated persons, (2) non-injection substance users, (3) HIV-infected persons, and (4) persons living in rural areas whose behaviors put them at risk for HIV infection.

Interested persons are invited to comment on the proposed funding priority. All comments received within 30 days after publication in the **Federal Register** will be considered before the final funding priority is established. If the funding priority changes because of comments received, a revised announcement will be published in the **Federal Register**, and revised applications will be accepted before the final selections are made. Address comments to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

The program requirements for the first year of activity include:

a. Develop the intervention package, including a promotional or marketing videotape for program administrators, and preliminary versions of the training curricula in collaboration with HIV prevention providers and consumers.

b. Produce a limited number of intervention packages.

c. Identify at least two HIV prevention agencies, that are not collaborating on package development, for case study of the technology transfer process.

d. Develop a process evaluation plan.

Program requirements for the second year of activity include:

a. Initiate the prevention agency case study using the intervention package, training, quality assurance, and technical assistance.

b. Complete the case study by achieving technology transfer with at least one of the selected agencies.

c. Initiate and complete the process evaluation.

d. Revise intervention and training materials based upon the case study results.

e. Develop technical assistance guidance manuals based on transfer experience.

f. Publish and distribute results.

2. CDC Activities

a. Host a meeting with the successful applicants within 60 days of the notice of award to discuss implementation of the project.

b. Provide technical assistance in the general operation of this HIV prevention project.

c. Consult on the choice of prevention agencies for the case studies with the intervention package.

d. Monitor and evaluate scientific and operational accomplishments of this project through frequent telephone contact and review of technical reports, package iterations, and interim data analyses.

e. Conduct site visits to assess program progress and mutually solve problems, as needed.

E. Application Content

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 20 double-spaced pages, printed on one side, with one-inch margins, and unreduced font.

Provide a one-page abstract of the proposal and a complete table of contents to the application and its appendices. Beginning with the first page of text, number all pages clearly and sequentially, including each page in the appendices. Replace double-sided article reprints with a one-sided copy.

Include a general introduction, followed by one narrative subsection for each of the numbered content elements per application, in the order in which the elements appear below. Label each narrative subsection with the element title and include all of the information needed to evaluate that element of the application (except for curriculum vitae, references, and letters of support, which are appropriate for the appendices). The application content elements are:

1. Effective behavioral intervention

a. Identify the principal investigator (PI); name and location of the institution(s) that originally developed, conducted, and evaluated the proposed intervention; and population(s) for whom the intervention was designed. Indicate whether the research was part of a multi-site project.

b. If the research was part of a multi-site project, provide letters of support from original developers of the intervention other than the applicant (e.g., PIs at other sites), indicating their intent to collaborate on a portion of the intervention materials that will discuss generalization of the intervention to other target populations or settings.

c. Where the applicant is not an original developer of the intervention, provide written permission from the intervention's original developers to develop and market materials for the intervention package.

d. Describe the research's positive results on behavioral or health outcomes, including how these results are both statistically and practically significant; and, if the intervention is community-level, how long the intervention was in operation before positive effects were detected.

e. Include in the appendix a copy of any reports that have been submitted to the institution funding the research, have been submitted for publication, or have been published in peer reviewed journals, describing the study design and positive behavioral or health outcomes of the intervention. This portion of the appendix should be labeled as "Intervention Study Design and Results."

f. Substantiate the need for an intervention package in terms of target population's risk and potential for generalizability to other populations at risk for HIV infection.

g. Describe the feasibility of implementation by HIV prevention agencies, particularly those with limited resources.

2. Intervention package

a. Describe the contents of the intervention package that will be developed. Include descriptions of:

1. The overall concept, format, and objectives to be in text and in a short promotional or marketing videotape for program administrators, e.g., appropriateness for intended implementing agencies, description of the intervention and the science behind it, target populations for whom the intervention would be appropriate;

2. Pre-implementation phase, e.g., intervention's core elements related to this phase, time line of necessary preparation steps, list of collaborators, training materials, material resources, facilities, staff (numbers, time commitment, and skills), and cost categories for conducting the intervention;

3. Implementation phase, e.g., intervention's core elements related to this phase, protocols and examples for implementing the intervention and ensuring quality and consistency, identification of barriers to implementation and advice on how they may be overcome, and methods for process evaluation; and

4. Maintenance phase, e.g., intervention's core elements related to this phase, how to deal with issues of staff turnover and retraining.

b. Explain how staff from HIV prevention programs (e.g., health departments and community-based organizations) and/or other prevention providers and consumers in the applicant's geographic area will collaborate in the development of the intervention package. Describe the planned procedures for how these collaborators will be identified.

c. Present a time line for developing and reviewing the intervention package and its components.

3. Plan to identify prevention agencies for case study of implementing the packaged intervention in year two.

a. Discuss a plan to identify and recruit potential implementers within your state (i.e., where training, assistance, and evaluation will be feasible within budget constraints) and indicate any agencies which already have shown interest in or may be interested in implementing the proposed intervention.

b. Elaborate on the criteria and mechanism for selecting agencies that will participate in case studies of implementing the packaged intervention.

Note: Any agency that participated in the intervention's original research is excluded from consideration as a potential implementer, as is any agency that currently or previously implemented the intervention.

4. Strategy to assist implementation

a. Describe the strategy to facilitate implementation of the packaged intervention, including development of training curricula, provision of training, and provision of direct technical assistance from the applicant to the selected implementers and plans for assisting selected users find additional funds, if relevant.

b. Discuss procedures to assist selected agencies to implement the packaged intervention, drawing upon the agencies' existing staff and resources, and to identify barriers to implementation and how to overcome them.

5. Plan to evaluate the implementation process

a. Describe methods and measures to be used in assessing (1) fidelity to the intervention's core elements during the implementation phases as specified in the intervention package; (2) quality of intervention delivery according to the methods describe in the package; (3) quality of the applicant's technical assistance and its delivery; (4) impact of barriers to implementation on the case study (e.g., accuracy of record keeping, agency's staff recruitment and training, client recruitment); (5) effectiveness of solutions to barriers; (6) costs of intervention delivery and cost containment strategies; and (7) maintenance of collaborative relationships. No behavioral or health outcomes are to be evaluated.

b. Describe plan to use the process evaluation results in finalizing the intervention package and the training curricula for agency staff and for the preparation of guidance manuals for future technical assistance providers.

Note: The purpose of the program includes achieving technology transfer with at least one HIV prevention agency and studying the process. Selection of two or more implementing agencies may increase the likelihood of achieving technology transfer (i.e., entering implementation phase and conducting all intervention components) with at least one agency.

6. Capacity, and the degree to which the applicant has met the CDC policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

a. Demonstrate capacity to conduct the activities required for this project.

b. Clearly describe the proposed staffing, e.g., show percentages of each staff member's commitment to this and other projects, the division of duties and responsibilities for this project, brief position descriptions for existing and proposed personnel, and any partnerships with HIV prevention agencies.

c. Demonstrate that the applicant's staff have the expertise to complete this project, including ability to produce the intervention package, e.g., include examples of previously developed fact sheets, CD–Roms, web sites, or samples from other intervention packages.

d. Name the staff members who are key to the completion of the project. Provide a brief description of their strengths that relate to this project. Include their curriculum vitae in the appendix.

e. Describe access to graphics expertise for the editing and production of the intervention package in print and/or electronic formats.

f. Briefly describe compliance regarding the inclusion of women, ethnic, and racial groups in the proposed activities or justification when representation is limited or absent.

7. Budget: Provide a detailed, line-item budget for the project; justify each line-item. Plan for two trips to Atlanta each year to meet with CDC representatives.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm*, or in the application kit. On or before July 15, 2002, submit the application to: Technical Information Management Section, PA #02137, Procurement and Grants Office, Centers for Disease Control and Prevention

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(CDC), 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with your application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Effective Behavioral Intervention (20 percent) Clear demonstration of the effectiveness of the proposed intervention in a report that has been submitted to the institution funding the research, has been submitted for publication, or has been published in a peer-reviewed journal. This is an absolute criterion. To be considered effective, the intervention must have been tested using a control or comparison group with participants assigned randomly or without bias to study conditions, have measured pre-intervention and post-intervention outcomes, have completed the data collection and analyses, and have findings that show significant positive results for changing HIV/STD-related risk behavior or health outcomes. If this evidence is present, also consider:

a. The original research for this intervention was conducted and completed with a population at demonstrable risk for acquiring or transmitting HIV, preferably incarcerated persons, non-injection substance users, HIV-infected persons, or persons living in rural areas whose behaviors put them at risk for HIV infection.

b. The feasibility of implementing the proposed intervention by agencies with limited resources.

c. Letters of permission from the intervention's developer(s) to develop and market materials for the proposed intervention package and, if the intervention was from a multi-site project, letters of participation from the same developers.

2. Intervention Package (15 percent) Level of detail in the outline of the proposed package, e.g., for overview, pre-implementation, implementation, and maintenance phases. Clarity of described formats, concepts, intended implementers, and objectives. Justification of the appropriateness of the package's objectives, format and concepts to the intended implementing agencies' needs and capabilities. Adequacy of planned identification of and input from collaborating HIV prevention programs and/or other prevention providers and consumers. Adequacy of planned materials' review, pretesting, and revision. Adequacy of time scheduled for completing the proposed steps of the package's development and contents.

3. Plan to Identify Prevention Agencies to Implement the Packaged Intervention (10 percent) Recognition of which agencies are not eligible to participate in the implementation case study. Quality of plan to identify eligible potential agencies with target populations for whom the intervention is appropriate and to interest them in implementing the package during year two of the project. Selection of active methods to identify and solicit potential implementing agencies. Adequacy of criteria and mechanism for selecting at least two implementing agencies likely to achieve technology transfer.

4. Strategy to Assist Implementation (15 percent) Clarity of the strategy to assist selected agencies in adopting and implementing the proposed intervention, e.g., outline of training curricula and training plan. Understanding of barriers to implementation and how to overcome them. Plan to assist selected users in implementing the entire intervention using their existing resources and staff, e.g., provision of proactive and on-call technical assistance. Plan to help selected agencies find additional funds for implementing the package in year two, if relevant.

5. Plan to Evaluate Implementation Process (15 percent) Feasibility and appropriateness of the applicant's plan to evaluate the selected agencies' implementation of the intervention as specified in the intervention package. Thorough and realistic selection of process measures to evaluate. Adequacy of plans for revising intervention package and training materials based upon the case study results. Adequacy of plans for developing a technical assistance manual based on the agencies' and applicant's implementation and transfer experiences.

6. Demonstrated Capacity, and the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research (25 percent)

a. Overall ability of the applicant to perform the proposed activities as reflected in their staff's and consultants' qualifications and availability. The extent to which the applicant demonstrates that proposed staff have experience with developing materials in various formats, training, and process evaluation and have demonstrated familiarity with HIV behavioral interventions, particularly the intervention to be packaged. The nature of any partnership between researchers and HIV prevention programs. Adequacy of existing support staff, equipment, and facilities.

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research.

This includes:

1.The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

7. Budget (not scored)

Extent to which the budget is reasonable, itemized, clearly justified, and consistent with the intended use of the funds. Extent to which the budget includes itemizations, justifications, scope, and deliverables for consultants or contractors.

8. The application must adequately address the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Provide measures of effectiveness to evaluate the accomplishment of the various identified objectives of the cooperative agreement. These measures must be objective and quantitative and must measure the intended outcome. The submission of these measures shall be a data element to be submitted with, or incorporated into the annual progress reports.

Technical Reporting Requirements

Provide CDC with original plus two copies of 1. Progress reports (annual); A brief, comprehensive narrative progress report should be submitted no later than 90 days after the end of the budget period. The progress report must include the following: (1) A comparison of the actual accomplishments to the objectives established; (2) the reasons for slippage if established objectives were not met; and (3) other pertinent information.

2. Financial status report, no more than 90 days after the end of the project period.

3. Final financial report and performance report, no more than 90 days after the end of the project period.

A fiscal Recipient Capability Assessment may be required with the potential awardee, prior or post award, in order to review their business management and fiscal capabilities regarding the handling of U.S. Federal funds.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

At the completion of two years of funding, recipients will be expected to share printed, and possibly, electronic copies of the revised intervention packages with representatives of the agencies that implemented the intervention for the program's case studies, with CDC project officers, and with the intervention's developers, if different from the applicant.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I in the application kit.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 and 317(k) of the Public Health Service Act, (42 U.S.C. 24 and 247b(k), as amended]. The Catalog of Federal Domestic Assistance number is 93.941.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Lynn Mercer, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. *Telephone number:* 770–488–2810. *Email address: lzm2@cdc.gov.*

For program technical assistance, contact: Craig Studer, Division of HIV/AIDS Prevention, National Center for HIV/STD/TB Prevention, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE, Mailstop E–37, Atlanta, GA 30333. *Telephone number:* 404–639–5389. *E-mail address: ccs1@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11565 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 2072]

Multi-Level Parent Training Effectiveness Trial; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement or grant program for a Multi-level Parent Training Effectiveness Trial to test the implementation of a culturally sensitive and responsive parenting program to prevent child maltreatment, specifically child physical abuse and neglect. This program addresses the "Healthy People 2010" focus area of injury and violence prevention.

The purpose of this program is to examine the effectiveness of a multi-level parent training program for families with children ages six and younger. The research trial will test the effectiveness of a multi-level intervention program that promotes positive parenting strategies in order to prevent child maltreatment. As an effectiveness trial, the program is required to examine the broad implementation of interventions with demonstrated efficacy rather than to test the efficacy of new interventions. The program must examine effects both with the individuals directly involved in the interventions, and the larger community in which the intervention program is implemented.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Reduce the risk of child maltreatment.

Methodology

This cooperative agreement seeks methodologically rigorous proposals rigorous designs and direct measures of outcomes with extended follow up. Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned to the intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Minimally, applicants are required to justify their use of the research design chosen, and should discuss the merits of the design with respect to attributing changes in behavior to the interventions.

Minimally, applicants are required to conduct measurement pre and post-intervention, and one year after the intervention for intervention and control/comparison group. Repeated measurement should be considered. Measures may require sampling both the individuals directly involved in the intervention, and a larger community sample in order to examine community-wide effects of the intervention program. For example, assessing a community-wide media campaign would require community sampling to measures exposure and impact.

Applicants must include measures of both the positive parenting strategies the interventions seek to change and measures of child maltreatment. Direct measures of parenting strategies (*i.e.*, behavioral observations) utilizing methods such as time sampling or interval recording are required, as are child maltreatment incident reports to measure program effects on child maltreatment. Standardized, validated

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indirect measures of parenting and child outcomes are also required (*e.g.*, ECBI, CBCL, PPI, PSI), along with proxy measures for child maltreatment (*e.g.*, CAPI). Finally, measures of social validity (Wolf, 1978) should be used to assess participant reaction to the goals, process, and outcomes of the interventions. Additional measures may of course be included at the applicant's discretion.

Applicants are required to clearly state plans to ensure intervention fidelity. Specifically, applicants must describe plans for ensuring that the curriculum is implemented as it has been designed. Applicants should also describe plans to assess whether staff have been successfully trained (*i.e.*, Can staff demonstrate intervention delivery?) and whether parents have been successfully trained (*i.e.*, Can parents demonstrate the parenting skills taught?). Intervention programs that have certification for those trained to deliver the intervention are preferred.

B. Eligible Applicants

Maximum Competition

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1.5 million is available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002, and will be made for a 12 month budget period within a project period of up to five years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design and conduct research to address the described goals of this cooperative agreement. This may include formative research or pilot work.

(b) Collaborate with CDC in the development of the human subjects protocol for the CDC Institutional Review Board (IRB), implementation and evaluation of project delivery.

(c) Collaborate with CDC to write and disseminate reports of research activities to regional, state, and local partners.

(d) Obtain approval of the study protocol by the recipient's local IRB.

(e) Collaborate with CDC to analyze data, perform cost analyses, and publish findings in peer-reviewed journals.

2. CDC Activities

(a) Provide scientific and technical assistance for the design and implementation of this research.

(b) Collaborate with the grantee in the development of a research protocol for IRB review by all collaborating institutions. The CDC's IRB will review the protocol initially and on an annual basis until the project is complete.

(c) Collaborate with the grantee in ensuring human subjects assurances are in place as needed.

(d) Participate in the analysis and dissemination of study findings.

(e) Monitor and evaluate the scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

(f) Provide cost analyses of the design and implementation of this research.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The Program Announcement title and number must appear in the LOI. The narrative should be no more than two double spaced pages, printed on one side, with one inch margins, and unreduced font. The letter should identify the name of the principal investigator and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 40 double spaced pages, printed on one side, with one inch margins, and unreduced font. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and a detailed Itemized Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS–398 (OMB Number 0925–0001) and adhere to the instructions on the Errata Instruction Sheet for PHS 398. Forms are available at the following Internet address: *http://www.cdc.gov/od/pgo/forminfo.htm*. Application forms must be submitted in the following order:

Cover Letter, Table of Contents,
Application, Budget Information Form, Budget Justification, Checklist, Assurances, Certifications, Disclosure Form, Human Subjects Certification, Indirect Cost Rate Agreement, Narrative

On or before 5 pm Eastern Time June 24, 2002, submit the application to the Technical Information Management Section: 2920 Brandywine Road, Suite, 3000, Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are received before 5 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to the following (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness (*i.e.*, rigorous designs and direct measures of outcomes with extended follow-up). Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned tot he intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Measures of Effectiveness must relate to the National Center for Injury Prevention and Control performance goal of reducing the risk of child maltreatment.

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competitive supplemental grant awards may be made if end of fiscal year funds are available, to support research work or activities not previously approved by the IRGRC. Competitive supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

(a) *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

(b) *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

(c) *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

(d) *Investigator.* Is the principal investigator appropriately trained and well-suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

(e) *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

(f) *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

(g) *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

(h) *Dissemination.* What plans have been articulated for disseminating findings?

(i) *Measures of Effectiveness.* The Peer Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (*See* attachment 4). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal ex officio members will be encouraged to participate in deliberations when

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applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

(a) The results of the primary review including the application's priority score as the primary factor in the selection process.

(b) The relevance and balance of proposed research relative to the NCIPC programs and priorities.

(c) The significance of the proposed activities in relation to the priorities delineated in the National Research Agenda.

(d) Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

(a) The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

(b) The objectives for the new budget period are realistic, specific, and measurable.

(c) The methods described will clearly lead to achievement of these objectives.

(d) The evaluation plan will allow management to monitor whether the methods are effective.

(e) The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Technical Reporting Requirements Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the identified objectives of the cooperative agreement. Measures must be objective/quantitative, and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and sholl be an element of evaluation.

Provide CDC with original plus two copies of

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–16 Security Clearance Requirement
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support
AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301, 317, and 391–394 of the Public Health Service Act, [42 U.S.C. sections 241, 247b, and 280b–280b–3], as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Angie N. Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number (770) 488–2719.

e-mail address: *aen4@cdc.gov*.

For program technical assistance, contact:

Daniel Whitaker, Behavioral Scientist, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE., (K–60), Atlanta, GA 30341–3724. Telephone number: (770) 488–4267. e-mail address: *dwhitaker@cdc.gov*.

Dated: May 3, 2002.

Sandra R. Manning,

CGFM, Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11559 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02151]

A Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year FY 2002 funds for a cooperative agreement for a Research Study to Assess Multifaceted Fall Prevention Intervention Strategies Among Community-Dwelling Older Adults. This Program Announcement addresses the "Healthy People 2010" focus area, Injury and Violence Prevention. A copy of "Healthy People 2010" is available at the following Internet site: *http://www.health.gov/healthypeople*.

The purpose of this funding is to develop and implement scientifically-based multifaceted fall prevention strategies and evaluate their effectiveness in community settings. This program is intended to stimulate collaborative research by creating a community planning infrastructure in which State Health Departments, aging services and researchers partner with, for example, community groups, aging centers, health care providers, clinicians, and social service agencies to develop, implement, and evaluate comprehensive community-based fall prevention strategies. This announcement seeks to support cross-disciplinary, multi-level research that will enhance the capacity of communities to deliver comprehensive multifactorial interventions. To accomplish this, applicants will need to develop model service delivery infrastructures that include partnerships between public health agencies and networks that serve the aging community to implement the study.

In addition to developing and evaluating scientifically-based comprehensive fall-prevention strategies, it would be useful to understand the barriers to conducting research that involves collaborative efforts across agencies and among multiple partners, as well as the barriers to implementing community-based fall prevention interventions.

Measurable outcomes of this research study will be in alignment with the following performance goals for the National Center for Injury Prevention and Control (NCIPC), described as a priority area in the NCIPC Research Agenda: to develop, evaluate, and study the dissemination of community-based interventions to prevent falls among older community-dwelling adults.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, technical schools, research institutions, hospitals, managed care organizations and other public and private nonprofit organizations, community-based organizations, faith-based organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations.

Other required eligibility criteria include the following:

1. The recipient must provide evidence of effective and well defined collaborative relationships within the performing organization and with community partners that will ensure implementation of the proposed activities. The collaboration must include at least a State Health Department, an academic institution and an aging services agency. The applicant must include documentation, such as letters of support, that describes the specific commitments and responsibilities that will be undertaken by the collaborating organizations.

2. The recipient must provide evidence of prior experience in designing, conducting, and analyzing multifaceted fall prevention studies among older adults and evidence of prior experience with randomized controlled trials. In addition, the recipient must provide evidence of access to a population of non-institutionalized seniors and experience with accessing and linking appropriate community level data with clinical, medical, pharmacy and falls data. The applicant must include documentation such as publications from peer reviewed journals.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code of 1986 that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant, or loan.

C. Availability of Funds

Approximately $750,000 will be available in FY 2002 to fund one award. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12 month budget period within a project period of up to three years, in two phases. Funding estimates may change.

Phase I, conducted during the first year, will be dedicated to identifying and building community infrastructures, to assessing community readiness and developing partnerships, building capacity, identifying, accessing and linking data, and designing appropriate interventions to be implemented during Phase II. At the end of Phase I, noncompetitive continuation funding will be available for Phase II, contingent upon successful progress in Phase I, approval of an appropriate research design including acceptable fall prevention strategies, and detailed plans and budget for implementing and evaluating the community-wide fall prevention interventions. Phase II, conducted during years two to three, will be dedicated to implementing and evaluating the comprehensive community-based interventions.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

Overall Study Objectives

1. Develop strategies and establish mutually beneficial collaborations among state health departments, academics, and the community using a systems approach. Identify agencies and organizations with the infrastructure to support research-based interventions, the capabilities to develop linked electronic data bases, and a willingness to work together to establish local priorities and plan strategies to reduce falls and fall-related injuries in the community.

2. Design a randomized multifaceted fall prevention intervention study among functionally competent, community-dwelling adults aged 65 years or older. The interventions must include at least two components that address modifiable risk factors that have been shown scientifically in community settings to reduce falls among older persons (e.g., gait and strength training; exercise programs with balance training as one component; review and

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modification of medications, especially psychotropic medications). In addition, interventions should include one or more components that are strongly associated with increased fall risk but have not been well studied in the community setting (e.g., identification and treatment of postural hypotension; vision screening and correction; and improved home lighting.) Community partners must be involved in selecting, developing, and implementing the intervention components.

3. The study would utilize a strong experimental or quasi-experimental research design (e.g., randomization, stratification) to identify the optimal type, duration and intensity of exercise for fall prevention while controlling for potential confounding factors within the study population, such as co-morbidities and functional limitations.

4. Outcome measures based on multi-year follow up should include frequency and severity of falls and fall-related injuries (collected monthly), adherence to and compliance with the various intervention components, medical care utilization, intervention effectiveness among both high and low risk populations, changes in fear of falling and self-efficacy, and the program's cost effectiveness.

5. Activities should be specifically designed to stimulate community ownership and investment in sustaining the program, if effective, beyond the funding period.

In conducting activities to achieve the purposes of this program, the recipient will be responsible for the activities under "Recipient Activities," and CDC will be responsible for the activities listed under "CDC Activities."

Recipient Activities: (Phase I)

1. Develop a plan to determine community readiness and infrastructure to undertake fall prevention activities, how the community will be involved in decision making about the intervention design and components, and the approach that will be used to identify and assess the data and data linkage systems necessary to conduct and evaluate a falls prevention intervention.

2. Implement a plan for obtaining community input and building partner cooperation, assess community readiness, and identify mutually beneficial activities and linkages to a broad range of collaborators in the community. Develop and utilize a community advisory group consisting of a broad range of professionals, clients, older adults, care-givers, and providers to give the project ongoing guidance and direction.

3. Develop collaborative relationships with organizations, agencies and programs that serve older adults. Partnerships must include organizations that provide medical and/or health care services as well as maintain electronic data base records, and have access to community-dwelling older adults, such as geriatricians, injury control researchers, managed care organizations, and hospitals.

4. Identify the best formats and channels for delivering interventions to ensure acceptability and adoption by community-dwelling seniors.

5. Develop a research and evaluation plan for Phase II based on the results and activities from Phase I, including the rationale and specific components of the interventions, identification and recruitment of program and control groups including randomization procedures, intervention implementation methods, strategies for obtaining, managing, and analyzing data, and methods of controlling for co-morbidities and multiple risk factors. Develop tools to maximize recruitment and retention of older adults into the study.

6. Travel to Atlanta annually to present a briefing to NCIPC staff describing progress to date.

Recipient Activities: (Phase II)

1. Conduct a research study to address the objectives in Section A under "Purpose" by implementing and evaluating a randomized controlled study of multifaceted fall prevention interventions among community-dwelling adults aged 65 or older. Research is sought on strategies that combine both previously tested and effective approaches as well as promising components into comprehensive programs designed to reduce falls and fall risks.

2. Identify appropriate personnel for the project. Skills and experience of project personnel must include: (1) Experience implementing and managing theory-driven intervention studies; (2) experience working with older adults; (3) knowledge of falls, fall risk factors and prevention strategies; (4) knowledge of behavioral theory; (5) experience with medical data and data linkage; (6) expertise in analysis of complex data sets; (7) evaluation expertise; (8) experience in working with community-based organizations; and (9) experience in conducting participatory research.

3. Utilize collaborative relationships established during Phase I to accomplish the project goals.

4. Collaborate and obtain approval for the study design and methods from CDC Injury Center staff. Prepare and submit the approved study protocols to the CDC, institutional, and local IRB review board(s). Activities must be conducted in compliance with Protection of Human Subjects (45 CFR 46).

5. Establish procedures to maintain the rights and confidentiality of all study participants, including securing any assurances necessary to conduct research involving human subjects.

6. Conduct data management activities including data collection and data linkage. Data collection may include medical record reviews, telephone and in-person interviews, and process measures. Data management must include security of data, assurance of participant confidentially, data editing, quality control procedures, and data entry.

7. Analyze and disseminate results through reports, presentations, and publications.

8. If effective, broadly disseminate the program through established partnerships with community programs, health providers, and social services that serve older adults.

9. Travel to Atlanta annually to provide briefings to NCIPC staff describing study status and progress to date.

CDC Activities:

A cooperative agreement reflects an assistance relationship between the Federal Government and the recipient in which substantial programmatic involvement is anticipated about the scientific and/or technical management of this research during its performance. With this in mind, CDC will perform the following during Phases I and II:

1. Provide up-to-date scientific information, technical assistance, and guidance in the design and conduct of the research.

2. Provide technical assistance to awardees in developing data collection instruments and a centralized system for data management.

3. Review plans for intervention development and implementation.

4. Assist in developing a research protocol for annual Institutional Review Board (IRB) review by all cooperating institutions participating in the research study. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research study, including analyses, is completed.

5. Assist in ensuring human subjects assurances are in place as needed.

6. Provide technical assistance on intervention design, development and delivery, data collection methods, and data quality assurance.

7. Assist in analysis and dissemination of results including the preparation of manuscripts, as needed.

8. Monitor and evaluate the scientific and operational accomplishments of the project. This will be accomplished through periodic site visits, telephone calls, electronic communication, technical reports and interim data analyses.

9. Convene meetings of recipients for the exchange of information.

E. Content

Letter of Intent (LOI)

A LOI is required for this program. The Program Announcement title and number must appear on the LOI. The narrative should be no more than three single-spaced pages, printed on one side, with one inch margins, and unreduced 12 point Times Roman (or equivalent size) font. Your LOI will be used to prepare for the special emphasis panel (SEP) that will review the scientific merit of the applications, and should include the following information: Program Announcement Number 02151; name and address of institution; name and telephone number of a contact person; specific objectives to be addressed by the proposed project; and a brief description of project plans.

Applications

The Program Announcement title and number must appear in the application. Use the information in the "Program Requirements," "Other Requirements," and "Evaluation Criteria" sections to develop the application content. Your application will be evaluated on the criteria listed so it is important to address each, preferably in order, with sufficient detail. Applicants may submit only one proposal.

The narrative should be no more than 25 (8½" x 11") double-spaced pages, printed on one side, with one inch margins on four sides, unreduced 12 point Times Roman (or equivalent size) font, and a page number at the bottom of each page. The narrative should consist of, at a minimum, Aims and Background, Goals and Objectives, Research Design and Methods, Collaborations, Community Capacity, and Budget.

Applications with more than 25 pages will be returned and not reviewed. Please provide only attachments or appendices that are directly relevant to this request for funding. Include sample forms and data collection instruments. The budget and attachments/appendices, including letters of support, are not included in the count for the 25 page limit. All pages, including appendices, should be numbered sequentially. To document eligibility, the narrative must contain the following sections in the order presented below:

1. Abstract (1 page recommended):

Provide a brief abstract of the project. The abstract must reflect the project's focus and the length of the project period (maximum of (3) years) for which assistance is being requested (see "Availability of Funds" for additional information).

2. Specific Aims and Background (3–5 pages recommended):

List the aims and the specific research questions this application is intended to address. Briefly sketch the background leading to the present study. Provide background information to document the capacity to accomplish this study as demonstrated by relevant past or current research studies in injury prevention.

3. Goals and Objectives (3–5 pages recommended):

Provide information to support the scientific basis for the present proposal, the theoretical or conceptual framework based on a critical evaluation of existing knowledge about fall risk factors and intervention strategies, the hypotheses to be tested, the specific goals of the research study (including measurable objectives for each of these goals), and the project time-line.

4. Research Design and Methods (10–15 pages recommended):

a. Describe the research design and the procedures to be used to accomplish the specific aims of the study.

b. Describe the intervention development process, content and delivery, including specific intervention protocols or plans for the development of intervention protocols.

c. Describe the identification, recruitment, and retention of community-dwelling older adults.

d. Describe how data will be collected. Provide power calculations to justify the sample size(s) and anticipated effect size(s). Describe data quality assurance plans.

e. Describe the measures that will be used to evaluate the impact of the various interventions including functional, behavioral, and biological measures. Outcomes should include the following: (1) Morbidity outcomes (e.g., fall and fall injury rates), (2) functional outcomes (e.g., changes in balance and strength, (3) behavioral changes (e.g., changes in numbers or types of medications, corrections in vision, changes in home lighting), (4) social cognitive outcomes (e.g., changes in fear of falling and self-efficacy), and (5) cost-benefits estimates.

f. Describe the data analysis plan including a justification for the statistical techniques chosen to analyze these data.

g. Provide a detailed time-line for the first year of the study as well as a projected time-line for the subsequent two years.

h. Describe the nature and extent of collaboration with CDC and/or others during various phases of the project.

5. Collaborations (3–5 pages):

Describe the proposed personnel and collaborative activities needed to accomplish the proposed activities including existing community partnerships. Personnel should include a range of disciplines and may include (but are not limited to) university scientists, medical and/or health care providers, injury control researchers, professional organizations, and staff from participating community-based organizations. The combined members of the research team must provide evidence of expertise in analytic research and evaluation, and familiarity with and success in providing services to older adults.

6. Community Capacity (6–8 pages):

Provide evidence of effective and well defined working relationships within and between the performing organization and community partners. The applicant should describe their experience in developing community partnerships and the existing and proposed network collaborations as well as the community's current and anticipated capacity to disseminate multi-level intervention programs.

Provide evidence of the availability of appropriate scientific oversight necessary to fulfill research study and intervention implementation objectives. These will include development, implementation, evaluation of the intervention, recruitment and retention of participants, and collection and management of project related data, and experience in delivering behavioral and/or community level interventions. Evidence of the experience and capacity of the project team should include an attachment with curriculum vitaes and position descriptions for all key staff.

7. Human Subject Involvement:

Describe procedures that will provide for the protection of human subjects. Address how these procedures adequately address the requirements of 45 CFR 46 for the protection of human subjects.

8. Inclusion of Women and Racial and Ethnic Populations:

Describe the proposed plan for the inclusion of both sexes and racial and ethnic minority populations. Describe the proposed justification when representation is limited or absent. Include a statement as to whether the design of the study is adequate to measure differences when warranted.

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F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI, on the applicant's letterhead, to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

On or before 5 p.m. Eastern Time June 24, 2002, submit the application to:

Technical Information Management–PA02151, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Letters of Intent and applications will be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) Carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applications

CDC staff will review the application first for eligibility, responsiveness to the purpose of this program announcement (as described in Section A) and completeness as outlined under "Eligible Applicants" and "Program Requirements." Applications from ineligible entities as well as incomplete and nonresponsive applications will be returned to the applicant without further consideration. It is important that the applicant's abstract reflects the project's focus because the abstract will be used to help determine the responsiveness of the application.

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goals as stated in Section A "Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These Measures of Effectiveness will be submitted with the application and will be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC:

1. Aims and Background (10 percent)

Aims of this study and the specific research questions this application is intended to address. Background information that demonstrates the applicant's knowledge of the field and capacity to carry out the study including relevant past or current injury prevention research activities.

2. Goals and Objectives (20 percent):

Information that forms the basis for the present proposal, the theoretical or conceptual framework based on a critical review of existing knowledge about fall risk factors and intervention strategies, the hypotheses to be tested, the specific goals of the research study (including measurable objectives for each of these goals), and the project time-line.

3. Research Design and Methods (35 percent):

a. The adequacy of the proposed research design and procedures to be used to accomplish the specific aims of the study including justifiable sample sizes.

b. The plans for the development of the interventions, including methods for obtaining community input and assessing community readiness, and how these data will be used in the development, content and delivery of specific interventions.

c. How target and control populations will be selected and how they will be accessed, recruited and retained.

d. The plans for data collection and data management including security of data, assurance of participant confidentially, data entry, editing, and quality assurance procedures.

e. Evaluation of the study and the measurable outcomes to be used to evaluate the impact of the proposed interventions.

f. A statistical analysis plan appropriate for the study design and for evaluating the interventions.

g. A strategy to adequately address the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes the: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; and (3) a statement as to whether the design of the study is adequate to measure differences when warranted.

4. Collaborations (15 percent):

The qualifications and appropriateness of the proposed personnel. The experience and capacity of the project team to accomplish the proposed activities and to provide appropriate scientific oversight necessary to fulfill research study and intervention dissemination objectives. The inclusion of multidisciplinary teams including (but not limited to) State health departments or agencies, university scientists, aging services agencies, medical and/or health care providers, injury control research centers, professional organizations, and staff from community-based organizations.

5. Community Capacity (20 percent):

Experience in developing community partnerships, evidence of community expertise with strong existing and proposed network collaborations, effective and well defined working relationships within and between the performing organization and other partners, and evidence of community capacity to promote and disseminate multi-level intervention programs using a variety of approaches including education and media support.

6. Human Subjects (Not scored):

Restate the strategies for the recruitment and retention of human subjects and how the applicant will obtain appropriate consent when necessary. Are the procedures proposed adequate for the protection of human subjects and are they fully documented? Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects? (Not scored: however, an application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.)

7. Budget (Not scored):

The extent to which the budget is reasonable, clearly justified, and consistent with the intended use of funds. All budget categories should be itemized and appropriately justified.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports (The progress report will include a data requirement that demonstrates measures of effectiveness.)
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition of Use Certain Gun Control Act.
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–21 Small, Minority, And Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 317 and 301 of the Public Health Service Act, (42 U.S.C. 241 and 247b) and CFR part 51b. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address, *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: 770–488–2721 e-mail address: *nfp6@cdc.gov.*

For program technical assistance, contact: Judy Stevens, Ph.D., Technical Adviser, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway NE., MS K–63, Atlanta, GA 30341–3724, Telephone number: (770) 488–4649 e-mail address: *JAS2@cdc.gov.*

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11555 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement Number 02128]

Targeted Injury Intervention Programs; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC), National Centers for Injury Prevention and Control (NCIPC), announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement for Targeted Injury Intervention Programs. This program addresses the "Healthy People 2010" focus areas for Injury and Violence Prevention.

The purpose of this program is to strengthen and support the capacity of state injury programs by awarding funds for targeted injury intervention activities to States which demonstrate an existing capacity to access and analyze current state injury data and to design, develop, and implement a targeted injury prevention program of high public health importance in the state.

The goal of this program is to support State public health agencies in developing their capacity to implement effective, comprehensive injury prevention programs, including both unintentional injury and violence prevention components.

B. Eligible Applicants

Assistance will be provided only to the official public health agencies of States or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

C. Availability of Funds

Approximately $1.2 million is available in FY 2002 to fund approximately three to four awards. It is expected that the average award will be $300,000, ranging from $275,000 to $350,000. It is expected that the awards will begin on or about September 30, 2002 and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may vary and are subject to change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Pre-Application Conference Call: In addition, for interested applicants, a telephone conference call for a pre-application Injury technical assistance workshop will be held on Friday, June 14, 2002, from 1:30 pm to 2:30 pm, Eastern Standard Time. The conference name is "Pre Application Grant Workshop", the bridge number for the conference call is 1–800–713–1971, and the conference code is #52104. If you have a problem during your conference, you may press *0 at anytime to signal the attendant.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities listed under 1 (Recipient Activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

a. Select an injury (unintentional or violence) topic or area for intervention based on identified priorities which have been established by the State's current Injury Prevention Plan (or similar consensus document which provides a framework for existing data-driven action to reduce the burden of injury in the state).

b. Develop, enhance, or provide evidence of a current detailed targeted intervention plan focused specifically on the priority topic or area of injury identified by the State Injury Prevention

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Plan (or similar document) identified in a, above.

c. Utilize, for implementation, intervention activities which are based on proven or very promising approaches as documented in the scientific literature (i.e., evidence based intervention activities).

d. Assess the State public health agency's injury infrastructure and capacity and determine key staff, expertise, and associated resources needed to coordinate and implement the targeted intervention plan described above. Determine how the addition of these staff and their activities will best further creation and operation of a comprehensive State injury program.

e. Build new and enhance existing partnerships by identifying and inviting potential key private, professional, voluntary, and non-profit injury prevention organizations, policymakers, consumers, payers, media, state, and Federal agencies, surveillance agencies, research and academic institutions, and others to become members of a new or existing state injury prevention and control coalition. Focus the partnerships on supporting and enhancing the targeted intervention plan's activities. States with existing injury advisory committees might wish to build upon these to form their coalitions, while still maintaining an active focus on development of a comprehensive injury prevention program.

f. Enhance and build new linkages among existing state-based surveillance systems and other data sources to refine and evaluate targeted intervention activities and to further develop comprehensive injury prevention activities.

g. Conduct systematic evaluation of the targeted intervention activities; develop performance indicators to use as benchmarks for improvement and to determine the impact of the targeted intervention activities; determine how conducting these targeted intervention activities impacts the State's ability to develop a comprehensive injury prevention program.

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the grant/cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

2. CDC Activities

a. Assist with the exchange of information and collaboration among recipients.

b. Provide to recipients relevant, state of the art, research findings and public health recommendations related to comprehensive injury control.

c. Provide ongoing guidance, consultation, and technical assistance in conducting Recipient Activities.

d. Assist with identifying and developing national injury prevention and control campaigns and materials that can be integrated into comprehensive injury control programs.

E. Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 30 double-spaced pages, printed on one side, with one inch margins, and unreduced 12 point Courier Font. Number each page consecutively and provide a complete Table of Contents. The total number of pages should not exceed 50 pages including the appendix. All materials must be provided in an unbound, one-sided, 8.5 x 11 inch pages, suitable for photocopying.

F. Submission and Deadline

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 pm Eastern Standard Time on June 24, 2002, submit the application to:

Technical Information Management-PA02128,
Procurement and Grants Office,
Centers for Disease Control and Prevention,
2920 Brandywine Rd., Room 3000,
Atlanta, GA 30341–4146.

Application forms must be submitted in the following order:

Cover Letter
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Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Forms
HIV Assurance Form
Human Subject Certification
Indirect Cost Rate Agreement
Narrative

G. Evaluation Criteria

Application

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 points)

a. The extent to which the applicant submits a State Injury Prevention Plan or similar consensus document which is up to date and which includes:

(1) An assessment and prioritization of the injury burden (both unintentional injury and violence) in the State using population-based data.

(2) Short-term and long-term goals and objectives that address a range of injury issues based on identified needs.

(3) An inventory assessment of existing and needed resources to implement specific injury intervention programs.

(4) Evidence that the plan was developed as part of a collaborative process with other state governmental and non-governmental agencies.

2. Targeted Intervention Plan (25 points)

a. The extent to which the applicant describes design and development of a specific injury prevention intervention activity or set of activities that focuses on a priority area of injury identified in the State Injury Prevention Plan (*e.g.* motor vehicle injuries, bicycle head injuries, youth violence or suicide prevention, *etc.*)

b. The extent to which proposed targeted intervention activities are based on evidence documented in the scientific literature and on the activities' potential impact in reducing the targeted unintentional injury or violence in the State.

c. The extent to which the injury problem chosen for intervention is based on the relative magnitude of the problem (*i.e.*, in comparison with other causes of injuries in the state and relative to national rates.)

d. The extent to which the applicant describes how injury surveillance data will be used in the context of the targeted intervention activities; the extent to which the applicant documents a process for updating or modifying the surveillance system as new needs are identified; the extent to which the description shows evidence that existing surveillance systems enable the injury program to: collect population-based information on the demographics and incidence of relevant injury morbidity and mortality; identify segments of the population who are at risk for the selected injury; identify factors contributing to the burden of this particular injury; and, when appropriate, monitor the number and characteristics of people served by relevant targeted intervention activities.

3. Collaborative Partnerships and Community Involvement (10 Points)

a. The extent to which evidence is presented which demonstrates the breadth and appropriateness of (1) existing linkages within and outside the State public health agency to coordinate diverse injury control activities, and (2) the current or proposed broad-based State collaborative partnership to advise and/or support a state injury advisory committee on state injury implementation activities.

b. The extent to which the applicant demonstrates that it will be able to mobilize support for the targeted intervention activities among the public and private sectors, including target communities.

c. The extent to which the applicant provides evidence it will enhance and build new linkages among partners to support existing and new surveillance systems to refine and evaluate targeted intervention activities and to further develop comprehensive injury prevention activities.

4. Methods and Staffing (30 points)

a. The extent to which the applicant includes goals which are relevant to the targeted intervention in the proposed injury area and feasible to accomplish during the project period.

b. The extent to which the applicant describes long and short term objectives which are specific, measurable, attainable, and realistic and which are time-framed process and outcome objectives designed to accomplish all activities of the targeted injury intervention(s).

c. The extent to which the applicant provides a program logic model that identifies and relates the critical elements of the targeted intervention activities with intended outcomes (*e.g.*, inputs, activities, outputs, intermediate and longer term outcomes).

d. The extent to which the applicant provides a detailed framework for implementation of the targeted intervention plan that shows specific intervention activities beginning not later than the latter part of year 1 and that includes a description of expected inputs, resources, and activities (with time lines and organizations/persons responsible and proposed level of effort).

e. The extent to which the applicant provides: (1) A detailed description of how staffing resources (including programmatic, epidemiological and evaluation resources) will be allocated for each activity, and which includes designation of a coordinator with responsibility for coordinating the targeted intervention plan's activities; (2) a reasonable and complete schedule for implementing and completing all activities; and (3) evidence of access or assignment of epidemiological expertise for performing routine data review and analysis activities.

5. Evaluation (20 Points)

a. The extent to which the applicant describes an evaluation plan which includes questions and methods for assessing the targeted intervention's implementation, impact, costs, and the linkage between the targeted intervention activities and the intended outcomes. In addition, since these targeted intervention activities are intended to expand existing capacities in the state to prevent injuries, the extent to which evaluation questions and methods addressing this have been proposed.

b. The extent to which a feasible plan for: assuring the targeted intervention plan is being implemented as designed (*i.e.*, what measure or indicators will be in place to monitor progress and fidelity of implementation); assessing the level of effort that may include developing guidance documents, training, intensity (how much and how often), reach, *etc.* and assessing program outputs and outcomes (intended/unintended, positive/negative) are included.

c. The extent to which the applicant describes data sources and linkages for evaluation purposes and methods to evaluate the data sources, and documents staff availability, expertise, experience, and capacity to perform the evaluation.

d. The extent to which the applicant describes a method for documenting lessons learned, including barriers (anticipated and unanticipated) and recommended changes or other considerations in future similar injury and violence prevention activities.

e. The extent the applicant provides a plan for collecting information related to costs associated with the project, including costs funded by the cooperative agreement, other sources, in-kind and donated (*e.g.*, volunteer) and which include: personnel time (type, amount and hours per activity); equipment and materials; facilities; and any client inputs.

f. The extent to which the applicant provides a plan for describing increased capacities within the state and/or the state public health agency as a result of this project.

g. The extent to which the applicant provides a plan for reporting information on intervention implementation and evaluation results.

6. Budget and Justification (Not Scored)

The extent to which the applicant provides a detailed budget and narrative justification consistent with stated objectives and planned injury prevention program activities and includes an out of state travel budget for two state participants to attend an annual CDC grantees meeting in Atlanta, Georgia.

The Objective Review Panel shall assure that measures set forth in the application are in accordance with CDC's performance plans.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. The results of the Measures of Effectiveness shall be a data requirement to be submitted with or incorporated into the periodic progress reports.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–16 Security Clearance Requirement

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301 (a) and 317k (2) (42 U.S.C. 241(a) and 247b (2)) of the Public Health

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Service Act, The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number 770–488–2721. e-mail address: *nfp6@cdc.gov.*

For program technical assistance, contact: John Hemphill, Project Officer, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, Division of Injury Disability Outcomes and Programs, 4770 Buford Highway, NE, Mailstop KO2, Atlanta, GA 30341–3724. Telephone (770) 488–1285.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11563 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02123]

Parenting Program Attrition and Compliance Efficacy Trial; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announce the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for a Parenting Program Attrition and Compliance Efficacy Trial. This program addresses the "Healthy People 2010" focus area: Injury and Violence Prevention.

The purpose of the program is to test strategies and techniques for reducing attrition and enhancing compliance with extant parenting programs for the prevention of child maltreatment. At a minimum, competitive applicants must have previously demonstrated program efficacy or effectiveness in enhancing family functioning and reducing child maltreatment. The project should examine rigorous tests of specific interventions focused on enhancing participation and participant compliance in existing efficacious or effective parenting programs.

Measurable outcomes of the program will be in alignment with the following performance goal for the National Center for Injury Prevention and Control: Reduce the risk of child maltreatment.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal governments, Indian Tribes, or Indian Tribal Organizations.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $400,000 is available in FY 2002 to fund one to two awards. It is expected that the average award will be $200,000, ranging from $200,000 to $400,000. It is expected that the award will begin on or about September 30, 2002 and will be made for a 12 month budget period within a project period of up four years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

(a) Design and conduct research to address the described goals of this cooperative agreement. This may include, formative research or pilot work.

(b) Collaborate with CDC in the development of the human subjects protocol for the CDC Institutional Review Board (IRB), implementation and evaluation of project delivery.

(c) Collaborate with CDC to write and disseminate reports of research activities to regional, state, and local partners.

(d) Obtain approval of the study protocol by the recipient's local IRB.

(e) Collaborate with CDC to analyze data, perform cost analyses, and publish findings in peer-reviewed journals.

2. CDC Activities

(a) Provide scientific and technical assistance for the design and implementation of this research.

(b) Collaborate with the grantee in the development of a research protocol for IRB review by all collaborating institutions. The CDC's IRB will review the protocol initially and on an annual basis until the project is complete.

(c) Collaborate with the grantee to ensure human subjects assurances are in place as needed.

(d) Participate in the analysis and dissemination of study findings.

(e) Monitor and evaluate the scientific and operational accomplishments of the project through conference calls, site visits, and review of technical reports.

(f) Provide cost analyses of the design and implementation of this research.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The program announcement title and number must appear in the LOI. The narrative should be no more than two pages, double spaced, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine level of interests in the announcement.

Applications

The Program Announcement title and number must appear in the application. Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

The narrative should be no more than 40 pages, double spaced, printed on one side, with one-inch margins, and unreduced fonts. The narrative should consist of, at a minimum, a Plan, Objectives, Methods, Evaluation and Budget.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the application on or before June 24, 2002. Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

Application forms must be submitted in the following order:

Cover Letter
Table of Contents
Application (PHS 398)
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Form
HIV Assurance Form (if applicable)
Human Subjects Certification (if applicable)
Indirect Cost Rate Agreement (if applicable)
Narrative

On or before 5:00PM Eastern Time June 24, 2002, submit the application to the Technical Information Section, 2920 Brandywine Road, Suite 3000, Atlanta, Georgia 30341.

Deadline: Letters of intent and applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness (*i.e.*, rigorous designs and direct measures of outcomes with extended follow-up). Rigorous designs could include experimental designs in which families, communities, or other units are randomly assigned to the intervention group (with level to be determined by assessment) and control or comparison groups, or strong quasi-experimental designs in which families, communities, or other units are matched appropriately. Measures of Effectiveness must relate to the National Center for Injury Prevention and Control performance goal of reducing the risk of child maltreatment.

Upon receipt, applications will be reviewed by CDC staff for completeness and responsiveness as outlined under the Eligible Applicants Section (Items 1–5). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC), to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be non-competitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process.

Competitive supplemental grant awards may be made if end of fiscal year funds are available, to support research work or activities not previously approved by the IRGRC. Competitive supplement applications should be clearly labeled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

All awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee IRGRC, recommendations by the secondary review committee Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. All applications will be reviewed for scientific merit using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance:* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced? What will be the effect of these studies on the concepts or methods that drive this field?

b. *Approach:* Are the conceptual framework, design, methods, and analyses adequately developed, well integrated, and appropriate to the aims of the project? Does the applicant acknowledge potential problem areas and consider alternative tactics? Does the project include plans to measure progress toward achieving the stated objectives? Is there an appropriate work plan included?

c. *Innovation:* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator:* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator and other significant investigator participants? Is there a prior history of conducting injury-related research?

e. *Environment:* Does the scientific environment in which the work will be done contribute to the probability of success? Does the proposed research take advantage of unique features of the scientific environment or employ useful collaborative arrangements? Is there evidence of institutional support? Is there an appropriate degree of commitment and cooperation of other interested parties as evidenced by letters detailing the nature and extent of the involvement?

f. *Ethical Issues:* What provisions have been made for the protection of human subjects and the safety of the research environments? How does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.*, suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the

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inclusion of women, ethnic, and racial groups in the proposed research. This includes:

1. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

2. The proposed justification when representation is limited or absent.

3. A statement as to whether the design of the study is adequate to measure differences when warranted.

4. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community or cummunities and recognition of mutual benefits.

g. *Study Samples*: Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination*: What plans have been articulated for disseminating findings?

i. *Measures of Effectiveness*: The peer Review panel shall assure that measures set forth in the application are in accordance with CDC's performance plans (*see* attachment 4). How adequately has the applicant addressed these measures?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Committee (SPRS) from the ACIPC. The ACIPC Federal *ex officio* members will be invited to attend the secondary review and will receive modified briefing books (*i.e.*, abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal *ex officio* members will be encouraged to participate in deliberations when applications address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal *ex officio* members to assure that research priorities of the announcement are understood and to provide background regarding current research activities. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally-funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review, including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities delineated in the National Research Agenda.

d. Budgetary considerations.

3. Continued Funding

Continuation awards made after FY 2002, but within the project period, will be made on the basis of the availability of funds and the following criteria:

a. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual work plan and satisfactory progress demonstrated through presentations at work-in-progress monitoring workshops.

b. The objectives for the new budget period are realistic, specific and measurable.

c. The methods described will clearly lead to achievement of these objectives.

d. The evaluation plan will allow management to monitor whether the methods are effective.

e. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

H. Other Requirements

Measures of Effectiveness Requirements

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative, and must measure the intended outcome. These Measures of Effectiveness shall be submitted with the application and shall be an element of evaluation.

Technical Reporting Requirements

Provide CDC with original plus one:

1. Semiannual progress reports

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment II of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–4 HIV/AIDS Confidentiality Provisions
AR–5 HIV Program Review Panel Requirements
AR–6 Patient Care
AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting Requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC Funds for Certain Gun Control Activities
AR–14 Accounting System Requirements
AR–15 Proof of Non-Profit Status
AR–16 Security Clearance Requirement
AR–17 Peer and Technical Reviews of Final Reports of Health Studies—ATSDR
AR–18 Cost Recovery—ATSDR
AR–19 Third Party Agreements—ATSDR
AR–20 Conference Support
AR–21 Small, Minority, Women-Owned Businesses
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301,317,and 391–394 of the Public Health Service Act, (42 U.S.C. section 241, 247b, and 280b–280b–3), as amended. The Catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary applications, and associated forms can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

For business management technical assistance, contact: Angie N. Nation, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, Atlanta, GA 30341–4146. Telephone number: (770) 488–2719. E-mail address: *aen4@cdc.gov*.

For program technical assistance, contact: Linda Anne Valle, Behavioral Scientist, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention, 4770 Buford Highway, NE.,(K–60), Atlanta, GA 30341–3724, Telephone number: (770) 488–4297. E-mail address: *adv2@cdc.gov*.

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Center for Disease Control and Prevention.

[FR Doc. 02–11561 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02088]

Prevention of Complications of Thalassemia; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Prevention of Complications of Thalassemia. This program addresses the "Healthy People 2010" focus area(s) Access to Quality Health Services and Disability and Secondary Conditions.

The purpose of the program is to assist in: (1) Providing comprehensive healthcare services through a network of thalassemia treatment and prevention centers to prevent complications through assessment, surveillance, outreach, education, consultation, and management; (2) participating in blood safety monitoring and surveillance efforts; (3) maintaining a prevention evaluation network to assess the efficacy of prevention services; and (4) collaborating with lay organizations to deliver consistent prevention messages aimed at preventing complications.

Measurable outcomes of this program will be in alignment with one or more of the following performance goals for the National Center for Infectious Diseases (NCID):

1. Protect Americans from priority infectious diseases.

2. Apply scientific findings to prevent and control infectious diseases.

B. Eligible Applicants

Assistance will be provided only to specialized thalassemia treatment and prevention centers that provide comprehensive treatment and prevention services to patients with thalassemia.

A thalassemia treatment and prevention center is a specialty, prevention, diagnostic and treatment program. Their goal is to provide family-centered, state-of-the-art medical and psycho-social evaluation and care, dental, educational, nutritional, genetic, research, and support services for individuals and families affected by thalassemia including beta thalassemia major, beta thalassemia intermedia, Hemoglobin H (Hb H) disease, Hb H Constant Spring or another variant.

Applicants must serve a minimum of 25 regularly transfused thalassemia patients (thalassemia major) and be able to demonstrate experience in providing multi-disciplinary treatment and prevention services to patients with thalassemia.

Note: Title II of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $1,000,000 is available in FY 2002 to fund approximately six awards. It is expected that the average award will be $150,000, ranging from $100,000 to $200,000. It is expected that the awards will begin on or about September 1, 2002, and will be made for a 12-month budget period within a project period of up to five years. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Funding Preference

Preference will be given to applicants with a minimum of 25 patients with severe forms of thalassemia who require chronic blood product transfusion therapy (thalassemia major).

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. The thalassemia treatment and prevention center applicant should develop and coordinate a plan in which a treatment center network within their catchment area would:

(1) Provide comprehensive prevention services to persons with thalassemia directed at attaining and measuring specific outcomes to prevent or reduce complications by using a multi-disciplinary team approach. The treatment center should work closely with other specialists and local health care providers to meet specific needs of persons with thalassemia to increase quality of life from birth throughout life. It should also assist individuals with the prevention and management of complications.

(2) Assess unmet needs and under-served populations. Participate in outreach efforts to identify patients who can benefit from treatment and prevention services and encourage patient participation in treatment center programs.

(3) Participate in development and implementation of CDC surveillance efforts (including the Thalassemia Universal Data Collection Program, investigations of sero-conversions, suspected blood-borne agents, and suspected bacterial contamination), other data collection and surveillance efforts by complying with federal and other required regulations, and offering programs to all active eligible patients to obtain informed consent or refusal.

(4) Identify any patients who have become infected with HIV or hepatitis A, B, C viruses (HAV, HBV, or HCV), new variant Creutzfeld-Jakob Disease (nvCJD), or bacterial contamination possibly as a result of contaminated blood products.

(5) Obtain appropriate assurances as required by the Office of Human Research Protections (OHRP), the Department of Health and Human Services (DHHS). Develop and maintain

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strict policies on protecting the confidentiality of patients, and ensure the security of databases and other records through controlled access to areas with confidential information, database password protection, locking file cabinets, and other security features.

(6) Establish a mechanism for consumer input and involvement in planning, implementing, and assessing center prevention activities that include education and outreach by collaborating with local and national consumer organizations, or ad hoc consumer consultation committee.

b. If subcontracting with satellite centers, the applicant should develop appropriate management and evaluation systems to ensure that subcontractors implement the recipient activities of this program appropriately (as outlined in section "D. Program Requirements"), and comply with federal and other required regulations. The applicant should conduct program assessments, site visits, assist treatment centers with problem solving, assess local needs, and provide technical assistance when needed.

c. For all activities, develop and implement an evaluation plan which measures the effectiveness of the activities involved, and document lessons learned.

2. CDC Activities

a. Assist in determining priority areas and long term goals for prevention of complications of thalassemia as a collaborative effort. Encourage treatment and prevention centers to seek input from providers, Community Based Organizations (CBOs), and consumer representatives.

b. Provide consultation, scientific and technical assistance in planning, implementing, and evaluating activities to prevent the complications of thalassemia by using surveillance data to develop interventions and assess their effectiveness. Coordinate the development, implementation, and evaluation of prevention intervention protocols.

c. Assist in the analysis and reporting of aggregate clinical outcomes data, coordinate and consolidate the transfer of tabulated data, analyses, and conclusions among participating treatment and prevention centers, as needed.

d. Provide necessary follow-up and technical assistance, as needed, to treatment and prevention centers implementing changes or recommendations resulting from program evaluations, assessments, or activities required to meet federal and other regulations.

e. Provide technical assistance and coordinate routine annual testing of patient samples for HAV, HBV, HCV, HIV, and other clinically significant tests and reporting of results back to treatment centers. Provide technical assistance to designated laboratory for permanent storage of blood samples.

f. Collaborate with treatment centers and appropriate State or local health departments to investigate any suspected HIV, HAV, HBV, HCV seroconversions, nvCJD, bacterial contaminant or other reported potential blood borne agents.

g. Ensure that surveillance data systems developed through this program will adhere to the National Electronic Disease Surveillance System (NEDSS) Standards as they become available to increase the interoperability of systems and the exchange of data among the users of these systems.

h. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than three single-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to plan for the review, and should include the following information: (1) The program announcement number 02088, (2) name and address of institution, (3) name, address, and telephone number of a contact person. Notification can be provided by facsimile, postal mail, or electronic mail (e-mail).

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

The application should include:

1. Background, Unmet Need, and Capacity

Describe the need for blood safety monitoring, data collection, education, outreach, and treatment and prevention services and programs. Explain the basis for providing such programs, expected outcomes and the relevance to preventing complications among people with thalassemia. Describe applicant's experience in providing treatment and prevention services to this population and other activities related to, but not supported by, the cooperative agreement.

2. Objectives

Establish long-term (five year) and short-term (one year) objectives for programmatic plans. Objectives should be specific, measurable, time-phased and realistic.

3. Operational Plan

Describe the methods by which the objectives will be achieved, including their sequence. Address CDC policy requirements as described in the evaluation criteria.

4. Evaluation Plan

Describe the plans to monitor the progress of the program, as well as to evaluate the outcomes of the proposed activities.

5. Program Management

Describe the roles and responsibilities of all project staff in the proposed project, regardless of their funding source. The description should include their titles, qualifications, and experience, as well as the percentage of time each will devote to the project, and the portions of their salaries to be paid by the cooperative agreement.

6. Budget

A detailed first year's budget and budget justification for the cooperative agreement with projections for the next four additional years. Separate detailed budgets with line-item descriptive justifications should be submitted for each sub-grantee if requested. For each performance site (applicant and sub-grantees), include the name and address of the person and organization to receive the contract.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 15, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before July 15, 2002, submit the application to: Technical Information Management-PA02088, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late: Applications which do not meet the criteria above will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and need (20 points)

The extent to which the applicant understands the needs, problems, objectives and complexities of the project. Rationale for selection of the targeted community and documentation of health needs and risk factors.

2. Objectives (15 points)

The degree to which the proposed objectives are clearly stated, realistic, time-phased, and related to the purpose of the project.

3. Operational Plan (Total 35 points)

a. The adequacy of the operational plans for carrying out the various initiatives involved in the project. (30 points)

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation. (2) The proposed justification when representation is limited or absent. (3) A statement as to whether the design of the study is adequate to measure differences when warranted. (4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Collaboration (10 points)

The extent of community sanction/liaison. Evidence of access to, interaction with, and participation of collaborative interactions among all project participants. Demonstration of effective communication channels among researchers.

5. Staff Qualifications (5 points)

The extent to which professional personnel proposed to be involved in this project are qualified, including evidence of past achievements appropriate to this project and capacity to fulfill program goals and objectives.

6. Evaluation Plan (10 points)

The quality and feasibility of the evaluation plan for the various initiatives involved in the project.

7. Measures of Effectiveness (5 points)

The extent to which the applicant provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. The extent to which the measures are objective/quantitative and adequately measure the intended outcome.

8. Human Subjects (Not Scored)

The extent to which the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects.

9. Budget (Not scored)

The extent to which the applicant provides justification for budget expenditures as well as appropriateness of activities proposed in their application.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with the original plus two copies of:

1. Semiannual progress reports (the progress report will include a data requirement that demonstrates measures of effectiveness).

2. Financial status report, no more than 90 days after the end of the budget period.

3. Final financial and performance reports, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of the announcement in the application kit.

AR–1 Human Subjects Requirements

AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research

AR–7 Executive Order 12372 Review

AR–9 Paperwork Reduction Act Requirements

AR–10 Smoke-Free Workplace Requirements

AR–11 Healthy People 2010

AR–12 Lobbying Restrictions

AR–15 Proof of Non-Profit Status

AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under sections 301(a), and 317(k)(1) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. sections 241(a), and 247b(k)(1) and 247(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

To obtain business management technical assistance, contact: Merlin Williams, Grants Management Specialist, Acquisition and Assistance, Branch B, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Road, Room 3000, MS K75, Atlanta, GA 30341–4146.

Telephone Number: 770–488–2765.

E-mail Address: *mqw6@cdc.gov.*

For program technical assistance, contact: Sally O. Crudder, Acting Deputy Chief, Hematologic Diseases Branch, National Center for Infectious Diseases, Centers for Disease Control and Prevention, 1600 Clifton Road, MS E64,Atlanta, GA 30333.

Telephone Number: 404–371–5270.

E-mail Address: *SCrudder@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11562 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement #02121]

New Investigator Awards for Unintentional, Violence, and Acute Care, Disability, and Rehabilitation-Related Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for new investigator awards in three research areas; unintentional injury prevention, violence-related injury prevention, and injury-related acute care and disability. This program addresses the "Healthy People 2010" focus areas of injury and violence prevention.

The purposes of this program are to:

1. Encourage researchers from a wide spectrum of disciplines such as public health, health care, medicine, criminal justice, and behavioral and social sciences to undertake research to prevent and control unintentional and violence-related injury and disability.

2. Support injury research by recent doctoral-level graduates or researchers who are redirecting their careers toward injury research.

3. Build the scientific base for the prevention and control of unintentional and violence-related injuries, disabilities, and deaths.

This program is designed to encourage qualified applicants who are beginning or redirecting their career to focus on injury-related research. The career development objectives of this program are to encourage scientists to develop independent research skills, and to gain experience in advanced methods and experimental approaches in injury-related research. This program is also intended to jump start the careers of researchers in injury prevention by providing support for pilot studies, enhancements to existing studies, or other studies that will serve as a foundation for a career in injury prevention. Applicants are encouraged to seek mentoring or collaboration with more senior level injury researchers in their proposed research.

Background and Significance

I. Unintentional Injury Prevention Research

For the purposes of this program announcement, unintentional injuries are defined as unintentional damage to the body resulting from acute exposure to thermal, mechanical, electrical, or chemical energy or from the absence of such essentials as heat or oxygen. Unintentional injuries continue to be a major public health problem. In 1999, nearly 98,000 people died in the United States as a result of unintentional injury. Someone dies in this country every six minutes from causes such as motor vehicle crashes, falls, poisonings, drownings, fires and burns, pedestrians struck, bicycle crashes, or suffocation. In addition to deaths, injuries also constitute a significant cause of both permanent and temporary disability. In 2000, unintentional injuries resulted in an estimated 29.1 million emergency department visits and millions more visits to physicians' offices. Although the greatest cost of injury is human suffering, the financial costs also are staggering: over 200 billion dollars a year for medical care, wage and productivity losses and employer costs in 1998.

II. Violence Related Injury Prevention Research

Deaths and injuries associated with interpersonal violence and suicidal behavior are also a major public health problem in the United States and around the world. In 1999, 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 nonfatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity resulting from violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior.

III. Injury Related Acute Care, Disability, and Rehabilitation

Each year, Americans make between 30 and 40 million Emergency Department (ED) visits for injuries. While most injured patients are treated and released, many are admitted to inpatient trauma units and later receive rehabilitative services. The most favorable outcomes are achieved when acute care and subsequent rehabilitation are as early as possible and focus on returning patients to baseline or to an optimal level of functioning. Trauma systems are designed to match trauma patients with the acute care and rehabilitative facilities they need, but in many parts of the U.S. trauma systems are not fully operational or are non-existent. Where these systems are lacking, as many as 30 percent to 40 percent of deaths among trauma patients are due to preventable problems in clinical care, including missed diagnoses and treatment delays.

Injuries are a major cause of disabilities in the U.S. Central nervous system injuries (those to the brain and spinal cord) are most likely to result in serious long-term disability. Each year, an estimated 80,000 Americans sustain a Traumatic Brain Injury (TBI) that results in disability; an estimated 5.3 million Americans live with TBI-related disability. Although physical impairments from the injury may contribute to TBI disability, cognitive deficits are the hallmark, frequently resulting in secondary conditions such as depression and other adverse outcomes such as the inability to work. An estimated 177,000 to 200,000 people in the U.S. live with Spinal Cord Injuries (SCI), and this number increases annually by as many as 20,000 individuals.

B. Eligible Applicants

Eligible institutions include any United States public or private universities or colleges, including, but not limited to schools or departments of public health, medicine, nursing, criminal justice, or the behavioral or social sciences. The performance site must be domestic.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Applicants must have a research or a health-professional doctorate-level degree from an accredited program and have demonstrated the capacity or potential for highly productive research in the period after the doctorate, commensurate with level of experience. Applicants must be within three years of receiving their doctoral or equivalent degree or redirecting their research to injury-related research.

Documentation of such redirection must be included in the application. Applicants who have been the principal investigator on a Public Health Service (PHS) injury-related research grant or who have had equivalent injury-related research support from an existing Injury Control Research Center (ICRC) are not eligible. Exceptions are researchers who have redirected their research areas from one area of injury research, *e.g.*, acute care or biomechanics, to another area, *e.g.*, violence prevention research. Recipients of dissertation research grants or NIH Small Grant Awards are eligible to apply.

C. Availability of Funds

Approximately $400,000 is expected to be available for up to four new investigator awards in FY 2002. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care. The maximum funding level will not exceed $100,000 (direct and indirect costs). Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant. The availability of Federal funding may vary and is subject to change.

Allowable Costs

Allowable costs include partial salary for the applicant; direct research project expenses, such as interviewer costs, data processing, payment to participants, statistical consultation services, and supplies; and travel to one scientific meeting, if adequately justified. No tuition support is allowed. Applicants should include travel costs for one, two-day trip to CDC in Atlanta to present research findings.

D. Program Requirements

Research Objectives

For the purpose of this program announcement, the highest priority will be given to research that addresses the following themes within each of the three broad research areas:

I. Unintentional Injury Prevention Research Priorities

1. Communications-based research that focuses on learning how to encourage practitioners and policy makers to adopt science-based programs, policies, laws, and regulations that reduce unintentional injuries.

2. Identifying modifiable human behaviors during a fire and evaluating interventions to prevent fire and burn injuries in fire emergencies.

3. Among children, determining the immediate causes of the most severe and disabling types of falls, and evaluating interventions that prevent serious falls in children.

4. Behavioral safety interventions that utilize applied behavioral analysis and other behavior modification strategies to change injury risk behaviors and risk taking of children and young adults.

5. Developing and evaluating methods to collect participation exposure and injury incidence data in sports, recreation (including playgrounds), and exercise.

6. Testing the effectiveness of implementing new innovative strategies to reduce alcohol impaired driving.

7. Evaluating the effectiveness of behavioral and environmental interventions to prevent pedestrian injury.

8. Measuring the efficacy and effectiveness of booster seats in reducing child injury or developing and testing interventions to increase the proper and consistent use of occupant protection devices among child occupants.

Research that focuses on interventions for unintentional injuries in high-risk groups or settings such as with the elderly, young children and members of minority groups, or in disadvantaged neighborhoods or communities, is especially encouraged.

II. Violence Related Injury Prevention Research

1. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior.

2. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior.

3. Identifying common and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence.

III. Injury Related Acute Care, Disability, and Rehabilitation Priorities

1. Evaluating methods of using point-of-care clinical information systems to report injuries to public health agencies.

2. Measuring the benefits and costs of trauma care systems.

3. Identifying methods and strategies for ensuring that people with TBI or SCI receive needed services.

4. Determining the impact of TBI on special populations.

Other special conditions for new investigator research grants:

1. The applicant must be the designated principal investigator. The principal investigator must be responsible for planning, directing, and executing the proposed project.

2. The applicant must specify which of the three areas the proposal addresses: (1) Unintentional injury; (2) violence-related injury research; or (3) injury-related acute care, disability, and rehabilitation.

3. The grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

4. Any publications directly resulting from the grant should be reported to the responsible CDC program official. The grantee also must cite receiving support from the National Center for Injury Prevention and Control, CDC in any publications directly resulting from the new investigator grant.

F. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one inch margins, and unreduced font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review of funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

Use the information in the Program Requirements and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative portion of the application must not exceed 25 pages.

Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of

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the findings to reduce injury morbidity, mortality, disability, and economic losses.

2. Specific, measurable, and time-framed objectives.

3. A detailed plan describing the methods that will achieve the objectives, including their sequence.

4. A description of the roles and responsibilities of the principal investigator and mentor, where appropriate.

5. A description of all project staff regardless of their funding sources. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. It should include letters of organizational commitments of support and a clear statement of their roles.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by injuries.

Additional materials required:

In addition to the completed PHS 398 application form, the applicant must also submit the following materials, attached to the application as appendices:

1. An official transcript of the applicant's graduate school record, if within the last three years.

2. When relevant, documentation showing the researcher has redirected his or her career within the last three years.

3. An overview of the applicant's prior research training and experience, including a statement of the applicant's short-term and long-term research and career goals and intended career trajectory.

4. Where appropriate, a letter from the applicant's mentor or scientific collaborator that outlines the proposed plan for providing scientific advice and consultation to the applicant during the grant period and a biography of the mentor or senior-level collaborator, limited to two pages (use the Biographical Sketch page in application form PHS 398).

G. Submission and Deadline

Letter of Intent

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 p.m. Eastern time on June 24, 2002, submit the application to: Technical Information Management-PA02121, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadlines

Applications shall be considered as meeting the deadline if they are received before 5 p.m. Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with the guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications which do not meet the above-criteria, will not be eligible for competition and will be discarded.

Applicants will be notified of their failure to meet the submission requirements.

H. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness, and eligibility as outlined under the Eligible Applicants Section. Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a Special Emphasis Panel (SEP) to determine if the application is of sufficient technical and scientific merit to warrant further review by the panel; CDC will withdraw from further consideration applications judged to be non-competitive and promptly notify the principal investigator and the official signing for the applicant organization. Those applications judged to be competitive will be reviewed by the SEP and the secondary review group.

Awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee (SEP), recommendations by the secondary review committee, the Advisory Committee for Injury Prevention and Control (ACIPC), consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the SEP. All applications will be reviewed for scientific merit by a committee of no less than three reviewers with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. *Significance.* Does this study address an important problem? If the aims of the application are achieved, how will scientific knowledge be advanced?

b. *Approach.* Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project? does the applicant acknowledge potential problem areas and consider alternative tactics?

c. *Innovation.* Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. *Investigator.* Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor or collaborator described?

e. *Environment.* Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of institutional support?

f. *Ethical Issues.* What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, *e.g.,* suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. *Study Samples.* Are the samples sufficiently rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. *Dissemination.* What plans have been articulated for disseminating findings?

The SEP will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC). The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). Federal *ex officio* members will be encouraged to participate in deliberations when proposals address overlapping areas of research interest so that unwarranted duplication in federally funded research can be avoided and special subject area expertise can be shared. The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal *ex officio* members. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review, the relevance and balance of proposed research relative to the NCIPC programs and priorities, and to assure that unwarranted duplication of federally funded research does not occur. The Secondary Review Committee has the latitude to recommend to the NCIPC Director, to reach over better-ranked proposals in order to assure maximal impact and balance of proposed research. The factors to be considered will include:

a. The results of the primary review including the application's priority score as the primary factor in the selection process.

b. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

c. The significance of the proposed activities in relation to the priorities and objectives stated in "Healthy People 2010" and the Institute of Medicine report, "Reducing the Burden of Injury."

I. Other Requirements

Technical Reporting Requirements

Grantees must provide CDC with an original plus two copies of:

1. An annual progress report.

2. A financial status report, no more than 90 days after the end of the budget period.

3. A final financial report and performance report, no more than 90 days after the end of the project period.

4. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific (laymen's) terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, *etc.* The grant recipient will also include a description of the dissemination plan for research findings. This plan will include publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (*e.g.,* state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the summary report and each grant recipient's final report with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the Where to Obtain Additional Information section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment 1 in the application kit.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

J. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 2412(a)) of the Public Health Service Act and section 391(a)(42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

K. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC homepage on the Internet. The address for the CDC homepage is *http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

To receive additional written information and to request an application kit, call 1–888–GRANTS4 (1–888–472–6874). You will be asked to leave your name and address and will be instructed to identify the Announcement number of interest..

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement #02121, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341. Telephone: (770) 488–2721. Internet address: *nfp6@cdc.gov.*

For program technical assistance, contact:

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I. For Unintentional Injury Prevention Research

David Sleet, PhD, Associate Director for Science, Division of Unintentional Injury Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–63, Atlanta, GA 30341–3724. Telephone: (770) 488–4699. Internet address: *dsleet@cdc.gov*.

II. For Violence Related Injury Prevention Research

Jim Mercy, PhD, Associate Director for Science, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723. Telephone: (770) 488–4699. Internet Address: *jmercy@cdc.gov*.

III. For Injury Related Acute Care, Disability, and Rehabilitation

Richard Sattin, MD, Associate Director for Science, Division of Injury Disability Outcomes and Programs, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–58, Atlanta, GA 30341–4723. Telephone: (770) 488–4330. Internet address: *rsattin@cdc.gov*.

Dated: May 3, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC).

[FR Doc. 02–11557 Filed 5–8–02; 8:45 am]

BILLING CODE 4163–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement No. 02152]

Dissertation Awards for Minority Doctoral Candidates for Violence-Related Injury Prevention Research; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for an extramural grant program for Dissertation Awards to Minority Doctoral Candidates for Violence-Related injury prevention research. This program addresses the "Healthly People 2010" focus areas of injury and violence prevention. Measurable outcomes of the program will be in alignment with one or more of the following performance goals for The National Center for Injury Prevention and Control (NCIPC):

1. Reduce the risk of youth violence.
2. Reduce violence against women.
3. Enhance the capacity of states to implement effective rape prevention and education programs.
4. Increase external input on the research priorities, policies, and procedures related to the extramural research supported by CDC.

The purposes of this program are to:

1. Stimulate and encourage minority doctoral candidates from a variety of academic disciplines and programs, including, but not limited to public health, health care, criminal justice, and behavioral and social sciences, to conduct violence-related injury prevention research.
2. Assist minority students in the completion of their dissertation research on a violence-related topic.
3. Encourage minority investigators to build research careers related to the prevention of violence-related injuries, disabilities, and deaths.

A dissertation represents the most extensive research experience formulated and carried out by a doctoral candidate, with the advice and guidance of a mentor (the chair of the dissertation committee or other academic advisor). Dissertation research involves a major investment of the doctoral student's time, energy, and interest and its substance is often the basis for launching a research career. The number of individuals who are members of minority groups and who are engaged in violence-related injury prevention research is currently small. There is a clear need to develop new ways to assist and encourage minority researchers to become active in the conduct of studies that can advance the rapidly growing knowledge base in this field. This research initiative is aimed at providing minority students with assistance to complete their dissertation research on a violence-related topic and thereby increase their representation in violence-related injury research.

Deaths and injuries associated with interpersonal violence and suicidal behavior are a major public health problem in the United States and around the world. In 1999, over 46,000 people died from homicide and suicide in the United States. Among 15 to 24 year olds, homicide ranked as the second and the third leading causes of death. Violent deaths are the most visible consequence of violent behavior in our society. Morbidity associated with physical and emotional injuries and disabilities resulting from violence, however, also constitute an enormous public health problem. For every homicide that occurs each year there are over 100 non-fatal injuries resulting from interpersonal violence. For every completed suicide it is estimated that there are 20 to 25 suicide attempts. The mortality and morbidity associated with violence are associated with a variety of types of violence including child maltreatment, youth violence, intimate partner violence, sexual violence, elder abuse, and self-directed violence or suicidal behavior. Violence has a disproportionate impact on racial and ethnic minorities. In 1999, homicide was the leading cause of death for African Americans and the second leading cause of death for Hispanics between the ages of 15 and 34. Suicide was the second leading cause of death for American Indians and Alaskan Natives and Asian and Pacific islanders 15 to 34 years of age. It is important to note that existing research indicates that race or ethnicity, per se, is not a risk factor for violent victimization or a cause of violent behavior. Rather, racial or ethnic status is associated with many other factors, such as poverty, that do influence the risk of becoming a victim or behaving violently. Nevertheless, racial and ethnic minorities in the United States are at high risk for both violent victimization and perpetration. A better understanding of the factors that contribute to this vulnerability or protection from such risk is important to furthering effective violence prevention programs that address racial and ethnic minorities.

There is a critical need for highly qualified scientists to carry out research on violence that can help in the development, implementation, and evaluation of effective violence prevention programs. In particular, scientists are needed that bring an understanding and sensitivity to the problems of violence as they affect minority communities. The primary purpose of this extramural research grant program is to attract young minority scientists to the field of violence by encouraging doctoral candidates from a variety of disciplines to conduct violence prevention research and hopefully carry this focus on throughout their careers.

B. Eligibility

Eligible Institutions

Eligible institutions include any United States public or private institution such as a university or college that supports an accredited doctoral level training program. The performance site must be domestic.

Note: Title 2 of the United States Code section 1611 states that an organization described in Section 501(C)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

Eligible Applicants

Applicants must be minority students in good standing enrolled in an accredited doctoral degree program. Applicants must have also successfully defended their dissertation proposal to be eligible for this funding. For the purpose of this program announcement, minorities are defined as individuals belonging to a particular ethnic or racial group (as defined by the U.S. Census Bureau) that has been determined by the applicant institution to be under-represented in biomedical or behavioral research. Applicants must be conducting or intending to conduct research in one of the areas described under the Research Objectives section. The applicant must have obtained approval of the dissertation proposal by the dissertation committee by the time of application. The applicant's eligibility must be verified in a letter of certification from the mentor (the chair of the dissertation committee or other academic advisor) and submitted with the grant application.

The following are applicant requirements:

1. The principal investigator must be a full-time doctoral student in an accredited doctoral program. The principal investigator must have the authority and responsibility to carry out the proposed project.
2. The application must propose dissertation research that will help expand and advance our understanding of violence, its causes, and prevention strategies.
3. The applicant must have the ability to carry out an injury prevention research project with the advice of and consultation of a senior research mentor.
4. The overall match between the applicant's proposed topic and research objectives, and the research objectives described under the Program Requirements.

C. Availability of Funds

Approximately $100,000 is expected to be available in FY 2002 for up to five dissertation awards for minority doctoral candidates. The availability of Federal funding may vary and is subject to change. It is expected that the awards will begin on or about September 30, 2002, and will be made for a 12-month budget period within a one-year project period. Applications that exceed the funding caps noted above will be excluded from the competition and returned to the applicant.

Grants to support dissertation research will provide no more than $20,000 in direct and indirect costs. An application that exceeds this limit will be returned to the applicant without review. Grants will be awarded for twelve months, but may be extended without additional funds for up to a total of 24 months. Grant funds will not be made available to support the provision of direct patient care including medical and/or psychiatric care.

Allowable costs include direct research project expenses, such as interviewer expenses, data processing, participant incentives, statistical consultant services, supplies, and dissertation printing costs; and travel to one scientific meeting, if adequately justified. Applicants should include travel costs for one two-day trip to CDC in Atlanta to present research findings. No tuition support is allowed.

D. Program Requirements

Research Objectives

For the purpose of this program announcement the highest priority will be given to dissertation research that addresses the following areas of inquiry:

a. Identifying shared and unique risk and protective factors for the perpetration of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behaviors, and examining the relationships among these forms of violence.

b. Evaluating the efficacy and effectiveness of interventions, programs, and policies to prevent intimate partner violence, sexual violence (includes both sexual violence against adults and child sexual abuse), child maltreatment, youth violence, or suicidal behavior.

c. Evaluating strategies for disseminating and implementing evidence-based interventions or policies for the prevention of intimate partner violence, sexual violence, child maltreatment, youth violence, or suicidal behavior.

Other Special Conditions for Dissertation Research Grants

a. The doctoral candidate must be the designated principal investigator. The principal investigator will be responsible for planning, directing, and executing the proposed project with the advice and consultation of the mentor and dissertation committee.

b. The responsible program official for CDC must be informed if there is a change of mentor. A biographical sketch of the new mentor must be provided for approval by the CDC program official.

c. A dissertation research grant may not be transferred to another institution, except under unusual and compelling circumstances (such as if the mentor moves to a new institution and both the mentor and the applicant wish to move together).

d. Two copies of the dissertation, including abstract, must be submitted to the CDC program official and will constitute the final report of the grant. The dissertation must be officially accepted by the dissertation committee or university official responsible for the candidate's dissertation and must be signed by the responsible university official.

e. Any publications directly resulting from the grant should be reported to the CDC program official. The grantee also should cite receiving support from the NCIPC and CDC, both in the dissertation and any publications directly resulting from the dissertation grant.

E. Content

Letter of Intent (LOI)

A LOI is optional for this program. The narrative should be no more than two double-spaced pages, printed on one side, with one-inch margins, and unreduced font. The letter should identify the announcement number, the name of the principal investigator, and briefly describe the scope and intent of the proposed research work. The letter of intent does not influence review or funding decisions, but the number of letters received will enable CDC to plan the review more effectively and efficiently.

Application

Use the information in the Program Requirements and Evaluation Criteria sections described below to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan.

Application forms must be submitted in the following order:

Cover letter
Table of Contents
Application
Budget Information Form
Budget Justification
Checklist
Assurances
Certifications
Disclosure Forms
HIV Assurance Form (If Applicable)
Human Subjects Certification
Indirect Cost Rate Agreement
Narrative

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Applications should follow the PHS–398 (Rev. 5/2001) application and Errata sheet and should include the following information:

1. The project's focus that justifies the research needs and describes the scientific basis for the research, the expected outcome, and the relevance of the findings to reduce injury morbidity, mortality, and economic losses.

2. Specific, and time-framed objectives.

3. A detailed plan describing the methods by which the objectives will be achieved, including their sequence.

4. A description of the principal investigator's role and responsibilities, along with that of the mentor.

5. A description of all project staff regardless of their funding source. It should include their title, qualifications, experience, percentage of time each will devote to the project, as well as that portion of their salary to be paid by the grant.

6. A description of those activities related to, but not supported by the grant.

7. A description of the involvement of other entities that will relate to the proposed project, if applicable. Letters of collaboration and a clear statement of their roles are required from all collaborating organizations.

8. A detailed budget for the grant.

9. An explanation of how the research findings will contribute to the national effort to reduce the morbidity, mortality and disability caused by violence-related injuries.

The narrative portion of the application that describes the Research Plan for the dissertation may not exceed fifteen pages.

Additional Materials Required

The applicant must also submit the following materials, attached to the application as appendices:

1. A letter from the applicant's mentor which: (a) Fully identifies the members of the dissertation committee and certifies their approval of the dissertation proposal. (b) Certifies that the mentor has read the application and believes that it reflects the work to be completed in the dissertation. (c) Certifies that the institution's facilities and general environment are adequate to conduct the proposed research.

2. A tentative time line for completion of the research, the dissertation, and the dissertation defense.

3. An official transcript of the applicant's graduate school record showing that the applicant has completed all required coursework for the degree with the exception of the dissertation.

4. A statement of the applicant's career goals and intended career trajectory.

5. A biography of the mentor, limited to two pages (use the Biographical Sketch page in application form PHS 398).

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and five copies of PHS 398 (OMB Number 0925–0001) (adhere to the instructions on the Errata Instruction sheet for PHS 398). Forms are in the application kit and at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm.*

On or before 5 pm Eastern Time on June 14, 2002, submit the application to the Technical Information Management Section: 2920 Brandywine Road, Suite, 3000, Atlanta, Georgia 30341.

Deadline

Applications shall be considered as meeting the deadline if they are received before 5 pm Eastern Time on the deadline date. Applicants sending applications by the United States Postal Service or commercial delivery services must ensure that the carrier will be able to guarantee delivery of the application by the closing date and time. If an application is received after closing due to (1) carrier error, when the carrier accepted the package with a guarantee for delivery by the closing date and time, or (2) significant weather delays or natural disasters, CDC will upon receipt of proper documentation, consider the application as having been received by the deadline.

Applications that do not meet the above criteria will not be eligible for competition and will be discarded. Applicants will be notified of their failure to meet the submission requirements.

G. Evaluation Criteria

Upon receipt, applications will be reviewed by CDC staff for completeness, responsiveness and eligibility as outlined under the Eligible Applicants Section. Incomplete applications, that are not responsive, or applications from applicants that are not eligible will be returned to the applicant without further consideration. It is especially important that the applicant's abstract reflects the project's focus, because the abstract will be used to help determine the responsiveness of the application.

Applications which are complete and responsive may be subjected to a preliminary evaluation (triage) by a peer review committee, the Injury Research Grant Review Committee (IRGRC) to determine if the application is of sufficient technical and scientific merit to warrant further review by the IRGRC; CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator and the official signing for the applicant organization. Those applications judged to be competitive will be initially reviewed by the IRGRC and the secondary review will be conducted by the Science and Program Review Subcommittee (SPRS) of the Advisory Committee for Injury Prevention and Control (ACIPC).

Awards will be determined by the Director of the NCIPC based on priority scores assigned to applications by the primary review committee (IRGRC), recommendations by the secondary review committee, e.g., the ACIPC, consultation with NCIPC senior staff, and the availability of funds.

1. The primary review will be a peer review conducted by the IRGRC. A committee of no less than three reviewers will review all applications for scientific merit with appropriate expertise using current National Institutes of Health (NIH) criteria to evaluate the methods and scientific quality of the application. Factors to be considered will include:

a. Significance: Does this study address an important problem?

b. Approach: Are the conceptual framework, design, methods, and analyses adequately developed, well-integrated, and appropriate to the aims of the project?

c. Innovation: Does the project employ novel concepts, approaches or methods? Are the aims original and innovative? Does the project challenge or advance existing paradigms, or develop new methodologies or technologies?

d. Investigator: Is the principal investigator appropriately trained and well suited to carry out this work? Is the proposed work appropriate to the experience level of the principal investigator? Is the name and role of a scientific mentor described?

e. Environment: Does the scientific environment in which the work will be done contribute to the probability of success? Is there evidence of agreements to collaborate or other institutional support?

f. Ethical Issues: What provisions have been made for the protection of human subjects and the safety of the research environments? Where relevant, how does the applicant plan to handle issues of confidentiality and compliance with mandated reporting requirements, e.g., suspected child abuse? Does the application adequately address the requirements of 45 CFR part 46 for the protection of human subjects? (An application can be disapproved if the research risks are sufficiently serious and protection against risks is so inadequate as to make the entire application unacceptable.) The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

(1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

(2) The proposed justification when representation is limited or absent.

(3) A statement as to whether the design of the study is adequate to measure differences when warranted.

(4) A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

g. Study Samples: Are the samples rigorously defined to permit complete independent replication at another site? Have the referral sources been described, including the definitions and criteria? What plans have been made to include women and minorities, and their subgroups as appropriate for the scientific goals of the research? How will the applicant deal with recruitment and retention of subjects?

h. Dissemination: What plans have been articulated for disseminating findings?

The IRGRC will also examine the appropriateness of the proposed project budget and duration in relation to the proposed research and the availability of data required for the project.

2. The secondary review will be conducted by the SPRS of the ACIPC. The ACIPC Federal ex officio members will be invited to attend the secondary review, will receive modified briefing books, (i.e., abstracts, strengths and weaknesses from summary statements, and project officer's briefing materials). The NCIPC Division Associate Directors for Science (ADS) or their designees will attend the secondary review in a similar capacity as the Federal ex officio members. Only SPRS members will vote on funding recommendations, and their recommendations will be carried to the entire ACIPC for voting by the ACIPC members in closed session. If any further review is needed by the ACIPC, regarding the recommendations of the SPRS, the factors considered will be the same as the factors that the SPRS considered.

The Secondary Review Committee's responsibility is to develop funding recommendations for the NCIPC Director based on the results of the primary review and the relevance and balance of proposed research relative to the NCIPC programs and priorities. The Committee has the latitude to recommend to the NCIPC Director, to reach over better ranked proposals in order to assure maximal impact and balance of proposed research.

The factors to be considered will include:

A. The results of the primary review including the application's priority score as the primary factor in the selection process.

B. The relevance and balance of proposed research relative to the NCIPC programs and priorities.

C. The significance of the proposed activities in relation to the priorities and objectives stated in "People 2010" and the Institute of Medicine report, "Reducing the Burden of Injury."

D. Budgetary considerations.

H. Other Requirements

Technical Reporting Requirements

The grantee must provide CDC with an original plus two copies of:

1. The dissertation, including abstract that will constitute the final report of the grant.

2. A financial status report, no more than 90 days after the end of the budget period.

3. At the completion of the project, the grant recipient will submit a brief (2,500 to 4,000 words written in non-scientific [laymen's] terms) summary highlighting the findings and their implications for injury prevention programs, policies, environmental changes, etc. The grant recipient will also include a description of the dissemination plan for research findings. This plan will include, publications in peer-reviewed journals and ways in which research findings will be made available to stakeholders outside of academia, (e.g., state injury prevention program staff, community groups, public health injury prevention practitioners, and others). CDC will place the dissertation abstract with the National Technical Information Service (NTIS) to further the agency's efforts to make the information more available and accessible to the public.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program.

AR–1 Human Subjects Certification
AR–2 Requirements for inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirement
AR–9 Paperwork Reduction Requirements
AR–10 Smoke-Free Workplace Requirement
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–13 Prohibition on Use of CDC funds for Certain Gun Control Activities
AR–21 Small, Minority, and Women-owned Business
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) (42 U.S.C. 241(a)) of the Public Health Service Act and section 391(a) (42 U.S.C. 280(b)) of the Public Service Health Act, as amended. The catalog of Federal Domestic Assistance number is 93.136.

J. Where To Obtain Additional Information

This and other CDC announcements, the necessary application and associated forms can be found on the CDC homepage Internet address—*http://www.cdc.gov.* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Nancy Pillar, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Program Announcement 02152, Centers for Disease Control and Prevention (CDC), 2920 Brandywine Road, Room 3000, Atlanta, Georgia 30341. *Telephone:* (770) 488–2721. *Email address: nfp6@cdc.gov.*

For program technical assistance, contact: Melinda Williams, Project Officer, Prevention Development and Evaluation Branch, Division of Violence Prevention, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), 4770 Buford Highway, NE, Mail Stop K–60, Atlanta, GA 30341–4723. *Telephone:* (770) 488–4647. *Email address: mwilliams1@cdc.gov.*

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Dated: May 3, 2002.
Sandra R. Manning,
Director, Procurement and Grants Office, Centers for Disease Control and Prevention.
[FR Doc. 02–11554 Filed 5–8–02; 8:45 am]
BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0144]

Bavarian Red Cross; Opportunity for Hearing on a Proposal to Revoke U.S. License No. 1002

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002), issued to the Bavarian Red Cross (BRC), for the manufacture of Whole Blood and Red Blood Cells. The proposed revocation is based on the failure of the establishment and the product for which the license has been issued, to conform to the applicable standards established in the license and in the regulations.

DATES: The firm may submit written or electronic requests for a hearing by June 10, 2002, and any data and information justifying a hearing by July 8, 2002. Other interested persons may submit written or electronic comments on the proposed revocation by July 8, 2002.

ADDRESSES: Submit written requests for a hearing, any data and information justifying a hearing, and any written comments on the proposed revocation to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to: http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael D. Anderson, Center for Biologics Evaluation and Research (HFM–17), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–827–6210.

SUPPLEMENTARY INFORMATION: FDA is initiating proceedings to revoke the biologics license (U.S. License No. 1002) issued to BRC, Herzog-Heinrich-Strasse 4, D–80336, Munich, Germany, for the manufacture of Whole Blood and Red Blood Cells. Additional locations affected by the proposed revocation include: Prof.-Ernst-Nathan-Str. 1, D–90419, Nurnburg, Germany; Klinikstrasse 5, D–97070, Wurzburg, Germany; Dr. Franz-Strasse 3, D–95445, Bayreuth, Germany; Westheimer Strasse 80, D–86156, Augsburg, Germany; Nikolaus-Fey-Strasse 32, D–97353, Wiesentheid, Germany; and Hoher Kreuz Weg 7, D–93055, Regensburg, Germany. The proposed revocation is based on the failure of BRC to conform to the applicable standards established in its license and the requirements of parts 211 and 600 to 680 (21 CFR parts 211 and 600 to 680).

FDA inspected four of the six licensed locations of the BRC from October 27 through November 13, 1997. The inspections were conducted at the Munich, Wiesentheid, Nurnberg, and Bayreuth facilities. During the inspections, FDA observed significant deviations from the standards established in the license as well as the applicable Federal regulations. The standards and regulations are designed to ensure the continued safety, purity, and potency of the manufactured product. FDA also determined that the firm had discontinued the manufacture of Whole Blood and Red Blood Cells intended for distribution in the United States. FDA concluded that a meaningful inspection of BRC's ability to appropriately manufacture products under the license could not be made. The deviations noted during the inspections included, but were not limited to, the following: (1) In violation of § 640.3(b), donor suitability was not adequately determined, in that questions were not asked, concurrently with the direct questions on high risk behavior, for exclusion of donors who are at increased risk for human immunodeficiency virus-1 (HIV–1) group O infection; (2) in violation of §§ 606.140, 610.40, and 610.45, inspections of the Nurnburg and Munich facilities disclosed that the Abbott Prism system, a device not approved by FDA, was utilized to test for antibody to HIV types 1 and 2 plus O (anti-HIV ±), the hepatitis B surface antigen (HBsAg), the antibody to hepatitis B core antigen (anti-HBc), and antibody to hepatitis C virus encoded antigen (anti-HCV). Additionally, blood and blood products were not tested for HIV–1 antigen and antibody to human lymphotropic virus type I (anti-HTLV–I); (3) in violation of § 606.140, the New LAV-Bolt I by Sanofi Diagnostics Pasteur, an HIV–1 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; (4) in violation of § 606.140, the New LAV-Bolt II by Sanofi Diagnostics Pasteur, an HIV–2 western blot assay that was not approved by FDA, was used as an assay for reentry of donors; and (5) in violation of § 606.121(c)(5)(i), blood and blood products that were intended for transfusion and collected from paid donors were not labeled as to distinguish them from blood products collected from volunteer donors.

In a letter dated July 8, 1998, and issued under § 601.5(b), FDA outlined the deviations noted at the inspection. FDA notified BRC of FDA's intent to revoke U.S. License No. 1002 and announced its intent to offer an opportunity for a hearing unless the deviations were adequately addressed. In a letter to FDA dated July 30, 1998, BRC responded to FDA's concerns about the inability to inspect products prepared under the U.S. License No. 1002.

In a certified, return-receipt letter to BRC, dated January 21, 1999, FDA stated that the firm's July 30, 1998, response was inadequate to address all the violations that FDA documented at the inspections. FDA advised BRC that its response was unsatisfactory in that BRC had not provided a comprehensive corrective action plan, adequate to bring the firm into compliance with the applicable Federal standards and regulations. In the same letter, FDA suggested that the firm voluntarily request that U.S. License No. 1002 be revoked, and a new application be submitted at a later date.

In a letter dated November 3, 2000, FDA notified BRC that since the receipt of the July 30, 1998, letter to FDA, FDA had not received any additional response from the firm. The letter stated that under § 601.5(b)(2), FDA had provided a reasonable period for the firm to demonstrate or achieve compliance with the applicable standards established in the license and regulations before proceeding to initiate revocation of U.S. License No. 1002. Since BRC did not submit a response addressing the methods intended to demonstrate or achieve compliance and did not waive an opportunity for a hearing, FDA notified the firm in the same letter of FDA's intent to revoke the license and to issue a notice of opportunity for a hearing under § 12.21(b) (21 CFR 12.21(b)).

Under § 12.21(b), FDA is issuing a notice of opportunity for a hearing on a proposal to revoke the biologics license (U.S. License No. 1002) issued to BRC.

FDA has placed copies of the documents relevant to the proposed revocation on file with Dockets Management Branch (see **ADDRESSES**) under the docket number found in brackets in the heading of this document. These documents include: (1) FDA's letters to BRC dated July 8, 1998, January 21, 1999, and November 3, 2000; and (2) BRC's response to FDA dated July 30, 1998. These documents are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

BRC may submit to the Dockets Management Branch (see **ADDRESSES**) a written request for a hearing by June 10, 2002, and any data and information justifying a hearing must be submitted by July 8, 2002. Other interested persons may submit written comments on the proposed license revocation to the Dockets Management Branch by July 8, 2002. The failure of the licensee to file a timely written request for a hearing constitutes an election by the licensee not to avail itself of the opportunity for a hearing concerning the proposed license revocation.

FDA's procedures and requirements governing a notice of opportunity for a hearing, notice of appearance and request for a hearing, grant or denial of hearing, and submission of data to justify a hearing on proposed revocation of a license are contained in 21 CFR parts 12 and 601. A request for a hearing may not rest upon mere allegations or denials but must set forth a genuine and substantial issue of fact that requires a hearing. If the Commissioner of the Food and Drugs (the Commissioner) determines upon review of any objections or request for a hearing that a hearing is not justified, in whole or in part, or if a request for a hearing is not made within the required time with the required format or required analyses, the Commissioner will deny the hearing request, with an explanation for the denial.

Two copies of any submissions are to be provided to FDA, except that individuals may submit one copy. Submissions are to be identified with the docket number found in brackets in the heading of this document. Such submissions, except for data and information prohibited from public disclosure under 21 CFR 10.20(j)(2)(i), 21 U.S.C. 331(j), or 18 U.S.C. 1905, may be seen in the Dockets Management Branch (see **ADDRESSES**) between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under section 351 of the Public Health Service Act (42 U.S.C. 262) and sections 201, 501, 502, 505, and 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 351, 352, 355, and 371), and under the authority delegated to Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: May 2, 2002.
Kathryn C. Zoon,
Director, Center for Biologics Evaluation and Research.
[FR Doc. 02–11509 Filed 5–8–02; 8:45 am]
BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Extramural Support Program for Projects To Increase Organ Procurement

AGENCY: Health Resources and Services Administration, Health and Human Services.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces the availability of fiscal year (FY) 2002 funds to be awarded under the Division of Transplantation (DoT) program for discretionary grants, under a new competition that supports the evaluation of clinical interventions to increase the number of heart-beating and non-heart-beating organ donors and/or the number of organs that could be recovered from such donors. In concert with HHS' Gift of Life Donation Initiative, this extramural program, Clinical Interventions to Increase Organ Procurement, will fund grants of up to 3 years duration to implement, evaluate, and disseminate model interventions with the greatest potential for yielding a verifiable and demonstrable impact on organ procurement and which are replicable, transferable, and feasible in practice. Applicants must be qualified organ procurement organizations (OPOs) or other nonprofit private organizations actively involved in the field of transplantation. Strong evaluation project components and staffing expertise are required.

Authority for this program is provided by section 371(a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended.

DATES: To help HRSA adequately plan for the Objective Review Process, Letters of Intent are encouraged from all applicants. Such letters should be sent to: Lynn Rothberg Wegman, M.P.A., Director, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Land, Room 7C–22, Rockville, Maryland 20857, or faxed to: 301/594–6095 or 301/443–1267. Such letters should be received by DoT by June 10, 2002. Receipt of these notices of intent will not be routinely acknowledged.

EFFECTIVE DATE: Applications must be received in the HRS Grant Application Center by the close of business July 8, 2002, to be considered for competition. Applications will meet the deadline if they are either (1) received on or before the deadline date or (2) postmarked on or before the deadline date, and received in time for submission to the objective review panel. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted instead of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications postmarked after the deadline will be returned to the applicant.

ADDRESSES: The official grant application kit and guidance materials for this announcement may be obtained on the following three web sites: *www.hrsa.gov*, *www.hrsa.gov/osp/dot/*, and *www.organdonor.gov*, and from the HRSA Grants Application Center, Attn: CFDA 93.134; 2002 Clinical Interventions to Increase Organ Procurement, The Legin Group, Inc., 901 Russell Avenue, Suite 450, Gaithersburg, MD 20879; telephone 877/477–2123, e-mail address *hrsagac@hrsa.gov*. Applicants are strongly advised to obtain the Guidance before preparing applications. Applicants for grants will use Revised Form PHS 5161–1. This form may be downloaded from the DHHS Program Support Center (PSC) website at: *http://www.psc.gov/forms/PHS/phs.html*. The application guidance may be accessed through HRSA's website at *www.hrsa.gov/grants.htm*.

FOR FURTHER INFORMATION CONTACT: Additional information regarding business, administrative, and fiscal issues related to the awarding of grants under this Notice may be requested from Darren S. Buckner, Grants Management Specialist, HIV/AIDS Bureau, Health Resources and Services Administration, 5600 Fishers Land, Room 7–89, Rockville, MD 20857; telephone 301/443–1913; fax 301/594–6096; e-mail address *DBuckner@hrsa.gov*.

Additional information regarding program issues and the overall Program may be requested from Laura M. Saint Martin, M.D., M.P.H., Medical Officer, or Virginia McBride, R.N., B.S., CPTC, Public Health Analyst, Operations and Analysis Branch, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Land, Room 7C–22, Rockville, MD 20857; telephone number 301/443–

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7577; fax 301/594–6095 or 301/443–1267. Dr. Saint Martin can be reached via e-mail at *LStMartin@hrsa.gov*; Ms. McBride can be reached at *VMcBride@hrsa.gov*.

Technical assistance regarding this funding announcement may be requested from Virginia McBride, R.N., B.S., CPTC, Public Health Analyst, Operations and Analysis Branch, Division of Transplantation, Office of Special Programs, Health Resources and Services Administration, 5600 Fishers Lane, Room 7C–22, Rockville, MD 20857; fax 301/594–6095 or 301/443–1267; e-mail address *VMcBride@hrsa.gov*.

SUPPLEMENTARY INFORMATION:

Purposes

Organ donation has become an increasingly important public health issue. Only about 6,000 deaths in the United States each year result in organ donation, compared with an estimated potential of 8,000–15,000 donors. Moreover, nearly 80,000 patients are currently awaiting transplants and about 5,500 patients die each year because of the critical shortage of transplantable organs.

In September 1999, HRSA's Division of Transplantation (DoT) instituted its Model Interventions to Increase Donation grant program that focused on interventions to increase cadaveric organ and tissue donation. In 2001, the program was expanded to include interventions to increase living donation and the development of hospital donor protocols and educational interventions to increase non-heart-beating donation. To be considered eligible, interventions must be intended to increase organ procurement, raise consent rates for organ donation, and/or increase the rate of declaration of intent to donate coupled with family notification of intent to become an organ donor.

To date, interventions funded by DoT's grant program that address the first criterion, increasing organ procurement, have focused on improving hospital and OPO interactions/practices to identify donors and provide emotional support to donor families. However, additional opportunities to increase the rate of organ procurement exist but continue to fall outside the scope of HRSA's current grant program. In fact, many interventions that would likely increase organ procurement efficiency do not appear to qualify for any HHS funding opportunities possibly because the research would need to be conducted after pronouncement of a donor's death.

For this reason, DoT is proposing the development of a new grant program, Clinical Interventions to Increase Organ Procurement, to support the evaluation of clinical interventions to increase the number of heart-beating and non-heart-beating organ donors and/or the number of organs that could be recovered from such organ donors. Eligible interventions could focus on new and/or improved methods to optimize hemodynamic stability in brain dead patients, improve donor organs with compatible recipients. Additionally, projects leading to more accurate identification of appropriate non-hear-beating donation candidates and improved methods of donor stabilization and organ recovery would qualify. Improving OPO internal processes, such as improved quality assurance practices, also would be acceptable if it can be demonstrated that these efforts result in increased organ procurement.

This grant program is focused solely on clinical interventions to increase heart-beating and non-heart-beating cadaveric donation. Funds will not be used for other types of projects. Examples of research that will *not* be supported under this program are: Living donation; clinical trials of drugs not approved by the FDA or off-label uses of FDA-approved drugs; research involving animals; long-term transplantation outcomes research; interventions to increase tissue donation alone; practices related to the pronouncement of death; and interventions inconsistent with Federal law or statute. Projects falling within the scope of DoT's grant program, Model Interventions to Increase Organ and Tissue Donation, also are not eligible to receive funding under the clinical interventions program.

Projects can employ qualitative studies, quantitative research, or empiric work. As emphasized during the April 1–2, 1998, national conference titled "Increasing Donation and Transplantation: The Challenge of Evaluation" sponsored by HHS' Office of the Assistant Secretary for Planning and Evaluation with additional support provided by the Agency for Healthcare Research and Quality and the National Institute of Allergy and Infectious Diseases, HHS places a high priority on research and evaluation. HHS has served, and plans to continue to serve, as a catalyst for the field by emphasizing and encouraging carefully designed and rigorous evaluation components and research projects to ascertain effective interventions for increasing donation and procurement.

Review Criteria

The review of applications will take into consideration the proposed criteria listed below. The system for scoring each application will range from 0–100 points, with 100 being best.

1. (30 points) Potential of the project to yield a demonstrable and verifiable impact on organ procurement.
2. (25 points) Degree of scientific rigor in the design, implementation, and evaluation of the project.
3. (20 points) Experience and expertise of proposed project staff as supported by education, relevant publications and work history.
4. (15 points) Extent to which projects are replicable, transferable, and practical.
5. (10 points) Adequacy of facilities, resources, and collaborative arrangements relevant to the goals of the project.

Performance Measures

All project must include rigorous outcome evaluation protocols. Outcomes and performance measures must be identified and defined to determine effectiveness of the project. Performance measures are expected to address one or more of the following outcomes:

1. Organ donation rates;
2. Organ procurement rates; and/or
3. Organ transplant rates.

Availability of Funds: The Clinical Interventions to Increase Organ Procurement Program is authorized by Section 371(a)(3) of the Public Health Service (PHS) Act, 42 U.S.C. 273(a)(3), as amended. This section authorizes the Secretary to make grants to qualified organizations for the purpose of carrying out special projects designed to increase the number of organ donors.

HRSA expects to award under this program up to $3 million in FY2002 to support the first year of approximately 12–20 projects. Subsequent years' funding depends on the availability of appropriations, program priorities, and recipient performance. Projects will be awarded for up to 3 years. The budget and project periods for approved and funded projects will begin on or about September 30, 2002. All applicants should submit budgets for the three-year period.

Eligible Applicants: The proposed project may be conducted solely by an OPO or by a consortium of relevant entities or organizations, of which one organizational member (the applicant) carries overall responsibility for project leadership and administration of the HRSA grant award. The applicant must be a Federally designated OPO (section 1138(b) of the Social Security Act) or other nonprofit private organization actively involved in the field of transplantation, or a Federal institution in accordance with section 235 of the Public Health Service Act. If the consortium approach is used, members and roles must be identified in the application and all members must have substantive involvement in the project. For-profit organizations may participate as members of consortia, but not as the applicant.

The OMB Catalog of Federal Domestic Assistance number for the Clinical Interventions to Increase Organ Procurement Program is 93.134.

Paperwork Reduction Act: OMB approval for any data collection in connection with these grants will be sought, as required under the Paperwork Reduction Act of 1995.

Dated: April 19, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–11580 Filed 5–8–02; 8:45 am]

BILLING CODE 4165–15–U

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budged Act of 1997 and the FY 2001 Consolidated Appropriations Act.

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Institute of Diabetes and Digestive and Kidney Diseases (NIDDK), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on November 28, 2001, page 59438 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Assessment of the Use of Special Funding for Research on Type 1 Diabetes Provided by the Balanced Budget Act of 1997 and the FY 2001 Consolidated Appropriations Act. *Type of Information Collection Requested:* NEW. *Need and Use of Information Collection:* This survey will be one source of input into a statutorily mandated assessment and report to the Congress on special funding for research on type 1 diabetes provided by 42 U.S.C. 254c–2 and 42 U.S.C. 1254c–2 note, "Special Diabetes Program for Type 1 Diabetes" (as created by the Balanced Budget Act of 1997, Pub. L. 105–33, and amended by the FY 2001 Consolidated Appropriations Act, Pub. L. 106–554). The primary objective of this study is to gain information, via a brief questionnaire, from NIH research grantees who were the primary recipients of these special funds. The responses will provide valuable information concerning how the funds have facilitated research as intended by these Acts of the Congress. Information from this study will aid in evaluation of the process by which the research goals for use of the special type 1 diabetes funds have been developed and are being pursued. Responses from this study will contribute to a statutorily mandated report, due to the Congress on January 1, 2003 (42 U.S.C. 254c–2 and 42 U.S.C. 1254c–2 note), evaluating the process and efforts under this program and assessing research initiatives funded by these Acts of the Congress. *Frequency of Response:* The initial survey will require a one time response; though, respondents may be contacted again in the event of future congressionally mandated reports on the use of the special type 1 diabetes research funds. *Affected Public:* Research scientists who received the special funds about which the Congress has mandated in law the requirements for an evaluation report. *Type of Respondents:* Laboratory and clinical investigators who have received support from the special type 1 diabetes funds provided under the laws previously cited. The annual reporting burden is as follows: *Estimated number of respondents:* 300; *Estimated Number of Responses per Respondent:* 1; *Average Burden Hours per Response:* 1 hour for nine questions; and *Estimated Total Burden Hours Requested:* 300. The annualized total cost to respondents is estimated at: $15,000. It is expected that the respondents will be contacted and will return their responses via electronic mail. These measures will reduce the burden on the respondents and the overall costs of administering the study. Respondents will be asked to answer nine questions, one-third of which will be answered with "yes" or "no" or a one-word response. There are no Capital Costs, Operating Costs or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information one those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the: Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Dr. Michelle A. Cissell, AAAS/NIH Science Policy Fellow, Office of Scientific Program and Policy Analysis, NIDDK, NIH, Building 31, Room 9A11, 9000 Rockville Pike, Bethesda, MD 20892, or call non-toll-free number (301) 496–6623 or e-mail your request, including your address to: *cissellm@extra.niddk.nih.gov*.

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: April 22, 2002.

Barbara Merchant,

Executive Officer, NIDDK.

[FR Doc. 02–11521 Filed 5–8–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Fogarty International Center; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Fogarty International Center Advisory Board.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Fogarty International Center Advisory Board.

Date: May 21, 2002.

Open: 8:30 a.m. to 12:00 p.m.

Agenda: Report of the Director on updates and overview of new FIC programs and initiatives.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Closed: 1 p.m. to Adjournment.

Agenda: To review and evaluate grant applications.

Place: Lawton Chiles International House, 16 Center Drive, (Building 16), Bethesda, MD 20892.

Contact Person: Irene W. Edwards, Information Officer, Fogarty International Center, National Institutes of Health, Building 31, Room B2C08, 31 Center Drive MSC 2220, Bethesda, MD 20892. 301–496–2075.

Information is also available on the Institute's/Center's home page: *www.nih.gov/fic/about/advisory.html*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.106, Minority International Research Training Grant in the Biomedical and Behavioral Sciences; 93.154, Special International Postdoctoral Research Program in Acquired Immunodeficiency Syndrome; 93.168, International Cooperative Biodiversity Groups Program; 93.934, Fogarty International Research Collaboration Award; 93.989, Senior International Fellowship Awards program, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11520 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institute; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the National Advisory Eye Council.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Advisory Eye Council.

Date: June 13–14, 2002.

Closed: June 13, 2002, 8:30 a.m to 1:15 p.m.

Agenda: To review and evaluate grant applications.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Open: June 13, 2002, 1:30 p.m. to 5 p.m.

Agenda: Following opening remarks by the Director, NEI, there will be presentations by staff of the Institute and discussions concerning Institute programs and policies.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Open: June 14, 2002, 8:30 a.m. to 12 p.m.

Agenda: Program Planning Meeting.

Place: 6130 Executive Boulevard, Room G, Rockville, MD 20852.

Contact Person: Lore Anne McNicol, Director, Division of Extramural Research, National Eye Institute, National Institutes of Health, Bethesda, MD 20892. 301–496–9110.

Information is also available on the Institue's/Center's home page: *www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11518 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Clinical Trials Review Committee.

Date: June 23–25, 2002.

Time: 7 p.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Joyce A Hunter, PhD, Review Branch, Room 7192, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, Bethesda, MD 20892–7924. 301/435–0277.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11514 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Allergy and Infectious Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Allergy and Infectious Diseases Special Emphasis Panel, Transplant Tolerance: Costimulation, Cytokines & Chimerism.

Date: May 24, 2002.

Time: 12 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: 6700–B Rockledge Drive, Bethesda, MD 20892. (Telephone Conference Call).

Contact Person: Priti Mehrota, PhD, Scientific Review Administrator, Division of Extramural Activities, National Institute of Allergy and Infectious Diseases, National Institutes of Health, 6700–B Rockledge Drive, Room 2100, Bethesda, MD 20892–7616. 301–496–2550. *pm158b@nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.855, Allergy, Immunology, and Transplantation Research; 93.856, Microbiology and Infectious Diseases Research, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11515 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute on Drug Abuse; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the National Advisory Council on Drug Abuse, May 22, 2002, 9 a.m. to May 23, 2002, 3:30 p.m., Neuroscience Center, National Institutes of Health, 6001 Executive Blvd., Rockville, MD, 20852 which was published in the **Federal Register** on April 18, 2002, Volume 67, FRN 75.

The date of the meeting has been changed to May 22, 2002. The time of the closed session will be from 9 a.m. to 11 a.m. and the open session will be from 11:15 a.m. to 3:30 p.m. The meeting is partially Closed to the public.

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11519 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Office of the Director, National Institutes of Health; Notice of Meeting

Pursuant to section 10(a) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Recombinant DNA Advisory Committee.

The meeting will be open to the public, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

Name of Committee: Recombinant DNA Advisory Committee.

Date: June 20–21, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: The Committee will discuss data management activities related to human gene transfer clinical trials, and review selected human gene transfer protocols.

Place: Double Tree Hotel, 1750 Rockville Pike, Rockville, MD 20852.

Contact Person: Stephen M. Rose, PhD, Executive Secretary, Office of Biotechnology Activities, National Institutes of Health, 6705 Rockledge Drive, Room 705, Bethesda, MD 20892. 301–496–9838. *sr8j@nih.gov.*

Information is also available on the Institute's/Center's home page: *www4.od.nih.gov/oba/*, where an agenda and any additional information for the meeting will be posted when available.

OMB's "Mandatory Information Requirements for Federal Assistance Program Announcements" (45 FR 39592, June 11, 1980) requires a statement concerning the official government programs contained in the Catalog of Federal Domestic Assistance. Normally NIH lists in its announcements the number and title of affected individual programs for the guidance of the public. Because the guidance in this notice covers virtually every NIH and Federal research program in which DNA recombinant molecule techniques could be used, it has been determined not to be cost effective or in the public interest to attempt to list these programs. Such a list would likely require several additional pages. In addition, NIH could not be certain that every Federal program would be included as many Federal agencies, as well as private organizations, both national and international, have elected to follow the NIH Guidelines. In lieu of the individual program listing, NIH invites readers to direct questions to the information address above about whether individual programs listed in the Catalog of Federal Domestic Assistance are effected.

(Catalogue of Federal Domestic Assistance Program Nos. 93.14, Intramural Research Training Award; 93.187, Undergraduate Scholarship Program for Individuals from Disadvantaged Backgrounds; 93.22, Clinical Research Loan Repayment Program for Individuals from Disadvantaged Backgrounds; 93.232, Loan Repayment Program for Research Generally; 93.39, Academic Research Enhancement Award; 93.936, NIH Acquired Immunodeficiency Syndrome Research Loan Repayment Program, National Institutes of Health, HHS)

Dated: April 30, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11516 Filed 5–8–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Fiscal Year (FY) 2002 Funding Opportunities

AGENCY: Substance Abuse and Mental Health Services Administration, HHS.

ACTION: Notice of Funding Availability.

SUMMARY: The Substance Abuse and Mental Health Services Administration (SAMHSA) Center for Substance Abuse Prevention (CSAP) announces the availability of FY 2002 funds for cooperative agreements for the following activity. This notice is not a complete description of the activity; potential applicants *must* obtain a copy of the Guidance for Applicants (GFA), including Part I, *Ecstasy, Other Club Drugs, Methamphetamine and Inhalant*

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Prevention Infrastructure Development Cooperative Agreements (SP 02–002), and Part II, *General Policies and Procedures Applicable to all SAMHSA Applications for Discretionary Grants and Cooperative Agreements,* before preparing and submitting an application.

Activity	Application deadline	Est. funds FY 2002	Est. number of Awards	Project period
Ecstasy, Other Club Drugs, Methamphetamine and Inhalant Prevention Infrastructure Development Cooperative Agreements.	July 10, 2002	$4,000,000	12	1 year.

The actual amount available for the award may vary, depending on unanticipated program requirements and the number and quality of applications received. FY 2002 funds for the activity discussed in this announcement were appropriated by the Congress under Public Law No. 106–310. SAMHSA's policies and procedures for peer review and Advisory Council review of grant and cooperative agreement applications were published in the **Federal Register** (Vol. 58, No. 126) on July 2, 1993.

General Instructions

Applicants must use application form PHS 5161–1 (Rev. 7/00). The application kit contains the two-part application materials (complete programmatic guidance and instructions for preparing and submitting applications), the PHS 5161–1 which includes Standard Form 424 (Face Page), and other documentation and forms. Application kits may be obtained from: National Clearinghouse for Alcohol and Drug Information (NCADI), P.O. Box 2345, Rockville, MD 20847–2345. Telephone: 1–800–729–6686.

The PHS 5161–1 application form and the full text of the activity are also available electronically via SAMHSA's World Wide Web home page: *http://www.samhsa.gov.*

When requesting an application kit, the applicant must specify the particular activity for which detailed information is desired. All information necessary to apply, including where to submit applications and application deadline instructions, are included in the application kit.

Purpose

Congress has authorized The Substance Abuse and Mental Health Services Administration's Center for Substance Abuse Prevention to announce the availability of Fiscal Year 2002 funds, for cooperative agreements for Ecstasy, other Club Drugs, Methamphetamine and Inhalant Prevention Infrastructure Development.

Applicants may address either one of the following topics:

- Ecstasy and other club drug prevention infrastructure development.
- Methamphetamine and/or inhalant prevention infrastructure development.

Eligibility

Units of State and local governments or Indian tribes and tribal organizations, and domestic private non-profit organizations may apply.

These organizations can include:

- Community-based organizations
- Non-profit managed care and other health care delivery systems
- Universities and colleges
- Faith-based organizations
- City/county government units
- Local law enforcement agencies
- Others

Availability of Funds

Approximately $4 million will be available for 12 awards for up to $350,000 each for one year in total costs (direct and indirect).

- Approximately 6 awards will be made for ecstasy and other club drug prevention infrastructure development.
- Approximately 6 awards will be made for methamphetamine and/or inhalant prevention infrastructure development.

Period of Support

Awards may be requested for up to 1 year.

Criteria for Review and Funding

General Review Criteria: Competing applications requesting funding under this activity will be reviewed for technical merit in accordance with established PHS/SAMHSA peer review procedures. Review criteria that will be used by the peer review groups are specified in the application guidance material.

Award Criteriq for Scored Applications

Applications will be considered for funding on the basis of their overall technical merit as determined through the peer review group and the appropriate National Advisory Council review process. Availability of funds will also be an award criteria. Additional award criteria specific to the programmatic activity may be included in the application guidance materials.

Catalog of Federal Domestic Assistance Number: 93.243.

Program Contact

For questions concerning program issues, contact: Soledad Sambrano, Ph.D., Or Pamela C. Roddy, Ph.D., Center for Substance Abuse Prevention, Substance Abuse and Mental Health, Services Administration, Rockwall II, Suite 1075, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9110. E-Mail: *ssambran@samhsa.gov, proddy@samhsa.gov.*

For questions regarding grants management issues, contact: Steve Hudak, Division of Grants Management, OPS/SAMHSA, Rockwall II, 6th floor, 5600 Fishers Lane, Rockville, MD 20857. (301) 443–9666. E-Mail: *shudak@samhsa.gov.*

Public Health System Reporting Requirements

The Public Health System Impact Statement (PHSIS) is intended to keep State and local health officials apprised of proposed health services grant and cooperative agreement applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based nongovernmental service providers who are not transmitting their applications through the State must submit a PHSIS to the head(s) of the appropriate State and local health agencies in the area(s) to be affected not later than the pertinent receipt date for applications. This PHSIS consists of the following information:

a. A copy of the face page of the application (Standard form 424).

b. A summary of the project (PHSIS), not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

State and local governments and Indian Tribal Authority applicants are not subject to the Public Health System Reporting Requirements. Application guidance materials will specify if a particular FY 2002 activity is subject to the Public Health System Reporting Requirements.

PHS Non-use of Tobacco Policy Statement

The PHS strongly encourages all grant and contract recipients to provide a smoke-free workplace and promote the non-use of all tobacco products. In addition, Public Law 103–227, the Pro-Children Act of 1994, prohibits smoking in certain facilities (or in some cases, any portion of a facility) in which regular or routine education, library, day care, health care, or early childhood development services are provided to children. This is consistent with the PHS mission to protect and advance the physical and mental health of the American people.

Executive Order 12372

Applications submitted in response to the FY 2002 activity listed above are subject to the intergovernmental review requirements of Executive Order 12372, as implemented through DHHS regulations at 45 CFR part 100. Executive Order 12372 sets up a system for State and local government review of applications for Federal financial assistance. Applicants (other than Federally recognized Indian tribal governments) should contact the State's Single Point of Contact (SPOC) as early as possible to alert them to the prospective application(s) and to receive any necessary instructions on the State's review process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. A current listing of SPOCs is included in the application guidance materials. The SPOC should send any State review process recommendations directly to: Division of Extramural Activities, Policy, and Review, Substance Abuse and Mental Health Services Administration, Parklawn Building, Room 17–89, 5600 Fishers Lane, Rockville, Maryland 20857.

The due date for State review process recommendations is no later than 60 days after the specified deadline date for the receipt of applications. SAMHSA does not guarantee to accommodate or explain SPOC comments that are received after the 60-day cut-off.

Dated: May 3, 2002.

Richard Kopanda,

Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 02–11512 Filed 5–8–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4491–N–07]

Final NEPA Environmental Impact Statement (EIS); 1105–1135 Warburton Avenue, City of Yonkers, NY; Affordable Housing Ordinance (AHO) Mandated by a 1988 Federal Long-Term Plan Order

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The Department of Housing and Urban Development (HUD) gives this notice to the public that the City of Yonkers, New York, has completed and makes available to the public for comment the Final Environmental Impact Statement (FEIS) that analyzes the potential impacts of developing a 4.6 acre property, located on the west side of Warburton Avenue, north of O'Dell Avenue, in the City of Yonkers, New York.

The original project was proposed for 524 units and eleven stories. The FEIS now contains two preferred alternatives, which shall set the development parameters of the project between 418 units and 440 units, and between 7 and 10 stories. Both alternatives are required to provide affordable units mixed with market rate units in accordance with the City's Affordable Housing Ordinance (AHO). The applicant proposes to utilize the 80/20 Program tax exempt financing and federal tax credits. No direct HUD funding is currently involved.

This notice is in accordance with the regulations of the Council on Environmental Quality as described in 40 CFR parts 1500–1508. Federal agencies having jurisdiction by law, special expertise, or other special interest are requested to comment.

DATES: *Comment Due Date:* June 10, 2002.

FOR FURTHER INFORMATION CONTACT: All interested agencies, groups and persons are invited to submit comments on the FEIS directly to Lee Ellman, Planning Director, Department of Planning and Development, City of Yonkers, 87 Nepperhan Avenue, Suite 311, Yonkers, New York, 10701, (914) 377–6558. *lee.ellman@cityofyonkers.com.*

Copies of the FEIS for 1105–1135 Warburton Avenue are available at the Yonkers Public Library: Getty Square Branch, 7 Main Street, Yonkers, NY 10701; Grinton I. Will Branch, 1500 Central Park, Yonkers, NY 10710; Crestwood Branch, 16 Thompson Street, Yonkers, NY 10702; or from the City of Yonkers Planning Bureau, 87 Nepperhan Avenue, Suite 311, Yonkers, New York, 10701.

SUPPLEMENTARY INFORMATION: The Affordable Housing Ordinance (AHO) is mandated by a 1988 Federal Long-Term Plan Order. A subsequent federal court decision requires environmental review of all affordable housing projects under the National Environmental Policy Act (NEPA). This project is an affordable housing development falling under the AHO. The City of Yonkers determined that the housing project constitutes an action significantly affecting the quality of the human environment and therefore required the preparation of an EIS in accordance with NEPA. The residential building proposed sets aside a number of units to satisfy the affordable housing requirement.

A scoping session to determine the issues of the Draft EIS (DEIS) was opened on March 23, 2000 and a final scoping document was accepted on June 29, 2000. The City accepted the DEIS as complete on November 15, 2000, and set a date for a public hearing. The DEIS was the subject of public comments, both oral and written, provided by agencies, interested groups, and individuals, at the public hearing on December 13, 2000, and during the DEIS public comment period which extended through March 3, 2001. In response to public comments on the DEIS, the Yonkers Planning Board, at its February 13, 2002 meeting, chose by resolution to identify two alternatives to carry forward in the FEIS. The public comments and preferred alternatives have been incorporated into the text of the Final EIS, which was completed in March 2002.

The public hearing for the Draft EIS was for the original 524-unit, 11-story building that had 10 percent of the units affordable. Correspondence from 53 involved or interested agencies and interested persons or groups were received on the project. Thirty-four responses were received by the Army Corps of Engineers relating to wetlands. The Army Corps of Engineers conducted its public hearing concurrently with the NEPA/SEQR public hearing process.

Discussion of Mitigation Measures

Public comments that were received on the DEIS primarily focused on issues relating to land use density, height and bulk impacts on scenic view sheds, wetlands protection, parking, and traffic on local streets.

A 1.45-acre portion of the property is wetland. One full acre of the wetland will remain on site and the City has indicated its preference to have the

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applicant mitigate the wetland impact with a new wetland at a location within the City of Yonkers or in a mutually accepted location. Relating to wetlands, on- and off-site mitigation measures are subject to approval by the Army Corps of Engineers under application number 1999–10770–YN.

In addition, other mitigation measures proposed for inclusion in the redesign of the project as discussed in the FEIS are the following. To reduce density, the number of units would be reduced from 524 in the original proposal to between 418 and 440 units. To reduce the visual impact on the Old Croton Aqueduct, the 11-story height of the building in the original proposal would be reduced to between 7 and 10 stories, and will be gradually stepped down to 4 stories. The building has also been rotated to further protect views. The project meets and exceeds the Yonkers Zoning Code Parking requirements and the applicant has agreed to continually monitor the parking situation. To mitigate traffic impacts, the applicant has agreed to fund substantial traffic improvements at area intersections and roadways, including a new traffic light at Odell and Warburton Avenue, new pavement, striping, guardrails and traffic signage along Odell Avenue.

Questions may be directed to the individual named above under the heading "For Further Information Contact."

Dated: May 3, 2002.

Roy A. Bernardi,

Assistant Secretary for Community Planning and Development.

[FR Doc. 02–11647 Filed 5–8–02; 8:45 am]

BILLING CODE 4210–29–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Dr. Raymond Waddell, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Dr. Raymond Waddell (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 31,312 square-foot lot containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 18% of the 31,312 square-foot lot (or approximately 5,625 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications have appeared in previous issues of the **Federal Register** or will appear in this or subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054183–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 10,064 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 18 percent of the total lot. The remaining 82 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be conserved and any impacts associated with construction activities will be restored. The preferred alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface by reducing the size of the driveway and moving the structure 10 feet north of the Construction Control Line (CCL) established by Alabama Department of Environmental Management (ADEM). The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a Section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 26, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11549 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Blaine C. and Lynda C. Crum, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Blaine C. and Lynda C. Crum (Applicant), seek an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 29,250 square-foot lot containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 24% of the 29,250 square-foot lot (or approximately 6,972 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County,

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Alabama. Other Notices relating to these applications have appeared in previous issues of the **Federal Register** or will appear in this or subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054180–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 29,254 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 24 percent of the total lot. The remaining 76 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be conserved and any impacts associated with construction activities will be restored. The preferred alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface through minimizing the size of the driveway and moving the structure 28 feet north of the Construction Control Line (CCL) established by Alabama Department of Environmental Management (ADEM). The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 26, 2002.

Thomas M. Riley,

Acting Regional Director.

[FR Doc. 02–11550 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for FML81A, LLC, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: FML81A, LLC (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of four duplex dwelling units on a 3.23 acre tract containing 100 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 3.23 acre tract (or approximately 41,226 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054163–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 3.23 acres of wet beach, primary and secondary dunes, escarpment, and scrub habitat. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–

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2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of four duplex residential units, including a common deck with a pool, and a primary crushed rock driveway with extensions and parking pads for each of the four residential buildings. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of four duplex units on approximately 29.3 percent of the total lot (Lot 81 of Resubdivision A, Gulf Beach A Subdivision). The remaining 70.7 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface and allowing the remainder of the property to remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11552 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Mr. John Hancock, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Mr. John Hancock (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to Section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (Chelonia mydas), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a single family residence on an approximately 0.33 acre tract containing 50 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 0.33 acre tract (or approximately 2,100 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208-B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054178–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 0.33 acres of wet beach, primary and secondary dunes, escarpment, and scrub habitat. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a single family residence and driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a single family residence on approximately 30 percent of the total lot. The remaining 70 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface, reducing the size of the driveway, and eliminating the concrete pad under the residence. The lot outside the footprint of the house and driveway would remain undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females

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and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11553 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for Mr. and Mrs. Daniel Sizemore, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior

ACTION: Notice.

SUMMARY: Mr. and Mrs. Daniel Sizemore (Applicant), seek an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle, (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of two single family residences on an approximately 10,640 square-foot lot containing 106 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 38% of the 10,640 square-foot lot (or approximately 4,070 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE054174–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 10,064 square feet of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of two single family residences and driveways. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of two single family residences on approximately 38 percent of the total lot. The remaining 62 percent of the habitat on the lot would be undisturbed. Existing dune habitat located outside the building footprint will be restored and planted with sea oats. The Applicant plans to store sand and vegetated material removed during excavation on the western side of the proposed residences. After construction is completed the material will be spread over the dune system to inoculate the area with seeds, stolons and other vegetative material to enhance plant propagation. Approximately 300 units of sea oats will be installed on the primary and secondary dune system. Planting units will contain at least 3 shoots and have achieved a height of 12–18 inches. This alternative includes measures designed to avoid or minimize take by reducing the footprint of impervious surface by reducing the size of the driveway and eliminating a concrete pad under the residence. The lot outside the footprint of the driveway and house will be undeveloped and remain in indigenous vegetation. The mitigation plan described in the applicants' HCP includes an enhancement component. The dunes south of the property line extend in an east/west direction for approximately 100 feet. Sand fencing will be placed continuously along this dune area and approximately 900 sea oat plants installed.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, others episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with Section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 22, 2002.

Thomas M. Riley,

Acting Regionol Director.

[FR Doc. 02–11566 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of an Environmental Assessment and Receipt of an Application for an Incidental Take Permit for FML81, LLC, Fort Morgan Peninsula, Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: FML81, LLC (Applicant), seeks an incidental take permit (ITP) from the Fish and Wildlife Service (Service), pursuant to section 10(a)(1)(B) of the Endangered Species Act of 1973 (Act), as amended. The ITP would authorize the take of the Federally listed endangered Alabama beach mouse (*Peromyscus polionotus ammobates*) (ABM), the threatened green sea turtle (*Chelonia mydas*), the threatened loggerhead turtle (*Caretta caretta*), and the endangered Kemp's ridley sea turtle (*Lepidochelys kempii*), in Baldwin County, Alabama. The proposed taking is incidental to construction of a duplex dwelling unit on a 0.5 acre tract containing 75 linear feet of coastal dune habitat, fronting the Gulf of Mexico. The Project would permanently remove about 30% of the 0.5 acre tract (or approximately 6,518 square feet) that could potentially be inhabited by the ABM and three sea turtle species in Baldwin County, Alabama. A

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description of the mitigation and minimization measures outlined in the Applicant's Habitat Conservation Plan (HCP) to address the effects of the Project to the protected species is described further in the **SUPPLEMENTARY INFORMATION** section below. It should be noted that this application for an incidental take permit is one of seven applications currently being considered by the Fish and Wildlife Service for construction of single family/or duplex residences in coastal dune habitat fronting the Gulf of Mexico, on the Fort Morgan Peninsula, in Baldwin County, Alabama. Other Notices relating to these applications will appear in this issue of the **Federal Register** or in subsequent issues.

The Service also announces the availability of an environmental assessment (EA) and HCP for the incidental take application. Copies of the EA and/or HCP may be obtained by making a request to the Regional Office (see **ADDRESSES**). Requests must be in writing to be processed. This notice also advises the public that the Service has made a preliminary determination that issuing the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of Section 102(2)(C) of the National Environmental Policy Act of 1969 (NEPA), as amended. The Finding of No Significant Impact (FONSI) is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to Section 10 of the Act and NEPA regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be sent to the Service's Regional Office (see **ADDRESSES**) and should be received on or before June 10, 2002.

ADDRESSES: Persons wishing to review the application, HCP, and EA may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Documents will also be available for public inspection by appointment during normal business hours at the Regional Office, 1875 Century Boulevard, Suite 200, Atlanta, Georgia 30345 (Attn: Endangered Species Permits), or Field Office, U.S. Fish and Wildlife Service, 1208–B Main Street, Daphne, Alabama 36526 (Attn: Ms. Barbara Allen). Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Comments and requests for the documentation must be in writing to be processed. Please reference permit number TE052383–0 in such comments, or in requests of the documents discussed herein.

FOR FURTHER INFORMATION CONTACT: Mr. David Dell, Regional Permit Coordinator, (see **ADDRESSES** above), telephone: 404/679–7313; or Ms. Barbara Allen, Fish and Wildlife Biologist, Daphne Field Office, (see **ADDRESSES** above), telephone: 334/441–5181, extension 33.

SUPPLEMENTARY INFORMATION: The ABM is one of eight subspecies of the oldfield mouse restricted to coastal dunes. The Service estimates that ABM historically occupied approximately 45 km (28 mi) of shoreline. By 1987, the total occupied linear, shoreline habitat for the ABM, Choctawhatchee, and Perdido Key beach mice was estimated at less than 35 km (22 mi). Monitoring (trapping and field observations) of the ABM population on other private lands that hold, or are under review for, an ITP during the last five years indicates the Fort Morgan Peninsula remains occupied (more or less continuously) by ABM along its primary and secondary dunes while ABM use interior habitats intermittently. The current occupied coastline for the ABM extends approximately 37 km (23 miles). ABM habitat on the Applicant's property consists of approximately 0.5 acre of wet beach, primary and secondary dunes. There is no designated critical habitat on the property.

The green sea turtle has a circumglobal distribution and is found in tropical and sub-tropical waters. The Florida population of this species is federally listed as endangered; elsewhere the species is listed as threatened. Primary nesting beaches in the southeastern United States occur in a six-county area of east-central and southeastern Florida, where nesting activity ranges from approximately 350–2,300 nests annually. The Service's turtle nesting surveys of the Fort Morgan Peninsula, from Laguna Key west to Mobile Point, for the period 1994–2001 have not confirmed any green turtle nests, though some crawls were suspected in 1999 and 2000.

The loggerhead turtle is listed as a threatened species throughout its range. This species is circumglobal, preferring temperate and tropical waters. In the southeastern United States, 50,000 to 70,000 nests are deposited annually, about 90 percent of which occur in Florida. Most nesting in the Gulf outside of Florida appears to be in the Chandeleur Islands of Louisiana; Ship, Horn and Petit Bois Islands in Mississippi; and the outer coastal sand beaches of Alabama. The Service's nesting surveys of the Fort Morgan Peninsula, from Laguna Key to Mobile Point, for the 2001 report included over 70 loggerhead turtle nests.

The Kemp's ridley sea turtle is an endangered species throughout its range. Adults are found mainly in the Gulf of Mexico. Immature turtles can be found along the Atlantic coast as far north as Massachusetts and Canada. The species' historic range is tropical and temperate seas in the Atlantic Basin and in the Gulf of Mexico. Nesting occurs primarily in Tamaulipas, Mexico, but occasionally also in Texas and other southern states, including an occasional nest in North Carolina. In 1999, a Kemp's ridley sea turtle nested on Bon Secour National Wildlife Refuge and another along the Gulf Island's National Seashore in Perdido Key, Florida. In 2001, two dead Kemp's ridley sea turtle hatchlings were recovered, one on Bon Secour National Wildlife Refuge, and the second in Gulf Shores, Alabama.

The EA considers the environmental consequences of three alternatives, including a no-action alternative that would result in no new construction on the Project site. This alternative would not be economically feasible for the applicant. The remaining two development alternatives involve construction of a duplex residence, including a deck with a pool, and a driveway. The difference between the two development alternatives relates to the amount of undisturbed habitat remaining on the property after construction has been completed.

In the Applicant's preferred alternative, the project involves construction of a duplex residence on approximately 30 percent of the total lot (Lot 82 in the Ponce de Leon Subdivision). The remaining 70 percent of the habitat on the lot would be undisturbed. This alternative includes measures designed to avoid or minimize take by reducing the footprint of development and habitat disturbance by 3,752 square feet, which will be undeveloped and remain in indigenous vegetation.

In addition, a more aggressive land development alternative was considered. Under this alternative wholesale clearing, grading, and formal landscaping landward of the Coastal Construction Control Line would remove nearly all of the natural habitat and indigenous vegetation currently present on the property, with the exception of that protected by zoning and construction setbacks.

Trapping has not been done on the lot, however, based on trapping data on adjacent properties with similar habitat and the presence of ABM tracks, the ABM uses portions (some on a permanent basis, other episodically) of the entire lot. The proposed project would adversely impact the ABM population directly by killing individuals in the construction areas via crushing or entombment and indirectly by introduction of house pets (cats), introduction of competitors (house mice), attraction of predators and permanent human disturbances. Occupation of the proposed structures could adversely affect sea turtle nesting by disorienting nesting females and disorienting hatchlings by excess artificial lighting, trampling nests, and trapping or disorienting nesting females and emerging hatchlings among tire ruts or beach equipment left after dark.

Under section 9 of the Act and its implementing regulations, "taking" of endangered and threatened wildlife is prohibited. However, the Service, under limited circumstances, may issue permits to take such wildlife if the taking is incidental to and not the purpose of otherwise lawful activities. The Applicant has prepared an HCP as required for the incidental take permit application, and as described above as part of the proposed project.

As stated above, the Service has made a preliminary determination that the issuance of the ITP is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of NEPA. This preliminary information may be revised due to public comment received in response to this notice and is based on information contained in the EA and HCP.

The Service will also evaluate whether the issuance of a section 10(a)(1)(B) ITP complies with section 7 of the Act by conducting an intra-Service Section 7 consultation. The results of the biological opinion, in combination with the above findings, will be used in the final analysis to determine whether or not to issue the ITP.

Dated: April 19, 2002.

Sam D. Hamilton,

Regional Director.

[FR Doc. 02–11567 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Battle of Midway National Memorial Advisory Committee; Meeting Notice

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meeting.

SUMMARY: The Battle of Midway National Memorial Advisory Committee will hold its second meeting by teleconference on Thursday, May 30, 2002, from 2 p.m. to 4 p.m. Eastern Daylight Savings Time. During this teleconference, the committee will review plans for the 60th anniversary celebration of the Battle of Midway, the status of historic structures on Midway Atoll National Wildlife Refuge, and the standards for any new memorials to be placed on the atoll.

DATES: May 30, 2003, 2 p.m. to 4 p.m.

ADDRESSES: U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Arlington, Virginia, room 205 or by teleconference.

FOR FURTHER INFORMATION CONTACT: Any member of the public wishing further information concerning the meeting or who wishes to submit oral or written comments should contact Barbara Maxfield, External Affairs Chief for the Fish and Wildlife Service's Pacific Islands Office, Box 50088, Honolulu, HI 96805; telephone (808) 541–2749; fax (808) 541–2756 no later than May 24, 2002. You may obtain copies of the draft meeting agenda from the same source.

SUPPLEMENTARY INFORMATION: As directed by Congress, the Secretary of the Interior established the Battle of Midway National Memorial Advisory Committee to facilitate development of a strategy for the dedication and management of this National Memorial. Members of the public are welcome to participate in any of its meetings.

Members of the public in the Washington, DC, area may attend the meeting in person in the U.S. Fish and Wildlife Service's Washington Office at 4401 N. Fairfax Drive, Arlington, Virginia, in room 205. Members of the public may also participate by teleconference, however, teleconference lines are limited. Please call Barbara Maxfield (808) 541–2749 if you are interested in participating in the call and to obtain the dial-in number. Seating in room 205 of the Fish and Wildlife Service's Arlington Square office is limited and is available on a first come, first served basis.

We will distribute written comments submitted to the Fish and Wildlife Service at the Honolulu address above to committee members prior to the meeting if we receive them in sufficient time to allow distribution. We will provide an opportunity for oral comments from the public during this teleconference meeting as well.

Dated: April 26, 2002.

Elizabeth N. Flint,

Acting Project Leader, Hawaiian and Pacific Islands Wildlife Refuge Complex.

[FR Doc. 02–11627 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–670–1990; CA–40204]

Notice of Availability of the Final Environmental Impact Report (EIR)/ Environmental Impact Statement (EIS) for the Proposed Mesquite Mine Expansion

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Newmont Gold Company (NGC), operator of the Mesquite gold mine located in Imperial County, California, has proposed to expand mining operations by a plan modification submitted to the Bureau of Land Management (BLM) El Centro field office, on November 30, 1998. Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4321–4347), and the California Environmental Quality Act (Public Resources Code, Section 21000, *et seq.*), the BLM and Imperial County, as lead agencies, have directed the preparation of a draft and final environmental impact report (EIR), environmental impact statement (EIS) by a third party contractor on the impacts of an expansion of this gold mining/ processing operation, which would extend the mine a projected six years. The draft EIR/EIS was completed during August, 2000, followed by a combined Federal and State 60 day public review period. Written comments on the draft were accepted until October 30, 2000. The final EIR/EIS is an abbreviated document that consists of responses to comments on the draft and an errata section with specific modifications and corrections to the draft in response to comments. A revised executive summary and list of persons and agencies who received copies of the draft are also included. This information, in conjunction with the draft, constitutes the final EIR/EIS. The final EIR/EIS presents a preferred alternative derived from seven alternatives, including NGC's proposed action. The preferred alternative is the agencies' attempt to reduce or avoid the potential environmental impacts of the proposed action.

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DATES: No action will be taken on the project for at least 30 days following publication of this notice.

ADDRESSES: Copies of the final EIR/EIS will be available at the Imperial County Planning and Building Department, 939 Main Street, El Centro, CA 92243; telephone (760) 482–4236, extension 4310. Text of the final is also available on-line at the BLM website: *// www.ca.blm.gov/elcentro/mesquite/.*

Public reading copies will be available for review at the following locations: (1) Bureau of Land Management, California State Office, 2800 Cottage Way, Sacramento, CA; (2) Bureau of Land Management, El Centro Field Office, 1661 South Main Street, El Centro, CA; (3) Imperial County Planning and Building Department, 939 Main Street, El Centro, CA; (4) local libraries in San Diego County, California, and Imperial County, California; and in the town of Yuma, Arizona.

FOR FURTHER INFORMATION: Contact Jurg Heuberger, Imperial County Planning and Building Department, 939 Main Street, El Centro, CA: telephone (760) 482–4236 extension 4310; or Kevin Marty, Bureau of Land Management, 1661 South 4th Street, El Centro, CA: telephone (760) 337–4422.

SUPPLEMENTARY INFORMATION: The Mesquite Mine began operations under an approved plan of operations during 1985. Since this time, plan modifications and expansions have occurred, which are summarized within the approved Mesquite Mine consolidated plan of operations dated October, 1995. On November 30, 1998, Newmont Gold Company, operator of the Mesquite Mine, submitted a plan of operations for an expansion of the mine. The existing mine site encompasses 5,200 acres, of which 3,655 acres have been disturbed by mining activities to date. The total new un-permitted area proposed for disturbance under the expansion is 190 acres.

The expansion would allow the company to continue extracting and processing economical gold deposits, delineated by drilling programs initiated during 1988 and continuing to date. The expansion would increase the mine life a projected six years. The plan modification proposes to process approximately 89 million tons of ore and 242 million tons of waste rock. The Big Chief and Rainbow pit expansions would encompass approximately 350 acres of Federal, State and private (patented) land, of which 76 acres would be new, unpermitted land disturbance. The plan modification also describes alternative methods for storage of waste rock, either in existing mined-out open pits, at new or expanded out-of-pit storage areas, or a combination of both; and construction of ancillary facilities including roads, fencing and drainage diversions. Current project is inactive; however if the price of gold increases to a favorable level, operations may be resumed.

Dated: March 5, 2002.

Greg Thomsen,

Field Manger.

[FR Doc. 02–11445 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–924–1430–HN–003E; MTM 88990, MTM 88991, MTM 88992, MTM 90001]

Public Notice—Jurisdiction Transfer as Required by the Crow Boundary Settlement Act of 1994; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This document provides notification to the public and state and local governmental officials of the transfer of exclusive jurisdiction and administration of the surface estate of 20,861.73 acres of public lands from the Bureau of Land Management to the United States of America, Bureau of Indian Affairs in trust for the Crow Indian Tribe and shall be recognized as part of the Crow Indian Reservation.

FOR FURTHER INFORMATION CONTACT: Russell Sorensen, BLM Dillon Field Office, 1005 Selway Drive, Dillon, Montana 59725–9431, 406–683–8036.

By virtue of the authority vested in the Secretary of the Interior pursuant to Section 5(d)(G) of the Crow Boundary Settlement Act of November 2, 1994, Public Law 103–444, it is ordered as follows:

1. Subject to valid existing rights, jurisdiction of the surface estate for the following described lands was transferred to the Bureau of Indian Affairs in trust for the Crow Indian Tribe on the dates listed below:

(a) February 27, 2001, Yellowstone County, Montana:

Principal Meridian, Montana

T. 3 S., R., 25 E.,
  Sec. 36, lots 5 through 10, inclusive, E½E½, SW¼SE¼.
T. 2 S., R. 27 E.,
  Sec. 36, All.
T. 3 S., R. 27 E.,
  Sec. 16, All;
  Sec. 36, All.
T. 1 S., R. 28 E.,
  Sec. 4, S½, S½NW¼;
  Sec. 16, All.
T. 4 S., R. 28 E.,
  Sec. 1, lots 1 through 4, inclusive, S½N½, S½;
  Sec. 4, lots 1 through 4, inclusive, S½N½, S½.

(b) February 27, 2001, Big Horn County, Montana

Principal Meridian, Montana

T. 7 S., R. 28 E.,
  Sec. 8, S½NE¼, S½;
  Sec. 9, S½NE¼, E½SW¼, SE¼;
  Sec. 10, S½N½, S½.
T. 3 S., R. 30 E.,
  Sec. 22, All;
  Sec. 23, All.
T. 4 S., R. 30 E.,
  Sec. 24, All.
T. 5 S., R. 30 E.,
  Sec. 9, All.
T. 3 S., R. 31 E.,
  Sec. 6, lots 1 through 7, inclusive, S½NE¼, SE¼NW¼, E½SW¼, SE¼;
  Sec. 7, lots 1 through 4, inclusive, E½, E½W½.
T. 4 S., R. 31 E.,
  Sec. 22, NE¼, SE¼;
  Sec. 23, NE¼.
T. 5 S., R. 31 E.,
  Sec. 3, lots 1 through 4, inclusive, S½N½, S½;
  Sec. 21, N½, SW¼;
  Sec. 28, NW¼.
T. 2 S., R., 32 E.,
  Sec. 10, E½;
  Sec. 11, W½, SE¼.
T. 6 S., R. 32 E.,
  Sec. 1, N½S½.
T. 7 S., R., 32 E.,
  Sec. 25, S½;
  Sec. 26, SE¼;
  Sec. 32, NE¼SW¼, S½SW¼, SE¼;
  Sec. 36, NE¼.
T. 6 S., R. 33 E.,
  Sec. 10, All;
  Sec. 22, SE¼.
T. 7 S., R. 33 E.,
  Sec. 29, S½;
  Sec. 30, lots 3, 4.
T. 9 S., R. 33 E.,
  Sec. 20, S½.
  Sec. 30, lots 1 through 4, inclusive, E½W½, E½;
  Sec. 31, lots 1, 2, E½NW¼, NE¼.
T. 6 S., R. 34 E.,
  Sec. 15, S½;
  Sec. 16, All.
T. 7 S., R. 34 E.,
  Sec. 16, NW¾NW¾;
  Sec. 36, All.
T. 8 S., R. 34 E.,
  Sec. 12, S½;
  Sec. 13, NW¼;
  Sec. 14, SW¼, E½.
T. 9 S., R. 34 E.,
  Sec. 16, SW¼SW¼, E½SE¼;
  Sec. 18, NE¼, NE¼SE¼;
  Sec. 20, S½NE¼, SE¼;
  Sec. 21, NW¼NW¼, S½NW¼, E½, SW¼.
T. 6 S., R. 35 E.,
  Sec. 8, E½;

  Sec. 9, W½NW¼, W½SE¼, SW¼.
T. 7 S., R. 35 E.,
  Sec. 36, lot 4.
T. 8 S., R. 35 E.,
  Sec. 16, NE¼NW¼.
T. 7 S., R. 36 E.,
  Sec. 13, NW¼.
T. 9 S., R. 36 E.,
  Sec. 13, NE¼.
T. 8 S., R. 37 E.,
  Sec. 16, NW¼SE¼, S½SE¼.
T. 7 S., R. 38 E.,
  Sec. 1, lot 10, SW¼SW¾;
  Sec. 2, S½SE¼;
  Sec. 12, lots 5, 6.

(c) May 21, 2001, Yellowstone County, Montana

Principal Meridian, Montana

T. 4 S., R. 25 E.,
  Sec. 16, lot 1.

The areas described aggregate 20,861.73 acres in Big Horn and Yellowstone Counties, Montana.

2. The transfer of the above described surface estate for such lands and all activities conducted thereon vests custody and accountability unto the United States of America, on behalf of the Bureau of Indian Affairs, in trust for the Crow Indian Tribe.

John E. Moorhouse,

Acting Deputy State Director, Division of Resources.

[FR Doc. 02–11431 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–$$–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA–180–1430–01; CACA 8188]

Public Land Order No. 7524; Partial Revocation of Executive Order No. 4203; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes an Executive Order insofar as it affects 20 acres withdrawn for possible inclusion into the Tahoe National Forest. The land is no longer needed for the purpose for which it was withdrawn. This order makes the land available for exchange.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Duane Marti, BLM California State Office, 2800 Cottage Way, Sacramento, California 95825–1886, 916–978–4675.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Executive Order No. 4203, which withdrew lands for possible inclusion into national forests, is hereby revoked insofar as it affects the following described land:

Mount Diablo Meridian

T. 17 N., R. 10 E.,
  Sec. 21, W½SE¼NE¼.

The area described contains 20 acres in Nevada County.

2. The above described land is hereby made available for exchange under Section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 716 (1994).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary.

[FR Doc. 02–11576 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–40–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–930; COC–28673]

Public Land Order No. 7521; Opening of National Forest System Lands Under Section 24 of the Federal Power Act; Colorado

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, 456.29 acres of National Forest System lands withdrawn by a United States Geological Survey Order which established Bureau of Land Management Power Site Classification No. 441. This action will permit consummation of a pending Forest Service land exchange and retain the power rights to the United States. The lands have been and will remain open to mineral leasing and, under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, BLM Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215–7093, 303–239–3706.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, Section 24, as amended, 16 U.S.C. 818 (1994), and pursuant to the determination of the Federal Energy Regulatory Commission in DVCO–558–000, it is ordered as follows:

At 9 a.m. on June 10, 2002, the following described National Forest System lands withdrawn by the United States Geological Survey Order dated January 23, 1958, which established Power Site Classification No. 441, will be opened to disposal subject to the provisions of Section 24 of the Federal Power Act as specified by the Federal Energy Regulatory Commission determination DVCO–558–000, and subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law:

New Mexico Principal Meridian

Rio Grande National Forest

T. 40 N., R. 2 W.,
  Sec. 4, E½NW¼SE¼;
  Sec. 9, S½SE¼;
  Sec. 10, lots 8 to 10, inclusive;
  Sec. 11, lots 16 and 17;
  Sec. 14, lot 3 and SW¼NW¼SW¼;
  Sec. 15, NW¼NW¼ and SW¼NE¼;
  Sec. 23, S½SE¼NE¼, NW¼SE¼NE¼, and NE¼SE¼;
  Sec. 25, lots 1 and 2.

The areas described aggregate 456.29 acres in Mineral County.

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary.

[FR Doc. 02–11573 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR–958–1430–ET; GPO–02–047; OR–19228]

Public Land Order No. 7523; Revocation of Executive Order Dated November 13, 1889; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes an Executive Order in its entirety as to the remaining 313.77 acres of lands withdrawn for the U.S. Army, Corps of Engineers' Coos Bay and Harbor Improvement Project. The lands are no longer needed for the purpose for which they were withdrawn. This action will open the lands to surface entry. The lands have been and will remain open to mineral leasing. The lands are within the Bureau of Land Management's Coos Bay North Spit Special Recreation Management Area and would remain closed to mining.

EFFECTIVE DATE: June 10, 2002.

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FOR FURTHER INFORMATION CONTACT: Charles R. Roy, BLM Oregon/Washington State Office, P.O. Box 2965, Portland, Oregon 97208–2965, 503–808–6189.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. The Executive Order dated November 13, 1889, which withdrew lands for the Corps of Engineers' Coos Bay and Harbor Improvement Project, is hereby revoked in its entirety as to the following described public lands:

Willamette Meridian

T. 25 S., R. 13 W.,
Sec. 18, lot 8, fractional W½NW¼, and fractional NW¼SW¼.
T. 25 S., R. 14 W.,
Sec. 13, lots 1, 2, and E½SE¼.
The areas described aggregate approximately 313.77 acres in Coos County.

2. At 8:30 a.m. on June 10, 2002, the lands described in paragraph 1 will be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m. on June 10, 2002, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. The lands described in paragraph 1 are within the Bureau of Land Management's North Spit Special Recreation Management Area and will remain withdrawn from location and entry under the United States mining laws pursuant to Public Land Order No. 7436, 65 FR 15920 (March 24, 2000).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary, Land and Minerals Management.

[FR Doc. 02–11575 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–33–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[SDM 013790, SDM 020559, and SDM 025762]

Public Land Order No. 7522; Partial Revocation of Public Land Order Nos. 1344, 1535, and 1744; South Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order partially revokes three Public Land Orders insofar as they affect approximately 728 acres of National Forest System lands withdrawn for a campground, roadside zone, and ranger station. The lands are no longer needed for these purposes. This action will make approximately 617 acres of National Forest System lands available for exchange and make the remaining lands available for conveyance under Public Law No. 106–329. The Federal lands have been and will remain open to mineral leasing.

EFFECTIVE DATE: May 9, 2002.

FOR FURTHER INFORMATION CONTACT: Glenn Kostelecky, Black Hills National Forest, R.R. #2, Box 200, Custer, South Dakota 57730, 605–673–9252.

SUPPLEMENTARY INFORMATION: By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1994), it is ordered as follows:

1. Public Land Order Nos. 1344, 1535, and 1744, which withdrew National Forest System lands for a campground, roadside zone, and ranger station, are hereby revoked insofar as they affect the following described lands:

Black Hills National Forest

(a) PLO No. 1344—Mitchell Lake Campground (SDM 020559).

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 28, N½NW¼NW¼ and NW¼NE¼NW¼.
The area described contains 30 acres in Pennington County.

(b) PLO No. 1535—Roadside Zone (SDM 013790).

A strip of land 330 feet on each side of the center line of U.S. Highway Nos. 16 and 16A through the following legal subdivisions:

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 20, SW¼SE¼;
Sec. 21, NE¼, SE¼, and SW¼;
Sec. 22, SW¼ and NW¼;
Sec. 25, SE¼SE¼;
Sec. 26, S½SE¼ and S½SW¼;
Sec. 27, SE¼, SW¼NE¼, and NW¼;
Sec. 28, NW¼NW¼;
Sec. 29, NE¼ and NW¼;
Sec. 30, NE¼;
Sec. 35, NE¼;
Sec. 36, N½NE¼ and NW¼.
The area described contains 616.80 acres in Pennington County.

(c) PLO No. 1744—Reder Ranger Station (SDM 025762)

Black Hills Meridian

T. 1 S., R. 5 E.,
Sec. 29, lots 6 and 7;
Sec. 30, lot 19, NW¼SE¼NE¼, and lot A of Reder Placer M.E. 07905, M.S. 433, described as follows: Beginning at Corner No. 3 of M.S. 1986 thence, S. 10° W., 340 feet; S. 89° E., 462 feet; S. 51° W., 593 feet; N. 1° W., 376 feet, to point of beginning.
The area described contains 81.55 acres in Pennington County.

2. The Federal lands lying within the roadside zone are hereby made available for exchange.

3. The remaining Federal lands are hereby made available for disposal under the Black Hills National Forest and Rocky Mountain Research Station Improvement Act (Public Law No. 106–329).

Dated: April 23, 2002.

Rebecca W. Watson,

Assistant Secretary for Land and Minerals Management.

[FR Doc. 02–11574 Filed 5–8–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Environmental Documents Prepared for Proposed Mineral Exploration on the Alaska Outer Continental Shelf

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the availability of environmental documents prepared for proposed mineral exploration on the Alaska Outer Continental Shelf.

SUMMARY: Minerals Management Service (MMS), in accordance with Federal regulations that implement the National Environmental Policy Act (NEPA), announces the availability of a NEPA-related Environmental Assessment (EA) prepared by MMS for oil and gas exploration activities proposed on the Alaska Outer Continental Shelf (OCS). This notice includes the only proposal for which an EA and Finding of No Significant Impact (FONSI) were prepared by the Alaska OCS Office since July 1, 1999.

FOR FURTHER INFORMATION CONTACT: Persons interested in reviewing the EA and FONSI for the proposal listed above are encouraged to contact the MMS Alaska OCS Regional office. The documents are available for public inspection between the hours of 7:45 a.m. and 4:30 p.m., Monday through Friday at: Minerals Management Service, Alaska OCS Region, Resource Center, 949 East 36th Avenue, Room 330, Anchorage, Alaska 99508–4363, phone: (907) 271–6070 or (907) 271–6621 or toll free at 1–800–764–2627. Request may also be sent to MMS at akwebmaster@mms.gov.

SUPPLEMENTARY INFORMATION: *Proposal.* The proposal is for exploratory-drilling operations that would be conducted in accordance with the OCS Lands Act Amendments. The purpose of the EA is to evaluate the probable environmental effects of the operations, described in the Exploration Plan (EP) for the McCovey Prospect, dated January 2002. The McCovey drill site would be located in the Central Alaskan Beaufort Sea about 14 miles north of Prudhoe Bay and 12 miles east of the Northstar Development. Information about the methods by which the exploration wells would be drilled are detailed in the EP and in the associated Environmental Report and Oil Discharge Prevention and Contingency Plan.

Location

Leases—Blocks
OCS–Y–1577—NR 06–03 475 through 477 inclusive
OCS–Y–1578—NR 06–03 475, 476, 519 & 520
EA Number: EA No. AK 02–01.
FONSI Date: February 27, 2002.

The MMS prepares EAs and FONSIs for proposals which relate to exploration for oil and gas resources on the Alaska OCS. The EAs examine the potential environmental effects of activities described in the proposals and present MMS conclusions regarding the significance of those effects. The EAs are used as the basis for determining whether or not approvals of the proposals would significantly affect the quality of the human environment in the sense of NEPA 102(2)(C). A FONSI is prepared in those instances where MMS finds that approval will not result in significant effects on the quality of the human environment. This Notice constitutes the public Notice of Availability of environmental documents required under the NEPA regulations.

Dated: April 9, 2002.

John Goll,

Regional Director, Alaska OCS Region, Minerals Mangement Service.

[FR Doc. 02–11639 Filed 5–8–02; 8:45 am]

BILLING CODE 4310–MR–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–470]

In the Matter of Certain Semiconductor Memory Devices and Products Containing Same; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 8, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Mosel Vitelic Inc. of Hsinchu, Taiwan and Mosel Vitelic Corp. of San Jose, California. A supplement to the complaint was filed on April 25, 2002. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain semiconductor memory devices and products containing same by reason of infringement of claims 1, 2, 4, 5, 7–10, 12, and 14 of U.S. Letters Patent 5,452,261, claims 12–14, 20, 21, 23, 28, and 29 of U.S. Letters Patent 5,412,257, and claims 1, 2, and 4–8 of U.S. Letters Patent 5,917,214. The complaint further alleges that an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's ADD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public.*

FOR FURTHER INFORMATION CONTACT: Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2568.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 2, 2002, *ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain semiconductor memory devices or products containing same by reason of infringement of claims 1, 2, 4, 5, 7–10, 12, or 14 of U.S. Letters Patent 5,452,261, claims 12–14, 20, 21, 23, 28, or 29 of U.S. Letters Patent 5,412,257, and claims 1, 2, 4, 5, 6, 7, or 8 of U.S. Letters Patent 5,917,214, and whether an industry in the United States exists or is in the process of being established as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainants are: Mosel Vitelic Inc., No. 19, Li Hsin Road, Science-Based Industrial Park, Hsinchu, Taiwan, Mosel Vitelic Corp., 3910 North First Street, San Jose, California 95134.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served: Hitachi, Ltd., 6 Kanda Surugadai 4-chome, Chiyoda-ku, Tokyo, 101–10 Japan; Hitachi Semiconductor (America) Inc., 179 East Tasman Dr., San Jose, California 95134; Elpida Memory, Inc., Sumitomo Seimei Yaesu Bldg. 3F, 2–1 Yaesu 2-chome, Chuo-ku, Tokyo, Japan,; Elpida Memory (USA) Inc., 2001 Walsh Avenue, Santa Clara, California 95050.

(c) Shival P. Virmani, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401–J, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, the Honorable Sidney Harris is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's Rules of Practice and Procedure, 19 CFR 210.13. Pursuant to 19 CFR 201.16(d) and 210.13(a), such responses will be considered by the

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Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Dated: Issued: May 6, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11621 Filed 5–8–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Under the Comprehensive Environmental Responses, Compensation, and Liability Act and the Solid Waste Disposal Act

Notice is hereby given that a proposed consent decree in *United States and State of California Department of Toxic Substances Control* v. *J.H. Mitchell & Sons Distributors, Inc. and Screwmatic, Inc.*, Civil No. 02–03009 CAS (RZx) (C.D. Cal.), was lodged on April 11, 2002, with the United States District Court for the Central District of California.

This consent decree represents a settlement of claims brought against J.H. Mitchell & Sons Distributors, Inc. ("J.H. Mitchell") and Screwmatic, Inc. ("Screwmatic") pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601–9675, and Section 7003 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976 and the Hazardous and Solid Waste Amendments of 1984 (collectively "RCRA"), 42 U.S.C. 6973. In the complaint filed concurrently with the lodging of the consent decree, the United States and the State of California Department of Toxic Substances Control ("DTSC") sought injunctive relief for performance of response actions under CERCLA section 106, 42 U.S.C. 9606, and RCRA Section 7003, 42 U.S.C. 6973, and reimbursement for response costs under CERCLA section 107, 42 U.S.C. 9607, incurred by the United States Environmental Protection Agency ("EPA"), the United States Department of Justice ("DOJ"), and DTSC, in response to releases of hazardous substances at the Baldwin Park Operating Unit of the San Gabriel Valley Superfund Sites, Areas 1–4, located in and near the cities of Azusa, Irwindale, Baldwin Park, and Covina in Los Angeles County, California.

The proposed consent decree requires J.H. Mitchell to pay $516,000 to the United States for response costs incurred by EPA and DOJ, and to pay $84,000 to DTSC for response costs incurred by DTSC. Screwmatic is required to pay $860,000 to the United States and $140,000 to DTSC. The proposed consent decree includes a covenant-not-to-sue under sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and under section 7003 of RCRA, 42 U.S.C. 6973.

The Department of Justice will receive comments relating to the proposed consent decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, and should refer to *United States and the State of California Department of Toxic Substances Control* v. *J.H. Mitchell & Sons Distributors, Inc. and Screwmatic, Inc.*, DOJ Ref. #90–11–2–354/6. Please send a copy of the comments to Robert D. Mullaney, U.S. Department of Justice, 301 Howard St., Suite 1050, San Francisco, CA 94105. Commenters may request an opportunity for a public meeting in the affected area, in accordance with section 7003(d) of RCRA, 42 U.S.C. 6973(d).

The proposed consent decree may be examined at the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, CA 94105. A copy of the proposed Consent Decree may also be obtained by mail from the Consent Decree Library, U.S. Department of Justice, P.O. Box 7611, Washington, DC 20044–7611, or by faxing a request to Tonia Fleetwood, Department of Justice Consent Decree Library, fax no. (202) 514–0097; phone confirmation no. (202) 514–1547. There is a charge for the copy (25 cent per page reproduction cost). In requesting a copy, please enclose a check, payable to the "U.S. Treasury," in the amount of $88.00. (A copy of the decree, exclusive of attachments, may be obtained for $7.50.)

Ellen M. Mahan,

Assistant Section Chief, Environmental Enforcement Section, Environment and Natural Resources Division, United States Department of Justice.

[FR Doc. 02–11546 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with 28 CFR 50.7, 38 FR 19029, notice is hereby given that on April 23, 2002, a Consent Decree was lodged with the United States District Court for the District of Massachusetts in *United States* v. *Waste Management of Massachusetts, Inc.*, Civil Action No. 02–CV–10741–GAO. A complaint in the action was also filed simultaneously with the lodging of the Consent Decree. In the complaint the United States, on behalf of the U.S. Environmental Protection Agency (EPA), alleges that the defendant Waste Management of Massachusetts, Inc. ("WMMA") failed to comply with section 601–618 of the Clean Air Act and regulations at 40 CFR Part 82, subpart F, in connection with its collection and handling of refuse and recyclables pursuant to a contract with the City of Boston, Massachusetts. The consent decree requires WMMA to pay a civil penalty of $775,000, and implement two Supplemental Environmental Projects at a combined cost of $2,671,000. The consent decree also requires WMMA to comply with sections 601 through 618 of the CAA and Subpart F with regard to the handling and disposal of appliances collected pursuant to its contract with the City of Boston. WMMA must also provide training to employees who are involved in tasks with respect to the handling of appliances that may contain refrigerant.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States* v. *Waste Management of Massachusetts, Inc.*, D.J. Ref.# 90–5–2–1–07045.

The proposed consent decree may be examined at the office of the United States Attorney, Suite 9200, 1 Courthouse Way, Boston, Massachusetts 02110, and at the Region I office of the Environmental Protection Agency, One Congress Street, Suite 1100, Boston, Massachusetts 02114. A copy of the proposed consent decree may also be obtained by mail from the Department of Justice Consent Decree Library, P.O. Box 7611, Washington, DC 20044. In requesting a copy, please enclose a check (there is a 25 cent per page reproduction cost) in the amount of $8.75 payable to the "United States Treasury."

Ronald G. Gluck,

Assistant Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 02–11545 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–15–M

DEPARTMENT OF JUSTICE

[AAG/A Order No. 265–2002]

Privacy Act of 1974; System of Records

Pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), notice is given that the Federal Bureau of Prisons (Bureau) proposes to modify its system of records entitled "Inmate Central Records System, JUSTICE/BOP–005". The system notice, which was last published on June 7, 1984 (49 FR 23711), is now being modified and will become effective 60 days from the date of publication.

As previously published, the system included only those persons who were committed to the custody of the Attorney General and thereby to the Bureau of Prisons under 18 U.S.C. 4003, 4042 and 4082. The Bureau is modifying the system to include all additional individuals who are directly committed to the custody of the Bureau of Prisons, pursuant to the additional authority of 18 U.S.C. 3621 and 5003 (state inmates), and inmates from the District of Colombia pursuant to section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33; 111 Stat. 740).

In addition to edits which have been made to better describe the system and/or improve its clarity, the Bureau has added a statement on the purpose of this system and expanded the list of records contained in this system to include "drug testing and DNA samples and analysis records." Also, the routine use section has been reorganized to better describe or clarify certain routine uses. New routine uses have been added to allow for the release of information to courts and administrative forums and to prevent immediate loss of life or serious bodily injury. In addition, an existing routine use has been modified to include the General Services Administration (GSA) as a potential recipient of records access during records management inspections. This modification is consistent with Public Law 98–497 (44 U.S.C. 2102) which renamed the National Archives and Records Service as the "National Archives and Records Administration (NARA)" and established it as a separate agency which would continue to share its records management inspection responsibilities with GSA. Accordingly, the routine use has been changed to show that while NARA and GSA are separate agencies, they have retained shared responsibilities for records management inspections under the authority of 44 U.S.C. 2904 and 2906.

Appropriate sections have been revised to reflect technological advances and new agency practices regarding the storage, retrieval, access, retention and disposal of records in the system. The Bureau has re-designated the system manager and also clarified record access procedures.

The exemptions from certain Privacy Act provisions continue, as previously published in 28 CFR 16.97(a) and (b). Exemptions from (e)(1) and (e)(5) have been added for law enforcement purposes.

Title 5 U.S.C. 552a (e)(4) and (11) provide that the public be given a 30-day period in which to comment; and the Office of Management and Budget (OMB), which has oversight responsibilities under the Privacy Act, requires that it be given a 40-day period in which to review the system. Therefore, please submit any comments by June 10, 2002. The public, OMB, and the Congress are invited to send written comments to Mary Cahill, Management and Planning Staff, Justice Management Division, Department of Justice, Washington, DC 20530 (1400 National Place Building).

In accordance with 5 U.S.C. 552a(r), the Department has provided a report to OMB and the Congress on the proposed modification. A description of the modified system is provided below.

Dated: April 26, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Justice/BOP–005

SYSTEM NAME:

Inmate Central Records System.

SYSTEM LOCATION:

Records may be retained at the Central Office, Regional Offices, or at any of the Federal Bureau of Prisons (Bureau) and/or contractor-operated correctional facilities. A list of Bureau locations may be found at 28 CFR part 503 and on the Internet at *http://www.bop.gov.*

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals currently or formerly under the custody of the Attorney General and/or the Director of the Bureau of Prisons.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains records relating to the care, classification, subsistence, protection, discipline, and programs of federal inmates. Such records may include:

(1) Computation of sentence and supporting documentation; (2) correspondence and other documentation concerning pending charges, and wanted status, including warrants; (3) requests from other federal and non-federal law enforcement agencies for notification prior to release; (4) records of the allowance, forfeiture, withholding and restoration of good time; (5) information concerning present offense, prior criminal background, sentence and parole; (6) identification data including date of birth, Social Security number, driver's license number, alien registration number, physical description, sex, race, religious preference, photographs, fingerprints, digital image, biometric identifier, drug testing and DNA samples and analysis records; (7) institution designation and housing assignments, including separation orders, and supporting documentation; (8) work and payroll records; (9) program selections, assignment and performance or progress reports; (10) prison conduct records, including information concerning disciplinary actions, participation in escapes, assaults, and disturbances; (11) economic, social, and religious background, including special religious dietary requirements; (12) educational data, including industrial and vocational training; (13) physical and mental health data; (14) United States Parole Commission orders, actions and related forms; (15) correspondence regarding the inmate, including his or her release, adjustment and violations; (16) transfer information, including orders and transportation arrangements; (17) mail, visiting and telephone records; (18) personal property records; (19) safety reports and rules; (20) release processing forms and certificates; (21)

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interview requests; (22) litigation related records; (23) investigatory information; (24) institution tracking records to locate archived files; (25) referrals of non-federal inmates to Bureau custody and/or referrals of Bureau inmates to state custody.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

This system is established and maintained under the authority of 18 U.S.C. 3621, 4042, 5003 (state inmates), and section 11201 of Chapter 1 of Subtitle C of Title XI of the National Capital Revitalization and Self-Government Improvement Act of 1997 (Pub. L. 105–33; 111 Stat. 740).

PURPOSE OF THE SYSTEM:

This system assists the Attorney General and the Bureau of Prisons in meeting statutory responsibilities for the safekeeping, care and custody of incarcerated persons. It serves as the primary record system on these individuals and includes information critical to the continued safety and security of federal prisons and the public.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Relevant data from this system will be disclosed as follows:

(a) To officers and employees of the Bureau of Prisons and the Department of Justice who have a need for the information in the performance of their duties;

(b) To federal, state, local, tribal, foreign and international law enforcement agencies and court officials for law enforcement and court-related purposes such as investigations, possible criminal prosecutions, civil court actions, or regulatory or parole proceedings, and, prior to release of an inmate, to the chief law enforcement officer of the state and local jurisdiction in which the released inmate will reside, as required by 18 U.S.C. 4042(b);

(c) To a court or adjudicative body before which the Department of Justice or the Bureau is authorized to appear, or to a private attorney authorized by the Department of Justice to represent a Bureau employee, when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Bureau to be arguably relevant to the litigation: (1) The Bureau, or any subdivision thereof, or the Department of Justice, or (2) any Department of Justice or Bureau employee in his or her official capacity, or (3) any Department of Justice or Bureau employee in his or her individual capacity where the Department of Justice has agreed to provide representation for the employee, or (4) the United States, where the Bureau determines that the litigation is likely to affect it or any of its subdivisions;

(d) In an appropriate proceeding before a court or administrative or regulatory body when records are determined by the Department of Justice to be arguably relevant to the proceeding, including federal, state, and local licensing agencies or associations which require information concerning the suitability or eligibility of an individual for a license or permit;

(e) To contractors, grantees, experts, consultants, students, and others performing or working on a contract, service, grant, cooperative agreement, or other assignment for the Federal Government, when necessary to accomplish an agency function related to this system of records;

(f) To victims and/or witnesses, pursuant to federal victim/witness legislation and policy requiring the release of information relating to an inmate's furlough, parole (including appearance before the United States Parole Commission), transfer to a community corrections center, mandatory release, expiration of sentence, escape (including apprehension), death, and other such release-related information;

(g) To state agencies and authorities, pursuant to Public Law 98–135, for the purpose of matching the data against state records to review eligibility of these inmates for unemployment compensation; the requesting state is to erase the Bureau data after this determination has been made;

(h) To the Social Security Administration (SSA), pursuant to Public Law 96–473, for the purpose of matching the data against SSA records to enable the SSA to determine the eligibility of Bureau inmates to receive benefits under the Social Security Act and for the purpose of assisting SSA in providing inmate data to the states administering federal benefit programs such as Food Stamps; SSA is to erase the Bureau data after the match has been made;

(i) To the Veterans Administration (VA), pursuant to Public Law 96–385, for the purpose of matching the data against VA records to determine the eligibility of Bureau inmates to receive veterans' benefits; the VA is to erase the Bureau data after the match has been made;

(j) To the Federal Aviation Administration (FAA), pursuant to Public Law 100–690, for the purpose of matching the data against FAA records to determine the eligibility of Bureau inmates to hold and obtain airmen certification and qualification;

(k) To the Internal Revenue Service (IRS) for the purposes of matching the data against IRS records for fraud detection;

(l) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy;

(m) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record;

(n) To the National Archives and Records Administration and General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906;

(o) To any person or entity to the extent necessary to prevent immediate loss of life or serious bodily injury;

(p) To a former employee of the Department, pursuant to subsection (b)(3) of the Privacy Act, for purposes of: responding to an official inquiry by a federal, state, or local government entity or professional licensing authority, in accordance with applicable Department regulations; or facilitating communications with a former employee that may be necessary for personnel-related or other official purposes where the Department requires information and/or consultation assistance from the former employee regarding a matter within that person's former area of responsibility; and

(q) To the United States Sentencing Commission (USSC) for the purpose of providing inmate identification data to enable the USSC to perform research and conduct studies.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM: STORAGE:

Information maintained in the system is stored in electronic media in Bureau facilities via a configuration of personal computer, client/server, and mainframe systems architecture. Computerized records are maintained on hard disk, floppy diskettes, Compact Discs (CDs), magnetic tapes and/or optical disks. Documentary records are maintained in microfilm, manual file folders and/or index card files.

RETRIEVABILITY:

Records are retrievable by identifying data, including name, inmate register number, FBI number, alien registration number and/or Social Security number.

SAFEGUARDS:

Information is safeguarded in accordance with Bureau rules and policy governing automated information systems security and access. These safeguards include the maintenance of records and technical equipment in restricted areas, and the required use of proper passwords and user identification codes to access the system. Only those Bureau personnel who require access to perform their official duties may access the system equipment and the information in the system.

RETENTION AND DISPOSAL:

Records in this system are retained for a period of thirty (30) years after the expiration of the sentence. Records of an unsentenced inmate are retained for a period of ten (10) years after the inmate's release from confinement. Documentary records are destroyed by shredding; computer records are destroyed by degaussing and/or shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Correctional Programs Division, Federal Bureau of Prisons, 320 First Street NW, Washington, DC 20534.

NOTIFICATION PROCEDURE:

Inquiries concerning this system should be directed to the System Manager listed above.

RECORD ACCESS PROCEDURES:

All requests for records may be made in writing to the Director, Federal Bureau of Prisons, 320 First Street NW., Washington, DC 20534, and should be clearly marked "Privacy Act Request." This system is exempt, under 5 U.S.C. 552a(j), from some access. To the extent that this system of records is not subject to exemption, it is subject to access and contest. A determination as to exemption shall be made at the time a request for access is received.

CONTESTING RECORD PROCEDURES:

Same as above.

RECORD SOURCE CATEGORIES:

Records are generated by: (1) Individual currently or formerly under custody; (2) federal, state, local, foreign and international law enforcement agencies and personnel; (3) federal and state prosecutors, courts and probation services; (4) educational institutions; (5) health care providers; (6) relatives, friends, and other interested individuals or groups in the community; (7) former or future employers; (8) state, local and private corrections staff; and (9) Bureau staff and institution contractors and volunteers.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

The Attorney General has exempted this system from subsections (c)(3) and (4), (d), (e)(1), (e)(2), (e)(3), (e)(4)(H), (e)(5), (e)(8), (f) and (g) of the Privacy Act pursuant to 5 U.S.C. 552a(j). Rules have been promulgated in accordance with the requirements of 5 U.S.C. 553(b), (c) and (e).

[FR Doc. 02–11578 Filed 5–8–02; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Antitrust Division

United States v. Microsoft Corporation; Addendum to Public Comments

The United States hereby publishes corrected versions of thirteen (13) of the Tunney Act public comments it received on the Revised Proposed Final Judgment in *United States* v. *Microsoft Corp.*, Civil Action No. 98–1232, pending in the United States District Court for the District of Columbia. The text of these comments was either incorrect or incomplete when originally submitted to the **Federal Register** for publication. This addendum is being published concurrently with the text of all of the public comments, including the incorrect versions of these thirteen comments, received on the Revised Proposed Final Judgment.

MTC–00000827

From: Steve Chambers
To: Microsoft ATR
Date: 11/17/01 11:59 a.m.
Subject: MS Antitrust Settlement

To who it may concern,

I have been following the Microsoft Antitrust case with a great deal of interest and have to say that I am absolutely apalled at the reports that I see in most of the online media on the details of the proposed agreement.

I am a computer support technician. I hold 4 Microsoft Certifications and spend 90 percent of my time working on and supporting Microsoft applications and operating systems.

You could say that my job depends on Microsoft. But regardless of that Microsoft must be prevented from continuing on a course that they seem hell bent on: controlling the very fabric of computing and in perpetuity. Additionally they must be punished for past misdeeds.

Microsoft's whole modus operandi (observed from over 10 years in the business) is to embrace (purchase) new technology, extend that technology in Microsoft-Proprietary ways to essentially lock out competitors.

At the very least severe structural penalties must be implemented to prevent these continued egregious behaviors from continuing. Additionally Microsoft must be made to pay penalties for past misdeed. These penalties could be anything from monetary to release of Microsoft Intellectual Property into the public domain.

I am further disturbed by the proposed settlement, in that it seems to be nothing more than a politically motivated "slap on the wrist." I respectfully urge you to reconsider your current proposed settlement. It is vastly insufficient to reign in the abuses and punish Microsoft.

Cordially,
Steve Chambers
Monmouth Junction, NJ

MTC–827

MTC–MTC–00000830

From: Charles McKnight
To: Microsoft ATR
Date: 11/17/01 12:26 p.m.
Subject: Settlement comments

Greetings,

I would like to express my concern about the settlement reached during the recent Microsoft antitrust case. In the past Microsoft has openly flaunted its disregard of any attempt to impose regulation. The 1995 settlement was essentially toothless, and led to the demise of Netscape as a separately operating company. As a Judge Sporkin pointed out. "simply telling a defendant to go forth and sin no more does little or nothing to address the unfair advantage it has already gained." The current "sanctions" can be, and most likely will be largely ignored by Microsoft. The entire settlement comes across as wishful thinking on the part of the government that this leopard will change its spots.

Although I have no desire to see Microsoft broken up, I am concerned about the predatory tactics it has used in the past and continues to employ. Given the similarities between the 1995 settlement and the currently proposed settlement, I do not believe that any positive effects will be achieved. I believe that Microsoft will continue to drive other companies out of business by bundling software into the operating system, much as they have done with the browser, and are attempting to do with the Windows Media Player and its proprietary formats.

I ask that you reconsider the settlement terms, and offer protection for the smaller companies that are trying to make a living. Don't deny them their chance to enjoy some portion of the same level of success that Microsoft currently enjoys.

Thank you for you time.

Charles McKnight

Disclaimer: My opinions are my own and do not necessarily reflect the opinions of my employer.

MTC–830

MTC–00000831

From: Joel (038) Sandy Harris
To: Microsoft ATR

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Date: 11/17/01 12:25pm
Subject: Antitrust penalty

It is interesting to me that after a very strong case in the court system and in reality a very good view by the appellate court that the government would go for such a weak penalty. Especially one that is worded in ways that sound like Microsoft actually wrote the document.

Has Microsoft demonstrated that they will abide by consent decrees in the past? No. In fact their behavior in the development and release of Windows XP has demonstrated that they have no intent of behaving in a way that allows for competition.

It is completely unreasonable to assert that it is good for the economy for the government to go lightly on Microsoft. The entire basis for antitrust legislation is that it is better for the economy for there to be competition. This proposed "penalty",will not help competition return to the PC desktop. It will, in reality, enable Microsoft to continue with their monopoly and will also allow them to continue the anti-competitive practices well into the future.

Remember: you WON the trial. Please don't let Microsoft off the hook for their abominable behavior. It most likely is not in the best interest of the country for you to come to any kind of agreement with them—it should be a court imposed sentence. This penalty is like a terrorist negotiating his own sentence.

Regards,
Joel Harris
harrisj @iquest.net

MTC–831

MTC–00000834

From: Boombie31@aol.com@inetgw
To: Microsoft ATR
Date: 11/17/01 12:28pm
Subject: ANTITRUST SETTLEMENT

100% BEHIND U.S. DECIDING AGAINST FORCING MICROSOFT REVEALING SECRET BLUEPRINTS OF WINDOWS.

OUR COUNTRY WAS BUILT ON THE IDEA THAT IF YOU BUILT A BETTER PRODUCT BUYERS WOULD BEAT A PATH TO YOUR DOOR.

I CANT BELIEVE THE 9 STATES THAT ARE MONEY HUNGRY ASKING MICROSOFT TO REVEAL THEIR SECRETS. THEY MUST BE OUT OF THEIR MINDS. THEY WOULD PROBABLY INSIST THAT RANDY JOHNSTON TELL THE BATTER WHAT THE NEXT PITCH WOULD BE TO EVEN COMPETITION.

YOURS TRULY,
J.G. HOLLAND
J.L. HOLLAND,Ph.D.

MTC–834

MTC–00000835

From: michael baxter
To: Microsoft ATR
Date: 11/17/01 12:44pm
Subject: what a fucking joke!

bush sold out.
justice department? no justice here.

MTC–835

MTC–00000838

From: Eric Bohm
To: Microsoft ATR
Date: 11/17/01 12:48pm
Subject: Sad about the Settlement

Greetings,

I thank you for the opportunity to convey my opinion about the DOJ vs Microsoft case. As a professional software developer I am quite interested in the future of my industry. I am deeply saddened that you have decided not to punish Microsoft for their illegal practices.

I have personally felt the insidious power of their monopoly. Few executives are expert enough in the actual technology to make well informed decisions. This leaves them extremely vulnerable to the lies and manipulations of the Microsoft Marketing department. This puts a tremendous additional burden on software developers.

Any time we analyze a problem we try to find the best and least expensive solution. If that solution doesn't involve Microsoft products its requires a great deal of additional justification. That justification requires considerable research time and effort. Their monopoly power forces us to consider them the default solution to any problem, completely independent of the quality of the products. Their misleading marketing material about the actual nature of those products further confounds realistic analysis. Their monopoly power permits them to get away with delivering a shoddy product masked by clever marketing.

In the process of your prosecution you proved that Microsoft has abused their monopoly power many times. You proved that the results of their action have been detrimental to the american people. And now you suggest the solution to these problems is a toothless watchdog committee. In order for them to apply any punishment for violation they have to go back through the court system again. Thus giving Microsoft more time and weasel room to ensure that the intended results of their misbehavior are accomplished.

You have betrayed us.
Sincerely,
Eric Bohm

MTC–838

MTC–00000842

From: John Keelin
To: Microsoft ATR
Date: 11/17/01 12:49pm
Subject: Microsoft Settlement

Hello,

Some comments regarding the proposed settlement.

According to an article at USA Today.com, "The Justice Department also considered trying to force Microsoft to sell a stripped-down version of Windows that did not include built-in software for browsing the Internet, reading e-mail, listening to music or sending instant-messages."

I believe that you should have pursued this approach for several reasons. I use both the Windows and Apple Macintosh Operating Systems on a regular basis. Both of these products offer bundled software, which I would agree benefits the consumer. It is the way in which Microsoft leverages the bundled software that highlights Microsoft's abusive behavior.

The following outlines some of the key differences in the way software is bundled by these two leading operating system providers:

Internet Explorer (Microsoft product available on Both MacOS and Windows)

On a macintosh, if a web site address is entered into Internet Explorer incompletely (e.g. news. vs. www.news.com) the browser assumes and correctly takes the user to the requested site (e.g. www.news.com).

On Windows, incomplete web address entries take you to a Microsoft-branded search site.

Conclusion: The bundled web browser on Windows gives Microsoft an unfair advantage on promoting it's web properties.

Software Update Features

On the Macintosh, there is a program called "Software Update" that logs onto an Apple Computer FTP server and provides the user with a list of updated system software. The user selects the updates and the "Software Update" program downloads and installs the new software accordingly.

Windows offers the same feature called "Windows Update." "Windows Update" REQUIRES that a user connect with Internet Explorer to update their system software. instead of a separate program, like Apple Computer offers for the same software update ability, Microsoft requires the use of Internet Explorer to perform these actions.

Conclusion: On the Macintosh, If I remove Internet Explorer and decide to use Netscape, it doesn't take away my ability to update my system software. On Windows, even if a user "chooses" to use the Netscape Browser, they must still rely on Internet Explorer for keeping their systems up to date. Microsoft could have easily separated this update feature from the Browser, but chose to mandate that everyone keep a copy of Internet Explorer on their machines for this purpose.

Instant Messaging

On the Macintosh, a user can choose from many different instant messaging clients. There are no Instant Messaging clients installed by default—the user is free to evaluate, download and use their preferred Instant Messaging Client.

Microsoft's new "Passport" user authentication plan is being closely tied in with their Instant Messaging client, which is the default Instant Messaging client on Windows. They plan to require that a web user that wishes to visit a Microsoft-branded site have a valid passport account. If they succeed in making Passport a standard for web authentication, they will essentially force everyone to have a copy of their Instant Messaging product installed in order to gain access to web sites.

Incidentally, integration with Microsoft Passport is touted as one of the key new "features" of MSN Messenger 2.0 for Macintosh. Why does this matter? It means that if Passport becomes the web-authentication standard, they'll be able to become the market share leader for Instant Messaging clients on the Macintosh platform as well as Windows.

Conclusion: This approach is similar to the software update feature—a back door approach to making a bundled product the market share leader since everyone is essentially required to have the product installed.

Summary

These are just a few of the ways in which Microsoft uses its bundled software in monopolistic ways. Bundled software is not the problem with Windows, it is how Microsoft leverages its bundled software. A user shouldn't have to keep Microsoft's version of a product on their machine to perform operating system functions if they decide to use a competitive product. Even in the midst of the DOJ inquiry, Microsoft continued down the path of leveraging its bundled software.

I believe that there are two primary remedies for this fundamental problem:

1. Prevent Microsoft from bundling software and allow computer users to make real choices in selecting software. (Put another way—Force Microsoft to sell a stripped-down version of Windows that does not include built-in software for browsing the Internet, reading e-mail, listening to music or sending instant-messages.)

2. Mandate that Microsoft discontinue the practice of tying non-related features together to essentially require that their products be installed even if a user chooses a competitive product.

The second remedy would be difficult to oversee and enforce, making the first remedy a seemingly preferred approach.

Sincerely,
John

MTC–842

MTC–00000846

From: Kevin Goeke
To: Microsoft ATR,tom wible,aras@erols.com@inetgw
Date: 11/17/01 12:53pm
Subject: I disapprove...

I disapprove of the Microsoft antitrust settlement. Microsoft has done way too much damage to the computer industry and consumers for this litigation to settled in such a manner. They are "NOT" a nice company; they always go out of their way to ensure their dominance, no matter what the cost to the industry, the science, and the individual, who may not know any better.

Kevin J. Goeke

I have learned from mistakes I may or may not have made."—George W. Bush

MTC–846

MTC–00000851

From: johnh@mail.truesdail.com@lanset.com@inetgw
To: Microsoft ATR
Date: 11/17/01 1:11pm
Subject: MS–Only EPA Web Sites

I work at an environmental testing laboratory. I would like to move away from the Windows operating system to Linux as a company-wide standard. But we have to submit UCMR data to the EPA via http://epa.lmi.org. This web site ONLY works with Microsoft Internet Explorer 5.0 or 5.5. It cannot be made to function effectively with any other browser. It is unlikely that Microsoft will port Internet Explorer to Linux, or any other platform at this point. Therefore, I do not have a real choice of operating systems. If this were an isolated example, I would not be writing this. But it is not. There are similar situations at GSA, and probably elsewhere.

This restriction apparently arose because the lmi.org website was built with Microsoft tools, and these tools are designed to render other browsers unusable.

My real concern is the new .NET strategy which Microsoft is pushing so hard. If a significant number of new services are created in a framework that also forces anyone wishing to use them to do so from a Microsoft platform, then Microsoft will be in a position to take the whole World Wide Web private.

The Web was >created< by Tim Berners-Lee at CERN, and given away. Microsoft likes to use the word 'innovation' from time to time, often in the context of Open Source projects, as in 'Open Source projects are not a true source of innovation'. I do not think that anything Microsoft has ever created (including Excel and Powerpoint, for which credit is due) comes anywhere near the creation of the Web in terms of innovation. Consider how long the Internet existed prior to the creation of the Web, compare the rate of growth and reach during the pre-Web and post-Web periods, and see if you don't agree. Most people today are unable to distinguish between the Internet and the Web.

So, why should Microsoft be permitted to use its monopoly (which never seemed to be questioned during the trial) to take the Web private?

MTC–851

MTC–00000852

From: Maness, Deborah
To: 'Microsoft.atr(a)usdoj.gov'
Date: 11/17/01 2:37pm
Subject: Microsoft Settlement

I am in favor of the Settlement that the DOJ has entered into with microsoft. I would like for the states to accept this as soon as possible.

Deborah Maness.

MTC–852

MTC–00000853

From: Evan Chaney
To: Microsoft ATR
Date: 11/17/01 2:54pm
Subject: Disappointed

Dept. of Justice:

I am upset with how easily the D.O.J. has given up after all of these years of pursuing a resolution that would be beneficial to the consumers/states who brought about this case. The settlement that has been agreed to is too kind towards Microsoft. Obviously, they can now declare a major victory. The consumer is in no better position than they were when this case started several years ago. What a waste of time and money, all for nothing.

Sincerely,
Evan Chaney
U.S. Citizen & Software Consumer

MTC–853

MTC–00000854

From: Kenneth Nicholson
To: Microsoft ATR
Date: 11/17/01 2:50pm
Subject: Microsoft Settlement

Recommend that ALL legal action against Microsoft be discontinued immediately in order to permit the company to focus full attention in providing those products that most of us need and require in our business.

MTC–854

MTC–00033650

From: Jonathan H. Bari
To: Renata Hesse
Date: 1/28/02 3:23pm
Subject: Microsoft Settlement

Dear Renata,

Pursuant to the Tunney Act, attached please find our comments on the Revised Proposed Final Judgment.

Thank you.
Jon

Jonathan H. Bari
Chairman and CEO
CATAVAULT
100 West Elm Street, Suite 400
Conshohocken, PA 19428
610.941.3388
610.828.9966 (fx)
jon@catavault.com
http://www.catavault.com/company
CC: Microsoft ATR, wtom@morganlewis.com@inetgw,dan@cata...

BEFORE THE UNITED STATES DEPARTMENT OF JUSTICE
UNITED STATES OF AMERICA
Plaintiff
v
MICROSOFT CORPORATION,
Defendant
Civil action No. 98–1232 (CKK)
United States District Court for the District of Columbia
STATE OF NEW YORK ex rel. Attorney General Eliot Spitzer, et al.,
Plaintiffs,
v.
MICROSOFT CORPORATION,
Defendant
Civil Action No. 98–1233 (CKK)
United States District Court for District of Columbia

COMMENTS OF CATAVAULT ON THE REVISED PROPOSED FINAL JUDGMENT

INTEREST OF THE COMMENTER

Given that Microsoft's Net Passport is the heart of Windows XP, Microsofts new Operating System that was officially launched on October 25, 2001, Catavault, a software company addressing online identification and authentication, unfortunately finds itself in the cross-hairs of the most powerful software company in the world, since Microsoft has tied its .Net Passport to Windows XP. Pursuant to the Tunney Act, this document sets forth Catavault's comments on the Revised Proposed Final Judgment because we feel that competing products such as Catavault will still unfortunately be set at a disadvantage which is not related to price or quality. If the Revised Proposed Final Judgment is accepted as is, the result will be a weakening of effective competition in the market, a reduction in consumer choice and less technological innovation, generally speaking and specifically to online identification and authentication.

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Catavault has developed, commercially licensed and deployed patent pending software that is both complementary and competitive with Microsoft .Net Passport in online identity and authentication services. Although Microsoft's September 20, 2001 announcement that a future version of .Net Passport will be federated,[1] and thus may be interoperable with rivals' services, we believe this in no way alters the extremely serious concerns articulated herein. Moreover, in spite of the Revised Proposed Final Judgment announced between the United States Department of Justice, nine states Attorneys General and Microsoft Corporation, Catavault believes this in no way alters the extremely serious concerns articulated herein. As such Catavault has been encouraged that various states Attorneys General still have the resolve and resources necessary to continue the fight in ensuring conduct remedies that are timely, effective, certain and practical when it comes to curbing Microsoft's recidivistic behavior.

While these Tunney Act comments were prepared from the heart so to speak of the entreprenours managing Catavault, Catavault has been working to promote vigorous competition in computer industry platforms and gateways with our antitrust counselors from Morgan, Lewis and Bockius including Mr. Willard K. Tom based in Washington, D.C. and Mr. Julian M. Joshua based in Brussels.

CATAVAULT OVERVIEW

Catavault is a pioneer in the online user identification and authentication space. Catavault's technology powers the "All Access Pass to the Internet," and it allows users to access more than 3,500 sites ranging from Amazon.com to ZDNet, a couple of orders of magnitude more than Microsofts .Net Passport currently enables access to, without the need to remember all of their authentication credentials for those sites. Unlike .Net Passport which is only accessible from a PC, Catavault is accessible from a PC, PDA, Mobile Phone and Set-top Box, so users can access their information from any device, at any time and from anywhere. CNN Headline News has called Catavault—"one site that can get you in everywhere..." Business Week has called Catavault, "An Open Sesame for the Whole Web." Despite these arguably superior features of its services, Catavault is severely endangered by the steps Microsoft is taking to ensure that .Net Passport becomes the dominant occupant of the online identity and authentication space. Accordingly, Catavault is endangered by the Revised Proposed Final Judgement. The remedial principle is straightforward enough: the remedy should unfetter a market from anticompetitive conduct,... terminate the illegal monopoly, deny to the defendant the fruits of its statutory violation and ensure that there remain no practices likely to result in monopolization in the future.[2] However, in spite of the overwhelming en banc victory on liability, the Revised Proposed Final Judgement does little to ensure that conduct remedies are timely, effective, certain and practical in curbing Microsoft's anti-competitive behavior.

NETWORK CHARACTERISTICS & MICROSOFTS HAILSTORM STRATEGY

Microsoft fully recognizes that, because of the network characteristics of the industry, only subtle uses of its monopoly position are necessary in order to gain an unwarranted, but insuperable dominance in this field. Indeed, its choice of "HailStorm" as a metaphor speaks volumes. As you may know, with each updraft in the natural weather-related occurrence of a hail storm, hail stones get larger as more water molecules attach to the crystalline structures of the hail stones. Similarly, Microsoft makes its monopoly position more impregnable with every adjacent space it dominates. Each layer creates another multiple-level entry problem for potential competitors, as described in the United States Department of Justice's 1984 Merger Guidelines to which the United States Federal agencies still refer in non-horizontal matters. Figure 1 is a visual representation of the troubling processes that Catavault see at work with respect to a monopolist bundling its own applications to its dominant Operating System.

As reported in The Wall Street Journal on September 20, 2001, Microsoft changed the name of its HailStorm initiative to ".Net My Services"—possibly because they realized that its very name, HailStorm, has strong whiffs of antitrust violations.

One can argue that network effects require a lock-in mechanism. However, the traditional lock-in mechanism is access to complements. Some of the services offered by Catavault and .Net Passport require cooperation from third party Internet site(s). If .Net Passport has a much larger number of users, gained through the use of its operating system monopoly, then why would the sites would want to work with Catavault? If the sites cease to work with Catavault, then why would users find Catavault attractive? These questions and their answers are paramount to understanding how market signaling and network effects work towards the monopolists advantages when it ties its own applications to its dominant Operating System.

NETSCAPE—FRUITS OF MICROSOFT'S STATUTORY VIOLATIONS

Most harmful of all is the message that Microsoft's actions have conveyed to every enterprise with the potential to innovate in the computer industry. Through its conduct toward Netscape, IBM, Compaq, Intel and others, Microsoft has demonstrated that it will use its prodigious market power and immense profits to harm any firm that insists on pursuing initiatives that could intensify competition against one of Microsoft's core products. Microsoft's past success in hurting such companies and stifling innovation deters investment in technologies and businesses that exhibit the potential to threaten Microsoft. The ultimate result is that some innovations that would truly benefit consumers never occur for the sole reason that they do no coincide with Microsoft's self-interest.[3]

Accordingly, When Microsoft destroyed Netscape as a potential rival platform, it did more than achieve dominance in browsers. It also prevented rival applications developers from playing Microsoft off against Netscape in the battle to ensure the survival of their applications programs and services. If Netscape and/or other browser/middleware platform software had survived as a serious competitor to Microsoft, competitive pressures would have forced one or more platforms to carry Catavault, because doing so would have provided a competitive advantage. The platform itself would have become more attractive if, through accessing Catavault, users were freed from cumbersome authentication procedures on a much larger number of sites. That competitive pressure is now gone. Thus, Catavault's current predicament flows directly from Microsoft's earlier unlawful acts against Netscape.

MARKET EXPECTATIONS STIFLE INNOVATION AND COMPETITION

Moreover, the very public bumbling of an 85 percent market share player like Netscape in itself creates market expectations that where Microsoft announces an intention to dominate a strategic space, it will succeed in doing so. .Net Passport occupies a strategic space as the on-ramp to the Internet as illustrated in Figure 2, and Microsoft has been quite public about that fact as has been reported in articles in The Industry Standard.[4] Consequently, merchants, investors and other marketplace participants become highly resistant to dealing with Microsoft's competitors in such spaces. For example, Benjamin D. Black, a principal of the Rosewood Venture Group, a U.S. venture capital firm in San Francisco, California has stated, "I still won't invest in companies that are directly in front of Microsoft's development path."[5] And Stewart Alsop, a general partner of New Enterprise Associates, a Silicon Valley venture capital firm in the U.S., has been quoted as saying, "The most common question for potential investors is: "What about Windows XP?" You can still compete but if Microsoft bundles it in Windows it makes it much more difficult for nay kind of innovation that is in Microsoft's path.[6] Thus, in this sense, too, Microsoft's earlier unlawful acts against Netscape directly cuts Catavault off from access to important complements.

To that end, one could argue that the competition is ultimately not for the end-user, but for the online service providers who actually pay for online identity and authentication services. Signing up 200 million Hotmail accounts gives Microsoft a huge critical mass of users, but what does it do to get third party sites to work with .Net Passport? To answer this effectively, one must understand that having so many users signals to the marketplace that Microsoft will dominate online identity and authentication services. Moreover, these third party businesses are motivated to work with Microsoft based on the marketing support that Microsoft can provide them—thus creating value propositions from Microsoft's monopoly position. If third party businesses believe that Microsoft will also succeed in using its Operating System monopoly to push Catavault and/or others aside in terms of subscribers or utilities, then third party firms will not have an incentive to work with Catavault. As former United States Deputy Assistant Attorney General Carl Shapiro has described in his writings, expectations play a very large role in network markets.[7]

MAKING .NET PASSPORT THE DE FACTO IDENTITY SERVICE IN WINDOWS XP

Microsoft has taken a number of steps to ensure, and to make consumers believe, that having a .Net Passport account is necessary in order to access features of Windows XP an/or other Microsoft goods and services. Indeed, the press, encouraged by Microsoft, has come to the conclusion that Microsoft .Net Passport "will be the exclusive identity service on the new Windows XP operating system. Any XP user who wishes to access key services such as Windows Messenger (for Instant Messaging) will have to register for a Passport."[8] Microsoft has not achieved its claimed 2000 million .Net Passport subscribes by offering a superior service. (Competitive market research indicates that .Net Passport is currently accepted by only about 35–70 sites, most of which are owned by Microsoft, have received substantial Microsoft investment or partnered with Microsoft in some sort of business arrangement.) Instead, it has done so by these kinds of suggestions of inevitability and by automatically opening .Net Passport accounts for all Hotmail and MSN users, and even hinting at future integration and potential incompatibilities. Thus, in published reports regarding .Net Passport 2.0, it is stated, "...with this release, Hotmail will move to the Passport code base for easier integration."[9]

Catavault experienced this directly in early September 2001 when a Catavault employee tried to access the latest release candidate of XP. First, he learned that one could not get the latest preview of XP online without a .Net Passport account.[10] Then, after downloading that version of XP and rebooting, he got a blank desktop, but in the system tray in the bottom right, a message popped up that said: "Add your. NET Passport to Windows XP! You've just connected to the Internet. You need a Passport to use Windows XP Internet communications features (such as instant messaging, voice chat, and video), and to access .NET-enabled services on the Internet. Click here to set up your Passport now."

When he clicked, it went to the .NET Passport Wizard to let him sign up for Passport. Thus, whether or not there are actual incompatibilities, Microsoft has been representing to users that they must sign up for .Net Passport in order to access key XP features or other Microsoft services. In a network business, that may be all Microsoft needs to maintain and extend its dominance to this space as well. These network characteristics undoubtedly underlie some of the "vaporware" aspects of Microsoft's dramatic announcements but slow rollout. We have already mentioned how small the number of third party sites accepting .Net Passport is. In the same vein, ZDNet has reported that American Express has yet to sign a contract with Microsoft for HailStorm services. This despite the fact that Microsoft touted American Express as a partner at the very announcement of the HailStorm initiative, by featuring American Express' Chief Information Officer in that announcement.[11]

PROPOSED CONDUCT REMEDIES TO CURB ANTI-COMPETITIVE PRACTICES

If there is no efficiency justification for Microsoft s tactics such as bundling and/or market signaling, they may be acts of monopolization in themselves. But regardless of whether they are or not, the current situation flows directly from Microsoft's earlier unlawful acts against Netscape. While one can never know with certainty exactly what that but-for world would have been had Netscape survived, it was reasonably certain that, for some significant period of time there would have been a competitive struggle between Microsoft and Netscape as alternative nuclei around which other providers of applications and services would coalesce. Both would seek to commoditize the other's space. If Netscape gained the upper hand, multiple operating systems would become available to computer users. If Microsoft gained the upper hand, multiple browsers would become available. Consequently, any remedy for those earlier acts needs to include some kind of mandated intra-system competition to take the place of the competition that would have existed between the two systems to add attractive applications through a Ballot Screen with choices for online identity and authentication services such as Catavault.

We have given a great deal of thought to what order language would be needed to implement the concept of a Ballot Screen. Following is the rationale and the result can be found in Figure 3 with the language marked as to revisions. It uses Microsoft's inclusion of middleware products in its operating system software as the benchmark for what types of products should be included, with the slight modification that it remedies the continuing effects of past inclusions as well as remedying the effects of future inclusions. As you will see, there is a provision for approval by some entity, corresponding to Commission approval in the AOL Time Warner, in order to ensure that the competing products are serious competitors to Microsoft. In the case of online identity and authentication, the seriousness of the competition can be measured by the number of sites, users, and devices accessed by the competitor. These metrics could be written into the order if desired, but in any event the existence of available metrics would ensure that the entity charged with approval would have an objective way of exercising that discretion. As you will also see, when we reviewed Judge Jackson's order, we concluded that online identity and authentication service software would fit comfortably into the definition of "middleware," but for the avoidance of doubt, we included it specifically in the list of examples. In addition to offering services via communications interfaces as now occurs, it is entirely possible that in the future, programmers of sites or of programs used to build sites will write software built upon a Catavault platform.

We have also given further thought to the Department of Justice s observation that a possible standard for relief is that it should be aimed at opening the operating system market to competition. After reflection, we believe that our proposed Ballot Screen relief does in fact further that goal, but that such a standard is nonetheless wrong, in spite of that standard appearing in the Department of Justice's September 6, 2001 press release.

The relief we propose does further the goal of operating system competition, because allowing Microsoft to use its operating system monopoly to obtain a dominant position in the authentication gateway to the Internet will mean the creation of yet another applications barrier to entry, because it will be extremely difficult to police the ways in which Passport could be used to favor Windows if a credible threat to Windows arose.

There is, however, a more fundamental issue: the proper standard must be to restore the competitive conditions that would have existed but for the illegal conduct. It is, of course, too late to revive Netscape as a credible threat to Microsoft's operating system monopoly. One approach might be, as the Department of Justice once proposed, to find in Microsoft's applications software—particularly its dominant Office suite—a sufficiently dangerous competitive threat to the operating system monopoly. As in the competition between Microsoft and Netscape in the but-for world, the point of that remedy was not to assure ultimate, long-term competition in operating systems. The operating system company might with the competitive struggle, and ultimately maintain its monopoly position through lawful means. The point of the remedy was the competitive struggle itself. That remedy was imperfect, as are all the alternatives. But of better or worse, it is now off the table.

Whatever replaces it, the goal should not be to assure ultimate, long-term competition in operating systems. The but-for world did not do so. Microsoft might well have won the competitive struggle, and maintained its monopoly. The point of the Netscape threat to the operating system monopoly was that Microsoft had to compete with better

[1] See http://www.microsoft.com/presspass/press/2001/sep01/09-20PassportFederationPR.asp

[2] United States v. Microsoft Corp., slip op. at 99-100, No. 00-5212 (D.C. Cir. June 28, 2001), quoting Ford Motor Corp V. United States, 405 U.S. 562,577 (1972); United States v. United Shoe Mech. Corp., 391 U.S. 244,250 (1068).

[3] Judge Thomas Penfield Jackson's Finding of Fact, 412th and final paragraph, November 5, 1999.

[4] http://www.thestandard.con/article/0,1902,27686,00.html.

[5] The New York Times, September 7, 2001, Competitors See a Giant That is Now Largely Unfettered, by Michael Brick.

[6] The New York Times, September 7, 2001, Pendulum Swings to Microsoft, But the Degree Remains Unclear, by Steve Lohr.

[7] Speech by Carl Shapiro, Deputy Assistant Attorney General, Antitrust Division, United States Department of Justice. American Law Institute and American Bar Association, "Antitrust/Intellectual Property Claims in High Technology Markets," San Francisco, California, January 25, 1996.

[8] Source: http://www.thestandard.com/article/0,1902,27685,00.html, attached.

[9] Source: http://www.wininformant.com/Articles/Index.cfm?ArticleID=22174, attached.

[10] Source: http://www.microsoft.com/windowsxp/preview/systemreq.asp.

[11] http://www.zdnet.com/zdnn/stories/news/0,4586,5096385,00.html.

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products and prices, and in the meantime the rest of the computer industry would be vigorously competitive and innovative, and might nurture the next threat to its surviving monopolist. It is the strangling of that dynamic from which the market must be unfettered, and it is Microsoft's freedom from that dynamic that constitutes the "fruits of its statutory violation." At this point in the evolution of the computer industry, after Microsoft's misconduct, it might well be a hopeless task to restore competition in operating systems.

It is not too late, however, to restore the competitive dynamic that ensured that, while Microsoft battles its chief rivals in the most strategic battleground at any given time, innovators in the next strategic space could play one against the other in order to survive. At the moment, the inter-system competition that Netscape represented is gone, and the Department of Justice is no longer seeking to have competition from Microsoft Office take its place. Thus, the temporary stopgap by which the next strategic space can develop must be intra-system competition, or "must-carry." That will revive some of the competitive dynamic that Microsoft has cut off, and allow competition to flourish in—and on the other side of—those gateways. Ergo, just as Microsoft agreed to change its digital imaging features to give users easier access to digital imaging software from a number of providers such as Kodak, not just those affiliated with Microsoft, so there needs to be a requirement that Microsoft incorporate Catavault (and other online identity and authentication services that may arise) into XP as a complementary and competitive service. Thus, doing some kind of a "Ballot Screen" for consumers to select which online identity and authentication service they would like may be as close as one can get to the competitive landscape that would have existed but for Microsoft's already adjudicated unlawful conduct.

In addition, of course, one would need to prohibit Microsoft from introducing incompatibilities, to forbid Microsoft from making use of .Net Passport as a prerequisite to use other Microsoft goods and services, and so forth. Otherwise, the need to sign up with .Net Passport to get the XP preview is likely to continue to be the typical pattern for accessing anything that Microsoft can control or influence.

MICROSOFT'S FEDERATED ANNOUNCEMENT & INTERNET TRUST NETWORK—ITS EFFECTS AND RELATION TO FEAR, UNCERTAINTY & DOUBT

A "Ballot Screen" remedy would be far superior to waiting to see how Microsoft's latest federated announcement plays out. As the Department of Justice well knows, a "fear, uncertainty and doubt" strategy relies heavily on the passage of time and the uncertainty of the future. (This is undoubtedly why Microsoft has been making every effort to delay judicial and legislative proceedings in the United States.) As of January 28, 2002, Catavault has neither been invited to any Microsoft developers conference yet, nor has it learned of any developers conference yet, albeit Catavault has informed Microsoft about its potential willingness to participate in the conference. Additionally, XP has already been launched with an aggressive marketing campaign and with .Net Passport as the exclusive online identity and authentication service. .Net Passport will have a huge user base that will undoubtedly get larger between now and the time that any Microsoft federation conference or any competitive and/or complementary solution such as the Liberty Alliance initiated by Sun Microsystems produces any tangible results in the marketplace. The agenda of the federated conference and other like it such as the Liberty Alliance may be to develop standards for implementation of online user identification and authentication services, and in the case of Microsoft's Internet Trust Network, built upon a technology platform of Microsoft's choosing, regardless of consumer preferences. Following that developers' conference, there may be a long period of back-and-forth over technical standards. Next may come a period in which Microsoft sows uncertainty about the extent to which other services are fully interoperable, perhaps because of peculiarities in Microsoft's implementation of the common standard. During all that time, .Net Passport will become more and more entrenched, regardless of consumers' preferences as to the features and scope of completing online user identification and authentication services.

Industry pundits used to subscribe to the notion that first mover advantage was the most important mission of many new technology ventures. However, based on present market conditions, we argue that it has nothing to do with first mover advantage anymore; rather it has everything to do with the concept of last man standing. Accordingly with over US $36 billion in case reserves on hand, Microsoft is well positioned to be the last man standing in many industries including online identity and authentication.

PROBLEMS WITH THE REVISED PROPOSED FINAL JUDGEMENT

While there are many troubling issues with the Revised Proposed Final Judgement, two of the more salient problems for the online identity and authentication sector involve the following terms and provisions:

• OEMs—The fact is that Original Equipment Manufacturers (OEMs) are a sub-optimal source to serve as an adequate check and balance on Microsoft's anti-competitive actions. For example, the provisions that allow OEMs to have greater freedom to select which software to use and not to use do absolutely nothing to protect consumer choice and technological innovation.

Thus, providing the OEMs greater freedom as a conduct remedy against Microsoft is meaningless today given consolidation in the PC industry, slumping PC sales, depressed PC margins, and the fact that the OEMs do not want to bite the hand that feeds them—Microsoft.

Moreover, the OEMs know very well that small companies such as Catavault cannot afford to compete against Microsoft, both in terms of operations and marketing. Case in point, Windows XP launched on time because Microsoft lobbied that XP would help revive slumping PC sales, and Microsoft is spending approximately US $250 million just on marketing for XP. As such, OEMs do not necessarily want to bet on smaller players which find themselves in the cross-hairs of Microsoft—thus consumer choice and technological innovation are still harmed.

• AUTHENTICATION LOOPHOLE—The following provision from the proposed settlement seems to be the veritable loophole large enough to drive a truck through, particularly affecting Catavault and other online identity and authentication services.

J. No provision of this Final Judgment shall:

1. Require Microsoft to document, disclose or license to third parties: (a) portions of APIs or Documentation or portions or layers of Communications Protocols the disclosure of which would compromise the security of anti-piracy, anti-virus, software licensing, digital rights management, encryption of authentication systems, including without limitation, keys, authorization tokens or enforcement criteria; or (b) any API, interface or other information related to any Microsoft product if lawfully directed not to do so by a governmental agency of competent jurisdiction.[12] Identification and authentication is singled out for a loophole to free Microsoft's .Net Passport from scrutiny and permit Microsoft to bind a universal identification and authentication service utility to its monopoly operating system without scrutiny under the Revised Proposed Final Judgement. By permitting Microsoft to withhold key part of encryption, digital rights management, authentication, and other security protocols, the Revised Proposed Final Judgement effectively clears the way for the desktop monopolist to the Web-services monopolist in a distributed computing environment. The Revised Proposed Final Judgement could hardly try to place a clearer stamp of approval on an expansion of the scope of an illegally maintained monopoly.

CONCLUSION

The Revised Proposed Final Judgement agreed to by the United States Department of Justice, the Attorneys General on nine states and Microsoft Corporation does not attain its goals of curbing Microsoft's recidivistic behavior in maintaining and extending its operating system monopoly into Web-services such as online identification and authentication, which Microsoft has bet will be the next gateway to the Internet. Specifically, the Revised Proposed Final Judgement does not provide adequate incentives across constituent bodies and penalties for Microsoft to ensure that the Revised Proposed Final Judgement goals are attained. Moreover, the lenient conduct remedies imposed on Microsoft are essentially a slap on the wrist for its illegal conduct and anti-competitive practices. Unfortunately, technological innovation and consumer choice will continue to be harmed, and this will be exacerbated in challenging economic conditions if the Revised Proposed Final Judgement is accepted as is. As such, the Revised Proposed Final Judgement needs to be revised significantly if it is to have any real impact in the marketplace in curbing Microsoft's recidivistic behavior. Specifically, as it pertains to the heart of Windows XP and Microsoft's goal of dominating online identification and authentication with .Net Passport, we believe quite passionately that implementing a Ballot Screen for users to choose which identification and authentication service that they would like would go a long way to providing a conduct remedy that was more timely, effective and certain.

Figure 1

"The world of operating systems becomes more homogeneous over time. Today something like 85 percent of the computers on the planet run the same operating system [Microsoft's]. There is sort of a positive feedback cycle here. If you get more applications, it gets more popular, if it gets more popular, it gets more applications."—Bill Gates keynote address, Conference on Internet and Society at Harvard in May 1996; World War 3.0 by Ken Auletta. On June 28, 2001, the District of Columbia Court of Appeals unanimously held that Microsoft engaged in unlawful monopolization. Notwithstanding Judge Jackson's ruling and the appellate ruling, Microsoft prominently announced its major corporate initiative called HailStorm in March 2001; the very choice of HailStorm as a name serves as a metaphor for a positive feedback cycle in Bill Gates opinion or network effects and increasing returns in an antitrust perspective. The heart of HailStorm is based on .Net Passport, Microsoft's proprietary online identification and authentication service. This market signaling transcends into Microsoft's strategy and tactics to gain market advantage in new sectors using .Net Passport. .Net Passport is the exclusive online identification and authentication service on Windows XP. Accordingly, .Net Passport will be the de facto online identification and authentication service which will limit consumer choice and undermine innovation. As reported in The Wall Street Journal on September 20, 2001, Microsoft changed the name of HailStorm to ".Net My Services"—possibly because they realize that its very name—HailStorm—has strong whiffs of antitrust violations.

Note: In its natural weather-related occurrence, hail stones are large frozen raindrops produced by intense thunderstorms. As the frozen drops fall, liquid water freezes onto them forming ice pellets that continue to grow as more and more droplets accumulate. Upon reaching the bottom of the cloud (symbolic for the Internet), some of the ice pellets are carried by the updraft back up to the top of the cloud. As the ice pellets once again fall through the cloud, another layer of ice is added and the hail stones grow even larger. Typically the stronger the updraft, the more times hail stones repeat this cycle and consequently, the larger the hail stones grow. Once the hail stones become too heavy to be supported by the updraft, they fall out of the cloud toward the surface. The hail stones reach the ground as ice since they are not in the warm air below the thunderstorm long enough to melt before reaching the ground. And as one knows, you should take cover from a hail storm. . . .

Figure 2

Microsoft s .Net Passport online identification & authentication technology controls the gateway to all applications in Windows XP

Windows XP

It's our goal to have virtually everybody who uses the Internet to have one of these Passport connections—Bill Gates

Source: The Industry Standard—July 3, 2001

http://www.thestandard.com/article/0,1902,27685,00.html

While digital photography, instant messaging and streaming media all are very important issues to constituents such as Kodak, AOL Time Warner and Real Networks respectively, the backbone to Microsoft s HailStorm (renamed .Net My Services) initiative and full utilization of Windows XP is the Microsoft .Net Passport identification and authentication service. Microsoft has stated that .Net Passport will be the exclusive Internet identity service on Windows XP, and Passport will be required to utilize some or all of the features noted above. Thus, even if competition in those areas is assured, Microsoft will still hold the real keys to access and conceivably will be able to use its .Net Passport monopoly to direct traffic away from competing digital photography, instant messaging and streaming media applications.

Instant Messaging

Digital Imaging Streaming Media

Microsoft s .Net Passport Identification & Authentication Technology

Microsoft Office XP

Internet Explorer

Figure 3 Proposed Order (Marked with changes)

3g. Restriction on BindingIncluding Middleware Products toin Operating System Products.

Microsoft shall not, in any Operating System Product distributed six or more months after the effective date of this Final Judgment, Bind include any Middleware Product toin a Windows Operating System unless:

i. that Operating System also includes at least two (2) comparable Middleware Products offered by non-affiliated firms approved by the [Antitrust Division] [Department of Justice] [Court] [Trustee] or Microsoft demonstrates to the satisfaction of [___] that fewer than two such products exist, in which case Microsoft shall include all that exist. The option of using such non-affiliated products shall be displayed to the user on terms no less favorable than those accorded to the Microsoft products.

ii. Microsoft also offers an otherwise identical version of that Operating System Product in which all means of End-User Access to that those Middleware Products can readily be removed (a) by OEMs as part of standard OEM pre-installation kits and (b) by end users using add-remove utilities readily accessible in the initial boot process and from the Windows desktop.; and

iii. when an OEM removes End-User Access to a Microsoft Middleware Product from any Personal Computer on which Windows is preinstalled, the royalty paid by that OEM for that copy of Windows is reduced in an amount not less than the product of the otherwise applicable royalty and the ratio of the number of amount in bytes of binary code of (a) the Middleware Product as distributed separately from a Windows Operating System Product to (b) the applicable version of Windows.

3g. Middleware Products Included in Previously Distributed Operating System Products. If Microsoft has, in any Operating System Product distributed less than six months after the effective date of this Final Judgment, included any Middleware Product in a Windows Operating System, it shall within six months after the effective date of this Final Judgment:

i. release a version of its most recent Operating System that includes at least two (2) comparable Middleware Products offered by non-affiliated firms approved by the [Antitrust Division] [Department of Justice] [Court] [Trustee], unless Microsoft demonstrates to the satisfication of [___] that fewer than two such products exist, in which case Microsoft shall include all that exist. The option of using such non-affiliated products shall be displayed to the user on terms no less favorable than those accorded to the Microsoft products.

ii. offer an otherwise identical version of that Operating System Product in which all means of End-User Access to those Middleware Products can readily be removed (a) by OEMs as part of standard OEM preinstallation kits and (b) by end users using add-remove utilities readily accessible in the initial boot process and from the Windows desktop.

7q. Middleware means software that operates, directly or through other software, between an Operating System and another type of software (such as an application, a server Operating System, or a database management system, including such Operating Systems and database management systems on an Internet site) by offering services via APIs or Communications Interfaces to such other software, and could, if ported to or interoperable with multiple Operating Systems, enable software products written for that Middleware to be run on multiple Operating System Products. Examples of Middleware within the meaning of this Final Judgment include Internet browsers, online identity and authentication service software, e-mail client software, multimedia viewing software, Office, and the Java Virtual Machine. Examples of software that are not Middleware within the meaning of this Final Judgment are disk compression and memory management.

r. Middleware Product means

i. Internet browsers, e-mail client software, multimedia viewing software, instant messaging software, online identity and authentication service software, and voice recognition software, or

ii. software distributed by Microsoft that—

(1) is, or has in the applicable preceding year been, distributed separately from an Operating System Product in the retail channel or through Internet access providers, Internet content providers, ISVs or OEMs, and

(2) provides functionality similar to that provided by Middleware offered by a competitor to Microsoft.

[12] http://www.usdoj.gov/atr/cases/f9400/9462.htm

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Dorothy B. Fountain,
Deputy Director of Operations.
[FR Doc. 02–11539 Filed 5–8–02; 8:45 am]
BILLING CODE 4410–11–M

DEPARTMENT OF JUSTICE

Office of Justice Programs

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 60-Day notice of information collection under review: reinstatement, with change, of a previously approved collection for which approval has expired; Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

The Department of Justice (DOJ), Office of Justice Programs, Office of Victims of Crime, has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. Comments are encouraged and will be accepted for "sixty days" until July 8, 2002. This process is conducted in accordance with 5 CFR 1320.10.

If you have comments especially on the estimated public burden or associated response time, suggestions, or need a copy of the proposed information collection instrument with instructions or additional information, please contact Celestine Williams (202) 616–3565, Office of Victims of Crime, Office of Justice Programs, U.S. Department of Justice, 810 Seventh Street NW., Washington, DC 20531.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of this information collection:

(1) *Type of Information Collection:* Reinstatement, With Change, of a Previously Approved Collection for Which Approval has Expired.

(2) *Title of the Form/Collection:* Victims of Crime Act, Crime Victim Assistance Grant Program, Subgrant Award Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: 1121–0142. Office for Victims of Crime, Office of Justice Programs, U.S. Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* None. The information requested is necessary to ensure compliance with statutory criteria which allows the Director of OVC to collect performance data from recipients of the VOCA victim assistance grant funds. The affected public include up to 57 States and territories administering the crime assistance provisions of the Victims of Crime Act.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are 57 respondents who will complete a three minute subgrant award report. However, a State can be responsible for entering subgrant data for as many as 9 to 417 programs.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 295 burden hours associated with this information collection. *If additional information is required contact:* Brenda E. Dyer, Department Deputy Clearance Officer, Information Management and Security Staff, Justice Management Division, Department of Justice, Patrick Henry Building, Suite 1600 D Street NW., Washington, DC 20530.

Dated: May 3, 2002.
Brenda E. Dyer,
Department Deputy Clearance Officer, Department of Justice.
[FR Doc. 02–11525 Filed 5–8–02; 8:45 am]
BILLING CODE 4410–18–M

DEPARTMENT OF LABOR

Office of The Secretary

Submission for OMB Emergency Review; Comment Request

May 3, 2002.

The Department of Labor has submitted the following (see below) information collection request (ICR), utilizing emergency review procedures, to the Office of Management and Budget (OMB) for review and clearance in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). OMB approval has been requested by June 1, 2002. A copy of this ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation, contact Darrin King on (202) 693–4129 or Email: *King-Darrin@dol.gov.*

Comments and questions about the ICR listed below should be forwarded to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for the Employment and Training Administration, Room 10235, Washington, DC 20503. The Office of Management and Budget is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

Agency: Employment and Training Administration (ETA).

Title: Temporary Extended Unemployment Compensation Reports.

OMB Number: 1205–0NEW.

Affected Public: State, Local, or Tribal Government.

Annualized Reporting Burden (time measured in hours):

Number of respondents	Estimated time per response	Number of reports	Total burden
ETA207 53	0.5	4	106
ETA218 53	0.2	4	42
ETA227 53	1.0	4	212
ETA2112 53	0.2	12	127
ETA5130 53	1.0	12	636
ETA5159 53	1.0	12	636
ETA539 53	0.01	52	28

Total Burden Hours: 1,787.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $ 0.

Description: On March 9, 2002, President Bush signed into law the Temporary Extended Unemployment Compensation (TEUC) program. This program provides up to 26 weeks of additional unemployment benefits to eligible claimants who have exhausted their regular entitlement. This is a temporary, federally funded program enacted through December 31, 2002. To properly administer and monitor this program, specific information is required from states. The information requested through these reports are necessary for proper administer of the program and interpretation of labor market conditions. Approval is not being sought for any new forms, but rather, approval is being sought for an additional use of existing forms. There are no state costs since the states are funded for reporting.

Darrin A. King,
Acting Departmental Clearance Officer.
[FR Doc. 02–11631 Filed 5–8–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Employment and Training

On April 22, 2002, the Secretary of Labor issued a memorandum to the Assistant Secretary for Employment and Training delegating authority and assigning responsibility to invoke all appropriate claims of governmental privilege arising from the functions of the Employment and Training Administration. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Charles D. Raymond, Associate solicitor for Employment and Training Legal Services, at (202) 693–5710. This is not a toll-free number.

Signed in Washington, DC, this 3rd day of May, 2002.

Eugene Scalia,
Solicitor of Labor.

Secretary of Labor

Washington

April 22, 2002.

Memorandum for: EMILY STOVER DE ROCCO, Assistant Secretary, Employment and Training Administration

From: ELAINE CHAO

Subject: Specific Delegation of Authority to the Assistant Secretary for Employment and Training

Effective immediately, the Assistant Secretary for Employment and Training is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege arising from the functions of the Employment and Training Administration, following her personal consideration of the matter, and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Employment and Training Administration in cases arising under the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) interfere with the Employment and Training Administration's investigation or enforcement of a particular statute for which the Employment and Training Administration exercises investigative or enforcement authority; (2) adversely affect persons who have provided information to the Employment and Training Administration; or (3) deter other persons from reporting violations of the statutes.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in cases arising under the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect con the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal the Employment and Training Administration's confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon the Employment and Training Administration's enforcement of the statutes listed in Secretary's Orders 4–75, 3–81 and 2–85 by: (1) disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the Employment and Training Administration; (3) prematurely revealing the facts of the Employment and Training Administration's case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation with which the disclosure is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

[FR Doc. 02–11632 Filed 5–8–02; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–056)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Makel Engineering, Inc., of Chico,

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California, has applied for an exclusive license to practice the inventions disclosed in U.S. Patent No. 6,027,954 entitled "Gas Sensing Diode and Method of Manufacturing," (NASA Case No. 16,519–1); and U.S. Patent No. 6,291,838 entitled "Gas Sensing Diode Comprising SiC" (NASA Case No. LEW 16,519–2), both of which are assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration.

Written objections to the prospective grant of a license should be sent to NASA Glenn Research Center.

NASA has not yet made a determination to grant the requested license and may deny the requested license even if no objections are submitted within the comment period.

DATES: Responses to this notice must be received by July 8, 2002.

FOR FURTHER INFORMATION CONTACT: Kent N. Stone, Patent Attorney, NASA Glenn Research Center, Mail Stop 500–118, 21000 Brookpark Road, Cleveland, Ohio 44135, telephone: (216) 433–8855.

Dated: May 2, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–11625 Filed 5–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (02–055)]

Notice of Prospective Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of prospective patent license.

SUMMARY: NASA hereby gives notice that Tietronix Software, Inc., having offices in Houston, Texas, has applied for a partially exclusive license to practice the inventions described and claimed in pending U.S. Patent Application entitled "System and Method for Dynamic Optical Filtration (DOFS)," NASA Case No. MSC23037–1, and any continuations, divisional applications, and foreign applications corresponding to the above-listed cases. The above-identified patent application is assigned to the United States of America as represented by the Administrator of the National Aeronautics and Space Administration. Written objections to the prospective grant of a license should be sent to the Johnson Space Center.

DATES: Responses to this notice must be received by May 24, 2002.

FOR FURTHER INFORMATION CONTACT: James Cate, Patent Attorney, NASA Johnson Space Center, Mail Stop HA, Houston, TX 77058–8452; telephone (281) 483–1001.

Dated: May 2, 2002.

Robert M. Stephens,

Deputy General Counsel.

[FR Doc. 02–11624 Filed 5–8–02; 8:45 am]

BILLING CODE 7510–01–P

NATIONAL MEDIATION BOARD

Notice of Proposed Information Collection Requests

AGENCY: National Mediation Board.

SUMMARY: The Chief Information Officer, Finance and Administration Department, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 8, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Chief Information Officer, Finance and Administration Department, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection contains the following: (1) Type of review requested, e.g. new, revision extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Record keeping burden. OMB invites public comment.

Currently, the National Mediation Board is soliciting comments concerning the proposed extension of the Application for Mediation Services, and the Application for Investigation of Representation Dispute and is interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the agency; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the agency enhance the quality, utility, and clarity of the information to be collected; and (5) how might the agency minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 3, 2002.

June D.W. King,

Chief Information Officer, Finance and Administration Department, National Mediation Board.

A. Application for Mediation Services

Type of Review: Extension.

Title: Application for Mediation Services, OMB Number: 3140–0002.

Frequency: On occasion.

Affected Public: Carrier and Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 70 annually.

Burden Hours: 17.50.

Abstract: Section 5, First of the Railway Labor Act, 45 U.S.C., 155, First, provides that both, or either, of the parties to the labor-management dispute may invoke the mediation services of the National Mediation Board. Congress has determined that it is in the nation's best interest to provide for governmental mediation as the primary dispute resolution mechanism to resolve labor-management disputes in the railroad and airline industries. The Railway Labor Act is silent as to how the invocation of mediation is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.1 provides that applications for mediation services be made on printed forms which may be secured from the National Mediation Board. This section of the regulations provides that applications should be submitted in duplicate, show the exact nature of the dispute, the number of employees involved, name of the carrier and name of the labor organization, date of agreement between the parties, date and copy of notice served by the invoking party to the other and date of final conference between the parties. The application should be signed by the highest officer of the carrier who has been designated to handle disputes under the Railway Labor Act or by the chief executive of the labor organization, whichever party files the application.

The extension of this form is necessary considering the information provided by the parties is used by the Board to structure a mediation process that will be productive to the parties and result in a settlement without resort to strike or lockout. The Board has been very successful in resolving labor disputes in the railroad and airline industries. Historically, some 97 percent of all NMB mediation cases have been successfully resolved without interruptions to public service. Since 1980, only slightly more than 1 percent of cases have involved a disruption of service. This success ratio would possibly be reduced if the Board was unable to collect the brief information that it does in the application for mediation services.

B. Application for Investigation of Representation Dispute

Type of Review: Extension.

Title: Application for Investigation of Representation Dispute, OMB Number: 3140–0001.

Frequency: On occasion.

Affected Public: Union Officials, and employees of railroads and airlines.

Reporting and Recordkeeping Hour Burden:

Responses: 68 annually.

Burden Hours: 17.

Abstract: Section 2, Fourth of the Railway Labor Act, 45 U.S.C. 152, Fourth provides that railroad and airline employees shall have the right to organize and bargain collectively, through representatives of their own choosing. When a dispute arises among the employees as to who will be their bargaining representative, the National Mediation Board is required by Section 2, Ninth to investigate the dispute, to determine who is the authorized representative, if any, and to certify such representative to the employer. The Board's duties do not arise until its services have been invoked by a party to the dispute. The Railway Labor Act is silent as to how the invocation of a representation dispute is to be accomplished and the Board has not promulgated regulations requiring any specific vehicle. Nonetheless, 29 CFR 1203.2 provides that requests to investigate representation disputes may be made on printed forms. The application shows the name of description of the craft or class involved, the name of the invoking organization, the name of the organization currently representing the employees, if any, and the estimated number of employees in the craft or class involved. This basic information is essential to the Board in that it provides a short description of the particulars of dispute and the Board can begin determining what resources will be required to conduct an investigation.

The extension of this form is necessary considering the information is used by the Board in determining such matters as how many staff will be required to conduct an investigation and what other resources must be mobilized to complete our statutory responsibilities. Without this information, the Board would have to delay the commencement of the investigation, which is contrary to the intent of the Railway Labor Act.

Requests for copies of the proposed information collection request may be accessed from *www.nmb.gov* or should be addressed to Grace Ann Leach, NMB, 1301 K Street NW., Suite 250 E, Washington, DC 20572 or addressed to the e-mail address *leach@nmb.gov* or faxed to 202–692–5081. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to June D.W. King at 202–692–5010 or via internet address *king@nmb.gov* Individuals who use a telecommunications device for the deaf (TDD/TDY) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11544 Filed 5–08–02; 8:45 am]

BILLING CODE 7550–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment request.

SUMMARY: The National Science Foundation (NSF) has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1995, Pub. L. 104–13. This is the second notice; the first notice was published at 67 FR 8562 and no comments were received. Comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send email to splimpto@nsf.gov. Comments regarding these information collections are best assured of having their full effect if received within 30 days of this notification. Copies of the submission(s) may be obtained by calling 703–292–7556.

NSF may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Applicant Survey.

OMB Approval Number: 3145–0096.

Expiration Date of Approval: August 31, 2002.

Type of Request: Intent to seek approval to extend with revision an information collection for three years.

Proposed Project: The current National Science Foundation Applicant survey has been in use for several years. Data are collected from applicant pools to examine the racial/sexual/disability composition and to determine the source of information about NSF vacancies.

Use of the Information: Analysis of the applicant pools is necessary to determine if NSF's targeted recruitment efforts are reaching groups that are underrepresented in the Agency's workforce and/or to defend the Foundation's practices in discrimination cases.

Burden on the Public: The Foundation estimates about 5,000 responses annually at 3 minutes per response; this computes to approximately 250 hours annually.

Dated: May 3, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11535 Filed 5–8–02; 8:45 am]

BILLING CODE 7555–01–M

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NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; Comment request

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 2248 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques of other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Cross Site Analysis of the Integrative Graduate Education and Research Traineeship (IGERT) Program.

OMB Control No.: 3145–0182.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Integrative Graduate Education and Research Traineeship (IGERT) Program. This site-based interview component is a part of a mixed method implementation and impact study and is comprised of on-site interviews of PIs, trainees, key faculty, and administrative personnel for all IGERT projects in their third year of funding (approximately 20 sites per year). It complements and verifies data from the previously cleared IGERT Distance Monitoring System (a Web-based survey completed annually by the project Principal Investigators, funded trainees, and non-funded associate students). While the Web-based survey provides prescribed and consistent data across all IGERT sites, site visits allow the collection of site-specific, in-depth information that answers questions raised by the Web-based collection and extends its scope. The two approaches inform and enrich each other to provide the clearest and most complete portrait possible of the evaluated program. Data are needed by NSF for program monitoring and to support program analysis, impact assessment, and evaluation activities.

Expected Respondents: Interview respondents at each IGERT project will include: The Principal Investigator, Co-Principal Investigators, Faculty associated with the project or advisors to trainees, Funded Trainees, Non-Funded Associates, and University Administrators.

Burden on the Public: Burden for respondents varies according to role, from 30 minutes to three hours. A total of 34 hours and 30 minutes interview time is projected for the estimated 44 respondents at each site. Over the average of 20 sites each year, this amounts to 880 respondents and a total of 690 hours. Burden to the public is limited because all respondents are limited to those associated with IGERT projects in their third year of implementation.

Dated: May 3, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11536 Filed 5–8–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–412]

Pennsylvania Power Company, Ohio Edison Company, FirstEnergy Nuclear Operating Company, Beaver Valley Power Station, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from Title 10 of the Code of Federal Regulations (10 CFR), Section 54.17(c), for Facility Operating License No. NPF–73, issued to FirstEnergy Nuclear Operating Company (the licensee), for operation of the Beaver Valley Power Station, Unit No. 2 (BVPS–2), located in Beaver County, Pennsylvania. Therefore, as required by 10 CFR 51.21, the NRC is issuing this environmental assessment and finding of no significant impact.

Environmental Assessment

Identification of the Proposed Action

The proposed action would exempt the licensee from the requirement of 10 CFR 54.17(c), which specifies that an applicant (for the purposes of license renewal the licensee is the applicant) may apply for a renewed operating license no earlier than 20 years before the expiration of the operating license currently in effect.

The proposed action is in accordance with the licensee's application for an exemption dated December 17, 2001.

The Need for the Proposed Action

In accordance with 10 CFR 54.17(c), the earliest date that the applicant could apply for a renewed operating license for BVPS–2 would be May 28, 2007. The proposed action would allow the applicant to file a license renewal application for BVPS–2 concurrent with the renewal application for Beaver Valley Power Station Unit No. 1 (BVPS–1), which has less than 20 years before expiration of its current operating license on January 29, 2016. The request seeks only schedular relaxation without any other substantive reliefs.

Environmental Impacts of the Proposed Action

The NRC has completed its evaluation of the proposed action and concludes that the issuance of the proposed exemption will not have a significant environmental impact. The exemption, if granted, will permit the applicant to apply for renewal of the BVPS–2 license sooner than the schedule specified by 10 CFR 54.17(c). When the applicant does apply for license renewal, the environmental impacts of operating the Beaver Valley units under the renewed licenses will then be submitted by the applicant and evaluated by the staff. In short, granting of the exemption will not necessitate, or lead to, changes to the as-built plant design, or to existing procedures at BVPS–2.

The NRC staff evaluated potential radiological environmental impacts associated with granting the requested exemption. Since no plant design or procedure changes will be made, no new accident causal mechanisms would be introduced.

The proposed action will not significantly increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released off site, and there is no significant increase in occupational or public radiation exposure. Therefore, there are no significant radiological environmental impacts associated with the proposed action.

With regard to the potential non-radiological impacts, the proposed action does not have a potential to affect any historic sites. The proposed action involves no plant design or procedure changes, it does not increase or decrease non-radiological plant effluents, and has no other environmental impact from those previously evaluated by the NRC staff in the Final Environmental Statement (FES) for BVPS–2 dated September 1985. Therefore, there are no significant non-radiological environmental impacts associated with the proposed action.

Accordingly, the NRC concludes that there are no significant environmental impacts associated with the proposed action.

Environmental Impacts of the Alternatives to the Proposed Action

As an alternative to the proposed action, the NRC staff considered denial of the proposed action (i.e., the "no-action" alternative). Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

The action does not involve the use of any different resources than those previously considered in the FES for BVPS–2 dated September 1985.

Agencies and Persons Consulted

In accordance with its stated policy, on March 20, 2002, the NRC staff consulted with Pennsylvania State official, Larry Ryan, Bureau of Radiation Protection, regarding the environmental impact of the proposed action. The State official had no comments.

Finding of No Significant Impact

On the basis of the environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to the proposed action, see the licensee's request for exemption dated December 17, 2001. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams/html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737, or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 3rd day of May 2002.

For the Nuclear Regulatory Commission.

Daniel Collins,

Project Manager, Section 1, Project Directorate I, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11622 Filed 5–8–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Proposed Generic Communication (TAC No. MB2788); Control Room Envelope Habitability

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of opportunity for public comment.

SUMMARY: The Nuclear Regulatory Commission (NRC) is proposing to issue a generic letter concerning control room envelope (CRE) habitability determination. The purpose of the proposed generic letter is to: (1) Alert addressees to findings at U.S. power reactor facilities that suggest that CRE licensing and design bases, and applicable regulatory requirements may not be met, and that a technical specification surveillance requirement may not be adequate to verify CRE operability, (2) emphasize the importance of reliable, comprehensive surveillance testing to verify CRE habitability, and (3) request addressees to submit information that demonstrates that the CRE at each of their respective facilities complies with the current licensing and design basis and applicable regulatory requirements, and that suitable design, maintenance and testing control measures are in place for maintaining this compliance. The NRC is seeking comment from interested parties regarding both the technical and regulatory aspects of the proposed generic letter, presented under the Supplementary Information heading.

The NRC will consider comments received from interested parties in the final evaluation of the proposed generic letter. The NRC's final evaluation will include a review of its technical positions and, as appropriate, an analysis of the value/impact on licensees. Should this generic letter be issued by the NRC, it will become available for public inspection in the NRC Public Document Room.

The NRC maintains an Agencywide Documents Access and Management System (ADAMS) which provides text and image files of NRC's public documents. These documents may be accessed through the NRC's Public Electronic Reading Room (PERR) on the Internet at < *http://www.nrc.gov/reading-rm/adams.html* >. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) reference staff by phone at 1–800–397–4209 or 301–415–4737, by e-mail to <*pdr@nrc.gov*>, or by Fax at 301–415–3548. The ADAMS Accession No. for the document containing the proposed generic letter is ML021090031.

DATES: Comment period expires August 7, 2002. Comments submitted after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except for comments received on or before this date.

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ADDRESSES: Submit written comments to Chief, Rules and Directives Branch, Division of Administrative Services, U.S. Nuclear Regulatory Commission, Mail Stop T6–D59, Washington, DC 20555–0001. Written comments may also be delivered to 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. to 4:15 p.m., Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: W. Mark Blumberg, (301) 415–1083

SUPPLEMENTARY INFORMATION:

NRC Generic Letter 2002–XX: Control Room Envelope Habitability

Addressees

All holders of operating licenses for pressurized-water reactors (PWRs) and boiling-water reactors (BWRs), except those who have permanently ceased operations and have certified that fuel has been permanently removed from the reactor vessel and that it has been more than one year since fuel was irradiated in the reactor vessel.

Purpose

The U.S. Nuclear Regulatory Commission (NRC) is issuing this generic letter to:

(1) Alert addressees to findings at U.S. power reactor facilities that suggest that the control room envelope (CRE) licensing and design bases, and applicable regulatory requirements (see section below) may not be met, and that a technical specification surveillance requirement may not be adequate to verify CRE operability,

(2) Emphasize the importance of reliable, comprehensive surveillance testing to verify CRE habitability, and

(3) Request addressees to submit information that demonstrates that the CRE at each of their respective facilities complies with the current licensing and design basis and applicable regulatory requirements, and that suitable design, maintenance and testing control measures are in place for maintaining this compliance.

Background

The control room is the plant area where actions are taken to operate the plant safely under normal conditions, maintain the reactor in a safe condition, or mitigate the consequences of an accident. The CRE encompasses the control room and other rooms and areas that personnel must access to accomplish plant control functions in the event of an accident. The structures that make up the CRE are designed to limit the inleakage of contaminants such as radioactive materials, hazardous chemicals, and smoke from areas outside the CRE. CRE habitability systems (CREHSs) typically provide the functions of shielding, isolation, pressurization, heating, ventilation, air conditioning and filtration, monitoring, and the sustenance and sanitation necessary to ensure that the control room operators can safely remain in the CRE. The personnel protection features incorporated into the design of a plant's CREHSs depend on the nature and scope of the plant-specific challenges to maintaining CRE habitability. Isolation of the CRE atmosphere from the atmosphere of adjacent areas is fundamental to ensuring a habitable environment.

During the design of a nuclear power plant, licensees perform analyses to demonstrate that the CRE and the CREHSs, as designed, provide a habitable environment during postulated design basis events. These design analyses model the transport of potential contaminants into the CRE and their removal. The amount of inleakage of contaminants assumed is important to these analyses. Unaccounted-for contaminants entering the CRE may impact the ability of the operators to perform plant control functions. If contaminants impair the response of the operators to an accident, there could be increased consequences to the public health and safety.

Typically, there are two CRE designs. These designs are referred to as positive-pressure and neutral-pressure CREs. Both designs focus on limiting the amount of contaminant entering the CRE. The positive-pressure CRE intentionally pressurizes the CRE with air from outside the CRE. The pressurization air is treated by a high-efficiency particulate air filter and iodine absorption media to remove contaminants. The neutral-pressure CRE does not intentionally pressurize the CRE, but limits inleakage of contaminants by isolating controlled flow paths into the CRE. Plants with a positive-pressure CRE have generally implemented testing programs. These programs verify those ventilation systems serving the CRE can maintain the CRE at a positive differential pressure relative to adjacent areas. These testing programs are generally implemented through a technical specification surveillance requirement for the CREHSs. The tests are typically referred to as a ΔP test. Plants with a neutral-pressure CRE design typically do not have a CRE integrity testing program. (The term *neutral-pressure* means only that the CRE is not intentionally pressured. The actual pressure of the CRE may be positive, neutral, or negative relative to adjacent areas.)

In addition to the ΔP surveillance testing described above, approximately 30 percent of all addressees have performed CRE integrity testing using the standard test method described in American Society for Testing and Materials (ASTM) consensus standard E741, "Standard Test Method for Determining Air Change in a Single Zone by Means of a Tracer Gas Dilution." Unlike the ΔP test, the E741 test measures the total CRE inleakage from all sources. It is well suited for assessing the integrity of positive-pressure or neutral-pressure CREs. The test basically involves homogeneously dispersing a nontoxic tracer gas throughout the CRE and measuring the dilution of the tracer gas caused by inleakage.

The results of the E741 tests indicate that the ΔP testing is not a reliable method for demonstrating CRE integrity. For all but one facility tested using the E741 standard, the measured inleakage was greater than the inleakage assumed in the design basis analyses. In some cases the measured inleakage was several orders of magnitude greater than the value previously assumed even though some licensees had routinely demonstrated a positive ΔP relative to adjacent areas at their facilities. Affected facilities were subsequently able to achieve compliance with the CRE radiation protection regulatory requirements by sealing, adding new duct work, changing their CRE or by re-analysis of their CRE habitability.

The ΔP surveillance test has two deficiencies. First, it does not measure CRE inleakage. The ΔP surveillance test infers that contamination cannot enter the CRE if the CRE is at a higher pressure than adjacent areas. Second, the ΔP test cannot determine whether there may be unrecognized sources of pressurization of the CRE that could introduce contaminants into the CRE under accident conditions. Two possible contamination pathways are the CREHS fan suction duct work that is located outside the CRE, and the pressurized ducts that traverse the lower pressure CRE en route to another plant area.

The E741 testing has helped to identify a spectrum of CREHS deficiencies that affect system design, construction, and quality; system boundary construction and integrity; and technical specification surveillance requirements. Licensees have determined that the performance of the CRE and the CREHSs can be affected by (1) the gradual degradation in associated equipment such as seals, floor drain traps, fans, duct work, and other components; (2) the drift of throttled dampers; (3) maintenance on the CRE boundary or the CREHSs; and (4) inadvertent misalignments of the CREHSs. Since inleakage is influenced by pressure differentials between the CRE and adjacent areas, changes in ambient pressure in these adjacent areas can affect the CRE inleakage. These changes can be the result of a modification, the degradation of the ventilation systems serving these areas, or inadequate preventive and corrective maintenance programs.

Licensees and NRC staff have identified other deficiencies in CREHS design, operation, and performance from the review of license amendments, Licensee Event Reports, and records and reports prepared pursuant to 10 CFR 50.59. These deficiencies showed that the licensees' CREs did not meet their design bases. Some of these deficiencies are discussed in Regulatory Issue Summary 2001–19, "Deficiencies in the Documentation of Design Basis Radiological Analyses Submitted in Conjunction With License Amendment Requests." For example, some licensees credited the operation of CREHSs based upon actuation of high-radiation signals from instrumentation. Further investigation revealed that the system would not be actuated due to incorrect setpoints or placement of the instrumentation. Other CRE designs appear not to have considered unfiltered or once-filtered inleakage through idle CREHS ventilation trains. Without adequate consideration of such design deficiencies, design basis radiation exposure limits may be exceeded.

Previous to the E741 testing, a group of licensees had trouble meeting the CRE criteria in Three Mile Island (TMI) Action Item III.D.3.4, "Control Room Habitability Requirements," that the NRC ordered most licensees to implement after the accident at TMI. At that time, radiological source term research suggested that the distribution of the chemical forms of iodine released during an accident could be different from the distribution in the traditional source term defined in U.S. Atomic Energy Commission Technical Information Document (TID) 14844, "Calculation of Distance Factors for Power and Test Reactor Sites." Because of the possible differences, the staff allowed licensees to postpone changing their CREs until the ongoing source term research was completed or until a generic letter on CRE habitability was issued. The staff believed that postponing changes were reasonable since the source term research or improved methods of analyses might prove that they were unnecessary. Many of these licensees incorporated compensatory actions into their operating procedures to assure that the control room operators would be protected in case of an accident. Since then, other licensees have found that they could not meet the thyroid dose limits for habitability without using compensatory actions. The NRC also allowed these facilities to use compensatory actions until completion of the source term research. In August 2000, the NRC staff incorporated the results of the source term into Regulatory Guide 1.183, "Alternative Radiological Source Terms for Evaluating Design Basis Accidents at Nuclear Power Reactors," and it is now available for use by licensees.

Although many CRE integrity testing programs focus on radiological concerns, radiation is only one potential design basis challenge to the protection of the operators. The inleakage of other contaminants may have a greater impact on CRE habitability. An inleakage rate that is tolerable for one contaminant may not be tolerable for another. The CRE licensing basis describes the hazardous chemical releases considered in the CRE design, the design features, and the administrative controls implemented to mitigate the consequences of these releases to the control room operators. Smoke and other byproducts of fire within the CRE or in adjacent areas are among the contaminants that can have an adverse impact on CRE habitability.

Discussion

The NRC is concerned that some licensees have not maintained adequate configuration control over their CREs and have not corrected identified design and performance deficiencies. Errors of omission and commission are more likely if CREHSs and CREs do not properly perform as intended in response to challenges from off-normal or accident situations. The CRE must be safe so that operators remain in the CRE to monitor plant performance and take appropriate mitigative actions. This is an underlying assumption in both the design basis and severe accident risk analyses. It is, therefore, imperative to the health and safety of the public that operators are confident of their safety in the CRE at all times.

The scope and magnitude of the problems that NRC staff and licensees have identified raise concerns about whether similar design, configuration, and operability problems exist at other reactor facilities. The NRC staff is particularly concerned about whether licensees' programs to maintain configuration control of CREHSs are sufficient to demonstrate that the physical and functional characteristics of CREHSs are consistent with and are being maintained according to their design bases. It is emphasized that the NRC's position has been, and continues to be, that it is the responsibility of individual licensees to know the licensing basis for the CRE and associated CREHSs. Licensees should also have appropriate documentation of the design basis, and procedures in place, in accordance with NRC regulations, for performing necessary assessments of plant or procedure changes that may affect the performance of the CRE and CREHSs.

The technical specifications for about 75 percent of the CREs (comprised mostly of positive-pressure CREs) have a Surveillance Requirement (SR) to measure the ΔP from the CRE to adjacent areas. The bases of the Improved Standard Technical Specifications say that this SR demonstrates CRE integrity with respect to unfiltered inleakage. The E741 integrated testing proves that it does not. Because 10 CFR 50.36 requires technical specifications to be derived from the safety analyses, the staff feels that the existing deficiency should be corrected. This correction is consistent with the NRC Administrative Letter 98–10, "Dispositioning Of Technical Specifications That Are Insufficient To Assure Plant Safety," which describes the staff's expectation that licensees correct technical specifications that are found to "contain non-conservative values or specify incorrect actions."

Because of the importance of ensuring habitable CREs under all normal and off-normal plant conditions, the addressees are requested to provide certain information that will enable the NRC staff to verify whether addressees can demonstrate and maintain the current design bases for the CRE at their facilities. Addressees are encouraged, but not required, to work closely with industry groups on the coordination of their responses. Coordinating the responses is more efficient and public confidence may ensue from a uniform approach to demonstrating compliance with the design bases of their CREs.

NEI 99–03, "Control Room Habitability Assessment Guidance," provides industry generic guidance on CRE habitability. The NRC staff reviewed NEI 99–03, but rather than fully endorse NEI 99–03, the NRC staff developed its own guidance. Draft Regulatory Guide DG–1114, "Control

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Room Habitability at Nuclear Power Reactors," endorses NEI 99–03 to the extent possible and provides additional guidance. Licensees are not required to comply with DG–1114, but may find it useful in responding to this generic letter. Licensees unable to confirm item 1 under the Required Information section may also use DG–1114 to develop and implement corrective actions.

Requested Information

Addressees are requested to provide the following information within 180 days of the date of this generic letter.

1. Confirmation that your facility's CRE meets its applicable habitability regulatory requirements (e.g., GDC 1, 3, 4, 5, and 19) and that the CRE and CREHSs are designed, constructed, configured, operated, and maintained in accordance with the facility's design and licensing basis. Emphasis should be placed on confirming:

(a) That the most limiting unfiltered inleakage into your CRE (and the filtered inleakage if applicable) is no more than the value assumed in your design basis radiological analyses for CRE habitability. Describe how and when you performed the analyses, tests, and measurements for this confirmation.

(b) That the most limiting unfiltered inleakage into your CRE (and filtered inleakage if applicable) is incorporated into your fire and hazardous chemical assessment, and the CRE integrity preserves the reactor control capability from either the CRE or the alternate shutdown panel in the event of a fire.

(c) That your technical specifications are adequate to demonstrate the OPERABILITY of your CRE (where OPERABILITY is defined by your technical specifications). If you currently have a ΔP surveillance requirement to demonstrate CRE integrity, provide the basis for your conclusion that it remains adequate to demonstrate CRE integrity in light of the E741 testing results. If your facility does not currently have a technical specification surveillance requirement for your CRE, explain how and on what frequency you confirm your CRE integrity.

(2) If you currently use compensatory measures to demonstrate CRE habitability, describe the compensatory measures at your facility and the corrective actions to retire these compensatory measures in accordance with your related commitments.

(3) If you believe that your facility is not required to meet either the GDC, draft GDC, or "Principle Design Criteria" regarding CRE habitability, provide documentation (e.g. PSAR, FSAR sections etc.) of the basis for this conclusion and identify your actual requirements.

Requested Response

If an addressee cannot provide the information or cannot meet the requested completion date, the addressee should submit a written response indicating this within 60 days of the date of this generic letter. The response should address any alternative course of action the addressee proposes to take, including the basis for the acceptability of the proposed alternative course of action.

The written response should be addressed to the U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555–0001. A copy of the response should be sent to the appropriate regional administrator.

NRC staff will review the responses to this generic letter and, if concerns are identified, will notify affected addressees. The staff may conduct inspections to determine licensees' effectiveness in addressing this generic letter.

Applicable Regulatory Requirements

Several provisions of the NRC regulations and plant operating licenses (technical specifications) pertain to the issue of CRE habitability. The general design criteria (GDC) for nuclear power plants (appendix A to 10 CFR part 50), or, as appropriate, quality assurance requirements in the licensing basis for a reactor facility, stated in appendix B of 10 CFR part 50, and the technical specifications, are the bases for the NRC staff's assessment of CRE habitability.

Appendix A to 10 CFR part 50, "General Design Criteria (GDC) for Nuclear Power Plants," and the plant safety analyses require or commit licensees to design and test safety-related structures, systems, and components (SSCs) to provide adequate assurance that they can perform their safety functions. The NRC staff applies these criteria to plants with construction permits issued on or after May 21, 1971, and to those plants whose licensees have committed to them. The applicable GDC are GDC 1, 3, 4, 5, and 19. GDC 1 requires quality standards commensurate with the importance of the safety functions performed. GDC 3 requires SSCs to be designed and located to minimize the effects of fires. GDC 4 requires SSCs to be designed to accommodate the effects of accidents. GDC 5 requires that an accident in one unit will not significantly impair orderly shutdown and cooldown of the remaining unit.

GDC 19 specifies that a control room be provided from which actions can be taken to operate the nuclear reactor safely under normal conditions and maintain the reactor in a safe condition under accident conditions, including a loss-of-coolant accident (LOCA). There must be adequate radiation protection to permit personnel to access and occupy the control room under accident conditions without receiving radiation exposures in excess of specified values.

Before the issuance of the GDC, proposed GDC (sometimes called "principal design criteria") were published in the **Federal Register** for comment. As they evolved, several of the proposed GDC addressed CRE habitability. A facility may have been licensed before the issuance of the GDC, but licensees may have committed to the proposed GDC as they existed at the time of licensing.

Following the accident at Three Mile Island (TMI), TMI Action Plan Item III.D.3.4, "Control Room Habitability Requirements," as clarified in NUREG–0737, "Clarification of TMI Action Plan Requirements," required all licensees to assure that control room operators would be adequately protected against the effects of accidental releases of toxic and radioactive gases and that the nuclear power plant could be safely operated or shut down under design basis accident conditions. When licensees proposed modifications, the NRC issued orders confirming licensee commitments. As a result, most plants licensed before the GDC were formally adopted were then required to meet the TMI Action Plan III.D.3.4 requirements.

Appendix B to 10 CFR part 50, "Quality Assurance Criteria for Nuclear Power Plants and Fuel Reprocessing Plants," establishes quality assurance requirements for the design, construction, and operation of those SSCs that prevent or mitigate the consequences of postulated accidents that could cause undue risk to the health and safety of the public. Criterion III of appendix B, "Design Control," requires that design control measures be provided for verifying or checking the adequacy of design. A suitable testing program is identified as one method of accomplishing this verification.

Section 36 of 10 CFR part 50, "Technical Specifications," requires technical specifications to be derived from the safety analyses.

If, in the course of preparing a response to the requested information, an addressee determines that its facility is not in compliance with the Commission's requirements, the addressee is expected to take appropriate action in accordance with requirements of appendix B to 10 CFR part 50 and the plant technical specifications to restore the facility to compliance.

Reasons for Information Request

This generic letter transmits an information request that is necessary to permit the assessment of plant-specific compliance with applicable regulatory requirements. Specifically, this information will enable the NRC staff to determine whether the CREs at power reactor facilities comply with the current licensing bases.

The habitability of the CRE and the operability of the CREHS in the event adverse environmental conditions prevail external to the CRE have a direct nexus to maintaining public health and safety. Plant design bases and severe accident risk analyses both assume that the control room operators remain safely within the CRE to monitor plant performance and take appropriate mitigative actions. It is essential that operators be confident of their safety within the CRE at all times.

Backfit Discussion

This generic letter transmits an information request for the purpose of verifying compliance with existing applicable regulatory requirements (see the applicable regulatory requirements section of this generic letter). This generic letter does not constitute a backfit as defined in 10 CFR 50.109(a)(1) since it does not impose modifications or additions to structures, systems, and components or to the design or operation of an addressee's facility. Nor does it impose an interpretation of the Commission's rules that is either new or different from a previous staff position. Therefore, no backfit is either intended or approved by this generic letter, and the staff has not performed a backfit analysis.

Small Business Regulatory Enforcement Fairness Act

The NRC has determined that this action (a generic letter) is not subject to the Small Business Regulatory Enforcement Fairness Act of 1996.

Federal Register Notification

(To be completed after the public comment period.)

Paperwork Reduction Act Statement

This generic letter contains an information collection that is subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*). This information collection was approved by the Office of Management and Budget, clearance number 3150–0011, which expires July 31, 2003.

The burden to the public for this information collection is estimated to average 200 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information collection. The NRC is seeking public comment on the potential impact of the information collection contained in the generic letter and on the following issues:

1. Is the proposed information collection necessary for the proper performance of the functions of the NRC? Will the information have practical use?

2. Is the burden estimate accurate?

3. Can the quality, utility, or clarity of the information to be collected be improved?

4. How can the burden of the information collection be minimized? Can automated collection techniques be used?

Comments on any aspect of this information collection, including suggestions for reducing the burden, should be sent to Records Management Branch (T–6 E6), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 or by Internet electronic mail to *infocollects@nrc.gov;* and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–10202, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Public Protection Notification

The NRC may not conduct or sponsor, and a person is not required to respond to, an information collection unless the requesting document displays a currently valid OMB control number.

Questions about this matter should be addressed to the technical contact or the Office of Nuclear Reactor Regulation project manager for your facility.

Dated at Rockville, Maryland, this 3rd day of May 2002.

For the Nuclear Regulatory Commission.

William D. Beckner,

Program Director, Operating Reactor Improvements Program, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11623 Filed 5–8–02; 8:45 am]

BILLING CODE 7590–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25564; 812–12807]

The Mexico Fund, Inc. and Impulsora del Fondo México, S.A. de C.V.; Notice of Application

May 1, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application for an order under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants, The Mexico Fund, Inc. (the "Fund") and Impulsora del Fondo México, S.A. de C.V. (the "Adviser"), seek an order that would permit an in-kind repurchase of shares of the Fund held by affiliated persons of the Fund.

FILING DATES: The application was filed on March 22, 2002, and amended on April 8, 2002, and on April 29, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 24, 2002, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, c/o Sander M. Bieber, Esq., Dechert, 1775 Eye Street, NW, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: David B. Smith, Jr., Associate Director, at (202) 942–0525 (Division of Investment Management, Public Utility and Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549 (telephone (202) 942–8090).

Applicants' Representations

1. The Fund, a Maryland corporation, is registered under the Act as a closed-

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end management investment company. The Fund's investment objective is to provide long-term capital appreciation through investment primarily in equity securities listed on the Bolsa Mexicana de Valores, S.A. de C.V. (the "Mexican Stock Exchange").[1] Shares of the Fund are listed and trade on the New York Stock Exchange. The Adviser, a Mexican corporation, is registered under the Investment Advisers Act of 1940 as an investment adviser and serves as investment adviser to the Fund.

2. The Fund proposes to repurchase up to 100% of its issued and outstanding shares at no less than 98% of net asset value (the "Repurchase Offer"). Under the Repurchase Offer, the Fund will give its shareholders the right to redeem their shares on an in-kind basis with a pro rata distribution of the Fund's portfolio securities (with exceptions generally for odd lots, fractional shares, and cash items). The Repurchase Offer will be offered pursuant to section 23(c)(2) of the Act and conducted in accordance with rules 13e–3 and 13e–4 under the Securities Exchange Act of 1934.

3. Applicants state that the Repurchase Offer is designed to accommodate the needs of shareholders who wish to participate in the Repurchase Offer and long-term shareholders who would prefer to remain invested in a closed-end vehicle. Under the Repurchase Offer, only participating shareholders will recognize capital gains, while non-participating shareholders would avoid the imposition of a significant tax liability, which would result in a repurchase offer for cash. Applicants request relief to permit any shareholder of the Fund who is an "affiliated person" of the Fund solely by reason of owning, controlling, or holding with the power to vote, 5% or more of the Fund's shares ("Affiliated Shareholder").

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits an affiliated person of a registered investment company, or any affiliated person of the person, acting as principal, from knowingly purchasing or selling any security or other property from or to the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include any person who directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person. Applicants also state that to the extent that the Repurchase Offer would constitute the purchase or sale of securities by an Affiliated Shareholder, the redemption would be prohibited by section 17(a). Accordingly, applicants request an exemption from section 17(a) of the Act to permit the participation of Affiliated Shareholders in the Repurchase Offer.

2. Section 17(b) of the Act authorizes the Commission to exempt any transaction from the provisions of section 17(a) if the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the transaction is consistent with the policy of each registered investment company and with the general purposes of the Act.

3. Applicants assert that the terms of the Repurchase Offer meet the requirements of section 17(b) of the Act. Applicants assert that neither the Fund nor an Affiliated Shareholder has any choice as to the portfolio securities to be received as proceeds from the Repurchase Offer. Instead, shareholders will receive their *pro rata* portion of each of the Fund's portfolio securities, excluding (a) securities which, if distributed, would have to be registered under the Securities Act of 1933 ("Securities Act"), and (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals (other than qualified investment vehicles), and (c) certain portfolio assets that involve the assumption of contractual obligations, require special trading facilities, or may only be traded with the counterparty to the transaction. Moreover, applicants state that the portfolio securities to be distributed in the Repurchase Offer will be valued according to an objective, verifiable standard, and the Repurchase Offer is consistent with the investment policies of the Fund. Applicants also believe that the Repurchase Offer is consistent with the general purposes of the Act because Affiliated Shareholders would not receive any advantage not available to any other shareholder participating in the Repurchase Offer.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. The Fund will distribute to shareholders redeeming shares in the Repurchase Offer an in-kind pro-rata distribution of equity portfolio securities except for (a) securities which, if distributed, would be required to register under the Securities Act; (b) securities issued by entities in countries which restrict or prohibit the holding of securities by non-nationals other than through qualified investment vehicles; and (c) certain portfolio assets (such as forward currency exchange contracts, futures and options contracts, and repurchase agreements) that, although they may be liquid and marketable, include the assumption of contractual obligations, require special trading facilities or can only be traded with the counterparty to the transaction in order to effect a change in beneficial ownership. As to fractional shares and/or odd lots of securities and/or amounts attributable to any cash position (including short-term non-equity securities), for shareholders of record of the Fund will (a) pay cash for fractional shares and/or odd lots of securities and/or amounts attributable to any cash position (including short-term non-equity securities); (b) round off (up or down) odd lots or fractional shares so as to eliminate them prior to distribution; or (c) pay a higher pro-rata percentage of equity securities to represent such items.

2. Securities distributed as proceeds in the Repurchase Offer will be valued in the same manner as they would be valued for the purposes of computing the Fund's net asset value, which, in the case of securities traded on a public securities market for which quotations are available, is their last reported sales price on the exchange on which the securities are primarily traded or at the last sales price on a public securities market, or, if the securities are not listed on an exchange or a public securities market or if there is no such reported price, the average of the most recent bid and asked price (or, if no such asked price is available, the last quoted bid price).

3. The securities distributed to shareholders pursuant to the Repurchase Offer will be limited to securities that are traded on a public securities market or for which quoted bid and asked prices are available.

4. The Fund will maintain and preserve for a period of not less than six years from the end of the fiscal year in which the Repurchase Offer occurs, the first two years in an easily accessible place, a written record of each repurchase that includes the identity of each shareholder of record that participated in the Repurchase Offer, whether that shareholder was an Affiliated Shareholder, a description of each security distributed, the terms of the distribution and the information or materials upon which the valuation was made.

[1] Applicants state that as of January 31, 2002, 93% of the Fund's assets were invested in equity securities.

For the Commission, by the Division of Investment Management, under delegated authority.

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11541 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25567; 812–12772]

Independence One Mutual Funds, et al.; Notice of Application

May 3, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of an application under section 17(b) of the Investment Company Act of 1940 (the "Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of a registered open-end management investment company to acquire all of the assets and assume all of the liabilities of certain series of another registered open-end management investment company. Because of certain affiliations, applicants may not rely on rule 17a-8 under the Act.

APPLICANTS: Independence One Mutual Funds, the ABN AMRO Funds and ABN AMRO North America Holding Company ("ABN AMRO").

FILING DATES: The application was filed on February 1, 2002. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on May 28, 2002, and should be accompanied by proof of service on the applicants, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609; Applicants, c/o Mark L. Winget, Vedder, Price, Kaufman & Kammholz, 222 North LaSalle Street, Chicago, IL 60601.

FOR FURTHER INFORMATION, CONTACT: Jean Minarick, Senior Counsel, at (202) 942–0527, or Nadya Roytblat, Assistant Director, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. Independence One Mutual Funds, a Massachusetts business trust, is registered under the Act as an open-end management investment company and currently offers eight series, seven of which will participate in the proposed transactions (the "Acquired Funds"). The ABN AMRO Funds, a Delaware business trust, is registered under the Act as an open-end management investment company and offers thirty-one series, six of which are involved in the proposed transactions. Three existing series of the ABN AMRO Funds are referred to as the "Existing Acquiring Funds" and three newly established series,[1] together with the Existing Acquiring Funds, are referred to as the "Acquiring Funds" (together with the Acquired Funds, the "Funds"). The Independence One Mutual Funds and the ABN AMRO Funds are referred to as the "Trusts."

2. ABN AMRO Asset Management (USA) LLC ("AAAM"), a wholly owned subsidiary of ABN AMRO, will serve as the investment adviser to the Acquired Funds and is the investment adviser to the Acquiring Funds. AAAM is registered under the Investment Advisers Act of 1940. Affiliated persons of ABN AMRO own 5% or more (and in some cases more than 25%) of the outstanding securities of the Acquiring Funds in a fiduciary capacity. In addition, affiliated persons of ABN AMRO, in a fiduciary or custodial capacity, or on behalf of brokerage customers, own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquired Funds.

3. On July 25, 2001 and December 20, 2001, the boards of trustees of the Independence One Mutual Funds and the ABN AMRO Funds (together, the "Boards"), including all the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), unanimously approved the reorganization and an agreement and plan of reorganization (the "Plan of Reorganization"). Under the Plan of Reorganization, the Acquiring Funds acquire all of the assets and liabilities of the corresponding Acquired Funds.[2] Applicants state that the Reorganization will occur on or about June 1, 2002 and June 8, 2002 (each a "Closing Date" and collectively, the "Closing Dates"). On the applicable Closing Date, each class of shares of each Acquiring Fund will acquire all of the assets and liabilities of the corresponding class of shares of the corresponding Acquired Fund in exchange for shares of the designated class of the Acquiring Fund. The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined as of the close of business on the business day immediately preceding the applicable Closing Date. The net asset value of the Acquiring Funds and value of the assets of the Acquired Funds will be determined according to the Acquiring Funds' then-current valuation policies and procedures stated in their prospectuses and statements of additional information. The Plan of Reorganization provides, however, that each Acquired Fund and the corresponding Acquiring Fund agree to use all commercially reasonable efforts to resolve any material differences between the prices of portfolio securities determined in accordance with the pricing policies and procedures of its corresponding Acquiring Fund and those determined in accordance with the pricing policies and procedures of its corresponding Acquired Fund, and that where a pricing difference results from a difference in pricing methodology, the parties will eliminate such difference by using the corresponding Acquiring Fund's methodology in valuing the Acquired Fund's assets. As soon as

[1] An amendment to the registration statement for the ABN AMRO Funds to register the new series that will participate in the Reorganization was filed with Commission on March 22, 2002 and became effective March 26, 2002.

[2] Under the Plan of Reorganization, the Acquired Funds will merge into the corresponding Acquiring Funds as follows: Independence One U.S. Treasury Money Market Fund will merge into ABN AMRO Treasury Money Market Fund; Independence One Prime Money Market Fund into ABN AMRO Institutional Prime Money Market Fund; Independence One Fixed Income Fund and Independence One U.S. Government Securities Fund into ABN AMRO Investment Grade Bond Fund; Independence One Small Cap Fund into ABN AMRO Select Small Cap Fund; Independence One Equity Plus Fund into ABN AMRO Equity Plus Fund; and Independence One International Equity Fund into ABN AMRO International Equity Fund.

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practicable after the applicable Closing Date, the Acquired Funds will distribute the shares of the corresponding Acquiring Funds pro rata to their shareholders of record, determined as of the close of business on the business day immediately preceding the applicable Closing Date. Following the distribution of the Acquiring Funds' shares, the Acquired Funds will terminate.

4. The Acquired Funds offer Class A Shares, which are subject to a sales load, and for certain Acquired Funds, a rule 12b–1 distribution fee, and no shareholder servicing fees; Class B shares, which are subject to a sales load, rule 12b–1 distribution fees of 0.75% and shareholder servicing fees; Class K shares, which are subject to shareholder servicing fees, but no sales load or rule 12b–1 distribution fees; and Class Y Shares and Trust Class Shares, which are not subject to any sales load, rule 12b–1 distribution fees, or shareholder servicing fees. The Acquiring Funds will offer Class N shares, which are subject to rule 12b–1 distribution fees of 0.25%, but no shareholder servicing fees or sales loads; Class I and Class Y Shares, which are not subject to any sales loads, rule 12b–1 distribution fees or shareholder servicing fees; Class S Shares, which are subject to rule 12b–1 distribution fees of 0.25% and shareholder servicing fees, but no sales loads; and Class YS Shares, which are subject to shareholder servicing fees, but no sales loads or rule 12b–1 distribution fees.

5. Shareholders with Class K Shares of the Independence One U.S. Treasury Money Market Fund will receive Class I Shares of the ABN AMRO Treasury Money Market Fund. Shareholders of Class A Shares of the Independence One International Equity Fund will receive Class N Shares of the ABN AMRO International Equity Fund. Shareholders of Trust Class and Class B Shares of the Independence One Fixed Income Fund and shareholders of Class A Shares and Class B Shares of the Independence One U.S. Government Securities Fund will receive Class I shares of the ABN AMRO Investment Grade Bond Fund. Shareholders of Class A Shares of the Independence One Small Cap Fund will receive Class N Shares of the ABN AMRO Select Small Cap Fund. Shareholders of Trust Class, Class A and Class B Shares of the Independence One Equity Plus Fund will receive Class I Shares of the ABN AMRO Equity Plus Fund. Shareholders of Class Y and Class K Shares of the Independence One Prime Money Market Fund will receive Class Y and Class YS Shares, respectively, of the ABN AMRO Institutional Prime Money Market Fund.

6. Applicants state that the investment objectives, policies and restrictions of each Acquired Fund are substantially similar to those of the corresponding Acquiring Fund, except for the Independence One U.S. Government Securities Fund whose investment objectives, policies and restrictions are similar to those of the corresponding Acquiring Fund. Applicants state that the rights and obligations of each class of shares of the Acquired Funds are similar to those of the corresponding class of shares of the Acquiring Funds. No sales charges will be imposed in connection with the Reorganization. AAAM and/or its affiliates (but not the Funds) will bear the costs associated with the Reorganization.

7. The Boards, including all of the Independent Trustees, unanimously determined that the Reorganization is in the best interests of each Fund and its shareholders and that the interests of shareholders of each Fund would not be diluted as a result of the Reorganization. In assessing the Reorganization, the Boards considered various factors, including: (a) The terms and conditions of the Reorganization; (b) the compatibility of the Funds' investment objectives, policies and limitations; (c) the performance histories of the Acquired Funds and corresponding Existing Acquiring Funds; (d) the pro forma expense ratios of the Acquiring Funds; (e) the potential economies of scale to be gained from the Reorganization; (f) the advantages of increased investment opportunities for the Acquired Funds' shareholders; (g) the anticipated tax-free nature of the Reorganization; (h) the service features available to the shareholders of the corresponding Funds; (i) the assumption of all liabilities of the Acquired Funds and (j) the fact that Reorganization expenses will be borne by AAAM and/or its affiliated persons (but not the Funds).

8. The Reorganization is subject to a number of conditions precedent, including that: (a) The shareholders of each Acquired Fund will have approved the Reorganization; (b) the Trusts will have received opinions of counsel that the Reorganization will be tax-free for the Trusts and their shareholders; (c) applicants will have received from the Commission an exemption from section 17(a) of the Act for the Reorganization; (d) the registration statement under the Securities Act of 1933 for the Acquiring Funds will have become effective; and (e) each Acquired Fund shall have declared and paid dividend(s) which shall have the effect of distributing to its shareholders all net investment company taxable income for all taxable periods ending on or before the applicable Closing Date and, with respect to each Acquired Fund that is reorganizing into an Existing Acquired Fund, all of its net capital gains, if any, to its shareholders. The Plan of Reorganization may be terminated by mutual agreement or by either party at or before the Closing Dates. No material changes to the Plan of Reorganization will be made without prior Commission approval.

9. The registration statement on Form N–14 for the ABM AMRO Funds (which contains a combined prospectus/proxy statement) was filed with the Commission on February 6, 2002. The solicitation materials related to the Reorganization were mailed to shareholders of the Acquired Funds on April 5, 2002. A special meeting of shareholders of the Acquired Funds to consider the Reorganization is scheduled for May 10, 2002.

Applicants' Legal Analysis

1. Section 17(a) of the Act prohibits any affiliated person of a registered investment company, or any affiliated person of that person, acting as principal, from selling to or purchasing from the registered investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Rule 17a–8 under the Act exempts certain mergers, consolidations, and sales of substantially all of the assets of registered investment companies that are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided, that certain conditions are satisfied. Applicants believe that rule 17a–8 may not be available to exempt the Reorganization because the Funds may be deemed to be affiliated by reasons other than having a common investment adviser, common directors, and/or common officers. Applicants state that an affiliated person of ABN AMRO owns of record and beneficially and has the power to vote more than 5% of the outstanding voting securities of the Independence One Prime Money Market Fund. Applicants state that because affiliated persons of ABN AMRO, in a fiduciary capacity, own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquiring Funds, each may be deemed to be affiliated persons of the Acquiring Funds. In addition, applicants state that because affiliated persons of ABN AMRO also own 5% or more (and in some cases more than 25%) of the outstanding voting securities of the Acquired Funds, in a fiduciary or custodial capacity, or on behalf of brokerage customers, each also may be deemed to be an affiliated person of the Acquired Funds. As a result, the Acquiring Funds may be deemed to be affiliated persons of an affiliated person of the Acquired Funds.

3. Section 17(b) of the Act provides, in relevant part, that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and the proposed transaction is consistent with the policy of each registered investment company concerned and the general purposes of the Act.

4. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to effect the Reorganization. Applicants submit that the Reorganization satisfies the conditions of section 17(b) of the Act. Applicants also state that the Boards, including all of the Independent Trustees, have determined that the participation of the Funds in the Reorganization is in the best interests of each Fund and that such participation will not dilute the interests of existing shareholders of each Fund. Applicants also state that the Reorganization will be effected on the basis of relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11615 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25568; 812–12802]

New York State College Choice Tuition Savings Program Trust Fund, et al.; Notice of Application

May 3, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 (the "Act") requesting an exemption from section 17(a) of the Act.

SUMMARY OF THE APPLICATION: Applicants request an order to permit New York State College Choice Tuition Savings Program Trust Fund (the "Trust") to purchase shares of certain series of TIAA–CREF Institutional Mutual Funds ("TIAA–CREF Funds") in-kind.

APPLICANTS: The Trust and TIAA–CREF Funds.

FILING DATE: The application was filed on April 4, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on May 28, 2002, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW, Washington, DC 20549–0609. Applicants, 730 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Nadya B. Roytblat, Assistant Director, at (202) 942–0564 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (telephone (202) 942–8090).

Applicants' Representations

1. The Trust was created by legislation enacted by New York and serves as a vehicle in which participant contributions from a qualified tuition program created pursuant to New York law and section 529 of the Internal Revenue Code of 1986, as amended ("New York Program"), are deposited into New York State College Choice Tuition LLC (the "LLC"). Applicants state that as a state instrumentality, the Trust is exempt from the Act pursuant to section 2(b). The LLC consists of age-based program series ("Program Series") that invest in differing allocations in underlying portfolios of the LLC (the "Underlying Portfolios"). Applicants state that the LLC and the Underlying Portfolios are exempt from the Act pursuant to sections 3(c)(1) and 3(c)(7). Teachers Insurance and Annuity Association of America ("TIAA") serves as the program administrator for the New York Program.

2. TIAA–CREF Funds is an open-end management investment company registered under the Act. TIAA–CREF Funds is comprised of multiple series, three of which are the Institutional Growth Equity, Institutional Bond and Institutional Money Market Funds (the "Affected Funds"). Advisors, an investment adviser registered under the Investment Advisers Act of 1940, and an indirect wholly owned subsidiary of TIAA, serves as investment adviser to the both the Affected Funds and the Underlying Portfolios.

3. Applicants state that subsequent to the establishment of the Trust, New York adopted legislation that would allow the New York Program greater flexibility in its investment options. Applicants propose to convert the New York Program to a simpler structure utilizing TIAA–CREF Funds, and forming new program series ("New Program Series") at the Trust level rather than the LLC level (the "Reorganization"). Applicants state that the Reorganization should result in greater flexibility and reduced costs for the New York Program as the New Program Series will invest directly in the Affected Funds. The Reorganization will involve the purchase by the New Program Series of shares of the Affected Funds in-kind with portfolio securities received by the New Program Series from the Underlying Portfolios ("the In-Kind Purchase"). The Underlying Portfolios subsequently will be liquidated. Applicants state that each Affected Fund has investment objectives and policies substantially identical to those of the corresponding Underlying Portfolio. Applicants further state that

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the securities involved in the In-Kind Purchase will be valued in the same manner as they would be valued for purposes of computing the net asset values for the Affected Funds.

Applicants' Legal Analysis

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, from selling to or purchasing from such investment company any security or other property. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include (a) any person that directly or indirectly owns, controls, or holds with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose outstanding voting securities are directly or indirectly owned, controlled or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Applicants state that the Underlying Portfolios and the Affected Funds may be deemed to be affiliated persons under section 2(a)(3) because they may be deemed to be under the common control of Advisors. The Trust, by controlling the Underlying Portfolios by virtue of its ownership in the Program Series, would be an affiliated person of an affiliated person of TIAA-CREF Funds. In addition, applicants state that the Trust owns more than 5% of the outstanding voting securities of another series of TIAA–CREF Funds and therefore the Trust could be deemed to be an affiliated person of an affiliated person of the Affected Funds. Therefore, applicants state that the In-Kind Purchase may be prohibited by section 17(a).

3. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if the evidence establishes that the terms of the proposed transaction, including the consideration to be paid, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

4. Applicants submit that the terms of the In-Kind Purchase satisfy the standards set forth in section 17(b). Applicants state that TIAA–CREF Fund's board of trustees, including a majority of the trustees who are not interested persons as defined in section 2(a)(19) of the Act, determined that the In-Kind Purchase would be in the best interests of each Affected Fund and would not dilute existing shareholder interests. Applicants also state that the In-Kind Purchase will comply with rule 17a–7(b) through (g) under the Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11616 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45868; File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03]

Self-Regulatory Organizations; The Depository Trust Company, The Options Clearing Corporation, National Securities Clearing Corporation, Emerging Markets Clearing Corporation, Government Securities Clearing Corporation, and MBS Clearing Corporation; Order Granting Approval of Proposed Rule Changes Seeking Authority To Enter Into a Multilateral Cross-Guaranty Agreement

May 2, 2002.

I. Introduction

On December 14, 2000, February 20, 2001, June 26, 2001, June 27, 2001, September 21, 2001, and September 25, 2001, The Depository Trust Company ("DTC"), The Options Clearing Corporation ("OCC"), National Securities Clearing Corporation ("NSCC"), Emerging Markets Clearing Corporation ("EMCC"), Government Securities Clearing Corporation ("GSCC"), and MBS Clearing Corporation ("MBSCC") (collectively referred to as the "clearing agencies"), respectively, filed with the Securities and Exchange Commission ("Commission") proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The purpose of the proposed rule change was to enable the clearing agencies to enter into a multilateral cross-guaranty agreement ("Multilateral Agreement"). Notice of the proposals was published in the **Federal Register** on March 14, 2002.[2] No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule changes.

II. Description

The clearing agencies have filed these proposed rule changes in order that they may enter into a multilateral cross-guaranty agreement that will replace the existing bilateral cross-guaranty agreements that are in place today.[3] In general, each clearing agency that is a party to a bilateral agreement provides the other clearing agency with a limited guaranty of the obligations of any entity that is a member of both clearing agencies. This means that if a common member fails and if one clearing agency winds up its business with the common member with assets of the common member in excess of the clearing member's liabilities to the clearing agency and the other clearing agency winds up its business with the common member with liabilities of the clearing member in excess of the clearing member's assets, (i) the clearing agency with the excess assets pays the clearing agency with the deficiency an amount equal to the lesser of the excess or the deficiency and (ii) the amount paid by the clearing agency with the excess assets to the clearing agency with the deficiency becomes an obligation of the common member to the clearing agency with the excess assets which the clearing agency with the excess assets may satisfy if necessary (thereby reimbursing itself for the amount paid to the clearing agency with the deficiency) from the assets of the common member. In this way, through the mechanism of a limited cross-guaranty and a compensating reimbursement obligation, the assets of a common member at one clearing agency in excess of its liabilities to that clearing agency may be made available to satisfy the liabilities of the common member to another clearing agency where the clearing member has a deficiency of assets to satisfy its liabilities.

Background

The Multilateral Agreement is similar in purpose to the bilateral agreements but differs in that (i) all of the parties to the several bilateral agreements will be parties to the Multilateral Agreement, (ii) all of the transactions of common members with any of the clearing corporations will be subject to the limited cross-guaranties of the Multilateral Agreement, (iii) all of the assets of common members with any of the parties to the Multilateral Agreement will be subject to application pursuant to the provisions of the Multilateral Agreement, (iv) all of the parties to the Multilateral Agreement will rank *pari passu* in terms of the payment of their respective guaranty obligations and entitlements, and (v) all such guaranty obligations and entitlements will be (A) calculated by DTC (based on information provided by the clearing agencies) pursuant to a formula set forth in the Multilateral Agreement and (B) settled through the facilities of DTC upon instructions from the clearing agencies required to make guaranty payments.

Set forth below is a description of the material terms and conditions of the Multilateral Agreement:

If a clearing agency that is a party to the Multilateral Agreement ceases to act for or suspends a person ("ceases to act") and if that person is a member or participant of two or more clearing agencies ("common member"), such clearing agency ("participating clearing agency") must give each other clearing agency a notice ("default notice") that it has ceased to act for such common member (hereinafter referred to as the "defaulting member"). Each other clearing agency that also ceases to act for the defaulting member within a period of ten business days after the default notice is given (also a "participating clearing agency") will have fifteen business days to deliver to each other participating clearing agency an information statement that sets forth the positive or negative sum derived (after application of any applicable liquidation procedures) from adding the amounts (specified in the Multilateral Agreement) owed by the participating clearing agency to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member and subtracting the amounts (specified in the Multilateral Agreement) owed by the defaulting member to the participating clearing agency as of the close of business on such date. The resulting amount is the "available net resources" of such participating clearing agency with respect to such defaulting member.

Each participating clearing agency with positive available net resources ("payor clearing agency") will have an obligation to make a payment ("guaranty obligation") to each participating clearing agency with negative available net resources, and each participating clearing agency with negative available net resources ("payee clearing agency") will have an entitlement to receive a payment ("guaranty entitlement") from each participating clearing agency with positive available net resources. The amount of the guaranty obligation or guaranty entitlement will be determined by a formula set forth in the Multilateral Agreement which (i) limits the aggregate guaranty obligation of any payor clearing agency to the amount of its positive available net resources and prorates the aggregate guaranty obligations of all payor clearing agencies (based on their available net resources) if all positive available net resources of all payor clearing agencies exceeds all negative available net resources of all payee clearing agencies and (ii) limits the aggregate guaranty entitlement of any payee clearing agency to the amount of its negative available net resources and prorates the aggregate guaranty entitlements of all payee clearing agencies (based on their available net resources) if the negative available net resources of all payee clearing agencies exceeds the positive available net resources of all payor clearing agencies.

Within two business days after the end of the period for submitting information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to any particular claim under the Multilateral Agreement and using only the information on available net resources contained in the information statements, will calculate the guaranty obligations and the guaranty entitlements of the participating clearing agencies in accordance with the formula set forth in the Multilateral Agreement and will deliver a report thereon to the participating clearing agencies. Two business days after that, DTC, acting on appropriate payment instructions from the payor clearing agencies, will debit their settlement accounts at DTC the amounts of their guaranty obligations and will credit the settlement accounts of the payee clearing agencies at DTC the amounts of their guaranty entitlements. Such debits and credits then will be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies. All of the clearing agencies are or will be prior to the execution of the Multilateral Agreement participants of DTC.

It is important to note that a clearing agency cannot assert a claim and cannot be obligated to make or be entitled to receive a payment unless it ceases to act for a defaulting member. Each clearing agency will determine on the basis of its own rules whether or not to cease to act for a defaulting member. Generally, a clearing agency may cease to act for a defaulting member to protect the interests of the clearing agency, its other members or participants, and the national system for the clearance and settlement of securities transactions if, among other things, the defaulting member (a) has failed to pay a settlement debit, (b) has failed to pay or perform any other obligation to the clearing agency, or (c) has become the subject of an insolvency proceeding or has become a "failed member" within the meaning of the Federal Deposit Insurance Corporation Improvement Act of 1991 (*e.g.* it ceases to meet its obligations when due even if it has not become the subject of a formal insolvency proceeding). Ceasing to act for a member or participant is a serious measure which clearing agencies do not take lightly or do for minor defaults. Accordingly, by requiring that a clearing agency cease to act for a defaulting member before the procedures of the Multilateral Agreement can be implemented, the Multilateral Agreement ensures that the payment obligations of payor clearing agencies and the reimbursement obligations of defaulting participants to payor clearing agencies will not be triggered by minor defaults which do not pose a threat to the interests of the clearing agencies, their members or participants, or to the national system for the clearance and settlement of securities transactions.

The Multilateral Agreement also provides for subsequent adjustments in guaranty obligations and guaranty entitlements among participating clearing agencies if information is

[1] 15 U.S.C. 78s(b)(1).

[2] Securities Exchange Act Release No. 45524, (March 8, 2002), 67 FR 11521.

[3] At the present time, there are bilateral cross-guaranty agreements in effect between:

(1) DTC and NSCC (forming part of the DTC–NSCC Agreement that also provides for the netting of settlement payments and the collateralization of transactions processed through the facilities of DTC and NSCC), Securities Exchange Act Release Nos. 36867 (February 21, 1996) [File No. SR–DTC–96–06] and 36866 (February 21, 1996) [File No. SR–NSCC–96–03];

(2) MBSCC and Participants Trust Company, Securities Exchange Act Release No. 38604 (May 9, 1997) [File No. SR–PTC–97–01] (Participants Trust Company has been merged into DTC, Securities, Exchange Act Release No. 40357 (August 24, 1998) [File Nos. SR–DTC–98–12, SR–PTC–98–02]);

(3) NSCC and each of MBSCC, GSCC and International Securities Clearing Corporation ("ISCC"), (ISCC has ceased operations and is no longer a registered clearing agency), Securities Exchange Act Release Nos. 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03 and SR–ISCC–96–04] and 39020 (September 4, 1997) [File No. SR–NSCC–97–11];

(4) NSCC and OCC, Securities Exchange Act Release No. 39022 (September 4, 1997) [File Nos. SR–OCC–97–17 and SR–NSCC–97–12]; and

(5) EMCC and each of NSCC, GSCC, and ISCC, Securities Exchange Act Release Nos. 42180 (November 29, 1999) [File No. SR–EMCC–99–7] and 37616 (August 28, 1996) [File Nos. SR–MBSCC–96–02, SR–GSCC–96–03, and SR–ISCC–96–04].

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discovered which, if known at the time of the initial calculation, would have changed the amounts of such guaranty obligations and guaranty entitlements, subject to certain conditions and limitations as described below. If at any time within four years after any payment is made with respect to of a guaranty obligation any participating clearing agency has any information that could result in a change in the calculation of such payment, such participating clearing agency must give each other participating clearing agency an adjustment notice. Within a period of ten business days after the adjustment notice is given, each participating clearing agency must deliver to each other participating clearing agency (and to DTC if DTC is not a participating clearing agency with respect to such default) a supplemental information statement which sets forth (i) the amount of the available net resources of such participating clearing agency with respect to the defaulting member as of the close of business on the day on which such participating clearing agency ceased to act for such defaulting member but taking into account the effect, if any, of the information in the adjustment notice and (ii) the amount of its available net resources, if any, as of the close of business on the day it received the adjustment notice.

Within two business days after the end of the period for submitting supplemental information statements with the available net resources of the participating clearing agencies, DTC, acting for the participating clearing agencies whether or not DTC is a participating clearing agency with respect to such default and using only the information on available net resources contained in the supplemental information statements, will recalculate the guaranty obligations and guaranty entitlements of the participating clearing agencies in accordance with the same formula originally used to calculate the guaranty obligations and guaranty entitlements of the participating clearing agencies and will deliver a report thereon to the participating clearing agencies. However, no participating clearing agency that is required to make a payment as a result of any recalculation of guaranty obligations and guaranty entitlements with respect to a prior default will be required to make any payment in excess of the positive amount of its available net resources on the date it received the adjustment notice plus any cash payments it previously received or minus any cash payments it previously paid pursuant to the terms of the Multilateral Agreement with respect to the same default. Two business days after that, DTC, acting on appropriate instructions from the participating clearing agencies required to make adjustment payments or entitled to receive adjustment payments as a result of the recalculation of the guaranty obligations and guaranty entitlements, will debit and credit the appropriate settlement accounts. Such debits and credits will then be netted and settled with all other debits and credits to the settlement accounts of the participating clearing agencies on the day of settlement.

As the foregoing description of the process for determining and satisfying a claim under the Multilateral Agreement indicates, no clearing agency would ever be required under the Multilateral Agreement to deliver assets or the proceeds of assets of a defaulting member to another clearing agency except for assets or the proceeds thereof in excess of the obligations and liabilities of the defaulting member to the first clearing agency and then only up to the amount needed to discharge the liabilities and obligations of the defaulting member to the second clearing agency. Also, as the foregoing description of the process for adjusting guaranty obligations and guaranty entitlements under the Multilateral Agreement indicates, a clearing agency will never be required to use its own assets to pay the claim of any other clearing agency against a defaulting member. Only the available net assets of the defaulting member will ever be used for this purpose.

Pursuant to the Multilateral Agreement, a clearing agency may be entitled to receive a guaranty payment from one or more other clearing agencies with respect to the obligations of a defaulting member. However, if a clearing agency receives a guaranty payment pursuant to the Multilateral Agreement, it will have a contingent obligation to refund some or all of such guaranty payment under two circumstances (each referred to as a "clawback"):

(i) A repayment as a result of a recalculation of the guaranty obligations and guaranty entitlements of participating clearing agencies, which, as described above, could take place at any time up to four years after the guaranty payment is received; or

(ii) A payment or repayment as a result of a judicial determination that the defaulting member did not owe a participating clearing agency some or all of the amount of the charge covered by the guaranty payment, which, as explained below, could take place at any time up to six years after such charge.

The Multilateral Agreement provides that if a court of competent jurisdiction determines that some or all of the amount paid by a payor clearing agency to a payee clearing agency was not owed by the defaulting member to the payee clearing agency, (i) the payee clearing agency will repay such amount (which may be some or all of the guaranty payment it received from the payor clearing agency) to the payor clearing agency or (ii) the payee clearing agency shall pay such amount to the defaulting member or its legal representative (*e.g.*, a trustee or receiver) if so ordered by a court.

There is no time limit expressed in the Multilateral Agreement within which a payee clearing agency can be required to make a court-ordered repayment to the payor clearing agency or payment to the defaulting member or its legal representative because the parties to the Multilateral Agreement cannot by contract among themselves bind any court or any third party seeking relief in any court to any such time limit. Accordingly, the time within which a payee clearing agency could be required to make such payment or repayment would be the time within which a third party may bring a claim for such relief (*i.e.*, the statutory limitations period applicable to such claim). Although it is difficult to predict how a claim that the payee clearing agency improperly charged the defaulting member and thereby received a guaranty payment from a payor clearing agency for an amount that the defaulting member did not in fact owe to the payee clearing agency would be framed, it is probable that it would be framed as a claim in contract (*i.e.*, that the charge was not a proper charge under the rules of the payee clearing agency). Under the rules of each clearing agency, such rules constitute a contract between such clearing agency and its members or participants and are binding on all parties. In New York, which is the most likely venue of any proceeding and the law that would most likely govern any claim, the statutory limitations period applicable to a claim on contract is generally six years from the time of the breach.

Although, as just discussed, a clawback could occur up to four or six years after a payee clearing agency receives a payment, as a practical matter, it is extremely unlikely that it would take (i) four years for participating clearing agencies to make all necessary adjustments in the calculation of guaranty obligations and guaranty entitlements under the

Multilateral Agreement or (ii) six years for a defaulting member or its legal representative to assert a claim against a payee clearing agency that an amount was improperly charged against such defaulting member. Nevertheless, GSCC and MBSCC are amending their rules to better enable them to deal with a clawback should one ever arise. The following is a summary of the GSCC and MBSCC amendments.

GSCC

GSCC is amending its rules to provide it with two options in dealing with a clawback:

Option 1

GSCC has the option to apply any guaranty payment that it receives pursuant to the Multilateral Agreement upon receipt. If GSCC chooses this option:

a. The members that would have been assessed in the absence of the guaranty payment will be required to reimburse GSCC for any amount subject to a clawback pro rata based on the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from such guaranty payment;

b. The obligations of the members referred to in (a) above will be secured by requiring that such members must make and maintain additional deposits to the clearing fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that would have been made against them) from the guaranty payment;

c. To deal with the possibility that a shortfall may occur in the situation where the additional clearing fund deposit of a particular member referred to in (a) above is no longer available at the time a clawback occurs (because, for example, that member became insolvent and its entire clearing fund deposit was used to cover losses incurred by GSCC), GSCC may treat such shortfall as an "other loss" pursuant to GSCC Rule 4, Section 8(g); and

d. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) or six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made pursuant to (b) or (c) above by the members that would have been assessed must be retained by GSCC until GSCC is satisfied that (i) GSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the members are therefore no longer subject to a corresponding obligation to reimburse GSCC for the amount of any such clawback; and

e. GSCC has the right (i) to waive the obligation of the members to make and maintain additional deposits to the clearing fund to secure an obligation on their part to reimburse GSCC for the amount of any clawback and/or (ii) to pay the clawback from the resources of GSCC without recourse to any member or their deposits to the clearing fund.

Option 2

GSCC has the option to retain the guaranty payment and not apply it to its losses and/or liabilities arising from the default of the member until after the end of the clawback period. If GSCC chooses this option:

a. The members would be assessed pursuant to GSCC's loss sharing rule and

b. At the end of the clawback period, GSCC would distribute the guaranty payment to the members who were assessed (whether or not they are still members at the time of such distribution) pro rata the amounts of such assessments.

Given that similar repayment issues are presented by GSCC's cross-margining arrangements, GSCC is making comparable changes in its rules with respect to the repayment of cross-margining payments.

MBSCC

To deal with clawbacks, MBSCC is amending its rules as follows:

a. Upon receipt of a guaranty payment, MBSCC will reduce or eliminate by an equivalent amount the assessments made or that otherwise would be made against the original contra-side participants pro rata as now provided in Rule 4 of Article III of its rules;

b. The original contra-side participants will be required to reimburse MBSCC for any amount subject to a clawback pro rata the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

c. MBSCC will secure the obligations of the original contra-side participants referred to above by requiring that such original contra-side participants must make and maintain additional deposits to the participants fund in amounts equal to the benefits they received (in terms of the reduction or elimination of assessments made or that otherwise would be made against them) from the guaranty payment;

d. To deal with the possibility that the participants fund deposit of a particular original contra-side participant referred to in (3) above may no longer be available at the time the clawback occurs (because, for example, that participant became insolvent and its entire participant fund deposit was used to cover losses incurred by MBSCC), the remaining original contra-side participants referred to in (3) above would be required to replenish the deficiency by making additional deposits to the participants fund pro rata their additional deposits to the participants fund pursuant to (3) above;

e. To deal with the fact that at least theoretically a clawback may not occur until four years (in the case of a recalculation of guaranty obligations and guaranty entitlements) to six years (in the case of a court determination of an improper charge) after receipt of a guaranty payment, the additional deposits made, pursuant to (3) or (4) above, by original contra-side participants must be retained by MBSCC until MBSCC is satisfied that (i) MBSCC is no longer subject to a clawback under the Multilateral Agreement and (ii) the original contra-side participants are therefore no longer subject to a corresponding obligation to reimburse MBSCC the amount of any such clawback; and

f. MBSCC has the right to (i) waive the obligation of the original contra-side participants to make and maintain additional deposits to the participants fund to secure an obligation on their part to reimburse MBSCC for the amount of any clawback and/or (ii) to pay any clawback from the resources of MBSCC without recourse to any original contra-side participants or their deposits to the participants fund.

Any clearing agency other than DTC may withdraw from the Multilateral Agreement with ten days advance written notice. Any clearing agency which resigns as a participant of DTC will also cease to be a party to the Multilateral Agreement effective upon such resignation. However, any such withdrawal or resignation will not effect the obligations of a withdrawing or resigning clearing agency with respect to a claim for which a default notice was delivered prior to such withdrawal or resignation and any such termination does not affect the obligations of any clearing agency with respect to a claim for which a default notice was delivered prior to such termination. DTC may terminate the Multilateral Agreement entirely with advance written notice of one year.

In conjunction with entering into the Multilateral Agreement, NSCC, EMCC,

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GSCC, MBSCC, and OCC will terminate their current bilateral agreements so that there will be no issues of conflict or of priority with the limited cross-guaranty provisions of the Multilateral Agreement. DTC and NSCC will enter into a Seconded Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement ("New DTC–NSCC Agreement"). The New DTC–NSCC Agreement will modify and supercede the current Amended and Restated Netting Contract and Limited Cross-Guaranty Agreement dated February 21, 1996, between DTC and NSCC ("Old DTC–NSCC Agreement").[4] The New DTC–NSCC Agreement will delete the limited net resources cross-guaranty provisions of the Old DTC–NSCC Agreement so that the limited net resources cross-guaranty provisions of the Multilateral Agreement will be the only such provisions of this type between DTC and NSCC and among DTC, NSCC and the other parties to the Multilateral Agreement.

III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds which are in the custody or control of the clearing agency or for which it is responsible and to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.[5] For the reasons set forth below, the Commission finds that the proposed rule changes are consistent with these obligations.

The Commission has encouraged the use of cross-guaranty agreements and has previously granted approval to several bilateral cross-guaranty agreements.[6] The Commission believes that by entering into the Multilateral Agreement, the clearing agencies will be improving their cross-guaranty system and their ability to assure the safeguarding of securities and funds in their custody or control. By providing for a mechanism for the use of a defaulting member's assets on deposit at any one of the clearing agencies which is a party to the Multilateral Agreement to reduce or eliminate the defaulting member's obligations at any clearing agency which is a party to the Multilateral Agreement, the Multilateral Agreement should reduce the risk of losses to the clearing agencies due to a member's default.

The Commission also finds that the Multilateral Agreement is consistent with the clearing agencies' obligations to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule changes are consistent with the requirements of the Act and in particular Section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule changes (File Nos. SR–DTC–2000–21, SR–OCC–2001–01, SR–NSCC–2001–13, SR–EMCC–2001–02, SR–GSCC–2001–12, and SR–MBSCC–2001–03) be and hereby are approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11617 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–U

[4] Securities and Exchange Act Release Nos. 36867 (February 27, 1996), 61 FR 7288 [File No. SR–DTC–96–06] and 36866 (February 27, 1996), 61 FR 7288 [File No. SR–NSCC–96–03[ ] orders amending rules and cross-guaranty agreement to accommodate same-day funds settlement.)

[5] 15 U.S.C. 78q–1(b)(3)(F).

[6] *Supra* note 3.

[7] 17 CFR 200.30–3(a)(12)

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45869; File No. SR–NYSE–2002–06]

Self Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto Amending Exchange Rule 351 Concerning the Reporting of Criminal Offenses by Members and Member Organizations to the Exchange

May 3, 2002.

On January 9, 2002, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend NYSE Rule 351 in order to narrow the scope of criminal offenses that must be reported by members and member organizations to incidents that are more germane to the conduct of a securities related business.

The proposed rule change was published for comment in the **Federal Register** on February 12, 2002.[3] The Commission received one comment letter on the proposal,[4] which supports the proposed rule change. On April 30, 2002, the Exchange filed Amendment No. 1 to the proposed rule change with the Commission.[5]

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[6] and, in particular, the requirements of section 6 of the Act[7] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act[8] because narrowing the scope of criminal offenses that members and member organizations would be required to report to the Exchange is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities. In particular, limiting the proposed misdemeanors that must be reported should minimize the number of immaterial filings and maximize the effective use of resources committed to fulfilling self-regulatory responsibilities at the Exchange. Moreover, the proposed rule change would continue to capture the reporting of arrests for which any subsequent conviction would subject the individual to a statutory disqualification under Section 3(a)(39) of the Act.[9]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act[10], that the proposed rule change and Amendment No. 1 thereto (File No. SR–NYSE–2002–06) are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11542 Filed 5–8–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 45404 (February 6, 2002), 67 FR 6565.

[4] *See* letter to Margaret H. McFarland, Deputy Secretary, Commission, from Selwyn J. Notelovitz, Senior Vice President, Global Compliance, Charles Schwab & Co., Inc., dated March 5, 2002 ("Schwab Letter").

[5] *See* letter to Katherine England, Assistant Director, Division of Market Regulation, Commission, from Susan Light, Vice President, Enforcement, NYSE, dated April 29, 2002 ("Amendment No. 1"). In Amendment No. 1, the Exchange amended the proposed rule change to require that an arrest, arraignment, or conviction before a *military* court of any of the enumerated crimes be reported to the Exchange. In addition, the Exchange added the conspiracy to commit any one of the enumerated misdemeanors under Exchange Rule 351 to the list of crimes that must be reported to the Exchange. This is a technical amendment and is not subject to notice and comment.

[6] In approving this proposed rule change, the Commission notes that it has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[7] 15 U.S.C. 78f.

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78c(a)(39).

[10] 15 U.S.C. 78s(b)(2).

[11] 17 CFR 200.30–3(a)(12).

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Ballard, Marshall, and McCracken Counties in Kentucky and Cape Girardeau and Mississippi Counties in Missouri; Notice of Planning Study

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of planning study.

SUMMARY: The FHWA is issuing this notice to advise the public that the Kentucky Transportation Cabinet (KYTC), in cooperation with the Missouri Department of Transportation (MoDOT) and the Federal Highway Administration (FHWA), is initiating a planning study for the following proposed highway project. "Evaluation of Options for the Location of I–66 from Missouri to I–24 near Paducah, Kentucky."

FOR FURTHER INFORMATION CONTACT: Evan J. Wisniewski, Project Development Team Leader, Federal Highway Administration, 330 West Broadway, Frankfort, KY 40601, Telephone: (502) 223–6740 or Ms. Annette Coffey, Director, Division of Planning, Kentucky Transportation Cabinet, 125 Holmes Street, Frankfort, KY 40622, Telephone: (502) 564–7183.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded by using a computer, modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and the Government Printing Office's Web page at *http://www.access.gpo.gov.nara.*

Background

This project is part of a proposed Transamerica Transportation Corridor fro the Atlantic Coast of Virginia to the Pacific Coast in California, in accordance with the legislative intent of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 and subsequent Federal transportation legislation. This highway is to pass through southern Kentucky and will generally be within a 50 mile wide band centered on the cities of Pikeville, Jenkins, Hazard, London, Somerset, Columbia, Bowling Green, Hopkinsville, Benton, and Paducah. The planning study will address alternatives and issues related to the development of an interstate highway that would provide continuity of I–66 between I–24 in Kentucky and Missouri and improve accessibility throughout the region.

During the development of this planning study, comments will be solicited from appropriate Federal, state, and local agencies, as well as other interested persons and the general public, in accordance with requirements set forth in the National Environmental Policy Act (NEPA) of 1969 and subsequent Federal regulations and guidelines developed by the Executive Office of the President's Council on Environmental Quality and the United States Department of Transportation for the implementation of the NEPA process.

This planning study will include a scoping process for the early identification of potential alternatives for, and environmental issues and impacts related to, the proposed project. At this time, the level of environmental documentation that will ultimately be prepared is not known. However, if an Environmental Impact Statement (EIS) is prepared for the proposed project in the future, the information gained through the scoping process in this planning study may be used as input to the scoping process for the development of that EIS. If an EIS is prepared in the future, written comments on the scope of alternatives and impacts will still be considered at that time, after the filing of the Notice of Intent (NOI).

(Catalog of Federal Domestic Assistance Program Number 20.205, "Highway Planning and Construction". The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 30, 2002.

Jose Sepulveda,

Kentucky Division Administrator, Frankfort.

[FR Doc. 02–11524 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

[Docket No. RSPA–99–6355]

Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With 500 or More Miles of Pipeline)

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Notice of workshop.

SUMMARY: This notice announces a two-day workshop on OPS's findings from inspections conducted from February through April 2002 to evaluate operators' compliance with 49 CFR part 195.452, "Pipeline Integrity Management in High Consequence Areas," effective May 29, 2001. On day 1, OPS will present its assessment of operators' progress identifying pipeline segments that could affect high consequence areas (HCAs). The deadline for completing these identifications was December 31, 2001. OPS will also comment on its plans for conducting the Comprehensive Integrity Management Program Inspections, set to begin in August 2002. On day 2, OPS will provide a forum for the pipeline industry to share and discuss noteworthy integrity management practices that achieve compliance with the rule. Emphasis will be in areas in which OPS believes improvement is needed.

Workshop Dates and Addresses: The workshop will be on July 23, 2002, from 8 a.m. to 5 p.m., and July 24, 2002, from 8 a.m. to noon, at the J.W. Marriott Hotel, 5150 Westheimer Road, Houston, Texas 77056 (tel: 713–961–1500 fax: 713–961–5045). No later than June 10, 2002, rooms may be reserved within a block identified as "USDOT/IMP Meeting Block".

Registration and Further Information: For event planning purposes, we request that you please register via the instructions given at *http://primis.rspa.dot.gov/meetings/Mtg3.mtg.* The website provides links to other useful information (including a meeting agenda, once available) and enables viewers to submit questions to OPS about the workshop.

SUPPLEMENTARY INFORMATION:

1. Background

OPS's integrity management initiative is intended to improve safety and environmental protection and to provide better assurance to the public

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about the safety of pipelines. It is also intended to comprehensively address National Transportation Safety Board recommendations, Congressional mandates and pipeline safety and environmental issues raised over the years. It is based on the culmination of experience OPS has gained from pipeline inspections, accident investigations and risk management and system integrity initiatives.

OPS's first integrity management rule (65 FR 75378), issued on November 2, 2000, and effective on May 29, 2001, applies to hazardous liquid operators who own or operate 500 or more miles of pipeline. The rule applies to pipelines that can affect HCAs, which include populated areas defined by the Census Bureau as urbanized areas or places, unusually sensitive environmental areas, and commercially navigable waterways.

Between February and April 2002, OPS inspected all affected operators to evaluate their compliance with the rule's first deadline requiring identification by December 31, 2001, of all pipeline segments that can affect HCAs. OPS also conducted a preliminary assessment of operators' readiness to comply with the rule's March 31, 2002, deadline to implement an integrity management program. OPS will begin more comprehensive inspections addressing the March 31 deadline in August 2002.

OPS is conducting this workshop to assist operators in learning where improvement in integrity management is needed, and what means are available to achieve these improvements. Because the new rule requires fundamental change in the integrity management practices of many affected pipeline operators, OPS's enforcement approach will encourage and monitor continuous improvement in operator compliance with the rule's provisions.

Issued in Washington, DC, on May 3, 2002.

Stacey L. Gerard,

Associate Administrator for Pipeline Safety.

[FR Doc. 02–11620 Filed 5–8–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–6 (Sub–No. 393X)]

The Burlington Northern and Santa Fe Railway Company—Abandonment Exemption—in Nelson and Eddy Counties, ND

The Burlington Northern and Santa Fe Railway Company (BNSF) has filed a notice of exemption under 49 CFR 1152 subpart F-*Exempt Abandonments* to abandon and discontinue service over a 6.00-mile line of railroad between milepost 92.00 in Tolna and milepost 98.00 in Hamar, in Nelson and Eddy Counties, ND. The line traverses United States Postal Service Zip Code 58380.

BNSF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 8, 2002,[1] unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 29, 2002, with: Surface Transportation Board, 1925 K Street, NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Michael Smith, Freeborn & Peters, 311 S. Wacker Dr., Suite 3000, Chicago, IL 60606–6677.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

BNSF has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Environmental Analysis (SEA) will issue an environmental assessment (EA) by May 14, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. [TDD for the hearing impaired is available at 1–800–877–8339.] Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Pursuant to the provisions of 49 CFR 1152.29(e)(2), BNSF shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by BNSF's filing of a notice of consummation by May 9, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: May 1, 2002.

By the Board, Joseph H. Dettmar, Acting Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–11618 Filed 5–8–02; 8:45 am]

BILLING CODE 4915–00–P

[1] While applicant initially indicated a proposed consummation date of June 5, 2002, and because applicant did not include the required filing fee, a new filing date was entered on April 19, 2002, when the Board received the correct filing fee. However, consummation may not occur prior to June 8, 2002 (50 days after the April 19, 2002 filing date of the verified notice). Applicant's representative has subsequently confirmed that consummation cannot occur before June 8, 2002.

[2] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[3] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Corrections

Federal Register
Vol. 67, No. 90
Thursday, May 9, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 13

[Docket No. FAA–2000–7554; Amendment No. 13–30]

RIN 2120–AF04

Flight Operational Quality Assurance Program

Correction

In rule document 01–27273 beginning on page 55042, in the issue of Wednesday, October 31, 2001, make the following correction:

§ 13.401 [Corrected]

On page 55048, in the third column, § 13.401, paragraph (e), in the third line, "for" should read "or".

[FR Doc. C1–27273 Filed 5–8–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Thursday,
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Part II

Department of Health and Human Services

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412 et al.
Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates; Proposed Rule

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 405, 412, 413, 482, 485, and 489

[CMS–1203–P]

RIN 0938–AL23

Medicare Program; Changes to the Hospital Inpatient Prospective Payment Systems and Fiscal Year 2003 Rates

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Proposed rule.

SUMMARY: We are proposing to revise the Medicare acute care hospital inpatient prospective payment systems for operating and capital costs to implement changes arising from our continuing experience with these systems. In addition, in the Addendum to this proposed rule, we describe the proposed changes to the amounts and factors used to determine the rates for Medicare hospital inpatient services for operating costs and capital-related costs. These changes would be applicable to discharges occurring on or after October 1, 2002. We also are setting forth proposed rate-of-increase limits as well as proposed policy changes for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment systems.

In addition, we are proposing changes to other hospital payment policies, which include policies governing: payments to hospitals for the direct and indirect costs of graduate medical education; pass-through payments for the services of nonphysician anesthetists in some rural hospitals; clinical requirements for swing-bed services in critical access hospitals (CAHs); payments to provider-based entities; and implementation of the Emergency Medical Treatment and Active Labor Act (EMTALA).

DATES: Comments will be considered if received at the appropriate address, as provided below, no later than 5 p.m. on July 8, 2002.

ADDRESSES: Mail written comments (an original and three copies) to the following address ONLY:

Centers for Medicare & Medicaid Services, Department of Health and Human Services, Attention: CMS–1203–P, P.O. Box 8010, Baltimore, MD 21244–1850.

If you prefer, you may deliver, by hand or courier, your written comments (an original and three copies) to one of the following addresses:

Room 443–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW, Washington, DC 20201, or

Room C5–14–03, Central Building, 7500 Security Boulevard, Baltimore, MD 21244–1850.

(Because access to the interior of the Humphrey Building is not readily available to persons without Federal Government identification, commenters are encouraged to leave their comments in the CMS drop slots located in the main lobby of the building. A stamp-in clock is available for commenters who wish to retain proof of filing by stamping in and keeping an extra copy of the comments being filed.)

Comments mailed to those addresses specified as appropriate for courier delivery may be delayed and could be considered late.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code CMS–1203–P.

For information on viewing public comments, see the beginning of the **SUPPLEMENTARY INFORMATION** section.

For comments that relate to information collection requirements, mail a copy of comments to the following addresses:

Centers for Medicare & Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850. Attn: John Burke, CMS–1203–P; and

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503, Attn: Allison Herron Eydt, CMS Desk Officer.

FOR FURTHER INFORMATION CONTACT: Stephen Phillips, (410) 786–4548, Operating Prospective Payments, Diagnosis-Related Groups (DRGs), Wage Index, New Medical Services and Technology, Hospital Geographic Reclassifications, and Postacute Transfer Issues. Tzvi Hefter, (410) 786–4487, Capital Prospective Payment, Excluded Hospitals, Graduate Medical Education, Provider-Based Entities, Critical Access Hospital (CAH), EMTALA Issues. Stephen Heffler, (410) 786–1211, Hospital Market Basket Rebasing. Jeannie Miller, (410) 786–3164, Clinical Standards for CAHs. Tom Hutchinson, (410) 786–8953, Hospital Communication with Medicare+Choice Organizations.

SUPPLEMENTARY INFORMATION:

Inspection of Public Comments

Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room C5–12–08 of the Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. Please call (410) 786–7197 to schedule an appointment to view public comments.

Availability of Copies and Electronic Access

Copies: To order copies of the **Federal Register** containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 512–1800 or by faxing to (202) 512–2250. The cost for each copy is $9.00. As an alternative, you can view and photocopy the **Federal Register** document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the **Federal Register**.

This **Federal Register** document is also available from the **Federal Register** online database through *GPO Access*, a service of the U.S. Government Printing Office. Free public access is available on a Wide Area Information Server (WAIS) through the Internet and via asynchronous dial-in. Internet users can access the database by using the World Wide Web; the Superintendent of Documents home page address is *http://www.access.gpo.gov/nara_docs/*, by using local WAIS client software, or by telnet to *swais.access.gpo.gov*, then login as guest (no password required). Dial-in users should use communications software and modem to call (202) 512–1661; type swais, then login as guest (no password required).

I. Background

A. Summary

1. Acute Care Hospital Inpatient Prospective Payment System

Section 1886(d) of the Social Security Act (the Act) sets forth a system of payment for the operating costs of acute care hospital inpatient stays under Medicare Part A (Hospital Insurance) based on prospectively set rates. Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of hospital inpatient stays under a prospective payment system. Under these prospective payment systems, Medicare payment for hospital inpatient operating and capital-related costs is made at predetermined, specific rates for each hospital discharge. Discharges are classified according to a list of diagnosis-related groups (DRGs).

The base payment rate is comprised of a standardized amount that is divided into a labor-related share and a nonlabor-related share. The labor-related share is adjusted by the wage index applicable to the area where the hospital is located; and if the hospital is located in Alaska or Hawaii, the nonlabor share is adjusted by a cost-of-living adjustment factor. This base payment rate is multiplied by the DRG relative weight.

If the hospital is recognized as serving a disproportionate share of low-income patients, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on several factors which include the percentage of low-income patients served. It is applied to the DRG-adjusted base payment rate, plus any outlier payments received.

If the hospital is an approved teaching hospital, it receives a percentage add-on payment for each case paid through the acute care hospital inpatient prospective payment system. This percentage varies, depending on the ratio of residents to beds.

The costs incurred by the hospital for a case are evaluated to determine whether the hospital is eligible for an additional payment as an outlier case. This additional payment is designed to protect the hospital from large financial losses due to unusually expensive cases. Any outlier payment due is added to the DRG-adjusted base payment rate.

Although payments to most hospitals under the acute care hospital inpatient prospective payment system are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of Federal fiscal year (FY) 1982, FY 1987, or FY 1996) or the prospective payment system rate based on the standardized amount. For example, sole community hospitals (SCHs) are the sole source of care in their areas, and Medicare-dependent, small rural hospitals (MDHs) are a major source of care for Medicare beneficiaries in their areas. Both of these categories of hospitals are afforded this special payment protection in order to maintain access to services for beneficiaries (although MDHs receive only 50 percent of the difference between the prospective payment system rate and their hospital-specific rates, if the hospital-specific rate is higher than the prospective payment system rate).

The existing regulations governing payments to hospitals under the acute care hospital inpatient prospective payment system are located in 42 CFR part 412, Subparts A through M.

2. Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

Under section 1886(d)(1)(B) of the Act, as amended, certain specialty hospitals and hospital units are excluded from the acute care hospital inpatient prospective payment system. These hospitals and units are: psychiatric hospitals and units; rehabilitation hospitals and units; long-term care hospitals; children's hospitals; and cancer hospitals. Various sections of the Balanced Budget Act of 1997 (Public Law 105–33), the Medicare, Medicaid, and SCHIP [State Children's Health Insurance Program] Balanced Budget Refinement Act of 1999 (Public Law 106–113), and the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554) provide for the implementation of prospective payment systems for rehabilitation hospitals and units, psychiatric hospitals and units, and long-term care hospitals, as discussed below. Children's hospitals and cancer hospitals will continue to be paid on a cost-based reimbursement basis.

The existing regulations governing payments to excluded hospitals and hospital units are located in 42 CFR parts 412 and 413.

Under section 1886(j) of the Act, as amended, rehabilitation hospitals and units are being transitioned from a blend of reasonable cost-based reimbursement subject to a hospital-specific annual limit under section 1886(b) of the Act and Federal prospective payments for cost reporting periods beginning January 1, 2002 through September 30, 2002, to payment on a fully Federal prospective rate effective for cost reporting periods beginning on or after October 1, 2002 (66 FR 41316, August 7, 2001). The statute also provides that IRFs may elect to receive the full prospective payment instead of a blended payment. The existing regulations governing payment under the inpatient rehabilitation facility prospective payment system (for rehabilitation hospitals and units) are located in 42 CFR part 412, subpart P.

Under the broad authority conferred to the Secretary by section 123 of Public Law 106–113 and section 307(b) of Public Law 106–554, we are proposing to transition long-term care hospitals from payments based on reasonable cost-based reimbursement under section 1886(b) of the Act to fully Federal prospective rates during a 5-year period. For cost reporting periods beginning on or after October 1, 2006, we are proposing to pay long-term care hospitals under the fully Federal prospective payment rate. (See the proposed rule issued in the **Federal Register** on March 22, 2002 (67 FR 13416).) Under the proposed rule, long-term care hospitals would also be permitted to elect to be paid based on full Federal prospective rates. The proposed regulations governing payments under the long-term care hospital prospective payment system would be located in 42 CFR part 412, subpart O.

Sections 124(a) and (c) of Public Law 106–113 provide for the development of a per diem prospective payment system for payment for inpatient hospital services furnished by psychiatric hospitals and units under the Medicare program, effective for cost reporting periods beginning on or after October 1, 2002. This system must include an adequate patient classification system that reflects the differences in patient resource use and costs among these hospitals and must maintain budget neutrality. We are in the process of developing a proposed rule, to be followed by a final rule, to implement the prospective payment system for psychiatric hospitals and units.

3. Critical Access Hospitals

Under sections 1814, 1820, and 1834(g) of the Act, payments are made to critical access hospitals (CAHs) (that is, rural hospitals or facilities that meet certain statutory requirements) for inpatient and outpatient services on a reasonable cost basis. Reasonable cost is determined under the provisions of section 1861(v)(1)(A) of the Act and existing regulations under 42 CFR parts 413 and 415.

4. Payments for Graduate Medical Education

Under section 1886(a)(4) of the Act, costs of approved educational activities are excluded from the operating costs of inpatient hospital services. Hospitals with approved graduate medical education (GME) programs are paid for the direct costs of GME in accordance with section 1886(h) of the Act; the

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amount of payment for direct GME costs for a cost reporting period is based on the hospital's number of residents in that period and the hospital's costs per resident in a base year.

The existing regulations governing GME payments are located in 42 CFR part 413.

B. Major Contents of This Proposed Rule

In this proposed rule, we are setting forth proposed changes to the Medicare hospital inpatient prospective payment systems for operating costs and for capital-related costs in FY 2003. We also are proposing changes relating to payments for GME costs; payments to excluded hospitals and units; policies implementing EMTALA; clinical requirements for swing beds in CAHs; and other hospital payment policy changes. The proposed changes would be effective for discharges occurring on or after October 1, 2002.

The following is a summary of the major changes that we are proposing to make:

1. Proposed Changes to the DRG Reclassifications and Recalibrations of Relative Weights

As required by section 1886(d)(4)(C) of the Act, we adjust the DRG classifications and relative weights annually. Based on analyses of Medicare claims data, we are proposing to establish a number of new DRGs and to make changes to the designation of diagnosis and procedure codes under other existing DRGs. Our proposed changes for FY 2003 are set forth in section II. of this preamble.

Among the proposed changes discussed are:

- Revisions of DRG 1 (Craniotomy Age >17 Except for Trauma) and DRG 2 (Craniotomy for Trauma Age >17) to reflect the current assignment of cases involving head trauma patients with other significant injuries to MDC 24;
- Reconfiguration of DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack) and DRG 15 (Transient Ischemic Attack and Precerebral Occlusions) and creation of a new DRG 524 (Transient Ischemia);
- Creation of a new DRG for heart assist devices;
- Reassignment of the diagnosis code for rheumatic heart failure with cardiac catheterization;
- Assignment of new, and reassignment of existing, cystic fibrosis principal diagnosis codes;
- Designation of a code for insertion of totally implantable vascular access device (VAD);
- Changes in the DRG assignment for the bladder reconstruction procedure code.
- Changes in DRG and MDC assignments for numerous newborn and neonate diagnosis codes; and
- Changes in DRG assignment for cases of tracheostomy and continuous mechanical ventilation greater than 96 hours.

We also are presenting our analysis of applicants for add-on payments for high-cost new medical technologies.

2. Proposed Changes to the Hospital Wage Index

In section III. of this preamble, we discuss proposed revisions to the wage index and the annual update of the wage data. Specific issues addressed in this section include the following:

- The FY 2003 wage index update, using FY 1999 wage data.
- Exclusion from the wage index of Part A physician wage costs that are teaching-related, as well as resident and Part A certified registered nurse anesthetist (CRNA) costs.
- Collection of data for contracted administrative and general, housekeeping, and dietary services.
- Revisions to the wage index based on hospital redesignations and reclassifications by the Medicare Geographic Classification Review Board (MGCRB).
- Requests for wage data corrections, including clarification of our policies on mid-year corrections.

3. Revision and Rebasing of the Hospital Market Basket

In section IV. of this preamble, we discuss issues relating to our proposed rebasing and revision of the hospital market basket in developing the recommended FY 2003 update factor for the operating prospective payment rates and the excluded hospital rate-of-increase limits. We also set forth the data sources used to determine the proposed revised market basket relative weights and choice of price proxies.

4. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating and Graduate Medical Education Costs

In section V. of this preamble, we discuss several provisions of the regulations in 42 CFR Parts 412 and 413 and set forth certain proposed changes concerning the following:

- Options for expanding the postacute care transfer policy.
- Refinement of the application of a hospital bed-count policy that would more accurately reflect the size of a hospital's operations.
- Clarification of the application of the statutory provisions on the calculation of hospital-specific rates for SCHs.
- Technical change regarding additional payments for outlier cases.
- Rural referral centers proposed case-mix index values for FY 2003.
- Changes relating to the IME adjustment, including resident-to-bed ratio caps and counting beds for IME and DSH adjustments.
- Clarification and codification of classification requirements for MDHs and intermediary evaluations of cost reports for these hospitals.
- Changes to policies on pass-through payments for the costs of nonphysician anesthetists in some rural hospitals.
- Clarification of policies relating to implementing 3-year reclassifications of hospitals and other policies related to hospital reclassifications decisions made by the MGCRB.
- Changes relating to payment for the direct costs of GME.
- Changes related to emergency medical conditions in hospital emergency department under the EMTALA provisions.
- Criteria for and payments to provider-based entities.
- CMS-directed reopening of intermediary determinations and hearing decisions on provider reimbursements.

5. Prospective Payment System for Capital-Related Costs

In section VI. of this preamble, we specify the proposed payment requirements for capital-related costs which include:

- Capital-related costs for new hospitals.
- Additional payments for extraordinary circumstances.
- Restoration of the 2.1 percent reduction to the standard Federal capital prospective payment system rate.
- Clarification of the special exceptions payment policy.

6. Proposed Changes for Hospitals and Hospital Units Excluded From the Prospective Payment Systems

In section VII. of this preamble, we discuss the following proposals concerning excluded hospitals and hospital units and CAHs:

- Payments for existing excluded hospitals and hospital units for FY 2003.
- Updated caps for new excluded hospitals and hospital units.
- Revision of criteria for exclusion of satellite facilities from the acute care hospital inpatient prospective payment system.

- The prospective payment systems for inpatient rehabilitation hospitals and units and long-term care hospitals.
- Changes in the advance notification period for CAHs electing the optional payment methodology.
- Removal of the requirement on CAHs to use a State resident assessment instrument (RAI) for patient assessments for swing-bed patients.

7. Determining Prospective Payment Operating and Capital Rates and Rate-of-Increase Limits

In the Addendum to this proposed rule, we set forth proposed changes to the amounts and factors for determining the FY 2003 prospective payment rates for operating costs and capital-related costs. We also establish the proposed threshold amounts for outlier cases. In addition, we address update factors for determining the rate-of-increase limits for cost reporting periods beginning in FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

8. Impact Analysis

In Appendix A, we set forth an analysis of the impact that the proposed changes described in this proposed rule would have on affected entities.

9. Report to Congress on the Update Factor for Hospitals Under the Prospective Payment System and Hospitals and Units Excluded From the Prospective Payment System

Section 1886(e)(3) of the Act requires the Secretary to report to Congress on our initial estimate of a recommended update factor for FY 2003 for payments to hospitals included in the acute care hospital inpatient prospective payment system, and hospitals excluded from this prospective payment system. This report is included as Appendix B to this proposed rule.

10. Proposed Recommendation of Update Factor for Hospital Inpatient Operating Costs

As required by sections 1886(e)(4) and (e)(5) of the Act, appendix C provides our recommendation of the appropriate percentage change for FY 2003 for the following:

- Large urban area and other area average standardized amounts (and hospital-specific rates applicable to SCHs and MDHs) for hospital inpatient services paid under the prospective payment system for operating costs.
- Target rate-of-increase limits to the allowable operating costs of hospital inpatient services furnished by hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

11. Discussion of Medicare Payment Advisory Commission Recommendations

Under section 1805(b) of the Act, the Medicare Payment Advisory Commission (MedPAC) is required to submit a report to Congress, not later than March 1 of each year, that reviews and makes recommendations on Medicare payment policies. This annual report makes recommendations concerning hospital inpatient payment policies. In section VIII. of this preamble, we discuss the MedPAC recommendations and any actions we are proposing to take with regard to them (when an action is recommended). For further information relating specifically to the MedPAC March 1 report or to obtain a copy of the report, contact MedPAC at (202) 653–7220 or visit MedPAC's website at: *www.medpac.gov*.

II. Proposed Changes to DRG Classifications and Relative Weights

A. Background

Under the acute care hospital inpatient prospective payment system, we pay for inpatient hospital services on a rate per discharge basis that varies according to the DRG to which a beneficiary's stay is assigned. The formula used to calculate payment for a specific case multiplies an individual hospital's payment rate per case by the weight of the DRG to which the case is assigned. Each DRG weight represents the average resources required to care for cases in that particular DRG relative to the average resources used to treat cases in all DRGS.

Congress recognized that it would be necessary to recalculate the DRG relative weights periodically to account for changes in resource consumption. Accordingly, section 1886(d)(4)(C) of the Act requires that the Secretary adjust the DRG classifications and relative weights at least annually. These adjustments are made to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources. The proposed changes to the DRG classification system and the proposed recalibration of the DRG weights for discharges occurring on or after October 1, 2002 are discussed below.

B. DRG Reclassification

1. General

Cases are classified into DRGs for payment under the acute care hospital inpatient prospective payment system based on the principal diagnosis, up to eight additional diagnoses, and up to six procedures performed during the stay, as well as age, sex, and discharge status of the patient. The diagnosis and procedure information is reported by the hospital using codes from the International Classification of Diseases, Ninth Revision, Clinical Modification (ICD–9–CM).

For FY 2002, cases are assigned to one of 506 DRGs in 25 major diagnostic categories (MDCs). Most MDCs are based on a particular organ system of the body. For example, MDC 6 is Diseases and Disorders of the Digestive System. However, some MDCs are not constructed on this basis because they involve multiple organ systems (for example, MDC 22 (Burns)).

In general, cases are assigned to an MDC based on the patients' principal diagnosis before assignment to a DRG. However, for FY 2002, there are eight DRGs to which cases are directly assigned on the basis of ICD–9–CM procedure codes. These are the DRGs for heart, liver, bone marrow, lung transplants, simultaneous pancreas/kidney, and pancreas transplants (DRGs 103, 480, 481, 495, 512, and 513, respectively) and the two DRGs for tracheostomies (DRGs 482 and 483). Cases are assigned to these DRGs before classification to an MDC.

Within most MDCs, cases are then divided into surgical DRGs and medical DRGs. Surgical DRGs are based on a hierarchy that orders operating room (O.R.) procedures or groups of O.R. procedures, by resource intensity. Medical DRGs generally are differentiated on the basis of diagnosis and age. Some surgical and medical DRGs are further differentiated based on the presence or absence of complications or comorbidities (CC).

Generally, nonsurgical procedures and minor surgical procedures not usually performed in an operating room are not treated as O.R. procedures. However, there are a few non-O.R. procedures that do affect DRG assignment for certain principal diagnoses, such as extracorporeal shock wave lithotripsy for patients with a principal diagnosis of urinary stones.

Patients' diagnosis, procedure, discharge status, and demographic information is fed into the Medicare claims processing systems and subjected to a series of automated screens called the Medicare Code Editor (MCE). These screens are designed to identify cases that require further review before classification into a DRG.

After screening through the MCE and any further development of the claims, cases are classified into the appropriate

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DRG by the Medicare GROUPER software program. The GROUPER program was developed as a means of classifying each case into a DRG on the basis of the diagnosis and procedure codes and, for a limited number of DRGs, demographic information (that is, sex, age, and discharge status). The GROUPER is used both to classify current cases for purposes of determining payment and to classify past cases in order to measure relative hospital resource consumption to establish the DRG weights.

The records for all Medicare hospital inpatient discharges are maintained in the Medicare Provider Analysis and Review (MedPAR) file. The data in this file are used to evaluate possible DRG classification changes and to recalibrate the DRG weights. However, in the July 30, 1999 final rule (64 FR 41500), we discussed a process for considering non-MedPAR data in the recalibration process. In order for the use of particular data to be feasible, we must have sufficient time to evaluate and test the data. The time necessary to do so depends upon the nature and quality of the data submitted. Generally, however, a significant sample of the data should be submitted by mid-October, so that we can test the data and make a preliminary assessment as to the feasibility of using the data. Subsequently, a complete database should be submitted no later than December 1 for consideration in conjunction with next year's proposed rule.

The major changes we are proposing to the DRG classification system for FY 2003 GROUPER version 20.0 and to the methodology to recalibrate the DRG weights are set forth below. Unless otherwise noted, our DRG analysis is based on data from 100 percent of the FY 2001 MedPAR file, which contains hospital bills received through May 31, 2001, for discharges in FY 2001.

2. MDC 1 (Diseases and Disorders of the Nervous System)

a. Proposed Revisions of DRGs 1 and 2

Currently, adult craniotomy patients are assigned to either DRG 1 (Craniotomy Age >17 Except for Trauma) or DRG 2 (Craniotomy for Trauma Age >17). The trauma distinction recognizes that head trauma patients requiring a craniotomy often have multiple injuries affecting other body parts. However, we note that the structure of these DRGs predates the creation in FY 1991 of MDC 24 (Multiple Significant Trauma). The creation of MDC 24 resulted in head trauma patients with other significant injuries being assigned to MDC 24 and removed from DRG 2. In FY 1990, there was a 16-percent difference in the DRG weights for DRG 1 and DRG 2. In FY 1992, after the creation of MDC 24, the percentage difference in the DRG weights for DRG 1 and DRG 2 had declined to 1.2 percent. The FY 2002 payment weight for DRG 1 is 3.2713 and for DRG 2 is 3.3874, a 3.5 percent difference.

For FY 2003, we reevaluated the GROUPER logic for DRGs 1 and 2 by combining the patients assigned to these DRGs and examining the impact of other patient attributes on patient charges. The presence or absence of a CC was found to have a substantial impact on patient charges.

Cases in DRGs 1 and 2	Number of patients	Average charges
With CC	19,012	$49,659
Without CC	9,618	26,824

Thus, there is an 85.1 percent difference in average charges for the groups with and without CC for the combined DRGs 1 and 2. On this basis, we are proposing to redefine and retitle DRGs 1 and 2 as follows: DRG 1 (Craniotomy Age >17 with CC); and DRG 2 (Craniotomy Age >17 without CC).

b. Proposed Revisions of DRGs 14 and 15

To assess the appropriate classification of patients with stroke symptoms, we evaluated the assignment of cases to DRGs 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack (TIA) and DRG 15 (Transient Ischemic Attack and Precerebral Occlusions). Our data review indicated that the cases in DRGs 14 and 15 fell into three discrete groups. The first group included cases in which the patients were very sick, with severe intracranial lesions or subarachnoid hemorrhage and severe consequences. The second group included cases in which patients had not suffered a debilitating stroke but instead may have experienced a transient ischemic attack. The patients in the second group had one half of the average length of stay in the hospital as the first group. The third group of cases included patients who appeared to suffer strokes with minor consequences, as well as those having occluded vessels without having a full-blown stroke.

We found that patients who have intracranial hemorrhage and patients who have infarction are similar in severity. These cases are more frequent in occurrence than cases with patients who have subarachnoid hemorrhage. Therefore, we are proposing to continue to group patients with intracranial hemorrhage and infarction together. These types of cases are different from patients with, for example, an occlusive carotid artery without infarction. In this common group of cases, patients are not as severely ill because they typically have lesser degrees of functional status deficits.

Our analysis indicates that we can improve the clinical and resource cohesiveness of DRGs 14 and 15 by reassigning several specific ICD–9–CM codes. For example, code 436 (Acute, but ill-defined, cerebrovascular disease) is not a specific code and contains patients with a wide range of deficits and anatomic problems. Our data show that these cases consume fewer resources and have shorter lengths of stay than other cases in DRG 14. Therefore, we are proposing to remove code 436 from DRG 14 and reassign it to DRG 15. We also are proposing to create a third new DRG to further identify these cases. The proposed revised or new DRG titles are as follows: DRG 14 (Intracranial Hemorrhage and Stroke with Infarction); DRG 15 (Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction); and DRG 524 (Transient Ischemia).

The following table represents a proposed reconfiguration of DRGs 14 and 15 and the creation of a new DRG 524 reflecting these three categorizations:

Proposed DRG and title	Number of cases	Average length of stay (days)	Average charge
Revised DRG 14 (Intracranial Hemorrhage and Stroke with Infarction)	164,786	6.1	$15,643
Revised DRG 15 (Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction)	70,866	4.9	11,595
New DRG 524 (Transient Ischemia)	92,835	3.3	8,633

The proposed reconfiguration of DRGs 14 and 15 would result in the following codes being designated as principal diagnosis codes in proposed revised DRG 14:

- 430, Subarachnoid hemorrhage
- 431, Intracerebral hemorrhage
- 432.0, Nontraumatic extradural hemorrhage
- 432.1, Subdural hemorrhage
- 432.9, Unspecified intracranial hemorrhage
- 433.01, Occlusion and stenosis of basilar artery, with cerebral infarction
- 433.11, Occlusion and stenosis of carotid artery, with cerebral infarction
- 433.21, Occlusion and stenosis of vertebral artery, with cerebral infarction
- 433.31, Occlusion and stenosis of multiple and bilateral arteries, with cerebral infarction
- 433.81, Occlusion and stenosis of other specified precerebral artery, with cerebral infarction
- 433.91, Occlusion and stenosis of unspecified precerebral artery, with cerebral infarction
- 434.01, Cerebral thrombosis with cerebral infarction
- 434.11, Cerebral embolism with cerebral infarction
- 434.91, Cerebral artery occlusion, unspecified, with cerebral infarction

In addition, we are proposing that the following two codes be moved from DRG 14 to DRG 34 (Other Disorders of Nervous System with CC) and DRG 35 (Other Disorders of Nervous System without CC): Code 437.3 (Cerebral aneurysm, nonruptured) and Code 784.3 (Aphasia). These codes do not represent acute conditions. Aphasia, for example, could result from a cerebral infarction, but if it does, the infarction should be correctly coded as the principal diagnosis.

The proposed redefined DRG 15 would contain the following principal diagnosis codes:

- 433.00, Occlusion and stenosis of basilar artery, without mention of cerebral infarction
- 433.10, Occlusion and stenosis of carotid artery, without mention of cerebral infarction
- 433.20, Occlusion and stenosis of vertebral artery, without mention of cerebral infarction
- 433.30, Occlusion and stenosis of multiple and bilateral arteries, without mention of cerebral infarction
- 433.80, Occlusion and stenosis of other specified precerebral artery, without mention of cerebral infarction
- 433.90, Occlusion and stenosis of unspecified precerebral artery, without mention of cerebral infarction
- 434.00, Cerebral thrombosis without mention of cerebral infarction
- 434.10, Cerebral embolism without mention of cerebral infarction
- 434.90, Cerebral artery occlusion, unspecified, without mention of cerebral infarction
- 436, Acute, but ill-defined, cerebrovascular disease

In addition, we are proposing to remove the following codes from the existing DRG 15 and place them in the proposed newly created DRG 524:

- 435.0, Basilar artery syndrome
- 435.1, Vertebral artery syndrome
- 435.2, Subclavian steal syndrome
- 435.3, Vertebrobasilar artery syndrome
- 435.8, Other specified transient cerebral ischemias
- 435.9, Unspecified transient cerebral ischemia

We are proposing to move code 437.1 (Other generalized ischemic cerebrovascular disease) from DRG 16 (Nonspecific Cerebrovascular Disorders with CC) and DRG 17 (Nonspecific Cerebrovascular Disorders without CC) and add it to the proposed new DRG 524. This proposed change represents a modification to improve clinical coherence and seems to be a logical change for the construction of the proposed new DRG 524.

3. MDC 5 (Diseases and Disorders of the Circulatory System)

a. Heart Assist Systems

Heart failure is typically caused by persistent high blood pressure (hypertension), heart attack, valve disease, other forms of heart disease, or birth defects. It is a chronic condition in which the lower chambers of the heart (ventricles) cannot pump sufficient amounts of blood to the body. This causes the organs of the body to progressively fail, resulting in numerous medical complications and frequently death. DRG 127 (Heart Failure and Shock), to which heart failure cases are assigned, is the single most common DRG in the Medicare population, and represents the medical, not surgical, treatment options for this group of patients.

In many cases, heart transplantation would be the treatment of choice. However, the low number of donor hearts limits this treatment option. Circulatory support devices, also known as heart assist systems or left ventricular assist devices (LVADs), offer a surgical alternative for end-stage heart failure patients. This type of device is often implanted near a patient's native heart and assumes the pumping function of the weakened heart's left ventricle. Studies are currently underway to evaluate LVADs as permanent support for end-stage heart failure patients.

We have reviewed the payment and DRG assignment of this type of device in the past. Originally, these cases were assigned to DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC) in the September 1, 1994 final rule (59 FR 45345). A more specific procedure code, 37.66 (Implant of an implantable, pulsatile heart assist system) was made effective for use with hospital discharges occurring on or after October 1, 1995. In the August 29, 1997 final rule (62 FR 45973), we reassigned these cases to DRG 108 (Other Cardiothoracic Procedures), because it was the most clinically similar DRG with the best match in resource consumption according to our data. In the July 31, 1998 final rule (63 FR 40956), we again reviewed our data and discovered that the charges for implantation of an LVAD were increasing at a greater rate than the average charges for DRG 108. The length of stay for cases with code 37.66 was approximately 32 days, or three times as long as all other DRG 108 cases. Therefore, we decided to move LVAD cases from DRG 108 to DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedures with Cardiac Catheterization) and DRG 105 (Cardiac Valve and Other Major Cardiothoracic Procedures without Cardiac Catheterization). We continued to review our data and discuss this topic in the FY 1999 and FY 2000 annual final rules: July 30, 1999 (64 FR 41498) and August 1, 2000 (65 FR 47058).

In the August 1, 2001 final rule (66 FR 39838), we remodeled MDC 5 to add five new DRGs. We also added procedure codes 37.62 (Implant of other heart assist system), 37.63 (Replacement and repair of heart assist system), and 37.65 (Implant of an external, pulsatile heart assist system) to DRGs 104 and 105. We removed defibrillator cases from DRGs 104 and 105 and assigned them to DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) and DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization) to make these DRGs more clinically coherent. This also increased the relative weights for DRGs 104 and 105, as the defibrillator cases had lower average charges than other cases in those two DRGs.

In the FY 2001 MedPAR data file, we found 185 LVAD cases in DRG 104 and 90 cases in DRG 105, for a total of 275 cases. These cases represent 1.3 percent of the total cases in DRG 104, and approximately 0.5 percent of the total

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cases in DRG 105. However, the average charges for these cases are approximately $36,000 and $85,000 higher than the average charges for cases in DRGs 104 and 105, respectively.

This situation presents a dilemma, in that the technology has been available since 1995 and is gradually increasing in utilization, while LVAD cases involving the technology remain a small part of the total cases in these two DRGs. In fact, removing LVAD cases from the calculation of the average charge changes the average by only -0.4 percent and -0.5 percent for DRGs 104 and 105, respectively. Therefore, despite the dramatically higher average charges for LVADs compared to the DRG averages, the relative volume is insufficient to affect the average to any great degree.

Therefore, we are proposing to create a new DRG 525 (Heart Assist System Implant), which would contain these cases. The proposed FY 2003 relative weight for proposed new DRG 525 is 11.3787.

The new DRG would consist of any principal diagnosis in MDC 5, plus one of the following surgical procedures:

- 37.62, Implant of other heart assist system
- 37.63, Replacement and repair of heart assist system
- 37.65, Implant of an external, pulsatile heart assist system
- 37.66, Implant of an implantable, pulsatile heart assist system

Cases in which a subsequent heart transplant occurs during the hospitalization episode would continue to be assigned to DRG 103 (Heart Transplant) because cases involving procedure codes 336 (Combined heart/lung transplant) and 375 (Heart transplant) are assigned to DRG 103, regardless of other codes included on the bill.

We reiterate a discussion we included in the August 1, 2000 final rule (65 FR 47058) regarding placement of code 37.66 in the MCE screening software as a noncovered procedure. The default designation for that code will continue to be "noncovered" because of the stringent conditions that must be met by hospitals in order to receive payment for implantation of the device.

Section 65–15 of the Medicare Coverage Issues Manual (Artificial Hearts and Relative Devices) provides the national coverage determination regarding Medicare coverage of these devices. This section may be accessed online at *www.hcfa.gov/pubforms/06_cim/ci00.htm*.

b. Moving Diagnosis Code 398.91 (Rheumatic Heart Failure) From DRG 125 to DRG 124

DRG 124 (Circulatory Disorders Except Acute Myocardial Infarction (AMI), with Cardiac Catheterization and Complex Diagnosis) and DRG 125 (Circulatory Disorders Except Acute Myocardial Infarction (AMI) with Cardiac Catheterization without Complex Diagnosis) have a somewhat complex DRG logic. In order to be assigned to DRG 124 or 125, the patient must first have a circulatory disorder, which would be one of the diagnoses included in MDC 5. However, these DRGs exclude acute myocardial infarctions. Therefore, these DRGs are comprised of cases with a diagnosis from MDC 5, excluding acute myocardial infarction, but also with a cardiac catheterization during the stay.

DRGs 124 and 125 are then further defined by whether or not the patient had a complex diagnosis. If the patient had a complex diagnosis, the case is assigned to DRG 124. If the patient does not have a complex diagnosis, the case is assigned to DRG 125. A list of diagnoses that comprise complex diagnoses is identified within DRG 124. These diagnoses can be listed as either a principal or secondary diagnosis.

We have received correspondence regarding the current assignment of diagnosis code 398.91 (Rheumatic heart failure). The correspondent pointed out that, while other forms of heart failure are listed as complex diagnoses under DRG 124, rheumatic heart failure is not included as a complex diagnosis within that DRG. Currently, if a patient with rheumatic heart failure receives a cardiac catheterization, the case is assigned to DRG 125.

The correspondent had conducted a study and found that patients with rheumatic heart failure who receive a cardiac catheterization have lengths of stay that are significantly longer than patients with other forms of heart failure who receive a cardiac catheterization and who are assigned to DRG 125. The correspondent found that these patients have lengths of stay more similar to those cases assigned to DRG 124 (which have other forms of heart failure), and recommended that diagnosis code 398.91 be added to the list of complex diagnoses within DRG 124.

Within our claims data, we found 439 cases of patients in DRG 125 with rheumatic heart failure who received a cardiac catheterization. The average charges for these rheumatic heart failure cases were almost twice as much as for other cardiac patients in DRG 125 who received a cardiac catheterization and who did not have a diagnosis of rheumatic heart failure. We also conferred with our medical consultants and they agree that rheumatic heart failure with cardiac catheterization is a complex diagnosis and should be assigned to DRG 124 along with the other complex forms of heart failure cases involving cardiac catheterization.

We are proposing to add code 398.91 to DRG 124 as a complex diagnosis. As a result, catheterization cases with rheumatic heart disease would no longer be assigned to DRG 125.

c. Radioactive Element Implant

In the August 1, 2001 final rule, we created DRG 517 (Percutaneous Cardiovascular Procedure without Acute Myocardial Infarction (AMI) with Coronary Artery Stent Implant) as a result of the overall DRG splits based on the presence of AMI (66 FR 39839). We assigned code 92.27 (Implantation or insertion of radioactive elements) to DRG 517 because we believed that code 92.27 would always accompany cases involving a percutaneous cardiovascular procedure and intravascular radiation treatment. We have since determined that code 92.27 can also be present as a stand-alone code in other types of cases. When cases with code 92.27 do not meet the criteria for DRG 517, they are currently directed into DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis). Because DRG 468 is for cases in which the O.R. procedure is unrelated to the principal diagnosis, rather than assign cases with code 92.27 that would otherwise be assigned to MDC 5 to DRG 468 because they do not meet the criteria for assignment to DRG 517, we are proposing to assign these cases to DRG 120 (Other Circulatory System O.R. Procedures).

4. MDC 10 (Endocrine, Nutritional, and Metabolic Diseases and Disorders)

Currently, when ICD–9–CM code 277.00 (Cystic Fibrosis without mention of meconium ileus) is reported as the principal diagnosis, it is assigned to the following DRG series in MDC 10: DRG 296 (Nutritional and Metabolic Disease, Age >17 with CC); DRG 297 (Nutritional and Metabolic Disease, Age >17 without CC); and DRG 298 (Nutritional and Metabolic Disease, Age 0–17).

As part of our annual review of DRG assignments and based on correspondence that we have received, we examined claims relating to cases involving code 277.00 as a principal diagnosis in DRGs 296, 297, and 298. Our analysis of the average charges for cases in which code 277.00 was the principal diagnosis in DRGs 296, 297, and 298 indicates that resource utilization for these cases is quite different from resource utilization for other cases in the three DRGs. We believe that this difference in resource utilization is due to the fact it is not uncommon for cystic fibrosis patients to be admitted with pulmonary complications. Our findings on the number of cases and the average charges in the three DRGs when code 277.00 is assigned as the principal diagnosis, and our findings for all cases in the three DRGs, are indicated in the charts below.

CASES IN DRG 296, 297, AND 298 WITH CODE 277.00 AS THE PRINCIPAL DIAGNOSIS

DRG and description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	271	$34,111
DRG 297 (Nutritional & Metabolic Disease Age >17 with CC)	133	21,998
DRG 298 (Nutritional & Metabolic Disease Age 0–17)	0	

ALL CASES IN DRG 296, 297, 298

DRG and description	Number of cases	Average charges
DRG 296 (Nutritional & Metabolic Disease Age >17 with CC)	169,768	$10,480
DRG 297 (Nutritional & Metabolic Disease Age >17 without CC)	31,560	6,190
DRG 298 (Nutritional & Metabolic Disease Age 0–17)	17	8,603

Based on the results of our analysis, we are proposing that three new cystic fibrosis principal diagnosis codes be assigned to specific DRGs and MDCs, and that other changes be made to DRG and MDC assignments of existing cystic fibrosis codes, as discussed below.

We are proposing to create the following three new principal diagnosis codes:

- 277.02 (Cystic fibrosis with pulmonary manifestations)
- 277.03 (Cystic fibrosis with gastrointestinal manifestations)
- 277.09 (Cystic fibrosis with other manifestations)

We are proposing that existing code 277.01 (Cystic fibrosis with mention of meconium ileus) would continue to be assigned to DRG 387 (Prematurity with Major Problems) and DRG 389 (Full Term Neonate with Major Problems) in MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period), since it is a newborn diagnosis code.

Because proposed new code 277.02 would identify those patients with cystic fibrosis who have pulmonary manifestations, we are proposing to assign cases in which the principal diagnosis is the proposed new code 277.02 to DRG 79 (Respiratory Infection and Inflammations Age >17 with CC), DRG 80 (Respiratory Infections and Inflammations Age >17 without CC), or DRG 81 (Respiratory Infections and Inflammations Age 0–17) in MDC 4 (Diseases and Disorders of the Respiratory System).

We are proposing that proposed new code 277.03 would be assigned to DRG 188 (Other Digestive System Diagnoses Age >17 with CC), DRG 189 (Other Digestive System Diagnoses Age >17 without CC), and DRG 190 (Other Digestive System Diagnoses Age 0–17) in MDC 6 (Diseases and Disorders of the Digestive System), because of its specific relationship to the digestive system.

Since proposed new code 277.09 could involve a number of manifestations (excluding pulmonary and gastrointestinal), we are proposing to assign this proposed new code to DRGs 296, 297, and 298 in MDC 10, where we are retaining the current assignment of existing code 277.00.

The following chart summarizes our proposed DRG and MDC assignments for new and existing cystic fibrosis principal diagnosis codes:

Principal diagnosis code and description	Proposed MDC assignment	Proposed DRG assignments
Existing 277.00 (Cystic fibrosis without mention of meconium ileus)	10	296, 297, 298
Existing 277.01 (Cystic fibrosis with mention of meconium ileus)	15	387, 389
Proposed new 277.02 (Cystic fibrosis with pulmonary manifestations)	4	79, 80, 81
Proposed new 277.03 (Cystic fibrosis with gastrointestinal manifestations)	6	188, 189, 190
Proposed new 277.09 (Cystic fibrosis with other manifestations)	10	296, 297, 298

5. MDC 11 (Diseases and Disorders of the Kidney and Urinary Tract)

a. Insertion of Totally Implantable Vascular Access Device (VAD)

In the August 1, 2001 final rule (66 FR 39844), we discussed our review of the DRG assignment of code 86.07 (Insertion of totally implantable vascular access device (VAD)). Code 86.07 is considered a nonoperative procedure when it occurs in MDC 11. Therefore, patients in renal (kidney) failure requiring implantation of this device for dialysis are grouped to medical DRG 316 (Renal Failure). We examined whether implantation of this device should be removed from DRG 316 and placed into surgical DRG 315 (Other Kidney and Urinary Tract O.R. Procedures).

Implantation of a VAD into the chest wall and blood vessels of a patient's upper body allows access to a patient's vessels via an implanted valve and cannula. Two devices are implanted during one operative session. One system is implanted arterially (the "draw"), while the other is implanted venously (the "return"). Typically, the VAD allows access to the patient's blood for hemodialysis purposes when other sites in the body have been exhausted. The device is usually inserted in the outpatient setting. Operative time is approximately 1 to 1.5 hours.

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In the FY 2002 final rule (66 FR 39844–39845), we pointed out that cases where the VAD was inserted as an inpatient procedure also involved other complications, leading to higher average charges. Therefore, we indicated that we were not assigning code 86.07 to DRG 315 at that time, but we would consider other alternative adjustments to DRGs 315 and 316.

For FY 2003, we explored whether DRG 315 should be split based on existence or nonexistence of CCs. However, during our consideration of this alternative, we discovered that DRG 315 does not lend itself to a CC split due to the high occurrence of cases in this DRG that already have complications identified on the CC list. Therefore, we reexamined cases in DRGs 315 and 316 in the FY 2001 MedPAR file. The results are reflected in the chart below:

	With Code 86.07	Without Code 86.07
DRG 315 (surgical):		
Number of Cases	354	21,089.
Average Length of Stay.	12.6 days	6.7 days.
Average Charges	$47,251	$25,622.
DRG 316 (Medical):		
Number of Cases	887	76,676.
Average Length of Stay.	10.3	6.6 days.
Average Charges	$31,904	$16,934.

These results are similar to the findings included in the FY 2002 final rule that were based on data from the FY 2000 MedPAR file (66 FR 39845).

We found that the average length of stay in DRG 315 for patients not receiving the VAD is 6.7 days, while those patients who received the VAD had an average length of stay of 12.6 days. We found the average charges in DRG 315 for patients not receiving the VAD were approximately $25,622, while the average charges for those patients who received the VAD were $47,251.

We found that the cases receiving the VAD as an inpatient procedure are significantly more costly than other cases in DRG 316. Therefore, we are proposing to designate code 86.07 as an O.R. procedure under MDC 11. Specifically, code 86.07 would be recognized as an O.R. procedure code in MDC 11 and assigned to DRG 315 when combined with the following principal diagnosis codes from DRG 316:

- 403.01, Malignant hypertensive renal disease with renal failure
- 403.11, Benign hypertensive renal disease with renal failure
- 403.91, Unspecified hypertensive renal disease with renal failure
- 404.02, Malignant hypertensive heart and renal disease with renal failure
- 404.12, Malignant hypertensive heart and renal disease with renal failure
- 404.92, Unspecified hypertensive heart and renal disease with renal failure
- 584.5, Acute renal failure with lesion of tubular necrosis
- 584.6, Acute renal failure with lesion of renal cortical necrosis
- 584.7, Acute renal failure with lesion of renal medullary (papillary) necrosis
- 584.8, Acute renal failure with other specified pathological lesion in kidney
- 584.9, Acute renal failure, unspecified
- 585, Chronic renal failure
- 586, Renal failure, unspecified
- 788.5, Oliguria and anuria
- 958.5, Traumatic anuria

b. Bladder Reconstruction

We received correspondence regarding the current classification of procedure code 57.87 (Reconstruction of urinary bladder) as a minor bladder procedure and the assignment of the code under DRG 308 (Minor Bladder Procedures with CC) and DRG 309 (Minor Bladder Procedures without CC). The correspondent believed that bladder reconstruction is not a minor procedure, submitted individual hospital charges to support this contention, and recommended that the code be classified as a major procedure and assigned to a higher weighted DRG.

Our clinical advisors indicated that reconstruction of the bladder is a more extensive procedure than the other minor bladder procedures in DRGs 308 and 309. They agree that the bladder reconstruction procedure is as complex as the procedures under code 57.79 (Total cystectomy) and the other major bladder procedures in DRGs 303 through 305.

As indicated in the chart below, we found that the average charges for bladder reconstruction are significantly higher than the average charges for other minor procedures within DRGs 308 and 309:

	With Code 57.87	Without Code 57.87
DRG 308 (minor bladder procedure with CC):		
Number of Cases	64	5,066
Average Charges	$36,560	$19,923
DRG 309 (minor bladder procedures without CC):		
Number of Cases	25	3,021
Average Charges	$23,390	$11,200

We found that procedure code 57.87 may be more appropriately placed in DRG 303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm), 304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC), and DRG 305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC), based on average charges for procedures in these three DRGS as indicated in the following chart:

DRG	Number of cases	Average charges
303 (Kidney, Ureter and Major Bladder Procedures for Neoplasm)	14,116	$30,691
304 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm with CC)	8,060	30,577
305 (Kidney, Ureter and Major Bladder Procedures for Nonneoplasm without CC)	2,029	15,492

Based on the results of our analysis and the advice of our medical consultants discussed above, we are proposing to classify code 57.87 as a major bladder procedure and to assign it to DRGs 303, 304, and 305.

6. MDC 15 (Newborns and Other Neonates with Conditions Originating in the Perinatal Period)

The primary focus of updates to the Medicare DRG classification system is for changes relating to the Medicare patient population, not the pediatric or neonatal patient populations. However, the Medicare DRGs are sometimes used to classify other patient populations.

Over the years, we have received comments about aspects of the Medicare newborn DRGs that appear problematic, and we have responded to these on an individual basis. Some correspondents have requested that we take a closer overall look at the DRGs within MDC 15.

To respond to this request relating to review of MDC 15, we contacted the National Association of Children's Hospitals and Related Institutions (NACHRI), along with our own medical advisors, to obtain proposals for possible revisions of the existing DRG categories in MDC 15. The focus of the requested proposals was to refine category definitions within the framework of the existing seven broadly defined neonatal DRGs. The proposals also were to take advantage of the new, more specific neonatal diagnosis codes to be adopted, effective October 1, 2002, to assist with refinements to the existing DRG category definitions.

In preparing these proposed changes to MDC 15, we have considered comments and suggestions previously received, including suggestions from NACHRI on how to make improvements within the existing framework of seven very broadly defined neonatal DRGs. In the future, we may consider broader changes to MDC 15.

a. Definition of MDC 15

The existing diagnosis definitions for MDC 15 include certain diagnoses that may be present at the time of birth but may also continue beyond the perinatal period.

These diagnoses are basically congenital anomalies, and even though they may continue beyond the perinatal period, they are assigned to MDC 15 which is specific to newborns and neonates.

The diagnosis codes assigned to the DRGs under MDC 15 have been a source of confusion because older children and adults can be admitted with these principal diagnoses and assigned to newborn or neonate DRGs in MDC 15 as if they were newborns.

Our medical consultants and NACHRI have reviewed the listing of diagnosis codes and identified those that should not be routinely classified under MDC 15. As a result of this review, we are proposing that the following list of diagnosis codes be removed from MDC 15:

- 758.9, Conditions due to anomaly of unspecified chromosome
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, so described
- 759.81, Prader-Willi Syndrome
- 759.83, Fragile X Syndrome
- 759.89, Other specified anomalies
- 759.9, Congenital anomaly, unspecified
- 779.7, Periventricular leukomalacia
- 795.2, Nonspecific abnormal findings on chromosomal analysis

We are proposing to assign the nine diagnosis codes listed above to the following MDCs and DRGs (if medical):

Diagnosis code	Title	Proposed MDC assignment	Proposed DRG assignment
758.9	Conditions due to anomaly of unspecified chromosome.	23	467 (Other Factors Influencing Health Status).
759.4	Conjoined twins	6	188, 189, 190 (Other Digestive System Diagnoses, age >17 with CC, Age >17 without CC, and Age 0–17, respectively).
759.7	Multiple congenital anomalies, so described	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.81	Prader-Willi Syndrome	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.83	Fragile x Syndrome	19	429 (Organic Disturbances and Mental Retardation)
759.89	Other specified anomalies	8	256 (Other Musculoskeletal System and Connective Tissue Diagnoses).
759.9	Congenital anomaly, unspecified	23	467 (Other Factors Influencing Health Status).
779.7	Periventricular leukomalacia	1	34, 35 (Other Disorders of the Nervous System with CC and without CC, respectively).
795.2	Nonspecific abnormal findings on chromosomal analysis.	23	467 (Other Factors Influencing Health Status).

The following three specific 4-digit diagnosis codes have been determined invalid by the ICD–9–CM Coordination and Maintenance Committee, effective October 1, 2002, and we are proposing to remove them from MDC 15.

- 770.8, Other newborn respiratory problems
- 771.8, Other infection specific to the perinatal period
- 779.8, Other specified conditions originating in the perinatal period

The above three codes are being replaced by 5-digit codes to capture more detail. These new 5-digit codes are assigned to DRGs within MDC 15 and are listed among the codes in Table 6A—New Diagnosis Codes in the Addendum of this proposed rule.

In addition, the ICD–9–CM Coordination and Maintenance Committee created a number of new codes, effective October 1, 2002, to capture newborn and neonatal conditions. Therefore, we are proposing to add the following new 23 diagnosis codes to MDC 15:

- 747.83, Persistent fetal circulation
- 765.20, Unspecified weeks of gestation
- 765.21, Less than 24 completed weeks of gestation
- 765.22, 24 completed weeks of gestation
- 765.23, 25–26 completed weeks of gestation
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation
- 765.29, 37 or more completed weeks of gestation
- 770.81, Primary apnea of newborn
- 770.82, Other apnea of newborn
- 770.83, Cyanotic attacks of newborn
- 770.84, Respiratory failure of newborn
- 770.89, Other respiratory problems after birth
- 771.81, Septicemia [sepsis] of newborn
- 771.82, Urinary tract infection of newborn
- 771.83, Bacteremia of newborn
- 771.89, Other infections specific to the perinatal period
- 779.81, Neonatal bradycardia
- 779.82, Neonatal tachycardia
- 779.89, Other specified conditions originating in perinatal period

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b. DRG 386 (Extreme Immaturity or Respiratory Distress Syndrome, Neonate)

The existing DRG 386 is defined by the presence of one of the ICD–9–CM extreme prematurity codes (765.01 through 765.05) with the fifth digit indicating birthweight less than 1,500 grams (3.3 pounds). NACHRI has identified two weaknesses in the use of the fifth digit to define prematurity.

One weakness relates to determining extreme immaturity, which, in part, is limited by the existing ICD–9–CM diagnosis codes. The existing ICD–9–CM definition for the extreme immaturity codes "usually implies birthweight less than 1,000 grams (2.2 pounds) or gestational age less than 28 completed weeks," or both. The fifth digit provides range values for birthweight but gives no information on gestational age. A specific and distinct set of ICD–9–CM diagnosis codes for gestational age is to be introduced effective October 1, 2002. These new codes will provide a clearer basis for differentiating extreme immaturity or gestational age, or both.

The second weakness is that diagnosis code 769 (Respiratory distress syndrome in newborn) is currently only associated with DRG 386, which requires extreme prematurity, but respiratory distress syndrome in newborns can occur with all levels of prematurity. Therefore, we believe that code 769 should not be used to classify a diagnosis under DRG 386.

The proposed revision to DRG 386 would reflect the upcoming new ICD–9–CM diagnosis codes. We are proposing to redefine DRG 386 to include those newborns whose preterm birthweight is less than 1,000 grams or gestational age is less than 27–28 completed weeks, or both. Therefore, we would remove diagnosis code 769 from DRG 386, as this code is associated with all levels of prematurity, not just extreme immaturity. In addition, we are proposing to revise the title of DRG 386 to read "Extreme Immaturity".

Because birthweight for neonates varies at all gestational ages, some neonates will meet the DRG 386 criteria for preterm extremely low birthweight (less than 1,000 grams) but not the DRG 386 criteria for extremely short gestation age (less than 27–28 completed weeks). The reverse may also occur, where a neonate meets the DRG 386 criteria for extremely short gestational age (less than 27–28 completed weeks) but not for preterm extremely low birthweight (less than 1,000 grams). In either situation, the neonate would be assigned to the proposed retitled DRG 386 (Extreme Immaturity).

NACHRI provided the following information on the measurement of gestational age and its use in the definition of Medicare neonatal DRGs. First, they noted that gestational age can be as powerful a predictor of a newborn's hospitalization course as birthweight and corresponds more directly to organ system immaturity. Second, while gestational age can be identified with a reasonable level of accuracy, it cannot be measured as precisely as birthweight. These two considerations led NACHRI to recommend the inclusion of gestational age in the definition of the Medicare neonatal DRGs, but in a conservative manner. Specifically, extremely short gestational age, as identified earlier, usually implies gestational age less than 28 weeks. The proposed new definition of DRG 386 includes only the gestational age codes for less than 27 to 28 completed weeks. Thus, there is a 1-week conservative bias in the use of the new gestational age codes for DRG 386. It is also important to note that the existing DRG 386 definition includes existing codes 765.01 through 765.05, which include extreme immaturity without a specific identification of gestational age and birthweight up to 1,499 grams (3.3 pounds). Thus, the proposed revised definition of DRG 386 is actually somewhat more stringent as well as more specific.

To implement these changes, we are proposing to remove the following diagnosis codes from the list of "principal or secondary diagnosis" under DRG 386:

- 765.04, Extreme immaturity, 1,000–1,249 grams
- 765.05, Extreme immaturity, 1,250–1,499 grams
- 769, Respiratory distress syndrome in newborn

Note, as explained above, while we are proposing to remove diagnosis codes 765.04, 765.05, and 769 from the list of principal or secondary diagnosis under DRG 386, a neonate would still be assigned to DRG 386 if there is a diagnosis of gestational age less than 27 to 28 completed weeks reported (765.21 through 765.23).

We are proposing to add the following diagnosis codes to the list of "principal or secondary diagnosis" under DRG 386:

- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams
- 765.21, Less than 24 completed weeks of gestation
- 765.22, 24 completed weeks of gestation
- 765.23, 25–26 completed weeks of gestation

c. DRG 387 (Prematurity With Major Problems)

The existing definition of DRG 387 has the following three components: (1) Principal or secondary diagnosis of prematurity; (2) Principal or secondary diagnosis of major problem (these are diagnoses that define MDC 15); or (3) secondary diagnosis of major problem (these are diagnoses that do not define MDC 15 so they can only be secondary diagnosis codes for patients assigned to MDC 15). We are proposing changes for each component of the definition for DRG 387.

We are proposing to revise the definition for the first component of DRG 387, "principal or secondary diagnosis of prematurity", to include all preterm low birthweight codes with fifth digit range code values indicating birthweight between 1,000 grams (2.2 pounds) and 2,499 grams (5.5 pounds), or gestational age between 27 to 28 and 35 to 36 completed weeks, or both. This would include all of the preterm low birthweight and gestational age codes except those assigned to the proposed revised DRG 386 and except for the following four preterm and gestational age codes: 765.10, 765.19, 765.20, and 765.29.

It is possible for a neonate to be premature and greater than 2,500 grams (5.5 pounds). In this instance, one of the new gestational age codes that specifically identifies the newborn to be less than 37 completed weeks of gestation would need to be present to meet the criteria for inclusion in DRG 387. This is not a conceptual change for DRG 387, in that diagnosis codes 765.10 and 765.19 should both refer to newborns less than 37 completed weeks of gestation. Therefore, we are proposing to take into consideration the new ICD–9–CM codes that require a more specific affirmation that the newborn is less than 37 completed weeks of gestation. Because DRG 387 is a broadly defined category (1,000–2,499 grams or 27–36 completed weeks of gestation), NACHRI recommends that it is important to require specific information for inclusion of patients at the high end of the birthweight/gestational age range.

We are proposing to remove the following diagnosis codes from the list of diagnoses defined as "principal or secondary diagnosis of prematurity" for DRG 387:

- 765.10, Other preterm infants, unspecified (weight)

- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams
- 765.19, Other preterm infants, 2,500+ grams

We are proposing to add the following diagnosis codes to the list of diagnoses defined as "principal or secondary diagnosis of prematurity" for DRG 387:

- 765.04, Extreme immaturity, 1000–1249 grams
- 765.05, Extreme immaturity, 1250–1499 grams
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation

We are proposing to revise the definition for the second component of DRG 387, "principal or secondary diagnosis of major problem", to remove certain diagnosis codes and to add other diagnosis codes. We are proposing to remove three groups of diagnosis codes. The first group of diagnosis codes that we are proposing to remove includes the fetal malnutrition codes for the birthweight ranges less than 2500 grams. NACHRI indicates that these newborns are not necessarily more complicated than preterm infants of the same birthweight range. These newborns have fewer problems related to organ system immaturity and often demonstrate excellent catch-up growth after delivery. Some of the fetal malnutrition diagnosis neonates may have serious problems. Therefore, it is best for the classification system to look for other more specific, major problem diagnoses than to include all of these newborns in DRG 387. We are proposing to remove the following diagnosis codes from DRG 387.

- 764.11, "Light-for-dates" with signs of fetal malnutrition, less than 500 grams
- 764.12, "Light-for-dates" with signs of fetal malnutrition, 500–749 grams
- 764.13, "Light-for-dates" with signs of fetal malnutrition, 750–999 grams
- 764.14, "Light-for-dates" with signs of fetal malnutrition, 1,000–1,249 grams
- 764.15, "Light-for-dates" with signs of fetal malnutrition, 1,250–1,499 grams
- 764.16, "Light-for-dates" with signs of fetal malnutrition, 1,500–1,749 grams
- 764.17, "Light-for-dates" with signs of fetal malnutrition, 1,750–1,999 grams
- 764.18, "Light-for-dates" with signs of fetal malnutrition, 2,000–2,499 grams
- 764.21, Fetal malnutrition without mention of "light-for-dates", less than 500 grams
- 764.22, Fetal malnutrition without mention of "light-for-dates", 500–749 grams
- 764.23, Fetal malnutrition without mention of "light-for-dates", 750–999 grams
- 764.24, Fetal malnutrition without mention of "light-for-dates", 1,000–1,249 grams
- 764.25, Fetal malnutrition without mention of "light-for-dates", 1,250–1,499 grams
- 764.26, Fetal malnutrition without mention of "light-for-dates", 1,500–1,749 grams
- 764.27, Fetal malnutrition without mention of "light-for-dates", 1,750–1,999 grams
- 764.28, Fetal malnutrition without mention of "light-for-dates", 2,000–2,499 grams

The second group of codes we are proposing to remove from the list of "principal or secondary diagnosis of major problems" under DRG 387 consists of the following 13 diagnosis codes. The majority of these diagnosis codes do not represent a major problem for a newborn at or shortly after birth. NACHRI believes that costs associated with newborns with these conditions are similar to costs associated with neonates without a major problem.

- 763.4, Cesarean delivery affecting fetus or newborn
- 770.1, Meconium aspiration syndrome
- 770.8, Other newborn respiratory problems
- 771.8, Other infection specific to the perinatal period
- 772.0, Fetal blood loss
- 773.2, Hemolytic disease due to other and unspecified isoimmunization of fetus or newborn
- 773.5, Late anemia due to isoimmunization of fetus or newborn
- 775.5, Other transitory neonatal electrolyte disturbances
- 775.6, Neonatal hypoglycemia
- 776.0, Hemorrhagic disease of newborn
- 776.6, Anemia of prematurity
- 777.1, Meconium obstruction in fetus or newborn
- 777.2, Intestinal obstruction due to inspissated milk in newborn

We note that diagnosis code 770.8 (Other newborn respiratory problems) and diagnosis code 771.8 (Other infection specific to the perinatal period) are 4-digit codes that are being replaced by a series of more specific 5-digit codes, effective October 1, 2002. (See Table 6C in the Addendum of this proposed rule.) The listing of the codes on the second group above includes some of these new 5-digit codes.

The third group of diagnosis codes that we are proposing to remove from the list of diagnosis defined as "principal or secondary diagnosis of major problem" under DRG 387 includes the following two diagnosis codes. These codes are no longer assigned to MDC 15 when they are the principal diagnosis.

- 759.4, Conjoined twins
- 779.7, Periventricular leukomalacia

We are proposing to add the following nine new and existing diagnosis codes to the list of "principal or secondary diagnosis of major problem" that defines DRG 387. These nine diagnosis codes generally represent major problems at the time of birth and have costs more similar to those of neonates with major problems than neonates without major problems. Many of these diagnosis codes are related to congenital anomaly conditions.

- 747.83, Persistent fetal circulation (new code)
- 769, Respiratory distress syndrome in newborn
- 770.84, Respiratory failure of newborn (new code)
- 771.3, Tetanus neonatorum
- 771.81, Septicemia of newborn (new code)
- 771.82, Neonatal urinary tract infection (new code)
- 771.83, Bacteremia of newborn (new code)
- 771.89, Other infections specific to perinatal period (new code)
- 776.7, Transient neonatal neutropenia

Of special note is the handling of diagnosis code 769 (Respiratory distress syndrome in newborn). Earlier in this preamble, we discussed the proposed removal of this diagnosis code from the definition of proposed retitled DRG 386 (Extreme Immaturity) because, even though it is usually associated with prematurity, it may occur with all levels of prematurity. We are proposing to add respiratory distress syndrome (which was previously assigned to existing DRG 386) to the list of diagnoses that define "principal or secondary diagnosis of major problem" for DRG 387. We are not proposing to add it to the list of diagnoses that define "principal or secondary diagnosis of prematurity" for DRG 387. The rationale for not adding code 769 as a prematurity diagnosis is that it occurs in only a small subset of neonates in the birthweight range of 1,000 to 2,499 grams (2.2 to 5.5 pounds), and the vast majority of occurrences is in the upper end of this birthweight range. Respiratory distress syndrome

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might not be indicative of a major problem for neonates at the low end of this range (for example, those closer to 1,000 to 1,249 grams), because these neonates will most likely have multiple significant problems. Therefore, we are proposing that respiratory distress syndrome be classified as a major problem and included among the list of "principal or secondary diagnosis of major problem" for DRG 387.

In addition, we are proposing to revise the definition for the third defining component of DRG 387, "secondary diagnosis of major problem". This list of major problem diagnoses can only be secondary diagnoses because they are not among the list of principal diagnoses that defines MDC 15 for the Medicare DRG classification system. Based on NACHRI's recommendations, we are proposing to add and remove diagnoses from this list on the same basis as previously described for the list of "principal or secondary diagnosis of major problems" for DRG 387. That is, diagnoses are removed if, in the majority of instances, the condition does not represent a major problem for a newborn at or shortly after birth, and on average exhibits costs similar to the costs associated with neonates without a major problem. In addition, we are proposing to remove the asthma with status asthmaticus diagnosis codes, as these diagnosis codes pertain to newborns or other conditions arising in the perinatal period.

We are proposing to remove the following diagnosis codes from the list of "secondary diagnosis of major problem" for DRG 387:

- 276.5, Volume depletion
- 349.0, Reaction to spinal or lumbar puncture
- 457.2, Lymphangitis
- 493.01, Extrinsic asthma with status asthmaticus
- 493.11, Intrinsic asthma with status asthmaticus
- 493.91, Asthma, unspecified type, with status asthmaticus
- 578.1, Blood in stool
- 683, Acute lymphadenitis
- 693.0, Dermatitis due to drugs and medicines taken internally
- 695.0, Toxic erythema
- 708.0, Allergic urticaria
- 745.4, Ventricular septal defect
- 785.0, Tachycardia, unspecified
- 995.2, Unspecified adverse effect of drug, medicinal and biological substance, not elsewhere classified
- 999.5, Other serum reaction, not elsewhere classified
- 999.6, ABO incompatibility reaction, not elsewhere classified
- 999.7, Rh incompatibility reaction, not elsewhere classified
- 999.8, Other transfusion reaction, not elsewhere classified

We are proposing to add the following 65 diagnosis codes to the list of "secondary diagnosis of major problem" for DRG 387:

- 416.0, Primary pulmonary hypertension
- 416.8, Other chronic pulmonary heart diseases
- 425.3, Endocardial fibroelastosis
- 425.4, Other primary cardiomyopathies
- 427.0, Paroxysmal supraventricular tachycardia
- 427.1, Paroxysmal ventricular tachycardia
- 466.11, Acute bronchiolitis due to respiratory syncytial virus (RSV)
- 466.19, Acute bronchiolitis due to other infectious organisms
- 478.74, Stenosis of larynx
- 480.0, Pneumonia due to adenovirus
- 480.1, Pneumonia due to respiratory syncytial virus
- 480.2, Pneumonia due to parainfluenza virus
- 480.8, Pneumonia due to other virus not elsewhere classified
- 480.9, Viral pneumonia, unspecified
- 745.0, Common truncus
- 745.10, Complete transposition of great vessels
- 745.11, Double outlet right ventricle
- 745.12, Corrected transposition of great vessels
- 745.19, Other transposition of great vessels
- 745.2, Tetralogy of Fallot
- 745.3, Common ventricle
- 745.60, Endocardial cushion defect, unspecified type
- 745.61, Ostium primum defect
- 745.69, Other endocardial cushion defects
- 746.01, Atresia of pulmonary valve, congenital
- 746.1, Tricuspid atresia and stenosis, congenital
- 746.2, Ebstein's anomaly
- 746.7, Hypoplastic left heart syndrome
- 746.81, Subaortic stenosis, congenital
- 746.82, Cor triatriatum
- 746.84, Obstructive anomalies of heart, congenital, not elsewhere classified
- 746.86, Congenital heart block
- 747.10, Coarctation of aorta (preductal) (postductal)
- 747.11, Interruption of aortic arch
- 747.41, Total anomalous pulmonary venous connection
- 747.81, Anomalies of cerebrovascular system, congenital
- 748.3, Other congenital anomalies of larynx, trachea, and bronchus
- 748.4, Cystic lung, congenital
- 748.5, Agenesis, hypoplasia, and dysplasia of lung, congenital
- 750.3, Tracheoesophageal fistula, esophageal atresia and stenosis, congenital
- 751.1, Atresia and stenosis of small intestine, congenital
- 751.2, Atresia and stenosis of large intestine, rectum, and anal canal, congenital
- 751.3, Hirschsprung's disease and other congenital functional disorders of colon
- 751.4, Anomalies of intestinal fixation, congenital
- 751.62, Congenital cystic disease of liver
- 751.69, Other congenital anomalies of gall bladder, bile ducts, and liver
- 751.7, Anomalies of pancreas, congenital
- 753.0, Renal agenesis and dysgenesis
- 753.5, Exstrophy of urinary bladder
- 756.51, Osteogenesis imperfecta
- 756.6, Anomalies of diaphragm, congenital
- 756.70, Congenital anomaly of abdominal wall, unspecified
- 756.71, Prune belly syndrome
- 756.79, Other congenital anomalies of abdominal wall
- 758.1, Patau's Syndrome
- 758.2, Edwards' Syndrome
- 758.3, Autosomal deletion syndromes
- 759.4, Conjoined twins
- 759.7, Multiple congenital anomalies, so described
- 759.81, Prader-Willi Syndrome
- 759.89, Other specified anomalies
- 7797, Periventricular leukomalacia
- 785.51, Cardiogenic shock
- 785.59, Other shock without mention of trauma
- 789.5, Ascites

d. DRG 388 (Prematurity Without Major Problems)

We are proposing to revise the definition for prematurity for DRG 388 ((Prematurity without Major Problems) in the same manner that we proposed to revise the definition of prematurity for DRG 387 (Prematurity with Major Problems).

We are proposing to remove the following five diagnosis codes from the list of codes pertaining to the "principal or secondary diagnosis of prematurity" for DRG 388:

- 765.10, Other preterm infants unspecified (weight)
- 765.11, Other preterm infants, less than 500 grams
- 765.12, Other preterm infants, 500–749 grams
- 765.13, Other preterm infants, 750–999 grams
- 765.19, Other preterm infants, 2,500+ grams

We are proposing to add the following seven diagnosis codes to the definition of principal or secondary diagnosis of prematurity for DRG 388:

- 765.04, Extreme immaturity, 1000–1249 grams
- 765.05, Extreme immaturity, 1250–1499 grams
- 765.24, 27–28 completed weeks of gestation
- 765.25, 29–30 completed weeks of gestation
- 765.26, 31–32 completed weeks of gestation
- 765.27, 33–34 completed weeks of gestation
- 765.28, 35–36 completed weeks of gestation

e. DRG 389 (Full Term Neonate With Major Problem)

We are proposing to revise the definition of "principal or secondary diagnosis of major problem" for DRG 389 (Full Term Neonate with Major Problem) in the same manner that we proposed to revise the definition for DRG 387 (Prematurity with Major Problem).

f. DRG 390 (Neonate With Other Significant Problems)

DRG 390 is defined as patients with "principal or secondary diagnosis of newborn or neonate, with other significant problems, not assigned to DRG 385 through 389, 391, or 469 (principal diagnosis invalid as discharge diagnosis). As a result of our proposed changes to other neonatal DRGs, we are proposing to make conforming changes related to diagnosis codes assigned to DRG 390.

g. DRG 391 (Normal Newborn)

DRG 391 (Normal Newborn) is defined by a list of principal diagnoses (for example, V30, Newborn codes plus certain minor newborn problems) and no secondary diagnoses or only certain secondary diagnoses (that is, minor problem diagnoses). NACHRI recommended that the definition of DRG 391 be modified to expand the number of minor problem newborn diagnoses included in both the list of principal diagnoses and the list of only certain secondary diagnoses that define DRG 391. The diagnoses that we are proposing to add to DRG 391 are conditions that NACHRI has identified as occurring with some frequency in the newborn population and having costs more similar to that of DRG 391 than DRG 390 (Neonates with Other Significant Problems).

We are proposing to add the following diagnosis codes to the list of "principal diagnosis" that defines DRG 391:

- 764.00, "Light-for-dates" without mention of fetal malnutrition, unspecified (weight)
- 764.90, Fetal growth retardation unspecified (weight)
- 765.10, Other preterm infants unspecified (weight)
- 765.19, Other preterm infants, 2,500+ grams
- 765.20, Unspecified weeks of gestation
- 765.29, 37 or more completed weeks of gestation

We also are proposing to add the above six diagnosis codes to the list of "only certain secondary diagnosis" that defines DRG 391, as indicated below. Of these diagnosis codes, NACHRI indicates that the highest volume diagnosis code is 765.19 (Other preterm infants, 2,500+ grams). NACHRI notes that when this diagnosis code is recorded and no major problem or significant problem diagnosis is recorded, these patients have costs that are not much different than those for other normal newborns.

We are proposing to add the following codes to the list of "only certain secondary diagnosis" that defines DRG 391:

- 216.0, Benign neoplasm of skin of lip
- 216.1, Benign neoplasm of eyelid, including canthus
- 216.2, Benign neoplasm of ear and external auditory canal
- 216.3, Benign neoplasm of skin of other and unspecified parts of face
- 216.4, Benign neoplasm of scalp and skin of neck
- 216.5, Benign neoplasm of skin of trunk, except scrotum
- 216.6, Benign neoplasm of skin of upper limb, including shoulder
- 216.7, Benign neoplasm of skin of lower limb, including hip
- 216.8, Benign neoplasm of other specified sites of skin
- 216.9, Benign neoplasm of skin, site unspecified
- 228.00, Hemangioma of unspecified site
- 228.01, Hemangioma of skin and subcutaneous tissue
- 228.1, Lymphangioma, any site
- 379.8, Other specified disorders of eye and adnexa
- 379.90, Disorder of eye, unspecified
- 379.92, Swelling or mass of eye
- 379.93, Redness or discharge of eye
- 379.99, Other ill-defined disorders of eye
- 427.60, Premature beats, unspecified
- 427.61, Supraventricular premature beats
- 427.9, Cardiac dysrhythmia, unspecified
- 528.4, Cysts of oral soft tissues
- 553.1, Umbilical hernia without mention of obstruction or gangrene
- 603.8, Other specified types of hydrocele
- 603.9, Hydrocele, unspecified
- 607.89, Other specified disorders of penis
- 607.9, Unspecified disorder of penis and perineum
- 624.9, Unspecified noninflammatory disorder of vulva and perineum
- 692.9, Contact dermatitis and other eczema unspecified cause
- 701.1, Keratoderma, acquired
- 701.3, Striae atrophicae
- 701.8, Other specified hypertrophic and atrophic conditions of skin
- 701.9, Unspecified hypertrophic and atrophic conditions of skin
- 702.8, Other specified dermatoses
- 705.1, Prickly heat
- 706.1, Other acne
- 706.2, Sebaceous cyst
- 709.8, Other specified disorders of skin
- 709.9, Unspecified disorder of skin and subcutaneous tissue
- 719.61, Other symptoms referable to joint of shoulder region
- 719.65, Other symptoms referable to joint of pelvic region and thigh
- 755.00, Polydactyly, unspecified digits
- 755.01, Polydactyly of fingers
- 755.02, Polydactyly of toes
- 755.10, Syndactyly of multiple and unspecified sites
- 755.11, Syndactyly of fingers without fusion of bone
- 755.12, Syndactyly of fingers with fusion of bone
- 755.13, Syndactyly of toes without fusion of bone
- 755.14, Syndactyly of toes with fusion of bone
- 755.66, Other congenital anomalies of toes
- 755.67, Anomalies of foot, congenital, not elsewhere classified
- 755.9, Unspecified congenital anomaly of unspecified limb
- 757.2, Dermatoglyphic anomalies
- 757.32, Vascular hamartomas
- 757.39, Other specified congenital anomalies of skin
- 757.4, Specified congenital anomalies of hair
- 757.5, Specified congenital anomalies of nails
- 757.6, Specified congenital anomalies of breast
- 757.8, Other specified congenital anomalies of the integument
- 757.9, Unspecified congenital anomaly of the integument
- 760.0, Maternal hypertensive disorders affecting fetus or newborn

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- 760.1, Maternal renal and urinary tract diseases affecting fetus or newborn
- 760.2, Maternal infections affecting fetus or newborn
- 760.3, Other chronic maternal circulatory and respiratory diseases affecting fetus or newborn
- 760.4, Maternal nutritional disorders affecting fetus or newborn
- 760.5, Maternal injury affecting fetus or newborn
- 760.6, Surgical operation on mother affecting fetus or newborn
- 760.70, Unspecified noxious substance affecting fetus or newborn via placenta or breast milk
- 760.74, Anti-infectives affecting fetus or newborn via placenta or breast milk
- 760.76, Diethylstilbestrol (DES) exposure affecting fetus or newborn via placenta or breast milk
- 760.79, Other noxious influences affecting fetus or newborn via placenta or breast milk
- 760.8, Other specified maternal conditions affecting fetus or newborn
- 760.9, Unspecified maternal condition affecting fetus or newborn
- 761.0, Incompetent cervix affecting fetus or newborn
- 761.1, Premature rupture of membranes affecting fetus or newborn
- 761.5, Multiple pregnancy affecting fetus or newborn
- 761.7, Malpresentation before labor affecting fetus or newborn
- 761.8, Other specified maternal complications of pregnancy affecting fetus or newborn
- 761.9, Unspecified maternal complication of pregnancy affecting fetus or newborn
- 762.8, Other specified abnormalities of chorion and amnion affecting fetus or newborn
- 762.9, Unspecified abnormality of chorion and amnion affecting fetus or newborn
- 763.4, Cesarean delivery affecting fetus or newborn
- 763.5, Maternal anesthesia and analgesia affecting fetus or newborn
- 763.7, Abnormal uterine contractions affecting fetus or newborn
- 763.89, Other specified complications of labor and delivery affecting fetus or newborn
- 764.00, "Light-for-dates" without mention of fetal malnutrition, unspecified (weight)
- 764.90, Fetal growth retardation unspecified (weight)
- 765.10, Other preterm infants unspecified (weight)
- 765.19, Other preterm infants, 2,500+ grams
- 765.20, Unspecified weeks of gestation
- 765.29, 37 or more completed weeks of gestation
- 767.2, Fracture of clavicle due to birth trauma
- 767.3, Other injuries to skeleton due to birth trauma
- 767.8, Other specified birth trauma
- 767.9, Unspecified birth trauma
- 768.2, Fetal distress before onset of labor, in liveborn infant
- 768.3, Fetal distress first noted during labor, in liveborn infant
- 768.4, Fetal distress, unspecified as to time of onset, in liveborn infant
- 768.9, Unspecified severity of birth asphyxia in liveborn infant
- 70.9, Unspecified respiratory condition of fetus and newborn
- 772.8, Other specified hemorrhage of fetus or newborn
- 772.9, Unspecified hemorrhage of newborn
- 773.1, Hemolytic disease due to ABO isoimmunization of fetus or newborn
- 773.2, Hemolytic disease due to other and unspecified isoimmunization of fetus or newborn
- 773.5, Late anemia due to isoimmunization of fetus or newborn
- 775.6, Neonatal hypoglycemia
- 775.9, Unspecified endocrine and metabolic disturbances specific to the fetus and newborn
- 776.4, Polycythemia neonatorum
- 776.8, Other specified transient hematological disorders of fetus or newborn
- 776.9, Unspecified hematological disorder specific to fetus or newborn
- 777.1, Meconium obstruction in fetus or newborn
- 777.3, Hematemesis and melena due to swallowed maternal blood of newborn
- 777.8, Other specified perinatal disorders of digestive system
- 777.9, Unspecified perinatal disorder of digestive system
- 778.3, Other hypothermia of newborn
- 778.4, Other disturbances of temperature regulation of newborn
- 778.6, Congenital hydrocele
- 778.7, Breast engorgement in newborn
- 778.9, Unspecified condition involving the integument and temperature regulation of fetus and newborn
- 779.9, Unspecified condition originating in the perinatal period
- 780.6, Fever
- 781.0, Abnormal involuntary movements
- 781.3, Lack of coordination
- 782.1, Rash and other nonspecific skin eruption
- 782.2, Localized superficial swelling, mass, or lump
- 782.4, Jaundice, unspecified, not of newborn
- 782.61, Pallo
- 782.62, Flushin
- 782.7, Spontaneous ecchymose
- 782.8, Changes in skin texture
- 782.9, Other symptoms involving skin and integumentary tissues
- 783.3, Feeding difficulties and mismanagement
- 784.2, Swelling, mass, or lump in head and neck
- 784.9, Other symptoms involving head and neck
- 785.2, Undiagnosed cardiac murmurs
- 785.3, Other abnormal heart sounds
- 785.9, Other symptoms involving cardiovascular system
- 786.00, Respiratory abnormality, unspecified
- 786.7, Abnormal chest sounds
- 786.9, Other symptoms involving respiratory system and chest
- 787.3, Flatulence, eructation, and gas pain
- 790.6, Other abnormal blood chemistry
- 790.7, Bacteremia
- 790.99, Other nonspecific findings on examination of blood
- 795.6, False positive serological test for syphilis
- 795.79, Other and unspecified nonspecific immunological findings
- 796.1, Abnormal reflex
- 910.0, Abrasion or frictions burn of face, neck, and scalp except eye, without mention of infection
- 910.2, Blister of face, neck, and scalp except eye, without mention of infection
- 910.8, Other and unspecified superficial injury of face, neck, and scalp, without mention of infection
- 920, Contusion of face, scalp, and neck except eye(s)
- 999.5, Other serum reaction, not elsewhere classified
- 999.6, ABO incompatibility reaction, not elsewhere classified
- V01.1, Contact with or exposure to tuberculosis
- V01.6, Contact with or exposure to venereal diseases
- V01.7, Contact with or exposure to other viral diseases
- V01.81, Contact with or exposure to communicable diseases, anthrax
- V01.89, Contact with or exposure to communicable diseases, other communicable diseases
- V01.9, Contact with or exposure to unspecified communicable disease
- V02.3, Carrier or suspected carrier of other gastrointestinal pathogens
- V05.3, Need for prophylactic vaccination and inoculation against viral hepatitis
- V05.4, Need for prophylactic vaccination and inoculation against varicella
- V05.8, Need for prophylactic vaccination and inoculation against other specified disease
- V05.9, Need for prophylactic vaccination and inoculation against unspecified single disease
- V07.8, Need for other specified prophylactic measure
- V07.9, Need for unspecified prophylactic measure
- V18.0, Family history of diabetes mellitus
- V18.1, Family history of other endocrine and metabolic diseases
- V18.2, Family history of anemia
- V18.3, Family history of other blood disorders
- V18.8, Family history of infectious and parasitic diseases
- V19.2, Family history of deafness or hearing loss
- V19.8, Family history of other condition
- V71.9, Observation for unspecified suspected condition
- V72.0, Examination of eyes and vision
- V72.6, Laboratory examination
- V73.89, Special screening examination for other specified viral diseases
- V73.99, Special screening examination for unspecified viral disease

7. MDC 23 (Factors Influencing Health Status and Other Contacts With Health Services)

In the August 1, 2001 final rule, we included in Table 6A—New Diagnosis Codes (66 FR 40064) code V10.53 (History of malignancy, renal pelvis), which was approved by the ICD–9–CM Coordination and Maintenance Committee as a new code effective October 1, 2001. We assigned the code to DRG 411 (History of Malignancy without Endoscopy) and DRG 412 (History of Malignancy with Endoscopy).

We received correspondence which suggested that we should have also assigned code V10.53 to DRG 465 (Aftercare with History of Malignancy as Secondary Diagnosis). The correspondent pointed out that all other codes for a history of malignancy are included in DRG 465.

We agree that code V10.53 should be included in the list of the history of malignancy codes within DRG 465. Therefore, we are proposing to add V10.53 to the list of secondary diagnosis in DRG 465.

8. Pre-MDC: Tracheostomy

DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses) is used to classify patients who require long-term mechanical ventilation.

Mechanical ventilation can be administered through an endotracheal tube for a limited period of time. When an endotracheal tube is used for an extended period of time (beyond 7 to 10 days), the patient runs a high risk of permanent damage to the trachea. In order to maintain a patient on mechanical ventilation for a longer period of time, the endotracheal tube is removed and a tracheostomy is performed. The mechanical ventilation is then administered through the tracheostomy.

A tracheostomy also may be performed on patients for therapeutic purposes unrelated to the administration of mechanical ventilation. Patients with certain face, mouth, and neck disease may have a tracheostomy performed as part of the treatment for the face, mouth, or neck disease. These patients are assigned to DRG 482 (Tracheostomy for Face, Mouth and Neck Diagnoses).

Therefore, patients assigned to DRGs 482 and 483 are differentiated based on the principal diagnosis of the patient. At certain times, selecting the appropriate principal diagnosis for the patients receiving tracheostomies for assignment to a DRG can be difficult. The overall number of tracheostomy patients increased by 13 percent between 1994 and 1999. During the same period, the percent of tracheostomy patients in DRG 483 (patients without certain face, mouth, or neck diseases) versus DRG 482 increased from 83.6 percent to 87.6 percent.

The payment weight for DRG 483 is more than four times greater than the DRG 482 payment weight, and this has led to concerns about coding compliance. Specifically, the fact that cases are assigned to DRG 483 based on the absence of a code indicating face, mouth, or neck diagnosis creates an incentive to omit codes indicating these diagnoses.

To address issues of possible coding noncompliance, we are proposing to modify DRGs 482 and 483 to differentiate the assignment to either DRG based on the presence or absence of continuous mechanical ventilation that lasts more than 96 hours (code 96.72). This modification would ensure that the patients assigned to DRG 483 are patients who had the tracheostomy for long-term mechanical ventilation. Based on an examination of claims data from the FY 2001 MedPAR file, we found that many patients assigned to DRG 483 do not have the code 96.72 for mechanical ventilation greater than 96 hours recorded. In part, this is the result of the limited number of procedure codes (six) that can be submitted on the current uniform hospital claim form, and the fact that code 96.72 does not currently affect the DRG assignment.

We found that many of the patients who are assigned to DRG 483 have multiple procedures, making it impossible for all procedures performed to be submitted on the hospital claim form. Because of the current underreporting of code 96.72 for continuous mechanical ventilation greater than 96 hours, we do not believe we can accurately determine the payment weights for modified DRGs 482 and 483 as described above.

In order to encourage the reporting of the code 96.72 for continuous mechanical ventilation for greater than 96 hours, we are proposing to change the definition of DRG 483 so that patients who have a tracheostomy and continuous mechanical ventilation greater than 96 hours (code 96.72) with a principal diagnosis unrelated to disease of the face, mouth, or neck would be assigned to DRG 483. DRG 483 would be retitled "Tracheostomy/ Mechanical Ventilation 96+ Hours Except Face, Mouth, and Neck Diagnosis."

We will give future consideration to modifying DRGs 482 and DRG 483 based on the presence of code 96.72, and invite comments on this area.

9. Medicare Code Editor (MCE) Change

As explained under section II.B.1. of this preamble, the MCE is a software program that detects and reports errors in the coding of Medicare claims data.

The MCE includes an edit for "nonspecific principal diagnosis" that identifies a group of codes that are valid according to the ICD–9–CM coding scheme, but are not as specific as the coding scheme permits. The fiscal intermediaries use cases identified in this edit for educational purposes for hospitals only. That is, when a hospital reaches a specific threshold of cases (usually 25) in this edit, the fiscal intermediary will contact the hospital and educate it on how to code diagnoses using more specific codes in the ICD–9–CM coding scheme. The claims identified in this nonspecific principal diagnosis edit are neither denied nor returned to the hospital.

Code 436 (Acute, but ill-defined, cerebrovascular disease) is one of the codes included in the groups of codes identified in the nonspecific principal diagnosis edit, and is widely used in smaller hospitals where testing mechanisms are not available to more specifically identify the location and condition of cerebral and precerebral vessels. Because of the frequent use of code 436 among smaller hospitals, we

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are proposing to remove the code from the nonspecific principal diagnosis edit in the MCE. We address the use of code 436 in section II.B.3. of this proposed rule under the discussion of MDC 5 changes with regard to the remodeling of DRGs 14 and 15.

10. Surgical Hierarchies

Some inpatient stays entail multiple surgical procedures, each one of which, occurring by itself, could result in assignment of the case to a different DRG within the MDC to which the principal diagnosis is assigned. Therefore, it is necessary to have a decision rule within the GROUPER by which these cases are assigned to a single DRG. The surgical hierarchy, an ordering of surgical classes from most resource-intensive to least resource-intensive, performs that function. Its application ensures that cases involving multiple surgical procedures are assigned to the DRG associated with the most resource-intensive surgical class.

Because the relative resource intensity of surgical classes can shift as a function of DRG reclassification and recalibrations, we reviewed the surgical hierarchy of each MDC, as we have for previous reclassifications and recalibrations, to determine if the ordering of classes coincides with the intensity of resource utilization.

A surgical class can be composed of one or more DRGs. For example, in MDC 11, the surgical class "kidney transplant" consists of a single DRG (DRG 302) and the class "kidney, ureter and major bladder procedures" consists of three DRGs (DRGs 303, 304, and 305). Consequently, in many cases, the surgical hierarchy has an impact on more than one DRG. The methodology for determining the most resource-intensive surgical class involves weighting the average resources for each DRG by frequency to determine the weighted average resources for each surgical class. For example, assume surgical class A includes DRGs 1 and 2 and surgical class B includes DRGs 3, 4, and 5. Assume also that the average charge of DRG 1 is higher than that of DRG 3, but the average charges of DRGs 4 and 5 are higher than the average charge of DRG 2. To determine whether surgical class A should be higher or lower than surgical class B in the surgical hierarchy, we would weight the average charge of each DRG in the class by frequency (that is, by the number of cases in the DRG) to determine average resource consumption for the surgical class. The surgical classes would then be ordered from the class with the highest average resource utilization to that with the lowest, with the exception of "other O.R. procedures" as discussed below.

This methodology may occasionally result in assignment of a case involving multiple procedures to the lower-weighted DRG (in the highest, most resource-intensive surgical class) of the available alternatives. However, given that the logic underlying the surgical hierarchy provides that the GROUPER searches for the procedure in the most resource-intensive surgical class, this result is unavoidable.

We note that, notwithstanding the foregoing discussion, there are a few instances when a surgical class with a lower average charge is ordered above a surgical class with a higher average charge. For example, the "other O.R. procedures" surgical class is uniformly ordered last in the surgical hierarchy of each MDC in which it occurs, regardless of the fact that the average charge for the DRG or DRGs in that surgical class may be higher than that for other surgical classes in the MDC. The "other O.R. procedures" class is a group of procedures that are only infrequently related to the diagnoses in the MDC but are still occasionally performed on patients in the MDC with these diagnoses. Therefore, these procedures should only be considered if no other procedure more closely related to the diagnoses in the MDC has been performed.

A second example occurs when the difference between the average charges for two surgical classes is very small. We have found that small differences generally do not warrant reordering of the hierarchy since, as a result of the hierarchy change, the average charges are likely to shift such that the higher-ordered surgical class has a lower average charge than the class ordered below it.

Based on the preliminary recalibration of the DRGs, we are proposing modifications of the surgical hierarchy as set forth below.

At this time, we are proposing to revise the surgical hierarchy for the pre-MDC DRGs and for MDC 5 (Diseases and Disorders of the Circulatory System) as follows:

- In the pre-MDC DRGs, we are proposing to reorder DRG 495 (Lung Transplant) above DRG 512 (Simultaneous Pancreas/Kidney Transplant).
- In MDC 5, we are proposing to reorder DRG 525 (Heart Assist System Implant) above DRGs 104 and 105 (Cardiac Valve and Other Major Cardiothoracic Procedures with and without Cardiac Catheterization, respectively).

11. Refinement of Complications and Comorbidities (CC) List

In the September 1, 1987 final notice (52 FR 33143) concerning changes to the DRG classification system, we modified the GROUPER logic so that certain diagnoses included on the standard list of CCs would not be considered valid CCs in combination with a particular principal diagnosis. Thus, we created the CC Exclusions List. We made these changes for the following reasons: (1) To preclude coding of CCs for closely related conditions; (2) to preclude duplicative coding or inconsistent coding from being treated as CCs; and (3) to ensure that cases are appropriately classified between the complicated and uncomplicated DRGs in a pair. We developed this standard list of diagnoses using physician panels to include those diagnoses that, when present as a secondary condition, would be considered a substantial complication or comorbidity. In previous years, we have made changes to the standard list of CCs, either by adding new CCs or deleting CCs already on the list. At this time, we are not proposing to delete any of the diagnosis codes on the CC list.

In the May 19, 1987 proposed notice (52 FR 18877) concerning changes to the DRG classification system, we explained that the excluded secondary diagnoses were established using the following five principles:

- Chronic and acute manifestations of the same condition should not be considered CCs for one another (as subsequently corrected in the September 1, 1987 final notice (52 FR 33154)).
- Specific and nonspecific (that is, not otherwise specified (NOS)) diagnosis codes for the same condition should not be considered CCs for one another.
- Codes for the same condition that cannot coexist, such as partial/total, unilateral/bilateral, obstructed/unobstructed, and benign/malignant, should not be considered CCs for one another.
- Codes for the same condition in anatomically proximal sites should not be considered CCs for one another.
- Closely related conditions should not be considered CCs for one another.

The creation of the CC Exclusions List was a major project involving hundreds of codes. The FY 1988 revisions were intended only as a first step toward refinement of the CC list in that the criteria used for eliminating certain diagnoses from consideration as CCs were intended to identify only the most obvious diagnoses that should not be considered CCs of another diagnosis. For that reason, and in light of comments and questions on the CC list, we have continued to review the remaining CCs to identify additional exclusions and to remove diagnoses from the master list that have been shown not to meet the definition of a CC. (See the September 30, 1988 final rule (53 FR 38485) for the revision made for the discharges occurring in FY 1989; the September 1, 1989 final rule (54 FR 36552) for the FY 1990 revision; the September 4, 1990 final rule (55 FR 36126) for the FY 1991 revision; the August 30, 1991 final rule (56 FR 43209) for the FY 1992 revision; the September 1, 1992 final rule (57 FR 39753) for the FY 1993 revision; the September 1, 1993 final rule (58 FR 46278) for the FY 1994 revisions; the September 1, 1994 final rule (59 FR 45334) for the FY 1995 revisions; the September 1, 1995 final rule (60 FR 45782) for the FY 1996 revisions; the August 30, 1996 final rule (61 FR 46171) for the FY 1997 revisions; the August 29, 1997 final rule (62 FR 45966) for the FY 1998 revisions; the July 31, 1998 final rule (63 FR 40954) for the FY 1999 revisions, the August 1, 2000 final rule (65 FR 47064) for the FY 2001 revisions; and the August 1, 2001 final rule (66 FR 39851) for the FY 2002 revisions. In the July 30, 1999 final rule (64 FR 41490), we did not modify the CC Exclusions List for FY 2000 because we did not make any changes to the ICD–9–CM codes for FY 2000.

We are proposing a limited revision of the CC Exclusions List to take into account the proposed changes that will be made in the ICD–9–CM diagnosis coding system effective October 1, 2002. (See section II.B.13. of this preamble for a discussion of ICD–9–CM changes.) These proposed changes are being made in accordance with the principles established when we created the CC Exclusions List in 1987.

Tables 6G and 6H in the Addendum to this proposed rule contain the revisions to the CC Exclusions List that would be effective for discharges occurring on or after October 1, 2002. Each table shows the principal diagnoses with changes to the excluded CCs. Each of these principal diagnoses is shown with an asterisk, and the additions or deletions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.

CCs that are added to the list are in Table 6G—Additions to the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses would not be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

CCs that are deleted from the list are in Table 6H—Deletions from the CC Exclusions List. Beginning with discharges on or after October 1, 2002, the indented diagnoses would be recognized by the GROUPER as valid CCs for the asterisked principal diagnosis.

Copies of the original CC Exclusions List applicable to FY 1988 can be obtained from the National Technical Information Service (NTIS) of the Department of Commerce. It is available in hard copy for $133.00 plus shipping and handling. A request for the FY 1988 CC Exclusions List (which should include the identification accession number (PB) 88–133970) should be made to the following address: National Technical Information Service, United States Department of Commerce, 5285 Port Royal Road, Springfield, VA 22161; or by calling (800) 553–6847.

Users should be aware of the fact that all revisions to the CC Exclusions List (FYs 1989, 1990, 1991, 1992, 1993, 1994, 1995, 1996, 1997, 1998, 1999, 2000, and 2002) and those in Tables 6F and 6G of the final rule for FY 2003 must be incorporated into the list purchased from NTIS in order to obtain the CC Exclusions List applicable for discharges occurring on or after October 1, 2002. (Note: There was no CC Exclusions List in FY 2001 because we did not make changes to the ICD–9-CM codes for FY 2001.)

Alternatively, the complete documentation of the GROUPER logic, including the current CC Exclusions List, is available from 3M/Health Information Systems (HIS), which, under contract with CMS, is responsible for updating and maintaining the GROUPER program. The current DRG Definitions Manual, Version 19.0, is available for $225.00, which includes $15.00 for shipping and handling. Version 20.0 of this manual, which includes the final FY 2002 DRG changes, is available for $225.00. These manuals may be obtained by writing 3M/HIS at the following address: 100 Barnes Road, Wallingford, CT 06492; or by calling (203) 949–0303. Please specify the revision or revisions requested.

12. Review of Procedure Codes in DRGs 468, 476, and 477

Each year, we review cases assigned to DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis), DRG 476 (Prostatic O.R. Procedure Unrelated to Principal Diagnosis), and DRG 477 (Nonextensive O.R. Procedure Unrelated to Principal Diagnosis) to determine whether it would be appropriate to change the procedures assigned among these DRGs.

DRGs 468, 476, and 477 are reserved for those cases in which none of the O.R. procedures performed are related to the principal diagnosis. These DRGs are intended to capture atypical cases, that is, those cases not occurring with sufficient frequency to represent a distinct, recognizable clinical group. DRG 476 is assigned to those discharges in which one or more of the following prostatic procedures are performed and are unrelated to the principal diagnosis:

60.0 Incision of prostate
60.12 Open biopsy of prostate
60.15 Biopsy of periprostatic tissue
60.18 Other diagnostic procedures on prostate and periprostatic tissue
60.21 Transurethral prostatectomy
60.29 Other transurethral prostatectomy
60.61 Local excision of lesion of prostate
60.69 Prostatectomy NEC
60.81 Incision of periprostatic tissue
60.82 Excision of periprostatic tissue
60.93 Repair of prostate
60.94 Control of (postoperative) hemorrhage of prostate
60.95 Transurethral balloon dilation of the prostatic urethra
60.99 Other operations on prostate

All remaining O.R. procedures are assigned to DRGs 468 and 477, with DRG 477 assigned to those discharges in which the only procedures performed are nonextensive procedures that are unrelated to the principal diagnosis. The original list of the ICD–9–CM procedure codes for the procedures we consider nonextensive procedures, if performed with an unrelated principal diagnosis, was published in Table 6C in section IV. of the Addendum to the September 30, 1988 final rule (53 FR 38591). As part of the final rules published on September 4, 1990 (55 FR 36135), August 30, 1991 (56 FR 43212), September 1, 1992 (57 FR 23625), September 1, 1993 (58 FR 46279), September 1, 1994 (59 FR 45336), September 1, 1995 (60 FR 45783), August 30, 1996 (61 FR 46173), and August 29, 1997 (62 FR 45981), we moved several other procedures from DRG 468 to 477, and some procedures from DRG 477 to 468. No procedures were moved in FY 1999, as noted in the July 31, 1998 final rule (63 FR 40962); in FY 2000, as noted in the July 30, 1999 final rule (64 FR 41496); in FY 2001, as noted in the August 1, 2000 final rule (65 FR 47064); or in FY 2002, as noted in the August 1, 2001 final rule (66 FR 39852).

a. Moving Procedure Codes From DRGs 468 or 477 to MDCs

We annually conduct a review of procedures producing assignment to

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DRG 468 or DRG 477 on the basis of volume, by procedure, to see if it would be appropriate to move procedure codes out of these DRGs into one of the surgical DRGs for the MDC into which the principal diagnosis falls. The data are arrayed two ways for comparison purposes. We look at a frequency count of each major operative procedure code. We also compare procedures across MDCs by volume of procedure codes within each MDC.

We identified those procedures occurring in conjunction with certain principal diagnoses with sufficient frequency to justify adding them to one of the surgical DRGs for the MDC in which the diagnosis falls. Based on this year's review, we did not identify any necessary changes in procedures under DRG 477. Therefore, we are not proposing to move any procedures from DRG 477 to one of the surgical DRGs. However, we have identified a number of procedure codes that should be removed from DRG 468 and put into more clinically coherent DRGs. The proposed assignments of these codes are specified in the charts below.

MOVEMENT OF PROCEDURE CODES FROM DRG 468

Procedure Code	Description	Included in DRG	Description
MDC 6—Diseases and Disorders of the Digestive System			
387	Interruption vena cava	170	Other Digestive System O.R. Procedures with CC.
387	Interruption vena cava	171	Other Digestive System O.R. Procedures without CC.
3950	Angioplasty or atherectomy of noncoronary vessel	170	Other Digestive System O.R. Procedures with CC.
3950	Angioplasty or atherectomy of noncoronary vessel	171	Other Digestive System O.R. Procedures without CC.
MDC 7—Diseases and Disorders of the Hepatobiliary System and Pancreas			
387	Interruption vena cava	201	Other Hepatobiliary & Pancreas Procedures.
3949	Other revision of vascular procedure	201	Other Hepatobiliary & Pancreas Procedures.
3950	Angioplasty or atherectomy of noncoronary vessel	201	Other Hepatobiliary & Pancreas Procedures.
MDC 8—Diseases and Disorders of the Musculoskeletal System and Connective Tissue			
387	Interruption vena cava	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
387	Interruption vena cava	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
3950	Angioplasty or atherectomy of noncoronary vessel	233	Other Musculoskeletal System & Connective Tissue O.R. Procedures with CC.
3950	Angioplasty or atherectomy of noncoronary vessel	234	Other Musculoskeletal System & Connective Tissue O.R. Procedures without CC.
MDC 9—Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast			
8344	Other fasciectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8344	Other fasciectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8345	Other myectomy	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8345	Other myectomy	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
8382	Muscle or fascia graft	269	Other Skin, Subcutaneous Tissue & Breast Procedures with CC.
8382	Muscle or fascia graft	270	Other Skin, Subcutaneous Tissue & Breast Procedures without CC.
MDC 10—Endocrine, Nutritional and Metabolic Diseases and Disorders			
387	Interruption vena cava	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
387	Interruption vena cava	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
5459	Other Lysis of Peritoneal adhesions	292	Other Endocrine, Nutritional, & Metabolic O.R. Procedures with CC.
5459	Other Lysis of Peritoneal adhesions	293	Other Endocrine, Nutritional, & Metabolic O.R. Procedures without CC.
MC 11—Diseases and Disorders of the Kidney and Urinary Tract			
0492	Implantation or replacement of peripheral neurostimulator.	315	Other Kidney & Urinary Tract O.R. Procedures.
3821	Blood vessel biopsy	315	Other Kidney & Urinary Tract O.R. Procedures.
387	Interruption vena cava	315	Other Kidney & Urinary Tract O.R. Procedures.
3949	Other revision of vascular procedure	315	Other Kidney & Urinary Tract O.R. Procedures.

MOVEMENT OF PROCEDURE CODES FROM DRG 468—Continued

Procedure Code	Description	Included in DRG	Description
MDC 12—Diseases and Disorders Male Reproductive System			
387	Interruption vena cava	344	Other Male Reproductive System O.R. Procedures for Malignancy.
387	Interruption vena cava	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
8622	Excisional debridement of wound, infection, or burn	344	Other Male Reproductive System O.R. Procedures for Malignancy.
8622	Excisional debridement of wound, infection, or burn	345	Other Male Reproductive System O.R. Procedures Except for Malignancy.
MDC 13—Diseases and Disorders of the Female Reproductive System			
387	Interruption vena cava	365	Other Female Reproductive System O.R. Procedures.
MDC 16—Diseases and Disorders of the Blood, Blood Forming Organs, Immunological Disorders			
387	Interruption vena cava	394	Other O.R. Procedures of the Blood & Blood Forming Organs.

b. Reassignment of Procedures Among DRGs 468, 476, and 477

We also annually review the list of ICD–9–CM procedures that, when in combination with their principal diagnosis code, result in assignment to DRGs 468, 476, and 477, to ascertain if any of those procedures should be reassigned from one of these DRGs to another of these DRGs based on average charges and length of stay. We look at the data for trends such as shifts in treatment practice or reporting practice that would make the resulting DRG assignment illogical. If we find these shifts, we would propose moving cases to keep the DRGs clinically similar or to provide payment for the cases in a similar manner. Generally, we move only those procedures for which we have an adequate number of discharges to analyze the data. Based on our review this year, we are not proposing to move any procedures from DRG 468 to DRGs 476 or 477, from DRG 476 to DRGs 468 or 477, or from DRG 477 to DRGs 468 or 476.

c. Adding Diagnosis Codes to MDCs

Based on our review this year, we are not proposing to add any diagnosis codes to MDCs.

13. Changes to the ICD–9–CM Coding System

As described in section II.B.1. of this preamble, the ICD–9–CM is a coding system that is used for the reporting of diagnoses and procedures performed on a patient. In September 1985, the ICD–9–CM Coordination and Maintenance Committee was formed. This is a Federal interdepartmental committee, co-chaired by the National Center for Health Statistics (NCHS) and CMS, charged with maintaining and updating the ICD–9–CM system. The Committee is jointly responsible for approving coding changes, and developing errata, addenda, and other modifications to the ICD–9–CM to reflect newly developed procedures and technologies and newly identified diseases. The Committee is also responsible for promoting the use of Federal and non-Federal educational programs and other communication techniques with a view toward standardizing coding applications and upgrading the quality of the classification system.

The NCHS has lead responsibility for the ICD–9–CM diagnosis codes included in the *Tabular List* and *Alphabetic Index for Diseases*, while CMS has lead responsibility for the ICD–9–CM procedure codes included in the *Tabular List* and *Alphabetic Index for Procedures*.

The Committee encourages participation in the above process by health-related organizations. In this regard, the Committee holds public meetings for discussion of educational issues and proposed coding changes. These meetings provide an opportunity for representatives of recognized organizations in the coding field, such as the American Health Information Management Association (AHIMA) (formerly American Medical Record Association (AMRA)), the American Hospital Association (AHA), and various physician specialty groups as well as physicians, medical record administrators, health information management professionals, and other members of the public, to contribute ideas on coding matters. After considering the opinions expressed at the public meetings and in writing, the Committee formulates recommendations, which then must be approved by the agencies.

The Committee presented proposals for coding changes for implementation in FY 2003 at public meetings held on May 17 and 18, 2001, and November 1 and 2, 2001, and finalized the coding changes after consideration of comments received at the meetings and in writing by January 8, 2002.

Copies of the Coordination and Maintenance Committee minutes of the 2001 meetings can be obtained from the CMS home page at: *http://www.cms.gov/medicare/icd9cm.htm*. Paper copies of these minutes are no longer available and the mailing list has been discontinued. We encourage commenters to address suggestions on coding issues involving diagnosis codes to: Donna Pickett, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; NCHS; Room 1100; 6525 Belcrest Road; Hyattsville, MD 20782. Comments may be sent by E-mail to: *dfp4@cdc.gov*.

Questions and comments concerning the procedure codes should be addressed to: Patricia E. Brooks, Co-Chairperson; ICD–9–CM Coordination and Maintenance Committee; CMS, Center for Medicare Management, Purchasing Policy Group, Division of Acute Care; C4–08–06; 7500 Security Boulevard; Baltimore, MD 21244–1850. Comments may be sent by E-mail to: *pbrooks@cms.hhs.gov*.

The ICD–9–CM code changes that have been approved will become effective October 1, 2002. The new ICD–

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9–CM codes are listed, along with their DRG classifications, in Tables 6A and 6B (New Diagnosis Codes and New Procedure Codes, respectively) in the Addendum to this proposed rule. As we stated above, the code numbers and their titles were presented for public comment at the ICD–9–CM Coordination and Maintenance Committee meetings. Both oral and written comments were considered before the codes were approved. In this proposed rule, we are only soliciting comments on the proposed DRG classification of these new codes.

Further, the Committee has approved the expansion of certain ICD–9–CM codes to require an additional digit for valid code assignment. Diagnosis codes that have been replaced by expanded codes or other codes or have been deleted are in Table 6C (Invalid Diagnosis Codes). These invalid diagnosis codes will not be recognized by the GROUPER beginning with discharges occurring on or after October 1, 2002. For codes that have been replaced by new or expanded codes, the corresponding new or expanded diagnosis codes are included in Table 6A (New Diagnosis Codes). New procedure codes are shown in Table 6B. Table 6C contains invalid diagnosis codes. There are no invalid procedure codes for FY 2002 (Table 6D). Revisions to diagnosis code titles are in Table 6E (Revised Diagnosis Code Titles), which also includes the DRG assignments for these revised codes. Revisions to procedure code titles are in Table 6F (Revised Procedure Codes Titles).

14. Other Issues

In addition to the specific topics discussed in section II.B.1. through 13. of this proposed rule, we examined a number of other DRG-related issues. Below is a summary of the issues that were addressed. However, we are not proposing any changes at this time.

a. Intestinal Transplantation

We examined our data to determine whether it is appropriate to propose a new intestinal transplant DRG. There were nine intestinal transplantation cases reported by two facilities. Two of the cases involved a liver transplant during the same admission and, therefore, would be assigned to DRG 480 (Liver Transplant). We do not believe that this is a sufficient sample size to warrant the creation of a new DRG.

b. Myasthenia Gravis

Myasthenia Gravis is an autoimmune disease manifested by a syndrome of fatigue and exhaustion of the muscles that is aggravated by activity and relieved by rest. The weakness of the muscles can range from very mild to life-threatening.

This disease is classified to ICD–9–CM diagnosis code 358.0 and is assigned to DRG 12 (Degenerative Nervous System Disorders). Myasthenia Gravis in crisis patients is being treated with extensive plasmapheresis. We received a request to analyze the charges associated with Myasthenia Gravis in crisis patients receiving plasmapheresis to determine whether DRG 12 is an equitable DRG assignment for these cases. We are currently unable to differentiate between the mild and severe forms of this disease because all types are classified to code 358.0. Therefore, we have requested the NCHS to create a new diagnosis code for Myasthenia Gravis in crisis so that we can uniquely identify these cases to ensure the DRG assignment is appropriate.

c. Cardiac Mapping and Ablation

In the August 1, 2001 final rule (66 FR 39840), in response to a comment received, we agreed to continue to evaluate DRGs 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)), 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI), and 518 (Percutaneous Cardiovascular Procedure without Coronary Artery Stent or AMI) in MDC 5. We reviewed code 37.26 (Cardiac electrophysiologic stimulation and recording studies), code 37.27 (Cardiac mapping), and code 37.34 (Catheter ablation of lesion or tissues of heart). The commenter had recommended that CMS either create a separate DRG for cardiac mapping and ablation procedures, or assign codes 37.27 and 37.34 to DRG 516 after retitling the DRG. We have reviewed FY 2001 MedPAR data on these specific codes. Over 97 percent of cases with these codes were assigned to DRG 518 and had average charges of $1,741 below the average for all cases in the DRG. Therefore, the data do not support making any DRG changes for these procedure codes.

d. Aortic Endograft

In the August 1, 2001 final rule (66 FR 39841), we responded to a comment concerning the placement of aortic endografts in DRG 110 (Major Cardiovascular Procedures with CC) and DRG 111 (Major Cardiovascular Procedures without CC). The commenter noted that the cost of the device alone is greater than the entire payment for DRG 111 and recommended that these cases be assigned specifically to DRG 110. Our response at that time was that DRGs 110 and 111 are paired DRGs, differing only in the presence or absence of a CC.

We reviewed the MedPAR data again for FY 2001 using the following criteria: all cases were either in DRG 110 or 111, had a principal diagnosis of 441.4 (Abdominal aneurysm without mention of rupture), and included procedure code 39.71 (Endovascular implantation of graft in abdominal aorta). Our conclusion is that the majority of aneurysm cases are already grouped to DRG 110, where they are appropriately compensated. Therefore, we are not proposing to assign cases without CCs from DRG 111 to DRG 110. We reiterate that hospitals should code their records completely and record and submit all relevant diagnosis and procedure codes that have a bearing on the current admission (in particular, any complications or comorbidities associated with a case).

e. Platelet Inhibitors

In the August 1, 2002 final rule (66 FR 39840), we addressed a commenter's concern that modifications to MDC 5 involving percutaneous cardiovascular procedures would fail to account for the use of GP IIB–IIIA platelet inhibiting drugs for cases with acute coronary syndromes. GROUPER does not recognize procedure code 99.20 (Injection or infusion of platelet inhibitor) as a procedure. Therefore, its presence on a claim does not affect DRG assignment. We agreed to continue to evaluate this issue.

We reviewed cases in the FY 2001 MedPAR file for DRG 121 (Circulatory Disorders with AMI and Major Complication, Discharged Alive), DRG 122 (Circulatory Disorders with AMI without Major Complication, Discharged Alive) and DRGs 516, 517, and 518. We looked at all cases in these DRGs containing procedure code 99.20 by total number of procedures and by average charges. There were a total of 73,480 cases where platelet inhibitors were administered, with 70,216 of these cases in DRGs 516, 517, and 518. The average charges for platelet inhibitor cases in these three DRGs are actually slightly below the average for all cases in the respective DRGs. Therefore, we believe these cases are appropriately placed in the current DRGs, and are not proposing any changes to the assignment of these procedure codes.

f. Drug-Eluting Stents

The drug-eluting stents technology has been developed to combat the problem of restenosis of previously treated blood vessels. The drug is placed onto the stent with a special polymer and slowly released into the vessel wall tissue over a period of 30 to 45 days, and is intended to prevent the build-up of scar tissue that can narrow the reopened artery.

In Table 6B of the Addendum to this proposed rule, we list a new procedure code 36.07 (Insertion of drug-eluting coronary artery stents(s)) that will be effective for use October 1, 2002. We also are proposing to add code 00.55 (Insertion of drug-eluting noncoronary artery stent).

A manufacturer of this technology requested that code 36.07 be assigned to DRG 516 (Percutaneous Cardiovascular Procedure with Acute Myocardial Infarction (AMI)) even without the presence of AMI. The manufacturer asserted that this technology is significantly more costly than other technologies currently assigned to DRG 517 (Percutaneous Cardiovascular Procedure with Coronary Artery Stent without AMI) (average charges of $29,189 compared to average charges of $22,998), and warrants this DRG assignment.

In addition, the manufacturer argued that this technology should be given preferential treatment because it will fundamentally change the treatment of multivessel disease. Specifically, the manufacturer stated that due to the absence of restenosis in patients treated with the drug-eluting stents based on the preliminary trial results, bypass surgery may no longer be the preferred treatment for many patients.[1] The manufacturer believes lower payments due to the decline in Medicare bypass surgeries will offset the higher payments associated with assigning all cases receiving the drug-eluting stent to DRG 516.

Currently, this technology has not been approved for use by the FDA. If the technology is approved by the FDA and further evidence is presented to us regarding the clinical efficacy and the impact that this technology has on the treatment of multivessel disease, we may reassign this code to another DRG or reassess the construct of all affected DRGs. We also are specifically soliciting comments on our proposal to treat the new codes cited above consistent with the current DRG assignment for stents.

g. Cardiac Resynchronization Therapy

Cardiac resynchronization therapy for heart failure provides strategic electrical stimulation to the right atrium, right ventricle, and left ventricle, in order to coordinate ventricular contractions and improve cardiac output. This therapy includes cardiac resynchronization therapy pacemakers (CRT–P) and cardiac resynchronization therapy defibrillators (CRT–D). While similar to conventional pacemakers and internal cardioverter-defibrillators, cardiac resynchronization therapy is different because it requires the implantation of a special electrode within the coronary vein, so that it can be attached to the exterior wall of the left ventricle.

Currently, defibrillator cases are assigned to either DRG 514 (Cardiac Defibrillator Implant with Cardiac Catheterization) or DRG 515 (Cardiac Defibrillator Implant without Cardiac Catheterization). DRG 514 has a higher relative weight than DRG 515. We received a recommendation that we assign implantation of CRT–D (code 00.51, effective October 1, 2002) to either DRG 104 (Cardiac Valve and Other Major Cardiothoracic Procedure with Cardiac Catheterization) or DRG 514 (Cardiac Defibrillator Implant With Cardiac Catheterization). It is argued that the change should be made because the current DRG structure for cardioverter-defibrillator implants does not recognize the significant amount of additional surgical resources required for cases involving patients with heart failure.

The recommendation supported assigning new code 00.50 (Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT–P]) to DRG 115 (Permanent Cardiac Pacemaker Implantation With AMI, Heart Failure, or Shock, or AICD Lead or Generator Procedure). Currently, pacemaker implantation procedures are assigned to either DRG 115 (Permanent Cardiac Pacemaker Implant with AMI, Heart Failure, or Stroke, or AICD Lead or Generator Procedure) or DRG 116 (Other Permanent Cardiac Pacemaker Implant). DRG 115 has the higher relative weight. Because DRG 115 recognizes patients with heart failure, the manufacturer believed CRT–P cases would be appropriately classified to DRG 115.

Our proposed DRG assignment for code 00.51 would be to DRG 514 or 515. Our proposed DRG assignment for code 00.50 would be to DRG 115 and 116. However, we are soliciting comments on these proposed DRG assignments and will carefully consider any relevant evidence about the clinical efficacy and costs of this technology.

h. Hip and Knee Revisions

We received a request to consider assigning hip and knee revisions (codes 81.53 and 81.55) out of DRG 209 (Major Joint and Limb Reattachment Procedures of Lower Extremity) because these revisions are significantly more resource intensive and costly than initial insertions of these joints.

We examined claims data and concluded that, while the charges for the hip and knee revision cases were somewhat higher than other cases within DRG 209, they do not support the establishment of a separate DRG.

i. Multiple Level Spinal Fusions

We received a comment suggesting that we create new spinal fusion DRGs that differentiate by the number of discs that are fused in a spinal fusion. The commenter indicated that the existing ICD–9–CM codes do not identify the number of discs that are fused. Codes were modified for FY 2002 to clearly differentiate between fusions and refusions, and new codes were created for the insertion of interbody spinal fusion device (84.51), 360 degree spinal fusion, single incision approach (81.61), and the insertion of recombinant bone morphogenetic protein (84.52) (66 FR 39841 through 39844).

ICD–9–CM codes have not historically been used to differentiate among cases by the number of repairs or manipulations performed in the course of a single procedure. However, we will explore the possibility of creating codes to differentiate cases by the number of discs fused during a spinal fusion procedure at the scheduled April 18 and 19, 2002 meeting of the ICD–9–CM Coordination and Maintenance Committee.

We also note that DRGs generally do not segregate cases based on the number of repairs or devices that occur in the course of a single procedure. For instance, DRGs are not split based on the number of vessels bypassed in cardiac surgery, nor are they split based on the number of cardiac valves repaired. Therefore, we are not proposing DRG changes for multiple level spinal fusions in this proposed rule.

j. Open Wound of the Hand

We received a recommendation that we move code 882.0 (Open Wound of Hand Except Finger(s) Alone Without Mention of Complication) from its current location in MDC 9 (Diseases and Disorders of the Skin, Subcutaneous Tissue and Breast) under DRGs 280 through 282 (Trauma to the Skin, Subcutaneous Tissue and Breast Age >17 with CC, Age >17 without CC, and Age 0–17, respectively) into MDC 21 (Injuries, Poisonings and Toxic Effects of Drugs) under DRGs 444 through 446 (Traumatic Injury Age >17 with CC, Age

[1] "Comparison of Coronary-Artery Bypass Surgery and Stenting for the Treatment of Multivessel Disease," Serruys, P. W., Unger, F., et. al., *The New England Journal of Medicine*, April 12, 2001, Vol. 344, No. 15, p. 1117.

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>17 without CC, and Age 0–17, respectively).

In examining our data, we found relatively few cases with code 882.0. These cases had charges that were less than the average charges for DRGs to which they are currently assigned. The data do not support a DRG change. Our medical consultants also believe that the cases are appropriately assigned to DRGs 280 through 282.

k. Cavernous Nerve Stimulation

As discussed in August 1, 2001 final rule (66 FR 39845), we reviewed data in MDC 12 (Diseases and Disorders of the Male Reproductive System). We looked specifically for code 89.58 (Plethysmogram) in DRG 334 (Major Male Pelvic Procedures with CC), and DRG 335 (Major Male Pelvic Procedures without CC).

Our data show that very few (six) of these procedures were reported on FY 2001 claims. It is not clear whether the small number reflects the fact that the procedure is not being performed, the ICD–9–CM code is not recorded, or the code is recorded but it is not in the top six procedures being performed. However, in all six cases where this procedure was performed, it occurred in conjunction with radical prostatectomy, so we are confident that these cases are consistent with the DRGs to which they have been grouped. Therefore, we are not proposing any DRG assignment changes to code 89.58 or DRGs 334 and 335.

C. Recalibration of DRG Weights

We are proposing to use the same basic methodology for the FY 2003 recalibration as we did for FY 2002 (August 1, 2001 final rule (66 FR 39828)). That is, we would recalibrate the weights based on charge data for Medicare discharges. However, we are proposing to use the most current charge information available, the FY 2001 MedPAR file. (For the FY 2002 recalibration, we used the FY 2000 MedPAR file.) The MedPAR file is based on fully coded diagnostic and procedure data for all Medicare inpatient hospital bills.

FY 2001 MedPAR data include discharges occurring between October 1, 2000 and September 30, 2001, based on bills received by CMS through December 31, 2001, from all hospitals subject to the acute care hospital inpatient prospective payment system and short-term acute care hospitals in waiver States. The FY 2001 MedPAR file includes data for approximately 11,420,001 Medicare discharges. The data include hospitals that subsequently became CAHs, although no data are included for hospitals after the point they are certified as CAHs. Section IX. of this preamble contains information about how to obtain the MedPAR data.

The proposed methodology used to calculate the DRG relative weights from the FY 2001 MedPAR file is as follows:

- To the extent possible, all the claims were regrouped using the DRG classification revisions discussed in section II.B. of this preamble.
- Charges were standardized to remove the effects of differences in area wage levels, indirect medical education and disproportionate share payments, and, for hospitals in Alaska and Hawaii, the applicable cost-of-living adjustment. (See section IX.A.15. of this proposed rule for information on the availability of the prospective payment system standardizing file.)
- The average standardized charge per DRG was calculated by summing the standardized charges for all cases in the DRG and dividing that amount by the number of cases classified in the DRG. A transfer case is counted as a fraction of a case based on the ratio of its transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases. That is, transfer cases paid under the transfer methodology equal to half of what the case would receive as a nontransfer would be counted as 0.5 of a total case.
- We then eliminated statistical outliers, using the same criteria used in computing the current weights. That is, all cases that are outside of 3.0 standard deviations from the mean of the log distribution of both the charges per case and the charges per day for each DRG are eliminated.
- The average charge for each DRG was then recomputed (excluding the statistical outliers) and divided by the national average standardized charge per case to determine the relative weight.
- We established the relative weight for heart and heart-lung, liver, and lung transplants (DRGs 103, 480, and 495) in a manner consistent with the methodology for all other DRGs except that the transplant cases that were used to establish the weights were limited to those Medicare-approved heart, heart-lung, liver, and lung transplant centers that have cases in the FY 1999 MedPAR file. (Medicare coverage for heart, heart-lung, liver, and lung transplants is limited to those facilities that have received approval from CMS as transplant centers.)
- Acquisition costs for kidney, heart, heart-lung, liver, lung, and pancreas transplants continue to be paid on a reasonable cost basis. Unlike other excluded costs, the acquisition costs are concentrated in specific DRGs: DRG 302 (Kidney Transplant); DRG 103 (Heart Transplant); DRG 480 (Liver Transplant); DRG 495 (Lung Transplant); and DRGs 512 (Simultaneous Pancreas/Kidney Transplant) and 513 (Pancreas Transplant). Because these acquisition costs are paid separately from the prospective payment rate, it is necessary to make an adjustment to exclude them from the relative weights for these DRGs. Therefore, we subtracted the acquisition charges from the total charges on each transplant bill that showed acquisition charges before computing the average charge for the DRG and before eliminating statistical outliers.

When we recalibrated the DRG weights for previous years, we set a threshold of 10 cases as the minimum number of cases required to compute a reasonable weight. We used that same case threshold in recalibrating the proposed DRG weights for FY 2003. Using the FY 2001 MedPAR data set, there are 41 DRGs that contain fewer than 10 cases. We computed the weights for these 41 low-volume DRGs by adjusting the FY 2002 weights of these DRGs by the percentage change in the average weight of the cases in the other DRGs.

The proposed new weights are normalized by an adjustment factor (1.43430) so that the average case weight after recalibration is equal to the average case weight before recalibration. This adjustment is intended to ensure that recalibration by itself neither increases nor decreases total payments under the prospective payment system.

Section 1886(d)(4)(C)(iii) of the Act requires that, beginning with FY 1991, reclassification and recalibration changes be made in a manner that assures that the aggregate payments are neither greater than nor less than the aggregate payments that would have been made without the changes. Although normalization is intended to achieve this effect, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years and as discussed in section II.A.4.a. of the Addendum to this proposed rule, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

D. Proposed Add-On Payments for New Services and Technologies

1. Background

Section 533(b) of Public Law 106–554 amended section 1886(d)(5) of the Act to add subparagraphs (K) and (L) to establish a process of identifying and ensuring adequate payment for new medical services and technologies under Medicare. Section 1886(d)(5)(K)(ii)(I) of the Act specifies that the process must apply to a new medical service or technology if, "based on the estimated costs incurred with respect to discharges involving such service or technology, the DRG prospective payment rate otherwise applicable to such discharges . . . is inadequate." Section 1886(d)(5)(K)(vi) of the Act specifies that a medical service or technology will be considered "new" if it meets criteria established by the Secretary (after notice and opportunity for public comment).

In the September 7, 2001 final rule (66 FR 46902), we established that a new technology would be an appropriate candidate for an additional payment when it represents an advance in medical technology that substantially improves, relative to technologies previously available, the diagnosis or treatment of Medicare beneficiaries (§ 412.87(b)(1)).

We also established that new technologies meeting this clinical definition must be demonstrated to be inadequately paid otherwise under the DRG system to receive special payment treatment (§ 412.87(b)(3)). To assess whether technologies would be inadequately paid under the DRGs, we established this threshold at one standard deviation beyond the geometric mean standardized charge for all cases in the DRGs to which the new technology is assigned (or the case-weighted average of all relevant DRGs, if the new technology occurs in many different DRGs) (§ 412.87(b)(3)).

Table 10 in the Addendum to this proposed rule lists the proposed qualifying criteria by DRG based on the discharge data used to calculate the proposed FY 2003 DRG weights. The thresholds published in the final rule will be used to evaluate applicants for new technology add-on payments during FY 2004 (beginning October 1, 2003). Similar to the timetable for applying for new technology add-on payments during FY 2003, we are proposing that applicants for FY 2004 must submit a significant sample of the data no later than early October 2002. Subsequently, we are proposing that a complete database must be submitted no later than mid-December 2002.

In addition to the clinical and cost criteria, we established that, in order to qualify for the special payment treatment, a specific technology must be "new" under the requirements of § 412.87(b)(2) of our regulations. The statutory provision contemplated the special payment treatment for new technologies until such time as data are available to reflect the cost of the technology in the DRG weights through recalibration (no less than 2 years and no more than 3 years). There is a lag of 2 to 3 years from the point a new technology is first introduced on the market and when data reflecting the use of the technology are used to calculate the DRG weights. For example, data from discharges occurring during FY 2001 are used to calculate the proposed FY 2003 DRG weights in this proposed rule.

Technology may be considered "new" for purposes of this provision within 2 or 3 years after the point at which data begin to become available reflecting the ICD–9–CM code assigned to the technology. After CMS has recalibrated the DRGs to reflect the costs of an otherwise new technology, the special add-on payment for new technology will cease (§ 412.87(b)(2)). For example, an approved new technology that received FDA approval in October 2001 would be eligible to receive add-on payments as a new technology until FY 2004 (discharges occurring before October 1, 2003), when data reflecting the costs of the technology would be used to recalibrate the DRG weights. Because the FY-2004 DRG weights will be calculated using FY 2002 MedPAR data, the costs of such a new technology would be reflected in the FY 2004 DRG weights.

For technologies that do not qualify for special payments under § 412.87, we will continue our past practice of evaluating whether existing procedures are appropriately classified to a DRG. To the extent the introduction of a new code for existing technology helps to better identify higher costs associated with a procedure, we would work to expedite the appropriate assignment of that code (for example, using more recent MedPAR data).

In the September 7, 2001 final rule, we established that Medicare would provide higher payments for cases with higher costs involving identified new technologies, while preserving some of the incentives under the average-based payment system. The payment mechanism is based on the cost to hospitals for the new technology. Under § 412.88, Medicare would pay a marginal cost factor of 50 percent for the costs of the new technology in excess of the full DRG payment. If the costs of a new technology case exceed the DRG payment by more than the estimated costs of the new technology, Medicare payment would be limited to the DRG payment plus 50 percent of the estimated costs of the new technology.

The report language accompanying section 533 of Public Law 106–554 indicated Congressional intent that the Secretary implement the new mechanism on a budget neutral basis (H.R. Conf. Rep. No. 106–1033, 106th Cong., 2d Sess. at 897 (2000)). Section 1886(d)(4)(C)(iii) of the Act requires that the adjustments to annual DRG classifications and relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. Therefore, we account for projected payments under this provision for new technology during the upcoming fiscal year at the same time we estimate the payment effect of changes to the DRG classifications and recalibration. The impact of additional payments under this provision would then be included in the budget neutrality factor, which is applied to the standardized amounts.

Because any additional payments directed toward new technology under this provision would be offset to ensure budget neutrality, it is important to carefully consider the extent of this provision and ensure that only technologies representing substantial advances are recognized for additional payments. In that regard, we indicated that we will discuss in the annual proposed and final rules those technologies that were considered under this provision; our determination as to whether a particular new technology meets our criteria for a new technology; whether it is determined further that cases involving the new technology would be inadequately paid under the existing DRG payment; and any assumptions that went into the budget neutrality calculations related to additional payments for that new technology, including the expected number, distribution, and costs of these cases.

To appropriately balance Congress' intent to increase Medicare's payments for eligible new technologies with concern that the total size of those payments not result in significantly reduced payments for other cases, we set a target limit for estimated special payments for new technology under the provisions of section 533(b) of Public Law 106–554 at 1.0 percent of estimated total operating prospective payments.

If invoked, the target limit would reduce the level of payments for approved technologies across the board,

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to ensure estimated payments do not exceed the limit. Using this approach, all cases involving approved new technologies that would otherwise receive additional payments would still receive special payments, albeit at a reduced amount. Although the marginal payment rate for individual technologies will be reduced, this would be offset by large overall payments to hospitals for new technologies under this provision.

2. Applicants for FY 2003

We received five applications for new technologies to be designated eligible for inpatient add-on payments under the policy we implemented in the September 7, 2001 final rule. One of these applications was subsequently withdrawn. The remaining four applicants are discussed below.

a. Drotrecogin Alfa (Activated)—Xigris ™

Eli Lilly and Company (Lilly) developed drotrecogin alfa (activated), trade name Xigris™, as a new technology and submitted an application to us for consideration under the new technology add-on provision. Xigris™ is used to treat patients with severe sepsis.

According to the application—

"Approximately 750,000 cases of sepsis associated with acute organ dysfunction (severe sepsis) occur annually in the United States. The mortality rates associated with severe sepsis in the United States range from 28 percent to 50 percent and have remained essentially unchanged for several decades. Each year, 215,000 deaths are associated with severe sepsis; deaths after acute myocardial infarction occur at approximately an equal rate."

Xigris™ is a biotechnology product that is a recombinant version of naturally occurring Activated Protein C (APC). APC is needed to ensure the control of inflammation and clotting in the blood vessels. In patients with severe sepsis, Protein C cannot be converted in sufficient quantities to the activated form. It appears that Xigris™ has the ability to bring blood clotting and inflammation back into balance and restore blood flow to the organs.

In support of its application, Lilly submitted data from the Phase III Protein C Worldwide Evaluation in Severe Sepsis (PROWESS) trial. According to Lilly, this was "an international, multicenter, randomized, double-blind, placebo-controlled trial in which 1,690 patients with severe sepsis received either placebo (n = 840) or drotrecogin alfa (activated) (n = 850)." The results of the trial were published in an article in the March 8, 2001 edition of *The New England Journal of Medicine* (Bernard, G. R., Vincent, J. L., et. al., "Efficacy and Safety of Recombinant Human Activated Protein C for Severe Sepsis," Vol. 344, No. 10, p. 699).

A 6.1 percent reduction in mortality was reported. This conclusion was based on a measure of 28-day all-cause mortality. However, at 28 days, over 10 percent of the study participants were still hospitalized. Whether these patients subsequently went on to recover or died was not reported.

Because the reduction in mortality was the result of a treatment effect in a relatively small number of patients and mortality was looked at only 28 days after treatment, we plan to review unpublished data on all-cause mortality at the time of hospital discharge for all patients enrolled in the study using an intent-to-treat analysis. We have asked the trial sponsor to provide CMS with these unpublished data and the analyses performed in the original report, including confidence intervals and Kaplan-Meier curve with log-rank statistics, for death from any cause assessed at the time of hospital discharge. A small increase in the number of deaths among treated patients still hospitalized at 28 days could nullify the survival advantage attributed to the use of Xigris™.

The study had a number of other important methodological limitations that also merit further consideration. Therefore, we are unable to conclude, based on the published data, that Xigris™ represents an advance that substantially improves, relative to technology previously available, treatment for Medicare beneficiaries. However, we are continuing our assessment and will announce our final determination in the final rule. If we subsequently determine that Xigris™ represents a substantial improvement, payment would likely be limited to a subpopulation of patients with severe sepsis, consistent with the FDA labeling and possible other restrictions.

Detailed bills were available for 604 of 705 patients in the United States in the PROWESS clinical trial (303 placebo patients and 301 treatment patients). In all, 83 hospitals submitted detailed bills. These data included an indicator whether the patient received the treatment or a placebo, total charges and standardized charges for the stay as well as for the biological, and the patients' APACHE II scores (an assessment of the risk of mortality based on *a*cute *p*hysiology *a*nd *c*hronic *h*ealth *e*valuation). The FDA's approval letter (issued November 21, 2001) stated "drotrecogin alfa (activated) is indicated for the reduction of mortality in adult patients with severe sepsis (sepsis associated with acute organ dysfunction) who have a high risk of death (e.g., as determined by APACHE II)."

Of the 604 cases with detailed billing data, 274 were patients age 65 or older. The average total charge for these 274 cases, including the average standardized charge for the biological, was $86,184 (adjusted for inflation using the applicable hospital market baskets, as patients were enrolled in the trial from July 1998 through June 2000). The inflated average standardized charge of the biological only for these cases was $15,562.

Lilly also submitted detailed ICD–9–CM diagnosis and procedure codes for a subset of 157 of the 604 U.S. patients with billing data from the PROWESS trial. These data were not requested as part of the trial, but were sent in separately. Of these 157 patients, 82 were over 65 years of age. These 82 patients grouped into 23 DRGs. Approximately 75 percent of these 82 cases were in 5 DRGs: 29 percent were in DRG 475 (Respiratory System Diagnosis with Ventilator Support); 17 percent were in DRG 483 (Tracheostomy Except for Face, Mouth, and Neck Diagnoses); 15 percent were in DRG 416 (Septicemia Age >17); 7 percent were in DRG 415 (OR Procedure for Infectious and Parasitic Diseases); and 5 percent were in DRG 148 (Major Small and Large Bowel Procedures With CC).

Using the methodology described in the September 7, 2001 final rule (66 FR 46918), we calculated a case-weighted threshold based on the distribution of these 82 cases across 23 DRGs. In order to qualify for new technology payments based on these DRGs, the threshold would be $82,882 (compared to the average standardized charge of $86,184 noted above).

In the September 7, 2001 final rule, we stated that the data submitted must be of a sufficient sample size to demonstrate a significant likelihood that the sample mean approximates the true mean across all cases likely to receive the new technology. Using a standard statistical methodology for determining the needed (random) sample size based on the standard deviations of the DRGs identified in the trial as likely to include cases receiving Xigris ™, we have determined that a random sample of 274 cases can be reasonably expected to produce an estimate within $3,500 of the true mean.[1] Of course, the data submitted do not represent a random sample.

[1] The formula is $n = 4\sigma^2/\beta^2$, where σ is the standard deviation of the population, and β is the bound on the error of the estimate (the range within which the sample means can reliably predict the population mean). See Statistics for Management and Economics, Fifth Edition, by Mendenhall, W., Reinmuth, J., Beaver, R., and Duhan, D.

The 274 case sample was for all U.S. patients over age 65 included in the PROWESS trial. In the September 7, 2001 final rule, we indicated our preference for using Medicare cases identifiable in our MedPAR database, although data from a trial without matching MedPAR data could be considered. We also indicated our intention to independently verify the data submitted.

According to Lilly, the patient consent agreements for the PROWESS trial did not provide for the collection and submission of data to CMS. Therefore, we have been unable to identify matching cases in our MedPAR database, or independently verify the data. Due to the passage of Public Law 106–554 in December 2000 and the publication of the final rule in September 2001, it is understandable that our data requirements in order to analyze applicants for new technology add-on payments were not accommodated in the design of the PROWESS trial. We will continue to work with Lilly to independently verify the data in the event it is determined that Xigris™ does represent a substantial clinical improvement.

In particular, we note that, even without the biological charges, the standardized mean charge for the cases submitted for analysis is well above the standardized case-weighted DRG mean ($70,623 for the PROWESS trial cases compared to $54,058 for all cases in the relevant DRGs). We are analyzing our MedPAR data to develop a cohort group of patients to assess the validity of the charges reported for the patients in the PROWESS trial and will report the result of our analysis in the final rule. We solicit comments on this and other approaches to verifying these data.

Cases where Xigris™ is administered will be identified by use of the new ICD–9–CM procedure code 00.11 (Infusion of drotrecogin alfa (activated)). According to Lilly, "(t)he net wholesale price for drotrecogin alfa (activated) is $210 for a 5-milligram vial and $840 for a 20-milligram vial. The average cost for a one-time 96-hour course of therapy for an average adult patient is $6,800 (24 ug/kg/hr for 96 hours for a 70 kg person)." Because code 00.11 does not identify the actual amount of the drug administered per patient, any additional payment would be based on the average cost per patient of $6,800. If this technology were to be approved for add-on payment under § 412.88, cases involving the administration of Xigris™ would be eligible for additional payments of up to $3,400 (50 percent of the average cost of the drug).

For purposes of budget neutrality, we need to estimate the additional payments that would be made under this provision during FY 2003. Lilly has estimated that, initially, 25,000 Medicare patients would receive drotrecogin alfa (activated). If the maximum $3,400 add-on payment is made for all 25,000 of these patients, the total amount that would be paid for these cases would be an additional $85 million. However, comparing the total standardized charges for the 274 patients age 65 or older, 56 percent had average standardized charges below the weighted average standardized charges for the 23 DRGs into which these cases were categorized. Therefore, assuming the costs for these cases would be below the payment received, these 56 percent of cases would not receive any additional payment. Therefore, for purposes of budget neutrality, we estimate the total payments likely to be made under this provision during FY 2003 for cases involving the administration of drotrecogin alfa (activated) would be $37.4 million (44 percent of $85 million).

b. Bone Morphogenetic Proteins (BMPs) for Spinal Fusions

BMPs have been isolated and shown to have the capacity to induce new bone formation. Using recombinant techniques, some BMPs (referred to as rhBMPs) can be produced in large quantities. This has cleared the way for their potential use in a variety of clinical applications such as in delayed unions and nonunions of fractured bones and spinal fusions. One such product, rhBMP–2, is developed for use instead of a bone graft with spinal fusions.

An application was submitted by Medtronic Sofamor Danek for the InFUSE™ Bone Graft/LT-CAGE™ Lumbar Tapered Fusion Device for approval as a new technology eligible for add-on payments. The product is applied through use of an absorbable collagen sponge and an interbody fusion device, which is then implanted at the fusion site. The patient undergoes a spinal fusion, and the product is placed at the fusion site to promote bone growth. This is done in place of the more traditional use of autogenous iliac crest bone graft.

In 1997, in a pilot study conducted under a FDA approved device exemption, 14 patients were enrolled at 4 investigational sites. Eleven patients received rhBMP–2, with 3 control patients. Radiographs and computed tomography scans at 6, 12, and 24 months after surgery showed that all 11 patients who received rhBMP–2 had solid fusions, whereas only 2 of the 3 patients who received autogeneous bone graft had solid fusions. Scores from the Oswestry Low Back Pain Disability Questionnaire showed that 6 of 11 patients treated with rhBMP–2 had a successful outcome at 3 months after surgery, compared with 0 of 3 control patients. After 6 months, the results had changed to 7 of 11 rhBMP–2 patients and 2 control patients with successful treatments; and at 12 months, 10 rhBMP–2 patients and 2 control patients were judged successful. The results were unchanged at 24 months. The trial results were presented in an article in the February 1, 2000 edition of SPINE (Bone, S., Zdeblick, T.. et. al., "The Use of rhBMP–2 in Interbody Fusion Cages-Definitive Evidence of Osteoinduction in Humans: A Preliminary Report"), Vol. 25, No. 3, p. 376.

The above study was then expanded to involve 281 patients at 16 sites, with 143 patients in the rhBMP–2 group and 138 patients in the autogenous iliac crest bone graft group. In the rhBMP–2 group, 76.9 percent of the patients showed an improvement of at least 15 points in their disability scores at 12 months postoperatively. This compared favorably to 75 percent of patients in the control group. At 6 months following surgery, 97 percent of patients in the rhBMP–2 group showed evidence of interbody fusion, as compared to 95.8 percent in the control group. At 12 months, 96.9 percent of patients in the rhBMP–2 group were fused as compared to 92.5 percent in the control group. At this time, the results of this study are unpublished.

On January 10, 2002, the FDA issued an approvable letter for this technology. At this point, however, the technology has not been approved by the FDA for general use. Therefore, we are not proposing to approve this technology for add-on payments in this proposed rule. We discuss thoroughly the data submitted with the application below. However, if the FDA approves the product for general use prior to our issuance of the final rule by August 1, 2002, we will issue a determination whether this technology represents a substantial clinical improvement under the criteria outlined in the September 7, 2001 final rule.

Cost data were submitted for 88 patients participating in the followup study described above. This trial was a single-level, anterior lumbar interbody

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fusion clinical study. Of these 88 bills with cost data, the applicant calculated an average standardized charge for these single-level fusion cases of $33,757. According to the applicant, "it is anticipated that a large number, if not the majority, of cases using BMP technology will, in practice, be multi-level fusions". The applicant reported the estimated hospital charges (based on general charging practices) to be $17,780 for each level. In order to account for the use of this technology in multilevel spinal fusions, the applicant assumed 47 percent of spinal fusions were multilevel (based on analysis of Medicare spinal fusion cases). Increasing the average standardized charge for the cases in the trial by $17,780, the applicant calculated a weighted average standardized charge (53 percent single-level and 47 percent multilevel) of $45,556.

Of these 88 cases, 11 were assigned to DRG 497 (Spinal Fusion Except Cervical With CC) and 77 were assigned to DRG 498 (Spinal Fusion Except Cervical Without CC). In order to qualify for new technology payments based on these DRGs, the threshold would be $37,815.

The applicant has submitted data that estimate between 2,300 and 4,600 Medicare spinal fusion procedures involving this technology in FY 2003. The cost of the technology is $3,900 per level. For approximately 45 percent of spinal fusion involving multilevel fusions, the weighted cost of the technology is $5,686, resulting in a maximum add-on payment amount of $2,843. In reference to the utilization estimates above, the total amount for these cases if each case qualified for a new technology payment would be between $6.5 million and $13.0 million.

c. Zyvox ™

Zyvox™ is the first antibiotic in the oxazolidinone class and is widely used by hospitals in the United States and other countries against the medically significant gram-positive bacteria, including those that are resistant to other therapies. Gram-positive bacterial infections have become increasingly prevalent in recent years, most commonly implicated in infections in the lower respiratory tract, skin and soft tissue, bone and bloodstream, and in meningitis. Significant morbidity and mortality trends are associated with such pathogens. Epinomics Research, Inc., submitted the application on behalf of Pharmacia Corporation (Pharmacia), which markets the drug.

The FDA approved Zyvox™ on April 18, 2000, for the treatment of serious infections caused by antibiotic-resistant bacteria. The applicant contends that this qualifies Zyvox™ for approval within the 2-year to 3-year period referenced at § 412.87(b)(2). Furthermore, the applicant notes that the approval of the new ICD–9–CM code 00.14 (Injection or infusion of oxazolidinone class of antibiotics) effective October 1, 2002, will permit a more precise identification of these cases. However, as noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the costs of Zyvox™ are currently reflected in the DRG weights, Zyvox™ does not meet our criterion that a medical service or technology be "new". The FY 2001 MedPAR data used to calculate the proposed DRG weights for FY 2003 include cases where Zyvox™ was administered. The application itself noted that the use of Zyvox™ is widespread. Therefore, even though the existing code, 99.21 (Injection of antibiotic) is a general code used for the administration of various antibiotics including Zyvox™, and does not separately identify the administration of Zyvox™ as will be possible with the new code 00.14, the charges associated with these cases are reflected in the proposed FY 2003 DRG weights.

As stated above, we note that the applicant itself points out that Zyvox™ is widely used currently by hospitals. In its 4th quarter 2001 earnings report, Pharmacia reports total sales in the United States of $97 million, which is an increase of 105 percent over the previous year. This would indicate expanding access to the drug.

We would point out that, in response to a comment that technologies should qualify as "new" beginning with the assignment of an appropriate tracking code, we clarified in the September 7, 2001 final rule that we would not consider technologies that have been on the market for more than 2 or 3 years to be "new" on the basis that a more precise ICD–9-CM procedure code has been created (66 FR 46914). However, although such technologies would not qualify for add-on payments under this provision, we did indicate that we would evaluate whether the existing DRG assignments of the technology are appropriate.

For example, currently the administration of Zyvox ™ does not affect the DRG to which a case is assigned. In its application for add-on payments, Epinomics provided CMS data that included clinical trials as well as data from a sample that spanned MedPAR files from FY 2000 through FY 2002. For its sample study, Epinomics obtained patient records from 70 hospitals that used Zyvox™ treatment on 832 Medicare patients. The cases were distributed across 151 DRGs. Epinomics calculated that the mean standardized charge for these 485 cases was $74,174. The case-weighted mean standardized charge for all cases in these DRGs would be $33,740 (based on the distribution of Zyvox™ cases across the 151 DRGs).

The unit price for the drug varies from approximately $30 for a 100 milliliter bag (200 milligram linezolid) to approximately $1,350 for 600 milligram tablets (unit doses of 30 tablets). Nevertheless, it appears the high average charges associated with patients receiving the drug are not directly attributable to the administration of Zyvox™. Therefore, we are not proposing any changes to the DRG assignment of these cases at this time. To the extent these cases are more expensive due to the severity of illness of the patients being treated, the current outlier policy will offset any extraordinarily high costs incurred.

d. Renew™ Radio Frequency Spinal Cord Stimulation Therapy

An application was submitted by Advanced Neuromodulation Systems (ANS) for the Renew™ Spinal Cord Stimulation Therapy for approval as a new technology eligible for add-on payments. ANS is a medical device company that deals with management of chronic pain that is severe, persistent, and unresponsive to drugs or surgery. Spinal cord stimulation (SCS) offers a treatment alternative to expensive ongoing comprehensive care. Renew™ SCS was introduced in July 1999 as a device for the treatment of chronic intractable pain of the trunk and limbs.

According to the applicant:

"SCS is a reversible method of pain control that works well for certain types of chronic intractable pain. SCS requires a surgical procedure to implant a receiver and leads. These implanted devices generate electrical stimulation that interrupts pain signals to the brain. SCS is considered to be a treatment of last resort, and is usually undertaken only when first and second-line therapies for chronic pain fail to provide adequate relief. SCS uses low-intensity electrical impulses to trigger nerve fibers selectively along the spinal cord. The stimulation of these nerve fibers diminishes or blocks the intensity of the pain message being transmitted to the brain. SCS replaces areas of intense pain with a more pleasant sensation * * *," masking the pain that is normally present.

Prior to Renew™, SCS systems offered few technical capabilities for treating complex chronic pain patients who suffered with pain that spanned noncontiguous areas (multi-focal) or that varied in intensity over the painful area. The Renew™ system features a multiplex output mode that controls separate stimulation programs to allow outputs of varying frequencies to be used at the same time. According to ANS, "The significance of this technology is that it is now possible to multiplex (link and cycle) up to 8 programs to provide pain relieving paresthesia overlap of anatomical regions that are not contiguous or that cannot be captured by a single program."

The Renew™ technology also allows the concomitant use of separate programs for patients who require different power settings for different areas that have pain. With this technology, separate programs can be programmed from the same unit, with electrical output parameters customized for each painful region. ANS contends that the clinical significance of this technology is that patients who find satisfactory pain relief will require fewer alternative treatments to treat unrelieved pain.

The ANS application specifically requests add-on payments for the costs of the Radio Frequency System (RF System). This system only requires one surgical placement and does not require additional surgeries to replace batteries as do other internal SCS systems. ANS estimates that there are 2,900 RF Systems implanted annually; only 10 percent are in the inpatient setting. ANS is the only company that offers a 16-channel/electrode system.

ANS provided the 2001 hospital acquisition cost for ANS Renew™ 8 and 16 Channel/Electrode RF SCS Systems as follows:

	ANS 2001 List Price
8 Channel/Electrode System:	
One Lead (8 Electrode)	$2,750
One Extension (8 Electrode)	695
Receiver (8 Channel)	4,995
Transmitter (8 Channel)	4,995
Total System	13,435
16 Channel/Electrode System:	
Two Leads (16 Electrodes)	5,500
Two Extensions (16 Electrodes)	1,390
Receiver (16 Channel)	7,295
Transmitter (16 Channel)	7,295
Total System	21,480

Currently, implanting the ANS 8 or 16 Channel/Electrode SCS System falls into DRG 4 (Spinal Procedures) under ICD–9–CM procedure code, 03.93 (Insertion or replacement, spinal neurostimulation). According to the September 7, 2001 **Federal Register**, the threshold to qualify for additional new technology payments for services classified to DRG 4 would be $38,242 (based on adding the geometric mean and the standard deviation of standardized charges) (66 FR 46922).

Relative to hospital invoice information, ANS provided the following estimates:

"* * * 90% of the U.S. hospital cost-to-charge ratios fall between .24 and .69, and 75% fall between .29 and .58. The median is .41. This median costs-to-charge ratio equates to an average hospital markup of 144%. If you apply the average hospital markup of 144% to the device acquisition cost plus the estimated facility cost, the result is an estimated hospital invoice for the SCS implant procedure of $40,101.00, for the 8 Channel/Electrode System and $59,731.00 for the 16 Channel/Electrode System."

In support of its application, ANS provided detailed bills for 12 patients. Of the 12 cases with detailed billing data, 3 patients were age 65 or older. The average total charge for these 3 cases, including the average standardized charge for operating room costs, was $42,820.

As noted previously, technology will no longer be considered new after the costs of the technology are reflected in the DRG weights. Because the Renew ™ RF System was introduced in July 1999, the FY 2001 MedPAR data used to calculate the proposed DRG weights for FY 2003 includes any Medicare cases that involved the implantation of the Renew™ RF System. The charges associated with these cases are reflected in the proposed FY 2003 DRG weights. Therefore, the Renew™ RF System is not considered "new" under our criteria. However, we will continue to monitor these cases in DRG 4 to determine whether this is the most appropriate DRG assignment.

III. Proposed Changes to the Hospital Wage Index

A. Background

Section 1886(d)(3)(E) of the Act requires that, as part of the methodology for determining prospective payments to hospitals, the Secretary must adjust the standardized amounts "for area differences in hospital wage levels by a factor (established by the Secretary) reflecting the relative hospital wage level in the geographic area of the hospital compared to the national average hospital wage level." In accordance with the broad discretion conferred under the Act, we currently define hospital labor market areas based on the definitions of Metropolitan Statistical Areas (MSAs), Primary MSAs (PMSAs), and New England County Metropolitan Areas (NECMAs) issued by the Office of Management and Budget (OMB). OMB also designates Consolidated MSAs (CMSAs). A CMSA is a metropolitan area with a population of one million or more, comprising two or more PMSAs (identified by their separate economic and social character). For purposes of the hospital wage index, we use the PMSAs rather than CMSAs since they allow a more precise breakdown of labor costs. If a metropolitan area is not designated as part of a PMSA, we use the applicable MSA. Rural areas are areas outside a designated MSA, PMSA, or NECMA. For purposes of the wage index, we combine all of the rural counties in a State to calculate a rural wage index for that State.

We note that, effective April 1, 1990, the term Metropolitan Area (MA) replaced the term MSA (which had been used since June 30, 1983) to describe the set of metropolitan areas consisting of MSAs, PMSAs, and CMSAs. The terminology was changed by OMB in the March 30, 1990 **Federal Register** to distinguish between the individual metropolitan areas known as MSAs and the set of all metropolitan areas (MSAs, PMSAs, and CMSAs) (55 FR 12154). For purposes of the prospective payment system, we will continue to refer to these areas as MSAs.

Under section 1886(d)(8)(B) of the Act, hospitals in certain rural counties adjacent to one or more MSAs are considered to be located in one of the adjacent MSAs if certain standards are met. Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification from a rural area to a MSA, one rural area to another rural area, or from one MSA to another MSA, for purposes of payment under the acute care hospital inpatient prospective payment system.

In a December 27, 2000 notice published in the **Federal Register** (65 FR 82228), OMB issued its revised standards for defining MSAs. In that notice, OMB indicated that it plans to announce in calendar year 2003 definitions of MSAs based on the new standards and the Census 2000 data. We will evaluate the new area designations and their possible effects on the

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Medicare wage index, as well as other provider payment implications. Although the final construct of the redefined MSAs will not be known until 2003, we intend to work closely with OMB to begin to assess the potential ramifications of these changes.

Beginning October 1, 1993, section 1886(d)(3)(E) of the Act requires that we update the wage index annually. Furthermore, this section provides that the Secretary base the update on a survey of wages and wage-related costs of short-term, acute care hospitals. The survey should measure, to the extent feasible, the earnings and paid hours of employment by occupational category, and must exclude the wages and wage-related costs incurred in furnishing skilled nursing services. As discussed below in section III.F. of this preamble, we also take into account the geographic reclassification of hospitals in accordance with sections 1886(d)(8)(B) and 1886(d)(10) of the Act when calculating the wage index.

Section 304(c) of Public Law 106–554 amended section 1886(d)(3)(E) of the Act to provide for the collection of data every 3 years on the occupational mix of employees for each short-term, acute care hospital participating in the Medicare program, in order to construct an occupational mix adjustment to the wage index. The initial collection of these data must be completed by September 30, 2003, for application beginning October 1, 2004 (the FY 2005 wage index).

In the May 4, 2001 proposed rule (66 FR 22674), we suggested possible occupational categories from the Occupational Employment Statistics (OES) survey conducted by the Bureau of Labor Statistics. In response to comments on the proposed rule, we agreed to work with the health care industry to develop a workable data collection tool. After we develop a method that appropriately balances the need to collect accurate and reliable data with the need to collect data that hospitals can be reasonably expected to have available, we will issue instructions as to the type of data to be collected, in advance of actually requiring hospitals to begin providing the data.

B. Proposed FY 2003 Wage Index Update

The proposed FY 2003 wage index values in section V. of the Addendum to this proposed rule (effective for hospital discharges occurring on or after October 1, 2002 and before October 1, 2003) are based on the data collected from the Medicare cost reports submitted by hospitals for cost reporting periods beginning in FY 1999 (the FY 2002 wage index was based on FY 1998 wage data).

The proposed FY 2003 wage index includes the following categories of data associated with costs paid under the hospital inpatient prospective payment system (as well as outpatient costs), which were also included in the FY 2002 wage index:

- Salaries and hours from short-term, acute care hospitals.
- Home office costs and hours.
- Certain contract labor costs and hours.
- Wage-related costs.

Consistent with the wage index methodology for FY 2002, the proposed wage index for FY 2003 also continues to exclude the direct and overhead salaries and hours for services such as skilled nursing facility (SNF) services, home health services, and other subprovider components that are not paid under the hospital inpatient prospective payment system.

We calculate a separate Puerto Rico-specific wage index and apply it to the Puerto Rico standardized amount. (See 62 FR 45984 and 46041.) This wage index is based solely on Puerto Rico's data. Finally, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State.

C. FY 2003 Wage Index Proposal

1. Removal of Wage Costs and Hours Related to Graduate Medical Education (GME) and Certified Registered Nurse Anesthetists (CRNAs)

Because the hospital wage index is used to adjust payments to hospitals under the acute care hospital inpatient prospective payment system, the wage index should, to the extent possible, reflect the wage costs associated with those cost centers and units paid under the hospital inpatient prospective payment system. Costs related to graduate medical education (GME) (teaching physicians and residents) and certified registered nurse anesthetists (CRNAs) are paid by Medicare separately from the hospital inpatient prospective payment system. In 1998, the AHA convened a workgroup to develop a consensus recommendation on this issue. The workgroup, which consisted of representatives from national and State hospital associations, recommended that costs related to GME and CRNAs be phased out of the wage index calculation over a 5-year period. Based upon our analysis of hospitals' FY 1996 wage data, and consistent with the AHA workgroup's recommendation, we specified in the July 30, 1999 final rule (64 FR 41505) that we would phase out these costs from the calculation of the wage index over a 5-year period, beginning in FY 2000.

FY 2003 would be the fourth year of the phaseout. Therefore, the wage index calculation for FY 2003 would blend 20 percent of a wage index with GME and CRNA costs included and 80 percent of a wage index with GME and CRNA costs removed. FY 2004 would begin the calculation with 100 percent of the GME and CRNA costs removed. However, we are proposing to remove 100 percent of GME and CRNA costs from the FY 2003 wage index, as discussed below.

We have analyzed the FY 2003 wage index both with 100 percent of GME and CRNA costs removed and with 80 percent of these costs removed. We found that the majority of labor market areas, both rural and urban, would benefit by the removal of all of these costs (298 out of 373). Only two rural labor market areas would be negatively impacted by this change (Pennsylvania by −0.01 percent, and New Hampshire by −0.12 percent). We note that, as part of its Report to the Congress on Medicare in Rural America (June 2001), the MedPAC recommended fully implementing this phaseout during FY 2002. Similar to our findings, MedPAC found the effect of completely eliminating GME and CRNA costs "might not be negligible for some areas, but it would not be large in any case" (page 76). Of the urban labor market areas that would be negatively affected, the impacts on all but two areas are less than 0.50 percent, and the largest negative impact is 1.12 percent.

Because we believe removing GME and CRNA costs from the wage index calculation is appropriate, and the impact is generally positive and relatively small, we are proposing to remove 100 percent of GME and CRNA costs beginning with FY 2003 wage index.

2. Contract Labor for Indirect Patient Care Services

Our policy concerning the inclusion of contract labor costs for purposes of calculating the wage index has evolved with the increasing role of contract labor in meeting special personnel needs of many hospitals. In addition, improvements in the wage data have allowed us to more accurately identify contract labor costs and hours. As a result, effective with the FY 1994 wage index, we included the costs for direct patient care contract services in the wage index calculation, and with the FY 1999 wage index, we included the costs for certain management contract services. (The August 30, 1996 final rule (61 FR 46181) provided an in-depth discussion of the issues related to the inclusion of contract labor costs in the wage index calculation.) Further, the FY 1999 wage index included the costs for contract physician Part A services, and the FY 2002 wage index included the costs for contract pharmacy and laboratory services.

We continue to consider whether to expand our contract labor definition to include more types of contract services in the wage index. In particular, we have examined whether to include the costs for acquired dietary and housekeeping services, as many hospitals now provide these services through contracts. Costs for these services tend to be below the average wages for all hospital employees. Therefore, excluding the costs and hours for these services if they are provided under contract, while including them if the services are provided directly by the hospital, creates an incentive for hospitals to contract for these services in order to increase their average hourly wage for wage index purposes.

It has also been suggested that we expand our definition to include all contract services, including both direct and indirect patient care services, in order to more appropriately calculate relative hospital wage costs. Our goal is to ensure that our wage index policy continues to be responsive to the changing need for contract labor and allow those hospitals that must depend on contract labor to supply needed services to reflect those costs in their wage data. At the same time, we are concerned about hospitals' ability to provide documentation that sufficiently details contract costs and hours. The added overhead, supplies, and miscellaneous costs typically associated with contract labor may result in higher costs for contract labor compared to salaried labor. If these costs are not separately identifiable and removed, they may cause distortions in the wage index.

We agree that it may be appropriate to include indirect patient care contract labor costs in the wage index. However, in light of concerns about hospitals' ability to accurately document and report these costs, we believe the best approach is to assess and include these costs incrementally. Through incremental changes, we can better determine the impact that specific costs have on area wage index values. Also, by including these costs incrementally, hospitals and fiscal intermediaries are able to adjust to the additional documentation and review requirements associated with reporting the additional contract costs and hours.

In this proposed rule, we are proposing to begin collecting contract labor costs and hours for management services and the following overhead services: administrative and general, housekeeping, and dietary. We selected these three overhead services because they are provided at all hospitals, either directly or through contracts, and together they comprise about 60 percent of a hospital's overhead hours. In addition, consistent with our consideration of administrative and general services, we propose to collect costs and hours associated with contract management services that are not currently included on Worksheet S–3, Part II, Line 9 (that is, management services other than those of the chief executive officer, chief financial officer, chief operating officer, and nurse administrator).

We propose to revise the FY 2002 Medicare cost report (or the next available cost report) to provide for the separate reporting of contract management, administrative and general, housekeeping, and dietary costs and hours. After evaluating these data, we will determine the feasibility of adding these categories of contract labor to the wage index calculation.

D. Verification of Wage Data From the Medicare Cost Report

The data for the proposed FY 2003 wage index were obtained from Worksheet S–3, Parts II and III of the FY 1999 Medicare cost reports. The data file used to construct the wage index includes FY 1999 data submitted to us as of February 15, 2002. As in past years, we performed an intensive review of the wage data, mostly through the use of edits designed to identify aberrant data.

We asked our fiscal intermediaries to revise or verify data elements that resulted in specific edit failures. Some unresolved data elements are included in the calculation of the proposed FY 2003 wage index, pending their resolution before calculation of the final FY 2003 wage index. We have instructed the intermediaries to complete their verification of questionable data elements and to transmit any changes to the wage data no later than April 5, 2002. We expect that all unresolved data elements will be resolved by that date. The revised data will be reflected in the final rule.

Also, as part of our editing process, we removed data for 96 hospitals that failed edits. For 6 of these hospitals, we were unable to obtain sufficient documentation to verify or revise the data because the hospitals are no longer participating in the Medicare program, are under new ownership and the data cannot be verified, or are in bankruptcy status. We identified 90 hospitals with incomplete or inaccurate data resulting in zero or negative average hourly wages. Therefore, they were removed from the calculation. The data for these hospitals will be included in the final wage index if we receive corrected data that pass our edits. As a result, the proposed FY 2003 wage index is calculated based on FY 1999 wage data for 4,718 hospitals.

E. Computation of the Proposed FY 2003 Wage Index

The method used to compute the proposed FY 2003 wage index follows.

Step 1—As noted above, we based the proposed FY 2003 wage index on wage data reported on the FY 1999 Medicare cost reports. We gathered data from each of the non-Federal, short-term, acute care hospitals for which data were reported on the Worksheet S–3, Parts II and III of the Medicare cost report for the hospital's cost reporting period beginning on or after October 1, 1998 and before October 1, 1999. In addition, we included data from some hospitals that had cost reporting periods beginning before October 1998 and reported a cost reporting period covering all of FY 1999. These data were included because no other data from these hospitals would be available for the cost reporting period described above, and because particular labor market areas might be affected due to the omission of these hospitals. However, we generally describe these wage data as FY 1999 data. We note that, if a hospital had more than one cost reporting period beginning during FY 1999 (for example, a hospital had two short cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999), we included wage data from only one of the cost reporting periods, the longest, in the wage index calculation. If there was more than one cost reporting period and the periods were equal in length, we included the wage data from the latest period in the wage index calculation.

Step 2—Salaries—Beginning with the FY 2003 wage index, the method used to compute a hospital's average hourly wage excludes all GME and CRNA costs.

In calculating a hospital's average salaries plus wage-related costs, we subtracted from Line 1 (total salaries) the GME and CRNA costs reported on lines 2, 4.01, and 6, the Part B salaries

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reported on Lines 3 and 5, home office salaries reported on Line 7, and excluded salaries reported on Lines 8 and 8.01 (that is, direct salaries attributable to SNF services, home health services, and other subprovider components not subject to the acute care hospital inpatient prospective payment system). We also subtracted from Line 1 the salaries for which no hours were reported on Line 4. To determine total salaries plus wage-related costs, we added to the net hospital salaries the costs of contract labor for direct patient care, certain top management, pharmacy, laboratory, and nonteaching physician Part A services (Lines 9, 9.01, 9.02, and 10), home office salaries and wage-related costs reported by the hospital on Lines 11 and 12, and nonexcluded area wage-related costs (Lines 13, 14, and 18).

We note that contract labor and home office salaries for which no corresponding hours are reported were not included. In addition, wage-related costs for nonteaching physician Part A employees (Line 18) are excluded if no corresponding salaries are reported for those employees on Line 4.

Step 3—Hours—With the exception of wage-related costs, for which there are no associated hours, we computed total hours using the same methods as described for salaries in Step 2.

Step 4—For each hospital reporting both total overhead salaries and total overhead hours greater than zero, we then allocated overhead costs to areas of the hospital excluded from the wage index calculation. First, we determined the ratio of excluded area hours (sum of Lines 8 and 8.01 of Worksheet S–3, Part II) to revised total hours (Line 1 minus the sum of Part II, Lines 2, 3, 4.01, 5, 6, 7, and Part III, Line 13 of Worksheet S–3). We then computed the amounts of overhead salaries and hours to be allocated to excluded areas by multiplying the above ratio by the total overhead salaries and hours reported on Line 13 of Worksheet S–3, Part III. Next, we computed the amounts of overhead wage-related costs to be allocated to excluded areas using three steps: (1) we determined the ratio of overhead hours (Part III, Line 13) to revised hours (Line 1 minus the sum of Lines 2, 3, 4.01, 5, 6, and 7); (2) we computed overhead wage-related costs by multiplying the overhead hours ratio by wage-related costs reported on Part II, Lines 13, 14, and 18; and (3) we multiplied the computed overhead wage-related costs by the above excluded area hours ratio. Finally, we subtracted the computed overhead salaries, wage-related costs, and hours associated with excluded areas from the total salaries (plus wage-related costs) and hours derived in Steps 2 and 3.

Step 5—For each hospital, we adjusted the total salaries plus wage-related costs to a common period to determine total adjusted salaries plus wage-related costs. To make the wage adjustment, we estimated the percentage change in the employment cost index (ECI) for compensation for each 30-day increment from October 14, 1998 through April 15, 2000 for private industry hospital workers from the Bureau of Labor Statistics' *Compensation and Working Conditions*. We use the ECI because it reflects the price increase associated with total compensation (salaries plus fringes) rather than just the increase in salaries. In addition, the ECI includes managers as well as other hospital workers. This methodology to compute the monthly update factors uses actual quarterly ECI data and assures that the update factors match the actual quarterly and annual percent changes. The factors used to adjust the hospital's data were based on the midpoint of the cost reporting period, as indicated below.

MIDPOINT OF COST REPORTING PERIOD

After	Before	Adjustment factor
10/14/98	11/15/98	1.04550
11/14/98	12/15/98	1.04325
12/14/98	01/15/99	1.04111
01/14/99	02/15/99	1.03880
02/14/99	03/15/99	1.03632
03/14/99	04/15/99	1.03369
04/14/99	05/15/99	1.03092
05/14/99	06/15/99	1.02801
06/14/99	07/15/99	1.02509
07/14/99	08/15/99	1.02230
08/14/99	09/15/99	1.01962
09/14/99	10/15/99	1.01687
10/14/99	11/15/99	1.01385
11/14/99	12/15/99	1.01056
12/14/99	01/15/2000	1.00710
01/14/2000	02/15/2000	1.00358
02/14/2000	03/15/2000	1.00000
03/14/2000	04/15/2000	0.99638

For example, the midpoint of a cost reporting period beginning January 1, 1999 and ending December 31, 1999 is June 30, 1999. An adjustment factor of 1.02509 would be applied to the wages of a hospital with such a cost reporting period. In addition, for the data for any cost reporting period that began in FY 1999 and covered a period of less than 360 days or more than 370 days, we annualized the data to reflect a 1-year cost report. Annualization is accomplished by dividing the data by the number of days in the cost report and then multiplying the results by 365.

Step 6—Each hospital was assigned to its appropriate urban or rural labor market area before any reclassifications under section 1886(d)(8)(B) or section 1886(d)(10) of the Act. Within each urban or rural labor market area, we added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in that area to determine the total adjusted salaries plus wage-related costs for the labor market area.

Step 7—We divided the total adjusted salaries plus wage-related costs obtained under both methods in Step 6 by the sum of the corresponding total hours (from Step 4) for all hospitals in each labor market area to determine an average hourly wage for the area.

Step 8—We added the total adjusted salaries plus wage-related costs obtained in Step 5 for all hospitals in the nation and then divided the sum by the national sum of total hours from Step 4 to arrive at a national average hourly wage. Using the data as described above, the national average hourly wage is $22.9949.

Step 9—For each urban or rural labor market area, we calculated the hospital wage index value by dividing the area average hourly wage obtained in Step 7 by the national average hourly wage computed in Step 8.

Step 10—Following the process set forth above, we developed a separate Puerto Rico-specific wage index for purposes of adjusting the Puerto Rico standardized amounts. (The national Puerto Rico standardized amount is adjusted by a wage index calculated for all Puerto Rico labor market areas based on the national average hourly wage as described above.) We added the total adjusted salaries plus wage-related costs (as calculated in Step 5) for all hospitals in Puerto Rico and divided the sum by the total hours for Puerto Rico (as calculated in Step 4) to arrive at an overall average hourly wage of $10.8935 for Puerto Rico. For each labor market area in Puerto Rico, we calculated the Puerto Rico-specific wage index value by dividing the area average hourly wage (as calculated in Step 7) by the overall Puerto Rico average hourly wage.

Step 11—Section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is located in an urban area of a State may not be less than the area wage index applicable to hospitals located in rural areas in that State. Furthermore, this wage index floor is to be implemented in such a manner as to ensure that aggregate prospective payment system payments are not greater or less than those that would have been made in the year if this section did not apply. For FY 2003, this change affects 163 hospitals in 40 MSAs. The MSAs affected by this provision are identified by a footnote in Table 4A in the Addendum of this proposed rule.

F. Revisions to the Wage Index Based on Hospital Redesignation

1. General

Under section 1886(d)(10) of the Act, the Medicare Geographic Classification Review Board (MGCRB) considers applications by hospitals for geographic reclassification for purposes of payment under the prospective payment system. Hospitals can elect to reclassify for the wage index or the standardized amount, or both, and as individual hospitals or as rural groups. Generally, hospitals must be proximate to the labor market area to which they are seeking reclassification and must demonstrate characteristics similar to hospitals located in that area. Hospitals must apply for reclassification to the MGCRB, which issues its decisions by the end of February for reclassification to become effective for the following fiscal year (beginning October 1). The regulations applicable to reclassifications by the MGCRB are in §§ 412.230 through 412.280.

Section 1886(d)(10)(D)(v) of the Act provides that, beginning with FY 2001, a MGCRB decision on a hospital reclassification for purposes of the wage index is effective for 3 fiscal years, unless the hospital elects to terminate the reclassification. Section 1886(d)(10)(D)(vi) of the Act provides that the MGCRB must use the 3 most recent years' average hourly wage data in evaluating a hospital's reclassification application for FY 2003 and any succeeding fiscal year.

Section 304(b) of Public Law 106–554 provides that, by October 1, 2001, the Secretary must establish a mechanism under which a statewide entity may apply to have all of the geographic areas in the State treated as a single geographic area for purposes of computing and applying a single wage index, for reclassifications beginning in FY 2003.

Beginning October 1, 1988, section 1886(d)(8)(B) of the Act permits a hospital located in a rural county adjacent to one or more urban areas to be designated as being located in the MSA to which the greatest number of workers in the county commute, if the rural county would otherwise be considered part of an urban area under the standards published in the **Federal Register** on January 3, 1980 (45 FR 956) for designating MSAs (and for designating NECMAs), and if the commuting rates used in determining outlying counties (or, for New England, similar recognized area) were determined on the basis of the aggregate number of resident workers who commute to (and, if applicable under the standards, from) the central county or counties of all contiguous MSAs (or NECMAs). Hospitals that met the criteria using the January 3, 1980 version of these OMB standards were deemed urban for purposes of the standardized amounts and for purposes of assigning the wage index.

Section 402 of Public Law 106–113 provided that, for FYs 2001 and 2002, hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. However, we are proposing that, beginning with FY 2003, redesignation under section 1886(d)(8)(B) of the Act will be based on the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

2. Effects of Reclassification

The methodology for determining the wage index values for redesignated hospitals is applied jointly to the hospitals located in those rural counties that were deemed urban under section 1886(d)(8)(B) of the Act and those hospitals that were reclassified as a result of the MGCRB decisions under section 1886(d)(10) of the Act. Section 1886(d)(8)(C) of the Act provides that the application of the wage index to redesignated hospitals is dependent on the hypothetical impact that the wage data from these hospitals would have on the wage index value for the area to which they have been redesignated. Therefore, as provided in section 1886(d)(8)(C) of the Act, the wage index values were determined by considering the following:

- If including the wage data for the redesignated hospitals would reduce the wage index value for the area to which the hospitals are redesignated by 1 percentage point or less, the area wage index value determined exclusive of the wage data for the redesignated hospitals applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals reduces the wage index value for the area to which the hospitals are redesignated by more than 1 percentage point, the area wage index determined inclusive of the wage data for the redesignated hospitals (the combined wage index value) applies to the redesignated hospitals.
- If including the wage data for the redesignated hospitals increases the wage index value for the area to which the hospitals are redesignated, both the area and the redesignated hospitals receive the combined wage index value.
- The wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.
- Rural areas whose wage index values would be reduced by excluding the wage data for hospitals that have been redesignated to another area continue to have their wage index values calculated as if no redesignation had occurred.
- Rural areas whose wage index values increase as a result of excluding

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the wage data for the hospitals that have been redesignated to another area have their wage index values calculated exclusive of the wage data of the redesignated hospitals.

• The wage data for a reclassified urban hospital is included in both the wage index calculation of the area to which the hospital is reclassified (subject to the rules described above) and the wage index calculation of the urban area where the hospital is physically located.

The proposed wage index values for FY 2003 are shown in Tables 4A, 4B, 4C, and 4F in the Addendum to this proposed rule. Hospitals that are redesignated should use the wage index values shown in Table 4C. Areas in Table 4C may have more than one wage index value because the wage index value for a redesignated urban or rural hospital cannot be reduced below the wage index value for the rural areas of the State in which the hospital is located.

Tables 3A and 3B in the Addendum of this proposed rule list the 3-year average hourly wage for each labor market area before the redesignation of hospitals, based on FY 1997, 1998, and 1999 wage data. Table 3A lists these data for urban areas and Table 3B lists these data for rural areas. In addition, Table 2 in the Addendum to this proposed rule includes the adjusted average hourly wage for each hospital from the FY 1997 and FY 1998 cost reporting periods, as well as the FY 1999 period used to calculate the FY 2003 wage index. The 3-year averages are calculated by dividing the sum of the dollars (adjusted to a common reporting period using the method described previously under computation of the proposed FY 2003 wage index) across all 3 years, by the sum of the hours. If a hospital is missing data for any of the previous years, its average hourly wage for the 3-year period is calculated based on the data available during that period.

At the time this proposed wage index was constructed, the MGCRB had completed its review of FY 2003 reclassification requests. We have included in this proposed rule a new Table 9, which shows hospitals that have been reclassified under either section 1886(d)(8)(B) or section 1886(d)(10)(D) of the Act. This table includes hospitals reclassified for FY 2003 by the MGCRB, as well as hospitals that were reclassified for the wage index in either FY 2001 or FY 2002 and are, therefore, in either the third or second year of their 3-year reclassification. There are 60 hospitals reclassified for the wage index beginning during FY 2003. In addition, 369 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2001, and 170 hospitals are reclassified for FY 2003 based on their 3-year reclassification that became effective during FY 2002. There are 124 hospitals included in the 3-year reclassification from FY 2001 that were reclassified in accordance with section 152(b) of Public Law 106–113. In addition, there are 38 rural hospitals redesignated to an urban area under section 1886(d)(8)(B) of the Act, and 14 urban hospitals that have been designated rural in accordance with section 1886(d)(8)(E) of the Act. Finally, there are 61 hospitals reclassified by the MGCRB for the standardized amount for FY 2003 (including one hospital that is also redesignated under section 1886(d)(8)(B) of the Act to a different MSA). The final number of reclassifications may vary because some MGCRB decisions are still under review by the Administrator and because some hospitals may withdraw their requests for reclassification.

Table 9 shows the various reclassifications and redesignations discussed above by individual hospital. The table does not reflect any hospital withdrawals from reclassifications approved by the MGCRB or decisions of the CMS Administrator. In the final rule to be published by August 1, 2002, we will include a similar table that will include all final reclassifications for FY 2003.

Under § 412.273, hospitals that have been reclassified by the MGCRB are permitted to withdraw their applications within 45 days of the publication of this proposed rule in the **Federal Register**. In addition, hospitals may terminate an existing 3-year reclassification within 45 days of the publication of this proposed rule. The request for withdrawal of an application for reclassification or termination of an existing 3-year reclassification that would be effective in FY 2003 must be received by the MGCRB by June 24, 2002. A hospital that withdraws its application or terminates an existing 3-year reclassification may not later request reinstatement of the MGCRB decision, except by canceling such a withdrawal or termination in a subsequent year (see § 412.273(b)(2)(i), and the proposed changes and clarifications to the cancellation procedures in section V. of this preamble).

Any changes to the wage index that result from withdrawals of requests for reclassification, wage index corrections, appeals, and the Administrator's review process will be incorporated into the wage index values published in the final rule following this proposed rule. The changes may affect not only the wage index value for specific geographic areas, but also the wage index value redesignated hospitals receive; that is, whether they receive the wage index value for the area to which they are redesignated, or a wage index value that includes the data for both the hospitals already in the area and the redesignated hospitals. Further, the wage index value for the area from which the hospitals are redesignated may be affected.

We are proposing limited changes and clarifications to the policies related to withdrawals, terminations, and cancellations of the 3-year wage index reclassifications. These are discussed in section V. of this preamble.

3. OMB Standards for Hospitals To Qualify for Redesignation

In the August 1, 2001 final rule, we implemented section 402 of Public Law 106–113. Section 402 provided that hospitals could elect whether to apply standards developed by OMB in 1980 or 1990 in order to qualify for redesignation under section 1886(d)(8)(B) of the Act. However, section 402 also states that, beginning with FY 2003, hospitals will be required to use the standards published in the **Federal Register** by the Director of OMB based on the most recent decennial census.

At this time, the 1990 standards are the most recent available. Although OMB is working to develop updated standards based on the 2000 census, that work is not yet completed. If the 2000 census population data become available prior to the preparation and publication of the final rule by August 1, 2002, CMS will work with the Population Distribution Branch within the Population Division of the U.S. Census Bureau to compile a list of hospitals that meet the established standards using the 2000 census population data. Otherwise, for purposes of redesignation for FY 2003. under section 1886(d)(8)(B) of the Act, qualifying hospitals must be located in counties meeting the 1990 standards.

In the August 1, 2001 final rule, we determined that three counties that qualified for redesignation under the 1980 standards qualified for redesignation to a different MSA using the 1990 standards (66 FR 39869). These counties, which will be redesignated to the MSA to which they qualify based on the 1990 standards, are as follows:

Rural county	1980 MSA designation	1990 MSA designation
Ionia, MI	Lansing-East Lansing, MI	Grand Rapids-Muskegon-Holland, MI.
Caswell, NC	Danville, VA.	Greensboro-Winston Salem-High Point, NC.
Harnett, NC	Fayetteville, NC	Raleigh-Durham-Chapel Hill, NC.

Section 402 of Public Law 106–113 allowed hospitals to elect to use either the January 3, 1980 standards or March 30, 1990 standards for payments during FY 2001 and FY 2002. Several hospitals in counties that did not qualify under the January 3, 1980 standards elected to use those older standards so they would not receive the urban designation accorded them under section 402 because they would lose their special rural designation (that is, a sole community hospital (SCH) or Medicare-dependent hospital (MDH)). Under section 402, the option to make such an election was available only for FY 2001 and FY 2002. Effective for FY 2003, we are proposing that hospitals located in counties qualifying for redesignation under section 1886(d)(8)(B) of the Act based on the 1990 standards would be redesignated under this provision.

We also noted in the August 1, 2001 final rule that five rural counties no longer meet the qualifying criteria when we apply the 1990 OMB standards (66 FR 39870). These rural counties are as follows: Indian River, FL; Mason, IL; Owen, IN; Morrow, OH; and Lincoln, WV. Therefore, beginning FY 2003, hospitals in these counties will not be eligible for redesignation unless the counties again qualify when the standards based on the 2000 census data are available.

G. Requests for Wage Data Corrections

As stated in section II.D. of this preamble, the data used to construct the proposed wage index includes FY 1999 data submitted to CMS as of February 15, 2002. In a memorandum dated December 19, 2001, we instructed all Medicare intermediaries to inform the prospective payment hospitals they service of the availability of the wage data file and the process and timeframe for requesting revisions. The wage data file was made available on January 12, 2002, through the Internet at CMS's home page (*http://www.hcfa.gov*). We also instructed the intermediaries to advise hospitals of the availability of these data either through their representative hospital organizations or directly from CMS. Additional details on ordering this data file are discussed in section IX.A. of this preamble, "Requests for Data from the Public."

In addition, Table 2 in the Addendum to this proposed rule contains each hospital's adjusted average hourly wage used to construct the proposed wage index values for the past 3 years, including the FY 1999 data used to construct the proposed FY 2003 wage index. It should be noted that the hospital average hourly wages shown in Table 2 only reflect changes made to a hospital's data and transmitted to CMS prior to February 15, 2002. Changes approved by a hospital's fiscal intermediary and forwarded to CMS by April 5, 2002, will be reflected in the final public use wage data file scheduled to be made available on or about May 10, 2002.

We believe hospitals have sufficient time to ensure the accuracy of their FY 1999 wage data. Moreover, the ultimate responsibility for accurately completing the cost report rests with the hospital, which must attest to the accuracy of the data at the time the cost report is filed. Hospitals should know what wage data were submitted on their cost reports. In addition, they are notified of any changes to their data as a result of their fiscal intermediary's review. However, if a hospital believed that its FY 1999 wage data were incorrectly reported, the hospital was to submit corrections along with complete, detailed supporting documentation to its intermediary by February 8, 2002. Hospitals were notified of this deadline, and of all other possible deadlines and requirements, through the December 19, 2001 memorandum referenced above.

After reviewing requested changes submitted by hospitals, fiscal intermediaries transmitted any revised cost reports to CMS and forwarded a copy of the revised Worksheet S–3, Parts II and III to the hospitals. In addition, fiscal intermediaries were to notify hospitals of the changes or the reasons that changes were not accepted. This procedure ensures that hospitals have every opportunity to verify the data that will be used to construct their wage index values. We believe that fiscal intermediaries are generally in the best position to make evaluations regarding the appropriateness of a particular cost and whether it should be included in the wage index data. However, if a hospital disagrees with the fiscal intermediary's resolution of a policy issue (whether a general category of cost is allowable in the wage data), the hospital may contact CMS in an effort to resolve policy disputes. We note that the April 5, 2002 deadline also applies to these requested changes. During this review, we will not consider issues such as the adequacy of a hospital's supporting documentation, as these types of issues should have been resolved earlier in the process.

These deadlines are necessary to allow sufficient time to review and process the data so that the final wage index calculation can be completed for development of the final FY 2003 prospective payment rates to be published by August 1, 2002.

We have created the process described above to resolve all substantive wage data correction disputes before we finalize the wage data for the FY 2003 payment rates. Accordingly, hospitals that do not meet the procedural deadlines set forth above will not be afforded a later opportunity to submit wage data corrections or to dispute the intermediary's decision with respect to requested changes. Specifically, our policy is that hospitals that do not meet the procedural deadlines set forth above will not be permitted to later challenge, before the Provider Reimbursement Review Board, CMS's failure to make a requested data revision (See *W. A. Foote Memorial Hospital* v. *Shalala*, No. 99–CV–75202–DT (E.D. Mich. 2001)).

The final wage data public use file will be released on approximately May 10, 2002. Hospitals should examine both Table 2 of this proposed rule and the May 2002 final public use wage data file (which reflects revisions to the data used to calculate the values in Table 2) to verify the data CMS is using to calculate the wage index.

As with the file made available in January 2002, CMS will make the final wage data file released in May 2002 available to hospital associations and the public on the Internet. However, the May 2002 public use file will be made available solely for the limited purpose of identifying any potential errors made by CMS or the fiscal intermediary in the entry of the final wage data that result from the correction process described above (with the February 8 deadline). Hospitals are encouraged to review their hospital wage data promptly after the release of the May 2002 file. Data presented at this time cannot be used by hospitals to initiate new wage data correction requests.

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If, after reviewing the final file, a hospital believes that its wage data are incorrect due to a fiscal intermediary or CMS error in the entry or tabulation of the final wage data, it should send a letter to both its fiscal intermediary and CMS. The letters should outline why the hospital believes an error exists and provide all supporting information, including dates. These requests must be *received* by CMS and the fiscal intermediaries no later than June 7, 2002. Requests mailed to CMS should be sent to: Center for Medicare & Medicaid Services, Center for Health Plans and Providers, Attention: Wage Index Team, Division of Acute Care, C4–07–05, 7500 Security Boulevard, Baltimore, MD 21244–1850. Each request must also be sent to the hospital's fiscal intermediary. The intermediary will review requests upon receipt and contact CMS immediately to discuss its findings.

At this point in the process, that is, between release of the May 2002 wage index file and June 7, 2002, changes to the hospital wage data will only be made in those very limited situations involving an error by the intermediary or CMS that the hospital could not have known about before its review of the final wage data file. Specifically, neither the intermediary nor CMS will accept the following types of requests at this stage of the process:

- Requests for wage data corrections that were submitted too late to be included in the data transmitted to CMS by fiscal intermediaries on or before April 5, 2002.
- Requests for correction of errors that were not, but could have been, identified during the hospital's review of the January 2002 wage data file.
- Requests to revisit factual determinations or policy interpretations made by the intermediary or CMS during the wage data correction process.

Verified corrections to the wage index received timely (that is, by June 7, 2002) will be incorporated into the final wage index to be published by August 1, 2002 and effective October 1, 2002.

Again, we believe the wage data correction process described above provides hospitals with sufficient opportunity to bring errors in their wage data to the fiscal intermediaries' attention. Moreover, because hospitals will have access to the final wage data by May 2002, they will have the opportunity to detect any data entry or tabulation errors made by the fiscal intermediary or CMS before the development and publication of the FY 2003 wage index by August 1, 2002, and the implementation of the FY 2003 wage index on October 1, 2002. If hospitals avail themselves of this opportunity, the wage index implemented on October 1 should be accurate. Nevertheless, in the event that errors are identified after that date, we retain the right to make midyear changes to the wage index under very limited circumstances.

Specifically, in accordance with § 412.63(x)(2) of our existing regulations, we make midyear corrections to the wage index only in those limited circumstances in which a hospital can show (1) that the intermediary or CMS made an error in tabulating its data; and (2) that the hospital could not have known about the error, or did not have an opportunity to correct the error, before the beginning of FY 2003 (that is, by the June 7, 2002 deadline). As indicated earlier, since a hospital will have the opportunity to verify its data, and the fiscal intermediary will notify the hospital of any changes, we do not expect that midyear corrections would be necessary. However, if the correction of a data error changes the wage index value for an area, the revised wage index value is effective prospectively from the date the correction is approved.

This policy for applying prospective corrections to the wage index was originally set forth in the preamble to the January 3, 1984 final rule (49 FR 258) implementing the hospital inpatient prospective payment system. It has been our longstanding policy to make midyear corrections to the hospital wage data and adjust the wage index for the affected areas on a prospective basis.

Section 412.63(x)(3) states that revisions to the wage index resulting from midyear corrections to the wage index values are incorporated in the wage index values for other areas at the beginning of the next Federal fiscal year. Prior to October 1, 1993, the wage index was based on a wage data survey submitted by all hospitals (prior to that, the data came from the Bureau of Labor Statistics' hospital wage and employment data file). Beginning October 1, 1993, as required by section 1886(d)(3)(E) of the Act, we began updating the wage index data on an annual basis. Because the wage index has been updated annually since FY 1994, § 412.63(x)(3) is no longer necessary, and we are proposing to delete it. Similarly, § 412.63(x)(4) provides that the effect on program payments of midyear corrections to the wage index values is taken into account in establishing the standardized amounts for the following year. Again, the wage data are now updated annually. Therefore, § 412.63(x)(4) is no longer necessary, and we are proposing to delete it as well.

Finally, we are proposing to revise § 412.63(x)(2) to clarify that CMS will make a midyear correction to the wage index for an area only if a hospital can show that the intermediary or CMS made an error in tabulating the hospital's own data. That is, this provision is not available to a hospital seeking to revise another hospital's data that may be affecting the requesting hospital's wage index. As described above, the requesting hospital must show that it could not have known about the error, or that it did not have the opportunity to correct the error, before the beginning of the Federal fiscal year.

IV. Proposed Rebasing and Revision of the Hospital Market Baskets

A. Operating Costs

1. Background

Effective for cost reporting periods beginning on or after July 1, 1979, we developed and adopted a hospital input price index (that is, the hospital "market basket") for operating costs. Although "market basket" technically describes the mix of goods and services used to produce hospital care, this term is also commonly used to denote the input price index (that is, cost category weights and price proxies combined) derived from that market basket. Accordingly, the term "market basket" as used in this document refers to the hospital input price index.

The percentage change in the market basket reflects the average change in the price of goods and services hospitals purchased in order to furnish inpatient care. We first used the market basket to adjust hospital cost limits by an amount that reflected the average increase in the prices of the goods and services used to furnish hospital inpatient care. This approach linked the increase in the cost limits to the efficient utilization of resources.

With the inception of the acute care hospital inpatient prospective payment system, the projected change in the hospital market basket has been the integral component of the update factor by which the prospective payment rates are updated every year. For FY 2003, payment rates will be updated by the projected increase in the hospital market basket minus 0.55 percentage points. A detailed explanation of the hospital market basket used to develop the prospective payment rates was published in the **Federal Register** on September 3, 1986 (51 FR 31461). We also refer the reader to the August 29, 1997 **Federal Register** (62 FR 45966) in which we discussed the previous rebasing of the hospital input price index.

The hospital market basket is a fixed-weight, Laspeyres-type price index that is constructed in three steps. First, a base period is selected and total base period expenditures are estimated for a set of mutually exclusive and exhaustive spending categories based upon type of expenditure. Then, the proportion of total operating costs that each category represents is determined. These proportions are called cost or expenditure weights. Second, each expenditure category is matched to an appropriate price or wage variable, referred to as a price proxy. These price proxies are price levels derived from publicly available statistical series and are published on a consistent schedule, preferably at least on a quarterly basis.

Finally, the expenditure weight for each category is multiplied by the level of the respective price proxy. The sum of these products (that is, the expenditure weights multiplied by the price levels) for all cost categories yields the composite index level of the market basket in a given year. Repeating this step for other years produces a series of market basket index levels over time. Dividing one index level by an earlier index level produces rates of growth in the input price index over that time.

The market basket is described as a fixed-weight index because it answers the question of how much it would cost, at another time, to purchase the same mix of goods and services that was purchased in the base period. The effects on total expenditures resulting from changes in the quantity or mix of goods and services (intensity) purchased subsequent to the base period are not measured. For example, shifting a traditionally inpatient type of care to an outpatient setting might affect the volume of inpatient goods and services purchased by the hospital, but would not be factored into the price change measured by a fixed weight hospital market basket. In this manner, the index measures only the pure price change. Only rebasing (changing the base year) the index would capture these quantity and intensity effects. Therefore, we rebase the market basket periodically so the cost weights reflect changes in the mix of goods and services that hospitals purchase (hospital inputs) in furnishing inpatient care. We last rebased the hospital market basket cost weights in 1997, effective for FY 1998 (62 FR 45993). This market basket, still used through FY 2002, reflects base year data from FY 1992 in the construction of the cost weights.

We note that there are separate market baskets for acute care hospital inpatient prospective payment system hospitals and excluded hospitals and hospital units. In addition, we are in the process of conducting the necessary research to determine if separate market baskets for the inpatient rehabilitation, long-term care, and psychiatric hospital prospective payment systems can be developed. However, for the purpose of this preamble, we are only discussing the market basket based on all excluded hospitals together.

2. Rebasing and Revising the Hospital Market Basket

The terms rebasing and revising, while often used interchangeably, actually denote different activities. Rebasing means moving the base year for the structure of costs of an input price index (for example, we are proposing to shift the base year cost structure from FY 1992 to FY 1997). Revising means changing data sources, cost categories, or price proxies used in the input price index.

We are proposing to use a rebased and revised hospital market basket in developing the FY 2003 update factor for the prospective payment rates. The new market basket would be rebased to reflect FY 1997, rather than FY 1992, cost data. The 1992-based market baskets contained expenditure data for hospitals from Medicare cost reports for cost reporting periods beginning on or after October 1, 1991, and before October 1, 1992. The 1997-based market baskets use data for hospitals from Medicare cost reports for cost reporting periods beginning on or after October 1, 1996, and before October 1, 1997. Fiscal year 1997 was selected as the new base year because 1997 is the most recent year for which relatively complete data are available. These include data from FY 1997 Medicare cost reports as well as 1997 data from two U.S. Department of Commerce publications: the Bureau of the Census' Business Expenditure Survey (BES) and the Bureau of Economic Analysis' Annual Input-Output Tables. In addition, preliminary analysis of FYs 1998 and 1999 Medicare cost report data showed little difference in cost shares from FY 1997 data.

In developing the proposed rebased and revised market baskets, we reviewed hospital operating expenditure data for the market basket cost categories in determining the cost weights. We relied primarily on Medicare hospital cost report data for the proposed rebasing. We prefer to use cost report data wherever possible because these are the cost data supplied directly from hospitals. Other data sources such as the BES and the input-output tables serve as secondary sources used to fill in where cost report data are not available or appear to be incomplete. Below we are providing a detailed discussion of the process for calculating cost share weights.

Cost category weights for the proposed FY 1997-based market baskets were developed in several stages. First, base weights for several of the categories (Wages and Salaries, Employee Benefits, Contract Labor, Pharmaceuticals and Blood and Blood Products) were derived from the FY 1997 Medicare cost reports for operating costs. The expenditures for these categories were calculated as a percentage of total operating costs from those hospitals covered under the inpatient hospital prospective payment system. These data were then edited to remove outliers and ensure that the hospital participated in the Medicare program and had Medicare costs. However, we were unable to measure only those operating costs attributable to the inpatient portion of the hospital, because many cost centers are utilized by both inpatients and outpatients in the hospital. Health Economics Research (HER), under contract with CMS, is currently in the process of researching the possibility of constructing a separate outpatient market basket for CMS' outpatient hospital prospective payment system. This research may provide some insight and guidance for separating inpatient and outpatient costs. We excluded hospital-based subprovider cost centers (for example, skilled nursing, nursing, hospice, psychiatric, rehabilitation, intermediate care/mental retardation, and other long-term care) as well as the portion of overhead and ancillary costs incurred by these subproviders.

Second, the weight for professional liability insurance was calculated using data from a survey conducted by ANASYS under contract to CMS. This survey, called the National Hospital Malpractice Insurance Survey (NHMIS), was conducted to estimate hospital malpractice insurance costs over time at the national level. A more detailed description of this survey is found later in this preamble.

Third, data from the 1997 Business Expenditure Survey (BES) was used to develop a weight for the utilities and telephone services categories. Like most other data sources, the BES includes data for all hospitals and does not break out data by payer. However, we believe the overall data from the BES does not produce results that are inconsistent with the prospective payment system hospitals, particularly at the detailed

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cost category level with which we are working.

Fourth, the sum of the weights for wages and salaries, employee benefits, contract labor, professional liability insurance, utilities, pharmaceuticals, blood and blood products, and telephone services was subtracted from other operating expenses to obtain a portion for all other expenses.

Finally, the remainder of the weight for all other expenses was divided into subcategories using relative cost shares from the 1997 Annual Input-Output Table for the hospital industry, produced by the Bureau of Economic Analysis, U.S. Department of Commerce. The 1997 Benchmark Input-Output data will be available, at the earliest, in late 2002, so we will be unable to incorporate these data in the final rule.

Below, we further describe the sources of the six main category weights and their subcategories in the proposed FY 1997-based market basket. We note the differences between the methodologies used to develop the FY 1992-based and the FY 1997-based market baskets.

- *Wages and Salaries:* The cost weight for the wages and salaries category was derived using Worksheet S–3 from the FY 1997 Medicare cost reports. Contract labor, which is also derived from the FY 1997 Medicare cost reports, is split between the wages and salaries and employee benefits cost categories, using the relationship for employed workers. An example of contract labor is registered nurses who are employed and paid by firms that contract for their work with the hospital. The wages and salaries category in the FY 1992-based market basket was developed from the FY 1992 Medicare cost reports. In addition, we used the 1992 Current Population Survey to break out more detailed occupational subcategories. These subcategories were not broken out for the proposed FY 1997-based market basket.
- *Employee Benefits:* The cost weight for the employee benefits category was derived from Worksheet S–3 of the FY 1997 Medicare cost reports. The employee benefits category in the FY 1992-based market basket was developed from FY 1992 Medicare cost reports and used the 1992 Current Population Survey to break out various occupational subcategories. These subcategories were not broken out for the proposed FY 1997-based market basket.
- *Nonmedical Professional Fees:* This category refers to various types of nonmedical professional fees such as legal, accounting, engineering and management and consulting fees. Management and consulting and legal fees make up the majority of professional fees in the hospital sector. The cost weight for the nonmedical professional fees category was derived from the Bureau of Economic Analysis Input-Output data for 1997. The FY 1992-based index used a combination of data from the American Hospital Association (AHA) and the Medicare cost reports to arrive at a weight. However, because the AHA survey data for professional fees are no longer published, we were unable to duplicate this method. Had we used the proposed methodology to calculate the FY 1992 nonmedical professional fees component, the proportion would have been similar to the FY 1997 share.
- *Professional Liability Insurance:* The proposed FY 1997-based market basket uses a weight for professional liability insurance derived from a survey conducted by ANASYS under contract to CMS (Contract Number 500–98–005). This survey attempted to estimate hospital malpractice insurance costs over time at the national level for years 1996 and 1997. The population universe of the survey was defined as all non-Federal short-term, acute care prospective payment system hospitals. A statistical sample of hospitals was drawn from this universe and data collected from those hospitals. This sample of hospitals was then matched to the appropriate cost report data so that a malpractice cost weight could be calculated. The questions used in the survey were based on a 1986 General Accounting Office (GAO) malpractice survey questionnaire that was modified so data could be collected to calculate a malpractice cost weight and the rate of change for a constant level of malpractice coverage at a national level. The 1997 proportion as calculated by ANASYS was compared to limited data for FYs 1998 and 1999 contained in the Medicare Health Care System Cost Report Information System (HCRIS). The percentages are relatively comparable. However, since this field was virtually incomplete in the FY 1997 cost report file, we were unable to use this cost report data.

  In contrast, the FY 1992-based market basket professional liability insurance weight was determined using the cost report data for PPS–6 (cost reporting periods beginning in FY 1989), the last year these costs had to be treated separately from all other administrative and general costs, trended forward to FY 1992 based on the relative importance of malpractice costs found in the previous market basket.
- *Utilities:* For the proposed FY 1997-based market baskets, the cost weight for utilities was derived from the Bureau of the Census' Business Expenditures Survey. For the FY 1992-based market baskets, the cost weight for utilities was derived from the Bureau of the Census' Asset and Expenditures Survey. The Business Expenditure Survey replaced the Asset and Expenditure Survey and the categories and results are similar.
- *All Other Products and Services:* The all other products and services category includes the remainder of products and services that hospitals purchase in providing care. Products found in this category include: direct service food, contract service food, pharmaceuticals, blood and blood products, chemicals, medical instruments, photo supplies, rubber and plastics, paper products, apparel, machinery and equipment, and miscellaneous products. Services found in this category include: telephone, postage, other labor-intensive services, and other nonlabor-intensive services. Labor-intensive services include those services for which local labor markets would likely influence prices. A complete discussion of the labor-related share is presented later in this preamble. The shares for pharmaceuticals and blood and blood products were derived from the FY 1997 Medicare cost reports, while the share for telephone services was derived from the BES. Relative shares for the other subcategories were derived from the 1997 Bureau of Economic Analysis Annual Input-Output Table for the hospital industry.

  The calculation of these subcategories involved calculating a residual from the Input/Output Table using categories similar to those not yet accounted for in the market basket. Subcategory weights were then calculated as a proportion of this residual and applied to the similar residual in the market basket.
- *Blood and blood products:* When the market basket was last revised and rebased to FY 1992, the component for blood services was discontinued because of the lack of appropriate data to determine a weight. The Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (BIPA) required that CMS consider the prices of blood and blood products purchased by hospitals and determine whether those prices are adequately reflected in the market basket. In accordance with this requirement, CMS has done considerable research to determine if a component for blood and blood products should be added to the market basket and, if so, how the weight should be determined. CMS has studied four alternative data sources to possibly determine a weight for blood in the market basket. If none of these data sources was deemed acceptable, we could conclude that a component for blood should not be reintroduced in the hospital market basket. In a December 2001 report by the MedPAC entitled "Blood Safety in Hospitals and Medicare Inpatient Payment," MedPAC recommended that the market basket should explicitly account for the cost of blood and blood products by reintroducing a separate component for their prices.

  The first alternative data source studied was using data from the Medicare cost reports. The cost reports have two cost centers where the costs of blood can be recorded: (1) whole blood and packed red blood cells (nonsalary); and (2) blood storing, processing, and transfusion (nonsalary). Although all prospective payment system hospitals submit a cost report, less than half of these hospitals reported data in either of the two blood cost centers. However, if we can determine that the hospitals reporting blood are representative of all prospective payment system hospitals, then a cost share can be computed using the cost reports.

  The second alternative involves constructing weights from the Input-Output Table from the BEA, Department of Commerce. These data were used to construct the weight when the market basket was revised before FY 1992. Unfortunately, BEA stopped reporting blood separately in their Input-Output Table in 1987. One possible use of these data would be to calculate a weight by updating the prior weight by the relative price change for blood between the last data point available and 1997. However, by using this method, only the escalation in prices, not the changes in quantity or intensity of use of blood products, would be captured.

  The third alternative was using data from the MedPAR files. This option was discussed in MedPAC's December 2001 report, and involves using claims data or data on hospital charges. In order to construct a weight for the market basket, the underlying costs of blood must be calculated from the claims data. An analysis of cost-to-charge ratios of hospitals can determine if this is feasible.

  The final alternative data source is the Bureau of the Census' quinquennial Business Expenditure Survey and the Economic Census. A weight can be obtained indirectly by taking the ratio of receipts of nonprofit blood collectors to total operating expenses of hospitals. Some adjustments would be needed in order for the weight calculated in this way to be completely valid. In addition, this method assumes that all blood used by hospitals comes from nonprofit sources. However, in 1999, hospitals collected 7 percent of the donated units.

  After a thorough analysis, CMS has determined that the Medicare cost reports, after minor adjustments, are the best option. The data from the Input-Output Table are not optimal because they are not current and would have to be aged using only price data, which do not reflect quantity and intensity changes over this period. Although the MedPAR data could be adjusted to compute a cost share, using claims data is not the preferred alternative. Census data would be an attractive option if the cost reports were not available.

  The main weakness of the Medicare cost reports is the inconsistent reporting of hospitals in the two blood cost centers. In 1997, only 48.0 percent of all hospitals reported blood in one or both cost centers. However, these hospitals accounted for 62.2 percent of the operating costs of all hospitals. In order for the calculation of the blood cost share weight to be acceptable, the hospitals that reported blood would need to be adjusted to be representative of all hospitals, including those that did not report blood on the cost reports.

  Because of the similarity of data in the two blood cost centers, the assumption was made that if a hospital reported blood in only one of the two cost centers, all of its blood costs were reported in that cost center. In the FY 1997 cost reports, of the hospitals that reported blood, 41.3 percent reported only in the blood cells cost center, 58.2 percent reported only in the blood storing cost center, and only 0.5 percent reported in both blood cost centers. To calculate a weight, the numerator was the summation of the data in both blood cost centers. The denominator was the summation of the operating costs of each hospital that reported blood in each cost center minus the operating costs of the few hospitals that reported blood in both cost centers to avoid double counting.

  The blood cost share calculated from these data was then adjusted so that the hospitals reporting blood had the same characteristics of all other hospitals. Adjustments were necessary because the hospitals that reported blood were more likely to be urban and teaching hospitals than those hospitals that did not report blood. The adjustments made less than a 0.1 percent difference in the cost share.

  The weight produced using the cost report for FY 1997 was 0.875 percent. We also looked at cost report data from FYs 1996 and 1998. The weights calculated in these years were similar to the FY 1997 weight. The calculation of the blood cost share using the alternative data sources cited above was similar to the results using the cost reports. Given the consistency with these other sources, the representativeness of our estimate, and the stability of the cost share, we are proposing to use the Medicare cost reports to determine a weight for blood and blood products in the proposed hospital market basket.

  Overall, our work resulted in the identification of 23 separate cost categories that represent the rebased weights in the proposed rebased and revised hospital market basket. There is one more category than was included in the FY 1992-based market basket (FY 1992-based had 22). The differences between the weights of the major categories determined from the Medicare cost reports for the proposed FY 1997-based index and the previous FY 1992-based index are summarized in Table 1.

TABLE 1.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING MAJOR COST CATEGORIES AND WEIGHTS AS DETERMINED FROM THE MEDICARE COST REPORTS

Expense categories	Proposed rebased FY 1997 hospital market basket	FY 1992-based hospital market basket
Wages and Salaries	50.686	50.244
Employee Benefits	10.970	11.146
Pharmaceuticals	5.416	4.162
Blood and Blood Products	0.875	.....

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TABLE 1.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING MAJOR COST CATEGORIES AND WEIGHTS AS DETERMINED FROM THE MEDICARE COST REPORTS—Continued

Expense categories	Proposed rebased FY 1997 hospital market basket	FY 1992-based hospital market basket
All Other	32.053	34.448
Total	100.000	100.000

Table 2 sets forth all of the proposed market basket cost categories and weights. For comparison purposes, the 1992-based cost categories and weights are included in the table.

TABLE 2.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES AND WEIGHTS

Expense categories	Proposed rebased FY 1997 hospital market basket weights	FY 1992-based hospital market basket weights
1. Compensation	61.656	61.390
A. Wages and Salaries*	50.686	50.244
B. Employee Benefits*	10.970	11.146
2. Professional Fees*	5.401	2.127
3. Utilities	1.353	1.542
A. Fuel, Oil, and Gasoline	0.284	0.369
B. Electricity	0.833	0.927
C. Water and Sewerage	0.236	0.246
4. Professional Liability Insurance	0.840	1.189
5. All Other	30.749	33.752
A. All Other Products	19.537	24.825
(1.) Pharmaceuticals	5.416	4.162
(2.) Direct Purchase Food	1.370	2.314
(3.) Contract Service Food	1.274	1.072
(4.) Chemicals	2.604	3.666
(5.) Blood and Blood Products	0.875	
(6.) Medical Instruments	2.192	3.080
(7.) Photographic Supplies	0.204	0.391
(8.) Rubber and Plastics	1.668	4.750
(9.) Paper Products	1.355	2.078
(10.) Apparel	0.583	0.869
(11.) Machinery and Equipment	1.040	0.207
(12.) Miscellaneous Products	0.956	2.236
B. All Other Services	11.212	8.927
(1.) Telephone Services	0.398	0.581
(2.) Postage	0.857	0.272
(3.) All Other: Labor Intensive*	5.438	7.277
(4.) All Other: Non-Labor Intensive	4.519	0.796
Total	100.000	100.000

*Labor-related.
Note: Due to rounding, weights may not sum to total.

3. Selection of Price Proxies

After computing the FY 1997 cost weights for the proposed rebased hospital market basket, it is necessary to select appropriate wage and price proxies to monitor the rate of change for each expenditure category. Most of the indicators are based on Bureau of Labor Statistics (BLS) data and are grouped into one of the following BLS categories:

• Producer Price Indexes—Producer Price Indexes (PPIs) measure price changes for goods sold in other than retail markets. PPIs are preferable price proxies for goods that hospitals purchase as inputs in producing their outputs because a PPI would better reflect the prices faced by hospitals. For example, we used the PPI for ethical (prescription) drugs, rather than the Consumer Price Index (CPI) for prescription drugs, because hospitals generally purchase drugs directly from the wholesaler. The PPIs that we use measure price change at the final stage of production.

• Consumer Price Indexes—Consumer Price Indexes (CPIs) measure change in the prices of final goods and services bought by the typical consumer. Because they may not represent the price faced by a producer, the consumer price indexes were used only if an appropriate PPI was not available, or if the expenditure was more similar to that of retail consumers in general rather than a purchase at the wholesale level. For example, the CPI for food purchased away from home was used as a proxy for contracted food services.

• Employment Cost Indexes—Employment Cost Indexes (ECIs) measure the rate of change in employee wage rates and employer costs for employee benefits per hour worked. These indexes are fixed-weight indexes and strictly measure the change in wage rates and employee benefits per hour. They are appropriately not affected by shifts in employment mix.

Table 3 sets forth the complete proposed hospital market basket including cost categories, weights, and price proxies. For comparison purposes, the respective FY 1992-based market basket price proxies are listed as well. A summary outlining the choice of the various proxies follows the table.

TABLE 3.—PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING COST CATEGORIES, AND WEIGHTS, AND FY 1992-BASED AND PROPOSED FY 1997-BASED PRICE PROXIES

Expense categories	Proposed rebased FY 1997 hospital market basket weights	Proposed rebased FY 1997 hospital market basket price proxy	FY 1992 hospital market basket price proxy
1. Compensation	61.656		
A. Wages and salaries*	50.686	ECI-wages and salaries, civilian hospital workers.	CMS occupational wage proxy.
B. Employee benefits*	10.970	ECI—benefits, civilian hospital workers	CMS occupational benefit proxy.
2. Professional fees*	5.401	ECI—compensation for professional specialty & technical.	ECI—compensation for professional, specialty & technical.
3. Utilities	1.353		
A. Fuel, oil, and gasoline	0.284	PPI refined petroleum products	PPI refined petroleum products.
B. Electricity	0.833	PPI commercial electric power	PPI commercial electric power.
C. Water and sewerage	0.236	CPI–U water & sewerage maintenance	CPI–U water & sewerage maintenance.
4. Professional liability insurance	0.840	CMS professional liability insurance premium index.	CMS professional liability insurance premium index.
5. All other products	30.749		
A. All other products	19.537		
(1.) Pharmaceuticals	5.416	PPI ethical (prescription) drugs	PPI ethical (prescription) drugs.
(2.) Direct purchase food	1.370	PPI processed foods and feeds	PPI processed foods and feeds.
(3.) Contract service food	1.274	CPI–U food away from home	CPI–U food away from home.
(4.) Chemicals	2.604	PPI industrial chemicals	PPI industrial chemicals.
(5.) Blood and blood products	0.875	PPI blood and blood derivatives, human use.	N/A.
(6.) Medical instruments	2.192	PPI medical instruments & equipment	PPI medical instruments and equipment.
(7.) Photographic supplies	0.204	PPI photographic supplies	PPI photographic supplies.
(8.) Rubber and plastics	1.668	PPI rubber & plastic products	PPI rubber and plastic products.
(9.) Paper products	1.355	PPI converted paper and paperboard products.	PPI converted paper and paperboard products.
(10.) Apparel	0.583	PPI apparel	PPI apparel.
(11.) Machinery and equipment	1.040	PPI machinery and equipment	PPI machinery and equipment.
(12.) Miscellaneous products	0.956	PPI finished goods less food and energy	PPI finished goods.
B. All other services	11.212		
(1.) Telephone services	0.398	CPI–U telephone services	CPI–U telephone services.
(2.) Postage	0.857	CPI–U postage	CPI–U postage.
(3.) All other: labor intensive*	5.438	ECI—Compensation for private service occupations.	ECI—compensation for private service occupations.
(4.) All other: non-labor intensive	4.519	CPI–U all items	CPI–U all items.
Total	100.000		

*Labor related.

a. Wages and Salaries

For measuring the price growth of wages in the FY 1997-based market basket, we are proposing to use the ECI for civilian hospitals. This differs from the proxy used in the FY 1992-based index in which a blended occupational wage index was used. The blended occupational wage proxy used in the FY 1992-based index and the ECI for wages and salaries for hospitals both reflect a fixed distribution of occupations within the hospital. The major difference between the two proxies is in the treatment of professional and technical wages. In the blended occupational wage proxy, the professional and technical category is blended evenly between the ECI for wages and salaries for hospitals and the ECI for wages and salaries for professional and technical occupations in the overall economy, instead of hospital-specific occupations as reflected in the ECI for hospitals. This blend was done to create a normative price index that did not reflect the market imperfections in the hospital labor markets that existed for much of the 1980s and early 1990s.

Between 1987 (the first year the ECI for hospitals was available, although the pattern existed before then using other measures of hospital wages) and 1994, the ECI for wages and salaries for hospital workers grew faster than the blended occupational wage proxy. This trend then reversed for the 1995 through 2000 period when the ECI grew slower than the blended occupational wage proxy each year. This is the apparent result of the shift of private insurance enrollees from fee-for-service plans to managed care plans and the tighter controls these plans exhibited over hospital utilization and incentives to shift care out of the inpatient hospital setting. More recently, the ECI for wages

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and salaries for hospital workers is again growing faster than the blended occupational wage proxy, raising the question of whether the relationship between hospital wages and the occupational wage blend from 1994 through 2000 was the signaling of a new era in the competitiveness of the hospital labor market, or simply the temporary reversal of the long-term pattern of labor market imperfections in hospitals.

In order to answer this question, we researched the historical determinants of this relationship and estimated what the future market conditions are likely to be. Our analysis indicated that the driving force behind the long-term differential between hospital wages and the blended occupational wage proxy was the increased demand for hospital services and the subsequent increase in hospital utilization, particularly in outpatient settings. However, during the 1994–2000 period, the major force behind the reversal of the differential was the shift of enrollees to managed care plans that had tighter restrictions on hospital utilization and encouraged the shift of care out of the hospital setting. To a lesser extent, the robust economic growth and tight economy-wide labor markets that accompanied this period helped to reverse the differential as well. Over the last year or two, there has been a move back towards less restrictive plans, and a subsequent increase in the utilization of medical services. This recent surge appears to reflect the true underlying fundamentals of health care demand. This concept is reinforced by the similar patterns being observed for nursing homes and other health sectors as well. This is an important development, specifically when compared to the ECI for wages and salaries for nursing homes, which reflect less skilled occupations, yet still experienced a similar acceleration in wage growth. Thus, we would expect that this recent surge in hospital wages is reflective of competitive labor market conditions, and would likely persist only as long as the underlying demand for health care was accelerating.

While the shift to managed care plans had a noticeable one-time effect, we do feel that the hospital labor market is more competitive than prior to this period and that the expected shift towards more restrictive insurance plans over the coming decade will act to create a wage differential that reflects the underlying increases in demand for hospital services. As shown in Table 5, using the ECI has only a minor overall impact (0.1 percentage point per year) from FY 1995 through FY 2001 on the hospital market basket. For FY 2003, the proposed hospital market basket is forecast to increase 0.2 percentage points faster (3.3 vs. 3.1) than it would have if the occupational blend had been used. Based on this, we are proposing to use the ECI for wages and salaries for hospitals and the ECI for benefits for hospitals as the proxies in the hospital market basket for wages and benefits, respectively. The ECI met our criteria of relevance, reliability, availability, and timeliness. Relevance means that the proxy is applicable and representative of the cost category that it proxies. Reliability indicates that the index is based on valid statistical methods and has low sampling variability. Availability means that the proxy is publicly available. Timeliness implies that the proxy is published regularly, at least once a quarter.

b. Employee Benefits

The proposed FY 1997-based hospital market basket uses the ECI for employee benefits for civilian hospitals. This differs from the FY 1992-based index in which a blended occupational index was used. Our conclusions were based on a similar analysis that was done for the wages and salaries proxy described above.

c. Nonmedical Professional Fees

The ECI for compensation for professional and technical workers in private industry is applied to this category since it includes occupations such as management and consulting, legal, accounting and engineering services. The same price measure was used in the FY 1992-based market basket.

d. Fuel, Oil, and Gasoline

The percentage change in the price of gas fuels as measured by the PPI (Commodity Code #0552) was applied to this component. The same price measure was used in the FY 1992-based market basket.

e. Electricity

The percentage change in the price of commercial electric power as measured by the PPI (Commodity Code #0542) was applied to this component. The same price measure was used in the FY 1992-based market basket.

f. Water and Sewerage

The percentage change in the price of water and sewerage maintenance as measured by the Consumer Price Index (CPI) for all urban consumers (CPI Code # CUUR0000SEHG01) was applied to this component. The same price measure was used in the FY 1992-based market basket.

g. Professional Liability Insurance

The percentage change in the hospital professional liability insurance price as estimated by the CMS Hospital Malpractice Index was applied. In the FY 1992-based market basket, the same proxy was used.

We are currently conducting research into improving our proxy for professional liability insurance. This research includes subcontracting with ANASYS through a contract with DRI-WEFA to extend the results of its NHMIS survey to set up a sample of hospitals from which malpractice insurance premium data will be directly collected. This new information, which would include liability estimates for hospitals that self-insure, would be combined with our current proxy data to obtain a more accurate price measure. Depending on the timing of this new information, the proxy for professional liability insurance in the market basket may be modified for the final rule. In addition, we are researching a BLS PPI for malpractice premiums that may be a more appropriate proxy for this cost category.

h. Pharmaceuticals

The percentage change in the price of prescription drugs as measured by the PPI (Commodity Code # PPI283D#RX) was applied to this variable. This is a special index produced by BLS. The previous price proxy used in the FY 1992-based index (Commodity Code #0635) was discontinued after BLS revised its indexes.

i. Food, Direct Purchases

The percentage change in the price of processed foods and foods as measured by the PPI (Commodity Code #02) was applied to this component. The same price measure was used in the FY 1992-based market basket.

j. Food, Contract Services

The percentage change in the price of food purchased away from home as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEFV) was applied to this component. The same price measure was used in the FY 1992-based market basket.

k. Chemicals

The percentage change in the price of industrial chemical products as measured by the PPI (Commodity Code #061) was applied to this component. While the chemicals in this category include industrial as well as other types of chemicals, the industrial chemicals component constitutes the largest proportion by far. Thus, Commodity Code #061 is the appropriate proxy. The same price measure was used in the FY 1992-based market basket.

l. Blood and Blood Products

The percentage change in the price of blood and derivatives for human use as measured by the PPI (Commodity Code #063711) was applied to this component. As discussed earlier in this preamble, a comparable cost category was not available in the FY 1992-based market basket.

We are proposing that the blood and blood products cost category use the PPI for blood and blood derivatives as its price proxy. This proxy is relevant, reliable, available, and timely. We considered placing the blood weight in the Chemicals or Pharmaceuticals cost category, but found this made only minor changes to the total index. We also considered constructing an index based on blood cost data received from the American Red Cross, America's Blood Centers, and Zeman and Company. However, these data are collected annually and not widely available. The PPI for blood and blood derivatives was the only index we found that met all of our criteria.

m. Surgical and Medical Equipment

The percentage change in the price of medical and surgical instruments as measured by the PPI (Commodity Code #1562) was applied to this component. The same price measure was used in the FY 1992-based market basket.

n. Photographic Supplies

The percentage change in the price of photographic supplies as measured by the PPI (Commodity Code #1542) was applied to this component. The same price measure was used in the FY 1992-based market basket.

o. Rubber and Plastics

The percentage change in the price of rubber and plastic products as measured by the PPI (Commodity Code #07) was applied to this component. The same price measure was used in the FY 1992-based market basket.

p. Paper Products

The percentage change in the price of converted paper and paperboard products as measured by the PPI (Commodity Code #0915) was used. The same price measure was used in the FY 1992-based market basket.

q. Apparel

The percentage change in the price of apparel as measured by the PPI (Commodity Code #381) was applied to this component. The same price measure was used in the FY 1992-based market basket.

r. Machinery and Equipment

The percentage change in the price of machinery and equipment as measured by the PPI (Commodity Code #11) was applied to this component. The same price measure was used in the FY 1992-based market basket.

s. Miscellaneous Products

The percentage change in the price of all finished goods less food and energy as measured by the PPI (Commodity Code #SOP3500) was applied to this component. The percentage change in the price of all finished goods was used in the FY 1992-based market basket. This change was made to remove the effect of food and energy prices, which are already captured elsewhere in the market basket.

t. Telephone

The percentage change in the price of telephone services as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEED) was applied to this component. The same price measure was used in the FY 1992-based market basket.

u. Postage

The percentage change in the price of postage as measured by the CPI for all urban consumers (CPI Code # CUUR0000SEEC01) was applied to this component. The same price measure was used in the FY 1992-based market basket.

v. All Other Services, Labor Intensive

The percentage change in the ECI for compensation paid to service workers employed in private industry was applied to this component. The same price measure was used in the FY 1992-based market basket.

w. All Other Services, Nonlabor Intensive

The percentage change in the all-items component of the CPI for all urban consumers (CPI Code # CUUR0000SA0) was applied to this component. The same price measure was used in the FY 1992-based market basket.

For further discussion of the rationale for choosing many of the specific price proxies, we reference the August 30, 1996 final rule (61 FR 46326). Table 4 shows the historical and forecasted updates under both the proposed FY 1997-based and the FY 1992-based market baskets. For comparison purposes, the FY 1997-based index incorporating different wage and benefit proxies is included in Table 5.

TABLE 4.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Prospective rebased 1997 hospital market basket	FY 1992-based market basket
Historical data:		
FY 1995	2.8	3.1
FY 1996	2.3	2.4
FY 1997	1.6	2.1
FY 1998	2.7	2.9
FY 1999	2.7	2.5
FY 2000	3.3	3.6
FY 2001	4.2	4.1
Average FYs 1995–2001	2.8	3.0
Forecast:		
FY 2002	3.7	2.8
FY 2003	3.3	3.0
FY 2004	2.9	3.2

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TABLE 4.—FY 1992-BASED AND PROPOSED FY 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004—Continued

Fiscal year (FY)	Prospective rebased 1997 hospital market basket	FY 1992-based market basket
Average FYs 2002–2004	3.3	3.0

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

Table 5 indicates that switching the proxy for wages and benefits to the ECI for Civilian Hospitals has a minimal effect on the FY 2003 update and a minimal effect over time. However, we believe that it is a more appropriate measure of price change in hospital wages and benefit prices given the current labor market conditions facing hospitals.

TABLE 5.—PROPOSED 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 hospital market basket using ECIs for wages and benefits	Proposed rebased 1997 market basket using occupational wage and benefit proxies
Historical data:		
FY 1995	2.8	2.9
FY 1996	2.3	2.5
FY 1997	1.6	2.3
FY 1998	2.7	3.2
FY 1999	2.7	2.9
FY 2000	3.3	3.5
FY 2001	4.2	4.0
Average FYs 1995–2001	2.8	3.0
Forecast:		
FY 2002	3.7	3.0
FY 2003	3.3	3.1
FY 2004	2.9	3.1
Average FYs 2002–2004	3.3	3.

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

The reintroduction of a cost component for blood and blood products in the market basket also does not make a noticeable impact on the market basket. Table 6 shows the proposed FY 1997-based market basket percentage change with blood broken out separately compared to market baskets with blood included in either chemicals or drugs.

TABLE 6.—PROPOSED 1997-BASED PROSPECTIVE PAYMENT HOSPITAL OPERATING INDEX PERCENT CHANGE, USING COST CATEGORIES FOR BLOOD AND BLOOD PRODUCTS, 1995–2004

Fiscal year (FY)	Proposed FY 1997-based market basket		
	With blood as a separate category	With blood included in chemicals	With blood included in drugs
Historical data:			
FY 1995	2.8	2.9	2.8
FY 1996	2.3	2.3	2.4
FY 1997	1.6	1.6	1.6
FY 1998	2.7	2.7	2.8
FY 1999	2.7	2.5	2.7
FY 2000	3.3	3.4	3.3
FY 2001	4.2	4.2	4.2
Average FYs 1995–2001	2.8	2.8	2.8
Forecast:			
FY 2002	3.7	3.6	3.7
FY 2003	3.3	3.3	3.3
FY 2004	2.9	3.0	3.0
Average FYs 2002–2004	3.3	3.3	3.3

Source: Global Insights, Inc, DRI-WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

4. Labor-Related Share

Sections 1886(d)(2)(H) and (d)(3)(E) of the Act direct the Secretary to estimate from time to time the proportion of payments that are labor-related: "The Secretary shall adjust the proportion (as estimated by the Secretary from time to time) of hospitals' costs which are attributable to wages and wage-related costs of the DRG prospective payment rates * * *".

In its June 2001 Report to Congress, MedPAC recommended that "To ensure accurate input-price adjustments in Medicare's prospective payment systems, the Secretary should reevaluate current assumptions about the proportions of providers' costs that reflect resources purchased in local and national markets." (Report to the Congress: Medicare in Rural America, p. 80, Recommendation 4D.) MedPAC believes that the labor-related share is an estimate of the national average proportion of providers' costs associated with inputs that are *only* affected by local market wage levels. MedPAC recommended the labor-related share include the weights for wages and salaries, fringe benefits, contract labor, and other labor-related costs for locally purchased inputs only. By changing the definition, and thereby lowering the labor-related share, funds would be transferred from urban to rural hospitals, which generally have wage index values less than 1.0.

Given the recommendation by MedPAC and our proposal to rebase and revise the hospital market basket, we have reviewed the definition and methodology of the labor-related share. In addition, we reviewed the differences between urban and rural hospitals, updated regression results, and began reviewing possible alternative methodologies for calculating the labor-related share.

The labor-related share is used to determine the proportion of the national prospective payment system base payment rate to which the area wage index is applied. In the past we have defined the labor-related share for prospective payment system acute care hospitals as the national average proportion of operating costs that are related to, influenced by, or vary with the local labor market. The labor-related share for the acute care hospital inpatient prospective payment system market basket has been the sum of the weights for wages and salaries, fringe benefits, professional fees, contract labor, postage, business services, and labor-intensive services.

The difference between the CMS definition of the labor-related share and MedPAC's recommendation is that MedPAC includes inputs that can only be purchased in the local labor market, while CMS' includes inputs that are related to, influenced by, or vary with the local labor market, even if those services may be purchased at the national level. We believe our measure of the labor-related share reflects the cost of those inputs that are likely purchased in the local market, and is consistent with the requirements under sections 1886(d)(2)(H) and (d)(3)(E) of the Act described at the beginning of section IV.A.4. of this proposed rule.

In connection with the rebasing and revising of the prospective payment system hospital market basket to 1997 data, we are proposing to recalculate the labor-related share of the standardized amounts. Our methodology is consistent with that used in the past to determine the labor-related share, which is the summation of the cost categories from the market basket deemed to vary with the local labor market. Based on the relative weights listed in Table 7, the proposed labor-related portion (wages and salaries, employee benefits, professional fees, and all other labor-intensive services) of the prospective payment system hospital market basket is 72.5 percent, and the nonlabor-related portion is 27.5 percent. By capturing more than just the direct labor costs that are available from the Medicare cost reports, our definition captures the "buy-versus-hire" decisions hospitals make in the purchase of their inputs. Accordingly, effective with discharges occurring on or after October 1, 2002, we are proposing to use these revised labor-related and nonlabor-related shares of the large urban and other areas' standardized amounts used to establish the prospective payment rates. Table 7 compares the FY 1992-based labor-related share with the proposed FY 1997-based labor-related share. As shown in Table 7, we have removed postage costs from the proposed FY 1997-based labor-related share because we do not believe these costs are likely to vary with the local labor market. Also, by changing the data source used to determine professional fees, the weight for that category has increased significantly.

TABLE 7.—LABOR-RELATED SHARE

Cost category	FY 1992-based weight	Proposed 1997-based weight	Difference
Wages and salaries	50.244	50.686	0.442
Fringe benefits	11.146	10.970	−0.176
Nonmedical professional fees	2.127	5.401	3.274
Postal services*	0.272	.....	−0.272
Other labor-intensive services**	7.277	5.438	−1.839
Total labor-related	71.066	72.495	1.429
Total nonlabor-related	28.934	27.505	−1.429

* No longer considered to be labor-related.
** Other labor-intensive services includes landscaping services, services to buildings, detective and protective services, repair services, insurance services, laundry services, auto parking and repairs, physical fitness facilities, other medical services, colleges and professional schools, and other government enterprises.

We are concerned that the result of this methodology could have negative impacts that would fall predominantly on rural hospitals and are interested in public comments on alternative methodologies. While we are not proposing to change the methodology for calculating the labor-related share in this proposed rule, we have begun the research necessary to reevaluate the current assumptions used in determining this share. This reevaluation is consistent with the MedPAC recommendation in MedPAC's June 2001 report. Our research involves analyzing the compensation share separately for urban and rural hospitals, using regression analysis to determine

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the proportion of costs influenced by the area wage index, and exploring alternative methodologies to determine whether all or just a portion of professional fees and nonlabor intensive services should be considered labor-related. Although we have not completed our research into this issue, we are summarizing some of our preliminary findings below. We encourage comments on this research and any information that is available to help determine the most appropriate measure.

The compensation share of costs for hospitals in rural areas was higher on average than the compensation share for hospitals in urban areas. Using FY 1997 Medicare cost report data, rural areas had an average compensation share of 62.7 percent, while urban areas had a share of 61.5 percent. This compares to a share of 61.7 percent for all hospitals. These findings were validated consistently through our regression analysis, described in more detail below, as the coefficient on the wage index was higher when the regressions were run only for rural hospitals compared to when the regressions were run only for urban hospitals. Based on these findings, it does not appear that using a national average labor share for all hospitals to adjust the national payment rate by the area wage index disadvantages rural hospitals that tend to have a wage index value below 1.0.

Our research attempted to validate our national average labor share by conducting regression analysis to determine the proportion of hospital's costs that varied with the area wage index. We have conducted this type of regression analysis before in helping to determine the labor-related share, most recently for the SNF prospective payment system (66 FR 39585). Our first step was to edit the data, which had significant outliers in some of the variables we used in the regressions. We originally began with an edit that excluded the top and bottom 5 percent of reports based on average Medicare cost per discharge and number of discharges. We also used edits to exclude reports that did not meet basic criteria for use, such as having costs greater than 0 for total, operating, and capital for the overall facility and for only the Medicare proportion. We also required that the hospital occupancy rate, length of stay, number of beds, full-time equivalents (FTEs), and overall and Medicare discharges be greater than 0. Finally, we excluded reports with occupancy rates greater than 1.

Our initial regression specification (in log form) was the Medicare operating cost per Medicare discharge as the dependent variable and the independent variables being the area wage index, the case mix index, the ratio of interns and residents per bed (as proxy for IME status), and a dummy for large urban hospitals. This regression produced a coefficient for all hospitals for the area wage index of 0.638 (which is equivalent to the labor share and can be interpreted as an elasticity because of the log specification) with an adjusted R-squared of 64.3. While on the surface this would appear to be a reasonable result, this same specification for urban hospitals had a coefficient of 0.532 (adjusted R-squared = 53.2) and a coefficient of 0.709 (adjusted R-squared = 36.4) for rural hospitals. This highlighted some apparent problems with the specification because the overall regression results appear to be masking underlying problems. It would not seem reasonable that urban hospitals would have a labor share below their actual compensation share or that the discrepancy between urban and rural hospitals would be this large. The other major problem with the regression was that the coefficient on the case-mix index was significantly below 1.0 for each specification. When we standardized the Medicare operating cost per Medicare discharge for case mix, the fit fell dramatically and the urban/rural discrepancy became even larger.

Based on this initial result, we tried two modifications to the regressions to correct for the underlying problems. First, we edited the data differently to determine if a few reports were causing the inconsistent results. We found that when we tightened the edits, the wage index coefficient was lower and the fit was worse. When we loosened the edits, we found higher wage index coefficients and still a worse fit. Second, we added variables to the regression equation to attempt to explain some of the variation that was not being captured. We found the best fit occurred when the following variables were added: the occupancy rate, the number of hospital beds, a dummy for control status, the Medicare length of stay, the number of FTEs per bed, and the age of fixed assets. The result of this specification was a wage index coefficient of 0.620 (adjusted R-squared = 68.7), with the regression on rural hospitals having a coefficient of 0.772 (adjusted R-squared = 45.0) and the regression on urban hospitals having a coefficient of 0.474 (adjusted R-squared = 60.9). Neither of these alternatives seemed to help the underlying difficulties with the regression analysis.

Because the market basket method determines the proportion of labor-related costs for the entire hospital, not just Medicare costs (due to the unavailability of Medicare specific data for such detailed cost categories) we also ran the regressions on overall hospital operating cost per discharge. The initial specification (only 4 independent variables) produced similar results to those discussed above, that is, what appeared to be a reasonable overall share but with major problems underlying the data. The more detailed specification also did not improve the results over the previous runs.

Because of these problems, we did not believe the regression analysis was producing enough sound evidence at this point for us to make the decision to change from the current method for calculating the labor-related share using market basket categories. We plan to continue to analyze these data and work on alternative specifications, including working with MedPAC, which has done a similar analysis in its studies of payment adequacy in the past. We welcome comments on this approach, given the difficulties we have encountered.

We also have been examining ways to refine our market basket approach to more accurately account for the proportion of costs influenced by the local labor market. Specifically, we have been looking at the professional fees and labor intensive cost categories to determine if only a proportion of the costs in these categories should be considered labor-related, not the entire cost category. Professional fees include management and consulting fees, legal services, accounting services, and engineering services. Labor-intensive services are mostly building services, but also include other maintenance and repair and insurance services. While we have identified some possible approaches for accomplishing this, we do not believe at this point that we have completely validated them and thus are not proposing to change from our current method. Below we briefly describe the possible approaches and some of the issues surrounding these approaches.

One possible option would be to only include in the labor-related share the compensation portion of the cost category for each industry included in professional fees and labor-intensive services. This could be done using data from the 1997 BES, which reports detailed cost categories by industry (SIC) code. For example, management and consulting fees (SIC 874) is one of the major pieces of professional fees. The BES indicates that compensation accounts for 59.2 percent of operating costs in management and consulting fees. If we only considered for inclusion in the labor-related share the portion that is compensation, this would result in a lower labor share. However, at this point, there does not appear to be enough information available from the BES to do this for every industry code. It is also not clear that at least some proportion of noncompensation costs of these inputs for hospitals would not vary with the local labor market. We are still researching the appropriateness of this option and whether it could be used to assist in determining the labor-related share.

Another possible option would be to use data from the Bureau of the Census' 1992 Enterprise Statistics to attempt to determine the proportion of costs for professional fees and labor-intensive services associated with centrally located overhead. That is, could we identify the proportion of costs that are borne in a central location such that they would not be related to the local labor market? The Enterprise Statistics include payroll data for both auxiliary establishments of a multiestablishment company and the entire company. Since auxiliary establishments primarily manage, administer, service, and support the activities of other establishments of the company, we were considering using this information to estimate the proportion of professional fees and labor-intensive services associated with central locations instead of with the location of the hospital. The Enterprise Statistics data are available for specific enterprise industry codes (EIC) that could seemingly be matched to the industry codes from the I–O used to determine professional fees and labor-intensive services. The methodology would consist of determining the auxiliary establishments payroll share of the total establishment, and subtracting that portion from the compensation portion of expenses for each I–O industry code. The initial research into this method is pointing out some difficulties in matching industry and EIC codes since the Enterprise Statistics do not contain as much detail as the I–O. In addition, it is not clear yet that this method would remove the appropriate amount of central office labor costs. We will continue to research this option, but at this time we are not proposing to use it in the calculation of the labor-related share.

We plan to continue researching whether an alternative methodology for determining the labor-related share would be more appropriate than our current methodology, including working with MedPAC. We plan to complete this research prior to August 1 and would make the appropriate changes in the final rule if we found another methodology to be superior to our current methodology. At this time, we are proposing to continue to use our existing methodology in determining the labor-related share.

5. Separate Market Basket for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

In its March 1, 1990 report, ProPAC recommended that we establish a separate market basket for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system. Effective with FY 1991, we adopted ProPAC's recommendation to implement separate market baskets. (See the September 4, 1990 final rule (55 FR 36049).) Prospective payment system hospitals and excluded hospitals and units tend to have different case mixes, practice patterns, and composition of inputs. The fact that excluded hospitals are not included under the acute care hospital inpatient prospective payment system in part reflects these differences. Studies completed by CMS, ProPAC, and the hospital industry have documented different weights for excluded hospitals and units and prospective payment system hospitals.

The excluded hospital market basket is a composite set of weights for Medicare-participating psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. We are proposing to use cost report data for excluded freestanding hospitals whose Medicare average length of stay is within 15 percent (that is, 15 percent higher or lower) of the total facility average length of stay for excluded hospitals, except psychiatric hospitals. A tighter measure of Medicare length of stay within 8 percent (that is, 8 percent higher or lower) of the total facility average length of stay is proposed for freestanding psychiatric hospitals. This was done because psychiatric hospitals have a relatively small proportion of costs from Medicare and a relatively small share of Medicare psychiatric cases. While the 15 percent length of stay edit was used for the FY 1992-based index, the tighter, 8 percent edit for psychiatric hospitals was not. We believe that limiting our sample to hospitals with a Medicare average length of stay within a comparable range to the total facility average length of stay provides a more accurate reflection of the structure of costs for treating Medicare patients.

Table 8 compares major weights in the proposed rebased FY 1997 market basket for excluded hospitals with weights in the proposed rebased FY 1997 market basket for acute care prospective payment system hospitals. Wages and salaries are 51.998 percent of total operating costs for excluded hospitals compared to 50.686 percent for acute care prospective payment hospitals. Employee benefits are 11.253 percent for excluded hospitals compared to 10.970 percent for acute care prospective payment hospitals. As a result, compensation costs (wages and salaries plus employee benefits) for excluded hospitals are 63.251 percent of costs compared to 61.656 percent for acute care prospective payment hospitals, reflecting the more labor-intensive services conducted in excluded hospitals.

A significant difference in the category weights also occurs in pharmaceuticals. Pharmaceuticals represent 5.416 percent of costs for acute care prospective payment hospitals and 6.940 percent for excluded hospitals. The weights for the excluded hospital market basket were derived using the same data sources and methods as for the acute care prospective payment market basket as outlined previously. Differences in weights between the proposed excluded hospital and acute care prospective payment hospital market baskets do not necessarily lead to significant differences in the rate of price growth for the two market baskets. If individual wages and prices move at approximately the same annual rate, both market baskets may have about the same overall price growth, even though the weights may differ substantially, because both market baskets use the same wage and price proxies. Also, offsetting price increases for various cost components can result in similar composite price growth in both market baskets.

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TABLE 8.—PROPOSED FY 1997-BASED EXCLUDED HOSPITAL AND PROSPECTIVE PAYMENT HOSPITAL MARKET BASKETS, COMPARISON OF SIGNIFICANT WEIGHTS

Category	Proposed rebased 1997 excluded hospital market basket	Proposed rebased 1997 Prospective Payment System hospital market basket
Wages and salaries	51.998	50.686
Employee benefits	11.253	10.970
Professional fees	4.859	5.401
Pharmaceuticals	6.940	5.416
All other	24.950	25.527
Total	100.000	100.000

Table 9 lists the cost categories, weights, and proxies for the proposed FY 1997-based excluded hospital market basket. For comparison, the FY 1992-based cost category weights are included. The proxies are the same used in the proposed FY 1997-based acute care hospital inpatient prospective payment system market basket discussed above.

TABLE 9.—FY 1992-BASED AND PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING COST CATEGORIES, WEIGHTS, AND PRICE PROXIES

Expense categories	Proposed rebased 1997 excluded hospital market basket weights	FY 1992-based excluded hospital market basket weights	FY 1997-based price proxy
1. Compensation	63.251	63.721	
A. Wages and salaries*	51.998	52.152	ECI-wages and salaries, civilian hospitals.
B. Employee benefits*	11.253	11.569	ECI-benefits, civilian hospitals.
2. Professional fees*	4.859	2.098	ECI-compensation for professional, specialty & technical.
3. Utilities	1.296	1.675	—
A. Fuel, oil, and gasoline	0.272	0.401	PPI commercial natural gas.
B. Electricity	0.798	1.007	PPI commercial electric power.
C. Water and sewerage	0.226	0.267	CPI–U water and sewerage maintenance.
4. Professional liability insurance	0.805	1.081	CMS professional liability insurance premiums index.
5. All other	29.790	31.425	—
A. All other products	19.680	24.227	—
(1) Pharmaceuticals	6.940	3.070	PPI ethical (prescription) drugs.
(2) Direct purchase food	1.233	2.370	PPI processed foods & feeds.
(3) Contract service food	1.146	1.098	CPI–U food away from home.
(4) Chemicals	2.343	3.754	PPI industrial chemicals.
(5) Blood and blood products	0.821	N/A	PPI blood and blood derivatives, human use.
(6) Medical instruments	1.972	3.154	PPI medical instruments & equipment.
(7) Photographic supplies	0.184	0.400	PPI photographic supplies.
(8) Rubber and plastics	1.501	4.865	PPI rubber & plastic products.
(9) Paper products	1.219	2.182	PPI converted paper & paperboard products.
(10) Apparel	0.525	0.890	PPI apparel.
(11) Machinery and equipment	0.936	0.212	PPI machinery & equipment.
(12) Miscellaneous products	0.860	2.232	PPI finished goods less food and energy.
B. All other services	10.110	7.198	—
(1) Telephone services	0.382	0.631	CPI–U telephone services.
(2) Postage	0.771	0.295	CPI–U postage.
(3) All other: labor intensive*	4.892	5.439	ECI-compensation for private service occupations.
(4) All other: Non-labor intensive	4.065	0.833	CPI–U all items.
Total	100.000	100.000	—

*Labor-related.
Note: Due to rounding, weights may not sum to total.

Table 10 shows the historical and forecasted updates under both the proposed FY 1997-based and the FY 1992-based excluded hospital market baskets.

TABLE 10.—FY 1992-BASED AND PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 excluded hospital market basket	FY 1992-based excluded hospital market basket
Historical data:		
FY 1995	2.7	3.2
FY 1996	2.4	2.5
FY 1997	1.7	2.0
FY 1998	3.0	2.7
FY 1999	2.9	2.4
FY 2000	3.3	3.6
FY 2001	4.3	4.1
Average FYs 1995–2001	2.9	2.9
Forecast:		
FY 2002	3.7	2.8
FY 2003	3.4	3.0
FY 2004	3.0	3.1
Average FYs 2002–2004	3.4	3.0

Source: Global Insights, Inc, DRI-WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

A comparison of the proposed FY 1997-based index incorporating the new wage and benefits proxies (ECIs) and updated occupational wage proxies is included in Table 11.

TABLE 11.—PROPOSED FY 1997-BASED EXCLUDED HOSPITAL OPERATING INDEX PERCENT CHANGE, USING DIFFERENT WAGE AND BENEFIT PROXIES, 1995–2004

Fiscal year (FY)	Proposed rebased 1997 excluded hospital market basket	
	Using ECIs for hospital wages and nenefits	Using occupational wage and benefit proxies
Historical data:		
FY 1995	2.7	2.9
FY 1996	2.4	2.5
FY 1997	1.7	2.3
FY 1998	3.0	3.4
FY 1999	2.9	3.1
FY 2000	3.3	3.5
FY 2001	4.3	4.0
Average FYs 1995–2001	2.9	3.1
Forecast:		
FY 2002	3.7	3.1
FY 2003	3.4	3.2
FY 2004	3.0	3.2
Average FYs 2002–2004	3.4	3.2

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

Like the proposed FY 1997-based prospective payment hospital index showed, there is little difference in the index over time when different compensation proxies are used. Table 12 shows the labor-related share for excluded hospitals.

TABLE 12.—LABOR-RELATED SHARE, EXCLUDED HOSPITALS

Cost category	FY 1992-based weight	Proposed FY 1997-based weight	Difference
Wages and salaries	52.152	51.998	−0.154
Fringe benefits	11.569	11.253	−0.316
Nonmedical professional fees	2.098	4.859	2.761
Postal services*	0.295	.....	−0.295
Other labor intensive services**	5.439	4.892	−0.547
Total labor-related	71.553	73.002	1.449

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TABLE 12.—LABOR-RELATED SHARE, EXCLUDED HOSPITALS—Continued

Cost category	FY 1992-based weight	Proposed FY 1997-based weight	Difference
Total nonlabor-related	28.447	26.998	−1.449

*No longer considered to be labor-related.
**Other labor-intensive services includes landscaping services, services to buildings, detective and protective services, repair services, insurance services, laundry services, auto parking and repairs, physical fitness facilities, other medical services, colleges and professional schools, and other government enterprises.

B. Capital Input Price Index

The Capital Input Price Index (CIPI) was originally detailed in the September 1, 1992 **Federal Register** (57 FR 40016). There have been subsequent discussions of the CIPI presented in the May 26, 1993 (58 FR 30448), September 1, 1993 (58 FR 46490), May 27, 1994 (59 FR 27876), September 1, 1994 (59 FR 45517), June 2, 1995 (60 FR 29229), September 1, 1995 (60 FR 45815), May 31, 1996 (61 FR 27466), and August 30, 1996 (61 FR 46196) rules in the **Federal Register**. The August 30, 1996 rule discussed the most recent revision and rebasing of the CIPI to a FY 1992 base year, which reflects the capital cost structure facing hospitals in that year.

We are proposing to revise and rebase the CIPI to a FY 1997 base year to reflect the more recent structure of capital costs. To do this, we reviewed hospital expenditure data for the capital cost categories of depreciation, interest, and other capital expenses. As with the FY 1992-based index, we have developed two sets of proposed weights in order to calculate the proposed FY 1997-based CIPI. The first set of proposed weights identifies the proportion of hospital capital expenditures attributable to each capital expenditure category, while the second set of proposed weights is a set of relative vintage weights for depreciation and interest. The set of vintage weights is used to identify the proportion of capital expenditures within a cost category that is attributable to each year over the useful life of capital assets in that category. A more thorough discussion of vintage weights is provided later in this section.

Both sets of weights are developed using the best data sources available. In reviewing source data, we determined that the Medicare cost reports provided accurate data for all capital expenditure cost categories. We are proposing to use the FY 1997 Medicare cost reports for acute care prospective payment system hospitals, excluding expenses from hospital-based subproviders, to determine weights for all three cost categories: Depreciation, interest, and other capital expenses. We compared the weights determined from the Medicare cost reports to other data sources for 1997, specifically the Bureau of the Census' BES and the AHA Annual Survey, and found the weights to be consistent with those data sources.

Lease expenses are not a separate cost category in the CIPI, but are distributed among the cost categories of depreciation, interest, and other, reflecting the assumption that the underlying cost structure of leases is similar to capital costs in general. We assumed 10 percent of lease expenses are overhead and assigned them to the other capital expenses cost category as overhead, as was done in previous capital market baskets. The remaining lease expenses were distributed to the three cost categories based on the weights of depreciation, interest, and other capital expenses not including lease expenses.

Depreciation contains two subcategories: Building and fixed equipment and movable equipment. The split between building and fixed equipment and movable equipment was determined using the Medicare cost reports. This methodology was also used to compute the FY 1992-based index.

Table 13 presents a comparison of the proposed rebased FY 1997 capital cost weights and the FY 1992 capital cost weights.

TABLE 13.—COMPARISON OF FY 1992 AND PROPOSED REBASED FY 1997 COST CATEGORY WEIGHTS

Expense categories	FY 1992 weights	Proposed rebased FY 1997 weights	Price proxy
Total	1.0000	1.0000	
Total depreciation	0.6484	0.7135	
Building and fixed equipment depreciation	0.3009	0.3422	Boeckh Institutional Construction Index—vintage weighted (23 years).
Movable equipment depreciation	0.3475	0.3713	PPI for machinery and equipment—vintage weighted (11 years).
Total interest	0.3184	0.2346	
Government/nonprofit interest	0.2706	0.1994	Average yield on domestic municipal bonds (Bond Buyer 20 bonds)—vintage weighted (23 years).
For-profit interest	0.0478	0.0352	Average yield on Moody's Aaa bonds—vintage weighted (23 years).
Other	0.0332	0.0519	CPI—Residential Rent.

Because capital is acquired and paid for over time, capital expenses in any given year are determined by past and present purchases of physical and financial capital. The vintage-weighted CIPI is intended to capture the long-term consumption of capital, using vintage weights for depreciation (physical capital) and interest (financial capital). These vintage weights reflect the purchase patterns of building and fixed equipment and movable equipment over time. Because depreciation and interest expenses are determined by the amount of past and current capital purchases, we used the vintage weights to compute vintage-weighted price changes associated with depreciation and interest expense.

Vintage weights are an integral part of the CIPI. Capital costs are inherently complicated and are determined by complex capital purchasing decisions over time, based on such factors as interest rates and debt financing. Capital is depreciated over time instead of being consumed in the same period it is purchased. The CIPI accurately reflects the annual price changes associated with capital costs, and is a useful simplification of the actual capital accumulation process. By accounting for the vintage nature of capital, we are able to provide an accurate, stable annual measure of price changes. Annual nonvintage price changes for capital are unstable due to the volatility of interest rate changes. These unstable annual price changes do not reflect the actual annual price changes for Medicare capital-related costs. CMS's CIPI reflects the underlying stability of the capital acquisition process and provides hospitals with the ability to plan for changes in capital payments.

To calculate the vintage weights for depreciation and interest expenses, we used a time series of capital purchases for building and fixed equipment and movable equipment. We found no single source that provides the best time series of capital purchases by hospitals for all of the above components of capital purchases. The early Medicare cost reports did not have sufficient capital data to meet this need. While the AHA Panel Survey provided a consistent database back to 1963, it did not provide annual capital purchases. The AHA Panel Survey did provide time series of depreciation and interest expenses that could be used to infer capital purchases over time. Although the AHA Panel Survey was discontinued after September 1997, we were able to use all of the available historical data from this survey since our proposed base year is FY 1997.

In order to estimate capital purchases from AHA data on depreciation and interest expenses, the expected life for each cost category (building and fixed equipment, movable equipment, debt instruments) is needed. The expected life is used in the calculation of vintage weights. We used FY 1997 Medicare cost reports to determine the expected life of building and fixed equipment and movable equipment. The expected life of any piece of equipment can be determined by dividing the value of the fixed asset (excluding fully depreciated assets) by its current year depreciation amount. This calculation yields the estimated useful life of an asset if depreciation were to continue at current year levels, assuming straight-line depreciation. From the FY 1997 cost reports, we determined the expected life of building and fixed equipment to be 23 years, and the expected life of movable equipment to be 11 years. By comparison, the FY 1992-based index showed that the expected life for building and fixed equipment was 22 years, while that for movable equipment was 10 years. Our analysis of data for FYs 1996, 1998, and 1999 indicates very little change in these measures over time.

We used the fixed and movable weights derived from the FY 1997 Medicare cost reports to separate the AHA Panel Survey depreciation expenses into annual amounts of building and fixed equipment depreciation and movable equipment depreciation. By multiplying the annual depreciation amounts by the expected life calculations from the FY 1997 Medicare cost reports, we determined year-end asset costs for building and fixed equipment and movable equipment. We subtracted the previous year asset costs from the current year asset costs and estimated annual purchases of building and fixed equipment and movable equipment back to 1963. From this capital purchase time series, we were able to calculate the vintage weights for building and fixed equipment, movable equipment, and debt instruments. Each of these sets of vintage weights is explained in detail below.

For building and fixed equipment vintage weights, we used the real annual capital purchase amounts for building and fixed equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of the effect of price inflation. This real annual purchase amount for building and fixed equipment was produced by deflating the nominal annual purchase amount by the building and fixed equipment price proxy, the Boeckh institutional construction index. Because building and fixed equipment has an expected life of 23 years, the vintage weights for building and fixed equipment are deemed to represent the average purchase pattern of building and fixed equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the real building and fixed capital purchase amount in any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period, and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the 1997 average building and fixed equipment vintage weights.

For movable equipment vintage weights, we used the real annual capital purchase amounts for movable equipment derived from the AHA Panel Survey. The real annual purchase amount was used to capture the actual amount of the physical acquisition, net of price inflation. This real annual purchase amount for movable equipment was calculated by deflating the nominal annual purchase amount by the movable equipment price proxy, the PPI for machinery and equipment. Because movable equipment has an expected life of 11 years, the vintage weights for movable equipment are deemed to represent the average purchase pattern of movable equipment over 11-year periods.

Vintage weights for each 11-year period are calculated by dividing the real movable capital purchase amount for any given year by the total amount of purchases in the 11-year period. This calculation is done for each year in the 11-year period, and for each of the twenty-four 11-year periods from 1963 to 1997. The average of the twenty-four 11-year periods is used to determine the FY 1997 average movable equipment vintage weights.

For interest vintage weights, we used the nominal annual capital purchase amounts for total equipment (building and fixed, and movable) derived from the AHA Panel Survey. Nominal annual purchase amounts were used to capture the value of the debt instrument. Because debt instruments have an expected life of 23 years, the vintage weights for interest are deemed to represent the average purchase pattern of total equipment over 23-year periods.

Vintage weights for each 23-year period are calculated by dividing the nominal total capital purchase amount for any given year by the total amount of purchases in the 23-year period. This calculation is done for each year in the 23-year period and for each of the twelve 23-year periods from 1963 to 1997. The average of the twelve 23-year periods is used to determine the FY 1997 average interest vintage weights. The vintage weights for the FY 1992 CIPI and the proposed FY 1997 CIPI are presented in Table 14.

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TABLE 14.—CURRENT AND PROPOSED VINTAGE WEIGHTS FOR CAPITAL-RELATED PRICE PROXIES

Year (from farthest to most recent)	Building and fixed equipment		Movable equipment		Interest	
	FY 1992 22 years	Proposed FY 1997 23 years	FY 1992 10 years	Proposed FY 1997 11 years	FY 1992 22 years	Proposed FY 1992 23 years
1	0.019	0.018	0.069	0.063	0.007	0.007
2	0.020	0.021	0.075	0.068	0.008	0.009
3	0.023	0.023	0.083	0.074	0.010	0.011
4	0.026	0.025	0.091	0.080	0.012	0.012
5	0.028	0.026	0.097	0.085	0.014	0.014
6	0.030	0.028	0.103	0.091	0.016	0.016
7	0.031	0.030	0.109	0.096	0.018	0.019
8	0.032	0.032	0.115	0.101	0.021	0.022
9	0.036	0.035	0.124	0.108	0.024	0.026
10	0.039	0.039	0.133	0.114	0.029	0.030
11	0.043	0.042	.....	0.119	0.035	0.035
12	0.047	0.044	.....	.....	0.041	0.039
13	0.050	0.047	.....	.....	0.047	0.045
14	0.052	0.049	.....	.....	0.052	0.049
15	0.055	0.051	.....	.....	0.059	0.053
16	0.059	0.053	.....	.....	0.067	0.059
17	0.062	0.057	.....	.....	0.074	0.065
18	0.065	0.060	.....	.....	0.081	0.072
19	0.067	0.062	.....	.....	0.088	0.077
20	0.069	0.063	.....	.....	0.093	0.081
21	0.072	0.065	.....	.....	0.099	0.085
22	0.073	0.064	.....	.....	0.103	0.087
23	.....	0.065	.....	.....	.....	0.090
Total	1.000	1.000	1.000	1.000	1.000	1.000

After the capital cost category weights were computed, it was necessary to select appropriate price proxies to reflect the rate of increase for each expenditure category. Our proposed price proxies for the FY 1997-based CIPI are the same as those for the FY 1992-based CIPI. We still believe these are the most appropriate proxies for hospital capital costs that meet our selection criteria of relevance, timeliness, availability, and reliability. We ran the proposed FY 1997-based index using the Moody's Aaa bonds average yield and using the Moody's Baa bonds average yield as proxy for the for-profit interest cost category. There was no difference in the two sets of index percent changes either historically or forecasted. The rationale for selecting the price proxies is explained more fully in the August 30, 1996 final rule (61 FR 46196). The proposed proxies are presented in Table 13.

Global Insights, Inc., DRI–WEFA forecasts a 0.7 percent increase in the proposed rebased FY 1997 CIPI for FY 2003, as shown in Table 15.

TABLE 15.—FY 1992 AND PROPOSED FY 1997-BASED CAPITAL INPUT PRICE INDEX, PERCENT CHANGE, 1995–2004

Federal fiscal year	CIPI, FY 1992-based	Proposed CIPI, FY 1997-based
1995	1.2	1.5
1996	1.0	1.3
1997	0.9	1.2
1998	0.7	0.9
1999	0.7	0.9
2000	0.9	1.1
2001	0.7	0.9
Average: FYs 1995–2001	0.9	1.1
Forecast:		
2002	0.6	0.8
2003	0.5	0.7
2004	0.6	0.7
Average: FYs 2002–2004	0.6	0.7

Source: Global Insights, Inc, DRI–WEFA, 1st Qtr. 2002; @USMACRO/MODTREND @CISSIM/TRENDLONG0202.

This 0.7 percent increase is the result of a 1.3 percent increase in projected vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.7 percent increase in other capital expense prices, partially offset by a 2.2 percent decrease in vintage-weighted interest rates in FY 2003, as indicated in Table 16.

TABLE 16.—CMS PROPOSED CAPITAL INPUT PRICE INDEX PERCENT CHANGES, TOTAL AND COMPONENTS, FISCAL YEARS 1985–2005

Fiscal year	Total	Total depreciation	Depreciation, building and fixed equipment	Depreciation, movable equipment	Interest	Other
Wgts FY 1997	1.000	0.7135	0.3422	0.3713	0.2346	0.0519
Vintage-Weighted Price Changes						
1995	1.5	2.7	4.0	1.6	−1.8	2.5
1996	1.3	2.5	3.8	1.4	−2.3	2.6
1997	1.2	2.3	3.6	1.2	−2.4	2.8
1998	0.9	2.1	3.3	0.9	−3.0	3.2
1999	0.9	1.9	3.2	0.7	−2.8	3.2
2000	1.1	1.7	3.1	0.4	−1.6	3.4
2001	0.9	1.5	2.9	0.1	−2.2	4.3
Forecast:						
2002	0.8	1.4	2.8	0.0	−2.2	4.0
2003	0.7	1.3	2.7	−0.1	−2.2	2.7
2004	0.7	1.3	2.5	−0.1	−2.1	2.8
2005	0.7	1.3	2.5	−0.1	−2.0	2.8

Rebasing the CIPI from FY 1992 to FY 1997 increased the percent change in the FY 2003 forecast by 0.2 percentage points, from 0.5 to 0.7 as shown in Table 15. The difference is caused mostly by changes in cost category weights, particularly the smaller weight for interest and larger weight for depreciation. Because the interest component has a negative price change associated with it for FY 2003, the smaller share it accounts for in the FY 1997-based index means it has less of an impact than in the FY 1992-based index. The changes in the expected life and vintage weights have only a minor impact on the overall percent change in the index.

V. Other Decisions and Proposed Changes to the Prospective Payment System for Inpatient Operating Costs and Graduate Medical Education Costs

A. Transfer Payment Policy

1. Expanding the Postacute Care Transfer Policy to Additional DRGs (§ 412.4)

Existing regulations at § 412.4(a) define discharges under the acute care hospital inpatient prospective payment system as situations in which a patient is formally released from an acute care hospital or dies in the hospital. Section 412.4(b) defines transfers from one acute care hospital to another, and § 412.4(c) defines transfers to certain postacute care providers. Our policy provides that, in transfer situations, full payment is made to the final discharging hospital and each transferring hospital is paid a per diem rate for each day of the stay, not to exceed the full DRG payment that would have been made if the patient had been discharged without being transferred.

Under section 1886(d)(5)(J) of the Act, which was added by section 4407 of Public Law 105–33, a "qualified discharge" from one of 10 DRGs selected by the Secretary to a postacute care provider is treated as a transfer case beginning with discharges on or after October 1, 1998. This section requires the Secretary to define and pay as transfers all cases assigned to one of 10 DRGs selected by the Secretary if the individuals are discharged to one of the following postacute care settings:

- A hospital or hospital unit that is not a subsection 1886(d) hospital. (Section 1886(d)(1)(B) of the Act identifies the hospitals and hospital units that are excluded from the term "subsection (d) hospital" as psychiatric hospitals and units, rehabilitation hospitals and units, children's hospitals, long-term care hospitals, and cancer hospitals.)
- A skilled nursing facility (as defined at section 1819(a) of the Act).
- Home health services provided by a home health agency, if the services relate to the condition or diagnosis for which the individual received inpatient hospital services, and if the home health services are provided within an appropriate period (as determined by the Secretary).

In the July 31, 1998 final rule (63 FR 40975 through 40976), we specified the appropriate time period during which we would consider postacute home health services to constitute a transfer situation as within 3 days after the date of discharge. Also, in the July 31, 1998 final rule, we did not include in the definition of postacute transfer cases patients transferred to a swing-bed for skilled nursing care (63 FR 40977).

The Conference Agreement that accompanied Public Law 105–33 noted that "(t)he Conferees are concerned that Medicare may in some cases be overpaying hospitals for patients who are transferred to a postacute care setting after a very short acute care hospital stay. The conferees believe that Medicare's payment system should continue to provide hospitals with strong incentives to treat patients in the most effective and efficient manner, while at the same time, adjust PPS [prospective payment system] payments in a manner that accounts for reduced hospital lengths of stay because of a discharge to another setting." (H.R. Report No. 105–217, 105th Cong., 1st Sess., 740 (1997).)

In the July 31, 1998 final rule (63 FR 40975), we implemented section 1886(d)(5)(J) of the Act, which directed the Secretary to select 10 DRGs based upon a high volume of discharges to postacute care and a disproportionate use of postacute care services. As discussed in the July 31, 1998 final rule, these 10 DRGs were selected in 1998 based on the MedPAR data from FY 1996. Using that information, we identified and selected the first 20 DRGs that had the largest proportion of discharges to postacute care (and at least 14,000 such transfer cases). In order to select 10 DRGs from the 20 DRGs on our list, we considered the volume and percentage of discharges to postacute care that occurred before the mean length of stay and whether the discharges occurring early in the stay were more likely to receive postacute care. We identified the following DRGs

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to be subject to the special 10 DRG transfer rule:

- DRG 14 (Specific Cerebrovascular Disorders Except Transient Ischemic Attack);
- DRG 113 (Amputation for Circulatory System Disorders Except Upper Limb and Toe);
- DRG 209 (Major Joint Limb Reattachment Procedures of Lower Extremity);
- DRG 210 (Hip and Femur Procedures Except Major Joint Procedures Age >17 with CC);
- DRG 211 (Hip and Femur Procedures Except Major Joint Procedures Age >17 without CC);
- DRG 236 (Fractures of Hip and Pelvis);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC);
- DRG 429 (Organic Disturbances and Mental Retardation); and
- DRG 483 (Tracheostomy Except for Face, Mouth and Neck Diagnoses).

Similar to our existing policy for transfers between two acute care hospitals, the transferring hospital in a postacute transfer for 7 of the 10 DRGs receives twice the per diem rate the first day and the per diem rate for each following day of the stay prior to the transfer, up to the full DRG payment. However, 3 of the 10 DRGs exhibit a disproportionate share of costs very early in the hospital stay in postacute transfer situations. For these 3 DRGs, hospitals receive 50 percent of the full DRG payment for the first day of the stay and 50 percent of the per diem for the remaining days of the stay, up to the full DRG payment. This is consistent with section 1886(d)(5)(J)(i) of the Act, which recognizes that in some cases "a substantial portion of the costs of care are incurred in the early days of the inpatient stay."

The statute provides that, after FY 2000, the Secretary is authorized to expand this policy to additional DRGs. In July 1999, the previous Administration committed to not expanding the number of DRGs included in the policy until FY 2003. Therefore, CMS did not propose any change to the postacute care settings or the 10 DRGs in FY 2001 or FY 2002.

Under contract with CMS (Contract No. 500–95–0006), Health Economics Research, Inc. (HER) conducted an analysis of the impact on hospitals and hospital payments of the postacute care transfer provision. We included in the August 1, 2000 final rule (65 FR 47079) a summary of that analysis. Among other issues, the analysis sought to evaluate the reasonableness of expanding the transfer payment policy beyond the current 10 selected DRGs.

The analysis supported the initial 10 DRGs selected as being consistent with the nature of the Congressional mandate. According to HER, "[t]he top 10 DRGs chosen initially by HCFA exhibit very large PAC [postacute care] levels and PAC discharge rates (except for DRG 264, Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC, which was paired with DRG 263). All 10 appear to be excellent choices based on the other criteria as well. Most have fairly high short-stay PAC rates (except possibly for Strokes, DRG 14, and Mental Retardation, DRG 429)."

The HER report discussed the issues related to potentially expanding the postacute care transfer policy to all DRGs. In favor of this expansion, HER pointed to the following benefits:

- A simple, uniform, formula-driven policy;
- The same policy rationale exists for all DRGs;
- DRGs with little utilization of short-stay postacute care would not be harmed by the policy;
- Less confusion in discharge destination coding; and
- Hospitals that happen to be disproportionately treating the current 10 DRGs may be harmed more than hospitals with an aggressive, short-stay, postacute care transfer policy for other DRGs.

The complete HER report may be obtained at: *http://www.cms.gov/medicare/ippsmain.htm*.

Consistent with HER's findings, we believe expanding the postacute care transfer policy to all DRGs may be the most equitable approach at this time, since a policy that is limited to certain DRGs may result in disparate payment treatment across hospitals, depending on the types of cases treated. We are considering implementing this expansion of the postacute transfer policy in the final rule. For example, a hospital specializing in some of the types of cases included in the current 10 DRG transfer policy would receive reduced payments for those cases transferred for postacute care after a brief acute inpatient stay, while a hospital specializing in cases not included in the current 10 DRGs may be just as aggressive in transferring its patients for postacute care, but it would receive full payment for those cases.

Another aspect of the issue is that some hospitals have fewer postacute care options available for their patients. In its June 2001 Report to Congress: Medicare in Rural America, MedPAC wrote: "[a] shortage of ambulatory and post-acute care resources may prevent rural hospitals from discharging patients as early in the episode of care as urban hospitals would" (page 68). MedPAC went on to note that the decline in length of stay for urban hospitals since 1989 was greater for urban hospitals than for rural hospitals (34 percent compared with 25 percent through 1999), presumably due to earlier discharges to postacute care settings. Although MedPAC contemplated returning money saved by expanding the policy to the base payment rate, thereby increasing payments for nontransfer cases, currently section 1886(d)(5)(I)(ii) of the Act provides that any expansion to the postacute transfer policy would not be budget neutral. (Budget neutrality refers to adjusting the base payment rates to ensure total aggregate payments are the same after implementing a policy change as they were prior to the change.) Nevertheless, over the long run, reducing the Medicare Trust Fund expenditures for patients who are transferred to a postacute care setting after a very short acute care hospital stay will improve the program's overall financial stability. Our analysis indicates that expanding the postacute care transfer policy to all DRGs would reduce program payments for these cases by approximately $1.9 billion for FY 2002.

If we were to expand the transfer policy to all DRGs, we would expand the list of those DRGs where a disproportionate share of the costs of the entire stay occurs early in the stay. We conducted analysis to identify those DRGs that would be eligible for the special transfer payment methodology specified in § 412.4(f)(2). As stated above, currently, three DRGs (DRGs 209, 210, and 211) are paid under a special transfer payment calculation whereby they receive 50 percent of the full DRG payment amount on the first day of the stay for cases transferred to a postacute care provider.

We identified cases that were transferred to home health care, SNFs, or long-term care, matching records by beneficiary identification numbers and discharge and admission dates. We standardized charges to account for differences in area wage levels, indirect medical education costs, and disproportionate share payments, and we reduced charges to costs using the available cost-to-charge ratios.

We then grouped the costs by DRG and length of stay. The average costs for transfer cases with a length of stay of 1 day were compared to the costs of transfer cases whose length of stay

approximated the geometric mean length of stay for that particular DRG. The average costs for the transfer cases with a length of stay of 1 day were also compared to costs for all cases with a length of stay approximating the geometric mean length of stay across the DRG. Based on this analysis, we identified the following DRGs that, if the postacute care transfer policy were to be expanded, would qualify for the special postacute care transfer payment policy of 50 percent of the full DRG payment for the first day of the stay:

- DRG 7 (Peripheral and Cranial Nerve and Other Nervous System Procedures with CC);
- DRG 159 (Hernia Procedures Except Inguinal and Femoral Age >17 with CC);
- DRG 218 (Lower Extremity and Humerus Procedure Except Hip, Foot, Femur Age >17 with CC);
- DRG 226 (Soft Tissue Procedures with CC);
- DRG 263 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis with CC);
- DRG 264 (Skin Graft and/or Debridement for Skin Ulcer or Cellulitis without CC);
- DRG 306 (Prostatectomy with CC);
- DRG 308 (Minor Bladder Procedures with CC);
- DRG 315 (Other Kidney and Urinary Tract O.R. Procedures);
- DRG 493 (Laparoscopic Cholecystectomy without C.D.E. with CC); and
- DRG 497 (Spinal Fusion Except Cervical with CC).

This list contains DRGs not currently paid under the special formula (DRGs 209, 210, and 211 will continue to receive the special payment). All of the DRGs in the list meet the following criteria: The average costs of transfer cases on the first day equals the average costs of cases staying the geometric mean length of stay; the geometric mean length of stay is 4 days or greater; and there were at least 50 transfer cases occurring on the first day of the stay.

We also note that DRGs 263 and 264 (which are included in the current list of 10 DRGs subject to the postacute care transfer policy) would qualify for special payment, even though both DRGs have not previously received payment under the special payment provision. However, DRG 264 does qualify under the criteria described above for identifying cases for the potential expanded postacute care transfer policy. Because DRGs 263 and 264 are paired DRGs (that is, the only difference in the cases assigned to DRG 263 as opposed to DRG 264 is that the patient has a complicating or comorbid condition), we would include both DRGs under this expanded policy. If we were to include only DRG 264, there would be an incentive not to include a code identifying a complicating or comorbid condition, so that a transfer case would be assigned to DRG 264 instead of DRG 263 due to the higher per diem payment for DRG 264.

Rather than expand the postacute care transfer policy to all DRGs, another option that we are considering for the final rule is expanding the postacute care transfer policy only to additional DRGs that have high rates of transfers, similar to the initial implementation of only 10 DRGs. For example, an incremental expansion would be to add another 10 DRGs to the policy. Using the same criteria to identify DRGs with high postacute care transfer rates, we identified additional DRGs to include in the postacute care transfer policy. We note that three of the DRGs we identified are paired DRGs (that is, they contain a CC/no-CC split). For the same reason given above for treating paired DRGS consistently, we would include the pairs for the 10 DRGs identified. We estimate the impact of this approach would be to reduce payments to hospitals by approximately $916 million for FY 2002. Under this approach, discharges from the following 13 DRGs (in addition to the 10 DRGs already subject to the postacute care transfer policy) could be considered to be subject to an alternative postacute care transfer policy:

- DRG 12 (Degenerative Nervous System Disorders);
- DRG 79 (Respiratory Infections and Inflammations Age >17 with CC);
- DRG 80 (Respiratory Infections and Inflammations Age >17 without CC);
- DRG 107 (Coronary Bypass with Cardiac Catheterization);
- DRG 109 (Coronary Bypass with PTCA or Cardiac Catheterization);
- DRG 148 (Major Small and Large Bowel Procedures with CC);
- DRG 149 (Major Small and Large Bowel Procedures without CC);
- DRG 239 (Pathological Fractures and Musculoskeletal System and Connective Tissue Malignancy);
- DRG 243 (Medical Back Problems);
- DRG 320 (Kidney and Urinary Tract Diagnoses Age >17 with CC);
- DRG 321 (Kidney and Urinary Tract Diagnoses Age >17 without CC);
- DRG 415 (O.R. Procedure for Infections and Parasitic Diseases); and
- DRG 468 (Extensive O.R. Procedure Unrelated to Principal Diagnosis).

Expanding the postacute care transfer policy in this limited manner, however, would retain many of the potential inequities of the current system. Although we are concerned about the potential for a large impact of implementing any expansion of the postacute care transfer payment policy, we believe that the current policy may create payment inequities across patients and across hospitals. By expanding the postacute transfer policy, we would expect to reduce or eliminate these possible inequities. Therefore, we are soliciting comments on the two options we have identified and discussed in this proposed rule. In the final rule, we could adopt one of the approaches discussed above, or some other approach based on comments received on this proposal for addressing this issue. If commenters submit comments on alternate approaches, we are asking them to also provide useful data relating to alternative DRGs to which the expansion should or should not apply and detailed supporting explanations.

If we adopt either of the proposals discussed above or a variation based on comments submitted, we would follow procedures similar to those that are currently followed for treating cases identified as transfers in the DRG recalibration process. That is, as described in the discussion of DRG recalibration in section II.C. of this proposed rule, additional transfer cases would be counted as a fraction of a case based on the ratio of a hospital's transfer payment under the per diem payment methodology to the full DRG payment for nontransfer cases.

2. Technical Correction

When we revised our regulations on payments for discharges and transfers under § 412.4 in the July 31, 1998 final rule (63 FR 41003), we inadvertently did not exclude discharges from one hospital area or unit to another inpatient area or unit of the hospital that is paid under the acute care hospital inpatient prospective payment system (§ 412.4(b)(2)) from the types of cases paid under the general rule for transfer cases. We are proposing to correct the regulation text to reflect our policy (as reflected in prior preamble language) that transfers from one area or unit within a hospital to another are not paid as transfers (except as described under the special 10 DRG rule at § 412.4(c)). We are proposing to correct this error by revising § 412.4(f)(1) to provide that only the circumstances described in paragraph (b)(1) and (c) of § 412.4 are paid as transfers under the general transfer rule. This proposed correction

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would reflect the fact that transfers under § 412.4(b)(2) are to be paid as discharges and not transfers.

B. Sole Community Hospitals (SCHs) (§§ 412.77 and 412.92)

1. Phase-In of FY 1996 Hospital-Specific Rates

Under the acute care hospital inpatient prospective payment system, special payment protections are provided to a sole community hospital (SCH). Section 1886(d)(5)(D)(iii) of the Act defines an SCH as a hospital that, by reason of factors such as isolated location, weather conditions, travel conditions, absence of other like hospitals (as determined by the Secretary), or historical designation by the Secretary as an essential access community hospital, is the sole source of inpatient hospital services reasonably available to Medicare beneficiaries. The regulations that set forth the criteria that a hospital must meet to be classified as an SCH are located in § 412.92.

To be classified as an SCH, a hospital either must have been designated as an SCH prior to the beginning of the hospital inpatient prospective payment system on October 1, 1983, or must be located more than 35 miles from other like hospitals, or the hospital must be located in a rural area and meet one of the following requirements:

- It is located between 25 and 35 miles from other like hospitals, and it—
  —Serves at least 75 percent of all inpatients, or at least 75 percent of Medicare beneficiary inpatients, within a 35-mile radius or, if larger, within its service area; or
  —Has fewer than 50 beds and would qualify on the basis of serving at least 75 percent of its area's inpatients except that some patients seek specialized care unavailable at the hospital.
- It is located between 15 and 35 miles from other like hospitals, and because of local topography or extreme weather conditions, the other like hospitals are inaccessible for at least 30 days in each of 2 out of 3 years.
- The travel time between the hospital and the nearest like hospital is at least 45 minutes because of distance, posted speed limits, and predictable weather conditions.

Effective with hospital cost reporting periods beginning on or after April 1, 1990, section 1886(d)(5)(D)(i) of the Act, as amended by section 6003(e) of Public Law 101–239, provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment to the hospital for the cost reporting period:

- The Federal rate applicable to the hospital;
- The updated hospital-specific rate based on FY 1982 costs per discharge; or
- The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 405 of Public Law 106–113 added section 1886(b)(3)(I) to the Act, and section 213 of Public Law 106–554 made further amendments to that section of the Act extending to all SCHs the ability to rebase their hospital-specific rates using their FY 1996 operating costs, effective for cost reporting periods beginning on or after October 1, 2000. The provisions of section 1886(b)(3)(I) of the Act were addressed in the June 13, 2001 interim final rule with comment period (66 FR 32177) and were finalized in the August 1, 2001 final rule (66 FR 39872).

In the June 13, 2001 interim final rule, we correctly described the provisions of section 1886(b)(3)(I) of the Act, as amended, and their implementation. However, in the August 1, 2001 final rule, in summarizing the numerous legislative provisions that had affected payments to SCHs, we incorrectly described the application of the statutory provisions in the background section of the preamble on SCHs (66 FR 39872). (We wish to point out that the Addendum to the August 1, 2001 final rule accurately describes the calculation of the hospital-specific rate (66 FR 39944).) Specifically, the payment options that we described in the August 1, 2001 preamble language on SCHs were incorrect in that we did not include the Federal rate in the blends. Therefore, we are providing below a correct description of the provisions of section 1886(b)(3)(I) of the Act and clarifying their application in determining which of the payment options will yield the highest rate of payment for SCHs.

For purposes of payment to SCHs for which the FY 1996 hospital-specific rate yields the greatest aggregate payment, the Federal rate is included in the blend, as set forth below:

- For discharges during FY 2001, 75 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates (identified in the statute as the subsection (d)(5)(D)(i) amount), plus 25 percent of the updated FY 1996 hospital-specific rate (identified in the statute as the "rebased target amount").
- For discharges during FY 2002, 50 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 50 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2003, 25 percent of the greater of the Federal amount or the updated FY 1982 or FY 1987 hospital-specific rates, plus 75 percent of the updated FY 1996 hospital-specific rate.
- For discharges during FY 2004 and subsequent fiscal years, the hospital-specific rate would be determined based on 100 percent of the updated FY 1996 hospital-specific rate.

For each cost reporting period, the fiscal intermediary determines which of the payment options will yield the highest rate of payment. Payments are automatically made at the highest rate using the best data available at the time the fiscal intermediary makes the determination. However, it may not be possible for the fiscal intermediary to determine in advance precisely which of the rates will yield the highest payment by year's end. In many instances, it is not possible to forecast the outlier payments, the amount of the disproportionate share hospital (DSH) adjustment, or the indirect medical education (IME) adjustment, all of which are applicable only to payments based on the Federal rate. The fiscal intermediary makes a final adjustment at the close of the cost reporting period to determine precisely which of the payment rates would yield the highest payment to the hospital.

If a hospital disagrees with the fiscal intermediary's determination regarding the final amount of program payment to which it is entitled, it has the right to appeal the fiscal intermediary's decision in accordance with the procedures set forth in Subpart R of Part 405, which concern provider payment determinations and appeals.

The regulation text of § 412.77 and § 412.92(d) that was revised to incorporate the provisions of section 1886(b)(3)(I) of the Act, as amended, and published in the June 13, 2001 interim final rule with comment period (66 FR 32192 through 32193) and finalized in the August 1, 2001 final rule (66 FR 39932), is accurate.

2. SCH Like Hospitals

Section 1886(d)(5)(D)(iii) of the Act provides that, to qualify as a SCH, a hospital must be not more than 35 road miles from another hospital. There are several other conditions under which a hospital may qualify as a SCH, including if it is the "* * * sole source of inpatient hospital services reasonably available to individuals in a geographic area * * *" because of factors such as the "* * * absence of other like hospitals * * *" We have defined a "like hospital" in regulations as a hospital furnishing short-term, acute care (§ 412.92(c)(2)). Like hospitals refers to hospitals paid under the acute care hospital inpatient prospective payment system.

We have become aware that, in some cases, new specialty hospitals that offer a very limited range of services have opened within the service area of a SCH and may be threatening the special status of the SCH. For example, a hospital that offers only a select type of surgery on an inpatient basis would qualify under our existing rules as an SCH "like hospital" if it met the hospital conditions of participation and was otherwise eligible for payment under the acute care hospital inpatient prospective payment system. Under our existing regulations, a SCH could lose its special status due to the opening of such a specialty hospital, even though there is little, if any, overlap in the types of services offered by the SCH and the specialty hospital.

We believe that limiting eligibility for SCH status to hospitals without SCH like hospitals in their service area is a way to identify those hospitals that truly are the sole source of short-term acute-care inpatient services in the community. A limited-service, specialty hospital, by definition, would not offer an alternate source of care in the community for most inpatient services and therefore, we believe, should not be considered a "like" hospital with the effect of negating SCH status of a hospital that is the sole source of short-term acute care inpatient services in the community. Therefore, we are proposing to amend the definition of SCH like hospitals under § 412.92(c)(2), effective with cost reporting periods beginning on or after October 1, 2002, to exclude any hospital that provides no more than a very small percent of the services furnished by the limited-service facility that overlap with the services provided by the SCH. We believe the percentage of overlapping services should be sufficiently small so that we can ensure that only hospitals that truly are the sole source of short-term acute-care in their community qualify for SCH status. Therefore, we are proposing that this percentage be set at 3 percent. However, we are soliciting public comments on alternate appropriate levels of service overlap, as well as on the overall proposed change to the definition of like hospitals.

C. Outlier Payments: Technical Change (§ 412.80)

Sections 1886(d)(5)(A) and (d)(5)(K) of the Act provide for payments, in addition to the basic prospective payments, for "outlier" cases; that is, cases involving extraordinarily high costs. Cases qualify for outlier payments by demonstrating costs that exceed a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME (§ 412.105) and DSH (§ 412.106) payments for the case and, for discharges on or after October 1, 2001, additional payments for new technologies or services.

Implementing regulations for outlier payments are located in subpart F of part 412. Paragraph (a) of § 412.80 specifies the basic rules for making the additional outlier payments, broken down into three applicable effective periods. We have become aware that in paragraph (a)(2), which relates to outlier payments for discharges occurring on or after October 1, 1997, and before October 1, 2001, we did not include language to specify that the additional costs of outlier cases must exceed the standard DRG payment and any additional payment the hospital would receive for IME and for DSH, plus a fixed loss dollar threshold. Therefore, we are proposing to make a technical change by revising § 412.80(a)(2), applicable for discharges occurring during the period between October 1, 1997 and October 1, 2001, to include the appropriate language regarding additional payments for IME and payments for DSH. (We note that when we amended § 412.80 to incorporate the provisions on the additional payments for new technology under paragraph (a)(3) (66 FR 46924, September 7, 2001), effective October 1, 2001, we did include this language.)

D. Rural Referral Centers (§ 412.96)

Under the authority of section 1886(d)(5)(C)(i) of the Act, the regulations at § 412.96 set forth the criteria that a hospital must meet in order to qualify under the prospective payment system as a rural referral center. For discharges occurring before October 1, 1994, rural referral centers received the benefit of payment based on the other urban amount rather than the rural standardized amount. Although the other urban and rural standardized amounts were the same for discharges beginning with that date, rural referral centers continue to receive special treatment under both the DSH payment adjustment and the criteria for geographic reclassification.

Section 1886(d)(8)(E) of the Act, as amended, creates a mechanism, separate and apart from the MGCRB, permitting an urban hospital to apply to the Secretary to be treated as being located in the rural area of the State in which the hospital is located. The statute directs the Secretary to treat a qualifying hospital as being located in the rural area for purposes of provisions under section 1886(d) of the Act. One of the criteria under section 1886(d)(8)(E) of the Act is that the hospital would qualify as an SCH or a rural referral center if it were located in a rural area. An SCH would be eligible to be paid on the basis of the higher of its hospital-specific rate or the Federal rate. On the other hand, a primary benefit under section 1886(d) of the Act for an urban hospital to become a rural referral center would be waiver of the proximity requirements that are otherwise applicable under the MGCRB process, as set forth in § 412.230(a)(3)(i).

Although hospitals that are reclassified as rural under section 1886(d)(8)(E) of the Act are not permitted to reclassify through the MGCRB, effective October 1, 2000, hospitals located in what is now an urban area if they were ever a rural referral center, were reinstated to rural referral center status. These hospitals may then take advantage of the waiver from the proximity requirements for reclassification.

In addition, as discussed in 62 FR 45999 and 63 FR 26317, under section 4202 of Public Law 105–33, a hospital that was classified as a rural referral center for FY 1991 is to be classified as a rural referral center for FY 1998 and later years so long as that hospital continued to be located in a rural area and did not voluntarily terminate its rural referral center status. Otherwise, a hospital seeking rural referral center status must satisfy applicable criteria. One of the criteria under which a hospital may qualify as a rural referral center is to have 275 or more beds available for use. A rural hospital that does not meet the bed size requirement can qualify as a rural referral center if the hospital meets two mandatory prerequisites (specifying a minimum case-mix index and a minimum number of discharges) and at least one of three optional criteria (relating to specialty composition of medical staff, source of inpatients, or referral volume). With respect to the two mandatory prerequisites, a hospital may be classified as a rural referral center if—

- The hospital's case-mix index is at least equal to the lower of the median case-mix index for urban hospitals in its census region, excluding hospitals with approved teaching programs, or the median case-mix index for all urban hospitals nationally; and
- The hospital's number of discharges is at least 5,000 per year, or, if fewer, the median number of discharges for urban hospitals in the census region in which the hospital is located. (The number of discharges criterion for an osteopathic

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hospital is at least 3,000 discharges per year.)

1. Case-Mix Index

Section 412.96(c)(1) provides that CMS will establish updated national and regional case-mix index values in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. The methodology we use to determine the proposed national and regional case-mix index values is set forth in regulations at § 412.96(c)(1)(ii). The proposed national mean case-mix index value includes all urban hospitals nationwide, and the proposed regional values are the median values of urban hospitals within each census region, excluding those with approved teaching programs (that is, those hospitals receiving indirect medical education payments as provided in § 412.105). These values are based on discharges occurring during FY 2001 (October 1, 2000 through September 30, 2001) and include bills posted to CMS's records through December 2001.

We are proposing that, in addition to meeting other criteria, hospitals with fewer than 275 beds, if they are to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have a case-mix index value for FY 2001 that is at least—

- 1.3229; or
- The median case-mix index value for urban hospitals (excluding hospitals with approved teaching programs as identified in § 412.105) calculated by CMS for the census region in which the hospital is located.

The median case-mix index values by region are set forth in the following table:

Region	Case-Mix index value
1. New England (CT, ME, MA, NH, RI, VT)	1.2089
2. Middle Atlantic (PA, NJ, NY)	1.2235
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	1.2985
4. East North Central (IL, IN, MI, OH, WI)	1.2377
5. East South Central (AL, KY, MS, TN)	1.2459
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	1.1616
7. West South Central (AR, LA, OK, TX)	1.2641
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	1.3255
9. Pacific (AK, CA, HI, OR, WA)	1.2779

The preceding numbers will be revised in the final rule to the extent required to reflect the updated FY 2001 MedPAR file, which will contain data from additional bills received through March 31, 2002.

Hospitals seeking to qualify as rural referral centers or those wishing to know how their case-mix index value compares to the criteria should obtain hospital-specific case-mix index values from their fiscal intermediaries. Data are available on the Provider Statistical and Reimbursement (PS&R) System. In keeping with our policy on discharges, these case-mix index values are computed based on all Medicare patient discharges subject to DRG-based payment.

2. Discharges

Section 412.96(c)(2)(i) provides that CMS will set forth the national and regional numbers of discharges in each year's annual notice of prospective payment rates for purposes of determining rural referral center status. As specified in section 1886(d)(5)(C)(ii) of the Act, the national standard is set at 5,000 discharges. We are proposing to update the regional standards based on discharges for urban hospitals' cost reporting periods that began during FY 2001 (that is, October 1, 2000 through September 30, 2001). That is the latest year for which we have complete discharge data available.

Therefore, we are proposing that, in addition to meeting other criteria, a hospital, if it is to qualify for initial rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have as the number of discharges for its cost reporting period that began during FY 2001 a figure that is at least—

- 5,000; or
- The median number of discharges for urban hospitals in the census region in which the hospital is located, as indicated in the following table:

Region	Number of discharges
1. New England (CT, ME, MA, NH, RI, VT)	6,905
2. Middle Atlantic (PA, NJ, NY)	8,648
3. South Atlantic (DE, DC, FL, GA, MD, NC, SC, VA, WV)	8,914
4. East North Central (IL, IN, MI, OH, WI)	8,040
5. East South Central (AL, KY, MS, TN)	6,748
6. West North Central (IA, KS, MN, MO, NE, ND, SD)	5,696
7. West South Central (AR, LA, OK, TX)	6,220
8. Mountain (AZ, CO, ID, MT, NV, NM, UT, WY)	9,167
9. Pacific (AK, CA, HI, OR, WA)	7,053

We note that the median number of discharges for hospitals in each census region is greater than the national standard of 5,000 discharges. Therefore, 5,000 discharges is the minimum criterion for all hospitals. These numbers will be revised in the final rule based on the latest FY 2001 cost report data.

We reiterate that an osteopathic hospital, if it is to qualify for rural referral center status for cost reporting periods beginning on or after October 1, 2002, must have at least 3,000 discharges for its cost reporting period that began during FY 2001.

E. Indirect Medical Education (IME) Adjustment (§ 412.105)

1. Background

Section 1886(d)(5)(B) of the Act provides that prospective payment hospitals that have residents in an approved graduate medical education (GME) program receive an additional payment for a Medicare discharge to reflect the higher indirect operating costs of teaching hospitals relative to nonteaching hospitals. The existing regulations regarding the calculation of this additional payment, known as the indirect medical education (IME) adjustment, are located at § 412.105. The additional payment is based on the IME adjustment factor. The IME adjustment factor is calculated using a hospital's ratio of residents to beds, which is represented as r, and a multiplier, which is represented as c, in the following equation: $c \times [(1 + r)^{.405} - 1]$. The formula is traditionally described in terms of a certain percentage increase in payment for every 10-percent increase in the resident-to-bed ratio. Section 1886(d)(5)(B)(ii)(VII) of the Act provides that, for discharges occurring during FY 2003 and thereafter, the "c" variable, or formula multiplier, is 1.35. The formula multiplier of 1.35 represents a 5.5-percent increase in IME payment for every 10-percent increase in the resident-to-bed ratio.

2. Temporary Adjustments to the FTE Cap To Reflect Residents Affected by Residency Program Closure: Resident-to-Bed Ratio for Displaced Residents (§§ 412.105(a) and (f)(1)(ix))

In the August 1, 2001 hospital inpatient prospective payment system final rule (66 FR 39899), we expanded the policy at existing § 413.86(g)(8) (proposed to be redesignated as § 413.86(g)(9) in this proposed rule), which allows a temporary adjustment to a hospital's FTE cap when a hospital trains additional residents because of another hospital's closure, to also allow a temporary adjustment when a hospital trains residents displaced by the closure of another hospital's residency program (but the hospital itself remains open). We revised regulations at existing § 413.86(g)(8) to state that, if a hospital that closes its residency training program agrees to temporarily reduce its FTE cap, another hospital(s) may receive a temporary adjustment to its FTE cap to reflect residents added because of the closure of the former hospital's residency training program. We defined "closure of a hospital residency training program" as when the hospital ceases to offer training for residents in a particular approved medical residency training program. The methodology for adjusting the caps for the "receiving" hospital and the "hospital that closed its program" as they apply to the IME adjustment and direct GME payments is set forth in the regulations at existing §§ 412.105(f)(1)(ix) and 413.86(g)(8)(iii), respectively.

In the August 1, 2001 rule, we noted a commenter who requested that CMS further revise the regulations to grant temporary relief to hospitals in calculating the IME adjustment with regard to application of the resident-to-bed ratio cap (66 FR 39900). The commenter believed that while the cap on the number of residents has been temporarily adjusted, if the receiving hospital is not allowed to also adjust its resident-to-bed ratio in the prior year, the lower resident-to-bed ratio from the prior year would act to reduce the IME payments to the receiving hospital. The commenter suggested that, similar to the exception for residents in hospitals that begin new programs under § 412.105(a)(1), an adjustment should be made to the prior year's FTE residents equal to the increase in the current year's FTEs that is attributable to the transferred residents. In response to the commenter, we stated that we had decided not to allow the exclusion of these displaced residents in applying the resident-to-bed ratio cap. We explained that, while we believed that the receiving hospital may be held to a lower cap in the first year of training the displaced residents, the receiving hospital would benefit from the higher cap in the subsequent years as the displaced residents complete their training and leave that hospital. However, we indicated that we would consider suggestions for possible future changes to this policy.

We have revisited this policy and now realize that our rationale for not allowing the adjustment for displaced residents to the resident-to-bed ratio cap may have been faulty. We initially believed that, in the year following the last year in which displaced residents trained at the receiving hospital, the receiving hospital would benefit from the higher resident-to-bed ratio cap. However, we have determined that, while it is correct that the hospital will have a higher resident-to-bed ratio cap because of the higher number of displaced residents in the prior year, the receiving hospital's FTE count decreases as the displaced residents finish their training. Therefore, the receiving hospital would not need a higher resident-to-bed ratio cap to accommodate the remaining FTEs. Consequently, the higher resident-to-bed ratio cap in fact would not benefit the receiving hospital. Thus, we are now proposing to allow the exclusion of residents displaced by either the closure of another hospital's program or another hospital's closure in applying the resident-to-bed ratio cap. Specifically, assuming a hospital is eligible to receive a temporary adjustment to its FTE cap as described in existing § 413.86(g)(8), we are proposing that, solely for purposes of applying the resident-to-bed ratio cap in the *first* year in which the receiving hospital is training the displaced residents, the receiving hospital may adjust the numerator of the prior year's resident-to-bed ratio by the number of FTE residents that has caused the receiving hospital to exceed its FTE cap. (We note that this adjustment to the resident-to-bed ratio cap does not apply to changes in bed size). In the years subsequent to the first year in which the receiving hospital takes in the displaced residents, we believe an adjustment to the numerator of the prior year's resident-to-bed ratio is unnecessary because the receiving hospital's actual FTE count in those years would either stay the same or, as the displaced residents complete their training or leave that hospital, decrease each year. If all other variables remain constant, an increase in the current year's resident-to-bed ratio will establish a higher cap for the following year. In the second and subsequent years of training the displaced residents, the receiving hospital's resident-to-bed ratio for the current year would not be higher than the prior year's ratio and thus would not be limited by the resident-to-bed ratio cap.

In the cost reporting period following the departure of the last displaced residents, when the temporary FTE cap adjustment is no longer applicable, we are proposing that, solely for purposes of applying the resident-to-bed ratio cap, the resident-to-bed ratio be calculated *as if* the displaced residents had not trained at the receiving hospital in the prior year. In other words, in the year that the hospital is no longer training displaced residents, the attendant FTEs should be removed from the numerator of the resident-to-bed ratio from the prior year (that is, the resident-to-bed ratio cap). We believe that because we are proposing to allow the adjustment to the resident-to-bed ratio cap in the first year in which the receiving hospital trains displaced residents, it is equitable to remove those FTEs when calculating the resident-to-bed ratio cap after all the displaced

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residents have completed their training at the receiving hospital.

The following is an example of how the receiving hospital's IME resident-to-bed ratio cap would be adjusted for displaced residents coming from either a closed hospital or a closed program:

Example: Hospital A has a family practice program with 3 residents. On June 30, 2002, Hospital A closes. Hospital B, which also has a family practice program, agrees to continue the training of Hospital A's residents beginning July 1, 2002. Its fiscal year end is June 30. As of July 1, 2002, the 3 residents displaced by the closure of Hospital A include 1 PGY1 resident, 1 PGY2 resident, and 1 PGY3 resident. In addition, Hospital B has 5 of its own residents, an IME FTE resident cap of 5, and 100 beds. Subject to the criteria under existing § 413.86(g)(8), Hospital B's FTE cap is temporarily increased to 8 FTEs. According to the proposed policy stated above, Hospital B's resident-to-bed ratio and resident-to-bed ratio cap would be determined as follows:

July 1, 2002 through June 30, 2003

• Resident-to-bed ratio: 5 FTEs + 3 displaced FTEs / 100 beds = .08 (line 3.18 of Worksheet E, Part A of the Medicare cost report, Form CMS 2552–96).

(**Note:** For purposes of applying the rolling average calculation at § 412.105(f)(1)(v) to this example, it is assumed that Hospital B had 5 FTE residents in both the prior and the penultimate cost reporting periods. Therefore, 5 FTEs are used in the numerator of the resident-to-bed ratio. Under § 412.105(f)(1)(v), displaced residents are added to the receiving hospital's rolling average FTE count in each year that the displaced residents are training at the receiving hospital.)

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2002) + *3 displaced FTEs (from fiscal year end June 30, 2003)* / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.08) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Therefore, Hospital B would use a resident-to-bed ratio of .08 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2003 through June 30, 2004

The PGY3 displaced resident has completed his or her family practice training on June 30, 2003 and has left Hospital B. Hospital B continues to train a displaced (now) PGY2 resident, and a displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 2 displaced FTEs / 100 beds = .07 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2003) + 3 displaced FTEs (from fiscal year end June 30, 2003) / 100 beds = .08 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.07) or the resident-to-bed ratio cap from the prior year (.08) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .07 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2004 through June 30, 2005

Another of the remaining displaced residents has completed his or her family practice training on June 30, 2004 and has left Hospital B. Hospital B continues to train one displaced (now) PGY3 resident.

• Resident-to-bed ratio: 5 FTEs + 1 displaced FTE / 100 beds = .06 (line 3.18 of Worksheet E, Part A of Form CMS 2552–96).

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2004) + 2 displaced FTEs (from fiscal year end June 30, 2004) / 100 beds = .07 (line 3.19 of Worksheet E, Part A of Form CMS 2552–96).

• The lower of the resident-to-bed ratio from the current year (.06) or the resident-to-bed ratio cap from the prior year (.07) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .06 (line 3.20 of Worksheet E, Part A of Form CMS 2552–96).

July 1, 2005 through June 30, 2006

The last displaced resident has completed his or her family practice training on June 30, 2005 and has left Hospital B. Hospital B no longer trains any displaced residents, and, therefore, the last displaced resident is *removed* from the numerator of the resident-to-bed ratio cap.

• Resident-to-bed ratio: 5 FTEs + 0 displaced FTEs / 100 beds = .05

• Resident-to-bed ratio cap: 5 FTEs (from fiscal year end June 30, 2005) + *0 displaced FTEs (subtract 1 displaced FTE from FYE June 30, 2005)* / 100 beds = .05

• The lower of the resident-to-bed ratio from the current year (.05) or the resident-to-bed ratio cap from the prior year (.05) is used to calculate the IME adjustment. Hospital B would use a resident-to-bed ratio of .05.

We are proposing that this exception to the resident-to-bed ratio cap for residents coming from a closed hospital or a closed program would be effective for cost reporting periods beginning on or after October 1, 2002. We are proposing to revise § 412.105(a)(1) accordingly.

3. Counting Beds for the IME and DSH Adjustments (§ 412.105(b) and § 412.106(a)(l)(i))

As discussed under section V.E.2. of this proposed rule, the regulations for determining the number of beds to be used in calculating the resident-to-bed ratio for the IME adjustment are located at § 412.105(b). These regulations also are used to determine the number of beds for other purposes, including calculating the DSH adjustment at § 412.106(a)(l)(i). Section 412.105(b) specifies that the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period and dividing that number by the number of days in the cost reporting period. The number of available bed days does not include beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units.

Section 2405.3G of Part I of the Medicare Provider Reimbursement Manual (PRM) further defines "available" beds. Specifically, section 2405.3G states that an available bed is a bed that is permanently maintained and is available for use to lodge inpatients. However, there has been some uncertainty concerning the application of this definition of "available." For example, a question arises as to whether beds in rooms or entire units that are unoccupied for extended periods of time should continue to be counted on the basis that, if there would ever be a need, they could be put into use.

Counting the number of beds in a hospital is intended to measure the size of a hospital's routine acute care inpatient operations. While hospitals necessarily maintain some excess capacity, we believe there is a point where excess capacity may distort the bed count. Therefore, we are proposing to revise our policy concerning the determination of a hospital's bed size to exclude beds that represent an excessive level of unused capacity. We believe this proposed refinement of our bed counting policy would better capture the size of a hospital's inpatient operations as described above.

We analyzed Medicare hospital data and found that, among hospitals that have between 100 and 130 beds, hospitals receiving DSH payments have lower occupancy rates than similar hospitals not receiving DSH payments. Because DSH payments are higher for urban hospitals with more than 100 beds, there may be an incentive for these hospitals to maintain excess capacity in order to qualify for those higher payments. Among 189 urban hospitals in this bed-size range that did not receive DSH payments during FY 1999, the average occupancy rate was 55 percent. However, among 294 urban hospitals in this bed-size range that did receive DSH payments during FY 1999, the average occupancy rate was 47 percent. Twenty-five percent of this group of hospitals (those receiving DSH payments) had occupancy rates below 35 percent. Among the hospitals not receiving DSH payments, 25 percent had occupancy rates below 43 percent. We believe this is indicative of a tendency among some small urban hospitals to maintain excess capacity in order to qualify for higher DSH payments. Therefore, we are proposing that if a hospital's reported bed count results in an occupancy rate (average daily census of patients divided by number of beds) below 35 percent, the applicable bed count, for purposes of establishing the number of available beds for that hospital, would exclude beds that would result in an average annual occupancy rate below 35 percent (proposed § 412.105(b)(3)).

For example, if a hospital reports 105 beds for a cost reporting period, but has an average daily census of 26 patients for that same cost reporting period, its occupancy rate equals 24.8 percent (that is, 26/105). Because its occupancy rate is below the proposed minimum threshold of 35 percent, its maximum available bed count would be 74, which is the number of beds that would result in an occupancy rate of 35 percent, given an average daily census of 26 patients (that is, 26/.35).

We would otherwise continue to determine a hospital's bed size using existing regulations and program manual instructions, including the application of the available bed policy.

Following are the steps a hospital would undertake in determining its number of beds in a cost reporting period under our proposed policy:

Step 1: Determine the number of available beds using the existing regulations at § 412.105(b) and PRM instructions.

Step 2: Determine the average daily census by dividing the total number of inpatient acute care days in the hospital by the number of days in the cost reporting period.

Step 3: Divide the average daily census determined in step 2 by 35 percent.

Step 4: Use the *lower* of the number of beds as determined under step 1, or the result of step 3 for purposes of the IME and DSH calculations.

We believe that this proposed policy more accurately indicates the size of a hospital's operations. We are proposing to specify under proposed § 412.105(b)(3) that if a hospital's reported bed count results in an occupancy rate below 35 percent, the applicable bed count for that hospital would be the number of beds that would result in an occupancy rate of 35 percent. We are proposing to make this proposed policy effective for discharges occurring on or after October 1, 2002.

F. Medicare-Dependent, Small Rural Hospitals: Ongoing Review of Eligibility Criteria (§ 412.108(b))

Section 6003(f) of the Omnibus Budget Reconciliation Act of 1989 (Public Law 101–239) added section 1886(d)(5)(G) to the Act and created the category of Medicare-dependent, small rural hospitals (MDHs). MDHs are eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system. Initially, in order to be classified as an MDH, a hospital must have met all of the following criteria:

• The hospital is located in a rural area (as defined in § 412.63(b);

• The hospital has 100 or fewer beds (as defined at § 412.105(b)) during the cost reporting period;

• The hospital is not classified as an SCH (as defined at § 412.92); and

• The hospital has no less than 60 percent of its inpatient days or discharges attributable to inpatients receiving Medicare Part A benefits during its cost reporting period beginning in FY 1987.

MDHs were eligible for a special payment adjustment under the acute care hospital inpatient prospective payment system, effective for cost reporting periods beginning on or after April 1, 1990, and ending on or before March 31, 1993. Hospitals classified as MDHs were paid using the same methodology applicable to SCHs, that is, based on whichever of the following rates yielded the greatest aggregate payment for the cost reporting period:

• The national Federal rate applicable to the hospital.

• The updated hospital-specific rate based on FY 1982 costs per discharge.

• The updated hospital-specific rate based on FY 1987 costs per discharge.

Section 13501(e)(1) of the Omnibus Budget Reconciliation Act of 1993 (Public Law 103–66) extended the MDH provision through FY 1994 and provided that, after the hospital's first three 12-month cost reporting periods beginning on or after April 1, 1990, the additional payment to an MDH whose applicable hospital-specific rate exceeded the Federal rate was limited to 50 percent of the amount by which the hospital-specific rate exceeded the Federal rate. The MDH provision expired effective with cost reporting periods beginning on or after October 1, 1994.

Section 4204(a)(3) of Public Law 105–33 reinstated the MDH special payment for discharges occurring on or after October 1, 1997 and before October 1, 2001, but did not revise the qualifying criteria for these hospitals or the payment methodology.

Section 404(a) of Public Law 106–113 extended the MDH provision to discharges occurring before October 1, 2006.

As specified in the June 13, 2001 interim final rule with comment period (66 FR 32172) and finalized in the August 1, 2001 final rule (66 FR 39883), section 212 of Public Law 106–554 provided that, effective with cost reporting periods beginning on or after April 1, 2001, a hospital has the option to base MDH eligibility on two of the three most recently audited cost reporting periods for which the Secretary has a settled cost report, rather than on the cost reporting period that began during FY 1987 (section 1886(d)(5)(G)(iv)(IV) of the Act). According to section 1886(d)(5)(G)(iv)(IV) of the Act, the criteria for at least 60 percent Medicare utilization will be met if, in at least "2 of the 3 most recently audited cost reporting periods for which the Secretary has a settled cost report", at least 60 percent of the hospital's inpatient days or discharges were attributable to individuals receiving Medicare Part A benefits.

We would like to point out that cost reports undergo different levels of review. For example, some cost reports are settled with a desk review; others, through a full field audit. We believe the intention of the law is to provide hospitals the ability to qualify for MDH status based on their most recent settled cost reporting periods, each of which undergoes a level of audit in its settlement.

Hospitals that qualify under section 1886(d)(5)(G)(iv)(IV) of the Act are subject to the other provisions already in place for MDHs. That is, all MDHs are paid using the payment methodology as defined in § 412.108(c) and may be eligible for the volume decrease provision as defined in § 412.108(d).

Under existing classification procedures at § 412.108(b), a hospital must submit a written request to its fiscal intermediary to be considered for

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MDH status based on at least two of its three most recently audited cost reporting periods for which the Secretary has a settled cost report (as specified in § 412.108(a)(1)(iii)(c)). The fiscal intermediary will make its determination and notify the hospital within 90 days from the date it receives the hospital's request and all of the required documentation. The intermediary's determination is subject to review under 42 CFR Part 405, Subpart R. MDH status is effective 30 days after the date of written notification of approval.

We are proposing to clarify and to codify in the regulations (proposed § 412.108(b)(4)) that an approved classification as an MDH remains in effect unless there is a change in the circumstances under which the classification was approved. That is, in order to maintain its eligibility for MDH status, a hospital must continue to be a small (100 or fewer beds), rural hospital, with no less than 60 percent Medicare inpatient days or discharges during either its cost reporting period beginning in FY 1987 or during at least two of its three most recently settled cost reporting periods.

We also are proposing to clarify and to codify in the regulations (proposed § 412.108(b)(5)) that the fiscal intermediary will evaluate on an ongoing basis whether or not a hospital continues to qualify for MDH status. This proposed clarification would include evaluating whether or not a hospital that qualified for MDH status under section 1886(d)(5)(G)(iv)(IV) of the Act continues to qualify for MDH status based on at least two of its three most recently settled cost reporting periods.

In addition, we are proposing, (proposed § 412.108(b)(6)) that if a hospital loses its MDH status, that change in status would become effective 30 days after the fiscal intermediary provides written notification to the hospital that it no longer meets the MDH criteria. If the hospital would like to be considered for MDH status after another cost reporting period has been audited and settled, we are proposing to require that the hospital must reapply by submitting a written request to its fiscal intermediary (proposed § 412.108(b)(7)). An MDH that continues to meet the criteria would not have to reapply.

G. Eligibility Criteria for Reasonable Cost Payments to Rural Hospitals for Nonphysician Anesthetists (§ 412.113(c))

Currently, a rural hospital can qualify and be paid on a reasonable cost basis for qualified nonphysician anesthetists (certified registered nurse anesthetists (CRNAs) and anesthesiologist assistants) services for a calendar year beyond 1990 and subsequent years as long as it can establish before January 1 of that year that it did not provide more than 500 surgical procedures requiring anesthesia services, both inpatient and outpatient.

In the September 1, 1983 interim final rule with comment period that implemented the acute care hospital inpatient prospective payment system, we established the general policy to include, under that prospective payment system, inpatient hospital services furnished incident to a physician's service, with a time-limited exception for the inpatient hospital services of anesthetists (48 FR 39794). The purpose of this exception, which originally was for cost reporting periods beginning before October 1, 1986, was that the practice of physician-employer and anesthetist-employee was so widespread that we believed "it would be disruptive of medical practice and adverse to the quality of patient care to require all such contracts to be renegotiated in the limited time available before the implementation of the prospective payment system."

Section 2312 of Public Law 98–369 provided for reimbursement to hospitals on a reasonable cost basis as a pass-through for the costs that hospitals incur in connection with 27 the services of CRNAs. [3] Section 2312(c) provided that the amendment was effective for cost reporting periods beginning on or after October 1, 1984, and before October 1, 1987.

Section 9320 of Public Law 99–509 (which established a fee schedule for the services of nurse anesthetists) amended section 2312(c) of Public Law 98–369 by extending the pass-through provision for cost reporting periods beginning before January 1, 1989. Section 608 of Public Law 100–485 limited the pass-through provision effective during 1989, 1990, and 1991, to hospitals meeting the following criteria:

- As of January 1, 1988, the hospital employed or contracted with a certified nonphysician anesthetist;
- In 1987, the hospital had a volume of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that did not exceed 250 (or such higher number as the Secretary determines to be appropriate); and
- Each certified nonphysician anesthetist employed by, or under contract with, the hospital has agreed not to bill under Part B of Medicare for professional services furnished by the anesthetist at the hospital.

Subsequently, section 6132 of Public Law 101–239 amended section 608 of Public Law 100–458 by raising the established 250-procedure threshold to 500 procedures (effective for anesthesia services furnished on or after January 1, 1990), and extended the cost pass-through indefinitely. However, section 6132 of Public Law 101–239 left intact the requirement that the hospital must have not exceeded a maximum number of surgical procedures (effectively raised to 500), both inpatient and outpatient, requiring anesthesia services during 1987. Also, the statutory authority for the Secretary to adopt such other appropriate maximum threshold volume of procedures as determined appropriate was not affected by section 6132.

In light of the age of this provision, we undertook to reexamine the appropriateness of the current 500-procedure threshold. Nonphysician anesthetists who are not employed by or have a contractual relationship with a hospital paid under this provision may receive payments under a fee schedule. Payments under the fee schedule are generally somewhat lower than those made on a reasonable cost basis. Therefore, hospitals that exceed 500 procedures may have difficulty retaining access to nonphysician anesthetists' services because cost reimbursement is unavailable. According to data from the American Association of Nurse Anesthetists (AANA), the average total annual compensation for a CRNA in 2001 was approximately $155,000. The AANA estimates that, based on payments under the Medicare fee schedule, a CRNA would have to provide at least 800 anesthesia procedures to reach this average level of compensation.

The statute provides the Secretary with the authority to determine the appropriateness of the volume threshold, in part, so that changes necessary to meet the needs of rural hospitals can be made. As we have found that hospitals that exceed the 500 surgical procedures may have difficulty in retaining access to nonphysician anesthetists' services, we believe that the appropriate maximum threshold for surgical procedures should be raised in order for the payment exception to apply to those hospitals most in need of this payment treatment. Based upon the data available to us concerning the best

[3] We noted in the August 31, 1984 final rule that section 2312 and the Conference Report used the term "CRNA" throughout. However, we believed it was Congressional intent to apply this pass-through payment amount to the services of all qualified hospital-employed nonphysician anesthetists (49 FR 34748).

estimates of average total compensation to a CRNA, we believe that the maximum volume threshold for surgical procedures requiring anesthesia services should be raised to 800. Therefore, to ensure continued access to nonphysician anesthetists' services in rural hospitals, we are proposing to revise §§ 412.113(c)(2)(ii) and (c)(2)(iii) to raise the 500-procedure threshold to 800 procedures.

H. Medicare Geographic Classification Review Board (MGCRB) Reclassification Process (§§ 412.230, 412.232, and 412.273)

With the creation of the MGCRB, beginning in FY 1991, under section 1886(d)(10) of the Act, hospitals could request reclassification from one geographic location to another for the purpose of using the other area's standardized amount for inpatient operating costs or the wage index value, or both (September 6, 1990 interim final rule with comment period (55 FR 36754), June 4, 1991 final rule with comment period (56 FR 25458), and June 4, 1992 proposed rule (57 FR 23631)). Implementing regulations in Subpart L of Part 412 (§§ 412.230 *et seq.*) set forth criteria and conditions for redesignations from rural to urban, rural to rural, or from an urban area to another urban area, with special rules for SCHs and rural referral centers.

1. Withdrawals, Teminations, and Cancellations

Under § 412.273(a) of our regulations, a hospital, or group of hospitals, may withdraw its application for reclassification at any time before the MGCRB issues its decision or, if after the MGCRB issues its decision, within 45 days of publication of our annual notice of proposed rulemaking concerning changes to the acute care hospital inpatient prospective payment system for the upcoming fiscal year (for example, this proposed rule for FY 2003). In the August 1, 2001 final rule, we specified that, for purposes of implementing section 304 of Public Law 106–554, the withdrawal procedures and the applicable timeframes in the existing regulations would apply to hospitals that receive 3-year reclassification for wage index purposes (66 FR 39886). Once effective, a withdrawal means that the hospital would not be reclassified for purposes of the wage index for FY 2003 (and would not receive continued reclassification for FYs 2004 and 2005), unless the hospital subsequently cancels its withdrawal.

Consistent with section 1886(d)(10)(D)(v) of the Act, a hospital may terminate its approved 3-year reclassification during the second or third years (§ 412.273(b)). This is a separate action from a reclassification withdrawal that occurs in accordance with the timeframes described above. Currently, in order to terminate an approved 3-year reclassification, we require the hospital to notify the MGCRB in writing within 45 days of the publication date of the annual proposed rule for changes to the hospital inpatient prospective payment system (§ 412.273(b)(1)(i)). A termination, unless subsequently cancelled, is effective for the full fiscal years remaining in the 3-year period.

We also provided that a hospital may apply for reclassification to a different area for the year corresponding to the second or third year of the reclassification (that is, an area different from the one to which it was originally reclassified) and, if successful, the reclassification would be for 3 years. Since the publication of the final rule, we received an inquiry regarding a situation where a hospital with an existing 3-year wage index reclassification successfully reclassifies to a different area, then withdraws from that second reclassification within the allowable timeframe for withdrawals. This scenario raises several issues not specifically addressed in the August 1, 2001 final rule, which we are proposing to clarify in this proposed rule.

For example, the question arises, at what point does a hospital's termination of a 3-year reclassification become effective when a hospital applies for reclassification to another area? As noted above, the August 1, 2001 final rule specified that a hospital must file a written request with the MGCRB within 45 days of publication of the annual proposed rule to terminate the reclassification. However, the rules do not specify at what point a previous 3-year reclassification is terminated when a hospital applies for reclassification to another area in subsequent years. One might conclude that an application for a wage index reclassification to another area constitutes a written notification of a hospital's intent to terminate an existing 3-year reclassification. Under this scenario, however, if the application to the second area were denied, it would then be necessary for the hospital to formally cancel the termination of its reclassification to the first area within 45 days of publication of the proposed rule to avoid a lapse in reclassification status the following year. Therefore, we are proposing to clarify, in § 412.273(b)(2)(iii), that, in a situation where a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1. In such a case, it will not be necessary for the hospital to submit a separate written notice of its intent to terminate its existing 3-year reclassification. Of course, a hospital also may still terminate an existing 3-year reclassification through written notice to the MGCRB, regardless of whether it successfully reclassifies to a different area.

The scenario of a hospital with an existing 3-year reclassification seeking reclassification to a second area raises another issue. If the hospital's request is approved by the MGCRB, but the hospital withdraws from that successful reclassification and "falls back" to its original 3-year reclassification, does the hospital retain the right to cancel that withdrawal the next year? In this way, a hospital could accumulate multiple reclassifications from which it could choose in any given year through canceling prior withdrawals or terminations to one area and withdrawing or terminating reclassifications to other areas.

We do not believe section 304 of Public Law 106–554 was intended to be used in such a manner. Therefore, we are proposing to clarify existing policy that a previous 3-year reclassification may not be reinstated after a subsequent 3-year reclassification to another area takes effect. This would mean that a hospital that is reclassified to an area for purposes of the wage index may have only one active 3-year reclassification at a time. Once a 3-year reclassification to a second area becomes effective, a previously terminated 3-year reclassification may not be reinstated by terminating or withdrawing the reclassification to the second area and then canceling the termination or withdrawal of the reclassification to the first area.

As we stated in the August 1, 2001 final rule, we believe the 3-year wage index reclassification policy was intended to provide consistency and predictability in hospital reclassifications and the wage index data. Allowing hospitals multiple reclassification options to choose from would create a situation where many hospitals move in unpredictable ways between the proposed and final rules based on their calculation of which of several areas would yield the highest wage index. This would reduce the predictability of the system, hampering the ability of the majority of hospitals to

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adequately project their future revenues. Therefore, we are proposing to amend § 412.273(b)(2)(ii) to provide that, once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, even within 3 years from the date of such withdrawal or termination. We are also proposing a technical correction to § 412.273(b)(2)(i) to correct the terminology regarding canceling (rather than terminating) a withdrawal.

Finally, the August 1, 2001 final rule did not specifically describe the process to cancel a withdrawal or termination. Therefore, we are proposing to add a new § 412.273(d) (existing paragraph (d) would be redesignated as paragraph (e)) to describe the process whereby a hospital may cancel a previous withdrawal or termination of a 3-year wage index reclassification. Specifically, a hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for reclassifications effective at the start of the following fiscal year (§ 412.256(a)(2)).

2. Effect of Change of Ownership on Hospital Reclassifications

Sections 412.230(e)(2)(ii) and 412.232(d)(2)(ii) provide that, for reclassifications effective beginning FY 2003, a hospital must provide a 3-year average of its average hourly wages using wage survey data from the CMS hospital wage survey used to construct the wage index in effect for prospective payment purposes.

As discussed in the August 1, 2001 final rule, we received a comment suggesting that, for purposes of calculating the 3-year average hourly wages, we permit a hospital that has changed ownership the option of excluding prior years' wage data submitted by a previous owner in order for the new hospital to qualify for reclassification. Although we responded to the comment (66 FR 39890), we have now determined that there is a need to further clarify our policy regarding change of ownership and hospitals that do not accept assignment of the previous owner's provider agreement.

In our response to the comment, we stated that, where a hospital has simply changed ownership and the new owners have acquired the financial assets and liabilities of the previous owners, all of the applicable wage data associated with that hospital are included in the calculation of its 3-year average hourly wage. Where this is not the case and there is no obligation on the part of the new hospital to claim the financial assets or assume the liabilities of a predecessor hospital, the wage data associated with the previous hospital's provider number would not be used in calculating the new hospital's 3-year average hourly wage.

Section 489.18(c) provides that, when there is a change of ownership, the existing provider agreement will automatically be assigned to the new owner. Our regulations at § 412.230(e)(2) do not specifically address the situation of new hospitals seeking to reclassify for wage index purposes, in light of the requirement that reclassification is based on a 3-year average hourly wage. Therefore, we are proposing to revise § 412.230(e)(2), by adding a new paragraph (e)(2)(iii), to clarify our existing policy to specify that, in situations where a hospital does not accept assignment of the existing hospital's provider agreement under § 489.18, the hospital would be treated as a new hospital with a new provider number. In that case, the wage data associated with the previous hospital's provider number would not be used in calculating the new hospital's 3-year average hourly wage. As we stated in the August 1, 2001 final rule, we believe this policy clarification is consistent with how we treat hospitals whose ownership has changed for other Medicare payment purposes. We are proposing to revise § 412.230 to clarify, under proposed new paragraph (e)(2)(iii), that once a new hospital has accumulated at least 1 year of wage data using survey data from the CMS hospital wage survey used to determine the wage index, it is eligible to apply for reclassification on the basis of those data.

I. Payment for Direct Costs of Graduate Medical Education (§ 413.86)

1. Background

Under section 1886(h) of the Act, Medicare pays hospitals for the direct costs of graduate medical education (GME). The payments are based in part on the number of residents trained by the hospital. Section 1886(h) of the Act caps the number of residents that hospitals may count for direct GME.

Section 1886(h)(2) of the Act, as amended by section 9202 of the Consolidated Omnibus Reconciliation Act (COBRA) of 1985 (Public Law 99–272), and implemented in regulations at § 413.86(e), establishes a methodology for determining payments to hospitals for the costs of approved GME programs. Section 1886(h)(2) of the Act, as amended by COBRA, sets forth a payment methodology for the determination of a hospital-specific, base-period per resident amount (PRA) that is calculated by dividing a hospital's allowable costs of GME for a base period by its number of residents in the base period. The base period is, for most hospitals, the hospital's cost reporting period beginning in FY 1984 (that is, the period of October 1, 1983 through September 30, 1984). The PRA is multiplied by the weighted number of full-time equivalent (FTE) residents working in all areas of the hospital complex (or nonhospital sites, when applicable), and the hospital's Medicare share of total inpatient days to determine Medicare's direct GME payments. In addition, as specified in section 1886(h)(2)(D)(ii) of the Act, for cost reporting periods beginning on or after October 1, 1993, through September 30, 1995, each hospital's PRA for the previous cost reporting period is not updated for inflation for any FTE residents who are not either a primary care or an obstetrics and gynecology resident. As a result, hospitals with both primary care and obstetrics and gynecology residents and nonprimary care residents in FY 1994 or FY 1995 have two separate PRAs: one for primary care and obstetrics and gynecology and one for nonprimary care.

Section 1886(h)(2) of the Act was further amended by section 311 of Public Law 106–113 to establish a methodology for the use of a national average PRA in computing direct GME payments for cost reporting periods beginning on or after October 1, 2000, and on or before September 30, 2005. Generally, section 1886(h)(2)(D) of the Act establishes a "floor" and a "ceiling" based on a locality-adjusted, updated, weighted average PRA. Each hospital's PRA is compared to the floor and ceiling to determine whether its PRA should be revised. For cost reporting periods beginning on or after October 1, 2000, and before October 1, 2001, the floor PRA is 70 percent of the locality-adjusted, updated, weighted average PRA. For cost reporting periods beginning on or after October 1, 2001, and before October 1, 2002, section 511 of Public Law 106–554 amended the floor PRA to equal 85 percent of the locality-adjusted, updated, weighted average PRA. PRAs that are below the applicable floor PRA for a particular cost reporting period would be adjusted to equal the floor PRA. PRAs that exceed the ceiling, that is, 140 percent of the locality-adjusted, updated, weighted average PRA, would, depending on the fiscal year, either be frozen and not increased for inflation, or increased by a reduced inflation factor. Existing regulations at § 413.86(e)(4) specify the methodology for calculating each hospital's weighted average PRA and the steps for determining whether a hospital's PRA will be revised.

2. Determining the Weighted Average PRAs for Newly Participating Hospitals (§ 413.86(e)(5))

As stated earlier, under section 1886(h) of the Act and implementing regulations, in most cases Medicare pays hospitals for the direct costs of GME on the basis of per resident costs in a 1984 base year. However, under existing § 413.86(e)(5), if a hospital did not have residents in an approved residency training program, or did not participate in Medicare during the base period, the hospital's base period for its PRA is its first cost reporting period during which the hospital participates in Medicare and the residents are on duty during the first month of that period. If there are at least three existing teaching hospitals with PRAs in the same geographic wage area (MSA), as that term is used in 42 CFR Part 412, the fiscal intermediary will calculate a PRA based on the lower of the new teaching hospital's actual cost per resident in its base period or a weighted average of all the PRAs of existing teaching hospitals in the same MSA. There must be at least three existing teaching hospitals with PRAs in the MSA for this calculation. If there are less than three existing teaching hospitals with PRAs within the new teaching hospital's MSA, effective for cost reporting periods beginning on or after October 1, 1997, the fiscal intermediary uses the updated regional weighted average PRA (determined for each of the nine census regions established by the Bureau of Census for statistical and reporting purposes) for the new teaching hospital's MSA (see 62 FR 46004, August 29, 1997). A new teaching hospital is assigned a PRA equal to the lower of its actual allowable direct GME costs per resident or the weighted average PRA as calculated by the fiscal intermediary. Using a methodology based on a weighted average ensures that a new teaching hospital receives a PRA that is representative of the costs of training residents within its specific geographic wage area.

Under existing policy, to calculate the weighted average PRA of teaching hospitals within a particular MSA, the fiscal intermediary begins by determining the base year PRA and the base year FTE count of each respective teaching hospital within that MSA. The weighted average PRA is (a) the sum of the products of each existing teaching hospital's base year PRA in the MSA and its base year FTEs, (b) divided by the sum of the base year FTEs from each of those hospitals. While a methodology using base year PRAs and FTEs was appropriate and workable in the years closely following the implementation of hospital-specific PRAs, it has become administratively burdensome for both CMS and the fiscal intermediaries to recreate base year information in calculating a weighted average. The methodology is particularly problematic in instances where there are large numbers of teaching hospitals in an MSA.

In addition, as discussed in section V.I.1. of this proposed rule, hospitals that were training nonprimary care residents during FYs 1994 and 1995 have a distinct nonprimary care PRA, because there was no update in the inflation factor for these years (§ 413.86(e)(3)(ii)). Thus, most teaching hospitals currently have two PRAs: one for primary care and obstetrics and gynecology; and one for all other residents. (Hospitals that first train residents after FY 1995 only have a single PRA, regardless of whether they train primary care or other residents.) However, since the current methodology for calculating weighted average PRAs is based on data from FY 1984, which was prior to the years during which the PRAs were not adjusted for inflation to reflect nonprimary care residents, the methodology does not account for *all* PRAs (both primary care and obstetrics and gynecology and nonprimary care) within an MSA.

Accordingly, we are proposing to simplify and revise the weighted average PRA methodology under § 413.86(e)(5)(i)(B) to reflect the average of all PRAs in an MSA, both primary care and obstetrics and gynecology, and nonprimary care. We would continue to calculate a weighted average PRA. However, rather than using 1984 base year data, we are proposing to use PRAs (both primary care and obstetrics and gynecology and nonprimary care) and FTE data from the most recently settled cost reports of teaching hospitals in an MSA. We are proposing that the intermediary would calculate the weighted average PRA using the following steps:

Step 1: Identify *all* teaching hospitals (including those serviced by another intermediary(ies)) in the same MSA as the new teaching hospital.

Step 2: Identify the respective primary care and obstetrics and gynecology FTE counts, the nonprimary care FTE counts, or the total FTE count (for hospitals with a single PRA) of each teaching hospital in step 1 from the most recently settled cost reports. (Use the FTE counts from line 3.07 and line 3.08 of the Medicare cost report, CMS–2552–96, Worksheet E–3, Part IV.)

Step 3: Identify the PRAs (either a hospital's primary care and obstetrics and gynecology PRA and nonprimary care PRA, or a hospital's single PRA) from the most recently settled cost reports of the hospitals in step 1, and update the PRAs using the CPI–U inflation factor to coincide with the fiscal year end of the new teaching hospital's base year cost reporting period. For example, if the base year fiscal year end of a new teaching hospital is December 31, 2003, and the most recently settled cost reports of the teaching hospitals within the MSA are from the fiscal year ending June 30, 2000, September 30, 2000, or December 31, 2000, the PRAs from these cost reports would be updated for inflation to December 31, 2003.

Step 4: Calculate the weighted average PRA using the PRAs and FTE counts from steps 2 and 3. For each hospital in the calculation:

(a) Multiply the primary care PRA by the primary care and obstetrics and gynecology FTEs.

(b) Multiply the nonprimary care PRA by the nonprimary care FTEs.

(c) For hospitals with a single PRA, multiply the single PRA by the hospital's total number of FTEs.

(d) Add the products from steps (a), (b), and (c) for all hospitals.

(e) Add the FTEs from step 3 for all hospitals.

(f) Divide the sum from step (d) by the sum from step (e). The result is the weighted average PRA for hospitals within an MSA.

The following is an example of how to calculate a weighted average PRA under the proposed methodology:

Example

Assume that new Hospital A has a June 30 fiscal year end and begins training residents for the first time on July 1, 2003. Thus, new Hospital A's base year for purposes of establishing a PRA is the fiscal year ending June 30, 2004. New Hospital A is located in MSA 1234, in which three other teaching hospitals exist, Hospital B, Hospital C, and Hospital D. These three hospitals also have a fiscal year end of June 30 and their most recently settled cost reports are for the fiscal year ending June 30, 2000. For fiscal year ending June 30, 2000, Hospital B has 200 primary care and obstetrics and gynecology FTEs, 150 nonprimary care FTEs, and 150 nonprimary care FTEs. Hospital C has 50 primary care and obstetrics and gynecology FTEs and 60

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nonprimary care FTEs. Hospital D has 25 FTEs. After updating the PRAs for inflation by the CPI–U to June 30, 2004, Hospital B has a primary care and obstetrics and gynecology PRA of $120,000 and a nonprimary care PRA of $115,000, Hospital C has a primary care and obstetrics and gynecology PRA of $100,000 and a nonprimary care PRA of $97,000, and Hospital D has a single PRA of $90,000.

(a) Primary care:
Hospital B: $120,000 × 200 FTEs = $24,000,000
Hospital C: $100,000 × 50 FTEs = $5,000,000
(b) Nonprimary care:
Hospital B: $115,000 × 150 FTEs = $17,250,000
Hospital C: $97,000 × 60 FTEs = $5,820,000
(c) Single PRA:
Hospital D: $90,000 × 25 FTEs = $2,250,000
(d) $24,000,000 + 5,000,000 + $17,250,000 + $5,820,000 + $2,250,000 = $54,320,000.
(e) 200 + 50 + 150 + 60 + 25 = 485 total FTEs.
(f) $54,320,000/485 FTEs = $112,000, the weighted average PRA for MSA1234 for fiscal year ending June 30, 2004.

New Hospital A's PRA would be the lower of $112,000 or its actual base year GME costs per resident.

We are proposing that this new weighted average calculation would be effective for hospitals with direct GME base years that begin on or after October 1, 2002.

In addition, we are taking the opportunity to clarify the language under existing § 413.86(e)(5)(i)(B), which relates to calculating the weighted average under existing policy. Specifically, existing § 413.86(e)(5)(i)(B) states: "The weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter, *for cost reporting periods beginning in the same fiscal years* [emphasis added]." We believe this language could be misinterpreted to imply that only those PRAs of hospitals in the same geographic wage area (MSA) *that have the same fiscal year end as the new teaching hospital* should be used in the weighted average calculation. However, the PRAs of *all* hospitals within the MSA of the new teaching hospital should be used, not just the PRAs of hospitals with the same fiscal year end as the new teaching hospital. The proposed revision appears under a proposed new § 413.86(e)(5)(i)(c).

3. Aggregate FTE Limit for Affiliated Groups (§§ 413.86 (b) and (g)(7))

Section 1886(h)(4)(H)(ii) of the Act permits, but does not require, the Secretary to prescribe rules that allow institutions that are member of the same affiliated group (as defined by the Secretary) to elect to apply the FTE resident limit on an aggregate basis. This provision allows the Secretary to permit hospitals flexibility in structuring rotations within a combined cap when they share residents' time. In accordance with the broad authority conferred by the statute, we created criteria for defining "affiliated group" and "affiliation agreements" in both the August 29, 1997 final rule (62 FR 45965) and the May 12, 1998 final rule (63 FR 26317). Because we have received many inquiries from the hospital industry on this policy, we are proposing to clarify in regulations the requirements for participating in an affiliated group. These requirements are explicitly derived from the policy explained in the August 29, 1997 and May 12, 1998 final rules.

Specifically, we are proposing to add under § 413.86(b) a new definition of "Affiliation agreement." This new proposed definition would state that an affiliation agreement is a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group (as defined in § 413.86(b)), that specifies—

- The term of the agreement, which, at a minimum must be one year, beginning on July 1 of a year.
- Each participating hospital's direct and indirect FTE cap.
- The annual adjustment to each hospital's FTE caps, for both direct GME and IME. This adjustment must reflect the fact that any positive adjustment to one hospital's direct and indirect FTE caps must be offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount.
- The names of the participating hospitals and their Medicare provider numbers.

In addition, we are proposing to add a new § 413.86(g)(5)(iv) and a new § 413.86(g)(7) to clarify the requirements for a hospital to receive a temporary adjustment to its FTE cap through an affiliation agreement. (Existing § 413.86(g)(5)(iv) through (vi) are proposed to be redesignated as § 413.86(g)(5)(v) through (vii), respectively; and existing §§ 413.86(g)(7) through (g)(12) are proposed to be redesignated as §§ 413.86(g)(8) through (g)(13), respectively, to accommodate these additions.) Specifically, we are proposing that a hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as that term is defined under § 413.86(b)). Under this proposed provision—

- Each hospital in the affiliated group must submit the affiliation agreement (as that term is proposed to be defined under § 413.86(b)), to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.
- There must be a rotation of a resident(s) among the hospitals participating in the affiliated group during the term of the affiliation agreement, such that more than one of the hospitals counts the proportionate amount of the time spent by the resident(s) in their FTE resident counts. (However, no resident may be counted in the aggregate as more than one FTE.) This requirement is intended to ensure that the participating hospitals maintain a "cross-training" relationship during the term of the affiliation agreement.
- The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.
- If the affiliation agreement terminates for any reason, the FTE cap for each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap.

Except for the proposed new § 413.86(g)(7)(iv) regarding the treatment of FTE caps after termination of the affiliation agreement, each provision of proposed new § 413.86(g)(7) is explicitly derived from policy stated in the May 12, 1998 final rule (63 FR 26336). We are proposing to incorporate in regulations policy that was previously established under the formal rulemaking process.

We are proposing a change in policy concerning what happens to each participating affiliated hospital's FTE cap when an affiliation agreement terminates (proposed new § 413.86(g)(7)(iv)). In the preamble of the May 12, 1998 final rule (63 FR 26339), we stated: "Each agreement must also specify the adjustment to each respective hospital cap in the event the agreement terminates, dissolves, or, if the agreement is for a specified time period, for residency training years and cost reporting periods subsequent to the

period of the agreement for purposes of applying the FTE cap on an aggregate basis. In the absence of an agreement on the FTE caps for each respective institution following the end of the agreement, each hospital's FTE cap will be the indirect and direct medical education FTE count from each hospital's cost reporting period ending in 1996 and the cap will not be applied on an aggregate basis." Our purpose for allowing hospitals to redistribute their FTE caps (within the limits of the aggregate FTE caps) upon the termination of an affiliation was to enable hospitals by agreement to more closely reflect the realities of the residency rotational arrangement. However, in practice, very few hospitals have altered their FTE caps following termination of affiliation agreements. Rather, the vast majority of hospitals opted to revert to their respective 1996 FTE caps upon the termination of an affiliation. In addition, we have found that our existing policy is susceptible to the following abusive practice that does not comport with our original purpose for allowing redistribution of FTE caps among hospitals following termination of an affiliation agreement. We have learned of a number of instances in which one hospital (Hospital A) affiliated with another hospital (Hospital B) in anticipation of Hospital B's closure at some point during the residency program year. In these instances, the affiliation agreement was made solely for the purpose of obtaining a permanent adjustment to Hospital A's FTE cap through the terms of the termination clause. We do not believe these permanent FTE cap adjustments that result from hospital closures (or any other circumstances) were intended when Congress passed the provision on affiliation agreements. As stated above, we believe affiliations were meant to provide flexibility for hospitals in the rotations of residents where, in the normal course of an affiliation between two or more hospitals, the actual number of residents training at each hospital may vary somewhat from year to year. Affiliations were *not* intended to be used as a vehicle for circumventing the statutory FTE cap on the number of residents. In addition, we have separately addressed issues that arise when residents are displaced because of a pending hospital closure. We have in place a policy at existing § 413.86(g)(8) (proposed to be redesignated as § 413.86(g)(9) in this proposed rule) that permits *temporary* FTE cap adjustments for hospitals that take on the training of residents displaced by the closure of another hospital.

Therefore, we are proposing that, effective October 1, 2002, for hospitals with affiliation agreements that terminate (for any reason) on or after that date, the direct and indirect FTE caps for each hospital in the affiliated group will revert back to each individual hospital's original FTE cap prior to the affiliation (proposed new § 413.86(g)(7)(iv)). This policy would not preclude the participating hospitals from entering into additional affiliation agreements for later residency years.

Since this proposed policy would be effective for agreements that terminate on or after October 1, 2002, hospitals that have already received a permanent FTE cap adjustment from their fiscal intermediaries through the existing termination clause policy would retain those cap adjustments.

We also are proposing to make a conforming clarification at § 412.105(f)(1)(vi) for purposes of IME payments.

4. Rotating Residents to Other Hospitals

At existing § 413.86(f), we state, in part, that a hospital may count residents training in all areas of the hospital complex; no individual may be counted as more than one FTE; and, if a resident spends time in more than one hospital or in a nonprovider setting, the resident counts as a partial FTE based on the proportion of *time worked at the hospital* to the total time worked (emphasis added). A similar policy exists at §§ 412.105(f)(1)(ii) and (iii) for purposes of counting resident FTEs for IME payment. Although these policies concerning the counting of the number of FTE residents for IME and direct GME payment purposes have been in effect since October 1985, we continue to receive questions about whether residents can be counted by a hospital for the time during which the resident is rotated to other hospitals.

We would like to clarify that it is longstanding Medicare policy, based on language in both the regulations and the statute, to prohibit one hospital from claiming the FTEs training at another hospital for IME and direct GME payment. This policy applies even when the hospital that proposes to count the FTE resident(s) actually incurs the costs of training the residents(s) (such as salary and other training costs) at another hospital.

First, section 1886(h)(4)(B) of the Act states that the rules governing the direct GME count of the number of FTE residents "shall take into account individuals who serve as residents for only a portion of a period with a hospital or simultaneously with more than one hospital." In the September 4, 1990 **Federal Register** (55 FR 36064), we stated that " * * * regardless of which teaching hospital employs a resident who rotates among hospitals, each hospital would count the resident in proportion to the amount of time spent at its facility." Therefore, another hospital *cannot* count the time spent by residents training at another hospital. Only the hospital where the residents are actually training can count those FTEs for that portion of time. For example, if, during a cost reporting year, a resident spends 3 months training at Hospital A and 9 months training at Hospital B, Hospital A can only claim .25 FTE and Hospital B can only claim .75 FTE. Over the course of the entire cost reporting year, the resident would add up to 1.0 FTE.

We have been made aware of some instances where an urban hospital may incur all the training costs of residents while those residents train at a rural hospital, because the rural hospital may not have the resources or infrastructure to claim those costs and FTEs on a Medicare cost report. However, even in this scenario, the urban hospital is precluded from claiming any FTEs for the proportion of time spent in training at that rural hospital, or at any other hospital.

We note, however, that, consistent with the statutory provisions of section 1886(d)(5)(B)(iv) of the Act for IME payment and section 1886(h)(4)(E) of the Act for direct GME payment, a hospital may count the time residents spend training in a *nonhospital* setting if the hospital complies with the regulatory criteria at § 413.86(f)(4).

J. Responsibilities of Medicare-Participating Hospitals in Emergency Cases (EMTALA)

1. Background

Sections 1866(a)(1)(I), 1866(a)(1)(N), and 1867 of the Act impose specific obligations on Medicare-participating hospitals that offer emergency services. These obligations concern individuals who come to a hospital emergency department and request examination or treatment for medical conditions, and apply to all of these patients, regardless of whether or not they are beneficiaries of any program under the Act. Section 1867 of the Act sets forth requirements for medical screening examinations for medical conditions, as well as necessary stabilizing treatment or appropriate transfer. In addition, section 1867 of the Act specifically prohibits a delay in providing required screening or stabilization services in order to inquire

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about the individual's payment method or insurance status. Section 1867 of the Act also provides for the imposition of civil monetary penalties on hospitals and physicians responsible for the following: (a) Negligently failing to appropriately screen a patient seeking emergency medical care; (b) negligently failing to provide stabilizing treatment to an individual with an emergency medical condition; or (c) negligently transferring a patient in an inappropriate manner. (Section 1867(e)(4) of the Act defines "transfer" to include both transfers to other health care facilities and cases in which the patient is released from the care of the hospital without being moved to another health care facility.)

These provisions, taken together, are frequently referred to as the Emergency Medical Treatment and Labor Act (EMTALA), also known as the patient antidumping statute. EMTALA was passed in 1986 as part of the Consolidated Omnibus Budget Reconciliation Act of 1986 (COBRA). As a result, many people initially referred to EMTALA as "COBRA" or the "COBRA antidumping" statute. Congress enacted these antidumping provisions in the Social Security Act because of its concern with an "increasing number of reports" that hospital emergency rooms were refusing to accept or treat patients with emergency conditions if the patients did not have insurance:

"* * * The Committee is most concerned that medically unstable patients are not being treated appropriately. There have been reports of situations where treatment was simply not provided. In numerous other situations, patients in an unstable condition have been transferred improperly, sometimes without the consent of the receiving hospital.

"There is some belief that this situation has worsened since the prospective payment system for hospitals became effective. The Committee wants to provide a strong assurance that pressures for greater hospital efficiency are not to be construed as license to ignore traditional community responsibilities and loosen historic standards.

"[Under the statute] [a]ll participating hospitals with emergency departments would be required to provide an appropriate medical screening examination for any individual who requests it (or has a request made on his behalf) to determine whether an emergency medical condition exists or if the patient is in active labor." (H.R. Rept. No. 99–241, Part 1, 99th Cong., 1st Sess. (1985), p. 27.)

The regulations implementing section 1867 of the Act are found at 42 CFR 489.24, Special responsibilities of Medicare hospitals in emergency cases. Section 489.24 provides for the following:

- Paragraph (a) requires that when an individual presents to a hospital's emergency department and a request is made on the individual's behalf for examination or treatment of a medical condition, the hospital must provide for an appropriate medical screening examination to determine whether or not an emergency medical condition exists.
- Paragraph (b) provides the definitions of terms, including "comes to the emergency department," "emergency medical condition," "stabilized," and "to stabilize."
- Paragraph (c) addresses procedures a hospital must follow when it determines that an emergency medical condition exists. If the hospital determines that an emergency medical condition exists, the hospital must provide for further medical examination and treatment as required to stabilize the patient. If the hospital does not have the capabilities to stabilize the patient, an appropriate transfer to another facility is permitted. A transfer is appropriate when the medical benefits of the transfer outweigh the medical risks of the transfer and other requirements, specified in the regulation at paragraph (d), are met. Also, the hospital may transfer an unstable patient who makes an informed written request. Paragraph (c) further states that a hospital may not delay an appropriate medical screening examination, or further examination or treatment, to inquire about the individual's payment method or insurance status.

In addition, § 489.24 addresses: (a) Restriction of a transfer until the individual is stabilized; (b) the responsibilities of the receiving hospital; (c) termination of the provider agreement for failure to comply with EMTALA requirements; and (d) matters concerning consultation with Peer Review Organizations (paragraphs (d) through (h), respectively).

Some EMTALA-related requirements are implemented under regulations at §§ 489.20(l), (m), (q), and (r)(1), (r)(2), and (r)(3). Those regulations deal with a hospital's obligations to report the receipt of patients that it has reason to believe may have been transferred inappropriately; to post signs in the emergency department describing a patient's rights to emergency treatment under section 1867 of the Act; and to maintain patient records, physician on-call lists, and emergency room logs. We are including this brief description for informational purposes but, because we are not proposing to change the regulations in § 489.20, they will not be discussed further in this document.

In promulgating these cited regulatory sections and in enforcing the provisions of EMTALA, we are aware of the necessary balance between the hospital's and a physician's legal duty to provide examination and treatment under the statute and the practical realities of the manner in which hospitals and medical staffs are organized and operated on a day-to-day basis, as well as proper mobilization of resources within hospitals in order to comply with these legal duties. Reports of overcrowding in hospital emergency departments are common in many parts of the country. Within the requirements of EMTALA, individuals should be treated at the appropriate site of care.

Hospitals and physicians have now had over 15 years of experience in organizing themselves to comply with the provisions of EMTALA. Throughout this section of this proposed rule relating to EMTALA, we solicit comments from hospitals, physicians, patients, and beneficiary groups on the proposed changes to the EMTALA policies.

2. Special Advisory Bulletin on EMTALA Obligations

On November 10, 1999, CMS (previously, HCFA) and the Office of the Inspector General (OIG) published jointly in the **Federal Register** a Special Advisory Bulletin addressing the requirements of the patient antidumping statute and the obligations of hospitals to medically screen all patients seeking emergency services and provide stabilizing medical treatment as necessary to all patients, including enrollees of managed care plans, whose conditions warrant it (64 FR 61353). The Special Advisory Bulletin addressed issues of dual staffing of hospital emergency rooms by managed care and nonmanaged care physicians, prior authorization requirements of some managed care plans, use of advance beneficiary notices (ABNs) or other financial responsibility forms, handling of individuals' inquiries about financial liability for emergency services, and voluntary withdrawal of a treatment request. Although it does not amend the Code of Federal Regulations, the Special Advisory Bulletin informs individuals of HHS policy regarding application of the patient antidumping statute and offers advice on the best practices to follow to avoid violation of the requirements imposed under that statute.

As discussed further in section V.J.4. of this preamble, we are now proposing to codify certain policies on prior authorization that are currently stated only in the Special Advisory Bulletin. We believe these changes in the regulations are needed to ensure uniform and consistent application of policy and to avoid any misunderstanding of EMTALA requirements by patients, physicians, or hospital employees.

3. EMTALA Provisions in This Proposed Rule

Recently, a number of questions have been raised about the applicability of § 489.24 to specific situations. These questions arise in the context of managed care plans' requirements for prior authorization, case experiences involving elective procedures, and situations when patients have been admitted as inpatients but are not stabilized, or later experience a deterioration in their medical condition. Some hospitals are uncertain whether various conditions of participation found in 42 CFR part 482 apply to these situations or whether the EMTALA requirements included in the provider agreement regulations at § 489.24 apply, or both. Some representatives of the provider community have asked us to reexamine CMS policy on the applicability of EMTALA to provider-based departments. Finally, there have also been questions concerning the applicability of EMTALA to physicians who are "on call" and to hospitals that own ambulances when those ambulances operate under communitywide emergency medical services (EMS) protocols. To help promote consistent application of the regulations concerning the special responsibilities of Medicare hospitals in emergency cases, we are proposing changes to § 489.24 to clarify its application to these situations and at the same time address concerns about EMTALA raised by the Secretary's Advisory Committee on Regulatory Reform. These changes are discussed more fully below and include the following:

- We are proposing to change the requirements relating to emergency patients presenting at those off-campus outpatient clinics that do not routinely provide emergency services. We believe these changes would enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics.
- We are proposing to clarify when EMTALA applies to both inpatients and outpatients. We believe these clarifications would enhance overall patient access to emergency services by helping to relieve administrative burdens on frequently overcrowded emergency departments.
- We are proposing to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications would help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. Our proposed clarification of the on-call list requirement would permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We are proposing to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these resources more efficiently for the benefit of these communities.

We solicit comments on all of these proposed changes.

4. Prior Authorization

Some managed care plans may seek to pay hospitals for services only if the hospitals obtain approval from the plan for the services before providing the services. Requirements for this approval are frequently referred to as "prior authorization" requirements. However, EMTALA (specifically, section 1867(h) of the Act and our regulation at § 489.24(c)(3)) explicitly prohibit hospitals from delaying screening or stabilization services in order to inquire about the individual's method of payment or insurance status. Thus, prior authorization requirements are a matter of concern because hospitals could, in seeking prior authorization from an insurer, present a barrier to or delay in the provision of services required by EMTALA.

After review of these considerations, we believe that our existing policy will best implement the intent of the statute by prohibiting a participating hospital from seeking authorization from the individual's insurance company for screening services or services required to stabilize an emergency medical condition until after the hospital has provided the appropriate medical screening examination required by EMTALA to the patient and has initiated any further medical examination and treatment that may be required to stabilize the patient's emergency medical condition.

We are soliciting comments as to whether the regulations should be further revised to state that the hospital may seek other information (apart from information about payment) from the insurer about the individual, and may seek authorization for all services concurrently with providing any stabilizing treatment, as long as doing so does not delay required screening and stabilization services.

In addition, we are proposing to specify that an emergency physician is not precluded from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical screening and treatment of the patient, as long as this consultation does not inappropriately delay required screening or stabilization services.

As explained earlier, this policy was stated in a Special Advisory Bulletin published jointly by CMS (then HCFA) and the OIG. However, we are now proposing to clarify existing language at § 489.24(c)(3) (proposed to be redesignated as paragraph (d)(4)) in this proposed rule to include this policy in the regulations.

5. Hospital Responsibility for Communication With Medicare+Choice Organizations Concerning Post-Stabilization Care Services

Section 422.113 of our existing regulations establishes rules concerning the responsibility of Medicare+Choice organizations for emergency and post-stabilization care services provided to Medicare+Choice enrollees (65 FR 40170, June 29, 2000). Under § 422.113(c)(2), a Medicare+Choice organization is financially responsible for post-stabilization care under certain circumstances, including situations in which the organization cannot be contacted or does not respond timely to a hospital's request for preapproval of this care.

It has come to our attention that, in some instances, hospitals may have failed to contact Medicare+Choice organizations on a timely basis to seek authorization for post-stabilization services. In such a case, the Medicare+Choice organization does not

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have the opportunity provided for under the regulations to decide whether to approve the provision of post-stabilization services at the hospital where the emergency services were provided, or to require that the enrollee instead be transferred to another hospital for such services. Therefore, we are proposing to add a new paragraph (d)(6) under § 489.24 to specify that a hospital must promptly contact the Medicare+Choice organization after a Medicare+Choice enrollee who is treated for an emergency medical condition is stabilized.

6. Clarification of "Comes to the Emergency Department"

Section 1867(a) of the Act and our regulations at § 489.24(a) provide, in part, that if any individual comes to the emergency department of a hospital and a request is made on that individual's behalf for examination or treatment of a medical condition, the hospital must provide an appropriate medical screening examination within the capability of the hospital's emergency department. If the hospital determines that such an individual has an emergency medical condition, the hospital is further obligated to provide either necessary stabilizing treatment or an appropriate transfer. Occasionally, questions have arisen as to whether these EMTALA requirements apply to situations in which a patient comes to a hospital, but does not present to the hospital's emergency department. We are proposing to clarify under what circumstances a hospital is obligated under EMTALA to screen, stabilize, or transfer an individual who comes to a hospital, presenting either at its dedicated emergency department, as proposed to be defined below, or elsewhere on hospital property, seeking examination or treatment.

Sometimes individuals come to hospitals seeking examination or treatment for medical conditions that could be emergency medical conditions, but present for examination or treatment at areas of the hospital other than the emergency department. For example, a woman in labor may go directly to the labor and delivery department of a hospital or a psychiatric outpatient experiencing a psychiatric crisis may present at the psychiatry department. In the June 22, 1994 final rule (59 FR 32098), we defined "comes to the emergency department" at § 489.24(b) to clarify that a hospital's EMTALA obligations are triggered whenever an individual presents on hospital property in this manner in an attempt to gain access to the hospital for emergency care and requests examination or treatment for an emergency medical condition. At the time we adopted this interpretation of "comes to the emergency department," we explained:

"We believe that section 1867 of the Act also applies to all individuals who attempt to gain access to the hospital for emergency care. An individual may not be denied services simply because the person failed to actually enter the facility's designated emergency department." (59 FR 32098)

We repeated this standard for situations in which a hospital becomes bound to meet EMTALA's screening and stabilization or transfer requirements with respect to individuals who present on hospital property in an attempt to gain access to the hospital for emergency care, but outside of a hospital's emergency department, in interpretative guidelines published in the State Operations Manual:

"If an individual arrives at a hospital and is not technically in the emergency department, but is on the premises (including the parking lot, sidewalk and driveway) of the hospital and requests emergency care, he or she is entitled to a medical screening examination." (State Operations Manual Appendix V—Responsibilities of Medicare Participating Hospitals in Emergency Cases, V–16)

Thus, an individual can "come to the emergency department," creating an EMTALA obligation on the part of the hospital, in one of two ways: The individual can present at a hospital's dedicated emergency department (as proposed to be defined below) and request examination or treatment for a medical condition; or the individual can present elsewhere on hospital property in an attempt to gain access to the hospital for emergency care (that is, at a location that is on hospital property but is not part of a dedicated emergency department), and request examination or treatment for what may be an emergency medical condition.

Because of the need to clarify the applicability of EMTALA to a particular individual depending on where he or she presents on hospital property in order to obtain emergency care, we are proposing to define "dedicated emergency department." "Dedicated emergency department" would mean a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in § 489.24(b), and is either located: (1) On the main hospital campus; or (2) off the main hospital campus and is treated by Medicare under § 413.65(b) as a department of the hospital. The EMTALA statute was intended to apply to individuals presenting to a hospital for emergency care services. Accordingly, we believe it is irrelevant whether the dedicated emergency department is located on or off the hospital main campus, as long as the individual is presenting to "a hospital" for those services. Therefore, we are proposing in our definition of "dedicated emergency department" that such a department may be located on the main hospital campus, or it may be a department of the hospital located off the main campus. (We note that this proposed definition would encompass not only what is generally thought of as a hospital's "emergency room," but would also include other departments of hospitals, such as labor and delivery departments and psychiatric units of hospitals, that provide emergency or labor and delivery services, or both, or other departments that are held out to the public as an appropriate place to come for medical services on an urgent, nonappointment basis.)

We are soliciting public comment on whether this proposed definition should more explicitly define what is a "dedicated emergency department." Specifically, we are seeking comment on whether a "significant portion of the time" should be defined more objectively; for example, in terms of some minimum number or minimum percentage of patients (20, 30, 40 percent or more of all patients seen) presenting for emergency care at a particular area of the hospital in order for it to qualify as a "dedicated emergency department." As an alternative, we could also consider a qualifying criteria that is based on determining whether the facility is used "regularly" for the evaluation or treatment of emergency medical conditions. Similarly, we are seeking comments on how we could define "regularly" more objectively in our consideration of this alternative. We further seek comments from hospitals, physicians, and others on how hospitals currently organize themselves to react to situations in which individuals come to a hospital requesting a screening examination or medical treatment, or both.

This proposed rule would clarify for hospitals that they must provide at least a medical screening examination to all individuals who present to an area of a hospital meeting the definition of dedicated emergency department and request examination or treatment for a medical condition, or have such a request made on their behalf. As we explain in section V.J.7. of this preamble, individuals who present to an area of a hospital other than a dedicated emergency department on hospital property must receive a medical screening examination under EMTALA, only when the individual requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf, as provided in the proposed changes to § 489.24(b) in this proposed rule.

7. Applicability of EMTALA: Individual Comes to the Dedicated Emergency Department for Nonemergency Services

We sometimes receive questions as to whether EMTALA's requirements apply to situations in which an individual comes to a hospital's dedicated emergency department, but no request is made on the individual's behalf for emergency medical evaluation or treatment. In view of the specific language of section 1867 of the Act and the discussion in section V.J.6. of this proposed rule, which proposes to define a hospital's dedicated emergency department as a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions located on the main hospital campus or at an off-campus department of the hospital, we believe that a hospital must be seen as having an EMTALA obligation with respect to any individual who comes to the dedicated emergency department, if a request is made on the individual's behalf for examination or treatment for a medical condition, whether or not the treatment requested is explicitly for an emergency condition. A request on behalf of the individual would be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition. This does not mean, of course, that all EMTALA screenings must be equally extensive. The statute plainly states that the objective of the appropriate medical screening examination is to determine whether or not an emergency medical condition exists. Therefore, hospitals are not obligated to provide screening services beyond those needed to determine that there is no emergency.

In general, a medical screening examination is the process required to reach, with reasonable clinical confidence, a determination about whether a medical emergency does or does not exist. We expect that in most cases in which a request is made for medical care that clearly is unlikely to involve an emergency condition, an individual's statement that he or she is not seeking emergency care, together with brief questioning by qualified medical personnel, would be sufficient to establish that there is no emergency condition and that the hospital's EMTALA obligation would thereby be satisfied.

To clarify our policy in this area, we are proposing to redesignate paragraphs (c) through (h) of § 489.24 as paragraphs (d) through (i) (we are proposing to remove existing paragraph (i), as explained in section V.J.10. of this preamble) and to add a new paragraph (c) to state that if an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an "emergency medical condition" as defined in paragraph (b). (See example 1 below.)

Example 1: A woman walks up to the front desk of a hospital's emergency room, a dedicated emergency department, and tells the hospital employee attending the front desk that she had a wound sutured several days earlier and was directed by her doctor to have the sutures removed that day. The front desk attendant registers the woman according to the hospital's normal registration procedure and directs the woman to the waiting area. An emergency nurse, who has been designated by the hospital as a "qualified medical person" (as provided for in existing § 489.24(a)), calls the woman into the examination area of the emergency room. The nurse asks the woman if she has experienced any discomfort or noticed any problems in the area sutured. The woman explains that she is feeling fine, and the wound is not causing her any discomfort, but that her doctor had directed her a week ago to have the sutures removed that day. The nurse physically inspects the sutures and determines that the wound is healing appropriately. The nurse explains to the woman that she does not have an emergency medical condition and may direct the woman to an outpatient clinic where nonemergency personnel will provide the services the woman has requested.

Application: In this case, the woman presented at the hospital's dedicated emergency department and requested examination or treatment for a medical condition—specifically, she asked that her sutures be removed. Therefore, the hospital is bound under section 1867(a) of the Act to provide her a medical screening examination in order to determine whether or not she has an emergency medical condition. The actions of the nurse, "a qualified medical person," constitute an appropriate medical screening examination under EMTALA because the nurse has determined, with reasonable clinical confidence, that the woman has no emergency medical condition. This appropriate medical screening examination fully satisfies the hospital's EMTALA obligations as to that woman; because the screening examination revealed no emergency medical condition, the hospital properly referred the woman to an outpatient clinic for nonemergency care.

8. Applicability of EMTALA: Individual Presents at an Area of the Hospital on the Hospital's Main Campus Other Than the Dedicated Emergency Department

Routinely, individuals come to hospitals as outpatients for many nonemergency medical purposes, and if such an individual initially presents at an on-campus area of the hospital other than a dedicated emergency department, we would expect that the individual typically would not be seeking emergency care. Under most of these circumstances, EMTALA would therefore not apply (this concept is further discussed in section V.J.8. of this preamble). A hospital would, however, incur an EMTALA obligation with respect to an individual presenting at that area who requests examination or treatment for what may be an emergency medical condition, or had such a request made on his or her behalf. This policy would not require that an emergency medical condition be found, upon subsequent medical examination, to exist. Rather, EMTALA is triggered in on-campus areas of the hospital other than a dedicated emergency department where, in an attempt to gain access to the hospital for emergency care, an individual comes to a hospital and requests an examination or treatment for a medical condition that may be an emergency.

We are proposing to specify in the regulations that such a request would be considered to exist if the individual requests examination or treatment for what the individual believes to be an emergency medical condition. Where there is no actual request because, for example, the individual is unaccompanied and is physically incapable of making a request, the request from the individual would be considered to exist if a prudent layperson observer would believe, based upon the individual's appearance or behavior, that the individual needs emergency examination or treatment. We believe this proposed policy is appropriate because it would not be

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consistent with the intent of section 1867 of the Act to deny its protections to those individuals whose need for emergency services arises upon arrival on hospital on-campus property at the hospital's main campus but have not been presented to the dedicated emergency department.

Under the proposed policies discussed above, a request for examination or treatment by an individual presenting for what may be an emergency medical condition at an on-campus area of the hospital other than the dedicated emergency department would not have to be expressed verbally in all cases, but in some cases should be inferred from what a prudent layperson observer would conclude from an individual's appearance or behavior. While there may be a request (either through the individual or a prudent layperson), thereby triggering an EMTALA obligation on the part of the hospital, this policy does not mean that the hospital must maintain emergency medical screening or treatment capabilities in each department or at each door of the hospital, nor anywhere else on hospital property other than the dedicated emergency department. If an individual presents at an on-campus area of the hospital other than the dedicated emergency department in an attempt to gain access to the hospital for emergency care, EMTALA would mandate that the hospital (as a whole) would provide for screening and stabilizing the individual. For example, upon presentation of an individual requesting emergency care, if the department to which the individual presents cannot readily provide screening and, if needed, stabilization services, the department may arrange for appropriate staff to provide these services. Care required to be provided under EMTALA should be provided in the most appropriate setting, as determined by the hospital.

Example 2: An individual bleeding profusely from a severe scalp laceration enters a hospital through the main entry for hospital visitors, and says to one of the receptionists: "I need help." The receptionist sees that the individual's head is bleeding and, noting his request, arranges to have the individual taken to the dedicated emergency department. Minutes later, the staff from the emergency department arrive and transport the individual to the hospital's emergency department to complete the screening and to give any necessary stabilizing treatment.

Application: The individual presented at an on-campus area of the hospital other than the dedicated emergency department (in this case, the main entry for hospital visitors), with his head bleeding profusely, asking for help. The receptionist, a prudent layperson observing the individual, believed that the individual was seeking emergency examination or treatment, thereby triggering an EMTALA obligation on the part of the hospital. (We note that EMTALA would have been triggered even if no verbal request had been made, since the individual's appearance indicated the clear possibility of an emergency medical condition.) Since the main entry for hospital visitors did not have emergency examination or treatment capabilities, the receptionist appropriately called the hospital's emergency department to summon emergency department staff to provide emergency care for that individual. Once the emergency department staff arrived and transported the individual to the hospital's emergency department, and provided him with the emergency care needed and stabilized the individual, the hospital had satisfied its EMTALA obligation to that individual.

Again, we solicit comments from hospitals and physicians that give examples of ways in which hospitals presently react to situations such as for the example noted above.

Most individuals who come to hospitals as outpatients come for many nonemergency purposes; under most circumstances, EMTALA would not apply. We are proposing that EMTALA would not apply to such an individual who then experiences what may be an emergency medical condition if the individual is an outpatient (as that term is defined at 42 CFR § 410.2) who has come to the hospital outpatient department for the purpose of keeping a previously scheduled appointment. We would consider such an individual to be an outpatient if he or she has begun an encounter (as that term is defined at § 410.2) with a health professional at the outpatient department. Because such individuals are patients of the hospital already, that is, they have a previously established relationship with the hospital, and have come to the hospital for previously scheduled medical appointments, we believe it is inappropriate that they be considered to have "come to the hospital" for purposes of EMTALA. However, we note that such an outpatient under this proposal who experiences what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare hospital conditions of participation (as discussed in section V.J.13. of this proposed rule). Hospitals that fail to provide treatment to these patients could face termination of their Medicare provider agreements for a violation of the conditions of participation. In addition, as patients of a health care provider, these individuals are accorded protections under State statutes or common law as well as under general rules of ethics governing the medical professions.

Example 3: A patient who had been discharged from inpatient status following knee replacement surgery comes to the hospital outpatient department for a physical therapy session which had been scheduled 2 weeks earlier. While undergoing therapy, the patient complains of chest pains and lightheadedness. Acting under protocols established by the hospital, staff of the outpatient department contact the hospital's dedicated emergency department, which dispatches appropriate personnel to the department. The patient is taken to the hospital's dedicated emergency department for examination. Upon arrival in the dedicated emergency department, she is given a medical screening examination, which reveals that she has an emergency medical condition related to coronary artery disease. She is stabilized in the dedicated emergency department and is released to the care of her daughter.

Application: In this case, the individual is an outpatient. While she is in a physical therapy session in an outpatient department of the hospital, she experiences what may be an emergency medical condition—chest pains and lightheadedness. This outpatient is under the care of the hospital; she is in a previously scheduled physical therapy appointment and clearly has a previously established relationship with the hospital. In addition, the encounter with hospital staff has begun since her condition arose while she was undergoing therapy. Therefore, although the individual may be experiencing what may be an emergency medical condition, the hospital is not obligated under EMTALA. However, the hospital appropriately provided treatment for this patient, as required under the Medicare conditions of participation (specifically, 42 CFR § 482.55, which requires the hospital to fulfill its condition of participation responsibility for emergency care by contacting the hospital's dedicated emergency department and providing care to the individual through staff of that department). We solicit comments from hospitals and physicians as to what current practices are when an outpatient with a previously scheduled appointment experiences an emergency medical condition.

We are proposing to retitle the definition of "property" at § 489.24(b) to "hospital property" and relocate it as a separate definition. In addition, we are proposing to clarify which areas and facilities are not considered hospital property.

9. Scope of EMTALA Applicability to Hospital Inpatients

While most issues regarding EMTALA arise in connection with ambulatory patients, questions have occasionally been raised about whether EMTALA applies to inpatients. In late 1998, the United States Supreme Court considered a case (*Roberts* v. *Galen of Virginia*) that involved, in part, the question of whether EMTALA applies to inpatients in a hospital. In the context of that case, the United States Solicitor General advised the Supreme Court that the Department of Health and Human Services (DHHS) would develop a regulation clarifying its position on that issue. After reviewing the issue in the light of the EMTALA statute, we are proposing that EMTALA would apply to inpatients only under limited circumstances, as described in the following paragraphs.

As noted earlier, once a hospital has incurred an EMTALA obligation with respect to an individual, that obligation continues while the individual remains at the hospital, so that any transfer to another medical facility or discharge of the individual must be in compliance with the rules restricting transfer until the individual is stabilized under existing § 489.24(d). In many cases, medical judgment will dictate that a patient be admitted to the hospital for further treatment on an inpatient basis because the patient's emergency medical condition has not yet been stabilized.

In these cases, the hospital continues to be obligated under section 1867, irrespective of the inpatient admission. Admitting an individual whose emergency medical condition has not been stabilized does not relieve the hospital of further responsibility to the individual under this section. An individual's emergency medical condition will be considered to have been stabilized only when the criteria in § 489.24(b) are met; that is, the individual's condition must be such that no material deterioration of the condition is likely, within reasonable medical probability, to result from or occur during a transfer of the individual from the facility or, if the patient is a pregnant woman who is having contractions, that the woman has delivered the child and the placenta.

Consistent with the above policy, we emphasize that an admission to inpatient status cannot be used to evade EMTALA responsibilities. Indeed, permitting inpatient admission to end EMTALA obligations would provide an obvious means of circumventing these requirements that would seemingly contradict the point of the statute to protect emergency patient health and safety. This point should be particularly evident in the case of a woman in labor, a central focus of the statute. Such women are frequently admitted, and the statute clearly contemplated protecting them until completion of the delivery (that is, stabilization). In addition, if an inpatient who had been admitted from the dedicated emergency department with an unstabilized emergency medical condition was never stabilized as an inpatient and is transferred, we would still apply EMTALA in reviewing the transfer. In this context, stability for transfer reflects a complex medical judgment that can be made only based on review of all relevant information in each particular case, including all conditions that could cause the patient to be medically unstable. A patient who goes in and out of apparent stability with sufficient rapidity or frequency would not be considered "stabilized" within the meaning of § 489.24; transient stability of such a patient does not relieve the hospital of its EMTALA obligation. Such a patient would continue to be covered by EMTALA until the patient's overall medical stability with respect to all conditions is achieved.

Except for the limited circumstances described above, we are proposing to clarify that EMTALA does not apply to hospital inpatients. We believe EMTALA does not apply to hospital inpatients because we interpret section 1867 of the Act by reading the statutory language as a whole, with the requirements of paragraphs (b), "Necessary Stabilizing Treatment for Emergency Medical Conditions and Labor," and (c), "Restricting Transfer Until Individual is Stabilized," applying only to those individuals who satisfy the threshold requirement of coming to the hospital and requesting emergency care (as interpreted in this proposed regulation). This interpretation is based upon the statutory language and the legislative history. First, the Congress defined "emergency medical condition" at section 1867(e)(1) of the Act by referring solely to "acute symptoms," which are self-identified, and did not mention other potentially relevant indications, in particular, signs or objective data. "Signs" are observable findings that are identified or confirmed by a clinician based on examination and use of objective data (for example, physiologic measurements, x-ray results). When a patient's condition deteriorates in the inpatient setting, awareness of a situation potentially requiring emergency care is based on any symptoms, signs, and objective data, reflecting a situation that is not captured by the targeted definition at section 1867(e)(1) of the Act. If the Congress had intended EMTALA to apply to transfers at any time during an inpatient stay, it would not have used a definition of emergency medical condition that focuses exclusively on symptoms and that uniquely defines the individual's status at the time of his or her initial presentation to the hospital, not his or her status as an inpatient. Furthermore, the definition of "appropriate transfer" in paragraph (c)(2) of section 1867 of the Act includes a variety of terms (observation, signs, symptoms, preliminary diagnosis) associated with patient information that is gathered at the initial stage of clinical intervention, when the course of treatment is just beginning. Thus, it would appear to be clear that the authors of this legislation understood the precise meanings of these clinical terms and utilized them accordingly. Further indication that Congress intended this result is the language in section 1867(b)(1)(A) of the Act (stabilization), which requires that the hospital provide "for such further medical examination" as necessary to stabilize. Congress' use of the word "further" acknowledges that there was some initial treatment that occurred in the emergency department.

In addition, the legislative history of EMTALA is replete with references to the problem of individuals denied emergency medical care at hospital emergency rooms, whereas there is no explicit reference to similar problems faced by hospital inpatients. (*See*, for example, 131 Cong. Rec. 28.587 and 28.588 (1985)). When the Congress considered the need for EMTALA legislation, it noted that Medicare-participating hospitals were bound to meet hospital conditions of participation, but that no specific requirements then existed for appropriate treatment of emergency patients. (*See* H.R. Rept. No. 241 (I)(1985), reprinted in 1986 U.S.C.C.A.N. 579, 605.) Arguably, the Congress also considered other protections available to hospital inpatients (for example, private causes of action).

This interpretation that EMTALA was not intended to apply to transfers at any time during an inpatient's stay is further supported by the language of the appropriate transfer provisions of section 1867(c) of the Act. While that paragraph does refer to individuals at a

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"hospital," rather than individuals at an "emergency department," the same paragraph also makes reference to actions to be taken by "a physician * * * physically present in the emergency department." This explicit mention of a hospital emergency department, even in a paragraph that generally cites an individual at a "hospital," supports the view that EMTALA was not intended to apply to admitted inpatients who may become unstable subsequent to admission, but only to patients who initially come to the hospital's emergency department with an emergency medical condition, and only until the condition has been stabilized. Finally, we note that once a hospital admits an individual as a patient, that hospital has a variety of other legal, licensing, and professional obligations with respect to the continued proper care and treatment of such patients.

a. Admitted Emergency Patients. A related issue concerns whether a hospital may satisfy its EMTALA obligations to an admitted emergency inpatient only by effectuating an actual stable discharge or appropriate transfer. We are proposing to clarify that even when an admitted emergency patient is not actually transferred, a determination may be made as to whether or not the patient has been stabilized such that he or she could be transferred at a certain point without likely material deterioration of the patient's condition, as defined in section 1867(e)(3)(B) of the Act. Under our proposed policy, if the admitted emergency patient could have been transferred as "stable" under the statute and the period of stability is documented by relevant clinical data in the patient's medical record, the hospital has satisfied its EMTALA obligation by meeting the statutory requirement of providing stabilizing treatment to the point of stability for transfer, and the hospital's obligation under EMTALA ends, even though the patient may remain in inpatient status at the hospital. If, after stabilization, the individual who was admitted as an inpatient again has an apparent decline of his or her medical condition, either as a result of the injury or illness that created the emergency for which he or she initially came to the dedicated emergency department or as a result of another injury or illness, the hospital must comply with the conditions of participation under 42 CFR Part 482, but has no further responsibility under EMTALA with respect to the individual.

We also note that, just because a hospital may stabilize a patient for purposes of ending its EMTALA obligation to that patient, this does not relieve the hospital of any further health and safety obligations as to that patient under the Medicare program. While they remain patients in that hospital, these patients are still protected by a number of Medicare health and safety standards (conditions of participation), as explained further below. In addition, as explained above, nothing under EMTALA in any way changes a hospital's other legal, licensing, and professional obligations with respect to the continued proper care and treatment of its patients.

Example 4: A patient comes to Hospital C's emergency department and requests treatment for an emergency medical condition. The patient knows he has severe heart disease and his chest pains have become more frequent. The patient receives an appropriate medical screening examination and is found to have an emergency medical condition, as indicated by a pain pattern and EKG abnormalities consistent with unstable angina. Stabilizing treatment in the emergency department on an outpatient basis, consisting of oxygen, nitrates and heparin, is initiated.

After several hours of outpatient care, the emergency physician determines that the patient is still not stable for purposes of discharge to his home. The emergency physician concludes that the patient can be treated most effectively by being admitted to Hospital C where he is currently being treated as an outpatient. The patient is admitted as an inpatient for further treatment. The attending physician knows that patients with indications for coronary angioplasty are usually transferred to Hospital D in another city because Hospital D has specialized capabilities that are unavailable at admitting Hospital C. A trip to Hospital D typically requires 2 hours travel by ground ambulance. The physician determines that the patient is stable for purposes of this type of transfer; that is, such a transfer is not likely to result in a material deterioration of the patient's condition, and documents relevant clinical data in the patient's medical record. Even though patients with this degree of coronary arterial disease and acute infarction risk are usually transferred, the patient opposes transfer and wants to remain in the local community. In accordance with the wishes of the patient and his family, the attending physician agrees to treat the patient in Hospital C while informing the patient of the risks involved.

Application: In this situation, the admitted patient is not stable for purposes of discharge to his home but the attending physician determined that the patient is stable for the type of transfer usually undertaken by Hospital C for patients with unstable angina considered for angioplasty. This stabilization, which is documented by relevant clinical data in the patient's medical record, ends Hospital C's EMTALA obligation to the patient, and that obligation would not be reinstated by any subsequent deterioration in the patient's condition.

We are proposing to redesignate paragraph (c) of § 489.24 as paragraph (d), and include these stabilization requirements under a new proposed § 489.2(d)(2). (Proposed redesignated paragraph (d) would be revised further as explained in section V.K.9.b. of this preamble.)

b. Admitted Elective (Nonemergency) Patients. Most hospital admissions do not consist of emergency cases. In most cases, a patient who comes to the hospital and requests admission does so to obtain elective (nonemergency) diagnosis or treatment for a medical condition. Questions have arisen, however, as to whether a hospital would be bound under EMTALA in the situation in which an admitted nonemergency inpatient experiences a deterioration of his or her medical condition.

Under our interpretation of section 1867 of the Act as described above, we believe EMTALA was intended to provide protection to patients coming to a hospital to seek care for an emergency condition. Therefore, we believe that the EMTALA requirements do not extend to admitted nonemergency inpatients. These patients are protected by a number of the Medicare hospital conditions of participation, as explained further under section V.K.13. of this preamble. These patients are further protected by a hospital's other legal, licensing, and professional obligations with respect to the continued proper care and treatment of its patients.

We are proposing to also include these requirements under the proposed redesignated § 489.24(d)(2).

10. Applicability of EMTALA to Provider-Based Entities

On April 7, 2000, we published a final rule specifying the criteria that must be met for a determination regarding provider-based status (65 FR 18504). The regulations in that the April 2000 final rule were subsequently revised to incorporate changes mandated by section 404 of Public Law 106–554 (66 FR 59856, November 30, 2001). However, those revisions did not substantively affect hospitals' obligations with respect to off-campus departments.

a. Applicability of EMTALA to Off-Campus Hospital Departments. In the April 7, 2000 final rule (65 FR 18504), we also clarified the applicability of EMTALA to hospital departments not located on the main provider campus. At that time, we revised § 489.24 to include a new paragraph (i) to specify the antidumping obligations of hospitals

with respect to individuals who come to off-campus hospital departments for the examination or treatment of a potential emergency medical condition. As explained in the preamble to the April 7, 2000 final rule, we made this change because we believed it was consistent with the intent of section 1867 of the Act to protect individuals who present on hospital property (including off-campus hospital property) for emergency medical treatment. Since publication of the April 7, 2000 final rule, it has become clear that many hospitals and physicians continue to have significant concerns with our policy on the applicability of EMTALA to these off-campus locations. After further consideration, we are proposing to clarify the scope of EMTALA's applicability in this scenario to those off-campus departments that are treated by Medicare under § 413.65(b) to be departments of the hospital, and that are equipped and staffed areas that are used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions. That is, we are proposing to narrow the applicability of EMTALA to only those off-campus departments that are "dedicated emergency departments" as defined in proposed revised § 489.24(b).

This proposed definition would include such departments whether or not the words "emergency room" or "emergency department" were used by the hospital to identify the departments. The definition would also be interpreted to encompass those off-campus hospital departments that would be perceived by a prudent layperson as appropriate places to go for emergency care. Therefore, we are proposing to revise the definition of "Hospital with an emergency department" at § 489.24(b) to account for these off-campus dedicated emergency departments and to also amend the definition of "Comes to the emergency department" at § 489.24(b) to include this same language. We believe this proposed change would enhance the quality of emergency care by facilitating the prompt delivery of emergency care in those cases, thus permitting individuals to be referred to nearby facilities with the capacity to offer appropriate emergency care.

In general, we expect that off-campus departments that meet the proposed definitions stated above would in practice be functioning as "off-campus emergency departments." Therefore, we believe it is reasonable to expect the hospital to assume, with respect to these off-campus departments, all EMTALA obligations that the hospital must assume with respect to the main hospital campus emergency department. For instance, the screening and stabilization or transfer requirements described in section V.K.1. of this preamble ("Background") would extend to the off-campus emergency departments, as well as to any such departments on the main hospital campus.

In conjunction with this proposed change in the extent of EMTALA applicability with respect to off-campus facilities, we are also proposing to delete all of existing § 489.24(i), which, as noted above, was established in the April 7, 2000 final rule. We are proposing to delete this paragraph in its entirety because its primary purpose is to describe a hospital's EMTALA obligations with respect to patients presenting to off-campus departments that do not routinely provide emergency care. Under the proposals outlined above, however, a hospital would have no EMTALA obligation with respect to individuals presenting to such departments. Therefore, it would no longer be necessary to impose the requirements in existing § 489.24(i). Even though off-campus provider-based departments that do not routinely offer services for emergency medical conditions would not be subject to EMTALA, some individuals may occasionally come to them to seek emergency care. Under such circumstances, we believe it would be appropriate for the department to call an emergency medical service (EMS) if it is incapable of treating the patient, and to furnish whatever assistance it can to the individual while awaiting the arrival of EMS personnel. Consistent with the hospital's obligation to the community and similar to our requirements under § 482.12(f)(2) that apply to hospitals that do not provide emergency services, we would expect the hospital to have appropriate protocols in place for dealing with individuals who come to off-campus nonemergency facilities to seek emergency care. To clarify a hospital's responsibility in this regard, we are proposing to revise § 482.12(f) by adding a new paragraph (3) to state that if emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff of the hospital has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate. (We note that, in a separate document (62 FR 66758, December 16, 1997), we proposed to relocate the existing § 482.12(f) requirement to a new section of Part 482. Any change to the existing § 482.12(f) that is adopted as a result of the proposal described above will be taken into account in finalizing the December 19, 1997 proposal.) However, the hospital would not incur an EMTALA obligation with respect to the individual.

In summary, we are proposing in existing § 489.24(b) to revise the definitions of "comes to the emergency department" and "hospital with an emergency department", and to include these off-campus departments in our new definition of "dedicated emergency department." We welcome comments on whether this new term is needed or if the term "emergency department" could be defined more broadly to encompass other departments that provide urgent or emergent care services. We are proposing to delete all of existing § 489.24(i) and to make conforming revisions to § 413.65(g)(1).

b. On-Campus Provider-Based Applicability. At existing § 413.65(g)(1), we state, in part, that if any individual comes to any hospital-based entity (including an RHC) located on the main hospital campus, and a request is made on the individual's behalf for examination or treatment of a medical condition, the entity must comply with the antidumping rules at § 489.24. Since provider-based entities, as defined in § 413.65(b), are not under the certification and provider number of the main provider hospital, this language, read literally, would appear to impose EMTALA obligations on providers other than hospitals, a result that would not be consistent with section 1867, which restricts EMTALA applicability to hospitals. To avoid confusion on this point and to prevent any inadvertent extension of EMTALA requirements outside the hospital setting, we are proposing to clarify that EMTALA applies in this scenario to only those *departments* on the hospital's main campus that are provider-based; EMTALA would not apply to provider-based *entities* (such as RHCs) that are on the hospital campus.

In addition, we are proposing in § 489.24(b) to revise the definition of "Comes to the emergency department" to include an individual who presents on hospital property, in which "hospital property" is in part defined as "the entire main hospital campus as defined at § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that may be located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, RHCs, SNFs, or other entities

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that participate separately in Medicare, or restaurants, shops, or other nonmedical facilities." We are specifically seeking comments on this proposed revised definition. Generally, this proposed language would clarify that EMTALA does not apply to provider-based entities, whether or not they are located on a hospital campus. This language is also consistent with our policy as stated in questions and answers published on the CMS website: *www.cms.gov* (CMS EMTALA guidance, 7/20/01, Q/A # 1) that clarifies that EMTALA does not apply to other areas or structures located on the hospital campus that are not part of the hospital, such as fast food restaurants or independent medical practices.

If this proposed change limiting EMTALA applicability to only those on-campus departments of the hospital becomes finalized, we believe that if an individual comes to an on-campus provider-based entity or other area or structure on the campus not applicable under the new policy and presents for emergency care, it would be appropriate for the entity to call the emergency medical service if it is incapable of treating the patient, and to render whatever assistance it can to the individual while awaiting the arrival of emergency medical service personnel. However, the hospital on whose campus the entity is located would not incur an EMTALA obligation with respect to the individual.

We welcome comments from providers and other interested parties on the proper or best way to organize hospital resources to react to situations on campus where an individual patient or prospective patient requires immediate medical attention.

We are proposing in § 489.24(b) to revise the definition of "Comes to emergency department" (specifically, under proposed new paragraph (1)) and make conforming changes at § 413.65(g)(1).

11. EMTALA and On-Call Requirements

We have frequently received inquiries concerning the applicability of EMTALA for physicians on call. We believe there are a number of misconceptions in the provider industry concerning the extent to which EMTALA requires physicians to provide on-call coverage. Therefore, we are including a section in this preamble that clarifies what kinds of obligations physicians have to provide on-call coverage under EMTALA.

Section 1866(a)(1)(I)(iii) of the Act states, as a requirement for participation in the Medicare program, that hospitals must keep a list of physicians who are on call for duty after the initial examination to provide treatment necessary to stabilize an individual with an emergency medical condition. If a physician on the list is called by a hospital to provide emergency screening or treatment and either fails or refuses to appear within a reasonable period of time, the hospital and that physician may be in violation of EMTALA as provided for under section 1867(d)(1)(C) of the Act.

The CMS State Operations Manual (SOM) further clarifies a hospital's responsibility for the on-call physician. The SOM (Appendix V, page V–15, Tag A404) states:

- Each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients.
- Physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times. The hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

Thus, hospitals are required to maintain a list of physicians on call at any one time and physicians or hospitals, or both, may be responsible under the EMTALA statute to provide emergency care if a physician who is on the on-call list fails to or refuses to appear within a reasonable period of time. However, Medicare does not set requirements on how frequently a hospital's staff of on-call physicians are expected to be available to provide on-call coverage. We are aware that practice demands in treating other patients, conferences, vacations, days off, and other similar factors must be considered in determining the availability of staff. We also are aware that some hospitals, particularly those in rural areas, have stated that they incur relatively high costs of compensating physician groups for providing on-call coverage to their emergency departments, and that doing so can strain their already limited financial resources. CMS allows hospitals flexibility to comply with EMTALA obligations by maintaining a level of on-call coverage that is within their capability.

We understand that some hospitals exempt senior medical staff physicians from being on call. This exemption is typically written into the hospital's medical staff bylaws or the hospital's rules and regulations, and recognizes a physician's active years of service (20 or more years) or age (that is, 60 years of age or older), or a combination of both. We wish to clarify that providing such exemptions to members of hospitals' medical staff does not necessarily violate EMTALA. On the contrary, we believe that the hospital is responsible for maintaining an on-call list in a manner that best meets the needs of its patients as long as the exemption does not affect patient care adversely. Thus, CMS allows hospitals flexibility in the utilization of their emergency personnel.

We also note that there is no predetermined "ratio" that CMS uses to identify how many days that a hospital must provide medical staff on-call coverage based on the number of physicians on staff for that particular specialty. In particular, CMS has no rule stating that whenever there are at least three physicians in a specialty, the hospital must provide 24 hour/7 day coverage. Generally, in determining EMTALA compliance, CMS will consider all relevant factors, including the number of physicians on staff, other demands on these physicians, the frequency with which the hospital's patients typically require services of on-call physicians, and the provisions the hospital has made for situations in which a physician in the specialty is not available or the on-call physician is unable to respond.

Example 5: Hospital D has 75 beds and is located in a rural area. The hospital provides on-call coverage of orthopedic services on all weekdays and the first 3 weekends of each month. On the fourth weekend of one month, an individual presents at Hospital D's dedicated emergency department and requests examination for a medical condition. The emergency physician on duty screens the individual and finds that she has an orthopedic emergency medical condition requiring the services of an orthopedist. Hospital D does not have on-call orthopedic physician coverage on this date and, therefore, transfers the individual to an urban hospital 20 miles away for necessary treatment. The transfer is arranged in accordance with procedures that Hospital D has for meeting patient needs when a particular specialty is not available or the physician cannot respond for reasons beyond his or her control.

Analysis: Hospital D incurred an EMTALA obligation when the individual presented at Hospital D's dedicated emergency department and requested examination for a medical condition. At that time, Hospital D did not have on-call coverage to provide necessary stabilizing treatment for what was an orthopedic emergency medical condition, even though an orthopedic physician was on-call at other times. The emergency physician at Hospital D weighed the risks involved to transfer the individual to an urban hospital with capabilities to treat the individual and found that it would be more beneficial to the individual to transfer him or her to the urban hospital 20 miles away, than to provide screening and stabilizing treatment within Hospital D's capabilities (which, at that time, did not include orthopedic services). Hospital D has satisfied its EMTALA obligation by providing screening services within its capability, followed by an appropriate transfer, under procedures developed in advance. To clarify our policies on EMTALA requirements regarding the availability of on-call physicians, we are proposing to add to § 489.24 a new paragraph (j) to specify that each hospital has the discretion to maintain the on-call list in a manner to best meet the needs of its patients. This paragraph would further specify that physicians, including specialists and subspecialists (for example, neurologists), are not required to be on call at all times, and that the hospital must have policies and procedures to be followed when a particular specialty is not available or the on-call physician cannot respond because of situations beyond his or her control.

12. EMTALA Applicability to Hospital-Owned Ambulances

We stated in the June 22, 1994 final rule (59 FR 32098) that if an individual is in an ambulance owned and operated by a hospital, the individual is considered to have come to the hospital's emergency department, even if the ambulance is not on hospital property. This policy, currently set forth at § 489.24(b), was necessary because we were concerned that some hospitals that owned and operated ambulances at that time were transporting individuals who had called for an ambulance to other hospitals, thereby evading their EMTALA responsibilities to the individuals.

Concerns have since been raised by the provider industry about applications of this policy to ambulances that are owned by hospitals but are operating under communitywide EMS protocols that may require the hospital-owned and other ambulances to transport individuals to locations other than the hospitals that own the ambulances. For instance, we understand that some community protocols require ambulances to transport individuals to the nearest hospital to the patient geographically, whether or not that hospital owns the ambulance.

To avoid imposing requirements that are inconsistent with local EMS requirements, we are proposing to clarify, at proposed revised § 489.24(b) in the definition of "Comes to the emergency department", an exception to our existing rule requiring EMTALA applicability to hospitals that own and operate ambulances. Our proposal would account for hospital-owned ambulances operating under communitywide EMS protocols. Under our proposal, the rule on hospital-owned ambulances and EMTALA does not apply if the ambulance is operating under a communitywide EMS protocol that requires it to transport the individual to a hospital other than the hospital that owns the ambulance. In this case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property.

13. Conditions of Participation for Hospitals

We are reminding hospitals and others that while this proposed regulation would make it clear that stabilizing an emergency inpatient relieves the hospital of its EMTALA obligations, it does not relieve the hospital of all further responsibility for the patient who is admitted or indicate that the hospital is thus free to improperly discharge or transfer him or her to another facility. Inpatients who experience acute medical conditions receive protections under the hospital conditions of participation, which are found at 42 CFR part 482. In addition, as noted earlier in this preamble, we believe that outpatients who experience what may be an emergency medical condition after the start of an encounter with a health professional would have all protections afforded to patients of a hospital under the Medicare conditions of participation. There are six conditions of participation that provide these protections: emergency services, governing body, discharge planning, quality assurance, medical staff, and outpatient services. We are not proposing in this proposed rule to make changes to any of the conditions of participation.

If a hospital inpatient develops an acute medical condition and the hospital is one that provides emergency services, the hospital is required to ensure that it meets the emergency needs of the patient in accordance with accepted standards of practice. Similarly, regardless of whether the hospital provides emergency services, if an inpatient develops an acute medical condition, the governing body condition of participation (§ 482.12(f)(2), which applies to all Medicare-participating hospitals) would apply. This condition of participation requires that the hospital governing body must ensure that the medical staff has written policies and procedures for appraisal of emergencies, initial treatment, and referral when appropriate.

The discharge planning condition of participation (§ 482.43, which applies to all Medicare-participating hospitals) requires hospitals to have a discharge planning process that applies to all patients. This condition of participation ensures that patient needs are identified and that transfers and referrals reflecting adequate discharge planning are made by the hospital. If an inpatient develops an acute medical condition and the hospital either does not offer emergency services or does not have the capability to provide necessary treatment, a transfer to another hospital with the capabilities to treat the emergency medical condition could be warranted. Hospitals are required to meet the discharge planning condition of participation in carrying out such a transfer.

The hospital condition of participation governing medical staff (§ 482.22) requires that the hospital have an organized medical staff that operates under bylaws approved by the governing body and is responsible to the governing body for the quality of medical care provided to patients by the hospital. Should the medical staff not be held accountable to the governing body for problems regarding a lack of provision of care to an inpatient who develops an emergency medical condition, this lack of accountability may be reviewed under the medical staff condition of participation, as well, and may result in a citation of noncompliance at the medical staff condition level for the hospital.

Finally, the quality assurance condition of participation (§ 482.21, which applies to all Medicare-participating hospitals) requires the governing body to ensure that there is an effective, hospital-wide quality assurance program to evaluate the provision of patient care. In order to comply with this condition of participation, the hospital must evaluate the care it provides hospital-wide. Complaints regarding a lack of provision of care to an inpatient who develops an emergency medical condition must be addressed under the hospital's quality assurance program and may be reviewed under the quality assurance condition of participation.

A hospital's failure to meet the conditions of participation requirements cited above may result in a finding of noncompliance at the condition level for the hospital and lead to termination of the hospital's Medicare provider agreement.

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K. Provider-Based Entities

1. Background

a. The April 7, 2000 Final Rule

Since the beginning of the Medicare program, some providers, which we refer to as "main providers," have functioned as a single entity while owning and operating multiple provider-based departments, locations, and facilities that were treated as part of the main provider for Medicare purposes. Having clear criteria for provider-based status is important because this designation can result in additional Medicare payments for services furnished at the provider-based facility, and may also increase the coinsurance liability of Medicare beneficiaries for those services.

In the April 7, 2000 **Federal Register** (65 FR 18504), we published a final rule specifying the criteria that must be met for a determination regarding provider-based status. The regulations at § 413.65(a)(2) define provider-based status as "the relationship between a main provider and a provider-based entity or a department of a provider, remote location of a hospital, or satellite facility, that complies with the provisions of this section." The regulations at existing § 413.65(b)(2) state that before a main provider may bill for services of a facility as if the facility is provider-based, or before it includes costs of those services on its cost report, the facility must meet the criteria listed in the regulations at § 413.65(d). Among these criteria are the requirements that the main provider and the facility must have common licensure (when appropriate), the facility must operate under the ownership and control of the main provider, and the facility must be located in the immediate vicinity of the main provider.

The effective date of these regulations was originally October 10, 2000, but was subsequently delayed and is now in effect for new facilities or organizations for cost reporting periods beginning on or after January 10, 2001, as explained further below. Program instructions on provider-based status issued before that date, found in Section 2446 of the Provider Reimbursement Manual, Part 1 (PRM–1), Section 2004 of the Medicare State Operations Manual (SOM), and CMS Program Memorandum (PM) A–99–24, will apply to any facility for periods before the new regulations become applicable to it. (Some of these instructions will not be applied because they have been superseded by specific legislation on provider-based status, as described in section V.K.3. of this preamble).

b. Frequently Asked Questions Regarding Provider-Based Issues

Following publication of the April 7, 2000 final rule, we received many requests for clarification of policies on specific issues related to provider-based status. In response, we published a list of "Frequently Asked Questions" and the answers to them on the CMS website at *www.hcfa.gov/medlearn/provqa.htm*. (This document can also be obtained by contacting any of the CMS (formerly, HCFA) Regional Offices.) These questions and answers did not revise the regulatory criteria, but do provide subregulatory guidance for their implementation.

c. Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000 (Public Law 106–554)

On December 21, 2000, the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act (BIPA) of 2000 (Public Law 106–554) was enacted. Section 404 of BIPA contains provisions that significantly affect the provider-based regulations at § 413.65. Section 404 includes a grandfathering provision for facilities treated as provider-based on October 1, 2000; alternative criteria for meeting the geographic location requirement; and criteria for temporary treatment as provider-based.

(1) Two-Year "Grandfathering"

Under section 404(a) of BIPA, any facilities or organizations that were "treated" as provider-based in relation to any hospital or CAH on October 1, 2000, will continue to be treated as such until October 1, 2002. For the purpose of this provision, we interpret "treated as provider-based" to include those facilities with formal CMS determinations, as well as those facilities without formal CMS determinations that were being paid as provider-based as of October 1, 2000. As a result, existing provider-based facilities and organizations may retain that status without meeting the criteria in the existing regulations under §§ 413.65(d), (e), (f), and (h) until October 1, 2002. These provisions concern provider-based status requirements, joint ventures, management contracts, and services under arrangement. Thus, the provider-based facilities and organizations affected under section 404(a) of BIPA are not required to submit an application for or obtain a provider-based status determination in order to continue receiving reimbursement as provider-based during this period.

These provider-based facilities and organizations are not exempt from the EMTALA responsibilities of provider-based facilities and organizations set forth at § 489.24, which we are proposing to revise as discussed above, or from the other obligations of hospital outpatient departments and hospital-based entities in existing § 413.65(g), such as the responsibility of off-campus facilities to provide written notices to Medicare beneficiaries of coinsurance liability. These rules are not preempted by the grandfathering provisions of section 404 of BIPA because they do not set forth criteria that must be met for provider-based status as a department of a hospital, but instead identify responsibilities that flow from that status. These responsibilities become effective for hospitals on the first day of the hospital's cost reporting period beginning on or after January 10, 2001.

(2) Geographic Location Criteria

Section 404(b) of BIPA provides that those facilities or organizations that are not included in the grandfathering provision at section 404(a) are deemed to comply with the "immediate vicinity" requirements of the existing regulations under § 413.65(d)(7) if they are located not more than 35 miles from the main campus of the hospital or CAH. Therefore, those facilities located within 35 miles of the main provider satisfy the immediate vicinity requirement as an alternative to meeting the "75/75 test" under existing § 413.65(d)(7).

In addition, BIPA provides that certain facilities or organizations are deemed to comply with the requirements for geographic proximity (either the "75/75 test" or the "35-mile test") if they are owned and operated by a main provider that is a hospital with a disproportionate share adjustment percentage greater than 11.75 percent and is (1) owned or operated by a unit of State or local government, (2) a public or private nonprofit corporation that is formally granted governmental powers by a unit of State or local government, or (3) a private hospital that has a contract with a State or local government that includes the operation of clinics of the hospital to ensure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare or Medicaid.

These geographic location criteria will continue indefinitely. While those facilities or organizations treated as provider-based on October 1, 2000 are covered by the 2-year grandfathering provision noted above, the geographic location criteria at section 404(b) of BIPA and the existing regulations at § 413.65(d)(7) will apply to facilities or organizations not treated as provider-based as of that date, effective with the hospital's cost reporting period beginning on or after January 10, 2001. On October 1, 2002, the statutory moratorium on application of these criteria to the grandfathered facilities will expire. In this proposed rule, we are proposing a further delay, as discussed below.

(3) Criteria for Temporary Treatment as Provider-Based

Section 404(c) of BIPA also provides that a facility or organization that seeks a determination of provider-based status on or after October 1, 2000, and before October 1, 2002, shall be treated as having provider-based status for any period before a determination is made. Thus, recovery for overpayments will not be made retroactively once a request for a determination during that time period has been made. For hospitals that do not qualify for grandfathering under section 404(a) of BIPA, a request for provider-based status should be submitted to the appropriate CMS Regional Office. Until a uniform application is available, at a minimum, the request should include the identity of the main provider and the facility or organization for which provider-based status is being sought and supporting documentation for purposes of applying the provider-based status criteria in effect at the time the application is submitted. Once such a request has been submitted on or after October 1, 2000, and before October 1, 2002, CMS will treat the facility or organization as being provider-based from the date it began operating as provider-based until the effective date of a CMS determination that the facility or organization is not provider-based.

Facilities requesting a provider-based status determination on or after October 1, 2002, will not be covered by the provision concerning temporary treatment as provider-based in section 404(c) of BIPA. Thus, as stated in § 413.65(n), the CMS Regional Offices will make provider-based status effective as of the earliest date on which a request for determination has been made and all requirements for provider-based status in effect as of the date of the request are shown to have been met, not on the date of the formal CMS determination. Under existing regulations at § 413.65(j), if a facility or organization does not qualify for provider-based status and CMS learns that the provider has treated the facility or organization as provider-based without having obtained a provider-based determination under applicable regulations, CMS will review all payments and may seek recovery for overpayments, including overpayments made for the period of time between submission of the request or application for provider-based status and the issuance of a formal CMS determination. (As explained in the previous paragraph, such retroactive recovery of payments would not be made for any period to the extent it is prohibited by section 404(c) of BIPA.)

d. The August 24, 2001 and November 30, 2001 Published Regulations

In August 24, 2001 **Federal Register** (66 FR 44672), we proposed to revise the provider-based regulations to reflect the changes mandated by section 404 of BIPA and to make other technical and clarifying changes in those regulations. In the November 30, 2001 **Federal Register** (66 FR 59856), following consideration of public comments received on the August 24, 2001 proposal, we published a final rule that revised the provider-based regulations. However, the only substantive changes in the provider-based regulations were those required by the BIPA legislation.

2. Proposed Changes

In the preamble to the proposed rule published on August 24, 2001 (66 FR 44709), we stated our intent to reexamine the EMTALA regulations and, in particular, to reconsider the appropriateness of applying EMTALA to off-campus locations. We announced that we planned to review these regulations with a view toward ensuring that these locations are treated in ways that are appropriate to the responsibility for EMTALA compliance of the hospital as a whole. We also pointed out that, at the same time, we want to ensure that those departments that Medicare pays as hospital-based departments are appropriately integrated with the hospital as a whole.

In addition, since the statutory grandfathering provision in the BIPA legislation remains in effect only until October 1, 2002, many hospital representatives have contacted CMS to request more guidance because they are concerned that their facilities are not in compliance with existing regulations and would not be able to continue billing as provider-based once the grandfathering provision expires. These hospital representatives are also concerned that the organizational and contractual changes needed to meet current provider-based requirements could take several months to complete. Moreover, resolution of some of the issues surrounding the provider-based regulations is needed in order to allow development of a uniform application form to enable the CMS Regional Offices to efficiently process the multitudes of requests for provider-based determinations that we expected as the grandfathering period expires.

To address the provider-based issues raised by the hospital industry and to allow for an orderly and uniform implementation strategy once grandfathering ends, we are proposing the following regulatory changes:

a. Scope of Provider-Based Requirements (§ 413.65(a))

Since publication of the April 2000 final rule, we have received many questions about which specific facilities or organizations are subject to the provider-based requirements. In the "Frequently Asked Questions" posted on the CMS website, we identified a number of facility types for which provider-based determinations would not be made, since such determinations would not affect either Medicare payment or Medicare beneficiary liability or scope of benefits. The regulations at § 413.65(a) were further revised to incorporate the exclusion of these facility types from review under the provider-based criteria. We now are proposing to further revise § 413.65(a)(1)(ii) to state that provider-based determinations will not be made with respect to independent diagnostic testing facilities that furnish only services paid under a fee schedule, such as facilities that furnish only screening mammography services, as defined in section 1861(jj) of the Act, facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services. A provider-based determination would not be appropriate for a facility that furnishes only screening mammography because of a change made by section 104 of BIPA. That legislation, which amended section 1848(j)(3) of the Act, mandates that all payment for screening mammography services furnished on or after January 1, 2000, be made under the Medicare Physician Fee Schedule (MPFS). Under the MPFS methodology, Medicare payment for the service, regardless of the setting in which it is furnished, is set at the lesser of the fee schedule amount or the actual charge; and no Part B deductible applies. Regardless of the setting, Part B coinsurance is assessed at 20 percent of the lesser of the fee schedule amount or the actual charge. Because the status of a facility as provider-based or freestanding would

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not affect the amount of Medicare or Medicaid payment, the beneficiary's scope of benefits, or the beneficiary's liability for coinsurance or deductible amounts, it is not necessary to make a provider-based determination regarding facilities that furnish only screening mammography. We are also proposing to revise § 413.65(a)(1)(ii) by adding a new paragraph (J) to state that we will not make provider-based determinations with respect to departments of providers (for example, laundry or medical records departments) that do not furnish types of health care services for which separate payment could be claimed under Medicare or Medicaid. (Such services frequently are referred to as "billable" services.) As explained more fully below, we would not make determinations with respect to these departments because their status (that is, whether they are provider-based or not) would have no impact on Medicare or Medicaid payment or on the scope of benefits or beneficiary liability under either program.

Despite the previous clarifications described above, providers, associations, and their representatives have continued to state that they are confused as to which facilities or organizations will be the subject of provider-based determinations.

In this document, we are proposing to further clarify the types of facilities that are subject to the provider-based rules, by making several changes to the definitions of key terms in § 413.65(a)(2). First, we are proposing to revise the definition of "department of a provider" to remove the reference to a physician office as being a department of a provider. While a hospital outpatient department, in fact, may furnish services that are clinically indistinguishable from those of physician offices, physician offices and provider departments are paid through separate methods under Medicare and beneficiaries may be liable for different coinsurance amounts. Thus, it is essential to distinguish between these facility types, and we believe avoiding confusion on this issue requires us to remove the reference to a hospital department as a physician office.

We also are proposing to revise § 413.65(a)(2) to state that a "department of a provider", "provider-based entity", or "remote location of a hospital" comprises both the specific physical facility that serves as the site of services of a type for which separate payment could be claimed under the Medicare or Medicaid programs, and the personnel and equipment needed to deliver the services at that facility. We believe this change would help to clarify that we would make determinations with respect to entities considered in their role as sources of health care services and not simply as physical locations. We also wish to clarify that we do not intend to make provider-based determinations with respect to various organizational components or units of providers that may be designated as "departments" or "organizations" but do not themselves furnish types of services for which separate payment could be claimed under Medicare or Medicaid. Examples of components for which we would not make provider-based determinations include the medical records, housekeeping, and security departments of a hospital. Such departments do perform functions that are essential to the provision of inpatient and outpatient hospital services, but the departments do not provide health care services for which Medicare or Medicaid benefits are provided under title XVIII or title XIX of the Act, and for which separate payment therefore could be claimed, assuming certification and other applicable requirements were met, to one or both programs. Therefore, neither Medicare or Medicaid program liability nor beneficiary liability or scope of benefits would be affected by the ability or inability of these departments to qualify as "provider-based." (We also would not make a provider-based determination with respect to any facility or organization that furnishes only types of health care services for which separate payment could be claimed under either Medicare or Medicaid, even if the facility or organization met all requirements for provider-based status. For example, if a hospital that is not eligible for DSH payments under Medicare or Medicaid or for IME payments under Medicare were to establish a dedicated facility providing only types of cosmetic surgery or experimental therapies that could not be covered under either Medicare or Medicaid, no determination would be made with respect to that facility.)

By contrast, Medicare or Medicaid payment (or both) to hospital departments that provide diagnostic or therapeutic radiology services to outpatients, or primary care, ophthalmology, or other specialty services to outpatients are affected by provider-based status, as would beneficiary liability for Medicare coinsurance amounts. Therefore, we would make provider-based determinations for these departments.

Similarly, if two acute care hospitals that have approved graduate medical education (GME) programs were to merge to form a single, multicampus hospital consisting of the main hospital campus and a remote location, it would be appropriate to make a determination as to whether the remote location is provider-based with respect to the main hospital campus. Such a determination would be needed because each hospital with an approved residency training program has its own hospital-specific cap on the number of residents (or FTE cap), its own PRA, and its own Medicare utilization used for purposes of receiving Medicare GME payments. A merger of the two hospitals would aggregate the two hospitals' individual FTE caps into a merged FTE cap under the main hospital's provider number, and would require recalculation of the hospital's PRA and a merging of these entities' respective Medicare utilization, resulting in a level of Medicare GME payment to the merged hospital that exceeds the sum of the payments that would be made to each hospital as separate entities. Thus, a provider-based determination would be appropriate and necessary in such a case, even though payment for services by both facilities would be made under the Medicare acute care hospital inpatient prospective payment system.

In deciding whether to make a provider-based determination with respect to a particular facility, it would not be significant that the facility might have a low rate of Medicare utilization, might be utilized by only Medicare or only Medicaid patients, or might not have admitted any Medicare or Medicaid patients in a particular period. The fact that the facility furnishes types of services that are billable under Medicare or Medicaid, or both, would be sufficient to make a determination appropriate.

We are proposing to retain the rules that a department of a provider or a remote location of a hospital (such as, for example, one campus of a multicampus hospital) may not by itself be qualified to participate in Medicare as a provider under the regulations on provider agreements in § 489.2, and the Medicare conditions of participation do not apply to a department as an independent entity. However, we are proposing to delete the requirement at § 413.65(a)(2) that such a department may not be licensed to provide services in its own right. Some States require separate licensing of facilities that Medicare would treat as a department of a hospital or other provider. In these States, we would not require a common license. We would retain the provision that, for purposes of Part 413, the term "department of a provider" does not include an RHC or, except as specified in § 413.65(m), an FQHC.

Questions have arisen regarding whether the provider-based criteria in § 413.65 are applicable in determining payment for ambulance services. Medicare is converting payment for ambulance services to a fee schedule, as described in a final rule published on February 27, 2002 (67 FR 9100). The ambulance fee schedule is effective April 1, 2001, and involves a transition period. During this transition period, the status of an ambulance supplier as provider-based could influence the amount of Medicare payment. However, the specific provider-based criteria in § 413.65 were not developed for ambulance suppliers, and we believe that many of these criteria could not reasonably be applied to them. Therefore, we are not proposing to apply the criteria at § 413.65 to ambulance services.

b. Further Delay in Effective Date of Provider-Based Rules

As noted earlier, § 413.65(b) was recently revised to reflect the "grandfathering" provision in section 404(a)(1) of BIPA. Under that provision, if a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until October 1, 2002.

It now appears likely that any new provider-based rules that may be adopted as the result of this rulemaking effort will not be published in final before mid-summer of 2002. To allow hospitals and other facilities the time they need to make contractual and organizational changes to comply with the new rules, and to ensure that CMS Regional Offices and contractors are able to provide for an orderly transition to the new provider-based rules, we believe an additional delay in the effective date of the provider-based criteria is needed. Therefore, we are proposing to revise § 413.65(b)(2) to state that if a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. We are proposing to further provide that the requirements, limitations, and exclusions specified in § 413.65(d) through (j) (as proposed to be redesignated) will not apply to that hospital or CAH for that facility until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of paragraph (b)(2), a facility would be considered as having been provider-based on October 1, 2000, if on that date it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital. We are proposing to make the new requirements effective on October 1, 2002, with respect to provider-based status for facilities not qualifying for the grandfathering provision.

c. Revision of Application Requirement

Existing regulations at § 413.65(b)(2) establish an explicit application requirement for all facilities seeking provider-based status, except for grandfathered facilities and those treated as provider-based pending a determination on an application filed on or after October 1, 2000, and before October 1, 2002. Under existing § 413.65(b)(3), a main provider or a facility must contact CMS, and the facility must be determined by CMS to be provider-based, before the main provider bills for services of the facility as if the facility were provider-based, or before it includes costs of those services on its cost report. Many providers and provider representatives have expressed concern that the requirement to file an application will increase paperwork burden for hospitals unnecessarily. In response to these concerns, we are proposing to revise the application requirements as follows:

First, we would delete the existing application requirement under § 413.65(b)(3). We are proposing to revise this section to state that except where payment is required to be made under BIPA, as specified in proposed revised § 413.65(b)(2) and (b)(5), if a potential main provider seeks an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider, the provider would be required to submit an attestation stating that its facility meets the criteria in § 413.65(d) and, if it is a hospital, also attest that its facility will fulfill the obligations of hospital outpatient departments and hospital-based entities, as described in proposed § 413.65(g). The provider also would be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request. We note that, under our proposal, there would no longer be an explicit requirement that a provider-based approval be obtained before a facility is treated as provider-based for billing or cost reporting purposes. However, under the proposed revisions to existing § 413.65(k) (Correction of errors) as described below, CMS would provide a delay in the effective date for any facility that is found not to meet the provider-based criteria following a previous advance determination, if the reason the provider-based criteria are not met is a material change in the provider-facility relationship that was properly reported to CMS. The removal of provider-based status would be effective as of the first cost reporting period following notification of the redetermination, but not less than 6 months after the date of notification.

We are further proposing that if the facility is not located on the main campus of the potential main provider, the provider that wishes to obtain an advance determination of provider-based status would be required to submit an attestation stating that its facility meets the criteria in proposed revised §§ 413.65(d) and (e) and, if the facility is operated as a joint venture or under a management contract, the requirements in proposed §§ 413.65(f) and (h), as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in proposed revised § 413.65(g). The provider seeking such an advance determination would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations. We believe the use of a self-attestation process would strike an appropriate balance between the legitimate interests of hospitals in reducing paperwork and reporting, and the equally legitimate need of CMS to ensure proper accountability for compliance with the qualification requirements for a status that typically leads to a higher level of Medicare or Medicaid payment.

We note that, under these proposed revisions to the application procedures at § 413.65(b), a hospital would not be explicitly required to submit an application and receive a provider-based determination for a facility before the time at which the hospital may bill for services at that facility as provider-based. However, we are considering, alternatively, retaining the existing regulations at § 413.65(b)(2) which state that, except where payment is required to be made under BIPA as specified in proposed revised §§ 413.65(b)(2) and (b)(5), hospitals are explicitly required to submit provider-based applications, and to withhold billing as provider-based until CMS determines that a facility meets the provider-based rules. We are soliciting comments on the

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appropriateness of this or other alternative application procedures.

d. Requirements Applicable to All Facilities or Organizations

Under existing § 413.65, all facilities seeking provider-based status with respect to a hospital or other main provider must meet a common set of requirements. These include requirements relating to common licensure (paragraph (d)(1)), operation under the ownership and control of the main provider (paragraph (d)(2)), administration and supervision (paragraph (d)(3)), integration of clinical services (d)(4)), financial integration (paragraph (d)(5)), public awareness (paragraph (d)(6)), and location in the immediate vicinity of the main provider (paragraph (d)(7)). (In addition, as described more fully below, specific rules applicable to all facilities rule out provider-based status for facilities operated as joint ventures by two or more providers (paragraph (e)) and limit the types of management contracts that facilities seeking provider-based status may operate under (paragraph (f)).)

Since publication in final of the existing provider-based rules in April 2000, hospitals and other providers have expressed concern that the requirements outlined above are overly restrictive and do not allow them enough flexibility to enter into appropriate business arrangements with other facilities. We understand these concerns, and agree that Medicare rules should not restrict legitimate business arrangements that do not lead to abusive practices or disadvantage Medicare beneficiaries. At the same time, we believe our existing rules provide a high level of assurance that a facility complying with them is, in fact, an integral and subordinate part of the facility with which it is based, and do not accord provider-based status to facilities that are not integral and subordinate to a main provider, but in fact have only a nominal relationship with that provider.

After considering all comments received on these issues, we believe that further changes in the provider-based rules would be appropriate. In particular, we agree with those who argue that a facility's or organization's location relative to the main campus of the provider is relevant to the integration that is likely to exist between the facility or organization and the main provider. For example, if a facility or organization is located on the main campus of a provider, is operated under the main provider's State license, is medically and financially integrated with that provider, and is held out to the public and other payers as a part of that provider, we believe the necessary degree of integration of the facility or organization into the main provider can be assumed to exist. We also are concerned that further prescribing the types of management contracts or other business arrangements that may exist between the main provider and the facility or organization would unnecessarily restrict its flexibility to establish cost-effective agreements without significantly enhancing the integration of the facility or organization into the main provider. Therefore, we are proposing to simplify the requirements applicable to facilities or organizations located on the campus of the main provider (as campus is defined in existing regulations at § 413.65(a)(2)). Under our proposal, all facilities seeking provider-based status, including both on-campus and off-campus facilities, would be required to comply with the existing requirements regarding licensure, clinical services integration, financial integration, and public awareness. (These requirements are currently codified at §§ 413.65(d)(1), (d)(4), (d)(5), and (d)(6) and, under this proposed rule, would be redesignated as paragraphs (d)(1) through (d)(4), respectively, of § 413.65.)

With respect to financial integration, existing regulations at § 413.65(d)(5) require that the financial operations of the facility or organization be fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The regulations also require that costs of a provider-based facility or organization be reported in a cost center of the provider, and that the financial status of any provider-based facility or organization be incorporated and readily identified in the main provider's trial balance.

Some hospital representatives have questioned the appropriateness of requiring that the costs of a remote location of a hospital be reported in a single cost center, noting that such costs ordinarily would appear in multiple cost centers of the main provider, with (for example) employee health and welfare costs of the remote location being included in the corresponding cost center of the main provider. In recognition of this concern, we are proposing to revise the requirement to state that the costs of a facility or organization that is a hospital department must be reported in a cost center of the provider, and that costs of a provider-based facility or organization other than a hospital department must be reported in the appropriate cost center or cost centers of the main provider.

Paragraph (d) of § 413.65 would be retitled "Requirements applicable to all facilities or organizations" and, as indicated by its revised title, would set forth those core requirements that any facility or organization would have to meet to qualify for provider-based status.

We are proposing to delete from this paragraph (d) the requirements in existing paragraphs (d)(2) and (d)(3) relating to operation under the ownership and control of the main provider and administration and supervision because we are proposing to no longer apply these requirements to on-campus facilities or organizations. These requirements would be moved to paragraph (e) as described below to reflect the proposed limitation of their applicability to off-campus departments. The core requirements for all facilities or organizations, including facilities located on the main campus, also would not include the requirement regarding location in the immediate vicinity of the main provider (existing § 413.65(d)(7)). Because any facilities or organizations located on the campus of the main provider automatically meet the requirement regarding location in the immediate vicinity (existing § 413.65(d)(7)), the requirement is only of relevance to off-campus facilities or organizations. For clarity, we are proposing to relocate the requirement to paragraph (e) as described below.

We also are proposing to require, in paragraph (d)(5) of § 413.65, all hospital outpatient departments and hospital-based entities, including those located on campus and those located off the campus of the main provider hospital, to fulfill the obligations currently codified and proposed to be retained at § 413.65(g) in order to qualify for provider-based status. (Fulfillment of these obligations is currently required under § 413.65(g).) As explained further below, we also are proposing other changes to paragraph (g).

e. Additional Requirements Applicable to Off-Campus Facilities or Organizations

We recognize that facilities or organizations located off the main provider campus may also be sufficiently integrated with the main provider to justify provider-based designation. However, the off-campus location of the facilities or organizations may make such integration harder to achieve, and such integration should not simply be presumed to exist. Therefore, to ensure that off-campus facilities or organizations seeking provider-based status are appropriately integrated, we are proposing to retain for these facilities or organizations certain requirements that we are proposing to remove for on-campus facilities or organizations. These requirements are set forth in proposed new § 413.65(e). The requirements set forth in proposed paragraphs (e)(1), (e)(2), and (e)(3) include the requirements on operation under the ownership and control of the main provider (existing § 413.65(d)(2)), administration and supervision (existing § 413.65(d)(3)), and location (existing § 413.65(d)(7)). We also are proposing to include language in proposed new § 413.65(e) to state more clearly that a facility or organization seeking provider-based status must be located in the same State or, when consistent with the laws of both States, in adjacent States.

f. Joint Ventures

Consistent with our views as expressed earlier in this preamble regarding the assumption that a higher degree of integration can be presumed for on-campus facilities or organizations and in recognition of the need to promote reasonable cooperation among providers and avoid costly duplication of specialty services, we are proposing to revise the regulations on joint ventures (currently set forth under § 413.65(e)) to limit their scope to facilities or organizations not located on the campus of any potential main provider. Specifically, we would redesignate § 413.65(e) as § 413.65(f) and revise it to state that a facility or organization that is not located on the campus of the potential main provider cannot be considered provider-based if the facility or organization is owned by two or more providers engaged in a joint venture. We also are proposing to make minor changes to the second sentence of the redesignated paragraph (f) to clarify its meaning.

g. Clarification of Obligations of Hospital-Outpatient Departments and Hospital-Based Entities

Existing regulations impose specific obligations for hospital outpatient departments and hospital-based entities, but do not specify the sanction that applies if the facility or organization does not fulfill its obligations. To clarify policy on this issue and emphasize the importance of compliance with the requirements in this area, we are proposing to revise existing § 413.65(g) to state that to qualify for provider-based status in relation to a hospital, a facility or organization must comply with these requirements. In regard to these obligations, we are proposing to make three changes in existing 413.65(g). First, for reasons explained in section V.J. of this preamble, we are proposing to revise paragraph (g)(1) by deleting the second sentence of that paragraph. In paragraph (g)(2), we are proposing to delete the reference to site-of-service reductions and instead refer to more accurately determined physician payment amounts, in order to more accurately describe how payment under the physician fee schedule is determined. In addition, we are proposing to revise the first sentence of paragraph (g)(7) to clarify that the notice requirements in it do not apply where a beneficiary is examined or treated for a medical condition in compliance with the antidumping rules in § 489.24. This clarification is needed because we believe it would be a violation of the antidumping requirements if examination or treatment required under § 489.24 was delayed in order to permit notification of the beneficiary or the beneficiary's authorized representative. We would further revise § 413.65(g)(7) to state that notice is required once the beneficiary has been appropriately screened and the existence of an emergency has been ruled out or the emergency condition has been stabilized.

h. Management Contracts

Under existing regulations, facilities or organizations operated under management contracts may be considered provider-based only if they meet specific requirements in § 413.65(f) (proposed to be redesignated as § 413.65(h)). In particular, staff of the facility or organization, other than management staff, may not be employed by the management company but must be employed either by the provider or by another organization, other than the main provider, which also employs the staff of the main provider. Under existing regulations, these requirements apply equally to on-campus and off-campus facilities or organizations.

Consistent with our intent to simplify provider-based requirements for on-campus facilities or organizations, we are proposing to restrict the applicability of proposed redesignated paragraph (h) to off-campus facilities or organizations. In addition, we are proposing two additional changes that we believe are needed to respond to questions that are raised frequently about the regulation. First, we would specify that a facility or organization operated under a management contract may be considered provider-based only if the main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at 42 CFR Part 414. We would not specify who may employ other support staff, such as maintenance or security personnel, and who are not directly involved in providing patient care, nor would we require licensed professional caregivers such as physicians, physician assistants, or certified registered nurse anesthetists to become provider employees. We also are proposing to revise the regulations to clarify at § 413.65(h)(2) that so-called "leased" employees (that is personnel who are actually employed by the management company but provide services for the provider under a staff leasing arrangement) are not considered to be employees of the provider for purposes of this provision.

i. Inappropriate Treatment of a Facility or Organization as Provider-Based

Below we describe the steps that we would take if we discover that a facility is billing as provider-based without having requested a determination, or if the facility received a provider-based determination but the main provider did not inform CMS of a subsequent material change that affected the provider-based status of its facility.

(1) Inappropriate Billing

The existing regulations at § 413.65(i) state that if we discover that a provider is billing inappropriately, we will recover the difference between the amount of payments that actually were made and the amount of payments that CMS estimates should have been made in the absence of a determination of provider-based status. Existing § 413.65(j)(2) states that we would adjust future payments to approximate as closely as possible the amounts that would be paid, in the absence of a provider-based determination, if all other requirements for billing are met. In addition, existing § 413.65(j)(5) describes a procedure under which CMS would continue payments to a provider for services of a facility or organization that had been found not to be provider-based, at an adjusted rate calculated as described in existing paragraph (j)(2), for up to 6 months in order to permit the facility or organization adequate time to meet applicable enrollment and other billing requirements. While CMS is not legally obligated to continue payments in this matter, we believe it would be

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appropriate to do so, on a time-limited basis, to allow for an orderly transition to either provider-based or freestanding status for the facility and to avoid disruption in the delivery of services to patients, particularly Medicare patients, who may be relying on the facility for their medical care.

We are proposing to adopt a policy concerning recoupment and continuation of payment that closely parallels the policy stated in existing regulations at § 413.65(j). Under proposed § 413.65(j)(1), if CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request an advance determination of provider-based status from CMS under proposed § 413.65(b)(3), and CMS determines that the facility or organization did not meet the requirements for provider-based status under proposed § 413.65(d) through (i), as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS would take several actions. First, we are proposing to issue notice to the provider, in accordance with proposed paragraph (j)(3), that payments for past cost reporting periods may be reviewed and recovered as described in proposed paragraph (j)(2)(ii), that future payments for services in or at the facility or organization will be adjusted as described in proposed paragraph (j)(4), and that continued payments to the provider for services of the facility or organization will be made only in accordance with proposed paragraph (j)(5). In addition, as detailed in proposed § 413.65(j)(1)(ii), CMS would, except for providers protected under section 404(a) or (c) of BIPA (implemented at § 413.65(b)(2) and (b)(5)) or the exception for good faith effort at existing § 413.65(i)(2) and (i)(3)), recover the difference between the amount of payments that actually was made to that provider for services at the facility or organization and an estimate of the payments that CMS would have made to that provider for services at the facility or organization in the absence of compliance with the requirements for provider-based status. We are proposing to make recovery for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889. Also, we are proposing to adjust future payments to approximate the amounts that would be paid for the same services furnished by a freestanding facility.

Recovery of past payments would be limited in certain circumstances. If a provider did not request a provider-based determination for a facility by October 1, 2002, but is included in the grandfathering period under § 413.65(b)(2), we are proposing to recoup all payments subject to the reopening rules at §§ 405.1885 and 405.1889, but not for any period before the provider's cost reporting period beginning on or after July 1, 2003.

(2) Good Faith Effort

We are proposing to retain the existing exception for good faith effort (proposed redesignated § 413.65(j)(2)). Under this exception, we would not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001 (the effective date of the existing provider-based regulations for providers not grandfathered under § 413.65(b)(2)) if during all of that period—

- The requirements regarding licensure and public awareness at § 413.65(d)(1) and proposed redesignated (d)(4) were met;
- All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and
- All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described at proposed redesignated and revised § 413.65(h)(2).

Under proposed § 413.65(j)(5), CMS would continue payment to a provider for services of a facility or organization for a limited period of time, in order to allow the facility or organization or its practitioners to meet necessary enrollment and other requirements for billing on a freestanding basis. Specifically, the notice of denial of provider-based status sent to the provider would ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, as to whether the provider intends to seek an advance determination of provider-based status for the facility or organization, or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services as a freestanding facility. If the provider indicates that it will not be seeking an advance determination or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payments under proposed paragraph (j)(5) would end as of the 30th day after the date of notice. If the provider indicates that it will be seeking an advance determination, or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization would continue, at the adjusted amount described in proposed paragraph (j)(4) for as long as is required for all billing requirements to be met (but not longer than 6 months). Continued payment would be allowed only if the provider or the facility or organization or its practitioners submits, as applicable, a complete request for an advance provider-based determination or a complete enrollment application and provide all other required information within 90 days after the date of notice; and the facility or organization or its practitioners furnishes all other information needed by CMS to process the request for provider-based status or, as applicable, the enrollment application and verify that other billing requirements are met. If the necessary applications or information are not provided, CMS would terminate all payment to the provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

j. Temporary Treatment as Provider-Based and Correction of Errors

Under proposed revised § 413.65(k), we would specify the procedures for payment for the period between the time a request is submitted until a provider-based determination is made, and the steps we would take if we discover that a facility for which a provider previously received a provider-based determination no longer meets the requirements for provider-based status.

First, we are proposing that, if a provider submits a complete request for a provider-based determination for a facility that has not previously been found by CMS to have been inappropriately treated as provider-based under proposed revised § 413.65(j), the provider may bill and be paid for services at the facility as provider-based from the date of the application until the date that we determine that the facility or organization does not meet the provider-based rules under § 413.65. If CMS determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates

should have been made in the absence of compliance with the provider-based requirements. We would consider a request "complete" only if it included all information we need to make an advance determination of provider-based status under § 413.65(b)(3).

Second, similar to what we specify in existing § 413.65(k), if we determine that a facility or organization that previously received a provider-based determination no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider reported to CMS as is required under § 413.65(c), treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

Third, if we determine that a facility or organization that had previously received a provider-based determination no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS, as required under § 413.65(c), we are proposing to take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in proposed paragraphs (j)(3), (j)(4), and (j)(5). In short, we would treat such cases in the same way as if the provider had never obtained an advance determination. However, with respect to recovery of past payments for providers included in the grandfathering provision at proposed revised § 413.65(b)(2), we would not recover payments for any period before the provider's first cost reporting period beginning on or after July 1, 2003.

Also, we are proposing that the exception for good faith effort concerning recovery of overpayments under proposed revised §§ 413.65(j)(2) described above would apply to any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001.

k. Technical Amendments

We are proposing to correct a typographical error in the heading of paragraph (m) of § 413.65 so that it reads "FQHCs and 'look alikes'".

In paragraph (n) of § 413.65, we are proposing to add a cross-reference to the requirements for provider-based status described in paragraph (b), for purposes of specifying the effective date of provider-based status.

L. CMS Authority Over Reopening of Intermediary Determinations and Intermediary Hearing Decisions on Provider Reimbursement

Our existing regulations provide various means for the reopening and revision of an intermediary determination or an intermediary hearing decision on provider reimbursement by the fiscal intermediary or the intermediary hearing officer(s) responsible for the determination or the hearing decision, respectively. (In this discussion, we will use the term "intermediary" to refer to, as applicable, the intermediary responsible for an intermediary determination (see §§ 405.1801(a) and 405.1803) or the intermediary hearing officer or panel of intermediary hearing officers responsible for an intermediary hearing decision (see §§ 405.1817 and 405.1831.)) Section 405.1885(a) provides that an intermediary "may" reopen an intermediary determination or an intermediary hearing decision, on its own initiative or at the request of a provider, within 3 years of the date of the notice of the intermediary determination or intermediary hearing decision. However, while § 405.1885(a) provides the intermediary with some discretion about whether to reopen an intermediary determination or an intermediary hearing decision, we have always considered the intermediary's discretion to be limited by any directives that may be issued by CMS. Thus, although § 405.1885(a) provides that the intermediary "may" reopen, that provision neither states nor implies that the Secretary lacks authority to direct the intermediary to reopen or not reopen a specific matter. Furthermore, CMS has prescribed, in Medicare Provider Reimbursement Manual, Part I ("PRM"), section 2931.2, criteria that guide the intermediary's reopening actions under "405.1885(a) in the absence of a particular directive from CMS. Also, given that the intermediaries are CMS' contractors, we have always believed that, under basic principles of agency law, we have inherent authority to direct the actions of our own agents with respect to reopening matters under "405.1885(a), just as for any other aspect of program administration. *See also* 42 U.S.C. 1395h and 1395kk(a); and 42 CFR 421.1(c), 421.5(b), 421.100(f), 421.124(a), and 421.126(b).

Under § 405.1885(b), an intermediary determination or an intermediary hearing decision "shall be reopened and revised by the intermediary if, within the aforementioned 3-year period, the Centers for Medicare & Medicaid Services notifies the intermediary that such determination or decision is inconsistent with the applicable law, regulations, or general instructions issued by the Centers for Medicare & Medicaid Services." We have always considered the CMS notice, which is a precondition of mandatory intermediary reopening under § 405.1885(b), to be one in which we explicitly direct the intermediary to reopen. We have never considered a notice or other document from CMS that only states or implies that an intermediary determination or an intermediary hearing decision is inconsistent with law, regulations, CMS ruling, or CMS general instructions, sufficient to require intermediary reopening under § 405.1885(b). Moreover, our understanding has always been that the phrase "law, regulations, or general instructions" in § 405.1885(b) refers to the legal provisions in effect, as we understand such legal provisions, at the time the intermediary rendered the determination or hearing decision. Conversely, we have never considered changes in, or judicial explications of, "law, regulations, or general instructions," that occur after the intermediary rendered the determination or hearing decision, sufficient to require intermediary reopening under § 405.1885(b). Also, § 405.1885(b) refers to the Secretary's agreement with an intermediary; we believe such agreement requires the intermediary to apply the law, regulations, CMS rulings, and CMS general instructions in effect, as we understand such legal provisions, when the intermediary determination or hearing decision was rendered. Accordingly, we have not instructed intermediaries to reopen and recover reimbursement, or to reopen and award additional reimbursement, due to a subsequent change in law or policy, whether the subsequent change is made in response to judicial precedent or otherwise.

Section 405.1885(c) provides: "Jurisdiction for reopening a determination or decision rests exclusively with that administrative body that rendered the last determination or decision." We have always interpreted § 405.1885(c) to provide that authority to reopen an intermediary determination or an intermediary hearing decision is vested exclusively with the responsible intermediary, as distinct from the Provider Reimbursement Review Board (PRRB) and the Administrator of CMS (in the context of reviewing PRRB

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decisions (see § 405.1875)) which may not reopen an intermediary determination or hearing decision and may not review an intermediary's denial of reopening. However, we have never considered the intermediary's authority to reopen an intermediary determination or hearing decision, which is exclusive under § 405.1885(c) only as to the PRRB and the Administrator of CMS (in the context of reviewing PRRB decisions), to limit CMS' authority to direct the actions of its own agents with respect to reopening matters. *See Your Home Visiting Nurse Services, Inc.* v. *Shalala*, 525 U.S. 449, 452–53 (1999). (Section 405.1885(c) divests the PRRB of "appellate jurisdiction to review the intermediary's refusal" to reopen, but does not limit the Secretary's authority to direct an intermediary's "original jurisdiction" in the reopening area). As discussed previously, the regulations do not constrain CMS' authority to direct the intermediary to reopen or not reopen a specific matter; instead, CMS has placed generally applicable limits on the intermediary's discretion through the reopening criteria prescribed in section 2931.2 of the PRM. In addition, we have always believed that, under basic principles of agency law, the intermediary's discretion over a particular reopening matter is no less circumscribed by any directives that may be issued by CMS than would be the case for any other aspect of program administration.

Two recent court decisions conflict with our longstanding interpretation of the forgoing provisions of the reopening regulations. In *Monmouth Medical Center* v. *Thompson*, 257 F.3d 807 (D.C. Cir. 2001), the court found that a statement in a CMS ruling, changing CMS' interpretation of the statute in response to circuit court precedent, constituted a directive to the intermediary under § 405.1885(b) to reopen, notwithstanding an explicit directive in the CMS ruling that the change in interpretation was to be applied only prospectively. The court ordered the intermediary to reopen over the Secretary's objection. We disagree with the court's decision, which we believe does not comport with our settled interpretation (discussed above) of § 405.1885(b). Therefore, we are proposing to revise § 405.1885(b) to make clear that, in order to trigger the intermediary's obligation to reopen, the notice from CMS to the intermediary must explicitly direct the intermediary to reopen based on a finding that an intermediary determination or an intermediary hearing decision is inconsistent with the law, regulations, CMS ruling, or CMS general instructions in effect, and as we understood those legal provisions, at the time the determination or decision was rendered. We are also proposing to clarify § 405.1885 to reflect our longstanding interpretation (discussed above) that a change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

The *Monmouth Medical Center* decision was followed in *Bartlett Memorial Medical Center* v. *Thompson*, 171 F. Supp. 2d 1215 (W.D. Okla. 2001). In a subsequent order in the *Bartlett Memorial Medical Center* case, the court concluded that a CMS ruling, which prohibited intermediary reopening on a particular reimbursement issue, improperly interfered with the intermediary's discretion under § 405.1885(c) over provider requests for reopening under § 405.1885(a). Accordingly, the court ordered the intermediary to act on the provider reopening requests without regard to the CMS ruling or any other involvement of the Secretary. We disagree with the court's decision, which we believe is contrary to our settled interpretation (discussed above) of § 405.1885(a) and (c). We believe the court's decision is also inconsistent with CMS' inherent authority to direct the activities of its own contractor-agents, the fiscal intermediaries, with respect to particular reopening matters, just as with any other aspect of program administration. Therefore, we are proposing, in a new paragraph (e) of § 405.1885 (the existing paragraph is proposed to be redesignated as paragraph (f)), to clarify that, notwithstanding an intermediary's discretion to reopen or not reopen under paragraphs (a) and (c) of § 405.1885, CMS may direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision in accordance with paragraphs (a) and (c) of this section. To illustrate our proposal, revised § 405.1885(e) would clarify that CMS has full authority to direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision under § 405.1885(a) and (c) based on the reopening criteria of "new and material evidence" or "clear and obvious error." *See* PRM § 2931.2.

VI. Proposed Changes to the Prospective Payment System for Capital-Related Costs

A. Background

Section 1886(g) of the Act requires the Secretary to pay for the capital-related costs of inpatient hospital services "in accordance with a prospective payment system established by the Secretary." Under the statute, the Secretary has broad authority in establishing and implementing the capital prospective payment system. We initially implemented the capital prospective payment system in the August 30, 1991 final rule (56 FR 43358), in which we established a 10-year transition period to change the payment methodology for Medicare inpatient capital-related costs from a reasonable cost-based methodology to a prospective methodology (based fully on the Federal rate).

Federal fiscal year (FY) 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. Beginning in FY 2001, capital prospective payment system payments were based solely on the Federal rate for the vast majority of hospitals. The basic methodology for determining capital prospective payments based on the Federal rate is set forth in § 412.312. For the purpose of calculating payments for each discharge, the standard Federal rate is adjusted as follows:

(Standard Federal Rate) × (DRG Weight) × (Geographic Adjustment Factor(GAF)) × (Large Urban Add-on, if applicable) × (COLA Adjustment for Hospitals Located in Alaska and Hawaii) × (1 + DSH Adjustment Factor + IME Adjustment Factor)

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year that are specified in § 412.312(c) of existing regulations. (Refer to the August 1, 2001 final rule (66 FR 39910) for a summary of the statutory basis for the system, the development and evolution of the system, the methodology used to determine capital-related payments to hospitals both during and after the transition period, and the policy for providing special exceptions.)

B. New Hospitals

Under the prospective payment system for capital-related costs, at § 412.300(b), a new hospital is defined as a hospital that is newly participating in the Medicare program (under current or previous ownership) for less than 2 years (see 56 FR 43418, August 30, 1991). During the 10-year transition period, under § 412.324(b), a new hospital was exempt from capital prospective payment system for its first 2 years of operation and was paid 85 percent of its reasonable costs during that period. Effective with its third cost reporting period, a new hospital was paid under the appropriate transition methodology (either hold-harmless or fully prospective) for the remainder of the transition period. (If the hold-harmless methodology was applicable, hold-harmless payments would be made for 8 years, even if they extend beyond the 10-year transition period, which ended beginning with cost reporting periods beginning during FY 2002.)

This payment provision was implemented to provide special protection to new hospitals during the transition period in response to concerns that prospective payments under a DRG system may not be adequate initially to cover the capital costs of newly built hospitals. These hospitals may not have sufficient occupancy in those initial 2 years and may have incurred significant capital startup costs, so that capital prospective payment system payments may not be sufficient. For instance, hospitals newly participating in the Medicare program may not initially have adequate Medicare utilization. Because capital prospective payment system payments are made on a per discharge basis, a hospital only receives payments for its capital-related costs upon discharge of its Medicare patients. In addition, these hospitals did not have an opportunity to reserve previous years' capital prospective payment system payments to finance capital projects.

While the regulations provided for payments based on a percentage of costs for new hospitals for the first 2 years during the 10-year transition period, no provision was made for new hospitals once the 10-year transition was completed. However, we believe that the rationale for the policy applies equally to new hospitals even after the completion of the 10-year transition period. Accordingly, we are proposing, under § 412.304(c)(2), to provide special payment to new hospitals for cost reporting periods beginning on or after October 1, 2002. That is, we would pay new hospitals, as defined under § 412.300(b), 85 percent of their reasonable costs for their first 2 years of operation. Effective with their third year of operation, a new hospital would be paid based on the Federal rate (that is, the same methodology used to pay all other hospitals subject to the capital prospective payment system). We believe this proposal would provide for more appropriate payments to new hospitals for their capital-related costs since initial capital expenditures may reasonably exceed the capital prospective payment system per discharge payment based on the Federal rate. The capital prospective payment Federal rate is based on industry-wide average capital costs rather than the experience of a new hospital. We believe this proposed policy would allow new hospitals to provide efficiency in the delivery of services and still make reasonable payments for their capital expenditures.

As was the case during the 10-year transition period, this proposed new hospital exemption would only be available to those hospitals that have not received reasonable cost-based payments under the Medicare program in the past, and would need special protection during their initial period of operation. This proposed exemption from the capital prospective payment system for the first 2 years of operation would not apply to a hospital that is "new" as an acute care hospital but that has operated in the past (under current or previous ownership) and has an historical Medicare asset base. Furthermore, a hospital that replaces its entire facility (regardless of a change of ownership) would not qualify for the new hospital exemption even though it may experience a significant change in its asset base. Thus, in accordance with § 412.300(b), a new hospital exemption would not apply in the following situations:

- A hospital that builds new or replacement facilities at the same or a new location, even if a change of ownership or a new leasing arrangement is involved;
- A hospital that closes and then reopens under the same or different ownership;
- A hospital that has been in operation for more than 2 years but has been participating in the Medicare program for less than 2 years; or
- A hospital that changes status from a prospective payment system-excluded hospital (paid under the TEFRA methodology) or another hospital prospective payment system (such as the inpatient rehabilitation facility prospective payment system) to a hospital that is subject to the capital prospective payment system for acute care hospitals.

C. Extraordinary Circumstances

When we implemented the capital prospective payment system in FY 1992, a number of commenters requested that we provide for a separate exceptions payment to account for extraordinary circumstances beyond a hospital's control that would require the hospital to make unanticipated major capital expenditures (56 FR 43411, August 30, 1991). In response to the commenters' request, we provided in the regulations at § 412.348(f) that a hospital may request an additional payment if the hospital incurs unanticipated capital expenditures in excess of $5 million due to extraordinary circumstances beyond the hospital's control. Extraordinary circumstances include, but are not limited to, a flood, a fire, or an earthquake. For more detailed information regarding this policy, refer to the August 30, 1991 **Federal Register** (56 FR 43411).

To clarify that this policy regarding additional payments for extraordinary circumstances also applies to periods beginning on or after October 1, 2001, we are proposing to revise § 412.312 by adding a new paragraph (e) to specify that payment is made for extraordinary circumstances as provided for in § 412.348(f) for cost reporting periods after the transition period, that is, on or after October 1, 2001.

D. Restoration of the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

Section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate (and the unadjusted hospital-specific rate) by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002, in addition to applying the budget neutrality factor used to determine the Federal capital prospective payment system payment rate in effect on September 30, 1995. The budget neutrality factor effective for September 30, 1995, was 0.8432 (59 FR 45416). Therefore, application of the budget neutrality factor (as specified under section 1886(g)(1)(A) of the Act) was equivalent to a 15.68 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate and the unadjusted hospital-specific rate in effect on September 30, 1997. The additional 2.1 reduction to the rates in effect on September 30, 1997 resulted in a total reduction of 17.78 percent. Accordingly, under the statute, the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002 (§ 412.308(b)(5)). Therefore, we are proposing to revise § 412.308(b) to add a new paragraph (b)(6) to restore the 2.1 percent reduction to the unadjusted

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standard Federal capital prospective payment system payment rate (as provided under § 412.308(c)) for discharges occurring on or after October 1, 2002, to the level that it would have been without the reduction. (Since FY 2001 was the final year of the 10-year transition period, we no longer update the hospital-specific rate and, therefore, we also no longer restore the 2.1 percent reduction to that rate as provided under § 412.328(e)(1).)

As described in the August 29, 1997 final rule (62 FR 46012), we determined the reduction factor for FY 1998 by deducting both the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) from 1 (1 − 0.1568 − 0.021 = 0.8222). We then applied the 0.8222 to the unadjusted standard Federal rate. Therefore, to determine the adjustment factor needed to restore the 2.1 percent reduction, we would divide the amount of the adjustment without the 2.1 percent reduction (1 − 0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Accordingly, we are proposing to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002, under proposed § 413.308(b)(6), by applying a factor of 1.02554 (0.8432/0.8222) to the unadjusted standard Federal capital prospective payment system payment rate under § 412.308(c), that was in effect on September 30, 2002.

E. Clarification of Special Exceptions Policy

Under the special exceptions provisions at § 412.348(g), an additional payment may be made through the 10th year beyond the end of the capital prospective payment system transition period for eligible hospitals that meet (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). In accordance with § 412.348(g)(7), hospitals are eligible to receive special exceptions payments for the 10 years after the cost reporting year in which they complete their project, which can be no later than the hospital's cost reporting period beginning before October 1, 2001.

During the 10-year capital prospective payment system transition period, regular exceptions under §§ 412.348(b) through (e) paid the same as or more (between 70 percent and 90 percent of costs, depending on the type of hospital) than the special exceptions provision under § 412.348(g) (70 percent for all eligible hospitals). Therefore, it was not until cost reporting periods beginning on or after October 1, 2001 (the end of the transition period) that eligible hospitals could actually begin receiving additional payments under the special exceptions provision. As we stated in the July 30, 1999 final rule (64 FR 41528), we believe that, since any substantive changes to this policy could have a significant impact, the appropriate forum for addressing the special exceptions policy is through the legislative process in Congress rather than the regulations process. Since hospitals are beginning to receive additional payments under this provision, we have received several questions regarding current policy at § 412.348(g). Therefore, while we are not proposing any changes to the special exceptions policy, we are providing the following clarifications to the existing regulations.

Under § 412.348(g)(1), to be eligible for special exception payments, a hospital must be either a sole community hospital (SCH), an urban hospital with at least 100 beds that has a disproportionate share (DSH) percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), or a hospital with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Because a hospital's SCH status, DSH patient percentage, and combined utilization may fluctuate from one cost reporting year to the next, the special exceptions eligibility criteria are applied for each cost reporting period throughout the 10-year special exceptions period. A hospital receives special exceptions payments only for those years in the 10-year period in which it meets the eligibility requirements in § 412.348(g)(1). Therefore, a hospital might be eligible for a special exception payment in one year, not be eligible the next year, and then subsequently qualify during the 10-year special exceptions period.

The project need criteria in § 412.348(g)(2) also state that a hospital must obtain any required approval from a State or local planning authority. However, in States where a certificate of need or approval is not required by the State or local planning authority, the hospital must provide the fiscal intermediary with appropriate documentation (such as project plans from the hospital's board of directors) that demonstrates that the requirements of § 412.348(g)(3) concerning the age of assets test and § 412.348(g)(4) concerning the excess capacity test for urban hospitals are met. We understand that a State planning authority and a hospital may define a project differently. Accordingly, we would allow the hospital to use either the definition provided by the project within the certificate of need (in States where a certificate of need is required), or other appropriate documentation provided from the hospital's project plans (such as project plans as specified in the minutes of the meetings of the hospital's board of directors).

In determining a hospital's special exceptions payment amount, as described in § 412.348(g)(8), for each cost reporting period, the cumulative payments made to the hospital under the capital prospective payment system are compared to the cumulative minimum payment levels applicable to the hospital for each cost reporting period subject to the capital prospective payment system. This comparison is offset by any amount by which the hospital's current year Medicare inpatient operating and capital prospective payment system payments (excluding 75 percent of its operating DSH payments) exceed its Medicare inpatient operating and capital costs (or its Medicare inpatient margin). The minimum payment level is 70 percent for all hospitals, regardless of class, as set forth in § 412.348(g)(6), for the duration of the special exceptions provision.

In order to assist our fiscal intermediaries in determining the end of the 10-year period in which an eligible hospital will no longer be entitled to receive special exception payments, § 412.348(g)(9) requires that hospitals eligible for special exception payments submit documentation to the intermediary indicating the completion date of their project (the date the project was put in use for patient care) that meets the project need and project size requirements outlined in §§ 412.348(g)(2) through (g)(5). In order for an eligible hospital to receive special exception payments, this documentation had to be submitted in writing to the intermediary by the later of October 1, 2001, or within 3 months of the end of the hospital's last cost reporting period beginning before October 1, 2001, during which a qualifying project was completed.

VII. Proposed Changes for Hospitals and Hospital Units Excluded From the Acute Care Hospital Inpatient Prospective Payment System

A. Payments to Excluded Hospitals and Hospital Units (§§ 413.40(c), (d), and (f))

1. Payments to Existing Excluded Hospitals and Hospital Units

Section 1886(b)(3)(H) of the Act (as amended by section 4414 of Public Law 105–33) established caps on the target amounts for certain existing hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system for cost reporting periods beginning on or after October 1, 1997 through September 30, 2002. For this period, the caps on the target amounts apply to the following three classes of excluded hospitals or units: psychiatric hospitals and units, rehabilitation hospitals and units, and long-term care hospitals.

In accordance with section 1886(b)(3)(H)(i) of the Act and effective for cost reporting periods beginning on or after October 1, 2002, payments to these classes of existing excluded hospitals or hospital units are no longer subject to caps on the target amounts. In accordance with existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), these excluded hospitals and hospital units continue to be paid on a reasonable cost basis, and payments are based on their Medicare inpatient operating costs, not to exceed the ceiling. The ceiling would be computed using the hospital's or unit's target amount from the previous cost reporting period updated by the rate-of-increase specified in § 413.40(c)(3)(viii) of the regulations.

2. Updated Caps for New Excluded Hospitals and Units

Section 1886(b)(7) of the Act establishes a payment methodology for new psychiatric hospitals and units, new rehabilitation hospitals and units, and new long-term care hospitals. A discussion of how the payment limitation was calculated can be found in the August 29, 1997 final rule with comment period (62 FR 46019); the May 12, 1998 final rule (63 FR 26344); the July 31, 1998 final rule (63 FR 41000); and the July 30, 1999 final rule (64 FR 41529). Under the statutory methodology, a "new" hospital or unit is a hospital or unit that falls within one of the three classes of hospitals or units (psychiatric, rehabilitation or long-term care) that first receives payment as a hospital or unit excluded from the acute care hospital inpatient prospective payment system on or after October 1, 1997. The amount of payment for a "new" hospital or unit would be determined as follows:

- Under existing § 413.40(f)(2)(ii), for the first two 12-month cost reporting periods, the amount of payment is the lesser of: (1) the operating costs per case; or (2) 110 percent of the national median (as estimated by the Secretary) of the target amounts for the same class of hospital or unit for cost reporting periods ending during FY 1996, updated by the hospital market basket increase percentage to the fiscal year in which the hospital or unit first receives payments under section 1886 of the Act, as adjusted for differences in area wage levels.
- Under existing § 413.40(c)(4)(v), for cost reporting periods following the hospital's or unit's first two 12-month cost reporting periods, the target amount is equal to the amount determined under section 1886(b)(7)(A)(i) of the Act for the third period, updated by the applicable hospital market basket increase percentage.

The proposed amounts included in the following table reflect the updated 110 percent of the national median target amounts proposed for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003. These figures are updated to reflect the proposed projected market basket increase percentage of 3.4 percent. This projected percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital services (as projected by the CMS Office of the Actuary based on its historical experience with the hospital inpatient prospective payment system). For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Class of excluded hospital or unit	FY 2003 proposed labor-related share	FY 2003 proposed nonlabor-related share
Psychiatric	$7,047	$2,801
Long-Term Care	17,269	6,866

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

3. Establishment of a Prospective Payment System for Inpatient Rehabilitation Hospitals and Units

Section 1886(j) of the Act, as added by section 4421(a) of Public Law 105–33, provided the phase-in of a case-mix adjusted prospective payment system for inpatient hospital services furnished by a rehabilitation hospital or a rehabilitation hospital unit (referred to in the statute as rehabilitation facilities) for cost reporting periods beginning on or after October 1, 2000 and before October 1, 2002, with a fully implemented prospective payment system for cost reporting periods beginning on or after October 1, 2002. Section 1886(j) of the Act was amended by section 125 of Public Law 106–113 to require the Secretary to use a discharge as the payment unit under the prospective payment system for inpatient hospital services furnished by rehabilitation facilities and to establish classes of patient discharges by functional-related groups. Section 305 of Public Law 106–554 further amended section 1886(j) of the Act to allow rehabilitation facilities to elect to be paid the full Federal prospective payment rather than the transitional period payments specified in the Act.

On August 7, 2001, we issued a final rule in the **Federal Register** (66 FR 41316) establishing the prospective payment system for inpatient rehabilitation facilities, effective for cost reporting periods beginning on or after January 1, 2002. Under the inpatient rehabilitation prospective payment system, for cost reporting periods beginning on or after January 1, 2002, and before October 1, 2002, payment will consist of 33⅓ percent of the facility-specific payment amount (based on the reasonable cost-based reimbursement methodology) and 66⅔ percent of the adjusted Federal prospective payment. For cost reporting periods beginning on or after October 1, 2002, payment will be based entirely on the Federal prospective payment rate determined under the inpatient rehabilitation facility prospective payment system.

4. Implementation of a Prospective Payment System for Long-Term Care Hospitals

In accordance with the requirements of section 123 of Public Law 106–113, as modified by section 307(b) of Public Law 106–554, we are proposing (as published in the March 22, 2002 proposed rule (67 FR 13415)) the establishment of a per discharge, DRG-based prospective payment system for long-term care hospitals as described in

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section 1886(d)(1)(B)(iv) of the Act for cost reporting periods beginning on or after October 1, 2002. As part of the implementation process, we are proposing a 5-year transition period from reasonable cost-based reimbursement to the long-term care hospital prospective payment system Federal rate. We are also proposing that a long-term care hospital may elect to be paid based on 100 percent of the Federal prospective rate. Under the March 22, 2002 proposed rule, a blend of the reasonable cost-based reimbursement percentage and the prospective payment Federal rate percentage would be used to determine a long-term care hospital's total payment under the prospective payment system during the transition period. We would expect long-term care hospitals to be paid under the full Federal prospective rate for cost reporting periods beginning on or after October 1, 2006.

B. Criteria for Exclusion of Satellite Facilities from the Hospital Inpatient Prospective Payment System

Existing regulations at 42 CFR 412.22(e) define a hospital-within-a-hospital as a hospital that occupies space in the same building as another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.22(h), relating to satellites of hospitals excluded from the acute care hospital inpatient prospective payment system, defines a satellite facility as a part of a hospital that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Section 412.25(e), relating to satellites of excluded hospital units, defines a satellite facility as a part of a hospital unit that provides inpatient services in a building also used by another hospital, or in one or more entire buildings located on the same campus as buildings used by another hospital. Because of the similarities between the definitions of the two types of satellite facilities and the definition of a hospital-within-a-hospital, questions have been raised as to whether satellite facilities must meet the "hospital-within-a-hospital" criteria in § 412.22(e) regarding having a governing body, chief medical officer, medical staff, and chief executive officer that are separate from those of the hospital with which space is shared.

Although the separateness of satellite facilities of excluded hospitals and satellite facilities of excluded units of hospitals is not explicitly required under existing regulations, we believe these two types of satellite facilities are similar enough to hospitals-within-hospitals to warrant application of more closely related criteria to all of them. Specifically, satellite facilities are like hospitals-within-hospitals in that the satellites are physically located in acute care hospitals that are paid for their inpatient services under the acute care hospital inpatient prospective payment system. Moreover, both satellite facilities and hospitals-within-hospitals provide inpatient hospital care that is paid for at higher rates than would apply if the facility were treated by Medicare as a part of the acute care hospital.

In view of these facts, it is important that we establish clear criteria for ensuring that these facilities are not merely units of the hospitals in which they are located, but are, in fact, organizationally and functionally separate from those hospitals. Therefore, we are proposing to revise § 412.22(h)(2) to specify that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if that satellite facility is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located. We also are proposing to revise § 412.25(e)(2)(iii) to state that, effective for cost reporting periods beginning on or after October 1, 2002, a hospital unit having a satellite facility would qualify for exclusion from the acute care hospital inpatient prospective payment system only if it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

C. Critical Access Hospitals (CAHs)

1. Background

Section 1820 provides for a nationwide Medicare Rural Hospital Flexibility Program (MRHF). (MRHF replaced the 7-State Essential Access Community Hospital/Rural Primary Care Hospital (EACH/RPCH) program.) Under section 1820 of the Act, as amended, certain rural providers may be designated as critical access hospitals (CAHs) under the MRHF program if they meet qualifying criteria and the conditions for designation specified in the statute. Implementing regulations for section 1820 of the Act are located at 42 CFR Part 485, Subpart F.

2. Election of Optional Payment Method

Under existing regulations at 42 CFR 413.70(b), CAHs may elect to be paid for services to their outpatients under an optional method. Facilities making this election are paid an amount for each outpatient visit that is the sum of the reasonable costs of facility services, as determined under applicable regulations, and, for professional services otherwise payable to the physician or other practitioner, 115 percent of the amounts that otherwise would be paid for the services if the CAH had not elected payment under the optional method. To enable intermediaries to make these payments accurately and to avoid possible delays in or duplications of payment, we specify in § 413.70(b)(3) that each CAH electing payment under the optional method must inform the intermediary in writing of that election annually, at least 60 days before the start of the affected cost reporting period (65 FR 47100, August 1, 2000, and 66 FR 31272, June 13, 2001).

Since the publication of this regulation, some CAHs have expressed concern that requiring a 60-day advance notice of the election of the optional payment method limits their flexibility, and have suggested that a shorter advance notice period would be appropriate. We have contacted our fiscal intermediaries to obtain feedback on the feasibility of changing the period of advance notification, since the fiscal intermediaries would need to make appropriate bill processing changes to allow any shorter time for notification of election of the optional method. Some fiscal intermediaries stated that requiring less than 60 days' advance notice is impractical, while others believed that needed changes could be made with as little as 2 weeks' advance notice. Given the diversity of feedback on this issue and our desire to allow CAHs as much flexibility as possible, we are proposing to revise § 412.30(b)(3) to allow the required advance notice period to be determined by each individual fiscal intermediary for the CAHs it services, as long as the required advance notice is not less than 14 days or more than 60 days before the start of each affected cost reporting period.

3. Use of the Resident Assessment Instrument (RAI) by CAHs

Among the existing regulations implementing section 1820 of the Act are specific conditions that a hospital must meet to be designated as a CAH. To help protect the health and safety of Medicare patients who are being furnished post-hospital skilled nursing facility (SNF) level of care in a CAH, our regulations require CAHs to comply with some, but not all, of the Medicare SNF conditions of participation at 42 CFR part 483, subpart B. Specifically, the regulations at § 485.645(d) provide that in order for a CAH to use its beds to provide post-hospital SNF care, the CAH must be in substantial compliance with nine of the SNF requirements contained in part 483, subpart B. Included among the nine requirements are requirements for comprehensive assessments, comprehensive care plans, and discharge planning as specified in § 483.20(b), (k), and (l). (We note that the existing § 485.645(d)(6) incorrectly cites these regulation cross-references as "§ 483.20(b), (d), and (e)." When we revised § 483.20 on December 23, 1997 (63 FR 53307), we inadvertently did not make conforming cross-reference changes in § 485.645(d)(6). In this proposed rule, we are proposing to make these conforming cross-reference changes.) Section 483.20(b) provides that a facility must make a comprehensive assessment of a resident's needs using the resident assessment instrument (RAI), specified by the State, on all its swing-bed patients.

We have received inquiries regarding the need for CAHs to use the RAI for patient assessment and care planning. The inquirers consider the RAI a lengthy and burdensome instrument and pointed out that CMS currently does not require CAHs to report data from the RAI for quality or payment purposes.

We required former RPCHs to use the RAI for the assessment of swing-bed patients to avoid the possibility of negative outcomes that might extend the length of stays in these hospitals, which provided limited services. In addition, we believed that the use of the RAI would help to ensure that patient needs are met when patients are in the facility for an extended period of time. Swing-bed hospitals were not required to use any patient assessment instrument because we believed that the hospital conditions of participation included requirements that were appropriate safeguards to protect the health and safety of Medicare patients. Currently, the regulations at § 483.20(f) require all long-term care facilities to collect and submit assessment data from the RAI to the State for quality and payment purposes. There are no such collection and submission requirements for CAHs.

We have gathered information from the provider community, State surveyors, and staff involved in the development of quality indicators and prospective payment system rates for SNFs to determine the feasibility of continuing to require CAHs to comply with the requirement for use of the RAI for patient assessments. Based on the information received, we have determined that there are no specific patient benefits involved in requiring CAHs to use the RAI for patient assessment purposes.

In the interest of reducing burden, where possible, and based on our analysis of the current significance of the requirement for use of the RAI for patient assessments in CAHs, we believe it is appropriate to propose the elimination of the requirement for CAHs to complete an RAI without jeopardizing patient health and safety. A CAH would still be required to capture assessment data for its SNF patients but would have the flexibility to document the assessment data in the medical record in a manner appropriate for its facility. We believe there are sufficient safeguards in the CAH regulations to ensure the health and safety of each SNF patient in a CAH. The facility would still be required to develop a comprehensive care plan for each SNF patient that includes measurable objectives and a timetable to meet a patient's medical, nursing, and psychosocial needs that are identified in an assessment. Also, a post-discharge plan of care would address post-hospital care needs of the patient. All of this information (assessment, plan of care, and discharge plans) must be maintained in the patient's medical record.

We are proposing to revise § 485.645 to specify that CAHs are required to complete a comprehensive assessment, comprehensive care plan, and discharge planning in accordance with the requirements of § 483.20(b), (k), and (l), except that the CAH is not required to use the RAI specified by the State, and is not required to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b).

VIII. MedPAC Recommendations

We have reviewed the March 1, 2002 report submitted by MedPAC to Congress and have given it careful consideration in conjunction with the proposals set forth in this document. MedPAC's recommendations for payments for Medicare inpatient hospital services in its March 2002 report focused mainly on accounting for changes in input prices for the hospital market basket (Recommendation 2A) and on increases in the base rate for inpatient hospital services by applying the annual update factors (Recommendations 2B–1 and 2B–2).

In Recommendation 2A, MedPAC recommended that the Secretary should use wage and benefit proxies that most closely match the training and skill requirements of health care occupations in all input price indexes used for updating payments. MedPAC further indicated that, in determining index weights, measures specific to the health sector and to occupation categories in which health care plays a major role should be emphasized. Our proposal to rebase and revise the hospital market basket, including cost category weights and price proxies, that is used in determining the update factors for payments for inpatient hospital services is presented in section IV. of this proposed rule.

Recommendations 2B–1 and 2B–2 concerning the update factor for inpatient hospital operating costs and for hospitals and hospital distinct-part units excluded from the acute care hospital inpatient prospective payment system are discussed in Appendix C to this proposed rule.

IX. Other Required Information

A. Requests for Data From the Public

In order to respond promptly to public requests for data related to the prospective payment system, we have established a process under which commenters can gain access to raw data on an expedited basis. Generally, the data are available in computer tape or cartridge format; however, some files are available on diskette as well as on the Internet at *http://www.hcfa.gov/stats/pufiles.htm*. Data files, and the cost for each, are listed below. Anyone wishing to purchase data tapes, cartridges, or diskettes should submit a written request along with a company check or money order (payable to CMS–PUF) to cover the cost to the following address: Centers for Medicare & Medicaid Services, Public Use Files, Accounting Division, P.O. Box 7520, Baltimore, Maryland 21207–0520, (410) 786–3691. Files on the Internet may be downloaded without charge.

1. Expanded Modified MedPAR-Hospital (National)

The Medicare Provider Analysis and Review (MedPAR) file contains records

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for 100 percent of Medicare beneficiaries using hospital inpatient services in the United States. (The file is a Federal fiscal year file, that is, discharges occurring October 1 through September 30 of the requested year.) The records are stripped of most data elements that would permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the **Federal Register** on December 24, 1984 (49 FR 49941), and amended by the July 2, 1985 notice (50 FR 27361). The national file consists of approximately 11,420,000 records. Under the requirements of these notices, an agreement for use of CMS Beneficiary Encrypted Files must be signed by the purchaser before release of these data. For all files requiring a signed agreement, please write or call to obtain a blank agreement form before placing an order. Two versions of this file are created each year. They support the following:

- Notice of Proposed Rulemaking (NPRM) published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2001 MedPAR file used for the FY 2003 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge.
File Cost: $3,655.00 per fiscal year.
Periods Available: FY 1988 through FY 2001.

2. Expanded Modified MedPAR-Hospital (State)

The State MedPAR file contains records for 100 percent of Medicare beneficiaries using hospital inpatient services in a particular State. The records are stripped of most data elements that will permit identification of beneficiaries. The hospital is identified by the 6-position Medicare billing number. The file is available to persons qualifying under the terms of the Notice of Proposed New Routine Uses for an Existing System of Records published in the December 24, 1984 **Federal Register** notice, and amended by the July 2, 1985 notice. This file is a subset of the Expanded Modified MedPAR-Hospital (National) as described above. Under the requirements of these notices, an agreement for use of CMS Beneficiary Encrypted Files must be signed by the purchaser before release of these data. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**. This file, scheduled to be available by the end of April, is derived from the MedPAR file with a cutoff of 3 months after the end of the fiscal year (December file).
- Final Rule published in the **Federal Register**. The FY 2001 MedPAR file used for the FY 2003 final rule will be cut off 6 months after the end of the fiscal year (March file) and is scheduled to be available by the end of April.

Media: Tape/Cartridge.
File Cost: $1,130.00 per State per year.
Periods Available: FY 1988 through FY 2001.

3. CMS Wage Data

This file contains the hospital hours and salaries for FY 1999 used to create the proposed FY 2003 prospective payment system wage index. The file will be available by the beginning of January for the NPRM and the beginning of May for the final rule.

Processing year	Wage data year	PPS fiscal year
2002	1999	2003
2001	1998	2002
2000	1997	2001
1999	1996	2000
1998	1995	1999
1997	1994	1998
1996	1993	1997
1995	1992	1996
1994	1991	1995
1993	1990	1994
1992	1989	1993
1991	1988	1992

These files support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

4. CMS Hospital Wages Indices (Formerly: Urban and Rural Wage Index Values Only)

This file contains a history of all wage indices since October 1, 1983.

Media: Diskette/most recent year on the Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

5. PPS SSA/FIPS MSA State and County Crosswalk

This file contains a crosswalk of State and county codes used by the Social Security Administration (SSA) and the Federal Information Processing Standards (FIPS), county name, and a historical list of Metropolitan Statistical Area (MSA).

Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

6. Reclassified Hospitals New Wage Index (Formerly: Reclassified Hospitals by Provider Only)

This file contains a list of hospitals that were reclassified for the purpose of assigning a new wage index. Two versions of these files are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final Rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00 per year.
Periods Available: FY 2003 PPS Update.

7. PPS–IV to PPS–XII Minimum Data Set

The Minimum Data Set contains cost, statistical, financial, and other information from Medicare hospital cost reports. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare participating hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.
Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IV	10/01/86	10/01/87
PPS–V	10/01/87	10/01/88
PPS–VI	10/01/88	10/01/89
PPS–VII	10/01/89	10/01/90
PPS–VIII	10/01/90	10/01/91
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Minimum Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Hospital Data Set Files (refer to item 9 below).)

8. PPS–IX to PPS–XII Capital Data Set

The Capital Data Set contains selected data for capital-related costs, interest expense and related information and complete balance sheet data from the Medicare hospital cost report. The data set includes only the most current cost report (as submitted, final settled or reopened) submitted for a Medicare certified hospital by the Medicare fiscal intermediary to CMS. This data set is updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Tape/Cartridge.
File Cost: $770.00 per year.

	Periods beginning on or after	and before
PPS–IX	10/01/91	10/01/92
PPS–X	10/01/92	10/01/93
PPS–XI	10/01/93	10/01/94
PPS–XII	10/01/94	10/01/95

(Note: The PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Capital Data Sets are part of the PPS–XIII, PPS–XIV, PPS–XV, PPS–XVI, and PPS–XVII Hospital Data Set Files (refer to item 9 below).)

9. PPS–XIII to PPS–XVII Hospital Data Set

The file contains cost, statistical, financial, and other data from the Medicare Hospital Cost Report. The data set includes only the most current cost report (as submitted, final settled, or reopened) submitted for a Medicare-certified hospital by the Medicare fiscal intermediary to CMS. The data set are updated at the end of each calendar quarter and is available on the last day of the following month.

Media: Diskette/Internet.
File Cost: $2,500.00.

	Periods beginning on or after	and before
PPS–XIII	10/01/95	10/01/96
PPS–XIV	10/01/96	10/01/97
PPS–XV	10/01/97	10/01/98
PPS–XVI	10/01/98	10/01/99
PPS–XVII	10/01/99	10/01/00

10. Provider-Specific File

This file is a component of the PRICER program used in the fiscal intermediary's system to compute DRG payments for individual bills. The file contains records for all prospective payment system eligible hospitals, including hospitals in waiver States, and data elements used in the prospective payment system recalibration processes and related activities. Beginning with December 1988, the individual records were enlarged to include pass-through per diems and other elements.

Media: Diskette/Internet.
File Cost: $265.00.
Periods Available: FY 2003 PPS Update.

11. CMS Medicare Case-Mix Index File

This file contains the Medicare case-mix index by provider number as published in each year's update of the Medicare hospital inpatient prospective payment system. The case-mix index is a measure of the costliness of cases treated by a hospital relative to the cost of the national average of all Medicare hospital cases, using DRG weights as a measure of relative costliness of cases. Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/most recent year on Internet.
Price: $165.00 per year/per file.
Periods Available: FY 1985 through FY 2001.

12. DRG Relative Weights (Formerly Table 5 DRG)

This file contains a listing of DRGs, DRG narrative description, relative weights, and geometric and arithmetic mean lengths of stay as published in the **Federal Register**. The hard copy image has been copied to diskette. There are two versions of this file as published in the **Federal Register:**

- NPRM.
- Final rule.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

13. PPS Payment Impact File

This file contains data used to estimate payments under Medicare's hospital inpatient prospective payment systems for operating and capital-related costs. The data are taken from various sources, including the Provider-Specific File, Minimum Data Sets, and prior impact files. The data set is abstracted from an internal file used for the impact analysis of the changes to the prospective payment systems published in the **Federal Register**. This file is available for release 1 month after the proposed and final rules are published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

14. AOR/BOR Tables

This file contains data used to develop the DRG relative weights. It contains mean, maximum, minimum, standard deviation, and coefficient of variation statistics by DRG for length of stay and standardized charges. The BOR tables are "Before Outliers Removed" and the AOR is "After Outliers Removed." (Outliers refers to statistical outliers, not payment outliers.) Two versions of this file are created each year. They support the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Diskette/Internet.
File Cost: $165.00.
Periods Available: FY 2003 PPS Update.

15. Prospective Payment System (PPS) Standardizing File

This file contains information that standardizes the charges used to calculate relative weights to determine payments under the prospective payment system. Variables include wage index, cost-of-living adjustment (COLA), case-mix index, disproportionate share, and the Metropolitan Statistical Area (MSA). The file supports the following:

- NPRM published in the **Federal Register**.
- Final rule published in the **Federal Register**.

Media: Internet.
File cost: No charge.
Periods Available: FY 2003 PPS Update.

For further information concerning these data tapes, contact the CMS Public Use Files Hotline at (410) 786–3691.

Commenters interested in obtaining or discussing any other data used in constructing this rule should contact Stephen Phillips at (410) 786–4548.

B. Information Collection Requirements

Under the Paperwork Reduction Act of 1995, we are required to provide 60-day notice in the **Federal Register** and solicit public comment before a collection of information requirement is submitted to the Office of Management and Budget (OMB) for review and approval. In order to fairly evaluate whether an information collection should be approved by OMB, section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 requires that we solicit comment on the following issues:

- The need for the information collection and its usefulness in carrying out the proper functions of our agency.
- The accuracy of our estimate of the information collection burden.
- The quality, utility, and clarity of the information to be collected.
- Recommendations to minimize the information collection burden on the affected public, including automated collection techniques.

However, the majority of the collection requirements contained in this proposed rule are currently approved.

Section IX.B.1. below lists the OMB approval numbers and the current

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expiration dates for the collection requirements, referenced by 42 CFR Part, in this proposed rule that are currently approved. In addition, as summarized below, section IX.B.2. of this proposed rule outlines the proposed collection requirements referenced in this proposed rule for which we are seeking public comment, as required under the PRA of 1995.

1. Currently Approved Requirements

Regulation references in 42 CFR	OMB approval No.	Current expiration date
Part 412	0938–0691	September 30, 2002.
	0938–0050	May 31, 2004.
	0938–0573	September 30, 2002.
Part 413	0938–0050	May 31, 2004.
	0938–0667	October 31, 2002.
	0938–0477	June 30, 2002.
Part 489	0938–0667	October 31, 2002.

2. Proposed Requirements for Public Comment

Section 412.230 Criteria for an Individual Hospital Seeking Redesignation to Another Rural Area or an Urban Area.

Appropriate Wage Data

As specified in this section, a new hospital must accumulate and provide at least 1 year of wage data to CMS for the purposes of applying for reclassification. While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

Section 413.65 Requirements for a Determination That a Facility or an Organization Had Provider-Based Status

Responsibility for Obtaining Provider-Based Determinations

As summarized in this section, a potential main provider seeking an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider would be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and, if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. In addition, the provider seeking such an advance determination would be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request.

We believe the burden associated with these requirements is estimated to average 1.5 hours per provider, for approximately 3,000 providers per year, for an annual burden of 4,500 annual burden hours. This estimate is based on fact the providers currently maintain the necessary data and that minimal effort would be required to locate and review the appropriate data.

Clinical Services

The clinical services of the facility or organization seeking provider-based status and the main provider would be required to maintain an unified retrieval system (or cross reference) of the main provider for all patient medical records for those patients treated in the facility or organization.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b) (2) and (b)(3).

Section 482.12 Conditions of Participation: Governing Body

Standard: Emergency Services

If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital would be required to assure that the medical staff have written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

Section 489.24 Special Responsibilities of Medicare Hospitals in Emergency Cases

Application to Inpatients—Admitted Emergency Patients

If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, and stabilizes that individual's emergency medical condition, the period of stability would be required to be documented by relevant clinical data in the individual's medical record, before the hospital has satisfied its special responsibilities under this section with respect to that individual.

While this collection requirement is subject to the PRA, we believe the burden associated with this requirement is exempt from the PRA as stipulated under 5 CFR 1320.3(b)(2) and (b)(3).

If you comment on these information collection and recordkeeping requirements, please mail copies directly to the following:

Centers for Medicare & Medicaid Services, Office of Information Services, Information Technology Investment Management Group, Attn.: John Burke, Attn: CMS–1203–P, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850.

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Allison Eydt, CMS Desk Officer Attn: CMS–1203–P.

C. Public Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, in preparing the final rule, we will consider all comments concerning the provisions of this proposed rule that we receive by the date and time specified in the "DATES" section of this preamble and respond to those comments in the preamble to that rule. We emphasize that section 1886(e)(5) of the Act requires the final rule for FY 2003 to be published by August 1, 2002, and we will consider only those comments that deal specifically with the matters discussed in this proposed rule.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney diseases, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 482

Grant program-health, Hospitals, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 485

Grant programs-health, Health facilities, Medicaid, Medicare, Reporting and recordkeeping requirements.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

For the reasons stated in the preamble of this proposed rule, 42 CFR chapter IV is proposed to be amended as follows:

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

A. Part 405 is amended as follows:

1. The authority citation for Part 405, Subpart R continues to read as follows:

Authority: Secs. 205, 1102, 1814(b), 1815(a), 1833, 1861(v), 1871, 1872, 1878, and 1886 of the Social Security Act (42 U.S.C. 405, 1302, 1395f(b), 1395g(a), 1395l, 1395x(v), 1395hh, 1395ii, 1395oo, and 1395ww).

2. Section 405.1885 is amended by revising paragraph (b), redesignating paragraph (e) as paragraph (f), and adding a new paragraph (e), to read as follows:

§ 405.1885 Reopening a determination or decision.

* * * * *

(b)(1) An intermediary determination or an intermediary hearing decision shall be reopened and revised by the intermediary if, within the aforementioned 3-year period, CMS—

(i) Provides notice to the intermediary that the intermediary determination or the intermediary hearing decision is inconsistent with the applicable law, regulations, CMS ruling, or CMS general instructions in effect, and as CMS understood those legal provisions, at the time the determination or decision was rendered by the intermediary; and

(ii) Explicitly directs the intermediary to reopen and revise the intermediary determination or the intermediary hearing decision.

(2) A change of legal interpretation or policy by CMS in a regulation, CMS ruling, or CMS general instruction, whether made in response to judicial precedent or otherwise, is not a basis for reopening an intermediary determination or an intermediary hearing decision under this section.

* * * * *

(e) Nothwithstanding an intermediary's discretion to reopen or not reopen an intermediary determination or an intermediary hearing decision under paragraphs (a) and (c) of this section, CMS may direct an intermediary to reopen, or not to reopen, an intermediary determination or an intermediary hearing decision in accordance with paragraphs (a) and (c) of this section.

* * * * *

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

B. Part 412 is amended as follows:

1. The authority citation for Part 412 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1302 and 1395hh).

§ 412.4 [Amended]

2. In § 412.4 (f)(1), the reference "paragraph (b) or (c)" is removed and "paragraph (b)(1) or (c)" is added in its place.

3. Section 412.22 is amended by—

a. Revising the introductory text of paragraph (h)(2).

b. Republishing the introductory text of paragraph (h)(2)(iii).

c. Redesignating paragraphs (h)(2)(iii)(A) through (F) as paragraphs (h)(2)(iii)(B) through (G), respectively. d. Adding new paragraph (h)(2)(iii)(A).

§ 412.22 Excluded hospitals and hospital units: General rules.

* * * * *

(h) *Satellite facilities.* * * *

(2) Except as provided in paragraph (h)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

4. Section 412.25 is amended by—

a. Revising the introductory text of paragraph (e)(2).

b. Republishing the introductory text of paragraph (e)(2)(iii).

c. Redesignating paragraphs (e)(2)(iii)(A) through (F) as paragraphs (e)(2)(iii)(B) through (G), respectively.

d. Adding new paragraph (e)(2)(iii)(A).

§ 412.25 Excluded hospitals units: Common requirements.

* * * * *

(e) *Satellite facilities.* * * *

(2) Except as provided in paragraph (e)(3) of this section, effective for cost reporting periods beginning on or after October 1, 1999, a hospital that has a satellite facility must meet the following criteria in order to be excluded from the acute care hospital inpatient prospective payment systems for any period:

* * * * *

(iii) The satellite facility meets all of the following requirements:

(A) Effective for cost reporting periods beginning on or after October 1, 2002, it is not under the authority or control of the governing body or chief executive officer of the hospital in which it is located, and it furnishes inpatient care through the use of medical personnel who are not under the authority or control of the medical staff or chief medical officer of the hospital in which it is located.

* * * * *

§ 412.63 [Amended]

5. Section 412.63 is amended by—

a. In paragraph (x)(2)(i)(A), removing the phrase "tabulating the hospital's data" and adding in its place "tabulating its data".

b. Removing paragraphs (x)(3) and (x)(4).

c. Redesignating paragraph (x)(5) as paragraph (x)(3).

6. Section 412.80 is amended by revising paragraph (a)(2) to read as follows:

§ 412.80 Outlier cases: General provisions.

(a) *Basic rule.* * * *

(2) *Discharges occurring on or after October 1, 1997 and before October 1, 2001.* For discharges occurring on or after October 1, 1997 and before October 1, 2001, except as provided in paragraph (b) of this section concerning transfers, CMS provides for additional payment, beyond standard DRG payments, to a

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hospital for covered inpatient hospital services furnished to a Medicare beneficiary if the hospital's charges for covered services, adjusted to operating costs and capital costs by applying cost-to-charge ratios, as described in § 412.84(h), exceed the DRG payment for the case, payments for indirect costs of graduate medical education (§ 412.105), and payments for serving disproportionate share of low-income patients (§ 412.106), plus a fixed dollar amount (adjusted for geographic variation in costs) as specified by CMS.

* * * * *

7. Section 412.92 is amended by revising paragraph (c)(2), to read as follows:

§ 412.92 Special treatment: Sole community hospitals.

* * * * *

(c) *Terminology.* * * *

(2) The term *like hospital* means a hospital furnishing short-term, acute care. Effective with cost reporting periods beginning on or after October 1, 2002, if a hospital seeking sole community hospital designation can demonstrate that no more than 3 percent of the services it provides overlap with the services provided by a nearby hospital that would otherwise be considered a like hospital under this definition, CMS will not consider the nearby hospital to be a like hospital.

* * * * *

8. Section 412.105 is amended by—

A. Republishing the introductory text of paragraph (a).

B. Revising paragraph (a)(1).

C. Revising paragraph (b).

D. Revising paragraph (f)(1)(vi).

E. Making the following cross-reference changes in paragraph (f)(1):

i. In paragraph (f)(1)(vii), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place.

ii. In paragraph (f)(1)(viii), the reference "§ 413.86(g)(7)" is removed and "§ 413.86(g)(8)" is added in its place.

iii. In paragraph (f)(1)(ix), the reference "§§ 413.86(g)(8)(i) and (g)(8)(ii) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(ii) of this subchapter" is added in its place; the reference "§§ 413.86(g)(8)(i) and (g)(8)(iii)(B) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(B) of this subchapter" is added in its place; and the reference "§§ 413.86(g)(8)(i) and (g)(8)(iii)(A) of this subchapter" is removed and "§ 413.86(g)(9)(i) and (g)(9)(iii)(A) of this subchapter" is added it its place.

iv. In paragraph (f)(1)(x), the reference "§ 413.86(g)(12)" is removed and "§ 413.86(g)(13)" is added in its place; and the reference "§ 413.86(g)(11)" is removed and "§ 413.86(g)(12)" is added in its place.

v. In paragraph (f)(1)(xi), the reference "§ 413.86(g)(9)" is removed and "§ 413.86(g)(10)" is added in its place.

vi. In paragraph (f)(1)(xii), the reference "§ 413.86(g)(10)" is removed and "§ 413.86(g)(11)" is added in its place.

The revisions read as follows:

§ 412.105 Special treatment: Hospitals that incur indirect costs for graduate medical education programs.

* * * * *

(a) *Basic data.* CMS determines the following for each hospital:

(1) The hospital's ratio of full-time equivalent residents (except as limited under paragraph (f) of this section) to the number of beds (as determined under paragraph (b) of this section).

(i) Except for the special circumstances for affiliated groups and new programs described in paragraphs (f)(1)(vi) and (f)(1)(vii) of this section for cost reporting periods beginning on or after October 1, 1997, and for the special circumstances for closed hospitals or closed programs described in paragraph (f)(1)(ix) of this section for cost reporting periods beginning on or after October 1, 2002, this ratio may not exceed the ratio for the hospital's most recent prior cost reporting period after accounting for the cap on the number of allopathic and osteopathic full-time equivalent residents as described in paragraph (f)(1)(iv) of this section, and adding to the capped numerator any dental and podiatric full-time equivalent residents.

(ii) The exception for new programs described in paragraph (f)(1)(vii) of this section applies to each new program individually for which the full-time equivalent cap may be adjusted based on the period of years equal to the minimum accredited length of each new program.

(iii) The exception for closed hospitals and closed programs described in paragraph (f)(1)(ix) of this section applies only in the first cost reporting period in which the receiving hospital trains the displaced full-time equivalent residents.

(iv) In the cost reporting period following the last year the receiving hospital's full-time equivalent cap is adjusted for the displaced resident(s), the resident-to-bed ratio cap in paragraph (a)(1) of this section is calculated as if the displaced full-time equivalent residents had not trained at the receiving hospital in the prior year.

* * * * *

(b) *Determination of number of beds.* (1) For purposes of this section, subject to the provisions of paragraph (b)(2) of this section, the number of beds in a hospital is determined by counting the number of available bed days during the cost reporting period, not including beds or bassinets in the healthy newborn nursery, custodial care beds, or beds in excluded distinct part hospital units, and dividing that number by the number of days in the cost reporting period.

(2) Effective for discharges occurring on or after October 1, 2002, a hospital's number of beds is equal to the lower of the number of beds as determined under paragraph (b)(1) of this section, or the average daily census (as determined in accordance with § 412.322(a)(2) of this chapter) divided by 35 percent.

* * * * *

(f) *Determining the total number of full-time equivalent residents for cost reporting periods beginning on or after July 1, 1991.*

(1) * * *

(vi) Hospitals that are part of the same affiliated group (as defined in § 413.86(b) of this subchapter) may elect to apply the limit at paragraph (f)(1)(iv) of this section on an aggregate basis, as specified in § 413.86(g)(7) of this chapter.

* * * * *

9. Section 412.108 is amended by revising paragraph (b) to read as follows:

§ 412.108 Special treatment: Medicare-dependent, small rural hospitals.

* * * * *

(b) *Classification procedures.* (1) The fiscal intermediary determines whether a hospital meets the criteria specified in paragraph (a) of this section.

(2) A hospital must submit a written request along with qualifying documentation to its fiscal intermediary to be considered for MDH status based on the criterion under paragraph (a)(1)(iii)(C) of this section.

(3) The fiscal intermediary will make its determination and notify the hospital within 90 days from the date that it receives the hospital's request and all of the required documentation.

(4) A determination of MDH status made by the fiscal intermediary is effective 30 days after the date the fiscal intermediary provides written notification to the hospital. An approved MDH status determination remains in effect unless there is a change in the circumstances under which the status was approved.

(5) The fiscal intermediary will evaluate on an ongoing basis, whether or not a hospital continues to qualify for MDH status. This evaluation includes an ongoing review to ensure that the hospital continues to meet all of the criteria specified in paragraph (a) of this section.

(6) If the fiscal intermediary determines that a hospital no longer qualifies for MDH status, the change in status will become effective 30 days after the date the fiscal intermediary provides written notification to the hospital.

(7) A hospital may reapply for MDH status following its disqualification only after it has completed another cost reporting period that has been audited and settled. The hospital must reapply for MDH status in writing to its fiscal intermediary and submit the required documentation.

(8) If a hospital disagrees with an intermediary's determination regarding the hospital's initial or ongoing MDH status, the hospital may notify its fiscal intermediary and submit other documentable evidence to support its claim that it meets the MDH qualifying criteria.

(9) The fiscal intermediary's initial and ongoing determination is subject to review under subpart R of Part 405 of this chapter. The time required by the fiscal intermediary to review the request is considered good cause for granting an extension of the time limit for the hospital to apply for that review.

* * * * *

10. Section 412.113 is amended by revising paragraphs (c)(2)(ii) and (c)(2)(iii) to read as follows:

§ 412.113 Other payments.

* * * * *

(c) *Anesthesia services furnished by hospital employed nonphysician anesthetists or obtained under arrangements.* * * *

(2) * * *

(ii) To maintain its eligibility for reasonable cost payment under paragraph (c)(2)(i) of this section in calendar years after 1989, a qualified hospital or CAH must demonstrate prior to January 1 of each respective year that for the prior year its volume of surgical procedures requiring anesthesia service did not exceed 500 procedures; or, effective October 1, 2002, did not exceed 800 procedures.

(iii) A hospital or CAH that did not qualify for reasonable cost payment for nonphysician anesthetist services furnished in calendar year 1989 can qualify in subsequent years if it meets the criteria in paragraphs (c)(2)(i)(A), (B), and (D) of this section, and demonstrates to its intermediary prior to the start of the calendar year that it met these criteria. The hospital or CAH must provide data for its entire patient population to demonstrate that, during calendar year 1987 and the year immediately preceding its election of reasonable cost payment, its volume of surgical procedures (inpatient and outpatient) requiring anesthesia services did not exceed 500 procedures, or, effective October 1, 2002, did not exceed 800 procedures.

* * * * *

11. Section 412.230 is amended by adding a new paragraph (e)(2)(iii) to read as follows:

§ 412.230 Criteria for an individual hospital seeking redesignation to another rural area or an urban area.

* * * * *

(e) *Use of urban or other rural area's wage index.* * * *

(2) *Appropriate wage data.* * * *

(iii) For purposes of this paragraph (e)(2), if a new owner does not accept assignment of the existing hospital's provider agreement in accordance with § 489.18 of this chapter, the hospital will be treated as a new provider with a new provider number. In this case, the wage data associated with the previous owner of the hospital cannot be used in calculating the new hospital's 3-year average hourly wage. Once a new hospital has accumulated at least 1 year of wage data, it is eligible to apply for reclassification on the basis of those data.

* * * * *

12. Section 412.273 is amended by—

A. Revising the section heading.

B. Revising paragraph (b)(2).

C. Redesignating paragraph (d) as paragraph (e).

D. Add a new paragraph (d).

§ 412.273 Withdrawing an application, terminating an approved 3-year reclassification, or canceling a previous withdrawal or termination.

* * * * *

(b) *Request for termination of approved 3-year wage index reclassifications.* * * *

(2) *Reapplication within the approved 3-year period.* (i) If a hospital elects to withdraw its wage index application after the MGCRB has issued its decision, it may cancel its withdrawal in a subsequent year and request the MGCRB to reinstate its wage index reclassification for the remaining fiscal year(s) of the 3-year period.

(ii) A hospital may apply for reclassification for purposes of the wage index to a different area (that is, an area different from the one to which it was originally reclassified for the 3-year period). If the application is approved, the reclassification will be effective for 3 years. Once a 3-year reclassification becomes effective, a hospital may no longer cancel a withdrawal or termination of another 3-year reclassification, regardless of whether the withdrawal or termination request is made within 3 years from the date of the withdrawal or termination.

(iii) In a case in which a hospital with an existing 3-year wage index reclassification applies to be reclassified to another area, its existing 3-year reclassification will be terminated when a second 3-year wage index reclassification goes into effect for payments for discharges on or after the following October 1.

* * * * *

(d) *Process for canceling a previous withdrawal or termination.* A hospital may cancel a previous withdrawal or termination by submitting written notice of its intent to the MGCRB no later than the deadline for submitting reclassification applications for the following fiscal year, as specified in § 412.256(a)(2).

* * * * *

13. Section 412.304 is amended by revising paragraph (c) to read as follows:

§ 412.304 Implementation of the capital prospective payment system.

* * * * *

(c) *Cost reporting periods beginning on or after October 1, 2001.*

(1) *General.* Except as provided in paragraph (c)(2) of this section, for cost reporting periods beginning on or after October 1, 2001, the capital payment amount is based solely on the Federal rate determined under § 412.308(a) and (b) and updated under § 412.308(c).

(2) *Payment to new hospitals.* For cost reporting periods beginning on or after October 1, 2002—

(i) A new hospital, as defined under § 412.300(b), is paid 85 percent of its allowable Medicare inpatient hospital capital-related costs through its cost report ending at least 2 years after the hospital accepts its first patient.

(ii) For the third year and subsequent years, the hospital is paid based on the Federal rate as described under § 412.312.

* * * * *

14. Section 412.308 is amending by adding a new paragraph (b)(6) to read as follows:

§ 412.308 Determining and updating the Federal rate.

* * * * *

(b) *Standard Federal rate.* * * *

(6) For discharges occurring on or after October 1, 2002, the 2.1 percent reduction provided for under paragraph (b)(5) of this section is eliminated from the unadjusted standard Federal rate in effect on September 30, 2002, used to

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determine the Federal rate each year under paragraph (c) of this section.

* * * * *

15. Section 412.312 is amended by adding a new paragraph (e) to read as follows:

§ 412.312 Payment based on the Federal rate.

* * * * *

(e) *Payment for extraordinary circumstances.* Payment for extraordinary circumstances is made as provided for in § 412.348(f) for cost reporting periods beginning on or after October 1, 2001.

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES; OPTIONAL PROSPECTIVELY DETERMINED PAYMENT RATES FOR SKILLED NURSING FACILITIES

C. Part 413 is amended as follows:

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1812(d), 1814(b), 1815, 1833(a), (i), and (n), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395d(d), 1395f(b), 1395g, 1395l(a), (i), and (n), 1395hh, 1395rr, 1395tt, and 1395ww).

2. Section 413.65 is amended by—

A. Revising paragraph (a)(1)(ii)(G) and adding a new paragraph (a)(1)(ii)(J).

B. Revising the definition of "Department of a provider", "Provider-based entity", and "Remote location of a hospital" under paragraph (a)(2).

C. Revising paragraphs (b)(2), (b)(3), and (d).

D. Removing paragraph (j).

E. Redesignating paragraphs (h) and (i) as paragraphs (i) and (j), respectively.

F. Redesignating paragraph (f) as paragraph (h).

G. Redesignating paragraph (e) as paragraph (f).

H. Adding a new paragraph (e).

I. Revising redesignated paragraph (f).

J. Revising the introductory text of paragraph (g), and paragraphs (g)(1), (g)(2), and (g)(7).

K. Revising redesignated paragraphs (h), (i), and (j).

L. Revising paragraph (k).

M. Revising the heading of paragraph (m).

N. Revising paragraph (n).

§ 413.65 Requirements for a determination that a facility or an organization had provider-based status.

(a) *Scope and definitions.* (1) *Scope.*

* * *

(ii) This section does not apply to the following facilities:

* * * * *

(G) Independent diagnostic testing facilities furnishing only services paid under a fee schedule, such as facilities that furnish only screening mammography services (as defined in section 1861(jj) of the Act), facilities that furnish only clinical diagnostic laboratory tests, or facilities that furnish only some combination of these services.

* * * * *

(J) Departments of providers that perform functions necessary for the successful operation of the providers but do not furnish services of a type for which separate payment could be claimed under Medicare or Medicaid (for example, laundry or medical records departments).

(2) *Definitions.* * * *

Department of a provider means a facility or organization that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of the same type as those furnished by the main provider under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A department of a provider comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A department of a provider may not by itself be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do not apply to a department as an independent entity. For purposes of this part, the term "department of a provider" does not include an RHC or, except as specified in paragraph (m) of this section, an FQHC.

* * * * *

Provider-based entity means a provider of health care services, or an RHC as defined in § 405.2401(b) of this chapter, that is either created by, or acquired by, a main provider for the purpose of furnishing health care services of a different type from those of the main provider under the name, ownership, and administrative and financial control of the main provider, in accordance with the provisions of this section. A provider-based entity comprises both the specific physical facility that serves as the site of services of a type for which payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. A provider-based entity may, by itself, be qualified to participate in Medicare as a provider under § 489.2 of this chapter, and the Medicare conditions of participation do apply to a provider-based entity as an independent entity.

* * * * *

Remote location of a hospital means a facility or an organization that is either created by, or acquired by, a hospital that is a main provider for the purpose of furnishing inpatient hospital services under the name, ownership, and financial and administrative control of the main provider, in accordance with the provisions of this section. A remote location of a hospital comprises both the specific physical facility that serves as the site of services for which separate payment could be claimed under the Medicare or Medicaid program, and the personnel and equipment needed to deliver the services at that facility. The Medicare conditions of participation do not apply to a remote location of a hospital as an independent entity. For purposes of this part, the term "remote location of a hospital" does not include a satellite facility as defined in § 412.22(h)(1) and § 412.25(e)(1) of this chapter.

(b) *Responsibility for obtaining provider-based determinations.* * * *

(2) If a facility was treated as provider-based in relation to a hospital or CAH on October 1, 2000, it will continue to be considered provider-based in relation to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. The requirements, limitations, and exclusions specified in paragraphs (d), (e), (f), (g), (h), and (i), of this section will not apply to that hospital or CAH until the start of the hospital's first cost reporting period beginning on or after July 1, 2003. For purposes of this paragraph (b)(2), a facility is considered as provider-based on October 1, 2000 if, on that date, it either had a written determination from CMS that it was provider-based, or was billing and being paid as a provider-based department or entity of the hospital.

(3)(i) Except as specified in paragraphs (b)(2) and (b)(5) of this section, if a potential main provider seeks an advance determination of provider-based status for a facility that is located on the main campus of the potential main provider, the provider would be required to submit an attestation stating that the facility meets the criteria in paragraph (d) of this section and if it is a hospital, also attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. The provider seeking such an advance determination would also be required to maintain documentation of the basis for its attestations and to make that documentation available to CMS upon request.

(ii) If the facility is not located on the main campus of the potential main provider, the provider seeking an advance determination would be required to submit an attestation stating that the facility meets the criteria in paragraphs (d) and (e) of this section, and if the facility is operated as a joint venture or under a management contract, the requirements of paragraph (f) or paragraph (h) of this section, as applicable. If the potential main provider is a hospital, the hospital also would be required to attest that it will fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section. The provider would be required to supply documentation of the basis for its attestations to CMS at the time it submits its attestations.

* * * * *

(d) *Requirements applicable to all facilities or organizations.* Any facility or organization for which provider-based status is sought, whether located on or off the campus of a potential main provider, must meet all of the following requirements to be determined by CMS to have provider-based status:

(1) *Licensure.* The department of the provider, the remote location of a hospital, or the satellite facility and the main provider are operated under the same license, except in areas where the State requires a separate license for the department of the provider, the remote location of a hospital, or the satellite facility, or in States where State law does not permit licensure of the provider and the prospective department of the provider, the remote location of a hospital, or the satellite facility under a single license. If a State health facilities' cost review commission or other agency that has authority to regulate the rates charged by hospitals or other providers in a State finds that a particular facility or organization is not part of a provider, CMS will determine that the facility or organization does not have provider-based status.

(2) *Clinical services.* The clinical services of the facility or organization seeking provider-based status and the main provider are integrated as evidenced by the following:

(i) Professional staff of the facility or organization have clinical privileges at the main provider.

(ii) The main provider maintains the same monitoring and oversight of the facility or organization as it does for any other department of the provider.

(iii) The medical director of the facility or organization seeking provider-based status maintains a reporting relationship with the chief medical officer or other similar official of the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the medical director of a department of the main provider and the chief medical officer or other similar official of the main provider, and is under the same type of supervision and accountability as any other director, medical or otherwise, of the main provider.

(iv) Medical staff committees or other professional committees at the main provider are responsible for medical activities in the facility or organization, including quality assurance, utilization review, and the coordination and integration of services, to the extent practicable, between the facility or organization seeking provider-based status and the main provider.

(v) Medical records for patients treated in the facility or organization are integrated into a unified retrieval system (or cross reference) of the main provider.

(vi) Inpatient and outpatient services of the facility or organization and the main provider are integrated, and patients treated at the facility or organization who require further care have full access to all services of the main provider and are referred where appropriate to the corresponding inpatient or outpatient department or service of the main provider.

(3) *Financial integration.* The financial operations of the facility or organization are fully integrated within the financial system of the main provider, as evidenced by shared income and expenses between the main provider and the facility or organization. The costs of a facility or organization that is a hospital department are reported in a cost center of the provider, costs of a provider-based facility or organization other than a hospital department are reported in the appropriate cost center or cost centers of the main provider, and the financial status of any provider-based facility or organization is incorporated and readily identified in the main provider's trial balance.

(4) *Public awareness.* The facility or organization seeking status as a department of a provider, a remote location of a hospital, or a satellite facility is held out to the public and other payers as part of the main provider. When patients enter the provider-based facility or organization, they are aware that they are entering the main provider and are billed accordingly.

(5) *Obligations of hospital outpatient departments and hospital-based entities.* In the case of a hospital outpatient department or a hospital-based entity, the facility or organization must fulfill the obligations of hospital outpatient departments and hospital-based entities described in paragraph (g) of this section.

(e) *Additional requirements applicable to off-campus facilities or organizations.* Except as described in paragraphs (b)(2) and (b)(5) of this section, any facility or organization for which provider-based status is sought that is not located on the campus of a potential main provider must meet both the requirements in paragraph (d) of this section and all of the following additional requirements, in order to be determined by CMS to have provider-based status.

(1) *Operation under the ownership and control of the main provider.* The facility or organization seeking provider-based status is operated under the ownership and control of the main provider, as evidenced by the following:

(i) The business enterprise that constitutes the facility or organization is 100 percent owned by the provider.

(ii) The main provider and the facility or organization seeking status as a department of the provider, a remote location of a hospital, or a satellite facility have the same governing body.

(iii) The facility or organization is operated under the same organizational documents as the main provider. For example, the facility or organization seeking provider-based status must be subject to common bylaws and operating decisions of the governing body of the provider where it is based.

(iv) The main provider has final responsibility for administrative decisions, final approval for contracts with outside parties, final approval for personnel actions, final responsibility for personnel policies (such as fringe benefits or code of conduct), and final approval for medical staff appointments in the facility or organization.

(2) *Administration and supervision.* The reporting relationship between the facility or organization seeking provider-based status and the main provider must have the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and one of its existing departments, as evidenced by

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compliance with all of the following requirements:

(i) The facility or organization is under the direct supervision of the main provider.

(ii) The facility or organization is operated under the same monitoring and oversight by the provider as any other department of the provider, and is operated just as any other department of the provider with regard to supervision and accountability. The facility or organization director or individual responsible for daily operations at the entity—

(A) Maintains a reporting relationship with a manager at the main provider that has the same frequency, intensity, and level of accountability that exists in the relationship between the main provider and its existing departments; and

(B) Is accountable to the governing body of the main provider, in the same manner as any department head of the provider.

(iii) The following administrative functions of the facility or organization are integrated with those of the provider where the facility or organization is based: billing services, records, human resources, payroll, employee benefit package, salary structure, and purchasing services. Either the same employees or group of employees handle these administrative functions for the facility or organization and the main provider, or the administrative functions for both the facility or organization and the entity are—

(A) Contracted out under the same contract agreement; or

(B) Handled under different contract agreements, with the contract of the facility or organization being managed by the main provider.

(3) *Location.* The facility or organization is located within a 35-mile radius of the hospital or CAH that is the potential main provider, except when the requirements in paragraph (e)(3)(i), (e)(3)(ii), or (e)(3)(iii) of this section are met:

(i) The facility or organization is owned and operated by a hospital or CAH that has a disproportionate share adjustment (as determined under § 412.106 of this chapter) greater than 11.75 percent or is described in § 412.106(c)(2) of this chapter implementing section 1886(e)(5)(F)(i)(II) of the Act and is—

(A) Owned or operated by a unit of State or local government;

(B) A public or nonprofit corporation that is formally granted governmental powers by a unit of State or local government; or

(C) A private hospital that has a contract with a State or local government that includes the operation of clinics located off the main campus of the hospital to assure access in a well-defined service area to health care services for low-income individuals who are not entitled to benefits under Medicare (or medical assistance under a Medicaid State plan).

(ii) The facility or organization demonstrates a high level of integration with the main provider by showing that it meets all of the other provider-based criteria and demonstrates that it serves the same patient population as the main provider, by submitting records showing that, during the 12-month period immediately preceding the first day of the month in which the application for provider-based status is filed with CMS, and for each subsequent 12-month period—

(A) At least 75 percent of the patients served by the facility or organization reside in the same zip code areas as at least 75 percent of the patients served by the main provider;

(B) At least 75 percent of the patients served by the facility or organization who required the type of care furnished by the main provider received that care from that provider (for example, at least 75 percent of the patients of an RHC seeking provider-based status received inpatient hospital services from the hospital that is the main provider); or

(C) If the facility or organization is unable to meet the criteria in paragraph (e)(3)(ii)(A) or paragraph (e)(3)(ii)(B) of this section because it was not in operation during all of the 12-month period described in paragraph (e)(3)(ii) of this section, the facility or organization is located in a zip code area included among those that, during all of the 12-month period described in paragraph (e)(3)(ii) of this section, accounted for at least 75 percent of the patients served by the main provider.

(iv) A facility or organization may qualify for provider-based status under this section only if the facility or organization and the main provider are located in the same State or, when consistent with the laws of both States, in adjacent States.

(v) An RHC that is otherwise qualified as a provider-based entity of a hospital that is located in a rural area, as defined in § 412.62(f)(1)(iii) of this chapter, and has fewer than 50 beds, as determined under § 412.105(b) of this chapter, is not subject to the criteria in paragraphs (e)(3)(i) through (e)(3)(iii) of this section.

(f) *Provider-based status for joint ventures.* A facility or organization that is not located on the campus of the potential main provider cannot be considered provider-based if the facility or organization is owned by two or more providers engaged in a joint venture. For example, where a hospital has jointly purchased or jointly created a facility under joint venture arrangements with one or more other providers, and the facility is not located on the campus of the hospital or the campus of any other provider engaged in the joint venture arrangement, no party to the joint venture arrangement can claim the facility as provider-based.

(g) *Obligations of hospital outpatient departments and hospital-based entities.* To qualify for provider-based status in relation to a hospital, a facility or organization must comply with the following requirements:

(1) The following departments must comply with the antidumping rules of § 489.20(l), (m), (q), and (r) and § 489.24 of this chapter:

(i) Any facility or organization that is located on the main hospital campus and is treated by Medicare under this section as a department of the hospital; and

(ii) Any facility or organization that is located off the main hospital campus that is treated by Medicare under this section as a department of the hospital and is a dedicated emergency department, as defined in § 489.24(b) of this chapter.

(2) Physician services furnished in hospital outpatient departments or hospital-based entities (other than RHCs) must be billed with the correct site-of-service so that appropriate physician and practitioner payment amounts can be determined under the rules of part 414 of this chapter.

* * * * *

(7) When a Medicare beneficiary is treated in a hospital outpatient department of hospital-based entity (other than an RHC) that is not located on the main provider's campus, and the treatment is not required to be provided by the antidumping rules in § 489.24 of this chapter, the hospital must provide written notice to the beneficiary, before the delivery of services, of the amount of the beneficiary's potential financial liability (that is, that the beneficiary will incur a coinsurance liability for an outpatient visit to the hospital as well as for the physician service, and of the amount of that liability).

(i) The notice must be one that the beneficiary can read and understand.

(ii) If the exact type and extent of care needed is not known, the hospital may furnish a written notice to the patient that explains that the beneficiary will incur a coinsurance liability to the hospital that he or she would not incur if the facility were not provider-based.

(iii) The hospital may furnish an estimate based on typical or average charges for visits to the facility, while stating that the patient's actual liability will depend upon the actual services furnished by the hospital.

(iv) If the beneficiary is unconscious, under great duress, or for any other reason unable to read a written notice and understand and act on his or her own rights, the notice must be provided, before the delivery of services, to the beneficiary's authorized representative.

(v) In cases where a hospital outpatient department provides examination or treatment that is required to be provided by the antidumping rules of § 489.24 of this chapter, notice, as described in this paragraph (g)(7), must be given as soon as possible after the existence of an emergency has been ruled out or the emergency condition has been stabilized.

* * * * *

(h) *Management contracts.* A facility or organization that is not located on the campus of the potential main provider and otherwise meets the requirements of paragraphs (d) and (e) of this section, but is operated under management contracts, must also meet all of the following criteria:

(1) The main provider (or an organization that also employs the staff of the main provider and that is not the management company) employs the staff of the facility or organization who are directly involved in the delivery of patient care, except for management staff and staff who furnish patient care services of a type that would be paid for by Medicare under a fee schedule established by regulations at Part 414 of this chapter. "Leased" employees (that is, personnel who are actually employed by the management company but provide services for the provider under a staff leasing or similar agreement) are not considered to be employees of the provider for purposes of this paragraph.

(2) The administrative functions of the facility or organization are integrated with those of the main provider, as determined under criteria in paragraph (e)(2)(iii) of this section.

(3) The main provider has significant control over the operations of the facility or organization as determined under criteria in paragraph (e)(2)(ii) of this section.

(4) The management contract is held by the main provider itself, not by a parent organization that has control over both the main provider and the facility or organization.

(i) *Furnishing all services under arrangement.* A facility or organization may not qualify for provider-based status if all patient care services furnished at the facility or organization are furnished under arrangements.

(j) *Inappropriate treatment of a facility or organization as provider-based.* (1) *Determination and review.* If CMS learns that a provider has treated a facility or organization as provider-based and the provider did not request an advance determination of provider-based status from CMS under paragraph (b)(3) of this section and CMS determines that the facility or organization did not meet the requirements for provider-based status under paragraphs (d) through (i) of this section, as applicable (or, in any period before the effective date of these regulations, the provider-based requirements in effect under Medicare program regulations or instructions), CMS will—

(i) Issue notice to the provider in accordance with paragraph (j)(3) of this section, adjust the amount of future payments to the provider for services of the facility or organization in accordance with paragraph (j)(4) of this section, and continue payments to the provider for services of the facility or organization only in accordance with paragraph (j)(5) of this section; and

(ii) Except as otherwise provided in paragraphs (b)(2), (b)(5), or (j)(2) of this section, recover the difference between the amount of payments that actually was made and the amount of payments that CMS estimates should have been made, in the absence of compliance with the provider-based requirements, to that provider for services at the facility or organization for all cost reporting periods subject to reopening in accordance with §§ 405.1885 and 405.1889 of this chapter.

(2) *Exception for good faith effort.* CMS will not recover any payments for any period before the beginning of the hospital's first cost reporting period beginning on or after January 10, 2001, if, during all of that period—

(i) The requirements regarding licensure and public awareness in paragraphs (d)(1) and (d)(4) of this section were met;

(ii) All facility services were billed as if they had been furnished by a department of a provider, a remote location of a hospital, a satellite facility, or a provider-based entity of the main provider; and

(iii) All professional services of physicians and other practitioners were billed with the correct site-of-service indicator, as described in paragraph (g)(2) of this section.

(3) *Notice to provider.* CMS will issue written notice to the provider that payments for past cost reporting periods may be reviewed and recovered as described in paragraph (j)(1)(ii) of this section, and that future payments for services in or of the facility or organization will be adjusted as described in paragraph (j)(4) of this section.

(4) *Adjustment of payments.* CMS will adjust future payments to the provider or the facility or organization, or both, to approximate as closely as possible the amounts that would be paid for the same services furnished by a freestanding facility.

(5) *Continuation of payment.* (i) The notice of denial of provider-based status sent to the provider will ask the provider to notify CMS in writing, within 30 days of the date the notice is issued, of whether the provider intends to seek an advance determination of provider-based status for the facility or organization under paragraph (b)(3) of this section or whether the facility or organization (or, where applicable, the practitioners who staff the facility or organization) will be seeking to enroll and meet other requirements to bill for services in a freestanding facility.

(ii) If the provider indicates that it will not be seeking an advance determination for the facility or organization under paragraph (b) of this section or that the facility or organization or its practitioners will not be seeking to enroll, or if CMS does not receive a response within 30 days of the date the notice was issued, all payment under this paragraph (j)(5) will end as of the 30th day after the date of notice.

(iii) If the provider indicates that it will be seeking an advance determination for the facility or organization under paragraph (b) of this section or that the facility or organization or its practitioners will be seeking to meet enrollment and other requirements for billing for services in a freestanding facility, payment for services of the facility or organization will continue, at the adjusted amounts described in paragraph (j)(4) of this section, for as long as is required for all billing requirements to be met (but not longer than 6 months) if the provider or the facility or organization or its practitioners—

(A) Submits, as applicable, a complete request for an advance determination of provider-based status or a complete enrollment application and provide all other required information within 90 days after the date of notice; and

(B) Furnishes all other information needed by CMS to process the request for provider-based status or the enrollment application, as applicable,

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and verifies that other billing requirements are met.

(v) If the necessary applications or information are not provided, CMS will terminate all payment to the provider, facility, or organization as of the date CMS issues notice that necessary applications or information have not been submitted.

(k) *Temporary treatment as provider-based and correction of errors.* (1) If a provider submits a complete request for a provider-based determination for a facility or organization that has not previously been found by CMS to have been inappropriately treated as provider-based under paragraph (j) of this section, the provider may bill and be paid for services of the facility or organization as provider-based from the date of the application until the date that CMS determines that the facility or organization does not meet the provider-based rules. If CMS subsequently determines that the requirements for provider-based status are not met, CMS will recover the difference between the amount of payments that actually was made since the date the complete request for a provider-based determination was submitted and the amount of payments that CMS estimates should have been made in the absence of compliance with the provider-based requirements. For purposes of this paragraph (k), a complete request is one that includes all information needed to permit CMS to make an advance determination under paragraph (b)(3) of this section.

(2) If CMS determines that a facility or organization that had previously been determined to be provider-based under paragraph (b) of this section no longer qualifies for provider-based status, and the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did report to CMS as required under paragraph (c) of this section, treatment of the facility or organization as provider-based ceases with the date that CMS determines that the facility or organization no longer qualifies for provider-based status.

(3) If CMS determines that a facility or organization that had previously been determined to be provider-based under paragraph (b) of this section no longer qualifies for provider-based status, and if the failure to qualify for provider-based status resulted from a material change in the relationship between the provider and the facility or organization that the provider did not report to CMS, as required under paragraph (c) of this section, CMS will take the actions with respect to notice to the provider, adjustment of payments, and continuation of payment described in paragraphs (j)(3), (j)(4), and (j)(5) of this section, and will recover past payments to the provider to the extent described in paragraph (j)(1)(ii) of this section.

* * * * *

(m) *FQHCs and "look alikes".* * * *

(n) *Effective date of provider-based status.* Provider-based status for a facility or organization is effective on the earliest date on which a request for provider-based status, as described in paragraph (b) of this section, has been made and all of the requirements of this part have been met.

3. Section 413.70 is amended by revising paragraph (b)(3)(i) to read as follows:

§ 413.70 Payment for services of a CAH.

* * * * *

(b) *Payment for outpatient services furnished by CAH.*

* * * * *

(3) *Election to be paid reasonable costs for facility services plus fee schedule for professional services.* (i) A CAH may elect to be paid for outpatient services in any cost reporting period under the method described in paragraphs (b)(3)(ii) and (b)(3)(iii) of this section. This election must be made in writing, made on an annual basis, and delivered to the intermediary servicing the CAH by a date determined by that intermediary, which may be no less than 14 days and no more than 60 days before the start of each affected cost reporting period. An election of this payment method, once made for a cost reporting period, remains in effect for all of that period and applies to all services furnished to outpatients during that period.

* * * * *

4. Section 413.86 is amended by—

A. Adding a definition of "Affiliation agreement" in alphabetical order under paragraph (b).

B. Revising the last sentence of the introductory text of paragraph (e)(5)(i).

C. Revising paragraph (e)(5)(i)(B).

D. Adding a new paragraph (e)(5)(i)(C).

E. Redesignating paragraphs (g)(5)(iv), (g)(5)(v), and (g)(5)(vi) as paragraphs (g)(5)(v), (g)(5)(vi), and (g)(5)(vii), respectively.

F. Republishing the introductory text of paragraph (g)(5) and adding a new paragraph (g)(5)(iv).

G. Redesignating paragraphs (g)(7) through (g)(12) as paragraphs (g)(8) through (g)(13), respectively.

H. Adding a new paragraph (g)(7).

I. Making the following cross-reference changes:

i. In redesignated paragraph (g)(5)(vii), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

ii. In paragraph (g)(6), "paragraph (g)(12)" is removed and "paragraph (g)(13)" is added in its place.

iii. In redesignated paragraphs (g)(8)(iv) and (g)(8)(v), "paragraph (g)(7)" is removed and "paragraph (g)(8)" is added in its place.

iv. In redesignated paragraph (g)(9)(i), "paragraph (g)(8)" is removed and "paragraph (g)(9)" is added in its place.

v. In the introductory text of redesignated paragraph (g)(9)(iii), "paragraph (g)(8)(iii)(B)" is removed and "paragraph (g)(9)(iii)(B)" is added in its place; and "paragraph (g)(8)(iii)(A)" is removed and "paragraph (g)(9)(iii)(A)" is added in its place.

vi. In redesignated paragraph (g)(9)(iii)(A)(*2*), "paragraph (g)(8)(iii)(B)(*2*)" is removed and "paragraph (g)(9)(iii)(B)(*2*)" is added in its place.

vii. In the introductory text of redesignated paragraph (g)(12), "paragraph (g)(11)(i) through (g)(11)(vi)" is removed and "paragraph (g)(12)(i) through (g)(12)(vi)" is added in its place.

The additions and revisions read as follows:

§ 413.86 Direct graduate medical education payments.

* * * * *

(b) *Definitions.* * * *

Affiliation agreement means a written, signed, and dated agreement by responsible representatives of each respective hospital in an affiliated group, as defined in this section, that specifies—

(1) The term of the agreement (which, at a minimum is one year), beginning on July 1 of a year;

(2) Each participating hospital's direct and indirect FTE caps existing at the time of affiliation;

(3) The adjustment to each hospital's FTE caps in each year that the affiliation agreement is in effect, for both direct GME and IME, that reflects a positive adjustment to one hospital's direct and indirect FTE caps that is offset by a negative adjustment to the other hospital's (or hospitals') direct and indirect FTE caps of at least the same amount; and

(4) The names of the participating hospitals and their Medicare provider numbers.

* * * * *

(e) *Determining per resident amounts for the base period.* * * *

(5) *Exceptions*—(i) *Base period for certain hospitals.* * * * The per resident amount is based on the lower of the amount specified in paragraph (e)(5)(i)(A) or in paragraph (e)(5)(i)(B) of this section, subject to the provisions of paragraph (e)(5)(i)(C) of this section.

* * * * *

(B) Except as specified in paragraph (e)(5)(i)(C) of this section—

(*1*) For base periods that begin before October 1, 2002, the updated weighted mean value of per resident amounts of all hospitals located in the same geographic wage area, as that term is used in the prospective payment system under part 412 of this chapter.

(*2*) For base periods beginning on or after October 1, 2002, the weighted mean value of per resident amounts of all hospitals located in the same geographic wage area is calculated using all per resident amounts (including primary care and obstetrics and gynecology and nonprimary care) and FTE resident counts from the most recently settled cost reports of those teaching hospitals.

(C) If, under paragraph (e)(5)(i)(B)(*1*) or (e)(5)(i)(B)(*2*) of this section, there are fewer than three existing teaching hospitals with per resident amounts that can be used to calculate the weighted mean value per resident amount, for base periods beginning on or after October 1, 1997, the per resident amount equals the updated weighted mean value of per resident amounts of all hospitals located in the same census region as that term is used in § 412.62(f)(1)(i) of this chapter.

* * * * *

(g) *Determining the weighted number of FTE residents.* * * *

(5) For purposes of determining direct graduate medical education payment—

* * * * *

(iv) Hospitals that are part of the same affiliated group (as described under paragraph (b) of this section) may elect to apply the limit on an aggregate basis as described under paragraph (g)(7) of this section.

* * * * *

(7) A hospital may receive a temporary adjustment to its FTE cap, which is subject to the averaging rules under paragraph (g)(5)(iii) of this section, to reflect residents added or subtracted because the hospital is participating in an affiliated group (as defined under paragraph (b) of this section). Under this provision—

(i) Each hospital in the affiliated group must submit the affiliation agreement, as defined under paragraph (b) of this section, to the CMS fiscal intermediary servicing the hospital and send a copy to CMS's Central Office no later than July 1 of the residency program year during which the affiliation agreement will be in effect.

(ii) There must be a rotation of a resident(s) among the hospitals participating in the affiliated group during the term of the affiliation agreement such that more than one of the hospitals count the proportionate amount of the time spent by the resident(s) in their FTE resident counts. No resident may be counted in the aggregate as more than one FTE.

(iii) The net effect of the adjustments (positive or negative) on the affiliated hospitals' aggregate FTE cap for each affiliation agreement must not exceed zero.

(iv) If the affiliation agreement terminates for any reason, the FTE cap of each hospital in the affiliated group will revert to the individual hospital's pre-affiliation FTE cap that is determined under the provisions of paragraph (g)(4) of this section.

* * * * *

PART 482—CONDITIONS FOR PARTICIPATION FOR HOSPITALS

D. Part 482 is amended as follows:

1. The authority citation for part 482 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Social Security Act (42 U.S.C. 1320 and 1395hh).

2. Section 482.12 is amended by adding a new paragraph (f)(3), to read as follows:

§ 482.12 Condition of participation: Governing body.

* * * * *

(f) *Standard: Emergency services.*

* * *

(3) If emergency services are provided at the hospital but are not provided at one or more off-campus departments of the hospital, the governing body of the hospital must assure that the medical staff has written policies and procedures in effect with respect to the off-campus department(s) for appraisal of emergencies and referral when appropriate.

PART 485—CONDITIONS OF PARTICIPATION: SPECIALIZED PROVIDERS

E. Part 485 is amended as follows:

1. The authority citation for Part 485 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1396hh).

2. In § 485.645, the introductory text of paragraph (d) is republished and paragraph (d)(6) is revised, to read as follows.

§ 485.645 Special requirements for CAH providers of long-term care services ("swing-beds").

* * * * *

(d) *SNF services.* The CAH is substantially in compliance with following SNF requirements contained in subpart B of part 483 of this chapter.

* * * * *

(6) Comprehensive assessment, comprehensive care plan, and discharge planning (§ 483.20(b), (k), and (l) of this chapter, except that the CAH is not required to use the resident assessment instrument (RAI) specified by the State that is required under § 483.20(b), or to comply with the requirements for frequency, scope, and number of assessments prescribed in § 413.343(b) of this chapter).

* * * * *

PART 489—PROVIDER AGREEMENTS AND SUPPLIER APPROVAL

F. Part 489 is amended as follows:

1. The authority citation for part 489 continues to read as follows:

Authority: Secs. 1102 and 1871 of the Act (42 U.S.C. 1302 and 1395hh).

2. Section 489.24 is amended by—

A. Revising paragraph (a).

B. Republishing the introductory text of paragraph (b) and revising the definitions of "Comes to the emergency department" and "Hospital with an emergency department".

C. Adding definitions of "Dedicated emergency department", "Hospital property", and "Patient" in alphabetical order under paragraph (b).

D. Under the definition of "Emergency medical condition" under paragraph (b), redesignating paragraphs (i), (i)(A), (i)(B), (i)(C), (ii), (ii)(A), and (ii)(B) as paragraphs (1), (1)(i), (1)(ii), (1)(iii), (2), (2)(i), and (2)(ii), respectively.

E. Under the definition of "Participating hospital" under paragraph (b), redesignating paragraphs (i) and (ii) as paragraphs (1) and (2), respectively.

F. Under the definitions of "Stabilized" and "To stabilize" under paragraph (b), "paragraph (i)" is removed and "paragraph (1)" is added in its place; and "paragraph (ii)" is removed and "paragraph (2)" is added in its place.

G. Removing paragraph (i); and redesignating paragraph (c) through (h) as paragraphs (d) through (i), respectively.

H. Adding a new paragraph (c).

I. Revising newly redesignated paragraph (d).

J. Adding a new paragraph (j).

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K. Making the following cross-reference changes:

i. In redesignated paragraph (e)(1)(i), "paragraph (d)(2)" is removed and "paragraph (e)(2)" is added in its place.

ii. In redesignated paragraph (e)(1)(ii)(C), "paragraph (d)(1)(ii)(B)" is removed and "paragraph (e)(1)(ii)(B)" is added in its place.

iii. In redesignated paragraph (e)(2)(iii), "paragraph (d)(1)(ii)" is removed and "paragraph (e)(1)(ii)" is added in its place.

iv. In redesignated paragraph (e)(2)(iii), "paragraph (f)" is removed and "paragraph (g)" is added in its place.

v. In redesignated paragraph (e)(3), "paragraph (d)(1)(ii)(C)" is removed and "paragraph (e)(1)(ii)(C) is added in its place.

vi. In redesignated paragraph (g), "paragraph (a) through (e)" is removed and "paragraphs (a) through (f)" is added in its place.

vii. In redesignated paragraph (h)(1), "paragraph (g)(3)" is removed and "paragraph (h)(3)" is added in its place; and "paragraph (g)(2)(iv) and (v)" is removed and "paragraphs (h)(2)(iv) and (v)" is added in its place.

viii. In redesignated paragraph (h)(2) introductory text, "paragraph (g)(1)" is removed and "paragraph (h)(1)" is added in its place.

ix. In redesignated paragraph (h)(2)(iii)(B), "paragraph (g)(2)(iii)(A)" is removed and "paragraph (h)(2)(iii)(A)" is added in its place.

x. In redesignated paragraph (h)(2)(vi), "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

xi. In redesignated paragraph (h)(4), "paragraph (g)" is removed and "paragraph (h)" is added in its place; and "paragraph (g)(2)(v)" is removed and "paragraph (h)(2)(v)" is added in its place.

The additions and revisions read as follows:

§ 489.24 Special responsibilities of Medicare hospitals in emergency cases.

(a) *Application.* In the case of a hospital that has an emergency department, if an individual (whether or not eligible for Medicare benefits and regardless of ability to pay) "comes to the emergency department", as defined in paragraph (b) of this section, the hospital must—

(1) Provide an appropriate medical screening examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists. The examination must be conducted by an individual(s) determined qualified by hospital bylaws or rules and regulations and who meet the requirements of § 482.55 of this chapter concerning emergency services personnel and direction; and

(2) If an emergency medical condition is determined to exist, provide any necessary stabilizing treatment, as defined in paragraph (d) of this section, or an appropriate transfer as defined in paragraph (e) of this section.

(b) *Definitions.* As used in this subpart—

* * * * *

Comes to the emergency department means, with respect to an individual who is not a patient, the individual—

(1) Has presented at a hospital's dedicated emergency department, as defined in this section, and requests examination or treatment for a medical condition, or has such a request made on his or her behalf. In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs examination or treatment for a medical condition;

(2) Has presented on hospital property, as defined in this section, other than the dedicated emergency department, and requests examination or treatment for what may be an emergency medical condition, or has such a request made on his or her behalf (except for certain outpatients as specified in paragraph (d)(3) of this section). In the absence of such a request by or on behalf of the individual, a request on behalf of the individual will be considered to exist if a prudent layperson observer would believe, based on the individual's appearance or behavior, that the individual needs emergency examination or treatment;

(3) Is in an ambulance owned and operated by the hospital for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department, even if the ambulance is not on hospital grounds. This provision does not apply if the ambulance is operating under communitywide EMS protocols that direct it to transport the individual to a hospital other than the hospital that owns the ambulance; for example, to the nearest hospital. In this latter case, the individual is considered to have come to the emergency department of the hospital to which the individual is transported, at the time the individual is brought onto hospital property; or

(4) Is in a nonhospital-owned ambulance on hospital property for presentation for examination and treatment for a medical condition at a hospital's dedicated emergency department. An individual in a nonhospital-owned ambulance off hospital property is not considered to have come to the hospital's emergency department, even if a member of the ambulance staff contacts the hospital by telephone or telemetry communications and informs the hospital that they want to transport the individual to the hospital for examination and treatment. In the latter circumstance, the hospital may deny access if it is in "diversionary status," that is, it does not have the staff or facilities to accept any additional emergency patients. If, however, the ambulance staff disregards the hospital's instructions and transports the individual onto hospital property, the individual is considered to have come to the emergency department.

Dedicated emergency department means a specially equipped and staffed area of the hospital that is used a significant portion of the time for the initial evaluation and treatment of outpatients for emergency medical conditions, as defined in this section, and that is located—

(1) On the main hospital campus; or

(2) Off the main hospital campus and is treated by Medicare under § 413.65(b) of this chapter as a department of the hospital.

* * * * *

Hospital property means the entire main hospital campus as defined in § 413.65(b) of this chapter, including the parking lot, sidewalk, and driveway, but excluding other areas or structures that are located within 250 yards of the hospital's main building but are not part of the hospital, such as physician offices, rural health centers, skilled nursing facilities, or other entities that participate separately under Medicare, or restaurants, shops, or other nonmedical facilities.

Hospital with an emergency department means a hospital that offers services for emergency medical conditions (as defined in this paragraph (b)) within its capability to do so, including a hospital that offers these services at locations other than its main hospital campus.

* * * * *

Patient, for purposes of this section, means an individual who is either an outpatient as defined in § 410.2 of this chapter, or is receiving inpatient hospital services as defined in § 409.10(b) of this chapter.

* * * * *

(c) *Use of dedicated emergency department for nonemergency services.* If an individual comes to a hospital's dedicated emergency department and a request is made on his or her behalf for examination or treatment for a medical condition, but the nature of the request makes it clear that the medical condition is not of an emergency nature, the hospital is required only to perform such screening as would be appropriate for any individual presenting in that manner, to determine that the individual does not have an emergency medical condition.

(d) *Necessary stabilizing treatment for emergency medical conditions.*—(1) *General.* If any individual (whether or not eligible for Medicare benefits) comes to a hospital and the hospital determines that the individual has an emergency medical condition, the hospital must provide either—

(i) Within the capabilities of the staff and facilities available at the hospital, for further medical examination and treatment as required to stabilize the medical condition; or

(ii) For transfer of the individual to another medical facility in accordance with paragraph (e) of this section.

(2) *Application to inpatients—admitted emergency patients.*

(i) When an individual has been screened under paragraph (a) of this section and found to have an emergency medical condition, and the individual has not been stabilized as defined in paragraph (b) of this section, the provisions of this section would apply, even if the hospital admits the patient as an inpatient. Admitting an individual whose emergency medical condition has not been stabilized does not relieve the hospital of further responsibility to the individual under this section.

(ii) If a hospital admits an individual with an unstable emergency medical condition for stabilizing treatment, as an inpatient, stabilizes that individual's emergency medical condition, and this period of stability is documented by relevant clinical data in the individual's medical record, the hospital has satisfied its special responsibilities under this section with respect to that individual. If the patient is stable for a transfer of the type usually undertaken with respect to patients having the same medical conditions, the hospital's special responsibilities under this section are satisfied, even if no transfer occurs and the individual remains at the hospital as an inpatient for followup care. If, after stabilization, the individual who was admitted as an inpatient again has an apparent decline of his or her medical condition, either as a result of the injury or illness that created the emergency for which he or she initially came to the dedicated emergency department or as a result of another injury or illness, the hospital must comply with the conditions of participation for hospitals under part 482 of this chapter but has no further responsibility under this section with respect to the individual.

(iii) A hospital has no responsibility under this section with respect to an inpatient who was admitted for elective (nonemergency) diagnosis or treatment. If such an inpatient has an abrupt deterioration of his or her medical condition after admission, the hospital must comply with the conditions of participation for hospitals under part 482 of this chapter and is not required to comply with the special responsibilities of this section.

(3) *Refusal to consent to treatment.* A hospital meets the requirements of paragraph (d)(1)(i) of this section with respect to an individual if the hospital offers the individual the further medical examination and treatment described in that paragraph and informs the individual (or a person acting on the individual's behalf) of the risks and benefits to the individual of the examination and treatment, but the individual (or a person acting on the individual's behalf) refuses to consent to the examination and treatment. The medical record must contain a description of the examination, treatment, or both if applicable, that was refused by or on behalf of the individual. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of the person acting on his or her behalf). The written document should indicate that the person has been informed of the risks and benefits of the examination or treatment, or both.

(4) *Delay in examination or treatment.*

(i) A participating hospital may not delay providing an appropriate medical screening examination required under paragraph (a) of this section or further medical examination and treatment required under paragraphs (d)(1) and (d)(2) of this section in order to inquire about the individual's method of payment or insurance status.

(ii) A participating hospital may not seek, or direct a patient to seek, authorization from the individual's insurance company for screening or stabilization services to an individual until after the hospital has provided the appropriate medical screening examination required under paragraph (a) of this section, and initiated any further medical examination and treatment that may be required to stabilize the emergency medical condition under paragraphs (d)(1) and (d)(2) of this section.

(iii) An emergency physician is not precluded from contacting the patient's physician at any time to seek advice regarding the patient's medical history and needs that may be relevant to the medical treatment and screening of the patient, as long as this consultation does not inappropriately delay services required under paragraph (a) or paragraphs (d)(1) and (d)(2) of this section.

(5) *Refusal to consent to transfer.* A hospital meets the requirements of paragraph (d)(1)(ii) of this section with respect to an individual if the hospital offers to transfer the individual to another medical facility in accordance with paragraph (e) of this section and informs the individual (or a person acting on his or her behalf) of the risks and benefits to the individual of the transfer, but the individual (or a person acting on the individual's behalf) refuses to consent to the transfer. The hospital must take all reasonable steps to secure the individual's written informed refusal (or that of a person acting on his or her behalf). The written document must indicate the person has been informed of the risks and benefits of the transfer and state the reasons for the individual's refusal. The medical record must contain a description of the proposed transfer that was refused by or on behalf of the individual.

(6) *Hospital responsibility for communicotion with Medicare+Choice organizations after stabilization of an emergency medical condition.* When an enrollee of a Medicare+Choice organization who is treated for an emergency medical condition is stabilized and needs further hospital care, the hospital must promptly contact the Medicare+Choice organization to obtain preapproval of the further hospital care, consistent with the provisions of § 422.113 of this chapter.

* * * * *

(j) *Availability of on-call physicians.* Each hospital must maintain an on-call list of physicians on its medical staff in a manner that best meets the needs of the hospital's patients. Physicians, including specialists and subspecialists, are not required to be on call at all times. The hospital must have written policies and procedures in place to respond to situations in which a particular specialty is not available or the on-call physician cannot respond because of circumstances beyond the physician's control.

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Dated: April 24, 2002.

Thomas A. Scully,

Administrator, Centers for Medicare & Medicaid Services.

Dated: April 26, 2002.

Tommy G. Thompson,

Secretary.

[**Editorial Note:** The following Addendum and appendixes will not appear in the Code of Federal Regulations.]

Addendum—Proposed Schedule of Standardized Amounts Effective with Discharges Occurring On or After October 1, 2002 and Update Factors and Rate-of-Increase Percentages Effective With Cost Reporting Periods Beginning On or After October 1, 2002

I. Summary and Background

In this Addendum, we are setting forth the proposed amounts and factors for determining prospective payment rates for Medicare hospital inpatient operating costs and Medicare hospital inpatient capital-related costs. We are also setting forth proposed rate-of-increase percentages for updating the target amounts for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system.

For discharges occurring on or after October 1, 2002, except for SCHs, MDHs, and hospitals located in Puerto Rico, each hospital's payment per discharge under the acute care hospital inpatient prospective payment system will be based on 100 percent of the Federal national rate.

SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal national rate; the updated hospital-specific rate based on FY 1982 costs per discharge; the updated hospital-specific rate based on FY 1987 costs per discharge; or 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 50 percent of the Federal DRG payment rate. Section 213 of Public Law 106–554 amended section 1886(b)(3) of the Act to allow all SCHs to rebase their hospital-specific rate based on their FY 1996 costs per discharge.

Under section 1886(d)(5)(G) of the Act, MDHs are paid based on the Federal national rate or, if higher, the Federal national rate plus 50 percent of the difference between the Federal national rate and the updated hospital-specific rate based on FY 1982 or FY 1987 costs per discharge, whichever is higher.

For hospitals in Puerto Rico, the payment per discharge is based on the sum of 50 percent of a Puerto Rico rate and 50 percent of a Federal national rate. (*See* section II.D.3. of this Addendum for a complete description.)

As discussed below in section II. of this Addendum, we are proposing to make changes in the determination of the prospective payment rates for Medicare inpatient operating costs for FY 2003. The changes, to be applied prospectively effective with discharges occurring on or after October 1, 2002, would affect the calculation of the Federal rates. In section III. of this Addendum, we discuss our proposed changes for determining the prospective payment rates for Medicare inpatient capital-related costs for FY 2003. Section IV. of this Addendum sets forth our proposed changes for determining the rate-of-increase limits for hospitals excluded from the prospective payment system for FY 2003. The tables to which we refer in the preamble to this final rule are presented at the end of this Addendum in section V.

II. Proposed Changes to Prospective Payment Rates for Hospital Inpatient Operating Costs for FY 2003

The basic methodology for determining prospective payment rates for hospital inpatient operating costs is set forth at § 412.63. The basic methodology for determining the prospective payment rates for hospital inpatient operating costs for hospitals located in Puerto Rico is set forth at §§ 412.210 and 412.212. Below, we discuss the factors used for determining the prospective payment rates.

In summary, the proposed standardized amounts set forth in Tables 1A and 1C of section V. of this Addendum reflect—

- Updates of 2.75 percent for all areas (that is, the market basket percentage increase of 3.3 percent minus 0.55 percentage points);
- An adjustment to ensure the proposed DRG recalibration and wage index update and changes are budget neutral, as provided for under sections 1886(d)(4)(C)(iii) and (d)(3)(E) of the Act, by applying new budget neutrality adjustment factors to the large urban and other standardized amounts;
- An adjustment to ensure the effects of geographic reclassification are budget neutral, as provided for in section 1886(d)(8)(D) of the Act, by removing the FY 2002 budget neutrality factor and applying a revised factor;
- An adjustment to apply the new outlier offset by removing the FY 2002 outlier offsets and applying a new offset; and
- An adjustment in the Puerto Rico standardized amounts to reflect the application of a Puerto Rico-specific wage index.

A. Calculation of Adjusted Standardized Amounts

1. Standardization of Base-Year Costs or Target Amounts

Section 1886(d)(2)(A) of the Act required the establishment of base-year cost data containing allowable operating costs per discharge of inpatient hospital services for each hospital. The preamble to the September 1, 1983 interim final rule (48 FR 39763) contained a detailed explanation of how base-year cost data were established in the initial development of standardized amounts for the acute care hospital inpatient prospective payment system.

Section 1886(d)(9)(B)(i) of the Act required us to determine the Medicare target amounts for each hospital located in Puerto Rico for its cost reporting period beginning in FY 1987. The September 1, 1987 final rule (52 FR 33043, 33066) contains a detailed explanation of how the target amounts were determined and how they are used in computing the Puerto Rico rates.

The standardized amounts are based on per discharge averages of adjusted hospital costs from a base period or, for Puerto Rico, adjusted target amounts from a base period, updated and otherwise adjusted in accordance with the provisions of section 1886(d) of the Act. Sections 1886(d)(2)(B) and (d)(2)(C) of the Act require us to update base-year per discharge costs for FY 1984 and then standardize the cost data in order to remove the effects of certain sources of cost variations among hospitals. These effects include case-mix, differences in area wage levels, cost-of-living adjustments for Alaska and Hawaii, indirect medical education costs, and costs to hospitals serving a disproportionate share of low-income patients.

Under sections 1886(d)(2)(H) and (d)(3)(E) of the Act, in making payments under the acute care hospital inpatient prospective payment system, the Secretary estimates from time to time the proportion of costs that are wages and wage-related costs. Since October 1, 1997, when the market basket was last revised, we have considered 71.1 percent of costs to be labor-related for purposes of the acute care hospital inpatient prospective payment system. As discussed in section IV. of the preamble to this proposed rule, we are proposing to revise the labor share of the standardized amount (the proportion adjusted by the wage index) to be 72.5 percent. The average labor share in Puerto Rico is 71.3 percent. We are proposing to revise the discharge-weighted national standardized amount for Puerto Rico to reflect the proportion of discharges in large urban and other areas from the FY 2001 MedPAR file.

2. Computing Large Urban and Other Area Averages

Sections 1886(d)(2)(D) and (d)(3) of the Act require the Secretary to compute two average standardized amounts for discharges occurring in a fiscal year: one for hospitals located in large urban areas and one for hospitals located in other areas. In addition, under sections 1886(d)(9)(B)(iii) and (d)(9)(C)(i) of the Act, the average standardized amount per discharge must be determined for hospitals located in large urban and other areas in Puerto Rico. Hospitals in Puerto Rico are paid a blend of 50 percent of the applicable Puerto Rico standardized amount and 50 percent of a national standardized payment amount.

Section 1886(d)(2)(D) of the Act defines "urban area" as those areas within a Metropolitan Statistical Area (MSA). A "large urban area" is defined as an urban area with a population of more than 1 million. In addition, section 4009(i) of Public Law 100–203 provides that a New England County Metropolitan Area (NECMA) with a population of more than 970,000 is classified as a large urban area. As required by section 1886(d)(2)(D) of the Act, population size is determined by the Secretary based on the latest population data published by the Bureau of the Census. Urban areas that do not meet the definition of a "large urban area" are referred to as "other urban areas." Areas

that are not included in MSAs are considered "rural areas" under section 1886(d)(2)(D) of the Act. Payment for discharges from hospitals located in large urban areas will be based on the large urban standardized amount. Payment for discharges from hospitals located in other urban and rural areas will be based on the other standardized amount.

Based on the latest available population estimates published by the Bureau of the Census, 63 areas meet the criteria to be defined as large urban areas for FY 2003. These areas are identified in Table 4A.

3. Updating the Average Standardized Amounts

Under section 1886(d)(3)(A) of the Act, we update the average standardized amounts each year. In accordance with section 1886(d)(3)(A)(iv) of the Act, we are proposing to update the large urban areas' and the other areas' average standardized amounts for FY 2003 using the applicable percentage increases specified in section 1886(b)(3)(B)(i) of the Act. Section 1886(b)(3)(B)(i)(XVIII) of the Act specifies that the update factor for the standardized amounts for FY 2003 is equal to the market basket percentage increase minus 0.55 percentage points for hospitals in all areas.

The percentage change in the market basket reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient care. The most recent forecast of the hospital market basket increase for FY 2003 is 3.3 percent. Thus, for FY 2003, the update to the average standardized amounts equals 2.75 percent for hospitals in all areas.

As in the past, we are adjusting the FY 2002 standardized amounts to remove the effects of the FY 2002 geographic reclassifications and outlier payments before applying the FY 2003 updates. That is, we are increasing the standardized amounts to restore the reductions that were made for the effects of geographic reclassification and outliers. We then apply the new offsets to the standardized amounts for outliers and geographic reclassifications for FY 2003.

Although the update factors for FY 2003 are set by law, we are required by section 1886(e)(3) of the Act to report to the Congress our initial recommendation of update factors for FY 2003 for both prospective payment hospitals and hospitals excluded from the prospective payment system. For general information purposes, we have included the report to Congress as Appendix B to this proposed rule. Our proposed recommendation on the update factors (which is required by sections 1886(e)(4)(A) and (e)(5)(A) of the Act) is set forth as Appendix C to this proposed rule.

4. Other Adjustments to the Average Standardized Amounts

a. Recalibration of DRG Weights and Updated Wage Index—Budget Neutrality Adjustment

Section 1886(d)(4)(C)(iii) of the Act specifies that, beginning in FY 1991, the annual DRG reclassification and recalibration of the relative weights must be made in a manner that ensures that aggregate payments to hospitals are not affected. As discussed in section II. of the preamble, we normalized the recalibrated DRG weights by an adjustment factor, so that the average case weight after recalibration is equal to the average case weight prior to recalibration. However, equating the average case weight after recalibration to the average case weight before recalibration does not necessarily achieve budget neutrality with respect to aggregate payments to hospitals because payments to hospitals are affected by factors other than average case weight. Therefore, as we have done in past years, we are proposing to make a budget neutrality adjustment to ensure that the requirement of section 1886(d)(4)(C)(iii) of the Act is met.

Section 1886(d)(3)(E) of the Act requires us to update the hospital wage index on an annual basis beginning October 1, 1993. This provision also requires us to make any updates or adjustments to the wage index in a manner that ensures that aggregate payments to hospitals are not affected by the change in the wage index.

We note, however, that section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required by section 4410(b) of Public Law 105–33 to be budget neutral.

To comply with the requirement of section 1886(d)(4)(C)(iii) of the Act that DRG reclassification and recalibration of the relative weights be budget neutral, and the requirement in section 1886(d)(3)(E) of the Act that the updated wage index be budget neutral, we used FY 2001 discharge data to simulate payments and compared aggregate payments using the FY 2002 relative weights and wage index to aggregate payments using the proposed FY 2003 relative weights and wage index. The same methodology was used for the FY 2002 budget neutrality adjustment. Based on this comparison, we computed a proposed budget neutrality adjustment factor equal to 1.001026. We also adjust the Puerto Rico-specific standardized amounts for the effect of DRG reclassification and recalibration. We computed a budget neutrality adjustment factor for Puerto Rico-specific standardized amounts equal to 1.002689. These budget neutrality adjustment factors are applied to the standardized amounts without removing the effects of the FY 2002 budget neutrality adjustments. We do not remove the prior budget neutrality adjustment because estimated aggregate payments after the changes in the DRG relative weights and wage index should equal estimated aggregate payments prior to the changes. If we removed the prior year adjustment, we would not satisfy this condition.

In addition, we are proposing to apply these same adjustment factors to the hospital-specific rates that are effective for cost reporting periods beginning on or after October 1, 2002. (See the discussion in the September 4, 1990 final rule (55 FR 36073).)

b. Reclassified Hospitals—Budget Neutrality Adjustment

Section 1886(d)(8)(B) of the Act provides that, effective with discharges occurring on or after October 1, 1988, certain rural hospitals are deemed urban. In addition, section 1886(d)(10) of the Act provides for the reclassification of hospitals based on determinations by the Medicare Geographic Classification Review Board (MGCRB). Under section 1886(d)(10) of the Act, a hospital may be reclassified for purposes of the standardized amount or the wage index, or both.

Under section 1886(d)(8)(D) of the Act, the Secretary is required to adjust the standardized amounts so as to ensure that aggregate payments under the acute care hospital inpatient prospective payment system after implementation of the provisions of sections 1886(d)(8)(B) and (C) and 1886(d)(10) of the Act are equal to the aggregate prospective payments that would have been made absent these provisions. To calculate this budget neutrality factor, we used FY 2001 discharge data to simulate payments, and compared total prospective payments (including IME and DSH payments) prior to any reclassifications to total prospective payments after reclassifications. Based on these simulations, we are applying a proposed adjustment factor of 0.990536 to ensure that the effects of reclassification are budget neutral.

The adjustment factor is applied to the standardized amounts after removing the effects of the FY 2002 budget neutrality adjustment factor. We note that the proposed FY 2003 adjustment reflects wage index and standardized amount reclassifications approved by the MGCRB or the Administrator as of February 28, 2002, and the effects of section 304 of Public Law 106–554 to extend wage index reclassifications for 3 years. The effects of any additional reclassification changes that occur as a result of appeals and reviews of the MGCRB decisions for FY 2003 or from a hospital's request for the withdrawal of a reclassification request for FY 2003 will be reflected in the final budget neutrality adjustment required under section 1886(d)(8)(D) of the Act and published in the final rule for FY 2003.

c. Outliers

Section 1886(d)(5)(A) of the Act provides for payments in addition to the basic prospective payments for "outlier" cases, cases involving extraordinarily high costs (cost outliers). To qualify for outlier payments, a case must have costs above a threshold amount. To determine whether the costs of a case exceed the threshold, a hospital's cost-to-charge ratio is applied to the total covered charges for the case to convert the charges to costs. Payments for eligible cases are then made based on a marginal cost factor, which is a percentage of the costs above the threshold.

Under section 1886(d)(5)(A)(iv) of the Act, outlier payments for any year must be projected to be not less than 5 percent nor more than 6 percent of total operating DRG payments plus outlier payments. Section 1886(d)(3)(B) of the Act requires the Secretary to reduce both the large urban and other area national standardized amounts by the same factor to account for the estimated proportion of total DRG payments made to outlier cases. Similarly, section

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1886(d)(9)(B)(iv) of the Act requires the Secretary to reduce the large urban and other standardized amounts applicable to hospitals in Puerto Rico to account for the estimated proportion of total DRG payments made to outlier cases.

i. FY 2003 outlier thresholds. For FY 2002, the threshold was equal to the prospective payment rate for the DRG plus any IME and DSH payments plus $21,025. The marginal cost factor for cost outliers (the percent of costs paid after costs for the case exceed the threshold) was 80 percent.

For FY 2003, we are proposing to establish a fixed loss cost outlier threshold equal to the prospective payment rate for the DRG plus any IME and DSH payments, and any add-on payments for new technology, plus $33,450. This single threshold would be applicable to qualify for both operating and capital outlier payments. We are proposing to maintain the marginal cost factor for cost outliers at 80 percent.

To calculate the proposed FY 2003 outlier thresholds, we simulated payments by applying proposed FY 2003 rates and policies to the December 2001 update of the FY 2001 MedPAR file and the December 2001 update of the Provider-Specific File. Therefore, it is necessary to inflate the charges on the MedPAR claims by 2 years.

Previously, inflation factors have been calculated by measuring the percent change in costs using the two most recent available cost report files. For example, the FY 2002 threshold was determined using the rate of cost increase measured using costs from hospitals' FY 1998 and FY 1999 cost reports. However, at the time of this proposed rule, the FY 2000 cost reports are not available to produce an updated cost inflation factor due to processing delays associated with implementing the hospital outpatient prospective payment system.

Rather than use the rate of cost increase from hospitals' FY 1998 and FY 1999 cost reports to project the rate of increase from FY 2001 to FY 2003, we are proposing to use a 3-year moving average of the rate of change in prior years to estimate the annual rates of increase from FY 2001 to FY 2003. The calculation is shown in the table below.

For example, the rate of change in cost per case from 1998 to 1999 was 1.0242 percent. This rate of change is then subtracted by the rate of change from 1997 to 1998 (1.0237) to calculate a difference in change of 0.005. A 3-year average of the annual rates of change was then computed based on the difference in the percent changes from the 3 most recent prior years. The difference in change for 1997 to 1998 is then averaged with the differences for 1996 to 1997, and for 1995 to 1996, to calculate a 3-year average of 0.0180. To project percent changes in costs for FY 2000 through FY 2003, the average of the differences in the percent changes for the 3 most recent years (0.0180) was added to the percent change in cost per case for the previous year (1.0242) to estimate the percent change in costs between fiscal years. This proposed methodology resulted in an estimated change of 1.066 (6.6 percent increase) for FY 2001 to FY 2002 and 1.079 (7.9 percent increase) for FY 2002 to FY 2003.

Cost reports begin in FY	Cost/case	Rate of change in cost per case	Difference in change	3-year moving average of differences in change
1995	5818.50	.....	.....	.....
1996	5644.52	0.9701	.....	.....
1997	5666.03	1.0038	0.0337	.....
1998	5800.34	1.0237	0.0199	.....
1999	5940.85	1.0242	0.0005	.....
2000	.....	1.0423	0.0180	0.0180
2001	.....	1.0551	0.0128	0.0128
2002	.....	1.0655	0.0105	0.0105
2003	.....	1.0793	0.0138	0.0138

Based on this proposed methodology, we are proposing a 2-year cost inflation factor of 15.0 percent to inflate FY 2001 charges to FY 2003, determined by multiplying the annual projected inflation factors for FYs 2002 and 2003 of 1.0655 and 1.0793.

Using FY 2001 cases now available, our analysis indicates that this 3-year moving average methodology would have resulted in FY 2002 outlier payments very close to 5.1 percent of total operating DRG payments and outlier payments (the current projection of FY 2002 outlier payments is 6.8 percent of total DRG and outlier payments—see discussion below). We intend to update our analysis of FY 2002 outlier payments using actual FY 2002 claims available through March 2002 prior to publishing the final rule by August 1.

We want to emphasize that we are making this proposal due to the unavailability of the FY 2000 cost reports. If the proposed methodology is ultimately adopted in the final rule for FY 2003, this would not necessarily mean that we would apply the same methodology in future fiscal years when updated cost report information becomes available.

ii. Other changes concerning outliers. In accordance with section 1886(d)(5)(A)(iv) of the Act, we calculated outlier thresholds so that outlier payments are projected to equal 5.1 percent of total operating DRG payments plus outlier payments. In accordance with section 1886(d)(3)(B), we reduced the proposed FY 2003 standardized amounts by the same percentage to account for the projected proportion of payments paid to outliers.

As stated in the September 1, 1993 final rule (58 FR 46348), we establish outlier thresholds that are applicable to both hospital inpatient operating costs and hospital inpatient capital-related costs. When we modeled the combined operating and capital outlier payments, we found that using a common set of thresholds resulted in a higher percentage of outlier payments for capital-related costs than for operating costs. We project that the proposed thresholds for FY 2003 would result in outlier payments equal to 5.1 percent of operating DRG payments and 5.4 percent of capital payments based on the Federal rate.

The proposed outlier adjustment factors to be applied to the standardized amounts for FY 2003 are as follows:

	Operating standardized amounts	Capital Federal rate
National	0.949004	0.945957
Puerto Rico	0.982910	0.980994

We apply the outlier adjustment factors after removing the effects of the FY 2002 outlier adjustment factors on the standardized amounts.

To determine whether a case qualifies for outlier payments, we apply hospital-specific cost-to-charge ratios to the total covered charges for the case. Operating and capital costs for the case are calculated separately by applying separate operating and capital cost-to-charge ratios, then these costs are combined to compare with the fixed-loss outlier threshold.

For those hospitals for which the fiscal intermediary computes operating cost-to-charge ratios lower than 0.200 or greater than 1.262, or capital cost-to-charge ratios lower than 0.012 or greater than 0.167, statewide average ratios would be used to calculate costs to determine whether a hospital qualifies for outlier payments.[1] Table 8A in section V. of this Addendum contains the proposed statewide average operating cost-to-charge ratios for urban hospitals and for rural hospitals for which the fiscal intermediary is unable to compute a hospital-specific cost-to-charge ratio within the above range. These statewide average ratios would replace the ratios published in the August 1, 2001 final rule (66 FR 40083). Table 8B contains comparable statewide average capital cost-to-charge ratios. We note that the cost-to-charge ratios in Tables 8A and 8B would be used during FY 2003 when hospital-specific cost-to-charge ratios based on the latest settled cost report are either not available or are outside the three standard deviations range.

[1] This range represents 3.0 standard deviations (plus or minus) from the mean of the log distribution of cost-to-charge ratios for all hospitals.

iii. FY 2001 and FY 2002 outlier payments. In the August 1, 2001 final rule (66 FR 39942), we stated that, based on available data, we estimated that actual FY 2001 outlier payments would be approximately 6.2 percent of actual total DRG payments. This was computed based on simulations using the March 2001 update of the Provider-Specific File and the March 2001 update of the FY 2000 MedPAR file (discharge data for FY 2000 bills). That is, the estimate of actual outlier payments did not reflect actual FY 2001 bills but instead reflected the application of FY 2001 rates and policies to available FY 2000 bills.

Our current estimate, using available FY 2001 bills, is that actual outlier payments for FY 2001 were approximately 7.6 percent of actual total DRG payments. Thus, the data indicate that, for FY 2001, the percentage of actual outlier payments relative to actual total payments is higher than we projected before FY 2001 (and thus exceeds the percentage by which we reduced the standardized amounts for FY 2001). Nevertheless, consistent with the policy and statutory interpretation we have maintained since the inception of the acute care hospital inpatient prospective payment system, we do not plan to recoup money and make retroactive adjustments to outlier payments for FY 2001. We note that the MedPAR file for FY 2001 discharges continues to be updated, and we will update our estimate of actual FY 2001 outlier payments as a percentage of total payments in the final rule.

We currently estimate that actual outlier payments for FY 2002 will be approximately 6.8 percent of actual total DRG payments, 1.7 percentage points higher than the 5.1 percent we projected in setting outlier policies for FY 2002. This estimate is based on simulations using the December 2001 update of the Provider-Specific File and the December 2001 update of the FY 2001 MedPAR file (discharge data for FY 2001 bills). We used these data to calculate an estimate of the actual outlier percentage for FY 2002 by applying FY 2002 rates and policies to available FY 2001 bills.

5. FY 2003 Standardized Amounts

The adjusted standardized amounts are divided into labor and nonlabor portions. Table 1A contains the two national standardized amounts that we are proposing to be applicable to all hospitals, except hospitals in Puerto Rico. As described in section II.A.1. of this Addendum, we are proposing to revise the labor share of the national standardized amount from 71.1 percent to 72.5 percent.

Under section 1886(d)(9)(A)(ii) of the Act, the Federal portion of the Puerto Rico payment rate is based on the discharge-weighted average of the national large urban standardized amount and the national other standardized amount (as set forth in Table 1A). The labor and nonlabor portions of the national average standardized amounts for Puerto Rico hospitals are set forth in Table 1C. This table also includes the Puerto Rico standardized amounts. The labor share applied to the Puerto Rico standardized amount is 71.3 percent.

B. Adjustments for Area Wage Levels and Cost of Living

Tables 1A and 1C, as set forth in this Addendum, contain the labor-related and nonlabor-related shares that are proposed to be used to calculate the prospective payment rates for hospitals located in the 50 States, the District of Columbia, and Puerto Rico. This section addresses two types of adjustments to the standardized amounts that are made in determining the proposed prospective payment rates as described in this Addendum.

1. Adjustment for Area Wage Levels

Sections 1886(d)(3)(E) and 1886(d)(9)(C)(iv) of the Act require that we make an adjustment to the labor-related portion of the national and Puerto Rico prospective payment rates, respectively, to account for area differences in hospital wage levels. This adjustment is made by multiplying the labor-related portion of the adjusted standardized amounts by the appropriate wage index for the area in which the hospital is located. In section III. of this preamble, we discuss the data and methodology for the proposed FY 2003 wage index. The proposed wage index is set forth in Tables 4A, 4B, 4C, and 4F of this Addendum. In section IV. of this preamble we discuss our proposed revised estimate of the labor-related portion of the standardized amounts.

2. Adjustment for Cost-of-Living in Alaska and Hawaii

Section 1886(d)(5)(H) of the Act authorizes an adjustment to take into account the unique circumstances of hospitals in Alaska and Hawaii. Higher labor-related costs for these two States are taken into account in the adjustment for area wages described above. For FY 2003, we are proposing to adjust the payments for hospitals in Alaska and Hawaii by multiplying the nonlabor portion of the standardized amounts by the appropriate adjustment factor contained in the table below. If the Office of Personnel Management releases revised cost-of-living adjustment factors before July 1, 2002, we will publish them in the final rule and use them in determining FY 2003 payments.

TABLE OF COST-OF-LIVING ADJUSTMENT FACTORS, ALASKA AND HAWAII HOSPITALS

Alaska—All areas	1.25
Hawaii:	
County of Honolulu	1.25
County of Hawaii	1.165
County of Kauai	1.2325
County of Maui	1.2375
County of Kalawao	1.2375

(The above factors are based on data obtained from the U.S. Office of Personnel Management.)

C. DRG Relative Weights

As discussed in section II. of the preamble, we have developed a classification system for all hospital discharges, assigning them into DRGs, and have developed relative weights for each DRG that reflect the resource utilization of cases in each DRG relative to Medicare cases in other DRGs. Table 5 of section V. of this Addendum contains the relative weights that we are proposing to use for discharges occurring in FY 2003. These factors have been recalibrated as explained in section II. of the preamble.

D. Calculation of Prospective Payment Rates for FY 2003

General Formula for Calculation of Prospective Payment Rates for FY 2003

The operating prospective payment rate for all hospitals paid under the acute-care, short-term inpatient prospective payment system located outside of Puerto Rico, except SCHs and MDHs, equals the Federal rate based on the amounts in Table 1A.

For FY 2003, the prospective payment rate for SCHs equals whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 cost per discharge, the updated hospital-specific rate based on FY 1987 cost per discharge, or, if qualified, 75 percent of the updated hospital-specific rate based on FY 1996 cost per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate, or 25 percent of the Federal rate. Section 1886(b)(3) of the Act, as amended, allows all SCHs to rebase their hospital-specific rate based on their FY 1996 cost per discharge.

The prospective payment rate for MDHs equals 100 percent of the Federal rate, or, if the greater of the updated FY 1982 hospital-specific rate or the updated FY 1987 hospital-specific rate is higher than the Federal rate, 100 percent of the Federal rate plus 50 percent of the difference between the applicable hospital-specific rate and the Federal rate.

The proposed prospective payment rate for Puerto Rico equals 50 percent of the Puerto Rico rate plus 50 percent of the national rate from Table 1C.

1. Federal Rate

For discharges occurring on or after October 1, 2002 and before October 1, 2003, except for SCHs, MDHs, and hospitals in Puerto Rico, payment under the acute-care inpatient prospective payment system is based exclusively on the Federal national rate.

The payment amount is determined as follows:

Step 1—Select the appropriate national standardized amount considering the location of the hospital (large urban or other) (see Table 1A in section V. of this Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the applicable wage index for the geographic area in which the hospital is located or the area to which the hospital is reclassified (see Tables 4A, 4B, and 4C of section V. of this Addendum).

Step 3—For hospitals in Alaska and Hawaii, multiply the nonlabor-related

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portion of the standardized amount by the appropriate cost-of-living adjustment factor.

Step 4—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount (adjusted, if appropriate, under Step 3).

Step 5—Multiply the final amount from Step 4 by the relative weight corresponding to the appropriate DRG (see Table 5 of section V. of this Addendum).

2. Hospital-Specific Rate (Applicable Only to SCHs and MDHs)

a. Calculation of Hospital-Specific Rate

Section 1886(b)(3)(C) of the Act provides that SCHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate, the updated hospital-specific rate based on FY 1982 costs per discharge, the updated hospital-specific rate based on FY 1987 costs per discharge, or, for FY 2003, 75 percent of the updated hospital-specific rate based on FY 1996 costs per discharge, plus the greater of 25 percent of the updated FY 1982 or FY 1987 hospital-specific rate or 25 percent of the Federal DRG payment rate.

Section 1886(d)(5)(G) of the Act provides that MDHs are paid based on whichever of the following rates yields the greatest aggregate payment: the Federal rate or the Federal rate plus 50 percent of the difference between the Federal rate and the greater of the updated hospital-specific rate based on FY 1982 and FY 1987 cost per discharge.

Hospital-specific rates have been determined for each of these hospitals based on either the FY 1982 cost per discharge, the FY 1987 cost per discharge or, for SCHs, the FY 1996 cost per discharge. For a more detailed discussion of the calculation of the hospital-specific rates, we refer the reader to the September 1, 1983 interim final rule (48 FR 39772); the April 20, 1990 final rule with comment (55 FR 15150); the September 4, 1990 final rule (55 FR 35994); and the August 1, 2000 final rule (65 FR 47082). In addition, for both SCHs and MDHs, the hospital-specific rate is adjusted by the budget neutrality adjustment factor (that is, by 1.001026) as discussed in section II.A.4.a. of this Addendum. The resulting rate is used in determining the payment rate an SCH or MDH would be paid for its discharges beginning on or after October 1, 2002.

b. Updating the FY 1982, FY 1987, and FY 1996 Hospital-Specific Rates for FY 2003

We are proposing to increase the hospital-specific rates by 2.75 percent (the hospital market basket percentage increase minus 0.55 percentage points) for SCHs and MDHs for FY 2003. Section 1886(b)(3)(C)(iv) of the Act provides that the update factor applicable to the hospital-specific rates for SCHs equal the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for SCHs in FY 2003, is the market basket rate of increase minus 0.55 percentage points. Section 1886(b)(3)(D) of the Act provides that the update factor applicable to the hospital-specific rates for MDHs equals the update factor provided under section 1886(b)(3)(B)(iv) of the Act, which, for FY 2003, is the market basket rate of increase minus 0.55 percentage points.

3. General Formula for Calculation of Prospective Payment Rates for Hospitals Located in Puerto Rico Beginning On or After October 1, 2002 and Before October 1, 2003

a. Puerto Rico Rate

The Puerto Rico prospective payment rate is determined as follows:

Step 1—Select the appropriate adjusted average standardized amount considering the large urban or other designation of the hospital (see Table 1C of section V. of the Addendum).

Step 2—Multiply the labor-related portion of the standardized amount by the appropriate Puerto Rico-specific wage index (see Table 4F of section VI. of the Addendum).

Step 3—Add the amount from Step 2 and the nonlabor-related portion of the standardized amount.

Step 4—Multiply the result in Step 3 by 50 percent.

Step 5—Multiply the amount from Step 4 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

b. National Rate

The national prospective payment rate is determined as follows:

Step 1—Multiply the labor-related portion of the national average standardized amount (see Table 1C of section V. of the Addendum) by the appropriate national wage index (see Tables 4A and 4B of section VI. of the Addendum).

Step 2—Add the amount from Step 1 and the nonlabor-related portion of the national average standardized amount.

Step 3—Multiply the result in Step 2 by 50 percent.

Step 4—Multiply the amount from Step 3 by the appropriate DRG relative weight (see Table 5 of section V. of the Addendum).

The sum of the Puerto Rico rate and the national rate computed above equals the prospective payment for a given discharge for a hospital located in Puerto Rico.

III. Proposed Changes to Payment Rates for Acute Care Hospital Inpatient Capital-Related Costs for FY 2003

The prospective payment system for acute care hospital inpatient capital-related costs was implemented for cost reporting periods beginning on or after October 1, 1991. Effective with that cost reporting period and during a 10-year transition period extending through FY 2001, acute care hospital inpatient capital-related costs were paid on the basis of an increasing proportion of the capital prospective payment system Federal rate and a decreasing proportion of a hospital's historical costs for capital.

The basic methodology for determining Federal capital prospective rates is set forth in regulations at §§ 412.308 through 412.352. Below we discuss the factors that we are proposing to use to determine the capital Federal rate for FY 2003, which will be effective for discharges occurring on or after October 1, 2002. The 10-year transition period ended with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002). Therefore, for cost reporting periods beginning in FY 2002, all hospitals (except "new" hospitals under § 412.324(b) and under proposed § 412.304(c)(2)) are paid based on 100 percent of the capital Federal rate.

For FY 1992, we computed the standard Federal payment rate for capital-related costs under the prospective payment system by updating the FY 1989 Medicare inpatient capital cost per case by an actuarial estimate of the increase in Medicare inpatient capital costs per case. Each year after FY 1992, we update the standard Federal rate, as provided in § 412.308(c)(1), to account for capital input price increases and other factors. Also, § 412.308(c)(2) provides that the Federal rate is adjusted annually by a factor equal to the estimated proportion of outlier payments under the Federal rate to total capital payments under the Federal rate. In addition, § 412.308(c)(3) requires that the Federal rate be reduced by an adjustment factor equal to the estimated proportion of payments for (regular and special) exceptions under § 412.348. Furthermore, § 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that the annual DRG reclassification and the recalibration of DRG weights and changes in the geographic adjustment factor are budget neutral. For FYs 1992 through 1995, § 412.352 required that the Federal rate also be adjusted by a budget neutrality factor so that aggregate payments for inpatient hospital capital costs were projected to equal 90 percent of the payments that would have been made for capital-related costs on a reasonable cost basis during the fiscal year. That provision expired in FY 1996. Section 412.308(b)(2) describes the 7.4 percent reduction to the rate that was made in FY 1994, and § 412.308(b)(3) describes the 0.28 percent reduction to the rate made in FY 1996 as a result of the revised policy of paying for transfers. In the FY 1998 final rule with comment period (62 FR 45966), we implemented section 4402 of Public Law 105–33, which requires that, for discharges occurring on or after October 1, 1997, and before October 1, 2002, the unadjusted standard Federal rate is reduced by 17.78 percent. As we explained in section VI.D. of the preamble of this proposed rule, a small part of that reduction will be restored effective October 1, 2002.

To determine the appropriate budget neutrality adjustment factor and the regular exceptions payment adjustment during the 10-year transition period, we developed a dynamic model of Medicare inpatient capital-related costs, that is, a model that projected changes in Medicare inpatient capital-related costs over time. With the expiration of the budget neutrality provision, the capital cost model was only used to estimate the regular exceptions payment adjustment and other factors. As we explained in the August 1, 2001 final rule (66 FR 39911), beginning in FY 2003 an adjustment for regular exceptions is no longer necessary because regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991, and before October 1, 2001 (see § 412.348(b)). Since payments are no longer being made under the regular exceptions policy in FY 2003, we are no longer using the capital cost model. The capital cost model and its application during the transition

period are described in Appendix B of the August 1, 2001 final rule (66 FR 40099).

In accordance with section 1886(d)(9)(A) of the Act, under the prospective payment system for acute care hospital inpatient operating costs, hospitals located in Puerto Rico are paid for operating costs under a special payment formula. Prior to FY 1998, hospitals in Puerto Rico were paid a blended rate that consisted of 75 percent of the applicable standardized amount specific to Puerto Rico hospitals and 25 percent of the applicable national average standardized amount. However, effective October 1, 1997, as a result of section 4406 of Public Law 105–33, operating payments to hospitals in Puerto Rico are based on a blend of 50 percent of the applicable standardized amount specific to Puerto Rico hospitals and 50 percent of the applicable national average standardized amount. In conjunction with this change to the operating blend percentage, effective with discharges on or after October 1, 1997, we compute capital payments to hospitals in Puerto Rico based on a blend of 50 percent of the Puerto Rico rate and 50 percent of the Federal rate.

Section 412.374 provides for the use of this blended payment system for payments to Puerto Rico hospitals under the prospective payment system for acute care hospital inpatient capital-related costs. Accordingly, for capital-related costs, we compute a separate payment rate specific to Puerto Rico hospitals using the same methodology used to compute the national Federal rate for capital.

A. Determination of Federal Hospital Inpatient Capital-Related Prospective Payment Rate Update

In the August 1, 2001 final rule (66 FR 39947), we established a Federal rate of $390.74 for FY 2002. As a result of the changes we are proposing to the factors used to establish the Federal rate in this addendum, the proposed FY 2003 Federal rate is $408.90.

In the discussion that follows, we explain the factors that were used to determine the proposed FY 2003 Federal rate. In particular, we explain why the FY 2003 Federal rate has increased 4.6 percent compared to the FY 2002 Federal rate (published in the August 1, 2001 final rule (66 FR 39947)). We also estimate aggregate capital payments will increase by 5.72 percent during this same period. This increase is primarily due to the increase in the number of hospital admissions and the increase in case-mix. This increase in capital payments is slightly more than last year (4.27 percent) mostly due to the restoration of the 2.1 percent reduction to the capital Federal rate (see section VI.D. of the preamble of this proposed rule).

Total payments to hospitals under the prospective payment system are relatively unaffected by changes in the capital prospective payments. Since capital payments constitute about 10 percent of hospital payments, a 1 percent change in the capital Federal rate yields only about 0.1 percent change in actual payments to hospitals. Aggregate payments under the capital prospective payment system are estimated to increase in FY 2003 compared to FY 2002.

1. Standard Federal Rate Update

a. Description of the Update Framework

Under § 412.308(c)(1), the standard Federal rate is updated on the basis of an analytical framework that takes into account changes in a capital input price index (CIPI) and other factors. The update framework consists of a CIPI and several policy adjustment factors. Specifically, we have adjusted the projected CIPI rate of increase as appropriate each year for case-mix index-related changes, for intensity, and for errors in previous CIPI forecasts. The proposed update factor for FY 2003 under that framework is 1.1 percent. This update factor is based on a projected 0.7 percent increase in the CIPI, a 1.0 percent adjustment for intensity, a 0.0 percent adjustment for case-mix, a −0.3 percent adjustment for the FY 2001 DRG reclassification and recalibration, and a forecast error correction of −0.3 percent. We explain the basis for the FY 2003 CIPI projection in section III.C. of this Addendum. Below we describe the policy adjustments that have been applied.

The case-mix index is the measure of the average DRG weight for cases paid under the acute care hospital inpatient prospective payment system. Because the DRG weight determines the prospective payment for each case, any percentage increase in the case-mix index corresponds to an equal percentage increase in hospital payments.

The case-mix index can change for any of several reasons:

- The average resource use of Medicare patients changes ("real" case-mix change);
- Changes in hospital coding of patient records result in higher weight DRG assignments ("coding effects"); and
- The annual DRG reclassification and recalibration changes may not be budget neutral ("reclassification effect").

We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs but do not reflect higher resource requirements. In the update framework for the prospective payment system for operating costs, we adjust the update upwards to allow for real case-mix change, but remove the effects of coding changes on the case-mix index. We also remove the effect on total payments of prior changes to the DRG classifications and relative weights, in order to retain budget neutrality for all case-mix index-related changes other than patient severity. (For example, we adjusted for the effects of the FY 2001 DRG reclassification and recalibration as part of our FY 2003 update recommendation.) We have adopted this case-mix index adjustment in the capital update framework as well.

For FY 2003, we are projecting a 1.0 percent total increase in the case-mix index. We estimate that real case-mix increase will equal 1.0 percent in FY 2003. Therefore, the net adjustment for case-mix change in FY 2003 is 0.0 percentage points.

We estimate that FY 2001 DRG reclassification and recalibration will result in a 0.3 percent change in the case-mix when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the DRGs. Therefore, we are making a −0.3 percent adjustment for DRG reclassification and recalibration in the update recommendation for FY 2003.

The capital update framework contains an adjustment for forecast error. The input price index forecast is based on historical trends and relationships ascertainable at the time the update factor is established for the upcoming year. In any given year, there may be unanticipated price fluctuations that may result in differences between the actual increase in prices and the forecast used in calculating the update factors. In setting a prospective payment rate under the framework, we make an adjustment for forecast error only if our estimate of the change in the capital input price index for any year is off by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of the forecast error. A forecast error of −0.3 percentage points was calculated for the FY 2001 update. That is, current historical data indicate that the forecasted FY 2001 CIPI used in calculating the FY 2001 update factor (0.9 percent) overstated the actual realized price increases (0.6 percent) by 0.3 percentage points. This over-prediction was due to prices from municipal bond yields declining faster than originally expected. Therefore, we are making a −0.3 percent adjustment for forecast error in the update for FY 2003.

Under the capital prospective payment system framework, we also make an adjustment for changes in intensity. We calculate this adjustment using the same methodology and data as in the framework for the operating prospective payment system. The intensity factor for the operating update framework reflects how hospital services are utilized to produce the final product, that is, the discharge. This component accounts for changes in the use of quality-enhancing services, changes in within-DRG severity, and expected modification of practice patterns to remove cost-ineffective services.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. The use of total charges in the calculation of the proposed intensity factor makes it a total intensity factor, that is, charges for capital services are already built into the calculation of the factor. Therefore, we have incorporated the intensity adjustment from the operating update framework into the capital update framework. Without reliable estimates of the proportions of the overall annual intensity increases that are due, respectively, to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume, as in the revised operating update framework, that one-half of the annual increase is due to each of these factors. The capital update framework thus provides an add-on to the input price index rate of increase of one-half of the estimated annual

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increase in intensity to allow for within-DRG severity increases and the adoption of quality-enhancing technology.

For FY 2003, we have developed a Medicare-specific intensity measure based on a 5-year average, using FY 1997 through 2001 data. In determining case-mix constant intensity, we found that observed case-mix increase was 0.3 percent in FY 1997, −0.4 percent in FY 1998, −0.3 percent in FY 1999, −0.7 in FY 2000, and −0.3 percent in FY 2001. Past studies of case-mix change by the RAND Corporation ("Has DRG Creep Crept Up? Decomposing the Case Mix Index Change Between 1987 and 1988" by G. M. Carter, J. P. Newhouse, and D. A. Relles, R–4098–HCFA/ProPAC (1991)) suggest that real case-mix change was not dependent on total change, but was usually a fairly steady 1.0 to 1.4 percent per year. We use 1.4 percent as the upper bound because the RAND study did not take into account that hospitals may have induced doctors to document medical records more completely in order to improve payment. Following that study, we consider up to 1.4 percent of observed case-mix change as real for FY 1997 through FY 2001. Since we did not find an increase in case-mix outside of the range of 1.0 to 1.4 percent, we believe that all of the observed case-mix increase for FYs 1997 through 2001 is real. Therefore, there was no need to employ the upper bound of 1.0 and 1.4 supported by the RAND study as we have done in the past since we did not find an increase in case-mix that was in excess of our estimate of real case-mix increase.

We calculate case-mix constant intensity as the change in total charges per admission, adjusted for price level changes (the CPI for hospital and related services), and changes in real case-mix. We estimate that case-mix constant intensity increased by an average of 1.0 percent during FYs 1997 through 2001, for a cumulative increase of 5.2 percent, given estimates of real case-mix of 0.3 percent for FY 1997, −0.4 percent for FY 1998, −0.3 percent for FY 1998, −0.7 percent for FY 2000, and −0.3 percent for FY 2001. Since we estimate that intensity has increased during that period, we are recommending a 1.0 percent intensity adjustment for FY 2003.

Above we described the basis of the components used to develop the proposed 1.1 percent capital update factor for FY 2003 as shown in Table 1 below.

TABLE 1.—CMS'S PROPOSED FY 2003 UPDATE FACTOR TO THE CAPITAL FEDERAL RATE—

Capital Input Price Index	0.7
Intensity:	1.0
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	−1.0
Real Across DRG Change	1.0
Subtotal	0.0
Effect of FY 2001 Reclassification and Recalibration	−0.3
Forecast Error Correction	−0.3
Total Proposed Update	1.1

b. Comparison of CMS and MedPAC Update Recommendations

In the past, MedPAC has included an update recommendation for capital prospective payment system payments in a Report to Congress. In its March 2001 report, MedPAC presented a combined operating and capital update for hospital inpatient prospective payment systems for FY 2002. Currently, section 1886(b)(3)(B)(i)(XVIII) of the Act sets forth the FY 2003 percentage increase in prospective payment system operating cost standardized amounts. The prospective payment system capital update is set at the discretion of the Secretary under the framework outlined in § 412.308(c)(1). In its March 2002 Report to Congress, MedPAC did not make an update recommendation for capital prospective payment system payments. MedPAC states that, with the two updates (operating and capital) remaining separate, it focused on the operating update since it involves more money (92 percent of hospital's Medicare costs) and it commands the most attention in Congress (page 65).

2. Outlier Payment Adjustment Factor

Section 412.312(c) establishes a unified outlier methodology for inpatient operating and inpatient capital-related costs. A single set of thresholds is used to identify outlier cases for both inpatient operating and inpatient capital-related payments. Section 412.308(c)(2) provides that the standard Federal rate for inpatient capital-related costs be reduced by an adjustment factor equal to the estimated proportion of capital-related outlier payments to total inpatient capital-related prospective payment system payments. The outlier thresholds are set so that operating outlier payments are projected to be 5.1 percent of total operating DRG payments.

In the August 1, 2001 final rule, we estimated that outlier payments for capital in FY 2002 would equal 5.76 percent of inpatient capital-related payments based on the Federal rate (66 FR 39948). Accordingly, we applied an outlier adjustment factor of 0.9424 to the Federal rate. Based on the thresholds as set forth in section II.A.4.c. of this Addendum, we estimate that outlier payments for capital will equal 5.40 percent of inpatient capital-related payments based on the Federal rate in FY 2003. Therefore, we are proposing an outlier adjustment factor of 0.9460 to the Federal rate. Thus, the projected percentage of capital outlier payments to total capital standard payments for FY 2003 is lower than the percentage for FY 2002.

The outlier reduction factors are not built permanently into the rates; that is, they are not applied cumulatively in determining the Federal rate. Therefore, the net proposed change in the outlier adjustment to the Federal rate for FY 2003 is 1.0038 (0.9460/0.9424). The outlier adjustment increases the proposed FY 2003 Federal rate by 0.38 percent compared with the FY 2002 outlier adjustment.

3. Budget Neutrality Adjustment Factor for Changes in DRG Classifications and Weights and the Geographic Adjustment Factor

Section 412.308(c)(4)(ii) requires that the Federal rate be adjusted so that aggregate payments for the fiscal year based on the Federal rate after any changes resulting from the annual DRG reclassification and recalibration and changes in the geographic adjustment factor (GAF) are projected to equal aggregate payments that would have been made on the basis of the Federal rate without such changes.

Since we implemented a separate geographic adjustment factor for Puerto Rico, we apply separate budget neutrality adjustments for the national geographic adjustment factor and the Puerto Rico geographic adjustment factor. We apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. Separate adjustments were unnecessary for FY 1998 and earlier since the geographic adjustment factor for Puerto Rico was implemented in FY 1998.

In the past, we used the actuarial capital cost model (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to estimate the aggregate payments that would have been made on the basis of the Federal rate with and without changes in the DRG classifications and weights and in the GAF to compute the adjustment required to maintain budget neutrality for changes in DRG weights and in the GAF. During the transition period, the capital cost model was also used to estimate the regular exceptions payment adjustment factor. As we explain below in section III.A.4. of this Addendum, beginning in FY 2003 an adjustment for regular exceptions is no longer necessary. Therefore, we are no longer using the capital cost model. Instead, we are using historical data based on hospitals' actual cost experiences to determine the exceptions adjustment factor for special exception payments.

To determine the proposed factors for FY 2003, we compared (separately for the national rate and the Puerto Rico rate) estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the FY 2003 relative weights and the FY 2003 GAF. For FY 2002, the budget neutrality adjustment factors were 0.9927 for the national rate and 0.9916 for the Puerto Rico rate (see the August 1, 2001 final rule (66 FR 40101)). In making the comparison, we set the regular and special exceptions reduction factors to 1.00.

To achieve budget neutrality for the changes in the national GAF, we propose to apply an incremental budget neutrality adjustment of 0.9990 for FY 2003 to the previous cumulative FY 2002 adjustment of (0.9927), yielding a proposed cumulative adjustment of 0.9917 through FY 2003. For the Puerto Rico GAF, we propose to apply an incremental budget neutrality adjustment of 1.0080 for FY 2003 to the previous cumulative FY 2002 adjustment (0.9916), yielding a proposed cumulative adjustment of 0.9996 through FY 2003.

We then compared estimated aggregate Federal rate payments based on the FY 2002 DRG relative weights and the FY 2002 GAF to estimated aggregate Federal rate payments based on the proposed FY 2003 DRG relative weights and the FY 2003 GAF. The proposed incremental adjustment for DRG classifications and changes in relative weights is 1.0034 nationally and for Puerto Rico. The proposed cumulative adjustments for DRG classifications and changes in relative weights and for changes in the GAF through FY 2003 are 0.9951 nationally and 1.0030 for Puerto Rico. The following table summarizes the adjustment factors for each fiscal year:

BUDGET NEUTRALITY ADJUSTMENT FOR DRG RECLASSIFICATIONS AND RECALIBRATION AND THE GEOGRAPHIC ADJUSTMENT FACTORS

Fiscal year	National				Puerto Rico			
	Incremental adjustment			Cumulative	Incremental adjustment			
	Geographic adjustment factor	DRG reclassifications and recalibration	Combined		Geographic adjustment factor	DRG reclassifications and recalibration	Combined	Cumulative
1992				1.00000				
1993			0.99800	0.99800				
1994			1.00531	1.00330				
1995			0.99980	1.00310				
1996			0.99940	1.00250				
1997			0.99873	1.00123				
1998			0.99892	1.00015				1.00000
1999	0.99944	1.00335	1.00279	1.00294	0.99898	1.00335	1.00233	1.00233
2000	0.99857	0.99991	0.99848	1.00142	0.99910	0.99991	0.99901	1.00134
2001[1]	0.99846	1.00019	0.99865	0.99933	1.00365	1.00009	1.00374	1.00508
2001[2]	[3]0.99771	[3]1.00009	[3]0.99780	0.99922	[3]1.00365	[3]1.00009	[3]1.00374	1.00508
2002	[4]0.99666	[4]0.99668	[4]0.99335	0.99268	[4]0.98991	[4]0.99668	[4]0.99662	0.99164
2003	[5]0.99902	[5]1.00342	[5]1.00244	[5]0.99510	[5]1.00804	[5]1.00342	[5]1.01149	[5]1.00303

[1] Factors effective for the first half of FY 2001 (October 2000 through March 2001).
[2] Factors effective for the second half of FY 2001 (April 2001 through September 2001).
[3] Incremental factors are applied to FY 2000 cumulative factors.
[4] Incremental factors are applied to the cumulative factors for the first half of FY 2001.
[5] Proposed factors for FY 2003.

The methodology used to determine the proposed recalibration and geographic (DRG/GAF) budget neutrality adjustment factor for FY 2003 is similar to that used in establishing budget neutrality adjustments under the prospective payment system for operating costs. One difference is that, under the operating prospective payment system, the budget neutrality adjustments for the effect of geographic reclassifications are determined separately from the effects of other changes in the hospital wage index and the DRG relative weights. Under the capital prospective payment system, there is a single DRG/GAF budget neutrality adjustment factor (the national rate and the Puerto Rico rate are determined separately) for changes in the GAF (including geographic reclassification) and the DRG relative weights. In addition, there is no adjustment for the effects that geographic reclassification has on the other payment parameters, such as the payments for serving low-income patients, indirect medical education payments, or the large urban add-on payments.

For FY 2002, we calculated a GAF/DRG budget neutrality factor of 0.9934. For FY 2003, we are proposing a GAF/DRG budget neutrality factor of 1.0024. The GAF/DRG budget neutrality factors are built permanently into the rates; that is, they are applied cumulatively in determining the Federal rate. This follows from the requirement that estimated aggregate payments each year be no more or less than they would have been in the absence of the annual DRG reclassification and recalibration and changes in the GAF. The proposed incremental change in the adjustment from FY 2002 to FY 2003 is 1.0024. The proposed cumulative change in the rate due to this adjustment is 0.9951 (the product of the incremental factors for FY 1993, FY 1994, FY 1995, FY 1996, FY 1997, FY 1998, FY 1999, FY 2000, FY 2001, FY 2002, and the proposed incremental factor for FY 2003: 0.9980 × 1.0053 × 0.9998 × 0.9994 × 0.9987 × 0.9989 × 1.0028 × 0.9985 × 0.9979 × 0.9934 × 1.0024 = 0.9951).

This proposed factor accounts for DRG reclassifications and recalibration and for changes in the GAF. It also incorporates the effects on the GAF of FY 2003 geographic reclassification decisions made by the MGCRB compared to FY 2002 decisions. However, it does not account for changes in payments due to changes in the DSH and IME adjustment factors or in the large urban add-on.

4. Exceptions Payment Adjustment Factor

Section 412.308(c)(3) requires that the standard capital Federal rate be reduced by an adjustment factor equal to the estimated proportion of additional payments for both regular exceptions and special exceptions under § 412.348 relative to total capital prospective payment system payments. In estimating the proportion of regular exceptions payments to total capital prospective payment system payments during the transition period, we used the actuarial capital cost model originally developed for determining budget neutrality (described in Appendix B of the August 1, 2001 final rule (66 FR 40099)) to determine the exception adjustment factor, which was applied to both the Federal and hospital-specific rates.

An adjustment for regular exceptions is no longer necessary in determining the proposed FY 2003 capital Federal rate because, in accordance with § 412.348(b), regular exception payments were only made for cost reporting periods beginning on or after October 1, 1991 and before October 1, 2001. Accordingly, as we explained in the August 1, 2001 final rule (66 FR 39949), in FY 2003 and later, no payments will be made under the regular exceptions provision. However, in accordance with § 412.308(c), we still need to compute a budget neutrality adjustment for special exception payments under § 412.348(g). We describe our methodology for determining the special exceptions adjustment used in establishing the FY 2003 proposed capital Federal rate below.

Under the special exceptions provision specified at § 412.348(g)(1), eligible hospitals include SCHs, urban hospitals with at least 100 beds that have a disproportionate share percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals with a combined Medicare and Medicaid inpatient utilization of at least 70 percent. An eligible hospital may receive special exception payments if it meets (1) a project need requirement as described at § 412.348(g)(2), which, in the case of certain urban hospitals, includes an excess capacity test as described at § 412.348(g)(4); (2) an age of assets test as described at § 412.348(g)(3); and (3) a project size requirement as described at § 412.348(g)(5).

As we explained in the August 1, 2001 final rule (66 FR 39912 through 39914), in order to determine the estimated proportion of special exceptions payments to total capital payments, we attempted to identify the universe of eligible hospitals that may potentially qualify for special exception payments. First, we identified hospitals that

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met the eligibility requirements at § 412.348(g)(1). Then we determined each hospital's average fixed asset age in the earliest available cost report starting in FY 1992 and later. For each of those hospitals, we calculated the average fixed asset age by dividing the accumulated depreciation by the current year's depreciation. In accordance with § 412.348(g)(3), a hospital must have an average age of buildings and fixed assets above the 75th percentile of all hospitals in the first year of the capital prospective payment system. In the September 1, 1994 final rule (59 FR 45385), we stated that, based on the June 1994 update of the cost report files in HCRIS, the 75th percentile for buildings and fixed assets for FY 1992 was 16.4 years. However, we noted that we would make a final determination of that value on the basis of more complete cost report information at a later date. In the August 29, 1997 final rule (62 FR 46012), based on the December 1996 update of HCRIS and the removal of outliers, we finalized the 75th percentile for buildings and fixed assets for FY 1992 as 15.4 years. Thus, we eliminated any hospitals from the potential universe of hospitals that may qualify for special exception payments if its average age of fixed assets did not exceed 15.4 years.

For the hospitals remaining in the potential universe, we estimated project-size by using the fixed capital acquisitions shown on Worksheet A7 from the following HCRIS cost reports updated through December 2001.

PPS year	Cost reports periods beginning in * * *
IX	FY 1992
X	FY 1993
XI	FY 1994
XII	FY 1995
XIII	FY 1996
XIV	FY 1997
XV	FY 1998
XVI	FY 1999

Because the project phase-in may overlap 2 cost reporting years, we added together the fixed acquisitions from sequential pairs of cost reports to determine project size. Under § 412.348(g)(5), the hospital's project cost must be at least $200 million or 100 percent of its operating cost during the first 12-month cost reporting period beginning on or after October 1, 1991. We calculated the operating costs from the earliest available cost report starting in FY 1992 and later by subtracting inpatient capital costs from inpatient costs (for all payers). We did not subtract the direct medical education costs as those costs are not available on every update of the HCRIS minimum data set. If the hospital met the project size requirement, we assumed that it also met the project need requirements at § 412.348(g)(2) and the excess capacity test for urban hospitals at § 412.348(g)(4).

Because we estimate that so few hospitals will qualify for special exceptions, projecting costs, payments, and margins would result in high statistical variance. Consequently, we decided to model the effects of special exceptions using historical data based on hospitals' actual cost experiences. If we determined that a hospital may qualify for special exceptions, we modeled special exceptions payments from the project start date through the last available cost report (FY 1999). For purposes of modeling we used the cost and payment data on the cost reports from HCRIS assuming that special exceptions would begin at the start of the qualifying project. In other words, when modeling costs and payment data, we ignored any regular exception payments that these hospitals may otherwise have received as if there had not been regular exceptions during the transition period. In projecting an eligible hospital's special exception payment, we applied the 70-percent minimum payment level, the cumulative comparison of current year capital prospective payment system payments and costs, and the cumulative operating margin offset (excluding 75 percent of operating DSH payments).

Our modeling of special exception payments for FY 2003 produced the following results:

Cost report	Number of hospitals eligible for special exceptions	Special exceptions as a fraction of capital payments to all hospitals
PPS IX		
PPS X		
PPS XI	2	
PPS XII	6	0.0002
PPS XIII	8	0.0001
PPS XIV	16	0.0003
PPS XV	20	0.0011
PPS XVI	28	0.0019

We note that hospitals still have two more cost reporting periods (PPS XVII and PPS XVIII) to complete their projects in order to be eligible for special exceptions, and therefore, we estimate that about 30 additional hospitals could qualify for special exceptions. Thus, we project that special exception payments as a fraction of capital payments to all hospitals could be approximately 0.0040.

Because special exceptions are budget neutral, we propose to offset the proposed Federal capital rate by 0.40 percent for special exceptions for FY 2003. Therefore, the proposed exceptions adjustment factor for special exception payments would equal 0.9960 (1 − 0.0040) to account for special exception payments in FY 2003. We will revise this projection of the special exception adjustment factor in the final rule based on the latest available data.

For FY 2002, we estimated that total (regular and special) exceptions payments would equal 0.71 percent of aggregate payments based on the Federal rate. Therefore, we applied an exceptions reduction factor of 0.9929 (1 − 0.0071) in determining the Federal rate. As we stated above, we estimate that exceptions payments for FY 2003 will equal 0.40 percent of aggregate payments based on the Federal rate. Therefore, we are proposing an exceptions payment reduction factor of 0.9960 (1 − 0.0040) to the Federal rate for FY 2003. The proposed exceptions reduction factor for FY 2003 is 0.31 percent higher than the factor for FY 2002 published in the August 1, 2001 final rule. This increase is primarily due to the expiration of the regular exceptions provision and the narrowly defined nature of the special exceptions policy.

The exceptions reduction factors are not built permanently into the rates; that is, the factors are not applied cumulatively in determining the Federal rate. Therefore, the proposed net change in the exceptions adjustment to the FY 2003 Federal rate is 0.9960/0.9929, or 1.0031.

5. Special Adjustment To Restore the 2.1 Percent Reduction to the Standard Federal Capital Prospective Payment System Payment Rate

As we explained in section VI.D. of the preamble of this proposed rule, section 1886(g)(1)(A) of the Act, as amended by section 4402 of Public Law 105–33, requires the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent for discharges on or after October 1, 1997, and through September 30, 2002. Therefore, under the statute the additional 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002. Accordingly, we are proposing to revise § 412.308(b) to restore the 2.1 percent reduction to the unadjusted standard Federal capital prospective payment system payment rate for discharges occurring on or after October 1, 2002 to the level that it would have been without the reduction.

As we state in section VI.D. of the preamble of this proposed rule and in the August 29, 1997 final rule (62 FR 46012), we applied a factor of 0.8222 in FY 1998 to account for both the reduction equal to the FY 1995 budget neutrality factor (0.1568) and the 2.1 percent reduction (0.021) provided for under section 4402 of Public Law 105–33. In order to determine the adjustment factor needed to restore the 2.1 percent reduction, we would divide the amount of the adjustment without the 2.1 percent reduction (1 − 0.1568 = 0.8432) by the amount of the adjustment with the 2.1 percent reduction (0.8222). Therefore, we are proposing to apply a factor of 1.02554 (0.8432/0.8222) to the unadjusted FY 2002 standard Federal capital prospective payment system payment rate to restore the 2.1 percent reduction for discharges occurring on or after October 1, 2002.

6. Standard Capital Federal Rate for FY 2003

For FY 2002, the capital Federal rate was $390.74. For FY 2003, we are proposing a capital Federal rate of $408.90. The proposed Federal rate for FY 2003 was calculated as follows:

- The proposed FY 2003 update factor is 1.0110; that is, the update is 1.10 percent.
- The proposed FY 2003 budget neutrality adjustment factor that is applied to the standard Federal payment rate for changes in the DRG relative weights and in the GAF is 1.0024.
- The proposed FY 2003 outlier adjustment factor is 0.9460.
- The proposed FY 2003 exceptions payments adjustment factor is 0.9960.
- The proposed special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate is 1.0255.

Since the Federal rate has already been adjusted for differences in case-mix, wages, cost-of-living, indirect medical education costs, and payments to hospitals serving a disproportionate share of low-income patients, we are proposing to make no additional adjustments in the standard Federal rate for these factors, other than the budget neutrality factor for changes in the DRG relative weights and the GAF.

We are providing a chart that shows how each of the proposed factors and adjustments for FY 2003 affected the computation of the proposed FY 2003 Federal rate in comparison to the FY 2002 Federal rate. The proposed FY 2003 update factor has the effect of increasing the Federal rate by 1.10 percent compared to the FY 2002 Federal rate, while the proposed geographic and DRG budget neutrality factor has the effect of increasing the Federal rate by 0.24 percent. The proposed FY 2003 outlier adjustment factor has the effect of increasing the Federal rate by 0.38 percent compared to the FY 2002 Federal rate. The proposed FY 2003 exceptions reduction factor has the effect of increasing the Federal rate by 0.31 percent compared to the exceptions reduction for FY 2002. The proposed special adjustment factor for FY 2003 to restore the 2.1 percent reduction to the standard Federal rate has the effect of increasing the Federal rate by 2.55 percent compared to the FY 2002 Federal rate. The combined effect of all the proposed changes is to increase the Federal rate by 4.65 percent compared to the FY 2002 Federal rate.

COMPARISON OF FACTORS AND ADJUSTMENTS: FY 2002 FEDERAL RATE AND PROPOSED FY 2003 FEDERAL RATE

	FY 2002	Proposed FY 2003	Change	Percent change
Update factor [1]	1.0130	1.0110	1.0110	1.10
GAF/DRG Adjustment Factor [1]	0.9934	1.0024	1.0024	0.24
Outlier Adjustment Factor [2]	0.9424	0.9460	1.0038	0.38
Exceptions Adjustment Factor [2]	0.9929	0.9960	1.0031	0.31
Special Adjustment [3]	N/A	1.0255	1.0255	2.55
Federal Rate	$390.74	$408.90	1.0465	4.65

[1] The update factor and the GAF/DRG budget neutrality factors are built permanently into the rates. Thus, for example, the incremental change from FY 2002 to FY 2003 resulting from the application of the 1.0024 GAF/DRG budget neutrality factor for FY 2003 is 1.0024.

[2] The outlier reduction factor and the exceptions reduction factor are not built permanently into the rates; that is, these factors are not applied cumulatively in determining the rates. Thus, for example, the net change resulting from the application of the FY 2003 outlier reduction factor is 0.9460/0.9424, or 1.0038.

[3] Section 1886(g)(1)(A) of the Act requires, for discharges on or after October 1, 1997, and through September 30, 2002, the Secretary to reduce the unadjusted standard Federal capital prospective payment system payment rate by 2.1 percent. Thus, the 2.1 percent reduction no longer applies to discharges occurring after September 30, 2002, and we are proposing to restore the 2.1 percent reduction by applying a factor of 1.0255 (see section VI.D. of the preamble of this proposed rule).

7. Special Rate for Puerto Rico Hospitals

As explained at the beginning of section II.D. of this Addendum, hospitals in Puerto Rico are paid based on 50 percent of the Puerto Rico rate and 50 percent of the Federal rate. The Puerto Rico rate is derived from the costs of Puerto Rico hospitals only, while the Federal rate is derived from the costs of all acute care hospitals participating in the prospective payment system (including Puerto Rico). To adjust hospitals' capital payments for geographic variations in capital costs, we apply a GAF to both portions of the blended rate. The GAF is calculated using the operating prospective payment system wage index and varies, depending on the MSA or rural area in which the hospital is located. We use the Puerto Rico wage index to determine the GAF for the Puerto Rico part of the capital-blended rate and the national wage index to determine the GAF for the national part of the blended rate.

Because we implemented a separate GAF for Puerto Rico in FY 1998, we also apply separate budget neutrality adjustments for the national GAF and for the Puerto Rico GAF. However, we apply the same budget neutrality factor for DRG reclassifications and recalibration nationally and for Puerto Rico. As we stated in section III.A.4. of this Addendum, for Puerto Rico the proposed GAF budget neutrality factor is 1.0080, while the proposed DRG adjustment is 1.0034, for a proposed combined cumulative adjustment of 1.0115.

In computing the payment for a particular Puerto Rico hospital, the Puerto Rico portion of the rate (50 percent) is multiplied by the Puerto Rico-specific GAF for the MSA in which the hospital is located, and the national portion of the rate (50 percent) is multiplied by the national GAF for the MSA in which the hospital is located (which is computed from national data for all hospitals in the United States and Puerto Rico). In FY 1998, we implemented a 17.78 percent reduction to the Puerto Rico rate as a result of Public Law 105–33.

For FY 2002, before application of the GAF, the special rate for Puerto Rico hospitals was $187.73. With the changes we are proposing to the factors used to determine the rate, the proposed FY 2003 special rate for Puerto Rico is $199.70.

B. Calculation of Inpatient Capital-Related Prospective Payments for FY 2003

With the end of the capital prospective payment system transition period in FY 2001, all hospitals (except "new" hospitals under § 412.324(b) and under proposed § 412.304(c)(2)) are paid based on 100 percent of the Federal rate in FY 2003. The applicable Federal rate was determined by making adjustments as follows:

- For outliers, by dividing the standard Federal rate by the outlier reduction factor for that fiscal year; and
- For the payment adjustments applicable to the hospital, by multiplying the hospital's GAF, disproportionate share adjustment factor, and IME adjustment factor, when appropriate.

For purposes of calculating payments for each discharge during FY 2003, the standard Federal rate is adjusted as follows: (Standard Federal Rate) × (DRG weight) × (GAF) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share Adjustment Factor + IME Adjustment Factor, if applicable). The result is the adjusted Federal rate.

Hospitals also may receive outlier payments for those cases that qualify under the thresholds established for each fiscal year. Section 412.312(c) provides for a single set of thresholds to identify outlier cases for both inpatient operating and inpatient capital-related payments. The outlier thresholds for FY 2003 are in section II.A.4.c. of this Addendum. For FY 2003, a case qualifies as a cost outlier if the cost for the case plus the IME and DSH payments is greater than the prospective payment rate for the DRG plus $33,450.

An eligible hospital may also qualify for a special exception payment under § 412.348(g) for up through the 10th year beyond the end of the capital transition period if it meets (1) a project need requirement described at § 412.348(g)(2), which in the case of certain urban hospitals includes an excess capacity test as described at § 412.348(g)(4); and (2) a project size requirement as described at § 412.348(g)(5). Eligible hospitals include sole community hospitals, urban hospitals with at least 100 beds that have a DSH patient percentage of at least 20.2 percent or qualify for DSH payments under § 412.106(c)(2), and hospitals that have a combined Medicare and Medicaid inpatient utilization of at least 70 percent. Under § 412.348(g)(8), the amount of a special exceptions payment is determined by comparing the cumulative payments made to the hospital under the capital prospective payment system to the cumulative minimum payment level. This amount is offset by (1) any amount by which a hospital's cumulative capital payments exceed its cumulative minimum payment levels applicable under

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the regular exceptions process for cost reporting periods beginning during which the hospital has been subject to the capital prospective payment system; and (2) any amount by which a hospital's current year operating and capital payments (excluding 75 percent of operating DSH payments) exceed its operating and capital costs. Under § 412.348(g)(6), the minimum payment level is 70 percent for all eligible hospitals.

During the transition period, new hospitals (as defined under § 412.300) were exempt from the capital prospective payment system for their first 2 years of operation and are paid 85 percent of their reasonable costs during that period. Effective with the third year of operation through the remainder of the transition period, under § 412.324(b) we paid the hospital under the appropriate transition methodology. If the hold-harmless methodology was applicable, the hold-harmless payment for assets in use during the base period would extend for 8 years, even if the hold-harmless payments extend beyond the normal transition period. As discussed in section VI.B. of the preamble of this proposed rule, we are proposing under § 412.304(c)(2) to pay new hospitals 85 percent of their reasonable costs during the first 2 years of operation. Effective with the third year of operation through the remainder of the transition period, we would pay the hospital based on 100 percent of the capital Federal (that is, the same methodology used to pay all other hospitals subject to capital prospective payment system).

C. Capital Input Price Index

1. Background

Like the operating input price index, the capital input price index (CIPI) is a fixed-weight price index that measures the price changes associated with costs during a given year. The CIPI differs from the operating input price index in one important aspect—the CIPI reflects the vintage nature of capital, which is the acquisition and use of capital over time. Capital expenses in any given year are determined by the stock of capital in that year (that is, capital that remains on hand from all current and prior capital acquisitions). An index measuring capital price changes needs to reflect this vintage nature of capital. Therefore, the CIPI was developed to capture the vintage nature of capital by using a weighted-average of past capital purchase prices up to and including the current year.

We periodically update the base year for the operating and capital input prices to reflect the changing composition of inputs for operating and capital expenses. The CIPI was last rebased to FY 1992 in the August 30, 1996 final rule (61 FR 46196). In this proposed rule, we are proposing to revise and rebase the CIPI to a FY 1997 base year to reflect the more recent structure of capital costs. For further details on the proposed rebasing and revision of the CIPI, see section IV.B. of this proposed rule.

2. Forecast of the CIPI for Federal Fiscal Year 2003

We are forecasting the proposed CIPI to increase 0.7 percent for FY 2003. This reflects a projected 1.3 percent increase in vintage-weighted depreciation prices (building and fixed equipment, and movable equipment) and a 2.7 percent increase in other capital expense prices in FY 2003, partially offset by a 2.2 percent decline in vintage-weighted interest rates in FY 2003. The weighted average of these three factors produces the 0.7 percent increase for the CIPI as a whole.

IV. Proposed Changes to Payment Rates for Excluded Hospitals and Hospital Units: Rate-of-Increase Percentages

The inpatient operating costs of hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system are subject to rate-of-increase limits established under the authority of section 1886(b) of the Act, which is implemented in regulations at § 413.40. Under these limits, a hospital-specific target amount (expressed in terms of the inpatient operating cost per discharge) is set for each hospital, based on the hospital's own historical cost experience trended forward by the applicable rate-of-increase percentages (update factors).

Under existing § 413.40(c)(4)(iii)(B), for cost reporting periods beginning and during FYs 1998 and through 2002, in the case of a psychiatric hospital or hospital unit, a rehabilitation hospital or hospital unit, or a long-term care hospital, the target amount may not exceed the updated figure for the 75th percentile of target amounts adjusted to take into account the differences between average wage-related costs in the area of the hospital and the national average of such costs within the same class of hospitals for hospitals and hospital units in the same class (psychiatric, rehabilitation, and long-term care) for cost reporting periods ending during FY 1996. The target amount is multiplied by the number of Medicare discharges in a hospital's cost reporting period, yielding the ceiling on aggregate Medicare inpatient operating costs for the cost reporting period.

Each hospital-specific target amount is adjusted annually, at the beginning of each hospital's cost reporting period, by an applicable update factor.

Under existing §§ 413.40(c)(4)(ii) and (d)(1)(i) and (ii), effective for cost reporting periods beginning during FY 2003, payments to existing excluded hospitals and hospital units will no longer be subject to a 75th percentile cap. These excluded hospitals and hospital units will be paid based on their aggregate Medicare inpatient operating costs, which may not exceed their ceiling. The ceiling on a hospital's or hospital unit's aggregate Medicare inpatient operating costs would be computed using the hospital's or hospital unit's target amount from the previous cost reporting period updated using the rate-of-increase percentage specified in § 413.40(c)(3)(viii) and multiplied by the total number of Medicare discharges.

Section 1886(b)(3)(B) of the Act, as implemented in regulations at § 413.40(c)(3)(viii), provides that, for cost reporting periods beginning on or after October 1, 2002, the update factor for a hospital or hospital unit is the percentage increase projected by the hospital market basket index. The most recent proposed projected forecast of the market basket percentage increase for FY 2003 for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system is 3.4 percent. This proposed percentage change is made by CMS" Office of the Actuary and reflects the average change in the price of goods and services purchased by hospitals to furnish inpatient hospital care. Therefore, we are proposing that the update to a hospital's target amount for its cost reporting period beginning in FY 2003 would be 3.4 percent.

As discussed in section VII. of the preamble of this proposed rule, we are proposing to make an adjustment to the updated cap on the target amounts per discharge for each class of new excluded hospitals and hospital units for cost reporting periods beginning during FY 2003, using the prospective payment system wage index without taking into account the reclassifications under sections 1886(d)(8)(B) and (d)(10) of the Act. For a new provider, the labor-related share of the target amount is multiplied by the appropriate geographic area wage index, without regard to prospective payment system reclassifications, and added to the nonlabor-related share in order to determine the per case limit on payment under the statutory payment methodology for new providers.

Regulations at § 413.40(f)(2)(ii) specify the payment methodology for new hospitals and hospital units, effective October 1, 1997.

For cost reporting periods beginning in FY 2003, the proposed caps are as follows:

Class of excluded hospital or unit	FY 2003 proposed labor-related share	FY 2003 proposed nonlabor-related share
Psychiatric	$7,047	$2,801
Long-Term Care	17,269	6,866

Effective for cost reporting periods beginning on or after October 1, 2002, this payment limitation is no longer applicable to new rehabilitation hospitals and units since they will be paid under the inpatient rehabilitation facility prospective payment system.

Regulations at § 413.40(d) specify the formulas for determining bonus and relief payments for excluded hospitals and specify established criteria for an additional bonus payment for continuous improvement.

V. Tables

This section contains the tables referred to throughout the preamble to this proposed rule and in this Addendum. For purposes of this proposed rule, and to avoid confusion, we have retained the designations of Tables 1 through 5 that were first used in the September 1, 1983 initial prospective payment final rule (48 FR 39844). Tables 1A, 1C, 1D, 2, 3A, 3B, 4A, 4B, 4C, 4F, 4G, 4H, 5, 6A, 6B, 6C, 6D, 6E, 6F, 6G, 6H, 7A, 7B, 8A, 8B, 9, and 10 are presented below. The tables presented below are as follows:

Table 1A—National Adjusted Operating Standardized Amounts, Labor/Nonlabor
Table 1C—Adjusted Operating Standardized Amounts for Puerto Rico, Labor/Nonlabor

Table 1D—Capital Standard Federal Payment Rate
Table 2—Hospital Average Hourly Wage for Federal Fiscal Years 2001 (1997 Wage Data), 2002 (1998 Wage Data), and 2003 (1999 Wage Data) Wage Indexes and 3–Year Average of Hospital Average Hourly Wages
Table 3A—3–Year Average Hourly Wage for Urban Areas
Table 3B—3–Year Average Hourly Wage for Rural Areas
Table 4A—Wage Index and Capital Geographic Adjustment Factor (GAF) for Urban Areas
Table 4B—Wage Index and Capital Geographic Adjustment Factor (GAF) for Rural Areas
Table 4C—Wage Index and Capital Geographic Adjustment Factor (GAF) for Hospitals That Are Reclassified
Table 4F—Puerto Rico Wage Index and Capital Geographic Adjustment Factor (GAF)
Table 4G—Pre-Reclassified Wage Index for Urban Areas
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Table 5—List of Diagnosis Related Groups (DRGs), Relative Weighting Factors, Geometric and Arithmetic Mean Length of Stay
Table 6A—New Diagnosis Codes
Table 6B—New Procedure Codes
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Table 6E—Revised Diagnosis Code Titles
Table 6F—Revised Procedure Code Titles
Table 6G—Additions to the CC Exclusions List
Table 6H—Deletions to the CC Exclusions List
Table 7A—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update 12/01 GROUPER V19.0
Table 7B—Medicare Prospective Payment System Selected Percentile Lengths of Stay FY 2001 MedPAR Update 12/01 GROUPER V20.0
Table 8A—Statewide Average Operating Cost-to-Charge Ratios for Urban and Rural Hospitals (Case Weighted) March 2002
Table 8B—Statewide Average Capital Cost-to-Charge Ratios (Case Weighted) March 2002
Table 9—Hospital Reclassifications and Redesignations by Individual Hospital—FY 2003
Table 10—Mean and Standard Deviations by Diagnosis-Related Groups (DRGs)—FY 2003

TABLE 1A.—NATIONAL ADJUSTED OPERATING STANDARDIZED AMOUNTS, LABOR/NONLABOR

Large urban areas		Other areas	
Labor-related	Nonlabor-related	Labor-related	Nonlabor-related
$3,099.62	$1,175.71	$3,050.55	$1,157.10

TABLE 1C.—ADJUSTED OPERATING STANDARDIZED AMOUNTS FOR PUERTO RICO, LABOR/NONLABOR

	Large Urban Areas		Other Areas	
	Labor	Nonlabor	Labor	Nonlabor
National	$3,073.03	$1,165.63	$3,073.03	$1,165.63
Puerto Rico	1,475.56	593.94	1,452.19	584.54

TABLE 1D.—CAPITAL STANDARD FEDERAL PAYMENT RATE

	Rate
National	$408.90
Puerto Rico	$199.70

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010001	16.4088	17.4467	17.7070	17.1977
010004	17.9732	19.0010	20.1613	19.0027
010005	17.5985	18.6554	21.5442	19.2074
010006	16.7480	17.6115	18.6118	17.6922
010007	15.4798	15.6788	16.0781	15.7477
010008	14.7443	17.4728	19.0182	17.0908
010009	18.7731	18.4979	19.7272	18.9866
010010	16.4468	16.4664	17.7348	16.9045
010011	20.7972	22.4292	24.7067	22.5297
010012	17.7171	15.8686	20.3948	17.8168
010015	15.4510	19.1178	19.8205	18.1040
010016	17.2473	20.2198	20.4139	19.2448
010018	17.6449	18.9388	19.5519	18.7214
010019	16.3493	17.0856	17.4615	16.9602
010021	16.2919	15.1241	*	15.7091

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010022	18.5879	17.6435	22.2036	19.2378
010023	16.1025	16.3209	18.4567	16.9929
010024	16.2900	15.9034	17.0372	16.4149
010025	15.1356	15.1548	16.9733	15.7569
010027	11.7900	16.8595	16.5157	14.5941
010029	17.6461	18.3605	19.1001	18.3671
010031	18.7835	18.6402	19.2612	18.9043
010032	12.5995	15.3590	16.3967	14.8530
010033	20.3923	21.2986	21.8375	21.1715
010034	15.0959	15.3639	14.9379	15.1325
010035	20.1853	15.9439	20.8498	18.7765
010036	17.8140	17.7166	18.1325	17.8864
010038	18.2671	19.6098	19.6887	19.2225
010039	20.1045	20.3406	21.1309	20.5522
010040	18.9376	20.0983	20.4032	19.7634
010043	30.7489	18.6640	18.1128	21.1242
010044	22.0091	24.0265	23.4575	23.1128
010045	15.2200	17.0417	18.7569	16.8822
010046	17.3970	18.9737	18.8741	18.4218
010047	13.3521	15.4190	13.4130	14.0833
010049	14.7590	15.5246	16.3349	15.5762
010050	18.5163	17.9830	20.3028	18.9035
010051	11.9275	11.8108	12.3280	12.0151
010052	16.5486	18.0653	19.8289	18.3581
010053	14.6267	15.5649	15.4156	15.2353
010054	18.5103	19.4955	20.9656	19.7134
010055	18.9526	18.8590	19.4959	19.1060
010056	19.2175	19.6577	20.5645	19.7867
010058	16.1702	16.9715	16.1265	16.4288
010059	19.1286	18.8020	19.1270	19.0199
010061	14.9547	14.5003	18.5320	15.9823
010062	14.7732	12.3259	*	13.4892
010064	20.4139	19.5256	20.6628	20.1862
010065	16.4049	16.8752	18.8957	17.4231
010066	15.4317	13.1559	14.8904	14.4355
010068	12.0525	18.6925	23.4322	17.0157
010069	13.8636	14.7211	15.4497	14.6885
010072	14.9526	16.2339	16.5652	15.9117
010073	13.8601	14.1273	13.5594	13.8482
010078	17.9202	18.1363	18.5127	18.1930
010079	16.4421	17.0648	16.8045	16.7705
010081	18.9474	17.2996	*	18.1637
010083	16.8933	18.0312	18.4282	17.8382
010084	18.4965	18.7769	19.8773	19.0316
010085	18.4744	19.9023	21.3593	19.9065
010086	16.6694	16.5711	16.8886	16.7103
010087	19.0033	18.0567	18.6860	18.6208
010089	16.8042	17.7800	19.5697	18.0246
010090	18.3866	18.9445	19.5635	18.9671
010091	13.9405	17.0799	17.1775	15.9756
010092	16.9900	17.8144	18.5703	17.8203
010095	12.4525	12.2597	13.7865	12.8381
010097	13.0413	12.7286	14.2675	13.3206
010098	15.9165	14.0300	15.5763	15.1201
010099	15.9874	15.5619	15.9232	15.8146
010100	17.2011	17.9430	18.3755	17.8826
010101	15.3859	14.4625	18.7988	16.0267
010102	13.7933	13.8136	15.7777	14.4205
010103	17.9358	17.7242	22.2456	19.1327
010104	17.7126	16.8457	22.0038	18.6396
010108	17.9017	19.4617	19.1596	18.8606
010109	15.3107	14.6752	15.9627	15.2873
010110	15.6317	15.8283	15.5817	15.6824

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
010112	15.1401	16.8271	15.6041	15.8270
010113	16.9683	16.8936	18.2706	17.3693
010114	15.2454	17.0760	19.0678	17.1007
010115	14.6268	14.2261	15.3510	14.7053
010118	18.8477	17.0834	17.4620	17.7157
010119	18.8024	19.3942	19.4672	19.3127
010120	17.2336	18.2567	18.9975	18.1726
010121	14.6444	14.5262	15.2345	14.7784
010123	16.7344	19.2140	*	17.9083
010124	16.2846	16.7465	*	16.5122
010125	15.5304	16.0136	16.5117	16.0174
010126	19.5710	19.1065	19.5933	19.4288
010127	19.5190	18.2786	*	18.9233
010128	14.5056	14.4322	15.1184	14.6873
010129	14.7286	16.1733	16.7609	15.8741
010130	16.6809	19.5573	17.4614	17.7942
010131	17.8260	20.1883	19.0492	18.9966
010134	18.8835	19.9856	18.5179	19.1797
010137	12.1217	20.5828	21.3573	17.6481
010138	12.8675	14.5254	14.1369	13.8739
010139	19.0001	20.4331	20.5708	19.9541
010143	16.7911	17.6212	18.8903	17.7663
010144	17.1320	18.2040	18.7743	18.0281
010145	20.8434	20.5895	20.8110	20.7460
010146	18.5198	19.1415	18.3666	18.6687
010148	12.2214	15.8349	16.6251	14.5873
010149	18.6333	18.0156	19.0199	18.5806
010150	17.8951	18.9359	19.4819	18.7907
010152	17.8306	18.7677	19.8695	18.8444
010155	9.0300	15.0689	13.6136	11.6435
010157	*	*	18.0689	18.0689
010158	17.3227	18.3957	18.8358	18.2136
010159	*	*	20.4419	20.4419
020001	28.1747	28.0394	28.6292	28.2864
020002	24.5815	25.1987	28.2759	25.9928
020004	30.5667	25.4679	26.5088	27.6844
020005	30.2920	29.2378	35.0860	31.4575
020006	31.2404	28.1417	33.0843	30.7594
020007	27.8319	32.3852	27.7269	28.9902
020008	29.4146	30.8691	31.8715	30.7301
020009	20.1930	18.4660	18.5594	19.0476
020010	23.6727	22.7559	23.7275	23.3859
020011	30.4727	28.0658	27.5062	28.6155
020012	24.8543	25.5320	26.7586	25.6982
020013	23.8847	28.1557	29.5646	26.9336
020014	27.3823	24.5875	*	25.9860
020017	26.8319	28.0572	28.8752	27.9519
020024	24.0872	25.3205	25.5933	25.0276
020025	21.7557	20.2583	29.4375	23.2312
030001	20.3673	21.7869	22.8996	21.6709
030002	21.5977	21.8375	23.1450	22.2070
030003	23.4833	22.6804	23.9849	23.3723
030004	14.0711	15.5478	13.8452	14.3965
030006	18.2668	20.0273	20.5019	19.5831
030007	19.6708	21.5169	22.2473	21.1843
030008	22.2758	22.2190	*	22.2524
030009	18.1794	18.7557	19.1258	18.6629
030010	19.0907	19.5123	19.8496	19.4665
030011	19.2973	19.4310	19.8141	19.5088
030012	18.9918	20.6585	21.1099	20.2847
030013	20.7458	20.0535	19.9517	20.2223
030014	19.9315	19.7966	20.0568	19.9241
030016	19.3967	19.4785	22.2526	20.4395

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
030017	22.8765	21.7938	23.1702	22.6064
030018	20.2032	20.8980	21.8067	20.9825
030019	21.7005	21.2540	22.0341	21.6682
030022	19.2966	19.5794	22.3351	20.3379
030023	23.6697	24.1678	25.4626	24.5066
030024	22.2541	23.6009	23.5218	23.1550
030025	12.7254	11.9894	20.2690	14.6291
030027	15.7554	17.6555	18.5500	17.3221
030030	20.8303	21.6932	23.1280	21.8856
030033	20.0044	20.2820	20.3034	20.1983
030034	16.8241	20.8689	19.5578	19.0205
030035	19.2781	20.0226	20.5339	19.9127
030036	20.7567	21.6371	22.2690	21.5890
030037	22.8266	23.7615	23.7325	23.4266
030038	22.6776	22.9822	23.4477	23.0337
030040	18.5456	19.7636	19.3706	19.2127
030041	15.8921	18.8717	18.4750	17.5529
030043	20.9341	20.5598	18.7843	19.9580
030044	16.8649	17.6575	18.6781	17.7554
030047	22.6401	21.4412	22.7385	22.2630
030049	19.0881	19.3580	19.7315	19.3525
030054	15.3338	15.0657	15.7973	15.4130
030055	16.3613	20.2991	20.8373	19.1429
030059	24.0465	22.6279	27.3929	24.5505
030060	19.2461	18.6313	19.5021	19.1145
030061	18.9063	19.9047	21.1013	19.9959
030062	17.6738	18.7172	19.2670	18.6035
030064	19.5673	20.3837	21.6435	20.5204
030065	20.5130	20.7838	22.2846	21.2496
030067	14.4446	17.2778	17.6414	16.3935
030068	17.3614	17.7208	18.9718	18.0528
030069	19.0961	21.0936	23.4902	21.1503
030080	20.5144	20.6581	21.2079	20.8105
030083	23.3355	23.5229	23.2965	23.3842
030085	21.0954	20.8690	21.4417	21.1505
030086	19.5436	*	*	19.5436
030087	21.4084	21.9465	23.1339	22.1276
030088	19.8682	20.5340	21.4201	20.6453
030089	20.4019	20.9516	22.0850	21.2122
030092	20.6986	21.8308	19.4627	20.4899
030093	19.7262	20.4314	21.7195	20.6797
030094	21.6218	22.8123	21.8049	22.0984
030095	13.7293	13.7664	20.5222	15.2252
030099	16.1541	18.2263	19.8092	18.2768
030100	*	23.7609	23.5868	23.6643
030101	*	19.2547	21.1029	20.2450
030102	*	18.2413	21.5405	19.8425
030103	*	*	15.0859	15.0859
030104	*	*	32.8668	32.8668
040001	15.1624	16.9178	16.3882	16.1463
040002	13.0592	15.1107	16.1353	14.6990
040003	14.2089	15.5740	15.5186	15.0890
040004	17.8476	17.9034	19.0105	18.2433
040005	13.2597	11.1318	16.5465	13.4890
040007	21.9583	18.6998	*	20.1466
040008	15.3040	14.7985	20.2121	16.6104
040010	18.6023	19.4913	19.8251	19.3459
040011	14.5319	16.0995	17.1337	15.8295
040014	17.6340	18.1434	19.3996	18.3693
040015	16.5891	15.5207	17.4003	16.5312
040016	19.0295	20.2321	19.8087	19.7068
040017	13.5098	15.4736	16.5602	15.1870
040018	17.6027	18.7463	18.8203	18.3807

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
040019	22.6769	23.4163	21.0465	22.2688
040020	16.4827	18.9844	17.6056	17.6157
040021	17.6398	19.6835	21.3321	19.4636
040022	17.0397	20.8281	19.2393	18.9742
040024	14.4541	17.6607	15.0590	15.6850
040025	11.5079	13.4705	14.8071	13.1413
040026	19.5563	19.7924	21.0143	20.1201
040027	16.0975	17.4431	17.7161	17.1113
040028	14.6584	13.9946	15.2850	14.6612
040029	17.8787	21.1370	22.5094	20.5216
040030	13.5428	11.2402	16.5488	13.3388
040032	13.7030	13.2872	13.8013	13.5932
040035	12.8300	10.9569	11.0611	11.5521
040036	18.9757	20.2012	21.1066	20.1370
040037	14.6559	14.0941	15.4984	14.7015
040039	14.3576	14.7177	14.8433	14.6458
040040	18.0895	19.1984	19.6704	18.9937
040041	15.9896	16.4624	17.7783	16.7177
040042	15.2142	15.2057	16.6875	15.6976
040044	12.6275	13.3501	17.1869	14.3743
040045	14.9429	16.2469	16.6648	15.9379
040047	16.8654	17.5336	18.6295	17.6726
040050	13.3818	14.0036	14.2087	13.8730
040051	15.8627	16.6039	18.0487	16.8084
040053	16.3610	15.0219	14.1508	15.1659
040054	15.3219	14.2577	16.5217	15.3669
040055	17.1269	18.0414	16.6283	17.2760
040058	17.6766	16.4278	19.3124	17.6534
040060	12.8148	17.9805	15.4220	15.0376
040062	18.2048	17.8902	19.4255	18.5267
040064	10.7255	11.5029	13.3479	11.7813
040066	18.3377	19.7144	18.7831	18.9326
040067	14.6014	14.4741	15.0081	14.6924
040069	17.5052	17.0026	18.9754	17.8560
040070	16.9027	16.9700	18.6066	17.5468
040071	16.9610	17.6144	18.0874	17.5370
040072	16.0895	17.4960	21.3094	18.1882
040074	18.3224	18.7542	20.8465	19.2921
040075	13.3623	14.0975	14.6681	14.0257
040076	19.0732	20.5840	21.8010	20.4612
040077	12.9211	13.9114	14.7230	13.8164
040078	18.7600	18.5821	*	18.6754
040080	19.2461	19.3707	22.8153	20.3838
040081	11.3169	11.1332	12.4796	11.6373
040082	16.2152	15.1331	16.4840	15.9329
040084	17.2613	17.7295	18.3410	17.7584
040085	16.8957	16.5216	14.1782	15.7843
040088	17.9636	17.1624	18.2831	17.7943
040090	17.8282	19.0824	16.6619	17.8476
040091	19.8700	20.1378	20.2904	20.1018
040093	12.3537	13.9741	14.7132	13.5635
040100	14.7587	15.6833	16.9558	15.9133
040105	15.3319	14.3896	14.8936	14.8814
040106	15.6545	18.1341	19.0936	17.8001
040107	18.8120	17.8628	20.6852	19.1446
040109	14.6266	16.6278	16.2496	15.8538
040114	18.8743	21.1231	21.3826	20.4184
040116	20.2716	*	*	20.2716
040118	19.3720	18.2123	19.6248	19.0444
040119	15.5338	16.9407	18.5876	17.0324
040124	19.1349	19.2889	*	19.2100
040126	12.5368	11.6517	16.3391	13.4177
040132	17.5179	10.3875	*	13.5846

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
040134	18.0787	19.0185	22.1291	19.8434
040135	22.6761	23.0084	*	22.8797
040136	*	*	21.4139	21.4139
050002	37.8295	36.9630	30.2629	34.5243
050006	19.5594	18.2061	22.4890	20.0298
050007	30.7126	30.8676	31.6270	31.0595
050008	26.2458	26.3682	28.2021	26.8667
050009	26.8159	28.4734	28.3021	27.8816
050013	23.2201	28.0569	27.2552	25.9477
050014	22.8478	23.6745	25.1664	23.9039
050015	26.2481	27.7731	28.2204	27.4404
050016	20.5566	21.2045	22.7014	21.5040
050017	23.9625	25.6178	25.7403	25.1023
050018	15.4721	15.2903	16.4211	15.7749
050021	25.8966	*	*	25.8966
050022	24.0318	24.5254	26.2574	24.9836
050024	21.3989	22.4274	21.5230	21.7688
050025	23.3896	24.8245	26.0161	24.7262
050026	27.8736	23.1904	23.4651	24.6800
050028	16.4671	17.6138	17.9421	17.3234
050029	25.1259	24.6839	26.6783	25.4673
050030	20.9812	21.5621	21.8639	21.4881
050032	25.2010	24.3598	24.4176	24.6502
050033	24.9328	32.0179	31.1768	29.1633
050036	21.2420	21.8239	24.1361	22.4423
050038	28.6528	29.9698	32.1757	30.1303
050039	22.7117	22.8288	23.8122	23.1279
050040	32.1287	30.2607	30.1153	30.8697
050042	24.8067	24.5260	25.4903	24.9502
050043	32.9958	33.8255	38.8988	35.0749
050045	19.8831	21.1474	21.0356	20.7131
050046	25.3185	25.2005	25.3067	25.2745
050047	29.9255	29.9580	31.6959	30.5375
050051	17.8945	18.7809	17.9266	18.1624
050054	20.7212	22.0982	19.2395	20.6257
050055	29.3984	29.2730	32.0923	30.2190
050056	27.4321	23.8396	24.7994	25.2478
050057	21.1554	20.7420	21.7403	21.2220
050058	23.1641	23.3009	24.8366	23.7800
050060	20.7747	20.5450	21.9971	21.2660
050061	23.5454	24.5488	23.9906	24.0316
050063	24.8851	25.7593	25.5798	25.3924
050065	24.0420	24.6290	27.6677	25.3130
050066	16.5725	16.1649	26.3920	18.5257
050067	23.1966	25.8857	22.1250	23.5170
050068	20.6851	19.3615	19.2325	19.8460
050069	25.9420	24.6153	25.8560	25.4593
050070	32.5166	34.0721	36.4136	34.4086
050071	33.1850	34.4367	36.4834	34.7318
050072	33.2858	39.7321	36.1146	36.2550
050073	33.3922	32.8555	36.1054	34.1118
050075	33.9095	33.7160	37.8104	35.1272
050076	27.7797	33.9752	37.0415	32.6495
050077	24.1019	24.1404	25.3481	24.5518
050078	23.0736	24.3150	22.6776	23.3158
050079	33.2432	30.0167	36.5455	33.0896
050082	22.1009	23.7617	23.7718	23.2042
050084	23.5866	25.4517	25.1155	24.6796
050088	20.8406	24.9641	25.2282	23.4877
050089	20.9117	22.8450	23.4120	22.3589
050090	23.4097	24.6070	25.4545	24.4799
050091	25.2792	23.7713	*	24.5189
050092	16.7969	17.1211	17.1883	17.0299

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050093	25.2130	25.6647	27.1820	26.0418
050095	33.6718	30.4847	29.2226	31.0314
050096	20.0487	22.7394	22.5034	21.6293
050097	16.7054	22.5991	24.2548	20.5747
050099	24.8091	25.3722	26.2363	25.4947
050100	29.8758	25.2031	23.9877	26.2195
050101	31.0264	31.8957	32.7594	31.9069
050102	22.2937	24.0014	22.6741	22.9916
050103	24.7932	25.4133	23.5946	24.5653
050104	25.5797	26.9726	25.4575	26.0072
050107	21.2690	22.2019	22.2746	21.9397
050108	23.5564	25.1758	25.6983	24.8127
050110	20.1870	19.9589	21.3399	20.4921
050111	21.5487	20.7897	21.0813	21.1480
050112	25.3015	26.8182	28.3676	26.8364
050113	28.8420	28.5224	32.3967	30.0407
050114	24.7286	26.6757	27.6486	26.3583
050115	21.3291	23.0182	24.3748	22.9340
050116	25.2130	24.9196	27.0331	25.6442
050117	23.3612	22.2123	23.0697	22.8657
050118	23.7698	23.7129	24.9094	24.1342
050121	19.5252	18.7272	18.8430	19.0230
050122	26.3172	26.9546	26.9193	26.7318
050124	22.7736	24.5069	23.9379	23.7017
050125	29.6147	32.0230	33.3290	31.6254
050126	23.9247	24.6752	26.9718	25.2082
050127	22.1937	20.9027	20.5928	21.0815
050128	25.7240	26.6132	26.2519	26.1998
050129	26.5030	24.0108	23.2118	24.4255
050131	31.0732	32.5462	33.0980	32.2202
050132	24.0834	24.0173	24.1583	24.0881
050133	24.9746	23.2093	23.9479	23.9946
050135	23.2361	24.7157	23.2750	23.7026
050136	24.7921	24.7280	28.0754	25.7753
050137	32.6507	32.9192	33.7489	33.1070
050138	37.3286	38.1584	40.8912	38.7884
050139	32.9351	31.4984	35.1492	33.0424
050140	34.1499	32.7609	36.7096	34.4570
050144	27.8751	27.4069	*	27.6480
050145	32.3857	34.5185	37.5003	34.7881
050148	21.9211	20.0971	21.1622	21.0247
050149	24.6078	26.8674	25.8880	25.7652
050150	24.9073	24.6596	25.9494	25.1761
050152	34.0766	33.3305	33.1217	33.4979
050153	30.5714	32.3389	32.1256	31.7026
050155	21.0257	25.3354	23.2118	23.0854
050158	27.5623	28.6071	28.9764	28.3557
050159	23.2912	22.5313	26.6139	23.7086
050167	21.9128	21.8796	21.9596	21.9174
050168	23.3511	25.1937	27.1971	25.2088
050169	22.3888	24.8407	24.7737	23.9439
050170	23.9574	24.3654	27.9459	25.2622
050172	20.1841	19.6120	22.0400	20.6111
050173	24.5545	24.8694	*	24.7049
050174	30.2140	30.2775	31.6888	30.7398
050175	27.2806	24.7548	26.0146	25.8419
050177	21.7943	21.1396	22.5039	21.8034
050179	21.7175	23.8868	22.8941	22.7755
050180	31.8947	33.3257	34.0900	33.1860
050183	20.3638	*	*	20.3638
050186	22.4155	23.6288	25.0791	23.7560
050188	28.0918	28.2364	30.6007	29.0015
050189	22.8687	27.4071	28.3295	26.4046

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050191	20.8321	25.3516	29.2992	25.0950
050192	18.6701	14.1996	19.0400	17.0362
050193	22.6316	24.9444	25.5294	24.3542
050194	29.7371	29.5678	28.5389	29.2648
050195	35.5621	36.9068	39.1617	37.2637
050196	18.5180	18.2411	19.4304	18.7370
050197	35.7449	32.4030	34.6750	34.1639
050204	23.6105	22.7099	23.0192	23.1063
050205	23.6831	24.1691	24.1275	23.9917
050207	21.6214	22.9941	23.4210	22.6876
050211	31.6084	31.7280	33.2481	32.1766
050213	21.4806	21.4951	*	21.4880
050214	21.7335	24.0276	21.1480	22.2422
050215	29.8563	35.0459	31.6895	32.1029
050217	19.6010	20.2042	21.3026	20.3986
050219	21.7444	21.2458	21.7637	21.5978
050222	27.4809	23.3563	23.0670	24.3640
050224	23.5316	23.5101	24.8431	23.9839
050225	23.3480	21.6820	22.0981	22.3835
050226	27.7315	24.4443	26.1959	26.0496
050228	34.0711	34.2596	36.0632	34.7751
050230	27.7357	26.6291	26.7963	27.0820
050231	26.1508	26.7321	26.8977	26.6061
050232	24.3072	24.5245	25.8640	24.8981
050234	25.7035	24.6126	25.0104	25.0823
050235	25.2527	27.0922	26.0323	26.1239
050236	26.9803	25.9458	27.7406	26.8805
050238	24.2922	24.5823	25.1796	24.6748
050239	22.6625	23.2711	24.9463	23.6289
050240	26.3657	26.7620	*	26.5501
050241	26.3740	29.8345	*	27.9992
050242	31.1576	32.0829	32.9875	32.0689
050243	28.9635	26.4627	26.0256	27.1221
050245	23.8124	23.2716	27.5920	24.8781
050248	26.2015	27.6457	28.4413	27.4692
050251	21.6574	23.6360	27.9531	24.2057
050253	16.0701	16.7540	21.0399	17.6028
050254	19.3126	20.1176	22.3414	20.6227
050256	23.6887	23.4835	25.1104	24.1533
050257	15.2306	17.2596	15.6379	16.0441
050260	23.2421	27.4234	30.1623	26.5840
050261	20.0552	20.1040	19.4649	19.8596
050262	28.8785	29.5550	30.8866	29.7520
050264	32.1312	36.0331	32.8689	33.6109
050267	26.2264	26.0401	27.8393	26.6370
050270	24.0439	25.3757	26.4092	25.2781
050272	22.4247	23.0587	23.3443	22.9405
050274	20.0422	*	*	20.0422
050276	29.8624	33.3302	34.0633	32.3736
050277	20.0520	26.0822	23.6065	23.0165
050278	24.7787	23.9289	24.9699	24.5628
050279	20.8444	21.8949	22.2776	21.6332
050280	25.2149	25.6651	26.3392	25.7541
050281	19.6888	24.2251	25.2699	22.9927
050282	28.8261	25.4428	26.4698	26.9213
050283	29.7734	31.7669	32.3270	31.3481
050286	16.5708	19.4241	20.6191	18.4349
050289	34.1393	30.4750	32.2125	32.1522
050290	28.6231	29.6796	31.5000	29.9312
050291	30.2748	29.4029	30.9334	30.2109
050292	21.6243	20.8410	21.4357	21.2903
050293	22.2963	24.1875	*	23.1602
050295	21.2892	21.7883	24.5917	22.5802

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050296	27.2948	28.3906	30.0984	28.6215
050298	24.4477	23.2006	22.4000	23.3022
050299	26.4543	25.5035	24.6751	25.5099
050300	23.5116	25.9228	26.0298	25.2222
050301	22.5201	21.1403	24.7987	22.7770
050305	34.5185	36.7908	36.6981	36.0318
050307	17.2147	*	*	17.2147
050308	29.3803	28.9284	28.5759	28.9478
050309	23.7884	25.3515	25.5221	24.8819
050312	26.7617	26.0015	26.0172	26.2525
050313	21.7577	25.6827	28.9126	25.5297
050315	24.7086	22.7359	25.8372	24.4689
050317	21.6937	*	*	21.6937
050320	30.4101	32.4809	31.6571	31.4911
050324	26.6049	25.3694	26.8313	26.2820
050325	24.4862	23.6327	22.6353	23.5919
050327	23.9484	25.6450	*	24.7970
050329	19.7455	21.6984	24.2134	21.8073
050331	22.2536	25.0230	25.2110	24.0855
050333	19.4589	19.1449	14.1808	17.2305
050334	34.2330	34.2557	34.3956	34.2968
050335	23.0258	22.9926	22.9335	22.9822
050336	20.7979	21.3402	18.9187	20.3375
050342	20.1841	20.8255	22.4356	21.1404
050343	17.2085	*	*	17.2085
050348	23.8779	25.1085	29.3364	26.0263
050349	14.9754	15.0667	15.4536	15.1663
050350	24.8340	26.4161	27.2368	26.1456
050351	25.4791	24.8121	25.2436	25.1768
050352	26.1380	26.4262	27.7489	26.7934
050353	23.0564	23.2699	24.1009	23.4992
050355	17.2778	21.0969	*	18.6280
050357	22.6545	24.5345	24.3540	23.9188
050359	17.7907	21.7548	19.6236	19.5994
050360	31.3526	31.7583	33.3592	32.1693
050366	23.7528	19.6823	22.0442	21.7233
050367	28.2805	30.7328	31.7487	30.2799
050369	27.0548	26.2234	26.6627	26.6233
050373	26.9776	27.8275	29.9749	28.1900
050376	26.5840	28.0990	28.4026	27.6603
050377	17.1764	17.0012	*	17.1127
050378	25.9810	26.9101	27.8389	26.9067
050379	15.2022	18.4278	*	16.6705
050380	31.4343	31.9578	31.5137	31.6362
050382	26.1398	25.9244	26.3968	26.1598
050385	24.6083	*	27.1692	25.6464
050388	19.1512	22.0122	17.6762	19.5684
050390	25.0426	24.2700	25.8556	25.0345
050391	18.9266	20.0615	19.0832	19.3414
050392	21.6729	22.9430	24.9003	23.1073
050393	25.6964	24.1981	25.4028	25.0965
050394	23.0604	23.1526	23.1641	23.1275
050396	24.0636	25.3729	25.7580	25.0612
050397	20.2601	20.6397	23.3212	21.1533
050401	20.7473	18.4593	*	19.5658
050404	17.3396	15.9839	16.4845	16.6030
050406	17.3016	17.8596	21.5282	18.7226
050407	29.9642	30.8346	32.0753	30.9310
050410	17.6769	19.8508	17.1718	18.1805
050411	34.8899	33.1943	33.1718	33.7076
050414	24.2060	25.9723	24.4936	24.8800
050417	21.5739	23.3005	23.3862	22.7800
050419	23.7584	23.4936	25.1449	24.1188

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050420	22.3166	23.5438	26.4201	24.1207
050423	17.3771	21.3552	24.8113	20.9574
050424	22.8350	24.0727	25.9378	24.3139
050425	32.8364	35.3712	33.7276	33.9997
050426	25.2453	29.0120	27.4428	27.1541
050427	20.1674	16.4330	*	17.9553
050430	23.8788	21.2275	25.2322	23.4217
050432	24.4133	24.5630	26.0686	25.0170
050433	17.4643	18.9021	17.7980	18.0325
050434	19.7591	*	24.0017	21.7788
050435	25.6676	23.3426	22.2458	23.7166
050436	14.8121	*	*	14.8121
050438	25.0138	23.2583	25.3763	24.5467
050440	23.5167	22.5400	25.4767	23.8254
050441	28.9804	31.8774	33.4696	31.2892
050443	19.9020	17.2875	16.8897	17.9266
050444	21.4533	22.4530	22.6469	22.1781
050446	20.4908	22.3422	20.3611	21.0344
050447	17.9751	18.9851	24.4339	20.7186
050448	19.7046	21.7718	22.6612	21.3755
050449	23.8001	23.4614	*	23.6286
050454	28.7432	30.0792	30.3063	29.7856
050455	20.1643	19.8577	20.5575	20.1952
050456	20.1254	18.1585	17.5846	18.4965
050457	34.4949	32.1910	33.5750	33.4045
050464	25.3292	25.7710	25.8092	25.6421
050468	23.3050	22.2926	22.9771	22.8607
050469	23.8759	24.5205	*	24.1896
050470	16.0292	16.0805	15.7765	15.9567
050471	25.6172	27.1597	29.4705	27.3360
050476	22.4754	24.0253	25.9458	24.2592
050477	27.9595	27.5819	30.8781	28.6932
050478	24.5401	26.3306	28.1829	26.3141
050481	28.9722	27.7973	28.5320	28.4396
050482	18.1217	16.0114	21.6091	18.2297
050483	22.7182	*	*	22.7182
050485	24.1983	24.6906	23.9507	24.2714
050488	34.6939	31.7481	33.8291	33.4344
050491	26.8703	27.4600	27.7412	27.3548
050492	19.5457	20.5030	23.4977	21.2468
050494	29.2621	29.1296	30.2875	29.5621
050496	32.5168	34.9704	32.7474	33.3456
050497	13.8110	15.4115	*	14.5264
050498	24.9677	26.1716	27.6099	26.2387
050502	22.3788	25.3701	27.2724	24.9510
050503	24.4069	23.3745	25.7668	24.5458
050506	25.0845	25.0333	27.1555	25.7636
050510	33.3774	33.7481	36.2548	34.4910
050512	35.3581	34.4368	36.0785	35.2923
050515	35.3419	33.7321	37.3440	35.4231
050516	24.7992	26.1969	25.1778	25.3919
050517	20.9550	22.0985	23.6067	22.1150
050522	35.3784	36.2127	37.0295	36.1638
050523	27.0544	31.2522	32.1272	30.1439
050526	23.8099	26.4014	27.9306	26.0042
050528	19.0611	18.9155	21.1741	19.7510
050531	22.7308	21.3948	*	22.0804
050534	24.0700	24.0001	24.4038	24.1576
050535	25.4215	26.8511	27.7626	26.6201
050537	22.2256	24.0354	26.2342	24.2063
050539	20.7129	23.3846	23.6244	22.6500
050541	34.4573	36.6149	37.0551	36.1147
050542	16.0892	17.7737	21.8129	18.4625

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050543	22.3994	21.6795	22.4134	22.1708
050545	26.3304	31.7280	33.6302	29.6054
050546	26.1949	38.8087	39.4266	31.5013
050547	26.8305	37.7681	37.7633	31.6990
050548	28.8083	29.8516	30.3336	29.5564
050549	27.2765	28.9615	30.0948	28.8364
050550	24.8048	25.6588	*	25.2235
050551	25.4652	24.8084	25.9619	25.4069
050552	21.5216	20.3239	20.6068	20.8970
050557	21.1243	22.2562	23.8340	22.4197
050559	23.5759	24.7866	26.3799	24.8811
050561	34.5791	33.4423	34.2065	34.0632
050564	23.5922	24.2091	*	23.9025
050565	23.7829	20.8349	*	22.1110
050566	17.4423	22.3448	21.7712	20.6000
050567	24.6454	25.0787	26.2588	26.3566
050568	19.5816	20.5376	21.9313	20.7038
050569	26.5479	27.3429	27.3294	27.0680
050570	25.2294	25.8619	26.8965	26.0357
050571	26.2039	24.0154	24.6237	24.9296
050573	24.9644	25.6589	25.9380	25.5333
050575	19.5611	20.7090	27.8579	22.3375
050577	25.1549	23.5487	25.2861	24.6231
050578	28.5379	28.9009	32.0554	29.7756
050579	30.4952	29.9348	32.0245	30.8151
050580	25.9004	24.6962	22.7522	24.4365
050581	23.8584	24.9807	26.0580	24.9311
050583	24.3987	25.8800	26.2664	25.5050
050584	21.2366	19.5805	24.5294	21.6929
050585	25.9426	24.2824	26.4446	25.5528
050586	23.4079	23.1850	*	23.3000
050588	25.3094	24.5472	27.0506	25.7065
050589	24.8698	23.8880	23.7918	24.1317
050590	22.4480	24.4797	25.7756	24.1986
050591	23.9412	25.0209	26.7662	25.1993
050592	21.1745	22.1174	23.8267	22.4222
050594	27.1584	27.7002	28.7415	27.8366
050597	22.8523	23.3280	23.1209	23.0979
050598	24.3597	23.9202	25.1622	24.5206
050599	29.1221	26.0892	26.3782	27.1542
050601	31.8670	29.7417	29.7734	30.4482
050603	23.3390	21.7031	24.9032	23.2638
050604	34.0461	35.4034	36.4669	35.3805
050608	18.0947	18.1664	20.7987	18.9517
050609	34.9935	33.5028	34.8949	34.4263
050613	23.3835	30.2413	34.9980	28.8691
050615	23.8815	27.5682	25.8698	25.6901
050616	22.7437	24.9843	25.0016	24.2299
050618	21.6509	21.4895	22.3548	21.8584
050623	29.1806	27.5832	28.6475	28.4545
050624	22.7148	26.4659	22.4030	23.6850
050625	26.4849	27.5816	28.1438	27.4404
050630	23.9159	24.2120	25.1453	24.4580
050633	23.1918	25.4283	27.8165	25.4720
050636	21.2618	23.5257	25.0214	23.2191
050638	18.2859	18.2159	15.6375	17.1599
050641	21.8315	17.1258	17.9379	18.6266
050644	22.3456	22.1489	*	22.2474
050661	19.6780	*	*	19.6780
050662	26.9606	35.0989	38.9592	31.5421
050663	30.6591	24.9110	22.7770	25.2271
050667	24.9979	27.5045	26.9236	26.1684
050668	42.0974	61.7751	57.8627	51.0207

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
050670	20.0152	24.6101	24.1626	22.6855
050674	34.7380	32.4807	33.7845	33.5929
050675	15.6794	*	*	15.6794
050676	18.6672	20.2087	16.3948	18.3663
050677	35.6503	33.6070	34.0936	34.4139
050678	26.8741	22.7756	25.2143	24.8560
050680	28.0584	31.4839	31.9166	30.4823
050682	26.2882	17.3566	19.8107	20.5443
050684	22.3398	23.3697	24.2792	23.3071
050685	31.1725	35.1307	30.4194	32.1391
050686	35.2631	33.4420	34.8278	34.4753
050688	30.6635	31.0648	34.9936	32.8691
050689	30.7295	30.9399	34.0571	31.9763
050690	32.8204	34.8112	36.7516	34.8707
050693	26.8265	25.5662	29.1213	27.1699
050694	23.2293	23.5572	25.1964	23.9614
050695	21.1377	24.4301	26.2838	24.0169
050696	28.0015	28.3291	29.6685	28.6563
050697	21.1566	18.2338	24.1116	21.0055
050698	*	*	24.9559	24.9559
050699	25.7843	17.5296	23.4611	21.9391
050701	22.6959	24.3055	26.4901	24.3588
050704	22.8716	22.7618	25.6565	23.8031
050707	26.2732	27.8958	28.2637	27.6356
050708	22.7821	24.8647	24.5606	24.0910
050709	21.9598	19.4977	21.8770	21.0737
050710	26.9060	27.5828	30.5918	28.4895
050713	17.7259	16.8538	18.2822	17.6031
050714	28.9314	30.1925	30.3290	29.7818
050717	25.9534	28.7973	31.5021	28.6924
050718	17.6062	18.0940	22.5989	19.6750
050719	25.5508	23.0833	*	23.8495
050720	*	25.8677	*	25.8677
050723	*	*	32.0291	32.0291
060001	21.3659	21.1819	20.6781	21.0801
060003	19.8023	20.4682	21.9043	20.7102
060004	22.8750	21.4496	22.9265	22.4496
060006	19.3651	20.0213	21.0003	20.1579
060007	17.4682	18.2977	19.3071	18.3452
060008	18.0333	18.4590	18.7097	18.3997
060009	21.4312	22.7164	23.9272	22.7121
060010	24.0872	23.6827	24.7332	24.1778
060011	23.4366	22.3458	22.2058	22.6927
060012	20.1442	19.4932	21.2980	20.3114
060013	22.7346	19.1256	23.5248	21.7755
060014	24.2459	24.3210	25.7689	24.7914
060015	20.9773	23.2469	23.6015	22.5801
060016	16.4707	20.2408	20.2361	18.8056
060018	20.3183	21.5083	21.8478	21.1863
060020	18.3099	18.8985	19.4966	18.9093
060022	21.0558	21.0830	22.6052	21.6192
060023	19.2373	21.5475	22.6480	21.1568
060024	21.9955	22.9185	23.5154	22.8418
060027	20.9846	22.0713	21.7571	21.6190
060028	23.2065	23.1792	24.2985	23.5665
060029	20.8585	18.2938	19.8498	19.6763
060030	20.5002	20.3452	18.0264	19.6163
060031	21.1649	22.5067	23.3995	22.3074
060032	23.4162	22.8123	24.2216	23.4772
060033	15.9085	16.0760	17.8514	16.5805
060034	22.4791	23.2816	23.4859	23.0898
060036	15.0698	18.5988	18.6521	17.3368
060037	15.5611	15.4513	15.7495	15.5902

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
060038	14.0791	14.3249	16.6525	15.2260
060041	14.8934	19.1263	19.0282	17.3424
060042	19.1892	20.8597	19.3967	19.6496
060043	13.6717	13.4443	15.4073	14.1048
060044	19.7039	20.8673	21.3102	20.6215
060046	19.4567	22.2699	22.6819	21.4974
060047	15.8770	17.1534	17.9173	16.9143
060049	21.7797	23.0613	25.9592	23.6523
060050	18.2238	19.0832	*	18.6522
060052	13.4210	14.8729	16.0543	14.6462
060053	15.9806	18.0232	19.4746	17.7396
060054	22.8985	20.4160	19.7753	20.9273
060056	18.2831	18.1263	21.9586	19.5606
060057	26.4046	25.4185	24.6599	25.4808
060058	15.4856	13.8539	16.4504	15.2822
060060	15.6469	15.6018	19.4418	16.7387
060062	17.2991	16.8640	17.1032	17.1033
060064	21.2207	22.7797	*	22.0259
060065	21.6305	24.5572	23.7809	23.3223
060066	16.3485	17.2537	17.5556	16.9855
060070	17.3184	18.8960	19.2220	18.4993
060071	17.5987	17.4068	17.6452	17.5489
060073	15.7860	17.0846	18.4971	17.0767
060075	24.1550	23.8724	25.0552	24.3665
060076	24.8732	20.3265	22.9203	22.6621
060085	13.6277	14.3409	10.9724	12.8943
060088	25.2786	13.7174	18.1570	17.7609
060090	22.2974	16.3760	16.5321	18.2600
060096	21.9623	20.8937	21.9951	21.6204
060100	23.5986	23.9305	24.1341	23.8807
060103	24.8151	23.5083	24.4962	24.2301
060104	22.2295	21.1820	24.4248	22.5603
060107	14.2698	21.9221	*	16.3130
060108	*	*	19.1327	19.1327
060109	*	*	27.3180	27.3180
070001	26.0878	26.3596	27.7441	26.7515
070002	26.2801	26.1768	26.6881	26.3761
070003	25.6949	27.5200	28.1721	27.1059
070004	22.4871	24.2567	25.4310	24.0188
070005	26.6483	26.9151	27.6733	27.0706
070006	27.5674	28.6413	33.6291	30.1330
070007	26.9505	26.3313	28.0875	27.1381
070008	23.0227	24.2971	25.1362	24.0979
070009	24.6201	24.1871	24.9408	24.5838
070010	26.2354	29.2194	28.3168	27.8716
070011	23.3638	23.0883	24.8206	23.7802
070012	23.0321	28.8067	*	25.4962
070015	23.8240	28.1204	29.2693	27.0233
070016	24.9148	24.4633	28.4833	25.9349
070017	26.2923	26.0424	27.5515	26.5441
070018	28.0689	30.6864	32.6301	30.4394
070019	25.7283	24.9249	26.2348	25.6326
070020	23.9987	25.9964	26.6203	25.5573
070021	25.2978	26.3043	29.4596	26.9916
070022	26.5691	26.9111	26.9907	26.8202
070024	25.2983	24.8948	26.2173	25.4902
070025	25.1315	25.4345	27.3592	25.9673
070027	23.6412	26.8450	25.8163	25.4005
070028	24.6788	25.7492	26.7286	25.7052
070029	22.0080	23.9682	23.8427	23.2454
070030	28.9117	22.1578	*	25.8929
070031	23.4419	24.1198	25.6347	24.3735
070033	30.4214	31.4736	32.8256	31.5451

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
070034	28.9200	29.4916	30.0480	29.4611
070035	23.0869	24.1423	24.1838	23.7950
070036	28.8400	29.9470	31.2961	29.9831
070038	*	*	26.3126	26.3126
070039	22.9032	22.3356	*	22.7640
080001	25.4836	24.8833	26.8887	25.7287
080002	19.6011	20.1965	20.9385	20.3062
080003	22.1856	23.1275	24.8200	23.2380
080004	21.9391	22.9706	21.7344	22.1849
080006	20.0792	22.6671	20.8203	21.1329
080007	19.6213	21.3746	21.1211	20.7477
090001	21.7526	21.5751	23.0365	22.1027
090002	19.4191	21.5726	20.6550	20.5048
090003	22.1090	23.1268	26.6720	23.7360
090004	24.3367	25.5054	25.9717	25.2072
090005	23.8620	26.3074	26.6217	25.5545
090006	20.8675	22.0957	22.6250	21.8452
090007	22.1973	29.2840	26.7809	26.4132
090008	20.2166	25.2708	*	22.7566
090010	24.1287	23.6616	25.9373	24.5182
090011	27.4781	26.6349	28.0948	27.4100
100001	19.5796	20.2157	21.9071	20.5375
100002	20.7136	21.0222	21.5772	21.1199
100004	14.6283	15.4149	16.1638	15.4361
100006	20.1133	21.2293	20.9190	20.7854
100007	21.7242	22.1590	22.5317	22.1527
100008	20.4980	20.8381	21.6416	21.0118
100009	22.6419	22.1741	21.3298	22.0295
100010	21.9078	23.0637	23.9582	22.9492
100012	19.6177	20.4659	21.7527	20.6367
100014	19.8023	19.5770	21.7358	20.3525
100015	18.4779	18.0654	18.9383	18.4860
100017	19.0608	19.8655	20.0861	19.6893
100018	21.0332	21.6388	22.5429	21.7594
100019	22.6152	23.5462	28.2362	24.8745
100020	21.3848	20.7816	21.7421	21.3134
100022	26.4094	26.5695	27.4235	26.7855
100023	19.9739	19.1787	20.2034	19.7906
100024	21.8791	22.1332	22.9872	22.3458
100025	18.7774	19.4529	20.1360	19.4381
100026	20.5641	20.9461	21.3742	20.9788
100027	19.1481	14.7916	20.5889	17.6926
100028	19.3757	19.3371	19.7475	19.4900
100029	20.8745	20.8950	22.2553	21.3244
100030	22.8204	20.5952	20.4996	21.1231
100032	19.8127	19.7451	20.6543	20.0503
100034	17.8743	19.5282	20.1214	19.1092
100035	20.1540	23.8117	21.2830	21.7761
100038	23.3578	24.5864	24.9548	24.3305
100039	21.5297	21.7861	23.3111	22.2259
100040	19.0449	18.6321	18.7546	18.8065
100043	18.7993	18.8206	20.7414	19.4322
100044	21.4764	22.7236	22.4824	22.2380
100045	20.9216	21.0228	22.8096	21.6136
100046	21.6207	21.3028	23.8909	22.2917
100047	20.0114	20.6068	21.4971	20.7134
100048	15.0584	15.7790	17.3663	16.1388
100049	18.8535	19.1025	20.9490	19.6376
100050	17.2377	17.9039	17.8960	17.6845
100051	23.1273	17.9453	19.3264	19.7334
100052	17.9537	18.1780	17.9957	18.0416
100053	20.1724	19.6800	21.6634	20.4905
100054	23.5491	21.1518	20.8078	21.8397

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100055	18.0547	18.8760	19.1324	18.6804
100056	25.7863	21.8506	23.1737	23.6729
100057	19.9712	19.5319	22.3406	20.5479
100060	23.2561	23.5997	*	23.4313
100061	22.1133	22.9176	24.4704	23.1202
100062	19.4370	21.4424	21.9054	21.0072
100063	19.2629	18.4642	19.0908	18.9473
100067	18.0877	18.4851	18.5405	18.3328
100068	19.9305	19.8308	19.9648	19.9094
100069	16.8271	17.3666	18.5789	17.6344
100070	18.7408	20.0381	20.9592	19.7991
100071	17.5451	17.7234	20.7461	18.6293
100072	21.0225	20.5968	22.0317	21.2423
100073	21.1898	22.2812	22.2425	21.9197
100075	18.3688	19.4480	20.4664	19.4104
100076	17.8733	17.8612	18.4815	18.0825
100077	22.3438	19.0640	16.8641	17.3061
100078	18.4499	19.2891	14.4191	17.3311
100080	22.1966	22.7153	21.3374	22.0479
100081	14.8313	15.4253	16.5149	15.5681
100082	18.8998	*	*	18.8998
100084	22.3674	22.7009	24.5682	23.2945
100085	22.1231	*	*	22.1231
100086	21.6997	23.3718	24.3067	23.1462
100087	23.6090	23.6562	21.2831	22.8681
100088	20.3693	20.5566	20.0598	20.3349
100090	19.1479	19.7695	21.0431	20.0438
100092	17.9216	20.1760	20.5186	19.5588
100093	16.5128	16.8422	18.7153	17.3704
100098	19.2427	20.8315	21.1723	20.4066
100099	15.7823	15.7591	16.5624	16.0147
100102	18.9701	19.7673	19.0195	19.2464
100103	17.2364	18.7844	20.6957	18.8771
100105	21.6604	21.8268	22.7793	22.1049
100106	17.2527	17.4958	21.4342	18.9189
100107	20.1281	20.0719	21.7553	20.6632
100108	19.9593	20.1125	18.4127	19.5107
100109	20.8440	20.8370	20.5973	20.7560
100110	20.8995	20.1853	22.2354	21.1342
100112	25.2570	15.2128	16.2109	17.7240
100113	23.2020	21.3489	22.7264	22.3351
100114	21.6262	22.8178	22.5326	22.3196
100117	20.7624	20.6962	21.3007	20.9256
100118	22.8702	20.7323	21.4486	21.6456
100121	*	18.5842	18.8073	18.6952
100122	19.8783	19.2643	24.9765	21.2147
100124	17.0713	20.4022	*	18.7024
100125	18.9535	19.6097	20.3232	19.6414
100126	19.5413	19.3103	21.4349	20.0428
100127	19.9860	19.2122	20.4778	19.8925
100128	20.1536	22.8826	23.5835	22.0798
100129	19.1936	*	*	19.1936
100130	18.6751	20.0947	21.0023	19.9341
100131	23.4373	23.1622	24.1745	23.6099
100132	18.1167	18.7863	19.0747	18.6426
100134	15.1764	15.9733	16.9302	15.9832
100135	18.8253	19.1865	19.7675	19.2758
100137	18.6955	19.5562	20.9015	19.8112
100138	17.1373	14.9539	14.9760	15.5324
100139	15.6514	15.2532	15.7378	15.5541
100140	17.1389	19.0584	20.1703	18.8122
100142	19.6815	18.4113	17.7250	18.5714
100144	12.2877	*	*	12.2877

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100146	18.1267	21.3359	21.9435	20.4800
100147	14.6616	15.2348	17.1566	15.6835
100150	21.2807	21.5057	25.4269	22.5635
100151	21.6087	23.8489	26.6143	24.0945
100154	20.0015	20.4068	21.6715	20.7094
100156	19.4980	18.4779	20.0348	19.3485
100157	22.6744	22.6195	24.2188	23.1792
100159	10.2793	10.7818	15.0633	11.7916
100160	20.5581	23.3121	22.6942	22.2030
100161	22.2994	22.3053	22.6534	22.4189
100162	20.1411	20.3110	20.4188	20.2955
100165	19.0388	22.6622	*	21.0526
100166	20.0250	21.2309	22.2379	21.1128
100167	23.4075	23.2969	25.6873	24.1145
100168	20.1994	20.3167	23.0121	21.2144
100169	20.9506	20.3017	21.6397	20.9720
100170	18.5088	19.3005	21.2469	19.5894
100172	14.3446	14.8826	15.7827	14.9994
100173	18.5662	17.1337	18.3828	18.0289
100174	26.1826	21.9807	*	24.0224
100175	18.1692	20.5442	21.2532	20.0936
100176	22.8604	24.3089	24.6595	23.9677
100177	24.4296	24.4284	26.4489	25.1965
100179	22.3015	23.0849	23.9633	23.1372
100180	20.2130	21.5388	22.6895	21.4521
100181	23.0800	18.9510	17.9048	19.7877
100183	24.6121	23.0654	22.2063	23.2470
100187	20.2533	20.8535	21.4988	20.8818
100189	21.3147	26.5962	27.1295	24.9742
100191	19.9879	21.0647	21.7024	20.8988
100199	21.7193	*	*	21.7193
100200	22.4579	23.8729	24.8878	23.7939
100204	20.8995	20.2193	20.8626	20.6601
100206	19.5710	20.1171	20.3436	20.0192
100208	21.2117	20.7029	20.4678	20.8077
100209	22.4577	23.3903	22.5915	22.8006
100210	21.3575	21.8545	23.0431	22.0260
100211	20.6427	20.7516	21.6367	21.0021
100212	21.1187	21.1263	*	21.1225
100213	20.6558	21.1818	21.9371	21.2709
100217	20.5909	22.7335	22.7116	21.9737
100220	21.2796	21.8246	22.3283	21.7592
100221	17.3965	21.2321	23.2263	20.3743
100223	20.6302	20.2233	21.3859	20.7713
100224	20.0251	21.8628	21.9515	21.2530
100225	20.6802	21.5059	22.4619	21.5424
100226	20.6858	21.8808	22.4084	21.7019
100228	21.3168	20.8810	23.4697	21.8662
100229	19.6908	18.2350	19.7259	19.2271
100230	20.5051	22.5650	23.4169	22.2637
100231	17.9226	18.7526	21.1128	19.1318
100232	19.3491	19.8002	19.9125	19.6887
100234	20.9104	21.6360	23.4761	21.9136
100235	17.1622	*	*	17.1622
100236	20.3766	20.6942	21.5316	20.8545
100237	22.0865	23.2408	23.2712	22.8481
100238	19.6367	20.8252	22.8488	21.0709
100239	21.3193	19.4481	23.0048	21.1692
100240	20.4340	21.0606	21.3495	20.9700
100241	14.7224	17.1063	14.1059	15.3322
100242	17.9260	18.6938	18.9062	18.5149
100243	21.2644	20.8041	22.4644	21.5426
100244	18.6227	20.5352	21.2521	20.2154

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
100246	19.6376	21.9247	23.5171	21.5681
100248	20.7007	21.2988	21.8086	21.2951
100249	19.2808	18.1397	18.4932	18.6366
100252	17.7778	19.8079	22.0976	19.8858
100253	21.3232	22.4778	22.6517	22.1811
100254	19.6598	19.5523	19.5050	19.5721
100255	25.2119	21.0284	20.7228	22.1421
100256	20.9356	21.2786	22.0528	21.4173
100258	21.3501	20.0300	22.0790	21.1494
100259	20.3815	21.1160	21.4991	21.0228
100260	21.0506	24.9183	21.1292	22.2409
100262	20.0433	21.0927	22.7137	21.2022
100264	19.1556	19.9491	21.5104	20.1857
100265	18.8301	18.2291	20.2365	19.1431
100266	18.2993	19.3623	20.2821	19.3534
100267	20.1141	21.7430	21.7446	21.2105
100268	23.9249	24.0538	23.6367	23.8643
100269	21.6724	22.5114	26.0271	23.4143
100270	15.1462	16.7148	20.8217	17.5380
100271	20.4824	20.8695	21.9823	21.1576
100275	20.9188	21.4904	23.2088	21.8580
100276	22.3646	24.1022	24.8251	23.8061
100277	16.6255	19.7241	14.9157	16.6327
100279	22.9095	22.5879	21.1094	22.2253
100280	17.3676	18.1972	19.0157	18.2076
100281	22.4392	23.0142	23.4729	23.0255
100282	19.1978	18.4884	20.9256	19.5516
100284	*	18.9448	18.4204	18.6867
110001	19.1971	20.1150	22.3072	20.5112
110002	17.1406	19.5158	20.2149	18.9927
110003	18.1168	17.1450	18.2792	17.8514
110004	19.5591	19.7733	20.6096	19.9776
110005	17.7348	22.4568	21.8105	20.9768
110006	20.7820	21.0601	21.9525	21.2769
110007	21.9505	25.2523	26.3143	24.5085
110008	22.0081	18.5265	19.9606	20.1468
110009	16.3069	17.4306	16.6452	16.8052
110010	23.3213	23.9104	25.1930	24.1454
110011	18.6144	18.9823	20.4028	19.3209
110013	16.2811	18.9160	16.7833	17.3444
110014	16.0658	18.1787	18.4463	17.4976
110015	21.2146	20.9926	21.2600	21.1563
110016	22.5321	14.2398	14.7571	16.4041
110017	13.1960	22.2537	21.2970	19.1377
110018	19.6064	22.1480	22.3933	21.3958
110020	18.3147	19.4617	20.9687	19.5535
110023	21.1994	22.0546	*	21.6186
110024	20.7297	20.7345	21.3945	20.9529
110025	19.5749	20.4232	20.2493	20.0573
110026	17.2977	16.2484	16.6320	16.7325
110027	16.0642	14.7081	19.8976	16.6619
110028	20.1547	29.1670	28.1695	25.3235
110029	20.2906	21.2150	21.3492	20.9560
110030	18.8105	19.6412	20.4656	19.6568
110031	19.9482	20.0553	20.9219	20.3082
110032	15.7349	18.2014	19.2685	17.6324
110033	22.1879	25.6335	23.1939	23.6010
110034	19.6055	19.5554	23.0724	20.6505
110035	19.3795	22.7950	21.8646	21.4160
110036	22.2498	24.9234	25.1127	24.0254
110038	17.7060	17.7396	18.4508	17.9715
110039	20.6011	20.4998	18.9817	19.9578
110040	17.0743	16.8083	17.7798	17.2164

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
110041	18.8035	20.2755	20.1398	19.7378
110042	24.0153	25.2331	25.0535	24.7832
110043	20.1016	20.6150	21.2714	20.6367
110044	16.3624	17.2087	17.5905	17.0642
110045	20.2498	21.3049	20.6934	20.7294
110046	19.7377	21.4905	22.8820	21.3991
110048	16.3148	15.6113	18.8751	16.8775
110049	16.1817	16.8639	17.1396	16.7155
110050	20.7619	19.2291	18.9048	19.6044
110051	17.0070	17.2292	17.2050	17.1503
110054	*	20.0549	20.5698	20.3256
110056	15.6202	17.7959	16.0362	16.5039
110059	16.6678	16.7990	17.8076	17.0958
110061	15.0367	16.3557	17.4601	16.2796
110062	18.8019	17.0053	17.9421	17.8940
110063	16.9612	18.5071	18.0256	17.8146
110064	18.9515	19.1203	18.8578	18.9772
110065	15.6771	16.3546	16.9829	16.3529
110066	21.0207	22.4189	23.4554	22.2503
110069	19.3109	20.9575	21.1513	20.4832
110070	21.0227	17.3438	19.6361	19.3058
110071	14.5984	18.8321	21.5042	17.7757
110072	12.7877	12.7625	13.6626	13.0734
110073	15.4261	16.4658	17.9372	16.5696
110074	21.3945	22.3769	24.4924	22.7969
110075	18.5199	20.1757	20.1604	19.6679
110076	21.2867	21.9798	23.6127	22.2999
110078	22.3718	24.0893	25.9119	24.1213
110079	21.0593	22.1070	22.3641	21.8325
110080	18.4768	19.1839	19.4635	19.0419
110082	23.8768	24.3140	22.7015	23.5986
110083	23.1219	23.1463	22.2609	22.8147
110086	18.2815	16.6374	19.0164	17.9653
110087	21.7773	22.7069	24.0994	22.9041
110089	18.5587	19.3855	19.0453	18.9917
110091	19.5114	21.5328	23.7110	21.5509
110092	17.3479	16.9725	15.9178	16.7054
110093	*	16.9827	*	16.9827
110094	14.5641	16.9503	16.8890	16.0918
110095	16.4670	17.1195	17.4302	17.0118
110096	16.8541	17.4157	18.0418	17.4444
110097	15.5811	17.4558	17.8454	16.7969
110098	16.3532	16.0597	16.7800	16.4135
110100	18.6978	19.0764	18.6822	18.8175
110101	10.8187	18.8491	13.8787	13.5799
110103	13.6842	21.1837	21.5683	17.7316
110104	15.7781	15.9431	16.6322	16.1150
110105	16.8909	16.7775	18.1306	17.2936
110107	19.3609	19.3897	21.0863	19.9482
110108	19.7938	25.2161	20.1140	21.3451
110109	15.9359	16.4031	16.5977	16.3157
110111	18.5108	18.3951	18.4274	18.4433
110112	19.0619	19.8986	18.9574	19.2821
110113	16.8179	15.9532	16.0942	16.2556
110114	14.6888	16.4812	16.8297	16.0087
110115	43.9427	22.5049	26.5759	28.7027
110118	20.5368	19.7509	17.5714	19.1118
110120	15.2589	17.7452	18.4738	17.1958
110121	16.2711	19.3643	18.8744	18.1723
110122	21.1385	21.1469	20.4922	20.9166
110124	17.5732	18.3366	19.4093	18.3953
110125	19.1311	18.0090	19.4207	18.8387
110127	14.6143	20.3765	16.1107	17.0392

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
110128	18.1845	18.0835	19.5450	18.6049
110129	18.9388	19.0001	20.8935	19.6183
110130	16.0580	14.6011	16.6915	15.7591
110132	16.0419	16.3943	17.1820	16.5355
110134	12.5723	19.8639	19.0305	17.6901
110135	17.4380	17.3504	15.6668	16.7018
110136	18.0639	16.9629	20.7827	18.4333
110140	17.8870	17.7915	*	17.8447
110141	13.2501	14.4935	13.2710	13.6692
110142	14.6144	13.9525	14.1203	14.2070
110143	20.1603	22.5926	22.4254	21.8082
110144	16.8685	17.5112	17.5678	17.2876
110146	16.1316	17.1835	17.5940	17.0117
110149	17.7535	32.1975	25.2525	24.0956
110150	20.2644	21.2909	22.4899	21.3508
110152	15.3996	15.1324	16.3837	15.6496
110153	19.2744	20.5068	20.6972	20.1497
110154	14.9636	17.3761	16.5286	16.2471
110155	15.5306	16.5146	16.4756	16.1555
110156	14.7477	16.3876	16.0759	15.7007
110161	21.7153	22.2861	24.5776	22.9656
110163	20.4202	18.6637	20.0673	19.6918
110164	20.2074	21.2160	22.5865	21.3587
110165	21.2577	20.8030	22.5604	21.5831
110166	20.5882	20.5049	22.3657	21.1057
110168	20.6646	21.8058	22.2537	21.6267
110169	20.6385	22.6648	23.3750	21.9474
110171	23.7893	25.5296	24.5313	24.5760
110172	23.3730	23.6803	24.7005	23.9332
110174	13.7339	14.6199	*	14.1346
110177	20.7187	21.2796	22.7831	21.6138
110178	18.8306	*	*	18.8306
110179	22.7841	22.0767	24.3673	23.0370
110181	14.0941	12.9798	13.9591	13.6986
110183	23.3826	22.5148	24.2899	23.3905
110184	22.1970	22.1920	22.2761	22.2235
110185	16.7246	17.7925	17.3330	17.2705
110186	17.4287	18.3178	19.7172	18.4775
110187	20.1154	19.8419	22.8248	20.9454
110188	24.8376	23.7032	21.9945	23.3633
110189	22.2715	20.8786	19.3335	20.7205
110190	18.5728	18.3649	20.7292	19.1518
110191	20.2033	21.4033	21.3404	21.0040
110192	21.4951	21.0486	22.9684	21.8761
110193	20.6380	20.7867	22.1392	21.1880
110194	15.1480	14.8115	15.8129	15.2645
110195	13.9135	12.7261	10.9444	12.3540
110198	24.1999	24.8646	24.8275	24.6410
110200	18.1862	17.7744	17.9631	17.9701
110201	20.4699	20.9497	21.9313	21.1039
110203	26.8148	22.7453	24.2062	24.5686
110204	19.7317	30.7342	35.3699	24.8432
110205	21.1435	21.3617	20.1405	20.8862
110207	12.9727	14.7154	14.6045	14.1130
110208	15.1742	15.6161	15.0350	15.2676
110209	17.9190	18.6404	20.0629	18.7585
110211	20.9372	26.9151	20.1024	22.3126
110212	11.8545	14.3790	15.8420	13.8932
110213	14.3651	*	*	14.3651
110215	20.1928	18.1539	21.0263	19.7770
110216	*	27.1878	*	27.1878
120001	27.9213	29.0427	29.4126	28.7754
120002	25.0744	25.2021	23.5667	24.5781

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
120003	25.9059	23.9115	24.6238	24.8142
120004	23.9208	24.8632	26.1398	24.8838
120005	23.3975	24.1662	22.3213	23.2601
120006	25.0895	25.8943	26.0904	25.6667
120007	22.7200	22.8772	22.7179	22.7718
120009	17.4693	16.4485	16.7630	16.8820
120010	25.1480	24.1923	24.9089	24.7414
120011	35.0582	37.2759	35.2051	35.8314
120012	23.1144	21.8507	22.0371	22.3824
120014	22.8866	24.1208	25.3557	24.0761
120015	32.9906	42.6465	*	37.0469
120016	27.9127	45.1899	43.5083	34.2774
120018	24.5031	31.1879	*	26.7466
120019	22.9341	25.5659	23.8535	24.0876
120021	23.4508	23.1839	*	23.3291
120022	21.7868	19.2614	17.3744	19.4456
120024	29.4808	32.2514	*	30.1443
120025	20.1065	50.6376	40.1332	25.3493
120026	26.0787	25.1314	25.7023	25.6323
120027	24.7255	24.4535	23.1434	24.0841
120028	27.5023	27.0897	27.5365	27.3898
130001	18.8471	17.6306	19.6328	18.7161
130002	16.6620	16.9867	18.5746	17.4270
130003	21.7313	22.3430	23.0994	22.4005
130005	20.7169	21.2386	22.6364	21.5043
130006	19.3392	20.4614	21.4640	20.4603
130007	20.8338	21.8107	22.0894	21.5806
130008	12.5506	13.6018	19.3392	14.7112
130009	19.1837	15.9701	16.8563	17.2592
130010	17.6795	17.5119	17.7826	17.6635
130011	20.5031	20.1147	22.1125	20.9248
130012	22.9813	24.9976	24.2451	24.1243
130013	17.4038	15.1129	22.6624	18.2887
130014	18.9769	19.2107	19.7560	19.3379
130015	15.7233	18.5913	16.4136	16.7965
130016	17.3942	19.0516	20.1220	18.8309
130017	17.1710	19.6875	19.9511	18.7336
130018	19.7368	19.8425	20.1934	19.9339
130019	18.6648	19.1711	19.5147	19.0953
130021	12.8588	15.6155	14.3089	14.2489
130022	16.5270	18.9127	19.7814	18.3410
130024	19.3634	19.0703	19.9934	19.4905
130025	17.5213	16.4627	17.5989	17.2009
130026	21.5934	21.8106	23.2093	22.2042
130027	21.4279	20.5344	19.0911	20.3739
130028	19.1093	20.9674	18.1205	19.2837
130029	18.4263	18.7694	22.9243	19.6491
130030	17.8440	17.5759	18.5827	17.9732
130031	16.2397	16.7766	20.4146	17.4242
130034	16.9873	18.9483	20.5802	18.9102
130035	19.3478	20.7770	16.9671	19.1314
130036	13.7933	13.6362	15.1590	14.2304
130037	18.8071	18.6856	19.2108	18.9127
130043	16.5102	16.7904	17.6920	16.9853
130044	17.8160	13.4513	16.7797	15.8094
130045	16.0990	19.0208	17.5152	17.4280
130048	16.0899	16.7900	*	16.4201
130049	20.3129	22.4440	22.0520	21.6192
130054	17.2729	17.7085	16.4675	17.1120
130056	14.6862	20.9476	28.8008	19.9051
130060	21.8662	22.7399	23.2512	22.6187
130061	15.4006	14.7394	*	15.1267
130062	16.5672	19.8157	19.8264	18.8380

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
130063	15.9441	18.8024	18.4797	18.1425
140001	16.3372	17.7990	17.7421	17.2408
140002	19.0248	19.9284	20.9959	19.9709
140003	21.2886	17.8595	18.0163	18.9220
140004	15.7042	17.4574	19.0486	17.4249
140005	11.6127	12.3002	12.4144	12.1009
140007	22.9799	23.8585	25.0105	23.9811
140008	21.6548	22.1111	24.2779	22.6707
140010	31.8207	28.5635	26.6836	28.8200
140011	17.8676	18.6164	18.4052	18.3022
140012	23.0653	21.4374	22.5885	22.3529
140013	18.3060	19.6722	20.3147	19.4284
140014	22.4737	21.4042	22.2944	22.0537
140015	16.6735	17.6805	20.3540	18.1726
140016	13.1278	14.4938	15.4454	14.3266
140018	22.3070	22.4132	23.4595	22.7307
140019	16.6548	16.4254	16.1180	16.3909
140024	16.8271	15.3782	16.1032	16.1040
140025	16.9462	18.5135	21.7775	18.9319
140026	16.6612	18.3220	19.7839	18.2263
140027	18.7553	19.2149	20.5980	19.5140
140029	22.8322	26.0833	28.0683	25.6669
140030	21.9475	23.1760	25.2828	23.5549
140031	19.5731	17.6067	16.9650	17.9987
140032	18.1058	19.0383	19.8033	18.9961
140033	24.1722	25.1639	22.8705	24.0049
140034	19.5278	19.8792	19.7711	19.7256
140035	15.2649	15.5040	17.4514	16.0631
140036	18.5771	19.1076	21.2366	19.6677
140037	13.0764	14.1083	14.3082	13.8255
140038	18.3035	18.4948	19.8197	18.8624
140040	19.9267	16.7450	18.0342	18.2044
140041	17.6582	18.5952	18.8042	18.3411
140042	15.4095	15.8892	16.1157	15.8051
140043	19.4683	20.1176	21.7356	20.4389
140045	15.5807	17.7799	17.4261	16.8835
140046	18.9763	18.6371	20.0859	19.2505
140047	17.1539	13.3610	16.6672	15.5612
140048	24.0913	23.9545	22.5870	23.5490
140049	28.4958	26.9483	27.0250	27.5281
140051	23.8264	24.0796	24.6964	24.2137
140052	19.6409	17.9571	21.0450	19.4727
140053	19.1892	19.9620	20.5244	19.8722
140054	22.1921	23.1576	23.9416	23.0858
140055	16.3404	14.3603	15.8756	15.4931
140058	17.4927	18.6861	19.1199	18.4367
140059	15.0195	*	18.2593	16.6820
140061	17.3012	18.2039	18.4264	17.9767
140062	28.0877	28.5304	28.6390	28.4255
140063	25.3641	29.1453	25.8203	26.5945
140064	19.1023	18.9379	19.6954	19.2477
140065	24.1128	25.3336	25.5939	25.0012
140066	17.3902	13.6491	15.4818	15.3710
140067	19.3267	19.5292	20.7511	19.8509
140068	19.9691	21.6188	21.6089	21.0342
140069	16.7544	17.3879	17.7785	17.3221
140070	22.9678	22.7153	25.2646	23.5870
140074	19.3504	21.6052	22.2604	20.9581
140075	21.6313	21.6434	21.0968	21.4950
140077	17.5305	17.3647	17.3236	17.4081
140079	23.3020	23.6928	22.7046	23.2149
140080	21.0739	22.1968	22.0682	21.7613
140081	16.2247	16.9808	18.1746	17.0842

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140082	23.8960	29.7262	26.5960	26.4591
140083	19.3145	21.0330	18.0664	19.5127
140084	20.9709	22.3467	22.0706	21.7924
140086	18.3803	19.1613	19.1815	18.9175
140087	16.1009	17.1147	21.4593	18.0959
140088	25.2369	25.4176	26.5258	25.7146
140089	17.6366	18.3157	19.3230	18.4019
140090	26.4325	26.9364	28.0530	26.9854
140091	20.9018	21.9322	22.9565	21.9272
140093	18.2899	20.1528	20.7564	19.6330
140094	21.4709	21.9383	22.8892	22.0901
140095	24.0549	24.2859	23.8834	24.0755
140097	17.5081	21.1719	21.8418	20.1374
140100	21.3581	23.1399	23.8226	22.7460
140101	21.5473	21.4211	23.1418	22.0459
140102	17.1500	17.5729	18.6328	17.7567
140103	19.2783	18.1303	16.2009	17.8612
140105	22.6573	22.8944	23.8258	23.1227
140107	13.7533	11.8383	11.5827	12.2495
140108	25.4742	26.9971	27.9140	26.8421
140109	15.7465	14.5498	15.9178	15.3965
140110	19.1822	19.2888	20.9631	19.8004
140112	17.6856	17.6974	18.1119	17.8311
140113	19.0592	19.5584	*	19.3069
140114	21.1639	21.0976	22.9844	21.7634
140115	21.1926	21.0433	20.7660	21.0012
140116	23.1177	23.8993	27.8888	25.1841
140117	21.5671	21.4876	22.0889	21.7249
140118	23.5952	24.3260	25.3249	24.4123
140119	29.1419	27.9145	30.6468	29.2072
140120	18.0743	17.9716	18.5685	18.2090
140121	16.0397	16.6993	16.2607	16.3273
140122	24.6470	26.1270	26.7344	25.7959
140124	27.1906	27.9813	30.2658	28.3904
140125	17.6759	16.9516	17.8190	17.4826
140127	19.8973	20.0489	20.8397	20.2623
140128	19.4955	23.1327	23.5481	22.1101
140129	18.2639	20.2868	21.6252	19.9926
140130	22.2285	23.4298	26.0464	23.9518
140132	23.5475	23.3054	23.7046	23.5171
140133	21.4090	21.4166	20.1740	21.0117
140135	17.8100	17.3985	18.2479	17.8298
140137	16.8969	18.6330	19.2594	18.2334
140138	16.7420	17.1968	14.5771	16.0861
140139	14.0619	11.0397	*	12.4249
140140	17.8243	17.6845	18.8185	18.1076
140141	17.5204	19.1097	20.2606	18.9480
140143	19.1862	19.0810	19.9885	19.4222
140144	21.3245	22.2864	24.8854	22.7447
140145	17.5471	18.1788	19.4509	18.3977
140146	21.9573	19.9704	19.4272	20.3714
140147	16.1336	18.8049	17.1013	17.2344
140148	18.6598	18.7730	19.7630	19.0696
140150	27.3378	24.7976	28.1723	26.6696
140151	21.3896	20.0310	20.8820	20.7518
140152	24.6333	25.6011	27.9615	26.0086
140155	19.9738	20.2778	23.9957	21.3787
140158	22.7639	22.7988	23.7428	23.1140
140160	17.7691	17.7921	19.8825	18.5234
140161	20.0948	20.3799	21.2045	20.5610
140162	19.6464	20.3452	21.6901	20.5431
140164	18.7806	18.6589	19.8246	19.1100
140165	14.9156	14.7223	16.3700	15.3419

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140166	17.5496	18.3833	18.9513	18.2817
140167	17.1479	17.6525	18.8532	17.9029
140168	16.6770	17.7453	18.2896	17.5820
140170	16.1621	16.4107	17.6901	16.7412
140171	14.1637	15.0237	15.2617	14.8002
140172	23.8431	23.6262	26.2314	24.4761
140173	15.1487	16.3924	16.0030	15.8459
140174	20.5339	35.9320	21.8272	23.9333
140176	23.2866	24.5338	26.2821	24.7364
140177	18.2648	15.0827	20.3142	17.5964
140179	21.1948	21.9859	22.6795	21.9485
140180	22.4548	22.7996	22.7508	22.6646
140181	20.8709	21.9864	22.6089	21.8164
140182	22.0170	28.9515	25.1352	24.9085
140184	17.8155	17.2401	17.9169	17.6582
140185	17.6514	18.2867	18.8573	18.2635
140186	22.7890	23.5034	20.7389	22.2767
140187	17.9201	18.3331	19.4049	18.5535
140188	15.2479	16.1907	*	15.6443
140189	21.0616	20.6627	21.1515	20.9599
140190	16.3366	17.5263	16.6673	16.8245
140191	25.8835	25.2628	27.4166	26.1852
140193	15.8022	17.4057	18.5651	17.2695
140197	18.6394	19.3774	19.9406	19.3426
140199	18.3507	18.0450	18.5409	18.3150
140200	21.5220	21.7680	22.5226	21.9573
140202	22.1939	23.7955	25.2777	23.7942
140203	19.9194	21.0848	24.8870	21.9324
140205	17.4751	20.0784	*	18.5139
140206	21.3295	22.5109	23.0603	22.2974
140207	21.9779	22.3905	25.4539	23.1447
140208	25.9900	26.2527	28.0890	26.7814
140209	18.1206	20.1557	20.2433	19.4720
140210	15.6899	14.8248	15.5345	15.3479
140211	21.8891	22.6265	22.8852	22.4887
140213	27.0645	24.9892	25.6839	25.9086
140215	15.9949	15.2893	18.5502	16.5949
140217	24.8229	25.7329	25.6584	25.3935
140218	14.9459	14.9851	17.4171	15.7345
140220	17.6370	17.8450	19.3915	18.3036
140223	24.9249	24.9017	26.2168	25.3383
140224	25.8668	32.8292	24.7882	27.5872
140228	19.6988	20.1688	21.2764	20.3895
140230	18.0918	18.2983	*	18.1984
140231	23.9176	24.5019	26.0439	24.9346
140233	19.4542	21.2333	23.5331	21.4436
140234	18.9945	*	19.7266	19.3554
140236	*	12.9253	*	12.9253
140239	18.8127	20.3745	20.9926	20.0958
140240	23.6860	24.6949	25.1418	24.5193
140242	24.5428	25.2317	26.1850	25.3655
140245	13.4839	14.2481	15.1320	14.2800
140246	13.4639	11.6267	15.0650	13.2908
140250	25.0876	23.6449	25.3410	24.6985
140251	21.4385	21.9435	23.3971	22.2702
140252	25.2246	25.0220	26.0869	25.4562
140253	18.5511	19.5858	18.4567	18.8447
140258	23.2973	25.3622	24.3731	24.3357
140271	15.5079	12.0079	16.0350	14.2915
140275	20.1699	23.8171	21.8908	21.8947
140276	26.6777	25.3134	26.1713	26.0267
140280	20.2360	18.8300	20.0763	19.6936
140281	24.0192	25.2719	26.5197	25.2957

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
140285	18.1181	18.5916	15.7435	17.3779
140286	20.3735	26.1290	24.0947	23.4832
140288	25.2327	24.4331	25.8717	25.1876
140289	17.1388	18.1747	15.9356	16.9462
140290	21.1784	22.8590	26.8449	23.6369
140291	25.0911	24.9537	26.8628	25.6578
140292	20.8560	21.9950	26.8610	23.2005
140294	17.7226	17.7301	19.4218	18.2830
140300	25.3662	27.8436	28.5457	27.2635
150001	22.8109	24.0620	22.1398	22.9956
150002	19.3401	20.7651	20.7353	20.3004
150003	19.7661	20.8636	22.3835	21.0177
150004	20.3685	21.2449	22.8060	21.4609
150005	20.6260	21.6806	22.5280	21.6427
150006	20.8158	20.6523	21.8435	21.1085
150007	20.1826	20.6635	21.2811	20.6934
150008	21.4545	21.8457	22.9042	22.0745
150009	18.7073	19.0030	19.4599	19.0578
150010	21.7125	20.5570	20.8213	21.0317
150011	18.3742	18.3275	19.8823	18.8436
150012	22.4751	22.1402	21.7903	22.1209
150013	17.0352	16.9327	17.5531	17.1857
150014	22.0143	21.5168	22.8402	22.1055
150015	22.5409	21.9037	24.2370	22.8616
150017	18.7664	19.5339	20.4814	19.6077
150018	20.4947	21.0496	23.0257	21.5245
150019	16.6327	17.8585	19.8341	18.0075
150020	15.1120	16.6600	15.9405	15.8686
150021	19.5096	21.5944	23.2077	21.4598
150022	19.1555	17.9222	18.7751	18.6044
150023	18.3598	19.3412	20.3015	19.3319
150024	18.4140	19.2295	19.8368	19.1528
150025	17.7007	20.2750	*	18.8948
150026	18.8417	22.4978	21.9448	21.0269
150027	17.3284	18.0335	19.4238	18.2383
150029	23.0546	23.2454	24.8939	23.7166
150030	17.9992	19.2406	20.5272	19.2757
150031	17.2429	18.3463	18.9672	18.2134
150033	21.8768	22.6741	23.0163	22.5338
150034	22.1317	23.1533	23.3718	22.8966
150035	20.4477	21.2374	22.3779	21.3734
150036	20.8692	21.4567	22.1464	21.5046
150037	21.7109	24.4611	22.3699	22.8076
150038	21.2193	22.0572	20.3454	21.1795
150039	18.4729	19.6215	16.0227	17.8696
150042	18.1632	20.2221	17.5614	18.5653
150043	19.0120	20.1741	20.5266	19.8572
150044	18.4381	19.1309	19.8951	19.1600
150045	16.8121	18.1670	21.3723	18.7127
150046	17.6342	18.2543	19.4146	18.4518
150047	19.7441	22.0145	21.9824	21.1814
150048	19.3329	19.1648	21.1441	19.9048
150049	17.0141	18.6451	21.6309	18.9803
150050	16.8354	17.7354	18.0411	17.5369
150051	19.0130	19.7257	20.6895	19.8190
150052	15.8590	17.3750	18.7783	17.3644
150053	19.1421	18.8632	17.8949	18.6402
150054	17.3825	18.3916	19.3424	18.3843
150056	22.4087	21.5774	23.0603	22.3391
150057	16.5882	16.9736	*	16.7800
150058	20.8178	22.1409	23.0273	22.0105
150059	21.2535	22.7360	22.9822	22.3129
150060	17.0743	18.6159	19.5011	18.4069

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
150061	17.3887	19.7968	19.4014	18.8242
150062	20.5415	20.8274	21.2608	20.9059
150063	22.0925	22.6525	24.8587	23.1574
150064	18.1400	20.3865	20.6232	19.7087
150065	19.8913	21.2153	21.4572	20.8676
150066	15.3373	19.5313	19.6845	18.2239
150067	18.2926	18.8862	19.8632	19.0434
150069	21.5310	23.3969	23.5510	22.9021
150070	17.9260	18.0827	18.9332	18.3136
150071	13.4760	13.5111	16.4179	14.3733
150072	16.2054	15.0765	18.5813	16.5238
150073	22.2968	*	19.7285	21.0407
150074	20.4175	20.2305	21.3821	20.6660
150075	15.5603	16.7532	17.1709	16.4680
150076	22.9382	22.6424	23.3724	22.9988
150078	19.2718	19.9668	20.2068	19.8183
150079	17.2436	18.2051	18.3668	17.9396
150082	17.5265	17.8381	19.6881	18.3251
150084	23.2506	24.3107	24.9054	24.1870
150086	18.9735	18.3838	19.7763	19.0552
150088	18.9869	20.3366	22.3055	20.5100
150089	23.8791	22.1725	21.0399	22.2998
150090	20.7726	21.0945	21.9803	21.2765
150091	20.4053	22.4640	26.2176	22.8558
150092	16.7434	16.9179	18.2592	17.3164
150094	16.5788	17.5244	16.7680	16.9454
150095	17.1324	19.2749	22.3214	19.5343
150096	23.2764	20.8204	*	21.9551
150097	19.3802	19.7751	21.0944	20.1363
150098	15.0943	15.2829	16.4763	15.6011
150099	22.4229	*	*	22.4229
150100	18.4148	19.8066	18.7289	18.9950
150101	16.4604	20.6209	20.9635	19.3121
150102	19.7426	23.7180	20.8818	21.3162
150103	18.4781	18.7036	19.2881	18.8849
150104	17.6981	20.0765	21.3141	19.7260
150105	20.0431	22.4412	21.6975	21.3454
150106	16.1510	16.8714	18.7088	17.2750
150109	18.8077	19.9066	21.6285	20.0890
150110	18.6627	21.9336	*	20.0654
150111	18.4556	19.2355	24.0256	20.3967
150112	20.4109	20.5253	22.1939	21.0672
150113	20.3780	19.6603	20.5871	20.2207
150114	19.5183	17.9877	18.3097	18.6233
150115	17.4315	18.4844	18.1308	18.0117
150122	18.7139	17.7867	20.7540	19.0652
150123	14.1105	14.0508	16.2898	14.8865
150124	14.6245	15.9487	16.2104	15.6060
150125	20.6735	21.3311	22.0021	21.3476
150126	21.3697	20.6857	24.0000	22.0092
150127	17.1994	17.0052	17.7858	17.3321
150128	18.5100	19.5576	20.3880	19.4584
150129	24.7711	28.6211	29.9888	27.3320
150130	18.1971	18.4846	18.3852	18.3505
150132	20.1684	20.9443	21.2747	20.8045
150133	17.3966	18.4250	19.0871	18.2346
150134	19.2526	19.3632	20.2764	19.6091
150136	20.1245	21.8097	22.9091	21.6195
150145	16.6851	*	*	16.6851
150146	*	19.0204	*	19.0204
160001	18.6035	19.0085	20.1699	19.2573
160002	15.9534	16.6003	17.6600	16.7287
160003	16.0862	16.2208	17.5429	16.6099

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
160005	17.6153	17.9405	19.3348	18.3156
160007	13.2101	15.1738	14.9137	14.4341
160008	15.9742	16.6193	16.7484	16.4416
160009	16.8391	17.9886	19.0664	17.9375
160012	16.4827	16.7112	17.9236	17.0145
160013	18.3996	18.6304	20.3023	19.1017
160014	15.9086	16.7146	18.7253	17.0747
160016	19.6322	19.9747	21.6050	20.4119
160018	14.5946	15.6141	16.0793	15.4308
160020	15.4712	15.5384	15.7960	15.6015
160021	16.5049	16.7617	16.7920	16.6812
160023	15.0665	15.0099	15.3854	15.1530
160024	19.7050	19.4764	20.5622	19.9066
160026	18.8379	19.5260	20.4567	19.6047
160027	16.3477	16.9417	18.2081	17.1431
160028	19.9595	21.0000	*	20.4650
160029	20.4678	21.3457	22.2106	21.3395
160030	19.9508	19.6182	21.6899	20.4018
160031	15.2448	16.1267	16.8957	16.0812
160032	17.3202	18.3168	19.2464	18.2782
160033	18.8673	18.8859	20.1916	19.3159
160034	15.0019	16.5957	17.3644	16.3397
160035	15.2211	16.3991	17.0165	16.0816
160036	17.8849	17.4558	20.2598	18.5977
160037	19.0532	19.5045	19.5067	19.3582
160039	17.4758	17.8647	19.1998	18.1868
160040	18.1949	18.0667	19.6339	18.6033
160041	16.7850	17.4435	18.7943	17.7638
160043	15.6909	14.8564	16.7841	15.7684
160044	16.7439	17.8323	19.5552	18.0882
160045	20.1236	20.0611	21.4757	20.5590
160046	14.5655	16.2737	16.8665	15.8592
160047	18.3593	19.0787	20.4259	19.2869
160048	14.6144	15.6856	17.2709	15.7797
160049	14.5457	15.5673	15.3233	15.1526
160050	17.4912	17.7878	21.1184	18.6885
160051	14.6400	16.4261	15.8213	15.6207
160052	18.0941	21.7647	22.1933	20.7461
160054	16.1753	16.1981	16.5258	16.3024
160055	14.7600	15.1674	17.6177	15.8187
160056	16.1575	17.0172	17.9534	17.0042
160057	18.1776	19.1378	19.6802	19.0270
160058	21.1159	22.1061	23.2042	22.1074
160060	16.0436	17.2825	17.7489	16.9862
160061	17.3215	17.0938	17.2064	17.2123
160062	17.8086	17.4388	18.8163	18.0222
160063	16.8834	16.3583	17.3771	16.8779
160064	20.5496	22.2131	25.1546	22.5347
160065	16.9373	17.1043	17.0609	17.0424
160066	17.1875	17.9971	19.3202	18.1697
160067	17.8514	16.7833	17.6602	17.4022
160068	17.9892	19.0572	20.5995	19.2056
160069	19.7280	19.1640	20.4556	19.7835
160070	16.7017	18.4588	17.7855	17.6458
160072	14.9536	14.4141	15.3384	14.9054
160073	11.8261	11.4997	15.5946	12.7126
160074	19.5092	17.9513	18.4624	18.6658
160075	19.4948	18.4613	20.7842	19.5335
160076	17.9381	17.8824	19.1590	18.2977
160077	12.8826	13.6658	15.0468	13.8624
160079	17.6187	18.6333	20.5010	18.9292
160080	18.6687	19.4925	19.6680	19.2860
160081	17.0052	17.4466	19.1442	17.8781

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
160082	19.6499	19.5322	20.6425	19.9343
160083	20.6189	19.7542	21.3221	20.5512
160085	18.0063	21.2557	19.1929	19.4359
160086	17.3271	17.5308	19.0477	17.9338
160088	20.2331	22.3655	23.8098	22.1152
160089	16.9538	17.3449	18.3526	17.5556
160090	17.1090	17.9614	18.4210	17.8146
160091	12.8516	14.2573	14.8904	13.9759
160092	15.5011	17.0633	17.9251	16.7839
160093	17.7457	18.5675	19.5732	18.6194
160094	18.7653	17.6094	18.7835	18.3744
160095	15.1895	15.2722	16.4927	15.6525
160097	15.9263	16.6790	17.7860	16.8002
160098	16.3135	16.8670	16.8997	16.6946
160099	13.9053	15.0880	16.0710	15.0169
160101	18.3705	18.9788	19.6314	18.9647
160102	18.8765	20.1161	14.4837	17.6011
160103	17.0973	18.2741	19.6168	18.2567
160104	18.8301	17.4829	21.0060	19.1043
160106	16.9639	17.3474	19.4385	17.8892
160107	18.0634	18.0097	18.8936	18.3269
160108	16.0529	16.7779	17.7577	16.8631
160109	16.5593	17.9873	18.2938	17.5854
160110	19.1420	20.6215	20.9346	20.2607
160111	14.1644	14.9965	15.1104	14.7432
160112	16.8332	17.2450	19.6950	17.9037
160113	14.7097	15.4834	14.9449	15.0474
160114	16.1423	16.5006	18.0532	16.8768
160115	15.8995	16.5654	16.9991	16.4863
160116	16.9534	16.6993	18.4261	17.3468
160117	17.9410	18.7615	19.9040	18.8566
160118	17.2523	19.4472	17.1480	17.8721
160120	10.5992	15.6789	15.0577	13.1432
160122	18.9252	18.1469	18.8469	18.6451
160124	18.0908	19.1600	19.9144	19.0634
160126	17.8142	19.4903	17.6813	18.2418
160129	16.7131	17.2112	18.0113	17.3098
160130	16.0528	15.6666	16.2628	15.9955
160131	15.4898	16.0424	16.5397	16.0265
160134	13.4743	15.3012	14.6396	14.4558
160135	18.2682	18.7711	18.3973	18.4829
160138	16.8699	17.1491	18.3957	17.4264
160140	18.4007	18.5630	19.6155	18.8655
160142	16.2875	18.1467	17.2792	17.2139
160143	16.6154	17.4497	18.1287	17.4014
160145	13.9152	16.9092	17.8887	16.1391
160146	16.6024	17.7010	19.0576	17.7319
160147	17.4880	19.4041	21.6062	19.3700
160151	16.8257	17.2177	18.3398	17.4331
160152	15.6170	15.9500	17.0750	16.1956
160153	20.2316	21.2085	22.7004	21.3705
170001	17.9304	17.9218	18.3934	18.0897
170004	15.0636	16.1442	17.2262	16.1274
170006	17.2192	17.5982	19.1802	18.0107
170008	14.9124	16.8412	17.7061	16.4380
170009	20.7795	23.1349	25.0155	23.0594
170010	18.7384	19.4584	19.5990	19.2633
170012	17.8719	18.4432	20.2281	18.8642
170013	18.6454	19.4667	20.1123	19.4285
170014	17.9349	18.4931	19.3973	18.6216
170015	16.5750	17.1302	17.2443	16.9768
170016	19.2130	20.0675	20.9301	20.0460
170017	17.7958	19.5994	19.7908	19.0428

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
170018	15.2984	15.3237	14.8794	15.1619
170019	15.2094	16.9362	17.3043	16.4640
170020	17.3400	18.1325	18.9345	18.1573
170022	18.5309	19.1888	20.3269	19.3395
170023	19.1351	19.2441	19.6533	19.3514
170024	13.6803	14.3604	15.0081	14.3388
170025	17.8667	18.7182	19.1720	18.5412
170026	15.0470	14.8974	16.6547	15.5216
170027	17.3604	17.8690	18.4466	17.8805
170030	14.6530	15.9282	12.9413	14.4010
170031	13.9601	14.2151	16.4660	14.7972
170032	15.6093	16.3449	15.2207	15.7224
170033	16.4059	19.1952	21.2104	18.9788
170034	15.8202	16.9586	17.8239	16.8326
170035	18.5885	17.0945	19.8334	18.5082
170038	14.7776	13.8582	15.2505	14.6401
170039	15.8635	17.0774	18.5780	17.1811
170040	21.6440	21.0617	23.1014	21.8449
170041	11.7566	12.4488	9.9263	11.2790
170044	15.3011	17.3254	*	16.3356
170045	14.0875	25.8331	20.5454	19.8078
170049	19.9415	20.7921	21.2917	20.7035
170051	15.0889	16.4851	16.9003	16.1546
170052	15.0108	15.2283	16.0948	15.4803
170053	16.5102	14.6133	14.3628	15.2080
170054	14.4353	14.6354	15.1330	14.7339
170055	16.9800	18.2607	18.1783	17.7932
170056	17.0442	18.3550	19.7369	18.3732
170057	13.0007	*	*	13.0007
170058	18.6983	19.5415	20.1090	19.4664
170060	17.3482	18.9853	17.5290	17.8991
170061	15.6527	15.0258	15.2924	15.3392
170063	12.8082	14.1185	13.7611	13.4911
170066	15.5322	16.2891	16.8009	16.1505
170067	14.7492	14.9921	20.7945	16.7328
170068	15.1790	17.0022	19.2629	17.0101
170070	14.2445	14.0627	14.8348	14.3652
170072	12.6329	12.7709	*	12.7037
170073	17.5368	17.7056	17.7586	17.6632
170074	17.5537	17.3699	17.2800	17.4035
170075	12.4212	13.6816	14.4939	13.5832
170076	14.5866	14.6109	14.9392	14.7111
170077	13.5235	13.9104	14.1376	13.8508
170079	13.5261	11.5902	16.7227	13.6766
170080	12.6014	14.8293	13.6794	13.6471
170081	13.8077	14.6823	15.0840	14.5566
170082	12.8563	13.7462	14.8154	13.7610
170084	12.5410	13.0519	13.5927	13.0488
170085	15.4518	17.5422	21.8907	18.4877
170086	20.4068	19.7182	20.2892	20.1437
170088	13.4542	13.4860	*	13.4703
170089	18.8136	15.4860	20.2263	18.3293
170090	11.9147	10.9444	*	11.4573
170093	13.5490	14.0276	14.7803	14.0852
170094	20.1985	21.2035	21.2484	20.8944
170095	15.5463	15.3532	16.1078	15.6715
170097	16.4608	17.7540	18.6805	17.6242
170098	15.5259	16.6210	17.3480	16.4881
170099	13.6033	14.3370	16.5247	14.7568
170101	14.5629	18.0143	17.3381	16.4637
170102	13.6321	14.2447	14.4499	14.1084
170103	17.2844	17.9530	18.6172	17.9709
170104	20.6182	21.0049	21.9487	21.1996

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
170105	16.5408	16.7403	18.2788	17.1877
170106	18.5479	17.7467	*	18.0680
170109	17.2629	16.9782	18.3483	17.5682
170110	16.9823	18.5731	21.0637	18.8359
170112	14.3855	15.4049	15.8097	15.1873
170113	13.9038	14.6486	16.4938	15.0142
170114	14.4545	16.2645	13.8347	14.7519
170115	12.6997	12.9216	13.0253	12.8848
170116	16.8714	18.1830	19.4278	18.1442
170117	15.7875	16.8237	16.8301	16.4481
170119	15.1990	15.2708	15.1982	15.2222
170120	17.6748	17.4917	18.2061	17.7788
170122	20.0615	21.1769	21.4205	20.8657
170123	23.1697	23.6534	25.2071	23.9580
170124	11.1249	15.0596	16.3925	13.8286
170126	12.8096	13.5736	14.5527	13.6140
170128	14.8891	14.1676	17.6259	15.4144
170131	10.1000	*	*	10.1000
170133	18.0243	18.8119	19.9778	18.9214
170134	14.1085	14.6799	15.1932	14.6538
170137	17.8290	19.3118	19.3344	18.8395
170139	14.1967	14.3001	14.8157	14.4193
170142	*	17.7134	18.9169	18.3246
170143	15.6509	16.0415	16.3258	16.0049
170144	19.0929	20.4392	20.7583	20.0727
170145	17.1837	19.0142	18.1398	18.1031
170146	20.9075	21.7919	25.4405	22.7798
170147	22.3017	17.6717	17.4968	19.0192
170148	16.9183	19.1942	24.4828	19.5145
170150	15.5651	15.9072	14.9718	15.4692
170151	13.8934	14.3668	14.5002	14.2317
170152	14.9139	15.6423	16.0930	15.5503
170160	13.7108	14.4732	17.0629	15.0179
170164	16.6542	17.4072	17.0791	17.0445
170166	27.5567	12.7507	16.5113	18.0323
170171	12.5200	13.1792	14.7051	13.3708
170175	19.0232	20.1907	19.9712	19.7266
170176	21.3400	23.5043	23.5743	22.8029
170180	16.6921	8.6352	*	11.8552
170182	22.2164	21.3454	21.9797	21.8339
170183	20.3505	19.5182	16.6577	18.5979
170185	*	*	26.6814	26.6814
170186	*	*	32.9088	32.9088
180001	17.9906	20.4885	20.8419	19.8481
180002	17.9669	17.5798	19.7742	18.4114
180004	17.2581	17.7149	18.0494	17.6734
180005	21.1390	22.4634	23.4941	22.1458
180006	11.4398	10.3400	11.2872	11.0389
180007	17.6776	17.9491	18.6823	18.0973
180009	21.4730	21.0608	21.7746	21.4458
180010	19.1100	19.6311	19.4210	19.3847
180011	17.1050	19.0526	22.6798	19.8513
180012	18.7223	19.0646	19.6614	19.1485
180013	18.2354	19.7418	19.9690	19.3345
180014	21.4856	21.3361	22.9674	21.8678
180016	19.8892	21.1458	19.7132	20.2640
180017	15.4140	15.6583	16.7649	15.9422
180018	17.1692	15.4892	17.2357	16.6084
180019	17.3970	17.8285	19.0883	18.1044
180020	17.7288	18.0111	19.3978	18.3483
180021	15.4580	17.0618	16.5376	16.3552
180023	15.8803	17.4717	19.0574	17.4610
180024	16.1731	16.5040	19.6313	17.2961

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
180025	14.1841	15.4180	17.1875	15.5888
180026	14.6804	15.0118	13.9959	14.5545
180027	16.4116	17.5286	19.6928	17.8399
180028	19.5276	15.7005	26.1723	19.5534
180029	17.7729	17.7248	20.0357	18.4826
180030	17.3430	17.9543	17.5043	17.5959
180031	13.9844	13.1848	17.1003	14.4541
180032	16.8318	17.2784	17.2362	17.1383
180033	17.7344	15.4131	17.0498	16.6984
180034	15.3369	16.3991	17.0349	16.2188
180035	20.1305	21.3666	22.6728	21.3628
180036	19.8398	20.1860	20.6951	20.2522
180037	19.9737	21.2184	21.0177	20.7450
180038	17.7626	18.5923	19.0457	18.4790
180040	19.5337	21.2229	22.1332	20.9525
180041	15.0785	16.3699	17.5950	16.3724
180042	16.7691	17.1519	15.5660	16.4438
180043	16.8027	14.6526	17.0419	16.0656
180044	18.5571	19.4984	21.1057	19.7654
180045	17.7130	20.8455	20.7850	19.9661
180046	19.2523	21.2080	20.8544	20.4279
180047	16.2304	18.6938	17.8625	17.5927
180048	18.3442	17.7816	18.3151	18.1431
180049	16.4319	16.5459	17.0422	16.6742
180050	17.8540	17.1493	19.4583	18.1528
180051	16.3960	17.5441	17.7358	17.2163
180053	15.9284	15.8994	17.3167	16.3733
180054	19.4858	20.0946	17.4354	19.0288
180055	15.2663	15.8422	16.6072	15.8890
180056	17.0056	17.5881	18.6075	17.7242
180058	15.9685	14.5355	14.7900	15.0323
180059	13.3955	14.7032	17.2542	14.9522
180063	13.1036	12.4448	14.7338	13.4418
180064	15.2424	15.5066	16.3894	15.6781
180065	12.0629	11.1934	11.0966	11.4164
180066	19.2981	19.8956	19.4875	19.5598
180067	20.6322	20.1712	20.2762	20.3589
180069	17.7911	16.2916	19.0443	17.6808
180070	13.1923	15.9362	15.4643	14.7849
180072	16.9021	17.2347	17.0576	17.0759
180078	21.1170	21.7116	22.2802	21.7169
180079	15.1636	15.9048	18.1683	16.3817
180080	16.4989	16.6428	17.5659	16.9072
180087	14.9167	15.6089	16.2378	15.5798
180088	22.0374	22.1774	22.8908	22.3519
180092	18.2405	18.3597	18.8964	18.5113
180093	17.0132	17.8492	17.6961	17.5099
180094	13.5490	13.6233	14.3306	13.8326
180095	13.8021	13.9050	15.4478	14.3114
180099	13.3631	13.2991	14.0464	13.5559
180101	18.4883	*	20.2958	19.4148
180102	17.9618	18.5240	16.6998	17.7006
180103	19.8965	20.3490	20.8866	20.3712
180104	18.9281	19.3922	20.3023	19.5481
180105	15.2394	16.6997	18.2976	16.6579
180106	14.3505	15.2895	15.5278	15.0462
180108	14.8187	14.4740	14.8720	14.7266
180115	16.7003	16.9096	18.0951	17.2235
180116	18.0392	18.6077	18.1923	18.2836
180117	17.7857	23.0192	20.7961	20.3977
180118	15.8597	16.9250	17.9017	16.8657
180120	16.1591	15.3115	16.4226	15.9318
180121	15.0983	20.0494	16.9570	17.2427

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
180122	18.5094	18.1930	18.7549	18.4922
180123	21.0613	21.1067	21.8227	21.3332
180124	17.4994	18.8487	19.7138	18.6761
180125	19.6416	14.9314	22.6161	18.1828
180126	12.9228	14.3551	14.8501	14.0804
180127	19.2581	17.6365	18.0498	18.2667
180128	17.6385	18.2817	18.7194	18.2299
180129	16.8378	22.3536	15.6637	17.9690
180130	19.8192	20.6450	21.9268	20.8000
180132	17.7744	19.5884	19.4233	18.9093
180133	21.6794	21.7800	23.2679	22.2101
180134	13.1935	14.5387	16.5901	14.7149
180136	17.3542	*	*	17.3542
180138	19.3692	20.2102	19.8524	19.8199
180139	18.7198	20.5350	20.3816	19.9038
180140	16.8152	15.2719	14.6466	15.5892
180141	20.9820	23.8930	23.0957	22.5668
180142	*	20.751	*	20.7510
180143	*	*	21.3197	21.3197
190001	17.6832	18.1514	18.8583	18.2414
190002	19.1924	19.8834	20.6057	19.8935
190003	19.7749	19.9121	19.5115	19.7281
190004	17.7710	18.3620	19.6755	18.6227
190005	17.2422	17.5161	18.6994	17.8286
190006	17.8036	17.5911	17.7333	17.7115
190007	13.8189	14.4720	15.8753	14.7770
190008	18.6664	19.2456	22.4797	20.0804
190009	15.3555	15.9731	16.0395	15.7936
190010	16.2805	16.5020	17.7616	16.8604
190011	15.9534	15.6351	15.7319	15.7701
190013	16.8181	15.5019	16.7770	16.3476
190014	17.0959	17.8015	18.6929	17.8513
190015	18.6266	18.9896	19.7673	19.1223
190017	16.2393	17.5381	19.8449	17.8836
190018	15.0668	11.1898	13.1355	13.0348
190019	18.5257	18.3788	18.6473	18.5189
190020	17.5256	17.6840	18.7252	17.9732
190025	18.6369	16.8686	18.1892	17.9111
190026	18.1622	18.5015	18.8895	18.5256
190027	17.0827	17.4761	18.3203	17.6149
190029	16.5239	19.1967	18.7344	18.0923
190034	16.8503	18.0754	19.2007	18.0146
190036	20.1780	20.0300	21.1870	20.4494
190037	17.6945	19.9878	14.1323	17.4581
190039	19.4713	19.0376	17.8217	18.7156
190040	21.4634	21.7376	23.0537	22.0787
190041	17.6646	17.9535	17.2344	17.5871
190043	15.5580	15.5618	15.5645	15.5614
190044	17.2892	17.4471	17.6788	17.4765
190045	21.6107	21.2853	22.0065	21.6574
190046	19.7964	20.4458	20.2414	20.1666
190048	16.6683	16.8136	16.6848	16.7218
190049	17.2280	17.7417	18.5902	17.8611
190050	16.1980	16.2854	16.9053	16.4718
190053	13.2159	13.0080	13.4768	13.2412
190054	19.1738	18.9059	17.7269	18.6351
190059	15.6942	15.8373	17.8651	16.5018
190060	14.7186	17.8443	19.9121	17.2297
190064	20.4482	18.2466	19.9873	19.5473
190065	20.9927	18.3091	18.3050	19.0764
190071	14.4827	16.4138	16.3822	15.7772
190077	15.7805	16.5536	16.8829	16.4072
190078	14.8826	16.9383	19.5879	16.9873

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
190079	17.7120	17.9403	18.1929	17.9449
190081	15.3198	14.9707	14.7919	15.0273
190083	18.8895	18.4951	16.2970	17.9487
190086	15.8694	16.5074	17.6237	16.6689
190088	20.5531	19.9362	20.4725	20.3095
190089	13.0503	15.0395	15.2055	14.4221
190090	16.6664	16.2351	19.8201	17.5803
190095	16.2287	17.3258	17.3637	16.9543
190098	20.4897	21.0847	22.5793	21.3421
190099	19.9018	19.0635	19.0545	19.3385
190102	20.0300	20.7870	21.0423	20.6389
190103	12.1389	14.4158	15.6415	14.0050
190106	18.5813	18.5908	19.9117	19.0267
190109	15.5767	15.8187	16.3641	15.9327
190110	15.8052	15.7313	15.2652	15.5956
190111	19.7514	20.6508	20.2253	20.2164
190112	21.0232	22.0741	24.2806	22.3499
190113	12.5777	*	19.0411	16.0667
190114	12.6366	13.9209	13.4402	13.3357
190115	20.2473	22.7583	23.7462	22.1782
190116	15.5481	17.3757	18.3223	17.0452
190118	14.7876	16.3776	17.8543	16.2736
190120	13.9591	17.2309	17.6708	16.2867
190122	15.4793	15.3742	16.7189	15.8764
190124	20.6222	20.1206	22.8245	21.2142
190125	20.4517	19.8298	20.1401	20.1511
190128	20.4688	20.8770	21.1465	20.8466
190130	15.1467	14.0379	14.5586	14.5812
190131	20.7565	18.8958	19.7483	19.8133
190133	13.5383	15.1393	15.7834	14.7342
190134	12.1749	12.4507	*	12.3182
190135	21.6875	21.3454	23.1434	22.0401
190136	12.4091	15.1662	15.6286	14.4513
190140	14.2256	14.6829	14.8738	14.5954
190142	15.4861	16.2280	19.0464	16.8845
190144	16.2068	18.4405	18.3513	17.6419
190145	15.2345	16.2505	16.4402	15.9754
190146	21.2825	21.9607	20.6776	21.3057
190147	14.4345	14.7202	15.2732	14.8106
190148	16.6337	15.5338	19.4518	17.1031
190149	17.5997	16.4722	16.5153	16.8165
190151	14.7333	15.5210	16.2783	15.5127
190152	22.2070	22.0319	22.7142	22.3160
190156	15.7478	16.0442	17.6573	16.4812
190158	20.4637	20.4078	21.6307	20.8104
190160	17.1003	18.4662	19.3139	18.3349
190161	15.5737	15.9280	15.7807	15.7581
190162	20.6143	20.1962	20.9645	20.5966
190164	15.1783	18.2379	19.0473	17.3930
190167	16.6681	17.7611	15.5795	16.5709
190170	14.1750	14.5222	16.2045	15.0173
190173	23.6398	23.0934	*	23.4298
190175	19.3625	20.4580	22.2470	20.7017
190176	24.0574	22.2316	21.7051	22.5987
190177	18.6715	19.7794	20.3679	19.5997
190178	11.0657	12.0372	*	11.5413
190182	20.2855	20.7102	23.1997	21.3232
190183	16.7671	16.0752	16.7402	16.5275
190184	17.2044	19.8436	18.6583	18.5582
190185	20.1444	20.5852	20.5454	20.4315
190186	18.7568	17.4078	16.7272	17.7093
190190	17.4642	15.8985	13.7951	15.8564
190191	20.4975	19.6911	19.7218	19.9785

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
190196	17.9225	18.6138	19.1961	18.6202
190197	19.5569	20.2082	20.5377	20.1371
190199	16.0637	15.3522	17.8288	16.5088
190200	22.0391	21.6852	22.3510	22.0311
190201	18.7079	19.7421	21.5656	20.0412
190202	*	*	22.4701	22.4701
190203	21.7350	21.7931	23.0636	22.1708
190204	21.4624	20.5784	22.9134	21.6176
190205	19.6587	19.3737	18.8750	19.3122
190206	21.7012	21.3307	21.7867	21.6067
190207	20.5082	19.0216	20.7024	20.0851
190208	20.0065	16.9641	17.6834	18.1192
190218	19.7518	19.2992	20.7290	19.9128
190231	15.8287	17.7247	*	16.7208
190236	19.3395	21.1982	22.5796	21.1124
190238	*	20.6799	*	20.6799
190239	*	19.7601	*	19.7601
190240	*	14.3579	16.0112	15.2482
200001	18.0527	18.2513	19.9438	18.7634
200002	19.3629	22.3035	22.3272	21.3905
200003	16.9566	18.4141	18.8570	18.0991
200006	17.6586	21.0922	24.1167	20.8621
200007	18.7992	18.1681	19.4177	18.7699
200008	21.7489	21.5556	24.2833	22.5897
200009	22.2280	21.4763	23.2456	22.3157
200012	18.3484	19.1047	20.9187	19.4746
200013	18.0566	17.9378	20.2192	18.8221
200016	18.0866	17.1187	16.2939	17.1580
200017	17.2930	*	*	17.2930
200018	18.5397	17.8675	20.6104	19.0069
200019	19.2348	19.9245	21.3003	20.1669
200020	22.4526	22.3355	24.8195	23.2627
200021	19.9133	20.7361	22.4038	21.0287
200023	16.1707	20.2063	*	18.0379
200024	19.4329	20.8336	21.2346	20.5158
200025	20.2259	20.4165	21.6002	20.7762
200026	18.1194	17.9021	21.4758	18.9050
200027	18.5659	19.4220	20.2146	19.4316
200028	19.5708	18.8763	19.9926	19.4914
200031	16.2217	16.1641	17.3915	16.5880
200032	18.9315	19.4613	20.8973	19.7659
200033	21.8634	22.4685	23.6538	22.6396
200034	20.1519	20.4941	21.3303	20.6756
200037	18.6713	20.3015	19.7768	19.6048
200038	23.3851	21.2632	22.9629	22.5227
200039	19.8589	20.1508	21.0884	20.3830
200040	19.5503	18.9580	19.5917	19.3665
200041	19.3563	18.8131	20.3761	19.5462
200043	16.7224	19.4295	19.8833	18.5621
200050	20.1214	20.2014	14.6387	17.8681
200051	22.1525	22.0712	*	22.1031
200052	17.2099	17.6271	19.9239	18.2260
200055	18.8422	18.5983	19.4998	18.9700
200062	17.2273	18.4279	18.4038	18.0038
200063	19.9331	21.2121	22.5278	21.2360
200066	17.0289	17.0570	18.7143	17.6294
210001	20.4841	18.6617	21.5280	20.1745
210002	19.9219	23.5132	21.1426	21.7024
210003	20.3446	26.0447	21.6625	22.4257
210004	24.2909	24.9760	*	24.6345
210005	21.4929	21.3829	23.8670	22.2506
210006	18.9436	19.3682	20.8607	19.7283
210007	23.1007	23.8840	23.4582	23.4837

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
210008	21.1768	21.2895	21.0767	21.1826
210009	20.5447	20.7479	20.8476	20.7179
210010	18.7197	19.5908	19.7917	19.3735
210011	21.4862	21.4043	20.0662	20.9726
210012	20.7203	21.3977	24.0745	21.9907
210013	19.7288	19.4505	23.1649	20.7921
210015	16.1912	18.7448	23.9651	19.4078
210016	23.8739	26.5193	*	25.1634
210017	18.8928	18.5079	18.2963	18.5724
210018	22.2135	22.8553	23.6442	22.8975
210019	19.3046	20.6025	21.5429	20.4724
210022	22.6389	24.5744	25.6728	24.3137
210023	23.1950	22.9989	24.4815	23.5799
210024	20.6011	24.4280	24.7858	23.2181
210025	19.5876	21.2769	21.4910	20.6428
210026	12.1348	13.8668	20.7986	14.8993
210027	17.6855	17.1060	16.2219	17.0429
210028	19.6408	19.4157	20.4027	19.8293
210029	21.2167	25.4939	24.7605	23.8903
210030	21.7403	20.9574	21.9547	21.5644
210031	16.2299	*	*	16.2299
210032	17.7228	20.1955	20.0825	19.3625
210033	20.8053	23.7588	22.8303	22.4103
210034	15.7322	19.4144	22.6812	19.1023
210035	20.2731	20.8317	21.6662	20.9231
210037	18.3072	20.5528	19.2811	19.3731
210038	23.4971	24.9762	25.9701	24.7755
210039	19.9901	21.3559	23.3583	21.5884
210040	21.5014	23.4252	23.1960	22.7040
210043	19.6474	22.4000	22.9504	21.5561
210044	22.5781	23.0917	22.9540	22.8695
210045	11.6086	12.1467	13.5654	12.4021
210048	23.0537	24.6921	24.9381	24.2387
210049	19.0821	19.3022	21.1056	19.8459
210051	22.4335	23.6476	24.8949	23.6510
210054	22.3559	23.2730	25.1694	23.5831
210055	29.2539	26.5272	23.8025	26.3168
210056	19.2662	22.9593	23.8915	21.9932
210057	23.8289	26.0076	*	24.8719
210058	22.0753	16.3191	17.4250	18.5418
210059	22.6766	25.6052	*	23.8855
210060	*	26.5846	26.4566	26.5245
210061	17.2240	16.1931	20.8975	18.1853
220001	21.9369	22.9064	23.4091	22.7509
220002	24.1285	24.5840	25.3171	24.6486
220003	16.9246	17.9319	17.6069	17.4814
220006	22.3085	22.6337	23.5624	22.8309
220008	24.4691	22.0796	23.0806	23.1592
220010	21.8582	22.0067	23.8256	22.5598
220011	26.1827	29.5290	24.8039	26.6476
220012	32.0829	31.2303	30.4104	31.2159
220015	22.5773	23.1893	24.1348	23.2890
220016	23.3750	23.0951	24.5411	23.6644
220017	22.4605	25.1568	25.9000	24.3877
220019	19.5613	19.8551	19.9268	19.7870
220020	21.4152	22.4295	22.5375	22.1352
220023	16.1885	*	*	16.1885
220024	21.5363	21.9316	23.8620	22.4506
220025	20.7882	22.8593	22.8936	22.1783
220028	22.8036	21.0630	24.0441	22.5673
220029	23.1509	25.6560	26.3117	25.0100
220030	18.5441	18.7429	19.3387	18.8705
220031	30.2430	29.3091	28.3832	29.0231

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
220033	20.0695	20.3609	22.3195	20.8616
220035	21.6396	23.1892	24.5685	23.0612
220036	24.6470	24.4091	24.9637	24.6635
220038	22.6518	22.3162	22.4302	22.4673
220041	23.4720	27.5034	28.6303	26.3941
220042	25.0779	26.0473	28.4675	26.3871
220046	22.7068	23.3149	23.8578	23.2791
220049	26.0025	27.2689	25.2174	26.1330
220050	22.0144	22.5265	23.3330	22.6222
220051	21.1033	21.7357	22.4826	21.7398
220052	23.7650	23.5225	24.4403	23.8995
220053	19.1280	*	*	19.1280
220055	21.3743	*	*	21.3743
220057	25.3902	25.8064	26.2945	25.8083
220058	19.9369	26.8345	21.6814	22.7654
220060	28.0843	28.0794	28.1888	28.1190
220062	20.4685	20.2254	16.0585	19.0019
220063	20.3951	20.8079	21.7336	21.0041
220064	22.3260	22.7497	23.8859	22.7342
220065	20.1364	20.1424	21.5556	20.6267
220066	20.7826	23.4477	24.5463	22.8901
220067	26.4443	27.5405	27.9807	27.2636
220070	19.7528	20.9128	21.0606	20.5677
220071	25.6184	27.4151	27.4906	26.8301
220073	25.6025	26.1328	27.4458	26.3872
220074	25.6390	24.3057	24.8908	24.8286
220075	22.8057	22.5329	24.5769	23.3112
220076	22.6668	23.2795	24.1224	23.3492
220077	25.2646	26.1545	27.1503	26.1736
220079	22.6256	22.0769	25.7305	22.9418
220080	21.5238	22.1971	22.9911	22.2508
220081	29.1726	29.6682	29.6399	29.4983
220082	21.6726	22.1453	22.9171	22.2513
220083	23.9156	22.5815	27.2605	24.4264
220084	23.6641	25.3761	25.8300	24.9680
220086	23.8705	26.7778	28.7276	26.2967
220088	22.9067	23.4258	25.0671	23.8081
220089	23.0965	25.4106	25.3521	24.5662
220090	22.0041	23.3049	25.0628	23.4549
220092	18.5239	24.7905	*	20.9405
220095	21.4831	21.7851	22.4924	21.9294
220098	21.5906	23.1547	24.7180	23.1447
220100	25.7077	27.5841	26.8001	26.6854
220101	25.9204	27.0711	27.9184	26.9502
220104	28.0021	28.7258	*	28.3658
220105	21.4129	21.9185	23.2210	22.2352
220106	25.6577	25.9277	28.1034	26.6044
220108	21.9115	23.4975	24.5939	23.3257
220110	28.7071	29.1648	30.2500	29.3820
220111	23.8066	24.7510	26.7336	25.0953
220116	26.1662	32.0049	28.4236	28.6928
220119	23.3216	23.8785	24.4507	23.8686
220123	25.8994	32.4678	28.8325	29.1153
220126	22.5218	23.6045	23.8123	23.3172
220133	25.4596	29.3911	29.8366	28.1948
220135	25.6522	28.3648	29.6837	27.9677
220153	22.9592	*	*	22.9592
220154	22.4770	21.1563	23.3590	22.3695
220163	29.1143	29.2299	29.3552	29.2328
220171	24.5553	24.9261	26.9048	25.5207
230001	19.8020	20.0438	23.3051	20.9963
230002	22.7991	23.0439	24.3115	23.3442
230003	19.8420	21.2215	21.6493	20.9088

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230004	23.1036	20.5005	22.4538	21.9617
230005	18.5644	17.0943	20.5596	18.6769
230006	19.1041	20.4978	21.1974	20.2494
230007	15.5538	*	*	15.5538
230012	15.0803	*	*	15.0803
230013	20.8018	22.2211	20.0954	21.0266
230015	20.1104	20.6464	21.9499	20.8811
230017	22.2822	22.9755	25.7900	23.6501
230019	22.2622	23.6674	23.8779	23.3381
230020	22.1280	21.8526	28.8386	23.8749
230021	18.9636	19.8256	20.5690	19.8347
230022	18.8006	21.9129	21.7265	20.8153
230024	23.7326	24.9664	26.2155	24.8592
230027	14.6950	19.6393	22.5114	18.5396
230029	19.4911	22.1782	25.2459	22.2502
230030	18.3916	18.6406	19.1742	18.7416
230031	19.3162	19.9465	19.4676	19.5690
230032	21.8845	24.8930	22.5952	23.1148
230034	19.0473	19.4366	17.9276	18.7511
230035	17.5109	17.7490	20.5906	18.5317
230036	23.2119	23.8398	25.2015	24.1096
230037	20.4747	23.2751	22.7382	22.1469
230038	23.5251	21.9692	21.4546	22.2952
230040	21.4393	20.7841	20.2451	20.8039
230041	20.3131	21.7364	23.2870	21.7251
230042	22.1043	21.3870	19.8523	21.0979
230046	25.5696	25.3206	26.1787	25.6837
230047	21.5381	22.3595	23.7737	22.5475
230053	25.4968	26.8917	23.3066	25.2933
230054	20.6963	20.8014	17.6968	19.8741
230055	20.7932	20.8492	20.8930	20.8452
230056	16.0766	17.8091	17.3516	17.0331
230058	20.4165	21.0303	21.6619	21.0283
230059	19.9240	20.7092	20.5651	20.3916
230060	19.8021	19.8987	21.0368	20.2439
230062	17.1540	18.8039	18.2283	18.0500
230063	20.4171	*	*	20.4171
230065	22.3459	22.7416	23.3414	22.8607
230066	22.1768	23.0475	23.2790	22.8376
230069	23.2076	24.2470	25.0212	24.1384
230070	20.2505	21.5666	21.1658	21.1081
230071	22.9052	23.1337	23.6398	23.2244
230072	20.6944	20.4456	22.6533	21.2484
230075	20.0545	22.5866	22.3632	21.5991
230076	24.4547	24.7010	26.7244	25.2068
230077	21.0178	20.2823	22.6153	21.3059
230078	17.5577	17.9868	19.1638	18.2565
230080	19.7687	20.2104	19.1810	19.7086
230081	19.0345	19.0199	20.0464	19.3283
230082	18.2992	19.0419	18.2165	18.5095
230085	20.2096	23.4996	24.5765	22.7898
230086	18.9420	20.1730	20.1060	19.7404
230087	18.9034	19.9700	20.6619	19.7714
230089	23.9100	22.6994	22.7774	23.0814
230092	20.0145	20.7738	22.2629	21.0588
230093	20.4655	20.6314	21.0274	20.7091
230095	17.3313	17.6444	18.0582	17.6864
230096	22.8410	22.7785	24.3004	23.2947
230097	21.2854	21.1254	22.5006	21.6504
230099	21.1933	21.7513	21.7402	21.5696
230100	17.1336	17.3842	18.1823	17.5576
230101	20.0932	20.5315	22.5159	20.9964
230103	22.7696	11.3429	18.5254	17.4039

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230104	23.1457	24.1238	25.5606	24.3812
230105	21.5210	22.6098	23.0086	22.4180
230106	20.7997	21.6825	22.9909	21.8109
230107	16.5966	17.1386	18.9985	17.6147
230108	18.8631	20.3437	21.4592	20.2385
230110	18.9825	19.7262	20.0544	19.5843
230113	14.9411	*	*	14.9411
230115	18.4050	19.6281	21.0361	19.6522
230116	16.5419	14.5692	15.6064	15.5368
230117	25.9318	25.6797	25.4341	25.6737
230118	21.3028	20.6797	20.2770	20.7229
230119	21.1918	22.6555	23.9898	22.6112
230120	18.5264	20.3306	20.6105	19.6370
230121	20.3158	21.3342	21.0568	20.9014
230122	20.9078	*	*	20.9078
230124	20.3608	18.9981	20.9641	20.0945
230128	24.9081	24.0724	24.4952	24.4850
230130	23.5170	22.1775	23.5123	23.0660
230132	26.6386	26.1946	27.3497	26.7222
230133	17.6894	17.1058	19.0770	17.9441
230135	22.5258	20.5637	18.4193	20.8744
230137	19.1813	*	*	19.1813
230141	22.1299	22.4570	24.4560	22.9910
230142	22.2940	23.5621	24.9830	23.5261
230143	16.3043	16.7948	18.2700	17.1074
230144	22.1108	23.4237	23.3295	22.9371
230145	20.2542	19.2638	17.9811	19.0315
230146	20.5044	21.2260	22.3838	21.3821
230147	21.8496	23.2755	*	22.5377
230149	20.7691	18.8005	19.9577	19.8029
230151	22.1713	23.3967	24.1404	23.2068
230153	19.5633	18.7403	20.0098	19.4472
230154	15.4456	15.4362	16.7152	15.8739
230155	17.2076	20.5409	20.9053	19.4860
230156	24.7587	25.6228	27.2254	25.8423
230157	20.3667	17.3571	*	18.9586
230159	20.0749	*	*	20.0749
230162	21.4636	21.7148	22.7984	21.9769
230165	23.0106	23.8881	24.5193	23.7930
230167	21.5048	22.9745	24.1064	22.8649
230169	23.0652	24.3874	28.1039	25.0117
230171	13.3863	17.1282	16.1129	15.4610
230172	20.6417	21.4675	22.1709	21.4477
230174	23.0272	22.7304	23.5025	23.0851
230175	16.8909	*	14.4932	15.4643
230176	22.7772	23.8204	24.6518	23.7400
230178	16.9156	17.3030	17.3428	17.1968
230180	15.8769	18.5744	19.6062	17.9856
230184	19.0604	19.7717	20.4831	19.7582
230186	19.5337	15.7837	19.1289	18.1131
230188	15.7112	16.2975	16.8687	16.3031
230189	16.6838	17.9218	19.1990	17.9352
230190	26.8196	26.4687	24.4643	25.9234
230191	19.0013	18.4861	20.6633	19.3446
230193	19.7066	19.8287	21.5358	20.3443
230195	21.7775	22.9228	23.4647	22.7456
230197	24.0184	24.0854	25.4494	24.4929
230199	19.4451	20.6580	22.4592	20.8791
230201	17.2141	18.0787	18.2486	17.8664
230204	25.4181	23.4966	24.5127	24.4525
230205	14.3788	15.9314	16.1551	16.1081
230207	20.6375	21.2483	20.9059	20.9181
230208	16.0733	16.7454	17.4925	16.7635

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
230211	18.6744	21.8581	21.1245	20.4277
230212	23.3021	24.2611	24.6420	24.0563
230213	15.1908	15.5469	17.1062	15.9226
230216	20.3359	21.0710	22.2137	21.1969
230217	21.2707	22.2698	24.1455	22.5496
230219	19.1549	20.0442	18.1277	19.1400
230222	22.1785	21.9711	23.2545	22.4802
230223	21.1528	22.6887	25.2666	22.9884
230227	23.7259	22.3155	25.8826	23.9496
230230	22.2385	22.3097	22.1703	22.2333
230235	16.8684	17.7197	18.3341	17.6456
230236	24.3835	25.9676	25.2273	25.2169
230239	18.0942	17.8168	18.9790	18.2974
230241	19.1000	20.7297	20.4217	20.0924
230244	21.7413	22.2697	23.1175	22.3742
230253	20.5945	21.0433	22.7706	21.4304
230254	21.9402	22.6335	23.3714	22.6370
230257	19.6982	21.3880	23.1794	21.3083
230259	22.2393	22.3969	23.1768	22.6077
230264	17.1319	17.4864	18.4075	17.6504
230269	23.3105	24.0992	24.3772	23.9435
230270	22.6187	22.5985	24.8925	23.3219
230273	22.9199	22.8715	24.1278	23.2898
230275	17.7487	20.8985	*	18.8231
230276	21.3722	25.8709	22.3313	22.8959
230277	23.1456	23.9771	24.2319	23.8212
230278	18.2110	*	*	18.2110
230279	17.6973	17.8074	18.3256	17.9471
230280	15.6654	18.3497	*	16.7057
230283	27.9480	22.5082	*	24.9202
230287	*	*	22.5420	22.5420
240001	24.6207	25.6936	26.6372	25.6759
240002	22.7981	23.2307	24.1694	23.4122
240004	25.1908	24.4030	25.6238	25.0604
240005	17.9563	20.3193	20.2389	19.4808
240006	25.1602	23.0715	25.7288	24.6342
240007	17.7625	19.0850	20.7189	19.1593
240008	20.2158	23.3783	22.7437	21.9832
240009	16.8965	17.1187	17.4518	17.1699
240010	23.6477	25.4752	28.3796	25.8852
240011	20.5192	21.5875	22.5188	21.5240
240013	20.3282	21.7544	25.1560	22.2201
240014	23.0025	24.2610	25.2306	24.1808
240016	20.4017	22.2011	23.3772	21.9959
240017	18.3585	18.9272	19.3431	18.8677
240018	20.8501	18.4268	23.6092	20.7339
240019	22.1501	23.1477	24.0613	23.1411
240020	21.1937	20.8849	20.6378	20.8948
240021	18.7515	20.1457	19.0469	19.2586
240022	21.7889	21.3234	23.0394	22.0529
240023	21.5087	22.8224	22.3002	22.1691
240025	18.8345	20.0308	20.7672	19.8809
240027	19.1017	16.7758	18.3837	18.0732
240028	19.7918	25.1934	*	22.5025
240029	21.1329	20.0164	23.0440	21.3549
240030	18.8547	20.1653	20.9799	20.0254
240031	18.1566	19.3983	21.7620	19.6652
240036	22.2460	22.1721	22.5423	22.3294
240037	19.2345	20.1195	21.4275	20.2550
240038	25.3061	24.3957	26.3886	25.3874
240040	20.4813	23.1352	22.8191	22.1112
240041	19.2864	21.8655	21.9054	20.9373
240043	17.7335	16.9859	18.2388	17.6591

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
240044	18.8411	20.3339	22.5750	20.4995
240045	21.1396	24.1557	24.2936	23.2125
240047	22.6152	23.8098	25.3136	23.8879
240050	25.2983	21.6499	23.1719	22.7044
240051	19.9195	22.5855	23.2612	21.9129
240052	20.7749	*	22.3485	21.5706
240053	22.9611	23.8693	24.2783	23.7568
240056	23.4226	23.7139	24.8549	24.0398
240057	24.2159	24.8686	25.4292	24.8727
240058	14.9697	18.4009	19.0506	17.2677
240059	23.6215	23.7808	25.3847	24.2488
240061	27.2603	25.9951	27.9151	27.0571
240063	23.7866	24.4031	25.4760	24.5591
240064	23.2860	22.8578	24.6785	23.6296
240065	12.7867	14.8734	14.4623	14.0357
240066	23.0698	24.1143	25.5163	24.2946
240069	19.8282	21.7991	23.3241	21.6103
240071	20.2101	21.2463	22.5319	21.3438
240072	21.1824	20.9529	21.5455	21.2291
240073	16.0840	17.3559	17.9013	17.1144
240075	21.2654	21.3357	21.9160	21.5185
240076	21.8795	22.3280	23.6130	22.6447
240077	15.3794	20.3445	22.1509	19.1544
240078	23.9150	25.1082	25.9495	25.0087
240079	18.4338	18.8345	18.2929	18.5204
240080	24.3399	25.5619	26.0031	25.2885
240082	18.3555	18.7995	20.2018	19.1212
240083	19.7637	21.0317	22.3289	20.9906
240084	19.4739	21.7421	23.1951	21.4482
240085	22.5736	20.9778	20.7535	21.3852
240086	16.9392	18.1401	18.1497	17.7863
240087	18.8352	21.3323	21.2116	20.4135
240088	21.6858	23.1056	24.6260	23.0939
240089	20.7239	21.1989	21.3949	21.1104
240090	19.2968	19.2166	21.0856	19.8725
240093	18.7092	20.2400	20.7138	19.9194
240094	20.9446	22.0247	22.5923	21.8995
240096	20.1644	21.0417	20.2992	20.4825
240097	24.2662	27.9496	29.7597	27.1621
240098	21.3467	24.2296	23.9626	23.2314
240099	14.4649	15.4964	18.8139	15.9924
240100	20.8302	20.8325	24.1875	21.9081
240101	19.2120	19.9837	22.1329	20.4409
240102	14.6067	16.3659	15.5114	15.4871
240103	19.1540	18.7510	21.0182	19.5968
240104	23.2178	23.5351	25.2485	24.0080
240105	14.3965	*	*	14.3965
240106	23.5148	23.5005	23.9677	23.6780
240107	20.3983	20.9004	21.2163	20.8360
240108	15.3547	18.2427	17.6500	16.9347
240109	13.5537	16.3216	15.1369	14.9110
240110	19.4828	21.0277	21.7340	20.7301
240111	17.2100	17.8617	19.9712	18.3046
240112	15.8350	16.6244	17.2437	16.5628
240114	16.2505	17.3682	18.3415	17.5274
240115	23.7765	23.8675	24.6174	24.0872
240116	16.6731	18.3520	17.3460	17.3960
240117	18.0636	17.9941	18.7656	18.2986
240119	20.6126	21.8289	23.0230	21.7338
240121	23.4018	22.2266	22.4858	22.6970
240122	19.1811	21.2876	20.7795	20.4095
240123	16.5098	18.3941	18.9494	17.8731
240124	19.4400	20.4728	21.2023	20.3644

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
240125	12.3627	14.9708	17.3846	15.0136
240127	15.8966	17.9724	16.4294	16.7198
240128	17.2513	16.3608	17.5611	17.0478
240129	14.4212	16.5209	17.7242	16.1756
240130	14.9399	16.4271	17.7634	16.3549
240132	23.0669	23.1452	24.4301	23.5642
240133	19.2126	19.5293	20.8958	19.9049
240135	14.3069	15.7015	15.6298	15.1560
240137	20.3750	21.5073	21.6644	21.1797
240138	15.2062	16.7332	18.9731	16.7753
240139	20.8053	20.5496	21.8580	21.0743
240141	23.8066	23.1009	23.6622	23.5109
240142	25.2770	29.2238	24.0719	25.9878
240143	16.6172	20.4266	20.7307	19.0810
240144	18.2604	21.4469	23.1661	20.7059
240145	17.2778	19.0689	17.6747	18.0668
240146	16.0652	16.5412	17.3275	16.6788
240148	18.8779	19.5204	19.5372	19.2785
240150	13.8786	20.8331	23.3857	18.4647
240152	21.1678	22.4744	24.1818	22.6586
240153	16.5412	19.3336	17.7399	17.7721
240154	17.5769	21.5052	21.5859	20.1583
240155	19.8762	20.9385	23.6944	21.5112
240157	17.4168	13.7309	*	15.5390
240160	15.9492	15.9014	16.4990	16.1163
240161	15.7996	16.8809	18.0542	16.8888
240162	16.6292	19.1542	19.3296	18.3301
240163	18.8320	20.4760	22.2009	20.3835
240166	17.3233	19.4131	19.4496	18.7799
240169	16.6725	16.3958	*	16.5195
240170	18.8762	20.3779	21.5994	20.2122
240171	17.2886	18.5172	19.6732	18.5083
240172	18.2852	20.8606	20.3699	19.7027
240173	17.2655	18.5187	18.3183	18.0300
240179	17.5116	20.4004	17.7557	18.4699
240184	15.3793	16.8917	17.6979	16.5493
240187	19.9230	21.2736	23.2471	21.4869
240193	17.8226	18.4664	*	18.1403
240196	24.3472	25.3479	26.1827	25.3447
240200	14.3415	14.9076	18.7517	15.8336
240207	24.1127	25.2814	26.1748	25.2384
240210	24.2218	24.5664	25.3031	24.7274
240211	19.7399	30.6260	34.7849	25.7741
250001	18.4233	19.2756	20.2019	19.2920
250002	17.2501	18.6938	19.6081	18.5060
250003	17.6539	16.7570	18.7331	17.7215
250004	17.8868	18.3860	19.2913	18.5189
250005	12.5993	12.5834	13.7341	13.0041
250006	16.9048	17.5192	19.6894	17.9911
250007	19.2913	19.7562	20.9757	19.9959
250008	14.1760	15.8506	15.8096	15.2607
250009	18.5610	17.7283	17.1686	17.8180
250010	13.3905	14.6101	16.0233	14.5948
250012	14.1623	16.7579	17.4032	16.1420
250015	13.5274	11.7249	16.6522	13.7345
250017	17.9410	20.5976	18.8850	19.0991
250018	11.9311	13.1687	14.7291	13.0932
250019	16.7425	18.0956	19.9070	18.3382
250020	13.4476	16.2698	19.6575	16.1595
250021	9.4318	10.5844	12.7242	10.6438
250023	13.9116	12.3434	13.8210	13.3756
250024	12.7127	12.9899	14.8394	13.4135
250025	19.0390	20.3625	21.9075	20.5374

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
250027	14.9519	14.5445	15.1790	14.8945
250029	16.4834	16.0682	14.8216	15.7783
250030	17.3636	26.6173	25.5089	23.0726
250031	17.9715	18.3825	19.8779	19.1622
250032	17.1339	17.5957	*	17.3669
250033	17.8257	15.0941	16.9132	16.6524
250034	16.6988	17.0399	19.1875	17.6568
250035	15.2353	16.8349	18.3861	16.7093
250036	15.8445	16.1913	17.6247	16.6012
250037	15.4325	12.7156	14.3994	14.0734
250038	16.8454	17.7019	18.8434	17.7665
250039	14.1556	15.1409	16.4502	15.2329
250040	17.3430	18.3364	19.6513	18.4442
250042	16.3867	17.6531	18.3858	17.4884
250043	16.0729	16.6500	18.4025	16.9554
250044	16.1218	16.7321	19.1860	17.3262
250045	22.0839	21.8988	22.7225	22.2606
250047	13.3706	14.7461	*	13.9984
250048	16.8932	17.6649	19.4976	18.0474
250049	11.6715	12.1635	12.8275	12.2266
250050	14.3949	15.1159	16.0234	15.1991
250051	9.3464	10.4900	10.1212	9.9666
250057	15.9237	16.1838	16.3204	16.1462
250058	15.5327	15.7197	16.2623	15.8399
250059	16.2845	16.6494	17.7592	16.8861
250060	13.0301	16.1804	12.6893	13.8440
250061	11.0308	11.5108	12.0186	11.5214
250063	13.2540	13.3092	15.0894	13.8432
250065	12.8853	13.6904	15.0507	13.8065
250066	15.6760	16.1742	17.2711	16.3375
250067	16.4120	16.8522	18.3773	17.2393
250068	13.6768	13.4127	13.2644	13.4415
250069	17.8960	16.8980	18.2097	17.6479
250071	14.3781	12.3488	13.1934	13.2742
250072	18.2218	18.9487	21.0602	19.2655
250076	10.5098	*	*	10.5098
250077	12.2564	13.7404	13.9479	13.2870
250078	15.6336	15.9739	17.1972	16.2928
250079	16.2712	16.5835	16.1483	16.3337
250081	17.3325	19.0358	18.1848	18.1653
250082	16.0975	17.1427	17.3096	16.8599
250083	14.2634	16.6065	16.3054	15.6454
250084	17.0189	20.6429	21.0870	19.3827
250085	14.3797	15.4477	16.7377	15.5314
250088	17.8674	18.2736	19.3976	18.4880
250089	13.4238	14.3027	15.0238	14.2301
250093	15.2044	16.1506	16.8647	16.0778
250094	18.0852	18.5063	18.9681	18.5063
250095	17.0039	17.4217	18.4944	17.6334
250096	19.0688	19.0584	19.3630	19.1609
250097	16.9905	15.5741	16.3328	16.3172
250098	13.1341	18.3874	17.9180	16.1645
250099	14.8528	15.1265	15.9867	15.3437
250100	17.1682	17.8688	19.8795	18.3539
250101	18.4685	17.7194	17.6704	17.9924
250102	23.9329	18.9348	*	21.2970
250104	18.2502	18.7651	19.0165	18.6823
250105	14.5401	15.5133	16.1480	15.4020
250107	15.1496	15.0737	16.5635	15.5581
250109	22.1551	21.3867	24.5760	22.6981
250112	15.5610	16.3640	16.6447	16.1593
250117	16.1225	16.9787	15.9335	16.3432
250119	15.2199	16.1218	16.5700	15.9756

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
250120	15.3433	16.7182	18.1428	16.6322
250122	18.9417	19.2990	19.8033	19.3541
250123	18.8690	18.7863	22.1376	19.9106
250124	13.1823	13.2490	14.3551	13.5956
250125	20.8895	21.2660	21.3711	21.1778
250126	18.2355	21.9101	19.0168	19.6297
250128	14.0048	16.1418	15.9958	15.4423
250131	12.6056	12.4557	11.2470	12.0464
250134	17.0671	18.5142	21.4489	18.9054
250136	18.9689	21.3497	20.0333	20.0576
250138	18.4028	20.4550	19.3446	19.3211
250141	19.0113	19.6692	21.6835	20.2708
250145	10.2507	11.2120	11.2021	10.8489
250146	14.4924	14.7781	15.4061	14.8913
250148	18.0980	19.4233	23.1459	20.1203
250149	12.9569	15.2318	15.7537	14.6277
250150	*	21.8599	*	21.8599
260001	18.0971	20.1560	20.9602	19.7021
260002	22.1183	21.6597	23.4259	22.4118
260003	14.6553	15.4482	16.0721	15.3980
260004	13.0133	13.7035	15.2735	13.9164
260005	19.5554	23.9681	22.2119	21.8900
260006	19.7467	20.0994	22.1692	20.6408
260008	13.8495	16.8893	18.2114	15.8498
260009	18.5080	18.2863	19.0654	18.6237
260011	19.1027	19.5059	20.3279	19.6368
260012	14.3645	17.1662	17.3810	16.3363
260013	15.9884	16.1825	17.3772	16.4946
260015	16.5822	17.8817	18.0070	17.4241
260017	16.7916	16.9914	17.9796	17.2888
260018	12.0060	12.5301	13.6120	12.7676
260019	18.6113	*	18.3629	18.4928
260020	20.5142	20.2241	21.0314	20.5884
260021	22.1017	21.6237	23.3527	22.2918
260022	17.2462	17.7772	18.7707	17.9082
260023	16.4705	17.8649	18.5665	17.6119
260024	15.2356	15.7815	15.6095	15.5379
260025	15.4935	17.0965	18.2804	16.9786
260027	21.2977	22.0362	23.1505	22.1110
260029	19.7484	21.1858	20.1832	20.3332
260030	12.5118	11.9215	12.8349	12.4289
260031	19.4921	19.7249	22.5379	20.4276
260032	20.1988	19.6728	20.1817	20.0177
260034	17.4233	20.4902	20.5439	19.5050
260035	13.1065	13.0071	15.1611	13.8141
260036	16.7430	18.8104	19.9593	18.5490
260039	14.1866	14.6644	15.9689	14.9611
260040	17.3099	18.0140	18.5132	17.9641
260042	18.7567	18.7514	20.8821	19.5084
260044	15.9927	15.9206	16.7879	16.2332
260047	19.0112	19.2247	19.8178	19.3380
260048	20.0885	21.0602	22.4800	21.2299
260050	15.6908	16.8520	17.6687	16.7168
260052	18.0553	18.0914	19.1044	18.4413
260053	15.2236	16.5166	17.4110	16.3851
260054	20.0199	20.6242	23.0188	21.1083
260055	12.0118	15.4214	17.9547	14.9547
260057	17.4636	19.7144	16.5704	17.9947
260059	16.1000	17.0546	16.2074	16.4474
260061	14.7175	15.7112	17.1343	15.8685
260062	20.1477	21.3138	21.9287	21.1699
260063	18.2309	18.8973	19.7231	18.9234
260064	16.5934	17.8033	18.3749	17.5653

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
260065	19.4382	20.0975	20.6671	20.0563
260066	14.9640	15.3460	15.3139	15.2114
260067	14.2249	15.1837	14.5499	14.6334
260068	20.2418	19.4240	20.7947	20.1541
260070	*	13.9510	18.7384	16.1582
260073	14.2550	15.9182	16.9496	15.7508
260074	19.0350	19.8915	20.4033	19.8192
260077	18.6473	19.4482	20.5830	19.5877
260078	15.6381	14.9463	16.0586	15.5564
260079	14.2985	16.1453	16.4816	15.5347
260080	13.5384	14.6832	13.1617	13.7147
260081	21.0151	20.3053	20.2471	20.5212
260082	15.9407	15.9858	18.2853	16.7287
260085	20.4669	20.7051	21.5137	20.8993
260086	14.3164	15.2927	16.7579	15.4677
260091	19.9987	21.5464	22.0772	21.4012
260094	18.0085	18.5395	19.7308	18.8006
260095	19.6944	20.7292	21.6999	20.6994
260096	23.0282	22.5972	22.8259	22.8155
260097	16.5582	19.0632	18.6965	18.1123
260100	15.7047	16.6523	16.5439	16.3025
260102	20.1264	20.6361	21.2133	20.6454
260103	18.5957	19.7146	19.9144	19.3556
260104	21.0138	20.3176	21.6624	21.0040
260105	24.7223	24.8181	22.8005	24.0843
260107	19.8422	20.4269	22.5214	20.7581
260108	19.4609	20.0034	20.9029	20.1514
260109	13.9129	14.8181	15.9724	14.8936
260110	17.8375	18.3227	19.5633	18.5673
260113	14.6756	16.2223	16.1346	15.6436
260115	19.2259	17.4698	19.3873	18.6920
260116	16.2774	14.9812	16.0187	15.7314
260119	16.8836	17.2942	18.0725	17.4218
260120	16.3755	16.4904	17.6811	16.8504
260122	14.9697	16.0931	16.3700	15.8295
260123	14.6444	14.6822	15.2926	14.8761
260127	18.3572	18.4026	18.1342	18.2957
260128	13.0481	12.6414	13.2942	12.9961
260131	17.7686	18.4154	18.0395	18.0595
260134	16.2832	17.5127	17.1341	16.9643
260137	17.9531	19.4697	19.5976	19.0342
260138	22.6491	23.2364	23.1213	22.9952
260141	19.1580	19.1893	19.6237	19.3180
260142	17.1248	17.3084	18.2023	17.5590
260143	12.7867	13.9040	15.4688	13.9600
260147	14.0778	14.7769	15.8522	14.8908
260148	11.8674	11.3524	12.6651	11.9425
260158	12.3005	12.7699	13.9790	13.0499
260159	20.3177	19.7951	20.9636	20.3519
260160	15.8394	16.5792	18.4007	16.9325
260162	19.5655	21.4099	20.7331	20.5870
260163	16.4245	15.8593	16.8300	16.3731
260164	14.9372	15.1211	16.7279	15.6074
260166	20.1025	21.1224	22.4071	21.2079
260172	15.4163	16.0772	16.4854	15.9816
260173	12.8523	14.2090	15.5733	14.3947
260175	16.9023	17.5625	18.3632	17.6144
260176	26.8712	21.6044	23.2414	23.9990
260177	21.2578	21.9014	22.9091	22.0689
260178	19.6638	20.2796	20.8189	20.2016
260179	21.4906	22.7185	21.4470	21.8753
260180	19.5819	18.9881	19.5983	19.3863
260183	20.0712	21.3175	23.7057	21.6731

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
260186	19.3238	19.6026	21.0675	20.0580
260188	20.6388	22.5060	23.7475	22.1881
260189	11.3004	16.4233	*	13.8239
260190	18.5168	19.3419	21.6994	19.8001
260191	17.9812	18.1604	19.6784	18.6471
260193	21.1588	20.2577	22.2030	21.2172
260195	17.7237	19.7068	*	18.7154
260197	19.2840	20.5453	*	19.7846
260198	11.9751	19.7552	21.7926	16.7576
260200	20.5339	20.6888	21.7031	21.0210
260205	17.6210	*	*	17.6210
270002	28.9959	19.2387	19.0221	21.4738
270003	22.0995	22.5019	20.7277	21.7202
270004	19.6292	19.4834	20.1821	19.8074
270006	16.0238	17.0715	15.1006	15.9252
270007	11.3143	13.8824	15.5780	13.1858
270009	17.2292	20.8238	20.7031	19.5097
270011	20.2669	21.1653	21.8086	21.0508
270012	19.7346	19.7878	20.7913	20.0975
270014	19.0872	19.9859	20.4321	19.8518
270016	19.6717	18.6149	17.9984	18.9093
270017	21.0800	20.0152	22.1046	21.0660
270019	18.1099	15.4128	18.5111	17.2358
270021	17.1787	16.9457	18.0515	17.3782
270023	22.2639	22.7181	22.7162	22.5721
270026	17.5102	18.0568	20.1673	18.5919
270027	13.1392	17.2091	17.2005	15.5928
270028	21.1492	19.1177	19.6212	19.9204
270029	16.5666	17.3710	18.2097	17.3728
270032	17.7393	18.7811	19.3937	18.6694
270033	16.9602	18.4876	20.7060	18.6303
270035	16.8295	16.4302	17.9822	17.0833
270036	14.2537	16.8552	16.1031	15.5470
270039	15.9368	19.6796	20.3800	18.4120
270040	18.8145	20.1242	20.1887	19.6792
270041	19.0327	25.8153	*	21.5554
270044	16.7710	17.5137	19.2939	17.7721
270048	17.0154	18.0666	17.4506	17.4823
270049	22.2444	22.2540	22.0263	22.1740
270050	16.7110	19.9356	19.6317	18.7001
270051	20.2735	20.1950	20.0386	20.1652
270052	14.4773	14.7009	17.1932	15.3511
270057	21.1317	20.6714	20.1507	20.6215
270058	14.7481	16.1412	18.4780	16.2593
270059	14.7530	19.1808	16.9303	16.8245
270060	15.2727	20.4148	21.3776	18.5305
270063	12.6108	15.1049	16.4553	14.5559
270073	14.4569	16.1937	16.6083	15.6741
270079	15.6873	16.7048	19.5493	17.1331
270080	16.3171	15.0705	16.6010	15.9696
270081	15.6262	16.7389	18.0543	16.7908
270082	17.3443	23.1245	23.3209	21.2882
270083	18.4432	17.8554	16.8420	17.6939
270084	16.6243	16.2958	15.7062	16.1694
280001	17.3541	18.1831	18.7137	18.0270
280003	22.3179	23.0213	20.0498	21.6193
280005	19.2405	23.6949	20.1943	21.0207
280009	19.8145	20.9643	23.2300	21.3319
280010	17.4859	20.0462	*	18.1962
280011	15.8573	15.9614	16.2281	16.0212
280013	22.8063	22.5163	24.0852	23.1972
280014	15.9596	16.8368	16.7109	16.5080
280015	17.0281	16.6939	18.0207	17.2299

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
280017	14.2059	13.9939	16.9884	15.1266
280018	15.1328	15.4496	16.6439	15.7480
280020	19.9667	21.2467	21.9587	21.0976
280021	17.1048	17.6345	19.1263	17.9823
280022	16.7179	16.8184	15.3785	16.3083
280023	25.8494	22.3435	21.5761	23.0011
280024	14.2186	15.0380	15.8747	15.0019
280025	15.5850	21.4764	22.2214	19.5445
280026	16.6861	16.5851	18.7258	17.3359
280028	17.3176	18.0793	19.1080	18.1555
280029	23.1292	24.4359	17.1351	21.6012
280030	24.5366	24.7723	26.3542	25.1586
280031	13.5654	9.6321	9.6951	11.0351
280032	18.8964	19.1191	20.5246	19.5206
280033	15.7583	17.4745	17.9841	17.1215
280035	15.9170	16.6872	18.6089	16.9364
280037	16.7952	17.1064	14.8049	16.2282
280038	17.0878	18.2503	18.9305	18.0758
280039	16.0442	16.1587	17.0153	16.4148
280040	19.5333	20.9896	21.5426	20.7346
280041	16.4083	16.5503	16.6889	16.5558
280042	16.1191	16.6239	16.4684	16.3973
280043	16.6570	17.5937	16.8186	17.0314
280045	16.9048	15.7630	17.7408	16.7631
280046	17.9221	17.3214	17.9752	17.7358
280047	18.3407	17.4735	21.3143	18.9885
280048	15.8723	15.8100	17.9319	16.5389
280049	18.3605	18.4365	19.4589	18.7530
280050	16.6432	20.0379	*	18.4507
280051	15.6336	17.1942	19.6206	17.2054
280052	14.0819	14.1201	14.9903	14.4198
280054	18.7992	18.7575	19.4049	18.9732
280055	13.5667	13.8129	14.2046	13.8644
280056	12.6475	15.6135	15.6442	14.4971
280057	18.0454	20.0686	21.4754	19.8186
280058	19.6752	21.4868	22.8105	21.3952
280060	19.7527	20.7022	22.4677	20.9351
280061	17.1629	18.6370	20.2066	18.7084
280062	14.4896	15.6018	16.1708	15.4336
280064	16.2977	16.8330	18.2196	17.1053
280065	19.2932	20.7370	21.6999	20.6166
280066	11.6621	11.7207	12.2225	11.8688
280068	9.4943	10.5987	10.5103	10.1786
280070	17.7400	22.6201	18.7211	19.4766
280073	17.4244	17.7698	18.3496	17.8530
280074	16.4310	17.3143	13.6025	15.4955
280075	15.5327	13.2230	13.3154	13.8859
280076	14.8469	16.7488	16.1939	15.8857
280077	19.2068	20.0148	21.1883	20.1246
280079	10.4540	16.6117	17.1519	13.6519
280080	15.3308	16.9487	16.1902	16.1919
280081	21.0771	20.9606	23.3805	21.7809
280082	14.3399	14.6173	15.4420	14.8136
280083	18.2992	21.5336	20.8995	20.2370
280084	12.5836	13.6536	13.2158	13.1411
280085	20.4302	20.4825	20.8532	20.5742
280088	20.2961	*	*	20.2961
280089	18.1668	18.9567	19.9003	18.9565
280090	14.1362	15.1274	*	14.6858
280091	15.8436	16.1866	16.3456	16.1284
280092	14.1945	14.7912	13.3032	14.1038
280094	17.6873	16.3474	16.9180	16.9734
280097	14.1734	13.8223	14.1870	14.0603

* Denotes wage data not available for the provider for that year.
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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
280098	13.0029	12.5875	12.4995	12.6927
280101	13.5261	16.9973	10.5153	13.1647
280102	14.0102	*	*	14.0102
280104	13.2819	16.2167	15.5949	14.8930
280105	18.6575	21.0735	23.7103	21.1232
280106	16.1247	16.0679	16.3564	16.1791
280107	13.3311	14.4679	*	13.8480
280108	17.5625	17.1961	18.5134	17.7698
280109	12.6803	12.4408	*	12.5540
280110	12.7546	14.2136	13.0278	13.3282
280111	21.8773	19.6283	19.3508	20.2354
280114	15.7160	17.3076	17.1154	16.7114
280115	16.7041	18.1480	18.3464	17.7487
280117	17.7276	18.8279	20.3819	18.9864
280118	16.8687	18.6524	17.8891	17.8029
280123	14.0637	11.8582	23.6682	15.2035
280125	16.1332	16.3944	17.2718	16.5861
290001	22.8226	22.7450	24.1873	23.2686
290002	17.2554	16.5419	16.7948	16.8714
290003	22.8840	24.2175	24.4237	23.8452
290005	19.4888	21.9814	22.7804	21.4325
290006	21.8070	22.4063	19.9226	21.3745
290007	29.7706	30.9075	30.2824	30.3297
290008	20.6190	24.1255	26.9216	23.3785
290009	23.3620	23.9373	24.5919	23.9575
290010	15.6423	16.4476	20.8387	17.4968
290011	20.1564	21.1234	19.7410	20.3076
290012	21.8275	25.0430	25.3963	24.1843
290013	18.2713	15.7932	20.2914	17.8815
290014	18.9743	18.7829	20.2762	19.3806
290015	22.3487	19.4504	20.2336	20.6208
290016	14.3542	23.8656	21.8030	19.3661
290019	21.2509	22.2045	22.5584	22.0258
290020	20.8733	21.2380	19.5039	20.6806
290021	21.5806	22.9488	23.4950	22.6778
290022	24.5468	25.5011	24.8144	24.9547
290027	16.7786	13.3769	13.1463	14.2467
290032	22.8447	23.9504	26.8557	24.6837
290036	*	12.9074	*	12.9074
290038	20.6753	27.7030	26.0836	23.3519
290039	25.3864	25.5024	26.2466	25.7352
290041	*	25.9905	27.0613	26.6211
290042	*	18.7527	18.7669	18.7611
290043	*	27.9053	*	27.9053
300001	22.0909	23.8567	25.7142	23.9386
300003	22.9111	24.1297	25.3252	24.1024
300005	20.7545	22.2858	22.0518	21.6894
300006	23.7793	18.9745	22.2642	21.6739
300007	20.2372	20.6325	21.3633	20.7580
300008	20.7702	19.6149	20.9207	20.4237
300009	18.0602	20.0938	20.1193	19.3850
300010	19.3940	20.2130	21.0316	20.1973
300011	22.4325	23.0279	23.8390	23.0923
300012	24.5673	24.5619	25.8581	25.0347
300013	19.1247	20.1669	20.0983	19.8032
300014	20.3292	20.1774	21.6705	20.7353
300015	20.4916	19.6627	22.8966	21.0797
300016	21.8659	17.8148	15.1311	18.1853
300017	21.6563	22.7191	23.9651	22.8162
300018	21.2381	21.6385	22.9623	21.9864
300019	20.9753	19.6728	20.5801	20.4037
300020	21.9165	22.6627	23.0806	22.5724
300021	18.6211	19.3101	20.2585	19.4039

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
300022	18.3507	19.1875	20.1635	19.2197
300023	22.1210	22.7649	22.1896	22.3579
300024	19.9116	21.5842	22.2235	21.2127
300028	17.4075	20.0778	21.4207	19.6713
300029	22.5748	22.6013	23.8415	23.0427
300033	17.1869	17.1632	17.4836	17.2725
300034	25.5182	24.4975	25.2355	25.1020
310001	28.1329	27.4730	28.6540	28.0966
310002	28.3434	27.9728	28.5941	28.3065
310003	29.1096	27.5624	28.8314	28.5051
310005	22.1146	22.9712	22.9664	22.6779
310006	21.5957	22.0894	24.1538	22.5976
310008	23.5084	24.7618	26.4989	24.9206
310009	23.6371	21.7094	23.2420	22.8675
310010	22.5682	23.1060	24.5471	23.4312
310011	23.1977	24.2885	25.4900	24.3173
310012	26.5242	26.6772	28.0541	27.1062
310013	21.2251	22.5603	23.0073	22.2711
310014	27.4614	23.1956	31.0374	27.0132
310015	27.4331	27.9684	*	27.7058
310016	24.3838	24.5206	25.4844	24.7602
310017	25.7902	24.5976	25.1634	25.1866
310018	22.8428	22.4779	24.1496	23.1662
310019	24.0542	24.9914	28.5952	25.8565
310020	24.1848	24.4152	25.0803	24.5523
310021	23.9369	25.4393	29.9117	26.2679
310022	21.2706	20.8258	21.2563	21.1130
310024	24.2353	24.9521	27.2475	25.4630
310025	24.3513	24.1812	25.5227	24.6926
310026	23.5491	22.1997	23.2895	22.9937
310027	21.8846	22.5696	24.4437	22.9152
310028	23.4577	23.9428	26.1931	24.5392
310029	22.6629	23.6610	25.2587	23.8421
310031	26.1567	26.6831	26.7174	26.5090
310032	24.3528	24.7404	25.4768	24.8830
310034	23.2729	24.1150	27.1303	24.7884
310036	20.1905	21.7187	23.0320	21.6137
310037	27.7823	28.1289	29.0864	28.3334
310038	26.7209	28.4893	28.4732	27.9039
310039	22.1754	22.7317	23.6605	22.8221
310040	26.1492	26.3573	26.5964	26.3696
310041	24.8960	23.5559	24.9733	24.4816
310042	23.2472	24.7678	25.7747	24.5600
310043	21.9022	21.6128	24.0238	22.3478
310044	21.6677	23.1549	23.3801	22.7473
310045	28.4854	28.9274	29.5452	28.9708
310047	25.1101	26.1921	25.9777	25.7489
310048	23.6118	25.2870	23.4189	24.0965
310049	24.8299	27.0842	25.6732	25.8686
310050	25.1752	24.7988	23.7735	24.5800
310051	27.1265	27.5378	28.5946	27.7258
310052	22.9326	23.3973	27.0616	24.3173
310054	26.1726	27.7376	26.9352	26.9153
310057	21.1686	22.2572	22.2630	21.9057
310058	26.5308	26.3765	25.9389	26.3360
310060	19.1992	20.0997	21.6211	20.2716
310061	23.2646	33.9582	23.4283	26.0987
310062	22.9073	*	*	22.9073
310063	21.9045	22.1080	23.5217	22.4712
310064	24.8567	25.4822	25.3339	25.2160
310067	25.0888	23.9278	24.1943	24.4277
310069	23.7531	24.2329	25.4373	24.4865
310070	26.0903	28.2220	30.1143	28.0038

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
310072	21.7605	22.5611	25.0708	23.0824
310073	28.5149	26.2937	29.2805	27.9813
310074	23.8340	22.3588	24.1313	23.4934
310075	23.3266	24.4788	23.9771	23.9276
310076	30.0797	27.9918	31.4866	29.8824
310077	25.2500	26.1251	26.7227	26.0109
310078	23.8841	24.0587	24.5862	24.1519
310081	22.0762	22.4086	23.2059	22.5650
310083	23.8852	24.8204	25.0191	24.5773
310084	26.6753	24.6049	25.5110	25.5914
310086	22.1674	23.1719	23.5820	22.9629
310087	20.7243	21.1215	20.7434	20.8650
310088	22.3160	23.1722	24.2150	23.2258
310090	23.8284	24.8986	24.4746	24.3899
310091	22.7978	23.2969	24.5357	23.5110
310092	20.5165	21.6964	23.1341	21.7772
310093	22.4291	23.7251	24.0037	23.3380
310096	25.1572	24.5759	26.6982	25.4341
310105	25.5891	26.2537	25.1559	25.6770
310108	22.4756	23.8308	26.2036	24.1336
310110	21.8341	23.2146	23.1789	22.7903
310111	21.1066	22.1151	24.1731	22.4723
310112	23.6701	24.7914	24.2999	24.2528
310113	23.6841	23.1961	24.0930	23.6671
310115	21.7320	21.1645	23.4249	22.1167
310116	22.9812	23.6366	*	23.3055
310118	26.4625	26.1315	26.5619	26.3869
310119	33.6686	32.7858	29.1045	31.7976
310120	23.9681	23.3200	22.6526	23.3189
320001	19.1150	20.6225	21.0689	20.2496
320002	22.6175	23.0983	25.5144	23.6846
320003	15.9504	16.4642	16.4961	16.3037
320004	18.5824	19.6642	21.3681	19.9888
320005	21.6103	21.0411	22.4178	21.7283
320006	18.9019	20.3863	19.8672	19.6917
320009	18.2883	19.3500	20.3783	19.2661
320011	20.0601	18.5222	18.7099	19.0944
320012	16.4355	17.1764	14.3961	16.0417
320013	22.9573	24.5543	24.4795	24.0591
320014	16.3598	16.8412	21.7784	18.0981
320016	20.5398	18.8519	18.8763	19.4121
320017	18.6388	19.4498	20.4390	19.4898
320018	18.8479	19.2336	20.4375	19.5136
320019	24.4707	26.9637	24.4394	25.3985
320021	17.8705	19.1265	19.6950	18.8702
320022	16.1777	18.0606	19.9587	18.1477
320023	18.0548	17.8419	*	17.9685
320030	16.5495	18.6859	18.1556	17.7555
320031	19.6768	25.1715	18.2244	20.7137
320032	18.8097	20.6871	21.1628	20.1426
320033	25.0777	21.0621	21.9804	22.5777
320035	21.5186	15.0612	17.8058	17.7193
320037	17.0305	17.8280	17.6619	17.5121
320038	16.8117	22.2664	*	19.6948
320046	18.3190	18.9607	22.6251	20.0803
320048	19.9642	16.8769	*	18.3467
320063	18.3237	17.9089	14.4611	17.0236
320065	16.7933	18.6525	22.1138	18.8982
320067	33.8654	15.3228	16.8015	18.3132
320068	17.4795	18.5103	15.6681	17.1335
320069	13.0094	14.4212	15.7350	14.3622
320074	19.3406	20.2290	22.3403	20.2679
320079	18.2828	19.8555	19.9049	19.3010

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330001	26.5533	27.3996	28.4974	27.5189
330002	26.5370	26.9341	26.6966	26.7185
330003	19.4102	18.9211	19.3972	19.2414
330004	22.5298	20.9501	22.5082	22.0002
330005	24.8338	22.1957	22.6137	22.8232
330006	25.0576	25.8006	26.2970	25.7013
330007	18.9024	*	*	18.9024
330008	19.0045	19.2341	19.6770	19.3060
330009	30.6918	31.3435	30.9087	30.9793
330010	17.4512	16.6508	17.8935	17.3146
330011	18.2986	18.6748	18.7995	18.5936
330012	32.7624	*	*	32.7624
330013	19.0856	19.6269	19.0995	19.2697
330014	32.3370	36.8669	32.4496	33.8020
330016	16.9717	16.8016	18.7194	17.4483
330019	35.9822	33.5369	31.5927	33.4812
330020	15.5527	15.1142	16.6952	15.7780
330023	24.4006	25.6512	26.6997	25.5866
330024	34.1682	37.3316	35.7485	35.6717
330025	16.2033	16.8687	17.6169	16.8903
330027	33.4738	35.5255	35.1046	34.6601
330028	28.2089	29.5294	31.7699	29.9762
330029	18.1567	17.0016	19.4377	18.2068
330030	17.4977	19.1085	18.0866	18.1511
330033	18.5353	17.4444	19.4402	18.4646
330034	31.3997	27.7738	38.2451	31.3373
330036	23.9874	25.2820	25.5888	24.9782
330037	16.1140	16.4866	18.3260	16.9831
330038	16.2549	17.3429	16.2997	16.6434
330041	24.5215	31.4871	29.5305	28.1630
330043	28.7467	27.4661	28.9622	28.3990
330044	20.0238	19.5219	19.9808	19.8437
330045	28.0758	27.9919	28.5267	28.2011
330046	32.4189	35.2703	38.1184	35.1742
330047	18.1815	18.5536	19.5561	18.7655
330048	17.8787	19.1093	19.6129	18.8634
330049	19.4993	20.5731	22.1523	20.7576
330053	17.4430	17.8082	17.8308	17.6930
330055	36.1109	32.8910	32.6387	33.8113
330056	30.4525	30.0945	29.8377	30.1337
330057	18.7478	19.3643	20.0995	19.4010
330058	17.0014	17.7672	18.1007	17.6091
330059	34.1705	34.2426	35.0121	34.4519
330061	25.7331	25.4082	26.8580	25.9786
330062	17.6067	18.1318	18.4662	18.0774
330064	33.1269	33.6447	35.1422	33.9496
330065	19.8940	19.9305	20.2835	20.0284
330066	19.5611	18.8707	19.5272	19.3115
330067	20.9443	22.1065	23.6836	22.2657
330072	30.8019	30.4171	30.3737	30.5362
330073	16.2898	16.4518	16.5166	16.4181
330074	18.0005	17.7308	18.7081	18.1472
330075	17.2298	17.6385	18.9699	17.9293
330078	16.7949	18.7884	18.0362	17.8405
330079	17.4555	18.7622	18.9398	18.3917
330080	29.2686	31.4424	28.3401	29.6840
330084	18.0435	19.3216	19.0261	18.8002
330085	20.2926	20.6203	22.8312	21.2658
330086	31.2980	23.6496	26.2979	27.1579
330088	25.6626	25.7940	26.7583	26.0739
330090	19.3954	19.2112	20.4314	19.6779
330091	19.0953	19.7776	21.6004	20.1526
330092	14.0671	13.3723	17.2083	14.8861

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330094	17.5585	18.1582	18.7259	18.1488
330095	20.1073	21.1096	21.1809	20.7563
330096	17.9641	18.5149	20.0370	18.8403
330097	16.2169	16.4433	15.8232	16.1519
330100	27.0661	29.0916	28.9956	28.3021
330101	32.4105	31.5914	34.7119	32.9505
330102	17.5755	19.0058	21.0057	19.0881
330103	15.7197	16.8110	17.8864	16.8159
330104	31.6471	31.2074	31.9154	31.5867
330106	40.2686	35.3775	35.1434	36.7949
330107	28.5580	27.7797	28.9225	28.4199
330108	17.3605	18.0786	18.5194	17.9737
330111	19.5314	15.9321	13.3352	15.9787
330114	17.3522	17.0581	19.1162	17.8316
330115	17.4430	17.4684	13.0722	15.4701
330116	24.4622	14.9610	16.8567	18.1237
330118	20.6936	*	*	20.6936
330119	34.8385	33.1179	33.5653	33.8391
330121	16.1052	16.3385	17.1869	16.5359
330122	20.8204	20.2417	23.0384	21.3559
330125	19.8494	19.7638	20.3093	19.9745
330126	23.7938	23.8957	24.8787	24.2123
330127	31.9046	30.7356	33.9627	32.2469
330128	29.0222	30.8242	27.7350	29.2603
330132	15.7633	14.3673	14.8704	15.0313
330133	37.2494	35.3576	37.5192	36.5906
330135	18.7120	22.2670	23.5662	21.3289
330136	18.2422	20.1043	20.0552	19.4517
330140	19.1438	19.3615	20.2951	19.5989
330141	26.4956	26.7096	27.5960	26.9363
330144	14.0566	16.2517	17.1513	15.7880
330148	16.8151	16.2782	16.7251	16.6024
330151	16.0714	15.7594	15.2233	15.6663
330152	30.5409	30.8314	33.4288	31.5069
330153	18.9689	18.1776	19.4417	18.8671
330157	22.0792	22.3804	23.1743	22.5628
330158	25.7569	27.1228	29.3163	27.3406
330159	19.1536	19.4998	20.2601	19.6219
330160	32.7840	29.5885	30.7893	30.9997
330162	27.1166	27.6010	27.9705	27.5570
330163	18.7816	20.7456	21.4143	20.2444
330164	19.8647	20.9003	20.5006	20.4195
330166	15.0954	15.4420	17.0637	15.8309
330167	29.3634	30.2346	32.0728	30.4495
330169	37.2655	35.4794	36.3690	36.3400
330171	25.5307	24.8035	24.8515	25.0649
330175	17.3290	18.3116	18.8201	18.1260
330177	17.2907	16.3704	16.6059	16.7542
330179	13.4999	13.8953	15.8620	14.3577
330180	16.8787	17.9877	19.2670	17.9995
330181	32.5192	33.0908	34.2919	33.2777
330182	32.9371	33.6531	33.3363	33.3137
330183	19.9207	20.6164	19.6980	20.0807
330184	30.0400	31.3706	28.4726	30.0103
330185	25.6112	26.8612	27.8585	26.7622
330188	20.9587	18.8000	20.2849	20.0186
330189	15.1253	18.4498	23.5589	18.7634
330191	18.6206	19.0348	19.4168	19.0266
330193	36.5481	30.2260	32.5496	32.9872
330194	34.6785	35.2036	35.6486	35.1819
330195	33.3254	34.8966	29.8157	32.7136
330196	30.8165	30.5799	25.9671	29.2151
330197	17.6646	18.3527	19.2237	18.4045

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330198	24.6038	24.8590	25.4472	24.9692
330199	28.7609	30.5409	26.0228	28.5436
330201	32.1149	28.7861	27.6320	29.6019
330202	31.4435	31.2575	31.9777	31.5574
330203	20.7575	25.0345	25.7916	23.7288
330204	29.4418	32.2005	28.4140	30.0233
330205	20.5793	22.3490	24.9040	22.5611
330208	26.1822	26.6682	27.3170	26.7219
330209	23.9924	25.1281	26.8546	25.3803
330211	19.5064	19.5405	20.0006	19.6855
330212	21.7705	24.7681	24.4902	23.6390
330213	18.7722	19.6796	20.1166	19.4878
330214	36.4447	32.4292	32.2640	33.3003
330215	19.6926	17.9863	19.0726	18.8818
330218	21.4796	21.1890	21.4747	21.3812
330219	23.9908	23.4310	25.1792	24.1748
330221	27.8485	33.3796	29.5535	30.2856
330222	18.3666	18.5571	19.3148	18.7515
330223	17.6199	17.8306	19.0773	18.1866
330224	19.6410	20.4309	20.7773	20.2793
330225	25.5823	27.0379	28.0523	26.7760
330226	16.6711	23.1859	16.9198	18.3930
330229	16.8026	17.5326	18.2554	17.5103
330230	29.7626	29.6283	30.6937	29.9984
330231	30.0923	32.7200	25.2793	29.5345
330232	17.9083	19.1787	19.6181	18.8942
330233	30.9241	44.1265	42.3510	37.9819
330234	35.1777	35.0720	35.8927	35.3813
330235	21.0842	19.5880	20.1255	20.2820
330236	29.5913	31.3463	30.9816	30.6263
330238	15.6245	17.3976	17.5807	16.8401
330239	17.4462	18.5079	18.9953	18.2764
330240	29.7082	30.7321	32.0049	30.7179
330241	24.6076	23.8638	24.7545	24.4065
330242	28.2612	27.6384	28.3561	28.0883
330245	17.6767	18.5161	20.7167	19.0400
330246	28.1090	28.1205	29.8777	28.6473
330247	28.5310	27.3937	32.5858	29.3555
330249	16.2687	17.1320	17.6846	17.0482
330250	19.5823	19.9619	20.7381	20.1092
330254	18.4057	15.9123	15.7864	16.7695
330258	29.7426	31.8910	32.6745	31.4411
330259	26.2661	25.9994	26.3620	26.2118
330261	25.7244	27.9766	30.0489	27.8583
330263	20.4149	18.7378	19.5057	19.6112
330264	22.8672	22.8099	24.6387	23.4672
330265	18.0193	17.6301	21.1215	18.8985
330267	24.5183	24.5939	27.8255	25.6678
330268	13.0595	15.9060	16.8358	15.2987
330270	34.4254	36.0824	31.3908	33.9198
330273	23.1511	26.0565	27.0454	25.3482
330275	19.0548	18.7268	*	18.9109
330276	18.2870	19.0228	19.2611	18.8572
330277	18.3169	19.1761	20.7851	19.4340
330279	19.5983	20.7107	21.7827	20.6371
330285	23.5264	24.0491	25.9154	24.4664
330286	26.7633	27.7762	28.0994	27.5677
330290	33.5056	30.4706	34.3439	32.7503
330293	16.2158	16.9238	17.2262	16.7522
330304	26.7683	27.3562	29.2207	27.7999
330306	27.3798	29.5937	25.6970	27.5466
330307	21.0673	21.7257	23.1148	21.9912
330314	24.5444	25.9937	25.5405	25.3155

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
330316	27.6102	27.9543	27.9277	27.8310
330327	16.4611	20.3874	20.1705	18.8688
330331	31.6216	33.1276	31.0718	31.9586
330332	27.6914	25.3689	27.6955	26.9473
330333	29.1931	*	28.8841	29.0179
330336	29.7689	29.8294	29.1415	29.5860
330338	22.4581	21.2670	23.6142	22.4472
330339	20.0111	20.1028	20.2382	20.1121
330340	28.8419	28.4129	29.4512	28.8934
330350	30.8889	30.9763	33.5493	31.7771
330353	32.1984	34.2431	34.2260	33.5106
330357	36.5928	34.1846	36.8598	35.8981
330372	28.8482	33.3771	27.8854	29.8144
330381	31.0091	31.8602	*	31.4219
330385	35.6722	33.2246	33.4159	34.1965
330386	17.6383	20.4231	21.4363	19.4104
330389	30.2505	37.3749	27.6223	31.1985
330390	31.1577	30.8744	33.4372	31.7841
330393	26.4958	27.8352	33.6061	29.1012
330394	19.2392	18.9343	19.6892	19.2847
330395	32.8749	32.7494	30.2846	32.0161
330396	34.8648	30.7961	29.1753	31.7581
330397	33.9061	32.6068	38.3281	34.7790
330398	28.7707	29.2872	*	28.9084
330399	32.9100	33.3012	32.7149	32.9707
330400	*	16.2707	16.8168	16.5566
340001	18.1814	19.7093	21.8572	19.9040
340002	20.8858	20.5253	22.2638	21.3163
340003	20.2540	19.5145	19.6545	19.8018
340004	19.0695	20.9863	23.0890	21.0811
340005	15.8205	16.7176	16.3073	16.2815
340006	16.9818	16.5709	16.1379	16.5756
340007	17.2356	18.3399	18.3760	17.9959
340008	21.2889	20.4157	22.0774	21.2828
340009	20.5023	20.9178	20.6155	20.6734
340010	18.3380	19.4302	20.6547	19.5049
340011	13.6554	14.4798	17.4534	15.1697
340012	18.8701	17.5112	19.3651	18.5479
340013	20.1747	19.4613	21.5130	20.3981
340014	20.5748	27.7888	21.9804	22.9126
340015	20.1562	19.4676	20.3493	19.9875
340016	17.5404	18.8958	19.4160	18.6049
340017	19.4192	20.2775	20.6263	20.1119
340018	14.0930	18.1751	16.4611	16.0927
340019	14.8980	15.2887	15.9037	15.3369
340020	18.6334	18.0897	19.2392	18.6598
340021	19.8020	20.5813	22.0220	20.7507
340022	17.8178	18.7714	20.6484	19.0742
340023	18.5414	19.3146	19.2617	19.0575
340024	17.3824	17.9130	19.1430	18.1515
340025	17.2648	18.4628	19.1770	18.3029
340027	18.0816	19.4548	19.4907	19.0172
340028	18.4787	19.9403	20.6496	19.7560
340030	21.1420	22.4709	24.0238	22.4825
340031	14.6951	14.6370	15.4935	14.9011
340032	20.0049	20.7444	21.7127	20.8112
340035	20.2312	18.9930	18.5883	19.2823
340036	18.2190	17.7619	18.4203	18.1226
340037	16.6576	17.5829	18.3655	17.5271
340038	17.3762	18.1493	20.3091	18.5547
340039	20.5876	21.3711	22.2939	21.4440
340040	20.4282	20.7237	21.1020	20.7582
340041	15.1419	15.5873	16.3200	15.6803

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
340042	16.9298	17.0034	19.1386	17.6977
340044	18.8687	18.0863	18.9562	18.6425
340045	13.0538	13.6182	20.2641	14.9554
340047	20.0602	20.0744	20.7061	20.2776
340049	19.2050	19.5127	17.2986	18.6550
340050	20.0090	19.6726	20.6831	20.1383
340051	16.5617	19.3627	19.0282	18.2702
340052	22.8173	23.2134	26.2243	23.8462
340053	20.9495	19.9915	22.6020	21.1247
340054	15.5993	15.5090	16.6208	15.8560
340055	19.6056	19.4035	20.2936	19.7761
340060	18.7137	19.3410	20.8570	19.6422
340061	21.5385	22.1175	23.7173	22.4390
340063	17.0249	16.7377	26.4132	19.5650
340064	20.7125	18.5069	17.7395	18.9394
340065	17.5414	17.3530	18.3610	17.7341
340067	19.3785	19.7187	22.4054	20.2943
340068	16.6305	17.8065	18.8758	17.7729
340069	21.0840	21.6728	22.5664	21.7942
340070	19.7796	20.6829	21.5793	20.6882
340071	17.1424	18.0767	19.3679	18.2275
340072	16.7400	17.7129	18.7920	17.7544
340073	21.9761	23.5832	23.4906	23.0367
340075	18.7090	20.0081	19.9451	19.5511
340080	22.2533	18.2061	*	20.1809
340084	17.1532	19.0103	19.6087	18.5190
340085	17.3462	18.3179	20.3684	18.6708
340087	17.3884	18.2255	20.2445	18.6743
340088	21.0226	22.2322	22.6462	21.9702
340089	13.8535	15.4760	16.1321	15.1566
340090	17.0584	18.5287	18.7701	18.1576
340091	20.5923	20.3861	21.1892	20.7475
340093	16.3276	16.8903	16.5452	16.5873
340094	19.0406	*	20.8816	19.9881
340096	17.8189	19.4696	20.9686	19.4268
340097	18.8412	18.2399	20.0302	19.0440
340098	21.4135	21.9578	23.5280	22.3354
340099	16.8305	15.3752	16.9979	16.3421
340101	13.9994	15.6509	20.7841	16.3562
340104	13.0462	11.5169	12.1845	12.2454
340105	20.2954	*	*	20.2954
340106	17.7220	18.1211	19.1147	18.3112
340107	18.0205	19.3197	20.7601	19.3267
340109	18.7746	19.0532	19.3357	19.0640
340111	16.3344	16.5976	17.2127	16.7260
340112	14.7562	15.5142	16.9592	15.7587
340113	21.2906	21.9883	24.0277	22.4262
340114	21.2166	20.7261	21.7750	21.2327
340115	19.7578	21.7586	24.7924	21.8733
340116	20.4255	20.6800	21.6616	20.9285
340119	18.8507	19.5827	20.5394	19.6919
340120	15.0410	15.8240	16.9847	15.9742
340121	16.3295	17.8771	19.0420	17.7638
340123	16.9114	18.9078	21.5041	19.1720
340124	15.5779	17.4185	17.5411	16.8707
340125	19.7164	20.2748	*	19.9923
340126	18.8100	19.3734	20.7395	19.6489
340127	19.3925	19.3842	21.4797	20.0982
340129	20.4605	20.6521	21.0773	20.7569
340130	19.7422	19.8707	20.5851	20.0891
340131	19.7908	21.3849	23.2478	21.4650
340132	17.3448	17.5711	17.7110	17.5495
340133	16.4766	17.2138	16.9829	16.8955

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
340137	21.0249	31.7702	*	23.8273
340138	20.7618	*	*	20.7618
340141	21.3754	21.4986	22.4525	21.7877
340142	17.1525	18.0766	18.1824	17.8038
340143	21.3604	24.4098	21.9304	22.5287
340144	20.9113	22.9183	22.8634	22.2296
340145	20.1081	19.9233	21.5958	20.6005
340146	15.9203	17.3051	19.1306	17.3989
340147	19.6827	20.5520	21.5912	20.6397
340148	18.5875	18.9912	20.6790	19.3782
340151	16.7275	18.4733	19.0779	18.0943
340153	20.6420	20.7533	21.7375	21.0743
340155	20.5792	23.1021	24.8963	22.8382
340158	18.1439	19.0843	20.0921	19.1509
340159	17.3893	19.0338	18.3028	18.2386
340160	16.1778	16.7170	17.1963	16.7262
340162	14.3472	*	*	14.3472
340164	21.2523	21.5769	*	21.4120
340166	20.0434	20.8270	22.0519	21.0278
340168	15.2919	15.6071	15.4250	15.4443
340171	21.5973	22.4779	22.7304	22.3095
340173	19.3353	21.0898	23.3690	21.3475
350001	14.9080	16.6551	15.6193	15.7235
350002	17.5259	18.3459	19.1931	18.3399
350003	18.2470	19.2840	20.0663	19.1912
350004	20.6518	23.7016	25.1976	23.1394
350005	18.3792	19.9156	20.7467	19.6757
350006	18.4107	19.0343	19.1257	18.8317
350007	13.3292	13.8824	13.9966	13.7234
350008	20.4777	22.3783	23.1361	21.9692
350009	19.1611	18.3688	19.3668	18.9603
350010	16.2808	16.6272	16.7774	16.5574
350011	18.2008	19.1944	20.6809	19.2312
350012	15.7033	18.2524	16.0990	16.7533
350013	16.4579	17.2596	17.5935	17.0893
350014	16.8403	18.0999	18.2003	17.6546
350015	16.3397	17.1071	16.5368	16.6512
350016	11.6524	*	*	11.6524
350017	17.6278	17.5124	18.0840	17.7360
350018	14.4928	16.4939	16.3210	15.7222
350019	19.3063	20.1608	20.6743	20.0169
350021	16.2898	17.7123	16.3394	16.7592
350023	17.9048	17.4983	18.3253	17.9187
350024	14.7529	15.4788	15.7510	15.3010
350025	17.1199	15.0469	14.6099	15.5234
350027	15.0835	15.5178	17.5882	15.9431
350029	13.5219	14.6173	*	14.0747
350030	17.7209	18.1131	18.7182	18.1761
350033	14.9012	16.0870	16.0903	15.6588
350034	18.7245	19.6445	*	19.1773
350035	10.4570	11.7675	12.6496	11.6111
350038	17.6666	19.6854	19.0500	18.7554
350039	17.0361	16.6278	14.8599	16.1842
350041	14.6680	19.1341	23.1150	18.5427
350042	16.7402	19.3309	19.3370	18.2440
350043	16.8876	16.7433	17.6722	17.1008
350044	10.2154	11.0601	10.9690	10.7163
350047	14.4628	18.0094	19.9749	17.4882
350049	14.8019	18.1993	16.7131	16.4253
350050	11.4921	12.2183	*	11.8525
350051	17.7279	17.0653	16.4587	17.0939
350053	14.6398	15.9160	16.5484	15.6473
350055	14.5691	15.7916	15.8572	15.3943

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
350056	14.8293	15.0995	15.7752	15.2147
350058	15.9378	16.7034	15.8171	16.1663
350060	10.3666	10.3076	10.5325	10.3988
350061	15.7269	18.8790	19.3748	18.0353
360001	17.0791	19.6655	18.5766	18.4186
360002	18.0139	18.2613	19.6145	18.5918
360003	22.7471	22.7521	23.2905	22.9196
360006	21.8048	22.4436	22.8554	22.3622
360007	18.0941	14.8213	15.3656	16.0665
360008	18.5439	18.7961	19.8034	19.0500
360009	18.9322	18.9935	19.6087	19.1932
360010	19.2288	19.1852	20.4671	19.6517
360011	19.3835	21.3659	19.4581	19.9957
360012	19.9881	20.0525	21.8759	20.5910
360013	20.6021	21.3690	22.3407	21.4314
360014	20.2390	20.7419	22.9930	21.3333
360016	17.8065	21.2505	21.4202	20.0256
360017	21.7543	22.2740	22.6535	22.2073
360018	23.5219	24.6686	24.6694	24.2429
360019	18.7147	20.6480	21.4708	20.1693
360020	21.7806	22.1751	21.7288	21.8938
360024	19.8508	20.1352	20.9408	20.3040
360025	20.3638	20.2531	20.9266	20.5175
360026	18.2222	17.9523	18.6739	18.2838
360027	21.0406	21.7650	22.6915	21.8330
360028	17.0177	18.7174	*	17.7935
360029	18.7622	19.2928	19.7246	19.2680
360030	17.5748	17.6058	19.0313	18.0839
360031	19.3858	21.0687	21.0481	20.5037
360032	18.6559	19.8020	19.8367	19.4058
360034	14.9534	17.9594	19.1248	17.3380
360035	20.5557	21.0674	21.0533	20.8877
360036	20.2107	20.9916	21.4665	20.8874
360037	23.5094	23.1674	23.8620	23.5454
360038	21.2467	19.9415	20.9651	20.7274
360039	18.7791	19.0013	19.1934	18.9931
360040	18.1618	18.7425	19.9750	18.9827
360041	19.5744	19.7968	21.2727	20.2776
360042	17.4306	17.1952	19.3774	17.9518
360044	17.0612	17.6882	17.8417	17.5521
360045	22.1471	22.4018	22.8112	22.4244
360046	20.4755	20.4607	21.4292	20.8030
360047	17.1871	15.2922	15.8279	16.0315
360048	22.5857	22.4890	25.6259	23.4295
360049	20.4564	20.8393	*	20.6400
360050	12.9873	15.0568	15.6847	14.5392
360051	20.8338	20.8757	21.2225	20.9792
360052	19.6233	18.7931	19.8278	19.4110
360054	17.2574	17.4911	17.5714	17.4428
360055	21.5585	21.4112	22.8755	21.9415
360056	19.0474	20.6968	23.2385	21.0356
360057	15.0146	15.8569	16.0395	15.6552
360058	18.6992	19.3306	19.0440	19.0197
360059	20.5618	19.9304	23.2129	21.1909
360062	20.7588	21.9195	24.4898	22.4391
360063	18.4512	17.5108	20.2671	18.6964
360064	20.4846	20.0615	20.9202	20.4850
360065	20.0532	19.6199	22.0853	20.5895
360066	21.6015	22.8175	23.8834	22.7933
360067	15.3157	14.2745	17.3024	15.5854
360068	21.2789	22.6227	22.2094	22.0458
360069	16.6982	14.6597	18.5382	16.4901
360070	17.3758	18.8406	19.4700	18.5552

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
360071	17.9756	19.0302	19.6873	18.9152
360072	18.1467	19.0166	20.8819	19.3874
360074	20.8275	18.5889	19.9876	19.7904
360075	22.4523	26.0663	27.6992	24.6791
360076	20.0700	20.3317	21.0402	20.4919
360077	21.1053	21.5517	22.2964	21.6371
360078	21.4392	22.6490	22.6075	22.2329
360079	22.1096	21.6644	23.9491	22.5122
360080	17.3892	17.6369	18.0392	17.6871
360081	21.7342	20.4614	20.7477	20.9963
360082	22.9460	20.7610	22.9390	22.1817
360084	20.4894	22.0492	22.1699	21.5674
360085	21.9051	21.5151	24.8010	22.5708
360086	19.5378	19.3701	20.5858	19.8561
360087	20.1684	20.7969	21.1621	20.7100
360088	24.0097	24.0822	20.5703	22.7567
360089	18.3881	18.1941	19.5260	18.6947
360090	21.0376	20.8971	21.2072	21.0517
360091	21.3126	21.8447	22.6510	21.9522
360092	20.4534	21.5073	20.9588	20.9684
360093	19.3292	19.0261	21.0134	19.7919
360094	18.8780	20.1227	21.1952	20.0119
360095	20.4149	19.8521	21.3505	20.5395
360096	18.2215	19.6726	20.9838	19.6144
360098	19.5314	19.8178	20.7942	20.0486
360099	18.5855	19.6241	20.8801	19.7171
360100	17.8989	18.0442	20.0683	18.5932
360101	21.3914	20.2635	24.1551	21.8064
360102	19.4345	18.5367	*	19.0252
360106	18.9752	19.1778	18.9779	19.0463
360107	19.7599	22.1359	*	20.9636
360108	17.5832	20.0681	19.0870	18.9015
360109	20.1032	19.9237	17.3564	18.9331
360112	22.5589	24.6335	25.7920	24.1917
360113	24.2654	20.8154	18.4832	21.0469
360114	17.8761	18.7509	19.4212	18.7051
360115	18.8059	20.7652	21.0104	20.2115
360116	18.8882	18.8319	20.1408	19.2675
360118	19.3732	19.9141	21.0235	20.1425
360121	22.1093	22.2175	21.9111	22.0788
360123	20.3236	20.9792	21.9985	21.1330
360125	19.0774	20.5508	21.6675	20.3325
360126	19.0036	24.5387	*	21.4419
360127	17.5882	16.5559	18.2150	17.4610
360128	16.1243	17.0515	17.5495	16.8959
360129	15.5002	16.6114	17.2309	16.4330
360130	17.2009	18.4539	19.8906	18.4639
360131	19.2241	18.4688	20.4123	19.3509
360132	19.9171	21.3493	21.0162	20.7647
360133	19.4316	20.2857	22.1957	20.5231
360134	20.6876	20.9564	21.4024	21.0100
360136	17.7827	18.2194	18.5687	18.1837
360137	20.1756	22.3648	23.1642	21.8556
360140	20.2791	21.2881	18.3463	19.9463
360141	23.0016	23.5343	23.5006	23.3475
360142	17.0059	18.3188	19.6189	18.3226
360143	20.1989	21.0336	20.9158	20.7118
360144	23.2191	20.9033	20.9386	21.6583
360145	19.6413	20.0513	21.2931	20.3252
360147	16.6616	17.6779	18.7258	17.7129
360148	19.2816	19.1393	20.3120	19.5918
360149	19.9808	*	*	19.9808
360150	21.1327	22.3620	23.1858	22.2110

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
360151	16.6019	19.2788	20.5594	18.6756
360152	20.8328	21.6005	20.8782	21.1044
360153	15.4132	16.7399	16.1021	16.0822
360154	14.3270	14.3593	14.8550	14.5038
360155	22.5347	22.2112	22.2805	22.3386
360156	17.8787	18.9095	19.9382	18.8811
360159	20.2841	21.5695	22.7992	21.5782
360161	19.1983	20.6160	19.9054	19.9030
360163	20.7275	21.2689	22.1012	21.3686
360165	18.2571	18.2417	19.6205	18.6959
360166	18.7321	*	*	18.7321
360170	16.4653	20.4407	19.3099	18.5975
360172	18.6720	19.8909	22.3294	20.3872
360174	19.9725	20.5399	20.5874	20.4239
360175	21.1685	21.5450	22.0274	21.5958
360176	15.9430	16.6228	17.6291	16.7269
360177	18.7898	18.9576	19.6992	19.1509
360178	18.8704	16.7962	18.0773	17.9514
360179	21.1309	20.7069	21.9617	21.2476
360180	21.3826	21.0146	18.0143	20.0375
360184	19.1224	*	*	19.1224
360185	18.7291	19.4858	20.0848	19.4376
360186	18.3246	20.7572	18.1254	19.0367
360187	18.5109	19.6535	20.8423	19.6414
360188	17.1044	18.3057	16.4329	17.3292
360189	17.8981	18.5940	19.0481	18.4968
360192	21.6365	22.7846	23.9969	22.7928
360194	17.1884	17.6140	19.3901	18.0653
360195	19.9302	20.5828	21.2083	20.5836
360197	20.0603	20.5062	21.6110	20.7240
360200	16.2306	17.9623	19.5866	17.8050
360203	16.3181	15.9609	17.9698	16.7236
360204	22.2494	*	*	22.2494
360210	20.9955	21.8629	21.5961	21.4839
360211	19.9895	20.6081	22.0011	20.8512
360212	21.1123	20.6987	21.0632	20.9556
360213	19.4765	19.0584	20.5448	19.6749
360218	18.9469	18.8204	20.7709	19.5181
360230	21.9763	20.8042	21.2417	21.3193
360231	12.9588	14.4168	12.7388	13.3090
360234	23.2588	20.6131	17.6716	20.3070
360236	17.8426	21.4628	20.5998	19.8666
360239	20.1854	19.2375	20.9440	20.0997
360241	23.5318	25.3741	23.7679	24.1749
360243	14.8694	*	*	14.8694
360245	16.4622	15.9782	16.7956	16.4127
360247	16.3092	17.0776	*	16.6743
360249	*	25.4331	*	25.4331
360251	*	*	21.3149	21.3149
360252	*	*	27.1728	27.1728
370001	22.5214	24.1929	21.8743	22.8253
370002	14.7315	15.4333	16.1853	15.4106
370004	19.3236	18.5233	22.0173	19.9087
370005	15.1654	15.3881	*	15.2760
370006	16.6484	16.4995	15.7367	16.2765
370007	15.2905	15.8312	14.4961	15.2449
370008	16.6566	17.5553	18.5253	17.5877
370011	14.9701	15.6178	16.1757	15.5584
370012	11.7265	12.4942	13.3824	12.5268
370013	19.3398	18.9584	19.3237	19.2083
370014	20.6512	20.2858	22.7976	21.2589
370015	17.0319	20.8765	18.6446	18.7763
370016	19.1191	19.1613	19.7706	19.3517

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
370017	12.6400	13.6531	*	13.1855
370018	18.5107	17.7054	18.7928	18.3360
370019	14.2277	14.6216	16.1367	14.9616
370020	14.3798	15.1035	15.6057	15.0288
370021	12.0474	12.9030	*	12.4760
370022	17.2344	17.3724	18.2109	17.5986
370023	17.7630	17.5148	18.1255	17.8019
370025	17.4988	18.4815	19.1013	18.3736
370026	18.3371	18.0412	18.6982	18.3516
370028	18.4445	21.1292	22.1765	20.5544
370029	16.4924	18.2580	19.3285	17.9453
370030	16.3269	16.5803	18.1779	17.0344
370032	18.2821	18.1538	18.9050	18.4517
370033	13.5216	11.3210	15.3857	13.3051
370034	15.6386	15.6288	16.2204	15.8253
370035	25.5764	*	*	25.5764
370036	12.4026	12.4070	11.7667	12.1865
370037	16.7012	18.9556	20.6493	18.6793
370038	13.3084	13.0210	15.4551	13.8393
370039	15.5206	19.4498	22.3915	18.9462
370040	14.4672	15.5109	16.8127	15.5746
370041	16.7356	16.2316	14.7346	15.7346
370042	14.9175	15.2764	15.9005	15.3820
370043	15.9534	17.0892	19.8318	17.5204
370045	10.1994	11.3560	11.6163	10.9883
370046	18.8334	*	*	18.8334
370047	16.7554	17.8769	18.4743	17.6862
370048	18.2150	15.6803	17.0785	16.9957
370049	20.7176	19.4868	20.3405	20.1537
370051	11.6736	12.5171	11.4943	11.8576
370054	16.9049	18.0787	19.2294	17.9957
370056	18.4558	18.1432	18.9395	18.5020
370057	16.7261	15.1228	16.0301	15.9579
370059	18.1386	18.3314	20.1182	18.8407
370060	16.5403	19.3051	17.5989	17.7984
370063	14.4132	16.7342	*	15.4260
370064	10.9676	11.9954	11.6347	11.5257
370065	16.6898	18.1349	18.2406	17.6615
370071	16.1439	16.4567	*	16.2906
370072	14.4742	13.6519	12.5765	13.5464
370076	13.5694	14.3555	15.4067	14.4469
370078	18.4086	19.2412	15.2513	17.4148
370079	16.6861	16.9201	17.5915	17.0209
370080	13.9239	14.7323	14.3546	14.3090
370082	13.9634	15.0669	16.9715	15.2230
370083	13.1510	13.1810	15.6824	14.0210
370084	22.0545	13.1197	15.6184	16.0638
370085	11.2842	48.1271	*	16.2341
370086	15.4404	11.1900	*	13.0199
370089	16.0966	17.2638	17.9243	17.0970
370091	19.1698	20.1822	20.8553	20.0806
370092	14.9802	15.7678	16.8432	15.8798
370093	18.4600	19.7008	22.1966	20.1375
370094	18.0002	19.5462	19.5565	19.0506
370095	12.6383	13.4202	14.5909	13.5521
370097	22.9714	23.2056	19.0437	21.4568
370099	15.4549	19.4646	18.1467	17.5179
370100	14.0168	18.8274	12.9784	15.1185
370103	19.2353	18.2685	23.1347	19.9596
370105	21.3352	20.7890	25.1252	22.1529
370106	18.5485	20.3651	21.5826	20.1129
370108	12.3279	12.7470	14.0190	13.0228
370112	14.8539	15.3039	14.3384	14.8216

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
370113	16.1046	17.6107	19.9767	17.8205
370114	16.5268	17.8941	17.9757	17.4836
370121	22.5611	21.3099	19.3414	20.9750
370122	15.0645	15.4375	*	15.2280
370123	18.9159	19.0313	19.7958	19.2564
370125	15.6284	13.9436	14.4664	14.6695
370126	23.9654	15.8020	*	19.5933
370131	17.5689	15.7261	*	16.5772
370133	10.9575	12.9545	16.1855	13.3276
370138	16.4005	17.5551	17.4574	17.1263
370139	14.8612	14.9964	16.0898	15.3115
370140	16.0721	17.1393	17.4950	16.9403
370141	18.4101	20.7798	19.8606	19.6250
370146	12.6402	13.0399	13.9900	13.2166
370148	20.6458	20.6612	26.6722	22.4333
370149	16.1850	17.0929	18.0699	17.1239
370153	17.8352	16.4669	16.5267	16.9839
370154	15.5127	15.6093	16.6687	15.9283
370156	13.9255	14.5696	15.4303	14.6173
370158	15.6917	15.6994	16.3637	15.9128
370159	28.0536	21.1267	25.3240	24.1146
370163	17.6361	20.4217	*	18.9027
370165	13.0910	13.0375	12.9569	13.0294
370166	17.2849	21.0797	19.4219	19.1747
370169	12.5243	12.7138	14.8384	13.3173
370176	15.9476	18.9951	19.6537	18.1230
370177	11.2536	14.6481	14.1304	13.3001
370178	10.5726	11.6200	9.8655	10.5383
370179	17.2829	21.3002	23.8404	20.1287
370183	10.2945	16.9318	16.6061	14.0419
370186	13.6192	15.4533	16.3671	15.1316
370190	14.1397	19.3570	20.6398	17.5727
370192	18.4614	19.6967	21.8343	20.0562
370198	21.3136	*	*	21.3136
370200	*	22.5299	18.3941	20.2627
370201	*	*	18.2548	18.2548
370202	*	*	16.4919	16.4919
370203	*	*	23.5454	23.5454
380001	20.3127	26.4822	25.1542	23.6052
380002	24.0241	21.9185	23.2479	22.9299
380003	21.7826	20.9007	23.8074	22.1844
380004	23.1451	23.3609	24.5418	23.6963
380005	24.0838	25.0750	24.7476	24.6467
380006	21.2731	21.3520	20.5914	21.0574
380007	25.2995	32.2678	25.9239	27.5188
380008	20.7063	22.3004	21.6133	21.5417
380009	23.8104	24.3851	25.1040	24.4366
380010	23.7488	22.7276	24.1931	23.5774
380011	21.1151	20.3357	20.6759	20.7167
380013	18.6818	19.8180	20.3705	19.6316
380014	24.6574	25.9828	26.6038	25.7705
380017	26.0578	25.3954	21.9236	24.5037
380018	22.3525	22.9822	24.8661	23.4431
380019	22.1215	20.8176	21.1743	21.3400
380020	20.1464	22.9568	23.9978	22.4898
380021	21.1590	23.8499	24.4365	23.1615
380022	22.6408	24.5974	25.6255	24.2510
380023	20.5462	21.3831	23.4328	21.9485
380025	26.3652	26.9346	26.9398	26.7561
380026	20.4706	20.6972	22.7561	21.3218
380027	20.8647	21.5490	22.2573	21.6028
380029	19.4246	20.1471	22.0371	20.5671
380031	23.3181	20.3396	23.7634	22.5126

* Denotes wage data not available for the provider for that year.
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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
380033	25.2454	27.1343	26.6899	26.3003
380035	22.4099	23.9719	25.6016	23.9444
380036	27.1587	27.2157	*	27.1858
380037	21.9158	22.1774	23.4798	22.5697
380038	26.0869	26.7759	28.1436	26.9990
380039	23.1746	22.8048	25.7614	23.8428
380040	26.2717	22.5477	22.6412	23.5906
380042	21.1176	24.4172	21.6793	22.3496
380047	23.0718	24.2524	25.2591	24.2189
380048	17.5885	18.3005	18.2773	18.0623
380050	20.3934	20.3205	22.1089	20.9066
380051	22.3568	22.3207	24.4081	23.0351
380052	19.4570	18.6299	20.7431	19.6320
380056	19.5185	18.4961	20.7895	19.6447
380060	24.2670	24.2059	23.0106	23.8515
380061	22.3736	22.8781	24.1121	23.0785
380062	20.7716	18.2148	25.9782	21.7912
380063	20.4077	*	*	20.4077
380064	19.9826	22.9160	27.0627	23.2721
380065	26.1404	22.9608	23.3146	24.0398
380066	22.0349	23.2794	23.1175	22.8287
380068	22.3178	*	*	22.3178
380069	19.8300	20.4882	21.2057	20.5172
380070	27.2541	27.7790	29.9706	28.3711
380071	22.6386	25.1808	25.7299	24.5669
380072	19.1553	19.4346	20.6568	19.7391
380075	22.3625	22.4139	23.1910	22.6625
380078	20.2507	21.0903	22.6996	21.3468
380081	20.9882	20.4082	22.9805	21.4341
380082	22.2275	22.9606	23.7927	23.0290
380083	21.3859	21.7431	22.4058	21.8126
380084	24.2844	27.1689	31.0111	27.0317
380087	16.5309	17.0380	21.3119	18.4448
380088	21.5225	19.5346	24.8158	21.8578
380089	19.5255	25.2908	26.1967	23.9671
380090	29.2702	24.9351	30.4223	28.0439
380091	27.5560	25.3062	28.7846	27.2892
390001	19.2989	19.6732	20.3350	19.7868
390002	21.8353	19.7833	21.0159	20.9278
390003	17.1371	18.1025	18.0436	17.7426
390004	19.2277	20.3204	20.0557	19.8647
390005	17.3506	16.9472	19.0218	17.7359
390006	20.2959	21.1786	21.8940	21.0893
390007	21.7506	21.3839	*	21.5715
390008	17.8297	18.2743	19.3496	18.4745
390009	20.6507	20.6241	22.5580	21.2847
390010	17.5127	17.3335	18.1275	17.6598
390011	18.1717	18.3257	18.2751	18.2595
390012	20.6523	21.0610	22.1912	21.3051
390013	19.2698	19.6562	20.2186	19.7244
390015	13.1337	13.7352	14.3138	13.7169
390016	16.9892	17.1133	17.3854	17.1611
390017	16.7493	18.6113	18.5869	17.9293
390018	21.3626	19.0279	20.0672	20.1854
390019	16.7848	17.7258	18.7609	17.7608
390022	21.5064	24.8468	24.7121	23.6803
390023	21.8270	22.1044	23.5236	22.6164
390024	24.9437	25.4606	27.7643	26.0343
390025	15.6155	15.5523	14.5309	15.2361
390026	22.3902	22.9718	*	22.6895
390027	26.8878	29.5940	*	28.2192
390028	22.7700	23.6571	22.7820	23.0704
390029	21.5729	21.2661	24.4753	22.2475

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390030	17.9580	18.6887	18.9093	18.5094
390031	19.2755	18.8162	19.1781	19.0917
390032	17.8041	21.5105	18.7616	19.2843
390035	20.2029	22.3591	21.9021	21.4643
390036	19.9880	19.7671	20.1769	19.9773
390037	21.0616	20.4263	19.9175	20.4619
390039	17.1046	17.5300	17.6176	17.4167
390040	15.9612	16.6876	17.4451	16.6853
390041	19.8080	20.4397	19.6159	19.9368
390042	22.7693	22.5775	21.7857	22.3776
390043	17.2607	17.4764	17.9549	17.5603
390044	20.2813	20.9831	21.3382	20.8726
390045	18.5574	19.4677	*	19.0190
390046	20.7303	21.7445	21.8760	21.4470
390047	27.6661	26.9709	*	27.3457
390048	19.0920	19.7992	18.8322	19.2254
390049	21.1217	22.1586	22.7306	21.9927
390050	22.8808	22.2639	24.7169	23.2216
390051	25.7910	28.1385	*	26.8617
390052	20.9306	20.1195	21.2367	20.7439
390054	17.8852	18.4975	19.5598	18.6230
390055	24.2211	23.4017	25.7327	24.4723
390056	17.7858	19.3901	21.4121	19.5072
390057	20.2059	20.2395	21.6693	20.6975
390058	19.7379	20.3520	20.7930	20.2983
390061	21.2392	23.8722	22.8728	22.6127
390062	16.6721	17.3750	17.4710	17.1692
390063	20.0125	19.4965	20.1696	19.9019
390065	19.9361	20.0473	20.2930	20.0884
390066	19.8539	18.9296	18.9776	19.2407
390067	20.9688	20.8162	21.9905	21.2535
390068	18.3158	19.1109	21.6408	19.5148
390069	19.6466	*	*	19.6466
390070	16.1988	21.8549	22.7909	20.2250
390071	15.7165	16.0100	18.9416	16.7655
390072	16.3133	16.9232	15.1402	16.1159
390073	20.5581	21.2623	22.2009	21.3579
390074	18.4806	18.3093	19.5799	18.7617
390075	17.9840	18.7695	19.5744	18.6643
390076	20.2475	21.3290	19.7719	20.4342
390078	19.2089	19.0156	20.5750	19.5586
390079	18.3312	18.9269	19.2984	18.8525
390080	18.8028	21.4707	22.2449	20.7685
390081	24.8351	24.7461	25.6575	25.0775
390083	*	*	26.1660	26.1660
390084	16.4026	20.2529	17.0197	17.7133
390086	18.5265	18.3563	*	18.4381
390088	23.6173	23.9506	*	23.7777
390090	21.6437	21.3759	20.5444	21.2031
390091	18.1569	18.3770	18.8545	18.4554
390093	17.7171	18.4442	20.0135	18.7217
390095	16.3357	16.6930	17.9697	16.9815
390096	19.1171	22.4382	21.5922	20.9351
390097	23.5963	25.2845	24.8005	24.5139
390100	20.7859	20.9263	21.1186	20.9469
390101	17.9499	18.5039	17.0447	17.8109
390102	19.0461	21.5496	18.0199	19.5593
390103	18.4312	18.8667	20.4422	19.2092
390104	15.9008	16.3255	16.2440	16.1553
390106	16.6666	16.8439	*	16.7557
390107	19.5178	20.9841	20.6024	20.3811
390108	21.0899	21.3142	21.2602	21.2184
390109	16.4597	16.5299	17.4540	16.8127

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390110	21.5282	21.6464	21.6005	21.5915
390111	27.5193	33.3971	27.0087	29.3495
390112	14.9427	15.0065	14.8634	14.9388
390113	19.1945	19.3634	19.9496	19.4908
390114	19.6295	20.9533	19.8004	20.1209
390115	23.3461	21.4287	21.9789	22.1926
390116	21.4877	21.3671	22.6783	21.8481
390117	17.9393	18.0769	18.2543	18.0888
390118	18.3440	18.9507	16.9990	18.1121
390119	18.2951	18.8815	19.3946	18.8604
390121	20.8780	19.1315	20.6253	20.2089
390122	17.1902	17.7734	15.5438	16.7430
390123	20.8344	21.3974	21.8434	21.3548
390125	16.7983	17.5446	17.0975	17.1374
390126	20.6498	*	*	20.6498
390127	21.7724	22.4555	22.8787	22.3758
390128	19.6792	19.3165	19.9764	19.6532
390130	17.7049	18.3695	18.5519	18.2059
390131	16.0986	19.2096	18.7142	17.9603
390132	21.1931	22.8414	24.1878	22.7048
390133	23.3489	24.7561	24.1814	24.0439
390135	21.5782	22.1905	21.8152	21.8560
390136	16.9737	20.6286	16.8505	18.1580
390137	17.5687	18.5397	19.1432	18.3744
390138	19.6212	20.6936	20.7726	20.3703
390139	24.4515	23.9757	23.8019	24.0822
390142	26.8086	28.8877	28.3448	28.0760
390145	20.3731	20.4228	20.4964	20.4300
390146	18.7922	18.6505	20.1788	19.1967
390147	20.9651	21.2492	21.7600	21.3199
390150	20.7294	20.3155	20.8970	20.6500
390151	21.6000	22.5206	23.6072	22.6096
390152	20.3353	19.4017	20.2581	19.9941
390153	23.7013	22.9707	23.3587	23.3403
390154	17.4036	16.7052	17.8774	17.3537
390156	21.8498	22.6398	*	22.2353
390157	19.6578	19.1783	20.2647	19.6975
390160	21.4810	19.4463	18.8676	19.8186
390161	16.4799	*	*	16.4799
390162	21.4095	21.9188	21.4600	21.5967
390163	16.8013	17.7564	18.1415	17.5746
390164	24.6765	24.9750	25.0347	24.8814
390166	19.0405	19.7978	19.8899	19.5577
390167	19.8973	*	*	19.8973
390168	18.7400	18.8863	19.6875	19.1127
390169	20.2382	22.0547	22.7920	21.7176
390170	26.5891	24.7973	*	25.6898
390173	18.5370	18.6613	18.7403	18.6472
390174	25.4189	25.3307	25.7174	25.4826
390176	17.8740	20.8368	21.7650	20.0495
390178	16.6993	17.0534	17.1142	16.9526
390179	21.6901	21.8593	21.6191	21.7220
390180	25.7074	26.5541	26.7743	26.3551
390181	19.4654	19.3832	18.8681	19.2465
390183	17.8306	17.9848	17.4535	17.7535
390184	20.8060	20.9349	21.1941	20.9693
390185	18.8798	20.3877	20.3301	19.8556
390189	20.0889	20.3338	19.0797	19.7997
390191	16.3240	17.2270	17.1919	16.8998
390192	17.4537	17.6597	17.1875	17.4275
390193	16.7874	18.1209	17.3804	17.3866
390194	20.7953	21.2689	21.0549	21.0283
390195	24.6855	24.1793	23.4250	24.1067

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
390197	19.2690	20.7998	22.1769	20.7816
390198	15.9721	15.8833	16.6803	16.1535
390199	17.0515	17.3865	17.7763	17.3987
390200	15.1399	15.4012	18.2456	16.2785
390201	20.6296	20.3533	21.3291	20.7767
390203	20.9432	21.4989	22.4685	21.6448
390204	20.1779	22.9616	22.1541	21.7608
390206	18.4027	*	*	18.4027
390209	17.4792	18.7059	16.8200	17.6370
390211	17.8638	18.4213	19.4552	18.6187
390213	18.8555	19.1553	19.3776	19.1155
390215	20.7084	21.2032	23.5953	21.7981
390217	19.1406	19.9837	19.9665	19.6808
390219	18.8292	19.6226	20.1311	19.5227
390220	18.7178	17.7916	*	18.2413
390222	21.5739	22.1548	22.7491	22.1668
390223	23.6482	22.1775	18.9493	21.4503
390224	15.3015	13.7518	17.2173	15.1752
390225	18.6125	18.7290	19.0364	18.7963
390226	21.8268	21.8481	22.7772	22.1197
390228	19.4083	19.8180	20.2703	19.8379
390231	22.7544	19.4798	21.3811	21.0947
390233	19.4887	20.2309	20.6673	20.1413
390235	25.0857	21.4200	19.9925	22.7713
390236	16.2397	17.8735	19.1427	17.7118
390237	19.5230	22.3011	*	20.8354
390238	17.8211	17.1055	18.1956	17.6820
390244	15.4611	15.6402	13.8845	14.9996
390245	26.0194	24.5076	*	25.2650
390246	18.9733	25.0556	22.3892	21.9107
390247	20.9526	21.2151	*	21.0479
390249	12.7920	13.1657	14.1062	13.3677
390256	23.2734	22.2773	22.3540	22.6670
390258	21.9207	22.6852	23.8318	22.8365
390260	21.9509	21.5982	*	21.7740
390262	18.2379	*	18.8942	18.5346
390263	20.6855	20.3796	20.6348	20.5647
390265	20.3580	20.4950	20.4760	20.4411
390266	17.1666	17.1966	17.5653	17.3117
390267	21.2974	19.2665	19.9578	20.2867
390268	21.3486	22.0909	22.2046	21.8827
390270	19.0925	19.2074	20.6793	19.6201
390278	18.2865	17.7176	18.5776	18.2038
390279	14.3241	14.8655	15.8080	14.9814
390283	*	22.5490	*	22.5490
390284	*	34.3904	*	34.3904
390285	*	*	29.1270	29.1270
390286	*	*	22.9746	22.9746
390287	*	*	30.3252	30.3252
390288	*	*	26.9662	26.9662
390289	*	*	22.8963	22.8963
390290	*	*	30.5037	30.5037
390291	*	*	20.0272	20.0272
390293	*	*	23.5285	23.5285
400001	9.9463	10.5757	10.7531	10.4326
400002	10.1417	13.0494	13.3684	12.2030
400003	10.8821	12.4078	11.2726	11.5031
400004	8.9864	8.5648	9.0781	8.8776
400005	9.5632	7.7432	9.7802	8.9053
400006	10.3444	10.1048	10.4988	10.3215
400007	6.4490	8.0174	8.1974	7.5138
400009	8.4207	8.8650	8.7341	8.6758
400010	10.6518	10.8011	9.1359	10.1542

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
400011	7.4979	8.5426	8.6252	8.2277
400012	8.2412	8.4728	8.6538	8.4546
400013	8.4579	9.2624	9.8197	9.2598
400014	9.5235	9.4798	10.2712	9.7458
400015	10.9505	14.4076	15.5827	13.3370
400016	13.2756	13.3922	13.7001	13.4570
400017	8.6421	9.2577	9.9167	9.2527
400018	10.4557	10.6208	10.5583	10.5484
400019	10.4332	10.8940	11.5139	11.0095
400021	10.6988	12.1434	12.7462	11.9145
400022	11.5861	12.2199	13.0411	12.2767
400024	7.8984	9.2409	9.0826	8.6750
400026	5.6454	5.8335	7.4280	6.2931
400027	9.5899	*	*	9.5899
400028	8.8597	19.1794	8.9567	8.9909
400031	8.2660	*	*	8.2660
400032	10.5498	10.0448	10.1898	10.2599
400044	11.9704	11.9486	12.8671	12.2011
400048	9.1701	15.1405	11.5104	11.4186
400061	12.4493	13.0988	10.3664	11.9076
400079	*	9.7203	8.7218	9.1657
400087	9.5097	9.8534	8.6480	9.3956
400094	8.9116	7.9187	8.8387	8.5180
400098	9.3308	9.7791	10.4312	9.8607
400102	9.8536	9.9903	8.5290	9.4812
400103	11.2069	11.5359	11.8454	11.4791
400104	11.0672	10.7292	7.9552	10.3151
400105	9.3049	9.0556	10.6028	9.5117
400106	9.3123	9.2187	9.8694	9.4766
400109	10.9826	11.8760	*	11.4480
400110	10.3326	10.5277	10.7228	10.5456
400111	9.5583	10.9665	12.3311	11.0412
400112	10.1755	10.8694	11.0634	10.7058
400113	9.2238	8.3168	9.3955	8.9859
400114	9.0496	7.0510	9.9477	8.5888
400115	9.8244	8.5487	7.2203	8.5322
400117	10.2295	10.8756	11.3351	10.8116
400118	9.4398	11.4051	11.4317	10.7997
400120	9.5274	10.6584	10.9315	10.3832
400121	7.8052	9.8322	8.7584	8.8340
400122	8.1911	7.6413	9.1638	8.3405
400123	7.8099	10.2367	10.3955	9.4702
400124	12.0999	12.2452	12.7323	12.3713
400125	*	10.2056	10.5997	10.3924
410001	23.2808	23.1738	22.4972	22.9875
410004	22.4801	21.0638	22.8898	22.1691
410005	23.1444	22.7170	23.8848	23.2434
410006	23.3968	23.8700	22.7636	23.3233
410007	22.1452	23.1325	22.4988	22.5921
410008	23.0662	24.9726	24.4170	24.1518
410009	24.4899	24.3895	24.3760	24.4190
410010	26.9813	28.4589	29.0876	28.1660
410011	25.2926	26.1183	27.1700	26.1594
410012	24.5811	24.1695	26.4570	25.0414
410013	24.5122	24.8800	24.8429	24.7494
420002	19.4845	20.7804	22.6182	20.9552
420004	19.7968	20.9588	16.3147	18.8438
420005	17.3510	17.9694	17.8103	17.7120
420006	18.3439	19.1760	18.7168	18.7347
420007	18.2096	18.6456	18.9047	18.5717
420009	18.5456	19.9586	21.2566	19.9500
420010	17.1184	18.0252	19.3267	18.2127
420011	16.5664	18.0970	16.7523	17.1112

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
420014	16.6065	18.0519	19.0455	17.8775
420015	18.8411	20.1164	20.8736	19.8858
420016	15.6241	15.5485	15.4358	15.5337
420018	19.7367	21.8775	18.7117	19.9976
420019	16.9990	17.1726	19.0199	17.6834
420020	20.9449	20.3193	20.5801	20.5993
420023	19.4855	20.4053	20.4978	20.1490
420026	20.3476	21.8749	23.3274	21.9111
420027	18.8457	19.2594	19.6743	19.2679
420030	19.1453	20.6448	22.5159	20.8443
420031	14.1855	8.2516	15.2208	11.5692
420033	21.7279	23.1303	23.7974	22.8884
420036	17.6136	21.3222	19.8080	19.4992
420037	21.7908	22.7099	23.5244	22.7289
420038	17.6726	18.6568	20.0181	18.7610
420039	15.8385	18.3017	17.7880	17.2992
420043	19.4521	19.7570	19.6834	19.6347
420048	18.4367	18.8070	20.4905	19.2520
420049	17.5854	19.4049	20.6238	19.1796
420051	19.5001	19.1555	19.8549	19.5061
420053	16.9599	18.1657	19.0780	18.0364
420054	18.2702	20.2574	20.2275	19.5600
420055	19.2048	16.8717	18.6782	18.0932
420056	14.8695	15.1835	16.5491	15.4839
420057	15.9849	20.5266	22.1312	19.6895
420059	15.8160	17.1483	18.2093	17.0936
420061	16.5555	17.3543	17.7047	17.2228
420062	17.8205	21.7469	20.9032	20.1974
420064	16.7227	16.0794	19.7067	17.5583
420065	19.6902	19.9435	19.2150	19.5969
420066	15.1804	18.0042	19.5366	17.5193
420067	18.8610	19.7824	20.7769	19.8307
420068	18.5030	18.5481	20.2580	19.1326
420069	17.0788	18.1298	18.9003	18.0124
420070	18.0057	17.3876	18.8535	18.0764
420071	19.4482	20.3902	20.1145	19.9887
420072	13.8550	15.0158	18.2531	15.7212
420073	19.1604	19.9986	20.2697	19.8499
420074	16.9292	18.0967	18.1839	17.6249
420075	14.2931	12.8158	15.0132	14.0442
420078	20.7317	21.9082	22.7156	21.7962
420079	20.8639	21.0874	21.3177	21.0994
420080	22.3443	21.9968	*	22.1649
420082	20.4653	21.7210	22.7391	21.6447
420083	20.1472	22.6376	24.0994	22.2410
420085	19.9603	21.6791	22.0071	21.2571
420086	25.7179	20.2878	23.7341	23.0645
420087	19.1403	19.8388	20.8217	19.9506
420088	17.1938	19.9919	21.8979	19.5872
420089	20.2537	20.5360	21.3954	20.7386
420091	18.8687	20.3092	21.8367	20.2654
420093	17.4689	18.3902	19.1299	18.3060
420095	*	*	33.4632	33.4632
420096	*	*	26.4863	26.4863
430004	18.5438	19.6344	19.2737	19.1454
430005	16.3059	16.4560	17.3400	16.6979
430007	14.1078	14.6331	15.1494	14.6319
430008	17.6640	18.1323	18.5234	18.0977
430010	17.1766	19.8191	16.5750	17.7180
430011	16.9848	17.4750	18.3648	17.6074
430012	17.2775	17.6997	19.2921	18.0907
430013	18.1338	18.4817	18.8978	18.5085
430014	16.8925	20.2387	20.9118	19.1361

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
430015	18.0019	18.2875	18.8998	18.3871
430016	19.4759	20.8850	21.2191	20.5077
430018	14.8854	16.2244	15.9424	15.6759
430022	13.4905	14.5118	14.0661	13.9980
430023	12.2331	16.2164	16.7850	14.8010
430024	15.4709	16.1801	17.4816	16.3448
430027	19.1461	20.2591	20.8666	20.0818
430028	18.2312	17.1577	18.2829	17.8947
430029	16.6500	17.6986	17.4932	17.2971
430031	13.1258	12.4660	13.2105	12.9278
430033	15.3003	17.3652	18.3978	16.9036
430034	15.4064	14.2491	13.8535	14.4964
430036	13.6967	15.6258	16.7827	15.2466
430037	16.5368	18.1293	18.7009	17.7855
430038	13.7167	18.4078	*	15.7522
430040	13.6745	14.4509	14.7860	14.2554
430041	13.1936	14.8816	*	14.0079
430043	13.6908	14.9949	17.0193	15.1103
430044	18.4970	21.0823	*	19.6187
430047	17.4956	17.9823	17.5377	17.6691
430048	18.3524	18.7602	19.0261	18.7260
430049	15.5381	15.2237	14.9025	15.2275
430051	17.0574	18.8070	18.8697	18.2650
430054	14.7251	14.8003	15.0101	14.8472
430056	11.7627	10.3697	14.1914	11.9246
430057	15.4390	17.2805	18.8777	17.1911
430060	9.0358	10.0176	9.7678	9.6151
430064	14.4367	14.2184	13.8666	14.1634
430066	14.3557	15.6660	14.5957	14.8566
430073	16.1133	15.3776	16.5112	15.9989
430076	12.7608	13.9883	15.2453	13.9494
430077	19.3012	19.8558	20.4361	19.8699
430079	13.6836	14.1815	14.4154	14.0719
430089	17.8908	17.9790	17.5100	17.7870
430090	21.5239	21.5974	23.5180	22.2918
430091	19.2146	18.1567	21.6239	20.0217
430092	*	21.3807	19.7644	20.5428
430093	*	19.5013	23.3009	21.3125
440001	14.8713	15.5897	17.2282	15.8569
440002	19.1498	20.3740	21.4299	20.3167
440003	18.3658	19.3042	20.3756	19.3464
440006	19.6021	21.4055	23.1483	21.3134
440007	12.1230	14.8959	14.0612	13.6386
440008	17.2848	18.8994	20.3303	18.7894
440009	17.8424	17.4831	18.4068	17.9060
440010	19.9829	16.3283	13.3692	16.2699
440011	17.6948	18.3375	19.3165	18.4706
440012	15.9837	19.5739	19.6437	18.4174
440014	15.9195	16.1143	15.0656	15.7064
440015	18.2632	22.0659	21.6106	20.5435
440016	15.4097	16.2964	14.6142	15.3378
440017	19.6215	20.4563	20.2241	20.0945
440018	16.4115	17.4995	18.1059	17.3355
440019	20.0416	21.5402	23.2963	21.6131
440020	18.1154	17.8879	19.0396	18.3371
440022	15.8459	*	*	15.8459
440023	15.4721	16.7837	15.6603	15.9134
440024	18.4432	18.4046	18.4276	18.4251
440025	15.8784	16.3140	17.0997	16.4428
440026	23.0550	23.2566	25.6490	23.8993
440029	19.4326	20.7050	22.2889	20.8403
440030	16.2941	16.9925	17.6297	17.0242
440031	15.5432	17.0211	17.2555	16.5726

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY•2003	Average hourly** wage (3 yrs)
440032	13.9775	13.8140	13.9784	13.9249
440033	14.5304	13.7328	16.4679	14.8744
440034	19.5470	20.0309	20.9470	20.1907
440035	18.9026	19.3034	20.4168	19.5344
440039	19.9439	21.6536	22.4158	21.3378
440040	16.3740	16.9275	17.6781	16.9632
440041	14.6621	14.9545	14.6684	14.7645
440046	18.1654	19.3229	20.5562	19.3415
440047	16.6646	17.8092	18.7469	17.7021
440048	19.4498	21.4993	19.6052	20.1565
440049	17.9292	18.7967	19.3000	18.6741
440050	19.1328	18.2511	19.7915	19.0510
440051	13.1901	16.0421	17.7067	15.5027
440052	16.6541	19.8075	18.1377	18.1083
440053	18.5515	19.6494	21.5253	19.8982
440054	13.8716	13.3967	15.2154	14.1791
440056	15.9821	16.2742	20.4903	17.3863
440057	12.7925	13.7257	14.4363	13.6135
440058	18.8118	19.1878	17.1548	18.4084
440059	18.5418	19.6018	20.8882	19.6895
440060	18.0586	19.7916	20.7628	19.4260
440061	14.9708	22.5525	16.9234	17.8112
440063	19.3222	19.8371	18.8061	19.2994
440064	17.7652	18.9809	18.2678	18.2991
440065	18.5825	18.8296	19.2282	18.8924
440067	16.2811	17.2397	18.2973	17.2997
440068	19.4695	19.3668	19.4392	19.4232
440070	13.7035	14.0437	18.0064	15.1918
440071	17.0186	19.7836	*	18.2110
440072	17.5995	19.1522	20.0691	18.8963
440073	19.1714	19.5554	19.6290	19.4550
440078	15.0849	16.0188	17.1645	15.9789
440081	18.3587	19.3454	20.7215	19.5016
440082	22.2857	22.6855	22.5590	22.5073
440083	14.8525	13.7423	13.7630	14.1806
440084	13.4378	13.7731	13.8085	13.6799
440091	19.6114	20.1065	20.1359	19.9669
440100	13.8437	14.7113	15.9969	14.8524
440102	14.3510	14.5500	16.0783	14.9840
440103	20.3052	18.6990	*	19.4877
440104	22.4403	22.6754	21.7135	22.2610
440105	16.7131	17.1172	18.1375	17.2950
440109	16.0446	17.7443	17.6399	17.0830
440110	21.1716	17.4816	18.4998	18.8996
440111	23.2425	23.2254	23.2111	23.2266
440114	14.4997	15.0036	18.5327	16.0830
440115	17.4514	18.5457	18.7054	18.2287
440120	17.2384	16.3115	19.8997	17.7817
440125	15.6588	19.4115	19.6848	18.2807
440130	17.8223	17.4857	19.0905	18.1589
440131	15.5048	16.1214	19.9883	17.1760
440132	16.6553	16.8871	17.9186	17.1418
440133	21.5313	23.0891	18.7556	21.1283
440135	19.2010	22.2005	22.5452	21.4251
440137	14.5632	15.0070	15.3530	14.9670
440141	13.5308	15.9429	17.6819	15.3875
440142	15.7287	16.8855	17.1483	16.5303
440143	17.7821	18.2061	18.6844	18.2206
440144	17.6415	18.3859	18.8127	18.2853
440145	17.0608	18.3948	18.3832	17.9140
440147	21.4304	26.1464	25.3766	24.0818
440148	19.2435	19.4598	19.3769	19.3574
440149	16.6923	18.4281	18.4869	17.8895

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
440150	20.1411	20.3006	21.2942	20.5974
440151	17.4248	18.3928	19.8977	18.5439
440152	21.0287	22.7664	26.2972	22.9356
440153	16.7769	16.5716	18.1975	17.1720
440156	29.5557	21.7577	21.9374	23.7510
440157	16.9265	18.4249	15.5316	17.0209
440159	17.7158	20.9371	21.4914	19.6375
440161	21.8013	22.8816	23.3891	22.6977
440162	14.7637	15.5534	19.8075	16.5656
440166	19.6684	19.2159	19.6632	19.5183
440168	18.6535	19.1509	21.1947	19.6498
440173	18.6402	19.1812	21.0284	19.6315
440174	17.3294	18.0865	19.3966	18.2367
440175	20.0802	18.5186	19.9065	19.4762
440176	18.0294	19.2208	19.8448	19.0126
440180	19.7773	20.2184	17.8427	19.2624
440181	16.4878	17.7709	19.0915	17.6551
440182	17.7487	19.7094	18.1953	18.4985
440183	22.7067	21.3465	22.2401	22.0840
440184	17.2037	16.8880	18.6890	17.3933
440185	19.3870	21.2188	21.1226	20.6133
440186	19.3948	19.7983	18.0450	19.1060
440187	18.9713	17.5872	16.0274	17.5444
440189	*	18.5252	22.2555	20.3772
440192	19.0839	19.1705	19.1976	19.1524
440193	19.0811	18.6999	19.9078	19.2111
440194	19.8682	22.4562	21.9609	21.4700
440197	21.9618	21.8503	22.5282	22.1263
440200	17.9575	19.8078	17.8595	18.5432
440203	18.3400	16.2861	16.9819	17.1896
440206	16.4429	*	*	16.4429
440210	11.0218	11.9815	12.3270	11.8072
440211	14.8972	*	*	14.8972
440212	17.0685	*	*	17.0685
440213	19.5760	*	*	19.5760
440214	*	28.0285	*	28.0285
440215	*	22.2928	*	22.2928
440217	*	*	19.2834	19.2834
450002	21.3749	21.4836	21.5141	21.4583
450004	16.6723	16.7850	15.9549	16.5100
450005	18.3600	16.6396	16.6354	17.2368
450007	16.9681	19.1910	17.7721	17.9505
450008	17.0832	17.6582	19.3637	18.0034
450010	16.5001	17.6677	18.5058	17.7858
450011	17.1942	20.8102	18.9490	18.9450
450014	17.9495	17.5815	18.4937	17.9967
450015	18.9895	21.6773	23.3972	21.2507
450016	18.4463	18.3456	18.9063	18.5621
450018	21.4788	23.2293	*	22.2764
450020	17.8415	19.1153	18.4454	18.4795
450021	23.0843	23.3630	22.5937	23.0174
450023	16.0831	17.6360	19.2810	17.6838
450024	17.3518	18.5985	19.5584	18.5411
450025	17.0004	*	*	17.0004
450028	18.8764	19.1658	19.5905	19.2141
450029	17.4716	17.7425	19.7835	18.3585
450031	22.2222	29.6945	29.6772	27.1869
450032	17.3317	14.6530	20.8525	17.3455
450033	19.7437	21.0222	21.4646	20.7635
450034	19.6721	18.8823	19.4439	19.3269
450035	20.0951	20.3599	20.2269	20.2257
450037	19.5411	19.9140	19.3682	19.6099
450039	19.8143	19.7176	18.4497	19.3230

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450040	16.8534	19.6370	*	18.3093
450042	19.8921	18.8357	20.2402	19.6613
450044	24.7961	21.0909	23.4476	22.9976
450046	18.6536	17.3631	18.1393	18.0789
450047	13.4486	16.9028	15.9525	15.2979
450050	14.7669	17.7209	19.1390	17.0907
450051	21.0236	21.1008	22.4159	21.4934
450052	13.8881	15.5890	16.3064	15.2550
450053	17.0467	17.2781	15.6962	15.7365
450054	22.8960	19.2431	*	21.4583
450055	15.0433	15.8526	16.4789	15.8195
450056	21.8436	21.8605	21.6890	21.7982
450058	18.0967	18.6172	20.0081	18.9393
450059	15.2168	19.8240	21.4873	18.7159
450063	14.3815	12.7211	15.1779	13.9190
450064	17.4093	19.7682	21.3929	19.5099
450065	21.4934	23.3797	23.8471	22.8509
450068	22.8998	23.3495	22.8227	23.0189
450072	19.0111	18.0307	20.0134	19.0500
450073	17.1002	16.5942	23.7700	19.3382
450078	11.7265	13.2820	13.9324	12.9289
450079	21.0518	20.6483	22.0609	21.2553
450080	17.4553	18.6212	19.7834	18.5898
450081	16.3448	17.5737	19.0276	17.6152
450082	16.1585	16.8677	*	16.5390
450083	21.5884	23.3754	20.9315	21.9323
450085	18.3602	20.0085	15.7805	17.8575
450087	22.0273	21.9320	23.4141	22.4951
450090	15.0939	15.5796	19.9180	16.7400
450092	16.8260	17.9520	15.7252	16.8197
450094	21.3158	23.2863	25.2158	23.1854
450096	17.8813	18.6802	19.3681	18.6265
450097	19.5723	19.7187	20.4932	19.9373
450098	20.5754	19.0454	19.3458	19.6276
450099	19.2258	20.4181	19.0079	19.5047
450101	17.1330	17.7928	*	17.4479
450102	18.6707	19.8793	21.4361	19.9466
450104	16.6744	17.0821	17.6834	17.1430
450107	25.1986	24.1094	20.9852	23.2733
450108	15.6324	15.2797	16.9845	15.9966
450109	13.8127	10.5973	17.7226	13.4301
450110	19.5821	*	*	19.5821
450111	19.6350	21.4908	*	20.6248
450112	16.0441	18.1026	17.3725	17.2066
450113	20.9777	20.8306	20.7782	20.8679
450118	17.9053	*	*	17.9053
450119	20.2853	20.2030	20.1335	20.2023
450121	20.4641	21.9198	22.0485	21.4762
450123	15.7618	14.1755	17.5051	15.6216
450124	22.7480	22.5208	22.6668	22.6449
450126	21.7233	21.4789	22.5290	21.9115
450128	18.2184	18.1446	18.4178	18.2629
450130	20.4156	18.9211	19.3882	19.5769
450131	19.2589	17.4168	17.7234	18.0882
450132	18.1713	21.8089	19.7672	19.9308
450133	23.6366	26.0763	24.4799	24.6993
450135	21.0306	20.4068	25.8775	22.4267
450137	22.4590	23.4346	21.3644	22.3582
450140	20.2280	17.3370	19.6205	19.0889
450143	14.5270	15.0871	16.7371	15.4651
450144	18.1121	17.4309	20.6880	18.7404
450145	15.6078	16.1895	16.4087	16.0604
450146	17.8572	15.5030	17.4391	16.8224

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450147	18.9363	19.0477	20.0805	19.3489
450148	18.6758	20.4923	20.9373	20.1433
450149	19.7521	21.7219	22.6138	21.3072
450150	16.3719	17.8612	18.3079	17.5184
450151	15.2906	16.4209	16.3279	16.0117
450152	18.0061	17.7265	19.6105	18.4659
450153	19.4419	18.6514	18.8000	18.9747
450154	13.8731	13.9119	16.8748	14.8870
450155	11.5841	13.3456	20.0872	14.3751
450157	15.6371	15.3083	16.8569	15.9683
450160	16.6533	10.6852	18.7780	14.2553
450162	20.9560	21.9218	20.5032	21.1178
450163	17.5403	17.8028	19.0727	18.1175
450164	16.9741	17.7180	18.7101	17.7835
450165	13.9218	17.3283	14.9478	15.3028
450166	11.4772	11.0541	11.3813	11.3012
450169	13.1990	*	*	13.1990
450170	14.2997	14.3234	15.8525	14.8194
450176	16.9674	17.2576	18.2050	17.4802
450177	14.9241	15.2419	14.8306	14.9994
450178	17.8508	16.0280	15.8729	16.5762
450181	15.5622	18.6936	18.3600	17.5713
450184	21.1263	20.0821	20.3941	20.5023
450185	14.0714	11.5228	13.2613	12.8423
450187	16.6945	18.5053	20.6388	18.5641
450188	14.3938	15.1954	16.9407	15.5553
450191	20.1222	20.9512	20.5883	20.5559
450192	20.3795	21.2497	20.1419	20.5690
450193	23.1963	23.1639	24.9007	23.7654
450194	20.5187	20.7745	20.5396	20.6114
450196	17.1955	17.8993	20.2663	18.3910
450200	18.7387	19.2228	19.6496	19.1969
450201	16.9908	17.1463	17.7763	17.3128
450203	20.6712	19.3978	19.6050	19.8895
450209	19.0611	20.0140	21.0205	19.9890
450210	13.9758	16.3470	16.7204	15.7370
450211	17.9857	18.8114	18.7305	18.5258
450213	17.7631	19.0651	18.5334	18.4589
450214	19.0475	20.5070	21.0485	20.1729
450217	12.8457	12.7647	13.1840	12.9276
450219	15.3976	17.6884	18.3602	17.1605
450221	16.3700	15.2120	16.1398	15.8866
450222	20.3129	19.8967	23.2779	21.1824
450224	24.9046	20.1579	16.2433	19.9276
450229	16.4503	16.7853	*	16.6236
450231	19.1564	19.1746	20.7709	19.7438
450234	16.1945	16.3003	16.5793	16.3818
450235	15.2332	16.3115	17.5349	16.3996
450236	16.6703	16.4957	17.0092	16.7226
450237	20.7930	19.0325	*	19.8837
450239	17.1308	17.8401	18.8416	17.9241
450241	12.5675	16.4240	16.6046	14.9426
450243	11.9099	13.6416	11.2035	12.2464
450246	16.5478	16.7959	22.7940	18.4445
450249	12.0302	11.7658	10.6467	11.4953
450250	10.2844	13.6787	*	11.6004
450253	12.2402	13.2177	14.5492	13.3367
450258	16.0466	16.7337	17.0724	16.6100
450264	13.8929	14.5956	17.2825	15.2193
450269	12.3594	12.7717	12.9555	12.7319
450270	12.8381	14.4792	13.6733	13.6110
450271	16.6319	16.7831	17.9808	17.1692
450272	19.9331	18.4344	20.5888	19.6562

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450276	13.1155	14.0745	14.0779	13.7681
450278	14.8291	15.2950	14.4871	14.8427
450280	22.2984	22.2936	20.3286	21.5973
450283	14.5664	15.1950	15.8684	15.2590
450288	16.2502	18.8935	13.5248	16.2231
450289	20.3104	20.3460	20.8745	20.5057
450292	16.9693	20.5335	17.7154	18.2921
450293	16.0132	16.2721	16.4077	16.2364
450296	21.6000	22.3430	*	21.9845
450299	21.5672	*	21.0398	21.2895
450303	12.4582	12.8996	14.3353	13.2442
450306	13.8216	14.2047	13.6333	13.8808
450307	16.4622	17.0691	17.6757	17.0817
450309	13.1480	13.3771	14.8823	13.8094
450315	22.8140	21.4684	23.8151	22.6579
450320	20.0946	20.6596	24.6129	21.4772
450321	13.1752	14.7344	14.4710	14.1070
450322	22.7667	29.1884	28.9834	26.4969
450324	17.7886	19.1692	20.9081	19.2343
450327	11.7511	13.3639	10.9732	11.8932
450330	18.9425	19.8066	20.8820	19.9093
450334	12.8051	13.8392	13.9839	13.5301
450337	17.1073	25.5708	*	20.0638
450340	17.6914	*	15.2368	16.4876
450341	18.9429	*	20.8814	19.8654
450346	17.5367	18.9475	19.2769	18.6527
450347	17.1099	19.3475	19.9109	18.7748
450348	13.9535	13.3585	15.0069	14.1063
450351	18.4116	19.3159	20.4537	19.4007
450352	18.7480	20.1871	21.2035	20.1227
450353	17.7539	16.0003	16.9105	16.8643
450355	11.9473	11.8933	12.8876	12.2285
450358	22.3235	23.0206	24.9765	23.4327
450362	15.8847	18.1983	18.1247	17.3786
450369	15.2233	15.3122	16.0667	15.5405
450370	12.6061	16.1369	18.7539	15.9177
450371	24.6339	16.0236	17.7591	19.2388
450372	20.0924	22.0746	21.4050	21.1434
450373	17.4183	17.9554	17.5600	17.6501
450374	13.6099	15.1750	15.0146	14.5995
450378	23.5789	23.4599	24.4143	23.8974
450379	22.7632	22.8756	25.1931	23.6182
450381	16.4166	16.7112	16.6476	16.5958
450388	19.2499	19.7408	20.6670	19.9390
450389	18.1797	18.8448	19.3156	18.7899
450393	20.2784	22.4992	21.1805	21.2450
450395	18.3768	18.0024	17.5236	17.9433
450399	15.7845	15.3491	16.3333	15.8319
450400	19.5379	18.6668	18.8375	18.9844
450403	20.1989	22.8430	24.7645	22.7028
450411	14.4832	15.1121	15.9178	15.1698
450417	13.4983	15.3591	15.2713	14.6933
450418	21.9161	21.9690	22.2511	22.0447
450419	20.6325	23.2551	22.4552	22.1296
450422	26.4848	28.0257	28.0395	27.5279
450423	22.7132	*	*	22.7132
450424	18.9741	18.7895	*	18.8834
450429	13.8723	*	*	13.8723
450431	19.6304	22.0361	21.7369	21.1141
450438	19.5028	15.4553	20.7791	18.3025
450446	13.0986	20.7592	*	16.2045
450447	18.0376	18.0377	19.3864	18.4641
450451	18.8948	18.2988	17.7525	18.2807

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450457	24.7880	19.6569	*	21.9578
450460	15.1765	14.6523	15.8434	15.2180
450462	22.6212	22.1144	18.6080	21.0035
450464	13.2931	15.5908	15.8121	14.8193
450465	15.5650	15.4731	19.3928	16.5297
450467	10.6184	17.0004	18.9388	14.4801
450469	19.6269	22.1930	22.0389	21.2453
450473	19.9761	19.7148	18.3813	19.2637
450475	16.3404	16.9269	19.0010	17.4228
450484	16.8131	18.9825	19.2310	18.3714
450488	19.3457	19.2173	21.5440	20.0301
450489	9.9326	16.3584	17.8779	13.9861
450497	15.0886	16.2997	15.9325	15.7828
450498	13.8551	14.4713	15.9479	14.7991
450508	18.8069	19.0991	19.2176	19.0434
450514	21.3243	20.0144	20.7064	20.6957
450517	27.8815	14.3191	17.6011	18.7482
450518	19.8116	21.4873	20.7355	20.6380
450523	20.0792	21.0393	20.8469	20.6355
450530	22.8623	21.1634	22.0810	22.0042
450534	19.9376	20.1520	19.7227	19.9301
450535	19.6645	21.0513	21.5449	20.7286
450537	20.8438	20.1161	20.6100	20.5223
450539	16.4921	18.7559	19.3681	18.2066
450544	23.9283	23.6652	22.7282	23.5339
450545	19.5558	20.2823	21.0792	20.2860
450547	14.8248	18.1524	19.3002	17.4255
450551	16.9439	16.6237	16.1437	16.5621
450558	22.2574	20.7404	21.3116	21.4292
450563	19.9218	22.0708	21.8171	21.3374
450565	16.2652	17.3803	17.8058	17.1566
450570	18.9532	19.0336	*	18.9910
450571	17.5598	18.2784	19.5325	18.4467
450573	12.2502	17.3518	17.5455	15.5608
450574	14.5965	14.6128	14.8549	14.6891
450575	19.3925	22.5621	24.0386	22.1410
450578	15.4783	18.0925	17.2863	16.9084
450580	15.8321	16.7374	17.8552	16.8065
450583	15.6580	14.4411	15.1202	15.0631
450584	14.2321	14.6735	14.9237	14.6266
450586	14.3773	13.8248	15.2831	14.4737
450587	17.0230	18.0219	17.6291	17.5412
450591	17.8981	17.7795	18.6275	18.1113
450596	22.5420	21.6729	21.9445	22.0245
450597	17.0776	17.6179	19.0641	17.9259
450603	11.6442	23.5572	23.4924	18.9348
450604	16.4535	17.6582	18.6241	17.5848
450605	21.1400	19.4580	19.7400	20.0918
450609	15.9753	17.0986	14.1776	15.7466
450610	18.9924	21.5191	22.1792	21.1877
450614	17.9853	16.5754	*	17.2230
450615	14.8562	15.2956	14.9323	15.0244
450617	20.3387	20.8919	21.5004	20.9383
450620	15.8380	16.0987	16.1315	16.0378
450623	22.1950	23.1270	25.1122	23.4424
450626	18.1673	18.4349	20.5225	19.1158
450628	20.5611	18.6093	19.9760	19.7367
450630	21.6876	20.9605	23.1840	21.9334
450631	20.0417	21.6736	21.7853	21.1405
450632	11.7587	13.9147	15.1416	13.5343
450633	19.5183	19.4949	*	19.5064
450634	23.5333	22.9877	23.0470	23.1838
450638	23.1437	22.1704	23.8335	23.0423

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450639	23.1936	21.6421	22.5182	22.4301
450641	16.5125	15.7578	15.1716	15.8348
450643	18.7054	16.8152	18.9088	18.1638
450644	23.6587	22.7721	24.5834	23.7084
450646	19.8274	19.1433	22.5667	20.4055
450647	24.7981	24.2763	25.0549	24.7111
450648	14.8488	15.0305	14.1565	14.6469
450649	16.4496	16.6577	16.7303	16.6187
450651	22.7664	22.7112	25.4679	23.6985
450652	13.4389	17.2445	*	14.7103
450653	18.1834	19.2349	19.5306	18.9413
450654	14.5258	14.5423	15.5858	14.8899
450656	17.6723	18.2606	18.5874	18.1828
450658	16.2657	17.2630	*	16.7212
450659	22.2550	23.0108	22.9344	22.7256
450661	19.7160	18.9071	19.5504	19.3935
450662	18.2284	19.3152	20.7973	19.5367
450665	15.2015	16.1319	14.2377	15.2093
450666	20.3248	20.2549	*	20.2912
450668	20.6965	21.0972	21.2002	20.9938
450669	21.7632	21.6746	22.5150	22.0051
450670	16.8893	20.2632	26.0785	20.9643
450672	21.8559	21.4927	23.2623	22.2025
450673	13.9620	13.7005	14.5310	14.0919
450674	22.2796	22.2426	21.9624	22.1483
450675	22.4961	21.4479	23.3954	22.4703
450677	22.6839	20.6556	21.3718	21.5395
450678	23.2617	24.1301	25.1841	24.1797
450683	20.9143	22.8699	21.9705	21.8695
450684	19.7005	21.9962	22.2380	21.3152
450686	16.5661	16.4632	17.4746	16.8354
450688	19.6250	20.1831	21.7691	20.5644
450690	21.6578	22.4707	27.2399	23.4791
450694	17.4758	18.1872	18.5520	18.0935
450696	24.9636	*	*	24.9636
450697	18.8405	19.4949	19.4424	19.2742
450698	14.6680	15.4750	16.5111	15.5420
450700	14.6421	15.9050	13.9129	14.8191
450702	20.8223	21.3739	19.3495	20.4688
450704	20.9821	20.7987	18.1835	19.7101
450705	30.0116	22.1809	18.7138	22.5666
450706	21.2072	22.0884	22.4329	21.9400
450709	20.8889	22.1490	21.9270	21.6715
450711	19.8126	19.8581	21.0779	20.2689
450712	13.6240	15.9298	11.7861	13.6660
450713	20.8065	22.6986	23.6017	22.4678
450715	22.0413	22.5988	24.8068	23.2060
450716	20.5544	20.9074	20.8913	20.7944
450717	20.7192	20.6551	22.0243	21.1286
450718	19.6886	22.1765	22.9582	21.6590
450723	19.7563	20.8213	22.1695	20.9457
450724	20.3235	20.3706	23.4039	21.3348
450727	13.5458	17.9172	24.7672	17.9685
450728	17.5284	19.8879	14.8030	17.2831
450730	22.0819	23.0054	24.5952	23.2900
450733	20.7693	20.2199	21.6162	20.8632
450735	13.8767	*	*	13.8767
450742	22.7655	21.8392	22.8135	22.4714
450743	18.8937	19.6015	20.5017	19.6892
450746	12.7904	30.2657	*	19.3854
450747	19.2585	20.3914	19.9818	19.8850
450749	16.2130	19.1678	17.2391	17.6065
450750	14.6914	13.8098	*	14.2686

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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
450751	21.2198	19.9995	19.8170	20.4240
450754	16.0860	16.7145	16.7688	16.5644
450755	17.9904	19.8743	19.5916	19.1939
450757	13.8675	14.9434	15.5327	14.7530
450758	21.8669	19.0221	22.6196	21.1578
450760	17.4852	19.2225	20.4209	19.0477
450761	13.6152	15.7681	14.6511	14.6112
450763	18.2123	18.6092	18.9713	18.6032
450766	22.4348	23.3879	25.4057	23.7704
450769	14.5858	18.4163	17.3037	16.4629
450770	16.5458	19.0183	19.2518	18.2668
450771	22.4542	21.8268	21.4199	21.8514
450774	17.9964	16.2948	*	17.1404
450775	19.8897	21.3504	22.6526	21.2920
450776	15.7750	14.1720	13.4287	14.1843
450777	21.0682	19.0380	18.3119	19.5171
450779	21.4546	21.6642	22.1453	21.7809
450780	19.1498	19.0914	20.0824	19.4503
450785	18.4976	*	*	18.4976
450788	19.1463	19.6469	19.9597	19.6478
450794	18.2229	*	*	18.2229
450795	16.6494	22.5753	27.0250	21.6046
450796	16.5362	19.2059	*	17.7667
450797	15.9188	16.4923	20.2356	17.4420
450798	9.4634	*	*	9.4634
450801	17.5669	17.9548	17.9759	17.8371
450802	19.9168	17.1435	18.2460	18.3472
450803	18.3767	21.6653	*	20.6031
450804	19.4846	19.0893	20.5225	19.7061
450806	*	*	18.8211	18.8211
450807	11.3192	13.4306	18.4410	13.7054
450808	16.9915	17.4917	18.1728	17.5602
450809	20.0202	19.7899	21.8610	20.5411
450811	19.0961	19.9168	21.6115	20.3503
450813	15.9166	14.5392	15.3780	15.2272
450815	*	21.2741	*	21.2741
450819	*	16.5521	*	16.5521
450820	*	26.8348	24.6742	25.7177
450822	*	22.8556	24.8702	23.9136
450823	*	*	17.9756	17.9756
450824	*	*	25.7488	25.7488
450825	*	*	15.3546	15.3546
450827	*	*	20.1310	20.1310
450828	*	*	17.7667	17.7667
450829	*	*	14.7121	14.7121
460001	21.7996	22.2735	23.5485	22.5533
460003	20.0452	22.6289	*	21.2787
460004	21.3744	21.7234	23.1289	22.0969
460005	19.7069	22.5252	23.0189	21.6769
460006	20.6252	21.0700	22.1648	21.3374
460007	20.8026	21.1922	22.0409	21.4007
460008	18.8661	19.1153	22.6808	20.2069
460009	21.9016	22.5295	23.1146	22.5111
460010	21.9830	22.4948	23.8996	22.8204
460011	18.8660	19.7674	24.6789	20.7963
460013	20.7326	20.1936	*	20.4776
460014	18.3865	18.5370	*	18.4531
460015	20.6593	21.0470	22.4872	21.4209
460016	18.2408	21.9105	19.0910	19.6368
460017	17.7103	18.9929	*	18.3294
460018	17.6235	17.0063	17.0385	17.1969
460019	16.2671	17.8690	19.3442	17.7589
460020	17.3467	17.2663	18.1542	17.5580

* Denotes wage data not available for the provider for that year.
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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
460021	21.0470	21.5174	23.1368	21.9697
460022	20.1534	21.3614	20.7539	20.7266
460023	22.3535	22.9265	24.1825	23.1937
460025	19.4247	17.3494	17.4070	17.9267
460026	19.9241	20.2576	21.1759	20.4671
460027	21.8868	22.2955	21.4833	21.8607
460029	20.5154	20.8366	22.7658	21.3471
460030	17.6071	17.1383	18.1423	17.6207
460032	21.1006	21.4832	21.0286	21.1954
460033	19.5372	19.2664	20.2389	19.6949
460035	16.0021	16.1685	15.6979	15.9450
460036	23.5893	23.4573	24.2651	23.7927
460037	18.6850	17.7399	19.0115	18.4898
460039	24.9134	24.4808	24.5134	24.6186
460041	21.0623	20.2035	21.6676	20.9770
460042	18.8814	19.5662	20.9858	19.8725
460043	24.4779	23.2819	25.1366	24.2896
460044	21.4696	21.8485	23.6604	22.3504
460046	18.2224	*	*	18.2224
460047	23.0433	22.7524	23.4965	23.0972
460049	19.6483	20.8283	21.5241	20.8906
460051	19.4761	22.1758	21.8595	21.1765
460052	*	19.8961	20.1989	20.0325
470001	20.2299	21.3817	21.7774	21.1523
470003	23.6949	22.0563	23.4163	23.0458
470004	16.8842	18.1879	17.3576	17.4706
470005	21.9191	23.1808	22.6589	22.5826
470006	17.8699	20.2829	21.0835	19.7003
470008	19.6069	20.1969	20.3833	20.0728
470010	20.2961	21.0616	22.3913	21.2927
470011	21.7675	22.2415	24.1306	22.7075
470012	18.5339	18.9444	19.8831	19.1162
470015	19.5366	20.2125	21.8204	20.4728
470018	21.5426	21.2406	23.1159	21.9638
470020	20.6643	21.5688	21.9911	21.4308
470023	20.4511	21.7139	22.5334	21.5811
470024	20.8510	21.9807	23.2738	22.0567
490001	21.9755	20.0570	21.4952	21.1603
490002	15.2287	15.7365	16.5198	15.8281
490003	19.1040	20.3237	20.7688	20.0621
490004	19.2126	19.7074	20.7390	19.8866
490005	20.5517	21.3318	22.9490	21.6702
490006	15.9537	12.3253	19.8977	16.1242
490007	18.7740	19.8938	20.5265	19.7370
490009	23.9344	23.7659	24.7602	24.1271
490010	21.7424	*	*	21.7424
490011	18.6071	19.8042	19.8179	19.3919
490012	15.9973	15.2965	16.0994	15.7867
490013	17.3318	18.2396	18.3901	17.9911
490014	25.8315	23.5266	27.8907	25.6619
490015	19.6363	20.0667	21.4500	20.3969
490017	18.4361	19.3854	*	18.9126
490018	18.3435	18.5508	19.7456	18.8862
490019	19.6178	21.0124	21.6790	20.8153
490020	18.5691	19.3424	20.9212	19.6001
490021	19.3945	20.0496	21.2263	20.2509
490022	21.2183	22.3380	24.3008	22.6504
490023	20.6694	21.5683	22.8400	21.7338
490024	17.7221	18.4314	19.7501	18.7524
490027	16.2761	16.7556	17.5178	16.8693
490030	9.1789	8.6446	*	8.9749
490031	14.9539	16.0003	17.4262	16.1268
490032	22.4262	21.4037	22.2041	22.0055

* Denotes wage data not available for the provider for that year.
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Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
490033	21.1723	19.2908	24.3589	21.5324
490037	16.3759	17.0113	16.7752	16.7116
490038	21.0218	17.6324	18.6012	18.9881
490040	22.7061	24.1266	24.8808	23.9273
490041	18.3589	18.7987	17.9942	18.3695
490042	16.4666	17.0972	18.1733	17.2802
490043	22.1574	22.1068	24.0198	22.7114
490044	18.3137	19.7842	18.4845	18.8757
490045	20.5468	20.5558	21.8453	21.0100
490046	18.4825	19.9102	19.7466	19.3960
490047	25.0438	18.7614	20.0837	20.6715
490048	18.4361	19.5417	20.9110	19.5970
490050	23.0729	23.3668	23.8519	23.4357
490052	16.8600	16.4787	17.6096	16.9745
490053	15.6996	16.8410	17.7363	16.7991
490054	15.4734	19.5780	22.5136	19.1813
490057	19.9210	20.3160	20.7806	20.3441
490059	20.8662	21.4801	24.1516	22.0719
490060	17.6308	18.5917	19.3525	18.5249
490063	28.6536	26.1930	*	27.3515
490066	20.6972	19.8352	21.5920	20.7067
490067	17.0195	17.8487	18.6469	17.8519
490069	17.3297	20.7582	21.5228	19.7588
490071	21.8879	23.3511	23.9246	23.0331
490073	20.7960	26.0957	*	23.1759
490075	18.6983	19.2156	20.2001	19.3654
490077	21.3670	22.6504	22.4133	22.1262
490079	17.0815	17.7016	17.5839	17.4571
490084	16.7834	18.0555	18.9679	17.9259
490085	17.4584	17.6158	19.2494	18.1150
490088	16.4362	17.9141	19.1415	17.7397
490089	17.7692	18.2290	19.6501	18.5835
490090	17.0199	17.5799	19.2094	17.9357
490091	20.8734	25.0272	23.6634	22.9282
490092	16.9533	16.4360	*	16.7160
490093	17.3711	17.8275	18.9442	18.0549
490094	18.9204	22.3033	20.2020	20.4445
490097	15.5780	16.9518	16.1076	16.1614
490098	15.1403	16.0488	18.5355	16.5130
490099	17.9665	18.3985	19.2604	18.5294
490100	22.5010	*	*	22.5010
490101	24.7616	23.5553	25.7804	24.7017
490104	25.6889	40.2529	*	29.6601
490105	18.5765	21.4428	*	19.7749
490106	17.6596	26.3821	31.8566	22.3213
490107	23.5240	22.9283	23.9962	23.5071
490108	20.2112	24.1232	24.8596	22.6562
490109	23.6620	25.9475	23.0609	24.1978
490110	16.5131	18.1561	18.8042	17.8380
490111	17.1768	17.8510	19.6489	18.2093
490112	21.4532	22.1162	23.2843	22.3013
490113	23.2235	23.9043	26.1840	24.4577
490114	17.3047	18.0359	18.8920	18.0825
490115	16.5203	16.8537	18.4499	17.2731
490116	16.6170	17.2040	18.2935	17.3997
490117	14.0104	14.7944	15.9284	14.9234
490118	21.4674	23.2022	24.2668	22.9444
490119	17.9147	18.6046	18.9640	18.4840
490120	19.3707	20.5777	20.4547	20.1460
490122	23.8801	23.8198	26.6681	24.7636
490123	17.7461	19.3056	20.0920	19.0902
490124	22.0884	21.3818	23.6526	22.4301
490126	18.6844	20.4294	19.0782	19.3248

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
490127	16.0516	16.5993	17.6437	16.7293
490129	22.5885	28.6868	*	23.5799
490130	16.4322	17.6943	18.6406	17.5834
490132	18.6570	18.4671	19.1742	18.7508
500001	22.1896	24.4829	25.2411	23.9385
500002	21.6332	19.8476	22.9942	21.4749
500003	24.2814	24.4333	25.1200	24.6216
500005	22.3955	24.3870	26.6971	24.3513
500007	26.0599	21.9911	24.7889	24.1708
500008	25.3064	26.1737	27.2852	26.2556
500011	24.0162	24.6554	25.7263	24.7924
500012	20.7032	24.2799	24.5450	23.0771
500014	24.3419	24.0990	25.0490	24.4936
500015	23.9297	24.9923	25.8775	24.9616
500016	24.3938	24.9439	25.1227	24.8306
500019	22.4213	23.2054	23.5730	23.0604
500021	25.9198	27.6490	25.9403	26.4613
500023	26.6535	27.1025	32.3079	28.0325
500024	23.7472	26.6452	26.2113	25.5094
500025	26.4810	24.4825	27.2601	26.0674
500026	23.8005	26.9884	26.6108	25.7916
500027	22.2158	25.1125	27.5909	24.9753
500028	19.2675	18.9556	19.0261	19.0887
500029	17.9237	18.5042	19.3130	18.5707
500030	24.9039	26.3828	28.5297	26.6182
500031	29.2707	23.6099	25.8542	26.0586
500033	22.3527	22.5462	23.8994	22.9522
500036	22.1096	23.6333	25.1255	23.5838
500037	20.7139	21.4059	22.1774	21.4194
500039	23.8918	24.0007	25.4225	24.4379
500041	23.9608	25.4376	24.7070	24.7067
500042	22.9125	*	*	22.9125
500043	20.9459	22.0466	24.1745	22.4162
500044	23.3364	24.2212	24.7816	24.1154
500045	20.8881	24.0526	24.6265	23.0766
500048	22.1906	20.3207	20.6333	21.0462
500049	24.0489	24.5997	26.5857	25.0314
500050	22.0065	22.6563	23.0804	22.6053
500051	24.8203	25.9447	26.7628	25.8820
500053	23.9397	22.8399	24.2492	23.6675
500054	22.8829	23.8089	25.7815	24.1708
500055	23.7446	23.8622	23.7988	23.8022
500057	18.2737	19.0479	20.5812	19.3310
500058	24.7882	24.1106	26.5679	25.1920
500059	23.3506	26.6270	25.3528	25.0566
500060	25.0233	28.3655	29.6030	27.5162
500061	21.7013	20.8624	24.5908	22.4271
500062	18.6329	19.0557	19.1685	18.9583
500064	25.5748	26.7000	27.5791	26.6387
500065	21.9308	23.5671	24.0966	23.2140
500068	19.6574	19.2638	20.9278	19.9560
500069	21.3592	21.4542	22.4158	21.7566
500071	19.1906	19.1428	22.3253	20.1059
500072	25.3928	25.2001	25.7734	25.4637
500073	21.2469	21.7698	22.5222	21.8777
500074	18.9679	19.5981	20.6120	19.7482
500077	22.8536	23.9410	24.5407	23.7721
500079	24.2036	23.1041	24.7946	24.0303
500080	15.6630	18.3883	18.8188	17.4053
500084	23.4032	24.4044	24.5678	24.1531
500085	21.4403	20.4517	20.7422	20.8523
500086	23.3288	22.8829	24.2556	23.4907
500088	23.2701	25.2478	25.2774	24.5589

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
500089	18.7080	19.7166	20.3478	19.5281
500090	16.1576	20.4429	21.7716	18.7859
500092	16.7913	19.2028	20.3058	18.6898
500094	18.5835	15.7866	17.6625	17.4874
500096	21.0151	23.3564	25.1135	23.2107
500097	19.7706	20.8774	21.4423	20.6699
500098	16.3511	15.2040	13.5203	15.0572
500101	19.7337	15.8000	19.8614	18.4197
500102	20.9389	21.8963	23.1307	22.0050
500104	22.8154	24.9389	24.7875	24.1421
500106	18.6041	19.1465	17.1066	18.3020
500107	18.1201	17.9489	17.4641	17.8401
500108	26.2939	28.6229	26.1609	27.0259
500110	21.4553	22.9775	23.5941	22.6736
500118	23.8397	24.8034	24.7875	24.4924
500119	22.4373	22.1192	23.9939	22.8469
500122	22.4268	23.5264	24.4462	23.5112
500123	20.3181	19.6646	21.7133	20.7526
500124	23.2836	23.7742	24.6591	23.9700
500125	15.1112	14.7910	15.6304	15.1911
500129	26.1575	25.4685	25.2082	25.5438
500132	15.6717	23.1822	21.9915	20.2081
500134	17.7457	17.2430	15.9791	16.9729
500139	22.2297	22.3053	23.7993	22.7606
500141	23.8838	29.9695	28.1014	27.3199
500143	18.0343	18.2570	18.7523	18.3736
500146	21.6003	*	*	21.6003
510001	19.1492	20.0429	20.2514	19.8050
510002	20.1527	17.6392	19.1517	18.9313
510005	14.2503	13.8621	13.8641	13.9934
510006	18.7313	19.9609	19.9760	19.5653
510007	21.2729	21.6761	23.0072	22.0021
510008	18.3296	19.0513	20.1039	19.1754
510012	15.8390	15.6089	15.8596	15.7743
510013	17.8527	19.5798	18.3486	18.5734
510015	14.9039	16.7311	17.1595	16.3249
510018	18.5269	18.5358	18.3023	18.4548
510020	13.1837	14.1211	15.7512	14.3266
510022	20.1763	21.5770	21.4336	21.0418
510023	16.0129	16.7777	17.6516	16.8122
510024	19.0941	18.7461	19.6521	19.1601
510026	13.6888	13.7952	14.8785	14.0865
510027	17.2900	18.5945	20.5222	18.7968
510028	20.0628	19.9208	22.4826	20.8230
510029	17.7124	18.4668	16.3204	17.4181
510030	17.4198	17.7603	19.2558	18.1712
510031	28.6673	18.6341	19.3049	21.2106
510033	18.4082	18.4718	19.6900	18.8637
510035	16.5007	18.3164	21.7818	18.6703
510036	13.4559	13.8786	15.0266	14.0903
510038	15.8132	15.5576	15.9821	15.7873
510039	16.9398	17.1461	17.4002	17.1582
510043	14.0662	13.1308	14.4202	13.8751
510046	17.3821	18.5896	18.7424	18.2568
510047	19.8963	20.8101	21.2375	20.6123
510048	21.0407	17.1647	15.2886	17.8240
510050	16.9136	18.4036	18.3964	17.9380
510053	16.1036	17.5798	18.1046	17.2603
510055	23.7248	24.2133	25.6333	24.5104
510058	18.4156	18.4501	18.6025	18.4938
510059	16.5854	16.1044	17.3844	16.6208
510060	17.5594	*	*	17.5594
510061	13.8204	14.1968	14.6774	14.2360

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
510062	19.3881	18.1588	19.7984	19.0922
510066	12.2943	*	*	12.2943
510067	16.7161	17.3067	17.8816	17.3091
510068	18.7938	23.0452	19.4299	20.2577
510070	18.5146	18.7091	18.6226	18.6195
510071	17.2148	18.0278	18.8766	18.0317
510072	15.6262	15.9257	16.5279	16.0216
510077	18.0668	18.2947	20.4521	18.9028
510080	17.4485	16.3453	18.5318	17.3501
510081	13.6359	11.9701	10.4972	11.9879
510082	17.4538	13.5946	16.0014	15.5120
510084	17.2395	13.5339	14.9683	15.2567
510085	17.5624	18.6227	19.0175	18.4360
510086	13.4763	14.2241	16.3413	14.6710
510088	*	14.8854	16.2850	15.6272
520002	19.7447	19.6755	19.3159	19.5604
520003	17.1248	18.7956	18.7507	18.2896
520004	19.6512	20.4591	18.8843	19.6231
520006	21.5313	21.4884	22.4099	21.7879
520007	16.2001	18.4629	18.3959	17.6275
520008	22.8024	24.9395	24.4927	24.0917
520009	18.6002	21.4638	19.8142	19.9388
520010	22.7703	22.3311	25.4845	23.5468
520011	20.7410	21.5223	21.6945	21.3155
520013	20.3965	20.5944	22.1009	21.0588
520014	17.1646	18.0841	19.2760	18.1480
520015	18.6078	19.7672	21.0428	19.8323
520016	17.3018	18.4320	19.5656	18.4077
520017	19.6008	19.4780	21.1409	20.0934
520018	21.1941	21.5279	22.1929	21.6736
520019	19.5440	20.9164	21.8870	20.7980
520021	21.3471	21.9531	22.8484	22.1016
520024	14.0175	14.4750	16.4879	15.0572
520025	18.2430	20.3838	21.9529	20.1629
520026	21.5453	20.8546	22.7429	21.7237
520027	19.9324	21.5868	22.0947	21.2079
520028	21.2852	22.5941	22.0333	21.9368
520029	19.5750	21.4197	21.6729	20.8760
520030	20.5039	21.6311	22.7239	21.6241
520031	20.4814	20.9875	21.2809	20.8937
520032	19.5697	21.1069	24.1092	21.5816
520033	19.2954	20.2520	21.0088	20.1750
520034	17.1282	20.4307	21.2944	19.6400
520035	18.9452	18.7135	19.7990	19.1719
520037	20.6686	21.6017	23.0801	21.8015
520038	19.6294	20.6130	21.2769	20.4835
520039	20.7641	23.3687	21.8688	21.9128
520040	20.4677	21.2023	23.0710	21.5679
520041	17.1959	18.4117	17.6529	17.7461
520042	18.5843	19.5466	20.6354	19.6057
520044	18.4014	19.1877	21.4913	19.6621
520045	20.5917	21.2427	21.9812	21.2870
520047	18.3048	20.3487	21.0370	19.8304
520048	20.6583	19.8926	20.3488	20.2938
520049	20.3559	20.1667	21.8271	20.7868
520051	21.6497	24.0460	23.4366	23.0036
520053	17.3945	18.0851	18.7234	18.0684
520054	15.1747	16.8363	16.6278	16.1750
520057	19.0872	19.8492	20.6959	19.9036
520058	19.7283	21.2500	23.6794	21.5351
520059	20.9913	21.5796	21.9452	21.5150
520060	17.9258	18.8232	20.3357	19.0291
520062	19.1482	19.7038	21.5525	20.1564

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

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TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
520063	19.6136	20.5262	21.2774	20.4843
520064	22.7423	22.0917	23.7144	22.8379
520066	22.8837	24.0087	24.1733	23.6290
520068	18.9943	19.6855	19.9595	19.5384
520069	20.2934	20.1770	21.7233	20.5221
520070	18.5938	19.4261	20.0096	19.3562
520071	18.7304	19.9866	22.0066	20.1801
520074	20.4601	20.9007	21.6636	20.9770
520075	19.8457	20.7301	22.1894	20.9388
520076	17.6088	19.5878	20.6155	19.2421
520077	17.7830	18.7119	18.1077	18.2004
520078	21.3380	21.7545	20.5734	21.2201
520082	17.7405	*	*	17.7405
520083	23.8849	23.5787	24.2131	23.8898
520084	20.8427	23.5446	21.8102	22.0208
520087	20.3624	20.7821	22.2579	21.1364
520088	20.6312	21.8931	22.3921	21.5920
520089	21.5456	22.1055	23.1221	22.2509
520090	18.9343	20.3645	20.9069	20.0854
520091	20.9927	20.9440	22.2218	21.3884
520092	17.6500	18.6248	19.7870	18.7181
520094	20.3611	20.6179	21.3082	20.7652
520095	20.3269	18.6425	21.8172	20.1804
520096	19.7757	20.6668	21.6803	20.7358
520097	20.2354	20.8016	22.2375	21.1096
520098	22.3348	23.4707	23.4273	23.0928
520100	18.3832	19.4788	20.5366	19.4712
520101	19.5186	19.9875	20.0164	19.8451
520102	20.1898	21.0138	22.1413	21.1139
520103	19.4809	20.1092	22.2765	20.6137
520107	20.3747	21.7907	23.8421	21.9354
520109	19.1303	19.7609	20.3208	19.7432
520110	20.4494	21.0055	22.3923	21.3276
520111	17.7834	17.7673	18.2744	17.9282
520112	19.1797	18.9577	17.6226	18.3876
520113	21.1485	21.8852	23.1852	22.0983
520114	16.6616	17.8476	18.5767	17.6415
520115	18.2980	19.2248	21.4279	19.6231
520116	19.8509	20.6922	22.2741	20.9026
520117	18.5414	18.3963	19.3653	18.7838
520118	14.2326	14.8626	13.9920	14.3519
520120	18.7437	*	*	18.7437
520121	19.7305	20.8492	20.9422	20.5799
520122	16.2436	16.9335	16.9905	16.7143
520123	17.3980	17.7986	19.8134	18.4575
520124	17.2619	17.9205	19.2621	18.1369
520130	15.6845	16.6873	18.8845	17.0161
520131	18.7295	20.2591	21.0400	20.0321
520132	15.6379	18.1630	18.2634	17.2681
520134	18.0953	18.8150	19.6881	18.8725
520135	15.8246	17.3476	18.1026	17.0799
520136	19.8480	20.9050	21.3966	20.7380
520138	21.2260	22.5599	22.5773	22.1218
520139	20.9988	21.4042	22.8070	21.7325
520140	21.5207	22.3671	22.5459	22.1346
520142	20.5858	21.9432	21.4120	21.2420
520144	18.5701	19.9120	20.5864	19.6719
520145	18.2654	18.7958	20.3461	19.0923
520146	17.9585	18.2370	18.6337	18.2882
520148	17.2421	19.1502	20.5075	19.0048
520149	14.1901	12.8928	13.8614	13.6192
520151	17.3267	18.7070	19.3362	18.4627
520152	19.5858	22.5980	26.2402	22.5080

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 2.—HOSPITAL AVERAGE HOURLY WAGE FOR FEDERAL FISCAL YEARS 2001 (1997 WAGE DATA), 2002 (1998 WAGE DATA) AND 2003 (1999 WAGE DATA) WAGE INDEXES AND 3-YEAR AVERAGE OF HOSPITAL AVERAGE HOURLY WAGES—Continued

Provider No.	Average hourly wage FY 2001	Average hourly wage FY 2002	Average hourly wage FY 2003	Average hourly** wage (3 yrs)
520153	15.9753	17.0863	18.3447	17.1026
520154	18.5403	19.5994	21.0486	19.7479
520156	21.3377	20.9638	20.7806	21.0121
520157	17.1974	19.6008	21.6821	19.4299
520159	18.6760	17.7649	21.8783	19.4305
520160	19.4173	20.5154	21.5266	20.5092
520161	19.4905	20.1102	21.4038	20.3456
520170	21.5233	21.9857	23.0867	22.2181
520171	17.4560	18.0785	18.1844	17.8993
520173	21.3016	20.9209	23.2955	21.8315
520177	22.7221	24.0139	25.1080	23.8746
520178	18.6936	20.9010	23.1509	20.7167
520188	13.9135	*	*	13.9135
520189	*	*	21.6813	21.6813
530002	19.3273	21.0560	23.0582	21.0877
530003	16.2139	15.9523	17.1646	16.4518
530004	15.0497	13.3788	17.4672	15.2335
530005	13.3529	15.3255	18.3704	15.7393
530006	18.5894	19.1305	20.7661	19.4956
530007	18.5161	17.7897	18.5286	18.3005
530008	18.8349	19.0113	19.0016	18.9483
530009	22.5009	21.7795	23.5839	22.6178
530010	21.6092	13.9536	12.3695	15.3501
530011	18.7354	19.4606	19.9212	19.3808
530012	18.9923	21.1854	22.5084	20.9252
530014	18.0869	18.4900	20.0422	18.9065
530015	22.4568	23.4040	24.6527	23.4897
530016	18.1562	19.3205	20.3647	19.2610
530017	16.3478	17.7736	20.9408	18.2556
530018	18.3783	19.5986	20.1226	19.3605
530019	18.5430	20.1097	18.1492	18.8643
530022	18.5002	19.6136	19.7902	19.3159
530023	20.1948	20.0677	21.6352	20.6416
530025	21.2598	22.0300	22.4816	21.9309
530026	17.0118	19.8969	20.9919	19.1178
530027	18.1664	25.5067	*	20.8124
530029	16.5092	19.3361	20.3046	18.6145
530031	18.3322	20.1734	23.2766	20.4477
530032	21.0361	20.0132	20.9856	20.6817

* Denotes wage data not available for the provider for that year.
** Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003.

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Abilene, TX	21.3116	18.2370
Aguadilla, PR	10.6548	10.3692
Akron, OH	22.2695	21.8175
Albany, GA	24.9139	23.4370
Albany-Schenectady-Troy, NY	19.4516	19.0017
Albuquerque, NM	21.3374	20.9662
Alexandria, LA	18.1736	17.9283
Allentown-Bethlehem-Easton, PA	22.6105	22.2137

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Altoona, PA	21.3848	20.7048
Amarillo, TX	20.8120	19.7427
Anchorage, AK	28.6899	28.2057
Ann Arbor, MI	25.7925	25.0051
Anniston, AL	18.6862	18.3987
Appleton-Oshkosh-Neenah, WI	20.8773	20.4112
Arecibo, PR	10.0744	10.0865
Asheville, NC	22.2638	21.2069
Athens, GA	23.7041	22.3198
Atlanta, GA	23.2034	22.5565

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Atlantic-Cape May, NJ	25.4286	24.9782
Auburn-Opelika, AL	19.1001	18.3671
Augusta-Aiken, GA-SC	23.8329	21.9394
Austin-San Marcos, TX	21.9115	21.4039
Bakersfield, CA	23.4741	21.9163
Baltimore, MD	22.4354	21.6104
Bangor, ME	22.5137	21.5643
Barnstable-Yarmouth, MA	30.1848	30.2355

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TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Baton Rouge, LA	19.2871	18.9071
Beaumont-Port Arthur, TX	19.2896	19.0451
Bellingham, WA	28.5297	26.6182
Benton Harbor, MI	20.6766	19.7627
Bergen-Passaic, NJ	27.8231	26.5455
Billings, MT	20.9586	20.9004
Biloxi-Gulfport-Pascagoula, MS	20.3045	19.0487
Binghamton, NY	19.3760	19.0441
Birmingham, AL	21.3884	19.7545
Bismarck, ND	18.0466	17.5136
Bloomington,IN	20.6895	19.8190
Bloomington-Normal, IL	21.1609	20.3703
Boise City, ID	21.6225	20.5010
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	25.9941	25.2200
Boulder-Longmont, CO	22.2777	21.7937
Brazoria, TX	19.8139	19.0124
Bremerton, WA	25.4225	24.4379
Brownsville-Harlingen-San Benito, TX	20.6770	19.9443
Bryan-College Station, TX	19.3399	19.2454
Buffalo-Niagara Falls, NY	21.7624	21.2368
Burlington, VT	23.3989	22.9310
Caguas, PR	10.1529	10.1915
Canton-Massillon, OH	20.7556	19.7901
Casper, WY	22.5084	20.9252
Cedar Rapids, IA	21.0377	19.8268
Champaign-Urbana, IL	22.9565	20.9245
Charleston-North Charleston, SC	18.6257	19.5755
Charleston, WV	20.1558	20.3125
Charlotte-Gastonia-Rock Hill, NC-SC	22.6242	21.3014
Charlottesville, VA	24.3357	23.7751
Chattanooga, TN-GA	20.8534	21.0504
Cheyenne, WY	20.0422	18.9065
Chicago, IL	25.4960	24.8000
Chico-Paradise, CA	22.6186	22.0636
Cincinnati, OH-KY-IN	21.4375	21.0209
Clarksville-Hopkinsville, TN-KY	19.2844	18.5774
Cleveland-Lorain-Elyria, OH	21.3730	21.1174
Colorado Springs, CO	22.9223	21.9346
Columbia, MO	20.0916	19.6531
Columbia, SC	20.6722	20.8728
Columbus, GA-AL	19.4319	18.9760
Columbus, OH	22.3157	21.5032
Corpus Christi, TX	18.7495	18.7846
Corvallis, OR	26.6038	25.7705
Cumberland, MD-WV	18.2292	18.3160
Dallas, TX	22.6072	22.1220
Danville, VA	20.2001	19.3654
Davenport-Moline-Rock Island, IA-IL	20.4000	19.6921
Dayton-Springfield, OH	21.5652	20.8876
Daytona Beach, FL	21.0017	20.3557
Decatur, AL	20.8473	19.7262
Decatur, IL	18.5380	18.0259
Denver, CO	23.9179	23.0032
Des Moines, IA	20.3902	19.9395
Detroit, MI	24.1574	23.4668
Dothan, AL	18.3729	17.7890
Dover, DE	21.7344	22.1849
Dubuque, IA	20.2381	19.4209
Duluth-Superior, MN-WI	24.0567	22.9550
Dutchess County, NY	24.8186	23.5537
Eau Claire, WI	20.7890	19.9433
El Paso, TX	21.0095	20.6428
Elkhart-Goshen, IN	22.6528	21.3565
Elmira, NY	19.7114	19.0237
Enid, OK	19.2869	18.8881
Erie, PA	20.7316	19.9094
Eugene-Springfield, OR	25.4725	24.9448
Evansville, Henderson, IN-KY	18.9808	18.5894
Fargo-Moorhead, ND-MN	22.4962	20.6192
Fayetteville, NC	20.6496	19.8938
Fayetteville-Springdale-Rogers, AR	18.8149	18.2982
Flagstaff, AZ-UT	24.8141	23.9367
Flint, MI	25.8296	24.8385
Florence, AL	18.2288	17.4228
Florence, SC	20.3953	19.6524
Fort Collins-Loveland, CO	22.8171	22.8018
Fort Lauderdale, FL	23.8406	22.9502
Fort Myers-Cape Coral, FL	21.7431	20.9253
Fort Pierce-Port St. Lucie, FL	22.5387	22.0206
Fort Smith, AR-OK	17.9611	17.8193
Fort Walton Beach, FL	22.1915	21.0734
Fort Wayne, IN	21.8421	20.4123
Fort Worth-Arlington, TX	22.1218	21.2887
Fresno, CA	23.7765	22.6843
Gadsden, AL	19.7302	19.2011
Gainesville, FL	22.3748	21.8054
Galveston-Texas City, TX	22.0810	22.2390
Gary, IN	22.2500	21.3750
Glens Falls, NY	19.1071	18.6348
Goldsboro, NC	20.6547	19.5049
Grand Forks, ND-MN	20.6675	19.9946
Grand Junction, CO	22.1097	21.1165
Grand Rapids-Muskegon-Holland, MI	22.1795	22.3013
Great Falls, MT	20.7913	20.0975
Greeley, CO	20.6781	21.0801
Green Bay, WI	22.0738	20.9151
Greensboro-Winston-Salem-High Point, NC	21.3171	20.8100
Greenville, NC	21.1020	20.7582
Greenville-Spartanburg-Anderson, SC	21.1013	20.4227
Hagerstown, MD	21.5280	20.1745
Hamilton-Middletown, OH	21.8081	20.7774
Harrisburg-Lebanon-Carlisle, PA	21.4204	21.2190
Hartford, CT	26.5589	25.6600
Hattiesburg, MS	17.6308	16.8808
Hickory-Morganton-Lenoir, NC	20.5993	20.3564
Honolulu, HI	25.5733	25.7139
Houma, LA	19.4770	18.2833
Houston, TX	22.4099	21.6980
Huntington-Ashland, WV-KY-OH	22.4054	21.7937
Huntsville, AL	20.4686	19.9112
Indianapolis, IN	22.6001	21.8532
Iowa City, IA	23.0524	21.9952
Jackson, MI	22.0543	20.8972
Jackson, MS	20.0348	19.3281
Jackson, TN	21.5461	20.3227
Jacksonville, FL	21.4789	20.7080
Jacksonville, NC	19.1386	17.6977
Jamestown, NY	18.5184	17.7951
Janesville-Beloit, WI	22.2956	21.6016
Jersey City, NJ	25.7550	25.2422
Johnson City-Kingsport-Bristol, TN-VA	19.1020	18.7739
Johnstown, PA	19.3481	19.3567
Jonesboro, AR	18.0006	17.9165
Joplin, MO	20.0064	19.0676
Kalamazoo-Battlecreek, MI	24.5797	23.6868
Kankakee, IL	22.0535	21.8916
Kansas City, KS-MO	22.5556	21.5044
Kenosha, WI	22.3994	21.6107
Killeen-Temple, TX	19.4230	20.6248
Knoxville, TN	20.9030	19.6266
Kokomo, IN	20.5813	20.5547
La Crosse, WI-MN	20.9920	20.5609
Lafayette, LA	19.6610	19.0691
Lafayette, IN	21.8803	20.4752
Lake Charles, LA	18.4643	17.2545
Lakeland-Winter Haven, FL	21.0679	20.4786
Lancaster, PA	21.0878	20.6617
Lansing-East Lansing, MI	22.5979	21.9294
Laredo, TX	19.5558	18.3090
Las Cruces, NM	20.4375	19.5136
Las Vegas, NV-AZ	25.3348	24.6305
[1] Lawrence, KS	.....	17.8290
Lawton, OK	18.9728	19.3040
Lewiston-Auburn, ME	21.2671	20.5697
Lexington, KY	19.8413	19.5837
Lima, OH	21.8791	21.1154
Lincoln, NE	20.5292	21.3398

TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
Little Rock-North Little Rock, AR	20.7992	19.9953
Longview-Marshall, TX	19.7471	19.4279
Los Angeles-Long Beach, CA	27.6569	26.7968
Louisville, KY-IN	21.8834	21.1577
Lubbock, TX	17.7930	18.8697
Lynchburg, VA	21.4112	20.3454
Macon, GA	21.2905	20.2752
Madison, WI	23.4267	22.9567
Mansfield, OH	20.6712	19.6802
Mayaguez, PR	11.3157	10.6879
McAllen-Edinburg-Mission, TX	19.3599	18.9086
Medford-Ashland, OR	24.3865	23.3354
Melbourne-Titusville-Palm Bay, FL	24.7923	22.7180
Memphis, TN-AR-MS	20.3251	19.7569
Merced, CA	22.8511	21.9541
Miami, FL	22.6833	22.2549
Middlesex-Somerset-Hunterdon, NJ	26.3374	25.3182
Milwaukee-Waukesha, WI	22.7676	22.0856
Minneapolis-St. Paul, MN-WI	25.2239	24.5477
Missoula, MT	21.2713	20.8023
Mobile, AL	18.8082	18.2018
Modesto, CA	24.3874	23.6713
Monmouth-Ocean, NJ	25.9158	24.8978
Monroe, LA	18.8342	18.4736
Montgomery, AL	17.8451	16.9642
Muncie, IN	21.0399	22.2998
Myrtle Beach, SC	21.0194	19.6847
Naples, FL	22.5429	21.7594
Nashville, TN	21.7439	21.3869
Nassau-Suffolk, NY	30.9070	30.5534
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	28.6474	27.5560
New London-Norwich, CT	27.2742	26.4332
New Orleans, LA	20.8098	20.4020
New York, NY	32.3513	32.1379
Newark, NJ	26.4531	26.0261
Newburgh, NY-PA	26.2921	24.9278
Norfolk-Virginia Beach-Newport News, VA-NC	19.6667	19.0225
Oakland, CA	35.0027	33.9458
Ocala, FL	21.9054	21.0412
Odessa-Midland, TX	21.2320	21.2696
Oklahoma City, OK	20.6894	19.7355
Olympia, WA	25.4588	24.6677
Omaha, NE-IA	23.1988	21.8834
Orange County, CA	26.6831	25.4624
Orlando, FL	21.9294	21.4758
Owensboro, KY	19.0457	18.4790
Panama City, FL	20.5244	20.1345
Parkersburg-Marietta, WV-OH	18.8778	18.3560
Pensacola, FL	19.9673	18.7468
Peoria-Pekin, IL	20.3592	19.5705
Philadelphia, PA-NJ	24.5469	24.2416
Phoenix-Mesa, AZ	21.9868	21.5339
Pine Bluff, AR	18.0874	17.5370
Pittsburgh, PA	21.6212	21.3813
Pittsfield, MA	23.4852	22.9215
Pocatello, ID	19.6333	20.1279
Ponce, PR	12.0062	11.5028
Portland, ME	22.8379	21.6951
Portland-Vancouver, OR-WA	24.7759	24.4428
Providence-Warwick, RI	24.2778	24.0071
Provo-Orem, UT	23.4308	22.3948
Pueblo, CO	20.3670	19.5929
Punta Gorda, FL	17.3909	18.1956
Racine, WI	21.6444	20.8817
Raleigh-Durham-Chapel Hill, NC	23.1852	22.0116
Rapid City, SD	20.5485	19.8947
Reading, PA	21.4029	20.8900
Redding, CA	25.8663	25.3801
Reno, NV	24.5213	23.5887
Richland-Kennewick-Pasco, WA	26.6936	25.3323
Richmond-Petersburg, VA	22.3862	21.6142
Riverside-San Bernardino, CA	25.8718	24.9920
Roanoke, VA	20.0117	19.2433
Rochester, MN	28.1983	26.1811
Rochester, NY	21.0003	20.5991
Rockford, IL	21.7440	20.5098
Rocky Mount, NC	21.4359	20.3593
Sacramento, CA	26.7257	26.3878
Saginaw-Bay City-Midland, MI	22.3260	21.5138
St. Cloud, MN	22.4364	22.0902
[1] St. Joseph, MO	.....	19.7467
St. Louis, MO-IL	20.4806	20.0376
Salem, OR	24.0818	22.8500
Salinas, CA	33.9674	32.7871
Salt Lake City-Ogden, UT	23.0757	22.1425
San Angelo, TX	18.2955	18.0306
San Antonio, TX	19.8888	19.2241
San Diego, CA	25.8535	25.5476
San Francisco, CA	32.8557	31.7475
San Jose, CA	32.5657	31.2857
San Juan-Bayamon, PR	10.8224	10.5408
San Luis Obispo-Atascadero-Paso Robles, CA	26.1821	24.6268
Santa Barbara-Santa Maria-Lompoc, CA	24.3466	23.8325
Santa Cruz-Watsonville, CA	31.3417	31.0243
Santa Fe, NM	24.8842	23.5075
Santa Rosa, CA	30.3046	28.9555
Sarasota-Bradenton, FL	21.4760	21.7771
Savannah, GA	22.9060	22.0969
Scranton-Wilkes Barre-Hazleton, PA	19.5725	19.0594
Seattle-Bellevue-Everett, WA	26.6067	25.2916
Sharon, PA	18.2710	17.7451
Sheboygan, WI	20.1510	19.0711
Sherman-Denison, TX	21.4636	20.3959
Shreveport-Bossier City, LA	20.2644	19.8410
Sioux City, IA-NE	21.0135	19.6404
Sioux Falls, SD	20.9214	20.1349
South Bend, IN	22.7694	22.2819
Spokane, WA	25.2044	23.9682
Springfield, IL	19.9008	19.3840
Springfield, MO	19.5680	19.0448
Springfield, MA	25.4001	24.2504
State College, PA	20.7690	20.2726
Steubenville-Weirton, OH-WV	20.4503	19.4333
Stockton-Lodi, CA	24.0178	23.7561
Sumter, SC	18.8535	18.0764
Syracuse, NY	21.8886	21.3786
Tacoma, WA	25.4131	25.5054
Tallahassee, FL	19.6007	19.0869
Tampa-St. Petersburg-Clearwater, FL	20.9878	20.1427
Terre Haute, IN	19.9743	19.0303
Texarkana, AR-Texarkana, TX	18.7416	18.5107
Toledo, OH	22.6790	21.9714
Topeka, KS	20.5859	20.0981
Trenton, NJ	24.6268	23.3224
Tucson, AZ	20.6783	19.9418
Tulsa, OK	19.3121	19.1851
Tuscaloosa, AL	18.9045	18.2544
Tyler, TX	22.1901	21.3538
Utica-Rome, NY	19.6508	18.9705
Vallejo-Fairfield-Napa, CA	30.9785	29.7068
Ventura, CA	25.7748	24.7503
Victoria, TX	20.2675	18.8655
Vineland-Millville-Bridgeton, NJ	23.6746	23.2888
Visalia-Tulare-Portersville, CA	21.6029	21.2747
Waco, TX	20.2402	18.4397
Washington, DC-MD-VA-WV	24.9537	24.2243
Waterloo-Cedar Falls, IA	18.7281	18.3305
Wausau, WI	22.7239	21.6241
West Palm Beach-Boca Raton, FL	22.8320	21.9092
Wheeling, OH-WV	17.8084	17.4900
Wichita, KS	22.0087	21.3928
Wichita Falls, TX	18.4488	17.5804
Williamsport, PA	19.8310	18.8540
Wilmington-Newark, DE-MD	25.9552	24.8359
Wilmington, NC	21.7789	21.1031
Yakima, WA	24.5502	23.1867
Yolo, CA	21.9147	21.8929

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TABLE 3A.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR URBAN AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2002]

Urban area	FY 2003 average hourly wage	3-Year average hourly wage
York, PA	21.0167	20.7492
Youngstown-Warren, OH	21.8109	21.2943
Yuba City, CA	23.7087	23.3825
Yuma, AZ	19.9517	20.2223

[1] The MSA is empty for FY 2003. The hospital(s) in the MSA received rural status under Section 401 of the Balanced Budget Refinement Act of 1999 (P.L. 106-113). The MSA is assigned the statewide rural wage index (see Table 4B).

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Alabama	17.9036	16.8484
Alaska	28.3370	27.2338
Arizona	19.5067	19.0116
Arkansas	17.6380	16.8439
California	22.8280	21.9650
Colorado	20.9354	20.0304
Connecticut	28.7896	27.0512
Delaware	20.9850	20.7345
Florida	20.4812	19.8506
Georgia	18.9804	18.5484
Hawaii	23.7802	24.2085
Idaho	20.2336	19.5324
Illinois	19.0881	18.2692
Indiana	20.2273	19.4705
Iowa	19.3039	18.3140
Kansas	18.3139	17.4523
Kentucky	18.5767	17.8667
Louisiana	17.5606	17.0801
Maine	20.1286	19.5633
Maryland	20.3626	19.6588
Massachusetts	25.8847	25.2714
Michigan	20.5663	20.0744
Minnesota	21.2683	20.2498
Mississippi	17.8117	16.9666
Missouri	18.6096	17.6847
Montana	19.7008	19.3096
Nebraska	19.0466	18.2894
Nevada	21.8882	21.2045
New Hampshire	22.7236	21.9972
New Jersey[1]		
New Mexico	19.8780	19.2303
New York	19.8523	19.1400
North Carolina	20.0381	19.1521
North Dakota	18.0060	17.4398
Ohio	19.9481	19.3896
Oklahoma	17.6227	16.9222
Oregon	23.9321	22.8031
Pennsylvania	19.6030	19.1490
Puerto Rico	10.1187	10.0248

TABLE 3B.—FY 2003 AND 3-YEAR* AVERAGE HOURLY WAGE FOR RURAL AREAS—Continued

[*Based on the sum of the salaries and hours computed for Federal FYs 2001, 2002, and 2003]

Nonurban area	FY 2003 average hourly wage	3-Year average hourly wage
Rhode Island[1]		
South Carolina	19.7928	19.0083
South Dakota	18.1545	17.3648
Tennessee	18.1050	17.6144
Texas	17.8263	17.1186
Utah	21.6749	20.5059
Vermont	21.6208	20.9793
Virginia	19.5315	18.5749
Washington	23.6253	23.0484
West Virginia	18.5169	18.1434
Wisconsin	21.2222	20.2660
Wyoming	20.4416	19.7159

[1] All counties within the State are classified as urban.

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS

Urban area (constituent counties)	Wage index	GAF
0040 Abilene, TX Taylor, TX	0.9268	0.9493
0060 Aguadilla, PR Aguada, PR Aguadilla, PR Moca, PR	0.4634	0.5905
0080 Akron, OH Portage, OH Summit, OH	0.9685	0.9783
0120 Albany, GA Dougherty, GA Lee, GA	1.0835	1.0565
0160 [2] Albany-Schenectady-Troy, NY Albany, NY Montgomery, NY Rensselaer, NY Saratoga, NY Schenectady, NY Schoharie, NY	0.8633	0.9042
0200 Albuquerque, NM Bernalillo, NM Sandoval, NM Valencia, NM	0.9372	0.9566
0220 Alexandria, LA Rapides, LA	0.7929	0.8531
0240 Allentown-Bethlehem-Easton, PA Carbon, PA Lehigh, PA Northampton, PA	0.9833	0.9885
0280 Altoona, PA Blair, PA	0.9300	0.9515
0320 Amarillo, TX Potter, TX Randall, TX	0.9051	0.9340
0380 Anchorage, AK Anchorage, AK	1.2610	1.1721
0440 Ann Arbor, MI Lenawee, MI Livingston, MI Washtenaw, MI	1.1217	1.0818
0450 Anniston, AL Calhoun, AL	0.8126	0.8675
0460 [2] Appleton-Oshkosh-Neenah, WI Calumet, WI Outagamie, WI Winnebago, WI	0.9229	0.9465
0470 [2] Arecibo, PR Arecibo, PR Camuy, PR Hatillo, PR	0.4400	0.5699
0480 Asheville, NC Buncombe, NC Madison, NC	0.9682	0.9781
0500 Athens, GA Clarke, GA Madison, GA Oconee, GA	1.0308	1.0210
0520 [1] Atlanta, GA Barrow, GA Bartow, GA Carroll, GA Cherokee, GA Clayton, GA Cobb, GA Coweta, GA DeKalb, GA Douglas, GA Fayette, GA Forsyth, GA Fulton, GA Gwinnett, GA Henry, GA Newton, GA Paulding, GA Pickens, GA Rockdale, GA Spalding, GA Walton, GA	1.0091	1.0062
0560 Atlantic-Cape May, NJ Atlantic, NJ Cape May, NJ	1.1058	1.0713
0580 Auburn-Opelika, AL Lee, AL	0.8306	0.8806
0600 Augusta-Aiken, GA-SC Columbia, GA McDuffie, GA Richmond, GA Aiken, SC Edgefield, SC	1.0364	1.0248
0640 [1] Austin-San Marcos, TX Bastrop, TX Caldwell, TX Hays, TX Travis, TX Williamson, TX	0.9529	0.9675
0680 Bakersfield, CA Kern, CA	1.0186	1.0127
0720 [1] Baltimore, MD Anne Arundel, MD Baltimore, MD Baltimore City, MD Carroll, MD Harford, MD Howard, MD Queen Anne's, MD	0.9757	0.9833
0733 Bangor, ME Penobscot, ME	0.9791	0.9856
0743 Barnstable-Yarmouth, MA Barnstable, MA	1.3127	1.2048
0760 Baton Rouge, LA Ascension, LA East Baton Rouge, LA Livingston, LA West Baton Rouge, LA	0.8388	0.8866
0840 Beaumont-Port Arthur, TX Hardin, TX Jefferson, TX Orange, TX	0.8389	0.8867
0860 Bellingham, WA Whatcom, WA	1.2407	1.1592
0870 Benton Harbor, MI Berrien, MI	0.9072	0.9355
0875 [1] Bergen-Passaic, NJ Bergen, NJ Passaic, NJ	1.2100	1.1394
0880 Billings, MT Yellowstone, MT	0.9114	0.9384
0920 Biloxi-Gulfport-Pascagoula, MS Hancock, MS Harrison, MS Jackson, MS	0.8830	0.9183
0960 [2] Binghamton, NY Broome, NY Tioga, NY	0.8633	0.9042
1000 Birmingham, AL Blount, AL Jefferson, AL St. Clair, AL Shelby, AL	0.9301	0.9516
1010 Bismarck, ND Burleigh, ND Morton, ND	0.7881	0.8495
1020 Bloomington, IN Monroe, IN	0.8997	0.9302
1040 Bloomington-Normal, IL McLean, IL	0.9202	0.9446
1080 Boise City, ID Ada, ID Canyon, ID	0.9403	0.9587
1123 [1] Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH Bristol, MA Essex, MA Middlesex, MA Norfolk, MA Plymouth, MA Suffolk, MA Worcester, MA Hillsborough, NH Merrimack, NH Rockingham, NH Strafford, NH	1.1304	1.0876
1125 Boulder-Longmont, CO Boulder, CO	0.9688	0.9785
1145 Brazoria, TX Brazoria, TX	0.8617	0.9031
1150 Bremerton, WA Kitsap, WA	1.1056	1.0712
1240 Brownsville-Harlingen-San Benito, TX Cameron, TX	0.8992	0.9298
1260 Bryan-College Station, TX Brazos, TX	0.8410	0.8882
1280 [1] Buffalo-Niagara Falls, NY Erie, NY Niagara, NY	0.9464	0.9630
1303 Burlington, VT Chittenden, VT Franklin, VT Grand Isle, VT	1.0176	1.0120
1310 Caguas, PR Caguas, PR Cayey, PR Cidra, PR Gurabo, PR San Lorenzo, PR	0.4453	0.5746
1320 Canton-Massillon, OH Carroll, OH Stark, OH	0.9026	0.9322
1350 Casper, WY Natrona, WY	0.9788	0.9854
1360 Cedar Rapids, IA Linn, IA	0.9149	0.9409
1400 Champaign-Urbana, IL Champaign, IL	0.9983	0.9988
1440 [2] Charleston-North Charleston, SC Berkeley, SC Charleston, SC Dorchester, SC	0.8607	0.9024
1480 Charleston, WV Kanawha, WV Putnam, WV	0.8765	0.9137
1520 [1] Charlotte-Gastonia-Rock Hill, NC-SC Cabarrus, NC Gaston, NC Lincoln, NC Mecklenburg, NC Rowan, NC Stanly, NC Union, NC York, SC	0.9839	0.9889
1540 Charlottesville, VA Albemarle, VA Charlottesville City, VA Fluvanna, VA Greene, VA	1.0583	1.0396
1560 Chattanooga, TN-GA Catoosa, GA Dade, GA Walker, GA Hamilton, TN Marion, TN	0.9069	0.9353
1580 [2] Cheyenne, WY Laramie, WY	0.8890	0.9226
1600 [1] Chicago, IL Cook, IL DeKalb, IL DuPage, IL Grundy, IL Kane, IL Kendall, IL Lake, IL McHenry, IL Will, IL	1.1088	1.0733
1620 [2] Chico-Paradise, CA Butte, CA	0.9934	0.9955
1640 [1] Cincinnati, OH-KY-IN Dearborn, IN Ohio, IN Boone, KY Campbell, KY Gallatin, KY Grant, KY Kenton, KY Pendleton, KY Brown, OH Clermont, OH Hamilton, OH Warren, OH	0.9354	0.9553
1660 Clarksville-Hopkinsville, TN-KY Christian, KY Montgomery, TN	0.8386	0.8864
1680 [1] Cleveland-Lorain-Elyria, OH Ashtabula, OH Cuyahoga, OH Geauga, OH Lake, OH Lorain, OH Medina, OH	0.9295	0.9512
1720 Colorado Springs, CO El Paso, CO	0.9968	0.9978
1740 Columbia, MO Boone, MO	0.8737	0.9117
1760 Columbia, SC Lexington, SC Richland, SC	0.8990	0.9297
1800 Columbus, GA-AL Russell, AL Chattahoochee, GA Harris, GA Muscogee, GA	0.8450	0.8911
1840 [1] Columbus, OH Delaware, OH Fairfield, OH	0.9705	0.9797

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Franklin, OH Licking, OH Madison, OH Pickaway, OH		
1880 Corpus Christi, TX Nueces, TX San Patricio, TX	0.8154	0.8696
1890 Corvallis, OR Benton, OR	1.1569	1.1050
1900 [2]Cumberland, MD-WV (MD Hospitals) Allegany, MD Mineral, WV	0.8855	0.9201
1900 [2]Cumberland, MD-WV (WV Hospitals) Allegany, MD Mineral, WV	0.8053	0.8622
1920 [1]Dallas, TX Collin, TX Dallas, TX Denton, TX Ellis, TX Henderson, TX Hunt, TX Kaufman, TX Rockwall, TX	0.9831	0.9884
1950 Danville, VA Danville City, VA Pittsylvania, VA	0.8785	0.9151
1960 Davenport-Moline-Rock Island, IA-IL Scott, IA Henry, IL Rock Island, IL	0.8872	0.9213
2000 Dayton-Springfield, OH Clark, OH Greene, OH Miami, OH Montgomery, OH	0.9378	0.9570
2020 Daytona Beach, FL Flagler, FL Volusia, FL	0.9133	0.9398
2030 Decatur, AL Lawrence, AL Morgan, AL	0.9066	0.9351
2040 [2]Decatur, IL Macon, IL	0.8301	0.8803
2080 [1]Denver, CO Adams, CO Arapahoe, CO Denver, CO Douglas, CO Jefferson, CO	1.0401	1.0273
2120 Des Moines, IA Dallas, IA Polk, IA Warren, IA	0.8908	0.9239
2160 [1]Detroit, MI Lapeer, MI Macomb, MI Monroe, MI Oakland, MI	1.0506	1.0344
St. Clair, MI Wayne, MI		
2180 Dothan, AL Dale, AL Houston, AL	0.8028	0.8603
2190 Dover, DE Kent, DE	0.9452	0.9621
2200 Dubuque, IA Dubuque, IA	0.8801	0.9163
2240 Duluth-Superior, MN-WI St. Louis, MN Douglas, WI	1.0462	1.0314
2281 Dutchess County, NY Dutchess, NY	1.0793	1.0536
2290 [2]Eau Claire, WI Chippewa, WI Eau Claire, WI	0.9229	0.9465
2320 El Paso, TX El Paso, TX	0.9137	0.9401
2330 Elkhart-Goshen, IN Elkhart, IN	0.9851	0.9898
2335 [2]Elmira, NY Chemung, NY	0.8633	0.9042
2340 Enid, OK Garfield, OK	0.8387	0.8865
2360 Erie, PA Erie, PA	0.9016	0.9315
2400 Eugene-Springfield, OR Lane, OR	1.1077	1.0726
2440 [2]Evansville-Henderson, IN-KY (IN Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8796	0.9159
2440 Evansville-Henderson, IN-KY (KY Hospitals) Posey, IN Vanderburgh, IN Warrick, IN Henderson, KY	0.8254	0.8769
2520 Fargo-Moorhead, ND-MN Clay, MN Cass, ND	0.9783	0.9851
2560 Fayetteville, NC Cumberland, NC	0.9055	0.9343
2580 Fayetteville-Springdale-Rogers, AR Benton, AR Washington, AR	0.8182	0.8716
2620 Flagstaff, AZ-UT Coconino, AZ Kane, UT	1.0791	1.0535
2640 Flint, MI Genesee, MI	1.1233	1.0829
2650 Florence, AL Colbert, AL Lauderdale, AL	0.7960	0.8554
2655 Florence, SC Florence, SC	0.8869	0.9211
2670 Fort Collins-Loveland, CO Larimer, CO	0.9923	0.9947
2680 [1]Ft. Lauderdale, FL Broward, FL	1.0792	1.0536
2700 Fort Myers-Cape Coral, FL Lee, FL	0.9456	0.9624
2710 Fort Pierce-Port St. Lucie, FL Martin, FL St. Lucie, FL	0.9959	0.9972
2720 Fort Smith, AR-OK Crawford, AR Sebastian, AR Sequoyah, OK	0.7811	0.8444
2750 Fort Walton Beach, FL Okaloosa, FL	0.9651	0.9760
2760 Fort Wayne, IN Adams, IN Allen, IN De Kalb, IN Huntington, IN Wells, IN Whitley, IN	0.9499	0.9654
2800 [1]Forth Worth-Arlington, TX Hood, TX Johnson, TX Parker, TX Tarrant, TX	0.9620	0.9738
2840 Fresno, CA Fresno, CA Madera, CA	1.0340	1.0232
2880 Gadsden, AL Etowah, AL	0.8684	0.9079
2900 Gainesville, FL Alachua, FL	0.9730	0.9814
2920 Galveston-Texas City, TX Galveston, TX	0.9603	0.9726
2960 Gary, IN Lake, IN Porter, IN	0.9676	0.9777
2975 [2]Glens Falls, NY Warren, NY Washington, NY	0.8633	0.9042
2980 Goldsboro, NC Wayne, NC	0.8982	0.9291
2985 Grand Forks, ND-MN Polk, MN Grand Forks, ND	0.9338	0.9542
2995 Grand Junction, CO Mesa, CO	0.9824	0.9879
3000 [1]Grand Rapids-Muskegon-Holland, MI Allegan, MI Kent, MI Muskegon, MI Ottawa, MI	0.9664	0.9769

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
3040 Great Falls, MT Cascade, MT	0.9057	0.9344
3060 Greeley, CO Weld, CO	0.9219	0.9458
3080 Green Bay, WI Brown, WI	0.9599	0.9724
3120 [1]Greensboro-Winston-Salem-High Point, NC Alamance, NC Davidson, NC Davie, NC Forsyth, NC Guilford, NC Randolph, NC Stokes, NC Yadkin, NC	0.9270	0.9494
3150 Greenville, NC Pitt, NC	0.9257	0.9485
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9177	0.9429
3180 Hagerstown, MD Washington, MD	0.9362	0.9559
3200 Hamilton-Middletown, OH Butler, OH	0.9484	0.9644
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9315	0.9526
3283 [1][2]Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2520	1.1664
3285 [2]Hattiesburg, MS Forrest, MS Lamar, MS	0.7759	0.8405
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.8958	0.9274
3320 Honolulu, HI Honolulu, HI	1.1121	1.0755
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.8470	0.8925
3360 [1]Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9746	0.9825
3400 Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH	0.9744	0.9824
3440 Huntsville, AL Limestone, AL Madison, AL	0.8901	0.9234
3480 [1]Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9828	0.9882
3500 Iowa City, IA Johnson, IA	1.0025	1.0017
3520 Jackson, MI Jackson, MI	0.9591	0.9718
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8713	0.9100
3580 Jackson, TN Madison, TN Chester, TN	0.9370	0.9564
3600 [1]Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9341	0.9544
3605 [2]Jacksonville, NC Onslow, NC	0.8714	0.9100
3610 [2]Jamestown, NY Chautauqua, NY	0.8633	0.9042
3620 Janesville-Beloit, WI Rock, WI	0.9696	0.9791
3640 Jersey City, NJ Hudson, NJ	1.1200	1.0807
3660 Johnson City-Kingsport-Bristol, TN-VA (TN Hospitals) Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN	0.8384	0.8863
3660 Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals) Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8494	0.8942
3680 [2]Johnstown, PA Cambria, PA Somerset, PA	0.8525	0.8965
3700 Jonesboro, AR Craighead, AR	0.7906	0.8514
3710 Joplin, MO Jasper, MO Newton, MO	0.8700	0.9090
3720 Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0689	1.0467
3740 Kankakee, IL Kankakee, IL	0.9591	0.9718
3760 [1]Kansas City, KS-MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9809	0.9869
3800 Kenosha, WI Kenosha, WI	0.9741	0.9822
3810 Killeen-Temple, TX Bell, TX Coryell, TX	0.8447	0.8909
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.9090	0.9368
3850 Kokomo, IN Howard, IN Tipton, IN	0.9031	0.9326
3870 [2]La Crosse, WI-MN (WI Hospitals) Houston, MN La Crosse, WI	0.9229	0.9465
3870 [2]La Crosse, WI-MN (MN Hospitals) Houston, MN La Crosse, WI	0.9249	0.9479
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8550	0.8983
3920 Lafayette, IN Clinton, IN Tippecanoe, IN	0.9515	0.9665
3960 Lake Charles, LA Calcasieu, LA	0.8030	0.8605
3980 Lakeland-Winter Haven, FL Polk, FL	0.9170	0.9424

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
4000 Lancaster, PA ... Lancaster, PA	0.9171	0.9425
4040 Lansing-East Lansing, MI ... Clinton, MI Eaton, MI Ingham, MI	0.9827	0.9881
4080 Laredo, TX ... Webb, TX	0.8504	0.8950
4100 Las Cruces, NM ... Dona Ana, NM	0.8888	0.9224
4120 [1] Las Vegas, NV-AZ ... Mohave, AZ Clark, NV Nye, NV	1.1018	1.0686
4150 Lawrence, KS ... Douglas, KS	0.7964	0.8556
4200 Lawton, OK ... Comanche, OK	0.8251	0.8766
4243 Lewiston-Auburn, ME ... Androscoggin, ME	0.9249	0.9479
4280 Lexington, KY ... Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8629	0.9040
4320 Lima, OH ... Allen, OH Auglaize, OH	0.9515	0.9665
4360 Lincoln, NE ... Lancaster, NE	0.9133	0.9398
4400 Little Rock-North Little Rock, AR ... Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.9045	0.9336
4420 Longview-Marshall, TX ... Gregg, TX Harrison, TX Upshur, TX	0.8588	0.9010
4480 [1] Los Angeles-Long Beach, CA ... Los Angeles, CA	1.2044	1.1358
4520 [1] Louisville, KY-IN ... Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY Jefferson, KY Oldham, KY	0.9517	0.9667
4600 Lubbock, TX ... Lubbock, TX	0.7809	0.8442
4640 Lynchburg, VA ... Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.9311	0.9523
4680 Macon, GA ... Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9296	0.9512
4720 Madison, WI ... Dane, WI	1.0188	1.0128
4800 Mansfield, OH ... Crawford, OH Richland, OH	0.8989	0.9296
4840 Mayaguez, PR ... Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4921	0.6153
4880 McAllen-Edinburg-Mission, TX ... Hidalgo, TX	0.8419	0.8888
4890 Medford-Ashland, OR ... Jackson, OR	1.0605	1.0410
4900 Melbourne-Titusville-Palm Bay, FL ... Brevard, Fl	1.0782	1.0529
4920 [1] Memphis, TN-AR-MS ... Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.8839	0.9190
4940 Merced, CA ... Merced, CA	0.9937	0.9957
5000 [1] Miami, FL ... Dade, FL	0.9878	0.9916
5015 [1] Middlesex-Somerset-Hunterdon, NJ ... Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1454	1.0974
5080 [1] Milwaukee-Waukesha, WI ... Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	0.9901	0.9932
5120 [1] Minneapolis-St. Paul, MN-WI ... Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI St. Croix, WI	1.0969	1.0654
5140 Missoula, MT ... Missoula, MT	0.9250	0.9480
5160 Mobile, AL ... Baldwin, AL Mobile, AL	0.8181	0.8715
5170 Modesto, CA ... Stanislaus, CA	1.0606	1.0411
5190 [1] Monmouth-Ocean, NJ ... Monmouth, NJ Ocean, NJ	1.1290	1.0866
5200 Monroe, LA ... Ouachita, LA	0.8191	0.8723
5240 [2] Montgomery, AL ... Autauga, AL Elmore, AL Montgomery, AL	0.7853	0.8475
5280 Muncie, IN ... Delaware, IN	0.9150	0.9410
5330 Myrtle Beach, SC ... Horry, SC	0.9141	0.9403
5345 Naples, FL ... Collier, FL	0.9803	0.9865
5360 [1] Nashville, TN ... Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford TN Sumner, TN Williamson, TN Wilson, TN	0.9456	0.9624
5380 [1] Nassau-Suffolk, NY ... Nassau, NY Suffolk, NY	1.3441	1.2245
5483 [1 2] New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT ... Fairfield, CT New Haven, CT	1.2520	1.1664
5523 [2] New London-Norwich, CT ... New London, CT	1.2520	1.1664
5560 [1] New Orleans, LA ... Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA	0.9050	0.9339
5600 [1] New York, NY ... Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY	1.4069	1.2634

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
5640 [1] Newark, NJ ... Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.1546	1.1035
5660 Newburgh, NY-PA ... Orange, NY Pike, PA	1.1434	1.0961
5720 [1] Norfolk-Virginia Beach-Newport News, VA-NC ... Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City VA Williamsburg City, VA York, VA	0.8553	0.8985
5775 [1] Oakland, CA ... Alameda, CA Contra Costa, CA	1.5324	1.3395
5790 Ocala, FL ... Marion, FL	0.9526	0.9673
5800 Odessa-Midland, TX ... Ector, TX Midland, TX	0.9233	0.9468
5880 [1] Oklahoma City, OK ... Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.8997	0.9302
5910 Olympia, WA ... Thurston, WA	1.1071	1.0722
5920 Omaha, NE-IA ... Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	1.0089	1.0061
5945 [1] Orange County, CA ... Orange, CA	1.1726	1.1152
5960 [1] Orlando, FL ... Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9537	0.9681
5990 Owensboro, KY ... Daviess, KY	0.8283	0.8790
6015 Panama City, FL ... Bay, FL	0.8926	0.9251
6020 Parkersburg-Marietta, WV-OH (WV Hospitals) ... Washington, OH Wood, WV	0.8210	0.8737
6020 [2] Parkersburg-Marietta, WV-OH (OH Hospitals) ... Washington, OH Wood, WV	0.8675	0.9072
6080 [2] Pensacola, FL ... Escambia, FL Santa Rosa, FL	0.8907	0.9238
6120 Peoria-Pekin, IL ... Peoria, IL Tazewell, IL Woodford, IL	0.8854	0.9200
6160 [1] Philadelphia, PA-NJ ... Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA Montgomery, PA Philadelphia, PA	1.0675	1.0457
6200 [1] Phoenix-Mesa, AZ ... Maricopa, AZ Pinal, AZ	0.9562	0.9698
6240 Pine Bluff, AR ... Jefferson, AR	0.7866	0.8484
6280 [1] Pittsburgh, PA Allegheny, PA Beaver, PA Butler, PA Fayette, PA Washington, PA Westmoreland, PA	0.9403	0.9587
6323 [2] Pittsfield, MA ... Berkshire, MA	1.1257	1.0845
6340 Pocatello, ID ... Bannock, ID	0.9013	0.9313
6360 Ponce, PR ... Guayanilla, PR Juana Diaz, PR Penuelas, PR Ponce, PR Villalba, PR Yauco, PR	0.5221	0.6408
6403 Portland, ME ... Cumberland, ME Sagadahoc, ME York, ME	0.9932	0.9953
6440 [1] Portland-Vancouver, OR-WA ... Clackamas, OR Columbia, OR Multnomah, OR Washington, OR Yamhill, OR	1.0792	1.0536
6483 [1] Providence-Warwick-Pawtucket, RI ... Bristol, RI Kent, RI Newport, RI Providence, RI Washington, RI	1.0558	1.0379
6520 Provo-Orem, UT ... Utah, UT	1.0190	1.0130
6560 [2] Pueblo, CO ... Pueblo, CO	0.9104	0.9377
6580 [2] Punta Gorda, FL ... Charlotte, FL	0.8907	0.9238
6600 Racine, WI ... Racine, WI	0.9413	0.9594
6640 [1] Raleigh-Durham-Chapel Hill, NC ... Chatham, NC Durham, NC Franklin, NC Johnston, NC Orange, NC Wake, NC	1.0083	1.0057
6660 Rapid City, SD ... Pennington, SD	0.8936	0.9259
6680 Reading, PA ... Berks, PA	0.9308	0.9521
6690 Redding, CA ... Shasta, CA	1.1249	1.0839
6720 Reno, NV ... Washoe, NV	1.0664	1.0450
6740 Richland-Kennewick-Pasco, WA ... Benton, WA Franklin, WA	1.1608	1.1075
6760 Richmond-Petersburg, VA ... Charles City County, VA Chesterfield, VA Colonial Heights City, VA Dinwiddie, VA Goochland, VA Hanover, VA Henrico, VA Hopewell City, VA New Kent, VA Petersburg City, VA Powhatan, VA Prince George, VA Richmond City, VA	0.9735	0.9818
6780 [1] Riverside-San Bernardino, CA ... Riverside, CA San Bernardino, CA	1.1251	1.0841
6800 Roanoke, VA ... Botetourt, VA Roanoke, VA Roanoke City, VA Salem City, VA	0.8703	0.9093
6820 Rochester, MN ... Olmsted, MN	1.2263	1.1499
6840 [1] Rochester, NY ... Genesee, NY Livingston, NY Monroe, NY	0.9133	0.9398

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Ontario, NY		
Orleans, NY		
Wayne, NY		
6880 Rockford, IL	0.9456	0.9624
Boone, IL		
Ogle, IL		
Winnebago, IL		
6895 Rocky Mount, NC	0.9322	0.9531
Edgecombe, NC		
Nash, NC		
6920 [1] Sacramento, CA	1.1636	1.1093
El Dorado, CA		
Placer, CA		
Sacramento, CA		
6960 Saginaw-Bay City-Midland, MI	0.9709	0.9800
Bay, MI		
Midland, MI		
Saginaw, MI		
6980 St. Cloud, MN	0.9858	0.9903
Benton, MN		
Stearns, MN		
7000 [2] St. Joseph, MO	0.8099	0.8656
Andrew, MO		
Buchanan, MO		
7040 [1] St. Louis, MO-IL	0.8907	0.9238
Clinton, IL		
Jersey, IL		
Madison, IL		
Monroe, IL		
St. Clair, IL		
Franklin, MO		
Jefferson, MO		
Lincoln, MO		
St. Charles, MO		
St. Louis, MO		
St. Louis City, MO		
Warren, MO		
7080 Salem, OR	1.0473	1.0322
Marion, OR		
Polk, OR		
7120 Salinas, CA	1.4772	1.3063
Monterey, CA		
7160 [1] Salt Lake City-Ogden, UT	1.0035	1.0024
Davis, UT		
Salt Lake, UT		
Weber, UT		
7200 San Angelo, TX	0.7956	0.8551
Tom Green, TX		
7240 [1] San Antonio, TX	0.8649	0.9054
Bexar, TX		
Comal, TX		
Guadalupe, TX		
Wilson, TX		
7320 [1] San Diego, CA	1.1247	1.0838
San Diego, CA		
7360 [1] San Francisco, CA	1.4288	1.2768
Marin, CA		
San Francisco, CA		
San Mateo, CA		
7400 [1] San Jose, CA	1.4162	1.2691

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Santa Clara, CA		
7440 [1] San Juan-Bayamon, PR	0.4706	0.5968
Aguas Buenas, PR		
Barceloneta, PR		
Bayamon, PR		
Canovanas, PR		
Carolina, PR		
Catano, PR		
Ceiba, PR		
Comerio, PR		
Corozal, PR		
Dorado, PR		
Fajardo, PR		
Florida, PR		
Guaynabo, PR		
Humacao, PR		
Juncos, PR		
Los Piedras, PR		
Loiza, PR		
Luguillo, PR		
Manati, PR		
Morovis, PR		
Naguabo, PR		
Naranjito, PR		
Rio Grande, PR		
San Juan, PR		
Toa Alta, PR		
Toa Baja, PR		
Trujillo Alto, PR		
Vega Alta, PR		
Vega Baja, PR		
Yabucoa, PR		
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1386	1.0930
San Luis Obispo, CA		
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0588	1.0399
Santa Barbara, CA		
7485 Santa Cruz-Watsonville, CA	1.3630	1.2362
Santa Cruz, CA		
7490 Santa Fe, NM	1.0822	1.0556
Los Alamos, NM		
Santa Fe, NM		
7500 Santa Rosa, CA	1.3179	1.2081
Sonoma, CA		
7510 Sarasota-Bradenton, FL	0.9367	0.9562
Manatee, FL		
Sarasota, FL		
7520 Savannah, GA	0.9961	0.9973
Bryan, GA		
Chatham, GA		
Effingham, GA		
7560 [2] Scranton--Wilkes-Barre--Hazleton, PA	0.8525	0.8965
Columbia, PA		
Lackawanna, PA		
Luzerne, PA		
Wyoming, PA		
7600 [1] Seattle-Bellevue-Everett, WA	1.1571	1.1051
Island, WA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
King, WA		
Snohomish, WA		
7610 [2] Sharon, PA	0.8525	0.8965
Mercer, PA		
7620 [2] Sheboygan, WI	0.9229	0.9465
Sheboygan, WI		
7640 Sherman-Denison, TX	0.9334	0.9539
Grayson, TX		
7680 Shreveport-Bossier City, LA	0.8813	0.9171
Bossier, LA		
Caddo, LA		
Webster, LA		
7720 Sioux City, IA-NE	0.9138	0.9401
Woodbury, IA		
Dakota, NE		
7760 Sioux Falls, SD	0.9098	0.9373
Lincoln, SD		
Minnehaha, SD		
7800 South Bend, IN	0.9902	0.9933
St. Joseph, IN		
7840 Spokane, WA	1.0961	1.0649
Spokane, WA		
7880 Springfield, IL	0.8654	0.9057
Menard, IL		
Sangamon, IL		
7920 Springfield, MO	0.8510	0.8954
Christian, MO		
Greene, MO		
Webster, MO		
8003 [2] Springfield, MA	1.1257	1.0845
Hampden, MA		
Hampshire, MA		
8050 State College, PA	0.9032	0.9327
Centre, PA		
8080 Steubenville-Weirton, OH-WV	0.8893	0.9228
Jefferson, OH		
Brooke, WV		
Hancock, WV		
8120 Stockton-Lodi, CA	1.0630	1.0427
San Joaquin, CA		
8140 [2] Sumter, SC	0.8607	0.9024
Sumter, SC		
8160 Syracuse, NY	0.9519	0.9668
Cayuga, NY		
Madison, NY		
Onondaga, NY		
Oswego, NY		
8200 Tacoma, WA	1.1052	1.0709
Pierce, WA		
8240 [2] Tallahassee, FL	0.8907	0.9238
Gadsden, FL		
Leon, FL		
8280 [1] Tampa-St. Petersburg-Clearwater, FL	0.9238	0.9472
Hernando, FL		
Hillsborough, FL		
Pasco, FL		
Pinellas, FL		
8320 [2] Terre Haute, IN	0.8796	0.9159

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Clay, IN		
Vermillion, IN		
Vigo, IN		
8360 Texarkana,AR-Texarkana, TX	0.8193	0.8724
Miller, AR		
Bowie, TX		
8400 Toledo, OH	0.9863	0.9906
Fulton, OH		
Lucas, OH		
Wood, OH		
8440 Topeka, KS	0.8952	0.9270
Shawnee, KS		
8480 Trenton, NJ	1.0710	1.0481
Mercer, NJ		
8520 Tucson, AZ	0.8993	0.9299
Pima, AZ		
8560 Tulsa, OK	0.8398	0.8873
Creek, OK		
Osage, OK		
Rogers, OK		
Tulsa, OK		
Wagoner, OK		
8600 Tuscaloosa, AL	0.8303	0.8804
Tuscaloosa, AL		
8640 Tyler, TX	0.9650	0.9759
Smith, TX		
8680 [2] Utica-Rome, NY	0.8633	0.9042
Herkimer, NY		
Oneida, NY		
8720 Vallejo-Fairfield-Napa, CA	1.3544	1.2309
Napa, CA		
Solano, CA		
8735 Ventura, CA	1.1209	1.0813
Ventura, CA		
8750 Victoria, TX	0.8814	0.9172
Victoria, TX		
8760 Vineland-Millville-Bridgeton, NJ	1.0296	1.0202
Cumberland, NJ		
8780 [2] Visalia-Tulare-Porterville, CA	0.9934	0.9955
Tulare, CA		
8800 Waco, TX	0.8802	0.9163
McLennan, TX		
8840 [1] Washington, DC-MD-VA-WV	1.0852	1.0576
District of Columbia, DC		
Calvert, MD		
Charles, MD		
Frederick, MD		
Montgomery, MD		
Prince Georges, MD		
Alexandria City, VA		
Arlington, VA		
Clarke, VA		
Culpeper, VA		
Fairfax, VA		
Fairfax City, VA		
Falls Church City, VA		
Fauquier, VA		
Fredericksburg City, VA		
King George, VA		

TABLE 4A.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index	GAF
Loudoun, VA		
Manassas City, VA		
Manassas Park City, VA		
Prince William, VA		
Spotsylvania, VA		
Stafford, VA		
Warren, VA		
Berkeley, WV		
Jefferson, WV		
8920 Waterloo-Cedar Falls, IA	0.8970	0.9283
Black Hawk, IA		
8940 Wausau, WI	0.9882	0.9919
Marathon, WI		
8960 [1] West Palm Beach-Boca Raton, FL	0.9929	0.9951
Palm Beach, FL		
9000 [2] Wheeling, WV-OH (WV Hospitals)	0.8053	0.8622
Belmont, OH		
Marshall, WV		
Ohio, WV		
9000 [2] Wheeling, WV-OH (OH Hospitals)	0.8675	0.9072
Belmont, OH		
Marshall, WV		
Ohio, WV		
9040 Wichita, KS	0.9571	0.9704
Butler, KS		
Harvey, KS		
Sedgwick, KS		
9080 Wichita Falls, TX	0.8023	0.8600
Archer, TX		
Wichita, TX		
9140 Williamsport, PA	0.8624	0.9036
Lycoming, PA		
9160 Wilmington-Newark, DE-MD	1.1287	1.0864
New Castle, DE		
Cecil, MD		
9200 Wilmington, NC	0.9471	0.9635
New Hanover, NC		
Brunswick, NC		
9260 Yakima, WA	1.0676	1.0458
Yakima, WA		
9270 [2] Yolo, CA	0.9934	0.9955
Yolo, CA		
9280 York, PA	0.9140	0.9403
York, PA		
9320 Youngstown-Warren, OH	0.9485	0.9644
Columbiana, OH		
Mahoning, OH		
Trumbull, OH		
9340 Yuba City, CA	1.0310	1.0211
Sutter, CA		
Yuba, CA		
9360 Yuma, AZ	0.8677	0.9074
Yuma, AZ		

[1] Large Urban Area

[2] Hospitals geographically located in the area are assigned the statewide rural wage index for FY 2003.

TABLE 4B.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR RURAL AREAS

Nonurban area	Wage index	GAF
Alabama	0.7853	0.8475
Alaska	1.2323	1.1538
Arizona	0.8483	0.8935
Arkansas	0.7670	0.8339
California	0.9934	0.9988
Colorado	0.9104	0.9377
Connecticut	1.2520	1.1664
Delaware	0.9126	0.9393
Florida	0.8907	0.9238
Georgia	0.8254	0.8769
Hawaii	1.0342	1.0233
Idaho	0.8799	0.9161
Illinois	0.8301	0.8803
Indiana	0.8796	0.9159
Iowa	0.8395	0.8871
Kansas	0.7964	0.8556
Kentucky	0.8079	0.8641
Louisiana	0.7719	0.8375
Maine	0.8754	0.9129
Maryland	0.8855	0.9201
Massachusetts	1.1257	1.0845
Michigan	0.8961	0.9276
Minnesota	0.9249	0.9479
Mississippi	0.7759	0.8405
Missouri	0.8099	0.8656
Montana	0.8567	0.8995
Nebraska	0.8283	0.8790
Nevada	0.9519	0.9668
New Hampshire	0.9882	0.9919
New Jersey [1]		
New Mexico	0.8645	0.9051
New York	0.8633	0.9042
North Carolina	0.8714	0.9100
North Dakota	0.7830	0.8458
Ohio	0.8675	0.9072
Oklahoma	0.7664	0.8334
Oregon	1.0408	1.0278
Pennsylvania	0.8525	0.8965
Puerto Rico	0.4400	0.5699
Rhode Island [1]		
South Carolina	0.8607	0.9024
South Dakota	0.7895	0.8506
Tennessee	0.7873	0.8489
Texas	0.7759	0.8405
Utah	0.9426	0.9603
Vermont	0.9402	0.9587
Virginia	0.8494	0.8942
Washington	1.0274	1.0187
West Virginia	0.8053	0.8622
Wisconsin	0.9229	0.9465
Wyoming	0.8890	0.9226

[1] All counties within the State are classified as urban.

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED

Area	Wage index	GAF
Abilene, TX	0.8534	0.8971
Akron, OH	0.9685	0.9783
Albany, GA	1.0658	1.0446
Albuquerque, NM	0.9372	0.9566
Alexandria, LA	0.7929	0.8531

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TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Allentown-Bethlehem-Easton, PA	0.9833	0.9885
Altoona, PA	0.9300	0.9515
Amarillo, TX	0.8900	0.9233
Anchorage, AK	1.2610	1.1721
Ann Arbor, MI	1.1217	1.0818
Anniston, AL	0.7983	0.8570
Asheville, NC	0.9448	0.9619
Athens, GA	1.0161	1.0110
Atlanta, GA	0.9985	0.9990
Augusta-Aiken, GA-SC	0.9981	0.9987
Austin-San Marcos, TX	0.9529	0.9675
Barnstable-Yarmouth, MA	1.2894	1.1901
Baton Rouge, LA	0.8281	0.8788
Bellingham, WA	1.2139	1.1420
Benton Harbor, MI	0.9072	0.9355
Bergen-Passaic, NJ	1.2100	1.1394
Billings, MT	0.9114	0.9384
Biloxi-Gulfport-Pascagoula, MS	0.8417	0.8887
Binghamton, NY	0.8525	0.8965
Birmingham, AL	0.9301	0.9516
Bismarck, ND	0.7881	0.8495
Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH	1.1304	1.0876
Burlington, VT	0.9667	0.9771
Caguas, PR	0.4453	0.5746
Casper, WY	0.9655	0.9762
Champaign-Urbana, IL	0.9334	0.9539
Charleston-North Charleston, SC	0.8607	0.9024
Charleston, WV	0.8602	0.9020
Charlotte-Gastonia-Rock Hill, NC-SC	0.9839	0.9889
Charlottesville, VA	1.0252	1.0172
Chattanooga, TN-GA	0.8878	0.9217
Chicago, IL	1.0953	1.0643
Cincinnati, OH-KY-IN	0.9354	0.9553
Clarksville-Hopkinsville, TN-KY	0.8239	0.8758
Cleveland-Lorain-Elyria, OH	0.9295	0.9512
Columbia, MO	0.8737	0.9117
Columbia, SC	0.8990	0.9297
Columbus, GA-AL (GA Hospitals)	0.8254	0.8769
Columbus, GA-AL (AL Hospitals)	0.8041	0.8613
Columbus, OH	0.9521	0.9669
Corpus Christi, TX	0.8154	0.8696
Dallas, TX	0.9831	0.9884
Danville, VA	0.8530	0.8968
Davenport-Moline-Rock Island, IA-IL	0.8872	0.9213
Dayton-Springfield, OH	0.9378	0.9570
Denver, CO	1.0401	1.0273
Des Moines, IA	0.8908	0.9239
Detroit, MI	1.0506	1.0344
Dothan, AL	0.8028	0.8603
Dover, DE	0.9274	0.9497
Duluth-Superior, MN-WI	1.0462	1.0314
Eau Claire, WI	0.9229	0.9465
Elkhart-Goshen, IN	0.9484	0.9643
Erie, PA	0.8850	0.9197
Eugene-Springfield, OR	1.1077	1.0726
Fargo-Moorhead, ND-MN	0.9564	0.9699
Fayetteville, NC	0.9055	0.9343
Flagstaff, AZ-UT	1.0234	1.0160
Flint, MI	1.1041	1.0702
Florence, AL	0.7960	0.8554
Florence, SC	0.8869	0.9211
Fort Collins-Loveland, CO	0.9923	0.9947
Ft. Lauderdale, FL	1.0792	1.0536
Fort Pierce-Port St. Lucie, FL	0.9959	0.9972
Fort Smith, AR-OK	0.7681	0.8347
Fort Walton Beach, FL	0.9365	0.9561
Forth Worth-Arlington, TX	0.9620	0.9738
Gadsden, AL	0.8684	0.9079
Grand Forks, ND-MN	0.9338	0.9542
Grand Junction, CO	0.9824	0.9879
Grand Rapids-Muskegon-Holland, MI	0.9664	0.9769
Great Falls, MT	0.9057	0.9344
Greeley, CO	0.9219	0.9458
Green Bay, WI	0.9347	0.9548
Greensboro-Winston-Salem-High Point, NC	0.9131	0.9396
Greenville, NC	0.9257	0.9485
Harrisburg-Lebanon-Carlisle, PA	0.9315	0.9526
Hartford, CT	1.1550	1.1037
Hattiesburg, MS	0.7759	0.8405
Hickory-Morganton-Lenoir, NC	0.8958	0.9274
Houston, TX	0.9746	0.9825
Huntington-Ashland, WV-KY-OH	0.9251	0.9481
Huntsville, AL	0.8901	0.9234
Indianapolis, IN	0.9828	0.9882
Iowa City, IA	0.9828	0.9882
Jackson, MS	0.8587	0.9009
Jackson, TN	0.9032	0.9327
Jacksonville, FL	0.9225	0.9463
Johnson City-Kingsport-Bristol, TN-VA (VA Hospitals)	0.8494	0.8942
Johnson City-Kingsport-Bristol, TN-VA (KY Hospitals)	0.8384	0.8863
Jonesboro, AR (AR Hospitals)	0.7906	0.8514
Jonesboro, AR (MO Hospitals)	0.8099	0.8656
Joplin, MO	0.8700	0.9090
Kalamazoo-Battlecreek, MI	1.0490	1.0333
Kansas City, KS-MO	0.9809	0.9869
Knoxville, TN	0.9090	0.9368
Kokomo, IN	0.9031	0.9326
Lafayette, LA	0.8392	0.8869
Lakeland-Winter Haven, FL	0.9170	0.9424
Las Vegas, NV-AZ	1.1018	1.0686
Lawton, OK	0.8073	0.8636
Lexington, KY	0.8629	0.9040
Lima, OH	0.9515	0.9665
Lincoln, NE	0.9133	0.9398
Little Rock-North Little Rock, AR	0.8926	0.9251
Longview-Marshall, TX	0.8588	0.9010
Los Angeles-Long Beach, CA	1.2044	1.1358
Louisville, KY-IN	0.9382	0.9573
Lubbock, TX	0.7809	0.8442
Lynchburg, VA	0.9114	0.9384
Macon, GA	0.9296	0.9512
Madison, WI	1.0188	1.0128
Mansfield, OH	0.8989	0.9296
Medford-Ashland, OR	1.0408	1.0278
Memphis, TN-AR-MS	0.8667	0.9067
Miami, FL	0.9878	0.9916
Milwaukee-Waukesha, WI	0.9901	0.9932
Minneapolis-St. Paul, MN-WI	1.0969	1.0654
Missoula, MT	0.9139	0.9402
Mobile, AL	0.8181	0.8715
Modesto, CA	1.0606	1.0411
Monmouth-Ocean, NJ	1.1290	1.0866
Monroe, LA	0.8191	0.8723
Montgomery, AL	0.7853	0.8475
Nashville, TN	0.9283	0.9503
New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT	1.2520	1.1664
New London-Norwich, CT	1.1683	1.1124
New Orleans, LA	0.9050	0.9339
New York, NY	1.3936	1.2552
Newark, NJ	1.1546	1.1035
Newburgh, NY-PA	1.0820	1.0555
Norfolk-Virginia Beach-Newport News, VA-NC	0.8714	0.9100
Oakland, CA	1.5324	1.3395
Ocala, FL	0.9343	0.9545
Odessa-Midland, TX	0.8910	0.9240
Oklahoma City, OK	0.8997	0.9302
Omaha, NE-IA	1.0089	1.0061
Orange County, CA	1.1726	1.1152
Orlando, FL	0.9537	0.9681
Peoria-Pekin, IL	0.8854	0.9200
Philadelphia, PA-NJ	1.0675	1.0457
Phoenix-Mesa, AZ	0.9562	0.9698
Pine Bluff, AR	0.7760	0.8406
Pittsburgh, PA	0.9268	0.9493
Pittsfield, MA	0.9869	0.9910
Pocatello, ID	0.9013	0.9313
Portland, ME	0.9698	0.9792
Portland-Vancouver, OR-WA	1.0792	1.0536
Provo-Orem, UT	1.0088	1.0060
Raleigh-Durham-Chapel Hill, NC	0.9978	0.9985
Rapid City, SD	0.8936	0.9259
Reading, PA	0.9126	0.9393
Redding, CA	1.1249	1.0839
Reno, NV	1.0445	1.0303
Richland-Kennewick-Pasco, WA	1.1209	1.0813
Richmond-Petersburg, VA	0.9735	0.9818

TABLE 4C.—WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF) FOR HOSPITALS THAT ARE RECLASSIFIED—Continued

Area	Wage index	GAF
Roanoke, VA	0.8703	0.9093
Rochester, MN	1.2263	1.1499
Rockford, IL	0.9456	0.9624
Sacramento, CA	1.1636	1.1093
Saginaw-Bay City-Midland, MI	0.9709	0.9800
St. Cloud, MN	0.9858	0.9903
St. Joseph, MO	0.8300	0.8802
St. Louis, MO-IL	0.8907	0.9238
Salinas, CA	1.4772	1.3063
Salt Lake City-Ogden, UT	1.0035	1.0024
San Antonio, TX	0.8649	0.9054
San Diego, CA	1.1247	1.0838
Santa Fe, NM	0.9927	0.9950
Santa Rosa, CA	1.2891	1.1899
Sarasota-Bradenton, FL	0.9367	0.9562
Savannah, GA	0.9841	0.9891
Seattle-Bellevue-Everett, WA	1.1571	1.1051
Sherman-Denison, TX	0.9090	0.9368
Shreveport-Bossier City, LA	0.8813	0.9171
Sioux City, IA-NE	0.8736	0.9116
Sioux Falls, SD	0.8950	0.9268
South Bend, IN	0.9902	0.9933
Spokane, WA	1.0770	1.0521
Springfield, IL	0.8654	0.9057
Springfield, MO	0.8236	0.8756
Stockton-Lodi, CA	1.0630	1.0427
Syracuse, NY	0.9519	0.9668
Tampa-St. Petersburg-Clearwater, FL	0.9238	0.9472
Texarkana, AR-Texarkana, TX	0.8193	0.8724
Toledo, OH	0.9863	0.9906
Topeka, KS	0.8840	0.9190
Tucson, AZ	0.8993	0.9299
Tulsa, OK	0.8398	0.8873
Tuscaloosa, AL	0.8303	0.8804
Tyler, TX	0.9249	0.9479
Vallejo-Fairfield-Napa, CA	1.3544	1.2309
Victoria, TX	0.8668	0.9067
Waco, TX	0.8671	0.9070
Washington, DC-MD-VA-WV	1.0852	1.0576
Waterloo-Cedar Falls, IA	0.8970	0.9283
Wausau, WI	0.9710	0.9800
West Palm Beach-Boca Raton, FL	0.9929	0.9951
Wichita, KS	0.9235	0.9470
Wichita Falls, TX	0.7918	0.8523
Wilmington-Newark, DE-MD	1.0973	1.0657
Wilmington, NC	0.9336	0.9540
York, PA	0.9140	0.9403
Youngstown-Warren, OH	0.9485	0.9644
Rural Alabama	0.7853	0.8475
Rural Florida	0.8907	0.9238
Rural Illinois (IA Hospitals)	0.8395	0.8871
Rural Illinois (MO Hospitals)	0.8301	0.8803
Rural Kentucky	0.8079	0.8641
Rural Louisiana	0.7719	0.8375
Rural Massachusetts	1.0417	1.0284
Rural Michigan	0.8961	0.9276
Rural Minnesota	0.9249	0.9479
Rural Mississippi	0.7759	0.8405
Rural Missouri	0.8099	0.8656
Rural Montana	0.8567	0.8995
Rural Nebraska	0.8283	0.8790
Rural Nevada	0.9097	0.9372
Rural Texas	0.7759	0.8405
Rural Washington	1.0274	1.0187
Rural Wyoming	0.8890	0.9226

TABLE 4F.—PUERTO RICO WAGE INDEX AND CAPITAL GEOGRAPHIC ADJUSTMENT FACTOR (GAF)

Area	Wage index	GAF	Wage index—reclass. hospitals	GAF—reclass. hospitals
Aguadilla, PR	0.9781	0.9850		
[1] Arecibo, PR	0.9289	0.9507		
Caguas, PR	0.9400	0.9585	0.9400	0.9585
Mayaguez, PR	1.0388	1.0264		
Ponce, PR	1.1021	1.0688		
San Juan-Bayamon, PR	0.9935	0.9955		
Rural Puerto Rico	0.9289	0.9507		

[1] Hospitals geographically located in the area are assigned the Rural Puerto Rico wage index for FY 2003.

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS

Urban area (constituent counties)	Wage index
0040 Abilene, TX	0.9268
Taylor, TX	
0060 Aguadilla, PR	0.4634
Aguada, PR	
Aguadilla, PR	
Moca, PR	
0080 Akron, OH	0.9685
Portage, OH	
Summit, OH	
0120 Albany, GA	1.0835
Dougherty, GA	
Lee, GA	
0160 Albany-Schenectady-Troy, NY	0.8633
Albany, NY	
Montgomery, NY	
Rensselaer, NY	
Saratoga, NY	
Schenectady, NY	
Schoharie, NY	
0200 Albuquerque, NM	0.9279
Bernalillo, NM	
Sandoval, NM	
Valencia, NM	
0220 Alexandria, LA	0.7903
Rapides, LA	
0240 Allentown-Bethlehem-Easton, PA	0.9833
Carbon, PA	
Lehigh, PA	
Northampton, PA	
0280 Altoona, PA	0.9300
Blair, PA	
0320 Amarillo, TX	0.9051
Potter, TX	
Randall, TX	
0380 Anchorage, AK	1.2477
Anchorage, AK	
0440 Ann Arbor, MI	1.1217
Lenawee, MI	
Livingston, MI	
Washtenaw, MI	
0450 Anniston, AL	0.8126
Calhoun, AL	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
0460 Appleton-Oshkosh-Neenah, WI	0.9229
Calumet, WI	
Outagamie, WI	
Winnebago, WI	
0470 Arecibo, PR	0.4400
Arecibo, PR	
Camuy, PR	
Hatillo, PR	
0480 Asheville, NC	0.9682
Buncombe, NC	
Madison, NC	
0500 Athens, GA	1.0308
Clarke, GA	
Madison, GA	
Oconee, GA	
0520 Atlanta, GA	1.0091
Barrow, GA	
Bartow, GA	
Carroll, GA	
Cherokee, GA	
Clayton, GA	
Cobb, GA	
Coweta, GA	
DeKalb, GA	
Douglas, GA	
Fayette, GA	
Forsyth, GA	
Fulton, GA	
Gwinnett, GA	
Henry, GA	
Newton, GA	
Paulding, GA	
Pickens, GA	
Rockdale, GA	
Spalding, GA	
Walton, GA	
0560 Atlantic-Cape May, NJ	1.1058
Atlantic, NJ	
Cape May, NJ	
0580 Auburn-Opelika, AL	0.8306
Lee, AL	
0600 Augusta-Aiken, GA-SC	1.0364
Columbia, GA	
McDuffie, GA	
Richmond, GA	
Aiken, SC	
Edgefield, SC	
0640 Austin-San Marcos, TX	0.9529
Bastrop, TX	
Caldwell, TX	
Hays, TX	
Travis, TX	
Williamson, TX	
0680 Bakersfield, CA	1.0186
Kern, CA	
0720 Baltimore, MD	0.9757
Anne Arundel, MD	
Baltimore, MD	
Baltimore City, MD	
Carroll, MD	
Harford, MD	
Howard, MD	
Queen Anne's, MD	
0733 Bangor, ME	0.9791
Penobscot, ME	
0743 Barnstable-Yarmouth, MA	1.3127
Barnstable, MA	
0760 Baton Rouge, LA	0.8388
Ascension, LA	
East Baton Rouge, LA	
Livingston, LA	
West Baton Rouge, LA	
0840 Beaumont-Port Arthur, TX	0.8389
Hardin, TX	
Jefferson, TX	
Orange, TX	
0860 Bellingham, WA	1.2407
Whatcom, WA	
0870 Benton Harbor, MI	0.8992
Berrien, MI	
0875 Bergen-Passaic, NJ	1.2100
Bergen, NJ	
Passaic, NJ	
0880 Billings, MT	0.9114
Yellowstone, MT	
0920 Biloxi-Gulfport-Pascagoula, MS	0.8830
Hancock, MS	
Harrison, MS	
Jackson, MS	
0960 Binghamton, NY	0.8633
Broome, NY	
Tioga, NY	
1000 Birmingham, AL	0.9301
Blount, AL	
Jefferson, AL	
St. Clair, AL	
Shelby, AL	
1010 Bismarck, ND	0.7848
Burleigh, ND	
Morton, ND	
1020 Bloomington, IN	0.8997
Monroe, IN	
1040 Bloomington-Normal, IL	0.9202
McLean, IL	
1080 Boise City, ID	0.9403
Ada, ID	
Canyon, ID	
1123 Boston-Worcester-Lawrence-Lowell-Brockton, MA-NH (NH Hospitals)	1.1304
Bristol, MA	
Essex, MA	
Middlesex, MA	
Norfolk, MA	
Plymouth, MA	
Suffolk, MA	
Worcester, MA	
Hillsborough, NH	
Merrimack, NH	
Rockingham, NH	
Strafford, NH	
1125 Boulder-Longmont, CO	0.9688
Boulder, CO	
1145 Brazoria, TX	0.8617
Brazoria, TX	
1150 Bremerton, WA	1.1056
Kitsap, WA	
1240 Brownsville-Harlingen-San Benito, TX	0.8992
Cameron, TX	
1260 Bryan-College Station, TX	0.8410
Brazos, TX	
1280 Buffalo-Niagara Falls, NY	0.9464
Erie, NY	
Niagara, NY	
1303 Burlington, VT	1.0176
Chittenden, VT	
Franklin, VT	
Grand Isle, VT	
1310 Caguas, PR	0.4415
Caguas, PR	
Cayey, PR	
Cidra, PR	
Gurabo, PR	
San Lorenzo, PR	
1320 Canton-Massillon, OH	0.9026
Carroll, OH	
Stark, OH	
1350 Casper, WY	0.9788
Natrona, WY	
1360 Cedar Rapids, IA	0.9149
Linn, IA	
1400 Champaign-Urbana, IL	0.9983
Champaign, IL	
1440 Charleston-North Charleston, SC	0.8607
Berkeley, SC	
Charleston, SC	
Dorchester, SC	
1480 Charleston, WV	0.8765
Kanawha, WV	
Putnam, WV	
1520 Charlotte-Gastonia-Rock Hill, NC-SC	0.9839
Cabarrus, NC	
Gaston, NC	
Lincoln, NC	
Mecklenburg, NC	
Rowan, NC	
Stanly, NC	
Union, NC	
York, SC	
1540 Charlottesville, VA	1.0583
Albemarle, VA	
Charlottesville City, VA	
Fluvanna, VA	
Greene, VA	
1560 Chattanooga, TN-GA	0.9069
Catoosa, GA	
Dade, GA	
Walker, GA	
Hamilton, TN	
Marion, TN	
1580 Cheyenne, WY	0.8890
Laramie, WY	
1600 Chicago, IL	1.1088
Cook, IL	
DeKalb, IL	
DuPage, IL	
Grundy, IL	
Kane, IL	
Kendall, IL	
Lake, IL	
McHenry, IL	
Will, IL	
1620 Chico-Paradise, CA	0.9934
Butte, CA	
1640 Cincinnati, OH-KY-IN	0.9323
Dearborn, IN	
Ohio, IN	
Boone, KY	
Campbell, KY	
Gallatin, KY	
Grant, KY	
Kenton, KY	
Pendleton, KY	
Brown, OH	
Clermont, OH	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Hamilton, OH	
Warren, OH	
1660 Clarksville-Hopkinsville, TN-KY	0.8386
Christian, KY	
Montgomery, TN	
1680 Cleveland-Lorain-Elyria, OH	0.9295
Ashtabula, OH	
Cuyahoga, OH	
Geauga, OH	
Lake, OH	
Lorain, OH	
Medina, OH	
1720 Colorado Springs, CO	0.9968
El Paso, CO	
1740 Columbia, MO	0.8737
Boone, MO	
1760 Columbia, SC	0.8990
Lexington, SC	
Richland, SC	
1800 Columbus, GA-AL	0.8450
Russell, AL	
Chattahoochee, GA	
Harris, GA	
Muscogee, GA	
1840 Columbus, OH	0.9705
Delaware, OH	
Fairfield, OH	
Franklin, OH	
Licking, OH	
Madison, OH	
Pickaway, OH	
1880 Corpus Christi, TX	0.8154
Nueces, TX	
San Patricio, TX	
1890 Corvallis, OR	1.1569
Benton, OR	
1900 Cumberland, MD-WV (WV Hospital)	0.8053
Allegany, MD	
Mineral, WV	
1920 Dallas, TX	0.9831
Collin, TX	
Dallas, TX	
Denton, TX	
Ellis, TX	
Henderson, TX	
Hunt, TX	
Kaufman, TX	
Rockwall, TX	
1950 Danville, VA	0.8785
Danville City, VA	
Pittsylvania, VA	
1960 Davenport-Moline-Rock Island, IA-IL	0.8872
Scott, IA	
Henry, IL	
Rock Island, IL	
2000 Dayton-Springfield, OH	0.9378
Clark, OH	
Greene, OH	
Miami, OH	
Montgomery, OH	
2020 Daytona Beach, FL	0.9133
Flagler, FL	
Volusia, FL	
2030 Decatur, AL	0.9066
Lawrence, AL	
Morgan, AL	
2040 Decatur, IL	0.8301
Macon, IL	
2080 Denver, CO	1.0401
Adams, CO	
Arapahoe, CO	
Denver, CO	
Douglas, CO	
Jefferson, CO	
2120 Des Moines, IA	0.8867
Dallas, IA	
Polk, IA	
Warren, IA	
2160 Detroit, MI	1.0506
Lapeer, MI	
Macomb, MI	
Monroe, MI	
Oakland, MI	
St. Clair, MI	
Wayne, MI	
2180 Dothan, AL	0.7990
Dale, AL	
Houston, AL	
2190 Dover, DE	0.9452
Kent, DE	
2200 Dubuque, IA	0.8801
Dubuque, IA	
2240 Duluth-Superior, MN-WI	1.0462
St. Louis, MN	
Douglas, WI	
2281 Dutchess County, NY	1.0793
Dutchess, NY	
2290 Eau Claire, WI	0.9229
Chippewa, WI	
Eau Claire, WI	
2320 El Paso, TX	0.9137
El Paso, TX	
2330 Elkhart-Goshen, IN	0.9851
Elkhart, IN	
2335 Elmira, NY	0.8633
Chemung, NY	
2340 Enid, OK	0.8387
Garfield, OK	
2360 Erie, PA	0.9016
Erie, PA	
2400 Eugene-Springfield, OR	1.1077
Lane, OR	
2440 Evansville-Henderson, IN-KY (IN Hospitals)	0.8796
Posey, IN	
Vanderburgh, IN	
Warrick, IN	
Henderson, KY	
2520 Fargo-Moorhead, ND-MN	0.9783
Clay, MN	
Cass, ND	
2560 Fayetteville, NC	0.8980
Cumberland, NC	
2580 Fayetteville-Springdale-Rogers, AR	0.8182
Benton, AR	
Washington, AR	
2620 Flagstaff, AZ-UT	1.0791
Coconino, AZ	
Kane, UT	
2640 Flint, MI	1.1233
Genesee, MI	
2650 Florence, AL	0.7927
Colbert, AL	
Lauderdale, AL	
2655 Florence, SC	0.8869
Florence, SC	
2670 Fort Collins-Loveland, CO	0.9923
Larimer, CO	
2680 Ft. Lauderdale, FL	1.0368
Broward, FL	
2700 Fort Myers-Cape Coral, FL	0.9456
Lee, FL	
2710 Fort Pierce-Port St. Lucie, FL	0.9802
Martin, FL	
St. Lucie, FL	
2720 Fort Smith, AR-OK	0.7811
Crawford, AR	
Sebastian, AR	
Sequoyah, OK	
2750 Fort Walton Beach, FL	0.9651
Okaloosa, FL	
2760 Fort Wayne, IN	0.9499
Adams, IN	
Allen, IN	
De Kalb, IN	
Huntington, IN	
Wells, IN	
Whitley, IN	
2800 Forth Worth-Arlington, TX	0.9620
Hood, TX	
Johnson, TX	
Parker, TX	
Tarrant, TX	
2840 Fresno, CA	1.0340
Fresno, CA	
Madera, CA	
2880 Gadsden, AL	0.8580
Etowah, AL	
2900 Gainesville, FL	0.9730
Alachua, FL	
2920 Galveston-Texas City, TX	0.9603
Galveston, TX	
2960 Gary, IN	0.9676
Lake, IN	
Porter, IN	
2975 Glens Falls, NY	0.8633
Warren, NY	
Washington, NY	
2980 Goldsboro, NC	0.8982
Wayne, NC	
2985 Grand Forks, ND-MN	0.8988
Polk, MN	
Grand Forks, ND	
2995 Grand Junction, CO	0.9615
Mesa, CO	
3000 Grand Rapids-Muskegon-Holland, MI	0.9645
Allegan, MI	
Kent, MI	
Muskegon, MI	
Ottawa, MI	
3040 Great Falls, MT	0.9042
Cascade, MT	
3060 Greeley, CO	0.9104
Weld, CO	
3080 Green Bay, WI	0.9599
Brown, WI	
3120 Greensboro-Winston-Salem-High Point, NC	0.9270
Alamance, NC	
Davidson, NC	
Davie, NC	
Forsyth, NC	
Guilford, NC	
Randolph, NC	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Stokes, NC Yadkin, NC	
3150 Greenville, NC Pitt, NC	0.9177
3160 Greenville-Spartanburg-Anderson, SC Anderson, SC Cherokee, SC Greenville, SC Pickens, SC Spartanburg, SC	0.9177
3180 Hagerstown, MD Washington, MD	0.9362
3200 Hamilton-Middletown, OH Butler, OH	0.9484
3240 Harrisburg-Lebanon-Carlisle, PA Cumberland, PA Dauphin, PA Lebanon, PA Perry, PA	0.9315
3283 Hartford, CT Hartford, CT Litchfield, CT Middlesex, CT Tolland, CT	1.2520
3285 [2] Hattiesburg, MS Forrest, MS Lamar, MS	0.7746
3290 Hickory-Morganton-Lenoir, NC Alexander, NC Burke, NC Caldwell, NC Catawba, NC	0.8958
3320 Honolulu, HI Honolulu, HI	1.1121
3350 Houma, LA Lafourche, LA Terrebonne, LA	0.8470
3360 Houston, TX Chambers, TX Fort Bend, TX Harris, TX Liberty, TX Montgomery, TX Waller, TX	0.9746
3400 Huntington-Ashland, WV-KY-OH Boyd, KY Carter, KY Greenup, KY Lawrence, OH Cabell, WV Wayne, WV	0.9744
3440 Huntsville, AL Limestone, AL Madison, AL	0.8901
3480 Indianapolis, IN Boone, IN Hamilton, IN Hancock, IN Hendricks, IN Johnson, IN Madison, IN Marion, IN Morgan, IN Shelby, IN	0.9828
3500 Iowa City, IA Johnson, IA	1.0025
3520 Jackson, MI Jackson, MI	0.9591
3560 Jackson, MS Hinds, MS Madison, MS Rankin, MS	0.8713
3580 Jackson, TN Madison, TN Chester, TN	0.9370
3600 Jacksonville, FL Clay, FL Duval, FL Nassau, FL St. Johns, FL	0.9341
3605 Jacksonville, NC Onslow, NC	0.8714
3610 Jamestown, NY Chautauqua, NY	0.8633
3620 Janesville-Beloit, WI Rock, WI	0.9696
3640 Jersey City, NJ Hudson, NJ	1.1200
3660 Johnson City-Kingsport-Bristol, TN-VA Carter, TN Hawkins, TN Sullivan, TN Unicoi, TN Washington, TN Bristol City, VA Scott, VA Washington, VA	0.8307
3680 Johnstown, PA Cambria, PA Somerset, PA	0.8525
3700 Jonesboro, AR Craighead, AR	0.7828
3710 Joplin, MO Jasper, MO Newton, MO	0.8700
3720 Kalamazoo-Battlecreek, MI Calhoun, MI Kalamazoo, MI Van Buren, MI	1.0689
3740 Kankakee, IL Kankakee, IL	0.9591
3760 Kansas City, KS-MO Johnson, KS Leavenworth, KS Miami, KS Wyandotte, KS Cass, MO Clay, MO Clinton, MO Jackson, MO Lafayette, MO Platte, MO Ray, MO	0.9809
3800 Kenosha, WI Kenosha, WI	0.9741
3810 Killeen-Temple, TX Bell, TX Coryell, TX	0.8447
3840 Knoxville, TN Anderson, TN Blount, TN Knox, TN Loudon, TN Sevier, TN Union, TN	0.9090
3850 Kokomo, IN Howard, IN Tipton, IN	0.8950
3870 La Crosse, WI-MN Houston, MN La Crosse, WI	0.9229
3880 Lafayette, LA Acadia, LA Lafayette, LA St. Landry, LA St. Martin, LA	0.8550
3920 Lafayette, IN Clinton, IN Tippecanoe, IN	0.9515
3960 Lake Charles, LA Calcasieu, LA	0.8030
3980 Lakeland-Winter Haven, FL Polk, FL	0.9162
4000 Lancaster, PA Lancaster, PA	0.9171
4040 Lansing-East Lansing, MI Clinton, MI Eaton, MI Ingham, MI	0.9827
4080 Laredo, TX Webb, TX	0.8504
4100 Las Cruces, NM Dona Ana, NM	0.8888
4120 Las Vegas, NV-AZ Mohave, AZ Clark, NV Nye, NV	1.1018
4150 Lawrence, KS Douglas, KS	0.7964
4200 Lawton, OK Comanche, OK	0.8251
4243 Lewiston-Auburn, ME Androscoggin, ME	0.9249
4280 Lexington, KY Bourbon, KY Clark, KY Fayette, KY Jessamine, KY Madison, KY Scott, KY Woodford, KY	0.8629
4320 Lima, OH Allen, OH Auglaize, OH	0.9515
4360 Lincoln, NE Lancaster, NE	0.8928
4400 Little Rock-North Little Rock, AR Faulkner, AR Lonoke, AR Pulaski, AR Saline, AR	0.9045
4420 Longview-Marshall, TX Gregg, TX Harrison, TX Upshur, TX	0.8588
4480 Los Angeles-Long Beach, CA Los Angeles, CA	1.2027
4520 [1] Louisville, KY-IN Clark, IN Floyd, IN Harrison, IN Scott, IN Bullitt, KY	0.9517

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Jefferson, KY Oldham, KY	
4600 Lubbock, TX Lubbock, TX	0.7752
4640 Lynchburg, VA Amherst, VA Bedford, VA Bedford City, VA Campbell, VA Lynchburg City, VA	0.9311
4680 Macon, GA Bibb, GA Houston, GA Jones, GA Peach, GA Twiggs, GA	0.9259
4720 Madison, WI Dane, WI	1.0188
4800 Mansfield, OH Crawford, OH Richland, OH	0.8989
4840 Mayaguez, PR Anasco, PR Cabo Rojo, PR Hormigueros, PR Mayaguez, PR Sabana Grande, PR San German, PR	0.4921
4880 McAllen-Edinburg-Mission, TX Hidalgo, TX	0.8419
4890 Medford-Ashland, OR Jackson, OR	1.0605
4900 Melbourne-Titusville-Palm Bay, FL Brevard, FI	1.0782
4920 Memphis, TN-AR-MS Crittenden, AR DeSoto, MS Fayette, TN Shelby, TN Tipton, TN	0.8839
4940 Merced, CA Merced, CA	0.9937
5000 Miami, FL Dade, FL	0.9864
5015 Middlesex-Somerset-Hunterdon, NJ Hunterdon, NJ Middlesex, NJ Somerset, NJ	1.1454
5080 Milwaukee-Waukesha, WI Milwaukee, WI Ozaukee, WI Washington, WI Waukesha, WI	0.9901
5120 Minneapolis-St. Paul, MN-WI Anoka, MN Carver, MN Chisago, MN Dakota, MN Hennepin, MN Isanti, MN Ramsey, MN Scott, MN Sherburne, MN Washington, MN Wright, MN Pierce, WI	1.0969
St. Croix, WI	
5140 Missoula, MT Missoula, MT	0.9250
5160 Mobile, AL Baldwin, AL Mobile, AL	0.8179
5170 Modesto, CA Stanislaus, CA	1.0606
5190 Monmouth-Ocean, NJ Monmouth, NJ Ocean, NJ	1.1270
5200 Monroe, LA Ouachita, LA	0.8191
5240 Montgomery, AL Autauga, AL Elmore, AL Montgomery, AL	0.7786
5280 Muncie, IN Delaware, IN	0.9150
5330 Myrtle Beach, SC Horry, SC	0.9141
5345 Naples, FL Collier, FL	0.9803
5360 Nashville, TN Cheatham, TN Davidson, TN Dickson, TN Robertson, TN Rutherford TN Sumner, TN Williamson, TN Wilson, TN	0.9456
5380 Nassau-Suffolk, NY Nassau, NY Suffolk, NY	1.3441
5483 New Haven-Bridgeport-Stamford-Waterbury-Danbury, CT Fairfield, CT New Haven, CT	1.2520
5523 New London-Norwich, CT New London, CT	1.2520
5560 New Orleans, LA Jefferson, LA Orleans, LA Plaquemines, LA St. Bernard, LA St. Charles, LA St. James, LA St. John The Baptist, LA St. Tammany, LA	0.9050
5600 New York, NY Bronx, NY Kings, NY New York, NY Putnam, NY Queens, NY Richmond, NY Rockland, NY Westchester, NY	1.4069
5640 Newark, NJ Essex, NJ Morris, NJ Sussex, NJ Union, NJ Warren, NJ	1.1504
5660 Newburgh, NY-PA Orange, NY Pike, PA	1.1434
5720 Norfolk-Virginia Beach-Newport News, VA-NC Currituck, NC Chesapeake City, VA Gloucester, VA Hampton City, VA Isle of Wight, VA James City, VA Mathews, VA Newport News City, VA Norfolk City, VA Poquoson City, VA Portsmouth City, VA Suffolk City, VA Virginia Beach City VA Williamsburg City, VA York, VA	0.8553
5775 Oakland, CA Alameda, CA Contra Costa, CA	1.5222
5790 Ocala, FL Marion, FL	0.9526
5800 Odessa-Midland, TX Ector, TX Midland, TX	0.9233
5880 Oklahoma City, OK Canadian, OK Cleveland, OK Logan, OK McClain, OK Oklahoma, OK Pottawatomie, OK	0.8997
5910 Olympia, WA Thurston, WA	1.1071
5920 Omaha, NE-IA Pottawattamie, IA Cass, NE Douglas, NE Sarpy, NE Washington, NE	1.0089
5945 Orange County, CA Orange, CA	1.1604
5960 Orlando, FL Lake, FL Orange, FL Osceola, FL Seminole, FL	0.9537
5990 Owensboro, KY Daviess, KY	0.8283
6015 Panama City, FL Bay, FL	0.8926
6020 Parkersburg-Marietta, WV-OH Washington, OH Wood, WV	0.8210
6080 Pensacola, FL Escambia, FL Santa Rosa, FL	0.8907
6120 Peoria-Pekin, IL Peoria, IL Tazewell, IL Woodford, IL	0.8854
6160 Philadelphia, PA-NJ Burlington, NJ Camden, NJ Gloucester, NJ Salem, NJ Bucks, PA Chester, PA Delaware, PA	1.0675

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TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
Montgomery, PA	
Philadelphia, PA	
6200 Phoenix-Mesa, AZ	0.9562
Maricopa, AZ	
Pinal, AZ	
6240 Pine Bluff, AR	0.7866
Jefferson, AR	
6280 Pittsburgh, PA	0.9403
Allegheny, PA	
Beaver, PA	
Butler, PA	
Fayette, PA	
Washington, PA	
Westmoreland, PA	
6323 Pittsfield, MA	1.1257
Berkshire, MA	
6340 Pocatello, ID	0.8799
Bannock, ID	
6360 Ponce, PR	0.5221
Guayanilla, PR	
Juana Diaz, PR	
Penuelas, PR	
Ponce, PR	
Villalba, PR	
Yauco, PR	
6403 Portland, ME	0.9932
Cumberland, ME	
Sagadahoc, ME	
York, ME	
6440 Portland-Vancouver, OR-WA	1.0774
Clackamas, OR	
Columbia, OR	
Multnomah, OR	
Washington, OR	
Yamhill, OR	
Clark, WA	
6483 Providence-Warwick-Pawtucket, RI	1.0558
Bristol, RI	
Kent, RI	
Newport, RI	
Providence, RI	
Washington, RI	
6520 Provo-Orem, UT	1.0190
Utah, UT	
6560 Pueblo, CO	0.9104
Pueblo, CO	
6580 Punta Gorda, FL	0.8907
Charlotte, FL	
6600 Racine, WI	0.9413
Racine, WI	
6640 Raleigh-Durham-Chapel Hill, NC	1.0083
Chatham, NC	
Durham, NC	
Franklin, NC	
Johnston, NC	
Orange, NC	
Wake, NC	
6660 Rapid City, SD	0.8936
Pennington, SD	
6680 Reading, PA	0.9308
Berks, PA	
6690 Redding, CA	1.1249
Shasta, CA	
6720 Reno, NV	1.0664
Washoe, NV	
6740 Richland-Kennewick-Pasco, WA	1.1608
Benton, WA	
Franklin, WA	
6760 Richmond-Petersburg, VA	0.9735
Charles City County, VA	
Chesterfield, VA	
Colonial Heights City, VA	
Dinwiddie, VA	
Goochland, VA	
Hanover, VA	
Henrico, VA	
Hopewell City, VA	
New Kent, VA	
Petersburg City, VA	
Powhatan, VA	
Prince George, VA	
Richmond City, VA	
6780 Riverside-San Bernardino, CA	1.1251
Riverside, CA	
San Bernardino, CA	
6800 Roanoke, VA	0.8703
Botetourt, VA	
Roanoke, VA	
Roanoke City, VA	
Salem City, VA	
6820 Rochester, MN	1.2263
Olmsted, MN	
6840 Rochester, NY	0.9133
Genesee, NY	
Livingston, NY	
Monroe, NY	
Ontario, NY	
Orleans, NY	
Wayne, NY	
6880 Rockford, IL	0.9456
Boone, IL	
Ogle, IL	
Winnebago, IL	
6895 Rocky Mount, NC	0.9322
Edgecombe, NC	
Nash, NC	
6920 Sacramento, CA	1.1622
El Dorado, CA	
Placer, CA	
Sacramento, CA	
6960 Saginaw-Bay City-Midland, MI	0.9709
Bay, MI	
Midland, MI	
Saginaw, MI	
6980 St. Cloud, MN	0.9757
Benton, MN	
Stearns, MN	
7000 St. Joseph, MO	0.8093
Andrew, MO	
Buchanan, MO	
7040 St. Louis, MO-IL	0.8907
Clinton, IL	
Jersey, IL	
Madison, IL	
Monroe, IL	
St. Clair, IL	
Franklin, MO	
Jefferson, MO	
Lincoln, MO	
St. Charles, MO	
St. Louis, MO	
St. Louis City, MO	
Warren, MO	
7080 Salem, OR	1.0473
Marion, OR	
Polk, OR	
7120 Salinas, CA	1.4772
Monterey, CA	
7160 Salt Lake City-Ogden, UT	1.0035
Davis, UT	
Salt Lake, UT	
Weber, UT	
7200 San Angelo, TX	0.7956
Tom Green, TX	
7240 San Antonio, TX	0.8649
Bexar, TX	
Comal, TX	
Guadalupe, TX	
Wilson, TX	
7320 San Diego, CA	1.1243
San Diego, CA	
7360 San Francisco, CA	1.4288
Marin, CA	
San Francisco, CA	
San Mateo, CA	
7400 San Jose, CA	1.4162
Santa Clara, CA	
7440 San Juan-Bayamon, PR	0.4706
Aguas Buenas, PR	
Barceloneta, PR	
Bayamon, PR	
Canovanas, PR	
Carolina, PR	
Catano, PR	
Ceiba, PR	
Comerio, PR	
Corozal, PR	
Dorado, PR	
Fajardo, PR	
Florida, PR	
Guaynabo, PR	
Humacao, PR	
Juncos, PR	
Los Piedras, PR	
Loiza, PR	
Luguillo, PR	
Manati, PR	
Morovis, PR	
Naguabo, PR	
Naranjito, PR	
Rio Grande, PR	
San Juan, PR	
Toa Alta, PR	
Toa Baja, PR	
Trujillo Alto, PR	
Vega Alta, PR	
Vega Baja, PR	
Yabucoa, PR	
7460 San Luis Obispo-Atascadero-Paso Robles, CA	1.1386
San Luis Obispo, CA	
7480 Santa Barbara-Santa Maria-Lompoc, CA	1.0588
Santa Barbara, CA	
7485 Santa Cruz-Watsonville, CA	1.3630
Santa Cruz, CA	
7490 Santa Fe, NM	1.0822
Los Alamos, NM	
Santa Fe, NM	
7500 Santa Rosa, CA	1.3179
Sonoma, CA	
7510 Sarasota-Bradenton, FL	0.9339
Manatee, FL	
Sarasota, FL	

TABLE 4G.—PRE-RECLASSIFIED WAGE INDEX FOR URBAN AREAS—Continued

Urban area (constituent counties)	Wage index
7520 Savannah, GA	0.9961
Bryan, GA	
Chatham, GA	
Effingham, GA	
7560 Scranton--Wilkes-Barre--Hazleton, PA	0.8525
Columbia, PA	
Lackawanna, PA	
Luzerne, PA	
Wyoming, PA	
7600 Seattle-Bellevue-Everett, WA	1.1571
Island, WA	
King, WA	
Snohomish, WA	
7610 Sharon, PA	0.8525
Mercer, PA	
7620 Sheboygan, WI	0.9229
Sheboygan, WI	
7640 Sherman-Denison, TX	0.9334
Grayson, TX	
7680 Shreveport-Bossier City, LA	0.8813
Bossier, LA	
Caddo, LA	
Webster, LA	
7720 Sioux City, IA-NE	0.9138
Woodbury, IA	
Dakota, NE	
7760 Sioux Falls, SD	0.9098
Lincoln, SD	
Minnehaha, SD	
7800 South Bend, IN	0.9902
St. Joseph, IN	
7840 Spokane, WA	1.0961
Spokane, WA	
7880 Springfield, IL	0.8654
Menard, IL	
Sangamon, IL	
7920 Springfield, MO	0.8510
Christian, MO	
Greene, MO	
Webster, MO	
8003 Springfield, MA	1.1257
Hampden, MA	
Hampshire, MA	
8050 State College, PA	0.9032
Centre, PA	
8080 Steubenville-Weirton, OH-WV (WV Hospitals)	0.8893
Jefferson, OH	
Brooke, WV	
Hancock, WV	
8120 Stockton-Lodi, CA	1.0445
San Joaquin, CA	
8140 Sumter, SC	0.8607
Sumter, SC	
8160 Syracuse, NY	0.9519
Cayuga, NY	
Madison, NY	
Onondaga, NY	
Oswego, NY	
8200 Tacoma, WA	1.1052
Pierce, WA	
8240 Tallahassee, FL	0.8907
Gadsden, FL	
Leon, FL	
8280 Tampa-St. Petersburg-Clearwater, FL	0.9127
Hernando, FL	
Hillsborough, FL	
Pasco, FL	
Pinellas, FL	
8320 Terre Haute, IN	0.8796
Clay, IN	
Vermillion, IN	
Vigo, IN	
8360 Texarkana,AR-Texarkana, TX	0.8150
Miller, AR	
Bowie, TX	
8400 Toledo, OH	0.9863
Fulton, OH	
Lucas, OH	
Wood, OH	
8440 Topeka, KS	0.8952
Shawnee, KS	
8480 Trenton, NJ	1.0710
Mercer, NJ	
8520 Tucson, AZ	0.8993
Pima, AZ	
8560 Tulsa, OK	0.8398
Creek, OK	
Osage, OK	
Rogers, OK	
Tulsa, OK	
Wagoner, OK	
8600 Tuscaloosa, AL	0.8221
Tuscaloosa, AL	
8640 Tyler, TX	0.9650
Smith, TX	
8680 Utica-Rome, NY	0.8633
Herkimer, NY	
Oneida, NY	
8720 Vallejo-Fairfield-Napa, CA	1.3472
Napa, CA	
Solano, CA	
8735 Ventura, CA	1.1209
Ventura, CA	
8750 Victoria, TX	0.8814
Victoria, TX	
8760 Vineland-Millville-Bridgeton, NJ	1.0296
Cumberland, NJ	
8780 Visalia-Tulare-Porterville, CA	0.9934
Tulare, CA	
8800 Waco, TX	0.8802
McLennan, TX	
8840 Washington, DC-MD-VA-WV	1.0852
District of Columbia, DC	
Calvert, MD	
Charles, MD	
Frederick, MD	
Montgomery, MD	
Prince Georges, MD	
Alexandria City, VA	
Arlington, VA	
Clarke, VA	
Culpeper, VA	
Fairfax, VA	
Fairfax City, VA	
Falls Church City, VA	
Fauquier, VA	
Fredericksburg City, VA	
King George, VA	
Loudoun, VA	
Manassas City, VA	
Manassas Park City, VA	
Prince William, VA	
Spotsylvania, VA	
Stafford, VA	
Warren, VA	
Berkeley, WV	
Jefferson, WV	
8920 Waterloo-Cedar Falls, IA	0.8395
Black Hawk, IA	
8940 Wausau, WI	0.9882
Marathon, WI	
8960 West Palm Beach-Boca Raton, FL	0.9929
Palm Beach, FL	
9000 Wheeling, WV-OH	0.8053
Belmont, OH	
Marshall, WV	
Ohio, WV	
9040 Wichita, KS	0.9571
Butler, KS	
Harvey, KS	
Sedgwick, KS	
9080 Wichita Falls, TX	0.8023
Archer, TX	
Wichita, TX	
9140 Williamsport, PA	0.8624
Lycoming, PA	
9160 Wilmington-Newark, DE-MD	1.1287
New Castle, DE	
Cecil, MD	
9200 Wilmington, NC	0.9471
New Hanover, NC	
Brunswick, NC	
9260 Yakima, WA	1.0676
Yakima, WA	
9270 Yolo, CA	0.9934
Yolo, CA	
9280 York, PA	0.9140
York, PA	
9320 Youngstown-Warren, OH	0.9485
Columbiana, OH	
Mahoning, OH	
Trumbull, OH	
9340 Yuba City, CA	1.0310
Sutter, CA	
Yuba, CA	
9360 Yuma, AZ	0.8677
Yuma, AZ	

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS

Nonurban area	Wage index
Alabama	0.7786
Alaska	1.2323
Arizona	0.8483
Arkansas	0.7670
California	0.9934
Colorado	0.9104
Connecticut	1.2520
Delaware	0.9126
Florida	0.8907
Georgia	0.8254
Hawaii	1.0342
Idaho	0.8799
Illinois	0.8301
Indiana	0.8796
Iowa	0.8395
Kansas	0.7964

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TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Kentucky	0.8079
Louisiana	0.7637
Maine	0.8754
Maryland	0.8855
Massachusetts	1.1257
Michigan	0.8944
Minnesota	0.9249
Mississippi	0.7746
Missouri	0.8093
Montana	0.8567
Nebraska	0.8283
Nevada	0.9519
New Hampshire	0.9882

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
New Jersey [1]	.....
New Mexico	0.8645
New York	0.8633
North Carolina	0.8714
North Dakota	0.7830
Ohio	0.8675
Oklahoma	0.7664
Oregon	1.0408
Pennsylvania	0.8525
Puerto Rico	0.4400
Rhode Island [1]	.....
South Carolina	0.8607
South Dakota	0.7895

TABLE 4H.—PRE-RECLASSIFIED WAGE INDEX FOR RURAL AREAS—Continued

Nonurban area	Wage index
Tennessee	0.7873
Texas	0.7752
Utah	0.9426
Vermont	0.9402
Virginia	0.8494
Washington	1.0274
West Virginia	0.8053
Wisconsin	0.9229
Wyoming	0.8890

[1] All counties within the State are classified as urban.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
1	01	SURG	CRANIOTOMY AGE >17 W CC	3.7174	8.1	11.2
2	01	SURG	CRANIOTOMY AGE >17 W/O CC	1.9613	4.0	5.2
3	01	SURG	*CRANIOTOMY AGE 0-17	1.9441	12.7	12.7
4	01	SURG	SPINAL PROCEDURES	2.2960	4.5	7.2
5	01	SURG	EXTRACRANIAL VASCULAR PROCEDURES	1.3846	2.1	3.1
6	01	SURG	CARPAL TUNNEL RELEASE	.8237	2.1	2.9
7	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W CC	2.5718	6.5	9.8
8	01	SURG	PERIPH & CRANIAL NERVE & OTHER NERV SYST PROC W/O CC	1.4925	1.9	2.8
9	01	MED	SPINAL DISORDERS & INJURIES	1.3592	4.6	6.6
10	01	MED	NERVOUS SYSTEM NEOPLASMS W CC	1.2507	4.9	6.6
11	01	MED	NERVOUS SYSTEM NEOPLASMS W/O CC	.8629	3.0	4.0
12	01	MED	DEGENERATIVE NERVOUS SYSTEM DISORDERS	.8881	4.4	5.9
13	01	MED	MULTIPLE SCLEROSIS & CEREBELLAR ATAXIA	.7928	4.1	5.0
14	01	MED	INTRACRANIAL HEMORRHAGE & STROKE W INFARCT	1.2742	4.8	6.2
15	01	MED	NONSPECIFIC CVA & PRECEREBRAL OCCLUSION W/O INFARCT	.9844	4.0	5.0
16	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W CC	1.2389	4.7	6.2
17	01	MED	NONSPECIFIC CEREBROVASCULAR DISORDERS W/O CC	.6651	2.5	3.1
18	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W CC	.9712	4.2	5.4
19	01	MED	CRANIAL & PERIPHERAL NERVE DISORDERS W/O CC	.6939	2.8	3.5
20	01	MED	NERVOUS SYSTEM INFECTION EXCEPT VIRAL MENINGITIS	2.7921	8.0	10.8
21	01	MED	VIRAL MENINGITIS	1.5323	5.0	6.6
22	01	MED	HYPERTENSIVE ENCEPHALOPATHY	1.0334	3.9	5.0
23	01	MED	NONTRAUMATIC STUPOR & COMA	.8214	3.1	4.3
24	01	MED	SEIZURE & HEADACHE AGE >17 W CC	.9953	3.6	4.9
25	01	MED	SEIZURE & HEADACHE AGE >17 W/O CC	.6061	2.5	3.2
26	01	MED	SEIZURE & HEADACHE AGE 0-17	.7854	2.5	4.7
27	01	MED	TRAUMATIC STUPOR & COMA, COMA >1 HR	1.3045	3.2	5.0
28	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W CC	1.3318	4.5	6.3
29	01	MED	TRAUMATIC STUPOR & COMA, COMA <1 HR AGE >17 W/O CC	.7069	2.7	3.6
30	01	MED	*TRAUMATIC STUPOR & COMA, COMA <1 HR AGE 0-17	.3288	2.0	2.0
31	01	MED	CONCUSSION AGE >17 W CC	.8787	3.0	4.1
32	01	MED	CONCUSSION AGE >17 W/O CC	.5318	1.9	2.4
33	01	MED	*CONCUSSION AGE 0-17	.2066	1.6	1.6
34	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W CC	.9962	3.7	5.1
35	01	MED	OTHER DISORDERS OF NERVOUS SYSTEM W/O CC	.6353	2.5	3.2
36	02	SURG	RETINAL PROCEDURES	.6814	1.2	1.5
37	02	SURG	ORBITAL PROCEDURES	1.0534	2.6	3.8
38	02	SURG	PRIMARY IRIS PROCEDURES	.5412	1.9	2.5
39	02	SURG	LENS PROCEDURES WITH OR WITHOUT VITRECTOMY	.5924	1.5	1.9
40	02	SURG	EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE >17	.8647	2.5	3.6
41	02	SURG	*EXTRAOCULAR PROCEDURES EXCEPT ORBIT AGE 0-17	.3348	1.6	1.6
42	02	SURG	INTRAOCULAR PROCEDURES EXCEPT RETINA, IRIS & LENS	.6552	1.7	2.4
43	02	MED	HYPHEMA	.4951	2.4	3.0
44	02	MED	ACUTE MAJOR EYE INFECTIONS	.6374	4.1	5.1
45	02	MED	NEUROLOGICAL EYE DISORDERS	.7064	2.6	3.2

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
** DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
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NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
46	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W CC	.7810	3.4	4.6
47	02	MED	OTHER DISORDERS OF THE EYE AGE >17 W/O CC	.5193	2.5	3.2
48	02	MED	*OTHER DISORDERS OF THE EYE AGE 0-17	.2949	2.9	2.9
49	03	SURG	MAJOR HEAD & NECK PROCEDURES	1.7706	3.3	4.6
50	03	SURG	SIALOADENECTOMY	.8318	1.5	1.8
51	03	SURG	SALIVARY GLAND PROCEDURES EXCEPT SIALOADENECTOMY	.9325	1.9	3.1
52	03	SURG	CLEFT LIP & PALATE REPAIR	.8003	1.5	1.9
53	03	SURG	SINUS & MASTOID PROCEDURES AGE >17	1.1968	2.1	3.4
54	03	SURG	*SINUS & MASTOID PROCEDURES AGE 0-17	.4779	3.2	3.2
55	03	SURG	MISCELLANEOUS EAR, NOSE, MOUTH & THROAT PROCEDURES	.9492	1.9	3.0
56	03	SURG	RHINOPLASTY	.9678	2.0	3.0
57	03	SURG	T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17.	.9849	2.4	3.7
58	03	SURG	*T&A PROC, EXCEPT TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17.	.2714	1.5	1.5
59	03	SURG	TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE >17	.7530	1.8	2.6
60	03	SURG	*TONSILLECTOMY &/OR ADENOIDECTOMY ONLY, AGE 0-17	.2067	1.5	1.5
61	03	SURG	MYRINGOTOMY W TUBE INSERTION AGE >17	1.3030	2.9	4.8
62	03	SURG	*MYRINGOTOMY W TUBE INSERTION AGE 0-17	.2927	1.3	1.3
63	03	SURG	OTHER EAR, NOSE, MOUTH & THROAT O.R. PROCEDURES	1.4279	3.0	4.5
64	03	MED	EAR, NOSE, MOUTH & THROAT MALIGNANCY	1.3100	4.4	6.6
65	03	MED	DYSEQUILIBRIUM	.5487	2.3	2.8
66	03	MED	EPISTAXIS	.5626	2.4	3.1
67	03	MED	EPIGLOTTITIS	.7763	2.8	3.6
68	03	MED	OTITIS MEDIA & URI AGE >17 W CC	.6690	3.1	3.8
69	03	MED	OTITIS MEDIA & URI AGE >17 W/O CC	.5033	2.4	3.0
70	03	MED	OTITIS MEDIA & URI AGE 0-17	.4570	2.8	3.5
71	03	MED	LARYNGOTRACHEITIS	.6933	2.8	3.4
72	03	MED	NASAL TRAUMA & DEFORMITY	.7159	2.6	3.6
73	03	MED	OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE >17	.7961	3.2	4.4
74	03	MED	*OTHER EAR, NOSE, MOUTH & THROAT DIAGNOSES AGE 0-17	.3326	2.1	2.1
75	04	SURG	MAJOR CHEST PROCEDURES	3.0978	7.7	10.1
76	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W CC	2.8553	8.5	11.4
77	04	SURG	OTHER RESP SYSTEM O.R. PROCEDURES W/O CC	1.2070	3.5	4.9
78	04	MED	PULMONARY EMBOLISM	1.2980	5.7	6.7
79	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W CC	1.6199	6.7	8.5
80	04	MED	RESPIRATORY INFECTIONS & INFLAMMATIONS AGE >17 W/O CC	.8747	4.4	5.5
81	04	MED	*RESPIRATORY INFECTIONS & INFLAMMATIONS AGE 0-17	1.5059	6.1	6.1
82	04	MED	RESPIRATORY NEOPLASMS	1.3926	5.2	7.0
83	04	MED	MAJOR CHEST TRAUMA W CC	.9653	4.3	5.5
84	04	MED	MAJOR CHEST TRAUMA W/O CC	.5109	2.6	3.2
85	04	MED	PLEURAL EFFUSION W CC	1.2119	4.8	6.4
86	04	MED	PLEURAL EFFUSION W/O CC	.6963	2.9	3.8
87	04	MED	PULMONARY EDEMA & RESPIRATORY FAILURE	1.3625	4.8	6.3
88	04	MED	CHRONIC OBSTRUCTIVE PULMONARY DISEASE	.9039	4.1	5.1
89	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W CC	1.0431	4.8	5.9
90	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE >17 W/O CC	.6270	3.4	4.0
91	04	MED	SIMPLE PNEUMONIA & PLEURISY AGE 0-17	.6854	3.2	4.0
92	04	MED	INTERSTITIAL LUNG DISEASE W CC	1.2255	5.0	6.4
93	04	MED	INTERSTITIAL LUNG DISEASE W/O CC	.7331	3.3	4.1
94	04	MED	PNEUMOTHORAX W CC	1.1575	4.7	6.4
95	04	MED	PNEUMOTHORAX W/O CC	.5895	2.9	3.7
96	04	MED	BRONCHITIS & ASTHMA AGE >17 W CC	.7541	3.7	4.6
97	04	MED	BRONCHITIS & ASTHMA AGE >17 W/O CC	.5602	2.9	3.5
98	04	MED	BRONCHITIS & ASTHMA AGE 0-17	.9319	3.7	5.1
99	04	MED	RESPIRATORY SIGNS & SYMPTOMS W CC	.7022	2.4	3.2
100	04	MED	RESPIRATORY SIGNS & SYMPTOMS W/O CC	.5347	1.7	2.1
101	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W CC	.8567	3.3	4.4
102	04	MED	OTHER RESPIRATORY SYSTEM DIAGNOSES W/O CC	.5447	2.0	2.6
103	PRE	SURG	HEART TRANSPLANT	19.5361	29.7	49.4
104	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W CARD CATH.	7.9615	12.3	14.4
105	05	SURG	CARDIAC VALVE & OTH MAJOR CARDIOTHORACIC PROC W/O CARD CATH.	5.7856	8.3	10.0
106	05	SURG	CORONARY BYPASS W PTCA	7.4493	9.6	11.4
107	05	SURG	CORONARY BYPASS W CARDIAC CATH	5.3894	9.2	10.5

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TABLE 5.—LIST OF DIAGNOSIS RELATED GROUPS (DRGS), RELATIVE WEIGHTING FACTORS, GEOMETRIC AND ARITHMETIC MEAN LENGTH OF STAY—Continued

DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
108	05	SURG	OTHER CARDIOTHORACIC PROCEDURES	5.4585	7.8	10.3
109	05	SURG	CORONARY BYPASS W/O PTCA OR CARDIAC CATH	3.9756	6.8	7.7
110	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W CC	4.0985	6.5	9.1
111	05	SURG	MAJOR CARDIOVASCULAR PROCEDURES W/O CC	2.4445	3.5	4.4
112	05	SURG	NO LONGER VALID	.0000	.0	.0
113	05	SURG	AMPUTATION FOR CIRC SYSTEM DISORDERS EXCEPT UPPER LIMB & TOE.	2.9028	10.4	13.4
114	05	SURG	UPPER LIMB & TOE AMPUTATION FOR CIRC SYSTEM DISORDERS	1.6530	6.2	8.5
115	05	SURG	PRM CARD PACEM IMPL W AMI,HRT FAIL OR SHK,OR AICD LEAD OR GN.	3.4452	5.9	8.3
116	05	SURG	OTHER PERMANENT CARDIAC PACEMAKER IMPLANT	2.3075	3.2	4.5
117	05	SURG	CARDIAC PACEMAKER REVISION EXCEPT DEVICE REPLACEMENT	1.3312	2.6	4.2
118	05	SURG	CARDIAC PACEMAKER DEVICE REPLACEMENT	1.5696	1.9	2.9
119	05	SURG	VEIN LIGATION & STRIPPING	1.3027	3.0	5.1
120	05	SURG	OTHER CIRCULATORY SYSTEM O.R. PROCEDURES	2.2337	5.3	8.8
121	05	MED	CIRCULATORY DISORDERS W AMI & MAJOR COMP, DISCHARGED ALIVE.	1.5813	5.3	6.6
122	05	MED	CIRCULATORY DISORDERS W AMI W/O MAJOR COMP, DISCHARGED ALIVE.	1.0393	3.0	3.8
123	05	MED	CIRCULATORY DISORDERS W AMI, EXPIRED	1.5526	2.8	4.7
124	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH & COMPLEX DIAG.	1.4301	3.3	4.4
125	05	MED	CIRCULATORY DISORDERS EXCEPT AMI, W CARD CATH W/O COMPLEX DIAG.	1.0846	2.1	2.7
126	05	MED	ACUTE & SUBACUTE ENDOCARDITIS	2.6971	9.5	12.2
127	05	MED	HEART FAILURE & SHOCK	1.0027	4.1	5.3
128	05	MED	DEEP VEIN THROMBOPHLEBITIS	.7241	4.7	5.5
129	05	MED	CARDIAC ARREST, UNEXPLAINED	1.0803	1.8	2.8
130	05	MED	PERIPHERAL VASCULAR DISORDERS W CC	.9384	4.5	5.7
131	05	MED	PERIPHERAL VASCULAR DISORDERS W/O CC	.5683	3.3	4.1
132	05	MED	ATHEROSCLEROSIS W CC	.6540	2.3	3.0
133	05	MED	ATHEROSCLEROSIS W/O CC	.5359	1.8	2.3
134	05	MED	HYPERTENSION	.5884	2.5	3.2
135	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W CC	.8961	3.3	4.5
136	05	MED	CARDIAC CONGENITAL & VALVULAR DISORDERS AGE >17 W/O CC.	.5709	2.1	2.6
137	05	MED	*CARDIAC CONGENITAL & VALVULAR DISORDERS AGE 0-17	.8113	3.3	3.3
138	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W CC	.8249	3.1	4.0
139	05	MED	CARDIAC ARRHYTHMIA & CONDUCTION DISORDERS W/O CC	.5128	2.0	2.5
140	05	MED	ANGINA PECTORIS	.5384	2.1	2.6
141	05	MED	SYNCOPE & COLLAPSE W CC	.7284	2.8	3.6
142	05	MED	SYNCOPE & COLLAPSE W/O CC	.5605	2.1	2.6
143	05	MED	CHEST PAIN	.5394	1.7	2.1
144	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W CC	1.1931	3.8	5.5
145	05	MED	OTHER CIRCULATORY SYSTEM DIAGNOSES W/O CC	.5881	2.1	2.7
146	06	SURG	RECTAL RESECTION W CC	2.7193	8.8	10.2
147	06	SURG	RECTAL RESECTION W/O CC	1.5566	5.8	6.4
148	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W CC	3.4444	10.2	12.3
149	06	SURG	MAJOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.5247	5.9	6.5
150	06	SURG	PERITONEAL ADHESIOLYSIS W CC	2.8477	9.1	11.2
151	06	SURG	PERITONEAL ADHESIOLYSIS W/O CC	1.3334	4.5	5.7
152	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W CC	1.9467	6.9	8.3
153	06	SURG	MINOR SMALL & LARGE BOWEL PROCEDURES W/O CC	1.1736	4.8	5.4
154	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W CC.	4.1397	9.8	13.2
155	06	SURG	STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE >17 W/O CC.	1.3054	3.0	4.0
156	06	SURG	*STOMACH, ESOPHAGEAL & DUODENAL PROCEDURES AGE 0-17	.8355	6.0	6.0
157	06	SURG	ANAL & STOMAL PROCEDURES W CC	1.2618	3.9	5.6
158	06	SURG	ANAL & STOMAL PROCEDURES W/O CC	.6504	2.0	2.5
159	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W CC.	1.3593	3.7	5.1
160	06	SURG	HERNIA PROCEDURES EXCEPT INGUINAL & FEMORAL AGE >17 W/O CC.	.8070	2.2	2.7
161	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W CC	1.1278	2.8	4.2
162	06	SURG	INGUINAL & FEMORAL HERNIA PROCEDURES AGE >17 W/O CC	.6337	1.6	1.9

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
163	06	SURG	*HERNIA PROCEDURES AGE 0-17	.6855	2.1	2.1
164	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W CC	2.2964	7.0	8.3
165	06	SURG	APPENDECTOMY W COMPLICATED PRINCIPAL DIAG W/O CC	1.2622	4.0	4.7
166	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W CC	1.4680	3.7	4.9
167	06	SURG	APPENDECTOMY W/O COMPLICATED PRINCIPAL DIAG W/O CC	.9104	2.1	2.5
168	03	SURG	MOUTH PROCEDURES W CC	1.2974	3.3	4.9
169	03	SURG	MOUTH PROCEDURES W/O CC	.7397	1.8	2.3
170	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W CC	2.8017	7.4	11.0
171	06	SURG	OTHER DIGESTIVE SYSTEM O.R. PROCEDURES W/O CC	1.1651	3.1	4.3
172	06	MED	DIGESTIVE MALIGNANCY W CC	1.3567	5.1	7.0
173	06	MED	DIGESTIVE MALIGNANCY W/O CC	.7531	2.7	3.8
174	06	MED	G.I. HEMORRHAGE W CC	.9937	3.9	4.8
175	06	MED	G.I. HEMORRHAGE W/O CC	.5553	2.5	2.9
176	06	MED	COMPLICATED PEPTIC ULCER	1.0832	4.1	5.3
177	06	MED	UNCOMPLICATED PEPTIC ULCER W CC	.9193	3.7	4.5
178	06	MED	UNCOMPLICATED PEPTIC ULCER W/O CC	.6843	2.6	3.1
179	06	MED	INFLAMMATORY BOWEL DISEASE	1.0778	4.6	6.0
180	06	MED	G.I. OBSTRUCTION W CC	.9429	4.2	5.4
181	06	MED	G.I. OBSTRUCTION W/O CC	.5322	2.8	3.4
182	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W CC.	.7982	3.3	4.4
183	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE >17 W/O CC.	.5722	2.3	2.9
184	06	MED	ESOPHAGITIS, GASTROENT & MISC DIGEST DISORDERS AGE 0-17	.4806	2.3	2.8
185	03	MED	DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE >17.	.8998	3.3	4.7
186	03	MED	*DENTAL & ORAL DIS EXCEPT EXTRACTIONS & RESTORATIONS, AGE 0-17.	.3185	2.9	2.9
187	03	MED	DENTAL EXTRACTIONS & RESTORATIONS	.8564	3.0	4.1
188	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W CC	1.0955	4.1	5.6
189	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE >17 W/O CC	.5821	2.4	3.1
190	06	MED	OTHER DIGESTIVE SYSTEM DIAGNOSES AGE 0-17	.6986	3.3	4.8
191	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W CC	4.2962	9.8	13.8
192	07	SURG	PANCREAS, LIVER & SHUNT PROCEDURES W/O CC	1.6932	4.7	6.1
193	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W CC.	3.4015	10.4	12.8
194	07	SURG	BILIARY TRACT PROC EXCEPT ONLY CHOLECYST W OR W/O C.D.E. W/O CC.	1.6023	5.5	6.9
195	07	SURG	CHOLECYSTECTOMY W C.D.E. W CC	3.0046	8.6	10.4
196	07	SURG	CHOLECYSTECTOMY W C.D.E. W/O CC	1.6036	4.6	5.4
197	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W CC.	2.4858	7.3	9.0
198	07	SURG	CHOLECYSTECTOMY EXCEPT BY LAPAROSCOPE W/O C.D.E. W/O CC.	1.2276	3.8	4.4
199	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR MALIGNANCY	2.4260	7.0	9.9
200	07	SURG	HEPATOBILIARY DIAGNOSTIC PROCEDURE FOR NON-MALIGNANCY.	2.9570	6.5	10.5
201	07	SURG	OTHER HEPATOBILIARY OR PANCREAS O.R. PROCEDURES	3.7421	10.3	14.5
202	07	MED	CIRRHOSIS & ALCOHOLIC HEPATITIS	1.2879	4.8	6.4
203	07	MED	MALIGNANCY OF HEPATOBILIARY SYSTEM OR PANCREAS	1.3499	5.0	6.8
204	07	MED	DISORDERS OF PANCREAS EXCEPT MALIGNANCY	1.1826	4.4	5.8
205	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W CC	1.1933	4.6	6.2
206	07	MED	DISORDERS OF LIVER EXCEPT MALIG,CIRR,ALC HEPA W/O CC	.7038	3.0	3.9
207	07	MED	DISORDERS OF THE BILIARY TRACT W CC	1.1338	4.0	5.3
208	07	MED	DISORDERS OF THE BILIARY TRACT W/O CC	.6526	2.3	2.9
209	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF LOWER EXTREMITY.	2.0531	4.5	5.0
210	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W CC.	1.8289	6.1	7.0
211	08	SURG	HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE >17 W/O CC.	1.2715	4.6	5.0
212	08	SURG	*HIP & FEMUR PROCEDURES EXCEPT MAJOR JOINT AGE 0-17	.8391	11.1	11.1
213	08	SURG	AMPUTATION FOR MUSCULOSKELETAL SYSTEM & CONN TISSUE DISORDERS.	1.8664	6.6	9.2
214	08	SURG	NO LONGER VALID	.0000	.0	.0
215	08	SURG	NO LONGER VALID	.0000	.0	.0

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
216	08	SURG	BIOPSIES OF MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	2.2151	6.6	9.6
217	08	SURG	WND DEBRID & SKN GRFT EXCEPT HAND,FOR MUSCSKELET & CONN TISS DIS.	3.0062	9.1	13.4
218	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W CC.	1.5404	4.3	5.4
219	08	SURG	LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE >17 W/O CC.	1.0244	2.7	3.2
220	08	SURG	*LOWER EXTREM & HUMER PROC EXCEPT HIP,FOOT,FEMUR AGE 0-17.	.5789	5.3	5.3
221	08	SURG	NO LONGER VALID	.0000	.0	.0
222	08	SURG	NO LONGER VALID	.0000	.0	.0
223	08	SURG	MAJOR SHOULDER/ELBOW PROC, OR OTHER UPPER EXTREMITY PROC W CC.	1.0248	2.1	2.9
224	08	SURG	SHOULDER,ELBOW OR FOREARM PROC,EXC MAJOR JOINT PROC, W/O CC.	.7868	1.6	1.9
225	08	SURG	FOOT PROCEDURES	1.1460	3.4	5.0
226	08	SURG	SOFT TISSUE PROCEDURES W CC	1.5663	4.6	6.7
227	08	SURG	SOFT TISSUE PROCEDURES W/O CC	.8129	2.1	2.7
228	08	SURG	MAJOR THUMB OR JOINT PROC,OR OTH HAND OR WRIST PROC W CC.	1.1339	2.6	4.1
229	08	SURG	HAND OR WRIST PROC, EXCEPT MAJOR JOINT PROC, W/O CC	.6984	1.7	2.2
230	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES OF HIP & FEMUR.	1.2657	3.3	5.1
231	08	SURG	LOCAL EXCISION & REMOVAL OF INT FIX DEVICES EXCEPT HIP & FEMUR.	1.3977	3.1	4.9
232	08	SURG	ARTHROSCOPY	1.0021	1.8	2.7
233	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W CC	1.9862	4.8	7.2
234	08	SURG	OTHER MUSCULOSKELET SYS & CONN TISS O.R. PROC W/O CC	1.2329	2.3	3.2
235	08	MED	FRACTURES OF FEMUR	.7648	3.8	5.1
236	08	MED	FRACTURES OF HIP & PELVIS	.7233	4.0	4.9
237	08	MED	SPRAINS, STRAINS, & DISLOCATIONS OF HIP, PELVIS & THIGH	.5797	2.9	3.6
238	08	MED	OSTEOMYELITIS	1.3934	6.6	8.9
239	08	MED	PATHOLOGICAL FRACTURES & MUSCULOSKELETAL & CONN TISS MALIGNANCY.	1.0031	4.9	6.3
240	08	MED	CONNECTIVE TISSUE DISORDERS W CC	1.3301	5.0	6.7
241	08	MED	CONNECTIVE TISSUE DISORDERS W/O CC	.6493	3.1	3.9
242	08	MED	SEPTIC ARTHRITIS	1.1093	5.1	6.7
243	08	MED	MEDICAL BACK PROBLEMS	.7407	3.7	4.7
244	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W CC	.7056	3.7	4.7
245	08	MED	BONE DISEASES & SPECIFIC ARTHROPATHIES W/O CC	.4686	2.7	3.4
246	08	MED	NON-SPECIFIC ARTHROPATHIES	.5658	2.9	3.8
247	08	MED	SIGNS & SYMPTOMS OF MUSCULOSKELETAL SYSTEM & CONN TISSUE.	.5725	2.6	3.4
248	08	MED	TENDONITIS, MYOSITIS & BURSITIS	.8317	3.8	4.9
249	08	MED	AFTERCARE, MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE.	.6895	2.5	3.7
250	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W CC.	.6886	3.3	4.2
251	08	MED	FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE >17 W/O CC.	.4624	2.2	2.8
252	08	MED	*FX, SPRN, STRN & DISL OF FOREARM, HAND, FOOT AGE 0-17	.2513	1.8	1.8
253	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W CC.	.7384	3.7	4.7
254	08	MED	FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE >17 W/O CC.	.4433	2.6	3.1
255	08	MED	*FX, SPRN, STRN & DISL OF UPARM,LOWLEG EX FOOT AGE 0-17	.2928	2.9	2.9
256	08	MED	OTHER MUSCULOSKELETAL SYSTEM & CONNECTIVE TISSUE DIAGNOSES.	.8038	3.8	5.1
257	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W CC	.8995	2.1	2.7
258	09	SURG	TOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.7107	1.6	1.8
259	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W CC	.9130	1.7	2.7
260	09	SURG	SUBTOTAL MASTECTOMY FOR MALIGNANCY W/O CC	.6821	1.2	1.4
261	09	SURG	BREAST PROC FOR NON-MALIGNANCY EXCEPT BIOPSY & LOCAL EXCISION.	.9773	1.6	2.2
262	09	SURG	BREAST BIOPSY & LOCAL EXCISION FOR NON-MALIGNANCY	.9324	2.9	4.3

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
263	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W CC	2.2113	9.3	12.5
264	09	SURG	SKIN GRAFT &/OR DEBRID FOR SKN ULCER OR CELLULITIS W/O CC.	1.1350	5.5	7.1
265	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W CC.	1.5906	4.2	6.7
266	09	SURG	SKIN GRAFT &/OR DEBRID EXCEPT FOR SKIN ULCER OR CELLULITIS W/O CC.	.8540	2.2	3.1
267	09	SURG	PERIANAL & PILONIDAL PROCEDURES	.9343	2.5	4.3
268	09	SURG	SKIN, SUBCUTANEOUS TISSUE & BREAST PLASTIC PROCEDURES	1.1068	2.4	3.6
269	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W CC	1.6798	5.7	8.2
270	09	SURG	OTHER SKIN, SUBCUT TISS & BREAST PROC W/O CC	.7495	2.3	3.3
271	09	MED	SKIN ULCERS	1.0266	5.6	7.3
272	09	MED	MAJOR SKIN DISORDERS W CC	1.0013	4.6	6.1
273	09	MED	MAJOR SKIN DISORDERS W/O CC	.5578	3.0	3.9
274	09	MED	MALIGNANT BREAST DISORDERS W CC	1.1936	4.8	6.8
275	09	MED	MALIGNANT BREAST DISORDERS W/O CC	.5469	2.2	3.0
276	09	MED	NON-MALIGANT BREAST DISORDERS	.6781	3.5	4.5
277	09	MED	CELLULITIS AGE >17 W CC	.8580	4.7	5.8
278	09	MED	CELLULITIS AGE >17 W/O CC	.5497	3.6	4.3
279	09	MED	*CELLULITIS AGE 0-17	.6580	4.2	4.2
280	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W CC	.6972	3.2	4.2
281	09	MED	TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE >17 W/O CC	.4634	2.3	2.9
282	09	MED	*TRAUMA TO THE SKIN, SUBCUT TISS & BREAST AGE 0-17	.2545	2.2	2.2
283	09	MED	MINOR SKIN DISORDERS W CC	.7211	3.5	4.7
284	09	MED	MINOR SKIN DISORDERS W/O CC	.4300	2.4	3.1
285	10	SURG	AMPUTAT OF LOWER LIMB FOR ENDOCRINE,NUTRIT,& METABOL DISORDERS.	2.0391	8.0	10.6
286	10	SURG	ADRENAL & PITUITARY PROCEDURES	2.0831	4.5	5.9
287	10	SURG	SKIN GRAFTS & WOUND DEBRID FOR ENDOC, NUTRIT & METAB DISORDERS.	1.8701	7.7	10.6
288	10	SURG	O.R. PROCEDURES FOR OBESITY	2.2124	4.3	5.4
289	10	SURG	PARATHYROID PROCEDURES	.9697	1.8	2.8
290	10	SURG	THYROID PROCEDURES	.8955	1.7	2.2
291	10	SURG	THYROGLOSSAL PROCEDURES	.6333	1.4	1.6
292	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W CC	2.4623	6.8	10.0
293	10	SURG	OTHER ENDOCRINE, NUTRIT & METAB O.R. PROC W/O CC	1.2998	3.3	4.9
294	10	MED	DIABETES AGE >35	.7573	3.4	4.5
295	10	MED	DIABETES AGE 0-35	.7854	3.0	4.0
296	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W CC	.8469	3.9	5.1
297	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE >17 W/O CC	.5046	2.7	3.4
298	10	MED	NUTRITIONAL & MISC METABOLIC DISORDERS AGE 0-17	.5879	2.9	4.4
299	10	MED	INBORN ERRORS OF METABOLISM	.9367	3.8	5.4
300	10	MED	ENDOCRINE DISORDERS W CC	1.0930	4.7	6.2
301	10	MED	ENDOCRINE DISORDERS W/O CC	.6308	2.8	3.7
302	11	SURG	KIDNEY TRANSPLANT	3.2671	7.4	8.7
303	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROCEDURES FOR NEOPLASM.	2.4195	6.7	8.3
304	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W CC.	2.3243	6.2	8.7
305	11	SURG	KIDNEY,URETER & MAJOR BLADDER PROC FOR NON-NEOPL W/O CC.	1.1946	2.9	3.6
306	11	SURG	PROSTATECTOMY W CC	1.2725	3.6	5.5
307	11	SURG	PROSTATECTOMY W/O CC	.6329	1.8	2.2
308	11	SURG	MINOR BLADDER PROCEDURES W CC	1.6399	4.0	6.3
309	11	SURG	MINOR BLADDER PROCEDURES W/O CC	.8980	1.7	2.2
310	11	SURG	TRANSURETHRAL PROCEDURES W CC	1.1281	2.9	4.3
311	11	SURG	TRANSURETHRAL PROCEDURES W/O CC	.6270	1.5	1.8
312	11	SURG	URETHRAL PROCEDURES, AGE >17 W CC	1.0583	3.0	4.5
313	11	SURG	URETHRAL PROCEDURES, AGE >17 W/O CC	.6693	1.7	2.1
314	11	SURG	*URETHRAL PROCEDURES, AGE 0-17	.4905	2.3	2.3
315	11	SURG	OTHER KIDNEY & URINARY TRACT O.R. PROCEDURES	2.0954	3.8	7.2
316	11	MED	RENAL FAILURE	1.3241	4.9	6.6
317	11	MED	ADMIT FOR RENAL DIALYSIS	.6603	2.0	3.1
318	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W CC	1.1819	4.4	6.1
319	11	MED	KIDNEY & URINARY TRACT NEOPLASMS W/O CC	.6051	2.1	2.9
320	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W CC	.8555	4.3	5.3

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
321	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE >17 W/O CC	.5645	3.1	3.8
322	11	MED	KIDNEY & URINARY TRACT INFECTIONS AGE 0-17	.4769	3.1	3.7
323	11	MED	URINARY STONES W CC, &/OR ESW LITHOTRIPSY	.8049	2.4	3.1
324	11	MED	URINARY STONES W/O CC	.4643	1.5	1.8
325	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W CC	.6508	2.9	3.8
326	11	MED	KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE >17 W/O CC	.4441	2.2	2.7
327	11	MED	*KIDNEY & URINARY TRACT SIGNS & SYMPTOMS AGE 0-17	.3668	3.1	3.1
328	11	MED	URETHRAL STRICTURE AGE >17 W CC	.7339	2.8	3.8
329	11	MED	URETHRAL STRICTURE AGE >17 W/O CC	.4891	1.7	2.2
330	11	MED	*URETHRAL STRICTURE AGE 0-17	.3160	1.6	1.6
331	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W CC	1.0553	4.2	5.6
332	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE >17 W/O CC	.5998	2.4	3.2
333	11	MED	OTHER KIDNEY & URINARY TRACT DIAGNOSES AGE 0-17	.7662	3.3	4.7
334	12	SURG	MAJOR MALE PELVIC PROCEDURES W CC	1.5217	4.0	4.8
335	12	SURG	MAJOR MALE PELVIC PROCEDURES W/O CC	1.1249	2.9	3.2
336	12	SURG	TRANSURETHRAL PROSTATECTOMY W CC	.8721	2.6	3.4
337	12	SURG	TRANSURETHRAL PROSTATECTOMY W/O CC	.6046	1.8	2.1
338	12	SURG	TESTES PROCEDURES, FOR MALIGNANCY	1.2297	3.5	5.6
339	12	SURG	TESTES PROCEDURES, NON-MALIGNANCY AGE >17	1.1006	2.9	4.6
340	12	SURG	*TESTES PROCEDURES, NON-MALIGNANCY AGE 0-17	.2808	2.4	2.4
341	12	SURG	PENIS PROCEDURES	1.2148	1.9	3.1
342	12	SURG	CIRCUMCISION AGE >17	.7897	2.3	3.1
343	12	SURG	*CIRCUMCISION AGE 0-17	.1526	1.7	1.7
344	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROCEDURES FOR MALIGNANCY.	1.2631	1.6	2.4
345	12	SURG	OTHER MALE REPRODUCTIVE SYSTEM O.R. PROC EXCEPT FOR MALIGNANCY.	1.1839	2.9	4.8
346	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W CC	1.0453	4.5	6.0
347	12	MED	MALIGNANCY, MALE REPRODUCTIVE SYSTEM, W/O CC	.5654	2.0	2.7
348	12	MED	BENIGN PROSTATIC HYPERTROPHY W CC	.7111	3.2	4.2
349	12	MED	BENIGN PROSTATIC HYPERTROPHY W/O CC	.3943	1.9	2.5
350	12	MED	INFLAMMATION OF THE MALE REPRODUCTIVE SYSTEM	.7192	3.6	4.5
351	12	MED	*STERILIZATION, MALE	.2342	1.3	1.3
352	12	MED	OTHER MALE REPRODUCTIVE SYSTEM DIAGNOSES	.7227	2.8	4.0
353	13	SURG	PELVIC EVISCERATION, RADICAL HYSTERECTOMY & RADICAL VULVECTOMY.	1.8746	5.0	6.5
354	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W CC.	1.5439	4.8	5.8
355	13	SURG	UTERINE, ADNEXA PROC FOR NON-OVARIAN/ADNEXAL MALIG W/O CC.	.9119	3.0	3.2
356	13	SURG	FEMALE REPRODUCTIVE SYSTEM RECONSTRUCTIVE PROCEDURES.	.7675	1.9	2.2
357	13	SURG	UTERINE & ADNEXA PROC FOR OVARIAN OR ADNEXAL MALIGNANCY.	2.3212	6.7	8.4
358	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W CC	1.2295	3.5	4.3
359	13	SURG	UTERINE & ADNEXA PROC FOR NON-MALIGNANCY W/O CC	.8356	2.4	2.6
360	13	SURG	VAGINA, CERVIX & VULVA PROCEDURES	.8857	2.3	2.8
361	13	SURG	LAPAROSCOPY & INCISIONAL TUBAL INTERRUPTION	1.1215	2.3	3.7
362	13	SURG	*ENDOSCOPIC TUBAL INTERRUPTION	.2993	1.4	1.4
363	13	SURG	D&C, CONIZATION & RADIO-IMPLANT, FOR MALIGNANCY	.8801	2.6	3.6
364	13	SURG	D&C, CONIZATION EXCEPT FOR MALIGNANCY	.8399	2.7	3.9
365	13	SURG	OTHER FEMALE REPRODUCTIVE SYSTEM O.R. PROCEDURES	1.9401	5.2	7.7
366	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W CC	1.2804	4.9	6.9
367	13	MED	MALIGNANCY, FEMALE REPRODUCTIVE SYSTEM W/O CC	.5388	2.3	3.0
368	13	MED	INFECTIONS, FEMALE REPRODUCTIVE SYSTEM	1.2019	5.2	6.7
369	13	MED	MENSTRUAL & OTHER FEMALE REPRODUCTIVE SYSTEM DISORDERS.	.5941	2.4	3.2
370	14	SURG	CESAREAN SECTION W CC	.9721	4.4	5.7
371	14	SURG	CESAREAN SECTION W/O CC	.6742	3.3	3.6
372	14	MED	VAGINAL DELIVERY W COMPLICATING DIAGNOSES	.6053	2.6	3.7
373	14	MED	VAGINAL DELIVERY W/O COMPLICATING DIAGNOSES	.3931	2.0	2.3
374	14	SURG	VAGINAL DELIVERY W STERILIZATION &/OR D&C	.7855	2.5	2.9
375	14	SURG	*VAGINAL DELIVERY W O.R. PROC EXCEPT STERIL &/OR D&C	.5714	4.4	4.4
376	14	MED	POSTPARTUM & POST ABORTION DIAGNOSES W/O O.R. PROCEDURE.	.4827	2.6	3.5

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
377	14	SURG	POSTPARTUM & POST ABORTION DIAGNOSES W O.R. PROCEDURE.	1.4673	3.2	4.4
378	14	MED	ECTOPIC PREGNANCY	.8385	2.0	2.5
379	14	MED	THREATENED ABORTION	.3944	2.1	3.0
380	14	MED	ABORTION W/O D&C	.3662	1.6	2.0
381	14	SURG	ABORTION W D&C, ASPIRATION CURETTAGE OR HYSTEROTOMY	.5859	1.6	2.1
382	14	MED	FALSE LABOR	.1588	1.2	1.4
383	14	MED	OTHER ANTEPARTUM DIAGNOSES W MEDICAL COMPLICATIONS	.5475	2.7	4.0
384	14	MED	OTHER ANTEPARTUM DIAGNOSES W/O MEDICAL COMPLICATIONS.	.4188	1.8	2.7
385	15	MED	*NEONATES, DIED OR TRANSFERRED TO ANOTHER ACUTE CARE FACILITY.	1.3636	1.8	1.8
386	15	MED	*EXTREME IMMATURITY	4.4966	17.9	17.9
387	15	MED	*PREMATURITY W MAJOR PROBLEMS	3.0711	13.3	13.3
388	15	MED	*PREMATURITY W/O MAJOR PROBLEMS	1.8531	8.6	8.6
389	15	MED	*FULL TERM NEONATE W MAJOR PROBLEMS	3.1546	4.7	4.7
390	15	MED	*NEONATE W OTHER SIGNIFICANT PROBLEMS	1.1165	3.4	3.4
391	15	MED	*NORMAL NEWBORN	.1512	3.1	3.1
392	16	SURG	SPLENECTOMY AGE >17	3.1530	6.9	9.5
393	16	SURG	*SPLENECTOMY AGE 0-17	1.3357	9.1	9.1
394	16	SURG	OTHER O.R. PROCEDURES OF THE BLOOD AND BLOOD FORMING ORGANS.	1.7961	4.3	7.0
395	16	MED	RED BLOOD CELL DISORDERS AGE >17	.8141	3.2	4.4
396	16	MED	RED BLOOD CELL DISORDERS AGE 0-17	.6515	2.4	3.8
397	16	MED	COAGULATION DISORDERS	1.2348	3.7	5.2
398	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W CC	1.2646	4.6	5.9
399	16	MED	RETICULOENDOTHELIAL & IMMUNITY DISORDERS W/O CC	.6883	2.8	3.6
400	17	SURG	LYMPHOMA & LEUKEMIA W MAJOR O.R. PROCEDURE	2.6627	5.5	9.0
401	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W CC	2.7815	8.0	11.3
402	17	SURG	LYMPHOMA & NON-ACUTE LEUKEMIA W OTHER O.R. PROC W/O CC.	1.1184	2.7	3.9
403	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W CC	1.7630	5.7	8.0
404	17	MED	LYMPHOMA & NON-ACUTE LEUKEMIA W/O CC	.8543	3.0	4.2
405	17	MED	*ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE 0-17	1.8937	4.9	4.9
406	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W CC.	2.7896	6.9	9.7
407	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W MAJ O.R.PROC W/O CC.	1.2754	3.3	4.1
408	17	SURG	MYELOPROLIF DISORD OR POORLY DIFF NEOPL W OTHER O.R.PROC.	2.0472	4.7	7.9
409	17	MED	RADIOTHERAPY	1.2026	4.5	6.1
410	17	MED	CHEMOTHERAPY W/O ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	1.0423	3.1	4.0
411	17	MED	HISTORY OF MALIGNANCY W/O ENDOSCOPY	.3885	2.2	2.9
412	17	MED	HISTORY OF MALIGNANCY W ENDOSCOPY	.2791	1.6	2.0
413	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W CC	1.3594	5.3	7.3
414	17	MED	OTHER MYELOPROLIF DIS OR POORLY DIFF NEOPL DIAG W/O CC	.6897	3.0	4.0
415	18	SURG	O.R. PROCEDURE FOR INFECTIOUS & PARASITIC DISEASES	3.6521	10.4	14.5
416	18	MED	SEPTICEMIA AGE >17	1.5936	5.6	7.5
417	18	MED	SEPTICEMIA AGE 0-17	1.1657	4.5	6.1
418	18	MED	POSTOPERATIVE & POST-TRAUMATIC INFECTIONS	1.0377	4.8	6.2
419	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W CC	.8636	3.6	4.7
420	18	MED	FEVER OF UNKNOWN ORIGIN AGE >17 W/O CC	.5907	2.8	3.4
421	18	MED	VIRAL ILLNESS AGE >17	.7028	2.9	3.8
422	18	MED	VIRAL ILLNESS & FEVER OF UNKNOWN ORIGIN AGE 0-17	.4351	2.3	2.9
423	18	MED	OTHER INFECTIOUS & PARASITIC DISEASES DIAGNOSES	1.7883	5.9	8.3
424	19	SURG	O.R. PROCEDURE W PRINCIPAL DIAGNOSES OF MENTAL ILLNESS	2.2964	8.1	13.0
425	19	MED	ACUTE ADJUSTMENT REACTION & PSYCHOSOCIAL DYSFUNCTION. .	.6796	2.9	3.9
426	19	MED	DEPRESSIVE NEUROSES	.5177	3.2	4.5
427	19	MED	NEUROSES EXCEPT DEPRESSIVE	.5199	3.1	4.4
428	19	MED	DISORDERS OF PERSONALITY & IMPULSE CONTROL	.7376	4.4	7.4
429	19	MED	ORGANIC DISTURBANCES & MENTAL RETARDATION	.8268	4.7	6.3
430	19	MED	PSYCHOSES	.7128	5.7	8.0
431	19	MED	CHILDHOOD MENTAL DISORDERS	.5925	4.2	5.9
432	19	MED	OTHER MENTAL DISORDER DIAGNOSES	.6333	2.9	4.6

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DRG	MDC	Type	DRG Title	Relative weights	Geometric mean LOS	Arithmetic mean LOS
433	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE, LEFT AMA	.2752	2.2	3.0
434	20	MED	NO LONGER VALID	.0000	.0	.0
435	20	MED	NO LONGER VALID	.0000	.0	.0
436	20	MED	NO LONGER VALID	.0000	.0	.0
437	20	MED	NO LONGER VALID	.0000	.0	.0
438	20		NO LONGER VALID	.0000	.0	.0
439	21	SURG	SKIN GRAFTS FOR INJURIES	1.6840	5.4	8.5
440	21	SURG	WOUND DEBRIDEMENTS FOR INJURIES	1.9031	5.7	9.0
441	21	SURG	HAND PROCEDURES FOR INJURIES	.9231	2.1	3.1
442	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W CC	2.4078	5.6	8.6
443	21	SURG	OTHER O.R. PROCEDURES FOR INJURIES W/O CC	1.0670	2.6	3.5
444	21	MED	TRAUMATIC INJURY AGE >17 W CC	.7577	3.2	4.3
445	21	MED	TRAUMATIC INJURY AGE >17 W/O CC	.4857	2.3	2.9
446	21	MED	*TRAUMATIC INJURY AGE 0-17	.2936	2.4	2.4
447	21	MED	ALLERGIC REACTIONS AGE >17	.5000	1.8	2.4
448	21	MED	*ALLERGIC REACTIONS AGE 0-17	.0965	2.9	2.9
449	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W CC	.8233	2.6	3.7
450	21	MED	POISONING & TOXIC EFFECTS OF DRUGS AGE >17 W/O CC	.4272	1.6	2.0
451	21	MED	*POISONING & TOXIC EFFECTS OF DRUGS AGE 0-17	.2607	2.1	2.1
452	21	MED	COMPLICATIONS OF TREATMENT W CC	1.0378	3.5	5.0
453	21	MED	COMPLICATIONS OF TREATMENT W/O CC	.5133	2.1	2.8
454	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W CC	.8272	3.0	4.4
455	21	MED	OTHER INJURY, POISONING & TOXIC EFFECT DIAG W/O CC	.4542	1.8	2.4
456	22		NO LONGER VALID	.0000	.0	.0
457	22	MED	NO LONGER VALID	.0000	.0	.0
458	22	SURG	NO LONGER VALID	.0000	.0	.0
459	22	SURG	NO LONGER VALID	.0000	.0	.0
460	22	MED	NO LONGER VALID	.0000	.0	.0
461	23	SURG	O.R. PROC W DIAGNOSES OF OTHER CONTACT W HEALTH SERVICES.	1.1927	2.2	4.1
462	23	MED	REHABILITATION	1.1251	9.3	11.5
463	23	MED	SIGNS & SYMPTOMS W CC	.6930	3.2	4.2
464	23	MED	SIGNS & SYMPTOMS W/O CC	.4957	2.4	3.0
465	23	MED	AFTERCARE W HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.6785	1.8	2.9
466	23	MED	AFTERCARE W/O HISTORY OF MALIGNANCY AS SECONDARY DIAGNOSIS.	.7305	2.1	3.9
467	23	MED	OTHER FACTORS INFLUENCING HEALTH STATUS	.6095	2.1	8.4
468	.....		EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	3.6658	9.2	13.0
469	.....		**PRINCIPAL DIAGNOSIS INVALID AS DISCHARGE DIAGNOSIS	.0000	.0	.0
470	.....		**UNGROUPABLE	.0000	.0	.0
471	08	SURG	BILATERAL OR MULTIPLE MAJOR JOINT PROCS OF LOWER EXTREMITY.	3.0990	4.8	5.5
472	22	SURG	NO LONGER VALID	.0000	.0	.0
473	17	SURG	ACUTE LEUKEMIA W/O MAJOR O.R. PROCEDURE AGE >17	3.5075	7.3	12.6
474	04	SURG	NO LONGER VALID	.0000	.0	.0
475	04	MED	RESPIRATORY SYSTEM DIAGNOSIS WITH VENTILATOR SUPPORT	3.6408	8.0	11.3
476	.....	SURG	PROSTATIC O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	2.2587	8.0	11.3
477	.....	SURG	NON-EXTENSIVE O.R. PROCEDURE UNRELATED TO PRINCIPAL DIAGNOSIS.	1.8605	5.3	8.2
478	05	SURG	OTHER VASCULAR PROCEDURES W CC	2.3660	4.9	7.4
479	05	SURG	OTHER VASCULAR PROCEDURES W/O CC	1.4314	2.5	3.3
480	PRE	SURG	LIVER TRANSPLANT	10.1911	15.7	21.5
481	PRE	SURG	BONE MARROW TRANSPLANT	6.9570	19.3	22.0
482	PRE	SURG	TRACHEOSTOMY FOR FACE,MOUTH & NECK DIAGNOSES	3.4938	9.7	12.5
483	PRE	SURG	TRACHEOSTOMY/MECH VENT 96+HRS EXCEPT FACE,MOUTH & NECK DIAGNOSES.	16.2670	34.6	42.0
484	24	SURG	CRANIOTOMY FOR MULTIPLE SIGNIFICANT TRAUMA	5.5512	8.9	13.2
485	24	SURG	LIMB REATTACHMENT, HIP AND FEMUR PROC FOR MULTIPLE SIGNIFICANT TRA.	2.9897	7.6	9.5
486	24	SURG	OTHER O.R. PROCEDURES FOR MULTIPLE SIGNIFICANT TRAUMA	4.8066	8.4	12.4
487	24	MED	OTHER MULTIPLE SIGNIFICANT TRAUMA	1.9538	5.5	7.8
488	25	SURG	HIV W EXTENSIVE O.R. PROCEDURE	4.6394	11.5	16.9
489	25	MED	HIV W MAJOR RELATED CONDITION	1.7885	6.0	8.6

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490	25	MED	HIV W OR W/O OTHER RELATED CONDITION	1.0200	3.7	5.3
491	08	SURG	MAJOR JOINT & LIMB REATTACHMENT PROCEDURES OF UPPER EXTREMITY.	1.7021	2.9	3.5
492	17	MED	CHEMOTHERAPY W ACUTE LEUKEMIA AS SECONDARY DIAGNOSIS.	3.9117	9.2	15.0
493	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W CC	1.8188	4.3	5.9
494	07	SURG	LAPAROSCOPIC CHOLECYSTECTOMY W/O C.D.E. W/O CC	1.0128	1.9	2.5
495	PRE	SURG	LUNG TRANSPLANT	8.9713	14.3	17.2
496	08	SURG	COMBINED ANTERIOR/POSTERIOR SPINAL FUSION	5.7699	7.1	9.5
497	08	SURG	SPINAL FUSION EXCEPT CERVICAL W CC	3.3834	5.4	6.5
498	08	SURG	SPINAL FUSION EXCEPT CERVICAL W/O CC	2.4714	3.7	4.1
499	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W CC	1.4381	3.4	4.6
500	08	SURG	BACK & NECK PROCEDURES EXCEPT SPINAL FUSION W/O CC	.9487	2.0	2.5
501	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W CC	2.5940	8.4	10.7
502	08	SURG	KNEE PROCEDURES W PDX OF INFECTION W/O CC	1.5391	5.3	6.4
503	08	SURG	KNEE PROCEDURES W/O PDX OF INFECTION	1.2111	2.9	3.9
504	22	SURG	EXTENSIVE 3RD DEGREE BURNS W SKIN GRAFT	14.4707	26.9	35.1
505	22	MED	EXTENSIVE 3RD DEGREE BURNS W/O SKIN GRAFT	1.9872	2.2	3.7
506	22	SURG	FULL THICKNESS BURN W SKIN GRAFT OR INHAL INJ W CC OR SIG TRAUMA.	4.6264	12.7	17.3
507	22	SURG	FULL THICKNESS BURN W SKIN GRFT OR INHAL INJ W/O CC OR SIG TRAUMA.	1.7118	6.5	9.0
508	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INHAL INJ W CC OR SIG TRAUMA.	1.4160	5.8	8.4
509	22	MED	FULL THICKNESS BURN W/O SKIN GRFT OR INH INJ W/O CC OR SIG TRAUMA.	.9410	4.1	5.5
510	22	MED	NON-EXTENSIVE BURNS W CC OR SIGNIFICANT TRAUMA	1.2161	4.6	6.7
511	22	MED	NON-EXTENSIVE BURNS W/O CC OR SIGNIFICANT TRAUMA	.6968	3.0	4.4
512	PRE	SURG	SIMULTANEOUS PANCREAS/KIDNEY TRANSPLANT	5.7000	11.7	14.2
513	PRE	SURG	PANCREAS TRANSPLANT	6.1951	9.4	10.7
514	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W CARDIAC CATH	6.3288	5.0	7.3
515	05	SURG	CARDIAC DEFIBRILLATOR IMPLANT W/O CARDIAC CATH	5.0380	3.3	5.5
516	05	SURG	PERCUTANEOUS CARDIOVASC PROC W AMI	2.7295	3.7	4.7
517	05	SURG	PERC CARDIO PROC W CORONARY ARTERY STENT W/O AMI	2.1793	1.9	2.6
518	05	SURG	PERC CARDIO PROC W/O CORONARY ARTERY STENT OR AMI	1.7267	2.3	3.4
519	08	SURG	CERVICAL SPINAL FUSION W CC	2.3467	3.2	5.2
520	08	SURG	CERVICAL SPINAL FUSION W/O CC	1.5390	1.7	2.1
521	20	MED	ALCOHOL/DRUG ABUSE OR DEPENDENCE W CC	.7267	4.3	5.8
522	20	MED	ALC/DRUG ABUSE OR DEPEND W REHABILITATION THERAPY W/O CC.	.5829	7.5	9.5
523	20	MED	ALC/DRUG ABUSE OR DEPEND W/O REHABILITATION THERAPY W/O CC.	.4007	3.3	4.1
524	01	MED	TRANSIENT ISCHEMIA	.7236	2.7	3.4
525	05	SURG	HEART ASSIST SYSTEM IMPLANT	11.3787	9.3	16.2

*MEDICARE DATA HAVE BEEN SUPPLEMENTED BY DATA FROM 19 STATES FOR LOW VOLUME DRGS.
**DRGS 469 AND 470 CONTAIN CASES WHICH COULD NOT BE ASSIGNED TO VALID DRGS.
GEOMETRIC MEAN IS USED ONLY TO DETERMINE PAYMENT FOR TRANSFER CASES.
ARITHMETIC MEAN IS PRESENTED FOR INFORMATIONAL PURPOSES ONLY.
NOTE: RELATIVE WEIGHTS ARE BASED ON MEDICARE PATIENT DATA AND MAY NOT BE APPROPRIATE FOR OTHER PATIENTS.

TABLE 6A.—NEW DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
040.82	Toxic shock syndrome	Y	18	423
066.4	West Nile fever	N	18	421, 422
277.02	Cystic fibrosis with pulmonary manifestations	Y	4	79, 80, 81
277.03	Cystic fibrosis with gastrointestinal manifestations	Y	6	188, 189, 190
277.09	Cystic fibrosis with other manifestations	Y	10	296, 297, 298
357.81	Chronic inflammatory demyelinating polyneuritis	N	1	18, 19
357.82	Critical illness polyneuropathy	N	1	18, 19
357.89	Other inflammatory and toxic neuropathy	N	1	18, 19
359.81	Critical illness myopathy	N	1	34, 35
359.89	Other myopathies	N	1	34, 35
365.83	Aqueous misdirection	N	2	46, 47, 48
414.06	Coronary atherosclerosis of coronary artery of transplanted heart	N	5	132, 133

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TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
414.12	Dissection of coronary artery	N	5	121, 144, 145
428.20	Unspecified systolic heart failure	Y	5	115, 121, 124, 127
428.21	Acute systolic heart failure	Y	5	115, 121, 124, 127
428.22	Chronic systolic heart failure	Y	5	115, 121, 124, 127
428.23	Acute on chronic systolic heart failure	Y	5	115, 121, 124, 127
428.30	Unspecified diastolic heart failure	Y	5	115, 121, 124, 127
428.31	Acute diastolic heart failure	Y	5	115, 121, 124, 127
428.32	Chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.33	Acute on chronic diastolic heart failure	Y	5	115, 121, 124, 127
428.40	Unspecified combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.41	Acute combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.42	Chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
428.43	Acute on chronic combined systolic and diastolic heart failure	Y	5	115, 121, 124, 127
438.6	Alterations of sensations	N	1	12
438.7	Disturbances of vision	N	1	12
438.83	Facial weakness	N	1	12
438.84	Ataxia	N	1	12
438.85	Vertigo	N	1	12
443.21	Dissection of carotid artery	N	5	130, 131
443.22	Dissection of iliac artery	N	5	130, 131
443.23	Dissection of renal artery	N	11	331, 332, 333
443.24	Dissection of vertebral artery	N	5	130, 131
443.29	Dissection of other artery	N	5	130, 131
445.01	Atheroembolism, upper extremity	Y	5	130, 131
445.02	Atheroembolism, lower extremity	Y	5	130, 131
445.81	Atheroembolism, kidney	Y	11	331, 332, 333
445.89	Atheroembolism, other site	Y	5	130, 131
454.8	Varicose veins of the lower extremities, with other complications	N	5	130, 131
459.10	Postphlebetic syndrome without complications	N	5	130, 131
459.11	Postphlebetic syndrome with ulcer	N	5	130, 131
459.12	Postphlebetic syndrome with inflammation	N	5	130, 131
459.13	Postphlebetic syndrome with ulcer and inflammation	N	5	130, 131
459.19	Postphlebetic syndrome with other complication	N	5	130, 131
459.30	Chronic venous hypertension without complications	N	5	130, 131
459.31	Chronic venous hypertension with ulcer	N	5	130, 131
459.32	Chronic venous hypertension with inflammation	N	5	130, 131
459.33	Chronic venous hypertension with ulcer and inflammation	N	5	130, 131
459.39	Chronic venous hypertension with other complication	N	5	130, 131
537.84	Dieulafoy lesion (hemorrhagic) of stomach and duodenum	Y	6	174, 175
569.86	Dieulafoy lesion (hemorrhagic) of intestine	Y	6	188, 189, 190
633.00	Abdominal pregnancy without intrauterine pregnancy	N	14	378
633.01	Abdominal pregnancy with intrauterine pregnancy	N	14	378
633.10	Tubal pregnancy without intrauterine pregnancy	N	14	378
633.11	Tubal pregnancy with intrauterine pregnancy	N	14	378
633.20	Ovarian pregnancy without intrauterine pregnancy	N	14	378
633.21	Ovarian pregnancy with intrauterine pregnancy	N	14	378
633.80	Other ectopic pregnancy without intrauterine pregnancy	N	14	378
633.81	Other ectopic pregnancy with intrauterine pregnancy	N	14	378
633.90	Unspecified ectopic pregnancy without intrauterine pregnancy	N	14	378
633.91	Unspecified ectopic pregnancy with intrauterine pregnancy	N	14	378
747.83	Persistent fetal circulation	N	15	387, 389
765.20	Unspecified weeks of gestation	N	15	391
765.21	Less than 24 completed weeks of gestation	N	15	386
765.22	24 completed weeks of gestation	N	15	386
765.23	25-26 completed weeks of gestation	N	15	386
765.24	27-28 completed weeks of gestation	N	15	387, 388
765.25	29-30 completed weeks of gestation	N	15	387, 388
765.26	31-32 completed weeks of gestation	N	15	387, 388
765.27	33-34 completed weeks of gestation	N	15	387, 388
765.28	35-36 completed weeks of gestation	N	15	387, 388
765.29	37 or more completed weeks of gestation	N	15	391
770.81	Primary apnea of newborn	N	15	390
770.82	Other apnea of newborn	N	15	390
770.83	Cyanotic attacks of newborn	N	15	390
770.84	Respiratory failure of newborn	Y	15	387, 389
770.89	Other respiratory problems after birth	N	15	390
771.81	Septicemia [sepsis] of newborn	Y	15	387, 389
771.82	Urinary tract infection of newborn	N	15	387, 389
771.83	Bacteremia of newborn	Y	15	387, 389
771.89	Other infections specific to the perinatal period	N	15	387, 389
779.81	Neonatal bradycardia	N	15	390

TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
779.82	Neonatal tachycardia	N	15	390
779.89	Other specified conditions originating in the perinatal period	N	15	390
780.91	Fussy infant (baby)	N	23	463,464
780.92	Excessive crying of infant (baby)	N	23	463,464
780.99	Other general symptoms	N	23	463,464
781.93	Ocular torticollis	N	8	243
795.00	Nonspecific abnormal Papanicolaou smear of cervix, unspecified	N	13	358, 359, 369
795.01	Atypical squamous cell changes of undetermined significance favor benign (ASCUS favor benign)	N	13	358, 359, 369
795.02	Atypical squamous cell changes of undetermined significance favor dysplasia (ASCUS favor dysplasia)	N	13	358, 359, 369
795.09	Other nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.31	Nonspecific positive findings for anthrax	N	18	423
795.39	Other nonspecific positive culture findings	N	18	423
813.45	Torus fracture of radius	N	8	250, 251, 252
			24	487
823.40	Torus fracture, tibia alone	N	8	253, 254, 255
			24	487
823.41	Torus fracture, fibula alone	N	8	253, 254, 255
			24	487
823.42	Torus fracture, fibula with tibia	N	8	253, 254, 255
			24	487
995.90	Systemic inflammatory response syndrome, unspecified	Y	18	416, 417
995.91	Systemic inflammatory response syndrome due to infectious process without organ dysfunction	Y	18	416, 417
995.92	Systemic inflammatory response syndrome due to infectious process with organ dysfunction	Y	18	416, 417
995.93	Systemic inflammatory response syndrome due to non-infectious process without organ dysfunction	Y	18	416, 417
995.94	Systemic inflammatory response syndrome due to non-infectious process with organ dysfunction	Y	18	416, 417
998.31	Disruption of internal operation wound	Y	21	452, 453
998.32	Disruption of external operation wound	Y	21	452, 453
V01.81	Contact with or exposure to communicable diseases, anthrax	N	15	391 [1]
			23	467
V01.89	Contact with or exposure to communicable diseases, other communicable diseases	N	15	391 [1]
			23	467
V13.21	Personal history of pre-term labor	N	23	467
V13.29	Personal history of other genital system and obstetric disorders	N	23	467
V23.41	Pregnancy with history of pre-term labor	N	14	469
V23.49	Pregnancy with other poor obstetric history	N	14	469
V46.2	Other dependence on machines, supplemental oxygen	N	23	467
V54.10	Aftercare for healing traumatic fracture of arm, unspecified	N	8	249
V54.11	Aftercare for healing traumatic fracture of upper arm	N	8	249
V54.12	Aftercare for healing traumatic fracture of lower arm	N	8	249
V54.13	Aftercare for healing traumatic fracture of hip	N	8	249
V54.14	Aftercare for healing traumatic fracture of leg, unspecified	N	8	249
V54.15	Aftercare for healing traumatic fracture of upper leg	N	8	249
V54.16	Aftercare for healing traumatic fracture of lower leg	N	8	249
V54.17	Aftercare for healing traumatic fracture of vertebrae	N	8	249
V54.19	Aftercare for healing traumatic fracture of other bone	N	8	249
V54.20	Aftercare for healing pathologic fracture of arm, unspecified	N	8	249
V54.21	Aftercare for healing pathologic fracture of upper arm	N	8	249
V54.22	Aftercare for healing pathologic fracture of lower arm	N	8	249
V54.23	Aftercare for healing pathologic fracture of hip	N	8	249
V54.24	Aftercare for healing pathologic fracture of leg, unspecified	N	8	249
V54.25	Aftercare for healing pathologic fracture of upper leg	N	8	249
V54.26	Aftercare for healing pathologic fracture of lower leg	N	8	249
V54.27	Aftercare for healing pathologic fracture of vertebrae	N	8	249
V54.29	Aftercare for healing pathologic fracture of other bone	N	8	249
V54.81	Aftercare following joint replacement	N	8	249
V54.89	Other orthopedic aftercare	N	8	249
V58.42	Aftercare following surgery for neoplasm	N	23	465,466
V58.43	Aftercare following surgery for injury and trauma	N	23	465,466
V58.71	Aftercare following surgery of the sense organs, NEC	N	23	465,466
V58.72	Aftercare following surgery of the nervous system, NEC	N	23	465,466
V58.73	Aftercare following surgery of the circulatory system, NEC	N	23	465,466
V58.74	Aftercare following surgery of the respiratory system, NEC	N	23	465,466
V58.75	Aftercare following surgery of the teeth, oral cavity and digestive system, NEC	N	23	465,466

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TABLE 6A.—NEW DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
V58.76	Aftercare following surgery of the genitourinary system, NEC	N	23	465,466
V58.77	Aftercare following surgery of the skin and subcutaneous tissue, NEC	N	23	465,466
V58.78	Aftercare following surgery of the musculoskeletal system, NEC	N	23	465,466
V71.82	Observation and evaluation for suspected exposure to anthrax	N	23	467
V71.83	Observation and evaluation for suspected exposure to other biological agent	N	23	467
V83.81	Cystic fibrosis gene carrier	N	23	467
V83.89	Other genetic carrier status	N	23	467

[1] Classified as an "only secondary diagnosis" in this DRG.

TABLE 6B.—NEW PROCEDURE CODES

Procedure code	Description	OR	MDC	DRG
00.01	Therapeutic ultrasound of vessels of head and neck	N		
00.02	Therapeutic ultrasound of heart	N		
00.03	Therapeutic ultrasound of peripheral vascular vessels	N		
00.09	Other therapeutic ultrasound	N		
00.10	Implantation of chemotherapeutic agent	N		
00.11	Infusion of drotrecogin alfa (activated)	N		
00.12	Administration of inhaled nitric oxide	N		
00.13	Injection or infusion of nesiritide	N		
00.14	Injection or infusion of oxazolidinone class of antibiotics	N		
00.50	Implantation of cardiac resynchronization pacemaker without mention of defibrillation, total system [CRT-P]	Y	5	115[1], 116[1]
00.51	Implantation of cardiac resynchronization defibrillator, total system [CRT-D]	Y	5	514[1], 515[1]
00.52	Implantation or replacement of transvenous lead (electrode) into left ventricular coronary venous system	Y	5	115[2], 116[3], 514[4], 515[4]
00.53	Implantation or replacement of cardiac resynchronization pacemaker pulse generator only [CRT-P]	Y	5	115[2], 116[3], 118
00.54	Implantation or replacement of cardiac resynchronization defibrillator pulse generator only [CRT-D]	Y	5	115[1], 514[4], 515[4]
00.55	Insertion of drug-eluting noncoronary artery stent(s)	N		
36.07	Insertion of drug-eluting coronary artery stents(s)	N*	5	517
39.72	Endovascular repair or occlusion of head and neck vessels	Y	1	1,2,3
			5	110, 111
			11	315
			21	442, 443
			24	486
49.75	Implantation or revision of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
49.76	Removal of artificial anal sphincter	Y	6	157, 158
			9	267
			21	442, 443
			24	486
81.61	360 degree spinal fusion, single incision approach	Y	1	4
			8	496
			21	442, 443
			24	486
84.51	Insertion of interbody spinal fusion device	N		
84.52	Insertion of recombinant bone morphogenetic protein	N		
88.96	Other intraoperative magnetic resonance imaging	N		
99.76	Extracorporeal immunoadsorption	N		
99.77	Application or administration of an adhesion barrier substance	N		

*Non-operating room procedure, but affects DRG.
[1] Classified under "operating room procedures".
[2] Classified under "operating room procedure" and under "as any of the following procedure combinations" as 00.52 and 00.53.
[3] Classified under "any of the following procedure combinations" as 00.52 and 00.53.
[4] Classified under "any of the following procedure combinations" as 00.52 and 00.54.

TABLE 6C.—INVALID DIAGNOSIS CODES

Diagnosis code	Description	CC	MDC	DRG
357.8	Other inflammatory and toxic neuropathy	N	1	18, 19
359.8	Other myopathies	N	1	34, 35

TABLE 6C.—INVALID DIAGNOSIS CODES—Continued

Diagnosis code	Description	CC	MDC	DRG
459.1	Postphlebetic syndrome	N	5	130, 131
633.0	Abdominal pregnancy	N	14	378
633.1	Tubal pregnancy	N	14	378
633.2	Ovarian pregnancy	N	14	378
633.8	Other ectopic pregnancy	N	14	378
633.9	Unspecified ectopic pregnancy	N	14	378
770.8	Other respiratory problems after birth	N	15	387, 389
771.8	Other infections specific to the perinatal period	Y	15	387, 389
779.8	Other specified conditions originating in the perinatal period	N	15	390
780.9	Other general symptoms	N	23	463, 464
795.0	Nonspecific abnormal Papanicolaou smear of cervix	N	13	358, 359, 369
795.3	Nonspecific positive culture findings	N	18	423
998.3	Disruption of operation wound	Y	21	452, 453
V01.8	Other communicable diseases	N	23	467
V13.2	Other genital system and obstetric disorders	N	23	467
V23.4	Pregnancy with other poor obstetric history	N	14	469
V54.8	Other orthopedic aftercare	N	8	249

TABLE 6D.—INVALID PROCEDURE CODES

Note: There are no invalid procedure codes for FY 2003.

TABLE 6E.—REVISED DIAGNOSIS CODE TITLES

Diagnosis code	Description	CC	MDC	DRG
402.00	Hypertensive heart disease, malignant, without heart failure	Y	5	134
402.01	Hypertensive heart disease, malignant, with heart failure	Y	5	115, 121, 124, 127
402.10	Hypertensive heart disease, benign, without heart failure	N	5	134
402.11	Hypertensive heart disease, benign, with heart failure	Y	5	115, 121, 124, 127
402.90	Hypertensive heart disease, unspecified, without heart failure	N	5	134
402.91	Hypertensive heart disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.00	Hypertensive heart and renal disease; malignant, without mention of heart failure or renal failure	Y	5	134
404.01	Hypertensive heart and renal disease, malignant, with heart failure	Y	5	115, 121, 124, 127
404.03	Hypertensive heart and renal disease, malignant, with heart failure and renal failure	Y	5	115, 121, 124, 127
404.10	Hypertensive heart and renal disease, benign, without mention of heart failure or renal failure	N	5	134
404.11	Hypertensive heart and renal disease, benign, with heart failure	Y	5	115, 121, 124, 127
404.13	Hypertensive heart and renal disease, benign, with heart failure and renal failure	Y	5	115, 121, 124, 127
404.90	Hypertensive heart and renal disease, unspecified, without mention of heart failure or renal failure	N	5	134
404.91	Hypertensive heart and renal disease, unspecified, with heart failure	Y	5	115, 121, 124, 127
404.93	Hypertensive heart and renal disease, unspecified, with heart failure and renal failure	Y	5	115, 121, 124, 127
414.10	Aneurysm of heart	N	5	121, 144, 145
414.11	Aneurysm of coronary vessels	N	5	121, 144, 145
414.19	Other aneurysm of heart	N	5	121, 144, 145
428.0	Congestive heart failure, unspecified	Y	5	115, 121, 124, 127
454.9	Asymptomatic varicose veins	N	5	130, 131
627.2	Symptomatic menopausal or female climacteric states	N	13	358, 359, 369
627.4	Symptomatic states associated with artificial menopause	N	13	358, 359, 369
V49.81	Asymptomatic postmenopausal status (age-related) (natural)	N	23	467

TABLE 6F.—REVISED PROCEDURE CODE TITLES

Procedure code	Description	OR	MDC	DRG
36.06	Insertion of nondrug-eluting coronary artery stents(s)	N*	5	517
39.79	Other endovascular repair of aneurysm of other vessels	Y	1	1, 2, 3
			5	110, 111
			11	315
			21	442, 443

TABLE 6F.—REVISED PROCEDURE CODE TITLES—Continued

Procedure code	Description	OR	MDC	DRG
39.90	Insertion of nondrug-eluting, noncoronary artery stent(s)	N	24	486

*Nonoperating room procedure, but affects DRG.

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*0031	99591	6829	99591	99593	44501	42821	4280
99590	99592	99590	99592	99594	44502	42822	4281
99591	99593	99591	99593	*04186	44581	42823	42820
99592	99594	99592	99594	99590	44589	42830	42821
99593	*03843	99593	*0412	99591	*25090	42831	42822
99594	99590	99594	99590	99592	44501	42832	42823
*0202	99591	*04089	99591	99593	44502	42833	42830
99590	99592	99590	99592	99594	44581	42840	42831
99591	99593	99591	99593	*04189	44589	42841	42832
99592	99594	99592	99594	99590	*25091	42842	42833
99593	*03844	99593	*0413	99591	44501	42843	42840
99594	99590	99594	99590	99592	44502	*40211	42841
*0362	99591	*04100	99591	99593	44581	42820	42842
99590	99592	99590	99592	99594	44589	42821	42843
99591	99593	99591	99593	*0419	*25092	42822	4289
99592	99594	99592	99594	99590	44501	42823	5184
99593	*03849	99593	*0414	99591	44502	42830	*42821
99594	99590	99594	99590	99592	44581	42831	39891
*0380	99591	*04101	99591	99593	44589	42832	40201
99590	99592	99590	99592	99594	*25093	42833	40211
99591	99593	99591	99593	*0545	44501	42840	40291
99592	99594	99592	99594	99590	44502	42841	4280
99593	*0388	99593	*0415	99591	44581	42842	4281
99594	99590	99594	99590	99592	44589	42843	42820
*03810	99591	*04102	99591	99593	*2515	*40291	42821
99590	99592	99590	99592	99594	53784	42820	42822
99591	99593	99591	99593	*1398	56986	42821	42823
99592	99594	99592	99594	99590	*27700	42822	42830
99593	*0389	99593	*0416	99591	27702	42823	42831
99594	99590	99594	99590	99592	27703	42830	42832
*03811	99591	*04103	99591	99593	27709	42831	42833
99590	99592	99590	99592	99594	*27701	42832	42840
99591	99593	99591	99593	*25070	27702	42833	42841
99592	99594	99592	99594	44501	27703	42840	42842
99593	*04082	99593	*0417	44502	27709	42841	42843
99594	0380	99594	99590	44581	*27702	42842	4289
*03819	03810	*04104	99591	44589	27700	42843	5184
99590	03811	99590	99592	*25071	27701	*4280	*42822
99591	03819	99591	99593	44501	27702	42820	39891
99592	0382	99592	99594	44502	27703	42821	40201
99593	0383	99593	*04181	44581	27709	42822	40211
99594	03840	99594	99590	44589	*27703	42823	40291
*0382	03841	*04105	99591	*25072	27700	42830	4280
99590	03842	99590	99592	44501	27701	42831	4281
99591	03843	99591	99593	44502	27702	42832	42820
99592	03844	99592	99594	44581	27703	42833	42821
99593	03849	99593	*04182	44589	27709	42840	42822
99594	0388	99594	99590	*25073	*27709	42841	42823
*0383	0389	*04109	99591	44501	27700	42842	42830
99590	04082	99590	99592	44502	27701	42843	42831
99591	6800	99591	99593	44581	27702	*4281	42832
99592	6801	99592	99594	44589	27703	42820	42833
99593	6802	99593	*04183	*25080	27709	42821	42840
99594	6803	99594	99590	44501	*39891	42822	42841
*03840	6804	*04110	99591	44502	42820	42823	42842
99590	6805	99590	99592	44581	42821	42830	42843
99591	6806	99591	99593	44589	42822	42831	4289
99592	6807	99592	99594	*25081	42823	42832	5184
99593	6808	99593	*04184	44501	42830	42833	*42823
99594	6809	99594	99590	44502	42831	42840	39891
*03841	6820	*04111	99591	44581	42832	42841	40201
99590	6821	99590	99592	44589	42833	42842	40211
99591	6822	99591	99593	*25082	42840	42843	40291
99592	6823	99592	99594	44501	42841	*42820	4280
99593	6825	99593	*04185	44502	42842	39891	4281
99594	6826	99594	99590	44581	42843	40201	42820
*03842	6827	*04119	99591	44589	*40201	40211	42821
99590	6828	99590	99592	*25083	42820	40291	42822

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

42823	5184	42822	42831	56986	*53270	53784	*56202
42830	*42833	42823	42832	*53140	53784	56986	53784
42831	39891	42830	42833	53784	56986	*53411	56986
42832	40201	42831	42840	56986	*53271	53784	*56203
42833	40211	42832	42841	*53141	53784	56986	53784
42840	40291	42833	42842	53784	56986	*53420	56986
42841	4280	42840	42843	56986	*53290	53784	*56212
42842	4281	42841	44501	*53150	53784	56986	53784
42843	42820	42842	44502	53784	56986	*53421	56986
4289	42821	42843	44581	56986	*53291	53784	*56213
5184	42822	4289	44589	*53151	53784	56986	53784
*42830	42823	5184	*4599	53784	56986	*53430	56986
39891	42830	*42843	42820	56986	*53300	53784	*5693
40201	42831	39891	42821	*53160	53784	56986	53784
40211	42832	40201	42822	53784	56986	*53431	56986
40291	42833	40211	42823	56986	*53301	53784	*56985
4280	42840	40291	42830	*53161	53784	56986	53784
4281	42841	4280	42831	53784	56986	*53440	56986
42820	42842	4281	42832	56986	*53310	53784	*56986
42821	42843	42820	42833	*53170	53784	56986	56986
42822	4289	42821	42840	53784	56986	*53441	*5780
42823	5184	42822	42841	56986	*53311	53784	53784
42830	*42840	42823	42842	*53171	53784	56986	56986
42831	39891	42830	42843	53784	56986	*53450	*5781
42832	40201	42831	44501	56986	*53320	53784	53784
42833	40211	42832	44502	*53190	53784	56986	56986
42840	40291	42833	44581	53784	56986	*53451	*5789
42841	4280	42840	44589	56986	*53321	53784	53784
42842	4281	42841	*5184	*53191	53784	56986	56986
42843	42820	42842	42820	53784	56986	*53460	*74783
4289	42821	42843	42821	56986	*53330	53784	42971
5184	42822	4289	42822	*53200	53784	56986	42979
*42831	42823	5184	42823	53784	56986	*53461	7450
39891	42830	*4289	42830	56986	*53331	53784	74510
40201	42831	42820	42831	*53201	53784	56986	74511
40211	42832	42821	42832	53784	56986	*53470	74512
40291	42833	42822	42833	56986	*53340	53784	74519
4280	42840	42823	42840	*53210	53784	56986	7452
4281	42841	42830	42841	53784	56986	*53471	7453
42820	42842	42831	42842	56986	*53341	53784	7454
42821	42843	42832	42843	*53211	53784	56986	74560
42822	4289	42833	*5302	53784	56986	*53490	74569
42823	5184	42840	53784	56986	*53350	53784	7457
42830	*42841	42841	56986	*53220	53784	56986	74601
42831	39891	42842	*5307	53784	56986	*53491	74602
42832	40201	42843	53784	56986	*53351	53784	7461
42833	40211	*44489	56986	*53221	53784	56986	7462
42840	40291	44501	*53082	53784	56986	*53501	7463
42841	4280	44502	53784	56986	*53360	53784	7464
42842	4281	44581	56986	*53230	53784	56986	7465
42843	42820	44589	*53100	53784	56986	*53511	7466
4289	42821	*4449	53784	56986	*53361	53784	7467
5184	42822	44501	56986	*53231	53784	56986	74681
*42832	42823	44502	*53101	53784	56986	*53521	74682
39891	42830	44581	53784	56986	*53370	53784	74683
40201	42831	44589	56986	*53240	53784	56986	74684
40211	42832	*44501	*53110	53784	56986	*53531	74686
40291	42833	44501	53784	56986	*53371	53784	74711
4280	42840	*44502	56986	*53241	53784	56986	74722
4281	42841	44502	*53111	53784	56986	*53541	*76520
42820	42842	*44581	53784	56986	*53390	53784	76501
42821	42843	44581	56986	*53250	53784	56986	76502
42822	4289	*44589	*53120	53784	56986	*53551	76503
42823	5184	44589	53784	56986	*53391	53784	76504
42830	*42842	*4560	56986	*53251	53784	56986	76505
42831	39891	53784	*53121	53784	56986	*53561	76506
42832	40201	56986	53784	56986	*53400	53784	76507
42833	40211	*45989	56986	*53260	53784	56986	76508
42840	40291	42820	*53130	53784	56986	*53783	*76521
42841	4280	42821	53784	56986	*53401	53784	76501
42842	4281	42822	56986	*53261	53784	56986	76502
42843	42820	42823	*53131	53784	56986	*53784	76503
4289	42821	42830	53784	56986	*53410	53784	76504

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

76505	76506	769	76508	7703	7713	78039	03811
76506	76507	7700	7670	7704	77181	7817	03819
76507	76508	7701	7685	7705	77183	7854	0382
76508	*7685	7702	769	7707	77210	78550	0383
*76522	77084	7703	7700	77084	77211	78551	03840
76501	*7686	7704	7701	7710	77212	78559	03841
76502	77084	7705	7702	7711	77213	7863	03842
76503	*7689	7707	7703	7713	77214	78820	03843
76504	77084	77084	7704	77181	7722	78829	03844
76505	*769	*7709	7705	77183	7724	7895	03849
76506	77084	77084	7707	77210	7725	7907	0388
76507	*7700	*7714	77084	77211	7730	7911	0389
76508	77084	77181	7710	77212	7731	7913	0545
*76523	*7701	77183	7711	77213	7732	7991	99590
76501	77084	*7715	7713	77214	7733	7994	99591
76502	*7702	77181	77181	7722	7734	*78099	99592
76503	77084	77183	77183	7724	7740	04082	99593
76504	*7703	*7716	77210	7725	7741	44024	99594
76505	77084	77181	77211	7730	7742	78001	*99592
76506	*7704	77183	77212	7731	77430	78003	0362
76507	77084	*7717	77213	7732	77431	7801	0380
76508	*7705	77181	77214	7733	77439	78031	03810
*76524	77084	77183	7722	7734	7744	78039	03811
76501	*7706	*77181	7724	7740	7745	7817	03819
76502	77084	77181	7725	7741	7747	7854	0382
76503	*7707	77183	7730	7742	7751	78550	0383
76504	77084	*77182	7731	77430	7752	78551	03840
76505	*77081	77181	7732	77431	7753	78559	03841
76506	7685	77183	7733	77439	7754	7863	03842
76507	769	*77183	7734	7744	7755	78820	03843
76508	7700	77181	7740	7745	7756	78829	03844
*76525	7701	77183	7741	7747	7757	7895	03849
76501	7702	*77189	7742	7751	7760	7907	0388
76502	7703	77181	77430	7752	7761	7911	0389
76503	7704	77183	77431	7753	7762	7913	0545
76504	7705	*7760	77439	7754	7763	7991	99590
76505	7707	77181	7744	7755	7771	7994	99591
76506	77084	77183	7745	7756	7772	*78550	99592
76507	*77082	*7761	7747	7757	7775	04082	99593
76508	7685	77181	7751	7760	7776	*78551	99594
*76526	769	77183	7752	7761	7780	04082	*99593
76501	7700	*7762	7753	7762	7790	*78559	0362
76502	7701	77181	7754	7763	7791	04082	0380
76503	7702	77183	7755	7771	7797	*7859	03810
76504	7703	*7763	7756	7772	*78091	04082	03811
76505	7704	77181	7757	7775	04082	*7998	03819
76506	7705	77183	7760	7776	44024	04082	0382
76507	7707	*7764	7761	7780	78001	*99590	0383
76508	77084	77181	7762	7790	78003	0362	03840
*76527	*77083	77183	7763	7791	7801	0380	03841
76501	7685	*7765	7771	7797	78031	03810	03842
76502	769	77181	7772	*77989	78039	03811	03843
76503	7700	77183	7775	76501	7817	03819	03844
76504	7701	*7766	7776	76502	7854	0382	03849
76505	7702	77181	7780	76503	78550	0383	0388
76506	7703	77183	7790	76504	78551	03840	0389
76507	7704	*7767	7791	76505	78559	03841	0545
76508	7705	77181	7797	76506	7863	03842	99590
*76528	7707	77183	*77982	76507	78820	03843	99591
76501	77084	*7768	76501	76508	78829	03844	99592
76502	*77084	77181	76502	7670	7895	03849	99593
76503	7685	77183	76503	7685	7907	0388	99594
76504	769	*7769	76504	769	7911	0389	*99594
76505	7700	77181	76505	7700	7913	0545	0362
76506	7701	77183	76506	7701	7991	99590	0380
76507	7702	*77981	76507	7702	7994	99591	03810
76508	7703	76501	76508	7703	*78092	99592	03811
*76529	7704	76502	7670	7704	04082	99593	03819
76501	7705	76503	7685	7705	44024	99594	0382
76502	7707	76504	769	7707	78001	*99591	0383
76503	77084	76505	7700	77084	78003	0362	03840
76504	*77089	76506	7701	7710	7801	0380	03841
76505	7685	76507	7702	7711	78031	03810	03842

TABLE 6G.—ADDITIONS TO THE CC EXCLUSIONS LIST—Continued

[CCs that are added to the list are in Table 6G-Additions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

03843	99591
03844	99592
03849	99593
0388	99594
0389	*V096
0545	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0970
*99791	99590
99831	99591
99832	99592
*99799	99593
99831	99594
99832	*V0971
*99831	99590
99831	99591
99832	99592
*99832	99593
99831	99594
99832	*V0980
*99881	99590
99831	99591
99832	99592
*99883	99593
99831	99594
99832	*V0981
*99889	99590
99831	99591
99832	99592
*9989	99593
99831	99594
99832	*V0990
*V090	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V0991
*V091	99590
99590	99591
99591	99592
99592	99593
99593	99594
99594	*V2341
*V092	V237
99590	V2381
99591	V2382
99592	V2383
99593	V2384
99594	V2389
*V093	V239
99590	*V2349
99591	V237
99592	V2381
99593	V2382
99594	V2383
*V094	V2384
99590	V2389
99591	V239
99592	*V462
99593	V461
99594	
*V0950	
99590	
99591	
99592	
99593	
99594	
*V0951	
99590	

TABLE 6H.—DELETIONS TO THE CC EXCLUSIONS LIST

[CCs that are deleted from the list are in Table 6H-Deletions to the CC Exclusions List. Each of the principal diagnoses is shown with an asterisk, and the revisions to the CC Exclusions List are provided in an indented column immediately following the affected principal diagnosis.]

*7708	7722	9983
7685	7724	*9989
769	7725	9983
7700	7730	*V234
7701	7731	V237
7702	7732	V2381
7703	7733	V2382
7704	7734	V2383
7705	7740	V2384
7707	7741	V2389
*7714	7742	V239
7718	77430	
*7715	77431	
7718	77439	
*7716	7744	
7718	7745	
*7717	7747	
7718	7751	
*7718	7752	
7718	7753	
*7760	7754	
7718	7755	
*7761	7756	
7718	7757	
*7762	7760	
7718	7761	
*7763	7762	
7718	7763	
*7764	7771	
7718	7772	
*7765	7775	
7718	7776	
*7766	7780	
7718	7790	
*7767	7791	
7718	7797	
*7768	*7809	
7718	44024	
*7769	78001	
7718	78003	
*7798	7801	
76501	78031	
76502	78039	
76503	7817	
76504	7854	
76505	78550	
76506	78551	
76507	78559	
76508	7863	
7670	78820	
7685	78829	
769	7895	
7700	7907	
7701	7911	
7702	7913	
7703	7991	
7704	7994	
7705	*99791	
7707	9983	
7710	*99799	
7711	9983	
7713	*9983	
7718	9983	
77210	*99881	
77211	9983	
77212	*99883	
77213	9983	
77214	*99889	

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	34667	8.9765	2	3	6	12	19
2	7122	9.9083	3	5	8	13	20
3	7	7.4286	1	1	3	4	10
4	6414	7.1743	1	2	5	9	16
5	93169	3.0674	1	1	2	3	7
6	398	2.9196	1	1	2	4	6
7	14187	9.7565	1	4	7	12	20
8	4350	2.7572	1	1	1	3	6
9	1738	6.4689	1	3	5	8	13
10	18019	6.5224	2	3	5	8	13
11	3400	4.0044	1	2	3	5	8
12	49655	5.8699	2	3	4	7	11
13	6646	5.0141	2	3	4	6	9
14	320358	5.8150	2	3	5	7	11
15	152285	3.4737	1	2	3	4	6
16	11455	6.0111	2	3	5	7	12
17	3729	3.2773	1	2	3	4	6
18	28016	5.4234	2	3	4	7	10
19	8679	3.5369	1	2	3	5	7
20	5618	10.4676	3	5	8	13	20
21	1429	6.5850	2	3	5	8	13
22	2723	5.0165	2	2	4	6	10
23	11192	4.2429	1	2	3	5	8
24	55364	4.8878	1	2	4	6	10
25	27208	3.2250	1	2	3	4	6
26	34	4.6765	1	1	2	4	6
27	3839	5.0253	1	1	3	6	11
28	12344	6.2286	1	3	5	8	13
29	4930	3.5613	1	2	3	5	7
31	3815	4.0765	1	2	3	5	8
32	1893	2.4464	1	1	2	3	5
34	21788	5.0453	1	2	4	6	9
35	6839	3.2388	1	1	3	4	6
36	2493	1.4705	1	1	1	1	2
37	1419	3.8182	1	1	2	4	9
38	93	2.4946	1	1	1	3	6
39	667	1.9340	1	1	1	2	4
40	1524	3.6037	1	1	2	5	8
42	1938	2.3710	1	1	1	3	5
43	110	3.0455	1	1	2	4	6
44	1295	5.0347	2	3	4	6	9
45	2600	3.2423	1	2	3	4	6
46	3374	4.5871	1	2	4	6	9
47	1350	3.1719	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2335	4.6188	1	2	3	5	9
50	2483	1.8212	1	1	1	2	3
51	251	3.1195	1	1	1	3	7
52	239	1.9205	1	1	1	2	3
53	2516	3.3792	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1566	3.0556	1	1	1	3	6
56	528	2.9848	1	1	2	3	6
57	692	3.6893	1	1	2	4	8
59	128	2.6641	1	1	1	3	6
60	6	3.3333	1	1	2	5	5
61	243	4.8354	1	1	3	7	10
62	3	1.6667	1	1	1	3	3
63	2887	4.4891	1	1	3	6	9
64	3132	6.6028	1	2	4	8	14
65	39024	2.7977	1	1	2	3	5
66	7671	3.1068	1	1	2	4	6
67	440	3.5955	1	2	3	4	6
68	8648	3.8274	1	2	3	5	7
69	2973	3.0054	1	2	2	4	6
70	25	3.4800	1	2	3	4	8
71	87	3.4368	1	2	3	4	6
72	926	3.5659	1	1	3	4	7
73	7073	4.3867	1	2	3	6	9
75	39878	10.0489	3	5	7	12	20

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
76	41691	11.4166	3	5	9	14	22
77	2445	4.8634	1	2	4	7	10
78	35316	6.6636	3	4	6	8	11
79	166404	8.5040	3	4	7	11	16
80	8320	5.4954	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63426	6.9938	2	3	6	9	14
83	6394	5.4759	2	3	4	7	10
84	1559	3.2290	1	2	3	4	6
85	21268	6.3168	2	3	5	8	12
86	2180	3.8138	1	2	3	5	8
87	59482	6.3070	1	3	5	8	12
88	396842	5.1059	2	3	4	6	9
89	502709	5.8920	2	3	5	7	11
90	46817	4.0322	2	2	3	5	7
91	57	4.0000	2	2	3	5	8
92	14816	6.3579	2	3	5	8	12
93	1710	4.1076	1	2	3	5	8
94	12574	6.3304	2	3	5	8	13
95	1679	3.7123	1	2	3	5	7
96	53729	4.5526	2	2	4	6	8
97	28601	3.5208	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21279	3.1677	1	1	2	4	6
100	8950	2.1349	1	1	2	3	4
101	21127	4.3832	1	2	3	6	9
102	5559	2.5690	1	1	2	3	5
103	428	49.2103	9	14	26	61	116
104	19836	14.4245	6	8	12	17	25
105	27462	9.9935	5	6	8	11	18
106	3308	11.3987	5	7	10	14	20
107	85791	10.4560	5	7	9	12	17
108	6205	10.2743	3	5	8	13	20
109	59572	7.7288	4	5	6	9	13
110	53172	9.0340	2	4	7	11	18
111	9394	4.4159	1	2	4	6	8
113	41424	12.4557	4	6	9	15	24
114	8852	8.5204	2	4	7	11	17
115	15271	8.2839	1	4	7	11	16
116	109277	4.4721	1	2	3	6	9
117	4177	4.1611	1	1	2	5	9
118	8112	2.8930	1	1	1	3	7
119	1316	5.1117	1	1	3	6	12
120	37220	8.7981	1	2	6	12	20
121	167308	6.3297	2	3	5	8	12
122	81710	3.6163	1	2	3	5	7
123	41163	4.7016	1	1	3	6	11
124	137232	4.3524	1	2	3	5	8
125	91133	2.7831	1	1	2	4	5
126	5016	11.8909	4	6	9	15	22
127	682134	5.2700	2	3	4	7	10
128	8254	5.4723	2	3	5	7	9
129	4105	2.8378	1	1	1	3	6
130	88700	5.6615	2	3	5	7	10
131	27798	4.0539	1	2	4	5	7
132	152312	2.9301	1	1	2	4	5
133	8929	2.2655	1	1	2	3	4
134	39623	3.1770	1	2	2	4	6
135	7554	4.4298	1	2	3	5	8
136	1237	2.5594	1	1	2	3	5
138	203378	3.9834	1	2	3	5	8
139	90000	2.4829	1	1	2	3	5
140	66435	2.5585	1	1	2	3	5
141	102391	3.5917	1	2	3	4	7
142	51719	2.5539	1	1	2	3	5
143	250133	2.0827	1	1	2	3	4
144	88510	5.4530	1	2	4	7	11
145	7598	2.6481	1	1	2	3	5
146	10799	10.2146	5	7	8	12	17
147	2798	6.4010	3	5	6	8	10

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
148	129350	12.2861	5	7	10	15	22
149	19313	6.4669	4	5	6	8	10
150	20328	11.2319	4	7	10	14	20
151	4963	5.6756	1	3	5	8	10
152	4425	8.3250	3	5	7	10	14
153	2014	5.3803	3	4	5	7	8
154	29001	13.2057	3	7	10	16	26
155	7262	3.9898	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8154	5.5581	1	2	4	7	11
158	4562	2.5184	1	1	2	3	5
159	17114	5.0598	1	2	4	6	10
160	12169	2.6492	1	1	2	3	5
161	11152	4.1588	1	1	3	5	9
162	7288	1.9175	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5118	8.2651	3	5	7	10	14
165	2185	4.6499	2	3	4	6	8
166	3903	4.8737	1	2	4	6	9
167	3800	2.5132	1	1	2	3	4
168	1279	5.0023	1	2	3	6	11
169	827	2.2866	1	1	2	3	5
170	12108	10.9853	2	4	8	14	22
171	1355	4.3107	1	2	3	6	9
172	30622	6.9624	2	3	5	9	14
173	2711	3.7444	1	1	3	5	8
174	247222	4.8059	2	3	4	6	9
175	35165	2.9201	1	2	3	4	5
176	15219	5.2481	2	3	4	6	10
177	9429	4.5038	2	2	4	6	8
178	3758	3.0780	1	2	3	4	6
179	12541	5.9632	2	3	5	7	11
180	88300	5.3709	2	3	4	7	10
181	27097	3.3767	1	2	3	4	6
182	248889	4.4042	1	2	3	5	8
183	87342	2.8973	1	1	2	4	5
184	90	2.9000	1	1	2	4	6
185	5021	4.7104	1	2	3	6	9
186	3	4.6667	2	2	3	9	9
187	446	4.3565	1	2	3	6	8
188	79403	5.5558	1	2	4	7	11
189	13113	3.0563	1	1	2	4	6
190	74	4.7838	1	2	3	5	9
191	9222	13.7304	3	6	10	17	28
192	1257	6.0963	1	3	5	8	11
193	4865	12.7394	5	7	10	16	23
194	733	6.8759	2	4	6	8	12
195	4157	10.3560	4	6	9	12	18
196	1051	5.4186	2	3	5	7	9
197	18569	8.9827	3	5	7	11	16
198	5672	4.4381	2	3	4	6	8
199	1644	9.9179	2	4	7	13	21
200	1042	10.4539	1	3	7	14	22
201	1466	14.4734	3	6	11	18	29
202	26156	6.3731	2	3	5	8	13
203	29310	6.7403	2	3	5	9	13
204	61544	5.8119	2	3	4	7	11
205	24459	6.1537	2	3	5	8	12
206	2049	3.9204	1	2	3	5	8
207	32107	5.1834	1	2	4	7	10
208	10745	2.8598	1	1	2	4	5
209	371105	4.9903	3	3	4	6	8
210	121541	6.8894	3	4	6	8	11
211	32567	4.9284	3	4	5	6	7
212	7	3.2857	1	2	2	2	4
213	9878	9.1432	2	4	7	11	18
216	6916	9.5448	2	4	7	12	19
217	17029	13.4060	3	5	9	16	28
218	22745	5.4427	2	3	4	7	10
219	20867	3.2086	1	2	3	4	5

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	1	2.0000	2	2	2	2	2
223	13667	2.8776	1	1	2	3	6
224	12467	1.8627	1	1	1	2	3
225	6124	5.0144	1	2	3	7	11
226	5702	6.6733	1	3	5	8	14
227	4923	2.6669	1	1	2	3	5
228	2481	4.0806	1	1	2	5	9
229	1176	2.2168	1	1	2	3	4
230	2407	5.0586	1	2	3	6	11
231	13540	4.8875	1	1	3	6	10
232	882	2.7426	1	1	1	3	7
233	7199	7.2148	1	3	5	9	15
234	4623	3.1573	1	1	2	4	7
235	5091	5.0304	1	2	4	6	9
236	39785	4.7450	1	3	4	6	9
237	1744	3.5740	1	2	3	4	7
238	8625	8.8420	3	4	7	11	17
239	48235	6.2846	2	3	5	8	12
240	11808	6.7199	2	3	5	8	13
241	3223	3.8849	1	2	3	5	7
242	2516	6.5568	2	3	5	8	13
243	93807	4.6804	1	2	4	6	9
244	13584	4.7331	1	2	4	6	9
245	5733	3.3630	1	2	3	4	6
246	1347	3.7647	1	2	3	5	7
247	19620	3.3687	1	1	3	4	6
248	12067	4.8652	1	2	4	6	9
249	12912	3.6678	1	1	2	4	8
250	3795	4.1686	1	2	3	5	7
251	2489	2.7814	1	1	2	4	5
253	20861	4.6779	1	3	4	6	9
254	10809	3.1314	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6422	5.1110	1	2	4	6	10
257	16706	2.6651	1	1	2	3	5
258	16972	1.8186	1	1	2	2	3
259	3813	2.6693	1	1	1	2	6
260	5087	1.3666	1	1	1	1	2
261	1889	2.1615	1	1	1	2	4
262	683	4.2958	1	1	3	5	10
263	24569	11.8050	3	5	8	14	23
264	3982	6.9006	2	3	5	8	14
265	4052	6.7347	1	2	4	8	14
266	2676	3.1371	1	1	2	4	6
267	267	4.2584	1	1	2	4	8
268	899	3.6274	1	1	2	4	8
269	9064	8.2177	2	3	6	10	17
270	2746	3.2618	1	1	2	4	7
271	19612	7.2767	2	4	6	9	13
272	5471	6.1349	2	3	5	7	12
273	1387	3.9250	1	2	3	5	7
274	2344	6.7675	1	3	5	8	14
275	247	3.0202	1	1	2	4	6
276	1315	4.5384	1	2	4	6	8
277	93957	5.7577	2	3	5	7	10
278	31764	4.2755	2	3	4	5	7
279	3	7.0000	3	3	8	10	10
280	17047	4.1686	1	2	3	5	8
281	7834	2.9183	1	1	2	4	5
283	5638	4.6568	1	2	4	6	9
284	1950	3.0569	1	1	2	4	6
285	6574	10.6492	3	5	8	13	20
286	2183	5.9464	2	3	4	7	11
287	6460	10.5718	3	5	8	12	20
288	3675	5.3897	2	3	4	6	8
289	6423	2.8026	1	1	1	3	6
290	9500	2.2281	1	1	1	2	4
291	78	1.6026	1	1	1	2	3
292	5423	9.9458	2	4	8	13	20
293	345	4.9246	1	2	3	7	10

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	95391	4.5356	1	2	3	6	9
295	3359	3.9690	1	2	3	5	7
296	250941	5.1144	1	2	4	6	10
297	47743	3.3559	1	2	3	4	6
298	103	4.3495	1	2	3	5	8
299	1218	5.3760	1	2	4	6	10
300	17546	6.1581	2	3	5	8	12
301	3644	3.6509	1	2	3	5	7
302	7896	8.6990	4	5	7	10	15
303	20694	8.2722	3	4	6	9	15
304	11944	8.6761	2	4	6	11	18
305	2972	3.5697	1	2	3	4	6
306	7213	5.4883	1	2	3	7	13
307	2168	2.2002	1	1	2	3	4
308	7359	6.3367	1	2	4	8	14
309	4375	2.1913	1	1	2	3	4
310	24597	4.3470	1	1	3	5	9
311	8323	1.8264	1	1	1	2	3
312	1547	4.4945	1	1	3	6	10
313	644	2.1289	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	31230	6.8866	1	1	4	9	16
316	116645	6.6308	2	3	5	8	13
317	1890	3.0899	1	1	2	3	7
318	5739	6.0294	1	3	4	8	12
319	494	2.8543	1	1	2	4	6
320	193283	5.3020	2	3	4	7	10
321	30745	3.7500	1	2	3	5	7
322	64	3.6563	1	2	3	4	7
323	18622	3.1423	1	1	2	4	6
324	7455	1.8437	1	1	1	2	3
325	8938	3.7880	1	2	3	5	7
326	2803	2.6718	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	685	3.7883	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49140	5.5819	1	3	4	7	11
332	5119	3.1686	1	1	2	4	6
333	311	4.6849	1	2	3	6	10
334	10271	4.7684	2	3	4	5	8
335	12383	3.1779	2	2	3	4	5
336	36334	3.4249	1	2	2	4	7
337	29524	2.0688	1	1	2	2	3
338	1055	5.5526	1	2	3	8	13
339	1505	4.6186	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3670	3.0695	1	1	2	3	6
342	723	3.1355	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3810	2.2850	1	1	1	2	4
345	1180	3.8542	1	1	2	4	8
346	4562	6.0342	1	3	5	8	12
347	373	2.6971	1	1	2	3	6
348	3281	4.1591	1	2	3	5	8
349	597	2.4623	1	1	2	3	5
350	6497	4.5045	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	768	3.9557	1	2	3	5	8
353	2659	6.4772	2	3	5	7	12
354	7491	5.8265	3	3	4	7	10
355	5680	3.2347	2	2	3	4	5
356	25943	2.1725	1	1	2	3	4
357	5715	8.4126	3	4	6	10	16
358	20616	4.3038	2	3	3	5	7
359	31095	2.6372	1	2	3	3	4
360	15579	2.8185	1	2	2	3	5
361	369	3.6694	1	1	2	4	8
362	2	1.0000	1	1	1	1	1
363	2684	3.6256	1	2	2	4	7
364	1632	3.8762	1	1	3	5	8

TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
365	1770	7.3989	1	3	5	9	16
366	4436	6.8537	2	3	5	9	14
367	521	3.0115	1	1	2	4	6
368	3288	6.7318	2	3	5	8	13
369	3280	3.1976	1	1	2	4	6
370	1244	5.6937	3	3	4	5	9
371	1416	3.6031	2	3	3	4	5
372	919	3.6529	1	2	2	3	5
373	3878	2.2935	1	2	2	3	3
374	116	2.8793	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	263	3.5095	1	2	2	4	6
377	29	4.3793	1	2	3	4	7
378	169	2.4615	1	1	2	3	4
379	408	3.0000	1	1	2	3	6
380	76	1.9605	1	1	1	2	4
381	181	2.0829	1	1	1	2	4
382	25	1.3600	1	1	1	1	3
383	1841	3.9620	1	1	3	4	8
384	149	2.7315	1	1	1	3	6
389	5	3.4000	1	1	2	4	8
390	8	2.7500	1	1	1	4	5
392	2247	9.5167	2	4	7	12	19
393	1	2.0000	2	2	2	2	2
394	1959	6.2950	1	2	4	8	14
395	100668	4.3478	1	2	3	5	9
396	11	3.8182	1	1	2	4	6
397	17952	5.1683	1	2	4	7	10
398	17121	5.8897	2	3	5	7	11
399	1788	3.5520	1	2	3	5	7
400	6488	8.9578	1	3	6	11	20
401	5837	11.2479	2	5	9	15	23
402	1598	3.8899	1	1	3	5	8
403	32013	8.0033	2	3	6	10	17
404	4593	4.1916	1	2	3	5	9
406	2495	9.6970	2	4	7	12	20
407	702	4.1140	1	2	3	5	8
408	2122	7.8591	1	2	5	10	18
409	2517	6.1339	2	3	4	6	13
410	30770	4.0138	1	2	4	5	6
411	14	2.9286	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5767	7.2917	2	3	6	9	14
414	763	4.0170	1	2	3	5	8
415	39920	14.4391	4	6	11	18	29
416	181162	7.4625	2	4	6	9	14
417	37	6.1351	2	2	4	8	13
418	23410	6.1742	2	3	5	8	12
419	15730	4.6490	1	2	4	6	9
420	2958	3.4324	1	2	3	4	6
421	9274	3.7804	1	2	3	4	7
422	69	2.9130	1	1	2	3	6
423	7273	8.2391	2	3	6	10	17
424	1292	12.9690	2	5	9	16	26
425	16309	3.8956	1	2	3	5	8
426	4483	4.4716	1	2	3	5	9
427	1576	4.4143	1	2	3	5	9
428	745	7.3732	1	2	4	8	15
429	27035	6.1425	2	3	4	7	12
430	63072	7.9697	2	3	6	10	16
431	321	5.9470	1	2	4	7	13
432	411	4.5645	1	1	3	5	9
433	5523	2.9714	1	1	2	3	6
439	1457	8.5003	1	3	6	10	17
440	5440	9.0241	2	3	6	11	20
441	612	3.0735	1	1	2	4	7
442	16697	8.5604	1	3	6	10	18
443	3806	3.5365	1	1	3	4	7
444	5676	4.3175	1	2	3	5	8
445	2726	2.8995	1	1	2	4	5

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TABLE 7A.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V19.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
447	6278	2.4462	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30479	3.6797	1	1	3	4	8
450	7369	1.9900	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25229	5.0164	1	2	3	6	10
453	5648	2.7665	1	1	2	3	5
454	4624	4.3575	1	2	3	5	9
455	1098	2.3752	1	1	2	3	5
461	4563	4.0690	1	1	2	4	10
462	11994	11.3643	4	6	10	14	21
463	25215	4.1639	1	2	3	5	8
464	7115	3.0145	1	1	2	4	6
465	224	2.8973	1	1	1	3	5
466	1797	3.9321	1	1	2	4	7
467	1043	8.3931	1	1	2	3	6
468	57090	12.8803	3	6	10	16	25
471	12468	5.4931	3	3	4	6	9
473	8236	12.3409	1	3	7	17	32
475	104072	11.1941	2	5	9	15	22
476	3803	11.2611	2	5	10	15	21
477	25564	8.1456	1	3	6	11	17
478	108638	7.3817	1	3	5	9	16
479	24179	3.3012	1	1	3	4	7
480	622	21.5354	7	9	14	28	49
481	726	21.9353	13	17	20	25	33
482	5562	13.2251	4	7	10	16	25
483	43028	39.7169	15	22	33	49	71
484	317	13.0820	2	5	10	18	27
485	3029	9.4262	4	5	7	11	18
486	1867	12.3214	1	5	10	16	25
487	3536	7.6683	1	3	6	10	16
488	776	16.9162	3	6	13	22	35
489	13557	8.5376	2	3	6	10	18
490	5252	5.2582	1	2	4	6	10
491	13607	3.4664	1	2	3	4	6
492	2875	15.0104	2	5	7	25	34
493	58106	5.8777	1	3	5	7	11
494	30972	2.4751	1	1	2	3	5
495	211	17.1659	8	10	13	20	31
496	1842	9.4870	3	4	7	11	19
497	18414	6.5560	3	4	5	7	11
498	13584	4.1477	2	3	4	5	6
499	33300	4.6629	1	2	3	6	9
500	49827	2.4760	1	1	2	3	5
501	2356	10.6341	4	5	8	13	20
502	637	6.4066	2	4	5	8	11
503	5894	3.8884	1	2	3	5	7
504	123	34.9756	9	15	27	44	66
505	147	3.6667	1	1	1	5	9
506	937	17.2604	4	8	14	22	36
507	288	8.9549	2	4	7	12	18
508	667	8.2219	2	3	6	10	17
509	177	5.4350	1	2	4	7	10
510	1671	6.6092	1	3	5	8	13
511	616	4.3766	1	1	3	5	9
512	450	14.2244	6	8	11	15	24
513	142	10.7042	5	7	9	11	20
514	19261	7.2615	1	3	6	9	15
515	4570	5.4897	1	1	3	7	13
516	76256	4.7308	2	2	4	6	9
517	191586	2.6138	1	1	2	3	6
518	51638	3.3905	1	1	2	4	7
519	7316	5.1875	1	2	3	6	12
520	11118	2.1205	1	1	2	2	4
521	28568	5.7752	2	3	4	7	12
522	6141	9.4402	3	4	8	12	20
523	14812	4.0927	1	2	3	5	7
	11403341						

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
1	27708	11.1212	3	5	8	14	22
2	14081	5.2277	1	3	4	7	10
3	7	7.4286	1	1	3	4	10
4	6426	7.1748	1	2	5	9	16
5	93169	3.0674	1	1	2	3	7
6	398	2.9196	1	1	2	4	6
7	14187	9.7565	1	4	7	12	20
8	4350	2.7572	1	1	1	3	6
9	1737	6.4669	1	3	5	8	13
10	18019	6.5224	2	3	5	8	13
11	3400	4.0044	1	2	3	5	8
12	49655	5.8699	2	3	4	7	11
13	6646	5.0141	2	3	4	6	9
14	236067	6.0768	2	3	5	7	12
15	101726	4.9503	2	3	4	6	9
16	9257	6.1391	2	3	5	8	12
17	2871	3.1379	1	1	2	4	6
18	28016	5.4234	2	3	4	7	10
19	8679	3.5369	1	2	3	5	7
20	5618	10.4676	3	5	8	13	20
21	1429	6.5850	2	3	5	8	13
22	2723	5.0165	2	2	4	6	10
23	11192	4.2429	1	2	3	5	8
24	55364	4.8878	1	2	4	6	10
25	27208	3.2250	1	2	3	4	6
26	34	4.6765	1	1	2	4	6
27	3839	5.0253	1	1	3	6	11
28	12344	6.2286	1	3	5	8	13
29	4930	3.5613	1	2	3	5	7
31	3815	4.0765	1	2	3	5	8
32	1893	2.4464	1	1	2	3	5
34	22342	5.0412	1	2	4	6	9
35	7331	3.2195	1	1	3	4	6
36	2493	1.4705	1	1	1	1	2
37	1419	3.8182	1	1	2	4	9
38	93	2.4946	1	1	1	3	6
39	667	1.9340	1	1	1	2	4
40	1524	3.6037	1	1	2	5	8
42	1938	2.3710	1	1	1	3	5
43	110	3.0455	1	1	2	4	6
44	1295	5.0347	2	3	4	6	9
45	2600	3.2423	1	2	3	4	6
46	3374	4.5871	1	2	4	6	9
47	1350	3.1719	1	1	3	4	6
48	1	2.0000	2	2	2	2	2
49	2337	4.6166	1	2	3	5	9
50	2483	1.8212	1	1	1	2	3
51	251	3.1195	1	1	1	3	7
52	239	1.9205	1	1	1	2	3
53	2518	3.3777	1	1	2	4	8
54	1	4.0000	4	4	4	4	4
55	1566	3.0556	1	1	1	3	6
56	528	2.9848	1	1	2	3	6
57	692	3.6893	1	1	2	4	8
59	128	2.6641	1	1	1	3	6
60	6	3.3333	1	1	2	5	5
61	243	4.8354	1	1	3	7	10
62	3	1.6667	1	1	1	3	3
63	2900	4.4831	1	1	3	6	9
64	3132	6.6028	1	2	4	8	14
65	39024	2.7977	1	1	2	3	5
66	7671	3.1068	1	1	2	4	6
67	440	3.5955	1	2	3	4	6
68	8754	3.8284	1	2	3	5	7
69	3035	2.9997	1	2	2	4	5
70	25	3.4800	1	2	3	4	8
71	87	3.4368	1	2	3	4	6
72	926	3.5659	1	1	3	4	7
73	7073	4.3867	1	2	3	6	9
75	39878	10.0489	3	5	7	12	20

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
76	41691	11.4166	3	5	9	14	22
77	2445	4.8634	1	2	4	7	10
78	35316	6.6636	3	4	6	8	11
79	166404	8.5040	3	4	7	11	16
80	8320	5.4954	2	3	5	7	10
81	2	8.0000	3	3	13	13	13
82	63426	6.9938	2	3	6	9	14
83	6394	5.4759	2	3	4	7	10
84	1559	3.2290	1	2	3	4	6
85	21268	6.3168	2	3	5	8	12
86	2180	3.8138	1	2	3	5	8
87	59482	6.3070	1	3	5	8	12
88	396842	5.1059	2	3	4	6	9
89	502709	5.8920	2	3	5	7	11
90	46817	4.0322	2	2	3	5	7
91	57	4.0000	2	2	3	5	8
92	14816	6.3579	2	3	5	8	12
93	1710	4.1076	1	2	3	5	8
94	12574	6.3304	2	3	5	8	13
95	1679	3.7123	1	2	3	5	7
96	53729	4.5526	2	2	4	6	8
97	28601	3.5208	1	2	3	4	6
98	15	5.0000	1	2	3	4	13
99	21279	3.1677	1	1	2	4	6
100	8950	2.1349	1	1	2	3	4
101	21127	4.3832	1	2	3	6	9
102	5559	2.5690	1	1	2	3	5
103	428	49.2103	9	14	26	61	116
104	19517	14.4041	6	8	12	17	25
105	27289	9.9529	5	6	8	11	18
106	3308	11.3987	5	7	10	14	20
107	85791	10.4560	5	7	9	12	17
108	6205	10.2743	3	5	8	13	20
109	59572	7.7288	4	5	6	9	13
110	53172	9.0340	2	4	7	11	18
111	9394	4.4159	1	2	4	6	8
113	41424	12.4557	4	6	9	15	24
114	8852	8.5204	2	4	7	11	17
115	15271	8.2839	1	4	7	11	16
116	109277	4.4721	1	2	3	6	9
117	4177	4.1611	1	1	2	5	9
118	8112	2.8930	1	1	1	3	7
119	1316	5.1117	1	1	3	6	12
120	37308	8.7872	1	2	6	12	20
121	167308	6.3297	2	3	5	8	12
122	81710	3.6163	1	2	3	5	7
123	41163	4.7016	1	1	3	6	11
124	138287	4.3673	1	2	3	6	8
125	90077	2.7417	1	1	2	4	5
126	5016	11.8909	4	6	9	15	22
127	682134	5.2700	2	3	4	7	10
128	8254	5.4723	2	3	5	7	9
129	4105	2.8378	1	1	1	3	6
130	88700	5.6615	2	3	5	7	10
131	27798	4.0539	1	2	4	5	7
132	152311	2.9301	1	1	2	4	5
133	8929	2.2655	1	1	2	3	4
134	39623	3.1770	1	2	2	4	6
135	7554	4.4298	1	2	3	5	8
136	1237	2.5594	1	1	2	3	5
138	203378	3.9834	1	2	3	5	8
139	90000	2.4829	1	1	2	3	5
140	66435	2.5585	1	1	2	3	5
141	102391	3.5917	1	2	3	4	7
142	51719	2.5539	1	1	2	3	5
143	250133	2.0827	1	1	2	3	4
144	88510	5.4530	1	2	4	7	11
145	7598	2.6481	1	1	2	3	5
146	10800	10.2147	5	7	8	12	17
147	2799	6.4012	3	5	6	8	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
148	129450	12.2855	5	7	10	15	22
149	19342	6.4670	4	5	6	8	10
150	20334	11.2329	4	7	10	14	20
151	4963	5.6756	1	3	5	8	10
152	4425	8.3250	3	5	7	10	14
153	2015	5.3782	3	4	5	7	8
154	29004	13.2062	3	7	10	16	26
155	7262	3.9898	1	2	3	6	8
156	3	15.0000	11	11	13	21	21
157	8155	5.5579	1	2	4	7	11
158	4564	2.5184	1	1	2	3	5
159	17115	5.0602	1	2	4	6	10
160	12172	2.6489	1	1	2	3	5
161	11155	4.1600	1	1	3	5	9
162	7290	1.9177	1	1	1	2	4
163	3	3.0000	1	1	3	5	5
164	5118	8.2651	3	5	7	10	14
165	2185	4.6499	2	3	4	6	8
166	3903	4.8737	1	2	4	6	9
167	3800	2.5132	1	1	2	3	4
168	1382	4.8705	1	2	3	6	10
169	869	2.2842	1	1	2	3	5
170	12156	10.9845	2	4	8	14	22
171	1359	4.3061	1	2	3	6	9
172	30622	6.9624	2	3	5	9	14
173	2711	3.7444	1	1	3	5	8
174	247222	4.8059	2	3	4	6	9
175	35165	2.9201	1	2	3	4	5
176	15219	5.2481	2	3	4	6	10
177	9429	4.5038	2	2	4	6	8
178	3758	3.0780	1	2	3	4	6
179	12541	5.9632	2	3	5	7	11
180	88300	5.3709	2	3	4	7	10
181	27097	3.3767	1	2	3	4	6
182	260686	4.3600	1	2	3	5	8
183	91243	2.8817	1	1	2	4	5
184	93	2.8387	1	1	2	4	6
185	5070	4.6984	1	2	3	6	9
186	3	4.6667	2	2	3	9	9
187	668	4.1153	1	2	3	6	8
188	79403	5.5558	1	2	4	7	11
189	13113	3.0563	1	1	2	4	6
190	74	4.7838	1	2	3	5	9
191	9222	13.7304	3	6	10	17	28
192	1257	6.0963	1	3	5	8	11
193	4865	12.7394	5	7	10	16	23
194	733	6.8759	2	4	6	8	12
195	4157	10.3560	4	6	9	12	18
196	1051	5.4186	2	3	5	7	9
197	18569	8.9827	3	5	7	11	16
198	5672	4.4381	2	3	4	6	8
199	1644	9.9179	2	4	7	13	21
200	1042	10.4539	1	3	7	14	22
201	2013	14.4287	4	6	11	18	28
202	26156	6.3731	2	3	5	8	13
203	29310	6.7403	2	3	5	9	13
204	61544	5.8119	2	3	4	7	11
205	24459	6.1537	2	3	5	8	12
206	2049	3.9204	1	2	3	5	8
207	32107	5.1834	1	2	4	7	10
208	10745	2.8598	1	1	2	4	5
209	371105	4.9903	3	3	4	6	8
210	121541	6.8894	3	4	6	8	11
211	32567	4.9284	3	4	5	6	7
212	7	3.2857	1	2	2	2	4
213	9878	9.1432	2	4	7	11	18
216	6916	9.5448	2	4	7	12	19
217	17029	13.4060	3	5	9	16	28
218	22744	5.4422	2	3	4	7	10
219	20866	3.2085	1	2	3	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
220	1	2.0000	2	2	2	2	2
223	13666	2.8724	1	1	2	3	6
224	12467	1.8627	1	1	1	2	3
225	6124	5.0144	1	2	3	7	11
226	5699	6.6699	1	3	5	8	14
227	4921	2.6651	1	1	2	3	5
228	2481	4.0806	1	1	2	5	9
229	1175	2.2179	1	1	2	3	4
230	2406	5.0590	1	2	3	6	11
231	12533	4.8810	1	1	3	6	11
232	882	2.7426	1	1	1	3	7
233	7179	7.2117	1	3	5	9	15
234	4607	3.1532	1	1	2	4	7
235	5091	5.0304	1	2	4	6	9
236	39785	4.7450	1	3	4	6	9
237	1744	3.5740	1	2	3	4	7
238	8625	8.8420	3	4	7	11	17
239	48230	6.2846	2	3	5	8	12
240	11807	6.7199	2	3	5	8	13
241	3223	3.8849	1	2	3	5	7
242	2516	6.5568	2	3	5	8	13
243	93654	4.6808	1	2	4	6	9
244	13584	4.7331	1	2	4	6	9
245	5732	3.3627	1	2	3	4	6
246	1346	3.7645	1	2	3	5	7
247	19620	3.3687	1	1	3	4	6
248	12067	4.8652	1	2	4	6	9
249	12651	3.6505	1	1	2	4	7
250	3795	4.1686	1	2	3	5	7
251	2489	2.7814	1	1	2	4	5
253	20861	4.6779	1	3	4	6	9
254	10809	3.1314	1	2	3	4	6
255	1	2.0000	2	2	2	2	2
256	6404	5.1084	1	2	4	6	10
257	16706	2.6651	1	1	2	3	5
258	16974	1.8185	1	1	2	2	3
259	3813	2.6693	1	1	1	2	6
260	5087	1.3666	1	1	1	1	2
261	1893	2.1590	1	1	1	2	4
262	686	4.2886	1	1	3	5	10
263	24569	11.8050	3	5	8	14	23
264	3982	6.9006	2	3	5	8	14
265	4052	6.7347	1	2	4	8	14
266	2676	3.1371	1	1	2	4	6
267	267	4.2584	1	1	2	4	8
268	899	3.6274	1	1	2	4	8
269	9064	8.2177	2	3	6	10	17
270	2746	3.2618	1	1	2	4	7
271	19612	7.2767	2	4	6	9	13
272	5471	6.1349	2	3	5	7	12
273	1387	3.9250	1	2	3	5	7
274	2344	6.7675	1	3	5	8	14
275	247	3.0202	1	1	2	4	6
276	1326	4.5181	1	2	4	6	8
277	93957	5.7577	2	3	5	7	10
278	31764	4.2755	2	3	4	5	7
279	3	7.0000	3	3	8	10	10
280	17047	4.1686	1	2	3	5	8
281	7834	2.9183	1	1	2	4	5
283	5638	4.6568	1	2	4	6	9
284	1950	3.0569	1	1	2	4	6
285	6574	10.6492	3	5	8	13	20
286	2183	5.9464	2	3	4	7	11
287	6460	10.5718	3	5	8	12	20
288	3675	5.3897	2	3	4	6	8
289	6423	2.8026	1	1	1	3	6
290	9500	2.2281	1	1	1	2	4
291	78	1.6026	1	1	1	2	3
292	5423	9.9458	2	4	8	13	20
293	345	4.9246	1	2	3	7	10

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
294	95391	4.5356	1	2	3	6	9
295	3359	3.9690	1	2	3	5	7
296	250941	5.1144	1	2	4	6	10
297	47743	3.3559	1	2	3	4	6
298	103	4.3495	1	2	3	5	8
299	1218	5.3760	1	2	4	6	10
300	17546	6.1581	2	3	5	8	12
301	3643	3.6508	1	2	3	5	7
302	7896	8.6990	4	5	7	10	15
303	20709	8.2736	3	4	6	9	15
304	12044	8.6857	2	4	6	11	18
305	3008	3.6051	1	2	3	5	6
306	7213	5.4883	1	2	3	7	13
307	2168	2.2002	1	1	2	3	4
308	7245	6.2803	1	2	4	8	14
309	4338	2.1547	1	1	2	3	4
310	24597	4.3470	1	1	3	5	9
311	8323	1.8264	1	1	1	2	3
312	1547	4.4945	1	1	3	6	10
313	644	2.1289	1	1	1	2	4
314	1	5.0000	5	5	5	5	5
315	33711	7.1835	1	1	4	9	17
316	115329	6.5892	2	3	5	8	13
317	1890	3.0899	1	1	2	3	7
318	5739	6.0294	1	3	4	8	12
319	494	2.8543	1	1	2	4	6
320	193283	5.3020	2	3	4	7	10
321	30745	3.7500	1	2	3	5	7
322	64	3.6563	1	2	3	4	7
323	18622	3.1423	1	1	2	4	6
324	7455	1.8437	1	1	1	2	3
325	8938	3.7880	1	2	3	5	7
326	2803	2.6718	1	1	2	3	5
327	2	2.5000	1	1	4	4	4
328	685	3.7883	1	1	3	5	7
329	105	2.2000	1	1	1	2	5
331	49140	5.5819	1	3	4	7	11
332	5119	3.1686	1	1	2	4	6
333	311	4.6849	1	2	3	6	10
334	10271	4.7684	2	3	4	5	8
335	12383	3.1779	2	2	3	4	5
336	36334	3.4249	1	2	2	4	7
337	29524	2.0688	1	1	2	2	3
338	1055	5.5526	1	2	3	8	13
339	1505	4.6186	1	1	3	6	10
340	1	1.0000	1	1	1	1	1
341	3670	3.0695	1	1	2	3	6
342	723	3.1355	1	1	2	4	6
343	1	5.0000	5	5	5	5	5
344	3840	2.3802	1	1	1	2	5
345	1336	4.7859	1	1	3	6	10
346	4562	6.0342	1	3	5	8	12
347	373	2.6971	1	1	2	3	6
348	3281	4.1591	1	2	3	5	8
349	597	2.4623	1	1	2	3	5
350	6497	4.5045	2	2	4	6	8
351	1	1.0000	1	1	1	1	1
352	768	3.9557	1	2	3	5	8
353	2659	6.4772	2	3	5	7	12
354	7491	5.8265	3	3	4	7	10
355	5680	3.2347	2	2	3	4	5
356	25943	2.1725	1	1	2	3	4
357	5715	8.4126	3	4	6	10	16
358	20617	4.3038	2	3	3	5	7
359	31095	2.6372	1	2	3	3	4
360	15583	2.8183	1	2	2	3	5
361	369	3.6694	1	1	2	4	8
362	2	1.0000	1	1	1	1	1
363	2683	3.6254	1	2	2	4	7
364	1631	3.8780	1	1	3	5	8

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TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
365	1834	7.6930	2	3	5	10	17
366	4436	6.8537	2	3	5	9	14
367	521	3.0115	1	1	2	4	6
368	3288	6.7318	2	3	5	8	13
369	3281	3.1987	1	1	2	4	6
370	1244	5.6937	3	3	4	5	9
371	1416	3.6031	2	3	3	4	5
372	919	3.6529	1	2	2	3	5
373	3878	2.2935	1	2	2	3	3
374	116	2.8793	1	2	2	3	5
375	8	5.2500	1	3	5	5	9
376	263	3.5095	1	2	2	4	6
377	29	4.3793	1	2	3	4	7
378	169	2.4615	1	1	2	3	4
379	408	3.0000	1	1	2	3	6
380	76	1.9605	1	1	1	2	4
381	181	2.0829	1	1	1	2	4
382	25	1.3600	1	1	1	1	3
383	1841	3.9620	1	1	3	4	8
384	149	2.7315	1	1	1	3	6
389	5	3.4000	1	1	2	4	8
390	1	4.0000	4	4	4	4	4
392	2247	9.5167	2	4	7	12	19
393	1	2.0000	2	2	2	2	2
394	2329	7.0575	1	2	5	9	15
395	100668	4.3478	1	2	3	5	9
396	11	3.8182	1	1	2	4	6
397	17952	5.1683	1	2	4	7	10
398	17121	5.8897	2	3	5	7	11
399	1788	3.5520	1	2	3	5	7
400	6488	8.9578	1	3	6	11	20
401	5837	11.2479	2	5	9	15	23
402	1599	3.8899	1	1	3	5	8
403	32013	8.0033	2	3	6	10	17
404	4592	4.1916	1	2	3	5	9
406	2495	9.6970	2	4	7	12	20
407	702	4.1140	1	2	3	5	8
408	2122	7.8591	1	2	5	10	18
409	2517	6.1339	2	3	4	6	13
410	30770	4.0138	1	2	4	5	6
411	14	2.9286	1	1	2	4	6
412	18	2.0000	1	1	1	2	4
413	5767	7.2917	2	3	6	9	14
414	763	4.0170	1	2	3	5	8
415	39922	14.4392	4	6	11	18	29
416	181162	7.4625	2	4	6	9	14
417	37	6.1351	2	2	4	8	13
418	23408	6.1732	2	3	5	8	12
419	15730	4.6490	1	2	4	6	9
420	2958	3.4324	1	2	3	4	6
421	9274	3.7804	1	2	3	4	7
422	69	2.9130	1	1	2	3	6
423	7273	8.2391	2	3	6	10	17
424	1292	12.9690	2	5	9	16	26
425	16309	3.8956	1	2	3	5	8
426	4483	4.4716	1	2	3	5	9
427	1576	4.4143	1	2	3	5	9
428	745	7.3732	1	2	4	8	15
429	27035	6.1425	2	3	4	7	12
430	63072	7.9697	2	3	6	10	16
431	321	5.9470	1	2	4	7	13
432	411	4.5645	1	1	3	5	9
433	5523	2.9714	1	1	2	3	6
439	1457	8.5003	1	3	6	10	17
440	5440	9.0241	2	3	6	11	20
441	612	3.0735	1	1	2	4	7
442	16700	8.5598	1	3	6	10	18
443	3808	3.5355	1	1	3	4	7
444	5676	4.3175	1	2	3	5	8
445	2726	2.8995	1	1	2	4	5

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued
[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
447	6278	2.4462	1	1	2	3	5
448	1	1.0000	1	1	1	1	1
449	30478	3.6796	1	1	3	4	8
450	7369	1.9900	1	1	1	2	4
451	5	1.6000	1	1	2	2	2
452	25229	5.0164	1	2	3	6	10
453	5646	2.7669	1	1	2	3	5
454	4624	4.3575	1	2	3	5	9
455	1098	2.3752	1	1	2	3	5
461	4563	4.0690	1	1	2	4	10
462	11994	11.3643	4	6	10	14	21
463	25215	4.1639	1	2	3	5	8
464	7115	3.0145	1	1	2	4	6
465	224	2.8973	1	1	1	3	5
466	1797	3.9321	1	1	2	4	7
467	1043	8.3931	1	1	2	3	6
468	54726	12.9153	3	6	10	16	25
471	12468	5.4931	3	3	4	6	9
473	8236	12.3409	1	3	7	17	32
475	104072	11.1941	2	5	9	15	22
476	3814	11.2651	2	5	10	15	21
477	25602	8.1413	1	3	6	11	17
478	108638	7.3817	1	3	5	9	16
479	24179	3.3012	1	1	3	4	7
480	622	21.5354	7	9	14	28	49
481	726	21.9353	13	17	20	25	33
482	5300	12.4930	4	7	9	15	23
483	43301	39.6393	14	22	33	49	71
484	317	13.0820	2	5	10	18	27
485	3029	9.4262	4	5	7	11	18
486	1867	12.3214	1	5	10	16	25
487	3536	7.6683	1	3	6	10	16
488	776	16.9162	3	6	13	22	35
489	13557	8.5376	2	3	6	10	18
490	5252	5.2582	1	2	4	6	10
491	13607	3.4664	1	2	3	4	6
492	2875	15.0104	2	5	7	25	34
493	58106	5.8777	1	3	5	7	11
494	30972	2.4751	1	1	2	3	5
495	211	17.1659	8	10	13	20	31
496	1842	9.4870	3	4	7	11	19
497	19927	6.5368	3	4	5	7	11
498	14665	4.1305	2	3	4	5	6
499	32668	4.6299	1	2	3	6	9
500	49512	2.4657	1	1	2	3	5
501	2356	10.6341	4	5	8	13	20
502	637	6.4066	2	4	5	8	11
503	5894	3.8884	1	2	3	5	7
504	123	34.9756	9	15	27	44	66
505	147	3.6667	1	1	1	5	9
506	937	17.2604	4	8	14	22	36
507	288	8.9549	2	4	7	12	18
508	667	8.2219	2	3	6	10	17
509	177	5.4350	1	2	4	7	10
510	1671	6.6092	1	3	5	8	13
511	616	4.3766	1	1	3	5	9
512	450	14.2244	6	8	11	15	24
513	142	10.7042	5	7	9	11	20
514	19261	7.2615	1	3	6	9	15
515	4570	5.4897	1	1	3	7	13
516	76256	4.7308	2	2	4	6	9
517	191586	2.6138	1	1	2	3	6
518	51638	3.3905	1	1	2	4	7
519	7220	5.1497	1	2	3	6	12
520	11073	2.1137	1	1	2	2	4
521	28568	5.7752	2	3	4	7	12
522	6141	9.4402	3	4	8	12	20
523	14812	4.0927	1	2	3	5	7
524	136857	3.3964	1	2	3	4	6

TABLE 7B.—MEDICARE PROSPECTIVE PAYMENT SYSTEM SELECTED PERCENTILE LENGTHS OF STAY—Continued

[FY 2001 MEDPAR Update 12/01 Grouper V20.0]

DRG	Number discharges	Arithmetic mean LOS	10th percentile	25th percentile	50th percentile	75th percentile	90th percentile
525	492	15.9309	2	5	9	18	35
	11420001						

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2002

State	Urban	Rural
ALABAMA	0.337	0.394
ALASKA	0.407	0.675
ARIZONA	0.349	0.478
ARKANSAS	0.456	0.438
CALIFORNIA	0.335	0.419
COLORADO	0.463	0.538
CONNECTICUT	0.494	0.509
DELAWARE	0.516	0.484
DISTRICT OF COLUMBIA	0.413	
FLORIDA	0.349	0.365
GEORGIA	0.446	0.456
HAWAII	0.403	0.519
IDAHO	0.558	0.599
ILLINOIS	0.398	0.492
INDIANA	0.522	0.529
IOWA	0.484	0.594
KANSAS	0.380	0.591
KENTUCKY	0.478	0.490
LOUISIANA	0.390	0.482
MAINE	0.585	0.523
MARYLAND	0.759	0.821
MASSACHUSETTS	0.550	0.568
MICHIGAN	0.460	0.562
MINNESOTA	0.470	0.581
MISSISSIPPI	0.444	0.434
MISSOURI	0.399	0.473
MONTANA	0.504	0.544
NEBRASKA	0.428	0.550
NEVADA	0.284	0.473
NEW HAMPSHIRE	0.524	0.579
NEW JERSEY	0.393	
NEW MEXICO	0.471	0.516
NEW YORK	0.500	0.595
NORTH CAROLINA	0.511	0.465
NORTH DAKOTA	0.611	0.611
OHIO	0.492	0.568
OKLAHOMA	0.405	0.485
OREGON	0.545	0.579

TABLE 8A.—STATEWIDE AVERAGE OPERATING COST-TO-CHARGE RATIOS FOR URBAN AND RURAL HOSPITALS (CASE WEIGHTED) MARCH 2002—Continued

State	Urban	Rural
PENNSYLVANIA	0.376	0.500
PUERTO RICO	0.467	0.561
RHODE ISLAND	0.486	
SOUTH CAROLINA	0.438	0.455
SOUTH DAKOTA	0.498	0.546
TENNESSEE	0.432	0.457
TEXAS	0.380	0.484
UTAH	0.495	0.570
VERMONT	0.572	0.595
VIRGINIA	0.452	0.546
WASHINGTON	0.580	0.598
WEST VIRGINIA	0.563	0.534
WISCONSIN	0.524	0.599
WYOMING	0.524	0.707

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2002

State	Ratio
ALABAMA	0.041
ALASKA	0.053
ARIZONA	0.038
ARKANSAS	0.049
CALIFORNIA	0.033
COLORADO	0.045
CONNECTICUT	0.036
DELAWARE	0.048
DISTRICT OF COLUMBIA	0.032
FLORIDA	0.043
GEORGIA	0.049
HAWAII	0.038
IDAHO	0.048
ILLINOIS	0.039
INDIANA	0.056

TABLE 8B.—STATEWIDE AVERAGE CAPITAL COST-TO-CHARGE RATIOS (CASE WEIGHTED) MARCH 2002—Continued

State	Ratio
IOWA	0.049
KANSAS	0.047
KENTUCKY	0.046
LOUISIANA	0.046
MAINE	0.038
MARYLAND	0.013
MASSACHUSETTS	0.050
MICHIGAN	0.044
MINNESOTA	0.043
MISSISSIPPI	0.043
MISSOURI	0.043
MONTANA	0.051
NEBRASKA	0.047
NEVADA	0.032
NEW HAMPSHIRE	0.058
NEW JERSEY	0.035
NEW MEXICO	0.045
NEW YORK	0.049
NORTH CAROLINA	0.047
NORTH DAKOTA	0.073
OHIO	0.047
OKLAHOMA	0.045
OREGON	0.042
PENNSYLVANIA	0.037
PUERTO RICO	0.041
RHODE ISLAND	0.031
SOUTH CAROLINA	0.046
SOUTH DAKOTA	0.050
TENNESSEE	0.049
TEXAS	0.043
UTAH	0.045
VERMONT	0.049
VIRGINIA	0.057
WASHINGTON	0.068
WEST VIRGINIA	0.044
WISCONSIN	0.050
WYOMING	0.062

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010005	01	3440	3440
010008	01	5240	
010010	01	3440	3440
010012	01	2880	
010022	01	2880	
010029	0580	1800	
010035	01	1000	
010036	01	2750	
010043	01	1000	1000
010044	01	25	
010072	01	0450	0450
010101	01	0450	0450

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
010118	01	5240	
010120	01	5160	
010121	01	5240	
010126	01	2180	
010150	01	5240	
010158	01	2650	
020008	02	0380	
030007	03	2620	
030012	03	6200	
030033	03	2620	
030043	03	8520	
040014	04	4400	
040017	04	7920	
040019	04	4920	
040020	3700	4920	
040026	04	4400	
040027	04	7920	
040041	04	4400	
040045	04	26	
040066	04	4400	
040069	04	4920	
040076	04	4400	
040078	04	4400	
040080	04	3700	
040088	04	7680	
040091	04	8360	
040107	04	8360	
040119	04	4400	
050042	05	6690	
050045	05		7320
050069	5945	4480	
050071	7400	5775	
050073	8720	5775	
050076	7360	5775	
050101	8720	5775	
050150	05	6920	
050174	7500	8720	
050192	2840	05	
050228	7360	5775	
050230	5945	4480	
050236	8735	4480	
050286	8780	05	
050296	05	7120	
050301	05	7500	
050325	05	5170	
050335	05	5170	
050419	05	6690	
050446	0680	05	
050457	7360	5775	
050464	5170	8120	
050469	6780	05	
050494	05	6920	
050510	7360	5775	
050528	4940	05	
050541	7360	5775	
050549	8735	4480	
050569	05	7500	
050594	5945	4480	
050609	5945	4480	
050686	6780	5945	
050701	6780	7320	
060003	1125	2080	2080
060013	06	0200	
060018	06	2995	
060023	2995	6520	
060027	1125	2080	2080
060044	06	2080	
060049	06	2670	
060075	06	2995	
060076	06	3060	

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TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
060096	06	2080	
060103	1125	2080	2080
070006	5483	5600	
070018	5483	5600	
070033	5483	5600	
070034	5483	5600	
070036	3283	5483	
080002	08		0720
080004	2190	9160	
080006	08	2190	
080007	08	2190	
100022	5000	2680	
100023	10	5960	
100024	10	5000	
100045	2020	5960	
100048	6080	10	
100049	10	3980	
100098	10	8960	8960
100103	10	3600	3600
100105	10	2710	
100109	10	5960	
100118	2020	10	
100150	10	5000	
100157	3980	8280	
100176	8960	2710	
100211	8280	3980	
100217	10	2710	
100232	10	5790	2900
100239	8280	7510	
100249	10	8280	
100268	8960	2680	
110001	11	0520	
110002	11	0520	
110003	11	3600	
110016	11	1800	
110023	11	0520	
110025	11	3600	
110029	11	0520	
110038	11	10	
110040	11	0500	0500
110050	11	0520	
110054	11	0520	
110075	11	7520	
110100	11	0600	
110118	11	0120	
110122	11	10	
110150	11	4680	
110168	11	0520	
110187	11	0520	
110188	11	0520	
110189	11	0520	
110190	11	4680	
110205	11	0520	
120015	12	3320	
130002	13	29	
130003	13	50	
130011	13	50	
130018	13	6340	
130049	13	7840	
130060	13	1080	
140012	14	1600	
140015	14	7040	
140031	14	1400	
140032	14	7040	
140034	14	7040	
140040	14	6120	
140043	14	6880	
140046	14	7040	
140058	14	7880	
140064	14	6120	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
140086	14		7040
140093	14	1400	
140102	14	7880	7880
140110	14	6120	
140141	14	7040	7040
140143	14	6120	
140155	3740		1600
140160	14	6880	
140161	14	1600	
140164	14	7040	
140189	14	1400	
140199	14	7040	
140230	14		1400
140234	14	6120	
140245	14		7040
140271	14	7800	7800
150002	2960	1600	
150004	2960	1600	
150006	15	7800	
150008	2960	1600	
150011	15	3480	3480
150015	15	1600	
150027	15		3480
150030	15	3480	3480
150034	2960	1600	
150036	15	3850	
150048	15	2000	
150051	1020		3480
150062	15	3480	3480
150065	15	3480	
150067	15		3480
150069	15	1640	1640
150076	15	7800	
150090	2960	1600	
150096	15	2330	
150105	15	3480	3480
150112	15	3480	3480
150122	15	3480	
150125	2960	1600	1600
150126	2960	1600	1600
150132	2960	1600	
150133	15	2330	
150146	15	2330	
160001	16	2120	
160016	16	2120	
160026	16	2120	
160030	16	2120	
160037	16	24	
160057	16	3500	
160064	16	8920	
160080	16	1960	
160089	16	2120	
160094	16	8920	
160122	16	14	
160147	16	2120	
170001	17	9040	
170006	17	3710	
170010	17	8560	
170012	17	9040	
170013	17	9040	
170014	17	3760	
170020	17	9040	
170022	17	7000	
170023	17	9040	
170025	17	9040	
170033	17	9040	
170058	17	26	
170060	17	28	
170094	17	8440	
170120	17	3710	

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TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
170131	17		8440
170137	4150	17	
170142	17	8440	
170145	17	8560	
170166	17	0320	
170175	17	9040	
180005	18	3400	
180011	18	4280	
180012	18	4520	
180013	18	5360	
180016	18	4520	
180018	18	4280	
180027	18	1660	
180028	18	3400	
180029	18	3660	
180044	18	3400	
180048	18	4280	
180054	18	1660	
180065	18	1640	
180066	18	5360	
180069	18	3400	
180078	18	3400	
180102	18	1660	
180104	18	1660	
180116	18	1660	
180124	18	5360	
180127	18	4520	
180132	18	4280	
180139	18	4280	
190001	19	5560	5560
190003	19	3880	
190010	19	5560	5560
190014	19	3880	
190015	19	5560	
190018	19	3880	
190025	19	3880	
190048	3350	19	
190054	19	3880	
190083	19	5200	
190086	19	5200	
190099	19	3880	
190106	19	3880	
190110	3880	19	
190131	19	5560	
190218	19	0220	
200020	6403	1123	1123
200024	4243	6403	
200034	4243	6403	
200039	20	6403	
200040	6403		1123
200063	20	6403	
220060	1123	0743	
220077	8003	3283	
230015	23	3720	
230022	23	3720	
230027	23	3000	3000
230030	23	6960	
230036	23	6960	
230037	23	0440	
230040	23	3720	3720
230054	23	3080	
230078	0870	23	
230080	23	6960	
230093	23	3000	
230096	23	3720	
230097	23	3000	
230105	23	6960	
230106	23	3000	
230121	23	2640	2640
230188	23	6960	6960

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
230199	23	0870	0870
230235	23	6960	6960
230253	23	2160	
240008	24	6820	
240011	24	5120	
240014	24	5120	
240016	24	2520	
240018	24		5120
240023	24	5120	
240045	24	2240	
240064	24	2240	
240075	24	6980	
240088	24	6980	
240089	24	5120	
240100	24	2985	
240121	24	2240	
240139	24	5120	
240142	24	6980	
240152	24	5120	
250004	25	4920	
250009	25	3580	
250012	25	4920	
250025	25	1	
250030	25	3560	
250031	25	3560	
250034	25	4920	
250042	25	4920	
250058	25	3285	
250069	25	3560	
250078	3285	0920	
250079	25	3560	
250081	25	3560	
250082	25	6240	
250084	25	19	
250088	25	0760	
250094	3285	0920	
250097	25	0760	
250100	25	8600	
250101	25	3560	
250104	25	3560	
250122	25	19	
250126	25	4920	
260006	7000	26	
260009	26	3760	
260011	26	1740	
260015	26	3700	
260017	26	7040	
260022	26	1740	
260025	26	14	
260034	26	3760	
260047	26	1740	
260050	26	7000	
260064	26	1740	
260074	26	1740	
260078	26	7920	
260094	26	7920	
260110	26	7040	7040
260113	26	14	
260116	26	7040	
260119	26	3700	
260120	26	3700	
260127	26	7040	
260131	26	1740	
260183	26	7040	
260186	26	1740	
270002	27	0880	
270003	27	3040	
270011	27	3040	
270016	27	0880	
270017	27	5140	

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TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
270051	27	5140	
270057	27	0880	
270083	27	5140	
280009	28	4360	
280023	28	4360	
280032	28	4360	
280054	28	4360	
280061	28	53	
280065	28	3060	
280077	28	5920	
280111	28	5920	
280125	28	7720	
290006	29	6720	
290019	29	6720	
300003	30	1123	
300005	30	1123	1123
300009	1123	30	
300019	30	22	
300024	30		1123
310001	0875	5600	
310002	5640	5600	
310003	3640	5600	
310015	5640	0875	
310021	8480	5190	
310031	6160	5190	
310038	5015	5600	
310039	5015	5190	
310045	0875	5600	
310048	5015	5640	
310049	3640		5640
310070	5015	5640	
310076	5640	5600	
310087	8760	6160	
310108	5015	5190	
310118	3640		0875
310119	5640	5600	
320005	32	0200	
320006	32	7490	
320011	32	7490	
320013	32	7490	
320063	32	5800	
320065	32	5800	
330001	5660	5600	
330004	33	5660	
330023	2281	5660	
330027	5380	5600	
330084	33	1303	
330085	33	8160	
330103	33		1280
330106	5380	5600	
330126	5660	5600	
330135	5660	5600	
330136	33	8160	
330157	33	8160	
330181	5380	5600	
330182	5380	5600	
330205	5660	5600	
330209	5660	5600	
330224	33	3283	
330235	8160		6840
330239	3610	2360	
330250	33	1303	
330264	5660	5600	
330307	33	8160	
330386	33	5660	
340003	34	3120	
340008	34	2560	
340013	34	1520	
340017	34	0480	
340021	34	1520	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
340023	34	0480	
340027	34	3150	
340039	34	1520	1520
340050	34	2560	
340051	34	3290	
340052	3120	1520	
340064	34	3120	
340068	34	9200	
340071	34	6640	6640
340084	34	1520	
340088	34	0480	
340097	34	3120	
340109	34	5720	5720
340115	34	6640	
340124	34	6640	6640
340126	34	6640	6640
340129	34	1520	
340131	34	3150	
340143	3290	1520	
340144	34	1520	
340147	6895	6640	
350005	35	2985	
350006	35	1010	
350009	35	2520	
350017	35	27	
350043	35	1010	
360002	36		1680
360008	36	3400	
360010	36	0080	
360011	36	1840	
360013	36	2000	
360014	36	1840	
360024	36	1680	1680
360025	36	1680	1680
360036	36	0080	
360037	1680	0080	
360039	36	1840	
360046	3200	1640	1640
360056	3200	1640	1640
360063	36	1680	1680
360065	36	1680	1680
360071	36	4320	4320
360076	3200	1640	1640
360078	0080		1680
360084	1320	0080	
360088	36	1840	
360089	36	8400	
360090	8400		2160
360092	36	1840	1840
360095	36	8400	
360101	1680	0080	
360107	36	8400	
360108	36	4800	
360109	36	1840	
360112	8400	0440	
360121	36	0440	
360132	3200	1640	1640
360142	36		1640
360144	1680	0080	
360159	36	1840	
360175	36	1840	1640
360197	36	1840	1840
360211	8080		6280
370004	37	3710	
370006	37	8560	
370014	37	7640	
370015	37	8560	
370018	37	8560	
370022	37	4200	
370023	37	4200	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
370025	37	8560	
370034	37	2720	
370047	37	7640	
370048	37	8360	
370049	37	5880	
370054	37	5880	
370084	37	2720	
370103	37	45	
370153	37	4200	
370200	37	5880	
380001	38	6440	
380002	38	4890	
380003	38	2400	
380006	38		6440
380027	38	2400	
380040	38	2400	
380047	38	2400	
380050	38	4890	
380051	7080		6440
380065	38	2400	
380070	38	6440	
380084	7080	38	
380090	38	2400	
390006	39	3240	
390008	39	6280	6280
390013	39	3240	
390016	39	6280	6280
390017	39	6280	6280
390030	39	0240	6680
390031	39	0240	6680
390048	39	3240	
390052	39	0280	
390065	39	8840	9280
390079	39	0960	
390091	39	6280	
390093	39	6280	
390110	3680	6280	
390113	39	9320	
390133	0240	6160	
390138	39	8840	
390150	39	6280	
390151	39	8840	
390181	39	6680	6680
390183	39	6680	6680
390189	39	3240	
390197	0240	6160	
390201	39	5660	5640
390263	0240	6160	
400018	40	1310	
410010	6483	1123	
410013	6483	5523	
420020	42	1440	
420036	42	1520	
420059	42	2655	
420062	42	1520	
420068	42	0600	
420070	8140	1760	
420071	42	0600	
420080	42	7520	
420085	5330	9200	
430008	43	24	
430012	43	7760	
430013	43	7760	
430014	43	2520	
430015	43	6660	
430047	43	28	
430048	43	53	
430089	43	7720	
440020	44	3440	
440024	44	1560	

TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
440050	44	0480	
440058	44	1560	
440059	44	5360	
440067	44	3840	
440068	44	1560	
440073	44	5360	
440083	44	3840	
440143	44	5360	
440148	44	5360	
440175	44	3440	
440180	44	3840	
440182	44	3580	
440185	44	1560	
440186	44	5360	
440187	44	18	
440192	44	5360	
440200	44	5360	
440203	44	1560	
450007	45	7240	
450014	45	8750	
450053	45	8750	
450072	1145	3360	
450080	45	4420	
450085	45	9080	
450098	45	4420	
450099	45	0320	
450113	45	1920	
450140	45	5800	
450144	45	5800	
450146	45	0320	
450155	45	0320	
450163	45	1880	
450178	45	5800	
450187	45	3360	
450192	45	1920	
450194	45	1920	
450196	45		1920
450211	45	3360	
450214	45	3360	
450224	45	8640	
450246	45	8750	
450347	45	3360	
450351	45	2800	
450353	45	1880	
450373	45	4420	
450395	45	3360	
450400	45	8800	
450438	45	0640	
450447	45	1920	
450451	45	2800	
450484	45	3360	
450508	45	8640	
450534	45	0320	
450587	45	40	
450591	1145	3360	
450623	45	1920	
450626	45	8750	
450653	45	5800	
450656	45	8640	
450694	45	3360	
450747	45	1920	
450755	45	4600	
450763	45	320	
460007	46	2620	
460011	46	6520	
460021	46	4120	
460027	46	6520	
460032	46	6520	
460036	46	6520	
460039	46	7160	

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TABLE 9.—HOSPITAL RECLASSIFICATIONS AND REDESIGNATIONS BY INDIVIDUAL HOSPITAL—FY—2003—Continued

Provider number	Actual MSA or rural area	Wage index MSA reclassification	Standardized amount MSA reclassification
470001	47	1303	
470003	1303	1123	
470011	47	1123	1123
470012	47	6323	
470018	47	1123	
490001	49	3660	
490004	49	1540	
490005	49	8840	
490013	49	1950	
490018	49	4640	
490038	49	3660	
490047	49	8840	
490060	49	3660	
490066	5720	6760	
490079	49	3120	
490126	49	6800	
500002	50	6740	
500003	50	7600	
500007	50	0860	
500016	50	7600	
500041	50	6440	
500059	50	7600	
500072	50	7600	
500079	8200		7600
510001	51	6280	
510002	51	6800	
510006	51	6280	
510024	51	6280	6280
510028	51	1480	
510046	51	1480	
510047	51	6280	
510048	51	3400	
510062	51	1480	
510070	51	1480	
510071	51	1480	
520002	52	8940	
520006	52	8940	
520011	52	2290	
520021	3800	1600	1600
520028	52	4720	
520037	52	8940	
520059	6600	5080	5080
520066	3620	4720	
520071	52	5080	5080
520076	52	5080	
520084	52	4720	
520088	52	5080	
520091	52	23	
520094	6600	5080	5080
520096	6600	5080	5080
520102	52	5080	5080
520107	52	3080	
520113	52	3080	
520116	52	5080	5080
520152	52	3080	
520173	52	2240	
520189	3800	1600	1600
530008	53	1350	
530009	53	1350	
530015	53	6340	
530025	53	2670	
530032	53	7160	

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]

DRG	Cases	Mean + 1 standard deviation
1	27,704	$66,748
2	14,078	$34,337
3	7	$55,030
4	6,426	$41,870
5	93,104	$23,280
6	398	$14,095
7	14,187	$46,968
8	4,349	$28,253
9	1,737	$24,223
10	18,015	$22,246
11	3,398	$15,519
12	49,619	$15,429
13	6,637	$13,922
14	235,975	$21,928
15	101,681	$16,969
16	9,257	$21,632
17	2,870	$11,541
18	28,000	$17,036
19	8,672	$12,308
20	5,616	$51,920
21	1,429	$27,335
22	2,722	$18,422
23	11,189	$14,276
24	55,342	$17,340
25	27,205	$10,640
26	34	$13,463
27	3,839	$23,063
28	12,339	$23,674
29	4,928	$12,505
31	3,814	$15,329
32	1,891	$9,174
34	22,336	$17,368
35	7,323	$11,138
36	2,481	$10,985
37	1,418	$18,071
38	93	$9,775
39	666	$10,551
40	1,524	$14,863
42	1,936	$11,289
43	110	$8,855
44	1,295	$11,245
45	2,598	$12,352
46	3,373	$13,685
47	1,350	$9,302
49	2,337	$31,134
50	2,477	$13,972
51	251	$16,197
52	238	$13,055
53	2,517	$20,530
55	1,564	$16,073
56	526	$16,460
57	692	$17,299
59	127	$13,165
60	6	$10,986
61	243	$21,950
62	3	$6,623
63	2,900	$25,070
64	3,131	$23,886
65	39,014	$9,512
66	7,668	$9,851
67	439	$13,316
68	8,752	$11,567
69	3,034	$8,666
70	25	$8,029
71	87	$12,279
72	926	$12,429
73	7,070	$13,912
75	39,852	$53,451

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
76	41,676	$50,324
77	2,444	$21,281
78	35,270	$22,207
79	166,273	$29,036
80	8,304	$15,356
81	2	$17,479
82	63,407	$25,645
83	6,390	$16,990
84	1,558	$8,753
85	21,262	$21,607
86	2,179	$12,312
87	59,447	$24,541
88	396,490	$15,658
89	502,217	$18,132
90	46,781	$10,653
91	57	$12,409
92	14,806	$21,600
93	1,710	$13,018
94	12,571	$20,639
95	1,679	$10,242
96	53,684	$13,018
97	28,583	$9,626
98	15	$16,431
99	21,274	$12,269
100	8,941	$9,245
101	21,119	$14,939
102	5,557	$9,489
103	428	$349,756
104	19,511	$130,539
105	27,278	$94,418
106	3,307	$121,657
107	85,660	$86,239
108	6,200	$95,309
109	59,511	$64,065
110	53,164	$71,438
111	9,392	$42,529
113	41,401	$49,111
114	8,849	$29,028
115	15,270	$58,727
116	109,194	$38,515
117	4,176	$23,091
118	8,104	$27,103
119	1,316	$22,646
120	37,306	$39,416
121	167,277	$27,051
122	81,670	$17,860
123	41,145	$28,071
124	138,236	$23,982
125	89,996	$18,048
126	5,015	$48,094
127	681,606	$17,412
128	8,240	$12,365
129	4,100	$19,186
130	88,663	$16,401
131	27,776	$9,821
132	152,256	$11,138
133	8,915	$9,314
134	39,612	$10,344
135	7,552	$15,416
136	1,237	$10,011
138	203,304	$14,336
139	89,960	$8,832
140	66,409	$9,140
141	102,377	$12,604
142	51,706	$9,672
143	250,001	$9,216
144	88,480	$21,330
145	7,594	$10,378

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
146	10,796	$45,993
147	2,797	$25,903
148	129,351	$59,354
149	19,315	$24,710
150	20,330	$49,351
151	4,962	$22,681
152	4,424	$33,239
153	2,013	$19,418
154	28,996	$73,715
155	7,260	$21,846
156	3	$32,596
157	8,151	$22,041
158	4,560	$10,941
159	17,109	$23,315
160	12,156	$13,554
161	11,153	$19,125
162	7,270	$10,677
163	3	$7,876
164	5,116	$39,084
165	2,184	$20,580
166	3,902	$24,579
167	3,799	$14,801
168	1,381	$22,419
169	869	$12,657
170	12,155	$49,736
171	1,359	$19,892
172	30,603	$24,475
173	2,709	$13,824
174	247,084	$17,229
175	35,141	$9,564
176	15,215	$18,581
177	9,422	$15,760
178	3,756	$11,718
179	12,540	$18,881
180	88,253	$16,534
181	27,085	$9,241
182	260,632	$13,956
183	91,215	$9,962
184	93	$8,646
185	5,069	$15,675
186	3	$17,560
187	666	$14,847
188	79,377	$19,332
189	13,104	$10,335
190	74	$12,681
191	9,220	$77,337
192	1,257	$30,601
193	4,862	$59,463
194	733	$27,612
195	4,151	$50,509
196	1,050	$26,194
197	18,557	$42,811
198	5,667	$20,952
199	1,644	$42,977
200	1,042	$53,497
201	2,013	$67,182
202	26,142	$23,012
203	29,301	$24,716
204	61,516	$20,412
205	24,447	$21,124
206	2,048	$12,455
207	32,101	$19,874
208	10,740	$11,426
209	370,349	$31,852
210	121,438	$29,326
211	32,517	$19,885
212	7	$11,988
213	9,875	$32,709

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
216	6,916	$38,905
217	17,022	$53,503
218	22,732	$25,771
219	20,855	$16,751
223	13,650	$17,145
224	12,431	$12,855
225	6,124	$19,539
226	5,698	$26,964
227	4,915	$13,522
228	2,481	$19,438
229	1,175	$11,756
230	2,406	$21,932
231	12,530	$24,031
232	880	$16,464
233	7,178	$34,665
234	4,607	$21,908
235	5,089	$13,039
236	39,744	$12,220
237	1,743	$9,880
238	8,617	$24,817
239	48,197	$17,565
240	11,800	$23,191
241	3,218	$11,428
242	2,515	$19,784
243	93,611	$12,959
244	13,570	$12,429
245	5,726	$8,349
246	1,346	$9,926
247	19,616	$10,001
248	12,060	$14,559
249	12,649	$11,805
250	3,793	$11,824
251	2,489	$8,063
253	20,842	$12,750
254	10,802	$7,656
256	6,400	$14,186
257	16,692	$14,784
258	16,950	$11,403
259	3,812	$15,230
260	5,072	$11,046
261	1,888	$16,770
262	686	$15,951
263	24,560	$37,753
264	3,982	$19,495
265	4,052	$27,077
266	2,676	$14,584
267	267	$15,879
268	899	$19,361
269	9,060	$29,801
270	2,746	$12,961
271	19,594	$18,154
272	5,470	$17,426
273	1,387	$10,047
274	2,343	$22,054
275	247	$10,261
276	1,326	$11,997
277	93,843	$14,927
278	31,720	$9,470
279	3	$19,964
280	17,038	$12,041
281	7,827	$8,003
283	5,635	$12,585
284	1,950	$7,589
285	6,568	$35,890
286	2,183	$35,565
287	6,457	$32,850
288	3,675	$36,854
289	6,414	$16,097
290	9,482	$14,860
291	78	$10,570
292	5,422	$44,164
293	345	$24,530
294	95,355	$13,252
295	3,358	$13,707
296	250,808	$14,775
297	47,716	$8,713
298	103	$10,114
299	1,218	$16,149
300	17,532	$19,436
301	3,639	$11,261
302	7,896	$54,753
303	20,698	$41,205
304	12,041	$40,662
305	3,006	$20,536
306	7,210	$21,938
307	2,164	$10,268
308	7,244	$28,300
309	4,331	$15,304
310	24,587	$19,325
311	8,309	$10,483
312	1,547	$18,439
313	644	$11,749
315	33,708	$36,795
316	115,275	$23,727
317	1,889	$12,419
318	5,736	$21,305
319	494	$11,322
320	193,134	$14,735
321	30,723	$9,566
322	64	$8,657
323	18,621	$14,311
324	7,451	$8,122
325	8,937	$11,466
326	2,802	$7,872
327	2	$10,679
328	685	$13,051
329	105	$8,650
331	49,123	$18,734
332	5,117	$10,727
333	311	$13,719
334	10,262	$24,961
335	12,370	$18,084
336	36,313	$14,365
337	29,498	$9,686
338	1,055	$21,430
339	1,505	$18,435
341	3,670	$21,442
342	723	$13,001
344	3,838	$22,438
345	1,335	$19,558
346	4,559	$18,995
347	373	$10,844
348	3,280	$12,862
349	597	$7,194
350	6,493	$12,462
352	768	$12,805
353	2,655	$31,864
354	7,485	$25,534
355	5,670	$14,447
356	25,920	$12,488
357	5,710	$39,602
358	20,605	$20,138
359	31,042	$13,346
360	15,575	$14,638
361	369	$18,778
362	2	$9,180
363	2,683	$15,573
364	1,629	$14,738
365	1,834	$34,245
366	4,432	$23,297
367	520	$10,108
368	3,285	$21,162
369	3,279	$10,693
370	1,242	$16,029
371	1,413	$10,589
372	919	$9,639
373	3,876	$6,330
374	116	$12,936
375	8	$21,289
376	262	$8,664
377	29	$24,590
378	169	$15,095
379	408	$6,916
380	76	$6,684
381	181	$10,112
382	25	$2,798
383	1,841	$9,336
384	149	$7,372
389	5	$11,692
392	2,246	$55,515
394	2,326	$31,257
395	100,607	$14,330
396	11	$12,749
397	17,906	$21,719
398	17,113	$22,322
399	1,788	$12,303
400	6,486	$47,400
401	5,836	$50,173
402	1,599	$19,649
403	31,999	$32,078
404	4,588	$15,824
406	2,494	$48,934
407	701	$21,576
408	2,122	$36,343
409	2,515	$21,666
410	30,760	$18,311
411	14	$7,688
412	18	$4,980
413	5,766	$24,842
414	763	$12,866
415	39,905	$66,206
416	181,072	$28,177
417	37	$21,802
418	23,398	$18,311
419	15,719	$15,131
420	2,957	$10,195
421	9,270	$11,869
422	69	$7,590
423	7,269	$31,897
424	1,292	$41,189
425	16,304	$11,890
426	4,481	$9,206
427	1,576	$9,291
428	744	$12,949
429	27,018	$14,174
430	63,051	$12,703
431	320	$10,737
432	411	$11,105
433	5,520	$4,883
439	1,457	$29,345
440	5,435	$32,696
441	612	$15,577
442	16,693	$42,597
443	3,807	$17,673

TABLE 10.—MEANS AND STANDARD DEVIATIONS, BY DIAGNOSIS RELATED GROUPS (DRGs) [1]—Continued

DRG	Cases	Mean + 1 standard deviation
444	5,675	$13,003
445	2,724	$8,465
447	6,278	$8,499
449	30,470	$14,241
450	7,366	$7,229
451	5	$4,039
452	25,215	$18,340
453	5,643	$9,105
454	4,623	$14,423
455	1,096	$8,019
461	4,563	$21,124
462	11,981	$19,956
463	25,204	$12,097
464	7,101	$8,636
465	224	$10,305
466	1,795	$11,397
467	1,043	$9,854
468	54,705	$66,153
470	49	$302,446
471	12,391	$47,581
473	8,235	$63,556
475	104,025	$67,384
476	3,812	$40,882
477	25,600	$32,847
478	108,611	$42,010
479	24,176	$24,354
480	622	$176,423
481	726	$123,849
482	5,299	$61,539
483	43,282	$288,420
484	317	$100,224
485	3,028	$50,619
486	1,867	$85,814
487	3,533	$35,194
488	776	$88,052
489	13,548	$32,178
490	5,247	$18,195
491	13,575	$26,985
492	2,874	$74,770
493	58,081	$30,868
494	30,883	$16,784
495	211	$155,662
496	1,841	$98,777
497	19,917	$57,641
498	14,635	$41,713
499	32,659	$24,252
500	49,444	$15,562
501	2,352	$44,432
502	636	$25,677
503	5,888	$20,546
504	123	$281,048
505	147	$31,985
506	937	$84,055
507	288	$30,296
508	667	$24,629
509	177	$16,475
510	1,671	$20,337
511	616	$11,613
512	450	$95,226
513	142	$99,439
514	19,241	$104,112
515	4,568	$87,754
516	76,169	$45,006
517	190,940	$36,508
518	51,620	$30,281
519	7,216	$39,899
520	11,045	$25,111
521	28,562	$12,663
522	6,139	$10,035
523	14,802	$6,921
524	136,805	$12,350
525	492	$209,675

[1] Cases are taken from the FY 2001 MedPAR file; DRGs are from GROUPER V20.0.

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Appendix A—Regulatory Impact Analysis

I. Introduction

We have examined the impacts of this rule as required by Executive Order 12866 (September 1993, Regulatory Planning and Review) and the Regulatory Flexibility Act (RFA) (September 19, 1980, Public Law 96–354), section 1102(b) of the Social Security Act, the Unfunded Mandate Reform Act of 1995 (Public Law 104–4), and Executive Order 13132.

Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). A regulatory impact analysis (RIA) must be prepared for major rules with economically significant effects ($100 million or more in any 1 year). We have determined that this proposed rule is a major rule as defined in 5 U.S.C. 804(2). We estimate that the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase.

The RFA requires agencies to analyze options for regulatory relief of small businesses. For purposes of the RFA, small entities include small businesses, nonprofit organizations, and government agencies. Most hospitals and most other providers and suppliers are small entities, either by nonprofit status or by having revenues of $5 million to $25 million in any 1 year. For purposes of the RFA, all hospitals and other providers and suppliers are considered to be small entities. Individuals and States are not included in the definition of a small entity.

In addition, section 1102(b) of the Act requires us to prepare a regulatory impact analysis for any proposed rule that may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. With the exception of hospitals located in certain New England counties, for purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds that is located outside of a Metropolitan Statistical Area (MSA) or New England County Metropolitan Area (NECMA). Section 601(g) of the Social Security Amendments of 1983 (Public Law 98–21) designated hospitals in certain New England counties as belonging to the adjacent NECMA. Thus, for purposes of the hospital inpatient prospective payment systems, we classify these hospitals as urban hospitals.

It is clear that the changes being proposed in this document would affect both a substantial number of small rural hospitals as well as other classes of hospitals, and the effects on some may be significant. Therefore, the discussion below, in combination with the rest of this proposed rule, constitutes a combined regulatory impact analysis and regulatory flexibility analysis.

Section 202 of the Unfunded Mandate Reform Act of 1995 (Public Law 104–4) also requires that agencies assess anticipated costs and benefits before issuing any proposed rule (or a final rule that has been preceded by a proposed rule) that may result in an expenditure in any one year by State, local, or tribal governments, in the aggregate, or by the private sector, of $110 million. This proposed rule would not mandate any requirements for State, local, or tribal governments.

Executive Order 13132 establishes certain requirements that an agency must meet when it promulgates a proposed rule (and subsequent final rule) that imposes substantial direct requirement costs on State and local governments, preempts State law, or otherwise has Federalism implications. We have reviewed this proposed rule in light of Executive Order 13132 and have determined that it will not have any negative impact on the rights, roles, and responsibilities of State, local, or tribal governments.

In accordance with the provisions of Executive Order 12866, this proposed rule was reviewed by the Office of Management and Budget.

II. Objectives

The primary objective of the acute care hospital inpatient prospective payment system is to create incentives for hospitals to operate efficiently and minimize unnecessary costs while at the same time ensuring that payments are sufficient to adequately compensate hospitals for their legitimate costs. In addition, we share national goals of preserving the Medicare Trust Fund.

We believe the proposed changes would further each of these goals while maintaining the financial viability of the hospital industry and ensuring access to high quality health care for Medicare beneficiaries. We expect that these proposed changes would ensure that the outcomes of this payment system are reasonable and equitable while avoiding or minimizing unintended adverse consequences.

III. Limitations of Our Analysis

The following quantitative analysis presents the projected effects of our proposed policy changes, as well as statutory changes effective for FY 2003, on various hospital groups. We estimate the effects of individual policy changes by estimating payments per case while holding all other payment policies constant. We use the best data available, but we do not attempt to predict behavioral responses to our policy changes, and we do not make adjustments for future changes in such variables as admissions, lengths of stay, or case-mix. As we have done in previous proposed rules, we are soliciting comments and information about the anticipated effects of these changes on hospitals and our methodology for estimating them.

IV. Hospitals Included In and Excluded From the Acute Care Hospital Inpatient Prospective Payment System

The prospective payment systems for hospital inpatient operating and capital-related costs encompass nearly all general, short-term, acute care hospitals that participate in the Medicare program. There were 44 Indian Health Service hospitals in our database, which we excluded from the analysis due to the special characteristics of the prospective payment method for these hospitals. Among other short-term, acute care hospitals, only the 67 such hospitals in Maryland remain excluded from the hospital inpatient prospective payment system under the waiver at section 1814(b)(3) of the Act.

There are approximately 515 critical access hospitals (CAHs). These small, limited service hospitals are paid on the basis of reasonable costs rather than under the acute care hospital inpatient prospective payment system. The remaining 20 percent are specialty hospitals that are excluded from the acute-care, short-term prospective payment system. These hospitals include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, children's hospitals, and cancer hospitals. The impacts of our final policy changes on these hospitals are discussed below.

Thus, as of February 2002, we have included 4,301 hospitals in our analysis. This represents about 80 percent of all Medicare-participating hospitals. The majority of this impact analysis focuses on this set of hospitals.

V. Impact on Excluded Hospitals and Hospital Units

As of February 2002, there were 1,065 specialty hospitals excluded from the acute care hospital inpatient prospective payment system and instead paid on a reasonable cost basis subject to the rate-of-increase ceiling under § 413.40. Broken down by specialty, there were 493 psychiatric, 216 rehabilitation, 270 long-term care, 75 children's, and 11 cancer hospitals. In addition, there were 1,436 psychiatric units and 936 rehabilitation units in hospitals otherwise subject to the acute care hospital inpatient prospective payment system. Under § 413.40(a)(2)(i)(A), the rate-of-increase ceiling is not applicable to the 67 specialty hospitals and units in Maryland that are paid in accordance with the waiver at section 1814(b)(3) of the Act.

In the past, hospitals and units excluded from the acute care hospital inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316 through 41430)). Therefore, these hospitals are not impacted by this proposed rule.

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals would be paid under a long-term care hospital prospective payment system, where long-term care hospitals receive payment based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416 through 13494)). However, under this proposed payment system, a long-term care hospital may also elect to be paid at 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the proposed estimate of the excluded hospital market basket (or 3.4 percent).

The impact on excluded hospitals and hospital units of the update in the rate-of-increase limit depends on the cumulative cost increases experienced by each excluded hospital or unit since its applicable base period. For excluded hospitals and units that have maintained their cost increases at a level below the rate-of-increase limits since their base period, the major effect will be on the level of incentive payments these hospitals and hospital units receive. Conversely, for excluded hospitals and hospital units with per-case cost increases above the cumulative update in their rate-of-increase limits, the major effect will be the amount of excess costs that would not be reimbursed.

We note that, under § 413.40(d)(3), an excluded hospital or unit whose costs exceed 110 percent of its rate-of-increase limit receives its rate-of-increase limit plus 50 percent of the difference between its reasonable costs and 110 percent of the limit, not to exceed 110 percent of its limit. In addition, under the various provisions set forth in § 413.40, certain excluded hospitals and hospital units can obtain payment adjustments for justifiable increases in operating costs that exceed the limit. At the same time, however, by generally limiting payment increases, we continue to provide an incentive for excluded hospitals and hospital units to restrain the growth in their spending for patient services.

VI. Quantitative Impact Analysis of the Proposed Policy Changes Under the Hospital Inpatient Prospective Payment System for Operating Costs

A. Basis and Methodology of Estimates

In this proposed rule, we are announcing policy changes and payment rate updates for the hospital inpatient prospective payment systems for operating and capital-related costs. We estimate the total impact of these changes for FY 2003 payments compared to FY 2002 payments to be approximately a $0.3 billion increase. We have prepared separate impact analyses of the proposed changes to each system. This section deals with changes to the operating prospective payment system.

The data used in developing the quantitative analyses presented below are taken from the FY 2001 MedPAR file and the most current provider-specific file that is used for payment purposes. Although the analyses of the changes to the operating prospective payment system do not incorporate cost data, the most recently available hospital cost report data were used to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to these proposed policy changes. Second, due to the interdependent nature of the hospital inpatient prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases, particularly the number of beds, there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available source overall. For individual hospitals, however, some miscategorizations are possible.

Using cases in the FY 2001 MedPAR file, we simulated payments under the operating prospective payment system given various combinations of payment parameters. Any short-term, acute care hospitals not paid under the short-term acute-care hospital inpatient prospective payment systems (Indian Health Service hospitals and hospitals in Maryland) are excluded from the simulations. The impact of payments under the capital prospective payment system, or the impact of payments for costs other than inpatient operating costs, are not analyzed in this section. Estimated payment impacts of proposed FY 2003 changes to the capital prospective payment system are discussed in section IX. of this Appendix.

The proposed changes discussed separately below are the following:

- The effects of the proposed change to the labor portion of the standardized amounts from 71.1 percent to 72.5 percent.
- The effects of the proposed changes in hospitals' wage index values reflecting wage data from hospitals' cost reporting periods beginning during FY 1999, compared to the FY 1998 wage data, and the effects of removing from the wage data the costs and hours associated with graduate medical education (GME) and certified registered nurse anesthetists (CRNAs).
- The effects of the proposed annual reclassification of diagnoses and procedures and the recalibration of the diagnosis-related group (DRG) relative weights required by section 1886(d)(4)(C) of the Act.
- The effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB) that will be effective in FY 2003.

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• The total change in payments based on FY 2003 policies relative to payments based on FY 2002 policies.

To illustrate the impacts of the FY 2003 proposed changes, our analysis begins with a FY 2003 baseline simulation model using: the FY 2002 DRG GROUPER (version 19.0); the FY 2002 wage index; and no MGCRB reclassifications. Outlier payments are set at 5.1 percent of total DRG plus outlier payments.

Each proposed and statutory policy change is then added incrementally to this baseline model, finally arriving at an FY 2003 model incorporating all of the changes. This allows us to isolate the effects of each change.

Our final comparison illustrates the percent change in payments per case from FY 2002 to FY 2003. Six factors have significant impacts here. The first is the update to the standardized amounts. In accordance with section 1886(d)(3)(A)(iv) of the Act, as amended by section 301 of Public Law 106–554, we are proposing to update the large urban and the other areas average standardized amounts for FY 2003 using the most recently forecasted hospital market basket increase for FY 2003 of 3.3 percent minus 0.55 percentage points (for an update of 2.75 percent). Under section 1886(b)(3) of the Act, the updates to the hospital-specific amounts for sole community hospitals (SCHs) and for Medicare-dependent small rural hospitals (MDHs) is also equal to the market basket increase of 3.3 percent minus 0.55 percentage points (for an update of 2.75 percent).

A second significant factor that impacts changes in hospitals' payments per case from FY 2002 to FY 2003 is the change in MGCRB status from one year to the next. That is, hospitals reclassified in FY 2002 that are no longer reclassified in FY 2003 may have a negative payment impact going from FY 2002 to FY 2003; conversely, hospitals not reclassified in FY 2002 that are reclassified in FY 2003 may have a positive impact. In some cases, these impacts can be quite substantial, so if a relatively small number of hospitals in a particular category lose their reclassification status, the percentage change in payments for the category may be below the national mean. This effect is alleviated, however, by section 304(a) of Public Law 106–554, which provided that reclassifications for purposes of the wage index are for a 3-year period.

A third significant factor is that we currently estimate that actual outlier payments during FY 2002 will be 6.7 percent of total DRG payments. When the FY 2002 final rule was published, we projected FY 2002 outlier payments would be 5.1 percent of total DRG plus outlier payments; the standardized amounts were offset correspondingly. The effects of the higher than expected outlier payments during FY 2002 (as discussed in the Addendum to this proposed rule) are reflected in the analyses below comparing our current estimates of FY 2002 payments per case to estimated FY 2003 payments per case.

Fourth, section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. This option was to be phased in over 4 years. For FY 2003, the proportion of payments based on affected SCHs' FY 1996 hospital-specific amount increases from 50 percent to 75 percent.

Fifth, under section 1886(d)(5)(B)(ii) of the Act, the formula for indirect medical education (IME) is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase.

Sixth, the disproportionate share hospital (DSH) adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003.

Table I demonstrates the results of our analysis. The table categorizes hospitals by various geographic and special payment consideration groups to illustrate the varying impacts on different types of hospitals. The top row of the table shows the overall impact on the 4,301 hospitals included in the analysis. This number is 494 fewer hospitals than were included in the impact analysis in the FY 2002 final rule (66 FR 40087). Of this number, 437 are now CAHs and are excluded from our analysis.

The next four rows of Table I contain hospitals categorized according to their geographic location: all urban, which is further divided into large urban and other urban; and rural. There are 2,613 hospitals located in urban areas (MSAs or NECMAs) included in our analysis. Among these, there are 1,511 hospitals located in large urban areas (populations over 1 million), and 1,102 hospitals in other urban areas (populations of 1 million or fewer). In addition, there are 1,688 hospitals in rural areas. The next two groupings are by bed-size categories, shown separately for urban and rural hospitals. The final groupings by geographic location are by census divisions, also shown separately for urban and rural hospitals.

The second part of Table I shows hospital groups based on hospitals' FY 2003 payment classifications, including any reclassifications under section 1886(d)(10) of the Act. For example, the rows labeled urban, large urban, other urban, and rural show that the number of hospitals paid based on these categorizations after consideration of geographic reclassifications are 2,645, 1,570, 1,075, and 1,656, respectively.

The next three groupings examine the impacts of the proposed changes on hospitals grouped by whether or not they have GME residency programs (teaching hospitals that receive an IME adjustment) or receive DSH payments, or some combination of these two adjustments. There are 3,195 nonteaching hospitals in our analysis, 872 teaching hospitals with fewer than 100 residents, and 234 teaching hospitals with 100 or more residents.

In the DSH categories, hospitals are grouped according to their DSH payment status, and whether they are considered urban or rural after MGCRB reclassifications. Hospitals in the rural DSH categories, therefore, represent hospitals that were not reclassified for purposes of the standardized amount or for purposes of the DSH adjustment. (They may, however, have been reclassified for purposes of the wage index.)

The next category groups hospitals considered urban after geographic reclassification, in terms of whether they receive the IME adjustment, the DSH adjustment, both, or neither.

The next five rows examine the impacts of the proposed changes on rural hospitals by special payment groups (SCHs, rural referral centers (RRCs), and MDHs), as well as rural hospitals not receiving a special payment designation. The RRCs (159), SCHs (540), MDHs (216), and hospitals that are both SCH and RRC (75) shown here were not reclassified for purposes of the standardized amount. There are 4 RRCs and 1 SCH and RRC that will be reclassified as urban for the standardized amount in FY 2003 and, therefore, are not included in these rows.

The next two groupings are based on type of ownership and the hospital's Medicare utilization expressed as a percent of total patient days. These data are taken primarily from the FY 1999 Medicare cost report files, if available (otherwise FY 1998 data are used). Data needed to determine ownership status were unavailable for 213 hospitals. Similarly, the data needed to determine Medicare utilization were unavailable for 109 hospitals.

The next series of groupings concern the geographic reclassification status of hospitals. The first grouping displays all hospitals that were reclassified by the MGCRB for FY 2003. The next two groupings separate the hospitals in the first group by urban and rural status.

The final row in Table I contains hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act.

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Percent changes in payments per case]

	Number of hosps.[1] (0)	New labor share[2] (1)	DRG changes.[3] (2)	New wage data[4] (3)	Remove GME & CRNA 80/20[5] (4)	Remove GME & CRNA 100 percent[6] (5)	DRG & WI changes[7] (6)	MCGRB reclassification[8] (7)	All FY 2003 changes[9] (8)
By Geographic Location:									
All hospitals	4,301	0.0	−0.2	0.0	0.0	0.0	0.0	0.0	0.4
Urban hospitals	2,613	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.5	0.1
Large urban areas (populations over 1 million)	1,511	0.1	−0.2	−0.2	0.0	0.0	−0.2	−0.5	−0.3
Other urban areas (populations of 1 million of fewer)	1,102	−0.1	−0.1	0.1	0.0	0.0	0.3	−0.4	0.8
Rural hospitals	1,688	−0.2	−0.4	0.5	0.1	0.1	0.3	2.5	2.1
Bed Size (Urban):									
0–99 beds	647	0.0	−0.2	0.0	0.1	0.1	0.3	−0.6	1.5
100–199 beds	904	0.0	−0.3	−0.1	0.0	0.1	0.0	−0.5	1.0
200–299 beds	528	0.0	−0.3	0.0	0.0	0.1	0.1	−0.4	0.5
300–499 beds	387	0.0	−0.1	−0.2	0.0	0.0	0.0	−0.4	0.1
500 or more beds	147	0.1	−0.2	−0.1	0.0	0.0	−0.1	−0.5	−1.1
Bed Size (Rural):									
0–49 beds	819	−0.2	−0.6	0.6	0.1	0.1	0.2	0.5	2.6
50–99 beds	507	−0.2	−0.5	0.4	0.1	0.1	0.2	1.0	2.4
100–149 beds	216	−0.2	−0.4	0.6	0.1	0.1	0.5	2.9	2.0
150–199 beds	78	−0.2	−0.4	0.5	0.1	0.1	0.5	4.8	1.9
200 or more beds	68	−0.2	−0.3	0.4	0.1	0.1	0.4	4.1	1.4
Urban by Region:									
New England	134	0.2	−0.3	0.1	0.0	0.1	0.9	−0.2	0.0
Middle Atlantic	402	0.2	−0.1	−0.8	0.0	0.0	−0.8	−0.1	−1.8
South Atlantic	380	−0.1	−0.2	0.1	0.1	0.1	0.2	−0.5	0.9
East North Central	431	0.0	−0.2	0.1	0.0	0.0	0.2	−0.5	0.4
East South Central	158	−0.2	−0.2	0.2	0.0	0.0	0.1	−0.7	0.9
West North Central	180	−0.1	−0.3	0.5	0.1	0.1	0.6	−0.7	0.9
West South Central	334	−0.2	−0.2	−0.2	0.1	0.1	−0.1	−0.7	0.4
Mountain	132	0.0	0.0	−0.3	0.1	0.1	0.0	−0.6	0.6
Pacific	416	0.2	−0.4	0.0	0.1	0.1	0.1	−0.5	0.7
Puerto Rico	46	−0.7	−0.4	−0.8	0.0	0.0	−0.7	−0.8	0.0
Rural by Region:									
New England	40	0.0	−0.4	0.2	0.0	0.0	0.0	2.8	1.0
Middle Atlantic	68	−0.1	−0.4	−0.1	0.0	0.0	−0.3	2.5	1.6
South Atlantic	239	−0.2	−0.5	0.4	0.1	0.1	0.2	3.0	1.9
East North Central	225	−0.1	−0.3	0.4	0.1	0.1	0.4	2.1	2.5
East South Central	243	−0.3	−0.6	1.0	0.1	0.1	0.8	2.4	2.0
West North Central	311	−0.2	−0.4	0.8	0.0	0.0	0.7	1.5	2.4
West South Central	294	−0.3	−0.6	0.3	0.1	0.1	0.0	3.4	1.8
Mountain	151	−0.1	−0.4	0.2	0.0	0.0	0.1	1.6	2.0
Pacific	112	0.0	−0.4	0.8	0.1	0.1	0.6	2.3	2.7
Puerto Rico	5	−0.7	−0.5	−4.9	0.1	0.1	−5.0	−0.5	−2.8
By Payment Classification:									
Urban hospitals	2,645	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.4	0.2
Large urban areas (populations over 1 million)	1,570	0.1	−0.2	−0.2	0.0	0.0	−0.2	−0.4	−0.2
Other urban areas (populations of 1 million of fewer)	1,075	−0.1	−0.1	0.1	0.0	0.0	0.3	−0.4	0.8
Rural areas	1,656	−0.2	−0.5	0.5	0.1	0.1	0.3	2.4	2.1
Teaching Status:									
Non-teaching	3,195	−0.1	−0.4	0.2	0.1	0.1	0.2	0.3	1.5
Fewer than 100 Residents	872	0.0	−0.1	−0.1	0.0	0.0	0.0	−0.3	0.5
100 or more Residents	234	0.1	−0.2	−0.3	0.0	0.0	−0.3	−0.3	−1.7
Urban DSH:									
Non-DSH	1,565	0.0	−0.1	0.0	0.0	0.0	0.2	0.1	0.7
100 or more beds	1,354	0.0	−0.2	−0.2	0.0	0.0	−0.1	−0.5	0.0
Less than 100 beds	295	0.0	−0.4	0.1	0.1	0.1	0.1	−0.3	1.5

TABLE I.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Percent changes in payments per case]

	Number of hosps.[1] (0)	New labor share[2] (1)	DRG changes.[3] (2)	New wage data[4] (3)	Remove GME & CRNA 80/20[5] (4)	Remove GME & CRNA 100 percent[6] (5)	DRG & WI changes[7] (6)	MCGRB reclassification[8] (7)	All FY 2003 changes[9] (8)
Rural DSH:									
Sole Community (SCH)	470	−0.1	−0.7	0.4	0.0	0.0	−0.1	0.1	2.3
Referral Center (RRC)	156	−0.2	−0.4	0.5	0.1	0.1	0.5	5.1	1.6
Other Rural:									
100 or more beds	78	−0.3	−0.5	0.6	0.1	0.1	0.6	1.2	2.0
Less than 100 beds	383	−0.3	−0.6	0.7	0.1	0.1	0.5	0.8	2.5
Urban teaching and DSH:									
Both teaching and DSH	758	0.0	−0.2	−0.3	0.0	0.0	−0.2	−0.5	−0.6
Teaching and no DSH	278	0.0	0.0	0.0	0.0	0.0	0.2	−0.1	−0.1
No teaching and DSH	891	0.0	−0.4	0.1	0.1	0.1	0.2	−0.4	1.4
No teaching and no DSH	718	0.0	−0.2	0.0	0.0	0.1	0.2	−0.4	1.0
Rural Hospital Types:									
Non special status hospitals	666	−0.3	−0.5	0.7	0.1	0.1	0.6	1.2	2.3
RRC	159	−0.3	−0.3	0.6	0.1	0.1	0.6	6.0	1.2
SCH	540	−0.1	−0.6	0.2	0.0	0.0	−0.2	0.3	2.3
Medicare-dependent hospitals (MDH)	216	−0.2	−0.6	0.7	0.1	0.1	0.3	0.5	2.7
SCH and RRC	75	−0.1	−0.3	0.3	0.0	0.0	0.1	1.8	2.5
Type of Ownership:									
Voluntary	2,473	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.1	0.4
Proprietary	705	0.0	−0.2	−0.2	0.1	0.1	−0.1	−0.1	0.3
Government	910	−0.1	−0.5	0.3	0.1	0.1	0.2	0.2	0.8
Unknown	213	−0.1	−0.3	0.2	0.1	0.1	0.2	−0.4	0.6
Medicare Utilization as a Percent of Inpatient Days:									
0–25	319	0.1	−0.4	−0.3	0.1	0.1	−0.4	−0.3	−0.7
25–50	1,650	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.3	0.0
50–65	1,706	−0.1	−0.2	0.1	0.0	0.0	0.2	0.3	1.1
Over 65	517	−0.1	−0.4	−0.1	0.0	0.0	−0.1	0.5	0.6
Unknown	109	0.2	0.1	−1.1	0.0	0.0	−0.8	−0.7	−0.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board: FY 2003 Reclassifications:									
All Reclassified Hospitals	620	−0.1	−0.3	0.3	0.0	0.1	0.4	4.4	1.0
Standardized Amount Only	29	0.0	−0.4	0.6	0.1	0.1	0.6	0:3	1.6
Wage Index Only	527	−0.1	−0.3	0.3	0.0	0.1	0.3	4.5	0.8
Both	41	−0.2	−0.2	0.4	0.1	0.1	0.6	5.1	1.1
Nonreclassified Hospitals	3,666	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.7	0.3
All Reclassified Urban Hospitals	108	0.1	−0.1	0.1	0.0	0.0	0.4	4.0	−0.4
Standardized Amount Only	1	0.0	−0.1	0.4	−0.1	−0.1	0.4	−0.9	1.6
Wage Index Only	95	0.1	−0.1	0.1	0.0	0.0	0.4	4.1	0.6
Both	12	−0.1	−0.2	0.6	0.1	0.1	0.9	2.9	4.1
Urban Nonreclassified Hospitals	2,471	0.0	−0.2	−0.1	0.0	0.0	0.0	−0.7	0.2
All Reclassified Rural Hospitals	512	−0.2	−0.4	0.4	0.1	0.1	0.4	4.6	1.8
Standardized Amount Only	1	−0.4	0.1	0.1	0.1	0.1	0.6	0.9	3.7
Wage Index Only	502	−0.2	−0.4	0.5	0.1	0.1	0.4	4.6	1.8
Both	9	−0.2	−0.2	0.2	0.1	0.1	0.2	4.7	0.7
Rural Nonreclassified Hospitals	1,175	−0.2	−0.6	0.5	0.1	0.1	0.3	−0.4	2.4
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	−0.1	−0.6	−0.1	0.0	0.0	−0.5	−1.4	2.8

[1] Because data necessary to classify some hospitals by category were missing, the total number of hospitals in each category may not equal the national total. Discharge data are from FY 2001, and hospital cost report data are from reporting periods beginning in FY 1999 and FY 1998.

[2] This column displays impact of the proposed change to the labor share from 71.1 percent to 72.5 percent.

[3] This column displays the payment impact of the recalibration of the DRG weights based on FY 2001 MedPAR data and the DRG reclassification changes, in accordance with section 1886(d)(4)(C) of the Act.

[4] This column displays the impact of updating the wage index with wage data from hospitals' FY 1999 cost reports.

[5] This column displays the impact of an 80/20 percent blend of removing the labor costs and hours associated with graduate medical education and for the Part A costs of certified registered nurse anesthetists.

[6] This column displays the impact of completely removing the labor costs and hours associated with graduate medical education (GME) and for the Part A costs of certified registered nurse anesthetists (CRNAs).

[7] This column displays the combined impact of the reclassification and recalibration of the DRGs, the updated and revised wage data used to calculate the wage index, the phase-out of GME and CRNA costs and hours, and the budget neutrality adjustment factor for DRG and wage index changes, in accordance with sections 1886(d)(4)(C)(iii) and 1886(d)(3)(E) of the Act. Thus, it represents the combined impacts shown in columns 2, 3, 4 and 5, and the FY 2003 budget neutrality factor of 1.001026.

[8] Shown here are the effects of geographic reclassifications by the Medicare Geographic Classification Review Board (MGCRB). The effects demonstrate the FY 2003 payment impact of going from no reclassifications to the reclassifications scheduled to be in effect for FY 2003. Reclassification for prior years has no bearing on the payment impacts shown here.

[9] This column shows changes in payments from FY 2002 to FY 2003. It incorporates all of the changes displayed in columns 1, 6 and 7 (the changes displayed in columns 2, 3, 4, and 5 are included in column 6). It also displays the impact of the FY 2003 update, changes in hospitals' reclassification status in FY 2003 compared to FY 2002, and the difference in outlier payments from FY 2002 to FY 2003. It also reflects the gradual phase-in for some SCHs of the full 1996 hospital-specific rate. Finally, the impacts of the reduction in IME adjustment payments, and the increase in the DSH adjustment are shown in this column. The sum of these impacts may be different from the percentage changes shown here due to rounding and interactive effect.

B. Impact of the Proposed Changes to the Labor Share (Column 1)

In Column 1 of Table 1, we present the effects of our proposal to update the labor share from 71.10 percent to 72.49 percent. We estimate the impact of this change by calculating payments using payment rates updated to FY 2003, but using the FY 2002 DRG GROUPER and wage index. The change in this column represents the impact upon various hospital categories of the proposed change to the labor share. This proposed change negatively impacts hospitals with wage indexes less than 1.0, and positively affects those with wage indexes greater than 1.0.

This proposed change has no impact on overall hospital payments. However, there are redistributive impacts generally in the range of plus or minus 0.1 percent or 0.2 percent. The net redistributive impact from those positively and negatively affected is approximately $65 million. Hospitals in large urban areas would experience an increase of 0.1 percent. Hospitals in both "other" urban and rural areas would experience −0.1 and −0.2 percent decreases, respectively.

Under the urban by region category, New England, Middle Atlantic and Pacific regions would experience a 0.2 percent increase. The urban East South Central and West South Central regions would experience −0.2 percent decreases. Puerto Rico has a projected decrease of −0.7 percent, due to the low wage indexes in the Puerto Rico MSAs.

All rural regions would experience a negative percent decrease except New England and Pacific regions (at 0.0 percent change). The South Atlantic and West North Central regions would experience a decrease of −0.2 percent. The East South Central and West South Central regions each would experience a −0.3 percent decrease, while Puerto Rico would experience a −0.7 percent decrease. Rural nonspecial status hospitals and RRCs would decline by −0.3. SCH and MDHs also would experience decreases of −0.1 and −0.2 percent, respectively. The relatively smaller negative impact for these hospitals is due to the fact that the hospital-specific rate is not adjusted by the wage index. Therefore, this proposed change would have no effect on hospitals paid on that basis (other than SCHs receiving a blended of their FY 1996 hospital-specific rate and the Federal rate).

C. Impact of the Proposed Changes to the DRG Reclassifications and Recalibration of Relative Weights (Column 3)

In column 3 of Table I, we present the combined effects of the DRG reclassifications and recalibration, as discussed in section II. of the preamble to this proposed rule. Section 1886(d)(4)(C)(i) of the Act requires us to annually make appropriate classification changes and to recalibrate the DRG weights in order to reflect changes in treatment patterns, technology, and any other factors that may change the relative use of hospital resources.

We compared aggregate payments using the FY 2002 DRG relative weights (GROUPER version 19.0) to aggregate payments using the proposed FY 2003 DRG relative weights (GROUPER version 20.0). Overall payments decrease −0.2 percent due to the DRG reclassification and recalibration. We note that, consistent with section 1886(d)(4)(C)(iii) of the Act, we have applied a budget neutrality factor to ensure that the overall payment impact of the DRG changes (combined with the wage index changes) is budget neutral. This budget neutrality factor of 1.001026 is applied to payments in Column 6. Because this is a combined DRG reclassification and recalibration and wage index budget neutrality factor, it is not applied to payments in this column.

The DRG changes we are proposing would result in 0.2 percent lower payments to hospitals overall. This is the reason the budget neutrality factor is greater than 1.0. This change is largely related to the proposed changes we are making to DRGs 14 (proposed to be retitled, Intracranial Hemorrhage and Stroke with Infarction) and 15 (proposed to be retitled, Nonspecific Cerebrovascular and Precerebral Occlusion without Infarction), and new DRG 524 (Transient Ischemia). With the new configuration of these DRGs, over 80,000 cases that previously would have been assigned to DRG 14 (with a FY 2003 proposed relative weight of 1.2742) would now be assigned to DRG 15 (with a FY 2003 proposed relative weight of 0.9844).

This change is evident most dramatically in small and rural hospitals. Rural hospitals with fewer than 50 beds would experience a 0.6 percent decrease. and rural hospitals with between 50 and 99 beds would experience a 0.5 percent decrease. Among rural hospitals categorized by region, the East South Central and West South Central would experience a 0.6 percent decrease in payments. Among special rural hospital categories, SCHs and MDHs both would experience 0.6 percent decreases.

D. Impact of Wage Index Changes (Columns 3, 4, and 5)

Section 1886(d)(3)(E) of the Act requires that, beginning October 1, 1993, we annually update the wage data used to calculate the wage index. In accordance with this requirement, the proposed wage index for FY 2003 is based on data submitted for hospital cost reporting periods beginning on or after October 1, 1998 and before October 1, 1999. As with column 2, the impact of the new data on hospital payments is isolated in columns 3, 4 and 5 by holding the other payment parameters constant in the three simulations. That is, columns 3, 4, and 5 show the percentage changes in payments when going from a model using the FY 2002 wage index (based on FY 1997 wage data before geographic reclassifications to a model using the FY 2003 pre-

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reclassification wage index based on FY 1998 wage data).

The wage data collected on the FY 1999 cost reports are similar to the data used in the calculation of the FY 2002 wage index. Also, as described in section III.B of this preamble, the proposed FY 2003 wage index is calculated by removing 100 percent of hospitals' GME and CRNA costs (and hours). The FY 2002 wage index was calculated by blending 60 percent of hospitals' average hourly wages, excluding GME and CRNA data, with 40 percent of average hourly wages including these data.

Column 3 shows the impacts of updating the wage data using FY 1999 cost reports. This column maintains the same 60/40 phase-out of GME and CRNA costs as the FY 2002 wage index, which is the baseline for comparison. Among regions, the largest impact of updating the wage data is seen in rural Puerto Rico (a 4.9 percent decrease). Rural hospitals in the East South Central region experience the next largest impact, a 1.0 percent increase. This is primarily due to a 6 percent increase in the rural Alabama wage index, and a little under a 3 percent increase in the rural Mississippi wage index. Among urban hospitals, the Middle Atlantic region would experience a 0.8 percent decrease, largely due to a 2.4 percent decrease in the New York City wage index and a 2.3 percent decrease in the Philadelphia wage index.

The next two columns show the impacts of removing the GME and CRNA data from the wage index calculation. Under the 5-year phaseout of these data, FY 2003 would be the fourth year of the phaseout. This means that, under the phaseout, the FY 2003 wage index would be calculated with 20 percent of the GME and CRNA data included and 80 percent with these data removed, and FY 2004 would begin the calculation with 100 percent of these data removed. However, we are proposing to remove 100 percent of GME and CRNA costs from the FY 2003 wage index. To demonstrate the impacts of this proposal, we first show the impacts of moving to a wage index with 80 percent of these data removed (Column 4), then show a wage index with 100 percent of these data removed (Column 5). As expected, the impacts in the two columns are similar, with some differences due to rounding. Generally, no group of hospitals is impacted by more than 0.1 percent by this change. Even among the hospital group most likely to be negatively impacted by this change, teaching hospitals with 100 or more residents, the net effect of removing 100 percent of GME and CRNA data is 0.0 percent change in payments.

We note that the wage data used for the proposed wage index are based upon the data available as of February 22, 2001 and, therefore, do not reflect revision requests received and processed by the fiscal intermediaries after that date. To the extent these requests are granted by hospitals' fiscal intermediaries, these revisions will be reflected in the final rule. In addition, we continue to verify the accuracy of the data for hospitals with extraordinary changes in their data from the prior year.

The following chart compares the shifts in wage index values for labor market areas for FY 2002 relative to FY 2003. This chart demonstrates the impact of the proposed changes for the FY 2003 wage index, including updating to FY 1999 wage data and removing 100 percent of GME and CRNA data. The majority of labor market areas (324) experience less than a 5 percent change. A total of 19 labor market areas experience an increase of more than 5 percent and less than 10 percent. One area experiences an increase greater than 10 percent. A total of 26 areas experience decreases of more than 5 percent and less than 10 percent. Finally, 2 areas experience declines of 10 percent or more.

Percentage change in area wage index values	Number of labor market areas	
	FY 2002	FY 2003
Increase more than 10 percent	2	1
Increase more than 5 percent and less than 10 percent	26	19
Increase or decrease less than 5 percent	335	320
Decrease more than 5 percent and less than 10 percent	10	26
Decrease more than 10 percent	1	2

Among urban hospitals, 24 would experience an increase of between 5 and 10 percent and 2 more than 10 percent. A total of 53 rural hospitals have increases greater than 5 percent, but none greater than 10 percent. On the negative side, 75 urban hospitals have decreases in their wage index values of at least 5 percent but less than 10 percent. Six urban hospitals have decreases in their wage index values greater than 10 percent. There are 19 rural hospitals with decreases in their wage index values greater than 5 percent or with increases of more than 10 percent. The following chart shows the projected impact for urban and rural hospitals.

Percentage change in area wage index values	Number of hospitals	
	Urban	Rural
Increase more than 10 percent	2	0
Increase more than 5 percent and less than 10 percent	24	53
Increase or decrease less than 5 percent	2506	1616
Decrease more than 5 percent and less than 10 percent	75	19
Decrease more than 10 percent	6	0

E. Combined Impact of DRG and Wage Index Changes—Including Budget Neutrality Adjustment (Column 6)

The impact of DRG reclassifications and recalibration on aggregate payments is required by section 1886(d)(4)(C)(iii) of the Act to be budget neutral. In addition, section 1886(d)(3)(E) of the Act specifies that any updates or adjustments to the wage index are to be budget neutral. As noted in the Addendum to this proposed rule, we compared simulated aggregate payments using the FY 2002 DRG relative weights and wage index to simulated aggregate payments using the proposed FY 2003 DRG relative weights and blended wage index. Based on this comparison, we computed a wage and recalibration budget neutrality factor of 1.001026. In Table I, the combined overall impacts of the effects of both the DRG reclassifications and recalibration and the updated wage index are shown in column 6. The 0.0 percent impact for all hospitals demonstrates that these changes, in combination with the budget neutrality factor, are budget neutral.

For the most part, the changes in this column are the sum of the changes in columns 2, 3, 4, and 5, plus approximately 0.1 percent attributable to the budget neutrality factor. In addition, section 4410 of Public Law 105–33 provides that, for discharges on or after October 1, 1997, the area wage index applicable to any hospital that is not located in a rural area may not be less than the area wage index applicable to hospitals located in rural areas in that State. This provision is required to be budget neutral. The impact of this provision, which is to increase overall payments by 0.1 percent, is not shown in columns 2, 3, 4, and 5. It is included in the impacts shown in column 6. There also may be some variation of plus or minus 0.1 percent due to rounding.

F. Impact of MGCRB Reclassifications (Column 7)

Our impact analysis to this point has assumed hospitals are paid on the basis of their actual geographic location (with the exception of ongoing policies that provide that certain hospitals receive payments on bases other than where they are geographically located, such as hospitals in rural counties that are deemed urban under section 1886(d)(8)(B) of the Act). The changes in column 6 reflect the per case payment impact of moving from this baseline to a simulation incorporating the MGCRB decisions for FY 2003. These decisions affect hospitals' standardized amount and wage index area assignments.

By February 28 of each year, the MGCRB makes reclassification determinations that will be effective for the next fiscal year, which begins on October 1. The MGCRB may approve a hospital's reclassification request for the purpose of using another area's standardized amount, wage index value, or both.

The proposed FY 2003 wage index values incorporate all of the MGCRB's reclassification decisions for FY 2003. The wage index values also reflect any decisions made by the CMS Administrator through the appeals and review process for MGCRB decisions as of February 28, 2002. Additional changes that result from the Administrator's review of MGCRB decisions or a request by a hospital to withdraw its application will be reflected in the final rule for FY 2003.

The overall effect of geographic reclassification is required by section 1886(d)(8)(D) of the Act to be budget neutral. Therefore, we applied an adjustment of 0.990536 to ensure that the effects of reclassification are budget neutral. (See section II.A.4.b. of the Addendum to this proposed rule.)

As a group, rural hospitals benefit from geographic reclassification. Their payments rise 2.5 percent in column 6. Payments to urban hospitals decline 0.5 percent. Hospitals in other urban areas see a decrease in payments of 0.5 percent, while large urban hospitals lose 0.5 percent. Among urban hospital groups (that is, bed size, census division, and special payment status), payments generally decline.

A positive impact is evident among most of the rural hospital groups. The smallest increases among the rural census divisions are 1.5 and 1.6 percent for West North Central and Mountain regions, respectively. The largest increases are in rural South Atlantic and West South Central regions. These regions receive increases of 3.0 and 3.4 percent, respectively.

Among all the hospitals that were reclassified for FY 2003 (including hospitals that received wage index reclassification in a FY 2001 or FY 2002 that extend for 3-years), the MGCRB changes are estimated to provide a 4.4 percent increase in payments. Urban hospitals reclassified for FY 2003 are expected to receive an increase of 4.0 percent, while rural reclassified hospitals are expected to benefit from the MGCRB changes with a 4.6 percent increase in payments. Overall, among hospitals that were reclassified for purposes of the standardized amount only, a payment increase of 0.3 percent is expected, while those reclassified for purposes of the wage index only show a 4.5 percent increase in payments. Payments to urban and rural hospitals that did not reclassify are expected to decrease slightly due to the MGCRB changes, decreasing by 0.7 for urban hospitals and 0.4 for rural hospitals. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive a decrease in payments of 1.4 percent.

The foregoing analysis was based on MGCRB and CMS Administrator decisions made by February 28, 2002. As previously noted, there may be changes to some MGCRB decisions through the appeals, review, and applicant withdrawal process. The outcome of these cases will be reflected in the analysis presented in the final rule.

G. All Changes (Column 8)

Column 8 compares our estimate of payments per case, incorporating all changes reflected in this proposed rule for FY 2003 (including statutory changes), to our estimate of payments per case in FY 2002. This column includes all of the policy changes to date, including the proposed new labor share shown in column 1, and the combined DRG and wage index changes from column 6. Because the reclassifications shown in column 7 do not reflect FY 2002 reclassifications, the impacts of FY 2003 reclassifications only affect the impacts from FY 2002 to FY 2003 if the reclassification impacts for any group of hospitals are different in FY 2003 compared to FY 2002.

It includes the effects of the 2.75 percent update to the standardized amounts and the hospital-specific rates for MDHs and SCHs. It also reflects the 1.7 percentage point difference between the projected outlier payments in FY 2002 (5.1 percent of total DRG payments) and the current estimate of the percentage of actual outlier payments in FY 2002 (6.8 percent), as described in the introduction to this Appendix and the Addendum to this proposed rule.

Section 213 of Public Law 106–554 provided that all SCHs may receive payment on the basis of their costs per case during their cost reporting period that began during 1996. For FY 2003, eligible SCHs that rebase receive a hospital-specific rate comprised of 25 percent of the higher of their FY 1982 or FY 1987 hospital-specific rate or their Federal rate, and 75 percent of their 1996 hospital-specific rate. The impact of this provision is modeled in column 8 as well.

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Under section 1886(d)(5)(B)(ii) of the Act, the formula for IME is reduced beginning in FY 2003. The reduction is from approximately a 6.5 percent increase for every 10 percent increase in the resident-to-bed ratio during FY 2002 to approximately a 5.5 percent increase. We estimate the impact of this change to be a 0.9 percent reduction in hospitals' overall FY 2003 payments. The impact upon teaching hospitals would be larger.

Finally, the DSH adjustment increases in FY 2003 compared with FY 2002. In accordance with section 1886(d)(5)(F)(ix) of the Act, during FY 2002, DSH payments that the hospital would otherwise receive were reduced by 3 percent. This reduction is no longer applicable beginning with FY 2003. The estimated impact of this change is to increase overall hospital payments by 0.2 percent.

There might also be interactive effects among the various factors comprising the payment system that we are not able to isolate. For these reasons, the values in column 8 may not equal the sum of the changes in columns 6 and 7, plus the other impacts that we are able to identify.

The overall change in payments per case for hospitals in FY 2003 increases by 0.4 percent. This reflects the update of 2.75 percent, the 1.7 percent higher outlier payments in FY 2002 than projected for FY 2003, a 0.9 percent reduction in payments for IME, and a 0.2 percent increase in payments due to higher DSH payments in FY 2003. Hospitals in urban areas experience a 0.1 percent increase in payments per case compared to FY 2002, although hospitals in large urban areas experience a 0.3 percent decline in payments, largely due to reduction in IME payments. The impact of the reduction in IME payments is most evident among teaching hospitals with 100 or more residents, who would experience a decrease in payments per case of 1.7 percent. Hospitals in rural areas, meanwhile, experience a 2.1 percent payment increase.

Among urban census divisions, the largest payment increase was 0.9 percent in South Atlantic, East South Central, and West North Central. Hospitals in urban Middle Atlantic would experience an overall decrease of 1.8 percent. This is primarily due to the combination of the negative impact on these hospitals of reducing IME and the lower outlier payments during FY 2003. The rural census division experiencing the smallest increase in payments were New England and the Middle Atlantic regions (1.0 and 1.6 percent, respectively). The only decreases by rural hospitals are in Puerto Rico, where payments appear to decrease by 2.8 percent, largely due to the updated wage data. In the Pacific, payments appear to increase by 2.7 percent. Rural East and West North Central regions also benefited, with 2.5 and 2.4 percent increases, respectively.

Among special categories of rural hospitals, those hospitals receiving payment under the hospital-specific methodology (SCHs, MDHs, and SCH/RRCs) experience payment increases of 2.3 percent, 2.7 percent, and 2.5 percent, respectively. This outcome is primarily related to the fact that, for hospitals receiving payments under the hospital-specific methodology, there are no outlier payments. Therefore, these hospitals do not experience negative payment impacts from the decline in outlier payments from FY 2002 to FY 2003 (from 6.8 percent of total DRG plus outlier payments to 5.1 percent) as do hospitals paid based on the national standardized amounts.

Among hospitals that were reclassified for FY 2003, hospitals overall are estimated to receive a 1.0 percent increase in payments. Urban hospitals reclassified for FY 2003 are anticipated to receive a decrease of −0.4 percent, while rural reclassified hospitals are expected to benefit from reclassification with a 1.8 percent increase in payments. Overall, among hospitals reclassified for purposes of the standardized amount, a payment increase of 1.6 percent is expected, while those hospitals reclassified for purposes of the wage index only show an expected 0.8 percent increase in payments. Those hospitals located in rural counties but deemed to be urban under section 1886(d)(8)(B) of the Act are expected to receive an increase in payments of 2.8 percent.

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
By Geographic Location:				
All hospitals	4,301	7,194	7,224	0.4
Urban hospitals	2,613	7,707	7,718	0.1
Large urban areas (populations over 1 million)	1,511	8,269	8,245	−0.3
Other urban areas (populations of 1 million of fewer)	1,102	6,977	7,034	0.8
Rural hospitals	1,688	5,108	5,213	2.1
Bed Size (Urban):				
0–99 beds	647	5,299	5,380	1.5
100–199 beds	904	6,436	6,498	1.0
200–299 beds	528	7,391	7,425	0.5
300–499 beds	387	8,276	8,280	0.1
500 or more beds	147	10,046	9,932	−1.1
Bed Size (Rural):				
0–49 beds	819	4,204	4,313	2.6
50–99 beds	507	4,754	4,866	2.4
100–149 beds	216	5,052	5,154	2.0
150–199 beds	78	5,494	5,600	1.9
200 or more beds	68	6,651	6,742	1.4
Urban by Region:				
New England	134	8,228	8,225	0.0
Middle Atlantic	402	8,832	8,675	−1.8
South Atlantic	380	7,287	7,353	0.9
East North Central	431	7,269	7,296	0.4

TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
East South Central	158	6,919	6,984	0.9
West North Central	180	7,330	7,399	0.9
West South Central	334	7,089	7,121	0.4
Mountain	132	7,505	7,553	0.6
Pacific	416	9,319	9,383	0.7
Puerto Rico	46	3,310	3,311	0.0
Rural by Region:				
New England	40	6,227	6,290	1.0
Middle Atlantic	68	5,345	5,430	1.6
South Atlantic	239	5,221	5,319	1.9
East North Central	225	5,059	5,185	2.5
East South Central	243	4,723	4,819	2.0
West North Central	311	5,093	5,214	2.4
West South Central	294	4,547	4,627	1.8
Mountain	151	5,424	5,531	2.0
Pacific	112	6,592	6,772	2.7
Puerto Rico	5	2,754	2,677	−2.8
By Payment Classification:				
Urban hospitals	2,645	7,691	7,703	0.2
Large urban areas (populations over 1 million)	1,570	8,194	8,175	−0.2
Other urban areas (populations of 1 million of fewer)	1,075	7,003	7,057	0.8
Rural areas	1,656	5,094	5,199	2.1
Teaching Status:				
Non-teaching	3,195	5,866	5,952	1.5
Fewer than 100 Residents	872	7,479	7,515	0.5
100 or more Residents	234	11,431	11,239	−1.7
Urban DSH:				
Non-DSH	1,565	6,538	6,581	0.7
100 or more beds	1,354	8,299	8,299	0.0
Less than 100 beds	295	5,235	5,312	1.5
Rural DSH:	470	4,938	5,053	2.3
Sole Community (SCH).				
Referral Center (RRC)	156	5,906	6,001	1.6
Other Rural:				
100 or more beds	78	4,509	4,598	2.0
Less than 100 beds	383	4,076	4,179	2.5
Urban teaching and DSH:				
Both teaching and DSH	758	9,185	9,134	−0.6
Teaching and no DSH	278	7,724	7,717	−0.1
No teaching and DSH	891	6,510	6,600	1.4
No teaching and no DSH	718	6,066	6,124	1.0
Rural Hospital Types:				
Non special status hospitals	666	4,247	4,345	2.3
RRC	159	5,667	5,737	1.2
SCH	540	5,223	5,344	2.3
Medicare-dependent hospitals (MDH)	216	4,032	4,142	2.7
SCH and RRC	75	6,429	6,589	2.5
Type of Ownership:				
Voluntary	2,473	7,322	7,349	0.4
Proprietary	705	6,907	6,929	0.3
Government	910	6,764	6,815	0.8
Unknown	213	7,281	7,326	0.6
Medicare Utilization as a Percent of Inpatient Days:				
0–25	319	9,820	9,755	−0.7
25–50	1,650	8,252	8,252	0.0
50–65	1,706	6,225	6,293	1.1
Over 65	517	5,645	5,679	0.6
Unknown	109	8,871	8,832	−0.4
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
FY 2002 Reclassifications:				
All Reclassified Hospitals	620	6,513	6,579	1.0
Standardized Amount Only	29	5,918	6,016	1.6
Wage Index Only	527	6,678	6,728	0.8
Both	41	5,874	5,936	1.1
All Nonreclassified Hospitals	3,666	7,310	7,335	0.3
All Urban Reclassified Hospitals	108	8,752	8,720	−0.4

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TABLE II.—IMPACT ANALYSIS OF CHANGES FOR FY 2003 OPERATING PROSPECTIVE PAYMENT SYSTEM—Continued

[Payments per Case]

	Number of hosps. (1)	Average FY 2002 payment per case [1] (2)	Average FY 2003 payment per case [1] (3)	All FY 2003 changes (4)
Urban Nonreclassified Hospitals	1	5,484	5,569	1.6
Standardized Amount Only	95	9,003	8,951	–0.6
Wage Index Only	12	5,680	5,911	4.1
Both	2,471	7,672	7,685	0.2
All Reclassified Rural Hospitals	512	5,666	5,768	1.8
Standardized Amount Only	1	5,408	5,605	3.7
Wage Index Only	502	5,650	5,754	1.8
Both	9	6,370	6,415	0.7
Rural Nonreclassified Hospitals	1,175	4,478	4,585	2.4
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	4,892	5,031	2.8

[1] These payment amounts per case do not reflect any estimates of annual case-mix increase.

Table II presents the projected impact of the proposed changes for FY 2003 for urban and rural hospitals and for the different categories of hospitals shown in Table I. It compares the estimated payments per case for FY 2002 with the average estimated per case payments for FY 2003, as calculated under our models. Thus, this table presents, in terms of the average dollar amounts paid per discharge, the combined effects of the changes presented in Table I. The percentage changes shown in the last column of Table II equal the percentage changes in average payments from column 8 of Table I.

VII. Impact of Specific Proposed Policy Changes

A. Impact of Proposed Policy Changes Relating to Hospital Bed Counts

As discussed in section V.E.3. of the preamble of this proposed rule, we are proposing that if a hospital's reported bed count results in an occupancy rate below 35 percent, the applicable bed count for that hospital would be the number of beds that would result in an occupancy rate of 35 percent.

We have calculated an estimated impact on the Medicare program for FY 2003 as a result of this policy. We first identified urban hospitals receiving DSH with bed counts above 100, but with occupancy rates below 35 percent. Then, we determined the amount of DSH payments made to these hospitals in FY 1999. Next, we simulated what these hospitals' DSH payments would have been had their bed counts been less than 100. We compared the difference between actual DSH payments using 100 or more beds to simulated DSH payments using fewer than 100 beds, and determined that the reductions in DSH payments to these hospitals, inflated to FY 2003 using the update to the average standardized amount, would be approximately $38.9 million.

B. Impact of Proposed Changes Relating to EMTALA Provisions

In section V.J. of the preamble to this proposed rule, we discuss our proposed changes to our policies relating to the responsibilities of Medicare-participating hospitals under the patient antidumping statute (EMTALA) to medically screen all patients seeking emergency services and provide stabilizing medical treatment as necessary to patients whose conditions warrant it. In summary, to help promote consistent application of our regulations concerning EMTALA, we are proposing to clarify certain policies in areas where issues have arisen and at the same time address concerns about EMTALA raised by the Secretary's Regulatory Reform Task Force, including the following:

- We are proposing to change the requirements relating to emergency patients presenting at those off-campus outpatient clinics that do not routinely provide emergency services. We believe these changes would enhance the quality and promptness of emergency care by permitting individuals to be referred to appropriately equipped emergency facilities close to such clinics.
- We are proposing to clarify when EMTALA applies to both inpatients and outpatients. We believe these clarifications would enhance overall patient access to emergency services by helping to relieve administrative burdens on frequently overcrowded emergency departments.
- We are proposing to clarify the circumstances in which physicians, particularly specialty physicians, must serve on hospital medical staff "on-call" lists. We expect these clarifications would help improve access to physician services for all hospital patients by permitting hospitals local flexibility to determine how best to maximize their available physician resources. We are currently aware of reports of physicians, particularly specialty physicians, severing their relationships with hospitals, especially when those physicians belong to more than one hospital medical staff. Physician attrition from these medical staffs could result in hospitals having no specialty physician service coverage for their patients. Our proposed clarification of the on-call list requirement would permit hospitals to continue to attract physicians to serve on their medical staffs and thereby continue to provide services to emergency room patients.
- We are proposing to clarify the responsibilities of hospital-owned ambulances so that these ambulances can be more fully integrated with citywide and local community EMS procedures for responding to medical emergencies and thus use these resources more efficiently for the benefit of these communities.

We believe it would be difficult to quantify the impact of these changes and are soliciting comments on these issues.

C. Impact of Proposed Policy Changes Relating to Provider-Based Entity

In section V.K. of the preamble of this proposed rule, we discuss our proposed Medicare payment policy changes relating to determinations of provider-based status for entities of main providers. These changes are intended to focus mainly on issues raised by the hospital industry surrounding the provider-based regulations and to allow for a orderly and uniform implementation strategy once the grandfathering provision for these entities expires on September 30, 2002.

We believe it would be difficult to quantify the impact of these changes and are soliciting comments on these issues.

VIII. Impact of Proposed Policies Affecting Rural Hospitals

A. Raising the Threshold To Qualify for the CRNA Pass-Through Payments

In section V. of the preamble of this proposed rule, we are proposing to raise the maximum number of surgical procedures (including inpatient and outpatient procedures) requiring anesthesia services that a rural hospital may perform to qualify for pass-through payments for the costs of CRNAs to 800 from 500. Currently, we have identified 622 hospitals that qualify under this provision.

To measure the impact of this provision, we determined that approximately half of the hospitals that would appear to be eligible based on the current number of procedures appear to receive this adjustment. In order to be eligible, hospitals must employ the CRNA and the CRNA must agree not to bill for services under Part B. We estimate approximately 90 rural hospitals would qualify under the increased maximum volume threshold. If one-half of these hospitals then met the other criteria, 45 additional hospitals would be eligible for these pass-through payments under this proposed change.

B. Removal of Requirement for CAHs To Use State Resident Assessment Instrument

In section VII. of the preamble of this proposed rule, we are proposing to eliminate the requirement that CAHs use the State resident assessment instrument (RAI) to conduct patient assessments. There are approximately 600 CAHs. The overwhelming majority of CAHs, 95 percent, provide SNF level care. The elimination of the requirement to use the State RAI would greatly reduce the burden on CAHs because facilities would no longer be required to complete an RAI document for each SNF patient (which would involve approximately 12,000 admissions based on the most recent claims data). Facilities would have the flexibility to document the assessment data in the medical record in a manner appropriate for their facility. The elimination of the requirement for use of the State RAI would reduce the amount of time required to perform patient assessments and allow more time for direct patient care.

IX. Impact of Proposed Changes in the Capital Prospective Payment System

A. General Considerations

Fiscal year 2001 was the last year of the 10-year transition period established to phase in the prospective payment system for hospital capital-related costs. During the transition period, hospitals were paid under one of two payment methodologies: fully prospective or hold harmless. Under the fully prospective methodology, hospitals were paid a blend of the Federal rate and their hospital-specific rate (see § 412.340). Under the hold-harmless methodology, unless a hospital elected payment based on 100 percent of the Federal rate, hospitals were paid 85 percent of reasonable costs for old capital costs (100 percent for SCHs) plus an amount for new capital costs based on a proportion of the Federal rate (see § 412.344). As we state in section VI.A. of the preamble of this proposed rule, the end of the 10-year transition period ending with hospital cost reporting periods beginning on or after October 1, 2001 (FY 2002), capital prospective payment system payments for most hospitals are based solely on the Federal rate in FY 2003. Therefore, we no longer include information on obligated capital costs or projections of old capital costs and new capital costs, which were factors needed to calculate payments during the transition period, for our impact analysis.

In accordance with section § 412.312, the basic methodology for determining a capital prospective payment system payment is:

(Standard Federal Rate) × (DRG weight) × (Geographic Adjustment Factor(GAF)) × (Large Urban Add-on, if applicable) × (COLA adjustment for hospitals located in Alaska and Hawaii) × (1 + Disproportionate Share (DSH) Adjustment Factor + Indirect Medical Education (IME) Adjustment Factor, if applicable).

In addition, hospitals may also receive outlier payments for those cases that qualify under the proposed threshold established for each fiscal year.

The data used in developing the impact analysis presented below are taken from the December 2001 update of the FY 2001 MedPAR file and the December 2001 update of the Provider Specific File that is used for payment purposes. Although the analyses of the changes to the capital prospective payment system do not incorporate cost data, we used the December 2001 update of the most recently available hospital cost report data (FY 1999) to categorize hospitals. Our analysis has several qualifications. First, we do not make adjustments for behavioral changes that hospitals may adopt in response to policy changes. Second, due to the interdependent nature of the prospective payment system, it is very difficult to precisely quantify the impact associated with each proposed change. Third, we draw upon various sources for the data used to categorize hospitals in the tables. In some cases (for instance, the number of beds), there is a fair degree of variation in the data from different sources. We have attempted to construct these variables with the best available sources overall. However, for individual hospitals, some miscategorizations are possible.

Using cases from the December 2001 update of the FY 2001 MedPAR file, we simulated payments under the capital prospective payment system for FY 2002 and FY 2003 for a comparison of total payments per case. Any short-term, acute care hospitals not paid under the general hospital inpatient prospective payment systems (Indian Health Service Hospitals and hospitals in Maryland) are excluded from the simulations.

As we explain in section III.A.4. of the Addendum of this proposed rule, payments will no longer be made under the regular exceptions provision under §§ 412.348(b) through (e). Therefore, we are no longer using the actuarial capital cost model (described in Appendix B of August 1, 2001 final rule (66 FR 40099)). We modeled payments for each hospital by multiplying the Federal rate by the GAF and the hospital's case-mix. We then added estimated payments for indirect medical education, disproportionate share, large urban add-on, and outliers, if applicable. For purposes of this impact analysis, the model includes the following assumptions:

- We estimate that the Medicare case-mix index will increase by 0.99800 percent in FY 2002 and will increase by 1.01505 percent in FY 2003.
- We estimate that the Medicare discharges will be 13,398,000 in FY 2002 and 13,658,000 in FY 2003 for a 1.9 percent increase from FY 2002 to FY 2003.
- The Federal capital rate was updated beginning in FY 1996 by an analytical framework that considers changes in the prices associated with capital-related costs and adjustments to account for forecast error, changes in the case-mix index, allowable changes in intensity, and other factors. The proposed FY 2003 update is 1.1 percent (see section III.A.1.a. of the Addendum to this proposed rule).

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• In addition to the proposed FY 2003 update factor, the proposed FY 2003 Federal rate was calculated based on a proposed GAF/DRG budget neutrality factor of 1.0224, a proposed outlier adjustment factor of 0.9460, a proposed exceptions adjustment factor of 0.9960, and a proposed special adjustment for FY 2003 of 1.0255 (see section III.A. of the Addendum of this proposed rule).

2. Results

In the past, in this impact section we presented the redistributive effects that were expected to occur between "hold-harmless" hospitals and "fully prospective" hospitals and a cross-sectional summary of hospital groupings by the capital prospective payment system transition period payment methodology. We are no longer including this information since all hospitals (except new hospitals under § 412.324(b) and under proposed § 412.32(c)(2)) are paid 100 percent of the Federal rate in FY 2003.

We used the actuarial model described above to estimate the potential impact of our proposed changes for FY 2003 on total capital payments per case, using a universe of 4,300 hospitals. As described above, the individual hospital payment parameters are taken from the best available data, including the December 2001 update of the MedPAR file, the December 2001 update to the Provider-Specific File, and the most recent cost report data. In Table III, we present a comparison of total payments per case for FY 2002 compared to FY 2003 based on proposed FY 2003 payment policies. Column 3 shows estimates of payments per case under our model for FY 2002. Column 4 shows estimates of payments per case under our model for FY 2003. Column 5 shows the total percentage change in payments from FY 2002 to FY 2003. The change represented in Column 5 includes the 1.1 percent increase in the Federal rate, a 1.01505 percent increase in case-mix, changes in the adjustments to the Federal rate (for example, the effect of the new hospital wage index on the geographic adjustment factor), and reclassifications by the MGCRB, as well as changes in special exception payments. The comparisons are provided by: (1) Geographic location; (2) region; and (3) payment classification.

The simulation results show that, on average, capital payments per case can be expected to increase 3.7 percent in FY 2003. Our comparison by geographic location shows an overall increase in payments to hospitals in all areas. This comparison also shows that urban and rural hospitals will experience slightly different rates of increase in capital payments per case (3.5 percent and 5.1 percent, respectively). This difference is due to a projection that urban hospitals will experience a larger decrease in outlier payments from FY 2002 to FY 2003 compared to rural hospitals.

All regions are estimated to receive an increase in total capital payments per case, partly due to the elimination of the 2.1 percent reduction to the Federal rate for FY 2003 (see section VI.D. of the preamble of this proposed rule). Changes by region vary from a minimum increase of 2.1 percent (Middle Atlantic urban region) to a maximum increase of 5.7 percent (West North Central rural region). Hospitals located in Puerto Rico are expected to experience an increase in total capital payments per case of 4.3 percent.

By type of ownership, government hospitals are projected to have the largest rate of increase of total payment changes (4.4 percent). Similarly, payments to voluntary hospitals will increase 3.9 percent, while payments to proprietary hospitals will increase 2.0 percent.

Section 1886(d)(10) of the Act established the MGCRB. Hospitals may apply for reclassification for purposes of the standardized amount, wage index, or both. Although the Federal capital rate is not affected, a hospital's geographic classification for purposes of the operating standardized amount does affect a hospital's capital payments as a result of the large urban adjustment factor and the disproportionate share adjustment for urban hospitals with 100 or more beds. Reclassification for wage index purposes also affects the geographic adjustment factor, since that factor is constructed from the hospital wage index.

To present the effects of the hospitals being reclassified for FY 2003 compared to the effects of reclassification for FY 2002, we show the average payment percentage increase for hospitals reclassified in each fiscal year and in total. For FY 2003 reclassifications, we indicate those hospitals reclassified for standardized amount purposes only, for wage index purposes only, and for both purposes. The reclassified groups are compared to all other nonreclassified hospitals. These categories are further identified by urban and rural designation.

Hospitals reclassified for FY 2003 as a whole are projected to experience a 4.2 percent increase in payments. Payments to nonreclassified hospitals will increase slightly less (3.6 percent) than reclassified hospitals, overall. Hospitals reclassified during both FY 2002 and FY 2003 are projected to receive an increase in payments of 3.9 percent. Hospitals reclassified during FY 2003 only are projected to receive an increase in payments of 9.0 percent. This increase is primarily due to changes in the GAF (wage index).

TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE

[FY 2002 Payments Compared To FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/ case	Average FY 2003 payments/ case	Change
By Geographic Location:				
All hospitals	4,300	667	692	3.7
Large urban areas (populations over 1 million)	1,511	773	798	3.1
Other urban areas (populations of 1 million of fewer)	1,102	652	678	4.0
Rural areas	1,687	448	471	5.1
Urban hospitals	2,613	721	746	3.5
0–99 beds	647	511	533	4.3
100–199 beds	904	611	634	3.7
200–299 beds	528	692	717	3.6
300–499 beds	387	762	790	3.7
500 or more beds	147	935	961	2.8
Rural hospitals	1,687	448	471	5.1
0–49 beds	818	370	393	6.0
50–99 beds	507	412	435	5.6
100–149 beds	216	454	477	5.1
150–199 beds	78	493	517	4.9
200 or more beds	68	566	589	4.1
By Region:				
Urban by Region	2,613	721	746	3.5
New England	134	771	804	4.3
Middle Atlantic	402	817	834	2.1
South Atlantic	380	690	716	3.7
East North Central	431	687	718	4.5
East South Central	158	649	675	4.0
West North Central	180	703	735	4.6
West South Central	334	666	685	2.9
Mountain	132	695	724	4.2
Pacific	416	841	866	2.9
Puerto Rico	46	305	319	4.3
Rural by Region	1,687	448	471	5.1
New England	40	549	575	4.6
Middle Atlantic	68	472	497	5.4
South Atlantic	239	467	489	4.8
East North Central	225	456	481	5.5
East South Central	243	414	435	5.0
West North Central	311	440	465	5.7
West South Central	294	403	423	5.0
Mountain	150	460	483	5.0
Pacific	112	528	557	5.5
By Payment Classification:				
All hospitals	4,300	667	692	3.7
Large urban areas (populations over 1 million)	1,570	767	791	3.2
Other urban areas (populations of 1 million of fewer)	1,075	654	680	4.0
Rural areas	1,655	447	469	5.1
Teaching Status:				
Non-teaching	3,194	545	568	4.2
Fewer than 100 Residents	872	699	726	3.8
100 or more Residents	234	1,041	1,069	2.7
Urban DSH:				
100 or more beds	1,354	759	784	3.3
Less than 100 beds	295	492	512	4.2
Rural DSH:				
Sole Community (SCH/EACH)	469	392	414	5.6
Referral Center (RRC/EACH)	156	518	540	4.3
Other Rural:				
100 or more beds	78	418	439	5.0
Less than 100 beds	383	378	400	5.8
Urban teaching and DSH:				
Both teaching and DSH	758	838	864	3.1
Teaching and no DSH	278	746	776	4.0
No teaching and DSH	891	600	623	3.8
No teaching and no DSH	718	600	623	3.8
Rural Hospital Types:				
Non special status hospitals	666	398	420	5.5
RRC/EACH	159	526	548	4.2
SCH/EACH	539	415	438	5.5
Medicare-dependent hospitals (MDH)	216	368	391	6.3
SCH, RRC and EACH	75	503	530	5.3
Hospitals Reclassified by the Medicare Geographic Classification Review Board:				
Reclassification Status During FY2002 and FY2003:				
Reclassified During Both FY2002 and FY2003	567	588	611	3.9
Reclassified During FY2003 Only	53	516	563	9.0
Reclassified During FY2002 Only	77	623	651	4.4
FY2003 Reclassifications:				
All Reclassified Hospitals	620	583	607	4.2
All Nonreclassified Hospitals	3,645	683	708	3.6
All Urban Reclassified Hospitals	108	799	826	3.4
Urban Nonreclassified Hospitals	2,471	718	743	3.5
All Reclassified Rural Hospitals	512	500	524	4.7
Rural Nonreclassified Hospitals	1,174	389	411	5.7
Other Reclassified Hospitals (Section 1886(D)(8)(B))	35	454	484	6.4

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TABLE III.—COMPARISON OF TOTAL PAYMENTS PER CASE—Continued
[FY 2002 Payments Compared To FY 2003 Payments]

	Number of hospitals	Average FY 2002 payments/ case	Average FY 2003 payments/ case	Change
Type of Ownership:				
Voluntary	2,473	680	707	3.9
Proprietary	705	658	671	2.0
Government	909	600	627	4.4
Medicare Utilization as a Percent of Inpatient Days:				
0–25	318	859	885	3.0
25–50	1,650	767	792	3.3
50–65	1,706	582	606	4.2
Over 65	517	525	547	4.3

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Appendix B—Report to Congress

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 2 2 2002

The Honorable Richard B. Cheney
President of the Senate
Washington, DC 20510

Dear Mr. President:

I am pleased to submit to Congress this letter containing my recommendation for the applicable percentage increase in Medicare's hospital inpatient prospective payment system (IPPS) rates for Federal fiscal year (FY) 2003. Also included are my recommendations for updates to the payment limits for hospitals and hospital units excluded from IPPS, and for adjustments to the diagnosis-related group (DRG) weighting factors.

Section 1886(e)(3) of the Social Security Act (the Act) directs the Secretary of the Department of Health and Human Services to report to the Congress his initial estimate of his recommendation (required by section 1886(e)(4) of the Act) of an appropriate payment update for inpatient hospital services for the upcoming FY. Consistent with current law, the President's FY 2003 budget includes an update to the standardized amounts (the base dollar amounts for IPPS payments) equal to the market basket (an index of inflation in goods and services used by hospitals) minus 0.55 percentage points. The President's FY 2003 budget estimated the IPPS market basket rate of increase for FY 2003 to be 2.8 percent. Based on this estimate, I am recommending an update to the standardized amounts for hospitals in both large urban and other areas of 2.25 percent. Payments to hospitals under IPPS are projected to increase by $2.1 billion, from $86.0 billion in FY 2002 to $88.1 billion in FY 2003.

Although payments for most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of either 1982, 1987, or 1996) or the IPPS rate based on the standardized amount. Consistent with current law and the President's FY 2003 budget, I am recommending an update equal to 2.25 percent to the hospital-specific rate for both sole community hospitals and Medicare-dependent, small rural hospitals.

I am also submitting, consistent with Section 1886(e)(3) of the Act, my recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from IPPS.

The excluded hospital types are: psychiatric hospitals; rehabilitation hospitals; children's hospitals; long-term care hospitals; and cancer hospitals. The types of excluded distinct-part hospital units are psychiatric and rehabilitation. Hospitals and units excluded from the IPPS have in the past been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

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Psychiatric hospitals and units, and children's and cancer hospitals continue to be paid based on their reasonable costs subject to TEFRA limits. For these hospitals, the President's FY 2003 budget incorporates an increase to the TEFRA limit using 2.8 percent for the excluded hospital market basket increase.

Inpatient rehabilitation facilities (IRF) are paid under the IRF PPS for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF PPS amount, updated annually.

Effective for cost reporting periods beginning on or after October 1, 2002, we are proposing that long-term care hospitals will be paid under a PPS based on a 5-year transition period (hospitals may elect to receive full PPS rather than transition payments.) For purposes of the update factor, the portion of the proposed PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long term care hospital's TEFRA limit by 2.8 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2003 budget. A final recommendation on the appropriate percentage increases for FY 2003 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any across-the-board adjustment to the DRG weighting factors for FY 2003.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the Speaker of the House of Representatives.

Sincerely,

Tommy G. Thompson

THE SECRETARY OF HEALTH AND HUMAN SERVICES
WASHINGTON, D.C. 20201

MAR 2 2 2002

The Honorable J. Dennis Hastert
Speaker of the House of Representatives
Washington, DC 20515

Dear Mr. Speaker:

I am pleased to submit to Congress this letter containing my recommendation for the applicable percentage increase in Medicare's hospital inpatient prospective payment system (IPPS) rates for Federal fiscal year (FY) 2003. Also included are my recommendations for updates to the payment limits for hospitals and hospital units excluded from IPPS, and for adjustments to the diagnosis-related group (DRG) weighting factors.

Section 1886(e)(3) of the Social Security Act (the Act) directs the Secretary of the Department of Health and Human Services to report to the Congress his initial estimate of his recommendation (required by section 1886(e)(4) of the Act) of an appropriate payment update for inpatient hospital services for the upcoming FY. Consistent with current law, the President's FY 2003 budget includes an update to the standardized amounts (the base dollar amounts for IPPS payments) equal to the market basket (an index of inflation in goods and services used by hospitals) minus 0.55 percentage points. The President's FY 2003 budget estimated the IPPS market basket rate of increase for FY 2003 to be 2.8 percent. Based on this estimate, I am recommending an update to the standardized amounts for hospitals in both large urban and other areas of 2.25 percent. Payments to hospitals under IPPS are projected to increase by $2.1 billion, from $86.0 billion in FY 2002 to $88.1 billion in FY 2003.

Although payments for most hospitals under the IPPS are made on the basis of the standardized amounts, some categories of hospitals are paid the higher of a hospital-specific rate based on their costs in a base year (the higher of either 1982, 1987, or 1996) or the IPPS rate based on the standardized amount. Consistent with current law and the President's FY 2003 budget, I am recommending an update equal to 2.25 percent to the hospital-specific rate for both sole community hospitals and Medicare-dependent, small rural hospitals.

I am also submitting, consistent with Section 1886(e)(3) of the Act, my recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from IPPS.

The excluded hospital types are: psychiatric hospitals; rehabilitation hospitals; children's hospitals; long-term care hospitals; and cancer hospitals. The types of excluded distinct-part hospital units are psychiatric and rehabilitation. Hospitals and units excluded from the IPPS have in the past been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

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Page 2 — The Honorable J. Dennis Hastert

Psychiatric hospitals and units, and children's' and cancer hospitals continue to be paid based on their reasonable costs subject to TEFRA limits. For these hospitals, the President's FY 2003 budget incorporates an increase to the TEFRA limit using 2.8 percent for the excluded hospital market basket increase.

Inpatient rehabilitation facilities (IRF) are paid under the IRF PPS for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF PPS amount, updated annually.

Effective for cost reporting periods beginning on or after October 1, 2002, we are proposing that long-term care hospitals will be paid under a PPS based on a 5-year transition period (hospitals may elect to receive full PPS rather than transition payments.) For purposes of the update factor, the portion of the proposed PPS transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long term care hospital's TEFRA limit by 2.8 percent.

My recommendation for the updates is based on cost projections used in the President's FY 2003 budget. A final recommendation on the appropriate percentage increases for FY 2003 will be made nearer the beginning of the new Federal fiscal year based on the most current market basket projection available at that time. The final recommendation will incorporate our analysis of the latest estimates of all relevant factors, including recommendations by the Medicare Payment Advisory Commission (MedPAC).

Section 1886(d)(4)(C)(iv) of the Act also requires that I include in my report recommendations with respect to adjustments to the diagnosis-related group (DRG) weighting factors. At this time I do not anticipate recommending any across-the-board adjustment to the DRG weighting factors for FY 2003.

I am pleased to provide this recommendation to you. I am also sending a copy of this letter to the President of the Senate.

Sincerely,

Tommy G. Thompson

ATTACHMENT

Discussion of Two Market Basket Estimates

Section 1886(b)(3)(B)(iii) of the Act defines the "market basket percentage increase" as "the percentage, estimated by the Secretary" by which the cost of goods and services comprising inpatient hospital services "will exceed the cost of such goods and services for the preceding period. The estimate is based on an index of appropriately weighted indicators of changes in wages and prices which are representative of the mix of goods and services included in such inpatient hospital services."

With the implementation of the Inpatient Prospective Payment System in Fiscal Year 1984, the Office of the Actuary (OACT) developed the market basket methodology and determined the official input price index from which the update percentage is calculated. OACT also forecasts the percentage increases for all of the Medicare payment categories that are updated by health-specific market baskets and other price indexes, including skilled nursing facility PPS, home health care PPS, and noninpatient hospital PPSs (capital, outpatient, rehabilitation facility, and hospice). To help ensure consistency among the many economic and price factors comprising the market baskets and other indexes, OACT contracts with a well-known and widely-respected independent forecasting firm, Global Insights/*DRI-WEFA*, to assist in making their forecasts.

In addition, each year for the President's Budget, the Office of Management and Budget forecasts the market basket by applying future assumptions of economy-wide wage and Consumer Price Index growth to the historical relationship between these factors and the market basket. This forecast does not attempt to capture the interrelationships among market basket factors that should be reflected in the actual update. OACT is in a stronger position to forecast the percentage increase in the market basket to be used in the actual update because they possess the detailed knowledge of the factors that affect the market basket, having developed these indexes for nearly two decades.

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Appendix C: Recommendation of Update Factors for Operating Cost Rates of Payment for Inpatient Hospital Services

I. Background

Section 1886(e)(4) of the Act requires that the Secretary, taking into consideration the recommendations of the Medicare Payment Advisory Commission (MedPAC), recommend update factors for inpatient hospital services for each fiscal year that take into account the amounts necessary for the efficient and effective delivery of medically appropriate and necessary care of high quality. Under section 1886(e)(5) of the Act, we are required to publish the update factors recommended under section 1886(e)(4) of the Act. Accordingly, this Appendix provides the recommendations of appropriate update factors and the analysis underlying our recommendations. We also respond to MedPAC's recommendations concerning the update factors.

Section 1886(b)(3)(B)(i)(XVIII) of the Act, as amended by Section 301 Public Law 106–554, sets the FY 2003 percentage increase in the operating cost standardized amounts equal to the rate of increase in the hospital market basket minus 0.55 percent for prospective payment hospitals in all areas. Section 1886(b)(3)(B)(iv) of the Act sets the FY 2003 percentage increase in the hospital-specific rates applicable to SCHs and MDHs equal to the rate set forth in section 1886(b)(3)(B)(i) of the Act, that is, the same update factor as all other hospitals subject to the acute care hospital inpatient prospective payment system, or the rate of increase in the market basket minus 0.55 percentage points. Under section 1886(b)(3)(B)(ii) of the Act, the FY 2003 percentage increase in the rate-of-increase limits for hospitals and hospital units excluded from the acute care hospital inpatient prospective payment system is the market basket percentage increase.

In accordance with section 1886(d)(3)(A) of the Act, we are proposing to update the standardized amounts, the hospital-specific rates, and the rate-of-increase limits for hospitals and hospital units excluded from the prospective payment system as provided in section 1886(b)(3)(B) of the Act. Based on the proposed revised and rebased first quarter 2002 forecast of the FY 2003 market basket increase of 3.3 percent for hospitals subject to the acute care hospital inpatient prospective payment system, the proposed update to the standardized amounts is 2.75 percent (that is, the market basket rate of increase minus 0.55 percent percentage points) for hospitals in both large urban and other areas. The proposed update to the hospital-specific rate applicable to SCHs and MDHs is also 2.75 percent.

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Consistent with section 1886(e)(3) of the Act, we are proposing a recommendation for updating payments for hospitals and distinct-part hospital units that are excluded from the hospital inpatient prospective payment system. Facilities excluded from the hospital inpatient prospective payment system include psychiatric hospitals and units, rehabilitation hospitals and units, long-term care hospitals, cancer hospitals, and children's hospitals.

In the past, hospitals and hospital units excluded from the hospital inpatient prospective payment system have been paid based on their reasonable costs subject to limits as established by the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA). Hospitals that continue to be paid based on their reasonable costs are subject to TEFRA limits for FY 2003. For these hospitals, the proposed update is the percentage increase in the excluded hospital market basket (currently estimated at 3.4 percent).

Inpatient rehabilitation facilities (IRFs) are paid under the IRF prospective payment system for cost reporting periods beginning on or after January 1, 2002. For cost reporting periods beginning during FY 2003, the Federal prospective payment for IRFs is based on 100 percent of the adjusted Federal IRF prospective payment amount, updated annually (see the August 7, 2001 final rule (66 FR 41316)).

Effective for cost reporting periods beginning during FY 2003, we are proposing that long-term care hospitals would be paid under a prospective payment system under which long-term care hospitals receive payment based on a 5-year transition period (see the March 22, 2002 proposed rule (67 FR 13416)). We are also proposing that long-term care hospitals may elect to be paid on 100 percent of the Federal prospective rate at the beginning of any of its cost reporting periods during the 5-year transition period. For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services would be determined by updating the long-term care hospital's TEFRA limit by the current estimate of the excluded hospital market basket (or 3.4 percent).

In its March 1, 2002 Report to the Congress, MedPAC recommended that the base payment rates for Medicare covered services under the hospital inpatient prospective payment system be increased by the market basket percentage increase minus 0.55 percent for hospitals located in large urban areas, and by the full market basket percentage increase for hospitals located in all other areas (page 66). MedPAC did not make a separate recommendation for the hospital-specific rate applicable to SCHs and MDHs. MedPAC also presented a new approach for updating the hospital inpatient prospective system payment rates, which assesses the adequacy of current payments and accounts for the increase in efficient providers' costs in the upcoming year. While this approach is not fundamentally different from what MedPAC has done in the past, it no longer produces a detailed update framework for direct comparison with the Secretary's framework. We discuss MedPAC's recommendations concerning the update factors and our responses to these recommendations in section III. of this Appendix C. Below we describe the basis of our FY 2003 update recommendation (as shown in Table 1).

II. Secretary's Recommendations

Under section 1886(e)(4) of the Act, we are recommending that an appropriate update factor for the standardized amounts is the market basket percentage increase minus 0.55 percentage points for hospitals located in large urban and other areas. We are also recommending an update factor of the market basket percentage increase minus 0.55 percentage points for the hospital-specific rate for SCHs and MDHs. We believe these recommended update factors for FY 2003 would ensure that Medicare acts as a prudent purchaser and provide incentives to hospitals for increased efficiency, thereby contributing to the solvency of the Medicare Part A Trust Fund.

Rehabilitation hospitals and units are now paid under the IRF prospective payment system. For cost reporting periods beginning on or after October 1, 2002, the IRF prospective payment is based on 100 percent of the adjusted Federal IRF prospective payment system amount updated annually.

Effective for cost reporting periods beginning during FY 2003, we have proposed that long-term care hospitals be paid under a prospective payment system (67 FR 13416). For purposes of the update factor, the portion of the proposed prospective payment system transition blend payment based on reasonable costs for inpatient operating services for FY 2003 would be determined by updating the TEFRA target amount for long-term care hospitals by the most recent available estimate of the increase in the excluded hospital operating market basket (or 3.4 percent).

We recommend that the remaining excluded hospitals and units (which are excluded from the acute care hospital inpatient prospective payment system and will continue to be paid on a reasonable cost basis in FY 2003) receive an update of 3.4 percent. The update for excluded hospitals and hospital units is equal to the most recent available estimate of the increase in the excluded hospital operating market basket. Based on the proposed revised and rebased first quarter 2002 forecast for FY 2003, the proposed market basket rate of increase for excluded hospitals and hospital units is 3.4 percent.

As required by section 1886(e)(4) of the Act, we have taken into consideration the recommendations of MedPAC in setting these recommended update factors. Our responses to the MedPAC recommendations concerning the update factors are discussed below. Consistent with current law, we are proposing an update recommendation of the market basket percentage increase minus 0.55 percentage points for the hospital inpatient prospective payment system operating cost standardized amounts for FY 2003. This proposed update recommendation is supported by the following analyses that measure changes in hospital productivity, scientific and technological advances, practice pattern changes, changes in case-mix, the effect of reclassification on recalibration, and forecast error correction.

A. Productivity

Service level labor productivity is defined as the ratio of total service output to full-time equivalent employees (FTEs). While we recognize that productivity is a function of many variables (for example, labor, nonlabor material, and capital inputs), we use the portion of productivity attributed to direct labor since this update framework applies to operating payment. To recognize that we are apportioning the short-run output changes to the labor input and not considering the nonlabor inputs, we weight our productivity measure by the share of direct labor services in the market basket to determine the expected effect on cost per case.

Our recommendation for the service productivity component is based on historical trends in productivity and total output for both the hospital industry and the general economy, and projected levels of future hospital service output. MedPAC's predecessor, the Prospective Payment Assessment Commission (ProPAC), estimated cumulative service productivity growth to be 4.9 percent from 1985 through 1989 or 1.2 percent annually. At the same time, ProPAC estimated total output growth at 3.4 percent annually, implying a ratio of service productivity growth to output growth of 0.35.

Absent a productivity measure specific to Medicare patients, we examined productivity (output per hour) and output (gross domestic product) for the economy. Depending on the exact time period, annual changes in productivity range from 0.3 to 0.35 percent of the change in output (that is, a 1.0 percent increase in output would be correlated with a 0.3 to 0.35 percent change in output per hour).

Under our framework, the recommended update is based in part on expected productivity—that is, projected service output during the year, multiplied by the historical ratio of service productivity to total service output, multiplied by the share of direct labor in total operating inputs, as calculated in the hospital market basket. This method estimates an expected productivity improvement in the same proportion to expected total service growth that has occurred in the past and assumes that, at a minimum, growth in FTEs changes proportionally to the growth in total service output. Thus, the recommendation allows for unit productivity to be smaller than the historical averages in years that output growth is relatively low and larger in years that output growth is higher than the historical averages. Based on the above estimates from both the hospital industry and the economy, we have chosen to employ the range of ratios of productivity change to output change of 0.30 to 0.35.

The expected change in total hospital service output is the product of projected growth in total admissions (adjusted for outpatient usage), projected real case-mix growth, expected quality-enhancing intensity growth, and net of expected decline in intensity due to reduction of cost-ineffective practice. Case-mix growth and intensity numbers for Medicare are used as proxies for those of the total hospital, since case-mix increases (used in the intensity measure as well) are unavailable for non-Medicare patients. Thus, expected FY 2003 hospital output growth is simply the sum of the expected change in intensity (1.0 percent), projected admissions change (1.9 percent), and projected real case-mix growth (1.0 percent), or 3.9 percent. The share of direct labor services in the market basket (consisting of wages, salaries, and employee benefits) is 61.7 percent (based on the proposed revised and rebased hospital market basket discussed in section IV. of the preamble of this proposed rule).

Multiplying the expected change in total hospital service output (3.9 percent) by the ratio of historical service productivity change to total service growth of 0.30 to 0.35 and by the direct labor share percentage 61.6, provides our productivity standard of 0.9 to 0.7 percent. Because productivity gains hold down the rate of increase in hospitals' costs, this factor is applied as a negative offset to the market basket increase.

B. Intensity

We base our intensity standard on the combined effect of three separate factors: changes in the use of quality enhancing services, changes in the use of services due to shifts in within-DRG severity, and changes in the use of services due to reductions of cost-ineffective practices. For FY 2003, we recommend an adjustment of 1.0 percent. The basis of this recommendation is discussed below.

Following methods developed by CMS' Office of the Actuary for deriving hospital output estimates from total hospital charges, we have developed Medicare-specific intensity measures based on a 5-year average using FYs 1997 through 2001 MedPAR billing data. Case-mix constant intensity is calculated as the change in total Medicare charges per discharge adjusted for changes in the average charge per unit of service as measured by the Consumer Price Index (CPI) for hospital and related services and changes in real case-mix. [1] The 5-year average percentage change in charge per discharge was 6.3 percent, the 5-year average annual change in the CPI for hospital and related services was 4.5 percent, and the 5-year average annual change in case-mix was −0.3 percent. Dividing the change in charge per discharge by the product of the real case-mix index change and the CPI for hospital and related services yields a 5-year average annual change in intensity of 2.0 percent. To account for the proportions of the overall annual intensity increases due to ineffective practice patterns and to the combination of quality-enhancing new technologies and within-DRG complexity, we assume that one-half of the annual increase is due to each of these factors. Our recommended adjustment excludes the estimated amount of the overall intensity increase due to ineffective practice patterns. Thus, we are recommending an intensity adjustment for FY 2003 of 1.0 percent.

[1] In the past, we have considered the upper bound of real case mix to be from 1.0 to 1.4 percent annually, with any increase beyond this bound assumed to be due to changes in coding practices. Because none of the annual changes in observed case mix change during the 5-year period from FY 1997 through FY 2001 exceeded 1.0 percent, it is all assumed to be real case mix change.

C. Change in Case-Mix

Our analysis takes into account projected changes in case-mix, adjusted for changes attributable to improved coding practices. For our FY 2003 update recommendation, we are projecting a 1.0 percent increase in the case-mix index. We define real case-mix change as actual changes in the mix (and resource requirements) of Medicare patients as opposed to changes in coding behavior that result in assignment of cases to higher weighted DRGs, but do not reflect greater resource requirements. We do not believe changes in coding behavior will impact the overall case-mix in FY 2003. As such, for FY 2003, we estimate that real case-mix is equal to projected change in case-mix. Thus, we are recommending a 0.0 percent adjustment for case-mix.

D. Effect of FY 2001 DRG Reclassification and Recalibration

We estimate that DRG reclassification and recalibration for FY 2001 resulted in a 0.3 percent change in the case-mix index when compared with the case-mix index that would have resulted if we had not made the reclassification and recalibration changes to the GROUPER. Therefore, we are recommending a −0.3 percent adjustment for the effect of FY 2001 DRG reclassification and recalibration.

E. Forecast Error Correction

We make a forecast error correction if the actual market basket changes differ from the forecasted market basket by 0.25 percentage points or more. There is a 2-year lag between the forecast and the measurement of forecast error. The estimated market basket percentage increase used to update the FY 2001 payment rates was 3.4 percent. Our most recent data indicates the actual FY 2001 increase was 4.1 percent. The resulting forecast error in the FY 2001 market basket rate of increase is 0.7 percentage points. This forecast error is a result of prices for wages, benefits, and utilities increasing more rapidly than expected. The effects of a labor shortage within the health services industry caused hospitals to increase wages greater than initially projected. Increases in actual benefits were faster than projected due to a greater than expected increase in health insurance premiums. Finally, market conditions for natural gas and electricity caused

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prices for those products to increase more rapidly than expected.

The following is a summary of the update range supported by our analyses:

HHS's FY 2003 UPDATE RECOMMENDATION

Market basket	MB
Policy Adjustment Factors:	
Productivity	−0.9 to −0.7
Intensity	1.0
Subtotal	0.1 to 0.3
Case-Mix Adjustment Factors:	
Projected Case-Mix Change	1.0
Real Across DRG Change	−1.0
Subtotal	0.0
Effect of FY 2001 DRG Reclassification and Recalibration	−0.3
Forecast Error Correction	0.7
Total Recommendation Update	MB + 0.5 to MB + 0.7

While the above analysis would suggest an update between market basket plus 0.5 percentage points and the market basket plus 0.7 percentage points, the Secretary is recommending, consistent with current law, an update of the market basket percentage increase minus 0.55 percentage points (or 2.75 percent) for hospitals in all areas.

We believe that a 2.75 percent update factor for FY 2003 will appropriately reflect current trends in health care delivery, including the recent decreases in the use of hospital inpatient services and the corresponding increase in the use of hospital outpatient and postacute care services. Also, consistent with current law, we are recommending that the hospital-specific rates applicable to SCHs and MDHs be increased by the same update, 2.75 percentage points.

Since the inception of the acute care hospital inpatient prospective payment system, hospitals have received a full market basket update only once, in FY 2001. The stabilization of overall hospital margins in recent years suggests that the restrictions on market basket increases have not resulted in inadequate hospital payments. Modest limits below full market basket updates could be linked to continued careful review of Medicare hospital margin data to ensure that margins do not worsen among certain hospital types with negative and declining Medicare margins.

III. MedPAC Recommendations for Assessing Payment Adequacy and Updating Payments in Traditional Medicare

In its FY 2002 Report to Congress, MedPAC developed a new approach for updating fee-for-service payments that breaks the process into two basic parts: assessing the adequacy of current payments; and accounting for the increase in efficient providers' costs in the coming year. MedPAC points out this new approach "is not fundamentally different from what the Commission has done in the past, but we expect formalizing the two parts of our process will lead to greater emphasis on the broad question of whether the amount of money in the system currently is right and less emphasis on the role of specific cost-influencing factors" (page 39).

In assessing payment adequacy, MedPAC reviews the relationship between costs and payments (conventionally expressed as a margin). On the payment side, MedPAC applied the annual payment updates specified in law through FY 2002 and then modeled the effects of other policy changes that have affected the level of payments. On the cost side, MedPAC estimated the increases in costs per unit of output over the same period using the change in cost per adjusted admission in the American Hospital Association's annual survey of hospitals for FY 2000, and the CMS projected increase in the FYs 2001 and 2002 market baskets (page 58). MedPAC estimated that the inpatient Medicare margin would be 10.8 percent in FY 2002 (with FY 2003 payment rules). This amount is down slightly from MedPAC's estimate of 11.9 percent in FY 1999. In addition to the inpatient Medicare margin, MedPAC measured the overall Medicare margin, incorporating almost all Medicare-related payments and costs to hospitals. This overall Medicare margin was estimated to be 3.8 percent. The report notes that "the Commission does not plan to specify a 'standard margin,' although we will take the need for a small positive margin into account as we assess the adequacy of various fee-for-service payments" (page 43).

In addition to considering the relationship between estimated payments and costs, MedPAC also considered the following three factors to assess whether current payments are adequate (page 43):

- Changes in access to or quality of care;
- Changes in the volume of services or number of providers; and
- Changes in providers access to capital.

MedPAC found no evidence that the hospital cost base is inappropriate and concluded that Medicare payment is adequate and no payment adequacy adjustment is needed for FY 2003.

MedPAC recommends gradually eliminating the differential in the standardized amounts for hospitals in large urban and other areas. MedPAC's data on margins and its analysis of costs suggest that a different standardized amount (the large urban standardized amount is 1.6 percent higher than the amount for other areas) is unwarranted. MedPAC estimates the FY 2002 Medicare inpatient margins will range from 5 percent for rural hospitals to 14 percent for hospitals in large urban areas. Because much of this difference is due to the greater proportion of IME and DSH payments going to hospitals in large urban areas, MedPAC removed DSH payments and the portion of the IME payment above the measured cost relationship between IME and hospitals' costs, and found that hospitals in large urban areas still have Medicare margins that are about 4 percentage points higher than other urban and rural hospitals (page 64).

MedPAC believes that "(e)liminating the differential would improve payment equity across geographic areas and also help to simplify the payment system" (page 63). For example, eliminating the standardized amount differential would also eliminate the need for hospitals to reclassify for a higher standardized amount through the MGCRB. Therefore, MedPAC recommends holding the update for hospitals in large urban areas to the legislated level of the market basket percentage increase minus 0.55 percent for FY 2003, while updating the other areas standardized amount by the full market basket percentage increase.

MedPAC accounts for providers' cost changes in the coming payment year primarily through a forecast of input price inflation, which estimates how much providers' costs would rise in the coming year if the quality and mix of inputs they use to furnish care and the types of patients they treat remain constant. MedPAC relies on CMS' market basket estimate to forecast input price inflation, but considers other factors that may affect providers' costs. These other factors are scientific and technological advances, changes in DRG case-mix complexity, site-of-service substitution, and other one-time factors.

In the past, MedPAC recommended specific adjustments to its update recommendation for each of these factors. In its March 2002 Report to Congress, MedPAC did not provide specific estimates for these factors, but stated "(a)fter considering all factors that might potentially affect the rate of growth in efficient providers' costs, we conclude that the appropriate adjustment for cost growth in fiscal year 2003 is the forecasted increase in the market basket, or 2.9 percent" (page 66). This market basket forecast was based on the December 2001 market basket estimated by CMS' Office of the Actuary, and does not reflect the proposed revisions and rebasing discussed in section IV. of the preamble of this proposed rule.

MedPAC's second recommendation related to updating payments under the hospital inpatient prospective payment system is that the Congress should increase the base rate for inpatient services covered by Medicare's prospective payment system in FY 2003 by the market basket percentage increase minus 0.55 percent for hospitals in large urban areas and by the market basket percentage increase for hospitals in all other areas. MedPAC focused on the operating update only because it applies to 92 percent of hospitals' Medicare costs. The report noted that, in its March 2000 report to Congress, MedPAC recommended combining the operating and capital payment systems into a single prospective payment system.

Response: As described above, we continue to use our detailed update framework to develop our recommended update for FY 2003. However, we believe MedPAC's new approach will be useful to focusing the policy discussion more directly on the overall adequacy of hospital payments. We look forward to continuing to work with MedPAC to refine and utilize both methodologies in an effort to produce analyses that provide the most helpful information for setting the annual updates.

We agree with MedPAC's recommendation that the current law update for FY 2003 of the market basket percentage increase minus 0.55 percentage points is appropriate for the operating system update. However, we are not recommending differential updates to gradually eliminate the higher standardized amount for hospitals in large urban areas, as recommended by MedPAC. We believe the stabilization of overall hospital margins in recent years suggests that modest limits below full market basket updates provide adequate payments. We agree, however, that certain hospital types that show clear evidence of negative and declining Medicare margins should be monitored closely.

Because the operating and capital prospective payment systems remain separate, CMS continues to use separate updates for operating and capital payments. The proposed update to the capital payment rate is discussed in section III. of the Addendum of this proposed rule.

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Thursday,
May 9, 2002

Part III

National Archives and Records Administration

36 CFR Part 1230
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EDITOR'S NOTE:
The Office of the Federal Register is publishing the following document in a special format to illustrate proposed changes to the appearance of the printed and PDF pages of the daily Federal Register. This experimental format uses a two-column layout, sans serif fonts, larger and bolder headings in the preamble and tables, bullets in the Summary, more space between lines of regulatory text, and makes other changes to the appearance of text and tables. The format changes are intended to improve the readability and public understanding of Federal regulations and notices without increasing white space that would affect printing costs charged to agencies. The proposed format would result in no change or a slight decrease in the number of pages printed. The format changes shown below do not affect the legal status of the final rule issued by the National Archives and Records Administration.
We invite agencies and members of the public to comment on the proposed format by email at: fedreg.legal@nara.gov, or by U.S. mail at: National Archives and Records Administration, Office of the Federal Register (NF), Federal Register Format Changes, 700 Pennsylvania Ave., NW, Washington, DC 20408-0001. For more information the proposed format, go to the Federal Register web site at: http://www.nara.gov/fedreg/plainlan.html#top.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AB06

Micrographic Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its Micrographic Records Management regulations to:
• Update the editions of standards incorporated by reference to the most current edition; and
• Rewrite the regulations in plain language format.
This final rule will affect Federal agencies.

DATES: This rule is effective June 10, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-713-7360, ext. 240, or fax number 301-713-7270.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on September 11, 2001, at 66 FR 47125, for a 60-day public comment period. We received comments from 2 Federal agencies, 1 records management professional organization, and 2 members from the public. Following is a summary of the comments and a discussion of the changes that we made to the proposed rule.

Terminology (§§ 1230.4 and 1230.7(f))

ARMA International (ARMA) recommended replacing the term "records schedule" with "records retention schedule" in § 1230.7(f) and defining the suggested term in § 1230.4, Definitions. We did not adopt this comment because "records schedule" is a standard records management term that is used throughout NARA regulations. The term does not need to be included in Part 1230 because it is already defined in 36 CFR 1220.14, which applies to the entire Subchapter B.

Discontinuing Filming Temporary Records (§ 1230.10)

A Federal agency asked if NARA would require agencies to request approval before discontinuing filming temporary records when the records, regardless of format, would be kept for the same period of time. Agencies are not required to request approval to film temporary records (§ 1230.10(b)) and the same is true for discontinuing microfilming temporary records. The principle, which has been in place for many years now, is that the nature and use of temporary records is not changed when the original paper is copied to microform.

Filming Requirements (§ 1230.14)

A Federal agency pointed out that § 1230.14 no longer includes the phrase "when the original paper records will be destroyed or otherwise disposed of," though § 1230.22 still makes that distinction. We did not intend to change § 1230.14(a) when we reformatted the paragraph in plain language, and have added the phrase in this final rule. We also modified § 1230.14(a)(2) for clarity.

Using Dry Silver Film for Permanent Records (§ 1230.14)

A member from the public recommended that we consider revising the section to permit the use of dry silver film for filming permanent records. We did not adopt this change because for long-term retention, the dry-silver film is much riskier than the traditional silver-gelatin film.
• Dry silver film that meets the ISO standard has a life expectancy rating of only 100 years, while wet-processed silver-gelatin film with a polyester base has a higher life expectancy rating of 500 years.
• Dry silver film is never "fixed" meaning, it will remain potentially developable for an indefinite period of time. Fixing is the process of removing the light sensitive silver salts. This means if the film is ever exposed to high temperatures (e. g., 120 degrees Fahrenheit to 130 degrees Fahrenheit) such as with an air conditioner failure, the film will "develop" and turn completely black, causing a catastrophic loss of all the information on the film.

Quality Standards (§ 1230.14(d))

ARMA and a member from the public suggested adding a clause to the second sentence so that it will read as follows: "Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334-1991." We accept this comment and have incorporated the suggested clause.

Film and Image Requirements for Temporary Records (§ 1230.16(a))

ARMA recommended use of the ARMA glossary to define temporary records in this section. We did not adopt this comment. Section 1230.16(a) does not define "temporary records" but pertains to film and image requirements. We require that temporary records retained for 100 years or longer meet the same image requirements as permanent records. This is not a new requirement. It already exists in the current regulation.

Inspection Period (§ 1230.22(b))

ARMA suggested changing the inspection period from every 2 years to every 5 years because they believe the longer inspection period is sufficient under appropriate storage conditions and would be less costly. No Federal agency has objected to the 2-year inspection requirement that NARA selected.
We partially accept this comment. We believe that it is important to conduct an initial inspection when the microfilm is 2 years old to identify any problems that did not appear when the film was processed and to ensure that it is stored in the proper environment. Acetate-based microfilm stock, which was used prior to 1990, is more susceptible to deterioration than the polyester-based microfilm used today. Therefore, we are retaining the requirement for inspection every 2 years for microfilms produced before 1990. Unless there is a catastrophic event (e.g., extended failure of environmental controls), microfilms produced during or after 1990 must be inspected on a 5-year cycle after the initial 2-year inspection.

Percentage of Inspection Sampling (§ 1230.22(a))

ARMA commented that § 1230.22(a) does not indicate the percentage of inspection sampling that is required. They questioned whether inspection is to cover 100 percent of all rolls of film or a lesser sampling. They recommended a sampling of approximately 10 percent because it would provide a reliable inspection and help reduce costs incurred with the inspection process. They also recommended adding a separate section to address microfilm inspection procedures. We did not adopt these comments. There is no need for a change in language, since we believe that what ARMA is concerned about is adequately covered in ANSI/AIIM MS45–1990. That standard addresses both the proper sampling procedures (1/1000th of the group or 100 microforms, whichever is greater, or the whole group if less than 100 microforms) and the proper inspection procedures. No additional language is, therefore, required.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1230

Archives and records, Incorporation by reference.

For the reasons set forth in the preamble, NARA revises part 1230 of title 36, Code of Federal Regulations, to read as follows:

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

Subpart A—General

Sec.
1230.1 What does this part cover?
1230.2 What is the authority for this part?
1230.3 Publications incorporated by reference.
1230.4 Definitions.

Subpart B—Program Requirements

1230.7 What must agencies do to manage microform records?

Subpart C—Microfilming Standards

1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?
1230.12 What are the steps to be followed in filming records?
1230.14 What are the filming requirements for permanent and unscheduled records?
1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

Subpart D—Storage, Use and Disposition Standards of Microform Records

1230.20 How should microform records be stored?
1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?
1230.24 What are NARA inspection requirements for temporary microform records?
1230.26 What are the use restrictions for permanent and unscheduled microform records?
1230.28 What must agencies do to send permanent microform records to a records storage facility?
1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

Subpart E—Centralized Micrographic Services

1230.50 What micrographic services are available from NARA?

Authority: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

§ 1230.1 What does this part cover?

This part covers the standards and procedures for using micrographic technology to create, use, store, inspect, retrieve, preserve, and dispose of Federal records.§ 1230.2 What is the authority for this part?

44 U.S.C. chapters 29 and 33, authorize the Archivist of the United States to:
(A) Establish standards for copying records by photographic and microphotographic means;
(B) Establish standards for the creation, storage, use, and disposition of microform records in Federal agencies; and
(C) Provide centralized microfilming services for Federal agencies.

§ 1230.3 Publications incorporated by reference.

(A) *General.* The following publications are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They may also be examined at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **FEDERAL REGISTER**.

(B) *American National Standards Institute (ANSI) and International (ISO) standards.* ANSI standards cited in this part are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036. The standards can be ordered on line at http://webstore.ansi.org/ansidocstore/default.asp.

ISO 10602:1995(E), February 1, 1995, Second edition, Photography–Processed silver-gelatin type black-and-white film–Specifications for stability.

ANSI/PIMA IT9.2–1998, April 15, 1998, American National Standard for Imaging Materials—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI/ISO 5.2-1991, ANSI/NAPM IT2.19–1994, February 20, 1995, American National Standard for Photography—Density Measurements—Part 2: Geometric Conditions for Transmission Density.

ANSI/ISO 5-3-1995, ANSI/NAPM IT2.18–1996, March 8, 1996, American National Standard for Photography—Density Measurements—Part 3: Spectral Conditions.

ISO 18911: 2000(E), First edition, November 1, 2000, Imaging materials–Processed safety photographic films—Storage practices.

(C) *Association of Information and Image Management (AIIM) Standards.* You may obtain the following standards from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. The standards can be ordered on line at http://www.aiim.org/.

ANSI/AIIM MS1–1996, August 8, 1996, Standard Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control.

ANSI/AIIM MS5–1992, December 21, 1992, Standard for Information and Image Management–Microfiche.

ANSI/AIIM MS14–1996, August 8, 1996, Standard Recommended Practice–Specifications for 16mm and 35mm Roll Microfilm.

ANSI/AIIM MS19–1993, August 18, 1993, Standard Recommended Practice–Identification of Microforms.

ANSI/AIIM MS23–1998, June 2, 1998, Standard Recommended Practice–

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Production, Inspection, and Quality Assurance of First-Generation, Silver Microforms of Documents.

ANSI/AIIM MS32–1996, February 16, 1996, Standard Recommended Practice–Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1996, July 16, 1996, Dimensions of Unitized Microfilm Carriers and Apertures (Aperture, Camera, Copy and Image Cards).

ANSI/AIIM MS43–1998, June 2, 1998, Standard Recommended Practice–Operational Procedures–Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, January 22, 1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, May 10, 1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

§ 1230.4 Definitions.

The following definitions apply to this part:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

Computer Output Microfilm (COM). Microfilm containing data converted and recorded from a computer.

Facility. An area used exclusively to make or copy microforms.

Microfilm. (1)Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages on film; or

(3) A fine-grain, high resolution photographic film containing microimages.

Microform. Any form containing microimages.

Microimage. A document such as a page of text or a drawing that is too small to be read without magnification.

Permanent record. Permanent record has the meaning specified in § 1220.14 of this chapter.

Records storage facility. Records storage facility has the meaning specified in § 1220.14 of this chapter.

Temporary record. Temporary record has the meaning specified in § 1220.14 of this chapter.

Unscheduled record. Unscheduled record has the meaning specified in § 1220.14 of this chapter.

Use or work copies. Duplicates of original film made to be used for reference or for duplication on a recurring or large-scale basis. These are not preservation master copies, which must be stored unused as specified in § 1230.20.

Subpart B—Program Requirements

§ 1230.7 What must agencies do to manage microform records?

Federal agencies must manage microform records by taking the following actions:

(A) Assign responsibility for an agencywide program for managing microform records and notify the National Archives and Records Administration (NWM), 8601 Adelphi Rd., College Park, MD 20740-6001 of the name and title of the person assigned the responsibility.

(B) Manage the microform records as part of other records and information resources management programs of the agency.

(C) Include microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminate them to appropriate officials.

(D) Address records management issues, including disposition, before approving new microform records systems or enhancements to existing systems.

(E) Train the managers and users of microform records.

(F) Develop records schedules covering microform records and finding aids, secure NARA approval, and apply the disposition instructions.

(G) Schedule computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, in accordance with part 1234 of this chapter.

(H) Review practices used to create and manage microform records periodically to ensure compliance with NARA standards in this part.

Subpart C—Microfilming Standards

§ 1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?

(A) *Permanent or unscheduled records.* Agencies must schedule both source documents (originals) and microforms. NARA must approve the schedule, Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with part 1228 of this chapter before any records, including source documents, can be destroyed. NARA will not approve the destruction of original records that have intrinsic value, or security classified or otherwise restricted original records that are scheduled as permanent, or original records that are scheduled as permanent and that have other characteristics that would limit the usefulness of microform copies for public reference.

(1) Agencies that comply with the standards in § 1230.14 must include on the SF 115 the following certification: "This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230."

(2) Agencies using microfilming methods, materials, and procedures that do not meet the standards in § 1230.14(a) must include on the SF 115 a description of the system and standards used.

(3) When an agency intends to retain the silver original microforms of permanent records and destroy the original records, the agency must certify in writing on the SF 115 that the microform will be stored in compliance with the standards of § 1230.20 and inspected as required by § 1230.22.

(B) *Temporary records.* Agencies do not need to obtain additional NARA approval when destroying scheduled temporary records that have been microfilmed. The same approved retention period for temporary records is applied to microform copies of these records. The original records can be destroyed once microfilm is verified, unless legal requirements prevent their early destruction.

§ 1230.12 What are the steps to be followed in filming records?

(A) Ensure that the microforms contain all information shown on the originals and that they can be used for the purposes the original records served.

(B) Arrange, describe, and index the filmed records to permit retrieval of any particular document or component of the records. Title each microform roll or fiche with a titling target or header. For fiche, place the titling information in

frame 1 if the information will not fit on the header. At a minimum, titling information must include:

(1) The title of the records;

(2) The number or identifier for each unit of film;

(3) The security classification, if any; and

(4) The name of the agency and organization the inclusive dates, names, or other data identifying the records to be included on a unit of film.

(C) Add an identification target showing the date of filming. When necessary to give the film copy legal standing, the target must also identify the person who authorized the microfilming. See ANSI/AIIM MS19–1993 for standards for identification targets.

(D) The following formats are mandatory standards for microforms:

(1) *Roll film.* (I)*Source documents.* The formats described in ANSI/AIIM MS14–1996 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1998 for the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32–1996, Table 1 are mandatory, and the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1996, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the requirements of ANSI/PIMA IT9.2–1998. The 35mm film used in the aperture card application must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

(II) *COM.* Computer output microfilm (COM) generated images must be the simplex mode described in ANSI/AIIM MS14–1996 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the formats and reduction ratios prescribed in ANSI/AIIM MS5–1992 (R1998) must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1998 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(E) *Index placement.* (1) *Source documents.* When filming original (source) documents, place indexes, registers, or other finding aids, if microfilmed, either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Place indexes on computer-generated microforms following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 What are the filming requirements for permanent and unscheduled records?

(A) *General requirements.* (1) Apply the standards in this section for microfilming of:

(I) Permanent paper records where the original paper record will be destroyed or otherwise disposed of;

(II) Unscheduled paper records where the original paper record will be destroyed or otherwise disposed of; and

(III) Permanent and unscheduled original microform records (no paper originals) produced by automation, such as computer output microfilm (COM).

(2) Do not destroy permanent or unscheduled paper records after microfilming without authorization from NARA on a SF 115 (see § 1230.10(a)).

(B) *Film stock standards.* Polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1—1996 for LE 500 film must be used in all applications.

(C) *Processing standards.* Microforms must be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI/NAPM IT9.1–1996. Follow processing procedures in ANSI/AIIM MS1–1996 and MS23–1998.

(D) *Quality standards.* (1) *Resolution.* (I) *Source documents.* Determine minimum resolution on microforms of source documents using the method in the Quality Index Method for determining resolution and anticipated losses when duplicating, as described in ANSI/AIIM MS23–1998 and MS43–1998. Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991. Use the smallest character used to display information to determine the height used in the Quality Index formula. A Quality Index of five is required at the third generation level.

(II) *COM.* Computer output microforms (COM) must meet the requirements of ANSI/AIIM MS1–1996.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms must be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1998. The densitometer must meet with ANSI/NAPM IT2.18–1996, for spectral conditions and ANSI/NAPM IT2.19–1994, for geometric conditions for transmission density.

(I) Recommended visual diffuse transmission background densities for images of documents are as follows:

CLASSIFICATION	DESCRIPTION OF DOCUMENT	BACKGROUND DENSITY
Group 1	High-quality, high contrast printed book, periodicals, and black typing.	1.3–1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high contrast printing.	1.15–1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0–1.2

CLASSIFICATION	DESCRIPTION OF DOCUMENT	BACKGROUND DENSITY
Group 4	Low-contrast manuscripts and drawing, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5	Poor-contrast documents (special exception).	0.7–0.85

(ii) Recommended visual diffuse transmission densities for computer generated images are as follows:

FILM TYPE	PROCESS	DENSITY MEASUREMENT METHOD	MIN. DMAX[1]	MAX. DMIN[1]	MINIMUM DENSITY DIFFERENCE
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

[1]Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films must not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or stroke width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, reduce the background density as needed to ensure that the copies will be legible.

§ 1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

(a) *Temporary records with a retention period over 99 years.* Follow the film and image requirements in § 1230.14.

(b) *Temporary records to be kept for less than 100 years.* NARA does not require the use of specific standards. Select a film stock that meets agency needs and ensures the preservation of the microforms for their full retention period. Consult appropriate ANSI standards, available as noted in § 1230.3, or manufacturer's instructions for processing microfilm of these temporary records. Follow the manufacturer's recommendations for production and maintenance of temporary microfilm to ensure that the image is accessible and usable for the entire retention period.

Subpart D—Storage, Use and Disposition Standards for Microform Records

§ 1230.20 How should microform records be stored?

(a) *Permanent and unscheduled records.* Store permanent and unscheduled microform records under the extended term storage conditions specified in ISO 18911:2000 and ANSI/PIMA IT9.2–1998, except that the relative humidity of the storage area must be a constant 35 percent RH, plus or minus 5 percent. Do not store non-silver copies of microforms in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Store temporary microform records under conditions that will ensure their preservation for their full retention period. Agencies may consult Life Expectance (LE) guidelines in ANSI/AIIM standards (see § 1230.3 for availability) for measures that can be used to meet retention requirements.

§ 1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?

(a) Agencies must inspect, or arrange to pay a contractor or NARA to inspect the following categories of microform records stored at the agency, at a commercial records storage facility, or at a NARA records center following the inspection requirements in paragraph (b) of this section:

(1) Master films of permanent records microfilmed in order to dispose of the original records;

(2) Master films of permanent records originally created on microfilm;

(3) Other master films scheduled for transfer to the National Archives; and

(4) Master films of unscheduled records.

(b) The films listed in paragraph (a) of this section must be inspected initially in accordance with ANSI/AIIM MS45—1990. All films must be inspected when they are 2 years old. After the initial 2-year inspection, unless there is a catastrophic event, the films must be inspected as follows until legal custody is transferred to the National Archives and Records Administration:

(1) For microfilm that is/was produced after 1990, inspect the microfilm every 5 years.

(2) For microfilm that was produced prior to 1990, inspect the microfilm every 2 years.

(c) To facilitate inspection, the agency must maintain an inventory of microfilm listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(d) The elements of the inspection shall consist of:

(1) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

(2) A rereading of resolution targets;

(3) A remeasurement of density; and

(4) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(e) The agency must prepare an inspection report, and send a copy to NARA in accordance with § 1230.28(b). The inspection report must contain:

(1) A summary of the inspection findings, including:

(i) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(ii) The quantity of microforms inspected;

(iii) An assessment of the overall condition of the microforms;

(iv) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(v) A summary of corrective action taken.

(2) A detailed inspection log created during the inspection that contains the following information:

(i) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection (see paragraph (a)(4) of this section);

(iv) Any defects uncovered; and

(v) The corrective action taken.

(f) If an inspection shows that a master microform is deteriorating, the agency must make a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the inspection requirements (see § 1230.22) before transfer to a record center or to the National Archives.

(g) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

§ 1230.24 What are NARA inspection requirements for temporary microform records?

NARA recommends, but does not require, that agencies use the inspection by sampling procedures described in § 1230.22(a) and (b).

§ 1230.26 What are the use restrictions for permanent and unscheduled microform records?

(a) Do not use the silver gelatin original microform or duplicate silver gelatin microform of permanent or unscheduled records created in accordance with § 1230.14 of this part (archival microform) for reference purposes. Agencies must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

(b) Use duplicates for:

(1) Reference;

(2) Further duplication on a recurring basis;

(3) Large-scale duplication; and

(4) Distribution of records on microform.

(c) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.28 What must agencies do to send permanent microform records to a records storage facility?

(a) Follow the procedures in part 1228, subpart I, of this chapter and the additional requirements in this section.

(b) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

(c) Include the following information on the transmittal (SF 135 for NARA records centers), or in an attachment to the transmittal. For records sent to an agency records center or commercial records storage facility, submit this information to NARA as part of the documentation required by § 1228.154(c)(2) of this chapter:

(1) Name of the agency and program component;

(2) The title of the records and the media/format used;

(3) The number or identifier for each unit of film;

(4) The security classification, if any;

(5) The inclusive dates, names, or other data identifying the records to be included on a unit of film;

(6) Finding aids that are not contained in the microform; and

(7) The inspection log forms and inspection reports required by § 1230.22(a) (5) and (6).

(d) Agencies may transfer permanent microform records to a records storage facility meeting the storage requirements in § 1230.20(a) (see § 1228.152(e)(3) of this chapter for NARA centers) only after the first inspection or with certification that the microforms will be inspected by the agency, an agency contractor, or a NARA records center (on a reimbursable basis) when the microforms become 2 years old.

§ 1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

(a) Follow the procedures in part 1228, subpart L, of this chapter and the additional requirements in this section.

(b) Originate the transfer by submitting an SF 258, Agreement to Transfer Records to the National Archives of the United States, unless otherwise instructed by NARA.

(c) If the records are not in a NARA records center, submit the information specified in § 1230.28(c).

(d) Transfer the silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy.

(e) Ensure that the inspection of the microform is up-to-date. If the microform records were recently produced, please note that NARA will not accession permanent microform records until the first inspection (when the microforms are 2 years old) has been performed.

(f) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

Subpart E—Centralized Micrographic Services

§ 1230.50 What micrographic services are available from NARA?

Some NARA records centers provide reimbursable microfilming services, including preparing, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services from NARA should contact the Office of Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740-6001, or the director of the NARA records center serving the agency's records (see § 1228.150(a) of this chapter). The fees for microfilming services will appear in NARA bulletins, which are available on NARA's web site at http://www.nara.gov/records/policy/bulletin.html or from the Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740-6001.

Dated: April 23, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–10588 Filed 5–8–02; 8:45 am]

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Part IV

Department of Education

Capacity Building for Traditionally Underserved Populations; Inviting Applications for New Awards for Fiscal Year (FY) 2002; Notices

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DEPARTMENT OF EDUCATION

Capacity Building for Traditionally Underserved Populations

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice of final priorities.

SUMMARY: The Assistant Secretary for the Office of Special Education and Rehabilitative Services announces priorities under the Capacity Building for Traditionally Underserved Populations program. The Assistant Secretary may use one or more of these priorities for competitions in fiscal year (FY) 2002 and in later years. We take this action to focus on meeting the needs of traditionally underserved populations. We intend these priorities to enhance the capacity and improve the participation of minority entities to compete for Rehabilitation Services Administration (RSA) discretionary grants and to improve services provided to minority people with disabilities under programs that are authorized under the Rehabilitation Act of 1973, as amended (Act).

EFFECTIVE DATE: These priorities are effective June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649 Telephone: (202) 205–9481 or via Internet: *Ellen.Chesley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the TDD number at (202) 205–8133.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the contact person listed under **FOR FURTHER INFORMATION CONTACT.**

SUPPLEMENTARY INFORMATION: Under section 21 of the Act, the Capacity Building for Traditionally Underserved Populations program is designed to support awards to minority entities and Indian tribes to provide training, technical assistance, or related activities to carry out certain programs authorized under the Act or to improve services under the Act. Section 21 of the Act also authorizes awards to eligible entities to enhance the capacity and increase the participation of minority entities and Indian tribes in activities funded under the Act. "Minority entity" is defined under section 21(b)(5) of the Act as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Under section 21 of the Act, only three types of awards can be made as follows: (1) Section 21(b)(2)(A)—Making awards to minority entities and Indian tribes to carry out activities under programs authorized under titles II, III, VI, and VII of the Act. (2) Section 21(b)(2)(B)—Making awards to minority entities and Indian tribes to conduct research, training, technical assistance, or a related activity to improve services provided under the Act, especially services provided to individuals from minority backgrounds.

(3) Section 21(b)(2)(C)—Making awards to a State or a public or private nonprofit agency or organization, such as an institution of higher education or an Indian tribe, to provide outreach and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to enhance their capacity to carry out those activities.

We published a notice of proposed priorities for this program in the **Federal Register** on November 28, 2001 (66 FR 59526).

Except for editorial and technical revisions, there are no significant differences between the notice of proposed priorities and this notice of final priorities.

Analysis Of Comments and Changes

In response to our invitation in the notice of proposed priorities, 20 parties submitted comments on the proposed priorities. An analysis of the comments and of any changes in the priorities since publication of the notice of proposed priorities follows.

Generally, we do not address technical and other minor changes. Also, we may choose not to address suggested statutory changes that we are not authorized to make under the applicable statutory authority.

Comments: Four commenters recommended that we include a priority similar to Proposed Priority 1 for Traumatic Brain Injury (TBI), because there is a need for services in this area. Further, they indicated that TBI is an underserved population that should be included as a minority entity. In addition, nine commenters recommended that Priority 4—Capacity Building for Minority Entities—should support not only minority institutions, but also agencies and organizations that are owned or controlled by minority individuals.

Discussion: We cannot consider these populations and entities as "minority entities" under the Act. Section 21 of the Act specifically defines "minority entity" as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

Changes: None.

Comments: Six commenters recommended that for Proposed Priority 3—Establishing New Rehabilitation Training Programs—we use the Higher Education Act of 1965, as amended (HEA) definition for a Hispanic-serving institution of higher education.

Discussion: The Department of Education uses the HEA definition of "Hispanic-serving institution of higher education." The HEA definition applies to all priorities of the Act, not just Priority 3.

Changes: We've added a provision in the priorities section to clarify that all priorities should use the HEA definition of Hispanic-serving institution of higher education.

Comments: One commenter recommended that capacity building for minority entities be expanded to include other programs like special education and the 21st Century Learning Centers.

Discussion: Section 21(b)(2)(A) of the Act specifies that capacity building must be directed to promoting the participation of minority entities in activities funded under the Act. Thus, there is no authority to include programs, such as special education and the 21st Century Learning Centers, which are not activities funded under the Act.

Changes: None.

Note: This notice does *not* solicit applications. In any year in which we choose to use one or more of these priorities, we invite applications through a notice in the **Federal Register**. When inviting applications we designate the priority as absolute, competitive preference, or invitational. The effect of each type of priority follows:

Absolute priority: Under an absolute priority we consider only applications that meet the priority (34 CFR 75.105(c)(3)).

Competitive preference priority: Under a competitive preference priority we give competitive preference to an application by either (1) awarding additional points, depending on how well or the extent to which the application meets the competitive priority (34 CFR 75.105(c)(2)(i)); or (2) selecting an application that meets the competitive priority over an application of comparable merit that does not meet the priority (34 CFR 75.105(c)(2)(ii)).

Invitational priority: Under an invitational priority we are particularly interested in applications that meet the invitational priority. However, we do not give an application that meets the invitational priority a competitive or absolute preference over other applications (34 CFR 75.105(c)(1)).

Priorities: For purposes of these priorities, a "minority entity" includes a Hispanic-serving institution whose Hispanic student enrollment is 25 percent of the institution's student population.

Priority 1—Train Staff of the Independent Living Services for Older Individuals Who Are Blind Program

We will fund a project that meets this priority. The project funded must meet the requirements in section 21(b)(2)(B) of the Act. A project must provide training that would—

(1) Increase the capacity and skills of staff of federally funded independent living programs serving older blind minority consumers in networking towards building trust within racial and ethnic minority communities;

(2) Increase the ability of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to identify and build partnerships with key or specific organizations and resources that provide infrastructure supports and specialized services to racial and ethnic minority consumers and their families;

(3) Increase the skills and capacity of staff of federally funded independent living programs serving older blind racial and ethnic minority consumers to understand family and community values and traditions of aging racial and ethnic minority consumers that will lead to improved methods of effective communication and dissemination of information about independent living services and other related resources for aging individuals with visual disabilities.

A project must—

(1) Partner or collaborate with other key institutions and agencies that have expertise in this training, technical assistance, and networking area;

(2) Develop a regional training and technical assistance activity that will enhance and improve the knowledge and skills of staff of federally funded independent living programs (i.e., field professionals and direct service providers) serving older blind consumers and improve outreach to racial and ethnic minority consumers and communities to increase their involvement in the independent living program funded under the Act;

(3) Provide training and technical assistance based upon a needs assessment of the region or geographical area being assisted;

(4) Include an evaluation component based upon clear, specific performance and outcome measures; and

(5) Report the results of the evaluation in its annual performance report.

Training must focus on the following:

(1) Specific methods on how to integrate and build alliances with key organizations, institutions, and individuals within a community to reach older individuals who are blind from racial and ethnic minority backgrounds.

(2) Specific training on how to identify, develop, and evaluate appropriate mediums of communication in disseminating critical information about this program.

(3) Specific training on the definitions of blindness and disability in the context of racial and ethnic minority cultures and the attitudes associated with these terms.

(4) Specific training on the implication of health-related conditions associated with certain racial and ethnic minority groups (i.e., diabetic retinopathy, glaucoma, hypertension, etc.).

(5) Specific training on what are some of the "promising practices" that are currently being used to educate consumers from racial and ethnic minority groups about these medical conditions and their relationship to blindness.

Priority 2—Community Rehabilitation Programs

We will fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Focus on referring more minorities currently served by community rehabilitation programs having service agreements, as well as those not having service agreements, to the vocational rehabilitation system;

(2) Target community rehabilitation programs serving large numbers of minorities with disabilities;

(3) Involve partnerships with community rehabilitation programs that serve significant numbers of minorities with disabilities;

(4) Provide training on diversity;

(5) Develop and conduct a survey that looks at why clients and consumers from minority backgrounds are reluctant to enter, remain in, or successfully exit the vocational rehabilitation program;

(6) Design and implement strategies that address the findings of the survey to increase the numbers of clients and consumers from minority backgrounds who successfully navigate through the vocational rehabilitation system;

(7) Identify effective practice models for service provision to unserved and underserved populations;

(8) Disseminate those models across the United States to community rehabilitation program sites used by minority persons with disabilities;

(9) Disseminate information about the vocational rehabilitation program and its potential benefits to minorities and other appropriate community agencies and organizations involved in community outreach activities;

(10) Enhance the capacity of clinics and outreach personnel to detect and respond to potential clients and consumers who are reluctant to enter the vocational rehabilitation system;

(11) Employ public relations and marketing strategies to highlight the vocational rehabilitation program in minority communities;

(12) Include an evaluation component based upon clear, specific performance and outcome measures; and

(13) Report the results of the evaluation in its annual performance report.

Priority 3—Establishing New Rehabilitation Training Programs

We will fund projects that meet the following priority. Projects funded must meet the requirements in section 21(b)(2)(B) of the Act.

Projects must—

(1) Enhance and increase the capacity of minority institutions of higher education to prepare more individuals for careers in the public vocational rehabilitation program, including individuals from minority backgrounds;

(2) Be located at minority institutions of higher education, including community colleges whose minority student enrollment is at least 50 percent, that are interested in establishing new first-time rehabilitation training programs at the associate degree, undergraduate degree, and graduate degree levels;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

Priority 4—Capacity Building for Minority Entities

We will fund projects that meet the priority. Projects funded must meet the requirements in section 21(b)(2)(C) of the Act.

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Projects must—

(1) Provide outreach, capacity building, and technical assistance to minority entities and Indian tribes to promote their participation in activities funded under the Act, including assistance to carry out those activities;

(2) Provide a variety of training and technical assistance activities, including grant writing workshops that focus on RSA and National Institute on Disability and Rehabilitation Research discretionary grant programs, the peer review process, selection criteria, training on disability legislation (i.e. Americans with Disabilities Act, Rehabilitation Act, etc.), and technical assistance to minority entities that are first-time recipients of grants funded under the Act in order to increase their ability to carry out their grants;

(3) Include an evaluation component based upon clear, specific performance and outcome measures; and

(4) Report the results of the evaluation in its annual performance report.

Intergovernmental Review

This program is subject to Executive order 12372 and the regulations in 34 CFR part 79. One of the objectives of the Executive order is to foster an intergovernmental partnership and a strengthened federalism. The Executive order relies on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

This document provides early notification of our specific plans and actions for this program.

Electronic Access to This Document

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(Catalog of Federal Domestic Assistance Number 84.315 Capacity Building for Traditionally Underserved Populations)

Program Authority: 29 U.S.C. 718b.

Dated: May 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11645 Filed 5–8–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.315]

Capacity Building for Traditionally Underserved Populations; Notice Inviting Applications for New Awards for Fiscal Year (FY) 2002

Purpose of Program: The Capacity Building for Traditionally Underserved Populations program is designed to support projects that provide training, technical assistance, or related activities to improve services provided under the Rehabilitation Act of 1973, as amended (Act), especially services provided to individuals from minority backgrounds. Section 21 of the Act speaks to enhancing the capacity and increasing the participation of "minority entities" in programs funded under the Act. "Minority entity" is defined under section 21 as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent.

For FY 2002 the competition for new awards focuses on projects designed to meet the priorities we reference in the PRIORITIES section of this application notice.

Eligible Applicants: For priorities 1, 2, and 3, minority entities as defined under section 21(b)(5) of the Act as a historically Black college or university, Hispanic-serving institution of higher education, American Indian tribal college or university, or another institution of higher education whose minority student enrollment is at least 50 percent are eligible to apply.

For priority 4, public or nonprofit private agencies, institutions, and organizations, including Indian tribes and institutions of higher education, are eligible to apply.

Applications Available: May 9, 2002

Deadline for Transmittal of Applications: June 24, 2002

Deadline for Intergovernmental Review: August 23, 2002

Estimated Available Funds: $2,558,320

Note: The Administration has requested $1,769,170 for this program for FY 2003. The actual level of funding, if any, depends on final congressional action.

Estimated Range of Awards:
Priority 1—$145,000–$165,000
Priority 2—$175,000–$225,000
Priority 3—$145,000–$165,000
Priority 4—$175,000–$225,000

Estimated Average Size of Awards:
Priority 1—$150,000
Priority 2—$200,000
Priority 3—$150,000
Priority 4—$200,000

Maximum Award: We will reject any application that proposes a budget exceeding $165,000 for Priorities 1 and 3 and a budget exceeding $225,000 for Priorities 2 and 4 for a single budget period of 12 months. The Assistant Secretary for the Office of Special Education and Rehabilitative Services may change the maximum amount through a notice published in the **Federal Register**.

Estimated Number of Awards:
Priority 1—1
Priority 2—3
Priority 3—4
Priority 4—3

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Page Limit: Part III of the application, the application narrative, is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit Part III to the equivalent of no more than 45 pages, using the following standards:

- A "page" is 8.5" x 11" on one side only, with 1" margins at the top, bottom, and both sides.
- Double space (no more than three lines per vertical inch) all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller than 10 pitch (characters per inch).

The page limit does not apply to Part I, the cover sheet, Part II, the budget section, including the narrative budget justification; Part IV, the assurances and certifications; or the one-page abstract, the resumes, the bibliography, or the letters of support. However, you must include all of the application narrative in Part III.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Note: The regulations in 34 CFR part 79 apply to all applicants except federally recognized Indian tribes.

Note: The regulations in 34 CFR part 86 apply to institutions of higher education only.

Priorities:

This competition focuses on projects designed to meet the priorities in the notice of final priorities for this program, published elsewhere in this issue of the **Federal Register**.

For FY 2002 the priorities are absolute priorities. Under 34 CFR 75.105(c)(3), we consider only applications that meet one or more of the priorities.

For Applications Contact: Education Publications Center (ED Pubs), P.O. Box 1398, Jessup, MD 20794–1398. Telephone (toll free): 1–877–433–7827. FAX: (301) 470–1244. If you use a telecommunications device for the deaf (TDD), you may call (toll free): 1–877–576–7734.

You may also contact ED Pubs at its Web site: *http://www.ed.gov/pubs/edpubs.html*

Or you may contact ED Pubs at its e-mail address: edpubs@inet.ed.gov

If you request an application from ED Pubs, be sure to identify this competition as follows: CFDA number 84.315.

FOR FURTHER INFORMATION CONTACT: Ellen Chesley, U.S. Department of Education, 400 Maryland Avenue, SW., room 3318, Switzer Building, Washington, DC 20202–2649. Telephone: (202) 205–9481, or via Internet: *Ellen.Chesley@ed.gov*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to the program contact person listed under **FOR FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting the Grants and Contracts Services Team, U.S. Department of Education, 400 Maryland Avenue, SW., room 3317, Switzer Building, Washington, DC 20202–2550. Telephone: (202) 205–8207. If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

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Program Authority: 29 U.S.C. 718(b).

Dated: May 6, 2002.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11646 Filed 5–8–02; 8:45 am]

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Federal Register

Thursday,
May 9, 2002

Part V

Office of Personnel Management

Federal Employees Retirement System and Civil Service Retirement System; Present Value Factors and Normal Cost Percentages; Notices

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OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System.

EFFECTIVE DATE: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2002.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Federal Employees Retirement System (FERS) require reduction of annuities on an actuarial basis. Under each of these provisions, we are required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that we will publish a notice in the **Federal Register** whenever we change factors used to compute the present values of these benefits.

Section 842.706(a) of Title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8420a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 842.706(a) of Title 5, Code of Federal Regulations.

Section 842.615 of Title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage or divorce under section 8416(b) or (c) or section 8417(b) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump sum payment or by installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8420a of title 5, United States Code.

Subpart F of part 847 of Title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (62 FR 19151) on April 18, 1997. Today, OPM is publishing a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Public Law 99–335, based on changed economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System. Under section 8461(i) of title 5, United States Code, those changed economic assumptions require corresponding changes in the present value factors. The revised factors will become effective in October 2002 to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity, the new factors will apply to annuities that commence on or after October 1, 2002. See 5 CFR 842.706. For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2002. See 5 CFR 842.615(b). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of Title 5, Code of Federal Regulations, is on or after October 1, 2002. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

TABLE I.—FERS PRESENT VALUE FACTORS FOR AGES 62 AND OLDER

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106]

Age	Present value factor
62	165.6
63	161.3
64	156.9
65	152.3
66	148.0
67	143.8
68	139.5
69	135.2
70	130.8
71	126.5
72	122.1
73	117.5
74	112.9
75	108.1
76	103.4
77	98.4
78	94.1
79	90.0
80	85.4
81	80.6
82	75.9
83	71.6
84	67.4
85	62.9
86	58.7
87	55.7
88	53.3
89	50.8
90	47.7

TABLE II.A.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is not increased by COLA'S before age 62]

Age	Present value factor
40	176.8
41	176.3
42	175.9
43	175.4
44	174.6
45	173.5
46	172.5
47	171.8
48	171.0
49	169.8
50	168.6
51	168.2
52	168.0
53	167.8
54	167.3
55	167.0
56	166.7
57	166.6

TABLE II.A.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61—Continued

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is not increased by COLA'S before age 62]

Age	Present value factor
58	166.7
59	166.8
60	167.3
61	167.7

TABLE II.B.—FERS PRESENT VALUE FACTORS FOR AGES 40 THROUGH 61

[Applicable to annuity payable following an election under Section 8416(b) or (c) or Section 8417(b) or Section 8420a of Title 5, United States Code, or under Section 1043 of Public Law 104–106 when annuity is increased by COLA'S before age 62]

Age	Present value factor
40	245.5
41	242.4
42	239.2
43	235.8
44	232.3
45	228.7
46	224.9
47	221.1
48	217.1
49	212.9
50	209.1
51	205.8
52	202.4
53	198.8
54	195.1
55	191.3
56	187.4
57	183.4
58	179.3
59	175.1
60	170.9
61	166.6

TABLE III.—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40

[Applicable to annuity payable following an election under Section 1043 of Public Law 104–106]

Age at calculation	Present value of a monthly annuity
17	287.9
18	286.4
19	284.8
20	283.0
21	281.2
22	279.4
23	277.6
24	275.6
25	273.5
26	271.4

TABLE III.—FERS PRESENT VALUE FACTORS FOR AGES AT CALCULATION BELOW 40—Continued

[Applicable to annuity payable following an election under Section 1043 of Public Law 104–106]

Age at calculation	Present value of a monthly annuity
27	269.2
28	266.9
29	265.1
30	264.4
31	263.6
32	261.8
33	259.9
34	258.1
35	256.1
36	254.0
37	251.9
38	249.7
39	247.3

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11570 Filed 5–8–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Federal Employees Retirement System; Normal Cost Percentages

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of revised normal cost percentages for employees covered by the Federal Employees Retirement System (FERS) Act of 1986.

DATES: The revised normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2002.

Agency appeals of the normal cost percentages must be filed no later than November 12, 2002.

ADDRESSES: Send or deliver agency appeals of the normal cost percentages to the Board of Actuaries, care of Frank D. Titus, Associate Director for Retirement and Insurance, Office of Personnel Management, Room 4A10, 1900 E Street, NW., Washington, DC 20415.

Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: The FERS Act of 1986, Pub. L. 99–335, created a new retirement system intended to cover most Federal employees hired after 1983. Most Federal employees hired before 1984 are under the older Civil Service Retirement System (CSRS). Section 8423 of title 5, United States Code, as added by the FERS Act of 1986, provides for the payment of the Government's share of the cost of the retirement system under FERS. Employees' contributions are established by law and constitute only a small fraction of the cost of funding the retirement system; employing agencies are required to pay the remaining costs. The amount of funding required, known as "normal cost," is the entry age normal cost of the provisions of FERS that relate to the Civil Service Retirement and Disability Fund (Fund). The normal cost must be computed by OPM in accordance with generally accepted actuarial practice and standards (using dynamic assumptions). Subpart D of Part 841 of Title 5, Code of Federal Regulations, regulates how normal costs are determined.

The Board of Actuaries of the Civil Service Retirement System approved a revised set of economic assumptions for use in the dynamic actuarial valuations of CSRS and FERS. These assumptions were adopted after the Board reviewed statistical data prepared by the OPM actuaries and considered trends that may affect future experience under the Systems.

Based on its analysis, the Board concluded that it would be appropriate to assume a rate of investment return of 6.75%, a reduction of .25% from the current rate of 7%. The Board reduced the anticipated rate of inflation from 4% to 3.75% and retained the projected rate of General Schedule salary increases at 4.25%. These salary increases are in addition to assumed in-grade increases that reflect past experience.

The new assumptions anticipate that over the long term the annual rate of investment return will exceed inflation by 3% and General Schedule salary increases will exceed inflation by .5% a year, as compared to 3% and .25%, respectively, under the previous assumptions.

The Board also adopted new demographic or "non-economic" assumptions. The new demographic rates are based on methodology adopted by the Board in November 2000, in conjunction with its comprehensive review of an extensive 10-year experience study prepared by the OPM actuaries.

The normal cost calculations depend on both the economic and demographic

assumptions. The demographic assumptions are determined separately for each of a number of special groups, in cases where separate experience data is available. Based on the new economic assumptions and demographic factors, OPM has determined the normal cost percentage for each category of employees under § 841.403 of Title 5, Code of Federal Regulations. The Government-wide normal cost percentages, including the employee contributions, are as follows:

	Percent
Members	17.1
Congressional employees	17.2
Law enforcement officers, firefighters, and employees under section 302 of the Central Intelligence Agency Act of 1964 for Certain Employees	24.0
Air traffic controllers	23.2
Military reserve technicians	14.0
Employees under section 303 of the Central Intelligence Agency Act of 1964 for Certain Employees (when serving abroad)	16.5
All other employees	11.5

Under § 841.408 of Title 5, Code of Federal Regulations, these normal cost percentages are effective at the beginning of the first pay period commencing on or after October 1, 2002.

The time limit and address for filing agency appeals under §§ 841.409 through 841.412 of Title 5, Code of Federal Regulations, are stated in the **DATES** and **ADDRESSES** sections of this notice.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11571 Filed 5–8–02; 8:45 am]

BILLING CODE 6325–50–P

OFFICE OF PERSONNEL MANAGEMENT

Civil Service Retirement System; Present Value Factors

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management (OPM) is providing notice of adjusted present value factors applicable to retirees who elect to provide survivor annuity benefits to a spouse based on post-retirement marriage and to retiring employees who elect the alternative form of annuity, owe certain redeposits based on refunds of contributions for service before October 1, 1990, or elect to credit certain service with nonappropriated fund instrumentalities. This notice is necessary to conform the present value factors to changes in economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System.

EFFECTIVE DATE: The revised present value factors apply to survivor reductions or employee annuities that commence on or after October 1, 2002.

ADDRESSES: Send requests for actuarial assumptions and data to the Office of the Actuary, Room 4307 STOP, Office of Personnel Management, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Patrick Jennings, (202)–606–0299.

SUPPLEMENTARY INFORMATION: Several provisions of the Civil Service Retirement System (CSRS) require reduction of annuities on an actuarial basis. Under each of these provisions, we are required to issue regulations on the method of determining the reduction to ensure that the present value of the reduced annuity plus a lump-sum equals, to the extent practicable, the present value of the unreduced benefit. The regulations for each of these benefits provide that we will publish a notice in the **Federal Register** whenever we change factors used to compute the present values of these benefits.

Section 831.2205(a) of title 5, Code of Federal Regulations, prescribes the method for computing the reduction in the beginning rate of annuity payable to a retiree who elects an alternative form of annuity under 5 U.S.C. 8343a. That reduction is required to produce an annuity that is the actuarial equivalent of the annuity of a retiree who does not elect an alternative form of annuity. The present value factors listed below are used to compute the annuity reduction under section 831.2205(a) of title 5, Code of Federal Regulations.

Section 831.303(c) of title 5, Code of Federal Regulations, prescribes the use of these factors for computing the reduction to complete payment of certain redeposits of refunded deductions based on periods of service that ended before October 1, 1990, under section 8334(d)(2) of title 5, United States Code.

Section 831.663 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the reduction required for certain elections to provide survivor annuity benefits based on a post-retirement marriage under section 8339(j)(5)(C) or (k)(2) of title 5, United States Code. Under section 11004 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, effective October 1, 1993, OPM ceased collection of these survivor election deposits by means of either a lump sum payment or by installments. Instead, OPM is required to establish a permanent actuarial reduction in the annuity of the retiree. This means that OPM must take the amount of the deposit computed under the old law, and "translate" it into a lifetime reduction in the retiree's benefit. The reduction is based on actuarial tables, similar to those used for alternative forms of annuity under section 8343a of title 5, United States Code.

Subpart F of part 847 of title 5, Code of Federal Regulations, prescribes the use of similar factors for computing the deficiency the retiree must pay to receive credit for certain service with nonappropriated fund instrumentalities made creditable by an election under section 1043 of Public Law 104–106.

The present value factors currently in effect were published by OPM (62 FR 19149) on April 18, 1997. Today, OPM is publishing a notice in the **Federal Register** to revise the normal cost percentage under the FERS Act of 1986, Public Law 99–335, based on changed economic assumptions and demographic factors approved by the Board of Actuaries of the Civil Service Retirement System. Those changed economic assumptions require corresponding changes in the present value factors. The revised factors will become effective in October 2002 to correspond with the changes in FERS normal cost percentages. For alternative forms of annuity and redeposits of employee contributions, the new factors will apply to annuities that commence on or after October 1, 2002. See 5 CFR 831.2205 and 831.303(c). For survivor election deposits, the new factors will apply to survivor reductions that commence on or after October 1, 2002. See 5 CFR 831.663(c) and (d). For obtaining credit for service with certain nonappropriated fund instrumentalities, the new factors will apply to cases in which the date of computation under section 847.603 of title 5, Code of Federal Regulations, is on or after October 1, 2002. See 5 CFR 847.602(c) and 847.603.

OPM is, therefore, revising the tables of present value factors to read as follows:

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 8339(J) OR (K) OR SECTION 8343A OF TITLE 5, UNITED STATES CODE, OR UNDER SECTION 1043 OF PUBLIC LAW 104–106 OR FOLLOWING A REDEPOSIT UNDER SECTION 8334(D)(2) OF TITLE 5, UNITED STATES CODE

Age	Present value factor
40	280.4
41	276.4
42	272.7
43	268.8
44	264.1
45	259.0
46	254.0
47	249.3
48	244.8
49	239.3
50	233.8
51	229.5
52	225.4
53	221.0
54	216.2
55	211.4
56	206.6
57	201.9
58	197.2
59	192.5
60	187.9
61	183.1
62	177.9
63	172.9
64	167.8
65	162.7
66	157.7

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 8339(J) OR (K) OR SECTION 8343A OF TITLE 5, UNITED STATES CODE, OR UNDER SECTION 1043 OF PUBLIC LAW 104–106 OR FOLLOWING A REDEPOSIT UNDER SECTION 8334(D)(2) OF TITLE 5, UNITED STATES CODE—Continued

Age	Present value factor
67	153.0
68	148.1
69	143.2
70	138.3
71	133.4
72	128.6
73	123.5
74	118.4
75	113.1
76	107.9
77	102.6
78	97.9
79	93.4
80	88.5
81	83.4
82	78.4
83	73.8
84	69.4
85	64.6
86	60.3
87	57.1
88	54.6
89	51.9
90	48.7

CSRS PRESENT VALUE FACTORS APPLICABLE TO ANNUITY PAYABLE FOLLOWING AN ELECTION UNDER SECTION 1043 OF PUBLIC LAW 104–106 (FOR AGES AT CALCULATION BELOW 40)

Age at calculation	Present value of a monthly annuity
17	335.0
18	332.8
19	330.4
20	328.0
21	325.4
22	322.9
23	320.2
24	317.5
25	314.7
26	311.8
27	308.8
28	305.7
29	303.3
30	302.1
31	300.7
32	298.1
33	295.4
34	292.9
35	290.1
36	287.2
37	284.5
38	281.5
39	278.3

U.S. Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–11572 Filed 5–8–02; 8:45 am]

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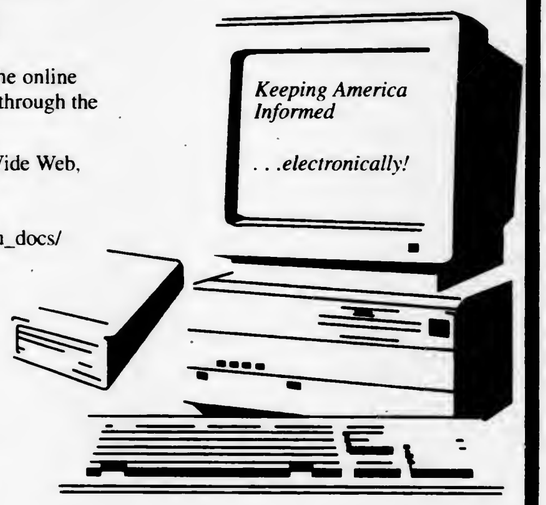
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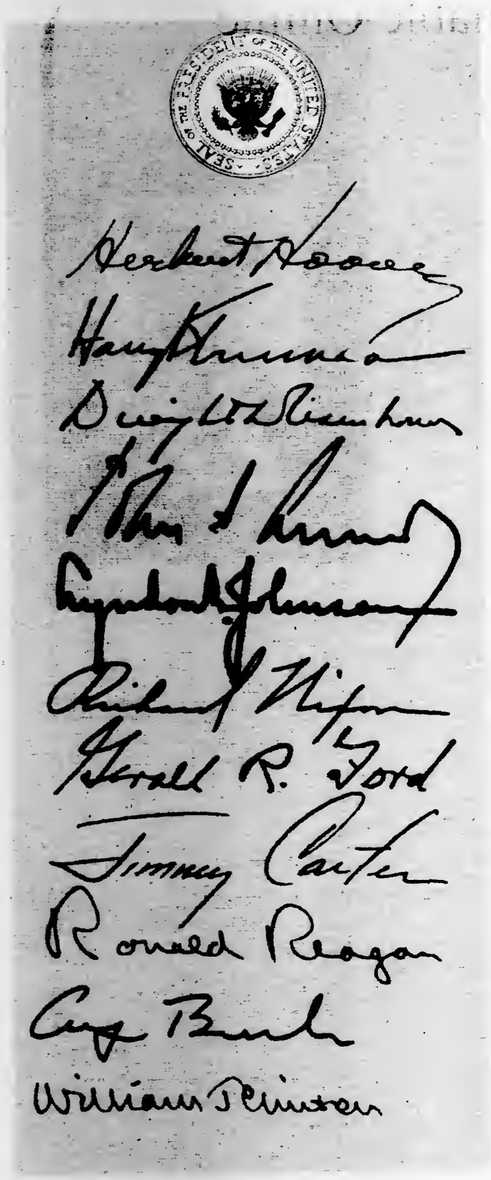
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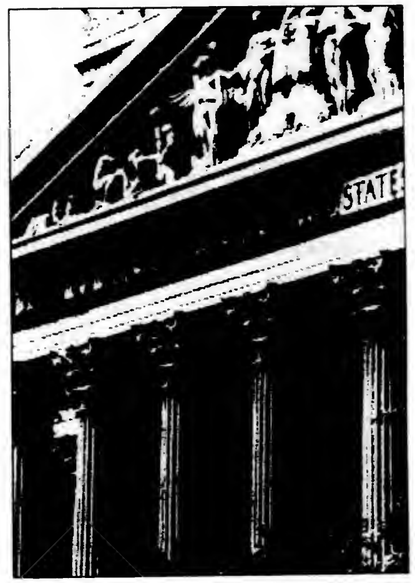
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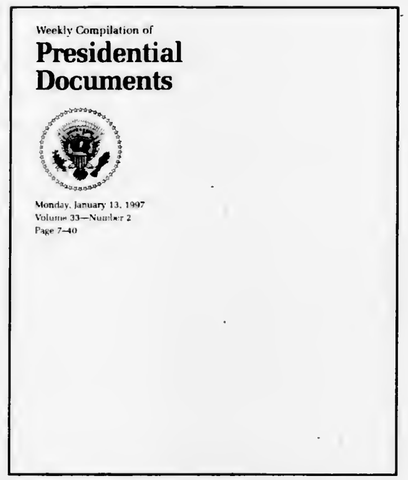
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Presidential Documents

Title 3—

The President

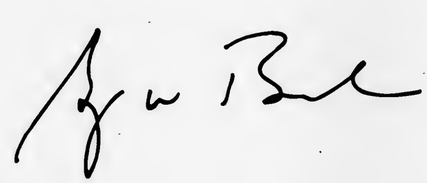
Presidential Determination No. 02–17 of April 24, 2002

Military Drawdown for Georgia

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including title III (Foreign Military Financing) of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2001 (Public Law 106–429), as amended by title III (Foreign Military Financing) of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107–115), I hereby direct the drawdown of defense articles from the stocks of the Department of Defense, defense services from the Department of Defense, and military education and training of an aggregate value of $4 million for Georgia, for the purposes of part II of the Foreign Assistance Act of 1961, as amended.

The Secretary of State is authorized and directed to report this determination to the Congress and to publish it in the **Federal Register**.



THE WHITE HOUSE,
Washington, April 24, 2002.

[FR Doc. 02–11904
Filed 5–9–02; 8:45 am]
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Presidential Documents

Presidential Determination No. 02–18 of April 27, 2001

Determination to (1) Waive Section 512 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115) and Section 620(q) of the Foreign Assistance Act of 1961, as amended to Provide Assistance to Afghanistan and (2) Authorize a Drawdown Under Section 506(a)(1) of the Foreign Assistance Act of 1961, as Amended, to Provide Emergency Military Assistance to Afghanistan

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by the Constitution and laws of the United States, including section 512 of the Kenneth M. Ludden Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002 (Public Law 107–115) (FOAA) and sections 506(a)(1) and 620(q) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2318(a)(1) (FAA), I hereby determine that:

(1) assistance to Afghanistan is in the national interest of the United States; and

(2) an unforeseen emergency exists that requires immediate military assistance to the Government of Afghanistan for purposes of training and equipping the Afghan national armed forces; and the emergency requirement cannot be met under the authority of the Arms Export Control Act or any other law except section 506(a)(1) of the FAA.

Accordingly, I hereby waive section 512 of the FOAA and section 620(q) of the FAA with respect to assistance to Afghanistan. Further, I hereby direct the drawdown of up to $2 million of defense articles, services, and training from the inventory and resources of the Department of Defense for military assistance for Afghanistan.

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register**.

THE WHITE HOUSE,
Washington, April 27, 2002.

[FR Doc. 02–11905
Filed 5–9–02; 8:45 am]
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Rules and Regulations

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 915

[Docket No. FV02–915–2 FR]

Avocados Grown in South Florida; Increased Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule increases the assessment rate established for the Avocado Administrative Committee (Committee) for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados handled. The Committee locally administers the marketing order which regulates the handling of avocados grown in South Florida. Authorization to assess avocado handlers enables the Committee to incur expenses that are reasonable and necessary to administer the program. The fiscal period began April 1 and ends March 31. The assessment rate will remain in effect indefinitely unless modified, suspended, or terminated.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Doris Jamieson, Marketing Specialist, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 799 Overlook Drive, Suite A, Winter Haven, Florida 33884; telephone: (863) 324–3375, Fax: (863) 325–8793; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW., STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 121 and Order No. 915, both as amended (7 CFR part 915), regulating the handling of avocados grown in South Florida, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. Under the marketing order now in effect, Florida avocado handlers are subject to assessments. Funds to administer the order are derived from such assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable avocados beginning April 1, 2002, and continue until amended, suspended, or terminated. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule increases the assessment rate established for the Committee for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados handled.

The Florida avocado marketing order provides authority for the Committee, with the approval of USDA, to formulate an annual budget of expenses and collect assessments from handlers to administer the program. The members of the Committee are producers and handlers of Florida avocados. They are familiar with the Committee's needs and with the costs for goods and services in their local area and are thus in a position to formulate an appropriate budget and assessment rate. The assessment rate is formulated and discussed in a public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

For the 2000–01 and subsequent fiscal periods, the Committee recommended, and USDA approved, an assessment rate that would continue in effect from fiscal period to fiscal period unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other information available to USDA.

The Committee met on January 9, 2002, and unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container or equivalent of avocados. In comparison, last year's budgeted expenditures were $187,384. The assessment rate of $0.20 is $0.01 higher than the rate currently in effect.

The Florida Lime Administrative Committee and the Avocado Administrative Committee have shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. The suspension runs from February 19, 2002, to February 24, 2003 (67 FR 6837). They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to generate more assessment funds to cover the increased expenses, and to reduce

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the amount of reserve funds the avocado committee has to use to pay those expenses. Without the assessment rate increase, the Avocado Administrative Committee would have had to use $26,582 of its operating reserve to cover the estimated expenses. With the increase, the Committee only has to use $17,082 of its operating reserve to cover expenses.

The major expenditures recommended by the Committee for the 2002–03 year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida avocados. Avocado shipments for the year are estimated at 950,000 bushels which should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses. Funds in the reserve (currently $96,633) will be kept within the maximum permitted by the order (approximately three fiscal periods' expenses).

The assessment rate established in this rule will continue in effect indefinitely unless modified, suspended, or terminated by USDA upon recommendation and information submitted by the Committee or other available information.

Although this assessment rate will be in effect for an indefinite period, the Committee will continue to meet prior to or during each fiscal period to recommend a budget of expenses and consider recommendations for modification of the assessment rate. The dates and times of Committee meetings are available from the Committee or USDA. Committee meetings are open to the public and interested persons may express their views at these meetings. USDA will evaluate Committee recommendations and other available information to determine whether modification of the assessment rate is needed. Further rulemaking will be undertaken as necessary. The Committee's 2002–03 budget and those for subsequent fiscal periods would be reviewed and, as appropriate, approved by USDA.

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 150 producers of avocados in the production area and approximately 33 handlers subject to regulation under the marketing order. Small agricultural producers are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

According to the Florida Agricultural Statistics Service, the average f.o.b. price for fresh avocados during the 2000–01 season was $14.60 per 55-pound bushel container or equivalent for all domestic shipments and total shipments were 1,005,000 bushels. Using these prices, virtually all avocado handlers could be considered small businesses under the SBA definition. The majority of Florida avocado handlers and producers may be classified as small entities.

This rule increases the assessment rate established for the Committee and collected from handlers for the 2002–03 and subsequent fiscal periods from $0.19 to $0.20 per 55-pound bushel container or equivalent of avocados. The Committee unanimously recommended 2002–03 expenditures of $211,082 and an assessment rate of $0.20 per 55-pound bushel container. The assessment rate of $0.20 is $0.01 higher than the 2001–02 rate. The quantity of assessable avocados for the 2002–03 season is estimated at 950,000. Thus, the $0.20 rate should provide $190,000 in assessment income. Income derived from handler assessments, along with interest income and funds from the Committee's authorized reserve, should be adequate to cover budgeted expenses.

The major expenditures recommended by the Committee for the 2002–03 fiscal year include $76,800 for salaries, $39,850 for local & national enforcement, $20,000 for research, $19,499 for insurance and bonds, and $17,958 for employee benefits. Budgeted expenses for these items in 2001–02 were $60,000, $45,615, $17,000, $14,336, and $15,180, respectively.

The Florida Lime Administrative Committee and the Avocado Administrative Committee shared certain costs (staff, office space, and equipment) for economy and efficiency. Each Committee's share of these costs was based upon the amount of work and time devoted to their particular programs. In April 2001, the Lime Administrative Committee voted to suspend its regulations, including assessment collection. The suspension runs from February 19, 2002, to February 24, 2003 (67 FR 6837). They will not need an administrative staff, office space, or equipment during the suspension period. Therefore, the Avocado Administrative Committee must assume increased costs. The increased assessment is needed to cover the increased costs and to keep its operating reserve at an acceptable level.

The Committee reviewed and unanimously recommended 2002–03 expenditures of $211,082 which included increases in administrative and office salaries, and research programs. Prior to arriving at this budget, the Committee considered information from various sources, such as the Committee's Budget Subcommittee. These groups discussed alternative expenditure levels. The assessment rate of $0.20 per 55-pound bushel container of assessable avocados was then determined by dividing the total recommended budget by the quantity of assessable avocados, estimated at 950,000 55-pound bushel containers or equivalents for the 2002–03 fiscal year. This is approximately $21,000 below the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal year indicates that the average grower price for the 2002–03 season could range between $10.00 and $60.00 per 55-pound bushel container or equivalent of avocados. Therefore, the estimated assessment revenue for the 2002–03 fiscal year as a percentage of total grower revenue could range between .3 and 2 percent.

This action increases the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs are offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida avocado industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the January 9, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue.

This rule imposes no additional reporting or recordkeeping requirements on either small or large Florida avocado handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A proposed rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11614). Copies of the proposed rule were also mailed or sent via facsimile to all avocado handlers. Finally, the proposal was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending April 15, 2002, was provided for interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it also found and determined that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because handlers are already receiving 2002–03 crop avocados from growers. Moreover, the crop year began on April 1, 2002, and the assessment rate applies to all avocados handled during the 2002–03 and subsequent seasons. Further, the Committee needs sufficient funds to pay its expenses, and handlers are aware of this rule which was recommended at a public meeting. Also, a 30-day comment period was provided for in the proposed rule and no comments were received.

List of Subjects in 7 CFR Part 915

Avocados, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 915 is amended as follows:

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR part 915 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 915.235 is revised to read as follows:

§ 915.235 Assessment rate.

On and after April 1, 2002, an assessment rate of $0.20 per 55-pound container or equivalent is established for avocados grown in South Florida.

Dated: May 3, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11676 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 993

[Docket No. FV02–993–1 FR]

Dried Prunes Produced in California; Undersized Regulation for the 2002–03 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule changes the undersized regulation for dried prunes received by handlers from producers and dehydrators under Marketing Order No. 993 for the 2002–03 crop year. The marketing order regulates the handling of dried prunes produced in California and is administered locally by the Prune Marketing Committee (Committee). This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets and allows handlers to dispose of the undersized prunes in such outlets as livestock feed. The Committee estimated that this rule will reduce the excess of dried prunes by approximately 3,800 tons while leaving sufficient prunes to fill foreign and domestic trade demand.

EFFECTIVE DATE: August 1, 2002. This final rule applies to undersized dried prunes received by handlers during the 2002–03 crop year until the prunes are disposed of as required under the marketing order.

FOR FURTHER INFORMATION CONTACT: Richard P. Van Diest, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, 20250–0237; telephone: (202) 720–2491, Fax: (202) 720–8938, or E-mail: *Jay.Guerber@usda.gov*.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 993, both as amended (7 CFR part 993), regulating the handling of dried prunes produced in California, hereinafter referred to as the "order." The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (USDA) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his

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or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This final rule changes the undersized regulation in § 993.49(c) of the prune marketing order for the 2002–03 crop year for volume control purposes. The regulation removes prunes passing through specified screen openings. For French prunes, the screen opening will be increased from 23/32 to 24/32 of an inch in diameter; and for non-French prunes, the opening will be increased from 28/32 to 30/32 of an inch in diameter. This rule removes the smallest, least desirable of the marketable size dried prunes produced in California from human consumption outlets. This rule will be in effect from August 1, 2002, through July 31, 2003, and was unanimously recommended by the Committee at a November 29, 2001, meeting.

Authority for Undersized Regulations as a Volume Control

Section 993.19b of the prune marketing order defines undersized prunes as prunes, which pass freely through a round opening of a specified diameter.

Section 993.49(c) of the prune marketing order establishes an undersized regulation of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes. These diameter openings have been in effect for quality control purposes. Section 993.49(c) also provides that the USDA upon a recommendation of the Committee may establish larger openings for undersized dried prunes whenever it is determined that supply conditions for a crop year warrant such regulation.

Section 993.50(g) states in part: "No handler shall ship or otherwise dispose of, for human consumption, the quantity of prunes determined by the inspection service pursuant to § 993.49(c) to be undersized prunes." * * * Pursuant to § 993.52 minimum standards, pack specifications, including the openings prescribed in § 993.49(c), may be modified by the USDA on the basis of a recommendation of the Committee or other information.

Pursuant to the authority in § 993.52 of the order, § 993.400 modifies the undersized prune openings prescribed in § 993.49(c) to permit undersized regulations using openings of 23/32 or 24/32 of an inch for French prunes and 28/32 or 30/32 of an inch for non-French prunes.

History of Undersized Regulations Used as a Volume Control

During the 1974–75 and 1977–78 crop years, USDA established the undersized prune regulation at 23/32 of an inch in diameter for French prunes and 28/32 of an inch in diameter for non-French prunes. These diameter openings were established in §§ 993.401 and 993.404, respectively (39 FR 32733, September 11, 1974; and 42 FR 49802, September 28, 1977). In addition, the Committee recommended and USDA established volume regulation percentages during the 1974–75 crop year with an undersized regulation at the aforementioned 23/32 and 28/32 inch diameter screen sizes. During the 1975–76 and 1976–77 crop years, the undersized prune regulation was established at 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes. These diameter openings were established in §§ 993.402 and 993.403 respectively (40 FR 42530, September 15 1975; and 41 FR 37306, September 3, 1976). The prune industry had an excess supply of prunes—particularly small-sized prunes. Rather than recommending volume regulation percentages for the 1975–76, 1976–77, and 1977–78 crop years, the Committee recommended the establishment of an undersized prune regulation applicable to all prunes received by handlers from producers and dehydrators during each of those crop years.

The objective of the undersized prune regulations during each of those crop years was to preclude the use of small prunes in manufactured prune products such as juice and concentrate. Handlers could not market undersized prunes for human consumption, but could dispose of them in nonhuman outlets such as livestock feed.

With these experiences as a basis, the marketing order was amended on August 1, 1982, establishing the continuing quality-related regulation for undersized French and non-French prunes under § 993.49(c). That regulation has removed from the marketable supply those prunes which are not desirable for use in prune products.

As in the 1970's, the prune industry is currently experiencing an excess supply of prunes. During the 1998–99 crop year, an undersized prune regulation was established at 24/32 of an inch for French prunes, and 30/32 of an inch for non-French prunes. These diameter openings were established in § 993.405 (63 FR 20058, April 23, 1998). With larger than desired carryin inventories and a 1999–2000 prune crop of about 172,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.406 (64 FR 23759, May 4, 1999) and made effective from August 1, 1999, through July 31, 2000, or until the undersized prunes from that crop were disposed of as required. Because carryin inventories were larger than desired and the 2000–01 prune crop was expected to be about 203,000 natural condition tons, the Committee unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.407 (65 FR 29945, May 10, 2000) and made effective from August 1, 2000, through July 31, 2001, or until the undersized prunes were properly disposed of as required. Because supplies were expected to remain excessive in 2001–02, the Committee again unanimously recommended continuing with an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes. These diameter openings were established in § 993.408 (66 FR 30642, June 7, 2001) and made effective from August 1, 2001, through July 31, 2002, or until the undersize prunes are disposed of under the marketing order.

For the 1998–99 crop year, the carryin inventory level reached a record high of 126,485 natural conditions tons. Excessive inventories tend to dampen producer returns, and cause weak marketing conditions. The carryin for the 1999–2000 crop year was reduced to 59,944 natural condition tons. This reduction was due to the low level of salable production in 1998–99 (about 102,521 natural condition tons and 50 percent of a normal size crop) and the undersized prune regulation. The carryin for the 2000–01 crop increased to 65,131 natural condition tons. This increase was due to a larger crop size of about 178,000 natural condition tons and reduced shipments during the 1999–2000 crop year. The carryin for the 2001–02 crop increased to 100,829 natural condition tons. This increase was due to a larger crop size of about 219,000 natural condition tons and a modest increase in shipments from a severely reduced shipment base during the 2001–02 crop year. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the new crop has ranged between 35,353 and 42,071 natural condition tons since the 1996–97 crop year, while the actual inventory has ranged between 59,944 and 126,485 natural condition tons since that year. The desired inventory level for early season shipments fluctuates from year-to-year depending on market conditions.

At its meeting on November 29, 2001, the Committee unanimously recommended continuing an undersized prune regulation at 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes during the 2002–03 crop year for supply management purposes. This regulation will be in effect from August 1, 2002, through July 31, 2003, or until the undersized prunes from 2002–03 are properly disposed of as required under the marketing order.

The Committee estimated that there will be an excess of about 15,422 natural condition tons of dried prunes as of July 31, 2002. This rule will continue to remove primarily small-sized prunes from human consumption channels, consistent with the undersized prune regulations that were implemented for the 1998–99, 1999–2000, 2000–01, and 2001–02 crop years. It is estimated that approximately 3,800 natural condition tons of small prunes will be removed from human consumption channels during the 2002–03 crop year as a result of this rule. This will leave sufficient prunes to fill domestic and foreign trade demand during the 2002–03 crop year, and provide an adequate carryout on July 31, 2003, for early season shipments until the new crop is available for shipment. According to the Committee, the desired inventory level to keep trade distribution channels full while awaiting the 2002–03 crop is about 41,000 natural condition tons.

In its deliberations, the Committee reviewed statistics reflecting: (1) A worldwide prune demand which has been relatively stable at about 260,000 tons; (2) a worldwide oversupply that is expected to continue growing for several more years (estimated at 317,628 natural condition tons by the year 2006); (3) a continuing oversupply situation in California caused by increased production from increased plantings and higher yields per acre (between the 1990–91 and 2000–01 crop years, the yields ranged from 1.2 to 2.6 versus a 10-year average of 2.1 tons per acre); (4) California's continued excess inventory situation; and (5) extremely low producer prices. The production of these small sizes ranged from 1,335 to 8,778 natural condition tons during the 1990–91 through the 1999–2000 crop years. The Committee concluded that it has to continue utilizing all available supply management techniques to accelerate the return to a balanced supply/demand situation in the interest of the California dried prune industry. To facilitate this management, the Committee has also supported other efforts to reduce burdensome supplies, including an industry-funded tree removal program that was initiated in the fall of 2001. Through this program, about 3,500 bearing acres of prune plum trees were removed. The Committee also recommended removal of prune plum trees through a USDA funded program, wherein growers would be encouraged to remove up to 20,000 bearing acres of prune plum trees. The final rule was published in the March 14, 2002, **Federal Register** (67 FR 11384). The changes to the undersized regulation for the 2002–03 crop year and the expected removal of prune plum trees are intended to bring supplies in line with market needs.

Despite these supply management efforts, the industry's oversupply situation may continue over the next few years due to new prune plantings in recent years with higher yields per acre. These plantings have a higher tree density per acre than the older prune plantings. During the 1990–91 crop year, the non-bearing acreage totaled 5,900 acres; but by 1998–99, the non-bearing acreage had quadrupled to more than 26,000 acres. The non-bearing acreage has subsequently been reduced to 15,000 acres during the 2000–01 crop year. The 1996–97 through 2000–01 yields have ranged from 1.2 to 2.6 tons per acre. Over the last 10-years, the average was 2.1 tons per acre.

The 2001–02 dried prune crop is expected to be 141,000 natural condition tons. Another large crop as high as 200,000 natural condition tons is expected for the 2002–03 crop year, partly because of an anticipated increase in new bearing acreage coming into production and high yields.

The 1997–98 crop year producer prices for the 24/size French prunes have been about $40–$50 per ton, about $260–$270 per ton below the cost of production. During the 2001–02 crop year, feedlot prices are expected to be about $20 to $40 per ton for the 24/32 size French prunes, which is about $270–290 per ton below the cost of production. The lower producer prices are expected to continue until the prune supply and demand come more closely into alignment.

The intent of this final rule is to eliminate small sizes that have limited economic value, help reduce excess prune inventories, and to improve producer returns. Average producer returns currently are below the cost of production and the final rule is expected to assist in enhancing returns.

The 1998–99, 1999–2000, 2000–01, and 2001–02 undersized prune rules of 24/32 of an inch for French prunes and 30/32 of an inch for non-French prunes have expedited the reduction of small prune inventories, but more needs to be done to bring supplies into balance with market demand. The excess inventory on July 31, 2001, was 100,829 natural condition tons, and only about 3,800 natural condition tons of dried prunes are expected to be removed from the 2001–02 marketable supply by the current undersized regulation. The Committee believes that the same undersized regulation also should be implemented during the 2002–03 crop year to continue reducing the inventories of small prunes, to help reduce the expected large 2002–03 prune crop, and more quickly bring supplies in line with demand. Attainment of this goal will benefit all of the producers and handlers of California prunes.

The recommended decision of June 1, 1981 (46 FR 29271) regarding undersized prunes states that the undersized prune regulation at the 23/32 and 28/32 inch diameter size openings will be continuous for the purposes of quality control even in above parity situations. Congress intended marketing orders to foster income equity for agricultural producers with non-agricultural producers, and used parity as a means of comparison. Parity compares agricultural producer prices against those for non-agricultural producers during the early 1900's, when incomes for agricultural and non-agricultural producers were generally thought to be fair. It further states that any change (i.e. increase) in the size of those openings will not be for the purpose of establishing a new quality-related minimum. Larger openings would only be applicable when supply conditions warranted the regulation of a larger quantity of prunes as undersized prunes. Thus, any regulation prescribing openings larger than those in § 993.49(c) should not be implemented when the grower average price is expected to be above parity. The season average price received by prune growers ranged from 39 percent to 62 percent of parity during the 1994 through 1999 seasons. As discussed later, the average grower price for prunes during the 2002–03 crop year is not expected to be above parity, and implementation of this more restrictive undersized regulation will be appropriate in reference to parity.

Section 8e of the Act requires that when certain domestically produced

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commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because this action is for inventory management, not quality control. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented to improve product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 1,205 producers of dried prunes in the production area and approximately 24 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less than $750,000, and small agricultural service firms are defined as those whose annual receipts are less than $5,000,000.

An updated industry profile shows that 9 out of 24 handlers (37.5 percent) shipped over $5,000,000 worth of dried prunes and could be considered large handlers by the Small Business Administration. Fifteen of the 24 handlers (62.5 percent) shipped under $5,000,000 worth of prunes and could be considered small handlers. An estimated 32 producers, or less than 3 percent of the 1,205 total producers, could be considered large growers with annual incomes over $750,000. The majority of handlers and producers of California dried prunes may be classified as small entities.

As recommended by the Committee, this final rule will establish an undersized prune regulation of 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes for the 2002–03 crop year for inventory management. This change in regulation will result in more of the smaller sized prunes being classified as undersized prunes and is expected to benefit producers, handlers, and consumers. The larger screen openings currently in place for 2001–02 are the same as those for 2002–03 and are expected to remove only 3,806 tons of dried prunes from the excess marketable supply. Implementation of the larger openings in 2002–03 is expected to remove approximately 3,800 tons from the marketable production.

The Committee estimates carryout inventories at July 31, 2002, to be 56,195 tons. This is 15,422 tons greater than desirable carryout inventories. This amount of inventory reflects a serious supply-demand imbalance in the industry. In addition, grower prices are reported at an average of $763 per ton for the 2001–02 crop year. This compares to $845 per ton for the 2000–01 season, or a decrease of 9.7 percent. The $763 average grower price is substantially below the total cost of production of $1,724 per ton and the total variable cost of production of $985 estimated for 2001–2002, meaning that most producers may not be earning sufficient returns to cover fixed costs. Some producers will continue to operate in the short run as long as prices are above variable costs, but others will begin to cease production in the longer run if prices do not recover to levels above the total cost of production.

A tree removal program funded by the industry and a USDA-funded program are in various stages of implementation. If these programs are successful in removing 20,000 bearing acres from production, marketable production will be reduced. Even with these tree removal programs, total available supply is estimated at 242,195 tons for the 2002–03 crop year (marketable production estimated at 186,000 tons and 56,195 tons of carryin inventories). Total demand is estimated at 167,591 tons, resulting in carryout inventories of 74,604 tons. With this large estimated crop size, inventories will increase and remain in excess of desirable inventories of 40,000 tons.

Inventories of this magnitude have a significant depressing impact on grower payments. Growers do not receive payments until inventories are completely sold. The costs of maintaining these inventories are deducted from grower payments.

An undersized prune regulation for 2002–03 will result in an additional 3,800 tons being removed from the total available supply. An econometric model shows that an undersized prune regulation resulting in eliminating 3,800 tons from marketable production will strengthen growers' prices modestly by $11 per ton. This price is still expected to be less than the cost of production for 2002–2003 estimated at $1,032 per ton.

Because the benefits and costs of the action will be directly proportional to the quantity of 24/32 screen French prunes and 30/32 screen non-French prunes produced or handled, small businesses should not be disproportionately affected by the action. While variation in sugar content, prune density, and dry-away ratio vary from county to county, they also vary from orchard to orchard and season to season. In the major producing areas of the Sacramento and San Joaquin Valleys (which account for over 99 percent of the State's production), the prunes produced are homogeneous enough that this action will not be viewed as inequitable by large and small producers in any area of the State.

The quantity of small prunes in a lot is not dependent on whether a producer or handler is small or large, but is primarily dependent on cultural practices, soil composition, and water costs. The cost to minimize the quantity of small prunes is similar for small and large entities. The anticipated benefits of this rule are not expected to be disproportionately greater or smaller for small handlers or producers than for large entities. The only additional costs on producers and handlers expected from the increased openings will be the disposal of additional tonnage (now estimated to be about 3,800 tons) to nonhuman consumption outlets. These costs are expected to be minimal and will be offset by the benefits derived by the elimination of some of the excess supply of small-sized prunes.

At the November 29, 2001, meeting, the Committee discussed the financial impact of this change on handlers and producers. Handlers and producers receive higher returns for the larger size prunes. Prunes eliminated through the implementation of this rule have very little value. As mentioned earlier, the current situation for producers is quite bleak with producers losing about $270–$290 on every ton of small-sized prunes delivered to handlers. During the 2002–03 crop year, the feedlot prices for 24/32 screen French prunes are expected to be about $20 to $40 per ton. This price is similar to the $20–$40 price received during the 2001–02 crop year. The cost of drying a ton of such prunes is $260 per ton at a 4 to 1 dry-away ratio, transportation is at least $20 per ton, and the producer assessment paid to the California Prune Board (a body which administers the State marketing order for promotion) is $30 per ton for a total cost of about $310 per ton. This equates to a loss of about $270–$290 per ton for every ton of 24/32 screen French prunes produced and delivered to handlers.

Utilizing data provided by the Committee, USDA has evaluated the impact of the proposed undersized regulation change upon producers and handlers in the industry. The analysis shows that a reduction in the marketable production and handler inventories could result in higher season-average prices, which would benefit all producers. The removal of the smallest, least desirable of the marketable dried prunes produced in California from human consumption outlets would eliminate an estimated 3,800 tons of small-sized dried prunes during the 2002–03 crop year from the marketplace. This would help lessen the negative marketing and pricing effects resulting from the excess inventory situation facing the industry. California prune handlers reported that they held 100,829 tons of natural condition prunes on July 31, 2001, the end of the 2000–01 crop year. The 100,829 ton year-end inventory is larger than what is desired for early season shipments by the prune industry. The desired inventory level is based on an average 12-week supply to keep trade distribution channels full while awaiting new crop. Currently, it is about 41,000 natural condition tons. This leaves a 2001–02 inventory surplus of about 60,000 tons. The undersized regulation will help reduce the surplus, but the anticipated large 2002–03 prune crop is expected to continue the supply imbalance.

As the marketable dried prune production and surplus prune inventories are reduced through this rule, and producers continue to implement improved cultural and thinning practices to produce larger-sized prunes, continued improvement in producer returns is expected.

For the 1991–92 through the 1999–2000 crop years, the season average price received by the producers ranged from a high of $1,140 per ton to a low of $764 per ton during the 1998–99 crop year. The season average price received by producers during that 9-year period ranged from 39 percent to 68 percent of parity. Based on available data and estimates of prices, production, and other economic factors, the season average producer price for 2001–02 season is expected to be about the same as the 2000–01 season average producer price of $809 per ton, or about 36 percent of parity.

The Committee discussed alternatives to this change, including making no changes to the undersized prune regulation and allowing market dynamics to foster prune inventory adjustments through lower prices on the smaller prunes. While reduced grower prices for small prunes are expected to contribute toward a slow reduction in dried prune inventories, the Committee believed that the undersized rule change is needed to expedite that reduction. The Committee also considered the potential impact of tree removals through the industry funded program which removed about 3,500 acres, and the tree removal program funded through USDA (California Prune/Plum Diversion Program), but concluded that these efforts alone were not likely to reduce the oversupply of small dried prunes sufficiently. With the excess tonnage of dried prunes, the Committee also considered establishing a reserve pool and diversion program to reduce the oversupply situation during the 2001–02 crop year. This alternative was not widely supported for a number of reasons. Reserve pools for prunes have historically been implemented "across the board" as far as sizes are concerned. While there is an exchange provision that allows handlers to remove larger prunes from the pool by replacing them with smaller prunes and the value difference in cash, this would be a cumbersome, expensive-to-administer alternative to implementing this undersized regulation. A third alternative discussed was to advance to a 25/32 screen undersized regulation for French prunes. However, handlers expressed concern that this will reduce the amount of manufacturing prunes (approximately 6,000 tons) available for the manufacture of prune juice and concentrate. This will increase the prices of these products.

Section 8e of the Act requires that when certain domestically produced commodities, including prunes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements for the domestically produced commodity. This action does not impact the dried prune import regulation because the action to be implemented is for inventory management, not quality control purposes. The smaller diameter openings of 23/32 of an inch for French prunes and 28/32 of an inch for non-French prunes were implemented for the purpose of improving product quality. The increases to 24/32 of an inch in diameter for French prunes and 30/32 of an inch in diameter for non-French prunes are for purposes of inventory management. Therefore, the increased diameters will not be applied to imported prunes.

This action will not impose any additional reporting or recordkeeping requirements on either small or large California dried prune handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this rule.

In addition, the Committee's meeting was widely publicized throughout the prune industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the November 29, 2001, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. The Committee itself is composed of twenty-two members. Seven are handlers, fourteen are producers, and one is a public member. Moreover, the Committee and its Supply Management Subcommittee have been monitoring the supply situation, and this rule reflects their deliberations completely.

A proposed rule concerning this action was published in the **Federal Register** on Friday, March 15, 2002, (67 FR 11625). Copies of this rule were mailed or sent via facsimile to all Committee members, alternates and dried prune handlers. Finally, the Office of the Federal Register and USDA made the rule available through the Internet. The rule provided a comment period that ended April 15, 2002. No comments were received. Accordingly, no changes will be made to the rule as proposed.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend

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to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 993

Marketing agreements, Plums, Prunes, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 993 is amended as follows:

PART 993—DRIED PRUNES PRODUCED IN CALIFORNIA

1. The authority citation for 7 CFR part 993 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. A new § 993.409 is added to read as follows:

§ 993.409 Undersized prune regulation for the 2002–03 crop year.

Pursuant to §§ 993.49(c) and 993.52, an undersized prune regulation for the 2002–03 crop year is hereby established. Undersized prunes are prunes which pass through openings as follows: for French prunes, $^{24}/_{32}$ of an inch in diameter; for non-French prunes, $^{30}/_{32}$ of an inch in diameter.

Dated: May 3, 2002.

Barry L. Carpenter,

Acting Administrator, Agricultural Marketing Service.

[FR Doc. 02–11675 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 516 and 567

[No. 2002–19]

RIN 1550–AB45

Capital: Qualifying Mortgage Loan, Interest Rate Risk Component, and Miscellaneous Changes

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Final rule.

SUMMARY: The Office of Thrift Supervision (OTS) is making miscellaneous changes to its capital regulations. These changes are designed to eliminate unnecessary capital burdens and to align OTS capital regulations more closely to those of the other federal banking agencies. Under the final rule, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it is underwritten in accordance with the prudent underwriting standards found in the Interagency Guidelines for Real Estate Lending, including standards relating to loan-to-value (LTV) ratios. The final rule also clarifies certain issues regarding the calculation of the LTV ratio.

OTS also is eliminating the requirement that a thrift must deduct from total capital that portion of a land loan or a nonresidential construction loan in excess of an 80 percent LTV ratio; eliminating the interest rate risk component of the risk-based capital regulations; modifying the definition of OECD-based country; and making a technical change to conform its treatment of reserves for loan and lease losses to that of the other federal banking agencies.

DATES: Effective July 1, 2002.

FOR FURTHER INFORMATION CONTACT: Michael D. Solomon, Senior Program Manager for Capital Policy, (202) 906–5654; David Riley, Project Manager, (202) 906–6669, Supervision Policy; or Teresa A. Scott, Counsel (Banking and Finance), (202) 906–6478, Regulations and Legislation Division, Office of the Chief Counsel, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Background

On March 15, 2001, OTS published a notice of proposed rulemaking seeking comment on a number of changes to its capital regulations. 66 FR 15049. These changes were designed to eliminate unnecessary burden and to align OTS capital regulations more closely to those of other federal banking agencies.[1] These proposed changes comply with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA), which directs the banking agencies to make their regulations and guidance uniform, consistent with principles of safety and soundness, statutory law and policy, and the public interest.

Specifically, OTS proposed to change its definition of a qualifying mortgage loan. Under current rules, a one-to four-family residential first mortgage loan will qualify for a 50 percent risk weight if it has a LTV ratio of 80 percent or less and meets other criteria. OTS proposed to revise the LTV requirement to permit a loan to qualify for a 50 percent risk weight if it has a LTV ratio of less than 90 percent. OTS also proposed to: (1) Eliminate the requirement that a thrift must deduct from total capital that portion of a non-residential construction and land loan that exceeds an 80 percent LTV ratio; (2) eliminate the interest rate risk component of the capital rules; (3) increase the risk weight on high quality, stripped mortgage-related securities; (4) modify the definition of OECD-based country; and (5) make a technical change to the treatment of reserves for loan and leases losses.

II. Comment Discussion

Eleven commenters responded to the proposed rule. The commenters included one savings and loan holding company, seven savings associations, and three trade associations. Generally, the commenters supported the proposed rule. These comments are discussed below.

A. One-to Four-Family Residential Mortgage Loans

OTS and the other federal banking agencies apply similar, but not identical, capital rules to one- to four-family residential first mortgage loans. Each agency provides that a one- to four-family residential first mortgage loan may receive a 50 percent risk weight if the loan meets certain specified criteria. To be eligible to receive the 50 percent risk weight, each agency requires that the loan may not be more than 90 days delinquent and must be prudently underwritten. [2]

Only OTS rules specifically require that a one- to four-family residential loan must have a LTV ratio of 80 percent or less at origination to qualify for the 50 percent risk weight.[3] All of the federal banking agencies, however, have indicated that prudent underwriting must include an appropriate LTV ratio,[4] and have clarified that a loan secured by a one-to four-family residential property will have an appropriate LTV ratio if the loan complies with the Interagency Guidelines for Real Estate Lending (Interagency Lending Guidelines).[5] These guidelines provide that an institution should establish internal LTV limits for real estate loans, including loans on one- to four-family residential properties. The guidelines do not establish a specific supervisory LTV limit for such loans. Rather the guidelines state that an institution should require appropriate credit enhancements (e.g., private mortgage insurance or readily marketable collateral) for a loan with an LTV that equals or exceeds 90 percent at origination. In addition, a loan that does not comply with this standard is permissible if the loan is supported by other credit factors, is an excluded transaction, or is a prudently underwritten exception to the lender's policies.[6]

OTS proposed to revise its definition of qualifying mortgage loan. Specifically, OTS proposed to raise the current LTV limit from below 80 percent to below 90 percent and to continue to include an express LTV requirement. OTS requested comment whether it should retain an explicit LTV requirement or conform its rule more closely to those of the other banking agencies.

1. Should OTS Include an Explicit LTV Standard in its Definition of Qualifying Mortgage Loan?

Seven commenters discussed whether OTS should retain the explicit LTV requirement in the final rule. Three commenters supported the retention of an explicit LTV standard. Those commenters argued that thrifts' high concentration of mortgage loans justifies a treatment that is substantially similar but more sharply defined than the treatment of mortgage lending at other depository institutions. Moreover, the commenters asserted that an explicit standard provides a clear, non-judgmental definition of a qualifying mortgage loan and limits the potential for confusion between the institution and its examiners. Four commenters urged OTS to delete the explicit LTV requirement. They argued that an explicit standard in unnecessary, and that the change would put thrifts on an equal footing with banks and conform OTS rules to the rules of other banking agencies.

The final rule deletes the explicit LTV requirement for qualifying mortgage loans. Although the LTV ratio is a meaningful measure (among others) of credit risk, OTS has concluded that the Interagency Lending Guidelines on LTV ratios sufficiently address the credit risks of residential mortgage lending. In addition, an explicit standard may competitively disadvantage thrifts since banks have been subject to a more flexible standard. Further, deleting the explicit requirement will align OTS regulations more closely to those of the other banking agencies and, is thus, more consistent with section 303 of CDRIA.

OTS research suggests that one- to four-family residential loans are generally subject to a disproportionately high capital burden, relative to other types of loans.[7] OTS" review of charge-off and delinquency rates [8] for various categories of loans (one- to four-family residential loans, multi-family loans, other real estate loans, consumer loans, agricultural loans, commercial and industrial loans) disclosed that one- to four-family residential loans carry substantially less risk than other loan types, relative to their respective risk weights. In this rule, OTS intends to reduce the disparity of the risk weights among these loans and expand the availability of residential mortgage products.[9]

Accordingly, the final rule provides that a qualifying mortgage loan must be underwritten in accordance with prudent underwriting standards, including standards relating the ratio of the loan amount to the value of the property. The rule will specifically cross-reference the Interagency Lending Guidelines in the Appendix to 12 CFR 560.101.[10]

2. What Types of Credit Enhancement Should OTS Consider in Determining Whether a Loan Meets the LTV Requirement Under the Capital Rules?

Under the current capital rule, a mortgage loan may satisfy the LTV requirement if an issuer approved by Fannie Mae or Freddie Mac provides an appropriate level of private mortgage insurance. OTS specifically asked whether it should permit other forms of credit enhancement in determining whether a loan meets the LTV requirement under the capital rules.

Nine commenters addressed this issue. Seven commenters agreed that OTS should permit additional forms of credit enhancement. These commenters noted that the Interagency Lending Guidelines permit other forms of credit enhancement. One commentator argued that savings associations are treated less favorably than other banking entities because OTS current rules differ from the guidelines.

Two commenters opposed additional credit enhancements. One maintained additional credit enhancements would raise questions regarding the financial soundness of any guarantor, the type of credit coverage that is supplied, and the overall credit risk to the banking industry. The other commenter contended that high LTV loans carry substantial risk and that losses could occur not only on single loans but also catastrophically throughout a loan portfolio.

The final rule relies on the Interagency Lending Guidelines, which permit institutions to consider various types of credit enhancements when determining whether a one-to four-family residential property loans has an appropriate LTV ratio. Such appropriate credit enhancements include private mortgage insurance and readily marketable collateral.[11]

OTS believes that the definition of readily marketable collateral in the Interagency Lending Guidelines adequately addresses potential safety and soundness concerns by requiring a perfected security interest and by requiring appropriate discounts from market value in determining the value of readily marketable collateral's value. OTS will, as a part of the examination process, review an institution's use of credit enhancements to ensure that any private mortgage insurance and readily marketable collateral provide protection against loss equivalent to that provided by residential real estate collateral.

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[1] The other federal banking agencies include the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), and the Federal Deposit Insurance Corporation (FDIC).

[2] 12 CFR part 3, App. A., Sec. 3(a)(3)(iii)(OCC); 12 CFR part 208, App. A., Sec. III.C.3.(FRB); 12 CFR part 325, App. A., Sec. II.C. (FDIC); 12 CFR 567.1 (OTS).

[3] *See* definition of qualifying mortgage loans at § 567.1.

[4] 64 FR 10194, 10196, fn. 6 (Mar. 2, 1999).

[5] *Id.* The Interagency Guidelines for Real Estate Lending are located at 12 CFR part 34, subpart D (OCC); 12 CFR part 208, subpart E (FRB); 12 CFR part 365 (FDIC); and 12 CFR 560.100–101 (OTS).

[6] Under the guidelines, the aggregate amount of all loans in excess of the supervisory LTV limits and all loans made pursuant to exceptions to the general lending policy is limited to 100 percent of total capital.

[7] *See* OTS Research Working Paper titled "Based Buckets and Loan Losses: Absolute and Relative Loan Underperformance at Banks and Thrifts," available on the OTS Website at *www.ots.treas.gov.*

[8] The charge off rate is charge offs net recoveries for each loan type divided by the total loan balance of that type of loan. The delinquency rate is the sum of loans more than 90 days past due for each loan type, divided by the total loan balance for that type of loan. Our review of charge-off data, which co-mingled expected and unexpected losses, covered the period from 1984 to 1999. While risk-based capital is primarily for unexpected losses, average (historical) losses are not irrelevant. For example, capital levels can be modeled based on dispersion of expected (historical) losses.

[9] In the past, some institutions have over-invested in fixed-rate one- to four-family mortgage loans, which created interest rate risk problems. However, as discussed below, improved supervisory tools for interest rate risk analysis, industry awareness of interest rate risk, and improved interest rate risk management have mitigated this concern.

[10] In addition, OTS will continue to apply factors described in the Interagency Expanded Guidance for Subprime Lending Programs when determining the level of capital necessary to support subprime lending programs. (OTS CEO Letter No. 137 (February 2, 2001)).

[11] Readily marketable collateral is defined as "insured deposits, financial instruments, and bullion in which the lender has a perfected security interest. Financial instruments and bullion must be salable under ordinary circumstances with reasonable promptness at a fair market value determined by quotations based on actual transactions, on an auction or similarly available daily bid and ask price market. Readily marketable collateral should be appropriate discounted by the lender consistent with the lender's usual practices for making loans secured by such collateral." *See* Appendix to 12 CFR 560.101.

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3. How Should Thrifts Calculate the LTV Ratio?

Positively Amortizing Loans. Under the current rule, a qualifying mortgage loan must have a documented LTV ratio that does not exceed 80 percent at origination. OTS proposed to clarify that a mortgage loan that is paid down to an appropriate LTV ratio after origination may become a qualifying mortgage loan, if it meets all other requirements. One commenter specifically supported this provision and no commenter opposed this clarification. Accordingly, OTS has included clarifying language in the final rule.

Negatively Amortizing Loans. OTS proposed to clarify that a residential mortgage loan that negatively amortizes to a LTV ratio above 90 percent would not be accorded a 50 percent risk weight. OTS specifically requested comment whether this treatment is appropriate.

Three commenters opined that loans that negatively amortize above a 90 percent LTV ratio, for whatever reason, should be placed in the 100 percent risk-weight category.[12] Another commenter agreed that loans designed to negatively amortize as a routine and predictable matter loans pose extraordinary collateral risk that should be addressed by capital requirements at origination. This commenter, however, suggested that a loan should qualify for a lower risk weight if it negatively amortizes solely as a result of deferred or capitalized interest. The commenter reasoned that the somewhat higher credit risk was offset by the stabilizing effect on the borrower's ability to service the loan during limited periods of unusual interest rate stress.

One commenter noted that if an LTV rises above 90 percent because of borrower default, the capital requirement should be governed by the rules related to classified loans. Another commenter agreed that negatively amortizing loans should be addressed through increases to the loan loss reserves.

OTS recognizes that some types of negatively amortizing loans may result in additional credit risk and others may not.[13] In light of the differing credit risks posed by these negatively amortizing loan products, OTS declines to specifically address this point in its final rule. Instead, the final rule simply provides that a qualifying mortgage loan must maintain an appropriate LTV ratio based on the amortized principal balance of the loan. OTS expects thrifts to review loans structured with negative amortization features and loans that have the potential for negative amortization to ensure that LTV ratios commensurate with the risk of the loan are maintained. OTS plans a more comprehensive assessment of these issues and may issue supervisory guidance on this matter. In the interim, a savings association that categorizes substantial number of negatively amortizing loans in the 50 percent risk weight will receive increased regulatory scrutiny to ensure that the savings association maintains capital commensurate with the risk of the loans.

Reevaluation of loan collateral. OTS also specifically requested comment whether it should permit the reevaluation of collateral values in an appreciating market, or require reevaluations in a declining market in determining whether a loan meets the LTV standard.

Six commenters specifically opposed any rule that would require a thrift to reevaluate collateral in a declining market. Three commenters argued that collateral deterioration is best addressed through the allowance for loan and lease losses, since these allowances are intended to capture subsequent changes in credit risk. Two commenters argued that a reevaluation requirement would be costly and would add needless complexity to thrift operations. If reevaluations are required, one commenter urged OTS to establish the original collateral value as the lowest value that may be used for LTV computation. The commenter argued that this position is consistent with other regulatory requirements.

Three commenters urged OTS to permit a thrift to reevaluate collateral where there is market appreciation or where the borrower has made property improvements. One of these commenters, however, would permit the thrift to reevaluate for market appreciation only where the principal amount has increased and the increase would otherwise trigger a higher capital requirement. Another commenter would not permit reclassification for market appreciation under any circumstances. Finally, one commenter would permit a thrift to reevaluate collateral for appreciation or depreciation where the expected LTV ratio is close to 90 percent. The commenter suggested that OTS use the examination process to ensure that thrifts do not ignore declining values.

OTS believes that further consideration is needed before it determines whether to revise its rules to permit or require recalculation of LTV ratios on the basis of changing market prices. OTS has reviewed the current practices of the other bank regulators and has found that there is no consistent interagency position on reevaluations. As a result, the final rule retains the current requirement that LTV ratios are calculated based upon the value of the collateral at origination.[14]

4. Other Comments on LTV Issues

One commenter addressed existing OTS rules regarding the computation of the LTV ratio where there are first and junior liens on the same property. Under current OTS rules, if a savings association holds first and junior liens on the same residential property, both loans are risk-weighted at 100 percent if the combined LTV ratio exceeds 80 percent. The commenter argued that the combined loans should receive a 100 percent risk weight only when the loans are originated simultaneously. It asserted that the two loans pose no greater risk than loans made on separate properties and that a savings association should not incur a higher capital charge on the first loan because of the junior loan.

The banking agencies addressed this issue in the final rule on Risk-Based Capital Standards: Construction Loans on Presold Residential Properties; Junior Liens on One-to Four-Family Residential Properties; and Investments in Mutual Funds; Leverage Capital Standards: Tier 1 Leverage Ratio.[15] The agencies concluded that it was appropriate to combine first and junior liens when calculating the LTV ratio. The agencies noted that where an institution holds first and junior liens to a single borrower with no intervening liens, it has made the economic equivalent of a single extension of credit that is secured by the same collateral. The agencies were also concerned that institutions could use creative lending arrangements to reduce capital charges without reducing risk. OTS sees no reason to depart from this position.

Another commenter encouraged OTS and the other banking agencies to lower the risk weights on various types of loans with low LTV ratios or other characteristics that might lessen risks. OTS is reviewing whether it has sufficient empirical data to support any of these changes and, if appropriate, may commence another rulemaking in this area.

B. Land Loans and Non-Residential Construction Loans

All of the banking agencies require depository institutions to risk weight land loans at 100 percent.[16] Only OTS, however, also requires savings associations to exclude from assets (and therefore from computations of total capital), that portion of a nonresidential construction or land loan that is above an 80 percent LTV ratio.[17] OTS proposed to eliminate this additional capital charge. The commenters addressing this provision supported the change. Accordingly, OTS adopts this aspect of the proposed rule without change.

One commentator, however, suggested that OTS should also revise its rules to assign a 50 percent risk weight to loans secured by fully improved single family building lots with LTV ratios of 80 percent or less. These loans are considered to be improved property loans and are currently risk weighted at 100 percent.[18] The commenter asserted that a lower risk weight is appropriate because finished lots are not subject to development risk. OTS views these loans differently than one-to four-family loans because they are not secured by the borrowers' own home. Often the borrower is a commercial entity. OTS declines to adopt the commenter's suggestion. Therefore, OTS, consistent with the other agencies, will continue to assign finished lots to the 100 percent risk weight category.

C. Interest Rate Risk Component of Risk Based Capital

Section 305 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires OTS and the banking agencies to review their risk-based capital standards to ensure that those standards take adequate account of, among other things, interest rate risk.[19] To fulfill this requirement, OTS issued a final rule in 1993 adding an interest rate risk component (IRR component) to its risk-based capital regulation at 12 CFR 567.7.[20] This IRR component is an explicit capital deduction from total capital and is imposed on institutions with above-normal levels of interest rate risk. An institution's interest rate risk is measured by dividing the decline in net portfolio value that would result from a 200 basis point increase or decrease in interest rates by the present value of the institution's assets. The amount deducted from capital is equal to one-half the difference between the institution's measured interest rate risk and a "normal" measured interest rate risk.

OTS concluded that the IRR component is not necessary in light of the other tools that are currently available to measure and control interest rate risk. OTS also concluded that the individual minimum capital provisions at § 567.3 satisfy the FDICIA requirement that the risk-based capital standards must take adequate account of interest rate risk. All six commenters addressing this issue supported the removal of § 567.7. Accordingly, OTS adopts this change.

D. High Quality, Stripped Mortgage-Related Securities

OTS proposed to amend its capital rules to apply a 100 percent risk-weight to all stripped, mortgage-related securities. Two commenters supported this change. OTS finalized this revision in the final interagency rule on Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations. 66 FR 59615, 59626 fn. 24 (Nov. 29, 2001).

E. Definition of OECD-Based Country

Under existing OTS regulations, certain assets that are supported by the credit standing of the central government of, public-sector entities in, or depository institutions incorporated in Organization for Economic Cooperation and Development (OECD) based countries, receive preferential capital risk weighting over similar entities in non-OECD-based countries. OTS proposed to conform its definition of OECD-based country to the definitions of the other banking agencies. Specifically, OTS proposed to revise its definition to exclude countries that have rescheduled their external sovereign debt within the previous five years. No commenters addressed this proposed change. The final rule will incorporate the revised definition.

F. Allowance for Loan and Lease Losses

Under current OTS capital rules, supplemental capital includes general valuation loan and lease loss allowances established under OTS regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets. *See* 12 CFR 567.5(b)(4). OTS proposed a technical change to the term "general valuation loan and lease loss allowances" to "allowance for loan and lease losses" to conform OTS's rule to the rules of the other banking agencies. No commenter discussed this proposed change. Accordingly, the final rule adopts the proposed change.

G. Other Changes

OTS solicited comment on whether it should address and eliminate any other capital differences between OTS and the other banking agencies. No commenter addressed this issue.

As a part of this final rule, however, OTS is making minor technical change to its application processing regulation at 12 CFR 516.40 to reflect the recent realignment of its regional offices.

III. Executive Order 12866

OTS has determined that this rule does not constitute a "significant regulatory action" for the purposes of Executive Order 12866.

IV. Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act, the Director of OTS has certified that this rule does not have a significant economic impact on a substantial number of small entities.

V. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, Public Law 104–4 (Unfunded Mandates Act) requires that an agency prepare a budgetary impact statement before promulgating a rule that includes a Federal mandate that may result in expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. OTS has determined that the effect of this rule will not result in expenditures by State, local, or tribal governments or by the private sector of $100 million or more. Accordingly, OTS has not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered.

[12] One commenter agreed with this position, but would permit the lender to show that the actual LTV remained below 90 percent due to any market appreciation that is confirmed by an appropriate appraisal or other valuation. Reevaluation of loan collateral is discussed below.

[13] The preamble to the proposed rule discusses the risks of variolus negative amortizing loan products. *See* 66 FR at 15051.

[14] OTS may, on a case-by-case basis, look to the substance of a loan transaction and find that the asigned risk weight for a particular loan does not appropriately reflect the risk imposed on the savings association. Where apropriate, OTS may permit the association to assign a lower risk weight to a mortgage loan where there has been significant appreciation in market value or may require a savings association to apply a higher risk weight where there has been a significant decline in market value. *See* 66 FR 59614, 59666 (Nov. 29, 2001) to be codified at 12 CFR 567.11(c)(2).

[15] 64 FR 10194, 10195–96 (Mar. 2, 1999).

[16] 12 CFR part 3, App. A., Sec. 3(a)(4)(OCC); 12 CFR part 208, App. A., Sec. III. C.4.(FRB); 12 CFR part 325, App. A., Sec. II.C. (FDIC); 12 CFR 567.6(a)(1)(iv)(G) & (H) (OTS).

[17] Compare 12 CFR 567.5(c)(2)(3) with 12 CFR part 3, App. A., Sec. 2(c)(4)(OCC); 12 CFR part 208, App. A., Sec. II. B.(FRB); 12 CFR part 325, App. A., Sec. I.B. (FDIC).

[18] *See* 12 CFR 560.101 and 123 CFR 561.26 (definition of land loan).

[19] 12 U.S.C. 1828 note.

[20] 58 FR 45799 (Aug. 31, 1993).

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List of Subjects

12 CFR Part 516

Administrative practice and procedure, Reporting and recordkeeping requirements, Savings associations

12 CFR Part 567

Capital, Reporting and recordkeeping requirements, Savings associations.

Accordingly, the Office of Thrift Supervision amends chapter V, title 12, Code of Federal Regulations as set forth below:

PART 516—APPLICATION PROCESSING PROCEDURES

1. The authority citation for part 516 continues to read as follows:

Authority: 5 U.S.C. 552, 559; 12 U.S.C. 1462a, 1463, 1464, 2901 *et seq.*

2. Section 516.40(a)(2) is revised to read as follows:

§ 516.40 Where do I file my application?

(a) * * *

(2) The addresses of each Regional Office and the states covered by each office are:

Region	Office address	States served
Northeast	Office of Thrift Supervision 10 Exchange Place, 18th Floor, Jersey City, New Jersey 07302.	Connecticut, Delaware, Maine, Massachusetts, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, Rhode Island, Vermont, West Virignia
Southeast	Office of Thrift Supervision, 1475 Peachtree Street, N.E., Atlanta, Georgia 30309 (Mail to: P.O. Box 105217, Atlanta, Georiga 30348–5217).	Alabana, District of Columbia, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, North Carolina, Puerto Rico, South Carolina, Virginia, the Virgin Islands
Midwest	Office of Thrift Supervision, 225 E. John Carpenter Freeway, Suite 500, Irving, Texas 75062–2326 (Mail to: P.O. Box 619027 Dallas/Ft. Worth, Texas 75261–9027.	Arkansas, Iowa, Kansas, Louisiana, Minnesota, Mississippi, Missouri, Nebraska, Oklahoma, Tennessee, Texas, Wisconsin
West	Office of Thrift Supervision, Pacific Plaza, 2001 Junipero, Serra Boulevard, Suite 650, Daly City, California 94014–1976 (Mail to: P.O. Box 7165 San Francisco, California 94120–7165).	Alaska, Arizona, California, Colorado, Guam, Hawaii, Idaho, Montana, Nevada, New Mexico, North Dakota, Northern Mariana Islands, Oregon, South Dakota, Utah, Washington, Wyoming

* * * * *

PART 567—CAPITAL

3. The authority citation for part 567 continues to read as follows:

Authority: 12 U.S.C. 1462, 1462a, 1463, 1464, 1467a, 1828 (note).

4. Section 567.1 is amended by revising the definitions of "OECD-based countries" and "qualifying mortgage loan" as follows:

§ 567.1 Definitions.

* * * * *

OECD-based country. The term *OECD-based country* means a member of that grouping of countries that are full members of the Organization for Economic Cooperation and Development (OECD) plus countries that have concluded special lending arrangements with the International Monetary Fund (IMF) associated with the IMF's General Arrangements to Borrow. This term excludes any country that has rescheduled its external sovereign debt within the previous five years. A rescheduling of external sovereign debt generally would include any renegotiation of terms arising from a country's inability or unwillingness to meet its external debt service obligations, but generally would not include renegotiations of debt in the normal course of business, such as a renegotiation to allow the borrower to take advantage of a decline in interest rates or other change in market conditions.

* * * * *

Qualifying mortgage loan. (1) The term *qualifying mortgage loan* means a loan that:

(i) Is fully secured by a first lien on a one-to four-family residential property;

(ii) Is underwritten in accordance with prudent underwriting standards, including standards relating the ratio of the loan amount to the value of the property (LTV ratio). See Appendix to 12 CFR 560.101. A nonqualifying mortgage loan that is paid down to an appropriate LTV ratio (calculated using value at origination) may become a qualifying loan if it meets all other requirements of this definition;

(iii) Maintains an appropriate LTV ratio based on the amortized principal balance of the loan; and

(iv) Is performing and is not more than 90 days past due.

(2) If a savings association holds the first and junior lien(s) on a residential property and no other party holds an intervening lien, the transaction is treated as a single loan secured by a first lien for the purposes of determining the LTV ratio and the appropriate risk weight under § 567.6(a).

(3) A loan to an individual borrower for the construction of the borrower's home may be included as a qualifying mortgage loan.

* * * * *

5. Section 567.5 is amended by: revising paragraph (b)(4) and footnote 7 to paragraph (b)(4) as set forth below; adding "and" to the end of paragraph (c)(2)(i); adding a period in place of ", and" at the end of paragraph (c)(2)(ii); and removing paragraphs (c)(2)(iii) and (c)(3).

§ 567.5 Components of capital.

* * * * *

(b) * * *

(4) *Allowance for loan and lease losses.* Allowance for loan and lease losses established under OTS regulations and memoranda to a maximum of 1.25 percent of risk-weighted assets.[7]

* * * * *

6. Section 567.6 is amended by revising paragraphs (a)(1)(iv)(G) and (a)(1)(iv)(H), to read as follows:

§ 567.6 Risk-based capital credit risk-weight categories.

(a) * * *

[7] The amount of the allowance for loan and lease losses that may be included in capital is based on a percentage of risk-weighted assets. The gross sum of risk-weighted assets used in this calculation includes all risk-weighted assets, with the exception of assets required to be deducted under § 567.6 in esteblishing risk-weighted assets. "Excess reserves for loan and lease losses" is defined as assets required to be deducted from capital under § 567.5(a)(2). A savings association may deduct excess reserves for loan and lease losses from the gross sum of risk-weighted assets (i.e., risk-weighted assets including allowance for loan and lease losses) in computing the denominator of the risk-based capital standard. Thus, a savings assocation will exclude the same amount of excess allowance for loan and lease losses from both the numerator and the denominator of the risk-based capital ratio.

(1) * * *

(iv) * * *

(G) Land loans;

(H) Nonresidential construction loans;

* * * * *

§ 567.7 [Removed]

7. Section 567.7 is removed.

Dated: May 6, 2002.

By the Office of Thrift Supervision.

James E. Gilleran,

Director.

[FR Doc. 02–11673 Filed 5–9–02; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2002–12007; Airspace Docket No. 02–ACE–02]

Revision of Federal Airway V–220; NE

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action corrects the legal description of Federal Airway 220 (V–220) between McCook, NE, and Kearney, NE. The current description incorrectly includes a reference to Grande Island, NE.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Steve Rohring, Airspace and Rules Division, ATA–400, Office of Air Traffic Airspace Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

On November 21, 2001, a review of Federal airways in the Kearney, NE, area revealed that the current legal description of V–220 contained an inadvertent reference to Grande Island, NE. The description should refer to the "Kearney, NE, 237° radial" rather than the "Grande Island, NE, 241° radial." This action corrects that error.

The Rule

This amendment to 14 CFR part 71 corrects the legal description of V–220 between McCook, NE, and Kearney, NE. Specifically, the "Grande Island, NE, 241° radial" is changed to read "Kearney, NE, 237° radial."

Since this action simply corrects the legal description by removing the reference to Grande Island, NE, I find that notice and public procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest.

This regulation is limited to an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since it has been determined that this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federal airways are published in paragraph 6010(a) of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Federal airway listed in this document will be published subsequently in the Order.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E, AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Revised]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways

* * * * *

V–220 [REVISED]

From Grand Junction, CO; INT Grand Junction, 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Kearney, NE, 237° radials; Kearney; Hastings, NE; Columbus, NE.

* * * * *

Issued in Washington, DC, on April 29, 2002.

Reginald C. Matthews,

Manager, Airspace and Rules Division.

[FR Doc. 02–11657 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–01–148]

RIN–2115–AE47

Drawbridge Operation Regulations; Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Interim rule; request for comments.

SUMMARY: The Coast Guard is revising the operating regulation governing drawbridges over Chicago River waterways. This interim rule adds one bridge to the current list of bridges not required to open for navigation, and removes the requirement for two to open on signal for commercial vessels due to the recent increases in their vertical clearances. This interim rule also requires 12-hours advance notice from commercial vessels year-round for City of Chicago movable bridges; updates ownership of certain railroad bridges; and specifies rush hour times that City of Chicago bridges will not be required to open for any vessels.

DATES: This interim rule is effective June 10, 2002. Comments and related material must reach the Coast Guard on or before June 30, 2002.

ADDRESSES: You may mail comments and related material to Commander

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(obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060. Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket (CGD09–01–148) and are available for inspection or copying at the address above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking (CGD09–01–148) and the specific section of this rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Public Meeting

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the address under **ADDRESSES**. The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, we will hold a public hearing at a time and place announced by a subsequent notice in the **Federal Register**.

Regulatory Information

Commander, Ninth Coast Guard District, published a notice of proposed rulemaking (NPRM) on December 27, 2001 (66 FR 66865). No public hearing was requested, and none was held. The NPRM included some formatting errors that have been corrected in this interim rule. The text of the NPRM contained no errors.

The Coast Guard received one written comment. The writer requested that the morning rush-hour period when all city bridges may remain closed be altered. Instead of the originally proposed hours of 7 a.m. to 10 a.m., Monday through Friday, that the bridges could remain closed to vessels, the writer requested that the time be changed to 7 a.m. to 9:30 a.m. The Coast Guard determined that this change would properly provide for the reasonable needs of navigation and has been incorporated into this interim rule.

A non-written comment to the NPRM involved the time of year that the proposed change was open for comments from the public. The Coast Guard determined that it would be appropriate to issue this interim rule to make the regulation effective, but provide for another comment period during the boating season.

Background and Purpose

The City of Chicago requested that Commander, Ninth Coast Guard District, revise the operating regulations for Chicago City operated drawbridges over Chicago River waterways. The primary changes are: (1) Remove the requirements for Kinzie Street bridge over the North Branch and Cermak Road bridge over the South Branch to open on signal for commercial vessels due to restrictive clearances. Both bridges have been raised to provide vertical clearances consistent with other fixed and movable bridges on the Chicago River system. (2) Add Division Street bridge over the North Branch of Chicago River to the current list of drawbridges not required to open for vessels. (3) Require a 12-hour advance notice requirement for bridge openings from commercial vessels for City of Chicago movable bridges throughout the year. (4) Change rush hour times (7 a.m. to 9:30 a.m. and 4 p.m. to 6:30 p.m.—Monday through Friday, with the exception of Federal holidays) that City of Chicago bridges would not be required to open for any vessels.

Discussion of Interim Rule

The current operating regulations for Chicago River bridges are contained in 33 CFR 117.391. This section was last changed on October 6, 1995 (60 FR 52311) to establish opening schedules for recreational vessels. This rule only alters the sections pertaining to recreational vessels by specifying rush hour times (7 a.m. to 9:30 a.m. and 4 p.m. to 6:30 p.m.—Monday through Friday, with the exception of Federal holidays) that bridges would not be required to open.

The City of Chicago requested that both Kinzie Street bridge over North Branch and Cermak Road bridge over South Branch be granted the same status as all other City of Chicago bridges and only be required to open for commercial vessels if at least 12-hours advance notice is provided. The bridges have been raised to provide vertical clearances consistent with other fixed and movable bridges on the Chicago River system.

The City has also requested that Division Street bridge over North Branch not be required to open for vessels. This would place the bridge in the same status as all other City bridges for a vessel proceeding northbound on North Branch above Division Street. There is adequate clearance for commercial vessels equipped with retractable pilothouses to pass under each of these bridges. There are currently no recreational vessel facilities from Division Street northward that require the opening of drawbridges for masted vessels. A marina south of Division Street services masted vessels, therefore, all bridges southward are still required to open in accordance with the articles pertaining to recreational vessels. Bridge opening logs provided by the City indicate that the last request for a bridge opening at Division Street occurred in 1982.

Drawbridges allowed to stay closed to navigation through this rule may be required to be made operational again within a reasonable time if ordered by the District Commander in the future.

This rule also updates the current ownership of railroad bridges on Chicago River and removes the emergency provisions specifically listed in paragraph (e). These provisions apply to all drawbridges, as set out in 33 CFR 117.31, and need not be re-stated in this regulation.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the current and prospective facilities and needs of all navigation on the Chicago River system.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard has considered whether this rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

The identified small entities operating on Chicago River will not be significantly affected by the rule. Marinas located on the North Branch and South Branch of Chicago River will still have bridge openings during designated times. However, rush hour times, where no openings would be required, have been expanded. These entities do not require openings of bridges from Division Street northward on North Branch. In addition, the three identified commercial tug companies operating on Chicago River do not require openings of Chicago City bridges.

Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule will have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule will economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Ninth Coast Guard District, at the address above.

Collection of Information

This rule would call for no new collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3520).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 13132, and determined that it does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.391, revise the introductory text to the section, paragraph (a), paragraphs (b)(1)(iv) and (b)(2), and paragraph (c); and remove paragraphs (b)(3), (d), and (e), to read as follows:

§ 117.391 Chicago River.

The draws of the bridges operated by the City of Chicago over the Main Branch of Chicago River, the bridges on the North Branch of Chicago River from the Main Branch to North Halsted Street, mile 2.65, and bridges on the South Branch of Chicago River from the Main Branch to South Ashland Avenue, mile 4.47, shall operate as follows:

(a) For commercial vessels, all bridges shall open on signal if at least 12-hours advance notice is provided to the Chicago City Bridge Desk prior to the intended time of passage; except that, from Monday through Friday between the hours of 7 a.m. and 9:30 a.m., and between the hours of 4 p.m. and 6:30 p.m., except for Federal holidays, the draws need not open for the passage of vessels.

(b) * * *

(1) * * *

(iv) The draws shall open at times in addition to those listed in paragraphs (b)(1)(i) through (b)(1)(iii) of this section, after notice has been given at least 20 hours in advance requesting passage for a flotilla of at least five vessels. However, the bridges need not open Monday through Friday from 7 a.m. to 9:30 a.m., and 4 p.m. to 6:30 p.m., except for Federal holidays.

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(2) From December 1 through March 31, the draws shall open on signal if at least 48 hours notice is given. However, the bridges need not open Monday through Friday from 7 a.m. to 9:30 a.m., and 4 p.m. to 6:30 p.m., except for Federal holidays.

(c) The following bridges need not be opened for the passage of vessels: The draws of South Damen Avenue, mile 6.14, over South Branch of Chicago River; all highway drawbridges between South Western Avenue, mile 6.7, and Willow Springs Road, mile 19.4, over Chicago Sanitary and Ship Canal; North Halsted Street, mile 2.85, and Division Street, mile 2.99, over North Branch Canal of Chicago River; and Division Street, mile 3.30, North Avenue, mile 3.81, Cortland Avenue, mile 4.48, Webster Avenue, mile 4.85, North Ashland Avenue, mile 4.90, and Union Pacific Railroad, mile 5.01, over North Branch of Chicago River.

Dated: April 29, 2002.

James D. Hull,

Rear Admiral, Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 02–11717 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07–01–037]

RIN 2115–AE84

Regulated Navigation Area; Savannah River, Georgia

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary Regulated Navigation Area (RNA) on a portion of the Savannah River to regulate waterway traffic when vessels carrying Liquefied Natural Gas (LNG) are transiting or moored on the Savannah River. This action is necessary because of the size, draft, and volatile cargo of LNG tankships. This rule enhances public and maritime safety by minimizing the risk of collision, allision or grounding and the possible release of LNG.

DATES: This rule is effective from 12:01 a.m. on May 4, 2002 until 11:59 p.m. on June 30, 2002.

ADDRESSES: You may mail comments and related material to Coast Guard Marine Safety Office Savannah, Juliette Gordon Low Federal Building, Suite 1017, 100 W. Oglethorpe, Savannah, Georgia 31401. Coast Guard Marine Safety Office Savannah maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket [CGD07–01–037], will become part of this docket and will be available for inspection or copying at Marine Safety Office Savannah, between 7:30 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander James Hanzalik at the Marine Safety Office Savannah; phone (912) 652–4353 extension 205.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On June 19, 2001 we published a notice of proposed rulemaking (NPRM) in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 32915). The Coast Guard received 22 letters commenting on the proposed rule. No public hearing was requested, and none was held.

Since immediate action was necessary to protect the public from the dangers associated with transporting LNG, on October 10, 2001, we published a temporary final rule in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 51562) creating a temporary rule while we published a Supplemental Notice of Proposed Rulemaking (SNPRM) and received comments.

Due in part to the comments we received and changes to the initial NPRM, on December 14, 2001, we published a SNPRM in the **Federal Register** entitled "Regulated Navigation Area; Savannah River, Georgia" (66 FR 64778), offering the public the opportunity to comment on our revised proposal. The Coast Guard received three letters commenting on the supplemental proposed rule. No public hearing was requested, and none was held.

Because the original temporary rule has expired, the Coast Guard is issuing this temporary final rule to respond to the dangers associated with Liquefied Natural Gas (LNG) vessels while comments to the SNPRM are considered and the final rule is being prepared.

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a NPRM because the terms in this temporary final rule have already been published for notice and comment in the **Federal Register** in the SNRPM (66 FR 64778) and previous temporary final rule (66 FR 51562) and publishing an additional NPRM, which would incorporate a comment period before a final rule could be issued, would be contrary to the public interest since immediate action is needed to protect the public, ports and waterways of the United States from the dangers associated with the transportation of LNG.

For the reasons cited in the summary, under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

Since early October 2001, the port of Savannah has received LNG tankships at the Southern LNG Elba Island facility. Due to the expiration of the original temporary final rule on March 31, 2002, this new temporary final rule is necessary to protect the safety of life and property on the navigable waters from hazards associated with LNG activities.

The Savannah River has a narrow and restricted channel with many bends. The LNG facility is located at one of these bends on Elba Island. The LNG tankship berth is located adjacent to and parallel with the toe of the shipping channel. Because of these factors, the hazardous nature of LNG and the substantial volume of deep draft vessel traffic in Savannah (approximately 5000 annual transits), the risk of collision or allision involving an LNG tankship must be addressed.

The Elba Island LNG facility has been struck by passing vessels twice in the past 20 years. In both instances the facility was inactive, however, damage to both the facility and vessels was extensive. The potential consequences from this type of allision would be significantly more severe with an LNG tankship moored at the Elba Island dock. This temporary final rule is needed to prevent incidents involving a LNG tankship in transit or while moored at the facility.

Discussion of Comments and Changes

The Coast Guard received twenty-two comment letters addressing the original notice of proposed rulemaking. These comments and our responses can be found in the SNRPM in the **Federal Register** (66 FR 64778) and the previous temporary final rule (66 FR 51562). The Coast Guard incorporated some of the comments and made content changes and other administrative and numbering corrections in the SNPRM published on December 14, 2001.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

We expect the economic impact of this temporary rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. Only an estimated one percent of the annual transits on the Savannah River will be LNG tankships. Further, all LNG transits will be coordinated and scheduled with the pilots and the Coast Guard Captain of the Port to minimize port disruption and delays for other commercial traffic, and LNG tankships. Finally, requests to enter the RNA may be granted on a case-by-case basis by the Coast Guard Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this temporary rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this temporary rule will not have a significant economic impact on a substantial number of small entities because LNG vessels will comprise an estimated one percent of the large commercial vessel transits on the Savannah River. Further, the tug escort requirements of this rule for vessels transiting past a moored LNG vessel will only affect an estimated 12 percent of all large commercial vessel transits on the River. Delays, if any, will be minimal because vessel speeds would be reduced regardless of tug requirements. Delays for inbound and outbound traffic due to LNG transits will be minimized through pre-transit conferences with the pilots and the Coast Guard Captain of the Port. Finally, the RNA requirements are less burdensome for smaller vessels, which are more likely to be small entities, because of the lower risk associated with these vessels.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this temporary rule so that they could better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business and you have questions concerning its provisions or options for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT**. Small businesses may also send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in the preamble.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that might disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard is amending 33 CFR part 165 as follows:

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PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Temporary § 165.T07–037 is added to read as follows:

§ 165.T07–037 Regulated Navigation Area; Savannah River, Georgia.

(a) *Regulated navigation area (RNA).* The Savannah River between Fort Jackson (32°04.93′ N, 081°02.19′ W) and the Savannah River Channel Entrance Sea Buoy is a regulated navigation area.

(b) *Definitions.* The following definitions are used in this section:

Bollard pull is an industry standard used for rating tug capabilities and is the pulling force imparted by the tug to the towline. It means the power that an escort tug can apply to its working line(s) when operating in a direct mode.

Direct mode is a towing technique which, for the purpose of this section, is defined as a method of operation by which a towing vessel generates by thrust alone: towline forces at an angle equal to or nearly equal to the towline, or thrust forces applied directly to the escorted vessel's hull.

Indirect mode is a towing technique which, for the purpose of this section, is defined as a method of operation by which an escorting towing vessel generates towline forces by a combination of thrust and hydrodynamic forces resulting from a presentation of the underwater body of the towing vessel at an oblique angle to the towline. This method increases the resultant bollard pull, thereby arresting and/or controlling the motion of an escorted vessel.

LNG tankship means a vessel as described in Title 46, Code of Federal Regulations, part 154.

Made-up means physically attached by cable, towline, or other secure means in such a way as to be immediately ready to exert force on a vessel being escorted.

Make-up means the act of, or preparations for becoming made-up.

Operator means the person who owns, operates, or is responsible for the operation of a facility or vessel.

Savannah River Channel Entrance Sea Buoy means the aid to navigation labeled R W "T" Mo (A) WHIS on the National Oceanic and Atmospheric Administration's (NOAA) Nautical Chart 11512.

Standby means immediately available, ready, and equipped to conduct operations.

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

(c) *Applicability.* This section applies to all vessels operating within the RNA, including naval and other public vessels, except vessels that are engaged in the following operations:

(1) Law enforcement or search and rescue operations;

(2) Servicing aids to navigation;

(3) Surveying, maintenance, or improvement of waters in the RNA; or

(4) Actively engaged in escort, maneuvering or support duties for the LNG tankship.

(d) *Regulations.* (1) Restrictions on vessel operations while a LNG tankship is underway within the RNA.

(i) Except for a vessel that is moored at a marina, wharf, or pier, and remains moored, no vessel 1600 gross tons or greater is permitted within the RNA without the permission of the Captain of the Port (COTP).

(ii) All vessels under 1600 gross tons shall keep clear of transiting LNG tankships.

(iii) The owner, master, or operator of a vessel carrying liquefied natural gas (LNG) shall:

(A) Comply with the notice requirements of 33 CFR part 160. Updates are encouraged at least 12 hours before arrival at the RNA boundaries. The COTP may delay the vessel's entry into the RNA to accommodate other commercial traffic. LNG tankships are further encouraged to include in their notice a report of the vessel's propulsion and machinery status and any outstanding recommendations or deficiencies identified by the vessel's classification society and, for foreign flag vessels, any outstanding deficiencies identified by the vessel's flag state.

(B) Obtain permission from the COTP before commencing the transit into the RNA.

(C) While transiting, make security broadcasts every 15 minutes as recommended by the U.S. Coast Pilot 4 Atlantic Coast. The person directing the vessel must also notify the COTP telephonically or by radio on channel 13 or 16 when the vessel is at the following locations: Sea Buoy, Savannah Jetties, and Fields Cut.

(D) Not enter or get underway within the RNA if visibility during the transit is not sufficient to safely navigate the channel, and/or wind speed is, or is expected to be, greater than 25 knots.

(E) While transiting the RNA, the LNG tankship shall have sufficient towing vessel escorts.

(2) Requirements for LNG facilities:

(i) The operator of a facility where a LNG tankship is moored shall station and provide a minimum of two escort towing vessels each with a minimum of 100,000 pounds of bollard pull, 4,000 horsepower and capable of safely operating in the indirect mode, to escort transiting vessels 1600 gross tons or greater past the moored LNG tankship.

(ii) In addition to the two towing vessels required by paragraph (d)(2)(i) of this section, the operator of the facility where the LNG tankship is moored shall provide at least one standby towing vessel of sufficient capacity to take appropriate actions in an emergency as directed by the LNG vessel bridge watch.

(3) Requirements for vessel operations while a LNG tankship is moored:

(i) While moored within the RNA, LNG tankships shall maintain a bridge watch of appropriate personnel to monitor vessels passing under escort and to coordinate the actions of the standby towing vessel required in paragraph (d)(2)(ii) of this section in the event of emergency.

(ii) Transiting vessels 1600 gross tons or greater, when passing a moored LNG tankship, shall have a minimum of two towing vessels, each with a minimum capacity of 100,000 pounds of bollard pull, 4,000 horsepower, and the ability to operate safely in the indirect mode, made-up in such a way as to be immediately available to arrest and/or control the motion of an escorted vessel in the event of steering, propulsion or other casualty. While it is anticipated that vessels will utilize the facility provided towing vessel services required in paragraph (d)(2)(i) of this section, this regulation does not preclude escorted vessel operators from providing their own towing vessel escorts, provided they meet the requirements of this part.

(A) Outbound vessels shall be made-up and escorted from Bight Channel Light 46 until the vessel is safely past the LNG dock.

(B) Inbound vessels shall be made-up and escorted from Elba Island Light 37 until the vessel is safely past the LNG dock.

(iii) All vessels of less than 1600 gross tons shall not approach within 70 yards of a LNG tankship.

(e) *LNG Schedule.* The Captain of the Port will issue a Broadcast Notice to Mariners to inform the marine community of scheduled LNG tankship activities during which the restrictions imposed by this section are in effect.

(f) *Waivers.*

(1) The COTP may waive any requirement in this section, if the COTP finds that it is in the best interest of safety or in the interest of national security.

(2) An application for a waiver of these requirements must state the compelling need for the waiver and describe the proposed operation and methods by which adequate levels of safety are to be obtained.

(g) *Enforcement.* Violations of this RNA should be reported to the Captain of the Port, Savannah, at (912) 652–4353. In accordance with the general regulations in § 165.13 of this part, no person may cause or authorize the operation of a vessel in the regulated navigation area contrary to the regulations.

Dated: May 2, 2002.

James S. Carmichael,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 02–11716 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 060–6019a; FRL–7208–4]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve a revision to the West Virginia State Implementation Plan (SIP). The revision was submitted in response to EPA's regulation entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The revision establishes and requires a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2004, as well as requirements for reductions in NO_X emissions from cement manufacturing kilns. The intended effect of this action is to approve West Virginia's NO_X Budget Trading Program because it addresses the requirements of the NO_X SIP Call. On December 26, 2000, EPA made a finding that West Virginia had failed to submit a SIP in response to the NO_X SIP Call, thus starting the 18 and 24 month clocks, respectively, for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP). On May 1, 2002, West Virginia submitted, as a SIP revision, its NO_X Budget Trading Program in response to the NO_X SIP Call. EPA found that SIP submission complete on May 1, 2002, thereby halting the sanctions clocks. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated. EPA is approving this revision in accordance with the requirements of the Clean Air Act.

DATES: This rule is effective on July 9, 2002 without further notice, unless EPA receives adverse written comment by June 10, 2002. If EPA receives such comments, it will publish a timely withdrawal of the direct final rule in the **Federal Register** and inform the public that the rule will not take effect.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103 and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, or by e-mail at *fernandez.cristina@epa.gov*. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call. The revision consists of the adoption of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides. The information in this section of this document is organized as follows:

I. EPA's Action
  A. What Action Is EPA Taking In This Final Rulemaking?
  B. What Are the General NO_X SIP Call Requirements?
  C. What Is EPA's NO_X Budget Trading Program?
  D. What Standards Did EPA Use to Evaluate West Virginia's Submittal?
II. West Virginia's NO_X Budget Trading Program
  A. When Did West Virginia Submit the SIP Revision to EPA in Response to the NO_X SIP Call?
  B. What Is West Virginia's NO_X Budget Program?
  C. What Is the Result of EPA's Evaluation of West Virginia's Program?
III. Final Action
IV. Administrative Requirements

I. EPA's Action

A. What Action Is EPA Taking in This Final Rulemaking?

EPA is taking direct final action to approve the West Virginia NO_X Budget Trading Program submitted as a SIP revision on May 1, 2002. Upon approval of this SIP revision, both the sanctions clocks and EPA's FIP obligation are terminated.

B. What Are the General NO_X SIP Call Requirements?

On October 27, 1998 (63 FR 57356), EPA published a final rule entitled, "Finding of Significant Contribution and Rulemaking for Certain States in the Ozone Transport Assessment Group Region for Purposes of Reducing Regional Transport of Ozone," otherwise known as the "NO_X SIP Call." The NO_X SIP Call requires the District of Columbia and 22 States, including West Virginia, to meet statewide NO_X emission budgets during the five-month period from May 1 through September 30. By meeting these budgets the states will reduce the amount of ground level ozone that is transported across the eastern United States. EPA has previously determined state-wide NO_X emission budgets for each affected jurisdiction to be met by the year 2007. EPA identified NO_X emission reductions, by source category, that could be achieved by using cost-effective measures. The source categories included were electric generating units (EGUs), non-electric generating units (non-EGUs), area sources, nonroad mobile sources and highway sources. However, the NO_X SIP Call allowed states the flexibility to decide which source categories to regulate in order to meet the statewide budgets. In the NO_X SIP Call rule's preamble, EPA suggested that imposing statewide NO_X emissions caps on large fossil-fuel fired industrial boilers and electricity generating units would provide a highly cost effective means for States to meet their NO_X budgets. In fact, the state-specific budgets were set assuming an emission rate of 0.15 pounds NO_X per million British thermal units (lbs NO_X/MMBtu) at EGUs,

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multiplied by the projected heat input (MMBtu) from burning the quantity of fuel needed to meet the 2007 forecast for electricity demand. See 63 FR 57407, October 27, 1998. The calculation of the 2007 EGU emissions assumed that an emissions trading program would be part of an EGU control program. The NO_X SIP Call state budgets also assumed, on average, a 30 percent NO_X reduction from cement kilns, a 60 percent reduction from industrial boilers and combustion turbines, and a 90 percent reduction from internal combustion engines. The non-EGU control assumptions were applied at units where the heat input capacities were greater than 250 MMBtu per hour, or in cases where heat input data were not available or appropriate, at units with actual emissions greater than one ton per day.

To assist the states in their efforts to meet the SIP Call, the NO_X SIP Call final rule included a model NO_X allowance trading regulation, called "NO_X Budget Trading Program for State Implementation Plans" (40 CFR part 96), that could be used by states to develop their regulations. The NO_X SIP Call rulemaking explained that if states developed an allowance trading regulation consistent with the EPA model rule, they could participate in a regional allowance trading program that would be administered by EPA. See 63 FR 57458–57459, October 27, 1998.

EPA conducted several comment periods on various aspects of the NO_X SIP Call emissions inventories. On March 2, 2000 (65 FR 11222), EPA published additional technical amendments to the NO_X SIP Call. The March 2, 2000 final rulemaking established the inventories upon which West Virginia's final budget is based.

A number of parties, including certain states as well as industry and labor groups, challenged the October 27, 1998 (63 FR 57356) NO_X SIP Call Rule. On March 3, 2000, the D.C. Circuit issued its decision on the NO_X SIP Call ruling in favor of EPA on all of the major issues. *Michigan* v. *EPA*, 213 F.3d 663 (D.C. Cir. 2000). However, the Court remanded certain matters for further rulemaking by EPA. EPA recently published a final notice that addresses one of the remanded issues and expects to publish this year another final notice that addresses the remaining remanded issues. Any additional emissions reductions required as a result of the final rulemaking will be reflected in the second phase portion (Phase II) of the NO_X SIP Call rule. West Virginia will be required to submit SIP revisions to address the Phase II of the NO_X SIP Call Rule.

C. What Is EPA's NO_X Budget Trading Program?

EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, sets forth a NO_X emissions trading program for large EGUs and non-EGUs. A state can voluntarily choose to adopt EPA's model rule in order to allow sources within its borders to participate in regional allowance trading. The October 27, 1998 final rulemaking contains a full description of the EPA's model NO_X budget trading program. See 63 FR 57514–57538 and 40 CFR part 96. In general, air emissions trading uses market forces to reduce the overall cost of compliance for pollution sources, such as power plants, while maintaining emission reductions and environmental benefits. One type of market-based program is an emissions budget and allowance trading program, commonly referred to as a "cap and trade" program.

In a cap and trade program, the state or EPA sets a regulatory limit, or emissions budget, of mass emissions from a specific group of sources. The budget limits the total number of allocated allowances during a particular control period. When the budget is set at a level lower than the current emissions, the effect is to reduce the total amount of emissions during the control period. After setting the budget, the state or EPA then assigns, or allocates, allowances to the participating entities up to the level of the budget. Each allowance authorizes the emission of a quantity of pollutant, e.g., one ton of airborne NO_X. At the end of the control period, each source must demonstrate that its actual emissions during the control period were less than or equal to the number of available allowances it holds. Sources that reduce their emissions below their allocated allowance level may sell their extra allowances. Sources that emit more than the amount of their allocated allowance level may buy allowances from the sources with extra reductions. In this way, the budget is met in the most cost-effective manner.

D. What Standards Did EPA Use To Evaluate West Virginia's Submittal?

The final NO_X SIP Call rule included a model NO_X budget trading program regulation at 40 CFR part 96. EPA used the model rule and 40 CFR 51.121 and 51.122 to evaluate West Virginia's NO_X Budget Trading Program.

II. West Virginia's NO_X Budget Trading Program

A. When Did West Virginia Submit the SIP Revision to EPA in Response to the NO_X SIP Call?

On May 1, 2002, the West Virginia Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call.

B. What Is West Virginia's NO_X Budget Program?

West Virginia's SIP revision to address the requirements of the NO_X SIP Call consists of the adoption and submittal of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides.

Rule 45CSR26 establishes and requires a NO_X allowance trading program for large electric generating units. The sections of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units which comprise West Virginia's SIP revision are as follows: sections 45–26–1 through 45–26–7, General Provisions; sections 45–26–10 through 45–26–14, NO_X Authorized Account Representative; sections 45–26–20 through 45–26–24, Permits; sections 45–26–30 through 45–26–31, Compliance Certifications; sections 45–26–40 through 45–26–43, NO_X Allowance Allocations; sections 45–26–50 through 45–26–57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45–26–60 through 45–26–62, NO_X Allowance Transfers; and sections 45–26–70 through 45–26–76, Monitoring, Recordkeeping and Reporting Requirements.

Rule 45CSR1 establishes and requires a NO_X allowance trading program for large non-electric generating units and reductions of NO_X emissions from cement manufacturing kilns. The sections of Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides which comprise West Virginia's SIP revision are as follows: sections 45–1–1 through 45–1–7, General Provisions; sections 45–1–10 through 45–1–14, NO_X Authorized Account Representative; sections 45–1–20 through 45–1–24, Permits; sections 45–1–30 through 45–1–31, Compliance Certifications; sections 45–1–40 through 45–1–43, NO_X Allowance Allocations; sections 45–1–50 through 45–1–57, Accounting Process for Deposit, Use and Transfer of Allowances; sections 45–1–60 through 45–1–62, NO_X Allowance Transfers; sections 45–1–70 through 45–1–76, Monitoring, Recordkeeping and Reporting Requirements; sections 45–1–80 through 45–1–88, Opt-In Requirements; section 45–1–100, Requirements for Emissions of NO_X from Cement Manufacturing Kilns.

Rule 45CSR26 and Rule 45CSR1 establish a NO_X cap and allowance trading program with a budget of 29,043 tons of NO_X for the ozone seasons of 2004 and beyond. The NO_X budgets for large electric generating units and large non-electric generating units are 26,859 and 2,184 tons of NO_X per ozone season, respectively. Cement manufacturing kilns are not part of the trading program. West Virginia voluntarily chose to follow EPA's model NO_X budget and allowance trading rule, 40 CFR part 96, that sets forth a NO_X emissions trading program for large EGUs and non-EGUs. Because West Virginia's NO_X Budget Trading Program is based upon EPA's model rule, West Virginia sources are allowed to participate in the interstate NO_X allowance trading program that EPA will administer for the participating states. West Virginia has adopted regulations that are substantively identical to 40 CFR part 96. Therefore, pursuant to 40 CFR 51.121(p)(1), West Virginia's SIP revision is automatically approved as satisfying its portion of NO_X emission reductions.

Under the NO_X Budget Trading Program, West Virginia allocates NO_X allowances to the EGUs and non-EGUs units that are affected by these requirements. The NO_X trading program generally applies to fossil fuel fired EGUs with a nameplate capacity equal to or greater than 25 MW that sell any amount of electricity as well as to non-EGUs that have a heat input capacity equal to or greater than 250 MMBtu per hour. Each NO_X allowance permits a unit to emit one ton of NO_X during the seasonal control period. NO_X allowances may be bought or sold. Unused NO_X allowances may also be banked for future use, with certain limitations. Owners will monitor their unit's NO_X emissions by using systems that meet the requirements of 40 CFR part 75, subpart H and will report resulting data to EPA electronically. Each budget unit complies with the program by demonstrating at the end of each control period that actual emissions do not exceed the amount of allowances held for that period. However, regardless of the number of allowances a unit holds, it cannot emit at levels that would violate other federal or state limits, for example, reasonably available control technology (RACT), new source performance standards, or title IV (the Federal Acid Rain program).

C. What Is the Result of EPA's Evaluation of West Virginia's Program?

EPA has evaluated West Virginia's May 1, 2002 SIP submittal and finds it approvable. The West Virginia NO_X Budget Trading Program is consistent with EPA's guidance and addresses the requirements of the NO_X SIP Call. EPA finds the NO_X control measures in West Virginia's NO_X Budget Trading Program and for the cement manufacturing kilns approvable. The May 1, 2002 submittal will strengthen West Virginia's SIP for reducing ground level ozone by providing NO_X reductions beginning in 2004.

West Virginia's SIP revision does not establish requirements for stationary internal combustion engines. West Virginia will be required to submit SIP revisions to address any additional emission reductions required to meet the State's overall emissions budget. In addition, West Virginia's submittal does not rely on any additional reductions beyond the anticipated federal measures in the mobile and area source categories.

On December 26, 2000 (65 FR 81366), EPA made a finding that West Virginia had failed to submit a SIP response to the NO_X SIP Call, thus starting 18 and 24 month clocks for the mandatory imposition of sanctions and the obligation for EPA to promulgate a Federal Implementation Plan (FIP) within 24 months. The effective date of that finding was January 25, 2001. On May 1, 2002, West Virginia submitted a SIP revision to satisfy the NO_X SIP Call. EPA found that SIP submission complete on May 1, 2002, thus, halting the sanctions clocks and terminating EPA's FIP obligation.

III. Final Action

EPA is approving West Virginia's Rules 45CSR45 and 45CSR1, submitted as a SIP revision on May 1, 2002. EPA finds that West Virginia's NO_X Budget Trading Program and the requirements for the cement manufacturing kilns are fully approvable because they satisfy the requirements of the NO_X SIP Call. Approval of this SIP revision fully terminates both the sanctions clocks and EPA's FIP obligation which officially started on January 25, 2001, the effective date of EPA's December 26, 2000 finding (FR 65 81366).

EPA is publishing this rule without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comment. However, in the "Proposed Rules" section of today's **Federal Register**, EPA is publishing a separate document that will serve as the proposal to approve the SIP revision if adverse comments are filed. This rule will be effective on July 9, 2002 without further notice unless EPA receives adverse comment by June 10, 2002. If EPA receives adverse comment, EPA will publish a timely withdrawal in the **Federal Register** informing the public that the rule will not take effect. EPA will address all public comments in a subsequent final rule based on the proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting must do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

IV. Administrative Requirements

A. General Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This

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action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

B. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

C. Petitions for Judicial Review

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 9, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action approving West Virginia NO_X Budget Trading Program as satisfying the NO_X SIP Call may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart XX—West Virginia

2. Section 52.2520 is amended by adding paragraphs (c)(46) to read as follows:

§ 52.2520 Identification of plan.

* * * * *

(c) * * *

(46) Revisions to the West Virginia Rules 45CSR26 and 45CSR1 submitted on May 1, 2002 by the West Virginia Department of Environmental Protection:

(i) Incorporation by reference.

(A) Letter of May 1, 2002 from the Secretary of the West Virginia Department of Environmental Protection transmitting rules 45CSR26 and 45CSR1 to implement West Virginia's NO_X Budget Trading Program and requirements for reductions in NO_X emissions from cement manufacturing kilns.

(B) West Virginia Rule Title 45 Series 26, "Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units," consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, and 76 effective May 1, 2002.

(C) West Virginia Rule Title 45 Series 1, "Nitrogen Oxides Budget Trading Program as a Means of Control and Reduction of Nitrogen Oxides," consisting of sections 1, 2, 3, 4, 5, 6, 7, 10, 11, 12, 13, 14, 20, 21, 22, 23, 24, 30, 31, 40, 41, 42, 43, 50, 51, 52, 53, 54, 55, 56, 57, 60, 61, 62, 70, 71, 72, 73, 74, 75, 76, 80, 81, 82, 83, 84, 85, 86, 87, 88, and 100, effective May 1, 2002.

(ii) Additional Material—Other materials submitted by the State of West Virginia in support of and pertaining to Rules 45CSR26 and 45CSR1 listed in paragraphs (c)(46)(i)(B) and (C) of this section.

[FR Doc. 02–11722 Filed 5–9–02; 8:45 am]
BILLING CODE 6560–50–P

Proposed Rules

Federal Register
Vol. 67, No. 91
Friday, May 10, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NE–33–AD]

RIN 2120–AA64

Airworthiness Directives; Turbomeca Artouste III Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Federal Aviation Administration (FAA) proposes to supersede an existing airworthiness directive (AD), applicable to Turbomeca Artouste III series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0 installed. That AD currently requires smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. That AD was prompted by reports of cracked injection wheels. This proposal would, in addition to the requirements in the existing AD, require the smoke emissions to be checked after the last flight of the day as opposed to after every flight as required by the original AD. This proposal would also require inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. This proposal would also require the removal of injection wheels at a new lower life limit. This proposal is prompted by reports and analyses of in-flight shutdowns (IFSD's) occurring since the issuance of AD 2000–06–12. The actions specified by the proposed AD are intended to prevent injection wheel cracks and excessive central labyrinth wear, which could result in an IFSD.

DATES: Comments must be received by July 9, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location, by appointment, between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays. Comments may also be sent via the Internet using the following address: *9-ane-adcomment@faa.gov*. Comments sent via the Internet must contain the docket number in the subject line. The service information referenced in the proposed rule may be obtained from Turbomeca, 40220 Tarnos, France; telephone +33 05 59 64 40 00, fax +33 05 59 64 60 80. This information may be examined, by appointment, at the FAA, New England Region, Office of the Regional Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Glorianne Niebuhr, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (781) 238–7132, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 99–NE–33–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRM's

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 99–NE–33–AD, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On March 21, 2000, the Federal Aviation Administration (FAA) issued airworthiness directive (AD) 2000–06–12, Amendment 39–11653 (65 FR 19300, April 11, 2000), to require smoke emission checks after every ground engine shutdown. If smoke is detected, that AD requires inspecting for fuel flow. If fuel flow is not detected, the engine may have injection wheel cracks, which requires removing the engine from service for repair. If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which requires removing the electric fuel cock from service and replacing with a serviceable part. The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Turbomeca Artouste III B–B1–D series turboshaft engines. The DGAC advises that cracks have been reported on the rear face of the injection wheels, which can lead to fuel leakage into the turbine shaft tube during operation. When the engine is shut down, fuel flows into the combustion chamber, which could result in a slight increase of rundown time and/or emission of smoke through the exhaust pipe, the air intake, or the turbine casing drain after the rotating assembly has stopped. This condition

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may be caused by the thermal stresses to which the injection wheel is subjected or a malfunctioning electric fuel cock. These conditions, if not corrected, could result in injection wheel cracks, which could result in an IFSD.

Since AD 2000–06–12 was issued, further analyses of the IFSD that prompted that AD, and a subsequent IFSD have concluded that the root cause of those IFSD's was excessive wear of the central labyrinth. The injection wheel crack could still cause an IFSD but the labyrinth had caused the IFSD, that prompted this proposed AD. The wear or deterioration of the bronze lips of the central labyrinth may result in overheating and damage through creeping of the turbine shaft and lead to an uncommanded engine shutdown. Therefore, this proposal would require smoke emission checks, inspection of central labyrinth, and removal of injection wheel at a new lower life limit.

Manufacturer's Service Information

Turbomeca has issued Artouste III Service Bulletin (SB) No A218 72 0099, Update 1, dated June 6, 2001, that specifies procedures for smoke emission checks, and fuel flow inspections if smoke is detected. Turbomeca has also issued Artouste III SB No. A218 72 0100, Update 1, dated March 13, 2001, that specifies procedures for inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary. The DGAC classified these SB's as mandatory and issued AD 2001–235(A) in order to assure the airworthiness of these Turbomeca Artouste III series engines in France.

Differences Between This AD and the Manufacturer's Service Information

Although the manufacturer calls for a check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown and after every engine shutdown, this proposal will require the same check, except after the last flight of the day. Also, although the manufacturer calls for inspection of the central labyrinth based on several cycle/hours ratios, within certain hours or months from the published date of the SB, this proposal will require inspection using the same criteria, except from the effective date of this AD.

Bilateral Agreement Information

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Proposed Requirements of This AD

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca Artouste III series turboshaft engines of the same type design that are used on helicopters registered in the United States, the proposed AD would require:

- Smoke emission checks after each last flight of the day.
- If smoke is detected, then inspection for fuel flow.
- If fuel flow is not detected, the engine may have injection wheel cracks, which would require removing the engine from service for repair.
- If fuel flow is detected, the engine may have a malfunctioning electric fuel cock, which would require removing the electric fuel cock from service and replacing with a serviceable part.
- Inspection of central labyrinths not previously inspected or not replaced after the engine logged 1,500 operating hours, and, replacement if necessary.
- Removal of injection wheel part number 0.218.27.713.0 at a new lower life limit.

The actions would be required to be done in accordance with the service bulletins described previously.

Economic Analysis

There are approximately 2,279 engines of the affected design in the worldwide fleet. The FAA estimates that 184 engines installed on helicopters of U.S. registry would be affected by this AD, that it would take approximately one work hour per engine to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $3,500 per engine. Based on these figures, the total cost of the proposed AD on U.S. operators is estimated to be $655,040.

Regulatory Analysis

This proposed rule does not have federalism implications, as defined in Executive Order 13132, because it would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the FAA has not consulted with State authorities prior to publication of this proposed rule.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–11653, (65 FR 19300, April 11, 2000), and by adding a new airworthiness directive:

Turbomeca: Docket No. 99–NE–33–AD. Supersedes AD 2000–06–12, Amendment 39–11653.

Applicability

This airworthiness directive (AD) is applicable to Turbomeca Artouste III B–B1–D series turboshaft engines with injection wheels part numbers (P/N's) 218.25.700.0, 218.25.704.0, 243.25.709.0, 243.25.713.0, 0.218.27.705.0, 0.218.27.709.0, and 0.218.27.713.0. These engines are installed on, but not limited to Eurocopter SA 315 LAMA and SA 316 Alouette III helicopters.

Note 1: This AD applies to each engine identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For engines that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance

Compliance with this AD is required as indicated, unless already done.

To prevent injection wheel cracks and excessive central labyrinth wear, which could result in an in-flight shutdown (IFSD), do the following:

Smoke Check

(a) Do the following in accordance with Turbomeca Artouste III Service Bulletin (SB) No. 218 72 0099, Update 1, dated June 6, 2001:

(1) After the last flight of every day, check for smoke emission through the exhaust pipe, air intake, or turbine casing drain during rundown.

(2) If smoke is detected, inspect for fuel flow in accordance with paragraph 2.B.(1) and 2.B.(2) of the SB.

(i) If fuel flow is not detected, remove the engine from service and replace with a serviceable engine before further flight.

(ii) If fuel flow is detected, remove the electric fuel cock from service and replace with a serviceable part in accordance with section 2.B.(4) and 2.B.(5) of the referenced SB.

(iii) Before entry into service, perform an engine ground run and check the fuel system again for smoke emission through the exhaust pipe, air intake, or turbine casing drain during engine rundown and after shutdown. If smoke emission still remains after replacement of the electric fuel cock, before further flight, remove the engine from service and replace with a serviceable engine.

Central Labyrinth Inspection

(b) If the central labyrinth has not been inspected or replaced since engine accumulation of 1,500 flight hours (FH) or more time-since-new (TSN) or time-since-last-overhaul (TSO), perform the checks and inspections, and replace if necessary the central labyrinth, in accordance with paragraph 2 of the Instructions of Turbomeca Artouste III SB No. 218 72 0100, Update 1, dated March 13, 2001 and the following Table 1:

TABLE 1.—INSPECTION SCHEDULE

For engine hours TSN, or TSO that are:	And cycles/FH ratio is:	Then inspect central labyrinth:
(1) More than 1,500 but fewer than 2,000	(i) Above 2 cycles	Within 250 FH time-in-service (TIS) after the effective date of this AD.
	(ii) Below or equal to 2 cycles	Within 500 FH TIS after the effective date of this AD.
(2) 2,000 or more	Not applicable	Within 50 FH TIS or 6 months after the effective date of this AD, whichever occurs first.

Injection Wheel New Life Limits

(c) Injection wheels are now life-limited to no more than 3,000 FH TSN or TSO, or 6,000 cycles-since-new (CSN) or cycles-since overhaul (CSO), whichever occurs first. Replace injection wheels that are over the life limits, before further flight, and replace all other injection wheels before reaching the new life limits.

(d) Do not install any injection wheels that have accumulated 3,000 FH TIS or TSO, or 6,000 CSN or CSO onto any engine.

(e) For the purpose of this AD, a serviceable engine is defined as an engine that does not exhibit smoke emission.

Alternative Methods of Compliance

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office (ECO). Operators must submit their request through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, ECO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the ECO.

Special Flight Permits

(g) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the helicopter to a location where the requirements of this AD can be done.

Note 3: The subject of this AD is addressed in Direction Generale de L'Aviation Civile airworthiness directive 2001–235(A).

Issued in Burlington, Massachusetts, on May 2, 2002.

Diane S. Romanosky,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 02–11667 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 358

[Docket No. 02N–0058]

RIN 0910–AA01

Pediculicide Drug Products for Over-the-Counter Human Use; Proposed Amendment of Final Monograph

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the final monograph for over-the-counter (OTC) pediculicide drug products to revise labeling for the statement of identity, warnings, directions, and other required statements. Pediculicide drug products are used for the treatment of head, pubic (crab), and body lice. This proposal is part of FDA's ongoing review of OTC drug products.

DATES: Submit written or electronic comments by August 8, 2002; written comments on the agency's economic impact determination by August 8, 2002. See section VIII for the effective and compliance dates of any final rule that may publish based on this proposal.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Michael T. Benson, Center for Drug Evaluation and Research (HFD–560), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–2222.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of December 14, 1993 (58 FR 65452), the agency published a final rule in the form of a final monograph in part 358 (21 CFR part 358, subpart G) establishing conditions under which OTC pediculicide drug products are generally recognized as safe and effective. The effective date of the final rule was December 14, 1994. Since that time, the agency has determined that labeling in the statement of identity, warnings, directions, and certain other required statements in the pediculicide monograph should be amended to

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increase the probability of treatment success with these products.

In the **Federal Register** of March 17, 1999 (64 FR 13254), the agency published a final rule for standardized format and content requirements for OTC drug product labeling in § 201.66 (21 CFR 201.66). In that same final rule (64 FR 13254 at 13296), the agency amended the final monograph for OTC pediculicide drug products and removed the requirement in § 358.650(d)(1) that the direction "Important: Read warnings before using" be printed in all capital letters. The sentence now needs only to appear in boldface type with only the first letter in the word "Important" and the word "Read" capitalized.

II. The Agency's Proposal

A. Introduction

The agency is proposing to revise the statement of identity, warnings, directions, and certain other required statements in the monograph for OTC pediculicide drug products for two reasons: (1) To be in conformance with the new labeling format in § 201.66, and (2) to increase the probability of treatment success based on some of the new information being added to the monograph. The agency is also revising the indications section to the new labeling format in § 201.66.

Several reports have emphasized the importance of combing and environmental control for treatment success and for prevention of reinfestation (Refs. 1 through 5). In 1998, Bainbridge et al. (Ref. 6) reported high clinical efficacy (79/79 treatment successes, defined as no live lice and no nits within 0.25 inches of the scalp, after a second treatment using pyrethrum extract with piperonyl butoxide on day 14 of pediculicide treatment). In the study, the hair was saturated with the pediculicide according to label directions and was thoroughly combed to remove lice and nits. Parents and guardians were provided with instructions regarding treatment of personal contacts and family members of cases, as well as instructed on proper cleaning of the home. Family members were provided with a marketed pediculicide shampoo to use at home to prevent reinfestation of the affected patients if they declined to participate in the study.

Other authors state that thorough combing is necessary to remove lice and eggs that the pediculicide does not kill (Refs. 1, 2, and 5). Because lice removed from the human host can survive up to 2 days and nits can survive away from the host for up to 10 days (Ref. 3), the agency believes that additional information about careful disposal of lice and nits combed out of the hair is very important and useful to consumers.

Other information can also enhance the effectiveness of combing. Lice and nits are small and hard to see; thus, good lighting is essential and magnification is recommended (Refs. 4 and 5). Before hatching, nits are small, whitish-yellow ovals that are found close to the scalp, cemented firmly to the hair shaft (Ref. 4). Nits hatch within 7 to 10 days. Once hatched, the empty, white nit case remains glued to the hair. When searching the hair, other small white objects may be easily seen. If these objects are displaced easily from the hair, they are not nits and are most likely dandruff (Refs. 1, 3, and 4).

Lice are transmitted by actual contact with infested persons, bedding materials, or articles of clothing (Refs. 2 through 5). To prevent reinfestation, environmental measures need to be taken as indicated in § 358.650(c) of the monograph. Clothing, linens, and towels need to be washed in hot water and dried in a hot dryer for at least 20 minutes. Vacuuming of rugs, carpets, upholstered furniture, and car seats is also recommended. Anything that cannot be laundered or vacuumed should be sealed in a plastic bag for 4 weeks. Personal combs and brushes may be disinfected by soaking in hot water (above 54 °C (130 °F)) for 5 to 10 minutes. As discussed above, the agency believes that it is necessary to inspect and treat family members and personal contacts and to clean or dispose of fomites[1] properly (Refs. 3, 4, and 5). These ancillary measures contributed to the high treatment success rate in the Bainbridge study (Ref. 6). The agency believes that using plain language in informing consumers about the reasons for label recommendations would improve compliance.

A second treatment after 7 to 10 days is essential because the first treatment: (1) May not kill all of the lice, (2) does not have any effect on nits within the first 4 days after the eggs have been laid because the nervous system has not yet developed in the louse embryo (Refs. 1, 4, and 5), and (3) has no residual lice-killing effect after the product is washed out of hair.

B. The Agency's Specific Recommendations

The current monograph statement of identity in § 358.650(a) provides for "pediculicide (lice treatment)" or "lice treatment." Because the term "pediculicide" is extra wording that is not needed, the agency is proposing to remove it and to limit the statement of identity to "lice treatment."

The agency is proposing to convert the labeling in § 358.650(c)(1), (c)(2), and (c)(3) to the format required in § 201.66(c), using the subheadings "Do not use," "Ask a doctor before use if you have," "When using this product," and "Stop use and ask a doctor if." The proposed labeling includes bullets in accord with § 201.66(d)(4). The agency is deleting § 358.650(c)(4) because that section is currently addressed by § 330.1(i)(23) (21 CFR 330.1(i)(23)).

The agency is revising the warning statement "Use with caution on persons allergic to ragweed" in § 358.650(c)(1) to read: "Ask a doctor before use if you are [bullet] allergic to ragweed. May cause breathing difficulty or an asthmatic attack." This warning would appear in new § 358.650(c)(3).

The current warnings in § 358.650(c)(2) state in part:

* * * Do not use near the eyes or permit contact with mucous membranes, such as inside the nose, mouth, or vagina, as irritation may occur. Keep out of eyes when rinsing hair. Adults and children: Close eyes tightly and do not open eyes until product is rinsed out. Also, protect children's eyes with washcloth, towel or other suitable material, or by a similar method. * * *

The agency is shortening these warning statements by deleting: (1) "* * * or permit contact with mucous membranes, such as * * *" and "* * * as irritation may occur" from the first sentence, (2) "Adults and children:" from the third sentence, and (3) "Also," "children's" and "or other suitable material, or by a similar method" from the fourth sentence. The revised warnings appear under the subheadings "Do not use" (new § 358.650(c)(2)) or "When using this product" (new § 358.650(c)(4)), as follows: "Do not use [bullet] near eyes [bullet] inside nose, mouth, or vagina" and "When using this product [bullet] keep eyes tightly closed and protect eyes with a washcloth or towel [bullet] if product gets in eyes, flush with water right away [bullet] scalp itching or redness may occur."

The agency is making two minor changes in the last warning statement in current § 358.650(c)(2) that states "If product gets into the eyes, immediately flush with water." The agency is substituting "in" for "into" and "right away" for "immediately," and moving "right away" to the end of the warning.

The current warnings in § 358.650(c)(3) state "If skin irritation or infection is present or develops, discontinue use and consult a doctor. Consult a doctor if infestation of eyebrows or eyelashes occurs." The agency is revising the first sentence and placing it in new § 358.650(c)(5) to read: "Stop use and ask a doctor if [bullet] skin or scalp irritation continues or infection occurs." The agency is moving the second sentence to under the "Do not use" subheading in new § 358.650(c)(2) to read "[bullet] on lice in eyebrows or eyelashes. See a doctor."

Table 1 shows how, using the format in § 201.66(c)(5), the agency is revising the warnings in § 358.650(c) of the final monograph in this proposed amendment.

[1] Items such as a book, wooden object, or clothing that is not in itself harmful, but is able to harbor lice or nits and thus may serve as an agent of transmission of an infestation.

TABLE 1.—REVISION OF FINAL MONOGRAPH WARNINGS TO NEW FORMAT

Pediculicide Final Monograph	Proposed Amendment to Monograph
For external use only.	For external use only.[2]
Do not use near the eyes or permit contact with mucous membranes, such as inside the nose, mouth, or vagina, as irritation may occur. Consult a doctor if infestation of eyebrows or eyelashes occurs.	Do not use • near eyes • inside nose, mouth, or vagina • on lice in eyebrows or eyelashes. See a doctor.
Use with caution on persons allergic to ragweed.	Ask a doctor before use if you are • allergic to ragweed. May cause breathing difficulty or an asthmatic attack.
Keep out of eyes when rinsing hair. Adults and children: Close eyes tightly and do not open eyes until product is rinsed out. Also, protect children's eyes with washcloth, towel or other suitable material, or by a similar method. If product gets into the eyes, immediately flush with water.	When using this product • keep eyes tightly closed and protect eyes with a washcloth or towel • if product gets in eyes, flush with water right away • scalp itching or redness may occur
If skin irritation or infection is present or develops, discontinue use and consult a doctor.	Stop use and ask a doctor if • breathing difficulty occurs • eye irritation occurs • skin or scalp irritation continues or infection occurs

[2] In bold type on the line immediately following the line for the Warnings heading. See § 201.66(c)(5)(i) and (d)(6) of this chapter.

The agency is amending the "Directions" in § 358.650(d) to provide greater detail. The directions for all products would include directions for adults and children 2 years and over and direct consumers to ask a doctor for children under 2 years. The directions would include new captions entitled "Treat" and "Remove lice and their eggs (nits)" and information to see a doctor for other treatments if infestation continues. The directions for head lice treatment products would also include a new caption entitled "Inspect." The proposed labeling includes bullets in accord with § 201.66(d)(4).

The current direction in § 358.650(d)(1) reads: "*For all products.* 'Important: Read warnings before using.' [statement in boldface type]." The agency is revising this direction by changing "using" to "use," and requiring this statement to appear first. This statement appears in new § 358.650(d)(1).

The agency is adding a heading in new § 358.650(d)(2) that states: "adults and children 2 years and over:" [in bold type]. The agency has a safety concern that there may be a greater likelihood of percutaneous absorption of topically applied pediculicide drug products by children under 2 years of age.

The agency is adding new § 358.650(d)(3) for head lice treatment products. This new section adds the following statements: "Inspect [bullet] check each household member with a magnifying glass in bright light for lice/nits (eggs) [bullet] look for tiny nits near scalp, beginning at back of neck and behind ears [bullet] examine small sections of hair at a time [bullet] unlike dandruff which moves when touched, nits stick to the hair [bullet] if either lice or nits are found, treat with this product".

The agency is moving the information currently in § 358.650(d)(2) and (d)(3) to new § 358.650(d)(4) for manufacturers to select the directions for either shampoo or nonshampoo products. The agency is revising some of the text in the new paragraph and adding the phrases "for head lice, first apply behind ears and to back of neck," "use warm water to form a lather, shampoo, then thoroughly rinse" for shampoo products; "wash area thoroughly with warm water and soap or shampoo" for nonshampoo products; and "for head lice, towel dry hair and comb out tangles" for both types of products.

The agency is adding new "Remove lice and their eggs (nits)" information for all products in § 358.650(d)(5). This new information adds the following statements:

[bullet] use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). [bullet] hair should remain slightly damp while removing nits [bullet] if hair dries during combing, dampen slightly with water [bullet] for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. [bullet] lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. [bullet] pin back each strand of hair after combing [bullet] clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. [bullet] after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. [bullet] check daily for any lice/nits that you missed.

The agency is proposing new § 358.650(d)(6) and (d)(7) as follows: "[bullet] a second treatment must be done in 7 to 10 days to kill any newly hatched lice [bullet] if infestation continues, see a doctor for other treatments". Paragraph (d)(6) incorporates information in existing § 358.650(d)(2) and (d)(3).

Table 2 shows how the agency is revising the directions in § 358.650(d) of the final monograph in this proposed amendment.

TABLE 2.—REVISION OF FINAL MONOGRAPH DIRECTIONS TO NEW FORMAT

Pediculicide Final Monograph	Proposed Amendment to Monograph
Important: Read warnings before using.	• Important: Read warnings before use. • adults and children 2 years and over:
	Inspect • check each household member with a magnifying glass in bright light for lice/nits • look for tiny nits near scalp, beginning at back of neck behind ears • examine small sections of hair at a time • unlike dandruff which moves when touched, nits stick to the hair • if either lice or nits (eggs) are found, treat with this product
Apply to affected area until all the hair is thoroughly wet with product.	Treat • apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck.
Allow product to remain on area for 10 minutes but no longer.	• allow product to remain for 10 minutes, but no longer
Add sufficient warm water to form a lather and shampoo as usual. Rinse thoroughly.	• use warm water to form a lather, shampoo, then thoroughly rinse[3]
Wash area thoroughly with warm water and soap or shampoo.	• wash area thoroughly with warm water and soap or shampoo[4] • for head lice, towel dry hair and comb out tangles[5]
A fine-toothed comb or a special lice/nit removing comb may be used to help remove dead lice or their eggs (nits) from hair.	Remove lice and their eggs (nits) • use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). • hair should remain slightly damp while removing nits • if hair dries during combing, dampen slightly with water • for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. • lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. • pin back each strand of hair after combing • clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. • after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. • check daily for any lice/nits that you missed
A second treatment must be done in 7 to 10 days to kill any newly hatched lice.	• a second treatment must be done in 7 to 10 days to kill any newly hatched lice • if infestation continues, see a doctor for other treatments • children under 2 years: ask a doctor.

[3] For shampoo products only.
[4] For nonshampoo products only.
[5] For shampoo and nonshampoo products.

Current § 358.650(e) describes "other required statements" for these products. The agency is proposing that those statements now appear under the heading "Other information," in accord with § 201.66(c)(7), and that this information may appear in a package insert. If a package insert is used, the "Other information" section shall include a statement referring to the package insert for additional information. The agency is retaining the current section titles "Head lice," "Pubic (crab) lice," and "Body lice" but requiring that they appear in bold type. The agency is restating the text using the bullet format. In the "Head lice" section, the agency is changing from 2 to 4 weeks the time for dry-cleaning or sealing in a plastic bag items that cannot be washed. The expanded time is being proposed for greater assurance of preventing reinfestation of the same items. In the same section, the agency is adding the statement "[bullet] vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people".

III. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). Under the Regulatory Flexibility Act, if a rule has a significant impact on a substantial number of small entities, an agency must analyze regulatory options that would minimize any significant impact of the rule on small entities. Section 202(a) of the Unfunded Mandates Reform Act of 1995 requires that agencies prepare a written statement of anticipated costs and benefits before proposing any rule that may result in an expenditure in any one year by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million (adjusted annually for inflation).

The agency believes that this proposed rule is consistent with the principles set out in Executive Order 12866 and in these two statutes. In accordance with the Executive order, FDA has analyzed the potential economic effects of this proposed rule. FDA has determined, as discussed below, that the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Unfunded Mandates Reform Act does not require FDA to prepare a statement of costs and benefits for this proposed rule, because the proposed rule is not expected to result in any 1-year expenditure that would exceed $100 million adjusted for inflation. The current inflation adjusted statutory threshold is about $110 million.

The purpose of this proposed rule is to revise and improve the statement of identity, warnings, directions, and other required labeling statements for OTC pediculicide drug products. The revised labeling provides more detailed information on the proper use of the product and should improve consumers' self-use.

The proposed rule would require relabeling of OTC pediculicide drug products containing pyrethrum extract with piperonyl butoxide. The agency's drug listing system identifies about 23 manufacturers and 36 marketers of approximately 75 stockkeeping units (SKU) (individual products, packages, and sizes) of OTC pediculicide drug products. There may be a few additional marketers and products that are not identified in the sources FDA reviewed.

The agency does not believe that manufacturers would need to increase the package size to add the additional labeling information. Almost all of these products are marketed in an outer carton and should have adequate space for the additional information. Assuming that there are about 75 affected OTC SKUs in the marketplace, FDA estimates (based on information provided by OTC drug manufacturers) that the rule would impose total one-time compliance costs on industry for relabeling of about $3,000 to $4,000 per SKU, for a total cost of $225,000 to $300,000.

The agency believes the actual cost could be lower for several reasons. First, most of the labeling changes will be made by private label small manufacturers that tend to use simpler and less expensive labeling.

Second, the compliance dates for labeling OTC pediculicide drug products in the new standardized format required by § 201.66 are May 16, 2002, and May 16, 2003 (if annual sales of the product are less than $25,000). (See the **Federal Register** of June 20, 2000 (65 FR 38191 at 38193).) This proposal alerts manufacturers of these products that additional labeling revisions will be required in the future. Thus, manufacturers should be able to control the amount of labeling in inventory. In addition, the agency is proposing that any final rule that may issue based on this proposal become effective 18 months after its publication (with a compliance date of 24 months after publication for products with annual sales less than $25,000). Thus, manufacturers should have ample time to use up the first batch of new labeling that complies with § 201.66, and the labeling changes that result from this proposed rule may be done in the normal course of business.

The final rule will not require any new reporting and recordkeeping activities. Therefore, no additional professional skills are needed. Further, manufacturers will not incur any expenses determining how to state the product's labeling because the proposed amendment (and eventual final rule) provide that information.

The agency considered but rejected several labeling alternatives: (1) A shorter or longer implementation period, and (2) an exemption from coverage for small entities. While the agency believes that consumers would benefit from having this labeling, as proposed, in place as soon as possible, the agency also acknowledges that labeling for these products needs to be converted to the new OTC "Drug Facts" format by May 16, 2002 (May 16, 2003, for products with annual sales less than $25,000). A final rule based on this proposal will not issue before May 16, 2002, and the agency cannot currently predict exactly when a final rule would issue. The agency believes that 18 months is a reasonable period of time for manufacturers to use up new labeling that is printed to comply with the May 16, 2002, date. The agency rejects an exemption for small entities because the new labeling information is also needed by consumers who purchase products marketed by those entities. However, a longer compliance date (24 months) is being provided for products with annual sales less than $25,000.

OTC pediculicide drug products are not the sole products produced by manufacturers affected by this rule. The agency believes the incremental costs of this proposed rule will be less than 1 percent of any of the manufacturer's total sales. Therefore, the agency certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. No further analysis is required under the Regulatory Flexibility Act (5 U.S.C. 605(b)).

IV. Paperwork Reduction Act of 1995

FDA tentatively concludes that the labeling requirements proposed in this document are not subject to review by the Office of Management and Budget because they do not constitute a "collection of information" under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) Rather, the proposed statement of identity, warnings, directions, and other information are a "public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public" (5 CFR 1320.3(c)(2)).

V. Environmental Impact

The agency has determined under 21 CFR 25.31(a) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VI. Federalism

FDA has analyzed this proposed rule in accordance with the principles set forth in Executive Order 13132. FDA has determined that the proposed rule does not contain policies that have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Accordingly, the agency tentatively concludes that the proposed rule does not contain policies that have federalism implications as defined in the Executive order and, consequently, a federalism summary impact statement has not been prepared.

VII. Request for Comments

Interested persons may submit written or electronic comments regarding this proposal to the Dockets Management Branch (address above) by August 8, 2002. Written comments on the agency's economic impact determination may be submitted on or before August 8, 2002. Three copies of all written comments are to be submitted. Individuals submitting written comments or anyone submitting electronic comments may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document and may be accompanied by a supporting memorandum or brief.

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Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VIII. Proposed Effective Date

The agency is proposing that any final rule that may issue based on this proposal become effective 18 months after its date of publication in the **Federal Register**. The agency is proposing that the compliance date for products with annual sales less than $25,000 would be 24 months after the date of publication in the **Federal Register**. The compliance date for all other OTC drug products would be 18 months after the date of publication in the **Federal Register**.

IX. References

The following references are on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Elston, D. M., "What's Eating You? Pediculus Humanus (Head Louse and Body Louse)," *Cutis*, 63:259–264, 1999.

2. Burkhart, C. G. et al., "An Assessment of Topical and Oral Prescription and Over-The-Counter Treatments for Head Lice," *Journal of the American Academy of Dermatology*, 38:979–982, 1998.

3. Sokoloff, F., "Identification and Management of Pediculosis," *Nurse Practitioner*, 19:62–64, 1994.

4. Clore, E. R., "Pediculosis Screening and Treatment," *School Nurse*, 6:14–23, 1990.

5. Shaw, K., "Eradicating Head Lice: A Review for Pharmacists," *Pharmacy Times*, 64:48–50, 1998.

6. Bainbridge, C. V. et al., "Comparative Study of the Clinical Effectiveness of a Pyrethrin-Based Pediculicide with Combing Versus a Permethrin-Based Pediculicide with Combing," *Clinical Pediatrics*, 37:17–22, 1998.

List of Subjects in 21 CFR Part 358

Labeling, Over-the-counter drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 358 be amended as follows:

PART 358—MISCELLANEOUS EXTERNAL DRUG PRODUCTS FOR OVER-THE-COUNTER HUMAN USE

1. The authority citation for 21 CFR part 358 continues to read as follows:

Authority: 21 U.S.C. 321, 351, 352, 353, 355, 360, 371.

2. Section 358.650 is revised to read as follows:

§ 358.650 Labeling of pediculicide drug products.

(a) *Statement of identity.* The labeling of the product contains the established name of the drug, if any, and identifies the product as a "lice treatment."

(b) *Indications.* The labeling of the product states, under the heading "Uses," the following: "treats head, pubic (crab), and body lice." Other truthful and nonmisleading statements, describing only the uses that have been established and listed in this paragraph (b), may also be used, as provided in § 330.1(c)(2) of this chapter, subject to the provisions of section 502 of the Federal Food, Drug, and Cosmetic Act (the act) relating to misbranding and the prohibition in section 301(d) of the act against the introduction or delivery for introduction into interstate commerce of unapproved new drugs in violation of section 505(a) of the act.

(c) *Warnings.* The labeling of the product contains the following warnings under the heading "Warnings":

(1) "For external use only" in accord with § 201.66 (c)(5)(i) of this chapter.

(2) "Do not use [bullet][1] near eyes [bullet] inside nose, mouth, or vagina [bullet] on lice in eyebrows or eyelashes. See a doctor."

(3) "Ask a doctor before use if you are [bullet] allergic to ragweed. May cause breathing difficulty or an asthmatic attack."

(4) "When using this product [bullet] keep eyes tightlyclosed and protect eyes with a washcloth or towel [bullet] if product gets in eyes, flush with water right away [bullet] scalp itching or redness may occur".

(5) "Stop use and ask a doctor if [bullet] breathing difficulty occurs [bullet] eye irritation occurs [bullet] skin or scalp irritation continues or infection occurs".

(d) *Directions.* The labeling of the product contains the following information under the heading "Directions":

(1) The labeling states "[bullet] Important: Read warnings before use" [statement shall appear first and in bold type].

(2) The labeling states "adults and children 2 years and over:" [in bold type].

(3) For head lice treatment products "Inspect [in bold type] [bullet] check each household member with a magnifying glass in bright light for lice/nits (eggs) [bullet] look for tiny nits near scalp, beginning at back of neck and behind ears [bullet] examine small sections of hair at a time [bullet] unlike dandruff which moves when touched, nits stick to the hair [bullet] if either lice or nits are found, treat with this product".

(4) Select one of the following:

(i) *For shampoo products* "Treat [in bold type] [bullet] apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] use warm water to form a lather, shampoo, then thoroughly rinse [bullet] for head lice, towel dry hair and comb out tangles".

(ii) *For nonshampoo products* "Treat [in bold type] [bullet] apply thoroughly to hair or other affected area. For head lice, first apply behind ears and to back of neck. [bullet] allow product to remain for 10 minutes, but no longer [bullet] wash area thoroughly with warm water and soap or shampoo [bullet] for head lice, towel dry hair and comb out tangles".

(5) "Remove lice and their eggs (nits) [in bold type] [bullet] use a fine-tooth or special lice/nit comb. Remove any remaining nits by hand (using a throw-away glove). [bullet] hair should remain slightly damp while removing nits [bullet] if hair dries during combing, dampen slightly with water [bullet] for head lice, part hair into sections. Do one section at a time starting on top of head. Longer hair may take 1 to 2 hours. [bullet] lift a 1 to 2 inch wide strand of hair. Place comb as close to scalp as possible and comb with a firm, even motion away from scalp. [bullet] pin back each strand of hair after combing [bullet] clean comb often. Wipe nits away with tissue and discard in a plastic bag. Seal bag and discard to prevent lice from coming back. [bullet] after combing, thoroughly recheck for lice/nits. Repeat combing if necessary. [bullet] check daily for any lice/nits that you missed".

(6) The labeling states "[bullet] a second treatment must be done in 7 to 10 days to kill any newly hatched lice".

(7) The labeling states "[bullet] if infestation continues, see a doctor for other treatments".

(8) The labeling states "children under 2 years:" [in bold type] "ask a doctor".

(e) The labeling of the product contains the following statements, as appropriate, under the heading "Other information." This information may appear in a package insert. If a package insert is used, the "Other information" section shall include a statement referring to the package insert for additional information.

(1) "Head lice [highlighted in bold type] [bullet] lay small white eggs (nits) on hair shaft close to scalp [bullet] nits are most easily found on back of neck or behind ears [bullet] disinfect hats, hair ribbons, scarves, coats, towels, and bed linens by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] items that cannot be washed (bedspreads, blankets, pillows, stuffed toys, etc.) should be dry-cleaned or sealed in a plastic bag for 4 weeks, then removed outdoors and shaken out very hard before using again [bullet] items that cannot be washed, dry-cleaned, or stored may be sprayed with a product designed for this purpose [bullet] soak all combs and brushes in hot water (above 54 °C (130 °F)) for at least 10 minutes [bullet] vacuum all carpets, mattresses, upholstered furniture, and car seats that may have been used by affected people".

(2) "Pubic (crab) lice [highlighted in bold type] [bullet] may be transmitted by sexual contact. Sexual partners should be treated simultaneously to avoid reinfestation [bullet] lice are very small and look like brown or grey dots on skin [bullet] usually cause intense itching and lay small white eggs (nits) on the hair shaft generally close to the skin surface [bullet] may be present on the short hairs of groin, thighs, trunk, and underarms, and occasionally on the beard and mustache [bullet] disinfect underwear by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes".

(3) "Body lice [highlighted in bold type] [bullet] body lice and their eggs (nits) are generally found in the seams of clothing particularly in waistline and armpit area [bullet] body lice feed on skin then return to clothing to lay their eggs [bullet] disinfect clothing by machine washing in hot water (above 54 °C (130 °F)), then using hottest dryer cycle for at least 20 minutes [bullet] do not seal clothing in a plastic bag because nits can remain dormant for up to 30 days".

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11656 Filed 5–9–02; 8:45 am]

BILLING CODE 4160–01–S

[1] See § 201.66(b)(4) of this chapter for definition of bullet symbol.

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–02–017]

RIN–2115–AE47

Drawbridge Operation Regulations; Saginaw River, MI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the operating regulation governing drawbridges over Saginaw River in Bay City, Michigan. The proposed rule would update current owners of railroad bridges, add a bridge that has been constructed, remove a bridge that has been demolished, and assign standardized mile marker designations. The revision was requested by the Michigan Department of Transportation and the city of Bay City, Michigan, to update the regulation for bridges on Saginaw River.

DATES: Comments must be received on or before July 9, 2002.

ADDRESSES: You may mail comments and related material to Commander (obr), Ninth Coast Guard District, 1240 East Ninth Street, Room 2019, Cleveland, OH, 44199–2060. Ninth Coast Guard District maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket (CGD09–02–017) and are available for inspection or copying at the address above between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scot M. Striffler, Project Manager, Ninth Coast Guard District Bridge Branch, at (216) 902–6084.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views or arguments for or against this rule. Persons submitting comments should include names and addresses, identify the rulemaking (CGD09–02–017) and the specific section of this proposed rule to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

Public Meeting

The Coast Guard plans no public hearing. Individuals may request a public hearing by writing to the address under **ADDRESSES.** The request should include the reasons why a hearing would be beneficial. If the Coast Guard determines that the opportunity for oral presentation will aid this rulemaking, we will hold a public hearing at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The current bridge operating regulations for drawbridges over Saginaw River are found in 33 CFR § 117.647. The city of Bay City operates all highway drawbridges on Saginaw River, including the Veterans Memorial bridge and Lafayette Street bridge, miles 5.6 and 6.78, respectively, which are owned by the Michigan Department of Transportation (MDOT). The current regulation does not contain an operating schedule for the Liberty Street bridge, which was constructed in 1987. The former Sixth Avenue bridge at mile 17.1 was removed in 1985.

In addition to the proposed changes for the highway bridges, the railroad bridges listed at miles 2.5 and 4.4, respectively, have changed ownership and would be updated through this rulemaking.

The mile marker designations for the bridges listed in this rulemaking will be revised to reflect the mile markers used in the United States Coast Pilot for proper cross-reference.

Discussion of Proposed Rule

The city of Bay City, Michigan has asked the Coast Guard to update § 117.647 by adding an operating schedule for Liberty Street bridge, which is located between Independence bridge and Veterans Memorial bridge. The current regulation has established bridge openings from March 16 to December 15 each year, between the hours of 8 a.m. and 8 p.m. on Saturdays, Sundays, and Federal holidays, to provide a continuous flow of vessels between Independence and Lafayette Street bridges during the busiest periods of vessel traffic on the river. All four highway bridges open twice an hour for pleasure vessels between 8 a.m. and 8 p.m. Two of the four bridges open on the hour and half-hour, while the other two bridges open on the quarter hour and three-quarter hour. This schedule is designed to have each bridge open in succession as vessels pass through. With the addition of Liberty Street bridge, this proposed rule would correctly place the bridges in proper order. The Veterans Memorial and Lafayette Street bridges will be adjusted to place them in the proper order for successive passage.

The Sixth Street bridge will be removed from the regulation because the bridge no longer exists. The names of the former Detroit and Mackinac and Conrail railroad bridges, miles 2.5 and

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4.4, respectively, will be updated to reflect the current owners.

In addition, the mile markers for all listed bridges will be corrected to match the mile marker listings in the U.S. Coast Pilot to eliminate confusion and provide proper cross-references.

Regulatory Evaluation

This proposed rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the relatively minor adjustments to the current regulation. There are no additional limitations placed on navigation, and the proper sequencing of bridge openings is expected to improve service to navigation and vehicular traffic.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard must consider whether this proposed rule will have a significant impact on a substantial number of small entities. "Small entities" may include small businesses and not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000 people.

The proposed schedule is not expected to place any additional limitations on passing vessel traffic. No identified entities would be unable to pass the bridges, as needed. Therefore, the Coast Guard certifies under 5 U.S.C 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the Bridge Administration Branch, Ninth Coast Guard District, at the address above.

Collection of Information

This proposed rule would call for no new collection of information requirement under the Paperwork Reduction Act (44 U.S.C. 3520).

Federalism

The Coast Guard has analyzed this proposed rule under the principles and criteria contained in Executive Order 13132, and determined that this proposed rule does not have federalism implications under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This proposed rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibility between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and it is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information andRegulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

The Coast Guard considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 32(e) of Commandant Instruction M16475.lD, this proposed rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 117

Bridges.

For reasons set out in the preamble, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations, as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g); section 117.255 also issued under the authority of Pub. L. 102–587, 106 Stat. 5039.

2. In § 117.647, revise paragraph (a), and paragraphs (b), introductory text, (b)(3), and (b)(4); remove paragraph (c); and redesignate paragraphs (d) and (e) as paragraphs (c) and (d), to read as follows:

§ 117.647 Saginaw River.

(a) The draws of the Lake State Railways railroad bridge, mile 3.10 at Bay City, and the Central Michigan railroad bridge, mile 4.94 at Bay City, shall open on signal; except that, from December 16 through March 15, the draws shall open on signal if at least 12 hours advance notice is provided.

(b) The draws of the Independence bridge, mile 3.88, Liberty Street bridge, mile 4.99, Veterans Memorial bridge, mile 5.60, and Lafayette Street bridge, mile 6.78, all in Bay City, shall open on signal from March 16 through December 15, except as follows:

(1) * * *

(3) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Independence and Veterans Memorial bridges need not be opened for the passage of pleasure craft except from three minutes before to three minutes after the hour and half-hour.

(4) From 8 a.m. to 8 p.m. on Saturdays, Sundays, and Federal holidays, the draws of the Liberty Street and Lafayette Street bridges need not be opened for the passage of pleasure craft, except from three minutes before to three minutes after the quarter hour and three-quarter hour.

* * * * *

Dated: April 29, 2002.

James D. Hull,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 02–11718 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–009]

RIN 2115–AA97

Safety Zones; Captain of the Port Buffalo Zone

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish safety zones for annual fireworks displays located in the Captain of the Port Buffalo Zone. This action is necessary to provide for the safety of life and property on navigable waters during each event. This action is intended to restrict vessel traffic in a portion of the Captain of the Port Buffalo Zone.

DATES: Comments must be received on or before June 10, 2002.

ADDRESSES: Comments may be mailed or delivered to: Commanding Officer, U.S. Coast Guard Marine Safety Office Buffalo, 1 Fuhrmann Blvd., Buffalo, NY 14203. Marine Safety Office Buffalo maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at MSO Buffalo between 7:30 a.m. and 4 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander David Flaherty at (716) 843–9574.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number on this rulemaking (CGD09–02–009), indicate the specific section of this proposal to which each comment applies, and give the reason(s) for each comment. Please submit all comments and attachments in an unbound format, no larger than 8½ by 11 inches, suitable for photocopying and electronic filing. If you would like to know they reached us, please enclose a stamped, self-addressed envelope or postcard.

The Coast Guard will consider all comments received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may request a public meeting by writing to MSO Buffalo at the address listed under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, the Coast Guard will hold a public meeting at a time and place announced by a later notice in the **Federal Register.**

Background and Purpose

The Coast Guard proposes to establish 14 permanent safety zones that will be activated for marine events occurring annually at the same location. The 14 proposed locations are: (1) The waters of the Niagara River within 300-yards of a fireworks barge moored/anchored with its center in approximate position 43°01′52″ N, 078°53′16″ W; (2) all navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier; (3) all waters of the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy # 12 and the Black Rock Canal Entrance Channel within 1000-feet of the fireworks display located at position 42°52′39″ N, 078°53′42″ W; (4) the waters of the Niagara River and Lake Erie between Fort Erie, Ontario, Canada and Buffalo, NY; (5) all waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8′ N, 077°36.0′ W; (6) the waters of the Niagara River within 300-yards of the fireworks barged moored/anchored with its center in approximate position 43°01′06″ N, 078°53′13″ W; (7) the navigable waters of the Niagara River between Grand Island and Tonawanda, NY; (8) all waters of Oswego Harbor in Lake Ontario within 300-yards of a fireworks barge moored/anchored in approximate position 43°28′25″ N, 076°31′01″ W; (9) all waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43°28′ N, 076°31′9″ W; (10) all waters of Oswego Harbor within a line from West Pierhead Light at 43°28′25″ N, 076°31′ W to the East Pierhead light at 43°28′22″ N, 076°30′51″ W, then along a line extending southeast to 43°28′08″ N, 076°30′57″ W, west along the shore to 43°27′57″ N, 076°30′45″ W, then along a line west to Oswego Harbor Buoy #2, and then following a line back to the West Pierhead Light; (11) all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42°08′19″ N, 080°05′30″ W; (12) all waters of Lake Ontario within Port Bay 500-feet around a barge located at approximate position 42°17′46″ N, 076°50′02″ W; (13) St. Lawrence River within Wheathouse Bay, St. Lawrence River; (14) a 300-yd radius around Heart Island. All coordinates are based upon the North American Datum of 1983 (NAD 83).

Based on recent accidents that have occurred in other Captain of the Port zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to public safety and property. The likely combination of large numbers of inexperienced recreational boaters, congested waterways, darkness

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punctuated by bright flashes of light, alcohol use, and debris falling into the water could easily result in serious injuries or fatalities. Establishing a safety zone to control vessel movement in the vicinity of these marine event locations would help ensure the safety of persons and property at these events and help minimize the associated risk.

Establishing permanent safety zones by notice and comment rulemaking would give the public the opportunity to comment on the proposed zones, provide better notice than promulgating temporary rules annually, and decrease the amount of annual paperwork required for these events. The Coast Guard has not previously received notice of any impact caused by these events.

Discussion of Proposed Rule

The size of these proposed safety zones was determined using National Fire Protection Association and local area fire department standards, combined with the Coast Guard's knowledge of waterway conditions in these areas.

The Coast Guard believes that these proposed rules would not pose any new problems for commercial vessels transiting the area. In the unlikely event that shipping would be affected by these new regulations, commercial vessels would be able to request permission from the Captain of the Port Buffalo to transit through the safety zone. No commercial shipping lanes would be impacted as a result of this rulemaking.

The Coast Guard will announce the exact times and dates for these events by publishing a Notice of Implementation in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and, for those who request it from Marine Safety Office Buffalo, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed this rule under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979). We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary.

This determination is based on the minimal time that vessels would be restricted from the zones. Further, all of the zones are in areas where the Coast Guard expects insignificant adverse impact to mariners from the zones' activation.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: The owners or operators of commercial vessels intending to transit a portion of an activated safety zone.

These safety zones would not have a significant economic impact on a substantial number of small entities for the following reasons: The proposed zones would only be in effect for a few hours on the day of the event on an annual basis. Vessel traffic could safely pass outside the proposed safety zones during the events. In cases where traffic congestion would be greater than expected and blocks shipping channels, traffic may be allowed to pass through the safety zone under Coast Guard escort with the permission of the Captain of the Port Buffalo. Before the proposed effective period, the Coast Guard would issue maritime advisories widely available to users who might be in the affected area by publication in the **Federal Register** and the Ninth Coast Guard District Local Notice to Mariners Marine information broadcasts and facsimile broadcasts may also be made. Additionally, the Coast Guard has not received any negative reports from small entities affected during these displays in previous years.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects and participate in the rulemaking process. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Buffalo (*see* **ADDRESSES.**)

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard has analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.1C, this proposed rule is categorically excluded from further environmental documentation. A written "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.914 to read as follows:

§ 165.914 Safety Zones; Annual fireworks events in the Captain of the Port Buffalo Zone.

(a) *Safety zones.* The following areas are designated safety zones:

(1) *Canal Fest, Tonawanda, NY.*

(i) *Location.* All waters of the Niagara River within 300-yards of a fireworks barge moored/anchored with its center in approximate position 43°01′52″ N, 078°53′16″ W (NAD 1983).

(ii) *Expected date.* One day in mid July.

(2) *Carnival on the Bay, Sodus Point, NY.*

(i) *Location.* All navigable waters of Sodus Bay Channel between a line drawn from buoy R4 to buoy G5 and the West Pier.

(ii) *Expected date.* One day in the last week of June.

(3) *Friendship Festival, Buffalo, NY.*

(i) *Location.* All waters of Lake Erie, the Black Rock Canal between a line drawn bulkhead to bulkhead at Buoy #5 extended to a line drawn bulkhead to bulkhead at Buoy #12 and the Black Rock Canal Entrance Channel within 1000-feet of the fireworks display located at position 42°52′39″ N 078°53′42″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(4) *Friendship Festival Air Show, Buffalo, NY.*

(i) *Location.* The waters the Niagara River and Lake Erie between Fort Erie, Ontario, Canada and Buffalo, NY.

(ii) *Expected date.* One day in the first week of July.

(5) *Rochester Harbor Fest, Rochester, NY.*

(i) *Location.* All waters of Rochester Harbor and the Genesee River encompassed by an area 300-yards around the fireworks barge moored/anchored in approximate position: 43°15.8′ N 077°36.0′ W (NAD 1983).

(ii) *Expected date.* One day in early August.

(6) *Tonawanda/North Tonawanda Fireworks Display.*

(i) *Location.* The waters of the Niagara River within 300-yards of the fireworks barged moored/anchored with its center in approximate position 43°01′06″ N, 078°53′13″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(7) *Hydromania Power Boat Races, Tonawanda, NY.*

(i) *Location.* All the navigable waters of the Niagara River between Grand Island and Tonawanda, NY.

(ii) *Expected date.* Two days in late June.

(8) *Oswego Independence Day Fireworks, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor, in Lake Ontario, within 300-yards of a fireworks barge moored/anchored in approximate position 43°28′25″ N, 076°31′01″ W (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(9) *Oswego Harborfest Fireworks Display, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor within an 800-foot radius around the fireworks barge located at 43°28′0″ N, 076°31′9″ W (NAD 1983).

(ii) *Expected date.* One day in the last week of July.

(10) *Oswego Harborfest Tall Ship Battle Demo, Oswego, NY.*

(i) *Location.* All waters of Oswego Harbor within a line from West Pierhead Light at 43°28′25″ N, 076°31′ W to East Pierhead light at 43°28′22″ N, 076°30′51″ W, then along a line extending southeast to 43°28′08″ N, 076°30′57″, west along the shore to 43°27′57″ N, 076°30′45″ W, then following a line west to Oswego Harbor Buoy #2, and along a line back to the West Pierhead Light (NAD 1983).

(ii) *Expected date.* One day in the last week of July.

(11) *We Love Erie Days Fireworks Display, Erie, PA.*

(i) *Location.* all navigable waters of Presque Isle Bay within an 800-foot arc around the fireworks launch platform located at the end of Dobbins Landing in approximate position 42°08′19″ N, 080°05′30″ W (NAD 1983).

(ii) *Expected date.* One day in mid August.

(12) *Thom Graves Memorial Fireworks Display, Wolcott, NY.*

(i) *Location.* All waters of Lake Ontario within Port Bay, 500 feet around a barge located at approximate position 42°17′46″ N, 076°50′02″ W. (NAD 1983).

(ii) *Expected date.* One day in the first week of July.

(13) *Thunder on Wheathouse Bay Power Boat Races, Ogdensburg, NY.*

(i) *Location.* All waters of St. Lawrence River within Wheathouse Bay.

(ii) *Expected date.* Three days in mid June.

(14) *Fireworks Over Boldt Castle, Alexandria Bay, NY.*

(i) *Location.* All waters of the St. Lawrence River within a 300-yard radius of the fireworks display on Heart Island.

(ii) *Expected date.* One day in the first week of July.

(b) *Regulations.* (1) The general regulations contained in 33 CFR 165.23 apply.

(2) All persons and vessels shall comply with the instructions of the

Coast Guard Captain of the Port or the designated on scene patrol personnel. Coast Guard patrol personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard. Upon being hailed by a U.S. Coast Guard vessel via siren, radio, flashing light, or other means, the operator shall proceed as directed.

(3) The safety zones in this regulation are outside navigation channels and will not adversely affect shipping. In cases where shipping is affected, commercial vessels may request permission from the Captain of the Port Buffalo to transit the safety zone. Approval will be made on a case-by-case basis. Requests must be made in advance and approved by the Captain of the Port before transits will be authorized. The Captain of the Port may be contacted via U.S. Coast Guard Group Buffalo on Channel 16, VHF–FM.

(c) *Effective period.* The Captain of the Port Buffalo will publish at least 10 days in advance a Notice of Implementation in the **Federal Register** as well as in the Ninth Coast Guard District Local Notice to Mariners the dates and times this section is in effect.

Dated: April 22, 2002.

S.D. Hardy,

Captain, U.S. Coast Guard, Captain of the Port Buffalo.

[FR Doc. 02–11660 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Corpus Christi–02–003]

RIN 2115–AA97

Security Zones: Port of Port Lavaca-Point Comfort, Point Comfort, TX; Port of Corpus Christi Inner Harbor, Corpus Christi, TX; and Port of Brownsville, Brownsville, TX

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish permanent security zones to ensure the safety and security within Port of Port Lavaca-Point Comfort, Port of Corpus Christi, and Port of Brownsville. These security zones are needed to protect personnel, vessels, waterfront facilities, and national security interests in these ports from subversive actions by any group or groups of individuals whose objective is to destroy or disrupt maritime activities. Entry of recreational vessels, passenger vessels, or commercial fishing vessels into these zones would be prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

DATES: Comments and related material must reach the Coast Guard on or before June 10, 2002.

ADDRESSES: You may mail comments and related material to the U.S. Coast Guard Marine Safety Office Corpus Christi, 555 N. Carancahua Street, Suite 500, Corpus Christi, Texas, 78478. Marine Safety Office Corpus Christi maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Corpus Christi between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade (LTJG) T. J. Hopkins, Waterways Management Division, U.S. Coast Guard Marine Safety Office Corpus Christi, Texas, at (361) 888–3162.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (COTP Corpus Christi–02–003), indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Corpus Christi at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a separate notice in the **Federal Register**.

Background and Purpose

On September 11, 2001, both towers of the World Trade Center and the Pentagon were attacked by terrorists. National security and intelligence officials have warned that future terrorist attacks against civilian targets may be anticipated. In response to these terrorist acts and warnings, heightened awareness and security of our ports and harbors is necessary. The Captain of the Port, Corpus Christi is proposing to establish permanent security zones within the Port of Port Lavaca-Point Comfort, Port of Corpus Christi, and the Port of Brownsville.

Restricting the access of recreational, passenger, and commercial fishing vessels reduces potential methods of attack on personnel, vessels and waterfront facilities within these zones. These security zones are designed to limit the access of vessels that do not have business to conduct with facilities or structures within these industrial areas. Entry of recreational vessels, passenger vessels, and commercial fishing vessels into these zones would be prohibited unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

A temporary final rule was published March 18, 2002 in the **Federal Register** (67 FR 11920) creating a security zone within the Corpus Christi Inner Harbor. The temporary rule restricts access of recreational, passenger, and commercial fishing vessels to the Inner Harbor. The proposed rule would make the Inner Harbor security zone permanent and would establish similar zones in the Port of Port Lavaca-Point Comfort and Port of Brownsville.

Discussion of Proposed Rule

Port Lavaca-Point Comfort is a heavily industrialized area with general cargo facilities, a liquid cargo ship terminal, and a liquid cargo barge terminal. Highways, rail service, and waterways combine to provide shippers with intermodal transportation options at these ports. Liquid cargoes include highly volatile materials such as anhydrous ammonia and butadiene. These materials, if released due to a terrorist attack, could cause wide spread harm and pollution to the surrounding cities of Port Lavaca, Point Comfort, Port O'Connor and Victoria. The Port of Port Lavaca-Point Comfort is located on the east side of Lavaca Bay and is accessible via the Matagorda Ship Channel. The channel has a controlling depth of 38 feet.

The Port of Corpus Christi is the fourth largest petro-chemical port within the United States. A large number of petro-chemical waterfront facilities are located within the Inner Harbor. The Inner Harbor serves as a major industrial ship channel. The Port of Corpus Christi is also designated as an alternate military strategic load-out port with docks and facilities located within the Inner Harbor. These docks and facilities are vital to the national security interest of the United States. The Inner Harbor is accessible via the Corpus Christi Channel and has a controlling depth of 45 feet.

The Port of Brownsville is a developing industrial port that is becoming more important with the influence of the North American Free Trade Agreement (NAFTA). The Port of Brownsville has marine terminal operations covering both liquid and dry cargo handling. In addition, containerized cargo transportation is anticipated to increase within the port. Principal imports and exports include chemicals, clays, petroleum, grain, agricultural products, sulfur, steel, bulk minerals, ores, fertilizers and aluminum. The Port of Brownsville is accessible via the Brownsville Ship Channel and has a controlling depth of 42 feet.

The proposed rule would create security zones within the industrialized areas of these ports that would exclude recreational, passenger, and commercial fishing vessels from entering these areas. Many large commercial vessels and barges, primarily containing extremely flammable and hazardous materials, transit the industrial areas of these ports. This proposed rule would increase the level of security within the ports by reducing the number of vessels transiting the industrialized area and limiting access to only those vessels that are conducting business with port industries. All recreational, passenger, and commercial fishing vessels would be prohibited from entering the security zones without the permission of the Captain of the Port Corpus Christi or his designated representative.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10(e) of the regulatory policies and procedures of DOT is unnecessary. This rule will not affect commercial traffic conducting business within the ports. Within these areas there are no marinas or other public businesses or docks that service recreational, passenger or commercial fishing vessels. As a result there would be little or no economic impact on recreational, passenger, and commercial fishing vessels or servicing entities. Vessels affected by this proposed rule may be permitted to enter the security zones on a case by case basis.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities because recreational vessels, passenger vessels, and commercial fishing vessels do not normally conduct business within these industrialized areas. Should a recreational vessel, passenger vessel, or commercial fishing vessel need to enter one of these security zones to conduct business with a small entity, there is no cost and little burden associated with obtaining permission to enter from the Captain of the Port Corpus Christi via VHF Channel 16 or via telephone at (361) 888–3162.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this proposed rule would have a significant economic impact on it, please submit a comment to the address under **ADDRESSES** explaining why you think it qualifies and how and to what degree this proposed rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the proposed rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact LTJG T.J. Hopkins, Waterways Management, U.S. Coast Guard Marine Safety Office Corpus Christi at (361) 888–3162.

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule will not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This proposed rule does not have tribal implications upder Executive Order 13175, Consultation and Coordination with Indian Tribal

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Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effect

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph 34(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because this rule is not expected to result in any significant environmental impact as described in the National Environmental Policy Act of 1969 (NEPA). A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add § 165.809 to read as follows:

§ 165.809 Security Zones: Port of Port Lavaca-Point Comfort, Point Comfort, Texas; Port of Corpus Christi Inner Harbor, Corpus Christi, Texas; and Port of Brownsville, Brownsville, Texas.

(a) *Location.* The following areas are designated as security zones:

(1) *Port of Port Lavaca-Point Comfort*—all waters between the Dredge Island Bridge at 28°39′30″ N, 96°34′20″ W and a line drawn between points 28°38′10″ N, 96°33′15″ W and 28°38′10″ N, 96°34′45″ W including the Point Comfort turning basin and the adjacent Alcoa Channel. These coordinates are based upon NAD 1983.

(2) *Port of Corpus Christi Inner Harbor*—all waters of the Christi Inner Harbor from the Inner Harbor Bridge (US HWY 181) to, and including, the Viola Turning Basin.

(3) *Port of Brownsville Navigation District*—all waters of the Brownsville Ship Channel, from west of the entrance to the Brownsville Fishing Harbor to, and including, the Brownsville Turning Basin.

(b) *Regulations.* (1) No recreational vessels, passenger vessels, or commercial fishing vessels may enter these security zones unless specifically authorized by the Captain of the Port Corpus Christi or his designated representative.

(2) Recreational vessels, passenger vessels and commercial fishing vessels requiring entry into these security zones must contact the Captain of the Port Corpus Christi or his designated representative. The Captain of the Port may be contacted via VHF Channel 16 or via telephone at (361) 888–3162 to seek permission to enter the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port, Corpus Christi or his designated representative.

(3) Designated U.S. Coast Guard personnel include commissioned, warrant, and petty officers of the U.S. Coast Guard.

(c) *Authority.* In addition to 33 U.S.C. 1231, the authority of this section includes 33 U.S.C. 1226.

Dated: April 22, 2002.

William J. Wagner III,

Captain, U.S. Coast Guard, Captain of the Port Corpus Christi.

[FR Doc. 02–11719 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 060–6019b; FRL–7208–3]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia; Nitrogen Oxides Budget Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of West Virginia for the purpose of establishing a nitrogen oxides (NO_X) allowance trading program for large electric generating and industrial units, beginning in 2004, as well as requirements for reductions in NO_X emissions from cement manufacturing kilns. In the Final Rules section of this **Federal Register**, EPA is approving West Virginia's SIP submittal as a direct final rule without prior proposal because the Agency views this as a noncontroversial submittal and anticipates no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this action, no further activity is contemplated. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment.

DATES: Comments must be received in writing by June 10, 2002.

ADDRESSES: Written comments should be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and West Virginia Department of Environmental Protection, Division of Air Quality, 7012 MacCorkle Avenue, S.E., Charleston, WV 25304–2943.

FOR FURTHER INFORMATION CONTACT: Cristina Fernandez, (215) 814–2178, at the EPA Region III address above, or by e-mail at fernandez.cristina@epa.gov. Please note any comments on this rule must be submitted in writing, as provided in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On May 1, 2002, the Department of Environmental Protection submitted a revision to its SIP to address the requirements of the NO_X SIP Call Phase I. The revision consists of the adoption of Rule 45CSR26—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides from Electric Generating Units and Rule 45CSR1—Nitrogen Oxides Budget Trading Program as Means of Control and Reduction of Nitrogen Oxides. For further information, please see the information provided in the direct final action, with the same title, that is located in the "Rules and Regulations" section of this **Federal Register** publication.

Dated: May 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–11723 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–992, MB Docket No. 02–96, RM–10410]

Digital Television Broadcast Service; Amarillo, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Amarillo Junior College District, licensee of noncommercial station KACV-TV, NTSC channel *2+, Amarillo, Texas, proposing the substitution of DTV channel *8 for station KACV–TV's assigned DTV channel *21. DTV Channel *8 can be allotted to at reference coordinates (35–2–30 N. and 101–52–56 W.) with a power of 5, a height above average terrain HAAT of 519 meters.

DATES: Comments must be filed on or before June 27, 2002, and reply comments on or before July 15, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Wayne Coy, Jr., Cohn and Marks LLP, 1920 N Street, NW., Suite 300, Washington, DC 20036–1622 (Counsel for Amarillo Junior College District).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–96, adopted April 29, 2002, and released May 6, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Texas is amended by removing DTV channel *21 and adding DTV channel *8 at Amarillo.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11671 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–981, MB Docket No. 02–94, RM–10423]

Digital Television Broadcast Service; Athens, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Georgia Public Telecommunications Commission, licensee of noncommercial station WGTV–TV, proposing the substitution of DTV channel *12 for station WGTV–TV's assigned DTV channel *22. DTV Channel *12 can be allotted to Athens, Georgia, at reference coordinates 33–48–18 N. and 84–08–40

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W. with a power of 16, a height above average terrain HAAT of 305 meters.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8 a.m. to 7 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW., Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Donald T. Stepka, Arnold & Porter, 555 Twelfth Street, NW., Washington, DC 20004–1206 (Counsel for Georgia Public Telecommunications Commission).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–94, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Georgia is amended by removing DTV channel *22 and adding DTV channel *12 at Athens.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11672 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018–AI33

Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service proposes to approve shot formulated with tungsten, iron, nickel, and tin as nontoxic for hunting waterfowl and coots. We assessed possible effects of the tungsten-iron-nickel-tin (TINT) shot, and we believe that it does not present a significant toxicity threat to wildlife or their habitats and that further testing of TINT shot is not necessary. In addition, approval of TINT shot may induce more waterfowl hunters to change from the illegal use of lead shot, reducing lead risks to species and habitats.

DATES: Comments on the proposed rule must be received no later than June 10, 2002.

ADDRESSES: You may send comments about this proposal to the Chief, Division of Migratory Bird Management, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 634, Arlington, Virginia 22203–1610. You may inspect comments during normal business hours at the same address.

FOR FURTHER INFORMATION CONTACT: Jon Andrew, Chief, or John J. Kreilich, Jr., Division of Migratory Bird Management, 703–358–1714.

SUPPLEMENTARY INFORMATION: The Migratory Bird Treaty Act of 1918 (Act) (16 U.S.C. 703–712 and 16 U.S.C. 742 a–j) implements migratory bird treaties between the United States and Great Britain for Canada (1916 and 1996 as amended), Mexico (1936 and 1972 as amended), Japan (1972 and 1974 as amended), and Russia (then the Soviet Union, 1978). These treaties protect certain migratory birds from take, except as permitted under the Act. The Act authorizes the Secretary of the Interior to regulate take of migratory birds in the United States. Under this authority, the Fish and Wildlife Service controls the hunting of migratory game birds through regulations in 50 CFR part 20.

Since the mid-1970s, we have sought to identify shot that is not significantly toxic to migratory birds or other wildlife. Compliance with the use of nontoxic shot has increased over the last few years (Anderson *et al.* 2000), and we believe that it will continue to increase with the approval and availability of other nontoxic shot types. Currently, steel, bismuth-tin, tungsten-iron, tungsten-polymer, tungsten-matrix, and tungsten-nickel-iron shot are approved as nontoxic.

The purpose of this proposed rule is to approve the use of TINT shot in the tested formulation (65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin by weight) for waterfowl and coot hunting. We propose to amend 50 CFR 20.21 (j), which describes prohibited types of shot for waterfowl and coot hunting.

On October 12, 2001, we received an application from ENVIRON-Metal, Inc.

for approval of HEVI–SHOTTM brand of Soft Shot in a 65% tungsten, 10.4% iron, 2.8% nickel, and 21.8% tin formulation. The initial application (Tier 1), included information on chemical characterization, production variability, use volume, toxicological effects, environmental fate and transport, and evaluation. After reviewing the tier 1 application and assessing the possible effects of TINT shot, we believe that it does not pose a significant toxicity threat to wildlife or their habitats.

Toxicity Information

Tungsten may be substituted for molybdenum in enzymes in mammals. Ingested tungsten salts reduce growth and can cause diarrhea, coma, and death in mammals (Bursian *et al.* 1996, Cohen *et al.* 1973, Karantassis 1924, Kinard and Van de Erve 1941, National Research Council 1980, Pham-Huu-Chanh 1965), but elemental tungsten is virtually insoluble and therefore essentially nontoxic. A dietary concentration of 94 parts-per-million (ppm) did not reduce weight gain in growing rats (Wei *et al.* 1987). Lifetime exposure to 5 ppm tungsten as sodium tungstate in drinking water produced no discernible adverse effects in rats (Schroeder and Mitchener 1975). At 100 ppm tungsten as sodium tungstate in drinking water, rats had decreased enzyme activity after 21 days (Cohen *et al.* 1973).

Chickens given a complete diet showed no adverse effects of 250 ppm sodium tungstate administered for 10 days in the diet. However, 500 ppm in the diet had detrimental effects on day-old chicks (Teekell and Watts 1959). Adult hens had reduced egg production and egg weight on a diet containing 1,000 ppm tungsten (Nell *et al.* 1981a). EPT (1999) concluded that 250 ppm in the diet would produce no observable adverse effects. Kelly *et al.* (1998) demonstrated no adverse effects on mallards dosed with tungsten-iron or tungsten-polymer shot according to nontoxic shot test protocols.

Most toxicity tests reviewed were based on soluble tungsten compounds rather than elemental tungsten. As we found in our reviews of other tungsten shot types, we have no basis for concern about the toxicity of the tungsten in TINT shot to fish, mammals, or birds.

Nickel is a dietary requirement of mammals, with necessary consumption set at 50 to 80 parts per billion for the rat and chick (Nielsen and Sandstead 1974). Though it is necessary for some enzymes, nickel can compete with calcium, magnesium, and zinc for binding sites on many enzymes. Water-soluble nickel salts are poorly absorbed if ingested by rats (Nieboer *et al.* 1988). Nickel carbonate caused no treatment effects in rats fed 1,000 ppm for 3 to 4 months (Phatak and Patwardhan 1950). Rats fed 1,000 ppm nickel sulfate for 2 years showed reduced body and liver weights, an increase in the number of stillborn pups, and decrease in weanling weights through three generations (Ambrose *et al.* 1976). Nickel chloride was even more toxic; 1,000 ppm fed to young rats caused weight loss in 13 days (Schnegg and Kirchgessner 1976).

Soluble nickel salts are toxic to mammals, with an oral LD_{50} of 136 mg/kg in mice, and 350 mg/kg in rats (Fairchild *et al.* 1977). Nickel catalyst (finely divided nickel in vegetable oil) fed to young rats at 250 ppm for 16 months, however, produced no detrimental effects (Phatak and Patwardhan 1950).

In chicks from hatching to 4 weeks of age, 300 ppm nickel as nickel carbonate or nickel acetate in the diet produced no observed adverse effects. However, concentrations of 500 ppm or more reduced growth (Weber and Reid 1968). A diet containing 200 ppm nickel as nickel sulfate had no observed effects on mallard ducklings from 1 to 90 days of age. Diets of 800 ppm or more caused significant changes in physical condition of the ducklings (Cain and Pafford 1981). Eastin and O'Shea (1981) observed no apparent significant changes in pairs of breeding mallards fed diets containing up to 800 ppm nickel as nickel sulfate for 90 days. We have no basis for concern about the toxicity of nickel in TINT shot to fish, mammals, or birds.

Iron is an essential nutrient, so reported iron toxicosis in mammals, such as livestock, is primarily a phenomenon of overdosing. Maximum recommended dietary levels of iron range from 500 ppm for sheep to 3,000 ppm for pigs (National Research Council [NRC] 1980). Chickens require at least 55 ppm iron in the diet (Morck and Austic 1981). Chickens fed 1,600 ppm iron in an adequate diet displayed no ill effects (McGhee *et al.* 1965), and turkey poults fed 440 ppm in the diet also suffered no ill effects. The tests in which eight #4 tungsten-iron shot were administered to each mallard in a toxicity study indicated that the 45% iron content of the shot had no adverse effects on the test animals (Kelly *et al.* 1998). We have no basis for concern about the toxicity of iron in TINT shot to fish, mammals, or birds.

Elemental and inorganic tins have low toxicity, due largely to low absorption rate, low tissue accumulation, and rapid excretion rates. Inorganic tin is only slightly to moderately toxic to mammals. The oral LD50 values for tin (II) chloride for mice and rats are 250 and 700 mg/kg of body weight, respectively (WHO 1980).

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. There were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Environmental Fate

Elemental tungsten and iron are virtually insoluble in water and do not weather or degrade in the environment. Tungsten is stable in acids and does not easily form compounds with other substances. Preferential uptake by plants in acidic soil suggests uptake of tungsten when it has formed compounds with other substances rather than when it is in its elemental form (Kabata-Pendias and Pendias 1984).

Nickel is common in fresh waters, though usually at concentrations of less than 1 part per billion in locations unaffected by human activities. Pure nickel is not soluble in water. Free nickel may be part of chemical reactions, such as sorption, precipitation, and complexation. Reactions of nickel with anions are unlikely. Complexation with organic agents is poorly understood (U.S. Environmental Protection Agency [EPA] 1980). Water hardness is the dominant factor governing nickel effects on living things (Stokes 1988).

Tin occurs naturally in soils at 2 to 200 mg/g with areas of enrichment at much higher concentrations (up to 1000mg/g) (WHO 1980). However, in the United States, soil concentrations are between 1 and 5 ppm (Kabata-Pendias and Pendias 2001).

Environmental Concentrations

Calculation of the estimated environmental concentration (EEC) of a candidate shot in a terrestrial ecosystem is based on 69,000 shot per hectare (2.47 acre) (Bellrose 1959, 50 CFR 20.134). Assuming complete dissolution of the shot, the EEC for tungsten in soil is 15.09 mg/kg. The EECs for nickel and iron would be 0.65 and 2.41 mg/kg, respectively. The EEC for nickel (the only one of the four elements with an application limit) is substantially below the U.S. Environmental Protection Agency (EPA) biosolid application limit. The 0.65 mg/kg EEC for nickel also is far below the 16 to 35 mg/kg concentrations suggested as minimum sediment concentrations at which effects of the

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metal are likely to occur (EPA 1997, Ingersoll *et al.* 1996, Long and Morgan 1991, MacDonald *et al.* 2000, Smith *et al.* 1996). The EEC for tungsten from TINT shot is below that for the already-approved TNI shot. The EEC for iron is less than 0.01% of the typical background concentration, and the iron is in an insoluble form. The EEC for tin in soil is 5.06 mg/kg, one order of magnitude smaller than the 50 mg/kg suggested maximum concentration in surface soil tolerated by plants (Kabata-Pendias and Pendias 2001).

Calculation of the EEC in an aquatic ecosystem assumes complete erosion of 69,000 shot in one hectare (2.47 acre) of water 1 foot deep. The EECs for the elements in TINT shot in water are 3,218 µg/L for tungsten, 515 µg/L for iron, 139 µg/L for nickel, and 1,079 µg/L for tin. We concluded that a tungsten concentration of 10,500 µg/L posed no threat to aquatic life (62 FR 4877). The EEC for nickel from TINT shot is below the EPA acute water quality criterion of 1,400 µg/L in fresh water, but would exceed the 75 µg/L criterion for salt water. However, tests showed that corrosion of TINT shot occurs at very low rates. The amount of nickel liberated into seawater by eight No. 4 TINT shot for a 30-day exposure was 23% of the amount liberated by TNI. TINT shot is predicted to release 1.8 µg/L of nickel into 1 ha-ft of seawater over 1 year. This value is 2.4% of the acute criterion and less than 23% of the chronic criterion.

The EEC for iron is below the chronic criterion for protection of aquatic life and for tin; it is four times less than the Minnesota Water Quality Standard. Previous assessments of tungsten demonstrated dissolution at a rate of 10.5 mg/L (equal to 10,500 µg/L) and concluded no risk to aquatic life (62 FR 4877). The EEC of tungsten from TINT shot is 3,218 µg/L. This level is three times less than the 10,500 µg/L level previously mentioned.

Effects on Birds

Kraabel *et al.* (1996) surgically embedded tungsten-bismuth-tin shot in the pectoralis muscles of ducks to simulate wounding by gunfire and to test for toxic effects of the shot. The shot neither produced toxic effects nor induced adverse systemic effects in the ducks during the 8-week period of their study.

Nell *et al.* (1981a) fed laying hens (*Gallus domesticus*) 0.4 or 1.0 g/kg tungsten in a commercial mash for 5 months to assess reproductive performance. Weekly egg production was normal, and hatchability of fertile eggs was not affected. Exposure of chickens to large doses of tungsten either through injection or by feeding resulted in an increased tissue concentration of tungsten and a decreased concentration of molybdenum (Nell *et al.* 1981b). The loss of tungsten from the liver occurred in an exponential manner, with a half-life of 27 hours. The alterations in molybdenum metabolism seemed to be associated with tungsten intake rather than molybdenum deficiency. Death due to tungsten occurred when tissue concentrations increased to 25 ppm in the liver.

A 150-day chronic toxicity/reproductive study conducted for tin shot revealed no adverse effects in mallards dosed with eight No. 4 sized shot. In this investigation, there were no significant changes in egg production, fertility, or hatchability of birds dosed with tin when compared to steel-dosed birds (Gallagher *et al.* 2000).

Toxicity Studies

Ringelman *et al.* (1993) conducted a 32-day acute toxicity study that involved dosing game-farm mallards with tungsten-bismuth-tin shot in a relative composition of 39%, 44.5%, and 16.5% by weight, respectively. No dosed birds died during the trial, and their behavior was normal. Post-euthanization examination of tissues revealed no toxicity or damage related to shot exposure. Blood calcium differences between dosed and undosed birds were judged as unrelated to shot exposure. That study indicated that tungsten presented little hazard to waterfowl.

The Tier 1 application of TINT shot included analyses comparing corrosion data of TNI shot to TINT shot. Samples of both shot types were exposed to seawater for 10.8 days. The two seawater samples were then analyzed for nickel, iron, tungsten, and tin. Samples were then returned to fresh seawater and exposed for an additional 44.5 days, whereupon the seawater solutions were again analyzed for nickel, iron, tungsten, and tin.

The total release of nickel from TINT shot over the 55.3-day exposure was only 13% that of TNI shot. The results indicate that TINT shot shows lower rates of nickel release due to the collection of corrosive materials on surfaces that inhibit additional corrosion.

Assuming that a duck eats 10 # 4 TINT shot in one day and that the shot are completely eroded in the gizzard in 24 hours, the duck would be exposed to .061g of nickel. This amount is slightly more than half of the .102g/day that Eastin and O'Shea (1981) found produced no ill effects on mallards. We believe, therefore, that consumption of nickel from TINT shot is unlikely to have detrimental effects on waterfowl.

Ingestion by Fish, Amphibians, Reptiles, or Mammals

Based on the best available information and past reviews of tungsten-based and tin shot, we expect no detrimental effects due to tungsten, iron, or tin on animals that might ingest TINT shot. We know of no studies of ingestion of nickel by reptiles or amphibians. The exposure of nickel to any animal in these taxa that might consume a TINT shot pellet would be lower, because the pellet likely would not be retained in most animals that might consume one. Their exposure to nickel would therefore be much lower than the worst-case scenario for waterfowl.

Nontoxic Shot Approval Process

The first condition for nontoxic shot approval is toxicity testing. Based on the results of past toxicity tests, we conclude that TINT shot does not pose a significant danger to migratory birds, other wildlife, or their habitats.

The second condition for approval is testing for residual lead levels. We determined that the maximum environmentally acceptable level of lead in shot is 1%, and incorporated this requirement in the nontoxic shot approval process we published on December 1, 1997 (62 FR 63608). ENVIRON-Metal, Inc. has documented that TINT shot meets this requirement.

The third condition for approval involves enforcement. On August 18, 1995 (60 FR 43314), we stated that approval of any nontoxic shot would be contingent upon the development and availability of a noninvasive field testing device. This requirement was incorporated in the nontoxic shot approval process. TINT shotshells can be drawn to a magnet as a simple field detection method.

This proposed rule will amend 50 CFR 20.21(j) by approving TINT shot as nontoxic for migratory bird hunting. It is based on the toxicological reports, acute toxicity studies, and assessment of the environmental effects of the shot. Those results indicate no deleterious effects of TINT shot to ecosystems or when ingested by waterfowl.

Public Comments Solicited

Past proposed rules on approval of nontoxic shot have generated fewer than five comments. Also, tungsten and iron already have been reviewed extensively for use in nontoxic shot. Therefore, we will accept comments on this proposal for a 30-day period.

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NEPA Consideration

In compliance with the requirements of section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(C)), and the Council on Environmental Quality's regulation for implementing NEPA (40 CFR 1500–1508), we have prepared a draft Environmental Assessment (EA) for approval of TINT shot. The draft EA is available to the public at the location indicated in the **ADDRESSES** section.

Endangered Species Act Considerations

Section 7 of the Endangered Species Act (ESA) of 1972, as amended (16 U.S.C. 1531 et seq., provides that Federal agencies shall "insure that any action authorized, funded or carried out * * * is not likely to jeopardize the continued existence of any endangered species or threatened species or result in the destruction or adverse modification of (critical) habitat * * * " We are completing a Section 7 consultation under the ESA for this proposed rule. The result of our consultation under

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Section 7 of the ESA will be available to the public at the location indicated in the **ADDRESSES** section.

Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.*) requires the preparation of flexibility analyses for rules that will have a significant economic impact on a substantial number of small entities, which includes small businesses, organizations, or governmental jurisdictions. This rule proposes to approve an additional type of nontoxic shot that may be sold and used to hunt migratory birds; this proposed rule would provide one shot type in addition to the existing six that are approved. We have determined, however, that this proposed rule will have no effect on small entities since the approved shot merely will supplement nontoxic shot already in commerce and available throughout the retail and wholesale distribution systems. We anticipate no dislocation or other local effects, with regard to hunters and others.

Small Business Regulatory Enforcement Fairness Act

Similarly, this policy is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. This policy does not impose an unfunded mandate of more than $100 million per year or have a significant or unique effect on State, local, or tribal governments or the private sector because it is the Service's responsibility to regulate the take of migratory birds in the United States.

Executive Order 12866

This proposed rule is not a significant regulatory action subject to OMB review under Executive Order 12866. OMB makes the final determination under E.O. 12866. We invite comments on how to make this rule easier to understand, including answers to questions such as the following: (1) Are the requirements in the rule clearly stated? (2) Does the rule contain technical language or jargon that interferes with its clarity? (3) Does the format of the rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Would the rule be easier to understand if it were divided into more (but shorter) sections? (5) Is the description of the rule in the **SUPPLEMENTARY INFORMATION** section of the preamble helpful in understanding the rule? What else could we do to make the rule easier to understand?

Paperwork Reduction Act

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. We have examined this regulation under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*) and found it to contain no information collection requirements.

Unfunded Mandates Reform

We have determined and certify pursuant to the Unfunded Mandates Reform Act, 2 U.S.C. 1502, *et seq.*, that this proposed rulemaking will not impose a cost of $100 million or more in any given year on local or State government or private entities.

Civil Justice Reform—Executive Order 12988

We have determined that these regulations meet the applicable standards provided in Sections 3(a) and 3(b)(2) of Executive Order 12988.

Takings Implication Assessment

In accordance with Executive Order 12630, this proposed rule, authorized by the Migratory Bird Treaty Act, does not have significant takings implications and does not affect any constitutionally protected property rights. This proposed rule will not result in the physical occupancy of property, the physical invasion of property, or the regulatory taking of any property. In fact, this proposed rule will allow hunters to exercise privileges that would be otherwise unavailable and, therefore, reduces restrictions on the use of private and public property.

Federalism Effects

Due to the migratory nature of certain species of birds, the Federal Government has been given responsibility over these species by the Migratory Bird Treaty Act. This proposed rule does not have a substantial direct effect on fiscal capacity, change the roles or responsibilities of Federal or State governments, or intrude on State policy or administration. Therefore, in accordance with Executive Order 13132, this proposed regulation does not have significant federalism effects and does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951) Executive Order 13175, and 512 DM 2, we have determined that this proposed rule has no effects on Federally recognized Indian tribes.

Energy Effects

In accordance with Executive Order 13211, this proposed rule, authorized by the Migratory Bird Treaty Act, does not significantly affect energy supply, distribution, and use. This proposed rule is not a significant energy action and no Statement of Energy Effects is required.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

For the reasons discussed in the preamble, we propose to amend part 20, subchapter B, chapter 1 of Title 50 of the Code of Federal Regulations as follows:

PART 20—[AMENDED]

1. The authority citation for part 20 continues to read as follows:

Authority: 16 U.S.C. 703–712; 16 U.S.C. 742 a–j, Pub. L. 106–108.

2. In § 20.21, revise paragraph (j) to read as follows:

§ 20.21 What hunting methods are illegal?

* * * * *

(j) While possessing loose shot for muzzle loading or shotshells containing other than the previously approved shot types of steel, bismuth-tin (97 parts bismuth: 3 parts tin), tungsten-iron (40 parts tungsten: 60 parts iron) , tungsten-polymer (95.5 parts tungsten: 4.5 parts Nylon 6 or 11), tungsten-matrix (95.9 parts tungsten: 4.1 parts polymer), tungsten-nickel-iron (50% tungsten: 35% nickel: 15% iron), and tungsten-iron-nickel-tin (65% tungsten: 10.4% iron: 2.8% nickel: 21.8% tin) all of which must contain less than 1% residual lead (see § 20.134). This restriction applies to the taking of ducks, geese (including brant), swans, coots (*Fulica americana*), and any other species that make up aggregate bag limits during concurrent seasons in areas described in § 20.108 as nontoxic shot zones.

* * * * *

Dated: April 26, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11767 Filed 5–9–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 67, No. 91
Friday, May 10, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[Docket No. TB–02–05]

Flue-Cured Tobacco Advisory Committee; Open Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of advisory committee meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (5 U.S.C. App.) announcement is made of a forthcoming meeting of the Flue-Cured Tobacco Advisory Committee.

DATES: The meeting will be held on May 21, 2002, at 9 a.m.

ADDRESSES: The meeting will be held at the United States Department of Agriculture (USDA), Agricultural Marketing Service (AMS), Tobacco Programs, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, Room 223, 1306 Annapolis Drive, Raleigh, North Carolina 27608.

FOR FURTHER INFORMATION CONTACT: John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, telephone number (202) 205–0567 or fax (202) 205–0235.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to discuss the implementation of mandatory grading, establish alternate grading schedules, and discuss other related issues for the 2002 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact John P. Duncan III, Deputy Administrator, Tobacco Programs, AMS, USDA, STOP 0280, 1400 Independence Avenue, SW., Washington, DC 20250–0280, prior to the meeting. Written statements may be submitted to the Committee before, at or after the meeting. If you need any accommodations to participate in the meeting, please contact the Tobacco Programs at (202) 205–0567 by May 15, 2002, and inform us of your needs.

Dated: May 7, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11801 Filed 5–7–02; 4:28 pm]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–030–1]

Notice of Request for Extension of Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Extension of approval of an information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to request an extension of approval of an information collection in support of regulations to prevent the introduction of gypsy moth into noninfested areas of the United States from Canada..

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 9, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–030–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–030–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–030–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information on the regulations regarding importation of gypsy moth host materials from Canada, contact Mr. Frederick A. Thomas, Export Specialist, PIM, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737; (301) 734–8367. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: Importation of Gypsy Moth Host Materials from Canada.

OMB Number: 0579–0142.

Type of Request: Extension of approval of an information collection.

Abstract: The United States Department of Agriculture is responsible for preventing plant pests from entering the United States and controlling and eradicating plant pests in the United States. The Plant Protection Act authorizes the Department to carry out this mission. The Plant Protection and Quarantine program of USDA's Animal and Plant Health Inspection Service (APHIS) is responsible for implementing the regulations that carry out the intent of the Act.

To carry out this mission, APHIS administers regulations in 7 CFR 319.77–1 through 319.77–5 to prevent the introduction of gypsy moth into noninfested areas of the United States from Canada by placing certain inspection and documentation requirements on gypsy moth host materials (*i.e.*, regulated articles) from Canada. These regulated articles are: Trees without roots (*e.g.*, Christmas trees), trees with roots, shrubs with roots and persistent woody stems, logs and pulpwood with bark attached,

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outdoor household articles, and mobile homes and their associated equipment. Under these regulations, phytosanitary certificates, certifications of origin, or signed homeowner statements will be required for some of these regulated articles, depending on their place of origin in Canada and their destination in the United States. These requirements necessitate the use of information collection activities.

We are asking the Office of Management and Budget (OMB) to approve our use of these information collection activities for an additional 3 years.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) enhance the quality, utility, and clarity of the information to be collected; and

(4) minimize the burden of the information collection on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies, *e.g.*, permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.03632 hours per response.

Respondents: Canadian plant health authorities; growers; exporters of Christmas trees, shrubs, logs, pulpwood, and other articles from gypsy moth-infested provinces in Canada; private individuals entering the United States with a mobile home or outdoor household articles.

Estimated annual number of respondents: 2,146.

Estimated annual number of responses per respondent: 1.03914.

Estimated annual number of responses: 2,230.

Estimated total annual burden on respondents: 81 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 6th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11725 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Agency Information Collection Activities: Proposed Collection; Comment Request: Food Stamp Program Web-Based Pre-Screening Tool

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice invites the general public and other public agencies to comment on proposed information collections. The information collection being proposed involves the use of a web-based pre-screening tool for the general public to use to determine potential eligibility for Food Stamp Program benefits. Some data provided by the users will be captured and retained for analytical purposes.

DATES: Written comments must be submitted on or before July 9, 2002, to be assured consideration.

ADDRESSES: Send comments to Pat Seward, Outreach Coordinator, State Administration Branch, Food Stamp Program, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Room 820, Alexandria, VA 22302.

Pursuant to the Paperwork Reduction Act of 1995 (44 U.S.C. 3507), comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate, automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

All comments will be summarized and included in the request for Office of Management and Budget (OMB) approval of the information collection. All comments will become a matter of public record.

FOR FURTHER INFORMATION: Requests for additional information should be directed to Pat Seward at (703) 305–2328.

SUPPLEMENTARY INFORMATION:

Title: Food Stamp Program Web-Based Pre-Screening Tool.

OMB Number: To be assigned by OMB.

Form Number: None.

Expiration Date: The Food and Nutrition Service (FNS) is requesting approval from OMB for three years.

Type of Request: This is a new information collection request.

Abstract: FNS is developing an interactive web-based food stamp pre-screening tool to be utilized by the general public to determine potential Food Stamp Program eligibility pursuant to 7 USC 2014. Once the user enters household size, income, expenses and resource information, the tool will calculate and provide the user with an estimated range of benefits that the household may be eligible to receive. Since food stamp eligibility and benefit amount may vary by location, FNS will provide a disclaimer that the tool is only an estimator, and the household will need to contact the local agency to determine actual eligibility and the appropriate benefit amount.

While FNS will not capture and retain any specific identifying or eligibility-related information about the household itself that uses the tool, it will request and retain the following information:

- The State where the user resides;
- Whether the user is using the tool for personal reasons or on behalf of others; and
- If the user is using it on the behalf of others; the user will be asked to identify him/herself (*i.e.*, relative of a person in need, advocacy organization, faith-based group, *etc.*) using a drop down menu.

This information will help FNS determine the degree and type of system usage as well as potential areas for further study. There may also be a formal survey appended to this tool but any such survey and proposed information collection will be announced under a separate notice.

Affected Public: Potential food stamp applicants and those using the tool on their behalf.

Estimated Number of Respondents: 48,000 per year.

Number of Responses per Respondent: 1.

Total Number of Annual Responses: 48,000.

Estimated Time per Response: 10 minutes.

Estimated Total Annual Burden: 8,000 hours.

Dated: April 25, 2002.

Eric M. Bost,

Under Secretary, Food, Nutrition, and Consumer Services.

[FR Doc. 02–11674 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–30–P

DEPARTMENT OF AGRICULTURE

Forest Service

Flathead, Lolo, and Bitterroot National Forests, Northern Region

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plans (Forest Plans) for the Flathead, Lolo and Bitterroot National Forests.

SUMMARY: This notice announces the beginning of the efforts to revise the Land and Resource Management Plans (Forest Plans) for the Flathead, Lolo and Bitterroot National Forests. The Forest Plan revision will be done jointly with the Flathead, Lolo and Bitterroot National Forests. The beginning efforts are to establish a planning team and evaluate information needs. Public involvement is critical and will be requested throughout this effort. The forests are developing a communication strategy to document how the public and government entities may participate in the revision of the Forest Plan.

ADDRESSES: Send written comments concerning this notice and requests to be added to the Forest Plan revision mailing list to Cathy Barbouletos, Forest Supervisor, Flathead National Forest, 1935 Third Avenue East, Kalispeel, MT 59901.

FOR FURTHER INFORMATION CONTACT: Terry Chute, Planning Staff, Flathead National Forest, phone (406) 758–5243; Barb Beckes, Planning Program Officer, Lolo National Forest, phone (406) 329–3809; or Sue Heald, Planning Staff, Bitterroot National Forest, phone (406) 363–7142.

SUPPLEMENTARY INFORMATION: The Forest Plans for the Flathead and Lolo National Forests were completed in 1986, while the Forest Plan for the Bitterroot National Forest was completed in 1987. These plans will remain in effect and continue to be implemented until they are revised. In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" was issued at the beginning of the forest planning process. This Notice addresses initiation of revision where the focus will be on collaboration with the public, organizing the revision team and information evaluation. Once the scope of the revision is better understood the Forests will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regualtions (36 CFR 219). The Forest Service is also preparing new draft planning regulations expected to be issued in the spring of 2002. When these new regulations are adopted, the Forests will consider whether to operate under the new or the 1982 regulations. An additional Notice will be issued if the Forests decide to operate under the new regulations.

Dated: May 3, 2002.

Kathleen A. McAllister,

Deputy Regional Forester, Forest Service-Northern Region.

[FR Doc. 02–11708 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Dixie National Forest, Intermountain Region, Utah

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to revise the Land and Resource Management Plan (Forest Plan) for the Dixie National Forest.

SUMMARY: This notice announces the intent of the Dixie National Forest to revise their Land and Resource Management Plan (Forest Plan). The revision will start under the 1982 planning regulations (36 CFR part 219). Initial steps of the revision process will focus on a communication strategy, organizing the revision team, information needs, resource inventory reviews, and establishing a Forest Plan revision mailing list. The forest is developing a communication strategy to engage interested people and groups early in the revision process. Public involvement is critical and will be requested throughout the revision effort. The Forest Plan revision will be done jointly with the fishlake National Forest.

ADDRESSES: Send written comments concerning this notice, communication strategy and requests to be added to the Forest plan revision mailing list to Mary Wagner, Forest Supervisor, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, UT 84720.

FOR FURTHER INFORMATION CONTACT: Anthony Erba, Forest Planner, Dixie National Forest, 1789 N. Wedgewood Lane, Cedar City, UT 84720; phone (435) 865–3737.

SUPPLEMENTARY INFORMATION: The Forest Plan for the Dixie National Forest was completed in September 1986 and will remain in effect and continue to be implemented until the Plan is revised. In the past, a "Notice of Intent to Prepare an Environmental Impact Statement" was issued at the beginning of the forest planning process. This Notice addresses initiation of revision where the focus will be on collaboration with the public, organizing the revision team and information evaluation. Once the scope of the revision is better understood, the Forest will issue another Notice to prepare the Environmental Impact Statement.

This Notice initiates revision under the 1982 planning regulations (36 CFR part 219). The Forest Service is also preparing new draft planning regulations expected to be issued in the spring of 2002. Since these new regulations will reflect the latest national thinking on land and resource management planning, the Forest wills seriously consider switching to, and completing the forest plan revision under, the new regulations when they are finalized. An additional Notice will be issued if the Forest decides to switch.

Authority: 40 CFR 1501.7 and 1508.22, Forest Service Handbook 1909.15, Section 21).

Dated: April 26, 2002.

Mary Wagner,

Forest Supervisor, Dixie National Forest.

[FR Doc. 02–10973 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Holly Beach to Constance Beach Segmented Breakwaters Enhancement and Sand Management Project, Cameron Parish, LA

AGENCY: Natural Resources Conservation Service, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102 (2) (c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Natural Resources Conservation Service Regulations (7 CFR part 650); the Natural Resources Conservation Service,

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U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for Holly Beach to Constance Beach Segmented Breakwaters and Sand Management Project, Cameron Parish, Louisiana.

FOR FURTHER INFORMATION CONTACT: Donald W. Gohmert, State Conservationist, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7751.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Donald W. Gohmert, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The purpose of the project is to protect existing coastal wetlands, local communities and reduce damages to Louisiana Highway 82 during storm events by restoring and maintaining the integrity and functionality of the remaining Cheniere/Beach ridge that runs from Holly Beach to Constance Beach. This will be accomplished by the creation of beach dune and marsh habitat and reducing local wave energies by increasing the effectiveness of the existing breakwater field.

The notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Bruce Lehto, Assistant State Conservationist/Water Resources/Rural Development, Natural Resources Conservation Service, 3737 Government Street, Alexandria, Louisiana 71302, telephone (318) 473–7756.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: April 25, 2002.

Donald W. Gohmert,

State Conservationist.

[FR Doc. 02–11699 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–16–P

DEPARTMENT OF AGRICULTURE

Natural Resources Conservation Service

Notice of Proposed Change to Section IV of the Virginia State Technical Guide

AGENCY: Natural Resources Conservation Service (NRCS), Department of Agriculture.

ACTION: Notice of availability of proposed changes in the Virginia NRCS State Technical Guide for review and comment.

SUMMARY: It has been determined by the NRCS State Conservationist for Virginia that changes must be made in the NRCS State Technical Guide specifically in practice standards: #490, Forest Site Preparation and #612, Tree/Shrub Establishment to account for improved technology. These practices will be used to plan and install conservation practices on cropland, pastureland, woodland, and wildlife land.

DATES: Comments will be received for a 30-day period commencing with the date of this publication.

FOR FURTHER INFORMATION CONTACT: Inquire in writing to M. Denise Doetzer, State Conservationist, Natural Resources Conservation Service (NRCS), 1606 Santa Rosa Road, Suite 209, Richmond, Virginia 23229–5014; Telephone number (804) 287–1665; Fax number (804) 287–1736. Copies of the practice standards will be made available upon written request to the address shown above or on the Virginia NRCS web site: *http://www.va.nrcs.usda.gov/DataTechRefs/Standards&Specs/EDITStds/EditStandards.htm.*

SUPPLEMENTARY INFORMATION: Section 343 of the Federal Agriculture Improvement and Reform Act of 1996 states that revisions made after enactment of the law to NRCS State technical guides used to carry out highly erodible land and wetland provisions of the law shall be made available for public review and comment. For the next 30 days, the NRCS in Virginia will receive comments relative to the proposed changes. Following that period, a determination will be made by the NRCS in Virginia regarding disposition of those comments and a final determination of change will be made to the subject standards.

Dated: April 26, 2002.

L. Willis Miller,

Assistant State Conservationist for Programs, Natural Resources Conservation Service, Richmond, Virginia.

[FR Doc. 02–11698 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–16–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions and Deletions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to and deletions from Procurement List.

SUMMARY: This action adds to the Procurement List products and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and deletes from the Procurement List products and services previously furnished by such agencies.

EFFECTIVE DATE: June 9, 2002.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION:

Additions

On October 5, 2001, March 8, and March 15, 2002, the Committee for Purchase From People Who Are Blind or Severely Disabled published notice (66 F.R. 51005, 67 FR 10663, 10664, and 11661) of proposed additions to the Procurement List.

The following comments pertain to the Janitorial/Custodial Service, Ronald Reagan Building at the Federal Tenant Spaces only, Washington, DC.

Comments were received from a subcontractor to the current contractor for this service. The subcontractor claimed that addition of this service to the Procurement List would have a severe adverse impact on the company. The subcontractor also questioned whether the addition met Committee regulatory requirements concerning creation of employment opportunities and qualification of the designated nonprofit agency to participate in the Committee's program. The Committee's regulation, at 41 CFR 51–2.4(a)(4), requires the Committee to assess impact of a Procurement List addition on the current contractor. This requirement exists because the current contractor is usually the most likely organization to win a competition for the next contract for the service in question, if it is not added to the Procurement List. Whether a subcontractor will continue to hold a subcontract for a service is at the discretion of the contractor, not the competitive procurement process or the Government contracting activity. Accordingly, the Committee does not consider impact on a subcontractor to constitute the severe adverse impact on the current contractor which the Committee's regulation requires the Committee to avoid in making its Procurement List addition decisions.

The subcontractor's contentions concerning the nonprofit agency's capability and program qualification are based on the subcontractor's beliefs that the people to be employed are not capable of safely operating machinery or otherwise performing some of the tasks involved in providing this janitorial service, and that security requirements will require the nonprofit agency to permanently retain people without disabilities who currently hold security clearances to work in the building. This service does not have specialized equipment or performance requirements unlike other janitorial services performed by this nonprofit agency. The Committee's determination that the nonprofit agency is capable of performing this service was based on an assessment by an industrial engineer who is familiar with the capabilities of the nonprofit agency and the Government customer. The Committee has approved a phase-in of the people with severe disabilities who will perform the service. One reason for the phase-in is to allow time for security clearances to be granted. Current employees with security clearances will be retained only as long as they are needed to meet the Government's requirements.

The following material pertains to all of the items being added to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the products and services and impact of the additions on the current or most recent contractors, the Committee has determined that the products and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4. I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the products and services to the Government.
2. The action will not have a severe economic impact on current contractors for the products and services.
3. The action will result in authorizing small entities to furnish the products and services to the Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46–48c) in connection with the products and services proposed for addition to the Procurement List.

Accordingly, the following products and services are added to the Procurement List:

Products

Product/NSN: Holder, Key and Credit Card/7510–01–445–9348
NPA: The Travis Association for the Blind, Austin, TX
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY
Product/NSN: Holder, Key and Credit Card, with Custom Logo/7510–01–NIB–0613
NPA: The Travis Association for the Blind, Austin, TX
Contract Activity: Office Supplies & Paper Products Commodity Center, New York, NY

Services

Service Type/Location: Janitorial/Custodial/Alton Federal Building, Alton, IL
NPA: Challenge Unlimited, Inc., Alton, IL
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Custodial/Ronald Reagan Building at the Federal Tenant Spaces only, Washington, DC
NPA: The Chimes, Inc., Baltimore, MD
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Grounds Maintenance/Ed Jones Federal Building & U.S. Courthouse, Jackson, TN
NPA: Madison Haywood Developmental Services, Jackson, TN
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Janitorial/Grounds Maintenance/Federal Building & U.S. Post Office, Dyersburg, TN
NPA: Madison Haywood Developmental Services, Jackson, TN
Contract Activity: GSA, Public Buildings Service
Service Type/Location: Mailroom/Communications Center Operation/U.S. Department of Agriculture, Kansas City, MO
NPA: Independence & Blue Springs Industries, Inc., Independence, MO
Contract Activity: Department of Agriculture
Service Type/Location: Shipboard & Shore-Based Logistics/CONUS Facilities for the Navy and Various other DOD Military Installations (20% of the Government's Requirement)
NPA: The Arc of the Virginia Peninsula, Inc., Hampton, VA
Contract Activity: Training & Doctrine Command (TRADOC) Acquisition Center
Service Type/Location: Switchboard Operation/Tennessee Valley Healthcare System, Murfreesboro, TN
NPA: Prospect Inc., Lebanon, TN
Contract Activity: Department of Veterans Affairs

Deletions

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities.
3. The action will result in authorizing small entities to furnish the products and service to Government.
4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the products and services deleted from the Procurement List.

After consideration of the relevant matter presented, the committee has determined that the products and service listed below are no longer suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

Accordingly, the following products and service are hereby deleted from the Procurement List:

Products

Product/NSN: Hood, Sleeping Bag/8465–00–518–2769
NPA: North Bay Rehabilitation Services, Inc., Rohnert Park, CA
Contract Activity: Defense Supply Center—Philadelphia, Philadelphia, PA
Product/NSN: Stamp, Rubber/7520–00–NSH–0001
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0002
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0003
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0004
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0005

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NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0006
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0007
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0008
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0009
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0010
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0011
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0012
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0013
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0014
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0015
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0016
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0017
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0018
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0019
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0020
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0021
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0022
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0023
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0024
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0025
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0026
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0027
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0028
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0029
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0030
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0031
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0032
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0033
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0034
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0035
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0036
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0037
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0038
NPA: PRIDE Industries, Roseville, CA
Contract Activity: McClellan AFB
Product/NSN: Stamp, Rubber/7520–00–NSH–0045
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0046
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0047
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0048
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0049
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0050
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0051
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0052
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0053
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0054
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0055
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0056
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0057
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0058
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0059
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0060
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0061
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0062
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0063
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0064
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0065
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0066
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0067
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0068
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0069
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0070
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0071
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0072
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0073
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0074
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0075
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0076
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0077
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0078
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0079
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0080
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0081
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA
Product/NSN: Stamp, Rubber/7520–00–NSH–0082
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Travis AFB, CA

Service

Service Type/Location: Vehicle Operation and Maintenance/Travis AFB, CA
NPA: PRIDE Industries, Roseville, CA
Contract Activity: Department of the Air Force

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–11752 Filed 5–9–02; 8:45 am]

BILLING CODE 6353–01–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to Procurement List.

SUMMARY: The Committee is proposing to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: June 9, 2002.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Jefferson Plaza 2, Suite 10800, 1421 Jefferson Davis Highway, Arlington, Virginia 22202–3259.

FOR FURTHER INFORMATION CONTACT: Sheryl D. Kennerly, (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C 47(a) (2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, the entities of the Federal Government identified in the notice for each service will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. If approved, the action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. If approved, the action will result in authorizing small entities to furnish the services to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C.46–48c) in connection with the services proposed for addition to the Procurement List. Comments on this certification are invited.

Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following services are proposed for addition to Procurement List for production by the nonprofit agencies listed:

Services

Service Type/Location: Base Supply Center, U.S. Army Signal Center, Fort Gordon, GA.
NPA: L.C. Industries For The Blind, Inc., Durham, NC.
Contract Activity: U.S. Army Signal Center, Fort Gordon, GA.
Service Type/Location: Food Service Attendant, Alabama Air National Guard, Birmingham, AL.
NPA: Alabama Goodwill Industries, Inc., Birmingham, AL.
Contract Activity: Alabama Air National Guard, Gadsden, AL.
Service Type/Location: Grounds Maintenance, Environmental Protection Agency, Environmental Science Center, Fort Meade, MD.
NPA: Baltimore Association for Retarded Citizens, Inc., Baltimore, MD.
Contract Activity: Environmental Protection Agency, Philadelphia, PA.

Sheryl D. Kennerly,

Director, Information Management.

[FR Doc. 02–11753 Filed 5–9–02; 8:45 am]

BILLING CODE 6353–01–P

BROADCASTING BOARD OF GOVERNORS

Sunshine Act Meeting

DATE AND TIME: May 14, 2002; 12 p.m.–1:30 p.m.

PLACE: Cohen Building, Room 3321, 330 Independence Ave., SW., Washington, DC 20237.

CLOSED MEETING: The members of the Broadcasting Board of Governors (BBG) will meet in closed session to review and discuss a number of issues relating to U.S. Government-funded non-military international broadcasting. They will address internal procedural, budgetary, and personnel issues, as well as sensitive foreign policy issues relating to potential options in the U.S. international broadcasting field. This meeting is closed because if open it likely would either disclose matters that would be properly classified to be kept secret in the interest of foreign policy under the appropriate executive order (5 U.S.C. 552b.(c)(1)) or would disclose information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action. (5 U.S.C. 552b. (c)(9)(B)). In addition, part of the discussion will relate solely to the internal personnel and organizational issues of the BBG or the International Broadcasting Bureau. (5 U.S.C. 552b.(c)(2) and (6))

CONTACT PERSON FOR MORE INFORMATION: Persons interested in obtaining more information should contact either

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Brenda Hardnett or Carol Booker at (202) 401–3736.

Dated: May 8, 2002.

Carol Booker,

Legal Counsel.

[FR Doc. 02–11936 Filed 5–8–02; 3:09 pm]

BILLING CODE 8236–01–M

CIVIL RIGHTS COMMISSION

Sunshine Act Meeting

AGENCY: Commission on Civil Rights.

DATE AND TIME: Friday, May 17, 2002, 9:30 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., Room 540, Washington, DC 20425.

STATUS:

Agenda

I. Approval of Agenda
II. Approval of Minutes of April 12, 2002 Meeting
III. Announcements
IV. Staff Director's Report
V. State Advisory Committee Appointments for Arizona, Hawaii, Idaho, Kentucky, Oregon, and New York, and Approval of SAC the Chair for Washington State
VI. State Advisory Committee Report
- Race Relations in Waterloo

VII. Future Agenda Items
10:30 a.m. Briefing: Enforcement without Evidence? Consequences of Government Race Data Collection Bans of Civil Rights

CONTACT PERSON FOR FURTHER INFORMATION: Les Jin, Press and Communications (202) 376–7700.

Debra A. Carr,

Deputy General Counsel.

[FR Doc. 02–11811 Filed 5–7–02; 4:29 am]

BILLING CODE 6335–01–M

DEPARTMENT OF COMMERCE

Office of the Secretary

[Docket No. 020502107–2107–01]

Privacy Act of 1974; System of Records

AGENCY: Department of Commerce.

ACTION: Notice.

SUMMARY: This notice announces the Department's proposal for a new system of records.

The system is entitled "Commerce/Census-9, Longitudinal Employer-Household Dynamics System." The Census Bureau will use these data to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden. This notice is submitted in accordance with the requirements of the Privacy Act, Title 5, United States Code (U.S.C.), Section 552a, and Office of Management and Budget (OMB) Circular A–130, Appendix I, "Federal Agency Responsibilities for Maintaining Records About Individuals." We invite public comment on the system announced in this publication.

DATES: *Effective Date:* The system will become effective without further notice on June 10, 2002, unless the Census Bureau receives comments that require a contrary determination.

Comment Date: To be considered, written comments must be submitted on or before June 10, 2002.

ADDRESSES: Please address comments to: Gerald W. Gates, Privacy Act Officer, Policy Office, Room 2430 FB 3, U.S. Census Bureau, Washington, DC 20233–3700. Comments received will be available for public inspection at this same address from 8:30 a.m. to 4:00 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Eloise Parker, Administrative Records Coordinator, Policy Office, Room 2430 FB 3, U.S. Census Bureau, Washington, DC 20233–3700; telephone: (301) 457–2520.

SUPPLEMENTARY INFORMATION: This notice is to announce the establishment of the Longitudinal Employer-Household Dynamics System and to request public comment. As required by 5 U.S.C. 552a(o) of the Privacy Act, the Commerce Department submitted reports on this new system to both Houses of Congress on May 10, 2002. The establishment of this system of records will be effective June 10, 2002, unless Commerce receives comments that would result in a contrary determination.

The purpose of the Longitudinal Employer-Household Dynamics System of records is to enable the Census Bureau to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden.

This system will contain personally identifiable information from administrative record systems from two national-level files: Social Security's Numident and Master Earnings Files; and one state-level program: Unemployment Insurance Contribution and Employment Reporting System. Information from these administrative record systems will be combined with selected Census Bureau demographic and economic census and survey data, with the combined data used for census and survey planning and evaluation, and policy-relevant research. All personal identifiers from these files will be removed and replaced with Census Bureau-generated unique identifiers and maintained within a secured, restricted environment, with access limited to a select number of persons sworn to uphold the confidentiality of Census Bureau data. No public disclosure of these data will be made. All authorized uses of the data will be for statistical purposes only. An in-house Administrative Records Project Review Board will oversee all such Census Bureau uses of these data to ensure that they are used only for authorized purposes.

COMMERCE/CENSUS–9

SYSTEM NAME:

Longitudinal Employer-Household Dynamics System, COMMERCE/CENSUS—9.

SYSTEM LOCATION:

Bowie Computer Center, U.S. Census Bureau, 17101 Melford Boulevard, Bowie, MD 20715.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

The population of the United States. In order to approximate coverage of the entire U.S. population, the Census Bureau will combine administrative record files from the Internal Revenue Service, the Social Security Administration, selected Census Bureau economic and demographic censuses and surveys, and comparable data from selected state agencies.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personal identifiers— *e.g.*, name and social security number (this information will be replaced by Census Bureau-generated unique identifiers, which will be provided on statistical data files); Demographic information—*e.g.*, gender, race, ethnicity, education, marital status, tribal affiliation, veterans status; Geographic information—*e.g.*, address; Economic information—*e.g.*, income, job information, total assets; and Processing information—*e.g.*, processing codes and quality indicators.

AUTHORITIES FOR MAINTENANCE OF THE SYSTEM:

Title 13, U.S.C.

PURPOSE(S):

The purpose of the Longitudinal Employer-Household Dynamics System of records is to enable the Census Bureau to undertake studies intended to improve the quality of its core demographic and economic censuses and surveys and conduct policy-relevant research. By using administrative record data from other agencies, the Census Bureau will be able to improve the quality and usefulness of its data, while reducing costs and respondent burden.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These data will be used by the Census Bureau to evaluate and enhance selected survey data and to produce new data products and conduct analyses of the social and economic characteristics of the population. The administrative record files will be used both alone and in conjunction with Census Bureau census or survey data for these purposes. The data will not be used to identify specific individuals, but will be used to produce statistical extracts with information from one or more of the source files. These records are being maintained and used by the Census Bureau solely for statistical purposes and are confidential under Title 13, U.S.C., Section 9. Only persons sworn to uphold the confidentiality of Census Bureau information and who have a need to know will have access to the data. Publications will not contain data that could identify any individual or establishment. No determinations affecting individual respondents will be made as a result of this routine use.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records will be stored in a secure computerized system and on magnetic tape; output data will be either electronic or paper copy. All identifiable data will be maintained in a secure environment, and access to identifiable information will be restricted to only a small number of persons sworn to uphold the confidentiality of Census Bureau data that have a need to know.

RETRIEVABILITY:

Records are maintained within a secure, restricted access environment and can be retrieved by unique serial identification numbers internal to the Census Bureau by only a limited number of persons sworn to uphold the confidentiality of Census Bureau data and who have a need to know. It should be noted that the purpose of these identifiers is not to facilitate retrieval of information concerning specific individuals, but only to develop matched data sets for subsequent statistical extracts.

SAFEGUARDS:

Only a limited number of persons sworn to uphold the confidentiality of Census Bureau data and who have a need to access these data will have access to them in identifiable form in order to construct the linked data sets and produce statistical extracts. The data will not be used to identify specific individuals, but will be used to create extracts containing information from one or more of the source files. Extract files will be released only to designated persons sworn to uphold the confidentiality of Census Bureau data and who have a need to know. The microdata will not be made publicly available. Any publications resulting from these data will be cleared for release under the direction of the Census Bureau's Disclosure Review Board, which will confirm that the data do not directly or indirectly disclose information that would identify any individual or establishment. All persons sworn to uphold the confidentiality of Census Bureau data are subject to the restrictions, penalties, and prohibitions of Title 13, U.S.C., Sections 9 and 214; the PrivacyAct of 1974 (5 U.S.C. 552a(b)(4)); Title 18, U.S.C., Section 1905; Title 26, U.S.C., Section 7213; and Title 42, U.S.C., Section 1306. When confidentiality or penalty provisions differ, the most stringent provisions apply to protect the data. Persons sworn to uphold the confidentiality of Census Bureau data are regularly advised of the regulations issued pursuant to Title 13, U.S.C., and other relevant statutes governing confidentiality of the data. The restricted access environment has been established to limit the number of persons having direct access to identifiable microdata from this system. While all persons with access to this system are sworn to uphold the confidentiality of Census Bureau data, this restricted access environment further protects the confidentiality of the data and prevents unauthorized use of or access to it. These safeguards provide a level and scope of security that is not less than the level and scope of security established by the Office of Management and Budget in OMB Circular No. A–130, Appendix III, Security of Federal Automated Information Systems. Furthermore, the use of unsecured telecommunications to transmit individually identifiable or deducible information derived from the administrative record files is prohibited.

RETENTION AND DISPOSAL:

Retention and disposal practices are in accordance with the General Records Schedule and Census Bureau records control schedules that are approved by the National Archives and Records Administration. Each of the agreements between the Census Bureau and the administrative record source agencies contain specific language pertaining to retention and disposal. Retention is not to exceed 10 years, unless, by agreement with the source agency, it is determined that a longer period is necessary for statistical purposes. At the end of the retention period or upon demand, all original files, extracts, and paper copies from each agency will be returned to the source agency or destroyed as stated in the respective interagency agreement.

SYSTEM MANAGER(S) AND ADDRESS:

Associate Director for Demographic Programs, U.S. Census Bureau, FOB 3, Washington, DC 20233.

CUSTODIAN:

Director, Longitudinal Employer-Household Dynamics Program, Demographic Surveys Division, Demographic Programs Directorate, U.S. Census Bureau, FOB 3, Washington, DC 20233.

RECORD SOURCE CATEGORIES:

Selected state and federal administrative record systems and Census Bureau censuses and surveys.

EXEMPTIONS CLAIMED FOR THIS SYSTEM:

Pursuant to Title 5, U.S.C., Section 552a(k)(4), this system of records is exempted from the notification, access, and contest requirements of the agency procedures (under Title 5, U.S.C., Section 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f)). This exemption is applicable, as the data are maintained by the Census Bureau solely as statistical records, as required under Title 13, U.S.C., and are not used in whole or in part in making any determination about an identifiable individual or establishment. This exemption is made in accordance with agency rules published in the rules section of the **Federal Register**.

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Dated: May 7, 2002.

Brenda S. Dolan,

Department of Commerce, Freedom of Information/Privacy Act Officer.

[FR Doc. 02–11774 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–07–P

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 22–2002]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX; Expansion of Subzone 39E, Fossil Partners, L.P. (Watches and Consumer Goods)

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting on behalf of the watch and accessories warehousing/distribution facility of Fossil Partners, L.P. (Fossil) to expand Subzone 39E, located in Richardson, Texas. The applicant requests the addition of a new site in Dallas, Texas. The application was submitted pursuant to the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on May 1, 2002.

Subzone 39E was approved on December 3, 1997 (Board Order No. 937, 12/10/97). Authority was granted for the warehousing/distribution of watches and accessories at the Fossil facility. The original authority covered a facility located at 2280 N. Greenville Avenue (300,000 sq. ft., 20.41 acres) in Richardson, Texas. On January 28, 2002, authority was granted for a minor boundary modification (A(27f)–7–02), which allowed the company to temporarily relocate its subzone designation (300,000 sq. ft.) to a facility located at 10615 Sanden Drive (517,000 sq. ft., 47.5 acres), in Dallas, Texas.

Fossil requests an expansion of subzone status that would cover its entire Dallas (Sanden Drive) site (517,000 sq. ft.; 47.5 acres). The company also requests a reinstatement of the 300,000 sq. ft. at the Richardson, Texas facility, that was deleted in the January 2002 action that is described above. The nature of the original warehousing/distribution operation at the subzone remains unchanged in terms of products and activities. The level of activity would increase commensurate with the increase in the size of the facility (300,000 sq. ft. to 517,000 sq. ft.).

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at one of the addresses:

1. *Submissions via Express/Package Delivery Services:* Foreign-Trade Zones Board, U.S. Department of Commerce, Franklin Court Building—Suite 4100W, 1099 14th Street NW, Washington, DC 20005; or,

2. *Submissions via the U.S. Postal Service:* Foreign-Trade Zones Board, U.S. Department of Commerce, FCB—Suite 4100W, 1401 Constitution Avenue NW, Washington, DC 20230.

The closing period for their receipt is July 9, 2002. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to July 24, 2002).

A copy of the application and accompanying exhibits will be available for public inspection at the Office of the Foreign-Trade Zones Board at the first address listed above and the U.S. Department of Commerce, Export Assistance Center, 711 Houston Street, Fort Worth, Texas 76102.

Dated: May 1, 2002.

Dennis Puccinelli,

Executive Secretary.

[FR Doc. 02–11772 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–P

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–835]

Oil Country Tubular Goods (OCTG) From Japan: Rescission of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

SUMMARY: In response to a request from petitioner, the Department of Commerce (the Department) initiated an administrative review of the antidumping duty order on oil country tubular goods (OCTG) from Japan. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001). This review covers four manufacturers/exporters of OCTG for the period from August 1, 2000 through July 31, 2001. Because the petitioner has withdrawn its request for review, the Department is rescinding its review of OCTG from Japan, in accordance with 19 CFR 351.213(d)(1).

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Doug Campau or Maureen Flannery, AD/CVD Enforcement Group III, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington D.C. 20230; telephone (202) 482–1395 or (202) 482–3020, respectively.

Applicable Statute and Regulations

Unless otherwise indicated, all citations are references to the provisions of the Tariff Act of 1930, as amended (the Act). In addition, unless otherwise indicated, all citations to the Department's regulations are to the provisions codified at 19 CFR Part 351 (2001).

SUPPLEMENTARY INFORMATION:

Background

The Department published in the Federal Register the antidumping duty order on OCTG from Japan on August 11, 1995. *See Antidumping Duty Order: Oil Country Tubular Goods From Japan*, 60 FR 41058 (August 11, 1995). The Department received a timely request from petitioner, United States Steel LLC, to conduct an administrative review pursuant to section 351.213(b) of the Department's regulations. On September 24, 2001, the Department initiated an administrative review covering four manufacturers/exporters of OCTG: Kawasaki Steel Corporation, Nippon Steel Corporation, NKK Steel Corporation/NKK Tubes, and Sumitomo Metal Industries, Ltd. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 66 FR 49924 (October 1, 2001). On April 5, 2002, petitioner withdrew its request for administrative review with respect to all four respondents named in the initiation.

Rescission of Antidumping Administrative Review

Pursuant to our regulations, the Department will rescind an administrative review "if a party that requested the review withdraws the request within 90 days of the date of publication of notice of initiation of the requested review." See 19 CFR 351.213(d)(1). This section further provides that the Secretary may extend this time limit if the Secretary decides that it is reasonable to do so. *See* 19 CFR 351.213(d)(1). In this case, the interested party's withdrawal of its requests for review was not within the 90–day time limit. However, because there were no objections from other interested parties and no other parties had requested a review, the Department is rescinding the administrative review of OCTG from Japan for the period August 1, 2000, through July 31, 2001. *See Memorandum for the File through Barbara Tillman, Director, Office of AD/CVD Enforcement VII, from Doug Campau, Analyst: Oil Country Tubular Goods From Japan: Intent to Rescind Administrative Review for the Period of 8/1/00 to 7/31/01*, dated April 22, 2002.[1] The Department will issue appropriate assessment instructions to the U.S. Customs Service (Customs).

This notice serves as a reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of the return or destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and terms of an APO is a sanctionable violation.

This determination and notice are issued and published in accordance with 19 CFR 351.213(d)(4) and sections 751(a)(1) and 777(i)(1) of the Act.

Dated: May 3, 2002

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–11769 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] On April 23, 2002, we faxed this memorandum to all interested parties, and informed them of our intent to rescind this review in the very near future. See Memorandum for the File from Christian Hughes, Analyst: Oil Country Tubular Goods From Japan: Notification to Interested Parties of Intent to Rescind, dated April 23, 2002.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–337–804]

Certain Preserved Mushrooms From Chile: Final Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Administrative Review.

SUMMARY: On January 4, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from Chile (67 FR 562). The review covers three exporters. The period of review is December 1, 1999, through November 30, 2000.

We received comments on our preliminary results. After consideration of these comments, we have not made any changes in the margin calculations. Therefore, the final results are the same as the preliminary results. The final weighted-average dumping margins for the reviewed firms are listed below in the section entitled "Final Results of Review."

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Sophie E. Castro, Office 2, AD/CVD Enforcement Group I, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone: (202) 482–4136 or (202) 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the U.S. Department of Commerce's (the Department's) regulations are to 19 CFR part 351 (2000).

Background

On January 4, 2002, the Department of Commerce published the preliminary results of the second administrative review of the antidumping duty order on certain preserved mushrooms from Chile (67 FR 562). This review covers the following companies: Nature's Farm Products (Chile) S.A. (NFC), Ravine Foods Inc. (Ravine), and Compañia Envasadora del Atlantico (CEA). We invited parties to comment on the preliminary results of review. We received a case brief from CEA on February 1, 2002. The petitioner[1] submitted a rebuttal brief on February 11, 2002. CEA's request for a hearing was subsequently withdrawn. We have conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Analysis of Comments Received

We have made no changes to our preliminary results. All issues raised in the case and rebuttal briefs by parties to this antidumping duty administrative review are addressed in the "Issues and Decision Memorandum" ("Decision Memo") from Richard W. Moreland, Deputy Assistant Secretary for Import Administration, to Faryar Shirzad, Assistant Secretary for Import Administration, dated May 6, 2002, which is hereby adopted by this notice. A list of the issues which parties have raised and to which we have responded, all of which are in the Decision Memo, is attached to this notice as an

[1] The petitioner is the Coalition for Fair Preserved Mushroom Trade which includes the American Mushroom Institute and the following domestic companies: L.K. Bowman, Inc., Nottingham, PA; Modern Mushroom Farms, Inc., Toughkenamon, PA; Monterey Mushrooms, Inc., Watsonville, CA; Mount Laurel Canning Corp., Temple, PA; Mushrooms Canning Company, Kennett Square, PA; Southwood Farms, Hockessin, DE; Sunny Dell Foods, Inc., Oxford, PA; United Canning Corp., North Lima, OH.

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Appendix. Parties can find a complete discussion of all issues raised in this review and the corresponding recommendations in this public memorandum which is on file in the Central Records Unit, room B–099 of the main Department building. In addition, a complete version of the Decision Memo can be accessed directly on the Web at http://ia.ita.doc.gov/. The paper copy and electronic version of the Decision Memo are identical in content.

Final Results of Review

We determine that the following margin percentages exist:

Manufacturer/exporter	Margin (percent)
Nature's Farm Products (Chile) S.A.(including merchandise shipped by the Colombian firm Compañia Envasadora del Atlantico)	148.51
Ravine Foods	148.51

Assessment Rates and Cash Deposit Requirements

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. We will instruct the Customs Service to apply on an importer-specific basis the assessment rates against the customs values for the subject merchandise entered during the review period. We will also instruct the Customs Service to apply a specific rate to all CEA entries manufactured by NFC and sold to CEA.

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(1) of the Act: (1) the cash deposit rate for the reviewed companies will be the rates indicated above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rates will continue to be the company-specific rates published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value (LTFV) investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 148.51 percent, the "All Others" rate made effective by the LTFV investigation. These deposit requirements shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping duties prior to

liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of doubled antidumping duties.

This notice serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/ destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this determination and notice in accordance with sections 751(a)(1) and 777(i) of the Act.

Dated: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

Appendix List of Issues

Comment 1: Application of Antidumping Duty Margin to Full Value of CEA's Sales

Comment 2: NFC's Knowledge of Export Destination

[FR Doc. 02–11771 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–570–815]

Sulfanilic Acid From the People's Republic of China; Preliminary Results and Preliminary Partial Rescission of Antidumping Duty Administrative Review

AGENCY: AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: May 10, 2002.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on sulfanilic acid from the People's Republic of China. The review covers exports of this merchandise to the United States for the period August 1, 2000 through July 31, 2001, and two firms: Zhenxing Chemical Industry Company (Zhenxing) (also known as Baoding Mancheng Zhenxing Chemical Plant) and Xinyu Chemical Plant (Xinyu) (formerly known as Yude Chemical Industry Company). The preliminary results of this review indicate that there are dumping margins only for Zhenxing. We are preliminarily rescinding the review with respect to Xinyu because Xinyu did not export the subject merchandise to the United States during the period of review (POR). Interested parties are invited to comment on these preliminary results. See "Public Comment" section of this notice. The dumping margins are listed below in the "Preliminary Results of the Review" section of this notice.

FOR FURTHER INFORMATION CONTACT: Sean Carey or Dana Mermelstein, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue N.W., Washington, DC 20230 at (202) 482–3964 or (202) 482–1391, respectively.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations:

Unless otherwise indicated, all citations to the statute are references to the Tariff Act of 1930 (the Act), as amended. In addition, unless otherwise indicated, all citations to the Department's.32 regulations are to the regulations codified at 19 CFR Part 351 (2001).

Background:

On August 1, 2001, the Department published in the **Federal Register** (66 FR 39729) a notice of "Opportunity to Request Administrative Review" of the antidumping duty order on sulfanilic acid from the People's Republic of China, for the August 1, 2000 through July 31, 2001 period of review (POR). In accordance with 19 CFR 351.213(b), Zhenxing requested an administrative review for the aforementioned period on August 27, 2001. Petitioner, Nation Ford Chemical Company, also requested an administrative review of Zhenxing and Xinyu on August 30, 2001. On October 1, 2001, we published a notice of "Initiation of Antidumping Review" that included Zhenxing and Xinyu as part of this administrative review. *See* 66 FR 49924, which is being conducting pursuant to section 751(a) of the Act.

Zhenxing, a Chinese manufacturer described as a joint venture with U.S.-based importer PHT, reported sales of subject merchandise to the United States during the POR in its December 21, 2001 response to Section A of the Department's questionnaire. On January 14, 2002, Zhenxing submitted its response to Sections C and D of this questionnaire. Corrections to sections C and D were filed by Zhenxing on the following day, January 15, 2002.

Zhenxing submitted its response to the Department's first supplemental questionnaire on March 6, 2002. On April 15, 2002, Zhenxing responded to the Department's second supplemental questionnaire.

Partial Rescission:

The Department conducted a query of U.S. Customs Service data on entries of sulfanilic acid from the People's Republic of China made during the POR, and confirmed that Xinyu made no entries during the review period. Therefore, we preliminarily determine to rescind the review with respect to Xinyu.

Scope of Review:

Imports covered by this review are all grades of sulfanilic acid, which include technical (or crude) sulfanilic acid, refined (or purified) sulfanilic acid and sodium salt of sulfanilic acid.

Sulfanilic acid is a synthetic organic chemical produced from the direct sulfonation of aniline with sulfuric acid. Sulfanilic acid is used as a raw material in the production of optical brighteners, food colors, specialty dyes, and concrete additives. The principal differences between the grades are the undesirable quantities of residual aniline and alkali insoluble materials present in the sulfanilic acid. All grades are available as dry, free flowing powders.

Technical sulfanilic acid, classifiable under the subheading 2921.42.22 of the Harmonized Tariff Schedule (HTS), contains 96 percent minimum sulfanilic acid, 1.0 percent maximum aniline, and 1.0 percent maximum alkali insoluble materials. Refined sulfanilic acid, also classifiable under the subheading 2921.42.22 of the HTS, contains 98 percent minimum sulfanilic acid, 0.5 percent maximum aniline and 0.25 percent maximum alkali insoluble materials.

Sodium salt (sodium sulfanilate), classifiable under the HTS subheading 2921.42.90, is a powder, granular or crystalline material which contains 75 percent minimum equivalent sulfanilic acid, 0.5 percent maximum aniline based on the equivalent sulfanilic acid content, and 0.25 percent maximum alkali insoluble materials based on the equivalent sulfanilic acid content.

Although the HTS subheadings are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Review:

The review period is August 1, 2000 through July 31, 2001.

Separate Rate Analysis:

It is the Department's standard policy to assign to all exporters of the merchandise subject to review in non-market economy countries a single rate, unless an exporter can affirmatively demonstrate an absence of government control, both in law (*de jure*) and in fact (*de facto*), with respect to exports. *See Mitsubishi Heavy Industries, Ltd., v. U.S.*, 54 F. Supp. 2d 1183 (CIT 1999). To establish whether a company is sufficiently independent to be entitled to a separate, company-specific rate, the Department analyzes each exporting entity in a non-market economy ("NME") country under the test established in the *Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China*, 56 FR 20588 (May 6, 1991) ("Sparklers"), as amplified by the *Final Determination of Sales at Less Than Fair Value: Silicon Carbide from the People's Republic of China*, 59 FR 22585 (May 2, 1994) ("Silicon Carbide"). Evidence supporting, though not requiring, a finding of *de jure* absence of government control includes: (1) an absence of restrictive stipulations associated with an individual exporter's business and export licenses; (2) any legislative enactments decentralizing control of companies; or (3) any other formal measures by the government decentralizing control of companies. *De facto* absence of government control with respect to exports is based on four criteria: (1) whether the export prices are set by or subject to the approval of a government authority; (2) whether each exporter retains the proceeds from its sales and makes independent decisions regarding the disposition of profits and financing of losses; (3) whether each exporter has autonomy in making decisions regarding the selection of management; and (4) whether each exporter has the authority to sign contracts and other agreements.

1. Absence of *De Jure* Control

With respect to the absence of *de jure* government control over the export activities of Zhenxing, evidence on the record indicates that Zhenxing's export activities are not controlled by the government. In its questionnaire response, Zhenxing stated that it is an independent legal entity. Zhenxing submitted evidence of its legal right to set prices independent of all government oversight. Our review of Zhenxing's joint venture and business licenses indicates that it is permitted to engage in the exportation of sulfanilic acid. We preliminarily find no evidence of *de jure* government control restricting Zhenxing from the exportation of sulfanilic acid.

2. Absence of *De Facto* Control

With respect to the absence of *de facto* control over export activities, the information provided and reviewed at verification indicates that the management of Zhenxing, itself, is responsible for the determination of export prices, profit distribution, marketing strategy, and contract negotiations. Our analysis indicates that there is no government involvement in the daily operations or the selection of management for this company. In addition, we have found that the respondent's pricing and export strategy decisions are not subject to the review or approval of any outside entity, and that there are no governmental policy directives that affect these decisions.

There are no restrictions on Zhenxing's use of its export earnings. The company's management has the right to negotiate and enter into contracts and may delegate this authority to other company employees. There is no evidence that this authority is subject to any level of governmental approval. According to Zhenxing, the general manager is appointed by the Board of Directors, and management is selected by the general manager in consultation with the board of directors. Zhenxing stated that there is no government involvement in this selection process.

Consequently, because evidence on the record indicates an absence of government control, both in law and in fact, over its export activities, we preliminarily determine that a separate rate should be applied to Zhenxing. For further discussion of the Department's preliminary determination regarding the issuance of separate rates, *see* Separate Rates Decision Memorandum for Barbara Tillman, Director, Office of AD/ CVD Enforcement VII, dated May 3, 2002. A public version of this memorandum is on file in the Department's Central Record Unit (CRU).

United States Price:

Zhenxing reported as constructed export price ("CEP") the U.S. sales made by PHT on behalf of Zhenxing. We calculated CEP based on FOB prices to unaffiliated purchasers in the United States. In past reviews, we have found Zhenxing and PHT to be affiliated, and

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there has been no change in their affiliation during this review period. We made deductions for foreign inland freight, ocean freight, marine insurance, U.S. customs duties, U.S. transportation, credit, repacking in the United States, indirect selling expenses, inventory carrying costs, and constructed export price profit, as appropriate, in accordance with sections 772(c) and (d) of the Act. *See* Preliminary Analysis Memorandum dated May 3, 2002, a pubic version of which is on file in the CRU.

For foreign inland freight and ocean freight, respondent reported that these services were provided by NME companies. We valued these expenses using surrogate rates from India. Where appropriate, we calculated expenses which were incurred in U.S. dollars based on the actual U.S. dollar amounts paid for such expenses.

Normal Value:

Section 773(c)(1) of the Act provides that the Department shall determine normal value ("NV") using a factors of production methodology if (1) the merchandise is exported from a non-market economy (NME) country, and (2) the available information does not permit the calculation of NV using home-market prices, third-country prices, or constructed value under section 773(a) of the Act.

In every case conducted by the Department involving the PRC, the PRC has been treated as an NME country. Pursuant to section 771(18)(C)(i), any determination that a foreign country is an NME country shall remain in effect until revoked by the administering authority. None of the parties to this proceeding has contested such treatment in this review. Accordingly, we treated the PRC as an NME country for purposes of this review and we calculated NV by valuing the factors of production as set forth in section 773(c)(3) of the Act in a comparable market economy country which is a significant producer of comparable merchandise. Pursuant to section 773(c)(4) of the Act, we determined that India is comparable to the PRC in terms of per capita gross national product ("GNP"), the growth rate in per capita GNP, and the national distribution of labor; and that India is a significant producer of comparable merchandise. The Department has selected India as the surrogate country in the investigation and all prior administrative reviews of this order. *See Final Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China*, 57 FR 9409, 9412 (March 18, 1992). For further discussion of the Department's selection of India as the primary surrogate country, *see* Memorandum from Jeffrey May, Director, Office of Policy, to Dana Mermelstein, Program Manager, Office of AD/CVD Enforcement VII, dated March 8, 2002, and the "Surrogate Values Memorandum," dated May 3, 2002.

For purposes of calculating NV, we valued PRC factors of production in accordance with section 773(c)(1) of the Act. In examining surrogate values, we selected, where possible, the publicly available value which was: (1) an average non-export value; (2) representative of a range of prices within the POR or most contemporaneous with the POR; (3) product-specific; and (4) tax-exclusive. For factor values where we used Indian import statistics, we did not include data pertaining to imports from non-market economy countries. *See e.g., Notice of Final Results of the Antidumping Duty Administrative Review of Chrome-Plated Lug Nuts from the People's Republic of China*, 63 FR 53872 (October 7, 1998). We also did not include imports from Indonesia, Korea, and Thailand because these countries maintain non-specific export subsidies. *See Notice of Final Determination of Sales at Less Than Fair Value: Certain Automotive Replacement Glass Windshields From the People's Republic of China*, 67 FR 6482 (February 12, 2002).

For those surrogate values not contemporaneous with the POR, we adjusted for inflation where appropriate, using the Indian wholesale price indices (WPI) and U.S. producer price indices (PPI) published in the IMF's International Financial Statistics. When necessary, we adjusted the values for certain inputs reported in *Chemical Weekly* to exclude sales and excise taxes. In accordance with our practice, we added to CIF import values from India a surrogate inland freight cost using a simple average of the reported distances from either the closest PRC port to the factory, or from the domestic input supplier to the factory. *See Final Determination of Sales at Less that Fair Value: Certain Cut-to-Length Carbon Steel Plate from the People's Republic of China*, 62 FR 61964, 61977 (November 20, 1997). In accordance with this methodology, we valued the factors of production as follows:

Consistent with our final results in the 1999–2000 administrative review (*see Sulfanilic Acid from the People's Republic of China*; Final Results of Administrative Review, 66 FR 1962 (January 15, 2001)), we used public price quotes to value aniline, sulfuric acid, sodium bicarbonate, and activated carbon. To value aniline used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the POR as reported in *Chemical Weekly*, excluding any amounts assessed for the Indian excise tax and sales tax. We made adjustments to include costs incurred for freight between the Chinese aniline suppliers and the Zhenxing factory. This price was adjusted for inflation to be concurrent with the POR.

The surrogate freight rates used in the calculation of transportation costs for material inputs and subject merchandise were based on price quotes for truck freight rates from six different Indian trucking companies which were used in the in the *Final Determination of Sales at Less than Fair Value: Bulk Aspirin from the People's Republic of China*, 65 FR 33805

(May 25, 2000) (*Bulk Aspirin*). We also used rail freight rates from *Bulk Aspirin* that were quoted by two Indian rail freight transporters. Both the trucking and rail freight rates were adjusted for inflation to be concurrent with the POR.

To value sulfuric acid used in the production of sulfanilic acid, we used the rupee per kilogram value for sales in India during the POR as reported in *ChemicalWeekly*, excluding the amounts assessed for the Indian excise tax and sales tax. We made additional adjustments to include costs incurred for freight between the Chinese sulfuric acid supplier and the Zhenxing factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

To value sodium bicarbonate used in the production of sodium sulfanilate, we used the rupee per kilogram value for sales in India during the POR as reported in Chemical Weekly, excluding the amounts assessed for the Indian excise tax and sales tax. We made additional adjustments to include costs incurred for freight between the Chinese sodium bicarbonate supplier and Zhenxing factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

We averaged public price quotes from two Indian chemical corporations to value activated carbon. These price quotes are specific to the type and grade of activated carbon used in the production of sulfanilic acid. We made adjustments to include costs incurred for inland freight between the Chinese activated carbon supplier and Zhenxing's factory in the PRC. This price was adjusted for inflation to be concurrent with the POR.

To value plastic bags used as packing materials, we used import information from Indian *Import Statistics* that accounted for the period August 2000 through January 2001.

We adjusted these values to include freight costs incurred between the Chinese plastic bag suppliers and Zhenxing's factory in the PRC. This price was contemporaneous with the POR and therefore, not inflated.

Zhenxing reported its energy usage associated with steam coal and electricity. To value coal, we used import information from *Indian Import Statistics* that accounted for the period August 2000 through January 2001. We adjusted this value to include freight costs incurred between the coal supplier and Zhenxing's factory in the PRC. This price was contemporaneous with the POR and, therefore, not inflated. To value electricity, we used the price of industrial electricity in India in 1997 reported in *Energy, Prices, and Taxes, First Quarter 1999* published by the International Energy Agency. This price was adjusted for inflation to be concurrent with the POR.

The Department's regulations, at 19 CFR 351.408(c)(3), state that "[f]or labor, the Secretary will use regression-based wage rates reflective of the observed relationship between wages and national income in market economy countries. The Secretary will calculate the wage rate to be applied in nonmarket economy proceedings each year. The calculation will be based on current data, and will be made available to the public." To value the factor inputs for labor, we used the wage rates calculated for the PRC in the Department's "Expected Wages of Selected Non-Market Economy Countries–1999 Income Data" as updated in September 2001, and made public by the Department on its world-wide web site for Import Administration at *www.ia.ita.doc.gov*.

Following our practice from prior administrative reviews of sulfanilic acid from the PRC, for factory overhead, we used information reported in the *Reserve Bank of India Bulletin* ("*Bulletin*") for Indian public companies in the chemical industry. We used updated information from the September 2001 *Bulletin*. From this information, we were able to determine factory overhead as a percentage of total cost of manufacturing.

To value ocean freight, we used a value provided by the Federal Maritime Commission used in the *Final Determination of the Antidumping Administrative Review of Sebacic Acid from the PRC*, 62 FR 65674 (December 15, 1997). We adjusted the value for ocean freight for inflation during the POR using the U.S. dollar PPI data published by the IMF.

For selling, general and administrative (SG&A) expenses, we used information reported in the September 2001 *Bulletin* for Indian public companies in the chemical industry. We calculated an SG&A rate by dividing SG&A expenses as reported in the *Bulletin* by the cost of manufacturing.

Finally, to calculate a profit rate, we used information reported in the September 2001 *Bulletin* for Indian public companies in the chemical industry. We calculated a profit rate by dividing the before-tax profit by the sum of those components pertaining to the cost of manufacturing plus SG&A as reported in the *Bulletin*.

For a complete discussion of the Department's selection of surrogate values and copies of source documents relating to their valuation, see the Department's "Surrogate Values Memorandum," dated May 3, 2002.

Preliminary Results of Review:

We preliminarily determine the weighted average dumping margin for Zhenxing for the period August 1, 2000 through July 31, 2001 to be 46.27 percent.

Public Comment:

Pursuant to 19 CFR 351.224(b), the Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results within five days after the date of publication of this notice. Pursuant to 19 CFR 351.309, interested parties may submit written comments in response to these preliminary results. Normally, case briefs are to be submitted within 30 days after the date of publication of this notice, and rebuttal briefs, limited to arguments raised in case briefs, are to be submitted no later than five days after the time limit for filing case briefs. Parties who submit arguments in this proceeding are requested to submit with the argument: (1) a statement of the issues, and (2) a brief summary of the argument. Case and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Also, pursuant to 19 CFR 351.310, within 30 days of the date of publication of this notice, interested parties may request a public hearing on arguments to be raised in the case and rebuttal briefs. Unless the Secretary specifies otherwise, the hearing, if requested, will be held two days after the date for submission of rebuttal briefs. Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than ten days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date case briefs are due. The Department will publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, not later than 120 days, unless extended, after publication of these preliminary results.

Duty Assessments and Cash Deposit Requirements:

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Upon completion of this review, the Department will issue liquidation instructions directly to the Customs Service. Since the reported sales are CEP sales through a single affiliated importer, the liquidation instructions will recalculate the dumping margin on an entered value basis. Furthermore, the following deposit rates will be effective with respect to all shipments of sulfanilic acid from the PRC entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this review, as provided for by section 751(a)(2)(C) of the Act: (1) the cash deposit rate for the reviewed company listed above will be the rate for that firm established in the final results of this review; (2) for companies previously found to be entitled to a separate rate and for which no review was requested, the cash deposit rate will be the rate established in the most recent review of that company; (3) for all other PRC exporters of subject merchandise, the cash deposit rate will be the PRC-wide rate of 85.20 percent; and (4) the cash deposit rate for non-PRC exporters of subject merchandise from the PRC will be the rate applicable to the PRC supplier of that exporter. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

Notification of Interested Parties:

This notice serves as a preliminary reminder to importers of their responsibility under section 351.402(f)(2) of the Department's regulations to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties

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occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with sections 751(a)(1) and 777 (i)(1) of the Act.

Dated: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11770 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[C–427–815]

Stainless Steel Sheet and Strip in Coils from France: Preliminary Results of Countervailing Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Preliminary Results of Countervailing Duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on stainless steel sheet and strip in coils from France for the period January 1, 2000, through December 31, 2000. We have preliminarily determined that Ugine SA, the sole producer/exporter covered by this review, has received countervailable subsidies during the period of review.

Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Suresh Maniam, Group I, Office 1, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone (202) 482–0176.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the statute are references to the provisions of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act ("URAA") effective January 1, 1995 ("the Act"). Unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR Part 351 (2001).

Case History

The Department published the countervailing duty order on stainless steel sheet and strip in coils from France on August 6, 1999 (*Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*, 64 FR 42923 (August 6, 1999)). On August 1, 2001, the Department published a notice of "Opportunity to Request Administrative Review" of this countervailing duty order for calendar year 2000 (*Notice of Opportunity to Request Administrative Review of Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation*, 66 FR 39729). We received a review request from Ugine SA ("Ugine") and we initiated this review on October 1, 2001 (*Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 49924 (October 1, 2001)).

On October 26, 2001, we issued countervailing duty questionnaires to the Commission of the European Union ("EC"), the Government of France ("GOF"), and Ugine. We received responses to our questionnaires on December 20, 2001 (EC), and January 8, 2002 (GOF and Ugine). On February 25, 2002, the petitioners, Allegheny Ludlum Corporation, AK Steel, Inc., North American Stainless, United Steelworkers of America, AFL-CIO/CLC, Butler Armco Independent Union, and Zanesville Armco Independent Organization, filed comments on the responses received from the GOF and Ugine. We issued a supplemental questionnaire to Ugine on March 5, 2002, and received Ugine's responses on April 2, and April 22, 2002.

Scope of the Review

The products covered by this countervailing duty order are certain stainless steel sheet and strip in coils. Stainless steel is an alloy steel containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. The subject sheet and strip is a flat-rolled product in coils that is greater than 9.5 mm in width and less than 4.75 mm in thickness, and that is annealed or otherwise heat treated and pickled or otherwise descaled. The subject sheet and strip may also be further processed (*e.g.*, cold-rolled, polished, aluminized, coated, *etc.*) provided that it maintains the specific dimensions of sheet and strip following such processing.

The merchandise covered by this order is currently classifiable in the *Harmonized Tariff Schedule of the United States* ("HTSUS") at the following subheadings:

7219.13.00.30, 7219.13.00.50, 7219.13.00.70, 7219.13.00.80, 7219.14.00.30, 7219.14.00.65, 7219.14.00.90, 7219.32.00.05, 7219.32.00.20, 7219.32.00.25, 7219.32.00.35, 7219.32.00.36, 7219.32.00.38, 7219.32.00.42, 7219.32.00.44, 7219.33.00.05, 7219.33.00.20, 7219.33.00.25, 7219.33.00.35, 7219.33.00.36, 7219.33.00.38, 7219.33.00.42, 7219.33.00.44, 7219.34.00.05, 7219.34.00.20, 7219.34.00.25, 7219.34.00.30, 7219.34.00.35, 7219.35.00.05, 7219.35.00.15, 7219.35.00.30, 7219.35.00.35, 7219.90.00.10, 7219.90.00.20, 7219.90.00.25, 7219.90.00.60, 7219.90.00.80, 7220.12.10.00, 7220.12.50.00, 7220.20.10.10, 7220.20.10.15, 7220.20.10.60, 7220.20.10.80, 7220.20.60.05, 7220.20.60.10, 7220.20.60.15, 7220.20.60.60, 7220.20.60.80, 7220.20.70.05, 7220.20.70.10, 7220.20.70.15, 7220.20.70.60, 7220.20.70.80, 7220.20.80.00, 7220.20.90.30, 7220.20.90.60, 7220.90.00.10, 7220.90.00.15, 7220.90.00.60, and 7220.90.00.80.

Although the HTSUS subheadings are provided for convenience and customs purposes, the Department's written description of the merchandise under investigation is dispositive.

Excluded from the scope of this order are the following: (1) sheet and strip that is not annealed or otherwise heat treated and pickled or otherwise descaled; (2) sheet and strip that is cut to length; (3) plate (*i.e.*, flat-rolled stainless steel products of a thickness of 4.75 mm or more); (4) flat wire (*i.e.*, cold-rolled sections, with a prepared edge, rectangular in shape, of a width of not more than 9.5 mm); and (5) razor blade steel. Razor blade steel is a flat-rolled product of stainless steel, not further worked than cold-rolled (cold-reduced), in coils, of a width of not more than 23 mm and a thickness of 0.266 mm or less, containing, by weight, 12.5 to 14.5 percent chromium, and certified at the time of entry to be used in the manufacture of razor blades. *See* Chapter 72 of the HTSUS, "Additional U.S. Note" 1(d).

Also excluded from the scope of this order are:

Flapper Valve Steel: Flapper valve steel is defined as stainless steel strip in coils containing, by weight, between 0.37 and 0.43 percent carbon, between 1.15 and 1.35 percent molybdenum, and between 0.20 and 0.80 percent manganese. This steel also contains, by weight, phosphorus of 0.025 percent or less, silicon of between 0.20 and 0.50 percent, and sulfur of 0.020 percent or less. The product is manufactured by means of vacuum arc remelting, with inclusion controls for sulphide of no more than 0.04 percent and for oxide of no more than 0.05 percent. Flapper valve steel has a tensile strength of between 210 and 300 ksi, yield strength of between 170 and 270 ksi, plus or minus 8 ksi, and a hardness (Hv) of between 460 and 590. Flapper valve steel is most commonly used to produce specialty flapper valves in compressors.

Suspension Foil: Suspension foil is a specialty steel product used in the manufacture of suspension assemblies for computer disk drives. Suspension foil is described as 302/304 grade or 202 grade stainless steel of a thickness between 14 and 127 microns, with a thickness tolerance of plus-or-minus 2.01 microns, and surface glossiness of 200 to 700 percent Gs. Suspension foil must be supplied in coil widths of not more than 407 mm and with a mass of 225 kg or less. Roll marks may only be visible on one side, with no scratches of measurable depth. The material must exhibit residual stresses of 2 mm maximum deflection and flatness of 1.6 mm over 685 mm length.

Certain Stainless Steel Foil for Automotive Catalytic Converters: This stainless steel strip in coils is a specialty foil with a thickness of between 20 and 110 microns used to produce a metallic substrate with a honeycomb structure for use in automotive catalytic converters. The steel contains, by weight, carbon of no more than 0.030 percent, silicon of no more than 1.0 percent, manganese of no more than 1.0 percent, chromium of between 19 and 22 percent, aluminum of no less than 5.0 percent, phosphorus of no more than 0.045 percent, sulfur of no more than 0.03 percent, lanthanum of less than 0.002 or greater than 0.05 percent, and total rare earth elements of more than 0.06 percent, with the balance iron.

Permanent Magnet Iron-chromium-cobalt Alloy Stainless Strip: This ductile stainless steel strip contains, by weight, 26 to 30 percent chromium and 7 to 10 percent cobalt, with the remainder of iron, in widths 228.6 mm or less, and a thickness between 0.127 and 1.270 mm. It exhibits magnetic remanence between 9,000 and 12,000 gauss, and a coercivity of between 50 and 300 oersteds. This product is most commonly used in electronic sensors and is currently available under proprietary trade names such as "Arnokrome III."[1]

[1] "Arnokrome III" is a trademark of the Arnold Engineering Company.

Certain Electrical Resistance Alloy Steel: This product is defined as a non-magnetic stainless steel manufactured to American Society of Testing and Materials (ASTM) specification B344 and containing, by weight, 36 percent nickel, 18 percent chromium, and 46 percent iron, and is most notable for its resistance to high-temperature corrosion. It has a melting point of 1390 degrees Celsius and displays a creep rupture limit of 4 kilograms per square millimeter at 1000 degrees Celsius. This steel is most commonly used in the production of heating ribbons for circuit breakers and industrial furnaces, and in rheostats for railway locomotives. The product is currently available under proprietary trade names such as "Gilphy 36."[2]

Certain Martensitic Precipitation-hardenable Stainless Steel: This high-strength, ductile stainless steel product is designated under the Unified Numbering System (UNS) as S45500–grade steel, and contains, by weight, 11 to 13 percent chromium and 7 to 10 percent nickel. Carbon, manganese, silicon and molybdenum each comprise, by weight, 0.05 percent or less, with phosphorus and sulfur each comprising, by weight, 0.03 percent or less. This steel has copper, niobium, and titanium added to achieve aging and will exhibit yield strengths as high as 1700 Mpa and ultimate tensile strengths as high as 1750 Mpa after aging, with elongation percentages of 3 percent or less in 50 mm. It is generally provided in thicknesses between 0.635 and 0.787 mm, and in widths of 25.4 mm. This product is most commonly used in the manufacture of television tubes and is currently available under proprietary trade names such as "Durphynox 17."[3]

Three Specialty Stainless Steels Typically Used in Certain Industrial Blades and Surgical and Medical Instruments: These include stainless steel strip in coils used in the production of textile cutting tools (*e.g.*, carpet knives)[4]. This steel is similar to AISI grade 420 but containing, by weight, 0.5 to 0.7 percent of molybdenum. The steel also contains, by weight, carbon of between 1.0 and 1.1 percent, sulfur of 0.020 percent or less, and includes between 0.20 and 0.30 percent copper and between 0.20 and 0.50 percent cobalt. This steel is sold under proprietary names such as "GIN4 Mo." The second excluded stainless steel strip in coils is similar to AISI 420–J2 and contains, by weight, carbon of between 0.62 and 0.70 percent, silicon of between 0.20 and 0.50 percent, manganese of between 0.45 and 0.80 percent, phosphorus of no more than 0.025 percent, and sulfur of no more than 0.020 percent. This steel has a carbide density on average of 100 carbide particles per 100 square microns. An example of this product is "GIN5" steel. The third specialty steel has a chemical composition similar to AISI 420 F, with carbon of between 0.37 and 0.43 percent, molybdenum of between 1.15 and 1.35 percent, but lower manganese of between 0.20 and 0.80 percent, phosphorus of no more than 0.025 percent, silicon of between 0.20 and 0.50 percent, and sulfur of no more than 0.020 percent. This product is supplied with a hardness of more than Hv 500 guaranteed after customer processing, and is supplied as, for example, "GIN6."[5]

[2] "Gilphy 36" is a trademark of Imphy, S.A.

[3] "Durphynox 17"is a trademark of Imphy, S.A.

[4] This list of uses is illustrative and provided for descriptive purposes only.

Period of Review

The period of review ("POR") for which we are measuring subsidies is January 1, 2000, through December 31, 2000.

Attribution of Subsidies

Ugine has filed its response on behalf of Usinor and all of Usinor's affiliates involved in the manufacture, production or exportation of the subject merchandise. These affiliates are: Ugine SA, Imphy Ugine Precision, Ugine France Service, Sollac Mediterrannee, Usinor Packaging, Sollac Lorraine, Sollac Atlantique, CARLAM, G. Fer, IRSID, and Usinor Stainless. Usinor holds a majority interest in all of these companies. Therefore, in accordance with 19 CFR 351.525(b)(6)(iii), we have preliminarily attributed subsidies received by these companies to the total sales by Usinor of French-produced merchandise.

Changes in Ownership

On February 2, 2000, the U.S. Court of Appeals for the Federal Circuit ("CAFC") in *Delverde Srl v. United States*, 202 F.3d 1360, 1365 (Feb. 2, 2000), *reh'g en banc denied*, 2000 U.S. App. LEXIS 15215 (June 20, 2000) ("*Delverde III*"), rejected the Department's change-in-ownership methodology as explained in the *General Issues Appendix*[6]. The CAFC held that "the Tariff Act, as amended, does not allow Commerce to presume conclusively that the subsidies granted to the former owner of Delverde's

[5] "GIN4 Mo,""GIN5" and "GIN6" are the proprietary grades of Hitachi Metals America, Ltd.

[6] *Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria*, 58 FR 37217, 37225 (July 9, 1993).

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corporate assets automatically 'passed through' to Delverde following the sale. Rather, the Tariff Act requires that Commerce make such a determination by examining the particular facts and circumstances of the sale and determining whether Delverde directly or indirectly received both a financial contribution and benefit from the government." *Id.* at 1364.

Pursuant to the CAFC's finding, the Department developed a new change-in-ownership methodology, first announced in a remand determination on December 4, 2000. This new methodology was also applied in remand determinations resulting from remand orders in *Allegheny-Ludlum Corp., et al v. United States*, No. 99–09–00566 ("*Allegheny-Ludlum I*") and *GTS Industries S.A. v. United States*, No. 00–03–00118 ("GTS I"). (*See Final Results of Redetermination Pursuant to Court Remand: Allegheny-Ludlum Corp., et al v. United States*, No. 99–09–00566 (December 20, 2000) and *Final Results of Redetermination Pursuant to Court Remand: GTS Industries S.A. v. United States*, No. 00–03–00118 (December 22, 2000).) In *Allegheny-Ludlum I*, the CAFC was reviewing the final determination which gave rise to the countervailing duty order covered by this review. In both of the cited remand determinations, the Department examined the privatization of Usinor and found that the pre-privatization subsidies continued to benefit subject merchandise exported to the United States after Usinor's privatization.

Ugine argues that in *Allegheny Ludlum Corp. v. United States*, Slip Op. 02–01 (Ct. Int'l Trade Jan. 4, 2002) ("*Allegheny Ludlum II*"), the Court of International Trade ("CIT") rejected as unlawful the change-in-ownership test applied by the Department in the *Allegheny Ludlum I* remand determination. We note, however, that the CIT has remanded this issue to the Department again in *Allegheny Ludlum II* and that the results of our redetermination have not yet been filed with the CIT. Consequently, the CIT's ruling in *Allegheny Ludlum II* is not final. Thus, we have continued to apply the same change-in-ownership methodology that we employed in the *Allegheny Ludlum I* remand determination in these preliminary results.

The first step under this methodology is to determine whether the legal person (entity) to which the subsidies were given is, in fact, distinct from the legal person that produced the subject merchandise exported to the United States. If we determine the two persons are distinct, we then analyze whether a subsidy has been provided to the purchasing entity as a result of the change-in-ownership transaction. If we find, however, that the original subsidy recipient and the current producer/exporter are the same person, then that person benefits from the original subsidies, and its exports are subject to countervailing duties to offset those subsidies. In other words, we will determine that a "financial contribution" and a "benefit" have been received by the "person" under investigation. Assuming that the original subsidy has not been fully amortized under the Department's normal allocation methodology as of the POI, the Department would then continue to countervail the remaining benefits of that subsidy.

In making the "person" determination, where appropriate and applicable, we analyze factors such as (1) continuity of general business operations, including whether the successor holds itself out as the continuation of the previous enterprise, as may be indicated, for example, by use of the same name, (2) continuity of production facilities, (3) continuity of assets and liabilities, and (4) retention of personnel. No single factor will necessarily provide a dispositive indication of any change in the entity under analysis. Instead, the Department will generally consider the post-sale person to be the same person as the pre-sale person if, based on the totality of the factors considered, we determine the entity in question can be considered a continuous business entity because it was operated in substantially the same manner before and after the change in ownership.

Usinor's Privatization

Up until the time of Usinor's privatization, Usinor was owned (directly or indirectly) by the GOF. Usinor was privatized beginning in July 1995, when the GOF and Clindus offered the vast majority of their shares in the company for sale. Clindus was a subsidiary of Credit Lyonnais, which at that time was controlled by the GOF. After the privatization and, in particular, by the end of calendar year 1997, 82.28 percent of Usinor's shares were held by private shareholders who could trade them freely. Usinor's employees owned 5.16 percent of Usinor's shares; Clindus, 2.5 percent; and, the GOF, 0.93 percent. The remaining 14.29 percent of Usinor's shares were held by the so-called "Stable Shareholders." According to Usinor's 2000 annual report, the government-owned Electricite de France continues to own 3.6 percent of Usinor's shares.

In analyzing whether the producer of merchandise subject to this investigation is the same business entity as pre-privatization Usinor, we have examined whether Usinor continued the same general business operations, retained production facilities, assets and liabilities, and retained the personnel of the pre-privatization Usinor. Based on our analysis, we have concluded that the privatized Usinor is, for all intents and purposes, the same person as the GOF-owned steel producer of the same name which existed prior to the privatization. Consequently, the subsidies bestowed on Usinor prior to its 1995 privatization are attributable to present-day Usinor and continue to benefit the subject merchandise during the POR.

1. Continuity of General Business Operations

Usinor produced the same products and remained the same corporation at least since the late 1980s. In 1987, Usinor became the holding company for the French steel groups, Usinor and Sacilor (the GOF had majority ownership of both Usinor and Sacilor since 1981). Usinor's principal businesses covered flat products, stainless steel and alloys, and specialty products. In 1994, these three product groups were produced by three subsidiaries: Sollac, Ugine and Aster (respectively). This same structure continued after Usinor's privatization in 1995. Usinor's organizational chart during the period of investigation shows the same three major products being produced by the same three subsidiaries.

In 1994 (prior to the privatization), flat products contributed 55 percent of consolidated sales, while stainless and specialty products contributed 20 and 18 percent, respectively. In the years following privatization (1995 -2000), flat carbon steels continued to contribute 49 - 58 percent of Usinor's consolidated net sales. Sales of stainless and alloy, and specialty steel accounted for 23 - 25 percent, and 19 - 21 percent, respectively, during the years 1995 - 1997. Since then, sales of the stainless, alloy, and specialty steel have been combined in Usinor's annual report and a separate category has been reported for "processing and distribution." The combined sales of stainless, alloy and specialty steel ranged from 21 - 28 percent of Usinor's consolidated net sales over the period 1998 - 2000, while processing and distribution ranged from 6 - 18 percent over the same period. In 1999, Usinor divested itself of its specialty steels business.

We have also examined whether post-privatization Usinor held itself out as the continuation of the previous enterprise (*e.g.*, by retaining the same name). In this instance, Usinor retained its same name and there is no indication that the privatized company held itself out as anything other than a continuation of pre-privatization Usinor.

The continuity of Usinor's business operations is also reflected in Usinor's customer base. Prior to privatization, the automobile industry was a principal purchaser of Usinor's output, accounting for approximately 30 percent of Usinor's sales in 1994. In 1997 and 2000, the automobile industry was still Usinor's major customer (36 percent of Usinor's sales in 1997 and 38 percent in 2000). The construction industry has continued as the second largest purchaser: 26 percent in 1994, 23 percent in 1997, and 15 percent in 2000.

2. Continuity of Production Facilities

Neither product lines nor production capacity changed as a result of the privatization, except those changes that occurred in an ongoing manner in the ordinary course of business. No facilities or production lines were added or eliminated specifically as a result of the sale. As is clear from a comparison of the Prospectus for the 1995 privatization and Usinor's 1997 Annual Report, steel production facilities have remained intact. The company has continued to focus on an "all steel" strategy, engaging in all aspects of the steel production process and produces a wide variety of steel products. Finally, Usinor's steel production facilities did not change their physical locations.

3. Continuity of Assets and Liabilities

Usinor was sold intact, with all of its assets and liabilities. While the GOF continued to own a small percentage of Usinor's shares, there is no indication that it retained any of Usinor's assets or liabilities.

4. Retention of Personnel

Usinor's Articles of Incorporation changed as a result of the privatization, and the new Articles of Incorporation specified new procedures for electing the Board of Directors. New directors were elected to the Board under the new procedures. However, Usinor's Chairman and Chief Executive Officer remained the same before and after the privatization. Similarly, Usinor's workforce did not change.

Therefore, based on the facts and our analysis of a variety of relevant factors, once privatized, Usinor continued to operate, for all intents and purposes, as the same person that existed prior to the privatization and, thus, the pre-privatization subsidies continued to benefit Usinor even under private ownership.

Use of Facts Available

Sections 776(a)(2)(A) and (B) of the Act require the use of facts available when an interested party withholds information requested by the Department, or when an interested party fails to provide information required in a timely manner and in the format requested. In selecting from among facts available, section 776(b) of the Act provides that the Department may use an inference adverse to the interests of a party if the Department determines that the party has failed to cooperate to the best of its ability. Such adverse inference may include reliance on information derived from (1) the petition; (2) a final determination in a countervailing duty or an antidumping duty investigation; (3) any previous administrative review, new shipper review, expedited antidumping review, section 753 review, or section 762 review; or (4) any other information placed on the record. *See* section 776(b) of the Act; *see also*, 19 CFR 351.308(a), (b), and (c).

Sections 782(d) and 782(e) of the Act require the Department to inform a respondent if there are deficiencies in its responses and allow it a reasonable time to correct these deficiencies before the Department applies facts available. Even if the information provided is deficient, if it is usable without undue difficulty, is timely, is verifiable, can serve as a reliable basis for reaching our determination, and if the party has cooperated to the best of its ability in providing responses to the Department's questionnaires, section 782(e) of the Act directs the Department not to decline to consider deficient submissions.

In this proceeding, the GOF did not provide information regarding the specificity of benefits under certain programs included under Investment/Operating Subsidies reported by Usinor. Instead, the GOF responded, "this question is not readily answerable given the multiplicity of programs involved. The GOF will undertake to provide responsive information at verification." *See* GOF Questionnaire Response, dated January 8, 2002, at II–9. Similarly, the GOF was asked to provide this information in the investigation segment of this proceeding and elected not to do so. (*See Final Affirmative Countervailing Duty Determination: Stainless Steel Sheet and Strip in Coils from France*, 64 FR 30774, 30779 (June 8, 1999) ("*SSSS from France*").) Thus, the GOF is aware of the specific information needed by the Department and apparently possesses responsive information, but has declined to provide it in response to our questionnaires.

In these circumstances, the Department has no alternative but to apply facts available, pursuant to section 776(a) of the Act. Further, we preliminarily determine that an adverse inference is warranted in applying facts available because the GOF elected not to provide information which it could provide and, hence, has not acted to the best of its ability. We do not believe that verification, if one is conducted, is the appropriate means for gathering this information.

Because the GOF did not provide information about these programs, including the distribution of benefits under the programs, the Department is unable to make specificity findings. Therefore, in applying adverse facts available, we preliminarily determine that these programs are *de facto* specific. (Our analysis of the financial contribution and benefit under these programs is discussed below under "Investment/Operating Subsidies.")

Subsidies Valuation Information

Allocation Period

Pursuant to 19 CFR 351.524(b), non-recurring subsidies are allocated over a period corresponding to the average useful life ("AUL") of the renewable physical assets used to produce the subject merchandise. Section 351.524(d)(2) of the regulations creates a rebuttable presumption that the AUL will be taken from the U.S. Internal Revenue Service's 1977 Class Life Asset Depreciation Range System ("the IRS Tables"). For stainless steel sheet and strip in coils, the IRS Tables prescribe an AUL of 15 years.

In order to rebut the presumption in favor of the IRS tables, the challenging party must show that the IRS tables do not reasonably reflect the company-specific AUL or the country-wide AUL for the industry in question, and that the difference between the company-specific or country-wide AUL and the IRS tables is significant. 19 CFR 351.524(d)(2)(i). For this difference to be considered significant, it must be one year or greater. 19 CFR 351.524(d)(2)(ii).

In this proceeding, Usinor has calculated a company-specific AUL of 12 years. We note, however, that the one allocable subsidy received by Usinor and attributed to Ugine, FIS Bonds, has previously been allocated over a company-specific AUL of 14 years. The

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14–year AUL was calculated in a remand determination involving the *Final Affirmative Countervailing Duty Determination: Certain Steel Products from France*, 58 FR 37304 (July 9, 1993) ("*French Certain Steel*") and was subsequently used to allocate this same subsidy in *SSSS from France* (64 FR at 30778) and *Final Affirmative Countervailing Duty Determination: Certain Cut-to-Length Carbon-Quality Steel Plate From France*, 64 FR 73277, 73280 (December 29, 1999) ("*French Plate*"). Because the 14–year AUL was calculated using company-specific information and the information is more contemporaneous with the bestowal of the subsidy in question than the information underlying Usinor's 12–year calculation, we have continued to use the 14–year AUL to allocate the benefits of the FIS bonds in this proceeding.

For non-recurring subsidies to Usinor, we applied the "0.5 percent expense test" described in 19 CFR 351.524(b)(2). Under this test, we compare the amount of subsidies approved under a given program in a particular year to sales (total or export, as appropriate) in that year. If the amount of subsidies is less than 0.5 percent of sales, the benefits are allocated to the year of receipt rather than over the AUL period.

Equityworthiness and Creditworthiness

In *French Certain Steel* and *SSSS from France*, we found Usinor to be unequityworthy from 1986 through 1988 and uncreditworthy from 1982 through 1988. No new information has been presented in this review to warrant a reconsideration of these findings. Therefore, based upon these previous findings of unequityworthiness and uncreditworthiness, in this review, we continue to find Usinor unequityworthy and uncreditworthy from 1987 through 1988, the years relevant to this investigation.

Benchmarks for Loans and Discount Rates

As discussed above, we have determined that Usinor was uncreditworthy in 1988, the only year in which it received a countervailable subsidy which is being allocated over time.

In accordance with 19 CFR 351.524(d)(3)(ii), the discount rate for companies considered uncreditworthy is the rate described in 19 CFR 351.505(a)(3)(iii). To calculate that rate, the Department must specify values for four variables: (1) the probability of default by an uncreditworthy company; (2) the probability of default by a creditworthy company; (3) the long-term interest rate for creditworthy borrowers; and (4) the term of the debt.

For the probability of default by an uncreditworthy company, we have used the average cumulative default rates reported for the Caa- to C-rated category of companies as published in Moody's Investors Service, "Historical Default Rates of Corporate Bond Issuers, 1920–1997" (February 1998). For the probability of default by a creditworthy company, we used the cumulative default rates for investment grade bonds as published in Moody's Investor Services: "Statistical Tables of Default Rates and Recovery Rates" (February 1998). For the commercial interest rate charged to creditworthy borrowers, we used the average of the following long-term interest rates: medium-term credit to enterprises, equipment loan rates as published by the OECD, cost of credit rates published in the *Bulletin of Banque de France*, and private sector bond rates as published by the International Monetary Fund. For the term of the debt, we used the AUL period for Usinor, as the equity benefits are being allocated over that period.

To measure the benefit from reimbursable advances received by Usinor, we relied on an average long-term interest rate developed in *SSSS from France* for 1989, and on Usinor's company-specific borrowing rate for 1995.

I. Programs Preliminarily Determined to Be Countervailable

A. FIS Bonds

The 1981 Corrected Finance Law granted Usinor the authority to issue convertible bonds. In 1983, the Fonds d'Intervention Sidérurgique ("FIS"), or steel intervention fund, was created to implement that authority. In 1983, 1984, and 1985, Usinor issued convertible bonds to the FIS, which in turn, with the GOF's guarantee, floated the bonds to the public and to institutional investors. These bonds were converted to common stock in 1986 and 1988.

In several previous cases, the Department has treated these conversions of Usinor's FIS bonds into equity as countervailable equity infusions. *See French Certain Steel*, 58 FR at 37307; *French Plate*, 64 FR at 73282; *SSSS from France*, 64 FR at 30779; and *Final Affirmative Countervailing Duty Determinations: Certain Hot Rolled Lead and Bismuth Carbon Steel Products From France*, 58 FR 6221, 6224 (January 27, 1997). These equity infusions were limited to Usinor and were, therefore, specific within the meaning of section 771(5A)(D)(i) of the Act. Also, these equity infusions provided a financial contribution to Usinor within the meaning of section 771(5)(D)(i) of the Act. Finally, because Usinor was unequityworthy at the time of the infusions, we determined that Usinor received a benefit in the amount of the investments.

No new information or evidence of changed circumstances has been submitted in this proceeding to warrant a reconsideration of our past findings. Therefore, we determine that a countervailable benefit is being bestowed on the subject merchandise. Because the final year of the benefit stream for the 1986 infusion was 1999, *i.e.*, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in this POR for the 1986 conversion. Thus, only the 1988 equity infusion continues to provide a benefit in the POR.

We have determined that the 1988 equity infusion should be treated as a non-recurring subsidy pursuant to 19 CFR 351.507(c). Because Usinor was uncreditworthy in 1988 (see section above on "Subsidies Valuation Information: Equityworthiness and Creditworthiness"), we used an uncreditworthy discount rate to allocate the benefit of the equity infusion.

In French Plate, we attributed separately to Usinor and GTS Industries S.A. their relative portions of the benefits from the equity infusion. 64 FR at 73282. We have continued to do so in this proceeding. We note, however, that the amount attributed to the respective companies differs from the amounts in *French Plate*. This is because of the revisions to the Department's change-in-ownership methodology since the *French Plate* determination.

Dividing the POR benefit attributed to Usinor by Usinor's total sales of French-produced merchandise during the POR, we preliminarily determine Usinor's net subsidy rate for this program to be 1.13 percent ad valorem.

B. Investment/Operating Subsidies

During the period 1987 through the POR, Usinor received a variety of small investment and operating subsidies from various GOF agencies and from the European Coal and Steel Community ("ECSC"). These subsidies were provided to Usinor for research and development, projects to reduce work-related illnesses and accidents, projects to combat water pollution, etc. The subsidies are classified as investment, equipment, or operating subsidies in the company's accounts, depending on how the funds are used.

In *SSSS from France* and *French Plate*, the Department determined that the funding provided to Usinor by the water boards (*les agences de l'eau*) and certain work/training grants were not countervailable. *See* 64 FR at 30779, 30782; 64 FR at 73282. Consistent with these previous cases, the Department has not included these programs in this review.

For the remaining programs, we preliminarily determine that the investment and operating subsidies provide a financial contribution, as described in section 771(5)(D)(i) of the Act, and a benefit, as described in section 771(5)(E)(i) of the Act. Also, as discussed above under "Use of Facts Available," we preliminarily determine that these investment and operating subsidies are specific within the meaning of section 771(5A)(D) of the Act. Therefore, consistent with *SSSS from France*, 64 FR at 30779, and *French Plate*, 64 FR at 73282, we determine that these investment and operating subsidies are countervailable subsidies.

The investment and operating subsidies provided in years prior to 1999 were already determined to be less than 0.5 percent of Usinor's sales of French-produced merchandise in the relevant year and expensed in the years in which they were received (*see SSSS from France*, 64 FR at 30780, and *French Plate*, 64 FR at 73283). The amount of investment and operating subsidies in 1999 was also less than 0.5 percent of Usinor's sales of French-produced merchandise in 1999. Therefore, this benefit was also expensed in the year of receipt (1999), in accordance with 19 CFR 351.524 (b)(2).

To calculate the benefit received during the POR, we divided the subsidies received by Usinor in the POR by Usinor's total sales of French-produced merchandise during the POR. Accordingly, we preliminarily determine Usinor's net subsidy rate for this program to be 0.16 percent ad valorem.

II. Programs Preliminarily Determined To Be Not Countervailable

A. Loans With Special Characteristics (PACS)

In SSSS from France, we determined that Usinor received a countervailable subsidy as a result of the GOF's 1986 conversions of PACS into common shares of Usinor. Because the final year of the benefit stream for this subsidy was 1999, *i.e.*, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in the POR.

B. Shareholders' Advances

In *SSSS from France*, we determined that Usinor received a countervailable subsidy as a result of shareholder advances made by the GOF in 1984 - 1986. Because the final year of the benefit streams for these advances was 1999, prior to this POR, we determine that there is no countervailable benefit to the subject merchandise in the POR.

C. Electric Arc Furnace

In *SSSS from France*, we explained that the GOF had agreed to provide Usinor with reimbursable advances to support the company's efforts to increase the efficiency of the melting process, the first stage in steel production. Because the first disbursements were not to be made until 1998, i.e., after the POI in *SSSS from France*, the Department found no benefit during the POI. (*See SSSS from France*, 64 FR at 30780). In *French Plate*, the Department also found no benefit during the POI (1998), because the reimbursable advance was treated as a loan and no payment would be due on the loan until 1999. (*See French Plate*, 64 FR at 73284)

In the instant review, Usinor has reported that it received reimbursable advances under this program in 1998 and 1999, and that the program was phased out in 1999 and 2000. These advances were approved in 1995 and they are to be repaid in 2002 and 2005, respectively.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, even if these reimbursable advances were treated as grants, they would be expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily determine that they do not confer a countervailable benefit on the subject merchandise during the POR.

D. Funding for Myosotis Project

In *SSSS from France*, we explained that Usinor received grants and reimbursable advances from the GOF to fund the Myosotis project. We found that the amounts received by Usinor between 1989 and 1993 were properly expensed in the years of receipt and, hence, that there was no countervailable subsidy to the subject merchandise from these grants. We also found that Usinor has received a reimbursable advance from the GOF in support of the Myosotis project in 1997. We viewed the reimbursable advance as a loan and found no countervailable benefit from the 1997 reimbursable advance during the 1997 POI. (*See SSSS from France*, 64 FR at 30780) In *French Plate*, we also found no countervailable benefit from the 1997 reimbursable advance. (*See French Plate*, 64 FR at 73283) In the instant review, Usinor has responded that it received a second reimbursable advance in 1999.

The reimbursable advances provided by the GOF to support the Myosotis project were approved in 1995. The advances were to be repaid in 1999 and 2001, respectively.

We divided the total amount approved by the GOF for this project by Usinor's total sales of French-produced merchandise in 1995, the year the reimbursable advances were approved. The result was less than 0.5 percent. Therefore, even if these reimbursable advances were treated as grants, they would be expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the reimbursable advances were treated as zero-interest long-term loans. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed these reimbursable advances further and preliminarily determine that they do not confer a countervailable benefit on the subject merchandise during the POR.

E. Conditional Advances

In *SSSS from France*, we explained that Usinor received a conditional advance from the GOF in connection with a project aimed at developing a new type of steel used in the production of catalytic converters. Payments were received by Usinor in 1992 and 1995. Repayment of the conditional advance was contingent upon sales of the product resulting from the project exceeding a set amount. In *SSSS from France*, we found that no repayment had been made and we treated the advance as a countervailable short-term, interest-free loan. In this review, Usinor has responded that it repaid a portion of the conditional advance in November 1999, and that the balance remained outstanding in the POR.

Assuming the conditional advance was approved in either 1991 or 1992, we divided the total amount received by Usinor's total sales of French-produced merchandise in each of those years. The result in both instances was less than 0.5 percent. Therefore, even if the

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conditional advance were treated as a grant, it would have been expensed prior to the POR. Alternatively, we have calculated the possible benefit to Usinor if the outstanding amount of the conditional advance were treated as a zero-interest long-term loan. The benefit (when rounded to the nearest hundredth) is zero during the POR.

Therefore, we have not analyzed the conditional advance further and preliminarily determine that it does not confer a countervailable benefit on the subject merchandise during the POR.

III. Programs Preliminarily Determined to Be Not Used

Based on the information provided in the responses, we determine that neither Usinor nor its affiliated companies that produce subject merchandise received benefits under the following programs during the POI:

A. ESF Grants

In *SSSS from France* and *French Plate*, we found that certain Usinor companies had received grants under the European Social Fund ("ESF") for worker training, and that the grants provided countervailable subsidies. Normally, the Department treats benefits from worker training programs to be recurring (see 19 CFR 351.524(c)(1)). However, we have found in several cases that ESF grants relate to specific, individual projects that require separate approval and, hence, should be treated as non-recurring grants. *See, e.g., SSSS from France*, 64 FR at 30781.

Because ESF grants are non-recurring subsidies and potentially allocable over time, we reviewed *SSSS from France* and *French Plate* regarding past disbursements to Usinor under this program. In *SSSS from France*, we determined that ESF grants received in 1995 and 1997 were less than 0.5 percent of Ugine's sales in those years. Hence, the benefits of those ESF grants were expensed in the years of receipt. *See SSSS from France*, 64 FR at 30781. In *French Plate*, an ESF grant received in 1998 by CLI, an Usinor subsidiary, was also expensed in the year of receipt.

In this review, Usinor has stated that any ESF grants received by the Usinor companies in 1999 would be included among the investment and operating subsidies reported in Usinor's financial statement. Because we find, for 1999, that these subsidies were less than 0.5 percent of Usinor's total sales of French-produced merchandise in 1999, any benefits in 1999 would have been expensed in 1999.

Therefore, we determine that ESF grants received by Usinor and it affiliates prior to the POR do not confer a countervailable benefit on the subject merchandise during the POR. Moreover, Usinor has responded that it did not receive any ESF grants during the POR.

B. Export Financing under Natexis Banque Programs

C. DATAR Regional Development Grants (PATs)

D. DATAR 50 Percent Taxing Scheme

E. DATAR Tax Exemption for Industrial Expansion

F. DATAR Tax Credit for Companies Located in Special Investment Zone

G. DATAR Tax Credits for Research

H. GOF Guarantees

I. Long-term Loans from CFDI

J. Resider I and II Programs

K. Youthstart

L. ECSC Article 54 Loans

M. ECSC Article 56(2)(b) Redeployment/ Readaptation Aid

N. ERDF Grants

Preliminary Results of Review

In accordance with 19 CFR 351.221(b)(4)(i), we calculated an individual subsidy rate for Ugine. For the period January 1, 2000, through December 31, 2000, we preliminarily determine Ugine's net subsidy rate to be 1.29 percent. The calculations will be disclosed to the interested parties in accordance with section 351.224(b) of the regulations.

If the final results of this review remain the same as these preliminary results, the Department intends to instruct the U.S. Customs Service ("Customs") to collect cash deposits of estimated countervailing duties at the rate of 1.29 percent on the f.o.b. value of all shipments of the subject merchandise from Ugine that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

For companies that were not named in our notice initiating this administrative review, we will instruct Customs to collect cash deposits of estimated countervailing duties at the most recent company-specific or country-wide rate applicable to the company. Accordingly, the cash deposit rates that will be applied to non-reviewed companies covered by this order are those established in the *Amended Final Determination: Stainless Steel Sheet and Strip in Coils From the Republic of Korea; and Notice of Countervailing Duty Orders: Stainless Steel Sheet and Strip in Coils from France, Italy, and the Republic of Korea*. These rates shall apply to all non-reviewed companies until a review of a company assigned these rates is requested.

While the countervailing duty deposit rate for Ugine may change as a result of this administrative review, we have been enjoined from liquidating any entries of the subject merchandise after August 6, 1999. Consequently, we do not intend to issue liquidation instructions for these entries until such time as the injunction, issued on December 22, 1999, is lifted.

Public Comment

Interested parties may submit written arguments in case briefs within 30 days of the date of publication of this notice. 19 CFR 351.509(c). Rebuttal briefs, limited to issues raised in case briefs, may be filed not later than five days after the date of filing the case briefs. Parties who submit briefs in this proceeding should provide a summary of the arguments not to exceed five pages and a table of statutes, regulations, and cases cited. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 351.303(f).

Interested parties may request a hearing within 30 days after the date of publication of this notice. Any hearing, if requested, will be held two days after the scheduled date for submission of rebuttal briefs. 19 CFR 351.310(c).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under 19 CFR 351.309(c)(ii), are due.

The Department will publish a notice of the final results of this administrative review within 120 days from the publication of these preliminary results.

This administrative review and notice are in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

DATED: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11768 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

International Trade Administration

[Docket No. 970424097–1069–06]

RIN 0625–ZA05

Market Development Cooperator Program

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of funding availability.

SUMMARY: The International Trade Administration (ITA) of the U.S. Department of Commerce (the Department) requests that eligible organizations submit proposals (applications) for the fiscal year (FY) 2002 competition for Market Development Cooperator Program (MDCP) awards. ITA creates economic opportunity for U.S. workers and firms by promoting international trade, opening foreign markets, ensuring compliance with U.S. trade laws and agreements, and supporting U.S. commercial interests at home and abroad.

Through MDCP cooperative agreements the Department works with export multiplier organizations providing technical and financial assistance which these organizations match. Export multiplier organizations compete for a limited number of MDCP awards.

Eligible export multipliers include trade associations, state economic development/trade departments, small business development centers, World Trade Centers, chambers of commerce, and other non-profit industry organizations. These export multipliers are particularly effective in reaching small- and medium-size enterprises (SMEs). MDCP awards help to underwrite the start-up costs of new export ventures which export multipliers are often reluctant to undertake without Federal Government support. MDCP aims to develop, maintain and expand foreign markets for non-agricultural goods and services produced in the United States and serves to:

- Challenge the private sector to think strategically about foreign markets;
- Spur private-sector innovation and investment in exporting; and
- Increase the number of U.S. companies, particularly SMEs, taking decisive export actions.

As an active partner, ITA will, as appropriate, guide and assist export multipliers in achieving project objectives. ITA encourages export multipliers to propose projects that (1) best meet their industry's market development needs; and (2) leverage the partnership between the export multiplier and ITA.

DATES: *Public Meeting:* The Department will hold a public meeting to discuss MDCP proposal preparation, procedures, and selection process on Monday, May 20, 2002. The two-hour meeting will begin at 10 a.m. in Room 6057, at the Herbert Clark Hoover Building, 14th and Constitution Avenue, NW., Washington, DC. The Department will not discuss specific proposals at this meeting. Attendance is not required.

Applications: The Department must receive completed applications by 5 p.m. Eastern Daylight Time, Monday, July 1, 2002. Late applications will not be accepted. They will be returned to the sender. Applicants must ensure that the service they use to deliver their application can do so by the deadline. Due to recent security concerns, packages sent to the Department via U.S. mail have been delayed several days or even weeks.

As set forth under *IV.B.2. Number of Copies*, ITA requests one original application, plus seven (7) copies. Applicants for whom this is a financial hardship should submit an original and two copies. Applications should be submitted to the contact below.

FOR FURTHER INFORMATION CONTACT: Mr. Brad Hess, Manager, Market Development Cooperator Program, Trade Development, ITA, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Room 3215, Washington, DC 20230.

Email: *Brad_Hess@ita.doc.gov*.

Phone/Fax: (202) 482–2969/–4462.

Internet: *http://www.export.gov/mdcp*.

Applicotion Kit: A kit which includes required application forms is available at *www.export.gov/mdcp*. A "hard-copy" version is available upon request.

Pre-Application Counseling: Applicants with questions should contact the Department as soon as possible, while continuing to prepare their proposals. The Department will not extend the deadline for submitting applications.

From May 10, 2002, until June 10, 2002, the Department does not counsel potential applicants regarding the merits of projects they may propose in their applications. During this competition period, the Department may respond to potential applicants' questions regarding eligibility, technical issues, procedures, general information, and referral.[1] For example, during the competition period the Department may refer a potential applicant to sources for market research on a foreign market identified by the potential applicant. However, to continue the example, the Department may not comment on the merits of including that market in a proposal, or suggest an alternative market.

SUPPLEMENTARY INFORMATION: *Authority:* The Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100–418, Title II, sec. 2303, 102 Stat. 1342, 15 U.S.C. 4723 and Pub. L. 107–38.[2]

Catalog of Federal Domestic Assistance (CFDA): No. 11.112, Market Development Cooperator Program.

I. Definitions of Terms

Several definitions are provided below to assist readers in preparing MDCP applications. These definitions do not supplant or supercede definitions provided in the Department's Grants and Cooperative Agreements Interim Manual (February 2002).

A. Definition of Frequently Used Terms

Several terms used throughout this request for applications have specific meanings that may not be evident. These are defined below.

1. Award period: Federal funds may be expended over the period of time required to complete the scope of work, but not to exceed three years from the start date of the award. The award period may be extended. Extensions usually do not exceed 12 months.

2. Commercial Service: Formally known as the U.S. and Foreign Commercial Service (US&FCS), the Commercial Service, one of ITA's major program areas, is statutorily mandated to promote exports of goods and services from the United States, particularly by SMEs, and to protect U.S. business interests abroad. It is composed of three main units. Two of these encompass entities whose staff work with or on practically every MDCP project team, namely, the domestic U.S. Export Assistance Centers (USEACs) and the overseas Commercial Service offices.

3. Cooperative agreement: The legal financial assistance instrument used for MDCP awards. Unlike a grant, a cooperative agreement reflects a relationship between a cooperator and the Department characterized by substantial Department involvement including collaboration and participation. See *II.B. Administration of Award Activity* below for additional information about the Department's involvement.

4. Cooperator: An export multiplier (see definition below) that wins an MDCP financial assistance award in ITA's annual competition. A cooperator is a "recipient" (see definition below) of Federal financial assistance. Cooperator

[1] Outside of the competition period, the Department is free to counsel potential applicants on the merits of their proposed projects.

[2] Unless otherwise noted, all legal authorities cited in this notice may be accessed via the Internet at *http://www.access.gpo.gov/* or at *http://wwwsecure.law.cornell.edu/federal/*.

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status is valid only for the term of the MDCP award period.

5. Cooperator event: An export promotion or market development activity undertaken as part of an MDCP project such as a trade mission, a trade show, a technical seminar, or opening a foreign office. Other examples include, but are not limited to, those listed below in *II.A. Examples of Project Activity.*

6. Current or Past Cooperator: Organization that currently has or in the past has had an MDCP project.

7. Domestic Commercial Service office: A U.S. Export Assistance Center.

8. Export multiplier: A trade association, state department of trade, and other non-profit that does not export, but helps companies to export. (See *III. Eligibility* below.)

9. Fiscal year: The fiscal year of the Federal Government. The twelve month period from October 1 through September 30.

10. Overseas Commercial Service office: A Commercial Service unit whose employees are based in U.S. embassies, consulates, or other locations abroad.

11. Industry: The U.S. potential exporters that an applicant's project is designed to benefit. The target group can be very broad or quite specific. For one applicant, for example, "industry" may mean all U.S. producers of tennis equipment and services, for another only California tennis equipment producers. For another applicant, industry might mean all California companies.

12. Market Access and Compliance (MAC): One of ITA's major program areas dealing with trade negotiations, compliance with trade agreements, and trade policy. MAC professionals often serve on project teams.

13. Office of Planning, Coordination and Management (OPCM): The Trade Development (TD) office that administers the MDCP.

14. Produced in the United States: Having substantial inputs of materials and labor originating in the United States, such inputs constituting over 50 percent of the value of the good or service to be exported.[3]

15. Product: A U.S. non-agricultural good or service.

16. Project: A series of activities proposed in an MDCP application—or, after an MDCP award is made, in an amendment request—and approved by the Department which occurs during the award period.

17. Project Team Leader: A Trade Development employee who coordinates MDCP project activity with a cooperator and serves as the cooperator's primary point of contact with ITA. (See *II. B.1. Project Team* below.)

18. Recipient: A cooperator. The organization that receives an MDCP award.

19. Request for Applications (RFA): **Federal Register** notice announcing the availability of MDCP financial assistance funds.

20. Trade Development (TD): One of ITA's major program areas that looks at all aspects of exporting from an industry perspective. Most Project Team Leaders are TD industry specialists. TD's Assistant Secretary makes the final selection of MDCP award winners.

21. U.S. Export Assistance Center (USEAC): A domestic Commercial Service office. USEACs are located across the United States.

22. U.S. product: See *Product* and *Produced in the United States* above.

B. Other Definitions

Some terms are best understood in the context of a more detailed discussion. For terms that do not appear above, refer to the RFA section where the term is discussed.

II. Program Description

The goal of the MDCP as set out in authorizing legislation is to develop, maintain, and expand foreign markets for non-agricultural goods and services produced in the United States. Non-agricultural goods and service means goods and services other than agricultural products as defined in 7 U.S.C. 451.[4]

A. Examples of Project Activity

Applicants should propose activities appropriate to the market development needs of the relevant U.S. industry. Examples from prior years are set forth below.[5] These are provided only for illustration. Applicants are not required to propose any of these activities:

1. Foreign trade show/trade mission participation;
2. Demonstration of U.S. products abroad;
3. Export seminars;
4. Establishment of technical servicing abroad;
5. Joint promotion of U.S. products with foreign partners;
6. Establishment of an overseas office[6];
7. Detail of a representative to a Commercial Service office in accordance with 15 U.S.C. 4723(c);
8. After-sale service training of foreign nationals;
9. Promotion of standards that ensure market access for U.S. products; and
10. Publication of product or company directory.

B. Administration of Award Activity

1. Project Team: To administer each cooperative agreement, a project team is established including key personnel from the cooperator and ITA officials who can help the cooperator achieve MDCP project objectives.[7] Each project team acts as the project's "board of directors" establishing direction, recommending changes when necessary, and working on project activities.

2. Annual Operating Plan: Each year during the award period, the project team formulates an operating plan based on the work plan submitted in the application. The plan identifies project events, projected dates, team responsibilities, and a rough cost estimate for each event and ongoing activity scheduled during the fiscal year (October through September).[8] Applicants do not submit annual operating plans in their applications. They are developed only after receipt of an award and designation of the project team.[9]

3. Regular Team Meetings: Project teams normally meet in-person at least every three months. In between the quarterly meetings, project teams usually hold regular telephone or video conferences. Cooperators based in the Washington, DC area usually meet in-person more often than quarterly.[10]

[3] "Trade Mission Application Form" ITA Form 4008P–1 (Rev. 8/97) available from *http://www.ita.doc.gov/ooms/forms.htm.*

[4] This definition includes "agricultural, horticultural, viticultural, and dairy products, livestock and the products thereof, the products of poultry and bee raising, the edible products of forestry, and any and all products raised or produced on farms and processed manufactured products thereof * * *"

[5] Visit *www.export.gov/mdcp* for a description of each of the MDCP projects funded to date.

[6] Such an office should not duplicate the programs or services of the Commercial Service office(s) in the region, but could include co-location with a Commercial Center of the Commercial Service.

[7] If needed, representatives from other Federal agencies may be invited to participate on the project team.

[8] Some of the planning by ITA team members is affected by the Federal fiscal year. Cooperators should anticipate finalizing their annual operating plans well before October 1.

[9] The annual operating plan is a blueprint for team activity worked out between the cooperator and the Project Team Leader. For example, one activity listed could be a trade mission. In addition to dates and responsibility, the cooperator would list its estimated costs based on the project budget submitted in the application, as amended. In a separate column, ITA's Project Team Leader estimates the amount of ITA administrative funds needed to pay for ITA travel supporting the mission. (Funding of ITA team members' participation is subject to availability of funds.)

[10] Project Team Leaders usually request and receive sufficient ITA administrative funds to pay for travel to the cooperator's location for team meetings. Most cooperators make provision in their project budgets to travel to Washington, DC for some of the team meetings in order to familiarize themselves with all of the Federal resources available to them.

C. Funding

1. Funding Availability: For FY 2002, the total funds expected to be available for this program are $2.0 million. The Department expects to conclude a minimum of five (5) cooperative agreements. No award will exceed $400,000, regardless of the duration of the award period.

2. Match Requirement: A cooperator must contribute at least two dollars for each Federal dollar received.

a. *Cash Contribution:* A cash contribution is a new outlay of cooperator funds for project activity. The cooperator can only use its funds—not the funds of a partner or any other entity—as cash contribution.[11] An in-kind contribution is not part of the cash contribution.

(1) One Dollar of Match Must Be Cash: One dollar of a cooperator's minimum two-dollar match must be cash contribution. The other dollar of match may be either in-kind contribution or cash contribution.

(2) Program Income: Project fees generated under the award, like any other source of program income, must be used for project-related purposes during the award period. Applicants should explain any such fees.

(a) Project Benefits and Reasonable Fees: Benefits from the project must be made available to all companies in the industry whether or not a company is a member or constituent of the cooperator or its partner(s). In some situations, a cooperator may charge lower fees to one class of companies than to another. For example, a trade association could charge a lower participation fee to a member company than it does to a nonmember. This is permitted as long as the difference in fees is reasonable.

(b) Cash Match If Value Added: Program income expended on project activity may be counted as cash match, if it represents value added by the cooperator for project activity. This can be illustrated in the example of a company that attends a trade show as part of a cooperator's project. If the company negotiates amounts for its own arrangements with vendors, pays the total amount to the cooperator, then has the cooperator pay the amount to the vendors, the cooperator has added no value. The cooperator cannot claim the fees as cash match.

The same cooperator could claim fees paid by the company for trade show participation, if the cooperator adds value and the fees represent something of value that furthers project goals. For example, the cooperator could create its own trade-show participation package. This might include finding optimal hotel accommodations, securing group airfare, meeting with trade show organizers before the show, and organizing a reception to take place during the show. Such a cooperator package would help determine project success. When companies pay the fees for such a package, they are doing more than getting themselves to a trade show, they are agreeing that the project itself has value. Because the cooperator's package adds value and furthers project goals, the cooperator could charge fees, use the fees to pay project expenses, and claim them as cash match.

(3) Third Party Contributions: In order for a cooperator to outlay cash contributed by a third party, the third party must transfer the funds to the cooperator. Otherwise, expenditures for goods and services contributed by a third party are considered to be in-kind contributions.

b. In-Kind Contribution: An in-kind contribution is a match other than a cash contribution. Examples include the value of staff time of a partner organization, airfare donated by a U.S. airline, and cash paid by partner organizations for project expenses.

Applicants can claim only the fair market value of the in-kind contribution.[12] In proposed budgets, applicants should list all in-kind contributions separately from cash contributions. Applicants must describe these in-kind contributions in sufficient detail to determine that the requirements of 15 CFR 14.23(a), or 15 CFR 24.24 (a) and (b) are met.

Applicants should structure their budgets carefully when expenditures by companies that benefit from project activity are involved. An expenditure by such a company that primarily benefits only that company cannot be claimed as in-kind match.

For example, a company may have made and paid for its own arrangements to attend a trade show that a cooperator has included in its project. The cooperator could not claim the amount paid by the company as in-kind match. The company incurs airfare and other expenses for its own benefit, but not necessarily to accomplish project objectives. Such expenditures are more self-serving than are true in-kind contributions to project success.

This policy should not deter applicants from proposing in-kind match. For example, a cooperator can claim the value of airfare donated by a U.S. airline. Although the airline benefits from goodwill associated with donating the service, it is the cooperator's project that benefits directly when the airfare is used to achieve project objectives. Unlike the company in the example above, the airline does not use the donated airfare itself and thereby benefit directly from it.

c. Minimum Match: An example of the minimum match is set forth below. An applicant requesting $200,000 of Federal funds must supply, at a minimum, $200,000 of cash contribution. As illustrated below, the remaining $200,000 of the required match can be made up of additional cash or in-kind contributions.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind		200,000
Total	200,000	400,000

d. Cost Share Ratio: The example above establishes a cost-share ratio of two-to-one: two cooperator dollars for each Federal dollar. The cooperator assumes ⅔ of the total cost. In other words, 67 percent of the funding is provided by the cooperator and 33 percent by the Federal Government. This means that the cooperator will receive one dollar for every three dollars in project expenditures.

e. Additional Match: Cooperators may contribute more than two dollars for each Federal dollar; however, as set forth below, this will increase the cost-share ratio.

Item	Federal share	Cooperator match
Cash	200,000	200,000
Cash or In-kind		400,000
Total	200,000	600,000

This example establishes a cost-share ratio of three-to-one: three cooperator dollars for each dollar of Federal funds. The cooperator assumes 3/4 of the total cost. In other words, 75 percent of the funding is provided by the recipient and 25 percent by the Federal Government.

[11] Recipient cash contributions are defined in 15 CFR part 14, § 14.2(g) as the award "recipient's cash outlay, including the outlay of money contributed to the recipient by third parties."

[12] For example, a consultant cannot claim $150 per hour for their donated services unless they can demonstrate that they are actually paid that rate by customers for similar work.

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This means that the cooperator will receive one dollar for every four dollars in project expenditures.

f. Direct and Indirect Costs: Applicants may claim indirect costs in their project budgets.[13] Generally, direct costs result directly from project activity and usually include expenses such as personnel, fringe benefits, travel, equipment, supplies and contractual obligations. By contrast, indirect costs are generally those costs that are incurred regardless of whether there is an MDCP project. These are often referred to as "overhead" and usually include expenses such as rent, electricity, and gas.

The Department will determine allowable costs on the basis of the applicable cost principles and definitions in OMB Circulars A–21, A–87, and A–122; in 45 CFR part 74, appendix E; and in 48 CFR part 31.[14]

Federal funds may be used only to cover direct costs. The applicant must incur and pay direct costs that equal or exceed the amount of Federal funds. However, any portion of the balance of applicant's match that does not exceed the levels set forth below in *II.B.3. Indirect Cost Rate*, may be used to cover indirect costs.

3. Indirect Cost Rate: If a cooperator does not have a current approved indirect cost rate from another Federal agency, and the Department of Commerce will be the largest funding Federal agency, the Department will work with a cooperator to establish an indirect cost rate. This will not happen until after the applicant has been announced as an MDCP award winner.

Indirect costs are capped by the lesser of the cooperator's total direct costs or the indirect cost rate whichever is less.[15] Examples of the two caps are set forth below.

a. Capped by Indirect Cost Rate: In the example below, indirect expenses are limited by the indirect cost rate of 30 percent of direct costs (461,538 × 0.3 = 138,462). This amount is lower than the other possible cap of $261,538, the total cooperator contribution to direct expenses. Accordingly, the cap is the lower amount, $138,462.

Cost	Federal share	Cooperator match
Direct	200,000	261,538
Indirect (30%)		138,462
Total	200,000	400,000

b. Capped by Cooperator Direct Costs: In the example below, indirect expenses are limited by the cooperator's level of contribution to direct expenses instead of the amount calculated with the indirect cost rate. The indirect cost rate of 60 percent of total direct costs yields $240,000 of total indirect costs (400,000 × 0.6 = 240,000). Because this amount exceeds the cooperator's contribution of direct costs of $200,000, indirect costs are capped at $200,000.

Cost	Federal share	Cooperator match
Direct	200,000	200,000
Indirect (60%) (capped)		200,000
Total	200,000	400,000

4. Approved Pre-Award-Period Expenditure: As a general matter, cooperators can request reimbursements only for project costs incurred during the award period. However, if proposed in the application, cooperators may expend project funds to attend a cooperator orientation meeting, even if it precedes the beginning of the award period. See *Summary: Dates: Public Meeting* above.[16]

5. Fees for Some Government Services: The Commercial Service participates on each MDCP project team. Applicants should understand that the Commercial Service is required to charge fees to cover costs for many of the services it provides. The policy set forth below applies to Commercial Service resources that are provided as part of the cooperative agreements.

The Commercial Service will provide, as part of the cooperative agreements, a limited amount of reasonable assistance to MDCP cooperators at no charge. The policy set forth below applies to Commercial Service resources that are provided as part of the cooperative agreements.

For assistance that goes beyond the "limited amount of reasonable assistance" as defined below, applicants should make provision in their budgets. To determine the cost for services provided by the Commercial Service, applicants should contact the USEACs or overseas Commercial Service offices. These may be identified at *www.export.gov/commercialservice*.

There may be situations that prevent the Commercial Service from providing no-charge services to cooperators. Perhaps the most common example is another event to which the Commercial Service office has already committed its resources.

The definitions below will guide the domestic or overseas Commercial Service offices in implementing this policy.

a. Overseas Commercial Service Offices:

(1) Limited amount: Cost-free assistance will not exceed two days' Commercial Service effort per cooperator, per country, per year. Direct costs and specially-prepared market research are not included in the cost-free assistance.

(2) No charge: No fees are collected. The term applies only to indirect costs such as time expended by Commercial Service employees. Cooperators should always expect to pay direct costs, such as hiring an interpreter or transportation.

(3) Reasonable assistance: This includes appointment making, temporary use of Commercial Service office space, when available, making hotel arrangements, briefing on market conditions, help organizing seminars/conferences, and other similar services worked out between the Project Team Leader and the Commercial Service office.

b. U.S. Export Assistance Centers (USEACs):

USEACs can generally implement the policy as a no-charge extension of normal client support. Most USEAC service to cooperators is provided as part of long-term relationships developed in local exporting communities throughout the United States.

III. Eligibility

A. Definition of Eligible Entity

U.S. trade associations, non-profit industry organizations, and state departments of trade and their regional associations are eligible to apply for an MDCP award. In cases where no entity described above represents the industry, private industry firms or groups of firms, may be eligible to apply for an MDCP award. Such private industry firms or groups of firms must provide in their application, documentation demonstrating that no entity in the first three categories listed below represents their industry.

1. Trade Association: A fee-based organization consisting of member firms in the same industry, or in related industries, or which share common commercial concerns. The purpose of the trade association is to further the commercial interests of its members through the exchange of information, legislative activities, and the like.

2. Non-Profit Industry Organization:

a. A non-profit small business development center operating under agreement with the Small Business Administration; or

b. A non-profit World Trade Center chartered or recognized by the non-profit World Trade Centers Association; [17] or

c. An organization granted status as a non-profit organization under Title 26 U.S.C. 501(c)(3), (4), (5), or (6) which operates as one of the following:

(1) Chamber of commerce,
(2) Board of trade,
(3) Business, export or trade council/interest group,
(4) Visitors bureau or tourism promotion group,
(5) Economic development group,
(6) Small business development center, or
(7) Port authority.

3. State Departments of Trade and Their Regional Associations:

a. Department of a state government tasked with promoting trade, tourism, or other types of economic development; or

b. Associations of the departments of trade (as defined above) of two or more states; or

c. Entities within a state or within a region that are associated with a state department of trade, tourism, or other types of economic development including non-profit, non-private, non-commercial entities which are at least partially funded by, directed by, or tasked by a state government to promote trade, tourism, or other types of economic development.

4. Special Note Regarding Educational Institutions: Educational institutions, such as schools, colleges, and universities, are generally not eligible. However, organizations that are part of an educational institution for administrative, financial, legal, or logistical reasons, and are not independent legal entities—for example, an organization which is not incorporated—which otherwise may be classified above under *1. Trade Association*, 2. *Non-Profit Industry Association*, or 3. *State Departments of Trade and Their Regional Associations*, above are eligible.

In such a case, the eligible entity will include in its application a signed letter stating that MDCP funds will be used only by the eligible entity for the purposes outlined in its application, and that no such funds will be used by or retained by the educational institution, even though the funds may need to go through the educational institution because of the eligible entity's lack of a separate accounting system or lack of status as a separate legal entity.

B. Eligibility of Current or Past Cooperators

MDCP aims to increase export market development activities by using program funds to encourage new initiatives. MDCP funds are not intended to replace funds from other sources, nor are they intended to replace MDCP funding from a previous award. Current or past cooperators may propose a new project. *See V.A.4. Creativity and Capacity* below.

C. Determination of Eligibility

1. Request for Determination: Prospective applicants are encouraged to resolve questions regarding eligibility by requesting an eligibility determination in writing accompanied by the most current version of all of the following documents that apply:

a. Articles of incorporation,
b. Charter,
c. Bylaws,
d. Information on types of members and membership fees,
e. Internal Revenue Service acknowledgment of non-profit status,
f. Annual report,
g. Audited financial statements,
h. Documentation of ties to state trade departments or their regional associations, and
i. The letter described in *III.A.4. Special Note Regarding Educational Institutions* above.

Prospective applicants should submit eligibility determination requests as soon as possible, if they wish to have determinations prior to the application deadline. This deadline will not be extended, and applicants should continue to work on applications while awaiting the Department's eligibility determination.

2. *Joint Ventures:* Entities may join together to submit an application as a joint venture; however, only one eligible organization can be the designated cooperator. For example, two trade associations may pool their resources and submit one application, but only one may be designated the cooperator. Foreign businesses and private groups also may join with eligible U.S. organizations to submit applications and to share project costs.

IV. Applications

A. Format

The basic elements of the application are set forth below. Additional instructions and required forms are provided in the application kit available from *www.export.gov/mdcp*.

1. Executive Summary: In accordance with *V.B. Evaluation and Selection Procedures* below, the Department will distribute applicants' one-page summaries to its experts to solicit comments. This summary should communicate the essence of the application proposal including the following:

a. Applicant's name and location,
b. Name of partnership organizations joining applicant,
c. ITA entities and other Federal offices with which applicant envisions working,
d. Amount of Federal funds requested,
e. Total project budget,
f. Proposed award period,
g. Foreign markets targeted,
h. U.S. industry to be promoted, and
i. Brief description of the project activities and methods.

2. Background Research: Developing a project plan requires solid background research. Applications should reflect the findings of the applicant's study of the following:

a. Market potential of the U.S. products,
b. Competition from host-country and third-country suppliers,
c. Economic situation and the ability of a country to import the U.S. products,
d. Industry resources that can be brought to bear on developing a market,
e. Industry's ability to meet potential market demand, and
f. Industry's after-sales service capability in designated foreign market(s).

3. Project Description: After describing their completed basic research, applicants should develop marketing plans that set forth project objectives and the specific activities applicants will undertake.

a. Work Plan: The project description should include a list of specific activities planned, including: (1) The different phases of the project, identifying each milestone and activity in chronological order; (2) the location where activities will take place; and (3) the ways the applicant intends to involve ITA as a partner in project activities.

[13] A sample calculation of indirect costs is provided in the mock application available at *www.export.gov/mdcp*.

[14] Access OMB circulars and forms at *http://www.whitehouse.gov/omb/grants/index.html*. Appendix E referred to on this OMB site is not listed separately. It is found at the end of 45 CFR 74.91, which may be accessed directly at *http://www.access.gpo.gov/nara/cfr/waisidx_99/45cfr74_99.html*.

[15] Information on calculating an indirect cost rate is available at *http://www2.dol.gov/dol/oasam/public/programs/guide.htm*.

[16] This expenditure is limited to allowable expenses (e.g., air fare and lodging) associated with attending the orientation.

[17] A description of the World Trade Centers Association is available on the Internet at *http://www.wtca.org*.

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b. Performance Measures:

(1) Applicant-Designed Performance Measures: Applicants should develop and utilize performance measures which reasonably gauge project success.

(2) ITA Performance Measures: ITA reports results using the Government Performance and Results Act (GPRA) measures defined for its programs and activities.[18] All cooperators will report quarterly on the GPRA measures listed below. Because they are not defined by the cooperator, ITA recognizes that some GPRA measures may be more applicable to some projects than to others. However, cooperators should be prepared to record the effect of MDCP project activity on as many of the performance measures below as possible.

(a) How does MDCP project activity increase:

(i) Awareness and understanding of ITA products and services,

(ii) Satisfaction with the quality of ITA products and services,

(iii) Ease of use of ITA's Internet portal, and

(iv) Ease of access to ITA export and trade information and data,

(b) Number of deals [19] executed by U.S. businesses,

(c) Dollar value of exports of U.S. businesses resulting from participation in MDCP project activities,

(d) Number of U.S. businesses that are new to export,[20]

(e) Number of U.S. businesses that are new to market,[21]

(f) Brief description of each partnership [22] between ITA and a public or private entity that is established or enhanced, and

(g) Number of export activities undertaken by U.S. businesses. (See examples below in *V.A.1. Export Success Potential.*)

(3) Performance Measure Reporting Requirements: Each cooperator should report on both applicant-designed measures and ITA performance measures in its quarterly reports.

(4) Performance Measure Recording and Reporting System: Each applicant should describe its recording and reporting system in its proposal. Ultimately, it is the success of individual companies that determines the project's export success. Therefore, applicants should demonstrate how they plan to ensure that participant companies, and any other sources of export success information, will report to it anecdotes and other performance measurement information.

c. Partnership: Applications should display the imagination and innovation of the private sector working in partnership with the government to obtain the maximum market development impact. As noted under *II.B.1. Project Team* above, each cooperator will work with a Project Team Leader and other ITA team members. Team members from other Federal agencies also may be invited to participate. Applicants must describe in detail all assistance expected from ITA or other Federal agencies.

d. Project Funding Priorities: Project proposals must be compatible with U.S. trade and commercial policy. In addition, applicants are encouraged to address the priorities set forth below. An application does not need to focus on a specific number of these priorities to qualify for an award. It is conceivable that an applicant could do a superb job focusing on only one of the priorities and receive an award.

The international trade priorities listed below are the priorities referred to in *V.A.3. Partnership and Priorities.* The Department is interested in receiving proposals that include projects that:

(1) Promote an industry particularly well suited to foreign market development including information technology, telecommunications, energy, environmental technology, tourism, services, and healthcare;

(2) Increase trade opportunities by opening markets through the development of new trade agreements, the support of World Trade Organization negotiations, the removal of non-tariff barriers, or the development of commercial infrastructure in emerging economies;

(3) Increase overall export awareness and awareness of ITA programs and services among U.S. companies, by making SMEs export-ready or by facilitating deal-making;

(4) Ensure compliance with trade agreements;

(5) Support the Administration's broader foreign policy objectives through trade-related initiatives;

(6) Promote the use of e-commerce as a low-cost, low-risk tool to help SMEs to export;

(7) Increase "hands-on" export education designed for SMEs through:

(a) Developing educational tools such as curricula and media, and/or

(b) Providing company-specific assistance; and

(8) Develop non-traditional approaches to creating demand for the products/services developed from new U.S. technologies.

4. Credentials: Each cooperator must ensure adequate development, supervision, and execution of project activities for itself and for each non-Federal partner with significant involvement in the project. Therefore, for itself and each such partner, each applicant must:

a. Address its ability to provide a competent, experienced staff and other resources;

b. Describe its structure and composition;

c. Discuss the degree to which it represents the industry in question;

d. Describe the role, if any, foreign membership plays in its affairs;

e. Summarize the recent history of its industry's international competitiveness;

f. Provide a resume for the project director and professional personnel; and

g. Project the amount of time each professional will devote to the project.

5. Finance and Budget: Applicants must provide a detailed budget for the project including the elements listed below:

a. Form 424A "Budget Information—Non-Construction Programs";

b. Budget for Project Award Period;

c. Supporting worksheets and explanations; [23]

d. A discussion of financial systems and projections of how, when, and from what sources the matching funds will be or have been raised;

e. A summary of all financial assistance awards received in excess of $20,000 over the last five years. This should include the award reference number, contact name, title, organization, email (if available), fax, and mailing address;

f. The most recent audited financial statements. If the applicant is a sub-unit of an audited entity, in addition to the financial statements of the audited entity, the applicant should provide financial statements at the most specific level available, whether or not these are audited. If the applicant's most recent financial statements are not audited, it should submit the most recent unaudited financial statements and a statement indicating whether it currently has an auditor and when it plans to issue audited financial statements; and

g. Any additional evidence of financial responsibility.

6. Forms: In addition to the budget forms identified above, each application must include the following completed forms:

a. SF–424 Application for Federal Assistance,

b. SF–424B Assurances—Non-Construction Programs,

c. CD–346 Applicant for Funding Assistance, and

d. CD–511 Certifications Regarding Debarment, Suspension, and Other Responsibility Matters.

In addition, applicants may determine that they need to complete forms CD–512 "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and/or form SF–LLL "Disclosure of Lobbying Activities". These are available at *www.export.gov/mdcp* as part of the application kit, which includes explanations of the forms.

7. Appendices: Appendices should be tabbed or otherwise marked for easy reference. Applicants should include in their appendices, whatever material supports the main body of the application *(IV.A.1–4)*, including the types of appendices listed below.

a. The portion of the application defined above in *IV.A.5. Finance and Budget.*

b. The forms noted above in *IV.A.6. Forms.*

c. The determination of eligibility that an applicant has received from the Department.[24] An applicant that has been found eligible in the past, but does not have a letter of eligibility, should request such a letter as soon as possible so it can receive one to include in its application.

d. Letters of support for the project are not required or expected.[25] Applicants that choose to submit letters of support should secure them soon enough to include them as application appendices.[26]

e. News media are informed by the Department when it announces awards. Applicants are invited to submit a list of news media the Department can contact when it issues its press release.[27] The most useful information is the fax number and email address of the news media contacts. These would include local newspapers, trade publications, local broadcast stations, and Internet sites. Rather than including these as "hard-copy" in the application, the Department invites applicants to submit this on floppy diskette, CD, or via email. Using the lowest version of any of the following file formats will ensure transferability: database (.dbf), Excel (.xls), Lotus 123 (.wk4), Word Perfect (.wpd), or Microsoft Word (.doc).

f. Current or past cooperators must submit a comparison between the proposed project and current or past projects. See *V.A.4. Creativity and Capacity* below.

B. Submission of Applications

1. Number of Pages: The main body of the application is limited to 50 pages. There is no limit on the number of pages for appendices. The main body of the application should include the substance of the applicant's proposal as identified in *IV.A.1.* through *IV.A.4.* above. Each page of the main body should be numbered.

2. Number of Copies: Each applicant must submit a signed original application plus two copies. The Department encourages applicants to submit five additional copies as well for a total of seven (7) copies.[28] However, if submitting seven (7) copies creates a financial hardship, applicants may submit the minimum of two copies plus the original.

If an applicant submits an original and two copies or any other number of copies greater than two and less than seven (7), the Department will make additional copies to allow all reviewers to read each application. However, the Department cannot guarantee that the copies will include features that are not easily reproduced on standard photocopy machines. For example, tabs might not be inserted, color pages might be reproduced in black and white, fold-out pages might not fold out, unusually sized (not 8.5″ × 11″) pages might be broken up, and the copies might be bound with staples or clips instead of the binding used for applicant-submitted material.

3. Distinguish Between Copies and Original: The Department needs to distinguish between the original application and copies. In order to facilitate processing of submitted applications, the Department recommends that applicants write or stamp "original" on the cover page of the original.

C. Retention of Applications

1. Award Winners: Copies of winning applications are distributed to project team members for their use in managing projects.

2. Unsuccessful and Ineligible Applicants: For each eligible application which does not win an award, the Department will retain the signed original of the application for seven years and will destroy the copies.

3. Late and Ineligible Applications Returned to Sender: Late applications are not accepted. Late applications and applications submitted by ineligible applicants are returned to the sender. However, the Department will retain a copy of the cover page or transmittal letter for seven years.

V. Evaluation and Selection

A. Evaluation Criteria

The Department is interested in projects that demonstrate the possibility of both significant results during the award period and lasting benefits extending beyond the award period. To that end, consideration for financial assistance under the MDCP will be based upon the following evaluation criteria:

1. Export Success Potential: Potential of the project to generate export success stories and/or export initiatives in both the short-term and medium-term. An export initiative is a significant expenditure of resources by the chief executive officer (CEO) of a company in

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[18] GPRA was enacted August 3, 1993 (Pub. L. 103–62).

[19] A "deal" is an action facilitated by the cooperator or its partners, including ITA, for U.S. exporters. Deals include the following types of export transactions: shipping goods or delivering services, signing an agent/distributor, identifying an agent/distributor, signing a contract with sales expected in the future, helping a U.S. firm avoid harm or loss, and helping resolve a trade dispute.

[20] A "new-to-export" firm is a U.S. firm that transacts an actual, verifiable export shipment of goods or delivery of services for the first time in the last 24 months, and where any prior exports resulted from unsolicited orders or were received through a U.S.-based intermediary.

[21] A "new-to-market" firm is a U.S. firm that transacts an actual, verifiable export shipment of goods or delivery of services to a market for the first time in the last 24 months, and where any prior exports to the market resulted from unsolicited orders or were received through a U.S.-based intermediary.

[22] A "partnership" is a new or enhanced relationship codified in writing through a memorandum/letter of understanding/agreement, reimbursable agreement, grant, cooperative agreement, or contract.

[23] An example of how to generate Form 424A, the Budget for Project Award Period, and supporting worksheets and explanations is included in the Mock Application at *www.export.gov/mdcp.* Applicants are welcome to copy the spreadsheet file used for the Mock Application Budget and use it for their own applications.

[24] If the applicant has not received such a determination, it must include in the appendices the documents requested in *III.C.1. Determination of Eligibility* above.

[25] The fact that a public official does or does not submit a letter of support does not confer any inherent competitive advantage to an applicant. On the other hand, some letters of support can be critical to the success of an application. For example, if funds for the cash match are to be provided by the state legislature, a letter of commitment from the state's governor or comptroller certifying the availability of the funds would help the Selection Panel greatly in its review.

[26] Including these as appendices may make it easier for all reviewers to find such letters in the same place in the application. The Department's standard practice for letters of support not included as application appendices is to make them available to reviewers until the time the Selection Panel identifies the top-ranked applications.

[27] Including news media contacts as an application appendix is not required, but doing so will help the Department publicize the success of the award winners.

[28] Several copies will be needed in order for the Department to complete its evaluation. (As noted below under *V.B. Evaluation and Selection Procedures*, four Selection Panel members and several Department staff will review each application.)

the active pursuit of export sales. Examples of export initiatives include, but are not limited to, the following:

a. Participating in an overseas trade promotion event;

b. Hiring an export manager;

c. Establishing an export department;

d. Exploring a new market through an overseas trip by the CEO;

e. Developing an export marketing/business plan;

f. Translating product literature into a foreign language;

g. Making product modifications to comply with foreign market requirements;

h. Commissioning an in-depth market research study;

i. Entering into a strategic alliance [29] with a foreign firm;

j. Advertising in a foreign business publication;

k. Undertaking an overseas direct-mail campaign to create product awareness;

l. Signing an agent/distributor;

m. Getting introduced to a potential foreign buyer; and

n. Signing an export contract/filling an export order.

Applicants should provide detailed explanations of projected results of the project.

2. Performance Measures: Projected increase (multiplier effect) in the number of U.S. companies operating in the market(s) selected, particularly SMEs, and the degree to which the project will increase or enhance the U.S. industry's presence in the foreign market(s).

Applicants must provide quantifiable estimates of projected increases and explain how they are derived. See *IV.A.3.b. Performance Measures* above. Applicants must detail the methods they will use to gather and report performance information.

3. Partnership and Priorities: The degree to which the project initiates or enhances partnership with ITA and the degree to which the proposal furthers or is compatible with ITA's priorities stated under *IV.A.3.c. Partnership* above.

4. Creativity and Capacity: Creativity, innovation, and realism displayed by the work plan as well as the institutional capacity of the applicant to carry out the work plan.

a. Creativity and innovation can be displayed in a variety of ways. Applicants might propose projects that include ideas not previously tried to promote a particular industry's goods or services in a particular market. Creativity can be demonstrated by the manner in which techniques are customized to meet the specific needs of certain client groups. A proposal can be creative in the way it brings together the strengths and resources of partners participating in project activities. Further, projects that focus on market development are more creative than projects that focus only on export promotion. Market development is the process of identifying or creating emerging markets or market niches and modifying products to penetrate those markets. Market development is demand driven and designed to create long-term export capacity. In addition to promoting current sales of existing products, market development promotes future sales and future products.

b. Current or past cooperators must submit a table comparing their current or past project(s) and their proposed project. The need for this table and the requested format are described below.

As noted in the *Summary* at the beginning of the RFA, MDCP awards are designed to help underwrite the start-up costs of new projects. Accordingly, current or past cooperators can be in a position to earn the maximum number of points under this criterion only if they propose projects that are entirely new.

In order to determine whether a project is entirely new, the current or past cooperator must provide, as a separate appendix, a comparison between the elements of the proposed project and the elements of its current or past MDCP-funded projects. Current or past cooperators that propose projects that are not entirely new will receive fewer points under this criterion than they would receive otherwise.

In determining the number of points under this criterion, the Selection Panel will consider the level to which a particular applicant has incorporated elements of its previously funded MDCP projects. To do this, current or past cooperators should submit a table wherein they approximate the amount of resources devoted to each project element as a percentage of the total. For example, if an applicant received an MDCP award in 1995 and spent approximately $400,000 of a total $1,000,000 project budget on opening an office in Beijing, it could report that 40 percent of the resources of its 1995 project went toward the project element of opening its Beijing office. The applicant would do the same for the other elements of its projects.

Previous project(s)		Proposed project	
Element	%	Element	%
1		1	
2		2	
etc.		etc.	
Total	100	Total	100

c. Institutional capacity will be measured by what each applicant submits. A current or past cooperator should not assume that success with a prior MDCP project will automatically be taken into account by the Department when reviewing its application. Each applicant must document its institutional capacity in its application.

5. Budget and Sustainability: Reasonableness of the itemized budget for project activities, the amount of the cash match that is readily available at the beginning of the project, and the probability that the project can be continued on a self-sustained basis after the completion of the award. Current or past cooperators must show how the proposed project will achieve self-sustainability independent of any current or past MDCP projects.

Each of the above criteria is worth a maximum of 20 points. The five criteria together constitute the application score. At 20 points per criterion, the total possible score is 100.

B. Evaluation and Selection Procedures

The applicant is responsible for submitting a complete application in a timely manner. Prior to selection, each complete application receives a thorough evaluation as set forth below.

1. Eligibility Determination: OPCM staff, in consultation with the Department's Office of General Counsel, review all applications to determine the eligibility of each applicant.

2. ITA Program Area Review: Relevant ITA program areas, including TD, MAC, and the Commercial Service, have the opportunity to review the submitted applications. This allows experts in the industry sector or geographical region to assess applicant claims. These reviewers provide insights into both the potential benefits and the potential difficulties associated with the applications.

3. MDCP Administrative Review: Representatives of OPCM review and comment on all applications using the evaluation criteria identified above. OPCM prepares for the Selection Panel a review packet including the applications and reviewer comments. The MDCP administrative staff and program area comments afford the Selection Panel the insights and breadth of experience of Department professionals. However, the Selection Panel is free to consider or disregard them as it sees fit.

4. Selection Panel Composition: The MDCP Manager forwards all of the eligible applications, along with all related materials, to the Selection Panel of senior ITA managers. This panel is chaired by the OPCM Director and typically includes three other members, one each from TD, MAC, and the Commercial Service. Panel members are Office Directors or higher.

5. Selection Panel Scoring: Each Selection Panel member reviews each eligible application and assigns a score for each of the five criteria stated above. The scores of each Selection Panel Member for each application reviewed are maintained in the files for seven years. The individual criteria scores are averaged to determine the total score for each application.

6. Ranked Recommendation: Based on the scores assigned by Selection Panel members and deliberations by the Selection Panel, the Selection Panel forwards the applications with the ten highest total scores ("top-ranked applications") to the Assistant Secretary for Trade Development and recommends which of the top applications should receive funding. If the amount of funds requested by the top ten applicants is less than the funding available, the Selection Panel recommends additional applications for funding in rank order.

The Selection Panel's recommendation will not deviate from the rank order. This means, for example, that the Selection Panel cannot recommend funding for the application ranked seventh without recommending funding for applicants ranked first through sixth. The Selection Panel recommendation includes the panel's written assessment of the strengths and weaknesses of the top-ranked applications.

7. Selection of Applications for Funding: From the top-ranked applications forwarded by the Selection Panel, the Assistant Secretary for Trade Development selects those applications which will receive funding. In addition to the criteria in *V.A. Evaluation Criteria* above, the Assistant Secretary for Trade Development may consider the following in making decisions:

a. Scores of individual Selection Panel members and the Selection Panel's written assessments,

b. Degree to which applications satisfy the ITA priorities established under *IV.A.3.d. Project Funding Priorities* above,

c. Geographic distribution of the proposed awards,

d. Diversity of industry sectors and overseas markets covered by the proposed awards,

e. Diversity of project activities represented by the proposed awards,

f. Avoidance of redundancy and conflicts with the initiatives of other Federal agencies, and

g. Availability of funds.

C. Announcement of Award Decisions

Award winners will be notified by letter. Once award winners formally accept their awards, the Department will issue a press release and list the award winners at *www.export.gov/mdcp*.

Within ten days of the announcement of the issuance of the press release, unsuccessful applicants will be notified in writing and invited to receive a debriefing from MDCP officers.

VI. Other Requirements and Classification

A. Other Requirements

1. Pre-Award Notification Requirements: The Department's Pre-Award Notification Requirements for Grants and Cooperative Agreements, published on October 1, 2001 (66 FR 49917), are applicable to this RFA. However, please note that the Department will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidelines issued by the Office of Management and Budget in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (DD.D.2001). This decision is currently on appeal. When the case has been finally resolved the Department will provide further information on implementation of Executive Order 13202.

2. Pre-Award Activities: Except as noted above in *II.C.4. Approved Pre-Award-Period Expenditure*, if applicants incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the government. Notwithstanding any verbal or written assurance that they may have received, there is no obligation on the part of the Department to cover pre-award costs.

4. Intergovernmental Review: Applications under this program are not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

B. Classification

1. Executive Order 12866: This notice has been determined to be not significant for purposes of Executive Order 12866.

2. Paperwork Reduction Act: The standard forms referenced in this notice are cleared under OMB Control No. 0348–0043, 0348–0044, 0348–0040, and 0348–0046 pursuant to the Paperwork Reduction Act. Notwithstanding any other provision of law, no person is required to respond nor shall a person be subject to a penalty for failure to comply with a collection of information subject to the requirements of the Paperwork Reduction Act unless that collection of information displays a currently valid OMB Control Number.

Dated: May 7, 2002.

Jerome S. Morse,

Director, Planning and Management Division, Office of Planning, Coordination and Management, Trade Development, International Trade Administration, Department of Commerce.

[FR Doc. 02–11786 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–DR–P

[29] A collaboration of one company with another company that can provide resources to achieve corporate, economic and strategic goals. One benefit of strategic alliances is reciprocal access to more than one market. For example, firms in two different markets can agree to market each other's non-competing products in their respective "home" markets.

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Notice of Government Owned Inventions Available for Licensing

AGENCY: National Institute of Standards and Technology Commerce.

ACTION: Notice of government owned inventions available for licensing.

SUMMARY: The inventions listed below are owned in whole by the U.S. Government, as represented by the Department of Commerce. The Department of Commerce's interest in the inventions is available for licensing in accordance with 35 U.S.C. 207 and 37 CFR part 404 to achieve expeditious commercialization of results of federally funded research and development.

FOR FURTHER INFORMATION CONTACT: Technical and licensing information on these inventions may be obtained by writing to: National Institute of Standards and Technology, Office of Technology Partnerships, Attn: Mary Clague, Building 820, Room 213, Gaithersburg, MD 20899. Information is also available via telephone: 301–975–4188, e-mail: *mclague@nist.gov*, or fax: 301–869–2751. Any request for information should include the NIST Docket number and title for the relevant invention as indicated below.

SUPPLEMENTARY INFORMATION: NIST may enter into a Cooperative Research and Development Agreement ("CRADA") with the licensee to perform further research on the inventions for purposes

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of commercialization. The inventions available for licensing are:

[Docket No.: 97–021US]

Title: Temperature Calibration Wafer For Rapid Thermal Processing Using Thin-Film Thermocouples.

Abstract: This invention enables the measurement of temperature and the calibration of temperature measurements in rapid thermal processing tools for silicon wafer processing to a greater accuracy than previously possible. The invention is a device which is a calibration wafer of novel construction and capabilities. The calibration wafer is comprised of an array of junctions of thin film thermocouples which traverse the silicon wafer (typically 200 mm in diameter) and are welded to thermocouple wires of the same composition as the thin films. The advantages of very low mass thin-film thermocouples in making these measurements are greatest under the extremely high heat flux conditions present in rapid thermal processing tools (100 w/cm2). In order to achieve these measurements with thin-film thermocouples at temperatures ranging up to 900 degrees celsius a novel approach was taken in the design and fabrication of the wafer including the incorporation of an adhesion film for the thermoelements, diffusion barriers, and high temperature dielectric insulators.

[Docket No.: 98–024D]

Title: System For Stabilizing And Controlling A Hoisted Load.

Abstract: The invention provides a system which can both be adapted to existing single point lift mechanisms, and constrain a hoisted load in all six degrees of freedom, includes a suspension point, an assembly, a lateral tension lines member, and a control system. The assembly includes first and second platforms connected by a plurality of control cables which can precisely control the position, velocity, and force of a hoisted element in six degrees of freedom. The position or tension of the control lines can be controlled either manually, automatically by computer, or in various combinations of manual and automatic control. Advantages associated with the system include not only the ability to control the position, velocity, and force of the attached load, tool, and/or equipment in six degrees of freedom using position and tension feedback, but its ready adaptation to existing single point lift mechanisms and relatively light weight, and its flexibility, ease, and precision of operation.

[Docket No.: 00–033US]

Title: Rapid Fluorescence Detection Of Binding To Nucleic Acid Drug Targets Labeled With Highly Fluorescent Nucleotide Base Analogs.

Abstract: This invention is available for nonexclusive licensing. A method is disclosed for selective substitution of highly flourescent nucleotide base analogs within the sequence of nucleic acid drug targets, such that these bases can be used as probes to monitor/screen for the interaction of ligands with a nucleic acid target. In designing the fluorescent nucleic acid target, information about the nucleic acid structure and its native interaction with other macromolecules is used to engineer fluorescent analogs that display fluorescence emission quantum yields that are sensitive to interactions with ligands and/or other macromolecules. The general method of using changes in the fluorescence emission spectra as a probe for the interaction of the nucleic acid target with ligands has been named Flurescence Emission Peturbation (FREP).

Dated: May 3, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–11779 Filed 5–9–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board; Notice of Meeting

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the AF Scientific Advisory Board Predictive Battlespace Awareness (PBA) Executive Panel and Panel Chairs. The purpose of the meeting is to allow the panel chairs to report to the executive panel on the status of their portions of the PBA study; to receive the Joint Staff/J2 perspective on PBA; and to plan the remainder of the study. Because the briefings and discussion are classified, this meeting will be closed to the public.

DATES: 21 May 02 (0800–1630 EST).

ADDRESSES: A-Team Conference & Innovation Center, 1560 Wilson Blvd., Suite 400, Rosslyn, VA 22209.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,

Air Force Federal Register Liaison Officer.

[FR Doc. 02–11700 Filed 5–9–02; 8:45 am]

BILLING CODE 5001–05–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to add a system of records.

SUMMARY: The Department of the Army is proposing to add a new system of records notice to its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action is effective without further notice on June 10, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 2, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 6, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0190–13 DAMO

SYSTEM NAME:

Security/Access Badges.

SYSTEM LOCATION:

Headquarters, Department of the Army staff, field operating agencies, states' adjutant general offices, and Army installations, activities, offices world-wide that issue security badges authorized by Army Regulation 190–13, The Army Physical Security Program. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals issued a security/access badge, authorized members of the Uniformed Services, civilian Department of Defense and contract employees and visitors entering Department of Defense properties, stations, forts, depots, arsenals, plants (both contractor and Government operated), hospitals, terminals, and other mission facilities and restricted areas, primarily used for military purposes.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individual's application for security/access badge on appropriate Department of Defense and Army forms; individual's photograph, finger print record, special credentials, allied papers, registers, logs reflecting sequential numbering of security/access badges may also contain other relevant documentation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 190–13, The Army Physical Security Program and E.O. 9397 (SSN).

PURPOSE(S):

To provide a record of security/access badges issued; to restrict entry to installations and activities; to ensure positive identification of personnel authorized access to restricted areas; to maintain accountability for issuance and disposition of security/access badges.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' also apply to this system of records.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS:

STORAGE:

Paper records in file folders and on cards, magnetic tapes, discs, cassettes, computer printouts, and microfiche.

RETRIEVABILITY:

By individual's name, Social Security Number, and/or security/access badge number.

SAFEGUARDS:

Data maintained in secure buildings accessed only by personnel authorized access. Computerized information protected by alarms and established access and control procedures.

RETENTION AND DISPOSAL:

Security identification applications are maintained for 3 months after turn-in of badge or card then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of security/access badge, current address, phone number and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–11669 Filed 5–9–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Navy

Public Hearing for the Draft Environmental Impact Statement (DEIS) for Disposal and Reuse of Naval Station Treasure Island (NSTI), San Francisco, CA

AGENCY: Department of the Navy, DOD.

ACTION: Notice.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy (Navy) has prepared and filed with the United States Environmental Protection Agency (EPA) the DEIS for Disposal and Reuse of NSTI. A public hearing will be held to receive oral and written comments on the DEIS. Federal, state, and local agencies and interested individuals are invited to be present or represented at the hearing.

DATES AND ADDRESSES: A public hearing will be held on Tuesday, June 11, 2002, from 7:00 p.m. to 9:30 p.m. at the Nimitz Conference Center, Building 140, corner of "D" and "California" streets, Treasure Island, San Francisco, CA 94130 for the purpose of receiving oral and written comments on the DEIS.

FOR FURTHER INFORMATION CONTACT: Ms. Timarie Seneca, Community Planner, BRAC Operations Office at (619) 532–0955, by fax at (619) 532–0940 or write to Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Ms. Timarie Seneca, Code 06CM.TS, 1230 Columbia Street, Suite 1100, San Diego, CA 92101–8517.

SUPPLEMENTARY INFORMATION: The DEIS has been prepared in accordance with the Defense Base Closure and Realignment Act of 1990 (10 U.S.C. 2687) and the recommendations of the Defense Base Closure and Realignment Commission approved by the President and accepted by Congress in 1991, 1993, and 1985.

A Notice of Intent (NOI) to prepare the DEIS was published in the **Federal Register** at 61 FR 50004, Sep. 24, 1996. A public scoping meeting was held on October 9, 1996, at the San Francisco Ferry Building.

The meeting was advertised in the *San Francisco Chronicle, Marin Independent Journal, San Jose Mercury*

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News, and *Oakland Tribune* on Sunday, September 29, 1996, and Tuesday, October 1, 1996.

The proposed action is the disposal of Navy property for subsequent reuse and redevelopment, in accordance with the 1990 Defense Base Closure and Realignment Act, and the 1993 Base Realignment and Closure Commission recommendations. NSTI was operationally closed on September 30, 1997. NSTI is located on two islands in the San Francisco Bay approximately midway between the shores of the cities of San Francisco and Oakland. The larger island, called Treasure Island, consists of 402 acres (160 hectare (ha)) of dry land created with artificial fill in the 1930s. Approximately 681 acres (276 ha) of dry and submerged land are available for disposal on Treasure Island. Yerba Buena Island is a natural island connected to Treasure Island by a causeway. Approximately 239 acres (97 ha) of dry and submerged land are available for disposal on Yerba Buena Island. Approximately 36 acres (14 ha) of land on Treasure Island have been transferred to the Department of Labor, approximately 97 acres (39 ha) on Yerba Buena Island have been transferred to Caltrans, and a total of 22 acres (9 ha) are ultimately scheduled for transfer to the Coast Guard.

The DEIS evaluates three reuse alternatives. Navy disposal is assumed as part of each of the reuse alternatives. Alternative 1 represents full implementation of the development scenario described in the *Naval Station Treasure Island Draft Reuse Plan* developed by the Local Redevelopment Authority (LRA). Alternative 2 is based on comments received during the scoping process, including the recommendations of an Urban Land Institute advisory panel. Alternative 3 represents a lower level of redevelopment than proposed in the Draft Reuse Plan. A fourth alternative, No Action, assumes no disposal of property and retention of the property by the Navy in an inactive or caretaker status. Under the No Action Alternative, existing leases would continue until they expire or are terminated, no new leases would be entered into, and all buildings and other facilities would remain vacant and unused.

Alternative 1 (Preferred Alternative) features a combination of publicly oriented development, open space and recreation, and extensive residential development at full build out. Under Alternative 1, publicly oriented development on Treasure Island would include a theme attraction similar to Disneyland; with lighting displays, some tall structures, such as a roller coaster, and at least one landmark structure assumed to be up to 100 feet (305 meters (m)) tall. Development would also include a 300-room hotel and a 1,000-room hotel with three restaurants and offices. Publicly oriented uses on Yerba Buena Island would include a 150-room hotel, conference facilities, and a restaurant. Clipper Cove Marina would also be expanded and a new yacht club would be developed. Community uses on both islands would include public parks and open space, schools, a bikeway and pedestrian path. Industrial uses would include a new wastewater treatment plant, a new police station, and a new fire station on Treasure Island; these facilities and an existing fire station on Yerba Buena Island would be staffed with fire, paramedic, and police personnel. The elementary school, child development center, fire training school, and brig would be retained and reused for their original uses, with some modifications. Residential housing use would include reuse of existing housing as well as construction of new housing on both islands. No decision on the proposed action will be made until the NEPA process has been completed.

Potential impacts evaluated in the DEIS include, but are not limited to: Land use, visual resources, socio-economics, public services, utilities, cultural resources, biological resources, geology and soils, water resources, traffic and circulation, air quality, noise, and hazardous materials and waste. Potentially significant impacts that can be mitigated include: land use impacts related to inconsistencies with the general plan designation and zoning classification; traffic impacts to westbound and eastbound on and off ramps on Yerba Buena Island under Alternative 1; impacts to transit operations due to lack of bus service between NSTI and the East Bay under all alternatives; biological impacts to mudflats, wading shorebirds and essential fish habitat due to increased pedestrian and boating activities under all alternatives; potential exposure of individuals and property to ponding under Alternatives 1 and 3 and flooding hazards under all alternatives; and potential health and safety implications from future development activities interfering with remedial actions under the Comprehensive Environmental Response, Compensation, and Liability Act. The one significant impact that cannot be mitigated would be to cultural resources from demolition of two buildings on Treasure Island eligible for listing on the National Register of Historic Places under Alternative 2.

The DEIS has been distributed to affected Federal, state, and local agencies and other interested parties. In addition, copies of the DEIS are available for review at the following public libraries:

—San Francisco Main Library, 100 Larkin St (at Grove), San Francisco, CA 94102, (415) 557–4400

—Bayview/Waden Branch Library, 5075 3rd St (at Revere Ave), San Francisco, CA 94124, (415) 715–4100

—Potrero Branch Library, 1616 20th St (between Arkansas and Connecticut St), San Francisco, CA 94107, (415) 695–6640

—Chinatown Branch Library, 1135 Powell St (near Jackson St), San Francisco, CA 94108, (415) 274–0275

—North Beach Branch Library, 2000 Mason St (at Columbus Ave), San Francisco, CA 94133, (415) 274–0270

—Oakland Public Library (Main Branch), 125 14th St, Oakland, CA 94612, (510) 238–3134

—Oakland Library (Eastmont Branch), Eastmont Mall—2nd Flr, 7200 Bancroft Ave, Ste 211, Oakland, CA 94605, (510) 615–5726

A public hearing will be held to inform the public of the DEIS findings and to solicit and receive oral and written comments. Federal, state, and local agencies and interested parties are invited to be present at the hearing. Oral comments will be heard and transcribed by a court recorder; written comments are also requested to ensure accuracy of the record. Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public hearing. All comments, both oral and written, will become part of the official record. Comments should clearly describe specific issues or topics with the DEIS. In the interest of allowing everyone a chance to participate, speakers will be requested to limit their oral comments to five (5) minutes. Longer comments should be summarized at the public hearing and submitted in writing either at the hearing or mailed to: Commander, Southwest Division, Naval Facilities Engineering Command, Attn: Ms. Timarie Seneca, Code 06CM.TS, 1230 Columbia St, Suite 1100, San Diego, CA 92101–8517. Comments must be postmarked by June 24, 2002, to be considered in this environmental review process.

Dated: May 2, 2002.

R.E. Vincent II,

Lieutenant Commander, Judge Advocate General's Corps, U.S. Navy, Federal Register Liaison Officer.

[FR Doc. 02–11773 Filed 5–9–02; 8:45 am]

BILLING CODE 3810–FF–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.144]

Migrant Education Program (MEP) Consortium Incentive Grants Program

ACTION: Notice inviting applications for new awards for fiscal year 2002; Correction.

SUMMARY: The deadline for intergovernmental review for the FY 2002 Migrant Education Program (MEP) Consortium Incentive Grants program has been changed from August 2, 2002 to July 3, 2002. This notice corrects the deadline in the notice published in the **Federal Register** on April 26, 2002 (67 FR 20756).

FOR FURTHER INFORMATION CONTACT: Call or write James English, U.S. Department of Education, Office of Elementary and Secondary Education, Office of Migrant Education, 400 Maryland Ave., SW., Room 3E315, FOB6, Washington, DC, 20202–6135. Telephone: (202) 260–1394. Inquiries may be sent by e-mail to *james.english@ed.gov* or by FAX at (202) 205–0089.

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339. Individuals with disabilities Braille, large print, audiotape or computer diskette) on request to the contact person listed in the preceding paragraph.

SUPPLEMENTARY INFORMATION: In order to permit the FY 2002 MEP Consortium Incentive Grants to be awarded without delay once the FY 2002 funds become available in early July, 2002, the Assistant Secretary for Intergovernmental and Interagency Affairs has waived the 60-day period for intergovernmental review required under E.O. 12372. Instead, the intergovernmental review period for these grant applications will be 30 days. In this way, the deadline for intergovernmental review under E.O. 12372 for the MEP Consortium Incentive grants will be July 3, 2002, rather than August 2, 2002 as previously announced in the notice inviting applications for new awards published in the **Federal Register** on April 26, 2002 (67 FR 20756).

Electronic Access to This Document

You may view this document, as well as all other Department of Education documents published in the **Federal Register**, in text or Adobe Portable Format (PDF) on the Internet at the following site: *www.ed.gov/legislation/FedRegister*. To use PDF you must have Adobe Acrobat reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office toll free at 1–888–293–6498; or in the Washington, DC area at 202–512–1530.

Note: The official version of this document is the document publishef in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at: *http://www.access.gpo.gov/nara/index.html*.

Program Authority: 20 U.S.C. 6398(d).

Dated: May 6, 2002.

Susan B. Neuman,

Assistant Secretary, for Elementary and Secondary Education.

[FR Doc. 02–11644 Filed 5–9–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

U.S.-Africa Energy Ministerial Meeting

AGENCY: Department of Energy.

ACTION: Notice of public conference and opportunity to participate.

SUMMARY: This notice announces a public U.S.-African Energy Ministerial Conference co-sponsored by the Government of Morocco and Department of Energy of the United States. Attendance at the conference with the exception of the Energy Ministers Only session is open to the public at no charge. In addition, businesses may display exhibits on a fee basis at the conference.

DATES: Meeting date: June 3–4, 2002. Companies planning to attend the conference should register by calling 011–212–37–688–486 or by emailing casaconf@mem.gov.ma.

ADDRESSES: Send comments/questions to: Samuel.Browne@hq.doe.gov or Samuel Browne, US DOE, Office of Policy and International Affairs, PI–32, 1000 Independence Avenue, SW., Washington, DC 20585, or by phone at 202–586–8724.

SUPPLEMENTARY INFORMATION: The Government of Morocco and the Department of Energy are co-sponsoring the Third Conference of U.S.-Africa Energy Ministers. The theme of the conference is "Energy Partnerships for Sustainable Development: Energy Security and Regional Integration."

The conference, hosted by the Government of Morocco in Casablanca, will serve as a venue for the Energy Ministers to meet with one another and with other public and private sector representatives to discuss important issues, including developing an attractive investment climate and identifying opportunities for partnerships and project development. The Casablanca Conference follows the first U.S.-Africa Energy Ministers Conference, hosted by the United States in Tucson, Arizona, in 1999, and the Second Ministerial Conference, hosted by South Africa in Durban, in 2000. These Conferences were productive in enhancing the dialogue among public and private sector representatives on key energy issues. President Bush's National Energy Policy also reaffirms the importance of the U.S.-African Energy Ministerial process in its ability to help promote democracy, good governance, human rights, trade investment, and global integration.

Public Participation

There is no charge for the private sector to participate in the Ministerial. However, businesses or other entities wishing to display exhibits can access a point of contact via the Government of Morocco's conference email address at *casaconf@men.gov.ma*. The cost of the exhibit space is $1000.00 per exhibit. The conference is open to the public with the exception of the Energy Ministers Only session on June 4, 2 to 4 p.m.

Issued in Washington, DC, on April 30, 2002.

Vicky A. Bailey,

Assistant Secretary of Energy, Office of Policy and International Affairs.

[FR Doc. 02–11729 Filed 5–9–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP01–1–001]

Colorado Interstate Gas Company; Notice of Amendment

May 3, 2002.

Take notice that on April 29, 2002, Colorado Interstate Gas Company (CIG), P.O. Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP01–1–001, a request to modify its variance request filed on April 19, 2002 to a Petition to Amend Order issued on May 16, 2001, all as more fully set forth

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in the application which is on file with the Commission and open to public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

CIG states that on October 2, 2000, it filed an application in Docket No. CP01–1–000 for authorization, pursuant to Section 7(b) of the Natural Gas Act (NGA), to abandon its Keyes Sand Reservoir at its Boehm Storage Field in southwest Kansas and for a certificate of public convenience and necessity, pursuant to Section 7(c) of the NGA, to construct and operate: (a) facilities to increase the deliverability of its Fort Morgan Storage Field in northeastern Colorado; and (b) pipeline looping and compression facilities to increase the capacity of its system south of its Cheyenne Compressor Station in Weld County, Colorado. On May 16, 2001, the Commission issued its Order Issuing Certificate and Approving Abandonment. As to the abandonment activity and temporary facilities set forth in ordering paragraph (A) of the May 16, 2001 Order, CIG states that it has not yet undertaken these activities.

With this amendment, CIG states that it has determined that the depletion of the Keyes Sand Reservoir can be more efficiently accomplished by modifying the original required facilities. CIG states that it now proposes to amend its certificate by: (1) Installing approximately 3,981 feet of 4" O.D. and 6" O.D. pipeline (Line No. 89F44) connecting the existing Keyes Sand Well Nos. 23, 26, 34 and 35 to the temporary compression and treatment plant. According to CIG, this would isolate its ability, through the dedication of one line, to deplete the reservoir without affecting the ability of the existing line to be used for storage related services; (2) installing an approximate 600 horsepower leased compressor, hydrogen sulfide treatment, and appurtenant facilities, all within a 250 foot by 350 foot plant yard and located immediately adjacent to the existing Boehm Central Dehydration Plant. According to CIG, this will reduce the area to be disturbed by the temporary facilities; (3) converting Keyes Sand Well Nos. 17, 36 and 47 to "G" Sand injection/withdrawal wells; and (4) converting Keyes Sand Well Nos. 14, 18, 21, 25 and 31 to Keyes Sand observation wells for improved monitoring of the reservoir.

Any questions concerning this application may be directed to Robert T. Tomlinson, Director, Regulatory Affairs Department, Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944, at (719) 520–3788 or fax (719) 520–4318.

There are two ways to become involved in the Commission's review of this project. First, any person wishing to obtain legal status by becoming a party to the proceedings for this project should, on or before May 24, 2002, file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, a motion to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the NGA (18 CFR 157.10). A person obtaining party status will be placed on the service list maintained by the Secretary of the Commission and will receive copies of all documents filed by the applicant and by all other parties. A party must submit 14 copies of filings made with the Commission and must mail a copy to the applicant and to every other party in the proceeding. Only parties to the proceeding can ask for court review of Commission orders in the proceeding.

However, a person does not have to intervene in order to have comments considered. The second way to participate is by filing with the Secretary of the Commission, as soon as possible, an original and two copies of comments in support of or in opposition to this project. The Commission will consider these comments in determining the appropriate action to be taken, but the filing of a comment alone will not serve to make the filer a party to the proceeding. The Commission's rules require that persons filing comments in opposition to the project provide copies of their protests only to the party or parties directly involved in the protest.

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

If the Commission decides to set the application for a formal hearing before an Administrative Law Judge, the Commission will issue another notice describing that process. At the end of the Commission's review process, a final Commission order approving or denying a certificate will be issued.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11755 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–389–049]

Columbia Gulf Transmission Company; Notice of Negotiated Rate Filing

May 6, 2002.

Take notice that on April 30, 2001, Columbia Gulf Transmission Company (Columbia Gulf) tendered for filing to the Federal Energy Regulatory Commission (Commission) the following contract for disclosure of a recently negotiated rate transaction:

FTS–1 Service Agreement No. 70440 between Columbia Gulf Transmission Company and Pogo Producing Company dated April 27, 2001

Transportation service which is scheduled to commence May 1, 2001.

Columbia Gulf states that copies of the filing have been served on all parties on the official service list created by the Secretary in this proceeding, and that copies of the filing are being made available for public inspection during regular business hours in Columbia Gulf's offices in Houston, Texas and Washington, DC.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11758 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–20–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to become effective January 1, 2002:

Seventh Revised Sheet No. 3
Fifth Revised Sheet No. 3A
Sixth Revised Sheet No. 3B
Fifth Revised Sheet No. 3C

Great Lakes states that the tariff sheets listed above are being filed to revise the system and zone maps included in Great Lakes' tariff pursuant to § 154.106(c) of the Commission's regulations. The revisions reflect the addition of the Mayfield and the Superior Interconnects to the western zone of Great Lakes' system. Great Lakes further states that the central and eastern zone maps are being filed at this time, for administrative purposes only, to reflect a map style consistent with the western zone map and the system map included in the instant filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11757 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–056]

Natural Gas Pipeline Company of America; Notice of Proposed Change in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), Fourth Revised Sheet No. 26P.03 to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective May 1, 2002.

Natural states that the purpose of this filing is to implement an amendment to an existing negotiated rate transaction entered into by Natural and Dynegy Marketing and Trade under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the proposed tariff sheet to become effective May 1, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list at Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11759 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–238–000]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission), certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff). An effective date of June 1, 2002, is requested for this tariff sheet.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions (GT&C) of its Tariff as the eighteenth semiannual limited rate filing under section 4 of the Natural Gas Act and the Rules and Regulations of the Commission promulgated thereunder. The rate adjustments filed for are designed to recover Account No. 858 stranded costs incurred by Natural under contracts for transportation capacity on other pipelines. Costs for any Account No. 858 contracts specifically excluded under Section 21 are not reflected in this filing. The filing also includes a procedure for closing out the Section 21 mechanism.

Natural requests waivers of Section 21 of the GT&C of its Tariff and Commission Regulations to the extent necessary to permit Nineteenth Revised Sheet No. 22 to become effective June 1, 2002.

Natural states that copies of the filing are being mailed to its customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance

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with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11761 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–19–000]

Panhandle Eastern Pipe Line Company; Notice of Proposed CHanges in FERC Gas Tariff

May 6, 2002.

Take notice that on April 30, 2002, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2002:

Fourth Revised Sheet No. 3
Third Revised Sheet No. 3A
Fifth Revised Sheet No. 3B

Panhandle states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Panhandle requests confidential treatment of its maps. As such, only the Commission is receiving a hard copy of the revised tariff sheets that display the system maps in the original filing. The tariff sheets in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheets in accordance with Section 388.108 of the Commission's Regulations. Panhandle's shippers may contact Panhandle directly to request copies of the tariff map sheets.

Panhandle states that a public copy of this filing is available for public inspection during regular business hours at Panhandle's office at 5444 Westheimer Road, Houston, Texas 77056–5306. In addition, copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11756 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–229–001]

Texas Eastern Transmission, LP; Notice of Errata Filing

May 6, 2002.

Take notice that Texas Eastern Transmission, LP (Texas Eastern) on April 30, 2002 tendered for filing an errata filing in order to correct certain typographical errors on the Summary of Refunds schedule included in its refund report filed on April 17, 2002 in Docket No. RP02–229.

Texas Eastern states that copies of its filing have been mailed to all affected customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11760 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–463–003]

Williston Basin Interstate Pipeline Company; Notice of Compliance Filing

May 3, 2002.

Take notice that on April 29, 2002, Williston Basin Interstate Pipeline Company (Williston Basin or Company), tendered for filing under protest with the Commission as part of its FERC Gas Tariff, Second Revised Volume No. 1, the Pro Forma tariff sheets listed on Appendix A to the filing.

Williston Basin states that the revised tariff sheets are being filed under protest to comply with the requirements of the Commission's February 27, 2002 "Order on Compliance With Order Nos. 637, 587–G and 587–L," in the above referenced dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11754 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL00–95–001, et al.]

San Diego Gas and Electric Company, et al.; Electric Rate and Corporate Regulation Filings

May 3, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. San Diego Gas and Electric Company, Complainant, v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, Respondents California Independent System Operator Corporation

[Docket No. EL00–95–001 and ER02–1656–000]

Take notice that on May 1, 2002, the California Independent System Operator Corporation (ISO) tendered for filing in the above-captioned dockets its proposals for a Comprehensive Market Redesign. The ISO requests that certain elements of the filing be made effective on July 1, 2002 and others on October 1, 2002.

The ISO states that this filing has been served on the California Public Utilities Commission, all California ISO Scheduling Coordinators, and all parties in Docket No. EL00–95. *Comment Date:* May 22, 2002.

2. Florida Power & Light Company

[Docket No. ER02–139–003]

Take notice that on April 26, 2002, and Florida Power & Light Company (FPL) filed, pursuant to the order issued on March 27, 2002 in the above-captioned proceeding, a compliance filing making the required changes to the executed Interconnection and Operation Agreement between FPL and CPV Atlantic, Ltd. On May 1, 2002, three pages have been included that were omitted on April 26, 2002 filing. *Comment Date*: May 17, 2002.

3. Armstrong Energy Limited Partnership, LLLP, Pleasants Energy, LLC, and Troy Energy, LLC

[Docket Nos. ER02–300–004, ER02–301–004, ER02–835–002, ER02–837–002]

Take notice that on April 25, 2002, Armstrong Energy Limited Partnership, LLLP (Armstrong), Pleasants Energy, LLC (Pleasants) and Troy Energy, LLC (Troy), tendered for filing with the Federal Energy Regulatory Commission (Commission) revised pages in Armstrong and Troy's revised power purchase agreements for test power sales (Revised Test Power PPAs) and revised pages in Armstrong, Pleasants and Troy's power purchase agreements for the sale of commercial power to Dominion Virginia Power (Revised Commercial Power PPAs) that comply with the Commission's April 10, 2002 Order in the above listed proceedings.

Copies of the filing were served upon Ohio Public Utilities Commission, the Pennsylvania Public Service commission, the North Carolina Utilities Commission, Virginia State Corporation Commission and the Public Service Commission of West Virginia.

Comment Date: May 16, 2002.

4. Boston Edison Company

[Docket No. ER02–843–001]

Take notice that on April 25, 2002, Boston Edison Company (Boston Edison) tendered for filing an amendment to the executed Related Facilities Agreement between Boston Edison and Mirant Kendall, LLC (Mirant Kendall) originally filed on January 25, 2002 in this proceeding .

Comment Date: May 16, 2002.

5. Duke Energy Corporation

[Docket No. ER02–994–002]

Take notice that on April 26, 2002, Duke Energy Corporation (Duke) on behalf of Duke Electric Transmission, tendered for filing with the Federal Energy Regulatory Commission (Commission) revised rate schedule sheets reflecting changes to Exhibit D to the Restated Interchange Agreement (Restated IA) dated February 10, 1992 between Duke and South Carolina Public Service Authority. The revised rate schedule sheets supersede the sheets of Exhibit D filed on February 8, 2002 and revisions filed on March 15, 2002. In addition, Duke tendered for filing a revised rate schedule sheet to the Restated IA incorporating Supplement No. 4, which was filed with the Commission on December 20, 1996 in Docket No. OA97–205–000 and accepted for filing in a letter order dated February 17, 1999. Duke seeks an effective date for the revised rate schedule sheets of Exhibit D to the Restated IA of April 10, 2002.

Comment Date: May 17, 2002.

6. Phelps Dodge Energy Services, LLC

[Docket No. ER02–1026–001]

Take notice that on April 26, 2002, Phelps Dodge Energy Services, LLC (PDES) tendered for filing with the Federal Energy Regulatory Commission (the Commission) a revised FERC Electric Tariff, First Revised Volume No. 1, in compliance with the Commission's letter order dated April 15, 2002.

Comment Date: May 17, 2002.

7. ISO New England Inc.

[Docket No. ER02–1392–001]

Take notice that on April 26, 2002, the New England Power Pool (NEPOOL), filed a Report of Compliance, which contains changes to NEPOOL Market Rule and Procedure No. 5, in order to effect compliance with the Federal Energy Regulatory Commission's (Commission) April 12, 2002 letter Order in Docket No. ER02–1392–000.

NEPOOL states that copies of these materials were sent to the New England state governors and regulatory commissions and NEPOOL Participants Committee members and alternates and Non Participant Transmission Customers.

Comment Date: May 17, 2002.

8. Florida Power Corporation

[Docket No. ER02–1655–000]

Take notice that on April 30, 2002, Florida Power Corporation tendered for filing cost support updates for its interchange service agreements pursuant to Part 35 of the Federal Energy Regulatory Commission's (Commission) regulations. In addition to the cost support, the service agreements have been restated as required by the Commission's Order No. 614. The filing also cancels rate schedules associated with 11 terminated interchange service agreements, and updates the Real Power Loss Factors in the Open Access Transmission Tariffs of Florida Power and Carolina Power and Light Company.

Copies of the filing letter and cost support (which identifies the updated

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charges) have been served on the counter-parties to the interchange service agreements and the interested state utility commissions.

Comment Date: May 21, 2002.

9. New York Independent System Operator, Inc.

[Docket No. ER01–2967–005]

Take notice that on April 26, 2002, the New York System Operator, Inc. (NYISO) filed revisions to Attachment S of its Open Access Transmission Tariff, which contains rules to allocate responsibility for the cost of new interconnection facilities, pursuant to the Federal Energy Regulatory Commission's (Commission) Order issued on October 26, 2001, in the above-captioned proceeding. The NYISO has requested an effective date of September 26, 2001, for the compliance filing, the effective date granted in the Commission's Order issued on October 26, 2001, in the above-captioned proceeding.

The NYISO has mailed a copy of this compliance filing to all persons that have filed interconnection applications or executed Service Agreements under the NYISO Open Access Transmission Tariff, to the New York State Public Service Commission, and to the electric utility regulatory agencies in New Jersey and Pennsylvania. The NYISO has also mailed a copy to each person designated on the official service list maintained by the Commission for the above-captioned proceeding.

Comment Date: May 17, 2002.

10. Southern Indiana Gas and Electric Company

[Docket No. ES02–31–000]

Take notice that on April 29, 2002, Southern Indiana Gas and Electric Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time during the period ending June 22, 2004, short-term debt with no more than $250 million outstanding at any one time.

Comment Date: May 24, 2002.

11. Ameren Energy Generating Company

[Docket No. ES02–32–000]

Take notice that on April 29, 2002, Ameren Energy Generating Company submitted an application pursuant to section 204 of the Federal Power Act seeking authorization to issue, from time to time during the period from June 23, 2002, through June 22, 2004, (1) up to $500 million of long-term debt, and (2) short-term debt with the total aggregate amount of all short-term debt outstanding at any one time not to exceed $300 million.

Comment Date: May 24, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11701 Filed 5–9–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–5]

Protection of Stratospheric Ozone: Process for Exempting Critical Uses of Methyl Bromide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives.

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a "critical use" claim.

Methyl bromide is a chemical pesticide that has been identified under the *Montreal Protocol on Substances that Deplete the Ozone Layer* and the Clean Air Act, as an ozone-depleting substance. It is scheduled for complete phaseout by January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Because Critical Use Exemptions are exemptions from the January 1, 2005 methyl bromide phaseout, they will become effective after that date.

Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before September 9, 2002.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Methyl Bromide Critical Use Exemption, Global Programs Division, Mail Code 6205J, 1200 Pennsylvania Ave., NW., Washington, DC 20460–0001 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Methyl Bromide Critical Use Exemption, Global Programs Division, 501 3rd St., NW., Washington, DC 20001, phone: (202) 564–9410.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1–800–296–1996.

Technical Information: Bill Chism, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8136.

Economic Information: David Widawsky, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 703–308–8150.

Regulatory Information: Amber Moreen, U.S. Environmental Protection Agency, Global Programs Division (6205J), 1200 Pennsylvania Ave., NW., Washington, DC, 20460, 202–564–9295.

SUPPLEMENTARY INFORMATION:

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I. What Do I Need to Know To Respond to This Request for Applications?

A. Who Can Respond to This Request for Information?

The Application Form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2005 and believe there are no technically and economically feasible alternatives. EPA encourages users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g. technical and/or economic feasibility research). The Application Form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses specified above.

B. Who Can I Contact To Find Out if a Consortium Is Submitting an Application Form for My Methyl Bromide Use?

Please contact your local, state, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your state agency has chosen to participate, EPA encourages all applicants to first submit their applications to the state regulatory agency, which will then forward them to EPA. The National Pesticide Information Center website is one resource available for identifying the lead pesticide agency in your state *(http://ace.orst.edu/info/npic/state1.htm)*.

C. How Do I Obtain an Application Form for the Methyl Bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form.

EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format at EPA website: *www.epa.gov/ozone/mbr;*

2. Microsoft Excel and other electronic spreadsheet formats at EPA website: *www.epa.gov/ozone/mbr;*

3. Mailed hard-copy ordered through the Stratospheric Ozone Protection Hotline at 1–800–296–1996;

4. Hard-copy format at Air Docket No. A–2000–24. The docket is located in room M–1500, First Floor, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street, SW., Washington DC 20460. The Docket Office is open from 8:30am until 5:30pm Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.

D. What Alternatives Must Applicants Address When Applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is "critical", applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The Parties to the Montreal Protocol have developed an "International Index" of Methyl Bromide Alternatives which lists chemical and non-chemical alternatives, by crop (*http://www.epa.gov/ozone/mbr/alt_in.html*). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the "technical potential" to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (*http://www.teap.org/html/teap_reports.html*). A corresponding U.S. Index of alternatives (also listed by crop) has been developed by the U.S. government regarding chemical alternatives (*http://www.epa.gov/ozone/mbr*). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop within the "U.S. Index" of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of "non-chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop in the "International Index".

E. What Portions of the Applications Will Be Considered Confidential Business Information?

The person submitting information to EPA in response to this Notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as trade secret, proprietary, or company confidential. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR Part 2 Subpart B; 41 FR 36902, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

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If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in the public docket for reference by other interested parties. Do not include on the "Worksheet Six: Application Summary" page of the application any information that you wish to claim as confidential business information. These application information summary sheets will be posted on the EPA website (*www.epa.gov/ozone/mbr*) and included in Air Docket No. A–2000–24.

II. What Is the Legal Authority for the Critical Use Exemption?

A. What Is the Clean Air Act (CAA) Authority For Implementing the Critical Use Exemption to the Methyl Bromide Phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA Sections 604(d)(6), 604(e)(3), and 604(h) (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. No. 105–277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999
50% reduction in 2001
70% reduction in 2003
100% reduction in 2005

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240) and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005 "to the extent consistent with the Montreal Protocol" (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Pub. L. 105–277, October 21, 1998)(Section 604(d)(6) of the Clean Air Act).

B. What Is the Montreal Protocol Authority For Granting a Critical Use Exemption After the Methyl Bromide Phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses".

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination:

(a) That a use of methyl bromide should qualify as 'critical' only if the nominating Party [e.g. U.S.] determines that:

(i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

(ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

(i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

(ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries need for methyl bromide;

(iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination * * * Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. * * *

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports − exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). Class I controlled substances that were produced or imported through the expenditure of allowances prior to their phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How will the U.S. Implement the Critical Use Exemption?

D. When Will the Exemption Become Available to U.S. Users of Methyl Bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption will be available to approved uses on January 1, 2005. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment exemption) must conform to the phasedown schedule listed above (see Supplementary Information Section II A). For more information on the quarantine and preshipment exemption, please refer to 66 FR 37752 (July 19, 2001).

B. What Is the Projected Timeline For the Critical Use Exemption Application Process?

There is both a domestic and international component to the Critical Use Exemption process. The following outline represents a projected timeline for the process:

May 10, 2002	Solicit applications for the methyl bromide Critical Use Exemption for 2005.
September 9, 2002.	Deadline for submitting Critical Use Exemption applications to EPA.
Late 2002	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package.
January 31, 2003.	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties.
Early 2003	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC).
Mid 2003	Parties consider TEAP/MBTOC recommendations.
Late 2003	Parties authorize Critical Use Exemptions for methyl bromide.
Early 2004	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S.
Late 2004	EPA publishes final rule allocating Critical Use Exemptions in the U.S.
January 1, 2005.	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses.

Authority: 42 U.S.C. 7414, 7601, 7671–7671q.

List of Subjects

Environmental protection, Administrative practice and procedure, Air pollution control, Chemicals, Methyl Bromide, Ozone layer, Reporting and Recordkeeping requirements.

Dated: April 18, 2002.

Robert Brenner,

Acting Assistant Administrator, Office of Air and Radiation.

[FR Doc. 02–11738 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–1]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 564–7167 or *www.epa.gov/oeca/ofa*

Weekly receipt of Environmental Impact Statements

Filed April 29, 2002 Through May 03, 2002 Pursuant to 40 CFR 1506.9.

EIS No. 020169, Final EIS, AFS, MO, Oak Decline and Forest Health Project, To Improve Forest Health, Treat Affected Stands, Recover Valuable Timber Products, Promote Public Safety, Potosi and Salem Ranger Districts, mark Twain National Forest, Crawford, Dent, Iron, Reynolds, Shannon and Washington, MO, Wait Period Ends: June 10, 2002, Contact: Karen Mobley (573) 729–6656.

EIS No. 020170, Draft EIS, COE, WV, Spurce Mine No. 1 Surface Mine Project, Proposed to Extraction (i.e., Maximum Mineral Recovery Based on Economic Considerations and Landowner Commitments) of High Quality Coal Reserve, Located in Blair, Logan County, WV, Comment Period Ends: June 24, 2002, Contact: James M. Richmond (304) 529–5210.

EIS No. 020171, Final EIS, USA, TX, Programmatic EIS—Fort Sam Houston, Camp Bullis, and Canyon Lake Recreation Area Master Plan, Implementing Revisions to the Existing 1988 Land Use Plan, City of San Antonio, TX, Wait Period Ends: June 10, 2002, Contact: Jackie Schlatter (210) 221–5093.

EIS No. 020172, Draft EIS, FRC, OR, North Umpqua Hydroelectric Project (FERC Project 1927), Issuing of Application for a New License for the Existing 185.5-megawatt (MW), Located on the North Umpqua River, Douglas County, OR, Comment Period Ends: June 24, 2002, Contact: John Smith (202) 219–2460. This document is available on the Internet at: *http://www.ferc.gov/.*

EIS No. 020173, Draft EIS, AFS, ID, The West Gold Creek Project, Proposing Forest Management Activities, Implementation, Idaho Panhandle National Forests, Sandpoints Ranger District, Bonner County, ID, Comment Period Ends: June 24, 2002, Contact: Judy York (208) 265–6665. This document is available on the Internet at: (*www.ferc.gov.*)

EIS No. 020174, Draft EIS, USN, CA, Naval Station Treasure Island Disposal and Reuse Property, Implementation, Local Redevelopment Authority (LRA), City of San Francisco, San Francisco County, CA, Comment Period Ends: June 24, 2002, Contact: Timarie Seneca (619) 532–0995.

EIS No. 020175, Final EIS, BLM, CA, Mesquite Mine Expansion Project, To Expand the Existing Open-Pit, Heap-Leach, and Precious Metal Mine, Federal Mine Plan of Operations Approval, Conditional Use Permits and Reclamation Plan Approval, Imperial County, CA, Wait Period Ends: June 10, 2002, Contact: Kevin Marty (760) 337–4422. This document is available on the Internet at: *www.ca.blm.gov/elcentro/mesquite/.*

EIS No. 020176, Final EIS, AFS, WA, Upper Charley Subwatershed Ecosystem Restoration Projects, Implementation, Pomeroy Ranger District, Umatilla National Forest, Garfield County, WA, Wait Period Ends: June 10, 2002, Contact: Monte Fujishin (509) 843–1891.

EIS No. 020177, Final EIS, NOA, HI, GU, AS, Coral Reef Ecosystems of the Western Pacific Region, Fishery Management Plan, Including Amendments to Four Existing (FMPs), Amendment 7—Bottomfish and Seamount Groundfish Fisheries, Amendment 11—Crustaceans Fisheries; Amendment 5—Precious Corals Fisheries and Amendment 10—Pelagics Fisheries, HI, GU and AS, Wait Period Ends: June 10, 2002, Contact: Charles Karnella (808) 973–2937.

Dated: May 7, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–11783 Filed 5–9–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–6629–2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 564–7167.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 12, 2002 (67 FR 17992).

Draft EISs

ERP No. D–AFS–K65238–CA Rating EC2, Star Fire Restoration Removal of Fire-Killed Trees, Road Reconstruction, and Associated Restoration, Eldorado National Forests (ENF) Georgetown Ranger District, Middle Fork American River, Chipmunk Ridge and the North Fork of Long Canyon, Placer County, CA.

Summary: EPA expressed environmental concerns about impacts to riparian areas, water quality and wildlife habitat. The final EIS should expand the discussion on cumulative impacts, impacts from reasonably foreseeable actions and potential use of pesticides and herbicides.

ERP No. D–AFS–K65394–CA Rating EO2, Los Padres National Forest Oil and Gas Leasing Management, Implementation, Kern, Los Angeles, Monterey, Santa Barbara and San Luis Obispo Counties, CA.

Summary: EPA expressed environmental objections based on severe air quality impacts projected during maximum development activity. EPA noted that Standard Lease Terms-only, proposed under both of the Preferred Alternatives may not adequately protect natural resources. EPA recommends additional lease stipulations to reduce air emissions.

ERP No. D–AFS–L67037–00 Rating EC2, Programmatic—Siskiyou National Forest Suction Dredging Activities, Operating Plan Terms and Conditions Approval, Coos, Curry and Josephine Counties, OR and Del Norte County, CA.

Summary: EPA expressed environmental concerns over the lack of mitigation measures to address impacts of roads and limit potential adverse impacts to mollusks, amphibians and fish. EPA believes that mitigation measures included in Alternative 3 are

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needed to reduce impacts of suction dredge mining to 303(d) listed waters and listed fish species. EPA recommends that the final EIS contain these measures, training for miners to identify and protect aquatic species and develop required planning documents under the Northwest Forest Plan, and a well defined enforcement strategy.

ERP No. D–FHW–L53003–WA Rating EC2, Vancouver Rail Project, Rail Improvements at the Burlington Northern and Santa Fe Rail Yard and Possible Elimination of the West 39th Street At-Grade Crossing, Funding and NPDES Permit Issuance, Clark County, WA.

Summary: EPA expressed environmental concerns that the draft EIS did not provide full disclosure of direct, indirect and cumulative environmental impacts, including impacts to wetland buffers, and does not provide sufficient discussion of alternatives.

ERP No. D–FTA–K54026–NV Rating EC2, Las Vegas Resort Corridor Project, Transportation Improvements, Funding, City of Las Vegas, Clark County, NV.

Summary: EPA expressed environmental concerns that the document does not provide sufficient information on environmental justice and cumulative impacts. EPA requested additional analysis and documentation on both of these issues.

ERP No. DS–FHW–F40368–WI Rating EO2, US–12 Highway Corridor Project, Improvement from IH90/94 at Lake Delton south to Ski Hi Road, Updated Information, Funding and US Army COE Section 404 Permit Issuance, Sauk County, WI.

Summary: EPA has concluded that potential adverse impacts to the Baraboo Hills resources will be significant and must be avoided to protect the environment. Specific objections are lack of consistency between the preferred alternative and the Highway 12 Memorandum of Agreement signed in 1999, indirect effects of the highway improvements, including secondary land use impacts, and the possibility of increased developmental pressure on the Baraboo Hills area's natural resources, and mitigation for anticipated impacts to interior forest habitat.

Final EISs

ERP No. F–BIA–L65330–WA White River Amphitheater Project, Construction and Operation of a 20,000 Seat Open-Air Amphitheater on the Muckleshoot Indian Reservation US Army COE Section 404 Permit and NPDES Permit Issuance, Seattle-Tocoma, King County, WA.

Summary: EPA requested that the concerns of local residents be addressed by implementing the mitigation measures. The records of Decision should commit to and implement actions that will mitigate traffic, noise, air and water quality.

ERP No. F–FHW–G40145–00 US 71 Highway Improvement Project, between Texarkana, (US71) Arkansas and DeQueen, Funding, Right-of-Way Grant and US Army COE Section 404 Permit Issuance, Little River, Miller and Sevier Counties, AR and Bowie County, TX.

Summary: EPA had no further comments to offer on the Final EIS. EPA had no objection to the preferred alternative.

ERP No. F–FHW–J40153–MT Montana State Primary Route 78 (P–78), Reconstruction, Widening and Realignment, from the junction with State Secondary Route 419 (S–419) which is just South of Abarokee, to the Southern end of the Yellowstone River Bridge which is just south of Columbus, MT.

Summary: EPA has environmental concerns regarding proposed stream channel modifications. EPA recommended consultation with the Montana Department of Environment Quality (MDEQ) to assure consistency of the proposed highway's construction activities with MDEQ's Total Maximum Daily Loading standards development for impaired water bodies in the project area.

ERP No. F–FHW–K40221–CA CA–84—Realignment Project, Transportation Improvement between CA–84 from I–880 to CA–2389/Mission Blvd, Funding and US Army COE Section 404 Permit Issuance, Cities of Fremont, Hayward and Union, Alameda County, CA.

Summary: EPA expressed continuing environmental concern that there is not enough information in the final EIS to assess the ways in which the project will impact waters of the United States and whether impacts have been avoided and minimized. EPA also commented that the conclusion that the project would not violate National Ambient Air Quality Standards for CO and PM10 at the project level was not supported.

ERP No. F–FTA–F40390–MN Northstar Transportation Corridor Improvement Project, Downtown Minneapolis to the St. Cloud Area along Trunk Highway 10/47 and the Burlington Northern Santa Fe Railroad Transcontinental Route connecting Hiawatha Light Rail Transit Line at a Multi-Modal Station, Minneapolis/St Paul International Airport and Mall of America, Bloomington, MN.

Summary: The final EIS includes additional information and discussions for the areas of concern identified in EPA's comment letters concerning the draft EIS and supplemental draft EIS. Direct wetland impacts have been reduced from 7.23 acres in the DEIS to 1.86 acres in the final EIS.

ERP No. F–NPS–D65023–DC Mary McLeod Bethune Council House National Historic Site General Management Plan, Implementation, Washington, DC.

Summary: No formal comment letter was sent to the preparing agency.

Dated: May 7, 2002.

Joseph C. Montgomery,

Director, NEPA Compliance Division, Office of Federal Activities.

[FR Doc. 02–11784 Filed 5–9–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[AMS–FRL–7210–7]

Meeting of the Clean Diesel Independent Review Panel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Clean Diesel Independent Review Panel of the Clean Air Act Advisory Committee will be active until September 30, 2002. This notice pertains to the first meeting of the panel. All panel meetings are open to the public. The preliminary agenda for this meeting will be available on the panel's website in early May: *http://www.epa.gov/air/caaac/subcommittees.html.*

DATES: Thursday, May 23 from 9 a.m. to 5 p.m.Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Old Town Holiday Inn Select, 480 King Street, Alexandria, VA 22314, (703) 549–6080.

FOR FURTHER INFORMATION CONTACT: *Technical Information:* Ms. Mary Manners, Designated Federal Official, U.S. EPA, National Vehicle and Fuels Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4873, fax (734) 214–4051, e-mail: *manners.mary@epa.gov.*

Logistical and Administrative Information: Ms. Julia MacAllister, FACA Management Officer, National Vehicle and Fueis Emission Laboratory, Assessment and Standards Division, 2000 Traverwood, Ann Arbor MI 48105; telephone (734) 214–4131, fax (734) 214–4816, e-mail: *macallister.julia@epa.gov.*

Current Information: http://www.epa.gov/air/caaac/subcommittees.html.

Individuals or organizations wishing to provide comments to the panel should submit them to Ms. Manners at the address above by September 30, 2002. The Clean Diesel Independent Review Panel expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

Dated: May 7, 2002.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02–11816 Filed 5–8–02; 1:33 pm]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–6]

Technical Peer Review Workshop on the EPA Risk Assessment Forum Draft Framework for Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a meeting, organized and convened by Versar, Inc., a contractor to EPA's Risk Assessment Forum, for external scientific peer review on the draft Framework for Cumulative Risk Assessment (EPA/630/P–02/001A). The meeting is being held to discuss technical issues associated with cumulative risk assessment and how to capture these issues in a broad, flexible framework that will inform future guidance development efforts in this area. The EPA also is announcing a 30-day public comment period for the draft document. EPA will consider the peer review advice and public comment submissions in revising the Framework document.

DATES: The peer review meeting will be held from 8:30 a.m. to 5 p.m. on Tuesday, June 4, 2002 and from 8:30 a.m. to 5 p.m. on Wednesday, June 5, 2002. The 30-day public comment period begins May 10, 2002, and ends June 10, 2002. Technical comments should be in writing and must be postmarked by June 10, 2002.

ADDRESSES: The meeting will be held at the Courtyard Crystal City Hotel, 2899 Jefferson Davis Highway, Arlington, VA 22202. Versar, Inc., an EPA contractor, will convene and facilitate the workshop. To register to attend the workshop as an observer, visit *www.versar.com/epa/cumriskmtg.htm*, or contact Ms. Traci Bludis, Versar, Inc.; telephone: (703) 750–3000 extension 449; facsimile: 703–642–6954; e-mail *bluditra@versar.com* by 5 p.m. eastern daylight time, May 31, 2002.

The draft Framework for Cumulative Risk Assessment is available via the Internet on the Risk Assessment Forum Publications home page at *http://www.epa.gov/ncea/raf/rafpub.htm* under What's New. Copies are not available from Versar Inc.

Public comments may be mailed to the Technical Information Staff (8623D), NCEA–W, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington, DC 20460, or delivered to the Technical Information Staff at 808 17th Street. NW., 5th Floor, Washington, DC 20006; telephone: 202–564–3261; facsimile: 202–565–0050.

FOR FURTHER INFORMATION CONTACT: For further information concerning the technical peer review workshop or the draft Framework for Cumulative Risk Assessment, please contact Steven Knott, U.S. EPA Office of Research and Development (8601–D), 1200 Pennsylvania Ave. NW., Washington, DC 20460, Telephone (202) 564–3359, Fax (202) 565–0062, e-mail *knott.steven@epa.gov.*

SUPPLEMENTARY INFORMATION: Several reports have highlighted the importance of understanding the accumulation of risks from multiple environmental stressors. These include the National Research Council's (NRC) 1994 report *Science and Judgment in Risk Assessment* and the 1997 report by the Presidential/Congressional Commission on Risk Assessment and Risk Management entitled *Risk Assessment and Risk Management in Regulatory Decision-Making.* In addition, legislation such as the *Food Quality Protection Act of 1996* (FQPA), has directed the Environmental Protection Agency (EPA) to move beyond single chemical assessments and to focus, in part, on the cumulative effects of chemical exposures occurring simultaneously. Further emphasizing the need for EPA to focus on cumulative risks are cases filed under Title VI of the *1964 Civil Rights Act.*

In response to the increasing focus on cumulative risk, several EPA programs have begun to explore cumulative approaches to risk assessment. In 1997, The EPA Science Policy Council issued a guidance on planning and scoping for cumulative risk assessments. More recently, the Office of Pesticide Programs has developed cumulative risk assessment guidance focused on implementing certain provisions of FQPA. The Office of Air Quality Planning and Standards has applied cumulative exposure models in its analyses for the National-Scale Air Toxics Assessment (NATA).

The EPA Science Policy Council has asked the Risk Assessment Forum (RAF) to begin developing Agency-wide cumulative risk assessment guidance that builds from these ongoing activities. As a first step, a technical panel convened under the RAF has been working to develop a Framework for Cumulative Risk Assessment. Building from the Agency's growing experiences, this Framework is intended to identify the basic elements of the cumulative risk assessment process. It should provide a flexible structure for the technical issues and define key terms associated with cumulative risk assessment.

Feedback on early drafts of the Framework for Cumulative Risk Assessment was obtained through meetings with other Federal and State government scientists. In addition, feedback was obtained through a public peer consultation meeting held in August 2001. The workshop and public comment period announced in this notice are associated with the external scientific peer review of the current draft of the Framework. The peer review will focus on the technical issues associated with the draft Framework.

Dated: May 3, 2002.

George W. Alapas,

Acting Director, National Center for Environmental Assessment.

[FR Doc. 02–11737 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–3]

Paying for Water Quality: Managing Funding Programs To Achieve the Greatest Environmental Benefits; Report to Congress

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of report.

SUMMARY: The Environmental Protection Agency held a public workshop on March 14–15, 2002, to provide a forum to discuss how water quality funding programs can be managed and enhanced to achieve the greatest environmental benefit. A report to Congress entitled,

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"Paying for Water Quality: Managing Funding Programs to Achieve the Greatest Environmental Benefit," was drafted based on the presentations and comments made during the workshop and is available for public comment and review. The report can be downloaded from EPA's Web site at *www.epa.gov/owm/srfwkshp.htm*. All comments can be sent to Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch, 1201 Constitution Avenue, NW, Washington, DC 20004, Mail Code 4204M; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*.

DATES: The report will be available for public comment and review for a period of two weeks from the date of this notice.

FOR FURTHER INFORMATION CONTACT: Jordan Dorfman, Environmental Protection Agency, Office of Wastewater Management, State Revolving Fund Branch; telephone: 202–564–0614; e-mail: *dorfman.jordan@epa.gov*.

Dated: April 30, 2002.

Richard T. Kuhlman,

Director, Municipal Support Division, Office of Wastewater Management.

[FR Doc. 02–11740 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–4]

Proposed Agreement Pursuant to Section 122(h)(1) of CERCLA for the Beloit Corporation Superfund Site

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice; request for public comment on proposed CERCLA 122(h)(1) agreement for the Beloit Corporation Superfund Site.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended ("CERCLA"), notice is hereby given of a proposed administrative cost recovery settlement under Section 122(h)(1) of CERCLA concerning the Beloit Corporation Superfund Site in Rockton, Illinois (the "Site"). The proposed settlement was signed by the Director, Superfund Division, of Region 5, EPA on February 13, 2002, and has been approved by the Assistant Attorney General for the Environment and Natural Resources Division of the U.S. Department of Justice. The settlement has also been approved by the Chief Legal Counsel for the Illinois Environmental Protection Agency, and by the Chief of the Environmental Bureau of the Illinois Attorney General's Office.

Pursuant to the terms of the proposed settlement, Giuffre II, a limited liability company under Wisconsin law ("Giuffre"), will resolve: (1) Its alleged civil liability under CERCLA as an operator at the Site; and (2) its potential liability for Existing Contamination, as that term is defined in the settlement agreement, which would otherwise result from Giuffre becoming the owner and/or operator of the Beloit Property. Giuffre will make effective one or more irrevocable letters of credit in the total amount of $3 million. After the selection of the final remedial action for the Site in a Record of Decision ("ROD"), which EPA currently expects to occur in September of 2002, EPA will engage in Remedial Design/Remedial Action ("RD/RA") negotiations with Giuffre. As provided by section 121(f)(1)(F), the State of Illinois will be provided the opportunity to participate in those negotiations. If those negotiations are successful, Giuffre will enter into an RD/RA Consent Decree, and EPA will release and return any unexercised letters of credit to Giuffre upon that company's substitution of financial assurance meeting the requirements of the RD/RA Consent Decree. In the event RD/RA negotiations are unsuccessful, then EPA will draw on the letters of credit provided by Giuffre and transfer the proceeds into a Beloit Special Account, to be used to pay for the costs associated with the remedial action selected in the ROD.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the proposed settlement. The Agency will consider all comments received and may modify or withdraw its consent to the settlement if comments received disclose facts or considerations which indicate that the settlement is inappropriate, improper or inadequate. The Agency's response to any comments received will be available for public inspection at the Talcott Free Library, located at 101 East Main Street, Rockton, Illinois 61072, and at EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

DATES: Comments must be submitted on or before June 10, 2002.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at 77 West Jackson Boulevard, Chicago, Illinois 60604. A copy of the proposed settlement may be obtained from Sonja Brooks, Regional Docket Clerk, Region 5, EPA, 77 West Jackson Boulevard (R–19J), Chicago, Illinois 60604 (312–886–3617). Comments should reference the Beloit Corporation Superfund Site in Rockton, Illinois, and EPA Docket No. V–W–02–C–678, and should be addressed to Eileen L. Furey, Associate Regional Counsel, 77 W. Jackson Boulevard (C–14J), Chicago, Illinois 60604 (312–886–7950).

FOR FURTHER INFORMATION CONTACT: Eileen Furey at the address and phone number specified above.

Dated: May 3, 2002.

William E. Muno,

Director, Superfund Division, Region 5.

[FR Doc. 02–11741 Filed 5–9–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL–7209–9]

Notice of Proposed Agreement for Recovery of Past and Future Response Costs Pursuant to Section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), Electro-Coatings Superfund Site, Cedar Rapids, IA, Docket No. CERCLA–07–2002–0002

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed agreement for recovery of past and future response costs, Electro-Coatings Superfund Site, Cedar Rapids, Iowa.

SUMMARY: Notice is hereby given that a proposed agreement for recovery of past and future response costs concerning the Electro-Coatings Superfund Site, Cedar Rapids, Iowa, with the following parties: EC Industries, Inc., Electro-Coatings, Inc., Electro-Coatings of Iowa, Inc., and Shaver Road Investments (Settling Respondents). This proposed settlement was signed by the United States Environmental Protection Agency (EPA) on March 27, 2002.

DATES: EPA will receive written comments relating to the proposed agreement for recovery of past and future response costs by June 10, 2002.

ADDRESSES: Comments should be addressed to Denise L. Roberts, Senior Assistant Regional Counsel, United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, Kansas 66101 and should refer to the Electro-Coatings Superfund Site Proposed Agreement for Recovery of Past and Future Response Costs, Docket No. CERCLA–07–2002–0002.

The proposed settlement may be examined or obtained in person or by mail from Kathy Robinson, Regional Hearing Clerk, at the office of the United States Environmental Protection Agency, Region VII, 901 N. 5th Street, Kansas City, KS 66101, (913) 551–7567.

SUPPLEMENTARY INFORMATION: This Proposed Agreement concerns the Electro-Coatings Superfund Site, located in Cedar Rapids, Iowa and is made and entered into by EPA and EC Industries, Inc., Electro-Coatings, Inc., Electro-Coatings of Iowa, Inc., and Shaver Road Investments (Settling Respondents).

In response to the release or threatened release of hazardous substances at or from the Site, EPA undertook response actions at the Site pursuant to Section 104 of CERCLA, 42 U.S.C. 9604, including but not limited to investigations, sampling and analysis, and oversight of the monitoring of groundwater contamination caused by hexavalent chromium at the Site. In performing this response action, EPA incurred response costs at or in connection with the Site.

Pursuant to Section 107(a) of CERCLA, 42 U.S.C. 9607(a), the Settling Respondents are responsible parties and are jointly and severally liable for response costs incurred at or in connection with the Site. The Superfund Division Director as Regional delegatee for the Regional Administrator of EPA Region VII, has determined that the total past and future response costs of the United States at or in connection with the Site will not exceed $500,000, excluding interest.

This Agreement requires the Settling Respondents to pay to the EPA Hazardous Substance Superfund the principal sum of $172,374.57 in reimbursement of 65% of past response costs, interest from January 31, 2001, and will resolve the Settling Respondents' alleged civil liability for these costs. In addition, the Settling Respondents shall also pay $12,800 in future oversight costs. The proposed Agreement includes a covenant not to sue the Settling Respondents pursuant to Section 122(g)(2) of CERCLA, 42 U.S.C. 9622(g)(2).

Dated: April 29, 2002.

William W. Rice,

Deputy Regional Administrator, United States Environmental Protection Agency, Region VII.

[FR Doc. 02–11739 Filed 5–9–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 3, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judy Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judy Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0394.

Title: Section 1.420, Additional Procedures in Proceedings for Amendment of FM or TV Table of Allotments.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 30.

Estimated Time Per Response: 20 minutes—2 hours (20 minutes consultation; 1–2 hours contract attorney).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 10 hours.

Annual Reporting and Recordkeeping Cost Burden: $9,000.

Needs and Uses: Section 1.420 requires a petitioner seeking to withdraw or dismiss its expression of interest in allotment proceedings to file a request for approval. This request would include a copy of any related written agreement and an affidavit certifying that neither the party withdrawing its interest nor its principals has received any consideration in excess of legitimate and prudent expenses in exchange for dismissing/withdrawing its petition, an itemization of the expenses for which it is seeking reimbursement, and the terms of any oral agreement. Each remaining party to any written or oral agreement must submit an affidavit within five days of the petitioner's request for approval stating that it has paid no consideration to the petitioner in excess of the petitioner's legitimate and prudent expenses. The data is used by FCC staff to ensure that an expression of interest in applying for, constructing, and operating a station was filed under appropriate circumstances to not to extract payment in excess of legitimate and prudent expenses.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11720 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 3, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control

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number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 9, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0012.

Title: Application for Additional Time to Construct a Radio Station.

Form No.: FCC Form 701.

Type of Review: Revision of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 130.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 260 hours.

Total Annual Cost: $22,375.

Needs and Uses: The FCC Form 701 will be used when applying for additional time to construct for MDS (Part 21) and International Broadcast (Parts 23 and 25) stations. The form is used by agency staff to determine whether to grant the applicant's request for an additional period of time to construct a station. Without this collection of information, the agency could not determine whether the applicant's request for additional time to construct should be granted.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11721 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection(s) Requirement Submitted to OMB for Emergency Review and Approval

May 1, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before May 20, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contacts listed below as soon as possible.

ADDRESSES: Direct all comments to Jeanette Thornton, Office of Management and Budget, Room 10236 NEOB, Washington, DC 20503, (202) 395–3562 or via Internet at *Jeanette_I._Thornton@omb.eop.gov*, and Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554 or via Internet to *jboley@fcc.gov*.

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via Internet at *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: The Commission has requested emergency OMB review of this collection with an approval by May 20, 2002.

OMB Control Number: 3060–0989.

Type of Review: Revision of a currently approved collection.

Title: Procedures for Applicants Requiring Section 214 Authorization for Domestic Interstate Transmission Lines Acquired Through Corporate Control, 47 CFR 63.01, 63.03 and 63.04.

Form No.: N/A.

Respondents: Business or other for-profit.

Number of Respondents: 35.

Estimated Time Per Response: 3–65 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,655 hours.

Total Annual Cost: $20,000.

Needs and Uses: The Report and Order in CC Docket No. 01–150, FCC 02–78, provides presumptive streamlining categories, allows for joint applications for international and domestic transfers of control, clarifies confusion about content of applications, provides timelines for streamlined transaction review, provides a pro forma transaction process, allows asset acquisitions to be treated as transfers of control and deletes obsolete sections of the Commission's rules. The information will be used by Commission staff to ensure that applicants comply with the requirements of 47 U.S.C. 214.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–11670 Filed 5–9–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:27 a.m. on Tuesday, May 7, 2002, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate, supervisory, and litigation activities.

In calling the meeting, the Board determined, on motion of Director John D. Hawke, Jr. (Comptroller of the Currency), seconded by Director John D. Reich (Appointive), and concurred in by Director James E. Gilleran (Director, Office of Thrift Supervision), and Chairman Donald E. Powell, that Corporation business required its consideration of the matters on less than seven days' notice to the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Federal Deposit Insurance Corporation.

Dated: May 7, 2002.

James D. LaPierre,

Deputy Executive Secretary.

[FR Doc. 02–11938 Filed 5–8–02; 3:37 pm]

BILLING CODE 6714–01–M

FEDERAL RESERVE SYSTEM

Change In Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 28, 2002.

A. Federal Reserve Bank of Philadelphia (Michael E. Collins, Senior Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105–1521:

1. Peter DaPaul, Ambler, Pennsylvania; to gain control of the outstanding common stock of Madison Bancshares Group, Ltd., Blue Bell, Pennsylvania, pursuant to Section 225.41 of Regulation Y, and thereby indirectly acquire voting shares of Madison Bank, Blue Bell, Pennsylvania.

Board of Governors of the Federal Reserve System, May 6, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–11677 Filed 5–9–02; 8:45 am]

BILLING CODE 6210–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Agency Information Collection Activities: Submission For OMB Review; Comment Request

The Department of Health and Human Services, Office of the Scretary publishes a list of information collections it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) and 5 CFR 1320.5. The following are those information collections recently submitted to OMB.

1. Survey of Research Integrity Measures Utilized in Biomedical Research Laboratories—New—The Office of Research Interity (ORI) expanded its education program to promote research integrity and discourage research misconduct. The proposed survey will identify measures being utilized to prevent misconduct and promote integrity in research laboratories. The results will guide ORI in the development of training and other educational material promoting research integrity. *Respondents:* Business or other for-profit, non-profit institutions; *Number of Respondents:* 5,000; *Frequency of Response:* one time; *Average Burden per Response:* 15 minutes; *Burden:* 1,250 hours.

OMB Desk Officer: Allison Herron Eydt.

Copies of the information collection packages listed above can be obtained by calling the OS Reports Clearance Officer on (202) 690–6207. Written comments and recommendations for the proposed inforamtion collection should be sent directly to the OMB desk officer designated above at the following address. Human Resources and Housing Branch, Office of Management and Budget, New Executive Office Building, Room 10235, 725 17th Street NW., Washington, DC 20503.

Comments may also be sent to Cynthia Agens Bauer, OS Reports Clearance Officer, Room 503H, Humphrey Building, 200 Indepence Avenue SW., Washington, DC, 20201. Written comments should be received within 30 days of this notice.

Dated: April 30, 2002.

Kerry Weems,

Acting Deputy Assistant Secretary, Budget.

[FR Doc. 02–11731 Filed 5–9–02; 8:45 am]

BILLING CODE 4150–31–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–50]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Surveys of Past HIV Prevention Technology Transfer Efforts—New—National Center for HIV, STD and TB Prevention (NCHSTP), Centers for Disease Control and Prevention (CDC).

CDC proposes to study the effectiveness of providing a packaged intervention, training, and technical assistance to HIV prevention agencies to ensure the agencies' maintenance of the intervention and adherence to the essential components of the intervention's defined protocol. Results from the survey will be used by CDC to develop a national program for disseminating packaged interventions

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that will increase the likelihood of continued use by agencies. This project supports CDC's Replicating Effective Programs (REP) project. The REP converts the intervention protocols from effective HIV prevention studies into packages (kits) containing manuals, videos, posters, penile models, and other materials needed by HIV prevention providers to implement the particular intervention on their own.

The surveys will be disseminated to staff members of 16 prevention agencies that implemented one of five unique, packaged interventions between 1997 and 2000 as part of CDC's ongoing REP project. One survey will be administered over the telephone to Agency Administrators from the 16 prevention agencies that implemented an intervention packaged by the REP project. Additional surveys will be administered in-person to one Intervention Supervisor and two Intervention Facilitators at 15 prevention agencies that are continuing to implement the REP-packaged intervention.

The objectives of the surveys include, but are not limited to, (1) Identification of factors associated with maintenance and discontinuation of REP-packaged interventions; (2) determination of why and how agencies adapted the packaged interventions; (3) examination of the impact of elapsed time on maintenance of the intervention and adherence to defined intervention protocols; (4) identification of any differences between the type of agency (i.e., community-based organization, health department) on maintenance and adherence; (5) identification of any difference between the type of original researcher (i.e., academic, non-profit) on maintenance and adherence; and (6) identification of perceived and actual benefits, as well as "instrumental" and "conceptual" utility, of REP-packaged interventions that can be used in marketing the intervention packages to other HIV prevention providers. Researchers administering the in-person surveys also will assess adherence to defined intervention protocols by observing facilitators delivering the intervention and by recording their observations on a checklist designed for the particular intervention being observed.

Survey questionnaire data will be collected once from each respondent (e.g., Agency Administrator, Intervention Supervisor, Intervention Facilitator). There are no costs to respondents for participation in the survey.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hours)	Total burden hours
Agency Administrators	16	1	108/60	29
Intervention Supervisors	15	1	90/60	23
Intervention Facilitators	30	1	105/60	53
Total				105

Dated: May 2, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11664 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–51]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: Intimate Partner Violence (IPV) Measurement—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Intimate partner violence (IPV) is considered by many to be a serious problem that cuts across cultures, socioeconomic status and gender. The Centers for Disease Control and Prevention (CDC) considers IPV to be a "substantial public health problem for Americans that has serious consequences and costs for individuals, families, communities and society." The past twenty years have witnessed an extraordinary growth in research on the prevalence, incidence, causes and effects of IPV. Various disciplines have contributed to the development of research on the subject including psychology, epidemiology, criminology and public health.

Still, there is a lack of reliable information on the extent and prevalence of IPV. Estimates vary widely regarding the magnitude of the problem. This variance is due in large part to the different contexts, instruments, and methods that are used to measure IPV. Thus, the CDC is engaged in work to improve the quality of data, and hence knowledge, about violence against women. Part of this process includes identifying the strengths and limitations of different scales used to measure IPV and to determine the appropriateness of each of the scales for use with individuals of different racial/ethnic backgrounds.

The purpose of this project is to administer and test the statistical properties of four scales, via telephone interviews, that measure both

intimate partner violence (IPV). The scales will be administered to a random sample of women ages 18–50, from five racial/ethnic backgrounds: African-American, American Indian, Asian, Caucasian and Hispanic.

The four scales are: The Sexual Experiences Survey (SES), the Conflict Tactics Scale 2 (CTS2), the Index of Spouse Abuse (ISA) and the Women's Experience with Battering (WEB) scale. The survey instrument will contain each of these scales and introductory and transitional text developed specifically for this study.

The overall benefit of this project is to increase knowledge about the reliability and validity of these scales, which have been used in previous studies. Ultimately, this knowledge will assist the CDC in establishing an on-going data collection system for monitoring IPV. The National Center for Injury Prevention and Control (NCIPC) intends to contract with an agency to conduct the survey. There is no cost to respondents.

Survey IPV measurement	Type of respondent	Number of respondents/survey	Number of responses/respondent	Avg. burden/responses in hours	Total burden hours
African-American	Female	400	1	30/60	200
American Indian	Female	400	1	30/60	200
Asian	Female	400	1	30/60	200
Caucasian	Female	400	1	30/60	200
Hispanic	Female	400	1	30/60	200
Total					1,000

Dated: May 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11665 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–49]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404)498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: 2003 National Health Interview Survey, Basic Module (0920–0214)—Revision—National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC). The annual National Health Interview Survey (NHIS) is a basic source of general statistics on the health of the U.S. population. In accordance with the 1995 initiative to increase the integration of surveys within the Department of Health and Human Services, respondents to the NHIS serve as the sampling frame for the Medical Expenditure Panel Survey. This survey is conducted by the Agency for Healthcare Research and Quality. The NHIS has long been used by government, university, and private researchers to evaluate both general health and specific issues, such as cancer, AIDS, and childhood immunizations. Journalists use its data to inform the general public. It will continue to be a leading source of data for the Congressionally mandated "Health US" and related publications, as well as the single most important source of statistics to track progress toward the National Health Promotion and Disease Prevention Objectives, "Healthy People 2010."

Because of survey integration and changes in the health and health care of the U.S. population, demands on the NHIS have changed and increased, leading to a major redesign of the annual core questionnaire, or Basic Module, and a shift from paper questionnaires to computer assisted personal interviews (CAPI). These redesigned elements were partially implemented in 1996 and fully implemented in 1997. This clearance is for the seventh full year of data collection using the core questionnaire on CAPI, and for the implementation of supplements on asthma, heart disease, children's mental health, cancer screening, and diabetes. The supplements will help track many of the Health People 2010 objectives. This data collection, planned for January–December 2003, will result in publication of new national estimates of health statistics, release of public use microdata files, and a sampling frame for other integrated surveys. There is no cost to the respondents other than their time.

Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Family	39,000	1	21/60	13,650
Sample adult	32,000	1	42/60	22,400
Sample child	13,000	1	15/60	3,250

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Respondents	Number of respondents	Number of responses/respondent	Avg. burden/response (in hrs.)	Total burden (in hrs.)
Total				39,300

Dated: May 1, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11666 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–55]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Anne O'Connor, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS–D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project: National Survey for Laboratory Containment of Wild Polioviruses—New—National Vaccine Program Office (NVPO), Centers for Disease Control and Prevention (CDC). Global polio eradication is anticipated within the next few years. The only sources of wild poliovirus will be in biomedical laboratories. Prevention of inadvertent transmission of polioviruses from the laboratory to the community is crucial.

The first step toward laboratory containment is a national survey of all biomedical laboratories. The survey will alert laboratories to the impending eradication of polio, encourage the disposition of all unneeded wild poliovirus infectious and potential infectious materials, and establish a national inventory of laboratories retaining such materials. Laboratories on the inventory will be kept informed of polio eradication progress and notified, when necessary, to implement biosafety requirements appropriate for the risk of working with such materials.

In June 2001, the Secretary for Health and Human Services, Tommy Thompson, declared in a letter to the Regional Director of the Pan American Health Organization that:

The United States is fully committed to PAHO's Executive Committee Resolution CE126.R4 urging Member States "to initiate activities related to the containment of any laboratory material that may harbor specimens of wild poliovirus."

The Department of Health and Human Services proposes a national survey of all biomedical laboratories that may possess wild poliovirus infectious or potential infectious materials. An estimated 15,000 biomedical laboratories, in six categories of institutions: academic, federal government, hospital, industry, private, and state and local government facilities, will be included in the national survey.

The national survey instruments and logistics will be tested during the OMB approved Pilot Survey (OMB Number: 0920–0545), scheduled to begin May 2002. The survey instruments ask laboratories to indicate whether or not they possess wild poliovirus infectious and/or potential infectious materials. If such materials are present, respondents are asked to indicate the types of materials and estimated numbers retained. Survey instruments will be available on the NVPO web page, and institutions will be encouraged to submit completed survey forms electronically.

No cost beyond time involved to complete the survey will be charged to the respondent. The time required for individuals and institutions to complete the national survey instruments is a function of records quality in each laboratory. It will take the respondent an average of 45 minutes to complete the survey form.

Respondents (institutions in the following categories)	Number of respondents*	Number of responses/respondent	Average burden/response (in hrs.)	Total burden (in hrs.)
Academic	301	1	45/60	226
Federal	10	1	45/60	8
Hospital	5,134	1	45/60	3,851
Industry	1,217	1	45/60	913
Private	4,226	1	45/60	3,170
State and local government	1,499	1	45/60	1,124
Total				*9,292

*The database of biomedical laboratories is currently under development. The numbers of respondents are best estimates.

Dated: May 6, 2002.

Nancy E. Cheal,

Acting Associate Director for, Policy, Planning and Evaluation, Centers for Disease Control, and Prevention.

[FR Doc. 02–11712 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02143]

Validating the Effectiveness of a Hand Hygiene Intervention Program in Healthcare Facilities; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for Validating the Effectiveness of a Hand Hygiene Intervention Program in Healthcare Facilities. This program addresses the "Healthy People 2010" focus areas of Access to Quality Health Services and Immunization and Infectious Diseases.

The purpose of the program is to demonstrate the impact of a specific hand hygiene intervention program in a group of healthcare facilities in which no such hand hygiene program previously existed. The hand hygiene intervention program to be evaluated was developed in collaboration with CDC by the Chicago Antimicrobial Resistance Project (CARP). The goals of this program are to: (1) Evaluate the reproducibility of the CARP hand hygiene intervention program in healthcare facilities in which no such hand hygiene program previously existed; (2) evaluate the impact of the program on the incidence of isolation of antimicrobial resistant microorganisms; and (3) evaluate the suitability of this program to be developed into a public health product that can be widely promoted to healthcare facilities nationwide.

B. Eligible Applicants

Applications may be submitted by public and private nonprofit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private nonprofit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, and federally recognized Indian tribal governments, Indian tribes, or Indian tribal organizations. Faith-based organizations are eligible for this award.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $197,830 is available in FY 2002 to fund one award. It is expected that the award will begin on or about August 1, 2002 and will be made for a 12-month budget period within a project period of one year. The funding estimate may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Equipment may be purchased with cooperative agreement funds. However, the equipment proposed should be appropriate and reasonable for the activity to be conducted. The applicant, as part of the application process, should provide: (1) A justification for the need to acquire the equipment; (2) the description of the equipment; (3) the intended use of the equipment; and (4) the advantages/disadvantages of purchase versus lease of the equipment (if applicable). Requests for equipment purchases will be reviewed and approved only under the condition that the National Center for Infectious Diseases, Division of Health Quality Promotion, will retain the right to request return of all equipment which is in operable condition and was purchased with cooperative agreement funds at the conclusion of the project period.

Funding Preferences

1. Funding preference will be given to applicants affiliated with integrated healthcare delivery networks (such as hospital "chains" or managed care organizations which operate their own healthcare facilities).

2. Funding preference will be given to healthcare delivery networks that have between four and ten healthcare facilities in close geographic proximity to one another that share a common administration and electronic information systems, including at least two long-term care facilities.

3. Funding preference will be given to applicants who have already identified a person that has a demonstrated background in infection control in healthcare facilities who can be designated to work full-time on this project.

4. Funding preference will be given to applicants who demonstrate a willingness to model, in collaboration with CDC, their hand hygiene intervention program after the CARP hand hygiene intervention program.

5. Funding preference will be given to applicants who have existing infrastructure and experience to perform active surveillance for healthcare-associated infections and antimicrobial resistance using methodology consistent with the National Nosocomial Infections Surveillance System (NNIS).

6. Funding preference will be given to applicants who have installed alcohol-based handrub dispensers in all patient care areas of facilities which will participate in the project.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. In collaboration with CDC, develop and implement a formal hand hygiene program in multiple healthcare facilities which has the following components:

(1) Regular educational presentations. At a minimum, educational presentations will be given annually to each healthcare worker. The interactive presentation uses an audience response system, an educational tool which actively engages the audience and allows participants to respond to the speaker and compare their own response with that of others. Components of the presentation include: review of the Hospital Infection Control Practice Advisory Committee's hand hygiene guideline, review of hospital policy related to hand hygiene and infection control, current hand antisepsis options for healthcare workers, data on hospital-specific hand hygiene adherence rates, benefits of alcohol-based hand rubs, importance of wearing gloves, effect of artificial nails on hand antisepsis, rings as a risk factor for healthcare worker hand contamination, and generalized hand care; including use of lotions. The presentation also includes two accompanying handouts: an individual, pocket-sized bottle of alcohol hand rub, and a fact sheet with questions and

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answers regarding alcohol-based hand rubs.

(2) Displays/Visuals.

(i) Poster campaign using specific templates provided by the CDC

(ii) Infection control game utilizing questions and answers pertaining to hand hygiene

(iii) Distribution of promotional items with hand hygiene messages (e.g. buttons, key chains, pens, and mugs)

(3) Motivational Items.

(i) Feedback of hand hygiene adherence rates to clinical areas and groups

(ii) Recognition of achievements

b. Perform observational prospective hand hygiene surveillance using a structured protocol in every participating facility.

c. Measure antimicrobial resistance rates before during and after implementation of the program using the methods of the Antimicrobial Use and Resistance (AUR) component of the National Nosocomial Infection Surveillance system.

d. In collaboration with CDC, develop a plan to evaluate cost-effectiveness of the intervention.

2. CDC Activities

a. Collaborate, as appropriate, with the recipient in all stages of the program, and provide programmatic and technical assistance.

b. Assist in data collection, analysis, and interpretation of data from the project.

c. Participate in improving program performance through consultation based on information and activities of other projects.

d. Provide scientific collaboration for appropriate aspects of the program, preventive measures, and program strategies.

e. Assist in the reporting and dissemination of research and other results and relevant healthcare quality prevention education and training information to appropriate Federal, State, and local agencies, healthcare providers, the scientific community, and prevention and service organizations with an interest in healthcare quality, and the general public.

f. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than three double-spaced pages, printed on one side, with one inch margins, and unreduced font. Your letter of intent will be used to enable CDC to determine the level of interest in the program announcement. Your letter of intent should identify Program Announcement Number 02143, and include the following information: (1) Name and address of institution, and (2) name, address, telephone number, e-mail address, and fax number of a contact person.

Applications

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 25 double-spaced pages, printed on one side, with one inch margins, and unreduced font.

1. Provide a line-item budget and narrative justification for all requested costs. The budget should be consistent with the purpose, objectives and research activities, and include:

a. Line-item breakdown and justification for all personnel, i.e., name, position title, annual salary, percentage of time and effort, and amount requested.

b. For each contract: (1) Name of proposed contractor; (2) breakdown and justification for estimated costs; (3) description and scope of activities to be performed by contractor; (4) period of performance, (5) method of contractor selection (e.g., sole-source or competitive solicitation); and (6) method of accountability.

c. A description of any financial and in-kind contributions from nonfederal sources.

Additionally, include a one page, single-spaced, typed abstract. The heading should include the title of the cooperative agreement, project title, organization, name and address, project director, and telephone number. This abstract should include a workplan identifying activities to be developed, activities to be completed, and a time-line for completion of these activities.

F. Submission and Deadline

Letter of Intent (LOI)

On or before June 1, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Application

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available at the following Internet address: *www.cdc.gov/od/pgo/forminfo.htm* or in the application kit. On or before July 14, 2002, submit the application to: Technical Information Management–PA02143, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd, Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the performance goals as stated in section "A. Purpose" of this announcement. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (10 points)

The extent to which the applicant demonstrates a strong understanding of this program for validating the effectiveness of a hand hygiene intervention program in healthcare facilities. The extent to which the applicant illustrates the need for this cooperative agreement program. The extent to which the applicant presents a clear goal for this cooperative agreement that is consistent with the described need.

2. Capacity (30 points)

The extent to which the applicant demonstrates that it has the expertise, facilities, and other resources necessary to accomplish the program requirements, including curricula vitae of key personnel and letters of support from any participating organizations and institutions. In particular, the degree to which the applicant demonstrates a healthcare delivery network which includes adequate numbers of facilities in close geographic proximity to one another that share common administration and information systems, and who demonstrate a willingness to fully participate.

3. Operational Plan (40 points)

a. The extent to which the applicant presents clear, time-phased objectives that are consistent with the stated program goal and a detailed operational plan outlining specific activities that are likely to achieve the objective. The extent to which the plan clearly outlines the responsibilities of each of the key personnel. (35 points)

b. The degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes: (1) The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation; (2) the proposed justification when representation is limited or absent; (3) a statement as to whether the design of the study is adequate to measure differences when warranted; and (4) a statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits. (5 points)

4. Evaluation Plan (15 points)

The extent to which the applicant presents a scientifically valid plan for monitoring the impact of the intervention, including, but not limited to, cost effectiveness.

5. Measures of Effectiveness (5 points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome.

6. Budget (Not scored)

The extent to which the applicant presents a reasonable detailed budget with a line-item justification and any other information to demonstrate that the request for assistance is consistent with the purpose and objectives of this cooperative agreement program.

7. Human Subjects (Not scored)

The extent to which the application adequately addresses the requirements of Title 45 CFR Part 46 for the protection of human subjects.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report, no more than 90 days after the end of the budget period.
3. Final financial and performance reports, no more than 90 days after the end of the project period.
4. Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, see Attachment I of this announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–7 Executive Order 12372 Review
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions
AR–15 Proof of Non-Profit Status
AR–22 Research Integrity

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under section 301(a) and 317(k)(2) of the Public Health Service Act, [42 U.S.C. sections 241(a) and 247b(k)(2)], as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: Rene' Benyard, Grants Management Specialist, Centers for Disease Control and Prevention, Procurement and Grants Office, Acquisition and Assistance, Branch B, 2920 Brandywine Road, Room 3000, Mailstop K–75, Atlanta, GA 30341–4146, Telephone number: (770) 488–2722, E-mail address: *bnb8@cdc.gov.*

For program technical assistance, contact: John Jernigan, M.D., Centers for Disease Control and Prevention, National Center for Infectious Diseases, Division of Healthcare Quality and Promotion, 57 Executive Park South, Room 4109, Mailstop E–68, Telephone number: (404)498–1257, E-mail address: *Jjernigan@cdc.gov.*

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Cantrol and Prevention.

[FR Doc. 02–11709 Filed 5–9–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02118]

Fellowship Training Programs in Vector-Borne Infectious Diseases; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for a cooperative agreement program for a graduate level Fellowship Training Program in Vector-Borne Infectious Diseases, leading to a master's or doctoral degree. This program addresses the "Healthy People 2010" focus area of Immunization and Infectious Diseases.

The purpose of this cooperative agreement is to assist recipients in the development and implementation of a two to three year Fellowship Training Program (FTP) in entomology, arbovirology, and microbiology, which provides a combination of entomologic, virologic, and microbiologic techniques, basic laboratory or epidemiologic training in vector-borne infectious diseases. The goal is to improve the ability of the U.S. public health system to respond to the problem of vector-borne infectious diseases by increasing the number of specialists with demonstrated skills in the public health aspects of vector-borne infectious diseases and to provide them with the essential, pertinent field and research skills.

FTPs should be implemented as new, distinct fellowship positions/tracks in recipient's existing graduate training program. FTPs should be aimed at individuals who wish to pursue an academic career in vector-borne

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diseases of public health importance. The objective is to offer a combination of field, laboratory, and research training which will lead to a masters or doctoral degree in entomology, arbovirology, or microbiology. Specific areas of concentration may include mosquito and tick biology, ecology, physiology or behavior, basic arbovirology, serology, laboratory diagnosis, epidemiology, prevention, and control of vector-borne viral and bacterial diseases. Specific areas of research concentration may include entomology, ecology, arbovirology, microbiology, vector-borne bacterial diseases, and vector-borne infectious diseases.

B. Eligible Applicants

Applications may be submitted by public and private non-profit organizations and by governments and their agencies; that is, universities, colleges, research institutions, hospitals, other public and private non-profit organizations, State and local governments or their bona fide agents, including the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, federally recognized Indian Tribal Governments, Indian Tribes, or Indian Tribal Organizations and Faith-based organizations are eligible to apply.

Assistance will be provided only to organizations with established research and training programs in one or more of the following disciplines: Medical entomology, arbovirology, vector-borne bacterial diseases, and/or vector-borne infectious diseases.

Note: Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Approximately $750,000 is available in FY 2002 to fund approximately three awards. It is expected that the average award will be $250,000, ranging from $200,000 to $300,000. It is expected that the awards will begin on or about August 30, 2002, and will be made for a 12-month budget period within a project period of up to three years. Funding estimates may change.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

Use of Funds

Recipient cost sharing is required under this program. CDC will provide up to 75 percent of the total cost for items directly related to the support of fellows such as stipends (consistent with Public Health Service policies) and professional travel. CDC funds will not be provided for supplies and equipment or for direct salaries/fringe, travel, space, etc., for recipient's faculty or administrative personnel. In a training grant, recipient's indirect charges are limited to eight percent of direct costs. CDC funds are not intended to supplant recipient's existing infectious disease fellowships, rather they are intended to support new fellowship opportunities that are consistent with the stated purpose of this cooperative agreement program.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for the activities under 1. Recipient Activities, and CDC will be responsible for the activities listed under 2. CDC Activities.

1. Recipient Activities

a. Develop and conduct a two to three year FTP that combines entomological, arboviral, microbiological, and bacterial zoonoses field, basic laboratory, and epidemiologic research in prevention and control of vector-borne infectious diseases of public health importance as a distinct and separate track of any existing graduate-level fellowship program.

b. Design and conduct the FTP such that, upon completion of the fellowship, fellows will receive a graduate degree in the field of study.

c. Provide preceptors for training.

d. Develop a fellowship candidate application, review, ranking, and selection process. Based on this process, select applicants to be awarded two-to three-year FTP fellowships.

e. Provide administrative support to fellows during their tenure in the FTP, including the payment of stipends, professional travel, etc. (see Availability of Funds for cost sharing requirements).

f. Assist fellows in publishing and/or otherwise disseminating results of their research.

g. Monitor and evaluate the progress of fellows and progress toward achieving program goals. To measure the overall success of the FTP, establish a mechanism to follow up and report on fellows (e.g., where they work, in what field, etc.) periodically for up to five years after they complete the FTP.

h. Assure appropriate IRB review by all cooperating institutions participating in the project if the fellows research involves the use of human subjects.

2. CDC Activities

a. Provide preceptors and facilities for research training that occurs at CDC facilities. The entomological, arboviral, microbiological, and laboratory or epidemiologic research training may occur at CDC facilities.

b. Assist in the development of a research protocol for Institutional Review Board (IRB) review by all cooperating institutions participating in the research project. The CDC IRB will review and approve the protocol initially and on at least an annual basis until the research project is completed.

E. Content

Letter of Intent (LOI)

An LOI is optional for this program. The narrative should be no more than 5 double spaced pages, printed on one side, with one-inch margins, and unreduced font. Your letter of intent will be used to assist CDC in planning the evaluation of applications submitted under Program Announcement 02118 and should include (1) name and address of institution; (2) name, address, and telephone number of contact person; and if proposing that research component be conducted at CDC facilities, (3) name and telephone number of CDC scientist agreeing to participate.

Applications

Use the information in this section and the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated on the criteria listed, so it is important to follow them in laying out your program plan. The narrative should be no more than 10 single spaced pages, printed on one side, with one-inch margins, and unreduced fonts.

Specific Instructions

All pages must be clearly numbered, and a complete index to the application and its appendices must be included. All pages of the application and appendices must be easily run through an automatic document feed copier. Thus, do not bind, staple, or paperclip any pages of any copy of the application, and do not include any bound documents (e.g., pamphlets or other publications) in the appendices. Do not include cardboard, plastic, or other page separators between sections.

The application narrative must not exceed 10 pages (excluding abstract, budget, and appendices). Unless indicated otherwise, all information requested below must appear in the narrative. Materials or information that should be part of the narrative will not be accepted if placed in the appendices. The application narrative must contain the following sections in the order presented below:

1. Abstract

Provide a brief (less than two pages) summary of the proposed FTP.

2. Background and Need

Demonstrate an understanding of the background and need for the FTP. Discuss how your proposed FTP track differs from existing tracks/opportunities in your fellowship program and how your proposed FTP track meets the purpose of this cooperative agreement program.

3. Capacity and Personnel

a. Describe applicant's goals, objectives, and efforts to promote the field of entomology and vector-borne infectious diseases. Describe relevant degree programs and sponsored regular national meetings, seminars, and/or workshops devoted to pertinent issues in academic vector-borne infectious diseases with relevance to public health.

b. Demonstrate applicant's experience in academic vector-borne infectious disease education and training in general, including experience in maintaining programs that lead to awarding of graduate degrees in the field. Describe applicant's existing graduate degree fellowship training programs for entomologists, arbovirologists, and/or bacteriologists.

c. Describe applicant's resources, facilities, and professional personnel that will be involved in conducting the project. Include (in an appendix) curriculum vitae for all professional personnel involved with the project. Describe plans for administration of the project and identify administrative resources/personnel that will be assigned to the project. Provide (in an appendix) letters of support from all key participating non-applicant organizations, individuals, etc., which clearly indicate their commitment to participate as described in the operational plan.

d. If proposing that fellows conduct their field, laboratory, or epidemiologic training at CDC facilities, include a letter of support (in an appendix) from the appropriate CDC scientist (cosigned by their Division/Program Principal Management Officer) that clearly indicates their commitment to participate as described in your application Operational Plan, including agreement to (1) serve as preceptor for the research training and (2) provide space, facilities, supplies, etc., for fellows.

4. Operational Plan

Present a detailed and time phased plan for establishing and conducting the FTP. Describe procedures to accomplish all of the required recipient activities. Describe how the field, laboratory, and research activities will be coordinated within the FTP. Present a plan for monitoring and evaluating the progress of fellows and the progress toward achieving program goals. Describe how the plan will ensure that all fellows become eligible for graduation by the end of fellowship tenure. Describe procedures and plans for assuring any fellow's research that involves the use of human subjects will receive appropriate IRB review by all cooperating institutions participating in the project.

5. Budget

Provide a line item budget and accompanying detailed, line by line justification that demonstrates the request is consistent with the purpose and objectives of this program. Clearly indicate by line item both (a) the full cost and (b) the amount requested from CDC (see Availability of Funds section for further information regarding cost-sharing).

F. Submission and Deadline

Letter of Intent

On or before June 5, 2002, submit the LOI to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Applications

Submit the original and two copies of PHS 5161–1 (OMB Number 0920–0428). Forms are available in the application kit and at *www.cdc.gov/od/pgo/forminfo.htm*. On or before July 5, 2002, submit the application to the Technical Information Section, 2920 Brandywine Road, Suite 3000 Atlanta, Georgia 30341.

Deadline: Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late Applications: Applications which do not meet the criteria in (1) or (2) above are considered late applications, will not be considered, and will be returned to the applicant.

G. Evaluation Criteria

Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of Effectiveness must relate to the performance goal (or goals) as stated in section "A. Purpose" of this announcement.

Each application will be evaluated individually against the following criteria by an independent review group appointed by CDC.

1. Background and Need (15 points)

The extent to which the applicant demonstrates an understanding of the background and need for the FTP. Extent to which they clearly demonstrate that their proposed FTP fellowship positions add to and do not supplant existing positions in their fellowship program. The extent to which they demonstrate how the proposed FTP track meets the Purpose of this cooperative agreement program.

2. Capacity (Total 50 points)

a. Institutional

The extent to which the applicant demonstrates that they have been and are devoted to promoting the field of vector-borne infectious diseases. Extent to which the applicant has promoted the field of vector-borne infectious diseases by conducting regular national meetings and workshops devoted to current topics. The extent to which the applicant documents experience in education and training in entomology, arbovirology, and vector-borne infectious diseases, including documentation of relevant degree programs offered and evidence of experience in successfully preparing students to work in the field. The extent to which the applicant demonstrates significant institutional experience in managing graduate-level fellowship training programs in the area of vector-borne infectious diseases. The extent to which the applicant documents they have a successful existing program(s) in vector-borne infectious diseases. (25 points)

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b. Staff and Administrative

The extent to which the applicant describes adequate resources and facilities (clinical, academic, and administrative) for conducting the FTP. The extent to which the applicant documents the past experience and qualifications of their professional personnel who will be involved in the FTP by *curriculum vitae*, publications, etc. If proposing that fellow's research be conducted at CDC facilities, the extent to which applicant includes a letter of support as described in Application Content section 3.b., above (i.e., that is signed by the appropriate CDC officials and that clearly indicates their commitment to participate as proposed in the application). (25 points)

3. Operational Plan (25 points)

The extent to which the proposed operational plan is clear, detailed, time-phased, and meets the purpose and goals of this cooperative agreement program. The extent to which the proposed operational plan addresses all required Recipient Activities. If specific fellow(s) research projects are proposed that involve the use of human subjects, the degree to which the applicant has met the CDC Policy requirements regarding the inclusion of women, ethnic, and racial groups in the proposed research. This includes:

a. The proposed plan for the inclusion of both sexes and racial and ethnic minority populations for appropriate representation.

b. The proposed justification when representation is limited or absent.

c. A statement as to whether the design of the study is adequate to measure differences when warranted.

d. A statement as to whether the plans for recruitment and outreach for study participants include the process of establishing partnerships with community(ies) and recognition of mutual benefits.

4. Evaluation Plan (5 points)

The extent to which the applicant demonstrates the quality of the proposed plan to monitor, evaluate, and track individual fellows and overall plan to evaluate activities and objectives.

5. Measures of Effectiveness (5 points)

The extent to which the applicant provides Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures must be objective/quantitative and must measure the intended outcome.

6. Budget (Not scored)

The extent to which the proposed budget is reasonable, clearly justified, and consistent with the intended use of cooperative agreement funds.

7. Human Subjects (Not scored)

Does the application adequately address the requirements of Title 45 CFR part 46 for the protection of human subjects?

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. Semiannual progress reports.
2. Financial status report no more than 90 days after the end of the budget period.
3. Final financial and performance reports no more than 90 days after the end of the project period.
4. Applicants are required to provide Measures of Effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

The following additional requirements are applicable to this program. For a complete description of each, *see* Attachment I of the announcement.

AR–1 Human Subjects Requirements
AR–2 Requirements for Inclusion of Women and Racial and Ethnic Minorities in Research
AR–3 Animal Subjects Requirements
AR–7 Executive Order 12372 Review
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under Sections 301 [42 U.S.C. 241] and 317(k)(2) [42 U.S.C. 247b(k)(2)] of the Public Health Service Act, as amended. The Catalog of Federal Domestic Assistance Number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address—*http://www.cdc.gov*. Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management technical assistance may be obtained from: René Benyard, Grants Management Specialist, Centers for Disease Control and Prevention, Procurement and Grants Office, Acquisition and Assistance, Branch B, 2920 Brandywine Road, Room 3000 Atlanta, GA 30341–4146, Telephone number: (770) 488–2722, E-mail: *bnb8@cdc.gov*.

For program technical assistance, contact: Mel Fernandez, Program Management Official, Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases, Division of Vector-Borne Infectious Diseases, P. O. Box 2087, Rampart Road, Foothills Campus, Fort Collins, CO 80521 Telephone: (970) 221–6426, E-mail: *jjernigan@cdc.gov*.

Dated: May 4, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11710 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

The Fifth Annual FDA/OCRA Educational Conference in Irvine, CA on Emerging Regulatory Issues and How to Handle Them; Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public workshop.

The Food and Drug Administration (FDA), in cosponsorship with the Orange County Regulatory Affairs Discussion Group (OCRA) is announcing its fifth annual educational conference entitled "Emerging Regulatory Issues and How to Handle Them." The public workshop is intended to give the drugs, devices, and biologics industries an opportunity to interact with FDA reviewers and compliance officers from FDA's centers and district offices, as well as other industry experts. The main focus of this interactive workshop is to provide information regarding regulatory changes such as the antibioterrorism initiatives that are taking place within the Federal, State, and local agencies; how these activities are affecting the approval process of product submissions to FDA and Foreign governments; and how companies could prepare for an onslaught of new requirements as a result of the sweeping regulatory changes.

Date and Time: The public workshop will be held on June 3 and 4, 2002, from 7:30 a.m. to 5 p.m.

Location: The public workshop will be held at the Irvine Marriott, 18000 Von Karman Ave., Irvine, CA 92612.

Contact: Ramlah Oma, FDA Los Angeles District Office, Food and Drug Administration, 19900 MacArthur Blvd., suite 300, Irvine, CA 92612, 949–798–7611, FAX 949–798–7656, or OCRA, PMB 624, 5405 Alton Pkwy., suite 5A, Irvine, CA 92604, 949–222–9022, FAX 949–767–5781, http://www.ocra-dg.org.

Registration: Send registration information (including name, title, firm name, address, telephone, and fax number) to the contact person by May 15, 2002. Until May 15, 2002, registration fees are as follows: Members, $525.00; nonmembers, $600.00; and FDA/government/full-time students with proper identification, $275.00. After May 15, 2002, registration fees will be as follows: Members, $595.00; nonmembers, $675.00; and FDA/government/full-time students with proper identification, $325.00.

Dated: May 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11655 Filed 5–9–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Early Clinical Trials on New Anti-Cancer Agents with Phase I Emphasis.

Date: June 25–26, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: 6001 Executive Blvd. Bethesda, MD 20892.

Contact Person: Timothy C. Meeker, MD, Scientific Review Administrator, Special Referral and Resources Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8088, Rockville, MD 20852, 301/594–1279.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11678 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclose of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Initial Review Group, Subcommittee F–Manpower & Training.

Date: June 12–14, 2002.

Time: 6:30 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Ave., Washington, DC 20007.

Contact Person: Mary Bell, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, National Institutes of Health, PHS, DHHS, 6116 Executive Boulevard, Room 8113, Bethesda, MD 20892–8328, 301–496–7978, bellm@dea.nci.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11681 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel. Loan Repayment Program (LRP).

Date: June 4, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate contract proposals.

Place: 6116 Executive Blvd. Suite 703, Room 7142, Rockville, MD 20852. (Telephone Conference Call)

Contact Person: Thomas M. Vollberg, PhD, Scientific Review Administrator, Special Review and Resources Branch, Division of Extramural Activities, National Cancer Institute, National Institute of Health, 6116 Executive Boulevard, Suite 703/7145, Rockville, MD 20852, 301/594–9582, vollbert@mail.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

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Dated: May 2, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11686 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Cancer Institute Special Emphasis Panel, Spores in GYN.
Date: June 3–4, 2002.
Time: 8 a.m. to 8 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Bratin K. Saha, PhD, Scientific Review Administrator, Grants Review Branch, Division of Extramural Activities, National Cancer Institute, 6116 Executive Boulevard, Room 8123, Bethesda, MD 20892, (301) 402–0371, *sahab@mail.nih.gov.*

(Catalogue of Federal Domestic Assistance Program Nos. 93.392, Cancer Construction; 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control, National Institutes of Health, HHS)

Dated: May 2, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11687 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Cancer Institute; Cancellation of Meeting

Notice is hereby given of the cancellation of the National Cancer Institute Director's Consumer Liaison Group, May 9, 2002, 2 p.m. to May 9, 2002, 4 p.m., 6116 Executive Blvd, Rockville, MD, 20852 which was published in the **Federal Register** on May 1, 2002, 67 FR 21706.

The meeting is cancelled due to scheduling conflicts.

Dated: May 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11696 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Eye Institutes; Notice of Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of a meeting of the Board of Scientific Counselors, National Eye Institute.

The meeting will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meeting will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., as amended for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Eye Institute, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Board of Scientific Counselors, National Eye Institute.
Date: June 3–4, 2002.
Open: June 3, 2002, 7:30 a.m. to 9 a.m.
Agenda: Opening remarks by the Acting Scientific Director, Intramural Research Program, on matters concerning the intramural program of the NEI.
Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: June 3, 2002, 9 a.m. to 5 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.
Closed: June 4, 2002, 8 a.m. to 12 p.m.
Agenda: To review and evaluate personal qualifications and performance, and competence of individual investigators.
Place: 31 Center Drive, Building 31, Conference Room 6A35, 9000 Rockville Pike, Bethesda, MD 20892.
Contact Person: Terry M. Green, Secretary, National Institutes of Health, National Eye Institute, Bethesda, MD 20892, 301–451–6763.

Information is also available on the Institute's/Center's home page: *www.nei.nih.gov*, where an agenda and any additional information for the meeting will be posted when available.

(Catalogue of Federal Domestic Assistance Program Nos. 93.867, Vision Research, National Institutes of Health, HHS)

Dated: May 3, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committeee Policy.
[FR Doc. 02–11692 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussion could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Demonstration and Education Research.
Date: June 26, 2002.
Time: 8: a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.

Place: Hilton, 8727 Colesville Road, Silver Spring, MD 20910.
Contact Person: Zoe E. Huang, MD, Health Scientist Administrator, Review Branch, Room 7190, Division of Extramural Affairs, National Heart, Lung, and Blood Institute, National Institutes of Health, 6701 Rockledge Drive, MSC 7924, Bethesda, MD 20892–7924, 301–435–0314

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Canter for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 2, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11684 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Heart, Lung, and Blood Program Project Review Committee.
Date: June 20, 2002.
Time: 8 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications.
Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Contact Person: Jeffrey H Hurst, PHD, Scientific Review Administrator, Review Branch, Division of Extramural Affairs, National Heart, Lung and Blood Institute, National Institutes of Health, Bethesda, MD 20892, 301–435–0303. *hurstj@nih.gov*

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11688 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Heart, Lung, and Blood Institute; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Heart, Lung, and Blood Institute Special Emphasis Panel, Translational Behavioral Science Research Consortia.
Date: June 5, 2002.
Time: 8 a.m. to 1 p.m.
Agenda: To review and evaluate contract proposals.
Place: Hilton Silver Spring, 8727 Colesville Road, Silver Spring, MD 20920.
Contact Person: Anne P. Clark, PhD, Chief, NIH, NHLBI, DEA, Review Branch, Rockledge II, 6701 Rockledge Drive, Room 7202, Bethesda, MD 20892–7924, 301/435–0310.

(Catalogue of Federal Domestic Assistance Program Nos. 93.233, National Center for Sleep Disorders Research; 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; 93.839, Blood Diseases and Resources Research, National Institutes of Health, HHS)

Dated: May 1, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11689 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Child Health and Human Development; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552(c)(6), Title 5 U.S.C., as amended. The grant applications and/or contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications and/or contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Child Health and Human Development Special Emphasis Panel Global Network for Women's and Children's Health Research (HD–01–024).
Date: June 5, 2002.
Time: 8:30 a.m. to 5 p.m.
Agenda: To review and evaluate grant applications and/or proposals.
Place: Doubletree Hotel, 1750 Rockville Pike, Rockville, MD 20852.
Contact Person: Gopal M. Bhatnagar, PhD, Scientific Review Administrator, Division of Scientific Review, National Institute of Child Health and Human Development, National Institutes of Health, PHS, DHHS, 9000 Rockville Pike, 6100 Bldg., Room 5E01, Bethesda, MD 20892, (301) 496–1485.

(Catalogue of Federal Domestic Assistance Program Nos. 93.209, Contraception and Infertility Loan Repayment Program; 93.864, Population Research; 93.865, Research for Mothers and Children; 93.929, Center for Medical Rehabilitation Research, National Institutes of Health, HHS)

Dated: May 2, 2002.
LaVerne Y. Stringfield,
Director, Office of Federal Advisory Committee Policy.
[FR Doc. 02–11679 Filed 5–9–02; 8:45 am]
BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of General Medical Sciences; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as

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amended (5 U.S.C. appendix 2), notice is hereby given to the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of General Medical Sciences Special Emphasis Panel, RFA: GM–02–002—Summer Research Experiences for Undergraduates.

Date: June 3, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Bethesda, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Shiva P. Singh, PhD, Scientific Review Administrator, Office of Scientific Review, National Institute of General Medical Sciences, National Institutes of Health, Natcher Building, Room 1AS.13J, Bethesda, Md 20892, (301) 594–2772, singhs@nigms.nih.gov.

(Catalogue of Federal Domestic Assistance Program Nos. 93.375, Minority Biomedical Research Support; 93.821, Cell Biology and Biophysics Research; 93.859, Pharmacology, Physiology, and Biological Chemistry Research; 93.862, Genetics and Developmental Biology Research; 93.88, Minority Access to Research Careers; 93.96, Special Minority Initiatives, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11680 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Environmental Health Sciences; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Research Core Center Applications (P30s).

Date: June 11–13, 2002.

Time: 7 p.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Courtyard by Marriott, 1815 Front Street, Durham, NC 27705.

Contact Person: Ethel B Jackson, DDS, Chief, Scientific Review Branch, Nat'l Institute of Environmental Health Sciences, PO Box 12233 MD EC–24, Research Triangle Park, NC 27709, (919) 541–7826.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 14, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 14, 2002.

Time: 2 pm to 3 pm.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 3446, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M McGee, Associate Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 18, 2002.

Time: 1 p.m. to 2 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associated Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

Name of Committee: National Institute of Environmental Health Sciences Special Emphasis Panel, Review of Conference Grant Applications (R13s).

Date: June 18, 2002.

Time: 2 p.m. to 3 p.m.

Agenda: To review and evaluate grant applications.

Place: NIEHS, 79 T.W. Alexander Drive, Building 4401, Conference Room 122, Research Triangle Park, NC 27709, (Telephone Conference Call).

Contact Person: RoseAnne M. McGee, Associated Scientific Review Administrator, Scientific Review Branch, Office of Program Operations, Division of Extramural Research and Training, Nat. Inst. of Environmental Health Sciences, P.O. Box 12233, MD EC–30, Research Triangle Park, NC 27709, 919/541–0752.

(Catalogue of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Health Hazards; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation—Health Risks from Environmental Exposures; 93.142, NIEHS Hazardous Waste Worker Health and Safety Training; 93.143, NIEHS Superfund Hazardous Substances—Basis Research and Education; 93.894, Resources and Manpower Development in the Environmental Health Sciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11691 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The contract proposals and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the contract proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Loan Repayment Special Emphasis Panel.

Date: May 10, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate contract proposals.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Raul A. Saavedra, PhD, Scientific Review Administrator, Scientific Review Branch, Division of Extramural Research, NINDS/NIH/DHHS, Neuroscience Center, 6001 Executive Blvd., Suite 3208, MSC 9529, Bethesda, MD 20892–9529, 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11693 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be open to the public as indicated below, with attendance limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should notify the Contact Person listed below in advance of the meeting.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Kidney, Urologic and Hematologic Diseases D Subcommittee.

Date: June 10, 2002.

Open: 8 a.m. to 8:30 a.m.

Agenda: To review procedures and discuss policies.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Closed: 8:30 a.m. to adjournment.

Agenda: To review and evaluate grant applications.

Place: Crystal City Courtyard by Marriott, 2899 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Neal A. Musto, PhD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 750, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892–6600, (301) 594–7798, *muston@extra.niddk.nih.gov.*

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Initial Review Group, Digestive Diseases and Nutrition C Subcommittee.

Date: June 20–21, 2002.

Open: June 20, 2002, 1 p.m. to 1:30 p.m.

Agenda: To review procedures and discuss policies.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Closed: June 20, 2002, 1:30 PM to adjournment.

Agenda: To review and evaluate grant applications.

Place: Crystal Gateway Marriott, 1700 Jefferson Davis Highway, Arlington, VA 22202.

Contact Person: Carolyn Miles, PhD, Scientific Research Administrator, Review Branch, DEA, NIDDK, Room 755, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892, (301) 594–7791

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11694 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Diabetes and Digestive and Kidney Diseases; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Diabetes and Digestive and Kidney Diseases Special Emphasis Panel, Preclinical Toxicity of Iron Chelators.

Date: June 11, 2002.

Time: 8:30 a.m. to 2 p.m.

Agenda: To review and evaluate contract proposals.

Place: Marriott Suites, 6711 Democracy Blvd., Bethesda, MD 20814.

Contact Person: Ned Feder, MD, Scientific Review Administrator, Review Branch, DEA, NIDDK, Room 645, 6707 Democracy Boulevard, National Institutes of Health, Bethesda, MD 20892.

(Catalogue of Federal Domestic Assistance Program Nos. 93.847, Diabetes, Endocrinology and Metabolic Research; 93.848, Digestive Diseases and Nutrition Research; 93.849, Kidney Diseases, Urology and Hematology Research, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11695 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Neurological Disorders and Stroke; Notice of Closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice

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is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: National Institute of Neurological Disorders and Stroke Special Emphasis Panel, Acute Stroke Centers.

Date: May 5–8, 2002.

Time: 7 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Katherine Woodbury, PHD, Scientific Review Administrator, Scientific Review Branch, NINDS/NIH/DHHS Neuroscience Center, 6001 Executive Blvd, Suite 3208, MSC 9529, Bethesda, MD 20892–9529. 301–496–9223.

This notice is being published less than 15 days prior to the meeting due to the timing limitations imposed by the review and funding cycle.

(Catalogue of Federal Domestic Assistance Program Nos. 93.853, Clinical Research Related to Neurological Disorders; 93.854, Biological Basis Research in the Neurosciences, National Institutes of Health, HHS)

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11697 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Cancellation of Meeting

Notice is hereby given of the cancellation of the PubMed Central National Advisory Committee, May 6, 2002, 9:30 a.m. to May 6, 2002, 4 p.m., National Library of Medicine, Board Room, Building 38, 2E09, 8600 Rockville Pike, Bethesda, MD, 20894 which was published in the **Federal Register** on March 18, 2002, 67 FR 12032.

The meeting is cancelleld due to the fact that issues of concern to the Committee need further development before the next meeting is convened.

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11682 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Library of Medicine; Notice of closed Meeting

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. appendix 2), notice is hereby given of the following meeting.

The meeting will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Biomedical Library and Informatics Review Committee.

Date: June 13–14, 2002.

Time: June 13, 2002, 8:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Time: June 14, 2002, 8:30 a.m. to 5 p.m.

Agenda: to review and evaluate grant applications.

Place: Library of Medicine, Board Room, Room 2E17, Bldg. 38, 8600 Rockville Pike, Bethesda, MD 20892.

Contact Person: Merlyn M Rodrigues, MD, PhD, Medical Officer/SRA, National Library of Medicine, Extramural Programs, 6705 Rockledge Drive, Suite 301, Bethesda, MD 20894.

(Catalogue of Federal Domestic Assistance Program Nos. 93.879, Medical Library Assistance, National Institutes of Health, HHS)

Dated: May 2, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11685 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Notice of Closed Meetings

Pursuant to section 10(d) of the Federal Advisory Committee Act, as amended (5 U.S.C. Appendix 2), notice is hereby given of the following meetings.

The meetings will be closed to the public in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5 U.S.C., as amended. The grant applications and the discussions could disclose confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the grant applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Cancer Molecular Pathobiology Study Section.

Date: June 2–4, 2002.

Time: 6 p.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Monarch Hotel, 2400 M Street, NW., Washington, DC 20037.

Contact Person: Elaine Sierra-Rivera, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4136, MSC 7804, Bethesda, MD 20892, 301–435–1779, riverse@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Surgery and Bioengineering (33) Cardiovascular Fluid/Valve.

Date: June 2, 2002.

Time: 7 p.m. to 10 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, (301) 435–1172.

Name of Committee: Surgery, Radiology and Bioengineering Integrated Review Group, Surgery and Bioengineering Study Section.

Date: June 3–4, 2002.

Time: 8 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Teresa Nesbitt, DVM, PhD., Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5110, MSC 7854, (301) 435–1172, nesbitt@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1-Special Study Section–W(10).

Date: June 3–4, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Dharam S. Dhindsa, DVM, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5126, MSC 7854, Bethesda, MD 20892, (301) 435–1174, dhindsad@csr.nih.gov.

Name of Committee: Oncological Sciences Integrated Review Group, Pathology B Study Section.

Date: June 5–7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Georgetown, 2101 Wisconsin Avenue, NW., Washington, DC 20007.

Contact Person: Martin L. Padarathsingh, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4146, MSC 7804, Bethesda, MD 20892, (301) 435–1717.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Medicinal Chemistry Study Section.

Date: June 5–6, 2002.

Time: 8:30 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn—Chevy Chase, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.

Contact Person: Ronald J. Dubois, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4156, MSC 7806, Bethesda, MD 20892, (301) 435–1722.

Name of Committee: Center for Scientific Review Special Emphasis Panel, ZRG1—Special Study Section X (10) Ultrasound Technology.

Date: June 5, 2002.

Time: 1 p.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn Rosslyn, 1900 North Fort Myer Drive, Arlington, VA 22209.

Contact Person: Lee Rosen, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5116, MSC 7854, Bethesda, MD 20892, (301) 435–1171.

Name of Committee: Integrative, Functional and Cognitive Neuroscience Integrated Review Group, Alcohol and Toxicology Subcommittee 3.

Date: June 6–7, 2002.

Time: 8 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Contact Person: Christine Melchior, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4102, MSC 7816, Bethesda, MD 20892, (301) 435–1713.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Biobehavioral and Behavioral Processes-1.

Date: June 6–7, 2002.

Time: 9 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Melrose Hotel, 2430 Pennsylvania Avenue, NW., Washington, DC 20037.

Contact Person: Luci Roberts, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health; 6701 Rockledge Drive, Room 3188, MSC 7848, Bethesda, MD 20892, (301) 435–0692.

Name of Committee: Genetic Sciences Integrated Review Group, Genetics Study Section.

Date: June 6–8, 2002.

Time: 9 a.m. to 4 p.m.

Agenda: To review and evaluate grant applications.

Place: The River Inn, 924 Twenty-Fifth Street, NW., Washington, DC 20037.

Contact Person: David J. Remondini, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 6154, MSC 7890, Bethesda, MD 20892, (301) 435–1038, remondid@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, Molecular, Cellular and Developmental Neuroscience-1.

Date: June 6–7, 2002.

Time: 9:30 a.m. to 5 p.m.

Agenda: To review and evaluate grant applications.

Place: Radison Barcelo Hotel, 2121 P Street, NW., Washington, DC 20037.

Contact Person: Carl D. Banner, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5212, MSC 7850, Bethesda, MD 20892, (301) 435–1251, bannerc@drg.nih.gov.

Name of Committee: Biophysical and Chemical Sciences Integrated Review Group, Metallobiochemistry Study Section.

Date: June 7, 2002.

Time: 8:30 a.m. to 6 p.m.

Agenda: To review and evaluate grant applications.

Place: Phoenix Park Hotel, 520 N. Capital Street, NW., Washington, DC 20001.

Contact Person: Janet Nelson, PhD, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 4168, MSC 7806, Bethesda, MD 20892, 301–435–1723, nelsonja@csr.nih.gov.

Name of Committee: Center for Scientific Review Special Emphasis Panel, International Cooperative Projects.

Date: June 7, 2002.

Time: 9:30 a.m. to 12 p.m.

Agenda: To review and evaluate grant applications.

Place: Hyatt Regency Hotel, One Bethesda Metro Center, Bethesda, MD 20814.

Contact Person: Sandy Warren, DMD, MPH, Scientific Review Administrator, Center for Scientific Review, National Institutes of Health, 6701 Rockledge Drive, Room 5134, MDC 7840, Bethesda, MD 20892. (301) 435–1019.

(Catalogue of Federal Domestic Assistance Program Nos. 93.306, Comparative Medicine, 93.306; 93.333, Clinical Research, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: May 2, 2002.

Laverne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11683 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Center for Scientific Review; Amended Notice of Meeting

Notice is hereby given of a change in the meeting of the Center for Scientific Review Advisory Committee, May 20, 2002, 9 AM to May 20, 2002, 3 PM, National Institutes of Health, Two Rockledge Center, Conference Room 9100, 6701 Rockledge Drive, Bethesda, MD 20892 which was published in the **Federal Register** on April 4, 2002, 67 FR 16114.

Additional agenda item. A review of the assurance documents for a research proposal involving the use of human embryonic germ cells will be conducted in compliance with the NIH guidelines. The meeting is open to the public.

Dated: May 3, 2002.

LaVerne Y. Stringfield,

Director, Office of Federal Advisory Committee Policy.

[FR Doc. 02–11690 Filed 5–9–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR–4730–N–19]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: May 10, 2000.

FOR FURTHER INFORMATION CONTACT: Mark Johnston, Department of Housing and Urban Development, Room 7262, 451 Seventh Street SW., Washington,

DC 20410; telephone (202) 708–1234; TTY number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: May 2, 2002.

John D. Garrity,

Director, Office of Special Needs Assistance Programs.

[FR Doc. 02–11321 Filed 5–9–02; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Geological Survey

Technology Transfer Act of 1986

AGENCY: Geological Survey, Department of Interior.

ACTION: Notice of proposed Cooperative Research and Development Agreement. (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) is planning to enter into a Cooperative Research and Development Agreement (CRADA) with Beartooth Mapping, Inc., Red Lodge, Montana. The purpose of the CRADA is to develop and deploy Internet-based Print-On-Demand capabilities for the on-demand production of image maps based on USGS Digital Orthophotoquad data. Any other organization interested in pursuing the possibility of CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Branch of Business Development, U.S. Geological Survey, 500 National Center, 12201 Sunrise Valley Drive, Reston, Virginia 20192; Telephone (703) 648–4621, facsimile (703) 648–4706; Internet "*bduff@usgs.gov*".

FOR FURTHER INFORMATION CONTACT: Beth L. Duff, address above.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: March 4, 2002.

Robert A. Lidwin,

Chief of Staff.

[FR Doc. 02–11762 Filed 5–9–02; 8:45 am]

BILLING CODE 4310–Y7–M

INTERNATIONAL TRADE COMMISSION

[Investigation Nos. 701–TA–415 and 731–TA–933–934]

Polyethylene Therephthalate Film, Sheet and Strip From India and Taaiwan; Notice of Commission Determination To Conduct a Portion of the Hearing In Camera

AGENCY: U.S. International Trade Commission.

ACTION: Closure of a portion of a commission hearing.

SUMMARY: Upon request of respondents Polyplex Corporation, Limited, Ester Industries, Ltd., Flex Industries Ltd., Garware Polyester Ltd., Ester International (USA) Ltd., Flex America Inc., Spectrum Marketing Inc. and Global Pet Film Inc. ("Indian Respondents"), the Commission has determined to conduct a portion of its hearing in the above-captioned investigations scheduled for May 9, 2002, *in camera*. See Commission rules 207.24(d), 201.13(m) and 201.36(b)(4) (19 CFR 207.24(d), 201.13(m) and 201.36(b)(4)). The remainder of the hearing will be open to the public. The Commission has determined that the seven-day advance notice of the change to a meeting was not possible. *See* Commission rule 201.35(a), (c)(1) (19 CFR 201.35(a), (c)(1)).

FOR FURTHER INFORMATION CONTACT: Peter L. Sultan, Office of General Counsel, U.S. International Trade Commission, telephone 202–205–3094, e-mail *psultan@usitc.gov*. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Commission's TDD terminal on 202–205–3105.

SUPPLEMENTARY INFORMATION: The Commission believes that Indian Respondents have justified the need for a closed session. In these investigations, significant amounts of data concerning the domestic industry are business proprietary. Indian Respondents seek a closed session in order to fully address the issues before the Commission without referring to business proprietary information ("BPI"). In making this decision, the Commission nevertheless reaffirms its belief that whenever possible its business should be conducted in public.

The hearing will begin with public presentations by DuPont Teijin Films, Toray Plastics (America), Inc. and Mitsubishi Polyester Film, LLC, petitioners in these investigations, followed by Indian Respondents. During the public session, the Commission may question the parties following their respective presentations. Next, the hearing will include a 20-minute *in camera* session for a confidential presentation by Indian Respondents and for questions from the Commission relating to the BPI, followed by a 20-minute *in camera* rebuttal presentation by petitioners. For any *in camera* session the room will be cleared of all persons except those who have been granted access to BPI under a Commission administrative protective order (APO) and are included on the Commission's APO service list in these investigations. *See* 19 CFR 201.35(b)(1), (2). The time for the parties' presentations and rebuttals in the *in camera* session will be taken from their respective overall time allotments for the hearing. All persons planning to attend the *in camera* portions of the hearing should be prepared to present proper identification.

Authority: The General Counsel has certified, pursuant to Commission Rule 201.39 (19 CFR 201.39) that a portion of the Commission's hearing in Polyethylene Terephthalate Film, Sheet and Strip from India and Taiwan, Inv. Nos. 701–TA–415 and 731–TA–933–934, may be closed to the public to prevent the disclosure of BPI.

Issued: May 7, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11749 Filed 5–9–02; 8:45 am]

BILLING CODE 7020–02–P

INTERNATIONAL TRADE COMMISSION

Privacy Act of 1974; Revision of a System of Records

AGENCY: International Trade Commission.

ACTION: Request for comments on proposed revision of a system of records.

SUMMARY: Pursuant to 5 U.S.C. 522a(e)(4) of the Privacy Act of 1974, the U.S. International Trade Commission ("Commission") proposes the following action: revise the existing system of records entitled "Pay, Leave and Travel Records".

DATES: Comments must be received no later than June 19, 2002. The proposed revision to the Commission's system of records will become effective on that date unless otherwise published in the **Federal Register**.

ADDRESSES: Written comments should be directed to the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

FOR FURTHER INFORMATION CONTACT: Thomas Bolick, Esq., Office of the General Counsel, U.S. International Trade Commission, tel. 202–205–3107. Hearing impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION: Pursuant to the Privacy Act of 1974, this revision to an existing Commission system of records will be reported to the Office of Management and Budget, the Chair of the Committee on Government Reform and Oversight of the House of Representatives, and the Chair of the Committee on Governmental Affairs of the Senate. This revision is in response to a review of the Commission's existing system of records entitled "Pay, Leave and Travel Records". The Commission proposes to revise the existing "Pay, Leave, and Travel Records" by updating, clarifying, and conforming the information in the Commission's Privacy Act notices to reflect current procedures.

ITC–1

SYSTEM NAME:

Pay, Leave and Travel Records.

SYSTEM LOCATION:

Office of Finance, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; National Business Center, U.S. Department of the Interior, Mail Stop D–2600, 7201 West Mansfield Avenue, Lakewood, CO 80235–2230; General Services Administration, 1500 East Bannister Road, Kansas City, MO 64131; Aldmyr Systems Incorporated, 4200 Parliament Place, Suite 406, Lanham, MD 20706; and in all Commission offices located at the same address as the Office of Finance. For Retired Personnel Files: National Archives and Records Administration National Personnel Records Center (Civilian Personnel Records Center), 111 Winnebago Street, St. Louis, MO 63118.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All current and former Commission employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system contains various records relating to pay, leave and travel. This includes information such as: Name; date of birth; Social Security number; W–2 address; grade; employing organization; timekeeper number; salary; pay plan; number of hours worked; leave accrual rate, usage, and balances; activity accounting reports; Civil Service Retirement and Federal Retirement System contributions; FICA withholdings; Federal, State, and local tax withholdings; Federal Employee's Group Life Insurance withholdings; Federal Employee's Health Benefits withholdings; charitable deductions; allotments to financial organizations; levy, garnishment, and salary and administrative offset documents; savings bonds allotments; union and management association dues withholding allotments; Combined Federal Campaign and other allotment authorizations; direct deposit information; information on the leave transfer program; travel records; and tax fringe benefits.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Authority for maintenance of the system includes the following with any revisions or amendments: 5 U.S.C. Chapters 53, 55, 57 and 61; 31 U.S.C. 3131 and 3512; Executive Order 9397.

PURPOSE(S):

These records are used for the purposes of administering pay, leave, and travel, activity accounting, and budget preparation.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

General Routine Uses A–K apply to this system. [1] The pay and leave records are transmitted electronically by the Commission directly to the National Business Center, U.S. Department of the Interior, which provides payroll services. The U.S. Department of the Interior transmits relevant portions of those records as necessary to the following: (a) To the Treasury Department for issuance of pay checks; (b) To the Treasury Department for issuance of savings bonds; (c) To the U.S. Office of Personnel Management ("OPM") for retirement, health, and life insurance purposes, and to carry out OPM's Government-wide personnel management functions; (d) To the National Finance Center, U.S. Department of Agriculture for the Thrift Savings Plan and Temporary Continuation of Coverage; (e) To the Social Security Administration for reporting wage data in compliance with the Federal Insurance Compensation Act; (f) To the Internal Revenue Service and to State and local tax authorities for tax purposes, including reporting of withholding, audits, inspections, investigations, and similar tax activities; (g) To the Combined Federal Campaign for charitable contribution purposes; and (h) To officials of labor organizations recognized under 5 U.S.C. Chapter 71 for the purpose of identifying Commission employees contributing union dues each pay period and the amount of dues withheld. Travel records are transmitted electronically to Aldmyr Systems Incorporated for management purposes, the National Business Center for accounting and processing purposes, and the San Francisco Finance Center, U.S. Department of Treasury, for issuance of travel reimbursements. Relevant information in this system may be disclosed as necessary to other Federal agencies or Federal contractors with statutory authority to assist in the collection of Commission debts.

Disclosure to Consumer Reporting Agencies:

Disclosures may be made from this system pursuant to 5 U.S.C. 552a(b)(12) and 31 U.S.C. 3711(f) to "consumer reporting agencies" as defined in 31 U.S.C. 3701(a)(3).

Policies and Practices for Storing, Retrieving, Accessing, Retaining, and Disposing of Records in the System Storage:

These records are maintained on computer media, on paper in file folders, and on microfiche. The computer records are shared electronically with the Department of the Interior. Travel computer records also are shared electronically with Aldmyr Systems Incorporated.

Retrievability:

These records are retrieved by the name and Social Security Number of the individuals on whom they are maintained.

Safeguards:

These records are maintained in a building with restricted public access. The records in this system are kept in limited access areas within the building. The paper files are maintained in secure

[1] *See* 62 FR 23485, 23495 (Apr. 30, 1997) for a listing of General Routine Uses Applicable to More Than One System of Records.

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file cabinets or rooms, and access is limited to persons whose official duties require access. The computer files can be accessed only by authorized individuals through the use of passwords.

Retention and Disposal:

Payroll and salary and administrative offset records will be updated as required in accordance with the National Archives and Records Administration's (NARA's) General Records Schedule 2. Time and attendance records generally will be destroyed after a General Accounting Office (GAO) audit or when six years old, whichever is sooner, in accordance with NARA's General Records Schedule 2. Tax withholding records will be destroyed when four years old in accordance with NARA's General Records Schedule 2. U.S. Savings Bond authorization (SF 1192 or equivalent) will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Bond registration files, receipt and transmittal files will be destroyed four months after date of issuance of bond in accordance with NARA's General Records Schedule 2. Combined Federal Campaign and other allotments will be destroyed after a GAO audit or when three years old, whichever is sooner. Thrift Savings Plan Election forms will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Direct Deposit sign-up forms will be destroyed when superceded or after separation of employee in accordance with NARA's General Records Schedule 2. Levy and garnishment records will be destroyed three years after garnishment is terminated. Travel records will be destroyed six years after the period of the account in accordance with NARA's General Records Schedule 9. Records will be disposed of in a secure manner.

System Manager(s) and Address:

Director, Office of Finance, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436; Travel and Transportation Management Officer, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Notification Procedure:

Individuals wishing to inquire whether this system of records contains information about them should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Record Access Procedure:

Individuals wishing to request access to their records should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR part 201).

Contesting Record Procedure:

Individuals wishing to request amendment of their records should contact the Privacy Act Officer, Office of the Director of Administration, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Individuals must furnish the following information for their records to be located and identified:

1. Full name(s);
2. Date of birth;
3. Social Security number;
4. Dates of employment;
5. Dates of travel (for travel records only); and
6. Signature.

Individuals requesting access must comply with the Commission's Privacy Act regulations on verification of identity (19 CFR part 201).

Record Source Categories:

Information in this system comes from official personnel documents, the individual to whom the record pertains, and Commission officials responsible for pay, leave, travel and activity reporting requirements.

Issued: May 7, 2002.
By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11750 Filed 5–9–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Cancellation of Environmental Impact Statement Process Criminal Alien Requirement Phase III—Arizona and California

One June 13, 2000, the U.S. Department of Justice, Federal Bureau of Prisons (Bureau) issued a notice in the Commerce Business Daily stating that the Bureau would be soliciting for Contractor-Owned and Contractor-Operated correctional facilities to house up to 4,500 low security, adult male, non-U.S. citizen criminal aliens within the States of California and/or Arizona. The solicitation was subsequently issued on November 13, 2000 and proposals were submitted by prospective contractors to the Bureau by January 12, 2001. At that time, sites were offered to the Bureau for consideration in: Eloy, Arizona; Florence, Arizona; Kingman, Arizona; Safford, Arizona; San Luis, Arizona; Wilcox, Arizona; Arvin, California; Barstow, California; Orange Cove, California; El Centro, California; and Wasco, California. In support of this undertaking, and in compliance with the National Environmental Policy Act, the Bureau initiated preparation of a Draft Environmental Impact Statement (EIS). Draft EIS preparation began on September 19, 2000 with publication in the **Federal Register** of a Notice of Intent to prepare a Draft EIS followed by public scoping meetings held in Arizona and California during October 2000. Since that time, the Bureau has been preparing the Draft EIS which would serve to study the potential environmental impacts associated with the proposed action at each of the alternative locations.

On March 15, 2002, the Bureau issued Amendment No. 6 to RFP No. PCC–0007 cancelling the overall solicitation. Cancellation of the solicitation was deemed appropriate because the Bureau no longer has a need for the service. Since January 2001 when proposals were submitted to the Bureau, the Bureau's requirements changed. New population projections indicate a reduced rate of growth of the federal inmate population. Therefore, the Bureau has determined that it is in the best interest of the Federal Government not to proceed with Solicitation No. PCC–0007 or to complete preparation of the Draft EIS. This decision is consistent with the Bureau's strategy of utilizing private corrections contractors to allow flexibility in managing its bedspace capacity needs in a reasonable and cost-effective manner. Questions concerning cancellation of the Draft EIS process should be directed to: David J. Dorworth, Chief, Site Selection & Environmental Review Branch, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, Tel: 202–514–6470/Fax: 202–616–6024.

Thank you for your interest.

David J. Dorworth,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 02–11713 Filed 5–9–02; 8:45 am]

BILLING CODE 4410–05–M

DEPARTMENT OF LABOR

Office of the Secretary

Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Veterans' Employment and Training Services

On April 22, 2002, the Secretary of Labor issued a memorandum to the Assistant Secretary for Veterans' Employment and Training Services delegating authority and assigning responsibility for carrying out the functions and authority vested in the Secretary of Labor pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994, Pub. L. 103–353, 38 U.S.C. 4301–4333, and Section 3 of the Veterans Employment Opportunities Act of 1998, Pub. L. 105–339, 5 U.S.C. 3330a. A copy of that memorandum is annexed hereto as an Appendix.

FOR FURTHER INFORMATION CONTACT: Nick Dawson, Veterans' Employment and Training Services, at (202) 693–4711. This is not a toll-free number.

Signed in Washington, DC, this 3rd day of May 2002.

Eugene Scalia,

Solicitor of Labor.

April 22, 2002.
Memorandum for Frederico Juarbe, Jr.
Assistant Secretary for Veterans' Employment and Training Services
From: Elaine Chao
Subject: Specific Delegation of Authority to the Assistant Secretary for Veterans' Employment and Training Services

Effective immediately, the Assistant Secretary for Veterans' Employment and Training Services is hereby delegated authority and assigned responsibilities for carrying out the functions and authority vested in the Secretary of Labor pursuant to the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. L. 103–353, 38 U.S.C. 4301–4333, and Section 3 of the Veterans Employment Opportunities Act of 1998 (VEOA), Pub. L. 105–339, 5 U.S.C. 3330a, except with regard to the preparation of reports and recommendations to the President and the Congress.

In addition, and also effective immediately, the Assistant Secretary for Veterans' Employment and Training Services is hereby delegated authority and assigned responsibility to invoke all appropriate claims of governmental privilege arising from the above functions of the Veterans' Employment and Training Services, following his personal consideration of the matter and in accordance with the following guidelines:

(a) Informant's Privilege (to protect from disclosure the identity of any person who has provided information to the Veterans' Employment and Training Services under USERRA and Section 3 of the VEOA): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter may: (1) Interfere with the Veterans' Employment and Training Services' investigation or enforcement of a particular statue for which the Veterans' Employment and Training Services exercises investigative or enforcement authority; (2) adversely affect persons who have provided information to the Veterans' Employment and Training Services; or (3) deter other persons from reporting violations of the statutes.

(b) Deliberative Process Privilege (to withhold information which may disclose pre-decisional intra-agency or inter-agency deliberations, including the analysis and evaluation of fact, written summaries of factual evidence, and recommendations, opinions or advice on legal or policy matters in cases arising under USERRA and Section 3 of the VEOA): A claim of privilege may be asserted where the Assistant Secretary has determined that disclosure of the privileged matter would have an inhibiting effect on the agency's decision-making processes.

(c) Privilege for Investigational Files Compiled for Law Enforcement Purposes (to withhold information which may reveal the Veterans' Employment and Training Services' confidential investigative techniques and procedures): The investigative file privilege may be asserted where the Assistant Secretary has determined the disclosure of the privileged matter may have an adverse impact upon the Veterans' Employment and Training Services' enforcement of USERRA and Section 3 of the VEOA by: (1) Disclosing investigative techniques and methodologies; (2) deterring persons from providing information to the Veterans's Employment and Training Services; (3) prematurely revealing the facts of the Veterans Employment and Training Services' case; or (4) disclosing the identities of persons who have provided information under an express or implied promise of confidentiality.

(d) Prior to filing a formal claim of privilege, the Assistant Secretary shall personally review all documents sought to be withheld (or, in case where the volume is so large that all of them cannot be personally reviewed in a reasonable time, an adequate and representative sample of such documents), together with a description or summary of the litigation with which the disclosures is sought.

(e) In asserting a claim of governmental privilege, the Assistant Secretary may ask the Solicitor of Labor, or the Solicitor's representative, to file any necessary legal papers or documents.

[FR Doc. 02–11706 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–79–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration is soliciting comments concerning the proposed collection extension of the Work Opportunity Tax Credit (WOTC) Program and the Welfare-to-Work (WtW) Tax Credit's reporting and administrative forms, the Third Edition of ETA Handbook No. 408, the proposed Training and Employment Guidance Letter (TEGL), "Planning Guidelines for Employment Service (ES) Fiscal Year 2002 Cost Reimbursable Grants for the Work Opportunity Tax Credit Program and the Welfare-to-Work Tax Credit," and the Technical Assistance (TA) and Review Guide. A copy of the proposed information collection request (ICR) can be obtained by contacting the office listed below in the addressee section of this notice.

DATES: Written comments must be submitted to the office listed in the addressee's section below on or before July 9, 2002.

ADDRESSES: Gay M. Gilbert, Division Chief, U.S. Employment Service/ ALMIS, Office of Workforce Security, U.S. Department Of Labor, 200 Constitution Ave., NW., Room C–4514, Washington, DC 20210, (202) 693–3428

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(this is not a toll-free number) and, at: ggilbert@doleta.gov and/or fax number: 202/693–2874. The proposed program forms and related materials can also be accessed at: *http://www.usworkforce.org*

SUPPLEMENTARY INFORMATION:

I.

Data collected on the WOTC and the WtW Tax Credits will be collected by the State Workforce Agencies (SWAs) and provided to the U.S. Employment Service/ALMIS Division, Office of Workforce Security, Washington, DC, through the appropriate Department of Labor regional offices. The data will be used, primarily, to supplement IRS Form 8850. This data will help expedite the processing of employer requests for Certifications generated through IRS Form 8850 or issuance of Conditional Certifications (CCs) and employer requests for Certifications as a result of hiring individuals who have received SWAs' or participating agencies' generated CCs. The data will also help streamline SWAs' mandated verification activities, aid and expedite the preparation of the quarterly reports, and provide a significant source of information for the Secretary's Annual Report to Congress on the WOTC program. The data recorded through the use of these forms will also help in the preparation of an annual report to the Committee House of Ways and Means of the U.S. House of Representatives. Also, the plans submitted by the states will tell the regional and national offices how the states plan to administer the WOTC and the WtW tax credits and use the funds allocated to them. Finally, the data obtained through the use of the Technical Assistance and Review Guide will help the Regional Coordinators determine if the states are administering the tax credits in compliance with the reauthorizing legislation, the IRS Code of 1986, as amended and the Program Handbook. If the findings show any deviation from the plan or deficiencies, the Regional Coordinator will be able to plan, coordinate and deliver remedial assistance with the National and corresponding State Coordinators to affected existing and new staff members.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarify of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

- The Work Opportunity and Welfare-to-Work Tax Credits' reporting and administrative forms expire June 30, 2002. Pub. L. 107–147 reauthorized these two tax credits through December 31, 2003. Because the Congress reauthorizes these tax credits regularly for periods that range between one and three years, we are requesting a 3-year expiration date from approval date to continue the existing collection of information.
- Further, the Government Paperwork Elimination Act (GPEA) of 1998 (Public Law 105–277) requires that, when feasible, Federal agencies design and implement the use of automated systems that facilitate the electronic signature and filing of forms (by participants) to conduct official business with the public by 2003. To comply with this requirement, ETA is currently working with a contractor to develop an electronic reporting system for the tax credits' program. The electronic system will transfer the WOTC and WtW quarterly reports to ETA's Enterprise Information Management System (EIMS). The EIMS is a web-based system that will allow states to meet the reporting responsibilities in a more efficient manner while reducing the reporting burden on the state, regional and national levels. Through this system, states will have the choice of manually entering or electronically uploading the required quarterly data for Reports 1, 2 and 3 (ETA Forms 9057, 9058 and 9059). Implementation of the new system is targeted for the reports due in the regional offices 25 days after the end of the July 1, 2002 to September 30, 2002 period. The new electronic reporting system is expected to reduce burden hours by 25 percent.

Type of Review: Extension.

Agency: Employment and Training Administration.

Title: Work Opportunity Tax Credit (WOTC) and Welfare-to-Work Tax (WtW) Credit.

OMB Number: 1205–0371.

Agency Number: ETA Forms 9057–59; 9061–63 and 9065.

Affected Public: State, Local or Tribal Government.

State Burden:

Cite/reference	Total respondents	Frequency	Total [1] responses	Average time/ response	Burden [2]
Form 9057	52	Quarterly	208	6 hours	1248
Form 9058	52	Quarterly	208	6 hours	1248
Form 9059	52	Quarterly	208	6 hours	1248
Form 9062	52	As needed	40	6 hours	240
Form 9063	52	As needed	1000	45 mins	750
Form 9065	52	Quarterly	208	6 hours	1248
Record keeping	52	Annually	52	931 hours	41844
TA & Review Guide	52	Annually	52	8 hours	416
TEGL No. ## Planning Guidance	52	One time	52	8 hours	416
TEGL No. ## Planning Guidance Modification.	52	As needed	52	1 hour	52
Total			2080		[3] 49910

[1] Numbers of "Total Responses" and "Average Time/Response" are only estimates and were obtained by calling several States and asking for the best possible estimates.

[2] Also, these numbers represent a 25% decrease in burden hours from those submitted for the 2001 OMB Package. The decrease is the direct result of the new Electronic Information Systems (EIMS) to be in place for the Fourth Quarter Reports due 25 days after the end of the July 1, 2001—September 20, 2002 period.

[3] This grand total includes the 1200 burden hours for ETA Form 9061.

EMPLOYER/CONSULTANTS AND JOB SEEKERS

Cite/ reference	Total respondents	Frequency	Total responses	Burden
Form 9061	200	5 days	6 hours	1200

Total Burden Hours: 49910.

Total Burden Cost (capital/startup): 0.

Total Burden Cost (operating/ maintaining): 0.

Comments submitted in response to this comment request will be summarized and/or included in the request for Office of Management and Budget approval of this information collection request. They will also become a matter of public record.

Dated: April 30, 2002.

Grace A. Kilbane,

Administrator, Office of Workforce Security, Labor.

[FR Doc. 02–11705 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division; Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department.

Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S–3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of the decisions listed to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

New Jersey
NJ020001 (Mar. 1, 2002)
NJ020002 (Mar. 1, 2002)
NJ020003 (Mar. 1, 2002)
NJ020004 (Mar. 1, 2002)
NJ020005 (Mar. 1, 2002)
NJ020007 (Mar. 1, 2002)

Volume II

None

Volume III

Florida
FL020001 (Mar. 1, 2002)
FL020014 (Mar. 1, 2002)
FL020015 (Mar. 1, 2002)
FL020017 (Mar. 1, 2002)
FL020032 (Mar. 1, 2002)
Tennessee
TN020001 (Mar. 1, 2002)
TN020002 (Mar. 1, 2002)
TN020005 (Mar. 1, 2002)
TN020045 (Mar. 1, 2002)
TN020048 (Mar. 1, 2002)
TN020062 (Mar. 1, 2002)

Volume IV

None

Volume V

Kansas
KS020006 (Mar. 1, 2002)
KS020007 (Mar. 1, 2002)
KS020009 (Mar. 1, 2002)
KS020010 (Mar. 1, 2002)
KS020011 (Mar. 1, 2002)
KS020013 (Mar. 1, 2002)
KS020016 (Mar. 1, 2002)
KS020017 (Mar. 1, 2002)
KS020025 (Mar. 1, 2002)
KS020026 (Mar. 1, 2002)
KS020029 (Mar. 1, 2002)
KS020035 (Mar. 1, 2002)
KS020069 (Mar. 1, 2002)
KS020070 (Mar. 1, 2002)
Missouri
MO020001 (Mar. 1, 2002)
MO020010 (Mar. 1, 2002)
MO020012 (Mar. 1, 2002)

MO020057 (Mar. 1, 2002)
Oklahoma
OK020013 (Mar. 1, 2002)
OK020014 (Mar. 1, 2002)
Texas
TX020007 (Mar. 1, 2002)
TX020010 (Mar. 1, 2002)
TX020033 (Mar. 1, 2002)
TX020034 (Mar. 1, 2002)
TX020035 (Mar. 1, 2002)
TX020037 (Mar. 1, 2002)
TX020069 (Mar. 1, 2002)
TX020085 (Mar. 1, 2002)

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Idaho
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ID020003 (Mar. 1, 2002)
ID020004 (Mar. 1, 2002)
ID020013 (Mar. 1, 2002)
ID020014 (Mar. 1, 2002)
North Dakota
ND020003 (Mar. 1, 2002)
ND020004 (Mar. 1, 2002)
ND020007 (Mar. 1, 2002)
Washington
WA020001 (Mar. 1, 2002)
WA020002 (Mar. 1, 2002)
WA020003 (Mar. 1, 2002)
WA020007 (Mar. 1, 2002)
WA020008 (Mar. 1, 2002)
WA020011 (Mar. 1, 2002)
WA020013 (Mar. 1, 2002)

Volume VII

Arizona
AZ020001 (Mar. 1, 2002)
AZ020002 (Mar. 1, 2002)
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AZ020005 (Mar. 1, 2002)
AZ020006 (Mar. 1, 2002)
AZ020007 (Mar. 1, 2002)
AZ020012 (Mar. 1, 2002)
AZ020014 (Mar. 1, 2002)
California
CA020001 (Mar. 1, 2002)
CA020002 (Mar. 1, 2002)
CA020004 (Mar. 1, 2002)
CA020009 (Mar. 1, 2002)
CA020019 (Mar. 1, 2002)
CA020023 (Mar. 1, 2002)
CA020025 (Mar. 1, 2002)
CA020028 (Mar. 1, 2002)
CA020029 (Mar. 1, 2002)
CA020030 (Mar. 1, 2002)
CA020031 (Mar. 1, 2002)
CA020033 (Mar. 1, 2002)
CA020035 (Mar. 1, 2002)
CA020036 (Mar. 1, 2002)
CA020037 (Mar. 1, 2002)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage determinations Issued Under the Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country.

General wage determinations issued under the Davis-Bacon and related Acts are available electronically at no cost on the Government Printing Office site at *www.access.gpo.gov/davisbacon*.

They are also available electronically by subscription to the Davis-Bacon Online Service (*http://davisbacon.fedworld.gov*) of the National Technical Information Service (NTIS) of the U.S. Department of Commerce at 1–800–363–2068. This subscription offers value-added features such as electronic delivery of modified wage decisions directly to the user's desktop, the ability to access prior wage decisions issued during the year, extensive Help desk Support, etc.

Hard-copy subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. (202) 512–1800.

When ordering hard-copy subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the six separate Volumes, arranged by State. Subscriptions include an annual edition (issued in January or February) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2nd day of May, 2002.

Carl J. Poleskey,

Chief, Branch of Construction Wage Determinations.

[FR Doc. 02–11369 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–27–M

DEPARTMENT OF LABOR

Mine Safety and Health Administration

Summary of Decisions Granting in Whole or in Part Petitions for Modification

AGENCY: Mine Safety and Health Administration (MSHA), Labor.

ACTION: Notice of affirmative decisions issued by the Administrators for Coal Mine Safety and Health and Metal and Nonmetal Mine Safety and Health on petitions for modification of the application of mandatory safety standards.

SUMMARY: Under section 101 of the Federal Mine Safety and Health Act of 1977, the Secretary of Labor (Secretary) may allow the modification of the application of a mandatory safety standard to a mine if the Secretary determines either that an alternate method exists at a specific mine that will guarantee no less protection for the miners affected than that provided by the standard, or that the application of the standard at a specific mine will result in a diminution of safety to the affected miners.

Final decisions on these petitions are based upon the petitioner's statements, comments and information submitted by interested persons, and a field investigation of the conditions at the mine. MSHA, as designee of the Secretary, has granted or partially granted the requests for modification listed below. In some instances, the decisions are conditioned upon compliance with stipulations stated in the decision. The term "FR Notice" appears in the list of affirmative decisions below. The term refers to the **Federal Register** volume and page where MSHA published a notice of the filing of the petition for modification.

FOR FURTHER INFORMATION CONTACT: Petitions and copies of the final decisions are available for examination by the public in the Office of Standards, Regulations, and Variances, MSHA, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. Contact Barbara Barron at 703–235–1910.

Dated at Arlington, Virginia this 6th day of May 2002.

Marvin W. Nichols, Jr.,

Director, Office of Standards, Regulations, and Variances.

Affirmative Decisions on Petitions for Modification

Docket No.: M–2001–011–C.
FR Notice: 66 FR 18659.
Petitioner: C.W. Mining Company (Co-op Mine).
Regulation Affected: 30 CFR 75.701.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, (275 kW/356 kVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3. MSHA grants the petition for modification for the 480-volt, three-phase, 275 kW/356 kVA diesel powered generator (DPG) set supplying power to a three-phase delta-wye connected 285 kVA transformer and three-phase 480- and 995-volt power circuits for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3 with conditions.

Docket No.: M–2001–012–C.
FR Notice: 66 FR 18659.
Petitioner: C.W. Mining Company (Co-op Mine).
Regulation Affected: 30 CFR 75.901.
Summary of Findings: Petitioner's proposal is to use a 480-volt, wye connected, (275 kW/356 kVA) diesel-powered generator for utility power and to move electrically powered mining equipment in and around the mine. This is considered an acceptable alternative method for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3. MSHA grants the petition for modification for the 480-volt, three-phase, 275 kW/356 kVA diesel powered generator (DPG) set supplying power to a three-phase delta-wye connected 285 kVA transformer and three-phase 480- and 995-volt power circuits for the Bear Canyon Mine #1, the Canyon Mine #2, and the Bear Canyon Mine #3 with conditions.

Docket No.: M–2001–014– and M–2001–015–C.
FR Notice: 66 FR 28932.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to seal the Pittsburgh Coal Seam from the surrounding strata at the abandoned wells using technology developed through its well-plugging program instead of maintaining barriers around the oil and gas wells. This is considered an acceptable alternative method for the Blacksburg No. 2 Mine and the Robinson Run No. 95 Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Pittsburgh seam and other mineable coal seams with conditions.

Docket No.: M–2001–017–C.
FR Notice: 66 FR 28933.
Petitioner: Goodin Creek Contracting, Inc.
Regulation Affected: 30 CFR 75.380(f)(4)(i).
Summary of Findings: Petitioner's proposal is to use two-ten pound fire extinguishers for a total of twenty pounds on each Mescher tractor that would be readily accessible to the equipment operator, and instruct the operator to check the fire extinguisher daily before entering the mine. This is considered an acceptable alternative method for the Goodin Creek #2 Mine. MSHA grants the petition for modification for Mescher three-wheel tractors to be operated in the primary intake escapeway at the Goodin Creek #2 Mine with conditions.

Docket No.: M–2001–018–C.
FR Notice: 66 FR 28933.
Petitioner: Excel Mining, LLC.
Regulation Affected: 30 CFR 75.388(a)(i).
Summary of Findings: Petitioner's proposal is to drill boreholes in each advancing working place when the working place approaches to within twenty-five (25) feet of certain areas of the mine as shown by the surveys certified by a registered engineer or registered surveyor unless the area has been pre-shift examined. This is considered an acceptable alternative method for the Excel Mine. MSHA grants the petition for modification for the use of administrative and engineering controls in lieu of drilling boreholes when the working place approaches to within 25 feet of an adjacent panel that cannot be pre-shift examined at the Excel Mine with conditions.

Docket No.: M–2001–021–C.
FR Notice: 66 FR 28933.
Petitioner: Brushy Creek Coal Company.
Regulation Affected: 30 CFR 75.360(b)(5).
Summary of Findings: Petitioner's proposal is to conduct pre-shift examinations for water and gas levels at the seals of the #6 slope. This is considered an acceptable alternative method for the Brushy Creek Mine. MSHA grants the petition for modification to allow evaluation of the Number 6 Seam seals off the shaft at the Brushy Creek Mine with conditions.

Docket No.: M–2001–022–C.
FR Notice: 66 FR 28933.
Petitioner: Cook and Sons Mining, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device on permissible mobile battery-powered machines instead using padlocks to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Premium Mine and the Sandlick Mine. MSHA grants the petition for modification for the use Premium Mine and Sandlick Mine with conditions.

Docket No.: M–2001–025–C.
FR Notice: 66 FR 28934.
Petitioner: Excel Mining, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed locking screw threaded through a steel bracket or spring-loaded locking devices in lieu of padlocks on battery plugs for powering permissible underground mining equipment to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentional loosening, and place warning tags on all battery connectors on the battery-powered equipment that states: "DO NOT DISENGAGE PLUGS UNDER LOAD". This is considered an acceptable alternative method for the Mine No. 2 and Mine No. 3. MSHA grants the petition for modification for the Mine No. 2 and the Mine No. 3 with conditions.

Docket No.: M–2001–026–C.
FR Notice: 66 FR 30232.
Petitioner: Fork Creek Mining Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt air to ventilate active working places and install a carbon monoxide monitoring system as an early warning fire detection system in all belt entries used to carry intake air to a working place. This is considered an acceptable alternative method for Tiny Creek No. 2 Mine. MSHA grants the petition for modification for the Tiny Creek No. 2 Mine with conditions.

Docket No.: M–2001–030–C.
FR Notice: 66 FR 30232.
Petitioner: Independence Coal Company, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles. This is considered an acceptable alternative method for the Justice #1 Mine, Shumate Powellton Mine, Shumate Upper Cedar Grove Mine, Jack's Branch Buffalo CK Mine, Twilight-Chilton R. Mine, Cedar Grove Mine No. 1, Tunnel Mine, and Allegiance Mine. MSHA grants the petition for modification for the Justice #1 Mine, Shumate Powellton Mine, Shumate Upper Cedar Grove Mine, Jack's Branch Buffalo CK Mine, Twilight-Chilton R. Mine, Cedar Grove Mine No. 1, Tunnel Mine, and Allegiance Mine with conditions.

Docket No.: M–2001–039–C.
FR Notice: 66 FR 30233.
Petitioner: Black Beauty Coal Company.
Regulation Affected: 30 CFR 75.1002.

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Summary of Findings: Petitioner's request is to amend the proposed decision and order (PDO) for its previously granted petition, docket number M–2000–138–C. The petitioner requests that paragraph 1 be changed to paragraph 1a and add a paragraph 1b, and that paragraphs 16b, 25, 28, and 32 be amended, and that a paragraph 34 be added. The petitioner's amended alternative method is essentially the same as that approved in the previous PDO for use of the prototype high-voltage continuous miner at the Black Beauty Coal Company's Riola #1 mine, but there are significant differences in the language concerning the method of powering the tram motors of the miner during equipment moves. Other wording changes and additions more closely reflect the electrical design of the Joy 14 CM high-voltage continuous miner and the method used to power the miner during equipment moves. This is considered an acceptable alternative method for the Riola #1 Mine. MSHA grants the petition for modification for the 2400-volt high-voltage continuous miner at the Riola #1 Mine with conditions.

Docket No.: M–2001–040–C.
FR Notice: 66 FR 30233.
Petitioner: Peabody Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2400-volt trailing cables at the working continuous miner section(s) and use a portable transformer to supply power to the 995-volt tramming motors on the continuous miner when the miner is trammed into, out of, or around the mine. This is considered an acceptable alternative method for the Highland Mine. MSHA grants the petition for modification for the 2400-volt high-voltage continuous miner(s) at the Highland Mine with conditions.

Docket No.: M–2001–041–C.
FR Notice: 66 FR 30233.
Petitioner: Appalachian Eagle, Inc.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through oil and gas wells. This is considered an acceptable alternative method for the Mine No. 1. MSHA grants the petition for modification for the use Mine No. 1 with conditions.

Docket No.: M–2001–043–C.
FR Notice: 66 FR 30234.
Petitioner: West Ridge Resources, Inc.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use high-voltage cables for longwall equipment with an insulated internal ground check conductor smaller than a No. 10 (AWG), but not smaller than a No. 16 (AWG). This is considered an acceptable alternative method for the West Ridge Mine. MSHA grants the petition for modification for the use West Ridge Mine with conditions.

Docket No.: M–2001–044–C.
FR Notice: 66 FR 30234.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt equipment inby the last open crosscut at the working longwall sections. This is considered an acceptable alternative method for the Skyline Mine #3. On July 12, 2001, MSHA grants the petition for modification for the 4160-volt longwall system for the Skyline Mine #3 with conditions. On July 12, 2001, MSHA grants "Application for Relief to Give Effect" to July 12, 2001.

Docket No.: M–2001–048–C.
FR Notice: 66 FR 30234.
Petitioner: Appalachian Eagle, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of padlocks on battery-powered machines to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine #1. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the Mine # 1 with conditions.

Docket No.: M–2001–049–C.
FR Notice: 66 FR 30234.
Petitioner: Coastal Coal West Virginia, LLC.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt haulage entries to ventilate active working places and install a carbon monoxide monitoring system as an early warning system in all belt entries used to course intake air to a working place. This is considered an acceptable alternative method for the Whitetail K-Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt haulage entries to be used to ventilate working places at the Whitetail K-Mine with conditions.

Docket No.: M–2001–050–C.
FR Notice: 66 FR 30234.
Petitioner: Mingo Logan Coal Company.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to plug and mine through gas wells. This is considered an acceptable alternative method for the Mountaineer Alma-A-Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil and gas wells penetrating the coal seam being mined and other mineable coal seams using continuous miners, conventional mining or longwall mining methods for the Mountaineer Alma-A-Mine with conditions.

Docket No.: M–2001–051–C.
FR Notice: 66 FR 34464.
Petitioner: Primrose Coal Company #2.
Regulation Affected: 30 CFR 75.1200(d) and (i).
Summary of Findings: Petitioner's proposal is use cross-sections instead of contour lines through the intake slope, at locations of rock tunnel connections between veins, and at 1,000-foot intervals of advance from the intake slope, and to limit the required mapping of the mine workings above and below to those present within 100 feet of the veins being mined except when veins are interconnected to other veins beyond the 100-foot limit through rock tunnels. This is considered an acceptable alternative method for the Buck Mountain Vein Slope Mine. MSHA grants the petition for modification for the Buck Mountain Vein Slope Mine with conditions.

Docket No.: M–2001–053–C.
FR Notice: 66 FR 34465.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs on mobile battery-powered equipment at the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. with conditions.

Docket No.: M–2001–054–C.
FR Notice: 66 FR 34465.
Petitioner: Coastal Coal Company, LLC.
Regulation Affected: 30 CFR 75.900.
Summary of Findings: Petitioner's proposal is to use contactors in lieu of circuit breakers to provide protection against undervoltage, grounded phase, short circuit, and over-current. This is considered an acceptable alternative method for the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1. MSHA grants the petition for modification to allow the use of contractors to provide undervoltage, grounded phase, and overload protection and monitor the grounding conductors for 480-volt belt conveyor drive motors and water pump motors greater than 5 horsepower located in the Red Star Mine No.1, Hip-High Mine No. 1, Lynn Branch Mine No. 1, Black Thunder Mine No. 3, and the Koyle Branch Mine No. 1 with conditions.

Docket No.: M–2001–055–C.
FR Notice: 66 FR 34465.
Petitioner: Mountaineer Coal Development Company. d.b.a. Marrowbone Development Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use 2400-volt AC-powered continuous mining equipment at its Dingess Tunnel No. 1 Deep Mine. This is considered an acceptable alternative method for the Dingess Tunnel No. 1 Deep Mine. On October 22, 2001, MSHA grants the petition for modification for the Dingess Tunnel No. 1 Deep Mine with conditions. On October 26, 2001, MSHA grants "Application for Relief to Give Effect" to October 22, 2001.

Docket No.: M–2001–056–C.
FR Notice: 66 FR 34465.
Petitioner: Speed Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt cables on longwall equipment at its American Eagle Mine. This is considered an acceptable alternative method for the American Eagle Mine. MSHA grants the petition for modification for the American Eagle Mine with conditions.

Docket No.: M–2001–059–C.
FR Notice: 66 FR 34465.
Petitioner: Monterey Coal Company.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use belt entry to ventilate active working places. This is considered an acceptable alternative method for the No. 1 Mine. MSHA grants the petition for modification to allow air coursed through conveyor belt haulage entries to be used to ventilate active working places in longwall development sections and in retreating longwall panels, from a point not less than 8,000 feet from the panel mouth at the No. 1 Mine with conditions.

Docket No.: M–2001–060–C.
FR Notice: 66 FR 34466.
Petitioner: Peabody Energy, Rivers Edge Mining, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 2400-volt trailing cables in the last open crosscut at the working continuous miners section(s).

This is considered an acceptable alternative method for the Rivers Edge Mine. MSHA grants the petition for modification for the Rivers Edge Mine with conditions.

Docket No.: M–2001–062–C.
FR Notice: 66 FR 34466.
Petitioner: Eastern Associated Coal Corporation.
Regulation Affected: 30 CFR 75.1700.
Summary of Findings: Petitioner's proposal is to clean out and prepare oil and gas wells for plugging and to plug all wells that are encountered during normal operations. This is considered an acceptable alternative method for the Harris No. 1 Mine. MSHA grants the petition for modification for mining through or near (whenever the safety barrier diameter is reduced to a distance less than the District Manager would approve pursuant to Section 75.1700) plugged oil or gas wells penetrating the Eagle Coal Seam and other mineable coal seams using continuous miners, conventional mining or longwall methods at the Harris No. 1 Mine with conditions.

Docket No.: M–2001–066–C.
FR Notice: 66 FR 38749.
Petitioner: Branham & Baker Underground Corp.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded device instead of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the Mine #23. MSHA grants the petition for modification for the Mine #23 with conditions.

Docket No.: M–2001–067–C.
FR Notice: 66 FR 38749.
Petitioner: Long Fork Development, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use a permanently installed spring-loaded locking device in lieu of a padlock on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles and to eliminate hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 6 Mine. MSHA grants the petition for modification for the use of permanently installed spring-loaded locking devices in lieu of padlocks on battery plugs at the No. 6 Mine with conditions.

Docket No.: M–2001–068–C.
FR Notice: 66 FR 38749.
Petitioner: Energy West Mining Company.
Regulation Affected: 30 CFR 75.364(b)(1).
Summary of Findings: Petitioner's proposal is to establish evaluation points instead of traveling an area from the top of the Cowin Raise for a distance of approximately three hundred (300) feet inby the intake air course, due to deteriorating adverse roof, deep water conditions. This is considered an acceptable alternative method for the Deer Creek Mine. MSHA grants the petition for modification for evaluation of the unsafe-for-examination intake air course segment (approximately 300 feet) known as the Cowin Raise Area at the Deer Creek Mine with conditions.

Docket No.: M–2001–070–C.
FR Notice: 66 FR 38749.
Petitioner: Consolidation Coal Company.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage 4160-volt cable with in internal ground check conductor smaller than #10 A.W.G. as part of its longwall mining system. This is considered an acceptable alternative method for the Buchanan No. 1 Mine. MSHA grants the petition for modification for the Buchanan No. 1 Mine with conditions.

Docket No.: M–2001–071–C.
FR Notice: 66 FR 38749.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.804(a).
Summary of Findings: Petitioner's proposal is to use a high-voltage cable

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with an internal ground check conductor smaller than No. 10 A.W.G. as part of its longwall mining system. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for the use of high-voltage system at the with conditions.

Docket No.: M–2001–072–C.
FR Notice: 66 FR 38750.
Petitioner: American Energy Corporation.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage 4160-volt cables inby the last open crosscut. This is considered an acceptable alternative method for the Century Mine. MSHA grants the petition for modification for the Century Mine with conditions.

Docket No.: M–2001–076–C.
FR Notice: 66 FR 41891.
Petitioner: Coastal Coal–West Virginia, LLC.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to continuous mining machines with nominal voltage of the power circuits not to exceed 2400-volts. This is considered an acceptable alternative method for the Popular Ridge Mine. On October 22, 2001, MSHA grants the petition for modification for the Popular Ridge Mine with conditions. On October 23, 2001, MSHA grants "Application for Relief to Give Effect to October 22, 2001.

Docket No.: M–2001–079–C.
FR Notice: 66 FR 41892.
Petitioner: Drummond Company, Inc.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to continuous mining machines with nominal voltage of power circuits not to exceed 2,400 volts at its Shoal Mine. This is considered an acceptable alternative method for the Shoal Creek Mine. MSHA grants the petition for modification for the use the 2,400-volt high-voltage continuous miner(s) at the Shoal Creek Mine with conditions.

Docket No.: M–2001–080–C.
FR Notice: 66 FR 41892.
Petitioner: Beech Fork Processing, Inc.
Regulation Affected: 30 CFR 75.503 (18.41(f) of part 18).
Summary of Findings: Petitioner's proposal is to use permanently installed spring-loaded devices instead of padlocks on mobile battery-powered equipment to prevent unintentional loosening of battery plugs from battery receptacles to eliminate the hazards associated with difficult removal of padlocks during emergency situations. This is considered an acceptable alternative method for the No. 5 Mine. MSHA grants the petition for modification for the No. 5 Mine with conditions.

Docket No.: M–2000–040–C.
FR Notice: 65 FR 31610.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.350.
Summary of Findings: Petitioner's proposal is to use the belt entry as the return entry during two-entry longwall panel development, and permit the operator the option of using the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner proposes to install a low-level carbon monoxide monitoring or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course in the primary intake entry. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification for the Skyline Mine No. 3 with conditions.

Docket No.: M–2000–041–C.
FR Notice: 65 FR 31610.
Petitioner: Canyon Fuel Company, LLC.
Regulation Affected: 30 CFR 75.352.
Summary of Findings: Petitioner's proposal is to use the belt entry as the return entry during two-entry longwall panel development, and to allow the operator the option of using the belt haulage entry as an intake entry for additional face ventilation during longwall panel retreat mining. The petitioner proposes to install a low-level carbon monoxide or equivalent product of combustion detection system in all longwall panel belt entries used as an intake or return air course and in the primary intake entry. This is considered an acceptable alternative method for the Skyline Mine No. 3. MSHA grants the petition for modification for the Skyline Mine No. 3 with conditions.

Docket No.: M–2000–116–C.
FR Notice: 65 FR 58820.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1002.
Summary of Findings: Petitioner's proposal is to use high-voltage (4,160-volt) cables in by the last open crosscut and within 150 feet of pillar workings. This is considered an acceptable alternative method for the San Juan South Underground Mine. MSHA grants the petition for modification for the San Juan South Underground Mine with conditions.

Docket No.: M–2000–123–C.
FR Notice: 65 FR 64261.
Petitioner: Dominion Coal Corporation.
Regulation Affected: 30 CFR 75.204(a)(1).
Summary of Findings: Petitioner's proposal is to use special purpose roof bolts that meet the requirements of ASTM F432–83 and ASTM F432–88, instead of using ASTM F432–95 roof bolts. This is considered an acceptable alternative method for the Dominion Mine No. 16, Dominion Mine No. 22, Dominion Mine No. 34, and Dominion Mine No. 36. MSHA grants the petition for modification for the use of Ingersoll Rand's Dyna-Rok roof bolts manufactured under the ASTM Standards F432–83 and F432–88 at the Dominion Mine No. 16, Dominion Mine No. 22, Dominion Mine No. 34, and Dominion Mine No. 36 with conditions.

Docket No.: M–2000–143–C.
FR Notice: 65 FR 75974.
Petitioner: San Juan Coal Company.
Regulation Affected: 30 CFR 75.1909(b)(6).
Summary of Findings: Petitioner's proposal is to operate its diesel road grader without front wheel brakes at a maximum speed of 10 miles per hour, lower the moldboard to increase stopping capability in emergency situations, and train grader operators on how to recognize the appropriate speeds for different road and slope conditions. This is considered an acceptable alternative method for the San Juan South Underground Mine and the San Juan Deep Mine. MSHA grants the petition for modification for the Caterpillar Inc., Model No. 120G, Serial No. 87V08979, diesel grader at the Juan South Underground Mine and the San Juan Deep Mine with conditions.

Docket No.: M–2000–002–M.
FR Notice: 65 FR 31612.
Petitioner: Original Sixteen to One Mine, Inc.
Regulation Affected: 30 CFR 57.11059(b).
Summary of Findings: Petitioner's proposal is to use its permissible combination self-contained breathing apparatus and pressure demand Type C supplied air respirator (MSHA and NIOSH approved TC–13F–146 issued on 4/13/88), in the interest of the health and safety of the hoist operator and the miners without modification, and continue to meet safety standards specific to the Sixteen to One Mine. This is considered an acceptable alternative method for the Original Sixteen to One Mine. MSHA grants the petition for modification for the Original Sixteen to One Mine with conditions.

Docket No.: M–2000–003–M.
FR Notice: 65 FR 40142.
Petitioner: FMC Corporation.
Regulation Affected: 30 CFR 57.22305.
Summary of Findings: Petitioner's proposal is to use a cordless drill or other equivalent drills to install surveying spads in the mine roof to minimize the potential of developing cumulative trauma disorders in the wrists, elbows, and shoulder of the surveyors. The petitioner propose to test for methane before using the drills and if one percent or more of methane is found, drilling will not begin and will be immediately stopped if a level of or greater than one percent methane is found. This is considered an acceptable alternative method for the Westvaco Mine. MSHA grants the petition for modification for the use Westvaco Mine with conditions.

Docket No.: M–2000–010–M.
FR Notice: 66 FR 9724.
Petitioner: ASARCO Incorporated.
Regulation Affected: 30 CFR 57.11055.
Summary of Findings: Petitioner's proposal is to use a vertical ladderway as an emergency escapeway, and as a secondary means of escape within the primary escapeway in the event of an extended power failure or repair to a damage hoist, to avoid hazards that are created by repeated unnecessary mine evacuations. This is considered an acceptable alternative method for the Coy Mine. MSHA grants the petition for modification for the Coy Mine during unplanned hoist outages to allow the Coy shaft ladderway to be designated as an escapeway 337 feet only when the Coy shaft hoist is incapacitated for unplanned reasons with conditions.

[FR Doc. 02–11727 Filed 5–9–02; 8:45 am]
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DEPARTMENT OF LABOR

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of existing safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Consol of Pennsylvania Coal Company

[Docket No. M–2002–039–C]

Consol of Pennsylvania Coal Company, Consol Plaza, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.35 (Portable trailing cables and cords) to its Enlow Fork Mine (I.D. No. 46–07416) located in Greene County, Pennsylvania. The petitioner requests a modification of the existing standard to increase the maximum length of trailing cables supplying power to continuous mining machines be 950 feet. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

2. Cook & Sons Mining, Inc.

[Docket No. M–2002–040–C]

Cook & Sons Mining, Inc., 147 Big Blue Boulevard, Whitesburg, Kentucky 41858 has filed a petition to modify the application of 30 CFR 75.503 (Permissible electric face equipment; maintenance) and 30 CFR 18.41(f) (Plug and receptacle-type connectors) to its Spring Branch #2 Mine, (I.D. No. 15–18287), UZ Deep Mine, (I.D. No. 15–18469), and Nu Enterprise Mine (I.D. No. 15–17481) all located in Letcher County, Kentucky. The petitioner proposes to use a permanently installed spring-loaded locking device to secure battery plugs on mobile battery-powered machines instead of a padlock to prevent unintentional loosening of the battery plugs from battery receptacles, and to eliminate the potential hazards associated with difficult removal of padlocks during emergency situations. The petitioner asserts that application of the existing standard would result in a diminution of safety to the miners and that the proposed alternative method would provide at least the same measure of protection as the existing standard.

3. Independence Coal Company, Inc.

[Docket No. M–2002–041–C]

Independence Coal Company, Inc., HC 78 Box 1800, Madison, West Virginia 25130 has filed a petition to modify the application of 30 CFR 75.1002 (Location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its White Oak Mine (I.D. No. 46–08933), WVOMSHT Permit U–5021–91, located in Boone County, West Virginia. The petitioner proposes to transfer 2,400 volt high-voltage equipment from one mine to another mine within the company. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

4. General Chemical (Soda Ash) Partners (GCSAP)

[Docket No. M–2002–003–M]

General Chemical (Soda Ash) Partners (GCSAP) has filed a petition to modify the application of 30 CFR 57.22305 (Approved equipment (III mines)) to its General Chemical Mine (I.D. No. 48–00155) located in Sweetwater County, Wyoming. The petitioner requests a modification of the existing standard to permit the use of the following non-permissible equipment in or beyond the last open crosscut: (i) A Leica Total Station Model No. TCR307 (6 volt battery), and (ii) a Milwaukee 14.4 Volt ½" Hammer Drill Model No. 0514–20, or equivalent. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as the existing standard.

Request for Comments

Persons interested in these petitions are encouraged to submit comments via e-mail to "*comments@msha.gov*," or on a computer disk along with an original hard copy to the Office of Standards, Regulations, and Variances, Mine Safety and Health Administration, 4015 Wilson Boulevard, Room 627, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before June 10, 2002. Copies of these petitions are available for inspection at that address.

Dated at Arlington, Virginia this 6th day of May 2002.

Marvin W. Nichols, Jr.,
Director, Office of Standards, Regulations, and Variances.

[FR Doc. 02–11726 Filed 5–9–02; 8:45 am]
BILLING CODE 4510–43–P

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10786]

Proposed Amendment to Prohibited Transaction Exemption 92–6 (PTE 92–6) Involving the Transfer of Individual Life Insurance Contracts and Annuities From Employee Benefit Plans to Plan Participants, Certain Beneficiaries of Plan Participants, Personal Trusts, Employers and Other Employee Benefit Plans

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of proposed amendment to PTE 92–6.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 92–6. PTE 92–6 is a class exemption that enables an employee benefit plan to sell individual life insurance contracts and annuities to: (1) A plan participant insured under such policies; (2) a relative of such insured participant who

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is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, for the cash surrender value of the contract, provided certain conditions are met. The proposed amendment, if adopted, would affect, among others, certain participants, beneficiaries and fiduciaries of plans engaged in the described transactions.

DATES: If adopted, the proposed amendment would be effective February 12, 1992. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: PTE 92–6 Amendment). Interested persons are also invited to submit comments and/or hearing requests to PWBA via e-mail or FAX. Any such comments or requests should be sent either by e-mail to: "*moffittb@pwba.dol.gov*" or by FAX to (202)219–0204 by the end of the scheduled comment period. The application pertaining to the exemptive relief proposed herein (Application No. D–10786) and the comments received will be available for public inspection in the public Documents Room of the Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–1513, 200 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Gary H. Lefkowitz, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202)693–8540. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 92–6 (57 FR 5189, February 12, 1992), which amended Prohibited Transaction Exemption 77–8 (PTE 77–8) (42 FR 31574, June 21, 1977). PTE 92–6 provides an exemption from the restrictions of section 406(a) and 406(b)(1) and (b)(2) of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Internal Revenue Code of 1986 (the Code), by reason of section 4975(c)(1)(A) through (E) of the Code.

The amendment to PTE 92–6 proposed herein was requested in an exemption application filed by the Chicago, Illinois law firm of Sonnenschein, Nath & Rosenthal on behalf of the General American Life Group (the Applicant). The Department is proposing the amendment pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[1]

A. General Background

The prohibited transaction provisions of the Act generally prohibit various transactions between plans covered by Title I of ERISA and certain related parties with respect to such plans. Specifically, section 406(a)(1)(A) and (D) of the Act states that a fiduciary with respect to a plan shall not cause the plan to engage in a transaction, if he knows or should know that such transaction constitutes a direct or indirect—

(A) sale or exchange, or leasing, of any property between the plan and a party in interest; or

(D) transfer to, or use by or for the benefit of, a party in interest of any assets of the plan.

Accordingly, unless a statutory or administrative exemption is applicable, the sale of a life insurance contract, or annuity contract, by a plan to a party in interest is prohibited.

B. Description of Existing Relief

Section I of PTE 92–6 permits the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A plan participant; (2) a relative of such insured participant who is the beneficiary under the contract; (3) an employer any of whose employees are covered by the plan; or (4) another employee benefit plan, if: (a) Such participant is the insured under the contract; (b) such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and the beneficiary under the contract; (c) the contract would, but for the sale, be surrendered by the plan; (d) with respect to sales of the policy to the employer, a relative of the insured or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative or other plan; (e) the amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and (f) with regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

Section II of PTE 92–6 amended PTE 77–8 to provide that the relief for transactions described in part I would be available, effective October 22, 1986, for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees (as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982), if the conditions set forth in part I are met.

C. Discussion of the Proposed Amendment

The Department, at the request of the Applicant, proposes to amend PTE 92–6 in order to expand the coverage of the exemption to include the sale by an employee benefit plan (the Plan) of an individual life insurance or annuity contract to a personal or private trust (the Trust) established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in section I(2) of PTE 92–6) of the participant. [2]

The Applicant notes that many Plans provide pre-retirement death benefit protection that is funded in whole or in part by the purchase of individual whole life and universal life insurance policies on the lives of the Plan's participants. This is particularly true for Plans of small employers offering a pre-retirement death benefit, which do not have a sufficient number of participants to incur the actuarial risk of premature death of one or more participants in the absence of insurance. In addition, the cash value element of life insurance creates a funding vehicle for post-retirement pension benefits. The Internal Revenue Service has historically permitted Plans to invest in whole life insurance and universal life insurance by establishing specific standards for the provision of incidental death benefits funded by whole and universal life insurance.[3]

In conformity with these tax standards for insurance in Plans, pre-retirement death benefit protection under a Plan typically ceases upon the retirement of a covered participant. At that time, the Plan will need to obtain the policy's cash value to support post-retirement pension benefits, either by converting the policy's cash value to an annuity payment from the issuer of the policy, or realizing such cash value through a surrender of the policy to the issuer, or by a sale of the policy for an amount at least equal to the cash surrender value. Insured death benefit protection supported by policies may also cease before retirement when a participant terminates employment with a vested or partially vested benefit, when a Plan converts its funding method from individual policies to a group contract or to a different funding medium, when a Plan is amended to cease death benefit coverage for participants or for the class of employees to which a particular participant belongs, or when a Plan terminates.

In these circumstances, where a Plan will not continue the Policy in effect, Plans have historically permitted the insured participant, or other persons with consent of the participant, to purchase the policy. Sale of the policy by a Plan to, or for the benefit of, a participant allows the participant (or other owner) to keep the policy death benefit in effect while simultaneously allowing the Plan to realize the policy cash value. Maintaining the death benefit in effect is particularly advantageous where a participant, at the time the policy would otherwise be surrendered, is medically impaired so that he or she is uninsurable or insurable only at substantially higher premium rates (to reflect the higher risk of death) or where the policy contains valuable options or features that cannot be replicated for the same premium cost in the current market. All of the above circumstances, and the advantage to the participants of allowing the Plan to sell the policy to his or her designee in lieu of surrender, were recognized by the Department in granting PTE 77–8 and PTE 92–6.

In many circumstances, the participant will have created a Trust as part of his or her estate plan to hold a policy or policies on his or her life. The Trust beneficiaries are typically the participant's spouse or children or both, or other relatives. The Trust will typically purchase insurance contracts on the life of the participant, including the policy from the Plan, if available, with funds contributed by the participant or by one or more of his relatives. The Trust will almost always be irrevocable (although a right to amend and revoke may be given to a person other than the insured who created the Trust) and will commonly provide for the participant's spouse or another relative, or an independent person, to be the trustee of the Trust. The governing instruments of Trusts holding life insurance policies vary markedly in format (depending on the applicable state law, the types of contracts held, the insured's desired disposition of the proceeds and other Trust assets, the likely tax impact, and the drafter's style).

The principal reason a participant will want someone other than himself or herself to own a policy purchased from a Plan is to conform to the federal estate tax standards for excluding the proceeds of the policy from the participant's gross estate. The aim is for the participant to divest himself or herself of all "incidents of ownership," or never to have had in the first instance any "incidents of ownership," in the policy.[4] In general, this estate tax result can be achieved by having a policy (including all its "incidents of ownership") held by a relative of the participant (as allowed under PTE 92–6), as well as by a Trust. Accordingly, use of a Trust is not necessary for a participant to achieve this estate tax exclusion. However, a participant may prefer that a policy available from a Plan be purchased by a Trust rather than by an individual for a variety of non-tax reasons related to his or her family situation. Having the policy held by a spouse or other relative may expose the policy to undesirable consequences related to probate if, for instance, the owner should become incapacitated or pre-decease the participant. Those participants who are unsure of their own or their relatives' continued capacity to act as owners and stewards of the policy and its proceeds may indeed prefer to have the policy held within a Trust under the control of an independent trustee. In addition, ownership by a spouse or family member subjects the participant's desired ultimate disposition of the policy proceeds to risks associated with changes in family relationships or discord among family members. Also, a policy owned by the participant or relative may be exposed to claims of the owner's future creditors, which result can often be avoided by having the policy held in a properly structured Trust. Finally, a Trust can embody a carefully tailored, intricate dispositive scheme that precisely carries out the participant's intentions. Simply allowing the Plan to sell the policy to a relative or other individual owner will not always reflect what a participant really wants to do.

Based upon the arguments presented by the Applicant and the protections already embodied in PTE 92–6, the Department has determined to amend PTE 92–6 to expand the scope of relief for sales of life insurance policies by Plans. Accordingly, effective February 12, 1992,[5] the proposed amendment to PTE 92–6 would expand the coverage of the exemption to include the sale by a Plan of an individual life insurance or annuity contract to a Trust established by or for the benefit of an individual who is a participant in the Plan and the insured under the policy, or by or for the benefit of one or more relatives (as defined in Section I(2) of PTE 92–6) of the participant.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan; nor does it affect the requirement of section 401(a) of the Code that the plan must operate

[1] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996]) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Code to the Secretary of Labor.

[2] Section 402(a)(1)(A) of the Act prohibits a direct or indirect sale or exchange of any property between a Plan and a party in interest. Section 406(a)(1)(D) of the Act prohibits a transfer to, or use by or for the benefit of, a party in interest, of any assets of the Plan. In most cases, the participant will be a party in interest with respect to the Plan under section 3(14)(H) of the Act, as an employee of an employer any of whose employees are covered by the Plan. In some cases, the participant or relative will also be a party in interest under section 3(14)(A) or (E) as a fiduciary of the Plan, or as an owner of 50% or more of the employer maintaining the Plan. The Trust would be a party in interest under section 3(14)(G) of the Act if 50% or more of the beneficial interest of such Trust is owned or held by persons described in section 3(14)(A) or (E) of the Act.

[3] See, for example, Treas. Reg. Section 1.401–1(b)(1)(i); and Rev. Rul. 66–143, 1966–1 C.B. 79.

[4] See, generally, section 2042 of the Code.

[5] i.e., the date of publication in the **Federal Register** of PTE 92–6.

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for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) This exemption, if granted, would not extend to transactions prohibited under section 406(b)(3) of the Act or section 4975(c)(1)(F) of the Code;

(3) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Requests

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Paperwork Reduction Act

Prohibited Transaction Exemption 92–6 includes a disclosure provision that requires an insured participant to be informed prior to the sale of an applicable life insurance policy. Although this disclosure requirement constitutes a collection of information as defined in the Paperwork Reduction Act of 1995, that collection of information as currently approved under OMB control number 1210–0063 is not substantially or materially altered by the terms of this proposed amendment. Accordingly, no information collection request has been submitted to the Office of Management and Budget in connection with this Notice of Proposed Amendment to PTE 92–6.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 92–6 as set forth below:

I. Effective January 1, 1975, the restrictions of sections 406(a), 406(b)(1) and 406(b)(2) of the Act, and the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale of an individual life insurance or annuity contract by an employee benefit plan to: (1) A participant under such plan; (2) a relative of a participant under such plan; (3) an employer any of whose employees are covered by the plan; (4) another employee benefit plan; or (5) effective February 12, 1992, a trust established by or for the benefit of one or more of the persons described in (1) or (2) above;, if:

(a) Such participant is the insured under the contract;

(b) Such relative is a "relative" as defined in section 3(15) of the Act (or a "member of the family" as defined in section 4975(e)(6) of the Code), or is a brother or sister of the insured (or a spouse of such brother or sister), and such relative or trust is the beneficiary under the contract;

(c) The contract would, but for the sale, be surrendered by the plan;

(d) With respect to sales of the policy to the employer, a relative of the insured, a trust, or another plan, the participant insured under the policy is first informed of the proposed sale and is given the opportunity to purchase such contract from the plan, and delivers a written document to the plan stating that he or she elects not to purchase the policy and consents to the sale by the plan of such policy to such employer, relative, trust or other plan;

(e) The amount received by the plan as consideration for the sale is at least equal to the amount necessary to put the plan in the same cash position as it would have been had it retained the contract, surrendered it, and made any distribution owing to the participant on his vested interest under the plan; and

(f) With regard to any plan which is an employee welfare benefit plan, such plan must not, with respect to such sale, discriminate in form or in operation in favor of plan participants who are officers, shareholders or highly compensated employees.

II. Effective October 22, 1986, the exemption provided for transactions described in part I is available for plan participants who are owner-employees (as defined in section 401(c)(3) of the Code) or shareholder-employees as defined in section 1379 of the Internal Revenue Code of 1954 as in effect on the day before the date of enactment of the Subchapter S Revision Act of 1982) if the conditions set forth in part I are met.

Signed at Washington, DC, this 6th day of May, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–11661 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application Number D–10845]

Proposed Amendment to Prohibited Transaction Exemption 86–128 (PTE 86–128) for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of Proposed Amendment to PTE 86–128.

SUMMARY: This document contains a notice of pendency before the Department of Labor (the Department) of a proposed amendment to PTE 86–128. PTE 86–128 is a class exemption that permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transactions on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions for such accounts when certain conditions are met. Currently, PTE 86–128 generally is not available to any person (or any affiliate thereof) who is a trustee [other than a nondiscretionary trustee], plan administrator or an employer, any of whose employees are covered by the plan. The proposed amendment, if adopted, would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86–128. The proposed amendment would affect participants and beneficiaries of employee benefit plans, fiduciaries with respect to such plans, and other persons engaging in the described transactions.

DATES: If adopted, the proposed amendment will be effective as of the date the granted amendment is published in the **Federal Register**. Written comments and requests for a public hearing should be received by the Department on or before June 24, 2002.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Room N–5649, 200 Constitution Avenue, NW., Washington, DC 20210, (attention: PTE 86–128 Amendment).

FOR FURTHER INFORMATION CONTACT: Christopher Motta, Office of Exemptions Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor, (202) 693–8544. (This is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 86–128 (51 FR 41686, Nov. 18, 1986). PTE 86–128 provides an exemption from the restrictions of section 406(b) [1] of the Employee Retirement Income Security Act of 1974 (ERISA or the Act) and from the taxes imposed by section 4975(a) and (b) of the Code, by reason of section 4975(c)(1)(E) or (F) of the Code.

The amendment to PTE 86–128 proposed herein was requested in an application, dated October 29, 1999, on behalf of the Securities Industry Association (the SIA), a trade association for securities broker-dealers. The Department is proposing the amendment to PTE 86–128 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code, and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990).[2]

Paperwork Reduction Act Analysis

The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and other federal agencies with an opportunity to comment on proposed and continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA 95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Pension and Welfare Benefits Administration is soliciting comments concerning the proposed revision of a currently approved collection of information: Prohibited Transaction Class Exemption 86–128 for Securities Transactions Involving Employee Benefit Plans and Broker-Dealers. A copy of the proposed information collection request (ICR) can be obtained by contacting the Department of Labor Clearance Officer, ATTN: Marlene Howze, at (202) 693–4158.

DATES: Written comments must be submitted on or before July 9, 2002. Comments concerning the ICR should be directed to the Office of Management and Budget, ATTN: Desk Officer for Pension and Welfare Benefits Administration, 725 17th St., NW., Washington, DC.

Desired Focus of Comments

The Department of Labor and OMB are particularly interested in comments that:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected;
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Current Action

Prohibited Transaction Class Exemption 86–128 permits certain persons who serve as fiduciaries for employee benefit plans to effect or execute securities transaction on behalf of those plans, provided that specified conditions are met. The exemption also allows sponsors of pooled separate accounts and other pooled investment funds to use their affiliates to effect or execute securities transactions under certain conditions. The conditions of the existing class exemption include specific information disclosure provisions currently approved under OMB control number 1210–0059.

This proposed amendment would allow a fiduciary that is a plan trustee to engage in a transaction covered by PTE 86–128. The existing PTE 86–128 is generally not available to any person (or any affiliate thereof) who is a trustee, plan administrator, or an employer, any of whose employees are covered by the plan. The proposed amendment would add such trustees, subject to conditions involving (1) the size of the plan, and (2) at least annual reporting to the authorizing fiduciary of each plan of annual brokerage commissions expressed in dollars paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee, and (3) at least annual reporting of average brokerage commissions expressed as cents per share paid to (a) brokerage firms affiliated with the trustee, and (b) brokerage firms unaffiliated with the trustee.

This amendment, if finalized, would result is a larger number of respondents and disclosure requirements that are specific to those respondents. The existing burdens and burden estimated to be associated with the proposed amendment are shown below.

Agency: Department of Labor, Pension and Welfare Benefits Administration

Title: PTE 86–128 for Certain Transactions Involving Employee Benefit Plans and Securities Broker-Dealers

Type of Review: Revision of a currently approved collection OMB Number: 1210–0059

Affected Public: Business or other for-profit; Not-for-profit institutions

Total Respondents: 22,974 existing; 700 proposal; 23,674 total

Total Responses: 542,813 existing; 700 proposal; 543,513 total

Frequency of Response: Quarterly; Annually

Total Annual Burden: 98,158 hours existing; 875 proposal; 99,033 total

Total Annual Cost (Operating & Maintenance): $188,200 (no addition for proposal)

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the information collection request; they will also become a matter of public record.

A. General Background

The prohibited transaction provisions of the Act prohibit certain transactions between a plan and a party in interest

[1] References to section 406 of ERISA as they appear throughout this proposed amendment should be read to refer as well to the corresponding provisions of section 4975 of the Internal Revenue Code of 1986 (the Code).

[2] Section 102 of the Reorganization Plan No. 4 of 1978 (5 U.S.C. App. 1 [1996] generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975 of the Internal Revenue Code of 1986 (the Code) to the Secretary of Labor.

(including a fiduciary) with respect to such plan. Specifically, unless a statutory or administrative exemption is applicable, section 406(a) of ERISA prohibits, among other things: the provision of services between a plan and parties in interest [including fiduciaries] with respect to such plan; and the transfer of assets from a plan to a party in interest with respect to such plan. In addition, unless exempted, section 406(b) of ERISA prohibits, among other things, a fiduciary's dealing with the assets of a plan in his or her own interest. Although section 408(b)(2) of ERISA provides a conditional statutory exemption permitting plans to make reasonable contractual arrangements with parties in interest for the provision of services necessary for plan operations, that exemption does not extend to acts of self-dealing described in section 406(b) of ERISA.

A fiduciary performing both investment management and brokerage services for the same plan is in a position where his or her decision to engage in a portfolio trade on behalf of the plan, as an exercise of fiduciary discretion, would result in the plan paying the fiduciary an additional fee for the provision of the brokerage services. In the Department's view, such a decision involves an act of self-dealing prohibited by ERISA section 406(b) with respect to which section 408(b)(2) of ERISA does not provide relief.

B. Description of Existing Relief

PTE 86–128 provides relief from the restrictions of section 406(b) for a plan fiduciary to use its authority to cause a plan to pay a fee to such fiduciary for effectuating or executing securities transactions as agent for the plan. Section I of PTE 86–128 contains definitions and special rules. Notably, for purposes of this class exemption, a "person" is defined to include "the person and affiliates of the person", and an "affiliate" of a "person" is defined, in part, to include: (1) Any person directly or indirectly controlling, controlled by, or under common control with, the person; (2) any officer, director, partner, employee, relative (as defined in section 3(15) of ERISA), brother, sister, or spouse of a brother or sister, of the person; and (3) any corporation or partnership of which the person is an officer, director or partner.

Section II describes the transactions covered under PTE 86–128, to include: A plan fiduciary using his or her authority to cause a plan to pay a fee for effecting or executing securities transactions to that person as agent for the plan, but only to the extent that such transactions are not excessive, under the circumstances, in either amount or frequency; a plan fiduciary acting as the agent in an agency cross transaction for both the plan and one or more other parties to the transaction; and the receipt by a plan fiduciary of reasonable compensation for effecting or executing an agency cross transaction to which a plan is a party in interest from one or more other parties to the transaction.

Section III contains conditions designed to protect the interests of plan participants and beneficiaries. These conditions require prior authorization to engage in covered transactions and periodic disclosure of the fiduciary's activities to the authorizing plan fiduciary. Section III(a) provides that the person engaging in a covered transaction is not a trustee (other than a nondiscretionary trustee) or an administrator of the plan, or an employer any of whose employees are covered by the plan. The term "person" is defined to include "affiliates" of the person, thus discretionary trustees, plan administrators, sponsoring employers, and their affiliates are generally precluded from relying on the relief provided by the exemption.

Section IV contains exceptions to several of the conditions in section III. Specifically, section IV provides that the conditions of section III do not apply to covered transactions to the extent such transactions are engaged in on behalf of individual retirement accounts which meet the requirement set forth in 29 CFR 2510.3–2(d) or plans, other than training programs, that do not cover any employees within the meaning of 29 CFR 2510.3–3. In addition, section IV provides that the conditions of section III do not apply in the case of agency cross transactions to the extent that the person effecting or executing the transaction: Does not render investment advice to any plan for a fee with respect to the transaction; is not otherwise a fiduciary who has investment discretion with respect to any plan assets involved in the transaction; and does not have the authority to engage, retain or discharge any person who is, or is proposed to be, a fiduciary regarding any such plan assets. Section IV also provides that a plan trustee, plan administrator, or sponsoring employer may engage in a covered transaction if he or she returns or credits to the plan all profits earned by that person in connection with the securities transactions associated with the covered transaction. Finally, Section IV contains special rules for pooled investment funds.

C. Discussion of the Proposed Exemption

The SIA requests an amendment to PTE 86–128 which would enable a discretionary trustee of an ERISA covered plan, or an affiliate of such trustee, to use its fiduciary authority to cause the plan to pay a fee to such trustee for effectuating or executing securities transactions as agent for the plan. The applicant represents that the amendment is necessary since, as a result of the consolidation in the nation's financial services industry, plans are finding it increasingly difficult to select service providers that are unaffiliated with plan trustees. In addition, the applicant notes that banks, as trustees with investment discretion, are currently precluded under PTE 86–128 from using their affiliated broker-dealers to execute securities transactions.

According to the applicant, there has been an increase in the number of discretionary trustees that have affiliates providing brokerage services. The applicant states that, as a result, there are fewer brokers that are not affiliated in some way with a plan trustee. The applicant represents that further consolidation is likely under the Gramm-Leach-Bliley Act, signed into law on November 12, 1999 (Pub. L. 106–102, 113 Stat. 1338 (1999). [3]

The SIA represents that, as a result of this consolidation, the discretionary trustees of larger plans, or affiliated investment managers thereof, often have little choice but to pay the higher transaction costs associated with executing securities transactions only through unaffiliated broker-dealers. In addition, the SIA represents that the investment strategies of certain plans, such as small cap, emerging markets or international investing, are increasingly becoming stunted as the number of available brokers having the requisite specialized expertise decreases. The proposed amendment, the applicant represents, will therefore be beneficial to plans because plan fiduciaries will no longer be forced to: appoint a plan trustee that does not have affiliated investment managers; appoint investment managers that are not affiliated with the trustee; or effect or execute securities transactions only through unaffiliated broker-dealers.

The SIA states that the relief sought in this application was originally

[3] The new law will facilitate cross-ownership and control among bank holding companies and securities firms through the creation of "financial hold companies" that will be permitted to engage in broad range of financial and related activities, including underwriting and dealing activities.

requested in 1986, when the Department replaced PTE 79–1 with PTE 86–128. At that time, the Department granted relief only where the trustee was strictly custodial and had no discretionary powers noting that "as a general matter, the position of a plan trustee may carry with it so great an influence over the general operation of the plan that an independent fiduciary may not be effective in examining critically and objectively multiple service arrangements", (Preamble to PTE 86–128, 51 FR 41686, 41692 (November 18, 1986). However, the SIA represents that the comparative benefits gained by continuing to deny relief to discretionary trustees and their affiliates are at best speculative. They note that federal securities laws and banking laws, and the duties imposed upon fiduciaries by ERISA section 404(a), require that investment managers, regardless of whether they are affiliated with the trustee, seek "best execution" in effecting securities transactions on behalf of plans. The SIA also states that brokerage commissions have become very competitive and very transparent.

Moreover, the SIA represents that the compensation arrangements that investment managers have with plans encourage investment managers to seek "best execution" in effecting securities transactions through affiliated broker-dealers. In this regard, the SIA represents that an investment manager is typically compensated based upon the amount of assets under its management. The SIA represents further that the amount of "assets under management", in turn, is reduced by the brokerage commissions paid by such investment manager. Thus, according to the SIA, investment managers have an incentive to seek "best execution" in effecting securities transactions through affiliated broker-dealers since, to the extent a plan pays higher brokerage commissions than is required under the particular circumstances, the amount of compensation received by the plan's investment manager will be directly impacted by the amount of brokerage commissions paid by the plan.

The SIA is of the opinion that plans can be additionally protected from the risk of discretionary trustees "steering" brokerage to a broker-dealer affiliate by requiring such trustees to disclose annually to an independent fiduciary all brokerage commissions paid to affiliated and unaffiliated broker-dealers. They state that a plan sponsor, advised in writing of the potential conflicts and provided with significant comparative reporting, should be able to oversee the investment manager, regardless of whether the manager is affiliated with the trustee. The SIA notes that the underwriter exemptions [4] provide similar relief to, among others, fiduciaries, including trustees, as long as certain reporting requirements are met and to the extent affected plans meet a minimum size threshold. The SIA represents that a comparable minimum size threshold and certain reporting requirements should adequately protect plans and ensure that the requested relief is in the best interest of affected plans.

Finally, the SIA notes that plan sponsors, especially large ones, have become increasingly sophisticated such that many trustees with broker-dealer affiliates maintain collective investment funds that passively manage portfolios to minimize trading and transaction costs. The SIA represents that, in such instances, the use by discretionary trustees of their own affiliates to provide brokerage services poses very little of the risk previously described by the Department. The SIA represents that, for all of the reasons cited above, it is appropriate for the Department to reconsider its position.

On the basis of the SIA's representations, and after reevaluating the Department's previously expressed concerns, the Department has tentatively concluded that it would be appropriate to extend relief under PTE 86–128 to discretionary plan trustees, provided that certain additional conditions are met. In this regard, the Department believes that a minimum plan size requirement is necessary in order to ensure an appropriate level of plan investor sophistication to monitor the covered transactions. Thus, the Department proposes to limit relief to plans with more than $50 million in assets. While the SIA has agreed to this dollar limitation, it has also suggested that this dollar limitation be reviewed periodically and that the $50 million requirement permit aggregation of all plans of an employer.[5]

Accordingly, the Department is proposing to limit the relief provided to trustees to plans that have net assets valued at least $50 million. In the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million. For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

The Department also proposes that the trustee (other than a nondiscretionary trustee) furnish, at least annually, to the independent fiduciary of each authorizing plan, the following information:

(i) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms affiliated with the trustee;

(ii) The total amount of brokerage commissions, expressed in dollars, paid by the plan (or fund in situations where a plan invests in a pooled fund) to brokerage firms unaffiliated with the trustee;

(iii) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(iv) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee.

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of ERISA and section 4975(c)(2) of the Code does not relieve a fiduciary, or other party in interest or disqualified person with respect to a plan, from certain other provisions of ERISA and the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of ERISA which require, among other things, that a fiduciary discharge his or her duties respecting the plan solely in the interests of the participants and beneficiaries of the plan. Additionally, the fact that a transaction is the subject of an exemption does not affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of

[4] See e.g., PTE 2000–25 (65 FR 35129, June 1, 2000), an individual underwriter exemption which permits purchases of securities by the applicant's asset management affiliate, on behalf of employee benefit plans for which such asset managment affiliate is a fiduciary, from underwriting or selling syndicates where the applicants' broker-dealer affiliate participates as a manager or syndicate member.

[5] PTE 2000–25, Section I (o) provides, in part, that for purposes of meeting the net asset tests, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement * * * may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

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the employer maintaining the plan and their beneficiaries;

(2) This exemption does not extend to transactions prohibited under section 406(a) of the Act;

(3) Before an exemption may be granted under section 408(a) of ERISA and 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries, and protective of the rights of participants and beneficiaries of the plan;

(4) If granted, the proposed amendment is applicable to a particular transaction only if the transaction satisfies the conditions specified in the exemption; and

(5) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

Written Comments and Hearing Request

The Department invites all interested persons to submit written comments or requests for a public hearing on the proposed amendment to the address and within the time period set forth above. All comments received will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection at the above address.

Proposed Amendment

Under section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990), the Department proposes to amend PTE 86–128 as set forth below:

(1) Section III(a) is amended to read: "The person engaging in the covered transaction is not an administrator of the plan, or an employer any of whose employees are covered by the plan.

(2) Adding to Section III new paragraph (h) to read: "(h) A trustee [other than a nondiscretionary trustee] may only engage in a covered transaction with a plan that has total net assets with a value of at least $50 million and in the case of a pooled fund, the $50 million requirement will be met if 50 percent or more of the units of beneficial interest in such pooled fund are held by plans having total net assets with a value of at least $50 million.

For purposes of the net asset tests described above, where a group of plans is maintained by a single employer or controlled group of employers, as defined in section 407(d)(7) of the Act, the $50 million net asset requirement may be met by aggregating the assets of such plans, if the assets are pooled for investment purposes in a single master trust.

(3) Adding to Section III new paragraph (i) to read:

"(i) The trustee (other than a nondiscretionary trustee) engaging in a covered transaction furnishes, at least annually, to the authorizing fiduciary of each plan the following:

(1) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms affiliated with the trustee;

(2) The aggregate brokerage commissions, expressed in dollars, paid by the plan to brokerage firms unaffiliated with the trustee;

(3) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms affiliated with the trustee; and

(4) The average brokerage commissions, expressed as cents per share, paid by the plan to brokerage firms unaffiliated with the trustee."

For purposes of this paragraph (i), the words "paid by the plan" shall be construed to mean "paid by the pooled fund" when the trustee engages in covered transactions on behalf of a pooled fund in which the plan participates.

Signed at Washington, DC, this 6th day of May, 2002.

Ivan L. Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, Department of Labor.

[FR Doc. 02–11662 Filed 5–9–02; 8:45 am]

BILLING CODE 4520–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Once approved by NARA, records schedules provide mandatory instructions on what happens to records when no longer needed for current Government business. They authorize the preservation of records of continuing value in the National Archives of the United States and the destruction, after a specified period, of records lacking administrative, legal, research, or other value. Notice is published for records schedules in which agencies propose to destroy records not previously authorized for disposal or reduce the retention period of records already authorized for disposal. NARA invites 1 public comments on such records schedules, as required by 44 U.S.C. 3303a(a).

DATES: Requests for copies must be received in writing on or before June 24, 2002. Once the appraisal of the records is completed, NARA will send a copy of the schedule. NARA staff usually prepare appraisal memorandums that contain additional information concerning the records covered by a proposed schedule. These, too, may be requested and will be provided once the appraisal is completed. Requesters will be given 30 days to submit comments.

ADDRESSES: To request a copy of any records schedule identified in this notice, write to the Life Cycle Management Division (NWML), National Archives and Records Administration (NARA), 8601 Adelphi Road, College Park, MD 20740–6001. Requests also may be transmitted by FAX to 301–837–3698 or by e-mail to *records.mgt@nara.gov*. Requesters must cite the control number, which appears in parentheses after the name of the agency which submitted the schedule, and must provide a mailing address. Those who desire appraisal reports should so indicate in their request.

FOR FURTHER INFORMATION CONTACT: Marie Allen, Director, Life Cycle Management Division (NWML), National Archives and Records Administration, 8601 Adelphi Road, College Park, MD 20740–6001. Telephone: (301) 713–7110. E-mail: *records.mgt@nara.gov*.

SUPPLEMENTARY INFORMATION: Each year Federal agencies create billions of records on paper, film, magnetic tape, and other media. To control this accumulation, agency records managers prepare schedules proposing retention periods for records and submit these schedules for NARA's approval, using the Standard Form (SF) 115, Request for Records Disposition Authority. These schedules provide for the timely transfer into the National Archives of historically valuable records and authorize the disposal of all other records after the agency no longer needs them to conduct its business. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. Most schedules, however, cover records of only one office or program or a few series of records. Many of these update previously approved schedules, and some include records proposed as permanent.

No Federal records are authorized for destruction without the approval of the Archivist of the United States. This approval is granted only after a thorough consideration of their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and whether or not they have historical or other value.

Besides identifying the Federal agencies and any subdivisions requesting disposition authority, this public notice lists the organizational unit(s) accumulating the records or indicates agency-wide applicability in the case of schedules that cover records that may be accumulated throughout an agency. This notice provides the control number assigned to each schedule, the total number of schedule items, and the number of temporary items (the records proposed for destruction). It also includes a brief description of the temporary records. The records schedule itself contains a full description of the records at the file unit level as well as their disposition. If NARA staff has prepared an appraisal memorandum for the schedule, it too includes information about the records. Further information about the disposition process is available on request.

Schedules Pending

1. Department of the Air Force, Agency-wide (N1–AFU–02–9, 96 items, 96 temporary items). Electronic versions of temporary records relating to developmental engineering, acquisition, contracting, and financial management. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as industrial equipment, supply quality assurance, purchase requests, contract performance, contractor personnel, and the tracking and status of audits.

2. Department of the Air Force, Agency-wide (N1–AFU–02–10, 72 items, 72 temporary items). Electronic versions of temporary records relating to security and law enforcement, medical matters, chaplain activities, historical and museum programs, and command policy. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as information security activities, facilities security, veterinary services, nursing, dental x-rays, chaplain funds, historical research and reference, museum operations, inspector general administrative reports, inspection checklists, and congressional travel.

3. Department of the Air Force, Agency-wide (N1–AFU–02–11, 73 items, 73 temporary items). Electronic versions of temporary records relating to personnel matters. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as financial disclosure reporting, drug abuse treatment programs, the issuance of passes and other credentials, personnel strength reporting, family support programs, recruitment activities, re-enlistment and retention, and promotion actions.

4. Department of the Air Force, Agency-wide (N1–AFU–02–12, 78 items, 78 temporary items). Electronic versions of temporary records relating to personnel matters. Included are electronic copies of documents created using electronic mail and word processing as well as electronic records that supplement or replace paper records already approved for disposal. Records relate to such matters as overall civilian personnel management policies and procedures, staffing of civilian positions, personnel selection and placement, career development, performance appraisals, position classification, honors and awards, family services programs, and the training of uniformed personnel.

5. Department of Commerce, National Oceanic and Atmospheric Administration (N1–370–02–1, 3 items, 3 temporary items). Records documenting market surveys and statistics relating to fish and the fishery industry. Included are statistical data files, survey operations files, and electronic copies of records created using electronic mail and word processing.

6. Department of Defense, Defense Threat Reduction Agency (N1–374–02–2, 10 items, 5 temporary items). Administrative correspondence and memorandums, electronic calendars, and an electronic correspondence tracking system accumulated by the Office of the Director. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of speech transcripts, briefing materials, calendars, policy and precedent files, and mission-related chronological files.

7. Department of Energy, Spent Nuclear Fuels Program (N1–434–01–3, 8 items, 8 temporary items). Records relating to offsite storage facilities, the licensing of independent spent fuel storage installations, proposed shipments that never were sent, and the support of spent fuels programs. Also included are electronic copies of documents created using electronic mail and word processing.

8. Department of the Navy, Agency-wide (N1–NU–02–6, 6 items, 4 temporary items). Records relating to the Alcohol and Drug Management Information Tracking System, a database containing information about individuals treated for abuse of drugs or alcohol. Included are source documents, output summary reports, and other output records. Also included are electronic copies of documents created by using electronic mail and word processing. Proposed for permanent retention are the electronic master files and the technical documentation relating to the system.

9. Department of State, Bureau of Political-Military Affairs (N1–59–01–19, 12 items, 8 temporary items). Records of the Office of Contingency Planning and Peacekeeping relating to interagency exercises and the office's weekly activities. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are recordkeeping copies of subject files, regional/country files, political-military plans, and complex contingency operation files.

10. Department of Transportation, Federal Aviation Administration (N1–237–01–2, 10 items, 10 temporary items). Records of the Office of Aviation Medicine relating to the development and implementation of drug and alcohol abuse prevention programs. Included are records relating to such matters as random drug testing, program certifications, the approval of plans, and investigations and inspections. Also included are electronic copies of documents created using electronic mail and word processing.

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51–02–1, 6 items, 2 temporary items). Electronic copies of documents created using word processing relating to legislation. Recordkeeping copies of public and private legislation files are proposed for permanent retention.

12. Federal Reserve System, Board of Governors (N1–82–02–1, 34 items, 33 temporary items). Records relating to Board oversight of Reserve Bank operations and services, including such matters as examinations and reviews of Reserve Banks, financial accounting, currency orders, Reserve Bank budgeting, equipment and facilities acquisition, and human resources activities. Also included are electronic copies of documents created using electronic mail and word processing. Proposed for permanent retention are architectural and engineering plans for Federal Reserve Bank buildings.

Dated: May 6, 2002.

Michael J. Kurtz,

Assistant Archivist for Record Services—Washington, DC.

[FR Doc. 02–11728 Filed 5–9–02; 8:45 am]

BILLING CODE 7515–01–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB Review; Comment Request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 8563 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register.**

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov.* Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send email to *splimpto@nsf.gov.*

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: National Science Foundation Science Honorary Awards.

OMB Control No.: 3145–0035.

Abstract: The National Science Foundation (NSF) administers several honorary awards, among them the President's National Medal of Science, the Alan T. Waterman Award, the NSB Vannevar Bush Award, and the NSB Public Service Award.

Use of the Information: The Foundation has the following honorary award programs:

• President's National Medal of Science. Statutory authority for the President's National Medal of Science is contained in 42 U.S.C. 1881 Pub. L. 86–209), which established the award and stated that "(t)he President shall * * * award the Medal on the recommendations received from the National Academy of Sciences or on the basis of such other information and evidence as * * * appropriate."

Subsequently, Executive Order 10961 specified procedures for the Award by establishing a National Medal of Science Committee which would "receive recommendations made by any other nationally representative scientific or engineering organization." On the basis of these recommendations, the Committee was directed to select its candidates and to forward its recommendations to the President.

In 1962, to comply with these directives, the Committee initiated a solicitation form letter to invite these nominations. In 1979, the Committee initiated a nomination form as an attachment to the solicitation letter. A slightly modified version of the nomination form was used in 1980. The Committee agreed that such a form standardized the nomination format, benefiting the nominator, making the Committee's review process more efficient and permitted better staff work in a shorter period of time. Form NSF–1122 will be used to further standardize the nomination procedures, thus continuing to allow for more effective committee review, and permitting better staff work in a shorter period of time.

The Committee has established the following guidelines for selection of candidates:

1. The total impact of an individual's work on the present state of physical, biological, mathematical, engineering, or social and behavioral sciences is to be the principal criterion.

2. Achievement of an unusually significant nature in relation to the potential effects of such achievement on the development of scientific thought.

3. Unusually distinguished service in the general advancement of science and engineering, when accompanied by substantial contributions to the content of science at some time.

4. Recognition by peers within the scientific community.

5. Contributions to innovation and industry.

6. Influence on education through publications, students.

7. Must be a U.S. citizen or permanent resident who has applied for citizenship.

Nominations remain active for a period of four years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the Committee.

Nomination forms should be typewritten, single-spaced using a font no smaller than 12 characters per inch. Renominations may be submitted via an updated nomination form.

• Alan T. Waterman Award. Congress established the Alan T. Waterman Award in August 1975 (42 U.S.C. 1881a (Pub. L. 94–86) and authorized NSP to "establish the Alan T. Waterman Award for resrach or advanced study in any of

the sciences or engineering" to mark the 25th anniversary of the National Science Foundation and to honor its first Director. The annual award recognizes an outstanding young researcher in any field of science or engineering supported by NSF. In addition to a medal, the awardee receives a grant of $500,000 over a three-year period for scientific research or advanced study in the mathematical, physical, medical, biological, engineering, social, or other sciences at the institution of the recipient's choice.

The Alan T. Waterman Award Committee was established by NSF to comply with the directive contained in Public Law 94–86. The Committee solicits nominations from members of the National Academy of Sciences, National Academy of Engineering, scientific and technical organizations, and any other source, public or private, as appropriate.

In 1976, the Committee initiated a form letter to solicit these nominations. In 1980, a nomination form was used which standardized the nomination procedures, allowed for more effective Committee review, and permitted better staff work in a short period of time. On the basis of its review, the Committee forwards its recommendations to the Director, NSF, and the National Science Board (NSB).

Candidates must be U.S. citizens or permanent residents and must be 35 years of age or younger or not more than seven years beyond receipt of the PhD degree by December 31 of the year in which they are nominated. Candidates should have demonstrated exceptional individual achievements in scientific or engineering research of sufficient quality to place them at the forefront of their peers. Criteria include originality, innovation, and significant impact on the field.

• Vannevar Bush Award. The NSB established the Vannevar Bush Award in 1980 to honor Dr. Bush's unique contributions to public service. The annual award recognizes an individual who, through public service activities in science and technology, has made an outstanding "contribution toward the welfare of mankind and the Nation."

The NSB ad hoc Vannevar Bush Award Committee annually solicits nominations from selected scientific engineering and educational societies. Candidates must be a senior stateperson who is an American citizen and meets two or more of the following criteria:

1. Distinguished him/herself through public service activities in science and technology.

2. Pioneered the exploration, charting and settlement of new frontiers in science, technology, education and public service.

3. Leadership and creativity has inspired others to distinguished careers in science and technology.

4. Contributed to the welfare of the Nation and mankind through activities in science and technology.

5. Leadership and creativity has helped mold the history of advancements in the Nation's science, technology, and education.

Nomination submissions are in letter format, accompanied by a curriculum vitae (without publication), a brief citation summarizing the nominee's scientific or technological contributions to our national welfare in promotion of the progress of science, and two reference letters. Nominations remain active for three years, including the year of nomination.

• NSB Public Service Award. The NSB Public Service Award Committee was established in November 1996. This annual award recognizes people and organizations who have increased the public understanding of science or engineering. The award is given to an individual and to a group (company, corporation, or organization), but not to members of the U.S. Government.

Eligibility includes any individual or group (company, corporation or organization) that has increased the public understanding of science or engineering. Members of the U.S. Government are not eligible for consideration.

Candidates for the individual and group (company, corporation or organization) award must have made contributions to public service in areas other than research, and should meet one or more of the following criteria:

1. Increased the public's understanding of the processes of science and engineering through scientific discovery, innovation and its communication to the public.

2. Encouraged others to help raise the public understanding of science and technology.

3. Promoted the engagement of scientists and engineers in public outreach and scientific literacy.

4. Contributed to the development of broad science and engineering policy and its support.

5. Influenced and encouraged the next generation of scientist and engineers.

6. Achieved broad recognition outside the nominee's area of specialization.

7. Fostered awareness of science and technology among broad segments of the population.

Nomination procedures:

1. Prepare a summary of the nominee's activities as they relate to the selection criteria. Include the nominator's name, address and telephone number, and the name, address, and telephone number of the nominee, as well as the nominee's vita, if appropriate (no more than three pages).

2. The selection committee recommends the most outstanding candidate(s) for each category to the NSB, which approves the awardees.

3. Nominations remain active for a period of three years, including the year of nomination. After that time, candidates must be renominated with a new nomination package for them to be considered by the selection committee.

4. Nominations should be mailed or faxed to the NSB Public Service Award Advisory Committee. Electronic mail does not protect confidentiality and should not be used for this purpose.

Estimate of Burden: These are annual award programs with application deadlines varying according to the program. Public burden also may vary according to program; however, it is estimated that each submission is averaged to be 15 hours per respondent for each program. If the nominator is thoroughly familiar with the scientific background of the nominee, time spent to complete the nomination may be considerably reduced.

Respondents: Individuals, businesses or other for-profit organizations, universities, non-profit institutions, and Federal and State governments.

Estimated Number of Responses per Award: 137 responses, broken down as follows: For the President's National Medal of Science, 55; for the Alan T. Waterman Award, 50; for the Vannevar Bush Award, 12; for the Public Service Award, 20.

Estimated Total Annual Burden on Respondents: 1,242 hours, broken down by 450 hours for the President's National Medal of Science (10 hours per 45 respondents); 600 hours for the Alan T. Waterman Award (10 hours per 60 respondents); 72 hours for the Vannevar Bush Award (6 hours per 12 respondents); and 120 hours for the Public Service Award (6 hours per 20 respondents.

Frequency of Responses: Annually.

Dated: May 6, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11732 Filed 5–9–02; 8:45 am]

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NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering, Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Computer and Information Science and Engineering (1115).

Date/Time: May 31, 2002: 8:30 a.m. to 4 p.m.

Place: National Foundation, 4201 Wilson Blvd., Room 1235, Arlington, VA.

Type of Meeting: Open.

Contact Person: Gwen Barber-Blount, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, National Science Foundation, 4201 Wilson Blvd., Suite 1105, Arlington, Va 22230. Telephone: (703) 292–8900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community. To provide advice to the Assistant Director/CISE on issues related to long range planning, and to form ad hoc subcommittees to carry out needed studies and tasks.

Agenda: report from the Assistant Director. Discussion of Information Technology Research, CISE Programs and CISE Budget.

Dated: May 7, 2002.

Susanne Bolton,

Committee Management Officer.

[FR Doc. 02–11733 Filed 5–9–02; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–369 and 50–370]

Duke Energy Corporation; McGuire Nuclear Station, Units 1 and 2; Notice of Availability of the Draft Supplement 8 to the Generic Environmental Impact Statement and Public Meeting for the License Renewal of McGuire Units 1 and 2

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a draft plant-specific supplement to the Generic Environmental Impact Statement (GEIS), NUREG–1437, regarding the renewal of operating licenses NPF–9 and NPF–17 for an additional 20 years of operation at McGuire Nuclear Station, Units 1 and 2 (McGuire). McGuire is located in Mecklenburg County, North Carolina. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources.

The draft supplement to the GEIS is available electronically for public inspection in the NRC Public Document Room located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records (PARS) component of NRC's document system (ADAMS). ADAMS is accessible from the NRC Web site at *http://www.nrc.gov/reading-rm.html* (the Public Electronic Reading Room). If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. In addition, the J. Murrey Atkins Library at the University of North Carolina—Charlotte, has agreed to make the draft supplement to the GEIS available for public inspection.

Any interested party may submit comments on the draft supplement to the GEIS for consideration by the NRC staff. To be certain of consideration, comments on the draft supplement to the GEIS and the proposed action must be received by August 2, 2002. Comments received after the due date will be considered if it is practical to do so, but the NRC staff is able to assure consideration only for comments received on or before this date. Written comments on the draft supplement to the GEIS should be sent to: Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001.

Comments may be hand-delivered to the NRC at 11545 Rockville Pike, Rockville, Maryland, between 7:45 a.m. and 4:15 p.m. on Federal workdays. Electronic comments may be submitted to the NRC by the Internet at *McGuireEIS@nrc.gov*. All comments received by the Commission, including those made by Federal, State, and local agencies, Indian tribes, or other interested persons, will be made available electronically at the Commission's Public Document Room in Rockville, Maryland and from the Publicly Available Records (PARS) component of NRC's document system (ADAMS).

The NRC staff will hold a public meeting to present an overview of the draft plant-specific supplement to the GEIS and to accept public comments on the document. The public meeting will be held in the auditorium at the Central Piedmont Community College, at 11920 Verhoeff Road, Huntersville, North Carolina on June 12, 2002. There will be two sessions to accommodate interested parties. The first session will commence at 1:30 p.m. and will continue until 4:30 p.m. The second session will commence at 7 p.m. and will continue until 10 p.m. Both meetings will be transcribed and will include (1) a presentation of the contents of the draft plant-specific supplement to the GEIS, and (2) the opportunity for interested government agencies, organizations, and individuals to provide comments on the draft report. Additionally, the NRC staff will host informal discussions one hour prior to the start of each session at the same location. No comments on the draft supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may pre-register to attend or present oral comments at the meeting by contacting Mr. James H. Wilson by telephone at 1–800–368–5642, extension 1108, or by Internet to the NRC at *McGuireEIS@nrc.gov* no later than June 7, 2002. Members of the public may also register to provide oral comments within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Wilson's attention no later than June 7, 2002, to provide the NRC staff adequate notice to determine whether the request can be accommodated.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Wilson, License Renewal and Environmental Impacts Program, Division of Regulatory Improvement Programs, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Mr. Wilson may be contacted at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 7th day of May, 2002.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11748 Filed 5–9–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District, Fort Calhoun Station, Unit 1; Notice of Intent To Prepare an Environmental Impact Statement and Conduct Scoping Process

Omaha Public Power District (OPPD) has submitted an application for renewal of Facility Operating License No. DPR–40 for an additional 20 years of operation at the Fort Calhoun Station (FCS), Unit 1. FCS is located in Washington County, Nebraska, approximately 19 miles north-northwest of Omaha, Nebraska. The application for renewal was submitted by letter dated January 9, 2002, pursuant to 10 CFR part 54, and updated on January 18, 2002. A notice of receipt of application, including the environmental report (ER), was published in the **Federal Register** on February 12, 2002 (67 FR 6551). A notice of acceptance for docketing of the application for renewal of the facility operating license was published in the **Federal Register** on April 16, 2002 (67 FR 18639), and modified on April 22, 2002 (67 FR 19599). The purpose of this notice is to inform the public that the U.S. Nuclear Regulatory Commission (NRC) will be preparing an environmental impact statement in support of the review of the license renewal application and to provide the public an opportunity to participate in the environmental scoping process as defined in 10 CFR 51.29.

In accordance with 10 CFR 54.23 and 10 CFR 51.53(c), OPPD submitted the ER as part of the application. The ER was prepared pursuant to 10 CFR part 51 and is available for public inspection at the NRC Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, or from the Publicly Available Records component of NRC's document system (ADAMS). ADAMS is accessible at *http://www.nrc.gov/reading-rm/adams.html*, which provides access through the NRC's Public Electronic Reading Room (PERR) link. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, or 301–415–4737, or by e-mail to *pdr@nrc.gov*. The application may also be viewed on the Internet at *http://www.nrc.gov/reactors/operating/licensing/renewal/applications/ft-calhoun.html*. In addition, the W. Dale Clark Library, located at 215 South 15th Street, Omaha, NE 68102, and the Blair Public Library, located at 210 South 17th Street, Blair, NE 68008–2055, have agreed to make the ER available for public inspection.

This notice advises the public that the NRC intends to gather the information necessary to prepare a plant-specific supplement to the Commission's "Generic Environmental Impact Statement (GEIS) for License Renewal of Nuclear Plants," (NUREG–1437) in support of the review of the application for renewal of the FCS operating license for an additional 20 years. Possible alternatives to the proposed action (license renewal) include no action and reasonable alternative energy sources. Section 51.95 of 10 CFR requires that the NRC prepare a supplement to the GEIS in connection with the renewal of an operating license. This notice is being published in accordance with the National Environmental Policy Act (NEPA) and the NRC's regulations found in 10 CFR part 51.

The NRC will first conduct a scoping process for the supplement to the GEIS and, as soon as practicable thereafter, will prepare a draft supplement to the GEIS for public comment. Participation in this scoping process by members of the public and local, State, and Federal government agencies is encouraged. The scoping process for the supplement to the GEIS will be used to accomplish the following:

a. Define the proposed action which is to be the subject of the supplement to the GEIS.

b. Determine the scope of the supplement to the GEIS and identify the significant issues to be analyzed in depth.

c. Identify and eliminate from detailed study those issues that are peripheral or that are not significant.

d. Identify any environmental assessments and other environmental impact statements (EISs) that are being or will be prepared that are related to but are not part of the scope of the supplement to the GEIS being considered.

e. Identify other environmental review and consultation requirements related to the proposed action.

f. Indicate the relationship between the timing of the preparation of the environmental analyses and the Commission's tentative planning and decision-making schedule.

g. Identify any cooperating agencies and, as appropriate, allocate assignments for preparation and schedules for completing the supplement to the GEIS to the NRC and any cooperating agencies.

h. Describe how the supplement to the GEIS will be prepared, including any contractor assistance to be used.

The NRC invites the following entities to participate in the scoping process:

a. The applicant, Omaha Public Power District.

b. Any Federal agency that has jurisdiction by law or special expertise with respect to any environmental impact involved, or that is authorized to develop and enforce relevant environmental standards.

c. Affected State and local government agencies, including those authorized to develop and enforce relevant environmental standards.

d. Any affected Indian tribe.

e. Any person who requests or has requested an opportunity to participate in the scoping process.

f. Any person who intends to petition for leave to intervene.

In accordance with 10 CFR 51.26, the scoping process for an EIS may include a public scoping meeting to help identify significant issues related to a proposed activity and to determine the scope of issues to be addressed in an EIS. The NRC has decided to hold public meetings for the FCS license renewal supplement to the GEIS. The scoping meetings will be held at the Days Hotel, 10909 M Street, Omaha, Nebraska, on Tuesday, June 18, 2002. There will be two sessions to accommodate interested parties. The first session will convene at 1:30 p.m. and will continue until 4:30 p.m., as necessary. The second session will convene at 7 p.m. with a repeat of the overview portions of the meeting and will continue until 10 p.m., as necessary. Both meetings will be transcribed and will include (1) an overview by the NRC staff of the National Environmental Policy Act (NEPA) environmental review process, the proposed scope of the supplement to the GEIS, and the proposed review schedule; (2) an overview by OPPD of the proposed action; and (3) the opportunity for interested Government agencies, organizations, and individuals to submit comments or suggestions on the environmental issues or the proposed scope of the supplement to the GEIS. Additionally, the NRC staff will host informal discussions one hour before the start of each session at the Days Hotel. No comments on the proposed scope of the supplement to the GEIS will be accepted during the informal discussions. To be considered, comments must be provided either at the transcribed public meetings or in writing, as discussed below. Persons may register to attend or present oral comments at the meetings on the scope

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of the NEPA review by contacting Mr. Thomas J. Kenyon by telephone at 1 (800) 368–5642, extension 1120, or by Internet to the NRC at *Ft_Calhoun_EIS@nrc.gov* no later than June 5, 2002. Members of the public may also register to speak at the meeting within 15 minutes of the start of each session. Individual oral comments may be limited by the time available, depending on the number of persons who register. Members of the public who have not registered may also have an opportunity to speak, if time permits. Public comments will be considered in the scoping process for the supplement to the GEIS. If special equipment or accommodations are needed to attend or present information at the public meeting, the need should be brought to Mr. Kenyon's attention no later than June 5, 2002, so that the NRC staff can determine whether the request can be accommodated.

Members of the public may send written comments on the environmental scope of the FCS license renewal review to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mailstop T–6 D 59, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. To be considered in the scoping process, written comments should be postmarked by July 10, 2002. Electronic comments may be sent by the Internet to the NRC at *Ft_Calhoun_EIS@nrc.gov*. Electronic submissions should be sent no later than July 10, 2002, to be considered in the scoping process. Comments will be available electronically and accessible through the NRC's Public Electronic Reading Room (PERR) link *HTTP://www.nrc.gov/reading-rm/adams.html*.

Participation in the scoping process for the supplement to the GEIS does not entitle participants to become parties to the proceeding to which the supplement to the GEIS relates. Notice of opportunity for a hearing regarding the renewal application was the subject of the aforementioned **Federal Register** notice of acceptance for docketing. Matters related to participation in any hearing are outside the scope of matters to be discussed at this public meeting.

At the conclusion of the scoping process, the NRC will prepare a concise summary of the determination and conclusions reached, including the significant issues identified, and will send a copy of the summary to each participant in the scoping process. The summary will also be available for inspection through the PERR link. The staff will then prepare and issue for comment the draft supplement to the GEIS, which will be the subject of separate notices and separate public meetings. Copies will be available for public inspection at the above-mentioned addresses, and one copy per request will be provided free of charge. After receipt and consideration of the comments, the NRC will prepare a final supplement to the GEIS, which will also be available for public inspection.

Information about the proposed action, the supplement to the GEIS, and the scoping process may be obtained from Mr. Kenyon at the aforementioned telephone number or e-mail address.

Dated at Rockville, Maryland, this 6th day of May 2002.

For the Nuclear Regulatory Commission.

John R. Tappert,

Acting Program Director, License Renewal and Environmental Impacts, Division of Regulatory Improvement Programs, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11747 Filed 5–9–02; 8:45 am]

BILLING CODE 7590–01–P

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Statement Regarding Contributions and Support.
(2) *Form(s) submitted:* G–134.
(3) *OMB Number:* 3220–0099.
(4) *Expiration date of current OMB clearance:* 6/30/2002.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households.
(7) *Estimated annual number of respondents:* 100.
(8) *Total annual responses:* 100.
(9) *Total and reporting hours:* 259.
(10) *Collection description:* Dependency on the employee for one-half support at the time of the employee's death can be a condition affecting eligibility for a survivor annuity provided for under Section 2 of the Railroad Retirement Act. One-half support is also a condition which may negate the public pension offset in Tier 1 for a spouse or widow(er).

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rust Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington DC 20450.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11763 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–1–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* RUIA Claims Notification System.
(2) *Form(s) submitted:* ID–4k.
(3) *OMB Number:* 3220–0171.
(4) *Expiration date of current OMB clearance:* 6/30/2002.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Business or other for-profit.
(7) *Estimated annual number of respondents:* 669.
(8) *Total annual responses:* 18,600.
(9) *Total annual reporting hours:* 460.
(10) *Collection description:* Section 5(b) of the RUIA requires that effective January 1, 1990, "when a claim for benefits is filed with the Railroad Retirement Board (RRB), the RRB shall provide notice of such claim to the claimant's base year employer(s) and afford such employer(s) an opportunity to submit information relevant to the claim".

Additional Information or Comments: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20503.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11764 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Railroad Retirement Board (RRB) has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Availability for Work.
(2) *Form(s) submitted:* UI–38, UI–38s, ID–8k.
(3) *OMB Number:* 3220–0164.
(4) *Expiration date of current OMB clearance:* 7/31/2002.
(5) *Type of request:* Extension of a currently approved collection.
(6) *Respondents:* Individuals or households, non-profit institutions.
(7) *Estimated annual number of respondents:* 7,600.
(8) *Total annual responses:* 7,600.
(9) *Total annual reporting hours:* 1,085.
(10) *Collection description:* Under Section 1(k) of the Railroad Unemployment Insurance Act, unemployment benefits are not payable for any day in which the claimant is not available for work. The collection obtains information needed by the to determine whether a claimant is willing and ready to work.

FOR FURTHER INFORMATION CONTACT: Copies of the forms and supporting documents can be obtained from Chuck Mierzwa, the agency clearance officer (312–751–3363). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois, 60611–2092 and to the OMB Desk Officer for the RRB, at the Office of Management and Budget, Room 10230, New Executive Office Building, Washington, DC 20502.

Chuck Mierzwa,

Clearance Officer.

[FR Doc. 02–11765 Filed 5–9–02; 8:45 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27526]

Filings Under the Public Utility Holding Company Act of 1935, as amended ("Act")

May 3, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by May 28, 2002, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After May 28, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Reliant Energy, Inc., et al. (70–9895)

Reliant Energy, Incorporated ("REI"), a Texas public-utility holding company exempt by order under section 3(a)(2) of the Act,[1] and its wholly owned Texas subsidiary company formed for purposes of the transactions described in this filing, CenterPoint Energy, Inc. ("New REI") (together, "Applicants"), 1111 Louisiana, Houston, TX 77002, have filed an amended and restated application-declaration under sections 3(a)(1), 6, 7, 9(a), 10, 12(b), 12(c), 12(f) and 13 and rules 43, 44, 45, 46, 52, 54, 90 and 91 of the Act in connection with a corporate restructuring ("Restructuring") of REI. On November 2, 2001, the Commission issued a notice of the proposed Restructuring.[2] The nature of the requested authority has now changed because New REI proposes to register as a holding company under section 5 of the Act. New REI will register following the Electric Restructuring (described and defined below).

I. Introduction

A. Background

REI is a Texas electric utility company and a combination electric and gas public-utility holding company. Through its unincorporated HL&P division (the "HL&P Division"), REI generates, purchases, transmits and distributes electricity to approximately 1.7 million customers in Texas. REI primarily serves a 5,000-square mile area on the Texas Gulf Coast, including the Houston metropolitan area. All of REI's electric generation and operating properties are located in Texas. For the year ended December 31, 2001, HL&P reported operating income of $1.091 billion on total operating revenues of $5.5 billion.

As an electric utility, the HL&P Division is subject to regulation by the Public Utility Commission of Texas (the "Texas Commission") and to the provisions of the Texas Act, as that term is defined below. REI is a member of the Electric Reliability Council of Texas, Inc. ("ERCOT"), which provides the function of "Independent System Operator" for its member utilities.[3]

REI conducts natural gas distribution operations through three unincorporated divisions of its wholly owned gas utility subsidiary, Reliant Energy Resources Inc. ("GasCo"): (1) The Entex Division, which serves approximately 1.5 million customers, located in Texas (including the Houston metropolitan area), Louisiana and Mississippi; (2) the Arkla Division, which serves approximately 716,600 customers located in Texas, Louisiana, Arkansas, and Oklahoma; and (3) the Minnegasco Division, which serves approximately 711,000 customers in Minnesota. The largest communities served by Arkla are the metropolitan areas of Little Rock, Arkansas and Shreveport, Louisiana. Minnegasco serves the Minneapolis metropolitan area.

The Entex Division is subject to regulation by the Texas Railroad Commission, the Louisiana Public Service Commission (the "Louisiana

[1] *Houston Industries*, Holding Co. Act Release No. 26744 (July 24, 1997).

[2] *See* Holding Co. Act Release No. 27462.

[3] ERCOT represents a bulk electric system located entirely within Texas. Because of the intrastate status of their operations, the primary regulatory authority for the HL&P Division and ERCOT is the Texas Commission, although the Federal Energy Regulatory Commission exercises limited authority.

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Commission") and the Mississippi Public Service Commission. The Arkla Division is subject to regulation by the Texas Railroad Commission, the Louisiana Commission, the Arkansas Public Service Commission and the Corporation Commission of the State of Oklahoma. The Minnegasco Division is subject to regulation by the Minnesota Public Utilities Commission.

For the year ended December 31, 2001, the Entex, Arkla, and Minnegasco Divisions reported combined net operating income of $158 million. At December 31, 2001, reported net property, plant and equipment were $1.6 billion.

REI conducts its nonutility operations, including merchant power generation and energy trading and marketing, largely through its partially owned nonutility subsidiary company, Reliant Resources, Inc. ("Reliant Resources"), and its subsidiary companies. These nonutility subsidiaries include wholesale power, trading and communications operations and, since the beginning of retail electric competition in Texas in January 2002, the sale of electricity to retail customers formerly served by REI's integrated electric-utility operations. As discussed below, New REI plans to spin off Reliant Resources soon after completion of the restructuring of the electric system ("Electric Restructuring").

REI's existing structure resulted from the acquisition by Houston Industries Incorporated ("Houston Industries") of NorAm Energy Corp. ("NorAm") in August 1997.[4] Prior to the acquisition, Houston Industries' principal utility operations were conducted through its electric utility subsidiary, Houston Light & Power Company ("HL&P"). NorAm engaged in gas distribution operations. In the merger, Houston Industries merged into HL&P (which then adopted the name Houston Industries Incorporated). HL&P became a division of the holding company, Houston Industries, and NorAm become a first tier, wholly owned subsidiary of the holding company.

In 1999, the name of the holding company was changed from Houston Industries to Reliant Energy, Incorporated, referred to in the application as REI, and the electric utility company became Reliant Energy HL&P, a division of REI referred to in the application as the HL&P Division. NorAm became Reliant Energy Resources Corp., referred to in the application as GasCo.

[4] See Houston Industries, supra note 1.

In June 1999, S.B. 7, known as the Texas Electric Choice Plan (the "Texas Act"), substantially amended the regulatory structure governing electric utilities in Texas to provide for full retail competition. Under the Texas Act, traditional vertically integrated electric utility companies are required to separate their generation, transmission and distribution, and retail activities.

On March 15, 2001, the Texas Commission approved a business separation plan (the "Business Separation Plan") under which REI's existing electric utility operations would be separated into three businesses: a power generation company, a transmission and distribution utility ("T&D Utility") and a retail electric provider ("REP").

Under the Business Separation Plan, Reliant Resources became the successor to REI as the REP to customers in the Houston metropolitan area when the Texas market opened to competition in January 2002. Reliant Resources became the REP for all of REI's customers in the Houston metropolitan area that did not take action to select another retail electric provider.[5]

As a preliminary step toward the Restructuring, REI formed Reliant Resources as a subsidiary and transferred to it, or its subsidiaries, substantially all of REI's nonutility operations, including merchant power generation, energy trading and marketing, and communications operations. On May 4, 2001, Reliant Resources completed an initial public offering ("IPO") of approximately 20% of its common stock. REI expects that the IPO will be followed by a tax-free distribution of the remaining Reliant Resources common stock to the shareholders of REI or its successor ("Distribution"). As a result of the Distribution, Reliant Resources will cease to be an affiliate of New REI for purposes of the Act and will become a separate publicly traded corporation.

B. The Restructuring

The Restructuring itself will proceed in the following stages (more fully described below): the Electric Restructuring, the Distribution, the Texas Genco IPO, and the GasCo Separation.

[5] Reliant Resources provides these services through subsidiary REPs. Applicants state that the REPs are not electric utility companies for purposes of the Act because they do not own or operate physical facilities used for the generation, transmission or distribution of electric energy for sale. Applicants state that the REPs are power marketers under rule 58(b)(1)(v) of the Act.

1. The Electric Restructuring

In the first stage, New REI will form Texas Genco Holdings, Inc. ("Texas Genco Holdings"), as a Texas indirect wholly owned limited partnership. REI will contribute its regulated assets used to generate electric power and energy for sale within Texas and the liabilities associated with those assets ("Texas Genco Assets") to Texas Genco Holdings. Texas Genco Holdings, in turn, will contribute the Texas Genco Assets to two newly formed limited liability companies, which, in turn, will contribute the assets to a Texas limited partnership, Texas Genco LP. Texas Genco LP will be an electric utility company within the meaning of the Act. Applicants state that Texas Genco Holdings will be a Texas holding company that will qualify for exemption under section 3(a)(1) of the Act.[6]

The next steps relate to the formation of New REI as a holding company for the regulated operations. REI formed New REI as a wholly owned subsidiary.[7] New REI, in turn, will form a special purpose wholly owned subsidiary, Utility Holding LLC, a Delaware limited liability company. Utility Holding LLC will form a special purpose wholly owned subsidiary company, MergerCo, which will merge with and into REI, with REI as the surviving entity. REI common stock will be exchanged for New REI common stock in the merger, and New REI will become the holding company for Utility Holding LLC, REI and its subsidiaries.

REI then plans to convert to a Texas limited liability company, Reliant Energy, LLC ("REI LLC" or the "T&D Utility"). The T&D Utility will retain REI's existing transmission and distribution businesses, which will remain subject to traditional utility rate regulation. The T&D Utility will distribute the stock of all its subsidiaries to New REI, including the stock of GasCo, Texas Genco Holdings and

[6] Applicants state that the limited liability companies, GP LLC and LP LLC, are conduit entities that will exist solely to minimize certain Texas franchise tax liability. LP LLC, a Delaware limited liability company, will acquire a 99% limited partnership interest with no voting rights in Texas Genco LP. Applicants state that, because LP LLC will not acquire 10% or more of the voting securities of Texas Genco LP, LP LLC will not be a holding company for purposes of the Act. GP LLC, a Texas limited liability company, will be a holding company because it will acquire the 1% general partnership interest in Texas Genco LP. Applicants state that GP LLC will qualify for exemption under section 3(a)(1) of the Act.

[7] New REI was incorporated in Delaware on December 13, 2000. As part of the Restructuring, on October 9, 2001, REI reincorporated New REI as a Texas corporation.

certain financing and other subsidiaries.[8]

Following the Electric Restructuring, New REI will register as a holding company under section 5 of the Act.

2. The Distribution

As noted above, on May 4, 2001, Reliant Resources completed an IPO of approximately 20% of its common stock. Upon completion of the Electric Restructuring and subject to board approval, market and other conditions, New REI will effect the Distribution by distributing all of the shares it owns in Reliant Resources to New REI's shareholders, effecting the separation of operations into two unaffiliated publicly traded corporations.[9] As a result of the Distribution, Reliant Resources will cease to be an affiliate of New REI for the purposes of the Act.

Prior to the IPO of Reliant Resources' common stock, REI entered into a Master Separation Agreement and associated ancillary agreements with Reliant Resources, providing for the separation of their businesses and assets. The Master Separation Agreement also provides for cross-indemnities that are intended to place sole financial responsibility on Reliant Resources and its subsidiaries for all liabilities associated with the current and historical businesses and operations they conduct, and to place sole financial responsibility for liabilities associated with REI's other businesses with REI and its other subsidiaries. REI and Reliant Resources also agreed to assume, and be responsible for, specified liabilities associated with activities and operations of the other party and its subsidiaries, to the extent performed for, or on behalf of, their respective current or historical businesses. The Master Separation Agreement also contains indemnification provisions under which REI and Reliant Resources will each indemnify the other with respect to breaches by the indemnifying party of the Master Separation Agreement or any ancillary agreements.

[8] The distribution of the stock of REI's subsidiaries, including GasCo and Texas Genco Holdings, will be currently taxable under Texas law. To minimize tax inefficiencies, New REI will hold its utility interests through Utility Holding LLC. Because Utility Holding LLC will be a Delaware company, it will not qualify for exemption under section 3(a)(1) of the Act. Applicants request the Commission to "look through" Utility Holding LLC for purposes of analysis under section 3(a)(1). *Compare National Grid Group plc*, Holding Co. Act Release No. 27154 (Mar. 15, 2000) (Commission disregarded intermediate holding companies for purposes of section 11(b)(2) analysis).

[9] As of December 31, 2001, REI owns approximately 83% of Reliant Resources, due to treasury stock repurchases of $189 million by Reliant Resources.

The Master Separation Agreement contains provisions relating to certain nuclear decommissioning assets, the exchange of information, provision of information for financial reporting purposes, dispute resolution, and provisions limiting competition between the parties in certain business activities and provisions allocating responsibility for the conduct of regulatory proceedings and limiting positions that may be taken in legislative, regulatory or court proceedings in which the interests of both parties may be affected.

The Distribution will significantly reduce the New REI system's common equity.[10] Applicants believe, however, that the Distribution is both necessary and appropriate because it will have the effect of reducing the business risk profile of the regulated business. Further, Applicants state that New REI's capital structure will be improved significantly with the sale of Texas Genco and securitization of any stranded investment that is anticipated to occur in 2004. Accordingly, Applicants seek authority for the Distribution.

3. Texas Genco IPO

On or before December 31, 2002, New REI expects to conduct an initial public offering of or distribute to shareholders approximately 20% of the common stock of Texas Genco Holdings, the holding company for the Texas Genco Assets or to distribute the stock to New REI's shareholders. The creation of a minority public interest in Texas Genco Holdings will permit the use of the "partial stock valuation method" under the Texas Act for purposes of determining the stranded costs associated with REI's regulated generation assets.

Reliant Resources will hold an option to purchase all of New REI's remaining equity interest in Texas Genco LP after the Texas Genco IPO ("Texas Genco Option").[11] The Texas Genco Option is exercisable in January 2004; therefore, Reliant Resources does not seek authority at this time to exercise the option. The exercise price will be determined by a market-based formula based on the formula employed by the Texas Commission for determining stranded costs under the partial stock valuation method referenced above.

[10] New REI projects its common equity as a percentage of total capitalization ("Common Equity Percentage") to be approximately 37.1% following the Electric Restructuring but prior to the Distribution. Following the Distribution, New REI projects its Common Equity Percentage to drop to approximately 16.1% (17.2% if calculated without the effect of securitization debt). New REI projects its Common Equity Percentage for the year 2005 to be 15.9% including securitization debt and 27.0% excluding securitization debt.

[11] The retained equity interest will be at least 80%. The Texas Genco Option agreement provides that if Reliant Resources purchases the Texas Genco LP shares, it must also purchase all notes and other receivables from Texas Genco LP then held by New REI at their principal amounts plus accrued interest.

4. The GasCo Separation

The final stage of the restructuring entails the reorganization of GasCo into three separate corporations ("GasCo Separation"). Upon receipt of necessary regulatory approvals, GasCo plans to form two new subsidiary companies, Arkla, Inc. and Minnegasco, Inc., and to contribute to them the Arkla and Minnegasco assets, respectively. GasCo will then dividend the stock of Arkla, Inc. and Minnegasco, Inc. to Utility Holding LLC. GasCo, which will be renamed Entex, Inc. and reincorporated in Texas, will own the Entex assets as well as, through subsidiary companies, the natural gas pipelines and gathering business.

Applicants request the Commission to reserve jurisdiction over the acquisition by New REI of the securities of the to-be-formed gas utility subsidiaries, Entex, Inc., Arkla, Inc. and Minnegasco, Inc., pending completion of the record.[12]

New REI will not qualify for an intrastate exemption immediately after the Electric Restructuring. Pending the GasCo Separation, New REI will not satisfy the standards for exemption under section 3(a)(1) of the Act because GasCo, a material subsidiary with significant out-of-state operations, will not be "predominantly intrastate in character" and carry on its business "substantially in a single state." Upon completion of the GasCo Separation, however, Applicants anticipate that New REI and each of its material utility subsidiaries will be incorporated in Texas and will be "predominantly intrastate in character and carry on their business substantially" in Texas. Applicants contemplate that, upon completion of the GasCo separation, New REI will file a claim of exemption under rule 2 or apply for an order under section 3(a)(1) of the Act.

C. Affiliate Transactions

Because Applicants contemplate that New REI will qualify for exemption upon completion of the GasCo Separation and, further, that the

[12] New REI plans to make the acquisition through an intermediate holding company, Utility Holding LLC. Applicants request the Commission to reserve jurisdiction over the request for Utility Holding LLC to acquire the securities of Entex, Arkla and Minnegasco as part of the GasCo separation.

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approvals necessary for that separation will be obtained within a year of the initial order. Applicants do not intend to form a service company. New REI requests authority to provide a variety of services to the New REI system companies, in areas such as accounting, rates and regulation, internal auditing, strategic planning, external relations, legal services, risk management, marketing, financial services and information systems and technology. Charges for all services will be on an at-cost basis, as determined under rules 90 and 91 of the Act.

II. Requested Authority

Applicants request an initial order: (1) Authorizing New REI to acquire the securities of the T&D Utility, Texas Genco, L.P., GasCo, Utility Holding LLC, Texas Genco Holdings, GP LLC and LP LLC; (2) granting Texas Genco Holdings and GP LLC an exemption under section 3(a)(1); (3) authorizing the Distribution of the voting securities of Reliant Resources by New REI to the common stock stockholders of New REI; (4) authorizing the sale or distribution of Texas Genco Holdings stock in connection with the Texas Genco IPO; (5) authorizing New REI to retain all nonutility subsidiaries of REI; (6) authorizing REI to provide goods and services to New REI system companies for a period not to exceed one year; and (7) approving the requested financings as outlined below. Applicants also request that they be exempt from the requirement to file Form U–6B–2 because the information contained in that form will be set forth in quarterly Rule 24 Certificates.

A. Financing Request

New REI, on behalf of itself and the Subsidiaries, requests authorization to engage in the following financing transactions for a period of one year from the date of the Commission's initial order ("Authorization Period").[13]

1. Parameters for Financing Authorization

The effective cost of money on debt financings will not exceed the greater of 500 basis points over the comparable term London Interbank Offered Rate ("LIBOR") or market rates available at the time of issuance to similarly situated companies with comparable credit ratings for debt with similar maturities and terms.

The dividend rate on any series of preferred securities will not exceed the greater of 500 basis points over LIBOR or a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies.

Financings will be subject to the following conditions: (1) The maturity of long-term debt will not exceed 50 years and all preferred securities will be redeemed no later than 50 years after issuance; (2) the underwriting fees, commissions or other similar remuneration paid in connection with the non-competitive issue, sale or distribution of a security (not including any original issue discount) will not exceed 5% of the principal or total amount of the securities being issued; (3) all ratable long-term debt, preferred securities and preferred stock that is issued to third parties will, when issued, be rated investment grade by a nationally recognized statistical ratings organization ("NRSRO");[14] and (4) each of the Utility Subsidiaries will maintain common stock equity as a percentage of capitalization of at least 30%.

2. Use of Proceeds

The proceeds from the sale of securities in external financing transactions will be used for general corporate purposes, including: the financing, in part, of the capital expenditures of the New REI system; the refinancing of existing obligations; the financing of working capital requirements of the New REI system; the acquisition, retirement or redemption of securities previously assumed or issued by New REI or its Subsidiaries without the need for prior Commission approval; and other lawful purposes.

3. Proposed Financing Program

The aggregate amount of financing under the authority requested by New REI, exclusive of guarantees and obligations assumed by New REI at the time of the Electric Restructuring, shall not exceed $8 billion at any one time outstanding during the Authorization Period. The types of securities that New REI may issue are described more fully below.

The aggregate amount of external financing under the authority requested by the Subsidiaries, exclusive of guarantees and exempt financings, shall not exceed $4 billion at any one time outstanding during the Authorization Period. The types of securities that the Subsidiaries may issue are described more fully below.

The aggregate amount of nonexempt guarantees shall not exceed $2 billion for the New REI system at any one time outstanding during the Authorization Period.[15]

4. Description of Specific Types of Financing

a. New REI External Financing

Upon completion of the Electric Restructuring, New REI will have outstanding long-term debt, obligations relating to tax-exempt debt issued by governmental authorities (such as pollution control bonds) and obligations relating to trust preferred securities issued by subsidiaries. In addition, New REI will have executed bank facilities that may be utilized in the form of direct borrowings, commercial paper support or letters of credit.

New REI requests authorization to assume the debt and obligations described in the previous paragraph and to replace the bank facilities of REI subsidiaries with bank facilities of New REI at the time of the Electric Restructuring. In addition, New REI requests authority to assume obligations under certain hedging transactions to manage its risk and for other lawful purposes.

New REI also requests authority to issue and sell securities, including common stock, preferred securities (either directly or through a subsidiary), long-term and short-term debt securities and convertible securities and derivative instruments with respect to any of these securities. New REI also requests authorization to enter into obligations with respect to tax-exempt debt issued on behalf of New REI by governmental authorities. These obligations may relate to the refunding of outstanding tax-exempt debt or to the remarketing of tax-exempt debt. New REI seeks authorization to enter into lease arrangements, and certain hedging transactions in connection with issuances of taxable or tax-exempt securities.

(i) New REI External Financing: Common Stock

New REI is authorized under its restated articles of incorporation to issue 1 billion shares of common stock, par value $.01 per share, and related preferred stock purchase rights. Common stock issued by New REI after completion of the Electric Restructuring will be valued, for purposes of determining compliance with the aggregate financing limitation of $8 billion, at its market value as of the date of issuance (or, if appropriate, at the date of a binding contract providing for the issuance).

New REI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, up to 7.5 million shares of New REI common stock for allocation under certain incentive compensation plans and certain other employee benefit plans. These acquisitions would comply with applicable law and Commission interpretations then in effect.

New REI proposes, from time to time during the Authorization Period, to issue and/or acquire in open market transactions or negotiated block purchases, up to 4 million shares of New REI common stock under the New REI Investors' Choice Program (or any similar or successor program).

New REI has established a Stockholder Rights Plan under which each share of its common stock will include one right to purchase from New REI a fraction of a share of New REI preferred stock. The rights will be issued under a rights agreement between New REI and a nationally recognized bank that will serve as the rights agent. As currently contemplated, the rights will become exercisable shortly after (i) any public announcement that a person or group of associated persons has acquired, or obtained the right to acquire, beneficial ownership of 15% or more of the outstanding shares of New REI common stock; or (ii) the start of a tender or exchange offer that would result in a person or group of associated persons becoming a 15% owner. New REI expects that the Stockholder Rights Plan will also provide for the rights to be exercisable for shares of (i) New REI common stock in the event of certain tender or exchange offers not approved by the New REI board; and (ii) the common stock of an acquiring company in the event of certain mergers, business combinations, or substantial sales or transfers of assets or earning power. The rights will attach to all certificates representing the outstanding shares of common stock and will be transferable only with these certificates. The Stockholder Rights Plan will provide for the rights to be redeemable at New REI's option prior to their becoming exercisable and for the rights to expire at a date certain.

(ii) New REI External Financing: Preferred Securities

New REI seeks to have the flexibility to issue its authorized preferred stock or other types of preferred securities (including trust preferred securities) directly or indirectly through one or more subsidiaries, including special-purpose financing subsidiaries organized for this purpose. The proceeds of preferred securities would provide an important source of future financing for the operations of, and investments in, businesses in which New REI or its Subsidiaries are authorized to invest. Preferred stock or other types of preferred securities may be issued in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by New REI's board of directors, or a pricing committee or other committee of the board performing similar functions. Preferred securities may be redeemable and may be perpetual in duration. Dividends or distributions on preferred securities will be made periodically and to the extent funds are legally available for this purpose, but may be made subject to terms which allow New REI to defer dividend payments for specified periods. Preferred securities may be convertible or exchangeable into shares of New REI common stock, other forms of equity or indebtedness, or into other securities or assets.

Preferred securities may be sold directly through underwriters or dealers in any manner and for purposes similar to those described for common stock above.

(iii) New REI External Financing: Long-Term Debt

Long-term debt securities could include notes or debentures under one or more indentures (each, the "New REI Indenture") or long-term indebtedness under agreements with banks or other institutional lenders directly or indirectly. Long-term debt will be unsecured. Long-term securities could also include obligations relating to the refunding or remarketing of tax-exempt debt issued on behalf of New REI by governmental authorities. Specific terms of any borrowings will be determined by New REI at the time of issuance and will comply in all regards with the parameters on financing authorization set forth above.

(iv) New REI External Financing: Short-Term Debt

New REI seeks authority to issue short-term debt securities, including, but not limited to, institutional borrowings, commercial paper and privately placed notes.

New REI may sell commercial paper or privately placed notes ("commercial paper") from time to time, in established domestic or European commercial paper markets. Commercial paper may be sold at a discount or bear interest at a rate per annum prevailing at the date of issuance for commercial paper of a similarly situated company.

New REI may, without counting against the limit on parent financing set forth above, maintain back-up lines of credit in connection with one or more commercial paper programs in an aggregate amount not to exceed the amount of authorized commercial paper.

New REI may also set up credit lines for use in general corporate purposes. Credit lines may support commercial paper, may be utilized to obtain letters of credit or may be borrowed against, from time to time, as it is deemed appropriate or necessary.

(v) New REI External Financing: Risk Management Devices

New REI requests authority to assume and to enter into hedging arrangements intended to reduce or manage the volatility of financial or other business risks to which New REI is subject, including, but not limited to, interest rate swaps, caps, floors, collars and forward agreements or any other agreements or derivative instruments intended to reduce or manage risks to which New REI is or may become exposed ("Hedging Instruments"). The transactions would be for fixed periods and stated notional amounts. New REI may employ interest rate hedges and other derivatives as a means of prudently managing the risk associated with any of its outstanding debt issued under this authorization or an applicable exemption by, in effect, synthetically (i) converting variable rate debt to fixed-rate debt; (ii) converting fixed-rate debt to variable rate debt; (iii) limiting the economic or accounting impact of changes in interest rates resulting from variable rate debt; and (iv) managing other risks that may attend outstanding securities. Transactions will be entered into for fixed or determinable periods. Thus, New REI will not engage in speculative transactions. New REI will only enter into agreements with counterparties having a senior debt rating at the time

[13] For purposes of this request, the term "Subsidiary" shall mean each directly and indirectly owned subsidiary of New REI as well as other direct or indirect subsidiaries that New REI may form after the Electric Restructuring with the approval of the Commission or in reliance on rules or statutory exemptions. The term "Intermediate Holding Company" shall mean Utility Holding, LLC, Texas Genco Holdings, Inc. and GP LLC. The term "Utility Subsidiaries" shall mean Texas Genco LP, the T&D Utility and GasCo. The term "Nonutility Subsidiary" shall mean any subsidiary company other than an Intermediate Holding Company or a Utility Subsidiary.

[14] New REI requests the Commission reserve jurisdiction over its issuance of any security that is rated below investment grade.

[15] This limit applies to guarantees of financial obligations but not to performance guarantees entered into in the normal course of a system company's duly authorized business.

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the transaction is executed of at least investment grade as published by a NRSRO ("Approved Counterparties").

In addition, New REI requests authorization to assume and to enter into hedging transactions with respect to anticipated debt offerings ("Anticipatory Hedges"), subject to certain limitations and restrictions. Anticipatory Hedges will only be entered into with Approved Counterparties, and will be used to fix and/or limit the risk associated with any issuance of securities through appropriate means, including (i) forwards and futures (a "Forward Sale"); (ii) the purchase of put options (a "Put Options Purchase"); (iii) a purchase of put options in combination with the sale of call options (a "Collar"); (iv) some combination of a Forward Sale, Put Options Purchase, Collar and/or other derivative or cash transactions, including, but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges; or (v) other financial derivatives or other products including Treasury rate locks, swaps, forward starting swaps, and options on the foregoing. Anticipatory Hedges may be executed on-exchange ("On-Exchange Trades") with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade ("CBOT"), "off-exchange" through the execution of agreements with one or more counterparties ("Off-Exchange Trades"), or a combination of On-Exchange Trades and Off-Exchange Trades. New REI or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution. New REI or a Subsidiary may decide to lock in interest rates and/or limit its exposure to interest rate increases. New REI and its Subsidiaries seek authority to modify the terms and conditions of any Hedging Instruments or Anticipatory Hedges that are put in place prior to the Electric Restructuring.

New REI and its Subsidiaries will comply with Statement of Financial Accounting Standards ("SFAS") 133 ("Accounting for Derivatives Instruments and Hedging Activities") and SFAS 138 ("Accounting for Certain Derivative Instruments and Certain Hedging Activities") or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

b. Subsidiary External Financings

The Utility Subsidiaries will have outstanding long-term debt and trust preferred securities upon completion of the Electric Restructuring. In addition, the Utility Subsidiaries will have a receivables facility and bank facilities that may be utilized in the form of direct borrowings, commercial paper support or letters of credit.

To the extent not otherwise exempted, the Subsidiaries request authority to issue and sell securities, including common equity, preferred securities (either directly or through a subsidiary), long-term and short-term debt securities and derivative instruments with respect to any of the foregoing on the same terms and conditions as discussed above for New REI, except that Subsidiary debt may be secured or unsecured. The Subsidiaries also request authorization to enter into obligations with respect to tax-exempt debt issued on behalf of a Subsidiary by governmental authorities in connection with the refunding of outstanding tax-exempt debt assumed by New REI at the time of the Electric Restructuring. The Subsidiaries also request authority to enter into hedging transactions to manage their risk in connection with the issuance of securities.

c. Guarantees, Intra-System Advances and Intra-System Money Pool

New REI requests authorization to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the obligations of its Subsidiaries and to enter into guarantees of non-affiliated third party obligations in the ordinary course of New REI's business ("New REI Guarantees") in an amount, together with the Subsidiary Guarantees (defined below), not to exceed $2 billion outstanding at any one time (not taking into account obligations exempt under rule 45). Any guarantees shall also be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable.

Certain of the guarantees referred to above may be in support of obligations that are not capable of exact quantification. In these cases, New REI will determine the exposure under the guarantee by appropriate means, including estimation of exposure based on loss experience or projected potential payment amounts. As appropriate, these estimates will be made in accordance with generally accepted accounting principles and/or sound financial practices.

The Utility Subsidiaries request authority to provide to other Subsidiaries guarantees and other forms of credit support, subject to the terms and conditions outlined above.[16]

Each of the Intermediate Holding Companies also seeks authority to issue guarantees and other forms of credit support to direct and indirect subsidiary companies, subject to the terms and conditions outlined above.

New REI will establish and manage a centralized system of intercompany borrowings and investments ("Money Pool") which will be used as a short-term cash management system by New REI and its Subsidiaries. Participants in the Money Pool will include New REI and certain subsidiaries of New REI. New REI will not borrow from the Money Pool.

The Utility Subsidiaries may also finance their capital needs through borrowings from New REI, directly or indirectly through one or more Intermediate Holding Companies

Each of the Intermediate Holding Companies requests authority to issue and sell securities to its respective parent companies and to acquire securities from its subsidiary companies.

d. Changes in Capital Stock of Majority Owned Subsidiaries

Request is made for authority to change the terms of any 50% or more owned Subsidiary's authorized capital stock capitalization or other equity interests by an amount deemed appropriate by New REI or other intermediate parent company. A Subsidiary would be able to change the par value, or change between par value and no-par stock, without additional Commission approval.

e. Payment of Dividends Out of Capital or Unearned Surplus

As a result of the accounting treatment for the Restructuring, New REI and the Subsidiaries are requesting authority to declare and pay dividends out of capital or unearned surplus. The dividends paid by these entities will not exceed 75% of net income, based on a rolling five-year average. Although the dividend policy of New REI has not been finally determined, it is contemplated that New REI will seek to maintain a pay-out ratio comparable to the current ration.

f. Financing Subsidiaries

New REI proposes to organize and acquire, directly or indirectly, the common stock or other equity interests of one or more subsidiaries (collectively, the "Financing Subsidiary") for the purpose of effecting various financing transactions from time to time through the Authorization Period involving the issuance and sale of up to an aggregate of $1 billion (cash proceeds to New REI or the respective subsidiary company) in any combination of common stock, preferred securities, debt securities, stock purchase contracts and stock purchase units, as well as common stock issuable under stock purchase contracts and stock purchase units, all as defined below. Any security issued under the requested authority will be appropriately disclosed in the system's financial statements. No Finance Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any utility asset, as that term is defined under the Act, without first obtaining any necessary approval.

The business of the Financing Subsidiary will be limited to effecting financing transactions for New REI and its associates. In connection with these transactions, New REI or the Subsidiaries may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary.

Any Financing Subsidiary shall be organized only if, in management's opinion, the creation and utilization of the Financing Subsidiary will likely result in tax savings, increased access to capital markets and/or lower cost of capital for New REI or the Subsidiaries.

Each of New REI and the Subsidiaries also requests authorization to enter into an expense agreement with its respective financing entity, under which it would agree to pay all expenses of the entity. Any amounts issued by the financing entities to third parties will be included in the additional external financing limitation for the immediate parent of the financing entity. However, the underlying intra-system mirror debt and parent guarantee will not be included.

REI currently has two financing subsidiaries ("FinanceCos"). The FinanceCos are Delaware limited partnerships whose limited partnership interests are wholly owned, directly or indirectly, by REI. Each of the FinanceCos has issued a series of debt, the proceeds of which have been used to purchase separate series of cumulative preference stock of REI. Dividends on the preference stock accrue based on the net interest requirements on the debt, subject to reduction of any payments previously made by REI under REI support agreements relating to each series of debt. After giving effect to this credit, REI must pay aggregate cash dividends on the preference stock equal to the lesser of the aggregate amount of interest then payable on the debt or its excess cash flow (excess funds of REI remaining after taking into account its cash requirements and other expenditures required by sound utility financial and management practices).

g. Authority To Reorganize Nonutility Interests

New REI proposes to restructure its nonutility interests from time to time as may be necessary or appropriate. New REI will engage, directly or indirectly, only in businesses that are duly authorized, whether by order or rule under the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11702 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

[16] New REI states that it is contemplated that the Nonutility Subsidiaries will rely on the exemptions provided by rules 45 and 52.

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–12070]

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration on the American Stock Exchange LLC (Transfinancial Holdings, Inc., Common Stock, $.01 par value)

May 6, 2002.

Transfinancial Holdings, Inc., a Delaware corporation ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to Section 12(d) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $.01 par value ("Security"), from listing and registration on the American Stock Exchange LLC ("Amex" or "Exchange").

The Issuer states in its application that it has met the requirements of Amex Rule 18 by complying with all applicable laws in effect in the state of Delaware, in which it was incorporated, and with the Amex's rules governing an issuer's voluntary withdrawal of a security from listing and registration.

On April 9, 2002, the Board of Directors of the Issuer unanimously approved a resolution to withdraw the Issuer's Security from listing on the Amex. In making the decision to withdraw the Security from listing on the Exchange, the Issuer represents that on April 29, 2002, a certificate of dissolution was filed with the Secretary of the State Delaware. Trading of the Security on the Amex was halted on April 29, 2002. The Issuer's application relates solely to the withdrawal of the Security from listing on the Amex and registration under Section 12(b) of the Act[3] and shall not affect its obligation to be registered under Section 12(g) of the Act.[4]

Any interested person may, on or before May 28, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–11744 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 15 U.S.C. 78*l*(g).

[5] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting; Notice

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: [67 FR 22471, May 3, 2002].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Wednesday, May 8, 2002, at 9:30 a.m.

CHANGE IN THE MEETING: Deletion of item.

The following item will not be considered at the open meeting scheduled for Wednesday, May 8, 2002: The Commission will not hear oral argument on an appeal by Daniel R. Lehl, et al., from the decision of an administrative law judge.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact:

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The Office of the Secretary at (202) 942–7070.

Dated: May 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11875 Filed 5–8–02; 12:09 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of May 13, 2002:

A closed meeting will be held on Monday, May 13, 2002, at 10 a.m., and an open meeting will be held on Tuesday, May 14, 2002, at 10 a.m., in Room 1C30, the William O. Douglas Room.

Commissioners, Counsel to the Commissioners, the secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.

Commissioner Hunt, as duty officer, determined that no earlier notice thereof was possible.

The subject matter of the close meeting scheduled for Monday, May 13, 2002, will be:

Formal orders of investigation;

Institution and settlement of injunctive actions; and

Institution and settlement of administrative proceedings of an enforcement nature.

The subject matter of the open meeting scheduled for Tuesday, May 14, 2002, will be:

1. The Commission will consider whether to jointly adopt a new rule with the Commodity Futures Trading Commission ("CFTC") generally requiring that the final settlement price for each cash-settled security futures product fairly reflect the opening price of the underlying security or securities, and that trading in any security futures product halt when a regulatory halt is instituted with respect to a security or securities underlying the security futures product by the national securities exchange or national securities association listing the security. The rule being considered would set forth more specifically how the exchange's or association's rules can satisfy provisions added to the Commodity Exchange Act ("CEA") and the Securities Exchange Act of 1934 ("Exchange Act") by the Commodity Futures Modernization Act of 2000. The Commission will also consider whether to issue a joint interpretation with the CFTC of the statutory requirement under the CEA and the Exchange Act that procedures be put in place for coordinated surveillance among the markets trading security futures products and any market trading any security underlying the security futures products or any related security.

2. The Commission will consider whether to propose amendments to Rules 134, 156, and 482 under the Securities Act of 1933; Rule 34b–1 under the Investment Company Act of 1940; and four investment company registration forms (Forms N–1A, N–3, N–4, and N–6). The proposed amendments would require enhanced disclosure in mutual fund advertisements and are designed to encourage advertisements that convey balanced information to prospective investors, particularly with respect to past performance. The proposed amendments also would implement a provision of the National Securities Markets Improvement Act of 1996 by eliminating the requirement that Rule 482 advertisements for an investment company contain only information the substance of which is included in the investment company's statutory prospectus.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: the Office of the Secretary at (202) 942–7070.

Dated: May 7, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11876 Filed 5–8–02; 12:18 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[File No. 500–1]

Pinnacle Business Management, Inc.; Order of Suspension of Trading

May 7, 2002.

It appears to the Securities and Exchange Commission that there is a lack of current and accurate information concerning the securities of Pinnacle Business Management, Inc. ("PCBM") because of questions regarding the accuracy of assertions made by PCBM, and by others, in Commission filings and in documents sent to and statements made to investors concerning among other things, a planned spin-off by PCBM of a subsidiary in May 2002, the initial price at which the subsidiary will trade after the spin-off has been completed, and the conditions bearing on the subsidiary's chances of achieving an American Stock Exchange listing.

The Commission is of the opinion that the public interest and the protection of investors require a suspension of trading in the securities of the above-listed company.

Therefore, it is ordered, pursuant to Section 12(k) of the Securities Exchange Act of 1934, that trading in the above listed company is suspended for the period from 9:30 a.m. EDT, May 8, 2002 through 11:59 p.m. EDT, on May 21, 2002.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11877 Filed 5–8–02; 1:33 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45873; File No. SR–CSE–2002–04]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Cincinnati Stock Exchange, Inc. Relating to the Introduction of Order Delivery and Automated Response on the Cincinnati Stock Exchange, Inc.

May 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the Cincinnati Stock Exchange, Inc. ("CSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CSE Rule 11.9, National Securities Trading System ("NSTS"), to modify CSE's execution functionality within the CSE Over-the-Counter ("OTC") Unlisted Trading Privileges ("UTP") system ("CSE OTC–UTP System")[3] from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE OTC–UTP System. The text of the proposed rule change is set forth below. Proposed new language is in italics.

Chapter XI

Trading Rules

Rule 11.9(i)

(1) No change.

(2) The OTC–UTP System offers two modes of order interaction selected by members:

(a) *If automatic execution selected, the OTC–UTP System shall match and execute like-priced order, bids and offers in Nasdaq/NM Securities on an order-by-order basis only at the specific instruction of Users, including Designated Dealers. Subject to the obligations of best execution, Users may choose to execute like-priced orders without regard for the price/time and agency/principal priorities set forth in Rules 11.9(l) and (m).*

(b) *If order delivery and automated response selected, the OTC–UTP System will deliver contra-side orders against displayed orders and quotations on an order-by-order basis and only at the specific instruction of Users, including Designated Dealers. To be eligible for order delivery service, Users must demonstrate to CSE examiners that the User's system can automatically process the inbound order and respond appropriately within 1 second.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to increase the flexibility of CSE execution systems to accommodate member needs. Specifically, CSE proposes to modify CSE's execution functionality within the CSE OTC–UTP System from a process of automatically matching and executing like-priced displayed orders and quotes to an optional process of delivering orders to quoting CSE members and requiring automated responses from such members back to the CSE OTC–UTP System. CSE is proposing this modification to facilitate a diverse membership base while promoting a fair and orderly market. CSE members that operate as electronic communications networks ("ECNs")[4] or alternative trading systems ("ATSs") subject to SEC Regulation ATS,[5] as well as members that act as Designated Dealers or specialists on CSE will have the option of selecting the type of centralized execution system that best fits their business model.

Currently, NSTS functions solely in an automatic execution mode. In an automatic execution system like NSTS, a Designated Dealer's quotation is held in NSTS, and NSTS executes any like-priced contra-side order against the dealer's quotation. NSTS then informs the Designated Dealer and the contra-side CSE member that the quotation and the order have been executed by delivering execution messages to both parties.

With the advent of ECN/ATS trading on CSE, members have expressed concern that CSE's automatic execution system exposes them to significant multiple execution liability. Given the speed with which ECN/ATSs operate, it is likely that displayed quotations will be subject to internal matches at the same time as another CSE member attempts to execute against the same quotations. When faced with a similar dilemma, the Nasdaq Stock Market, Inc. permitted ECN/ATSs to remain on SelectNet (an order delivery system) for inbound executions against the ECN/ATSs' displayed quotations rather than requiring them to migrate to the automatic execution methodology of the Nasdaq National Market Execution System ("NNMS").[6] Nasdaq even amended its Intermarket Trading System ("ITS")/Computer Assisted Execution System ("CAES") (together "ITS/CAES") definitions and functionality to permit ECN/ATSs to operate in an order delivery format when interacting with inbound commitments from ITS. Similarly, CSE now proposes to permit members to select order delivery and automated response for order interaction with displayed quotations within the CSE OTC–UTP System or to continue interacting through CSE's automatic execution facility.

In an order delivery and automated response system, a member's quotation or displayed order will be held in the CSE OTC–UTP System, and when a contra-side order is received in the CSE OTC–UTP System, CSE will immediately forward the order message to the quoting member, who will be obligated by rule to instantaneously respond to the order message. Moreover, the quoting member must have a demonstrated capability to instantaneously respond to the order message. On receipt of the order message delivered by CSE, the quoting member will automatically determine whether its quote is still active. If so, the member will automatically deliver to the CSE OTC–UTP System matched orders representing its quote and the contra-side for execution. If the member's quote is in the process of changing due to a prior internal match at the displayed price, consistent with the Firm Quote Rule,[7] the member will reject the inbound order and send it back to the CSE OTC–UTP System. The CSE OTC–UTP System will then automatically send a cancellation message to the member submitting the order. The entire duration of the order delivery and automated response process likely will be less than one second.

CSE reiterates that members must demonstrate the capacity to accept inbound orders and to automatically respond to the CSE OTC–UTP System before they will be permitted use of this

[3] CSE proposed the creation of the CSE OTC–UTP System in proposed rule change CSE–2001–04. *See* Securities Exchange Act Release No. 45405 (February 6, 2002), 67 FR 6558 (February 12, 2002).

[4] ECNs are defined in SEC Rule 11Ac1–1(a)(8), 17 CFR 240.11Ac1–1(a)(8), as any electronic system that widely disseminates to third parties orders entered therein by an exchange market maker or OTC market maker, and permits such orders to be executed against in whole or in part.

[5] 17 CFR 242.300–303.

[6] *See* Securities Exchange Act Release No. 42344 (January 14, 2000), 65 FR 3987 (January 25, 2000) in which Nasdaq designated SelectNet as the link to ECNs pursuant to the SEC's Order Handling Rules. *See* Securities Exchange Act Release No. 38156 (January 10, 1997), 62 FR 2415 (January 16, 1997).

[7] 17 CFR 240.11Ac1–1.

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functionality. Moreover, CSE Rule 11.9(i)(2) shall provide that the CSE OTC–UTP System will offer order delivery and automated response subject to the requirement that members demonstrate the capability to respond in an automated manner. Therefore, by rule and through demonstrated capacity verified by CSE examiners prior to operation, the CSE will reduce the risk of multiple execution liability, while ensuring that members comply with their obligations under the Firm Quote Rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the provisions of Section 6(b) of the Act,[8] in general, and Section 6(b)(5) of the Act,[9] in particular, which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Further, the Exchange believes that the proposal is consistent with Section 6(b)(8) of the Act[10] in that it is not designed to impose any burden on competition not necessary or appropriate in furtherance of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR–CSE–2002–04 and should be submitted by May 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11746 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f(b).

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78f(b)(8).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45851; File No. SR–NASD–2002–57]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. to Extend a Pilot Amendment to NASD Rule 4120 Regarding Nasdaq's Authority To Initiate and Continue Trading Halts

April 30, 2002

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 22, 2002, the National Association of Securities Dealers, Inc. ("NASD"), through its subsidiary, The Nasdaq Stock Market, Inc. ("Nasdaq") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by Nasdaq. Nasdaq filed the proposal pursuant to Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6) thereunder,[4] which renders the proposal effective upon filing with the Commission.[5] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Nasdaq proposes to extend a pilot amendment to NASD Rule 4120, which clarified Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq. The proposal would extend the pilot through September 30, 2002. There is no new proposed rule language.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, Nasdaq included statements concerning the purpose of and basis for its proposal and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. Nasdaq has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On May 11, 2001, Nasdaq filed with the Commission a proposed rule change to clarify Nasdaq's authority to initiate and continue trading halts in circumstances where Nasdaq believes that extraordinary market activity in a security listed on Nasdaq may be caused by the misuse or malfunction of an electronic quotation, communication, reporting, or execution system operated by, or linked to, Nasdaq.[6] On July 27, 2001, Nasdaq filed Amendment No. 1 to the proposed rule change, which requested that the Commission approve the proposed rule change on a three-month pilot basis, expiring on October 27, 2001.[7] Also on July 27, 2001, the Commission approved the proposed rule change and Amendment No. 1.[8] On September 27, 2001, Nasdaq filed a proposed rule change to extend the pilot period for the rule through January 27, 2002,[9] and on January 23, 2002, Nasdaq filed to extend the pilot period through April 30, 2002.[10]

As a result of the decentralized and electronic nature of the market operated by Nasdaq, the price and volume of transactions in a Nasdaq-listed security may be affected by the misuse or malfunction of electronic systems, including systems that are linked to, but not operated by, Nasdaq. In circumstances where misuse or malfunction results in extraordinary market activity, Nasdaq believes that it may be appropriate to halt trading in an affected security until the system problem can be rectified. In the period during which the rule change has been in effect, Nasdaq has not had occasion to initiate a trading halt under the rule. Nevertheless, Nasdaq believes that the rule is an important component of its authority to maintain the fairness and orderly structure of the Nasdaq market. Accordingly, Nasdaq believes the rule should remain in effect on an uninterrupted basis.

2. Statutory Basis

Nasdaq believes that the proposal is consistent with the provisions of Section 15A of the Act,[11] with the provisions of Section 15A(b)(6) of the Act,[12] which requires, among other things, that a registered national securities association's rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq believes that the proposed rule change will impose no burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Instinet Corporation ("Instinet") has commented on the proposed rule change. Nasdaq has filed a proposed rule change to modify the rule in certain respects and to make the rule permanent.[13] Nasdaq believes that the amendments to the rule proposed in SR–NASD–2001–75 respond to the concerns expressed by Instinet without impairing the flexibility that Nasdaq believes the rule must retain in order for the rule to assist Nasdaq in meeting its overarching responsibility to maintain the fairness and orderly structure of the Nasdaq market. Pending Commission action on SR–NASD–2001–75, Nasdaq believes that the pilot period of the current rule should be extended to allow the rule to remain in effect on an uninterrupted basis.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) impose any significant burden on competition; and

(iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act[14] and Rule 19b–4(f)(6) thereunder.[15] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Nasdaq has requested that the Commission waive the 5-day pre-filing notice requirement and the 30-day operative delay. The Commission finds good cause to waive the 5-day pre-filing notice requirement and the 30-day operative delay because such designation is consistent with the protection of investors and the public interest. Acceleration of the operative date will allow the pilot to operate continuously through September 30, 2002. For these reasons, the Commission finds good cause to waive both the 5-day pre-filing requirement and the 30-day operative waiting period.[16]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to file number SR–NASD–2002–14 and should be submitted by May 31, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11745 Filed 5–9–02; 8:45 am]

BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6).

[5] Nasdaq asked the Commission to waive the 5-day pre-filing notice requirement and the 30-day operative delay. *See* Rule 19b–4(f)(6)(iii). 17 CFR 240.19b–4(f)(6)(iii).

[6] Securities Exchange Act Release No. 44307 (May 15, 2001), 66 FR 28209 (May 22, 2001)(SR–NASD–2001–37).

[7] *See* July 27, 2001 letter from Thomas P. Moran, Associate General Counsel, Nasdaq, to Alton Harvey, Division of Market Regulation, Commission.

[8] Securities Exchange Act Release No. 44609 (July 27, 2001), 66 FR 40761 (August 3, 2001)(SR–NASD–2001–37).

[9] Securities Exchange Act Release No. 44870 (September 28, 2001), 66 FR 50701 (October 4, 2001) (SR–NASD–2001–60).

[10] Securities Exchange Act Release No. 45344 (January 28, 2002), 67 FR 5022 (February 3, 2002)(SR–NASD–2002–14).

[11] 15 U.S.C. 78o–3.

[12] 15 U.S.C. 78o–3(b)(6).

[13] Securities Exchange Act Release No. 45355 (January 29, 2002), 67 FR 5351 (February 5, 2002)(SR–NASD–2001–75).

[14] 15 U.S.C. 78s(b)(3)(A).

[15] 17 CFR 240.19b–4(f)(6).

[16] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[17] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3406]

State of Maryland; Disaster Loan Areas

As a result of the President's major disaster declaration on May 1, 2002, I find that Calvert, Charles and

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Dorchester Counties in the State of Maryland constitute a disaster area due to damages caused by a tornado occurring on April 28, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 1, 2002 and for economic injury until the close of business on February 3, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South, 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Anne Arundel, Caroline, Prince George's, St. Mary's, Talbot and Wicomico Counties in the State of Maryland; Sussex County in the State of Delaware; and Fairfax, King George, Prince William and Stafford Counties in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340612. For economic injury the number is 9P3500 for Maryland; 9P3600 for Delaware; and 9P3700 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 2, 2002.

S. George Camp,

Acting Associate Administrator for Disaster Assistance.

[FR Doc. 02–11724 Filed 5–9–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

[Public Notice 4015]

Culturally Significant Objects Imported for Exhibition Determinations: "Bernardo Bellotto: Views of Imperial Vienna"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22.U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Bernardo Bellotto: Views of Imperial Vienna," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on or about June 16, 2002, to on or about September 2, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11778 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4014]

Culturally Significant Objects Imported for Exhibition Determinations: "Josef Hoffmann: Homes of the Wittgensteins"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 [79 Stat. 985; 22 U.S.C. 2459], Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 [112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*], Delegation of Authority No. 234 of October 1, 1999 [64 FR 56014], and Delegation of Authority No. 236 of October 19, 1999 [64 FR 57920], as amended, I hereby determine that the objects to be included in the exhibition, "Josef Hoffmann: Homes of the Wittgensteins," imported from abroad for temporary exhibition within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the exhibition or display of the exhibit objects at the Clark Art Institute, Williamstown, Massachusetts, from on or about June 16, 2002, to on or about September 2, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of exhibit objects, contact Paul W. Manning, Attorney-Adviser, Office of the Legal Adviser, 202/619–5997, and the address is United States Department of State, SA–44, Room 700, 301 4th Street, SW., Washington, DC 20547–0001.

Dated: May 3, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc: 02–11777 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF STATE

[Public Notice 4013]

Culturally Significant Objects Imported for Exhibition Determinations: "Projects 76: Francis Alÿs"

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of the following determinations: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985; 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978, the Foreign Affairs Reform and Restructuring Act of 1998 (112 Stat. 2681, *et seq.*; 22 U.S.C. 6501 note, *et seq.*), Delegation of Authority No. 234 of October 1, 1999, and Delegation of Authority No. 236 of October 19, 1999,

as amended, I hereby determine that the objects to be included in the exhibition "Projects 76: Francis Alÿs," imported from abroad for temporary exhibition within the United States, are of cultural significance. The objects are imported pursuant to a loan agreement with the foreign owner. I also determine that the exhibition or display of the exhibit objects at the Museum of Modern Art, New York, NY from on or about June 29, 2002 to on or about September 30, 2002, and at possible additional venues yet to be determined, is in the national interest. Public Notice of these Determinations is ordered to be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: For further information, including a list of the exhibit objects, contact David S. Newman, Attorney-Adviser, Office of the Legal Adviser, U.S. Department of State, (telephone: 202/619–6982). The address is U.S. Department of State, SA–44, 301 4th Street, SW., Room 700, Washington, DC 20547–0001.

Dated: May 6, 2002.

Patricia S. Harrison,

Assistant Secretary for Educational and Cultural Affairs, Department of State.

[FR Doc. 02–11776 Filed 5–9–02; 8:45 am]

BILLING CODE 4710–08–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Second Tier Environmental Impact Statement: Montgomery, Warren, Lincoln and St. Charles Counties, MO

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a Second Tier Environmental Impact Statement (EIS) will be prepared for proposed improvements to a portion of Interstate 70 (identified as SIU #7) in Montgomery, Warren, Lincoln, and St. Charles Counties, Missouri.

FOR FURTHER INFORMATION CONTACT: Ms. Peggy J. Casey, Environmental Projects Engineer, FHWA Division Office, 209 Adams Street, Jefferson City, MO 65101, Telephone: (573) 638–2620 or Kathyrn P. Harvey, Project Development Liaison Engineer, Missouri Department of Transportation, 105 West Capitol Avenue, PO Box 270, Jefferson City, MO 65102, Telephone: (573) 526–5678.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Missouri Department of Transportation (MoDOT), will prepare a Second Tier EIS to investigate possible improvements to a 36-mile section of Interstate 70 (I–70), from Milepost 174 (just west of Route 19) in Montgomery City, Missouri to the beginning of the existing six-lane section of I–70 immediately east of the Lake St. Louis Boulevard exit (Exit 214) in Lake St. Louis, Missouri. The study will include above five (5) miles on each side of existing I–70.

The I–70 First Tier EIS process was initiated in January 2000. Its purpose was to evaluate approaches to improving the safety and efficiency of travel on I–70 between suburban Kansas City and suburban St. Louis (approximately 200 miles). To meet these goals, seven strategies were evaluated. These strategies included (1) taking no action, (2) implementing transportation system management methods, (3) providing other modes of transportation, (4) upgrading and improving this section of the existing I–70, (5) constructing a new limited-access highway on new or partially-new location, and (6) implementing a combination of the above strategies. After detailed analysis and public review, widening and reconstructing the existing I–70 was identified as the preferred general approach to improving the interstate corridor. In July 2001, the Draft First Tier EIS was published. A 45-day comment period, which included seven public hearings, followed publication of the draft. In November 2001, the Final First Tier EIS was published, with a Record of Decision published in December 2001.

The First Tier EIS recommended that for the second tier environmental studies, the 200-mile I–70 corridor be divided into seven sections of independent utility (SIU). The intent of the Second Tier EIS is to build on and extend the work of the first tier EIS for improving I–70 as part of the state's long-range transportation plan. Each SIU will be evaluated to the appropriate level of detail (CE, EA, or EIS) within the NEPA process.

Given the current and projected traffic volumes, and the dated design of existing I–70 (Some portions date from as early as 1956 as the first construction in the United States on the interstate highway system), improvements to the I–70 corridor are considered critical to provide for a safe, efficient, and economical transportation network that will meet traffic demands in the state and for national travelers. As such, the range of alternatives carried forward from the first Tier EIS has been expanded for SIU #7. At the easternmost end of the study area, three conceptual corridors (two north and one to the south) were developed and will be further studied as potential locations for a relocated I–70, along with the alternative of widening and reconstructing the existing highway. These conceptual corridors will be further examined based on the need to reduce traffic congestion, address roadway deficiencies, improve safety, and enhance system linkage in the St. Louis metropolitan area.

For the second tier effort, a scoping process has been initiated that involves all appropriate federal and state agencies. This coordination will continue throughout the study as an ongoing process. An intensive public information effort will be initiated, and will include those agencies, private organizations, and citizens that have previously expressed or are known to have interest in this proposal. This effort also will inform the public living in the study area and those who travel on this section of I–70 from across the nation with the intent of capturing their comments for and about the study. Public informational meetings will be held across the study area to engage the regional community in the decision-making process and to obtain public comment. In addition, a public hearing will be held to present the findings of the Second Tier Draft EIS (DEIS). Public notice will be given concerning the time and place of informational meetings and public hearings. The Second Tier DEIS will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments, and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the Second Tier EIS for SIU #7 should be directed to the FHWA or MoDOT at the addresses previously provided.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: April 25, 2002.

Peggy J. Casey,

Environmental Project Engineer, Jefferson City.

[FR Doc. 02–11766 Filed 5–9–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA 2001–10258, Notice 2]

NovaBUS, Inc.; Denial of Application for Decision of Inconsequential Noncompliance

NovaBUS, Inc. (Nova) of Roswell, New Mexico, manufactured a number of buses that were equipped with one of two types of auxiliary lamp systems. Both of these lamp systems are wired to flash. Federal Motor Vehicle Safety Standard (FMVSS) No. 108, "Lamps, Reflective Devices, and Associated Equipment," requires that all lamps, except those specified, be wired to be steady burning. Nova determined that these buses fail to comply with FMVSS No. 108 and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Nova has also applied to be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—"Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

Notice of receipt of the application was published in the **Federal Register** (66 FR 41307) on August 7, 2001. Opportunity was afforded for public comment until September 6, 2001. No comments were received.

In FMVSS No. 108, paragraph S5.5.10 requires that, other than turn signal lamps, hazard warning signal lamps, school bus warning lamps, and headlamps and side marker lamps wired to flash for signaling purposes, all other lamps shall be wired to be steady burning.

Between January 1994 and March 2001, Nova produced 742 buses with optional deceleration lamps that flash at a rate related to the deceleration of the vehicle. These lamps are amber and are located on the rear center of the bus.

During the same period of time, Nova also produced 1,819 buses with "hoodlum" lamps that flash when the driver activates a switch. The purpose of these lamps is to provide an alert to the police or public that a dangerous situation is occurring on the bus and that the driver requires assistance. These lamps are green and are located on the top front and rear of the bus.

Nova supported its application for inconsequential noncompliance by stating the following:

> The [deceleration and hoodlum] lights do not pose a safety risk to the bus, passengers, driver, or other vehicles on the roadway. They in no way interfere with the normal operation of the bus. Their size, location, color, and flashing pattern make it impossible to confuse them with stop and turn lights. There are no other green lights on the vehicle. There is a slight chance the amber lens color may be confused with hazard lights. However, this is not a hindrance as the [deceleration] and hazard lights heighten other drivers' awareness of the bus.
>
> These lights were requested by our customers to help attract attention to the buses in the stated situations. Since the requirement that "all other lamps shall be wired to be steady burning" applies to Nova as an [original equipment manufacturer] but not to our customers, Nova believes these lights would not be changed to be steady burning if a recall process was executed.

Nova no longer offers these options and is now compliant with [FMVSS No. 108].

The agency has reviewed the application and has decided that the noncompliance is not inconsequential to motor vehicle safety. Regarding the flashing amber lamps, the standard states explicitly that only certain original equipment lamps are permitted to flash. The main reason for limiting the flashing function to these lamps is to minimize confusion that may be caused to other drivers who observe the flashing lights. If manufacturers include a flashing function in other lamps, the importance of the safety meaning of required lamps can be diminished. Standardization of lighting functions is paramount to the necessary and instant recognition of their meaning by other drivers.

This concern was expressed by the agency in a March 1996, legal interpretation to the Gillig Corporation (Gillig). Gillig asked whether it was permitted to install four amber lamps that would act as supplemental stop lamps on its buses. These four lamps would flash when the brake pedal was depressed and be extinguished when the pedal was released. The agency stated that this was not permitted, as it could impair the effectiveness of the required red brake lamps. When confronted with an array of red steady burning lamps (the required ones) and amber flashing ones (the ones Gillig wished to add), the agency said that there is a strong likelihood of momentary confusion in the mind of a driver following the vehicle. Quick understanding of and appropriate reaction to motor vehicle safety signals is fundamental to safe motor vehicle operation.

The agency also expressed a similar view in an August 1999 legal interpretation in response to a request from the law firm of Helfgott and Karas, P.C. A client of this firm wanted to install a steady burning amber lamp in the rear of the vehicle that would be illuminated whenever the ignition was activated and the brake lamps were not activated. In this interpretation, the agency stated that:

> Traffic safety is enhanced by the familiarity of drivers with established lighting schemes, which facilitates their ability to instantly and unhesitatingly recognize the meaning a lamp conveys and to respond to it. Any modification to the required lamps or any supplemental lamp that could be perceived to have signals different from the required functions when these functions are operating, or could be perceived incorrectly as signals from required functions would be deemed by us to impair the effectiveness of the required lighting.

Regarding the green "hoodlum" lamps, the agency addressed a similar issue in an April 2001 interpretation to Peter Hoffman of I.D. Lite Products Group, Inc. (I.D. Lite). I.D. Lite asked whether it would be permitted to include a green lamp that highlights signage on commercial vehicles. The agency stated that, because FMVSS No. 108 only allows the use of white, red, or amber lamps, a green lamp would not be permitted.

Also regarding the "hoodlum" lamps, the agency issued an interpretation in the early 1970s (the exact date could not be found in the interpretation database) in response to the Flxible Company (Flxible). Flxible asked whether a flashing "hoodlum warning system" that was requested by the city of Boston, Massachusetts would be allowable. The agency stated that, after January 1, 1972, this lamp would not be permitted because of the requirements limiting the flashing function to certain lamps.

Nova supported its application by stating that the lamps do not pose a safety risk. It does not explain what leads it to believe that there is no possibility of confusing the subject amber lamps with required lamps or why flashing green lamps also would not confuse observers. It does admit that there is "a slight chance" that the amber ones could be confused with the hazard lamps. The fact remains that they will attract attention, while having no readily apparent safety meaning, given that they are unique in the motor vehicle environment. This dilutes driver attention that needs to be focused on the driving task.

In addition, Nova states that because its customers specifically requested these noncompliant lamps and the agency cannot force the customers to return the buses to make them compliant, it would be unlikely they would return the vehicles in a recall campaign. This does not persuade us to grant the application. It is necessary that Nova notify its customers that the vehicles it sold them were noncompliant. It must also explain to the customers why they are noncompliant and the potential consequences of the noncompliance. If a large percentage of owners decide not to return their vehicles for remedy, the agency may investigate whether the Nova notification was adequate, and further action could be required.

In consideration of the foregoing, NHTSA has decided that the applicant has not met its burden of persuasion that the noncompliance it describes is inconsequential to motor vehicle safety, and that it should not be exempted from the notification and remedy requirements of the statute. Accordingly, its application is hereby denied.

(49 U.S.C. 30118(d) and 30120(h); delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: May 6, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–11714 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. NHTSA–01–10411; Notice 2]

Reliance Trailer Company, LLC; Grant of Application for Decision of Inconsequential Noncompliance

Reliance Trailer Company, LLC, of Spokane, Washington ("Reliance"), has determined that 26 of its dump body trailers, manufactured between February and June 2001, fail to comply with Federal Motor Vehicle Safety Standard (FMVSS) No. 224, "Rear Impact Protection," and has filed an appropriate report pursuant to 49 CFR part 573, "Defects and Noncompliance Reports."

On May 29, 2001, Reliance submitted a petition to the agency and requested that it be exempted from the notification and remedy requirements of 49 U.S.C. Chapter 301—Motor Vehicle Safety" on the basis that the noncompliance is inconsequential to motor vehicle safety.

We published a notice of receipt of the application on August 24, 2001, affording an opportunity to comment (66 FR 44663). We did not receive any comments on the notice. This notice grants the application.

The dump body trailers Reliance manufactured between February and June 2001 do not comply with FMVSS No. 224, "because their wheels were located farther ahead of the 12″ wheels back dimension," and hence do not qualify for exclusion from FMVSS No. 224. Paragraph S4 of FMVSS No. 224 defines a wheels back vehicle as a trailer or semitrailer whose rearmost axle is permanently fixed and is located such that the rearmost surface of tires of the size recommended by the vehicle manufacturer for the vehicle on that axle is not more than 305 mm [12 inches] forward of the transverse vertical plane tangent to the rear extremity of the vehicle." Reliance's Part 573 report acknowledged that the 26 affected dump body trailers are not in compliance with FMVSS No. 224, since the rearmost surface of their tires must be 16″–18″ forward of the rear extremity of the trailers to accommodate asphalt lay down equipment used in road construction.

Reliance supported its petition for a determination of inconsequential noncompliance with the following reasons:

1. *The noncompliance has no safety concerns*—Reliance knows "of no rear end collisions, involving injuries, with this type of trailer." Typical hauls of these trailers are short and have minimal amount of time traveling on highways compared with most freight trailers.

2. *There is no practical way to remedy the noncompliance*—"Currently, no one has been able to get paver manufacturers to revise, or users to retrofit all their equipment so that under-ride could be accommodated." Reliance stated that "any device behind the tires will interfere with [the trailer's] operation unless it can be moved out of the way when [the] dumping takes place."

3. *NHTSA granted temporary exemptions to competitors and similarly designed trailers*—Reliance noted that NHTSA granted a renewal of a temporary exemption from FMVSS No. 224 to Beall Trailers of Washington, Inc., another manufacturer of dump body trailers; the agency also granted a temporary exemption to Dan Hill & Associates, and Red River Manufacturing, Inc., manufacturers of trailers having similar interference problems with paving equipment.

4. *Reliance will aggressively proceed to conduct remedial activities*—Reliance will conduct "a review of paving equipment that these trailers mate with to determine if they can be retrofitted or modified to accommodate trailers with tires located within 12″ of the rear." Further, Reliance "will aggressively proceed to design, build, test and provide prototypes to determine the feasibility and usefulness of these devices."

Based on the above stated reasons, Reliance requested that the agency grant the inconsequential petition. Our analysis of the Reliance request follows.

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Reliance implied that the noncompliance should cause no safety concerns since Reliance knows "of no rear end collisions, involving injuries, with this type of trailer." This lack of knowledge by Reliance of injury-producing crashes is not convincing evidence that such designs present no safety risk. In promulgating FMVSS No. 224, NHTSA concluded that the limit for a "wheels back vehicle" should be set at 12 inches, and that vehicles with their rearmost tires positioned farther forward than that would present undue safety risk. While NHTSA also does not have evidence of any passenger car underride rear impact crashes with rear discharge asphalt dump body trailers, there is no reason to conclude that such trailers would be any less vulnerable to real-end crashes than other types of trailers in similar use. Nevertheless, due to the fact that only 26 trailers are involved, the safety risk is not conclusive.

Reliance stated that there is no practical way to remedy the noncompliance at a reasonable cost without interfering with the trailer's operation. In order to bring the 26 trailers in question into compliance, their rear axles would have to be repositioned farther rearward. For vehicles that have already been built, NHTSA agrees that this would be a costly modification. NHTSA also agrees that such an alteration may render the trailers unusable for their intended purpose, because with the axles farther rearward they may not be able to be properly positioned for unloading asphalt into the paving equipment with which they have to interact.

Reliance also noted the fact that the agency has granted temporary exemptions to competitors of similarly designed trailers, based partially on the same reasons. Reliance submitted a petition for a temporary exemption from FMVSS No. 224, for its future production of the same design as the 26 dump body trailers that are the subject of this notice. On October 22, 2001, we granted a temporary exemption to Reliance (66 FR 53471).

Finally, Reliance stated that it "will aggressively proceed to design, build, test and provide prototypes to determine the feasibility and usefulness of these devices." Since the above exemption was granted as temporary, NHTSA anticipates that Reliance will make progress in developing a design that is fully compliant.

Accordingly, the agency has decided that Reliance has met its burden of persuasion that the noncompliance described herein is inconsequential to motor vehicle safety and its application is granted. Therefore, Reliance Trailer Company, LLC is not required to provide notification and remedy of the noncompliance as required by 49 U.S.C. 30118 and 30120.

(49 U.S.C. 30118 and 30120; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: May 6, 2002.

Stephen R. Kratzke,

Associate Administrator for Safety Performance Standards.

[FR Doc. 02–11715 Filed 5–9–02; 8:45 am]

BILLING CODE 4910–59–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Docket No. AB–55 (Sub–No. 612X)]

CSX Transportation, Inc.—Abandonment Exemption-in Greenville, SC

CSX Transportation, Inc. (CSXT) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon approximately 1.31 miles of rail line between Valuation Station 47+50 and Valuation Station 115+11.5 in Greenville, Greenville County, SC. The line traverses United States Postal Service Zip Code 29601.

CSXT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed. Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on June 11, 2002, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by May 20, 2002. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by May 30, 2002, with: Surface Transportation Board, Case Control Unit, 1925 K Street NW., Washington, DC 20423.

A copy of any petition filed with the Board should be sent to applicant's representative: Natalie S. Rosenberg, Counsel, CSX Transportation, Inc., 500 Water Street J150, Jacksonville, FL 32202.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment or historic resources. SEA will issue an environmental assessment (EA) by May 17, 2002. Interested persons may obtain a copy of the EA by writing to SEA (Room 500, Surface Transportation Board, Washington, DC 20423) or by calling SEA, at (202) 565–1552. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

[1] The Board will grant a stay if an informed decision on environmental issues (whether raised by a party or by the Board's Section of Environmental Analysis (SEA) in its independent investigation) cannot be made before the exemption's effective date. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any request for a stay should be filed as soon as possible so that the Board may take appropriate action before the exemption's effective date.

[2] Each offer of financial assistance must be accompanied by the filing fee, which as of April 8, 2002, is set at $1,100. *See* 49 CFR 1002.2(f)(25).

Pursuant to the provisions of 49 CFR 1152.29(e)(2), CSXT shall file a notice of consummation with the Board to signify that it has exercised the authority granted and fully abandoned the line. If consummation has not been effected by CSXT's filing of a notice of consummation by May 10, 2003, and there are no legal or regulatory barriers to consummation, the authority to abandon will automatically expire.

Board decisions and notices are available on our Web site at "*www.stb.dot.gov.*"

Decided: May 6, 2002.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams,

Secretary.

[FR Doc. 02–11751 Filed 5–9–02; 8:45 am]

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Federal Register

Friday,
May 10, 2002

Part II

Department of Transportation

Coast Guard

33 CFR Part 155
Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[USCG–1998–3417]

RIN 2115–AF60

Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to revise the vessel response plan salvage and marine firefighting requirements for tank vessels carrying oil. These revisions will clarify the salvage and marine firefighting services that must be identified in vessel response plans. The proposed changes will assure the appropriate salvage and marine firefighting resources are identified and available for responding to incidents up to and including the worst-case scenario. The proposed rulemaking will also set new response time requirements for each of the required salvage and marine firefighting services.

DATES: Comments and related material must reach the Docket Management Facility on or before August 8, 2002. Comments sent to the Office of Management and Budget (OMB) on collection of information must reach OMB on or before July 9, 2002.

ADDRESSES: To make sure that your comments and related material are not entered more than once in the docket, please submit them by only one of the following means:

(1) By mail to the Docket Management Facility, (USCG–1998–3417), U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC 20590–0001.

(2) By hand delivery to room PL–401 on the Plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–366–9329.

(3) By fax to the Docket Management Facility at 202–493–2251.

(4) Electronically through the Web site for the Docket Management System at *http://dms.dot.gov*.

You must also mail comments on collection of information to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

The Docket Management Facility maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at room PL–401 on the Plaza level of the Nassif Building at the same address between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

You may inspect the material proposed for incorporation by reference at room 2100, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 202–267–0448. Copies of the material are available as indicated in the "Incorporation by Reference" section of this preamble.

FOR FURTHER INFORMATION CONTACT: For questions on this proposed rule, before July 15, 2002, call Lieutenant Douglas Lincoln, Office of Response, Response Operations Division, Coast Guard Headquarters, telephone 202–267–0448, or via e-mail at *DLincoln@comdt.uscg.mil*, and after July 15, 2002, call Lieutenant Reed Kohberger telephone 202–267–0448 or via e-mail at *RKohberger@comdt.uscg.mil*. For questions on viewing, or submitting material to the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking (USCG–1998–3417), indicate the specific section of this document to which each comment applies, and give the reason for each comment. You may submit your comments and material by mail, hand delivery, fax, or electronic means to the Docket Management Facility at the address under **ADDRESSES**; but please submit your comments and material by only one means. If you submit them by mail or hand delivery, submit them in an unbound format, no larger than 8½ by 11 inches, suitable for copying and electronic filing. If you submit them by mail and would like to know they reached the Facility, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and materials received during the comment period. We may change this proposed rule in view of them.

Public Meeting

The Coast Guard plans to hold several public meetings. A notice with the specific dates and locations of the meetings will be published in the **Federal Register** at least 30 days prior to the meetings. In addition, known interested parties will be contacted via mail, e-mail, and telephone. If you wish to be contacted regarding the public meetings, contact Lieutenant Douglas Lincoln, listed under **FOR FURTHER INFORMATION CONTACT.**

Background and Purpose

Requirements for salvage and marine firefighting resources in vessel response plans have been in place since February 5, 1993 (58 FR 7376). The existing requirements are general. The Coast Guard did not originally develop specific requirements because salvage and marine firefighting response resource requirements were viewed as unique to each vessel. The Coast Guard's intent was to rely on the planholders to prudently identify contractor resources to meet their needs. The Coast Guard anticipated that the significant benefits of a quick and effective salvage and marine firefighting response would be sufficient incentive for industry to develop salvage and marine firefighting capabilities similar to the development of oil spill removal organizations. The existing requirements in 33 CFR 155.1050(k)(3) are general. They require that the planholder identify resources capable of being deployed to the port nearest to the area in which the vessel operates within 24 hours of notification.

Early in 1997, it became apparent that the anticipated salvage and marine firefighting capability development was not occurring. Instead, there was disagreement among planholders, salvage and marine firefighting contractors, maritime associations, public agencies, and other stakeholders as to what constituted adequate salvage and marine firefighting resources. There was also concern over whether these resources could respond to the port nearest to the vessel's operating area within 24 hours, even though industry had been given several years to develop these resources.

On June 24, 1997, a notice of meeting was published in the **Federal Register** (62 FR 34105) announcing a workshop to solicit comments from the public on potential changes to the salvage and marine firefighting requirements found in 33 CFR 155.

A public workshop was held on August 5, 1997, to address issues related to salvage and marine firefighting response capabilities, including the 24-hour response time requirement, which was then scheduled to become effective on February 18, 1998. The participants uniformly identified the following three issues that they felt the Coast Guard needed to address:

(1) Defining the salvage and marine firefighting capability that is necessary in the plans;

(2) Establishing how quickly these resources must be on-scene; and

(3) Determining what constitutes adequate salvage and marine firefighting resources.

A copy of the summary report generated from this meeting is included in the project docket.

On February 12, 1998, a notice of suspension was published in the **Federal Register** suspending the 24-hour requirement, scheduled to become effective on February 18, 1998, until February 12, 2001 (63 FR 7069). On January 17, 2001, a second notice of suspension was published in the **Federal Register**, extending the suspension of the 24-hour requirement until February 12, 2004 (66 FR 3876).

The Coast Guard examined the information provided in the National Academy of Sciences 1994 Marine Board Report: "A Reassessment of the Marine Salvage Posture of the United States" (1994 Marine Board Report) as part of the information collected for this rulemaking. The 1994 Marine Board Report was authored by the National Research Council's Marine Board, Committee on Marine Salvage Issues (copy available for viewing at *http://books.nap.edu/books/0309051495/html/index.html)*. This committee was established in April 1992 at the request of the U.S. Navy Supervisor of Salvage to examine issues related to jettisoning of cargo in salvage operations. At the request of the Coast Guard the committee's charter was expanded to include updating a 1982 report titled *Marine Salvage in the United States*.

The report addressed changes in the salvage industry on the East, West, and Gulf Coasts since 1982, national salvage posture issues, formulated conclusions about the salvage industry, and made specific recommendations to Congress, the U.S. Navy, and the Coast Guard on salvage issues. The information on changes in the salvage industry and national salvage posture issues was extremely valuable and many of the findings were adopted as part of this regulation.

Additionally, the Coast Guard was aware that the California Office of Spill Prevention and Response (OSPR) had an implementation date of July 1, 2000, for State Salvage Equipment and Service requirements. In May 2000, the Coast Guard contacted OSPR to discuss extending the implementation date and provided them a draft copy of this proposed rulemaking. OSPR asked the Coast Guard to submit a formal request for the implementation delay, and on June 9, 2000, the request was sent to the OSPR Administrator. On June 14, 2000, OSPR informed the Coast Guard that they were extending their implementation date to September 30, 2000. Due to the extended period required to complete the regulatory analysis for this rulemaking, the Coast Guard informed OSPR in a letter on October 25, 2000, of our delay, although there had been several discussions of the status prior to this. On November 1, 2000, the State requirements became effective. Coordination with OSPR to develop a regulation that meets both the State and Federal requirements will continue. Copies of both of these letters are available for review in the public docket.

In addition to discussions with OSPR, the Coast Guard met with members of the salvage industry, represented by the American Salvage Association, and a representative group of marine firefighters to discuss issues affecting them. A regulation concept paper was made available to participants to facilitate the discussions. Participants were made aware that the concept paper was just a model of what the regulation concept was in 1998, and that it may not accurately reflect the current composition of the draft regulation. The following issues were discussed:

- How salvors and marine firefighters will be integrated into the planholder's response plan;
- Response times for salvage and marine firefighting services;
- Training requirements for marine firefighters; and
- Issues related to the "contract or other approved means" definition and requirements that appears in 33 CFR 155.1020 of the current regulation.

These meetings were held at the request of the interested parties. No changes to the regulation were made based upon these meetings.

Discussion of Proposed Rule

The public workshop conducted on August 5, 1997, showed that tank vessel owners and operators wanted more specificity in the salvage and marine firefighting requirements in the vessel response plan regulations (33 CFR 155). To address this, the Coast Guard is proposing that planholders of a vessel carrying groups I through IV petroleum oil as primary cargo will need to identify, in their plans, a salvage and marine firefighting resource provider (or providers) that performs the specific salvage and marine firefighting services identified in proposed Table 155.4030(b), Salvage and Marine Firefighting Services.

The proposed tables of services provide the specificity that was previously lacking while still maintaining flexibility for each vessel. Requiring "services" rather than specifying types and amounts of equipment was deemed to be more practical for the planholder, since the amount and type of equipment will vary depending on the vessel's characteristics and operating environment. The services we propose requiring were derived from the 1994 Marine Board Report and from the comments received at the August 5, 1997, public workshop.

The intent of requiring planholders to identify specific resource providers for the specific services listed in proposed Table 155.4030(b), Salvage and Marine Firefighting Services, is to require that the listed service provider be contacted in the event of a marine incident requiring that service. If another service provider, not listed in the approved plan for the specific service required, is contracted for a specific response, justification for the selection of that service provider needs to be provided and approved by the Federal On Scene Coordinator (FOSC). Only under exceptional circumstances will the FOSC authorize deviation from the service provider listed in the approved plan. It is also understood that some resources such as public firefighting resources may respond because of jurisdictional requirements, although these resources may not have been listed by the planholder.

While resource providers are usually private contractors, planholders may list public marine firefighting resources in their plans under the conditions detailed in proposed § 155.4020 and § 155.4045. They may list public marine firefighters as a resource provider for firefighting services only out to the maximum extent of the public resource's jurisdiction. Typically jurisdictional boundaries extend only out to three miles, but some states have adopted greater jurisdictional boundaries. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to be used for fighting fires beyond their own jurisdictional limits.

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It must be understood that because public marine firefighting services have jurisdictional boundaries, it may not be appropriate to select one public marine firefighting service to cover a whole Captain of the Port (COTP) zone. Since the Oil Pollution Act of 1990 emphasizes the use of private over public resources, public marine firefighting resource providers should only be listed when the planholder has determined no private resources are available that can meet the response times and the public resource has a responsibility to respond to incidents in the area specified in the plan. Also, the public resource must agree, in writing, to be included in the plan.

Planholders would be able to identify one or more resource providers within their plan. The 1994 Marine Board Report stated that it is unlikely any single salvage and marine firefighting contractor would be able to perform all of the elements (services) of salvage and marine firefighting in every region of the United States. Thus, more than one contractor may be necessary to perform all the services needed. The planholder would be required to list each service and the resource provider to perform it in each COTP zone the vessel transits. Planholders may list more than one resource provider for a salvage or marine firefighting service within a single COTP zone, but a primary provider must be identified. Different primary resource providers can be listed for the same service in different COTP zones.

Planholders must have discussions with resource providers to ensure that proper resources are identified for their type of vessel and cargo. For example, extinguishing agents must be identified that are compatible with the cargo onboard the vessel. Planholders would be allowed to include portable and non-portable off-vessel firefighting systems (or both) in their plans, so long as these resources are capable of responding within the time frames listed in this proposed rulemaking. Planholders would only list in their plan resource providers who have provided written consent to be included. This consent would include a statement from the resource provider that they are capable of providing the salvage and/or marine firefighting services they have been requested to provide within the response times in proposed Table 155.4030(b), Salvage and Marine Firefighting Services. Additionally, the proposed regulations would require that plans be certified by the planholder and state that the resource provider(s) capabilities have been reviewed by the planholder, and the minimum selection criteria in proposed § 155.4050 were considered during selection of the resource provider(s).

Only marine firefighting contractors that meet the National Fire Protection Association (NFPA) Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience, should be included in the plan. The Coast Guard proposes to incorporate these standards by reference into the rulemaking.

The public workshop showed a need to identify practical on-scene response times for salvage and marine firefighting services. This proposed rulemaking would set specific response times (in hours) for each of the salvage and marine firefighting services that must be included in plans.

Resource providers, in their written agreement with the planholder, must provide a statement that they are able to meet the required response times for each service they would provide. This agreement need not be provided as part of the plan, but must be available for inspection upon request by the Coast Guard. The time frame starts when someone in the planholders response organization receives notification of a potential or actual incident. It ends when the end point requirement listed in proposed Table 155.4040(c), Response Time End Points is met. The measurement of the 12 and 50 mile point will be from the boundary lines or the line of demarcation (COLREG lines) for the Gulf of Mexico for CONUS operations, and from the harbor of the COTP city closest to the potential or actual discharge for OCONUS operations.

Planholders would be responsible for ensuring that contract negotiations with salvage and/or marine firefighting providers do not delay response efforts. In order to ensure this, the Coast Guard is proposing to require, as part of the "contract or other approved means" in § 155.4025, that planholders develop and sign a written funding agreement between themselves and the resource providers. The funding agreement should contain an agreed upon pricing list for services and equipment that the resource providers might need to provide in order to meet the requirements. This agreement should state how long the agreement remains in effect and must be available to the Coast Guard upon request. If Lloyd's Standard Form of Salvage Agreement is to be used, this should be stated in place of a pricing list for services.

The public workshop also showed a need to identify qualified salvage and marine firefighting resource providers. In the absence of national and/or international certification or qualification programs for determining the adequacy of private salvage and marine firefighting resources, planholders will be responsible for determining the adequacy of these resources on their own. The 1994 Marine Board Report, on page 35, made recommendations as to the minimum attributes that a salvor should possess in order to be considered a professional. These attributes and others have been compiled into a comprehensive list that the Coast Guard feels planholders need to consider when choosing resource providers.

In proposed § 155.4050, we recommend that a planholder choose resource providers who meet the following criteria:

(1) Are currently performing the needed response service(s).

(2) Have a documented history of participation in successful salvage and/or marine firefighting operations, including salvage and/or marine firefighting equipment deployment.

(3) Own or have contracts for equipment needed to perform response services.

(4) Have personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).

(5) Have 24-hour availability of personnel and equipment, and a history of response times compatible with the time requirements in this rulemaking.

(6) Have an on-going continuous training program, and meet the training guidelines in NFPA 1001, 1021, 1405, and 1561, or equivalent.

(7) Have a successful record of participation in drills and exercises.

(8) Have sample salvage or marine firefighting plans used and approved during real incidents.

(9) Have membership in relevant national and/or international organizations.

(10) Have insurance that covers the salvage and/or marine firefighting services which they intend to provide.

(11) Have sufficient up front capital to support an operation.

(12) Have equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, currents, temperature extremes, etc.).

(13) Have the logistical and transportation support capability required to sustain operations for extended periods of time.

A resource provider need not meet all of the selection criteria in order to be considered, in fact some criteria will not apply to all resource providers.

Planholders would be required to certify that these factors were considered when choosing a resource provider. This includes determining that some of the selection criteria do not apply.

Planholders who are unable to obtain a salvage and/or marine firefighting resource provider(s) that can meet the specified response times may submit a request for a temporary waiver. The details of the waiver process and the waiver time limits are listed in proposed § 155.4055. The waiver request must specifically identify the salvage or marine firefighting service, response time, COTP zone, and operating environment (e.g., inland, nearshore, offshore, OCONUS). The waiver request must first be submitted to the cognizant COTP. The COTP will evaluate and comment on the waiver request, and then forward the waiver request, via the District and Area Commanders, on to Commandant (G–MOR). Commandant (G–MOR) shall make the final determination on approving the waiver. The emergency lightering requirements that are detailed in this rulemaking are not subject to waiver. Planholders are already required to comply with these requirements, as in 33 CFR 155.1050(l).

During the development of the regulation, the Coast Guard decided that group V petroleum products would not be covered under this rulemaking. This decision was based on the differences in response procedures for dealing with group V petroleum cargoes and the relative differences in cargo volumes transported. For group V petroleum products, the existing planning requirements in 33 CFR 155.1052(f) will remain the same. In other words, these proposed regulations will not apply to group V petroleum products. The suspension in 33 CFR 155.1052(f) will be cancelled once these proposed salvage and marine firefighting requirements become final.

Incorporation by Reference

Material proposed for incorporation by reference appears in §§ 155.4035 and 155.4050. You may inspect this material at U.S. Coast Guard Headquarters where indicated under **ADDRESSES.** Copies of the material are available from the sources listed in § 155.140.

Before publishing a binding rule, we will submit this material to the Director of the Federal Register for approval of the incorporation by reference.

Regulatory Evaluation and Unfunded Mandates Reform Act Assessment

Unfunded Mandates Reform Act Assessment

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of more than $100 million annually.

The legal authority for this proposed rulemaking is provided by the Oil Pollution Act of 1990 (OPA 90). Response plans are required by the Federal Water Pollution Control Act 33 USC 1321(j)(5) as amended by Section 4202(a) of OPA 90.

The proposed rule will not result in expenditures by State, local, or tribal governments because public vessels are exempt from the requirements of this rulemaking. This rule is expected to cost the private sector more than $100 million in the first year the rule is in effect as salvage and firefighting companies invest in capital equipment. The Regulatory Evaluation below provides an overview of the rulemaking and the costs and benefits of this rulemaking. A more detailed discussion of costs and benefits can be found in the Regulatory Assessment for the proposed rule, which is available in the docket as indicated under **ADDRESSES.** The Regulatory Assessment also presents alternatives to the proposed rule, which are contained in the Initial Regulatory Flexibility Act Analysis.

Regulatory Evaluation

This proposed rule is a "significant regulatory action" under section 3(f) of Executive Order 12866 and has been reviewed by the Office of Management and Budget. Section 6(a)(3) of Executive Order 12866 states that an assessment of potential costs and benefits must be conducted. This evaluation is significant under the regulatory policies and procedures of the Department of Transportation (44 FR 11040; February 26, 1979). A more detailed draft Regulatory Assessment is available in the docket as indicated under **ADDRESSES.**

Summary of Cost

This rule is economically significant because the costs for the first year the rule is in effect exceed $100 million. Costs are presented in 2001 dollars, and the analysis covers the period 2001–2030. These costs are considered accurate for 2002. Detail of these costs is described below.

The total net present value (NPV) cost for the period 2001–2030 is $491.7 million (7 percent discount rate, 2001 dollars). Of this, $127.9 million ($111.7 million NPV) is for the initial acquisition of salvage and firefighting equipment in 2003, when the proposed rule will become effective. An estimated $28.4 million ($24.8 million NPV) is for initial paperwork requirements in 2003 for salvage and firefighting companies, vessel planholders, and companies that prepare response plans for planholders. This rule is estimated to cost $30.9 million annually (undiscounted) for operations, maintenance, and paperwork costs. This cost will first be incurred in 2004 and will be incurred through the assessment period (until 2030). Capital equipment initially acquired in 2003 will be replaced at various times throughout the assessment period.

We believe that the capital and annual costs incurred by salvage and firefighting companies will be, to the extent possible, passed on to vessel planholders through retainer fees or increased costs for services provided.

A summary of the estimated cost for the proposed rule is presented in Table 1.

TABLE 1.—TOTAL NET PRESENT VALUE COST OF THE PROPOSED RULE

[2001 $Millions, 7 Percent Discount Rate, Assessment Period 2001–2030]

Affected Entity	Equipment	Personnel	Paperwork	Total
Salvage Companies	$349.8	$38.7	$0.6	$389.1
Firefighting Companies	21.3	39.9	16.6	77.8
Planholders/Plan Preparers	0	0	24.4	24.4
Coast Guard	0	0	0.4	0.4
Total	371.1	78.6	42.0	491.7

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Equipment and personnel costs were developed using information from representatives of the salvage and marine firefighting industry, other experts, and the Coast Guard.
Paperwork costs were based on previous regulatory analysis of paperwork requirements for the original vessel response plan rulemaking for salvage and marine firefighting and the hazardous substance response plan rulemakings.

Summary of Benefit

Benefit of the proposed rule is expressed in barrels of oil not spilled. We assessed the benefit of the proposed rule using a modeling tool developed for the Oil Pollution Act of 1990 Programmatic Regulatory Assessment (OPA 90 PRA). The PRA assessed the costs and benefits of 11 "core group" rules enacted under OPA 90. These included such rules as double hulls, financial responsibility, and the original vessel response plan rulemakings. The PRA assessed the overlapping effects (and therefore benefits) of these 11 major rulemakings and avoided the double counting of barrels of oil not spilled. A copy of the OPA 90 PRA can be found in the docket for this proposed rulemaking.

The benefit analysis for the proposed rulemaking used the PRA modeling tool and adjusted estimates of effectiveness specific to this proposed rulemaking. Effectiveness factors (i.e., the quantified effect of the proposed rule) were developed through an expert panel. We assume benefits will be accrued beginning in 2004 after equipment has been purchased and response plans have been developed. The number of barrels of oil not spilled over the assessment period (2001–2030) as a result of this rulemaking is 87,282 NPV (7 percent discount rate), or approximately 87,300 NPV barrels.

The cost effectiveness of the rule is the NPV cost of the rule (in dollars) divided by the NPV of the oil not spilled (in barrels) as a result of the rule. The cost effectiveness of the proposed salvage and firefighting rulemaking is $5,634 ($491.7 million/87,282 barrels), or approximately $5,600/barrel. This means it costs society $5,600 to keep each barrel of oil from being spilled into the water.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of fewer than 50,000.

From our analysis, the Coast Guard concluded that the requirements for salvage and marine firefighting might have a significant impact on a substantial number of small entities. There are an estimated 710 vessel companies that will be affected by the proposed rule. Of these, an estimated 191 of them are small businesses. We estimate that the proposed rule will have a no more than 10-percent affect on annual revenues for 90 percent of these 191 small businesses. Under the proposed rulemaking, some businesses may be eligible for a limited time waiver of the salvage and marine firefighting requirements. This waiver may help offset the financial impacts of the proposed rulemaking on affected small businesses.

A complete Initial Regulatory Flexibility Analysis discussing the impact of this proposed rule on small entities is available in the docket where indicated under **ADDRESSES.** This analysis also presents alternatives to the proposed rule that the Coast Guard considered.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would effect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please consult Lieutenant Douglas Lincoln at 202–267–0448.

Collection of Information

This proposed rule would call for a collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As defined in 5 CFR 1320.3(c), "collection of information" comprises reporting, record keeping, monitoring, posting, labeling, and other, similar actions. The title and description of the information collections, a description of those who must collect the information, and an estimate of the total annual burden follow. The estimate covers the time for reviewing instructions, searching existing sources of data, gathering and maintaining the data needed, and completing and reviewing the collection.

This proposed rule affects an existing OMB approved collection of information.

Title: Vessel Response Plans, Facility Response Plans, Shipboard Oil Pollution Emergency Plans, and Additional Response Equipment Requirements for Prince William Sound.

OMB Number: 2115–0595.

Summary of the Collection of Information: Vessels carrying oil in bulk as cargo, and operating in U.S. waters are required by section 4202(a)(6) of the Oil Pollution Act of 1990, and amended section 311(j) of the Federal Water Pollution Control Act to prepare and submit a written response plan for a worst case discharge of oil. The information in these plans contain:

- Names and contact information for salvage and marine firefighting responders for each vessel with appropriate equipment and resources located in each zone in which the vessel operates.
- Specific lists of equipment that the resource providers will make available in case of an incident in each zone.
- Certification that the responders are qualified and have given their permission to be included in the plan.

The collection of information period is 2003–2005 (3 years). We use this period rather than 2001–2003 because collection of information requirements under this rulemaking are anticipated to begin in 2003.

Need for Information: The collection of information is necessary to ensure that salvage and marine firefighting resources appropriate for each vessel and type of cargo are available if an incident occurs to prevent or mitigate the discharge of oil into the environment.

Proposed Use of Information: The information in the salvage and marine firefighting sections of vessel response plans is necessary to show evidence that vessel planholders have done proper planning to prevent or mitigate oil outflow from vessel casualties, and to provide that information to the Coast Guard for their use in emergency response.

Description of the Respondents: Respondents are vessel owners and operators, known as planholders. Planholders also include small entities, such as tank barge companies, and tank ship or mixed fleet companies. Respondents are also the companies that may prepare response plans for planholders. Finally, respondents are the salvage and firefighting companies that will provide the equipment requirements under the proposed rule.

Number of Respondents: The proposed rule affects 710 of the 5,127 respondents who are planholders and plan preparers to the collection of information. The proposed rule also affects 50 salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be 710 + 50 = 760 respondents. In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 respondents (planholders/plan preparers only).

Frequency of Response: The proposed rule accounts for 710 of the 5,207 total annual responses for the collection of information. In addition, there are 50 responses from salvage and firefighting companies. In the first year the rule is in effect (estimated in 2003), there will be 710 + 50 = 760 responses (one response for each respondent). In the 2nd and 3rd years of the 3-year collection of information period (2004–2005), there will be 710 responses (one for each planholder/plan preparer).

Burden of Response: The primary burden of response consists of:

- Initial preparation of the vessel response plan.
- Consultation and negotiation between salvage and firefighting companies and planholders/plan preparers.
- Submission of the plan to the Coast Guard for approval.
- Submission of revisions or modifications to a response plan as material changes occurs for the vessel to prepare.
- Resubmission of the vessel response plan to the Coast Guard.

The plans are to be resubmitted every 5 years, and the paperwork burden for the resubmission is expected to be the same as for the annual review.

Estimate of Total Annual Burden: The total estimated burden for planholders and plan preparers to comply with the proposed rulemaking is 100,520 hours for the first year (2003), and 17,750 hours for each subsequent year (2004–2005). Total estimated burden for salvage and firefighting companies is 196,840 hours for the first year and 0 hours for each subsequent year. The total burden for the first year the rule is in effect is 297,360 hours. The total burden for subsequent years is 17,750. The total burden of the proposed rule during the 3-year period of the collection of information (2003–2005) is 297,360 hours.

As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), we have submitted a copy of this proposed rule to the Office of Management and Budget (OMB) for its review of the collection of information.

We ask for public comment on the proposed collection of information to help us determine how useful the information is; whether it can help us perform our functions better; whether it is readily available elsewhere; how accurate our estimate of the burden of collection is; how valid our methods for determining burden are; how we can improve the quality, usefulness, and clarity of the information; and how we can minimize the burden of collection.

If you submit comments on the collection of information, submit them both to OMB and to the Docket Management Facility where indicated under **ADDRESSES**, by the dates under **DATES**.

You need not respond to a collection of information unless it displays a currently valid control number from OMB. Before the requirements for this collection of information become effective, we will publish a notice in the **Federal Register** of OMB's decision to approve, modify, or disapprove the collection.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. It is well settled that States may not regulate in categories reserved for regulation by the Coast Guard. It is also well settled, now, that all of the categories covered in 46 U.S.C. 3306, 3703, 7101, or 8101 (design, construction, alteration, repair, maintenance, operation, equipping, personnel qualification, and manning of vessels), as well as casualty reporting and any other category in which Congress intended the Coast Guard to be the sole source of a vessel's obligations, are within the field foreclosed from regulation by the States. (See the decision of the Supreme Court in the consolidated cases of *United States* v. *Locke* and *Intertanko* v. *Locke*, 529 U.S. 89, 120 S.Ct. 1135 (March 6, 2000).)

This regulation covers vessel response plans for salvage and marine firefighting resources, aimed at reducing cargo loss should a marine casualty occur. As discussed in the Background and Purpose section above, the Coast Guard has consulted with state agencies, such as California's OSPR, to ensure these proposed regulations will not interfere with or preempt state regulations on the same subject. We will continue to do so, until a Final Rule is published.

Taking of Private Property

This proposed rule would not affect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Consultation and Coordination With Indian Tribal Governments

This proposed rule will not have tribal implications; will not impose substantial direct compliance costs on Indian tribal governments; and will not preempt tribal law. Therefore, it is exempt from the consultation requirements of Executive Order 13175. If tribal implications are identified during the comment period we will undertake appropriate consultations With the affected Indian tribal officials.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that this might be classified as a "significant energy action" under that order because it is a "significant regulatory action" under Executive Order 12866 and might have a significant adverse effect on the supply, distribution, or use of energy. The Coast Guard is establishing a waiver provision for this proposed rule, and we do not anticipate adverse energy consequences during that time. After this waiver period, we do not expect a national impact on energy supply, distribution or use. We cannot rule out however, effects on local markets. We would appreciate comments discussing any likely significant adverse effects on the supply, distribution, or use of energy. Submit these comments to one of the locations listed under **ADDRESSES.** We will analyze all comments and, if necessary, prepare a full Statement of Energy Effects with the Final Rule for this project.

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Environment

The Coast Guard considered the environmental impact of vessel response plans as a whole during an April 1992, Environmental Assessment (EA), and a November 1992 Supplemental Statement, and concluded that a Finding of No Significant Impact (FONSI) was appropriate. The 1992 EA and FONSI are sufficiently broad in scope to cover these new requirements. Therefore, we have determined that it is not necessary to complete another EA solely for these salvage and marine firefighting revisions. The 1992 EA and FONSI are available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 155

Alaska, Hazardous substances, Oil pollution, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 continues to read as follows:

Authority: 33 U.S.C. 1231, 1321(j); 46 U.S.C. 3715, 3719; sec. 2, E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; 49 CFR 1.46, 1.46(iii).

Sections 155.110–155–130, 155.110–155.130; 155.350–155.400, 155.430, 155.440, 155.470, 155.1030(j) and (k), and 155.1065(g) also issued under 33 U.S.C. 1903(b); and §§ 155.1110–155.1150 also issued under 33 U.S.C. 2735.

Note: Additional requirements for vessels carrying oil or hazardous materials appears in 46 CFR parts 30 through 36, 150, 151, and 153.

2. Add a note following § 155.130 to read as follows:

§ 155.130 Exemptions.

* * * * *

Note to § 155.130: Additional exemptions/temporary waivers related to salvage and marine firefighting requirements can be found in § 155.4055.

3. Amend § 155.140 by adding alphabetically to paragraph (b):

§ 155.140 Incorporation by reference.

* * * * *

(b) * * *

Notional Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269–9101

NFPA 1001, Standard for Fire Fighter Professional Qualifications, 1997 Edition—155.4050

NFPA 1021, Standard for Fire Officer Professional Qualifications, 1999 Edition—155.4050

NFPA 1405, Guide for Land-based Fire Fighters who Respond to Marine Vessel Fires, 1996 Edition 155.4035; 155.4050

NFPA 1561, Standard on Fire Department Incident Management System, 2000 Edition 155.4050

* * * * *

4. In § 155.1020, revise the definition of "Oil Spill Removal Organization" to read as follows:

§ 155.1020 Definitions.

* * * * *

Oil spill removal organization (OSRO) means an entity that provides oil spill response resources.

* * * * *

5. Amend § 155.1050 by revising paragraph (k) to read as follows:

§ 155.1050 Response plan development and evaluation criteria for vessels carrying groups I through IV petroleum oil as a primary cargo.

* * * * *

(k) *Salvage* (including lightering) and *marine firefighting* requirements are found in subpart I of this part.

* * * * *

6. Add subpart I, consisting of § 155.4010 through § 155.4055, to read as follows:

Subpart I—Salvage and Marine Firefighting

Sec.

155.4010 What is the purpose of this subpart?
155.4015 Who must follow this subpart?
155.4020 When must my plan comply with this subpart?
155.4025 Definitions.
155.4030 What salvage and marine firefighting services are required to be listed in my plans?
155.4035 What pre-incident information and arrangements are needed for the salvage and marine firefighting resource providers in my plans?
155.4040 What are the response times for each salvage and marine firefighting service?
155.4045 What agreements or contracts must I have with the salvage and marine firefighting resource providers?
155.4050 How can I ensure that the salvors and marine firefighters are adequate?
155.4055 What if I am unable to obtain a salvage or marine firefighting resource provider that can meet one or more of the specified response times?

§ 155.4010 What is the purpose of this subpart?

The purpose of this subpart is to establish vessel response plan *salvage* and *marine firefighting* requirements for vessels that are required by § 155.1015 to have a response plan. *Salvage* and *marine firefighting* actions can save lives, property, and prevent the escalation of potential oil spills to worst case events.

§ 155.4015 Who must follow this subpart?

You must follow this subpart if your vessel meets the vessel response plan applicability requirements of § 155.1015.

§ 155.4020 When must my plan comply with this subpart?

(a) If you have an existing approved vessel response plan, you must have your plan updated and submitted to the Coast Guard by [Date Six Months After Publication of a Final Regulation].

(b) All new or existing vessels entering United States that meet the applicability requirements of § 155.1015, that do not have an approved vessel response plan, must comply with § 155.1065.

(c) Your vessel may not conduct oil operations if-(1) You have not submitted a plan to the Coast Guard in accordance with § 155.1065 prior to [Date Six Months After Publication of a Final Regulation];

(2) The Coast Guard determines that the response resources referenced in your plan do not meet the requirements of this subpart;

(3) The contracts or agreements cited in your plan have lapsed or are otherwise no longer valid;

(4) You are not operating in accordance with your plan; or

(5) The plan's approval has expired.

§ 155.4025 Definitions.

Assessment of structural stability means completion of a vessel's stability and structural integrity assessment through the use of a salvage software program. The data used for the calculations would include information collected by the on-scene salvage professional. The assessment is intended to allow sound decisions to be made for subsequent salvage efforts.

Continental United States (CONUS) means the contiguous 48 states and the District of Columbia.

Contract or other approved means is any one of the following:

(1) A written contractual agreement between a vessel owner or operator and a resource provider. This agreement must expressly provide that the resource provider is capable of, and intends to commit to, meeting the plan requirements.

(2) A written certification that the personnel, equipment, and capabilities required by this subpart are available and under your direct control.

(3) An alternative approved by the Coast Guard (Commandant (G-MOR)).

As part of the contract or other approved means you must develop and sign, with your resource provider, a written funding agreement. This funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. The funding agreement must include a statement of how long the agreement remains in effect, and must be available to the Coast Guard for inspection.

Diving services support means divers and their equipment to support salvage operations. This support may include, but not be limited to, underwater repairs, welding, placing lifting slings, or performing damage assessments.

Emergency lightering is the process of transferring oil between two ships or other floating or land-based receptacles in an emergency situation and may require pumping equipment, transfer hoses, fenders, portable barges, shore based portable tanks, or other equipment that circumstances may dictate.

Emergency towing, also referred to as rescue towing, means the use of towing vessels that can pull, push or make-up alongside a vessel. This is to ensure that a vessel can be stabilized, controlled or removed from a grounded position. Towing vessels must have the proper horsepower or bollard pull compatible with the size and tonnage of the vessel to be towed.

External emergency transfer operations means the use of external pumping equipment placed onboard a vessel to move oil from one tank to another, when the vessel's own transfer equipment is not working.

External firefighting teams means trained firefighting personnel, aside from the crew, with the capability of boarding and combating a fire on a vessel.

External vessel firefighting systems mean firefighting resources (personnel and equipment) that are capable of combating a fire from other than onboard the vessel. These resources include, but are not limited to, fire tugs, portable fire pumps, airplanes, helicopters, or shore side fire trucks.

Funding agreement is a written agreement between a resource provider and a planholder that identifies agreed upon rates for specific equipment and services to be made available by the resource provider under the agreement. The funding agreement is to ensure that salvage and marine firefighting responses are not delayed due to funding negotiations. This agreement must be part of the contract or other approved means, however, it does not need to be part of your plan.

Great Lakes means Lakes Superior, Michigan, Huron, Erie, and Ontario, their connecting and tributary waters, the Saint Lawrence River as far as Saint Regis, and adjacent port areas.

Heavy lift means the use of a salvage crane, A-frames, hydraulic jacks, winches, or other equipment for lifting, righting, or stabilizing a vessel.

Inland area means the area shoreward of the boundary lines defined in 46 CFR part 7, except that in the Gulf of Mexico, it means the area shoreward of the lines of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter. The inland area does not include the Great Lakes.

Making temporary repairs means action to temporarily repair a vessel to enable it to safely move to a shipyard or other location for permanent repairs. These services include, but are not limited to, shoring, patching, drill stopping, or structural reinforcement.

Marine firefighting means any firefighting related act undertaken to assist a vessel in potential or actual fire danger, to prevent loss of life, damage or destruction of the vessel, or damage to the marine environment.

Nearshore area means the area extending seaward 12 miles from the boundary lines defined in 46 CFR part 7, except in the Gulf of Mexico. In the Gulf of Mexico, a nearshore area is one extending seaward 12 miles from the line of demarcation (COLREG lines) as defined in §§ 80.740 through 80.850 of this chapter.

Offshore area means the area up to 38 nautical miles seaward of the outer boundary of the nearshore area.

On-site fire assessment means that a marine firefighting professional is on scene, at a safe distance from the vessel or on the vessel, that can determine the steps needed to control and extinguish a marine fire, taking into consideration a vessel's stability and structural integrity.

On-site salvage assessment means that a salvage professional is on scene, at a safe distance from the vessel or on the vessel, that has the ability to assess the vessel's stability and structural integrity. The data collected during this assessment will be used in the salvage software calculations and to determine necessary steps to salve the vessel.

Other refloating methods means those techniques for refloating a vessel aside from using pumps. These services include, but are not limited to, the use of pontoons, air bags or compressed air.

Outside Continental United States (OCONUS) means Alaska, Hawaii, the Commonwealth of Puerto Rico, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Marianas, and any other territory or possession of the United States.

Remote assessment and consultation means contacting the salvage and/or marine firefighting resource providers by phone or other communications to discuss and assess the situation.

Resource provider means an entity that provides personnel, equipment, supplies, and other capabilities necessary to perform salvage and/or marine firefighting services identified in the response plan. For marine firefighting services, resource providers can include public firefighting resources as long as they are able and willing to provide the services needed.

Salvage means any act undertaken to assist a vessel in potential or actual danger, to prevent loss of life, damage or destruction of the vessel and release of its contents into the marine environment.

Salvage plan means a plan developed to guide salvage operations except those identified as specialized salvage operations.

Special salvage operations plan means a salvage plan developed to carry out a specialized salvage operation, including heavy lift and/or subsurface product removal.

Subsurface product removal means the safe removal of oil from a vessel that has sunk or is partially submerged underwater. These actions can include pumping or other means to transfer the oil to a storage device.

Underwater vessel and bottom survey means having salvage resources on scene that can perform examination and analysis of the vessel's hull and equipment below the water surface. These resources also include the ability to determine the bottom configuration and type for the body of water. This service can be accomplished through the use of equipment such as sonar, magnetometers, remotely operated vehicles or divers. When divers are used to perform these services, the time requirements for this service apply and not those of diving services support.

§ 155.4030 What salvage and marine firefighting services are required to be listed in my plans?

(a) You must identify in your plan the *salvage* and *marine firefighting* services listed in Table 155.4030(b)—Salvage and Marine Firefighting Services. Additionally, you must list those *resource providers* that you have contracted to provide these services. You may list multiple *resource providers* for each service, but you must identify which one is your primary *resource provider* for each Captain of

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the Port (COTP) zone in which you operate. A method of contact, consistent with the requirements in §§ 155.1035(e)(6)(ii) and 155.1040(e)(5)(ii), must also be listed adjacent to the name of the resource provider.

(b) TABLE 155.4030(b).—SALVAGE AND MARINE FIREFIGHTING SERVICES

Service	Location of incident response activity timeframe	
	CONUS: near-shore area; inland waters; Great Lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(1) Salvage		
(i) *Assessment & Survey:*		
(A) Remote assessment and consultation	1	1
(B) Begin assessment of structural stability	3	3
(C) On-site salvage assessment	6	12
(D) Assessment of structural stability	12	18
(E) Hull and bottom survey	12	18
(ii) *Stabilization:*		
(A) Emergency towing	12	18
(B) Salvage plan	16	22
(C) External emergency transfer operations	18	24
(D) Emergency lightering	18	24
(E) Other refloating methods	18	24
(F) Making temporary repairs	18	24
(G) Diving services support	18	24
(iii) *Specialized Salvage Operations:*		
(A) Special salvage operations plan	18	24
(B) Heavy lift	72	84
(C) Subsurface product removal	72	84

(2) Marine firefighting	At pier (hours)	CONUS: Near-shore area; inland waters; great lakes; and OCONUS: < or = 12 miles from COTP city (hours)	CONUS: Offshore area; and OCONUS: < or = 50 miles from COTP city (hours)
(i) *Assessment & Planning:*			
(A) Remote assessment and consultation	1	1	1
(B) On-site fire assessment	2	6	12
(ii) *Fire Suppression:*			
(A) External firefighting teams	4	8	12
(B) External vessel firefighting systems	4	12	18

(c) *Integration into the response organization.* You must ensure that all *salvage* and *marine firefighting resource providers* are integrated into the response organizations listed in your plans. The response organization must be consistent with the requirements set forth in §§ 155.1030(d), 155.1040(d), and 155.1045(d).

(d) *Coordination with other response resource providers, response organizations and OSROs.* Your plan must include provisions on how the *salvage* and *marine firefighting resource providers* will coordinate with other response resources, response organizations, and OSROs. For example, you will need to identify how *salvage* and *marine firefighting* assessment personnel will coordinate response activity with oil spill removal organizations. For services that, by law, require public assistance, there must be clear guidelines on how service providers will interact with those organizations.

(e) *Ensuring the proper emergency towing vessels are listed in your plans.* Your plans must identify towing vessels with the proper characteristics, horsepower, and bollard pull to tow your vessel(s). These towing vessels must be capable of operating in environments where the winds are up to 40 knots.

(f) *Ensuring the proper type and amount of transfer equipment is listed in your plans.* Your *salvage resource provider* must be able to bring on scene a pumping capability that can offload the vessel's largest cargo tank in 24 hours of continuous operation. This is required for both emergency transfer and lightering operations.

(g) *Ensuring firefighting equipment is compatible with your vessel.* Your plan must list the proper type and amount of extinguishing agent needed to combat a fire involving your vessel's cargo, other contents, and superstructure. If your primary extinguishing agent is foam or water, you must identify resources in your plan that are able to pump, at a minimum, 0.16 gallons per minute per square foot of the deck area of your vessel, or an appropriate rate for spaces that this rate is not suitable for and if needed, an adequate source of foam.

(h) *Ensuring the proper subsurface product removal.* You must have *subsurface product removal* capability if your vessel(s) operates in waters of 40 feet or more. Your resource provider must have the capability of removing cargo and fuel from your sunken vessel to a depth equal to the maximum your vessel operates in up to 150 feet.

(i) *Worker health and safety.* Your resource providers must have the capability to implement the necessary engineering, administrative, and personal protective equipment controls to safeguard their workers when providing *salvage* and *marine firefighting* services.

§ 155.4035 What pre-incident information and arrangements are needed for the salvage and marine firefighting resource providers in my plans?

(a) You must provide the information listed in §§ 155.1035(c), 155.1040(c), and 155.1045(c) to your *salvage* and *marine firefighting* resource providers.

(b) *Marine firefighting pre-fire plan.*

(1) You must prepare a vessel pre-fire plan in accordance with the National Fire Protection Association (NFPA) Standard 1405, Guide for Land-based Firefighters who Respond to Marine Vessel Fires, Chapter 7. If you meet this requirement through compliance with another regulation or international standard, you need only to indicate this in your plan.

(2) The *marine firefighting resource provider(s)* you are required to identify in your plan must be given a copy of the plan. Additionally, they must certify in writing to you that they find the plan acceptable and agree to implement it to mitigate a potential or actual fire.

§ 155.4040 What are the response times for each salvage and marine firefighting service?

(a) You must ensure, by *contract or other approved means*, that your *resource provider(s)* is capable of providing the services within the required time frames.

(1) If your vessel is at the pier or transiting a COTP zone within the Continental United States (CONUS), the time frames in Table 155.4030(b) apply as listed.

(2) If your vessel is at the pier or transiting a COTP zone outside the Continental United States (OCONUS), the time frames in Table 155.4030(b) apply as follows:

(i) Inland waters and nearshore area time frames apply from the COTP city out to and including the 12 mile point.

(ii) Offshore area time frames apply from 12 to 50 miles outside the COTP city.

(3) If your vessel transits within an OCONUS COTP zone that is outside the areas described in paragraph (a)(2) of this section, but within the inland waters or the nearshore or offshore area, you must submit in writing, in your plan, the steps you will take to address *salvage* and *marine firefighting* needs in the event these services are required.

(b) The time frame starts when anyone in your response organization receives notification of a potential or actual incident. It ends when the service reaches the ship, the outer limit of the nearshore area, the outer limit of the offshore area, the 12 or 50-mile point from the COTP city, or a point identified in your response plan for areas OCONUS. Table 155.4040(c) provides additional amplifying information for vessels transiting within the nearshore and offshore areas of CONUS or within 50 miles of an OCONUS COTP city.

(c) Table 155.4040(c)—Response Time End Points (CONUS & Within 50 Miles of An OCONUS COTP City)

Service	Response time ends when
(1) Salvage:	
(i) Remote assessment and consultation	Salvor is in voice contact with QI/Master/Operator.
(ii) Begin assessment of structural stability	A structural assessment of the vessel has been initiated.
(iii) On-site salvage assessment	Salvor onboard vessel.
(iv) Assessment of structural stability	Initial analysis is completed. This is a continual process, but at the time specified an analysis needs to be completed.
(v) Hull and bottom survey	Survey completed.
(vi) Emergency towing	Towing vessel on scene.
(vii) Salvage plan	Plan completed and submitted to Incident Commander/Unified Command.
(viii) External emergency transfer operations	External pumps onboard vessel.
(ix) Emergency lightering	Lightering equipment on scene and alongside.
(x) Other refloating methods	Salvage plan approved & resources on vessel.
(xi) Making temporary repairs	Repair equipment onboard vessel.
(xii) Diving services support	Required support equipment & personnel on scene.
(xiii) Special salvage operations plan	Plan completed and submitted to Incident Commander/Unified Command.
(xiv) Heavy lift	Resources on scene.
(xv) Subsurface product removal	Resources on scene.
(2) Marine Firefighting:	
(i) Remote assessment and consultation	Firefighter in voice contact with QI/Master/Operator.
(ii) On-site fire assessment	Firefighter representative on site.
(iii) External firefighting teams	Team and equipment on scene.
(iv) External vessel firefighting systems	Personnel and equipment on scene.

(d) *How to apply the time frames to your particular situation.* To apply the time frames to your vessel's situation, follow these procedures:

(1) Identify if your vessel operates CONUS or OCONUS.

(2) If your vessel is calling at any CONUS pier or an OCONUS pier within 50 miles of a COTP city, you must list the pier location by facility name or city and ensure that the firefighting *resource provider* can reach the location within the specified response times in the table in § 155.4030(b).

(3) If your vessel is transiting within CONUS inland waters, nearshore or offshore areas or the Great Lakes, you must ensure the listed *salvage* and *marine firefighting* services are capable of reaching your vessel within the appropriate response times listed in the table in § 155.4030(b).

(4) If your vessel is transiting within 12 miles or less from an OCONUS COTP city, you must ensure the listed *salvage* and *marine firefighting* services are capable of reaching a point 12 miles from the harbor of the COTP city within the nearshore area response times listed in the table in § 155.4030(b).

(5) If your vessel is transiting between 12 and 50 miles from an OCONUS COTP city, you must ensure the listed

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salvage and *marine firefighting* services are capable of reaching a point 50 miles from the harbor of the COTP city within the offshore area response times listed in the table in § 155.4030(b).

(6) If your vessel transits inland waters or the nearshore or offshore areas OCONUS, but is more than 50 miles from a COTP city, you must still contract for *salvage* and *marine firefighting* services and provide a description of how you intend to respond and an estimated response time when these services are required, however, none of the time limits listed in the table in § 155.4030(b) will apply to these services.

§ 155.4045 What arrangements or contracts must I have with the salvage and marine firefighting resource providers?

(a) You may only list resource providers in your plan that have been arranged by *contract or other approved means.*

(b) You must obtain written consent from the *resource provider* stating that they agree to be listed in your plan. This consent must state that the *resource provider* agrees to provide the services that are listed in §§ 155.4030(a) through 155.4030(g), and that these services are capable of arriving within the response times listed in the table in § 155.4030(b). This consent may be included in the contract with the *resource provider* or in a separate document.

(c) This written consent must be available to the Coast Guard for inspection. The response plan must identify the location of this written consent, which must be—

(1) On board the vessel; or

(2) With a planholder representative located in the United States.

(d) Public marine firefighters may only be listed out to the maximum extent of the public resource's jurisdiction, unless other agreements are in place. A public marine firefighting resource may agree to respond beyond their jurisdictional limits, but the Coast Guard considers it unreasonable to expect public marine firefighting resources to do this.

§ 155.4050 How can I ensure that the salvors and marine firefighters are adequate?

(a) You are responsible for determining the adequacy of the *resource providers* you intend to include in your plan.

(b) When determining adequacy of the resource provider, you must consider as a minimum the following selection criteria:

(1) *Resource provider* is currently working in response service needed.

(2) *Resource provider* has documented history of participation in successful *salvage* and/or *marine firefighting* operations, including equipment deployment.

(3) *Resource provider* owns or has contracts for equipment needed to perform response services.

(4) *Resource provider* has personnel with documented training certification and degree experience (Naval Architecture, Fire Science, etc.).

(5) *Resource provider* has 24-hour availability of personnel and equipment, and history of response times compatible with the time requirements in the regulation.

(6) *Resource provider* has on-going continuous training program. For *marine firefighting* providers, they must meet the training guidelines in NFPA Standards 1001, 1021, 1405, and 1561, or show equivalent training, or qualification through experience.

(7) *Resource provider* has successful record of participation in drills and exercises.

(8) *Resource provider* has *salvage* or *marine firefighting* plans used and approved during real incidents.

(9) *Resource provider* has membership in relevant national and/or international organizations.

(10) *Resource provider* has insurance that covers the *salvage* and/or *marine firefighting* services which they intend to provided.

(11) *Resource provider* has sufficient up front capital to support an operation.

(12) *Resource provider* has equipment and experience to work in the specific regional geographic environment(s) that the vessel operates in (e.g., bottom type, water turbidity, water depth, and temperature extremes).

(13) *Resource provider* has the logistical and transportation support capability required to sustain operations for extended periods of time.

(c) A *resource provider* need not meet all of the selection criteria in order for you to choose them as a provider.

(d) You must certify in your plan that these factors were considered when you chose your *resource provider.*

§ 155.4055 What if I am unable to obtain a salvage and/or marine firefighting resource provider that can meet one or more of the specified response times?

(a) You may submit a request for a temporary waiver of a specific response time requirement, if you are unable to identify a resource provider who can meet the response time.

(b) Your request must be specific as to the COTP zone, operating environment, *salvage* or *marine firefighting* service, and response time.

(c) Emergency lightering requirements set forth in § 155.4030(b) will not be subject to the waiver provisions of this subpart.

(d) You must submit your request to the Commandant (G-MOR) via the local COTP for final approval. The local COTP will evaluate and comment on the waiver before forwarding the waiver request, via the District and Area Commanders, to the Commandant (G-MOR) for final approval.

(e) Your request must include the reason why you are unable to meet the time requirements. It must also include how you intend to correct the shortfall, the time it will take to do so, and what arrangements have been made to provide the required response resources and their estimated response times.

(f) The Commandant will only approve waiver requests up to a specified time period, depending on the service addressed in the waiver request, the operating environment, and other relevant factors. These time periods are listed in the table in § 155.4055(g).

(g) Table 155.4055(g)—Service Waiver Time Periods.

Service	Maximum waiver time period (years)
(1) Remote salvage assessment & consultation	0
(2) Remote firefighting assessment & consultation	0
(3) On-site salvage & firefighting assessment	1
(4) Hull and bottom survey	2
(5) Salvage stabilization services	3
(6) Fire suppression services	4
(7) Specialized salvage operations	5

(h) You must submit your waiver request 30 days prior to any plan submission deadlines identified in this or any other subpart of part 155 in order for your vessel to continue oil operations.

Dated: May 1, 2002.

James M. Loy,

Admiral, U.S. Coast Guard, Commandant.

[FR Doc. 02–11376 Filed 5–8–02; 8:45 am]

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Part III

Department of the Treasury

Fiscal Service

31 CFR Part 205

Rules and Procedures for Efficient Federal-State Funds Transfers; Final Rule

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DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 205

RIN 1510–AA38

Rules and Procedures for Efficient Federal-State Funds Transfers

AGENCY: Financial Management Service, Fiscal Service, Treasury.

ACTION: Final rule.

SUMMARY: On October 12, 2000, the Financial Management Service issued a Notice of Proposed Rulemaking proposing revisions to the regulations implementing the Cash Management Improvement Act of 1990, as amended (CMIA). These regulations govern the transfer of funds between the Federal government and States for certain Federal assistance programs. This final rule finalizes the proposed rule, with changes, and addresses issues raised by comments received in response to the Notice of Proposed Rulemaking. The purpose of this final rule is to update the current regulations and address various concerns raised since the initial issuance of the regulations. This rule is intended to improve the efficiency of Federal-State funds transfers.

EFFECTIVE DATE: June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Stephen K. Kenneally, Financial Program Specialist, at (202) 874–6966, or Ellen Neubauer, Senior Attorney, at (202) 874–6680. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service at 1–800–877–8339 between 8 a.m. and 4 p.m. Eastern time, Monday through Friday, excluding Federal holidays. A copy of this final rule is being made available on the Financial Management Service web site at the following address: *http://www.fms.treas.gov/policycmia.*

SUPPLEMENTARY INFORMATION:

I. Background

We are revising our regulations at 31 CFR part 205 (part 205). Since we issued part 205 in 1992, we have issued a number of CMIA Policy Statements (Policy Statements) that address various issues relevant to part 205. One of the purposes of this final rule is to update the current regulations by deleting obsolete provisions and incorporating Policy Statements. Another purpose is to address various concerns that States, Federal agencies, and the General Accounting Office [1] have raised since the initial issuance of part 205. Specifically, the regulations:

(1) Provide greater flexibility in funding techniques;

(2) Ensure that Treasury-State agreements are unambiguous and auditable;

(3) Reflect new laws and directives, including the Single Audit Act Amendments of 1996, 31 U.S.C. chapter 75; Executive Order 12866 of September 30, 1993, Regulatory Planning and Review; and the Debt Collection Improvement Act of 1996; and, (4) Are clearer and, where possible, more concise.

We provided an earlier draft of the proposed rule to the National Association of State Auditors, Comptrollers and Treasurers, the National Governors' Association, the National Conference of State Legislatures, the Council of State Governments, and the National League of Cities and solicited comments from their membership. We also provided the draft proposed rule to the State of Colorado. Their comments were considered in the formulation of the proposed rule. Several States and State Associations commented on the proposed rule and, as described in more detail below, their comments were considered in the formulation of this final rule.

II. Summary of Comments

We received 57 written comments in response to the Notice of Proposed Rulemaking (NPRM) from State agencies, State Associations, and Federal agencies. Two issues were of particular interest to the commenters. These issues involve the application of CMIA to disallowed expenses (§ 205.15 of the NPRM) and the requirement of proportional drawdowns of Federal funds for certain grant programs (§ 205.25 of the NPRM). In addition to these two issues, commenters submitted numerous questions, comments and recommendations regarding several other sections. Responses to questions raised by commenters that did not impact the rule and, therefore, are not addressed in the Preamble to this rule, will be published on our web site at *http://www.fms.treas.gov/policycmia.* Substantive changes to the rule are summarized below.

Disallowances

Forty-seven of the fifty-seven commenters opposed the proposed provision in § 205.15 that would have imposed an interest liability on States for disallowed expenditures. The commenters opposed the NPRM's inclusion of disallowance coverage for four main reasons: the increased administrative burden imposed on States for tracking additional interest over longer time periods; the conflicts between existing Federal Program Agency regulations and the NPRM; the inequity caused by States being subject to interest liability if they lose an appeal, but no correlating provision describing Federal Program Agency liability; and the unfairness of the NPRM's interest accrual date being the date funds were drawn down and not the later date when a State is informed that a funds transfer was disallowed.

We have carefully considered the comments received relating to disallowances and the concerns raised therein. Based upon these comments and upon reconsideration of the intent of CMIA, we have deleted those provisions of the NPRM which would subject disallowances to interest liability under CMIA. This treatment of disallowed expenses is consistent with longstanding current practice.

The primary goal of CMIA is to improve the efficiency and effectiveness of funds transfers between the Federal government and States. Disallowances are reflective of program management disputes, not a lack of efficiency of funds transfers. Federal Program Agencies administering Federal programs are the authorities best suited to determine whether funds have been used for an allowable program purpose.

States are required to ensure that Federal funds are used solely for appropriate program purposes. Although disallowances are not governed by the CMIA regulations, they are covered by specific program regulations. In addition, disallowed expenses are subject to existing debt collection regulations.

Proportional Drawdowns

Eighteen State entities and five State Associations opposed proposed § 205.25 which would have required States that provide matching State funding and/or maintenance-of-effort (MOE) funding to coordinate a proportional drawdown of State and Federal funds to avoid interest liabilities.

The matter of proportional drawdowns was addressed in Policy Statements 7 (dated March 31, 1993) and 19 (dated June 1, 1999). These Policy Statements addressed the treatment of programs that incorporate (MOE) and "matching" requirements. Programs with MOE requirements provide a State with an amount of Federal funds and mandate that a State contribute a set minimum of their historical financial commitment as a condition for receiving Federal funds. Programs with matching requirements allow the Federal Program Agency and a State to share the costs of a program. For example, for every two dollars spent by the Federal Program Agency, a State must contribute one dollar.

The NPRM would have required that States contributing their own funds to a Federal-State program through a MOE requirement or matching program not draw down all Federal funds before State funds are used. The NPRM would have required that Federal and State funds be spent concurrently and in the appropriate proportion.

A large number of commenters noted that the proposed proportional drawdown provision was more prescriptive than are the specific regulations governing the programs. Several commenters noted that the NPRM requirements exceeded the Federal Program Agency requirements governing not only how Federal funds are disbursed, but how States spend their own funds. For example, several commenters indicated that the NPRM provision conflicts directly with the Social Services Block Grant (SSBG), the Child Care Development Fund (CCDF), and the Temporary Assistance for Needy Families (TANF) block grant requirements. These commenters further commented that the use and disbursement of State funds has nothing to do with the relationship between the Federal government and the State as it relates to Federal funds in the SSBG. Commenters also stated that TANF and CCDF funds should not be subject to the proportional drawdown requirement. These commenters noted that under the Federal TANF and CCDF programs agencies must meet the MOE requirement by the close of the fiscal year, but not on a proportional or ongoing basis. In addition, several commenters recommended that clarifications be made between programs that require MOE and those that require matching funds, and that this section not treat MOE in the same manner as State matching requirements. One commenter noted that while both involve cost sharing, the requirements are not the same and should not be treated as such in the regulations.

Commenters indicated that States require flexibility in administering block grant funds, given the complex funding structures associated with these funds. They stated that monitoring block grant funds closely to ensure proportionality creates an administrative burden for the States, particularly since many States have automated drawdown systems not capable of calculating proportional drawdown requests. One commenter wrote that this provision would cause such an administrative burden that it would result in a disincentive for States to voluntarily supplement their programs throughout the year.

One Federal Program Agency addressed this provision, recommending that the regulatory requirements applying to matching funds and MOE be clarified because they are two different types of funding mechanisms.

Based on comments received and additional research, the final rule recognizes that the different funding techniques associated with MOE, mandatory matching, and voluntary matching require proportional State contributions only in limited circumstances. We agree that the requirement in the NPRM for proportional drawdowns in programs that utilize MOE funding may be more prescriptive than are program requirements. Therefore, for programs utilizing MOE contributions from States, the final rule does not require concurrent proportional State contributions. This gives States the added flexibility that was intended for the administration of block grant programs and eases the burden associated with the use of in-kind contributions and funds being used across a large number of State agencies for one program. However, the CMIA regulations' interest provisions continue to apply to the Federal funds received by the State. The time between receiving these Federal funds and expending these funds for program purposes must continue to be minimized.

In programs utilizing voluntary matching contributions from States, the final rule does not require concurrent proportional State contributions. We believe that the CMIA regulations should not hinder States from making voluntary contributions to Federal/State programs. The CMIA regulations' interest provisions will continue to apply to Federal funds received by the State, but the CMIA regulations will not require proportional draws of State voluntary contributions.

In programs utilizing mandatory matching of funds, the requirement for proportional drawdowns is maintained in the final rule in § 205.15(d). Because of the nature of this funding technique, it is necessary to maintain a close linkage between State and Federal funding.

Section 205.2 What Definitions Apply to This Part?

Commenters stated that the proposed definition of "administrative costs" is too vague. They stated that because of the variances among grants a uniform definition of this term is not possible or desirable and would cause an undue burden on States in meeting Federal financial reporting requirements. A few commenters suggested that FMS remove this definition altogether from the regulations and others suggested tailoring the definition according to each specific grant program definition of the term. Because the rule describes the treatment of administrative costs under CMIA, a definition of administrative costs is necessary and is intentionally broad to ensure the variances among the many Federal programs are covered. The definition has been amended, however, to clarify that administrative costs include indirect costs.

Commenters noted that the definition of "disburse" should recognize that an off-line environment, such as the Electronic Benefit Transfers system, is also an option for the disbursement of funds. We agree with this recommendation and have amended the definition of "disburse" accordingly.

Commenters stated that the definition of "indirect costs" is too vague and should be narrowed to include only true indirect costs. These commenters noted that the definition should not be so broad as to include direct apportioned costs, which are used by public assistance agencies. One State entity added that the definition should not include allowable allocated costs.

Another State entity added that this definition cannot be standardized because it can have different meanings for different grants. The definition of indirect costs has not been changed. The definition is intentionally broad to ensure it encompasses the variances among Federal programs.

One commenter stated that the definition of "indirect cost rate" should be parallel to the definition in Office of Management and Budget (OMB) Circular A–87. We have declined to adopt this suggestion, but believe that the existing definition allows a State and FMS to agree to use indirect cost rates as defined in OMB Circular A–87.

Another commenter noted that the NPRM used the term "direct cost" in two different ways. The commenter recommended that this apparent discrepancy be clarified. The term "direct cost" as used within the definition of "indirect cost rate" is not intended to have the same meaning as that term is used elsewhere in the rule.

[1] See Financial Management: "Implementation of the Cash Management Improvement Act" (Letter Report, 01/08/96, GAO/AIMD–96–4).

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We agree that the use of the term "direct cost" to describe the costs a State incurs in calculating interest liabilities may be confusing. We have, therefore, changed the term describing the costs a State incurs in calculating interest liabilities to "Interest Calculation Costs."

One commenter expressed concern that the definition of "compensating balances" would result in increased costs to States, because it would require banking costs to be paid directly from grant funds. Under the NPRM, a State may not draw down funds from its account in the Unemployment Trust Fund in advance of immediate cash needs for any purpose including maintaining a compensating balance. Another commenter suggested that a definition should be included for "immediate cash needs," to clarify the vagueness of the regulations. The definition of compensating balances was added to clarify existing policy regarding drawing down funds in advance of need. The rule merely states, consistent with the goals of CMIA, that funds, including funds drawn down for the purpose of maintaining a compensating balance, may not be drawn down in advance of need. This does not necessarily require that banking costs be paid directly from grant funds. For example, where a Treasury-State agreement establishes a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding), consistent with CMIA, a State may deduct its banking costs from any interest paid. However, States may not draw down funds in advance of need solely for the purpose of covering banking costs.

One commenter recommended that the definition of "estimate" be revised so that its usage is consistent in other sections in the regulations. Specifically, the commenter questioned whether the definition applies to references of drawing down Federal funds or in establishing future grant authority amounts. We agree that the term "estimate" is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term "estimate" with the term "project" in §§ 205.10, 205.12, and 205.20.

Section 205.4 Are There any Circumstances Where a Federal Assistance Program That Meets the Criteria of § 205.3 Would Not Be Subject to This Subpart A?

This section allows, under limited circumstances, the exclusion of components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies. Two commenters wrote that this section does not greatly reduce the State's administrative burden, particularly if the management of Federal funds is decentralized within the State. One of these commenters commented that if the agreement is with the State, the entire program should be covered. The other commenter recommended that if the State agencies covered in the agreement account for 90–95% or more of the total program expenditures, the amounts drawn by the remaining agencies should be assumed interest neutral and excluded from the calculations completely. We have not made changes to this section because we believe that, as proposed, it may reduce a State's administrative burden. Where a State administers a Federal financial assistance program through more than one State agency, the State is only required to track funding to a single agency and may pro-rate to determine interest liabilities funding to the remaining agency or agencies. Additionally, this method of calculating interest is optional and, therefore, need not be adopted if it creates a burden. Therefore, no changes to this section have been made.

Two commenters noted that proposed § 205.4(b)(1) does not result in the same exclusions as do the examples in the current CMIA Policy Statement 8 (dated April 19, 1993). In response, we have amended § 205.4(b)(1) to ensure that the final rule and Policy Statement 8 are consistent. States may exclude a component of a major Federal assistance program that is administered by multiple State agencies from the provisions of CMIA on the basis that the funding for that component is an immaterial percentage of the program. FMS will agree to this immaterial exception only if certain requirements are met. These requirements are that the dollar amount of the exempted cash flow or component may not exceed 5% of the State's Single Audit threshold, and the total amount excluded under a single program, by all State agencies administering the program, may not exceed 10% of the total program expenditures. If less than total program funding is subject to interest calculation procedures, the interest liabilities that are calculated under the program should be prorated to 100% of the program to provide the truest projection of interest liabilities.

The only Federal Program Agency commenting on this section suggested that this section be clarified to state that all major programs not already included in a Treasury-State agreement are covered by default procedures until the agreement is modified. We agree that it is important that new major programs be covered as soon as possible, however, we do believe that covering such programs by default procedures until such time as a Treasury-State agreement is modified is the most effective way to ensure prompt coverage. To address this concern, we have clarified in § 205.7 that States must inform us of new major programs in a timely manner (within 30 days) so that they may properly be included in a Treasury-State agreement.

Section 205.5 What Are the Thresholds for Major Federal Assistance Programs?

This section describes new thresholds for determining major Federal assistance programs, as well as the methodology to calculate the new thresholds. Many of the commenters wrote that the formulas included in this section were difficult to understand and, therefore, require further simplification. One commenter stated that it is not clear if the 10% comparison should be calculated each year that the Single Audit is issued or if it should be performed on a one-time basis. We have clarified that this is an annual requirement. We have also revised this section in an attempt to clarify the threshold calculations. Assistance in calculating the threshold can be found at *http://www.fms.treas.gov/policmia.*

Section 205.6 What Is a Treasury-State Agreement?

This section provides that Treasury-State agreements will remain in effect until terminated. Commenters suggested that we clarify that Treasury-State agreements can still be negotiated yearly if the parties desire to do so. This section has been amended to clarify that we and a State may still agree that a Treasury-State agreement will terminate on a specific termination date, where appropriate.

Section 205.7 Can a Treasury-State Agreement Be Amended?

Two commenters proposed that amendments to the Treasury-State agreement should be retroactive based on mutual consent by a State and FMS. We agree that there may be circumstances where it is appropriate for a change to a Treasury-State agreement to be effective as of the date the Treasury-State agreement was entered into. We have therefore amended this section to allow the parties to agree to the effective date of an amendment.

One commenter sought clarification on how soon after Single Audit data is available a State must notify FMS when a Treasury-State agreement needs to be amended due to Federal assistance program changes. This section has been amended to reflect that States must notify us of required amendments to the Treasury-State agreement within 30 days of the time the State becomes aware of the change.

Section 205.8 What If There Is No Treasury-State Agreement in Effect?

One commenter recommended there be a middle ground between establishing a Treasury-State agreement and resorting to default procedures, to prevent the entire agreement from going into default due to disagreement over coverage of a single program. In the "middle ground" case, default procedures would go into effect only for the program about which there is a disagreement; a Treasury-State agreement would be entered into for all other programs. We agree that where we and a State are unable to reach agreement over a particular program, we may impose default procedures for only that one program and, therefore, have incorporated this change.

Section 205.9 What Is Included in a Treasury-State Agreement?

This section describes information required to be in Treasury-State agreements, including applicable funding techniques, methodology regarding clearance patterns and estimates, and interest calculations. Two commenters described 205.9(g), which requires States and Federal agencies to describe the methods used to calculate interest liabilities, as excessive and contrary to efforts of reducing administrative burden. We have not changed this provision because we believe the required information is necessary to ensure that interest liabilities are being properly calculated.

Two commenters also stated that 205.9(f), which requires States to include the results of the clearance pattern process, is unnecessary and places an undue burden on States. One of these commenters noted that this burden is placed on States that use pre-issuance funding techniques when computing clearance patterns for inclusion in an agreement that will not be required to be used for interest calculations for over 15 months. In response to this comment, we have amended this section to reflect our intent that this section apply only to programs where funds are drawn based on clearance patterns. Pre-issuance States may provide the results of their clearance pattern process with their annual report.

Section 205.11 What Requirements Apply to Funding Techniques?

Many of the comments on this section addressed compensating balances. Although no change in the treatment of compensating balances was intended in the NPRM, some commenters interpreted the language as a new policy position that prohibited the use of Federal funds for compensating balances. It has been our longstanding policy position, consistent with the purpose of CMIA, that funds cannot be drawn down in advance of need. Because questions regarding compensating balances have arisen, this section of the rule is meant to merely clarify existing policy prohibiting the drawing down of funds for the purpose of maintaining a compensating balance. This does not prohibit those States that are required to have funds on hand before issuing checks from drawing down funds early nor does it prohibit those States from deducting their banking costs from any interest paid.

Section 205.12 What Funding Techniques May Be Used?

Some State Constitutions require that States have funds on hand before issuing checks. These pre-issuance States are allowed to draw funds early, but are subject to interest liability. The commenters strongly recommended retaining the current three-day drawdown window for pre-issuance States, rather than the two-day window proposed in the NPRM. One State said the proposed two-day drawdown window was "arbitrary and unrealistic" while another State entity called it "unnecessary and restrictive." We agree that the two-day window proposed in the NPRM may not give States sufficient time to ensure that funds are on hand prior to the issuance of payments. This section has, therefore, been amended to retain the three-day drawdown window that currently exists.

Section 205.13 How Do You Determine When State or Federal Interest Liability Accrues?

One commenter wrote that the indirect costs referenced in § 205.13(b) should be for Statewide indirect costs, not agency specific costs. Another commenter recommended clarifying § 205.13(b) by including specific reference to costs allocated through a Federally-approved public assistance cost allocation plan or through a Federally-approved Statewide cost allocation plan. Based on these comments, we have made changes in the final rule. States will be allowed to apply a Statewide indirect cost rate or a public assistance indirect cost rate, where appropriate. The cost rate must be consistent with OMB Circular A–87, including Attachments.

Section 205.14 When Does Federal Interest Liability Accrue?

Three commenters requested clarification on how interest is calculated when obligational authority is established after an expenditure is made. Under § 205.14(a)(2), Federal interest liability may accrue when States expend their own funds for program purposes and obligational authority is subsequently established to cover those expenditures. In accordance with § 205.14(a)(1), this Federal interest liability is calculated from the time of expenditure. Paragraph (a)(2) has been amended to clarify this intent.

One commenter commented that § 205.14(c) conflicts with § 205.14(a)(1). Section 205.14(c) requires that a State adhere to Federal disbursement schedules when requesting funds; § 205.14(a)(1) states that interest begins to accrue against the Federal government whenever a State advances funds for program purposes. We do not agree that these two provisions conflict. Section 205.14(a)(1) contains the general rule regarding the accrual of Federal interest liabilities. Section 205.14(c) contains an exception to that rule, namely, we may deny interest liability even if a State advances its own funds for program purposes if it does so because it failed to timely request a drawdown of the funds. To clarify this in the rule, we have added the phrase "notwithstanding any other provision of this section" at the beginning of 205.14(c).

One Federal Program Agency recommended that there be no Federal interest liability for implementation of new activities by the State until the Federal Program Agency approves the new plan(s) and/or system projects. The same agency proposed adding language to this section saying no Federal interest will accrue while approval is pending. In response to these comments, we have modified the provisions of paragraph (a)(2) to allow for greater flexibility to deny interest in certain circumstances where a State expends its own funds without Federal approval even if obligational authority is subsequently established. For example, if a State is required to have an approved State plan in effect as a pre-condition to Federal funding and makes an expenditure prior to the time the plan has been approved, we may deny Federal interest liability if

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the State failed to act reasonably in obtaining Federal approval.

Section 205.15 When Does State Interest Liability Accrue?

As previously discussed, the provisions addressing interest liability on disallowances have been deleted.

The final rule clarifies that for mandatory matching programs, the interest provisions of the CMIA regulations apply when a State draws Federal funds in advance or in excess of State funds.

Section 205.16 What Special Rules Apply to Federal Assistance Programs and Projects Funded by the Federal Highway Trust Fund?

One commenter disagreed with the policy on valid projects that experience an unforeseen cost overrun. Under this section, a State that advances its own funds because of cost overruns may be reimbursed later by the Federal Highway Administration. However, no CMIA interest will be paid to the State, even though it advanced its own funds. The policy, which has not changed from the existing rule, is intended to discourage cost overruns. Accordingly we have not made any changes to this provision.

Section 205.18 Are Administrative Costs Subject to This Part?

One commenter questioned why the determination of whether indirect and administrative costs are subject to subpart A is based upon whether the grants are wholly dedicated to these purposes. Another commenter noted that the exclusion in 205.18(b) exempting the administrative and indirect cost portions of Federal Program Agency grants from subpart A of the regulations may prevent States from collecting interest from Federal Program Agencies. One commenter sought a definition or example of "administrative costs" while another stated that the regulations should not provide a definition at all, but rely on how the term is defined by the Federal Program Agency responsible for that particular program. One Federal Program Agency suggested that the provision clearly state that drawdowns for indirect costs must be related to timing of the associated direct costs.

While the intent of this provision was to ease the burden on States of tracking administrative and indirect costs which were only a portion of a Federal award, we nevertheless agree that whether an award is wholly or partially dedicated to indirect and administrative costs should not be the basis for determining whether or not CMIA interest applies. We have, therefore, amended this section to clarify that when States and Treasury agree, in a Treasury-State agreement, to specified funding techniques for administrative costs (including Statewide or public assistance indirect costs, if appropriate, consistent with OMB Circular A–87), no interest liability will accrue provided the agreed upon funding technique is followed. This rule will apply whether the Federal grant is dedicated wholly or partially to administrative costs.

Section 205.21 When May Clearance Patterns Be Used?

One commenter recommended amending § 205.21(b) to delete the reference to § 205.9, since that commenter felt the provisions contained therein are excessive, unreasonably burdensome, and will be costly to develop and incorporate in Treasury-State agreements. We have not adopted this recommendation because, without the required information, we cannot ensure the accuracy of clearance patterns. The costs of developing clearance patterns in support of interest calculations may be considered Interest Calculation Costs.

Section 205.23 What Requirements Apply to Estimates?

One commenter noted that the provisions of this section are counter to most, if not all, of the program regulations on block grant programs. This commenter suggested that forcing a State to list "hard and fast" rules in a Treasury-State agreement defeats the purpose and intent of block grant law. We do not agree because the requirements of this section apply only when the funds transfer procedures agreed upon by us and a State are based on estimates. Where the use of estimates is not agreed upon, the requirements do not apply.

Consistent with changes made to § 205.25 on proportional draws, the restrictions on MOE and voluntary matching have been removed from the final rule.

Commenters also sought clarification on the use of the term "estimates" in the proposed regulations. We agree that the term "estimate" is used in various sections of the rule in a manner which is inconsistent with how the term is defined. Accordingly, where appropriate, we have replaced the term "estimate" with the term "project" in §§ 205.10, 205.12, and 205.20. The use of the term "estimate" in § 205.23 remains unchanged.

Section 205.25 How Does This Part Apply to Certain Federal Assistance Programs or Funds?

In addition to comments received on the issue of proportional drawdowns, discussed above, two commenters recommended that this section be amended to allow States the option of maintaining a compensating balance to offset the actual benefit and clearing account banking charges incurred. These same commenters also suggested that the final rule allow States to earn non-cash credits to offset legitimate banking charges related to the Unemployment Insurance Trust Fund.

We have declined to adopt this recommendation because maintaining a compensating balance is not consistent with the goals of CMIA. Under CMIA, States must minimize the time elapsing between the receipt of funds from the Federal government and the payment of those funds to program beneficiaries. Maintaining funds drawn down from the Federal government in a bank account for the purpose of covering banking expenses is inconsistent with that goal. As previously noted, however, nothing in this rule prohibits us and a State from agreeing, in a Treasury-State agreement, to a funding technique that creates a State interest liability on funds drawn from the State's account in the Unemployment Trust Fund (e.g., pre-issuance funding). Where a State incurs an interest liability on funds drawn from the State's account in the Unemployment Trust Fund, banking costs may be deducted from any interest paid.

Section 205.26 What Are the Requirements for Preparing Annual Reports?

This section requires States to submit supporting documentation for all liability claims greater than $5,000. One commenter was in favor of increasing the documentation threshold to $10,000. Another recommended deleting the requirement of documentation for claims in excess of $5,000. A third commenter recommended requiring the $5,000 supporting documentation only in cases when the funding technique used would not normally be expected to result in a Federal interest liability. We have not adopted these recommendations because we are of the view that this requirement is necessary to ensure that claims are verified when appropriate.

Section 205.27 How Are Interest Calculation Costs Calculated?

The title of this section has been amended to eliminate the confusion

caused by use of the term "direct costs" to describe those costs incurred by a State in performing the interest calculations required under CMIA. The term "direct costs" has been replaced with the term "Interest Calculation Costs." Two commenters suggested that Interest Calculation Costs should not be limited to amounts that can be offset against interest owed by the States to the Federal government. Two commenters recommended that the definition of "interest calculation" be broadened to allow more costs to be charged. One of these commenters wrote that, in order to measure the cost benefit of the CMIA program, CMIA-related costs need to be recovered by the program. We do not believe that CMIA permits us to expand the definition of Interest Calculation Costs. The CMIA limits those costs which may be claimed by States to costs incurred for interest calculations. The statute does not provide a mechanism for paying these costs other than to offset them from amounts otherwise owed by States. Additionally, in our view the $50,000 limitation imposed by this section is reasonable and appropriate.

Section 205.30 What Are the Federal Oversight and Compliance Responsibilities?

One Federal Program Agency submitted comments proposing a time period of at least 30 days to review States' Annual Reports. We agree that a 30-day time period to review States' annual reports is reasonable and have incorporated this change.

Section 205.31 How Does a State or Federal Program Agency Appeal a Determination Made by us and Resolve Disputes?

One commenter recommended shortening the 90-day periods for appeals and rebuttals to 30-day periods. We have not adopted this recommendation because we believe 90 days is warranted to ensure that appeals and rebuttals are carefully considered and thoroughly reviewed. Another commenter suggested removing the discretion granted to the FMS Assistant Commissioner on approving when disputes can be moved along the Administrative Dispute Resolution Act (ADRA) track. Because the use of alternative dispute resolution procedures requires the agreement of all parties, we have declined to adopt this recommendation.

Subpart B

Section 205.35 What Is the Result of Federal Program Agency or State Non-compliance?

One commenter wrote that §§ 205.3(b), 205.3(c), and 205.35 seemed contradictory and requested clarification regarding whether or not individual programs covered by subpart B could be moved to subpart A. Section 205.35 has been clarified to reflect our intent that under § 205.35 we may, at our discretion, move a program that falls below the threshold for a major Federal assistance program from subpart B to subpart A without lowering the threshold applicable to other programs.

III. Procedural Matters

Executive Order 12866, Regulatory Planning and Review

This final rule is not a significant regulatory action and is not subject to review by the Office of Management and Budget under Executive Order 12866. These regulations will not have an effect of $100 million or more on the economy. They will not adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. These regulations will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency. These regulations do not alter the budgetary effects of entitlement, grants, user fees, or loan programs, or the right or obligations of their recipients; nor do they raise novel legal or policy issues.

Clarity of the Regulations

Executive Order 12866 requires each agency to write regulations that are simple and easy to understand. We invite your comments on how to make this final rule easier to understand.

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule does not require any actions on the part of small entities. Accordingly, a Regulatory Flexibility Act analysis is not required.

Paperwork Reduction Act

The Office of Management and Budget has approved the information collection requirements in the final rule under the Paperwork Reduction Act of 1995, 44 U.S.C. 3501, *et seq.*, and has assigned clearance number 1510–0061. Sections of this final rule with information collection requirements are §§ 205.9, 205.26, 205.27, 205.29, and we estimate the public reporting burden of these sections to average, respectively, 500 hours per response. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. We estimate the number of respondents to be 56. No comments were received regarding this burden estimate or any other aspect of this collection of information.

List of Subjects in 31 CFR Part 205

Administrative practice and procedure, Electronic funds transfers, Grant programs, Intergovernmental relations.

Authority and Issuance

For the reasons set out in the Preamble, we revise Part 205 of title 31 of the Code of Federal Regulations to read as follows:

PART 205—RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Sec.

205.1 What Federal assistance programs are covered by this part?
205.2 What definitions apply to this part?

Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement

205.3 What Federal assistance programs are subject to this subpart A?
205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?
205.5 What are the thresholds for major Federal assistance programs?
205.6 What is a Treasury-State agreement?
205.7 Can a Treasury-State agreement be amended?
205.8 What if there is no Treasury-State agreement in effect?
205.9 What is included in a Treasury-State agreement?
205.10 How do you document funding techniques?
205.11 What requirements apply to funding techniques?
205.12 What funding techniques may be used?
205.13 How do you determine when State or Federal interest liability accrues?
205.14 When does Federal interest liability accrue?
205.15 When does State interest liability accrue?
205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?
205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?

205.18 Are administrative costs subject to this part?
205.19 How is interest calculated?
205.20 What is a clearance pattern?
205.21 When may clearance patterns be used?
205.22 How are accurate clearance patterns maintained?
205.23 What requirements apply to estimates?
205.24 How are accurate estimates maintained?
205.25 How does this part apply to certain Federal assistance programs or funds?
205.26 What are the requirements for preparing Annual Reports?
205.27 How are Interest Calculation Costs calculated?
205.28 How are interest payments exchanged?
205.29 What are the State oversight and compliance responsibilities?
205.30 What are the Federal oversight and compliance responsibilities?
205.31 How does a State or Federal Program Agency appeal a determination made by us and resolve disputes?

Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement

205.32 What Federal assistance programs are subject to this subpart B?
205.33 How are funds transfers processed?
205.34 What are the Federal oversight and compliance responsibilities?
205.35 What is the result of Federal Program Agency or State non-compliance?

Subpart C—[Reserved]

Authority: 5 U.S.C. 301; 31 U.S.C. 321, 3332, 3335, 6501, 6503.

§ 205.1 What Federal assistance programs are covered by this part?

(a) This part prescribes rules for transferring funds between the Federal government and States for Federal assistance programs. This part applies to:

(1) All States as defined in § 205.2; and

(2) All Federal program agencies, except the Tennessee Valley Authority (TVA) and its Federal assistance programs.

(b) Only programs listed in the Catalog of Federal Domestic Assistance, as established by Chapter 61 of Title 31, United States Code (U.S.C) are covered by this part.

(c) This part does not apply to:

(1) Payments made to States acting as vendors on Federal contracts, which are subject to the Prompt Payment Act of 1982, as amended, 31 U.S.C. 3901 *et seq.*, 5 CFR Part 1315, and 48 CFR Part 32; or

(2) Direct loans from the Federal government to States.

§ 205.2 What definitions apply to this part?

For purposes of this part:

Administrative Costs means expenses incurred by a State associated with managing a Federal assistance program. This term includes indirect costs.

Auditable means records must be retained to allow for calculations outlined in the Treasury-State agreements to be reviewed and replicated for compliance purposes. States must maintain these records to be readily available, fully documented, and verifiable.

Authorized State Official means a person with the authority under the laws of a State to make commitments on behalf of the State for the purposes of this part, or that person's official designee as certified in writing.

Business Day means a day when Federal Reserve Banks are open.

Catalog of Federal Domestic Assistance (CFDA) means the government-wide list of Federal assistance programs, projects, services, and activities which provide assistance or benefits to the American public. The listing includes financial and non-financial Federal assistance programs administered by agencies of the Federal government.

Clearance Pattern means a projection showing the daily amount subtracted from a State's bank account each day after the State makes a disbursement. For example, a State mailing out benefit checks may project that the percentage of checks cashed each day will be 0% for the first day, 10% for the second day, 80% on the third day, and 10% on the fourth day following issuance. Clearance patterns are used to schedule the transfer of funds with various funding techniques and to support interest calculations.

Compensating Balance means funds maintained in State bank accounts and/or State Treasurer bank accounts to offset the costs of bank services.

Current Project Cost means a cost for which the State has recorded a liability on or after the day that the State last requested funds for the project.

Day means a calendar day unless otherwise specified.

Default Procedures means efficient cash management practices that we prescribe for Federal funds transfers to a State if a Treasury-State agreement is not in place.

Disburse means to issue a check or initiate an electronic funds transfer payment, or to provide access to benefits through an electronic benefits transfer.

Discretionary Grant Project means a project for which a Federal Program Agency is authorized by law to exercise judgment in awarding a grant and in selecting a grantee, generally through a competitive process.

Dollar-Weighted Average Day of Clearance means the day when, on a cumulative basis, 50 percent of funds have been paid out. To calculate the dollar-weighted average day of clearance for a clearance pattern:

(1) For each day, multiply the percentage of dollars paid out that day by the number of days that have elapsed since the payments were issued. For example, on the first day payments were issued, multiply the percentage of dollars paid out on that day by zero, since zero days have elapsed. On the day after payments were issued, multiply the percentage of dollars paid out on that day by one, since one day has elapsed; and so forth.

(2) Total the results from paragraph (1) of this definition. Round to the nearest whole number. This is the dollar-weighted average day of clearance.

Draw Down (verb) means a process in which a State requests and receives Federal funds.

Drawdown (noun) means Federal funds requested and received by a State.

Electronic Funds Transfer (EFT) means any transfer of funds, other than a transaction originated by cash, check, or similar paper instrument, that is initiated through an electronic terminal, telephone, computer, or magnetic tape, for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account.

Estimate means a projection of the needs of a Federal Assistance Program.

Federal Assistance Program means a program included in the Catalog of Federal Domestic Assistance where funds are transferred from the Federal government to a State. Federal assistance programs include cooperative agreements, but do not include vendor payments or direct loans.

Federal Program Agency means an executive agency as defined by 31 U.S.C. 102, except the Tennessee Valley Authority (TVA), that issues and administers Federal assistance programs to States or cooperative agreements with States.

Federal-State Agreement means an agreement between a State and a Federal Program Agency specifying terms and conditions for carrying out a Federal assistance program or group of programs. This is different than a Treasury-State agreement.

Financial Management Service (we or us) means the Bureau of the U.S. Department of the Treasury responsible for implementation of this part.

Fiscal Year means the twelve-month period that a State designates as its budget year.

Grant means, for purposes of this part, a funds transfer by the Federal government associated with a Federal assistance program listed in the Catalog of Federal Domestic Assistance.

Indirect Cost Rate means a formula that identifies the amount of indirect costs based on the amount of accrued direct costs. The applicable indirect cost rate shall be described in the Treasury-State agreement.

Indirect Costs means costs a State incurs that are necessary to the operation and performance of its Federal assistance programs, but that are not readily identifiable with a particular project or Federal assistance program.

Interest Calculation Costs means those costs a State incurs in performing the actual calculation of interest liabilities, including those costs a State incurs in developing and maintaining clearance patterns in support of interest calculations.

Maintenance-of-Effort means a requirement that a State spend at least a specified amount of State funds for Federal assistance program purposes.

Major Federal Assistance Program means a Federal assistance program which receives Federal funding in excess of the dollar thresholds found in Table A to § 205.5.

Obligational Authority means the existence of a definite commitment on the part of the Federal government to provide appropriated funds to a State to carry out specified programs, whether the commitment is executed before or after a State pays out funds for Federal assistance program purposes.

Pay Out means to debit the State's bank account.

Pay Out Funds for Federal Assistance Program Purposes means, in the context of State payments, to debit a State account for the purpose of making a payment to:

(1) A person or entity that is not considered part of the State pursuant to the definition of "State" in this section; or

(2) A State entity that provides goods or services for the direct benefit or use of the payor State entity or the Federal government to further Federal assistance program goals.

Rebate means funds returned to a State by third parties after a State has paid out those funds for Federal assistance program purposes.

Refund means funds that a State recovers that it previously paid out for Federal assistance program purposes. Refunds include rebates received from third parties.

Refund Transaction means an entry to the record of a State bank account representing a single deposit of refunds. A refund transaction may consist of a single check or item, or a bundle of accumulated checks.

Related Banking Costs means separately identified costs which are necessary and customary for maintaining an account in a financial institution, whether a commercial account or a State Treasurer account. Investment service fees and fees for credit-related services are not related banking costs.

Request for Funds means a State's request for funds that the State completes and submits in accordance with Federal Program Agency guidelines.

Reverse Flow Program means a Federal assistance program, such as Supplemental Security Income (SSI), for which the Federal government makes payments to recipients on behalf of a State.

Revolving Loan Fund means a pool of program funds managed by a State. States may loan funds from the pool to other entities in support of Federal assistance program goals. Investment income is earned on the funds that remain in the pool and on loans made from pool funds. A Federal Program Agency may require that all income derived from a revolving loan fund be used for Federal assistance program purposes.

Secretary means the Secretary of the United States Department of the Treasury. We are the Secretary's representative in all matters concerning this part, unless otherwise specified.

State means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam, and the Virgin Islands. It includes any agency, instrumentality, or fiscal agent of a State that is legally and fiscally dependent on the State Executive, State Treasurer, or State Comptroller.

(1) A State agency or instrumentality is any organization of the primary government of the State financial reporting entity, as defined by generally accepted accounting principles.

(2) A fiscal agent of a State is an entity that pays, collects, or holds Federal funds on behalf of the State in furtherance of a Federal assistance program, excluding private nonprofit community organizations.

(3) Local governments, Indian Tribal governments, institutions of higher education, hospitals, and nonprofit organizations are excluded from the definition of State.

Treasury-State agreement means a document describing the accepted funding techniques and methods for calculating interest and identifying the Federal assistance programs governed by this subpart A.

Trust Fund for Which the Secretary Is the Trustee means a trust fund administered by the Secretary.

Vendor Payment means a funds transfer by a Federal Program Agency to a State to compensate the State for acting as a vendor on a Federal contract.

We and Us means Financial Management Service.

Subpart A—Rules Applicable to Federal Assistance Programs Included in a Treasury-State Agreement

§ 205.3 What Federal assistance programs are subject to this subpart A?

(a) Generally, this subpart prescribes the rules that apply to Federal assistance programs which:

(1) Are listed in the Catalog of Federal Domestic Assistance;

(2) Meet the funding threshold for a major Federal assistance program; and

(3) Are included in a Treasury-State agreement or default procedures.

(b) Upon a State's request, we will make additional Federal assistance programs subject to subpart A by lowering the funding threshold in the Treasury-State agreement. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(c) We may make additional Federal assistance programs subject to subpart A if a State or Federal Program Agency fails to comply with subpart B of this part.

§ 205.4 Are there any circumstances where a Federal assistance program that meets the criteria of § 205.3 would not be subject to this subpart A?

(a) A Federal assistance program that meets or exceeds the threshold for major Federal assistance programs in a State is not subject to this subpart A until it is included in a Treasury-State agreement or in default procedures.

(b) We and a State may agree to exclude components of a major Federal assistance program from interest calculations if the State administers the program through several State agencies and meets the following requirements:

(1) The dollar amount of the exempted cash flow does not exceed 5% of the State's major Federal assistance program threshold and the total amount excluded under a single program by all State agencies administering the program does not exceed 10% of that Federal assistance program's total expenditures;

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(2) If less than the total amount of Federal assistance program funding is subject to interest calculation procedures, the interest liabilities should be pro-rated to 100% of the Federal assistance program funding;

(3) A State may not use this exclusion if a Federal assistance program is administered by only one State agency; and

(4) We may request Federal assistance program specific data on funding levels to determine exemptions.

(c) We and a State may exclude a Federal assistance program from this subpart A if the Federal assistance program has been discontinued since the most recent Single Audit and the remaining funding is below the threshold, or if the Federal assistance program is funded by an award not limited to one fiscal year and the remaining Federal assistance program funding is below the State's threshold.

§ 205.5 What are the thresholds for major Federal assistance programs?

(a) Table A of this section defines major Federal assistance programs based on the dollar amount of an individual Federal assistance program and the dollar amount of all Federal assistance being received by a State for all Federal assistance programs including non-cash programs. A State must locate the appropriate row in Column A based upon the total amount of Federal assistance received. In that same row, a State must apply the percentage from Column B to the dollar value of all its Federal assistance programs to determine the State's threshold for major Federal assistance programs. For example, if the total amount received by a State for all Federal assistance programs is $50 million, then that State's threshold for major Federal assistance programs is 6% of $50 million or $3 million. A State which receives more than $10 billion under Federal assistance programs will have a minimum default threshold of $60 million.

(b) To ensure adequate coverage of all State programs, a State must, on an annual basis, compare its program coverage using the percentage obtained from Table A to the program coverage which would result using a percentage which is half of the percentage obtained from Table A. For example, a State receiving $1 billion in Federal Assistance would use Table A to learn that its threshold level would be .60 percent of $1 billion. A State would compare program coverage at .60 percent of $1 billion to program coverage at .30 percent of $1 billion.

(c) If the comparison conducted under paragraph (b) of this section results in a reduction of program coverage that is greater than 10%, a State must lower its threshold, or add programs, until the difference is less than or equal to 10%.

(d) In accordance with § 205.3(b), a State may lower its threshold to include additional programs. All of a State's programs that meet this lower threshold would be subject to this subpart A.

(e) Unless specified otherwise, major Federal assistance programs must be determined from the most recent Single Audit data available.

TABLE A TO § 205.5

Column A Total amount of Federal Assistance for all programs per State:	Column B Major Federal Assistance Program means any Federal assistance program that exceed these levels:
Between zero and $100 million inclusive.	6.00 percent of the total amount of Federal assistance.
Over $100 million but less than or equal to $10 billion.	0.60 percent of the total amount of Federal assistance.
Over $10 billion.	The greater of 0.30 percent of the total Federal assistance of $60 million.

§ 205.6 What is a Treasury-State agreement?

(a) A Treasury-State agreement documents the accepted funding techniques and methods for calculating interest agreed upon by us and a State and identifies the Federal assistance programs governed by this subpart A. If anything in a Treasury-State agreement is inconsistent with this subpart A, that part of the Treasury-State agreement will not have any effect and this subpart A will govern.

(b) A Treasury-State agreement will be effective until terminated unless we and a State agree to a specific termination date. We or a State may terminate a Treasury-State agreement on 30 days written notice.

§ 205.7 Can a Treasury-State agreement be amended?

(a) We or a State may amend a Treasury-State agreement at any time if both we and the State agree in writing.

(b) The effective date of an amendment shall be the date both parties agree to the amendment in writing unless otherwise agreed to by both parties.

(c) We and a State must amend a Treasury-State agreement as needed to change or clarify its language when the terms of the existing agreement are either no longer correct or no longer applicable. A State must notify us in writing within 30 days of the time the State becomes aware of a change, describing the Federal assistance program change. The notification must include a proposed amendment for our review and a current list of all programs included in the Treasury-State agreement. Amendments may address, but are not limited to:

(1) Additions or deletions of Federal assistance programs subject to this subpart A;

(2) Changes in funding techniques; and

(3) Changes in clearance patterns.

(d) Additions or deletions to the list of Federal assistance programs subject to this subpart A take effect when a Treasury-State agreement is amended, unless otherwise agreed to by the parties.

(e) Federal assistance programs that are to be added to a Treasury-State agreement are not subject to this subpart A until the Treasury-State agreement is amended, except when a Federal assistance program subject to this subpart A is being replaced by a Federal assistance program governed by subpart B of this part, in which case the replacement program is immediately subject to this subpart A.

(f) Notwithstanding any other provision of this section, if no changes to the Treasury-State agreement are required, States must notify us annually.

§ 205.8 What if there is no Treasury-State agreement in effect?

When a State does not have a Treasury-State agreement in effect, we will prescribe default procedures to implement this subpart A. The default procedures will prescribe efficient funds transfer procedures consistent with State and Federal law and identify the covered Federal assistance programs and designated funding techniques. When we and a State reach agreement on some but not all Federal assistance programs administered by the State, we and the State may enter into a Treasury-State agreement for all programs on which we are in agreement and we may prescribe default procedures governing those programs on which we are unable to reach agreement.

§ 205.9 What is included in a Treasury-State agreement?

We will prescribe a uniform format for all Treasury-State agreements. A Treasury-State agreement must include, but is not limited to, the following:

(a) State agencies, instrumentalities, and fiscal agents that administer the

Federal assistance programs subject to this subpart A.

(b) Federal assistance programs subject to this subpart A, consistent with §§ 205.3 and 205.4. A State must use its most recent Single Audit report as a basis for determining the funding thresholds for major Federal assistance programs, unless otherwise specified in the Treasury-State agreement. A State may use budget or appropriations data for a more recent period instead of Single Audit data, if specified in the Treasury-State agreement.

(c) Funding techniques to be applied to Federal assistance programs subject to this subpart A.

(d) Methods the State will use to develop and maintain clearance patterns and estimates, consistent with § 205.11. The method must include, at a minimum, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The development process;

(4) For estimates, when and how the State will update the estimate to reflect the most recent data available;

(5) For estimates, when and how the State will make adjustments, if any, to reconcile the difference between the estimate and the State's actual cash needs; and

(6) Any assumptions, standards, or conventions used in converting the data into the clearance pattern or estimate.

(e) Federal Program Agency provisions requiring reconciliation of estimates to actual outlays may be included in a Treasury-State agreement. The supporting documentation must be retained by the State for three years.

(f) States must include the results of the clearance pattern process in the Treasury-State agreement for programs where the timing of drawdowns is based on clearance patterns. For programs where the timing of drawdowns is not based on clearance patterns, the results of the clearance pattern process may be provided with the annual report required under § 205.26. The supporting documentation must be retained by the State for three years.

(g) Methods used by the State and Federal agencies to calculate interest liabilities pursuant to this subpart A. The method must include, but is not limited to, a clear indication of:

(1) The data used;

(2) The sources of the data;

(3) The calculation process; and

(4) Any assumptions, standards, or conventions used in converting the data into the interest liability amounts.

(h) Treasury-State agreements must include language describing how a State and Federal Program Agency will address a State request for supplemental funding. This language must include, but is not limited to, the following provisions:

(1) What constitutes a timely request for supplemental funds for Federal assistance program purposes by a State; and

(2) What constitutes a timely transfer of supplemental funds for Federal assistance program purposes from a Federal Program Agency to a State.

§ 205.10 How do you document funding techniques?

The Treasury-State agreement must include a concise description for each funding technique that a State will use. The description must include the following:

(a) What constitutes a timely request for funds;

(b) How the State determines the amount of funds to request;

(c) What procedures are used to project or reconcile estimates with actual and immediate cash needs;

(d) What constitutes the timely receipt of funds; and

(e) Whether a State or Federal interest liability accrues when the funding technique, including any associated procedure for projection or reconciliation, is properly applied.

§ 205.11 What requirements apply to funding techniques?

(a) A State and a Federal Program Agency must minimize the time elapsing between the transfer of funds from the United States Treasury and the State's payout of funds for Federal assistance program purposes, whether the transfer occurs before or after the payout of funds.

(b) A State and a Federal Program Agency must limit the amount of funds transferred to the minimum required to meet a State's actual and immediate cash needs.

(c) A State must not draw down funds from its account in the Unemployment Trust Fund (UTF) or from a Federal account in the UTF in advance of actual immediate cash needs for any purpose including maintaining a compensating balance.

(d) A Federal Program Agency must allow a State to submit requests for funds daily. This requirement should not be construed as a change to Federal Program Agency guidelines defining a properly completed request for funds.

(e) In accordance with the electronic funds transfer provisions of the Debt Collection Improvement Act of 1996 (31 U.S.C. 3332), a Federal Program Agency must use electronic funds transfer methods to transfer funds to States unless a waiver is available.

§ 205.12 What funding techniques may be used?

(a) We and a State may negotiate the use of mutually agreed upon funding techniques. We may deny interest liability if a State does not use a mutually agreed upon funding technique. Funding techniques should be efficient and minimize the exchange of interest between States and Federal agencies.

(b) We and a State may base our agreement on the sample funding techniques listed in paragraphs (b)(1) through (b)(5) of this section, or any other technique upon which both parties agree.

(1) Zero balance accounting means that a Federal Program Agency transfers the actual amount of Federal funds to a State that are paid out by the State each day.

(2) Projected clearance means that a Federal Program Agency transfers to a State the projected amount of funds that the State pays out each day. The projected amount paid out each day is determined by applying a clearance pattern to the total amount the State will disburse.

(3) Average clearance means that a Federal Program Agency, on the dollar-weighted average day of clearance of a disbursement, transfers to a State a lump sum equal to the actual amount of funds that the State is paying out. The dollar-weighted average day of clearance is the day when, on a cumulative basis, 50 percent of the funds have been paid out. The dollar-weighted average day of clearance is calculated from a clearance pattern, consistent with § 205.20.

(4) Cash advance (pre-issuance or post-issuance) funding means that a Federal Program Agency transfers the actual amount of Federal funds to a State that will be paid out by the State, in a lump sum, not more than three business days prior to the day the State issues checks or initiates EFT payments.

(5) Reimbursable funding means that a Federal Program Agency transfers Federal funds to a State after that State has already paid out the funds for Federal assistance program purposes.

§ 205.13 How do you determine when State or Federal interest liability accrues?

(a) State or Federal interest liability may or may not accrue when mutually agreed to funding techniques are applied, depending on the terms of the Treasury-State agreement.

(b) We and a State may agree in a Treasury-State agreement that no State or Federal interest liability will accrue for indirect costs or indirect allocated costs based on an indirect cost rate. This

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indirect cost must be consistent with OMB Circular A–87 (For availability, see 5 CFR 1310.3.) and be in accordance with this subpart A. The indirect cost rate may be a Statewide indirect cost rate or a public assistance cost rate, where appropriate.

§ 205.14 When does Federal interest liability accrue?

(a) Federal interest liabilities may accrue in accordance with the following provisions:

(1) The Federal Program Agency incurs interest liability if a State pays out its own funds for Federal assistance program purposes with valid obligational authority under Federal law, Federal regulation, or Federal-State agreement. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(2) If a State pays out its own funds for Federal assistance program purposes without obligational authority, the Federal Program Agency will incur an interest liability if obligational authority subsequently is established. However, if the lack of obligational authority is the result of the failure of the State to comply with a Federal Program Agency requirement established by statute, regulation, or agreement, interest liability may be denied. A Federal interest liability will accrue from the day a State pays out its own funds for Federal assistance program purposes to the day Federal funds are credited to a State bank account.

(3) If a State pays out its own funds prior to the day a Federal Program Agency officially notifies the State in writing that a discretionary grant project is approved, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(4) If a State pays out its own funds prior to the availability of Federal funds authorized or appropriated for a future Federal fiscal year, the Federal Program Agency does not incur an interest liability, notwithstanding any other provision of this section.

(5) If a State fails to request funds timely as set forth in § 205.29, or otherwise fails to apply a funding technique properly, we may deny any resulting Federal interest liability, notwithstanding any other provision of this section.

(b) Federal Program Agency programs that have specific payment dates set by the Federal Program Agency that create interest liabilities are subject to this part.

(c) States must adhere to Federal Program Agency disbursement schedules when requesting funds. Notwithstanding any other provision of this section, we may deny a State's claim for Federal interest liability for the period prior to a late drawdown request. States must time their funds drawdown so that it does not create Federal interest liability. The drawdown request must allow the Federal Program Agency sufficient time to meet its disbursement schedule. If the Federal Program Agency does not make a timely payout in accordance with the terms of the Treasury-State agreement, a State may submit a claim for interest liability.

§ 205.15 When does State interest liability accrue?

(a) *General rule.* State interest liability may accrue if Federal funds are received by a State prior to the day the State pays out the funds for Federal assistance program purposes. State interest liability accrues from the day Federal funds are credited to a State account to the day the State pays out the Federal funds for Federal assistance program purposes.

(b) *Refunds.* (1) A State incurs interest liability on refunds of Federal funds from the day the refund is credited to a State account to the day the refund is either paid out for Federal assistance program purposes or credited to the Federal government.

(2) We and a State may agree, in a Treasury-State agreement, that a State does not incur an interest liability on refunds in refund transactions under $50,000.

(c) *Exception to the general rule.* A State does not incur an interest liability to the Federal government if a Federal statute requires the State to retain or use for Federal assistance program purposes the interest earned on Federal funds, notwithstanding any other provision in this section.

(d) *Mandatory matching of Federal funds.* In programs utilizing mandatory matching of Federal funds with State funds, a State must not arbitrarily assign its earliest costs to the Federal government. A State incurs interest liabilities if it draws Federal funds in advance and/or in excess of the required proportion of agreed upon levels of State contributions in programs utilizing mandatory matching of Federal funds with State funds.

§ 205.16 What special rules apply to Federal assistance programs and projects funded by the Federal Highway Trust Fund?

The following applies to Federal assistance programs and projects funded out of the Federal Highway Trust Fund, notwithstanding any other provision of this part:

(a) A State must request funds at least weekly for current project costs, or Federal interest liability will not accrue prior to the day a State submits a request for funds.

(b) If a State pays out its own funds in the absence of a project agreement or in excess of the Federal obligation in a project agreement, the Federal Program Agency will not incur an interest liability.

§ 205.17 Are funds transfers delayed by automated payment systems restrictions based on the size and timing of the drawdown request subject to this part?

Funds transfers delayed due to payment processes that automatically reject drawdown requests that fall outside a pre-determined set of parameters are subject to this part.

§ 205.18 Are administrative costs subject to this part?

(a) A State and FMS may agree, in a Treasury-State agreement, to the following funding conventions for indirect costs and administrative costs:

(1) The State will draw down a prorated amount of administrative costs on the date of the State payday. For example, the State would draw one-third of its quarterly administrative costs if payroll is monthly, or one-sixth of its quarterly administrative costs if payroll is semi-monthly.

(2) If an indirect cost rate is applied to a program, the State will include a proportionate share of the indirect cost allowance on each drawdown by applying the indirect cost rate to the appropriate direct costs on each drawdown.

(3) If costs must be allocated to various programs pursuant to a labor distribution or other system under an approved cost allocation plan, the State will draw down funds to meet cash outlay requirements based on the most recent, certified cost allocations, with subsequent adjustments made pursuant to the actual allocation of costs.

(b) Notwithstanding any other provision of this part, no interest liabilities will be incurred or calculated for indirect costs and administrative costs, provided the funding conventions described in paragraph (a) of this section are properly applied.

§ 205.19 How is interest calculated?

(a) A State must calculate Federal interest liabilities and State interest liabilities for each Federal assistance program subject to this subpart A.

(b) The interest rate for all interest liabilities for each Federal assistance program subject to this subpart A is the annualized rate equal to the average equivalent yields of 13-week Treasury Bills auctioned during a State's fiscal year. We provide this rate to each State.

(c) A State must calculate and report interest liabilities on the basis of its fiscal year. A State must ensure that its interest calculations are auditable and retain a record of the calculations.

(d) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to calculate and document interest liabilities.

(e) A State may use actual data, a clearance pattern, or statistical sampling to calculate interest. A clearance pattern used to calculate interest must meet the standards of § 205.20. If a State uses statistical sampling to calculate interest, the State must sample transactions separately for each Federal assistance program subject to this subpart A. Each sample must be representative of the pool of transactions and be of sufficient size to accurately represent the flow of Federal funds under the Federal assistance program, including seasonal or other periodic variations.

(f) For the first year in which a Federal assistance program is covered in a Treasury-State agreement, funds transfers that occur prior to the first day of the State's fiscal year must not be included in interest calculations and are not subject to the interest liability provisions of this part.

§ 205.20 What is a clearance pattern?

States use clearance patterns to project when funds are paid out, given a known dollar amount and a known date of disbursement. A State must ensure that clearance patterns meet the following standards:

(a) A clearance pattern must be auditable.

(b) A clearance pattern must accurately represent the flow of Federal funds under the Federal assistance programs to which it is applied.

(c) A clearance pattern must include seasonal or other periodic variations in clearance activity.

(d) A clearance pattern must be based on at least three consecutive months of disbursement data, unless additional data is required to accurately represent the flow of Federal funds.

(e) If a State uses statistical sampling to develop a clearance pattern, the sample size must be sufficient to ensure a 96 percent confidence interval no more than plus or minus 0.25 weighted days above or below the estimated mean.

(f) A clearance pattern must extend, at a minimum, until 99 percent of the dollars in a disbursement have been paid out for Federal assistance program purposes.

(g) We and a State may agree to other procedures, such as estimates to project when funds are paid out when the dollar amount and/or the timing of disbursements are not known.

§ 205.21 When may clearance patterns be used?

(a) A State may develop a clearance pattern for:

(1) An individual Federal assistance program;

(2) A logical group of Federal assistance programs that have the same disbursement method and type of payee;

(3) A bank account;

(4) A specific type of payment, such as payroll or vendor payments; or

(5) Anything that is agreed upon by us and a State. If a clearance pattern is used for multiple Federal assistance programs, a State must apply the clearance pattern separately to each Federal assistance program when scheduling funds transfers or calculating interest.

(b) As set forth in § 205.9, a Treasury-State agreement must include the method a State uses to develop and maintain clearance patterns.

§ 205.22 How are accurate clearance patterns maintained?

(a) If a State has knowledge, at any time, that a clearance pattern no longer reflects a Federal assistance program's actual clearance activity, or if a Federal assistance program undergoes operational changes that may affect clearance activity, the State must notify us, develop a new clearance pattern, and certify that the new pattern corresponds to the Federal assistance program's clearance activity. Clearance patterns will remain in effect until a new clearance pattern is certified.

(b) An authorized State official must certify that a clearance pattern corresponds to the clearance activity of the Federal assistance program to which it is applied. An authorized State official must re-certify the accuracy of a clearance pattern at least every five years. If a State develops a clearance pattern for a bank account or a specific type of payment, or on another basis, as set forth in § 205.21, we may prescribe other requirements for re-certifying the accuracy of the clearance pattern. A State can begin to use a new clearance pattern on the date the new clearance pattern is certified.

§ 205.23 What requirements apply to estimates?

The following requirements apply when we and a State negotiate a mutually agreed upon funds transfer procedure based on an estimate of the State's immediate cash needs:

(a) The State must ensure that the estimate reasonably represents the flow of Federal funds under the Federal assistance program or program component to which the estimate applies. The estimate must take into account seasonal or other periodic variations in activity throughout the period for which the Federal funds are available.

(b) As set forth in §§ 205.9 and 205.10, a Treasury-State agreement must include the method a State uses to develop, maintain, and document the estimate.

§ 205.24 How are accurate estimates maintained?

(a) If a State has knowledge that an estimate does not reasonably correspond to the State's cash needs for a Federal assistance program or program component, or if a Federal assistance program undergoes operational changes that may affect cash needs, the State must immediately notify us in writing. We and the State will amend the funding technique provisions in the Treasury-State agreement or take other mutually agreed upon corrective action.

(b) When estimates are properly updated and applied, a State or Federal interest liability may or may not accrue, depending on the terms of the Treasury-State agreement.

(c) We may require a State to justify in writing that it is not feasible to use a more efficient basis for determining the amount of funds to be transferred under the Federal assistance program or program component to which an estimate is applied. We may prescribe requirements for certifying the reasonableness of an estimate.

§ 205.25 How does this part apply to certain Federal assistance programs or funds?

(a) Special rules apply to certain Federal assistance programs or funds described in this section. To the extent the provisions of this section are inconsistent with other provisions of this part, this section applies.

(b) A State's interest liability on funds withdrawn from its account in the UTF equals the actual interest earned on such funds less the related banking costs. Actual interest earned does not include non-cash bank earnings. If funds withdrawn from the State account in the UTF are commingled with other funds, a proportionate share of interest earnings and banking costs must be allocated to the funds withdrawn from the State account. Interest liabilities on funds withdrawn from a Federal

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account in the UTF, except the Federal Unemployment Account, are calculated in accordance with § 205.19.

(c) *Supplemental Security Income.* (1) Except as provided in 42 U.S.C. 1382e(d), the Federal government incurs an interest liability from the day State funds are credited to the Federal government's account to the day a Federal Program Agency pays out the State funds for Federal assistance program purposes. A State incurs an interest liability from the day a Federal Program Agency pays out Federal funds for Federal assistance program purposes to the day State funds are credited to the Federal government's account.

(2) Interest liability must be calculated on the difference between a State's monthly Supplemental Security Income payment and the State's actual liability for the month.

(3) The Federal government will not incur interest liabilities on refunds of State funds under the Supplemental Security Income Program.

(4) Administrative fees charged by the Social Security Administration to States under the Supplemental Security Income program are not subject to this part.

(5) Supplemental State payments made in conjunction with Supplemental Security Income are not subject to this part.

(d) *Funds collected under the Child Support Enforcement Program.* (1) Funds collected by States from absent parents pursuant to Title IV–D of the Social Security Act are not subject to this part.

(2) Interest earned by States on undistributed collections must be treated as Federal assistance program income under 45 CFR 304.50(b) and is not subject to this part.

(3) Late payment fees collected by States from absent parents are not subject to interest liabilities under this part and are not subject to this part. However, such fees must be treated as Federal assistance program income in accordance with 45 CFR 302.75(b)(6).

(e) A State that earns interest on Special Supplemental Food Program for Women, Infants, and Children rebates is not subject to interest liability if the funds earned are used for Federal assistance program purposes.

(f) *Revolving Loan Funds.* (1) This part applies to any transfer of funds from the Federal Program Agency to the State for the Revolving Loan Fund.

(2) This part does not apply to interest a State earns on Revolving Loan Funds when Federal Program Agency regulations require that all interest earned on invested funds be used for Federal assistance program purposes.

§ 205.26 What are the requirements for preparing Annual Reports?

(a) A State must submit to us an Annual Report accounting for State and Federal interest liabilities of the State's most recently completed fiscal year. Adjustments to the Annual Report must be limited to the two State fiscal years prior to the State fiscal year covered by the report. The authorized State official must certify the accuracy of a State's Annual Report. A signed original of the Annual Report must be received by December 31 of the year in which the State's fiscal year ends. We will provide copies of Annual Reports to Federal agencies. We will prescribe the format of the Annual Report, and may prescribe that the Annual Report be submitted by electronic means.

(b) A State must submit a description and supporting documentation for liability claims greater than $5,000. This information must include the following:

(1) The amount of funds requested;

(2) The date the funds were requested;

(3) The date the funds were paid out for Federal assistance program purposes;

(4) The date the funds were received by the State; and

(5) The date of award.

(c) A State claiming reimbursement of Interest Calculation Costs must submit its claim with its Annual Report in accordance with § 205.27. An authorized State official must certify the accuracy of a State's claim for Interest Calculation Costs.

§ 205.27 How are Interest Calculation Costs calculated?

(a) We will compensate a State annually for the costs of calculating interest, including the cost of developing and maintaining clearance patterns in support of interest calculations, pursuant to this subpart A, subject to the conditions and limitations of this section.

(b) We may deny an interest calculation cost claim if a State does not:

(1) Have a Treasury-State agreement with us, as set forth in §§ 205.6 through 205.9;

(2) Submit timely a Treasury-State agreement, as set forth in §§ 205.6 through 205.9;

(3) Submit timely an updated list of Federal assistance programs subject to this subpart A, as set forth in §§ 205.6 through 205.9;

(4) Submit timely a claim for Interest Calculation Costs with its Annual Report, as set forth in § 205.26; or

(5) Submit timely its Annual Report, as set forth in § 205.26.

(c) A State must maintain documentation to substantiate its claim for Interest Calculation Costs. We may require a State to provide documentation to support its interest calculation cost claims. We will review all interest calculation cost claims for reasonableness. If we determine that a cost claim is unreasonable, we will not reimburse a State for that cost, notwithstanding any other provision of this section.

(d) *Eligibility and treatment of Interest Calculation Costs.* (1) Interest Calculation Costs do not include expenses for normal disbursing services, such as processing checks or maintaining records for accounting and reconciliation of cash accounts, or expenses for upgrading or modernizing accounting systems.

(2) Interest Calculation Costs in excess of $50,000 in any year are not eligible for reimbursement, unless a State can justify to us that the State is unable to develop and maintain clearance patterns in support of interest calculations, or perform the actual calculation of interest, without incurring such costs. Supporting documentation must accompany State requests for reimbursement in excess of $50,000.

(3) Interest Calculation Costs that a State incurs in fiscal years prior to its most recently completed Annual Report are not eligible for reimbursement.

(4) A State must not include Interest Calculation Costs in its Statewide cost allocation plan, as defined and provided for in OMB Circular A–87. All costs incurred by a State to implement this subpart A, other than Interest Calculation Costs, are subject to the procedures and principles of OMB Circular A–87.

(e) The payments from the Federal government to individual States to offset Interest Calculation Costs incurred are funded from the aggregate interest payments States make to the Federal government. The following limitations apply:

(1) We will not reduce or adjust interest liabilities for Federal assistance programs funded out of trust funds for which the Secretary is trustee. These programs include, but are not limited to, Unemployment Insurance Trust Fund (CFDA 17.225); Highway & Planning Trust Fund (CFDA 20.205); Airport Improvement Trust Fund (CFDA 20.106); Federal Transit Capital Improvement Trust Fund (CFDA 20.500); Federal Transit Capital & Operating Assistance Trust Fund (CFDA 20.507); and Social Security—Disability Insurance Trust Fund (CFDA 96.001); and

(2) The aggregate payments from the Federal government to States to offset Interest Calculation Costs will not be greater than the aggregate interest payments States make to the Federal government.

§ 205.28 How are interest payments exchanged?

(a) We offset the adjusted total State interest liability and the adjusted total Federal interest liability for each State to determine the net interest payable to or from each specific State. The payment of net interest and any Interest Calculation Costs, as set forth in § 205.27, for the most recently completed fiscal year must occur no later than March 31. We will notify a State of the final net interest liability. A State must submit a claim to receive payment.

(b) A State may appeal a decision by us on interest liabilities and interest calculation cost claims in accordance with § 205.31.

(c) If a State appeals the amount of interest payable in accordance with the provisions of § 205.31, payment must occur by March 31 for any portions not subject to the appeal.

(d) The Federal government will not be liable for interest on any payment of interest to a State.

§ 205.29 What are the State oversight and compliance responsibilities?

(a) A State must designate an official representative with the statutory or administrative authority to coordinate all interaction with the Federal government concerning this subpart A, and must notify us in writing of the representative's name and title. A State must notify us immediately of any change in the official representative.

(b) A State must maintain records supporting interest calculations, clearance patterns, Interest Calculation Costs, and other functions directly pertinent to the implementation and administration of this subpart A for audit purposes. A State must retain the records for each fiscal year for three years from the date the State submits its Annual Report, or until any pending dispute or action involving the records and documents is completed, whichever is later. We, the Comptroller General, and the Inspector General or other representative of a Federal Program Agency must have the right of access to, and may require submission of, all records for the purpose of verifying interest calculations, clearance patterns, interest calculation cost claims, and the State's accounting for Federal funds.

(c) A State's implementation of this subpart A is subject to audit in accordance with 31 U.S.C. Chapter 75, "Requirements for Single Audits."

(d) If a State repeatedly or deliberately fails to request funds in accordance with the procedures established for its funding techniques, as set forth in § 205.11, § 205.12, or a Treasury-State agreement, we may deny the State payment or credit for the resulting Federal interest liability, notwithstanding any other provision of this part.

(e) If a State materially fails to comply with this subpart A, we may, in addition to the action described in paragraph (d) of this section, take one or more of the following actions, as appropriate under the circumstances:

(1) Deny the reimbursement of all or a part of the State's interest calculation cost claim;

(2) Send notification of the non-compliance to the affected Federal Program Agency for appropriate action, including, where appropriate, a determination regarding the impact of non-compliance on program funding;

(3) Request a Federal Program Agency or the General Accounting Office to conduct an audit of the State to determine interest owed to the Federal government, and to implement procedures to recover such interest;

(4) Initiate a debt collection process to recover claims owed to the United States; or

(5) Take other remedies legally available.

§ 205.30 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must designate an official representative to coordinate all interaction with us and the States concerning this subpart A, and must notify us in writing of the representative's name and title. A Federal Program Agency must notify us immediately of any change in the official representative.

(b) A Federal Program Agency's implementation of this subpart A is subject to review pursuant to procedural instructions that we issue.

(c) We will consult with Federal agencies as necessary and appropriate before entering into or amending a Treasury-State agreement.

(d) We will distribute Annual Reports to Federal agencies, as set forth in § 205.26. Upon our request, a Federal Program Agency must review a State's Annual Report for reasonableness and must report its findings to us within 30 days.

(e) A Federal Program Agency must notify us in writing if the program agency has knowledge, at any time, that:

(1) A State's clearance pattern does not correspond to a Federal assistance program's clearance activity; or

(2) Corrective action needs to be taken by a State, us, or another Federal Program Agency, with respect to the implementation of this subpart. We will notify the State or Federal Program Agency as appropriate in writing with a description of the Federal Program Agency's assertion.

(f) A Federal Program Agency must notify us in writing of new Federal assistance programs listed in the Catalog of Federal Domestic Assistance.

(g) If a Federal Program Agency causes an interest liability by failing to comply with this subpart A, we may collect a charge from the Federal Program Agency. A Federal interest liability resulting from circumstances beyond the control of a Federal Program Agency does not constitute noncompliance. We will determine the charge using the following procedures:

(1) We will issue a Notice of Assessment to the Federal Program Agency, indicating the nature of the noncompliance, the amount of the charge, the manner in which it was calculated, and the right to file an appeal.

(2) To the maximum extent practicable, a Federal Program Agency must pay a charge for noncompliance out of appropriations available for the Federal Program Agency's operations and not from the Federal Program Agency's program funds.

(3) If a Federal Program Agency does not pay a charge for noncompliance within 45 days after receiving a Notice of Assessment, we will debit the appropriate Federal Program Agency account.

(4) In the event a Federal Program Agency appeals a charge imposed under the Notice of Assessment, we will defer the charge until we decide the appeal. If we deny the appeal, the effective date of the charge may be retroactive to the date indicated in the Notice of Assessment.

§ 205.31 How does a State or Federal Program Agency appeal a determination made by us and resolve disputes?

(a) This section documents the procedures for:

(1) A State to appeal the net interest charge that we have assessed;

(2) A State to appeal a determination we have made regarding the State's claim for Interest Calculation Costs in accordance with § 205.27;

(3) A Federal Program Agency to appeal a charge for noncompliance that we have assessed in accordance with § 205.30; or

(4) A State or a Federal Program Agency to resolve other disputes with us or between or among each other concerning the implementation of this subpart A.

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(b) A State or Federal Program Agency must submit a written petition (Petition) to the Assistant Commissioner, Federal Finance, Financial Management Service, (Assistant Commissioner), within 90 days of the date of the notice of assessment or the event that initiated the appeal or dispute. The Petition must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices, of the conditions forming the basis of the Petition and the action requested of the Assistant Commissioner. In the case of a dispute, the party submitting the petition to us must concurrently provide a copy of the petition to the other concerned parties. The other concerned parties may submit to the Assistant Commissioner a rebuttal within 90 days of the date of the petition. The rebuttal must include a concise factual statement, not to exceed 15 pages, with supporting documentation in the appendices.

(c) The Assistant Commissioner will review the Petition, any rebuttal, and all supporting documentation. As part of the review process, the Assistant Commissioner may request to meet with any or all parties and may request additional information.

(d) The Assistant Commissioner will issue a written decision within the later of 120 days of the date of the Petition or the rebuttal, in case of a dispute, or 120 days from receipt of any additional information. The Assistant Commissioner's decision will be the final program agency action on our part for purposes of judicial review procedures under the Administrative Procedures Act, 5 U.S.C. 701–706 (APA), unless either the State or Federal Program Agency invokes the provisions of the Administrative Dispute Resolution Act of 1990 (ADRA), 5 U.S.C. 581–593.

(e) Either a State or Federal Program Agency may seek to invoke the provisions of the ADRA within 45 days after the date of the Assistant Commissioner's written decision.

(1) The party invoking the ADRA must notify the Assistant Commissioner and any other concerned parties in writing. If all parties, including the Assistant Commissioner, agree in writing, a neutral party appointed under the provisions of the ADRA may assist in resolving the dispute through the use of alternate means of dispute resolution as defined in the ADRA.

(2) If the party invoking the ADRA is unable to reach a satisfactory resolution, the Assistant Commissioner's decision will be the final agency action on our part for purposes of the judicial review procedures under the APA.

(f) Any amount due as a result of an appeal or dispute must be paid within 30 days of the date of the decision of the Assistant Commissioner or the date of the resolution under the ADRA. If a State fails to pay, the State will be subject to collection techniques under 31 U.S.C. 3701 *et seq.*, including accrual of interest on outstanding balances and administrative offset.

Subpart B—Rules Applicable to Federal Assistance Programs Not Included in a Treasury-State Agreement

§ 205.32 What Federal assistance programs are subject to this subpart B?

This subpart B applies to all Federal assistance programs listed in the Catalog of Federal Domestic Assistance that are not subject to subpart A of this part.

§ 205.33 How are funds transfers processed?

(a) A State must minimize the time between the drawdown of Federal funds from the Federal government and their disbursement for Federal program purposes. A Federal Program Agency must limit a funds transfer to a State to the minimum amounts needed by the State and must time the disbursement to be in accord with the actual, immediate cash requirements of the State in carrying out a Federal assistance program or project. The timing and amount of funds transfers must be as close as is administratively feasible to a State's actual cash outlay for direct program costs and the proportionate share of any allowable indirect costs. States should exercise sound cash management in funds transfers to subgrantees in accordance with OMB Circular A–102 (For availability, see 5 CFR 1310.3.).

(b) Neither a State nor the Federal government will incur an interest liability under this part on the transfer of funds for a Federal assistance program subject to this subpart B.

§ 205.34 What are the Federal oversight and compliance responsibilities?

(a) A Federal Program Agency must review the practices of States as necessary to ensure compliance with this subpart B.

(b) A Federal Program Agency must notify us if a State demonstrates an unwillingness or inability to comply with this subpart B.

(c) A Federal Program Agency must formulate procedural instructions specifying the methods for carrying out the responsibilities of this section.

§ 205.35 What is the result of Federal Program Agency or State non-compliance?

We may require a State and a Federal Program Agency to make the affected Federal assistance programs subject to subpart A of this part, consistent with Federal assistance program purposes and regulations, notwithstanding any other provision of this part, if:

(a) A State demonstrates an unwillingness or inability to comply with this subpart B; or

(b) A Federal Program Agency demonstrates an unwillingness or inability to make Federal funds available to a State as needed to carry out a Federal assistance program.

Subpart C—[Reserved]

Richard L. Gregg,
Commissioner.

[FR Doc. 02–11540 Filed 5–9–02; 8:45 am]
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Federal Register

Friday,
May 10, 2002

Part IV

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 930

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 930; Proposed Rule

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 930

[Docket Nos. AO–370–A7; FV00–930–1]

Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin; Secretary's Decision and Referendum Order on Proposed Amendment of Marketing Agreement and Order No. 930

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision proposes amendments to the marketing agreement and order for tart cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, and provides growers and processors with the opportunity to vote in a referendum to determine if they favor the changes. The amendments are based on those proposed by the Cherry Industry Administrative Board (Board), which is responsible for local administration of the order. The amendments include making districts producing more than 6 million pounds per year subject to volume regulations (rather than 15 million pounds); making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all processed cherries subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Remaining amendments pertain to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimates other than the official USDA crop estimate in developing the Board's marketing policy. The proposed amendments are intended to improve the operation and functioning of the tart cherry marketing order program.

DATES: The referendum will be conducted from May 20 to 31, 2002. The representative period for the purpose of the referendum is June 1, 2000, through May 31, 2001.

FOR FURTHER INFORMATION CONTACT: Anne M. Dec, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone: (202) 720–2491, or Fax: (202) 720–8938. Small businesses may request information on compliance with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue, SW STOP 0237, Washington, DC 20250–0237; telephone (202) 720–2491; Fax (202) 720–8938.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued on March 17, 2000, and published in the March 23, 2000, issue of the **Federal Register** (65 FR 15580); Recommended Decision and Opportunity to File Written Exceptions issued on January 15, 2002, and published in the January 24, 2002, issue of the **Federal Register** (67 FR 3540).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

Preliminary Statement

The proposed amendments were formulated based on the record of a public hearing held in Rochester, New York on March 27 and 28, 2000; in Grand Rapids, Michigan on March 29, 30, and 31, 2000; in Kennewick, Washington on April 4 and 5, 2000; and in Salt Lake City, Utah on April 6, 2000. The hearing was held to consider the proposed amendment of Marketing Agreement and Order No. 930, regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin, hereinafter referred to collectively as the "order." The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act," and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900). The notice of hearing contained numerous proposals submitted by the Board, and one proposed by the Agricultural Marketing Service (AMS).

The Board's proposed amendments included making all districts subject to volume regulations, rather than only those districts producing more than 15 million pounds per year; making shipments of cherry juice and juice concentrate to certain markets eligible to receive diversion credit; changing provisions related to alternate Board members serving for absent members at Board meetings; making all cherry shipments subject to assessments; and eliminating the requirement that different assessment rates be established for different cherry products. Other amendments proposed by the Board pertained to allocation of Board membership; clarification of order provisions relating to exemption and diversion; release of cherries in the inventory reserve; and the use of crop estimate in developing the Board's marketing policy.

The Fruit and Vegetable Programs of AMS proposed to allow such changes as may be necessary to the order, if any of the proposed amendments are adopted, so that all of the order's provisions conform with the effectuated amendments.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of AMS on January 15, 2002, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision and Opportunity to File Written Exceptions thereto by February 13, 2002.

Ninety-six exceptions were filed during the period provided: Growers and processors in the production area submitted almost all of the comments. Comments were also filed by the Board, the Wisconsin Department of Agriculture, and Congressman Mark Green of Wisconsin.

All of the comments addressed the issue of whether to reduce the production threshold level for districts to be subject to volume regulation. Fourteen supported retaining the current 15 million pound threshold; 17 favored reducing the threshold to 6 million pounds (as proposed by USDA in the recommended decision); and 65 wanted the threshold to be eliminated (as proposed by the Board). Growers and processors in the regulated States tended to support the Board's proposal, while those in unregulated States favored retaining a threshold production level. The exception was Wisconsin. Twenty-two of the 28 comments originating in that State supported eliminating the threshold, but not lowering it.

Only four of the exceptions addressed other material issues included in the recommended decision. The specific issues raised in all of the exceptions are discussed in the Findings and Conclusions section of this document.

In addition to the 96 timely exceptions, 4 comments were received after the comment period ended. No substantive issues were raised by these commenters that were not already known to the Department or raised by those who filed in a timely manner.

Small Business Considerations

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), AMS has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions so that small businesses will not be unduly or disproportionately burdened. Marketing orders and amendments thereto are unique in that they are normally brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act are compatible with respect to small entities.

Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.201) as those having annual receipts of less than $750,000. Small agricultural service firms, which include handlers regulated under the order, are defined as those with annual receipts of less than $5,000,000.

Interested persons were invited to present evidence at the hearing on the probable regulatory and informational impact of the proposed amendments on small businesses. The record indicates that these amendments could result in additional regulatory requirements being imposed on some tart cherry handlers, while regulatory burdens on other handlers could be reduced. Overall benefits are expected to exceed costs.

The record indicates that there are about 40 handlers regulated under Marketing Order No. 930. In addition, there are about 905 producers of tart cherries in the production area.

The record indicates that of the 41 tart cherry handlers operating during the 1999–2000 season, 7 had processed tonnage of more than 10 million pounds (or 17 percent of all handlers); 8 had between 5.1 and 10 million pounds (20 percent); 12 had between 2.1 and 5 million pounds (29 percent); and the remaining 14 had less than 2 million pounds of processed tonnage (34 percent). Handlers accounting for 10 million pounds or more would be classified as large businesses. Thus, a majority of tart cherry handlers could be classified as small entities.

Twenty handlers are located in Michigan—nine in district 1 (Northern Michigan), eight in district 2 (Central Michigan) and three in district 3 (Southern Michigan). Of the remaining 21 handlers, 4 are in district 4 (New York), 3 are in district 5 (Oregon), 1 is in district 5 (Pennsylvania), 3 are in district 7 (Utah), 5 are in district 8 (Washington), and 5 are in district 9 (Wisconsin). Many handlers process cherries grown in more than one district.

Of the 904 growers who produced cherries in 1999, 368 were in Northern Michigan (41 percent), 149 were in Southern Michigan (16 percent), 129 percent in Central Michigan (14 percent), 84 in New York (9 percent), 65 in Wisconsin (7 percent), 38 in Utah (4 percent), 29 in Pennsylvania (3 percent), 27 in Oregon (3 percent), and 17 in Washington (2 percent).

During the 3-year period 1999–2001, production of tart cherries averaged 300.6 million pounds. By district, Northern Michigan accounted for 44.0 percent of the production, followed by Central Michigan with 22.4 percent, Southern Michigan with 8.7 percent, Utah and Washington each with 6.6 percent, New York with 5.3 percent, Wisconsin with 3.4 percent, Pennsylvania with 1.7 percent, and Oregon with 1.3 percent.

Dividing total production by the number of growers, the average grower produces about 332,500 pounds of cherries annually. With grower returns of about 20 cents per pound, average revenues would be $66,500. Thus, it is reasonable to conclude that most tart cherry growers are small entities.

At 20 cents per pound, a grower would have to produce 2.5 million pounds of cherries to reach the $500,000 receipt threshold to qualify as a large producing entity under the SBA's definition that was in effect at the time of the hearing. The evidence of record is that only 13 growers (or less than 2 percent of the total number of growers) produced 2.5 million pounds or more during the 1999–2000 crop year. Five of those growers (or 38 percent) were located in Northern Michigan (district 1) and three operated (23 percent) in Central Michigan (district 2). The remaining five growers in this category (38 percent) were distributed among the remaining seven districts. The distribution of large growers is thus in proportion to the overall distribution of growers among the districts.

A large majority (more than 98 percent) of the tart cherry growers falls into the previous SBA definition of a small entity (annual receipts of less than $500,000); it is reasonable to assume that an even greater majority qualify under the current SBA definition of a small grower (annual receipts of less than $750,000).

During the 3 years 1999 to 2001, the average grower accounted for about 333,000 pounds of cherries. By district, average grower size varies considerably. The average grower in Washington accounts for roughly 1,159,000 pounds of cherries. Next in size is Central Michigan with 530,000 pounds, followed by Utah (518,000 pounds), Northern Michigan (360,000 pounds), New York (191,000 pounds), Pennsylvania (179,000 pounds), Southern Michigan (177,000 pounds), Wisconsin (155,000 pounds) and Oregon (141,000 pounds).

This decision proposes that the order be amended: (1) To provide that all districts in the production area with annual production in excess of 6 million pounds be subject to volume regulation rather than only those with annual production in excess of 15 million pounds; (2) To allocate Board membership among districts based on levels of production and make a corresponding change in quorum requirements; (3) To authorize a Board member to designate any alternate to serve for that member at a Board meeting in the event the member and his or her alternate are unavailable; (4) To clarify the diversion and exemption provisions of the order by eliminating cross references among those provisions and adding general rulemaking authority to implement handler diversion provisions; (5) To add specific authority to the order to exempt or provide diversion credit for cherries exported to designated markets; (6) To provide diversion credit for shipments of cherry juice and juice concentrate to established diversion markets; (7) To add specific authority for the transfer of diversion credits among handlers; (8) To provide that grower diversions that take place in districts that are subsequently exempt from volume regulation qualify for diversion credit; (9) To allow cherries in the inventory reserve to be released for use in only certain designated markets; (10) To specify that the 10-percent reserve release for market expansion only applies during years when volume regulations are in effect; (11) To require assessments to be paid on all cherries handled, except for those that are diverted by destruction at a handler's facility and those covered by a grower diversion certificate; (12) To eliminate the requirement that differential assessment rates be established for various cherry products based on the relative market values of such products; and (13) To allow the Board to use an estimate other than the official USDA crop estimate in developing its marketing policy.

Industry Background

The principal demand for tart cherries is in the form of processed products. Tart cherries are dried, frozen, canned,

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juiced, and pureed. During the period 1995–96 through 1999–00, approximately 91 percent of the U.S. tart cherry crop, or 280.5 million pounds, was processed annually. Of the 280.5 million pounds of tart cherries processed, 62 percent was frozen, 29 percent was canned, and 9 percent was utilized for juice.

Based on National Agricultural Statistics Service data, acreage in the United States devoted to tart cherry production has been trending downward. In the ten-year period, 1987–88 through 1997–98, the tart cherry area decreased from 50,050 acres, to less than 40,000 acres. In 1999–00, approximately 90 percent of domestic tart cherry acreage was located in four States: Michigan, New York, Utah and Wisconsin. Michigan leads the nation in tart cherry acreage with 70 percent of the total. Michigan produces about 75 percent of the U.S. tart cherry crop each year. In 1999–00, tart cherry acreage in Michigan decreased to 28,100 acres from 28,400 acres the previous year.

In crop years 1987–88 through 1999–00, tart cherry production ranged from a high of 396.0 million pounds in 1995–96 to a low of 189.9 million pounds in 1991–92. The price per pound received by tart cherry growers ranged from a low of 7.3 cents in 1987 to a high of 46.4 cents in 1991. These problems of wide supply and price fluctuations in the tart cherry industry are national in scope and impact. Growers testified during the order promulgation process that the prices they received often did not come close to covering the costs of production. They also testified that production costs for most growers range between 20 and 22 cents per pound, which is well above average prices received during the 1993–1995 seasons.

The industry demonstrated a need for an order during the promulgation process of the marketing order because large variations in annual tart cherry supplies tend to lead to fluctuations in prices and disorderly marketing. As a result of these fluctuations in supply and price, growers realize less income. The industry chose a volume control marketing order to even out these wide variations in supply and improve returns to growers. During the promulgation process, proponents testified that small growers and processors would have the most to gain from implementation of a marketing order because many such growers and handlers had been going out of business due to low tart cherry prices. They also testified that, since an order would help increase grower returns, this should increase the buffer between business success and failure because small growers and handlers tend to be less capitalized than larger growers and handlers.

Aggregate demand for tart cherries and tart cherry products tends to be relatively stable from year-to-year. Similarly, prices at the retail level show minimal variation. Consumer prices in grocery stores, and particularly in food service markets, largely do not reflect fluctuations in cherry supplies. Retail demand is assumed to be highly inelastic which indicates that price reductions do not result in large increases in the quantity demanded. Most tart cherries are sold to food service outlets and to consumers as pie filling; frozen cherries are sold as an ingredient to manufacturers of pies and cherry desserts. Juice and dried cherries are expanding market outlets for tart cherries.

Demand for tart cherries at the farm level is derived from the demand for tart cherry products at retail. In general, the farm-level demand for a commodity consists of the demand at retail or food service outlets minus per-unit processing and distribution costs incurred in transforming the raw farm commodity into a product available to consumers. These costs comprise what is known as the "marketing margin."

The supply of tart cherries, by contrast, varies greatly. The magnitude of annual fluctuations in tart cherry supplies is one of the most pronounced for any agricultural commodity in the United States. In addition, since most tart cherries are either canned or frozen, they can be stored and carried over from year-to-year. This creates substantial coordination and marketing problems. The supply and demand for tart cherries are rarely in equilibrium. As a result, grower prices fluctuate widely, reflecting the large swings in annual supplies.

In an effort to stabilize prices, the tart cherry industry uses the volume control mechanisms under the authority of the Federal marketing order. This authority allows the industry to set free and restricted percentages.

The primary purpose of setting restricted percentages is an attempt to bring supply and demand into balance. If the primary market is oversupplied with cherries, grower prices decline substantially.

The tart cherry sector uses an industry-wide storage program as a supplemental coordinating mechanism under the Federal marketing order. The primary purpose of the storage program is to warehouse supplies in large crop years in order to supplement supplies in short crop years. The storage approach is feasible because the increase in price—when moving from a large crop to a short crop year—more than offsets the cost for storage, interest, and handling of the stored cherries.

The price that growers receive for their crop is largely determined by the total production volume and carry-in inventories. The Federal marketing order permits the industry to exercise supply control provisions, which allow for the establishment of free and restricted percentages for the primary market, and a storage program. The establishment of restricted percentages impacts the production to be marketed in the primary market, while the storage program has an impact on the volume of unsold inventories.

The volume control mechanism used by the cherry industry would result in decreased shipments to primary markets. Without volume control the primary markets (domestic) would likely be oversupplied, resulting in low grower prices.

Recent grower prices have been as high as $0.20 per pound. At current production levels, the cost of production is reported to be $0.20 to $0.22 per pound. Thus, the estimated $0.20 per pound received by growers is close to the cost of production. The use of volume controls is believed to have little or no effect on consumer prices and will not result in fewer retail sales or sales to food service outlets.

Without the use of volume controls, the industry could be expected to continue to build large amounts of unwanted inventories. These inventories have a depressing effect on grower prices. The use of volume controls allows the industry to supply the primary markets while avoiding the disastrous results of oversupplying these markets. In addition, through volume control, the industry has an additional supply of cherries that can be used to develop secondary markets such as exports and the development of new products.

The free and restricted percentages established under the order release the optimum supply and apply uniformly to all regulated handlers in the industry, regardless of size. There are no known additional costs incurred by small handlers that are not incurred by large handlers. The stabilizing effects of the percentages impact all handlers positively by helping them maintain and expand markets, despite seasonal supply fluctuations. Likewise, price stability positively impacts all producers by allowing them to better anticipate the revenues their tart cherries will generate.

While the benefits resulting from operation of the marketing order program are difficult to quantify, the stabilizing effects of volume regulations impact both small and large handlers positively by helping them maintain markets even though tart cherry supplies fluctuate widely from season to season.

Districts Subject to Volume Regulation

The order currently covers cherries grown in Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. For purposes of regulation and allocation of Board membership, the seven-State production area is divided into nine districts. Michigan, the largest producing State, is divided into three districts—Northern Michigan, Central Michigan, and Southern Michigan. Each of the other States constitutes a single district.

A principal feature of the tart cherry marketing order is supply management through the use of volume regulations. Volume regulations are implemented through the establishment of free and restricted percentages that are recommended by the Board and implemented by the Department through the public rulemaking process. These percentages are then applied to each regulated handler's acquisitions in a given season. "Free market tonnage percentage" cherries may be marketed in any outlet. "Restricted percentage" cherries must be withheld from the primary market. This can be accomplished by either placing the cherries into handlers' inventory reserves or by diverting them. Cherries may be diverted by leaving them unharvested in the orchard or by destruction at the processing plant; or by using them in secondary markets. These secondary markets include exports (except to Canada or Mexico), new products, new market development, experimental purposes, and charitable contributions. Shipments of restricted percentage cherries to these specified markets receive diversion credits which handlers use to fulfill their restricted obligation.

Section 930.52 of the order provides that volume regulations only apply to cherries grown in districts in which average annual production of cherries over the prior 3 years has exceeded 15 million pounds. Additionally, paragraph (d) of § 930.52 provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years would be exempt from any volume regulation in the year of the short crop.

The Board proposed eliminating the 15-million pound threshold, and subjecting all 9 districts to volume regulation. No proposal was made to change the provision of § 930.52(d).

Most witnesses at the hearing addressed this issue. Growers and processors in Michigan, Utah and Wisconsin testified in support of the Board's proposal. Opposition was primarily from growers and handlers in Pennsylvania and Oregon. Some growers and processors in New York and Washington testified in support of the Board's proposal, while others were opposed to a change in the 15-million pound threshold.

The record shows that production levels in the nine districts vary considerably, with Northern Michigan consistently producing the largest volume of tart cherries, and Oregon the least. The following table shows tart cherry production by district for the 5 years 1997 through 2001 (all figures are in million pound units). The data for the first 3 years (1997 through 1999) were introduced on the hearing record. The statistics for 2000 and 2001 became available subsequent to the hearing and may be found in reports compiled by the Board and retained by the Department.

District	1997	1998	1999	2000	2001
No. Michigan	140.7	187.8	107.7	107.5	182.0
Central Mich.	68.7	58.2	47.2	70.8	84.0
So. Michigan	14.4	17.4	28.6	20.3	30.1
New York	13.3	13.1	16.9	16.5	14.6
Oregon	2.4	2.2	5.1	4.0	2.2
Pennsylvania	5.6	4.0	6.9	5.3	3.5
Utah	17.5	32.5	14.5	32.5	12.0
Washington	11.8	13.7	16.6	17.4	25.2
Wisconsin	11.2	14.7	7.9	9.7	12.7
Total	285.4	343.6	251.4	284.0	366.3

Using the above figures, the following 3-year averages (used to determine which districts are subject to volume regulation) were computed.

District	Average 1997–99	Average 1998–00	Average 1999–01
No. Michigan	145.4	134.3	132.4
Central Mich.	58.0	58.7	67.3
So. Michigan	20.1	22.1	26.3
New York	14.4	15.5	16.0
Oregon	3.2	3.8	3.8
Pennsylvania	5.5	5.4	5.2
Utah	21.4	26.5	19.7
Washington	14.0	15.9	19.7
Wisconsin	11.3	10.8	10.1
Total	293.5	293.0	300.6

The above table shows that for each of the 3-year periods, the three Michigan districts and Utah consistently exceeded the 15-million pound threshold. Production in Oregon, Pennsylvania and Wisconsin was below the threshold in all periods, while New York and Washington each exceeded the 15-

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million pound threshold in two out of three of the periods.

The order became effective in 1996, based on a series of hearings that began in December 1993 and ended in January 1995. Proponents of the order supported the 15-million pound threshold as a criterion for determining which districts would be subject to volume regulation. At the time the order was implemented, the three Michigan districts, New York and Utah had average annual production in excess of 15 million pounds. These five districts accounted for 92 percent of U.S. production in 1995, and 89 percent of U.S. production in 1996.

Proponents of the order also supported a provision that a district not meeting the 15-million pound threshold would become covered by regulation when it reached a production level equal to 150 percent of its average annual production during the period 1989 through 1992. The purpose of this provision was to catch surges in production that occasionally occur in order to more equitably distribute the burden of supply control. It was also to make sure that when smaller producing districts expand production capacity, they do not take advantage of the system and become free riders. This was intended to prevent a district from benefitting from the program without contributing to the effort to reduce surplus supplies.

After considering the record evidence in support of this provision, the Department decided not to include it in the order. The provision, as proposed, seemed to be overly complicated to administer and would possibly be inequitable to tart cherry growers and handlers. In addition, proponents indicated that it was not their intent to regulate States with small production volumes since their aggregate volume is not a critical amount when compared to the total volume of tart cherries produced.

Several witnesses at the amendatory hearing suggested that, had the 150 percent rule been incorporated into the initial order, the amendment to eliminate the 15-million pound threshold would now be unnecessary.

The following table shows production in the initially unregulated districts during the period 1989 through 1992.

	1989	1990	1991	1992	Average	150%
Pennsylvania	6.0	3.5	11.5	6.0	6.7	10.0
Wisconsin	7.6	4.8	7.8	9.1	7.3	10.9
Oregon	15.0	7.5	7.5	9.5	9.9	14.8
Washington	6.4	7.4	9.8	12.8	9.1	13.6

The record shows that neither Pennsylvania nor Oregon has reached a level of production equal to 150 percent of their production during this base period. Wisconsin first exceeded production of 10.9 million pounds (150 percent of its average annual production in the base period) in 1997, and Washington exceeded production of 13.6 million pounds (150 percent of its production during the base period) in 1998.

If the order were implemented as proposed by the proponents during the promulgation, all districts but Pennsylvania and Oregon would currently be regulated. As it is, for the 2001 season, Wisconsin is also unregulated. In the 1999 crop year, Pennsylvania and Oregon together accounted for 4.9 percent of the U.S. tart cherry crop. In 2000, they accounted for 3.3 percent of the total, and in 2001, only 1.6 percent. Adding production in Wisconsin during those years brings the percentages in the 3 years 1999 to 2001 to 8 percent, 7 percent and 5 percent respectively.

With respect to New York, witnesses concurred that with the 15-million pound threshold, that district would likely be subject to regulation only about 50 percent of the time in the future. That is because production in that State is close to the threshold, ranging from 13.1 to 16.9 million pounds over the last 5 seasons. Concern was also expressed that Utah could fall below the established threshold in upcoming years and become unregulated. Washington was expected to continue to increase its production and become subject to regulation in the near future. (Washington did exceed the threshold during the period 1998–2000, and will be subject to any volume regulation implemented for the 2001 crop). Witnesses agreed that production in Oregon, Pennsylvania and Wisconsin was likely to remain below 15 million pounds.

The conclusion by proponents of the Board's proposal was that with the order as currently written, a greater proportion of U.S. production could become unregulated. This would dilute the effectiveness of the program and, more important, increase the amount of regulation imposed on the remaining regulated districts.

Since the order became operational, volume regulations have been implemented for three crop years—1997, 1998, and 2000. A volume regulation has also been recommended for the 2001 crop, but not yet effectuated. No regulation was deemed necessary for the 1999 crop. The following table shows the level of regulation implemented (or, in the case of 2001, recommended) in 1997, 1998, 2000 and 2001. With the exception of the restricted percentages, all figures are in million pound units.

	1997	1998	2000	2001
U.S. Crop	285.0	344.0	284.0	366.3
Carry-in	70.0	38.8	87.0	39.0
Total Available Supply	355.0	382.8	371.0	405.3
3-Year Average Sales	269.9	288.6	277.0	217.0
Target Carry-out	0.0	0.0	0.0	0.0
Economic Adjustment	(23.0)	(31.4)	(22.0)	50.0
Optimum Supply	246.9	257.2	257.0	267.0
Surplus	108.1	125.6	116.0	138.3
Production in Regulated Distncts	240.0	309.0	232.0	335.9
Restricted Percentage	45	41	50	41

If all districts had been subject to regulation, the surplus would have been divided by total production rather than by production in the regulated districts. Had this been done, the restricted percentage in 1997 would have been 38 percent rather than 45 percent; the restricted percentage in 1998 would have been 37 percent rather than 41 percent; the restricted percentage in 2000 would have been 41 percent rather than 50 percent; and the restricted percentage recommended for 2001 would have been 39 percent instead of 41 percent. The difference is relatively small for the 2001 crop year because production in Utah (12 million pounds) was less than 50 percent of its prior 5-year average, so that district will be unregulated in the 2001 crop year.

One of the primary arguments made by supporters of the Board's proposed amendment was that of fairness. These witnesses stated that all tart cherry growers benefit from the operation of the order, but the burden of regulation is borne only by those in the regulated districts. They testified that revenues received by growers of similar size varied considerably due solely to where a particular grower's farm was located. They concluded that no growers in the regulated districts receive gross returns equal to those received in non-regulated districts.

To illustrate, an agricultural economist from Michigan State University (who was a witness testifying in support of the Board's amendment) presented an analysis of the economic impacts of the program on growers in regulated versus non-regulated districts. This analysis compared gross farm income for growers of the same size in regulated and non-regulated districts. It assumed a grower who produces 200 tons on 40 acres, or 10,000 pounds per acre. Estimates of likely returns for the 1998 crop were used.

For purposes of this analysis, it was assumed that the grower in the non-regulated district could sell all of his or her production in primary market outlets. In the case of the grower in the regulated district, it was assumed that his or her crop utilization would be allocated in accordance with the overall industry averages in 1998. For example, about 3 percent of the tonnage would be placed in the inventory reserve, 11 percent would be exported, and 13 percent would be diverted through non-harvest.

Prices for free market cherries were USDA estimates of 14 cents per pound for the regulated districts and 13.5 cents per pound for the non-regulated districts.

Returns for market growth factor cherries were expected to be somewhat lower (12 cents per pound) because these cherries tend to be sold later in the year, or perhaps in a subsequent year. A conservative figure of 6 cents per pound was used for reserve cherries because of the many uncertainties as to what those cherries might return (for example, the timing of their release and prevailing prices that might exist). Export sales were estimated by industry leaders to average about 9 cents per pound in 1998. For new product development, an estimate of 11 cents per pound was used, taking into account the considerable variation of returns for new cherry products depending upon the processor and the circumstances surrounding the new products. For non-harvested cherries, a savings of 3 cents per pound in variable costs (e.g., harvesting and trucking) was used. Finally, no return was recorded for cherries diverted through at-plant diversions.

The income for a grower in a regulated district, based on the analysis of the witness, is shown below:

	Lbs.	%	Price	Income
Open Market	240,000	60	$0.14	$33,600
Market Growth	36,000	9	0.12	4,320
Inventory Reserve	12,000	3	0.06	720
Exports	44,000	11	0.09	3,960
New Products	8,000	2	0.11	880
Non-Harvest	52,000	13	0.03	1,560
At-Plant Diversion	8,000	2	0.00	0
Total Production	400,000	100		45,040

For a grower in a non-regulated district, income was estimated as follows:

Open Market	400,000	100	$0.135	$54,000

In summary, the grower in the non-regulated district would receive revenues of $54,000, about 20 percent more than the grower in the regulated district. Both growers would benefit from any strengthening of prices through the use of volume regulations.

Opposition to the Board's proposal was expressed primarily by industry members in unregulated districts. One of the arguments made was that growers in these districts would be much more severely impacted by a volume regulation because yields in those districts are so low compared to those in regulated districts.

One witness used the analysis given above, but used different yields per acre. For the grower in a regulated district, he used 40 acres with a yield of 7,400 pounds per acre. This resulted in total production for that grower of 296,000 pounds and revenues of about $33,330. For the grower in a non-regulated district, he again used 40 acres, but used a yield of 2,400 pounds per acre. This provided total production of 96,000 pounds and revenues of only $2,960. Had the second grower been subject to volume regulation, his or her revenues would have been even lower.

The following table shows yields per acre in the States covered by the order for the years 1997 through 2000. The annual yields are from USDA statistics, while the average yield for Washington for the 4-year period was obtained from a processor survey in that State. All figures are in pounds per acre.

State	1997	1998	1999	2000	Average
Utah	6,250	11,790	5,360	11,800	8,800
Michigan	7,920	9,260	6,580	7,020	7,695
New York	5,580	5,380	6,850	7,550	6,340

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State	1997	1998	1999	2000	Average
Pennsylvania	5,420	3,500	6,000	5,080	5,000
Wisconsin	4,670	6,580	4,350	4,350	4,988
Oregon	2,850	2,150	4,080	3,380	3,115
Washington	NA	NA	NA	NA	14,000

The above table shows that average yields do vary among the cherry producing States. It also shows that yields within the States vary considerably from year to year.

A witness supporting the Board's proposal stated that the use of average yields for an entire State is misleading. Michigan, for example, has a 4-year average yield of about 7,600 pounds per acre. The average yields for the three districts that comprise Michigan are quite different. In Northern Michigan, yields averaged about 13,000 pounds per acre, while in Central Michigan they averaged 5,000 pounds per acre and in Southern Michigan only 4,000 pounds per acre.

This witness further went on to state that variations in yields within a geographic district exceed the variations among the districts. He gave a personal example. The witness is a processor in Central Michigan. His organization deals with about 20 growers. Yields for those growers in 1998 ranged from 1,000 to 15,000 pounds per acre.

Therefore, it is reasonable to assume that the State in which a grower farms is not necessarily a good indicator of an individual grower's potential yield per acre. While weather conditions affect yields (e.g., susceptibility to freezes), weather conditions can vary as much within a district as between districts. Also, there are many other variables that contribute to a grower's yield per acre. These include the density of trees planted per acre, the age of the trees, and cultural practices undertaken by individual growers to care for their orchards. However, the table showing yields per acre does indicate that there is a definite difference in yields among the various States.

Regarding the age of trees, the record indicates that tart cherry trees start losing optimum productivity at about 20 years. Growers testified that they typically replant their trees when they are between 20 and 25 years old. The following table shows the percentage of acreage in each State that contained older trees in 1998.

State	% acreage 21–25 years	% acreage 26+ years	Percentage total 21+ years
Michigan	15	6	21
Utah	8	1	9
New York	24	7	31
Wisconsin	20	15	35
Washington	18	5	23
Pennsylvania	30	6	36
Oregon	30	48	78

Oregon, consistently the lowest yielding producing district, has substantially more older trees planted than other States. Because older trees tend to produce less fruit, and Oregon has a high percentage of older trees, this is likely to explain in part why Oregon's yields are, on average, lower than in other areas. Pennsylvania had the second largest percentage of older trees.

Another argument against eliminating the 15 million-pound threshold was that unregulated districts like Oregon and Pennsylvania had already "done their part" to reduce the surplus of tart cherries by reducing their acreage. Any continued surpluses were attributable to the major producing State, Michigan. It was therefore argued that State should bear the consequences of its actions and not impose its problems on the smaller districts.

The record shows that U.S. tart cherry bearing acreage had declined from a high of 50,050 acres in 1987, to 39,880 acres in 2000. All producing States recorded acreage reductions during this period. On a percentage basis, the greatest reduction was in New York (down 52 percent), followed by Oregon (down 36 percent), Utah (down 30 percent), Pennsylvania (down 25 percent), Washington (down 24 percent), and Wisconsin (down 17 percent). Michigan had the lowest percentage decrease (down 15 percent), but the largest decline in total number of acres (a reduction of 5,140 acres).

The record evidence is that acreage in all districts have declined over the past decade. Decisions to reduce acreage were made by individual growers based on their assessments of the best use of their land. While opportunities for alternative land uses vary somewhat by State, they also vary within the States.

In determining whether a surplus of tart cherries exists, total U.S. supplies are compared to total demand in the primary market. Production in each district contributes to the total supply, and thus to any surplus that may exist. However, Michigan accounts for such a large proportion of the total, that production in that State alone can warrant a volume regulation. Additionally, the evidence is that production in the smallest producing State—Oregon—is negatively correlated to production in Michigan. That is, when production in Michigan is high, production in Oregon is generally low. Thus, it is likely that with elimination of the production threshold, Oregon would be regulated in years when its production is below normal. This could result in a heavier burden being placed on growers in Oregon as a result of volume regulation than is true in the other producing districts.

Additionally, the record shows that the benefits of the supply management provisions of the order accrue to the entire U.S. tart cherry industry. The short-run benefits arise when surplus supplies are reduced, and market prices (due to the inelastic demand for tart cherries) rise to levels that are closer to growers' typical costs of production. Longer range gains are also expected from the encouragement to expand market demand through new market and new product development.

The aggregate short-run benefits to the industry's growers from the use of volume regulation in 1997 and 1998 have been estimated to be at least $20 million per year. This has resulted because the smaller market surpluses have resulted in stronger grower prices which are estimated to be 7 to 9 cents per pound greater during those years.

The record shows that tart cherries, regardless of where grown in the U.S., are sold into markets that are essentially national markets with similar, closely interrelated prices throughout the country. Therefore, the somewhat higher prices that have resulted from the order's supply management features have accrued to all tart cherry growers in the United States.

However, the history of the order and the evidence on the record support the premise that the smallest producing districts should not be subject to volume regulation under the tart cherry marketing order. Further, there is an argument to be made for reducing the current 15-million pound threshold. After considering all the testimony and other record evidence, the Department has concluded that a threshold of 6 million pounds would be more reasonable. This would result in all districts that have increased production over the past decade being subject to regulation, consistent with the original intent of the proponents of the order.

The record shows that the two districts that would not be regulated under a 6-million pound threshold—Oregon and Pennsylvania—produce insignificant volumes of tart cherries compared with total U.S. production. Production in these districts has not grown, nor is it anticipated that it will in the future. The evidence supports claims that these smaller producing districts would be more impacted by a volume regulation than other districts. Costs may be higher to growers in those areas than in others because they tend to have lower yields. Also, processing capacity in those districts tends to be limited, supporting the argument that production is unlikely to increase. In addition, processors in the smaller producing districts testified that they would have to shut down their facilities if those districts were subject to volume regulation because they would not be able to get sufficient supplies of cherries to run their operations efficiently. If the smaller producing districts do increase their production, they would become regulated once they reach the 6-million pound threshold.

The proponent evidence showed that while volume regulations have helped strengthen overall cherry prices, there are costs involved with complying with these regulations. Such costs include reduced returns for cherries that cannot be sold in primary markets. Imposing those costs on the smallest producing districts would not result in any higher overall price for tart cherries. Additionally, regulating the two smallest States would not reduce the volume of regulation imposed on cherries grown in the other States because of their low levels of production. In the four years that restricted percentages have been recommended by the Board, the percentage would not have changed at all in two of four years (by not including Pennsylvania and Oregon) and would have been marginally reduced in the other two years. Thus, it appears that the costs of regulating these minor districts would not be outweighed by any accrued benefits.

Allocation of Board Membership

Section 930.20 of the order provides for a Cherry Industry Administrative Board, appointed by the Secretary to locally administer the program. Among the Board's responsibilities is recommending regulations to implement marketing order authorities. The Board consists of 19 members: 18 tart cherry growers and handlers, and 1 public member.

For purposes of Board representation (among other things), the production area is divided into nine districts. Each district is allocated one to four Board members. Six of the nine current districts, including all districts subject to volume regulation, are allocated more than one member. Those five districts are Northern Michigan (four members), Central Michigan (three members), Southern Michigan (two members), New York (two members), Utah (two members), and Washington (two members). The three districts with one member each are Oregon, Pennsylvania, and Wisconsin. The nineteenth Board member is selected to represent the general public, and need not be from any specific area.

Section 930.20 further provides that if a district with a single member becomes subject to volume regulation, that district will get a second Board member position. There is no specific requirement that a district must lose a seat if it falls below the 15 million pound threshold and is no longer subject to regulation.

The Board proposed amending § 930.20 to provide that membership for each district be based on the average annual production for that district over the previous 3 years. Districts with up to and including 10 million pounds would be represented by one Board member; districts with more than 10 and up to and including 40 million pounds would have two members; districts with more than 40 and up to and including 80 million pounds would have three members; and districts with more than 80 million pounds would have four members.

The record shows that this amendment could result in a larger number of Board members. Using average annual production figures for the years 1999 through 2001, one district (Wisconsin) would have been entitled to an additional Board member position for the term of office that began July 1, 2000. Thus, the total number of Board members under this proposed amendment would have increased to 20 members (versus 19 members under the provisions currently in effect).

An increase in the number of Board members would result in a marginal increase in Board expenses. This is because the Board reimburses members for costs incurred in attending Board meetings (travel costs, etc.). Since Board expenses are funded through handler assessments, all handlers would be impacted by slightly higher assessments.

However, these slight cost increases will be offset by better industry representation on the Board. Reallocating membership on an annual basis will allow membership to more closely reflect changing production trends in the industry. This should lead to better decision making by a more representative administrative body.

Designation of a Temporary Alternate To Act for an Absent Board Member

As previously discussed, the Board is composed of 19 members, with the industry members allocated among nine districts. Each Board member has an alternate who has the same qualifications as the member. Industry Board members and alternates are nominated by their peers in the district they represent.

Section 930.28 of the order provides that if a Board member is absent from a meeting, his or her alternate will act in that member's place. There is no provision for a situation in which both the member and that member's alternate are unavailable.

The Board has proposed changing § 930.28 as follows. If both a member and his or her alternate cannot attend a Board meeting, the member or the alternate (in that order) could designate another alternate member to act in their stead. If neither the member nor the alternate chooses to make such a designation, the Board's chairperson would be free to do so (with the concurrence of a majority of present members).

The record supports the concept of allowing more flexibility for alternates

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to fill in for absent Board members. However, the Department is proposing a revision in the Board's proposal. This decision proposes allowing a Board member to designate an additional alternate to act in his or her place when that member and that member's alternate are unable to attend a Board meeting. However, if the member chooses not to name an additional alternate, that decision would not then revert to the Board or its chairperson.

This proposed amendment would allow more flexibility for Board members who cannot attend a Board meeting. It should also encourage a full contingency of voting members at Board meetings, while maintaining adequate representation among the districts comprising the production area. No additional costs should be incurred as a result of this change.

Clarification of Diversion and Exemption Provisions

As previously discussed, a primary feature of the tart cherry marketing order is supply management through the establishment of free and restricted percentages. These percentages are applied to each regulated handler's acquisitions of cherries. Free percentage cherries may be sold in any market, while restricted percentage cherries must be diverted by a grower or handler or placed in the inventory reserve.

Section 930.58 of the order provides for grower diversions. Under this section, growers may receive diversion certificates for cherries used for animal feed and cherries left unharvested in the orchard. Growers may also receive diversion certificates for "uses exempt under § 930.62." A grower's diversion certificates can then be transferred to that grower's handler and used to meet the handler's restricted obligation.

Section 930.59 provides for handler diversions. Handlers may receive diversion credits for cherries used in such forms as the Board may designate, with approval of USDA. These forms may include destruction at the handler's facility; use in Board approved food banks or other approved charitable organizations; acquisition of grower diversion certificates; and uses exempt under § 930.62. Handlers desiring to use the first three forms must notify the Board prior to diverting cherries. Use of the fourth form requires application to and approval by the Board prior to diversion.

Section 930.62 provides that certain cherries may be exempt from volume regulation upon Board recommendation and USDA approval. Such cherries would also be exempt from assessment obligations and any established quality standards. Section 930.62 currently provides that exemptions may be provided for cherries diverted in accordance with § 930.59 (Handler diversion privilege); used for new product and new market development; or used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries was utilized.

The record indicates that the industry supports continuation of both the authority to exempt certain cherries from regulation, and the authority to provide diversion credits for cherries used for certain purposes. The application of each provision is different, however. An example provided at the hearing illustrates the difference. Assume a restricted percentage of 20 percent has been established, a regulated handler acquires 10 million pounds of cherries, and that handler uses 2 million pounds of those cherries for new market development. This handler would have a restricted obligation of 2 million pounds of cherries (20 percent of the 10 million pounds of cherries acquired).

If cherries used for new market development were eligible for diversion credit, this handler would have met his or her restricted obligation by using 2 million pounds for that purpose. The handler could thus market the remaining 8 million pounds of his or her cherries as free percentage cherries in any outlet he or she chose. If, however, cherries used for new market development were exempt from regulation, the restricted percentage would be applied to that handler's total acquisitions (10 million pounds), less the volume of cherries exempt from regulation (2 million pounds). Thus, this handler would have a restricted obligation of 1.6 million pounds (20 percent of 8 million pounds), which would have to be diverted in forms approved by the Board as eligible for diversion credit.

Cross references between §§ 930.59 and 930.62 have proved to be confusing. Thus, these sections are proposed to be amended by deleting those cross references. Also, uses listed under § 930.62 as possible exempt uses are being listed under § 930.59 as possible uses eligible for handler diversion credit. Rulemaking would be required to designate whether a particular use would be exempt from regulation or would constitute an approved diversion outlet. Such rulemaking would be based on Board recommendations, following its assessment of the impact exemptions or diversions would have on the tart cherry industry.

This proposed amendment is a clarification of the current order and its operation. It would not introduce new or different concepts. To the extent that it makes the order easier for growers and handlers to understand, it should be of benefit to the industry.

Exemption or Diversion Credit for Export Shipments

As discussed in the previous material issue, §§ 930.59 and 930.62 provide for handler diversions and exemptions, respectively. Certain uses of cherries are listed as eligible for diversion credit or exemptions. Under the authority in these sections (specifically, that for market development), diversion credits have been made available to handlers during recent crop years for shipments to export markets, excluding Canada and Mexico. Canada and Mexico were not included because of their proximity to the United States and concern about compliance matters.

The record indicates that allowing export shipments to receive diversion credits resulted in stronger export sales. Exports in 1997–98 wore unusually high (around 50 million pounds), although they declined during the next season to 34 million pounds. Witnesses stated that the tart cherry industry needs to expand demand for its product through, among other things, development of new markets.

The Board proposed adding specific authority to §§ 930.59 and 930.62 to allow diversion credits or exemptions for such export markets as recommended by the Board and approved by the Secretary. This is a clarifying change only. It would impose no new or different regulatory requirements on the tart cherry industry.

Diversion Credit for Juice and Juice Concentrate

Section 930.59 of the order relates to how handlers may receive diversion credits to offset their restricted obligations. Paragraph (b) of that section states that diversion may not be accomplished by converting cherries into juice or juice concentrate.

The Board recommended that the order be amended by deleting the prohibition in § 930.59(b) that shipments of cherry juice and juice concentrate to approved diversion outlets be eligible for diversion credit.

The record indicates that in the promulgation proceeding, handlers from Oregon and Washington were concerned that juice concentrate could be established as a use eligible for

diversion credit. Those handlers indicated that they processed all or a majority of their cherries into juice concentrate. Cherries produced in that area of the country have a high brix (sugar content) level desirable for juice concentrate. Concern was expressed that if the Board decided to allow diversion credit for juice concentrate, an increase in the volume of juice in the marketplace and an accompanying reduction in juice prices could result. This would unduly harm the industry in the Washington and Oregon. USDA therefore inserted the provision to prohibit the use of juice or juice concentrate for diversion credit.

However, the use of juice and juice concentrate for export was allowed under the exemption provisions of the order for the 1997–98 season. The 1997–98 season was the first season of operation for the cherry order, and its provisions were new to the industry and complex to administer. Handlers unfamiliar with order's diversion provisions had exported or contracted to export tart cherry juice or juice concentrate to eligible countries with the intention of applying for and receiving diversion certificates for those exports. If those handlers had been prohibited from receiving diversion certificates for those sales, the handlers would have incurred severe financial difficulties. Thus, the prohibition against exports of juice and juice concentrate was suspended for the 1997–98 season only.

The record shows that until 1997, the juice market was distressed. One reason was that there had been large volumes of concentrate produced in the preceding years in the Western United States—volumes that exceeded market demand. In 1995 particularly, there was a very large crop of tart cherries (a record 395.6 million pounds), and a large portion of that crop was processed into concentrate. An oversupply situation occurred, which led to low prices and a large carry-over of concentrate.

Witnesses claimed that the operation of the order has helped address the cherry oversupply situation, including the surplus of juice. Allowing exports of juice to receive diversion credits in 1997–98 was quite successful. The industry exported more than 4 million pounds (raw product equivalent) of juice concentrate that year, comprising about 10 percent of total exports qualifying for credit. At 9 cents per pound for the raw fruit, growers received about $382,500 in revenue from these sales. Handlers, whose value-added component is about $5.00 per gallon (or $.056 per pound), received $236,000 in revenue. In total, the industry gained at least $618,000 from export sales of juice concentrate in 1997–98.

Providing diversion credits for exports of juice concentrate by handlers in the regulated districts encouraged more exports of this product. The higher levels of exports of concentrate helped reduce heavy inventories and reduced the supplies available in the domestic market. This led to an increase in the domestic price for juice concentrate of about $4.00–$6.00 per gallon. Producers whose cherries were processed into concentrate benefitted from the strengthening of domestic juice prices.

In 1998, diversion credits were no longer authorized for exports of juice and juice concentrate. Witnesses stated that this hurt the U.S. cherry industry. Demand for juice concentrate in Europe was strong, but domestic processors could not export juice concentrate in a way that was economically feasible. Some processors exported raw juice stock to Europe so the raw stock could be juiced overseas. This meant that the added value of converting the stock to juice concentrate was lost to U.S. processors. It also meant higher freight costs for the raw product (versus concentrate). When juice stock was exported, the freight cost to Europe was about 10 cents per pound. Growers received little for cherries exported as raw juice stock, while grower returns for exported juice concentrate were positive.

Further, this restriction resulted in shorting the export juice market. Witnesses stated that if you are unable to supply a market consistently, that market looks for a more reliable source of supplies. When a market is lost to the U.S. industry for this reason, it is difficult to regain. This is particularly detrimental to the tart cherry industry as it seeks to expand markets for its heavy supplies of product.

As previously indicated, the prohibition on diversion credits for juice and juice concentrate was in response to concerns expressed by the industry in the Northwest. At the time the order was promulgated, it was represented that more than 85 percent of the crop in Washington was processed into juice. During recent years, less than half of the Washington crop was used for juice. Most of the rest of the crop was used for 5 + 1 cherries (25 pounds of cherries to 5 pounds of sugar). Additionally, the record shows that in 1993 there were 7 pitters in the State; by 2000, that number had grown to 20. This supports the conclusion that processors in Washington are able to pack a wider variety of finished products. Cherries grown in Washington have increasingly been processed into products other than juice and juice concentrate.

Also, production in the State of Washington has grown, and a number of witnesses at the hearing held in early 2000 expressed their belief that Washington would soon produce in excess of 15 million pounds annually and thus would become subject to volume regulation. In fact, production in Washington for the 3 years 1998 to 2000 averaged 15.9 million pounds, and Washington became subject to volume regulation in 2001. It was critical for handlers in Washington to be able to receive diversion credits for exports of juice and juice concentrate. This was particularly true because 5+1 cherries do not generally sell in export markets because they contain sugar and are thus subject to increased tariffs when exported. For these reasons, the Board unanimously recommended suspension of the prohibition on receiving diversion credit for exports of cherry juice and juice concentrate. This suspension became effective August 1, 2001 [66 FR 39409, July 31, 2001].

An additional benefit of allowing diversion credits for exported juice and juice concentrate is that it would ensure that the domestic market is adequately supplied in short crop years. In years when the crop is small, most available tart cherries will be used to supply higher value finished products rather than juice concentrate. If the industry does not have a supply of concentrate in reserve, the juice markets, both domestic and foreign, could go unsatisfied. In order to have supplies available in short crop years, there needs to be an incentive to have tart cherries stored as juice concentrate. Making juice and juice concentrate eligible for diversion credit would create an incentive to produce and store concentrate, which would ensure that markets for those products are adequately supplied. It could also result in fewer cherries being diverted in the orchard. This would benefit growers through enhanced revenues, because they receive more for cherries that are processed and sold than for cherries that are diverted in the orchard.

This proposed amendment would result in additional options for handlers in meeting their restricted obligations under the order. It would also encourage expansion of markets for U.S. tart cherry products, which should benefit the industry as a whole. It would not adversely impact the sale of juice and juice concentrate in primary markets; in fact, it could tend to strengthen prices in those markets. This is because more

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juice would likely be exported, which would reduce the supply available in the domestic market.

Handler Transfers of Diversion Credits

Section 930.59 of the order provides for handler diversion credits. Those diversion credits are used by handlers to meet their restricted obligations. That provision of the order is silent with respect to the ability of handlers to transfer diversion credits among themselves to meet their restricted obligations.

The Board proposed adding a new paragraph (e) to § 930.59 to provide that a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers.

The record shows that allowing transfers of diversion certificates provides additional flexibility to tart cherry growers and handlers in meeting program requirements, without changing the amount of tart cherries available to be marketed as free percentage cherries. This can also result in the processing of the highest quality cherries available in any crop year, which would benefit the industry as a whole.

One witness at the hearing explained as an example that Handler A may acquire a very high quality of tart cherries in a given year, and would want to process and sell a higher percentage of those cherries than his or her free percentage would allow. Handler B may be in a situation where he or she receives more diversion credits than needed because most of that handler's pack is for export. (We are assuming that export sales are eligible for diversion credits.) Handler B might want to transfer those excess credits to Handler A.

Additionally, there may be a situation in which Handler C's growers have low quality cherries due to adverse growing conditions. These growers may choose to use in-orchard diversions to a greater extent than they normally would. Handler C could wind up with more diversion credits than needed and may want to transfer those credits to Handler A. A simple example to illustrate this situation follows. In this example, we will assume a restricted percentage of 40 percent has been established.

Handler	Receipts (pounds)	Restricted obligation (pounds)	Exports (pounds)	Grower diversions (pounds)	Excess diversion credit (pounds)
A	100,000	40,000	0	0	(40,000)
B	100,000	40,000	70,000	0	30,000
C	100,000	40,000	0	50,000	10,000

In this case, Handler A needs diversion credits totaling 40,000 pounds to meet his or her restricted obligation, while Handlers B and C have excess credits representing 40,000 pounds of cherries. If Handler A could receive Handler B's and C's excess diversion credits, he or she could use them to fulfill Handler A's restricted obligation. Otherwise, Handler A would have to divert 40,000 pounds of cherries (by destroying them, for example) or put them in the inventory reserve. With the ability to transfer diversion credits, Handler A could acquire excess credits from Handlers B and C. Handler A would benefit by being able to process all of his or her cherries for free use. Handlers B and C (and their growers) would benefit by being compensated for their diversions, including those above the required amount.

Both the transferring handlers' and the receiving handler's growers would benefit. Also, the overall quality of the crop marketed could be improved. This would serve to increase consumer confidence and acceptance, thereby strengthening demand for tart cherries. This would benefit the U.S. tart cherry industry as a whole.

Additionally, if the transfer of diversion credits were not allowed, the market could be shorted. This would have a detrimental impact on the tart cherry industry. Again, we will use the above illustration and assume these three handlers comprise the entire industry.

Handler	Receipts	Restricted obligation	Excess diversions	"Free" sales	
				With transfers	Without transfers
A	100,000	40,000	(40,000)	100,000	60,000
B	100,000	40,000	30,000	30,000	30,000
C	100,000	40,000	10,000	50,000	50,000
Total	300,000	120,000	0	180,000	140,000

With a 60 percent free percentage, it would be expected that 180,000 pounds of cherries would be available for sale as free percentage cherries (60 percent of total receipts of 300,000 pounds). As shown above, without the ability to transfer diversion credits, the total volume of "free" cherries available to market would be only 140,000 pounds. This would be well below the 180,000 pounds deemed necessary to meet market demand. This would hamper the industry's efforts to expand markets for its products. Allowing transfers of diversion certificates therefore has a positive impact on the industry.

Grower Diversion Certificates

Section 930.58 provides that a grower may voluntarily choose to divert all or a portion of his or her cherries. Typically, this is accomplished by leaving cherries in the orchard unharvested, although other means are provided as well. Upon diversion in accordance with order provisions, the Board issues the grower a diversion certificate which the grower may then offer to handlers in lieu of delivering cherries. Handlers may then redeem those certificates to meet their restricted obligations.

Section 930.52(d) of the order provides that any district producing a crop which is less than 50 percent of the average annual processed production in that district in the previous 5 years is exempt from any volume regulation in that year. This provision was included in the order to help relieve a district from the burdens of the order in a year in which its processors and growers were already suffering from a severely short crop.

The Board proposed an amendment to § 930.58(a) to provide that any grower diversions completed in a district subsequently exempt from regulation under § 930.52(d) will qualify for diversion credit.

Witnesses at the hearing testified that this is a needed change to the order to reduce the risk growers face in deciding whether or not to divert all or a portion of their crops. The reason such risk exists is primarily due to the difference between the time diversions must take place and the time a district's final production figure is known.

The Board is required to meet on or about July 1 of each crop year to develop its marketing policy and recommend preliminary free and restricted percentages (if crop conditions so warrant). The marketing policy is typically a week or two after the release of the USDA tart cherry crop estimate in late June. Final free and restricted percentages are not recommended until after the actual crop production figure is available. This is typically not until September, after harvest is complete. This is also when a final determination is made as to whether a district will be covered by regulation in accordance with § 930.52(d).

The record shows that the tart cherry crop is harvested in late June or July. Growers must, therefore, make decisions as to whether to undertake diversion activities before they are certain whether or not their district will be covered by regulation. This occurred in Southwest Michigan in 1997. Based on the USDA estimate, it was expected that this district would be covered by volume regulation during the upcoming crop year. However, the actual crop came in at less than 50 percent of the prior 5-year average production in that district, and Southwest Michigan (District 3) was exempt from regulation.

Witnesses testified that growers who divert their crops in anticipation of a volume regulation should not be penalized for that decision because the USDA crop estimate indicates their district will be regulated, but it turns out it is not. If those growers' diversion certificates become invalid, they receive nothing for the cherries they diverted. If their diversions continue to qualify for credit, however, handlers who accept those diversion certificates compensate the growers for them.

Without this amendment, the record shows that growers in some districts (where application of volume regulation is uncertain) could be forced into harvesting their crops. This would be contrary to the program objective of balancing tart cherry supplies with market demand.

This amendment should benefit tart cherry growers who choose to divert cherries in anticipation of a volume regulation. It should also contribute to the supply management objectives of the program, which would benefit the U.S. tart cherry industry as a whole.

Release of Cherries in the Inventory Reserve

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted through non-harvest, destruction at a handler's facilities, or shipment into approved secondary outlets.

The order specifies three possible releases of inventory reserves under §§ 930.50 (g) and (j) and 930.54 (a). The first, under § 930.50 (g), releases an additional 10 percent (above the optimum supply level) of the average of the prior 3 years sales if such inventory is available. This release is for market expansion purposes.

The second release, under § 930.50 (j) occurs in years when the expected availability from the current crop plus expected carry-in does not fulfill the optimum supply (100 percent of the average annual sales in the prior 3 years plus the desirable carry-out). This release is made to all handlers holding primary inventory reserves and is a required release to be made by the Board if the above conditions are met and reserve cherries are available. This provision is intended to assure that inventory reserves are utilized to stabilize supplies available on the market. Under this authority, cherries released from the reserve can be sold in any market.

The third release is authorized under § 930.54 (a) which allows the Board to recommend to the Secretary a release of a portion or all of the primary (and secondary) reserve. To make this release, the Boards needs to determine that the total available supplies for use in commercial outlets do not equal the amount needed to meet the demand in such outlets.

The Board recommended an amendment to § 930.54 to provide a fourth option for a reserve release. Specifically, it proposed that a portion or all of the primary and/or secondary inventory reserve may be released for sale in certain designated markets.

Witnesses at the hearing suggested that the industry (through the Board) needs more flexibility in determining how to utilize inventory reserves. One witness opined that limited releases of reserves during years of non-regulation may be necessary to maintain markets that are available for diversion credits during years of regulation. The example given dealt with sales to export markets other than Canada and Mexico. In years of volume regulation, sales of cherries to these markets are eligible for diversion credits that handlers may use to meet their restricted obligations.

In developing its marketing policy and determining whether a surplus exists, the optimum supply is compared with available supplies. The optimum supply is defined as average sales over the last 3 years, minus sales qualifying for diversion credit. Thus, the optimum supply measures the volume of cherries needed to fill demand in the primary market. If anticipated supplies exceed demand in the primary market, a volume regulation may be issued. Restricted percentage cherries are then used to fill these secondary markets.

If anticipated supplies are reasonably in balance with demand in the primary market, no volume regulation would be issued. Since all of a handler's cherries would then be "free" percentage cherries, he or she would likely attempt to sell all those cherries in the primary market because returns tend to be higher in that market. This could result in few cherries being made available for sale in secondary markets (such as exports).

The record shows that the tart cherry industry needs to continue its efforts to expand markets. A critical aspect of this effort is to ensure that supplies are available to fill needs in developing markets. If, for example, an export market is developed over the course of time, and then cherries are not available to supply that market, that market may be lost to the industry. The Board's proposal would allow a release of inventory reserves to meet the needs of these specific markets. This should contribute to the long-run health of the industry.

Another witness suggested that a limited release should also be possible for specific types of cherry products. He stated that over time, the mix of products offered by the tart cherry industry has changed considerably. New product development should continue to be encouraged to expand marketing opportunities for the industry. Releases

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of inventory reserves can play a part in this endeavor.

The witness gave a hypothetical situation using dried cherries as an example. He said that if demand for dried cherries was very strong, and supplies of that product from the current year's crop were insufficient to meet that demand, releases of that product from the inventory reserve should be authorized.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Ten Percent Reserve Release for Market Expansion

Section 930.51 of the order authorizes the issuance of volume regulations for tart cherries in the form of free and restricted percentages. Section 930.50(i) provides that a handler's restricted percentage cherries must be placed in an inventory reserve or diverted into approved secondary outlets.

Section 930.50 provides that any volume regulation make available as free percentage cherries an "optimum supply" of tart cherries. The optimum supply is defined as the average sales of the prior 3 years (minus sales of cherries qualifying for diversion credit) plus a desired carry-out. Section 930.50(g) further provides that in addition to the free market tonnage percentage cherries, the Board must make available tonnage equal to 10 percent of the average sales of the prior 3 years for market expansion.

The Board proposed amending § 930.50(g) to specify that the 10 percent reserve release only apply during years when volume regulation is in effect.

The record shows that the 10 percent reserve release provision was made a part of the order in large part due to USDA policy guidelines. The Secretary's Guidelines for Fruit, Vegetable, and Speciality Crop Marketing Orders (Guidelines) state that, under volume control programs, primary markets should have available a quantity equal to 110 percent of recent years' sales in those outlets before the Secretary would approve secondary market allocation or pooling. This is to assure plentiful supplies for consumers and for market expansion while retaining the mechanism for dealing with burdensome supply situations.

Witnesses in support of the Board's proposal stated that allowing for and encouraging market growth in years of surplus supplies is sensible. In fact, several witnesses stated that an important objective of the tart cherry industry and the marketing order program is to expand markets for tart cherries. This is supported, for example, by the authorization of diversion credits for new product and new market development.

Several witnesses spoke against the 10 percent release during years of no volume regulation, however. Two concerns were expressed in this regard. First, the release of inventories in a year in which supplies and market demand are reasonably in balance results in an oversupply situation. This can be accompanied by reduced grower prices. Second, and probably more important, industry reserves can be depleted. One objective of keeping an inventory reserve is to aid in stabilizing annual supply fluctuations and safeguard against the detrimental impacts of a short crop year.

The record shows that the tart cherry industry experiences cycles in acreage and production. During the phase of the cycle with less bearing acreage and shorter supplies, a short crop year can result in significant shortages of available market supplies. This can curtail continued market demand and market growth. When supplies are short, they can be supplemented by reserve cherries. This would mitigate spikes in prices, which hinder long term market demand. Food manufacturing customers in particular demand a stable supply of product at reasonable prices. Absent a reliable supply, these customers tend to substitute other fruits in their products.

The use of the inventory release option also provides that some surplus supplies in a large crop year with low prices can be carried over to short crop, high price years. This results in improved revenues for growers and processors. The use of the inventory reserve option also provides an alternative to grower diversions (i.e., non-harvest).

Several witnesses used the 1999–2000 crop year to show the effects of a reserve release during a year of no regulation. During that year, the crop was 251.0 million pounds which, when added to a carryover from the previous crop year of 38.0 million pounds, yielded total available supplies of 289.0 million pounds. With the optimum supply at 285.0 million pounds, the Board found that supplies were reasonably in line with market demand, and recommended no volume regulation be implemented.

At the beginning of the crop year, industry reserves totaled 28.4 million pounds. Four million pounds were released early in the crop year to meet unanticipated demand, leaving 24.4 million pounds in the reserve when it came time for the release for market expansion. Ten percent of the 3-year average sales figure meant that 28.5 million pounds should have been released for market expansion; however, there were only 24.4 million pounds in the inventory reserve, so the entire reserve was released.

Witnesses claimed that the release of reserves in the current crop year may result in a surplus supply of cherries in the marketplace. This could put a downward pressure on price, and could result in a higher carryover into the next crop year. This could mean a greater surplus in 2000–2001, which could result in a higher restricted percentage and greater probability of cherries being left in the orchard unharvested.

Ultimately, these releases could result in less economic incentive to place cherries in the reserve because they could be released at the wrong time and return little to growers. With less incentive to participate in the inventory reserve, more cherries would likely be diverted by growers through non-harvest. Overall grower returns would be lower, and long term market losses may occur.

This proposed amendment should contribute to the industry's efforts to balance tart cherry supplies with market demand. It will give the Board more flexibility in determining when inventory reserve cherries should be released for use. It will not impose any additional regulatory requirements on tart cherry handlers.

Assessments on All Cherries Handled

Section 930.40 of the order authorizes the Board to incur such expenses as the Secretary finds are reasonable and necessary for it to administer the tart cherry marketing order program. Section 930.40 further provides that the Board's expenses be covered by income from handler assessments.

Section 930.41 provides that handlers pay their pro rata share of the Board's expenses. Each handler's share is determined by applying the established assessment rate(s) to the volume of cherries each handler handles during a crop year. Section 930.41 further provides that handlers are exempt from paying assessments on cherries that are diverted in accordance with § 930.59, including cherries represented by grower diversion certificates issued under § 930.58. Cherries devoted to exempt uses under § 930.62 are also free from assessments.

The Board recommended that § 930.41 be amended to provide that all cherries processed and sold by handlers

be subject to assessments. The only cherries that would be exempt from assessments would be those diverted in-orchard by growers, and those diverted by handlers through destruction at their plants.

Proponent witnesses testifying in support of this change stated that all processed cherries should be subject to assessments because handlers profit from the sale of these cherries. This is because each pound of fruit processed increases the handler's overall profitability by reducing the per unit cost of processing. This is true even if the cherries are used in an outlet approved for diversion credit.

The record shows that handlers have different ways of meeting their restricted obligations. Their decisions are based on their own marketing strategies. Some handlers take advantage of marketing their products in eligible diversion outlets, while others either cannot or do not do so. Witnesses suggested that providing an exemption from assessments to handlers who choose to divert their cherries through sales in those designated outlets creates a competitive advantage over their competitors who do not do so. It was their opinion that if a substantial volume of cherries is diverted by certain handlers, the burden of financing the program increases on other handlers. Those in support of assessing all processed cherries concluded that subjecting all processed cherries to the assessment provisions of the order would eliminate this unintended advantage.

Additionally, the record shows that a large portion of the Board's annual expenses is incurred for oversight of compliance activities related to diversion credits. For example, for those export sales eligible for diversion credit, handlers are required to submit proof of export. The documentation typically consists of warehouse receipts, bills of lading, overseas bills of lading, and other documents proving the cherries were exported. The Board staff reviews the documentation submitted by each handler for sufficiency, requests additional documentation if necessary, and issues diversion certificates upon proof of compliance with order requirements. Similar activities are undertaken with respect to sales in other designated diversion markets (e.g., new product development). Witnesses stated that those handlers who take advantage of these order provisions should pay their share of the costs of enforcing those provisions.

One witness also stated that an advantage of this amendment would be that it would broaden the assessment base under the order. This would lower the assessment rate needed to effectively administer the program.

This amendment would increase assessment obligations on handlers who choose to divert their restricted percentage cherries in approved outlets. However, it would also tend to result in a more reasonable assessment system.

Uniform Assessment Rate

As discussed in the preceding section, §§ 930.40 and 930.41 of the order provide that the Board may incur certain expenses, and that the funds to defray those expenses be paid by handlers through assessments. Section 930.41 also provides, among other things, that the assessment rate(s) recommended by the Board and approved by the Secretary must compensate for the differences in the amounts of cherries used for various cherry products and the relative market values of those products.

The Board recommended that § 930.41 be amended to provide that a uniform assessment rate be established for cherries used in any or all products. This would be true unless the Board decided to consider the volumes of cherries used for various products and their relative values; if that were the case, the Board could recommend differential assessment rates if warranted.

The record shows that at the time the order was promulgated, proponents of the program supported different assessment rates being established for cherries used for various products. In their testimony, they suggested that high value products such as frozen, canned or dried cherries be assessed at one rate, and low value products such as juice concentrate and puree be assessed at one-half that rate.

Proponents of the Board's recommended amendment stated that the order should not require one rate for certain products and twice that rate for others. They stated that while a two-tiered assessment rate scheme may be appropriate in some years, it may not be in others. They cited the fact that the absolute and relative market values of various tart cherry products fluctuate from year to year.

One witness testified, for example, that producer returns for cherries used for juice concentrate are comparable to those for other products. He stated that cherry juice concentrate was selling for about $17 per gallon. Subtracting estimated handling charges of $5.81 per gallon, the net return to the grower would be an estimated $11.19. In Washington, where about 50 pounds are required to make a gallon of concentrate, growers would receive 22 cents per pound. In Michigan, where it takes approximately 90 pounds of cherries to make a gallon of concentrate, growers would receive 12 cents per pound. This witness stated that grower returns in this range are comparable to returns available for other products.

The conclusion of the proponent witnesses was that the Board should have discretion in determining appropriate rates of assessment. They did not believe a two-tiered approach should be mandated.

An opponent of the proposed change stated that the order should continue to require the Board to consider the volume of raw product used in producing various cherry products as well as the relative value of those products in recommending annual assessment rates. He stated that he did not necessarily support two levels of assessment rates, but believed the Board should be required to give due consideration to relevant factors in making its recommendations.

The Department concludes that while there may be justification for establishing different assessment rates for different products, it should not be required under the order. Thus, the proposed amendment to § 930.41 provides that in its deliberations pertaining to appropriate levels of assessment rates, the Board should consider the volume of cherries used in making various products and the relative market value of those products. The assessment rate established may be uniform or may vary among products, based on the Board's analysis.

Implementation of this amendment could result in a single, uniform assessment rate applicable to all cherries. Such action would likely increase the rate established for cherries used for juice concentrate and puree, and could result in a lower rate for cherries used for other products. The impact of any such action would be analyzed by the Board and USDA prior to its effectuation.

Crop Production Estimate

Section 930.50 of the order requires the Board to develop an annual marketing policy. This policy serves as the basis for determining the level of volume regulation needed in a given crop year. First, the Board determines the "optimum supply" which is defined as the average sales of cherries in the past three years plus the desirable carry-out. Next, the Board takes the crop forecast for the upcoming year and subtracts from it the optimum supply (less the carry-in). If the remainder is positive, it represents a surplus in

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supplies, supporting the use of volume regulation. Section 930.50 prescribes that the Board must use the official USDA crop estimate as its crop forecast.

The Board's amendment proposal would allow the Board to use a crop estimate other than the official USDA crop estimate in its marketing policy.

The record shows that USDA bases its pre-harvest estimate on two methods. In Michigan, an objective yield survey is done by the State. Such a survey is based on the actual count of fruit on the tree, the number of trees per acre, and the acres in production. In the other producing States, subjective yield surveys are done by those States. This method entails canvassing tart cherry growers and handlers to obtain their assessment of the upcoming year's crop.

The Michigan crop survey costs a total of $60,000 per year. Of this total, the Board pays $24,000. The Board's share was expected to increase to half of the total in 2001. Concern was expressed at the hearing that if the industry decides to no longer contribute to the cost of the Michigan State survey, that State would likely discontinue its objective yield surveys and turn to subjective yield surveys. This could result in a less reliable crop estimate than is currently available. This is of particular concern because Michigan produces more than 70 percent of the U.S. tart cherry crop.

Witnesses in support of this proposal stated that, in some years, USDA's pre-harvest crop estimate may not be accurate enough due to quickly changing crop conditions. They stated that current order provisions prohibit the Board from using any other estimate even if the majority of Board members, with their years of experience in the industry, believe USDA's estimate in a given year is inaccurate. Using the most accurate crop estimate available in deriving preliminary free and restricted percentages is important because growers and handlers make decisions based in part on those percentages. For example, growers decide whether to divert or harvest their crops; these decisions are irrevocable. Handlers also make pack and marketing plans based in part on the expected level of regulation. If actual harvest varies significantly from the pre-harvest estimate, growers and handlers could suffer economic harm. Using the most accurate information available is therefore necessary to enhance industry decision making.

One witness pointed to the situation faced by district 3 (Southern Michigan) growers in 1997. As previously discussed under Material Issue Number 9, at the time the Board developed its marketing policy, indications were that district 3 would be regulated that year. Subsequent to harvest, however, it was determined that volume regulation would not apply to district 3 cherries that year. Growers who made decisions to divert their crops based on the Board's marketing policy estimates found themselves with diversion certificates that were of no value.

The record shows that the USDA estimate should be used by the Board unless two things happen. The first would be that the Board would have to agree that the USDA estimate was inaccurate. The second would be that the Board would have to agree on another estimate or estimates to use. Both these actions would require concurrence by at least two-thirds of the Board members. This would safeguard against the possibility of some members attempting to manipulate the crop estimate to impact the level of volume restriction.

In addition, witnesses testified that other estimates used by the Board would have to be from other reliable, independent sources, and would be averaged in with the USDA estimate. Currently available is an annual estimate made by the Michigan Food Processors Association. Other possible sources include the Michigan Agricultural Cooperative Marketing Association and individual State grower associations.

This proposed amendment provides the Board with more flexibility in developing its marketing policy and recommending preliminary free and restricted percentages. To the extent that the Board's decision making improves, the entire U.S. tart cherry industry would benefit.

The collection of information under the marketing order would not be affected by these amendments to the marketing order. Current information collection requirements for Part 930 are approved by OMB under OMB number 0581–0177.

As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The Department has not identified any relevant Federal rules that duplicate, overlap or conflict with this proposed rule. These amendments are designed to enhance the administration and functioning of the marketing order to the benefit of the industry.

Board meetings regarding these proposals as well as the hearing dates were widely publicized throughout the tart cherry industry, and all interested persons were invited to attend the meetings and the hearing and participate in Board deliberations on all issues. All Board meetings and the hearing were public forums and all entities, both large and small, were able to express views on these issues.

Civil Justice Reform

The amendments proposed herein have been reviewed under Executive Order 12988, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed amendments would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the amendments.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Findings and Conclusions; Discussion of Comments

The material issues, findings and conclusions, rulings, and general findings and determinations included in the Recommended Decision set forth in the January 24, 2002, issue of the **Federal Register** (67 FR 3540) are hereby approved and adopted subject to the following additions and modifications.

Material Issue Number 1—Districts Subject to Volume Regulation

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 1 of the Recommended Decision (whether to change the criterion for determining which districts are subject to volume regulation) are amended by adding the following 18 paragraphs to read as follows:

Ninety-four exceptions were filed regarding this issue, mostly from tart cherry growers and processors in the production area. Seventeen of those exceptions supported the Department's recommendation to reduce the annual production threshold to 6 million pounds. The majority of these were from industry members in Pennsylvania (12 of the 14 comments received from that State). Two Michigan growers, two Oregon growers, and one Washington grower also supported the 6 million pound threshold.

These 17 comments generally agreed with USDA's conclusion that there continues to be a need to set a minimum production threshold to recognize the unique circumstances of the smallest producing districts. They stated that imposing regulation on these areas would result in costs that would exceed any benefits derived. It was their contention that the tart cherry industries operating in the smaller districts would be detrimentally impacted by volume regulation, while regulating them would change very little because these States are minor producers of cherries.

The President of Knouse Foods, the only processor operating in Pennsylvania, was one of the commenters who supported the 6 million pound threshold as a compromise, although he indicated leaving the threshold at its current level of 15 million pounds would be preferable. In his exception, he asked that if USDA goes forward with the reduction in the threshold, that it also inform the industry that this topic will not be reopened. He suggested that the Board should shift its focus from this issue to the more important issue of how the industry can sell more cherries.

The Department is aware that this issue has been of significant concern to tart cherry producers and handlers recently. This is supported by the number of witnesses who testified at the hearing and the number of exceptions filed on this matter. While this issue has been explored in depth during this proceeding, it cannot be concluded that it will never need to be reassessed sometime in the future.

Fourteen comments were received in opposition to any change in the current production threshold of 15 million pounds. In this category were two Pennsylvania growers, five Oregon growers, one Washington grower, and six commenters from Wisconsin (including a Congressperson).

Many of the comments in this category echoed the arguments of those in support of the 6 million pound threshold. That is, they believed a production threshold was needed to protect smaller growing areas which have higher costs and lower returns.

Several exceptions mentioned that the 15 million pound threshold was a compromise made when the program was put into effect, and it is unfair for those in the larger growing areas to now go back on the promises that were originally made. Also, some stated that this is an effort by the Michigan industry to eliminate competition from other areas.

It is true that proponents of the order supported the 15 million pound threshold during the promulgation process. However, the order authorizes the Board to seek amendments to the program. This is to recognize that things change over time, and changes may be needed to improve the operations of the program. In fact, much testimony was presented at the hearing about experience gained during the first years of operating the program. Many issues have arisen that were not foreseen at the time the program was put in place. Based on the record evidence, USDA has concluded that the threshold should be reduced, but not eliminated.

Two Oregon growers opposed lowering the threshold level because they feared the precedent it would set. They were concerned that the Board would continue its attempt to eliminate the threshold altogether.

As previously stated, this subject has been examined in depth during this proceeding. USDA does not believe current conditions in the tart cherry industry support a reduction in the production threshold below 6 million pounds. However, it cannot be concluded that this issue will not be reexamined at some point in the future.

Most of the comments received from Wisconsin (22 out of 28) supported the Board's proposal to reduce the threshold to zero. The remaining six opposed any change in the current threshold. Some of these exceptions stated that making Wisconsin subject to volume regulation would result in some growers and handlers going out of business. One of the Wisconsin commenters in support of retaining the 15 million pound threshold stated that establishing a 6 million pound threshold could end tart cherry production in Wisconsin. Commenters also claimed that production and acreage in Wisconsin are expected to decline, so there is no need to regulate that district because it does not contribute in any meaningful way to the oversupply situation. However, there were other Wisconsin commenters who supported a zero threshold.

The record evidence does not support the claims concerning a decline in Wisconsin production. Production in Wisconsin has increased since the inception of the order, and no one presented evidence at the hearing that this was expected to change. In any event, if production were to decline significantly (below 6 million pounds), Wisconsin would again become unregulated.

Volume control provisions of the order have stabilized tart cherry marketing conditions and have been economically beneficial to growers and handlers in the production area. As with all volume control programs, there will be those who may argue that they are economically disadvantaged and therefore disagree with controls which are implemented. However, in light of the changes in the industry since the promulgation of the order, and the experience which has been gained in administering volume control provisions, it is the Department's belief that, at this time, a 6 million pound threshold will best serve the interests of the industry.

Sixty-five comments were received objecting to USDA's recommendation to reduce the threshold to 6 million pounds, and supporting the Board's proposal to eliminate the threshold. Thirty-three of these were from Michigan, 22 from Wisconsin, 5 from Utah, 3 from New York, and 2 from Washington. Proponents questioned the concept of the order focusing on districts rather than the individuals within them. No amendments were offered to change the district structure of the order pertaining to volume regulation, and the subject was not developed at the hearing.

The arguments raised in comments supporting a zero threshold were introduced at the hearing and have been addressed in this discussion of Material Issue Number 1. These arguments pertain mainly to the issue of "equity." That is, it is simply not fair that some districts are subject to volume regulation and some are not. All cherries produced contribute to the surplus; everyone in the industry benefits from the operation of the marketing order; and, thus, everyone should bear a share of the burden of regulation.

The Act requires that marketing orders be limited in their application to the smallest regional production area practicable. In the case of tart cherries, USDA has determined that this includes the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The Act also requires the marketing orders prescribe such different terms applicable to different areas, as USDA finds necessary to give due recognition

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to the differences in production and marketing in those areas.

Both the promulgation record and the record of this hearing are replete with evidence concerning differences among the tart cherry producing districts. There are differences in yields; costs of production; the mix of cherry products made; the number of growers and processors; climate; swings in annual levels of production; age of orchards; proximity to different markets; and the quality of the cherries produced, among other things.

Proponents of a zero threshold continue to argue that all cherries in the production area should be regulated, no matter how small the crop. Even though evidence at the order promulgation hearing shows that it was the proponents' position that the minor production states have little bearing on the market, they now argue otherwise. Any threshold, in their opinion, creates a competitive advantage for those who are unregulated. However, based on the record, it is the Department's view that a production threshold is necessary to recognize the differences among varying districts. Proponents of the zero threshold failed to produce adequate evidence to change that view. Furthermore, the record does not demonstrate that the added costs of regulating all cherries would be exceeded by the benefits derived from doing so. For these reasons, the exceptions are denied.

Material Issue Number 2—Allocation of Board Membership

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 2 of the Recommended Decision (concerning whether changes should be made in allocation of Board membership and voting requirements) are amended by adding the following seven paragraphs to read as follows:

The exception filed by the Oregon Tart Cherry Association (OTCA) supported the concept of annual reallocation of Board membership based on each district's production. However, the exception asked that specific language be added to § 930.20 to require that this reallocation be implemented "promptly," and not be delayed based on the expectation that a district's production level may change in the near future.

OTCA's comments regarding this issue are consistent with the intent of the changes proposed in the Recommended Decision. Therefore, § 930.23(f) is being changed to indicate that each district's 3-year average annual production would be recalculated annually. This would be done as soon as possible after each season's final production figures are known (typically in September). Any district meriting additional seats due to increasing production would have them filled during the next regularly scheduled round of nominations (generally held in January or February). Nominees to fill these additional seats would then be appointed by USDA to serve for the term of office beginning the following July 1. Likewise, any seats needing to be vacated due to a district's falling production would be vacated at the beginning of the next term of office (July 1). There is no provision in the proposed revision to § 930.20 to allow the annual reallocation of Board membership to be waived if there are expectations that changes in a district's production level are temporary in nature.

The Board's exception asked for clarification regarding the way in which it is determined which seats are to be vacated in the event a district's production declines and it is entitled to fewer positions. First, the Board took exception to an example given in the Recommended Decision that a district with three members would have two grower positions and one handler position. The Board pointed out that a district with three members would not necessarily have two grower and one handler positions, but could have one grower position and two handler positions instead. The Board's observation is correct. The example used in the Recommended Decision was for illustrative purposes and was not intended to suggest that a district entitled to three Board positions would always have two growers and one handler representing that district.

Second, the Board suggested that in determining which member should step down, the members representing the affected district should have the discretion in deciding. If that was not successful, rules and regulations governing this situation could be implemented. This is precisely what the Recommended Decision states.

The Board's exception also addressed the issue of filling a new seat when a district earns an additional Board representative due to higher production levels. In such an instance, the Board wants the members representing the district at the time the reallocation is made to be able to state whether they want to be considered as a grower or a handler member. This would be true regardless of which type of seat they were nominated and appointed to fill.

Under the provisions of the order, only growers may participate in nominating grower members to serve on the Board, and only handlers may nominate handler members. While it is true that some members may be both growers and handlers and may therefore be eligible to serve in either type of position, each member is nominated by a different group and appointed to represent that group. To illustrate, a person nominated by handlers in a district to represent them may not be acceptable to growers in that district to represent their interests (or vice versa). The Board's exception on this point is contrary to the nomination procedures contained in the order and is therefore denied.

Two exceptions expressed concern about the requirement that two-thirds of the Board's membership be required to vote in favor of any Board action. These two comments said it was unclear whether the two-thirds applied to total membership or only to the membership present at a given meeting. They objected to the latter scenario. The change proposed in the Recommended Decision intended that two-thirds of the total Board membership be required to approve any Board action (not two-thirds of those present). Thus, no changes are needed.

Material Issue Number 3—Board Designation of a Temporary Alternate To Act for an Absent Board Member

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 3 of the Recommended Decision (concerning added flexibility for alternates to serve for absent Board members) are amended by adding the following five paragraphs to read as follows:

Three exceptions were filed concerning this issue. One Washington grower supported USDA's recommendation in its entirety.

The OTCA supported allowing a member to designate an additional alternate to act in his or her stead when that member and that member's alternate are unable to attend a Board meeting. However, the OTCA opined that any such designated alternate should be required to be a grower or handler in the district he or she is designated to represent.

As discussed in the previous material issue, depending on a district's production, that district could be represented on the Board by one to four members. The OTCA proposal would not work in those districts with only one or two members (because any designated alternate would have to be from the same group—grower or handler). Thus, the OTCA revision would provide additional flexibility in only some districts. This would be contrary to USDA's conclusion that maximum flexibility should be provided to all members to encourage a full complement of members at each Board meeting. However, it would remain the member's decision as to whether an additional alternate be designated in his or her stead. If a member were to determine that no one was available to adequately represent the interests of that member's constituency, the member could simply choose to leave his or her seat vacant. For these reasons, this exception is denied.

The Board took exception to USDA deleting the provision in its original proposal that if a member chose not to designate an additional alternate to act in his or her stead, the Board's Chairperson would have the authority to do so. The Board argued that the failure of a member to attend a meeting constituted a "no" vote on all matters acted on at the meeting, and would cause a district to be unrepresented at that meeting.

Board membership is allocated among the established districts to ensure that the varying interests of those districts are considered in Board deliberations. Further, quorum and voting requirements are set to encourage an industry consensus on program matters. The Board's recommendation is at odds with these objectives. Therefore, the Board's exception is denied.

Material Issue Number 4—Clarification of Diversion and Exemption Provisions

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 4 of the Recommended Decision (concerning clarification of diversion and exemption provisions) are amended by adding the following three paragraphs to read as follows:

The Board filed an exception suggesting a further clarification of the order's exemption and diversion provisions. Under both the handler diversion provision of the order (§ 930.59) and the exemption provision (§ 930.62) certain uses of cherries are listed that may be eligible for diversion or exemption. An example is that exports to designated markets may be eligible for diversion or exemption (subject to Board recommendation and USDA approval). In both sections of the order, in addition to the possible uses listed, authority is provided to give diversion credit or exempt use status for cherries used for other purposes recommended by the Board and approved by USDA.

The Board expressed concern that since the order's inception, USDA has interpreted the phrase "other uses" to mean only those uses that are very similar to those specifically listed. The Board wished to clarify its intention that this phrase be interpreted very broadly. As an illustration, the exception said there could be a case where destruction of an obsolete product should be eligible for diversion credit. While such a situation has not occurred in the past (and may not in the future), this example was used to illustrate the fact that the order needs to be flexible and adaptable to unforeseen situations that may arise in the future.

The Department finds the Board's comment has merit. The intent of the Recommended Decision was to provide such flexibility in the exemption and diversion provisions of the order. Any use authorized for such purposes would need to be recommended by the Board (and supported by sufficient economic justification) and approved by USDA through the informal rulemaking process.

Material Issue Number 6—Diversion Credit for Juice and Juice Concentrate

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 5 of the Recommended Decision (concerning exemption or diversion credit for export shipments) are amended by adding the following two paragraphs to read as follows:

The Board filed an exception suggesting a clarification of the proposal to allow diversion credit for juice and juice concentrate sold in outlets approved for diversion credit. The Board pointed out that the Recommended Decision used as an example juice and concentrate shipped to approved export markets, and wanted to clarify that juice and juice concentrate used for any approved diversion outlet (not just exports) be eligible to receive diversion credit.

The Department accepts the Board's suggestion. While it is true that the discussion of this issue in the Recommended Decision focused on export shipments, it was not intended that diversion credits for juice be limited only to export shipments. The use of juice or juice concentrate in any outlet approved under § 930.59 would be eligible for diversion credit.

Material Issue Number 7—Handler Transfers of Diversion Credits

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 7 of the Recommended Decision (concerning handler transfers of diversion credits) are amended by adding the following two paragraphs to read as follows:

An exception to this issue was filed by a Michigan cherry grower. While he supported the concept of handler transfers of diversion credits, he suggested that only handlers who do not "force" their growers to divert cherries in-orchard should be eligible for such transfers. His point was that growers do not have the option of diverting cherries; rather, their handlers require them to do so. In such instances, handlers should not be able to market a greater percentage of their acquired cherries through transfers of diversion credits.

Under the terms of the marketing order, grower diversions are voluntary. Any negotiations between a grower and his or her handler fall beyond the scope of the order. Thus, this exception is denied.

Material Issue Number 9—Release of Cherries in Inventory Reserve

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 9 of the Recommended Decision (concerning the release of cherries in the inventory reserve) are amended by adding the following two paragraphs to read as follows:

A Michigan grower filed an exception to this provision. He suggested that handlers be required to compensate growers for any cherries that are released from the inventory reserve. He stated that growers receive a different price for free percentage cherries and restricted percentage cherries, with the latter receiving far less than the former. When restricted percentage cherries placed in the inventory reserve are subsequently released from the reserve and become free percentage cherries, growers do not necessarily receive anything additional for those cherries.

The issue of pricing reserve pool cherries was not explored at the hearing and is outside the scope of this rulemaking. Thus, this exception must be denied.

Material Issue Number 12—Uniform Assessment Rate

Based upon the briefs and exceptions filed, the findings and conclusions in material issue number 12 of the Recommended Decision (concerning a uniform assessment rate) are amended by adding the following two paragraphs to read as follows:

Two exceptions were filed regarding this material issue. A Washington grower stated that a lower assessment rate for cherries used for juice concentrate remains justified because

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such cherries return far less to growers than cherries used for other purposes. The OTCA also objected, because it believed the Board should be required to consider various criteria (such as relative market values of different products) in recommending appropriate assessment rates.

To clarify the change proposed in the Recommended Decision, the Department is not suggesting that the Board disregard the criteria listed in § 930.41 when recommending assessment rates. Different assessment rates, while not being required, shall be considered by the Board.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are denied.

Marketing Agreement and Order

Annexed hereto and made a part hereof is the document entitled "Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin." This document has been decided upon as the detailed and appropriate means of effectuating the foregoing findings and conclusions.

It is hereby ordered, That this entire decision be published in the **Federal Register**.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the procedure for the conduct of referenda (7 CFR part 900.400 *et seq.*) to determine whether the issuance of the annexed order amending the order regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin is approved or favored by growers and processors, as defined under the terms of the order, who during the representative period were engaged in the production or processing of tart cherries in the production area.

The representative period for the conduct of such referendum is hereby determined to be June 1, 2000, through May 31, 2001.

The agent of the Secretary to conduct such referendum is hereby designated to be Kenneth G. Johnson, Regional Manager, DC Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 4700 River Road, Unit 155, Suite 2A04, Riverdale, Maryland 20737; telephone (301) 734–5243.

List of Subjects in 7 CFR Part 930

Marketing agreements, Reporting and recordkeeping requirements, Tart cherries.

Dated: May 3, 2002.

A.J. Yates,

Administrotor, Agricultural Marketing Service.

Order Amending the Order Regulating the Handling of Tart Cherries Grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin[1]

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the order; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

(a) *Findings and Determinations Upon the Basis of the Hearing Record.*

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure effective thereunder (7 CFR part 900), a public hearing was held upon the proposed amendments to the Marketing Agreement and Order No. 930 (7 CFR part 930), regulating the handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington, and Wisconsin.

Upon the basis of the evidence introduced at such hearing and the record thereof, it is found that:

(1) The marketing agreement and order, as amended, and as hereby proposed to be further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing agreement and order, as amended, and as hereby proposed to be further amended, regulate the handling of tart cherries grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing order upon which hearings have been held;

(3) The marketing agreement and order, as amended, and as hereby proposed to be further amended, are limited in application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The marketing agreement and order, as amended and as hereby proposed to be further amended, prescribe, insofar as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the differences in the production and marketing of tart cherries grown in the production area; and

(5) All handling of tart cherries grown in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, all handling of tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin, shall be in conformity to, and in compliance with, the terms and conditions of the said order as hereby proposed to be amended as follows:

The provisions of the proposed marketing agreement and the order amending the order contained in the Recommended Decision issued by the Administrator on January 15, 2002, 1999, and published in the **Federal Register** on January 24, 2002, will be and are the terms and provisions of this order amending the order and are set forth in full herein.

PART 930—TART CHERRIES GROWN IN THE STATES OF MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON, AND WISCONSIN

1. The authority citation for 7 CFR part 930 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Amend § 930.20 as follows:

a. By revising paragraphs (a), (b), (d) and (e);

b. Redesignating paragraphs (f) and (g) as paragraphs (g) and (h); and

c. Adding new paragraphs (f) and (i).

The additions and revisions read as follows:

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board, the membership of which shall be calculated in accordance with paragraph (b) of this section. The number of Board members may vary, depending upon the production levels of the districts. All but one of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. One member of the Board shall be a public member who, along with his or her alternate, shall be elected by the Board from the general public.

(b) District representation on the Board shall be based upon the previous three-year average production in the district and shall be established as follows:

(1) Up to and including 10 million pounds shall have 1 member;

(2) Greater than 10 and up to and including 40 million pounds shall have 2 members;

(3) Greater than 40 and up to and including 80 million pounds shall have 3 members; and

(4) Greater than 80 million pounds shall have 4 members; and

(5) Allocation of the seats in each district shall be as follows but subject to the provisions of paragraphs (d), (e) and (f) of this section:

District type	Grower members		Handler members
Up to and including 10 million pounds ..	1	OR	1
More than 10 and up to 40 million pounds	1		1
More than 40 and up to 80 million pounds	1		2
More than 80 million pounds	2		2

* * * * *

(d) The ratio of grower to handler representation in districts with three members shall alternate each time the term of a Board member from the representative group having two seats expires. During the initial period of the order, the ratio shall be as designated in paragraph (b) of this section.

(e) Board members from districts with one seat may be either grower or handler members and will be nominated and elected as outlined in § 930.23.

(f) If the 3-year average production of a district changes so that a different number of seats should be allocated to the district, then the Board will be reestablished by the Secretary, and such seats will be filled according to the applicable provisions of this part. Each district's 3-year average production shall be recalculated annually as soon as possible after each season's final production figures are known.

* * * * *

(i) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

3. Revise § 930.28 to read as follows:

§ 930.28 Alternate members.

An alternate member of the Board, during the absence of the member for whom that member serves as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event a member and his or her alternate are absent from a meeting of the Board, such member may designate, in writing and prior to the meeting, another alternate to act in his or her place: *Provided*, that such alternate represents the same group (grower or handler) as the member. In the event of the death, removal, resignation or disqualification of a member, the alternate shall act for the member until a successor is appointed and has qualified.

4. Amend § 930.32 by revising paragraph (a) to read as follows:

§ 930.32 Procedure.

(a) Two-thirds of the members of the Board, including alternates acting for absent members, shall constitute a quorum. For any action of the Board to pass, at least two-thirds of the entire Board must vote in support of such action.

* * * * *

5. Amend § 930.41 by revising paragraphs (c) and (f) to read as follows:

§ 930.41 Assessments.

* * * * *

(c) As a pro rata share of the administrative, inspection, research, development, and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, a handler shall be exempt from any assessment only on the tonnage of handled cherries that either are diverted by destruction at the handler's facilities according to § 930.59 or are cherries represented by grower diversion certificates issued pursuant to § 930.58(b) and acquired by handlers as described in § 930.59.

* * * * *

(f) Assessments shall be calculated on the basis of pounds of cherries handled. The established assessment rate may be uniform, or may vary dependent on the product the cherries are used to manufacture. In recommending annual assessment rates, the Board shall consider:

(1) The differences in the number of pounds of cherries utilized for various cherry products; and

(2) The relative market values of such cherry products.

* * * * *

6. Amend § 930.50 by revising paragraphs (a), (b) and (g) to read as follows:

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years reduced by average sales that represent dispositions of exempt cherries and restricted percentage cherries qualifying for diversion credit for the same three years, unless the Board determines that it is necessary to recommend otherwise with respect to sales of exempt and restricted percentage cherries, to which shall be added a desirable carry-out inventory not to exceed 20 million pounds or such other amount as the Board, with the approval of the Secretary, may establish. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: From the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carry-in inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be subtracted from the current year USDA crop forecast or by an average of such other crop estimates the Board votes to use. If the resulting number is positive, this would represent the estimated overproduction which would be the restricted tonnage. This restricted tonnage would then be divided by the sum of the crop forecast(s) for the regulated districts to obtain a preliminary restricted percentage, rounded to the nearest whole number, for the regulated districts. If subtracting the current crop year requirement, computed in the first sentence from the current crop forecast, results in a negative number, the Board shall establish a preliminary free market tonnage percentage of 100 percent with a preliminary restricted percentage of zero. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

* * * * *

[1] This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

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(g) *Additional tonnage to sell as free tonnage.* In addition, the Board, in years when restricted percentages are established, shall make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years, as defined in paragraph (a) of this section, for market expansion.

* * * * *

7. Amend § 930.51 by revising paragraph (c) to read as follows:

§ 930.51 Issuance of volume regulations.

* * * * *

(c) That portion of a handler's cherries that are restricted percentage cherries is the product of the restricted percentage imposed under paragraph (a) of this section multiplied by the tonnage of cherries, originating in a regulated district, handled, including those diverted according to § 930.59, by that handler in that fiscal year.

* * * * *

8. Amend § 930.52 by revising paragraph (a) to read as follows:

§ 930.52 Establishment of districts subject to volume regulation.

(a) The districts in which handlers shall be subject to any volume regulations implemented in accordance with this part shall be those districts in which the average annual production of cherries over the prior 3 years has exceeded 6 million pounds. Handlers shall become subject to volume regulation implemented in accordance with this part in the crop year that follows any 3-year period in which the 6-million pound average production requirement is exceeded in that district.

* * * * *

9. Revise § 930.54 to read as follows:

§ 930.54 Prohibition on the use or disposition of inventory reserve cherries.

Cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.55, or § 930.57 shall not be used or disposed of by any handler or any other person except as provided in § 930.50 or in paragraphs (a), (b), or (c) of this section.

(a) If the Board determines that the total available supplies for use in commercial outlets are less than the amount needed to meet the demand in such outlets, the Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) The Board may recommend to the Secretary that a portion or all of the primary and/or secondary inventory reserve cherries be released for sale in certain designated markets. Such designated markets may be defined in terms of the use or form of the cherries.

(c) Cherries in the primary and/or secondary inventory reserve may be used at any time for uses exempt from regulation under § 930.62.

10. Amend § 930.58 by revising paragraph (a) to read as follows:

§ 930.58 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with the provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting grower a grower diversion certificate which such grower may deliver to a handler, as though there were actual harvested cherries. Any grower diversions completed in accordance with this section, but which are undertaken in districts subsequently exempted by the Board from volume regulation under § 930.52(d), shall qualify for diversion credit.

* * * * *

11. Revise § 930.59 to read as follows:

§ 930.59 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by acquiring diversion certificates or by voluntarily diverting cherries or cherry products in a program approved by the Board, rather than placing cherries in an inventory reserve. Upon voluntary diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any form which the Board, with the approval of the Secretary, may designate. Tart cherry juice and juice concentrate may receive diversion credit but only if diverted in forms approved under the terms of this section. Such forms may include, but are not limited to:

(1) Contribution to a Board-approved food bank or other approved charitable organization;

(2) Use for new product and new market development;

(3) Export to designated destinations; or

(4) Other uses or disposition, including destruction of the cherries at the handler's facilities.

(c) *Notification.* The handler electing to divert cherries through means authorized under this section shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision may be established by the Board, pursuant to rules and regulations approved by the Secretary.

(d) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries under paragraph (c) of this section as may be necessary to assure that the cherries are diverted as authorized. After the diversion has been completed, the Board shall issue to the diverting handler a handler diversion certificate indicating the weight of cherries which may be used to offset any restricted percentage requirement.

(e) *Transfer of certificates.* Within such restrictions as may be prescribed in rules and regulations, including but not limited to procedures for transfer of diversion credit and limitations on the type of certification eligible for transfer, a handler who acquires diversion certificates representing diverted cherries during any crop year may transfer such certificates to another handler or handlers. The Board must be notified in writing whenever such transfers take place during a crop year.

(f) The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

12. Revise § 930.62 to read as follows:

§ 930.62 Exempt uses.

(a) The Board, with the approval of the Secretary, may exempt from the provisions of § 930.41, § 930.44, § 940.51, § 930.53, or § 930.55 through § 930.57 cherries for designated uses. Such uses may include, but are not limited to:

(1) New product and new market development;

(2) Export to designated destinations;

(3) Experimental purposes; or

(4) For any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized.

(b) The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

(c) Diversion certificates shall not be issued for cherries which are used for exempt purposes; *Provided,* that growers engaging in such activities under the authority of § 930.58 shall be issued diversion certificates for such activities.

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Friday,
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Part V

Department of Transportation

Federal Aviation Administration

14 CFR Part 91
Reduced Vertical Separation Minimum in Domestic United States Airspace; Proposed Rule

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2002–12261; Notice No. 02–09]

RIN 2120–AH63

Reduced Vertical Separation Minimum in Domestic United States Airspace

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to permit Reduced Vertical Separation Minimum (RVSM) flights in the airspace over the contiguous 48 States of the United States (U.S.) and Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services. The RVSM program would allow the use of reduced vertical separation between aircraft at certain altitudes. This reduction of vertical separation minima would only be applied between those aircraft that meet stringent altimeter and auto-pilot performance requirements. This proposed rule would also require any aircraft that is equipped with Traffic Alert and Collision Avoidance System version II (TCAS II) and flown in RVSM airspace to incorporate a version of TCAS II that is compatible wit RVSM operations. The FAA is proposing this action to enhance airspace capacity and to assist aircraft operators to save fuel and time.

DATES: Comments must be submitted on or before August 8, 2002.

ADDRESSES: Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing comments to these proposed regulations in person in the Docket Office between 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Roy Grimes, Flight Technologies and Procedures Division, Flight Standards Service, AFS–400, Federal Aviation Administration, 600 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–3734.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this proposed rulemaking by submitting written comments, data, or views. We also invite comments relating to the economic, environmental, energy or federalism impacts that might result from adopting the proposals in this document. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this preamble between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also review the docket using the Internet at the web address in the **ADDRESSES** section.

Before acting on this proposal, we will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change this proposal in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it to you.

Availability of Rulemaking Documents

You can get an electronic copy of this copy through in Internet by taking the following steps:

(1) Go to the search function of the Department of Transportation's electronic Docket Management System (DMS) web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last four digits of the Docket number shown at the beginning of this notice. Click on "search."

(3) On the next page, which contains the Docket summary information for the Docket you selected, click on the document number of the item you wish to view.

You can also get an electronic copy using the Internet through the Office of Rulemaking's web page at *_http://www.faa.gov/avr/armhome.htm* or the Federal Register's web page at *http://www.access.gpo.gov/su_docs/aces/aces140.html*.

You can also get a copy by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM–1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267–9680. Make sure to identify the docket number, notice number, or amendment number of this rulemaking.

Why RVSM Implementation in US and Gulf of Mexico Airspace Is Warranted: Benefits, Proven Safety, Existing Aircraft Eligibility

Statement of the Problem

Air traffic levels were reduced following the events of September 11, 2001. The FAA anticipates, however, that over the next 12–18 months, air traffic will resume the steady increase that has been exhibited in past years. Air traffic at FAA air route traffic control centers is projected to increase over the next ten years at an average annual rate of 1.5 percent. By 2012, FAA air route traffic control centers are projected to be required to manage approximately 9 million more instrument flight rule (IFR) flights than they did in 2000 (55.0 million versus 46.0 million).

As air traffic increases, the opportunity for aircraft to fly the desired time and fuel-efficient flight levels and routes will be significantly diminished. In addition, traffic increases will diminish the capability of the FAA to move aircraft through and around areas affected by significant weather systems. In areas characterized by high-density traffic, the FAA may be required to invoke restrictions that can result in traffic delays and fuel penalties.

National Airspace System Operational Evolution Plan (NAS OEP) Initiatives

In 2001, the FAA began a focused study of initiatives to enhance the efficiency and reliability of air traffic operations in the NAS. This study and inputs from the airspace user community has led the FAA to pursue a variety of options and initiatives to enhance airport capacity and arrival, approach, and enroute operations. The initiatives and FAA plans to pursue them are published in the NAS OEP.

The website address for this document is: *www.faa.gov/programs/oep*.

The FAA believes that the option to implement RVSM in the NAS should be a high priority initiative because RVSM has proven over the past several years to provide significant enhancements to enroute operations in other areas. The RVSM implementation project is listed in the Enroute Congestion Solutions section of the NAS OEP.

Advocacy by User Groups

Organizations and representatives from the aviation community have advocated the implementation of RVSM in U.S. and Gulf of Mexico airspace. The U.S. operators view RVSM as a proven operational program that can mitigate some of the problems encountered in U.S. domestic operations.

RVSM Mitigation of Air Traffic Management Problems

The explanation of the term "flight levels (FL)" in this paragraph is provided to introduce the discussion of RVSM benefits below. Flight levels are stated in three digits that represent thousands of feet. The term flight level is used to describe a surface of constant atmospheric pressure related to a reference datum of 29.92 inches of mercury. Flight levels are separated by specific pressure intervals. Rather than adjusting altimeters for changes in atmospheric pressure, pilots base altitude readings above the transition altitude (18,000 feet in the United States) on this standard reference. Thus FL 290 represents the pressure surface equivalent to 29,000 feet based on the 29.92″ Hg datum; FL 310 represents 31,000 feet, and so on.

With air traffic levels increasing annually, FAA airspace planners and their international counterparts have established programs to implement RVSM as a primary measure to enhance air traffic management and operating efficiency. RVSM has been successfully implemented in both oceanic and continental airspace. The RVSM program has been implemented in oceanic airspace in the North and South Atlantic, the Pacific, the South China Sea, and in the portion of the West Atlantic Route System (WATRS) that is in the New York Oceanic Flight Information Region (FIR). The RVSM program has also been implemented in the continental airspace of Australia and Europe.

The RVSM program allows the vertical separation standard that is applied below FL 290 to be applied between FL 290 and 410. Below FL 290 (29,000 feet), air traffic controllers can assign Instrument Flight Rules (IFR) aircraft to flight levels that are separated by 1,000 feet. Above FL 290, however, the Conventional Vertical Separation Minimum (CVSM) is 2,000 feet and IFR aircraft must be assigned to FL's separated by 2,000 feet.

The 2,000-foot minimum vertical separation restricts the number of flight levels available. Flight levels 310, 330, 350, 370, and 390 are flight levels at which aircraft operate most economically. During peak periods, these FL's can become congested. When all RVSM FL's (FL 290–410) are utilized, six additional flight levels are available: FL's 300, 320, 340, 360, 380, and 400. Increasing the number of FL's available in the U.S. domestic airspace is projected to provide enhancements to aircraft operations similar to those gained in the North Atlantic (NAT) and Pacific (PAC) (i.e., mitigation of fuel penalties attributed to the inability to fly optimum altitudes and tracks and enhanced controller flexibility for air traffic management).

Benefits and Enhancements

Implementation of a 1,000-foot vertical separation standard above FL 290 offers substantial operational benefits to operators, including:

- Greater availability of the most fuel-efficient altitudes. In the RVSM environment, aircraft are more likely to receive their requested altitude enabling them to consistently fly closer to their most fuel efficient FL.
- Greater availability of the most time and fuel-efficient routes (and an increased probability of obtaining these routes). Operators may not be cleared on the route that was filed due to demand for the optimum routes and resultant traffic congestion on those routes. The RVSM program allows the FAA to accommodate a greater number of aircraft on a given track or route. More time and fuel-efficient tracks or routes would therefore be available to more aircraft.
- Increased air traffic controller flexibility. The RVSM program gives the FAA greater flexibility to manage traffic by increasing the number of flight levels available on each track or route. This enhanced flexibility is especially desirable in situations where the FAA must re-route traffic around weather.
- Reduction of air traffic controller workload. The enhanced flexibility described above will reduce controller workload and allow them to work more efficiently.
- Enhanced flexibility to allow aircraft to cross intersecting routes. The RVSM program makes more flight levels available to enable aircraft to cross intersecting flight paths above or below conflicting traffic.
- Enhanced safety in the application of separation standards. Studies show that the RVSM program produces a wider distribution of aircraft among different routes and altitudes.

Example of RVSM Benefits to NAT Operations

Over the past five years, the FAA and the other NAT Air Traffic Service Providers have observed significant benefits provided by RVSM implementation in NAT airspace. Prior to the introduction of RVSM, 27 percent of flights in NAT airspace were issued clearances on tracks and at altitudes other than the optimum tracks and altitudes requested by the operators in their filed flight plans. These flights were, therefore, generally subject to time and fuel penalties.

The NAT Implementation Management Group (IMG) (of which the FAA is a member) observed the following improvements in NAT operations due to the introduction of RVSM:

1. Fifty percent of the fuel penalty attributed to NAT system operation was eliminated. The total NAT system fuel penalty is estimated based on track design, meteorological forecast, cruise level, and traffic congestion penalties.
2. Twenty five percent fewer fixed tracks were required to be published. This allows more airspace for operators to fly preferred tracks.
3. There was a five percent increase in flights cleared to fly at both the altitude and on the track that the operator requested.

Aircraft Operating in U.S. Airspace Already Approved for RVSM

Approximately twenty-two percent of flights in U.S. airspace are already conducted by aircraft that have been approved for RVSM operations. Approximately 2,600 aircraft of U.S. registry have already been FAA-approved for RVSM operations under the existing RVSM regulation. Many U.S. operators have obtained RVSM approval for these aircraft so they can be flown in airspace outside the U.S. where RVSM has been implemented. Aircraft that have been approved for RVSM are currently approved for RVSM operations in any area of the world where RVSM is applied.

Developing of RVSM Programs

Rising traffic volume and fuel costs, which made flight at fuel-efficient altitudes a priority for operators, sparked an interest in the early 1970's in implementing RVSM above FL 290.

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In April 1973, the Air Transport Association of America (ATA) petitioned the FAA for a rule change to reduce the vertical separation minimum to 1,000 feet for aircraft operating above FL 290. The petition was denied in 1977 in part because (1) aircraft altimeters had not been improved sufficiently, (2) improved maintenance and operational standards had not been developed, and (3) altitude correction was not available in all aircraft. In addition, the cost of modifying nonconforming aircraft was prohibitive. The FAA concluded that granting the ATA petition at that time would have adversely affect safety.

Forums for Development of RVSM Policy and Procedures

The FAA recognized, however, the potential benefits of RVSM and in the 1980's, focused its efforts and resources on establishing the criteria and policies that would allow RVSM to be implemented safely. In conjunction with this effort, the FAA also considered the economic feasibility of RVSM. These efforts were considered in the following national and international forums.

1. *FAA Vertical Studies Program.* This program began in mid-1981, with the objectives of collecting and analyzing data on aircraft performance in maintaining assigned altitude, developing program requirements to reduce vertical separation, and providing technical and operational representation on the various working groups studying the issue outside the FAA.

2. *RTCA Special Committee (SC)–150.* RTCA, Inc., (formerly Radio Technical Commission for Aeronautics) is an industry organization in Washington, D.C., that addresses aviation technical requirements and concepts and produces recommended standards. When the FAA hosted a public meeting in early 1982 on vertical separation, it was recommended that RTCA be the forum for development of minimum system performance standards for RVSM. RTCA SC–150 served as the focal point for the study and development of RVSM criteria and programs in the United States from 1982 to 1987, including analysis of the results of the FAA Vertical Studies Program.

3. *International Civil Aviation Organization (ICAO) Review of the General Concept of Separation Panel (RGCSP).* In 1987, the FAA concentrated its resources for the development of RVSM programs in the ICAO RGCSP. The U.S. delegation to the ICAO RGCSP used the material developed by RTCA SC–150 as the foundation for U.S. positions and plans on RVSM criteria and programs. The panel's major conclusions were:

- RVSM is technically feasible without imposing unreasonably demanding technical requirements on the equipment.
- RVSM provides significant benefits in terms of economy and enroute airspace capacity.
- Implementation of RVSM on either a regional or global basis requires sound operational judgment supported by an assessment of system performance based on: Aircraft altitude-keeping capability, operational considerations, system performance monitoring, and risk assessment.

The RGCSP developed the ICAO Manual on Implementation of a 300-meter (1,000-foot) Vertical Separation Minimum Between FL 290 and FL 410 (inclusive) (ICAO Document 9574) that was published in 1992. This document provided the FAA with the basis for: The development of detailed aircraft and operator approval documents, planning for required RVSM implementation tasks, and developing programs to monitor aircraft performance and system safety.

4. *North Atlantic System Planning Group (NATSPG) and the NATSPG Vertical Separation Implementation Group (VSIG).*

After developing and reviewing cost/benefit studies, the NATSPG (of which the FAA is a member) concluded in 1991 that RVSM should be implemented in North Atlantic Minimum Navigation Performance Specification airspace and that working groups and programs should be established to implement it in 1996–1997. The NATSPG, thus, became the first ICAO regional group to develop the technical and operational programs to implement RVSM.

To pursue implementation, the NATSPG established the VSIG in June 1991 to take the necessary actions to implement RVSM in the NAT. These actions included:

- Aircraft and Operator Approval. The Operations and Airworthiness Group (chaired by the FAA) developed a detailed document containing the criteria and process to approve aircraft and operators for RVSM operations. The document addressed issues related to aircraft airworthiness, maintenance, and operations. The ICAO regional implementation groups and civil aviation authorities world-wide have adopted this document as the basis for aircraft airworthiness and operations programs.
- Safety Analysis and Monitoring Aircraft Altitude-keeping performance. The VSIG provided the forum to develop criteria and process for safety analysis and for the development and use of two different, but complementary, monitoring systems to assess aircraft altitude-keeping in-service performance. These systems are the ground-based Height Monitoring Unit (HMU) and the Global Position System Monitoring System (GMS). The NATSPG used these systems to observe the performance of individual airframes and groups of aircraft with the objective of confirming that the approval process was uniformly effective and that the airspace system was safe.
- Air Traffic Policy and Procedures. The NATSPG Air Traffic Management Group developed ATC procedures for RVSM, conducted simulation studies to assess the effect of RVSM on ATC, and developed documents to address ATC issues.

Policy, procedures and documents developed in the NATSPG forum are used as the basis for RVSM program implementation worldwide.

Safety Observed in RVSM Operations

Application of 1,000-foot Vertical Separation Below FL 290. Before discussing the safety observed in the application, over the past several years, of 1,000-foot vertical separation at and above FL 290, it is important to note that 1,000-foot vertical has been applied safety below FL 290 for over 40 years. The 1,000-foot vertical separation of aircraft below FL 290 is an ICAO separation standard and since the 1960's, it has been applied below FL 290 worldwide, including in the U.S. The RVSM program enables the use of 1,000-foot vertical separation to be expanded above FL 290 to FL 410.

Existing and Proposed Regulations: Criteria for Aircraft and Operator Approval

Part 91, § 91.706 (Operations within airspace designated as Reduced Vertical Separation Minimum Airspace) and part 91, Appendix G (Operations in Reduced Vertical Separation Minimum (RVSM) Airspace) contain the FAA requirements for aircraft and operator approval for RVSM operations outside the U.S. They have been applied to operations outside the U.S. since they were published in April of 1997. A major objective of the proposed part 91 amendment is to add § 91.180 (Operations Within Reduced Vertical Separation Minimum Airspace in the United States) to make the standards of Appendix G applicable to RVSM operations within the U.S.

The aircraft and operator approval requirements published in part 91, Appendix G, and European Joint Airworthiness Authorities (JAA) RVSM documents was developed in a joint FAA/JAA working group. In that group, technical and operational experts from the FAA, the European Joint Airworthiness Authorities (JAA), the aircraft manufacturers, and pilot associations developed detailed criteria and procedures for RVSM approval using the ICAO RVSM Manual (Doc 9574) as the starting point. These FAA and JAA regulations and standards have been used worldwide for RVSM aircraft and operator approval.

Section 91.706 requires that aircraft and operators meet the standards of Appendix G and receive authorization from the Administrator prior to flying in airspace where RVSM is applied. Appendix G contains requirements in eight sections:

1. Definitions
2. Aircraft Approval
3. Operator Authorization
4. RVSM operations (flight planning into RVSM airspace)
5. Deviation Authority Approval
6. Reporting Altitude-keeping Errors
7. Removal or Amendment of Authority
8. Airspace Designation

The criteria and procedures published in FAA Appendix G and in JAA and ICAO documents have produced aircraft performance that is significantly better than the minimum required for safety in the ICAO RVSM Manual.

Observed Altitude-Keeping Performance

For the past several years, the FAA, in conjunction with the NATSPG, has evaluated (or monitored) the altitude-keeping performance of RVSM approved aircraft. The GMS and the ground-based HMU have been used to observe aircraft performance in both oceanic and continental airspace.

Altimeter system error (ASE) is the major component of aircraft altitude-keeping performance. The ASE is the difference between the pressure altitude displayed on the altimeter (assuming a correct altitude barometric setting) and the true pressure altitude.

Measurements have shown that the altitude-keeping performance of the population of aircraft approved for RVSM operations is significantly better than the minimum requirement established by the ICAO RGCSP in the ICAO RVSM Manual. The ICAO RVSM Manual calls for average or mean ASE for groups of aircraft not to exceed 80 feet and 99.9% of ASE measurements not to exceed 245 feet. To date, over 120,000 measurements of ASE taken for approximately 6,000 airframes has shown that the observed average ASE is −4.69 feet and 99.9% of ASE is within approximately 165 feet.

RVSM Safety Analysis

Over the past several years, the on-going assessment of RVSM risk in various areas worldwide has shown that operational safety is maintained. All sources of aircraft, pilot, and controller error in RVSM operations have been assessed using safety analysis processes. The FAA and other civil aviation authorities have concluded that RVSM operations are safe.

Proposed Implementation Plans and Schedules

Domestic RVSM (DRVSM) Implementation Team

The FAA has established a Domestic RVSM Implementation Team to develop U.S. Domestic RVSM implementation plans and programs. It is the objective of the FAA team to develop and coordinate the DRVSM program and to complete the necessary tasks to implement RVSM in U.S. and Gulf of Mexico airspace.

Proposed DRVSM Implementation Plan

The FAA proposes to implement DRVSM in the airspace of the continguous 48 states, Alaska and Gulf of Mexico airspace where the FAA provides air traffic service in December of 2004 between FL 290–410 (inclusive). When DRVSM is implemented, with limited exceptions described below, to fly in that airspace, civil operators and aircraft must comply with the standards of part 91 Appendix G and the operator must be authorized by the Administrator or, if a foreign operator, the country of registry to conduct RVSM operations. Implementing DRVSM in this manner enhances safety by requiring the aircraft/operator population to be approved to common standards, thus, enabling controllers to apply, in normal operations, a single vertical separation standard. It also enables a significant majority of operators to consistently flight plan, fuel plan and fly RVSM FL's and, therefore to maximize RVSM benefits.

In accordance with Appendix G, Section 5 (Deviation Authority Approval), the FAA proposes to allow the following exceptions to RVSM standards for civil aircraft operating in DRVSM airspace:

- The FAA will accommodate unapproved aircraft conducting air ambulance flights using a Lifeguard call sign as described in the Aeronautical Information Manual.
- Unapproved aircraft may be allowed to climb through RVSM FL's to operate above RVSM airspace at FL 430 and above, traffic permitting.

When such aircraft operate in RVSM aircraft, their lack of RVSM approval status will be displayed to FAA controllers and 2,000-foot vertical or the appropriate lateral or longitudinal separation standard will be applied to them.

Factors Considered in Developing the Implementation Plan

In proposing a FL stratum and implementation date, the FAA has considered the following factors:

- Feasibility of phased implementation
- Timeframe for significant majority of flights to be conducted by approved aircraft
- Justification to avoid further delay of RVSM benefits
- Capability and timeframe for the majority of operators and aircraft to obtain approval
- Options for unapproved aircraft to continue to operate

These implementation factors are discussed below:

Phased implementation. The FAA does not consider phased implementation to be feasible. Prior to reaching this conclusion, the FAA conducted real-time simulations at the William J. Hughes Technical Center to assess the feasibility of implementing RVSM initially between FL 350–390 or between 330–390. In the simulations of these implementation scenarios, the FAA analyzed controller workload, the potential for controller error and the impact on airspace complexity. Observations were made of qualified FAA controllers managing representative air traffic flows in three RVSM airspace scenarios: FL 350–390, FL 350–390, and FL 290–410. The FAA concluded that the FL 290–410 implementation scenario offered significant advantages in that it provided reductions in controller workload, airspace complexity and potential for error. Controllers were required to vector aircraft significantly less frequently and required coordination between air route centers was significantly reduced.

Timeframe for a significant majority of flights to be conducted by RVSM approved aircraft. In preparation for RVSM implementation, the FAA has worked with U.S. operators to establish a timeframe when a significant majority of flights would be conducted by RVSM approved aircraft. The FAA conducted a survey of U.S. operators to determine their plans to schedule and complete RVSM aircraft engineering tasks. The FAA found that many U.S. aircraft and operators have already obtained RVSM approval in order to operate in RVSM

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airspace outside the U.S. In addition, anticipating DRVSM implementation, many operators are planning for completion of RVSM engineering work in late 2004. A significant motivation noted was the desire to accomplish RVSM aircraft work during scheduled maintenance checks to avoid costs associated with special inspections outside the normal maintenance cycle.

The FAA used the operator survey information in combination with data obtained from the Enhanced Traffic Management System (ETMS) to project the percentage of flights to be conducted in domestic airspace in December of 2004 by individual aircraft types. The FAA has projected that by December of 2004 over 90% of flights conducted between FL 290–410 will be conducted by RVSM approved aircraft.

Justification to avoid further delay. The FAA believes that further delay beyond December 2004 would result in an unwarranted loss of benefits. Based on the enhanced capability for aircraft to operate at more fuel-efficient altitudes, the FAA has projected $388 million dollars in fuel savings for the period from December 2004 through calendar year 2005, assuming DRVSM is implemented in December 2004. In addition, as noted previously, the FAA has projected that the addition of six FL's between FL 290–410 would significantly enhance controller flexibility to manage traffic in situations such as weather re-routes and increase the number of aircraft that can traverse a sector. These benefits would be lost if implementation were delayed.

Capability for operators to obtain aircraft approval. First, aircraft certification authorities have approved RVSM aircraft engineering packages for all major aircraft types used in either airline or general aviation operations. Second, Appendix G provides operators with the option of obtaining approval for their aircraft in a non-group or individual airframe status. Third, the FAA is working with Aircraft Service Centers and other organizations that provide RVSM engineering service, as well as operator organizations, to standardize and clarify the aircraft approval process, as necessary. In addition, the FAA will conduct RVSM seminars and enhance the FAA RVSM information network to ensure that operators have ready access to information on the RVSM approval process.

Options for unapproved aircraft to continue to operate. Operators unable or unwilling to obtain RVSM approval for their aircraft by the proposed December 2004 implementation date would still be able to operate at and below FL 280. The FAA recognizes that aircraft operating at and below FL 280 would not be operating at fuel-efficient altitudes. In addition, aircraft that can operate at and above FL 430 would be allowed to climb through to operate above RVSM airspace, traffic permitting. Finally, the FAA will plan to accommodate civilian air ambulance flights conducted by unapproved aircraft operating under a "Lifeguard" call sign. (Guidance on Lifeguard flights is published in the Aeronautical Information Manual).

Specific Airspace Issues

Coordination with Mexico and Canada. The FAA has established contact with representatives from the civil aviation authorities of Canada and Mexico and is coordinating RVSM implementation plans with them. Canadian representatives have informed the FAA that RVSM will be implemented in Northern Canadian Domestic airspace in April 2002, and Canada is planning to implement RVSM implementation in Canadian Southern Domestic airspace at the time that it is implemented in the U.S.

Gulf of Mexico Airspace. The airspace in the Gulf of Mexico for which the FAA provides air traffic services has been included in this proposal. The regulations, at 14 CFR 71.33(c), already designate portions of Houston and Miami Oceanic and Jacksonville Offshore Airspace as Class A airspace "within which domestic ATC procedures are applied." The offshore airspace is treated in the regulations as an extension of the Class A airspace of the continental U.S. In addition, certain routes where RVSM is proposed begin in continental U.S. airspace, cross the Gulf of Mexico and then re-enter continental airspace on the other side. Inclusion of Gulf of Mexico airspace in the proposal will mitigate unwarranted air traffic management complexity and contribute to maximizing benefits to the operators.

Hawaiian Airspace. The airspace of the Hawaiian Islands is surrounded by Pacific Oceanic RVSM airspace. RVSM approved aircraft operate to and from Hawaiian airspace, however, there is currently no plan to require RVSM approval for all aircraft to operate within that airspace. Instead, 1,000-foot vertical separation is applied between FL 290–410 when two passing aircraft are both RVSM approved and 2,000-foot vertical or horizontal separation is applied if either of the passing aircraft is not RVSM approved.

Exploration of Tactical RVSM

The FAA is exploring allowing controllers to apply "tactical RVSM" prior to the proposed DRVSM implementation date of December 2004. Prior to December 2004, RVSM approval would not be mandatory for operation in U.S. domestic airspace. Application of tactical RVSM would allow controllers to use 1,000-foot vertical separation between FL 290–410, at controller's discretion, if both passing aircraft are RVSM approved. In this situation, the approval status would be displayed to the controller. This provision has been used successfully in Europe since April 2001.

DRVSM Aircraft and Operator Approval Factors

The intent of this rulemaking is to expand the application of the RVSM aircraft and operator approval requirements to all aircraft operating in the U.S. and Gulf of Mexico airspace. Currently, 14 CFR 91.706 addresses RVSM operations for U.S. registered civil aircraft outside of the U.S. The FAA proposes to locate new RVSM § 91.180 in part 91, subpart B (Flight Rules). Section 91.180 would, therefore, apply to RVSM operations conducted in the NAS. The new section instructs domestic operators and their aircraft to comply with part 91, Appendix G and obtain an authorization from the Administrator prior to conducting RVSM operations. In addition, proposed § 91.180 would provide that foreign operators and their aircraft would comply with appendix G and be authorized by the country of registry prior to conducting flight in RVSM airspace of the U.S.

Eligibility of Aircraft Approved for RVSM Operations Outside the U.S. Aircraft that have already received RVSM airworthiness approval in accordance with Appendix G that have been used in RVSM operations outside the U.S. are eligible for RVSM operations within the NAS. Prior to conducting NAS RVSM operations, however, operators will be required to adopt RVSM operational policies and procedures unique to the U.S. for pilots and, if applicable, dispatchers.

TCAS II Version 7.0 Requirement. A significant majority of the aircraft that operate in the domestic U.S. at and above flight level 290 area already required to be equipped with TCAS II, Version 6.04a. Requirements for aircraft TCAS equipage are published in 14 CFR parts 121, 125, 129 and 135. Approximately 85% of domestic operations above FL 290 are conducted by large jet aircraft operating under parts 121 or 129. These parts call for aircraft equipage with an approved TCAS II if the aircraft has seating capacity of more than 30 seats. FAA Airworthiness Directives published in 1994 mandate TCAS II, Version 6.04a for TCAS II installations.

Part 91, appendix G, section 2, paragraph (g) states that "after March 31, 2002, unless otherwise authorized by the Administrator, if you operate an aircraft that is equipped with TCAS II in RVSM airspace, it must be a TCAS II that meets TSO C–119b (Version 7.0), or a later version." This provision was adopted because Version 7.0 incorporates Traffic Alert and Resolution Advisory thresholds that mitigate unnecessary alerts when 1,000-foot vertical separation is applied above FL 290. Version 7.0 generally requires a software modification that is not a major system modification. The cost for this modification has been accounted for in the cost-benefit analysis. Operators of aircraft equipped with TCAS II must consider this provision when planning for the proposed DRVSM implementation date of December 2004.

Eligibility of turbo-propeller Aircraft Operated Under Part 91 and Equipped with a single RVSM Compliant Altimeter. In the proposed amendment, the FAA proposes operational and airworthiness criteria for turbo-propeller aircraft operated under part 91 to conduct RVSM operations when equipped with a single RVSM compliant altimeter. The FAA believes that aircraft can be used in RVSM operations conducted under part 91 in US operations for the following reasons:

Frequency of Single Altimeter Operations. General aviation (part 91) operations account for approximately ten percent of the total flights in the U.S. between FL 290–410. Of these flights, only a small percentage of flights operating above FL 290 would be conducted by turbo-propeller aircraft equipped with a single RVSM compliant altimeter.

NAS Communications/Navigation/Surveillance (CNS) capabilities. Direct pilot-controller communications, a robust navigation aid structure, and ATC radar surveillance are available in US domestic airspace. ATC will have the CNS tools to aid a pilot experiencing a failure or malfunction of the primary altimeter in exiting RVSM airspace, to apply the appropriate separation to the aircraft, and to aid the pilot in diverting to an alternate airport, if necessary.

Continued Airworthiness. Aircraft approved for RVSM operations must be maintained under the Continued airworthiness requirements of appendix G, section 3 (Operator Authorization).

Altitude-keeping Performance Monitoring. Part 91 aircraft have participated in the altitude-keeping performance monitoring program established for RVSM implementation in oceanic operations and have demonstrated satisfactory RVSM performance. Aircraft equipped with a single RVSM compliant altimeter will participate in the monitoring program for domestic RVSM.

Loss of function and integrity. The single RVSM compliant altimeter/second or stand by altimeter installation detailed in the proposed Appendix G amendment would meet airworthiness requirements for availability and integrity of the RVSM altitude function.

Air Traffic Control Factors Related to RVSM Operations

RVSM implementation will require that certain air traffic policies and procedures be implemented to address issues related to the introduction of a reduced vertical separation standard. Policies and procedures will be established for the following:

- As discussed previously, unapproved aircraft will be allowed to climb or descend through RVSM airspace to operate above or below it, traffic permitting.
- Limited accommodation will be made for unapproved aircraft conducting air ambulance flights under a "Lifeguard" call sign.
- In areas when and where mountain wave is active, ATC will establish policies for the use of appropriate separation.

Wake turbulence events experienced in the past five years of RVSM operations have shown wake turbulence at RVSM FL's to be generally moderate or less than moderate. FL changes or aircraft lateral path offsets have been shown to mitigate the effect of wake turbulence.

Proposed Amendment to Part 91, Appendix G, Section 5 (Deviation Authority Approval). First, the FAA would only grant authority to deviate from the requirements of part 91 § 91.706 or the proposed § 91.180 in limited circumstances. The FAA may choose not to grant a deviation if the operator has elected not to equip its aircraft for RVSM operations because the presence of an unapproved aircraft could affect traffic flow and increase controller workload. Second, the FAA proposes to require the operator to submit an appropriate request in a time and manner acceptable to the Administrator, as published in the Aeronautical Information Manual and appropriate FAA orders. Section 5 currently calls for the operator to submit a request at least 48 hours in advance. However, several years of RVSM experience has shown that air traffic has been able, in certain circumstances, to accommodate the operation of unapproved aircraft with less lead-time. The proposed wording would allow the FAA to prescribe more appropriate policy when warranted by operational circumstances.

Proposed Amendment to VFR and IFR Cruising Altitudes At and Above FL 290. The FAA proposes to revise part 91, § 91.159 (VFR cruising altitude or flight level) and § 91.179 (IFR cruising altitude or flight level). The proposed revision to § 91.159 would eliminate reference to VFR FL's above FL 180. Airspace above FL 180 is established as Positive Control Airspace where aircraft must maintain the altitude or flight level assigned by ATC.

The proposed revision to § 91.179 would revise the altitudes or FL's that are considered to be appropriate for IFR flight in uncontrolled airspace above FL 290 in airspace where RVSM is implemented. In accordance with RVSM policy, this revision would provide FL's that are separated by 1,000 feet vertically based on the direction of flight.

Factors Related to Safety Analysis and Monitoring of Altitude-keeping Performance in the Pre-and Post Implementation Phases

Necessity for Monitoring Programs. DRVSM implementation would require RVSM standards to be applied to the thousands of aircraft and operators that operate above FL 290 in domestic airspace. In order to assess the uniform effectiveness of aircraft and operator actions and identify adverse trends that may arise, the FAA would establish a DRVSM monitoring program similar to those established for oceanic RVSM implementation.

Monitoring Experience. The altitude-keeping performance of RVSM approved aircraft has generally been significantly better than the minimum required by RVSM standards, however, in the past five years of RVSM operations, a few individual airframes and aircraft groups have demonstrated altitude-keeping that has not met RVSM standards. A major purpose of monitoring is to identify performance that does not meet RVSM standards and, when necessary, to ensure that operators and/or manufacturers take appropriate corrective actions.

Justification for Sampling Process and Monitoring After Approval Granted. Altitude-keeping performance monitoring began in 1996. Since that time, the FAA and other authorities responsible for monitoring have obtained approximately 120,000 measurements for appropriately 6,000 individual airframes and 80 individual

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aircraft types. To date only seven airframes have been observed exhibiting performance that exceeded RVSM standards. In addition, altimetry system error for the aircraft population as a whole has been demonstrated to be significantly better than the minimum standards. These results have given the FAA and other authorities confidence in RVSM aircraft engineering processes. Based on the monitoring results, authorities have adopted the position that monitoring may take the form of a sampling of newly approved airframes and, for most aircraft, it was not necessary for operators to complete monitoring prior to RVSM operating authority being granted.

Systems Developed to Monitor Aircraft Performance. Two systems have been deployed to perform monitoring for RVSM purposes. One is the ground-based Height Monitoring Unit (HMU). The other is the GPS-based Monitoring Unit (GMU). HMU's are now placed in strategic locations in Canada, the UK and Europe so that a large percentage of flights will be observed. At least three FAA HMU's will be deployed by the FAA in the U.S. for the same purpose. Only aircraft that fly in close proximity to the HMU location can be observed.

To obtain performance measurements with the GMU system, a GMU unit is temporarily installed, in accordance with appropriate certification documents, on an aircraft for a flight. The unit contain a GPS to obtain the geometric height of the aircraft in flight. This data is processed after the flight by the FAA Technical Center to obtain measurement of ASE, Total Vertical Error (TVE) and Assigned Altitude Deviation (AAD).

Operators have had and will have for DRVSM, the options of overflying an HMU at no cost or contracting for service to have the GMU installed on the aircraft and data processed.

Operators have been notified of monitoring program processes and procedures in the following formats: letters to State authorities issued by ICAO Regional Offices, NOTAMS, FAA and JAA guidance and the FAA RVSM website.

Pre-Implementation Programs

In the 2–3 year period leading to RVSM implementation, operators will begin to obtain RVSM airworthiness approval for aircraft that have not already been approved for RVSM. During this period, the FAA will review aircraft operations with the overall objections of:

1. Confirming that operators are conducting RVSM operations safely.
2. Confirming through observation (monitoring) that aircraft approved for RVSM operation demonstrate altitude-keeping performance that meets RVSM standards. This will be achieved by:
   - Identifying and eliminating any causes of out-of-tolerance altitude-keeping performance, in general or for specific aircraft groups; and
   - Monitoring a sample of RVSM-approved aircraft and operators that is representative of the total population.
3. Verifying that operational procedures adopted for RVSM are effective and appropriate.
4. Confirming that the altitude-monitoring program is effective.

Post Implementation Programs

After DRVSM is implemented, the FAA will continue to:

1. Collect altitude-keeping performance data relying primarily on the ground-based HMU.
2. Monitor to confirm that safety goals are being met.
3. Monitor to establish that there are no unresolved adverse trends in DRVSM operations.

Conclusion

The FAA has examined the success of existing RVSM programs, the costs and benefits for DRVSM implementation, the measures to be taken to protect operational safety, the factors bearing on the implementation schedule and implementation scenario and the factors related to aircraft and operator approval and air traffic programs. The FAA proposes that RVSM should be implemented between FL 290–410 (inclusive) in December 2004.

Regulatory Impact Analysis Summary

Executive Order 12866 directs federal agencies to promulgate new regulations or modify existing regulations after consideration of the expected benefits to society and the expected costs. Each federal agency shall assess both the costs and the benefits of proposed regulations while recognizing that some costs and benefits are difficult to quantify. A proposed rule is promulgated only upon a reasoned determination that the benefits of the proposed rule justify its costs.

The order also requires federal agencies to assess whether a proposed rule is considered a "significant regulatory action". The Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. The Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. Finally, Public Law 104–4 requires federal agencies to assess the impact of any federal mandates on state, local, tribal governments, and the private sector.

In conducting these analyses, the FAA has determined that this rule: (1) Generates benefits that justify its costs for the significant majority of U.S. operators and is "a significant regulatory action" as defined in the Executive Order; (2) is significant as defined in Department of Transportation's Regulatory Policies and Procedures; (3) does not have a significant impact on a substantial number of small entities; and (4) does not constitute a barrier to international trade. These analyses, available in the docket, are summarized below.

This proposal expands Reduced Vertical Separation Minimum (RVSM) operations to aircraft operating between FL 290–410 (inclusive) in the airspace of the 48 contiguous States of the U.S., Alaska and the FIR's in the Gulf of Mexico where the FAA provides air traffic services. The benefits of this proposed rulemaking are: (1) An increase in the number of available flight levels; (2) enhanced airspace capacity; (3) permits operators to operate more fuel/time efficient routes and altitudes; and (4) enhanced air traffic controller flexibility by increasing the number of available flight levels, while maintaining an equivalent level of safety.

The FAA estimates that this proposed rule would cost U.S. operators $634.0 million for the fifteen-year period 2002–2016 or $539.9 million, discounted. For the purposes of this cost analysis, the FAA assumed that operators would choose to upgrade all of their aircraft to meet RVSM standards. Operators of non-RVSM approved aircraft would, however, retain the option of flying above or below RVSM airspace. Benefits would begin accruing in December 2004. Estimated benefits, based on fuel savings for the commercial aircraft fleet over the years 2004 to 2018, would be $5.8 billion or discounted at $2.9 billion.

In addition to fuel savings, many non-quantifiable or value-added benefits would result from the implementation of RVSM in domestic U.S. airspace. Input from air traffic managers, controllers, and operators has identified numerous additional benefits.

Through implementation of RVSM in the NAT and PAC regions, operators and controllers have realized some additional benefits. The major additional benefits as identified by air traffic managers and controllers are:

- Enhanced capacity
- Decreased operational errors in these regions
- Reduction of user-requested off course climbs for altitude changes
- Improved flexibility for peak traffic demands
- More options in deviating aircraft during period of adverse weather.

The benefits outlined above for RVSM in the NAT and PAC regions ae anticipated in domestic U. S. airspace. There should be expected efficiencies through reduced airspace complexity, increased flight levels, and fewer altitude changes with crossing traffic.

Operators can also expect enhanced operating efficiency and the potential for decreased departure delays due to improved airspace efficiency. Specific benefits cited by aircraft operators are:

- Decreased flight delays
- Improved access to desired flight levels
- Reduced average flight times
- Increased likelihood of receiving a clearance for weather deviations
- Seamless, transparent, and harmonious operations between the NAT and WATRS regions
- Consistent procedural environment throughout the entire flight
- Reduced impact of adverse weather by permitting aircraft deviations to other airways without any efficiency loss.

Implementation of RVSM in U.S. domestic airspace should increase user satisfaction. The benefits described in this section are compelling in number and operational impact. These benefits are also important in that they are enjoyed both by air traffic and aircraft operators.

Analysis of Alternatives

This NPRM is a "significant regulatory action" as defined by Executive Order (E.O.) 12866 (Regulatory Planning and Review) because this NPRM would impose costs exceeding $100 million annually. The E.O. requires that agencies promulgating economically significant rules provide an assessment of feasible alternatives to their respective rulemaking actions. In addition, the E.O. requires that an explanation of why the final rule, which is significant, is preferable to the identified potential alternatives. The FAA identified and considered three alternatives to the proposed rule.

Alternative One—The Status Quo

The alternative would maintain the 2,000-foot separation above FL 290 and would avoid the equipment and testing requirements of this NPRM, which impose a cost of $634.0 million ($539.9 million, discounted) from 2002 to 2004 on the aviation industry and the FAA. But maintaining the status quo also means that aviation industry would not receive any of the cost-savings afforded by Domestic RVSM.

As mentioned earlier, the cost-savings afforded by this NPRM are estimated to be $5.8 billion ($2.9 billion, discounted) in fuel savings over the same period. Since the foregone cost-savings of the alternative greatly exceed the avoided NPRM costs, the FAA rejects this alternative in favor of the proposed rule.

Alternative Two—Implement Domestic RVSM Without the Equipment and Testing Requirements

This alternative would allow RVSM between FL 290 and FL 410 without requiring aircraft system engineering to 14 CFR part 91, appendix G. This alternative would allow the aviation industry to receive the estimated $5.8 billion ($2.9 billion, discounted) in fuel savings while the aviation industry and the FAA avoids the NPRM costs of $634.0 million ($539.9 million, discounted). Unfortunately, this is not a viable alternative due to safety considerations.

Studies by the FAA and European civil aviation authorities have shown that many aircraft that have not been calibrated to the proposed RVSM standards exhibit altitude-keeping errors that exceed the Standards established for RVSM safety. In these studies, non-RVSM calibrated aircraft were observed with errors of up to 700 feet. Under RVSM aircraft are allowed to operate with only 1,000 feet vertical separation. If non-RVSM calibrated aircraft were allowed to operate with only 1,000 feet vertical separation, there could be a 400 foot altitude overlap in altitude-keeping errors for two non-RVSM calibrated aircraft operating in close proximity to each other. Thus, there is an increase risk of midair collisions if non-RVSM calibrated aircraft are allowed to operate under RVSM. Sine there are some aviation safety concerns with this alternative, this alternative is also rejected in favor of the proposed rule.

Alternative Three—Delay Implementation of the RVSM by Seven or Eight Years

This alternative would delay implementation of the proposed rule by seven or eight years. This would allow the costs to be spread over a longer period of time so that costs in any one-year would be below $100 million. This would make the proposed rule no longer economically significant under E.O. 12866. The cost of this alternative would still be the same as the cost of the proposed rule, although the discounted costs would be lower than the discounted costs of the proposed rule. However, if implementation of the rule is delayed by seven or eight years, the estimated cost-savings would be reduced by $2.0 billion or $2.4 billion, respectively ($1.5 billion, discounted or $1.8 billion, discounted, respectively). This is a considerable amount of cost-savings to forego in order for the FAA to avoid issuing an economically significant rule. For this reason, this alternative is rejected in favor of the proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable status, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation. To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis (RFA) as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and an RFA is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

Only two small operators were found to have significant costs of compliance. This is not a substantial number of small entities that would be significantly affected by this proposed rulemaking. Therefore, the FAA certifies that this proposed rulemaking does not have a significant impact on a substantial number of small entities. The FAA requests comments from small operators affected by this rulemaking concerning the findings of this regulatory flexibility determination.

International Trade Impact Statement

The FAA has assessed the potential effect of this rulemaking and has determined that it would impose the

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same costs on domestic and international entities and thus has a neutral trade impact.

Federalism Implications

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Paperwork Reduction Act of 1995

This proposal contains the following new information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Department of Transportation has submitted the information requirements associated with this proposal to the Office of Management and Budget for its review.

Title: Reduced Vertical Separation Minimum.

Summary: This proposal requires aircraft operators seeking operational approval to conduct RVSM operations within the 48 contiguous States of the United States (U.S.), Alaska and that portion of the Gulf of Mexico where the FAA provides air traffic services to submit application to their Certificate-Holding District Office (CHDO).

Use of: This proposal would support the information needs of the operator's CHDO as they register RVSM approved airframes in the FAA RVSM Approvals Database. When operators complete airworthiness, continued airworthiness and operations program requirements, the CHDO grants operational approval.

Respondents: The 2,275 likely respondents to this proposed information requirement are scheduled and non-scheduled commercial air carriers, and corporations or individuals operating RVSM-capable aircraft.

Frequency: The FAA estimates that this proposed information requirement would be a one-time submission of application for operational approval. Thus, the frequency of an annual requirement is zero.

Annual Burden Estimate: This proposal would result in a one-time recordkeeping and reporting burden. The proposed rule, while imposing additional reporting and recordkeeping requirements on those operators, would have the following impacts:

- The estimated preparation time for an operator to complete and submit an application for operational approval to their CHDO would be 16 hours.
- All pilots would need to be trained to ensure familiarity with RVSM operations. Each organization would have a navigation specialist prepare a document. The FAA anticipates that it would take this specialist approximately 14 hours to prepare the document; and
- Each pilot would have to receive a copy of the 4-page training document. To be conservative, the FAA is assuming that each pilot's document has been photostated. Each organization would need to spend 30 hours on paperwork at a cost of approximately $950 each. The total hours and costs sum to 68,250 hours and $2,147,052.40.

The FAA estimates that aircraft upgrade costs for this proposed rule would cost U.S. operators $578.3 million. While it is impossible to accurately isolate the equipment costs associated with these upgrade costs, the FAA estimates that approximately 50% or $289.2 million of the upgrade costs will be due to equipment costs. In addition, all aircraft equipped with TCAS version 6.04 would be required to upgrade to TCAS II Version 7.0 at a cost of $45.6 million. The total equipment costs for this proposed rule are estimated at $334.8 million.

The regulation will increase paperwork for the Federal government: The FAA assumes that it would take either an avionics inspector or an operations inspector 8 hours to process each applicant submission. The time and cost to the Federal government for processing 2,275 application packages is 18,200 and $981,162.00.

The FAA is soliciting comments to—(1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) evaluate the accuracy of the agency's estimate of the burden; (3) enhance the quality, utility, and clarity of the information to be collected; and (4) minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Individuals and organizations may submit comments on the information collection requirement by July 9, 2002, and should direct them to the address listed in the **ADDRESSES** section of this document.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register**, after the Office of Management and Budget approves it.

Unfunded Mandates Reform Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments in the aggregate, or by the private sector; such as a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

International Civil Aviation Organization and Joint Aviation Requirements

In keeping with U.S. obligations under the Convention on ICAO, it is FAA policy to comply with ICAO Standards and Recommended Practices (SARP) to maximum extent practicable. The operator and aircraft approval process was developed jointly by the FAA and the JAA under the auspices of NATSPG. The FAA has determined that this amendment does not present any difference.

Environmental Analysis

FAA Order 1050.1D defines FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with FAA Order 1050.1D, appendix 4, paragraph 4(j), regulations, standards, and exemptions (excluding those, which if implemented may cause a significant impact on the human environment) qualify for a categorical exclusion. The FAA proposes that this rule qualifies for a categorical exclusion because no significant impacts to the environment are expected to result from its finalization or implementation.

Energy Impact

The energy impact of this proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Public Law 94–163, as amended (42 U.S.C. 6362). It has been determined that this proposed rule is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 14 CFR Part 91

Air-traffic control, Aircraft, Airmen, Airports, Aviation safety. Reporting and record-keeping requirements.

The Proposed Amendment

For the reasons discussed in the preamble, the Federal Aviation Administration proposes to amend part 91 of Title 14 of the Code of Federal Regulations (14 CFR Part 91) as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528,–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

* * * * *

Subpart B—Flight Rules

1. Amend § 91.159 by revising paragraph (b) to read as follows and by removing paragraph (c):

* * * * *

§ 91.159 VFR cruising altitude or flight level.

* * * * *

(b) When operating above 18,000 feet MSL, maintain the altitude or flight level assigned by ATC.

* * * * *

2. Amend § 91.179 by revising paragraph (b)(3), introductory text, and adding a new paragraph (b)(4) to read as follows:

§ 91.179 IFR cruising altitude or flight level.

* * * * *

(b) *In uncontrolled airspace.* * * *

(3) When operating at flight level 290 and above in non-RVSM airspace, and—

* * * * *

(4) When operating at flight level 290 and above in airspace designated as Reduced Vertical Separate Minimum (RVSM) airspace and—

(i) On a magnetic course of zero degrees through 179 degrees, any odd flight level, at 2,000-foot intervals beginning at and including flight level 290 (such as flight level 290, 310, 330, 350, 370, 390, 410); or

(ii) On a magnetic course of 180 degrees through 359 degrees, any even flight level, at 2000-foot intervals beginning at and including flight level 300 (such as 300, 320, 340, 360, 380 or 400).

3. Add section 91.180 to subpart B to read as follows:

* * * * *

§ 91.180 Operations within airspace designated as Reduced Vertical Separation Minimum airspace.

(a) Except as provided in paragraph (b) of this section, no person may operate a civil aircraft in airspace designated as Reduced Vertical Separation Minimum (RVSM) airspace unless:

(1) The operator and the operator's aircraft comply with the minimum standards of appendix G of this part; and

(2) The operator is authorized by the Administrator of the country of registry to conduct such operations.

(b) The Administrator may authorize a deveration from the requirements of this section.

4. Amend Appendix G as follows:

a. Amend Section 2 by revising paragraph (c)(1) and paragraph (h) and adding a new paragraph (i).

b. Amend Section 5 by revising the introductory text; redesignating paragraph (2) as paragraph (a) and by revising newly redesignated (a);

c. Amend Section 8 by adding new paragraphs (d) and (e).

The revisions and additions read as follows:

Appendix G To Part 91—Operations in Reduced Vertical Separation Minimum (RVSM) Airspace

Section 2. Aircraft Approval

* * * * *

(c) Altitude-keeping equipment: All aircraft. * * *

(1) The aircraft must be equipped with two operational independent altitude measurement systems that meet the requirements of paragraphs (d), (e) or (f), as appropriate, unless the aircraft is approved and operated in accordance with the provisions of paragraph (h) of this section.

* * * * *

(h) Turbo-propeller Aircraft Operated Under Part 91 Equipped With a Single RVSM Compliant Altitude Measurement System. Such aircraft will be considered eligible for RVSM operations conducted under part 91 within the airspace of the U.S. and within the airspace of foreign countries that authorize such a provision, provided that:

(1) Altimeters are installed in the aircraft in accordance with the provisions of part 23 or part 25, as appropriate; and

(2) The Administrator finds that at least one of the installed altitude measurement systems meets the standards for altimetry system error containment detailed in paragraphs (d), (e), or (f), as appropriate, of this section; and

(3) A second altitude measurement system is installed and the pilot provided with a means (such as correction cards) to correct for the inaccuracy in that altimeter when operating in RVSM airspace; and

(4) Procedures are established for pilots to:

(1) Use the appropriate means (e.g., correction cards), after initial level off, to compare the accuracy of the RVSM compliant altitude measurement system to the second system; and

(ii) Report as soon as practical to ATC any malfunction of the installed RVSM compliant altimeter occurring in flight that would prevent the aircraft from maintaining altitude to the degree of accuracy required for RVSM operations.

(i) If the Administrator finds that the applicant's aircraft complies with this section, the Administrator will notify the applicant in writing.

* * * * *

Section 5. Deviation Authority Approval

The Administrator may authorize an aircraft operator to deviate from the requirements of § 91.180 or 91.706 for a specific flight in RVSM airspace if that operator has not been approved in accordance with Section 3 of this appendix if:

(a) The operator submits a request in a time and manner acceptable to the Administrator; and

* * * * *

Section 8. Airspace Designation

* * * * *

(d) *RVSM in the United States.* (1) RVSM may be applied in the airspace of the 48 contiguous states and Alaska, including that airspace overlying the waters within 12 nautical miles of the coast.

(e) *RVSM in the Gulf of Mexico.* (1) RVSM may be applied in the Gulf of Mexico in the following areas: Houston Oceanic ICAO FIR, Miami Oceanic ICAO FIR, and the Jacksonville Offshore Airspace.

Issued in Washington, DC, on May 6, 2002.

James J. Ballough,

Director, Flight Standards Service.

[FR Doc. 02–11704 Filed 5–7–02; 12:00 pm]

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Part VI

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Federal Aviation Administration

14 CFR Parts 91, 121, and 139
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 91, 121, and 139

[Docket No. TSA–2002–11602; Amendment Nos. 91–274; 121–275; 139–25]

RIN 2110–AA03

Civil Aviation Security Rules

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule, technical amendment.

SUMMARY: The Federal Aviation Administration (FAA) is making minor technical changes to a final rule published in the **Federal Register** on February 22, 2002, effective February 17, 2002. That final rule transferred certain FAA regulations to the Transportation Security Administration (TSA) and removed parts 107, 108, 109, 191, and Special Federal Aviation Regulation (SFAR) No. 91 from title 14 of the Code of Federal Regulations. The final rule, however, did not make conforming amendments to several cross-references to parts 107 and 108 appearing elsewhere in the FAA's regulations. This technical amendment conforms the cross-references to parts 107 and 108. These changes are not substantive in nature and will not impose any additional burden or restriction on persons or organizations affected by these regulations.

EFFECTIVE DATE: May 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mardi Thompson, Transportation Security Administration, 400 Seventh Street SW., Washington, DC 20590; telephone 202–493–1227.

SUPPLEMENTARY INFORMATION:

Background

The September 11, 2001, terrorist attacks and the potential for future attacks led Congress to enact the Aviation and Transportation Security Act, Public Law 107–71, November 19, 2001, which established the TSA as an administration within the Department of Transportation. On February 22, 2002, the FAA published in the **Federal Register** (67 FR 8340) a document that transferred the regulations on civil aviation security from the FAA to the newly created TSA, and removed parts 107, 108, 109, 191, and SFAR No. 91. However, we did not include conforming amendments to certain cross-references to parts 107 and 108, which are now obsolete. This technical amendment makes the appropriate technical changes to conform obsolete references to parts 107 and 108.

Removal of SFAR No. 95

Two references to part 108 were found in SFAR No. 95 in part 91 of title 14. SFAR No. 95 is a temporary regulation related to a specific event. SFAR No. 95 concerns Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games, Salt Lake City, Utah, and expired on February 25, 2002. When an SFAR expires, the Office of the Federal Register does not automatically remove it from the regulations. The agency is required to publish an amendment to accomplish the removal of an expired SFAR from the Code of Federal Regulations. Since SFAR No. 95 expired on February 25, 2002, and is no longer in effect, we are removing SFAR No. 95 from the regulations rather than correcting the references.

Immediately Adopted Final Rule

Under the Administrative Procedure Act, an agency does not have to issue a notice of proposed rulemaking when the agency for good cause finds that notice and public procedure are "impracticable, unnecessary, or contrary to the public interest." See 5 U.S.C. 553(b). Because this technical amendment simply corrects inaccurate references, we find that publishing the change for public notice and comment is unnecessary.

The Administrative Procedure Act also states that an agency must publish a substantive rule not less than 30 days before its effective date, except as otherwise provided by the agency for good cause. See 5 U.S.C. 553(d). We find that this technical amendment imposes no additional burden or requirement on the regulated industry, and is not substantive in nature. Moreover, we find that there is good cause to make the change effective immediately upon publication in the **Federal Register**. It is in the public interest to remove these inaccurate references from our regulations without further delay.

Regulatory Analyses

This regulation is editorial in nature and imposes no additional burden on any person or organization. Accordingly, we have determined that the action is not a significant rule under Executive Order 12866 or under Department of Transportation Regulatory Policy and Procedures. No impact is expected to result, and a full regulatory evaluation is not required. In addition, the FAA certifies that the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects

14 CFR Part 91

Afghanistan, Agriculture, Air traffic control, Aircraft, Airmen, Airports, Aviation safety, Canada, Cuba, Freight, Mexico, Noise control, Political candidates, Reporting and recordkeeping requirements.

14 CFR Part 121

Air carriers, Aircraft, Airmen, Alcohol abuse, Aviation safety, Charter flights, Drug abuse, Drug testing, Reporting and recordkeeping requirements, Safety, Transportation.

14 CFR Part 139

Air carriers, Airports, Aviation safety, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Federal Aviation Administration amends parts 91, 121, and 139 of title 14 of the Code of Federal Regulations as follows:

PART 91—GENERAL OPERATING AND FLIGHT RULES

1. The authority citation for part 91 continues to read as follows:

Authority: 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

SFAR No. 95 [Removed]

2. Remove SFAR No. 95 from part 91.

PART 121—OPERATING REQUIREMENTS: DOMESTIC, FLAG, AND SUPPLEMENTAL OPERATIONS

3. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C.106(g), 40113, 40119, 41706, 44101, 44701–44702, 44705, 44709–44711, 44713, 44716–44717, 44722, 46105.

§ 121.575 Alcoholic beverages.

4. Amend § 121.575(b)(2) by removing "§ 108.21" and adding in its place "49 CFR 1544.221".

5. Amend § 121.575(b)(3) by removing "§ 108.11" and adding in its place §49 CFR 1544.219, 1544.221, or 1544.223".

PART 139—CERTIFICATION AND OPERATIONS: LAND AIRPORTS SERVING CERTAIN AIR CARRIERS

6. The authority citation for part 139 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701–44706, 44709, 44719.

§ 139.335 Public protection.

7. Amend § 139.335(b) by removing "part 107 of this chapter" and adding in its place "49 CFR part 1542".

Issued in Washington, DC, on May 3, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 02–11658 Filed 5–9–02; 8:45 am]

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H.R. 861/P.L. 107–169
To make technical amendments to section 10 of title 9, United States Code. (May 7, 2002; 116 Stat. 132)
H.R. 4167/P.L. 107–170
To extend for 8 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 7, 2002; 116 Stat. 133)
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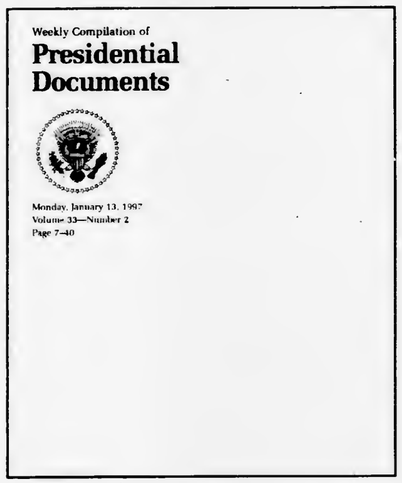
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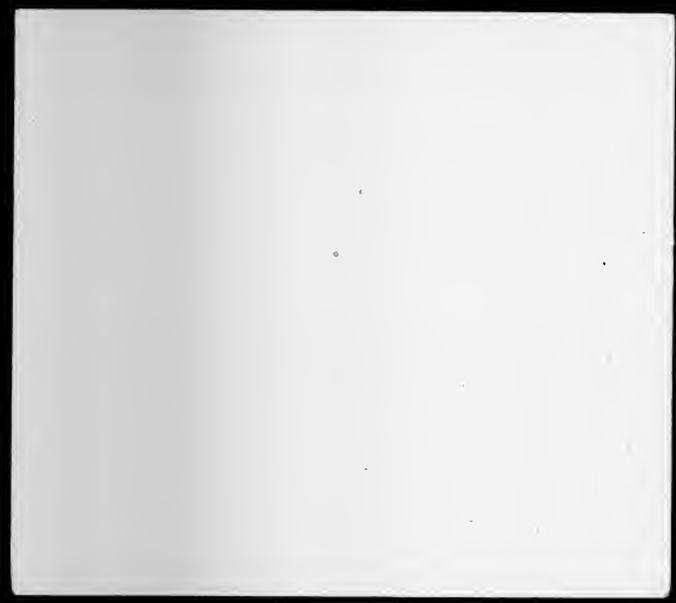
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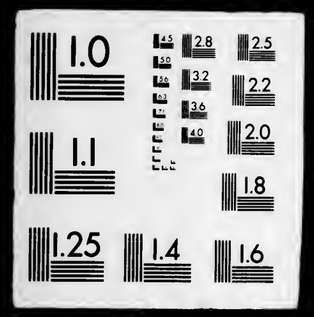
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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01–081–2]

Imported Fire Ant; Addition to Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the imported fire ant regulations by designating as quarantined areas all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee. As a result of that action, the interstate movement of regulated articles from those areas was restricted. The interim rule was necessary in order to prevent the artificial spread of the imported fire ant to noninfested areas of the United States.

EFFECTIVE DATE: The interim rule became effective on January 2, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Charles L. Brown, Program Manager, Invasive Species and Pest Management, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737–1236; (301) 734–4838.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective January 2, 2002, and published in the **Federal Register** on January 9, 2002 (67 FR 1067–1070, Docket No. 01–081–1), we amended the imported fire ant regulations contained in §§ 301.81 through 301.81–10 by adding all or portions of five counties in Arkansas, three counties in Georgia, eight counties in North Carolina, and four counties in Tennessee to the list of quarantined areas in § 301.81–3. As a result of that action, the interstate movement of regulated articles from those areas was restricted.

Comments on the interim rule were required to be received on or before March 11, 2002. We received one comment by that date, from an association of State plant health officials. The comment supported the changes to the quarantine made by the interim rule. It also requested that the Animal and Plant Health Inspection Service consider making various other changes to the imported fire ant regulations in a separate rulemaking. We are considering those recommendations.

Therefore, for the reasons given in the interim rule and in this document, we are adopting the interim rule as a final rule without change.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Orders 12372 and 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 7 CFR part 301 and that was published at 67 FR 1067–1070 on January 9, 2002.

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A–293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

Done in Washington, DC, this 7th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11898 Filed 5–10–02; 8:45 am]
BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–037–1]

Importation of Used Farm Equipment From Regions Affected With Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the regulations concerning foot-and-mouth disease to prohibit the importation of used farm equipment from regions affected with foot-and-mouth disease unless the equipment has been steam-cleaned prior to export to the United States so that it is free of exposed dirt and other particulate matter. We are also providing that cleaned equipment that arrives at the port of arrival with a minimal amount of exposed dirt may, under certain conditions, be cleaned at the port of arrival. This action is necessary to help prevent the introduction of foot-and-mouth disease into the United States.

DATES: This interim rule is effective retroactively to March 31, 2001. We will consider all comments that are postmarked, delivered, or e-mailed by July 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–037–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–037–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body

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of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–037–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS dockets published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Karen James-Preston, Assistant Director, Technical Trade Services Team, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 40, Riverdale, MD 20737–1231; (301) 734–8364.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation of specified animals and animal products into the United States in order to prevent the introduction of various animal diseases, including foot-and-mouth disease (FMD). FMD is a highly communicable viral disease, not found in the United States since 1929, that affects all cloven-hoofed ruminants, especially cattle and swine. The disease is highly communicable and is characterized by fever and blisterlike lesions on the tongue and lips, in the mouth, on the teats, and between the hooves. It causes severe losses in production of meat, milk, and other dairy products. Although many affected animals survive the disease, it leaves them debilitated. Because of the highly communicable nature of FMD, it is necessary to protect livestock that are free of the disease from any animals, animal products, or other articles that might be contaminated with the FMD virus.

Section 94.1(a) of the regulations lists regions of the world that are declared free of rinderpest (another highly communicable serious disease) or free of both FMD and rinderpest. FMD or rinderpest exists in all regions of the world not listed. The provisions of § 94.1(b) of the regulations prohibit, except for very limited exceptions, the importation into the United States of any ruminant or swine or any fresh (chilled or frozen) meat of any ruminant or swine that originates in any region in which FMD or rinderpest exists, or that enters a port that is located in or otherwise transits a region in which FMD or rinderpest exists.

Among the articles that could harbor the FMD virus is farm equipment that has been used on a premises containing infected animals and that has not been cleaned free of soil or other particulate matter from that premises.

In the past, such equipment that was imported into the United States from a region in which FMD exists has not been allowed entry into the United States without being first cleaned of dirt or other potentially contaminated matter at the port of arrival.

Although such cleaning has been effective to date in ensuring that FMD-contaminated equipment does not come into contact with U.S. livestock, it presents logistical problems that we have determined make it necessary to review such a practice. Many U.S. ports do not have facilities that allow large mechanized equipment to be cleaned in a way that ensures that soil and other particulate matter has been removed. Additionally, some ports are not constructed to allow for secure disposal of waste water and other cleaning materials.

Because of the recent increase in outbreaks of FMD in different parts of the world, we now consider it necessary to prohibit the importation of all used farm equipment into the United States from regions in which FMD exists unless the equipment meets the following conditions: (1) It has first been steam-cleaned free of exposed soil and other particulate matter in the exporting region; and (2) it is accompanied by an original certificate signed by an authorized official of the national animal health service of the region of origin stating that such cleaning has been done. Once the equipment arrives at the port of arrival, it must be inspected by an inspector of the Animal and Plant Health Inspection Service (APHIS) to confirm that it has been cleaned free of exposed soil and other particulate matter, or that the amount of any exposed soil and other particulate matter is so minimal that it can be safely removed at the port of arrival. We are adding these requirements to the regulations at a new § 94.1(c) and are redesignating the existing § 94.1(c) as § 94.1(d).

(*Please note:* The provisions we are adding at new § 94.1(c) refer to used farm equipment exported from regions listed in § 94.1(a) as those in which FMD or rinderpest exists. Although our concern in this interim rule involves regions in which FMD exists, not regions in which rinderpest exists, all the regions currently listed as those in which FMD or rinderpest exists are currently affected with FMD. Therefore, we are using the list in § 94.1(a) with regard to used farm equipment and FMD. If it should happen that a region becomes affected with rinderpest but not FMD, we will provide in the regulations that the restrictions on farm equipment do not apply to that region.)

We consider it necessary to require certification from the exporting region that such cleaning has been done, even though inspection will also be conducted in the United States, in order for APHIS to make the best use of its personnel resources. If used farm equipment arrives at a U.S. port without an original certificate signed by an authorized official of the national animal health service of the region of origin, APHIS inspectors will not inspect the equipment and will simply not allow it to be entered into the United States. If equipment arrives at a U.S. port with the required certification from the exporting region, but is found upon APHIS inspection to contain exposed soil or other particulate matter, it will also be refused entry, unless, in the judgment of the APHIS inspector, the amount of exposed soil is minimal enough to allow cleaning at the port of arrival, and there are adequate facilities and personnel at the port to conduct such cleaning without risk of spreading disease. Whether such cleaning can be carried out at the port of arrival will be determined by factors such as, but not limited to, the availability of space, cleaning equipment, and personnel, and the presence of adequate drainage and other means of ensuring that any material potentially contaminated with the FMD virus is safely disposed of.

What Constitutes Farm Equipment?

We are adding to § 94.0 of the regulations a definition of *farm equipment* to mean "equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks." We are excluding automobiles and trucks from the definition of *farm equipment* because those vehicles are constructed in such a way that APHIS inspectors at the port of arrival can adequately clean them if necessary. The other types of equipment used on farms are more likely to contain parts and crevices from which soil and other particulate matter are not easily removed.

How Will We Determine Farm Equipment Has Been Used?

Whether farm equipment is considered used will be determined at the time of inspection at the port of arrival, and will be based on its physical appearance, its description in the equipment's carrier manifest, and any accompanying trade documentation, including, but not limited to, Customs entries, container markings, certificates, and commercial invoices.

Emergency Action

This rulemaking is necessary on an emergency basis to prevent the importation into the United States of dirty equipment that has been used on farms that may be affected with FMD. Because of the highly transmissible nature of the disease, such equipment poses an unacceptable risk of introducing the FMD virus into the United States. We are making this action effective retroactively to March 31, 2001, which is the date APHIS made effective a policy stating it had stopped issuing import permits for, and would prohibit the importation of, the materials covered by this interim rule. This effective date is necessary to ensure that articles contaminated with the FMD agent are not imported into the United States. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public interest and that there is good cause under 5 U.S.C. 553 for making this rule effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. That document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This emergency situation makes timely compliance with section 604 of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) impracticable. We are currently assessing the potential economic effects of this action on small entities. Based on that assessment, we will either certify that the rule will not have a significant economic impact on a substantial number of small entities or publish a final regulatory flexibility analysis.

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to March 31, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(j) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection and recordkeeping requirements included in this interim rule have been submitted for emergency approval to the Office of Management and Budget (OMB). OMB has assigned control number 0579–0195 to the information collection and recordkeeping requirements.

We plan to request continuation of that approval for 3 years. Please send written comments on the 3-year approval request to the following addresses: (1) Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503; and (2) Docket No. 01–037–1, Regulatory Analysis and Development, PPD, APHIS, suite 3C03, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comments refer to Docket No. 01–037–1 and send your comments within 60 days of publication of this rule.

This interim rule establishes regulations prohibiting the importation into the United States of used farm equipment from regions affected with FMD unless the equipment is accompanied by an original certificate, signed by an authorized official of the national animal health services of the exporting region, stating that the equipment has been steam-cleaned prior to export to the United States to remove all visible dirt and other particulate matter. We are soliciting comments from the public (as well as affected agencies) concerning our information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.20 hours per response.

Respondents: Exporters of used farm equipment in FMD-affected regions; veterinary authorities in FMD-affected regions.

Estimated annual number of respondents: 1,000.

Estimated annual number of responses per respondent: 10.

Estimated annual number of responses: 10,000.

Estimated total annual burden on respondents: 2,000 hours.

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

2. In § 94.0, a new definition of *Farm equipment* is added, in alphabetical order, to read as follows:

§ 94.0 Definitions

* * * * *

Farm equipment. Equipment used in the production of livestock or crops, including, but not limited to, mowers, harvesters, loaders, slaughter machinery, agricultural tractors, farm

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engines, farm trailers, farm carts, and farm wagons, but excluding automobiles and trucks.

3. Section 94.1 is amended as follows:

a. In paragraph (b)(2), by removing the words "paragraph (c)" and adding the words "paragraph (d)" in their place.

b. By redesignating paragraph (c) as paragraph (d).

c. By adding a new paragraph (c) to read as set forth below.

d. By revising the OMB control number citation at the end of the section to read as set forth below.

§ 94.1 Regions where rinderpest or foot-and-mouth disease exists; importations prohibited.

* * * * *

(c) The importation of any used farm equipment that originates in any region where rinderpest or foot-and-mouth disease exists, as designated in paragraph (a) of this section, is prohibited, unless the equipment is accompanied by an original certificate signed by an authorized official of the national animal health service of the exporting region that states that the equipment, after its last use and prior to export, was steam-cleaned free of all exposed dirt and other particulate matter. Such farm equipment is subject to APHIS inspection at the port of arrival. If it is found during such inspection to contain any exposed dirt or other particulate matter, it will be denied entry into the United States, unless, in the judgment of the APHIS inspector, the amount of exposed soil is minimal enough to allow cleaning at the port of arrival, and there are adequate facilities and personnel at the port to conduct such cleaning without risk of disease contamination.

* * * * *

(Approved by the Office of Management and Budget under control numbers 0579–0015 and 0579–0195)

Done in Washington, DC, this 7th day of May 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11896 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–34–U

NUCLEAR REGULATORY COMMISSION

10 CFR Part 72

RIN 3150–AG94

List of Approved Spent Fuel Storage Casks: NAC–MPC Revision; Confirmation of Effective Date

AGENCY: Nuclear Regulatory Commission.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: The Nuclear Regulatory Commission (NRC) is confirming the effective date of May 29, 2002, for the direct final rule that appeared in the **Federal Register** of March 15, 2002 (67 FR 11566). This direct final rule amended the NRC's regulations by revising the NAC–MPC cask system listing within the "List of approved spent fuel storage casks" to include Amendment No. 2 to Certificate of Compliance No. 1025. This document confirms the effective date.

DATES: The effective date of May 29, 2002 is confirmed for this direct final rule.

ADDRESSES: Documents related to this rulemaking, including comments received, may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. These same documents may also be viewed and downloaded electronically via the rulemaking website *(http://ruleforum.llnl.gov)*. For information about the interactive rulemaking website, contact Ms. Carol Gallagher (301) 415–5905; e-mail *CAG@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Jayne M. McCausland, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 415–6219 (e-mail: *jmm2@nrc.gov*).

SUPPLEMENTARY INFORMATION: On March 15, 2002 (67 FR 11566), the NRC published in the **Federal Register** a direct final rule amending its regulations in part 72 by revising the NAC International Multi-Purpose Canister (NAC–MPC) cask system listing within the "List of approved spent fuel storage casks" to include Amendment 2 to Certificate of Compliance (CoC) No. 1025. This amendment allows for modification of the design of the cask system to accommodate a new type of fuel. The modifications include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask. Changes also include a redesigned fuel basket to accommodate 26 fuel assemblies, with an alternate 24-fuel assembly configuration and increased transfer cask radial shielding. The CoC has been revised in its entirety to include a reference to the new type of fuel and a revised format. The Technical Specifications (TS) have also been revised in their entirety to include specifications for the new type of fuel, new operational limits, and to incorporate a revised format for the TS. In the direct final rule, NRC stated that if no significant adverse comments were received, the direct final rule would become final on May 29, 2002. The NRC did not receive any comments on the direct final rule. Therefore, this rule will become effective as scheduled.

Dated at Rockville, Maryland, this 7th day of May, 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration.

[FR Doc. 02–11874 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

FARM CREDIT ADMINISTRATION

12 CFR Parts 611 and 614

RIN 3052–AB86

Organization; Loan Policies and Operations; Termination of Farm Credit Status; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published a final rule under parts 611 and 614 on April 12, 2002 (67 FR 17907). This final rule amends our regulations to allow a Farm Credit System (FCS or System) bank or association to terminate its FCS charter and become a financial institution under another Federal or State chartering authority. Our purpose is to amend the existing regulations so they apply to all System banks and associations and to make other changes. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is May 13, 2002.

EFFECTIVE DATE: The regulation amending 12 CFR parts 609 and 620 published on April 12, 2002 (67 FR 17907) is effective May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Alan Markowitz, Senior Policy Analyst, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498, TTY (703) 883–4434;

or

Rebecca S. Orlich, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TTY (703) 883–2020.

(12 U.S.C. 2252(a)(9) and (10))

Dated: May 8, 2002.

Kelly Mikel Williams,

Secretory, Farm Credit Administration Boord.

[FR Doc. 02–11878 Filed 5–10–02; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–99–AD; Amendment 39–12731; AD 2002–08–19]

RIN 2120–AA64

Airworthiness Directives; Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, that currently requires revising the Airplane Flight Manual to address uncommanded transfer of fuel between the wing fuel tanks and the center fuel tank; revising the Minimum Equipment List; limiting airplane operation; and increasing normal mission fuel requirements by 3,000 pounds. This amendment retains the requirements of the existing AD, and adds requirements for modification of the fuel distribution system for the center tank; and an inspection of that system for discrepancies, and corrective actions if necessary. This amendment is prompted by reports of uncommanded fuel transfer between wing fuel tanks and the center fuel tank, and reports of misaligned or damaged fuel tubes due to vibration. The actions specified in this AD are intended to ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer; and to detect and correct discrepancies in the fuel distribution system, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation.

DATES: Effective May 28, 2002.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of May 28, 2002.

Comments for inclusion in the Rules Docket must be received on or before June 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–99–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-iarcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2002–NM–99–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in this AD may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centreville, Montreal, Quebec H3C–3G9, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: James Delisio, Aerospace Engineer, Airframe and Propulsion Branch, ANE–171, FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York 11581; telephone (516) 256–7521; fax (516) 568–2716.

SUPPLEMENTARY INFORMATION: On March 21, 2002, the FAA issued AD 2002–06–51, amendment 39–12688 (67 FR 14844, March 28, 2002), applicable to certain Bombardier Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, to require revising the Airplane Flight Manual (AFM) to provide procedures for addressing uncommanded transfer of fuel from wing fuel tanks to the center fuel tank. That action also requires revising the Minimum Equipment List (MEL); limiting operation of the airplane to flight within 60 minutes of a suitable alternative airport; and ensuring that normal mission fuel requirements are increased by 3,000 pounds. That action was prompted by reports of uncommanded fuel transfer between the wing fuel tanks and the center fuel tank. The actions required by that AD are intended to ensure that the flight crew has the procedures necessary to address such uncommanded fuel transfer, which could cause the center tank to overfill, and fuel to leak from the center tank vent system or to become inaccessible, and result in engine fuel starvation.

Actions Since Issuance of Previous Rule

Since the issuance of that AD, Transport Canada Civil Aviation (TCCA), which is the airworthiness authority for Canada, has advised the FAA that vibration and misalignment of fuel lines in the center fuel tank could cause damage to the fuel line couplings, and result in leakage of fuel within the center tank. Extensive fuel leakage within the center tank could result in an increase in unusable fuel and consequent engine fuel starvation.

Explanation of Relevant Service Information

Bombardier has issued two alert service bulletins to provide increased reliability for the fuel system. The procedures included in these alert service bulletins are described as follows:

CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002, specifies procedures for modifying the fuel distribution system for the center tank. Modification includes installing new brackets and attaching the ejectors with new P-clamps, replacing couplings (four in total) with new couplings, and relocating certain brackets.

CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, specifies procedures for inspection of the motive flow line and fuel feed line in the fuel distribution system for the center tank to detect discrepancies, and corrective actions if necessary. Discrepancies include misalignment, pre-loading, or damage to certain parts such as the fuel lines, couplings, boost pump canisters, check valves, ejectors, and P-clamps. Corrective actions include replacement of any part that exceeds the limit specified by the alert service bulletin, and proper alignment of parts.

TCCA issued Canadian airworthiness directive CF–2002–22, dated March 22, 2002, in order to ensure the continued

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airworthiness of these airplanes in Canada.

FAA's Conclusions

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of section 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, TCCA has kept the FAA informed of the situation described above. The FAA has examined the findings of TCCA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Explanation of Requirements of Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD supersedes AD 2002–06–51 to continue to require revising the AFM to address uncommanded transfer of fuel from wing fuel tanks to center fuel tank; revising the MEL; limiting airplane operation; and increasing normal mission fuel requirements by 3,000 pounds. This AD adds requirements for modifying the fuel distribution system for the center tank; a one-time inspection of the motive flow line and fuel feed line in the fuel distribution system for discrepancies, and corrective actions if necessary. The actions are required to be accomplished per the alert service bulletins described previously, except as discussed below.

Differences Between This AD and Canadian Airworthiness Directive

Operators should note that the applicability of the Canadian airworthiness directive specifies serial numbers 10005 through 10039. However, this AD expands the applicability to include airplanes having serial numbers 10005 and subsequent. The FAA considers that such an expansion is necessary until a modification is developed by the manufacturer and approved by the FAA to address the identified unsafe condition and ensure continued operational safety of the fleet.

Operators also should note that, although the Canadian airworthiness directive specifies that the actions may be accomplished per the previously referenced alert service bulletins, "or later revisions," this AD requires modification and inspection actions to be accomplished per specific alert service bulletins. The FAA points out that where a specific service bulletin is referenced in an AD, the use of the phrase, "or later revisions," violates Office of the Federal Register regulations regarding approval of materials that are incorporated by reference.

Difference Between This AD and Canadian Airworthiness Directive/Alert Service Bulletin

Operators should note that, although the Canadian airworthiness directive and the applicable alert service bulletin specify a "visual inspection," this AD specifies a "detailed inspection."

Interim Action

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Clarification of AD 2002–06–51

Paragraph (a) of this AD has been revised to clarify the reference to AD 2002–06–51 by adding "amendment 39–12688" following the AD number.

Paragraph (d) of this AD has been revised to clarify the operational requirements cited in paragraph (d) of AD 2002–06–51.

Determination of Rule's Effective Date

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–99–AD." The postcard will be date stamped and returned to the commenter.

Regulatory Impact

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–12688 (67 FR 14844, March 28, 2002), and by adding a new airworthiness directive (AD), amendment 39–12731, to read as follows:

2002–08–19 Bombardier, Inc. (Formerly Canadair): Amendment 39–12731. Docket 2002–NM–99–AD. Supersedes AD 2002–06–51, Amendment 39–12688.

Applicability: Model CL–600–2C10 (Regional Jet Series 700 and 701) series airplanes, serial numbers 10005 and subsequent; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (k) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew has the procedures necessary to address uncommanded fuel transfer between the wing fuel tanks and the center fuel tank; and to detect and correct discrepancies in the fuel distribution system for the center tank, which could cause the center tank to overfill and fuel to leak from the center tank vent system or to become inaccessible, and could result in engine fuel starvation; accomplish the following:

Restatement of Requirements of AD 2002–06–51

Revision of Airplane Flight Manual (AFM)

(a) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002 (the effective date of AD 2002–06–51, amendment 39–12688), revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (a)(1) and (a)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the "Limitations—Power Plant," Paragraph 6, "Fuel" to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002:

"Dispatch with the fuel quantity gauging system inoperative is prohibited."

(2) Revise the "Abnormal Procedures—Fuel," Paragraph H, "L or R Main Ejector" to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

"H. L or R MAIN EJECTOR	
(1) Left and right boost pumps	Confirm operating
(2) Affected engine instruments	Monitor
(3) Fuel tank quantity	Monitor and balance, if required
If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):	
(4) Land at the nearest suitable airport.	
If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):	
(5) Affected engine thrust	IDLE
(6) Consider shutting down affected engine to prevent centre tank transfer.	
• Ensure both BOOST PUMPs are operating.	
If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):	
(7) Land immediately at the nearest suitable airport."	

Revision of Minimum Equipment List (MEL)

(b) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, remove the relieving requirements specified in MEL CL–600–2C10 for the following items:

(1) Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).

(2) Fuel Transfer shutoff valves (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).

(3) Xflow Pump (Ref. MMEL Item 28–13–10).

(4) Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).

(5) EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).

(6) Fuel Computer Channels (Ref. MMEL Item 28–41–03).

Operational Limitation

(c) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Operational Requirements

(d) For airplanes having serial numbers 10005 through 10039: Within 2 days after April 2, 2002, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to specify that, prior to each further flight, the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

New Requirements of This AD

Revision of Airplane Flight Manual (AFM)

(e) For airplanes other than those identified in paragraph (a) of this AD: Within 2 days after the effective date of this AD, revise the Limitations and Abnormal Procedures sections of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to include the following information included in paragraphs (e)(1) and (e)(2) of this AD (this may be accomplished by inserting a copy of this AD into the AFM):

(1) Revise the "Limitations—Power Plant," Paragraph 6, "Fuel" to include the following information, per Canadair Temporary Revision (TR) RJ 700/23–1, dated March 7, 2002:

"Dispatch with the fuel quantity gauging system inoperative is prohibited."

(2) Revise the "Abnormal Procedures—Fuel," Paragraph H, "L or R Main Ejector" to include the following information, per Canadair TR RJ 700/23–1, dated March 7, 2002:

"H. L or R MAIN EJECTOR	
(1) Left and right boost pumps	Confirm operating

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(2) Affected engine instruments	Monitor
(3) Fuel tank quantity	Monitor and balance, if required
If centre tank quantity increases abnormally (by more than 227 kg (500 lb)):	
(4) Land at the nearest suitable airport.	
If centre tank quantity continues to increase (by more than 454 kg (1000 lb)):	
(5) Affected engine thrust	IDLE
(6) Consider shutting down affected engine to prevent centre tank transfer.	
• Ensure both BOOST PUMPs are operating.	
If centre tank quantity further continues to increase (by more than 680 kg (1500 lb)):	
(7) Land immediately at the nearest suitable airport."	

Revision of Minimum Equipment List (MEL)

(f) For airplanes other than those identified in paragraph (b) of this AD: Within 2 days after the effective date of this AD, remove the relieving requirements specified in MEL CL–600–2C10 for the following items.

(1) Transfer Ejectors (Center Tank) (Ref. Master Minimum Equipment List (MMEL) Item 28–13–07).

(2) Fuel Transfer shutoff valves (SOV) (Center Tank) (Ref. MMEL Item 28–13–08).

(3) Xflow Pump (Ref. MMEL Item 28–13–10).

(4) Engine Indication and Crew Alerting System (EICAS) Fuel Tank Quantity Readouts (Left, Right, and Total) (Ref. MMEL Item 28–41–01).

(5) EICAS Center and Total Fuel Tank Quantity Readouts (Ref. MMEL Item 28–41–02).

(6) Fuel Computer Channels (Ref. MMEL Item 28–41–03).

Operational Limitation

(g) For airplanes other than those identified in paragraph (c) of this AD: Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to limit operation of the airplane to flight within 60 minutes of a suitable alternative airport. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Operational Requirements

(h) For airplanes other than those identified in paragraph (d) of this AD: Within 2 days after the effective date of this AD, revise the Limitations section of Canadair Regional Jet Series 700 of FAA-approved AFM CSP B–012 to specify that, prior to each further flight, the normal mission fuel requirements are increased by 3,000 pounds. This action may be accomplished by inserting a copy of this AD into the Limitations section of the AFM.

Modification

(i) For airplanes having serial numbers 10005 through 10039 inclusive: Within 200 flight hours after the effective date of this AD, modify the fuel distribution system for the center tank per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002.

(1) Install new brackets, part numbers (P/N) KBA670–62010–1 and P/N KBA670–62010–2; and attach ejectors with new P-clamps.

(2) Replace existing couplings (four in total), P/N B0305025A24, with new couplings, P/N B0305072–24DE.

(3) Relocate brackets, P/N CC670–62278–1 and P/N CC670–62278–2.

Note 2: Modifications accomplished prior to the effective date of this AD per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, original issue, dated March 12, 2002; or Revision A, dated March 15, 2002; are considered acceptable for compliance with the applicable action specified in this AD.

Inspection and Corrective Actions

(j) For airplanes having serial numbers 10005 and subsequent: Accomplish a one-time detailed inspection of the motive flow line and fuel feed line in the fuel distribution system for the center tank to detect any discrepancy (including misalignment, pre-loading, or damage) per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, including Appendix A, dated February 8, 2002; at the time specified in paragraph (j)(1) or (j)(2) of this AD, as applicable. If any discrepancy is found, before further flight, replace any part that exceeds the limit in the alert service bulletin; and correct any misalignment of parts; per the alert service bulletin.

(1) For airplanes on which the detailed inspection required by paragraph (j) of this AD has been accomplished per CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, original issue, dated February 8, 2002; or Revision A, dated March 12, 2002; prior to the effective date of this AD: Do the inspection within 400 flight hours after performing the most recent detailed inspection, or within 200 flight hours after the effective date of this AD, whichever occurs later.

(2) For airplanes other than those identified in paragraph (j)(1) of this AD: Do the inspection within 400 flight hours after the effective date of this AD.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, *etc.*, may be used. Surface cleaning and elaborate access procedures may be required."

Alternative Methods of Compliance

(k) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

Special Flight Permits

(l) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished. The operational limitations and requirements of paragraphs (c) and (d) of this AD will be applicable to all special flight permits.

Incorporation by Reference

(m) Except as provided by paragraphs (a) through (h) of this AD, the actions shall be done in accordance with Canadair Temporary Revision RJ 700/23–1, dated March 7, 2002; CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, including Appendix A, dated February 8, 2002; and CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–007, Revision B, dated March 18, 2002; as applicable. CRJ700 (Bombardier) Alert Service Bulletin A670BA–28–005, Revision B, dated March 21, 2002, contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–36	B	March 21, 2002.
Appendix A		
A1, A2	Original	February 8, 2002.

(The manufacturer's name is indicated only on page 1 of the service bulletins; no other pages of these documents contain this information.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Bombardier, Inc., Canadair Aerospace Group, P.O. Box 6087, Station Centre-ville, Montreal, Quebec H3C3G9, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, New York Aircraft Certification Office, 10 Fifth Street, Third Floor, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Note 5: The subject of this AD is addressed in Canadian airworthiness directive CF–2002–22, dated March 22, 2002.

Effective Date

(n) This amendment becomes effective on May 28, 2002.

Issued in Renton, Washington, on May 7, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11942 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–105–AD; Amendment 39–12703; AD 2002–07–09]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects information in an existing airworthiness directive (AD that applies to certain Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That AD currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. This document corrects a typographical error in the supplemental type certificate (STC) number specified in paragraph (i) of that AD. This correction is necessary to ensure that the correct STC number is specified and operators of affected airplanes are advised of all applicable actions.

DATES: Effective May 17, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 17, 2002 (67 FR 17923, April 12, 2002).

FOR FURTHER INFORMATION CONTACT: Walt Sippel, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2774; fax (425) 227–1181.

SUPPLEMENTARY INFORMATION: On April 2, 2002, the Federal Aviation Administration (FAA) issued AD 2002–07–09, amendment 39–12703 (67 FR 17923, April 12, 2002), which applies to all Boeing Model 727, 727C, 727–100, 727–100C, 727–200, and 727–200F series airplanes. That AD currently requires repetitive inspections to find cracking of the lower skin panel at the lower row of fasteners in certain lap joints of the fuselage, and repair, if necessary. That AD was prompted by the FAA's determination that, in light of additional crack findings, certain modifications of the fuselage lap joints are necessary. The actions required by that AD are intended to find and fix fatigue cracking of the fuselage lap joints, which could result in sudden fracture and failure of the lower skin lap joints, and rapid decompression of the airplane.

Need for the Correction

The FAA notes that there is a typographical error in the STC number specified in paragraph (i) of the AD.

The FAA has determined that a correction to AD 2002–07–09 is necessary to correctly identify the STC number.

Correction of Publication

This document corrects the error and correctly adds the AD as an amendment to section 39.13 of the Federal Aviation Regulations (14 CFR 39.13).

The AD is reprinted in its entirety for the convenience of affected operators. The effective date of the AD remains May 17, 2002.

Since this action only corrects a typographical error, it has no adverse economic impact and imposes no additional burden on any person. Therefore, the FAA has determined that notice and public procedures are unnecessary.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Corrected]

2. Section 39.13 is amended by correctly adding the following airworthiness directive (AD):

2002–07–09 Boeing: Amendment 39–12703. Docket 99–NM–105–AD.

Applicability: Model 727 series airplanes, as listed in Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (l)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To find and fix fatigue cracking in the lower skin panel at the lower row of fasteners of the fuselage lap joints, which could result in sudden fracture and failure of the lap joints, and rapid decompression of the airplane; accomplish the following:

Initial and Repetitive Inspections

(a) Do either an external low frequency eddy current (LFEC) inspection to find cracking, or both internal detailed and medium frequency eddy current (MFEC) inspections to find cracking or corrosion, in the lower skin panels of the lower row of fasteners of the fuselage lap joints per Part I of the Accomplishment Instructions of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Do the applicable inspection at the earlier of the times specified in paragraphs (a)(1) and (a)(2) of this AD on the lap joints identified in Tables A through H and J through N of Section 1.E., "Compliance," of Paragraph 1, Planning Information, of the service bulletin. Except as provided by paragraph (b) of this AD, after doing the applicable initial inspection, repeat that inspection at the intervals specified in

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Tables A through G or J through N of the service bulletin.

(1) At the latest of the times specified for the initial inspection in Tables A through H (for Groups 1, 2, 3, and 5 airplanes), or Tables J through N (for Groups 3 and 4 airplanes), as applicable, of Section 1.E., "Compliance," of the service bulletin, except where the compliance time in the service bulletin specifies a compliance time interval based on "the release of this service bulletin," this AD requires compliance within the interval specified in the service bulletin "after the effective date of this AD."

(2) Within 600 flight cycles after the last LFEC inspection or 7,000 flight cycles after the last MFEC inspection, if any, is accomplished in accordance with AD 99–04–22, amendment 39–11047.

Note 2: Groups 1–5 are defined in the effectivity section of the service bulletin.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to find damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

(b) For Model 727–200 series airplanes: The repetitive inspection intervals for lap joints identified in Table H of Section 1.E., "Compliance," of Paragraph 1, Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001, decrease with increasing flight cycles. Perform the repetitive inspections listed in Table H of the service bulletin at the thresholds and intervals specified in paragraph (b)(1), (b)(2), (b)(3), or (b)(4) of this AD, as applicable.

Note 4: Table H of Boeing Service Bulletin 727–53A0222, Revision 1, has different inspection procedures for airplanes that have accumulated fewer than 35,000 total flight cycles, and airplanes that have accumulated 35,000 or more, but fewer than 45,000 total flight cycles.

(1) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated fewer than 35,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(2) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 35,000 or more, but fewer than 45,000 total flight cycles: Perform LFEC inspections at intervals not to exceed 600 flight cycles, or detailed internal visual and MFEC inspections at intervals not to exceed 7,000 flight cycles.

(3) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 45,000 or more, but fewer than 55,000 total flight cycles: Perform detailed internal visual and MFEC inspections at intervals not to exceed 2,000 flight cycles.

(4) If, at the time of the most recent inspection required by paragraph (a) or (b) of this AD, the airplane has accumulated 55,000 or more total flight cycles: Perform LFEC inspections at intervals not to exceed 300-flight-cycle intervals.

Note 5: Inspections done prior to the effective date of this AD per Boeing Alert Service Bulletin 727–53A0222, dated July 27, 2000, are considered acceptable for compliance with the applicable action specified in this amendment.

Compliance Plan

(c) For airplanes on which the modification required by paragraph (d) of this AD has not been done as of the effective date of this AD: Within 3 months after the effective date of this AD, submit a plan to the FAA identifying a schedule for compliance with paragraph (d) of this AD. This schedule must include, for each of the operator's affected airplanes, the estimated dates when the required actions will be accomplished. For the purposes of this paragraph, "FAA" means the Principal Maintenance Inspector (PMI) for operators that are assigned a PMI, or the cognizant Flight Standards District Office for other operators. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

Note 6: Operators are not required to submit revisions to the compliance plan required by paragraph (c) of this AD to the FAA.

Modification/Post-Modification Inspections

(d) For Model 727–200 series airplanes: Do the modification listed in Table H of Section 1.E., "Compliance," of Paragraph 1, Planning Information, of Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001; per Part II of the Accomplishment Instructions of the service bulletin, at the threshold specified in paragraph (d)(1), (d)(2), or (d)(3) of this AD, as applicable. Within 35,000 flight cycles after doing the modification, do the post-modification inspections for cracking in the skin, per Part III of the Accomplishment Instructions of the service bulletin. Accomplishment of this paragraph terminates the repetitive inspections required by paragraph (b) of this AD.

(1) For airplanes that have accumulated fewer than 35,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 48,000 total flight cycles.

(2) For airplanes that have accumulated 35,000 or more, but fewer than 55,000 total flight cycles on the effective date of the AD: Accomplish the modification prior to 55,000 total flight cycles, or within 2,000 flight cycles after the effective date of this AD, whichever is later.

(3) For airplanes that have accumulated 55,000 or more total flight cycles on the effective date of the AD: Accomplish the modification within 2,000 flight cycles after the effective date of this AD.

Repair

(e) If any cracking or corrosion is found during any inspection required by paragraph (a), (b), or (d) of this AD: Before further flight, repair per Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A, dated March 15, 2001. Where the service bulletin specifies to contact Boeing for repair instructions, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company DER who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Concurrent Modifications

(f) For Model 727–200 series airplanes modified per supplemental type certificate (STC) SA1368SO or SA1797SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A, dated May 7, 2001, per the service bulletin.

(g) For Model 727–200 series airplanes modified per STCs SA1444SO and SA1509SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in PEMCO Service Bulletin 727–53–0007, Revision 1, dated June 6, 2001, per the service bulletin.

(h) For Model 727–200 series airplanes modified per STC SA00015AT: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Aircraft Technical Service, Inc., Service Bulletin ATS 727–001, dated May 7, 2001, per the service bulletin.

(i) For Model 727–200 series airplanes modified per STC SA1767SO: Concurrent with the modification of the fuselage lap joints required by paragraph (d) of this AD, do the inspection for cracking of the lower row of fasteners in the lower skin of the lap joints, and the modification specified in Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A, dated May 16, 2001, per the service bulletin.

(j) Within 2,200 flight cycles after doing the applicable modification specified in paragraph (f), (g), (h), or (i) of this AD, do the post-modification inspection for cracking in the skin per the applicable service bulletin specified in Table 1, below. Repeat the applicable inspection after that at intervals not to exceed 2,200 flight cycles. Table 1 follows:

TABLE 1.—SERVICE BULLETINS

Service bulletin	Date
Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A.	May 16, 2001.
PEMCO Service Bulletin, 727–53–0007, Revision 1.	June 6, 2001.

Repair

(k) If any cracking is found during any inspection required by paragraph (f), (g), (h), or (i) of this AD: Before further flight, repair per the applicable service bulletin as provided in Table 1 in paragraph (j) of this AD. Where cracks exceed the limits provided in the service bulletin, and the bulletin specifies to contact the provider of the service bulletin for repair instructions, prior to further flight, repair per a method approved by the Manager, Seattle ACO. If any cracking is found during any inspection required by paragraph (j) of this AD: Before further flight, repair per a method approved by the Manager, Seattle ACO. For a repair method to be approved by the Manager, Seattle ACO, as required by this paragraph, the approval letter must specifically reference this AD.

Alternative Methods of Compliance

(l)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA PMI, who may add comments and then send it to the Manager, Seattle ACO.

(2) Alternative methods of compliance, approved previously per AD 99–04–22, amendment 39–11047, are approved as alternative methods of compliance with this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(m) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Incorporation by Reference

(n) Except as provided by paragraphs (c), (e), and (k) of this AD, the actions shall be done in accordance with the following service bulletins, as applicable:

TABLE 2.—SERVICE BULLETINS

Service bulletin	Date
Aeronautical Engineers Inc. Service Bulletin AEI 00–01, Revision A.	May 7, 2001.
Aircraft Technical Service, Inc., Service Bulletin ATS 727–001.	May 7, 2001.
Boeing Service Bulletin 727–53A0222, Revision 1, including Appendix A.	March 15, 2001.
Federal Express Corporation Service Bulletin 00–029, Revision A, including Attachment A.	May 16, 2001.
PEMCO Service Bulletin 727–53–0007, Revision 1.	June 6, 2001.

This incorporation by reference was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 17, 2002 (67 FR 17923, April 12, 2002). Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Effective Date

(o) The effective date of this amendment remains May 17, 2002.

Issued in Renton, Washington, on May 6, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–11803 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–20–AD; Amendment 39–12680; AD 2002–06–04]

RIN 2120–AA64

Airworthiness Directives; Eurocopter France Model AS350B, AS350B1, AS350B2, AS350B3, AS350BA, AS350C, AS350D, AS350D1, AS355E, AS355F, AS355F1, AS355F2, and AS355N Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This document corrects Airworthiness Directive (AD) 2002–06–04 for the specified Eurocopter France helicopters that was published in the **Federal Register** on March 20, 2002 (67 FR 12858). The effective date as stated in paragraph (f) of the AD is incorrect, and this document corrects that effective date. In all other respects, the original document remains the same.

DATES: Effective April 24, 2002.

FOR FURTHER INFORMATION CONTACT: Jim Grigg, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Rotorcraft Standards Staff, Fort Worth, Texas 76193–0110, telephone (817) 222–5490, fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule AD 2002–06–04 on March 11, 2002 (67 FR 12858, March 20, 2002) for the specified Eurocopter France helicopters. The following correction is needed:

The effective date given in paragraph (f) of the AD was intended to be the same effective date of April 24, 2002, as stated in the "Effective Date" line. Therefore, the date in paragraph (f) needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

Correction of Publication

Accordingly, the publication on March 20, 2002 of the final rule (AD 2002–06–04) which was the subject of FR Doc. 02–6626 is corrected as follows:

§ 39.13 [Corrected]

On page 12859, in the second column, in AD 2002–06–04, paragraph (f), correct "April 4, 2002" to read "April 24, 2002".

Issued in Fort Worth, Texas, on April 29, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–11805 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–46–AD; Amendment 39–12674; AD 2002–05–06]

RIN 2120–AA64

Airworthiness Directives; Sikorsky Aircraft Corporation Model S–76A Helicopters; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

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SUMMARY: This document corrects an effective date in Airworthiness Directive (AD) 2002–05–06. That AD applies to Sikorsky Aircraft Corporation Model S–76A helicopters and was published in the **Federal Register** on March 18, 2002 (67 FR 11893). The effective date as stated in paragraph (g) of the AD is incorrect, and this document corrects that effective date. In all other respects, the original document remains the same.

DATES: Effective April 22, 2002.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7199.

SUPPLEMENTARY INFORMATION: The FAA issued a final rule AD 2002–05–06, on March 5, 2002 (67 FR 11893, March 18, 2002). The following correction is needed:

The effective date given in paragraph (g) of the AD was intended to be the same effective date of April 22, 2002 as stated in the "Effective Date" line. Therefore, the date in paragraph (g) needs correcting.

Since no other part of the regulatory information has been revised, the final rule is not being republished.

Correction of the Publication

Accordingly, the publication on March 18, 2002 of the final rule (AD 2002–05–06) which was the subject of FR Doc. 02–6330 is corrected as follows:

§ 39.13 [Corrected]

On page 11895, in the second column, in AD 2002–05–06, paragraph (g), correct "April 2, 2002" to read "April 22, 2002".

Issued in Fort Worth, Texas, on April 29, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–11806 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AWP–2]

Establishment of Class D Surface Area at Indian Springs Air Force Auxiliary Field; Indian Springs, NV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Direct final rule, confirmation of effective date.

SUMMARY: This document confirms the effective date of a direct final rule that establishes a Class D Surface Area at Indian Springs Air Force Auxiliary Field in Indian Springs, NV.

EFFECTIVE DATE: 0901 UTC March 21, 2002.

FOR FURTHER INFORMATION CONTACT: Jeri Carson, Air Traffic Division, Airspace Branch, AWP–520.11, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 725–6611.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on February 27, 2002 (67 FR 8859). The FAA uses the direct final rulemaking procedure for a non-controversial rule when FAA believes that there will be no adverse public comment. This direct final rule advised the public that adverse comments were not anticipated, and that unless written adverse comments or written notice of intent to submit such adverse comments, were received within the comment period, the regulation would become effective on March 21, 2002. No adverse comments were received. Thus, this action confirms the direct final rule will become effective on that date.

Issued in Los Angeles, California, on April 5, 2002.

John Clancy,

Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 02–10500 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–19]

Establishment of Class E Airspace, St. George, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at the surface at St. George Municipal Airport, St. George, UT. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at St. George Municipal Airport, St. George, UT.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–19, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On February 21, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by establishing Class E surface area airspace at St. George, UT, in order to provide a safer IFR environment at St. George Municipal Airport, St. George, UT (67 FR 7980). This amendment provides additional Class E2 Surface Area controlled airspace at St. George, UT, to contain aircraft conducting instrument flight operations at St. George Municipal Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) establishes Class E airspace at St. George, UT in order to provide adequate controlled airspace for IFR operations at St. George Municipal Airport, St. George, UT. This amendment establishes Class E2 Surface Area airspace at St. George, UT to enhance safety and efficiency of IFR flight operations in the St. George, UT terminal area. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the St. George Municipal Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface areas for an airport, are published in Paragraph 6002, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6002 Class E airspace areas designated as surface areas for an airport.

* * * * *

ANM UT E2 St. George, UT [NEW]

St. George Municipal Airport, UT
(Lat. 37°05′26″ N., long. 113°35′35″ W.)

Within a 4.5-mile radius of St. George Municipal Airport. This Class E airspace is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington on April 30, 2002.

Charles E. Davis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–11903 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 01–ANM–18]

Modification of Class E Airspace, Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action modifies Class E airspace at Friedman Memorial Airport, Hailey, ID. Newly developed Area Navigation (RNAV) Special Standard Instrument Approach Procedure (SIAP) at the Friedman Memorial Airport made this action necessary. Additional Class E 700-feet and 1,200-feet controlled airspace, above the surface of the earth is required to contain aircraft executing the RNAV Z RWY 31 Global Positioning System (GPS) 31R Special SIAP at Friedman Memorial Airport. The intended effect of this action is to provide adequate controlled airspace for Instrument Flight Rules (IFR) operations at Friedman Memorial Airport, Hailey, ID.

EFFECTIVE DATE: 0901 UTC, August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Brian Durham, ANM–520.7, Federal Aviation Administration, Docket No. 01–ANM–18, 1601 Lind Avenue SW, Renton, Washington 98055–4056: telephone number: (425) 227–2527.

SUPPLEMENTARY INFORMATION:

History

On February 21, 2002, the FAA proposed to amend Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) by revising Class E airspace at Hailey, ID, in order to provide a safer IFR environment at Friedman Memorial Airport, Hailey, ID (67 FR 7981). This amendment provides additional Class E2 Surface Area controlled airspace at Hailey, ID to contain aircraft conducting instrument flight operations at Friedman Memorial Airport. Interested parties were invited to participate in the rulemaking proceeding by submitting written comments on the proposal. No comments were received.

The Rule

This amendment to Title 14 Code of Federal Regulations, part 71 (14 CFR part 71) modifies Class E airspace at Hailey, ID, in order to provide adequate controlled airspace for IFR operations at Friedman Memorial Airport, Hailey, ID. This amendment modifies Class E 700 and 1,200 foot airspace at Hailey, ID, to enhance safety and efficiency of IFR flight operations in the Hailey, ID, terminal area. The FAA establishes Class E airspace where necessary to contain aircraft transitioning between the terminal and en route environments. This rule is designed to provide for the safe and efficient use of the navigable airspace and to promote safe flight operations under IFR at the Friedman Memorial Airport and between the terminal and en route transition stages.

The area will be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700–feet or more above the surface of the earth, are published in Paragraph 6005, of FAA Order 7400.9J dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designation listed in this document will be published subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a Regulatory Evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION ON CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

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§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9J, Airspace Designations and Reporting Points, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700-feet or more above the surface of the earth.

* * * * *

ANM ID E5 Hailey, ID [REVISED]

Friedman Memorial Airport, ID
(Lat. 43°30'14" N., long. 114°17'45" W.)

That airspace extending upward from 700-feet above the surface within a 5.5 mile radius of Friedman Memorial Airport, and within 2 miles each side of the 328° bearing from the airport extending from the 5.5 mile radius to 7.4 miles northwest of the airport, and within 2 miles each side of the 159° bearing from the airport extending from the 5.5 mile radius to 7.6 miles southeast of the airport; and that airspace extending upward from 1,200-feet above the surface, bounded by a line beginning at lat. 43°50'00" N., long. 114°38'27" W.; 43°50'00" N., long. 114°00'00" W.; to lat. 43°12'55" N., long. 114°00'00" W.; to lat. 43°12'55" N., 114°38'27" W.; thence to point of origin; excluding that airspace within Federal Airways and the Burley, ID, Class E airspace area.

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Issued in Seattle, Washington on April 30, 2002.

Charles E. Davis,

Acting Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 02–11906 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 24

[T.D. 02–24]

RIN 1515–AC82

Amended Procedure for Refunds of Harbor Maintenance Fees Paid on Exports of Merchandise

AGENCY: Customs Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: This document adopts as a final rule, with certain modifications, the content of interim amendments to the Customs Regulations which provide a new procedure for requesting refunds of export harbor maintenance fees. The new procedure simplifies the refund process by relieving exporters from documentary requirements in most cases and providing a 120-day period to allow exporters to seek additional refunds.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Deborah Thompson, Revenue Branch, National Finance Center, (317) 298–1200 (ext. 4003).

SUPPLEMENTARY INFORMATION:

Background

The harbor maintenance fee was created by the Water Resources Development Act of 1986 (Pub. L. 99–622; codified at 26 U.S.C. 4461 *et seq.*) (the Act) and is implemented by § 24.24 of the Customs Regulations (19 CFR 24.24). Imposition of the fee is intended to require those who benefit from the maintenance of U.S. ports and harbors to share in the cost of that maintenance. Pursuant to the Act and as implemented by the regulations, the harbor maintenance fee became effective on April 1, 1987, and is assessed based on 0.125 percent of the value of commercial cargo loaded or unloaded at certain identified ports or, in the case of passengers, on the value of the actual charge paid for the transportation. In 1998, the U.S. Supreme Court held the fee unconstitutional as applied to exports (*United States Shoe Corporation* v. *United States*, 118 S. Ct. 1290, No. 97–372 (March 31, 1998)). Until then, the fee had been assessed on port use associated with imports, exports, foreign trade zone admissions, passengers, and movements of cargo between domestic ports.

After the Supreme Court decision, by a notice published in the **Federal Register** (63 FR 24209) on May 1, 1998, Customs announced that, as of April 25, 1998, the harbor maintenance fee for cargo loaded on board a vessel for export would no longer be collected. On July 31, 1998, Customs published in the **Federal Register** (63 FR 40822) an amendment to § 24.24 of the Customs Regulations, removing the requirement that exporters loading cargo at ports subject to the harbor maintenance fee pay the fee. Thus, currently, application of the fee continues, as noted above, but only for imports, domestic shipments, foreign trade zone admissions, and passengers.

On August 28, 1998, the U.S. Court of International Trade (CIT) ordered an immediate refund of undisputed export fee payments to exporters who had filed complaints with the court (*United States Shoe Corporation* v. *United States*, No. 94–11–00668, slip op. 98–126 (C.I.T. Aug. 28, 1998)). The court's refund procedure applied to export fee payments received by Customs within two years of the date of the exporter's complaint, and refunds under this procedure were duly paid by Customs. On February 28, 2000, the U.S. Court of Appeals for the Federal Circuit (CAFC) acknowledged that the Customs Regulations did not then impose a limitation on the period within which a refund request may be filed (*Swisher International, Inc.* v. *U.S.*, 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000) (cert. denied).) With this decision, all parties who had paid export fees became eligible to file a refund request for those fees regardless of when the fees were paid. This opened the entire period the export fee was in effect (April 1, 1987—April 25, 1998) to recovery of refunds under the administrative procedure set forth in the regulations.

Recent Regulatory Activity Affecting Export Harbor Maintenance Fee Payments

After publishing a notice of proposed rulemaking and considering the comments received, Customs, on July 2, 2001, published a final rule in the **Federal Register** (66 FR 34813) establishing a one year from time of payment time limit within which a refund request must be filed for overpayments of harbor maintenance fees that were paid on a quarterly basis. As Customs has not collected the fee on exports since April 25, 1998, this time limitation, when in effect, would have eliminated the opportunity for exporters to file any additional harbor maintenance fee refund requests. Thus, to ensure that all exporters had sufficient time and notice to file refund requests, the July 2, 2001, final rule provided that those who made quarterly payments on exports more than one year ago (in effect, all payers of these export fees) would have until December 31, 2001, to file refund requests. Customs notes that the December 31, 2001, filing deadline for refunds applied also to any other harbor maintenance fees paid on a quarterly basis that are more than a year old as of that date.

Before publication of the July 2, 2001, final rule, Customs published an interim regulation providing a simplified procedure for requesting refunds of export harbor maintenance fees. The interim regulation was published in the **Federal Register** (66 FR 16854) on March 28, 2001, and became effective on that date. A correction document to the interim regulation was published in the **Federal Register** (66 FR 21806) on April 27, 2001.

It is noted that the July 2, 2001, final rule setting the one year time limitation

for refunds of quarterly harbor maintenance fee payments incorporated the simplified refund procedure for export fee payments set forth in the interim regulation. However, it modified the structure of the interim regulation and deleted language in the interim regulation regarding the application of interest to refunds because the issue of interest was and remains subject to litigation.

Today's document is a final rule that adopts, with modifications, the content of the interim regulation as corrected by the April 27, 2001, correction document. It retains the structure of the July 2, 2001, final rule and continues to not mention whether interest is applicable to the refunds. The primary additional modifications to the interim regulation (additional to those that were included in the July 2, 2001, final rule) are that: (1) Customs, after receiving a refund request, will provide exporters a list of all payments Customs was able to identify from a search of its records; (2) all exporters filing refund requests will have an additional 120 days from Customs issuance of payment and certification reports to file a request for a Revised Report/Certification to make a refund claim for additional payments; (3) refund requests covering export fee payments made prior to July 1, 1990, will become subject to a power of attorney/authorization letter requirement (exporters or their agents can submit the authorization after the refund request is filed); (4) an exception to the power of attorney/authorization letter requirement will be introduced for freight forwarders; and (5) any agent (including a freight forwarder) that signs a Report/Certification or Revised Report/Certification on an exporter's behalf will certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt. These and other changes are discussed in the "Discussion of Comments", "Other Changes", and "Conclusion" sections of this document.

Refund Filing Procedure Under the Interim Regulation and the July 2, 2001, Final Rule

For Export Fee Payments Made on and After July 1, 1990

The interim regulation's refund procedure, which became effective on March 28, 2001 (the substance of which was incorporated into the July 2, 2001, final rule), provides that Customs, upon receipt of a request, will search its records for payments made on and after July 1, 1990, and include all payments that can be confirmed in a "Harbor Maintenance Tax Payment Report and Certification" (Report/Certification) that is issued to the exporter. If the exporter agrees that the Report/Certification is accurate, the exporter will sign and return it to Customs, thereby agreeing that the amount determined to be owed in the Report/Certification is in full accord and satisfaction of its export harbor maintenance fee claims. Customs then will issue the refund.

If an exporter disputes any payment listed in the Report/Certification (that is, the Report/Certification does not include a payment the exporter believes was made or includes one but not in the correct amount), the exporter must submit documentary proof to Customs to support its claim. After reviewing the submission, if any additional or corrected payments can be confirmed, Customs will issue a Revised Report/Certification listing all undisputed payments from the initially issued Report/Certification and adding the additional confirmed payments (including corrections). If Customs cannot confirm the additional payments/corrections, they will be denied a refund. The denial will be final, and the original Report/Certification will constitute the total refund.

To receive a refund, the exporter must sign and return to Customs the Report/Certification or the Revised Report/Certification, as the case may be.

For Export Fee Payments Made Prior to July 1, 1990

Regarding refund requests for payments made prior to July 1, 1990, the interim regulation (and the July 2, 2001, final rule) provides that proof of payment documentation for each payment must be submitted with the request. If the documentation relative to a payment is sufficient to confirm the payment, Customs will issue a refund. If the documentation relative to a payment is lacking or insufficient to confirm payment, the refund request for that payment will be denied. Upon denial, an exporter will have an additional 120 days to submit documentation or additional documentation proving payment. Customs will review the documentation and issue refunds for confirmed payments and deny refunds for payments that cannot be confirmed. Any denials will be final.

In the interim regulation, Customs explained that it is treating payments made prior to July 1, 1990, differently from payments made on or after that date because it possesses paper documentary proof of payment for payments made on or after July 1, 1990, but not before. Under the interim regulation's procedure, where Customs has paper documentation, it will not require exporters to submit proof of payment with their refund requests. However, Customs will require documentation for such payments where an exporter disputes the completeness or accuracy of a Report/Certification.

Discussion of Comments

Customs received comments from nine commenters on the interim regulation. The comments raised various issues, some of which have already been addressed by Customs in its July 2, 2001, final rule.

Comment: One commenter indicated that exporters may be disinclined to accept Customs invitation to withdraw Freedom of Information Act (FOIA) requests. (Customs made the suggestion in the "Background" text of the interim regulation in order to unclog the refund process that had been inundated with FOIA requests. Customs did so after pointing out that FOIA requests would be of no benefit to exporters for two reasons: (1) In most cases, proof of payment documents would not be required under the refund procedure for export fee payments made on and after July 1, 1990, and (2) Customs does not possess, and therefore cannot provide, proof of payment documents (paper documents) for payments made prior to July 1, 1990.) This commenter explained that filers of FOIA requests will not withdraw them because the records received from a FOIA request can be used to assist exporters in identifying the quarters in which a payment was made, as required under the interim regulation. Thus, this commenter recommended that the regulation be modified to remove the requirement that the quarters of payment be identified in a refund request for payments made on and after July 1, 1990; Customs could then search the entire post-June 30, 1990, period for payments.

Customs response: Customs appreciates the commenter's concern regarding FOIA requests and has reconsidered the refund procedure. To accommodate exporters who have requested documentation and to further simplify the process, Customs is modifying the refund procedure in this document.

As set forth in the regulatory text in this document, Customs, when processing a refund request, will perform a search of its records (paper documents and electronic database) and produce for issuance to the exporter two reports: the Report/Certification (also provided for under the interim

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regulation) and the Harbor Maintenance Tax Payment Report (HMT Payment Report; not provided for under the interim regulation).

The Report/Certification lists all post-June 30, 1990, payments identified by Customs record search and any pre-July 1, 1990, payments supported by documentation submitted by the exporter with its refund request or afterward; it also sets forth the total amount of the refund owed the exporter. The HMT Payment Report lists all payments made by the exporter during the entire recovery period (April 1, 1987 through April 25, 1998), as identified by Customs record search. Customs believes that the HMT Payment Report should satisfy all exporters who filed FOIA requests, as it contains all payments that Customs can identify from all record sources.

Consequently, specifying quarters of payment in a refund request (or not doing so) will not determine which payments will be included in a Report/Certification (although the information may be helpful to Customs in its search). Exporters who could not identify quarters will benefit from Customs issuance of the HMT Payment Report, as it will provide them information they may need to locate evidence of payments should that evidence be needed to obtain a refund.

Also, Customs notes that under the modified procedure, upon receipt of the HMT Payment Report and the Report/Certification, the exporter will have 120 days to submit a request for a Revised Report/Certification, with supporting documentation, to establish any payments not listed in the Report/Certification. This provides an exporter with a second opportunity to submit required documentation to establish pre-July 1, 1990, payments and, as under the interim regulation procedure, gives exporters the opportunity to support with documentation additional post-June 30, 1990, payments not listed in a Report/Certification (as well as corrections of payments listed).

Comment: Several commenters contended that Customs could use its database to provide information to exporters relative to export fee payments made prior to July 1, 1990. The exporters could then use the provided data to search for records to support payments.

Customs response: Customs favors this recommendation, which is reflected in the modified procedure set forth in this document. Under the modified procedure, Customs will use the database (along with other paper document sources Customs possesses for payments made on or after July 1, 1990) to provide each requesting exporter a HMT Payment Report that lists all payments made during the entire recovery period. This report will provide exporters data they can use to search for that supporting documentation, just as the commenter recommended.

Comment: One commenter recommended that Customs search its database for pre-July 1, 1990, payments and treat them the same as post-July 1, 1990, payments, meaning that Customs would include them in the Report/Certification's refund calculation.

Customs response: Customs cannot agree to this recommendation. The modified procedure will provide the exporter the reports that list payments Customs identified in its record search, but exporters will be required to submit supporting documentation to obtain refunds for pre-July 1, 1990, payments. Customs records do not include paper documentation to support these payments, and Customs experience with older payments recorded in the database has shown that the database is unreliable. Customs therefore cannot rely exclusively on that record source to confirm export fee payments, and exporters will have to provide that documentation (if not with the refund request, as soon as possible thereafter) to receive refunds for pre-July 1, 1990, payments.

Comment: Two commenters objected to the interim regulation's requirement that only certain documents are acceptable as proof of payment for pre-July 1, 1990, payments. (The interim regulation provides that acceptable documentation may be either a copy of the Export Vessel Movement Summary Sheet or, where an Automated Summary Monthly Shipper's Export Declaration was filed, a letter containing certain information there specified.) These commenters contended that any documentation tending to support the payment should be acceptable, such as a cancelled check, a company payment ledger, or a Shipper's Export Declaration (SED).

Customs response: The interim regulation requires as proof of payment the documentation that, under the regulations, was required to be submitted with payment. In requiring that documentation to support a payment, Customs is demanding no more from exporters than the regulation always required for refunds and no more than the regulation still requires for refunds of other than export harbor maintenance fee payments. However, Customs appreciates the difficulty some exporters may have in locating these documents, particularly for older payments (the recovery period extends back to April of 1987). Therefore, Customs is modifying the regulation to provide that, in addition to the required documents, Customs will consider any documentation the exporter submits that tends to prove a payment, including, with respect to exporters whose only quarterly HMT payments were for exports, affidavits attesting to that fact.

Customs notes however that in reviewing documentation other than the required documentation, it will balance its obligation to issue refunds with its obligation to protect the revenue. Thus, while Customs will accommodate exporters by considering additional evidence of payment, it will only accept those documents as evidence of payment if the documentation clearly shows that the payments were made for export fees (as opposed to other harbor maintenance fees), in the amounts sought to be refunded, and by the party requesting the refund (or on whose behalf the refund is requested). The regulation is amended in this document accordingly.

Customs notes that the regulations did not require the CF 349 and the CF 350 until 1991. Thus, for a period of time after this 1991 regulation change, Customs also accepted with payment, and for proving payments for refund, the documentation that was required under the regulations prior to the 1991 change. Consequently, for issuing refunds now for payments made on and after July 1, 1990, Customs will accept as proof of payment, when required to be submitted, whichever type of document Customs accepted with the payment at the time it was made. That documentation was either the documentation required after the 1991 change or, at least for a time, the documentation required under the regulations prior to the 1991 change.

Comment: Two commenters objected to the interim regulation's statement, in the "Background" text of the document, regarding when a protest under 19 U.S.C. 1514 should be filed to challenge a denial of a refund request for a pre-July 1, 1990, payment. These commenters contended that the 90-day protest filing period should commence upon expiration of the 120-day refund request refiling period. (The interim regulation procedure provided that, for pre-July 1, 1990, payments, an exporter would have 120 days after a refund denial to submit additional documentation. The document pointed out, however, that if an exporter wanted to file a protest, it must do so within 90 days of the refund denial. This would mean that an exporter would have to file a protest prior to the end of the 120-day period.)

Customs response: Under 19 U.S.C. 1514(c)(3), a protest must be filed within 90 days of the date of a Customs decision described in 19 U.S.C. 1514(a)(3) concerning charges or exactions under the customs laws, which includes a decision to deny a refund of export harbor maintenance fees. (See *Swisher International, Inc.* v. *United States*, 205 F. 3d 1358 (No. 99–1277 C.A.F.C. February 28, 2000)(cert. denied), which held that denial of a harbor maintenance fee refund request is protestable.) Based on this statutory requirement, the interim regulation document indicated that a protest must be filed within 90 days of the Customs decision to deny a refund.

However, the modified refund procedure, as set forth in this document, renders the concern of these commenters moot. Under the modified procedure, and in contrast to the procedure set forth in the interim regulation, under no circumstance does the 120-day period for filing documentation run concurrently with the statutory 90-day protest period. Under the modified procedure, the 90-day protest period begins to run either upon expiration of the 120-day period or issuance of a Revised Report/Certification if issued after the period's expiration.

Comment: Several commenters objected to Customs expression of intent, in the "Background" text of the interim regulation, to require that refund requests for export fee payments made more than a year ago be filed by the anticipated 30-day delayed effective date of the then not yet published July 2, 2001, final rule. These commenters recommended that Customs allow one year or 18 months from the date of publication of that anticipated final rule.

Customs response: Regarding the effective date of the July 2, 2001, final rule by which refund requests for export fee payments must be filed, Customs reconsidered the matter after publication of the interim regulation (partly in response to comments discussed in the final rule). Thus, in the July 2, 2001, final rule, Customs set forth a 180-day delayed effective date that would allow exporters plenty of time to file these refund requests, through December 31, 2001. Customs believes that this was a satisfactory resolution of the matter as it provided ample time to file refund requests (considering the period of time exporters had to do so prior to issuance of the July 2, 2001, final rule).

Comment: Several commenters objected to the interim regulation explicitly precluding application of interest to refunds of export harbor maintenance fees. Some of these commenters stated that interest should apply to these refunds and others stated that the regulation should not explicitly preclude application of interest while the issue is still being litigated.

Customs response: Customs does not agree that interest should apply to refunds of export harbor maintenance fees. As Customs pointed out in its comment responses published in the July 2, 2001, final rule, the U.S. Court of Appeals for the Federal Circuit ruled in *International Business Machines Corp.* v. *United States*, 201 F.3d 1367 (Fed. Cir. 2000), that exporters are not entitled to interest on the refund of these fees. Customs, however, does agree that the regulation should not mention interest while the matter is still subject to litigation. Consequently, Customs removed the language regarding interest from the regulation published in the July 2, 2001, final rule, and today's final rule document continues the omission.

Customs also notes that under § 24.24(e)(4)(ii)(B) of the interim regulation (and under the July 2, 2001, final rule), claims for recovery of interest are not included among the claims waived by the exporter. This is made explicit in the amendment published in this document (see § 24.24(e)(4)(iv)(B)(*5*)).

Comment: Several commenters objected to the interim regulation's requirement that a power of attorney or letter of authorization be submitted when an exporter is represented by an agent. The power of attorney or letter constitutes the exporter's authorization of an agent or representative to file a refund request, sign a Report/Certification or Revised Report/Certification, and/or receive a refund on its behalf.

Customs response: Customs notes that it was the exporter who was liable for the export fee and, as such, is the proper party entitled to receive a refund. Generally, where an agent claims to represent an exporter, Customs believes it is appropriate to require as evidence of the representation a properly executed and current power of attorney or letter of authorization executed by the exporter. This ensures that the agent requestor is properly authorized to request and receive the refund, and it protects both the Government and the exporter against the possibility of issuing a refund to the wrong party, issuing duplicate refunds to both the exporter and its agent, or issuing refunds to more than one agent claiming to represent the same exporter.

Thus, the general rule is that Customs will not process a refund request submitted by an agent on behalf of an exporter (by witholding issuance of the HMT Payment Report and the Report/Certification until an authorizing document is filed) unless a power of attorney or authorization letter signed by the exporter is submitted.

However, in reviewing this matter, Customs has recognized the special circumstance of freight forwarders who made export fee payments on behalf of many exporters at a time, in some cases, hundreds. Customs believes that this special circumstance warrants an exception to the general rule that is practical for Customs as well as the exporters represented by these agents. To accommodate these agents and yet to ensure, as much as possible, that Customs does not inadvertently issue double refunds to an exporter who also files a refund request on its own behalf, Customs will process refund requests filed by freight forwarders without power of attorneys or authorization letters unless any exporter covered in the refund request has also filed a separate refund request on its own behalf. In that instance, the freight forwarder's entire refund request will be removed from the chronological processing order and processed later.

The exception to the power of attorney/authorization letter requirement for freight forwarders is added to § 24.24(e)(4)(iv)(B)(*1*) of this final rule. Minor conforming modifications are made in the amended regulation, as necessary.

Customs notes that while it always intended to process refund requests in the chronological order of receipt, the interim regulation did not make that explicit. This final rule amends the regulation to make it explicit (see § 24.24(e)(4)(iv)(B)(*1*)).

Where a power of attorney or authorization letter is submitted, whether or not required, it must be executed by an official of the exporting company who is authorized to legally bind the company.

Finally, Customs notes that under the interim regulation procedure, this requirement for a power of attorney or authorization letter only applied to refund requests for post-June 30, 1990, payments for which a Report/Certification would be issued. Refund requests covering payments made prior to July 1, 1990, did not require a power of attorney or authorization letter, as they were to be treated like a request for a refund of any other quarterly paid harbor maintenance fee (except that an

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additional 120-day period to establish payments would apply) and a Report/Certification would not be issued. However, as the modified procedure treats payments made prior to and on or after July 1, 1990, the same with respect to issuance of a HMT Payment Report and a Report/Certification that must be signed by the exporter or its representative to receive a refund, the power of attorney/authorization letter requirement is no longer limited to refund requests covering post-June 30, 1990, payments. The regulation is modified accordingly in this document (§ 24.24(e)(4)(iv)(B)(*1*)).

Comment: One commenter recommended that Customs clarify that already-filed refund requests (filed before publication of the interim regulation) that were accompanied by documentation to prove payments made on or after July 1, 1990, will result in a Customs records search that is not limited to only the quarters covered by the documentation submitted. This commenter stated that an exporter should receive refunds for all post-June 30, 1990, payments made but will not if Customs does not search the entire period or the exporter does not refile its refund request identifying all possible quarters during which payments were (or could have been) made.

Customs response: Given the modified procedure set forth in this document, this commenter's concern is moot. Exporters, all of whom have already filed refund requests, will receive the HMT Payment Report that identifies all payments made by the exporter, as revealed by Customs record search. All post-June 30, 1990, payments that Customs can identify will be included in the HMT Payment Report and the Report/Certification whether or not the exporter's request specified quarters of payment. All payments, no matter when made, will be included in the HMT Payment Report.

Comment: Some commenters contended that Customs should convene a public meeting to discuss the amended refund process.

Customs response: Customs does not agree with this recommendation. As stated in its comment responses published in the July 2, 2001, final rule document, Customs believes that a public meeting regarding this subject is unnecessary and that the particular administrative (notice and comment) procedures being followed are sufficient to resolve the matter at issue.

Comment: One commenter recommended that Customs adopt a procedure to sever disputed claims from undisputed claims in a refund request to allow immediate payment of claims that can be verified while the exporter pursues a dispute involving claims that cannot be verified.

Customs response: A form of severability (of undisputed claims from disputed claims) is available under the modified procedure. Under the modified procedure, an exporter may sign and return to Customs a Report/Certification to receive the refund set forth in that report and also file a request for a Revised Report/Certification to seek refunds for additional payments not identified in the Report/Certification. The request for a Revised Report/Certification may be filed either contemporaneously with the filing of the signed Report/Certification or sometime later but within the 120-day period. Customs notes, however, that corrections of payments included in a signed Report/Certification cannot be pursued later because the exporter's signature on the report constitutes a full accord and satisfaction agreement with respect to all payments covered in that report.

In addition, an exporter may file another request for a Revised Report/Certification at any time during the 120-day period. This feature of the procedure allows an exporter to seek a refund for any later discovered payments and gives an exporter another chance to prove (with additional documentation) a payment that was not included in a refund previously issued by Customs.

Finally, after expiration of the 120-day period, an exporter may file a protest covering any payments not refunded by Customs. This provides another opportunity to sever disputed from undisputed refund claims, though later in the process.

Comment: One commenter recommended that a time limit be imposed on Customs processing of refund requests to require that Customs process at least 500 claims per month.

Customs response: Customs disagrees that a monthly processing requirement is necessary. However, Customs agrees that the expeditious processing of claims should be given a high priority. Toward that end, the modified procedure provides that Customs will endeavor to issue a Revised Report/Certification within 60 days of receiving a request for a revised report with supporting documentation. Also, for exporters whose payments are confined to the post-June 30, 1990, period and who do not dispute the payments listed and the refund set forth in a Report/Certification, refunds will be issued soon after Customs receipt of a signed Report/Certification. The sooner the exporter signs and returns it to Customs, the sooner Customs will issue the refund. Customs believes that the timetable set up in the modified procedure adequately addresses this commenter's concern.

Other Changes

After further consideration of the interim regulation's refund procedure, Customs determined that other changes were warranted (additional to those discussed in the comment responses above). One change involves the exporter's waiver (release, waiver, and abandonment) of claims against the Government (its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages, excluding interest), and another change involves the exporter's full accord and satisfaction agreement. The interim regulation (as well as the July 2, 2001, final rule) provides that the waiver and the full accord and satisfaction agreement apply to all export fee payments made by the exporter, whether or not addressed in a report. In contrast, under the modified procedure set forth in this document, an exporter's signature on a Report/Certification or a Revised Report/Certification represents a waiver and a full accord and satisfaction agreement relative only to the payments approved for refund in the report.

Another change is the Government's waiver of claims (excluding fraud claims) against the exporter (its employees, etc.) which in this document, like the exporter's waiver, is limited to claims arising out of payments covered in a signed report. Under the interim regulation, the Government's waiver was broad, covering all export fee payments whether or not covered in a report.

Another change has to do with the certification made by an agent, including a freight forwarder, that signs a Report/Certification or Revised Report/Certification on an exporter's behalf. Customs, in determining that the freight forwarder exception to the power of attorney/authorization letter requirement is warranted (discussed in the "Comments" section), recognized that any agent should be accountable for the proper distribution of refunds issued by Customs that are intended for exporters covered in the agent's refund request. Thus, Customs is adding to the regulation (§ 24.24(e)(4)(iv)(B)(*5*)) a provision that requires any agent, when signing a Report/Certification or Revised Report/Certification and accepting refunds on behalf of exporters, to certify that it will use due diligence to forward the refund to the exporters it represents, and will return a refund to Customs, within one year of receipt, if it does not forward it to the exporter.

Another change in the regulation is to add language indicating that refund requests will be processed in the chronological order of receipt (see § 24.24(e)(4)(iv)(B)(*1*)) . Customs always intended to process refund requests in this way, but the regulation was silent in this regard.

Finally, a change concerning the address for submitting requests for refunds of harbor maintenance fees paid on a quarterly basis (found in § 24.24(e)(4)(i) of the interim regulation) is made in this document (in §§ 24.24(e)(4)(i) and (iv)(A)). The change reflects the correct zip code; however, as noted previously, this change was reflected in the July 2, 2001, final rule and was made in a notice of correction document published in the **Federal Register** on April 27, 2001.

Conclusion

After analysis of the comments and further review and consideration of the matter, Customs has determined to adopt as final the content of the interim amendments published in the **Federal Register** (66 FR 16854) on March 28, 2001, with the changes discussed above in this document and set forth in the amended regulatory text below.

In summary, these changes relate to: (1) That part of the procedure relative to Customs issuance of refunds after receiving a refund request, including the issuance of a HMT Payment Report; (2) the processing of refund requests in chronological order; (3) the requirement that a power of attorney or authorization letter be submitted to Customs prior to issuance of a HMT Payment Report and Report/Certification for any refund request (as opposed to only requests covering post-June 30, 1990, payments) submitted on the exporter's behalf by an agent other than a freight forwarder; (4) an exception to the power of attorney/authorization letter requirement applicable to freight forwarders and it's effect on the chronological processing of refunds filed by freight forwarders; (5) a requirement that any agent (including a freight forwarder) that signs a Report/Certification or Revised Report/Certification on an exporter's behalf must certify that it will use due diligence to forward the refund to the exporter and will return to Customs any refund not forwarded to the exporter within one year of its receipt; (6) the exporter's waiver (release and abandonment) of claims and its agreement of full accord and satisfaction; (7) the Government's waiver of claims against the exporter; (8) the address for mailing refund requests for export harbor maintenance fees; and (9) the matter of interest on refunds of export harbor maintenance fees. Customs notes that the latter two changes were reflected in the July 2, 2001, final rule.

Customs emphasizes that the instant final rule's modification of the interim regulation's refund-filing procedure will not prejudice exporters who filed refund requests in accordance with that procedure. The modified procedure is simpler and more accommodating to exporters than the interim regulation's procedure, and all filers will benefit equally from its implementation. Customs notes that as all refund requests have been filed prior to publication of this document, any modification to the procedure will not affect any exporter's actual filing of the request. The modifications made in this document affect the part of the procedure that commences after Customs receives a refund request.

Finally, Customs notes that this document amends only § 24.24(e)(4)(iv). The remaining paragraphs of § 24.24(e)(4) remain as published in the July 2, 2001, final rule (which became effective after the interim regulation and thereby replaced the interim regulation).

Inapplicability of Delayed Effective Date

Pursuant to 5 U.S.C. 553(d)(3), Customs has determined that a delayed effective date for this final rule is unnecessary. This document adopts, with some modifications, the content of an interim regulation previously published in the **Federal Register** (66 FR 34813) and made effective on March 28, 2001. The several changes made with publication of this document are to the benefit of the exporters who are required to follow the procedure set forth in the already effective interim regulation. For that reason, the effective date of this final rule document should not be delayed.

Executive Order 12866

This document does not meet the criteria for a Asignificant regulatory action" as specified in E.O. 12866.

Paperwork Reduction Act

The collection of information contained in this final rule has previously been reviewed and approved by the Office of Management and Budget (OMB) under OMB control number 1515–0158. Additional information requested in the final rule relates to usual and customary business information/records. This rule does not include any substantive changes to the existing approved information collection. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

Regulatory Flexibility Act

Because no notice of proposed rulemaking was required for this rule, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. However, because this amendment to the regulations merely simplifies, to the benefit of exporters, a procedure for applying for and receiving refunds of export harbor maintenance fees that is already provided for under an existing regulation, it will not have a significant economic impact on a substantial number of small entities.

Drafting Information

The principal author of this document was Bill Conrad, Office of Regulations and Rulings, U.S. Customs Service. However, personnel from other offices contributed in its development.

List of Subjects in 19 CFR Part 24

Accounting, Claims, Customs duties and inspection, Fees, Financial and accounting procedures, Imports, Taxes, User fees.

Amendments to the Regulations

For the reasons stated in the preamble, under the authority of 19 U.S.C. 66 and 1624, the content of the interim rule amending 19 CFR part 24 that was published at 66 FR 16854 on March 28, 2001, is adopted as a final rule, with changes, to read as follows:

PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE

1. The general authority citation for part 24 is amended to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 23, Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 9701.

* * * * *

2. Section 24.24 is amended by revising paragraph (e)(4)(iv) to read as follows:

§ 24.24 Harbor maintenance fee.

* * * * *

(e) *Collections, supplemental payments, and refunds*—* * *

(4) * * *

(iv) *For fees paid on export movements.* Customs will process refund requests relative to fee payments previously made regarding the loading of cargo for export as follows:

(A) *Refund request.* For export fee payments made prior to July 1, 1990, the

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exporter (the name that appears on the SED or equivalent documentation authorized under 15 CFR 30.39(b)) or its agent must submit a letter of request for a refund specifying the grounds for the refund and identifying the specific payments made. The letter must be accompanied by the proof of payment set forth in paragraph (e)(4)(iv)(C) of this section. For export fee payments made on or after July 1, 1990, supporting documentation is not required with the refund request. For these payments, the request must specify the grounds for the refund, identify the quarters for which a refund is sought, and contain the following additional information: the exporter's name, address, and employer identification number (EIN); the name and EIN of any freight forwarder or other agent that made export fee payments on the exporter's behalf; and a name, telephone number, and facsimile number of a contact person.

(B) *Refund procedure—(1) Processing order; power of attorney.* Generally, a properly filed refund request will be processed in the chronological order of its receipt. A refund request filed on behalf of an exporter by an agent other than a freight forwarder must be supported by a power of attorney or letter signed by the exporter authorizing the representation. A refund request filed by an agent other than a freight forwarder that lacks a power of attorney or authorization letter will not be processed unless one or the other is submitted. A refund request filed by a freight forwarder does not require a power of attorney or authorization letter to be processed; however, if Customs has not received a power of attorney or authorization letter for an exporter covered in a freight forwarder's refund request and that exporter has filed a separate refund request on its own behalf, that freight forwarder's entire refund request will be removed from the chronological processing order and processed after the processing of all exporter refund requests is completed.

(2) HMT Payment Report and Report/Certification. In processing a request for a refund, Customs will conduct a search of its records (Customs electronic database and paper document sources) and produce for issuance to the exporter (or its agent, as appropriate) a "Harbor Mantenance Tax Payment Report" (HMT Payment Report) that lists all payments reflected in those records for the entire period the fee was in effect. Customs will also produce for issuance to the exporter a "Harbor Maintenance Tax Refund Report and Certification" (Report/Certification) that lists all payments supported by paper documentation, either retained by Customs (relative to payments made on and after July 1, 1990) or submitted by the exporter with its refund request (relative to payments made at any time the fee was in effect). Where a refund request was filed on the exporter's behalf by an agent other than a freight forwarder, a power of attorney or authorization letter must be filed with Customs before Customs will issue these reports. The Report/Certification sets forth the total amount of the refund that Customs believes it owes the exporter for the payments listed in that report (minus any previous refunds). Pre-July 1, 1990, payments listed in the HMT Payment Report for which paper documentation has not been provided by the exporter will not be listed in the Report/Certification. The exporter has 120 days from the date the HMT Payment Report and the Report/Certification are issued (the 120-day period) to sign and return to Customs the Report/Certification in order to receive the refund set forth in that report and/or to submit to Customs a request for a Revised Report/Certification. Where the exporter chooses to receive the refund set forth in the Report/Certification, the exporter must sign and return the report to Customs. Customs will issue the refund upon receipt of the signed report.

(3) Revised Report/Certification. A request for a Revised Report/Certification must be accompanied by documentation to support any payments not listed in the Report/Certification or corrections to listed payments. See paragraph (e)(4)(iv)(C) of this section regarding acceptable documentation. If an exporter (or its agent, as appropriate) both signs and returns to Customs a Report/Certification and requests a Revised Report/Certification, Customs will not, when reviewing the request for a Revised Report/Certification, approve for refund any corrections to the payments that were listed in the signed Report/Certification; Customs will, however, in that circumstance, consider approving any additional payments that were not listed in the signed Report/Certification. If an exporter does not sign and return to Customs a Report/Certification, but requests a Revised Report/Certification, Customs will consider approving for refund corrections to the payments listed in the Report/Certification and additional payments. Where the exporter requests a Revised Report/Certification, Customs will review the documentation submitted with the request, make a determination, and, within 60 days of the request's receipt, issue a Revised Report/Certification that lists all payments approved for refund and the total amount of the refund owed. In order to receive the refund set forth in a Revised Report/Certification, the exporter must sign and return it to Customs. Customs will issue the refund upon its receipt of the signed report. An exporter, within the 120-day period, may submit additional requests for a Revised Report/Certification, with appropriate documentation, to cover any payments not approved for refund in a Revised Report/Certification previously issued by Customs.

(4) Protest. For purposes of filing a protest under 19 U.S.C. 1514 (and 19 CFR part 174), unless issuance of a Revised Report/Certification is pending, any payments not approved for refund in a Report/Certification or a Revised Report/Certification issued by Customs within the 120-day period will be considered denied as of the date the period expires; a protest covering such payments must be filed within 90 days of that date. For any payments not approved for refund in a Revised Report/Certification issued after expiration of the 120-day period, a protest may be filed within 90 days of that report's issuance.

(5) Significance of signed Report/Certification and Revised Report/Certification. A Report/Certification or Revised Report/Certification must be signed by an officer of the company duly authorized to bind the company or by an agent (such as a broker or freight forwarder) representing the exporter in seeking a refund under this section. A Report/Certification or Revised Report/Certification signed by the exporter or its agent and received by Customs constitutes the exporter's agreement that the amount of the refund set forth in the report is accurate and Customs payment of that refund amount is in full accord and satisfaction of all payments approved for refund in the report. The signed Report/Certification or Revised Report/Certification also represents the exporter's release, waiver, and abandonment of all claims, excluding claims for interest, against the Government, its officers, agents, and assigns for costs, attorney fees, expenses, compensatory damages, and exemplary damages arising out of the payments approved for refund in the report. When an agent, including a freight forwarder, signs a Report/Certification or Revised Report/Certification on behalf of an exporter(s), the agent certifies that it is acting on the exporter's behalf and will use due diligence to forward the refund to the exporter, and, in the event the agent does not forward the refund to the exporter, will notify Customs and return the refund to Customs within one year of its receipt of the refund. Upon receipt of the signed Report/Certification or Revised Report/Certification, Customs releases, waives, and abandons all claims other than fraud against the exporter, its officers, agents, or employees arising out of all payments approved for refund in the report.

(C) *Documentation.* For payments made prior to July 1, 1990, supporting documentation is required to obtain a refund and must be submitted in accordance with paragraphs (e)(4)(iv)(A) and/or (B)(*3*) of this section. For payments made on and after July 1, 1990, supporting documentation is not required to obtain a refund, unless the exporter seeks to prove corrections of payments listed in the Report/Certification (if the exporter did not sign and return it to Customs) and/or additional payments not listed in a Report/Certification, in accordance with paragraph (e)(4)(iv)(B)(*3*) of this section. The supporting documentation that Customs will accept as establishing entitlement to a refund, whether submitted with a refund request or a request for a Revised Report/Certification, is whichever of the following documents Customs accepted with the payment at the time it was made: a copy of the Export Vessel Movement Summary Sheet; where an Automated Summary Monthly Shipper's Export Declaration was filed, a copy of a letter containing the exporter's identification, its employer identification number (EIN), the Census Bureau reporting symbol, and, the quarter for which the payment was made; or a copy of a Harbor Maintenance Fee Quarterly Summary Report, Customs Form 349, for the quarter covering the refund requested. Customs also will consider other documentation offered as proof of payment of the fee, such as cancelled checks and/or affidavits from exporters attesting to the fact that all quarterly harbor maintenance tax payments made by the exporter were made exclusively for exports, and will accept that other documentation as establishing entitlement for a refund only if it clearly proves the payments were made for export harbor maintenance fees in the amounts sought to be refunded and were made by the party requesting the refund or the party on whose behalf the refund was requested.

* * * * *

Robert C. Bonner,
Commissioner of Customs.
Approved: May 8, 2002.
Timothy E. Skud,
Deputy Assistant Secretary of the Treasury.
[FR Doc. 02–11835 Filed 5–10–02; 8:45 am]
BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8985]

RIN 1545–AY02

Hedging Transactions; Corrections

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on Wednesday, March 20, 2002 (67 FR 12863) relating to the character of gain or loss from hedging transactions.

DATES: This correction is effective March 20, 2002.

FOR FURTHER INFORMATION CONTACT: Elizabeth Handler (202) 622–3930 or Viva Hammer (202) 622–0869 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of these corrections are under section 1221 of the Internal Revenue Code.

Need for Correction

As published, the final regulations contain errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

Accordingly, 26 CFR Part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

§ 1.446–4 [Corrected]

2. Section 1.446–4, paragraph (d)(3) is amended by removing the language "§ 1.1221–2(a)(4)(i)" from the last sentence and adding the language "§ 1.1221–2(a)(4)" in its place.

§ 1.1256(e)–1 [Corrected]

3. Section 1.1256(e)–1, paragraph (c) is amended by removing the language "(f)(1)(ii)" from the second sentence and adding the language "(g)(1)(ii)" in its place.

Cynthia E. Grigsby,
Chief, Regulations Unit, Associate Chief Counsel (Income Tax and Accounting).
[FR Doc. 02–11793 Filed 5–10–02; 8:45 am]
BILLING CODE 4830–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Los Angeles-Long Beach 02–009]

RIN 2115–AA97

Security Zones; Cruise Ships, San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing moving and fixed security zones around cruise ships located on San Pedro Bay, California, near and in the ports of Los Angeles and Long Beach. These actions are necessary to ensure public safety and prevent sabotage or terrorist acts against these vessels. Persons and vessels are prohibited from entering these security zones without permission of the Captain of the Port.

DATES: This rule is effective from 11:59 p.m. PDT on May 1, 2002 to 11:59 p.m. PST on December 1, 2002.

ADDRESSES: Documents indicated in this preamble as being available in the docket are part of docket COTP Los Angeles-Long Beach 02–009 and are available for inspection or copying at Coast Guard Marine Safety Office Los Angeles-Long Beach, 1001 South Seaside Avenue, Building 20, San Pedro, California, 90731, between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Lieutenant Junior Grade Rob Griffiths, Chief of Waterways Management Division, at (310) 732–2020.

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Regulatory Information

We did not publish a notice of proposed rulemaking (NPRM) for this regulation. Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing an NPRM. Due to the terrorist attacks on September 11, 2001 and the warnings given by national security and intelligence officials, there is an increased risk that further subversive or terrorist activity may be launched against the United States. A heightened level of security has been established around all cruise ships near the ports of Los Angeles and Long Beach. These security zones are needed to protect the United States and more specifically the people, waterways, and properties near San Pedro Bay.

In addition, the Coast Guard is currently working on an NPRM, for this temporary rule to become a final rule, which will soon be published. Therefore, the public will still have the opportunity to comment on this rule. This current temporary final rule's sole purpose is to continue a similar temporary final rule that began enforcement on November 1, 2001, recently following the attacks, and expires May 1, 2002. In this case, doing a NPRM will be repetitious in nature and since delay is inherent in the NPRM process, any delay in the effective date of this rule, is contrary to the public interest insofar as it may render individuals and facilities within and adjacent to cruise ships vulnerable to subversive activity, sabotage or terrorist attack. The measures contemplated by this rule are intended to prevent future terrorist attacks against individuals and facilities within or adjacent to cruise ships. Immediate action is required to accomplish these objectives and necessary to continue safeguarding these vessels and the surrounding area. Any delay in the effective date of this rule is impractical and contrary to the public interest.

For the reasons stated in the paragraphs above under 5 U.S.C. 553(d)(3), the Coast Guard also finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**.

Background and Purpose

On September 11, 2001, terrorists launched attacks on commercial and public structures—the World Trade Center in New York and the Pentagon in Arlington, Virginia—killing large numbers of people and damaging properties of national significance. There is an increased risk that further subversive or terrorist activity may be launched against the United States based on warnings given by national security and intelligence officials. The Federal Bureau of Investigation (FBI) issued warnings on October 11, 2001 and February 11, 2002 concerning the potential for additional terrorist attacks within the United States. In addition, the ongoing hostilities in Afghanistan have made it prudent for important facilities and vessels to be on a higher state of alert because Osama Bin Ladin and his Al Qaeda organization, and other similar organizations, have publicly declared an ongoing intention to conduct armed attacks on U.S. interests worldwide.

These heightened security concerns, together with the catastrophic impact that a terrorist attack against a cruise ship would have to the public interest, makes these security zones prudent on the navigable waterways of the United States. To mitigate the risk of terrorist actions, the Coast Guard has increased safety and security measures on the navigable waterways of San Pedro Bay by establishing security zones around cruise ships. Vessels operating near cruise ships present possible platforms from which individuals may gain unauthorized access to these vessels or launch terrorist attacks upon these vessels or adjacent population centers. As a result, the Coast Guard is taking measures to prevent vessels or persons from accessing the navigable waters close to cruise ships on San Pedro Bay.

On January 18, 2002, we published a temporary final rule for cruise ships entitled "Security Zones; Port of Los Angeles and Catalina Island" in the **Federal Register** (67 FR 2571) under § 165.T11–058. It has been in effect since 11:59 PST on November 1, 2001 and is set to expire 11:59 p.m. PDT on May 1, 2002. As of today, the need for security zones around cruise ships still exist. This new temporary final rule will begin 11:59 p.m. PDT on May 1, 2002, the exact time the previous cruise ship security zone was in effect, and is set to expire 11:59 p.m. PST December 1, 2002. This will allow the Coast Guard time to publish a notice of proposed rulemaking (NPRM) in the **Federal Register**, which will include a public comment period, and for a final rule to be published and put into effect without there being an interruption in the protection provided by cruise ship security zones.

This new rule differs slightly from temporary section 165.T11–058 in a few ways. First, this temporary rule extends only the security zones in San Pedro Bay. Second, the security zones will be in effect around cruise ships in the Port of Long Beach as well as the Port of Los Angeles. Third, while underway in San Pedro Bay, the security zone will be 200 yards ahead, and 100 yards on each side and astern of the cruise ship which is needed due to the cruise ship's speed of advance through the water. Fourth, while implicit in the prior temporary rule, the security zones here will be described as extending from the water's surface to the sea floor. This more specific description is intended to discourage unidentified scuba divers and swimmers from coming within close proximity of a cruise ship. Fifth, the security zone around cruise ships that are underway or anchored on San Pedro Bay was broadened from only the port of Los Angeles inside the Los Angeles "sea buoy" to include all waters on San Pedro Bay within three nautical miles of the Federal breakwaters. Lastly, to clarify to which types of passenger vessels the rule applies, we have defined "cruise ship" to coincide with the description in 33 CFR 120.100.

Discussion of Rule

This regulation establishes a security zone in the waters of San Pedro Bay around all cruise ships that are anchored, moored, or underway within the Los Angeles or Long Beach port area. This security zone will take effect upon entry of any cruise ship into the waters from within three nautical miles outside the Federal breakwaters encompassing San Pedro Bay and will remain in effect until that vessel departs the three nautical mile limit. The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwater.

These security zones are needed for national security reasons to protect cruise ships, the public, transiting vessels, adjacent waterfront facilities, and the ports from potential subversive acts, accidents, or other events of a similar nature. Entry into these zones will be prohibited unless specifically authorized by the Captain of the Port or his designated representative. Vessels already moored or anchored when these security zones take effect are not required to get underway to avoid either the moving or fixed zones unless specifically ordered to do so by the Captain of the Port or his designated representative.

As part of the Diplomatic Security and Antiterrorism Act of 1986 (Pub. L. 99–399), Congress amended the Ports and Waterways Safety Act (PWSA) to allow the Coast Guard to take actions, including the establishment of security and safety zones, to prevent or respond to acts of terrorism against individuals, vessels, or public or commercial structures. This authority, under section 7 of the PWSA (33 U.S.C. 1226), supplements the Coast Guard's authority to issue security zones under The Magnuson Act regulations promulgated by the President under 50 U.S.C. 191, including Subparts 6.01 and 6.04 of Part 6 of Title 33 of the Code of Federal Regulations.

Vessels or persons violating this section will be subject to the penalties set forth in 33 U.S.C. 1232 and 50 U.S.C. 192. Pursuant to 33 U.S.C. 1232, any violation of the security zone described herein, is punishable by civil penalties (not to exceed $27,500 per violation, where each day of a continuing violation is a separate violation), criminal penalties (imprisonment up to 6 years and a maximum fine of $250,000), and in rem liability against the offending vessel. Any person who violates this section, using a dangerous weapon, or who engages in conduct that causes bodily injury or fear of imminent bodily injury to any officer authorized to enforce this regulation, also faces imprisonment up to 12 years. Vessels or persons violating this section are also subject to the penalties set forth in 50 U.S.C. 192: Seizure and forfeiture of the vessel to the United States, a maximum criminal fine of $10,000, and imprisonment up to 10 years.

The Captain of the Port will enforce these zones and may enlist the aid and cooperation of any Federal, State, county, municipal, and private agency to assist in the enforcement of the regulation. This regulation is proposed under the authority of 33 U.S.C. 1226 in addition to the authority contained in 50 U.S.C. 191 and 33 U.S.C. 1231.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979) because these zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than 30 minutes in duration. Vessels and persons may be allowed to enter these zones on a case-by-case basis with permission of the Captain of the Port.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

For the same reasons stated in the Regulatory Evaluation section above, the Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

We expect this rule will affect the following entities, some of which may be small entities: The owners and operators of private and commercial vessels intending to transit or anchor in a small portion of the ports of Los Angeles or Long Beach near a cruise ship that are covered by these security zones. The impact to these entities would not, however, be significant since these security zones will encompass a small portion of the waterway for a limited period of time. Delays, if any, are expected to be less than thirty minutes in duration.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we offer to assist small entities in understanding the rule so that they can better evaluate its effects on them and participate in the rulemaking process. If this rule will affect your small business, organization, or government jurisdiction and you have questions concerning its provision or operations for compliance, please contact the person listed under **FOR FURTHER INFORMATION CONTACT** for assistance in understanding this rule.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

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Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation because we are establishing security zones. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. Add new temporary § 165.T11–065 to read as follows:

§ 165.T11–065 Security Zones; Cruise ships, San Pedro Bay, California.

(a) *Definition.* "Cruise ship" as used in this section means a passenger vessel over 100 gross tons, carrying more than 12 passengers for hire; making voyages lasting more than 24 hours, any part of which is on the high seas; and for which passengers are embarked or disembarked in the Port of Los Angeles or Port of Long Beach. It does not apply to ferries that hold Coast Guard Certificates of Inspection endorsed for "Lakes, Bays, and Sounds", and that transit international waters for only short periods of time, on frequent schedules.

(b) *Location.* The following areas are security zones:

(1) All waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is anchored at a designated anchorage either inside the Federal breakwaters bounding San Pedro Bay or outside at designated anchorages within three nautical miles of the Federal breakwaters;

(2) The shore area and all waters, extending from the surface to the sea floor, within a 100 yard radius around any cruise ship that is moored, or is in the process of mooring, at any berth within the Los Angeles or Long Beach port areas inside the Federal breakwaters bounding San Pedro Bay; and

(3) All waters, extending from the surface to the sea floor, within 200 yards ahead, and 100 yards on each side and astern of a cruise ship that is underway either on the waters inside the Federal breakwaters bounding San Pedro Bay or on the waters within three nautical miles seaward of the Federal breakwaters.

(c) *Regulations.* (1) In accordance with the general regulations in § 165.33 of this part, entry into or remaining in this zone is prohibited unless authorized by the Coast Guard Captain of the Port, Los Angeles-Long Beach, or his designated representative.

(2) Persons desiring to transit the area of the security zone may contact the Captain of the Port at telephone number 1–800–221–8724 or on VHF-FM channel 16 (156.8 MHz) to seek permission to transit the area. If permission is granted, all persons and vessels must comply with the instructions of the Captain of the Port or his or her designated representative.

(d) *Authority.* In addition to 33 U.S.C. 1231 and 50 U.S.C. 191, the authority for this section includes 33 U.S.C. 1226.

(e) *Enforcement.* The U.S. Coast Guard may be assisted in the patrol and enforcement of the security zone by the Los Angeles Port Police and the Long Beach Police Department.

(f) *Effective period.* This section is effective from 11:59 p.m. PDT on May 1, 2002 through 11:59 p.m. PST on December 1, 2002.

Dated: May 1, 2002.

J.M. Holmes,

Captain, U.S. Coast Guard, Captain of the Port, Los Angeles-Long Beach.

[FR Doc. 02–11917 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–15–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[LANT AREA–02–001]

RIN 2115–AG33

Protection of Naval Vessels

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. Naval vessel protection zones will provide for the regulation of vessel traffic in the vicinity of many U.S. naval vessels in the navigable waters of the United States.

DATES: This rule is effective beginning June 15, 2002.

ADDRESSES: Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, are part of docket LANTAREA 02–001 and are available for inspection or copying at Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704–5004 between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Commander Chris Doane, Commander (Amr), Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704–5004; telephone number (757) 398–6372.

SUPPLEMENTARY INFORMATION:

Regulatory Information

On September 21, 2001, the Coast Guard published a temporary final rule entitled "Protection of Naval Vessels" in the **Federal Register** (66 FR 48779). The temporary final rule continues until June 15, 2002.

On February 21, 2002, we published a notice of proposed rulemaking (NPRM) entitled "Protection of Naval Vessels" in the **Federal Register** (67 FR 7992). We received no letters commenting on the proposed rule. No public hearing was requested, and none was held.

Background and Purpose

These zones are necessary to provide for the safety and security of United States naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Prior to issuing the temporary final rule on September 21, 2001, no regulation existed implementing 14 U.S.C. 91.

We determined that a continuing need existed for the protection of naval vessels. Therefore, we are establishing a final rule that will replace the temporary rule.

The temporary final rule continues until June 15, 2002. The permanent final rule becomes effective June 15, 2002.

Discussion of Comments and Changes

We received no comments on the proposed rule. Therefore, we have made no changes and plan to implement the provisions of the proposed rule as written.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Although this regulation restricts access to the regulated area, the effect of this regulation will not be significant because: (i) individual naval vessel protection zones are limited in size; (ii) the Coast Guard, senior naval officer present in command, or official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only effect a given geographical location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to operate near or anchor in the vicinity of U.S. naval vessels in the navigable waters of the United States.

This regulation will not have a significant economic impact on a substantial number of small entities for the following reasons: (i) Individual naval vessel protection zones are limited in size; (ii) the official patrol may authorize access to the naval vessel protection zone; (iii) the naval vessel protection zone for any given transiting naval vessel will only affect a given geographic location for a limited time; and (iv) when conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should give advance notice of all naval vessel movements on VHF–FM channel 16 so mariners can adjust their plans accordingly.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking process. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the address listed under **ADDRESSES.**

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or risk to safety that may disproportionately affect children.

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Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(g), of Commandant Instruction M16475.1D, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection and copying where indicated under **ADDRESSES.**

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Protection of naval vessels, Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 subpart G reads as follows:

Authority: 14 U.S.C. 91 and 633; 49 CFR 1.45.

2. Subpart G is added to part 165 to read as follows:

Subpart G—Protection of Naval Vessels

Sec.
165.2010 Purpose.
165.2015 Definitions.
165.2020 Enforcement authority.
165.2025 Atlantic Area.

Subpart G—Protection of Naval Vessels

§ 165.2010 Purpose.

This subpart establishes the geographic parameters of naval vessel protection zones surrounding U.S. naval vessels in the navigable waters of the United States. This subpart also establishes when the U.S. Navy will take enforcement action in accordance with the statutory guidelines of 14 U.S.C. 91. Nothing in the rules and regulations contained in this subpart shall relieve any vessel, including U.S. naval vessels, from the observance of the Navigation Rules. The rules and regulations contained in this subpart supplement, but do not replace or supercede, any other regulation pertaining to the safety or security of U.S. naval vessels.

§ 165.2015 Definitions.

The following definitions apply to this subpart:

Atlantic Area means that area described in 33 CFR 3.04–1 Atlantic Area.

Large U.S. naval vessel means any U.S. naval vessel greater than 100 feet in length overall.

Naval defensive sea area means those areas described in 32 CFR part 761.

Naval vessel protection zone is a 500-yard regulated area of water surrounding large U.S. naval vessels that is necessary to provide for the safety or security of these U.S. naval vessels.

Navigable waters of the United States means those waters defined as such in 33 CFR part 2.

Navigation rules means the Navigation Rules, International-Inland.

Official patrol means those personnel designated and supervised by a senior naval officer present in command and tasked to monitor a naval vessel protection zone, permit entry into the zone, give legally enforceable orders to persons or vessels within the zone, and take other actions authorized by the U.S. Navy.

Pacific Area means that area described in 33 CFR 3.04–3 Pacific Area.

Restricted area means those areas established by the Army Corps of Engineers and set out in 33 CFR part 334.

Senior naval officer present in command is, unless otherwise designated by competent authority, the senior line officer of the U.S. Navy on active duty, eligible for command at sea, who is present and in command of any part of the Department of Navy in the area.

U.S. naval vessel means any vessel owned, operated, chartered, or leased by the U.S. Navy; any pre-commissioned vessel under construction for the U.S. Navy, once launched into the water; and any vessel under the operational control of the U.S. Navy or a Combatant Command.

Vessel means every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water, except U.S. Coast Guard or U.S. naval vessels.

§ 165.2020 Enforcement authority.

(a) *Coast Guard.* Any Coast Guard commissioned, warrant or petty officer may enforce the rules and regulations contained in this subpart.

(b) *Senior naval officer present in command.* In the navigable waters of the United States, when immediate action is required and representatives of the Coast Guard are not present or not present in sufficient force to exercise effective control in the vicinity of large U.S. naval vessels, the senior naval officer present in command is responsible for the enforcement of the rules and regulations contained in this subpart to ensure the safety and security of all large naval vessels present. In meeting this responsibility, the senior naval officer present in command may directly assist any Coast Guard enforcement personnel who are present.

§ 165.2025 Atlantic Area.

(a) This section applies to any vessel or person in the navigable waters of the United States within the boundaries of the U.S. Coast Guard Atlantic Area, which includes the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts.

Note to § 165.2025 paragraph (a): The boundaries of the U.S. Coast Guard Atlantic Area and the First, Fifth, Seventh, Eighth and Ninth U.S. Coast Guard Districts are set out in 33 CFR part 3.

(b) A naval vessel protection zone exists around U.S. naval vessels greater than 100 feet in length overall at all times in the navigable waters of the United States, whether the large U.S. naval vessel is underway, anchored, moored, or within a floating drydock, except when the large naval vessel is moored or anchored within a restricted area or within a naval defensive sea area.

(c) The Navigation Rules shall apply at all times within a naval vessel protection zone.

(d) When within a naval vessel protection zone, all vessels shall operate at the minimum speed necessary to maintain a safe course, unless required to maintain speed by the Navigation Rules, and shall proceed as directed by the Coast Guard, the senior naval officer present in command, or the official patrol. When within a naval vessel protection zone, no vessel or person is allowed within 100 yards of a large U.S. naval vessel unless authorized by the Coast Guard, the senior naval officer present in command, or official patrol.

(e) To request authorization to operate within 100 yards of a large U.S. naval vessel, contact the Coast Guard, the senior naval officer present in command, or the official patrol on VHF-FM channel 16.

(f) When conditions permit, the Coast Guard, senior naval officer present in command, or the official patrol should:

(1) Give advance notice on VHF-FM channel 16 of all large U.S. naval vessel movements; and

(2) Permit vessels constrained by their navigational draft or restricted in their ability to maneuver to pass within 100 yards of a large U.S. naval vessel in order to ensure a safe passage in accordance with the Navigation Rules; and

(3) Permit commercial vessels anchored in a designated anchorage area to remain at anchor when within 100 yards of passing large U.S. naval vessels; and

(4) Permit vessels that must transit via a navigable channel or waterway to pass within 100 yards of a moored or anchored large U.S. naval vessel with minimal delay consistent with security.

Note to § 165.2025 paragraph (f): The listed actions are discretionary and do not create any additional right to appeal or otherwise dispute a decision of the Coast Guard, the senior naval officer present in command, or the official patrol.

Dated: April 26, 2002.

Thad W. Allen,

Vice Admiral, U.S. Coast Guard, Commander, Atlantic Area.

[FR Doc. 02–11919 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–15–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Parts 1220, 1222 and 1228

RIN 3095–AB02

Records Disposition

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising the records management regulations in Subchapter B to simplify certain records disposition procedures. The current rule addresses only hard copy distribution of agency records disposition manuals. This rule reflects agencies' use of the Internet and Intranets to distribute copies of agency records manuals that include the disposition authorities approved by NARA. The rule also eliminates the requirement that agencies request authority for a retention period that differs from the General Records Schedules if NARA previously has granted a disposition authority specifically to an agency. NARA is also correcting references in parts 1220, 1222, and 1228. This final rule will affect Federal agencies.

EFFECTIVE DATE: June 12, 2002.

FOR FURTHER INFORMATION CONTACT: Nancy Allard on 301–837–1850 or fax number 301–837–0319.

SUPPLEMENTARY INFORMATION: The proposed rule was published in the July 17, 2001, **Federal Register** (66 FR 37202) for a 60-day public comment period. NARA notified Federal records officers of the availability of the proposed rule. A copy of the proposed rule was also posted on the NARA web site.

NARA received 14 responses to the proposed rule, 12 from Federal agencies and two from private sector commenters. Six agencies and the two non-Federal commenters concurred with both changes. Comments from six agencies on the proposed rule related mainly to the clarity of the requirements and the format of the electronic copies of schedules submitted to NARA. Comments on each of the sections of the regulation are summarized below, followed by NARA's response.

36 CFR 1228.42

Comment: One agency recommended that NARA eliminate the requirement to submit a schedule for any deviation from GRS authorities.

NARA response: We did not adopt this comment. Application of the GRS is mandatory unless NARA has approved an alternate disposition. NARA has the statutory responsibility to approve all records disposition authorities, including those on agency-specific schedules and those contained in the GRS. See 44 U.S.C. 3303a.

36 CFR 1228.42(b)

Comments: Under the new rule, agencies need to notify NARA when they intend to apply a previously approved agency schedule instead of a newly-approved or newly-revised GRS. One agency suggested that it would be easier for agencies to notify NARA when they are not going to continue using the agency schedule rather than when they intend to continue to apply it. Another agency recommended that NARA add a time limit of 60–90 days for agencies to notify NARA that they intend to continue using their schedules. That agency also asked how NARA would determine which GRS items need be applied "without exception."

NARA response: The GRS, as the later authority, would normally supersede the agency schedule, so agencies need to tell NARA when they do not choose to apply the GRS. The rule has been modified to require notification within 90 days from issuance of the GRS change. GRS items that must be used without exception will be those that have a retention period based on another statutory or regulatory requirement. For example, retention periods for such records as accountable officers accounts and contracts are based on the statute of limitations on claims. A shorter retention period than provided in the law would deny an agency the ability to defend itself against claims, and a longer retention period may put the Government in jeopardy of processing untimely claims. NARA will identify such items clearly on the GRS Transmittal and in the disposition instruction for the applicable item.

36 CFR 1228.42(c)

Comment: One agency commented that NARA needs to process schedules for exceptions to the GRS more quickly, including shortening the 45-day review period on pending schedules listed in **Federal Register** notices to 14 days.

NARA response: We did not adopt this comment. NARA is concerned about the time required to approve many of the schedules submitted by agencies, and has undertaken a review of the scheduling process. NARA will consider, as part of this review, whether the Federal Register notice period should be modified. Public notice on pending schedules is required by law (44 U.S.C. 3303a(a)), and the current review period provides reasonable accommodation. In the meantime, NARA appraisal archivists work with agencies to set priorities for schedule processing.

36 CFR 1228.50(a)(4)

Comments: One agency asked for clarification of the requirement that agencies submit copies of schedules to NARA within 30 days as it relates to the provision in 36 CFR 1228.50(a)(4)(ii) that agencies submit a copy to NARA

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when posted. That agency also recommended that NARA provide links to printed schedules of all agencies. Another agency suggested that the regulation specify that if the agency both prints and posts an electronic copy of its schedule, it need only submit an electronic copy to NARA.

NARA response: The provisions of 36 CFR 1228.50(a)(4) apply to both subordinate paragraphs ((a)(4)(i) and (a)(4)(ii)). Therefore, agencies are required to submit printed directives, schedules, and schedule changes within 30 days of the date they were issued, and a printed or electronic copy of the materials on an Internet or Intranet web site within 30 days of the date they were posted. Agencies may email electronic copies of schedules to NARA at the email address now indicated in the rule. The NARA records management web site includes the Agency Records Disposition Online Resource (http://ardor.nara.gov/index.html) which contains agency schedules or links to agency schedules, and the GRS. NARA urges agencies to provide information on their schedules to add to this resource. NARA agrees that agencies may submit only electronic copies of schedules if they both post an electronic copy and print copies for distribution. This change has been made.

36 CFR 1228.50(a)(4)(ii)

Comments: Three agencies raised questions about the format of the electronic copy of the records schedule that agencies would send to NARA. One agency asked whether the term meant the method of transmission, e.g., via email, instead of the format of the document itself. That agency also asked if the requirement to provide the Internet address for relevant schedules could be met if the address (URL) is on the electronic copy submitted to NARA. Another agency believed that the "format specified by NARA" referred to the requirement for transfer of permanent records in 36 CFR 1228.270, because it requested that HTML and PDF be acceptable as well as ASCII. A third agency commented that NARA should be able to accept all formats. Another agency recommended that the regulation specify that any revisions to schedules also be covered by the requirement to submit copies of schedules to NARA.

NARA response: The regulation relates to the format of the directives, schedules, and schedule changes, not the method of transmission for either the schedules or the transfer of permanent electronic text records to NARA. NARA will accept the schedules in all formats that it is able to read and disseminate, *e.g.*, Word, WordPerfect, HTML, RTF (rich text format), and PDF. If the copy of a schedule posted on a publicly available web site is submitted to NARA and includes the URL, the requirement to provide the Internet address would be met. However, inclusion of the URL for schedules posted on an agency's internal Intranet is not required because an agency's Intranet is not available to either NARA or the public. The regulation clearly states that agencies are to submit "changes to all manuals as they are issued." NARA believes that the requirement is sufficiently clear.

Other Changes in This Final Rule

After publication of the proposed rule, the General Services Administration (GSA) updated its records management regulations. Cross-references to specific sections of GSA's records management regulations in title 41, Code of Federal Regulations, have been changed in this rule.

This rule is a significant regulatory action for the purposes of Executive Order 12866 and has been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities because it applies only to Federal agencies. This rule has no federalism or tribalism implications. This rule is not a major rule as defined in 5 U.S.C. Chapter 8, Congressional Review of Agency Rulemaking.

List of Subjects in 36 CFR Part 1228

Archives and records, Federal buildings and facilities.

For the reasons set forth in the preamble, NARA amends parts 1220, 1222, and 1228 of title 36, Code of Federal Regulations, as follows:

PART 1220—FEDERAL RECORDS; GENERAL

1. The authority citation for part 1220 continues to read as follows:

Authority: 44 U.S.C. 2104(a) and chs. 29 and 33.

§ 1220.2 [Amended]

2. In § 1220.2, remove the term "41 CFR chapter 201, Subchapters A and B" and add in its place the term "41 CFR part 102–193."

§ 1220.34 [Amended]

3. In § 1220.34, remove the term "41 CFR part 201–9" and add in its place the term "41 CFR part 102–193."

§ 1220.36 [Amended]

4. In paragraph (c) of § 1220.36, remove the term "41 CFR part 101–11" and add in its place the term "41 CFR part 102–193."

PART 1222—CREATION AND MAINTENANCE OF FEDERAL RECORDS

5. The authority citation for part 1222 continues to read as follows:

Authority: 44 U.S.C. 2904, 3101, and 3102.

§ 1222.20 [Amended]

6. In paragraph (a) of § 1222.20, remove "41 CFR Chapter 201" and add "41 CFR part 102–193."

PART 1228—DISPOSITION OF FEDERAL RECORDS

7. The authority citation for part 1228 continues to read as follows:

Authority: 44 U.S.C. chs. 21, 29, and 33.

8. Revise § 1228.40 to read as follows:

§ 1228.40 Authority.

The Archivist of the United States issues schedules authorizing disposal, after specified periods of time, of temporary records common to several or all agencies of the U.S. Government. General Records Schedules authorize the destruction of records after the stated retention period expires. Application of the disposition instructions in these schedules is mandatory (44 U.S.C. 3303a), provided an agency has not already received disposition authority from NARA.

9. Amend § 1228.42 by redesignating paragraph (c) as paragraph (d); revising paragraphs (a) and (b); and adding new paragraph (c) to read as follows:

§ 1228.42 Applicability.

(a) Agencies must apply GRS authorizations except as provided in paragraphs (b) or (c) of this section. Agencies must not include on SFs 115 records covered by the GRS unless a different retention period is requested, as specified in paragraph (c) of this section.

(b) Agencies may apply either the disposition instructions in a new or revised GRS or the disposition instructions previously approved by NARA in an agency schedule for the same series or system of records, unless NARA indicates that the new GRS disposition instruction must be applied without exception. The authority chosen by the agency must be applied on an agency-wide basis. The agency must notify NARA within 90 days of the date of the GRS change if it intends to continue using the agency schedule.

(c) Except as provided in paragraph (b) of this section, agencies that wish a different retention period must request an exception to the GRS by submitting an SF 115 in accordance with § 1228.30 accompanied by a written justification for the different retention period.

* * * * *

10. Revise § 1228.50(a)(4) to read as follows:

§ 1228.50 Application of schedules.

* * * * *

(a) * * *

(4) Agencies must submit to the National Archives and Records Administration (NWML) copies of published records schedules and all directives and other issuances relating to records disposition, within 30 days of implementation or internal dissemination, as specified below. If an agency both prints copies for distribution and posts an electronic copy, it should follow the instructions in paragraph (a)(4)(ii) of this section.

(i) Agencies that print these materials for internal distribution must forward to NARA (NWML), 8601 Adelphi Rd., College Park, MD 20740–6001, three copies of each final directive or other issuance relating to records disposition and 20 copies of all published records schedules (printed agency manuals) and changes to all manuals as they are issued.

(ii) Agencies that make these materials available via the Internet or internally on an Intranet web site or by other electronic means must submit one printed or electronic copy, in a format specified by NARA, to NARA (NWML) when the directive or manual is posted or distributed. Electronic mail messages transmitting copies of agency schedules as electronic attachments may be sent to *records.mgt@nara.gov*. These submissions must specify the name, title, agency, address, and telephone number of the submitter. If the records schedule is posted on a publicly available web site, the agency must also provide the Internet address (URL).

* * * * *

Dated: February 11, 2002.

John W. Carlin,

Archivist of the United States.

[FR Doc. 02–11577 Filed 5–10–02; 8:45 am]

BILLING CODE 7515–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN63–01–7288a; FRL–7165–7]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: We are approving a revision to the Minnesota State Implementation Plan (SIP) which updates Minnesota's performance test rule in the SIP. The Minnesota Pollution Control Agency (MPCA) submitted the proposed revision to EPA on December 16, 1998. The proposed revisions set out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. The request is approvable because it satisfies the requirements of the Clean Air Act (Act). The rationale for the approval and other information are provided in this notice.

DATES: This direct final rule will be effective July 12, 2002, unless EPA receives adverse comment by June 12, 2002. If EPA receives adverse comments, EPA will publish a timely withdrawal of the direct final rule in the **Federal Register** informing the public that the rule will not take effect.

ADDRESSES: Written comments may be mailed to: Carlton Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the documents relevant to this action are available for inspection during normal business hours at the above address. (Please telephone Christos Panos at (312) 353–8328, before visiting the Region 5 office.)

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), Air and Radiation Division, United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328.

SUPPLEMENTARY INFORMATION: This supplemental information section is organized as follows:

I. General Information
1. What action is EPA taking today?
2. Why is EPA taking This action?
3. What is the background for this action?
II. Review of State Implementation Plan Revision
1. Why did the State submit this SIP Revision?
2. What information did Minnesota submit, and what were its requests?
III. Final Rulemaking Action
IV. Administrative Requirements

I. General Information

1. What Action Is EPA Taking Today?

In this action, EPA is approving into the Minnesota SIP a revision to the SIP that MPCA submitted on December 16, 1998 which updates the Minnesota performance test rule. The Minnesota performance test rule was originally approved into the SIP on May 6, 1982 (47 FR 19520). Specifically, EPA is approving into the SIP Minnesota Rules 7017.2001 through 2060, removing from the SIP Minn. R. 7017.2000, and amending in the SIP Minn. R. 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410.

2. Why Is EPA Taking this Action?

EPA is taking this action because the state's submittal, which revises the performance test rule SIP, is fully approvable. The revisions made by MPCA to the performance test rule since 1976 vastly improve the performance testing requirements found in the Minnesota SIP. The 1976 rule, which is currently enforceable by EPA in the SIP (Minn. R. 70 17.2000), lacks many of the requirements now specifically set forth in the revised state rules.

EPA reviewed the SIP revision request for completeness based on the completeness requirements contained in Title 40 of the *Code of Federal Regulations*, Part 51, Appendix V. The EPA determined that the submittal is complete, and notified the State of Minnesota in a March 23, 1999 letter from Richard C. Karl, EPA, to Karen Studders, MPCA. The state has adequately addressed EPA's concerns, as discussed below, and the performance test SIP revision satisfies the applicable requirements of the Act. A more detailed explanation of how the state's submittal meets these requirements is in EPA's June 19, 2001 Technical Support Document (TSD).

3. What Is the Background for This Action?

A. Original Performance Test Rule SIP Submittal

Minnesota promulgated the original performance test rules in 1976 as Air Pollution Control 21 (APC 21). APC 21 was submitted to EPA in 1980 as part of Minnesota's Total Suspended Particulate Matter control plan and was incorporated into the SIP on May 6,

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1982 (47 FR 19520). The state recodified APC 21 to Minn. R. 7005.1860 in 1983, and yet again to Minn. R. 7017.2000 in 1993. The state made only minor changes to the performance test rule between 1976 and 1993. MPCA initiated major additions to the performance test rule in 1993 as described below.

B. 1993 Rulemaking Changes to the Performance Test Rule

The MPCA revised the performance test rule in 1993 for the following reasons: (1) The need to clarify and consolidate the state's performance test requirements; (2) the increase in the number of regulated pollutants and the increase in available test methods for performance testing; and (3) the need to use a definition of "PM10" that is consistent with the federal definition. On December 6, 1993, the state repealed the 1976 performance test rule, Minn. R. 7017.2000, and the 1993 performance test rule, Minn. R. 7017.2001–2060, became effective.

EPA reviewed and commented on the rule during its development and had identified several issues that required resolution before the rule could be approved into the SIP. EPA and MPCA staff participated in numerous discussions subsequent to the rulemaking to resolve these issues. EPA formally provided MPCA with its final comments by letter dated May 9, 1997. EPA's primary concerns with the 1993 version of the performance test rule were that certain provisions in the regulations could unintentionally impede enforcement, and that provisions addressing malfunction, startup and shutdown were less stringent than the federal New Source Performance Standards (NSPS).

II. Review of State Implementation Plan Revision

1. Why Did the State Submit This SIP Revision?

MPCA initiated its latest revision to the performance test rule to address EPA's May 9, 1997 comments. As previously stated, in 1993 the state repealed the 1976 version of the performance test rule, which is currently in the Minnesota SIP.

In a June 25, 1997 letter to EPA, MPCA staff responded to EPA's May 9, 1997 comments with additional revisions to the rule. Due to filing errors, MPCA placed the performance test rule on public notice twice, from July 28 to August 27, 1997 and from April 20 to May 20, 1998 before rulemaking was completed on the final rule.

Because over a year had passed between MPCA's June 25, 1997 response to EPA's May 9, 1997 comments and the completion of formal rulemaking, MPCA re-responded to EPA's comments which it included in their December 16, 1998 SIP submittal.

2. What Information Did Minnesota Submit, and What Were Its Requests?

In order to resolve those issues that EPA identified as impediments to SIP approval, MPCA made the following revisions to its performance test rule. MPCA revised language in the performance test rule to reference the use of credible evidence where a test does not meet the administrative and technical requirements of the rule, and incorporated NSPS language to make the revised rule's provisions regarding malfunction, startup and shutdown equally stringent to the federal requirements. MPCA also incorporated a number of relatively minor language changes to help clarify the intent of the rule. Additional changes to the performance test rule were based on MPCA's review and experience since the state adopted the rule in December 1993, and the streamlining of certain administrative procedures. EPA has reviewed both the 1997 and 1998 response documents submitted by MPCA and has found that the state has adequately addressed EPA's concerns.

The State has requested that EPA approve the following: (1) The removal of Minn. R. 7017.2000 from the SIP, since this rule was repealed by the state in 1993; (2) the inclusion of the revised performance test rule, Minn. R. 7019.2001–2060, into the SIP; and (3) the inclusion into the SIP of updates to small portions of the opacity rules and other related rules identified while amending the performance test rule. Listed below are some of the changes made by the state to strengthen the performance test rule since it was incorporated into the SIP in 1976.

Definitions (7017.2005). A detailed set of definitions for the terms used in the performance test provisions was added to enhance the clarity and enforceability of the requirements.

Federal Testing Requirements and Test Methods (7017.2010, 7017.2015, and 7017.2050). The amended rule requires compliance with current EPA test methods. Because the rule incorporates by reference federal test methods and any future amendments or versions of those methods, the SIP will automatically require compliance with the latest EPA requirements (including testing requirements set forth in NSPS and NESHAPS).

Pretest Requirements (7017.2030). Substantial pretest requirements have been added, including a requirement to submit a detailed test plan and to meet with MPCA personnel prior to testing.

Testing Procedures and Quality Assurance (7017.2045 7017.2060). Incorporates new language regarding testing procedures and quality assurance.

Operational Requirements and Limitations (7017.2025). Establishes enforceable operating limitations based on tested conditions to better ensure that the compliance shown during testing is actually maintained during day-to-day operations.

Reporting and Certification Requirements (7017.2035, 7017.2040). Prescribes detailed reporting requirements, including what information must be in the test report, and specific requirements for responsible persons to certify the sampling, analysis, and reporting of the test results.

Consequences for Failing a Test (7017.2025, subparts 4 and 5). Lays out specific retesting requirements and a standard requirement to shut down units failing a retest except in certain circumstances.

Credible Evidence (7017.2020, subpart 6). Ensures that no person can mistakenly assume that the performance test requirements in any way undermine the ability to use any credible evidence to establish a violation.

Changes to Opacity Averaging Times in Performance Standards (7011). Changes the averaging times of all opacity limit excursion levels to six-minute intervals, and proportionately lowers the excursion limit. This results in an opacity standard that is essentially equivalent and consistent with EPA Method 9 and therefore makes the excursion limits more enforceable.

III. Final Rulemaking Action

EPA is approving into the Minnesota SIP revisions to the Minnesota performance test rule. The Minnesota performance test rule was originally approved into the SIP on May 6, 1982 (47 FR 19520). Specifically, EPA is approving into the SIP Minnesota Rules 7017.2001 through 2060, and amending the following rules currently in the SIP with amendments adopted by the state on July 13, 1998: Minn. R. 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410. In addition, EPA is removing Minn. R. 7017.2000 from the SIP, since this rule was repealed by the state in 1993. As described above, MPCA has addressed the issues identified by EPA and the performance test rule revision is therefore fully approvable.

The EPA is publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this **Federal Register** publication, we are publishing a separate document that will serve as the proposal to approve the state plan if relevant adverse comments are filed. This rule will be effective July 12, 2002 without further notice unless we receive relevant adverse comments by June 12, 2002. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. The EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. If we do not receive any comments, this action will be effective July 12, 2002.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future implementation plan. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

Title 40 of the Code of Federal Regulations, chapter I, part 52, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 52.1220 is amended by adding paragraph (c)(58) to read as follows:

§ 52.1220 Identification of plan.

* * * * *

(c) * * *

(58) On December 16, 1998, the State submitted an update to the Minnesota performance test rule, which sets out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. In addition, EPA is removing from the state SIP Minnesota Rule 7017.2000 previously approved as APC 21 in paragraph (c)(20) and amended in paragraph (c)(40) of this section.

(i) Incorporation by reference.

(A) Amendments to Minnesota Rules 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, 7011.1410, 7017.2001, 7017.2005, 7017.2015, 7017.2018, 7017.2020.

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7017.2025, 7017.2030, 7017.2035, 7017.2045, 7017.2050 and 2060, published in the *Minnesota State Register* April 20, 1998, and adopted by the state on July 13, 1998.

[FR Doc. 02–11734 Filed 5–10–02; 8:45 am]
BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 70

[CT–021–1224a; A–1–FRL–7210–9]

Clean Air Act Final Approval of Operating Permits Program; State of Connecticut

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is granting full approval to the Clean Air Act (Act), Operating Permits Program of the State of Connecticut (program). Connecticut submitted its program for the purpose of complying with the Act's directive under title V that states develop programs to issue operating permits to all major stationary sources and certain other stationary sources of air pollution. EPA granted interim approval to Connecticut's initial operating permit program on March 24, 1997. On August 13, 2001, EPA proposed full approval of Connecticut's pending revised program, provided the state finalized the sections of its proposed rules that address EPA's interim approval conditions. On January 11, 2002 EPA received Connecticut's adopted revisions to its program. On March 15, 2002, EPA proposed full approval to rule changes Connecticut made that were not related to EPA's interim approval issues. The Agency has determined that Connecticut's program fully meets the requirements of title V.

DATES: This rule is effective on May 31, 2002.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours, by appointment at the Office of Ecosystem Protection, U.S. Environmental Protection Agency, EPA New England Regional Office, One Congress Street, 11th floor, Boston, MA.

FOR FURTHER INFORMATION CONTACT: Donald Dahl, (617) 918–1657.

SUPPLEMENTARY INFORMATION:

The following table of contents describes the format for this **SUPPLEMENTARY INFORMATION** section:

I. What action is EPA taking today?
II. What issues were raised during the public comment periods and what are EPA responses?
III. What is the effective date of EPA's full approval of the Connecticut title V program?
IV. How does today's action affect the part 71 program in Connecticut?
V. How does EPA's action affect Indian country?
VI. What are the administrative requirements associated with this action?

I. What Action Is EPA Taking Today?

EPA is taking final action to approve the changes Connecticut made to its regulations (R.C.S.A. Sections 22a–174–1, 22a–174–2a and 22a–174–33) regarding the state's title V permitting program. The Agency is granting full approval to Connecticut's title V permitting program because Connecticut has made all the necessary changes to its program required by EPA's interim approval and the additional program changes that the state made meet the requirements of title V and EPA's state operating permit program regulations at 40 CFR part 70 (part 70). Details of the state's regulatory changes can be found in EPA's two proposed rulemakings, 66 FR 42496 (August 13, 2001) and 67 FR 11636 (March 15, 2002).

EPA received comments from several groups on the proposed rulemakings. Responses to relevant comments are contained in the following section. In the final adoption, the state made several changes to its proposed rule in response to comments the state received. These changes do not effect the substance of the provisions EPA relied on when it proposed to grant full approval to Connecticut's program. The exact changes the state made can be found as part of EPA's public record. In addition, in EPA's proposal of March 15, 2002, the Agency explained several interpretations of the state's rules upon which we are relying to fully approve the program. The Connecticut Department of Environmental Protection (DEP) has submitted a letter confirming DEP's agreement with our interpretations. See letter from Carmine DiBattista to Donald Dahl, April 12, 2002.

Unlike the prior interim approval, this full approval has no expiration date. However, the state may revise its program as appropriate in the future by following the procedures of 40 CFR 70.4(i). EPA may also exercise its oversight authority under section 502(i) of the Act to require changes to a state's program consistent with the procedures of 40 CFR 70.10.

II. What Issues Were Raised During the Public Comment Periods and What Are EPA Responses?

EPA received several comments on its proposals during the public comment periods. The state's rule changes touch upon three separate, though related, programs—the title V operating permit program, the new source review (NSR) preconstruction permit program, and mechanisms that may be used to limit a source's potential emissions. EPA received comments that raise issues about all three programs. EPA is not taking action here on the portions of the state's rule changes that concern NSR and the mechanisms that may limit potential emissions. In the Agency's Technical Support Document, EPA has categorized the comments into three areas: comments relating to the title V program, comments relating to new source review, and all other comments including several comments on section 22a-174–3b which establishes operational requirements for facilities that assure their emissions will remain at insignificant levels. The requirements of section 3b may ultimately play a role in a facility's potential to emit. But this section is not part of the title V program, and relates more to the requirements for staying out of the title V program. Comments concerning new source review or other programs, including section 3b, are not related to EPA's proposal and are beyond the scope of today's actions. EPA is now responding only to the comments that are relevant to fully approving Connecticut's title V program. Those comments and our responses are as follows:

1. *Comment:* The commenter states that Connecticut did not fully meet a state legislative mandate that requires the DEP to identify and explain differences between federal and state requirements.

Response: Under section 506(a) of the Clean Air Act, a state is free to establish "additional permitting requirements not inconsistent with [the] Act." Therefore, EPA will not look behind a state's decision to include permitting requirements beyond the minima of the Act and part 70, provided the program satisfies those requirements. While state agencies may have an independent obligation under state law to explain their reasons for including requirements beyond those specified in part 70, that obligation does not apply to EPA's assessment of the program's adequacy under the Act and part 70.

2. *Comment:* The commenter states that the DEP should continue its work in clarifying terminology. Examples were given where clarity could be improved. Terms such as "minor" or "modification" will have different meanings depending on the context the term is used in.

Response: EPA agrees with the commenter that an unambiguous regulation is an important goal for Connecticut as well as the Agency. We also agree with the commenter that Connecticut has made major improvements in clarity to its title V regulations. As the program is implemented in the future, we will continue to work with Connecticut in addressing any areas of the state's rule that may be unclear to the public or the regulated community. EPA believes that the meaning of the terms "minor" and "modification" are reasonably clear when read in the context of each regulatory requirement.

3. *Comment:* The commenter requested the state to clarify the intent of the phrase "any other state located within fifty (50) miles of a Connecticut Title V source" contained within the definition of "Affected State or States" in Section 22a–174–1 of the state regulations. The current state rule is unclear as to whether "the within 50 mile test" applies from the Connecticut state border or from the location of the permitted source.

Response: Part 70 defines "affected state" as all states whose air quality may be affected and which are contiguous to the state in which the title V source exists in and any other state within 50 miles of the source. The state's definition in section 22a–174–1 differs from part 70 only in that Connecticut lists the contiguous states and removes the requirement that the source may affect the air quality in that contiguous state. Both Connecticut's rule and part 70 determine the 50 mile rule based on the distance between another state's border and the location of the title V facility. Connecticut's rule satisfies the part 70 requirements for identifying affected states.

4. *Comment:* The commenter asks the state whether the definition of "Minor Permit Modification" means either a permit modification under the new source review program or a permit modification under the title V permitting program.

Response: The term "minor permit modification" as it is used in Connecticut's air regulations can mean either a modification to a title V permit or a new source review permit. When the term is read in context, however, the state's regulations make a source's obligations reasonably clear when making a change that would require a minor permit modification to its title V permit. This is also true for a source that is required to obtain a minor permit modification under the new source review program.

5. *Comment:* The commenter asks the state whether the definition of "non-minor permit modification" means either a permit modification under the major new source review program or the title V permitting program.

Response: The term "non-minor permit modification" as it is used in Connecticut's air regulations can mean either a major modification to a title V permit or a major new source review permit. The state's permit process regulations consolidate provisions for title V and NSR permits where possible to avoid repetition of similar procedural requirements. When the term is read in context, however, the state's regulations make a source's obligations reasonably clear when making a change that would require a non-minor permit modification to its title V permit. This is also true for a source that is required to obtain a non-minor permit modification under the major new source review program.

6. *Comment:* The commenter asks the state why the phrase "who are legally" was removed from the definition of who is responsible as an "operator." The commenter suggests that the state limit the definition by adding "legally" when describing who can be considered responsible as an operator. The commenter interprets the proposed definition of operator, without the term "legally responsible," as possibly making all employees subject to permit requirements.

Response: The term "operator" in the state's regulations is used to define who is responsible for a source. For example, section 22a–174–33(c)(1) states that the title V provisions shall apply to the owner or operator of a title V source. Connecticut has agreed with the commenter and has added the phrase "who are legally responsible for the operation of a source" back into the definition of "operator." This change does not affect EPA's ability to fully approve the state's program. It is the intent of part 70 to hold any operator or owner, including their agents, who are legally responsible for a source's operations liable for meeting the Act's requirements.

7. *Comment:* The commenter states that adding the phrase "portable emissions units" to the definition of "stationary sources" will lead to unnecessary permitting of de minimus sources. According to the comment, de minimus sources would include, among other things, snow making machines, rented engines, and spray painting equipment. The commenter suggests removing the reference to "portable emissions units."

Response: The term "stationary source" is used extensively in the state's title V regulations. In order to clarify what process units are considered emission units at a stationary source, the state proposed to add to the term "stationary source" portable emission units that remain stationary at a source. The state's clarification is consistent with EPA guidance when dealing with emission units that are portable. Therefore, EPA disagrees with the commenter that the state definition of "stationary source" should remove the term "portable emission unit." For example, under the title V program in Vermont, the state correctly included snow making machines as emission units in the title V permit for Okemo Mountain, Incorporated.

8. *Comment:* The commenter requests that the state incorporate-by-reference the federal definition of "volatile organic compound" in Section 22a–174–1 of its regulations. The comment states that this will minimize the need for the DEP to revise the definition every time EPA changes the definition.

Response: The term "VOC" is used in the state's title V regulations in the definition of "regulated air pollutant." EPA agrees with the commenter that incorporating the federal definition of VOC will make it easier for the state to recognize future changes EPA makes to the federal definition. The state also agrees with the commenter and has changed the definition of VOC to simply incorporate EPA's definition found in "40 CFR 51.100(s), as amended from time to time."

9. *Comment:* The commenter requests the state to clarify and modify the signatory responsibilities requirements found in section 22a–174–2a(a). This section of the state rule identifies who the responsible official is for purposes of certifying documents under the title V permit program. The state should clarify that people who sign documents in accordance with section 22a–174–2a(a)(1) be authorized in accordance with section 22a–174–2a(a)(2). The state should also use the existing language in section 22a–174–33(b) regarding responsible officials and authorization. The state should clarify that an authorization goes to a position rather than a specific person. Lastly, the requirement for state approval when signatory responsibility is delegated is overly burdensome.

Response: EPA identified as an interim approval issue the definition of a "responsible official" for documents submitted under the title V program. *See* 62 FR 13830–13833 (March 24,

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1997). As discussed in EPA's August 13, 2001 proposal to fully approve Connecticut's program, the state's proposed rule fully addressed EPA's interim approval issue. To address comments the state received, Connecticut has made changes to its provisions for identifying a "responsible official." The state changes clarify the procedures a company must follow when designating an individual as a responsible official. The state's final rule still satisfies the federal requirements for "responsible official."

As discussed in response to comment number 1, above, EPA does not have authority to look behind a state's decision to include permitting requirements in addition to those specified in part 70. Therefore, whatever burden might be created by Connecticut's requirement that DEP approve delegations of signatory responsibility is not relevant to EPA's review and approval of this program.

10. *Comment:* The commenter noted that DEP provides for adjudicative hearings, as well as less formal legislative hearings, as an option for satisfying the requirement that there be an opportunity for a hearing on permits. The commenter asserts that EPA has interpreted the Act to require only the less formal legislative hearings. Additionally, the commenter requests the DEP to consider limiting the requirement to hold a public adjudicative hearing by adding a threshold that one must make a "material request" before a hearing would be granted.

Response: The provisions of 22a–174–2a(c)(6) and 22a–174–2a(c)(7) governing non-adjudicative hearings and meetings satisfy the federal requirement to provide an opportunity for a hearing for Title V operating permits and new source review permits. In both programs, however, a state may include procedural requirements, including adjudicative hearing procedures, in addition to the federal minimum where the state agency deems it appropriate. EPA has found it appropriate for states to require that a request for a hearing must raise a material issue; it would be plainly unreasonable to require a state to hold hearings on immaterial issues.

11. *Comment:* The commenter notes that "issue of a subject permit * * *" should be "issuance of a subject permit * * *" in section 22a–174–2a(c)(7).

Response: Connecticut has corrected this error. As stated in the response to the previous comment, section 22a–174–2a(c)(7), in conjunction with section 22a–174–2a(c)(6), satisfies the federal requirements when a public hearing is requested.

12. *Comment:* Section 22a–174–2a(e)(3)(B)(i) requires a source to include in its application for a minor permit modification any "modification in potential emissions." Since the term "modification" is a defined term, the commenter requests the word "modification" be replaced by the word "increase."

Response: The state agreed with the commenter and changed the word "modification" to "increase" when describing a change in emissions due to a project that requires a minor modification to the part 70 permit. EPA agrees that this change clarifies the state's proposed rule. The state's rule still satisfies the federal requirements regarding the content of a title V application for a minor permit modification.

13. *Comment:* Connecticut requires a 21 day waiting period before a source can make the change it proposes in its application for a minor permit modification. The commenter requests that the state remove the waiting period and make the process consistent with part 70.

Response: The provision of section 22a–174–2a(e)(3)(c) meets the federal requirement for minor permit amendments that allow a source to make the proposed change prior to receiving a permit modification. As stated earlier, a state may include procedural requirements in its title V program, including a waiting period for minor permit modifications, in addition to the federal minimum requirements when the state agency deems it appropriate.

14. *Comment:* The commenter requested that Connecticut incorporate a safe harbor provision in the procedures for a minor permit modification in section 22a–174–2a(e)(4) of the state's regulations. A safe harbor provision would protect a source from enforcement if the source acted in good faith when it implemented its minor permit modification, even if it was determined later that the modification did not qualify as a minor permit modification.

Response: EPA disagrees with this comment. The part 70 program does not allow a state to create a safe harbor provision for a source that violates program regulations even though the source is complying with its application and applied for the minor modification in good faith. The minor permit modification procedures in 40 CFR 70.7(e)(2) allow a facility to implement a change prior to the permit authority revising the permit to address the change. But this provision imposes strict liability on a facility that submits a change that it purports to be a minor permit modification, but ultimately turns out to require a significant permit modification. This strict liability is an important element of the structure of 70.7(e)(2), because it provides a significant disincentive to permitees that might be tempted to rush a change through the system with an unfounded claim that it is a minor modification. Therefore, Connecticut cannot, consistent with part 70, create the "safe harbor" the commenter recommends, and the state's rule is consistent with part 70.

15. *Comment:* The commenter requests that Connecticut add language to section 22a–174–2a(d)(4)(D) that would explicitly state that modifications qualifying as operational flexibility and off-permit changes would not be subject to non-minor permit modification requirements.

Response: The state has made changes to its proposed rule to address this comment. It is consistent with part 70 to exclude changes at a facility that qualify as changes under the off-permit or operational flexibility requirements from the requirements for significant permit modifications. Therefore, the state's changes to its rule that address this comment do not impact EPA's ability to approve this program.

16. *Comment:* The commenter requests that the approval of "equivalent monitoring, recordkeeping, or reporting" be added to administrative amendments found at 22a–174–2a(f)(2) of the state regulations.

Response: In 40 CFR 70.7(d), EPA lists the types of changes a state may allow sources to make as administrative amendments. Section 70.7(d)(1)(iii) states a change is eligible as an administrative amendment if the permit change "requires more frequent monitoring or reporting." Since the request is to add "equivalent monitoring * * *," EPA disagrees with the comment and supports Connecticut's position not to add "equivalent monitoring, recordkeeping, or reporting" to its list of permit changes eligible for administrative amendments. Making a determination that a substitute monitoring regime is "equivalent" to that provided in the permit involves a level of regulatory judgment that is not appropriate for the administrative amendment procedure. These procedures are designed for amendments that are largely ministerial or that are indisputably more protective of the environment, such as increased monitoring frequency.

17. *Comment:* Section 22a–174–2a(i)(1) requires permit renewal applications to include "any modifications in potential emissions resulting from the proposed modifications." The commenter suggests clarifying language by replacing "any modification" with "any increase" since the term modification is a defined term.

Response: Connecticut essentially agreed to make this clarification in its regulations, and the final rule provides that a renewal application must describe any "increases or decreases in potential emissions resulting from any proposed modifications." This revision is consistent with part 70.

18. *Comment:* The commenter states that section 22a–174–3a(m) of Connecticut regulations is not identical to part 63 with regard to case-by-case MACT determinations. For example, under Connecticut's definitions, an increase in HAP emissions at the entire source, not just process lines, is used to determine if the thresholds for a 112(g) modification are triggered.

Response: Case-by-case MACT determinations are commonly referred to as 112(g) modifications because they implement the requirements of section 112(g) of the CAA. Under part 63, the entire new or reconstructed process must be a major source by itself. A process is defined in 40 CFR part 63 as "any collection of structures and/or equipment, that processes assembles, applies, or otherwise uses material inputs to produce or store an intermediate or final product." This means that a single facility may contain more than one process or production unit. Since the state's regulation determines applicability on a facility wide basis, the state's rule could potentially require more section 112(g) determinations than federal requirements. However a state may include requirements, including a more encompassing 112(g) program, in addition to the federal minimum for a part 70 program and other air pollution control programs where the state agency deems it appropriate. See sections 506(a) and 116 of the Act, 42 U.S.C. 7661e(a) and 7416.

19. *Comment:* The commenter states that Connecticut's rule does not exclude sources from the 112(g) program that use existing controls previously determined as BACT within 5 years of the modification (referred to as the "good controls exclusion"). This omission could make the Connecticut 112(g) program more stringent than the federal program. The commenter requests that the state make section 22a–174–3a(m)(8) consistent with the federal requirements regarding situations when compliance with a MACT standard is not required for a source that is operating under a 112(g) determination.

Response: The comment is correct in that Connecticut's rule is more stringent than the federal rule regarding this issue. However, a state may include requirements, including a more encompassing 112(g) program, that go beyond the federal minimum for a part 70 program and other air pollution control programs.

20. *Comment:* The commenter requests that the state expand its list of exempted activities from 112(g) determinations in section 22a–174–3a(m)(2) to be consistent with federal requirements. The expanded list would include adding exemptions for electric utility steam generating units and research and development activities.

Response: The exemption for electric steam generating units is no longer applicable. *See* 65 FR 79825 (December 20, 2000). In its final rule, the state did add an exemption for research and development (R&D). To comply with the exemption, the state rule requires R&D activities to meet the federal requirements for R&D at 40 CFR 63.40(f). Exempting R&D activities from 112(g) requirements is consistent with federal requirements under part 63 and does not impact EPA's ability to approve the title V program.

21. *Comment:* The commenter suggests that the state incorporate-by-reference the federal application requirements for a case-by-case MACT determination. The commenter states that Connecticut's rule does not contain administrative procedures nor an opportunity for public comment. The current proposed state regulations are also confusing when determining the required information in an application for a 112(g) modification.

Response: Connecticut is not required to incorporate the federal requirements for 112(g) applications. Instead, the state has the option to develop its own regulations for applications, as long as the state regulations are consistent with federal requirements. EPA has determined that section 22a–174–3a, including subsections (c) and (m), meet the federal requirements for a complete application, including adequate public notice, under the 112(g) program.

22. *Comment:* The commenter requests the state to clarify section 22a–174–3a(m)(7). This section determines when a permittee that has received a 112(g) determination is required to comply with the emission limit for the applicable MACT standard. The state rule is unclear about what happens when a source that installs case-by-case MACT controls that are different than the MACT standard later adopted by EPA.

Response: The state regulation requires a facility, even one with a case-by-case MACT determination, to comply with a MACT standard within 8 years after a MACT is promulgated or within 8 years of the permittee's first compliance date for the emission limitation under the MACT determination, whichever is earlier. If the first compliance date precedes the MACT promulgation, then the permittee would have less than 8 years from the promulgation. Since the federal requirement is for all sources with case-by case determinations to meet the MACT standard within eight years of the standard's promulgation, the state rule meets federal requirements.

23. *Comment:* The commenter is concerned that the state rule regarding alternative operating scenarios could be interpreted too broadly, requiring separate permit conditions for each level of production.

Response: It is not the intent of a title V permit program to require a source to list every production level as an alternative operating scenario. EPA has determined that Connecticut's definition of an alternative operating scenario is consistent with the Agency's policy and guidance on the issue.

It is true that the definition of "alternative operating scenario" in definitions section of Connecticut's operating permit program regulations is quite broad. *See* R.C.S.A. sec. 22a–174–33(a)(1). Read out of context, it is possible to conclude this definition implies that any variation in a facility's operations is relevant under this program, regardless of the bearing that variation has on the permit and the applicable requirements.

But it is important to understand this definition in the context in which it is used in the program regulations. Permit applicants must provide information "for each alternative operating scenario that the applicant has included in the title V permit application." R.C.S.A. sec. 22a–174–33(g)(1)(E). The permit content requirements mandate that each permit include a "statement of all terms and conditions applicable to any allowable alternative operating scenario, including a requirement that each such alternative operating scenario shall meet all applicable requirements * * *." R.C.S.A. sec. 22a–174–33(j)(1)(J). These provisions make it reasonably clear that an applicant must provide information about those operating scenarios that must be addressed in the permit and which require separate attention because of the different compliance scenarios or different applicable

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requirements that apply to those scenarios.

24. *Comment:* The commenter requests a determination as to how title V applicability in the state rules affects landfills and other sources subject to section 111(d) plans of the CAA.

Response: According to Section 22a–174–33(a)(10)(D) of the state's rule, any source subject to a 111(d) plan would be defined as a "Title V source." However, not all "Title V sources" are required to obtain a title V permit. Section 22a–174–33(c)(2)(D) of the state's rule, exempts sources subject to a 111(d) plan, in addition to other types of sources, from obtaining a Title V permit if EPA exempts such a source. For example, if a closed landfill is not otherwise required to obtain a Title V permit, 40 CFR 62.14352(f) exempts the landfill from obtaining a Title V permit provided that the landfill meets certain criteria. Since EPA has exempted this limited class of landfills from having to obtain a Title V permit, Section 22a–174–33(c)(2)(D) is invoked and closed landfills in Connecticut meeting the requirements of 40 CFR 62.14352(f) are exempted from Title V permitting. Please note that if Connecticut submits a rule that would substitute for the federal rule for existing landfills, and EPA approves the state rule, the exemption from Title V permitting listed in 40 CFR 62.14532(f) would no longer apply. The exemption would have to exist in the EPA approved state rule.

25. *Comment:* The commenter believes that the references to a general permit in sections 22a–174–33(d)(9) and (10) are redundant and unnecessarily repeat the requirements of sections 22a–174–33(c)(4) and (5).

Response: Section 22a–174–33(d) of Connecticut's rules deals with regulations that limit a source's potential emissions. Subsection (d) does not contain provisions for a general permit for the title V permit program. In fact, the main reason Connecticut developed section 22a–174–33(d) is to allow a source to limit its potential emissions to avoid the title V permit program. Sections 22a–174–33(c)(4) and (5), on the other hand, address how title V general permits operate under Connecticut's program. Specifically, they spell out the consequences for failing to comply with a general permit and for failing to qualify for a general permit under which the facility claims it is operating. These provisions are not redundant with the general permit provisions designed to limit a source's potential to emit under sections 22a–174–33(d)(9) and (10).

26. *Comment:* The commenter believes that the state has gone beyond the federal requirement when determining the consequences when a source is found to be violating a general title V permit or a general permit limiting potential to emit. Connecticut's rule states that if a source violates either type of a general permit, the source would be considered to be operating without a title V permit.

Response: EPA disagrees with the comment and has determined the state regulation (sections 22a–174–33(c)(4) and (d)(10)) is consistent with federal requirements. The commenter is correct that the minimum federal requirement in EPA's part 70 regulations for liability provisions in a title V general permit program includes a provision deeming the source to be operating without a title V permit if the source is found not to qualify for a general permit. Connecticut added section 33(c)(5) to address EPA interim approval issue number 23 to meet this requirement. In addition, Connecticut provided that sources which fail to comply with their general permits will be deemed to be operating without a title V permit under section 33(c)(4). While not required by the part 70 regulations, this provision is certainly allowed under title V pursuant to section 506(a) of the Act. That section allows a state to establish "additional permitting requirements not inconsistent with [the] Act." Connecticut's decision to provide vigorous enforcement mechanisms to ensure compliance with its general permit programs is certainly not inconsistent with the Clean Air Act.

The requirement in section 33(d)(10), while similar in structure to 33(c)(4), is not strictly speaking part of EPA's review of the operating permit program. This provision addresses a source's liability when it fails to comply with a general permit to limit its potential to emit. As noted in response to the prior comment, the purpose of 33(d) is to keep sources out of the title V program, not to address the requirements of title V or part 70.

27. *Comment:* The commenter requests the state to be consistent with the federal requirements regarding the timing of a title V application for a new major stationary source. The federal rule requires an application within 12 months of commencing operation. The state's proposed rule required an application within 12 months of applying for an NSR permit.

Response: The state addressed this comment by changing its proposed rule to be consistent with federal regulations. Section 22a–174–33(f)(4) requires a title V application within 12 months of commencing operation for a new major stationary source or a major modification to an existing title V source or within 90 days if notified by the commissioner, whichever date is earlier. This state rule addresses the application deadline requirements of 40 CFR 70.5(a)(1)(ii).

Section 22a–174–33(f)(4) does not address the requirement in 40 CFR 70.5(a)(1)(ii) that the title V permit must be modified prior to operating the modification when its existing title V permit prohibits such construction or change in operation. However, nothing in section 22a–174–33(f)(4) of the state rules excuses a source applying for a major modification from complying with its existing title V permit. Section 22a–174–2a(d)(5)(B) of the state rules clearly prohibits a source deviating from its existing permit unless the state first modifies the permit.

28. *Comment:* The commenter states the vagueness of section 22a–174–33(h) of Connecticut's rules may not allow an applicant a reasonable opportunity to correct application deficiencies before being held liable for an insufficient permit application.

Response: Connecticut has revised section 22a–174–33(h) to clarify the consequences if a source fails to meet the requirements for submitting a timely application either for the first time or when the state determines additional information is required in order to process an application. The state's final rule is still consistent with federal requirements and fully addresses EPA's interim approval issue. See 62 FR 13831, section III, no. 6.

29. *Comment:* The commenter requests that the state make its permit shield provisions in the state rules consistent with permit shield language in part 70, and that the state grant permit shield when issuing permits.

Response: Connecticut's permit shield provisions in section 33(k) are substantially identical to the federal shield provisions in section 70.6(f) of EPA's part 70 regulations. Both regulations require that a permit shield will only cover those applicable requirements that are included and are specifically identified in the permit. Therefore, the commenter's concern that the state's shield provisions are more stringent that federal requirements appears to be misplaced.

The commenter's concern that the state does not always provide for a permit shield when issuing permits is not relevant to this program review. The permit shield language is an optional element for a state title V program. It is solely within Connecticut's discretion to grant a permit shield. As long as the authority for granting a shield under section 22a–174–33(k) is consistent with federal requirements, it is up to the state to decide when to use that authority.

30. *Comment:* The commenter requests the state to relax the proposed rule regarding prompt reporting. The commenter is concerned that the state has eliminated the provision in section 33(p)(1) that commenced the period for measuring "prompt" reporting from the time at which the permit holder reasonably should have learned of the occurrence. The commenter is concerned that some deviations will be difficult to discover, and the deadline for reporting will have passed before the permit holder knows that the deviation must be reported.

Response: Part 70 is not specific about how a state should define "prompt" for reporting deviations, and leaves the state substantial latitude in structuring this requirement. As described in section IV., no. 8 of the proposal, EPA stated that sections 22a–174–33(o)(1) and (p)(1) of Connecticut's proposed rules are consistent with how EPA defines prompt reporting in the federal program. *See* 40 CFR 71.6(a)(iii)(B). Since Connecticut has not changed these proposed provisions, EPA has determined that the state's regulations governing prompt reporting meet the requirements of part 70. Any concern about the strict standard in section 33(p)(1) for reporting a deviation can be addressed as part of program implementation and with the reasonable application of enforcement discretion.

31. *Comment:* The commenter requests the state confirm that it has deferred title V permitting of chrome emitting sources for five years.

Response: Section 22a–174–33(c)(2)(D) essentially incorporates any decisions EPA has made under the NSPS and NESHAP programs, including the MACT standards program, to defer facilities from the requirement to have a title V permit. This section allows for such deferrals where the sole reason for bringing a source into the title V program is the applicability of a MACT standard and where EPA has promulgated a deferral of the title V permitting requirement for that MACT standard or certain sources under it. At the discretion of the permitting authority, EPA has deferred chrome sources from becoming subject to the title V permit program until December 9, 2004. A title V application will be due one year after becoming subject to the program, on December 9, 2005 unless EPA exempts or continues to defer title V applicability for chrome emitting sources.

32. *Comment:* The commenter asks why did the DEP define the term "principal executive officer" in the last sentence of section 22a–174–2a(a)(1)(E) of the state's rule because the term appears nowhere else in the section. This section of the state rule lists the positions of people who can sign as the responsible official for federal entities.

Response: DEP clarified this provision by including "principal executive officer" in the list of federal officials who can sign title V permitting documents as responsible officials. Thus, the definition for this term now makes sense in the context of the final regulation, and the provision is consistent with part 70, section 70.2.

33. *Comment:* The commenter believes that section 22a–174–33(f)(3) includes a typographical error and the phrase "may issue" does not belong in the last phrase of the section. This section of the state regulation contains the deadlines for applying for a title V permit when a source's potential emissions are minor, but when the source is subject to either 40 CFR parts 60 or 61.

Response: Connecticut agreed with the comment and deleted the phrase "may issue." The deletion of the phrase "may issue" does not impact EPA's proposal that states section 22a–174–33(f)(3) has been adequately revised to address the interim approval issue. See section IV, no. 20 of EPA's proposal.

34. *Comment:* The commenter requests that the state identify the forms that a facility must use to comply with the "non-minor permit modification" application process in section 22a–174–2a(e)(5)(B) of the state rules.

Response: On page 199 of its November 14, 2001 Hearing Report, Connecticut stated that it is developing forms for sources to use. However, the state made it clear, and EPA concurs, that a source is still required to submit all information required by the regulations if it desires a non-minor permit modification, even if the state has not yet developed a form.

35. *Comment:* A commenter expressed concern that the permit modification process for "non-minor permit modifications" is open-ended. Connecticut's regulation section 22a–174–2a(d)(8) requires the Commissioner to take final action on a non-minor modification within 12 months, but also provides that the modification will not be "automatically be deemed sufficient or approved" if the Commissioner takes longer than 12 months. The commenter asks what the consequence is if DEP misses its deadline for modifying a permit.

Response: EPA agrees with DEP that default issuance of "non-minor" permit modifications, which basically correspond to significant modifications under part 70, cannot be allowed consistent with sections 70.7(e)(4)(ii), 70.7(a), and 70.7(h). Therefore, it would not be appropriate to allow a facility to make a "non-minor modification" in its permit based solely on the fact that DEP has failed to act on its application within 12 months. EPA's significant permit modification regulations do provide that the "permitting authority shall design and implement this review process to complete review on the majority of significant permit modifications within 9 months after receipt of a complete application." 40 CFR 70.7(e)(4)(ii). This provision does not mandate that the state bind itself to acting on all applications within 9 months. Rather it requires that the state use its authority to act on most significant modifications within 9 months. Connecticut's rule for processing "non-minor modifications" is consistent with this provision. Connecticut's procedures for taking public comment, offering an opportunity for a hearing, addressing affected state comments, and allowing for EPA review give DEP ample opportunity to implement its program so that it acts on a majority of "non-minor modifications" within 9 months. *See* R.C.S.A. 22a–174–2a(b), (c), and (d).

36. *Comment:* A commenter agreed with Connecticut's incorporation of the federal definition for "emission unit" in section 22a–174–1

Response: EPA also agrees with the state's change in its definition for "emission unit."

37. *Comment:* The definition of "federally enforceable" elicited several comments. First, commenters asked whether "permits to operate" issued under section 22a–174–3 of the state's regulations are considered federally enforceable. Second, the commenters supported the state's decision to provide that practically enforceable limits should also be considered sufficient to limit a source's potential to emit. Commenters also submitted concerns that relate to the new source review program and are not relevant to this action.

Response: In a July 25, 1997 letter to Christopher James at DEP, EPA confirmed that state operating permits issued pursuant to section 22a–174–3(f) and (g) may be federally enforceable if they are issued consistent with the requirements of those regulations approved into the state implementation plan. As discussed below, EPA agrees that emission limits to reduce a facility's

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potential to emit must be practically enforceable.

38. *Comment:* A commenter requested an explanation from Connecticut whether the change to the state's definition for "fugitive emissions" was intended to change the meaning of "fugitive emissions" as defined by EPA.

Response: Connecticut's hearing report makes it clear that it did "not intend to alter or expand the meaning of "fugitive emissions" by the proposed change." DEP Hearing Report at 154 (November 14, 2001). Rather the state's change was made to shift the tense of the verb "which could not reasonably pass through a stack * * *" from past tense to the present tense "that cannot pass through a stack ." * * *" Therefore, if emissions would reasonably be passed through a stack, this definition would exclude them from being treated as fugitive emissions. Connecticut's revised definition for "fugitive emissions" is consistent with 40 CFR 70.2.

39. *Comment:* The commenter requested an explanation of the state's intent concerning new language the state added to the definition of "maximum capacity." The new language allows the state to accept a time frame different from 8760 hours per year when determining the maximum capacity of a piece of equipment.

Response: Connecticut responded that it intends to issue future guidance on determining "maximum capacity." On January 25, 1995, EPA issued guidance titled "Options for Limiting the Potential to Emit (PTE) of a Stationary Source Under section 112 and Title V of the Clean Air Act (Act)" that recognized inherent physical limits in a source's operations that would restrict a source's capacity. These restrictions would prevent a source from operating the pollution emitting devices 8760 hours per year. In this guidance EPA indicated that states have the authority to make judgements on inherent physical operational restrictions. The language Connecticut added to the definition of "maximum capacity" gives the state the authority EPA recognized in the Agency's guidance. EPA is committed in working with Connecticut in developing state guidance on when the use of 8760 hours of operation is inappropriate when calculating a source's potential emissions.

40. *Comment:* The commenter requests the state to limit the counting of fugitive emissions "to the extent quantifiable" within the definition of "potential emissions." In addition, the commenter states the definition of "potential emissions" arbitrarily prevents pollution control equipment from being considered as a physical limitation on potential emissions where that equipment is integral to the source's operation.

Response: The term "potential emissions" is used in section 22a–174–33(a)(10) for determining whether a source is required to obtain a title V permit. The state disagreed with the commenter and did not add the language "to the extent quantifiable" when determining if fugitive emissions are counted towards a source's title V applicability. The state rule is consistent with part 70, where the language "to the extent quantifiable" is absent when describing fugitive emissions within the definition of "major source." The state also disagreed with the commenter that pollution control equipment is treated arbitrarily under its definition of potential emissions, and EPA sees no reason to disagree with that conclusion. DEP clarified that it will consider "inherent engineering, operational or technical capacity on an emissions unit that restricts the potential emission of such unit" when determining the maximum capacity of a unit. Nothing in this standard arbitrarily excludes consideration of pollution control equipment that is integral to the design of an emissions unit, although the applicant may have a high burden to demonstrate that the operation and performance of the control equipment is an inherent aspect of the source's operation.

41 *Comment:* Several industry commenters objected to aspects of the new definition of "practically enforceable" in section 1(87) of the state's rule. Following some slight adjustments DEP made to the proposed definition in its final rule, the remaining relevant comments all expressed concern about the requirement that a facility must have "CEM or equivalent" monitoring if it wishes to limit its emissions using an emission limit or operating restriction with a 12-month rolling average averaging period.

Response: Strictly viewed, this comment is probably not directly relevant to the action EPA is taking today to approve Connecticut's title V program. The term "practically enforceable," as well as the corresponding term "federally enforceable," are used in DEP's regulations primarily to define how a facility may take limits on its potential to emit to avoid the title V operating permit program or other applicable requirements that are triggered based on a facility's potential emissions. So these terms do not relate so much to the implementation of the operating permit program EPA is approving as they bear on how to stay out of that program.

Nevertheless, EPA is responding to comments about the definition of "practically enforceable" because the meaning of this term might be relevant to how permit terms in a title V permit are crafted. For example, a title V permit holder may wish to take a limit in its permit reducing its potential to emit so as to avoid an otherwise applicable requirement. In this context, title V sources and the state may want to assess the practical enforceability of that limit. Therefore, EPA is responding to the comments on this definition.

Connecticut's definition of practically enforceable is built on the same principles as EPA's guidance on the enforceability of limits on potential to emit (PTE). *See e.g.* Guidance on Enforceability Requirements for Limiting Potential to Emit through SIP and § 112 Rules and General Permits, from Kathie A. Stein, Jan. 25, 1995, and the materials summarized at p. 5 of this guidance. Both DEP and EPA are concerned that if a facility is relying on a PTE limit to avoid important applicable requirements or title V permitting, the agencies must be able to enforce those PTE limits readily on a short term basis. If we must wait for year before enforcing a PTE limit, the limit will have far less practical deterrent effect than a short term limit.

A limit based on a 12-month rolling averaging period strains at the boundary of this principle. It is not optimal for an agency to have to wait for a month to document compliance with a PTE limit. To be sure that we can determine compliance readily when the monthly compliance period is completed, the monitoring of such limits must be both accurate and timely.

A CEM meets this standard and provides a useful benchmark for the sort of monitoring that is necessary to make such limits practically enforceable. As DEP explained in its own response to comments, their rule does not mandate CEMs, but does require monitoring with similar characteristics—"qualitatively equal to that of CEM." DEP Hearing Report at 182 (Nov. 14, 2001). DEP and EPA understand that two critical qualities of CEMs are that they are accurate in their measurement of emissions and they produce data virtually contemporaneously. In addition to making timely compliance determinations possible at the end of each month, such monitoring would allow an agency inspector to arrive mid-month and look at the monitoring records of a facility to determine if it is on track to meet its PTE limit at the end of a month. EPA believes Connecticut's requirement for "CEM or equivalent" monitoring for 12-month rolling average compliance periods is a reasonable step to making such longer term rolling PTE limits practically enforceable. During review of title V permits, EPA will monitor Connecticut's implementation of the "CEM or equivalent" requirement when a 12-month rolling average is used for the compliance period.

42. *Comment:* The commenter requested that Connecticut establish in the definition of "Research and Development Operation" a *de minimis* amount of commercial product activity in a laboratory. The commenter states that by adding a *de minimis* level to the definition, the definition would be consistent with EPA's proposed changes to part 70.

Response: Connecticut did revise the proposed amendments to section 33 with regards to how Research and Development Activities are treated. However, the state changes did not create a *de minimis* amount of product that could be sold commercially. Rather, the state's final rule essentially maintained the definition of "Research and Development" as the term was defined in the state's interim title V program which EPA had approved in 1997. If part 70 is amended as EPA proposed in 1996, EPA will work with Connecticut in making any state program changes that the revised federal rule would require or allow.

43. *Comment:* The commenter noted language appeared missing from the end of section 22a–174–33(j)(1)(F)(ii). "For all other regulated air pollutants such limits are no [???]."

Response: Connecticut noted in its hearing report that a software error had led to the deletion of phrase "less than one (1) ton per pollutant per year for each emission unit" from the commenter's copy. The official version of the regulation contained the missing language so there was no typographical error.

44. *Comment:* The commenter requested that in order to take advantage of fuel cells, hydrogen, argon, and helium should be exempted in the states definition of "air pollutant."

Response: Connecticut did not add the requested exemptions to the definition of "air pollutant." The state's definition of "air pollutant" is consistent with how that term is used in part 70.

45. *Comment:* One commenter inquired about EPA's assessment of section 22a–174–2a(f)(2)(F) in which EPA clarified that Connecticut's new source review program (NSR) does not include all the necessary elements of the title V program to allow NSR permits to be included in a title V permit using an administrative amendment. The commenter asked EPA to explain what provisions of Connecticut's new source review program do not meet all the requirements of sections 40 CFR 70.6, 70.7, and 70.8 and to specify the changes Connecticut would have to make in its NSR program to meet these requirements.

Response: EPA is not prepared here to catalogue exactly how Connecticut might enhance its NSR program to allow for administrative title V permit amendments. That question is not ripe as a formal matter, and it would not be prudent for EPA to spell out how DEP might revise its NSR program without first working with DEP to sort through the many choices DEP would have to make about the design of such NSR enhancements. It is sufficient for the purposes of the decision currently before EPA to say that the state's NSR program does not contain all the substantive and procedural elements of sections 70.6, 70.7, and 70.8—the most obvious example being that the state does not provide EPA an opportunity to object to NSR permits to block their issuance.

III. What Is the Effective Date of EPA's Full Approval of the Connecticut Title V Program?

EPA is using the good cause exception under the Administrative Procedure Act (APA) to make the full approval of the state's program effective on May 31, 2002. In relevant part, the APA provides that publication of "a substantive rule shall be made not less than 30 days before its effective date, except— * * * (3) as otherwise provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). Section 553(b)(3)(B) of the APA provides that good cause may be supported by an agency determination that a delay in the effective date is impracticable, unnecessary, or contrary to the public interest. EPA finds that it is necessary and in the public interest to make this action effective sooner than 30 days following publication. In this case, EPA believes that it is in the public interest for the program to take effect before June 1, 2002. In the absence of this full approval of Connecticut's amended program taking effect on May 31, 2002, the federal program under 40 CFR part 71 would automatically require some sources to pay operating permit fees to the federal government in addition to fees the sources already pay to Connecticut under state law. EPA believes it is in the public interest for sources to avoid having to pay federal fees for permits the sources would not receive, since a federal program would only continue for a short time after June 1, 2002. Furthermore, a delay in the effective date is unnecessary because Connecticut has been administering the title V permit program for more than five years. Through this action, EPA is approving a few revisions to the existing and currently operational program. The change from the interim approved program which substantially met the part 70 requirements, to the fully approved program is relatively minor, in particular if compared to the changes between a state-established and administered program and the federal program. Finally, the state regulations EPA is approving have been effective under state law since March 15, 2002. Therefore, the regulated community has had more than 30 days to anticipate compliance with the requirements EPA is approving today.

IV. How Does Today's Action Affect the Part 71 Program in Connecticut?

Today, EPA is fully approving Connecticut's title V program. Upon the effective date of this notice, the part 71 program will no longer be effective in Connecticut. However, a part 71 program could become effective at a future date if EPA makes a finding that Connecticut's title V program fails to meet the requirements of part 70. If such a finding is made, the Agency will use its authority and follow the procedures under section 502(i) of the CAA and 40 CFR 70.10.

V. How Does EPA's Action Affect Indian Country?

In its program submission, Connecticut did not assert jurisdiction over Indian country. To date, no tribal government in Connecticut has applied to EPA for approval to administer a title V program in Indian country within the state. EPA regulations at 40 CFR part 49 govern how eligible Indian tribes may be approved by EPA to implement a title V program on Indian reservations and in non-reservation areas over which the tribe has jurisdiction. EPA's part 71 regulations govern the issuance of federal operating permits in Indian country. EPA's authority to issue permits in Indian country was challenged in *Michigan* v. *EPA*, (D.C. Cir. No. 99–1151). On October 30, 2001, the court issued its decision in the case, vacating a provision that would have allowed EPA to treat areas over which EPA determines there is a question regarding the area's status as if it is Indian country, and remanding to EPA for further proceedings. EPA will respond to the court's remand and explain EPA's approach for further

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implementation of part 71 in Indian country in a future action.

VI. What Are the Administrative Requirements Associated With This Action?

Under Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), this final approval is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) the Administrator certifies that this final approval will not have a significant economic impact on a substantial number of small entities because it merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. This rule does not contain any unfunded mandates and does not significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4) because it approves pre-existing requirements under state law and does not impose any additional enforceable duties beyond that required by state law. This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the federal government and Indian tribes, or on the distribution of power and responsibilities between the federal government and Indian tribes, as specified by Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 9, 2000). This rule also does not have Federalism implications because it will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, "Federalism" (64 FR 43255, August 10, 1999). This rule merely approves existing requirements under state law, and does not alter the relationship or the distribution of power and responsibilities between the state and the federal government established in the Clean Air Act. This final approval also is not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997) or Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001), because it is not a significant regulatory action under Executive Order 12866. This action will not impose any collection of information subject to the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, other than those previously approved and assigned OMB control number 2060–0243. For additional information concerning these requirements, see 40 CFR part 70. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

In reviewing state operating permit programs submitted pursuant to title V of the Clean Air Act, EPA will approve state programs provided that they meet the requirements of the Clean Air Act and EPA's regulations codified at 40 CFR part 70. In this context, in the absence of a prior existing requirement for the state to use voluntary consensus standards (VCS), EPA has no authority to disapprove a state operating permit program for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews an operating permit program, to use VCS in place of a state program that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2). This rule will be effective on May 31, 2002.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 12, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

List of Subjects in 40 CFR Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, Reporting and recordkeeping requirements.

Dated: May 6, 2002.

Robert W. Varney,

Regional Administrator, EPA New England.

Part 70, title 40 of the Code of Federal Regulations is amended as follows:

PART 70—[AMENDED]

1. The authority citation for part 70 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Appendix A to part 70 is amended by revising the entry for Connecticut to read as follows:

Appendix A to Part 70—Approval Status of State and Local Operating Permits Programs

* * * * *

Connecticut

(a) Department of Environmental Protection: submitted on September 28, 1995; interim approval effective on April 23, 1997; revised program submitted on January 11, 2002; full approval effective May 31, 2002.

(b) [Reserved]

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[FR Doc. 02–11826 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Chapter I

[Notice No. 02–05]

Hazardous Materials; Advisory Guidance on Packaging and Shipper Responsibilities

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Advisory guidance.

SUMMARY: This advisory document is to remind shippers of hazardous materials in commerce, particularly by aircraft, of their responsibilities to properly identify, package, and communicate the hazards of those materials in conformance with the Hazardous Materials Regulations. The intent of this action is to enhance the safety of hazardous materials in transportation.

FOR FURTHER INFORMATION CONTACT: Michael G. Stevens, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001, telephone (202) 366–8553.

SUPPLEMENTARY INFORMATION: The Hazardous Materials Regulations (HMR; 49 CFR Parts 171–180) specify requirements for the safe transportation of hazardous materials in commerce by rail car, aircraft, vessel, and motor vehicle. In general, the HMR apply to each person who performs, or causes to be performed, functions related to the transportation of hazardous materials in commerce. The HMR prescribe requirements for classification, packaging, hazard communication, shipping papers, incident reporting, handling, loading, unloading, segregation, and movement of hazardous materials.

Each year, carriers report thousands of "incidents" involving the transportation of hazardous materials to the Research and Special Programs Administration (RSPA, we) in accordance with the HMR incident reporting requirements. An "incident" occurs when there is an unintentional release of hazardous material from a package (including a tank) or, as a direct result of hazardous materials, an "incident" requires immediate notification to the National Response Center (see §§ 171.15 and 171.16).

Many incidents result from noncompliance with the requirements in the HMR. They frequently stem from a shipper's lack of awareness of the HMR's requirements, rather than a deliberate violation. The safety of hazardous materials in transportation depends on persons engaged in day-to-day transportation-related activities making a concerted effort to comply with the HMR. We strongly urge all persons involved in the packaging and offering of hazardous materials to carefully examine all of their procedures to ensure compliance.

In this document, we discuss requirements that are applicable to persons who offer (or ship) hazardous materials. These are subdivided into the following seven areas: (1) Hazard identification, classification and communication; (2) general packaging requirements; (3) requirements for the use of packagings meeting United Nations (UN) performance standards; (4) additional packaging requirements for air shipments; (5) transportation security; (6) training of hazmat employees; and (7) obtaining Federal assistance.

Most of the guidance and information in this document applies to all modes of transportation. However, this document emphasizes the requirements for air transportation because of the number of reported incidents involving air transportation and the vulnerability of air transportation to potentially catastrophic accidents. This document provides general guidance only. Shippers should not rely on this document as a substitute for the HMR to determine compliance with regulatory requirements.

I. Hazardous Materials Identification, Classification, and Communication

Reducing or eliminating the incidence of undeclared hazardous materials in transportation is one of our highest priorities. Undeclared hazardous materials shipments by aircraft are of particular concern because of the risks they pose. We believe a lack of awareness of regulatory requirements and the risks posed by hazardous materials is a contributing factor in undeclared hazardous materials entering the transportation system. As a shipper—that is, a person who offers hazardous materials for transportation—you must be aware of any hazardous characteristics of your products and must know whether a product is regulated as a hazardous material before offering it for transportation. In addition, you should know whether an item or article contains a hazardous material.

Currently, we have a number of non-regulatory initiatives to increase public awareness of the safety problem presented by undeclared shipments of hazardous materials. We are examining a number of alternatives to reduce or eliminate undeclared hazardous materials shipments, such as through better means of detection. Ultimately, however, primary responsibility for ensuring that hazardous materials are identified and declared in accordance with the applicable regulations rests with the shipper.

Classification and Hazard Communication

Because you as a shipper perform critical functions in preparing hazardous materials for transportation, you have the greatest opportunity to improve transportation safety. You may offer a hazardous material for transportation only when it is properly classed and described in accordance with parts 172 and 173 of the HMR, or international regulations such as the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air (ICAO Technical Instructions), as permitted in Part 171 of the HMR. The § 172.101 Hazardous Material Table (HMT) lists the most commonly transported materials and articles by name, or by a generic alternative when no specific name is listed. Some hazardous materials are prohibited for transportation. Others, such as most explosives, self-reactive substances, and organic peroxides, require the approval of the Associate Administrator for Hazardous Materials Safety before they may be offered or transported. However, for most hazardous materials, you are responsible for determining the appropriate hazard class and shipping description. This information determines the appropriate packaging and hazard communication requirements such as package marking, labels, and shipping documentation, including emergency response information.

II. General Packaging Requirements

Selection and use of the appropriate packaging for a hazardous material are essential to ensuring that a hazardous material is not released during transportation. Only packagings authorized by the HMR may be used to package hazardous materials for transportation. You must ensure that a packaging will retain its contents during temperature variances, changes in atmospheric pressure, vibration, or other conditions that may be encountered during normal conditions of transport.

Section 173.24 of the HMR sets forth general requirements that apply to all packagings and packages used for hazardous materials. Section 173.24a contains additional requirements for non-bulk packagings. These sections of general applicability require you to ensure a packaging is compatible with its lading, properly closed, and meets any additional capability requirements. For example, § 173.24 requires plastic packaging and inner receptacles used for liquids to be capable of withstanding, without failure, the procedure for determining chemical compatibility and rate of permeation prescribed in Appendix B of Part 173. For Packing Group I materials, this procedure must be performed on each plastic packaging or receptacle. In addition, § 173.24a requires all non-bulk packagings to be capable of withstanding the vibration test procedure specified in § 178.608 without rupture or leakage. Section IV of this notice discusses additional

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packaging requirements in § 173.27 that apply to packages transported by aircraft.

III. Requirements for the Use of Packagings Meeting United Nations (UN) Performance Standards

UN Standard

Generally, the HMR specify performance levels for packagings based on the hazardous characteristics posed by the specific hazardous material to be packaged. In the HMR, we have implemented packaging standards based on United Nations Recommendations on the Transport of Dangerous Goods (UN Model Regulations). UN standard packagings (i.e., packagings which conform to both the UN Model Regulations and the HMR) are required for most hazardous materials.

Prior to using a UN standard packaging, you must determine that the packaging has been manufactured, assembled, and marked in accordance with Part 178 of the HMR or national or international regulations based on the UN Model Regulations (see § 173.24(d)(2)). For a UN standard packaging, you must assure that the packaging meets the applicable packing group, specific gravity, gross mass, and pressure requirements. Unless otherwise permitted, you must assemble, fill, close, and offer a package for transportation in the same manner as it was tested. Communication between you and the packaging manufacturer is essential to ensure these conditions are met, and that any specialized instructions relating to package preparation are followed. For liquids, you must know the vapor pressure and specific gravity of the material to be packaged (see § 173.24a(b)(4)). You will generally need to know the design details (e.g., size, shape, and type of material) for cushioning material used, if any, and the number and type (e.g., metal can, plastic bottle), style (e.g., friction lid, narrow mouth screw top, wide mouth jar), closure details (e.g., material, size, and liner or gasket design (if required)), and position of any inner receptacles as tested in that particular design type.

You should have a copy of the packaging manufacturer's notification to its customers (see 49 CFR 178.2(c)) and complete the assembly and closure of the package in the manner specified in the notification. Closure of the packaging in the same manner as tested and as specified in the manufacturer's notification is essential to ensuring that it conforms to the requirements of § 173.24 under conditions normally incident to transportation. We strongly recommend that you maintain copies of both the packaging design test report and the notification to customer to ensure that the packaging conforms to applicable requirements. You may also need this information if you reoffer a previously offered package of hazardous material.

For combination UN standard packagings, inner receptacles must conform to the general packaging requirements of §§ 173.24 and 173.24a, discussed in Section II above. Inner packagings must be adequately secured and cushioned within the outer packaging to prevent breakage or leakage and to control the movement of inner packagings within the outer packaging under conditions normally incident to transportation. Except as otherwise permitted under § 178.601 variations, you must close a package in accordance with closure instructions provided by the packaging manufacturer. Design tested components of a combination packaging may vary as permitted under § 178.601. When using a variation, you must ensure that an equivalent level of performance is maintained and you should document how such equivalence was determined. For example, under the selective testing variations in § 178.601(g)(1), Variation 1 allows inner packagings of a tested design to be replaced with inner packagings of equivalent or smaller size without further testing provided an equivalent level of performance is maintained. You must, however, be able to fully ascertain that the varied inner packagings are equally effective as the tested inner packagings they replace; otherwise, the packaging is considered a new packaging and subject to design qualification testing.

Packaging Reuse

If you intend to reuse a packaging or receptacle you must ensure the packaging continues to conform to all applicable HMR requirements. This includes closure devices and cushioning materials. Before a packaging is reused, it must be inspected to assure it is free from incompatible residue, leaks, or other damage that reduces its structural integrity. Packagings that show any evidence of such damage must be reconditioned in accordance with § 173.28(c) prior to reuse. Non-bulk packagings made of paper, plastic film, or textile are not authorized for reuse.

Single or composite UN standard packagings intended to contain liquids are subject to the leakproofness test prescribed in § 178.604 and must be leakproofness tested before reuse. As prescribed in § 173.28(b)(2)(i), packagings must be tested with air using an internal air pressure (gauge) of at least 48 kPa (7.0 psi) for Packing Group I and 20 kPa (3.0 psi) for Packing Group II and Packing Group III. The packaging must be marked with the letter "L", the name and address or symbol of the person conducting the test, and the last two digits of the year the test was conducted to indicate successful completion of the leakproofness test.

Metal and plastic drums and jerricans used as single packagings or as the outer packagings of composite packagings may be reused only when they are permanently marked (e.g., embossed) in millimeters with the nominal (for metal packagings) or minimum (for plastic packagings) thickness of the packaging material, as required by §§ 173.28 and 178.503(a)(9). Under § 173.28(b)(5), plastic inner receptacles of composite packagings must have a minimum thickness of 1.0 mm (0.039 inch) if reused. Metal or plastic packagings that do not conform to minimum thickness requirements may not be reused.

Packaging Maintenance and Recordkeeping

Packagings manufactured to a UN standard must be design-qualified. This means the design must be tested (design qualification tests) to meet a particular standard. Once a packaging has been tested, it is certified by marking it to identify which performance standard it meets, where and when it was manufactured, and by whom. Identical packagings may be manufactured until periodic retesting is due. Single and composite non-bulk packaging designs must be retested successfully at least once every 12 months. Combination packaging designs must be retested successfully at least once every 24 months.

The term "manufacturer" means the person certifying or taking responsibility for assuring that the packaging meets the standard to which it is marked. This may not necessarily be the person who produces the packaging or the person who tests the packaging. A person who certifies a packaging may be a self-certifying shipper, a box manufacturer, or a third party testing lab. The person certifying the packaging is responsible for the integrity of the packaging and for ensuring the packaging meets the performance requirements of the HMR.

Any person certifying a packaging, and each subsequent distributor of that packaging, must notify in writing each person to whom that packaging is transferred of all requirements of Part 178 not met at the time the packaging is transferred. Such notification must include the type and dimensions of any closures, including gaskets, needed to satisfy performance test requirements. This notification includes instructions on how to assemble and close each packaging so the user may be assured that the packaging will perform to the standard to which it is marked. A copy of the written notification must be retained by the packaging manufacturer for at least one year from the date it is issued, and copies of all written notifications must be made available for inspection by representatives of DOT.

IV. Additional Packaging Requirements for Air Shipments

If you offer hazardous materials for transportation by aircraft, you must ensure that all of the additional requirements applicable to air transport are met. Because of the risks posed by leaking hazmat packages in air transport, you must exercise exceptional diligence and attention to detail when preparing packagings. For example, because temperatures can range from −40 °C to 55 °C (−40 °F to 130 °F), sufficient ullage (outage) must be maintained in receptacles containing liquids to ensure the structural integrity of the package while transported. Reduced external pressure caused by altitude variances can result in package failure if inferior, untested, or improper packagings containing liquids are transported. Extreme care must be exercised when hazardous materials have been packaged by others and are consolidated or reshipped. You must verify that the package is eligible for air transport.

General Packaging Requirements

All packagings offered for air transport must conform to the requirements prescribed in § 173.27 of the HMR. These requirements are in addition to those in §§ 173.24 and 173.24a. For example, a Packing Group III material of Class 4, 5, or 8 offered for air transport must be packaged in packages meeting the Packing Group II performance level. In addition, § 173.27 prescribes pressure requirements for packagings; package closure requirements; the use of absorbent materials; inner receptacle quantity limits and pressure capabilities; and additional labeling for packages requiring transport aboard cargo-only aircraft.

Inner Packaging Requirements

Tables 1 and 2 of § 173.27 prescribe the maximum net capacity of inner packagings contained within a combination packaging that may be offered for transport aboard an aircraft. Columns 9A and 9B of the HMT specify individual package quantity limits or forbid transportation by passenger-carrying or cargo-only aircraft, respectively. Unless otherwise specified, the individual package quantity limitations in columns 9A and 9B of the HMT are "net", that is, the quantity of hazardous materials in the completed package. When "gross" is specified, the individual package limitation is the gross mass (i.e., packaging and its contents) allowed per package. For articles or devices specifically listed by name, the net quantity limit applies to the entire article or device, less packaging and packaging materials.

Pressure Differential Capability

You should not use a packaging for transportation by aircraft unless the packaging meets the pressure requirements and is closed in a manner that ensures that it will be capable of resisting pressure changes throughout transportation. All packagings intended to contain liquids must be capable of withstanding, without leakage, an internal gauge pressure of at least 75 kPa (11 psig) for liquids in Packing Group III of Class 3 or Division 6.1 or 95 kPa (14 psig) for all other liquids, or a pressure related to the vapor pressure of the liquid to be conveyed, whichever is greater (see § 173.27(c)). This requirement also applies to liquids excepted from specification packaging, such as limited quantities and consumer commodities. Although not currently required, we recommend that you perform pressure tests on sample receptacles to ensure conformance with the capability standard. Liquids contained in inner receptacles that do not meet the minimum pressure requirements in § 173.27(c) may be overpacked into receptacles that do meet the pressure requirements. A single packaging, or any packaging subject to hydrostatic pressure testing under § 178.605, must have a marked test pressure of not less than 250 kPa for liquids in Packing Group I, 80 kPa for liquids in Packing Group III of Class 3 or Division 6.1, and 100 kPa for other liquids.

Closures

Packaging failures in air transportation often involve loose closures. Stoppers, corks, or other such friction-type closures must be held securely, tightly and effectively in place by positive means (see § 173.27(d)). A screw-type closure on any packaging must be secured to prevent the closure from loosening due to vibration or substantial change in temperature. A secured closure should incorporate a secondary means of maintaining a seal, such as a shrink-wrap band or heat sealed liner. You must ensure that replacement closures or inner packagings other than those originally tested (e.g., caps or bottles from a different vendor) conform to the pressure requirements in § 173.27 (c)(1) and (c)(2).

Absorbent Material

Except as otherwise provided, liquids in Packing Group I or II of Class 3, 4, 5, 6, or 8, when in glass or earthenware inner packagings, must be packaged with absorbent material that will not react dangerously with the liquid as prescribed in § 173.27(e). In addition, where a package requiring absorbent material is not liquid-tight, a means of containing the liquid must be used. You may accomplish this by using a leakproof liner, plastic bag, or other equally efficient means of containment. It should be noted that, while not having official standing under the HMR, the majority of air carriers only accept hazardous materials packaged in conformance with the International Air Transport Association's Dangerous Goods Regulations (IATA DGR). Currently, the IATA DGR require all liquids in Class 3, 4, or 8, or in Division 5.1, 5.2, or 6.1, to be provided with a means of containing the liquid in the event of leakage when packed in an outer package that is not leak-tight. The addition of a liner or similar form of containment to a previously tested packaging design generally would not constitute a different packaging, requiring new design qualification testing, provided the liner does not compromise the integrity of the original tested design type (such as affecting the closure or necessitating a change in the manner of assembly of the package).

V. Transportation Security

In the wrong hands, certain hazardous materials may pose significant security threats, particularly those that may be used as weapons of mass destruction. Persons who offer, transport, or store hazardous materials in transit should review their security measures and make any necessary adjustments to ensure the security of hazardous materials shipments. On February 14, 2002, we published a notice in the **Federal Register** (67 FR 6963) advising hazardous materials shippers and carriers of voluntary measures to enhance the security of hazardous materials shipments during transportation. The notice addresses personnel, facility, and en route security issues, and includes contact points for

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obtaining additional, more detailed information. These possible actions are not government regulations or mandates. However, we strongly suggest that shippers and carriers consider implementation of security measures that are appropriate to their industry and operations. There are certain cargo security regulations already in place, such as the Federal Aviation Administration's Indirect Air Carrier Security Program set forth under 14 CFR part 109.

VI. Training of Hazmat Employees

We estimate that over 85 percent of all hazardous materials incidents are caused by human error. Insufficient function-specific training of hazmat employees has been identified as a major contributor in hazmat related incidents. Before any hazmat employee performs a function subject to the HMR, that person must be trained in the performance of that function. Effective training of hazmat employees reduces the potential for incidents and accidents. Training is essential for the protection of people, property, and the environment.

Training is a systematic program (consistent approach, testing, and documentation) that ensures a hazmat employee has knowledge of hazardous materials and the HMR, and can perform assigned hazmat functions properly. The terms "hazmat employee" and "hazmat employer" are defined in detail in § 171.8. Stated briefly, a hazmat employee is anyone who directly affects hazardous material transportation safety. A hazmat employer is anyone who uses employees in connection with transporting hazardous materials in commerce, causing hazardous materials to be transported, or manufacturing or offering packagings as authorized for use in transportation of hazardous materials. Each hazmat employee must be initially trained, and periodically retrained every three years in three areas: (1) General awareness/familiarization training designed to provide familiarity with requirements of the HMR and to enable the employee to recognize and identify hazardous materials; (2) function-specific training concerning requirements of the HMR which are specifically applicable to the functions the employee performs; and (3) safety training concerning emergency response information, measures to protect the employee from the hazards posed by materials, and methods and procedures for avoiding accidents.

VII. Obtaining Federal Assistance

You may obtain information on hazardous material incidents, most of which involve "spills" (the unintentional release of a hazardous material during transportation), from RSPA's database which is accessible from our website at *http://hazmat.dot.gov*. You can search this database to make sure that you are aware of incidents involving your shipments. To ensure that shippers are informed of incidents involving their shipments, RSPA has proposed to amend the HMR to require a carrier to notify the shipper of any incident required to be reported to RSPA. (*See* RSPA's notice of proposed rulemaking published in the **Federal Register** on July 3, 2001; 66 FR 35155.)

Our Hazardous Materials Information Center (HMIC) may be reached toll-free at 800–467–4922. The HMIC provides informal guidance concerning requirements of the HMR. The HMIC is staffed with information specialists from 9 am until 5 pm, Eastern time, Monday through Friday, except Federal holidays. When the information line is not staffed, callers may leave a recorded message, which will be answered the next business day. This toll-free number may also be used to voluntarily report suspected violations of the HMR. Reported violations of hazardous materials regulations are forwarded to the Office of Hazardous Materials Enforcement or the appropriate DOT modal administration for appropriate action.

Modal-specific information may be obtained directly from DOT's modal administrations (*i.e.*, the Federal Aviation Administration, the Federal Motor Carrier Safety Administration, the Federal Railroad Administration, the U.S. Coast Guard, and the Transportation Security Administration) at their Washington, DC headquarters or field offices.

You may request an informal written interpretation, a regulatory clarification, a response to a question, or offer an opinion concerning hazardous materials transportation by submitting a written request to the RSPA Office of Hazardous Materials Standards (DHM–10), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590–0001.

We have a variety of training materials and compliance guides available in limited quantities to interested persons. Information on those publications and related materials is available through our website at http://hazmat.dot.gov/. In addition our website provides: (1) A complete copy of the HMR; (2) recently published rulemakings; (3) hyperlinks to government and private vendors who offer training, consulting and other contracted services; (4) our multi-modal training seminar schedule; (5) complementary on-line training modules; and (6) informal interpretations and guidance documents.

Issued in Washington, DC, on May 6, 2002.

Frits Wybenga,

Deputy Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–11659 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

49 CFR Part 385

[Docket No. FMCSA–2001–11061]

RIN 2126–AA59

New Entrant Safety Assurance Process

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Interim Final Rule (IFR); request for comments.

SUMMARY: The FMCSA establishes minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable through the application process, the new entrants will operate for 18 months in which time they must pass a safety audit in order to receive permanent DOT registration.

DATES: This rule is effective January 1, 2003. Comments must be received on or before July 12, 2002.

ADDRESSES: You can submit comments by mail or by delivery service to the U.S. DOT Docket Management Facility (DMS), Room PL–401, 400 Seventh Street, SW., Washington, DC 20590–0001, and your signed written comments must refer to the docket number appearing at the top of this document. Comments received from the public will become part of this docket and will be available for inspection and copying at the DMS between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. Those desiring acknowledgement of receipt of your comments should include a self-addressed stamped envelope or postcard, or after submitting comments electronically, print the acknowledgment page.

Comments may also be submitted on the Internet by using the universal resource locator (URL) at: *http://dmses.dot.gov/submit*, or by fax to (202) 493–2251. Internet users may view all comments received by the DMS on the Internet at: *http://dms.dot.gov*. Please follow the instructions online for more information and help. In addition, an electronic copy of this document may be downloaded by accessing **Federal Register** publications through the Government Printing Office (GPO) Access service (*http://www.access.gpo.gov/nara*).

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination using the docket number appearing at the top of this document in the docket room at the above address. The FMCSA will file comments received after the comment closing date in the docket and will consider late comments to the extent practicable. The FMCSA may, however, issue a final rule at any time after the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. Larry Minor, 202–366–4009, Acting Chief, Driver and Carrier Operations Division, Federal Motor Carrier Safety Administration (MC–PSD), 400 Seventh Street, SW., Washington, DC 20590–0001. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Regulatory Information

This rule is being published as an interim final rule and is being made effective on January 1, 2003. A notice of proposed rulemaking does not precede this rule.

In the fiscal year 2002 Department of Transportation Appropriations Act (Public Law 107–87; December 18, 2001), Congress directed that as a condition of processing applications of Mexico-domiciled motor carriers for authority to operate beyond the commercial zones and municipalities located along the U.S.-Mexico border, the FMCSA must issue an interim final rule to ensure that new entrant carriers are knowledgeable about Federal safety standards. The FMCSA is making the effective date of the rule January 1, 2003 in order to allow the agency sufficient time to put in place the necessary resources to conduct the safety audits prescribed by the rule. Additionally, the FMCSA will need the funds generated by its final fee structure under the Motor Carrier Replacement Information/Registration System to run the program. It expects to complete that rulemaking by the January 2003 effective date.

Because of Congress' direction, the FMCSA finds that there is good cause that notice and comment are contrary to the public interest under 5 U.S.C. 553(b)(3)(B).

Background

On December 9, 1999, the President signed the Motor Carrier Safety Improvement Act of 1999 (Public Law 106–159). Section 210(a) of MCSIA, now codified as 49 U.S.C. 31144(f), requires the Secretary of Transportation to establish regulations specifying minimum requirements for applicant motor carriers seeking federal interstate operating authority, including a requirement that new entrants undergo a safety audit within the first 18 months of operations.

Although operating authority has generally been construed in the past to mean registration of for-hire carriers subject to the jurisdiction transferred from the Interstate Commerce Commission following enactment of the ICC Termination Act of 1995 (ICCTA) (Public Law 104–88) (referred to herein as authorized for-hire motor carriers), the FMCSA believes section 210 extends this concept to all carriers subject to Federal safety jurisdiction. In other words, all new entrants, regardless of whether they need to register with the FMCSA under 49 U.S.C. 13901, will be required to meet certain minimum safety standards in order to continue operating in interstate commerce during and after the 18-month period following their receipt of a USDOT number.

The FMCSA intends to improve the safety performance of new entrants by providing educational and technical assistance to new carriers as they begin their new business. The intent of the safety audit and 18-month monitoring period is to provide new carriers the opportunity to understand their safety obligations under the Federal Motor Carrier Safety Regulations (FMCSRs) and applicable Hazardous Materials Regulations (HMRs). The safety audit will consist of a review of the new entrant's safety data, a review of requested motor carrier documents, and an interview session with the motor carrier by an individual certified under FMCSA regulations to perform safety audits. The objective of the safety audit is both to educate the carrier on compliance with the FMCSRs and HMRs and to determine areas where the carrier might be deficient in terms of compliance. Areas covered include the qualification of drivers; driving a commercial motor vehicle; hours of service; vehicle inspection, repair, and maintenance; transporting and marking hazardous materials; controlled substances and alcohol use and testing; commercial driver's license standards; and financial responsibility. When presented with evidence that carriers cannot or will not exercise basic safety management controls, the FMCSA will require corrective action. If the necessary corrective action is not taken, a carrier will be denied the privilege of operating in interstate commerce.

However, the safety enforcement remedies addressed in the rule are not the exclusive enforcement tools available to the agency to ensure safe operations by new entrants. New entrant carriers are subject, like any other carrier operating in the United States, to all Federal Motor Carrier Safety Regulations and operating requirements. The agency can and will, where necessary, apply the full range of enforcement actions to new entrant carriers. These include, but are not limited to, compliance reviews, civil penalties, and revocation of new entrant registration for serious safety violations.

Currently, an applicant who wishes to begin commercial vehicle operations in interstate commerce is required to submit the Motor Carrier Identification Report, Form MCS–150, to FMCSA before commencing operations. Additionally, unless providing transportation exempt from ICCTA registration requirements, a for-hire motor carrier must also apply for the appropriate operating authority, make the necessary administrative filings as required by the ICCTA, and pay a fee.

This regulation establishes new minimum requirements for all applicant motor carriers domiciled in the United States and Canada seeking to operate in interstate commerce for the first time. Applicants will be provided educational and technical assistance material to assist them in complying with the FMCSRs and applicable HMRs, and will be required to certify that they are knowledgeable about, and will comply, with these regulations. This will help ensure they are knowledgeable about applicable Federal motor carrier safety standards before being granted "new entrant registration" that will continue for a minimum of 18 months. During the 18-month period, FMCSA will evaluate the new entrant's safety management practices through a safety audit and monitor its on-road performance prior to granting the new entrant permanent registration.

Section 210(b) of the MCSIA required the Secretary to consider establishing a proficiency examination as well as other requirements to ensure applicants understand applicable safety regulations

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before being granted operating authority. The FMCSA is not requiring a proficiency examination because it believes that the educational and technical assistance materials provided to the new entrants and the safety certifications on the required application forms will demonstrate the new entrants understand applicable safety regulations.

The new MCS–150A form requires the new entrant to certify that it has a system(s) in place to ensure compliance with applicable requirements covering driver qualifications, hours of service, controlled substance and alcohol testing, vehicle condition, accident monitoring, and hazardous materials transportation. The certification reminds the new entrant of its statutory and regulatory responsibilities, which if neglected or violated, may subject the applicant to civil penalties and/or lead to the revocation of the new entrant registration.

Motor carriers domiciled in Mexico seeking to operate in the United States will not be subject to this rule. The FMCSA adopted separate application and safety monitoring procedures for Mexico-domiciled carriers on March 19, 2002, (67 FR 12652, 67 FR 12702, and 67 FR 12758). The FMCSA believes it is necessary to maintain separate procedures for Mexico-domiciled carriers because of: (1) The differences between the Mexican and U. S. regulatory systems, which present unique circumstances in ensuring compliance with the FMCSRs and HMRs by Mexico-domiciled carriers; and (2) the unique requirements imposed on certain Mexico-domiciled carriers by the Department of Transportation Appropriations Act. These differences are discussed in detail in the preambles to the notices of proposed rulemakings for the Mexican carrier rules published on May 3, 2001 (66 FR 22238, 22371 and 22415).

Under the new requirements, an applicant may request an application package by contacting the FMCSA website (*www.fmcsa.dot.gov*); or by contacting the FMCSA's Washington, DC headquarters by mail, fax or telephone. Applicants are strongly encouraged to complete the applications on line. The application package will contain the following:

1. Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.
2. The Form MCS–150, The Motor Carrier Identification Report.
3. The Form MCS–150A, Safety Certification for Applications for U.S. DOT Number. A copy of Form MCS–150A is available in the docket described above under **ADDRESSES**.

For-hire motor carriers are also required to complete the application forms OP–1 or OP–1(P), as appropriate, and must submit them to the FMCSA at the same time as the Forms MCS–150 and MCS–150A. The FMCSA is planning to update these forms in the future to implement the provisions of the ICC Termination Act of 1995 (ICCTA).

The educational and technical assistance package will consist of material designed to assist the applicant in complying with the FMCSRs and establishing good safety management practices. It will include information on driver qualifications; controlled substances and alcohol use testing; commercial drivers licenses; minimum levels of financial responsibility; accident reports; requirements applicable to the driving of motor vehicles; vehicle inspection, repair and maintenance; hours of service and records of duty status of drivers; and requirements applicable to the transportation of hazardous materials.

Following completion of the application forms, FMCSA will register the new entrant and assign a United States Department of Transportation (USDOT) number. For-hire motor carriers, unless providing transportation exempt from ICCTA registration requirements, are required to obtain operating authority prior to commencing operations. The new entrant registration begins with the issuance of the USDOT number and will continue for 18 months. During the 18-month new entrant registration period, the new entrant will be required to undergo a safety audit designed to evaluate the adequacy of its safety management practices and to offer guidance and assistance in enhancing those practices. The agency is treating the term "safety audit," which is used in Sec. 211 of the MCSIA regarding the certification of an individual under FMCSA regulations to perform safety audits, as equivalent to the "safety review" mandated by Sec. 210 of MCSIA. The statutory purpose of a "safety review" and a "safety audit" appears to be very similar. In addition, the term "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency, which were discontinued on September 30, 1994.

The safety audit will generally occur at the new entrant's place of business, upon reasonable notice to the new entrant, which will include notice of what the audit will consist of and when it will take place. The safety audit will be an assessment of the adequacy of the new entrant's basic safety management controls. It will include, but not be limited to, a review of selected carrier records and operational practices, e.g., driver qualification records, driver records of duty status, and vehicle maintenance files. The safety audit is different than a compliance review in that it focuses on providing safety management and technical assistance and will not result in a safety fitness determination, i.e., a safety rating of satisfactory, conditional, or unsatisfactory. Safety ratings are assigned only after a compliance review. However, the safety audit could result in the new entrant having its new entrant registration revoked if it is found to have inadequate basic safety management controls and fails to take corrective action required by the FMCSA. Appendix A—Explanation of Safety Audit Evaluation Criteria will be used to determine the adequacy of the new entrant's basic safety management controls.

The FMCSA is interested in comments on the advisability of conducting some safety audits at alternate locations. This would enable the agency to provide educational and technical assistance to a number of new entrants at one time and also perform the audits of the systems and records the new entrants will be required to provide. The FMCSA also invites comments on whether it is appropriate for private contractors certified by the FMCSA to conduct safety audits.

Following completion of the safety audit, the auditor will review the findings with the new entrant. If the safety audit reveals that the carrier has basic safety management controls in place that are functioning adequately, the FMCSA will notify the new entrant in writing within 45 days that it has successfully met the safety audit requirements. However, the new entrant registration will remain in place and the carrier's performance will remain closely monitored by the FMCSA until the end of the 18-month period. If a safety audit has not been conducted on a new entrant, through no fault of the carrier, the new entrant designation will continue until such time as a safety audit is conducted. However, a new entrant who has not undergone a safety audit within the 18 months because it has refused to allow the FMCSA to conduct the safety audit may have its new entrant registration revoked ten days after receiving notice from the FMCSA.

The FMCSA anticipates that the safety management practices of the large majority of new entrants will prove to be adequate because of the combined effect of: (1) Providing educational material to the new entrant in the application process; (2) requiring the new entrant to certify that it understands and that it will comply with the FMCSRs; and (3) providing notice to the new entrant of the content of the safety audit. However, in those cases in which the safety audit reveals that the new entrant's safety management practices are inadequate, the FMCSA will notify the new entrant that it is required to take action to improve its practices. The new entrant will have 60 days to take the necessary remedial action, unless it transports passengers or carries hazardous materials, in which case it will have 45 days. These time periods are consistent with the period currently provided to motor carriers to improve proposed safety ratings following a compliance review. Failure by the carrier to make the necessary changes to remedy inadequate basic safety management controls will result in revocation of its new entrant registration and imposition of an out-of-service order (OOS) prohibiting operations in interstate commerce. The FMCSA is interested in comments on the resource cost to the economy of denying permanent registration.

If a new entrant provides the FMCSA with a written response demonstrating that corrective action likely to achieve compliance with the requirements of the FMCSRs and applicable HMRs has been taken, and the FMCSA determines the new entrant's basic safety management controls are adequate, the new entrant will be notified in writing that its safety management practices are acceptable and that its new entrant registration will remain in place until the end of the 18-month period.

The FMCSA believes that in most cases in which corrective action is needed, the remedial action will be taken in the required time frame. However, in those cases in which the new entrant does not take any remedial action, or takes action unlikely to improve its safety performance to an acceptable level, the FMCSA will initiate a proceeding to revoke the new entrant registration.

The FMCSA Division Administrators or State Directors will make the initial determination about the adequacy of a new entrant's basic safety management controls and whether necessary corrective action has been taken. The Field Administrator of the appropriate FMCSA Service Center will conduct administrative review of this decision.

A new entrant may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls are inadequate. The new entrant's request must explain the error it believes the FMCSA committed in its determination and include a list of all factual and procedural issues in dispute. In addition, the new entrant must include any information or documents that support its argument. Following the administrative review, the FMCSA will notify the new entrant of its decision, which will constitute the final action of the agency.

A new entrant whose registration has been revoked is prohibited from operating a CMV in interstate commerce and may not reapply for new entrant registration sooner than 30 days after the date of revocation. A new entrant reapplicant will be required to demonstrate to the FMCSA's satisfaction that it has corrected the deficiencies that resulted in revocation and otherwise has in place safety management systems that will function effectively.

The rule provides that at the end of the 18-month period, if the new entrant has successfully met the requirements of the safety audit and is not currently under a notice from the FMCSA to remedy its safety management practices, its DOT registration will become permanent. Thereafter, it will be treated like any other motor carrier. If the carrier is under a notice to remedy its safety management practices, its new entrant designation will continue until FMCSA determines the new entrant has implemented actions necessary to achieve adequate safety management practices.

Rulemaking Analysis and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FMCSA has determined that this action is a significant regulatory action within the meaning of Executive Order 12866, and is significant within the meaning of Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). It has been reviewed by the Office of Management and Budget. The subject of requirements for new entrant motor carriers will likely generate considerable public interest within the meaning of Executive Order 12866. We have classified the rule as significant because of the high level of public and congressional interest in the new entrant safety assurance process. OMB has designated the rule as economically significant. A regulatory evaluation has been prepared and placed in the docket.

A series of analyses and reports have demonstrated that new motor carriers are less likely to comply with safety regulations, and are more likely to be involved in crashes, than established motor carriers. In response to this, Congress directed the FMCSA to develop a program to ensure the safety of new entrants.

The centerpiece of the new entrant program is the safety audit, which will be performed on all new entrants within 18 months of their registration. Individuals certified under the FMCSA regulations will perform these audits. The FMCSA anticipates a volume of approximately 40,000 new entrant safety audits each year. A copy of the complete regulatory evaluation is available in the docket described above under **ADDRESSES.**

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FMCSA has considered the effects of this regulatory action on small entities and determined that such entities would not be adversely affected by this rule. We therefore certify that it would not have a significant impact on a substantial number of small entities.

Executive Order 12988 (Civil Justice Reform)

This action meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Executive Order 13045 (Protection of Children)

We have analyzed this rule under Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks." This rule does not concern an environmental risk to health or safety that would disproportionately affect children.

Executive Order 12630 (Taking of Private Property)

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Executive Order 13132 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 dated August 4, 1999, and it has been determined that this action does

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not have a substantial direct effect or sufficient federalism implications on States that would limit the policymaking discretion of the States. Nothing in this document directly preempts any State law or regulation. It will not impose additional costs or burdens on the States. This action will not have a significant effect on the States' ability to execute traditional State governmental functions. To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under the Motor Carrier Safety Assistance Program (MCSAP). Since the MCSAP is an "80/20" program, FMCSA would reimburse the States for 80% of the costs incurred in conducting safety audits.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities do not apply to this program.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501–3520), Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulations. An analysis of this interim final rule has been made by the FMCSA, and it has been determined that it will affect a currently-approved information collection covered by OMB Control No. 2126–0013 (Motor Carrier Identification Report). Information collection 2126–0013, with an annual burden of 68,250 hours, expires on May 31, 2004.

In addition to completing form MCS–150 (Motor Carrier Identification Report), this interim final rule will also require new entrants to complete a new supplemental form, entitled Safety Certification for Applications for U.S. DOT Number (MCS–150A). The completion of the supplemental form is the only portion of this interim final rule with PRA implications.

Although the rule also involves two other forms new entrants must complete—the BOC–3 and OP forms, there is no impact on burden hours for those information collections resulting from this rule. The BOC–3 form is covered by 2126–0015 (Designation of Agents, Motor Carriers, Brokers and Freight Forwarders), which expires on November 30, 2004. The OP series forms are covered by 2126–0016 (Revision of Licensing Application Forms of Application Procedures and Corresponding Regulations), which expires on March 31, 2005. However, this rule does not affect the burden hours involved with these two information collections.

The FMCSA estimates that approximately 40,000 new entrants annually will be required to complete this supplemental form (MCS–150A) and that the supplemental form takes approximately 9 minutes to complete. Therefore, we estimate the total annual burden of this interim final rule to be 6,000 burden hours (9 minutes × 40,000, divided by 60 minutes). The new total burden for information collection 2126–0013 would be 74,250 hours (the currently-approved 68,250 hours for completing the MCS–150, plus 6,000 hours for completing the MCS–150A).

We particularly request your comments on whether the collection of information is necessary for the FMCSA to meet its goal of reducing truck crashes, including (1) whether the information is useful to this goal; (2) the accuracy of the estimate of the burden of the information collection; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology.

You may submit comments on the *information collection burden* addressed by this interim final rule to the Office of Management and Budget (OMB). The OMB must receive your comments by June 27, 2002. You must mail or hand deliver your comments to: Attention: Desk Officer for the Department of Transportation, Docket Library, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10102, 725 17th Street, NW., Washington, DC 20503.

National Environmental Policy Act

The Federal Motor Carrier Safety Administration (FMCSA) is a new administration within the Department of Transportation (DOT). We are striving to meet all of the statutory and executive branch requirements on rulemaking. The FMCSA is currently developing an agency order that will comply with all statutory and regulatory policies under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). We expect the draft FMCSA Order to appear in the **Federal Register** for public comment in the near future. The framework of the FMCSA Order is consistent with and reflects the procedures for considering environmental impacts under DOT Order 5610.1C. The FMCSA analyzed this interim final rule under the NEPA and DOT Order 5610.1C. We believe it would be among the type of regulations that would be categorically excluded from any environmental assessment.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not likely to have a significant adverse effect on the supply, distribution, or use of energy because it sets standards for new entrant motor carriers and has no direct relation to energy consumption. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Unfunded Mandates

This rule does not impose an unfunded Federal mandate resulting in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. (2 U.S.C. 1531 *et seq.*) Any costs incurred by the States are reimbursable under the Motor Carrier Safety Assistance Program (MCSAP). To the extent that States incur costs for conducting these safety audits, they will be reimbursed with federal funds under MCSAP.

List of Subjects in 49 CFR Part 385

Administrative practice and procedure, Highway safety, Motor carriers, Motor vehicle safety, Reporting and recordkeeping requirements, Safety fitness procedures.

In consideration of the foregoing, Title 49, Code of Federal Regulations, Chapter III, part 385 is amended as set forth below:

PART 385—SAFETY FITNESS PROCEDURES

1. The authority citation for part 385 is revised to read as follows:

Authority: 49 U.S.C. 113, 504, 521(b), 5113, 31136, 31144, 31148, and 31502; and 49 CFR 1.73.

2. Amend § 385.1 by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b) to read as follows:

§ 385.1 Purpose and scope.

* * * * *

(b) This part establishes the safety assurance program for a new entrant motor carrier initially seeking to register with FMCSA to conduct interstate operations. It also describes the consequences that will occur if the new entrant fails to maintain adequate basic safety management controls.

(c) The provisions of this part apply to all motor carriers subject to the requirements of this subchapter, except non-business private motor carriers of passengers.

3. Amend § 385.3 by revising the section heading and adding definitions and acronyms in alphabetical order to read as follows:

§ 385.3 Definitions and acronyms.

* * * * *

CMV means a commercial motor vehicle as defined in § 390.5 of this subchapter.

* * * * *

FMCSA means the Federal Motor Carrier Safety Administration.

FMCSRs mean Federal Motor Carrier Safety Regulations (49 CFR parts 350–399).

HMRs means the Hazardous Materials Regulations (49 CFR parts 100–178).

New entrant is a motor carrier not domiciled in Mexico that applies for a United States Department of Transportation (DOT) identification number in order to initiate operations in interstate commerce.

New entrant registration is the registration (US DOT number) granted a new entrant before it can begin interstate operations in an 18-month monitoring period. A safety audit must be performed on a new entrant's operations within 18 months after receipt of its US DOT number and it must be found to have adequate basic safety management controls to continue operating in interstate commerce at the end of the 18-month period.

* * * * *

4. Part 385 is amended by adding a new subpart D to read as follows:

Subpart D—New Entrant Safety Assurance Program

Sec.

385.301 What is a motor carrier required to do before beginning interstate operations?
385.303 How does a motor carrier register with the FMCSA?
385.305 What happens after the FMCSA receives a request for new entrant registration?
385.307 What happens after a motor carrier begins operations as a new entrant?
385.309 What is the purpose of the safety audit?
385.311 What will the safety audit consist of?
385.313 Who will conduct the safety audit?
385.315 Where will the safety audit be conducted?
385.317 Will a safety audit result in a safety fitness determination by the FMCSA?
385.319 What happens after the completion of the safety audit?
385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?
385.323 May the FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?
385.325 What happens after a new entrant has been notified under 385.319(c) to take corrective action to remedy its safety management practices?
385.327 What happens when a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?
385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) reapply?
385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?
385.333 What happens at the end of the 18-month safety monitoring period?
385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?
385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

Subpart D—New Entrant Safety Assurance Program

§ 385.301 What is a motor carrier required to do before beginning interstate operations?

(a) Before a motor carrier of property or passengers begins interstate operations, it must register with the FMCSA and receive a USDOT number. In addition, for-hire motor carriers must obtain operating authority from FMCSA following the registration procedures described in 49 CFR part 365, unless providing transportation exempt from 49 CFR part 365 registration requirements.

(b) This subpart applies to motor carriers domiciled in the United States and Canada.

(c) A Mexico-domiciled motor carrier of property or passengers must register with the FMCSA by following the registration procedures described in 49 CFR part 365 or 368, as appropriate. The regulations in this subpart do not apply to Mexico-domiciled carriers.

§ 385.303 How does a motor carrier register with the FMCSA?

A motor carrier may contact the FMCSA by internet (*www.fmcsa.dot.gov*); or Washington, DC headquarters by mail at, FMCSA, 400 7th Street SW., Washington, DC 20590; fax (703) 280–4003; or telephone 1–800–832–5660, and request the application materials for a new entrant motor carrier.

§ 385.305 What happens after the FMCSA receives a request for new entrant registration?

(a) The requester for new entrant registration will be directed to the FMCSA Internet website (*www.fmcsa.dot.gov*) to secure and/or complete the application package online.

(b) The application package will contain the following:

(1) Educational and technical assistance material regarding the requirements of the FMCSRs and HMRs, if applicable.

(2) The Form MCS–150, The Motor Carrier Identification Report.

(3) The Form MCS–150A, The Safety Certification for Applications for U.S. DOT Number.

(4) Application forms to obtain operating authority under 49 CFR 365, as appropriate.

(c) Upon completion of the application forms, the new entrant will be issued a USDOT number.

(d) For-hire motor carriers, unless providing transportation exempt from 49 CFR part 365 registration requirements, must also comply with the procedures established in 49 CFR part 365 to obtain operating authority before operating in interstate commerce.

§ 385.307 What happens after a motor carrier begins operations as a new entrant?

After a new entrant satisfies all applicable pre-operational requirements, it will be subject to the new entrant safety monitoring procedures for a period of 18 months. During this 18-month period:

(a) The new entrant's roadside safety performance will be closely monitored to ensure the new entrant has basic safety management controls that are operating effectively. An accident rate or driver or vehicle violation rate that is higher than the industry average for similar motor carrier operations may cause the FMCSA to conduct an expedited safety audit or compliance review at any time.

(b) A safety audit will be conducted on the new entrant, once it has been in operation for enough time to have sufficient records to allow the agency to

evaluate the adequacy of its basic safety management controls. This period will generally be at least 3 months.

(c) All records and documents required for the safety audit shall be made available for inspection upon request by an individual certified under FMCSA regulations to perform safety audits.

§ 385.309 What is the purpose of the safety audit?

The purpose of a safety audit is to:

(a) Provide educational and technical assistance to the new entrant; and

(b) Gather safety data needed to make an assessment of the new entrant's safety performance and adequacy of its basic safety management controls.

§ 385.311 What will the safety audit consist of?

The safety audit will consist of a review of the new entrant's safety management systems and a sample of required records to assess compliance with the FMCSRs, applicable HMRs and related record-keeping requirements as specified in Appendix A of this part. The areas for review include, but are not limited to, the following:

(a) Driver qualification;

(b) Driver duty status;

(c) Vehicle maintenance;

(d) Accident register; and

(e) Controlled substances and alcohol use and testing requirements.

§ 385.313 Who will conduct the safety audit?

An individual certified under the FMCSA regulations to perform safety audits will conduct the safety audit.

§ 385.315 Where will the safety audit be conducted?

The safety audit will generally be conducted at the new entrant's business premises.

§ 385.317 Will a safety audit result in a safety fitness determination by the FMCSA?

A safety audit will not result in a safety fitness determination. Safety fitness determinations follow completion of a compliance review.

§ 385.319 What happens after the completion of the safety audit?

(a) Upon the completion of the safety audit, the auditor will review the findings with the new entrant.

(b) If the FMCSA determines that the safety audit discloses that the new entrant has adequate basic safety management controls, the FMCSA will provide the new entrant written notice as soon as practicable, but not later than 45 days after the completion of the safety audit, that it has adequate basic safety management controls. The new entrant's safety performance will continue to be closely monitored for the remainder of the 18-month period of new entrant registration.

(c) If the FMCSA determines that the findings of the safety audit disclose that the new entrant's basic safety management controls are inadequate, it will provide the new entrant written notice, as soon as practicable, but not later than 45 days after the completion of the safety audit, that its USDOT new entrant registration will be revoked and its operations placed out-of-service unless it takes the actions specified in the notice to remedy its safety management practices within:

(1) 45 days of the date of the notice if the new entrant transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials requiring placarding; or

(2) 60 days of the date of the notice for all other new entrants.

§ 385.321 What failures of safety management practices disclosed by the safety audit will result in a notice to a new entrant that its DOT new entrant registration will be revoked?

The failures of safety management practices consist of a lack of basic safety management controls as described in Appendix A of this part and will result in a notice to a new entrant that its DOT new entrant registration will be revoked.

§ 385.323 May the FMCSA extend the period under § 385.319(c) for a new entrant to take corrective action to remedy its safety management practices?

(a) If a new entrant that transports passengers in a CMV designed or used to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding, has submitted evidence that corrective actions have been taken pursuant to § 385.319(c) and the FMCSA cannot make a determination regarding the adequacy of the corrective actions within the 45 day period, the period may be extended for up to 10 days at the discretion of the FMCSA.

(b) The FMCSA may extend the 60-day period in § 385.319(c)(2), for up to an additional 60 days provided FMCSA determines that the new entrant is making a good faith effort to remedy its safety management practices.

§ 385.325 What happens after a new entrant has been notified under § 385.319(c) to take corrective action to remedy its safety management practices?

(a) If the new entrant provides evidence of corrective action acceptable to the FMCSA within the time period provided in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will provide written notification to the new entrant that its DOT new entrant registration will not be revoked and it may continue operations.

(b) If a new entrant, after being notified that it is required to take corrective action to improve its safety management practices, fails to submit a written response demonstrating corrective action acceptable to FMCSA within the time specified in § 385.319(c), including any extension of that period authorized under § 385.323, the FMCSA will revoke its new entrant registration and issue an out-of-service order effective on:

(1) Day 46 from the date of notification if the new entrant transports passengers in a CMV designed to transport 16 or more passengers, including the driver, or transports hazardous materials in quantities requiring placarding; or

(2) Day 61 from the date of notification for all other new entrants; or

(3) If an extension has been granted under § 385.323, the day following the expiration of the extension date.

(c) The new entrant may not operate in interstate commerce on or after the effective date of the out-of-service order.

§ 385.327 What happens when a new entrant receives a notice under § 385.319(c) that its new entrant registration will be revoked and it believes the FMCSA made an error in its determination?

(a) If a new entrant receives a revocation notice, it may request the FMCSA to conduct an administrative review if it believes the FMCSA has committed an error in determining that its basic safety management controls were inadequate.

(1) The request must be made to the Field Administrator of the appropriate FMCSA Service Center.

(2) The request must explain the error the new entrant believes the FMCSA committed in its determination.

(3) The request must include a list of all factual and procedural issues in dispute, and any information or documents that support the new entrant's argument.

(b) The new entrant should submit its request no later than 15 days from the date of the notice of the inadequacy of its basic safety management controls. Submitting the request within 15 days will allow the FMCSA to issue a written decision before the prohibitions outlined in § 385.319(c) take effect. Failure to petition within this 15-day period may prevent the FMCSA from issuing a final decision before the prohibitions take effect.

(c) The FMCSA may request that the new entrant submit additional data and attend a conference to discuss the issue(s) in dispute. If the new entrant does not attend the conference, or does not submit the requested data, the FMCSA may dismiss the new entrant's request for review.

(d) The FMCSA will complete its review and notify the new entrant in writing of its decision within 30 days after receiving a request for review from a hazardous materials or passenger new entrant and within 45 days from any other new entrant.

(e) A new entrant must make a request for an administrative review within:

(1) 90 days of the date when it was initially notified under § 385.319(c) that its basic safety management controls were inadequate; or

(2) 90 days after it was notified that its corrective action under § 385.319(c) was insufficient and its basic safety management controls remain inadequate.

(f) The Field Administrator's decision constitutes the final agency action.

(g) Notwithstanding this subpart, a new entrant is subject to the suspension and revocation provisions of 49 U.S.C. 13905 for violations of DOT regulations governing motor carrier operations.

§ 385.329 May a new entrant that has had its U.S. DOT registration revoked and its operations placed out of service (OOS) reapply?

(a) A new entrant whose U.S. DOT registration has been revoked and whose operations have been placed OOS by the FMCSA may reapply under § 385.301 no sooner than 30 days after the date of revocation.

(b) The motor carrier will be required to initiate the process from the beginning, and will be required to demonstrate that it has corrected the deficiencies that resulted in revocation of its registration and otherwise will ensure that it will have adequate basic safety management controls.

§ 385.331 What happens if a new entrant operates a CMV after having been issued an order placing its interstate operations out of service (OOS)?

If a new entrant operates a CMV in violation of an out-of-service (OOS) order and § 385.325(b), it is subject to the penalty provisions in 49 U.S.C. 521(b)(2)(A), not to exceed $10,000 for each offense.

§ 385.333 What happens at the end of the 18-month safety monitoring period?

(a) If a safety audit has been performed within the 18-month period, and the new entrant is not currently subject to an order placing its operations out-of-service under § 385.325(b) or under a notice ordering it to take specified actions to remedy its safety management controls under § 385.319(c), the FMCSA will remove the new entrant designation and notify the new entrant in writing that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(b) If a new entrant is determined to be "unfit" after a compliance review its new entrant registration will be revoked. (See § 385.13)

(c) A new entrant that has reached the conclusion of the 18-month period but is under an order to correct its safety management practices under § 385.319(c) will have its new entrant registration removed following FMCSA's determination that the specified actions have been taken to remedy its safety management practices. The motor carrier will be notified in writing that its new entrant designation is removed and that its registration has become permanent. Thereafter, the FMCSA will evaluate the motor carrier on the same basis as any other carrier.

(d) If a safety audit or compliance review has not been performed by the end of the 18-month monitoring period through no fault of the motor carrier, the carrier will be permitted to continue operating as a new entrant until a safety audit or compliance review is performed and a final determination is made regarding the adequacy of its safety management controls. Based on the results of the safety audit or compliance review, the FMCSA will either:

(1) Remove the new entrant designation and notify the new entrant in writing that its registration has become permanent; or

(2) Revoke the new entrant registration in accordance with § 385.319(c).

§ 385.335 If the FMCSA conducts a compliance review on a new entrant, will the new entrant also be subject to a safety audit?

If the FMCSA conducts a compliance review on a new entrant that has not previously been subject to a safety audit and issues a safety fitness determination, the new entrant will not have to undergo a safety audit under this subpart. However, the new entrant will continue to be subject to the 18-month safety-monitoring period prior to removal of the new entrant designation.

§ 385.337 What happens if a new entrant refuses to permit a safety audit to be performed on its operations?

(a) If a new entrant refuses to permit a safety audit to be performed on its operations, the FMCSA will provide the carrier with written notice that its registration will be revoked and its operations placed out of service unless the new entrant agrees in writing, within 10 days from the service date of the notice, to permit the safety audit to be performed. The initial refusal to permit a safety audit to be performed may subject the new entrant to the penalty provisions in 49 U.S.C. 521(b)(2)(A).

(b) If the new entrant does not agree to undergo a safety audit as specified in paragraph (a) of this section, its registration will be revoked and its interstate operations placed out of service effective on the 11th day from the service date of the notice issued under paragraph (a) of this section.

5. Amend appendix A to part 385 as follows:

a. In section I. General, revise paragraph (b);

b. In section II. Source of the Data for the Safety Audit Evaluation Criteria, revise the introductory text of paragraph (b);

c. In section IV. Overall Determination of the Carrier's Basic Safety Management Controls, designate the first paragraph as paragraph (a) and revise it, designate the second paragraph as paragraph (b), and designate the last paragraph as paragraph (c) and revise it.

The revisions read as follows:

Appendix A to Part 385—Explanation of Safety Audit Evaluation Criteria

I. General

* * * * *

(b) To meet the safety standard, a motor carrier must demonstrate to the FMCSA that it has basic safety management controls in place which function adequately to ensure minimum acceptable compliance with the applicable safety requirements. A "safety audit evaluation criteria" was developed by the FMCSA, which uses data from the safety audit and roadside inspections to determine that each owner and each operator applicant for new entrant registration, provisional operating authority, or provisional Certificate of Registration has basic safety management controls in place. The term "safety audit" is the equivalent to the "safety review" required by Sec. 210. Using "safety audit" avoids any possible confusion with the safety reviews previously conducted by the agency that were discontinued on September 30, 1994.

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II. Source of the Data for the Safety Audit Evaluation Criteria

* * * * *

(b) The safety audit is a review of a Mexico-domiciled or new entrant motor carrier's operation and is used to:

* * * * *

IV. Overall Determination of the Carrier's Basic Safety Management Controls

(a) If the carrier is evaluated as having inadequate basic safety management controls in at least three separate factors, the carrier will be considered to have inadequate safety management controls in place and corrective action will be necessary in order to avoid having its new entrant registration, provisional operating authority, or provisional Certificate of Registration revoked.

* * * * *

(c) In this example, the carrier scored three or more points for Factors 2, 4 and 5 and FMCSA determined the carrier had inadequate basic safety management controls in at least three separate factors. FMCSA will require corrective action in order to avoid having the carrier's new entrant registration revoked, or having the provisional operating authority or provisional Certificate of Registration suspended and possibly revoked.

* * * * *

Issued on: May 6, 2002.

Joseph M. Clapp,

Administrator.

[FR Doc. 02–11730 Filed 5–10–02; 8:45 am]

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Proposed Rules

Federal Register

Vol. 67, No. 92

Monday, May 13, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 71, 93, 94, 98, and 130

[Docket No. 01–074–1]

Classical Swine Fever Status of Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of classical swine fever. We have conducted a series of risk evaluations and have determined that these four States have met our requirements for being recognized as free of this disease. This proposed action would allow importation into the United States of pork, pork products, live swine, and swine semen from these regions and would eliminate restrictions that no longer appear necessary.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 12, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–074–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–074–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–074–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817, before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Hatim Gubara, Staff Veterinarian, Regionalization Evaluation Services Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; phone (301) 734–4356, fax (301) 734–3222.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture (the Department) regulates the importation of animals and animal products into the United States to guard against the introduction of animal diseases not currently present or prevalent in this country. The regulations pertaining to the importation of animals and animal products are set forth in the Code of Federal Regulations (CFR), title 9, chapter I, subchapter D (9 CFR parts 91 through 99).

Until several years ago, the regulations in parts 91 through 99 (referred to below as the regulations) governed the importation of animals and animal products according to the recognized disease status of the exporting country. In general, if a disease occurred anywhere within a country's borders, the entire country was considered to be affected with the disease, and importations of animals and animal products from anywhere in the country were regulated accordingly. However, international trade agreements entered into by the United States—specifically, the North American Free Trade Agreement and the World Trade Organization Agreement on Sanitary and Phytosanitary Measures—require APHIS to recognize regions, rather than only countries, for the purpose of regulating the importation of animals and animal products into the United States.

Consequently, on October 28, 1997, we published in the **Federal Register** a final rule (62 FR 56000–56026, Docket No. 94–106–9, effective November 28, 1997) and a policy statement (62 FR 56027–56033, Docket No. 94–106–8) that established procedures for recognizing regions (referred to below as "regionalization") for the purpose of regulating the importation of animals and animal products. With the establishment of those procedures, APHIS may consider requests to allow the importation of a particular type of animal or animal product from a foreign region, as well as requests to recognize all or part of a country or countries as a region. The regulations define the term *region*, in part, as "any defined geographic land area identifiable by geological, political, or surveyed boundaries."

In accordance with these regionalization procedures, we are proposing to amend the regulations in §§ 94.9 and 94.10 by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of classical swine fever (CSF). The proposed rule would allow importation into the United States of pork, pork products, live swine, and swine semen from these regions and would eliminate restrictions that no longer appear necessary.

Change in Terminology

Our regulations in 9 CFR chapter I use the term "hog cholera." However, it is standard practice among veterinary practitioners in the international community to refer to hog cholera as "classical swine fever." Therefore, in the remainder of this proposed rule, including the regulatory text at the end of this document, we use the term "classical swine fever," or the abbreviation CSF, rather than "hog cholera." Additionally, for the sake of consistency throughout our regulations in 9 CFR chapter I, we are proposing to remove the term "hog cholera" wherever it appears in the regulations (*i.e.*, parts 71, 93, 94, 98, and 130) and add in its place the term "classical swine fever."

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Risk Evaluation

Using the information submitted to us by the Government of Mexico and the Governments of the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa, as well as information gathered during site visits by APHIS staff to Chihuahua in 1995 and 1997 and to Sinaloa in 1997, we have reviewed and analyzed the animal health status of these four States relative to CSF. This review and analysis was conducted in light of the factors identified in § 92.2, "Application for recognition of the animal health status of a region," which are used to evaluate the risk associated with importing animals or animal products into the United States from a given region. Based on the information submitted to us, we have concluded the following:

Veterinary Infrastructure

A decree published in Mexico's Federal Official Daily on March 25, 1980, established a national campaign for the control and eradication of CSF. The campaign is mandatory and permanent throughout the entire country. Animal disease control and eradication programs operate under the authority of the Federal Secretariat for Agriculture, Livestock, Rural Development, Fisheries and Food Safety (SAGARPA), and its subordinate Directorate for Animal Health (DGSA). International sea and airport border control for animal and plant products is under the authority of SAGARPA and its subordinate Directorate for Phyto and Zoosanitary Inspection (DGIF).

Baja California

Baja California is divided into two rural development districts with supportive technical staff coordinated by the SAGARPA delegation. A collaborative relationship exists among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices. For international control of the movement of livestock and animal byproducts, there are five animal health inspection offices with official veterinary inspectors. At the airports and ports there are sanitary control points. Hog slaughtering and processing are done in Federal Inspection Standard (TIF) establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

Baja California Sur

The State is subdivided into four rural development districts. Six animal health inspection offices control the international movement of livestock and animal byproducts. Sanitary control offices exist at all airports and ports. Hog slaughtering and processing are done in municipal facilities, which have official veterinary sanitary officers providing supervision and inspection.

Chihuahua

Chihuahua is divided into two rural development districts with technical staff coordinated by the SAGARPA delegation. An APHIS site visit conducted in February 1997 determined that the cooperative relationships that exist among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices are excellent and that the veterinary infrastructure is efficient and reliable. For international control of the movement of livestock and animal byproducts, Chihuahua has 3 animal health offices with official veterinary inspectors and 10 checkpoints for controlling overland movement. Hog slaughtering and processing are done in TIF establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

Sinaloa

Sinaloa is divided into six rural development districts with technical staff coordinated by the SAGARPA delegation. An APHIS site visit conducted in February 1997 determined that the cooperative relationships that exist among the pork producers' association, the SAGARPA delegation and other Federal personnel, and the State animal health official from the central offices are excellent and that the veterinary infrastructure is efficient and reliable. Hog slaughtering and processing are done in TIF establishments that comply with international sanitary requirements and have official veterinary sanitary officers and supervision and certification by the countries to which they export.

Disease History and Surveillance

In regions, States, or areas under eradication or free of CSF in Mexico, the Federal and State governments, as well as swine owners or producers and accredited veterinarians, have responsibility for maintaining epidemiological surveillance for CSF. Surveillance includes inspection of swine products and byproducts and of the official documentation required for the control of movement from eradication areas into free areas, as well as virological monitoring by government and producers. Mexico is currently seeking to eradicate pseudorabies. Blood samples collected for the pseudorabies campaign are also tested for CSF, thus providing additional surveillance of that disease.

Baja California

CSF has not been diagnosed in Baja California since at least 1990, despite intensive and ongoing surveillance. The State maintains an active surveillance system, which includes reporting all suspected cases and sampling from commercial and backyard farms. To confirm the absence of CSF in Baja California, ongoing epidemiological surveys are carried out. Since 1997, at least 2,072 samples have been tested annually, with all samples negative for CSF.

Baja California Sur

Mexico recognized Baja California Sur as free of CSF in October 1991, based on an epidemiological survey in which 524 sera and 280 tissue samples were collected from swine slaughtered in municipal abattoirs. Four subsequent outbreaks occurred in the State (one in 1993, two in 1994, and one in 1995), but there have been no reported outbreaks since 1995. Intensive surveillance was initiated after each outbreak to identify the focus and extent of the outbreak, and to confirm that depopulation of infected and exposed animals had eradicated the outbreak. Sera are collected during annual surveillance to confirm the absence of the CSF virus.

Chihuahua

Chihuahua has not reported a case of CSF in over 10 years. The last reported outbreak was in 1989, and eradication efforts began the following year. Mexico declared Chihuahua free of CSF in September 1993. An epidemiological survey conducted a year later confirmed the absence of the virus. Chihuahua maintains an active surveillance system. This includes reporting of all suspected cases and sampling from commercial and backyard farms.

Sinaloa

The last outbreak of CSF in Sinaloa occurred in 1990, with vaccination prohibited the same year. Eradication efforts began in 1991, and Mexico declared Sinaloa free of CSF in 1993. Sinaloan animal health officials monitor all commercial herds on an annual basis.

Diagnostic Capabilities

Laboratories for CSF diagnosis include the National Center for Animal Health Diagnosis (CENASA), the Exotic Animal Disease Commission (EADC) laboratory, and eight laboratories accredited for the diagnosis of CSF located throughout the country. All positive samples are sent to the central laboratories in Mexico City for confirmation, and tissues from any suspect animal are sent to the EADC laboratory in Mexico City for virus isolation. Both CENASA and EADC use the same tests and testing schemes.

Vaccination Status

Vaccination has been prohibited in Baja California and Baja California Sur since 1986, in Chihuahua since 1989, and in Sinaloa since 1990.

Disease Status of Adjacent Regions

Baja California

Baja California is adjacent to the U.S. States of Arizona and California and the Mexican State of Sonora. CSF is not known to occur in any of these three States.

Baja California Sur

CSF is not known to exist in the Mexican State of Baja California, the only bordering State.

Chihuahua

Located in northern Mexico, Chihuahua borders the U.S. States of New Mexico and Texas to the north and northeast and the Mexican States of Coahuila on the east, Durango on the south, Sinaloa on the southwest, and Sonora on the west. All of these States have been declared free of CSF by the United States or Mexico.

Sinaloa

Sinaloa is adjacent to the Mexican States of Sonora, Chihuahua, Durango, and Nayarit. All of these States have been declared free of CSF by the government of Mexico.

Degree of Separation From Adjacent Regions

Baja California

Baja California has two natural barriers: The Gulf of California to the east and the Pacific Ocean to the west. The Colorado River forms the border between Sonora and Baja California.

Baja California Sur

Baja California Sur has two natural barriers: The Gulf of California to the east and the Pacific Ocean to the south and west. Baja California lies to the north.

Chihuahua

The eastern part of Chihuahua is desert, which provides a natural barrier between Chihuahua and Coahuila. The Sierra Madre Occidental Mountains in the west separate Chihuahua from Sonora and Sinaloa. Between Chihuahua and Durango lies a region of mountains and valleys, another geographical feature that complements the extensive permanent internal quarantine system designed to control movement of animals between States.

Sinaloa

Sinaloa is bordered on the east by the Sierra Madre Occidental Mountains, which separate the State from neighboring Durango to the southeast. The mountains also provide a limited number of access points. Sinaloa is bordered on the west by the Pacific Ocean and the Sea of Cortes. Nayarit is to the south, and Sonora and Chihuahua are to the north.

Movement Across Borders

Regulations controlling the movement of all land, air, and maritime traffic are the primary means for preventing the reintroduction of CSF into Baja California, Baja California Sur, Chihuahua, and Sinaloa. The entry of live hogs from CSF control zones in Mexico into free zones is not allowed. Hog products and byproducts moving from eradication or control zones to free zones must be processed and inspected by TIF establishments that are expressly authorized by the General Division of Animal Health to market their products and byproducts into CSF-free and eradication zones. Pork products from regions of lower health status may be imported only if they meet time- and temperature-related processing requirements and only if they originate from approved TIF plants. Transportation must be in vehicles sealed with metal straps. At airports, passenger baggage is examined, and because most domestic flights originate from areas not yet declared free of CSF, food served on airplanes is not permitted to contain pork.

Livestock Demographics and Marketing Practices

Baja California

In 2001, Baja California had 10 commercial farms with a total population of 15,251 pigs and an additional 6,951 head dispersed among 548 backyard operations. The presence of more pigs in commercial farms than backyard farms is rare in Mexico. The decreasing number of pigs in backyard operations further reduces the risk of a CSF outbreak in Baja California. Baja California has three TIF plants, two of which handle swine. One of the TIF plants has been authorized to export meat to the United States since 1996 and has exported pork to Japan since 1995 without incident. Baja California is not self-sufficient in pork production, and the pork processed at this facility originates from Sonora, the United States, and Canada.

Baja California Sur

Baja California Sur is a net importer of swine and has no TIF facility. The State has two farms that use semi-commercial production methods. According to an inventory taken in 2000, these 2 farms had a total population of 1,200 pigs. The remaining 20,550 head in the State were from backyard operations, in which pigs are raised, slaughtered and consumed on location.

Chihuahua

The swine inventory conducted in 2000 listed 2,626 head distributed among 5 commercial herds. In addition, there were 169,183 head of swine distributed among 45,714 backyard operations. Swine represented 5.8 percent of the total gross value of livestock production in Chihuahua in 2000. Chihuahua is a net exporter of pork. The Carnes Selecta Baeza Favez plant in Chihuahua is allowed to ship fresh and frozen pork to markets in Japan and other countries.

Sinaloa

The 1999 State swine census listed 284,614 hogs on over 33,500 premises. These figures included the 92,070 hogs on the State's 25 commercial farms. Nine of the State's 18 municipalities have commercial production, with the swine industry concentrated in the northern and central areas of the State. Sinaloa is a net exporter of pork. It is estimated that swine account for 10 percent of the total gross value of livestock production in the State and 3.5 percent of Mexico's swine production.

Detection and Eradication of Disease

CSF has been effectively controlled and eradicated from Baja California, Baja California Sur, Chihuahua, and Sinaloa and is not known to exist in those four States at this time. The government of Mexico and the State governments maintain a surveillance system capable of rapidly detecting CSF should the disease be reintroduced in any of the four States. The Federal government of Mexico and the State governments of Baja California, Baja California Sur, Chihuahua, and Sinaloa have the laws, policies and infrastructure to detect, respond to, and eliminate any reoccurrence of CSF.

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These findings are described in further detail in a qualitative evaluation that may be obtained by contacting the person listed under **FOR FURTHER INFORMATION CONTACT** and may be viewed on the Internet at *http://www.aphis.usda.gov/vs/reg-request.html* by following the link for current requests and supporting documentation. The evaluation documents the factors that have led us to conclude that Baja California, Baja California Sur, Chihuahua, and Sinaloa are free of CSF. Therefore, we are proposing to recognize the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa as free of CSF and to add them to the lists in §§ 94.9 and 94.10 of regions where CSF is not known to exist.

We are also proposing to amend § 94.15, which, among other things, sets out requirements for transit through the United States of pork and pork products that are not otherwise eligible for entry into the United States under part 94. Because these requirements would no longer apply to pork and pork products from Baja California, Baja California Sur, Chihuahua, and Sinaloa, references to these States in § 94.15(b) and § 94.15(b)(2) would be removed.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

This proposed rule would amend the regulations in §§ 94.9 and 94.10 by adding the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa to the list of regions considered free of CSF. The proposed changes would relieve the CSF-related restrictions imposed on the importation of pork, pork products, live swine, and swine semen from these regions.

Based on the assumption that these four States will not drastically increase their levels of hog and pig meat production over that of the last few years, the amount of pork, pork products, live swine, and swine semen that may potentially be imported into the United States from Baja California, Baja California Sur, Chihuahua, and Sinaloa is likely to be negligible. In 2000, the State of Sinaloa produced 1.1 percent of Mexico's live swine and 1.1 percent of its pig meat (FAS, USDA, GAIN Report, 2001), and Chihuahua produced 0.7 percent of Mexico's live swine and 0.5 percent of Mexico's pig meat (tables 1 and 2). The States of Baja California and Baja California Sur, which are not self-sufficient in pork production, produced smaller percentages. In 2001, these four States together produced less than 2 percent of Mexico's total number of live hogs (table 1) and slaughtered pigs (table 2). Between 1999 and 2001, Mexico exported around 3.3 percent of its annual production of pig meat (table 3), which amounted to 35,000 metric tons on average. Mexico has not exported any live swine since 1997 (table 4).

TABLE 1.—LIVE HOGS IN MEXICAN STATES, 2001

State	Hogs in commercial farms	Hogs in backyard operations	Total
Baja California	15,251 (in 10 farms)	6,951 (in 548 farms)	22,202 (0.09%)
Baja California Sur	1,200 (in 2 farms)	20,550 (in unknown number of farms)	21,750 (0.09%)
Chihuahua	2,626 (in 5 farms)	169,183 (in 45,714 farms)	171,809 (0.67%)
Sinaloa	92,070 (in 25 farms)	192,544 (in 33,475 farms)	284,614 (1.11%)
Mexico	25,736,000 (pig crop + beginning stocks) in both commercial and backyard operations.		

Source: Risk Assessments of Importing Pork into the United States From the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; Risk Analysis Systems, PPD, APHIS, USDA.

TABLE 2.—NUMBER OF HOGS SLAUGHTERED IN MEXICAN SLAUGHTERHOUSES

[Percentage of Mexico's total in parenthesis]

State	1999	2000*
Baja California	16,399 (0.15%)	7,660 (0.13%)
Baja California Sur	9,044 (0.08%)	4,612 (0.08%)
Chihuahua	60,634 (0.55%)	31,117 (0.54%)
Sinaloa	132,298 (1.19%)	63,639 (1.11%)
Mexico	11,110,978	5,729,229

Source: Confederacion Nacional Ganadera with data from SAGARPA. Sum of Federally Inspected Type (TIF) and Municipal Slaughterhouses.
* As of June 30, 2000.

TABLE 3.—MEXICAN SWINE, MEAT

[Metric tons]

Calendar year	1999	2000	2001
Production	994,000	1,035,000	1,060,000
Imports	143,000	130,000	150,000
Total supply	1,137,000	1,165,000	1,210,000
Exports	33,000	35,000	40,000
Domestic consumption	1,104,000	1,130,000	1,170,000
Total demand	1,137,000	1,165,000	1,210,000

Source: USDA, FAS, GAIN Report #MX1010, Mexico, Livestock & Products, Semiannual Report 2001; Source for Stocks is the FAOSTAT Database.

TABLE 4.—MEXICAN EXPORTS OF SWINE, LIVE PURE-BREEDING—010310

	1995	1996	1997	1998	1999	2000
Quantity	8	29	22	0	0	0
Value	$5,000	$439,000	$170,000			

Source: FAS Global Agricultural Trade System using data from the UN Statistical Office.
Data: Harmonized Tariff Schedule (HS 6 Digit).

The Regulatory Flexibility Act requires that agencies specifically consider the economic impact of their rules on small entities. The domestic entities most likely to be affected by our proposal to declare the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa free of CSF are pork producers.

According to the 1997 Agricultural Census, there were about 102,106 hog and pig farms in the United States in that year, of which 93 percent received $750,000 or less in annual revenues. Agricultural operations with $750,000 or less in annual receipts are considered small entities, according to the Small Business Administration (SBA) size criteria.

We do not anticipate that any U.S. entities (*i.e.*, importers of hogs and hog meat products, and hog producers), small or otherwise, would experience any negative economic effects as a result of this proposed action. This is because the amount of pork, pork products, live swine, and swine semen likely to be imported into the United States from Chihuahua and Sinaloa would be negligible. We expect that the amount of these articles likely to be imported from Baja California and Baja California Sur would either be less than that from the other two States or none at all.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

9 CFR Part 93

Animals, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

9 CFR Part 98

Animal diseases, Imports.

9 CFR Part 130

Animals, Birds, Diagnostic reagents, Exports, Imports, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Tests.

Accordingly, we propose to amend 9 CFR parts 71, 93, 94, 98, and 130 as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a–1, 115–117, 120–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.4.

§ 71.3 [Amended]

2. In § 71.3, paragraph (b) would be amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

PART 93—IMPORTATION OF CERTAIN ANIMALS, BIRDS, AND POULTRY, AND CERTAIN ANIMAL, BIRD, AND POULTRY PRODUCTS; REQUIREMENTS FOR MEANS OF CONVEYANCE AND SHIPPING CONTAINERS

3. The authority citation for part 93 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 93.505 [Amended]

4. In § 93.505, paragraph (a) would be amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

§ 93.517 [Amended]

5. In § 93.517, paragraph (a) would be amended by removing the words "hog cholera" and adding the words "classical swine fever" in their place.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, CLASSICAL SWINE FEVER, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

6. The authority citation for part 94 would continue to read as follows:

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

7. The heading of part 94 would be revised to read as set forth above.

8. Section 94.9 would be amended as follows:

a. By revising the section heading and paragraph (a) to read as set forth below.

b. By removing the words "hog cholera" and adding in their place the words "classical swine fever" in following places:

i. Paragraph (b), introductory text.

ii. Paragraph (b)(1)(iii)(C).

iii. Paragraph (b)(1)(iii)(C)(*1*), both times they appear.

iv. Paragraph (b)(1)(iii)(C)(*2*), both times they appear.

v. Paragraph (c).

§ 94.9 Pork and pork products from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; and Wales.

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9. Section 94.10 would be amended by revising the section heading and paragraph (a) to read as follows:

§ 94.10 Swine from regions where classical swine fever exists.

(a) Classical swine fever is known to exist in all regions of the world except Australia; Canada; Denmark; England, except for East Anglia (Essex, Norfolk, and Suffolk counties); Fiji; Finland; Iceland; Isle of Man; the Mexican States of Baja California, Baja California Sur, Chihuahua, and Sinaloa; New Zealand; Northern Ireland; Norway; the Republic of Ireland; Sweden; Trust Territory of the Pacific Islands; and Wales. No swine that are moved from or transit any region where classical swine fever is known to exist may be imported into the United States, except for wild swine imported into the United States in accordance with paragraph (b) of this section.

* * * * *

§ 94.15 [Amended]

10. Section 94.15 would be amended by removing the words "Baja California, Baja California Sur,", "Chihuahua,", and "Sinaloa," in the following places:

a. The introductory text of paragraph (b).

b. Paragraph (b)(2).

§ 94.17 [Amended]

11. Section 94.17 would be amended by removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

a. The section heading.

b. Paragraph (b).

c. Paragraph (c).

§ 94.20 [Amended]

12. In § 94.20, paragraph (c) and the introductory text of paragraph (e) would be amended by removing the words "hog cholera" and adding in their place the words "classical swine fever".

PART 98—IMPORTATION OF CERTAIN ANIMAL EMBRYOS AND ANIMAL SEMEN

13. The authority citation for part 98 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 103–105, 111, 134a, 134b, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.22, 2.80, and 371.4.

§ 98.15 [Amended]

14. Section 98.15 would be amended by removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

a. Paragraph (a)(1)(ii).

b. Paragraph (a)(2)(ii).

c. Paragraph (a)(5)(ii)(B).

d. Paragraph (a)(7)(i)(B).

e. Paragraph (a)(8)(i)(B).

§ 98.34 [Amended]

15. Section 98.34 would be amended as follows:

a. By removing the words "hog cholera" and adding in their place the words "classical swine fever" in the following places:

i. Paragraph (c)(7)(ii).

ii. Paragraph (c)(7)(iii)(G).

b. In paragraph (c)(7)(iii)(D), by removing the words "Hog cholera" and adding in their place the words "Classical swine fever".

PART 130—USER FEES

16. The authority citation for part 130 would continue to read as follows:

Authority: 5 U.S.C. 5542; 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114, 114a, 134a, 134c, 134d, 134f, 136, and 136a; 31 U.S.C. 3701, 3716, 3717, 3719, and 3720A; 7 CFR 2.22, 2.80, and 371.4.

§ 130.14 [Amended]

17. In § 130.14, paragraph (b), the table would be amended in the column titled "Test" by removing the words "(hog cholera)" in the entry for Fluorescent antibody neutralization and adding in their place the words "(classical swine fever)".

18. In § 130.18, paragraph (b), the table would be amended by removing the entry for Hog cholera tissue sets and adding a new entry in alphabetical order to read as follows:

§ 130.18 User fees for veterinary diagnostic reagents produced at NVSL or other authorized site (excluding FADDL).

* * * * *

(b) * * *

Reagent	User fee	Unit
. . . . .		
Classical swine fever tissue sets.	81.50	Tissue set.
. . . . .		

Done in Washington, DC, this 7th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–11897 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–SW–50–AD]

RIN 2120–AA64

Airworthiness Directives; Kaman Aerospace Corporation Model K–1200 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes revising an existing airworthiness directive (AD) for Kaman Aerospace Corporation (Kaman) Model K–1200 helicopters. That AD currently requires reducing the life limit of the rotor shaft and teeter pin assembly and establishing a life limit for the flap clevis. This action would retain those requirements but would remove a flap clevis part number from the applicability. This proposal is prompted by the determination after an analysis of testing results that a certain flap clevis should have an unlimited life. The actions specified by the proposed AD are intended to remove the life limit for a specified flap clevis and to revise the maintenance manual by removing the life limit for that flap clevis. Also, the actions specified by the proposed AD are intended to prevent fatigue failure of the rotor shaft, the teeter pin assembly, and the flap clevis and subsequent loss of control of the helicopter.

DATES: Comments must be received by July 12, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Regional Counsel, Southwest Region, Attention: Rules Docket No. 2000–SW–50–AD, 2601 Meacham Blvd., Room 663, Fort Worth, Texas 76137. You may also send comments electronically to the Rules Docket at the following address: *9-asw-adcomments@faa.gov.* Comments may be inspected at the Office of the Regional Counsel between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Richard Noll, Aviation Safety Engineer, Boston Aircraft Certification Office, 12 New England Executive Park, Burlington, MA 01803, telephone (781) 238–7160, fax (781) 238–7170.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their mailed comments submitted in response to this proposal must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 2000–SW–50–AD." The postcard will be date stamped and returned to the commenter.

Discussion

On June 12, 2001, the FAA issued AD 2001–13–03, Amendment 39–12283 (66 FR 34102, June 27, 2001), to require reducing the life limit of the rotor shaft and the teeter pin assembly and establishing a life limit for the flap clevis. That action was prompted by the discovery of cracks in parts returned to the manufacturer. That condition, if not corrected, could result in failure of a part and subsequent loss of control of the helicopter.

Since the issuance of that AD, further testing indicates that a specified time-in-service (TIS) life limit is unwarranted for flap clevis, part number (P/N) K911049–021.

This unsafe condition is likely to exist or develop on other helicopters of the same type design. Therefore, the FAA proposes revising AD 2001–13–03 to retain the existing life limits for each rotor shaft, teeter pin assembly, and flap clevis, except flap clevis, P/N K911049–021. Accordingly, this NPRM would also propose to revise the Limitations section of the maintenance manual to remove the life limit of 640 hours TIS for flap clevis, part number K911049–021.

The FAA estimates that 9 helicopters of U.S. registry would be affected by this proposed AD. No additional costs would be incurred to accomplish the proposed actions because it would relieve an AD requirement.

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12283 (66 FR 34102, June 27, 2001), and by adding a new airworthiness directive (AD), to read as follows:

Kaman Aerospace Corporation: Docket No. 2000–SW–50–AD. Revises AD 2001–13–03, Amendment 39–12283, Docket No. 2000–SW–50–AD.

Applicability: Model K–1200 helicopters, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the rotor shaft, teeter pin assembly, or flap clevis due to fatigue cracks, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, remove any rotor shaft, part number (P/N) K974112–001, –003, –005, –007, –009, or –101, that has 3,750 or more hours time-in-service (TIS) and replace it with an airworthy part. Remove any teeter pin assembly, P/N K910005–007 or –009, that has 550 or more hours TIS and replace it with an airworthy part. Remove any flap clevis, P/N K911049–011, –017, or –019, that has 640 or more hours TIS, and replace it with an airworthy part.

(b) This AD revises the Limitations section of the maintenance manual by removing the life limit of 640 hours TIS established for the flap clevis, P/N K911049–021. The life limit for each rotor shaft, P/N K974112–001, –003, –005, –007, –009, and –101 remains at 3,750 hours TIS; the life limit for each teeter pin assembly, P/N K910005–007 and –009, remains at 550 hours TIS; and the life limit for the flap clevis, P/N K911049–011, –107, and –109 remains at 640 hours TIS.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Boston Aircraft Certification Office, FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Boston Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Boston Aircraft Certification Office.

(d) Special flight permits will not be issued.

Issued in Fort Worth, Texas, on April 29, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–11807 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 02–AAL–4]

Proposed Revision of Class E Airspace; Kodiak, AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This action proposes to revise Class E airspace at Kodiak, AK. The FAA is establishing four new standard instrument approach procedures (SIAP) at the Kodiak Airport, Kodiak, Alaska. The current SIAPs will be cancelled coincident with the effective date and time of the new SIAPs. An airspace review has determined that the existing Class E airspace at Kodiak is insufficient to contain aircraft executing the new SIAPs. Adoption of this proposal would result in the addition of Class E airspace at Kodiak, AK.

DATES: Comments must be received on or before June 27, 2002.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Operations Branch, AAL–530, Docket No. 02–AAL–4, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587.

The official docket may be examined in the Office of the Regional Counsel for the Alaskan Region at the same address.

An informal docket may also be examined during normal business hours in the Office of the Manager, Operations Branch, Air Traffic Division, at the address shown above and on the Internet at Alaskan Region's Home Page at *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

FOR FURTHER INFORMATION CONTACT: Derril Bergt, AAL–538, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587; telephone number (907) 271–2796; fax: (907) 271–2850; e-mail: Derril.CTR.Bergt@faa.gov. Internet address: *http://www.alaska.faa.gov/at* or at address *http://162.58.28.41/at.*

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this action must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 02–AAL–4." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this action may be changed in light of comments received. All comments submitted will be available for examination in the Operations Branch, Air Traffic Division, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of Notice of Proposed Rulemaking's (NPRM's)

An electronic copy of this document may be downloaded, using a modem and suitable communications software, from the FAA regulations section of the Fedworld electronic bulletin board service (telephone: 703–321–3339) or the **Federal Register**'s electronic bulletin board service (telephone: 202–512–1661).

Internet users may reach the **Federal Register**'s web page for access to recently published rulemaking documents at *http://www.access.gpo.gov/su_docs/aces/aces140.html.*

Any person may obtain a copy of this NPRM by submitting a request to the Operations Branch, AAL–530, Federal Aviation Administration, 222 West 7th Avenue, Box 14, Anchorage, AK 99513–7587. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should contact the individual(s) identified in the **FOR FURTHER INFORMATION CONTACT** section.

The Proposal

The FAA proposes to amend 14 CFR part 71 by revising Class E airspace at Kodiak, AK. The intended effect of this proposal is to extend that Class E controlled airspace above 1,200 feet to enable IFR operations at Kodiak, AK to be contained within controlled airspace.

The FAA Instrument Flight Procedures Production and Maintenance Branch has developed four new SIAPs for the Kodiak Airport. The new approaches are (1) Instrument Landing System Y (ILS Y) Runway 25, original; (2) Very High Frequency Omni-navigational Range or Tactical Air Navigation Y (VOR or TACAN Y) Runway 25, original; (3) Non-directional Beacon (NDB) Runway 25, original; and (4) Area Navigation (Global Positioning System) (RNAV GPS) Runway 25, original. The existing SIAPs: (1) ILS/Distance Measuring Equipment (DME)–1, Runway 25; (2) VOR or TACAN–1, Runway 25; (3) NDB–1, Runway 25; and (4) GPS, Runway 25 will be cancelled by this action.

An airspace review was conducted to determine if Class E airspace at Kodiak was sufficient to contain aircraft while executing the new SIAPs. A determination was made that a slight addition of new airspace was needed, north of Colored Federal Airway B27 (Blue 27) and VOR Federal Airway V506 (Victor 506), northwest of the Kodiak VOR and NDB. That airspace extending upward from 1,200 feet above the surface will be expanded if this action is taken.

The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. The Class E airspace areas extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 in FAA Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, CLASS B, CLASS C, CLASS D, AND CLASS E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9J, *Airspace Designations and Reporting Points*, dated August 31, 2001, and effective September 16, 2001, is amended as follows:

* * * * *

Paragraph 6005 Class E airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AAL AK E5 Kodiak, AK [REVISED]

Kodiak Airport, AK
(Lat. 57°45'00" N, long. 152°29'38" W)
Kodiak VORTAC
(Lat. 57°46'00" N, long. 152°20'23" W)

That airspace extending upward from 700 feet above the surface within a 6.8 mile radius of the Kodiak Airport, and within 5 miles south and 9 miles north of the 070° radial of the Kodiak VORTAC extending to 17 miles northeast of the VORTAC and within 8 miles north and 4 miles south of the Kodiak Localizer front course extending from the airport to 20.3 miles east of the airport and within 14 miles of the Kodiak VORTAC extending from the 358° radial clockwise to the 107° radial; and that airspace extending upward from 1,200 feet above the surface within lat. 57°57'06" N, long. 152°45'00" W to lat. 57°55'00" N, long. 152°28'00" W to lat. 57°53'00" N, long. 152°27'06" W to point of beginning and within 27 miles of the Kodiak VORTAC extending clockwise from the 023 radial to the 088 radial and within 8 miles north and 5 miles south of the Kodiak Localizer front course extending from the airport to 32 miles east of the airport.

* * * * *

Issued in Anchorage, AK, on May 2, 2002.

Trent S. Cummings,

Manager, Air Traffic Division, Alaskan Region.

[FR Doc. 02–11775 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG–154920–01]

RIN 1545–BA33

Guidance Regarding the Definition of Foreign Personal Holding Company Income

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations that provide that gain or loss arising from certain commodities hedging transactions and currency gain or loss arising from certain interest-bearing liabilities do not constitute (or are not netted against) foreign personal holding company income. This treatment is proposed because the applicable commodities hedging transactions and interest-bearing liabilities typically offset transactions that do not generate foreign personal holding company income. This document also provides notice of a public hearing on these proposed regulations.

DATES: Written or electronic comments must be received by August 21, 2002. Requests to speak (with outlines of oral comments to be discussed) at the public hearing scheduled for September 11, 2002, at 10 a.m. must be submitted by August 21, 2002.

ADDRESSES: Send submissions to: CC:ITA:RU (REG–154920–01), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to: CC:ITA:RU REG–154920–01, Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments electronically directly to the IRS Internet site at: *www.irs.gov/regs.* The public hearing will be held in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Kenneth Christman or Ted Setzer at (202) 622–3870; concerning submission and delivery of comments and the public hearing, Treena Garrett, (202) 622–7180 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background

Section 954(c)(1)(C) of the Internal Revenue Code provides that *foreign personal holding company income* of a controlled foreign corporation (a CFC) generally includes the excess of gains over losses from transactions in commodities. An exception to this treatment is provided, however, for gains and losses that arise out of "*bona fide* hedging transactions" entered into by a producer, processor, merchant or handler of commodities. Section 954(c)(1)(C)(i). On September 7, 1995, final regulations were published in the **Federal Register** (60 FR 46500, as corrected at 60 FR 62024) under section 954 governing the definition of a CFC and the definitions of *foreign base company income* and *foreign personal holding company income* of a CFC. These regulations address, among other matters, the circumstances in which income from transactions in commodities will be treated as foreign personal holding company income. In particular, the regulations provide that income from a "qualified hedging transaction" is excluded from the definition of foreign personal holding company income. § 1.954–2(f)(1)(ii). A qualified hedging transaction is defined in the regulations generally as a bona fide hedging transaction with respect to a sale of commodities in the active conduct of a commodities business by a CFC if substantially all of the CFC's business is as an active producer, processor, merchant or handler of commodities. §§ 1.954–2(f)(2)(iii) and (iv).

Following the publication of the final regulations, some taxpayers have commented that the regulations inappropriately characterize as foreign personal holding company income any gain arising from hedging transactions entered into by a manufacturer to protect itself from fluctuations in the prices of commodities associated with the products that it manufactures. Because the manufacturer would not be considered to be selling the commodities in the active conduct of a commodities business, transactions entered into by the manufacturer could not qualify for the "qualified hedging transaction" exception under the regulations.

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The regulations also address the treatment of currency gain or loss for purposes of subpart F. Although the regulations provide that foreign personal holding company income generally includes the excess of foreign currency gains over foreign currency losses, an exception is provided for foreign currency gain or loss "directly related to the business needs of the controlled foreign corporation." § 1.954–2(g)(2)(ii). Notwithstanding this "business needs" exception, the regulations provide that currency gain or loss arising from an interest-bearing liability must be allocated and apportioned between subpart F and non-subpart F income in the same manner that interest expense associated with the liability is allocated and apportioned between subpart F and non-subpart F income under §§ 1.861–9T and 1.861–12T. § 1.954–2(g)(2)(iii).

Some taxpayers have commented that the final regulations inappropriately characterize a portion of foreign currency gain on certain interest-bearing liabilities as foreign personal holding company income. In particular, these taxpayers have noted that securities dealers commonly utilize a technique known as "match funding" to manage currency exposures associated with their dealer assets. Rather than borrowing in their functional currency to meet their business needs, dealers who utilize this technique attempt to manage their exposure to foreign currencies on their dealer assets by borrowing the funds needed for their business in the currency in which the dealer assets are denominated. As a result, the foreign currency exposure on the dealer assets is offset economically by the foreign currency exposure on the interest-bearing liabilities incurred by the dealer. Under the regulations, foreign currency gain on the dealer assets would qualify for the "business needs" exception and therefore would not be classified as foreign personal holding company income. If the foreign currency gain arose on the offsetting interest-bearing liabilities, however, a portion of the foreign currency gain likely would be treated as subpart F income under the regulations.

Explanation of Provisions

The proposed regulations address each of these issues by refining the relevant exceptions to foreign personal holding company income.

Commodities Hedging Transactions

Section 1.954–2(f)(2)(v), as proposed, would provide that a hedging transaction entered into by a CFC with respect to its business as a producer, processor, merchant or handler of commodities may be a qualified hedging transaction although the hedging transaction is not a hedge with respect to a sale of commodities in the active conduct of a commodities business by a CFC substantially all of whose business is as an active producer, processor, merchant or handler of commodities. The proposed regulation also provides that, for purposes of satisfying the qualified hedging transaction requirements, a producer, processor, merchant or handler of commodities includes (but is not limited to) a CFC that regularly uses commodities in a manufacturing, construction, utilities, or transportation business. Similar to the regulations currently in effect, the proposed regulations provide that a corporation is not a producer, processor, merchant or handler of commodities (and therefore cannot satisfy the qualified hedging transaction requirements) if its business is primarily financial.

Foreign Currency Gain or Loss on Interest-Bearing Liabilities

Section 1.954–2(g)(2)(ii)(C)(*2*), as proposed, would provide that interest-bearing liabilities of a CFC will be treated as dealer property if the liabilities are denominated in a currency so as to manage the CFC's currency risk with respect to dealer property held by the CFC. This provision would apply only to interest-bearing liabilities identified on the date the liability is incurred. The result of the proposed rule would be to exclude currency gain or loss on interest-bearing liabilities that manage the CFC's currency risk with respect to dealer property from the computation of foreign personal holding company income.

Proposed Effective Dates

Section 1.954–2(f)(2)(v) is proposed to apply to gain or loss realized by a CFC with respect to a qualified hedging transaction entered into on or after the date proposed § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**. Section 1.954–2(g)(2)(ii)(C)(*2*) is proposed to apply to gain or loss from an interest-bearing liability entered into by a CFC on or after the date proposed § 1.954–2(g)(2)(ii)(C)(*2*) is published as a final regulation in the **Federal Register**.

Special Analysis

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not impose on small entities a collection of information requirement, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department specifically request comments on the clarity of the proposed regulations and how they can be made easier to understand. All comments will be available for public inspection and copying.

A public hearing has been scheduled for September 11, 2002, at 10 a.m. in room 4718, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Due to building security procedures, visitors must enter at the Constitution Avenue entrance. In addition, all visitors must present photo identification to enter the building. Because of access restrictions, visitors will not be admitted beyond the immediate entrance area more than 30 minutes before the hearing starts. For information about having your name placed on the building access list to attend the hearing, *see* the **FOR FURTHER INFORMATION CONTACT** section of this preamble.

The rules of 26 CFR 601.601(a)(3) apply to the hearing. Persons who wish to present oral comments at the hearing must submit electronic or written comments and an outline of the topics to be discussed and the time to be devoted to each topic (signed original and eight (8) copies) by August 21, 2002. A period of 10 minutes will be allotted to each person for making comments. An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal authors of these regulations are Kenneth Christman and Ted Setzer of the Office of the Associate Chief Counsel (International). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.954–0, paragraph (b) is amended by:

1. Removing the entry for § 1.954–2(f)(2)(iii)(E).
2. Revising the entry for § 1.954–2(f)(2)(iv).
3. Adding entries for § 1.954–2(f)(2)(iv)(C), (f)(2)(v) and (f)(2)(vi).
4. Revising the entry for § 1.954–2(g)(2)(ii)(C).

The additions and revisions read as follows::

§ 1.954–0 Introduction.

* * * * *

(b) * * *

§ 1.954–2 Foreign personal holding company income.

* * * * *

(f) * * *

(2) * * *

(iv) Qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

* * * * *

(C) Effective date.

(v) Qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(A) In general.

(B) Exception.

(C) Examples.

(D) Effective date.

(vi) Financial institutions not a producer, etc.

(g) * * *

(2) * * *

(ii) * * *

(C) Regular dealers.

(1) General rule.

(2) Certain interest-bearing liabilities treated as dealer property.

(*i*) In general.

(*ii*) Failure to identify certain liabilities.

(*iii*) Effective date.

* * * * *

Par. 3. Section 1.954–2 is amended by:

1. Removing paragraph (f)(2)(iii)(E).
2. Revising the heading of paragraph (f)(2)(iv).
3. Adding paragraphs (f)(2)(iv)(C), (f)(2)(v), and (f)(2)(vi).
4. Revising paragraph (g)(2)(ii)(C) and (g)(2)(iii).

The revisions and additions read as follows:

§ 1.954–2 Foreign personal holding company income.

* * * * *

(f) * * *

(2) * * *

(iv) Qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulations in the **Federal Register**.

* * * * *

(C) *Effective date.* This paragraph (f)(2)(iv) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into prior to the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(v) *Qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the* **Federal Register**—(A) *In general.* The term *qualified hedging transaction* means a bona fide hedging transaction, as defined in paragraph (a)(4)(ii) of this section, with respect to one or more commodities transactions reasonably necessary to the conduct of any business by a producer, processor, merchant or handler of commodities in a manner in which such business is customarily and usually conducted by others. For purposes of this paragraph (f)(2)(v), a producer, processor, merchant or handler of commodities includes a controlled foreign corporation that regularly uses commodities in a manufacturing, construction, utilities, or transportation business.

(B) *Exception.* The term *qualified hedging transaction* does not include a transaction described in section 988(c)(1) (without regard to section 988(c)(1)(D)(i)).

(C) *Examples.* The following examples illustrate the provisions of this paragraph (f)(2)(v):

Example 1. CFC1 is a controlled foreign corporation located in country A. CFC1 manufactures and sells machinery in country B using aluminum and component parts purchased from third parties that contain significant amounts of aluminum. CFC1 conducts its manufacturing business in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aluminum used in the machinery it manufactures, CFC1 enters into futures purchase contracts for the delivery of aluminum. These futures purchase contracts are bona fide hedging transactions. As CFC1 purchases aluminum and component parts containing significant amounts of aluminum in the spot market for use in its business, it closes out an equivalent amount of aluminum futures purchase contracts by entering into offsetting aluminum futures sales contracts. The aluminum futures purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aluminum futures purchase contracts is excluded from the computation of foreign personal holding company income.

Example 2. CFC2 is a controlled foreign corporation located in country B. CFC2 operates an airline business within country B in a manner in which such business is customarily and usually conducted by others. To protect itself against increases in the price of aviation fuel, CFC2 enters into forward contracts for the purchase of aviation fuel. These forward purchase contracts are bona fide hedging transactions. As CFC2 purchases aviation fuel in the spot market for use in its business, it closes out an equivalent amount of its forward purchase contracts for cash pursuant to a contractual provision that permits CFC2 to terminate the contract and make or receive a one-time payment representing the contract's fair market value. The aviation fuel forward purchase contracts are qualified hedging transactions as defined in paragraph (f)(2)(v)(A) of this section. Accordingly, any gain or loss on such aviation fuel forward purchase contracts is excluded from the computation of foreign personal holding company income.

(D) *Effective date.* This paragraph (f)(2)(v) applies to gain or loss realized by a controlled foreign corporation with respect to a qualified hedging transaction entered into on or after the date § 1.954–2(f)(2)(v) is published as a final regulation in the **Federal Register**.

(vi) *Financial institutions not a producer, etc.* For purposes of this paragraph (f), a corporation is not a producer, processor, merchant or handler of commodities if its business is primarily financial. For example, the business of a controlled foreign corporation is primarily financial if its principal business is making a market in notional principal contracts based on a commodities index.

* * * * *

(g) * * *

(2) * * *

(ii) * * *

(C) *Regular dealers*—(1) *General rule.* Transactions in dealer property (as defined in paragraph (a)(4)(v) of this section) described in section 988(c)(1)(B) or (C) that are entered into by a controlled foreign corporation that is a regular dealer (as defined in paragraph (a)(4)(iv) of this section) in

such property in its capacity as a dealer will be treated as directly related to the business needs of the controlled foreign corporation under paragraph (g)(2)(ii)(A) of this section.

(2) Certain interest-bearing liabilities treated as dealer property—(i) In general. For purposes of this paragraph (g)(2)(ii)(C), an interest-bearing liability incurred by a controlled foreign corporation that is denominated in (or determined by reference to) a non-functional currency shall be treated as dealer property if the liability, by being denominated in such currency, reduces the controlled foreign corporation's currency risk with respect to dealer property, and the liability is identified on the controlled foreign corporation's records as a liability treated as dealer property before the close of the day on which the liability is incurred.

(ii) Failure to identify certain liabilities. If a controlled foreign corporation identifies certain interest-bearing liabilities as liabilities treated as dealer property under the previous paragraph but fails to so identify other interest-bearing liabilities that manage its currency risk with respect to assets held that constitute dealer property, the Commissioner may treat such other liabilities as dealer property if the Commissioner determines that the failure to identify such other liabilities had as one of its principal purposes the avoidance of federal income tax.

(iii) Effective date. This paragraph (g)(2)(ii)(C)(*2*) applies only to gain or loss from an interest-bearing liability entered into by a controlled foreign corporation on or after the date § 1.954–2(g)(2)(ii)(C)(2) is published as a final regulation in the **Federal Register**.

* * * * *

(iii) *Special rule for foreign currency gain or loss from an interest-bearing liability.* Except as provided in paragraph (g)(2)(ii)(C)(*2*) or (g)(5)(iv) of this section, foreign currency gain or loss arising from an interest-bearing liability is characterized as subpart F income and non-subpart F income in the same manner that interest expense associated with the liability would be allocated and apportioned between subpart F income and non-subpart F income under "1.861–9T and 1.861–12T.

* * * * *

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

[FR Doc. 02–11891 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MN63–01–7288b; FRL–7165–8]

Approval and Promulgation of Implementation Plans; Minnesota

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: We are proposing to approve a revision to the Minnesota State Implementation Plan (SIP) that updates Minnesota's performance test rule in the SIP. This plan was submitted by the Minnesota Pollution Control Agency on December 16, 1998, and sets out the procedures for facilities that are required to conduct performance tests to demonstrate compliance with their emission limits and/or operating requirements. The request is approvable because it satisfies the requirements of the Clean Air Act. Specifically, we are proposing to approve into the SIP Minnesota Rules 7017.2001 through 2060, and to amend in the SIP Minnesota Rules 7011.0010, 7011.0105, 7011.0510, 7011.0515, 7011.0610, 7011.0710, 7011.0805, 7011.1305, 7011.1405, and 7011.1410 as adopted by the state on July 13, 1998. In addition, we are proposing to remove from the SIP Minnesota Rule 7017.2000, since this rule was repealed by the state in 1993. In the final rules section of this **Federal Register**, we are approving the SIP revision as a direct final rule without prior proposal, because we view this as a noncontroversial revision amendment and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If we receive adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. We will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 12, 2002.

ADDRESSES: Written comments should be sent to: Carlton T. Nash, Chief, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

FOR FURTHER INFORMATION CONTACT: Christos Panos, Regulation Development Section, Air Programs Branch (AR–18J), EPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8328

SUPPLEMENTARY INFORMATION: For additional information, see the Direct Final notice which is located in the Rules section of this **Federal Register**. Copies of the request and the EPA's analysis are available for inspection at the above address. (Please telephone Christos Panos at (312) 353–8328 before visiting the Region 5 Office.)

Dated: January 17, 2002.

David A. Ullrich,

Acting Regional Administrator, Region 5.

[FR Doc. 02–11735 Filed 5–10–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 249–0349; FRL–7211–2]

Revisions to the California State Implementation Plan, South Coast Air Quality Management District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a conditional approval of revisions to the South Coast Air Quality Management District's portion of the California State Implementation Plan (SIP). These revisions concern oxides of nitrogen (NO_X) and oxides of sulfur (SO_X) emissions from facilities emitting 4 tons or more per year of NO_X and/or SO_X in the year 1990 or any subsequent year. We are proposing action on local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act). These rules compose the South Coast Air Quality Management District's Regional Clean Air Incentives Market ("RECLAIM") program. We are taking comments on this proposal and plan to follow with a final action.

DATES: Any comments must arrive by July 12, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support document (TSD) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

South Coast Air Quality Management District ("SCAQMD"), 21865 E. Copley Dr., Diamond Bar, CA 91765–4182.

FOR FURTHER INFORMATION CONTACT: Thomas C. Canaday, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 947–4121.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules addressed by this proposal with the dates that they were adopted by SCAQMD and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule title	Adopted	Submitted
SCAQMD	2000	General	05/11/01	05/31/01
SCAQMD	2001	Applicability	05/11/01	05/31/01
SCAQMD	2002	Allocations for Oxides of Nitrogen (NO_X) and Oxides of Sulfur (SO_X).	05/11/01	05/31/01
SCAQMD	2004	Requirements	05/11/01	05/31/01
SCAQMD	2005	New Source Review for RECLAIM	04/20/01	10/30/01
SCAQMD	2006	Permits	05/11/01	05/31/01
SCAQMD	2007	Trading Requirements	05/11/01	05/31/01
SCAQMD	2010	Administrative Remedies and Sanctions	05/11/01	05/31/01
SCAQMD	2011	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	05/11/01	05/31/01
SCAQMD	2011–2	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Sulfur (SO_X) Emissions.	03/16/01	05/31/01
SCAQMD	2012	Requirements for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	05/11/01	05/31/01
SCAQMD	2012–2	Protocol for Monitoring, Reporting, and Recordkeeping for Oxides of Nitrogen (NO_X) Emissions.	03/16/01	05/31/01
SCAQMD	2015	Backstop Provisions	05/11/01	05/31/01
SCAQMD	2020	RECLAIM Reserve	05/11/01	05/31/01

On, July 20, 2001, these rule submittals (excepting the submittal for Rule 2005) were found to meet the completeness criteria in 40 CFR part 51 Appendix V, which must be met before formal EPA review. The rule submittal for Rule 2005 was found to be complete on January 1, 2002.

B. Are There Other Versions of These Rules?

We approved an amended version of Rule 2000 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2000 on February 14, 1997, and April 11, 1997, and CARB submitted them to us on August 22, 1997. The SCAQMD subsequently adopted additional revisions to the SIP-approved version of this rule on October 20, 2000, and CARB submitted those revisions to us on March 14, 2001.

We approved an amended version of Rule 2001 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2001 on February 14, 1997, and CARB submitted them to us on August 22, 1997.

We approved an amended version of Rule 2002 into the SIP on March 14, 2000.

We approved an amended version of Rule 2004 into the SIP on June 15, 1998. The SCAQMD adopted revisions to the SIP-approved version of Rule 2004 on July 12, 1996, and CARB submitted them to us on March 3, 1997.

We approved an amended version of Rule 2005 into the SIP on March 14, 2000.

We approved amended versions of Rules 2006 and 2007 into the SIP on June 15, 1998.

We approved Rule 2010, adopted by the SCAQMD on October 15, 1993, into the SIP on November 8, 1996.

We approved versions of Rules 2011 and 2011–2 into the SIP on June 15, 1998. These versions were adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved versions of Rule 2011 and 2011–2 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD adopted additional revisions to the SIP-approved versions of these rules on February 14, 1997, and CARB submitted those revisions to us on July 23, 1999. Finally, the SCAQMD adopted further revisions to the SIP-approved versions of Rule 2011 and 2011–2 on April 11, 1997, and April 9, 1999, and CARB submitted those revisions to us on July 23, 1999.

We approved versions of Rules 2012 and 2012–2 into the SIP on June 15, 1998. These versions were adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved versions of Rule 2012 and 2012–2 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD adopted additional revisions to the SIP-approved versions of these rules on February 14, 1997, and April 11, 1997, and CARB submitted those revisions to us on August 22, 1997. Finally, the SCAQMD adopted further revisions to the SIP-approved versions of Rules 2012 and 2012–2 on April 9, 1999, and CARB submitted those revisions to us on July 23, 1999.

We approved an amended version of Rule 2015 into the SIP on June 15, 1998. This version had been adopted by the SCAQMD on December 7, 1995. The SCAQMD adopted revisions to the SIP-approved version of Rule 2015 on July 12, 1996, and CARB submitted them to us on March 3, 1997. The SCAQMD subsequently adopted additional revisions to the SIP-approved version of this rule on February 14, 1997, and

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CARB submitted those revisions to us on August 22, 1997.

There is no previous version of Rule 2020 in the SIP. While we can act on only the most recently submitted versions of submitted rules, we have reviewed materials provided with previous submittals.

C. What Is the Purpose of the Submitted Rules?

The RECLAIM program is intended to allow facilities subject to the program to meet their emission reduction requirements in the most cost-effective manner. The program was designed to provide incentives for industry to reduce emissions and develop innovative pollution control technologies, as well as give facilities added flexibility in meeting emission reduction requirements. Each facility under the program was given an allocation of RECLAIM Trading Credits ("RTCs") based on a declining balance equivalent to the emissions levels that would have occurred if the facility continued to operate under the then current command-and-control regulations. Facilities within the RECLAIM program must reconcile their emissions with their RTC holdings and have the option of doing so by either installing control equipment, modifying their activity, or purchasing RTCs from other facilities.

Beginning June 2000, RECLAIM program participants experienced a sharp and sudden increase in NO_X RTC prices for both 1999 and 2000 compliance years. The program rules were amended with the intent of lowering and stabilizing RTC prices. The submitted rule revisions isolate existing large power plants (those producing 50 megawatts or more) from the rest of RECLAIM, require these plants to install emissions control equipment, limit their ability to purchase RTCs from other program participants, and impose on them a mitigation fee for emissions in excess of RTC holdings. The revisions also initiate a temporary, limited, pilot RECLAIM Air Quality Investment Program; improve registration and timely reporting of RTC trades; and modify procedures for late electronic emissions reports. The rule revisions also effect additional changes to the RECLAIM program predating and unrelated to the sudden increase in RTC prices. Some definitions in Rule 2000 were added or modified. Rule 2001 was revised to specify that RECLAIM facilities will be exempt from future amendments to certain rules listed in Rule 2001. The breakdown provisions of Rule 2004 were revised. Numerous revisions were made to the monitoring, reporting, and recordkeeping requirements and protocols of Rule 2011, Rule 2011–2, Rule 2012, and Rule 2012–2. Rule 2015 was revised to consolidate some reporting requirements and to specify the presentation date of the annual RECLAIM audit report. The TSD has more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating the Rules?

Generally, SIP rules must be enforceable (*see* section 110(a) of the Act), must require Reasonably Available Control Technology ("RACT") for major sources in nonattainment areas (*see* section 182(a)(2)(A)), and must not relax existing requirements (*see* sections 110(l) and 193). The SCAQMD regulates an ozone nonattainment area (*see* 40 CFR part 81), so the submitted rules must fulfill RACT.

We have used guidance and policy documents to help evaluate enforceability and RACT requirements consistently. Because this guidance is non-binding and does not represent final agency action, EPA uses this guidance as an initial screen to determine whether approvability issues arise. These documents include the following:

1. "State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble; Clean Air Act Amendments of 1990 Implementation of Title I; Proposed Rule," (the NO_X Supplement), 57 FR 55620, November 25, 1992.

2. "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations; Clarification to Appendix D of November 24,1987 **Federal Register** Notice," (Blue Book), notice of availability published in the May 25, 1988 **Federal Register**.

3. "Improving Air Quality with Economic Incentive Programs," January 2001, Office of Air and Radiation, EPA–452/R–01–001 ("EIP Guidance"). This guidance applies to discretionary economic incentive programs ("EIPs") and represents the agency's interpretation of what EIPs should contain in order to meet the requirements of the CAA.

4. "State Implementation Plans: Policy Regarding Excess Emissions During Malfunctions, Startup and Shutdown," EPA Office of Air and Radiation, and EPA Office of Enforcement and Compliance Assurance, September 20, 1999 ("Excess Emissions Policy").

B. Do the Rules Meet the Evaluation Criteria?

These rules improve the SIP by requiring the installation of pollution control equipment and by strengthening reporting provisions. These rules are largely consistent with the relevant policy and guidance regarding enforceability, RACT, and SIP relaxations. Rule provisions which do not meet the evaluation criteria are summarized below and discussed further in the TSD.

C. What Are the Rule Deficiencies?

The rules conflict with section 110 and part D of the Act and prevent full approval of the SIP revision due to their treatment of excess emissions which occur due to equipment breakdown. Rules 2000 and 2004 contain provisions which exempt, under certain circumstances, excess emissions that occur during breakdowns from being counted when a RECLAIM facility reconciles its emissions with its RTC holdings. In our EIP Guidance and our Excess Emissions Policy, EPA interprets the CAA as requiring that such emissions not be exempted.

D. Proposed Action and Public Comment

On April 2, 2002, SCAQMD Executive Officer Barry R. Wallerstein submitted a commitment on behalf of the SCAQMD staff to adopt and submit revisions to the RECLAIM program rules within one year after the date of publication of EPA's final action on today's proposed conditional approval. These revisions will establish a mechanism within the RECLAIM program to mitigate all excess emissions resulting from breakdowns. RECLAIM will be revised to require monitoring and tracking of excess emissions from breakdowns and comparison of the total amount of exempted emissions to the amount of unused RTCs for that year. If total exempted breakdown emissions from all RECLAIM sources exceeds the total amount of unused RTCs program-wide in any year, RECLAIM allocations in the following year will be reduced by an amount equal to that exceedence.

As authorized in section 110(k)(4) of the Act, EPA is proposing a conditional approval of the submitted rule to improve the SIP. If finalized, this action would incorporate into the SIP both the submitted rule and the commitment to correct the identified deficiency within one year.

This conditional approval shall be treated as a disapproval if the SCAQMD fails to adopt rule revisions to correct the deficiencies within the time allowed. If this rule is disapproved, sanctions will be imposed under section 179 of the Act unless EPA approves subsequent SIP revisions that correct the rule deficiencies within 18 months. These sanctions would be imposed according to 40 CFR 52.31. A final disapproval would also trigger the federal implementation plan (FIP) requirement under section 110(c). Note that the submitted rules have been adopted by the SCAQMD, and EPA's final conditional approval would not prevent the local agency from enforcing it.

We will accept comments from the public on the proposed conditional approval for the next 60 days.

III. Background Information

A. Why Were These Rules Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

A. Executive Order 12866

The Office of Management and Budget has exempted this regulatory action from Executive Order 12866, Regulatory Planning and Review.

B. Executive Order 13211

This proposed rule is not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

C. Executive Order 13045

Executive Order 13045, entitled Protection of Children from Environmental Health Risks and Safety Risks (62 FR 19885, April 23, 1997), applies to any rule that: (1) is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that EPA has reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, the Agency must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives considered by the Agency.

This rule is not subject to Executive Order 13045 because it does not involve decisions intended to mitigate environmental health or safety risks.

D. Executive Order 13132

Executive Order 13132, entitled Federalism (64 FR 43255, August 10, 1999) revokes and replaces Executive Orders 12612, Federalism and 12875, Enhancing the Intergovernmental Partnership. Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." Under Executive Order 13132, EPA may not issue a regulation that has federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, or EPA consults with State and local officials early in the process of developing the proposed regulation. EPA also may not issue a regulation that has federalism implications and that preempts State law unless the Agency consults with State and local officials early in the process of developing the proposed regulation.

This proposed rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, because it merely acts on a state rule implementing a federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

E. Executive Order 13175

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes,

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as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule. In the spirit of Executive Order 13175, and consistent with EPA policy to promote communications between EPA and tribal governments, EPA specifically solicits additional comment on this proposed rule from tribal officials.

F. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) generally requires an agency to conduct a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and small governmental jurisdictions.

This proposed rule will not have a significant impact on a substantial number of small entities because SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply act on requirements that the State is already imposing. Therefore, because the Federal SIP approval does not create any new requirements, I certify that this action will not have a significant economic impact on a substantial number of small entities.

Moreover, due to the nature of the Federal-State relationship under the Clean Air Act, preparation of flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

G. Unfunded Mandates

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated costs to State, local, or tribal governments in the aggregate; or to private sector, of $100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that the proposed action does not include a Federal mandate that may result in estimated costs of $100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This proposed Federal action acts on pre-existing requirements under State or local law, and imposes no new requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

H. National Technology Transfer and Advancement Act

Section 12 of the National Technology Transfer and Advancement Act (NTTAA) of 1995 requires Federal agencies to evaluate existing technical standards when developing a new regulation. To comply with NTTAA, EPA must consider and use "voluntary consensus standards" (VCS) if available and applicable when developing programs and policies unless doing so would be inconsistent with applicable law or otherwise impractical.

EPA believes that VCS are inapplicable to today's proposed action because it does not require the public to perform activities conducive to the use of VCS.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: April 26, 2002.

Wayne Nastri,

Regional Administrator, Region IX.

[FR Doc. 02–11825 Filed 5–10–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF DEFENSE

48 CFR Parts 208 and 210

[DFARS Case 2002–D003]

Defense Federal Acquisition Regulation Supplement; Competition Requirements for Purchases From a Required Source

AGENCY: Department of Defense (DoD).

ACTION: Notice of public meeting.

SUMMARY: The Director of Defense Procurement is sponsoring a public meeting to discuss the interim rule published at 67 FR 20687 on April 26, 2002. The rule amended the Defense Federal Acquisition Regulation Supplement (DFARS) to implement Section 811 of the Fiscal Year 2002 National Defense Authorization Act. Section 811 requires DoD to conduct market research before purchasing a product listed in the Federal Prison Industries (FPI) catalog, to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector. A listing of possible discussion topics can be found on the Defense Procurement Web site at *http://www.acq.osd.mil/dp*.

DATES: The meeting will be held on June 3, 2002, from 1 p.m. to 4 p.m., local time.

ADDRESSES: The meeting will be held in Room C–43, Crystal Mall 4, 1931 Jefferson Davis Highway, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Susan L. Schneider, Defense Acquisition Regulations Directorate, at (703) 602–0326 or *susan.schneider@osd.mil*.

Michele P. Peterson,

Executive Editor, Defense Acquisition Regulations Council.

[FR Doc. 02–11899 Filed 5–10–02; 8:45 am]

BILLING CODE 5001–08–U

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 175

[Docket No. RSPA–02–11654 (HM–228)]

RIN 2137–AD18

Hazardous Materials: Revision of Requirements for Carriage by Aircraft; Extension of Comment Period

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM); extension of comment period.

SUMMARY: On February 26, 2002, RSPA published an advance notice of proposed rulemaking to consider changes to the requirements in the Hazardous Materials Regulations (HMR) on the transportation of hazardous materials by aircraft. These changes would modify or clarify requirements to promote safer transportation practices; promote compliance and enforcement; eliminate unnecessary regulatory requirements; convert certain exemptions into regulations of general applicability; finalize outstanding petitions for rulemaking; facilitate international commerce; and make these requirements easier to understand. In response to requests by members of the regulated community, the comment period for the advanced proposed rule is extended until September 30, 2002.

DATES: Submit comments by September 30, 2002. To the extent possible, we will consider comments received after this date.

ADDRESSES: *Comments:* You must address comments to the Dockets Management System, U.S. Department of Transportation, Room PL 401, 400 Seventh Street SW., Washington, DC 20590–0001. You should identify the docket number (RSPA–02–11654 (HM–228)) and submit your comments in two copies. If you want to confirm our receipt of your comments, you should include a self-addressed, stamped postcard. You may also e-mail comments by accessing the Dockets Management System web site at *http://dms.dot.gov/* and following the instructions for submitting a document electronically. If you prefer, you may fax comments to 202–366–2251 for filing in the docket.

The Dockets Management System is located on the Plaza Level of the Department of Transportation headquarters building (Nassif Building) at the above address. You may review public dockets there between the hours of 9 a.m. to 5 p.m., Monday through Friday, except Federal holidays. You may also review comments on-line at the DOT Dockets Management System Web site at: *http://dms.dot.gov*.

We are experiencing some delays in mail deliveries as a result of ongoing efforts to ensure that mail is not contaminated with infectious or harmful materials. We encourage you to take advantage of the opportunities provided by the DOT Dockets Management System to submit comments electronically or by fax.

FOR FURTHER INFORMATION CONTACT: Deborah Boothe or Michael Stevens of the Office of Hazardous Materials Standards, (202) 366–8553, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington DC 20590–0001.

SUPPLEMENTARY INFORMATION:

I. Background

On February 26, 2002, the Research and Special Programs Administration (RSPA) published an advance notice of proposed rulemaking (ANPRM) (67 FR 8769) under Docket RSPA–02–11654 (HM–228) to consider changes to the HMR on transportation of hazardous materials by aircraft. The HMR (49 CFR parts 171–180) govern the transportation of hazardous materials in commerce by all modes of transportation, including aircraft (49 CFR 171.1(a)(1)). Parts 172 and 173 of the HMR include requirements for classification and packaging of hazardous materials, hazard communication, and training of employees who perform functions subject to the requirements in the HMR. Part 175 contains additional requirements applicable to aircraft operators transporting hazardous materials aboard an aircraft, and authorizes passengers and crew members to carry hazardous materials on board an aircraft under certain conditions.

RSPA and the Federal Aviation Administration (FAA) are reviewing part 175 and other sections of the HMR applicable to transportation of hazardous materials by aircraft. This review will increase safety in the air transportation of hazardous materials by:

(1) Modifying or clarifying requirements to promote compliance and enforcement;
(2) Eliminating unnecessary current regulatory requirements;
(3) Adopting current exemptions and outstanding petitions for rulemaking;
(4) Facilitating international commerce; and
(5) Making the regulations easier to understand.

On March 28, 2002, the Air Transport Association (ATA) requested an extension of the comment period (closing date of May 31, 2002) until September 30, 2002. ATA requested the extension because they need additional time to develop comments. ATA stated that the airline industry needs the opportunity to have air carrier working groups meet on several occasions to examine this docket in depth and to answer the 60 questions posed by RSPA and FAA in the rulemaking.

On April 2, 2002, the Air Line Pilots Association (ALPA), requested an extension of the comment period until September 30, 2002, to fully address the rule and prepare comments. ALPA concluded that the areas and topic requests, as well as the large number of specific questions in the rule are far reaching in their scope and require an in-depth response. ALPA commented that the complexity and number of questions posed in the rule makes it necessary to request additional time to develop their comments. RSPA agrees that extending the comment period on this in-depth rulemaking is in the public interest because it will assure a more thorough consideration of the issues by all affected entities. Therefore, we are extending the comment period to September 30, 2002.

Issued in Washington, DC on May 7, 2002, under the authority delegated in 49 CFR part 106.

Robert A. McGuire,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 02–11902 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Notice of Availability of a Draft Recovery Plan for Five Plants From Monterey County, CA, for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce the availability for public review of a Draft Recovery Plan for Five Plants from Monterey County, California. This recovery plan includes the following species: coastal dunes milk-vetch (*Astragalus tener* var. *titi*), Yadon's piperia (*Piperia yadonii*), Hickman's potentilla (*Potentilla hickmanii*), Monterey clover (*Trifolium trichocalyx*), and Gowen cypress (*Cupressus goveniana* ssp. *goveniana*). These plant species are found primarily along coast of northern Monterey County, California. Hickman's potentilla also occurs in San Mateo County and has occurred historically in Sonoma County. Coastal dunes milk-vetch has occurred historically in Los Angeles and San Diego Counties, California. The Service solicits review and comment from local, State, and Federal agencies, and the public on this draft recovery plan.

DATES: Comments on the draft recovery plan must be received on or before July 12, 2002 to receive consideration by the Service.

ADDRESSES: Copies of the draft recovery plan are available for inspection, by appointment, during normal business hours at the following location: U.S. Fish and Wildlife Service, Ventura Fish and Wildlife Office, 2493 Portola Road, Suite B, Ventura, California 93003 (phone: 805–644–1766). Requests for copies of the draft recovery plan, and written comments and materials regarding this plan should be addressed to Ms. Diane K. Noda, Field Supervisor, at the above Ventura address.

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FOR FURTHER INFORMATION CONTACT: Heidi E.D. Crowell, Fish and Wildlife Biologist, at the above address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act, as amended in 1988 (16 U.S.C. 1531 *et seq.*) (Act), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during the public comment period prior to approval of each new or revised recovery plan. Substantive technical comments will result in changes to the plans. Substantive comments regarding recovery plan implementation may not necessarily result in changes to the recovery plans, but will be forwarded to appropriate Federal or other entities so that they can take these comments into account during the course of implementing recovery actions. Individualized responses to comments will not be provided.

Coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla and Monterey clover are listed as endangered. Gowen cypress is listed as a threatened species.

Coastal dunes milk-vetch is restricted to sandy soils that occur within 30 meters (m) (98 feet (ft)) of the ocean beach on relatively flat coastal terraces that are exposed to ocean sprays and periodic saturation. Only one extant population is currently known to occur, made up of approximately 11 scattered patches of plants that are separated by 17-Mile Drive on the western edge of the Monterey Peninsula. The land is owned by the Febble Beach Company and the Monterey Peninsula Country Club.

Yadon's piperia is endemic to Monterey County and has a center of distribution within large undeveloped tracts of Monterey pine forest. Its range extends from the Los Lomos area near the border of Santa Cruz County in the north to approximately 25 kilometers (km) (15 miles (mi)) south of the Monterey Peninsula near Palo Colorado Canyon where it occurs in a maritime chaparral habitat. Some of the plants occur on protected property, while a large proportion of plants occur on unprotected private property.

Hickman's potentilla is currently known from one site on the Monterey Peninsula and at one site in San Mateo County. The population in Monterey County grows in fine sandy soils within an opening of Monterey pine forest that supports wet conditions for a variety of native and nonnative grassland species. The population in San Mateo County was presumed extirpated until it was rediscovered on private land in 1995 by biologists conducting surveys for a highway project.

Monterey clover is known from only one area in the vicinity of Huckleberry Hill within the Monterey Peninsula. Only a few scattered individuals were reported in the late 1990's. This species is a classic fire-follower, taking advantage of reduced forest cover that allows a significantly higher proportion of light to reach the herbaceous ground cover for the first few years after a fire. Fire suppression activities and development within the Pebble Beach Company property are likely negatively affecting this species' habitat and seed bank.

Gowen cypress is currently found in only two stands, in addition to individuals that occur locally in cultivation. The largest stand (Del Monte Forest) is near Huckleberry Hill on the west side of the Monterey Peninsula and covers approximately 40 hectares (ha) (100 acres (ac)) within lands owned by the Pebble Beach Company and the Del Monte Forest Foundation. The second stand (Point Lobos) occurs 10 km (6 mi) south of Huckleberry Hill on the north side of Gibson Creek inland of the Point Lobos Peninsula. This stand occurs on a 60-ha (150-ac) parcel owned by the California Department of Parks and Recreation and is somewhere between 16 and 32 ha (40 and 80 ac) in size. The stands occur in mixed conifer forest and maritime chaparral habitats. Within the chaparral habitat, the cypress also grows in a dense, dwarf or pygmy forest.

These plants are threatened by one or more of the following: alteration, destruction, and fragmentation of habitat resulting from urban and golf course development; recreational activities; competition with nonnative plant species; herbivory from native or nonnative species; demographic stochasticity; and disruption of natural fire cycles due to fire suppression associated with increasing residential development around and within occupied habitat.

The objective of this recovery plan is to provide a framework for the recovery of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, Monterey clover, and Gowen cypress so that protection by the Act is no longer necessary. This recovery plan establishes criteria necessary to accomplish delisting of Gowen cypress and downlisting of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, and Monterey clover to threatened status. These criteria include: (1) Permanent protection of habitat presently occupied by the species and the surrounding ecosystem on which they depend, with long-term commitments to conserving the species; (2) in a protected habitat, successful control of invasive, nonnative plants and successful management of other problems (management success must be demonstrated through at least 10 years of biological monitoring); (3) development of management strategies that include results from research on the life histories of the taxa, and results from monitoring the species' response to vegetation management; (4) successful reintroduction or establishment of populations for coastal dunes milk-vetch, Hickman's potentilla, and Monterey clover; (5) implementation of a prescribed burn plan or successful alternative management strategy for Gowen cypress; (6) monitoring to demonstrate long-term viability of existing populations, including successful recruitment and reproduction; and (7) establishment of seed banks at recognized institutions. Criteria for delisting of coastal dunes milk-vetch, Yadon's piperia, Hickman's potentilla, and Monterey clover may be addressed in future revisions of this recovery plan when additional information about the biology of the species is available.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 6, 2002.

D. Kenneth McDermond,

Manager, California/Nevada Operations Office, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 02–11802 Filed 5–10–02; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 67, No. 92

Monday, May 13, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Encore Technologies LLC of Minnetonka, Minnesota, an exclusive license to U.S. Patent No. 5,968,808, "Method for Producing Desiccation Tolerant Paecilomyces Fumosoroseus Spores," issued on October 19, 1999. Notice of Availability of this invention for licensing was published in the **Federal Register** on May 11, 1999.

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Encore Technologies LLC has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–11894 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Federal Invention Available for Licensing and Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of availability and intent.

SUMMARY: Notice is hereby given that the Federally owned invention disclosed in U.S. Patent Application Serial No. 09/989,287, "Use of Paecilomyces Spp. As Pathogenic Agents Against Subterranean Termites," filed November 20, 2001, is available for licensing and that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Encore Technologies LLC of Minnetonka, Minnesota, an exclusive license to this invention.

DATES: Comments must be received on or before August 12, 2002.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Room 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights to this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Encore Technologies LLC has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within ninety (90) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–11895 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent To Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Heritage Fare, Ltd., of Cleveland, Ohio, an exclusive license to U.S. Patent No. 5,676,994, "Non-Separable Starch-Oil Compositions," issued on October 4, 1997 and to U.S. Patent No. 5,882,713, "Non-Separable Compositions of Starch and Water-Immiscible Organic Materials," issued on March 16, 1999, for all uses in the field of whole muscle, ground, prepared and/or processed meats and dry seasonings, sauces, soups and gravy bases intended for use with these meats, including beef, pork and poultry but not including seafood. U.S. Patent No. 5,676,994 is a continuation of U.S. Patent Application Serial No. 08/233,173, "Non-Separable Starch-Oil Compositions," and U.S. Patent No. 5,882,713 is a continuation-in-part of U.S. Patent Application Serial No. 08/233,173. Notice of Availability for U.S. Patent Application Serial No. 08/233,173 was published in the **Federal Register** on October 24, 1994.

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174, Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United

States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Heritage Fare, Ltd has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–11893 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Agricultural Research Service

Notice of Intent to Grant Exclusive License

AGENCY: Agricultural Research Service, USDA.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the U.S. Department of Agriculture, Agricultural Research Service, intends to grant to Molecular Staging, Inc. of New Haven, Connecticut, an exclusive license to U.S. Patent No. 6,054,300, "Single-Site Amplification (SSA): Method for Accelerated Development of Nucleic Acid Markers," issued on April 25, 2000. Notice of Availability of this invention for licensing was published in the **Federal Register** on January 8, 1998.

DATES: Comments must be received within thirty (30) calendar days of the date of publication of this Notice in the **Federal Register**.

ADDRESSES: Send comments to: USDA, ARS, Office of Technology Transfer, 5601 Sunnyside Avenue, Rm. 4–1174; Beltsville, Maryland 20705–5131.

FOR FURTHER INFORMATION CONTACT: June Blalock of the Office of Technology Transfer at the Beltsville address given above; telephone: 301–504–5257.

SUPPLEMENTARY INFORMATION: The Federal Government's patent rights in this invention are assigned to the United States of America, as represented by the Secretary of Agriculture. It is in the public interest to so license this invention as Molecular Staging, Inc. has submitted a complete and sufficient application for a license. The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within thirty (30) days from the date of this published Notice, the Agricultural Research Service receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

Michael D. Ruff,

Assistant Administrator.

[FR Doc. 02–11892 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–03–P

DEPARTMENT OF AGRICULTURE

Forest Service

Garver EIS; Kootenai National Forest, Lincoln County, Montana

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) for a proposal to improve forest health and wildlife habitat, reduce urban interface fuels, and make access management changes to improve grizzly bear habitat. The project is located on the Three Rivers Ranger District, Kootenai National Forest, Lincoln County, Montana, approximately 30 air miles northeast of Troy, Montana.

SCOPING COMMENT DATES: Comments concerning the scope of the analysis should be received by June 17, 2002.

ADDRESSES: Written comments and suggestions concerning the scope of the analysis should be sent to Michael L. Balboni, District Ranger, Three Rivers Ranger District, 1437 Hwy 2, Troy, MT 59935.

FOR FURTHER INFORMATION CONTACT: Kathy Mohar, Team Leader, Three Rivers Ranger District, 1436 Hwy 2, Troy, MT 59935. Phone: (406) 295–4693.

SUPPLEMENTARY INFORMATION: The project area is approximately 43,096 acres and is located in portions of T36N, R32W; T36N; R31W; T37N; R32W; and T37N, R31W, PMM, Lincoln County, Montana. The project area encompasses the West Fork Yaak River, Pete Creek, Lap Creek, Waper Creek, and Mud Creek, as well as several small drainages that are tributary to the Yaak River. The West Fork Yaak Inventoried Roadless Area is located along the north and western border of this project area.

The purpose and need for this project is to: (1) Improve and Maintain Forest Health; (2) Improve and Maintain Winter Range Conditions; (3) Improve and Maintain Old Growth Characteristics; (4) Reduce Fuels In The Wildlife Urban Interface; (5) Improve Growing Conditions and Long-Term Management Options for Overstocked Sapling Pole Stands; (6) Improve Quality and Quantity of Grizzly Bear Habitat; and (7) Contribute Forest Products to the Economy.

To meet the purpose and need, this project proposes treatments to manage for vegetative conditions that are most suitable to a fire-dependent ecosystem, and in the long term to encourage more resilient and sustainable forest conditions. Intermediate harvest treatments are proposed where forest conditions are generally healthy but some undesirable trends have been noted. Regeneration harvest methods would be implemented in areas with high levels of insect and disease, uniform mature lodgepole pine stands, and/or where restoration of species at risk are identified. This treatment may also be used in site-specific areas where small forage openings would be created for the benefit of big games species. Precommercial thinning is proposed for overstocked sapling/pole stands.

Mechanical treatments and/or burning would be used in other areas to reduce fuels, including urban interface areas, and to improve big game habitat. Burning is proposed for the Dusty Peak area within the West Fork Yaak Inventoried Roadless Area and in designated old growth.

Access management changes are proposed with this project to improve grizzly bear security and habitat conditions. Best Management Practices, including activities such as outsloping, waterbarring, and culvert replacement would be applied to haul roads being used for this project.

Range of Alternatives

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and location for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

Public Involvement and Scoping

The public is encouraged to take part in the process and to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations that may be interested in, or affected by, the proposed action. This input will be used in preparation of the draft and final EIS. The scoping process will include:

1. Identifying potential issues.
2. Identifying major issues to be analyzed in depth.
3. Identifying alternatives to the proposed action.
4. Exploring additional alternatives that will be derived from issues recognized during scoping activities.
5. Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

Estimated Dates for Filing:

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in July 2001. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register**. The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register**. It is very important that those interested in the management of this area participate at that time.

The final EIS is scheduled to be completed in September 2001. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and to applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519,553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be must helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

The District Ranger of the Three Rivers Ranger District, Michael L. Balboni, is the Responsible Official. As Responsible Official, he will decide if the proposed project will be implemented and will document the decision and reasons for the decision in the Record of Decision.

Dated: May 6, 2002.

Cami Winslow,

Acting Forest Supervisor, Kootenai National Forest.

[FR Doc. 02–11829 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Virginia Forest Management Project Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service, will prepare an Environmental Impact Statement (EIS) for the Virginia Area. The Record of Decision will disclose how the Forest Service has decided to manage approximately 101,000 acres of federal land. The proposed action would provide approximately 35 to 45 million board feet of timber to local and regional timber markets; final harvest approximately 5,000 acres of 60+ year-old aspen and jack pine experiencing substantial mortality from blowdown, decay and old age; reduce fuel loading on approximately 2,500 acres of mature red and white pine communities that are converting to balsam fir and brush through prescribed under-burning and other treatments to remove ladder fuels; hand release approximately 2,000 acres of regenerated red pine, white pine and black spruce communities from competing vegetation, and provide access to non-federally owned lands within the project boundaries. A road analysis will be done in conjunction with the Virginia project, to develop a mutual transportation plan. A range of alternatives responsive to significant issues will be developed, including a no-action alternative. The proposed project is located on the Laurentian Ranger District, Aurora, MN, Superior National Forest. In addition, the Laurentian Ranger District may create temporary openings greater than 40 acres under 36 CFR 219.27 (d)(ii).

DATES: Comments concerning the scope of this project should be received by June 20, 2002.

ADDRESSES: Please send written comments to: Laurentian Ranger District, Superior National Forest, ATTN: Virginia EIS, 318 Forestry Road, Aurora, MN 55705.

FOR FURTHER INFORMATION CONTACT: Allan Bier, District Ranger, or Barbara Stordahl, Team Leader, Laurentian Ranger District, Superior National Forest, 318 Forestry Road, Aurora, MN 55705, or at (218) 229–8800.

SUPPLEMENTARY INFORMATION: Public participation will be an integral component of the study process, and will be especially important at several points during the analysis. The first is during the scoping process. The Forest Service will be seeking information, comments and assistance from federal, State and local agencies, individuals and organizations that may be interested or affected by the proposed activities. The scoping process will include: (1) Identification of potential issues, (2) identification of issues to be analyzed in depth and (3) elimination of insignificant issues, or those which have been covered by a previous environmental review. Written comments will be solicited through a scoping package that will be sent to the project mailing list and local newspaper. For the Forest Service to best use the scoping input, comments should be received by June 20, 2002. Issues identified for analysis in the EIS include the potential effects of the project and the relationship of the project to age class distribution, species composition, reforestation, fuel reduction treatment, temporary roads, rare resources, and others.

Based on the results of scoping and the resource capabilities within the project area, alternatives, including a no-action alternative, will be developed for the Draft EIS. The Draft EIS is

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projected to be filed with the Environmental Protection Agency (EPA) in May 2003. The Final EIS is anticipated in November 2003.

The comment period on the Draft EIS will be a minimum of 45 days from the date that the EPA publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes, at this early stage, that it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of Draft EIS's must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553, [1978]). Environmental objections that could have been raised at the Draft EIS stage may be waived or dismissed by the courts (*City of Angoon* v. *Hodel*, 803 F.2nd 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 [E.D. Wis. 1980]). Because of these court rulings, it is very important that those interested in this proposed action, participate by the close of the 45-day comment period, so that substantive comments and objections are made available to the Forest Service at a time when they can be meaningfully considered and responded to in the Final EIS.

To assist the Forest Service in identifying and considering issues and concerns of the proposed action, comments during scoping, and on the Draft EIS, should be as specific as possible and refer to specific pages or chapters. Comments may address the adequacy of the Draft EIS, or the merits of the alternatives formulated and discussed. In addressing these points, reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act in 40 CFR 1503.3. Comments received in response to this solicitation, including names and addresses of those who comment, will be considered part of the public record on this proposed action, and will be available for public inspection. Comments submitted anonymously will be accepted and considered. Pursuant to 7 CFR 1.27(d), any person may request the agency to withhold a submission, from the public record, by showing how the Freedom of Information Act (FOIA) permits such confidentiality. Requesters should be aware that, under FOIA, confidentiality may be granted in only very limited circumstances, such as to protect trade secrets. The Forest Service will inform the requester of the agency's decision regarding the request for confidentiality. If the request is denied, the agency will return the submission and notify the requester that the comments may be resubmitted with or without name and address within seven days.

Permits/Authorizations

The proposed action may create temporary openings greater than 40 acres. A 60-day public notice and review by the Regional Forester would be needed for such action.

Easement or permission to cross non-federal property may be needed to access some treatment units to implement Forest Service activities.

Responsible Official

James W. Sanders, Forest Supervisor, Superior National Forest, is the responsible official. In making the decision, the responsible official will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations, and policies. The responsible official will state the rationale for the chose alternative in the Record of Decision.

James W. Sanders,

Forest Supervisor, Superior National Forest.

[FR Doc. 02–11828 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Forest Counties Payments Committee

AGENCY: Forest Service, USDA.

ACTION: Correction.

SUMMARY: In notice document 02–11111 beginning on page 30353 in the issue of Monday, May 6, 2002, make the following correction:

On page 30353 in the second column, in the **SUMMARY** section, the date of the Rapid City, South Dakota, meeting of the Forest Counties Payments Committee was previously listed as occurring on April 20, 2002. This should be changed to read May 17, 2002.

Dated: May 7, 2002.

Maitland Sharpe,

Acting Deputy Chief, Programs and Legislation.

[FR Doc. 02–11809 Filed 5–10–02; 8:45 am]

BILLING CODE 3410–11–P

DEPARTMENT OF AGRICULTURE

Forest Service

Tehama County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Tehama County Resource Advisory Committee (RAC) will hold its fourth meeting.

DATES: The meeting will be held on May 9, 2002, and will begin at 9 a.m. and end at approximately 12 p.m.

ADDRESSES: The meeting will be held at the Lincoln Street School, Conference Room E, 1135 Lincoln Street, Red Bluff, CA.

FOR FURTHER INFORMATION CONTACT: Bobbin Gaddini, Committee Coordinator, USDA, Mendocino National Forest, Grindstone Ranger District, P.O. Box 164, Elk Creek, CA 95939. (530) 968–5329; e-mail *ggaddini@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Reports from subcommittee's and possible approval (2) approval of revision of short form, (3) project presentations with possible preliminary selection (4) public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: April 11, 2002.

James F. Giachino,

Designated Federal Official.

[FR Doc. 02–11920 Filed 5–9–02; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Florida Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a planning meeting with briefing of the Florida Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, May 30, 2002, at the Adam's Mark Hotels & Resorts, 225 Coast Line Drive East, Jacksonville, Florida 32202. The purpose of the planning meeting with briefing is to: (1) Plan future activities, and (2) be briefed on immigration and Title VI allegations of discrimination in Jacksonville.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–11868 Filed 5–10–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Indiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Indiana Advisory Committee to the Commission will be held from 9 a.m. to 5 p.m. on Thursday, May 30, 2002, at the Hyatt Regency Hotel, One South Capitol Avenue, Indianapolis, Indiana 46204. The purpose of the meeting is to discuss current events and plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Constance M. Davis, Director of the Midwestern Regional Office, 312–353–8311 (TDD 312–353–8362). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–11867 Filed 5–10–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Louisiana Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Louisiana Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on June 6, 2002, at the Baton Rouge Marriott, 5500 Hilton Avenue, Baton Rouge, LA 70808. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–11865 Filed 5–10–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Nebraska Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Nebraska Advisory Committee to the Commission will convene at 6 p.m. and adjourn at 8 p.m. on June 5, 2002, at the Holiday Inn, 3221 S. 72nd Street, Omaha, Nebraska 68124. The Committee will plan future activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 913–551–1400 (TDD 913–551–1414). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 3, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–11866 Filed 5–10–02; 8:45 am]

BILLING CODE 6335–01–P

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Carolina Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Carolina Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Wednesday, June 5, 2002, at the North Carolina A&T State University, Hodgin Hall, Room 118, Greensboro, North Carolina 27411. The purpose of the meeting is to hold new member orientation and discuss the Title VI project.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–562–7000 (TDD 404–562–7004). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least ten (10) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 6, 2002.

Ivy L. Davis,

Chief, Regional Programs Coordination Unit.

[FR Doc. 02–11864 Filed 5–10–02; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Under Secretary for Industry and Security

[01–BXA–01]

In the Matter of: Jabal Damavand General Grading Company, P.O. Box 52130, Dubai, United Arab Emirates, Respondent; Decision and Order

On January 4, 2001, the Bureau of Industry and Security (BIS) [1] issued a charging letter against the respondent, Jabal Damavand General Trading Company (Jabal), that alleged three violations of the Export Administration Regulations (EAR), 15 CFR part 730 *et. seq.* The three charges related to a shipment of U.S.-origin ferrography laboratory equipment to the United Arab Emirates (UAE) and, ultimately, to

[1] The Bureau of Industry and Security was formerly known as the Bureau of Export Administration. The name of the Bureau was changed pursuant to an order signed by the Secretary of Commerce on April 16, 2002.

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Iran. The specific charges were: (1) Reexporting the equipment from the UAE to Iran without the required authorization from BIS; (2) participating in that transaction with knowledge that a violation had occurred; and (3) making a false statement to the U.S. supplier of the equipment as to the end-use and destination of the equipment. *See* BIS Charging Letter of January 4, 2001.

Jabal failed to answer the charging letter within the time limits set forth in Section 766.7 of the EAR. Accordingly, on June 14, 2001, the Administrative Law Judge (ALJ), at the request of BIS, issued a Recommended Decision and Order finding that Jabal had violated the EAR as charged in the charging letter and recommending a penalty of denial of Jabal's export privileges for 10 years. *See* Recommended Decision and Order of June 14, 2001, published at 66 FR 39,008 (July 26, 2001).

On July 19, 2001, I vacated the ALJ's Recommended Decision and Order and remanded the case to the ALJ. *See* 66 FR 39,007, July 26, 2001. Based on my review of the record, I found that BIS had not established the Export Control Classification Number of the equipment in question and, consequently, had not established a requirement under the EAR to obtain authorization from BIS to reexport the equipment from the UAE to Iran. I also directed the ALJ to determine whether to consider as an answer a letter that Jabal had sent to the ALJ more than 30 days after notice of issuance of the charging letter. Finally, I directed the ALJ to reconsider the recommended penalty in light of any decisions on remand.

On September 4, 2001, the ALJ approved BIS's request to amend the charging letter. *See* ALJ Order of September 4, 2001, at 2. BIS filed an amended charging letter with the ALJ on September 24, 2001 and served it on Jabal on the same date. *See* BIS Amended Charging Letter of September 24, 2001. Jabal did not respond to the amended charging letter.

BIS's amended charging letter alleges four violations of the EAR. These violations are: (1) Causing the illegal exportation of goods from the United States through the UAE to Iran; (2) transferring the goods in the UAE to Iran knowing that they had been exported in violation of the EAR; (3) evading the EAR by misrepresenting to the U.S. supplier that the end-user was in the UAE when, infact, the end-user was in Iran; and (4) evading the EAR by having the equipment assembled and tested in the UAE so as to conceal the true destination from the U.S. supplier.

In his Recommended Decision and Order issued on April 1, 2002, the ALJ found that the charges in the amended charging letter were proven on three alternate theories: (1) Jabal defaulted by not answering the amended charging letter within the time set forth in the EAR; (2) BIS was entitled to a summary decision as a matter of law because there was no genuine issue of material fact; and (3) after review of the facts in the record, the charges in the amended charging letter were proven by BIS. *See* Recommended Decision and Order of April 1, 2002, at 10–11.

As provided by section 66.22 of the EAR, the Recommended Decision and Order has been referred to me for final action. Based on my review of the entire record, I find that each of three alternate findings of the ALJ is correct and that the charges in the amended charging letter have been proven. I hereby affirm the findings of fact and conclusions of law in the Recommended Decision and order of the ALJ.

It is therefore ordered.

First, that, for a period of 10 years from the date that this Order is published in the **Federal Register**, Jabal Damavand General Trading Company, P.O. Box 52130, Dubai, United Arab Emirates, and all of its successors or assigns, officers, representatives, agents, and employees (hereinafter collectively referred to as the "denied person"), may not, directly or indirectly, participate in any way in any transaction involving any commodity, software, or technology (hereinafter collectively referred to as "item") exported or to be exported from the Untied States that is subject to the Export Administration Regulations (EAR), or in any other activity subject to the EAR, including, but not limited to:

A. Applying for, obtaining, or using any license, License Exception, or export control document;

B. Carrying on negotiations concerning, or ordering, buying, receiving, using, selling, delivering, storing, disposing of, forwarding, transporting, financing, or otherwise servicing in any way, any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or in connection with any other activity subject to the EAR; or

C. Benefiting in any way from any transaction involving any item exported or to be exported from the United States that is subject to the EAR, or from any other activity subject to the EAR.

Second, that no person may, directly or indirectly, do any of the following:

A. Export or reexport to or on behalf of the denied person any item subject to the EAR;

B. Take any action that facilitates the acquisition or attempted acquisition by the denied person of the ownership, possession, or control of any item subject to the EAR that has been or will be exported from the United States, including financing or other support activities related to a transaction whereby the denied person acquires or attempts to acquire such ownership, possession, or control;

C. Take any action to acquire from or to facilitate the acquisition or attempted acquisition from the denied person of any item subject to the EAR that has been exported from the United States;

D. Obtain from the denied person in the United States any item subject to the EAR with knowledge or reason to know that the item will be, or is intended to be, exported from the United States; or

E. Engage in any transaction to service any item subject to the EAR that has been or will be exported from the United States and that is owned, possessed, or controlled by the denied person, or service any item, of whatever origin, that is owned, possessed, or controlled by the denied person if such service involves the use of any item subject to the EAR that has been or will be exported from the United States. For purposes of this paragraph, "servicing" means installation, maintenance, repair, modification, or testing.

Third, that, after notice and opportunity for comment as provided in section 766.23 of the EAR, any person, firm, corporation, or business organization related to the denied person by affiliation, ownership, control, or position of responsibility in the conduct of trade or related servicing may also be made subject to the provisions of this Order.

Fourth, that this Order does not prohibit any export, reexport, or other transaction subject to the EAR where the only items involved that are subject to the EAR are the foreign-produced direct product of U.S.-origin technology.

Fifth, that this Order shall be served on the denied person and on BIS, and shall be published in the **Federal Register**. In addition, the ALJ's Recommended Decision and Order, except for the section headed "Proposed Decision and Order," shall be published in the **Federal Register**.

This Order, which constitutes the final agency action in this matter, is effective immediately.

Dated: May 2, 2002.

Kenneth I. Juster,

Under Secretary of Commerce for Industry and Security.

Bureau of Export Administration

Recommended Decision and Order

Background

On January 4, 2001, the Bureau of Export Administration ("BXA") issued a charging letter against the respondent, JABAL DAMAVAND GENERAL TRADING COMPANY ("Jabal") that alleged three violations of Export Administration Regulations ("EAR").[1] The charges related to a shipment of ferrography laboratory equipment to Iran through the United Arab Emirates ("UAE"). The charges were (1) re-exporting the equipment from the UAE to Iran without re-export authorization from BXA, (2) participating in that transaction with knowledge that a violation had occurred, and (3) making a false statement to the supplier of the equipment as to the end use and destination of the equipment.

Jabal failed to answer the charging letter in a timely manner. On June 14, 2001, this Administrative Law Judge (ALJ), at the request of BXA, issued a Recommended Decision and Order that found Jabal in violation of the charges in the charging letter and that recommended a penalty of denial of Jabal's export privileges for 10 years.

On July 19, 2001, the Under Secretary for Export Administration vacated the Recommended Decision and Order and remanded the case to the ALJ. The Under Secretary found that BXA had not established the Export Control Commodity Number (ECCN) of the goods in question and, consequently, had not established a requirement under the Export Administration Regulations to obtain authorization from BXA for the re-export. The Under Secretary further directed the ALJ to determine whether to consider as an answer a letter that Jabal had sent to the ALJ more than 30 days after service of the charging letter. Finally, the Under Secretary directed that the ALJ reconsider the penalty.

On August 14, 2001, BXA asked the ALJ's permission to amend the charging letter. (Under EAR Section 766,3(a), the charging letter may be amended with permission of the ALJ.) On September 4, 2001, the ALJ approved BSA's request to amend the charging letter. Additionally, the ALJ ordered BXA to "include [in the amended charging letter] sufficient information relating to the classification of the ferrography laboratory equipment within the Commerce Control List.

This ALJ also ordered:

Respondent may * * * amend its answer after service of the amended charging letter. Respondent shall have 20 days from the date of service of the amended charging letter to file such an amendment. A failure to timely file such an answer will be considered a waiver of the right to answer the amended charging letter.

BXA filed an amended charging letter with the ALJ on September 24, 2001 and served it on Jabal on the same date. Jabal has not responded to the amended charging letter.[2]

BXA's amended charging letter alleges four violations of the Export Administration Regulations. These violations are (1) causing the illegal exportation of goods from the United States through the UAE to Iran, (2) transferring the goods in the UAE to Iran knowing that they had been exported in violation of the Regulations, (3) evading the Regulations by representing to the U.S. supplier that the end-user was in the UAE when, in fact, the end-user was in Iran, and (4) evading the Regulations by assembling and testing that goods in the UAE so the U.S. supplier would not know their true destination.

On March 11, 2002, BXA filed a Motion for Recommended Decision together with a Declaration of David J. Poole, Senior Special Agent, of the Bureau of Export Administration, Office of Export Enforcement. The Declaration included various factual exhibits.[3] Jabal has not responded to this motion.

Facts

In November 1997, a manufacturer in Massachusetts received an order for a ferrograph analysis system from the Jabal General Trading Company in Dubai, UAE. In a fax to Jabal dated November 11, 1997, the manufacturer requested information relating to the end-use of the equipment and asked for assurances that the ferrograph system would not be shipped to a "boycotted nation." Jabal responded that the end-user was in Dubai and that an engineer from the U.S. manufacturer should install the system at its facility. See, Declaration of David J. Poole ¶ 4 (Declaration and Exhibits).

On February 27, 1998, the U.S. manufacturer exported a ferrograph analysis system valued at $438,200, to Jabal in Dubai, UAE. Approximately one month after the shipment, an engineer from the U.S. manufacturer traveled to the UAE to install and test this system for Jabal Declaration, ¶ 5.

Shortly after the engineer's arrival in the UAE, he met with a man who identified himself as Mr. Ashraf of Jabal. An individual who identified himself as A.R. Massoudi accompanied Mr. Ashraf. Mr. Massoudi gave the engineer a business card that stated that Mr. Massoudi was the chairman of the Tavankav PJS Company in Iran. When the engineer questioned this, Mr. Massoudi said that he was a consultant working with the Jabal. Mr. Massoudi and Mr. Ashraf then took the engineer to a warehouse, not the end user's location, where the equipment was stored. When the engineer asked Mr. Massoudi why the ferrograph analysis system was being tested in a warehouse as it would usually be tested after installation at the end-user's premises, Mr. Ashraf said that his customer's facility was still being built. The engineer assembled the equipment and then demonstrated to Ashraf and Massoudi how the equipment should be used. Upon completion of the assembly and testing of the equipment, the engineer returned to the United States on or about April 5, 1998 Declaration ¶ 6.

The U.S. manufacturer had no further contact with Jabal until July 6, 1998. On that day, a person identifying himself as Mr. Massoudi called and asked to speak with the engineer. The engineer was unavailable but Mr. Massoudi asked that he contact him at his office in Dubai at 971–4–278–808, or on his cellular phone, number 98–911–228–15–004. Mr Massoudi called the U.S. manufacturer again on July 7, 1998, and this time reached Mr. Kelly and spoke to him about a problem with the ferrograph system. The problem described by Mr. Massoudi appeared to be related to the elevation at which the system was being used. When the engineer asked Massoudi if the system had been moved, Massoudi said that it had, but was reluctant to provide any details. Eventually, Massoudi admitted that the system had been moved to a location near Tehran, Iran Declaration ¶ 7.

On July 7, 1998, the U.S. manufacturer received an inquiry from

[1] The Export Administration Regulations are codified at 15 CFR part 730, *et seq.*

[2] Jabal had ample notice of its need to properly answer the amended charging letter. In addition to the ALJ's order, BXA made the following statement in the brief it filed with the amended charging letter, which it served on Jabal, and which alerted Jabal to its need to properly answer.

BXA has no objection to the ALJ's decision to consider the June 19, 2001 letter from Jabal as an answer, but we note that the answer does not meet the requirements for a detailed response that are set out in the EAR. In light of the amended charges, BXA believes that Jabal must file another answer that specifically addresses each charge, lest the charges be deemed to have been admitted.

[3] While BXA's Motion is characterized as one for Recommended Decision its pleadings show it is both a motion for default under EAR Section 766.7, and a motion for Summary Decision under EAR Section 766.8.

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Jabal concerning the purchase of spare parts for the ferrograph system. Declaration ¶ 8.

Sometime later, Massoudi again contacted the U.S. manufacturer and spoke with then engineer. During this conservation, Massoudi advised that he had corrected the problem with the system and expressed an interested in being a representative for the U.S. manufacturer in Iran. Declaration ¶ 9.

The U.S. manufacturer received a fax message on July 30, 1998, from the Tavankav PJS Company in Iran advising that Tavankav had purchased the U.S. manufacturer's equipment from Jabal in Dubai, and was following up on Mr. Massoudi's offer to represent the U.S. manufacturer in Iran. On October 7, 1998, Jabal again inquired about the purchase of spare parts for the system that was now in Iran. Declaration ¶ 10.

Neither the Bureau of Export Administration, nor the U.S. Treasury's Office of Foreign Assets Control ("OFAC") authorized the shipment of the items in issue to Iran. Declaration ¶¶ 13 and 14, and Exhibit 11.

In its letter of June 19, 2001, Jabal claimed that it was only a financier based on an accompanying contract and copies of messages. Jabal also asserted that it was told the end user was in Dubai and the equipment was to be installed in Dubai. Jabal denied making any false or misleading statement.

The Law

A. Procedural

Given the nature of the procedural setting of this case, I find it appropriate to rule in the alternative. First, BXA is entitled to a finding that the facts in the amended charging letter are proven since Jabal has defaulted by not answering the Amended Charging Letter. Second, BXA is entitled to a summary decision according to EAR Section 766.8, because there are no genuine issues of material fact and thus is entitled to a judgement as a matter of law. Third, in reviewing all of the facts on the merits, BXA has established that the charges in the amended charging letter are proven.

It is clear from the Regulations that respondent's answer is critical to framing the factual issues in the case. There are no factual issues in dispute if the respondent has not presented an answer as required by this regulation. EAR Section 766.7 provides as follows:

> The answer must be responsive to the charging letter and must fully set forth the nature of the respondent's defense or defenses. The answer must admit or deny specifically each separate allegation of the charging letter; if the respondent is without knowledge, the answer must so state and will operate as a denial. *Failure to deny or controvert a particular allegation will be deemed an admission of that allegation.* The answer must also set forth any additional or new matter the respondent believes supports a defense or claim of mitigation. *Any defense or partial defense not specifically set forth in the answer shall be deemed waived.* and evidence thereon may be refused, except for good cause shown. EAR Section 766.6(b) [Emphasis supplied].

While Jabal has answered, in part, the first charging letter, its failure to answer the amended charging letter is the critical element, which constitutes the default under EAR Section 766.7(a). Respondent Jabal has not answered the amended charging letter even after it was explicitly given the opportunity to do so. Therefore, I find that Jabal has defaulted in its failure to answer the amended Charging Letter, and thus find those charges to be as alleged in the Charging Letter and thus proven in accordance with EAR Section 766.7(a).

Even if Jabal is deemed to have answered certain allegations originally included in the first Charging Letter, its answer and supporting documentation raised no disputed issues of fact that prevent a finding for BXA under the summary decision procedures in EAR Section 766.8. This is because Jabal may not rest on its answer to oppose summary decision. It must make an affirmative showing on all matters placed in issue by BXA's motion as to which it has the burden of proof at trial.[4] A simple denial is insufficient.[5] See *Celotex Corporation* v. *Catrett*, 477 US 317, 323–324 (1986).

Simply put, Jabal has made no response to the BXA motion, and its earlier answer did not supply evidence that was significantly probative to raise a genuine issue of material fact, which would cause or be enough for the ALJ, as the trier of fact, to resolve the parties' differing versions of the truth.[6] See, *Avdin Corporation* v. *Loral Corporation*, 718 F.2d 897, 902 (9th Cir. 1983).

Consequently, I find there is no genuine issue as to any material fact, and BXA is entitled to a summary decision as a matter of law. EAR Section 766.8.

[4] Jabal affirmatively asserted in its answer it was only a financer and was told the end user was in Dubai. Jabal has the burden of showing these affirmative statements of fact at trial.

[5] Jabal denied making a false statement. The Amended Charging Letter no longer asserts that violation.

[6] For summary decision purposes, Jabal's answer to the first charging letter included three documents, when carefully read support the inference that Jabal aided and abetted the false representation to the U.S. manufacturer regarding the true identity and location of the end user causing an evasion of the EAR.

B. Export Control Law

While the EAR do not create a requirement to obtain an export license from BXA to ship goods, such as those here, from the United States to Iran, it does violate the EAR to export such goods from the United States to Iran without authority from the Office of Foreign Assets Control of the United States Department of the Treasury (OFAC). Thus, the gist of the offense here was exporting goods subject to the EAR without approval from OFAC.

The ferrography laboratory equipment that Jabal caused to be exported to Iran was of "U.S. origin" and was classified as EAR99.[7] The equipment was "subject to the Export Administration Regulations" as it was of U.S. origin. *See* EAR Section 734.3(a)(2). As described below, the export of this equipment to Iran violated provisions of the EAR precluding shipments to Iran of any item "subject to the EAR" without authorization from OFAC.

The licensing policy with respect to Iran is contained in EAR Section 746.7, which reads in pertinent part:

> The Treasury Department's Office of Foreign Assets Control (OFAC) administers a comprehensive trade and investment embargo against Iran under the authority of the International Emergency Economic Powers Act of 1977, as amended, section 505 of the International Security and Development Cooperation Act of 1985, and Executive Orders 12957 and 12959 of March 15, 1995 and May 6, 1995, respectively. This embargo includes prohibitions on export and certain re-export transactions involving Iran, including transactions dealing with items subject to the EAR. (See OFAC's Iranian Transactions Regulations, 31 CFR part 560.) BXA continues to maintain licensing requirements on exports and re-exports to Iran under the EAR as described in paragraph (a)(2) of this section. *No person may export or re-export items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.* Exports and re-exports subject to the EAR that are not subject to the Iranian Transactions Regulations may require authorization from BXA. [Emphasis supplied.][8]

The italicized portion of this provision, then, establishes a violation that has the following elements:

[7] *See* EAR Section 734.3(c). Items not on the Commerce Control List (CCL) but which are "subject to the EAR" are designated "EAR 99."

[8] This provision was added in 1996. The **Federal Register** notice that made the change said in part: "This rule makes clear that enforcement action may be taken under the EAR with respect to an export or re-export prohibited both by the EAR and by the Executive Order and not authorized by OFAC." 61 FR 8471 (Mar. 5, 1996). This provision allows BXA's enforcement penalties, such as denial of export privileges, to supplement those available to OFAC.

(1) An export or re-export that is subject to the EAR, regardless whether it is on the CCL or classified as EAR99;

(2) That is also subject to OFAC's Iranian Transactions Regulations; and

(3) That does not have authorization from OFAC.

The transaction in this case was export from the United States to Iran that made a temporary stop in the UAE.[9] Section 560.204 of OFAC's Iran Transactions Regulations provided at the times relevant to this case:

> Except as otherwise authorized, and notwithstanding any contract entered into or any license or permit granted prior to May 7, 1995, the exportation from the United States to Iran or the Government of Iran, or the financing of such exportation, of any goods, technology, or services is prohibited.[10]

The facts of this case demonstrate that the export alleged in the amended charging letter was subject to the EAR because the ferrography equipment was of U.S. origin, was subject to Iranian Transactions Regulations because it was an export to Iran, and did not have authorization from OFAC. These facts establish a violation of EAR Section 746.7 ("No person may export or re-export items subject to both the EAR and OFAC's Iranian Transactions Regulations without prior OFAC authorization.")

Discussion

The four charges in this case are clearly proven. In charge 1, Jabal caused the good to be exported to Iran by ordering them from the U.S. supplier knowing that they were bound for Iran. Pursuant to EAR Section 734.2(b)(6), Jabal's intent that the goods ultimately go to Iran makes that an export to Iran under the EAR. There was no authorization for this export to Iran from OFAC. Consequently, the elements of this offense are proven.

Charge 2 alleges that Jabal, with knowledge of the illegal exportation of the goods as set out in charge 1, transferred them to Iran. EAR Section § 764.2(e) prohibits Jabal from taking this action with such knowledge. It is clear that Jabal knew that its customer was in Iran since the customer's representative, Mr. Massaoudi, was so closely connected to Jabal. Jabal's action of transferring the goods to Iran clearly proves charge 2.

[9] Pursuant to EAR Section 734.2(b)(6), an export that transits or transships one country for a new country or is intended for a new country is deemed to be an export to the new country.

[10] See also 15 CFR 742.8(a)(2) [export from the United States to any destination with knowledge that the items will be re-exported directly or indirectly in whole or in part to Iran is prohibited without a license from the Department of Treasury].

Under charge 3, Jabal lied to the U.S. supplier because if the U.S. supplier knew the true facts, it would be required to obtain an export license, notify the authorities, or absent a license terminate the deal. Any of these actions would have circumvented Jabal's attempt to supply its Iranian customer. So Jabal's lie was intended to evade the provisions of the EAR and establishes that charge 3 was proven.

Charge 4 was another important step in Jabal's circumvention of U.S. export controls. Jabal had to gain the expertise to use the equipment but could not gain that expertise in Iran for feat that the U.S. supplier would alert the authorities. Consequently, Jabal arranged the assembly and testing of the goods at a warehouse in order to gain the necessary information on use of the equipment without detection of the true nature of the transaction. Again, Jabal evaded U.S. export controls.

The Penalty

In the Under Secretary's order of remand, he directed the ALJ to reconsider the recommended penalty in light of any new findings of fact or conclusions of law.

The Bureau of Export Administration has requested that all of Jabal's export privileges be denied for at least 10 years. A 10-year denial period is the appropriate sanction for several reasons. Under Section 764.3 of the Regulations, the only realistic sanctions available to BXA for the violations charged in this proceeding are a civil monetary penalty and a denial of export privileges. Jabal is located overseas, has not responded to the allegations set forth in the amended charging letter, or this motion, and has not demonstrated any interest in resolving this matter, either through the hearing process or through settlement. It is unlikely that Jabal would pay a civil monetary penalty willingly and BXA's ability to collect such a judgment is doubtful, rendering any judgment involving a civil monetary penalty meaningless.

Moreover, Jabal's violations are willful, blatant, and the result of an unlawful scheme. Finally, Jabal sent the ferrograph equipment to Iran, an embargoed country. Under all of these circumstances, I recommend a penalty of a 10-year denial of export privileges.

Conclusion

For these reasons, I recommend that you issue a *Decision* and *Order* as follows:

Dated: April 1, 2002.

Edwin M. Bladen,

Administrative Law Judge.

[FR Doc. 02–11581 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF COMMERCE

International Trade Administration

[A–428–832, A–560–815, A–841–805]

Postponement of Final Antidumping Duty Determinations; Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Postponement of Final Antidumping Duty Determinations of Carbon and Certain Alloy Steel Wire Rod from Germany, Indonesia and Moldova.

SUMMARY: The Department of Commerce (the Department) is postponing the final determinations in the antidumping duty investigations of carbon and certain alloy steel wire rod from Germany, Indonesia and Moldova.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Robert James at 202–482–0649 (Germany), Michael Ferrier at 202–482–1394 (Indonesia) or Scott Lindsay at 202–482–0780 (Moldova), Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW, Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Tariff Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Tariff Act by the Uruguay Round Agreements Act (URAA). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 CFR part 351 (April 2001).

Postponement of Final Determinations and Extension of Provisional Measures

On April 10, 2002, the Department published the affirmative preliminary determinations for the investigation of carbon and certain alloy steel wire rod (steel wire rod) from Germany and Moldova, and a negative preliminary determination in the investigation of steel wire rod from Indonesia. *See*

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Notice of Preliminary Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Germany, 67 FR 17384, *Notice of Preliminary Determination of Sales at Not Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod from Indonesia*, 67 FR 17374, and *Carbon and Certain Alloy Steel Wire Rod from Moldova: Notice of Preliminary Determination of Sales at Less Than Fair Value* 67 FR 17401 (April 10, 2002).

Pursuant to section 735(a)(2) of the Tariff Act and section 351.210(b)(2)(ii) of the Department's regulations, on April 4, 2002, the respondent in the German case, Saarstahl AG (Saarstahl) requested the Department postpone the final determination in accordance with section 735(a)(2)(A) of the Tariff Act. Saarstahl also requested that the Department extend to six months any provisional measures imposed pursuant to section 733(d) of the Tariff Act. Similarly, on April 27, 2002, Moldova Steel Works requested the Department postpone the final determination in the Moldova case, agreeing to an extension of the provisional measures.

On April 11, 2002, pursuant to section 735(a)(2)(B) of the Tariff Act and section 351.210(b)(2)(i) of the Department's regulations, petitioners requested the Department postpone the final determination in the investigation of steel wire rod from Indonesia.[1]

Section 735(a)(2) of the Tariff Act provides that a final determination may be postponed until not later than 135 days after the date of the publication of the preliminary determination if, in the event of an affirmative determination, a request for a postponement is made by exporters who account for a significant proportion of exports of the subject merchandise, or in the event of a negative preliminary determination, a request for such postponement is made by petitioner. The Department's regulations, at 19 CFR 351.210(e)(2), require that requests by respondents for postponement of a final determination be accompanied by a request for extension of provisional measures from a four-month period to not more than six months.

In accordance with 19 CFR 351.210(b)(2)(ii), because (1) our preliminary determinations were affirmative with respect to Germany and Moldova, (2) the respondent requesting a postponement accounts for a significant proportion of exports of the subject merchandise from these countries, and (3) no compelling reasons for denial exist, we are granting Saarstahl's and Moldova Steel Works' requests for the postponement of the final determination in the cases involving Germany and Moldova. Furthermore, in accordance with 19 CFR 351.210(b)(i), because (1) our preliminary determination was negative with respect to Indonesia, (2) the petitioner requested a postponement and (3) no compelling reasons for denial exist, we are granting petitioners' request for a postponement in the Indonesian case.

We are postponing the final determinations in all three cases to no later than August 23, 2002, which is 135 days after the publication of the preliminary determination in the **Federal Register**. Where applicable, suspension of liquidation will be extended accordingly.

This notice of postponement is published pursuant to 19 CFR 351.210(g).

Dated: May 3, 2002.

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11923 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] The margin in the Indonesian case was de minimis.

DEPARTMENT OF COMMERCE

International Trade Administration

[A–560–802]

Certain Preserved Mushrooms from Indonesia: Final Results of Antidumping Duty Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of Final Results of Antidumping Duty Administrative Review.

SUMMARY: On March 7, 2002, the Department of Commerce published the preliminary results of the administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia. The review covers three manufacturers/exporters of the subject merchandise to the United States: PT Dieng Djaya and PT Surya Jaya Abadi Perkasa,[1] PT Indo Evergreen Agro Business Corp., and PT Zeta Agro Corporation. The period of review is February 1, 2000, through January 31, 2001.

No interested party submitted comments on the preliminary results. We have made no changes to the margin calculation. Therefore, the final results do not differ from the preliminary results. The final weighted-average dumping margin for the three manufacturer/exporters are listed below in the "Final Results of Review" section of this notice.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Sophie Castro, AD/CVD Enforcement Group I, Office 2, Import Administration-Room B099, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4007, or 482–0588, respectively.

SUPPLEMENTARY INFORMATION:

The Applicable Statute

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended (the Act), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act. In addition, unless otherwise indicated, all citations to the Department of Commerce's (the Department's) regulations are to 19 CFR Part 351 (April 2000).

Background

The review covers three manufacturers/exporters of the subject merchandise to the United States: PT Dieng Djaya and PT Surya Jaya Abadi Perkasa (Dieng/Surya), PT Indo Evergreen Agro Business Corp. (Indo Evergreen), and PT Zeta Agro Corporation (Zeta).

On March 7, 2002, the Department of Commerce published in the **Federal Register** the preliminary results of administrative review of the antidumping duty order on certain preserved mushrooms from Indonesia (67 FR 10366) (*Preliminary Results*).

We invited parties to comment on the preliminary results of the review. No interested party submitted comments. The Department has conducted this administrative review in accordance with section 751 of the Act.

Scope of the Order

The products covered by this order are certain preserved mushrooms, whether imported whole, sliced, diced, or as stems and pieces. The preserved mushrooms covered under this order are the species *Agaricus bisporus and Agaricus bitorquis*. "Preserved mushrooms" refer to mushrooms that have been prepared or preserved by cleaning, blanching, and sometimes slicing or cutting. These mushrooms are then packed and heated in containers including but not limited to cans or glass jars in a suitable liquid medium, including but not limited to water, brine, butter or butter sauce. Preserved mushrooms may be imported whole, sliced, diced, or as stems and pieces. Included within the scope of this order are "brined" mushrooms, which are presalted and packed in a heavy salt solution to provisionally preserve them for further processing.

Excluded from the scope of this order are the following: (1) All other species of mushroom, including straw mushrooms; (2) all fresh and chilled mushrooms, including "refrigerated" or "quick blanched mushrooms"; (3) dried mushrooms; (4) frozen mushrooms; and (5) "marinated," "acidified" or "pickled" mushrooms, which are prepared or preserved by means of vinegar or acetic acid, but may contain oil or other additives.

The merchandise subject to this order is currently classifiable under subheadings 2003.10.0027, 2003.10.0031, 2003.10.0037, 2003.10.0043, 2003.10.0047, 2003.10.0053, and 0711.90.4000 of the *Harmonized Tariff Schedule of the United States*[2](HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

Final Results of the Review

Our final results remain unchanged from the preliminary results. The following weighted-average margin percentages apply for the period February 1, 2000, though January 31, 2001:

Manufacturer/exporter	Margin (percent)
PT Dieng Djaya and PT Surya Jaya Abadi Perkasa	0.59
PT Indo Evergreen Agro Business Corp.	0.09 (de minimis)
PT Zeta Agro Corporation	0.27 (de minimis)

Assessment Rates

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appropriate appraisement instructions directly to the Customs Service upon completion of this review. In accordance with 19 CFR 351.106(c)(1), we will instruct the Customs Service to assess antidumping duties on all appropriate entries covered by this review if any importer-specific assessment rate calculated in the final results of this review is above de minimis (i.e., less than 0.50 percent). For assessment purposes, we intend to calculate importer-specific assessment rates for the subject merchandise by aggregating the dumping margins calculated for all U.S. sales examined and dividing this amount by the total entered value of the sales examined. In order to estimate the entered value, we will subtract applicable movement expenses from the gross sales value.

Cash Deposit Requirements.

The following cash deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) the cash deposit rates for the reviewed companies will be those established above in the "Final Results of Review" section, except if the rate is less than 0.50 percent, and therefore, de minimis within the meaning of 19 CFR 351.106(c)(1), in which case the cash deposit rate will be zero; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or the original less than fair value investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 11.26 percent, the "All Others" rate made effective by the LTFV investigation. These requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as the only reminder to parties subject to the administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Timely written notification of return/destruction of APO material or conversion to judicial protective order is hereby requested. Failure to comply with the regulation and the terms of an APO is a sanctionable violation.

This administrative review and notice are published in accordance with sections 751(a)(1) of the Act and 19 CFR 351.221.

Dated: May 3, 2002

Faryar Shirzad,

Assistant Secretary for Import Administration.

[FR Doc. 02–11922 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–DS–S

[1] In accordance with 19 CFR 351.401(f), PT Dieng Djaya and PT Surya Jaya Abadi Perkasa were determined to be affiliated companies in the original less-than-fair-value investigation.

[2] As of January 1, 2002, the HTS codes are as follows: 2003.10.0127, 2003.10.0131, 2003.10.0137, 2003.10.0143, 2003.10.0147, 2003.10.0153, 0711.51.0000

DEPARTMENT OF COMMERCE

International Trade Administration

[A–475–824]

Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of extension of time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

SUMMARY: The Department of Commerce ("the Department") is extending the time limit of the preliminary results of the antidumping duty administrative review of stainless steel sheet and strip in coils from Italy.

EFFECTIVE DATE: May 13, 2002.

FOR FURTHER INFORMATION CONTACT: Juanita H. Chen at 202–482–0409, Import Administration, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue, N.W., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Applicable Statute and Regulations

Unless otherwise indicated, all citations to the Tariff Act of 1930, as amended ("Act"), are references to the provisions effective January 1, 1995, the effective date of the amendments made to the Act by the Uruguay Round Agreements Act ("URAA"). In addition, unless otherwise indicated, all citations to the Department's regulations are to the regulations codified at 19 C.F.R. Part 351 (2001).

Background

On July 2, 2001, the Department published a notice of opportunity to request an administrative review of the antidumping duty order on stainless steel sheet and strip in coils from Italy. *See Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity to Request Administrative Review*, 66 FR 34910

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(July 2, 2001). On July 31, 2001, ThyssenKrupp Acciai Speciali Terni S.p.A.[1] ("TKAST"), an Italian producer of subject merchandise, its affiliate, ThyssenKrupp AST USA[2] ("TKAST USA"), a U.S. importer of subject merchandise, and the petitioners from the original investigation requested the Department conduct an administrative review. On August 20, 2001, the Department published a notice of initiation of an administrative review of the antidumping duty order on subject merchandise, for the period July 1, 2000 through June 30, 2001. *See Initiation of Antidumping and Countervailing Duty Administrative Reviews and Requests for Revocation in Part*, 66 FR 43570 (August 20, 2001). On February 26, 2002, the Department extended the time limit for the preliminary results of this administrative review. *See Notice of Extension of Time Limit of the Preliminary Results of Antidumping Duty Administrative Review: Stainless Steel Sheet and Strip in Coils from Italy*, 67 FR 9960 (March 5, 2002). The preliminary results of this administrative review are currently due no later than July 1, 2002.

Extension of Time Limit for Preliminary Results

Pursuant to section 751(a)(3)(A) of the Act, and section 351.213(h)(2) of the Department's regulations, the Department may extend the deadline for completion of the preliminary results of a review if it determines that it is not practicable to complete the preliminary results within the statutory time limit of 245 days from the date on which the review was initiated. Due to the complexity of issues present in this administrative review, such as home market affiliated downstream sales, constructed export price versus export price, selling expenses, and complicated cost accounting issues, the Department has determined that it is not practicable to complete this review within the original time period provided in section 751(a)(3)(A) of the Act and section 351.213(h)(2) of the Department's regulations. Therefore, we are extending the due date for the preliminary results, until no later than July 26, 2002. The final results continue to be due 120 days after the publication of the preliminary results.

[1] Formerly "Acciai Speciali Terni S.p.A.".

[2] Formerly "Acciai Speciali Terni USA, Inc.".

Dated: May 3, 2002.

Joseph A. Spetrini,

Deputy Assistant Secretary for Import Administration, Group III.

[FR Doc. 02–11921 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–DS–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 020418090–2090–01; I.D. 041202B]

RIN 0648–ZB19

Financial Assistance for Research and Development Projects to Assess the Potential Suitability of Non-native Oysters in Chesapeake Bay

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: NMFS publishes this notice to solicit proposals for research and development projects that will address the potential suitability of *Crassostrea ariakensis* or other oysters for aquaculture in Chesapeake Bay. Through this notice, NMFS sets forth instructions on how to apply for financial assistance, and how NMFS will determine which applications will be selected for funding. A total of up to $100,000 in Fiscal Year (FY) 2002 funds is available through the NOAA/NMFS Chesapeake Bay Office for cooperative agreements.

DATES: Applications for funding under this program must be received by 5 p.m. eastern daylight savings time on June 12, 2002. Applications received after that time will not be considered for funding. Applications will not be accepted electronically nor by facsimile machine submission.

ADDRESSES: You can obtain an application package from, and send completed applications to: Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410 Severn Avenue, Suite 107A, Annapolis, MD 21403. You can also obtain the application package from the NOAA Chesapeake Bay Office webpage. *http://noaa.chesapeakebay.net/*

FOR FURTHER INFORMATION CONTACT: Mr. Lowell Bahner or Mr. Derek Orner, National Marine Fisheries Service, NOAA Chesapeake Bay Office, 410/267–5660; or e-mail: *lowell.bahner@noaa.gov*.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. *Authority.* The Fish and Wildlife Act of 1956, as amended, at 16 U.S.C. 753a, authorizes the Secretary of Commerce (Secretary), for the purpose of developing adequate, coordinated, cooperative research and training programs for fish and wildlife resources, to continue to enter into cooperative agreements with colleges and universities, with game and fish departments of the several states, and with non-profit organizations relating to cooperative research units. The Secretary of Commerce is authorized under the Fish and Wildlife Coordination Act, 16 U.S.C. 661–666c, to provide assistance to, and cooperate with, Federal, State, and public or private agencies and organizations in the development, protection, rearing, and stocking of fisheries resources thereof, and for fisheries habitat restoration. The Departments of Commerce (DOC), Justice, State, the Judiciary, and Related Agencies Appropriations Act of 2002 (Pub. L. 107–77, 115 Stat.748) makes funds available to the Secretary.

B. *Catalog of Federal Assistance (CFDA).* The activities requested are listed in the "Catalog of Federal Domestic Assistance" under number 11.457, entitled Chesapeake Bay Studies.

C. *Research Initiative Description.* The Eastern oyster, *Crassostrea virginica*, has been a major fishery in Chesapeake Bay for nearly three centuries. In the late 1950's, MSX spread into the lower Chesapeake Bay devastating native populations of the eastern oyster. By the 1970's, MSX had wiped out vast tracts of oysters in Virginia. In the 1980's, Dermo joined MSX in decimating the native oyster population. Together, both diseases have frustrated restoration and aquaculture efforts and have brought the oyster fishery to near demise.

Several workshops were convened in the Chesapeake Bay region to explore options for countering the effects of these diseases. These workshops focused on specific topics such as research needs to combat MSX and Dermo (see the National Oyster Disease Research Program), socio-economic issues related to the oyster industry and the ecological and genetic implications of introducing non-native oyster species. Initial experimentation was conducted on *C. gigas* but has recently moved toward investigations of another Asian species, *C. ariakensis*. This research initiative seeks to garner information to make scientifically-based resource management decisions.

D. *Funding Availability.* This document describes how interested persons can apply for funding under this initiative and how funding decisions will be made.

This solicitation announces that funding of up to $100,000 may be available through the NOAA Chesapeake Bay Office. This announcement does not guarantee that sufficient funds will be available to make awards for all selected applications submitted under this program.

II. Research Priorities

Proposals should exhibit familiarity with related work that is completed or ongoing. Where appropriate, proposals should be multi-disciplinary. Coordinated efforts involving multiple eligible applicants or persons are encouraged. Proposals must address one of the priorities listed here. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals.

(A) Consideration for funding will be given to applications that address the following priorities for C. ariakensis and/or other potentially suitable oysters for aquaculture in Chesapeake Bay. Due to the risks of accidental release of non-native organisms into Chesapeake Bay, in-water testing may need to be conducted outside Chesapeake Bay and in waters native to the organism being evaluated, or in closed systems with adequate safety controls. Proposals should clearly explain the safe guards that would be used. Proposals should also explain any needs for obtaining or conducting an Environmental Assessment (EA) or Environmental Impact Statement (EIS) to comply with National Environmental Policy Act or National Invasive Species Act or other relevant Federal or state requirements, since these would have a direct impact on whether or not the work could be conducted. Proposals may include:

(1) Assessment of the biological and physiological requirements of the oyster with regard to its potential as a fishery and for creating habitat suitable to Chesapeake Bay. Proposals may include life history characteristics, stock recruitment characteristics, environmental requirements, growth rates, reproductive rates and capacity, geographic range, capacity for reef building, reef structure, value as habitat, screening of potential pathogens, disease susceptibility, causes of mortality, predators and predation, filtering capacity, and other environmental considerations relevant to the growth and survival of a viable culture or stock.

(2) Comparison of oysters that can reproduce with those that can not (sterile). Proposals may include comparisons of growth rates, value as habitat, disease susceptibility, causes of mortality, predators and predation, filtering capacity, and other factors relevant to the comparison.

(3) Evaluation of benefits and risks associated with culturing or releasing non-native oysters in Chesapeake Bay. Proposals may include the economic benefits and risks to the commercial and recreational sectors, role of watermen in aquaculture or restoration, potential for spreading disease, potential for becoming invasive, potential for competition with native species, potential for cross-breeding or genetic mixing, potential for fouling boats, engines, pilings, marinas, pumps, wires, and pipes, comparison of non-reproductive organisms with reproductively capable organisms for aquaculture or wide-scale restoration, capacity as habitat or fishery, potential reversion from non-reproductive (sterile) to reproductive (non-sterile) state, and the potential to spread naturally to adjacent waters, including the Atlantic Ocean, Coastal Bays, Gulf Coast and East and Gulf Coast bays and estuaries.

III. How to Apply

A. *Eligible Applicants.* Eligible applicants are institutions of higher education, hospitals, other nonprofits, commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, international organizations, state, local and Indian tribal governments. Federal agencies or institutions are not eligible to receive Federal assistance under this notice.

The Department of Commerce National Oceanic and Atmospheric Administration (DOC/NOAA) is strongly committed to broadening the participation of Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities in its educational and research programs. The DOC/NOAA vision, mission, and goals are to achieve full participation by Minority Serving Institutions (MSI) in order to advance the development of human potential, to strengthen the nation's capacity to provide high-quality education, and to increase opportunities for MSIs to participate in and benefit from Federal Financial Assistance programs. DOC/NOAA encourages all applicants to include meaningful participation of MSIs.

B. *Duration and Terms of Funding.* Under this solicitation, NMFS will fund 12 month cooperative agreements. The cooperative agreement has been determined to be the appropriate funding instrument because of the substantial involvement of NMFS in:

1. Developing program research priorities;
2. Evaluating the performance of the program for effectiveness in meeting regional goals for Chesapeake Bay management entities;
3. Monitoring the progress of each funded project;
4. Holding periodic workshops with investigators; and
5. Working with recipients to prepare annual reports summarizing current research efforts with the NOAA Chesapeake Bay Office.

Project dates should be scheduled to begin no later than 1 October 2002. Cooperative agreements are approved on an annual basis but may be considered eligible for continuation beyond the first project and budget period subject to the approved scope of work, satisfactory progress, and availability of funds at the total discretion of NMFS. However, there are no assurances for such continuation. Publication of this document does not obligate NMFS to award any specific cooperative agreement or to obligate any part of the entire amount of funds available.

C. *Cost-sharing Requirements.* Applications must reflect the total budget necessary to accomplish the project, including contributions and/or donations. Cost-sharing is not required but is encouraged.

D. *Format.* 1. Applications for project funding must be complete and must follow the format described in this document.

Applicants must identify the specific research priority or priorities to which they are responding. If the proposal addresses more than one priority, it should list first on the application the priority that most closely reflects the objective of the proposals. For applications containing more than one project, each project component must be identified individually using the format specified in this section. If an application is not in response to a priority, it should so state. Applicants should not assume prior knowledge on the part of NMFS as to the relative merits of the project described in the application.

Applications must not be bound and must be one-sided. All incomplete applications will be returned to the applicant. Applicants are required to submit 1 signed original and 2 copies of the proposal.

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2. Applications must be submitted in the following format:

(a) *Cover sheet:* An applicant must use OMB Standard Form 424 (revised July 1997) as the cover sheet for each project. Applicants may obtain copies of these forms from the NOAA-Grants Management Division, the NOAA Chesapeake Bay Office (see **ADDRESSES**) from the NOAA Grants website, *http://www.rdc.noaa.gov/grants/*.

(b) *Project summary:* It is recommended that each proposal contain a summary of not more than one page that provides the following:

(1) Project title.

(2) Project status (new vs. continuation).

(3) Project duration (beginning and ending dates).

(4) Name, address, and telephone number of applicant.

(5) Principal Investigator(s) (PI).

(6) Project objectives.

(7) Summary of work to be performed.

(8) Total Federal funds requested.

(9) Cost-sharing to be provided from non-Federal sources, if any. Specify whether contributions are project-related cash or in-kind.

(10) Total project cost.

(c) *Project description* (including results from prior support): Each project must be completely and accurately described. The main body of the proposal should be a clear statement of the work to be undertaken and should include: specific objectives and performance measures for the period of the proposed work and the expected significance; relation to longer-term goals of the PI's project; and relation to other work planned, anticipated, or underway under Federal Assistance. The project description must not exceed 15 pages in length. Visual materials, including charts, graphs, maps, photographs and other pictorial presentations are not included in the 15-page limitation. If an application is awarded, NMFS will make all portions of the project description available to the public for review; therefore, NMFS cannot guarantee the confidentiality of any information submitted as part of any project, nor will NMFS accept for consideration any project requesting confidentiality of any part of the project.

Each project must be described as follows:

(1) *Identification of problem(s):* Describe the specific problem to be addressed (see section II above).

(2) *Project objectives:* The project description must identify the following three project objectives: a. Identify the specific priority listed earlier in the solicitation to which the proposed projects respond, if any. b. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. c. State what you expect the project to accomplish.

If you are applying to continue a project previously funded under the Chesapeake Bay Fisheries Research Program, describe in detail your progress to date and explain why you need additional funding.

Objectives should be:

(a) Simple and easily understandable.

(b) As specific and quantitative as possible.

(c) Clear with respect to the "what and when" and should avoid the "how and why."

(d) Attainable within the time, money, and human resources available.

(e) Use action verbs that are accomplishment oriented.

(f) Identify specific performance measures.

(3) *Results from Prior Chesapeake Bay Fisheries Research Support:* If any Principal Investigator (PI) or co-PI identified on the project has received NOAA Chesapeake Bay Office support in the past 5 years, information on the prior award(s) is required. The following information must be provided:

(a) The NOAA award number, amount and period of support;

(b) The title of the project;

(c) Summary of the results of the completed work, including, for a research project, any contribution to the development of human resources in science/biology;

(d) Publications resulting from the award;

(e) Brief description of available data, samples, physical collections and other related research products not described elsewhere; and

(4) *Need for Government financial assistance:* Demonstrate the need for assistance. Any appropriate database to substantiate or reinforce the need for the project should be included. Explain why other funding sources cannot fund all the proposed work. List all other sources of funding that are or have been sought for the project.

(5) *Benefits or results expected:* Identify and document the results or benefits to be derived from the proposed activities.

(6) *Project statement of work:* The Statement of Work is the scientific or technical action plan of activities that are to be accomplished during each budget period of the project. This description must include the specific methodologies, by project job activity, proposed for accomplishing the proposal's objective(s).

Investigators submitting proposals in response to this announcement are strongly encouraged to develop inter-institutional, inter-disciplinary research teams in the form of single, integrated proposals or as individual proposals that are clearly linked together. Such collaborative efforts will be factored into the final funding decision.

Each Statement of Work must include the following information:

(a) The applicant's name.

(b) The inclusive dates of the budget period covered under the Statement of Work.

(c) The title of the proposal.

(d) The scientific or technical objectives and procedures that are to be accomplished during the budget period. A detailed set of objectives and procedures to answer who, what, how, when, and where. The procedures must be of sufficient detail to enable competent workers to be able to follow them and to complete scheduled activities.

(e) Location of the work.

(f) A list of all project personnel and their responsibilities.

(g) A milestone table that summarizes the procedures (from item III.D.2.c(5)(d)) that are to be attained in each project month covered by the Statement of Work. Table format should follow sequential month rather than calendar month (i.e. Project period Month 1, Month 2... versus October, November ...)

(7) *Federal, state and local government activities:* List any programs (Federal, state, or local government or activities, including Sea Grant, state Coastal Zone Management Programs, NOAA Oyster Disease Research Program, the state/Federal Chesapeake Bay Program, etc.) this project would affect and describe the relationship between the project and those plans or activities.

(8) *Project management:* Describe how the project will be organized and managed. Include resumes of principal investigators. List all persons directly employed by the applicant who will be involved with the project. If a consultant and/or subcontractor is selected prior to application submission, include the name and qualifications of the consultant and/or subcontractor and the process used for selection.

(9) *Monitoring of project performance:* Identify who will participate in monitoring the project.

(10) *Project impacts:* Describe how these products or services will be made available to the fisheries and management communities.

(11) *Evaluation of project:* The applicant is required to provide an evaluation of project accomplishments and progress towards the project objectives and performance measures at the end of each budget period and in the final report. The application must describe the methodology or procedures to be followed to determine technical feasibility, or to quantify the results of the project in promoting increased production, product quality and safety, management effectiveness, or other measurable factors.

(12) *Total project costs:* Total project costs is the amount of funds required to accomplish what is proposed in the Statement of Work, and includes contributions and donations. All costs must be shown in a detailed budget. A standard budget form (SF-424A) is available from the offices listed and on the internet (see **ADDRESSES**). NMFS will not consider fees or profits as allowable costs for grantees. Additional cost detail may be required prior to a final analysis of overall cost allowability, allocability, and reasonableness. The date, period covered, and findings for the most recent financial audit performed, as well as the name of the audit firm, the contact person, and phone number and address, must be also provided.

(d) *Supporting documentation:* Provide any required documents and any additional information necessary or useful to the description of the project. The amount of information given in this section will depend on the type of project proposed, but should be no more than 20 pages. The applicant should present any information that would emphasize the value of the project in terms of the significance of the problems addressed. Without such information, the merits of the project may not be fully understood, or the value of the project may be underestimated. The absence of adequate supporting documentation may cause reviewers to question assertions made in describing the project and may result in lower ranking of the project. Information presented in this section should be clearly referenced in the project description.

IV. Review Process and Criteria

A. *Initial Evaluation of Applications.* Applications will be reviewed by NOAA to assure that they meet all requirements of this announcement. Proposals that do not support the research priorities as defined in section II. above will not be considered for funding.

B. *Consultation with Experts in the Field of Fisheries Research and Invasive Species.* For applications meeting the requirements of this solicitation, NMFS will conduct an individual technical evaluation (via mail/electronic mail) of each project. This review normally will involve experts from both NOAA and non-NOAA organizations. All comments submitted to NMFS will be taken into consideration in the technical evaluation of projects. Reviewers will be asked to score and comment based on the following four criteria (total of 50 possible points):

1. Problem description and conceptual approach for resolution, especially the applicant's comprehension of the problem(s), familiarity with related work that is completed or ongoing, and the overall concept proposed to resolve the problem(s) (15 points).

2. Soundness of project design/technical approach, especially whether the applicant provided sufficient information to technically evaluate the project and, if so, the strengths and weaknesses of the technical design proposed for problem resolution (20 points).

3. Project management and experience and qualifications of personnel, including organization and management of the project, and the personnel experience and qualifications (5 points).

4. Justification and allocation of the budget in terms of the work to be performed (10 points).

C. *Review Panel.* NMFS will convene a review panel consisting of at least three regional experts (both NOAA and non-NOAA panelists) in the scientific and management aspects of fisheries and invasive species research.

Each individual panel member will:

1. Provide independent review based on the same criteria and scoring as the technical review.

2. Provide a numerical ranking of all submitted proposals and suggestions for modifications (i.e., budget, personnel, technical approach, etc.).

The review panel will collectively:

1. Discuss all review comments as a panel incorporating the evaluation provided by the technical reviewers.

D. *Funding Decision.* After applications have been evaluated and ranked numerically by the review panel, the Director of the NOAA/NMFS Chesapeake Bay Office, in consultation with NOAA Chesapeake Bay Office staff and the Assistant Administrator (AA) for Fisheries, NOAA, will determine the projects to be recommended for funding based upon the technical evaluations and panel review comments, and determine the amount of funds available for the program. Numeric ranking will be the primary consideration for deciding which of the proposals will be selected for funding. In making the final selections, NOAA/NMFS may consider costs, geographical distribution, inter-jurisdictional and inter-institutional collaboration and duplication with other federally funded projects. Accordingly, numerical ranking is not the sole factor in deciding which proposals will be selected for funding. The Director of the NOAA/NMFS Chesapeake Bay Office will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments. The exact amount of funds awarded to each project will be determined in preaward negotiations between the applicant, the Grants Office, and the NOAA/NMFS Chesapeake Bay Office staff. Potential grantees should not initiate projects in expectation of Federal funding until an award document signed by an authorized NOAA official has been received.

E. Applications not selected for funding will be held in the Program Office for a period of at least 12 months.

V. Administrative Requirements

A. *Obligations of the Applicant*

Periodic Workshops—Investigators will be expected to prepare for and attend one or two workshops with other Fisheries Research Program researchers to encourage interdisciplinary dialogue and collaboration.

B. *Other Requirements*

1. *Indirect Cost Rates*—The budget may include an amount for indirect costs if the applicant has an established indirect cost rate with the Federal government. Regardless of any approved indirect cost rate applicable to the award, the maximum dollar amount of allocable indirect costs for which the Department of Commerce will reimburse the recipient shall be the lesser of the line item amount for the Federal share of indirect costs contained in the approved budget of the award, or the Federal share of the total allocable indirect costs of the award based on the indirect cost rate approved by an oversight or cognizant Federal agency and current at the time the cost was incurred, provided the rate is approved on or before the award end date. However, the Federal share of the indirect costs may not exceed 25 percent of the total proposed direct costs for this Program. Applicants with indirect costs above 25 percent may use the amount above the 25 percent level as cost sharing. If the applicant does not have a current negotiated rate and plans to seek reimbursement for indirect costs, documentation necessary to establish a rate must be submitted within 90 days of receiving an award.

2. The Department of Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements contained in the **Federal Register** notice

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of October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that the Department of Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the Office of Management and Budget, in light of a court opinion which found that the Executive Order was not legally authorized. See *Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C 2001). This decision is currently on appeal. When the case has been finally resolved, the Department will provide further information on implementation of Executive Order 13202.

3. *Financial Management Certifications/preaward Accounting Survey*—Successful applicants, at the discretion of the NOAA Grants Officer, may be required to have their financial management systems certified by an independent public accountant as being in compliance with Federal standards specified in the applicable Office of Management and Budget (OMB) Circulars prior to execution of the award. Any first-time applicant for Federal grant funds may be subject to a preaward accounting survey by the DOC specified in the applicable OMB Circulars/Code of Federal Regulations prior to execution of the award.

Classification

This action has been determined to be ≥not significant≥ for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

Pursuant to Section 553(a)(2) of the Administrative Procedure Act, prior notice and an opportunity for public comment are not required for this notification concerning grants, benefits, and contracts. Therefore, a regulatory flexibility analysis is not required for purposes of the Regulatory Flexibility Act 5 U.S.C. 601 *et seq.*

This document contains collection-of-information requirements subject to the Paperwork Reduction Act. The use of Standard Forms (SF) 424 and 424A have been approved by OMB under their respective control numbers 0348–0043 and 0348–0044. Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the Paperwork Reduction Act, unless that collection displays a currently valid OMB control number.

Dated: May 7, 2002.

John Oliver,

Deputy Assistant Administrator for Operations, National Marine Fisheries Service.

[FR Doc. 02–11928 Filed 5–10–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 21 & 22 May 2002.

Times(s) of Meeting: 0900–1700, 21 May 2002, 0900–1300, 22 May 2002.

Place: SAIC.

1. The Acquisition and Technology Panel, Army Science Board FY02 Summer Study on "Affordability of the Objective Force" is holding a meeting on 21–22 May 2002. The meeting will be held at SAIC, 1710 SAIC Drive, McLean, VA. The meeting will begin at 0900 hrs on the 21st and will end at approximately 1300 hrs on the 22nd. for further information, please contact Tom Conway—703–617–9438 or e-mail: *TCONWAY@hqamc.army.mil.*

Wayne Joyner,

Program Suppport Specialist, Army Science Board.

[FR Doc. 02–11812 Filed 5–10–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date(s) of Meeting: 16 & 17 May 2002.

Time(s) of Meeting: 0900–1700, 16 May 2002, 0900–1700, 17 May 2002.

Place: Lockheed Martin.

1. The Infrastructure Panel, Army Science Board FY02 Summer Study on "*Ensuring the Financial Viability of the Objective Force*" is holding a meeting on 16–17 May 2002. The meeting will be held at Lockheed Martin, 1725 Jefferson Davis Highway, Suite 900, Arlington, VA. The meeting will begin at 0900 hrs on the 16th and will end at approximately 1700 hrs on the 17th. For further information, please contact William Hansen—703–266–3970 or e-mail: *william.hansen@lmco.com.*

Wayne Joyner,

Program Support Specialist, Army Science Board.

[FR Doc. 02–11813 Filed 5–10–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.133S and 84.305S]

Office of Special Education and Rehabilitative Services (OSERS) and the Office of Educational Research and Improvement (OERI); Small Business Innovation Research (SBIR) Program—Phase I Notice Inviting Grant Applications for New Awards for Fiscal Year (FY) 2002

Note to Applicants: Beginning in FY 2002, OSERS and OERI are switching from contracts to grants to conduct the Department's SBIR Phase I competition.

Purpose of Program: The purpose of this program is to stimulate technological innovation in the private sector, strengthen the role of small business in meeting Federal research or research and development (R/R&D) needs, increase the commercial application of Department of Education (ED) supported research results, and improve the return on investment from Federally-funded research for economic and social benefits to the Nation.

For FY 2002, we encourage applicants to present activities that focus on the invitational priorities in the PRIORITIES section of this application notice.

Eligible Applicants: Each organization submitting an application must qualify as a small business concern as defined by the Small Business Administration (SBA) at the time of the award. This definition is included in the application package.

Firms with strong research capabilities in educational and assistive technologies, science, or engineering in any of the priority areas listed are encouraged to participate. Consultative or other arrangements between these firms and universities or other non-profit organizations are permitted, but the small business must serve as the grantee.

If it appears that an applicant organization does not meet the eligibility requirements, we will request an evaluation by the SBA. Under circumstances in which eligibility is unclear, we will not make an SBIR award until the SBA makes a determination.

Applications Available: May 15, 2002.

Deadline for Transmittal of Applications: July 10, 2002.

Estimated Available Funds: Up to $4,200,000 for new Phase I awards.

The estimated amount of funds available for new Phase I awards is based upon the threshold SBIR allocation for OSERS and OERI, minus prior commitments for Phase II continuation awards. The actual funds available could be less, should either office make any new Phase II awards (contracts) in FY 2002.

Estimated Average Size of Awards: Up to $75,000.

Maximum Award: We will reject any application that proposes a budget exceeding $75,000 for a single budget period of 6 months.

Estimated Number of Awards: 40.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 6 months.

Page Limits: The application narrative is where you, the applicant, address the selection criteria that reviewers use to evaluate your application. You must limit your application narrative to the equivalent of no more than 25 pages, excluding any documentation of prior multiple Phase II awards, if applicable; and attachments responding to the "Assurances, Certifications, and Disclosures" section of the application package. The following standards should be used:

- A "page" is 8.5″ x 11″, on one side only, with 1″ margins at the top, bottom, and both sides.
- Single space all text in the application narrative, including titles, headings, footnotes, quotations, references, and captions, as well as all text in charts, tables, figures, and graphs.
- Use a font that is either 12-point or larger or no smaller that 10 pitch (characters per inch). Standard black type should be used to permit photocopying.
- Draw all graphs, diagrams, tables, and charts in black ink. Do not include glossy photographs, or materials that cannot be photocopied, in the body of the application.

The application package will provide instructions for completing all components to be included in the application. Each application must include an application cover sheet (ED Standard Form 424); an abstract or summary page; a description of the technical content, staff qualifications, facilities and equipment, budget requirements (ED Form 524 or facsimile), and related application(s) or award(s); and documentation of multiple Phase II awards.

We will reject your application if—

- You apply these standards and exceed the page limit; or
- You apply other standards and exceed the equivalent of the page limit.

Applicable Statutes and Regulations

(a) *Statutes.* The Small Business Reauthorization Act of 2000, Pub. L. 106–554 (15 U.S.C. 631 and 638); Title II of the Rehabilitation Act of 1973, as amended, Pub. L. 105–220 (29 U.S.C. 760–764); The Educational Research, Development, Dissemination, and Improvement Act of 1994, Pub. L. 103–227 (20 U.S.C. 6001 *et seq.*

(b) *Regulations—General Applicability.* The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 81, 82, 85, 97, and 98.

(c) *Regulations—Limited Applicability.* For OERI, its program regulations in 34 CFR part 700 (except for subpart D-Evaluation Criteria).

Note on Peer Review Procedures: OSERS and OERI will apply their own requirements. (1) For OSERS, the requirements are contained in 29 U.S.C. 760 and 762(f); (2) For OERI, the requirements are contained in 34 CFR part 700, subparts B and C.

Priorities

For FY 2002, we have selected 10 priorities for the SBIR program. SBIR projects are encouraged to look to the future by exploring uses of technology to ensure equal access to education and promote educational excellence throughout the nation.

The application package will include a number of examples to illustrate the kinds of activities that could be funded under each priority. Specific examples are listed only as examples of advanced applications or basic research of interest to us, and they are not to be interpreted as exclusive. We intend to provide sufficient flexibility to obtain the greatest degree of creativity and innovation possible, consistent with overall SBIR and ED program objectives.

An application should be limited to one priority listed in this notice. When an application is relevant to more than one priority, the applicant should decide which priority is most relevant and submit it under that priority only. However, there is no limitation on the number of different applications that an applicant may submit under this competition, even to the same priority. A firm may submit separate applications on different priorities, or different applications on the same priority, but each application should respond to only one priority. Duplicate applications will be returned without review.

Invitational Priorities

We are particularly interested in applications that meet one of the following priorities. Under 34 CFR 75.105(c)(1) we do not give an application that meets one of these priorities a competitive or absolute preference over other applications.

CFDA Number 84.133S: The Office of Special Education and Rehabilitative Services (OSERS)

The following seven priorities relate to innovative research utilizing new technologies (including nanotechnologies and biotechnologies) to address the needs of individuals with disabilities and their families.

Priority 1—Development of Technology to Support Access and Integration of Individuals with Disabilities in the Community, Workplace, or Educational Setting.

Priority 2—Research and Development of Technology to Improve the Sensory or Motor Health of Individuals with Disabilities.

Priority 3—Research and Development of Assistive Technology to Improve the Function of Individuals with Disabilities of All Ages.

Priority 4—Research and Development of Technology to Improve School to Work Transition and Employment Outcomes for Individuals with Disabilities.

Priority 5—Research in Positive Behavioral Supports or Behavioral Health Care to Support Independent Living/Community Integration and Participation in Educational and Vocational Activities.

Priority 6—Research and Development of Technology in Support of Early Intervention for Infants, Toddlers, and Small Children.

Priority 7—Research and Development of Outcome Measurements Related to Use of Disability and Rehabilitation Technologies in Medical, Community, Home, Transportation, Educational, or Employment Settings.

CFDA Number 84.305S: The Office of Educational Research and Improvement (OERI)

The following three priorities focus on student achievement of at-risk students in pre-kindergarten to postsecondary education and adult learning.

Priority 8—Development and Adaptation of Innovative Technologies to Improve Instruction, Learning, and Achievement in Reading, Mathematics, and Sciences.

Priority 9—Development and Adaptation of Innovative Technologies

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to Support High Standards and Accountability through Testing, Assessment, and Evaluation.

Priority 10—Development and Adaptation of Innovative Technologies to Improve the Involvement of Parents and Communities in Education and to Use Resources Effectively for Student Learning and Education Reform.

Selection Criteria: Under 34 CFR 75.210, we use the following selection criteria to evaluate applications for new grants under this competition. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Quality of Project Design (45 points).

(b) Significance (25 points).

(c) Quality of Project Personnel (20 points).

(d) Adequacy of Resources (10 points).

We will make awards based upon these selection criteria and the availability of funds. In the evaluation and handling of applications, we will make every effort to protect the confidentiality of the application and any evaluations.

SUPPLEMENTARY INFORMATION:

Background

The Small Business Reauthorization Act (the "Act") of 2000 was enacted on December 21, 2000. The Act requires certain agencies, including the Department of Education, to establish SBIR programs by reserving a statutory percentage of their extramural research and development budgets to be awarded to small business concerns for research or R&D through a uniform, highly competitive three-phase process.

The three phases of the SBIR program are:

Phase I: Phase I is to determine, insofar as possible, the scientific or technical merit and feasibility of ideas submitted under the SBIR program. The application should concentrate on research that will significantly contribute to proving the scientific or technical feasibility of the approach or concept and that would be prerequisite to further ED support in Phase II.

Phase II: Phase II is to expand on the results of and to further pursue the development of Phase I projects. Phase II is the principal research or R&D effort. It requires a more comprehensive application, outlining the effort in detail including the commercial potential. Phase II applicants must be Phase I awardees with approaches that appear sufficiently promising as a result of Phase I. Awards are for periods up to 2 years in amounts up to $500,000 (beginning in FY 2003).

Phase III: In Phase III, the small business must use non-SBIR capital to pursue commercial applications of the research or research and development. Also, under Phase III, Federal agencies may award non-SBIR follow-on funding for products or processes that meet the needs of those agencies.

FOR APPLICATIONS AND FURTHER INFORMATION CONTACT: *For General Information:* Lee Eiden, U.S. Department of Education, 555 New Jersey Avenue, NW., room 508D, Washington, DC 20208–5644. Telephone (202) 219–2004 or via Internet: lee.eiden@ed.gov.

For Priorities 1–7 (OSERS): Kristi Wilson, U.S. Department of Education, 330 "C" Street, SW., room 3433, Washington, DC 20202–2572. Telephone (202) 260–0988 or via Internet: *kristi.wilson@ed.gov.*

For Priorities 8–10 (OERI): Ram Singh, U.S. Department of Education, 555 New Jersey Avenue, NW., room 514, Washington, DC 20208–5573. Telephone (202) 219–2025 or via Internet: *ram.singh@ed.gov.*

If you use a telecommunications device for the deaf (TDD), you may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

Individuals with disabilities may obtain this document in an alternative format (e.g., Braille, large print, audiotape, or computer diskette) on request to either of the program contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.**

Individuals with disabilities may obtain a copy of the application package in an alternative format by contacting one of the contact persons listed under **FOR APPLICATIONS AND FURTHER INFORMATION CONTACT.** However, the Department is not able to reproduce in an alternative format the standard forms included in the application package.

Electronic Access to This Document

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To use PDF you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO), toll free, at 1–888–293–6498; or in the Washington, DC area at (202) 512–1530.

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Program Authority: Pub. L. 106–554 (The Small Business Reauthorization Act of 2000); Pub. L. 105–220 (Title II of the Rehabilitation Act of 1973, as amended); and Pub. L. 103–227 (The Educational Research, Development, Dissemination, and Improvement Act of 1994).

Dated: May 8, 2002.

Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

Grover J. Whitehurst,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 02–11924 Filed 5–10–02; 8:45 am]

BILLING CODE 4000–01–U

DEPARTMENT OF EDUCATION

Federal Interagency Coordinating Council Meeting

AGENCY: Department of Education.

ACTION: Notice of a public meeting.

SUMMARY: This notice describes the schedule and agenda of the forthcoming meeting of the Federal Interagency Coordinating Council (FICC). Notice of this meeting is intended to inform members of the general public of their opportunity to attend the meeting. The FICC will engage in ongoing policy discussions related to young children with disabilities and their families. Child care for young children with disabilities and their families will be the topic of this FICC meeting. The meeting will be open and accessible to the general public.

FICC committee meetings will be held on June 12, 2002 in the Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202.

DATE AND TIME: FICC Meeting: Thursday, June 13, 2002 from 9 a.m. to 4:30 p.m.

ADDRESSES: U.S. Department of Education, Departmental Auditorium, 400 Maryland Avenue, SW., Washington, DC 20202 (near the Federal Center Southwest and L'Enfant metro stops).

FOR FURTHER INFORMATION CONTACT: Bobbi Stettner-Eaton or Obral Vance, U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202. Telephone: (202) 205–5507 (press 3). Individuals who use a telecommunications device for the deaf (TDD) may call (202) 205–5637.

SUPPLEMENTARY INFORMATION: The FICC is established under section 644 of the Individuals with Disabilities Education Act (20 U.S.C. 1444). The FICC is established to: (1) Minimize duplication across Federal, State, and local agencies of programs and activities relating to early intervention services for infants and toddlers with disabilities and their families and preschool services for children with disabilities; (2) ensure effective coordination of Federal early intervention and preschool programs, including Federal technical assistance and support activities; and (3) identify gaps in Federal agency programs and services and barriers to Federal interagency cooperation. To meet these purposes, the FICC seeks to: (1) Identify areas of conflict, overlap, and omissions in interagency policies related to the provision of services to infants, toddlers, and preschoolers with disabilities; (2) develop and implement joint policy interpretations on issues related to infants, toddlers, and preschoolers that cut across Federal agencies, including modifications of regulations to eliminate barriers to interagency programs and activities; and (3) coordinate the provision of technical assistance and dissemination of best practice information. The FICC is chaired by Dr. Robert H. Pasternack, Assistant Secretary for Special Education and Rehabilitative Services.

Individuals who need accommodations for a disability in order to attend the meeting (*i.e.*, interpreting services, assistive listening devices, materials in alternative format) should notify Obral Vance at (202) 205–5507 (press 3) or (202) 205–5637 (TDD) ten days in advance of the meeting. The meeting location is accessible to individuals with disabilities.

Summary minutes of the FICC meetings will be maintained and available for public inspection at the U.S. Department of Education, 330 C Street, SW., Room 3080, Switzer Building, Washington, DC 20202, from the hours of 9 a.m. to 5 p.m., weekdays, except Federal holidays.

Loretta L. Petty,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11797 Filed 5–10–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF EDUCATION

President's Commission on Excellence in Special Education

AGENCY: President's Commission on Excellence in Special Education, Department of Education.

ACTION: Notice of public meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of two forthcoming meetings of the President's Commission on Excellence in Special Education (Commission). This notice also describes the functions of the Commission. Notice of these meetings are required under Section 10(a)(2) of the Federal Advisory Committee Act and is intended to notify the public of their opportunity to attend.

DATES: May 30 and 31, 2002, June 12 and 13, 2002.

TIME: 9:00 a.m. to 5:00 p.m. each day.

ADDRESSES: The two Commission meetings will be held in Washington, DC. However, the specific locations for each meeting are not now determined. The Commission will make the specific location for each meeting available on its website as soon as meeting space is secured.

FOR FURTHER INFORMATION CONTACT: C. Todd Jones, Executive Director, or Troy R. Justesen, Deputy Executive Director, at (202) 208–1312. The fax number is (202) 208–1593 and e-mail address is *troy.justesen@ed.gov* or via the Commission's web site at: *http://www.ed.gov/inits/commissionsboards/whspecialeducation/sitemap.html*

SUPPLEMENTARY INFORMATION: The Commission is established under Executive Order 13227 dated October 2, 2001. The Commission's function is to collect information and study issues related to Federal, State, and local special education programs with the goal of recommending policies for improving the educational performance of students with disabilities. In furtherance of its duties, the Commission shall invite experts and members of the public to provide information and guidance. The Commission shall prepare and submit a report to the President outlining its findings and recommendations.

Individuals who will need accommodations for a disability in order to attend the meeting (e.g., interpreting services, assistive listening devices, materials in alternative format) should notify Troy R. Justesen, at (202) 219–0704, as soon as possible. Sign language interpreter services will be provided at all meetings. The meeting site will be accessible to individuals with mobility impairments, including those who use wheelchairs.

Unlike all other Commission meetings and hearings, these meetings will not provide a public comment period.

Records are kept of all Commission proceedings, and are available for public inspection at President's Commission on Excellence in Special Education, 80 F Street, NW, Suite 408, Washington, DC 20208 from the hours of 9 a.m. to 5 p.m. (EST). This notice will not meet the 15-day FACA requirement for announcing meetings in the **Federal Register**; however, a previous notice was printed indicating the date of the upcoming meeting. The notice gives the public more information about the agenda and actual location of the meeting that was not available at the first printing.

Electronic Access to This Document

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Robert H. Pasternack,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 02–11814 Filed 5–10–02; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of Availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE-PS26–02NT15375 entitled "Public Resources Invested in Management and Extraction (PRIME)." The Department of Energy (DOE) National Energy Technology Laboratory (NETL), on behalf of its National Petroleum Technology Office (NPTO), seeks applications for cost-shared long-term (7–10 years), high-risk research and development (R & D), including fundamental research and optimization of important, state-of-the art oil/gas technologies, for future applications on

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domestic areas including on state and federal lands and waters. These longer-term, high-risk research activities emphasize new concepts and/or approaches that may lead to significant revolutionary (i.e., not evolutionary) advancements in the state-of-the-art oil/gas technology by reducing risks, costs, and environmental impacts associated with finding and producing U.S. petroleum resources. The projects in this program may be designed to yield specific solutions to exploration and production problems including issues of public lands, and allowing real returns from these lands and waters while preserving the Nation's asset.

The goal is to develop world class technologies that will provide the domestic industry a leadership role in discovery and the development of undiscovered or previously unattainable resources. This new initiative will focus longer-term fundamental R&D in the following three broad areas: (1) Oil and Gas Recovery Technology, (2) Advanced Drilling, Completion, Stimulation, and Operations (ADCS), or (3) Advanced Diagnostic and Imaging Systems (ADIS) and Reservoir Characterization.

DATES: The solicitation will be available on the DOE/NETL's Internet address at *http://www.netl.doe.gov/business* and on the "Industry Interactive Procurement System" (IIPS) webpage located at *http://e-center.doe.gov* on or about May 31, 2002.

FOR FURTHER INFORMATION CONTACT: Keith R. Miles, U.S. Department of Energy, National Energy Technology Laboratory, P.O. Box 10940, MS 921–107, Pittsburgh, PA 15236, E-mail Address: miles@netl.doe.gov, Telephone Number: 412–386–5984.

SUPPLEMENTARY INFORMATION: The Department of Energy, National Energy Technology Laboratory's Fossil Energy—Oil and Gas Program plans to initiate a fundamental research and development (R&D) program (PRIME) in exploration and production technologies during FY–2002. This new initiative differs from the current Fossil Energy—Oil and Gas Program in that it stresses high-risk research that may require multiple years to develop from the concept phase. Such R&D activities warrant the longer-term investment of resources from which one to several breakthroughs may result in significant advancements in our understanding and subsequent development in technologies applicable to petroleum exploration and production.

The three areas of interest for this solicitation are:

Area of Interest 1—Oil and Gas Recovery Technology

The production research program has historically targeted oil reservoirs that contain around 200 billion barrels of oil that are potentially recoverable by conventional Enhanced Oil Recovery (EOR) methods. This program has been subdivided into the areas, (1) chemical methods, (2) gas flooding, (3) microbial methods, (4) heavy oil recovery, (5) novel methods, and (6) reservoir simulation. Each area addresses one or more specific portions of the resource base.

However, new technologies and concepts are being developed so there may be new areas that do not fit into the present EOR methods. This initiative is to focus on new technologies with longer-term R&D potential (recovery processes which are only at the concept stage), which may help recover additional oil but are currently outside the traditional methods.

Area of Interest 2—Advanced Drilling, Completion, Stimulation, and Operations (ADCS)

Currently producers and service providers in the oil and gas industry are being asked to reach deeper depths with a minimum of damage to the producing formation and at a cost well below traditional methods. What the industry needs is safe, lower cost drilling systems whose use can be considered value added and not simply a cost to the project. Technology that increases the ultimate production and creates access to the remote sites with a minimum disturbance and have the ability to drill and complete wells while protecting the environment is essential in the effort to develop remote areas.

DOE is looking for projects with the potential to create technological breakthroughs and surmount the current barriers to drilling and production. Projects should use an integrated system approach to the problems. The needs identified as high priority by a group of industry and research representatives in the ADCS area are:

• Miniaturization and materials development—The operational and mobilization costs associated with drilling and completion must be reduced significantly without sacrificing any performance. It will be necessary to develop beyond our current capabilities in the offshore and deep onshore to access the deeper targets economically and also to reduce the exploration costs. Research to improved performance and reliability must increase radically in order to reach some targets. DOE is accepting proposals for revolutionary development that would come into use after 2010. Such breakthroughs could lead to reductions in mobilization costs and increase the economics of a prospect. This may be achieved through breakthroughs in the following areas:

(1) Materials development that would allow the design of lighter, yet robust systems for drilling and operations.

(2) Miniaturization without loss of performance or reliability would effectively reduce space and weight requirements so critical to remote locations and ultradeep offshore development and exploration.

• Fluid/flow identification—It is critical to identify flow and fluids the horizontal leg of a well and in multi-lateral wells. The need for "smart pipes" and robust diverse sensors are suitable for such work. In particular, the identification must be in space. Parameters could include pressure, temperature, density, specific gravity, flow rate, flow volume, acoustics, orientation, motion or vibration, electrical or acoustical conductivity, radioactivity, and chemical composition.

• Separation technology—Downhole separation technology along with seafloor separation technology will be critical to the offshore industry and reduce the costs associated with produced water and waste issues. The technology has not advanced to fully address multi-lateral well designs or separation in the horizontal leg of a well. Proposals are sought for two topics in this area:

(1) Issues related to downhole separation—Radical design of downhole separation technology is critical to handle higher flow rates, fit into 8" diameter and less wells, operate effectively at high water cuts, be able to handle solids, maintain better separation efficiency and high product quality.

(2) Subsea separation—The separation technology suitable to reduce cost associated with water lifting to the surface and address the associated disposal issues could create economic targets offshore that are currently marginal. Significant breakthroughs in this area are sought.

Area of Interest 3—Advanced Diagnostic and Imaging Systems (ADIS) and Reservoir Characterization

High risk, long term new research applications are solicited for finding new domestic oil/gas reserves. The research may be focused to develop innovative geologic system models and exploration concepts for analysis ofU.S. basins for new and overlooked fairways (field-to–basin scales).

The potential is focused on the development and application of new geoscientific and engineering concepts in high oil/gas potential basins on public lands and waters. Technology is needed to increase accuracy and resolution of seismic and other geological and geophysical methods. New methodology is solicited for interpretation and integration of multiple technology, and data sets into refined geologic and engineering models that guide discovery of new oil reserves, oil field development, and management for maximum economic oil recovery.

DOE currently has available $3.5 million for this Program Solicitation (PS) and the proposed budget for this program over 5 years is $23.5 million of DOE support. The total program of PRIME may be $30 million for a period of 7–10 years. It is anticipated that between 10–20 cost-shared awards, with a *total* project value estimated at $1.0 million to $1.5 million each (i.e., DOE share of project costs estimated at between $750K–$1,000K), will be made under this solicitation. The applicant must cost share a minimum of 20% of the total project cost. Projects must be structured with two (2) phases (i.e., Budget Periods) which include: idea and/or concept development (Budget Period 1) and initiation of proof-of-concept activities (Budget Period 2).

The research conducted in this program will provide support for foundation-building R&D in universities and the national laboratories and maintain the leadership of the United States in oil and gas technologies. It is envisioned that a teaming of expertise from academic, private research organizations, state and federal agencies in collaboration with industry may be needed to focus efforts on overcoming key scientific and engineering hurdles. Applications submitted by or on behalf of (1) another Federal agency; (2) a Federally Funded Research and Development Center sponsored by another Federal agency; or (3) a Department of Energy (DOE) Management Operating (M&O) contractor will not be eligible for award under this solicitation. However, an application that includes performance of a portion of the work by a DOE National Laboratory and/or M&O contractor will be evaluated and may be considered for award subject to the provisions to be set forth in Program Solicitation DE–PS26–02NT15375. **(Note:** The limit on participation by a National Laboratory and/or M&O contractor for an individual project under this solicitation cannot exceed 25% of the total project cost).

Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at IIPS_HelpDesk@e-center.doe.gov. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on May 3, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–11915 Filed 5–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

National Energy Technology Laboratory; Notice of Availability of a Financial Assistance Solicitation

AGENCY: National Energy Technology Laboratory, Department of Energy (DOE).

ACTION: Notice of availability of a Financial Assistance Solicitation.

SUMMARY: Notice is hereby given of the intent to issue Financial Assistance Solicitation No. DE–PS26–02NT41488 entitled Gas Storage Program. The Department of Energy's (DOE's) National Energy Technology Laboratory (NETL), through the Strategic Center for Natural Gas (SCNG), is conducting this solicitation to competitively seek cost-shared applications for research and technology development efforts to enhance operational flexibility and deliverability of the Nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions.

DATES: The solicitation will be available on the "Industry Interactive Procurement System" (IIPS) Web page located at *http://e-center.doe.gov* on or about May 8, 2002. Applicants can obtain access to the solicitation from the address above or through DOE/NETL's Web site at *http://www.netl.doe.gov/business.*

FOR FURTHER INFORMATION CONTACT: Debra A. Duncan, MS 921–107, U.S. Department of Energy, National Energy Technology Laboratory, 626 Cochrans Mill Road, P.O. Box 10940, Pittsburgh, PA 15236–0940, E-mail Address: *duncan@netl.doe.gov,* Telephone Number: 412–386–5700.

SUPPLEMENTARY INFORMATION: The Gas Storage Program supports the Strategic Center for Natural Gas' 2020 Vision of the U.S. public enjoying benefits (affordable supply, reliable delivery, and environmental protection) from an increase in gas use. Most natural gas consumed in the U.S. is not produced in the areas where it is most needed. To get gas to the customers, the Nation uses 1.5 million miles of natural gas pipelines capable of moving 111 billion cubic feet (Bcf) of gas daily. However, the amount of gas needed varies at time scales much shorter than can be accommodated by the production and pipeline systems. In general, demand varies seasonally, but the exact timing and magnitude of peak demand is largely determined by the weather, and is therefore unpredictable. As a result, gas is injected into more than 400 storage reservoirs, located near the points of demand, each year from April through October. Roughly 3.8 trillion cubic feet (Tcf) of storage gas is available to help meet peak demands. Pipelines and storage work together to comprise a natural gas distribution system that efficiently balances the need for steady year-round production with seasonal variation in use.

All projections of the Nation's near-term energy future call for increased use of natural gas. Gas consumption, now roughly 22 Tcf per year, could grow to more than 30 Tcf per year by 2015. As much as 50 percent of the new gas demand will come from the electric-generation sector, as new plants capitalize on the economic and environmental benefits of gas. This expansion in both the volume and nature of gas use will place significant new burdens on the Nation's pipeline and gas storage systems. These challenges require significant investment in R&D at a time when the gas industry is focusing on reducing

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costs and improving profits in a competitive marketplace. The goal of the transmission and storage work at NETL is to develop the technologies needed to ensure both the reliability and flexibility of the Nation's critical gas distribution infrastructure as it adapts to changing supply and demand characteristics.

Research in gas storage conducted at NETL focuses on two main issues. First, NETL works cooperatively with storage operators to demonstrate technologies to preserve and improve the deliverability of existing conventional underground storage reservoirs. This work focuses on technologies to limit and remediate the progressive damage caused by the repeated injection and withdrawal of gas, as well as innovative management techniques that can maximize performance. Second, not all areas of high gas demand possess natural underground reservoirs that can support the local storage needs. Therefore, NETL is working to develop advanced storage concepts that utilize man-made structures such as underground mined caverns and other non-traditional means that can be located where needed

The objective of the National Energy Technology Laboratory's (NETL's) Natural Gas Storage rogram, and this solicitation, is to encourage and support research and technology development to advance natural gas storage, transmission, and distribution technologies to enhance operational flexibility and deliverability of the Nation's gas storage system, and provide a cost-effective, safe, and reliable supply of natural gas to meet demand in new and expanded market regions. To achieve program objectives, DOE/NETL, through the Strategic Center for Natural Gas, is requesting applications addressing, but not limited to, the following topics: (1) Thin-bedded salt cavern design technology—seeks proposals to investigate long-term geotechnical integrity of bedded salt cavern designs. The ability to develop stable gas storage caverns in thinly bedded salt could have implications for new storage capacity in the Eastern, Northeast, and Midwest United States. Proposed research could include geologic analysis, failure analysis and definition, and improved geotechnical design to mitigate possible failure; (2) Liquefied Natural Gas (LNG) Applications in Gas Storage—seeks proposals to investigate applications of LNG for conventional storage and distributed, or peaking power generation; (3) Hydrate Control—seeks proposals for control of natural gas hydrates formed in storage wells and gathering lines during rapid withdrawal operations; and (4) Deliverability enhancement—seeks proposals that will increase deliverability from aquifers and depleted oil and gas reservoirs. This could include "smart" storage systems that will optimize storage field operations.

Proposed approaches are anticipated to develop new or novel technologies, or suggest innovative applications of existing technologies. Efforts can encompass any combination of theory, laboratory validation of concepts, or field validation of concepts. The overall goal of this solicitation shall be to work toward a demonstration of the technology at a commercially scalable size.

DOE anticipates multiple cooperative agreement awards resulting from the solicitation and no fee or profit will be paid to a Recipient or Subrecipient under the awards. However, the Government reserves the right to fund, in whole or in part, any, all, or none of the applications submitted in response to this solicitation and will award that number of financial assistance instruments which serves the public purpose and is in the best interest of the Government. At current planning levels, and subject to the availability of funds, DOE expects to provide up to approximately $700,000 over the life of the projects to support work under this solicitation. This particular program is covered by section 3001 and 3002 of the Energy Policy Act (EPAct), 42 U.S.C. 13542 for financial assistance awards. EPAct 3002 requires a cost-share commitment of at least twenty (20) percent from non-Federal sources for research and development projects. Cost sharing must meet the requirements of 10 CFR 600.123 and 10 CFR 600.224. Allowable costs for cost sharing shall be in accordance with 10 CFR 600.127 and 10 CFR 600.222. The particular program is also covered by Section 2306 of EPAct, 42 U.S.C. 13525 for financial assistance awards. In order for a company to be eligible for an award under this solicitation, the Applicant must be a United States-owned company. If the Applicant is not a United States-owned company, it must be incorporated or organized in a foreign country that affords treatment to United States-owned companies that is comparable to treatment the United States affords foreign-owned companies. This eligibility requirement also applies to all companies participating in any joint venture, "team" arrangement, or as a major subcontractor. The solicitation will contain as part of the application package the applicable EPAct representation form(s). Applications which include performance of Federal agencies and agents (i.e. Management and Operations (M&O) contractors and/or National Laboratories) as a subcontractor will be acceptable under this solicitation if the proposed use of any such entities is specifically authorized by the executive Federal agency managing the M&O or National Laboratory, and the work is not otherwise available from the private sector. Such work, if approved, would be accomplished through a direct transfer of funding from the NETL to the M&O contractor and/or National Laboratory. Even though participation of an M&O and/or National Laboratory may be appropriate, their participation cannot exceed forty-nine (49) percent of the Applicant's total estimated project cost. The Government anticipates the maximum project period of twenty-four (24) months. This however does not preclude projects of a longer or shorter duration. Awards will have annual budget periods. Each annual budget period shall contain "continuation decision points." Once released, the solicitation will be available for downloading from the IIPS Internet page. At this Internet site you will also be able to register with IIPS, enabling you to submit an application. If you need technical assistance in registering or for any other IIPS function, call the IIPS Help Desk at (800) 683–0751 or E-mail the Help Desk personnel at *IIPS_HelpDesk@e-center.doe.gov*. The solicitation will only be made available in IIPS, no hard (paper) copies of the solicitation and related documents will be made available.

Prospective applicants who would like to be notified as soon as the solicitation is available should subscribe to the Business Alert Mailing List at http://www.netl.doe.gov/business. Once you subscribe, you will receive an announcement by E-mail that the solicitation has been released to the public. Telephone requests, written requests, E-mail requests, or facsimile requests for a copy of the solicitation package will not be accepted and/or honored. Applications must be prepared and submitted in accordance with the instructions and forms contained in the solicitation. The actual solicitation document will allow for requests for explanation and/or interpretation.

Issued in Pittsburgh, PA, on May 6, 2002.

Dale A. Siciliano,

Deputy Director, Acquisition and Assistance Division.

[FR Doc. 02–11916 Filed 5–10–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–330–000]

ANR Pipeline Company; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, ANR Pipeline Company (ANR), 9 E. Greenway Plaza, Houston, Texas 77046, tendered for filing Eighteenth Revised Sheet No. 19 for inclusion in ANR's FERC Gas Tariff, Second Revised Volume No. 1. ANR requests that this tariff sheet be made effective June 1, 2002. ANR states that it is proposing to modify its Tariff to provide for a general waiver of the charge for Transporter's Use on transportation services provided on ANR's off-system 12-mile lateral located between ANR's Link Meter Station and ANR's Corunna Interconnect Point in St. Clair, Michigan (the "Link Lateral").

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11858 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–335–000]

ANR Pipeline Company; Notice of Proposed Change in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, ANR Pipeline Company ("ANR"), pursuant to Section 15.5 of the General Terms and Conditions FERC GAS Tariff, Second Revised Volume No. 1, tendered for filing the following revised tariff sheet to be effective June 1, 2002.

Thirty-Third Revised Sheet No. 17

This annual Cashout Price Surcharge filing reflects an increase in ANR's currently effective surcharge from $0.1508 per Dth to $0.4464 per Dth. This filing is ANR's eighth annual report of net cashout activity on its pipeline system and reflects the net financial results of shipper cashout activity during calendar year 2001 as well as the results of ANR's attempts to recover the prior period negative cashout balance.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11863 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–18–000]

CMS Trunkline Gas Company, LLC; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, CMS Trunkline Gas Company, LLC (Trunkline) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to be effective June 1, 2002:

First Revised Sheet No. 5
First Revised Sheet No. 6
First Revised Sheet No. 7
First Revised Sheet No. 8
First Revised Sheet No. 9

Trunkline states that the purpose of this filing, made in accordance with the provisions of section 154.106 of the Commission's Regulations, is to revise the tariff maps to reflect changes in the pipeline facilities and the points at which service is provided. Trunkline requests confidential treatment of its maps. As such, only the Commission is receiving a hard copy of the revised tariff sheets that display the system maps in the original filing. The tariff sheets in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheets in accordance with section 388.108 of the Commission's regulations. Trunkline's shippers may contact Trunkline directly to request copies of the tariff map sheets.

Trunkline states that copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be

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viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11840 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–190–019]

Colorado Interstate Gas Company; Notice of Negotiated Rates

May 7, 2002.

Take notice that on May 2, 2002, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Substitute Original Sheet No. 11N.

On April 23, 2002 at Docket No. RP96–190–018, CIG submitted two tariff sheets summarizing negotiated rate transactions to become effective May 1, 2002. CIG is submitting Substitute Original Sheet No. 11N to revise the beginning date of one of the negotiated rate transactions to reflect the year 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426; in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11846 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–383–042]

Dominion Transmission, Inc.; Notice of Filing

May 7, 2002.

Take notice that on April 30, 2002, Dominion Transmission, Inc. ("DTI") filed with the Federal Energy Regulatory Commission (Commission) the following tariff sheet for disclosure of a recently negotiated transaction with Key Oil Company:

First Revised Sheet No. 1414

DTI states that copies of its letter of transmittal and enclosures have been served upon DTI's customers and interested state commissions. DTI also states that copies of its filing are available for public inspection during regular business hours in a convenient form and place, at DTI's offices at 445 West Main Street, Clarksburg, West Virginia 26301.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11848 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EL02–86–000]

Exelon Generation Company, LLC, Complainant, v. The Southwest Power Pool, Inc., Respondent; Notice of Complaint

May 7, 2002.

Take notice that on May 3, 2002, Exelon Generation Company, LLC (Exelon Generation), filed a complaint against The Southwest Power Pool, Inc. (SPP). Copies of the filing were served upon SPP.

Any person desiring to be heard or to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests must be filed on or before May 13, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Answers to the complaint shall also be due on or before May 13, 2002. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests, interventions and answers may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11837 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–232–000]

Great Lakes Gas Transmission Limited Partnership; Notice of Tariff Filing

May 7, 2002.

Take notice that on April 25, 2002, Great Lakes Gas Transmission Limited Partnership (Great Lakes) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets, proposed to be effective June 1, 2002:

Seventh Revised Sheet No. 45
First Revised Sheet No. 55A
First Revised Sheet No. 57I

Great Lakes states that these tariff sheets are being filed to (1) add generally applicable tariff provisions setting forth the conditions under which contract demand reductions or termination provisions will be made available to all customers seeking firm capacity on a non-discriminatory basis, and (2) add tariff provisions to permit negotiation of a contractual right of first refusal between Great Lakes and its shippers in instances where a regulatory right is not available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11855 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–305–009]

Mississippi River Transmission Corporation; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, Mississippi River Transmission Corporation (MTR) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective May 1, 2002.

Original Sheet No. 10E
Original Sheet No. 10F

MRT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11853 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–176–057]

Natural Gas Pipeline Company of America; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, Natural Gas Pipeline Company of America (Natural) tendered for filing with the Federal Energy Regulatory Commission (Commission) certain tariff sheets to become part of its FERC Gas Tariff, Sixth Revised Volume No. 1 (Tariff), to be effective May 1, 2002.

Natural states that the purpose of this filing is to implement a new rate transaction entered into by Natural and Reliant Energy Aurora, LP under Natural's Rate Schedule FTS pursuant to Section 49 of the General Terms and Conditions of Natural's Tariff. Natural states that the negotiated rate agreement does not deviate in any material respect from the applicable form of service agreement in Natural's Tariff.

Natural requests waivers of the Commission's Regulations to the extent necessary to permit the tariff sheet to become effective May 1, 2002.

Natural states that copies of the filing are being mailed to all parties set out on the Commission's official service list in Docket No. RP99–176.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the

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instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,
Deputy Secretary.
[FR Doc. 02–11850 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–333–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

Fifth Revised Volume No. 1

Sixty-First Revised Sheet No. 50
Sixty-Second Revised Sheet No. 51
Twenty-Eighth Revised Sheet No. 52
Fifty-Eighth Revised Sheet No. 53
Eleventh Revised Sheet No. 56
20 Revised Sheet No. 59
Fourth Revised Sheet No. 59A
23 Revised Sheet No. 60
Fourth Revised Sheet No. 60A

Original Volume No. 1

168 Revised Sheet No. 1C

Northern is filing to adjust its rates effective June 1 to reflect the rate impact of the return and tax components associated with the System Levelized Account (SLA) balance as of March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11861 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–334–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

Fifth Revised Volume No. 1

Sixteenth Revised Sheet No. 54
Third Revised Sheet No. 54A
Fourteenth Revised Sheet No. 61
Fourteenth Revised Sheet No. 62
Fourteenth Revised Sheet No. 63
Fourteenth Revised Sheet No. 64
Third Revised Sheet No. 300A
Sixth Revised Sheet No. 301

The revised tariff sheets are being filed in accordance with Section 53 of Northern's Tariff. This filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2002, based on actual data for the 12 month period ended March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11862 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. PR02–15–000]

Ohio Valley Hub, LLC; Notice of Petition for Rate Approval

May 7, 2002.

Take notice that on April 17, 2002, Ohio Valley Hub, LLC (Ohio Valley) filed, pursuant to Section 284.224(c)(7) and Section 284.123(b)(1)(ii) of the Commission's Regulations, a petition for rate approval, requesting that the Commission approve rates on file with the Indiana Utility Regulatory Commission for firm and interruptible transportation and storage service.

Ohio Valley states that it concurrently filed for a blanket certificate pursuant to Section 284.224 of the Commission's regulations. The supporting documentation shows a state rate for firm transportation of $0.0813 per MMBtu demand charge and $0.1341 per MMBtu commodity charge. The storage rate is $0.0397 per MMBtu reservation charge and $0.0292 per MMBtu commodity charge.

Pursuant to section 284.123(b)(2)(ii), if the Commission does not act within 150 days of the date of this filing, the rates will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data, and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed with the Secretary of the Commission on or before May 22, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. This petition for rate approval is on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11845 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–22–000]

Petal Gas Storage, L.L.C.; Notice of Material Deviation Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, Petal Gas Storage, L.L.C. (Petal), tendered for filing its Material Deviation Tariff Filing.

Petal's filing requests that the Commission approve a Firm Transportation Service Agreement between Petal and Southern Company Services, Inc., which contains certain deviations from Petal's pro forma service agreement. Petal requests that the Commission approve the filing effective June 1, 2002.

Petal states that copies of the filing have been mailed to each of its customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed on or before May 14, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11842 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–332–000]

Petal Gas Storage, L.L.C.; Notice of Filing

May 7, 2002.

Take notice that on May 1, 2002, Petal Gas Storage, L.L.C. (Petal), Nine Greenway Plaza, Houston, Texas 77046, tendered for filing an original and five (5) copies of the attached Tariff Sheets listed in Appendix A hereto. Petal requests that these sheets be made effective June 1, 2002.

Petal states that the tariff sheets are being filed to implement an AVS Rate Schedule. The AVS service proposes an interruptible advancing (lending) service under Rate Schedule AVS, whereby Petal would essentially loan gas to its customers requesting the service. Petal further states that the AVS service proposed here is identical to that proposed in its Order No. 637 compliance docket, RP00–491, as revised by its March 1, 2002, filing in Docket Nos. RP02–188, CP01–69 et al., and RP00–491.

Petal states that copies of the filing have been mailed to all affected customers and state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11860 Filed 5–10–02; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–331–000]

PG&E Gas Transmission, Northwest Corporation; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing (to be part of its FERC Gas Tariff, First Revised Volume No. 1-A) Pro Forma Sheet No. 5 and Pro Forma Sheet No. 142, to comply with Commission orders issued August 6, 2001 and October 26, 2001 in Docket Nos. CP01–141–000 and -001, respectively. GTN indicates that these pro forma tariff sheets are intended to 1) establish an incremental fuel surcharge for shippers utilizing capacity currently being constructed as part of GTN's 2002 Pipeline Expansion Project ("02 Expansion") and 2) establish a mechanism that will allow GTN to roll-down its proposed incremental fuel surcharge, consistent with the mechanisms described in the Commission's Statement of Policy on new pipeline construction. GTN indicates further that it is proposing to eliminate the applicability of its Competitive Equalization Surcharge to "02 Expansion Shippers.

GTN requests that the Commission act upon the *pro forma* tariff sheets by July 1, 2002, in order to provide certainty to the market regarding the outcome of GTN's proposal prior to the start of the winter heating season. Following the outcome of the Commission's review of this filing, GTN states that it will file actual tariff sheets with a November 1,

2002 effective date, i.e., the anticipated in-service date for 97,500 horsepower of compression associated with GTN's "02 Expansion.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11859 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–518–027]

PG&E Gas Transmission, Northwest Corporation; Notice of Proposed Change in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, PG&E Gas Transmission, Northwest Corporation (GTN) tendered for filing Nineteenth Revised Sheet No. 7 as part of its FERC Gas Tariff, First Revised Volume No. 1–A. GTN states that this sheet is being filed to reflect the implementation of one negotiated rate agreement and the removal of two negotiated rate agreements that have expired. GTN requests that this tariff sheet become effective May 1, 2002.

GTN further states that a copy of this filing has been served on GTN's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11852 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP99–513–016]

Questar Pipeline Company; Notice of Negotiated Rates

May 7, 2002.

Take notice that on May 2, 2002, Questar Pipeline Company's (Questar) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, Seventeenth Revised Sheet No. 7, to become effective May 1, 2002.

Questar states that the filing is being made to implement an amended negotiated-rate contract for BP Energy Company as authorized by Commission orders issued October 27, 1999, and December 14, 1999, in Docket Nos. RP99–513, et al. The Commission approved Questar's request to implement a negotiated-rate option for Rate Schedules T–1, NNT, T–2, PKS, FSS and ISS shippers. Questar submitted its negotiated-rate filing in accordance with the Commission's Policy Statement in Docket Nos. RM95–6–000 and RM96–7–000 (Policy Statement) issued January 31, 1996.

Questar states that a copy of this filing has been served upon all parties to this proceeding, Questar's customers, the Public Service Commission of Utah and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11851 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP02–318–000 and CP99–13–000]

Questar Southern Trails Pipeline Company; Notice of Tariff Filing

May 7, 2002.

Take notice that on May 1, 2002, Questar Southern Trails Pipeline Company (Southern Trails) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets, to be effective June 1, 2002:

Original Sheet Nos. 1–130

On October 15, 1999, Southern Trails received a Preliminary Determination on Nonenvironmental issues in Docket Nos. CP99–163–000, et al. In the October 15, 1999, order and in the order dated July 28, 2000, on rehearing, the Commission directed Southern Trails to file, not less than thirty days nor more than sixty days prior to the proposed effective date, revised rates and tariff sheets consistent with the modifications described in the orders.

In compliance with the Commission orders, Southern Trails is filing its Original Volume No. 1 FERC Gas Tariff. This filing is subdivided into three main Sections: (1) Tariff Changes ordered by the Commission, (2) modifications consistent with FERC Order Nos. 637 and 587-L through 587-N that update the original pro forma tariff and (3) miscellaneous tariff changes to update the General Terms & Conditions section of the tariff to be consistent with industry standards and procedures.

Southern Trails states that a copy of this filing has been served upon its customers, the Public Service Commissions of Utah, New Mexico, Arizona and California.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11856 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–200–079]

Reliant Energy Gas Transmission Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 1, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective May 1, 2002:

Second Revised Sheet No. 635
Second Revised Sheet No. 636

REGT states that the purpose of this filing is to reflect the implementation of a new negotiated rate transaction and an amendment to an existing negotiated rate contract.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11847 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–21–000]

Sea Robin Pipeline Company; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on April 30, 2002, Sea Robin Pipeline Company (Sea Robin) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following revised tariff sheet to be effective June 1, 2002:

Second Revised Sheet No. 6

Sea Robin states that the purpose of this filing, made in accordance with the provisions of Section 154.106 of the Commission's Regulations, is to revise the system map to reflect changes in the pipeline facilities and the points at which service is provided.

Sea Robin requests confidential treatment of its map. Sea Robin states that only the Commission is receiving a hard copy of the revised tariff sheet that displays the system map in the original filing. The tariff sheet in the copies of the filing will identify the map and state that information has been removed for privileged treatment. Interested parties may request a copy of the confidential tariff sheet in accordance with Section 388.108 of the Commission's Regulations. Sea Robin's shippers may contact Sea Robin directly to request a copy of the tariff map sheet.

Sea Robin states that copies of the public portion of this filing are being served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and

interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11841 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1342–000 and ER96–2869–003]

State Line Energy, L.L.C., Dominion State Line, Inc.; Notice of Issuance of Order

May 7, 2002.

State Line Energy, L.L.C. (State Line Energy) and Dominion State Line, Inc. (Dominion State Line) (together, "the Applicants) submitted for filing under section 205 of the Federal Power Act a joint application which included a notice of change in status, an amendment to its market-based rate tariff and code of conduct, and a market-based service agreement. The Applicants also requested waiver of various Commission regulations. In particular, the Applicants requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by the Applicants.

On May 2, 2002, pursuant to delegated authority, the Director, Office of Markets, Tariffs and Rates-Central, granted requests for blanket approval under Part 34, subject to the following:

Any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by the Applicants should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214).

Absent a request to be heard in opposition within this period, the Applicants are authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the Applicants, compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public nor private interests will be adversely affected by continued approval of the Applicants' issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is June 3, 2002.

Copies of the full text of the Order are available from the Commission's Public Reference Branch, 888 First Street, NE., Washington, DC 20426. The Order may also be viewed on the Internet at *http://www.ferc.fed.us/online/rims.htm* (call 202–208–2222 for assistance). Comments, protests, and interventions may be filed electronically via the internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site at *http://www.ferc.fed.us/efi/doorbell.htm*.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11838 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–329–000]

Stingray Pipeline Company, L.L.C.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 2, 2002 Stingray Pipeline Company, L.L.C. (Stingray) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 the following tariff sheet to become effective on June 1, 2002.

Fourth Revised Sheet No. 100

In light of a new offshore delivery point expected to go into service, Stingray is proposing changes to the Company Use Gas provision of its tariff as more fully discussed within the application.

Stingray states that a copy of this filing has been served upon its customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11857 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP97–255–045]

TransColorado Gas Transmission Company; Notice of Compliance Filing

May 7, 2002.

Take notice that on May 1, 2002, TransColorado Gas Transmission Company (TransColorado) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, Forty-Fifth Revised Sheet No. 21 and Eighteenth Revised Sheet No. 22A, to be effective May 1, 2002.

TransColordo states that the filing is being made in compliance with the Commission's letter order issued March 20, 1997, in Docket No. RP97–255–000.

The tendered tariff sheets propose to revise TransColorado's Tariff to reflect four amended contracts with Enserco Energy, Inc., National Fuel Marketing Company, Dynegy Marketing & Trade and Sempra Energy Trading and a new contract with BP Energy Company.

TransColorado stated that a copy of this filing has been served upon all parties to this proceeding, TransColorado's customers, the Colorado Public Utilities Commission and the New Mexico Public Utilities Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11849 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–425–006]

Williams Gas Pipelines Central, Inc.; Notice of Proposed Changes in FERC Gas Tariff

May 7, 2002.

Take notice that on May 2, 2002, Williams Gas Pipelines Central, Inc. (Williams) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheet to become effective May 1, 2002:

First Revised Sheet No. 10

Williams states that the purpose of this filing is to file the negotiated rate agreement with Platte River Power Authority (PRPA).

Copies of the revised tariff sheets are being mailed to all parties on the service list, Williams' jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11854 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. GT02–17–000]

Williston Basin Interstate Pipeline Company; Notice of Filing

May 7, 2002.

Take notice that on April 30, 2002, Williston Basin Interstate Pipeline Company (Williston Basin), 1250 West Century Avenue, Bismarck, North Dakota 58503, tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following revised tariff sheets to become effective April 30, 2002:

Second Revised Volume No. 1
Eleventh Revised Sheet No. 5
Ninth Revised Sheet No. 6
Ninth Revised Sheet No. 6A
Sixth Revised Sheet No. 7
Ninth Revised Sheet No. 8
Tenth Revised Sheet No. 9
Eighth Revised Sheet No. 10

Williston Basin states that the revised tariff sheets are being filed simply to update its System Maps with the most recent information available.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11839 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–1983–001, et al.]

Geysers Power Company, LLC, et al.; Electric Rate and Corporate Regulation Filings

May 6, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Geysers Power Company, LLC

[Docket No. ER99–1983–001]

Take notice that on April 29, 2002, Geysers Power Company, LLC submitted for filing with the Federal Energy Regulatory Commission (Commission) its triennial market analysis update in compliance with the Commission order issued in this docket on April 28, 1999.

Comment Date: May 20, 2002.

2. Cordova Energy Company LLC

[Docket No. ER99–2156–001]

Take notice that on April 29, 2002, Cordova Energy Company LLC filed its updated market power analysis.

Comment Date: May 20, 2002.

3. PacifiCorp

[Docket No. ER01–1152–005]

Take notice that PacifiCorp on April 29, 2002, tendered for filing with the Federal Energy Regulatory Commission (Commission), in compliance with the Commission's Order dated April 10, 2002 under FERC Docket No. ER01–1152–000, copies of the Interconnection and Transmission Service Agreement (and amendments) between PacifiCorp and Western Area Power Administration. This filing is being made in compliance with the Order 614.

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Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: May 20, 2002.

4. Armstrong Energy Limited Partnership, LLLP

[Docket No. ER02–1657–000]

Take notice that on April 29, 2002, Armstrong Energy Limited Partnership, LLLP (the Company) respectfully tendered for filing the following:

Service Agreement by Armstrong Energy Limited Partnership, LLLP to Dominion Energy Marketing, Inc., designated as Service Agreement No 1 under the Company's Market-Based Rate Tariff, FERC Electric Tariff, Original Volume No. 1, effective on December 1, 2001. The Company requests an effective date of April 10, 2002, as requested by the customer.

Copies of the filing were served upon the Dominion Energy Marketing, Inc., the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: May 20, 2002.

5. Virginia Electric and Power Company

[Docket No. ER02–1658–000]

Take notice that on April 29, 2002, Virginia Electric and Power Company (Dominion Virginia Power or the Company) tendered for filing the following:

1. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS #164117] designated as Service Agreement No. 363 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

2. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS #164119] designated as Service Agreement No. 364 under the Company's FERC Electric Tariff, Second Revised Volume No. 5;

3. Service Agreement for Long Term Firm Point-to-Point Transmission Service by Virginia Electric and Power Company to The Wholesale Power Group of Virginia Electric and Power Company [OASIS 164368] designated as Service Agreement No. 365 under the Company's FERC Electric Tariff, Second Revised Volume No. 5.

The foregoing Service Agreements are tendered for filing under the Open Access Transmission Tariff to Eligible Purchasers effective June 7, 2000. Under the tendered Service Agreements, Dominion Virginia Power will provide long term firm point-to-point service to the Transmission Customer under the rates, terms and conditions of the Open Access Transmission Tariff. Dominion Virginia Power requests an effective date of January 1, 2004, the date requested by the customer.

Copies of the filing were served upon The Wholesale Power Group of Virginia Electric and Power Company, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

Comment Date: May 20, 2002.

6. Pinnacle West Capital Corporation

[Docket No. ER02–1659–000]

Take notice that on April 29, 2002, Pinnacle West Capital Corporation (PWCC") tendered for filing a Service Agreement with Plumas Sierra Rural Electric Cooperative under PWCC's FERC Rate Schedule No. 1. PWCC has requested waiver of the Commission's Notice Requirements for effective dates as stated in the service agreements.

A copy of this filing has been served on Plumas Sierra Rural Electric Cooperative.

Comment Date: May 20, 2002.

7. Arizona Public Service Company

[Docket No. ER02–1660–000]

Take notice that on April 29, 2002, Arizona Public Service Company (APS) tendered for filing a Service Agreement to provide control area services to Ak Chin Electric Utility Authority (AkChin) under APS" Open Access Transmission Tariff.

A copy of this filing has been served on Ak Chin and the Arizona Corporation Commission.

Comment Date: May 20, 2002.

8. Duke Energy Morro Bay LLC

[Docket No. ER02–1661–000]

Take notice that on April 29, 2002, Duke Energy Morro Bay LLC (Duke Morro Bay) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act and under its market-based rate tariff: (1) an amended service agreement pursuant to which it sells energy and ancillary services at wholesale to Duke Energy Trading and Marketing, L.L.C., and (2) a service agreement pursuant to which it sells energy at wholesale to Duke Energy Mulberry, LLC.

Comment Date: May 20, 2002.

9. Duke Energy Moss Landing LLC

[Docket No. ER02–1662–000]

Take notice that on April 29, 2002, Duke Energy Moss Landing LLC (Duke Moss Landing) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act and under its market-based rate tariff: (1) an amended service agreement pursuant to which it sells energy and ancillary services at wholesale to Duke Energy Trading and Marketing, L.L.C., and (2) a service agreement pursuant to which it sells energy at wholesale to Duke Energy Mulberry, LLC.

Comment Date: May 20, 2002.

10. Tampa Electric Company

[Docket No. ER02–1663–000]

Take notice that on April 29, 2002, Tampa Electric Company (Tampa Electric) tendered for filing an unexecuted service agreement with Calpine Energy Services, LP (Calpine) for long-term firm point-to-point transmission service under Tampa Electric's open access transmission tariff.

Tampa Electric proposes an effective date of April 18, 2002, for the tendered service agreement, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Calpine and the Florida Public Service Commission.

Comment Date: May 20, 2002.

11. Cleco Power LLC

[Docket No. ER02–1664–000]

Take notice that on April 29, 2002 Cleco Power LLC (Cleco Power), tendered for filing a Notice of Cancellation pursuant to 18 CFR 35.15, effective April 30, 2002, canceling Cleco Utility Group, Inc."s Rate Schedule 17 and all supplements thereto. Cleco Power is successor-in-interest to Cleco Utility Group, Inc. Cleco Power simultaneously filed substantially the same rate schedule as Cleco Power's Rate Schedule 14. Cleco Power Rate Schedule 14 has been amended to reflect that the parties recently entered into a Service Agreement for the Sale of Power and Energy Between Cleco Power LLC and The City of Natchitoches, Louisiana.

Comment Date: May 20, 2002.

12. Commonwealth Edison Company

[Docket No. ER02–1665–000]

Take notice that on April 29, 2002, Commonwealth Edison Company (ComEd) submitted for filing twenty-three Service Agreements for Firm Point to Point Transmission Service, fourteen with corresponding Network Upgrade Agreements, between ComEd and Alliant Energy (Alliant), Ameren Energy Marketing (Ameren), Dynegy Power Marketing, Inc. (Dynegy), Wisconsin Electric Power Marketing (Wisconsin Electric), and NRG Power Marketing, Inc. (NRG) under ComEd's FERC Electric Tariff, Second Revised Volume No. 5.

ComEd seeks an effective date of April 1, 2002 for each agreement and, accordingly, seeks waiver of the Commission's notice requirements. ComEd states that a copy of this filing has been served on Alliant, Ameren, Dynegy, Wisconsin Electric, NRG and the Illinois Commerce Commission.

Comment Date: May 20, 2002.

13. PSI Energy, Inc.

[Docket No. ER02–1666–000]

Take notice that on April 29, 2002, Cinergy Services, Inc. (Cinergy), as agent for PSI Energy, Inc., tendered for filing the Seventh Amendment to the Interconnection Agreement, dated May 1, 1992, between Indianapolis Power & Light Company and PSI Energy, Inc.

Cinergy states that it has served a copy of the filing upon the Indiana Utility Regulatory Commission and Indianapolis Power & Light Company.

Cinergy requests an effective date of May 1, 2002.

Comment Date: May 20, 2002.

14. Duke Energy Hinds, LLC

[Docket No. ER02–1667–000]

Take notice that on April 29, 2002, Duke Energy Hinds, LLC (Duke Hinds) submitted for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed service agreement under Duke Hinds' market-based rate tariff pursuant to which it sells power at wholesale to Duke Energy Trading and Marketing, L.L.C.

Comment Date: May 22, 2002.

15. Duke Energy Lee, LLC

[Docket No. ER02–1668–000]

Take notice that on April 29, 2002, Duke Energy Lee, LLC (Duke Lee) tendered for filing for informational purposes pursuant to Section 205 of the Federal Power Act an executed service agreement under Duke Lee's market-based rate tariff pursuant to which it sells power at wholesale to Duke Energy Trading and Marketing, L.L.C.

Comment Date: May 20, 2002.

16. PJM Interconnection, L.L.C.

[Docket No. ER02–1669–000]

Take notice that on April 29, 2002, PJM Interconnection, L.L.C. (PJM), tendered for filing the following executed agreement: an umbrella service agreement for network integration transmission service under state required retail access programs for Cook Inlet Power.

PJM requested a waiver of the Commission's notice regulations to permit effective date of April 1, 2002 for the agreement, the date that Cook Inlet Power became a member of PJM.

Copies of this filing were served upon Cook Inlet Power, as well as the state utility regulatory commissions within the PJM control area.

Comment Date: May 20, 2002.

17. Commonwealth Electric Company

[Docket No. ER02–1670–000]

Take notice that on April 30, 2002, Commonwealth Electric Company (Commonwealth) tendered for filing a firm point-to-point transmission service agreement between Commonwealth and Entergy Nuclear Generation Company (Entergy). Commonwealth states that the service agreement sets out the transmission arrangements under which Commonwealth will provide firm point-to-point transmission service to Entergy under Commonwealth's open access transmission tariff accepted for filing in Docket No. ER01–2291–001. Commonwealth requests that the service agreement become effective on July 1, 2002.

Comment Date: May 21, 2002.

18. Exelon Generation Company, LLC

[Docket No. ER02–1671–000]

Take notice that on April 30, 2002, Exelon Generation Company, LLC (Exelon Generation), submitted for filing a power sales service agreement between Exelon Generation and Electric Energy, Inc., under Exelon Generation's wholesale power sales tariff, FERC Electric Tariff Original Volume No. 2

Comment Date: May 21, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's web site under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11808 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1932–004, 1933–010 & 1934–010—California]

Southern California Edison; Notice of Availability of Draft Environmental Assessment

May 7, 2002.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Energy Projects has reviewed the applications for licenses for the Lytle Creek, Santa Ana River 1 & 3, and the Mill Creek 2/3 Hydroelectric Projects, located on the Lytle Creek, Santa Ana River, and Mill Creek, respectively, in San Bernardino County, California, and has prepared a Draft Multiple Project Environmental Assessment (DEA) for the projects. The projects are located within the San Bernardino National Forest.

The DEA contains the staff's analysis of the potential environmental impacts of the projects and concludes that licensing the projects, with appropriate environmental protective measures, would not constitute a major federal action that would significantly affect the quality of the human environment.

A copy of the DEA is on file with the Commission and is available for public inspection. The DEA may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Any comments should be filed within 45 days from the date of this notice and should be addressed to Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Please affix Project No. 1932–004, P–1933–010, or P–1934–010 to all comments. Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR

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385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.For further information, contact Jon Cofrancesco at (202) 219–0079.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11843 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing, Soliciting Motions To Intervene and Protests, Ready for Environmental Analysis, and Soliciting Comments, and Terms and Conditions, Recommendations, and Prescriptions

May 7, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection.

a. *Type of Application:* New Minor License.

b. *Project No.:* 3410–009.

c. *Date filed:* April 30, 2001.

d. *Applicant:* Woods Lake Hydro Company.

e. *Name of Project:* Woods lake Hydro Project.

f. *Location:* On Lime Creek, a tributary of Frying Pan River, in Eagle County, Colorado. The project occupies 2.73 acres of land within the White River National Forest.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825 (r).

h. *Applicant Contact:* Kenneth M. Knight, Woods Lake Hydro Company, P.O. Box 247, Parker, Colorado 80134. Tel. # (303) 964–1700.

i. *FERC Contact:* Gaylord Hoisington, (202) 219–2756, or *gaylord.hoisington@ferc.gov.*

j. *Cooperating agencies:* We are asking Federal, state, local, and tribal agencies with jurisdiction and/or special expertise with respect to environmental issues to cooperate with us in the preparation of the environmental document. Agencies who would like to request cooperating status should follow the instructions for filing comments described in item k below.

k. *Deadline for filing motions to intervene and protests, comments, and terms and conditions, recommendations, and prescriptions and request for cooperating agency status:* July 8, 2002.

All documents (original and eight copies) should be filed with: Magalie R Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

The Commission's Rules of Practice require all intervenors filing documents with the Commission to serve a copy of that document on each person on the official service list for the project. Further, if an intervenor files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Motions to intervene and protests, comments, terms and conditions, recommendations, and prescriptions and requests for cooperating agency status may be filed electronically via the Internet in lieu of paper. See 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link. l. This application has been accepted for filing, and is now ready for environmental analysis.

We will consider the prefiling consultation process that has occurred as satisfying National Environmental Policy Act scoping and intend on issuing one environmental assessment (EA) rather than issuing a draft and final EA. Tentatively, we plan on issuing an EA by September 2002.

m. *The Woods Lake Project consists of:* (1) A 37.3-foot-long, 6-foot-high overflow-type gravity dam; (2) a reservoir having a surface area of 0.018 acre and a storage capacity of 0.09 acre-feet; (3) a gated and screened intake structure; (4) a gated 15-inch, 630-foot-long PVC pipeline penstock; (5) a powerhouse containing a generating unit having an installed capacity of 45-kilowatts; (6) a short 24-inch-diameter CMP tailrace pipe; (7) a 1.02-mile-long transmission line; and (8) a switch gear, power controls, breaker boxes, switches, meters, transformers, and other appurtenant facilities.

n. A copy of the application is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

o. Anyone may submit comments, a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified deadline date for the particular application.

The Commission directs, pursuant to Section 4.34 (b) of the Regulations (*see* Order No. 533 issued May 8, 1991, 56 FR 23108, May 20 1991) that all comments, recommendations, terms and conditions, and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. All reply comments must be filed with the Commission within 105 days from the date of this notice.

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11844 Filed 5–10–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

MAY 8, 2002.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C 552B:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.

DATE AND TIME: May 15, 2002, 10:00 A.M.

PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda, * Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, secretary, telephone (202) 208–0400, for a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the reference and information center.

791ST—Meeting May 15, 2002, regular meeting, 10:00 A.M.

Administrative Agenda

A–1.
Docket# AD02–1, 000, Agency Administrative Matters

A–2.
Docket# AD02–7, 000, Customer Matters, Reliability, Security and Market Operations

Markets, Tariffs and Rates—Electric

E–1.
Docket# ER02–1330, 000, Pacific Gas and Electric Company

E–2.
Docket# ER02–1401, 000, Allegheny Power
Other#s
ER02–1440, 000, PJM Interconnection, L.L.C.
ER02–1441, 000, PJM Interconnection, L.L.C.

E–3.
Docket# ER02–1387, 000, Entergy Louisiana, Inc.

E–4.
Docket# ER02–1400, 000, Illinois Power Company

E–5.
Docket# EL00–62, 010, NSTAR Services Company v. New England Power Pool
Other#s EL00–102, 000, Northeast Utilities Service Company and Select Energy, Inc. v. ISO New England Inc.
EL00–109, 000, Alternate Power Source, Inc. v. ISO New England Inc.
EL00–109, 001, Alternate Power Source, Inc. v. ISO New England Inc.
ER00–2052, 008, NSTAR Services Company v. New England Power Pool

E–6.
Docket# ER02–211, 000, Vermont Yankee Nuclear Power Corporation
Other#s EL02–53, 000, Vermont Yankee Nuclear Power Corporation and Entergy Nuclear Vermont Yankee, LLC

E–7.
Docket# EL00–95, 058, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–97, 003, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
EL00–98, 050, Investigation of Practices of the California Independent System Operator and the California Power Exchange
EL00–104 008 California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator and the California Power Exchange
EL00–107, 009, Public Meeting in San Diego, California
EL01–1, 009, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL01–2, 003, CAlifornians for Renewable Energy, Inc. v. Independent Energy Products, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, All Scheduling Coordinators Acting on Behalf of the Above Sellers, California Independent System Operator Corporation and California Power Exchange Corporation EL01–68 011 Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council

E–8. Docket# ER01–3000, 003, International Transmission Company
Other#s RT01–101, 003, International Transmission Company
RT01–101, 004, International Transmission Company
EC01–146, 003, International Transmission Company and DTE Energy Company
EC01–146, 004, International Transmission Company and DTE Energy Company
ER01–3000, 004, International Transmission Company

E–9.
Docket# ER00–2413, 002, American Electric Power Service Corporation
Other#s ER00–2413, 003, American Electric Power Service Corporation
ER00–2413 005 American Electric Power Service Corporation

E–10.
Omitted

E–11.
Omitted

E–12.
Docket# EL01–122, 001, PJM Interconnection, L.L.C.

E–13.
Docket# TX98–2, 000, Public Service Company of Colorado

E–14.
Docket# ER02–782, 001, Florida Power & Light Company
Other#s ER02–782, 002, Florida Power & Light Company

E–15.
Docket# EG02–99, 001, Garnet Energy LLC

E–16.
Docket# ER02–508, 001, Tampa Electric Company
Other#s ER02–551, 001, Tampa Electric Company

E–17.
Docket# ER01–3142, 006, Midwest Independent Transmission System Operator, Inc.

E–18.
Docket# ER02–851, 002, Southern Company Services, Inc.
Other#s ER02–851, 003, Southern Company Services, Inc.

E–19.
Docket# TX96–2, 003, City of College Station, Texas

E–20.

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Docket# ER99–1770, 001, California Independent System Operator Corporation
E–21.
Docket# EL00–95, 031, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
Other#s EL00–98, 030, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 033, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL01–68, 000, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
E–21. (Continued)
EL01–68, 001, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
RT01–85, 000, California Independent System Operator Corporation
RT01–85, 001, California Independent System Operator Corporation
E–22.
Omitted
E–23.
Docket# EL00–95, 053, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
Other#s EL00–95, 045, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service into Markets Operated by the California Independent System Operator Corporation and the California Power Exchange Corporation
EL00–97, 002, Reliant Energy Power Generation, Inc., Dynegy Power Marketing, Inc. and Southern Energy California, L.L.C. v. California Independent System Operator Corporation
EL00–98, 042, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–98, 047, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
EL00–104, 007, California Electricity Oversight Board v. All Sellers of Energy and Ancillary Services Into the Energy and Ancillary Services Markets Operated by the California Independent System Operator Corporation and the California Power Exchange
EL00–107, 008, Public Meeting in San Diego, California
ER00–3461, 003, California Power Exchange Corporation
ER00–3673, 002, California Independent System Operator Corporation
E–23. (Continued)
EL01–1, 008, California Municipal Utilities Association v. All Jurisdictional Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange
EL01–2, 002, CAlifornians for Renewable Energy, Inc. v. Independent Energy Producers, Inc. and All Sellers of Energy and Ancillary Services Into Markets Operated by the California Independent System Operator and the California Power Exchange, All Scheduling Coordinators Acting on Behalf of the Above Sellers, California Independent System Operator Corporation and California Power Exchange Corporation
EL01–10, 003, Puget Sound Energy, Inc. v. All Jurisdictional Sellers of Energy and/or Capacity at Wholesale Into Electric Energy and/or Capacity Markets in the Pacific Northwest, Including Parties to the Western Systems Power Pool Agreement
EL01–34, 002, Southern California Edison Company and Pacific Gas and Electric Company
EL01–68, 009, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
RT01–85, 007, California Independent System Operator Corporation
ER01–607, 002, California Independent System Operator Corporation
ER01–1444, 003, Arizona Public Service Company
ER01–1445, 003, Automated Power Exchange, Inc.
ER01–1446, 005, Avista Energy, Inc.
ER01–1447, 003, California Power Exchange Corporation
ER01–1448, 005, Duke Energy Trading and Marketing, LLC
ER01–1449, 006, Dynegy Power Marketing, Inc.
ER01–1450, 003, Nevada Power Company
ER01–1451, 006, Portland General Electric Company
ER01–1452, 003, Public Service Company of Colorado
ER01–1453, 007, Reliant Energy Services, Inc.
ER01–1454, 003, Sempra Energy Trading Corporation
ER01–1455, 009, Mirant California, LLC, Mirant Delta LLC and Mirant Potrero, LLC
ER01–1456, 010, Williams Energy Services Corporation
ER01–1579, 003, California Independent System Operator Corporation
E–24. Docket# EL01–68, 010, Investigation of Wholesale Rates of Public Utility Sellers of Energy and Ancillary Services in the Western Systems Coordinating Council
E–25.
Docket# EL00–95, 056, San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Service Into Markets Operated by the California Independent System Operator Corporation and the California Power xchange Corporation
Other#s EL00–98, 049, Investigation of Practices of the California Independent System Operator Corporation and the California Power Exchange
E–26.
Docket# RM01–12, 000, Electricity Market Design and Structure
E–27.
Docket# RM02–9, 000, Electronic Filing of FERC Form No. 1 and Elimination of Certain Designated Schedules in FERC Form Nos. 1 and 1-F
E–28.
Docket# EL02–70, 000, The United Illuminating Company v. ISO New England Inc.
Other#s EL02–61, 000, PG&E National Energy Group, PG&E Generating, USGen New England Inc. and PG&E Energy Trading-Power, L.P. v. ISO New England Inc.
E–29.
Docket# EL00–35, 000, Platte-Clay Electric Cooperative, Inc.
E–30.
Docket# EL01–103, 000, USGen New England, Inc
E–31.
Docket# EL98–66, 000, East Texas Electric Cooperative, Inc. v. Central and South West Services, Inc., Central Power and Light Company, West Texas Utilities Company, Public Service Company of Oklahoma and Southwestern Electric Power Company
E–32.
Docket# EL01–106, 000, Old Dominion Electric Cooperative v. PJM Interconnection, L.L.C.
Other#s ER02–1333, 000, PJM Interconnection, L.L.C.
E–33.
Docket# EL02–8, 000, Mirant Americas Energy Marketing, L.P., Mirant Bowline, LLC, Mirant Lovett, LLC and Mirant NY Gen, LLC v. New York Independent System Operator, Inc.
E–34.
Docket# EL02–58, 000, Public Service Company of New Mexico v. Arizona Public Service Company
E–35.
Omitted
E–36.
Docket# EL01–109, 000, Midwest Generation, LLC v. Commonwealth Edison Company
E–37.
Docket# EL02–71, 000, State of California, ex rel. Bill Lockyer, Attorney General of the State of California v. British Columbia Power Exchange Corporation, Coral Power, LLC, Dynegy Power Marketing, Inc., Enron Power Marketing, Inc., Mirant Americas Energy Marketing, LP, Reliant Energy Services, Inc., Williams Energy Marketing & Trading Company, All Other Public Utility Sellers of Energy and Ancillary Services to the California Energy Resources Scheduling Division of the California Department of Water Resources, and All Other Public Utility Sellers of Energy and Ancillary Services Into Markets Operated by the California Power Exchange and California Independent System Operator Corporation
E–38.
Docket# EL02–12, 000, Sunbury Generation, LLC v. PPL Electric Utilities Corporation
E–39.
Docket# EL01–50, 000, KeySpan-Ravenswood, Inc. v. New York Independent System Operator, Inc.
E–40.
Docket# ER00–2413, 006, American Electric Power Service Corporation
Other#s ER00–3435, 003, Carolina Power & Light Company
ER01–247 004 Virginia Electric and Power Company
E–41.
Docket# ER00–3668, 001, Commonwealth Edison Company
Other#s ER00–3668, 000, Commonwealth Edison Company
ER00–3668 002 Commonwealth Edison Company
E–42.
Docket# ER01–3122, 000, Appalachian Power Company

Miscellaneous Agenda

M–1.
Reserved

Markets, Tariffs and Rates—Gas

G–1.
Docket# RP00–403, 000, Northern Border Pipeline Company
Other#s RP00–403, 001, Northern Border Pipeline Company
RP01–85, 000, Northern Border Pipeline Company
RP01–388, 000, Northern Border Pipeline Company
G–2.
Docket# RP00–320, 000, Chandeleur Pipe Line Company
Other#s RP01–111, 000, Chandeleur Pipe Line Company
G–3.
Docket# RP00–462, 000, Equitrans, L.P.
Other#s RP01–37, 001, Equitrans, L.P.
RP01–37 002 Equitrans, L.P.
G–4.
Docket# RP00–392, 000, Nautilus Pipeline Company, L.L.C.
Other#s RP00–576, 000, Nautilus Pipeline Company, L.L.C.
G–5.
Docket# GT01–25, 003, ANR Pipeline Company
Other#s RP99–301, 038, ANR Pipeline Company
G–6.
Omitted
G–7.
Docket# RP01–623, 003, Mississippi River Transmission Corporation
Other#s RP01–622, 002, Mississippi River Transmission Corporation
G–8.
Docket# RP02–129, 001, Southern LNG Inc. ,
Other#s RP02–129, 002, Southern LNG Inc.
G–9.
Omitted
G–10.
Docket# RM98–10, 010, Regulation of Short-Term Natural Gas Transportation Services, and Regulation of Interstate Natural Gas Transportation Services
G–11.
Docket# RP02–206, 000, Tenaska Marketing Ventures v. Northern Border Pipeline Company
G–12.
Docket# OR02–4, 000, Chevron Products Company v. SFPP, L.P.
G–13.
Docket# IS01–444, 004, Conoco Pipe Line Company
Other#s IS01–445, 004, Conoco Pipe Line Company
G–14.
Docket# RP00–318, 000, Enbridge Pipelines (KPC)(formerly, Kansas Pipeline Company)
Other#s RP01–6, 001, Enbridge Pipelines (KPC)(formerly, Kansas Pipeline Company)
G–15.
Docket# OR01–8, 000, ARCO, a subsidiary of BP America, Inc. v. Calnev Pipe Line, L.L.C.
Other#s OR01–8, 001, ARCO, a subsidiary of BP America, Inc. v. Calnev Pipe Line, L.L.C.
OR02–2, 000, Tosco Corporation v. Calnev Pipe Line, L.L.C.
OR02–3, 000, Ultramar Inc. v. Calnev Pipe Line, L.L.C.
G–16.
Docket# RP00–545, 000, WestGas InterState, Inc.
Other#s RP01–55, 001, WestGas InterState, Inc.
RP01–55, 002, WestGas InterState, Inc.
G–17.
Docket# PR02–10, 000, Enogex, Inc.
G–18.
Docket# RP00–387, 000, Florida Gas Transmission Company
Other#s RP00–583, 000, Florida Gas Transmission Company
RP00–583, 001, Florida Gas Transmission Company
G–19.
Docket# OR02–7, 001, Kinder Morgan Energy Partners, L.P.

Energy Projects—Hydro

H–1.
Docket# P–2436, 158, Consumers Energy Company
Other#s P–2447, 148, Consumers Energy Company
P–2448, 152, Consumers Energy Company
P–2449, 132, Consumers Energy Company
P–2450, 128, Consumers Energy Company
P–2451, 132, Consumers Energy Company
P–2452, 139, Consumers Energy Company
P–2453, 158, Consumers Energy Company
P–2468, 134, Consumers Energy Company
P–2580, 177, Consumers Energy Company
P–2599, 145, Consumers Energy Company
H–2.
Docket# P–2113, 146, Wisconsin Valley Improvement Company
H–3.
Omitted
H–4. ,
Omitted
H–5.

Docket# P–137, 036, Pacific Gas and Electric Company
Other#s P–619, 098, Pacific Gas and Electric Company and City of Santa Clara, California
H–6.
Docket# P–2899, 105, Idaho Power Company

Energy Projects—Ccertificates

C–1.
Docket# CP01–439, 000, Columbia Gas Transmission Corporation
C–2.
Docket# CP01–45, 002, Colorado Interstate Pipeline Company
C–3.
Docket# CP00–36, 004, Guardian Pipeline, L.L.C.
Other#s CP02–160, 000, ANR Pipeline Company
C–4.
Docket# CP01–311, 000, Kinder Morgan Interstate Gas Transmission LLC
C–5.
Docket# CP02–133, 000, Aquila Storage and Transportation, LP

Magalie R. Salas,
Secretary.
[FR Doc. 02–11984 Filed 5–9–02; 11:21 pm]
BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Sunshine Act Meeting

May 8, 2002.

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), 5 U.S.C. 552b:

AGENCY HOLDING MEETING: Federal Energy Regulatory Commission.
DATE AND TIME: May 15, 2002, (30 Minutes Following Regular Commission Meeting).
PLACE: Room 2C, 888 First Street, NE., Washington, DC 20426.
STATUS: Closed.
MATTERS TO BE CONSIDERED: Docket No. EL02–75–000, Duke Energy Trading and Marketing, L.L.C. v. Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., Entergy New Orleans, Inc. and Entergy Services, Inc.
CONTACT PERSON FOR MORE INFORMATION: Magalie R. Salas, Secretary, Telephone (202) 208–0400.

Magalie R. Salas,
Secretary.
[FR Doc. 02–11985 Filed 5–9–02; 11:21 am]
BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–957]

Annual Adjustment of Revenue Threshold

AGENCY: Federal Communications Commission.
ACTION: Notice.

SUMMARY: This notice announces that the 2001 revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $119 million. The Telecommunications Act of 1996 mandates that the Commission shall adjust the revenue threshold annually to reflect the effect of inflation.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–A325, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Debbie Weber, Pricing Policy Division, Wireline Competition Bureau at (202) 418–0812.

SUPPLEMENTARY INFORMATION: This gives notice that the annual revenue threshold used for classifying carriers for various accounting and reporting purposes is increased to $119 million. Section 402(c) of the Telecommunications Act of 1996 mandates that we adjust this revenue threshold annually to reflect the effects of inflation since October 19, 1992, at which time the threshold was $100 million. In accordance with the Act, we adjust the threshold based on the ratio of the gross domestic product chain-type price index (GDP–CPI) in the revenue year and the GDP–CPI for October 19,1992. The revenue threshold for 2001 was determined as follows:

(1) October 19, 1992 GDP–CPI: 91.62
(2) 2001 GDP–CPI: 109.37
(3) Inflation Factor (line 2 ÷ line 1): 1.1937
(4) Original Revenue Threshold: $100 million
(5) 2001 Revenue Threshold (line 3 * line 4): $119 million

Federal Communications Commission.
Tamara L. Preiss,
Chief, Pricing Policy Division.
[FR Doc. 02–11834 Filed 5–10–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Technological Advisory Council

ACTION: Notice of public meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the fifth meeting of the Technological Advisory Council ("Council") under its new charter.

DATES: Wednesday, June 12, 2002 at 10 a.m.

ADDRESSES: Federal Communications Commission, 445 12th St. SW., Room TW–C305, Washington, DC 20554.

SUPPLEMENTARY INFORMATION: Continuously accelerating technological changes in telecommunications design, manufacturing, and deployment require that the Commission be promptly informed of those changes to fulfill its statutory mandate effectively. The Council was established by the Federal Communications Commission to provide a means by which a diverse array of recognized technical experts from a variety of interests such as industry, academia, government, citizens groups, etc., can provide advice to the FCC on innovation in the communications industry. The purpose of, and agenda for, the fifth meeting under the Council's new charter will be to review the progress that has been made and organize the Council's efforts to fulfill its responsibilities under its new charter. The Council will also consider such questions as the Commission may put before it. Members of the public may attend the meeting. The Federal Communications Commission will attempt to accommodate as many persons as possible. Admittance, however, will be limited to the seating available. Unless so requested by the Council's Chair, there will be no public oral participation, but the public may submit written comments to Jeffery Goldthorp, the Federal Communications Commission's Designated Federal Officer for the Technological Advisory Council, before the meeting. Mr. Goldthorp's e-mail address is *jgoldtho@fcc.gov*. His United States mail delivery address is Jeffery Goldthorp, Chief, Network Technology Division, Office of Engineering and Technology, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554.

Federal Communications Commission.
Marlene H. Dortch,
Secretary.
[FR Doc. 02–11833 Filed 5–10–02; 8:45 am]
BILLING CODE 6712–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 6, 2002.

A. Federal Reserve Bank of Atlanta (Sue Costello, Vice President) 1000 Peachtree Street, N.E., Atlanta, Georgia 30309–4470:

1. Gwinnett Commercial Group, Inc., Lawrenceville, Georgia; to merge with Embry Bankshares, Inc., Lawrenceville, Georgia, and thereby indirectly acquire voting shares of Emby Bank, Lawrenceville, Georgia.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Grace Investment Company, Inc., Alva, Oklahoma; to acquire 100 percent of the voting share of Alva State Bank & Trust Company, Alva, Oklahoma.

Board of Governors of the Federal Reserve System, May 7, 2002.
Robert deV. Frierson,
Deputy Secretary of the Board.
[FR Doc. 02–11799 Filed 5–10–02; 8:45 am]
BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

SECURITIES AND EXCHANGE COMMISSION

[Docket No. R–1122; Release No. 34–45879; File No. S7–15–02]

RIN 3235–AI48

Interagency White Paper on Structural Change in the Settlement of Government Securities: Issues and Options

AGENCIES: Board of Governors of the Federal Reserve System and Securities and Exchange Commission.
ACTION: Concept release; request for comment.

SUMMARY: The Board of Governors of the Federal Reserve System ("Board") and the Securities and Exchange Commission ("Commission") (collectively, the "agencies") are publishing for comment an interagency White Paper titled: *Structural Change in the Settlement of Government Securities: Issues and Options* ("White Paper"). The White Paper is designed to facilitate the discussion of possible structural changes in the settlement of government securities transactions. The White Paper is not intended to suggest that any of the approaches represent an improvement over current arrangements or that structural change is necessary. The goal of the White Paper is to provide a framework for discussion by identifying issues and questions that need to be further explored.

DATES: Comments should be received on or before August 12, 2002.

ADDRESSES: Comments should be sent to both agencies at the addresses listed below.

Board: Comments should refer to Docket No. R–1122 and should be submitted in triplicate to Ms. Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551, or mailed electronically to *regs.comments@federalreserve.gov*. Comments addressed to Ms. Johnson may also be delivered to the Board's mail facility in the West Courtyard between 8:45 a.m. and 5:15 p.m., located on 21st Street between Constitution Avenue and C Street, NW. Members of the public may inspect comments in Room MP–500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board's Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

SEC: All comments concerning the White Paper should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549–0609. Comments can be submitted electronically at the following e-mail address: *rule-comments@sec.gov*. All comment letters should refer to File No. S7–15–02; this file number should be included on the subject line if e-mail is used. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 5th Street, NW., Washington, DC 20549. Electronically submitted comment letters will be posted on the Commission's Internet Web site (*http://www.sec.gov*).[1]

FOR FURTHER INFORMATION CONTACT: *Board:* Patrick Parkinson, Associate Director, (202) 452–3526, and Patricia White, Assistant Director, (202) 452–3620, Division of Research and Statistics; and Jeff Stehm, Assistant Director, (202) 452–2217, Division of Reserve Bank Operations and Payment Systems, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551. Telecommunications Device for the Deaf (TDD) users may contact (202) 263–4869.

SEC: Robert L.D. Colby, Deputy Director, at (202) 942–0094; Larry Bergmann, Senior Associate Director, at (202) 942–0770; Jerry Carpenter, Assistant Director, at (202) 942–4187; Jeffrey Mooney, Senior Special Counsel, at (202) 942–4174, and Jennifer Lucier, Attorney, at (202) 942–0173, Division of Market Regulation, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–1001.

SUPPLEMENTARY INFORMATION:

After the September 11, 2001, terrorist attacks, discussions were held with market participants to learn their perspectives on vulnerabilities in settlements of government securities. Three options for addressing vulnerabilities were explored: (1) The clearing banks and key market participants implementing more robust contingency arrangements; (2) each

[1] The Commission does not edit personal, identifying information, such as names or electronic mail addresses, from electronic submissions. Submit only information you wish to make publicly available.

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primary dealer establishing a backup clearing arrangement at a bank other than its existing clearing bank; and (3) implementing structural change such as by establishing a utility to conduct settlement. The discussions revealed consensus on two points—contingency planning should be enhanced but market participants felt that a backup clearing account would be of little value. Market participants were interested in exploring structural changes in the provision of settlement services for government securities, including the concept of creating a utility, but the discussion was unfocused because of the absence of specific proposals.

The purpose of this White Paper is to facilitate discussion of issues relating to the settlement of government securities transactions by describing more concretely ways in which a utility might be organized. The staffs of the agencies believe that further discussion of a utility is warranted because enhanced contingency planning alone does not eliminate the vulnerabilities that have been identified in the settlement process for the government securities market. The White Paper identifies possible structural approaches for a utility and possible evaluation criteria for assessing the approaches. The White Paper also offers a preliminary assessment of the various approaches. The agencies request the views of market participants on the analysis in the White Paper and the next steps to be taken in evaluating structural change further.

The White Paper in its entirety is set forth below.

Interagency White Paper [2] Structural Change in the Settlement of Government Securities: Issues and Options

Introduction

Payment and securities settlement systems have been marked by increasing consolidation of the institutions providing those services. During the 1980s and early 1990s, for example, mergers and exits reduced the number of banks providing settlement services for government securities trades, and today only two banks—JPMorgan Chase (Chase) and The Bank of New York (BONY)—provide the full range of services required by major market participants. Though these changes in the settlement of government securities are only one aspect of broader developments in financial markets, they are of particular interest to makers of public policy because of the key role that government securities play in the monetary policy process and as collateral in a wide array of financial market transactions.[3]

The business of settling trades in government securities involves the provision of a range of services: the transfer of government securities against funds (settlement), the provision of intraday credit to facilitate these settlements, position management services for primary dealers (including the matching of settlement instructions with incoming securities, automated options for handling mismatches, and the real-time reporting of transactions), and overnight and term financing through triparty repurchase agreements (repos). Settling trades, providing intraday credit, and providing tools (software) for position management are sometimes referred to as "core clearing."[4] The financing provided through triparty repos also is critical to the functioning of the government securities market. Triparty services for government securities currently are provided by the same banks that provide core clearing, but different entities may be able to offer the two types of services, as is the case for other types of securities.[5]

All the primary dealers depend critically on either Chase or BONY for core clearing services and triparty repo arrangements, which are integral to the dealers' financing, and institutional investors rely on these clearing banks to place large volumes of funds in the highly secure and liquid triparty repos. The Federal Reserve also is dependent upon the clearing banks' records for open market transactions conducted through triparty arrangements, and the U.S. Treasury relies on the clearing banks for the settlement of a major portion of its securities at issuance.

This concentration in the provision of clearing services gives rise to operational, financial, and structural vulnerabilities.

(1) Operational problems at either of the two clearing banks can significantly impede the settlement of dealers' trades and the reconciliation of their positions. Market participants settling through a clearing bank with operational problems could not easily move to another service provider because of differences in the technology used by the clearing banks. Even if a switch in banks were technologically feasible, firms would be hampered because they would not know their securities and funds positions or have access to them at the clearing bank with operational problems.

(2) Financial vulnerabilities arise from the potential for a clearing bank's financial condition to become impaired, perhaps because of losses from activities unrelated to the clearing business. Involuntary exit because of financial problems could force regulators to transfer the clearing operations to a bridge bank.[6] Moreover, market participants might be uncomfortable with the uncertainty associated with a bridge bank, particularly because the ability to fashion a permanent solution (through, for example, the sale of the business) may be limited.

(3) The current concentration in clearing has resulted in part from voluntary decisions by banks to exit the clearing business. A business decision to exit by either clearing bank would concentrate risk and market power in a single, full-purpose, commercial bank. This concentration of risk would likely be unacceptable to market participants and public policy makers and might be unacceptable to the remaining clearing bank.

As part of the stocktaking after September 11, staff from the Federal Reserve, the Commission, and the Treasury held discussions with market participants to learn their perspective on the vulnerabilities of the government securities market. The discussants explored three options for addressing vulnerabilities: improving the operational resiliency of clearing banks, establishing backup securities accounts with the second clearing bank, and instituting structural change, for example, by creating an industry utility to conduct settlement.

These discussions indicated consensus on two points. First, clearing banks as well as other market participants needed to improve their contingency backup arrangements.[7] Second, backup securities accounts would be difficult to arrange and likely would be of little value. The technology used by the two clearing banks is sufficiently different to make it difficult and costly to establish and maintain such accounts. More important, quickly moving activity to another account would likely be difficult because of the need to determine positions at the bank with problems, transfer these positions to the backup account, and alter standing settlement instructions with counterparties to direct new transactions to the backup account.

Market participants were interested in exploring structural change, including the concept of an industry utility. Discussions of such a utility were hampered, however, by different conceptions of how it might be organized and lack of systematic consideration of the concept on the part of most market participants.

This paper facilitates exploration of structural change in settlements of government securities by describing more concretely some approaches to organizing an industry utility. The agencies believe further discussion of structural change is warranted because enhanced contingency backup arrangements alone do not eliminate the financial and structural vulnerabilities that the market faces. Indeed, the cost of improved contingency arrangements could exacerbate structural vulnerability by reducing the profitability of core clearing. This paper also identifies possible criteria for assessing the approaches and, to encourage further discussion, offers a preliminary evaluation of the various approaches using the assessment criteria.

The agencies whose staff have contributed to the drafting of this paper have not concluded that any of the approaches described below represents an improvement over current arrangements. Nor is this paper intended to resolve that issue. Rather, the agencies believe that a broad industry discussion of these issues is timely and that such a discussion would benefit from a document that furnishes it with a framework. This paper, therefore, provides that framework and identifies issues and questions that need to be explored further.

Approaches

One of the difficulties in discussing the establishment of a utility is the wide variety of forms that such an entity could take. The structure of the utility determines how risks will be shared and costs will be borne. An important dimension along which utilities often differ is their ownership and governance. A utility can be organized as a private-sector entity, perhaps owned and governed by market participants but subject to oversight by a public-sector body. Alternatively, clearing and settlement functions might be performed by a governmental entity. Other important characteristics of a utility include how credit is supplied in the clearing process (by individual banks, by the utility itself, by the central bank) and how the operational infrastructure is supplied (by competing service providers, by a single private utility, by the central bank). To focus discussion on the specific characteristics that meet market needs and address market vulnerabilities, this analysis is limited to only three of the many ways in which a utility might be structured.

Old Euroclear Model

A utility can be structured as an industry-owned depository and settlement entity that contracts with a commercial bank for the provision of most services.[8] This model for a utility is similar to the original Euroclear model in which, until 2001, an industry-owned company contracted with Morgan Guaranty Trust Company for operational and credit services. Shareholders of a utility organized along these lines would largely be securities and banking industry participants. The governing body typically would be elected by shareholders, and it would establish membership criteria, prices, operating budgets, and investment priorities. The utility would contract with a bank (or banks or other service providers) for the operation of the settlement and depository services. Settlements would take place on the books of this bank, which would furnish securities and cash accounts to dealers. It would also furnish intraday financing, subject to risk controls it would establish. Overnight financing, including triparty repo services, would be provided either by the bank supplying the operational support or perhaps by other banks.

A Private Limited-Purpose Bank

A private limited-purpose bank (like the Depository Trust Company [DTC] or the new Euroclear Bank) is an alternative type of industry-owned depository and settlement mechanism.[9] Key features distinguishing this model from the old Euroclear model are the means of providing depository and settlement services and the sources of liquidity support. Rather than contracting with a commercial bank, the utility itself would furnish the operational support. Settlements of government securities currently require aggregate extensions of hundreds of billions of dollars of intraday credit to dealers, and a private limited-purpose bank would need to arrange a backup liquidity facility to ensure final settlement in the event one of its participants failed to cover an overdraft. Based on the experience of other utilities in arranging facilities a fraction of that size, a private limited-purpose bank might find arranging sufficient backup liquidity support difficult, other than possibly from the Federal Reserve. Overnight funding, including triparty repo services, would be provided by the limited-purpose bank or perhaps by other commercial banks.

Enhancement of Federal Reserve Services

A third alternative is a public utility in which the Federal Reserve provides depository and settlement services. The Federal Reserve and the Commission generally prefer private-sector solutions to policy problems unless a market failure suggests a clear need for government intervention. In evaluating potential structural changes, however, it is important to discuss the widest possible set of ways to address the vulnerabilities for the government securities market, which includes enhancing Federal Reserve services.

In a simple version of this model, the Federal Reserve would need to provide nonbank securities dealers, as well as the GSCC (and possibly interdealer brokers), direct access to securities

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[2] Prepared by staff of the Federal Reserve Board, the Federal Reserve Bank of New York, and the Securities and Exchange Commission. Staff at the U.S. Treasury Department were consulted and provided comments.

The agencies whose staff contributed to the drafting of this paper have not concluded that structural change is necessary.

[3] The Group of Ten, "Report on Consolidation in the Financial Sector," January 2001, provides a detailed look at the ongoing consolidation of financial institutions and the potential effects on the contours of the financial system.

[4] Some view the use of the term "clearing" for these activities as a misnomer. The Government Securities Clearing Corporation (GSCC) serves as the clearing utility and central counterparty for trade comparison and netting in the U.S. government securities market. Trade comparison and trade netting services are also traditionally referred to as "clearing." Because of the prevalence of the use of the term "clearing" for settling trades in government securities, however, its use is continued here.

[5] Triparty programs cover various securities for which core clearing is provided by the Depository Trust Company (DTC) or Euroclear Bank.

[6] The use of a bridge bank might be consistent with a least-cost resolution; but if it were not, authorities would need to consider a systemic-risk exception to least-cost resolution, with the attendant increased costs in terms of moral hazard and diminished market discipline on large complex banks. The Federal Deposit Insurance Corporation generally must resolve failed institutions using the least costly method that meets its obligations to insured depositors. It can employ a method that is not least cost only if the Federal Reserve Board and the board of the FDIC recommend that step and if the Secretary of the Treasury (in consultation with the President) makes an explicit determination that a least-cost resolution would have adverse effects on economic conditions or financial stability and that the more costly method for resolution would avoid or mitigate those adverse effects. This is known as the "systemic-risk exception."

[7] A complementary interagency group is working with private-sector firms and utilities to improve the resiliency of financial market participants' backup arrangements. Goals of the group include developing guidance on business continuity issues, organizing industry testing, and addressing telecommunications issues, particularly switching and routing diversity.

[8] Contracting with multiple banks for these services may be possible.

[9] This option could be implemented by expanding an existing depository such as DTC or by creating an organization de novo.

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accounts, funds accounts, and secured credit. As noted earlier, dealers routinely use substantial intraday credit, which would need to be supplied by the Federal Reserve. A dealer also might find itself unable to fund its holdings of government securities in a financial crisis, and in that event, the Federal Reserve would need to provide liquidity support in the form of overnight credit. For this model to be effective, the Federal Reserve would have to furnish operational support by developing products that replicate at least some of the position management and information services currently provided to the dealers by the clearing banks. Dealers would continue to need the overnight funding supplied by triparty repo services. These services might be provided by commercial banks. Alternatively, the Federal Reserve could develop the product. In this case, the Federal Reserve would need to consider how triparty services might be offered without also extending accounts to nonbank institutional investors, perhaps by using these investors' accounts at their custodian banks.

Variants on this simple model of enhanced Federal Reserve services also might be explored. For example, the Federal Reserve could provide direct operational interfaces with the dealers, but the dealers' transactions could settle through accounts held at depository institutions. In this way, depository institutions would intermediate the intraday credit used in the settlement process.

Evaluation Criteria

Operational, Financial, and Structural Vulnerabilities

Any proposal to restructure government securities settlements must address the operational, financial, and structural vulnerabilities that are inherent in the current arrangements. Arguably, no utility could be designed to eliminate all these vulnerabilities. Rather, the relevant criteria for evaluating options are the extent to which the utility can reduce existing vulnerabilities. Proposals thus should be evaluated on their ability to improve the operational resiliency of government securities clearing, to better insulate the clearing process from the risks of financial problems at a key service provider, and to reduce the vulnerability of the clearing process to voluntary exit by firms that provide critical services. In the addressing of these vulnerabilities, however, it is equally important that new ones not be introduced, and evaluations of structural change should take this concern into account.

Efficiency and Innovation

Other criteria that are critical for evaluating any restructuring proposal are the proposal's implications for the efficiency and innovativeness of the settlement process and related financing transactions. Existing arrangements in which the clearing banks compete in the provision of services to dealers create a mechanism both for holding down costs and for fostering innovation. The development of triparty repo services illustrates how clearing banks, in responding innovatively to market demands, have reduced dealers' financing costs and benefited investors. Proposals for structural change, therefore, should be evaluated on their ability to replicate the strengths of the existing system, encourage ongoing innovation, and deliver services in a cost-effective manner.

Fully evaluating proposals may be difficult because the evaluations will depend on the governance structures adopted, which will determine pricing and investment decisions. In general, various proposals' governance structures (and the transparency of those structures) will have implications for a range of important issues, from the robustness of the risk-management system to the fairness (particularly with respect to access) of the system. Furthermore, assumptions about the initial investment required and the potential for savings on operating costs over time are necessary for making judgments about the efficiency of proposals.

Implications for Federal Reserve Policies

Proposals to restructure the settlement process will have implications for Federal Reserve services and policies. The implementation of some proposals would require the Federal Reserve to broaden dramatically the scope of services that it provides market participants and, most important, change policies with respect to the types of firms that are granted access to accounts and to credit. Consideration of these proposals should entail an assessment of the Federal Reserve's legal and operational ability to deliver the required services. Proposals also should be evaluated to determine whether broader access and the provision of credit to nondepositories poses significant risk to the Federal Reserve or entails significant moral hazard. Other proposals raise the possibility that the Federal Reserve would greatly reduce its role in settling secondary market transactions for government securities, and the implications of that possible outcome also should be assessed.

Evaluations of Approaches

Old Euroclear Model

This model's ability to address the vulnerabilities in the current system is mixed; though operational vulnerabilities could be addressed, financial vulnerabilities would not, and the effects on structural vulnerabilities would be unclear. Operationally, the utility would contract with one or more entities to provide support for depository and settlement activities, and its resiliency would depend upon the standards it set for firms providing the services. There is no reason to believe that the operational resiliency of this model would not be on par with that of the current system, and it might be possible to hold the banks providing services to higher standards because the costs would be more transparent and, therefore, dealers might be more willing to bear them.

The ability of this model to address financial and structural vulnerabilities is much more limited, however. The utility would be exposed to the risk that a bank providing operational and credit services could involuntarily exit the business because of financial difficulties unrelated to clearing activities. This risk would be diversified if more than one firm provided these services. However, given the economies of scale and scope in clearing, the willingness of multiple banks to provide the critical services and, therefore, the potential for diversifying the risks may be limited. The extent to which the structural vulnerabilities are addressed depends on the ability of the utility to negotiate long-term contracts with suppliers of critical services at terms that the supplier will find sufficiently attractive to remain in the business.

Because of the critical role of triparty activity in the financing of dealers, the market would be vulnerable to operational, financial, or structural problems if triparty services continued to be concentrated among only a few providers. Dealers might be able to manage these risks by requiring standardization of software that would enable them to move their accounts more easily in the event of operational problems or exit, but the challenges of reconciling positions in such events would remain.

The ability of this model to deliver innovative services cost effectively will depend critically on the governance structure of the utility and the standards it sets for banks supplying services. The utility may be able to foster competition similar to that of the current system by contracting with multiple banks for services. Product innovation would be dependent upon the utility's policies as well. The management and board of the utility clearly would have to be mindful of these issues if this model of utility were to retain these features of the current system.

This model would not require any changes in Federal Reserve policies. The model continues to rely on private banks to provide operational and credit support for settlements; the utility itself would be a vehicle for administration and governance rather than a provider of services.

A Private Limited-Purpose Bank

The creation of a limited-purpose bank to function as the utility would concentrate depository and settlement activity within one entity, thereby concentrating operational risk. The ability of this model of utility to improve the operational resiliency of government securities settlements thus will depend upon the resources it devotes to backup facilities. The current system requires each clearing bank to incur these costs; so conceivably, a limited-purpose bank could devote more resources to backup facilities than an individual clearing bank but would still offer a cost savings. A limited-purpose bank is, by construction, less exposed to financial problems from unrelated activities than a full-service bank because of limits on the scope of its activities. Similarly, it is unlikely to voluntarily exit the business of clearing, having been created solely for that purpose.

The assessment of the ability of a limited-purpose bank to address financial and structural vulnerabilities in the government securities market is less sanguine if the utility does not provide triparty services and these services remain concentrated among a few banks. Triparty services are so integral to the financing of dealers in government securities markets that these markets will be operationally, financially, and structurally vulnerable to the banks that provide such services. These banks, which have broader business lines than a limited-purpose bank, will be vulnerable to losses in activities unrelated to clearing and triparty services. They are also free to make the business decision to voluntarily exit the triparty business. If the separation of core clearing from triparty services lowers the barriers to entry and attracts entrants to the triparty business, however, structural vulnerabilities would be ameliorated with a reduction in concentration.

The ability of this model to deliver services efficiently and innovatively will depend upon the governance structure of the limited-purpose bank. Assuming that users own the bank and control the governance structure, these users will have incentives to monitor costs and to create mechanisms for developing new products. In recent years, triparty repo services have been the area of most innovation in the clearing of government securities. Undoubtedly, the competition between the clearing banks has spurred the innovation. Some of this pressure to innovate thus might be lost if triparty services were provided exclusively by the utility. Over time, a failure to innovate in the triparty area could have adverse implications for dealer financing.

This model has several important implications for Federal Reserve policy. As was noted in the description of the limited-purpose bank, the Federal Reserve may be the only feasible entity to provide a backup liquidity facility of large enough size. Providing this facility to a limited-purpose bank would entail a change in policy with respect to discount window access for limited-purpose banks or trust companies. But it is not clear whether risk to the Federal Reserve or moral hazard would increase. With the current arrangements, the Federal Reserve effectively provides back-stop liquidity to the clearing banks. Providing the same liquidity to a utility might, in fact, entail less risk and moral hazard because of the restrictions on the utility's activities, more intense supervision of the utility, and greater transparency. The creation of this type of utility would also reduce (and might eliminate) the Federal Reserve's role in settling secondary market transactions for government securities. The vast majority of transactions would be settled on the books of the limited-purpose bank, particularly if it were providing triparty repo services as well as core clearing.

Enhancement of Federal Reserve Services

If the Federal Reserve provides accounts, credit, and services directly to dealers, the existing vulnerabilities in the government securities market would be reduced. Under this model, the Federal Reserve would be providing the operational support for the settlement process, and these enhanced products would be integrated into the existing backup contingency arrangements for the Fedwire system. The Federal Reserve's arrangements have been more robust than those of private-sector firms and other market utilities, and the Federal Reserve has spent appropriate amounts to meet contingency requirements. Federal Reserve services are not vulnerable to disruption because of financial difficulties.

To address vulnerabilities fully, the Federal Reserve may need to develop triparty repo as well as core clearing services. Alternatively, if the Federal Reserve limits its enhanced services to core clearing, there may be opportunities for a wider set of firms to offer triparty services, reducing structural vulnerability in the triparty market. A separation between core clearing and triparty repos, however, would require an additional transfer of securities from the dealer to the triparty provider, as in the current process with DTC-eligible securities used for triparty repos. The number of additional transfers could be reduced through the creation of a facility to transfer securities in blocks (bulk transfers) rather than security by security.

It is not clear whether this model could deliver services as cost effectively as the current system or how product innovation would be affected. Although the Federal Reserve is required to price services to cover its costs over the long run, the benefits of competition would be lost. Perhaps more significant in the long run, innovation would no longer be spurred by competition. Because the Federal Reserve is not subject to the same profitability constraints that a private-sector business is, some industry participants may view its assumption of the role of service provider for settlement services negatively.

Providing direct access to dealers would be a marked departure from existing Federal Reserve policy. The Federal Reserve would need to provide accounts and hundreds of billions of dollars of credit to nondepository institutions routinely during the day and, in a crisis, overnight. From a risk-management perspective, however, credit extensions presumably would be collateralized with highly liquid securities, and government securities brokers and dealers would be subject to federal regulation by the Commission or the Treasury.

Direct access to dealers could be perceived as providing dealers with broad access to liquidity support from the Federal Reserve. Any adverse effects on market discipline would be mitigated by federal regulation of the dealers, collateralization of the credit extensions, fees for intraday and overnight credit, and the potential for the Federal Reserve to impose quantity constraints on the amount of intraday

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credit extensions. Still, expansion of access could raise concerns about moral hazard. Perception of a safety net extension might be further attenuated through some variant of this model that leaves the dealers' accounts in a depository institution. In addition, if the Federal Reserve were to provide triparty repo services, the issue of accounts for a broad set of institutional investors might arise unless market practices changed.

Questions for Further Discussion

1. Have the vulnerabilities in the government securities market been identified correctly? Are there other vulnerabilities that should be considered in evaluating the need for structural change?

2. Are there other structural approaches to a utility that should be given serious consideration besides the three basic options described in this paper? If so, what are they?

3. Are the evaluation criteria set out in this paper the relevant ones for assessing the merits of an industry utility? If not, what other criteria are relevant?

4. Can concerns about efficiency, innovation, and competition be addressed through governance? If so, how?

5. Is it feasible to separate the provision of core clearing from the provision of triparty repo services? Would the separation of core clearing from triparty repo enable other banks to compete more effectively in the provision of triparty services? Can triparty repo services be provided by a utility?

6. How much intraday credit would a utility need to provide in the settlement of government securities trades? Would a utility likely be able to arrange backup liquidity through committed lines of credit at commercial banks of the magnitude necessary to ensure timely settlement in the event a participant failed to cover an intraday credit extension?

7. What is the likely size of the initial investment to create an industry utility? What factors determine the effects of a utility on costs generally? On costs to dealers of core clearing services? On financing costs to dealers?

8. Who should own a private utility? How should its board of directors be chosen? What legal form should it take (for example, a bank, registered clearing agency, an Edge Act corporation)?

9. What should be the next steps in evaluating alternative structures? What type of decisionmaking framework should be created, and which groups should be represented in that process?

Appendix 1

Clearing and Settlement Arrangements for Government Securities

1. Within the universe of about 1,700 dealers, the trading of U.S. government securities is concentrated largely among 22 primary dealers and a handful of interdealer brokers (IDBs).

- Interdealer brokers collect dealer quotes, post them to electronic screen services, and execute trades between dealers, thereby facilitating price discovery, liquid markets, and anonymity in the interdealer market; about one-third of dealer-to-dealer trades are executed through an IDB.
- Among the primary dealers, most trading activity is concentrated in five to ten dealers.
- Trading activity includes dealer financing (repo) transactions and outright purchases and sales on behalf of customers and for the dealer's own account.

2. After a trade is executed, counterparties to the trade must compare trade details and determine settlement obligations (clearance).

- The Government Securities Clearing Corporation (GSCC) serves as the clearing utility and central counterparty for trade comparison and netting in the U.S. government securities market.
- GSCC is registered with and supervised by the Commission.
- Through trade comparison, netting, and central counterparty guarantees, GSCC decreases its participants' counterparty settlement risk and helps ensure orderly settlement in the marketplace.
- Each day, GSCC compares trades valued at more than $1.3 trillion. About one-third of these trades are for outright purchases and sales, and the remaining two-thirds are repo transactions.
- GSCC has 122 direct participants—consisting of dealers, interdealer brokers, investment managers, and banks—one-quarter of which use trade comparison services only.
- GSCC participants also clear trades for another 468 dealers, banks, and investment managers, through correspondent relationships. Generally, these correspondent relationships are for trade comparison services only.

3. Following the clearance process, securities must be exchanged for funds (settlement) on either a gross or a net basis.

- Government securities are transferred against funds (settled) through depository institutions acting as agents for nonbank dealers. Interbank settlement occurs through the Fedwire securities transfer system.
- Settlement typically occurs one business day after the trade (T+1), either through transfers on the books of a depository institution or, if settlement must occur between two depository institutions, on the books of the Federal Reserve through the Fedwire securities transfer system. Repo transactions generally settle on a same-day (T) basis.
- More than $800 billion in securities is transferred through the Fedwire securities transfer system each day.
- The two banks, Chase and The Bank of New York (BONY), that provide settlement services to primary dealers account for more than three-quarters of the value of Fedwire settlement activity. On a typical day, these two banks settle more than $600 billion in government securities transactions through Fedwire. The clearing banks apparently settle another $200 billion to $300 billion per day internally, excluding triparty repo transactions.
- GSCC settles net obligations valued at about $415 billion per day through its accounts at the two clearing banks.
- Chase's and BONY's client bases consist of the primary dealers, other dealers and banks, and GSCC.

4. The settlement of financing (repo) transactions occurs either through bilateral exchanges (delivery-versus-payment or DVP repos) of securities and funds between a dealer (borrower) and an investor (lender) or through the use of triparty repos on the books of the clearing banks.

- DVP repos are generally settled over Fedwire between 8:30 a.m. and 12:00 p.m., Eastern time.
- Triparty repos are settled after the close of the Fedwire securities transfer system, generally between 5:00 p.m. and 7:00 p.m., Eastern time. The two clearing banks estimate that together they settle on their books between $600 billion and $1 trillion in triparty repos each day.

Appendix 2

Triparty Repo

The Market

Understanding the role of the clearing banks in the clearance of U.S. government securities requires an appreciation of the triparty repo market and the critical role that such banks play in facilitating triparty repo transactions. Essentially, these transactions involve the secured financing of broker-dealer securities inventories by a large number of cash investors, with settlement occurring on the books of the clearing banks. Over the last decade, the importance of the triparty repo market grew significantly, so that now it is integral to the financing methods of all major broker-dealers and

involves nearly $1 trillion per day in transactions.

The success of the triparty repo market is due to its ability to meet the needs of both the broker-dealers who need secured financing and the cash investor community, who desire highly secure and liquid outlets for the investment of cash on a short-term basis. The cash investors in triparty repo consist of money market mutual funds and other institutional money managers such as pension funds. Both the pool of funds that such institutional investors need to invest and the size of the broker-dealer securities inventories have grown significantly in recent years, with no signs of a slowdown yet apparent. The clearing banks also benefit from providing triparty repo services as a profitable line of business and as an opportunity to cross-sell other custody and banking services to cash investors.

Settlement: The Critical Role of the Clearing Banks

In a typical triparty repo transaction, a broker-dealer contracts with a cash investor to provide a certain amount of securities in exchange for cash at the outset of the transaction, with the transaction to be unwound at the end of its term. All movements of cash and securities are to take place on the books of the broker-dealer's clearing bank. That is, both the broker-dealer and the cash investor will use cash and securities accounts at the clearing bank, and the clearing bank will play a critical role in settling the transaction. It is typical for the broker-dealer to pay for the setting up of accounts at its clearing bank on behalf of all its cash investors.

Triparty transactions are typically arranged early in the morning so that dealers can be assured of meeting their financing requirements. Importantly, however, these transactions typically do not specify the individual securities that the broker-dealer will provide as collateral. Rather the transactions are based on broad categories of collateral, such as U.S. government or agency securities. Different qualities of collateral engender different financing rates, and the triparty market has been steadily expanding beyond U.S. government securities to encompass a wide range of mortgage-backed securities, corporate bonds, and non-U.S. securities. However, U.S. government and agency securities remain the dominant form of triparty collateral, accounting for more than two-thirds of the total market.

The fact that triparty transactions do not uniquely specify individual securities is central to their appeal for the broker-dealer community. This flexibility allows the broker-dealers to trade their securities inventory during the normal business day, settling whatever transactions come due, without significant concern regarding their financing arrangements. For example, settlement of cash-market U.S. government and agency securities continues until 3:30 p.m. on a normal day, the time when the Fedwire book-entry transfer system closes. Soon after this point, the clearing banks begin to process the broker-dealer's triparty repo transactions. This processing involves comparing the generic triparty transactions that the broker-dealers have submitted with the specific securities that now reside in their accounts at the clearing bank. The clearing banks have developed routines for optimizing the allocation of specific collateral to individual triparty transactions to minimize the financing costs for the broker-dealers.

The collateral optimization and allocation routines run in the late afternoon, with settlement of the triparty transactions on the books of the clearing bank typically occurring in the early evening. The efficiency of these procedures, together with the familiarity of the broker-dealers with them, means that the need for residual financing (that is, securities to finance that cannot be financed through triparty repos) is generally only very small, on the order of 1 percent or less of their total eligible inventory.

Benefits to Investors and Dealers

Triparty arrangements between a broker-dealer and a cash investor may be either on an overnight or on a term basis. Importantly, however, even if the transactions are done on a term basis, all collateral is typically unwound on a daily basis (early in the morning). This daily unwinding has two implications. First, the cash investors get access to their funds on the books of the clearing bank on an intraday basis. Second, the broker-dealers get access to their securities inventory and thus can effectively "substitute" other collateral into the agreements as their inventory shifts over the term of the agreement.

From the cash investors' perspective, the triparty repo market provides a great deal of liquidity and safety for their cash holdings. During the day, the cash resides in deposit accounts at their clearing bank (or elsewhere if they choose to wire it back and forth, although most do not). Overnight, they are exposed to the credit risk of their broker-dealer counterparties but are protected by the presence of collateral held in their accounts at the relevant clearing bank. Moreover, the flexibility of the triparty arrangement allows them to frequently adjust the size of their cash investments as their pool of available funds fluctuates. For the broker-dealer, the triparty repo market obviously provides a highly flexible mechanism to minimize the costs of financing.

Triparty Repo an Important Source of Intraday Overdrafts

For the clearing banks, the triparty repo mechanism is an important complementary service to their core clearance activities in the underlying securities. However, a major implication of the triparty mechanism as currently designed is the presence of extremely large intraday overdrafts in the deposit accounts of the broker-dealers at the clearing banks. That is, because all the cash is returned to the cash investors daily, the entirety of a dealer's inventory is effectively financed by the clearing bank on an intraday basis. Still, the clearing bank is secured to the extent that the broker-dealer's securities remain at the bank. These figures can approach $100 billion for the largest individual dealers on peak days.

By order of the Board of Governors of the Federal Reserve System, May 7, 2002.

Jennifer J. Johnson,

Secretary of the Board.

By the Securities and Exchange Commission.

Dated: May 6, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11785 Filed 5–10–02; 8:45 am]

BILLING CODE 6210–01–P, 8010–01–P

GENERAL SERVICES ADMINISTRATION

Governmentwide Per Diem Advisory Board

AGENCY: General Services Administration.

ACTION: Establishment of Advisory Board.

Establishment of Advisory Board

This notice is published in accordance with the provisions of the Federal Advisory Committee Act (Public Law 92–463), and advises of the establishment of the GSA Governmentwide Per Diem Advisory Board. The Administrator of General Services has determined that the establishment of the Board is necessary and in the public interest.

Purpose of the Advisory Board

The Board will be used to obtain advice and recommendations on a wide

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range of travel management and best practices issues. The Board's first priority will be to examine the current rate-setting process and methodology used to establish per diem rates for destinations within the continental United States. In addition, the Board will identify best practices for a Governmentwide lodging program.

FOR FURTHER INFORMATION CONTACT: The Office of Transportation and Personal Property, Office of Governmentwide Policy, is the organization within GSA that is sponsoring this board. For additional information, contact Joddy P. Garner (MTT), 1800 F Street, NW, Washington, DC 20405, telephone (202) 501–4857, or by e-mail at *joddy.garner@gsa.gov*

Stephen A. Perry,

Administrator.

[FR Doc. 02–11836 Filed 5–10–02; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–02–52]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call the CDC Reports Clearance Officer on (404) 498–1210.

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Send comments to Seleda Perryman, CDC Assistant Reports Clearance Officer, 1600 Clifton Road, MS-D24, Atlanta, GA 30333. Written comments should be received within 60 days of this notice.

Proposed Project

State Surveys on Intimate Partner Violence (IPV) and Sexual Violence (SV)—New—National Center for Injury Prevention and Control (NCIPC), Centers for Disease Control and Prevention (CDC).

Violence against women has become a major public health issue in the nation. It is the leading cause of injury for women between the ages of 18 and 44. The National Violence Against Women Survey, conducted November 1995 to May 1996, estimates that approximately 1.9 million women are physically assaulted annually in this country by an intimate partner (*e.g.*, current of former husband, cohabiting partner, boyfriend or date). The 1994 National Crime Victimization Survey estimates that over 432,000 rapes or sexual assaults were perpetrated against U.S. females, age 12 years and older. The National Center for Injury Control and Prevention (NCIPC) has recognized intimate partner violence (IPV) and sexual violence (SV) as public health problems or several years. Survey data are the most common data used to determine incidence and prevalence rates, risk and resiliency factors and consequences (*e.g.*, physical injuries, psychological trauma) or IPV and SV. The Department of Justice (DOJ) has compiled a number of one-time looks at violence against women from a variety of perspectives, primarily provided by the criminal justice system, which counts only those cases that are reported.

There is a need for collection of standardized data on a consistent and continual basis, at the state and community levels in order to target limited resources towards populations in greatest need of prevention and intervention programs and services. As a result, the Centers for Disease Control and Prevention (CDC) plans to develop and pilot test two surveys on IPV and SV for possible inclusion in the Behavioral Risk Factor Surveillance System (BRFSS). The surveys will be administered to non-institutionalized women and men, 18 years of age and older. The pilot test will be conducted through a computer-assisted telephone interviewing system, using a sample of women and men randomly selected from six states. The overall benefit of this pilot is to increase knowledge regarding the magnitude and scope of violence against women and men in the U.S. Ultimately, the CDC intends to establish an on-going data collection system for monitoring IPV and SV at the state level.

The goals of the project are to: (1) Determine the questions' utility, participant reactions, and length of surveys; and (2) compile and disseminate the results of the pilot test and prepare a report for submission to the BRFSS coordinators for consideration for inclusion as an optional module for FY 2003. There is no cost to respondents.

Survey (IPV/SV)	Type of respondent	Number of respondents/ survey	Number of responses/ respondent	Avg. burden/ responses (in hours)	Total burden hours
State 1	Female/Male	2400	1	30/60	1,200
State 2	Female/Male	2400	1	30/60	1,200
State 3	Female/Male	2400	1	30/60	1,200
State 4	Female/Male	2400	1	30/60	1,200
State 5	Female/Male	2400	1	30/60	1,200
State 6	Female/Male	2400	1	30/60	1,200
Total					7,200

Dated: May 2, 2002.

Nancy E. Cheal,

Acting Associate Director for Policy, Planning and Evaluation, Centers for Disease Control and Prevention.

[FR Doc. 02–11830 Filed 5–10–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–106]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Criteria for Medicare Coverage of Heart Transplants.

Form No.: CMS–R–106 (OMB# 0938–0490).

Use: Medicare Participating Hospitals must file an application to be approved for coverage and payment of heart transplants performed on Medicare beneficiaries. This information collection specifies the criteria for approval.

Frequency: Annually.

Affected Public: Business or other for-profit.

Number of Respondents: 4.

Total Annual Responses: 4.

Total Annual Hours: 400.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Dawn Willinghan, CMS–R–106, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 24, 2002.

John P. Burke, III,

Reports Clearance Officer, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–11820 Filed 5–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–1513]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

TYPE OF INFORMATION COLLECTION REQUEST: Reinstatement, without change, of a previously approved collection for which approval has expired; *Title of Information Collection:* Medicare/Medicaid Disclosure of Ownership and Control Interest Statement and Supporting Regulations in 42 CFR 420.200–.206, 455.100–.106 and 45 CFR 228.72–.73; *Form No.:* HCFA–1513 (OMB# 0938–0086); *Use:* The Medicare/Medicaid Disclosure of Ownership and Control Interest Statement must be used by State agencies and HCFA regional offices to determine whether providers meet the eligibility requirements for Titles 18 and 19 (Medicare and Medicaid) and for grants under Titles V and XX. Review of ownership and control is particularly necessary to prohibit ownership and control for individuals excluded under Federal fraud statutes; *Frequency:* Other (every 1 to 3 years); *Affected Public:* Business or other for-profit, and Not-for-profit institutions; *Number of Respondents:* 92,000; *Total Annual Responses:* 92,000; *Total Annual Hours:* 46,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address:

CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS–1513, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 30, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Baltimore MD 21244.

[FR Doc. 02–11821 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–232]

Agency Information Collection Activities: Proposed Collection; Comment Request

AGENCY: Centers for Medicare and Medicaid Services.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden. *Type of Information Collection Request:* Extension; *Title of Information Collection:* Supporting Statement for Medicare Program Integrity Program Organizational Conflict of Interest Disclosure Certificate and Supporting Regulations in 42 CFR 421.300 and 421.318; *Form No.:* CMS–R–232 (OMB# 0938–0723); *Use:* This information is used to assess whether contractors who perform, or who seek to perform, Medicare Integrity Program functions, such as medical review, fraud review or cost audits, have organizational conflicts of interest and whether any conflicts have been resolved. The entities providing the information will be organizations that have been awarded, or seek award of, a Medicare Integrity Program contract; *Frequency:* On occasion; *Affected Public:* Businesses or other for profit; *Number of Respondents:* 5; *Total Annual Responses:* 5; *Total Annual Hours:* 1,000.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS's Web site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 60 days of this notice directly to the CMS Paperwork Clearance Officer designated at the following address: CMS, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Attention: Julie Brown, CMS R 232, Room N2–14–26, 7500 Security Boulevard, Baltimore, Maryland 21244–1850.

Dated: April 30, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, 7500 Security Boulevard, Baltimore MD 21244.

[FR Doc. 02–11822 Filed 5–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10059]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA)), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Survey of Medicare Private Fee-for-Service (PFFS) Enrollees and Nonenrollees.

Form No.: CMS–10059 (OMB# 0938–NEW).

Use: Private fee-for-service was established in the Balanced Budget Act (BBA) of 1997 as an important variant of the Medicare+Choice program. As of September 2001, the only PFFS product was being offered by Sterling Insurance Company in some or all of 25 states with enrollees 24,300 including disenrollees. CMS wishes to survey approximately 6,322 enrollees and nonenrollees to evaluate the impact of this option on Medicare beneficiary on their awareness and knowledge of PFFS, decision making for/against PFFS, access to care, out-of-pocket costs, satisfaction with PFFS, etc.

Frequency: Other: One-time.

Affected Public: Individuals or Households.

Number of Respondents: 6,322.

Total Annual Responses: 6,322.

Total Annual Hours: 1,581.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–11817 Filed 5–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–R–79]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: Extension of a currently approved collection.

Title of Information Collection: Payment Adjustment for Sole Community Hospitals and Supporting Regulations in 42 CFR, section 412.92.

Form No.: CMS–R–79 (OMB# 0938–0477).

Use: Hospitals designated "sole community hospitals" that experience a 5 percent decrease in discharges in one cost reporting period, as compared to the previous period, due to unusual circumstances beyond its control, may request an adjustment to its Medicare payment amount.

Frequency: On Occasion.

Affected Public: Not-for-profit institutions, Business or other for-profit, and State, Local or Tribal Gov.

Number of Respondents: 40.

Total Annual Responses: 40.

Total Annual Hours: 160.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS" Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–11818 Filed 5–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10061]

Agency Information Collection Activities: Submission for OMB Review; Comment Request

AGENCY: Centers for Medicare and Medicaid Services, HHS.

In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid Services (CMS) (formerly known as the Health Care Financing Administration (HCFA), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

Type of Information Collection Request: New Collection.

Title of Information Collection: Evaluation of Programs of Coordinated Care and Disease Management.

Form No.: CMS–10061 (OMB# 0938–NEW).

Use: CMS is currently conducting two demonstration programs to determine the impact of programs of coordinated care and disease management on health outcomes and costs of care for Medicare beneficiaries. The purpose of this evaluation is to provide an independent assessment of the effectiveness of these programs, and to provide the basis for the Reports to Congress required for the care coordination demonstration. To provide this information, the evaluation must generate both rigorous quantitative estimates of the programs' impacts and qualitative analyses of the programs' processes. Surveys of demonstration participants and their health care providers are an integral part of this evaluation.

Frequency: Other: One-time.

Affected Public: Individuals or Households, Business or other for-profit, and Not-for-profit institutions.

Number of Respondents: 11,356.

Total Annual Responses: 11,356.

Total Annual Hours: 5,465.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdact95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326. Written comments and recommendations for the proposed information collections must be mailed within 30 days of this notice directly to the OMB desk officer: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, Room 10235, Washington, DC 20503.

Dated: April 24, 2002.

John P. Burke, III,

CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–11819 Filed 5–10–02; 8:45 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare and Medicaid Services

[Document Identifier: CMS–10057]

Emergency Clearance: Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB)

AGENCY: Center for Medicare and Medicaid Services, HHS.

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In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, the Centers for Medicare and Medicaid services (CMS), Department of Health and Human Services, is publishing the following summary of proposed collections for public comment. Interested persons are invited to send comments regarding this burden estimate or any other aspect of this collection of information, including any of the following subjects: (1) The necessity and utility of the proposed information collection for the proper performance of the agency's functions; (2) the accuracy of the estimated burden; (3) ways to enhance the quality, utility, and clarity of the information to be collected; and (4) the use of automated collection techniques or other forms of information technology to minimize the information collection burden.

We are, however, requesting an emergency review of the information collection referenced below. In compliance with the requirement of section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995, we have submitted to the Office of Management and Budget (OMB) the following requirements for emergency review. We are requesting an emergency review because the collection of this information is needed before the expiration of the normal time limits under OMB's regulations at 5 CFR part 1320. This is necessary to ensure compliance with an initiative of the Administration. We cannot reasonably comply with the normal clearance procedures because of an unanticipated event and possible public harm.

This document involves CMS initiatives pertaining to family or individual directed community services. To obtain CMS approval, two application methods are offered to enable States to implement the self-directed model. (1) Under section 1915(c) of the Social Security Act, states are allowed to submit a request to the Secretary of Health and Human Services to waive Medicaid requirements to allow provision of home and community-based services as an alternative to Medicaid funded institutional care. (2) Under section 1115 of the Social Security Act, states are allowed to submit a request to the Secretary of Health and Human Services to waive Medicaid requirements for the purpose of an experimental, pilot, or demonstration project which promotes the objective of the Medicaid program. States may select whichever method will be appropriate to the unique design of their specific program.

Independence Plus: A Demonstration Program for Family or Individual Directed Community Services Template Applications facilitate States' provision of self-directed supports and services and promotes DHHS' goals of increasing access to medically necessary services. By using a template, a State will potentially save a great deal of time in applying and be able to provide the services earlier.

CMS is requesting OMB review and approval of this collection by May 22, 2002, with a 180-day approval period. Written comments and recommendation will be accepted from the public if received by the individuals designated below by May 20, 2002.

Type of Information Collection Request: New collection.

Title of Information Collection: Independence Plus: A Demonstration Program for Family or Individual Directed Community Services Template Applications.

Form No.: CMS–10057 (OMB# XXXX).

Use: The Family or Individual Directed Community Services Template Applications will enable states to apply, via a standard format, to provide assistance for families with a member who requires long term supports and services, or individuals who require long term supports and services, so that the individual may remain in the family residence or in their own home.

Frequency: Other: 3 years after initial submission for the 1915 (c) waiver; 5 years after initial submission for the 1115 demonstration.

Affected Public: State Government.

Number of Respondents: 20.

Total Annual Responses: 20.

Total Annual Hours: 100.

We have submitted a copy of this notice to OMB for its review of these information collections. A notice will be published in the **Federal Register** when approval is obtained.

To obtain copies of the supporting statement and any related forms for the proposed paperwork collections referenced above, access CMS' Web Site address at *http://www.hcfa.gov/regs/prdoct95.htm*, or e-mail your request, including your address, phone number, OMB number, and CMS document identifier, to *Paperwork@hcfa.gov*, or call the Reports Clearance Office on (410) 786–1326.

Interested persons are invited to send comments regarding the burden or any other aspect of these collections of information requirements. However, as noted above, comments on these information collection and recordkeeping requirements must be mailed and/or faxed to the designees referenced below by May 20, 2002:

Centers for Medicare and Medicaid Services, Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards, Room N2–14–26, 7500 Security Boulevard, Baltimore, MD 21244–1850, Fax Number: (410) 786–0262, Attn: Julie Brown, CMS–10057,
and,

Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn.: Brenda Aguilar, CMS Desk Officer.

Dated: May 7, 2002.

John P. Burke, III,

Paperwork Reduction Act Team Leader, CMS Reports Clearance Officer, CMS Office of Information Services, Security and Standards Group, Division of CMS Enterprise Standards.

[FR Doc. 02–11963 Filed 5–9–02; 11:04 am]

BILLING CODE 4120–03–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Office of Planning, Research and Evaluation; Grant to the National Center for Appropriate Technology

AGENCY: Office of Planning, Research and Evaluation, ACF, DHHS.

ACTION: Award Announcement.

SUMMARY: Notice if hereby given that a noncompetitive grant award is being made to the National Center for Appropriate Technology (NCAT) to develop a national energy deregulation clearinghouse.

As a Congressional set-aside, this one-year project is being funded noncompetitively. The National Center for Appropriate Technology is uniquely qualified to conduct this project because of their prior experience in analyzing energy-related issues affecting residential consumers with low and moderate incomes. The cost of this one-year project is $150,000.

FOR FURTHER INFORMATION CONTACT: Charlotte Abney, Administration for Children and Families, Office of Community Services, 370 L'Enfant Promenade, SW, Washington, DC. 20447, telephone: 202–401–5334.

Dated: April 26, 2002.

Howard Rolston,

Director, Office of Planning, Research and Evaluation.

[FR Doc. 02–11798 Filed 5–10–02; 8:45 am]

BILLING CODE 4184–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Request for Nominations for Voting Members on Public Advisory Committee; Veterinary Medicine Advisory Committee

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is requesting nominations for voting members to serve on the Veterinary Medicine Advisory Committee (VMAC) in one of the following specialty areas: Pharmacology, Minor Species/Minor Use Veterinary Medicine, and pathology. Nominations for the VMAC chairperson are also being solicited. Information regarding the committee can be found on the CVM home page at http://www.fda.gov/cvm/index/vmac/vmactoc.htm.

FDA has a special interest in ensuring that women, minority groups, and the physically challenged are adequately represented on advisory committees and, therefore, encourages nominations of qualified candidates from these groups.

DATES: FDA is seeking nominations for voting members, as well as, nominations for the VMAC chairperson by May 15, 2002. Because scheduled vacancies occur on various dates throughout each subsequent year, no cutoff date for those specialty areas has been established.

ADDRESSES: All nominations and curricula vitae should be sent to the appropriate contact person in the **FOR FURTHER INFORMATION CONTACT** section of this document.

FOR FURTHER INFORMATION CONTACT:

Regarding nominations except for consumer representatives: Aleta Sindelar, Center for Veterinary Medicine, Food and Drug Administration, 7519 Standish Pl., Rockville, MD 20855, 301–827–4515, e-mail: asindela@cvm.fda.gov.

Regarding nominations for consumer representatives: Linda Sherman, Advisory Committee Oversight and Management Staff (HF–4), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA is requesting nominations for voting members to serve on the committee. The function of the VMAC is to advise the Commissioner of Food and Drugs (the Commissioner) in discharging their responsibilities as they relate to assuring safe and effective drugs, feeds and feed additives, and devices for animal use, and, as required, any other product for which FDA has regulatory responsibility. The committee reviews and evaluates available data concerning the safety and effectiveness of marketed and investigational new animal drugs, feeds, and devices for use in the treatment and prevention of animal diseases and increased animal production, and makes appropriate recommendations to the Commissioner regarding scientific issues and regulatory policies.

Qualifications

Persons nominated for membership on the committee shall have adequately diversified experience that is appropriate to the work of the committee in such fields as companion animal medicine, food animal medicine, avian medicine, microbiology, biometrics, toxicology, pathology, pharmacology, animal science, public health/epidemiology, Minor Species/Minor Use Veterinary Medicine, and chemistry. The specialized training and experience necessary to qualify the nominee as an expert suitable for appointment is subject to review, but may include experience in medical practice, teaching, and/or research relevant to the field of activity of the committee. The term of office is 4 years. The committee currently has three vacancies and is requesting nominations for voting members to serve on one of the following specialty areas: Pharmacology, Minor Species/Minor Use Veterinary Medicine, and pathology. Nominations for the VMAC chairperson are also being solicited.

Nomination Procedures

Any interested person may nominate one or more qualified persons for membership on one or more of the advisory committees. Self-nominations are also accepted. Nominations shall include the name of the committee, a complete curriculum vitae of each nominee, current business address and telephone number, and shall state that the nominee is aware of the nomination, is willing to serve as a member, and appears to have no conflict of interest that would preclude membership. FDA will ask the potential candidates to provide detailed information concerning such matters as financial holdings, employment, and research grants and/or contracts to permit evaluation of possible sources of conflict of interest.

This notice is issued under the Federal Advisory Committee Act (5 U.S.C. app. 2) and 21 CFR part 14 relating to advisory committees.

Dated: May 2, 2002.

Bonnie Malkin,

Acting Senior Associate Commissioner for Communications and Constituent Relations.

[FR Doc. 02–11787 Filed 5–10–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Traumatic Brain Injury Program; Traumatic Brain Injury Protection and Advocacy Grants

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that $1.5 million in fiscal year (FY) 2002 funds is available for up to 33 Protection and Advocacy (P&A) Grants to existing State P&A systems to provide services to individuals with traumatic brain injury (TBI). P&A services include the provision of (1) information, referrals and advice; (2) individual and family advocacy; (3) legal representation; and (4) specific assistance in self-advocacy. Currently, an estimated 5.3 million individuals are living with the effects of TBI. TBI can cause chronic physical impairments, and long-term problems with cognition, emotional functioning, and behavior. A recent study by the U.S General Accounting Office (GAO) found that many individuals with TBI are not receiving the services they need to remain in the community. The purpose of these grants is to improve access and coordination of TBI services and supports for individuals and their families. All grants will be made under the program authority of the Public Health Service Act, Title XII, Section 1253 (42 U.S.C. 300d–53), and will be administered by the Maternal and Child Health Bureau (MCHB), HRSA. Awards for TBI P&A grants may be approved for up to three years. States are eligible for $50,000 each. Territories and American Indian Consortia are eligible for $20,000 each. Funding after the initial year is contingent upon the availability of funds.

DATES: Applicants are expected to notify MCHB of their intent by May 24, 2002. The deadline for receipt of applications is June 14, 2002. Applications will be considered "on time" if they are either received on or before the deadline date or postmarked on or before the deadline

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date. The projected award date is August 19, 2002.

ADDRESSES: To receive a complete application kit, applicants may telephone the HRSA Grants Application Center at 1–877–477–2123 (1–877–HRSA–123) beginning May 14, 2002, or register on-line at: *http://www.hrsa.gov/_order3.htm* directly. The Traumatic Brain Injury P&A Grant Program uses the standard Form PHS 5161–1 (rev. 7/00) for applications (approved under OMB No. 0920–0428). Applicants must use Catalog of Federal Domestic Assistance (CFDA) #93.234D when requesting an application kit. The CFDA is a Government-wide compendium of enumerated Federal programs, project services, and activities that provide assistance. All applications must be mailed or delivered to Grants Management Officer, MCHB: HRSA Grants Application Center, 901 Russell Avenue, Suite 450 Gaithersburg, MD 20897 telephone 1–877–477–2123: E-mail: *hrsagac@hrsa.gov*. Necessary application forms and an expanded version of this **Federal Register** notice may be downloaded in either Microsoft Office 2000 or Adobe Acrobat format (.pdf) from the MCHB Home Page at *http://www.mchb.hrsa.gov*. Please contact Joni Johns, at 301/443–2088, or *jjohns@hrsa.gov*, if you need technical assistance in accessing the MCHB Home Page via the Internet. This notice will appear in the **Federal Register** and or HRSA Home page at *http://www.hrsa.gov/*. **Federal Register** notices are found on the World Wide Web by following instructions at: *http://www.access.gpo.gov/su_docs/aces/aces140 html*.

Letter of Intent: Notification of intent to apply should be directed to Betty Hastings, M.S.W., by email, *bhastings@hrsa.gov*; or mail, MCHB, HRSA; Traumatic Brain Injury Program, Parklawn Building, Room 18A–38; 5600 Fishers Lane; Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Betty Hastings, M.S.W., 301/443–5599, or e-mail: *bhastings@hrsa.gov* (for questions specific to project objectives and activities of the program; or the required Letter of Intent); Marilyn Stewart, 301/443–1440, email *mstewart@hrsa.gov* (for grants policy, budgetary, and business questions).

SUPPLEMENTARY INFORMATION:

Traumatic Brain Injury Program Background and Objectives

Traumatic brain injury (TBI) is sudden physical damage to the brain, often caused by motor vehicle accidents, falls, sports injuries, violent crimes, or child abuse. TBI can result in physical, behavioral, and/or mental changes, depending on the areas of the brain that are injured. TBI is the leading cause of death and disability among young people in the United States. Approximately 200,000 Americans die each year from traumatic injuries. An additional half million are hospitalized. About 10 percent of the surviving individuals have mild to moderate problems that threaten their ability to live independently. Another 200,000 have serious problems that may require institutionalization or some other form of close supervision.

The number of people surviving TBI has increased significantly in recent years because of more effective emergency care; transportation to specialized treatment facilities, and acute medical management. Currently, an estimated 5.3 million Americans are living with the effects of TBI. The direct medical costs for treatment of TBI have been estimated to be over $4.5 billion, annually.

Although TBI can cause chronic physical impairments, often the individual has more disability due to problems with cognition, emotional functioning, and behavior in connection with interpersonal relationships, school, or work. The result is frequently a dramatic change in the individual's life-course, profound disruption of the family, and huge medical and related expenses over a lifetime. Rehabilitation efforts can require years of treatment, starting in the hospital, and extending through formal inpatient and outpatient rehabilitation to a variety of day treatment or residential programs.

The cognitive and communication problems of TBI are best treated early; often beginning while the individual is still in the hospital. Longer-term rehabilitation may be performed individually, in groups, or both, depending on the needs of the individual. This therapy often occurs in a rehabilitation facility designed specifically for the treatment of individuals with TBI. The goal of rehabilitation is to help affected individuals progress to the most independent level of functioning possible. Therapy focuses on regaining lost skills, as well as learning ways to compensate for abilities that have been permanently changed because of TBI.

According to a recent GAO study of services, adults with TBI often have permanent disability that requires long-term supportive services to remain in the community. In an analysis of eleven States, the gap between the number of individuals with TBI receiving long-term services and the estimated number of disabled adults with TBI remains wide.

Until FY 2002, two categories of TBI demonstration grants were available: (1) State TBI Planning Grants and (2) State TBI Implementation Grants. Thirty-three States and the District of Columbia received planning grants to develop an Action Plan to improve the State's TBI service system. Grantees developed four "core capacity" components: (1) A statewide TBI Advisory Board; (2) designated State agency and staff position(s) responsible for State TBI activities; (3) a statewide needs/resource assessment to address the full spectrum of services from initial acute treatment through rehabilitation and long-term community services for individuals with TBI; and (4) a statewide Action Plan outlining steps needed to develop a comprehensive, community-based system of care encompassing physical, psychological, educational, vocational, and social aspects of TBI services, and addressing the needs of individuals with TBI and their families.

Twenty-six States received Implementation Grants. States used these grants to focus on key priorities identified in their statewide action plans, including: (1) Leadership in integrating individuals with TBI and their families into the broader service delivery system; (2) human resources, personnel, training, and education on TBI issues; (3) data collection, evaluation, and information management to improve delivery of TBI services; (4) public information and education regarding TBI issues; (5) and coordination with other public health and disability community services.

The Children's Health Act of 2000, Public Law 106–310, established two additional grant categories: (1) Post Demonstration Grants for States that have successfully completed a TBI Implementation Grant, and (2) TBI Protection and Advocacy (P&A) grants. This notice announces the availability of funds specifically for P&A grants. The purpose of P&A grants is to provide (1) information, referrals and advice; (2) individual and family advocacy; (3) legal representation; and (4) specific assistance in self-advocacy to individuals with TBI and their families.

Authorization: Public Health Service Act, Title XII, Section 1253, 42 U.S.C. 300d–53.

Purpose: As Congress recognized with the passage of the Traumatic Brain Injury Act of 1996 and its reauthorization in the Children's Health Act of 2000, there is a pressing need for improved access to and coordination of TBI services and support for individuals with TBI and their families.

Additionally, Congress recognized that State (including Tribal and Territorial) P&A systems are critical to achieving the goals and objectives of the TBI Act. Thus, section 1253 includes language authorizing the Secretary, acting through the Administrator of HRSA, to make grants to existing State P&A systems for the purposes of strengthening P&A service delivery to individuals with TBI and their families. The planning and assessment of State TBI P&A systems, responsiveness to TBI issues, and outreach strategies to the brain injury community are critical to ensure that P&A services will be delivered appropriately for individuals with TBI and their families.

The purpose of these grants, therefore, is to enable State P&A systems to develop a plan to address the needs of individuals with TBI and their families. These plans are expected to identify the resources and operational structure needed to provide P&A services to individuals with TBI, identify information needs and develop the ability to provide information and advocacy training for individuals with TBI and their families, present a mechanism for sustaining TBI P&A activities in their States, and provide an operational structure for implementing the plan and providing P&A services. Thus, P&A grantees may work with individuals with TBI, their families, State TBI grantees, and other stakeholders to: (1) Assess statewide needs and capacity; (2) determine the best approach for identifying individuals and families within and outside the State service system; (3) develop and provide P&A-related education and training materials; and, (4) develop an action plan that provides a mechanism for serving individuals with TBI and their families.

Eligibility: Eligible for funding are: State P&A systems established under part C of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6042 *et seq.*) in the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands, and American Indian Consortia established under part C of the Developmental Disabilities Assistance Bill of Rights Act (42 U.S.C. 6042 *et seq.*).

Funding Level/Project Period: Projects will be approved for up to three years. States are eligible for $50,000 each. Territories and American Indian Consortia are eligible for $20,000 each. MCHB expects to award 28 P&A grants to States, and 5 P&A grants to U.S. Territories and American Indian Consortia. The initial budget period for TBI P&A Grants is expected to be 12 months, with any subsequent budget period being 12 months. Continuation of any TBI project from one budget period to the next is subject to satisfactory performance, program priorities, and availability of funds.

Review Criteria: An objective review panel will evaluate applications for P&A grants. Based on the quality of the responses, an application may receive up to 100 points on the following review criteria:

1. A plan to enable the P&A system to provide services for individuals with TBI and their families (25 points).
   - The proposed services.
   - The balance of individual TBI cases and systemic work.
   - Recognition of the unique needs of the area.
2. A comprehensive approach to collaboration, partnership and outreach (25 points).
   - Established relationships with the brain injury community.
   - The evidence and breadth of collaboration demonstrated in the narrative and letters of support.
   - Participation with the State TBI State grant project if one exists.
3. A demonstrated knowledge of the needs of individuals with TBI and their families (25 points).
   - Financial and human resources have been committed by the State P&A towards improving the services for individuals for TBI and their families.
   - The roles, responsibilities and skills of the project staff are sufficient to meet the goals and objectives of the project within the proposed time period.
   - The project management plan is reasonable and will build State P&A capacity.
4. Project Evaluation (25 points).
   - The methodology that will be used to achieve the goals and objectives of the project.
   - The strength of the project evaluation plan.

Additional criteria may be used to review and rank applications for this competition. Any such criteria will be identified in the program guidance included in the application kit. Applicants should pay strict attention to addressing these criteria, as they are the basis upon which their applications will be judged.

Paperwork Reduction Act

OMB approval for any data collection in connection with these grants will be sought, as required under the Paperwork Reduction Act of 1995.

Executive Order 12372

This program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies, as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. The application packages to be made available under this notice will contain a listing of States that have chosen to set up such a review system and will provide a single point of contact (SPOC) in the States for review. Applicants (other than federally-recognized Indian tribal governments) should contact their State SPOCS as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (See Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements).

Dated: April 12, 2002.

Elizabeth M. Duke,

Administrator.

[FR Doc. 02–11832 Filed 5–10–02: 8:45 am]

BILLING CODE 4165–15–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; A Follow-Up Survey of National Cancer Institute Science Enrichment Program Students

SUMMARY: Under the provisions of Section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request for review and approval of the information collection listed below. This proposed information collection was previously published in the **Federal Register** on April 9, 2001, pages 18488–18489 and allowed 60 days for public comment. No public

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comments were received. The purpose of this notice is to allow an additional 30 days for public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection: Title: A Follow-up Survey of National Cancer Institute Science Enrichment Program Students. Type of Information Collection Request: New. Need and Use of Information Collection: This survey will investigate the long-term effects of the National Cancer Institute's Science Enrichment Program. The primary objective of the survey is to determine if past NCI SEP student participants are pursuing science education and science careers. The findings will provide information regarding the effectiveness of the program and will inform decisions about continuing and expanding the program. Frequency of Response: One time. Affected Public: Individuals. Type of Respondents: Young adults (18–23 years old). The annual reporting burden is as follows: Estimated Number of Respondents: 448; Estimated Number of Responses per Respondent: 1; Average Burden Hours Per Response: .2500; and Estimated Total Annual Burden Hours Requested: 112. The annualized cost to respondent is estimated at $4,480. There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments: Written comments and/or suggestions from the public and affected agencies are invited on one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) The accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and (4) Ways to minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB: Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20530, Attention: Desk Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact Mr. Frank Jackson, Office of Special Populations Research, National Cancer Institute, National Institutes of Health, Executive Plaza South, Room 320, 6120 Executive Boulevard, Rockville, MD 20852, or call non-toll-free number (301) 496–8589, or E-mail your request, including your address to *fj12i@nih.gov*

Comments Due Date: Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 6, 2002.

Reesa L. Nichols,

NCI Project Clearance Liaison.

[FR Doc. 02–11800 Filed 5–10–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–920–09–1320–EL, WYW155637]

Coal Lease Exploration License, WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of invitation for coal exploration license.

SUMMARY: Pursuant to section 2(b) of the Mineral Leasing Act of 1920, as amended by section 4 of the Federal Coal Leasing Amendments Act of 1976, 90 Stat. 1083, 30 U.S.C. 201(b), and to the regulations adopted as 43 CFR part 3410, all interested parties are hereby invited to participate with Cordero Mining Company on a pro rata cost sharing basis in its program for the exploration of coal deposits owned by the United States of America in the following-described lands in Campbell County, WY:

T. 46 N., R. 71 W., 6th P.M., Wyoming
Sec. 4: Lots 5–20;
Sec. 5: Lots 5, 6, 11–14, 19, 20;
T. 47 N., R. 71 W., 6th P.M., Wyoming
Sec. 8: Lots 3–6, 11–13;
Sec. 17: Lots 1–15, SWNW;
Sec. 21: Lots 1–16;
Sec. 28: Lots 1–16;
Sec. 33: Lots 1–16.
Containing 3864.40 acres, more or less.

All of the coal in the above-described land consists of unleased Federal coal within the Powder River Basin Known Coal Leasing Area. The purpose of the exploration program is to obtain coal quality data.

ADDRESSES: The proposed exploration program is fully described and will be conducted pursuant to an exploration plan to be approved by the BLM. Copies of the exploration plan are available for review during normal business hours in the following offices (serialized under WYW155637): BLM, Wyoming State Office, 5353 Yellowstone Rd, PO Box 1828, Cheyenne, WY 82003; and, BLM, Casper Field Office, 2987 Prospector Drive, Casper, WY 82604.

SUPPLEMENTARY INFORMATION: This notice of invitation will be published in "The News-Record" of Gillette, WY, once each week for two consecutive weeks beginning the week of May 15, 2002, and in the **Federal Register**. Any party electing to participate in this exploration program must send written notice to both the BLM and Cordero Mining Company no later than thirty days after publication of this invitation in the **Federal Register**. The written notice should be sent to the following addresses: Cordero Mining Company, Attn: Tom Stedtnitz, PO Box 1449, Gillette, WY 82717–1449, and the BLM, Wyoming State Office, Branch of Solid Minerals, Attn: Julie Weaver, PO Box 1828, Cheyenne, WY 82003.

The foregoing is published in the **Federal Register** pursuant to 43 CFR 3410.2–1(c)(1).

Dated: March 27, 2002.

Phillip C. Perlewitz,

Chief, Branch of Solid Minerals.

[FR Doc. 02–11441 Filed 5–10–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–060–1990]

Notice of Intent To Prepare an Environmental Impact Statement to Analyze the Proposed Pediment Plan of Operations

AGENCY: Bureau of Land Management, Interior.

COOPERATING AGENCIES: Nevada Division of Wildlife.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement to analyze the Proposed Pediment Project Plan of Operations for Cortez Gold Mines and notice of public scoping meetings.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA), 40 Code of Federal Regulations 1500–1508 Council on Environmental Quality Regulations, and 43 Code of Federal Regulations 3809, the Bureau of Land Management's Battle Mountain Field Office will be directing the preparation of a third-party Environmental Impact Statement (EIS) to analyze a proposed new open pit, heap leach facility, and ancillary facilities. The project will involve public and private lands in Lander County, Nevada.

DATES: Written comments must be post-marked or otherwise delivered by 4:30 p.m. on June 24, 2002. Comments may also be presented at public meetings to be held:

June 5, 2002 (7–9 p.m.), Community Center in Crescent Valley, NV
June 6, 2002 (7–9 p.m.) BLM Battle Mountain Field Office, Battle Mountain, NV

ADDRESSES: Written comments should be addressed to the Bureau of Land Management, Battle Mountain Field Office, Attention: Pam Jarnecke, 50 Bastian Road, Battle Mountain, Nevada 89820.

FOR FURTHER INFORMATION CONTACT: Pam Jarnecke, Battle Mountain BLM, at (775) 635–4144.

SUPPLEMENTARY INFORMATION: The purpose of these meetings is to identify potentially significant issues to be addressed in the EIS, to determine the scope of issues to be addressed, to identify viable alternatives, and to encourage public participation in the NEPA process. Additional briefings will be considered, as appropriate.

Comments, including names and street addresses of respondents, will be available for public review at the Battle Mountain Field Office located in Battle Mountain, Nevada, during regular business hours, and may be published as part of the EIS. Individual respondents may request confidentiality. If you wish to withhold your name or street address from public review or from disclosure under the Freedom of Information Act, you must state this prominently at the beginning of your written comment. Such requests will be honored to the extent allowed by law. All submissions from organizations and businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, will be available for public inspection in their entirety.

Cortez Gold Mines has submitted a proposal to develop a mining facility approximately 40 miles south of Beowawe in Lander County, Nevada. The proposed mining development would involve 1,766 acres of disturbance including a new open pit, a new heap leach facility, new waste rock dumps, widening a portion of the Horse Canyon haul road to 150 feet, and relocation of a portion of the county road that is within the project area.

Gerald M. Smith,

Field Manager, Bottle Mountain Field Office.

[FR Doc. 02–11869 Filed 5–10–02; 8:45 am]

BILLING CODE 4310–HC–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services

Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: New collection; tribal resources grant program hiring progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5611 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 12, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202) 395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* COPS Tribal Resources Grant Program Hiring Progress Report.

(3) Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:* Primary: Federally Recognized Tribal governments: Other: None. Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses. The estimated amount of time required for the average respondent to respond is: 1.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* 300 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 7, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–11815 Filed 5–10–02; 8:45 am]

BILLING CODE 4410–AT–M

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DEPARTMENT OF LABOR

Office of the Secretary

Women's Bureau; Proposed Information Collection Request Submitted for Public Comment and Recommendations; Women in Apprenticeship and Nontraditional Occupations (WANTO) Act Grant Application and Reporting Requirements

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden conducts a preclearance consultation program to provide the general Public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c) (2) (A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed.

DATES: Submit comments on or before July 12, 2002.

ADDRESSES: Send comments to the Women's Bureau, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC 20210, to the attention of Diane Faulkner. Commenters are encouraged to send their comments on a computer disk, or via Internet E-mail to Faulkner-Diane@dol.gov, along with an original printed copy. Ms. Faulkner can be reached at (202) 693–6752 (voice) or (202) 693–6776 (facsimile).

FOR FURTHER INFORMATION CONTACT: Diane Faulkner, Economist, U.S. Department of Labor, Women's Bureau, 200 Constitution Ave., N.W., Washington, DC 20210. Ms Faulkner can be reached at *Faulkner-Diane@dol.gov* (Internet E-mail), (202) 693–6752 (voice), or (202) 693–6776 (facsimile).

SUPPLEMENTARY INFORMATION:

1. Background

The Women in Apprenticeship and Nontraditional Occupations (WANTO) Act of 1992 stipulates that:

"Each community-based organization that desires to receive a grant to provide technical assistance under section 2503(a) of this title to employers and labor unions, shall submit an application to the Secretary at such time, in such manner, and accompanied by such information as the Secretary may reasonably require.

In awarding grants under section 2503(a) of this title, the Secretary shall give priority to applications from community-based organizations that—

(1) demonstrate experience preparing women to gain employment in apprenticeable occupations or other nontraditional occupations;

(2) demonstrate experience working with the business community to prepare them to place women in apprenticeable occupations or other nontraditional occupations;

(3) have tradeswomen or women in nontraditional occupations as active members of the organization, as either employed staff or board members; and

(4) have experience delivering technical assistance."

II. Desired Focus of Comments

Currently the Office of the Secretary, Women's Bureau is soliciting comments concerning the grant application and reporting requirements for the Women in Apprenticeship and Nontraditional Occupations (WANTO) Act grants. The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used.
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

A copy of the proposed information collection request may be viewed by contacting the employee listed above in the **FOR FURTHER INFORMATION CONTACT** section of this notice for a hard copy.

III. Current Actions

For every fiscal year for which WANTO Act grant funds are included in the Federal budget, the following process takes place during that fiscal year:

- A Solicitation for Grant Applications (SGA) is published in the Federal Register.
- Applications received by the specified deadline are reviewed and evaluated.
- By September 30, grants are awarded to those community-based organizations ranked highest by the evaluation panel.

Since the agency generally has enough funds appropriated for awarding grants to only one-third of the applicants, the panelists ranking the applications need enough information to be able to rate and rank the proposals fairly and equitably. The applicants need to provide clear documentation of their organization's viability, their potential for completing their proposal, their ability to meet the intent of the WANTO Act, and their ability to establish linkages with employers and labor unions. The information required in the quarterly and final reports is the minimal information required by grant monitoring administrative requirements for nonprofit organizations, *i.e.* what goals have been met, which have not been met (and why), and any difficulties encountered.

Type of Review: New.

Agency: Office of the Secretary, Women's Bureau.

Title: Women in Apprenticeship and Nontraditional Occupations (WANTO) Act Grant Application and Reporting Requirements.

OMB Number: 1225–0NEW.

Recordkeeping: Records are normally required to be kept for 3 years.

Affected Public: Not-for-profit institutions.

Cite/Reference/Form/etc.: 29 U.S.C. 2501 *et seq.*

Total Respondents: 40.

Requirement	Frequency	Estimated number of responses	Average response time (hours)	Estimated annual burden hours
Grant Application:				
Previous Applicant	Annually	30	6	180

Requirement	Frequency	Estimated number of responses	Average response time (hours)	Estimated annual burden hours
New Applicant	Annually	10	12	120
Quarterly Reports:				
Previous Applicant	Quarterly	9	2	72
New Applicant	Quarterly	3	5	60
Final Report:				
Previous Applicant	Annually	9	4	36
New Applicant	Annually	3	10	30
Totals		64		498

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operating/maintaining): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

Loretta Herrington,

Deputy Director, Women's Bureau, Office of the Secretary.

[FR Doc. 02–11883 Filed 5–10–02; 8:45 am]

BILLING CODE 4510–23–P

DEPARTMENT OF LABOR

Employment and Training Administration

[SGA/DFA 02–108]

Grants for Small Faith-Based and Community-Based Non-Profit Organizations; Amendment

AGENCY: Employment and Training Administration (ETA), Labor.

ACTION: Notice; amendment.

SUMMARY: The Employment and Training Administration published a document in the **Federal Register** of April 17, 2002, concerning the availability of grant funds to award a grant to "grass-roots" organizations or small faith-based and community-based non-profit organizations with the ability to connect to the nation's workforce development system. The document is hereby amended.

FOR FURTHER INFORMATION CONTACT: Linda Forman, Grants Management Specialist, Division of Federal Assistance, Fax (202) 693–2879.

Amendment

In the **Federal Register** of April 17, 2002, in FR Doc. 02–9259, on page 18931, in the second column, add the following paragraph after the first full paragraph.

The Establishment Clause of the First Amendment of the United States Constitution prohibits the government from directly funding religious activity. These grants may not be used for instruction in religion or sacred literature, worship, prayer, proselytizing or other inherently religious practices. The services provided under these grants must be secular and non-ideological. Grant or sub-grant recipients, therefore, may not and will not be defined by reference to religion. Neutral, secular criteria that neither favor nor disfavor religion must be employed in their selection. In addition, under the WIA and DOL regulations implementing the Workforce Investment Act, a recipient may not employ or train a participant in sectarian activities, or permit participants to construct, operate, or maintain any part of a facility that is primarily used or devoted to sectarian instruction or worship. Under WIA, no individual shall be excluded from participation in, denied the benefits of, subjected to discrimination under, or denied employment in the administration of or in connection with, any such program or activity because of race, color, religion, sex (except as otherwise permitted under title IX of the Education Amendments of 1972), national origin, age, disability, or political affiliation or belief.

Signed at Washington, DC, this 8th day of May, 2002.

James W. Stockton,

Grant Officer,

[FR Doc. 02–11884 Filed 5–9–02; 8:45 am]

BILLING CODE 4510–30–M

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division (WHD) is soliciting comments concerning the following proposed collection: Housing Terms and Conditions. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov.* Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division (WHD) administers the Migrant and Seasonal Agricultural Protection Act (MSPA). Section 201(c) of MSPA, 29 U.S.C. 1801 *et seq.*, requires that any farm labor contractor, agricultural employer or agricultural association that provides housing to any migrant agricultural worker, post in a conspicuous place or present to such worker a statement of

the terms and conditions, if any, of occupancy of such housing. In addition, section 201(g) requires that such information be provided in English, or as necessary and reasonable, in a language common to the workers and that the Department of Labor make forms available to provide such information. Section 500.75(f) and (g) of Regulations, 29 CFR Part 500, of MSPA, sets forth the terms of occupancy of housing which are to be posted or given in a written statement to the worker. Section 500.1(i)(2) provides for optional Form WH–521, which may be used to satisfy sections 201(c) and 201(g) of MSPA. Optional Form WH–521 is printed in English/Spanish. Form WH–521 in other languages is not available at this time. The information collection is currently approved by the Office of Management and Budget (OMB) for use through September 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval of optional Form WH–521, which may be used to satisfy sections 201(c) and 201(g) of MSPA. Form WH–521 is an optional form which a farm labor contractor, agricultural employer, and agricultural association can post or present to a migrant agricultural worker listing the terms and conditions for occupancy of housing. While use of the form is optional, disclosure of the information is required by MSPA. The optional form completed by the employer provides an easy method for the employer to satisfy the disclosure requirements. Completion of the form and disclosure also provides the migrant agricultural workers with information enabling them to understand the conditions under which they may occupy housing provided by farm labor contractors, agricultural employers or agricultural associations. There are no changes to this form since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Housing Terms and Conditions.

OMB Number: 1215–0146.

Agency Numbers: Not Applicable.

Affected Public: Businesses or other for-profit; individuals or households; Farms.

Total Respondents/Responses: 1,300.

Total Hours: 650.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 7, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–11879 Filed 5–10–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Labor-Management Standards, is soliciting comments concerning the proposed information collection entitled Labor Organization and Auxiliary Reports. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

Congress enacted the Labor-Management Reporting and Disclosure Act (LMRDA), 29 U.S.C. 401 *et seq.*, to provide for the disclosure of information on the financial transactions and administrative practices of labor organizations. The statute also provides, under certain circumstances, for reporting by labor organization officers and employees, employers, labor relations consultants, and surety companies. In addition, the statute requires: (a) the maintenance and retention of supporting records for five years after the required reports are filed, and (b) the preservation for one year of records of elections of union officers. Section 208 of the Act authorizes the Secretary to issue rules and regulations prescribing the form of the required reports. The reporting provisions were devised to implement a basic tenet of the LMRDA: the guarantee of democratic procedures and safeguards within labor organizations that are designed to protect the basic rights of union members. The implementing regulations specifically incorporate by reference the LMRDA reporting and record retention requirements of labor organization information, annual financial, and trusteeship reports, as well as the requirement for the preservation of election records. Information supplied on the reports may be utilized by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting

improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. The information collection is currently approved by the Office of Management and Budget (OMB) for use through November 2002. The following is a list of the reporting forms contained in this information collection and their regulatory and legislative citations: LM–1, Labor Organization Information Report, 29 CFR 402, 29 U.S.C. 431(a); LM–2, Labor Organization Annual Report, 29 CFR 402.5 and 403.3; 29 U.S.C. 431(b); LM–3, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–4, Labor Organization Annual Report, 29 CFR 402.5 and 403.4; 29 U.S.C. 431(b); LM–10, Employer Report, 29 CFR Part 405, 29 U.S.C. 433(a); LM–15, Trusteeship Report, 29 CFR Part 408, 29 U.S.C. 461; LM–15A, Report on Selection of Delegates and Officers, 29 CFR Part 408, 29 U.S.C. 461; LM–16, Terminal Trusteeship Report, 29 CFR Part 408, 29 U.S.C. 461; LM–20, Agreement and Activities Report, 29 CFR Part 406, 29 U.S.C. 433(b); LM–21, Receipts and Disbursements Report, 29 CFR Part 406, 29 U.S.C. 433(b); LM–30, Labor Organization Officer and Employee Report, 29 CFR Part 404, 29 U.S.C. 432; S–1, Surety Company Annual Report, 29 CFR Part 409, 29 U.S.C. 441; Simplified Annual Report Format, 29 CFR Part 403, 29 U.S.C. 431(b).

II. Review Focus

The Department of Labor is particularly interested in comments which:

• Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

• Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

• Enhance the quality, utility and clarity of the information to be collected; and

• Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

Pursuant to § 205 of the LMRDA, the purpose of the reporting requirements is the public disclosure of the information and financial reports. Copies of every report submitted are maintained for public inspection and copying, upon request, at the U.S. Department of Labor, Room N5608, 200 Constitution Avenue, NW., Washington, DC 20210, and at the appropriate field office for the Department's Office of Labor-Management Standards (OLMS). Information supplied on the reports may be utilized by union members to help self-govern their unions, by the general public, and as research material for both outside researchers and within the Department of Labor. The information is also used to assist DOL and other government agencies in detecting improper practices on the part of labor organizations, their officers and/or representatives, and is used by Congress in oversight and legislative functions. Under this request, the Department of Labor is seeking extension of the approved expiration date of the forms described above for a three year period.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Labor Organization Information Report (LM–1); Labor Organization Annual Report (LM–2); Labor Organization Annual Report (LM–3); Labor Organization Annual Report (LM–4); Employer Report (LM–10); Trusteeship Report (LM–15); Report on Selection of Delegates and Officers (LM–15A); Terminal Trusteeship Report (LM–16); Agreement and Activities Report (LM–20); Receipts and Disbursements Report (LM–21); Labor Organization Officer and Employee Report (LM–30); Surety Company Annual Report (S–1); and the Simplified Annual Report Format.

OMB Number: 1215–0188.

Affected Public: Not-for-profit institutions, Businesses or other for-profit; Individuals or households.

Form	Responses/respondents	Hours per respondent	Reporting burden hours	Minutes per respondent	Recordkeeping hours	Total hours
LM–1	253	0.83	210	5	21	231
LM–2	5,932	14.75	87,497	30	2,966	90,463
LM–3	12,722	6.50	82,693	15	3,181	85,874
LM–4	8,108	0.83	6,730	2	270	7,000
LM–10	116	0.50	58	5	10	68
LM–15	427	1.50	641	20	142	783
LM–15A	71	0.33	23	2	2	25
LM–16	110	0.33	36	1	2	38
LM–20	231	0.33	76	2	8	84
LM–21	36	0.50	18	5	3	21
LM–30	139	0.50	70	5	12	82
S–1	82	0.50	41	5	7	48
SARF*	2,142	0.17	364	2	71	435
Total	30,369		178,457	6,695	85,152	

*Simplified Annual Report Format.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–11880 Filed 5–10–02; 8:45 am]

BILLING CODE 4510–CP–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Wage and Hour Division (WHD) is soliciting comments concerning the following proposed collection: Application of the Employee Polygraph Protection Act. A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U.S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail *pforkel@fenix2.dol-esa.gov*. Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

The Wage and Hour Division (WHD) administers the Employee Polygraph Protection Act of 1988 (EPPA). The EPPA was signed into law June 27, 1988 and became effective December 27, 1988. EPPA prohibits most private employers from using any lie detector tests either for pre-employment screening or during the course of employment. Federal, State, and local government employers are exempted from the Act. The law contains several limited exemptions which authorize polygraph tests under certain conditions, including: (1) The testing of employees who are reasonably suspected of involvement in a workplace incident that results in economic loss or injury to the employer's business; (2) the testing by the Federal Government of experts, consultants, or employees of Federal contractors engaged in national security intelligence or counterintelligence functions; (3) the testing of some prospective employees of private armored car, security alarm, and security guard firms; and (4) the testing of some current and prospective employees in firms authorized to manufacture, distribute, or dispense controlled substances. Employers who violate any of the Act's provisions may be assessed civil money penalties up to $10,000. The information collection is currently approved by the Office of Management and Budget (OMB) for use through October 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval of this information collection that requires the keeping of records necessary or appropriate for the administration of the Act in order to carry out its responsibility to determine if a beneficiary is capable and/or competent to manage his/her black lung benefits, and to assure that the representative payee is using the benefits to meet the beneficiary's needs. There is no change to these forms since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Application of the Employee Polygraph Protection Act.

OMB Number: 1215–0170.

Agency Numbers: Not Applicable.

Affected Public: Businesses or other for-profit; individuals or households; Not-for-profit institutions; Farms.

Total Respondents/Responses: 328,000.

Total Hours: 82,406.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $0.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–11881 Filed 5–10–02; 8:45 am]

BILLING CODE 4510–27–P

DEPARTMENT OF LABOR

Employment Standards Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) [44 U.S.C. 3506(c)(2)(A)]. This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment Standards Administration, Office of Workers' Compensation Programs (OWCP) is soliciting comments concerning the following proposed collection: Representative Payee Report (CM–623), Representative Payee Report, Short Form (CM–623S), and Physician's/Medical Officer's Report (CM–787). A copy of the proposed information collection request can be obtained by contacting the office listed below in the addressee section of this Notice.

DATES: Written comments must be submitted to the office listed in the addressee section below on or before July 12, 2002.

ADDRESSES: Ms. Patricia A. Forkel, U. S. Department of Labor, 200 Constitution Ave., NW., Room S–3201, Washington, DC 20210, telephone (202) 693–0339, fax (202) 693–1451, EMail pforkel@fenix2.dol-esa.gov. Please use only one method of transmission for comments (mail, fax, or EMail).

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Workers' Compensation Programs administers the Federal Black Lung Workers' Compensation Program. Under the Federal Mine Safety and Health Act (30 U.S.C. 901) benefits payable to a black lung beneficiary may be paid to a representative payee on behalf of the beneficiary when the beneficiary is unable to manage his/her benefits due to incapability, incompetence, or minority. The CM–623 is used to collect expenditure data regarding the disbursement of the beneficiary's benefits by the representative payee to assure that the beneficiary's needs are being met. The CM–623S is a shortened version of the CM–623 that is used when the representative payee is a family member. The CM–787 is a form used by OWCP to gather information from the beneficiary's physician about the capability of the beneficiary to manage monthly benefits. It is used by OWCP to determine if it is in the beneficiary's best interests to have his/her benefits managed by another party. Regulatory authority for the collection of this information is at 20 CFR 725.506, 510, 511, and 513. The information collection is currently approved by the Office of Management and Budget (OMB) for use through October 2002.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submissions of responses.

III. Current Actions

The Department of Labor seeks an extension of approval to collect this information in order to carry out its responsibility to determine if a beneficiary is capable and/or competent to manage his/her black lung benefits, and to assure that the representative payee is using the benefits to meet the beneficiary's needs. There is no change to these forms since the last OMB approval.

Type of Review: Extension.

Agency: Employment Standards Administration.

Titles: Representative Payee Report; Representative Payee Report, Short Form; Physician's Medical Officer's Statement.

OMB Number: 1215–0173.

Agency Numbers: CM–623, CM–623S, CM–787.

Affected Public: Businesses or other for-profit; individuals or households; Not-for-profit institutions.

Form	Respondents/responses	Frequency	Average response time	Total hours
CM–623	2,275	Annually	90	3,413
CM–623S	600	Annually	10	100
CM–787	223	On occasion	15	56

Total Respondents/Responses: 3,098.

Total Hours: 3,569.

Total Burden Cost (capital/startup): $0.

Total Burden Cost (operation/maintenance): $1,064.

Comments submitted in response to this notice will be summarized and/or included in the request for Office of Management and Budget approval of the information collection request; they will also become a matter of public record.

Dated: May 6, 2002.

Margaret J. Sherrill,

Chief, Branch of Management Review and Internal Control, Division of Financial Management, Office of Management, Administration and Planning, Employment Standards Administration.

[FR Doc. 02–11882 Filed 5–10–02; 8:45 am]

BILLING CODE 4510–CH–P

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 57113 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget

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(OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding this information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of ifnromation on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725—17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The National Science Foundation's Graduate Research Traineeship Program's Follow Up Study.

OMB Control No.: 3145–NEW.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the follow up study of the National Science Foundation's (NSF) Graduate Research Traineeship (GRT) Program. GRT supported graduate students in peer-review selected institutions to achieve a doctorate (PhD) in critical or emerging areas of science, mathematics, and engineering. The study addresses the following questions: What positions do graduates obtain following completion of the doctorate? What academic awards or private/public sector attainments do graduates receive? What impacts do traineeships have on the sponsoring institution, faculty, and colleagues? How do GRT trainees who stopped their pursuit of a PhD characterize their GRT experience? Is there a relationship between the average time of GRT funding support for a trainee and the average number of years required for completing a PhD? Despite not completing the doctorate, did former GRT recipients find the traineeship relevant to their subsequent employment or study related to science and technology needs in priority fields? What is the overall "value added" of traineeships?

The data to address these questions will be gathered via two survey instruments. The first instrument is an Institutional Impact Survey that GRT project Principal Investigators (PI) will complete 2 years after their final year of funding. The second instrument is an individual survey that all trainees who have received doctorates or withdrawn from the GRT program will be asked to complete.

2. *Expected Respondents:* The expected respondents are the Principal Investigators and GRT funding recipients (trainees) from GRT projects funded by NSF since 1993.

3. *Burden on the Public:* The total annual burden hours for this collection are 290 for a maximum of 373 respondents, assuming an 80–100% response rate. The average annual reporting burden is one hour or less per respondent. The burden on the public is limited because the study is limited to GRT project participants and no other individuals.

Dated: May 8, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11912 Filed 5–10–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 66 FR 65748 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, NW., Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Office at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

An agency may not conduct or sponsor a collection of information unless the collection of information displays a currently valid OMB control number and the agency informs potential persons who are to respond to the collection of information that such persons are not required to respond to the collection of information unless it displays a currently valid OMB control number.

SUPPLEMENTARY INFORMATION:

Title of Collection: The Evaluation of the Preparing Future Faculty (PFF) Program.

OMB Control No.: 3145–NEW.

Abstract: This document has been prepared to support the clearance of data collection instruments to be used in the evaluation of the Preparing Future Faculty (PFF) Program, funded since 1993 by The PEW Charitable Trust, the National Science Foundation, and an anonymous donor. PFF is designed to change the culture of graduate education in order to produce faculty for colleges and universities who are fully prepared for teaching and service responsibilities as well as the research role.

Data will be collected using Web-based surveys and conducting institutional site visits for six selected case studies. Titles of the survey instruments and interview protocol for the PFF Evaluation are as follows:

- PFF Partner Faculty Survey
- PFF Graduate Faculty Survey
- PFF Participant Survey (Graduate Students)
- PFF Site Visit Protocol (for case studies)

NSF will use this collection to evaluate the impact and effectiveness of the Preparing Future Faculty Program on graduate education and the development of future professors.

2. *Expected Respondents:* The expected respondents are project directors, deans, and graduate student participants at PFF grantee institutions as well as faculty associated directly with the PFF program at both graduate institutions and partner institutions.

3. *Burden on the Public:* The remaining elements for this collection represent 734 burden hours for a maximum of 3840 participants over two years, assuming an 80–100% response rate. The burden on the public is negligible; the study is limited to project participants that have directly received funding from or otherwise have benefited from participation in the PFF program.

Dated: May 7, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11913 Filed 5–10–02; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL SCIENCE FOUNDATION

Agency Information Collection Activities: Comment Request

AGENCY: National Science Foundation.

ACTION: Submission for OMB review; comment request.

SUMMARY: Under the Paperwork Reduction Act of 1995, Pub. L. 104–13 (44 U.S.C. 3501 *et seq.*), and as part of its continuing effort to reduce paperwork and respondent burden, the National Science Foundation (NSF) is inviting the general public and other Federal agencies to comment on this proposed continuing information collection. This is the second notice for public comment; the first was published in the **Federal Register** at 67 FR 2914 and no comments were received. NSF is forwarding the proposed submission to the Office of Management and Budget (OMB) for clearance simultaneously with the publication of this second notice.

DATES: Comments regarding these information collections are best assured of having their full effect if received by OMB within 30 days of publication in the **Federal Register**.

ADDRESSES: Written comments regarding (a) whether the collection of information is necessary for the proper performance of the functions of NSF, including whether the information will have practical utility; (b) the accuracy of NSF's estimate of burden including the validity of the methodology and assumptions used; (c) ways to enhance the quality, utility and clarity of the information to be collected; or (d) ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology should be addressed to: Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for National Science Foundation, 725–17th Street, N.W. Room 10235, Washington, DC 20503, and to Suzanne H. Plimpton, Reports Clearance Officer, National Science Foundation, 4201 Wilson Boulevard, Suite 295, Arlington, Virginia 22230 or send e-mail to *splimpto@nsf.gov*. Copies of the submission may be obtained by calling (703) 292–7556.

FOR FURTHER INFORMATION CONTACT: Suzanne H. Plimpton, NSF Reports Clearance Officer at (703) 292–7556 or send e-mail to *splimpto@nsf.gov*.

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SUPPLEMENTARY INFORMATION:

Title of Collection: Cross-Project Evaluation of the National Science Foundation's Local Systemic Change through Teacher Enhancement Program (LSC).

OMB Control No.: 3145–0161.

Abstract: The National Science Foundation (NSF) requests an extension of approval of instruments to be used in the evaluation of the Local Systemic Change (LSC) through Teacher Enhancement Program that were previously approved through May 2002 (OMB No. 3145–0136). The surveys are part of the ongoing data collection for the program-wide evaluation of the LSC. Each of the 72 currently funded projects administers teacher and principal questionnaires and conducts teacher interviews at appropriate times during the school year based on the program evaluation design.

These surveys have been ongoing for a number of years in LSC projects funded by NSF. The LSC program is a large-scale effort to modify the nature of teacher in-service training (or professional development) provided to mathematics and science teachers in a large number of school districts across the country. Currently there are 72 projects funded at up to $6 million each. The database maintained by Horizon Research, Inc. for LSC is designed to provide information on the total system, both for accountability and for judging effectiveness. For example, NSF is required to report for GPRA the number of teachers receiving NSF in-service and development support. This information is gathered through this recurring study of the LSC projects.

Expected Respondents: A total of 150 teachers and 55 principals from schools in each of the 72 LSC projects, for a total of 10,800 teachers and 3,960 principals participating in the LSC program.

Burden On The Public: 3,960 hours for teachers and 990 hours for principals per year.

Dated: May 8, 2002.

Suzanne H. Plimpton,

Reports Clearance Officer, National Science Foundation.

[FR Doc. 02–11914 Filed 5–10–02; 8:45 am]

BILLING CODE 7555–01–M

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NUCLEAR REGULATORY COMMISSION

[Docket No. 030–19135; License No. 29–19707–01; EA No. 01–314]

In the Matter of Trap Rock Industries, Kingston, New Jersey; Order Imposing a Civil Monetary Penalty

I

Trap Rock Industries (Licensee) is the holder of Byproduct Materials License No. 29–19707–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission) on July 24, 1991. The License was most recently renewed by the Commission on September 22, 1994. The License authorizes the Licensee to possess and use certain byproduct materials in accordance with the conditions specified therein at their facility in Kingston, New Jersey and at various temporary job sites.

II

An inspection of the Licensee's activities was conducted on December 6, 2001, at the Licensee's facility located in Kingston, New Jersey. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated February 27, 2002. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for one of the violations.

The Licensee responded to the Notice in a letter, dated March 26, 2002. In its response, the Licensee does not deny that the violations occurred as stated in the Notice, but requests withdrawal of the penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that an adequate basis was not provided for withdrawal of the penalty and that a penalty of $3,000 should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $3,000 within 30 days of the date of this Order, in accordance with NUREG/BR–0254. In addition, at the time of making the payment, the Licensee shall submit a statement indicating when and by what method payment was made, to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852–2738.

V

The Licensee may request a hearing within 30 days of the date of this Order. Where good cause is shown, consideration will be given to extending the time to request a hearing. A request for extension of time must be made in writing to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and include a statement of good cause for the extension. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Rulemakings and Adjudications Staff, Washington, DC 20555. Copies also shall be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Associate General Counsel for Hearings, Enforcement & Administration at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, PA 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

Whether on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 30th day of April, 2002.

For the Nuclear Regulatory Commission.

Frank J. Congel,

Director, Office of Enforcement.

Appendix

Evaluations and Conclusion

On February 27, 2002, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for two violations identified during a NRC inspection conducted at the Licensee's facility located in Kingston, New Jersey, as well as temporary job sites in Ewing, New Jersey. The penalty was issued for one violation. The Licensee responded to the Notice in a letter, dated March 26, 2002. While in its response, the Licensee does not deny that the violations occurred as stated in the Notice, the Licensee does request withdrawal of the civil penalty. The NRC's evaluation and conclusion regarding the Licensee's request is as follows:

1. Restatement of Violation Assessed a Civil Penalty

10 CFR 20.1801 requires that the Licensee secure from unauthorized removal or access licensed materials that are stored in controlled or unrestricted areas. 10 CFR 20.1802 requires that the Licensee control and maintain constant surveillance of licensed material that is in a controlled or unrestricted area and that is not in storage. As defined in 10 CFR 20.1003, *controlled area* means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the Licensee for any reason; and *unrestricted area* means an area, access to which is neither limited nor controlled by the Licensee.

Contrary to the above, on October 24, 2001, the Licensee did not secure from unauthorized removal or limit access to a Troxler Model 4640–B density gauge (containing one 8-millicurie cesium-137 source) located at a temporary job site on Route 31 in Ewing, New Jersey, which is an unrestricted area, nor did the Licensee control and maintain constant surveillance of this licensed material.

2. Summary of Licensee's Request for Withdrawal of the Civil Penalty

The Licensee, in its response, requests that the civil penalty be withdrawn. In support of this request, the Licensee contends that (1) the violation should be considered minor; and (2) extenuating circumstances exist that should eliminate the need for a civil penalty.

With respect to the significance of the violation, the Licensee indicates that there was no actual safety significance to the violation; the potential consequences were de minimus; the loss of the gauge did not impact the NRC's ability to perform its regulatory functions; and the loss of the gauge was not willful. The Licensee also states that using the standards set forth in the enforcement policy for assigning severity, the violation, "at best," should be classified at Severity Level III. However, the Licensee also argues that using the guidance set forth in Section E of Supplement IV of the enforcement policy, the violation could be considered minor because the amount of radioactivity that could be given off by this 8 millicurie cesium-137 gauge was approximately that of an x-ray.

With respect to the extenuating circumstances, the Licensee argues that the penalty should be withdrawn because the gauge contained minuscule quantities of material, was clearly and properly labeled, and was lost due to a criminal act of an unknown third party; upon discovery that the gauge was missing, the Licensee immediately notified the NRC of the theft and attempted to find the stolen gauge; the Licensee disciplined the employee who left the gauge unattended, and also took corrective actions that included re-instructing and re-training its employees; and the Licensee has had no prior violations of NRC regulations.

The Licensee also argues that none of the rationales set forth in the enforcement policy for issuing a penalty are applicable in this case. Specifically, the Licensee indicates that the penalty will not encourage prompt identification and prompt corrective action because the Licensee had already identified and corrected the violations. The Licensee also states that the penalty will not deter future violations because the theft of the radioactive device was the result of a criminal act by a third party. Finally, the Licensee maintains that the penalty will not focus the Licensee's attention on significant violations because the Licensee believes that the violation was insignificant.

3. NRC Evaluation of Licensee's Request for Withdrawal of the Civil Penalty

Notwithstanding the Licensee's contentions regarding the significance of the violation, the NRC maintains that the violation was appropriately classified at Severity Level III, consistent with the NRC enforcement policy. Since the gauge contained less than 1000 times the quantity of cesium-137 set forth in 10 CFR Part 20, Appendix C (the gauge contained approximately 800 times that quantity), the failure to secure the gauge and maintain surveillance over it might have been classified at Severity Level IV, in accordance with Section C.11 of Supplement IV of the enforcement policy, had the gauge not been stolen. However, since the failure to secure or maintain constant surveillance over the gauge, resulted in the gauge being stolen and radioactive material entering the public domain and being handled by members of the public, the violation is more appropriately classified at Severity Level III. Such violations are considered significant since, although the source is normally shielded within the gauge, significant radiation exposures could occur if the source becomes unshielded while in the public domain.

The NRC agrees that the gauge was properly labeled, the Licensee took appropriate actions once it discovered that the gauge was missing, the violation was not willful, and the Licensee's prior enforcement history has been good. As a result, consistent with the NRC enforcement policy, a civil penalty would not normally be warranted for a Severity Level III violation, as the NRC indicated in its February 27, 2002 letter transmitting the civil penalty. However, although the outcome of the normal civil penalty process in this case would not result in a civil penalty, a civil penalty is warranted, in accordance with Section VII.A.1.g of the enforcement policy since the case involved a loss/improper disposal of a sealed source. The Commission included Section VII.A.1.g. in the policy since it believes that normally issuance of a civil penalty is appropriate for cases involving of loss of a sealed source or device. This is necessary to properly reflect the significance of such violations.

Although the loss of the gauge was due to the criminal act of a third party, the Licensee is responsible for that occurrence since the gauge user left the gauge unattended and unsecured, which directly contributed to the theft. Accordingly, issuance of the violation, categorization of the violation at Severity Level III, and imposition of the related civil penalty, is appropriate in this case, and consistent with the NRC enforcement policy.

4. NRC Conclusion

The NRC has concluded that the Licensee did not provide an adequate basis for withdrawal of the civil penalty. Accordingly, the proposed civil penalty in the amount of $3,000 should be imposed.

[FR Doc. 02–11872 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards; Joint Meeting of the ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment; Notice of Meeting

The ACRS Subcommittees on Materials and Metallurgy, on Thermal-Hydraulic Phenomena, and on Reliability and Probabilistic Risk Assessment will hold a joint meeting on May 31, 2002, Room T–2B3, 11545 Rockville Pike, Rockville, Maryland.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: *Friday, May 31, 2002—8:30 a.m. until the conclusion of business.*

The Subcommittees will continue their review of the proposed risk-informed revisions to the technical requirements of the Emergency Core Cooling Systems Rule (10 CFR 50.46 and Appendix K). The purpose of this meeting is to gather information, analyze relevant issues and facts, and formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittees, their consultants, and staff. Persons desiring to make oral statements should notify the Designated Federal Official named below five days prior to the meeting, if possible, so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittees, along with any of their consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittees will then hear presentations by and hold discussions with representatives of the NRC staff, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, and the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor, can be obtained by contacting the Designated Federal Official, Mr. Paul A. Boehnert (telephone 301–415–8065) between 7:30 a.m. and 5 p.m. (EDT). Persons planning to attend this meeting are urged to contact the above named individual one or two working days prior to the meeting to be advised of any potential changes to the agenda that may have occurred.

Dated: May 7, 2002.

Sher Bahadur,

Associate Director for Technicol Support, ACRS/ACNW.

[FR Doc. 02–11870 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a proposed revision of a guide in its Regulatory Guide Series. Regulatory Guides are developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide is temporarily identified by its task number, DG–1118, which should be mentioned in all correspondence concerning this draft guide. Draft Regulatory Guide DG–1118, the Proposed Revision 1 of Regulatory Guide 1.53, "Application of the Single-Failure Criterion to Safety Systems," is being developed to describe a method acceptable to the NRC staff for complying with the NRC's regulations with respect to satisfying the single-failure criterion for safety systems.

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This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted by mail to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555; or they may be hand-delivered to the Rules and Directives Branch, ADM, at 11555 Rockville Pike, Rockville, MD. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by July 15, 2002.

You may also provide comments via the NRC's interactive rulemaking Web site through the NRC home page (*http://www.nrc.gov*). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking Web site, contact Ms. Carol Gallagher, (301) 415–5905; e-mail *CAG@NRC.GOV*. For information about Draft Regulatory Guide DG–1118, contact Mr. S.K. Aggarwal at (301) 415–6005, e-mail *<SKA@NRC.GOV>*.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415–4737 or (800) 397–4205; fax (301) 415–3548; email PDR@NRC.GOV . Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to *<DISTRIBUTION@NRC.GOV>*; or by fax to (301) 415–2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and NRC approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of May, 2002.

For the Nuclear Regulatory Commission.

Michael E. Mayfield,

Director, Division of Engineering Technology, Office of Nuclear Regulatory Research.

[FR Doc. 02–11873 Filed 5–10–02; 8:45 am]

BILLING CODE 7590–01–P

OVERSEAS PRIVATE INVESTMENT CORPORATION

Sunshine Act Meeting; May 22, 2002, Board of Directors Meeting

TIME AND DATE: Wednesday, May 22, 2002, 1:30 p.m. (OPEN Portion), 1:45 p.m. (CLOSED Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, NW., Washington, DC.

STATUS: Meeting OPEN to the Public from 1:30 p.m. to 1:45 p.m., Closed portion will commence at 1:45 p.m. (approx).

MATTERS TO BE CONSIDERED:

1. President's Report
2. Approval of January 31, 2002 Minutes (Open Portion)

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:45 p.m.)

1. Finance Project in South America
2. Finance Project in Pakistan
3. Finance Project—Global
4. Insurance Project in Chad
5. Insurance Project in the Philippines
6. Approval of January 31, 2002 Minutes (Closed Portion)
7. Pending Major Projects
8. Reports

CONTACT PERSON FOR INFORMATION: Information on the meeting may be obtained from Connie M. Downs at (202) 336–8438.

Dated: May 9, 2002.

Connie M. Downs,

Corporate Secretary, Overseas Private Investment Corporation.

[FR Doc. 02–11962 Filed 5–9–02; 10:34 am]

BILLING CODE 3210–01–M

PRESIDIO TRUST

The Presidio of San Francisco, California; Notice of Availability of the Presidio Trust Management Plan and Final Environmental Impact Statement

AGENCY: The Presidio Trust.

ACTION: Notice of availability of the Presidio Trust Management Plan (PTMP): Land Use Policies for Area B of The Presidio of San Francisco and associated Final Environmental Impact Statement (EIS). The PTMP (formerly known as the Presidio Trust Implementation Plan or PTIP) is an update to the July 1994 Final General Management Plan Amendment (GMPA) for the portion of The Presidio of San Francisco (Presidio) now under the Presidio Trust's (Trust's) jurisdiction (Area B). The PTMP EIS supplements the GMPA Environmental Impact Statement adopted by the National Park Service (NPS) for the Presidio in 1994.

Contents of Final EIS: Volume I of the Final EIS contains the text of the Final EIS with a summary of changes made in response to comments on the Draft EIS. Major impact topics assessed in Volume I include historic resources, cultural landscape, archaeology, biological resources, water resources, visual resources, air quality, noise, land use, socioeconomic issues, visitor experience, recreation, public safety, transportation, water supply, utilities and Trust operations. Volume II contains a summary of the public and agency comments received on the Draft EIS, along with written responses to those comments. Volume III contains technical appendices related to the EIS analyses.

Background: The Trust has prepared a Final EIS in compliance with the National Environmental Policy Act (NEPA), the Council on Environmental Quality's implementing regulations at 40 CFR Parts 1500–1508, and the Trust's supplemental implementing regulations in 36 CFR Part 1010. The Final EIS describes and analyzes a proposed action (Final Plan), a variant of the Final Plan alternative, and five additional alternatives to address Presidio Trust Act (Trust Act) requirements, changed conditions since the GMPA was adopted, new policies and management approaches of the Trust, and public comment on the Draft Plan and Draft EIS. The Draft Plan and EIS were circulated for public and agency review from July 25, 2001 to October 25, 2001, a period of about 90 days. During this period, the Trust received over 3,000 comment letters, as well as oral comments provided at two public hearings and at a public meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Citizens' Advisory Commission. The Trust carefully considered public comments, and made modifications to the text of the Draft Plan and EIS. Modifications included re-naming and substantially revising the text of the Draft Plan, along with inclusion of the Final Plan variant in the EIS and other modest adjustments to the text and analysis of the EIS. Original comment letters and transcripts are available for review in the Trust library, 34 Graham Street, in the Presidio.

Under the Trust Act, as amended, Congress created the Trust to manage Area B so as to make it financially self-sufficient by year 2013 and to protect Area B's resources by ensuring long-term financial sustainability. Each of the alternatives summarized below and presented in the Final EIS achieves Trust Act goals to varying degrees and has a different emphasis. Principal differences among alternatives include the proposed total building square footage, the proposed amount of non-residential and residential uses, the amount of open space, the proposed plan vision and method of delivery of public programs. The maximum overall square footage of 5,960,000 allowed under the Trust Act would not be exceeded under any alternative.

GMPA 2000 Alternative—The GMPA 2000 or "no action" alternative would implement the 1994 GMPA assuming current (year 2000) conditions. Buildings would be removed to increase open space and enhance natural resources, and available housing would decrease substantially. Tenants with a mission related to environmental, social or cultural concerns would offer public programs related to their business mission.

Final Plan Alternative—Under the Final Plan or the Trust's "preferred" alternative, the Trust would preserve and enhance the park resources for public use. Housing units would be removed to increase open space and would be replaced through a combination of subdivision, conversion and possible new construction. The Trust would collaborate with partners, including the NPS, tenants and residents, to provide park programs. A broader mix of tenants would be permitted than under the GMPA 2000 alternative to meet the policy goals of the Plan.

Final Plan Variant—The Final Plan variant is consistent with a detailed Sierra Club proposal. Its land use proposals are similar to the Final Plan alternative, except for greater building demolition and therefore less total built space as well as a prohibition on replacing demolished structures through new construction. The Final Plan variant emphasizes the replacement of removed housing units by converting existing buildings.

Resource Consolidation Alternative—Under the Resource Consolidation alternative, the Presidio would become an enhanced open space haven in the center of urban surroundings by maximizing open space in the southern part of the park through the removal of historic and non-historic structures, and concentrating built space in the northern part of the park. Open space and natural resource enhancements would be maximized.

Sustainable Community Alternative—Under the Sustainable Community alternative, the Presidio would become a sustainable live/work community in a park setting with a small decrease in housing units, would retain its present dispersed pattern of development, and would emphasize building reuse and rehabilitation.

Cultural Destination Alternative—Under the Cultural Destination alternative, the Presidio would become a national and international destination park by providing robust public programming delivered through the Trust. A substantial level of building demolition in the southern part of the park would be replaced in the northern part of the park to provide an increase in and improved mix of housing, and to cluster housing near work and transit.

Minimum Management Alternative—Under the Minimum Management alternative, there would be no significant physical change beyond that already underway, and the Presidio would be minimally managed to meet legal requirements.

Materials Available to the Public: Copies of the PTMP and Final EIS will be available at the public meeting of the Trust Board of Directors on May 21, 2002, and will be available thereafter by calling or writing the Presidio Trust, 34 Graham Street, Post Office Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414. The complete PTMP and Final EIS will be available electronically on the Trust's website (*www.presidiotrust.gov*) and on CD–ROM after May 21, 2002. The PTMP and Final EIS may also be reviewed after May 21, 2002, in the Trust's library at the above address or in local libraries.

Public Meeting: As previously announced on April 26, 2002 (67 FR 20846), information on the PTMP and Final EIS will be presented at the public meeting of the Trust Board of Directors on May 21, 2002, at the Officers' Club, 50 Moraga Avenue at Arguello Boulevard (Main Post), Presidio of San Francisco, California, from 6 p.m. to 9 p.m.

Limitation on Action: Following distribution of the Final EIS, and following the 30-day "no action" period required under the NEPA, the Trust Board of Directors will consider adoption of the Final Plan. The Board's action could include, but is not limited to, adoption of the preferred alternative (the Final Plan), rejection of all alternatives, and/or partial or conditional approval of a particular alternative. The Board's action, through a Record of Decision, will describe the scope and basis of the decision, the mitigations or conditions upon which it is contingent, and how the Final EIS will be used in subsequent decision-making.

FOR FURTHER INFORMATION CONTACT: John Pelka, NEPA Compliance Manager, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129–0052. Telephone: 415/561–5414.

Dated: May 7, 2002.

Karen A. Cook,

General Counsel.

[FR Doc. 02–11831 Filed 5–10–02; 8:45 am]

BILLING CODE 4310–4R–P

RAILROAD RETIREMENT BOARD

Sunshine Act Meeting; Notice of Public Hearing

Notice is hereby given that the Railroad Retirement Board, acting through its appointed Hearing Examiner, will hold a hearing on May 21, 2002, at 9 a.m., at the Board's meeting room on the 8th floor of its headquarters building, 844 North Rush Street, Chicago, Illinois, 60611. The hearing will be at the request of American Orient Express Railway Company LLC for the purpose of taking evidence relating to the status of the company as an employer covered by the Railroad Retirement and Railroad Unemployment Insurance Acts.

The entire hearing will be open to the public. The person to contact for more information is Karl Blank, Hearing Examiner, phone number (312) 751–4941, TDD (312) 751–4701.

Dated: May 7, 2002.

Beatrice Ezerski,

Secretary to the Board

[FR Doc. 02–11961 Filed 5–9–02; 10:34 am]

BILLING CODE 7905–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45843A; File No. S7–12–02]

Draft Data Quality Assurance Guidelines; Correction

In FR Document No. 02–10931 on page 21785 for Wednesday, May 1, 2002, make the following correction:

In the third column, remove "By the Commission." before the date line.

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Dated: May 7, 2002.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–11810 Filed 5–10–02; 8:45 am]
BILLING CODE 8010–01–U

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45887; File No. SR–NFA–2002–03]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by National Futures Association Regarding Futures Commission Merchants and Introducing Brokers Anti-Money Laundering Program

May 7, 2002.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–7 under the Act,[2] notice is hereby given that on April 25, 2002, National Futures Association ("NFA") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule changes described in Items I, II, and III below, which Items have been prepared by NFA. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

On April 22, 2002, NFA submitted the proposed rule change to the Commodities Futures Trading Commission ("CFTC") for approval. The CFTC approved the proposed rule change on April 23, 2002.[3]

I. Self-Regulatory Organization's Description of the Proposed Rule Change

Section 15A(k) of the Exchange Act[4] makes NFA a national securities association for the limited purpose of regulating the activities of members who are registered as brokers or dealers in security futures products under Section 15(b)(11) of the Exchange Act.[5] NFA Compliance Rule 2–9 and the Interpretive Notice Regarding Futures Commission Merchants ("FCM") and Introducing Brokers ("IB") Anti-Money Laundering Program ("Notice") apply to all Members who open and accept orders for futures accounts, regardless of the underlying product and, therefore, will apply to Members registered under Section 15(b)(11) with regard to their security futures activities.

The proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* ("Title III") requires financial institutions, as defined under the Bank Secrecy Act ("BSA"), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program. NFA Compliance Rule 2–9 and the Interpretive Notice Regarding FCM and IB Anti-Money Laundering Program implement this requirement.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NFA has prepared statements concerning the purpose of, and basis for, the proposed rule change, burdens on competition, and comments received from members, participants, and others. The text of these statements may be examined at the places specified in Item IV below. These statements are set forth in Sections A, B, and C below. The text of the proposed rule change is available for inspection at the Office of the Secretary, the NFA, the Commission's Public Reference Room, and on the Commission's website (*http://www.sec.gov*).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As noted above, the proposed rule change responds to the CFTC's request that NFA adopt minimum standards for anti-money laundering programs applicable to the futures industry. Section 352 of the *International Money Laundering Abatement and Anti-Terrorist Financing Act of 2001* ("Title III") requires financial institutions, as defined under the Bank Secrecy Act ("BSA"), to implement an anti-money laundering program which, at a minimum, must include internal policies, procedures and controls to deter, detect and report suspicious activity; a designated compliance officer to oversee anti-money laundering surveillance; an ongoing training program for employees; and an independent audit function to test the compliance of the program.

Although the BSA explicitly defines "financial institutions" to include FCMs, Commodity Pool Operators ("CPOs") and Commodity Trading Advisors ("CTAs") (but not IBs), the U.S. Department of the Treasury ("Treasury") has requested that NFA's anti-money laundering program requirements apply to IBs. Treasury notes that it intends to clarify that IBs are within the BSA's definition of "financial institutions" in the near future. In Treasury's view, this amendment is necessary so that Title III's requirements apply to FCMs and IBs in a manner comparable to clearing and introducing broker-dealers in the securities industry.

The proposed Notice makes clear that FCMs and IBs must adopt an anti-money laundering compliance program. The Notice allows FCMs and IBs to allocate their responsibilities by written agreement, but indicates that both parties must have a reasonable basis for believing that the other party is performing their required functions. The Notice also highlights that the Secretary of the Treasury has stated that allocating these responsibilities does not relieve either the FCM or the IB of its independent obligation to comply with the anti-money laundering requirements.

The proposed Notice is divided into four main areas that track the requirements of Section 352. The first section discusses the types of policies, procedures, and internal controls that FCMs and IBs should include in their anti-money laundering program. Specifically, the Notice discusses procedures for obtaining and verifying the true identity of the owner/beneficial owner of an account. The Notice also describes various relationships between carrying FCMs and IBs and other entities and discusses the FCM's and IB's responsibilities when other entities are involved. In particular, the Notice states that when an FCM or IB is doing business with a CPO, the FCM or IB will be required to conduct a risk-based analysis of the money laundering risks posed by the pool and, in most instances, this analysis will not require the FCM or IB to conduct due diligence on the underlying participants or beneficiaries. With regard to the treatment of accounts introduced by regulated foreign intermediaries, the proposed Notice requires an FCM to make a risk-based determination as to whether it can rely on the foreign intermediary's due diligence with respect to its customers. The Notice also identifies certain factors to consider including whether the intermediary, is located in a FATF member jurisdiction, the FCM's historical experience with the foreign intermediary and the intermediary's reputation in the investment business.

The first section of the Notice also describes procedures for detecting and reporting suspicious activity, hiring qualified staff in areas susceptible to money laundering, and record keeping requirements. The second section of the Notice discusses the requirement that the firm designate an individual or individuals to oversee the surveillance program. This section also highlights the main responsibilities of this individual. The third section discusses the components of an employee training program. Finally, the last section discusses the independent audit review function and the ways a firm can satisfy this requirement.

2. Statutory Basis

The rule change is authorized by, and consistent with, Section 15A(k) of the Exchange Act.[6]

B. Self-Regulatory Organization's Statement on Burden on Competition

The rule change will not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Exchange Act and the CEA. Any burdens imposed are necessary and appropriate in order to protect customers.

C. Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

NFA worked with industry representatives in developing the rule changes. NFA did not, however, publish the rule changes to the membership for comment. NFA did not receive comment letters concerning the rule changes.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

By law, financial institutions must be in compliance with the requirements of Section 352 of Title III on or before April 24, 2002.

The proposed rule change became effective on April 23, 2002. Within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.[7]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change conflicts with the Act. Persons making written submissions should file nine copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Comments also may be submitted electronically to the following e-mail address: *rule-comments@sec.gov*. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of these filings also will be available for inspection and copying at the principal office of NFA. Electronically submitted comments will be posted on the Commission's website (http://www.sec.gov). All submissions should refer to File No. SR–NFA–2002–03 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–11889 Filed 5–10–02; 8:45 am]
BILLING CODE 8010–01–P

[1] 15 U.S.C. 78s(b)(7).
[2] 17 CFR 240.19b–7.
[3] Letter from Catherine D. Dixon, Assistant Secretary of the Commission, CFTC, to Thomas W. Sexton, Vice President and General Counsel, NFA, dated April 23, 2002.
[4] 15 U.S.C. 78o–3(k)
[5] 15 U.S.C. 78o(b)(11).
[6] 15 U.S.C. 78o–3(k).
[7] 15 U.S.C. 78s(b)(1).
[8] 17 CFR 200.30–3(a)(75).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45884; File No. SR–NYSE–2002–17]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. to Extend Pilot Relating to Its Allocation Policy for Trading of Exchange-Traded Funds Traded on an Unlisted Trading Privileges Basis

May 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on May 6, 2002, the New York Stock Exchange, Inc. ("Exchange" or "NYSE") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE. The proposed rule change has been filed by the NYSE as a "non-controversial" rule change under Rule 19b–4(f)(6) of the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change seeks to extend the pilot relating to the Exchange's policy for allocating Exchange-Traded Funds ("ETFs") admitted to trading on the Exchange on an Unlisted Trading Privileges Basis ("UTP") for an additional year. The pilot is set to expire on May 7, 2002. For purposes of the Allocation Policy, ETFs include both Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Rule 1200), which trade UTP.

Since the inception of the Allocation Policy, 30 different ETFs have been successfully allocated. This includes 17 Merrill Lynch Holding Company Depositary Receipts (HOLDRs), a type of Trust Issued Receipt, 9 different types of Select Sector SPDRs, 1 MidCap SPDR, the Nasdaq-100 Index Tracking Stock (symbol QQQ), the Standard & Poor's Depositary Receipts (symbol SPY), and The Dow Industrials DIAMONDS (symbol DIA).

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 17 CFR 240.19b–4(f)(6).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NYSE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Allocation Policy was originally filed as a one-year pilot, which was approved by the Commission on May 7, 2001.[4] Certain aspects of the pilot program were subsequently amended.[5] The pilot program is due to expire on May 7, 2002. Therefore, the NYSE is seeking to extend the pilot relating to the Allocation Policy for an additional year.

Under the Allocation Policy, the ETFs traded on a UTP basis are allocated by a special committee, consisting of the Chairman of the Allocation Committee, the three most senior Floor broker members of the Allocation Committee, and four members of the Exchange's senior management as designated by the Chairman of the Exchange. This permits Exchange management, acting with key members of the Allocation Committee, to oversee directly the introduction of the UTP concept to the NYSE. For purposes of the Allocation Policy, ETFs collectively include Investment Company Units (as defined in paragraph 703.16 of the NYSE Listed Company Manual) and Trust Issued Receipts (as defined in NYSE Exchange Rule 1200).

Under the Allocation Policy, allocation applications are solicited by the Exchange, and the special committee reviews the same performance and disciplinary material reviewed by the Allocation Committee for allocating listed stocks on the Exchange.[6] In addition, specialist unit applicants are required to demonstrate:

(a) An understanding of the trading characteristics of ETFs;

(b) Expertise in the trading of derivatively-priced instruments;

(c) Ability and willingness to engage in hedging activity as appropriate;

(d) Knowledge of other markets in which the ETF to be allocated trades;

(e) Willingness to provide financial and other support to relevant Exchange publicity and educational initiatives.

The special committee reviews specialist unit applications and reaches its allocation decision by majority vote. Any tie vote is decided by the Chairman of the Exchange. The Exchange has determined that, due to the unique aspects of certain ETF products, it may be helpful for the special committee to meet with and interview specialist units before making an allocation decision.

A specialist organization cannot be both the specialist in the ETF and the specialist in any security that is a component of the ETF. This restriction is necessary to avoid the possibility of "wash sales" in a situation where the specialist in the ETF needs to hedge by buying or selling component stocks of the ETF, and could inadvertently be trading with a proprietary bid or offer made by a specialist in the same member organization who is making a market in the component security.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6(b) of the Act[7] in general, and furthers the objectives of Section 6(b)(5) of the Act[8] in particular, because it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

If the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change may become effective pursuant to Section 19(b)(3)(A) of the Act[9] and Rule 19b–4(f)(6) thereunder.[10] The Exchange has requested that the Commission waive the five-day pre-filing requirement and designate that the proposed rule change become operative immediately to permit the Exchange to continue the pilot program on an uninterrupted basis.

The Commission believes that it is consistent with the protection of investors and the public interest to waive the five-day pre-filing requirement and designate the proposal immediately operative.[11] Accelerating the operative date and waiving the pre-filing requirement will permit the Exchange to continue the pilot program without undue delay. In addition, the Commission did not receive any comments on the original pilot program. Thus, the pilot program is extended through May 8, 2003. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule

[4] *See* Securities Exchange Act Release No. 44272 (May 7, 2001), 66 FR 26898 (May 15, 2001) (SR–NYSE–2001–07).

[5] *See* Securities Exchange Act Release Nos. 44306 (May 15, 2001), 66 FR 28008 (May 21, 2001) (SR–NYSE–2001–10); and 45729 (April 10, 2002), 67 FR 18970 (April 17, 2002) (SR–NYSE–2002–07).

[6] *See* Section IV of the Allocation Policy and Procedures approved to Securities Exchange Act No. 42746 (May 2, 2000), 65 FR 30171 (May 10, 2000) (SR–NYSE–99–34) for details of the performance and disciplinary material available to the Allocation Committee.

[7] 15 U.S.C. 78f(b).

[8] 15 U.S.C. 78f(b)(5).

[9] 15 U.S.C. 78s(b)(3)(A).

[10] 17 CFR 240.19b–4(f)(6).

[11] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR-NYSE–2002–17 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11888 Filed 5–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45872; File No. SR–PCX–2002–21]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to the Reduction of a Surcharge Fee for the Automatic Execution of Broker-Dealer Orders

May 3, 2002.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4[2] thereunder, notice is hereby given that on April 11, 2002, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PCX is proposing to modify its Schedule of Fees and Charges by reducing the surcharge fee for the automatic execution of broker-dealer orders from $0.45 to $0.20.

The text of the proposed rule change is available at the PCX and at the Commission.

[12] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

I. Purpose

The Exchange is proposing to reduce the per contract surcharge fee for all broker-dealer orders[3] executed via the Exchange's automatic execution system ("Auto-Ex"). The current $0.45 per contract surcharge fee for the automatic execution of broker-dealer orders was filed for immediate effectiveness on February 4, 2002.[4] After review of the surcharge, the Exchange believes that a reduction of the fee would encourage participation in the program and that the reduction is reasonable and appropriate.

On November 6, 2001, the Commission approved a PCX rule change proposal to amend PCX Rule 6.87(b) to permit broker-dealer orders to be executed on Auto-Ex.[5] The amendments to PCX Rule 6.87(b) were implemented on an issue-by-issue basis, subject to the approval of the Options Floor Trading Committee.[6]

The Exchange proposes to reduce the per contract surcharge on all trades executed pursuant to the proposed rule change from a $0.45 to $0.20. The Exchange represents that, under the proposal, *all* trades executed via Auto-Ex on behalf of broker-dealers will be uniformly assessed the fee. The Exchange also represents that the surcharge for automatic execution of broker-dealer orders will only be charged to member firms. The Exchange asserts that these firms will be assessed the fee monthly. The Exchange represents that bills will be issued to these firms approximately five days after the end of each trade month. The Exchange asserts that the surcharge will not apply to non-members.

The Exchange represents that amended PCX Rule 6.87(b) extends the benefits of automatic execution to broker-dealers.[7] The Exchange asserts that such change provides instant execution without the need for a floor broker. The Exchange represents that the fast turnaround time minimizes the possibility that the market will move away from the prevailing quote. The Exchange asserts that broker-dealers who want to access the PCX's markets, but who do not want to pay the surcharge, can send their orders to the PCX for manual execution by Floor Brokers. The Exchange believes, however, that the benefits of automatic execution outweigh the burden of paying the surcharge.

The Exchange represents that broker-dealer orders that are automatically executed on Auto-Ex are not subject to brokerage fees that would otherwise be imposed by PCX members. The Exchange believes that the floor brokerage fees on broker-dealer order executions are generally comparable to the proposed surcharge amount. The Exchange represents that broker-dealer orders routed to Floor Broker Hand Held Terminals are not subject to the surcharge. The Exchange asserts that the surcharge is in addition to existing fees.

The Exchange represents that the fee will recoup costs associated with developing the new feature allowing automatic execution of broker-dealer orders in designated option issues. The Exchange asserts that the costs required to allow its Pacific Options Exchange Trading System ("POETS") to accept and execute these orders included an extensive system design change, programming and testing, and that billing programming was also required. The Exchange believes the fee is reasonable. The Exchange proposes that the reduction in the surcharge become effective on April 15, 2002.

2. Statutory Basis

The Exchange believes the proposed rule change is consistent with Section 6 of the Act,[8] in general, and with Section 6(b)(4) of the Act,[9] in particular, in that it provides for the equitable allocation

[3] A broker-dealer order is an order for the account of a registered broker-dealer.

[4] *See* Securities Exchange Act Release No. 45662 (March 27, 2002), 67 FR 16786 (April 8, 2002) (SR–PCX–2002–10).

[5] *See* Securities Exchange Act Release No. 45032 (November 6, 2001), 66 FR 57145 (November 14, 2001) (SR–PCX–2000–05) (approving portion of proposal that allowed for orders for the account of broker-dealers to be executed on Auto-Ex on an issue-by-issue basis).

[6] *Id.*

[7] The Exchange represents that, previously, these benefits were only available to public customers.

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(4).

of reasonable dues, fees, and other charges among its members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PCX does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing proposed rule change has become effective pursuant to Section 19(b)(3)(A)(ii) of the Act [10] and subparagraph (f)(2) of Rule 19b-4 [11] thereunder, because it establishes or changes a due, fee, or other charge. At any time within 60 days of April 11, 2002, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–21 and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. 02–11890 Filed 5–10–02; 8:45 am]

BILLING CODE 8010–01–P

[10] 15 U.S.C. 78s(b)(3)(A)(ii).

[11] 17 CFR 240.19b–4(f)(2).

[12] *See* 15 U.S.C. 78(b)(3)(C).

[13] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45889; File No. SR–Phlx–2002–28]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. To Extend PACE Price Improvement and Order Execution and Price Protection Pilot Programs

May 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 24, 2002, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Exchange filed this proposal under Section 19(b)(3)(A) of the Act,[3] and Rule 19b–4(f)(6)[4] thereunder, which renders the proposal effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend through September 30, 2002 two PACE[5] pilot programs that were introduced with the advent of decimal pricing in the securities industry. The first PACE pilot program, which is found in Supplementary Material .07(c)(i) to Phlx Rule 229, consists of an automated price improvement feature that incorporates a percentage of the spread between the bid and the offer ("price improvement pilot program"). The price improvement pilot program has been in effect since January 30, 2001.[6]

The second PACE pilot program, which is found in Supplementary Material .05 and .07(c)(ii) to Phlx Rule 229, incorporates immediate execution of certain market orders through the Public Order Exposure System ("POES") and mandatory double-up/double-down price protection (the "order execution and price protection pilot program"). The order execution and price protection pilot program has been in effect since August 25, 2000.[7]

The Phlx is not proposing any changes, substantive or otherwise, to the price improvement pilot program or the order execution and price protection pilot program, other than extending the pilot programs through September 30, 2002. The text of the proposed rule change is available at the Phlx and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] 15 U.S.C. 78s(b)(3)(A).

[4] 17 CFR 240.19b–4(f)(6). The Phlx requested that the Commission waive the 5-day pre-filing notice requirement, and the 30-day operative delay.

[5] Philadelphia Stock Exchange Automated Communication and Execution System is the Phlx's automated order routing, delivery, execution and reporting system for equities.

[6] The price improvement pilot program was established in SR–Phlx–2001–12. *See* Securities Exchange Act Release No. 43901 (January 30, 2001), 66 FR 8988 (February 5, 2001). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44672 (August 9, 2001), 66 FR 43285 (August 17, 2001) (SR–Phlx–2001–67); 45078 (November 19, 2001), 66 FR 59293 (November 27, 2001) (SR–Phlx–2001–101); and 45284 (January 15, 2002), 67 FR 3253 (January 23, 2002) (SR–Phlx–2002–01).

[7] The order execution and price protection pilot program was established in SR–Phlx–2000–08. *See* Securities Exchange Act Release No. 43206 (August 25, 2000), 65 FR 53250 (September 1, 2000). It was extended several times, currently through April 15, 2002. *See* Securities Exchange Act Release Nos. 44185 (April 16, 2001), 66 FR 20511 (April 23, 2001) (SR–Phlx–2001–20); 44818 (September 19, 2001), 66 FR 49240 (September 26, 2001) (SR–Phlx–2001–81); 45079 (November 19, 2001), 66 FR 59292 (November 27, 2001) (SR–Phlx–2001–102); and 45295 (January 16, 2002), 67 FR 3624 (January 24, 2002) (SR–Phlx–2002–03).

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange proposes to extend the price improvement pilot program and the order execution and price protection pilot program through September 30, 2002. No other changes are proposed to these pilot programs at this time.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act[8] in general, and in particular, with Section 6(b)(5),[9] in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change does not:

(i) Significantly affect the protection of investors or the public interest;

(ii) Impose any significant burden on competition; and

(iii) Become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate, it has become effective pursuant to Section 19(b)(3)(A) of the Act [10] and Rule 19b–4(f)(6) thereunder.[11] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

The Exchange has requested that the Commission waive the 5-day pre-filing notice requirement, and accelerate the operative date. The Commission finds good cause to waive the pre-filing notice requirement, and to designate the proposal to be both effective and operative upon filing because such designation is consistent with the protection of investors and the public interest. Waiver of these requirements will allow the pilot programs to continue uninterrupted through September 30, 2002. For these reasons, the Commission finds good cause to designate that the proposal is both effective and operative upon filing with the Commission.[12]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposal is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to file number SR–Phlx–2002–28, and should be submitted by June 3, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11887 Filed 5–10–02; 8:45 am]

BILLING CODE 8010–01–P

[8] 15 U.S.C. 78f.

[9] 15 U.S.C. 78f(b)(5).

[10] 15 U.S.C. 78s(b)(3)(A).

[11] 17 CFR 240.19b–4(f)(6).

[12] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[13] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3407]

Federated States of Micronesia; State of Yap; Disaster Loan Areas

The State of Yap in the Federated States of Micronesia constitutes a disaster area as a result of damages caused by Typhoon Mitag that began on February 26 and continued through March 3, 2002. The typhoon caused structural damages throughout the State of Yap from wind, rain, strong tidal surges and flooding in low-lying coastal areas. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 8, 2002, and for economic injury until the close of business on February 7, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.625
Homeowners without credit available elsewhere	3.312
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340706 and for economic damage is 9P3800.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 7, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–11927 Filed 5–10–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3410]

State of Ohio; Disaster Loan Areas

Stark County and the contiguous Counties of Carroll, Columbiana, Holmes, Mahoning, Portage, Summit, Tuscarawas and Wayne in the State of Ohio constitute a disaster area due to

damages caused by a tornado, high winds and severe thunderstorms that occurred April 28, 2002. Applications for loans for physical damage may be filed until the close of business on July 8, 2002, and for economic injury until the close of business on February 7, 2003, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 341012 and for economic injury is 9P5300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 7, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–11926 Filed 5–10–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3409]

Commonwealth of Virginia

As a result of the President's major disaster declaration on May 5, 2002, I find that Buchanan and Tazewell Counties in the Commonwealth of Virginia constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on April 28, 2002 through May 3, 2002. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 4, 2002 and for economic injury until the close of business on February 5, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bland, Dickenson, Russell and Smyth Counties in the Commonwealth of Virginia; Pike County in the State of Kentucky; and McDowell, Mercer and Mingo counties in the State of West Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit.	
Available elsewhere	3.500
Others (including non-profit organizations) with credit.	
Available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340911. For economic injury the number is 9P4200 for Virginia; 9P4300 for Kentucky; and 9P4400 for West Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2002.

Herbert L. Mitchell,

Associate Administrator For Disaster Assistance.

[FR Doc. 02–11789 Filed 5–10–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3408]

State of West Virginia

As a result of the President's major disaster declaration on May 5, 2002, I find that McDowell, Mercer, Mingo and Wyoming Counties in the State of West Virginia constitute a disaster area due to damages caused by severe storms, flooding and landslides occurring on May 2, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 4, 2002 and for economic injury until the close of business on February 5, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 1 Office, 360 Rainbow Blvd., South 3rd Fl., Niagara Falls, NY 14303–1192.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Boone, Lincoln, Logan, Raleigh, Summers and Wayne Counties in the State of West Virginia; Martin and Pike Counties in the State of Kentucky; and Bland, Buchanan, Giles and Tazewell Counties in the Commonwealth of Virginia.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (Including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 340811. For economic injury the number is 9P3900 for West Virginia; 9P4000 for Kentucky; and 9P4100 for Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 6, 2002.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 02–11790 Filed 5–10–02; 8:45 am]

BILLING CODE 8025–01–P

DEPARTMENT OF STATE

Bureau of Oceans and International Environmental and Scientific Affairs

[Public Notice 4017]

Certifications Pursuant to Section 609 of Public Law 101–162; Relating to the Protection of Sea Turtles in Shrimp Trawl Fishing Operations

SUMMARY: On April 27, 2002, the Department of State certified, pursuant to section 609 of Public Law 101–162 ("Section 609"), that 17 nations have adopted programs to reduce the incidental capture of sea turtles in their shrimp fisheries comparable to the program in effect in the United States.

The Department also certified that the fishing environments in 24 other countries and one economy, Hong Kong, do not pose a threat of the incidental taking of sea turtles protected under Section 609. Shrimp imports from any nation not certified were prohibited effective May 1, 2002 pursuant to Section 609.

Effective Date: On Publication.

FOR FURTHER INFORMATION CONTACT: David Hogan, Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, Department of State, Washington, DC 20520–7818; telephone: (202) 647–2335.

SUPPLEMENTARY INFORMATION: Section 609 of Public Law 101-162 prohibits imports of certain categories of shrimp unless the President certifies to the Congress not later than May 1 of each year either: (1) That the harvesting nation has adopted a program governing the incidental capture of sea turtles in its commercial shrimp fishery comparable to the program in effect in the United States and has an incidental take rate comparable to that of the United States; or (2) that the fishing environment in the harvesting nation does not pose a threat of the incidental taking of sea turtles. The President has delegated the authority to make this certification to the Department of State. Revised State Department guidelines for making the required certifications were published in the Federal Register on July 8 1999 (Vol. 64, No. 130, page 36946, Public Notice 3086).

On April 27, 2002, the Department certified 17 nations on the basis that their sea turtle protection program is comparable to that of the United States: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Honduras, Mexico, Nicaragua, Nigeria, Pakistan, Panama, Suriname, Thailand, Trinidad and Tobago, and Venezuela.

The Department also certified 24 shrimp harvesting nations and one economy as having fishing environments that do not pose a danger to sea turtles. Sixteen nations have shrimping grounds only in cold waters where the risk of taking sea turtles is negligible. They are: Argentina, Belgium, Canada, Chile, Denmark, Finland, Germany, Iceland, Ireland, the Netherlands, New Zealand, Norway, Russia, Sweden, the United Kingdom, and Uruguay. Eight nations and one economy only harvest shrimp using small boats with crews of less than five that use manual rather than mechanical means to retrieve nets, or catch shrimp in using other methods that do not threaten sea turtles. Use of such small-scale technology does not adversely affect sea turtles. The nine nations and one economy are: the Bahamas, China, the Dominican Republic, Fiji, Hong Kong, Jamaica, Oman, Peru and Sri Lanka.

The Department of State has communicated the certifications under Section 609 to the Office of Trade Program of the United States Customs Service.

Dated: April 29, 2002.

David A Balton, Acting

Deputy Assistant Secretary, For Oceans and Fisheries, Department of State.

[FR Doc. 02–11901 Filed 5–10–02; 8:45 am]

BILLING CODE 4710–09–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12272]

Merchant Marine Personnel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: A working group of the Merchant Marine Personnel Advisory Committee (MERPAC) will meet to discuss task statement #34 concerning the minimum standard of competence in security necessary for a ship's security officer and crew. MERPAC advises the Secretary of Transportation on matters relating to the training, qualifications, licensing, certification, and fitness of seamen serving in the U.S. merchant marine. This meeting will be open to the public.

DATES: The MERPAC working group will meet on Tuesday, June 18, 2002, from 8:30 a.m. to 3:30 p.m. This meeting may adjourn early if all business is finished. Requests to make oral presentations should reach the Coast Guard on or before June 4, 2002. Written material and requests to have a copy of your material distributed to each member of the working group should reach the Coast Guard on or before June 4, 2002.

ADDRESSES: The working group of MERPAC will meet in room 1103, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. Further directions regarding the location of U.S. Coast Guard Headquarters may be obtained by contacting Mr. Mark Gould at (202) 267–6890. Send written material and requests to make oral presentations to Commander Brian J. Peter, Commandant (G-MSO–1), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: For questions on this notice, contact Commander Brian J. Peter, Executive Director of MERPAC, or Mr. Mark C. Gould, Assistant to the Executive Director, telephone 202–267–6890, fax 202–267–4570, or e-mail *mgould@comdt.uscg.mil.*

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of June 18, 2002 Meeting

The working group will meet to discuss the Knowledge, Understanding, and Proficiency (KUPs) required to train a ship security officer in the minimum competencies detailed in task statement #34. The International Maritime Organization's Maritime Safety Committee (MSC) will further consider the competencies to be required of ship security officers and other crew members at its 75th session which will be held from 15–24 May 2002. The United States' proposal is contained in MSC paper 75/17/30 (located at *http://www.uscg.mil/hq/g-m/nmc/imosec/75-17-30.pdf*). The MERPAC working group will consider any action taken on this proposal by the MSC. The working group will develop the KUPs into a table format similar to Section A of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW), as amended, Code. At the end of the day, the working group will re-cap its discussions and prepare the table for the full committee to consider at its next meeting.

Procedural

This meeting is open to the public. Please note that the meeting may adjourn early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meeting. If you would like to make an oral presentation at the meeting, please notify the Executive Director no later than June 4, 2002. Written material for distribution at the meeting should reach the Coast Guard no later than June 4, 2002. If you would like a copy of your material distributed to each member of the committee or working group in advance of the meeting, please submit 25 copies to the Executive Director no later than June 4, 2002. We request that members of the public who plan to attend this meeting notify Mr. Mark Gould at the number listed in **ADDRESSES** above so that

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building security officials may be notified.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals With disabilities or to request special assistance at the meeting, contact the Assistant Executive Director as soon as possible.

Dated: May 7, 2002.

Joseph J. Angelo,

Director of Standards, Marine Safety, Security and Environmental Protection.

[FR Doc. 02–11918 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–35]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a certain petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 3, 2002.

ADDRESSES: Send comments on the petition to the Docket Manager System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–XXXXX at the beginning of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Pat Siegrist (425–227–2126), Transport Airplane Directorate (ANM–113), Federal Aviation Administration, 1601 Lind Ave., SW., Renton, WA 98055–4056; or Vanessa Wilkins (202–267–8029), Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC on May 8, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–12142.

Petitioner: Airbus.

Section of 14 CFR Affected: 14 CFR 25.901(c).

Description of Relief Sought: To permit Rolls-Royce Trent 500 series engines to be certified on Airbus Model A340–500 and A340–600 series airplanes on the basis that, while this type design may not strictly comply with an applicable rule, it would provide some improvement in the level of safety compared to that of currently approved A340 and other similar airplane type designs.

[FR Doc. 02–11910 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–2002–36]

Petitions for Exemption; Summary of Petitions Received

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petition for exemption received.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption, part 11 of Title 14, Code of Federal Regulations (14 CFR), this notice contains a summary of a petition seeking relief from specified requirements of 14 CFR. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before June 3, 2002.

ADDRESSES: Send comments on any petition to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590–0001. You must identify the docket number FAA–2002–11998 at the beginning of your comments. If you wish to receive confirmation that FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to *http://dms.dot.gov*. You may review the public docket containing the petition, any comments received, and any final disposition in person in the Dockets Office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Dockets Office (telephone 1–800–647–5527) is on the plaza level of the NASSIF Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Vanessa Wilkins (202) 267–8029, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

This notice is published pursuant to 14 CFR 11.85 and 11.91.

Issued in Washington, DC, on May 8, 2002.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: FAA–2002–11845.

Petitioner: General electric Company.

Section of 14 CFR Affected: 14 CFR 33.73(b).

Description of Relief Sought: To exempt GE90–110B1, GE90–113B, and GE90–115B engine models from meeting the 5-second thrust response requirement to accommodate a control system enhancement made to optimize engine operability at high corrected core airflow conditions.

[FR Doc. 02–11911 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

RTCA Special Committee 172: Future Air-Ground Communications in the Very High Frequency (VHF) Aeronautical Data Band (118–137 MHz)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of RTCA Special Committee 172 meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of RTCA Special Committee 172: Future Air-Ground Communications in the VHF Aeronautical Data Band (118–137 MHz).

DATES: The meeting will be held May 28–31, 2002 from 9 am to 5 pm each day.

ADDRESSES: The meeting will be held at RTCA, Inc., 1828 L Street, NW. Suite 805, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: RTCA Secretariat, 1828 L Street, SW., Washington, DC, 20036; telephone (202) 833–9339; fax (202) 833–9434; Web site *http://www.rtca.org*.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., Appendix 2), notice is hereby given for a Special Committee 172 meeting. The agenda will include:

- May 28:
- Opening Plenary session (Welcome and Introductory Remarks, Review of Agenda, Review Summary of Previous Meeting)
- Prepare DO–224A Change 2 for Final Review and Comment (FRAC)
- May 29, 30:
- Continue work on DO–224A Change 2 for FRAC
- Work on DO–271A for FRAC
- May 31:
- Continue work on DO–271A for FRAC
- Plenary Reconvenes (Approve both DO–224A Change 2 and DO–271A for FRAC)
- Review Relevant International Activities (EUROCAE WG 47 status and issues, Others as appropriate)
- Closing Plenary Session (Other Business, Date and Place of Next Meeting, Adjourn)

Attendance is open to the interested public but limited to space availability. With the approval of the chairmen, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the person listed in the **FOR FURTHER INFORMATION CONTACT** section. Members of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 7, 2002.

Janice L. Peters,

FAA Special Assistant, RTCA Advisory Committee.

[FR Doc. 02–11907 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent To Rule on Application (02–04–C–00–ASE) To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at the Aspen/Pitkin Airport, Submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use PFC revenue at the Aspen/Pitkin County Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Alan E. Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. James P. Elwood, Director of Aviation, at the following address: 0233 East Airport Road, Aspen, Colorado 81611.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Aspen/Pitkin County Airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Christopher J. Schaffer, (303) 342–1258 Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 East 68th Avenue, Suite 224; Denver, Colorado 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–04–C–00–ASE) to impose and use PFC revenue at the Aspen/Pitkin County Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 6, 2002, the FAA determined that the application to impose and use the revenue from a PFC submitted by the County of Pitkin, Aspen/Pitkin County Airport, Aspen, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $4.50.

Proposed charge effective date: May 1, 2003.

Proposed charge expiration date: August 1, 2004.

Total requested for use approval: $986,381.

Brief description of proposed projects: Airport Master Plan; East Side Infrastructure Development (ESID) Planning and Design; Relocation/Rehabilitation of North General Aviation Apron; Construction of Aircraft Parking Apron; Replace Runway Lighting and Install Runway End Identification Lights on Runway 33; Replace Wildlife Fence; Installation of Medium Intensity Approach Lighting System (MALSF).

Class or classes of air carriers that the public agency has requested not be required to collect PFC's: All air traffic/commercial operators (ATCO) filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Aspen/Pitkin County Airport.

Issued in Renton, Washington on May 6, 2002.

David A. Field,

Manager, Planning, Programming and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–11908 Filed 5–10–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Notice of Intent to Rule on Application (02–05–U–00–GJT) To Use Passenger Facility Charge (PFC) Revenue at the Walker Field Airport, Submitted by the Walker Field Airport Authority, Grand Junction, Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to use PFC revenue at the Walker Field Airport under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before June 12, 2002.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Alan Wiechmann, Manager; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Ms. Corinne C. Nystrom, Airport Manager, at the following address: Walker Field Airport Authority, 2828 Walker Field Drive, Suite 301, Grand Junction, Colorado 81506.

Air Carriers and foreign air carriers may submit copies of written comments previously provided to the Walker Field Airport Authority, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Schaffer, (303) 342–1258; Denver Airports District Office, DEN–ADO; Federal Aviation Administration; 26805 E. 68th Avenue, Suite 224; Denver, CO 80249–6361. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application (02–05–U–00–GJT) to use a PFC at the Walker Field Airport, under the provisions of 49 U.S.C. 40117 and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On May 6, 2002, the FAA determined that the application to use PFC revenue, submitted by the Walker Field Airport Authority, Grand Junction, Colorado, was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than August 3, 2002.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00.

Proposed charge effective date: August 1, 2002.

Proposed charge expiration date: September 1, 2006.

Total requested for use approval: $1,480,000.00.

Brief description of proposed project: Expand Terminal Building Boarding Area, Concourses, and Loading Bridges.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA Regional Airports Office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., Suite 540, Renton, WA 98055–4056. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Walker Field Airport.

Issued in Renton, Washington on May 6, 2002.

David A. Field,

Manager, Planning, Programming, and Capacity Branch, Northwest Mountain Region.

[FR Doc. 02–11909 Filed 5–10–02; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Customs Service

Use or Replacement of Continuous Bonds That Were Destroyed in New York

AGENCY: United States Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: This notice advises the public of the procedures that must be followed by importers to ensure continuous bond coverage on future import transactions in the case of continuous bonds maintained by Customs in New York that were destroyed in the terrorist attack on September 11, 2001.

DATES: A copy of a current bond must be provided to Customs, or a new bond must be filed with Customs, on or before June 12, 2002.

FOR FURTHER INFORMATION CONTACT: For questions regarding operational issues: The Entry and Drawback Management Branch, Office of Field Operations (202–927–0360). For inquiries about specific bonds: The Customs Bond Unit, Elizabeth, New Jersey (201–443–0234). A party making a telephonic inquiry regarding a specific bond should be prepared to provide its importer name and identification number.

SUPPLEMENTARY INFORMATION:

Background

The Customs laws and regulations require the posting of a surety bond to secure Customs transactions involving specific types of activities (for example, the importation and entry of merchandise, the custody of imported merchandise, the arrival and clearance of conveyances). A Customs bond may be approved by Customs for a particular activity involving one individual Customs transaction (for example, a single entry bond) or may be approved by Customs as a continuous bond for a particular activity involving multiple Customs transactions (for example, a continuous importation and entry bond). A single transaction bond normally is approved by Customs when presented in connection with the individual transaction to which it relates and remains in effect only for purposes of that one transaction. An application for a continuous transaction bond normally is filed with, and approved by, Customs before all of the transactions to which it relates arise, and the approved bond is retained on file by Customs and remains in effect until terminated by the parties to the bond.

The terrorist attack on the World Trade Center in New York on September 11, 2001, resulted in the destruction of Customs bonds and other documents that were being stored at the Customs offices at 6 World Trade Center. The destroyed bonds and other documents included, but were not limited to, continuous bonds which were filed for approval at the New York Seaport (port code 1001) and at the New York Regional Port (port code 7200). In order to ensure uninterrupted bond coverage and avoid the need to file an application for a new continuous bond, each party having a continuous bond of any type involving activity code 1 to 5 that has an effective date of September 11, 2001, or earlier and that was filed at either of the two ports referred to above and that remains in effect on the date of publication of this notice must, within 30 days of the date of publication of this notice, provide Customs with a copy of that bond together with the Customs bond number and copies of any riders to the bond. Failure to provide a copy of the bond within the prescribed 30 day period will cause Customs to refuse to accept a reference to the bond to guarantee future transactions. If a copy of the bond cannot be provided, the party must submit to Customs a new continuous bond application within the same 30-day period. For purposes of this notice, the term "party" refers to any individual or business association that prior to, or on or after, September 11, 2001, has engaged in activities secured by a continuous bond described above as having been destroyed on that date, either by virtue of being listed as a "Principal" on the bond or by virtue of being listed as a user in "Section III" on the bond.

The copy of the continuous bond or the new continuous bond application should be sent to either of the following addresses:

U.S. Customs Service,
Attention: Bond Desk,
1210 Corbin Street,
Elizabeth, New Jersey 07201;

or

U.S. Customs Service,
Attention: Bond Desk,
Bldg. 77,
JFK Airport,
Jamaica, New York 11430.

Dated: May 7, 2002.

Bonni G. Tischler,

Assistant Commissioner, Office of Field Operations.

[FR Doc. 02–11788 Filed 5–10–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

[REG–107069–97]

Proposed Collection; Comment Request for Regulation Project

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning an existing final regulation, REG–107069–97 (TD 8940), Purchase Price Allocations in Deemed and Actual Asset Acquisitions (§§ 1.338–2, 1.338–5, 1.338–10, 1.338(h)(10)–1, and 1.1060–1).

DATES: Written comments should be received on or before July 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Purchase Price Allocation in Deemed and Actual Asset Acquisition.

OMB Number: 1545–1658.

Regulation Project Numbers: REG–107069–97.

Abstract: Section 338 of the Internal Revenue Code provides rules under which a qualifying stock acquisition is treated as an asset acquisition (a "deemed asset acquisition") when an appropriate election is made. Section 1060 provides rules for the allocation of consideration when a trade or business is transferred. The collection of information is necessary to make the election, to calculate and collect the appropriate amount of tax liability when a qualifying stock acquisition is made, to determine the persons liable for such tax, and to determine the bases of assets acquired in the deemed asset acquisition.

Current Actions: There is no change to this existing regulation.

Type of review: Extension of OMB approval.

Affected Public: Business or other for-profit organizations, and farms.

The regulation provides that a section 338 election is made by filing Form 8023. The burden for this requirement is reflected in the burden of Form 8023. The regulation also provides that both a seller and a purchaser must each file an asset acquisition statement on Form 8594. The burden for this requirement is reflected in the burden of Form 8594.

The burden for the collection of information in § 1.338–2T(e)(4) is as follows:

Estimated Number of Respondents/Recordkeeper: 45.

Estimated Average Annual Burden Per Respondent/Recordkeeper: 34 minutes.

Estimated Total Annual Reporting/Recordkeeping Hours: 25.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 6, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–11794 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Form 9620

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C.

3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Form 9620, Race and National Origin Identification.

DATES: Written comments should be received on or before July 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of regulations should be directed to Carol Savage, (202) 622–3945, or through the internet (*CAROL.A.SAVAGE@irs.gov.*), Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Race and National Origin Identification.

OMB Number: 1545–1398.

Form Number: 9620.

Abstract: Form 9620 is an optically scannable form that is used to collect race and national origin data on all IRS employees and new hires. The form is a valuable tool in allowing the IRS to meet its diversity/EEO goals and as a component of its referral and tracking system and recruitment program.

Current Actions: There are no changes being made to the form at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Individuals or households, and the Federal Government.

Estimated Number of Respondents: 50,000.

Estimated Time Per Respondent: 3 minutes.

Estimated Total Annual Burden Hours: 2,500.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 7, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–11795 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Proposed Collection; Comment Request for Revenue Procedure 2002–32

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice and request for comments.

SUMMARY: The Department of the Treasury, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and other Federal agencies to take this opportunity to comment on proposed and/or continuing information collections, as required by the Paperwork Reduction Act of 1995, Public Law 104–13 (44 U.S.C. 3506(c)(2)(A)). Currently, the IRS is soliciting comments concerning Revenue Procedure 2002–32, Waiver of 60-month Bar on Reconsolidation after Disaffifiliation.

DATES: Written comments should be received on or before July 12, 2002, to be assured of consideration.

ADDRESSES: Direct all written comments to Glenn P. Kirkland, Internal Revenue Service, room 6411, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of revenue procedure should be directed to Carol Savage, (202) 622–3945, or through the internet *(CAROL.A.SAVAGE@irs.gov.)*, Internal Revenue Service, room 6407, 1111 Constitution Avenue NW., Washington, DC 20224.

SUPPLEMENTARY INFORMATION:

Title: Waiver of 60-month Bar on Reconsolidation after Disaffiliation.

OMB Number: 1545–1784.

Revenue Procedure Number: Revenue Procedure 2002–32.

Abstract: Revenue Procedure 2002–32 provides qualifying taxpayers with a waiver of the general rule of § 1504(a)(3)(A) of the Internal Revenue Code barring corporations from filing consolidated returns as a member of a group of which it had been a member for 60 months following the year of disaffiliation.

Current Actions: There are no changes being made to the revenue procedure at this time.

Type of Review: Extension of a currently approved collection.

Affected Public: Business or other for-profit organizations.

Estimated number of respondents: 20.

The estimated annual burden per respondent varies from 2 hours to 8 hours, depending on individual circumstances, with an estimated average of 5 hours.

Estimated total annual reporting burden: 100.

The following paragraph applies to all of the collections of information covered by this notice:

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number. Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Request for Comments

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval. All comments will become a matter of public record. Comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Approved: May 3, 2002.

Carol Savage,

Program Analyst.

[FR Doc. 02–11796 Filed 5–10–02; 8:45 am]

BILLING CODE 4830–01–P

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LIST OF PUBLIC LAWS

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H.R. 861/P.L. 107–169

To make technical amendments to section 10 of title 9, United States Code. (May 7, 2002; 116 Stat. 132)

H.R. 4167/P.L. 107–170

To extend for 8 additional months the period for which chapter 12 of title 11 of the United States Code is reenacted. (May 7, 2002; 116 Stat. 133)

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600-End	(869-044-00206-0)	55.00	Oct. 1, 2001
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Complete 2001 CFR set		1,195.00	2001
Microfiche CFR Edition:			
Subscription (mailed as issued)		298.00	2000
Individual copies		2.00	2000
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Complete set (one-time mailing)		247.00	1999

[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period January 1, 2001, through January 1, 2002. The CFR volume issued as of January 1, 2001 should be retained.

[5] No amendments to this volume were promulgated during the period April 1, 2000, through April 1, 2001. The CFR volume issued as of April 1, 2000 should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 2000, through July 1, 2001. The CFR volume issued as of July 1, 2000 should be retained.

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Part II

Regulatory Information Service Center

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

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REGULATORY INFORMATION SERVICE CENTER

Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Regulatory Information Service Center.

ACTION: Introduction to the Unified Agenda of Federal Regulatory and Deregulatory Actions.

SUMMARY: The Regulatory Flexibility Act requires that agencies publish semiannual regulatory agendas describing regulatory actions they are developing (5 U.S.C. 602). Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and Office of Management and Budget memoranda implementing section 4 of that Order establish minimum standards for agencies' agendas, including specific types of information for each entry.

The **Unified Agenda of Federal Regulatory and Deregulatory Actions** (Unified Agenda) helps agencies fulfill all of these requirements. All Federal regulatory agencies have chosen to publish their regulatory agendas as part of this publication.

The following separate parts in this issue of the **Federal Register** are the agency agendas, followed by indexes to the entries. Together, these constitute the spring 2002 edition of the semiannual Unified Agenda. We welcome your comments on this publication and your suggestions for improving future editions.

ADDRESSES: Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: For further information about specific regulatory actions, please refer to the Agency Contact listed for each entry.

To provide comment on or to obtain further information about this publication, contact: Ronald C. Kelly, Executive Director, Regulatory Information Service Center (MI), General Services Administration, 1800 F Street NW., Suite 3039, Washington, DC 20405, (202) 482-7340. You may also send comments to us by e-mail at:

RISC@gsa.gov

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INTRODUCTION TO THE UNIFIED AGENDA OF FEDERAL REGULATORY AND DEREGULATORY ACTIONS

I. What Is the Unified Agenda?

The Unified Agenda provides information, in a uniform format, about regulations that the Government is considering or reviewing. The Unified Agenda has appeared in the **Federal Register** twice each year since 1983. This edition includes regulatory agendas from 59 Federal departments and agencies. Agencies of the United States Congress are not included.

The Regulatory Information Service Center (the Center) compiles the Unified Agenda for the Office of Information and Regulatory Affairs (OIRA), part of the Office of Management and Budget. OIRA is responsible for overseeing the Federal Government's regulatory, paperwork, and information resource management activities, including implementation of E.O. 12866. The Center also provides information about Federal regulatory activity to the President and his Executive Office, the Congress, agency managers, and the public.

The activities included in the Agenda are, in general, those that will have a regulatory action within the next 12 months. Agencies may include activities that will have a longer timeframe than 12 months. Agency agendas also show actions or reviews completed or withdrawn since the last Unified Agenda. The agendas do not contain regulations that were excluded under Executive Order 12866, such as those concerning military or foreign affairs functions or regulations related to agency organization, management, or personnel matters.

Agencies prepared entries for this publication to give the public notice of their plans to review, propose, and issue regulations. They have tried to predict their activities over the next 12 months as accurately as possible, but dates and schedules are subject to change. Agencies may withdraw some of the regulations now under development, and they may issue or propose other regulations not included in their agendas. Agency actions in the rulemaking process may occur before or after the dates they have listed.

The Unified Agenda does not create a legal obligation on agencies to adhere to schedules within it or to confine their regulatory activities to those regulations that appear in this publication. The information in this edition is accurate as of April 1, 2002, in the judgment of the submitting agencies, except as otherwise noted by the agencies. In addition, some agencies submitted updates after that date.

II. Why Is the Unified Agenda Published?

The Unified Agenda helps agencies comply with their obligations under the Regulatory Flexibility Act and various Executive orders and other statutes.

Regulatory Flexibility Act

The *Regulatory Flexibility Act* requires agencies to identify those rules that may have a significant economic impact on a substantial number of small entities (5 U.S.C. 602). Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Agencies may also indicate those regulations that they are reviewing as part of their periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610).

Executive Order 12866

Executive Order 12866 entitled "Regulatory Planning and Review" (September 30, 1993; 58 FR 51735) requires covered agencies to prepare an agenda of all regulations under development or review. The Order also requires that certain agencies prepare annually a regulatory plan of their "most important significant regulatory actions," which appears as part of the October Unified Agenda.

Executive Order 13132

Executive Order 13132 entitled "Federalism" (August 4, 1999; 64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications" as defined in the Order. Under the Order, an agency that is proposing regulations with federalism implications, which either preempt State law or impose nonstatutory unfunded substantial direct compliance costs on State and local governments, must consult with State and local officials early in the process of developing the regulation. In addition, the agency must provide to the Director of the Office of Management and Budget a federalism summary impact statement for such regulations, which consists of a description of the extent of the agency's prior consultation with State and local officials, a summary of their concerns and the agency's position supporting the need to issue the regulation, and a statement of the extent to which those concerns have been met. As part of this effort, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions may have an effect on the various levels of government and whether those actions have federalism implications.

Unfunded Mandates Reform Act of 1995

The *Unfunded Mandates Reform Act of 1995* (P.L. 104-4, title II) requires agencies to prepare written assessments of the costs and benefits of significant regulatory actions "that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100,000,000 or more . . . in any 1 year . . . ." The requirement does not apply to independent regulatory agencies, nor does it apply to certain subject areas excluded by section 4 of the Act. Affected agencies identify in the Unified Agenda those regulatory actions they believe are subject to title II of the Act.

Executive Order 13211

Executive Order 13211 entitled "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (May 22, 2001, 66 FR 28355) directs agencies to provide, to the extent possible, information regarding the adverse effects that agency actions may have on the supply, distribution, and use of energy. Under the Order, the agency must prepare and submit a Statement of Energy Effects to the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, for "those matters identified as significant energy actions." As part of this effort, agencies may optionally include in their submissions for the Unified Agenda, information on whether they have prepared or plan to prepare a Statement of Energy Effects for their regulatory actions.

Small Business Regulatory Enforcement Fairness Act

The *Small Business Regulatory Enforcement Fairness Act* (P.L. 104-121, title II) established a procedure for congressional review of rules (5 U.S.C. 801 et seq.), which defers, unless exempted, the effective date of a "major" rule for at least 60 days from the publication of the final rule in the **Federal Register**. The Act specifies that a rule is "major" if it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in that Act. If the issuing agency believes that a rule may be major, it indicates this under the "Priority" heading of the entry. The Act provides that the Administrator of OIRA will make the final determination as to whether a rule is major.

III. How Is the Unified Agenda Organized?

Each agency's agenda appears as a separate part in this edition of the **Federal Register**. The parts of the Unified Agenda are organized alphabetically in four groups: Cabinet departments; other executive agencies; the Federal Acquisition Regulation, a joint authority; and independent regulatory agencies. Departments may in turn be divided into subagencies.

Each agency's part of the Agenda begins with a preamble providing information specific to that part. Following the preamble, for each agency that requests it, the Center provides a table of contents. Next is a description of each agency's regulatory and deregulatory actions.

Each agency presents its entries under one of five headings according to the rulemaking stage of the entry. The stages are:

1. *Prerule Stage* — actions agencies will undertake to determine whether or how to initiate rulemaking. Such actions occur prior to a Notice of Proposed Rulemaking (NPRM) and may include Advance Notices of Proposed Rulemaking (ANPRMs) and reviews of existing regulations.

2. *Proposed Rule Stage* — actions for which agencies plan to publish a Notice of Proposed Rulemaking as the next step in their rulemaking process or for which the closing date of the NPRM Comment Period is the next step.

3. *Final Rule Stage* — actions for which agencies plan to publish a final rule or an interim final rule or to take other final action as the next step in their rulemaking process.

4. *Long-Term Actions* — items under development but for which the agency does not expect to have a regulatory action within the 12 months after publication of this edition of the Unified Agenda. Some of the entries in this section may contain abbreviated information.

5. *Completed Actions* — actions or reviews the agency has completed or withdrawn since publishing its last agenda. This section also includes items the agency began and completed between issues of the Agenda.

In the Agenda, an agency may use subheadings to identify regulations that it has grouped according to particular topics. When these subheadings are used, they appear above the title of the first regulation in each group.

A bullet (•) preceding the title of an entry indicates that the entry appears in this publication for the first time.

All entries are numbered sequentially from the beginning to the end of the publication. The sequence number preceding the title of each entry identifies the location of the entry in this edition. This sequence number is used as the reference in the table of contents and in all indexes to enable readers to find entries.

This publication contains six indexes. Index A lists entries for which agencies have indicated that they are conducting a periodic review under section 610(c) of the Regulatory Flexibility Act. Index B lists the regulatory actions for which agencies believe that the Regulatory Flexibility Act may require a Regulatory Flexibility Analysis. Index C lists additional regulatory actions for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required. Index D lists entries that agencies believe may have effects on levels of government. Index E lists entries that agencies believe may have federalism implications as defined in Executive Order 13132. Index F is a subject index based on the **Federal Register Thesaurus of Indexing Terms**.

IV. What Information Appears for Each Entry?

All entries in the Unified Agenda contain uniform data elements including, at a minimum, the following information:

Title of the Regulation — a brief description of the subject of the regulation, possibly including section 610 review designation. The notation "Section 610 Review" following the title indicates that the agency has selected the rule for its periodic review of existing rules under the Regulatory Flexibility Act (5 U.S.C. 610(c)). Some agencies have indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews

Priority — an indication of the significance of the regulation. Agencies assign each entry to one of the following five categories of significance.

(1) Economically Significant

As defined in Executive Order 12866, a rulemaking action that will have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The definition of an "economically significant" rule is similar but not identical to the definition of a "major" rule under 5 U.S.C. 801 (P. L. 104-121). (See below.)

(2) Other Significant

A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that the agency anticipates will be reviewed under E.O. 12866 or rules that are a priority of the agency head. These rules may or may not be included in the agency's regulatory plan.

(3) Substantive, Nonsignificant

A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

(4) Routine and Frequent

A rulemaking that is a specific case of a multiple recurring application of a regulatory program in the Code of Federal Regulations and that does not alter the body of the regulation.

(5) Informational/Administrative/Other

A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Unified Agenda to inform the public of the activity.

In addition, if an agency believes that a rule may be "major" under 5 U.S.C. 801 (P.L. 104-121) because it has resulted or is likely to result in an annual effect on the economy of $100 million or more or meets other criteria

specified in that Act, the agency indicates this under the "Priority" heading. (The Act provides that the Administrator of the Office of Information and Regulatory Affairs will make the final determination as to whether a rule is major.)

Unfunded Mandates — whether the rule is covered by section 202 of the Unfunded Mandates Reform Act of 1995 (P.L. 104-4). The Act requires that, before issuing an NPRM likely to result in a mandate that may result in expenditures by State, local, and tribal governments, in the aggregate, or by the private sector of more than $100 million in 1 year, agencies, other than independent regulatory agencies, shall prepare a written statement containing an assessment of the anticipated costs and benefits of the Federal mandate. If the agency believes the entry is not subject to the Act, this data element will not be printed.

Legal Authority — the section(s) of the United States Code (U.S.C.) or Public Law (P.L.) or the Executive order (E.O.) that authorize(s) the regulatory action. Agencies may provide popular name references to laws in addition to these citations.

CFR Citation — the section(s) of the Code of Federal Regulations that will be affected by the action.

Legal Deadline — whether the action is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to an NPRM, a Final Action, or some other action.

Abstract — a brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, alternatives that the agency is considering to address the problem; and potential costs and benefits of the action.

Timetable — the dates and citations (if available) for all past steps and a projected date for at least the next step for the regulatory action. A date printed in the form 12/00/01 means the agency is predicting the month and year the action will take place but not the day it will occur. In some instances, agencies may indicate what the next action will be, but the date of that action is "To Be Determined." "Next Action Undetermined" indicates the agency does not know what action it will take next. Dates after 1999 are printed in the same form as other dates, using the last two digits of the year.

Regulatory Flexibility Analysis Required — whether an analysis is required by the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) because the rulemaking action is likely to have a significant economic impact on a substantial number of small entities as defined by the Act.

Small Entities Affected — the types of small entities (businesses, governmental jurisdictions, or organizations) on which the rulemaking action is likely to have an impact as defined by the Regulatory Flexibility Act. Some agencies have chosen to indicate likely effects on small entities even though they believe that a Regulatory Flexibility Analysis will not be required.

Government Levels Affected — whether the action is expected to affect levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism — whether the action has "federalism implications" as defined in Executive Order 13132. This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." If the action does not have federalism implications, this data element will not be printed.

Independent regulatory agencies are not required to supply this information.

Agency Contact — the name and phone number of one or more persons in the agency who is knowledgeable about the rulemaking action. The agency may also provide the title, address, fax number, e-mail address, and TDD for each agency contact.

Some agencies have provided the following optional information:

Compliance Cost to the Public — the estimated gross compliance cost of the action.

Affected Sectors — the industrial sectors that the action may most affect, either directly or indirectly. Affected Sectors are identified by North American Industry Classification System (NAICS) codes.

Energy Effects — an indication of whether the agency has prepared or plans to prepare a Statement of Energy Effects for the action, as required by Executive Order 13211 "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" issued on May 18, 2001 (66 FR 28355; May 22, 2001).

Some agencies that participated in the October 2001 edition of **The Regulatory Plan** have chosen to include the following information for those entries that appeared in the Plan:

Statement of Need — a description of the need for the regulatory action.

Summary of the Legal Basis — a description of the legal basis for the action, including whether any aspect of the action is required by statute or court order.

Alternatives — a description of the alternatives the agency has considered or will consider as required by section 4(c)(1)(B) of E.O. 12866.

Anticipated Costs and Benefits — a description of preliminary estimates of the anticipated costs and benefits of the action.

Risks — a description of the magnitude of the risk the action addresses, the amount by which the agency expects the action to reduce this risk, and the relation of the risk and this risk reduction effort to other risks and risk reduction efforts within the agency's jurisdiction.

V. Abbreviations

The following abbreviations appear throughout this publication:

ANPRM — An Advance Notice of Proposed Rulemaking is a preliminary notice, published in the **Federal Register**, announcing that an agency is considering a regulatory action. The agency issues an ANPRM before it develops a detailed proposed rule. The ANPRM describes the general area that may be subject to regulation and usually asks for public comment on the issues and options being discussed. An ANPRM is issued only when an agency believes it needs to gather more information before proceeding to a notice of proposed rulemaking.

CFR — The Code of Federal Regulations is an annual codification of the general and permanent regulations published in the **Federal Register** by the departments and agencies of the Federal Government. The Code is divided into 50 titles, and each title covers a broad area subject to Federal regulation. The CFR is keyed to and kept up to date by the daily issues of the **Federal Register**.

EO — An Executive order is a directive from the President to executive agencies, issued under constitutional or statutory authority. Executive orders are published in the **Federal Register** and in title 3 of the Code of Federal Regulations.

FR — The **Federal Register** is a daily Federal Government publication that provides a uniform system for publishing Presidential documents, all proposed and final regulations, notices of meetings, and other official documents issued by Federal departments and agencies.

FY — The Federal fiscal year runs from October 1 to September 30.

NPRM — A Notice of Proposed Rulemaking is the document an agency issues and publishes in the **Federal Register** that describes and solicits public comments on a proposed regulatory action. Under the Administrative Procedure Act (5 U.S.C. 553), an NPRM must include, at a minimum:

- a statement of the time, place, and nature of the public rulemaking proceeding;
- a reference to the legal authority under which the rule is proposed; and
- either the terms or substance of the proposed rule or a description of the subjects and issues involved.

PL — A Public Law is a law passed by Congress and signed by the President or enacted over his veto. It has general applicability, unlike a private law that applies only to those persons or entities specifically designated. Public laws are numbered in sequence throughout the 2-year life of each Congress; for example, PL 105-4 is the fourth public law of the 105th Congress.

RFA — A Regulatory Flexibility Analysis is a description and analysis of the impact of a rule on small entities, including small businesses, small governmental jurisdictions, and certain small not-for-profit organizations. The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) requires each agency to prepare an initial RFA for public comment when it is required to publish an NPRM and to make available a final RFA when the final rule is published, unless the agency head certifies that the rule would not have a significant economic impact on a substantial number of small entities.

RIN — The Regulation Identifier Number is assigned by the Regulatory Information Service Center to identify each regulatory action listed in **The Regulatory Plan** and the Unified Agenda, as directed by E.O. 12866 (section 4(b)). Additionally, OMB has asked agencies to include RINs in the headings of their Rule and Proposed Rule documents when publishing them in the **Federal Register**, to make it easier for the public and agency officials to track the publication history of regulatory actions throughout their development.

Seq. No. — The Sequence Number identifies the location of an entry in this publication. Note that a specific regulatory action will have the same RIN throughout its development but will generally have different sequence numbers in different editions of **The Regulatory Plan** and the Unified Agenda.

USC — The United States Code is a consolidation and codification of all general and permanent laws of the United States. The USC is divided into 50 titles, and each title covers a broad area of Federal law.

VI. How Can Users Get Copies of the Agenda?

Printed copies of this edition of the Federal Register are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402-9325, (202) 512-1800.

Copies of individual agency materials may be available directly from the agency. Please contact the particular agency for further information.

All editions of **The Regulatory Plan** and the **Unified Agenda of Federal Regulatory and Deregulatory Actions** since October 1995 are also available in electronic form. You can search the Agenda and the Plan on the World Wide Web at:

http://reginfo.gov

You may also search the Agenda and the Plan on the Government Printing Office's GPO Access, which is accessible through:

http://www.access.gpo.gov

Dated: April 30, 2002.

Ronald C. Kelly,

Executive Director.

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May 13, 2002

Part III

Department of Agriculture

Semiannual Regulatory Agenda

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DEPARTMENT OF AGRICULTURE (USDA)

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Subtitle A, Chs. I-VII, IX-XII, XIV-XVIII, XXI, XXIV-XXIX

9 CFR Chs. I-IV

36 CFR Ch. II

41 CFR Ch. 4

Semiannual Regulatory Agenda, Spring 2002

AGENCY: Office of the Secretary, USDA.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of significant and not significant regulations being developed in agencies of the U.S. Department of Agriculture (USDA) in conformance with Executive Order 12866 "Regulatory Planning and Review." The agenda also describes regulations affecting small entities as required by section 602 of the Regulatory Flexibility Act, Public Law 96-354. This agenda also identifies regulatory actions that are being reviewed in compliance with section 610(c) of the Regulatory Flexibility Act. We invite public comment on those actions.

USDA has attempted to list all regulations and regulatory reviews pending at the time of publication except for minor and routine or repetitive actions, but some may have been inadvertently missed. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the date shown.

FOR FURTHER INFORMATION CONTACT: For further information on any specific entry shown in this agenda, please contact the person listed for that action. Requests for copies of the agenda should include a self-addressed, stamped envelope and be directed to: Regulatory Agenda, OBPA, Office of the Secretary, Room 118-E, Jamie Whitten Building, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-1272.

Dated: April 1, 2002.

Jacquelyn Y. Chandler,

Chief, Legislative and Regulatory and Automated Systems Staff.

Agricultural Marketing Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1	Cotton Futures Act: Changing the Destination of Spot Markets (CN-01-004)	0581-AC00

Agricultural Marketing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2	National Laboratory Accreditation Program	0581-AB42
3	Changes in Fees for Federal Grading and Certification of Livestock for Chicago Mercantile Exchange Futures Deliveries	0581-AB66
4	Discontinue the Official Grading of Imported Beef, Lamb, Veal, and Calf Carcasses Under the Authority of the Agricultural Marketing Act of 1946	0581-AB90
5	Revision of Regulations Governing the Inspection and Grading Service of Manufactured or Processed Dairy Products (DA-00-08)	0581-AB93
6	National Organic Program: Add Standards for Mushroom, Apiculture, Greenhouse and Hydroponic Production Systems and the Handling of Honey (TM-01-09)	0581-AB96
7	National Organic Program: Add Standards for the Organic Certification of Wild Captured Aquatic Animals (TM-01-08)	0581-AB97
8	Livestock Mandatory Reporting Program—Lamb Amendment (LS-01-08)	0581-AB98
9	Revision of User Fees for 2002 Crop Cotton Classification Services	0581-AC04
10	Mango Promotion, Research, and Information Order (FV-01-707)	0581-AC05
11	Establishing a Lamb Promotion, Research, and Information Order (LS-01-12)	0581-AC06
12	Establishing Fees for Voluntary Quality Systems Certification Services (LS-00-13)	0581-AC08

Agricultural Marketing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
13	General Specifications for Dairy Plants Approved for USDA Inspection and Grading	0581-AB59
14	Hass Avocado Promotion, Research, and Information Order (FV-01-705)	0581-AB92

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Agricultural Marketing Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
15	Increase in Fees for Voluntary Federal Seed Testing and Certification Services and Establishment of a Fee for Preliminary Test Reports (LS-01-07)	0581-AB95
16	Increase in Fees and Charges For Eggs, Poultry, and Rabbit (PY-01-005)	0581-AB99
17	Regulations Governing the California Prune/Plum (Tree Removal) Diversion Program, 2001-2002 Crop Year (FV-01-81-01)	0581-AC03
18	Fresh Russet Potato Diversion Program, 2000 Crop (FV-01-80-01)	0581-AC07

Agricultural Marketing Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0581-AB56	Voluntary Shell Egg Regulations; Repackaging of Shell Eggs Under USDA's Grading Program	03/11/2002	Withdrawn
0581-AB70	Program To Assess Organic Certifying Agencies	03/14/2002	Withdrawn
0581-AB74	Regulations Governing the Inspection of Eggs	03/11/2002	Withdrawn
0581-AB86	Tobacco Fees and Charges for Permissive Inspection: Fee Increase (TB-00-04 FR)	03/11/2002	Withdrawn
0581-AB87	Tobacco Fees and Charges for Mandatory Inspection: Fee Increase	03/11/2002	Withdrawn
0581-AC02	Voluntary Grading of Shell Eggs; Facilities and Equipment (PY-01-003)	03/11/2002	Withdrawn

Farm Service Agency—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
19	Regulatory Streamlining of the Farm Service Agency's Direct Farm Loan Programs	0560-AF60
20	Interest Assistance Program	0560-AG46

Farm Service Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
21	Noninsured Crop Disaster Assistance Program Regulations for the 2001 and Succeeding Crop Years	0560-AG20
22	Limitations on Amount of Guaranteed Farm Ownership and Operating Loans	0560-AG64

Farm Service Agency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
23	Mediation; Agricultural Loan Mediation Program	0560-AE26
24	Amendments to the Standards for Approval of Warehouse for Commodity Credit Corporation Storage Contracts	0560-AE50
25	Deletion of FSA Regulations Regarding Colorado River Basin Salinity Control Program	0560-AE54
26	Amendments to the Debt Settlement Policies and Procedures To Conform to the Debt Collection Improvement Act of 1996	0560-AF22
27	Amendment to the Farm Reconstitution Regulations	0560-AF36
28	Low Documentation Loan	0560-AF71
29	Amendments to the Conservation Reserve Program Regulations Regarding Land Eligibility	0560-AF77
30	Designation of Non-Auction Tobacco	0560-AG07
31	Agricultural Disaster and Market Assistance	0560-AG14
32	Emergency Conservation Program	0560-AG26
33	Conservation of Farmable Wetlands	0560-AG38
34	Tobacco Loss Assistance Program and Amendments to the Tobacco Marketing Quota Regulations	0560-AG40

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Farm Service Agency—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
35	Collection of Appraisal Fees for Farm Loan Programs, Insured Loans	0560-AG42
36	Collecting Guaranteed Loss Payments From FSA Farm Loan Program Borrowers	0560-AG44
37	Implementation of the U.S. Warehouse Act of 2000	0560-AG45
38	Non-Recourse Cotton Loan and Loan Deficiency Payment Programs; Upland Cotton First Handler Marketing Certificate Program; and Seed Cotton Recourse Loan Program	0560-AG47
39	Ocean Freight Claims Administrative Appeal Process	0560-AG49
40	Elimination of 30-Day Past-Due Period for Farm Loan Program Borrowers	0560-AG50
41	Tobacco Marketing Quotas, Cards, Penalty Provisions, Recordkeeping and Reporting	0560-AG52
42	Rescheduling Guaranteed Loans With Balloon Payments, Clarification of Annual Analysis Requirements for Guaranteed Lenders, and Subordination Requirements	0560-AG53
43	General Regulations Governing Commodity Loans for 1998 and Subsequent Crops	0560-AG54
44	Amendment to the Regulations for Determining Acreage for Skip-Row Cotton	0560-AG55
45	Prompt Disaster Set-Aside Consideration and Primary Loan Servicing	0560-AG56
46	2002-Crop Peanuts National Poundage Quota for Quota Peanuts	0560-AG57
47	2002-Crop Marketing Quotas and Price Support Levels for Five Kinds of Tobacco	0560-AG58
48	2002-Crop Marketing Quota and Price Support Level for Burley Tobacco	0560-AG59
49	2002-Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560-AG60
50	Horse Breeder Loans	0560-AG62
51	Apple Market Loss Payment Program	0560-AG63
52	Clarification of Guaranteed Farm Ownership and Operating Loan Requirements	0560-AG65
53	Servicing Minor Farm Loan Program Loans	0560-AG67
54	Sale and Purchase of Flue-Cured Tobacco Across County Lines (Florida and Georgia)	0560-AG68

Farm Service Agency—Completed Actions

Sequence Number	Title	Regulation Identification Number
55	Dairy Recourse Loan Program	0560-AF41
56	1999-Crop Marketing Quota and Price Support Level for Burley Tobacco	0560-AF50
57	Remove Internal Agency Provisions From FSA Farm Credit Program Regulations for Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property	0560-AF53
58	Streamlining of the Emergency Farm Loan Program Regulations	0560-AF72
59	2000-Crop Peanuts National Poundage Quota, National Average Loan Rates for Quota and Additional Peanuts and Minimum Export-Edible Sales Price for Additional Peanuts	0560-AF83
60	2000-Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560-AF84
61	Disaster Set-Aside Program	0560-AF91
62	Lamb Meat Adjustment Assistance Program	0560-AG17
63	2001-Crop Marketing Quota and Price Support Level for Flue-Cured Tobacco	0560-AG28
64	2001-Crop Marketing Quota and Price Support Level for Burley Tobacco	0560-AG29
65	2001-Crop Marketing and Price Support Levels for Five Kinds of Tobacco	0560-AG30
66	2001-Crop Peanuts National Poundage Quota, National Average Loan Rates for 2001-Crop Quota and Additional Peanuts and Minimum Export Edible Sales Price for Additional Peanuts	0560-AG31
67	Livestock Indemnity Program and Livestock Indemnity Program for Contract Growers	0560-AG33
68	Conservation Reserve Program—Failure To Establish Cover and Good Faith Reliance	0560-AG37
69	Reduction of Amortized Shared Appreciation Recapture Interest Rate	0560-AG43
70	Tobacco Marketing Quotas, Acreage Allotments and Production Adjustment	0560-AG51
71	Tobacco Loss Assistance Program 2001	0560-AG61
72	Dairy Indemnity Payment Program	0560-AG66

Animal and Plant Health Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
73	Animal Welfare: Marine Mammals; Nonconsensus Language and Interactive Programs	0579-AB24

USDA

Animal and Plant Health Inspection Service—Prerule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
74	Potential Pathways for the Spread of Bovine Spongiform Encephalopathy in U.S. Livestock	0579-AB43

Animal and Plant Health Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
75	Importation of Solid Wood Packing Material	0579-AA99
76	Blood and Tissue Collection at Livestock Slaughtering Establishments	0579-AB13
77	Bees, Beekeeping Byproducts, and Beekeeping Equipment **(Section 610 Review)**	0579-AB20
78	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**	0579-AB22
79	Salmonella Enteritidis Phage-Type 4; Remove Import Restrictions	0579-AB31
80	Foot-and-Mouth Disease; Payment of Indemnity	0579-AB34
81	Chronic Wasting Disease in Elk; Interstate Movement Restrictions and Payment of Indemnity	0579-AB35
82	Importation of Milk and Milk Products from FMD Countries	0579-AB38
83	Importation of Clementines from Spain	0579-AB40

Animal and Plant Health Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
84	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**	0579-AA94
85	Phytosanitary Treatment by Irradiation of Imported Fresh Fruits and Vegetables	0579-AA97
86	Importation of Unmanufactured Wood Articles From Mexico	0579-AB02
87	Establishment of Regions in the European Union for Classical Swine Fever, Foot-and-Mouth Disease, and Swine Vesicular Disease	0579-AB03
88	Pseudorabies in Swine; Payment of Indemnity	0579-AB10
89	Plum Pox Compensation	0579-AB19
90	Animal Welfare; Policy on Environment Enhancement for Nonhuman Primates	0579-AB25
91	Importation Prohibitions Because of Bovine Spongiform Encephalopathy	0579-AB26
92	Animals Destroyed Because of Tuberculosis; Payment of Indemnity	0579-AB29
93	Tuberculosis; Indemnity for Dairy Cattle	0579-AB36
94	Infectious Salmon Anemia; Payment of Indemnity	0579-AB37
95	Animal Welfare; Policy on Training and Handling of Potentially Dangerous Animals	0579-AB39
96	Additional Restrictions on the Importation of Certain Ruminant Meat, Meat Products, and Edible Products Other Than Meat From BSE Regions	0579-AB41
97	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**	0579-AB42
98	Karnal Bunt Compensation	0579-AB45

Animal and Plant Health Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
99	Importation of Certain Embryos and Animal Semen **(Section 610 Review)**	0579-AA63
100	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**	0579-AA80
101	Importation of Fuji Apples From the Republic of Korea	0579-AA93
102	Horse Protection; Horse Industry Organizations	0579-AB04
103	Phytosanitary Certificates for Imported Fruits and Vegetables	0579-AB18
104	Exportation of Livestock **(Section 610 Review)**	0579-AB21
105	Nursery Stock Regulations **(Section 610 Review)**	0579-AB23
106	Draft Action Plan for the Noxious Weeds Program	0579-AB30
107	Amend Regulations To Harmonize Our Import Requirements With Proposed National Tuberculosis Eradication Program	0579-AB44

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Animal and Plant Health Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
108	Commercial Transportation of Equines to Slaughter	0579-AB06
109	Importation of Unshu Oranges	0579-AB17
110	Mexican Hass Avocado Import Program	0579-AB27
111	Interstate Movement of Swine Within a Production System	0579-AB28
112	Black Stem Rust; Identification Requirements and Addition of Rust-Resistant Varieties **(Completion of a Section 610 Review)**	0579-AB33

Animal and Plant Health Inspection Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0579-AB09	Aquaculture; Farm-Raised Fin Fish	03/12/2002	Withdrawn
0579-AB16	Importation of Beef From Brazil	02/22/2002	Withdrawn
0579-AB32	Standards for Permanent, Privately Owned Horse Quarantine Facilities	03/12/2002	Withdrawn

Cooperative State Research, Education, and Extension Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0524-AA09	Higher Education Multicultural Scholars Program; Administrative Provisions	03/22/2002	Withdrawn
0524-AA17	Hispanic-Serving Institutions Education Grants Program Administrative Provisions	03/22/2002	Withdrawn
0524-AA19	Community Food Projects Administrative Provisions	03/22/2002	Withdrawn
0524-AA20	Small Business Innovation Research Program Administrative Provisions	03/22/2002	Withdrawn
0524-AA21	Biotechnology Risk Assessment Research Grants Program Administrative Provisions	03/22/2002	Withdrawn
0524-AA22	National Research Initiative Competitive Grants Program Administrative Provisions	03/22/2002	Withdrawn

Rural Housing Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
113	Civil Rights Compliance Requirements—1901-E to 1940-D	0575-AA83
114	National Flood Insurance Regulations	0575-AC07
115	Servicing Community Programs Loans and Grants	0575-AC12
116	Multi-Family Housing	0575-AC13
117	Self-Help Technical Assistance Grants	0575-AC20
118	Community Facilities Direct Loan Program—Consolidate, Simplify, and Update Regulations	0575-AC27
119	Guaranteed Rural Rental Housing Program—Secondary Mortgage Market Participation	0575-AC28

Rural Housing Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
120	Environmental Program	0575-AB98
121	Direct Section 502 and 504 Single-Family Housing Program	0575-AB99
122	Guaranteed Single-Family Housing	0575-AC18
123	Operating Assistance for Migrant Farmworker Projects	0575-AC24
124	Technical Assistance To Encourage the Development of Domestic and Migrant Farm Labor Housing	0575-AC25

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Rural Housing Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
125	Guaranteed Rural Rental Housing, Section 538 Statutory Changes	0575-AC26

Federal Crop Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
126	General Administrative Regulations; Subpart D; Application for Crop Insurance	0563-AB00
127	General Administrative Regulations; Movement of Business Among Insurance Providers	0563-AB71
128	General Administrative Regulations; Sanctions	0563-AB73
129	Common Crop Insurance Regulations; Blueberry Crop Insurance Provisions	0563-AB76
130	Common Crop Insurance Regulations; Nursery Crop Insurance Provisions	0563-AB80
131	General Administrative Regulations; Actual Production History	0563-AB83
132	Common Crop Insurance Regulations; Basic Provisions and General Administrative Regulations, Subpart T, Regulations for Implementation	0563-AB85
133	General Administrative Regulations; Subpart L—Reinsurance Agreement—Standards for Approval; Regulations for the 1997 and Subsequent Reinsurance Years	0563-AB86

Federal Crop Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
134	Common Crop Insurance Regulations; Small Grains Crop Insurance Provisions and Wheat Winter Coverage Endorsement	0563-AB63
135	General Administrative Regulations; Nonstandard Underwriting Classification System	0563-AB66
136	General Administrative Regulations; Premium Reductions; Payments of Rebates, Dividends, and Patronage Refunds; and Payments to Insured-Owned and Record-Controlling Entities	0563-AB70
137	Catastrophic Risk Protection Endorsement; Group Risk Plan of Insurance Regulations; Basic Provisions	0563-AB81
138	General Administrative Regulations; Submission of Policies and Provisions of Policies and Rates of Premiums	0563-AB84

Federal Crop Insurance Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
139	Common Crop Insurance Regulations; Millet Crop Insurance Provisions	0563-AB79

Grain Inspection, Packers and Stockyards Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
140	Review Inspection Requirements	0580-AA58
141	Livestock Purchase or Sale: Prohibit Non-Reporting of Price	0580-AA65
142	Exceptions to Geographic Areas for Official Agencies Under the USGSA	0580-AA76
143	Prohibition on Disguising Grain Quality	0580-AA77
144	Laboratory Proficiency Program	0580-AA78
145	Fees for Official Inspection and Official Weighing Services	0580-AA80

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Grain Inspection, Packers and Stockyards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
146	Tolerances for Dividers	0580-AA57
147	Swine Packer Marketing Contracts	0580-AA71

Grain Inspection, Packers and Stockyards Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
148	Fees for Official Inspection and Weighting Service	0580-AA79

Grain Inspection, Packers and Stockyards Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0580-AA51	Poultry Grower Contracts	03/08/2002	Withdrawn
0580-AA72	Packer Recordkeeping Requirements	03/08/2002	Withdrawn
0580-AA73	How Can USDA Best Facilitate the Marketing of Grains, Oilseeds, Fruits, Vegetables, and Nuts in Today's Marketplace	04/24/2002	Withdrawn

Food and Nutrition Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
149	Special Supplemental Food Program for Women, Infants, and Children (WIC): Miscellaneous Provisions	0584-AB10
150	Intentional Program Violation Reporting and Computer Matching Requirements That Affect the Food Stamp Program	0584-AB51
151	FSP: Civil Rights Data Collections	0584-AC75
152	Commodity Supplemental Food Program: Plain Language, Program Accountability, and Program Flexibility	0584-AC84
153	Food Stamp Program: Administrative Cost Reimbursement	0584-AC86
154	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages	0584-AC90
155	Improving Access to the Food Stamp Program for Persons With Limited English Proficiency	0584-AD06
156	Food Distribution Program on Indian Reservations: Resource Limits and Exclusions, Extended Certification Periods, and Transitional Benefits	0584-AD12
157	Food Stamp Program: Vehicle and Maximum Excess Shelter Expense Deduction Provisions of Public Law 106-387	0584-AD13
158	Child and Adult Care Food Program (CACFP): At-Risk Afterschool Suppers	0584-AD15
159	Food Stamp Program: Administrative Sanctions Imposed Against Violating Electronic Benefits Transfer (EBT) Stores	0584-AD18
160	Expanded Verification of Eligibility Summary Requirements	0584-AD20
161	Food Stamp Program: Simplification and State Flexibility	0584-AD22
162	Food Stamp Program: Administrative Review Requirements—Food Retailers/Wholesalers	0584-AD23

Food and Nutrition Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
163	WIC: Requirements for and Evaluation of WIC Program Requests for Bids for Infant Formula Rebate Contracts	0584-AB52
164	Food Stamp Program: Anticipating Income and Reporting Changes	0584-AB57
165	Child and Adult Care Food Program: Improving Management and Program Integrity	0584-AC24
166	Food Stamp Program Regulatory Review: FSP Standards for Approval and Operation of Food Stamp Electronic Benefit Transfer Systems	0584-AC37

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Food and Nutrition Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
167	Food Stamp Program: Work Provisions of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 and the Food Stamp Provisions of the Balanced Budget Act of 1997	0584-AC45
168	National School Lunch Program: Reimbursement for Snacks in Afterschool Care Programs	0584-AC72
169	FSP: Electronic Benefit Transfer (EBT) Systems Interoperability and Portability	0584-AC91
170	Child and Adult Care Food Program: Implementing Legislative Reforms To Strengthen Program Integrity	0584-AC94
171	Special Nutrition Programs: Disclosure of Children's Eligibility Information Under the Child Nutrition Programs	0584-AC95
172	Implementation of Poultry Substitution Pilot as Permanent and Modification of Commodity Recordkeeping Requirements	0584-AD08
173	Special Nutrition Programs: Uniform Federal Assistance Regulations; Nondiscretionary Technical Amendments	0584-AD16
174	National School Lunch Program, School Breakfast Program, and Child and Adult Care Food Program—Amendments to the Infant Meal Pattern	0584-AD26

Food and Nutrition Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
175	State Administrative Expense Funds: Plain Language Rewrite	0584-AC96
176	Special Milk Program for Children: Plain Language Revision and Reorganization	0584-AC97
177	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 250, Donation of Foods for Use in the United States, Its Territories and Possessions, and Areas Under Its Jurisdiction	0584-AC98
178	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 251, The Emergency Food Assistance Program (TEFAP)	0584-AC99
179	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 252, The National Commodity Processing Program (NCP)	0584-AD00
180	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 253, the Food Distribution Program on Indian Reservations (FDPIR)	0584-AD01
181	Food Distribution Programs: Plain Language Rewrite of 7 CFR Part 254, the Food Distribution Program on Indian Reservations (FDPIR) in Oklahoma	0584-AD02
182	Nutrition Education and Training Program: Plain Language Rewrite of 7 CFR Part 227	0584-AD03
183	State Agency Liabilities and Federal Sanctions	0584-AD04
184	Payments of Certain Administrative Costs of State Agencies	0584-AD05
185	School Breakfast Program: Plain Language Revision and Reorganization	0584-AD10
186	WIC: Plain Language Rewrite of 7 CFR Part 248, Farmers' Market Nutrition Program	0584-AD11
187	CNP: Plain Language Rewrite of 7 CFR Part 225, Summer Food Service Program	0584-AD17

Food and Nutrition Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
188	Determining Eligibility for Free and Reduced-Price Meals and Free Milk in Schools: Provision 2 and Provision 3	0584-AC25

Food and Nutrition Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0584-AC68	WIC Farmers Market Nutrition Program (FMNP): Expansion Funds Allocation Formula	03/05/2002	Withdrawn--Future of FMNP funding is uncertain.
0584-AC79	Food Distribution Program: Deletion of Requirement To Evaluate State-Run Commodity Distribution and Warehousing Systems Every 3 Years	03/07/2002	Withdrawn--Regulatory change not required.

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Food Safety and Inspection Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
189	Poultry Inspection: Revision of Finished Product Standards With Respect to Ingesta	0583-AC77
190	Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used **(Section 610 Review)**	0583-AC90

Food Safety and Inspection Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
191	Grant and Inauguration of Inspection	0583-AC07
192	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry	0583-AC43
193	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products	0583-AC44
194	Performance Standards for Bacon	0583-AC49
195	Egg and Egg Products Inspection Regulations	0583-AC58
196	Labeling—Generic Approval and Regulation Consolidation	0583-AC59
197	Pathogen Reduction; Hazard Analysis and Critical Control Points (HACCP) Systems; Additions to Generic E. Coli Criteria	0583-AC63
198	Food Standards; Guiding Principles and Food Standards Modernization	0583-AC72
199	Petitions for Rulemaking	0583-AC81
200	Classes of Poultry Updating Poultry Class Standards	0583-AC83
201	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)**	0583-AC87

Food Safety and Inspection Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
202	Beef or Pork With Barbecue Sauce; Revision of Standards	0583-AC09
203	Performance Standards for Ready-To-Eat Meat and Poultry Products	0583-AC46
204	Meat Produced by Advanced Meat/Bone Separation Machinery and Recovery Systems	0583-AC51
205	Incorporation of Food and Color Additives Into 21 CFR	0583-AC69
206	Performance Standards for On-line Antimicrobial Reprocessing of Pre-Chill Poultry Carcasses	0583-AC73
207	Sharing Recall Distribution Lists With State and Other Federal Government Agencies	0583-AC75
208	Agency Organization	0583-AC78
209	Food Standards: Requirements for Substantive Standardized Meat and Poultry Products Named by Use of an Expressed Nutrient Content Claim and a Standardized Term	0583-AC82

Food Safety and Inspection Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
210	Transportation, Storage, and Other Handling of Potentially Hazardous Foods	0583-AC05
211	Reworking of Meat and Poultry Carcasses Accidentally Contaminated During Evisceration	0583-AC53
212	Reform of Regulations on Imported Meat and Poultry Products	0583-AC56
213	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products	0583-AC60
214	Food Labeling; Nutrient Content Claims, Definition of the Term Healthy	0583-AC65
215	Elimination of Requirements for Total Quality Control Systems	0583-AC68
216	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce	0583-AC88

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Food Safety and Inspection Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
217	Labeling of Natural or Regenerated Collagen Sausage Casings	0583-AC80
218	Mandatory Inspection of Ratites and Squabs	0583-AC84
219	Increases in Fees for Meat, Poultry, and Egg Products Inspection Services—Fiscal Year (FY) 2002	0583-AC89

Foreign Agricultural Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
220	Program To Provide Technical Assistance To Promote U.S. Agricultural Exports to Emerging Markets (Emerging Markets Program)	0551-AA62

Foreign Agricultural Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
221	Program To Assist U.S. Producers in Developing Domestic Markets for Value-Added Wheat Gluten and Wheat Starch Products	0551-AA60
222	Freedom of Information Act (FOIA) Regulations for the Foreign Agricultural Service	0551-AA61

Foreign Agricultural Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
223	CCC Supplier Credit Guarantee Program	0551-AA30
224	Facility Guarantee Program	0551-AA35

Forest Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
225	Hydropower Applications	0596-AA47
226	Small Tracts Act Regulations	0596-AA79
227	Species Surplus to Domestic Manufacturing Needs	0596-AB27
228	Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Permit Urgent Removal of Other Timber	0596-AB48
229	Law Enforcement Support Activities	0596-AB61
230	Noncompetitive Sale of Timber	0596-AB70
231	Land Uses; Special Uses Requiring Authorizations	0596-AB74
232	Sale and Disposal of National Forest System Timber; Timber Export and Substitution Restrictions	0596-AB75
233	Use of Fixed Anchors in Wilderness	0596-AB80
234	Special Forest Products and Forest Botanical Products	0596-AB81
235	Determining Fair Market Value for Recreation Residence Use Authorizations	0596-AB83
236	National Forest System Land and Resource Management Planning	0596-AB86
237	National Environmental Policy Act Documentation for Certain Small Administrative Timber Sales on National Forest System Lands and Research Projects (Forest Service Handbook 1909.15, Chapter 30)	0596-AB88
238	Notice, Comment, and Appeal Procedures for National Forest System Projects and Activities	0596-AB89
239	Special Uses and General Prohibitions: Paleontological Resources	0596-AB91
240	Forest Service Trails Accessibility Guidelines	0596-AB92
241	Forest Service Outdoor Recreation Accessibility Guidelines	0596-AB93

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Forest Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
242	Indian Allotments on National Forest System Lands	0596-AA52
243	Disposal of National Forest Timber; Cancellation of Timber Sale Contracts	0596-AB21
244	Collection of Reimbursable Costs for Processing Special-Use Applications and Administration of Special-Use Authorizations	0596-AB36
245	Preference for Visitor Service; Alaska National Forest Conservation System Units	0596-AB57
246	Categorical Exclusion for Certain Special Uses Permit Actions (FSH 1909.15, Chapter 30)	0596-AB73
247	National Forest System Land and Resource Management Planning; Extension of Compliance Deadline	0596-AB87

Forest Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
248	Appeal of Decisions Relating to Occupancy and Use of National Forest System Lands	0596-AB45
249	Revisions to Road Management Policy (Forest Service Manual Chapter 7710)	0596-AB90

Forest Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0596-AB85	Inventoried Roadless Areas	03/08/2002	Withdrawn

Office of Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
250	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0505-AA11

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
251	General Nonprocurement Regulations	0503-AA21

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
252	Outreach and Assistance for Disadvantaged Farmers and Ranchers	0503-AA22

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
253	Designation of Rural Empowerment Zones and Enterprise Communities	0503-AA20

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Rural Business-Cooperative Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
254	Business and Industrial Guaranteed Loan Program—Miscellaneous Changes	0570-AA23
255	Affirmative Fair Housing Marketing Plan	0570-AA24
256	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock	0570-AA26
257	Rural Business Enterprise Grant Program	0570-AA28
258	Annual Renewal Fee	0570-AA34

Rural Business-Cooperative Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
259	Rural Economic Development Loan and Grant Program	0570-AA19
260	Allocation Formulas	0570-AA30
261	Business and Industry Guaranteed Loan Program—Domestic Lamb Industry Adjustment Assistance Program Set-Aside	0570-AA31
262	The Rural Business Enterprise Grants and Television Demonstration Grants—Small/Emerging Private Business Enterprise	0570-AA32

Rural Business-Cooperative Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0570-AA33	Intermediary Relending Program Participation Agreements	03/13/2002	Withdrawn

Rural Utilities Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
263	Telecommunications Standards and Specifications for Materials, Equipment, and Construction	0572-AB40
264	Servicing of Water Programs Loans and Grants	0572-AB59
265	Electric Program Standard Contract Forms	0572-AB67
266	Exemptions of RUS Operational Controls Under Section 306E of the RE Act	0572-AB68
267	Environmental Policies and Procedures	0572-AB73
268	Technical Assistance Grants	0572-AB75
269	Special Equipment Contract (Not Including Installation), RUS Form 398	0572-AB76
270	Accounting Requirements for RUS Telecommunications Borrowers	0572-AB77
271	Extensions of Payments of Principal and Interest	0572-AB79
272	Useful Life of Facility Determination	0572-AB80

Rural Utilities Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
273	Settlement of Debt	0572-AB61
274	Mergers and Consolidations of Electric Borrowers	0572-AB63
275	Demand Side Management and Renewable Energy Systems	0572-AB65
276	Telecommunications Program Specification	0572-AB69
277	General and Pre-Loan Policies and Procedures Common to Insured and Guaranteed Loans	0572-AB72
278	Seismic Safety	0572-AB74
279	Record Retention Requirements for RUS Electric and Telecommunications Borrowers	0572-AB78

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Rural Utilities Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
280	Extensions of Payments of Principal and Interest	0572-AB60
281	Distance Learning and Telemedicine Loan and Grant Program	0572-AB70
282	Treasury Rate Loan Program	0572-AB71

Rural Utilities Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0572-AB38	RUS Approval of Additions and Extensions to Electric Plants	02/27/2002	Withdrawn
0572-AB55	The "Buy American" Requirement	03/07/2002	Withdrawn

Natural Resources Conservation Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
283	Wetland Categorical Minimal Effects Exemptions	0578-AA27
284	Emergency Watershed Protection Program	0578-AA30

Natural Resources Conservation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
285	Conservation of Private Grazing Land	0578-AA29

Natural Resources Conservation Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
286	Highly Erodible Land and Wetland Conservation	0578-AA17
287	Forestry Incentives Program	0578-AA26

Office of Procurement and Property Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
288	Office of Procurement and Property Management (OPPM); Uniform Procedures for the Acquisition and Transfer of Excess Federal Property	0599-AA10

Office of Procurement and Property Management—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0599-AA03	New Restrictions on Lobbying	03/22/2002	Withdrawn

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)
Prerule Stage

1. COTTON FUTURES ACT: CHANGING THE DESTINATION OF SPOT MARKETS (CN-01-004)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 156; PL 94-455, 90 Stat. 1841-1846; PL 102-287, Stat. 1844

CFR Citation: 7 CFR 27

Legal Deadline: None

Abstract: The U.S. Cotton Futures Act authorizes the Secretary of Agriculture to determine the five most appropriate spot cotton markets to designate for settlement of cotton futures contracts. Regional changes in current commercial sales of cotton makes it necessary to change the designation of spot market to more accurately reflect the commercial market prices and qualities of cotton for use in determining settlement differences for cotton traded on the cotton exchange.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Norma Randall McDill, Deputy Administrator, Department of Agriculture, Agricultural Marketing Service, 14th & Independence Avenue SW, Room 2641-South, Washington, DC 20250
Phone: 202 720-2145
Fax: 202 690-1718
Email: norma.mcdill@usda.gov

RIN: 0581–AC00

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS)
Proposed Rule Stage

2. NATIONAL LABORATORY ACCREDITATION PROGRAM

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 7 USC 138 to 138i

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food, Agriculture, Conservation, and Trade Act of 1990 (the FACT Act) authorized the establishment of the National Laboratory Accreditation Program (NLAP). The NLAP is a voluntary, fee-for-service program for accrediting laboratories that analyze for the presence of pesticide residues in agricultural products. The regulations will ensure that laboratories which request accreditation and conduct residue testing of fresh fruits and vegetables for at least one of four classes of pesticides, or make claims to the public or buyers concerning the residue levels, meet certain standards.

Timetable:

Action	Date	FR Cite
ANPRM	11/20/92	57 FR 54727
ANPRM Comment Period End	01/19/93	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: James V. Falk, Department of Agriculture, Agricultural Marketing Service, Room 3523-South, Technical Services Branch, P.O. Box 96456, Room 3523-south, Washington, DC 20090-6456
Phone: 202 690-4089
Fax: 202 720-4631
Email: james.falk@usda.gov

RIN: 0581–AB42

3. CHANGES IN FEES FOR FEDERAL GRADING AND CERTIFICATION OF LIVESTOCK FOR CHICAGO MERCANTILE EXCHANGE FUTURES DELIVERIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 53

Legal Deadline: None

Abstract: The purpose of this action is to amend the rate and procedures used to charge applicants for Federal grading and certification of livestock inspected for deliveries on commodity futures contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: John E. VanDyke, Branch Chief, Department of Agriculture, Agricultural Marketing Service, Room 2619-South, L&S, 14th & Independence Avenue SW, Washington, DC 20250
Phone: 202 720-6231
Fax: 202 690-3732
Email: john.vandyke@usda.gov

RIN: 0581–AB66

4. DISCONTINUE THE OFFICIAL GRADING OF IMPORTED BEEF, LAMB, VEAL, AND CALF CARCASSES UNDER THE AUTHORITY OF THE AGRICULTURAL MARKETING ACT OF 1946

Priority: Other Significant

Legal Authority: 7 USC 1621 through 1627

CFR Citation: 7 CFR 54

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) proposes to discontinue the official grading of imported beef, lamb, veal, and calf carcasses. Current regulations, promulgated under the Agricultural Marketing Act of 1946, permit the official grading of imported beef, lamb, veal, and calf carcasses provided the carcasses are in compliance with all requirements of the standards and regulations.

Timetable:

Action	Date	FR Cite
ANPRM	02/01/00	65 FR 4780
ANPRM Comment Period End	04/03/00	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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Proposed Rule Stage

Agency Contact: Martin E. O'Connor, Assistant Chief, Department of Agriculture, Agricultural Marketing Service, P.O. Box 96456, Washington, DC 20250-6456
Phone: 202 720-7046
Fax: 202 690-4119

RIN: 0581–AB90

5. REVISION OF REGULATIONS GOVERNING THE INSPECTION AND GRADING SERVICE OF MANUFACTURED OR PROCESSED DAIRY PRODUCTS (DA-00-08)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: These regulations have not been updated since December 1, 1976. The proposal will establish a revision of the existing regulations to strengthen program integrity, to update the regulations to accurately reflect inspection and grading services available, and to clarify the meaning of the regulation provisions. The proposed changes are not expected to have any major impact on program participants as most participants are operating in a manner that is consistent with the proposed changes.

Timetable:

Action	Date	FR Cite
Proposed Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, Department of Agriculture, Agricultural Marketing Service, Rm. 2746-South, Dairy Programs, P.O. Box 96456, Washington, DC 20090-6456
Phone: 202 720-7473
Fax: 202 720-2643
Email: duane.spomer@usda.gov

RIN: 0581–AB93

6. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR MUSHROOM, APICULTURE, GREENHOUSE AND HYDROPONIC PRODUCTION SYSTEMS AND THE HANDLING OF HONEY (TM-01-09)

Priority: Other Significant

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: AMS is proposing to revise the regulatory provisions for labeling agricultural products as organically produced and handled (7 CFR part 205). AMS will propose production standards for mushroom, apiculture, and greenhouse production systems and handling standards for apiculture products. The proposed standards will incorporate the recommendations of the National Organic Standards Board (NOSB) finalized at its October 2001 meeting. In June 2001, the NOSB released and accepted public comment on a draft version of mushroom and greenhouse standards. Concurrently, the NOSB implemented a task force to develop production and handling standards for apiculture.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, Tribal, State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Richard H. Mathews, Acting Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510-South, 14th & Independence Avenue SW, Washington, DC 20250
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Email: richard.mathews@usda.gov

RIN: 0581–AB96

7. NATIONAL ORGANIC PROGRAM: ADD STANDARDS FOR THE ORGANIC CERTIFICATION OF WILD CAPTURED AQUATIC ANIMALS (TM-01-08)

Priority: Other Significant

Legal Authority: 7 USC 6501 through 6522

CFR Citation: 7 CFR 205

Legal Deadline: None

Abstract: AMS is proposing to revise the regulatory provisions for labeling of agricultural products as organically produced and handled (7 CFR part 205). AMS proposes to incorporate the term "aquatic animal" in the definition of livestock and to establish production and handling standards for operations that capture aquatic animals from the wild. AMS has defined "aquatic animal" as any finfish or shellfish used for human consumption, whether taken from regulated but free roaming marine and fresh water populations (wild captured) or propagated and raised in a controlled or selected environment (aquaculture). Production standards for operations producing aquatic animals will incorporate requirements for livestock origin, feed ration, health care, living conditions, and recordkeeping. Handling standards for such operations will address prevention of commingling of organically produced commodities and prevention of contact between organically produced and prohibited substances.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Richard H. Mathews, Acting Program Manager, Department of Agriculture, Agricultural Marketing Service, Rm. 2510-South, 14th & Independence Avenue SW, Washington, DC 20250
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RIN: 0581–AB97

USDA—AMS

Proposed Rule Stage

8. LIVESTOCK MANDATORY REPORTING PROGRAM—LAMB AMENDMENT (LS-01-08)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621

CFR Citation: 7 CFR 59

Legal Deadline: None

Abstract: The Agricultural Marketing Service is amending the Livestock Reporting Act of 1999 regulations. The amendments would: (1) Amend regulations requiring lamb packers to report negotiated purchases of live lamb and sales of carcass lamb; (2) adjust requirements for reporting of imported and domestic boxed lamb sales; and (3) make adjustments to input data collection forms. The Act was implemented April 2, 2001, and requires packers to report purchase and sales transactions for cattle, swine, sheep, boxed beef, and lamb meat.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: John Edward Van Dyke, Chief, Livestock and Grain Market News Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0252, Room 2619-South, Washington, DC 20250
Phone: 202 720-6231
Fax: 202 690-3732
Email: john.vandyke@usda.gov

RIN: 0581–AB98

9. REVISION OF USER FEES FOR 2002 CROP COTTON CLASSIFICATION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 473a

CFR Citation: 7 CFR 28

Legal Deadline: Final, Statutory, June 2001.

Abstract: This action would increase the user fees for cotton producers for the 2002 crop cotton classification services under the Cotton Statistics and Estimates Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Norma Randall McDill, Deputy Administrator, Department of Agriculture, Agricultural Marketing Service, 14th & Independence Avenue SW, Room 2641-South, Washington, DC 20250
Phone: 202 720-2145
Fax: 202 690-1718
Email: norma.mcdill@usda.gov

RIN: 0581–AC04

10. MANGO PROMOTION, RESEARCH, AND INFORMATION ORDER (FV-01-707)

Priority: Routine and Frequent

Legal Authority: 7 USC 7411 through 7425

CFR Citation: 7 CFR 1206

Legal Deadline: None

Abstract: This action would establish a Mango Promotion, Research, and Information Order. The purpose of the new program would be to increase consumption of mangos in the United States. The program would be administered by the National Mango Promotion Board under the supervision of the Agricultural Marketing Service.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathie Birdsell, Research and Promotion Branch, Department of Agriculture, Agricultural Marketing Service, Room 2535-South, Stop 0244, Fruit and Vegetable Program, 14th and Independence Avenue SW, Washington, DC 20250-0244
Phone: 202 720-4835
Fax: 202 205-2800
Email: kathie.birdsell@usda.gov

RIN: 0581–AC05

11. ESTABLISHING A LAMB PROMOTION, RESEARCH, AND INFORMATION ORDER (LS-01-12)

Priority: Other Significant

Legal Authority: 7 USC 7401 through 7425

CFR Citation: 7 CFR 1280

Legal Deadline: None

Abstract: The Agricultural Marketing Service (AMS) is planning to issue a final rule establishing an industry-funded promotion, research, and information program for lamb and lamb products including pelts but excluding wool and wool products. On September 21, 2001, AMS published the proposed Order for comment (66 FR 48764). The comment period ended November 20, 2001. AMS received 242 comments in a timely manner, the bulk of which were submitted by individual lamb producers.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marlene M. Betts, Acting Chief, Marketing Programs Branch, Department of Agriculture, Agricultural Marketing Service, 0251 — Room 2627-South, 1400 Independence Avenue SW, Washington, DC 20250-0251
Phone: 202 720-1111

RIN: 0581–AC06

12. ESTABLISHING FEES FOR VOLUNTARY QUALITY SYSTEMS CERTIFICATION SERVICES (LS-00-13)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed action is necessary to ensure that voluntary Quality Systems Certification Program (QSCP) services provided by the Agricultural Marketing Service's Meat Grading and Certification Branch remain financially self-sufficient and viable. The QSCP is a voluntary, audit-based program developed at the request of the industry and others to provide a means of verifying value-adding

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processes in the production and processing of agricultural products.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry R. Meadows, Chief, Meat Grading and Certification Branch, Department of Agriculture, Agricultural Marketing Service, Stop 0248, Rm. 2628-South, Livestock & Seed Program, 14th & Independence Avenue SW, Washington, DC 20250-0248
Phone: 202 720-1113
Fax: 202 690-4119
Email: larry.meadows@usda.gov

RIN: 0581–AC08

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS) — **Final Rule Stage**

13. GENERAL SPECIFICATIONS FOR DAIRY PLANTS APPROVED FOR USDA INSPECTION AND GRADING

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1621 to 1627

CFR Citation: 7 CFR 58

Legal Deadline: None

Abstract: The final rule would: (1) Lower the maximum allowable bacterial estimate for manufacturing-grade producer milk from 1,000,000 per milliliter to 500,000 per milliliter; (2) lower the maximum allowable somatic cell count from 1,000,000 to 750,000 cells per milliliter; (3) lower the maximum permitted bacterial estimate in commingled milk from 3,000,000 per milliliter to 1,000,000 per milliliter; (4) modify the follow-up procedures when producer herd milk exceeds the maximum allowable bacterial estimate; (5) delete the laboratory screening test for somatic cells in producer-held milk samples (no change for goat milk); and (6) make editorial changes where necessary.

Timetable:

Action	Date	FR Cite
NPRM	08/13/01	66 FR 42458
NPRM Comment Period End	10/12/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Duane R. Spomer, Associate Deputy Administrator for Standards and Grading, Department of Agriculture, Agricultural Marketing Service, Rm. 2746-South, Dairy Programs, P.O. Box 96456, Washington, DC 20090-6456
Phone: 202 720-7473
Fax: 202 720-2643
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RIN: 0581–AB59

14. HASS AVOCADO PROMOTION, RESEARCH, AND INFORMATION ORDER (FV-01-705)

Priority: Other Significant

Legal Authority: 7 USC 7801 to 7813

CFR Citation: 7 CFR 1219

Legal Deadline: None

Abstract: Under the Hass Avocado Promotion, Research, and Information Order, Hass avocado producers and importers will pay an assessment of 2.5 cents per pound on Hass avocados produced and imported into the U.S. The funds will be used by the Hass Avocado Board to increase demand for Hass avocados in the U.S.

Timetable:

Action	Date	FR Cite
NPRM	07/13/01	66 FR 36869
NPRM Comment Period End	08/27/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Margaret B. Irby, Assistant Branch Chief, Department of Agriculture, Agricultural Marketing Service, Stop 0244, Fruit & Vegetable Programs, 14th & Independence Avenue SW, Washington, DC 20250-0244
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Fax: 202 205-2800
Email: margaret.irby@usda.gov

RIN: 0581–AB92

Department of Agriculture (USDA)
Agricultural Marketing Service (AMS) — **Completed Actions**

15. INCREASE IN FEES FOR VOLUNTARY FEDERAL SEED TESTING AND CERTIFICATION SERVICES AND ESTABLISHMENT OF A FEE FOR PRELIMINARY TEST REPORTS (LS-01-07)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 75

Completed:

Reason	Date	FR Cite
NPRM	10/23/01	66 FR 53550
Final Action	03/14/02	67 FR 11383
Final Action Effective	04/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Richard C. Payne
Phone: 301 504-9430
Email: richard.payne2@usda.gov

RIN: 0581–AB95

16. INCREASE IN FEES AND CHARGES FOR EGGS, POULTRY, AND RABBIT (PY-01-005)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 56; 7 CFR 70

USDA—AMS — **Completed Actions**

Completed:

Reason	Date	FR Cite
Final Action	12/27/01	66 FR 66712
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Rex A. Barnes
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RIN: 0581–AB99

17. REGULATIONS GOVERNING THE CALIFORNIA PRUNE/PLUM (TREE REMOVAL) DIVERSION PROGRAM, 2001-2002 CROP YEAR (FV-01-81-01)

Priority: Other Significant

CFR Citation: 7 CFR 81

Completed:

Reason	Date	FR Cite
NPRM	12/17/01	66 FR 64918
Final Action	03/14/02	67 FR 11384
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard C. Payne
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RIN: 0581–AC03

18. FRESH RUSSET POTATO DIVERSION PROGRAM, 2000 CROP (FV-01-80-01)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 80

Completed:

Reason	Date	FR Cite
Final Action	11/21/01	66 FR 58349
Final Action Effective	11/22/01	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Susan Proden
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RIN: 0581–AC07

BILLING CODE 3410–02–S

Department of Agriculture (USDA)
Farm Service Agency (FSA) — **Proposed Rule Stage**

19. REGULATORY STREAMLINING OF THE FARM SERVICE AGENCY'S DIRECT FARM LOAN PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 7; 7 CFR 18

Legal Deadline: None

Abstract: The Farm Service Agency's (FSA's) direct farm loan programs are still using the regulations and handbooks from the former Farmers Home Administration, and still share many of its regulations, forms, and handbooks with the Rural Housing Service, Rural Utilities Service, and the Rural Business-Cooperative Service. This is very cumbersome and confusing to both Agency employees and the general public. This action will move all the direct farm loan program regulations from 7 CFR chapter 18 to 7 CFR chapter 7 and will allow FSA the opportunity to rewrite and re-engineer its direct farm loan program regulations. This action also consolidates a number of actions that were previously included in the regulatory agenda under separate RINs: 0560-AE04, 0560-AE07, 0560-AE09, 0560-AE11, 0560-AE13, 0560-AE14, 0560-AE15, 0560-AE37, 0560-AE87, 0560-AE88, 0560-AE90, 0560-AE98, and 0560-AE99.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
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Fax: 202 720-5233
Email: tom_witzig@wdc.fsa.usda.gov

RIN: 0560–AF60

20. INTEREST ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Consolidated Farm and Rural Development Act (CONACT)

CFR Citation: 7 CFR 762

Legal Deadline: None

Abstract: The Consolidated Farm and Rural Development Act authorizes the Farm Service Agency to establish and carry out an interest rate reduction program, which provides an interest subsidy for guaranteed loans. The existing Interest Assistance Program is cumbersome and administratively expensive for lenders, discouraging many of them from participation. The lenders that do participate use it extensively for many of their clients, resulting in an unbalanced and regional use of the program, and not always for those producers most in need of the assistance.

Our proposal is to reduce administrative burden for the lender, with the elimination of the annual needs test, to encourage non-participating lenders to utilize the program. We also propose to reduce the number of years that a producer can receive an interest subsidy and revise the way this is determined. This reduced term will target the program to addressing short-term cash flow problems, and discourage use of the program for major expansion, capital improvements or other longer term purposes.

There will be no change in program funding. However, some allocated funds will be redirected to reach producers more in need of assistance.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
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RIN: 0560–AG46

Department of Agriculture (USDA)
Farm Service Agency (FSA) — Final Rule Stage

21. NONINSURED CROP DISASTER ASSISTANCE PROGRAM REGULATIONS FOR THE 2001 AND SUCCEEDING CROP YEARS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-224

CFR Citation: 7 CFR 1437

Legal Deadline: None

Abstract: This rule implements provisions of the Agricultural Risk Protection Act of 2000 amending the NAP regulations to eliminate the area loss requirement, implement an administrative service fee, and require producers to apply for assistance not later than 30 days before the beginning of the coverage period. The expected cost is about $100 million per year over the next 4 years.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/02	67 FR 12446
Interim Final Rule Comment Period End	04/19/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
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RIN: 0560–AG20

22. • LIMITATIONS ON AMOUNT OF GUARANTEED FARM OWNERSHIP AND OPERATING LOANS

Priority: Other Significant

Legal Authority: 5 USC 301; PL 105-277; 7 USC 1989

CFR Citation: 7 CFR 762; 7 CFR 761

Legal Deadline: None

Abstract: This rule will remove the specific dollar amount of guaranteed loan limits from FSA regulations. Regulations will be revised to state that the loan limits are modified each fiscal year based on the percentage change in the Prices Paid by Farmers Index (as determined annually by USDA, NASS) and that the maximum loan amount, percentage change in the index and the effective date of the limits will be available at all USDA Service Centers.

Timetable:

Action	Date	FR Cite
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11 Agriculture, Forestry, Fishing, and Hunting

Agency Contact: Mr. Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS 0572, 1400 Indepenedence Avenue SW, Washington, DC 20250
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RIN: 0560–AG64

Department of Agriculture (USDA)
Farm Service Agency (FSA) — Long-Term Actions

23. MEDIATION; AGRICULTURAL LOAN MEDIATION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1946 subpart A

Timetable:

Action	Date	FR Cite
NPRM	11/09/99	64 FR 61034
NPRM Comment Period End	01/10/00	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Tom Witzig
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RIN: 0560–AE26

24. AMENDMENTS TO THE STANDARDS FOR APPROVAL OF WAREHOUSE FOR COMMODITY CREDIT CORPORATION STORAGE CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1421; 7 CFR 1423; 7 CFR 1427

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AE50

25. DELETION OF FSA REGULATIONS REGARDING COLORADO RIVER BASIN SALINITY CONTROL PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 702; 7 CFR 703; 7 CFR 752

USDA—FSA — Long-Term Actions

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AE54

26. AMENDMENTS TO THE DEBT SETTLEMENT POLICIES AND PROCEDURES TO CONFORM TO THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

Priority: Other Significant

CFR Citation: 7 CFR 792; 7 CFR 1403; 7 CFR 1404

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AF22

27. AMENDMENT TO THE FARM RECONSTITUTION REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 718

Timetable:

Action	Date	FR Cite
NPRM	02/04/00	65 FR 5444
NPRM Comment Period End	03/06/00	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AF36

28. LOW DOCUMENTATION LOAN

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1910; 7 CFR 1941

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/09/01	66 FR 1570
Interim Final Rule Effective	01/09/01	
Interim Final Rule Comment Period End	03/12/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AF71

29. AMENDMENTS TO THE CONSERVATION RESERVE PROGRAM REGULATIONS REGARDING LAND ELIGIBILITY

Priority: Other Significant

CFR Citation: 7 CFR 1410

Timetable:

Action	Date	FR Cite
NPRM	12/06/01	66 FR 63339
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AF77

30. DESIGNATION OF NON-AUCTION TOBACCO

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1464

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG07

31. AGRICULTURAL DISASTER AND MARKET ASSISTANCE

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 7 CFR 1411; 7 CFR 1427; 7 CFR 1439; 7 CFR 1464; 7 CFR 1478

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/08/00	65 FR 36550
Interim Final Rule Comment Period End	07/10/00	
Correction	08/01/00	65 FR 47840
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG14

32. EMERGENCY CONSERVATION PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 701

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG26

33. CONSERVATION OF FARMABLE WETLANDS

Priority: Other Significant

CFR Citation: 7 CFR 1410

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG38

34. TOBACCO LOSS ASSISTANCE PROGRAM AND AMENDMENTS TO THE TOBACCO MARKETING QUOTA REGULATIONS

Priority: Other Significant

CFR Citation: 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG40

35. COLLECTION OF APPRAISAL FEES FOR FARM LOAN PROGRAMS, INSURED LOANS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 761; 7 CFR 1910; 7 CFR 1927; 7 CFR 1941; 7 CFR 1945; ...

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG42

36. COLLECTING GUARANTEED LOSS PAYMENTS FROM FSA FARM LOAN PROGRAM BORROWERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG44

37. IMPLEMENTATION OF THE U.S. WAREHOUSE ACT OF 2000

Priority: Other Significant

CFR Citation: 7 CFR 735 to 742

Timetable:

Action	Date	FR Cite
NPRM	09/04/01	66 FR 46310
NPRM Comment Period End	10/04/01	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG45

38. NON-RECOURSE COTTON LOAN AND LOAN DEFICIENCY PAYMENT PROGRAMS; UPLAND COTTON FIRST HANDLER MARKETING CERTIFICATE PROGRAM; AND SEED COTTON RECOURSE LOAN PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 1427

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AG47

39. OCEAN FREIGHT CLAIMS ADMINISTRATIVE APPEAL PROCESS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1405; 7 CFR 1499; 22 CFR 211

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG49

40. ELIMINATION OF 30-DAY PAST-DUE PERIOD FOR FARM LOAN PROGRAM BORROWERS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG50

41. TOBACCO MARKETING QUOTAS, CARDS, PENALTY PROVISIONS, RECORDKEEPING AND REPORTING

Priority: Other Significant

CFR Citation: 7 CFR 723

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG52

42. RESCHEDULING GUARANTEED LOANS WITH BALLOON PAYMENTS, CLARIFICATION OF ANNUAL ANALYSIS REQUIREMENTS FOR GUARANTEED LENDERS, AND SUBORDINATION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 762

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG53

43. GENERAL REGULATIONS GOVERNING COMMODITY LOANS FOR 1998 AND SUBSEQUENT CROPS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1421

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG54

44. AMENDMENT TO THE REGULATIONS FOR DETERMINING ACREAGE FOR SKIP-ROW COTTON

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 718.107

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG55

45. PROMPT DISASTER SET-ASIDE CONSIDERATION AND PRIMARY LOAN SERVICING

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG56

46. 2002-CROP PEANUTS NATIONAL POUNDAGE QUOTA FOR QUOTA PEANUTS

Priority: Other Significant

CFR Citation: 7 CFR 729; 7 CFR 1421; 7 CFR 1446

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG57

47. 2002-CROP MARKETING QUOTAS AND PRICE SUPPORT LEVELS FOR FIVE KINDS OF TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG58

48. 2002-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG59

49. 2002-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
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RIN: 0560–AG60

50. • HORSE BREEDER LOANS

Priority: Other Significant

Legal Authority: PL 107-76; 5 USC 301; 7 USC 1981

CFR Citation: 7 CFR 764 and 775

Legal Deadline: Other, Statutory, September 30, 2002, Deadline for loan applications.
Final, Statutory, September 30, 2003, Expiration of Authority to Make Loans.

Abstract: Section 759(c) of the Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriations Act, 2002, [Pub. L. 107-76], (2002 Appropriations Act) requires the Secretary to provide loans to eligible horse breeders for losses caused by mare reproductive loss syndrome (MRLS). To be eligible (1) the farmer must derive over 70 percent of his income from breeding, boarding, training, or selling horses, (2) the losses must have occurred during a specific period of time when at least 30% of the mares owned, or boarded on a farm owned, operated, or leased by the breeder failed to produce a live healthy foal, (3) the breeder must be unable to meet the financial obligations of the operation without the loan, and (4) the breeder must not be able to obtain the necessary credit elsewhere. Loan amounts will be based on the loss

suffered, the financial needs of the horse breeder, and cannot exceed $500,000. The maximum loan term is 20 years and the interest rate is equal to that of other Agency Emergency loans (EM). The objective is to offset income loss and reduction in credit availability faced by horse breeders caused by MRLS.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined
Final Action Effective	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Sectors Affected: 112 Animal Production

Agency Contact: Cathy Quayle, Loan Officer, Department of Agriculture, Farm Service Agency, Mail Stop 0522, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 690-4018
Fax: 202 721-1117
Email: cathy__quayle@wdc.usda.gov

RIN: 0560–AG62

51. • APPLE MARKET LOSS PAYMENT PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 714b and 714c; PL 107-76

CFR Citation: 7 CFR 1470

Legal Deadline: None

Abstract: Section 741 of the Agriculture, Rural Development, Food and Drug Administration, and related agencies Appropriation Act, for Fiscal Year 2002, authorizes the Secretary of Agriculture to provide assistance to apple growers for loss of markets for apples. The Apple Market Loss Assistance Payment Program will utilize $75 million of Commodity Credit Corporation funds to make payments to apple producers. The direct cash payments to apple growers will be based on the quantity of the 2000 crop of apples that was produced on each farm unit. A particular farm will be eligible for a payment based on reported production, with a maximum eligible 2000 apple crop production of 20,000,000 pounds per farm. This Program is being implemented to provide monetary assistance to eligible apple producers who have recently experienced a variety of adverse marketing conditions, including record low prices, unfairly priced imports of apple juice concentrate, high regulatory costs, food retail consolidation and subsidized foreign competition.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG63

52. • CLARIFICATION OF GUARANTEED FARM OWNERSHIP AND OPERATING LOAN REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 1480; 7 USC 1989

CFR Citation: 7 CFR 762

Legal Deadline: None

Abstract: The USDA Farm Service Agency (FSA) proposes a rule to correct minor errors and clarify confusing sections in 7 CFR 762. FSA promulgated part 762 on February 12, 1999, to implement a Preferred Lender Program and improve its guaranteed loan regulations. First, this rule proposes to correct §762.120(d). This section requires all members of an entity to be citizens while the authorizing statute requires only a majority of entity members to be citizens. Second, "experience" will be added to §762.120 as an eligibility requirement. Adequate experience is currently a requirement for loan applicants; however, the regulation is not sufficiently clear. This rule proposes to correct that omission. Finally, the rule proposes to clarify entity eligibility, security requirements, and miscellaneous items, such as how lenders use guarantees as security.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11 Agriculture, Forestry, Fishing, and Hunting

Agency Contact: Mr. Phillip Elder, Agricultural Economist, Department of Agriculture, Farm Service Agency, MS 0572, 1400 Indepenedence Avenue SW, Washington, DC 20250
Phone: 202 690-4012
Fax: 202 720-5233
Email: phillip__elder@wdc.usda.gov

RIN: 0560–AG65

53. • SERVICING MINOR FARM LOAN PROGRAM LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1932 Note; 7 USC 1989; 16 USC 1005; 31 USC 3711

CFR Citation: 7 CFR 772; 7 CFR 1901-E; 7 CFR 1942-A; 7 CFR 1951-E and F; 7 CFR 1956-C

Legal Deadline: None

Abstract: The rule proposes to consolidate regulations currently shared by FSA and the agencies of the USDA Rural Development mission area and publish a single Farm Service Agency regulation. The existence of provisions governing these loans in scattered regulations make proper administration difficult. Information not specific to the Minor Programs will be eliminated, language will be improved for readability, and only regulations pertaining to the FSA Minor Programs will be included. FSA's minor loan program borrowers, a total of 52 Irrigation and Drainage Loan borrowers and 88 Grazing and Land Shift Loan borrowers, with a total outstanding balance of around $20 million, are the only program participants who will be affected by this proposed rule. When finalized, the rule will not change the requirements or the effect of the regulations pertaining to FSA Minor Program Loans. The consolidation of the regulations will enable more efficient use by FSA staff who administer the programs and better service to the customers with these loans. There will be no additional outlays of Federal funds, no additional staffing and no additional paperwork burden.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG67

54. • SALE AND PURCHASE OF FLUE-CURED TOBACCO ACROSS COUNTY LINES (FLORIDA AND GEORGIA)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-78

CFR Citation: 7 CFR 723

Legal Deadline: None

Abstract: Current regulations require the Farm Service Agency (the Agency) to approve only requests for sale of flue-cured tobacco quota between farms located within the same county. The Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2000, however, provided for this to change if a sufficient number of voting producers who own or grow the tobacco wanted it. The Act directed the Secretary to conduct a referendum within any State in which at least 25 per cent of the active flue-cured producers in that State petitioned the Secretary to do so. Thus the producers themselves would determine if the regulations would permit the sale of flue-cured tobacco quota within a state across county lines. More than the required 25 per cent of active flue-cured producers in both Florida and Georgia requested a referendum. The Agency conducted the referenda in October, 2001. In Florida 76.8 percent of those voting approved permitting the sale of flue-cured quota across county lines and in Georgia, 81.2 per cent of the voters approved the changes. Therefore, this action will amend the regulation that limits such sales to within a county. It will not result in any additional budget outlays or financial risk to either the small number of producers who will avail themselves of the opportunity it permits or to the Government.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
Phone: 202 205-5851
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG68

Department of Agriculture (USDA)
Farm Service Agency (FSA)

Completed Actions

55. DAIRY RECOURSE LOAN PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1430

Completed:

Reason	Date	FR Cite
Final Action	02/15/02	67 FR 7056

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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RIN: 0560–AF41

56. 1999-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Merged With 0560-AG58	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AF50

57. REMOVE INTERNAL AGENCY PROVISIONS FROM FSA FARM CREDIT PROGRAM REGULATIONS FOR LIQUIDATION OF LOANS SECURED BY REAL ESTATE AND ACQUISITION OF REAL AND CHATTEL PROPERTY

Priority: Info./Admin./Other

CFR Citation: 7 CFR 1955

Completed:

Reason	Date	FR Cite
Merged With 0560-AF60	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
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RIN: 0560–AF53

58. STREAMLINING OF THE EMERGENCY FARM LOAN PROGRAM REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1945

Completed:

Reason	Date	FR Cite
Final Action	01/08/02	67 FR 791
Correction	02/21/02	67 FR 7941

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
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RIN: 0560–AF72

59. 2000-CROP PEANUTS NATIONAL POUNDAGE QUOTA, NATIONAL AVERAGE LOAN RATES FOR QUOTA AND ADDITIONAL PEANUTS AND MINIMUM EXPORT-EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Priority: Other Significant

CFR Citation: 7 CFR 729; 7 CFR 1446

Completed:

Reason	Date	FR Cite
Merged With 0560-AG57	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AF83

60. 2000-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Merged With 0560-AF84	12/31/99	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AF84

61. DISASTER SET-ASIDE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1951

Completed:

Reason	Date	FR Cite
Interim Final Rule	05/17/00	65 FR 31248
Interim Final Rule Comment Period End	07/17/00	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AF91

62. LAMB MEAT ADJUSTMENT ASSISTANCE PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 784

Completed:

Reason	Date	FR Cite
Final Action Effective	03/21/02	
Final Action	03/26/02	67 FR 13707

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG17

63. 2001-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR FLUE-CURED TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Merged With 0560-AG60	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
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RIN: 0560–AG28

64. 2001-CROP MARKETING QUOTA AND PRICE SUPPORT LEVEL FOR BURLEY TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Merged With 0560-AG59	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
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RIN: 0560–AG29

65. 2001-CROP MARKETING AND PRICE SUPPORT LEVELS FOR FIVE KINDS OF TOBACCO

Priority: Other Significant

CFR Citation: 7 CFR 723; 7 CFR 1464

Completed:

Reason	Date	FR Cite
Merged With 0560-AG58	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
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RIN: 0560–AG30

66. 2001-CROP PEANUTS NATIONAL POUNDAGE QUOTA, NATIONAL AVERAGE LOAN RATES FOR 2001-CROP QUOTA AND ADDITIONAL PEANUTS AND MINIMUM EXPORT EDIBLE SALES PRICE FOR ADDITIONAL PEANUTS

Priority: Other Significant

CFR Citation: 7 CFR 729; 7 CFR 1421; 7 CFR 1446

Completed:

Reason	Date	FR Cite
Merged With 0560-AG57	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
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RIN: 0560–AG31

67. LIVESTOCK INDEMNITY PROGRAM AND LIVESTOCK INDEMNITY PROGRAM FOR CONTRACT GROWERS

Priority: Other Significant

CFR Citation: 7 CFR 1439

Completed:

Reason	Date	FR Cite
Final Rule: LIP 2000	02/19/02	67 FR 7265

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG33

68. CONSERVATION RESERVE PROGRAM—FAILURE TO ESTABLISH COVER AND GOOD FAITH RELIANCE

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1410

Completed:

Reason	Date	FR Cite
Final Rule	01/16/02	67 FR 2131

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
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Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG37

69. REDUCTION OF AMORTIZED SHARED APPRECIATION RECAPTURE INTEREST RATE

Priority: Other Significant

CFR Citation: 7 CFR 761; 7 CFR 1910; 7 CFR 1927; 7 CFR 1941; 7 CFR 1943; 7 CFR 1945

Completed:

Reason	Date	FR Cite
Final Action	02/21/02	67 FR 7942

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG43

70. TOBACCO MARKETING QUOTAS, ACREAGE ALLOTMENTS AND PRODUCTION ADJUSTMENT

Priority: Other Significant

CFR Citation: 7 CFR 1464

Completed:

Reason	Date	FR Cite
NPRM	01/04/02	67 FR 526
Direct Final Rule	01/04/02	67 FR 481
Direct Final Rule Effective	02/04/02	
Affirmation of Direct Final Rule	03/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Witzig
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG51

71. • TOBACCO LOSS ASSISTANCE PROGRAM 2001

Priority: Other Significant

Legal Authority: PL 107-76; 7 USC 1421, 1423, 1441, 1445, 1445-1, and 1445-2; 15 USC 714b, 715c

CFR Citation: 7 CFR 1464

Legal Deadline: Other, Statutory, March 31, 2002, Expiration of Authority to issue payments.

Abstract: Section 774 of the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 2002 directs the Farm Service Agency to issue payments to producers and quota holders for 2001 Fire Cured, Dark Air Cured, and Virginia Sun Cured Tobacco. The payments will be $.10 per pound. The amount appropriated is $5,000,000.

Timetable:

Action	Date	FR Cite
Final Action Effective	03/01/02	
Final Action	03/20/02	67 FR 12829

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Sectors Affected: 11191 Tobacco Farming

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250
Phone: 202 205-5851
Fax: 202 720-5233
Email: tom__witzig@wdc.fsa.usda.gov

RIN: 0560–AG61

72. • DAIRY INDEMNITY PAYMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-76

CFR Citation: 7 CFR 760

Legal Deadline: None

Abstract: The Agriculture, Rural Development, Food and Drug Administration and Related Agencies Appropriation Act, 2002 provided $100,000 for the Dairy Indemnity Payment Program, which indemnifies dairy farmers for milk dumped because of contamination that was not the fault of the producer. The program is reauthorized annually via the appropriation of funds. The Appropriations Act further provided that the program is to be carried out in the same manner as the previous year. Therefore, this action will make no change to the program regulations and will only amend the statutory authority in the Code of Federal Regulations. In a typical year, less than $30,000 is spent.

Timetable:

Action	Date	FR Cite
Final Action	03/28/02	67 FR 14843

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Witzig, Chief, Regulatory Review and Foreign Investment Disclosure Branch, Department of Agriculture, Farm Service Agency, 1400 Independence Avenue SW, Room 6734-S, Washington, DC 20250

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USDA—FSA **Completed Actions**

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Email: tom__witzig@wdc.fsa.usda.gov
RIN: 0560–AG66
BILLING CODE 3410–05–S

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS) **Prerule Stage**

73. ANIMAL WELFARE: MARINE MAMMALS; NONCONSENSUS LANGUAGE AND INTERACTIVE PROGRAMS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3

Legal Deadline: None

Abstract: The U.S. Department of Agriculture regulates the treatment of certain marine mammals under the Animal Welfare Act. The present standards for treatment of these animals have been in effect for over 10 years. During this time, advances have been made and new information has been developed with regard to the housing and care of marine mammals. We intend to develop amendments to the marine mammal standards on which consensus was not reached during negotiated rulemaking conducted between September 1995 and July 1996. The amendments would be to standards affecting variances, indoor facilities, outdoor facilities, space requirements, and water quality, as well as swim-with-the-dolphins programs. These actions appear necessary to ensure that the minimum standards for the humane handling, care, treatment, and transportation of marine mammals in captivity are based on current general, industry, and scientific knowledge and experience.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234
Phone: 301 734-7833

RIN: 0579–AB24

74. • POTENTIAL PATHWAYS FOR THE SPREAD OF BOVINE SPONGIFORM ENCEPHALOPATHY IN U.S. LIVESTOCK

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 711 to 7714; 7 USC 7751; 7 USC 7754; 19 USC 1306; 21 USC 111; 21 USC 114a; 21 USC 134a to 134c; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: We are soliciting public comment to help us develop approaches to control risks that dead stock and nonambulatory animals could serve as potential pathways for the spread of bovine spongiform encephalopathy, if that disease should ever be introduced into the United States. We are also seeking comments on the role of rendering in dead stock disposal. We are publishing this notice to collect information that could help us address animal disease risks associated with nonambulatory animals and dead stock.

Timetable:

Action	Date	FR Cite
ANPRM	07/00/02	
ANPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Linda Detwiler, Emergency Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 320 Corporate Boulevard, Robbinsville, NJ 08691
Phone: 609 259-5825

RIN: 0579–AB43

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS) **Proposed Rule Stage**

75. IMPORTATION OF SOLID WOOD PACKING MATERIAL

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7701 to 7772

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: APHIS is undertaking rulemaking to strengthen restrictions on the importation of solid wood packing material (e.g., crates, dunnage, wooden spools, pallets, packing blocks) into the United States. Imported solid wood packing material (SWPM) has been linked to introductions of exotic plant pests, such as the pine shoot beetle and the Asian longhorned beetle. These and other plant pests that could be carried by imported SWPM pose a serious threat to U.S. agriculture and to natural, cultivated, and urban forests. SWPM accompanies nearly all types of imported commodities, from fruits and vegetables to machinery and electrical equipment.

Timetable:

Action	Date	FR Cite
ANPRM	01/20/99	64 FR 3049
ANPRM Comment Period End	03/22/99	
Notice	07/07/99	64 FR 36608
Comment Period End	09/07/99	
Notice	10/17/00	65 FR 61301
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

USDA—APHIS **Proposed Rule Stage**

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Raymond Nosbaum, Regulatory Coordination, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 141, 4700 River Road, Riverdale, MD 20737-1228
Phone: 301 734-6280

RIN: 0579–AA99

76. BLOOD AND TISSUE COLLECTION AT LIVESTOCK SLAUGHTERING ESTABLISHMENTS

Priority: Other Significant

Legal Authority: 21 USC 111 to 113; 21 USC 114a to 114a-1; 21 USC 115 to 117; 21 USC 120 to 126; 21 USC 134b; 21 USC 134f

CFR Citation: 9 CFR 71

Legal Deadline: None

Abstract: We are considering establishing requirements for the collection of blood and tissue samples from livestock (horses, cattle, bison, sheep, and swine) and poultry at slaughter establishments when it is necessary for disease surveillance. Under this proposal, any person who moves an animal interstate for slaughter could only move the animal to a slaughter establishment that has been approved by the Administrator. The Administrator would approve a slaughter establishment after determining that it is not necessary to conduct testing at the establishment or determining that it is necessary to conduct testing at the establishment and the establishment provides space and facilities to collect blood and tissue samples for disease testing. This collection of blood and tissue samples would enable us to identify animals at slaughter that are affected by various communicable diseases. This change would affect persons moving animals interstate for slaughter, slaughter plants that receive animals in interstate commerce, and in cases where an animal that tests positive can be successfully traced back to its herd or flock of origin, the owners of such herds or flocks. The long-term effects of this change would be to improve surveillance programs for animal diseases and to contribute to the eventual control or eradication of such diseases.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Diane Sutton, Senior Staff Veterinarian, VS, National Animal Health Programs, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4363

RIN: 0579–AB13

77. BEES, BEEKEEPING BYPRODUCTS, AND BEEKEEPING EQUIPMENT (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 7 USC 281; 7 USC 7701 to 7772

CFR Citation: 7 CFR 319; 7 CFR 322

Legal Deadline: None

Abstract: We propose to revise the regulations for the importation of honeybees and honeybee semen. Among other things, we propose to allow, under certain conditions, the importation into the United States of honeybees from Australia and honeybees and honeybee germ plasm from New Zealand. We also propose changes to make these regulations more consistent with standards established by the Office International des Epizooties, to update them to reflect current research and terminology, and to simplify them and make them more useful.

In addition, we propose to combine the regulations for the importation of honeybees and honeybee semen with the regulations established to prevent the introduction of exotic bee diseases and parasites through the importation of bees other than honeybees, certain beekeeping byproducts, and used beekeeping equipment. This change would make the regulations more useful by consolidating all of the requirements related to the importation of bees, beekeeping byproducts, and used beekeeping equipment into one part.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/00/02	
Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Wayne Wehling, Permits and Risk Assessment, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 141, 4700 River Road, Riverdale, MD 20737-1228
Phone: 301 734-8757

RIN: 0579–AB20

78. VETERINARY DIAGNOSTIC USER FEES—5-YEAR PLAN FOR FEES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5542; 7 USC 1622; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 114 to 114a; 21 USC 134a; 21 USC 134c to 134d; 21 USC 134f; 21 USC 136 to 136a; 31 USC 3701; 31 USC 3716; 31 USC 3717; 31 USC 3719; 31 USC 3720A

CFR Citation: 9 CFR 130

Legal Deadline: None

Abstract: We are proposing user fees for multiple fiscal years for APHIS' Veterinary Services' veterinary diagnostic user fee goods and services. We are proposing this action in order to ensure that we recover the full costs of providing these goods and services.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Donna Ford, User Fee Section Head, FSSB, BASE, MRPBS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-8351

RIN: 0579–AB22

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79. SALMONELLA ENTERITIDIS PHAGE-TYPE 4; REMOVE IMPORT RESTRICTIONS

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 19 USC 1306; 21 USC 111; 21 USC 114a; 21 USC 134a to 134c; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 94

Legal Deadline: None

Abstract: This rule would remove import restrictions on eggs (other than hatching eggs) of poultry, game birds, and other birds from regions where Salmonella enteritidis phage-type 4 exists. Previously, Salmonella enteritidis phage-type 4 had not been isolated in the United States; therefore, those import restrictions were necessary to help prevent Salmonella enteritidis phage-type 4 from being introduced into this country. However, Salmonella enteritidis phage-type 4 is now known to be present in the United States.

Timetable:

Action	Date	FR Cite
Proposed Rule	11/00/02	
Proposed Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Michael David, Asst. Director, Sanitary International Standards Team, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 33, 4700 River Road, Riverdale, MD 20737 Phone: 301 734-8093

RIN: 0579–AB31

80. FOOT-AND-MOUTH DISEASE; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 21 USC 111; 21 USC 114 to 114a; 21 USC 134a to 134h

CFR Citation: 9 CFR 53

Legal Deadline: None

Abstract: APHIS is proposing to amend its regulations for the cooperative control and eradication of livestock or poultry diseases. These changes would provide APHIS with much needed flexibility in responding in an effective manner in the event of an outbreak of foot-and-mouth disease so that eligible claimants may be compensated while at the same time protecting the U.S. livestock and poultry population from the further spread of this highly contagious disease.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Mark Teachman, Senior Staff Veterinarian, Emergency Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 41, 4700 River Road, Riverdale, MD 20737-1231 Phone: 301 734-8073

RIN: 0579–AB34

81. CHRONIC WASTING DISEASE IN ELK; INTERSTATE MOVEMENT RESTRICTIONS AND PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 21 USC 111 to 114a-1; 21 USC 120 to 121; 21 USC 125; 21 USC 134b

CFR Citation: 9 CFR 55; 9 CFR 81

Legal Deadline: None

Abstract: APHIS is proposing to establish minimum requirements for the interstate movement of farmed elk and to provide indemnity for the depopulation of farmed elk that have been infected with, or exposed to, chronic wasting disease (CWD).

Timetable:

Action	Date	FR Cite
Interim Rule	02/08/02	67 FR 5925
Interim Rule Comment Period End	04/09/02	
Proposed Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: APHIS documents published in the Federal Register and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at http://www.aphis.usda.gov/ppd/rad/webrepor.html.

Agency Contact: Dr. Lynn Creekmore, Staff Veterinarian/Wildlife Diseases Liaison, NAHPS, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4101 Laporte Avenue, Fort Collins, CO 80521 Phone: 970 266-6128

RIN: 0579–AB35

82. • IMPORTATION OF MILK AND MILK PRODUCTS FROM FMD COUNTRIES

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 19 USC 1306; 21 USC 111; 21 USC 114a; 21 USC 134a to 134c; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 94

Legal Deadline: None

Abstract: This rule would amend the regulations regarding the importation of animal products to establish additional processing and handling requirements for milk and milk products imported from regions in which foot-and-mouth disease exists. Additionally, it would require that those materials, when imported from regions in which foot-and-mouth disease exists, be accompanied by government certification regarding the production, processing, and handling of the materials. We believe these actions are necessary to ensure that materials containing the foot-and-mouth disease virus are not imported into the United States.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Karen A. James-Preston, Assistant Director, Technical Trade Services Team, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737-1231 Phone: 301 734-8364

RIN: 0579–AB38

83. • IMPORTATION OF CLEMENTINES FROM SPAIN

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7701 to 7772; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

Abstract: This rule would allow clementines to be imported from Spain if they are cold treated en route to the United States, and provided that certain other pre- and post-treatment requirements are met. We are taking this action based on our finding that this rule, if adopted, would reduce the risk of dissemination of fruit flies associated with the importations of clementines from Spain.

Timetable:

Action	Date	FR Cite
Proposed Rule	07/00/02	
Proposed Rule Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737-1236 Phone: 301 734-6799

RIN: 0579–AB40

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Final Rule Stage

84. ANIMAL WELFARE; INSPECTION, LICENSING, AND PROCUREMENT OF ANIMALS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 1 to 2

Legal Deadline: None

Abstract: This action would make several amendments to the Animal Welfare Act regulations to clarify them and improve their enforceability. In addition, it would amend a number of administrative procedures to make them more efficient. We believe these actions are necessary to help ensure compliance with the regulations and the Animal Welfare Act.

Timetable:

Action	Date	FR Cite
Proposed Rule	08/04/00	65 FR 47908
Comment Period End	10/03/00	
Comment Period Reopened and Extended	10/19/00	65 FR 62650
Comment Period End	11/20/00	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234 Phone: 301 734-7833

RIN: 0579–AA94

85. PHYTOSANITARY TREATMENT BY IRRADIATION OF IMPORTED FRESH FRUITS AND VEGETABLES

Priority: Other Significant

Legal Authority: 7 USC 7701 to 7772

CFR Citation: 7 CFR 305; 7 CFR 319

Legal Deadline: None

Abstract: This rulemaking would establish irradiation as a new treatment alternative for the importation of certain fresh fruits and vegetables. Irradiation would be allowed as an alternative to mitigation measures that are required to control certain species of fruit flies in a variety of imported fruits and vegetables. If this proposal is adopted, importers of certain fruits and vegetables will have an additional alternative to the currently approved treatments, such as fumigation and cold treatment, for treating their articles. No net societal gains and losses other than small price-related changes are expected from this rulemaking.

Timetable:

Action	Date	FR Cite
Policy Statement for Irradiation Treatment of Fresh Fruits and Vegetables	05/15/98	63 FR 24433
Proposed Rule	05/26/00	65 FR 34113
Comment Period End	07/25/00	
Proposed Rule (Supplemental)	05/00/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donna L. West, Import Specialist, Phytosanitary Issues Management Team, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, 4700 River Road, Riverdale, MD 20737-1236 Phone: 301 734-6799

RIN: 0579–AA97

86. IMPORTATION OF UNMANUFACTURED WOOD ARTICLES FROM MEXICO

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 450; 7 USC 7711 to 7714; 7 USC 7718; 7 USC 7731 to 7732; 7 USC 7751 to 7754; 21 USC 136 to 136a

CFR Citation: 7 CFR 319

Legal Deadline: None

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Abstract: This action would add restrictions on the importation of pine and fir logs and lumber, as well as other unmanufactured wood articles, from Mexico. These wood articles from Mexico would have to meet certain treatment and handling requirements to be eligible for importation into the United States. We believe this action is necessary to prevent the introduction into the United States of dangerous plant pests, including forest pests, with unmanufactured wood articles from Mexico.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/11/99	64 FR 31512
Comment Period End	08/10/99	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Wayne D. Burnett, Senior Import Specialist, PIM, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 140, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-6799

RIN: 0579–AB02

87. ESTABLISHMENT OF REGIONS IN THE EUROPEAN UNION FOR CLASSICAL SWINE FEVER, FOOT-AND-MOUTH DISEASE, AND SWINE VESICULAR DISEASE

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 1622; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 114a; 21 USC 134a to 134d; 21 USC 134f; 21 USC 135 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 92; 9 CFR 94; 9 CFR 98

Legal Deadline: None

Abstract: This action would recognize certain regions in the European Union as regions where classical swine fever is not known to exist and from which live swine, swine semen, and pork and pork products may be imported into the United States under certain conditions. Additionally, it would recognize Greece as free of swine vesicular disease and recognize eight regions in Italy as free of swine vesicular disease.

Timetable:

Action	Date	FR Cite
Proposed Rule	06/25/99	64 FR 34155
Comment Period End	08/24/99	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. S. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4929

RIN: 0579–AB03

88. PSEUDORABIES IN SWINE; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 21 USC 111 to 114a-1; 21 USC 120 to 121; 21 USC 125; 21 USC 134b

CFR Citation: 9 CFR 52

Legal Deadline: None

Abstract: We are amending the animal health regulations to provide for the payment of indemnity by the United States Department of Agriculture for the voluntary depopulation of herds of swine known to be infected with pseudorabies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/12/99	64 FR 2545
Interim Final Rule Comment Period End	04/16/99	
Interim Final Rule	04/18/00	65 FR 20706
Interim Final Rule Comment Period End	06/19/00	
Affirmation of Interim Rules	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Arnold C. Taft, Senior Staff Veterinarian, National Animal Health Programs Staff, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4916

RIN: 0579–AB10

89. PLUM POX COMPENSATION

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 7711 to 7712; 7 USC 7714; 7 USC 7731; 7 USC 7735; 7 USC 7751 to 7754; sec 301.75-15 also issued under sec 204, title II, PL 106-113; 113 Stat. 1501A-293; sec 301.75-15 and 301.75.16 also issued under sec 203; title II, PL 106-224, 114 Stat. 400 (7 USC 1421 note)

CFR Citation: 7 CFR 301.74-5

Legal Deadline: None

Abstract: APHIS has published an interim rule amending its plum pox regulations to provide for the payment of compensation to the owners of commercial stone fruit orchards and fruit tree nurseries who had stone fruit trees or nursery stock destroyed in order to control plum pox. The payment of these funds is necessary in order to reduce the economic impact of the plum pox quarantine on affected commercial stone fruit growers and fruit tree nursery owners. APHIS anticipates finalizing this interim rule after addressing the comments received.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/14/00	65 FR 55431
Interim Final Rule Comment Period End	11/13/00	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen R. Poe, Operations Officer, Program Support Staff, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 134, 4700 River Road, Riverdale, MD 20737-1236
Phone: 301 734-8247

RIN: 0579–AB19

90. ANIMAL WELFARE; POLICY ON ENVIRONMENT ENHANCEMENT FOR NONHUMAN PRIMATES

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3.81

Legal Deadline: None

Abstract: APHIS' Animal Welfare Act regulations require that dealers, exhibitors, and research facilities that maintain nonhuman primates develop and follow a plan for environment enhancement adequate to promote the psychological well-being of nonhuman primates.

APHIS is preparing a final policy statement to provide guidance on what we believe must be considered and included in the plan in order for dealers, exhibitors, and research facilities to adequately promote the psychological well-being of nonhuman primates. This final policy statement addresses the comments received in response to our draft policy statement.

Timetable:

Action	Date	FR Cite
Draft Policy Statement	07/15/99	64 FR 38145
Comment Period End	10/13/99	
Final Policy Statement	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234
Phone: 301 734-7833

RIN: 0579–AB25

91. IMPORTATION PROHIBITIONS BECAUSE OF BOVINE SPONGIFORM ENCEPHALOPATHY

Priority: Other Significant

Legal Authority: 7 USC 450; 7 USC 7711 to 7714; 7 USC 7751; 7 USC 7754; 18 USC 1306; 21 USC 111; 21 USC 134b to 134c; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701

CFR Citation: 9 CFR 94.18; 9 CFR 95.1; 9 CFR 95.4; 9 CFR 95.29 (New)

Legal Deadline: None

Abstract: This interim rule prohibits, with limited exceptions, the importation of certain animal materials and their derivatives, and any products they are used in, from regions considered to present an unacceptable risk of introducing bovine spongiform encephalopathy (BSE) into the United States. Additionally, it requires that those materials, when imported from regions not considered at risk for BSE, be accompanied by Government certification regarding the species, region of origin, processing, and handling of the materials and the animals from which they were derived. These actions are necessary to ensure that materials containing the BSE agent are not imported into the United States.

Timetable:

Action	Date	FR Cite
IRM Retroactively Effective	12/07/00	
Interim Final Rule	08/14/01	66 FR 42595
Sec 95.29 Effective	08/14/01	
Comment Period End	10/15/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Donna L. Malloy, Senior Staff Veterinarian, Technical Trade Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-3277

RIN: 0579–AB26

92. ANIMALS DESTROYED BECAUSE OF TUBERCULOSIS; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 21 USC 111 to 114a-1; 21 USC 120 to 121; 21 USC 125; 21 USC 134b

CFR Citation: 9 CFR 50

Legal Deadline: None

Abstract: This action will provide that APHIS will pay owners of animals destroyed because of bovine tuberculosis an indemnity equal to the difference between the net salvage received and the appraisal value of the animals destroyed up to $3,000 per animal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/20/02	67 FR 7583
Interim Final Rule Comment Period End	04/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Joseph Van Tiem, Staff Veterinarian, VS, National Animal Health Program, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-7716
Email: jvantiem@aphis.usda.gov

RIN: 0579–AB29

93. • TUBERCULOSIS; INDEMNITY FOR DAIRY CATTLE

Priority: Other Significant

Legal Authority: 21 USC 111 to 114a-1; 21 USC 120 to 121; 21 USC 134b

CFR Citation: 9 CFR 50

Legal Deadline: None

Abstract: This action will provide that APHIS will make payments to owners of dairy cattle as well as other property used in connection with a dairy business and a dairy processing plant in the area of El Paso, TX, provided the owners agree to refrain from establishing new cattle breeding operations in the area.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Interim Final Rule Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Joseph Van Tiem, Staff Veterinarian, VS, National Animal Health Program, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-7716
Email: jvantiem@aphis.usda.gov

RIN: 0579–AB36

94. • INFECTIOUS SALMON ANEMIA; PAYMENT OF INDEMNITY

Priority: Other Significant

Legal Authority: 21 USC 111; 21 USC 114 to 114a

CFR Citation: 9 CFR 53

Legal Deadline: None

Abstract: We are amending the regulations regarding the control and eradication of certain communicable diseases of livestock or poultry to provide for the payment of indemnity to producers in the State of Maine for fish destroyed due to infectious salmon anemia. Because depopulation is necessary to control infectious salmon anemia, a successful control program

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will provide for indemnification of depopulated fish to gain producer support. This action will, therefore, increase the effectiveness of our efforts to control infectious salmon anemia in Maine and prevent further outbreaks of the disease.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/11/02	67 FR 17605
Interim Final Rule Comment Period End	06/10/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Dr. Otis Miller,jr., National Aquaculture Coordinator, NAHP, Veterinary Services, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 36, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-8715

RIN: 0579–AB37

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95. • ANIMAL WELFARE; POLICY ON TRAINING AND HANDLING OF POTENTIALLY DANGEROUS ANIMALS

Priority: Other Significant

Legal Authority: 7 USC 2131 to 2159

CFR Citation: 9 CFR 3

Legal Deadline: None

Abstract: APHIS's Animal Welfare Act regulations require exhibitors and other regulated entities that handle potentially dangerous animals to provide a sufficient number of adequately trained personnel to handle and care for the animals and to provide adequate protection from risk for the general public when animals are exhibited.

APHIS is preparing a final policy statement to provide guidance to exhibitors and other regulated entities for the training and handling of potentially dangerous animals, adequate experience and training of trainers, handlers, and attendants, and points to consider when developing emergency contingency plans. The final policy statement addresses the comments received in response to our draft policy statement.

Timetable:

Action	Date	FR Cite
Draft Policy Statement	02/18/00	65 FR 8318
Comment Period End	04/18/00	
Final Policy Statement	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Barbara Kohn, Senior Staff Veterinarian, Animal Care, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 84, 4700 River Road, Riverdale, MD 20737-1234
Phone: 301 734-7833

Related RIN: Previously reported as 0579-AB12

RIN: 0579–AB39

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96. • ADDITIONAL RESTRICTIONS ON THE IMPORTATION OF CERTAIN RUMINANT MEAT, MEAT PRODUCTS, AND EDIBLE PRODUCTS OTHER THAN MEAT FROM BSE REGIONS

Priority: Other Significant

Legal Authority: Title IV, PL 106-224; Title IV, PL 114 Stat. 438; 7 USC 7701 to 7772; 7 USC 450; 19 USC 1306; 21 USC 111; 21 USC 114a; 21 USC 134a to 134c; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701; 42 USC 4331 to 4332

CFR Citation: 9 CFR 94; 9 CFR 96

Legal Deadline: None

Abstract: We are amending the regulations governing the importation into the United States of meat and meat products from ruminants and other ruminant products to restrict the importation of meat and meat products from ruminants and certain other ruminant products that were processed or stored in regions where bovine spongiform encephalopathy exists or regions considered to present an undue risk of introducing bovine spongiform encephalopathy into the United States. This action is necessary to ensure that materials containing the bovine spongiform encephalopathy agent are not imported into the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Donna L. Malloy, Senior Staff Veterinarian, Technical Trade Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-3277

RIN: 0579–AB41

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97. • BRUCELLOSIS IN SHEEP, GOATS, AND HORSES; PAYMENT OF INDEMNITY (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 21 USC 111 to 113; 21 USC 114 to 114a-1; 21 USC 120 to 121; 21 USC 125; 21 USC 134b

CFR Citation: 9 CFR 51

Legal Deadline: None

Abstract: We are proposing to amend the brucellosis indemnity regulations to allow us to pay indemnity for sheep, goats, and horses destroyed because of brucellosis. This action would make it easier to eliminate affected herds/flocks and infected animals as sources of infection by encouraging herd and flock owners to cooperate with our brucellosis eradication program. This action is intended to help reduce the incidence of brucellosis and the likelihood of it spreading within the United States.

Timetable:

Action	Date	FR Cite
Proposed Rule	09/13/01	66 FR 47593
Proposed Rule Comment Period End	11/13/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Valerie Ragan, Senior Staff Veterinarian, National Animal Health Programs, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 43, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-7708

RIN: 0579–AB42

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98. • KARNAL BUNT COMPENSATION

Priority: Other Significant

Legal Authority: 7 USC 166; 7 USC 7711 to 7712; 7 USC 7714; 7 USC 7731; 7 USC 7735; 7 USC 7751 to 7754

CFR Citation: 7 CFR 301

Legal Deadline: None

Abstract: We are amending the Karnal bunt regulations to provide compensation for certain growers and handlers of grain and seed affected by Karnal bunt who are not currently eligible for compensation, and for certain wheat grown outside the regulated area that was commingled with wheat grown in regulated areas in Texas. This rule particularly addresses areas that became regulated during the latter part of the 2000-2001 growing season; due to the need to quickly regulate these areas, we were unable to modify the compensation regulations at that time to address certain relevant aspects of the way seed and grain are moved, stored, and used in the newly regulated areas. The payment of compensation is necessary in order to encourage the participation of, and obtain cooperation from, affected individuals in our efforts to contain and reduce the prevalence of Karnal bunt.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Interim Final Rule Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert G. Spaide, Director of Surveillance and Emergency Programs Planning and Coordination, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 98, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-7819

Related RIN: Related To 0579-AA83

RIN: 0579–AB45

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS)

Long-Term Actions

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99. IMPORTATION OF CERTAIN EMBRYOS AND ANIMAL SEMEN (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 98

Timetable:

Action	Date	FR Cite
ANPRM	07/08/93	58 FR 36625
ANPRM Comment Period End	09/07/93	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roger Perkins
Phone: 301 734-8364

RIN: 0579–AA63

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100. PLANT PEST REGULATIONS; UPDATE OF CURRENT PROVISIONS (SECTION 610 REVIEW)

Priority: Other Significant

CFR Citation: 7 CFR 330

Timetable:

Action	Date	FR Cite
ANPRM	09/27/96	61 FR 50767
ANPRM Comment Period End	12/26/96	
NPRM	10/09/01	66 FR 51340
NPRM Comment Period End	02/06/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Flanders
Phone: 301 734-5930

RIN: 0579–AA80

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101. IMPORTATION OF FUJI APPLES FROM THE REPUBLIC OF KOREA

Priority: Other Significant

CFR Citation: 7 CFR 319.56-2cc

Timetable:

Action	Date	FR Cite
Proposed Rule	04/26/00	65 FR 24423
Comment Period End	06/26/00	
Comment Period Extended	08/22/00	65 FR 50937
Comment Period End	10/23/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Wayne D. Burnett
Phone: 301 734-6799

RIN: 0579–AA93

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102. HORSE PROTECTION; HORSE INDUSTRY ORGANIZATIONS

Priority: Other Significant

CFR Citation: 9 CFR 11

Timetable:

Action	Date	FR Cite
Proposed Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jodie Kulpa
Phone: 301 734-7833

RIN: 0579–AB04

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103. PHYTOSANITARY CERTIFICATES FOR IMPORTED FRUITS AND VEGETABLES

Priority: Other Significant

CFR Citation: 7 CFR 319.56 to 319.56-8

Timetable:

Action	Date	FR Cite
Proposed Rule	08/29/01	66 FR 45637
Comment Period End	10/29/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Wayne D. Burnett
Phone: 301 734-6799

RIN: 0579–AB18

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104. EXPORTATION OF LIVESTOCK (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 91

Timetable:

Action	Date	FR Cite
Proposed Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

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USDA—APHIS — **Long-Term Actions**

Government Levels Affected: None

Agency Contact: Gary Colgrove
Phone: 301 734-4356

RIN: 0579–AB21

105. NURSERY STOCK REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 300; 7 CFR 319

Timetable:

Action	Date	FR Cite
NPRM	12/28/01	66 FR 67123
NPRM Comment Period End	02/26/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Wayne D. Burnett
Phone: 301 734-6799

RIN: 0579–AB23

106. DRAFT ACTION PLAN FOR THE NOXIOUS WEEDS PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 360

Timetable:

Action	Date	FR Cite
Notice	01/28/02	67 FR 3874
Comment Period End	03/29/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alan V. Tasker
Phone: 301 734-5225

RIN: 0579–AB30

107. • AMEND REGULATIONS TO HARMONIZE OUR IMPORT REQUIREMENTS WITH PROPOSED NATIONAL TUBERCULOSIS ERADICATION PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 1622; 19 USC 1306; 21 USC 102 to 105; 21 USC 111; 21 USC 114a; 21 USC 134a to 134d; 21 USC 134f; 21 USC 136 to 136a; 31 USC 9701

CFR Citation: 9 CFR 93

Legal Deadline: None

Abstract: This action would harmonize APHIS' animal import requirements with regard to bovine tuberculosis with the provisions of the domestic tuberculosis eradication program. It would establish risk classification categories based on the risk of tuberculosis in foreign regions.

Timetable:

Action	Date	FR Cite
Proposed Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. S. Anne Goodman, Senior Staff Microbiologist, Regionalization Evaluation Services, NCIE, VS, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 38, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-4929

RIN: 0579–AB44

Department of Agriculture (USDA)
Animal and Plant Health Inspection Service (APHIS) — **Completed Actions**

108. COMMERCIAL TRANSPORTATION OF EQUINES TO SLAUGHTER

Priority: Other Significant

CFR Citation: 9 CFR 70; 9 CFR 88 (New)

Completed:

Reason	Date	FR Cite
Final Rule	12/07/01	66 FR 63588
Final Rule Effective	01/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy R. Cordes
Phone: 301 734-3279

RIN: 0579–AB06

109. IMPORTATION OF UNSHU ORANGES

Priority: Other Significant

CFR Citation: 7 CFR 319.28

Completed:

Reason	Date	FR Cite
Final Rule Effective	01/28/02	
Final Rule	02/01/02	67 FR 4873

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Inder Paul Gadh
Phone: 301 734-6799

RIN: 0579–AB17

110. MEXICAN HASS AVOCADO IMPORT PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 319.56-2ff

Completed:

Reason	Date	FR Cite
Final Rule	11/01/01	66 FR 55530
Final Rule Effective	11/01/01	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

Agency Contact: Wayne D. Burnett
Phone: 301 734-6799

RIN: 0579–AB27

111. INTERSTATE MOVEMENT OF SWINE WITHIN A PRODUCTION SYSTEM

Priority: Other Significant

CFR Citation: 9 CFR 71; 9 CFR 85

Completed:

Reason	Date	FR Cite
Final Rule	12/20/01	66 FR 65598
Final Rule Effective	01/22/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Arnold C. Taft
Phone: 301 734-4916

RIN: 0579–AB28

USDA—APHIS — **Completed Actions**

112. BLACK STEM RUST; IDENTIFICATION REQUIREMENTS AND ADDITION OF RUST-RESISTANT VARIETIES (COMPLETION OF A SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 166; 7 USC 7711 to 7712; 7 USC 7714; 7 USC 7731; 7 USC 7735; 7 USC 7751 to 7754

CFR Citation: 7 CFR 301

Legal Deadline: None

Abstract: We are amending the black stem quarantine regulations by adding 32 new varieties to the list of rust-resistant varieties of Berberis, Mahoberberis, or Mahonia spp. We are also updating the regulations to reflect changes to the variety listing process.

Timetable:

Action	Date	FR Cite
Proposed Rule	04/07/98	63 FR 16908
Comment Period End	05/22/98	
Proposed Rule; Withdrawal and Reproposal	06/14/01	66 FR 32268
Comment Period End	08/13/01	
Final Rule	02/22/02	67 FR 8177
Final Rule Effective	03/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Vedpal S. Malik, Agriculturalist, Invasive Species and Pest Management, PPQ, Department of Agriculture, Animal and Plant Health Inspection Service, Unit 134, 4700 River Road, Riverdale, MD 20737-1231
Phone: 301 734-6774

RIN: 0579–AB33

BILLING CODE 3410–34–S

Department of Agriculture (USDA)
Rural Housing Service (RHS) — **Proposed Rule Stage**

113. CIVIL RIGHTS COMPLIANCE REQUIREMENTS—1901-E TO 1940-D

Priority: Other Significant

Legal Authority: PL 100-259; 29 USC 794; PL 94-135; 42 USC 6101 et seq; PL 94-239; 15 USC 1601 et seq; EO 11246; PL 88-352; 42 USC 2000d et seq; PL 90-284; 42 USC 3601 to 3619; PL 100-430; PL 92-318; 20 USC 1681 et seq; PL 93-112; EO 12898

CFR Citation: 7 CFR 15; 12 CFR 202; 28 CFR 42; 45 CFR 90; 41 CFR 60 to 64; 24 CFR 14; 7 CFR 1940 subpart D; 7 CFR 1901 subpart E

Legal Deadline: None

Abstract: This ruling will effectuate a comprehensive civil rights regulation implementing the following laws: The Equal Credit Opportunity Act (ECOA); title VI of the Civil Rights Act of 1964; title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988 (The Fair Housing Act); section 504 Federally Conducted and Federally Assisted Programs; title IX of the Education Amendments of 1972; Age Discrimination Act of 1975; and Executive Orders 11246 and 12898 (Environmental Justice). The revised regulations will provide detailed guidelines for field offices for improved enforcement and compliance with these laws, which heavily impact the Agency's programs. Mechanisms for monitoring compliance by field offices and recipients of Federal financial assistance at all levels will decrease the Agency's vulnerability that exist due to noncompliance with recently enacted Civil Rights legislation.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carlton L. Lewis, Chief, Program Compliance Branch, Department of Agriculture, Rural Housing Service, STOP 0703, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 692-0097
TDD Phone: 202 692-0107
Fax: 202 692-0305
Email: cllewis@rdmail.rural.usda.gov

RIN: 0575–AA83

114. NATIONAL FLOOD INSURANCE REGULATIONS

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 42 USC 4012a; 42 USC 4104b; 42 USC 4106; 42 USC 4128; PL 91-152; PL 93-234; PL 103-325; ...

CFR Citation: 7 CFR 1926, subpart B; 7 CFR 1806, subpart B

Legal Deadline: None

Abstract: The Agency is rewriting its regulations to conform to the requirements of the National Flood Insurance Reform Act of 1994 (NFIRA).

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Baxter Hill, Technical Support Branch Chief, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1499

RIN: 0575–AC07

115. SERVICING COMMUNITY PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 31 USC 3711; 42 USC 1480

CFR Citation: 7 CFR 3570 subpart E; 7 CFR 1951 subpart E; 7 CFR 1951 subpart O; 7 CFR 1955 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart C; 7 CFR 1951 subpart F

Legal Deadline: None

Abstract: The Agency is combining seven regulations affecting the servicing of Community Programs loans and grants into one regulation. There are no policy or procedural changes. The published regulation will be simplified by removing the administrative portion and will only contain the information affecting the public.

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Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Jones, Loan Specialist, Community Programs Division, Department of Agriculture, Rural Housing Service, Room 0183/Stop 0787, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1498
Email: epjones@rdmail.rural.usda.gov

RIN: 0575–AC12

116. MULTI-FAMILY HOUSING

Priority: Other Significant

Legal Authority: 5 USC 301; 42 USC 1490a; 7 USC 1989; 42 USC 1475; 42 USC 1479; 42 USC 1480; 42 USC 1481; 42 USC 1484; 42 USC 1485; 42 USC 1486

CFR Citation: 7 CFR 1806 subpart A; 7 CFR 1955 subpart B; 7 CFR 1955 subpart C; 7 CFR 1956 subpart B; 7 CFR 1965 subpart B; 7 CFR 1965 subpart E; 7 CFR 1930 subpart C; 7 CFR 1944 subpart D; 7 CFR 1944 subpart E; 7 CFR 1951 subpart C; 7 CFR 1951 subpart D; 7 CFR 1951 subpart K; 7 CFR 1951 subpart N; 7 CFR 1955 subpart A

Legal Deadline: None

Abstract: The Rural Housing Service proposes to consolidate regulations pertaining to section 515 Rural Rental Housing, section 514 Farm Labor Housing Loans, section 516 Farm Labor Housing Grants, and section 521 Rental Assistance Payments. Fourteen published regulations will be reduced to one regulation and handbooks for program administration. This will simplify loan origination and portfolio management for applicants, borrowers, and housing operators as well as Rural Development field staff. This will also provide flexibility for program modifications to reflect current and foreseeable changes. It will also reduce regulations that address solely internal Agency program administration. Finally, the regulation will be more customer friendly and responsive to the needs of the public.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Sheridan, Assistant Deputy Administrator, MFH, Department of Agriculture, Rural Housing Service, Room 1263/Stop 0782, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1609
Email: psherida@rdmail.rural.usda.gov

RIN: 0575–AC13

117. SELF-HELP TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 1480

CFR Citation: 7 CFR 1944; 7 CFR 3551

Legal Deadline: None

Abstract: The regulations for 7 CFR 1944-I "Self-Help Technical Assistance Grants" is being rewritten and renumbered to 7 CFR 3551. Changes are proposed for clarification of policy and procedures relative to the: 1) Application procedure, which is changing to an annual competitive grant process; 2) labor contribution of participating families; 3) monitoring of grantee progress through Self-Help Automated Reporting and Evaluation System (SHARES); and 4) define the roles of Technical and Management Assistance Contractors.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William M. Toney, Director, SFH Direct Loan Division, Department of Agriculture, Rural Housing Service, STOP 0783, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1474

RIN: 0575–AC20

118. • COMMUNITY FACILITIES DIRECT LOAN PROGRAM—CONSOLIDATE, SIMPLIFY, AND UPDATE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1926

CFR Citation: 7 CFR 1942, subpart A; 7 CFR 1942, subpart C

Legal Deadline: None

Abstract: Community Programs, a division of the Rural Housing Service, is seeking to consolidate, simplify, and update the Agency's regulations used to administer the Community Facilities Direct Loan Program. This effort will produce a user-friendly tool to help constituents and rural communities seeking to develop their essential community facilities for public use. The proposed action will have no financial impact on the public or agency.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Ben-Israel, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 0183/STOP 0787, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1490
Email: jbenisra@rdmail.rural.usda.gov

RIN: 0575–AC27

119. • GUARANTEED RURAL RENTAL HOUSING PROGRAM—SECONDARY MORTGAGE MARKET PARTICIPATION

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3565

Legal Deadline: None

Abstract: Section 538 of title V of the Housing Act of 1949 authorizes USDA to make commitments to guarantee loans for the development of housing and related facilities. By this authority, the Rural Housing Service (RHS) administers the Guaranteed Rural Rental Housing Program. The RHS, through consultation with industry and government experts in the loan guarantee field, has identified barriers to the success of the program. In the case of default, regulations will be revised to allow for a timely payment to the investor. In addition, lenders will be allowed to submit a claim for "estimated" losses. The RHS also intends to lower the annual guarantee fee from 50 to 25 basis points.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Stop 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
Phone: 202 720-1627
Fax: 202 690-3444
Email: dmacdowe@rurdev.usda.gov

RIN: 0575–AC28

Department of Agriculture (USDA)
Rural Housing Service (RHS)

Final Rule Stage

120. ENVIRONMENTAL PROGRAM

Priority: Other Significant

Legal Authority: PL 96-510; PL 94-580; PL 94-469; PL 92-500; PL 91-190

CFR Citation: 40 CFR 300; 40 CFR 260; 40 CFR 700; 40 CFR 400; 7 CFR 1940

Legal Deadline: None

Abstract: The objective of this action is to replace the existing environmental regulation and to implement changes to streamline the environmental process for the Rural Housing Service (RHS) and the Rural Business Service (RBS); to include changes necessitated by amendments to various environmental laws, Executive orders, and regulations applicable to the two agencies; to clarify wording; correct inconsistencies; and where applicable, to delete obsolete material and update references in other program regulations. This revision represents an important contribution to the Department's efforts to streamline its operations and realize more efficient use of staff time. There are a number of Federal environmental statutes which govern the management of hazardous substances, materials, and wastes. At the present time, RHS and RBS do not have implementing regulations for these Federal statutes. The development of implementation procedures for managing hazardous substances is necessary to insure consistency in compliance with Federal, as well as State, environmental statutes; to develop appropriate "due diligence" policies to ensure that the market value of real estate being considered as security for financial assistance adequately reflects potential contamination from hazardous waste; and to minimize the Agencies' liability with regard to environmental cleanups of hazardous waste in loan processing/servicing and property management activities.

Timetable:

Action	Date	FR Cite
NPRM	09/14/00	65 FR 55784
NPRM Comment Period End	11/13/00	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Susan Wieferich, Senior Environmental Protection Specialist, Program Support Service, Department of Agriculture, Rural Housing Service, Room 6900/Stop 0761, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-9647

RIN: 0575–AB98

121. DIRECT SECTION 502 AND 504 SINGLE-FAMILY HOUSING PROGRAM

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480; 31 USC 3700

CFR Citation: 7 CFR 1806; 7 CFR 1900; 7 CFR 1944; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956; 7 CFR 1965; 7 CFR 3550

Legal Deadline: None

Abstract: The Rural Housing Service reopened the comment period on four sections of this regulation seeking potential changes to the definition of modest housing and calculation of payment subsidies. The Agency has reviewed the comments and will be publishing minor corrections and clarifications in the existing regulation. In addition, the Agency will provide an updated definition of modest housing moving away from reliance on the section 203(b) mortgage limits set by the Department of Housing and Urban Development. The Agency will use more localized data and provide clearer guidance to ensure compliance with our mission to finance housing that is decent, safe, sanitary, and modest. No changes in the payment subsidy are anticipated.

Timetable:

Action	Date	FR Cite
NPRM	04/08/96	61 FR 15395
NPRM Comment Period End	06/07/96	
Interim Final Rule	11/22/96	61 FR 59762
Interim Final Rule Comment Period End	12/26/96	
Interim Final Rule Effective	12/26/96	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William M. Toney, Director, SFH Direct Loan Division, Department of Agriculture, Rural Housing Service, STOP 0783, 1400 Independence Avenue SW, Washington, DC 20250
Phone: 202 720-1474

RIN: 0575–AB99

122. GUARANTEED SINGLE-FAMILY HOUSING

Priority: Other Significant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 3555; 7 CFR 1980, subpart D

Legal Deadline: None

Abstract: The Rural Housing Service is rewriting the regulations governing the Guaranteed Single-Family Housing program to provide better clarity and consistency within the program. The action is taken to update the regulations to current mortgage industry standards and provide more

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guidance on program oversight and monitoring.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 70124
NPRM Comment Period End	02/14/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Roger Glendenning, Deputy Director, Guaranteed Loan Division, Department of Agriculture, Rural Housing Service, Room 2248/Stop 0784, 1400 Independence Avenue SW, Washington, DC 20250-0780
Phone: 202 720-1480
Fax: 202 205-2476
Email: rglendenning@rdmail.rural.usda.gov

RIN: 0575–AC18

123. OPERATING ASSISTANCE FOR MIGRANT FARMWORKER PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989; 42 USC 1484; 42 USC 1486; 42 USC 1490a; PL 105-276, sec 599c

CFR Citation: 7 CFR 1944, subpart D; 7 CFR 1930, subpart C

Legal Deadline: None

Abstract: Regulation implements the provisions of Public Law 105-276, enacted October 21, 1998, which amended section 521 of the Housing Act of 1949. This amendment provides that, for migrant farmworker housing projects financed under section 514 or 516 of the Housing Act, the Secretary may, at the request of the owner, permit amounts provided for rental assistance under section 521 to be used to provide assistance for the costs of operating the project.

Timetable:

Action	Date	FR Cite
NPRM	11/02/00	65 FR 65790
NPRM Comment Period End	01/02/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Layfield, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 1239/STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
Phone: 202 690-0759
Fax: 202 690-3444
Email: dlayfiel@rdmail.rural.usda.gov

RIN: 0575–AC24

124. TECHNICAL ASSISTANCE TO ENCOURAGE THE DEVELOPMENT OF DOMESTIC AND MIGRANT FARM LABOR HOUSING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1484; 42 USC 1486

CFR Citation: 7 CFR 1944, subpart D

Legal Deadline: None

Abstract: Section 514 of title V of the Housing Act of 1949 authorizes USDA to make loans for farm labor housing. Section 516 of the Act authorizes USDA to make grants for the same purpose. These authorities are implemented through 7 CFR part 1944, subpart D. Section 516 also authorizes USDA to provide financial assistance to private and public nonprofit agencies to encourage the development of farm labor housing. Recipients of this financial assistance, in turn, assist other organizations obtain loans and grants for the construction of farm labor housing. This regulation change will incorporate the "technical assistance" provision of the statute into 7 CFR 1944. The amount of assistance is limited by statute to 10 percent of the total section 516 allocation.

Timetable:

Action	Date	FR Cite
NPRM	06/01/01	66 FR 29739
NPRM Comment Period End	07/31/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Layfield, Senior Loan Specialist, Department of Agriculture, Rural Housing Service, Room 1239/STOP 0781, 1400 Independence Avenue SW, Washington, DC 20250-0781
Phone: 202 690-0759
Fax: 202 690-3444
Email: dlayfiel@rdmail.rural.usda.gov

RIN: 0575–AC25

Department of Agriculture (USDA)
Rural Housing Service (RHS) — **Completed Actions**

125. GUARANTEED RURAL RENTAL HOUSING, SECTION 538 STATUTORY CHANGES

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 3565

Completed:

Reason	Date	FR Cite
Final Action	04/09/02	67 FR 16969

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas MacDowell
Phone: 202 720-1627
Fax: 202 690-3444
Email: dmacdowe@rurdev.usda.gov

RIN: 0575–AC26

BILLING CODE 3410–XV–S

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC) — **Proposed Rule Stage**

126. GENERAL ADMINISTRATIVE REGULATIONS; SUBPART D; APPLICATION FOR CROP INSURANCE

Priority: Other Significant

Legal Authority: 7 USC 1506(l)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation amends the General Administrative Regulations by revising the "Collection of Information and Data (Privacy Act)" statement found on the general crop insurance application. The proposed amendments to the statement include defining "substantial beneficial interest" as those persons whose interest in the policyholder is in excess of 10 percent. Other minor changes have been made to more fully comply with provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926-7743

RIN: 0563–AB00

127. GENERAL ADMINISTRATIVE REGULATIONS; MOVEMENT OF BUSINESS AMONG INSURANCE PROVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To ensure that the interests of policyholders are protected and that the policies and policyholder data are transferred in an orderly manner, the Risk Management Agency is providing comprehensive regulations that will apply to agents, managing general agents, policy-issuing companies, and reinsured companies. The objective of this regulation is to prescribe uniform administrative requirements for the movement or assumption of crop insurance policies.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250
Phone: 202 720-4232

RIN: 0563–AB71

128. GENERAL ADMINISTRATIVE REGULATIONS; SANCTIONS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); PL 106-224

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: RMA plans to supplement the existing sanction authority found at 7 CFR 400.451 in order to include the revised sanctions available for offenses which occur after June 20, 2001, the date of passage of the Agricultural Risk Protection Act of 2000. This action will supplement the existing regulations which remain effective for all offenses occurring before June 20, 2000. This rule will contain guidelines for the level of sanctions that may be imposed, waiver authority on the part of the Administrator or designee, examples of sanctionable offenses, and the evidentiary standards to be followed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert J. Crockett, Sanction Officer, Department of Agriculture, Federal Crop Insurance Corporation, 430 G. Street, Suite 4167, Davis, CA 95616-4167
Phone: 530 792-5864

RIN: 0563–AB73

129. COMMON CROP INSURANCE REGULATIONS; BLUEBERRY CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this rule is to solicit public comments on FCIC's proposed action to convert the blueberry pilot insurance program to a permanent insurance program. The pilot was initiated for the 1995 crop year for selected counties in Michigan, Mississippi, New Jersey, and North Carolina and covered highbush and rabbiteye blueberry varieties.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133
Phone: 816 926-7743

RIN: 0563–AB76

130. COMMON CROP INSURANCE REGULATIONS; NURSERY CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457

Legal Deadline: None

Abstract: The purpose of this proposed rule is to solicit public comments on FCIC's proposed action to revise the Nursery Crop Provisions (99-073) for the 2002 crop year to: Specify that container grown and field grown plants are separate crops, provide optional units by location for field grown nursery plant, incorporate the "lower of" rule into section 6 of the provisions, permit insureds to purchase insurance coverage on a year-round basis, incorporate provisions to provide a rehabilitation payment for plants damaged by an insured cause of loss.

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USDA—FCIC — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB80

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131. GENERAL ADMINISTRATIVE REGULATIONS; ACTUAL PRODUCTION HISTORY

Priority: Other Significant

Legal Authority: 7 USC 1506 (l); 7 USC 1506 (p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To revise actual production history regulations to reflect changes in calculation of approved APH yields as mandated by the Agricultural Risk Protection Act of 2000. Revisions will include: Assigned yields for crops produced on land not farmed before (added land), rotations to crops not previously produced (new crops), and for prevented planting acreage if planted to a substitute crop; adjustments for successful pest control efforts and for organic crops destroyed to maintain organic certification; and substitution of 60 percent of the transitional yield for low actual yields if producers elect that option.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB83

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132. COMMON CROP INSURANCE REGULATIONS; BASIC PROVISIONS AND GENERAL ADMINISTRATIVE REGULATIONS, SUBPART T, REGULATIONS FOR IMPLEMENTATION

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400; 7 CFR 457

Legal Deadline: Final, Statutory, October 18, 2000.

Abstract: The purpose of these rules is to propose changes to the Common Crop Insurance Regulations, Basic Provisions and the General Administrative Regulations, Subpart T—Insurance Implementation, mandated by the Agricultural Risk Protection Act of 2000. The changes will be proposed to be effective beginning with the 2002 crop year for all crops with a contract change date on or after June 30, 2001. The major changes to the Common Crop Insurance Regulations, Basic Provisions are: 1) Limit indemnities and premiums when more than one crop is planted on acreage within the same crop year; 2) if an initial crop is prevented from being planted and a substitute crop is planted on the acreage within the same crop year, allow reduced prevented planting coverage for the initial crop, and the initial crop's Actual Production History (APH) will be reduced to 60 percent of the producer's APH; and 3) add scientifically sound sustainable and organic farming practices as good farming practices.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB85

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133. • GENERAL ADMINISTRATIVE REGULATIONS; SUBPART L—REINSURANCE AGREEMENT—STANDARDS FOR APPROVAL; REGULATIONS FOR THE 1997 AND SUBSEQUENT REINSURANCE YEARS

Priority: Other Significant

Legal Authority: 7 USC 1508

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation (FCIC) proposes to amend its General Administrative Regulations to publish the terms of the Standard Reinsurance Agreement (SRA) in the Federal Register. This will improve the integrity of the public/private partnership by avoiding ad hoc changes to important definitions and terms during negotiations involving compensation paid to each insurance provider. The current SRA has not been published in the Federal Register; therefore, the intent of this proposal is to codify the definitions and terms.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250 Phone: 202 720-4232

RIN: 0563–AB86

Department of Agriculture (USDA)
Federal Crop Insurance Corporation (FCIC) — **Final Rule Stage**

134. COMMON CROP INSURANCE REGULATIONS; SMALL GRAINS CROP INSURANCE PROVISIONS AND WHEAT WINTER COVERAGE ENDORSEMENT

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 457.101; 7 CFR 457.102

Legal Deadline: None

Abstract: The Federal Crop Insurance Corporation proposes to revise and clarify existing policy provisions; establish winter wheat coverage in certain South Dakota and Wisconsin counties, reduce coverage under Option B of the Wheat Winter Coverage Endorsement, and to require insurance on spring wheat planted to replace damaged winter wheat covered under the Wheat Winter Coverage Endorsement.

Timetable:

Action	Date	FR Cite
NPRM	04/20/00	65 FR 21144
NPRM Comment Period End	06/19/00	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB63

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135. GENERAL ADMINISTRATIVE REGULATIONS; NONSTANDARD UNDERWRITING CLASSIFICATION SYSTEM

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Nonstandard Underwriting Classification System (NCS): NCS was criticized by producers and their representatives for several years and became a major issue with the repetitive floods in the upper Midwest and multi-year droughts in the Southwest. Complaints included claims that the NCS procedures: 1) Did not adequately exclude widespread causes of loss (disaster adjustment); 2) failed to recognize diverse conditions within a county; 3) unfairly hit new or struggling producers caught by repetitive disasters; and 4) set too high a premium for those producers listed. Additionally, administration of the NCS process was complicated, sometimes subjective, and labor intensive.

The Advanced Notice of Proposed Rulemaking that was published in the Federal Register in September 1997 sought comments from the public on options to improve NCS. Twenty-two comments were received in response to the advanced notice. RMA decided to replace NCS with a process that charged appropriate rates for those producers with adverse loss experience and less than average production histories.

RMA examined increasing premium rates based on producers' lower APH yields and using a surcharge based on use of the yield floor (or some other identifiable indicator of adverse experience) to determine if these measures would adequately address the need to increase premiums for those producers with the most adverse loss histories based on the frequency and severity of losses. After reviewing past NCS experience on the existing book of business, it was determined that appropriate rate increases for those producers whose APH yields were less than average would compensate entirely for the elimination of NCS.

RMA implemented the following actions to accomplish the goal of replacing NCS beginning with the 1999 crop year:

— Removed and reserved the current NCS regulation (7 CFR part 400, subpart O) by publishing a proposed rule in the Federal Register. The final rule is pending clearance; however, the Agency proceeded with the process and has waived NCS since 1999.

— Developed and implemented appropriate rate adjustments to offset the removal of NCS.

Timetable:

Action	Date	FR Cite
ANPRM	09/17/97	62 FR 48798
ANPRM Comment Period End	10/17/97	
NPRM	09/02/98	63 FR 46703
NPRM Comment Period End	10/19/98	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB66

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136. GENERAL ADMINISTRATIVE REGULATIONS; PREMIUM REDUCTIONS; PAYMENTS OF REBATES, DIVIDENDS, AND PATRONAGE REFUNDS; AND PAYMENTS TO INSURED-OWNED AND RECORD-CONTROLLING ENTITIES

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p); 7 USC 1508(e)(3)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: To allow approved insurance providers to apply to the Federal Crop Insurance Corporation for authority to reduce the premium charged producers in accordance with section 508(e)(3) of the Federal Crop Insurance Act, as amended, and to provide the limitations and requirements applicable to the payment of rebates, dividends, and patronage refunds to insureds and payments to insured-owned and record-controlling entities.

Timetable:

Action	Date	FR Cite
NPRM	05/12/99	64 FR 25464
NPRM Comment Period End	07/12/99	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Heyward Baker, Director, Reinsurance Services Division, Department of Agriculture, Federal Crop Insurance Corporation, 1400 Independence Avenue SW, Room 6727 South, Washington, DC 20250 Phone: 202 720-4232

RIN: 0563–AB70

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USDA—FCIC **Final Rule Stage**

137. CATASTROPHIC RISK PROTECTION ENDORSEMENT; GROUP RISK PLAN OF INSURANCE REGULATIONS; BASIC PROVISIONS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 1506(l), 1506(p)

CFR Citation: 7 CFR 402; 7 CFR 407; 7 CFR 457

Legal Deadline: Final, Statutory, June 30, 2000.

Abstract: The Federal Crop Insurance Corporation (FCIC) amends the Catastrophic Risk Protection Endorsement (7 CFR part 402), the Group Risk Plan of Insurance Regulations (7 CFR part 407), and the Common Crop Insurance Regulations, Basic Provisions (7 CFR part 457) to revise those provisions affected by the changes in the administrative fees and subsidies and the substitution of yields in the producer's actual production history mandated by the Agricultural Risk Protection Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	06/28/00	65 FR 40483
Interim Final Rule	06/30/00	65 FR 40483
Interim Final Rule Comment Period End	08/29/00	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB81

138. GENERAL ADMINISTRATIVE REGULATIONS; SUBMISSION OF POLICIES AND PROVISIONS OF POLICIES AND RATES OF PREMIUMS

Priority: Other Significant

Legal Authority: 7 USC 1506(l); 7 USC 1506(p)

CFR Citation: 7 CFR 400

Legal Deadline: None

Abstract: Minor revisions will be made to the regulation for clarification and other revisions will be made as specified: Remove the need to publish policies from 508(h) submissions as a Notice of Availability in the Federal Register; information will be made available electronically to producers and approved insurance providers; confidential information may be withheld from the public under the standard for privileged or confidential information pertaining to trade secrets and commercial or financial information even after approval by the Board; there will be an expert review of submissions; the applicant will be notified in writing at least 30 days prior to the Board disapproving a submission, if the Board intends to disapprove the submission; a submission will be deemed approved by the Board if the Board fails to make a determination within a prescribed time period; applicants will be reimbursed for research and developmental costs and maintenance costs; and companies selling the product will pay fees to the developer of the product after the fourth year of the applicant being paid maintenance costs unless maintenance for the product is transferred to FCIC.

Timetable:

Action	Date	FR Cite
NPRM	07/16/01	66 FR 36951
NPRM Comment Period End	08/15/01	
Interim Final Rule	09/17/01	66 FR 47949
Interim Final Rule Comment Period End	11/16/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann, Director, Product Development Branch, Department of Agriculture, Federal Crop Insurance Corporation, 6501 Beacon Drive, Kansas City, MO 64133 Phone: 816 926-7743

RIN: 0563–AB84

Department of Agriculture (USDA) **Completed Actions**

Federal Crop Insurance Corporation (FCIC)

139. COMMON CROP INSURANCE REGULATIONS; MILLET CROP INSURANCE PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 457

Completed:

Reason	Date	FR Cite
Final Rule	01/23/02	67 FR 3036
Final Action Effective	02/22/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Hoffmann Phone: 816 926-7743

RIN: 0563–AB79

BILLING CODE 3410–08–S

Department of Agriculture (USDA) **Proposed Rule Stage**

Grain Inspection, Packers and Stockyards Administration (GIPSA)

140. REVIEW INSPECTION REQUIREMENTS

Priority: Other Significant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 800.125; 7 CFR 800.135; 7 CFR 800.87

Legal Deadline: None

Abstract: The Agency is proposing to revise regulations under the U.S. Grain Standards Act to allow interested persons to stipulate the quality factors that would be redetermined during a reinspection or appeal inspection for grade. Currently reinspections and appeal inspections for grade must include a review for all factors that (1) may determine the grade; (2) are reported on the original certificate; or (3) are required to be shown. The Agency has determined that mandating all quality factors be reexamined during a review inspection is inefficient, time consuming, and costly. Further, such a complete review of the preceding inspection service is usually not needed to confirm the true quality of the grain. This proposed action will allow interested parties to specify which official factors should be redetermined during the reinspection or appeal inspection service. However, to safeguard against inadvertent misgrading, official personnel may determine other factors, when deemed necessary.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA58

141. LIVESTOCK PURCHASE OR SALE: PROHIBIT NON-REPORTING OF PRICE

Priority: Other Significant

Legal Authority: 7 USC 204; 7 USC 228

CFR Citation: 9 CFR 201.54

Legal Deadline: None

Abstract: Following a review of comments received in response to the ANPRM, the Agency is proposing a regulation that would make purchasing or selling livestock with the condition that the price not be reported a violation of the Packers and Stockyards Act.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/98	63 FR 48450
ANPRM Comment Period End	12/09/98	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA65

142. EXCEPTIONS TO GEOGRAPHIC AREAS FOR OFFICIAL AGENCIES UNDER THE USGSA

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.81; 7 CFR 800.99; 7 CFR 800.116-.118; 7 CFR 800.185; 7 CFR 800.196

Legal Deadline: None

Abstract: The Agency is proposing to revise regulations under the U.S. Grain Standards Act to reflect the amendment made by the Grain Standards and Warehouse Improvements Act of 2000 that provides an exception under which the Secretary may determine that more than one official agency can provide inspection services in a specified geographic area.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA76

143. PROHIBITION ON DISGUISING GRAIN QUALITY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.61

Legal Deadline: None

Abstract: The Agency proposes to revise regulations under the U.S. Grain Standards Act to prohibit the disguising of grain quality by adding various substances during post-harvest marketing.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA77

144. LABORATORY PROFICIENCY PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800

Legal Deadline: None

Abstract: The Agency is proposing to issue regulations under the U.S. Grain Standards Act to establish a proficiency program to improve the reliability of testing for biotechnology events in grains and oilseeds.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250 Phone: 202 720-7486 Fax: 202 720-4628 Email: h.tess.butler@usda.gov

RIN: 0580–AA78

USDA—GIPSA **Proposed Rule Stage**

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145. • FEES FOR OFFICIAL INSPECTION AND OFFICIAL WEIGHING SERVICES

Priority: Other Significant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.71

Legal Deadline: None

Abstract: GIPSA is proposing several changes in the way the Agency charges fees for official inspection and weighing services performed in the United States, under the United States Grain Standards Act. Currently, GIPSA assesses fees by using hourly and unit rates and by assessing an administrative tonnage fee. The proposed action will increase the hourly and unit rates. GIPSA is also proposing to increase the administrative tonnage fee and adopt a new, regional fee structure.

Timetable:

Action	Date	FR Cite
NPRM	06/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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RIN: 0580–AA80

Department of Agriculture (USDA) — Grain Inspection, Packers and Stockyards Administration (GIPSA) — Final Rule Stage

146. TOLERANCES FOR DIVIDERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71 et seq

CFR Citation: 7 CFR 801.10

Legal Deadline: None

Abstract: GIPSA proposes to remove section 801.10, Tolerance for Dividers, from the CFR. Since GIPSA no longer tests dividers, the rule is no longer needed. By using the direct final rule process, GIPSA will give the public general notice of its intent to remove the rule and provide interested persons an opportunity to participate in the rulemaking through submission of comments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
Phone: 202 720-7486
Fax: 202 720-4628
Email: h.tess.butler@usda.gov

RIN: 0580–AA57

147. SWINE PACKER MARKETING CONTRACTS

Priority: Other Significant

Legal Authority: 7 USC 181; PL 106-78

CFR Citation: 9 CFR 206

Legal Deadline: None

Abstract: The Agency is issuing rules under the Packers and Stockyards Act to implement the Swine Packer Marketing Contracts subtitle of the Livestock Mandatory Reporting Act of 1999. The Agency will establish a swine contract library and publish contract provisions on its web site.

Timetable:

Action	Date	FR Cite
NPRM	09/05/00	65 FR 53653
NPRM Comment Period End	10/05/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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Email: h.tess.butler@usda.gov

RIN: 0580–AA71

Department of Agriculture (USDA) — Grain Inspection, Packers and Stockyards Administration (GIPSA) — Completed Actions

148. • FEES FOR OFFICIAL INSPECTION AND WEIGHTING SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 71

CFR Citation: 7 CFR 800.71

Legal Deadline: None

Abstract: The Agency is increasing certain fees by approximately 4.6 percent; i.e., contract and non-contract hourly rates, certain unit rates, and the administrative tonnage fee. These fees apply only to official inspection and weighing services performed by the Agency in the United States under the United States Grain Standards Act. These increases are needed to cover increased operational costs resulting from the approximate 4.6 percent January 2002 Federal pay increase.

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 25
NPRM Comment Period End	02/01/02	
Final Rule	03/21/02	67 FR 13084
Final Rule Effective	04/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: H. Tess Butler, Regulatory Liaison, Department of Agriculture, Grain Inspection, Packers and Stockyards Administration, 1400 Independence Avenue SW, Room 1647 South Building, Washington, DC 20250
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Email: h.tess.butler@usda.gov

RIN: 0580–AA79

BILLING CODE 3410–EN–S

Department of Agriculture (USDA) — Food and Nutrition Service (FNS) — Proposed Rule Stage

149. SPECIAL SUPPLEMENTAL FOOD PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): MISCELLANEOUS PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This proposed rule responds to a variety of program concerns, most of which have been expressed by WIC State agencies. The proposal increases State agency flexibility regarding the sharing of participant information with other programs and streamlines Federal requirements for financial and participation reporting by State agencies. Several minor clarifications and technical corrections are also made. (89-515)

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	08/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
Phone: 703 305-2246
Fax: 703 605-0220
Email: sheri.ackerman@fns.usda.gov

RIN: 0584–AB10

150. INTENTIONAL PROGRAM VIOLATION REPORTING AND COMPUTER MATCHING REQUIREMENTS THAT AFFECT THE FOOD STAMP PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552(a) Computer Matching and Privacy Protection Act; 7 USC 2015(b) Food Stamp Act

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This proposed rule describes requirements for State agencies to report information on individuals disqualified from the program for intentional program violations to FNS and codifies prisoner verification and death master file matching mandated by legislation and previously implemented through agency directive. (89-010)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	06/00/03	
Final Action Effective	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Sharon Ackerman, Agency Regulatory Officer, Department of Agriculture, Food and Nutrition Service, 3101 Park Center Drive, Room 308, Alexandria, VA 22302
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RIN: 0584–AB51

151. FSP: CIVIL RIGHTS DATA COLLECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 88-352, sec 601

CFR Citation: 7 CFR 272

Legal Deadline: None

Abstract: Title VI of the Civil Rights Act of 1964 requires the collection of racial/ethnic data for all programs utilizing Federal funds. State agencies are required to collect the data by racial/ethnic categories set by the Federal Government. In 1997, those categories changed. This proposed rule would change the racial categories for State Food Stamp Program reporting to comply with the new Federal racial categories. (98-010)

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	
Final Action	09/00/03	
Final Action Effective	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AC75

152. COMMODITY SUPPLEMENTAL FOOD PROGRAM: PLAIN LANGUAGE, PROGRAM ACCOUNTABILITY, AND PROGRAM FLEXIBILITY

Priority: Other Significant

Legal Authority: PL 101-624; PL 104-127

CFR Citation: 7 CFR 247

Legal Deadline: None

Abstract: This rule will rewrite regulations pertaining to the Commodity Supplemental Food Program (7 CFR part 247) in "plain language." It will also amend regulatory provisions in this part to increase program accountability and flexibility for program operators. The rule will affect program accountability by: (1) Requiring State agencies to initiate a claim against participants for repayment of the value of program benefits obtained as a result of intentional misrepresentation; (2)

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extending the period that State agencies may disqualify participants for program violations to up to 1 year; (3) requiring State agencies to disqualify participants for engaging in dual participation or for other selected program violations; (4) including under program violations the physical abuse, or the threat of physical abuse, of program staff.

Amendments to increase program flexibility include: (1) Allowing the State to extend the certification of elderly persons on a fixed income for an indefinite period without a formal review of eligibility; (2) increasing the period of time the State agency has to review a local agency's application for participation; (3) allowing State agencies to request to retain more than the maximum amount of administrative funds allocated whether or not they perform warehouse services; (4) reducing the frequency of State management evaluations of local agencies; and (5) making State plans and Federal-State agreements permanent, with amendments submitted as needed.

Other miscellaneous proposed changes include: (1) Requiring local agencies to notify applicants of a decision on their application within 10 days of the date of application; (2) including the specific factors that FNS uses to determine the amount of caseload that States will receive in addition to base caseload; (3) making the caseload cycle the period from January 1 to December 31; and (4) including a pregnant woman's embryo or fetus in utero as a household member in determining the family's income eligibility.

The rule will also incorporate legislative provisions that have been implemented through program policy, including: (1) Increasing the percentage of the program appropriation, and of funds carried over from the previous year, to be allotted for administrative support of State and local agencies from 15 to 20 percent; and (2) requiring that State and local agencies provide information on certain other public assistance programs to participants. (99-005)

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

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RIN: 0584–AC84

153. FOOD STAMP PROGRAM: ADMINISTRATIVE COST REIMBURSEMENT

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: PL 105-185, sec 502

CFR Citation: 7 CFR 277

Legal Deadline: Final, Statutory, October 1, 1998, Payment reduction required by law.

Abstract: This rule will allow State agencies to charge the FSP for its share of common costs for determining eligibility of Temporary Assistance for Needy Families (TANF) households for FSP in accordance with new HHS policy and approved cost allocation plans. (99-007)

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	05/00/03	
Final Action	11/00/03	
Final Action Effective	03/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 0584–AC86

154. SPECIAL SUPPLEMENTAL NUTRITION PROGRAM FOR WOMEN, INFANTS, AND CHILDREN (WIC): REVISIONS IN THE WIC FOOD PACKAGES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: This proposed rule will amend regulations governing the WIC food packages to disallow low-iron WIC formulas in food packages for infants; revise the maximum monthly allowances and minimum requirements for certain WIC foods; revise the substitution rates for certain WIC foods and allow additional foods as alternatives; make technical adjustments in all of the food packages to accommodate newer packaging and physical forms of the WIC foods; add vegetables as a food category in Food Packages III-VII for women and children; require that State agencies make available the full maximum foods allowed in each package; revise the criteria for developing State agency proposals for alternative food packages to accommodate participant food preferences more effectively; revise the purpose, content, and requirements for Food Package III; and address general provisions that apply to all the food packages. These revisions will improve the likelihood that WIC recipients achieve the food servings recommendations of the Dietary Guidelines for Americans and nutritional recommendations, providing WIC participants with a wider variety of foods, accommodating newer packaging and physical forms of WIC foods, and providing WIC State agencies with greater flexibility in prescribing food packages, especially to accommodate participants with hardships or cultural/food preferences. (99-006)

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	01/00/03	
Final Action	06/00/03	
Final Action Effective	10/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC90

155. IMPROVING ACCESS TO THE FOOD STAMP PROGRAM FOR PERSONS WITH LIMITED ENGLISH PROFICIENCY

Priority: Other Significant

Legal Authority: 42 USC 2000d

CFR Citation: 7 CFR 272.4(b)

Legal Deadline: None

Abstract: On August 11, 2000, the President signed an Executive order requiring Federal agencies to examine the services they provide and to develop and implement a system that ensures persons with limited English proficiency (LEP) have meaningful access to Federal health and human services programs and activities. The Executive order clarifies long-standing title VI principles that prohibit discrimination based on national origin. (00-016)

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	
Final Action	06/00/03	
Final Action Effective	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

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RIN: 0584–AD06

156. FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS: RESOURCE LIMITS AND EXCLUSIONS, EXTENDED CERTIFICATION PERIODS, AND TRANSITIONAL BENEFITS

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 253; 7 CFR 254

Legal Deadline: None

Abstract: This proposed rule would amend FDPIR regulations to: 1) Increase the standard FDPIR resource limit from $1750 to $2000 per household (households that include a member or members age 60 or over shall continue to have a resource limit of $3000); 2) allow a resource exclusion for the first $1500 of the value of one pre-paid funeral arrangement per household member (in instances where the total value of the agreement is not already excluded because it is funded under a life insurance policy or an inaccessible trust fund); 3) allow households in which all members are elderly or disabled to be certified for up to 24 months, provided that the State agency contacts the household at least once every 12 months; and 4) allow States the option to provide transitional FDPIR benefits (for 3 months), at a minimum, to households with earnings that leave the Temporary Assistance Program for Needy Families (TANF). All of the above provisions conform to Food Stamp Program policy and will ensure consistent treatment between the two programs. (01-005)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

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RIN: 0584–AD12

157. FOOD STAMP PROGRAM: VEHICLE AND MAXIMUM EXCESS SHELTER EXPENSE DEDUCTION PROVISIONS OF PUBLIC LAW 106-387

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-387

CFR Citation: 7 CFR 273.8; 7 CFR 273.9

Legal Deadline: None

Abstract: This proposed rule will (1) implement a revision of the Food Stamp Program's resource eligibility standards regarding vehicle ownership and (2) set the maximum excess shelter expense deduction for fiscal year 2001 and, for future years, index it to the Consumer Price Index. (01-006)

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AD13

158. CHILD AND ADULT CARE FOOD PROGRAM (CACFP): AT-RISK AFTERSCHOOL SUPPERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-224, sec 243(i)

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: This proposed rule would revise the Child and Adult Care Food Program (CACFP) regulations to allow reimbursement of suppers provided by at-risk afterschool care programs in seven States.

Six States were initially authorized by the Agricultural Risk Protection Act (Pub. L. 106-224); the seventh State was authorized by Fiscal Year 2002

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appropriation legislation. At-risk suppers in these States (Delaware, Illinois, Pennsylvania, Michigan, Missouri, New York, and Oregon) are reimbursed under the same conditions set forth in the National School Lunch Act (NSLA) for at-risk snacks in the CACFP. Children who are 18 or younger and enrolled in qualifying afterschool programs located in the seven States may receive free suppers. To qualify, afterschool care programs must be located in low-income areas, provide care to children, and have an educational or enrichment purpose. (01-007)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD15

159. • FOOD STAMP PROGRAM: ADMINISTRATIVE SANCTIONS IMPOSED AGAINST VIOLATING ELECTRONIC BENEFITS TRANSFER (EBT) STORES

Priority: Other Significant

Legal Authority: 12 USC 2021; 13 USC 2022

CFR Citation: 7 CFR 278.6

Legal Deadline: None

Abstract: The United States Department of Agriculture, Food and Nutrition Service (FNS), is proposing to revise section 278.6 of the Food Stamp Program Regulations entitled "Disqualification of Retail Food Stores and Wholesale Food Concerns and Imposition of Civil Money Penalties In Lieu of Disqualifications." This section of the regulation is being revised as a result of the implementation of the Electronic Benefits Transfer (EBT) system. This section of the regulations addresses the administrative sanctions (i.e., imposing a period of disqualification or assessing a monetary penalty) that may be imposed by FNS against retail food stores and wholesale food concerns that are found violating the Food Stamp Program. (01-012)

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0584–AD18

160. • EXPANDED VERIFICATION OF ELIGIBILITY SUMMARY REQUIREMENTS

Priority: Other Significant

Legal Authority: 42 USC 1758, Sec 9(d)(2)

CFR Citation: 7 CFR 245

Legal Deadline: None

Abstract: Recent comparisons of National data indicate that there are more students certified for free and reduced price meals than there are students eligible for such meal benefits. As a result, the Food and Nutrition Service (FNS) plans to propose regulations to address this discrepancy. FNS plans to publish proposed regulations to require local school food authorities to report verification activity and results to their respective State agency to support State agency oversight activities and to allow States to report the school level data to USDA. Results will provide USDA with information that will assist in improving the certification of eligibility for free and reduced price meal benefits. (01-015)

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD20

161. • FOOD STAMP PROGRAM: SIMPLIFICATION AND STATE FLEXIBILITY

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 2011 to 2036

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This action will 1) propose to streamline the regulations by removing unnecessary or redundant provisions and reorganizing several sections; 2) propose to increase State flexibility by moving overly prescriptive regulations; 3) re-propose several provisions that were proposed in a previous rule, the Noncitizen Eligibility Certification Provisions (NECP) of Pub. L. 104-193, as amended by Public Laws 104-208, 105-33, and 105-185, published on February 29, 2000, but were not accepted in the final NECP rule published on November 21, 2001; 4) propose to remove or revise several provisions that were finalized in the NECP final rule; and 5) propose to incorporate current policy from the Food Stamp Program's Policy Interpretation Response System (PIRS). (01-018).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD22

162. • FOOD STAMP PROGRAM: ADMINISTRATIVE REVIEW REQUIREMENTS—FOOD RETAILERS/WHOLESALERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2011 to 2036

CFR Citation: 7 CFR 278; 7 CFR 279

Legal Deadline: None

Abstract: The rule proposes to streamline and make technical corrections to the administrative review process by amending portions of current regulations provided in parts 278 and 279. It would eliminate repetitious, outdated and unnecessary provisions without taking away a business's right to an administrative review or a judicial review. It would also eliminate formal procedures for face-to-face meetings with review officers. There are very few requests for such reviews, and because administrative review decisions are based on documented facts and not on face-to-face meetings, these meetings are unnecessary and ineffective. (02-001)

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0584–AD23

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

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163. WIC: REQUIREMENTS FOR AND EVALUATION OF WIC PROGRAM REQUESTS FOR BIDS FOR INFANT FORMULA REBATE CONTRACTS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1786

CFR Citation: 7 CFR 246

Legal Deadline: None

Abstract: At the time the current cost containment regulations were published in 1989, there were only minor differences in infant formula wholesale prices and few differences in types of infant formulas offered by manufacturers; i.e., milk- and soy-based infant formula. However, current wholesale prices vary considerably among manufacturers for similar formulas and several new infant formulas have emerged on the market over the last decade. Therefore, to reflect market changes in the infant formula industry and to optimize competition in the WIC Program's infant formula rebate contracts, this interim rule would require WIC State agencies to award infant formula rebate contracts based on the lowest net price, allowing highest gross rebate as a basis of award only when retail prices of the different brands of infant formula vary, on average, by 5 percent or less. Additionally, this rule would define the types and forms of infant formula that must be included in cost containment systems. It would also expand on conditions that must be met for the issuance of infant formulas not covered by rebate contracts. (92-013)

Timetable:

Action	Date	FR Cite
NPRM	07/16/98	63 FR 38343
NPRM Comment Period End	09/14/98	
Interim Final Rule	08/23/00	65 FR 51213
Interim Final Rule Effective	10/23/00	
Interim Final Rule Implementation Date	11/21/00	
Interim Final Rule Comment Period End	08/23/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AB52

164. FOOD STAMP PROGRAM: ANTICIPATING INCOME AND REPORTING CHANGES

Priority: Other Significant

Legal Authority: 7 USC 2011 to 2032

CFR Citation: 7 CFR 272; 7 CFR 273

Legal Deadline: None

Abstract: This rule revises Food Stamp Program procedures for reporting and acting on changes in earned income. The changes are designed to increase State agency flexibility and improve procedures for determining the eligibility and benefits of households whose income fluctuates unpredictably. Under this rule, State agencies would choose from four different reporting requirements for households with earned income. The reporting requirement a State agency selects would replace the current requirement that households report a change of more than $25 in earned income. In addition to reporting a change in source of income, households would be required to report one of the following: A change in wage rate or salary and a change in part-time or full-time status, provided the household is certified for no more than 3 months; a change in wage rate or salary and a change of more than 5 hours a week that is expected to continue for more than a month; or a change in the amount earned of more than $100 a month. The reporting requirement for changes in unearned income would be increased to changes of more than $50

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a month from the current threshold of changes of more than $25 a month. In addition to the above reporting options, State agencies would also be able to select the option of requiring households to report changes through a quarterly reporting system rather than at the time the changes become known to the household. (93-005)

Timetable:

Action	Date	FR Cite
NPRM	12/17/96	61 FR 66233
NPRM Comment Period End	02/18/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AB57

165. CHILD AND ADULT CARE FOOD PROGRAM: IMPROVING MANAGEMENT AND PROGRAM INTEGRITY

Priority: Other Significant

Legal Authority: 42 USC 1766; PL 103-448; PL 104-193; PL 105-336

CFR Citation: 7 CFR 226

Legal Deadline: None

Abstract: This rule amends the Child and Adult Care Food Program (CACFP) regulations. The changes in this rule result from the findings of State and Federal program reviews and from audits and investigations conducted by the Office of Inspector General. This rule will revise: State agency criteria for approving and renewing institution applications; program training and other operating requirements for child care institutions and facilities; and State- and institution-level monitoring requirements. This rule also includes changes that are required by the Healthy Meals for Healthy Americans Act of 1994 (Pub. L. 103-448), the Personal Responsibility and Work Opportunities Reconciliation Act of 1996 (Pub. L. 104-193), and the William F. Goodling Child Nutrition Reauthorization Act of 1998 (Pub. L. 105-336).

The changes are designed to improve program operations and monitoring at the State and institution levels and, where possible, to streamline and simplify program requirements for State agencies and institutions. (95-024)

Timetable:

Action	Date	FR Cite
NPRM	09/12/00	65 FR 55103
NPRM Comment Period End	12/11/00	
Interim Final Rule	12/00/02	
Interim Final Rule Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC24

166. FOOD STAMP PROGRAM REGULATORY REVIEW: FSP STANDARDS FOR APPROVAL AND OPERATION OF FOOD STAMP ELECTRONIC BENEFIT TRANSFER SYSTEMS

Priority: Other Significant

Legal Authority: 7 USC 2011 TO 2034

CFR Citation: 7 CFR 274.12

Legal Deadline: None

Abstract: This rule proposes revisions to food stamp regulations affecting the standards and administration of EBT systems for food stamp issuance. Current regulations at 7 CFR 274.12 delineate the standards that EBT systems must meet in order to be approved for operation. This rule will revise those regulations to provide the State agency more flexibility in implementing and operating those systems. Clarifications and FNS settlement improvements will also be incorporated into the rule. (96-016)

Timetable:

Action	Date	FR Cite
NPRM	07/12/01	66 FR 36495
NPRM Comment Period End	09/10/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AC37

167. FOOD STAMP PROGRAM: WORK PROVISIONS OF THE PERSONAL RESPONSIBILITY AND WORK OPPORTUNITY RECONCILIATION ACT OF 1996 AND THE FOOD STAMP PROVISIONS OF THE BALANCED BUDGET ACT OF 1997

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 104-193

CFR Citation: 7 CFR 273.7; 7 CFR 273.22; 7 CFR 273.24

Legal Deadline: None

Abstract: This proposed rule will implement revisions to the Food Stamp Program's work and employment and training requirements, as well as new provisions for a work supplementation or support program and an employment initiative program. (96-025)

Timetable:

Action	Date	FR Cite
NPRM	12/23/99	64 FR 72196
NPRM Comment Period End	02/22/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AC45

168. NATIONAL SCHOOL LUNCH PROGRAM: REIMBURSEMENT FOR SNACKS IN AFTERSCHOOL CARE PROGRAMS

Priority: Other Significant

Legal Authority: PL 105-336

CFR Citation: 7 CFR 210; 7 CFR 235; 7 CFR 245

Legal Deadline: None

Abstract: The William F. Goodling Child Nutrition Reauthorization Act of 1998 amended the National School Lunch Act to authorize reimbursement for snacks served under the NSLP in afterschool care programs operated by schools. The afterschool program must be organized primarily to provide care for children and have an educational or enrichment purpose. Additionally, the statute mandates free snacks for all children enrolled in afterschool care programs operated by schools in areas served by a school in which at least 50 percent of the enrolled children are certified for free or reduced price meals. (98-007)

Timetable:

Action	Date	FR Cite
NPRM	10/11/00	65 FR 60502
NPRM Comment Period End	01/09/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AC72

169. FSP: ELECTRONIC BENEFIT TRANSFER (EBT) SYSTEMS INTEROPERABILITY AND PORTABILITY

Priority: Other Significant

Legal Authority: PL 106-171

CFR Citation: 7 CFR 272.1; 7 CFR 274.12

Legal Deadline: Other, Statutory, September 7, 2000, PL 106-171, sec 3.
Other, Statutory, February 11, 2001, PL 106-171, sec 4.
Other, Statutory, October 1, 2002, PL 106-171, sec 3.

Abstract: This rule revises Food Stamp regulations to ensure that recipients can use their electronic food stamp benefits across State borders by requiring interoperable State electronic issuance systems. The regulations establish uniform national standards to achieve this requirement. Also, 100 percent funding is available under the regulation to pay for the operational cost of this functionality up to a national limit of $500,000. Costs beyond this level will be covered at the standard 50 percent program reimbursement rate for State administrative costs. (00-001)

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/15/00	65 FR 49719
Interim Final Rule Effective	09/19/00	
Interim Final Rule Comment Period End	11/13/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0584–AC91

170. CHILD AND ADULT CARE FOOD PROGRAM: IMPLEMENTING LEGISLATIVE REFORMS TO STRENGTHEN PROGRAM INTEGRITY

Priority: Other Significant

Legal Authority: PL 106-224, sec 243

CFR Citation: 7 CFR 226

Legal Deadline: Final, Statutory, October 20, 2000.

Abstract: This interim rule incorporates changes to the Child and Adult Care Food Program as required by the Agricultural Risk Protection Act (Pub. L. 106-224) to strengthen the management and integrity of the program. Provisions include 1) changes to eligibility requirements for participating institutions; 2) conditions for approval, such as ensuring financial viability, stipulating that new sponsoring organizations are allowed to participate only where there is need for the program, and the elimination of "moving toward tax exempt status" of institutions; 3) new program monitoring requirements; 4) new parental notification requirements by CACFP centers or homes that describe the program and benefits and provide parents with access to the sponsoring organization and State agency; 5) rules on allowing corrective action and appeals in situations involving the termination or suspension of participating institutions, facilities, and individuals; 6) funds recovery in situations involving fraud, abuse, or improper submissions for reimbursement; and 7) limitation on the percentage of funds that sponsoring organizations of centers can retain from day care meal reimbursements for their administrative expenses. These changes support the Department's ongoing efforts in management and integrity improvement. (00-005)

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0584–AC94

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Final Rule Stage

171. SPECIAL NUTRITION PROGRAMS: DISCLOSURE OF CHILDREN'S ELIGIBILITY INFORMATION UNDER THE CHILD NUTRITION PROGRAMS

Priority: Other Significant

Legal Authority: PL 106-224, sec 242; PL 103-448, sec 108

CFR Citation: 7 CFR 215; 7 CFR 225; 7 CFR 226; 7 CFR 245

Legal Deadline: Final, Statutory, October 20, 2000.

Abstract: This rule establishes requirements for the disclosure of children's free and reduced price meal and free milk eligibility information by agencies that make the free and reduced price meal or free milk determination under the National School Lunch Program, the School Breakfast Program, the Special Milk Program, the Child and Adult Care Food Program, and the Summer Food Service Program. The rule responds to amendments to the Richard B. Russell National School Lunch Act, which allow limited disclosure of children's free and reduced price meal or free milk eligibility information, Public Law 103-448, the Healthy Meals for Healthy Americans Act of 1994; and Public Law 106-224, the Agricultural Risk Protection Act of 2000; comments received on the July 25, 2000, proposed rule on "Disclosure of Children's Eligibility Information" (65 FR 45725 issued under RIN 0584-AC21) and comments received on the January 11, 2001, interim rule on "Disclosure of Children's Eligibility Information to State Medicaid and the State Children's Health Insurance Program" (66 FR 2195 issued under RIN 0584-AC95). This rule incorporates the proposed rule and interim rule into one final rule. Therefore, RIN 0584-AC21 is withdrawn, and the final provisions will be issued under RIN 0584-AC95. The final rule will adopt or modify as necessary many of the provisions mandated by the statute and required by the interim rule. Many of these same provisions were presented as recommendations in the proposed rule. The objective is to provide consistency in procedures when determining agencies opt to disclose children's eligibility information and to provide some protection against unauthorized disclosures and misuse of personal information, regardless of whether the disclosure is to Medicaid or SCHIP or to an education or other program. (00-004)

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	01/11/01	66 FR 2195
Interim Final Rule Comment Period End	04/11/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 0584–AC95

172. IMPLEMENTATION OF POULTRY SUBSTITUTION PILOT AS PERMANENT AND MODIFICATION OF COMMODITY RECORDKEEPING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 612c; 7 USC 612c note; 7 USC 1431; 7 USC 1431b; 7 USC 1431e; 7 USC 1431 note; 7 USC 1446a-1; 7 USC 1859; 7 USC 2014; 7 USC 2025; 15 USC 713c; 22 USC 1922; 42 USC 1751; 42 USC 1755; 42 USC 1758; 42 USC 1760 to 1761; 42 USC 1762a; 42 USC 1766; 42 USC 3030a; 42 USC 5179 to 5180

CFR Citation: 7 CFR 250.14; 7 CFR 250.16; 7 CFR 250.30

Legal Deadline: None

Abstract: 1) Poultry and fruit and vegetables may currently be substituted for commodities under pilots and waivers. Due to the success of these programs, the regulations will be changed to allow such commercial substitution on a permanent basis. 2) Due to changes in the commercial market and the food donation program, the Department will allow vendors to use their own labels in place of USDA donated labels for school programs. This will complicate school's recordkeeping and inventory procedures. The regulations will be modified to accommodate the change in labels. (01-001)

Timetable:

Action	Date	FR Cite
NPRM	02/21/02	67 FR 7977
NPRM Comment Period End	04/22/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD08

173. SPECIAL NUTRITION PROGRAMS: UNIFORM FEDERAL ASSISTANCE REGULATIONS; NONDISCRETIONARY TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 503, 111 and 7501; PL 98-502; PL 104-156

CFR Citation: 7 CFR 210, 215, 220, 225, and 235

Legal Deadline: None

Abstract: This final rule makes a number of technical changes to the regulations governing the National School Lunch Program, the Special Milk Program for Children, the School Breakfast Program, the Child and Adult Care Food Program, the Summer Food Service Program, and State Administrative Expense Funds. The United States Department of Agriculture (USDA) is revising its grants management regulations in order to bring the entitlement programs it administers under the same regulations that already apply to nonentitlement programs and to identify exceptions to these general rules that apply only to entitlement programs. (01-008)

Timetable:

Action	Date	FR Cite
Direct Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

USDA—FNS

Final Rule Stage

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RIN: 0584–AD16

174. • NATIONAL SCHOOL LUNCH PROGRAM, SCHOOL BREAKFAST PROGRAM, AND CHILD AND ADULT CARE FOOD PROGRAM—AMENDMENTS TO THE INFANT MEAL PATTERN

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 210; 7 CFR 220; 7 CFR 226

Legal Deadline: None

Abstract: This final rule amends the regulations for the National School Lunch Program (7 CFR 210.10), the School Breakfast Program (7 CFR 220.8), and the Child and Adult Care Food Program (7 CFR 226.20) to (1) eliminate the option of serving whole cow's milk to infants between the ages of 8 months and one year in lieu of infant formula or breast milk and (2) permit reimbursement for meals containing only breast milk. The first provision responds to scientific evidence indicating that whole cow's milk is nutritionally deficient compared to breast milk and formula and can produce harmful effects when consumed by children less than 1 year old. The second provision is intended to give infants that are less than 4 months old an amount of breast milk less than the minimum requirement when the infants consistently do not want the full minimum amount. This provision is intended to prevent wasting any of this very limited food item. Finally, this regulation incorporates some technical amendments designed to clarify requirements and provide consistency among the three programs. (95-005)

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/99	64 FR 61770
Interim Final Rule Effective	12/15/99	
Interim Final Rule Comment Period End	05/15/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD26

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Long-Term Actions

175. STATE ADMINISTRATIVE EXPENSE FUNDS: PLAIN LANGUAGE REWRITE

Priority: Info./Admin./Other

CFR Citation: 7 CFR 235

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AC96

176. SPECIAL MILK PROGRAM FOR CHILDREN: PLAIN LANGUAGE REVISION AND REORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 215

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AC97

177. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 250, DONATION OF FOODS FOR USE IN THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS, AND AREAS UNDER ITS JURISDICTION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 250

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AC98

178. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 251, THE EMERGENCY FOOD ASSISTANCE PROGRAM (TEFAP)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 251

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AC99

179. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 252, THE NATIONAL COMMODITY PROCESSING PROGRAM (NCP)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 252

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD00

180. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 253, THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR)

Priority: Info./Admin./Other

CFR Citation: 7 CFR 253

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AD01

181. FOOD DISTRIBUTION PROGRAMS: PLAIN LANGUAGE REWRITE OF 7 CFR PART 254, THE FOOD DISTRIBUTION PROGRAM ON INDIAN RESERVATIONS (FDPIR) IN OKLAHOMA

Priority: Info./Admin./Other

CFR Citation: 7 CFR 254

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 0584–AD02

182. NUTRITION EDUCATION AND TRAINING PROGRAM: PLAIN LANGUAGE REWRITE OF 7 CFR PART 227

Priority: Info./Admin./Other

CFR Citation: 7 CFR 227

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0584–AD03

183. STATE AGENCY LIABILITIES AND FEDERAL SANCTIONS

Priority: Info./Admin./Other

CFR Citation: 7 CFR 276

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD04

184. PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

Priority: Info./Admin./Other

CFR Citation: 7 CFR 277

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD05

185. SCHOOL BREAKFAST PROGRAM: PLAIN LANGUAGE REVISION AND REORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 7 CFR 220

Timetable:

Action	Date	FR Cite
Direct Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD10

186. WIC: PLAIN LANGUAGE REWRITE OF 7 CFR PART 248, FARMERS' MARKET NUTRITION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 7 CFR 248

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AD11

187. • CNP: PLAIN LANGUAGE REWRITE OF 7 CFR PART 225, SUMMER FOOD SERVICE PROGRAM

Priority: Info./Admin./Other

Legal Authority: 42 USC 1758, 1761 and 1762a

CFR Citation: 7 CFR 225

Legal Deadline: None

Abstract: This rule makes no changes in the meaning of the Summer Food Service Program regulations; it is only a reorganization and rewriting of the existing text in plain language. Our goal in rewriting is simple and two-fold: allow the reader to quickly find and understand desired subject matter. The rewrite accomplishes our first goal by presenting material in a more logical sequence where needed, and most importantly, by splitting the text into much smaller and more easily scanned units. We have greatly increased the number of sections within the part, also increased the number of paragraphs within each of the new sections, and made greater use of italicized headings. By increasing the number of sections, we have "flattened" the regulation's structure. This in turn generally allows the elimination of at least one level of codification, despite the increased number of paragraphs and subparagraphs within each section. The result is much easier scanning of the sections for subject matter, further aided by the italicized headings. Each section is headed by a question on a major aspect of the regulations, which is then answered in the headings and paragraphs which follow. Finally, our second goal, greater comprehensibility, is accomplished by the use of shorter sentences, the active voice, and common words, except for necessary technical terms. (01-011)

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

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RIN: 0584–AD17

Department of Agriculture (USDA)
Food and Nutrition Service (FNS)

Completed Actions

188. DETERMINING ELIGIBILITY FOR FREE AND REDUCED-PRICE MEALS AND FREE MILK IN SCHOOLS: PROVISION 2 AND PROVISION 3

Priority: Other Significant

CFR Citation: 7 CFR 245

Completed:

Reason	Date	FR Cite
Final Action	09/20/01	66 FR 48323

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 0584–AC25

BILLING CODE 3410–30–S

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Prerule Stage

189. POULTRY INSPECTION: REVISION OF FINISHED PRODUCT STANDARDS WITH RESPECT TO INGESTA

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 451 to 470 et seq

CFR Citation: 9 CFR 381

Legal Deadline: None

Abstract: FSIS is seeking to clarify its Poultry Inspection regulations regarding visible ingesta on poultry carcasses and parts. A preliminary regulatory impact analysis conducted by FSIS determined that costs to achieve a zero tolerance for ingesta far outweighed benefits. This action was precipitated by a civil suit filed against USDA.

Timetable:

Action	Date	FR Cite
ANPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC77

190. • STANDARDS AND LABELING REQUIREMENTS FOR MECHANICALLY SEPARATED (SPECIES) AND PRODUCTS IN WHICH IT IS USED (SECTION 610 REVIEW)

Priority: Info./Admin./Other

Legal Authority: 5 USC 610 (c)

CFR Citation: 9 CFR 317.2(j)(13); 9 CFR 319.5(a)

Legal Deadline: Other, Statutory, April 2003, Review must be completed within the 12 months succeeding this publication.
Provisions of the RFA mandate that all reviews be conducted and completed within the 12 months succeeding this publication.

Abstract: Brief Description:

On June 29, 1982, the Department of Agriculture amended the Federal meat inspection regulations with promulgation of the final rule (47 FR

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USDA—FSIS **Prerule Stage**

28214) to (1) modify the definition, standard, and permitted use for the finely comminuted product resulting from the mechanical separation and removal of most of the bone from attached skeletal muscle of livestock carcasses and parts of carcasses, and the labeling requirements for meat food products in which it is used as an ingredient; and (2) to establish labeling requirements for such products.

Promulgation Purpose and Legal Basis:

Sections 1(m), (n), 7 and 10 of the Federal Meat Inspection Act (FMIA) established the Secretary of Agriculture's statutory responsibility for ensuring that meat and meat food products, prepared and intended to be distributed in commerce, are not adulterated, misbranded or improperly marked, labeled, and packaged. (21 U.S.C. 601 (m)(n), 607, 610) The final rule governing the production and use of mechanically separated species was issued in 1978 (43 FR 26416). However, despite the availability of technology and raw materials, a potential food source was not being made available to the general public. In the interim, the Pacific Coast Meat Association (PCMA) and the American Meat Institute (AMI) contended that its failure to market products containing Mechanically Processed (Species) Product (MP(S)P) was due to regulatory requirements that extended beyond the perimeters necessary to protect the public, and argued that they were effectively precluded from producing or marketing mechanically deboned beef, pork, veal, or lamb by the misleading labeling and the unreasonable compositional standards imposed by the regulations. PCMA and the AMI petitioned the agency to reconsider the requirements in light of information compiled since the promulgation of the 1978 regulations. PCMA and AMI submitted a report on a series of consumer focus groups' sessions exploring attitudes towards various types of meat food product labeling, and as a result of an analysis of the economic impacts of the 1978 rule and the Agency's internal review and re-evaluation of its regulations in accordance with Executive Order 12291 (now Executive Order 12866), the Department decided to amend the requirements and issue a new final rule entitled "Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used."

This regulation will be reviewed under the Regulatory Flexibility Act's Section 610 provisions within the succeeding twelve months. As such, the Food Safety and Inspection Service (FSIS) invites all interested parties to submit comments on: (1) the continued need for the rule; (2) the complexity of the rule; (3) the extent to which the rule overlaps, duplicated or conflicts with other Federal, State and local rules; (4) the nature of complaints or comments received concerning the rule from the public; and (5) the technology and economic conditions, or other factors, which have changed the specific area affected by the rule. Copies of comments may be submitted to the Docket Clerk within 30 days after this publication at: United States Department of Agriculture, Food Safety & Inspection Service, Office of Policy, Program Development and Evaluation, Regulations and Directives Development Staff, 300 12th Street SW, Room 112, Washington, DC 20250-3700.

Timetable:

Action	Date	FR Cite
Begin Review	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Businesses, Organizations

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: Referencing docket number 81-016F, 47 FR 28214

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RIN: 0583–AC90

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS) **Proposed Rule Stage**

191. GRANT AND INAUGURATION OF INSPECTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 304; 9 CFR 305

Legal Deadline: None

Abstract: FSIS is proposing to clarify the regulations in 9 CFR parts 304 and 305, which provide for grant and inauguration of inspection in meat and poultry establishments to address issues raised by the Office of Inspector General and others.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 0583–AC07

192. ANTE-MORTEM AND POST-MORTEM INSPECTION OF LIVESTOCK AND POULTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 601 to 695 et seq; 7 USC 138 et seq; 21 USC 450 et seq; 7 USC 2.18 to 2.53 et seq; 21 USC 451 to 470 et seq

CFR Citation: 9 CFR 309; 9 CFR 310; 9 CFR 381

USDA—FSIS **Proposed Rule Stage**

Legal Deadline: None

Abstract: FSIS is proposing to reform the regulations governing ante-mortem and post-mortem inspection of livestock and poultry. A number of the current regulations are no longer appropriate for the conditions under which meat and poultry products are produced and distributed today (e.g., splitting of sterna, prohibition of inflating carcasses). Others are duplicative regulations (e.g., those dealing with bruises and contamination) applying separately to meat and to poultry that could be combined into single regulations applying to both meat and poultry. Most emphasize the procedures for achieving regulatory objectives rather than the objectives themselves. This proposal would remove these prescriptive, detailed, or obsolete regulations or convert them to performance standards that are consistent with FSIS requirements for establishment-operated hazard analysis and critical control points (HACCP) systems and with the Agency's food safety regulatory strategy.

Under the proposal, the current ante-mortem requirements, listing objectionable diseases or conditions and corresponding actions to be taken, would be replaced by performance standards intended to ensure that only "normal," healthy animals that do not pose an evident hazard to public health are permitted to enter a slaughtering establishment. "Normal" animals would include those, for example, that are not running a temperature or that do not exhibit lesions of disease or behaviors characteristic of central nervous system disorders. Similarly, the post-mortem regulations, with their lists of conditions and detailed, command-and-control procedures, would be streamlined. The prescriptive provisions would be replaced by performance standards relating to food safety (prevention of economic adulteration).

This proposal would also recodify the ante-mortem and post-mortem inspection regulations for livestock and poultry. To the extent possible, consistent the with Federal Meat Inspection Act and the Poultry Products Inspection Act, regulations concerning livestock and meat carcasses and parts, and those concerning poultry carcasses and parts, would be designated to the same parts and sections of the Code of Federal Regulations. These changes would be part of the ongoing Agency effort to make the regulations more streamlined and user-friendly.

This proposal would focus on the performance standards that establishments should meet through operation of their HACCP systems for slaughtering and dressing operations. It would remove impediments to the development and operation of HACCP plans by making the current regulations compatible with the HACCP approach to food safety.

Besides the proposed action, FSIS considered the alternative of no rulemaking and the alternative of eliminating all regulations on livestock, poultry, and the carcasses and parts of livestock and poultry, affected by specific diseases and conditions. The first alternative would leave in place numerous detailed prescriptions and procedural requirements inconsistent with, or duplicative of, HACCP systems. The second would risk exposing the public to products that may be unwholesome or otherwise adulterated.

The Agency believes the alternative represented by this proposal—converting to performance standards the ante-mortem and post-mortem inspection regulations—would offer the best prospect for the efficient and effective implementation of HACCP. It would also maximize the flexibility establishments have to adopt technological innovations that would increase the assurance of food safety.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 0583–AC43

193. REQUIREMENTS FOR DISPOSITION AND DISPOSAL OF INSPECTED RAW MEAT AND POULTRY PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 7 USC 450; 21 USC 451 to 470 et seq; 21 USC 601 to 695 et seq; 7 USC 1901 to 1906

CFR Citation: 9 CFR 311; 9 CFR 314; 9 CFR 320; 9 CFR 325; 9 CFR 381; 9 CFR 428; 9 CFR 455

Legal Deadline: None

Abstract: FSIS is proposing to reform the regulations governing the disposition of inspected raw meat and poultry products and the disposal of such products that are condemned or otherwise inedible. A number of the current regulations are no longer appropriate for the conditions under which meat and poultry products are produced and distributed today. Others are duplicative regulations applying separately to meat and to poultry that should be combined into single regulations applying to both meat and poultry. Most emphasize the procedures for achieving regulatory objectives rather than the objectives themselves. The proposal would remove these prescriptive, detailed, or obsolete regulations or convert them to performance standards that are consistent with FSIS requirements for establishment-operated hazard analysis and critical control points (HACCP) systems and with the Agency's food safety regulatory strategy.

Besides the proposed action, FSIS considered the alternative of no rulemaking and the alternative of eliminating all regulations on the disposition and disposal of inspected raw products. Among these regulations are those concerning the handling of raw product moving between official establishments and the disposal of condemned or inedible carcasses and parts. The first alternative would leave in place numerous detailed prescriptions and procedural requirements inconsistent with, or duplicative of, HACCP systems. The second would risk exposing the public to products that may be unwholesome or otherwise adulterated.

This proposal would convert to performance standards the regulations governing the disposition, handling,

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and disposal of raw carcasses and parts. The Agency believes this alternative would offer the best prospect of permitting the efficient and effective implementation of HACCP and of maximizing the flexibility official establishments and other entities have to adopt technological and other innovations that could increase the assurance of food safety.

This proposal would also recodify the regulations on the disposition, handling, and disposal of raw meat and poultry products. To the extent possible, consistent with the Federal Meat Inspection Act and the Poultry Products Inspection Act, regulations affecting both meat and poultry would be designated to the same parts and sections of the Code of Federal Regulations. These changes would be part of the ongoing Agency effort to make the regulations more streamlined and user-friendly.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 0583–AC44

194. PERFORMANCE STANDARDS FOR BACON

Priority: Other Significant

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: 9 CFR 424.22(b)

Legal Deadline: None

Abstract: FSIS is proposing to revise the regulatory provisions concerning the production and testing of pumped bacon (9 CFR 424.22(b)). FSIS is proposing to remove provisions that require the Agency to test pumped bacon for nitrosamines and to remove provisions that prescribe the substances and amounts of such substances that must be used to produce pumped bacon. FSIS is proposing to replace these provisions with an upper limit for nitrite and a performance standard that establishments producing pumped bacon must meet. To meet the proposed performance standard, the process used would be required to limit the presence of nitrosamines when the product is cooked. Under the hazard analysis and critical control points (HACCP) system, establishments would incorporate the proposed performance standard into their HACCP plans.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC49

195. EGG AND EGG PRODUCTS INSPECTION REGULATIONS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 1031 to 1056

CFR Citation: 9 CFR 590.570; 9 CFR 590.575; 9 CFR 590.146; 9 CFR 590.10; 9 CFR 590.411; 9 CFR 590.502; 9 CFR 590.504; 9 CFR 590.580; 9 CFR 591; ...

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) is proposing to require shell egg packers and egg products plants to develop and implement Hazard Analysis and Critical Control Points (HACCP) systems and Sanitation Standard Operating Procedures (SOPs). FSIS also is proposing pathogen reduction performance standards that would be applicable to pasteurized shell eggs and egg products. Plants would be expected to develop HACCP systems that ensure products meet the pathogen reduction performance standards. Finally, FSIS is proposing to amend the Federal egg and egg products inspection regulations by removing current requirements for prior approval by FSIS of egg products plant drawings, specifications, and equipment prior to their use in official plants. The Agency also plans to eliminate the prior label approval system for egg products.

The actions being proposed are part of FSIS's regulatory reform effort to improve FSIS's egg and egg products food safety regulations, better define the roles of Government and the regulated industry, encourage innovations that will improve food safety, remove unnecessary regulatory burdens on inspected egg products plants, and make the egg and egg products regulations as consistent as possible with the Agency's meat and poultry products regulations. FSIS is also taking these actions in light of changing inspection priorities and recent findings of salmonella in pasteurized egg products.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State

Federalism: Undetermined

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 104 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250 Phone: 202 720-5627 Fax: 202 690-0486 Email: daniel.engeljohn@usda.gov

RIN: 0583–AC58

196. LABELING—GENERIC APPROVAL AND REGULATION CONSOLIDATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695

CFR Citation: 9 CFR 317; 9 CFR 327; 9 CFR 381; 9 CFR 412

Legal Deadline: None

Abstract: This rulemaking will continue an effort initiated several years ago by amending FSIS's regulations to expand the types of labeling that are generically approved. FSIS plans to propose that the submission of labeling for approval prior to use be limited to certain types of labeling, as specified in the regulations. In addition, FSIS plans to reorganize and amend the regulations by consolidating labeling rules that currently are stated separately for livestock products and poultry products (in part 317, subpart A, and part 381, subpart N, respectively) and by amending their provisions to set out clearly various circumstances under which these products are misbranded.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 0583–AC59

197. PATHOGEN REDUCTION; HAZARD ANALYSIS AND CRITICAL CONTROL POINTS (HACCP) SYSTEMS; ADDITIONS TO GENERIC E. COLI CRITERIA

Priority: Other Significant

Legal Authority: 21 USC 601 to 695; 21 USC 451 to 470

CFR Citation: 9 CFR 310; 9 CFR 381

Legal Deadline: None

Abstract: FSIS is proposing to add generic E. coli criteria to the regulations. In addition, FSIS is proposing to revise the terms used to identify and define certain classes of product listed in the Salmonella tables. FSIS is proposing to delay making the proposed criteria and standards applicable for 1 year for small establishments and for 2 years for very small establishments.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC63

198. FOOD STANDARDS; GUIDING PRINCIPLES AND FOOD STANDARDS MODERNIZATION

Priority: Other Significant

Legal Authority: 21 USC 601 et seq; 21 USC 451 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) and the Food and Drug Administration (FDA) are proposing to modernize their food standards. The agencies are proposing a set of guiding principles that define how modern food standards should be structured to protect the interest of consumers, provide for technological advances in food production, be consistent with international food standards, and be clear, simple, and easy to use for both manufacturers and the agencies that enforce compliance with the standards. If this proposed rule is adopted, the agencies will not consider a petition to establish, revise, or eliminate a standard unless the proposed action is consistent with these guiding principles. If this proposed rule is adopted, the agencies may publish proposed rules to establish, revise, or eliminate standards based on petitions fulfilling the requirements of this proposal that they receive.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Con'act: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250 Phone: 202 205-0279

RIN: 0583–AC72

199. PETITIONS FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553

CFR Citation: 9 CFR 392

Legal Deadline: None

Abstract: FSIS is proposing to amend its regulations to add a new part that prescribes procedures for the submission, consideration, and disposition of petitions for rulemaking. The proposal also describes the Agency's expectations for the type of documentation that must be submitted in support of a petition and that will facilitate regulatory development. FSIS is proposing this action to provide clear guidance to those who would like to participate in the rulemaking process by petitioning FSIS to issue, amend, or repeal a rule administered by the Agency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 104 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250 Phone: 202 720-5627 Fax: 202 690-0486 Email: daniel.engeljohn@usda.gov

RIN: 0583–AC81

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USDA—FSIS — **Proposed Rule Stage**

200. CLASSES OF POULTRY UPDATING POULTRY CLASS STANDARDS

Priority: Other Significant

Legal Authority: 21 USC 451

CFR Citation: 9 CFR 381.170(a)

Legal Deadline: None

Abstract: FSIS is proposing to amend the official U.S. classes of poultry so that they more accurately and clearly describe the characteristics of poultry in the market today. Poultry classes are defined primarily in terms of age and sex of the bird. Genetic improvements and new poultry management techniques have reduced the grow-out period for some poultry classes while extensive cross breeding has produced poultry with higher meat yields but blurred breed distinctions. This action is being taken to ensure that poultry products are labeled in a truthful and non-misleading manner.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
Phone: 202 205-0279

RIN: 0583–AC83

201. ELIMINATION OF CHILLING TIME AND TEMPERATURE REQUIREMENTS FOR READY-TO-COOK POULTRY (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 21 USC 451 to 470

CFR Citation: 9 CFR 381.66

Legal Deadline: None

Abstract: FSIS is proposing to eliminate the time and temperature requirements for chilling ready-to-cook poultry carcasses and giblets. The Agency is taking this action because the requirements are inconsistent with the Agency's Pathogen Reduction/Hazard Analysis and Critical Control Point (HACCP) System regulations, with its final rule further restricting retained water in raw meat and poultry, and with the Agency's regulatory reform program. Moreover, because of these regulations, the meat and poultry industries receive disparate regulatory treatment: No regulations that apply to the chilling of poultry apply to the chilling of meat. This proposal responds to longstanding petitions by industry trade associations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0583–AC87

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS) — **Final Rule Stage**

202. BEEF OR PORK WITH BARBECUE SAUCE; REVISION OF STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 601 et seq

CFR Citation: 9 CFR 319

Legal Deadline: None

Abstract: The Food Safety and Inspection Service (FSIS) has been petitioned to amend the Federal meat inspection regulations by removing a meat yield requirement for the standardized products "Beef With Barbecue Sauce" and "Pork With Barbecue Sauce." Current regulations for these products require that the product contain not less than 50 percent of the species identified on the label and that the weight of the cooked pork or beef not exceed 70 percent of the uncooked weight of the meat. The first requirement is consistent with other meat and sauce requirements, but the second requirement is not. The petitioner asserts that the product standard (promulgated in 1952) does not reflect current production practices or the commercial marketability of beef or pork with barbecue sauce. The petitioner further states that producers of these products are at a competitive disadvantage with other meat and sauce producers, because other meat and sauce producers do not have a 70 percent yield requirement. For example, producers of the standardized products "Beef with Gravy," "Meat Pies," and "Spaghetti with Meat and Sauce" and similar standardized products do not have any meat yield requirements.

FSIS has determined that the petitioner's request should be granted. This action would permit fair competition between meat and barbecue sauce producers, and poultry and sauce producers, and would provide consistent requirements in both the meat and poultry inspection regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/03/97	62 FR 46450
NPRM Comment Period End	11/03/97	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC09

USDA—FSIS — **Final Rule Stage**

203. PERFORMANCE STANDARDS FOR READY-TO-EAT MEAT AND POULTRY PRODUCTS

Priority: Economically Significant

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 451 et seq; 21 USC 601 et seq

CFR Citation: 9 CFR 317; 9 CFR 381; 9 CFR 430

Legal Deadline: None

Abstract: FSIS has proposed to establish pathogen reduction performance standards for all ready-to-eat and partially heat-treated meat and poultry products. The performance standards spell out the objective level of pathogen reduction that establishments must meet during their operations in order to produce safe products but allow the use of customized, plant-specific processing procedures other than those prescribed in the earlier regulations. Along with HACCP, food safety performance standards will give establishments the incentive and flexibility to adopt innovative, science-based food safety processing procedures and controls, while providing objective, measurable standards that can be verified by Agency inspectional oversight. This set of performance standards will include and be consistent with those already in place for certain ready-to-eat meat and poultry products. FSIS also is proposing testing requirements intended to reduce the incidence of Listeria in ready-to-eat meat and poultry products.

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12590
NPRM Comment Period End	05/29/01	
NPRM Extended Comment Period	07/03/01	66 FR 35112
NPRM Comment Period End	09/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 0583–AC46

204. MEAT PRODUCED BY ADVANCED MEAT/BONE SEPARATION MACHINERY AND RECOVERY SYSTEMS

Priority: Economically Significant

Legal Authority: 21 USC 601 to 695

CFR Citation: 9 CFR 301.2; 9 CFR 318.24 (Revision); 9 CFR 320.1(b)(10)

Legal Deadline: None

Abstract: In 1994, the Food Safety and Inspection Service amended its regulations to recognize that product resulting from advanced meat/bone separation machinery comes within the definition of meat when recovery systems are operated to assure that the characteristics and composition of the resulting product are consistent with those of meat. Subsequent compliance problems and other concerns have made it apparent that the regulations are inadequate to prevent misbranding and economic adulteration. Therefore, FSIS is developing a rule to clarify the regulations and supplement the rules for assuring compliance.

Timetable:

Action	Date	FR Cite
NPRM	04/13/98	63 FR 17959
NPRM Comment Period End	06/12/98	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 104 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0583–AC51

205. INCORPORATION OF FOOD AND COLOR ADDITIVES INTO 21 CFR

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 602 et seq; 21 USC 451 et seq; 21 USC 321 et seq

CFR Citation: 9 CFR 318.7; 9 CFR 381.147

Legal Deadline: None

Abstract: This final rule will amend the meat and poultry inspection regulations by completing earlier efforts to incorporate current listings in 9 CFR into 21 CFR.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
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RIN: 0583–AC69

206. PERFORMANCE STANDARDS FOR ON-LINE ANTIMICROBIAL REPROCESSING OF PRE-CHILL POULTRY CARCASSES

Priority: Other Significant

Legal Authority: 21 USC 451 to 470

CFR Citation: 9 CFR 381; 9 CFR 424

Legal Deadline: None

Abstract: This rule is proposing to allow, on a voluntary basis, the on-line reprocessing of pre-chill poultry carcasses that are accidentally contaminated with digestive tract contents during slaughter. The treated carcasses must meet pre-chill performance standards that are substantially lower than the current performance standard and criteria.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75187
NPRM Comment Period End	01/30/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

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RIN: 0583–AC73

207. SHARING RECALL DISTRIBUTION LISTS WITH STATE AND OTHER FEDERAL GOVERNMENT AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552; 7 CFR 1.3; 7 CFR 2.7

CFR Citation: 9 CFR 390

Legal Deadline: None

Abstract: FSIS will add regulations concerning sharing distribution lists with State and other Federal Government agencies during a food recall.

Timetable:

Action	Date	FR Cite
NPRM	09/19/00	65 FR 56503
NPRM Comment Period End	11/20/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

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RIN: 0583–AC75

208. AGENCY ORGANIZATION

Priority: Info./Admin./Other

Legal Authority: 21 USC 451 to 470; 21 USC 601 to 695; 21 USC 1031 to 1056

CFR Citation: 9 CFR 300; 9 CFR 301; 9 CFR 306; 9 CFR 320; 9 CFR 381; 9 CFR 590

Legal Deadline: None

Abstract: This rulemaking will amend FSIS's regulations adopted under the FMIA, PPIA, and EPIA by updating and consolidating organizational provisions.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Daniel L. Engeljohn, Director, Regulations and Directives Development Staff, Department of Agriculture, Food Safety and Inspection Service, Room 104 Cotton Annex Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0583–AC78

209. FOOD STANDARDS: REQUIREMENTS FOR SUBSTANTIVE STANDARDIZED MEAT AND POULTRY PRODUCTS NAMED BY USE OF AN EXPRESSED NUTRIENT CONTENT CLAIM AND A STANDARDIZED TERM

Priority: Other Significant

Legal Authority: 21 USC 601; 21 USC 451

CFR Citation: 9 CFR 381.172; 9 CFR 319.10

Legal Deadline: None

Abstract: FSIS is amending the Federal meat and poultry inspection regulations to establish a general definition and standard of identity for standardized meat and poultry products that have been modified to qualify for use of an expressed nutrient content claim in their product names. These products will be identified by an expressed nutrient content claim, such as "fat free," "low fat," and "light," in conjunction with an appropriate standardized term. FSIS is taking this action to 1) assist consumers to maintain healthy dietary practices by providing for modified versions of standardized meat and poultry products that have reductions of certain constituents that are of health concern to some people, 2) increase regulatory flexibility and support product innovation and, 3) provide consumers with an informative nutrition labeling system.

Timetable:

Action	Date	FR Cite
NPRM	12/29/95	60 FR 67474
NPRM Comment Period End	02/27/96	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post, Director, Labeling and Consumer Protection Staff, Department of Agriculture, Food Safety and Inspection Service, Washington, DC 20250
Phone: 202 205-0279

RIN: 0583–AC82

210. TRANSPORTATION, STORAGE, AND OTHER HANDLING OF POTENTIALLY HAZARDOUS FOODS

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 9 CFR 308; 9 CFR 317; 9 CFR 325; 9 CFR 381

Timetable:

Action	Date	FR Cite
ANPRM	11/22/96	61 FR 59372
ANPRM Comment Period End	02/20/97	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0583–AC05

211. REWORKING OF MEAT AND POULTRY CARCASSES ACCIDENTALLY CONTAMINATED DURING EVISCERATION

Priority: Other Significant

CFR Citation: 9 CFR 310; 9 CFR 381; 9 CFR 433

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC53

212. REFORM OF REGULATIONS ON IMPORTED MEAT AND POULTRY PRODUCTS

Priority: Other Significant

CFR Citation: 9 CFR 327; 9 CFR 381

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC56

213. NUTRITION LABELING OF GROUND OR CHOPPED MEAT AND POULTRY PRODUCTS AND SINGLE-INGREDIENT PRODUCTS

Priority: Other Significant

CFR Citation: 9 CFR 317; 9 CFR 381

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4970
NPRM Comment Period End	04/18/01	
NPRM Comment Period End	07/17/01	
Extension of Comment Period	07/20/01	66 FR 20213
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Robert Post
Phone: 202 205-0279

RIN: 0583–AC60

214. FOOD LABELING; NUTRIENT CONTENT CLAIMS, DEFINITION OF THE TERM HEALTHY

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 317; 9 CFR 381

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/28/99	64 FR 72490
Interim Final Rule Comment Period End	01/27/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Post
Phone: 202 205-0279

RIN: 0583–AC65

215. ELIMINATION OF REQUIREMENTS FOR TOTAL QUALITY CONTROL SYSTEMS

Priority: Other Significant

CFR Citation: 9 CFR 317; 9 CFR 318; 9 CFR 381

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

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RIN: 0583–AC68

216. EMERGENCY REGULATIONS TO PREVENT MEAT FOOD AND MEAT PRODUCTS THAT MAY CONTAIN THE BSE AGENT FROM ENTERING COMMERCE

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0583–AC88

Department of Agriculture (USDA)
Food Safety and Inspection Service (FSIS)

Completed Actions

217. LABELING OF NATURAL OR REGENERATED COLLAGEN SAUSAGE CASINGS

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 317; 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Action	08/06/01	66 FR 40843

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel L. Engeljohn
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RIN: 0583–AC80

218. MANDATORY INSPECTION OF RATITES AND SQUABS

Priority: Other Significant

CFR Citation: 9 CFR 361; 9 CFR 381

Completed:

Reason	Date	FR Cite
Final Rule	03/22/02	67 FR 13253

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arshad Hussain
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RIN: 0583–AC84

219. INCREASES IN FEES FOR MEAT, POULTRY, AND EGG PRODUCTS INSPECTION SERVICES—FISCAL YEAR (FY) 2002

Priority: Substantive, Nonsignificant

CFR Citation: 9 CFR 391.2

Completed:

Reason	Date	FR Cite
NPRM	10/16/01	66 FR 52548
Final Action	01/24/02	67 FR 3428

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0583–AC89

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Department of Agriculture (USDA)
Foreign Agricultural Service (FAS)

Proposed Rule Stage

220. PROGRAM TO PROVIDE TECHNICAL ASSISTANCE TO PROMOTE U.S. AGRICULTURAL EXPORTS TO EMERGING MARKETS (EMERGING MARKETS PROGRAM)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This rule proposes to establish regulations applicable to the Emerging Markets Program, currently authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 and amended by the Federal Agriculture Improvement and Reform Act of 1996. The Emerging Markets Program currently operates under agency guidelines. The proposed rule would amend and codify the existing guidelines. Codification of the guidelines should not change program administration noticeably. Because the program is already in operation under agency guidelines, this proposal would have no significant impact on the U.S. economy.

The proposed rule will provide specific regulations concerning program administration. Significant provisions include definition of emerging market and country eligibility, program objectives and priorities, eligible organizations, qualification requirements, application and review processes, decisions and appeals, reimbursement rules and procedures, reporting requirements, evaluations, and program controls.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kimberly Chisley, Regulatory Coordinator, Department of Agriculture, Foreign Agricultural Service, Room 6087, South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0551–AA62

Department of Agriculture (USDA)
Foreign Agricultural Service (FAS)

Final Rule Stage

221. PROGRAM TO ASSIST U.S. PRODUCERS IN DEVELOPING DOMESTIC MARKETS FOR VALUE-ADDED WHEAT GLUTEN AND WHEAT STARCH PRODUCTS

Priority: Other Significant

Legal Authority: 15 USC 714c

CFR Citation: 7 CFR 1482

Legal Deadline: None

Abstract: The rule provides for a 2-year program to assist U.S. wheat gluten producers in fully adjusting to import competition by transitioning the industry from production of basic bulk commodities to production of value-added commodities where the market potential is more viable. U.S. producers of wheat gluten, who meet the eligibility requirements of the rule and submit the required market development plans, will receive an annual lump sum payment by CCC to conduct specific program activities aimed at facilitating the transition to value-added wheat gluten products for sale in the domestic market.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/08/01	66 FR 30801
Interim Final Rule Comment Period End	07/09/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0551–AA60

USDA—FAS

Final Rule Stage

222. FREEDOM OF INFORMATION ACT (FOIA) REGULATIONS FOR THE FOREIGN AGRICULTURAL SERVICE

Priority: Info./Admin./Other

Legal Authority: 5 USC 552

CFR Citation: 7 CFR 1

Legal Deadline: None

Abstract: This final rule is issued in accordance with the regulations of the Secretary of Agriculture, 7 CFR part 1—Administrative Regulations, subpart A—Official Records, 1.3, Agency Implementing Regulations, for the Freedom of Information Act (5 U.S.C. 552).

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Department of Agriculture (USDA)
Foreign Agricultural Service (FAS)

Long-Term Actions

223. CCC SUPPLIER CREDIT GUARANTEE PROGRAM

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 7 CFR 1493

Timetable:

Action	Date	FR Cite
NPRM	07/19/95	60 FR 37025
NPRM Comment Period End	09/18/95	
Interim Final Rule	07/01/96	61 FR 33825
Interim Final Rule Effective	08/30/96	
Interim Final Rule Comment Period End	12/30/96	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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224. FACILITY GUARANTEE PROGRAM

Priority: Other Significant

CFR Citation: 7 CFR 17; 7 CFR 1493

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/01/93	58 FR 11786
Interim Final Rule Comment Period End	06/01/93	
Interim Final Rule	08/08/97	62 FR 42651
Interim Final Rule Comment Period End	10/07/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Department of Agriculture (USDA)
Forest Service (FS)

Proposed Rule Stage

225. HYDROPOWER APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 43 USC 1761

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The Forest Service is revising its current policy and procedures, implemented in February 1987, concerning administration of hydropower authorizations and the processing of proposals for hydropower projects affecting National Forest System lands. These revisions are necessary to make Agency policy and procedures consistent with regulatory changes by the Federal Energy Regulatory Commission (FERC). The proposed policy was published in the Federal Register on May 22, 1995 (60 FR 27153), for a 60-day public comment period, which was extended for another 45 days (60 FR 36401). As a result of the comments received, substantial changes were made to the proposed policy (60 FR 36401). Therefore, the Forest Service is publishing a revised proposed policy for public comment.

Timetable:

Action	Date	FR Cite
NPRM	05/22/95	60 FR 27153
NPRM Comment Period Extended	07/17/95	60 FR 36401
NPRM Comment Period End	09/05/95	
Second NPRM	01/00/03	
Second NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA47

226. SMALL TRACTS ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 521(c) to 521(i)

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: Implementation of the Agency's Small Tracts regulations (adopted in 1984) has revealed an inadvertent inconsistency between the regulations at 36 CFR 254.35(f) and 254.41(a) and the legislative history of the Small Tracts Act of January 12, 1983. The regulations imply that the disposal of mineral fractions by sale can only be made in response to an application from an abutting landowner, thus discouraging the conveyance by sale to the public. The Act clearly authorizes sale of mineral fractions to the public through public sale, as well as individual applications, provided that certain conditions are met. The revisions will clarify the application of the Act to ensure that both individual applications and public sale are permissible means of disposing of qualifying tracts.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA79

227. SPECIES SURPLUS TO DOMESTIC MANUFACTURING NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 620 et seq

CFR Citation: 36 CFR 223.200

Legal Deadline: None

Abstract: This proposed rule would amend 36 CFR 223.200 to list species proposed to be surplus to domestic manufacturing needs. This proposed rule would implement a portion of section 620a(b) of the Forest Resources Conservation and Shortage Relief Act of 1990 (16 U.S.C. 620 et seq.). Section 620a(a) of the Act provides that no person who acquires unprocessed timber originating from Federal lands west of the 100th meridian in the contiguous 48 States may export such timber from the United States, or sell, trade, exchange, or otherwise convey such timber from the United States, unless such timber has been determined under subsection (b) to be surplus to the needs of timber manufacturing facilities in the United States. Section 620a(b) of the Act provides that the prohibition contained in section (a) shall not apply to specific quantities of grades and species of unprocessed timber originating in Federal lands which the Secretary determines, through rulemaking, to be surplus to domestic manufacturing needs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0596–AB27

228. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; EXTENSION OF TIMBER SALE CONTRACTS TO PERMIT URGENT REMOVAL OF OTHER TIMBER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472a; 16 USC 618; 16 USC 620

CFR Citation: 36 CFR 223.50; 36 CFR 223.53

Legal Deadline: None

Abstract: This rule and policy change will provide for extension of National Forest System (NFS) timber sale contracts when such extension will permit the prompt removal and utilization of non-NFS timber damaged by catastrophic events. The change will define the responsibilities of the parties for requesting and approving such extensions and specify when such extension should be approved. This change will also allow for the use of scarce timber resources and the recovery of economic benefits from timber that might otherwise be lost because of contractual obligations to harvest undamaged timber.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0596–AB48

USDA—FS

Proposed Rule Stage

229. LAW ENFORCEMENT SUPPORT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1011(f); 16 USC 472; 16 USC 551; 16 USC 559(a) to 559(g); 40 USC 484(m)

CFR Citation: 36 CFR 262

Legal Deadline: None

Abstract: In February 1994, the Forest Service published proposed rule changes for parts 261 and 262 of title 36 of the Code of Federal Regulations. Due to the high level of interest in and comment on part 261, the decision was made to publish a second proposed rule. The majority of the public comment on part 262 referred to the definition section, which has been revised to respond to those comments. The Forest Service has decided to issue a second proposed rule for comment only on part 262, Law Enforcement Support Activities. Proposed revisions to part 261 will proceed separately.

In addition, the proposed amendment to 36 CFR part 262, Law Enforcement Support Activities, would amend the rules that govern monetary rewards and payments for information leading to the arrest and conviction of people who harm natural resources or threaten employees. The proposed rule would remove established rewards for damaging or stealing yew trees, the natural source of taxol, as taxol is now produced synthetically. The change also would clarify the procedures in subpart B for administrative impoundments and removals of livestock, dogs, and personal property.

Timetable:

Action	Date	FR Cite
NPRM	02/16/94	59 FR 7880
NPRM Comment Period End	05/18/94	
Second NPRM	10/00/02	
Second NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB61

230. NONCOMPETITIVE SALE OF TIMBER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472(a)

CFR Citation: 36 CFR 223.85

Legal Deadline: None

Abstract: This proposed rule would revise 36 CFR 223.85 by removing references to section 2001(k) of Public Law 104-19 (109 Stat. 246) and define "extraordinary conditions" to allow forest officers, without advertisement, to make modifications to timber and forest product sales, which result in the substitution of timber or forest products from outside the sale area specified in the contract. Under the proposed rule, substitute timber or forest products would have to come from the same administrative national forest and meet Agency requirements for compliance with the National Environmental Policy Act and other environmental laws. This proposed rule would not compel a timber purchaser to accept a timber sale modification offered under this rule. The rule only authorizes the Forest Service to propose modifications and to enter into discussions with purchasers on such modifications. This proposed rule will reduce timber sale cancellations and partial cancellations, thus reducing future damage claims on timber sales.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB70

231. LAND USES; SPECIAL USES REQUIRING AUTHORIZATIONS

Priority: Info./Admin./Other

Legal Authority: 16 USC 477 to 482; 16 USC 551; 43 USC 1761 to 1771

CFR Citation: 36 CFR 251.50

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program on how to manage the program in a more businesslike, customer-service-oriented way. The Agency is proposing revisions to 36 CFR 251.50 that would implement recommendations from this study. The study determined that many units are issuing special use authorizations unnecessarily, thereby increasing workloads. The study concluded that the Agency should clarify the special uses rules at section 251.50(a) to make explicitly clear that special use authorizations should not be issued for activities that are addressed by other Forest Service regulations; for example, those governing the disposal of timber (part 223); minerals (part 228); and the grazing of livestock (part 222). The study also concluded that section 251.50(e) should be added to direct that special use authorizations should not be issued where such authorization would serve no land or resource management objective and would have nominal effects on National Forest

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System lands; for example, where activities are adequately regulated by other governmental entities or where an authorized officer determines that normal operation and maintenance by the holder is within the scope of a right-of-way, easement, or other valid existing real property interest. Further, the rule at section 251.50(d) would clarify requirements regarding authorizations for special uses involving National Forest System roads and trails. The current regulation requires the issuance of closure orders for regulation of special uses on NFS roads and trails. The revised regulation will eliminate the necessity of individual closure orders for common public service permit programs.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB74

232. SALE AND DISPOSAL OF NATIONAL FOREST SYSTEM TIMBER; TIMBER EXPORT AND SUBSTITUTION RESTRICTIONS

Priority: Other Significant

Legal Authority: 16 USC 620

CFR Citation: 36 CFR 223; 36 CFR 261

Legal Deadline: None

Abstract: The proposed rule for timber export and substitution restrictions would implement the Forest Resources Conservation and Shortage Relief Act of 1990, as amended. The proposed rule defines the certain terms necessary to facilitate uniform compliance; prohibits transfer of unprocessed private timber for export by a person who possesses or acquires unprocessed Federal timber; prohibits export of such unprocessed private timber by a third or successive party; prescribes procedures for reporting the acquisition and disposition of NFS and private timber requiring domestic processing, including transfers; prescribes procedures for identifying unprocessed National Forest Service and private timber requiring domestic processing; and establishes procedures for assessing civil and criminal penalties and applying administrative remedies for violations of the Act, its implementing regulations, and contracts subject to the Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 0596–AB75

233. USE OF FIXED ANCHORS IN WILDERNESS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 36 CFR 261

Legal Deadline: None

Abstract: The Forest Service is proposing to issue regulations on the use of climbing equipment in designated wilderness areas within the National Forest System (NFS). Prior to the adoption of the Wilderness Act, certain climbing equipment, including rock bolts, have been placed in rock faces by climbers. This practice has continued for several decades and is the focus of controversy among wilderness users. An increase in the popularity of bolt-intensive form of rock climbing in the early 1990s has fueled this controversy. Some wilderness advocates consider rock bolts and other anchors, left behind by climbers, as permanent improvements.

To address this issue on NFS lands, a negotiated rulemaking committee was convened in June 2000. After four 2-day meetings, the group failed to reach consensus on several aspects of the issue; however, consensus was reached on other aspects. The Agency is moving forward with a proposal that utilizes the advice of the committee and the aspects that were agreed upon by the committee. The Agency intends to propose for public comment several alternatives to define and regulate permanent fixed anchors, including bolts. Resolving these issues through rulemaking is preferable to other dispute resolution alternatives, such as litigation or legislative amendment.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB80

234. SPECIAL FOREST PRODUCTS AND FOREST BOTANICAL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 36 CFR 223

Legal Deadline: None

Abstract: The Forest Service proposes to promulgate regulations for managing special forest products and forest botanical products. The regulations will guide the Forest Service in the administration of the broader category of special forest products. The proposed rule also implements Public Law 106-113, Pilot Program of Charges and Fees for Harvest of Forest Botanical Products, Appropriations Act H.R. 3423, section 339, Forest Botanical Products. Forest botanical products include products, such as herbs, berries, seeds, and wildflowers that are not wood products. The intended effect of this rule is to give guidance and consistency for the sustainability and sale of special forest products and forest botanical products.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB81

235. DETERMINING FAIR MARKET VALUE FOR RECREATION RESIDENCE USE AUTHORIZATIONS

Priority: Info./Admin./Other

Legal Authority: 16 USC 497; PL 106-291, title VI

CFR Citation: None

Legal Deadline: None

Abstract: The appropriations act for the Department of the Interior and related agencies for fiscal year 2001 (Pub.L. 106-291) contains provisions in title VI "Cabin User Fee Fairness Act of 2000" to ensure consistent and fair processes for appraising the fee simple value of recreation residence lots on National Forest System (NFS) lands. This act (1) establishes in law that the base annual fee for recreation residences is 5 percent of the market value of the lot; (2) changes the appraisal cycle period from 20 years to 10 years; and (3) requires the Secretary of Agriculture to (a) complete an inventory of utilities, access, and facilities serving each recreation residence tract or lot and document who paid for the installation of those improvements; (b) develop a new set of guidelines for conducting appraisals for recreation residences on NFS lands; (c) use a different annual indexing indicator; and (d) issue new Agency direction to implement the provisions of the Act within 2 years of its passage (10/11/2000). The Forest Service proposes to publish notice in the Federal Register of policy changes to the Forest Service Manual (FSM 2723) and Handbooks (FSH 2709.11, sec. 33; and FSH 5409.12, ch. 6) that would make Agency direction consistent with the requirements in the Act for the base annual fee and appraisal cycle (described in the preceding items (1) and (2)) and to request public comment on those policy changes related to the inventory, guidelines for appraisals, and indexing indicator (described in the preceding items (3)(a) to (3)(d)). Comments will be considered in development of the final policy.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0596–AB83

236. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING

Priority: Other Significant

Legal Authority: 16 USC et seq; 5 USC 301

CFR Citation: 36 CFR 219, subpart A

Legal Deadline: None

Abstract: The Forest Service is proposing to revise the November 9, 2000, land and resource management planning rule. This action responds to serious concerns raised by employees and others about the Agency's ability to implement some provisions of the November 2000 rule. The Agency's ability to promptly implement the November 9, 2000, planning regulations has also been called into question through pending litigation. The Forest Service has been asked to resolve deficiencies in the November 2000 rule. In so doing, the Forest Service plans to ensure that issues or deficiencies that have evolved from over 2 decades of forest planning are also addressed. The goal is to develop a new rule that improves the planning process, decisionmaking, and legal defensibility of land and resource management plans.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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237. NATIONAL ENVIRONMENTAL POLICY ACT DOCUMENTATION FOR CERTAIN SMALL ADMINISTRATIVE TIMBER SALES ON NATIONAL FOREST SYSTEM LANDS AND RESEARCH PROJECTS (FOREST SERVICE HANDBOOK 1909.15, CHAPTER 30)

Priority: Other Significant

Legal Authority: 42 USC 1421 to 4337

CFR Citation: None

Legal Deadline: None

Abstract: In 1999, as a result of a court action, the Forest Service lost the ability to use a categorical exclusion from National Environmental Policy Act (NEPA) documentation for small

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timber sales. This category was used extensively for small timber sales to remove hazard trees, treat insect and disease outbreaks, and provide related timber products for local communities. As a consequence, the responsible official must now prepare an environmental assessment (EA) on these small volume timber sales (under 250,000 board feet of green timber or 1 million board feet of salvage timber). This has resulted in a Service-wide increase in environmental analysis costs and delays in beginning and completing these small timber sale projects on the National Forests and Research Experimental Forests. This proposal would categorically exclude from documentation in an EA or environmental impact statement (EIS) certain types of small timber sales in the National Forests and Research Experimental Forests and would enable the Agency to accomplish in a more timely and efficient manner the treatment of small fire hazard areas, insect and disease outbreaks, and hazard tree removal. This new categorical exclusion would be added to the existing categories for categorical exclusions in chapter 30 of Forest Service Handbook (FSH) 1909.15, and by Council on Environmental Quality (CEQ) regulation, this proposal requires public notice and opportunity to comment. For convenience and cost savings, the final directive may be issued temporarily as an interim directive to chapter 30 of FSH 1909.15 but would be incorporated as an amendment as soon as there are sufficient other changes to the chapter to warrant revision of the entire chapter. Decisions using this new category may be subject to a 30-day public comment period and administrative appeal under 36 CFR part 215

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB88

238. NOTICE, COMMENT, AND APPEAL PROCEDURES FOR NATIONAL FOREST SYSTEM PROJECTS AND ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472; 16 USC 551; PL 102-381, sec 322 (Appeal Reform Act); 106 Stat 1419 (16 USC 1612 note)

CFR Citation: 36 CFR 215 (Revision)

Legal Deadline: None

Abstract: In 1992, the Appeal Reform Act mandated the Forest Service to develop appeal regulations for site-specific projects on National Forest System lands. The regulations were promulgated in 1994. Eight years of experience have shown there are certain provisions in the regulations that consistently give rise to questions by employees and the public and reduce efficient processing of administrative appeals. This proposed rule would revise the appeal regulations to bring better focus to public participation and to improve consistency in the application of this regulation, both of which would result in improved efficiency of the appeals process for the public and the Government.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB89

239. • SPECIAL USES AND GENERAL PROHIBITIONS: PALEONTOLOGICAL RESOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 551; 18 USC 641

CFR Citation: 36 CFR 251.50; 36 CFR 261.2; 36 CFR 261.9(i)

Legal Deadline: None

Abstract: This proposed rule consists of several technical changes to the agency's special uses and prohibited acts regulations regarding fossil collecting. First, the proposed rule would revise 36 CFR 251.50 to make clear that non-vertebrate fossil collecting is not a special use and, therefore, does not require a special use authorization. Second, this proposed rule also would make minor changes to 36 CFR 261.2 to make the definition for "paleontological resource" scientifically correct and to remove the text that addresses exceptions. Third, the prohibitions related to property at 36 CFR 261.9 would be revised to clarify that the prohibition does not apply to mineral materials, such as limestone or building stone recovered under a mineral contract or to organic remains primarily used as fuel, such as coal and oil. These exceptions are currently addressed inappropriately in the definition and, as a consequence, have led to misinterpretation of the prohibitions. This proposed rule is consistent with the Forest Service's stated commitment to develop a unified policy for management of fossil resources on Federal and Indian lands in accordance with the seven principles established in the May 2000 Secretary of the Interior's Report to the Senate.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB91

240. • FOREST SERVICE TRAILS ACCESSIBILITY GUIDELINES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 4151; 29 USC 794; 7 CFR 15e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, Section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Trails Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) 2350, Trail, River, and Similar Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility to pedestrian/hiker trails for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. The proposed policy also would incorporate the definition of a wheelchair and clarify direction that a mobility device that meets that definition of a wheelchair may be used anywhere foot travel is permitted. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB92

241. • FOREST SERVICE OUTDOOR RECREATION ACCESSIBILITY GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4151; 29 USC 794; 7 CFR 15 e

CFR Citation: None

Legal Deadline: None

Abstract: The Architectural Barriers Act of 1968, section 504 of the Rehabilitation Act of 1973, and 7 CFR 15e require that new or reconstructed facilities be accessible. The Forest Service Outdoor Recreation Accessibility Guidelines in this proposed policy amending Forest Service Manual (FSM) chapter 2330, Publicly Managed Recreation Opportunities, would establish clear agency guidelines to provide the highest level of accessibility for the greatest number of people, including persons with disabilities, while not fundamentally altering the environment and recreational setting. Outdoor recreation facilities include campgrounds, picnic areas, beach access and other access routes, and so on. The proposed policy also would clarify direction regarding existing requirements for the Golden Access Passport eligibility and documentation utilized by all Federal agencies under the 1980 amendment to the Land and Water Conservation Fund Act. Comments will be considered in development of the final guidelines.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, MS 1134, ATTN: IRM, D&R, 1400 Independence Avenue SW, Washington, DC 20250-1134
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RIN: 0596–AB93

Department of Agriculture (USDA)
Forest Service (FS)

Final Rule Stage

242. INDIAN ALLOTMENTS ON NATIONAL FOREST SYSTEM LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 472; 16 USC 551; 16 USC 1603; 43 USC 1740; 25 USC 337

CFR Citation: 36 CFR 254

Legal Deadline: None

Abstract: This rule sets forth Forest Service procedures and role in the regulation of Indian allotments on National Forest System land. The Indian Allotment Act, as amended, authorizes the Secretary of the Interior to make allotments of National Forest System lands to Indians for homesteading and agricultural and grazing purposes. The Forest Service has relied upon USDI rules and procedures at 43 CFR 2533 to govern its involvement in Indian allotment cases. Litigation and a decision by the Interior Board of Land Appeals require the Forest Service to set forth its own regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/22/87	52 FR 23473
NPRM Comment Period End	07/22/87	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AA52

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243. DISPOSAL OF NATIONAL FOREST TIMBER; CANCELLATION OF TIMBER SALE CONTRACTS

Priority: Other Significant

Legal Authority: 16 USC 472a; 16 USC 551; 16 USC 618

CFR Citation: 36 CFR 223.30; 36 CFR 223.40; 36 CFR 223.116

Legal Deadline: None

Abstract: Current regulations governing cancellation of National Forest timber sale contracts do not adequately protect the Government's financial interests in the event the Forest Service is forced to cancel contracts due to events beyond its control arising from compliance with environmental statutes. This rulemaking would remove an unworkable compensation-of-damages formula and establish a termination-for-environmental-protection clause in timber sale contracts, a standard in most Federal procurement contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68690
NPRM Comment Period End	02/13/97	
Final Action	10/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB21

244. COLLECTION OF REIMBURSABLE COSTS FOR PROCESSING SPECIAL-USE APPLICATIONS AND ADMINISTRATION OF SPECIAL-USE AUTHORIZATIONS

Priority: Other Significant

Legal Authority: 43 USC 1764; 30 USC 181

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The objective of this proposal is to incorporate into regulation the authority contained in the Mineral Leasing Act and the Federal Land Policy and Management Act to reimburse the United States for reasonable administrative costs associated with the issuance and administration of special-use authorizations on National Forest System lands. It responds to a recommendation contained in GAO Audit Report RCED-97-16 (12/96).

Timetable:

Action	Date	FR Cite
NPRM	11/24/99	64 FR 66341
NPRM Comment Period Extended	12/29/99	64 FR 72971
NPRM Comment Period End	02/04/00	
Comment Period Extended	02/25/00	65 FR 10042
Comment Period End	03/09/00	
Final Action	07/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Cost reimbursement for processing special-use applications and administration of special-use authorizations was originally included under RIN 0596-AA36. All provisions pertaining to the special-use application and administration process have been merged with RIN 0596-AB35. Thus, this rulemaking addresses only the cost-reimbursement provisions.

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RIN: 0596–AB36

245. PREFERENCE FOR VISITOR SERVICE; ALASKA NATIONAL FOREST CONSERVATION SYSTEM UNITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3197

CFR Citation: 36 CFR 251

Legal Deadline: None

Abstract: The Forest Service is issuing regulations to define and establish procedures for administering the statutory rights and preferences established by the Alaska National Interest Lands Conservation Act of 1980 for historical operators, Native Corporations, and local residents to conduct revenue-producing visitor services on certain National Forest System Lands in Alaska. The regulations are necessary to comply with section 1307 of the Alaska National Interest Lands Conservation Act, which requires the Secretary of Agriculture to give preference to persons he determines by rule are local residents. The regulations, which have been developed in close consultation with the other Federal land-managing agencies in Alaska, will apply only to Conservation System Units administered by the Forest Service. As applied to these regulations, administered Conservation System Units are Forest Service National Monuments and units of the National Wild and Scenic River Systems, National Trails System, and the National Wilderness Preservation System in Alaska.

Timetable:

Action	Date	FR Cite
NPRM	04/25/97	62 FR 20140
NPRM Comment Period End	06/24/97	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, MS 1134, ATTN: IRM, D&R, 1400 Independence Avenue SW, Washington, DC 20250-1134
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RIN: 0596–AB57

246. CATEGORICAL EXCLUSION FOR CERTAIN SPECIAL USES PERMIT ACTIONS (FSH 1909.15, CHAPTER 30)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 to 4346

CFR Citation: None

Legal Deadline: None

Abstract: In April 1997, the Forest Service completed a reengineering study of its special uses program. One finding in that study was that the Forest Service is conducting extensive National Environmental Policy Act (NEPA) analysis and documentation for the renewal or transfer of ownership of special use authorizations having no significant effect on the human environment, either individually or cumulatively. This level of NEPA compliance is costly, time consuming, and not commensurate with the risk attributed to the activity. Therefore, the Forest Service proposes to add a new category of categorical exclusions from NEPA documentation at sections 31.1b and 31.2 of FSH 1909.15, Environmental Policy and Procedures Handbook. This action would give clearer direction regarding the NEPA obligation, when issuance of a special use authorization is a purely ministerial action and no changes are proposed in permitted activities or facilities.

Further, the Forest Service proposes to amend section 30.3 to clarify the NEPA documentation that is needed for processing applications and authorizations under a categorical exclusion when extraordinary circumstances exist. There is confusion surrounding section 30.3 about the "mere presence" of an extraordinary circumstance and the implication of a need for an Environmental Assessment (EA) or Environmental Impact Statement (EIS). The Forest Service proposes to amend this section to provide that an identified extraordinary circumstance must clearly have a significant impact on the National Forest resource to merit preparation of an EA or EIS.

Timetable:

Action	Date	FR Cite
NPRM	09/20/01	66 FR 48412
NPRM Comment Period End	11/19/01	
Final Action	07/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marian P. Connolly, Regulatory Officer, Department of Agriculture, Forest Service, MS 1134, ATTN: IRM, D&R, 1400 Independence Avenue SW, Washington, DC 20250-1134
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RIN: 0596–AB73

247. NATIONAL FOREST SYSTEM LAND AND RESOURCE MANAGEMENT PLANNING; EXTENSION OF COMPLIANCE DEADLINE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1600 et seq; 5 USC 301

CFR Citation: 36 CFR 219, subpart A

Legal Deadline: None

Abstract: On November 9, 2000 (65 FR 67514), a rule substantially revising National Forest System land and resource management planning was adopted. Section 219.35 of that rule provided for the transition from the 1982 planning rule to the 2000 rule. May 9, 2001, was the date by which all forest plan amendments and revisions, under specified conditions, would be subject to the new planning requirements. However, early in 2001, the Department determined that the November 2000 planning regulation needed to be revised in order to improve its implementation by field personnel (see sequence No. 425, National Forest System Land and Resource Management Planning). On May 17, 2001, the Department issued an interim final rule and simultaneously issued a proposed rule immediately extending the compliance date of May 9, 2001, until May 9, 2002, anticipating that the revised planning rule would be final at that time (66 FR 27552). Completion of the revised planning rule by May 9, 2002, has proven to be unrealistic; thus, the Department needs to extend the compliance deadline until the adoption of a final planning rule. This action is needed immediately because the May 9, 2002, compliance date is imminent and it is necessary to grant relief to the units of the National Forest System that may initiate plan revisions and amendments after this date but before a new planning regulation is finalized. As with the May 17, 2001, interim final rule, the new interim final rule would allow forests the option of proceeding under the 1982 rule or under the November 2000 rule.

Timetable:

Action	Date	FR Cite
NPRM	05/17/01	66 FR 27555
NPRM Comment Period End	07/16/01	
Interim Final Rule	05/00/02	
Interim Final Rule Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0596–AB87

Department of Agriculture (USDA)
Forest Service (FS)

Long-Term Actions

248. APPEAL OF DECISIONS RELATING TO OCCUPANCY AND USE OF NATIONAL FOREST SYSTEM LANDS

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 251; 36 CFR 214

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB45

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USDA—FS — **Long-Term Actions**

249. REVISIONS TO ROAD MANAGEMENT POLICY (FOREST SERVICE MANUAL CHAPTER 7710)

Priority: Other Significant

CFR Citation: 36 CFR 212

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65796
NPRM Comment Period End	02/19/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0596–AB90

BILLING CODE 3410–11–S

Department of Agriculture (USDA)
Office of Chief Financial Officer (OCFO) — **Long-Term Actions**

250. • GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549

CFR Citation: 7 CFR 3017 and 3021

Legal Deadline: None

Abstract: The requirements for maintaining a drug-free workplace are being removed as a subpart in the current debarment and suspension common rule, and recodified as a separate part 3021. The appendix that is referenced in 3017.50 contains a model for covered transactions that would be accurate for all USDA agencies if USDA had not added certain exclusions in 3017.215 and 3017.220. Therefore it is necessary to clarify that the appendix contains a general model that will vary for certain categories of transactions in accordance with the exclusions from covered transactions in 3017.215 and 3017.220. USDA has limited covered transactions under its current debarment and suspension regulation (7 CFR part 3017) to primary tier transactions for all of its export and foreign assistance programs. In 3017.755 (a) and 3017.870 (a) USDA has added the requirement that the record remain open for a full 30 days after the respondent receives the notice of suspension or debarment even if a submission in opposition is made before the 30 days expire.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Annie Walker-Bradley, Acting Director for Planning, Department of Agriculture, Office of Chief Financial Officer, Room 4632 South Building, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0505–AA11

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Office of the Secretary (AgSEC) — **Proposed Rule Stage**

251. GENERAL NONPROCUREMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 901 et seq

CFR Citation: 7 CFR 3020

Legal Deadline: None

Abstract: USDA published 7 CFR part 3015, Uniform Federal Assistance Regulations, in 1981 to establish and codify departmentwide policies and standards for administering grants and cooperative agreements to governmental and nongovernmental entities. Since that time, the Office of Management and Budget has led efforts to establish Governmentwide common rules for governmental and nongovernmental recipients of grants and cooperative agreements. Consequently, over the years, USDA has codified its Governmentwide common rules in other parts of title 7 of the CFR. This has resulted in corresponding amendments to part 3015 to revise its scope accordingly. We are proposing to remove part 3015 and to add part 3020 to parts of title 7. We are proposing to include other administrative requirements that were never codified. The alternative would be to continue to work with the disjointed, outdated part 3015. Expected results are that the new part 3020 will be more clear and concise and will only contain those cross-cutting requirements not included in other USDA departmentwide administrative regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: Undetermined

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RIN: 0503–AA21

Department of Agriculture (USDA)
Office of the Secretary (AgSEC) — **Final Rule Stage**

252. • OUTREACH AND ASSISTANCE FOR DISADVANTAGED FARMERS AND RANCHERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2279(a)

CFR Citation: 7 CFR 26

Legal Deadline: None

Abstract: This rulemaking will remove CFR Part 1943, Subpart C, "Small Farmer Outreach Training and Technical Assistance Program," under the Farm Service Agency and add new CFR Part 26, "Outreach and Assistance to Socially Disadvantaged Farmers and Ranchers Program," under the Office of the Secretary. The Food, Agriculture, Conservation and Trade Act of 1990, title XXV, section 2501 and the Department of Agriculture Appropriation Acts provides funding for the "Outreach and Assistance for Socially Disadvantaged Farmers and Ranchers Program." These acts provide the Office of Outreach with the authority to make grants and enter into contracts, cooperative agreements, and other agreements with entities to provide outreach, training, and technical assistance; to encourage and assist socially disadvantaged farmers and ranchers to own and operate farms and ranches; and increase their participation and accessibility to agricultural programs.

Timetable:

Action	Date	FR Cite
NPRM	04/30/01	66 FR 21608
NPRM Comment Period End	05/30/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Geraldine Herring, Special Outreach Program Coordinator, Department of Agriculture, Office of the Secretary, 1400 Independence Avenue SW, Washington, DC 29259
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RIN: 0503–AA22

Department of Agriculture (USDA)
Office of the Secretary (AgSEC) — **Completed Actions**

253. DESIGNATION OF RURAL EMPOWERMENT ZONES AND ENTERPRISE COMMUNITIES

Priority: Other Significant

CFR Citation: 7 CFR 25

Completed:

Reason	Date	FR Cite
Final Rule	03/25/02	67 FR 13553

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Jay Norman Reid
Phone: 202 260-6332

RIN: 0503–AA20

BILLING CODE 3410–90–S

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS) — **Proposed Rule Stage**

254. BUSINESS AND INDUSTRIAL GUARANTEED LOAN PROGRAM—MISCELLANEOUS CHANGES

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4287, subpart B; 7 CFR 4279, subpart A; 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: Revisions are proposed in the following areas: Exclusion of financing agriculture production, limiting debt refinancing, definition of rural and rural area, criteria for reducing percent of guarantee, revising loan priority criteria, eligibility issues when an applicant is delinquent on Federal debt, title IX provisions, additional administrative guidance, tightening eligibility criteria for non-bank lenders, removing the need for a Regional Attorney review for transfers and assumptions of existing loans, limiting debt refinancing, limiting packaging fees, adjusting loan priorities, additional application requirements for certain applicants, and various other minor editorial changes.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard Bonnet, Sr. Loan Specialist, B&I Processing Branch, Department of Agriculture, Rural Business-Cooperative Service, Room 6864/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA23

255. AFFIRMATIVE FAIR HOUSING MARKETING PLAN

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1703 subpart B; 7 CFR 1942 subpart G; 7 CFR 4284 subpart D; 7 CFR 4287, subpart B; 7 CFR 4279, subpart B; 7 CFR 4274, subpart D; 7 CFR 4280, subpart A; 7 CFR 4287, subpart H

Legal Deadline: None

Abstract: This action will incorporate the requirement for housing-related projects (such as apartment buildings, nursing homes, group homes, and assisted living type facilities) to develop an Affirmative Fair Housing Marketing Plan (plan) when receiving funding from the Intermediary Relending Program, Rural Business Enterprise Grant Program, Rural Business Opportunity Grant Program,

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USDA—RBS **Proposed Rule Stage**

Rural Economic Development Loan and Grant Programs, and the Business and Industry Direct and Guaranteed Loan Programs. The plan will describe strategies to attract applications from all groups in a housing market area and efforts to reach those persons in the market area who traditionally would not be expected to apply for housing. The Rural Housing Service Multifamily Housing Program regulations currently include this borrower requirement.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Concepcion Malazo, Loan Specialist, B&I Servicing Branch, Department of Agriculture, Rural Business-Cooperative Service, Room 6858/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250-3224
Phone: 202 690-3810

RIN: 0570–AA24

256. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—FINANCING COOPERATIVE STOCK

Priority: Other Significant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4279, subpart B; 7 CFR 4279, subpart A

Legal Deadline: None

Abstract: The Agency proposes to revise the Business and Industry Program regulations to incorporate additional guidance and eliminate or reduce certain requirements when financing cooperative stock. It also proposes to develop a streamlined application form when financing working capital, which includes cooperative stock.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Richard Bonnet, Sr. Loan Specialist, B&I Processing Branch, Department of Agriculture, Rural Business-Cooperative Service, Room 6864/Stop 3224, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA26

257. RURAL BUSINESS ENTERPRISE GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1932; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1942; 7 CFR 4284

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service proposes to completely rewrite and renumber 7 CFR 1942, subpart G, to 7 CFR part 4284, subpart B. This rewrite will incorporate public law changes and clarify administrative regulatory procedures and guidelines in order to improve program administration.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Room 6867/Stop 3225, 1400 Independence Avenue SW, Washington, DC 20250-3225
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RIN: 0570–AA28

258. • ANNUAL RENEWAL FEE

Priority: Other Significant

Legal Authority: 7 USC 1932

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: The Rural Business-Cooperative Service is amending its regulation for Business and Industry Guaranteed Loans to provide for an annual renewal fee. The intended effect of this rule is to reduce the subsidy rate and its associated budget authority dollar level, which will result in a greater level of assistance to the public (i.e., higher supportable loan level).

An alternative to this action is to increase the initial up-front guaranteed fee, which is a greater initial financial burden on the lender/borrower. The cost to the lender/borrower is 1/4 of one percent per annum on the unpaid balance of the loan. This reduces the risk to the Government by requiring the public to share in the credit risk of each loan.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dwight Carmon, Director, Special Project Program Oversight Division, Department of Agriculture, Rural Business-Cooperative Service, STOP 3221, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0570–AA34

Department of Agriculture (USDA)
Rural Business-Cooperative Service (RBS) **Final Rule Stage**

259. RURAL ECONOMIC DEVELOPMENT LOAN AND GRANT PROGRAM

Priority: Other Significant

Legal Authority: 7 USC 940c

CFR Citation: 7 CFR 1703, subpart B; 7 CFR 4280, subpart A

Legal Deadline: None

Abstract: This action is part of a reinvention laboratory initiative of the Department of Agriculture and Rural Business-Cooperative Service. The regulations will be written in a "plain language" style. The regulation will be simpler and improve the ease of use by the public and program beneficiaries. The regulation will be written in a question and answer format from the perspective of questions from the applicant under this program. The regulations will simplify the application format, review and selection process, and recipient's recordkeeping requirements. It will also add a section on the appeal of adverse decisions. The comment period on the proposed rule ended February 14, 2000. The Agency received 28 written comments. The Agency conducted a meeting, which was open to the public on August 2, 2000, to allow the Agency to listen to oral presentations from the general public on the proposed rule. The Agency will respond to the comments made at the meeting in the preamble to the final rule as part of the rulemaking processing under the Administrative Procedures Act.

Timetable:

Action	Date	FR Cite
NPRM	12/15/99	64 FR 69937
NPRM Comment Period End	02/14/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Wing, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Room 6867, South Building, STOP 3225, Washington, DC 20250
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RIN: 0570–AA19

260. ALLOCATION FORMULAS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 42 USC 1480

CFR Citation: 7 CFR 1940, subpart L

Legal Deadline: None

Abstract: This action will amend existing regulations for allocating program funds among Agency State offices. It will add the Rural Business Opportunity Grant Program and update the formulas used for Rural Business Enterprise Grant and Business and Industry Programs.

Timetable:

Action	Date	FR Cite
NPRM	08/03/00	65 FR 47695
NPRM Comment Period End	10/02/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0570–AA30

261. BUSINESS AND INDUSTRY GUARANTEED LOAN PROGRAM—DOMESTIC LAMB INDUSTRY ADJUSTMENT ASSISTANCE PROGRAM SET-ASIDE

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1989; 42 USC 1480; 5 USC 301

CFR Citation: 7 CFR 4279, subpart B

Legal Deadline: None

Abstract: This action provides for a set-aside of $15 million in Business and Industry Guaranteed Loans in fiscal year (FY) 2001, $15 million in FY 2002, and $5 million in FY 2003 to help fund the Domestic Lamb Industry Adjustment Assistance Program. The effective date for the set-aside was September 30, 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/00	65 FR 64596
Interim Final Rule Effective	10/30/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0570–AA31

262. THE RURAL BUSINESS ENTERPRISE GRANTS AND TELEVISION DEMONSTRATION GRANTS—SMALL/EMERGING PRIVATE BUSINESS ENTERPRISE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1932; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1942, subpart G

Legal Deadline: None

Abstract: This action will amend the existing regulation by clarifying the definition of small and emerging private business enterprise and reduce the burden to the applicant in meeting the restricted definition.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/01	66 FR 27013
Interim Final Rule Comment Period End	07/16/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Cavanaugh, Loan Specialist, Department of Agriculture, Rural Business-Cooperative Service, Room 6867/Stop 3225, 1400

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USDA—RBS — **Final Rule Stage**

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RIN: 0570–AA32

BILLING CODE 3410–XY–S

Department of Agriculture (USDA)
Rural Utilities Service (RUS) — **Proposed Rule Stage**

263. TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT, AND CONSTRUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) proposes to amend 7 CFR 1755 to include requirements presently contained in RUS Bulletin 345-3. This rule would establish and codify provisions for the inclusion and removal for products from I.P. 344-2. This rule also proposes to integrate the existing section on field trials in the procedures for product acceptance and inclusion in this codification, as well as clarifying and reorganizing the field trials section.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB40

264. SERVICING OF WATER PROGRAMS LOANS AND GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 7 CFR 1782; 7 CFR 1951; 7 CFR 1955; 7 CFR 1956

Legal Deadline: None

Abstract: This proposed action combines nine existing loan-servicing regulations of Water Programs into one. The new regulations will codify and clarify Water Programs policy relating to loan-servicing by incorporating simplified language without significantly changing any of the Agency's servicing policies or procedures.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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Fax: 202 720-4120

RIN: 0572–AB59

265. ELECTRIC PROGRAM STANDARD CONTRACT FORMS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1724; 7 CFR 1726; 7 CFR 1755

Legal Deadline: None

Abstract: RUS proposes to amend its regulations to revise its standard forms of contracts that borrowers are required to use when contracting for construction and procurement financed through loans made or guaranteed by RUS, in accordance with applicable RUS regulations.

Timetable:

Action	Date	FR Cite
ANPRM	09/16/98	63 FR 49503
ANPRM Comment Period End	11/16/98	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB67

266. EXEMPTIONS OF RUS OPERATIONAL CONTROLS UNDER SECTION 306E OF THE RE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS proposes to eliminate duplicative lists of requirements and to eliminate RUS notification to each borrower informing them of their exemption from operational controls status under the 110 percent rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550

USDA—RUS — **Proposed Rule Stage**

Fax: 202 720-4120

RIN: 0572–AB68

267. • ENVIRONMENTAL POLICIES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901-950b; PL 103-354; 7 USC 6941 et seq

CFR Citation: 7 CFR 1794

Legal Deadline: None

Abstract: Based on a greater use of small-scale and distribution generation, RUS' experience and review of its existing procedures, RUS has determined that several changes are necessary for its environmental process to operate in a more effective and efficient manner.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB73

268. • TECHNICAL ASSISTANCE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 7 USC 1989; 16 USC 1005

CFR Citation: 7 CFR 1775

Legal Deadline: None

Abstract: RUS proposes to amend the regulation to separate the technical assistance and training grant and solid waste management grant programs for clarification purposes and to bring the regulation in line with revisions to OMB circulars. Additionally, it eliminates the requirement that applicants submit a pre-application when applying for grant funds and transfers grant processing and servicing from the National Office to Rural Development State Offices.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB75

269. • SPECIAL EQUIPMENT CONTRACT (NOT INCLUDING INSTALLATION), RUS FORM 398

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 CFR 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: RUS is amending its regulations on Telecommunications Standards and Specifications for Materials, Equipment, and Construction to revise RUS Form 398, Special Equipment Contract (Not Including Installation).

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB76

270. • ACCOUNTING REQUIREMENTS FOR RUS TELECOMMUNICATIONS BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1770

Legal Deadline: None

Abstract: RUS proposes to revise subpart B, Uniform System of Accounts, to reflect changes to 47 CFR Part 32, Uniform System of Accounts, by the Federal Communications Commission.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB77

271. • EXTENSIONS OF PAYMENTS OF PRINCIPAL AND INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1721

Legal Deadline: None

Abstract: RUS proposes to amend the regulation to include distributed generation projects. Also, the agency proposes to impose a maximum interest rate not to exceed more than 3 percent in excess of the RUS Borrower's average interest on the notes being deferred. This 3 percent limit would be used to offset all or part of the administrative costs.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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USDA—RUS — **Proposed Rule Stage**

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB79

272. • USEFUL LIFE OF FACILITY DETERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: The Rural Utilities Service proposes to eliminate the requirement to use depreciation rates as found in RUS Bulletin 183-1 for determining the useful life of a facility.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17018
NPRM Comment Period End	05/09/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB80

Department of Agriculture (USDA)
Rural Utilities Service (RUS) — **Final Rule Stage**

273. SETTLEMENT OF DEBT

Priority: Other Significant

Legal Authority: 7 USC 901 to 950b; 7 USC 1981; PL 99-591; PL 103-354

CFR Citation: 7 CFR 1717

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) proposes to amend its debt settlement procedures to allow its Administrator to modify the requirements borrowers must meet to receive debt settlements. Currently, all borrowers must meet the same requirements regardless of the amount of debt or other circumstances. The intent of the proposed change is to facilitate debt settlements where the RUS Administrator determines that the Government's interest in the debt can still be protected without having the borrower meet each of the current requirements. Such determinations would be made on a case-by-case basis. While the change is expected to improve the efficiency of debt settlements, it is not intended to alter the basic outcome of such settlements.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB61

274. MERGERS AND CONSOLIDATIONS OF ELECTRIC BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1717

Legal Deadline: None

Abstract: The Rural Utilities Service will amend subpart D to provide the Administrator the flexibility to limit the amount of a loan to a successor (surviving business entity following a merger) to no more than 10 percent of the municipal loan authorization for a particular fiscal year, with the balance of the limited first loan request (if any) being considered in subsequent years. The Administrator will consider this limitation in years where a significant loan backlog is determined to exist.

Timetable:

Action	Date	FR Cite
NPRM	11/01/01	66 FR 55130
NPRM Comment Period End	12/03/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB63

275. DEMAND SIDE MANAGEMENT AND RENEWABLE ENERGY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: The Agency is removing subpart H in its entirety.

Timetable:

Action	Date	FR Cite
NPRM	04/25/01	66 FR 20759
NPRM Comment Period End	05/25/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

USDA—RUS — **Final Rule Stage**

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB65

276. TELECOMMUNICATIONS PROGRAM SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1755

Legal Deadline: None

Abstract: The Rural Utilities Service (RUS) is proposing to amend its regulations to change the manner in which it publishes the specifications that products need to meet for their use in telecommunications systems of RUS Borrowers. The specifications are currently published in the text of the CFR. This proposed rule would eliminate this unnecessary and burdensome publication in the CFR.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB69

277. • GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS is amending its regulations to clarify that the purchase or acquisition of existing electric facilities and implementation of demand side management and energy conservation programs, and on-grid and off-grid renewable energy systems are eligible loan purposes under the Rural Electrification Act, as amended. The rule also makes several technical corrections to conform the language of the regulations to existing law and to correct a typographical error.

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
Fax: 202 720-4120

RIN: 0572–AB72

278. • SEISMIC SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 42 USC 7701 et seq

CFR Citation: 7 CFR 1792-C

Legal Deadline: None

Abstract: The revision to the existing CFR is made to update the requirements of the agency. The direct final rule provides RUS borrowers, grant recipients, Rural Telephone Bank (RTB) borrowers and the public with updated rules for compliance with seismic safety requirements for new building construction using RUS or RTB loan, grant or guaranteed funds or funds provided through lien accommodations or subordinations approved by RUS or RTB.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB74

279. • RECORD RETENTION REQUIREMENTS FOR RUS ELECTRIC AND TELECOMMUNICATIONS BORROWERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1767; 7 CFR 1770

Legal Deadline: None

Abstract: RUS plans to issue record retention requirements for its Electric and Telecommunications borrowers.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
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RIN: 0572–AB78

Department of Agriculture (USDA)
Rural Utilities Service (RUS)

Completed Actions

280. EXTENSIONS OF PAYMENTS OF PRINCIPAL AND INTEREST

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1721

Completed:

Reason	Date	FR Cite
Final Rule	01/04/02	67 FR 484
Final Action Effective	02/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe
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RIN: 0572–AB60

281. DISTANCE LEARNING AND TELEMEDICINE LOAN AND GRANT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 1703

Completed:

Reason	Date	FR Cite
NPRM	01/23/02	67 FR 3128
Direct Final Rule	01/23/02	67 FR 3039
Direct Final Rule Effective	03/11/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe
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RIN: 0572–AB70

282. • TREASURY RATE LOAN PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 901 et seq; 7 USC 1921 et seq; 7 USC 6941 et seq

CFR Citation: 7 CFR 1710

Legal Deadline: None

Abstract: RUS is amending its regulations to establish rules and regulations to administer the Treasury rate direct loan program.

Timetable:

Action	Date	FR Cite
NPRM	12/26/01	66 FR 66359
Direct Final Rule	12/26/01	66 FR 66293
NPRM Comment Period End	01/25/02	
Direct Final Rule Effective	02/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: F. Lamont Heppe Jr., Director, Program Development & Reg Analysis, Department of Agriculture, Rural Utilities Service, Room 4034, South Building, 1400 Independence Avenue SW, Washington, DC 20250-1522
Phone: 202 720-9550
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RIN: 0572–AB71

BILLING CODE 3410–15–S

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS)

Proposed Rule Stage

283. WETLAND CATEGORICAL MINIMAL EFFECTS EXEMPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3801 et seq

CFR Citation: 7 CFR 12

Legal Deadline: None

Abstract: The 1985 Farm Bill, as amended, gives producers a major incentive to conserve wetlands by tying eligibility for most USDA program benefits to conservation of wetlands. However, producers can convert wetlands based on available exemptions, including a minimal effect exemption. A minimal effect applies if the action, individually and cumulatively, will have minimal effect on the functional hydrological and biological value of the wetlands in the area. A categorical minimal effect is one that, when carried out, will always have a minimal effect on the hydrologic and biological functions of wetlands in the area. These activities will be identified on a regional basis.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Helen Huntington, Regulatory Liaison, Department of Agriculture, Natural Resources Conservation Service, Mail Stop 5460, 5601 Sunnyside Avenue, Beltsville, MD 20705
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RIN: 0578–AA27

284. EMERGENCY WATERSHED PROTECTION PROGRAM

Priority: Other Significant

Legal Authority: PL 81-516; 33 USC 701; PL 95-334; 16 USC 2203

CFR Citation: 7 CFR 624

Legal Deadline: None

Abstract: A revision is necessary to incorporate changes in the program, which have resulted from the passage of the 1996 Farm Bill; to fulfill a desire to make the program more responsive and efficient; and to respond to concerns of the public and the Agency. The rule is being reorganized and several items added.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Victor Cole, National EWP Leader, Department of Agriculture, Natural Resources Conservation Service, Room 6019-S, PO Box 2890, Washington, DC 20013
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RIN: 0578–AA30

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS)

Final Rule Stage

285. CONSERVATION OF PRIVATE GRAZING LAND

Priority: Other Significant

Legal Authority: 16 USC 2005b

CFR Citation: 7 CFR 610

Legal Deadline: None

Abstract: Private grazing land constitutes nearly one-half of the non-Federal land of the United States and is basic to environmental, social, and economic stability of rural areas. In fact, grazing land constitutes the single largest watershed cover type in the United States and contributes significantly to the quality and quantity of water for all of the many uses in the watershed. Congress recognized the importance of grazing lands in subtitle H, section 386, of the Federal Agriculture Improvement and Reform Act of 1996 by authorizing the Secretary to provide a coordinated technical, educational, and related assistance program to conserve and enhance private grazing lands.

Timetable:

Action	Date	FR Cite
NPRM	06/29/01	66 FR 34584
NPRM Comment Period End	08/28/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Helen Huntington, Regulatory Liaison, Department of Agriculture, Natural Resources Conservation Service, Mail Stop 5460, 5601 Sunnyside Avenue, Beltsville, MD 20705
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RIN: 0578–AA29

Department of Agriculture (USDA)
Natural Resources Conservation Service (NRCS)

Long-Term Actions

286. HIGHLY ERODIBLE LAND AND WETLAND CONSERVATION

Priority: Other Significant

CFR Citation: 7 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47019
Interim Final Rule Comment Period End	11/05/96	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0578–AA17

287. FORESTRY INCENTIVES PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 7 CFR 635; 7 CFR 701

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Molleur
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RIN: 0578–AA26

BILLING CODE 3410–16–S

Department of Agriculture (USDA)
Office of Procurement and Property Management (OPPM)

Final Rule Stage

288. OFFICE OF PROCUREMENT AND PROPERTY MANAGEMENT (OPPM); UNIFORM PROCEDURES FOR THE ACQUISITION AND TRANSFER OF EXCESS FEDERAL PROPERTY

Priority: Info./Admin./Other

Legal Authority: 7 USC 2206a; 7 USC 301 note; 7 USC 321 et seq; 20 USC 1059c(b)

CFR Citation: 7 CFR 3200

Legal Deadline: None

Abstract: The Office of Procurement and Property Management (OPPM) is amending its procedures for the acquisition and transfer of excess personal property to 1994 Institutions (as defined in section 532 of the Equity in Education Land Grant Status Act of 1994); Hispanic-Serving Institutions (as defined in section 316(b) of the Higher Education Act of 1965); and any college or university eligible to receive funds under the Act of August 30, 1890. This amendment clarifies administrative rules regarding equipment transfer and reduces the administrative burden placed on recipient Institutions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathleen N. Fay, Property Utilization Specialist, Department of Agriculture, Office of Procurement and Property Management, Mail Stop 9304, 1400 Independence Avenue SW, Washington, DC 20250
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RIN: 0599–AA10

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Department of Commerce

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DEPARTMENT OF COMMERCE (DOC)

DEPARTMENT OF COMMERCE

Office of the Secretary

13 CFR Ch. III

15 CFR Subtitle A; Subtitle B, Chs. I, II, III, VII, VIII, IX, and XI

19 CFR Ch. III

37 CFR Chs. I, IV, and V

48 CFR Ch. 13

50 CFR Chs. II, III, IV, and VI

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AGENCY: Office of the Secretary, Commerce.

ACTION: Semiannual regulatory agenda.

SUMMARY: In compliance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, as amended, the Department of Commerce, in the spring and fall of each year, publishes in the **Federal Register** an agenda of regulations under development or review over the next 12 months. Rulemaking actions are grouped according to prerulemaking, proposed rules, final rules, long-term actions, and rulemaking actions completed since the October 2001 agenda. The purpose of the agenda is to provide information to the public on regulations currently under review, being proposed, or issued by the Department. The agenda is intended to facilitate comments and views by interested members of the public.

The Department's spring 2002 regulatory agenda includes regulatory activities that are expected to be conducted during the period April 1, 2002, through March 31, 2003.

FOR FURTHER INFORMATION CONTACT:

Specific: For additional information about specific regulatory actions listed in the agenda, contact the individual identified as the contact person.

General: Comments or inquiries of a general nature about the agenda should be directed to Daniel Cohen, Chief Counsel for Regulation, Office of the Assistant General Counsel for Legislation and Regulation, U.S. Department of Commerce, Washington, DC 20230; telephone: 202-482-3151.

SUPPLEMENTARY INFORMATION: Executive Order 12866 requires agencies to publish an agenda of those regulations that are under consideration pursuant to this Order. By memorandum of February 15, 2002, the Office of Management and Budget issued guidelines and procedures for the preparation and publication of the Spring 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions. The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to publish, in April and October of each year, a regulatory flexibility agenda which contains a brief description of the subject area of any rule which is likely to have a significant economic impact on a substantial number of small entities. The agenda also identifies those entries that have been selected for periodic review under section 610 of the Regulatory Flexibility Act.

Explanation of Information Contained in the Agenda

Within the Department, the Office of the Secretary and various operating units may issue regulations. Operating units, such as the National Oceanic and Atmospheric Administration (NOAA), the Bureau of Export Administration, and the Patent and Trademark Office issue the greatest share of the Department's regulations.

A large number of regulatory actions reported in the agenda deal with fishery management programs of NOAA's National Marine Fisheries Service (NMFS). To avoid repetition of programs and definitions, as well as to provide some understanding of the technical and institutional elements of the NMFS programs, a section on "Explanation of Information Contained in NMFS Regulatory Entries" is provided below.

Explanation of Information Contained in NMFS Regulatory Entries

The Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 *et seq.*) (Act) governs the management of fisheries within the Exclusive Economic Zone (EEZ). The EEZ refers to those waters from the outer edge of the State boundaries, generally 3 nautical miles, to a distance of 200 nautical miles. Fishery Management Plans (FMPs) are to be prepared for fisheries, which require conservation and management measures. Regulations implementing these FMPs regulate domestic fishing and foreign fishing where permitted. Foreign fishing can be conducted in a fishery in which there is no FMP only if a preliminary fishery management plan has been issued to govern that foreign fishing. Under the Act, eight Regional Fishery Management Councils (Councils) prepare FMPs or amendments to FMPs for fisheries within their respective areas. In the development of such plans or amendments and their implementing regulations, the Councils are required by law to conduct public hearings on the draft plans and to consider the use of alternative means of regulating.

The Council process for developing FMPs and amendments makes it difficult for NMFS to determine the significance and timing of some regulatory actions under consideration by the Councils at the time the semiannual regulatory agenda is published.

The DOC spring 2002 regulatory agenda follows.

Theodore W. Kassinger,
General Counsel.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
289	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0690-AA30
290	Employee Responsibilities and Conduct; Removal of Obsolete Regulations	0690-AA32

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Office of the Secretary—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0690-AA23	Standards of Ethical Conduct—Department of Commerce Supplemental Regulations	02/21/2002	Withdrawn

Bureau of Economic Analysis—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
291	Annual Survey of Selected Services Transactions With Unaffiliated Foreign Persons	0691-AA43
292	Benchmark Survey of Foreign Direct Investment in the United States—2002	0691-AA44
293	Transactions of U.S. Affiliate, Except U.S. Banking Affiliate, With Foreign Parent (BE-605) and Transactions of U.S. Banking Affiliate With Foreign Parent (BE-605)	0691-AA45
294	Initial Report on Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of Operating Assets, or U.S. Business Enterprise, Including Real Estate	0691-AA46

Bureau of Economic Analysis—Completed Actions

Sequence Number	Title	Regulation Identification Number
295	Benchmark Survey of Selected Services Transactions With Unaffiliated Foreign Persons—2001	0691-AA41
296	International Services Surveys: BE-48, Annual Survey of Reinsurance and Other Insurance Transactions by U.S. Insurance Companies With Foreign Persons	0691-AA42

Bureau of the Census—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
297	Mandatory Automated Export System (AES) Filing for All Items on the Commerce Control List (CCL) and the United States Munitions List (USML)	0607-AA34

Bureau of the Census—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
298	Special Services and Studies by the Bureau of the Census; Amendments to Age Search Procedures	0607-AA24
299	Cutoff Dates for Recognition of Boundary Changes for Census 2000 and for the Intercensal Period	0607-AA35

Bureau of the Census—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
300	Reporting Value on Shipper's Export Declaration for Inland Freight and Insurance Charges	0607-AA29
301	Reporting the Value of Repairs and Replacement Parts on the Shipper's Export Declaration	0607-AA30
302	Notation of the Shipper's Export Declaration Filing Exemption Statement on Manifest Documents	0607-AA31

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General Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
303	Governmentwide Debarment and Suspension (Nonprocurement)	0605-AA16

General Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
304	Uniform Administrative Requirement for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofits and Commercial Organizations	0605-AA09
305	Public Information, Freedom of Information and Privacy	0605-AA14

International Trade Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
306	Procedures for Conducting Five-Year (Sunset) Reviews of Antidumping and Countervailing Duty Orders	0625-AA51
307	Import of Certain Worsted Wool Fabric: Implementation of Tariff Rate Quote Established Under Title V of the Trade and Development Act of 2000	0625-AA58

International Trade Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
308	Export Trade Certificates of Review (15 CFR 325)	0625-AA52
309	Proposed Changes in the Insular Possessions Watch, Watch Movement and Jewelry Program	0625-AA57

Bureau of Industry and Security—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
310	SNAP: Simplified Network Application Process	0694-AC20

Bureau of Industry and Security—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
311	Chemical Weapons Convention Regulations	0694-AB06
312	Revisions to the Export Administration Regulations; Additions to the Entity List	0694-AB60
313	Revisions to the Export Administration Regulations; Country Group E:1; License Exception TMP	0694-AB76
314	Exports and Reexports of Explosive Detection Systems; Expansion of Foreign Policy Controls	0694-AB87
315	Exports and Reexports to Sudan	0694-AC05
316	Anti-Terrorism Controls on Iraq	0694-AC06
317	Revisions to the North Korean Embargo Policy	0694-AC10
318	Expansion of License Exception GOV; Exports and Reexports to International Organizations	0694-AC15
319	Revisions to the Export Administration Regulations Related to the Missile Technology Control Regime (MTCR)	0694-AC22
320	Revision to the Export Administration Regulations: Replacement Licenses	0694-AC23
321	Revisions and Clarifications to the Export Administration Regulations	0694-AC24
322	Crime Control Items: Revisions to the Commerce Control List	0694-AC31
323	License Exception AVS: Cuba, Libya, Serbia	0694-AC33
324	Clarifications to Part 753: Special Comprehensive License Requirements	0694-AC34

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Bureau of Industry and Security—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
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326	Exports of Agricultural Commodities, Medicines and Medical Devices	0694-AC37
327	Implementation of the Wassenaar Arrangement List of Dual-Use Items Revisions: Computers; and Revisions to License Exception CTP	0694-AC42
328	Exports to Afghanistan (the Taliban) and Liberia: Imposition of Foreign Policy Controls	0694-AC45
329	Addition and Revision of Missile Projects in the Export Administration Regulations	0694-AC46
330	Revision, Suspension, or Prohibition of Use of "No License Required" Provisions	0694-AC47
331	Licensing Jurisdiction for "Space Qualified" Items	0694-AC49
332	Missile Technology Production Equipment and Facilities	0694-AC51
333	Revisions and Clarifications to the Export Administration Regulations—Nuclear Nonproliferation Controls: Nuclear Suppliers Group	0694-AC52
334	Corrections and Clarifications to the Export Administration Regulations: Czech Republic, Hungary and Poland	0694-AC53
335	Elimination of "National Security" as a Reason for Control for Certain Items on the Commerce Control List	0694-AC54
336	Revisions to the Export Administration Regulations as a Result of the September 2001 Missile Technology Control Regime (MTCR) Plenary Meeting	0694-AC55
337	Revisions to License Exception CTP: Implementation of Presidential Announcement of January 2, 2002	0694-AC56
338	Exports to the Federal Republic of Yugoslavia: Lifting of Sanctions	0694-AC57
339	Revision to Export Administration Regulations: Denied Persons List	0694-AC58
340	Imposition and Expansion of Controls on Designated Persons	0694-AC60
341	Implementation of the Wassenaar Arrangement List of Dual-Use Items and Other Revisions to Encryption Items	0694-AC61
342	Revisions and Clarifications to the Export Administration Regulations—Chemical and Biological Weapons Controls: Australia Group; Chemical Weapons Convention	0694-AC62

Bureau of Industry and Security—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
343	Transfer of Dual-Use Items From U.S. Munitions List to the Commerce Control List	0694-AA52
344	Administration of State Log Exports Ban	0694-AB25
345	Change the Commerce Control List To Revise Controls on Communication Intercepting Devices (Export Commerce Control Number ECCN 5A980)	0694-AB41
346	Clarification of License Exception GFT (Humanitarian Donations)	0694-AB49
347	Exports of Technology and Software; Release of Technology or Source Code to Foreign Nationals in the United States	0694-AB59
348	India and Pakistan Sanctions	0694-AB73
349	Expansion of License Exception CIV Eligibility for "Microprocessors" Controlled by ECCN 3A001	0694-AB90
350	Export of Technology and Software Through Electronic Transmissions, Downloads, and Programmed Onto Hardware	0694-AB97
351	Export Administration Regulations: Support Documentation	0694-AC04
352	De Minimis Expansion of Eligibility: U.S. Origin Software Incorporated Into Foreign-Made Retail Commodities	0694-AC17
353	Short Supply Controls: Crude Oil Exports	0694-AC25
354	Offsets in Military Exports	0694-AC27
355	Entity List: Additions and Revisions	0694-AC28
356	Revisions to Encryption Items	0694-AC32
357	Removal of Licensing Exemption for Exports and Reexports of Missile Technology-Controlled Items Destined to Canada	0694-AC48
358	License Exception CIV Eligibility for Certain "Microprocessors" Controlled by ECCN 3A001	0694-AC59

Bureau of Industry and Security—Completed Actions

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360	Revisions and Clarifications to the Commerce Control List; Chemical and Biological Weapons Controls; Australia Group	0694-AC43

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Bureau of Industry and Security—Completed Actions (Continued)

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361	Implementation of the Wassenaar Arrangement List of Dual-Use Items: Revisions to Categories 1, 2, 3, 4, 5, 6, 7 and 9 of the Commerce Control List and Revisions to Reporting Requirements	0694-AC44
362	Export Administration Regulations Entity List: Removal of Indian and Pakistani Entities, and Revision in License Policy	0694-AC50

National Oceanic and Atmospheric Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
363	Preventing Harassment from Human Activities Directed at Marine Mammals in the Wild	0648-AN43

National Oceanic and Atmospheric Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
364	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands	0648-AG87
365	Regulatory Amendment To Establish Permit and Reporting Requirements for Pelagic Troll and Handline Vessels Fishing Off Pacific Remote Islands of the United States	0648-AJ08
366	Establish Central Registry for Limited Access System Permits	0648-AJ77
367	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery	0648-AK26
368	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands	0648-AK82
369	Revise Exempted Fishing Regulations To Specify Compensatory Fishing Under Exempted Fishing	0648-AK84
370	Amendment 11 to the Fishery Management Plan for the Crustacean Fisheries of the Western Pacific Region	0648-AL67
371	Fishery Management Plan for Calico Scallop Fishery in the South Atlantic Region (FMP)	0648-AL78
372	Comprehensive Amendment Addressing Sustainable Fisheries Act Requirements Regarding Overfishing, Bycatch, Fishing Communities and Provisions for Fishery Management Plans for the Caribbean	0648-AL86
373	Regulatory Amendment To Reinstate 6000 Pound Trip Limit of Halibut in Area Northeast of the Bering Sea	0648-AL97
374	Fishery Management Plan Amendment To Revise Community Development Quota Regulations	0648-AM07
375	Amendment 10 to the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648-AM23
376	Enhanced Measures To Mitigate Seabird Bycatch in the Alaska Longline Fisheries	0648-AM30
377	Regulatory Amendment To Change the Regulations Implementing the North Pacific Observer Program	0648-AM44
378	Framework Regulatory Amendment for the Atlantic Highly Migratory Species (HMS); Fishing Vessel Permits; Charter Boat Operations	0648-AM91
379	Amendment 62 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area and Amendment 62 to the FMP for the Groundfish of the Gulf of Alaska	0648-AM94
380	Implementation of Western Pacific Coral Reef Ecosystem Fishery Management Plan (FMP)	0648-AM97
381	Amendment 7 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region	0648-AM98
382	Amendment 7 to the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic FMP	0648-AN08
383	Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico	0648-AN09
384	Amendment 7 to the Fishery Management Plan for the Stone Crab Fishery of the Gulf of Mexico	0648-AN10
385	Amendment 13 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan	0648-AN12
386	Amendment 10 to the Atlantic Sea Scallop Fishery Management Plan	0648-AN16
387	Deep-Sea Red Crab Fishery Management Plan	0648-AN68
388	Regulatory Amendment To Prevent or Mitigate the Take of Sea Turtles in the Western Pacific Pelagic Fisheries	0648-AN75
389	Amendment 9 to the Fishery Management Plan Amendment for the Pelagic Fisheries of the Western Pacific Region	0648-AN76
390	Resubmission of Sustainable Fisheries Act Amendment Crustaceans, Bottomfish, and Pelagics Regarding Overfishing Definitions	0648-AN79
391	Regulatory Amendment Modifying the Gulf of Mexico BRD Protocol Under the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648-AN84
392	Fishery Management Plan (FMP) for Sargassum Habitat of the South Atlantic	0648-AN87
393	Fishery Management Plan for Northeast Skate	0648-AO10

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National Oceanic and Atmospheric Administration—Proposed Rule Stage (Continued)

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394	Amendment 5 to the Fishery Management Plan for Precious Coral Fisheries in the Western Pacific Region	0648-AO47
395	Amendment 11 to Fishery Management Plan for Shrimp Fishery of Gulf of Mexico (FMP)	0648-AO51
396	Amendments to FMPs for Gulf of Mexico Reef Fish and Gulf of Mexico and South Atlantic Coastal Migratory Pelagic Resources To Limit Entry Into Gulf of Mexico Recreational-for-Hire Fisheries	0648-AO62
397	Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean, and Gulf of Mexico (FMP)	0648-AO63
398	Atlantic Highly Migratory Species Fisheries; Atlantic Bluefin Tuna Incidental Catch	0648-AO75
399	Atlantic Highly Migratory Species; Exempted Fishing Permits Procedures	0648-AO79
400	Recreational Measures for the Summer Flounder, Scup, and Black Sea Bass Fisheries for Fishing Year 2002	0648-AO91
401	Regulatory Amendment Under the Fishery Management Plan for Gulf of Mexico Reef Fish (FMP) To Establish a Red Snapper Stock Rebuilding Plan and To Set Red Snapper Overfishing Targets and Thresholds	0648-AP02
402	Amendment 13 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region	0648-AP03
403	Specifications for the Spiny Dogfish Fishery for Fishing Year 2002	0648-AP07
404	Framework 1 to the Monkfish Fishery Management Plan for Fishing Year 2002	0648-AP11
405	Framework Adjustment 2 to the Fishery Management Plan for the Atlantic Mackerel, Squid, and Butterfish Fisheries	0648-AP12
406	American Lobster Fishery; Revisions to Lobster Trap Limits, Conservation Equivalency in New Hampshire Waters, and Clarification of Lobster Management Boundaries per Addendum 1	0648-AP15
407	Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs	0648-AP25
408	Regulatory Amendment to Implement Permit Stacking in the Limited-Entry Fixed-Gear Sablefish Fishery in 2002 and Beyond	0648-AP38
409	Regulatory Amendment To Allow Experimental Setnet Sablefish Landings To Qualify Limited-Entry Sablefish Endorsement Holders for Tier Assignment in the West Coast Primary Sablefish Fishery	0648-AP39
410	Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region	0648-AP41
411	Implementation of Fishery Management Plan for Highly Migratory Species Fisheries Off the West Coast	0648-AP42
412	Secretarial Amendment to Implement Annual Adjustment Measures for the Northeast Multispecies Fishery for Fishing Year 2002	0648-AP45
413	Atlantic Highly Migratory Species; Pelagic Longline Fishery; Sea Turtle Protection Measures	0648-AP49
414	Regulatory Amendment Under the Coastal Migratory Pelagics Fishery Management Plan	0648-AP50
415	Amendment 2 to the Fishery Management Plan for the Queen Conch Resources of Puerto Rico and the U.S. Virgin Islands	0648-AP51
416	Adjustment of Management Program: Bottomfish Fisheries in the Western Pacific	0648-AP53
417	Resubmission of Sustainable Fisheries Act Amendment Bottomfish, Crustacean, and Pelagics Regarding Bycatch Provisions	0648-AP54
418	Resubmission of Sustainable Fisheries Act Amendment Bottomfish, Crustaceans, and Pelagics, and Precious Corals Regarding Fishing Communities	0648-AP55
419	Atlantic Surfclam and Ocean Quahog Fisheries; Amendment 13	0648-AP57
420	Spiny Dogfish Fishery; Amendment 1	0648-AP58
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423	Amendment to Regulations for Observer At-Sea Electronic Communication Equipment Requirements for Vessels and Shoreside Processors in the North Pacific Groundfish Fisheries	0648-AP66
424	Revise Community Development Quota Program Administration and Allocation Regulations	0648-AP67
425	Amendment 69 to the BSAI FMP - AFA Co-Op Leasing	0648-AP71
426	Full Retention of Demersal Shelf Rockfish in Gulf of Alaska Area 650	0648-AP73
427	Antarctic Marine Living Resources Vessel Monitoring System and Catch Documentation Scheme	0648-AP74
428	Amendment 60 to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska	0648-AP79
429	Suspension of the Texas Closure in Accordance With the Fishery Management Plan for the Shrimp Fishery of the Gulf of Mexico (FMP)	0648-AP82
430	Amendment 10 to the Coastal Pelagic Species Fishery Management Plan	0648-AP87
431	Atlantic Highly Migratory Species (HMS); 2002 Bluefin Tuna Quota Specifications and Effort Controls	0648-AP90
432	Amend Regulations Governing the Taking and Importing of Marine Mammals	0648-AH83
433	North Atlantic Whale Protection	0648-AM85
434	Designated Critical Habitat: Proposed Critical Habitat for Northern California Steelhead	0648-AO04
435	Endangered and Threatened Species: Permit Exemptions	0648-AO37
436	Captive Steller Sea Lions	0648-AO61
437	Taking Marine Mammals Incidental to Rocket Launches From the Kodiak Launch Complex, Kodiak Island, Alaska	0648-AP62

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439	Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Oil and Gas Structure Removal Activities in the Gulf of Mexico	0648-AP83
440	Revision of Overflight Regulations	0648-AI91

National Oceanic and Atmospheric Administration—Final Rule Stage

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441	Regulatory Amendment To Allocate Pacific Halibut to the Charter Boat Fleet	0648-AK17
442	Adjustment of the Management Program for Precious Corals Fisheries in the Western Pacific	0648-AK23
443	Proposed Highly Migratory Species Process	0648-AK40
444	Amendment 54 to FMP for Groundfish Fishery of Bering Sea and Aleutian Islands Area and Amendment 54 to FMP for Groundfish of Gulf of Alaska	0648-AK70
445	Crab Community Development Quota Reserves	0648-AL92
446	Amendment 67 to the FMP for the Groundfish Fishery of the Bering Sea and the Aleutian Islands Area	0648-AM40
447	Prohibit Use of Set Net Gear To Harvest Groundfish in Certain Portions of the Exclusive Economic Zone Waters Seaward of California	0648-AN03
448	Atlantic Highly Migratory Species Fisheries; Management of the Atlantic Blue Marlin and White Marlin Recreational Fisheries	0648-AN06
449	Amendments 61/61 for BSAI and GOA Groundfish; Amendment 13 for Commercial King and Tanner Crab; and Amendment 8 for Alaska Scallop Fishery	0648-AN55
450	Generic Amendment Addressing the Establishment of the Tortugas Marine Reserves Under the Fishery Management Plans of the Gulf of Mexico	0648-AN83
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452	Regulatory Amendment to Modify the Management Program for the Western Pacific Pelagic Fisheries to Mitigate the Take of Seabirds	0648-AO35
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454	American Lobster; Modify Management Measures, Historical Participation	0648-AP18
455	Announcement of the Optimum Yield and Harvest Limit for Pacific Mackerel	0648-AP43
456	2002-2003 Management Measures for Commercial, Recreational, and Treaty Indian Salmon Fisheries Off the Coasts of Washington, Oregon, and California	0648-AP52
457	Summer Flounder, Scup, and Black Sea Bass Fisheries; Framework 3	0648-AP56
458	Atlantic Bluefish Fishery; Specifications for Fishing Year 2002	0648-AP59
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460	Pacific Halibut Fisheries Catch Sharing Plan	0648-AP80
461	Emergency Interim Rule Imposing Additional Restrictions in the Hawaii-Based Longline Fishery	0648-AP84
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465	Atlantic Highly Migratory Species (HMS); Regulatory Adjustments; NOAA Information Collection Requirements	0648-AP89
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468	Endangered Species; Transferring Permits	0648-AP64
469	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program	0648-AP68
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472	Rulemaking for the Incidental Taking of Marine Mammals During Worldwide Deployment of the U.S. Navy's Low Frequency Active Sonar	0648-AM62
473	Sea Turtle Conservation Regulations; Summer Flounder Fishery	0648-AM89
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476	Sea Turtle Conservation Regulations; Fishery Activities	0648-AP91

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480	Amendment 1 to the Atlantic Herring Fishery Management Plan	0648-AN19
481	Amendment 14 to the Northeast Multispecies Fishery Management Plan	0648-AN20
482	Amendment 14 to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan	0648-AO55
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484	Sea Turtle Conservation Regulations; Fishery Activities	0648-AP63
485	Endangered and Threatened Species: Take of Threatened Southern Oregon/Northern California Coast Evolutionarily Significant Unit (ESU) Coho Salmon	0648-AJ91
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487	Interagency Consultation for the National Marine Sanctuary Program	0648-AL06
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492	Regulatory Amendment To Update Regulations Governing the Operation of Regional Fishery Management Councils	0648-AJ82
493	Regulatory Amendment To Prohibit Vessels Over 50 Feet From Fishing for Pelagic Management Unit Species Within 50 Nautical Miles of American Samoa	0648-AL41
494	Amendment 6 - Definition of Overfishing for Salmon Fisheries Off Alaska	0648-AL98
495	Steller Sea Lion Conservation Measures for the BSAI and GOA Pollock Fisheries	0648-AM32
496	American Fisheries Act Regulations	0648-AO14
497	Revisions to Recordkeeping and Reporting Requirements for 2001	0648-AO20
498	2001 Quotas for Purse Seine Fisheries in the Eastern Pacific	0648-AO48
499	Pacific Coast Groundfish Fishery; Announcement of the 2002 Groundfish Fishery Specifications and Management Measures	0648-AO69
500	Continue Closure of Two Mid-Atlantic Areas to Scallop Fishing	0648-AO71
501	Atlantic Highly Migratory Species; Pelagic Longline Fishery; Gear Requirements	0648-AO76
502	Steller Sea Lion Protection Measures for Groundfish Fisheries Off Alaska; Reasonable and Prudent Alternative Under November 30 Biological Opinion on Alaska Groundfish Fisheries	0648-AO82
503	Announcement of the Optimum Yield and Harvest Limit for Pacific Sardines	0648-AP00
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505	Specifications for the Atlantic Mackerel, Squid, and Butterfish Fisheries for Fishing Year 2002	0648-AP08
506	Specifications for the Atlantic Surf Clam and Ocean Quahog Fisheries for Fishing Year 2002	0648-AP09
507	Establish Measures To Address the Imminent Rapid Increase in Landings and To Halt Overfishing in the Atlantic Red Crab Fishery	0648-AP10
508	Implementation of the Shark Finning Prohibition Act	0648-AP21
509	Western Pacific Pelagics Fisheries; Hawaii-Based Pelagic Longline Restrictions and Seasonal Area Closure, Sea Turtle and Sea Bird Mitigation Measures	0648-AP24
510	Extension of Atlantic Highly Migratory Species (HMS); Permit Category Deadline	0648-AP29
511	Extension of Implementation Date of the Year 4 Default Management Measures for Small-Mesh Multispecies (Whiting, Red Hake and Offshore Hake)	0648-AP32
512	Status Review of Gulf of Maine/Bay of Fundy Population of Harbor Porpoise Under the ESA	0648-AP33

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National Oceanic and Atmospheric Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
513	Eligibility Criteria and Definitions for Western Pacific Community Development Programs and Western Pacific Demonstration Projects	0648-AP36
514	Annual Specifications for the Atlantic Herring Fishery for Fishing Year 2002	0648-AP37
515	Framework 1 to the Atlantic Herring Fishery Management Plan	0648-AP44
516	Taking and Importing Marine Mammals; Taking Marine Mammals Incidental to Rocket Launches at Vandenberg Air Force Base, CA	0648-AP47
517	Regulatory Amendment to the Summer Flounder, Scup, and Black Sea Bass Fishery Management Plan	0648-AP65
518	Emergency Rule To Implement Steller Sea Lion Protection Measures and Harvest Specifications for 2002 for the Aleutian Islands, Bering Sea and Gulf of Alaska Groundfish Fisheries	0648-AP69
519	Atlantic Highly Migratory Species; Large and Small Coastal Sharks; Commercial Management Measures	0648-AP70
520	Regulations Relating to Disclosure of Information and Employee Testimony in Litigation; Removal of Obsolete Regulations	0648-AP77
521	Implementation of 1997 MMPA Amendments Affecting Yellowfin Tuna Purse Seine Fishing in the Eastern Tropical Pacific	0648-AI85
522	Sea Turtle Conservation Regulations; Fisheries	0648-AN64
523	Rule for Gear Modifications to the Atlantic Large Whale Take Reduction Plan	0648-AN88
524	Endangered and Threatened Species; Take of Four Threatened Evolutionarily Significant Units of West Coast Salmon	0648-AP17
525	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations	0648-AP48
526	Sea Turtle Conservation; Shrimp Trawling Requirements	0648-AP75
527	Florida Keys National Marine Sanctuary; Tortugas Ecological Reserve	0648-AO18
528	Revisions to Anchoring Prohibitions in Flower Garden Banks National Marine Sanctuary	0648-AP22

National Oceanic and Atmospheric Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0648-AE54	Sea Turtle Monitoring and Conservation Measures for Nonshrimp Fisheries	03/08/2002	Withdrawn
0648-AG46	General Provisions for Domestic Fisheries—Standard Definitions	02/15/2002	Withdrawn
0648-AG80	Amendment of Marine Mammal Regulations To Authorize Incidental Takings of Marine Mammals by Harassment as Authorized by Public Law 103-238	03/08/2002	Withdrawn
0648-AH19	Establish Guidelines for Nonlethally Deterring Marine Mammals From Endangering Personal Safety or Damaging Public or Private Property	03/08/2002	Withdrawn
0648-AH20	General Authorization for Scientific Research Involving Level B Harassment	03/08/2002	Withdrawn
0648-AH31	Issuance of Permits for Marine Mammal Photography	03/08/2002	Withdrawn
0648-AI69	Amendments to the Observer Program - Amendment 47 to the FMP for BSAI Groundfish and Amendment 47 to the FMP for GOA Groundfish	03/07/2002	Withdrawn
0648-AJ60	Amend the Foreign Fishing Regulations To Implement the Provisions of a Pacific Insular Area Fishery Agreement	02/19/2002	Withdrawn
0648-AK08	Regulatory Amendment To Develop a C. Bairdi Vessel Incentive Program	03/07/2002	Withdrawn
0648-AK16	Regulatory Amendment To Allocate Pacific Halibut to the Halibut Subsistence Fishery	03/07/2002	Withdrawn
0648-AL44	Proposed Guidelines for Defining Serious Injury; Request for Comments	03/08/2002	Withdrawn
0648-AL59	Section 4(d) of ESA Protective Regulations for Johnson's Seagrass, a Threatened Species	03/08/2002	Withdrawn
0648-AL66	Regulatory Amendment To Fund Purchase of Limited Entry Trawl Permits To Reduce Excess Capacity in Pacific Coast Groundfish Fleet	03/04/2002	Withdrawn
0648-AL69	Regulatory Amendment To Allocate Lingcod and Bocaccio Rockfish Between Commercial and Recreational Groundfish Fisheries	03/04/2002	Withdrawn
0648-AM39	Alaska Groundfish Fishery Management Plan Amendment To Revise Improved Retention/Improved Utilization Program	03/07/2002	Withdrawn
0648-AM51	Amendment 53 to the Groundfish Fisheries of the Gulf of Alaska Fishery Management Plan	03/04/2002	Withdrawn
0648-AM76	Halibut Bycatch Accounting for the Yellowfin Sole	03/07/2002	Withdrawn
0648-AN21	Regulatory Amendment To Clarify the Alaska Groundfish Individual Fishing Quota Program Appeals Regulations	03/07/2002	Withdrawn

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National Oceanic and Atmospheric Administration—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
0648-AN24	Amendment 63 to the FMP for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area and Amendment 63 to the FMP for the Groundfish of the Gulf of Alaska	03/07/2002	Withdrawn
0648-AN26	Amendments to Alaska FMPs for Groundfish, Crab, and Scallop To Reduce Halibut Mortality	03/07/2002	Withdrawn
0648-AN60	Distribute U.S. Allocations From the Northwest Atlantic Fisheries Organization	03/05/2002	Withdrawn
0648-AN86	Regulatory Amendment Modifying the South Atlantic BRD Testing and Certification Protocol	03/14/2002	Withdrawn
0648-AN89	Designated Critical Habitat; Designation of Marine Areas as Critical Habitat for Pacific Salmon	02/19/2002	Withdrawn
0648-AO26	Multispecies Community Development Quota Program Bycatch Accounting	03/07/2002	Withdrawn
0648-AO57	Regulatory Amendment To Address Inaccuracies in Current Northeast Fisheries Regulations	03/14/2002	Withdrawn
0648-AO59	Endangered and Threatened Species: Permits: Suspension Criteria and Procedures and Revocation Criteria and Procedures	03/08/2002	Withdrawn
0648-AO73	Implement Management Measures for the Pacific Cod Fisheries in the Gulf of Alaska, the Bering Sea, and the Aleutian Islands	03/07/2002	Withdrawn
0648-AO81	Vessel Monitoring System to the Pollock, Pacific Cod, and Atka Mackerel Groundfish Fisheries in the BSAI and GOA	03/07/2002	Withdrawn
0648-AO83	Harvesting Restrictions for the Dolphin and Wahoo Fishery in the Atlantic Exclusive Economic Zone (EEZ)	03/07/2002	Withdrawn
0648-AO90	Observer Program Electronic Reporting Requirements	03/07/2002	Withdrawn
0648-AO98	Amendment 65 to BSAI Groundfish, Amendment 65 to GOA Groundfish, Amendment 12 for Commercial King and Tanner Crab of BSAI, and Amendment 7 for Scallop Fishery Off Alaska	03/07/2002	Withdrawn
0648-AP05	Framework 36 to the Northeast Multispecies Fishery Management Plan	03/04/2001	Withdrawn
0648-AP46	Framework Adjustment for the Northeast Multispecies (Whiting) Fishery	03/15/2002	Duplicate of 0648-AP32

National Telecommunications and Information Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
529	Mandatory Reimbursement Rules for Relocation of Federal Spectrum	0660-AA14

National Telecommunications and Information Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0660-AA11	Improvement of Technical Management of Internet Names and Addresses	04/01/2002	Withdrawn

Patent and Trademark Office—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
530	Rules of Practice Before the Board of Patent Appeals and Interferences in Appeals Under 35 U.S.C. 134	0651-AB27
531	Changes in Rules of Practice for Patent Interferences and Related Proceedings	0651-AB32
532	Development of Plan To Remove Patent and Trademark Classified Paper Files From Public Search Facilities	0651-AB34
533	Revision of Patent and Trademark Fees for Fiscal Year 2003	0651-AB49
534	Changes To Improve the Patent and Application Process	0651-AB50

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Patent and Trademark Office—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
535	Complaints Regarding Invention Promoters	0651-AB12
536	Elimination of Continued Prosecution Application Practice as to Utility and Plant	0651-AB37

Patent and Trademark Office—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
537	Correspondence Filed in the Patent and Trademark Office	0651-AB17
538	Electronic Submission of Application for Trademark Registration and Other Documents	0651-AB31
539	Changes to Representation of Others Before the U.S. Patent and Trademark Office	0651-AB38
540	Madrid Protocol Implementation Act Rules Change	0651-AB45
541	Patent and Trademark Office Acquisition Regulation	0651-AB46
542	Surcharge for the Use of Non-Electric, Paper Forms for Submission of Applications for Registration and Other Documents	0651-AB47
543	Amendment of Rule Regarding Filing of Trademark Correspondence via Express Mail	0651-AB48

Patent and Trademark Office—Completed Actions

Sequence Number	Title	Regulation Identification Number
544	Standard for Declaring a Patent Interference	0651-AB29
545	Changes to the Time Period For Making Any Necessary Deposits of Biological Materials	0651-AB33
546	Revision of Patent Corporation Treaty Application Procedure	0651-AB35
547	Requirements for Claiming the Benefit of Prior-Filed Applications Under Eighteen-Month Publication of Patent Applications	0651-AB41
548	Trademark Classification; Changes To Comport With Obligations to Nice Agreement Concerning Intl Classification of Goods and Services for Purposes of Registration of Marks of June 15, 1957, as Revised	0651-AB42
549	Revision of the Time Limit for National Stage Commencement in the United States for Patent Cooperation Treaty Applications	0651-AB44

Patent and Trademark Office—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0651-AA93	Requirements for Registration To Practice Before the PTO in Patent Cases	12/31/2001	Withdrawn
0651-AA95	Technical and Nontechnical Requirements for Registration To Practice Before the PTO in Patent Cases, Disciplinary Rules, and Investigations and Disciplinary Proceedings	02/22/2002	Withdrawn
0651-AB11	Patent and Trademark Office Acquisition Regulations	12/31/2001	Withdrawn - Replaced by 0651-AB46.
0651-AB24	Study of Alternative Fee Structures	02/25/2002	Withdrawn
0651-AB25	Preliminary Draft Convention on Jurisdiction and Foreign Judgments and Civil and Commercial Matters	02/26/2002	Withdrawn
0651-AB26	Notification of Required and Optional Search Criteria for Computer-Implemented Business Method Patent Applications in Class 705 and Request for Comments	02/22/2002	Withdrawn
0651-AB28	Protection of Audiovisual Performances To Be Considered by the WIPO Diplomatic Conference	12/31/2001	Withdrawn
0651-AB30	Establishment of Data Base Containing Official Insignia of Federally Recognized Native American Tribes	12/31/2001	Withdrawn
0651-AB40	Elimination of the Practice of Including Copies of U.S. Patent Documents With Office Actions	02/22/2002	Withdrawn

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Technology Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
550	Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692-AA14
551	Acquisition and Protection of Foreign Rights in Inventions	0692-AA15
552	Amendment to Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements	0692-AA18

Department of Commerce (DOC)
Office of the Secretary (OS)

Final Rule Stage

289. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 15 CFR 8; 15 CFR 8b; 15 CFR 8c; 15 CFR 20

Legal Deadline: None

Abstract: The Department of Commerce proposes to make amendments to its regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of The Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lawrence N. Self, Acting Director, Office of Civil Rights, Department of Commerce, Office of the Secretary, HCHB Room 6010, 14th and Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-0625
Fax: 202 482-5375

RIN: 0690–AA30

290. EMPLOYEE RESPONSIBILITIES AND CONDUCT; REMOVAL OF OBSOLETE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353; 26 USC 7214(b); EO 12731; ...

CFR Citation: 15 CFR

Legal Deadline: None

Abstract: The Department of Commerce issues this final rule to remove obsolete sectors of the Commerce and Foreign Trade Regulation concerning the policies and procedures relating to employee responsibilities and conduct.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas Ligor, Attorney Advisor, Department of Commerce, Office of the Secretary, HCHB Room 5898C, 14th & Constitution Avenue NW., Washington, DC 20230
Phone: 202 482-0127
Fax: 202 482-2998

RIN: 0690–AA32

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Department of Commerce (DOC)
Bureau of Economic Analysis (BEA)

Proposed Rule Stage

291. ANNUAL SURVEY OF SELECTED SERVICES TRANSACTIONS WITH UNAFFILIATED FOREIGN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 801

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 801 to raise the threshold for reporting on the BE-22, Annual Survey of Selected Services Transactions with Unaffiliated Foreign Persons, and to bring the survey into conformity with the BE-20, Benchmark Survey of Selected Services Transactions with Unaffiliated Foreign Persons.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA43

292. BENCHMARK SURVEY OF FOREIGN DIRECT INVESTMENT IN THE UNITED STATES—2002

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.17 to provide for the conduct of the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002, as required in the International Investment and Trade in Services Survey Act, 22 USC 3101 to 3108 (see especially section 4(b) of the Act). The existing rule covers a similar survey for 1997 which has been completed and which the new survey will update.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA44

293. TRANSACTIONS OF U.S. AFFILIATE, EXCEPT U.S. BANKING AFFILIATE, WITH FOREIGN PARENT (BE-605) AND TRANSACTIONS OF U.S. BANKING AFFILIATE WITH FOREIGN PARENT (BE-605)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.15 on the BE-605, Transactions of U.S. Affiliated, Except a U.S. Banking Affiliate, with Foreign Parent and BE-605 Bank, Transactions of U.S. Banking Affiliate with Foreign Parent, to bring the survey into conformity with the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA45

294. INITIAL REPORT ON FOREIGN PERSON'S DIRECT OR INDIRECT ACQUISITION, ESTABLISHMENT, OR PURCHASE OF OPERATING ASSETS, OR U.S. BUSINESS ENTERPRISE, INCLUDING REAL ESTATE

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 3101 to 3108

CFR Citation: 15 CFR 806

Legal Deadline: None

Abstract: This action will amend existing rule 15 CFR 806.15 on the BE-13, Initial Report on a Foreign Person's Direct or Indirect Acquisition, Establishment, or Purchase of the Operating Assets, of U.S. Business Enterprise, Including Real Estate and Form BE-14, Report by a U.S. Person Who Assists or Intervenes in the Acquisition of a U.S. Business by, or Who Enters Into a Joint Venture with, a Foreign Person, to bring the survey into conformity with the BE-12, Benchmark Survey of Foreign Direct Investment in the United States—2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NRPM Comment Period End	09/00/02	
Final Action	10/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. David Belli, Chief, International Investment Division, Department of Commerce, Bureau of Economic Analysis, BE-50, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA46

Department of Commerce (DOC)
Bureau of Economic Analysis (BEA)

Completed Actions

295. BENCHMARK SURVEY OF SELECTED SERVICES TRANSACTIONS WITH UNAFFILIATED FOREIGN PERSONS—2001

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 801

Completed:

Reason	Date	FR Cite
Final Action	12/11/01	66 FR 63919
Final Action Effective	01/10/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: R. David Belli
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA41

296. INTERNATIONAL SERVICES SURVEYS: BE-48, ANNUAL SURVEY OF REINSURANCE AND OTHER INSURANCE TRANSACTIONS BY U.S. INSURANCE COMPANIES WITH FOREIGN PERSONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 801

Completed:

Reason	Date	FR Cite
Final Action	12/11/01	66 FR 63916
Final Action Effective	01/10/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: R. David Belli
Phone: 202 606-9807
Fax: 202 606-5318
Email: david.belli@bea.doc.gov

RIN: 0691–AA42

Department of Commerce (DOC)
Bureau of the Census (CENSUS)

Proposed Rule Stage

297. MANDATORY AUTOMATED EXPORT SYSTEM (AES) FILING FOR ALL ITEMS ON THE COMMERCE CONTROL LIST (CCL) AND THE UNITED STATES MUNITIONS LIST (USML)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-113, title XII

CFR Citation: 15 CFR 30

Legal Deadline: None

Abstract: The Bureau of the Census is amending the Foreign Trade Statistics Regulations to specify the Requirement for the Mandatory Automated Export System (AES) filing for all items on the Department of Commerce's Commerce Control List (CCL) and the United States Munitions List (USML) of the Department of State. The AES is an electronic method by which export information can be transmitted. This amendment will specify the provisions and the responsibilities of parties exporting commodities identified on the CCL and USML via AES.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dale Dickerson, Regulations, Outreach, & Education Branch, Foreign Trade Division, Department of Commerce, Bureau of the Census, Room 3148, FB-3, Washington, DC 20233
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA34

Department of Commerce (DOC)
Bureau of the Census (CENSUS)

Final Rule Stage

298. SPECIAL SERVICES AND STUDIES BY THE BUREAU OF THE CENSUS; AMENDMENTS TO AGE SEARCH PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1526; 13 USC 8

CFR Citation: 15 CFR 50.1(d); 15 CFR 80.1(c); 15 CFR 80.1(g); 15 CFR 50.5

Legal Deadline: None

Abstract: Chapter 1, part 50.1(d) should be amended to read as follows: If a search is unsuccessful and additional information for a further search is requested by the Bureau, such information must be received within 90 days of the request or the case will be considered closed. Additional information received after 90 days must be accompanied by a new fee and will be considered a new request. Chapter 1, part 80.1(c): Change the address from Pittsburg, Kansas 66762 to Jeffersonville, Indiana 47131. Chapter 1, part 80.1(g): The language may be clarified by changing it to read: Census information will not be furnished to another person unless the person to whom the information relates authorizes such release in the space provided on the Form BC-600. Chapter 1, part 50.5: The note following the chart of the fee structure can be eliminated since we have not had a fee increase since February 1993.

Timetable:

Action	Date	FR Cite
NPRM	09/17/01	66 FR 48013
NPRM Comment Period End	10/17/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stanley M. Domzalski, Assistant Chief (Services), National Processing Center, Department of Commerce, Bureau of the Census, 1201 East 10th Street, Jeffersonville, IN 47132
Phone: 812 218-3579
Fax: 812 218-3293

RIN: 0607–AA24

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DOC—CENSUS — **Final Rule Stage**

299. • CUTOFF DATES FOR RECOGNITION OF BOUNDARY CHANGES FOR CENSUS 2000 AND FOR THE INTERCENSAL PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(b)(3)(A); 5 USC 604(a); 44 USC 35

CFR Citation: 15 CFR 70

Legal Deadline: None

Abstract: The Bureau of the Census (Census Bureau) is establishing cutoff dates for recognition of boundary changes to geographic entities for which the Census Bureau reports data in various surveys, estimates, censuses, programs, compilations, and publications throughout the period between decennial censuses (years 2001 through 2009).

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3631
NPRM Comment Period End	02/25/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Robert W. Marx, Chief, Geography Division, Department of Commerce, Bureau of the Census, Stop 7400, 4700 Silver Hill Road, Washington, DC 20233-7400
Phone: 301 457-2131
Email: rmarx@geo.census.gov

RIN: 0607–AA35

Department of Commerce (DOC)
Bureau of the Census (CENSUS) — **Long-Term Actions**

300. REPORTING VALUE ON SHIPPER'S EXPORT DECLARATION FOR INLAND FREIGHT AND INSURANCE CHARGES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 30.7(q)

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dale Dickerson
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA29

301. REPORTING THE VALUE OF REPAIRS AND REPLACEMENT PARTS ON THE SHIPPER'S EXPORT DECLARATION

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 30.30(c)

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Dale Dickerson
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA30

302. NOTATION OF THE SHIPPER'S EXPORT DECLARATION FILING EXEMPTION STATEMENT ON MANIFEST DOCUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 30.50

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dale Dickerson
Phone: 301 457-2238
Fax: 301 457-3765

RIN: 0607–AA31

Department of Commerce (DOC)
General Administration (ADMIN) — **Final Rule Stage**

303. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 103-355, sec 2455; 31 USC 6101; EO 12549; EO 12689

CFR Citation: 15 CFR 26

Legal Deadline: None

Abstract: Periodically, OMB amends the Governmentwide common rule for suspension and debarment of contractors and assistance participants who threaten the integrity of Federal programs because of criminal misconduct or poor performance. Agencies must issue changes to their individual codified versions to conform to the common rule. Recently, the Interagency Suspension and Debarment Coordinating Committee prepared recommendations for comprehensive changes to the Common Rule to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act. In addition, several other proposals to improve or change the rule are included.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/23/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Robert Kugelman, Director, Office of Executive Budgeting and Assistance Management, Department of Commerce, HCHB Room 6022, 14th & Constitution Avenue, NW., Washington, DC 20230
Phone: 202 482-4115
Fax: 202 482-3270

RIN: 0605–AA16

DOC—ADMIN — **Final Rule Stage**

Department of Commerce (DOC)
General Administration (ADMIN) — **Long-Term Actions**

304. UNIFORM ADMINISTRATIVE REQUIREMENT FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFITS AND COMMERCIAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 14

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/04/98	63 FR 47155
Interim Final Rule Effective	10/01/98	
Interim Final Rule Comment Period End	11/03/98	
Final Rule	10/01/01	66 FR 49827

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Dorfman
Phone: 202 482-4115

RIN: 0605–AA09

305. PUBLIC INFORMATION, FREEDOM OF INFORMATION AND PRIVACY

Priority: Other Significant

CFR Citation: 15 CFR 4; 15 CFR 4a; 15 CFR 4b

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34606

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Andy McCready
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RIN: 0605–AA14

Department of Commerce (DOC)
International Trade Administration (ITA) — **Final Rule Stage**

306. PROCEDURES FOR CONDUCTING FIVE-YEAR (SUNSET) REVIEWS OF ANTIDUMPING AND COUNTERVAILING DUTY ORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 1671 et seq; 19 USC 1673 et seq; 19 USC 1303

CFR Citation: 19 CFR 351

Legal Deadline: None

Abstract: On May 19, 1997 (62 FR 27296), the Department of Commerce (the Department) published final rules on, inter alia, procedures for conducting antidumping and countervailing duty proceedings to conform the Department's existing regulations to the Uruguay Round Agreements Act (URAA). Although these regulations contain provisions on the conduct of sunset reviews, the Department is planning to amend the regulations to provide more guidance on the procedures for conducting sunset reviews. Specifically, the Department proposes to amend the procedural regulations for participation in, and conduct of, sunset reviews to add two definitions to provide shorthand expressions for 120-day and 240-day sunset reviews; provide deadlines for certain submissions; clarify the information to be provided by parties participating in a sunset review; clarify when the Department will conduct a 120-day or a 240-day sunset review and provide time limits for actions to be taken by the Department.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/98	63 FR 13516
Interim Final Rule Effective	03/20/98	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stacy Ettinger, Attorney, Department of Commerce, International Trade Administration, Room 3828, 14th & Pennsylvania Ave., N.W., Washington, DC 20230
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RIN: 0625–AA51

307. IMPORT OF CERTAIN WORSTED WOOL FABRIC: IMPLEMENTATION OF TARIFF RATE QUOTE ESTABLISHED UNDER TITLE V OF THE TRADE AND DEVELOPMENT ACT OF 2000

Priority: Other Significant

Legal Authority: PL 106-200, sec 501-504; Title V of the Trade and Development Act of 2000; Presidential Proclamation No. 7383 (December 1, 2000)

CFR Citation: 15 CFR 335; 15 CFR 340

Legal Deadline: None

Abstract: On January 22, 2001, the Department of Commerce issued interim regulations implementing section 501(e) and section 504(b) of the Trade and Development Act of 2000 (the Act). Section 501(e) requires the President to fairly allocate tariff rate quotas on the import of certain worsted wool fabrics, tariff rate quotas which were established by sections 501(a) and 501(b) of the Act. Section 504(b) authorizes the President to modify the limitations on worsted wool fabric imports under the tariff rate quotas. The President has delegated to the Secretary of Commerce the authority to allocate the quantity of imports under

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DOC—ITA — **Final Rule Stage**

the tariff rate quotas and to determine whether the limitations on the quantity of imports under the tariff rate quotas should be modified. Final regulations will be issued after the period for notice and comment has expired.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 6459
Interim Final Rule Comment Period End	03/23/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Sergio Botero, Industry Economist, Department of Commerce, International Trade Administration, HCHB Room 3119, Office of Textiles and Apparel, 14th and Constitution Avenue NW., Washington, DC 20230
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RIN: 0625–AA58

Department of Commerce (DOC)
International Trade Administration (ITA)

Long-Term Actions

308. EXPORT TRADE CERTIFICATES OF REVIEW (15 CFR 325)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 325

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Vanessa Bachman
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RIN: 0625–AA52

309. PROPOSED CHANGES IN THE INSULAR POSSESSIONS WATCH, WATCH MOVEMENT AND JEWELRY PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 303

Timetable:

Action	Date	FR Cite
NPRM	05/23/01	66 FR 28404
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Faye Robinson
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RIN: 0625–AA57

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Proposed Rule Stage

310. SNAP: SIMPLIFIED NETWORK APPLICATION PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; EO 12924, 59 FR 43437, 3 CFR, 1994 Comp., p. 917; EO 13026, 61 FR 58767, 3 CFR, 1996 Comp., p. 228; ...

CFR Citation: 15 CFR 748

Legal Deadline: None

Abstract: This proposed rule amends the Export Administration Regulations by incorporating information about access, usage, and requirements of the Simplified Network Application Process (SNAP). SNAP is an Internet access system that allows an authorized applicant to submit export or reexport applications, high performance computer notifications, commodity classification requests, and reporting forms to the Bureau of Export Administration (BXA) via the Internet.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC20

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Final Rule Stage

311. CHEMICAL WEAPONS CONVENTION REGULATIONS

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 710 et seq

Legal Deadline: None

Abstract: The final rule will make effective the proposed rule published July 21, 1999. The purpose of the regulation is to implement the provisions of the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention) and the Chemical Weapons Convention Implementation Act of 1998, requiring private facilities to submit information on certain activities involving toxic chemicals, and to make certain private facilities subject to periodic inspection by the Organization for the Prohibition of Chemical Weapons (OPCW), the international organization created to administer the Convention and to monitor compliance by States Parties.

Timetable:

Action	Date	FR Cite
NPRM	07/21/99	64 FR 39193
Interim Final Rule	12/30/99	64 FR 73744
Correction	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AB06

DOC—BIS — **Final Rule Stage**

312. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; ADDITIONS TO THE ENTITY LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 744

Legal Deadline: None

Abstract: The Export Administration Regulations (EAR) provide that the Bureau of Export Administration may inform exporters, individually or through amendment to the EAR, that a license is required for exports or reexports to certain entities. The EAR contains a list of such entities. This rule adds entities to the Entity List, and requires a license for all exports and reexports of all items subject to the EAR.

Timetable:

Action	Date	FR Cite
Addition to Entity List	05/16/97	62 FR 26922
Addition to Entity List	06/30/97	62 FR 35334
Addition to Entity List	06/30/97	62 FR 35335
Revision to Entity List	10/01/97	62 FR 51369
Addition to Entity List - Russian Entities	07/29/98	63 FR 40363
Revisions and Additions to Entity List	05/14/01	66 FR 24264
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB76

313. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS; COUNTRY GROUP E:1; LICENSE EXCEPTION TMP

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: This interim final rule amends the Export Administration Regulations (EAR) by revising Country Group E:1 to include all terrorist-supporting countries, and replacing references to Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria with Country Group E:1 where appropriate. This rule also expands the scope of eligible countries for License Exception TMP for exhibition and demonstration to all countries except the new Country Group E:1, with certain restrictions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/10/01	66 FR 42108
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB60

314. EXPORTS AND REEXPORTS OF EXPLOSIVE DETECTION SYSTEMS; EXPANSION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: The Bureau of Export Administration is amending the Export Administration Regulations by expanding the current scope of control of explosive detection systems controlled by Export Control Classification Number (ECCN) 2A993 to include all types of systems that detect the presence of explosives or explosive residue. This rule also expands the control of these explosive detection systems to Iraq. In addition, this rule establishes a new licensing requirement on the export and reexport of software designed or modified for the development, production, or use of explosive detection systems to Iran, Iraq, Sudan, and Syria for antiterrorism reasons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB87

315. EXPORTS AND REEXPORTS TO SUDAN

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

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Abstract: The Bureau of Export Administration is amending the Export Administration Regulations (EAR) to reflect the imposition of economic sanctions on Sudan, as a result of the issuance of Executive Order 13067 on November 3, 1997. The Executive Order delegates implementation responsibility to the Department of the Treasury's Office of Foreign Assets Control, including authority for exports and certain reexports. In addition, this rule makes editorial revisions to the EAR relating to embargoes and anti-terrorism controls.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AC05

316. ANTI-TERRORISM CONTROLS ON IRAQ

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Export Administration is amending the Export Administration Regulations to impose foreign policy controls on Iraq for anti-terrorism reasons.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC06

317. REVISIONS TO THE NORTH KOREAN EMBARGO POLICY

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: On September 17, 1999, the President announced his decision to ease sanctions against North Korea. Under this new policy, most items subject to the EAR designated as EAR99 may be exported or reexported to North Korea without a license. In addition, BXA is changing the licensing policy for certain items on the Commerce Control List (CCL) destined to North Korean civil end-users from a policy of denial to case-by-case review. This regulation adds certain categories of items to the CCL for which a license will be required to North Korea. This easing of sanctions does not affect U.S. anti-terrorism or nonproliferation export controls on North Korea.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/19/00	65 FR 38148
Correction	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC10

318. EXPANSION OF LICENSE EXCEPTION GOV; EXPORTS AND REEXPORTS TO INTERNATIONAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: The Bureau of Export Administration maintains the Export Administration Regulations. This rule expands availability of License Exception GOV to allow certain exports and reexports to the North Atlantic Treaty Organization and to the United Nations for those organizations' official use.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC15

319. REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS RELATED TO THE MISSILE TECHNOLOGY CONTROL REGIME (MTCR)

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740; 15 CFR 774; 15 CFR 742

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to amend the Commerce Control List to reflect the reformatted Missile Technology Control Regime (MTCR) Annex of October 14, 1999 (Noordwijk/TEM). This final rule also amends Country Group A:2, MTCR, to add the Czech Republic, Korea (Republic of), Poland, Turkey, and Ukraine.

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC22

320. REVISION TO THE EXPORT ADMINISTRATION REGULATIONS: REPLACEMENT LICENSES

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 748 to 750

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) licenses items subject to the Export Administration Regulations (EAR) that are classified on the Commerce Control List (CCL) and require a license. The information on a license application is deemed to be a continuing representation of the existing facts or circumstances of the transaction. If a license application is under consideration by BXA, any material or substantive change in the terms of the order, or in the facts relating to the transaction, must be promptly reported to BXA. However, if a license has been issued and information submitted on the original license application has changed or will change, and these changes are not specifically excepted by the EAR, then the licensee must apply for either a new license or a replacement license to obtain prior authorization for these changes before exporting or reexporting. This rule clarifies the instructions for applying for a replacement license.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC23

321. REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730; 15 CFR 732; 15 CFR 734; 15 CFR 736; 15 CFR 740; 15 CFR 746; 15 CFR 748; 15 CFR 752; 15 CFR 758; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the EAR by making certain revisions and clarifications and, in some cases, inserts material inadvertently omitted from previous rules.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC24

322. CRIME CONTROL ITEMS: REVISIONS TO THE COMMERCE CONTROL LIST

Priority: Other Significant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 799

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations by expanding controls on restraint devices, such as handcuffs, and on discharge type arms, such as stun guns or shock batons. In addition, this rule modifies the license review policy to include consideration of whether there is civil disorder in the country or region or whether there is evidence that the government of the importing country may have violated internationally recognized human rights.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/00	65 FR 55177
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sheila Quarterman, Export Policy Analyst, Department of Commerce, Bureau of Industry and Security
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RIN: 0694–AC31

323. LICENSE EXCEPTION AVS: CUBA, LIBYA, SERBIA

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by allowing equipment, spares, and plane stores under the provisions of License Exception AVS on foreign registered aircraft subject to the EAR that are temporarily reexported to Libya and Serbia, and on U.S.- or foreign-registered aircraft subject to the EAR that are temporarily exported or reexported to Cuba.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist,

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RIN: 0694–AC33

324. CLARIFICATIONS TO PART 753: SPECIAL COMPREHENSIVE LICENSE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Export Administration administers the Special Comprehensive License (SCL) program to provide an effective export control mechanism for exporters who routinely ship to multiple end-users. This rule amends the SCL provisions of the Export Administration Regulations (EAR) to conform with changes in the SCL licensing process and to provide SCL applicants and consignees with additional guidance on how to fill out the forms required to submit a license application or to request changes in their SCLs. This rule also creates two new elements for SCL Internal Control Programs. These new elements require the establishment of procedures for screening customers and items to ensure that SCL transactions conform with the antiboycott provisions of the EAR and with EAR provisions concerning entities involved in weapons of mass destruction activities.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AC34

325. CHEMICAL WEAPONS CONVENTION: REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) administers export controls on certain toxic chemicals and precursors that are listed in the "Schedules of Chemicals" contained within the "Annex on Chemicals" to the "Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction," also known as the Chemical Weapons Convention (CWC). This rule amends the CWC provisions in the Export Administration Regulations (EAR) to clarify BXA licensing requirements and policies for chemicals and precursors controlled for CW reasons.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440

RIN: 0694–AC35

326. EXPORTS OF AGRICULTURAL COMMODITIES, MEDICINES AND MEDICAL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 700 to 799

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to implement certain provisions of the Trade Sanctions Reform and Export Enhancement Act (TSRA) of 2000. The TSRA requires the President to terminate existing U.S. unilateral agricultural and medical sanctions and also provides that the export of agricultural commodities, medicines and medical devices to designated terrorist countries be made in accordance with the licensing regime described in that Act. The Department of Commerce is implementing TSRA as it relates to exports of agricultural commodities to Cuba. This rule establishes License Exception Agricultural Commodities (AGR) to permit exports and reexports to Cuba of agricultural commodities that are not specifically identified on the Commerce Control List (CCL) and are classified as EAR99. The Department of the Treasury's Office of Foreign Assets Control (OFAC) is implementing TSRA as it relates to exports to Iran, Libya, and Sudan of agricultural commodities, medicines and medical devices that are not specifically identified on the CCL and are classified as EAR99.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/12/01	66 FR 36676
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC37

327. IMPLEMENTATION OF THE WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS REVISIONS: COMPUTERS; AND REVISIONS TO LICENSE EXCEPTION CTP

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740; 15 CFR 742; 15 CFR 743; 15 CFR 774; 15 CFR 748

Legal Deadline: None

Abstract: On December 1, 2000, the Wassenaar Arrangement agreed to implement several changes in its List of Dual-Use Goods and Technologies. This final rule revises the CCL to implement certain recently agreed to changes in Category 4 (Computers) of the Wassenaar List of Dual-Use Goods and Technologies, specifically in the area of computers. These changes are being implemented to reflect rapid technological advances and controllability factors. Additional changes in other categories of the Wassenaar Dual-Use List will be implemented in the CCL in a supplemental regulation.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC42

328. EXPORTS TO AFGHANISTAN (THE TALIBAN) AND LIBERIA: IMPOSITION OF FOREIGN POLICY CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 730 to 774

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to implement United Nations Security Council (UNSC) Resolutions 1333 of December 19, 2000, and 1343 of March 7, 2001, which mandated embargoes on the sale or supply of arms-related items, including technical assistance and training, to the Taliban and to Liberia, respectively. These steps taken by the Bureau of Export Administration (BXA) supplement controls implemented by the Department of State on exports of defense articles and services to the Taliban and to Liberia under the International Traffic in Arms Regulations. BXA already requires a license for the export and reexport to Afghanistan and Liberia of most of the items subject to the EAR that fall within the scope of the UNSC-mandated ban on arms-related items (e.g., items controlled for regional stability and crime control reasons).

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC45

329. ADDITION AND REVISION OF MISSILE PROJECTS IN THE EXPORT ADMINISTRATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740

Legal Deadline: None

Abstract: This interim rule amends the Export Administration Regulations (EAR) by revising the footnote to Country Group D, which includes missile projects of concern. This rule updates the list of missile projects by adding missile projects and revising others by expanding the scope to missile project series. This rule will increase the amount of applications for license submitted to the Bureau of Export Administration, while curtailing the availability of goods and technology that could contribute to missile proliferation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC46

330. REVISION, SUSPENSION, OR PROHIBITION OF USE OF "NO LICENSE REQUIRED" PROVISIONS

Priority: Routine and Frequent

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 758

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to add provisions that alert the public that BXA has the authority to revise, suspend, or prohibit the use of "No License Required" provisions. These provisions were unintentionally not included in the newly "reformed" EAR during the "regulatory reform" exercise in March of 1996.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Final Rule Stage

331. LICENSING JURISDICTION FOR "SPACE QUALIFIED" ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 2401 et seq; 50 USC 1701 et seq; 22 USC 3201 et seq; 42 USC 2139a; EO 12002; EO 12058; EO 12214; EO 12938; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 740; 15 CFR 774

Legal Deadline: None

Abstract: This interim final rule amends Export Administration Regulations (EAR) by revising Supplement No. 1 to part 774, the Commerce Control List (CCL) to clarify the licensing jurisdiction of certain "space qualified" items on the CCL. This rule also amends the EAR by removing certain "space qualified" items from License Exception eligibility in part 740 and the CCL.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC49

332. • MISSILE TECHNOLOGY PRODUCTION EQUIPMENT AND FACILITIES

Priority: Routine and Frequent

Legal Authority: 50 USC 2401; 50 USC 1701; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: In an effort to clarify Department of Commerce controls, Commerce is revising the language contained in Export Control Classification Numbers (ECCNs) 9B115, 9B116, 1B115, and 1B117 to reflect that all missile technology (MT) production equipment and facilities are controlled on the Commerce Control List (CCL).

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC51

333. • REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS—NUCLEAR NONPROLIFERATION CONTROLS: NUCLEAR SUPPLIERS GROUP

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 7420; 10 USC 7430(e); 50 USC 1701; 50 USC 2401; EO 13222; ...

CFR Citation: 15 CFR 738; 15 CFR 740; 15 CFR 742; 15 CFR 744; 15 CFR 772; 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising certain entries on its control list that are controlled for nuclear nonproliferation (NP) reasons. This final rule revises these entries to make them conform more closely to the format used in the technical descriptions of items identified in the Annex to the "Guidelines for Transfers of Nuclear-Related Dual-Use Equipment, Material, and Related Technology" (the Annex), which is published by the International Atomic Energy Agency. Member countries of the Nuclear Suppliers Group (NSG), which includes the United States, have established export licensing procedures for the transfer of items identified in the Annex.

This final rule also revises the types of controls and the scope of the controls that apply to a number of entries on the Commerce Control List (CCL). In addition, this rule amends the "Related Controls" paragraphs in a number of entries by adding references to related items that are either controlled under other entries on the CCL or controlled by other U.S. Government agencies.

As a result of the admission of Belarus, Cyprus, Slovenia, and Turkey to the Nuclear Suppliers Group, this rule adds these four countries to Country Group A:4, which identifies the member countries of the Nuclear Suppliers Group. These four countries are also added to the definition of the term "Nuclear Suppliers Group" in the EAR. The addition of these four countries will lessen the administrative burden on U.S. exporters by decreasing the number of items that require an export license to these countries for nuclear nonproliferation (NP) reasons.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC52

334. • CORRECTIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS: CZECH REPUBLIC, HUNGARY AND POLAND

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; EO 13026; EO 13222; ...

CFR Citation: 15 CFR 738; 15 CFR 742

Legal Deadline: None

Abstract: The Bureau of Export Administration maintains the Export Administration Regulations (EAR). This rule amends the EAR by removing the license requirements for certain regional stability items and for certain crime control items destined to the Czech Republic, Hungary and Poland to correctly reflect the status of those countries as NATO members.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC53

335. • ELIMINATION OF "NATIONAL SECURITY" AS A REASON FOR CONTROL FOR CERTAIN ITEMS ON THE COMMERCE CONTROL LIST

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 18 USC 2510; EO 13222; EO 12058; ...

CFR Citation: 15 CFR 742; 15 CFR 774

Legal Deadline: None

Abstract: This rule amends the Commerce Control List (CCL) to eliminate "National Security" as a reason for control with respect to certain items. This rule is needed to make the CCL conform to Section 5(c)(6)(A) of the Export Administration Act (the Act), which provides that unilateral national security controls expire six months after enactment of the Act or of the control (whichever is later) unless a determination has been made under section 5 of the Act that there is no foreign availability of the items or unless the President is pursuing negotiations to end such availability. All but four of the items affected by this rule are moved to other Export Control Classification Numbers (ECCNs) on the CCL. Two of the items that are removed from the CCL (bayonets and technology for the design, production or use of bayonets) are transferred to the United States Munitions List. The other two items (muzzle-loading firearms and technology for the design, production or use of muzzle-loading firearms) are now EAR99.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC54

336. • REVISIONS TO THE EXPORT ADMINISTRATION REGULATIONS AS A RESULT OF THE SEPTEMBER 2001 MISSILE TECHNOLOGY CONTROL REGIME (MTCR) PLENARY MEETING

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 2401; 50 USC 1701; 10 USC 7420; 10 USC 7430(e); 18 USC 2510; ...

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR), Commerce Control List (CCL), to reflect changes that were negotiated during the September 2001 Missile Technology Control Regime (MTCR) Plenary in Ottawa, Canada. These revisions include several changes to Items 3.A.1 and 8.C.3 of the MTCR Annex, controlled on the CCL under ECCNs 9A101 and 1C107, respectively.

These revisions will result in an expansion of MT controls, which will not increase the number of applications for 1C107, as industry had already been applying for licenses at these levels of controls. As for 9A101, BXA has not received any applications for this ECCN; therefore, it has been determined that this expansion should not result in an increase of license applications for this ECCN.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AC55

337. • REVISIONS TO LICENSE EXCEPTION CTP: IMPLEMENTATION OF PRESIDENTIAL ANNOUNCEMENT OF JANUARY 2, 2002

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 13026; EO 13222; EO 12058; ...

CFR Citation: 15 CFR 734; 15 CFR 740; 15 CFR 742

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) by revising License Exception CTP to reflect rapid technological advances in computing capability. This rule implements the President's revision to U.S. export controls on high performance computers (HPCs), announced January 2, 2002. All HPCs continue to be eligible for export to a Computer Tier 1 country under License Exception CTP. Beginning March 3, 2002, HPCs controlled by Export Control Classification Number (ECCN) 4A003 with a CTP up to 190,000 Millions of Theoretical Operations per Second (MTOPS) can be exported to Computer Tier 3 countries under License Exception CTP. This revision also applies to electronic assemblies and specially designed components controlled by ECCN 4A003. The NDAA advance notification will not be required because President Bush sent a report to Congress on January 2 to increase the requirement level for NDAA advanced notification for exports to Computer Tier 3 countries of HPCs with a CTP exceeding 190,000 MTOPS. This rule also moves Latvia from Computer Tier 3 to Computer Tier 1, effective May 2, 2002. The President's action will promote our national security, enhance the effectiveness of our export control system and ease unnecessary regulatory burdens on both government and industry.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

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RIN: 0694–AC56

338. • EXPORTS TO THE FEDERAL REPUBLIC OF YUGOSLAVIA: LIFTING OF SANCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 13026; EO 13222; EO 12854; ...

CFR Citation: 15 CFR 732; 15 CFR 738; 15 CFR 746; 15 CFR 758

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) by removing the license requirements imposed on the Federal Republic of Yugoslavia on July 14, 1998. Under the EAR, controls have been maintained on arms and related material to the Federal Republic of Yugoslavia (Serbia and Montenegro) consistent with the UNSC Resolution 1160. On September 10, 2001, in Resolution 1367, the UNSC terminated the international arms embargo against the Federal Republic of Yugoslavia established by Resolution 1160. This rule implements UNSC Resolution 1367.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC57

339. • REVISION TO EXPORT ADMINISTRATION REGULATIONS: DENIED PERSONS LIST

Priority: Info./Admin./Other

Legal Authority: 50 USC 1701; 50 USC 2401; EO 13222; EO 13026; EO 12938; ...

CFR Citation: 15 CFR 732; 15 CFR 736; 15 CFR 752; 15 CFR 758; 15 CFR 764; ...

Legal Deadline: None

Abstract: This rule removes the description of the denied persons list format from the Export Administration Regulations. It eliminates several references to the list published in Supplement 2 to part 764 in the looseleaf edition of the Export Administration Regulations as "the" denied persons list.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC58

340. • IMPOSITION AND EXPANSION OF CONTROLS ON DESIGNATED PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; 22 USC 3201; EO 13099; EO 13222; ...

CFR Citation: 15 CFR 744; 15 CFR 772

Legal Deadline: None

Abstract: This final rule amends the Export Administration Regulations (EAR) by imposing a license requirement on the export and reexport of any item subject to the EAR by a U.S. person or non-U.S. person to persons blocked and designated pursuant to Executive Order 13224 of September 23, 2001. In response to grave acts of terrorism and threats of terrorism, Executive Order 13224 blocks the property and interests in property of persons who commit, threaten to commit or support terrorism, and prohibits U.S. persons or applicable non-U.S. persons from engaging in any transactions with such blocked persons. The Department of the Treasury's Office of Foreign Assets Control (OFAC) maintains the list of blocked persons newly designated Specially Designated Global Terrorists (SDGTs) in Appendix A to 31 C.F.R. chapter V pursuant to Executive Order 13224 and identified by the bracketed initials [SDGT]. This rule also amends the EAR by expanding reexport controls on Specially Designated Terrorists (SDTs) and foreign controls on Specially Designated Terrorists (SDTs) and Foreign Terrorist Organizations (FTOs). OFAC also maintains the lists of SDTs and FTOs found in appendix A to 31 C.F.R. chapter V and identified by the bracketed initials [SDT] and [FTO], respectively.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC60

341. • IMPLEMENTATION OF THE WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS AND OTHER REVISIONS TO ENCRYPTION ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 13026; EO 13222; EO 12058; ...

CFR Citation: 15 CFR 732; 15 CFR 740; 15 CFR 742; 15 CFR 748; 15 CFR 770; ...

Legal Deadline: None

Abstract: This rule amends the Export Administration Regulations (EAR) to reflect changes made to the Wassenaar Arrangement List of dual-use items, and to update and clarify other provisions of the EAR pertaining to encryption export controls. For the first time, mass market encryption commodities and software with symmetric key lengths exceeding 64 bits may be exported and reexported No License Required (NLR) under Export Control Classification Numbers (ECCNs) 5A992 and 5D992, following a 30-day review by the Bureau of Export Administration (BXA). This rule updates Category 5—part II (Information Security) of the Commerce Control List (CCL), and for the first time allows equipment controlled under ECCN 5B002 to be exported and reexported under License Exception ENC. For all other information security items, including encryption source code that would be considered publicly available, this rule updates and clarifies existing notification, review, licensing and post-export reporting requirements. Restrictions on exports and reexports of encryption items to terrorist-supporting states (Cuba, Iran, Iraq, Libya, North Korea, Sudan and Syria), their nationals and other sanctioned entities are not changed by this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willard Fisher, Export Administration Specialist, Department of Commerce, Bureau of Industry and Security, 14th & Pennsylvania Avenue NW., Washington, DC 20230
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RIN: 0694–AC61

342. • REVISIONS AND CLARIFICATIONS TO THE EXPORT ADMINISTRATION REGULATIONS—CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS: AUSTRALIA GROUP; CHEMICAL WEAPONS CONVENTION

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; EO 12938; EO 13020; EO 13026; ...

CFR Citation: 15 CFR 736; 15 CFR 738; 15 CFR 740; 15 CFR 742; 15 CFR 745; ...

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) is amending the Export Administration Regulations (EAR) to implement the understandings reached at the October 2001 plenary meeting of the Australia Group (AG).

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC62

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Final Rule Stage

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Long-Term Actions

343. TRANSFER OF DUAL-USE ITEMS FROM U.S. MUNITIONS LIST TO THE COMMERCE CONTROL LIST

Priority: Other Significant

CFR Citation: 15 CFR 774 Supplement No. 1

Timetable:

Action	Date	FR Cite
Transfer of Communications Satellites	10/23/92	57 FR 48312
Navigation and Avionics	06/23/93	58 FR 34211
Final Rule - Transfer of Commercial Communication Satellites	09/08/93	58 FR 47322
Transfer of Items From the USMI to the CCL; Imposition of Certain Foreign Policy Controls	10/26/93	58 FR 57549
Satellite Fuel	09/29/97	62 FR 50865
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
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RIN: 0694–AA52

344. ADMINISTRATION OF STATE LOG EXPORTS BAN

Priority: Other Significant

CFR Citation: 15 CFR 754

Timetable:

Action	Date	FR Cite
ANPRM	06/07/95	60 FR 30030
ANPRM Comment Period End	07/07/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Willard Fisher
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RIN: 0694–AB25

345. CHANGE THE COMMERCE CONTROL LIST TO REVISE CONTROLS ON COMMUNICATION INTERCEPTING DEVICES (EXPORT COMMERCE CONTROL NUMBER ECCN 5A980)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
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RIN: 0694–AB41

346. CLARIFICATION OF LICENSE EXCEPTION GFT (HUMANITARIAN DONATIONS)

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 740

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Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB49

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347. EXPORTS OF TECHNOLOGY AND SOFTWARE; RELEASE OF TECHNOLOGY OR SOURCE CODE TO FOREIGN NATIONALS IN THE UNITED STATES

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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348. INDIA AND PAKISTAN SANCTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule - India and Pakistan Sanctions and Other Measures	11/19/98	63 FR 64322
Interim Final Rule - Correction to India and Pakistan Sanctions and Other Measures	11/27/98	63 FR 65352
Final Rule	03/17/00	65 FR 14444
Final Rule	07/26/00	65 FR 45842
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AB73

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349. EXPANSION OF LICENSE EXCEPTION CIV ELIGIBILITY FOR "MICROPROCESSORS" CONTROLLED BY ECCN 3A001

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/08/99	64 FR 36779
Interim Final Rule	11/26/99	64 FR 66372
Interim Final Rule	06/13/00	65 FR 37039
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AB90

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350. EXPORT OF TECHNOLOGY AND SOFTWARE THROUGH ELECTRONIC TRANSMISSIONS, DOWNLOADS, AND PROGRAMMED ONTO HARDWARE

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0694–AB97

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351. EXPORT ADMINISTRATION REGULATIONS: SUPPORT DOCUMENTATION

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 748

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 0694–AC04

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352. DE MINIMIS EXPANSION OF ELIGIBILITY: U.S. ORIGIN SOFTWARE INCORPORATED INTO FOREIGN-MADE RETAIL COMMODITIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 774

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC17

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353. SHORT SUPPLY CONTROLS: CRUDE OIL EXPORTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 750; 15 CFR 754

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
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RIN: 0694–AC25

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354. OFFSETS IN MILITARY EXPORTS

Priority: Other Significant

CFR Citation: 15 CFR 701

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC27

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355. ENTITY LIST: ADDITIONS AND REVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0694–AC28

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356. REVISIONS TO ENCRYPTION ITEMS

Priority: Other Significant

CFR Citation: 15 CFR 730 to 799

Timetable:

Action	Date	FR Cite
Final Rule	10/19/00	65 FR 62600
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Nilsson
Phone: 202 482-4196

RIN: 0694–AC32

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357. REMOVAL OF LICENSING EXEMPTION FOR EXPORTS AND REEXPORTS OF MISSILE TECHNOLOGY-CONTROLLED ITEMS DESTINED TO CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 738; 15 CFR 742

Timetable:

Action	Date	FR Cite
ANPRM	12/20/01	66 FR 65666
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bxa.doc.gov

RIN: 0694–AC48

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358. • LICENSE EXCEPTION CIV ELIGIBILITY FOR CERTAIN "MICROPROCESSORS" CONTROLLED BY ECCN 3A001

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC 1701; 50 USC 2401; 10 USC 7420; 18 USC 2510; EO 13026; ...

CFR Citation: 15 CFR 774

Legal Deadline: None

Abstract: The Bureau of Export Administration (BXA) maintains the Commerce Control List (CCL), which identifies those items subject to Department of Commerce export licensing requirements based on their characteristics. Consistent with technological changes, this final rule makes License Exception CIV available for certain microprocessors controlled by Export Control Classification Number (ECCN) 3A001 when they have a composite theoretical performance (CTP) of equal to or greater than 6,500 million theoretical operations per second (MTOPS), but less than or equal to 12,000 MTOPS. License Exception CIV authorizes exports and reexports to civil end-users for civil end-uses in Country Group D:1, except North Korea. CIV may not be used for exports or reexports to military end-users or end-uses.

Timetable:

Action	Date	FR Cite
Final Rule	03/21/02	67 FR 13091
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharron Cook, Policy Analyst, Department of Commerce, Bureau of Industry and Security, 2096/MS 2705, 14th & Pennsylvania Avenue NW., Washington, DC 20230
Phone: 202 482-2440
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Email: scook@bxa.doc.gov

RIN: 0694–AC59

Department of Commerce (DOC)
Bureau of Industry and Security (BIS)

Completed Actions

359. ENTITY LIST: REMOVAL OF TWO RUSSIAN ENTITIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 744

Completed:

Reason	Date	FR Cite
Final Action	12/21/01	66 FR 65836

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bxa.doc.gov

RIN: 0694–AC40

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360. REVISIONS AND CLARIFICATIONS TO THE COMMERCE CONTROL LIST; CHEMICAL AND BIOLOGICAL WEAPONS CONTROLS; AUSTRALIA GROUP

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

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DOC—BIS

Completed Actions

Completed:

Reason	Date	FR Cite
Final Action	09/28/01	66 FR 49520

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Willard Fisher
Phone: 202 482-2440

RIN: 0694–AC43

361. IMPLEMENTATION OF THE WASSENAAR ARRANGEMENT LIST OF DUAL-USE ITEMS: REVISIONS TO CATEGORIES 1, 2, 3, 4, 5, 6, 7 AND 9 OF THE COMMERCE CONTROL LIST AND REVISIONS TO REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 700 to 799

Completed:

Reason	Date	FR Cite
Final Action	01/03/02	67 FR 458

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bxa.doc.gov

RIN: 0694–AC44

362. EXPORT ADMINISTRATION REGULATIONS ENTITY LIST: REMOVAL OF INDIAN AND PAKISTANI ENTITIES, AND REVISION IN LICENSE POLICY

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 744; 15 CFR 742

Completed:

Reason	Date	FR Cite
Final Action	10/01/01	66 FR 50090

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharron Cook
Phone: 202 482-2440
Fax: 202 482-3355
Email: scook@bxa.doc.gov

RIN: 0694–AC50

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Prerule Stage

NATIONAL MARINE FISHERIES SERVICE

363. PREVENTING HARASSMENT FROM HUMAN ACTIVITIES DIRECTED AT MARINE MAMMALS IN THE WILD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: Announces that NMFS is considering whether to issue regulations that would prohibit the public from swimming with or otherwise interacting with dolphins and other marine mammals in the wild.

Timetable:

Action	Date	FR Cite
ANPRM	01/30/02	67 FR 4379
ANPRM Comment Period End	04/01/02	
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Trevor Spradlin, Marine Mammal Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289
Email: trevor.spradlin@noaa.gov

RIN: 0648–AN43

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

Proposed Rule Stage

NATIONAL MARINE FISHERIES SERVICE

364. AMENDMENT 4 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH FISHERY OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 4 would restrict the use of gill nets, fish traps, and other gear in the reef fish fishery in the Caribbean exclusive economic zone. Amendment 4 would address the possible need for permitting in the fish trap fishery.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AG87

DOC—NOAA

Proposed Rule Stage

365. REGULATORY AMENDMENT TO ESTABLISH PERMIT AND REPORTING REQUIREMENTS FOR PELAGIC TROLL AND HANDLINE VESSELS FISHING OFF PACIFIC REMOTE ISLANDS OF THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action will establish NMFS permit/reporting requirements for pelagic troll and handline vessels fishing in waters off the U.S. Pacific remote island areas.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AJ08

366. ESTABLISH CENTRAL REGISTRY FOR LIMITED ACCESS SYSTEM PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action will establish a central registry for limited access system permits as required by the Magnuson-Stevens Fishery Conservation and Management Act section 305(h).

Timetable:

Action	Date	FR Cite
ANPRM	05/07/97	62 FR 24897
ANPRM Comment Period End	08/05/97	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles L. Cooper, Program Leader, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2396
Email: charles.cooper@noaa.gov

RIN: 0648–AJ77

367. REGULATORY AMENDMENT TO REQUIRE MANDATORY OBSERVER COVERAGE IN THE AT-SEA PROCESSING SECTOR OF THE WHITING FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Regulations would require observer coverage on vessels in the at-sea processing sector of the whiting fishery.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Donna Darm, Acting Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, BIN C15700, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150

RIN: 0648–AK26

368. ADJUSTMENT OF MANAGEMENT PROGRAM: BOTTOMFISH FISHERIES IN THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of NPRM comment period.

Abstract: This regulatory action would facilitate and enable adjustments to management measures governing bottomfish fisheries of the main and Northwestern Hawaiian Islands. Possible measures include a point system based on historical participation, a limited permit transfer process, or a lottery system.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AK82

369. REVISE EXEMPTED FISHING REGULATIONS TO SPECIFY COMPENSATORY FISHING UNDER EXEMPTED FISHING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 600

Legal Deadline: None

Abstract: This action would revise current exempted fishing regulations to specifically authorize the use of an exempted fishing permit as the method of allowing the compensation of private vessels for their conduct of resource assessment. Specific methodology for vessel compensation would be developed on a fishery-by-fishery basis. The rule would also make other minor changes in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AK84

370. AMENDMENT 11 TO THE FISHERY MANAGEMENT PLAN FOR THE CRUSTACEAN FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 11 to the Western Pacific remote Crustaceans FMP would add the EEZ waters off the U.S. Pacific Island Areas and the Commonwealth of the Northern Mariana Islands as crustaceans management areas.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AL67

371. FISHERY MANAGEMENT PLAN FOR CALICO SCALLOP FISHERY IN THE SOUTH ATLANTIC REGION (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: The FMP could include the following measures: (1) Definitions of management unit, MSY, OY, and overfishing; (2) requirement for a vessel permit to harvest or possess calico scallops in or from the South Atlantic EEZ; (3) designation of essential fish habitat for calico scallops; (4) prohibition on harvest of calico scallops in the area bounded to the west by 80 degrees W. longitude, to the north by 28 degrees 30 minutes N. latitude, to the south by 27 degrees 30 minutes N. latitude, and to the east by the 100 fathom depth contour; and (5) requirement for use of transponders by calico scallop vessels.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AL78

372. COMPREHENSIVE AMENDMENT ADDRESSING SUSTAINABLE FISHERIES ACT REQUIREMENTS REGARDING OVERFISHING, BYCATCH, FISHING COMMUNITIES AND PROVISIONS FOR FISHERY MANAGEMENT PLANS FOR THE CARIBBEAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: NMFS proposes regulations to implement those provisions of the Comprehensive Amendment Addressing Sustainable Fishery Act (SFA) Definitions and other Required Provision of the Magnuson-Stevens Act in the FMP of the U.S. Caribbean (Comprehensive SFA Amendment) that would modify and/or add framework procedures to the FMPs for reef fish, corals and reef associated plants and invertebrates, queen conch, and spiny lobster. These FMP framework modifications/additions would allow timely modification/addition of required stock parameters and management measures related to preventing overfishing and rebuilding overfished stocks. The intended effect is to provide a more efficient mechanism for implementation of improved estimates of stock parameters and necessary management measures as better information becomes available.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Under 16 USC 1853 note, each Regional Fishery Management Council must submit to NMFS amendments to its fishery management plans and any associated proposed regulations bringing them into compliance with the Sustainable Fisheries Act (P.L. 104-297). Final regulations to be published within 30 days of NPRM comment period.

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AL86

373. REGULATORY AMENDMENT TO REINSTATE 6000 POUND TRIP LIMIT OF HALIBUT IN AREA NORTHEAST OF THE BERING SEA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment would reinstate a 6000 pound halibut trip limit in the halibut management area northeast of the Bering Sea.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AL97

374. FISHERY MANAGEMENT PLAN AMENDMENT TO REVISE COMMUNITY DEVELOPMENT QUOTA REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Revisions to the Community Development Quota (CDQ) regulations that would include: overage/underage provisions, pooling, and removing species from CDQ; revise observer coverage requirements shoreside; crab CDQ regulations change to allow start in September crab management year instead of calendar year; change start date for CDQ trawl fisheries.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AM07

375. AMENDMENT 10 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 10 would extend the FMP requirements for using bycatch reduction devices in shrimp trawls in the EEZ from Cape San Blas, Florida, east and south to the boundary line (in South Florida) between the areas of jurisdiction of the Gulf of Mexico and South Atlantic Fishery Management Councils.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AM23

376. ENHANCED MEASURES TO MITIGATE SEABIRD BYCATCH IN THE ALASKA LONGLINE FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, One year from approval of overfishing definitions. Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment would enhance measures designed to mitigate seabird bycatch in the longline fisheries off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AM30

377. REGULATORY AMENDMENT TO CHANGE THE REGULATIONS IMPLEMENTING THE NORTH PACIFIC OBSERVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This would change the regulations implementing the North Pacific Observer program, including authority to place NMFS personnel onboard fish or processing vessels, revised requirements for shoreside accommodations for observers, and revisions to observer coverage levels.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AM44

DOC—NOAA

Proposed Rule Stage

378. FRAMEWORK REGULATORY AMENDMENT FOR THE ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); FISHING VESSEL PERMITS; CHARTER BOAT OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This framework regulatory amendment to the HMS FMP will adjust gear/permitting/reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AM91

379. AMENDMENT 62 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS MANAGEMENT AREA AND AMENDMENT 62 TO THE FMP FOR THE GROUNDFISH OF THE GULF OF ALASKA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 105-277

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, January 30, 2000.

Abstract: This Fishery Management Plan amendment complies with the requirements of the American Fisheries Act by revising inshore/offshore directed pollock allocations and replacement requirements for eligible vessels.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AM94

380. IMPLEMENTATION OF WESTERN PACIFIC CORAL REEF ECOSYSTEM FISHERY MANAGEMENT PLAN (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would implement the Western Pacific Coral Reef Ecosystem FMP. Possible initial management measures include permit and reporting requirements, framework procedures, gear restrictions, harvest limits/restrictions, marine protected areas, no anchoring zones, etc.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AM97

381. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE BOTTOMFISH FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 7 would facilitate and enable adjustments to management measures for the bottomfish fisheries in Guam and American Samoa. Possible regulatory changes include closed areas, gear restrictions, seasons, permit and notification/reporting requirements, etc.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AM98

382. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC FMP

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 640

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 7 would address issues regarding the impacts of the FMP's tailing permit provisions on State spiny lobster conservation efforts.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN08

DOC—NOAA

Proposed Rule Stage

383. AMENDMENT 18 TO THE FISHERY MANAGEMENT PLAN FOR THE REEF FISH RESOURCES OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 18 would address the need for improved conservation of grouper stocks in the Gulf of Mexico by establishing additional closed seasons and areas.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN09

384. AMENDMENT 7 TO THE FISHERY MANAGEMENT PLAN FOR THE STONE CRAB FISHERY OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 654

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 7 would adopt the relevant provisions of Florida's approved limited entry trap reduction program for the stone crab fishery and apply them to vessels fishing in the exclusive economic zone off Florida's west coast.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN10

385. AMENDMENT 13 TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 13 is being developed to bring the disapproved Essential Fish Habitat portions of Amendment 12 into compliance with the Sustainable Fisheries Act and revise management of black sea bass.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Federal

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN12

386. AMENDMENT 10 TO THE ATLANTIC SEA SCALLOP FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 10 would implement a management strategy that would incorporate rotational closed areas for rebuilding the sea scallop resource and address essential fish habitat issues. This action may replace or modify the current DAS reduction schedule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN16

387. DEEP-SEA RED CRAB FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would establish a fishery management plan for the red crab fishery to protect the stock.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast

Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AN68

388. REGULATORY AMENDMENT TO PREVENT OR MITIGATE THE TAKE OF SEA TURTLES IN THE WESTERN PACIFIC PELAGIC FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory action would modify the management program for the western Pacific pelagic fisheries to mitigate or prevent the take of sea turtles.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AN75

389. AMENDMENT 9 TO THE FISHERY MANAGEMENT PLAN AMENDMENT FOR THE PELAGIC FISHERIES OF THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This amendment would prevent or mitigate and conserve, manage, and allow full utilization of sharks.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AN76

390. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT CRUSTACEANS, BOTTOMFISH, AND PELAGICS REGARDING OVERFISHING DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved overfishing definitions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AN79

391. REGULATORY AMENDMENT MODIFYING THE GULF OF MEXICO BRD PROTOCOL UNDER THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, the Gulf Council requested that NMFS develop alternative data collection procedures and statistical tests to certify bycatch reduction devices (BRDs) for use in the shrimp fishery of the Gulf of Mexico. The regulation would provide additional flexibility in sampling procedures to facilitate BRDs meeting the testing/certifying protocol's requirements while maintaining the scientific and statistical credibility in achieving the FMP's established bycatch reduction criterion for certified BRDs.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02.	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN84

392. FISHERY MANAGEMENT PLAN (FMP) FOR SARGASSUM HABITAT OF THE SOUTH ATLANTIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Sargassum habitat is defined as essential fish habitat for several

managed fish stocks in the South Atlantic region under the provisions of the South Atlantic Fishery Management Council's fishery management plans. To further conserve and manage Sargassum habitat, the Council's proposed new FMP would restrict the commercial harvest of Sargassum to avoid further expansion of the current limited fishery and to reduce the potential for habitat loss.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN87

393. FISHERY MANAGEMENT PLAN FOR NORTHEAST SKATE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: This action would establish a fishery management plan for the seven species of skates found in the Northeast. Management measures would be established to end overfishing on four of the seven species of skate and to provide basic protection for the remaining three species.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AO10

394. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR PRECIOUS CORAL FISHERIES IN THE WESTERN PACIFIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 5 would facilitate and enable adjustments to management measures for the precious coral fisheries in the Commonwealth of the Northern Mariana Islands (CNMI). Possible regulatory changes could include inclusion of the EEZ around CNMI, within the management area of the FMP, as well as permit and reporting requirements for harvesters in this area.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AO47

395. AMENDMENT 11 TO FISHERY MANAGEMENT PLAN FOR SHRIMP FISHERY OF GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 11 would require vessels using shrimp trawls in the Gulf of Mexico EEZ to obtain Federal permits for the purposes of identifying vessels and reporting and describe permit qualification criteria and permit application, issuance, and transferability requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/25/02	67 FR 8503
NPRM Comment Period End	04/11/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AO51

396. AMENDMENTS TO FMPS FOR GULF OF MEXICO REEF FISH AND GULF OF MEXICO AND SOUTH ATLANTIC COASTAL MIGRATORY PELAGIC RESOURCES TO LIMIT ENTRY INTO GULF OF MEXICO RECREATIONAL-FOR-HIRE FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of NPRM comment period.

Abstract: These amendments to the Fishery Management Plan (FMP) for the Reef Fish Resources of the Gulf of Mexico and to the FMP for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic would impose additional measures limiting entry into the recreational-for-hire (i.e., charter vessel and headboat) fisheries for reef fish and coastal migratory pelagic fish (e.g., king and Spanish mackerel) in the exclusive economic zone of the Gulf of Mexico. NMFS published an advanced notice of proposed rulemaking announcing that the Council was considering November 18, 1999, as a possible control date for

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this action (63 FR 64031). The FMP amendments would address the issue of the recreational sectors exceeding their annual allocations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AO62

397. FISHERY MANAGEMENT PLAN FOR THE DOLPHIN AND WAHOO FISHERY OF THE ATLANTIC, CARIBBEAN, AND GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of NPRM comment period.

Abstract: This new FMP, as prepared jointly by the South Atlantic, Gulf of Mexico, and Caribbean Fishery Management Councils, is to provide a comprehensive management program for dolphin and wahoo in the Atlantic Ocean, Gulf of Mexico, and Caribbean exclusive economic zone.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AO63

398. ATLANTIC HIGHLY MIGRATORY SPECIES FISHERIES; ATLANTIC BLUEFIN TUNA INCIDENTAL CATCH

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS is considering rulemaking on modifications to the target catch requirements for the incidental longline fishery for Atlantic bluefin tuna (BFT). NMFS requests comments on possible changes to Atlantic tuna regulations prior to drafting proposed changes to those regulations.

Timetable:

Action	Date	FR Cite
ANPRM	11/17/00	65 FR 69492
ANPRM Comment Period End	12/14/00	
Comment Period Extended	01/16/01	
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AO75

399. ATLANTIC HIGHLY MIGRATORY SPECIES; EXEMPTED FISHING PERMITS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS amends procedures for issuing exempted fishing permits for fishing activities that are otherwise prohibited, and for scientific research permits.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AO79

400. RECREATIONAL MEASURES FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERIES FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action would establish the possession limit, size limit, and other management measures for the recreational fisheries for fishing year 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	
Final Action	07/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AO91

401. REGULATORY AMENDMENT UNDER THE FISHERY MANAGEMENT PLAN FOR GULF OF MEXICO REEF FISH (FMP) TO ESTABLISH A RED SNAPPER STOCK REBUILDING PLAN AND TO SET RED SNAPPER OVERFISHING TARGETS AND THRESHOLDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory amendment under the FMP's framework procedure would establish a revised red snapper stock rebuilding plan and red snapper overfishing targets and thresholds, all intended to meet requirements of the Magnuson-Stevens Fishery Conservation and Management Act as amended by the Sustainable Fisheries Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP02

402. AMENDMENT 13 TO THE FISHERY MANAGEMENT PLAN FOR THE SNAPPER-GROUPER FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: NPRM, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 13 will revise permit transfers, revise MSY and overfishing definitions, revise snowy grouper and golden tilefish management measures, and include a formal section 7 analysis on the interaction of gear (with an emphasis on black sea bass traps) with endangered and threatened species.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP03

403. SPECIFICATIONS FOR THE SPINY DOGFISH FISHERY FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: These annual specifications for spiny dogfish would implement a coastwide quota and management measures to achieve a target fishing mortality rate specified in the Spiny Dogfish FMP.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP07

404. FRAMEWORK 1 TO THE MONKFISH FISHERY MANAGEMENT PLAN FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: This action would extend year-3 management measures for the monkfish fishery for fishing year 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP11

405. FRAMEWORK ADJUSTMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Framework Adjustment 2 would implement a 5-year extension of the Illex squid moratorium; a rollover of the mackerel specifications in the event the current annual specifications are not in place (excluding TALFF specifications); a modification to the overfishing definition and in-season adjustment provision for the Loligo squid fishery; and a Loligo squid trip limit exemption in the directed Illex

squid fishery during the months of June to September in the event the directed Loligo squid fishery is closed.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP12

406. AMERICAN LOBSTER FISHERY; REVISIONS TO LOBSTER TRAP LIMITS, CONSERVATION EQUIVALENCY IN NEW HAMPSHIRE WATERS, AND CLARIFICATION OF LOBSTER MANAGEMENT BOUNDARIES PER ADDENDUM 1

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for Federal permit holders associated with Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). Addendum I to Amendment 3 of the ISFMP, approved by the Atlantic States Marine Fisheries Commission (ASMFC) on August 3, 1999, provides for the control of fishing effort as determined by historical participation in the American lobster trap fisheries in offshore waters of the Exclusive Economic Zone (EEZ) and areas of the EEZ closer to shore between New York and North Carolina. The addendum also clarifies lobster management area boundaries in Massachusetts waters. In addition, the ISFMP calls for the implementation of conservation equivalent trap limits in New Hampshire waters.

Timetable:

Action	Date	FR Cite
ANPRM	05/24/01	66 FR 28726
ANPRM Comment Period End	06/25/01	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Additional Information: The Advanced Notice of Proposed Rule making was published under RIN 0648-AP18.

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427-2014

RIN: 0648–AP15

407. FISHING CAPACITY REDUCTION PROGRAM FOR THE CRAB SPECIES COVERED BY THE FISHERY MANAGEMENT PLAN FOR THE BERING SEA/ALEUTIAN ISLANDS KING AND TANNER CRABS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 16 USC 1861a; 46 USC 1279f; PL 106-554

CFR Citation: 50 CFR 600

Legal Deadline: Final, Statutory, May 1, 2001, Publish Final Regulations. Other, Statutory, December 31, 2001, Complete Fishing Capacity Reduction Program.

Abstract: This action establishes a fishing capacity reduction program in the fishery for the crab species covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs. The crab reduction program makes payments for revoking crab licenses in, and withdrawing fishing vessels from, the crab fishery. Reducing the number of crab licenses and vessels in the crab fishery increases post-reduction harvesting productivity, helps conserve and manage the crab resources, and fosters the potential for rationalizing crab fishery harvesting effort. The proposed regulations add a new section 600.1018 to the fishing capacity reduction framework regulations contained in subpart L to 50 CFR part 600.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael L. Grable, Chief, Financial Services Division, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2390
Email: michael.grable@noaa.gov

RIN: 0648–AP25

408. REGULATORY AMENDMENT TO IMPLEMENT PERMIT STACKING IN THE LIMITED-ENTRY FIXED-GEAR SABLEFISH FISHERY IN 2002 AND BEYOND

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, Final Rule must be published 30 days after end of comment period on the Proposed Rule.

Abstract: This regulatory amendment would implement the following Amendment 14 provisions: permit owners will be required to provide detailed ownership information to ensure that no person has ownership interest in or holds more than 3 permits; current permit owners who were not permit owners before November 1, 2000, will be required to be on board the vessel fishing against the sablefish cumulative limits associated with that vessel's permit(s); vessels landing sablefish against their primary season limits will be required to contact enforcement officials before making sablefish landings; vessel owners wishing to freeze sablefish at sea will be required to provide proof of a history of freezing sablefish at sea in the years 1998, 1999, or 2000.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest

Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP38

409. REGULATORY AMENDMENT TO ALLOW EXPERIMENTAL SETNET SABLEFISH LANDINGS TO QUALIFY LIMITED-ENTRY SABLEFISH ENDORSEMENT HOLDERS FOR TIER ASSIGNMENT IN THE WEST COAST PRIMARY SABLEFISH FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, Final Rule must be published 30 days after end of comment period on Proposed Rule.

Abstract: This proposed regulation would alter sablefish tier qualification requirements at 50 CFR 660 to include sablefish landings made in the 1984-1986 setnet sablefish fishery. This is a minor regulation intended to allow sablefish endorsement holders to qualify for sablefish tier assignment based on both fixed-gear sablefish landings and on experimental setnet sablefish landings, and will not change the effect of the fishery on the sablefish resource nor change the overall sablefish harvest level.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP39

410. AMENDMENT 5 TO THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE SOUTH ATLANTIC REGION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rule would implement Amendment 5 to the Fishery Management Plan (FMP) for the Shrimp Fishery of the South Atlantic Region. This rule proposes to: (1) establish a license limitation program for the rock shrimp fishery prosecuted south of the South Carolina-Georgia border in the South Atlantic Region that (a) have held a valid rock shrimp permit prior to December 31, 2000 and (b) can demonstrate landings of at least 15,000 pounds in any one year from 1996 to 2000; (2) require captains operating permitted vessels fishing for rock shrimp in the South Atlantic EEZ to have a vessel operator's permit issued by the National Marine Fisheries Service to participate in the fishery; (3) require the minimum allowable mesh size for a trawl used to fish in the South Atlantic EEZ for rock shrimp be 1 and 7/8 inch stretched mesh; and (4) require any vessel fishing for rock shrimp in the South Atlantic Council's EEZ to use an approved vessel monitoring system that would not exceed $1,200 in cost for equipment and installation. Annual communication costs would not exceed $800.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Peter J. Eldridge, Fishery Management Specialist, Department of Commerce, National Oceanic and Atmospheric Administration
Phone: 727 570-5305
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Email: peter.eldridge@noaa.gov

RIN: 0648–AP41

411. IMPLEMENTATION OF FISHERY MANAGEMENT PLAN FOR HIGHLY MIGRATORY SPECIES FISHERIES OFF THE WEST COAST

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would implement the Fishery Management Plan (FMP) for Highly Migratory Species Fisheries off the West Coast. The FMP is currently under development by the Pacific Fishery Management Council (Council) under the terms of the Magnuson-Stevens Act and other applicable law. The FMP will both establish a process for implementing regulations as deemed necessary in the future and provide a basis for initial regulation of selected fishery sectors (e.g., drift gillnet and longline) to ensure conservation of the fish stocks involved and protection of species of special concern such as sea turtles and seabirds. The FMP will include substantial environmental and economic analyses consistent with the requirements of the National Environmental Policy Act, the Regulatory Flexibility Act, and Executive Order 12296 and other laws and orders. Steps for reviewing and implementing approved elements of the FMP are set forth in the Magnuson-Stevens Act and include provisions for publication of proposed and final rules within certain time periods.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	10/00/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP42

412. SECRETARIAL AMENDMENT TO IMPLEMENT ANNUAL ADJUSTMENT MEASURES FOR THE NORTHEAST MULTISPECIES FISHERY FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This action would implement management measures for the Northeast multispecies fishery for fishing year 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AP45

413. ATLANTIC HIGHLY MIGRATORY SPECIES; PELAGIC LONGLINE FISHERY; SEA TURTLE PROTECTION MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rule would implement measures that were discussed in the June 14, 2001, Biological Opinion to reduce the bycatch mortality of endangered and threatened sea turtles. These requirements would be adopted by vessels that fish in specified highly migratory species (HMS) fisheries in the Atlantic Ocean. Also, this rule would finalize the interim final rule published on March 30, 2001, the emergency rule that published on July 13, 2001, and clarify the HMS regulations to address certain enforcement issues.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910 Phone: 301 713-2334 Email: bruce.morehead@noaa.gov

RIN: 0648–AP49

414. REGULATORY AMENDMENT UNDER THE COASTAL MIGRATORY PELAGICS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 622

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: In accordance with the FMP's framework procedure for regulatory adjustments, this action would establish biomass-based stock status criteria such as maximum-sustainable yield (MSY), optimum yield (OY), and definitions of overfishing and overfished using default control rules as required by the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432 Phone: 727 570-5301

RIN: 0648–AP50

415. AMENDMENT 2 TO THE FISHERY MANAGEMENT PLAN FOR THE QUEEN CONCH RESOURCES OF PUERTO RICO AND THE U.S. VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 2 would prohibit possession and harvest of queen conch in the exclusive economic zone (EEZ) of the U.S. Caribbean. The queen conch resource is overfished and needs to be rebuilt to a healthy level consistent with requirements of the Magnuson-Stevens Fishery Conservation and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432 Phone: 727 570-5301

RIN: 0648–AP51

416. ADJUSTMENT OF MANAGEMENT PROGRAM: BOTTOMFISH FISHERIES IN THE WESTERN PACIFIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 2002.

Abstract: This regulatory action would facilitate and enable adjustments to management measures for the bottomfish fisheries in the Commonwealth of the Northern Mariana Islands.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Action	Date	FR Cite
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700 Phone: 808 973-2937

RIN: 0648–AP53

417. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT BOTTOMFISH, CRUSTACEAN, AND PELAGICS REGARDING BYCATCH PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved bycatch provisions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700 Phone: 808 973-2937

RIN: 0648–AP54

418. RESUBMISSION OF SUSTAINABLE FISHERIES ACT AMENDMENT BOTTOMFISH, CRUSTACEANS, AND PELAGICS, AND PRECIOUS CORALS REGARDING FISHING COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action would bring these FMPs into compliance with the Sustainable Fisheries Act regarding previously disapproved categorization of the State of Hawaii as a fishing community.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700 Phone: 808 973-2937

RIN: 0648–AP55

419. ATLANTIC SURFCLAM AND OCEAN QUAHOG FISHERIES; AMENDMENT 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 40 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Amendment 13 to the Fishery Management Plan for the Atlantic Surfclam and Ocean Quahog Fisheries would describe gear impacts on essential fish habitat, revise the surfclam overfishing definition, establish multiyear quotas, and add/revise other measures.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AP57

420. SPINY DOGFISH FISHERY; AMENDMENT 1

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Amendment 1 to the Spiny Dogfish Fishery Management Plan would revise the rebuilding plan and management measures for spiny dogfish.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930 Phone: 978 281-9200

RIN: 0648–AP58

421. ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES; AMENDMENT 9

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Amendment 9 to the Fishery Management Plan for the Atlantic

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Mackerel, Squid and Butterfish Fisheries would establish a controlled access program for mackerel, address essential fish habitat, and revise the Illex quota procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP60

422. RULEMAKING TO IMPLEMENT A VESSEL MONITORING SYSTEM UNDER THE SOUTH PACIFIC TUNA ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 50 CFR 300

Legal Deadline: NPRM, Statutory, November 2001.
Final, Statutory, January 2002.

Abstract: This rulemaking will implement an electronic vessel monitoring system under the South Pacific Tuna Act. The system is satellite-based with individual U.S. purse seine vessels providing automatic location information to the Forum Fisheries Agency located in Honiara, Solomon Islands. This rule will require that all U.S. purse seine vessels operating within the South Pacific Tuna Treaty Area shall participate and shall install and operate a transponder of the type and in such a manner as agreed upon by the parties to the "Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America" (implemented as the South Pacific Tuna Act).

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP61

423. • AMENDMENT TO REGULATIONS FOR OBSERVER AT-SEA ELECTRONIC COMMUNICATION EQUIPMENT REQUIREMENTS FOR VESSELS AND SHORESIDE PROCESSORS IN THE NORTH PACIFIC GROUNDFISH FISHERIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: NPRM, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rulemaking would refine requirements for the facilitation of observer data transmission and improve support for observers. The proposed rule is intended to assure continued collection of high quality observer data to support the management objectives of the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area and the Fishery Management Plan for Groundfish of the Gulf of Alaska.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP66

424. • REVISE COMMUNITY DEVELOPMENT QUOTA PROGRAM ADMINISTRATION AND ALLOCATION REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: NPRM, Statutory, August 2002.
Final, Statutory, December 2002.

Abstract: This action will revise regulations governing the process under which a portion of the Bering Sea and Aleutian Islands quotas for groundfish, prohibited species, crab, and halibut are allocated to groups representing Western Alaska communities eligible for the Community Development Quota (CDQ) Program. The action also will revise administrative regulations for the economic development aspects of the CDQ Program.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	09/00/02	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Federal

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP67

425. • AMENDMENT 69 TO THE BSAI FMP - AFA CO-OP LEASING

Priority: Routine and Frequent

Legal Authority: 16 USC 1801 et seq; 16 USC 773 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rulemaking would amend the Fishery Management Plan for the Groundfish Fishery of the Bering Sea Aleutian Islands Area (BSAI) (Amendment 69) to allow American Fisheries Act inshore pollock co-operatives to contract with inshore catcher vessel members of other co-operatives for the purpose of harvesting the co-operative's BSAI pollock allocation.
This rulemaking would alter the AFA inshore co-operative structure. The change would allow one inshore co-operative to contract with members of another inshore co-operative to harvest a portion of the first co-operative's BSAI pollock allocation. This is currently not allowed, since only members of a given co-operative are allowed to harvest any portion of that co-operative's allocation. Co-operatives are concerned that they might not be able to achieve a full harvest of their pollock allocation under some conditions in any given year. This amendment would result in a structure that would better ensure that co-operatives are able to harvest all of their allocation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP71

426. • FULL RETENTION OF DEMERSAL SHELF ROCKFISH IN GULF OF ALASKA AREA 650

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This action would require full retention of demersal shelf rockfish (DSR) in the hook-and-line fisheries in the GOA, Regulatory Area 650. If approved, this rule would eliminate the maximum retainable bycatch limit for DSR and require that all DSR caught by federally permitted vessels using fixed gear in the SEO be retained, landed, weighed and reported. The amount of DSR that could be sold would be limited to an amount no more than 10 percent of other retained catch. With respect to DSR in excess of that 10 percent limit, fishermen would be allowed to voluntarily surrender the fish to the State of Alaska, retain it for personal use, donate it to a State-recognized charity, use it for bait, or any combination of the above.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP73

427. • ANTARCTIC MARINE LIVING RESOURCES VESSEL MONITORING SYSTEM AND CATCH DOCUMENTATION SCHEME

Priority: Other Significant

Legal Authority: 16 USC 2341 et seq

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This rule would lengthen the duration of the permit required to enter a Commission for the Conservation of Antarctic Marine Living Resources (CCAMLR) Ecosystem Monitoring Program (CEMP) site from one year to five years. The rule would define the CCAMLR fishing season and require the use of an automated satellite-linked vessel monitoring system (VMS) for U.S. vessels harvesting Antarctic marine living resources (AMLR) in the area of the Convention on the Conservation of Antarctic Marine Living Resources (Convention). The rule would also require a non-resident consignee to designate a resident agent; prohibit the importation of Dissostichus species declared as harvested in high seas areas outside the Convention Area; prohibit the import of Dissostichus species issued a Specially Validated Dissostichus Catch Document (SVDCD); and provide guidance on the disposition of AMLR seized by law enforcement personnel; and propose regulations to modify requirements for U.S. receivers and importers of Dissostichus eleginoides (Patagonian toothfish) and Dissostichus mawsoni (Antarctic toothfish) harvested in all waters, including those under the jurisdiction of CCAMLR. This rule is intended to implement U.S. obligations as a Member of CCAMLR and to conserve Antarctic and Patagonian toothfish by preventing and discouraging unlawful harvest and trade in these species.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robin Tuttle, Foreign Affairs Officer, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2282
Email: robin.tuttle@noaa.gov

RIN: 0648–AP74

428. • AMENDMENT 60 TO THE FISHERY MANAGEMENT PLAN FOR THE GROUNDFISH FISHERY OF THE GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This Amendment is intended to protect the depressed king and Tanner crab stocks in Cook Inlet by minimizing bycatch and the mortality of such bycatch. Prohibiting non-pelagic trawl operations will protect this habitat and promote the rebuilding of the crab resources in the Cook Inlet portion of the GOA.

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Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP79

429. • SUSPENSION OF THE TEXAS CLOSURE IN ACCORDANCE WITH THE FISHERY MANAGEMENT PLAN FOR THE SHRIMP FISHERY OF THE GULF OF MEXICO (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final Rule must be published 30 days after the end of the comment period on the NPRM.

Abstract: The Gulf of Mexico Fishery Management Council (Council) annually reviews the benefits of continuing the Cooperative Texas Closure, which prohibits shrimping in the exclusive economic zone (EEZ) off Texas between May 15 and July 15 each year. At its January 2002 meeting the Council received substantial public testimony regarding the economic impacts imposed by other State-mandated closures off Texas, which would be exacerbated by an additional closure of the EEZ off Texas. Plus, there is an apparent surplus of large shrimp in cold storage. Therefore, the Council concluded it was unnecessary to defer harvest with a closure until the shrimp reach a larger size. The Council voted to recommend that the National Marine Fisheries Service (NMFS) suspend, via proposed and final rule, the closure to shrimp trawling in the EEZ off Texas for one season to allow the industry to harvest smaller shrimp.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	05/00/02	
Final Action	06/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AP82

430. • AMENDMENT 10 TO THE COASTAL PELAGIC SPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This action implements Amendment 10 to the Coastal Pelagic Species Fishery Management Plan, which sets conditions by which Federal fishing permits can be transferred from one person to another. This amendment will also include a maximum sustainable yield for market squid.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP87

431. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); 2002 BLUEFIN TUNA QUOTA SPECIFICATIONS AND EFFORT CONTROLS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes specifications for the Atlantic bluefin tuna (BFT) fishery to set BFT quotas and general category effort controls for the 2002 fishing year. This action will implement the U.S. annual BFT quota as recommended by the International Commission on Conservation of Atlantic Tunas and allocate that quota among the domestic fishing categories. Effort controls for the general category will allocate monthly quotas and set certain restricted fishing days.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway 13350, Silver Spring, MD
Phone: 301 713-2334

RIN: 0648–AP90

432. AMEND REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371(a)(6)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This action implements certain changes in the prohibitions on importing or exporting marine mammals or marine mammal parts and products that occurred with the enactment of the Marine Mammal Protection Act Amendments of 1994 (Pub. L. 104-238). This action prohibits the export of marine mammals or marine mammal products for purposes other than public display, scientific research, or enhancing the survival of a species or stock and establishes three new categories of exceptions to the prohibition on importing marine mammal parts and products. This is a noncontroversial action that is not significant as it will have only minor effects on a small number of people, most of whom will benefit by the new exceptions.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gene Nitta, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289

RIN: 0648–AH83

433. NORTH ATLANTIC WHALE PROTECTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1361 et seq; 16 USC 1531 et seq

CFR Citation: 50 CFR 216; 50 CFR 222

Legal Deadline: None

Abstract: This action investigates the need to adopt regulations to decrease negative action of whale watching.

Timetable:

Action	Date	FR Cite
ANPRM	01/04/00	65 FR 270
ANPRM Comment Period End	03/06/00	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Trevor Spradlin, Marine Mammal Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289
Email: trevor.spradlin@noaa.gov

RIN: 0648–AM85

434. DESIGNATED CRITICAL HABITAT: PROPOSED CRITICAL HABITAT FOR NORTHERN CALIFORNIA STEELHEAD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1533

CFR Citation: 50 CFR 226

Legal Deadline: Final, Statutory, June 7, 2001.

Abstract: On June 7, 2000, NMFS listed the Northern California steelhead evolutionarily significant unit of steelhead as threatened under the Endangered Species Act. NMFS will now designate critical habitat for these steelhead.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kellie Carter, Fishery Biologist, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Email: kellie.f.carter@noaa.gov

RIN: 0648–AO04

435. ENDANGERED AND THREATENED SPECIES: PERMIT EXEMPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531 et seq; 16 USC 742a et seq; 31 USC 9701

CFR Citation: 50 CFR 222

Legal Deadline: None

Abstract: NMFS is providing exceptions to prohibitions to allow Federal and State employees to perform conservation activities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Terri Jordan, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Fax: 301 713-0376
Email: terri.jordan@noaa.gov

RIN: 0648–AO37

436. CAPTIVE STELLER SEA LIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 16 USC 1531-1543; subpart B, 3223.12; 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: This rule is to provide exception to captive Steller sea lions (those captured before listing) to assist the public display community in commerce involving these animals.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jennifer Lyn Skidmore, Knauss Sea Grant Fellow, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13710, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289
Fax: 301 713-0376
Email: jennifer.skidmore@noaa.gov

RIN: 0648–AO61

437. TAKING MARINE MAMMALS INCIDENTAL TO ROCKET LAUNCHES FROM THE KODIAK LAUNCH COMPLEX, KODIAK ISLAND, ALASKA

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS has received a request from the Alaska Aerospace Development Corporation (AADC) for a

Letter of Authorization (LOA) to take small numbers of marine mammals incidental to rocket launches from the Kodiak Launch Complex (KLC), Kodiak Island, Alaska. As a result of that request, NMFS is proposing regulations that would authorize the incidental taking of a small number of marine mammals. In order to issue such regulations, NMFS must determine that these takings will have a negligible impact on the affected species and stocks of marine mammals and will not have an unmitigable adverse impact on the availability of marine mammal species or stocks for subsistence uses.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/01	66 FR 55909
ANPRM Comment Period End	12/05/01	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Simona Perry Roberts, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Room 13727, Silver Spring, MD 20910
Phone: 301 713-2322
Fax: 301 713-0376
Email: simona.roberts@noaa.gov

RIN: 0648–AP62

438. • RESTRICTIONS ON POUND NET LEADERS TO ENHANCE TURTLE PROTECTION IN VIRGINIA; THREATENED AND ENDANGERED SEA TURTLE CONSERVATION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 222; 50 CFR 223; 50 CFR 224

Legal Deadline: None

Abstract: This action involves prohibiting the use of all pound net leaders measuring 12 inches or greater stretched mesh and all pound nets with stringer leaders in the Virginia waters of the mainstem Chesapeake Bay and the waters of the James River, York River, and Rappahannock River downstream of the first bridge in each tributary from May 8 to June 30. This action also includes a provision to extend the regulation if NMFS believes that sea turtles may still be vulnerable to entanglement in pound net leaders after June 30. Should an extension of the prohibition of pound net leaders measuring 12 inches or greater stretched mesh and leaders with stringers be necessary, NMFS will file a notification with the Office of the Federal Register explicitly stating the duration of the extension. Additionally, this proposed rule incorporates a measure that if high strandings start to occur and/or monitoring of pound net leaders reveals new information about sea turtle interactions with pound net leaders less than 12 inches stretched mesh, NMFS may determine that additional restrictions are necessary. Should this occur, NMFS will immediately file a final rule with the Office of the Federal Register which explicitly states the mandatory gear modification as well as the affected area and the time period. Such additional restrictions may include prohibiting the use of all pound net leaders measuring 8 inches or greater stretched mesh or prohibiting the use of all pound net leaders regardless of mesh size in the Virginia waters of the mainstem Chesapeake Bay and portions of the Virginia tributaries from the date of publication to June 30.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary A. Colligan, Assistant Regional Admisistrator, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS/Protected Resources, Protected Resources Division, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9116
Fax: 978 281-9394

RIN: 0648–AP81

439. • TAKING AND IMPORTING MARINE MAMMALS; TAKING MARINE MAMMALS INCIDENTAL TO OIL AND GAS STRUCTURE REMOVAL ACTIVITIES IN THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is proposing to issue regulations authorizing and governing the taking of bottlenose and spotted dolphins incidental to the removal of oil and gas drilling and production structures in state waters and on the Outer Continental Shelf (OCS) in the Gulf of Mexico for a period not to exceed 1 year. The incidental taking of small numbers of marine mammals is authorized by the Marine Mammal Protection Act (MMPA), if certain findings are made and regulations are issued that include requirements for monitoring and reporting. Previous regulations were issued for these same activities in 1995 and expired in November 2000.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Simona Perry Roberts, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Room 13727, Silver Spring, MD 20910
Phone: 301 713-2322
Fax: 301 713-0376
Email: simona.roberts@noaa.gov

RIN: 0648–AP83

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

440. REVISION OF OVERFLIGHT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1431 et seq

CFR Citation: 15 CFR 922

Legal Deadline: None

Abstract: These regulations are being revised to clarify that they are for resource protection purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Armor, National Marine Sanctuary Program, Department of Commerce, National Oceanic and Atmospheric Administration, N ORM 6, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-3125

RIN: 0648–AI91

Department of Commerce (DOC) — Final Rule Stage
National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

441. REGULATORY AMENDMENT TO ALLOCATE PACIFIC HALIBUT TO THE CHARTER BOAT FLEET

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 773c

CFR Citation: 50 CFR 300

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This action establishes measures to manage the halibut charter boat industry off Alaska.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3867
NPRM Comment Period End	02/27/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AK17

442. ADJUSTMENT OF THE MANAGEMENT PROGRAM FOR PRECIOUS CORALS FISHERIES IN THE WESTERN PACIFIC

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulation would modify the management program for the fisheries for precious corals in the western Pacific region. In response to new information on changes that may occur in the fishery, possible changes to the management program include the establishment of or adjustments to fishing seasons, permit requirements, quotas, closures, area limitations, gear, coral size restrictions, and fishery-dependent data reporting requirements, etc.

Timetable:

Action	Date	FR Cite
NPRM	09/05/00	65 FR 53646
NPRM Comment Period End	10/05/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AK23

443. PROPOSED HIGHLY MIGRATORY SPECIES PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: NMFS proposes to revise the administrative procedures it follows to prepare and issue highly migratory species (HMS) management plans (FMPs), FMP amendments and implementing regulations for the Atlantic Ocean, Gulf of Mexico and Caribbean Sea in response to recent amendments to the Magnuson-Stevens Fishery Management Act.

Timetable:

Action	Date	FR Cite
NPRM	09/18/97	62 FR 48990
NPRM Comment Period End	10/15/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AK40

444. AMENDMENT 54 TO FMP FOR GROUNDFISH FISHERY OF BERING SEA AND ALEUTIAN ISLANDS AREA AND AMENDMENT 54 TO FMP FOR GROUNDFISH OF GULF OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of NPRM comment period.

Abstract: These FMP amendments would change sablefish use limits from percentages to quota share units; add a leasing provision to allow initial recipients of quota shares to lease 10 percent of their individual fishing quota pooled across all areas, with an option to restrict this allowance to the Bering Sea; and modify plan language to allow an individual who holds an initial allocation of quota share to hire a skipper to fish individual IFQ on a collectively owned vessel.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52090

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Action	Date	FR Cite
NPRM Comment Period End	11/26/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AK70

445. CRAB COMMUNITY DEVELOPMENT QUOTA RESERVES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This regulatory amendment would specify crab community development quota reserves by calendar year.

Timetable:

Action	Date	FR Cite
NPRM	07/25/01	66 FR 38626
NPRM Comment Period End	08/24/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AL92

446. AMENDMENT 67 TO THE FMP FOR THE GROUNDFISH FISHERY OF THE BERING SEA AND THE ALEUTIAN ISLANDS AREA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 67 will establish gear and Pacific cod species endorsements. This requires an additional species/gear endorsement on the License Limitation Program license of fishermen who wish to fish for Pacific cod with fixed gear.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49908
NPRM Comment Period End	11/15/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AM40

447. PROHIBIT USE OF SET NET GEAR TO HARVEST GROUNDFISH IN CERTAIN PORTIONS OF THE EXCLUSIVE ECONOMIC ZONE WATERS SEAWARD OF CALIFORNIA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This rule would prohibit the use of set net gear to take groundfish species in a portion of the exclusive economic zone (EEZ) seaward of California. This rule has been requested by the Pacific Fishery Management Council (Council) under procedures in the Pacific Groundfish Fishery Management Plan (FMP) that allow for implementing Federal regulations to conform to State regulations for the groundfish fishery in selected circumstances. The Council has determined that the State regulations prohibiting the use of set net gear used to take groundfish species in certain areas are consistent with the FMP and requested Federal adoption of consistent regulations in the EEZ. The conformance with State regulations is desired to ensure consistent application of conservation and management measures and enforcement in the EEZ and in State waters to the extent practicable.

Timetable:

Action	Date	FR Cite
NPRM	05/19/00	65 FR 31871
NPRM Comment Period End	06/19/00	
Comment Period Extended	07/05/00	65 FR 41426
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AN03

448. ATLANTIC HIGHLY MIGRATORY SPECIES FISHERIES; MANAGEMENT OF THE ATLANTIC BLUE MARLIN AND WHITE MARLIN RECREATIONAL FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: The International Commission for the Conservation of Atlantic Tuna recommended that the United States limit annual recreational landings of Atlantic blue marlin and white marlin to 250 marlin, combined, for 2001 and 2002. NMFS may consider an adjustment of the minimum size, as well as management measure to enhance reporting of non-tournament landings to comply with the ICCAT framework provisions of Amendment 1 to the Atlantic Billfish Fishery Management Plan.

Timetable:

Action	Date	FR Cite
ANPRM	08/09/00	65 FR 48671
ANPRM Comment Period End	09/25/00	
NPRM	12/26/01	66 FR 66386

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Action	Date	FR Cite
NPRM Comment Period End	02/25/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AN06

449. AMENDMENTS 61/61 FOR BSAI AND GOA GROUNDFISH; AMENDMENT 13 FOR COMMERCIAL KING AND TANNER CRAB; AND AMENDMENT 8 FOR ALASKA SCALLOP FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: Other, Statutory, American Fisheries Act requires regulatory implementation prior to January 2000.

Abstract: This rule would implement: (1) permitting requirements for AFA pollock catcher vessels, catcher vessel cooperatives, c/p motherships, and shoreside processors; (2) new pollock allocation regime for allocations to catcher vessel cooperatives; (3) new recordkeeping and reporting requirements for vessels and processors; (4) new restrictions on participation of AFA pollock vessels in non-pollock fisheries; and (5) restrictions on ability of AFA pollock processors to process non-pollock groundfish and crab species from the Bering Sea and Gulf of Alaska.

Timetable:

Action	Date	FR Cite
NPRM	12/17/01	66 FR 65028
NPRM Comment Period End	01/31/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger, Regional Administrator, Alaska Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, P.O. Box 21668, Juneau, AK 99802
Phone: 907 586-7228

RIN: 0648–AN55

450. GENERIC AMENDMENT ADDRESSING THE ESTABLISHMENT OF THE TORTUGAS MARINE RESERVES UNDER THE FISHERY MANAGEMENT PLANS OF THE GULF OF MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: The Generic Tortugas Amendment would amend the Gulf of Mexico Fishery Management Council's fishery management plans to establish the portion of the Tortugas North ecological reserve that falls within the Gulf of Mexico EEZ and to establish the Tortugas South Ecological Reserve, which resides entirely within the EEZ and includes Riley's Hump (a fish spawning aggregation site). Fishing for any species, including Atlantic highly migratory species, would be prohibited within these marine reserves. Additionally, anchoring by fishing vessels would be prohibited within the marine reserves. Along with regulations issued by the Florida Keys National Marine Sanctuary (under NOAA's National Ocean Service), the Generic Tortugas Amendment would protect unique and valuable reef resources.

Timetable:

Action	Date	FR Cite
NPRM	02/07/02	67 FR 5749
NPRM Comment Period End	03/25/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AN83

451. AMENDMENT 3 TO THE FISHERY MANAGEMENT PLAN FOR THE GOLDEN CRAB FISHERY OFF THE SOUTHERN ATLANTIC STATES (FMP)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 622

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: Amendment 3 would: (1) extend the use of cable for main lines through December 31, 2002; (2) require that escape panel or doors on traps must measure at least 11 7/8 inches by 11 7/8 inches; (3) remove the 5,000-pound harvest requirement for renewing the biannual permit; (4) allow up to a 20 percent increase in vessel size from the vessel size on the original permit; (5) create a subzone within the southern zone for smaller vessels, as agreed to by the affected fishermen; (6) allow two new vessels to be permitted to fish only in the northern zone; (7) specify MSY, OY, and status determination criteria; and (8) modify the FMP framework procedure to allow modifications to the subzone.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59221
NPRM Comment Period End	01/11/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph Powers, Acting Regional Administrator, Southeast Region, Department of Commerce, National Oceanic and Atmospheric Administration, National Marine Fisheries Service, 9721 Executive Center Drive N., St. Petersburg, FL 33702-2432
Phone: 727 570-5301

RIN: 0648–AO23

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452. REGULATORY AMENDMENT TO MODIFY THE MANAGEMENT PROGRAM FOR THE WESTERN PACIFIC PELAGIC FISHERIES TO MITIGATE THE TAKE OF SEABIRDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of end of NPRM comment period.

Abstract: This regulatory action implements the terms and conditions of a biological opinion on the effects of the continued operation of the Hawaii-based longline fishery on the short-tailed albatross, and seabird mitigation measures proposed by the Western Pacific Fishery Management Council. All operators of vessels registered for use under Hawaii pelagic longline limited access permits will be required to use specific bird mitigation techniques when fishing with pelagic longline gear north of 23 degrees N. latitude; all vessel operators and owners must annually attend a protected species workshop conducted by NMFS; and all hooked or entangled sea birds, including the endangered short-tailed albatross, must be released in a manner that maximizes their post-release survival.

Timetable:

Action	Date	FR Cite
NPRM	07/05/00	65 FR 41424
NPRM Comment Period End	08/21/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AO35

453. ATLANTIC HIGHLY MIGRATORY SPECIES; SWORDFISH QUOTAS AND FISHING AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This rulemaking would implement several recommendations adopted by the International Commission for the Conservation of Atlantic Tunas (ICCAT) in November 2000. These recommendations include a ban on the importation of bigeye tuna from non-members Belize, Honduras, Cambodia, and St. Vincent and the Grenadines, and ICCAT member Equatorial Guinea, the development of statistical document programs for swordfish and bigeye tuna to monitor harvests and assist in the collection of trade data, the establishment of a 400 metric ton conservation reserve for North Atlantic swordfish and the establishment of a 2001 catch limit for South Atlantic swordfish, consistent with catch limits in recent years. This rule would also clarify authorized fishing areas for highly migratory species in the Atlantic Ocean.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57409
NPRM Comment Period End	12/31/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AO93

454. AMERICAN LOBSTER; MODIFY MANAGEMENT MEASURES, HISTORICAL PARTICIPATION

Priority: Other Significant

Legal Authority: 16 USC 5101 et seq

CFR Citation: 50 CFR 697

Legal Deadline: None

Abstract: In accordance with the Atlantic Coastal Fisheries Cooperative Management Act (Act), 16 U.S.C. et seq., NMFS announces that it is considering, and seeking public comment on, revisions to Federal American lobster regulations for the Exclusive Economic Zone (EEZ) in response to recommendations from the Atlantic States Marine Fisheries Commission (ASMFC) to NMFS in Addendum II to Amendment 3 of the Interstate Fishery Management Plan for American Lobster (ISFMP). Addendum II, approved by the ASMFC on February 1, 2001, revises the Amendment 3 egg production schedule in each of seven lobster conservation management areas (LCMAs) to end overfishing of American lobster stocks by the end of 2008. The management measures defined in Addendum II to meet the egg production targets include a series of minimum gauge size increases (increases in the minimum allowable harvest size of American lobster) in five of the seven LCMAs, trap gear modifications, and a 4-year trap reduction schedule for LCMA 3.

Timetable:

Action	Date	FR Cite
NPRM	01/03/02	67 FR 282
Comment Period Extended	01/31/02	67 FR 4697
NPRM Comment Period End	02/19/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: The Proposed Rule and extension of comment period was published under RIN 0648-AP15.

Agency Contact: Thomas Meyer, Fisheries Biologist, Office of Intergovernmental/Recreational Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Suite 425, 8484 Georgia Avenue, Silver Spring, MD 20910
Phone: 301 427-2014

RIN: 0648–AP18

DOC—NOAA

Final Rule Stage

455. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC MACKEREL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: NPRM, Statutory, July 2002.
The Coastal Pelagics Fisheries regulations require that the annual specifications for Pacific mackerel be published in the Federal Register before July 1, the start of the season.

Abstract: NMFS announces the annual harvest guideline for Pacific mackerel in the exclusive economic zone off the Pacific coast. The Coastal Pelagic Species Fishery Management Plan (FMP) and its implementing regulations require NMFS to set an annual harvest guideline for Pacific mackerel based on a formula in the FMP. The intended effect of this action is to establish allowable harvest levels for Pacific mackerel off the Pacific coast and to minimize the impact on other coastal pelagic fisheries.

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP43

456. 2002-2003 MANAGEMENT MEASURES FOR COMMERCIAL, RECREATIONAL, AND TREATY INDIAN SALMON FISHERIES OFF THE COASTS OF WASHINGTON, OREGON, AND CALIFORNIA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, May 2002.

Abstract: The annual management measures for the 2002-2003 fishing year specify allowable ocean harvest levels (including quotas), allocations, management boundaries and zones, minimum size limits, gear definitions, seasons, selective fisheries, and in-season notice procedures.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP52

457. SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERIES; FRAMEWORK 3

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: Framework 3 to the Fishery Management Plan for the Summer Flounder, Scup, and Black Sea Bass Fisheries would revise the overfishing definition for summer flounder.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP56

458. ATLANTIC BLUEFISH FISHERY; SPECIFICATIONS FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: Final, Statutory, Final regulations to be published within 30 days of the end of the NPRM comment period.

Abstract: This action would establish the Atlantic bluefish total allowable landings, commercial quota, recreational harvest limit, and management measures for the exclusive economic zone for fishing year 2002.

Timetable:

Action	Date	FR Cite
NPRM	03/13/02	67 FR 11276
NPRM Comment Period End	03/28/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP59

459. • INTERIM FINAL RULE TO PROTECT NORTHEAST MULTISPECIES GROUNDFISH STOCKS

Priority: Other Significant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: NMFS is planning to take interim action to protect Gulf of Maine (GOM) cod and other stocks under ongoing rebuilding efforts under the Northeast Multispecies Fishery Management Plan (FMP). This action would implement measures for the 2002 fishing year, beginning May 1, 2002, to reduce overfishing. The most recent scientific information indicates that reductions in fishing mortality are needed for GOM cod and haddock, white hake, American Plaice, redfish, Georges Bank (GB) cod, and Cape Cod, Southern New England, and Mid-

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Atlantic yellowtail flounders. This action would continue the Western GOM (WGOM) closed area, which is scheduled currently to re-open to commercial fishing on May 1, 2002, and revise other GOM closed areas. This action would also revise the GOM cod trip limit; restrict days-at-sea (DAS) use for all limited access multispecies permit holders; eliminate the large-mesh vessel permit category; implement restrictions for the recreational and charter/party fisheries; and increase observer coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP78

460. • PACIFIC HALIBUT FISHERIES CATCH SHARING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 773c

CFR Citation: None

Legal Deadline: None

Abstract: The proposed changes to the Pacific Halibut Catch Sharing Plan for Area 2A would adjust the management of the sport fishery for halibut in Puget Sound, Washington, and adjust the halibut possession limit for Oregon anglers. Sport fishing seasons for 2002 are proposed to implement the Catch Sharing Plan based on the expected total allowable catch in 2002 as established by the International Pacific Halibut Commission.

Timetable:

Action	Date	FR Cite
NPRM	02/11/02	67 FR 6220
NPRM Comment Period End	02/22/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP80

461. • EMERGENCY INTERIM RULE IMPOSING ADDITIONAL RESTRICTIONS IN THE HAWAII-BASED LONGLINE FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This rule would implement emergency measures that would prohibit longline fishing north of 26 N. latitude and prohibit the landing of more than 10 swordfish per trip by Hawaii-based longline vessels. The trip limit is intended to provide further disincentive for targeting swordfish in the fishery.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dr. Charles Karnella, Administrator, Pacific Islands Area Office, Department of Commerce, National Oceanic and Atmospheric Administration, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814-4700
Phone: 808 973-2937

RIN: 0648–AP84

462. • EMERGENCY RULE TO IMPLEMENT 2002 PACIFIC WHITING SPECIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: None

Abstract: This emergency rulemaking would implement the final specifications for Pacific whiting in the Pacific coast groundfish fishery prior to the April 1, 2002, start of the major whiting fishery. These specifications include the level of acceptable biological catch and the optimum yield, as well as the sector-specific and tribal fishery allocations which are computed using previously adopted rates.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: D. Robert Lohn, Regional Administrator, Northwest Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, 7600 Sand Point Way NE, Building 1, Seattle, WA 48115-0070
Phone: 206 526-6150
Fax: 206 526-6426

RIN: 0648–AP85

463. • PACIFIC TUNA FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 955

CFR Citation: 50 CFR 300

Legal Deadline: None

Abstract: This action would announce harvest limits and associated fishery management measures to carry out recommendations of the IATTC that have been approved by the U.S. Department of State. The United States is a member of the IATTC, and NMFS (on behalf of the Secretary of Commerce) implements management recommendations pursuant to the Tuna Conventions Act of 1950. Procedures for announcing harvest quotas and associated management measures are set forth at 50 CFR part 300 subpart C.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP86

464. • ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC SARDINE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 660

Legal Deadline: Final, Statutory, January 1, 2003, The CPS fisheries regulations require that the annual specs for Pacific sardine be published in the Federal Register before January 1, the start of the fishing year.

Abstract: This rule will announce the annual harvest guidelines for Pacific sardine in the exclusive economic zone off the Pacific coast. The CPS FMP and its implementing regulations require NMFS to establish an annual harvest guideline for Pacific sardine based on a formula in the Fishery Management Plan (FMP). This harvest guideline has been calculated according to the regulations implementing the Coastal Pelagic Species FMP and establishes allowable harvest levels for Pacific sardine off the Pacific coast.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Svein Fougner, Assistant Regional Administrator for Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, Southwest Region, 501 W. Ocean Boulevard, Long Beach, CA 90802
Phone: 562 980-4040

RIN: 0648–AP88

465. • ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); REGULATORY ADJUSTMENTS; NOAA INFORMATION COLLECTION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq; 16 USC 971 et seq

CFR Citation: 50 CFR 622

Legal Deadline: None

Abstract: This rule corrects authorized gear table (IX) at 50 CFR 600.725(v) by restating the existing table at 50 CFR 635.21(d), for which notice and comment has taken place. This rule also corrects the cross-references in several parts to regulations that have since been removed, and it updates the table in 15 CFR 902.1(b) to add new OMB approvals and to correct control number references to the appropriate CFR part or section.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John H. Dunnigan, Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway 13350, Silver Spring, MD
Phone: 301 713-2334

RIN: 0648–AP89

466. INTERAGENCY POLICY ON THE PRESCRIPTION OF FISHWAYS UNDER SECTION 18 OF THE FEDERAL POWER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 742; 16 USC 661 et seq; 16 USC 791a et seq; 16 USC et 1531 et seq; 16 USC 811 et seq; ...

CFR Citation: 18 CFR 385.713

Legal Deadline: None

Abstract: This rulemaking invites public comment on proposed internal policy for the U.S. Fish and Wildlife Service and National Marine Fisheries Service (the Services) regarding the prescription of fishways pursuant to section 18 of the Federal Power Act for non-Federal hydropower projects licensed by the Federal Energy Regulatory Commission (FERC). The proposed policy is intended to set forth the definition of fishways in accordance with the 1992 National Energy Policy Act and the procedures for the prescription of fishways. The policy does not introduce new procedures but standardizes current practices and existing procedures for providing fishway prescriptions.

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Notice Comment Period End	02/20/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kathryn Conant, Habitat Specialist, NMFS, Office of Habitat Conservation, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2325
Fax: 301 713-1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO70

467. POLICY FOR REVIEW OF MANDATORY CONDITIONS DEVELOPED BY THE DEPARTMENTS OF THE INTERIOR AND COMMERCE IN THE CONTEXT OF HYDROPOWER LICENSING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 791a et seq; 16 USC 811; 16 USC 797(e); 16 USC 8251(b)

CFR Citation: 18 CFR 385.713

Legal Deadline: None

Abstract: The Department of the Interior and the Department of Commerce (Departments) have formalized a process for public review of and comment on mandatory conditions and prescriptions the Departments develop for inclusion in hydropower licenses issued by the Federal Energy Regulatory Commission pursuant to part I of the Federal Power Act. This policy provides an opportunity for public comment on the Departments' mandatory conditions and prescriptions for both the traditional licensing process and the alternative licensing process.

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Timetable:

Action	Date	FR Cite
Notice	12/13/00	65 FR 77889
Notice Comment Period End	01/03/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Kathryn Conant, Habitat Specialist, NMFS, Office of Habitat Conservation, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2325
Fax: 301 713-1043
Email: kathryn.conant@noaa.gov

RIN: 0648–AO84

468. • ENDANGERED SPECIES; TRANSFERRING PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 224; 50 CFR 223; 50 CFR 222

Legal Deadline: None

Abstract: This proposed action will allow NMFS to transfer certain permits issued under 10 (a) of the Endangered Species Act (the Act) of 1973. This proposed rule will parallel a rule previously adopted by the U.S. Fish and Wildlife Service pertaining to assignability of permits under the Act issued by that agency. Without the implementation of this action, applicants will have to apply for new permits as property is sold to a new entity, thus increasing the burden on the applicant and NMFS. If NMFS can transfer permits, this would eliminate the need for increased burden on the applicant and NMFS.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 65873
NPRM Comment Period End	02/04/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lamont Jackson, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AP64

469. • ATLANTIC LARGE WHALE 2002 SEASONAL AREA MANAGEMENT (SAM) PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 229

Legal Deadline: NPRM, Judicial, November 23, 2001, The Federal District Court for the District of Massachusetts order.
Final, Judicial, December 31, 2001, The Federal District Court for the District of Massachusetts order.

Abstract: NMFS is preparing regulations to implement a SAM program for the 2002 fishing year, which was identified as a measure under the RPA that resulted from the biological opinions prepared for the Northeast multispecies, monkfish, spiny dogfish, and American lobster fisheries. The 2002 SAM program is intended as an incremental step to provide endangered western North Atlantic right whales protection from entanglement with fishing gear used in those fisheries. NMFS is preparing an EIS for more comprehensive SAM regulations for 2003 and beyond, in accordance with the National Environmental Policy Act (NEPA), to analyze the impacts on the human environment of the management alternatives under consideration. The measures that have been identified for the 2002 SAM proposed rulemaking would require reduction, elimination, and/or modification of certain types of fixed gear (i.e., gillnets and lobster traps) in specific areas off the Atlantic coast of the United States during times of the year when right whales are known to be present in significant concentrations.

Timetable:

Action	Date	FR Cite
ANPRM	10/03/01	66 FR 50390
ANPRM Comment Period End	11/02/01	
NPRM	11/28/01	66 FR 59394
NPRM Comment Period End	12/13/01	
Interim Final Rule	01/09/02	67 FR 1142
Interim Final Rule Comment Period End	02/08/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Undetermined

Agency Contact: Patricia Lawson, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AP68

470. PROVIDE REGULATIONS FOR PERMITS FOR CAPTURE, TRANSPORT, IMPORT AND EXPORT OF PROTECTED SPECIES FOR PUBLIC DISPLAY, AND FOR MAINTAINING A CAPTIVE MARINE MAMMAL INVENTORY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1372 (c)

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: This rule will revise and simplify criteria and procedures specific to permits for taking, transporting, importing, and exporting protected species for public display and provide convenient formats for reporting marine mammal captive holdings and transports as required by amendments made in 1994 to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35209
NPRM Comment Period Extended	08/22/01	66 FR 44109
NPRM Comment Period End	09/04/01	
Comment Period Extended	11/02/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gene Nitta, Marine Resource Manager, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2289

RIN: 0648–AH26

471. DRAFT POLICY FOR EVALUATION OF CONSERVATION EFFORTS IN MAKING LISTING DECISIONS

Priority: Info./Admin./Other

Legal Authority: 16 USC 1531

CFR Citation: 50 CFR 424

Legal Deadline: None

Abstract: This draft policy evaluates conservation efforts in making listing decisions under the Endangered Species Act. The policy identifies considerations to be used in determining whether conservation plans and agreements, management plans or other efforts provide sufficient protections to preclude or remove the need to list a species under the ESA.

Timetable:

Action	Date	FR Cite
NPRM	06/13/00	65 FR 37102
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Margaret C. Lorenz, ESA Policy Coordinator, Office of Protected Resources, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-1401
Email: margaret.lorenz@noaa.gov

RIN: 0648–AL91

472. RULEMAKING FOR THE INCIDENTAL TAKING OF MARINE MAMMALS DURING WORLDWIDE DEPLOYMENT OF THE U.S. NAVY'S LOW FREQUENCY ACTIVE SONAR

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 216.101

Legal Deadline: None

Abstract: NMFS has received an application from the U.S. Navy for authorization to take marine mammals incidental to the worldwide deployment of its new low frequency active sonar system. The U.S. Navy anticipates deployment of up to 4 shipboard systems within the next 5 years. This authorization can be granted under the Marine Mammal Protection Act provided the taking of marine mammals is incidental, is having no more than a negligible impact on small numbers of marine mammals and is not having an unmitigatable impact on Arctic subsistence needs. If an authorization is granted, monitoring and reporting takings will be required.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/99	64 FR 57026
NPRM	03/19/01	66 FR 15375
NPRM Comment Period End	05/31/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Kenneth R. Hollingshead, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20912
Phone: 301 713-2055
Email: ken.hollingshead@noaa.gov

RIN: 0648–AM62

473. SEA TURTLE CONSERVATION REGULATIONS; SUMMER FLOUNDER FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 223; 50 CFR 222

Legal Deadline: None

Abstract: The National Marine Fisheries Service intends to amend the Turtle Excluder Device (TED) requirements for summer flounder trawlers at 50 CFR 223.206(d)(2)(iii). The rule change would require the use of a TED extension with a hard TED. The extension could not be more than 3.5-inch stretched mesh. The extension could extend not more than 24 inches and not less than 36 inches in front of and behind the TED. New information came to light over the winter and during TED testing in June 1999 that TED installation in larger mesh results in many turtle captures and deaths. The fishery will begin at the beginning of October, and many preventable sea turtle deaths would occur if the rule is not in place before then. Bringing the rule into effect during the course of the fishery would also be disruptive to the fishermen. The rule is not significant and the cost to the fishermen for compliance will be minimal: less than $20 for materials and about 2 hours to reinstall the TED (many fishermen already reinstall their TEDs on an annual basis).

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/15/99	64 FR 55860
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AM89

474. SEA TURTLE CONSERVATION REGULATIONS; SHRIMP FISHERY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS issues this rule to make technical changes to the requirements for turtle excluder devices (TEDs) to increase their effectiveness. In particular, NMFS is considering increasing the size of TED escape openings to allow larger turtles to escape. The options NMFS is currently considering are: Requiring the leatherback opening with a minimum 32-inch grid in all areas (71-inch opening), or requiring a 35-inch by 16-inch opening with a minimum 30-inch grid in all areas. In addition, NMFS is considering other modifications to the TED regulations, including modifying or decertifying hooped hard TEDs and weedless TEDs, changing the requirements for the types of flotation devices allowed, and extending the requirement to have a short flap and

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grid angle of no greater than 45 degrees on bottom opening TEDs (other than TEDs equipped with the leatherback opening) to all areas in the U.S. Gulf of Mexico and the Southeast U.S. Atlantic. NMFS is also considering modifications to the leatherback contingency plan (50 CFR 223.206(d)(2)(iv)) to provide better protection to leatherback turtles.

Timetable:

Action	Date	FR Cite
ANPRM	04/05/00	65 FR 17852
ANPRM Comment Period End	05/05/00	
NPRM	10/02/01	66 FR 50148
NPRM Comment Period End	11/16/01	
Comment Period Extended	02/15/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AN62

475. TAKING OF THE COOK INLET, ALASKA, STOCK OF BELUGA WHALES BY ALASKA NATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1371

CFR Citation: 50 CFR 216

Legal Deadline: None

Abstract: NMFS is regulating subsistence harvest of Cook Inlet Beluga to ensure that the harvest is sustainable and does not substantially delay the recovery of this marine mammal stock. Specific harvest levels and distribution of the harvest will be based upon cooperative agreements with Alaska native organizations.

Timetable:

Action	Date	FR Cite
NPRM	10/04/00	65 FR 59164
NPRM Comment Period End	11/27/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Governmental Jurisdictions

Government Levels Affected: Tribal, Federal

Agency Contact: Thomas C. Eagle, Fishery Biologist, Department of Commerce, National Oceanic and Atmospheric Administration, Room 13725, Office of Protected Resources, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2055
Fax: 301 713-4060
Email: tom.eagle@noaa.gov

RIN: 0648–AO16

476. • SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS is enacting a seasonally adjusted closure of the Mid-Atlantic Exclusive Economic Zone (EEZ) waters to fishing with gillnets with a mesh size larger than 8 inch (20.3 cm) stretched mesh. The purpose of this action is to reduce the impact of the large-mesh gillnet fisheries on endangered and threatened species of sea turtles primarily from the monkfish fishery which has previously demonstrated a high sea turtle bycatch and mortality rate. The closure areas and times are as follows: waters north of 33 degrees 51.0' N (North Carolina/South Carolina border at the coast) and south of 35 degrees 46.0' N (Oregon Inlet) are closed at all times; waters north of 35 degrees 46.0' N (Oregon Inlet) and south of 36 degrees 22.5' N (Currituck Beach Light, NC) are closed from March 16 through January 14; waters north of 36 degrees 22.5' N (Currituck Beach Light, NC) and south of 37 degrees 34.6' N (Wachapreague Inlet, VA) are closed from April 1 through January 14; waters north of 37 degrees 34.6' N (Wachapreague Inlet, VA) and south of 37 degrees 56.0' N (Chincoteague, VA) are closed from April 16 through January 14; waters north of 37 degrees 56.0' N (Chincoteague, VA) will not be affected by this rule. NMFS also intends to publish a permanent rule establishing seasonal closures and is seeking comments on this proposal. In addition, NMFS is requesting comments on the need to consider restrictions on smaller gillnet mesh sizes in the permanent rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AP91

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

477. NATURAL RESOURCE DAMAGE ASSESSMENT UNDER THE OIL POLLUTION ACT OF 1990

Priority: Other Significant

Legal Authority: 33 USC 2706(e)

CFR Citation: 15 CFR 990

Legal Deadline: None

Abstract: This action amends the natural resource damage assessment rule under the Oil Pollution Act of 1990, codified at 15 CFR 990, due to court remand (General Electric vs. Commerce, 128 F. 3d 767. DC Cir. 1997).

Timetable:

Action	Date	FR Cite
NPRM	07/31/01	66 FR 39464
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eli Reinharz, Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, NOAA/DAC, Room 10218, 1305 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-3038
Fax: 301 713-4387

RIN: 0648–AM80

Department of Commerce (DOC)

Long-Term Actions

National Oceanic and Atmospheric Administration (NOAA)

NATIONAL MARINE FISHERIES SERVICE

478. FISHING CAPACITY REDUCTION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 600

Timetable:

Action	Date	FR Cite
NPRM	02/11/99	64 FR 6869
Interim Final Rule	05/18/00	65 FR 31430
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael L. Grable
Phone: 301 713-2390
Email: michael.grable@noaa.gov

RIN: 0648–AK76

479. AMENDMENT 13 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AN17

480. AMENDMENT 1 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AN19

481. AMENDMENT 14 TO THE NORTHEAST MULTISPECIES FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AN20

482. AMENDMENT 14 TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AO55

483. SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES (TEDS)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/14/01	66 FR 24287
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Therese Conant
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AP16

484. • SEA TURTLE CONSERVATION REGULATIONS; FISHERY ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS intends to close waters of Pamlico Sound, North Carolina, to fishing with gillnets with a mesh size larger than 4-1/4 inches (10.8 cm) stretched mesh, from September 15 through December 15. The closed area includes all inshore waters of Pamlico Sound south of 35 degrees 46.3' N. lat., north of 35 degrees 00' N. lat., and east of 76 degrees 30' W. long. The large mesh gill net fishery in Pamlico Sound has been shown to capture and kill numerous endangered and threatened sea turtles during their fall migration.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/28/01	
Interim Final Rule	10/03/01	66 FR 50350
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Therese Conant, Department of Commerce, National Oceanic and Atmospheric Administration, Office of Protected Resources, Silver Spring, MD 20910
Phone: 301 713-1431
Fax: 301 713-0376

RIN: 0648–AP63

485. ENDANGERED AND THREATENED SPECIES: TAKE OF THREATENED SOUTHERN OREGON/NORTHERN CALIFORNIA COAST EVOLUTIONARILY SIGNIFICANT UNIT (ESU) COHO SALMON

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/18/97	62 FR 38479
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kellie Carter
Phone: 301 713-1401

Email: kellie.f.carter@noaa.gov

RIN: 0648–AJ91

486. PACIFIC OFFSHORE CETACEAN TAKE REDUCTION PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 229

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/24/01	66 FR 44549
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Lawson
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AL70

NATIONAL OCEAN SERVICE/OFFICE OF OCEAN AND COASTAL RESOURCE MANAGEMENT

487. INTERAGENCY CONSULTATION FOR THE NATIONAL MARINE SANCTUARY PROGRAM

Priority: Other Significant

CFR Citation: 15 CFR 922

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Helen Golde
Phone: 301 713-3145

RIN: 0648–AL06

488. INSTALLING AND MAINTAINING COMMERCIAL SUBMARINE CABLES IN NATIONAL MARINE SANCTUARIES

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 922

Timetable:

Action	Date	FR Cite
ANPRM	08/23/00	65 FR 51264
ANPRM Comment Period End	10/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Helen Golde
Phone: 301 713-3145

RIN: 0648–AO36

OFFICE OF THE ADMINISTRATOR

489. REGIONAL MARINE RESEARCH PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Don Scavia
Phone: 301 713-3060

RIN: 0648–AF20

Department of Commerce (DOC)
National Oceanic and Atmospheric Administration (NOAA)

490. FISHERY MANAGEMENT PLAN FOR TILEFISH

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Final Action	09/26/01	66 FR 49136
Final Action Effective	11/01/01	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Federal

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AF87

491. GUIDELINES FOR THE DESCRIPTION, IDENTIFICATION, CONSERVATION, AND ENHANCEMENT OF ESSENTIAL FISH HABITAT

Priority: Other Significant

CFR Citation: 50 CFR 600

Completed:

Reason	Date	FR Cite
Final Action	01/17/02	67 FR 2343

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rolland Schmitten
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Fax: 301 713-1043
Email: rolland.schmitt@noaa.gov

RIN: 0648–AJ30

492. REGULATORY AMENDMENT TO UPDATE REGULATIONS GOVERNING THE OPERATION OF REGIONAL FISHERY MANAGEMENT COUNCILS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 600

Completed:

Reason	Date	FR Cite
Final Action	11/19/01	66 FR 57885

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AJ82

493. REGULATORY AMENDMENT TO PROHIBIT VESSELS OVER 50 FEET FROM FISHING FOR PELAGIC MANAGEMENT UNIT SPECIES WITHIN 50 NAUTICAL MILES OF AMERICAN SAMOA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Final Action	01/30/02	67 FR 4369
Final Action Effective	03/01/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AL41

494. AMENDMENT 6 - DEFINITION OF OVERFISHING FOR SALMON FISHERIES OFF ALASKA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
NPRM	10/05/01	66 FR 51001
Final Action	01/09/02	67 FR 1163

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger
Phone: 907 586-7228

RIN: 0648–AL98

495. STELLER SEA LION CONSERVATION MEASURES FOR THE BSAI AND GOA POLLOCK FISHERIES

Priority: Other Significant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Emergency Interim Final Rule (Effective 01/20/2000 to 07/19/2000)	01/25/00	65 FR 3892
Emergency Final Rule Effective Date Extended to 12/31/2000	06/12/00	65 FR 36795

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger
Phone: 907 586-7228

RIN: 0648–AM32

496. AMERICAN FISHERIES ACT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Extension of Emergency Interim Rule	07/10/01	66 FR 35911
Emergency Interim Rule Comment Period End	08/09/01	
Emergency Interim Rule End	01/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger
Phone: 907 586-7228

RIN: 0648–AO14

497. REVISIONS TO RECORDKEEPING AND REPORTING REQUIREMENTS FOR 2001

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Final Action	01/28/02	67 FR 4099

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: James L. Balsiger
Phone: 907 586-7228

RIN: 0648–AO20

498. 2001 QUOTAS FOR PURSE SEINE FISHERIES IN THE EASTERN PACIFIC

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 300

Completed:

Reason	Date	FR Cite
Final Action Effective	10/28/01	
Final Action	11/06/01	66 FR 56038

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Svein Fougner
Phone: 562 980-4040

RIN: 0648–AO48

499. PACIFIC COAST GROUNDFISH FISHERY; ANNOUNCEMENT OF THE 2002 GROUNDFISH FISHERY SPECIFICATIONS AND MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
NPRM	01/11/02	67 FR 1555
Interim Final Rule	01/11/02	67 FR 1540
Interim Final Rule Effective	01/28/02	67 FR 3820
Correction	02/19/02	67 FR 7289
Final Action	03/07/02	67 FR 10490

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal, Federal

Agency Contact: Donna Darm
Phone: 206 526-6150

RIN: 0648–AO69

500. CONTINUE CLOSURE OF TWO MID-ATLANTIC AREAS TO SCALLOP FISHING

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Interim Final Rule	02/09/01	66 FR 9678
Interim Final Rule Effective	03/02/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AO71

501. ATLANTIC HIGHLY MIGRATORY SPECIES; PELAGIC LONGLINE FISHERY; GEAR REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 635

Completed:

Reason	Date	FR Cite
Interim Final Rule	03/30/01	66 FR 17370
Interim Final Rule Comment Period End	04/30/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AO76

502. STELLER SEA LION PROTECTION MEASURES FOR GROUNDFISH FISHERIES OFF ALASKA; REASONABLE AND PRUDENT ALTERNATIVE UNDER NOVEMBER 30 BIOLOGICAL OPINION ON ALASKA GROUNDFISH FISHERIES

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 50 CFR 679

Completed:

Reason	Date	FR Cite
Emergency Interim Rule	06/13/01	66 FR 31845
Amended	06/13/01	66 FR 31845
Emergency Interim Rule Comment Period Extended	07/17/01	66 FR 37167
Emergency Interim Rule End	12/31/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Balsiger
Phone: 907 586-7228

RIN: 0648–AO82

503. ANNOUNCEMENT OF THE OPTIMUM YIELD AND HARVEST LIMIT FOR PACIFIC SARDINES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Final Action	12/27/01	66 FR 66811

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Svein Fougner
Phone: 562 980-4040

RIN: 0648–AP00

504. SPECIFICATIONS FOR THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERIES FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	11/20/01	66 FR 58097
Final Action	12/26/01	66 FR 66348
Correction	01/23/02	67 FR 3126

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP06

505. SPECIFICATIONS FOR THE ATLANTIC MACKEREL, SQUID, AND BUTTERFISH FISHERIES FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	10/23/01	66 FR 53575
Final Action	01/25/02	67 FR 3623

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP08

506. SPECIFICATIONS FOR THE ATLANTIC SURF CLAM AND OCEAN QUAHOG FISHERIES FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	10/24/01	66 FR 53770
Final Action Effective	01/16/02	
Final Action	01/22/02	67 FR 2824

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP09

507. ESTABLISH MEASURES TO ADDRESS THE IMMINENT RAPID INCREASE IN LANDINGS AND TO HALT OVERFISHING IN THE ATLANTIC RED CRAB FISHERY

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Emergency Interim Rule	11/13/01	66 FR 56781
Emergency Interim Rule Effective	11/15/01	
Emergency Interim Rule End	05/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP10

508. IMPLEMENTATION OF THE SHARK FINNING PROHIBITION ACT

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 600

Completed:

Reason	Date	FR Cite
Final Action	02/11/02	67 FR 6194
Final Action Effective	02/13/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Svein Fougner
Phone: 562 980-4040

RIN: 0648–AP21

509. WESTERN PACIFIC PELAGICS FISHERIES; HAWAII-BASED PELAGIC LONGLINE RESTRICTIONS AND SEASONAL AREA CLOSURE, SEA TURTLE AND SEA BIRD MITIGATION MEASURES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 660

Completed:

Reason	Date	FR Cite
Emergency Interim Rule	12/10/01	66 FR 63630
Emergency Interim Rule End	06/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Karnella
Phone: 808 973-2937

RIN: 0648–AP24

510. EXTENSION OF ATLANTIC HIGHLY MIGRATORY SPECIES (HMS); PERMIT CATEGORY DEADLINE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 635

Completed:

Reason	Date	FR Cite
Interim Final Rule	05/31/01	66 FR 29510

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AP29

511. EXTENSION OF IMPLEMENTATION DATE OF THE YEAR 4 DEFAULT MANAGEMENT MEASURES FOR SMALL-MESH MULTISPECIES (WHITING, RED HAKE AND OFFSHORE HAKE)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Final Action	02/05/02	67 FR 5241
Final Action Effective	03/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP32

512. STATUS REVIEW OF GULF OF MAINE/BAY OF FUNDY POPULATION OF HARBOR PORPOISE UNDER THE ESA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 424; 50 CFR 223; 50 CFR 224

Completed:

Reason	Date	FR Cite
Final Action	10/19/01	66 FR 53195

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Emily E. Hanson
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Email: emily.hanson@noaa.gov

RIN: 0648–AP33

513. ELIGIBILITY CRITERIA AND DEFINITIONS FOR WESTERN PACIFIC COMMUNITY DEVELOPMENT PROGRAMS AND WESTERN PACIFIC DEMONSTRATION PROJECTS

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Final Action	04/16/02	67 FR 18512

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Ziobro
Phone: 301 713-2239

RIN: 0648–AP36

514. ANNUAL SPECIFICATIONS FOR THE ATLANTIC HERRING FISHERY FOR FISHING YEAR 2002

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
NPRM	10/29/01	66 FR 54498
Final Action	01/24/02	67 FR 3442

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP37

515. FRAMEWORK 1 TO THE ATLANTIC HERRING FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 648

Completed:

Reason	Date	FR Cite
Final Action	01/24/02	67 FR 3445
Final Action Effective	01/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul
Phone: 978 281-9200

RIN: 0648–AP44

516. TAKING AND IMPORTING MARINE MAMMALS; TAKING MARINE MAMMALS INCIDENTAL TO ROCKET LAUNCHES AT VANDENBERG AIR FORCE BASE, CA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 216

Completed:

Reason	Date	FR Cite
Final Action	01/22/02	67 FR 2820
Final Action Effective	01/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Simona Perry Roberts
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RIN: 0648–AP47

517. • REGULATORY AMENDMENT TO THE SUMMER FLOUNDER, SCUP, AND BLACK SEA BASS FISHERY MANAGEMENT PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 648

Legal Deadline: None

Abstract: This regulatory amendment would establish cut-off dates for commercial summer flounder, scup, and black sea bass landings to be used in developing final adjusted quotas for these fisheries. The proposed action is needed to provide State marine fisheries agencies with the ability to appropriately manage these fishery resources by establishing final quota allocations prior to the start of the fishing year. In addition, this action would enable fishermen targeting these resources to intelligently prepare for the upcoming fishing year. This regulatory amendment would also remove the regulatory language found at 50 CFR 648.100(d), 648.120(c), and 648.140(c) that specifies publication dates for annual summer flounder, scup, and black sea bass fishing measures. These dates have proven to be misleading because there is no corresponding schedule for submission of annual specifications by the Mid-Atlantic Fisheries Management Council (Council).

Timetable:

Action	Date	FR Cite
NPRM	12/13/01	66 FR 64392

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Action	Date	FR Cite
NPRM Comment Period End	12/27/01	
Final Action	02/14/02	67 FR 6877
Final Action Effective	02/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Kurkul, Regional Administrator, Northeast Region, NMFS, Department of Commerce, National Oceanic and Atmospheric Administration, One Blackburn Drive, Gloucester, MA 01930
Phone: 978 281-9200

RIN: 0648–AP65

518. • EMERGENCY RULE TO IMPLEMENT STELLER SEA LION PROTECTION MEASURES AND HARVEST SPECIFICATIONS FOR 2002 FOR THE ALEUTIAN ISLANDS, BERING SEA AND GULF OF ALASKA GROUNDFISH FISHERIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1801 et seq

CFR Citation: 50 CFR 679

Legal Deadline: None

Abstract: This EIR would implement Steller sea lion protection measures to avoid the likelihood that the groundfish fisheries off Alaska would jeopardize the continued existence of the western population of Steller sea lions or adversely modify its critical habitat. These management measures dispersed fishing effort over time and area and provided protection for fisheries competition for prey in waters adjacent to rookeries and important haulouts. Management measures contained in this EIR are substantially different from previous measures based on new information regarding Steller sea lion foraging behavior. This rulemaking will also announce the final 2002 harvest specifications and associated management measures for the groundfish fisheries of the BSAI management area and the GOA. Steller sea lion management measures for seasons, rollovers, and critical habitat harvest limits are incorporated into the harvest specifications making the harvest specification for 2002 significantly different from harvest specification in 2001. The combining of these actions into one EIR is necessary to ensure the Steller sea lion protection measures are effective January 1, 2001, and NMFS is in compliance with the ESA and the Magnuson-Stevens Act.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/01/02	
Final Action	01/08/02	67 FR 956

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: James W. Balsiger, Administrator, Alaska Region, Department of Commerce, National Oceanic and Atmospheric Administration, NMFS, P.O. 21668, Juneau, AK 99802
Phone: 907 586-7221
Fax: 907 586-7249

RIN: 0648–AP69

519. • ATLANTIC HIGHLY MIGRATORY SPECIES; LARGE AND SMALL COASTAL SHARKS; COMMERCIAL MANAGEMENT MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 971 et seq; 16 USC 1801 et seq

CFR Citation: 50 CFR 635

Legal Deadline: None

Abstract: This interim final rule implements commercial quota levels for large and small coastal shark at 1,285 metric tons (mt) dressed weight (dw) and 1,760 mt dw, respectively. The quota level for large coastal sharks is based on the results of an independent review of the 1998 large coastal shark stock assessment that was conducted as part of a court-approved settlement agreement and is pending a new large coastal shark stock assessment and its review. The quota level for small coastal sharks, consistent with the court-approved settlement agreement, is pending a new small coastal shark stock assessment. The new stock assessments are anticipated to be completed in early 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/28/01	66 FR 67118
Correction	02/22/02	67 FR 8211

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce C. Morehead, Acting Director, Office of Sustainable Fisheries, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Highway, Silver Spring, MD 20910
Phone: 301 713-2334
Email: bruce.morehead@noaa.gov

RIN: 0648–AP70

520. • REGULATIONS RELATING TO DISCLOSURE OF INFORMATION AND EMPLOYEE TESTIMONY IN LITIGATION; REMOVAL OF OBSOLETE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 15 USC 1501; 15 USC 1512; 15 USC 1513; 15 USC 1518; 44 USC 3101

CFR Citation: 15 CFR 909

Legal Deadline: None

Abstract: NOAA issues this final rule to remove provisions from its internal conduct regulations codified at 15 CFR part 909. This part is removed because it has been superseded by other regulations.

Timetable:

Action	Date	FR Cite
Final Action	02/20/02	67 FR 7611

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Glenn E. Tallia, Senior Counselor for Atmospheric and Space Services and Research, NOAA, GC, Department of Commerce, National Oceanic and Atmospheric Administration, NOAA GCW, 1315 East-West Highway, Room 15861, Silver Spring, MD 20910
Phone: 301 713-1337
Fax: 301 713-1494

RIN: 0648–AP77

521. IMPLEMENTATION OF 1997 MMPA AMENDMENTS AFFECTING YELLOWFIN TUNA PURSE SEINE FISHING IN THE EASTERN TROPICAL PACIFIC

Priority: Other Significant

CFR Citation: 50 CFR 216.24

Completed:

Reason	Date	FR Cite
Final Action	02/15/02	67 FR 7134

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nicole LeBoeuf
Phone: 301 713-2322

Related RIN: Merged With 0648-AG36

RIN: 0648–AI85

522. SEA TURTLE CONSERVATION REGULATIONS; FISHERIES

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 223

Completed:

Reason	Date	FR Cite
Final Action	12/31/01	66 FR 67495

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Therese Conant
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Fax: 301 713-0376

RIN: 0648–AN64

523. RULE FOR GEAR MODIFICATIONS TO THE ATLANTIC LARGE WHALE TAKE REDUCTION PLAN

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 216

Completed:

Reason	Date	FR Cite
NPRM	10/01/01	66 FR 49896
Final Action	01/10/02	67 FR 1300

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Lawson
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AN88

524. ENDANGERED AND THREATENED SPECIES; TAKE OF FOUR THREATENED EVOLUTIONARILY SIGNIFICANT UNITS OF WEST COAST SALMON

Priority: Other Significant

CFR Citation: 50 CFR 223

Completed:

Reason	Date	FR Cite
Final Action	01/09/02	67 FR 1116

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Tribal, Federal, Local

Agency Contact: Kellie Carter
Phone: 301 713-1401
Email: kellie.f.carter@noaa.gov

RIN: 0648–AP17

525. TAKING OF MARINE MAMMALS INCIDENTAL TO COMMERCIAL FISHING OPERATIONS; ATLANTIC LARGE WHALE TAKE REDUCTION PLAN REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 229

Completed:

Reason	Date	FR Cite
NPRM	10/02/01	66 FR 50160
Final Action	01/09/02	67 FR 1133

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Patricia Lawson
Phone: 301 713-2322
Email: patricia.lawson@noaa.gov

RIN: 0648–AP48

526. • SEA TURTLE CONSERVATION; SHRIMP TRAWLING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 223

Legal Deadline: None

Abstract: NMFS intends to close for 30 days all Atlantic offshore waters within 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded on the south by 28 degrees N. lat. and on the north by 30 degrees 42'45.6" N. lat. (the Georgia-Florida border) to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles. This action is necessary to protect endangered and threatened sea turtles.

Timetable:

Action	Date	FR Cite
Final Action Effective	12/14/01	
Final Action	12/20/01	66 FR 65658

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Opay, Sea Turtle Ecologist, Department of Commerce, National Oceanic and Atmospheric Administration, 1315 East-West Hwy., Silver Spring, MD 20910
Phone: 301 713-1401

RIN: 0648–AP75

527. FLORIDA KEYS NATIONAL MARINE SANCTUARY; TORTUGAS ECOLOGICAL RESERVE

Priority: Other Significant

CFR Citation: 15 CFR 922 et seq

Completed:

Reason	Date	FR Cite
Final Rule	03/08/01	66 FR 16120
Final Rule Effective	03/08/01	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Federal

Agency Contact: Billy Causey
Phone: 305 743-2437

RIN: 0648–AO18

528. REVISIONS TO ANCHORING PROHIBITIONS IN FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

Priority: Substantive, Nonsignificant

CFR Citation: 15 CFR 922

Completed:

Reason	Date	FR Cite
Final Action	11/21/01	66 FR 58370

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: G. P. Schmahl
Phone: 979 779-2705

RIN: 0648–AP22

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Department of Commerce (DOC)
National Telecommunications and Information Administration (NTIA)

Final Rule Stage

529. MANDATORY REIMBURSEMENT RULES FOR RELOCATION OF FEDERAL SPECTRUM

Priority: Other Significant

Legal Authority: 47 USC sec 921 et seq; PL 105-261; 112 Stat/1920(1998); 47 USC sec 923(g)

CFR Citation: 47 CFR 301

Legal Deadline: None

Abstract: The National Defense Authorization Act requires successful bidders of auctions of Federal spectrum to compensate the Federal incumbent users for the marginal costs associated with the relocation of a Federal station. This mandatory reimbursement applies to the 20MHz of spectrum identified for reallocation under the Balanced Budget Act of 1997, the 1710-1755MHz band identified under the Omnibus Budget Reconciliation Act of 1993, and future allocations. The National Defense Authorization Act requires NTIA to develop reimbursement procedures which are to include a process for resolving differences between the Federal Government and commercial licensees regarding estimates of relocation or modification costs. This NPRM sets forth those rules. Final rules are expected in the fall of 2001.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4771
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Milton Brown, Deputy Chief Counsel, Department of Commerce, National Telecommunications and Information Administration, HCHB Room 4713, 14th & Pennsylvania Avenue, NW., Washington, DC 20230
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RIN: 0660–AA14

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Proposed Rule Stage

530. RULES OF PRACTICE BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES IN APPEALS UNDER 35 U.S.C. 134

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(B)(2); 35 USC 6; 35 USC 134

CFR Citation: 37 CFR 1.14; 37 CFR 1.191 to 1.198; 37 CFR 1.959 to 1.981

Legal Deadline: None

Abstract: The United States Patent and Trademark Office proposes to amend its rules of patent appellate practice to simplify proceedings and to reflect changes in recent legislation.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey V. Nase, Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Commissioner of Patents and Trademarks, Washington, DC 20231
Phone: 703 305-9797
Fax: 703 308-7953
Email: jeffrey.nase@uspto.gov

RIN: 0651–AB27

531. CHANGES IN RULES OF PRACTICE FOR PATENT INTERFERENCES AND RELATED PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2; 35 USC 3; 35 USC 6; 35 USC 10; 35 USC 22; 35 USC 23; 35 USC 25; 35 USC 31; 35 USC 32; 35 USC 41; 35 USC 135; ...

CFR Citation: 37 CFR 1; 37 CFR 41; ...

Legal Deadline: None

Abstract: The United States Patent and Trademark Office will revise its rules of practice in patent interferences to simplify the process and to increase its flexibility and efficiency.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Torczon, Administrative Patent Judge, Department of Commerce, Patent and Trademark Office, Box Interference, Washington, DC 20231
Phone: 703 308-9797
Fax: 703 305-0942
Email: interference.rules@uspto.gov

RIN: 0651–AB32

532. DEVELOPMENT OF PLAN TO REMOVE PATENT AND TRADEMARK CLASSIFIED PAPER FILES FROM PUBLIC SEARCH FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-113; 35 USC 41(i)(1); ...

CFR Citation: None

Legal Deadline: None

Abstract: Public comment is being sought on issues associated with the development of a plan to remove the patent and trademark classified paper files from the United States Patent and Trademark Office's public search facilities and replace them with electronic records. Issues of particular interest to the agency include, but are not limited to, measures required to ensure the integrity of electronic records, the comparable functionality for searching and retrieving information from electronic records, and the disposition of the paper files.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Martha Crockett Sneed, Manager, Public Search Services Division, Department of Commerce, Patent and Trademark Office, Office of the CIO, Washington, DC 20231
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RIN: 0651–AB34

DOC—PTO

Proposed Rule Stage

533. • REVISION OF PATENT AND TRADEMARK FEES FOR FISCAL YEAR 2003

Priority: Routine and Frequent

Legal Authority: 35 USC 41; 15 USC 1115; 35 USC 1051; 15 USC 1113; 15 USC 1123; 35 USC 2(b)(2); 35 USC 376; PL 105-358; PL 106-113

CFR Citation: 37 CFR 1.16 TO 1.21; 37 CFR 1.26; 37 CFR 1.445; 37 CFR 1.482; 37 CFR 1.492; 37 CFR 2.6

Legal Deadline: Final, Statutory, October 1, 2002, Final Action Effective Date.

Abstract: This rulemaking revises certain patent and trademark fees to reflect fluctuations in the Consumer Price Index (CPI) consistent with PL 105-358, as amended by PL 106-113.

Timetable:

Action	Date	FR Cite
NRPM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew Lee, Financial Systems Analyst, Department of Commerce, Patent and Trademark Office, PK1-802, Washington, DC 20231
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Email: matthew.lee@uspto.gov

RIN: 0651–AB49

534. • CHANGES TO IMPROVE THE PATENT AND APPLICATION PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The United States Patent and Trademark Office (Office) is revising the rules of practice to improve the patent application and examination process. For example, the Office is proposing: (1) changes to facilitate the filing of applications and subsequent papers by facsimile or electronic mail message over internet; (2) changes to the manner in which applicants bring pertinent information to the Office's attention and how the Office uses that information; (3) limitation on the number of claims that must be given a separate examination by the Office; (4) changes to allow the Office to terminate proceedings or application if the applicant refuses to prosecute the application with reasonable diligence; and (5) changes that facilitate obtaining information from the applicant to aid in the examination process, such as what information is well known in the art, where support for a claim is found in the written description, what priority application provides support for each claim. These changes to the patent application and examination process are necessary for the Office to be able to process an ever-increasing number of applications within a reasonable time frame.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
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RIN: 0651–AB50

Department of Commerce (DOC)
Patent and Trademark Office (PTO)

Final Rule Stage

535. COMPLAINTS REGARDING INVENTION PROMOTERS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2); 35 USC 297; PL 106-113, sec 4001

CFR Citation: 37 CFR 4

Legal Deadline: None

Abstract: The Patent and Trademark Office (Office) has added rules of practice to implement the Office's procedures for accepting complaints under the Inventor's Rights Act of 1999. The Act requires the Office to provide a forum for publishing complaints concerning invention promoters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/20/00	65 FR 3127
Interim Final Rule Effective	01/28/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William R. Covey, Associate Counsel for General Law, Department of Commerce, Patent and Trademark Office, Washington, DC 20231
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Email: william.covey@uspto.gov

RIN: 0651–AB12

536. ELIMINATION OF CONTINUED PROSECUTION APPLICATION PRACTICE AS TO UTILITY AND PLANT

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 2(b)(2)

CFR Citation: 37 CFR 1

Legal Deadline: None

Abstract: The American Inventors Protection Act of 1999 (AIPA) enacted provisions for the continued examination of a utility or plant application at the request of the applicant (request for continued examination or RCE practice). Therefore, there no longer appears to be a need for continued prosecution application (CPA) practice as to utility and plant applications. Thus, the Office is eliminating CPA practice as to utility and plant applications. An applicant

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for a utility or plant patent may also continue to effectively obtain further examination of the application by filing a continuing application under section 1.53(b). Since RCE practice does not apply to design applications, CPA practice will remain in place for design applications.

Timetable:

Action	Date	FR Cite
NPRM	07/09/01	66 FR 35763
NPRM Comment Period End	09/07/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr, Senior Patent Attorney, Department of Commerce, Patent and Trademark Office, Box DAC, Assistant Commissioner for Patents, Washington, DC 20231
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RIN: 0651–AB37

Department of Commerce (DOC) Patent and Trademark Office (PTO) — Long-Term Actions

537. CORRESPONDENCE FILED IN THE PATENT AND TRADEMARK OFFICE

Priority: Info./Admin./Other

CFR Citation: 37 CFR 1.1

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0651–AB17

538. ELECTRONIC SUBMISSION OF APPLICATION FOR TRADEMARK REGISTRATION AND OTHER DOCUMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1.4; 37 CFR 2.21; 37 CFR 2.56; 37 CFR 2.76; 37 CFR 2.88 to 2.89; 37 CFR 2.161; 37 CFR 2.166 to 2.168; ...

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary E. Hannon
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RIN: 0651–AB31

539. CHANGES TO REPRESENTATION OF OTHERS BEFORE THE U.S. PATENT AND TRADEMARK OFFICE

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1; 37 CFR 2; 37 CFR 10; 37 CFR 11

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harry I. Moatz
Phone: 703 306-4097

RIN: 0651–AB38

540. MADRID PROTOCOL IMPLEMENTATION ACT RULES CHANGE

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Hannon
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RIN: 0651–AB45

541. PATENT AND TRADEMARK OFFICE ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Anastasio
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Related RIN: Related To 0651-AB11

RIN: 0651–AB46

542. • SURCHARGE FOR THE USE OF NON-ELECTRIC, PAPER FORMS FOR SUBMISSION OF APPLICATIONS FOR REGISTRATION AND OTHER DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1123; 35 USC 2

CFR Citation: None

Legal Deadline: None

Abstract: The United States Patent and Trademark Office is proposing to amend its rules to require payment of a surcharge of $50.00 whenever a party elects to make a submission using paper in place of an electronically transmittable form available through the Trademark Electronic Application System (TEAS). If a party submits a paper document to the Office and the TEAS system includes a form for preparing that document and transmitting it to the Office electronically, the fee for submitting the paper document will be fifty dollars more than the fee for submitting the equivalent electronic document.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202-3513
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Email: mary.hannon@uspto.gov

RIN: 0651–AB47

DOC—PTO — Long-Term Actions

543. • AMENDMENT OF RULE REGARDING FILING OF TRADEMARK CORRESPONDENCE VIA EXPRESS MAIL

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1123; 35 USC 2

CFR Citation: 37 CFR 1.10

Legal Deadline: None

Abstract: The United States Patent and Trademark Office is amending its rules to provide that correspondence received by the Office that was delivered by "Express Mail Post Office to Addressee" will no longer be considered to have been filed in the Office on the date of deposit with the United States Postal Service, unless the Trademark Electronic Application System ("TEAS") does not include a form for transmitting that correspondence.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Hannon, Staff Attorney, Department of Commerce, Patent and Trademark Office, 2900 Crystal Drive, Arlington, VA 22202-3513
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RIN: 0651–AB48

Department of Commerce (DOC) Patent and Trademark Office (PTO) — Completed Actions

544. STANDARD FOR DECLARING A PATENT INTERFERENCE

Priority: Substantive, Nonsignificant

CFR Citation: None

Completed:

Reason	Date	FR Cite
Comment Period End	02/28/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Torczon
Phone: 703 308-9797
Fax: 703 305-0942
Email: interference.rules@uspto.gov

RIN: 0651–AB29

545. CHANGES TO THE TIME PERIOD FOR MAKING ANY NECESSARY DEPOSITS OF BIOLOGICAL MATERIALS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1

Completed:

Reason	Date	FR Cite
Final Action	04/27/01	66 FR 21090
Final Action Effective	05/29/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr
Phone: 703 305-9285
Fax: 703 305-6916

RIN: 0651–AB33

546. REVISION OF PATENT CORPORATION TREATY APPLICATION PROCEDURE

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1

Completed:

Reason	Date	FR Cite
Final Action - Correction	05/22/01	66 FR 28053

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Pearson
Phone: 703 308-6515
Fax: 703 305-3230

RIN: 0651–AB35

547. REQUIREMENTS FOR CLAIMING THE BENEFIT OF PRIOR-FILED APPLICATIONS UNDER EIGHTEEN-MONTH PUBLICATION OF PATENT APPLICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1

Completed:

Reason	Date	FR Cite
Final Action	12/28/01	66 FR 67087
Final Action Effective	12/28/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert W. Bahr
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RIN: 0651–AB41

548. TRADEMARK CLASSIFICATION; CHANGES TO COMPORT WITH OBLIGATIONS TO NICE AGREEMENT CONCERNING INTL CLASSIFICATION OF GOODS AND SERVICES FOR PURPOSES OF REGISTRATION OF MARKS OF JUNE 15, 1957, AS REVISED

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 6.1

Completed:

Reason	Date	FR Cite
Final Action	09/20/01	66 FR 48338
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jessie Marshall
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RIN: 0651–AB42

549. REVISION OF THE TIME LIMIT FOR NATIONAL STAGE COMMENCEMENT IN THE UNITED STATES FOR PATENT COOPERATION TREATY APPLICATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 37 CFR 1

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Completed:

Reason	Date	FR Cite
Final Action	01/04/02	67 FR 520
Final Action Effective	04/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0651–AB44

Department of Commerce (DOC)
Technology Administration (TA) — **Final Rule Stage**

550. RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Other Significant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: None

Abstract: This rule issued to authorize the electronic reporting of inventions and the filing of provisional patent applications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/95	60 FR 41811
Interim Final Rule Comment Period End	09/13/95	
NPRM	09/11/00	65 FR 54826
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Karen Laney-Cummings, Acting Director, Technology Competitiveness, Department of Commerce, Technology Administration, 14th & Pennsylvania Ave. NW., Washington, DC 20230
Phone: 202 482-2100
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RIN: 0692–AA14

551. ACQUISITION AND PROTECTION OF FOREIGN RIGHTS IN INVENTIONS

Priority: Substantive, Nonsignificant

Legal Authority: EO 10096; 15 USC 3710d

CFR Citation: 37 CFR 101; 37 CFR 501

Legal Deadline: None

Abstract: On August 7, 1996, 37 CFR part 101 was abolished and 37 CFR part 501 expanded to cover foreign rights of inventions made by Federal employees.

We are evaluating the comments received on the interim final rule and will be making minor changes to the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 40997
Interim Final Rule Effective	08/07/96	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., Washington, DC 20230
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RIN: 0692–AA15

552. AMENDMENT TO RIGHTS TO INVENTIONS MADE BY NONPROFIT ORGANIZATIONS AND SMALL BUSINESS FIRMS UNDER GOVERNMENT GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 35 USC 206

CFR Citation: 37 CFR 401

Legal Deadline: NPRM, Statutory, June 30, 2000, To provide for an exception for support contractors.

Abstract: This would require certain contractors to assign their rights if they make an invention under a Cooperative Research and Development Agreement.

Timetable:

Action	Date	FR Cite
NPRM	09/11/00	65 FR 54826
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: John H. Raubitschek, Patent Counsel, Department of Commerce, Technology Administration, HCHB Room 4613, 14th & Pennsylvania Avenue, NW., Washington, DC 20230
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RIN: 0692–AA18

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Federal Register

Monday,
May 13, 2002

Part V

Department of Defense

Semiannual Regulatory Agenda

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DEPARTMENT OF DEFENSE (DOD)

DEPARTMENT OF DEFENSE

32 CFR Chs. I, V, VI, and VII

33 CFR Ch. II

36 CFR Ch. III

Improving Government Regulations; Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Defense (DoD).

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Defense (DoD) is publishing this semiannual agenda of regulatory documents, including those that are procurement-related, for public information and comments under Executive Order 12866 "Regulatory Planning and Review." This agenda incorporates the objective and criteria, when applicable, of the regulatory reform program under the Executive order and other regulatory guidance. It contains DoD issuances initiated by DoD components that may have economic and environmental impact on State, local, or tribal interests under the criteria of Executive Order 12866. Although most DoD issuances listed in the agenda are of negligible public impact, their nature may be of public interest and, therefore, are published to provide notice of rulemaking and an opportunity for public participation in the internal DoD rulemaking process.

The agenda portion of this document updates the report published on December 3, 2001, and includes regulations expected to be issued and under review over the next 12 months. The next agenda and regulatory plan are scheduled to be published in the fall of 2002. In addition to this agenda, DoD components also publish rulemaking notices pertaining to their specific statutory administration requirements as required.

FOR FURTHER INFORMATION CONTACT: For information concerning the overall DoD regulatory improvement program and for general semiannual agenda information, contact Mr. Robert Cushing, telephone 703-604-6269, or write to Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302, or e-mail: cushingr@dior.whs.mil.

For questions of a legal nature concerning the agenda and its statutory requirements or obligations, write to Office of the General Counsel, 1600 Defense Pentagon, Washington, DC 20301-1600, or call 703-697-2714.

For general information on Office of the Secretary regulations, other than those which are procurement-related, contact Mr. Dan Cragg, telephone 703-601-4722, or write to Directives and Records Division, Directorate for Correspondence and Directives, Washington Headquarters Services, Suite 501, 1111 Jefferson Davis Highway, Arlington, Virginia 22202, or e-mail: dcragg@cd.whs.mil.

For general information on Office of the Secretary agenda items which are procurement-related, contact Ms. Michele Peterson, telephone 703-602-0131, or write to Defense Acquisition Regulations Directorate, 3062 Defense Pentagon, Washington, DC 20301-3062, or e-mail: michele.peterson@osd.mil.

For general information on Department of the Army regulations, contact Ms. Luz D. Ortiz, telephone 703-806-3708, or write to the U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, 6000 6th Street, Stop 5603, Fort Belvoir, Virginia 22060-5603, or e-mail: luz.ortiz@rmda.belvoir.army.mil.

For general information on the U.S. Army Corps of Engineers regulations, contact Mr. Chip Smith, telephone 703-693-3644, or write to Office of the Deputy Assistant Secretary of the Army (Policy and Legislation), 108 Army Pentagon, Room 2E569, Washington, DC 20310-0108, or e-mail: chip.smith@hqda.army.mil.

For general information on Department of the Navy regulations, contact Lieutenant Commander Thomas Welsh, telephone 703-604-8208, or write to Department of the Navy, Office of the Judge Advocate General, Administrative Law Division (Code 13), Washington Navy Yard, 1322 Patterson Avenue SE., Suite 3000, Washington, DC 20374-5066, or e-mail: welsh.thomas@hq.navy.mil.

For general information on Department of the Air Force regulations, contact Mrs. Pamela D. Fitzgerald, telephone 703-601-4042, or write to Department of the Air Force, AF-CIO/P, 1155 Air Force Pentagon, Washington, DC 20330-1155, or e-mail: pamela.fitzgerald@pentagon.af.mil.

For specific agenda items, contact the appropriate individual indicated in each DoD component report.

SUPPLEMENTARY INFORMATION: This edition of the Unified Agenda of Federal Regulatory and Deregulatory Actions is composed of the regulatory status reports, including procurement-related regulatory status reports, from the Office of the Secretary of Defense (OSD) and the Departments of the Army, Navy, and Air Force. Included also is the regulatory status report from the U.S. Army Corps of Engineers, whose civil works functions fall under the reporting requirements of Executive Order 12866 and involve water resource projects and regulation of activities in waters of the United States.

DoD issuances range from DoD directives (reflecting departmental policy) to implementing instructions and regulations (largely internal and used to implement directives). The OSD agenda section contains the primary directives under which DoD components promulgate their implementing regulations.

To ease identification and to differentiate among the variety of issuances reported, they are identified by their DoD internal numbering system, which denotes component level of authority and type of issuance, in addition to the required CFR number.

In addition, this agenda, although published under the reporting requirements of Executive Order 12866, continues to be the DoD single-source reporting vehicle, which identifies issuances that are currently applicable under the various regulatory reform programs in progress. Therefore, DoD components will identify those rules which come under the criteria of the:

a. Regulatory Flexibility Act;
b. Paperwork Reduction Act of 1995;
c. Unfunded Mandates Reform Act of 1995.

Those DoD issuances, which are directly applicable under these statutes, will be identified in the agenda and their action status indicated. Generally, the regulatory status reports in this agenda will contain five sections: (1) Prerule stage; (2) proposed rule stage; (3) final rule stage; (4) completed actions; and (5) long-term actions. Where certain regulatory actions indicate that small entities are affected, the effect on these entities may not necessarily have significant economic impact on a substantial number of these entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601(6)).

Although not a regulatory agency, DoD will continue to participate in regulatory initiatives designed to reduce economic costs and unnecessary environmental burdens upon the public. Comments and recommendations are invited on the rules reported and should be addressed to the DoD component representatives identified in the regulatory status reports. Although sensitive to the needs of the public, as well as regulatory reform, DoD reserves the right to exercise the exemptions and flexibility permitted in its rulemaking process in order to proceed with its overall defense-oriented mission. The publishing of this agenda does not waive the applicability of the military affairs exemption in section 553 of title 5 U.S.C. and section 3 of Executive Order 12866.

Dated: March 13, 2002.

D. O. Cooke,

Director, Administration and Management.

DOD

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
553	Settling Personnel and General Claims and Processing Advance Decision Requests	0790-AG47
554	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	0790-AG83
555	Stars and Stripes (S&S) Newspaper	0790-AG84
556	Department of Defense Newspapers, Magazines, and Civilian Enterprise Publications	0790-AG85
557	DoD Grant and Agreement Regulations	0790-AG87
558	Procedures for Settling Personnel and General Claims and Processing Advance Decision Requests	0790-AG89
559	Waiver of Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Directive 1340.21)	0790-AG90
560	Waiver Procedures for Debts Resulting From Erroneous Payments of Pay and Allowances (DoD Instruction 1340.23)	0790-AG91

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
561	National Security Education Program (NSEP) Grants to Institutions of Higher Education (DoD Instruction 1025.5)	0790-AF59
562	Personnel Security Policies for Granting Access to Classified Information	0790-AG54
563	National Policy on Reciprocity of Facilities and Guidelines for Implementation of Reciprocity	0790-AG55
564	National Policy on Technical Surveillance Countermeasures	0790-AG56
565	Implementation of the Wildfire Suppression Aircraft Transfer Act of 1996	0790-AG60
566	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	0790-AG76
567	Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects	0790-AG92

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
568	Teacher and Teacher's Aide Placement Assistance Program (Troops to Teachers) (DoD Instruction 1404.13)	0790-AF71
569	Former Spouse Payments From Retired Pay; Amendment (DoD Directive 1340.16 and DoD 7000.14-R, Vol 7, Part B)	0790-AG22
570	Restoration Advisory Boards (RABs)	0790-AG31
571	Closed, Transferred, and Transferring Ranges Containing Military Munitions	0790-AG46
572	Governmentwide Debarment and Suspension (Non-Procurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0790-AG86

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
573	Transactions Other Than Contracts, Grants, or Cooperative Agreements for Prototype Projects	0790-AG79

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Office of the Secretary—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0790-AF27	Science, Mathematics, and Engineering (SME) Education	02/12/2002	Withdrawn
0790-AF72	DLA Acquisition Regulation; Small Business and Small Disadvantaged Business Concerns	02/12/2002	Withdrawn
0790-AF73	DLA Acquisition Regulation; Fuel Allocation Procedures	02/12/2002	Withdrawn
0790-AG21	Military Assistance for Civil Disturbances (MACDIS) (DoD Directive 3025.12)	02/12/2002	Withdrawn
0790-AG26	University Research Initiative Support Program (URISP)	02/12/2002	Withdrawn
0790-AG44	Commercial Activities Program Procedures (DoD Instruction 4100.33)	02/12/2002	Withdrawn
0790-AG71	Eligibility Requirements for Education of Minor Dependents in Overseas Areas (DoD Directive 1342.13)	02/12/2002	Withdrawn
0790-AG72	Eligibility Procedures for the Education of Minor Dependents in Overseas Areas (DoD Instruction 1342.XX)	02/12/2002	Withdrawn
0790-AG80	Revitalizing Base Closure Communities and Base Closure Community Assistance	02/12/2002	Withdrawn

Defense Acquisition Regulations Council—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
574	Enterprise Software Agreements (DFARS Case 2000-D023)	0750-AD37
575	Restriction on Contingent Fees for Foreign Military Sales—Commercial Items (DFARS Case 2000-D029)	0750-AD47

Defense Acquisition Regulations Council—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
576	Anticompetitive Teaming (DFARS Case 1999-D028)	0750-AC98
577	Ocean Transportation by United States-Flag Vessels—Simplified Acquisition Threshold (DFARS Case 2000-D014)	0750-AD19
578	Changes to Profit Policy (DFARS Case 2000-D018)	0750-AD21
579	Balance of Payments Program (DFARS Case 2000-D020)	0750-AD22
580	Performance-Based Service Contracts Using Part 12 Procedures (DFARS Case 2000-D306)	0750-AD35
581	Subcontract Commerciality Determinations (DFARS Case 2000-D028)	0750-AD36
582	Utilization of Indian Organizations and Indian-Owned Economic Enterprises (DFARS Case 2000-D024)	0750-AD42
583	Research and Development Streamlined Contracting Procedures (DFARS Case 2001-D002)	0750-AD43
584	Department of Defense Pilot Mentor-Protege Program (DFARS Case 2001-D006)	0750-AD52
585	Preference for Local 8(a) Contractors—Base Closure or Realignment (DFARS Case 2001-D007)	0750-AD53
586	Applicability of Competition Requirements to Purchases From a Required Source (DFARS Case 2002-D003)	0750-AD57
587	Performance of Security Functions (DFARS Case 2001-D018)	0750-AD58
588	Partnership Agreement Between SBA and DoD (DFARS Case 2001-D016)	0750-AD59
589	Restriction on Acquisition of Vessel Propellers (DFARS Case 2002-D006)	0750-AD61

Defense Acquisition Regulations Council—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
590	Incremental Funding, Fixed-Price Contracts (DAR Case 90-037)	0750-AA07
591	Demilitarization (DFARS Case 92-D024)	0750-AA09
592	Institutions of Higher Education (DFARS Case 1999-D303)	0750-AD05

DOD

Defense Acquisition Regulations Council—Completed Actions

Sequence Number	Title	Regulation Identification Number
593	Acquisition of Commercial Items (DFARS Case 95-D712)	0750-AB00
594	Veterans Employment Emphasis (DFARS Case 97-D314)	0750-AC20
595	Overseas Use of the Purchase Card in Contingency, Humanitarian, or Peacekeeping Operations (DFARS Case 2000-D019)	0750-AD16
596	Domestic Source Restrictions—Ball and Roller Bearings and Vessel Propellers (DFARS Case 2000-D301)	0750-AD33
597	Multiyear Service Contracts (DFARS Case 2000-D304)	0750-AD34
598	Reporting Requirements Relating to Multiyear Contracts (DFARS Case 2000-D303)	0750-AD38
599	Qualification Requirements for Contracting Positions (DFARS Case 2000-D305)	0750-AD39
600	Cancellation of MIL-STD-973, Configuration Management (DFARS Case 2001-D001)	0750-AD41
601	Caribbean Basin Country End Products (DFARS Case 2000-D302)	0750-AD44
602	Cost or Pricing Data Threshold (DFARS Case 2000-D026)	0750-AD45
603	Tax Exemptions (Italy) (DFARS Case 2000-D027)	0750-AD46
604	Use of Recovered Materials (DFARS Case 2001-D005)	0750-AD50
605	Customary Progress Payment Rate for Large Business Concerns (DFARS Case 2001-D012)	0750-AD51
606	Extension of the MOU—8(a) Program (DFARS Case 2001-D009)	0750-AD54
607	Switzerland-Implementation of Amendment to Memorandum of Understanding (DFARS Case 2001-D019)	0750-AD60
608	Inapplicability of Limitation to Small Purchases of Miniature or Instrument Ball or Roller Bearings Under Certain Circumstances (DFARS Case 2002-D004)	0750-AD62

Department of the Army—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
609	Environmental Analysis of Army Actions	0702-AA34

Department of the Army—Completed Actions

Sequence Number	Title	Regulation Identification Number
610	Program for Qualifying DOD Freight Motor Carriers, Exempt Surface Freight Forwarders, Shipper Agents, and Freight Brokers	0702-AA36

U.S. Army Corps of Engineers—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
611	Environmental Quality; Procedures for Implementing the National Environmental Policy Act (NEPA)	0710-AA42
612	Natural Disaster Procedures: Preparedness, Response, and Recovery Activities of the Corps of Engineers	0710-AA47
613	Programmatic Regulations for the Comprehensive Everglades Restoration Plan	0710-AA49

U.S. Army Corps of Engineers—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
614	Proposed Revision to the Clean Water Act Regulatory Definitions of "Fill Material" and the "Discharge of Fill Material"	0710-AA48

DOD

U.S. Army Corps of Engineers—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
615	Regulatory Programs of the Corps of Engineers	0710-AA30
616	Regulatory Programs of the Corps of Engineers—Wetland Delineator Certification Program	0710-AA38
617	Regulatory Programs of the Corps of Engineers, Endangered Species Act; Scope of Analysis	0710-AA43
618	Flood Control Cost-Sharing Requirements Under the Ability To Pay Provisions	0710-AA44

Department of the Navy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
619	Policies and Responsibilities for Implementation of the National Environmental Policy Act Within the Department of the Navy	0703-AA51

Department of the Navy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
620	Use of Department of the Navy Aviation Facilities by Other Than United States Department of Defense Aircraft	0703-AA48
621	Shipbuilding Capability Preservation Agreements	0703-AA50

Department of the Air Force—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
622	Installation Entry Policy, Civil Disturbance Intervention and Disaster Assistance	0701-AA64
623	Wake Island Code	0701-AA65

Department of the Air Force—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0701-AA58	Appointment to the United States Air Force Academy	03/11/2002	Withdrawn

Office of Assistant Secretary for Health Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
624	CHAMPUS/TRICARE; Implementation of the Pharmacy Benefits Program	0720-AA63
625	Collection From Third-Party Payers of Reasonable Charges of Healthcare Services	0720-AA67
626	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Voluntary Disenrollment From the TRICARE Retiree Dental Program (TRDP)	0720-AA69
627	TRICARE; Waiver of Certain TRICARE Deductibles; Clarification of the TRICARE Prime Enrollment Period	0720-AA72

DOD

Office of Assistant Secretary for Health Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
628	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Hospital Payment for Ambulatory Care (DoD 6010.8-R)	0720-AA20
629	TRICARE; Revisions to Coverage Criteria for Transplants, Cardiac and Pulmonary Rehabilitation and Ambulance Services	0720-AA28
630	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Exception to the CHAMPUS Dual Compensation/Conflict of Interest Provisions	0720-AA41
631	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Prosthetic Devices	0720-AA49
632	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Double Coverage	0720-AA50
633	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); TRICARE Program; Double Coverage; Third-Party Recoveries	0720-AA52
634	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Establishment of an Appeals Process for TRICARE Claimcheck Denials	0720-AA56
635	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Methodology for Coverage of NIH-Sponsored Clinical Trials	0720-AA57
636	TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Bonus Payments in Medically Underserved Areas	0720-AA60
637	CHAMPUS/TRICARE; Partial Implementation of Pharmacy Benefits Program; Implementation of National Defense Authorization Act Medical Benefits for Fiscal Year 2001	0720-AA62
638	Civilian Health and Medical Program of the Uniformed Services; Individual Case Management Program for Persons With Extraordinary Conditions (ICMP-PEC)	0720-AA65
639	TRICARE; Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Eligibility and Payment Procedures for CHAMPUS Beneficiaries Age 65 and Over	0720-AA66
640	TRICARE Prime Remote for Active Duty Family Members	0720-AA68
641	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS): Enuretic Devices, Breast Reconstructive Surgery, PFPWD Valid Authorization Period, Early Intervention Services	0720-AA70
642	TRICARE; Sub-Acute Care Program; Uniform Skilled Nursing Facility Benefit; Home Health Care Benefit; Adopting Medicare Payment Methods for Skilled Nursing Facilities and Home Health Care Providers	0720-AA73

Office of Assistant Secretary for Health Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
643	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Enrollment of Certain Family Members of E-4 and Below Into TRICARE Prime	0720-AA59
644	Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Enhancement of Dental Benefits Under the TRICARE Retiree Dental Program	0720-AA61

Department of Defense (DOD)
Office of the Secretary (OS)

Proposed Rule Stage

553. SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 281

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Pending analysis of public comments and issuance of final regulations, DOHA intends to use the procedures and practices applicable to claims and waiver applications before the effective dates of the transfers of authority, June 30, 1996, and December 18, 1996, respectively, which are published in title 4, Code of Federal Regulations, chapter 1, subchapters C and G. See also 61 FR 50285, September 25, 1996; and 62 FR 5387, February 5, 1997.

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG89, Related To 0790-AG90, Related To 0790-AG91

RIN: 0790–AG47

554. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Defense proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department of Defense's title VI, section 504, and Age Discrimination Act regulations. The Department of Defense's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jerry Anderson, Department of Defense, Office of the Secretary
Phone: 703 695-0105

RIN: 0790–AG83

555. STARS AND STRIPES (S&S) NEWSPAPER

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 246

Legal Deadline: None

Abstract: This rule establishes policies and assigns responsibilities for the Stars and Stripes (S&S) newspaper operations. It designates the Secretary of the Army as the DoD Executive Agent for nonappropriated fund support to S&S and designates the successor-in-interest to S&S.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary
Phone: 703 428-0629

RIN: 0790–AG84

556. DEPARTMENT OF DEFENSE NEWSPAPERS, MAGAZINES, AND CIVILIAN ENTERPRISE PUBLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 113

CFR Citation: 32 CFR 247

Legal Deadline: None

Abstract: This rule establishes policy, assigns responsibilities, and prescribes procedures concerning authorized DoD Appropriated Funded (APF) newspapers and magazines, and Civilian Enterprise (CE) newspapers, magazines, guides, and installation maps (hereafter referred to as DoD publications) in support of the DoD Internal Information Program.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: R. Oleszewski, Department of Defense, Office of the Secretary
Phone: 703 428-0629

RIN: 0790–AG85

557. DOD GRANT AND AGREEMENT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 21; 32 CFR 22; 32 CFR 32; 32 CFR 34; 32 CFR 37

Legal Deadline: None

Abstract: The Department of Defense (DoD) proposes to add a new part 37 to the DoD Grant and Agreement Regulations (DoDGARs) to incorporate policies and procedures for the award and administration of Technology Investment Agreements (TIAs). TIAs are a relatively new class of assistance instruments. DoD Components use TIAs to support or stimulate defense research projects involving for-profit firms, especially commercial firms that do business primarily in the commercial marketplace. The new part 37 therefore gives DoD agreements officers greater flexibility to negotiate award provisions in areas that can present barriers to those commercial firms (e.g., intellectual property, audits, and cost principles). This rule also proposes revisions to parts 21, 22, 32, and 34 of the DoDGARs to conform the rest of the DoDGARs with the proposed part 37.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Herbst, Department of Defense, Office of the Secretary
Phone: 703 696-0372
Email: herbstm@acq.osd.mil

RIN: 0790–AG87

558. • PROCEDURES FOR SETTLING PERSONNEL AND GENERAL CLAIMS AND PROCESSING ADVANCE DECISION REQUESTS

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 282

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG90, Related To 0790-AG91

RIN: 0790–AG89

559. • WAIVER OF DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD DIRECTIVE 1340.21)

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 283

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG89, Related To 0790-AG91

RIN: 0790–AG90

560. • WAIVER PROCEDURES FOR DEBTS RESULTING FROM ERRONEOUS PAYMENTS OF PAY AND ALLOWANCES (DOD INSTRUCTION 1340.23)

Priority: Other Significant

Legal Authority: 31 USC 3702

CFR Citation: 32 CFR 284

Legal Deadline: None

Abstract: The Legislative Branch Appropriations Act of 1996 transferred to the Director of the Office of Management and Budget (OMB) the Comptroller General's authority to settle claims. The OMB Director subsequently delegated some of these authorities to the Department of Defense (DoD). Later, the General Accounting Office Act of 1996 codified many of these delegations and transferred to the OMB Director the authority of the Comptroller General to waive uniformed service member and employee debts arising out of the erroneous payment of pay or allowances exceeding $1,500. The OMB Director subsequently delegated the authority to waive such debts of uniformed service members to DoD and the authority to waive employee debts to the employee's agency (non-DoD

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agencies may request an advisory opinion from DoD). The Secretary of Defense further delegated his claims settlement authority to the Defense Office of Hearings and Appeals (DOHA). This proposed rule seeks public comments on the procedures that DOHA proposes to use to implement these authorities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Hipple, Department of Defense, Office of the Secretary
Phone: 703 696-8524

Related RIN: Related To 0790-AG47, Related To 0790-AG89, Related To 0790-AG90

RIN: 0790–AG91

Department of Defense (DOD)
Office of the Secretary (OS)

Final Rule Stage

561. NATIONAL SECURITY EDUCATION PROGRAM (NSEP) GRANTS TO INSTITUTIONS OF HIGHER EDUCATION (DOD INSTRUCTION 1025.5)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1141(a)

CFR Citation: 32 CFR 206

Legal Deadline: Final, Statutory, April 5, 1994.

Abstract: The National Security Education Act provided for the National Security Education Program, the National Security Education Board, and a trust fund in the U.S. Treasury to provide all resources for the program. Under the Act, the Secretary is directed to carry out a program to award undergraduate scholarships, graduate fellowships, and grants to institutions of higher education. This rule is to inform those concerned with institutional grants to be offered under the 1994-1995 pilot grants program of the preliminary guidelines.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/05/94	59 FR 26116
Interim Final Rule	05/19/94	59 FR 26116
Interim Final Rule Comment Period End	07/18/94	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Door, Department of Defense, Office of the Secretary
Phone: 703 696-1991
Email: nsep@nsep.policy.osd.mil

RIN: 0790–AF59

562. PERSONNEL SECURITY POLICIES FOR GRANTING ACCESS TO CLASSIFIED INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 147

Legal Deadline: None

Abstract: This rule is published to streamline security practices throughout the Government. Uniform adjudicative guidelines, investigative standards, and guidelines for temporary access are being established. This initiative will simplify security processing and allow the deserving public to obtain a security clearance in a faster, more efficient manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/98	63 FR 4572
Interim Final Rule Effective	03/24/98	
Interim Final Rule Comment Period End	03/31/98	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG54

563. NATIONAL POLICY ON RECIPROCITY OF FACILITIES AND GUIDELINES FOR IMPLEMENTATION OF RECIPROCITY

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 148

Legal Deadline: None

Abstract: This rule is published to make physical facilities available for reciprocal use in the storage of classified information. Once a facility has been certified as suitable for classified use by one organization, it may also be used by another for like purposes.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4580
Interim Final Rule	01/30/98	63 FR 4580
Interim Final Rule Comment Period End	03/31/98	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG55

564. NATIONAL POLICY ON TECHNICAL SURVEILLANCE COUNTERMEASURES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12968

CFR Citation: 32 CFR 149

DOD—OS — Final Rule Stage

Legal Deadline: None

Abstract: This rule is published to limit the use of technical surveillance countermeasures within the boundaries of the U.S. to cases where there is a reasonable showing of threat.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/16/97	63 FR 4582
Interim Final Rule	01/30/98	63 FR 4582
Interim Final Rule Comment Period End	03/31/98	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Terence Thompson, Department of Defense, Office of the Secretary
Phone: 703 602-9969

RIN: 0790–AG56

565. IMPLEMENTATION OF THE WILDFIRE SUPPRESSION AIRCRAFT TRANSFER ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-307

CFR Citation: 32 CFR 171

Legal Deadline: Final, Statutory, September 30, 1998.

Abstract: The Wildfire Suppression Aircraft Transfer Act of 1996 states that, notwithstanding section 202 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 483) and subject to subsections (b) and (c), the Secretary of Defense may, during the period beginning October 1, 1996, and ending on September 30, 2000, sell certain aircraft and aircraft parts to persons or entities that contract with the Federal Government for the delivery of fire retardant by air to suppress wildfire. The Act states that, as soon as practicable after the date of the enactment of the Act, the Secretary of Defense shall, in consultation with the Secretary of Agriculture and the Administrator of General Services, prescribe regulations relating to the sale of aircraft and aircraft parts under this section. This interim final rule prescribes regulations to implement the Wildlife Suppression Aircraft Transfer Act of 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29227
Interim Final Rule Effective	06/01/99	
Interim Final Rule Comment Period End	08/02/99	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Michael Stubblebine, Department of Defense, Office of the Secretary
Phone: 703 767-1537

RIN: 0790–AG60

566. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 10 USC 113

CFR Citation: 32 CFR 22; 32 CFR 32

Legal Deadline: None

Abstract: This rulemaking is the Department of Defense portion of a multiple-agency action. The agencies are amending their rules implementing Office of Management and Budget (OMB) Circular A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." The amendments to the rules incorporate updated language in Circular A-110 requiring Federal awarding agencies to ensure that all data produced under awards subject to the Circular are made available to the public through the procedures established under the Freedom of Information Act (FOIA). OMB updated the Circular language in this way in October 1999, in response to a provision in Public Law 105-277. With this rule amendment to 32 CFR parts 22 and 32, the Department of Defense therefore will maintain policies on access to data produced under awards subject to Circular A-110 that are consistent with the policies of other Executive Departments and Agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period End	05/15/00	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0790–AG76

567. • TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-160

CFR Citation: 32 CFR 3

Legal Deadline: None

Abstract: This rule outlines the conditions for appropriate use enacted bylaw, defines a nontraditional Defense contractor, and provides audit policy application to transactions other than contracts, grants or cooperative agreements for prototype projects. It directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58422
NPRM Comment Period End	01/22/02	
Public Meeting	03/27/02	67 FR 9632
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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DOD—OS — **Final Rule Stage**

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RIN: 0790–AG92

Department of Defense (DOD)
Office of the Secretary (OS) — **Long-Term Actions**

568. TEACHER AND TEACHER'S AIDE PLACEMENT ASSISTANCE PROGRAM (TROOPS TO TEACHERS) (DOD INSTRUCTION 1404.13)

Priority: Substantive, Nonsignificant
CFR Citation: 32 CFR 254
Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/94	59 FR 7213
Interim Final Rule Effective	02/22/94	
Interim Final Rule Comment Period End	04/18/94	
Interim Final Rule Amendment Effective	11/25/94	60 FR 30188
Interim Final Rule Amendment	06/08/95	60 FR 30188
Interim Final Rule Amendment Comment Period End	08/07/95	60 FR 30188
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Federalism: Undetermined
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RIN: 0790–AF71

569. FORMER SPOUSE PAYMENTS FROM RETIRED PAY; AMENDMENT (DOD DIRECTIVE 1340.16 AND DOD 7000.14-R, VOL 7, PART B)

Priority: Substantive, Nonsignificant
CFR Citation: 32 CFR 63
Timetable:

Action	Date	FR Cite
NPRM	04/06/95	60 FR 17507
NPRM Comment Period End	06/06/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Fiti Malufau
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RIN: 0790–AG22

570. RESTORATION ADVISORY BOARDS (RABS)

Priority: Other Significant
CFR Citation: 32 CFR 202
Timetable:

Action	Date	FR Cite
NPRM	08/06/96	61 FR 40764
NPRM Comment Period End	11/04/96	61 FR 40765
NPRM Extension of Comment Period	11/19/96	61 FR 58803
NPRM Comment Period End	01/20/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: Federal
Federalism: Undetermined
Agency Contact: Marcia Read
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RIN: 0790–AG31

571. CLOSED, TRANSFERRED, AND TRANSFERRING RANGES CONTAINING MILITARY MUNITIONS

Priority: Other Significant
CFR Citation: 32 CFR 178
Timetable:

Action	Date	FR Cite
NPRM	09/26/97	62 FR 50796
Public Meetings Begin	10/22/97	
Public Meetings End	12/10/97	
NPRM Comment Period End	12/26/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: Undetermined
Agency Contact: John Selstrom
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RIN: 0790–AG46

572. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NON-PROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant
CFR Citation: 32 CFR 25; 32 CFR 26
Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	67 FR 3267
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
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RIN: 0790–AG86

Department of Defense (DOD)
Office of the Secretary (OS) — **Completed Actions**

573. TRANSACTIONS OTHER THAN CONTRACTS, GRANTS, OR COOPERATIVE AGREEMENTS FOR PROTOTYPE PROJECTS

Priority: Substantive, Nonsignificant
Legal Authority: PL 106-65
CFR Citation: 32 CFR 3
Legal Deadline: None
Abstract: Representatives of the military departments, defense agencies, and other DoD activities have agreed on a final rule that amends the interim rule as a result of comments received and incorporates clarification enacted in fiscal year 2001 that limits Comptroller General access in certain situations. This rule requires inclusion of a clause as required by law, providing for Comptroller General access to records in transactions other than contracts, grants, or cooperative agreements for prototype projects that provide for total payments in excess of $5,000,000. This rule is published in the Federal Register because it directly impacts the public by prescribing conduct that must be followed by a party to, or entity that participates in the performance of, any such transaction.
Timetable:

Action	Date	FR Cite
Interim Final Rule	06/05/00	65 FR 35576
Interim Final Rule Effective	07/05/00	
Interim Final Rule Comment Period End	08/04/00	
Final Action	11/15/01	66 FR 57381
Final Action Effective	12/17/01	66 FR 57382

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
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RIN: 0790–AG79

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC) — **Proposed Rule Stage**

574. ENTERPRISE SOFTWARE AGREEMENTS (DFARS CASE 2000-D023)

Priority: Substantive, Nonsignificant
Legal Authority: 41 USC 421
CFR Citation: 48 CFR 208.001; 48 CFR 208.74; 48 CFR 239.101; 48 CFR 251.102; 48 CFR 252.251
Legal Deadline: None
Abstract: Modifies the Defense FAR Supplement to add guidance on acquiring commercially available software. These revisions implement the Department of Defense Chief Information Officer Guidance and Policy Memorandum Number 12-8430, dated July 26, 2000, entitled "Acquiring Commercially Available Software."
Timetable:

Action	Date	FR Cite
Case Opened	10/03/00	
NPRM	01/29/02	67 FR 4231
NPRM Comment Period End	04/01/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: Federal
Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD37

575. RESTRICTION ON CONTINGENT FEES FOR FOREIGN MILITARY SALES—COMMERCIAL ITEMS (DFARS CASE 2000-D029)

Priority: Substantive, Nonsignificant
Legal Authority: 41 USC 421
CFR Citation: 48 CFR 252.212
Legal Deadline: None
Abstract: Modifies the Defense FAR Supplement to remove the clause at 252.225-7027, Restriction on Contingent Fees for Foreign Military Sales, from the list of clauses at DFARS 252.212-7001, Contract Terms and Conditions Required to Implement Statutes or Executive Orders Applicable to Defense Acquisitions of Commercial Items.
Timetable:

Action	Date	FR Cite
Case Opened	12/05/00	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: Federal
Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD47

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Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Final Rule Stage

576. ANTICOMPETITIVE TEAMING (DFARS CASE 1999-D028)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 203.3

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add policy addressing exclusive teaming arrangements.

Timetable:

Action	Date	FR Cite
Case Opened	10/13/99	
NPRM	11/18/99	64 FR 63002
NPRM Comment Period End	01/18/00	
NPRM	11/01/01	66 FR 55157
NPRM Comment Period End	12/31/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AC98

577. OCEAN TRANSPORTATION BY UNITED STATES-FLAG VESSELS—SIMPLIFIED ACQUISITION THRESHOLD (DFARS CASE 2000-D014)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 247.573; 48 CFR 252.247

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to apply cargo preference provision and clause in solicitations and resultant contracts with an anticipated value at or below the simplified acquisition threshold.

Timetable:

Action	Date	FR Cite
Case Opened	05/12/00	
NPRM	09/11/01	66 FR 47153
NPRM Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AD19

578. CHANGES TO PROFIT POLICY (DFARS CASE 2000-D018)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.404

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to make changes to Department of Defense profit policy that would reduce and eventually eliminate emphasis on facilities investment, increase emphasis on performance risk, and encourage contractor cost efficiency.

Timetable:

Action	Date	FR Cite
Case Opened	06/05/00	
NPRM	07/24/00	65 FR 45574
NPRM Comment Period End	09/22/00	
NPRM	09/21/01	66 FR 48649
NPRM Comment Period End	11/20/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AD21

579. BALANCE OF PAYMENTS PROGRAM (DFARS CASE 2000-D020)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225; 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add language on the Balance of Payments Program and streamline procedures.

Timetable:

Action	Date	FR Cite
Case Opened	08/01/00	
NPRM	09/11/01	66 FR 47155
NPRM Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AD22

580. PERFORMANCE-BASED SERVICE CONTRACTS USING PART 12 PROCEDURES (DFARS CASE 2000-D306)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 821(b)

CFR Citation: 48 CFR 212.102; 48 CFR 237.601

Legal Deadline: Final, Statutory, April 27, 2001.

Abstract: Modifies the Defense FAR Supplement to implement section 821(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which authorizes the Department of Defense to treat performance-based service contracts/task orders valued at $5 million or less as commercial items if certain conditions are met.

Timetable:

Action	Date	FR Cite
Case Opened	11/08/00	

DOD—DARC

Final Rule Stage

Action	Date	FR Cite
Interim Final Rule	12/06/01	66 FR 63335
Interim Final Rule Comment Period End	02/04/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD35

581. SUBCONTRACT COMMERCIALITY DETERMINATIONS (DFARS CASE 2000-D028)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 244.303; 48 CFR 244.402

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify that contractors must determine whether a particular subcontract item meets the definition of a commercial item. Also clarifies that administrative contracting officers must review the adequacy of the contractor's rationale documenting commercial item determinations during Contractor Purchasing System Reviews.

Timetable:

Action	Date	FR Cite
Case Opened	11/29/00	
NPRM	09/11/01	66 FR 47159
NPRM Comment Period End	11/13/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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582. UTILIZATION OF INDIAN ORGANIZATIONS AND INDIAN-OWNED ECONOMIC ENTERPRISES (DFARS CASE 2000-D024)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-259, sec 8022

CFR Citation: 48 CFR 226.104; 48 CFR 252.226

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 8022 of the Fiscal Year 2001 Defense Appropriations Act, which specifies that a subcontractor at any tier shall be considered a contractor for the purposes of being allowed additional compensation under section 504 of the Indian Financing Act of 1974.

Timetable:

Action	Date	FR Cite
Case Opened	10/17/00	
Interim Final Rule	09/11/01	66 FR 47110
Interim Final Rule Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AD42

583. RESEARCH AND DEVELOPMENT STREAMLINED CONTRACTING PROCEDURES (DFARS CASE 2001-D002)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 235.7003

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to delete the requirement that research and development streamlined solicitations must be posted on the research and development streamlined solicitation/contract website.

Timetable:

Action	Date	FR Cite
Case Opened	01/17/01	
NPRM	12/06/01	66 FR 63348
NPRM Comment Period End	02/04/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD43

584. DEPARTMENT OF DEFENSE PILOT MENTOR-PROTEGE PROGRAM (DFARS CASE 2001-D006)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 807

CFR Citation: 48 CFR 219.71; 48 CFR 252.232; 48 CFR app I

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to add women-owned small businesses to the types of concerns that may participate as protege firms in the DoD Pilot Mentor-Protege Program.

Timetable:

Action	Date	FR Cite
Case Opened	04/06/01	
Interim Final Rule	09/11/01	66 FR 47108
Interim Final Rule Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 0750–AD52

585. PREFERENCE FOR LOCAL 8(A) CONTRACTORS—BASE CLOSURE OR REALIGNMENT (DFARS CASE 2001-D007)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 226.71

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify policy pertaining to preferences for local businesses in acquisitions that support a base closure or realignment.

Timetable:

Action	Date	FR Cite
Case Opened	05/02/01	
NPRM	09/11/01	66 FR 47158
NPRM Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 0750–AD53

586. • APPLICABILITY OF COMPETITION REQUIREMENTS TO PURCHASES FROM A REQUIRED SOURCE (DFARS CASE 2002-D003)

Priority: Other Significant

Legal Authority: PL 107-107, sec 811

CFR Citation: 48 CFR 208.6; 48 CFR 210.0

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to require market research before purchasing any product from Federal Prison Industries (FPI), to determine whether the FPI product is comparable in price, quality, and time of delivery to products available from the private sector.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD57

587. • PERFORMANCE OF SECURITY FUNCTIONS (DFARS CASE 2001-D018)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 237.1

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 1010 of the USA Patriot Act. Section 1010 permits DoD to contract for security functions at military installations.

Timetable:

Action	Date	FR Cite
Case Opened	12/04/01	
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD58

588. • PARTNERSHIP AGREEMENT BETWEEN SBA AND DOD (DFARS CASE 2001-D016)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 219.800

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement a Partnership Agreement between DoD and the Small Business Administration (SBA). The agreement permits DoD to award contracts directly to 8(a) program participants instead of awarding the contracts through the SBA.

Timetable:

Action	Date	FR Cite
Case Opened	11/07/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD59

589. • RESTRICTION ON ACQUISITION OF VESSEL PROPELLERS (DFARS CASE 2002-D006)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.7020-4

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to clarify that the statutory restriction on acquisition of vessel propellers from foreign sources applies only to DoD contracts that use fiscal year 2000 or 2001 funds.

Timetable:

Action	Date	FR Cite
Case Opened	01/28/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD61

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Long-Term Actions

590. INCREMENTAL FUNDING, FIXED-PRICE CONTRACTS (DAR CASE 90-037)

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 232.7; 48 CFR 252.232

Timetable:

Action	Date	FR Cite
Case Opened	09/26/90	
Interim Final Rule	09/01/93	58 FR 46091
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 0750–AA07

591. DEMILITARIZATION (DFARS CASE 92-D024)

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 245; 48 CFR 252.245

Timetable:

Action	Date	FR Cite
Case Opened	07/22/92	
NPRM	03/16/94	59 FR 12223
NPRM Comment Period End	06/30/94	
NPRM	03/23/95	60 FR 15276
NPRM Comment Period End	05/22/95	
NPRM	06/05/97	62 FR 30832
NPRM Comment Period End	08/04/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0750–AA09

592. INSTITUTIONS OF HIGHER EDUCATION (DFARS CASE 1999-D303)

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 209.470; 48 CFR 243; 48 CFR 252.209

Timetable:

Action	Date	FR Cite
Case Opened	10/06/99	
Interim Final Rule	01/13/00	65 FR 2056
Interim Final Rule Comment Period End	03/13/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 0750–AD05

Department of Defense (DOD)
Defense Acquisition Regulations Council (DARC)

Completed Actions

593. ACQUISITION OF COMMERCIAL ITEMS (DFARS CASE 95-D712)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355

CFR Citation: 48 CFR 211.70; 48 CFR 212; 48 CFR 227.7102; 48 CFR 252.211; 48 CFR 252.212; 48 CFR 252.227

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to conform to the FAR changes pertaining to the acquisition of commercial items. Also, implements DoD-unique requirements of the Federal Acquisition Streamlining Act of 1994 regarding the acquisition of commercial items.

Timetable:

Action	Date	FR Cite
Case Opened	10/04/95	
Interim Final Rule	11/30/95	60 FR 61585
Interim Final Rule Effective	11/30/95	
Interim Final Rule Comment Period End	01/29/96	
Final Action	11/01/01	66 FR 55121

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AB00

594. VETERANS EMPLOYMENT EMPHASIS (DFARS CASE 97-D314)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-56, sec 8117

CFR Citation: 48 CFR 209.104; 48 CFR 212.503; 48 CFR 213.005; 48 CFR 217.207; 48 CFR 222.1304; 48 CFR 252.209

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement a prohibition

on obligation or expenditure of funds with a contractor who has not submitted a required report on employment of Vietnam veterans.

Timetable:

Action	Date	FR Cite
Case Opened	10/17/97	
Interim Final Rule	03/11/98	63 FR 11850
Interim Final Rule Effective	03/11/98	
Interim Final Rule Comment Period End	05/11/98	
Final Action	01/29/02	67 FR 4208

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AC20

595. OVERSEAS USE OF THE PURCHASE CARD IN CONTINGENCY, HUMANITARIAN, OR PEACEKEEPING OPERATIONS (DFARS CASE 2000-D019)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 213.301

Legal Deadline: None

Abstract: Modified the Defense FAR Supplement to permit contracting officers, in support of contingency, humanitarian, or peacekeeping operations, to use the Governmentwide commercial purchase card on a stand-alone basis for purchases of commercial items at or below the simplified acquisition threshold ($200,000).

Timetable:

Action	Date	FR Cite
Case Opened	06/26/00	
NPRM	09/20/00	65 FR 56858
NPRM Comment Period End	11/20/00	
Final Action	11/01/01	66 FR 55123

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD16

596. DOMESTIC SOURCE RESTRICTIONS—BALL AND ROLLER BEARINGS AND VESSEL PROPELLERS (DFARS CASE 2000-D301)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-259, sec 8064; PL 106-398, sec 805

CFR Citation: 48 CFR 212.5; 48 CFR 225.70; 48 CFR 252.212; 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 8064 of the Fiscal Year 2001 Defense Appropriations Act (Pub. L. 106-259). Section 8064 restricts acquisition of ball and roller bearings and vessel propellers other than those produced by a domestic source and of domestic origin. The restrictions do not apply to the purchase of commercial items, except ball or roller bearings purchased as end items. Also implements section 805 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which extends 10 United States Code 2534 restriction of ball and roller bearings through fiscal year 2005.

Timetable:

Action	Date	FR Cite
Case Opened	08/16/00	
Interim Final Rule	12/13/00	65 FR 77827
Interim Final Rule Comment Period End	02/12/01	
Final Action	10/01/01	66 FR 49862

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD33

597. MULTIYEAR SERVICE CONTRACTS (DFARS CASE 2000-D304)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 802

CFR Citation: 48 CFR 217.170; 48 CFR 217.171; 48 CFR 217.172; 48 CFR 217.174

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 802 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 which clarifies the authority to enter into multiyear contracts for the acquisition of services.

Timetable:

Action	Date	FR Cite
Case Opened	11/08/00	
Final Action	12/06/01	66 FR 63336

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD34

598. REPORTING REQUIREMENTS RELATING TO MULTIYEAR CONTRACTS (DFARS CASE 2000-D303)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 806

CFR Citation: 48 CFR 217.1

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 806 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which requires an annual report that addresses all multiyear contracts, regardless of dollar value. Section 806 also requires a separate report prior to entering into a multiyear contract or extension above $500 million if the information required by section 2306b, title 10, for the contract or extension was not included in the annual report.

Timetable:

Action	Date	FR Cite
Case Opened	11/08/00	
Final Action	12/06/01	66 FR 63336

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD38

599. QUALIFICATION REQUIREMENTS FOR CONTRACTING POSITIONS (DFARS CASE 2000-D305)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398, sec 808

CFR Citation: 48 CFR 201.603

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 808 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which requires a baccalaureate degree and 24 semester credit hours in business disciplines for new entrants into the GS-1102 occupational series and for contracting officers warranted above the simplified acquisition threshold.

Timetable:

Action	Date	FR Cite
Case Opened	11/08/00	
Case Closed	01/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD39

600. CANCELLATION OF MIL-STD-973, CONFIGURATION MANAGEMENT (DFARS CASE 2001-D001)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 243.205; 48 CFR 248.270; 48 CFR 252.243; 48 CFR 252.248

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to reflect the cancellation of MIL-STD-973, Configuration Management.

Timetable:

Action	Date	FR Cite
Case Opened	01/16/01	
Final Action	10/01/01	66 FR 49865

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD41

601. CARIBBEAN BASIN COUNTRY END PRODUCTS (DFARS CASE 2000-D302)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-200, sec 211

CFR Citation: 48 CFR 252.225

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 211 of the United States-Caribbean Basin Trade Partnership Act, and the United States Trade Representative's (USTR) determinations under that Act. Specifically, amends the definition of "Caribbean Basin country end product" and removes Panama from the list of Caribbean Basin countries consistent with USTR determination.

Timetable:

Action	Date	FR Cite
Case Opened	10/24/00	
Interim Final Rule	09/11/01	66 FR 47112
Interim Final Rule Comment Period End	11/13/01	
Final Action	01/29/02	67 FR 4210

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD44

602. COST OR PRICING DATA THRESHOLD (DFARS CASE 2000-D026)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 215.404; 48 CFR 253.215

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to replace references to $500,000 with the phrase "cost or pricing data threshold."

Timetable:

Action	Date	FR Cite
Case Opened	11/27/00	
Final Action	10/01/01	66 FR 49862

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD45

603. TAX EXEMPTIONS (ITALY) (DFARS CASE 2000-D027)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 252.229

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to update the clause at 252.229-7003, Tax Exemptions (Italy), to identify the fiscal codes for the Army and Navy. The revisions also provide the correct address to which questions regarding Italian value-added taxes may be directed and make plain language changes to improve the clarity of the clause.

Timetable:

Action	Date	FR Cite
Case Opened	11/28/00	
NPRM	09/21/01	66 FR 48652
NPRM Comment Period End	11/20/01	
Final Action	01/29/02	67 FR 4209

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD46

604. USE OF RECOVERED MATERIALS (DFARS CASE 2001-D005)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 223.4

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to remove approval requirements pertaining to the acquisition of items that do not meet Environmental Protection Agency (EPA) minimum recovered material standards. The DFARS requirements are no longer necessary as a result of changes made to the Federal Acquisition Regulation.

Timetable:

Action	Date	FR Cite
Case Opened	03/14/01	
Final Action	10/01/01	66 FR 49864

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD50

605. CUSTOMARY PROGRESS PAYMENT RATE FOR LARGE BUSINESS CONCERNS (DFARS CASE 2001-D012)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 232.501; 48 CFR 252.232

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to increase the progress payment rate to 80 percent for large businesses.

Timetable:

Action	Date	FR Cite
Case Opened	06/20/01	
NPRM	08/24/01	66 FR 44588
NPRM Comment Period End	09/24/01	
Final Action	10/01/01	66 FR 49864

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD51

606. EXTENSION OF THE MOU—8(A) PROGRAM (DFARS CASE 2001-D009)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 219.800

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to reflect an extension in the expiration date of a memorandum of understanding between DoD and Small Business Administration (SBA). The memorandum of understanding permits DoD to award contracts directly to 8(a) Program participants instead of awarding the contracts through the SBA.

Timetable:

Action	Date	FR Cite
Case Opened	05/15/01	
Final Action	10/01/01	66 FR 49863

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD54

607. • SWITZERLAND-IMPLEMENTATION OF AMENDMENT TO MEMORANDUM OF UNDERSTANDING (DFARS CASE 2001-D019)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 421

CFR Citation: 48 CFR 225.872-1

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to reflect a determination of the Deputy Secretary of Defense that it is inconsistent with the public interest to apply the restrictions of the Buy American Act to the acquisition of defense equipment produced in Switzerland.

Timetable:

Action	Date	FR Cite
Case Opened	12/12/01	
Final Action	01/29/02	67 FR 4209

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A.T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD60

608. • INAPPLICABILITY OF LIMITATION TO SMALL PURCHASES OF MINIATURE OR INSTRUMENT BALL OR ROLLER BEARINGS UNDER CERTAIN CIRCUMSTANCES (DFARS CASE 2002-D004)

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107, sec 835

CFR Citation: None

Legal Deadline: None

Abstract: Modifies the Defense FAR Supplement to implement section 835 of the FY 2002 National Defense Authorization Act. Section 835 provides an exception for micropurchases of certain ball or roller bearings from the statutory requirement to procure bearings from domestic sources.

Timetable:

Action	Date	FR Cite
Case Opened	01/08/02	
Case Closed	02/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gail Cruz, Admin Assistant, Department of Defense, Defense Acquisition Regulations Council, Attn: IMD 3D139, OUSD A&T, 3062 Defense Pentagon, Washington, DC 20301-3062
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RIN: 0750–AD62

Department of Defense (DOD)
Department of the Army (DOA)

Final Rule Stage

609. ENVIRONMENTAL ANALYSIS OF ARMY ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321

CFR Citation: 32 CFR 651

Legal Deadline: None

Abstract: This rule revises policies and procedures for assessing the effect of Army actions (32 CFR 651). The revision is intended to streamline portions of the Army environmental actions process and strives to meet the spirit of the National Performance Review (NPR) and Executive Order 12861 "Elimination of One-Half of Executive Branch Internal Regulations."

Timetable:

Action	Date	FR Cite
NPRM	09/07/00	65 FR 54348
NPRM Comment Period End	11/06/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Luz D. Ortiz, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Stop 5603, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, 6000 6th Street, Fort Belvoir, VA 22060-5603
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RIN: 0702–AA34

Department of Defense (DOD)
Department of the Army (DOA)

Completed Actions

610. • PROGRAM FOR QUALIFYING DOD FREIGHT MOTOR CARRIERS, EXEMPT SURFACE FREIGHT FORWARDERS, SHIPPER AGENTS, AND FREIGHT BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101-5127; 49 USC 31132; 49 USC 31136; 49 USC 31142

CFR Citation: 32 CFR 619

Legal Deadline: None

Abstract: This action removes 32 CFR part 619 published in the Federal Register August 20, 1993 (58 FR 44405, amended at 61 FR 49060, Sept. 18, 1996). Due to changes in the laws governing interstate commerce, including a transition of much of our procurement from nonFAR to FAR contract procedures, this rule is obsolete and no longer applies to or governs the qualifications of carriers to do business with the Military Traffic Management Command or with the Department of Defense.

Timetable:

Action	Date	FR Cite
Final Action	12/20/01	66 FR 65651
Final Action Effective	12/20/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Luz D. Ortiz, Army Federal Register Liaison Officer, Department of Defense, Department of the Army, Stop 5603, U.S. Army Records Management and Declassification Agency, ATTN: TAPC-PDD-RP, 6000 6th Street, Fort Belvoir, VA 22060-5603
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RIN: 0702–AA36

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Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)
Proposed Rule Stage

611. ENVIRONMENTAL QUALITY; PROCEDURES FOR IMPLEMENTING THE NATIONAL ENVIRONMENTAL POLICY ACT (NEPA)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq; 40 CFR 1500.6

CFR Citation: 33 CFR 230

Legal Deadline: None

Abstract: The purpose of this regulatory revision is to clarify and provide additional guidance for Corps NEPA requirements for activities at Federal water resource development projects and lands.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	
Final Action	10/00/02	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Forrester Einarsen, Biologist, Department of Defense, U.S. Army Corps of Engineers, Office of Environmental Policy (CECW-PC), 441 G Street NW, Washington, DC 20314-1000
Phone: 202 761-4589

RIN: 0710–AA42

612. NATURAL DISASTER PROCEDURES: PREPAREDNESS, RESPONSE, AND RECOVERY ACTIVITIES OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 701

CFR Citation: 33 CFR 203

Legal Deadline: None

Abstract: This revision of 33 CFR 203 is necessary to reflect current policy, add features required by the Water Resources Development Act of 1996 (Pub. L. 104-303), and streamline certain procedures concerning Corps authority for disaster preparedness, response, and recovery activities. Public Law 104-303 additions are the option of a nonstructural alternative to structural levee repairs for damage caused by flood events and the provision of a levee owners' manual. Other changes include a change in the cost share provision for rehabilitation of Federal and non-Federal flood control works, expansion of investigation ability for potential Advance Measures work, and a streamlined approach for requests for assistance from Native American tribes and Alaska Native Corporations.

Timetable:

Action	Date	FR Cite
NPRM	02/26/02	67 FR 8748
NPRM Comment Period End	04/29/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert K. Grubbs, Program Manager, Public Law 84-99, Department of Defense, U.S. Army Corps of Engineers, CECW-OE (3F68), 441 G Street NW, Washington, DC 20314-1000
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RIN: 0710–AA47

613. • PROGRAMMATIC REGULATIONS FOR THE COMPREHENSIVE EVERGLADES RESTORATION PLAN

Priority: Other Significant

Legal Authority: PL 106-541

CFR Citation: 33 CFR 385

Legal Deadline: Final, Statutory, December 11, 2002.

Abstract: The U.S. Army Corps of Engineers was directed to develop a Comprehensive Everglades Restoration Plan (Plan) to restore and preserve south Florida's natural ecosystem, while enhancing water supplies and maintaining flood protection. The Water Resources Development Act of 2000 required that the Secretary of the Army, after notice and opportunity for public comment and with concurrence of the Governor of Florida and the Secretary of the Interior and consultation with the Seminole Tribe of Indians of Florida, the Miccosukee Tribe of Indians of Florida, the Administrator of the Environmental Protection Agency, the Secretary of Commerce, and other Federal, State, and local agencies, promulgate programmatic regulations to ensure that the goals and purposes of the Plan are achieved. The purpose of these programmatic regulations is to establish a process for the development of project implementation reports, project cooperation agreements, and operating manuals that ensure that the goals and the objectives of the Plan are achieved; to ensure that new information resulting from changes or unforeseen circumstances, new scientific or technical information, or information that is developed through the principles of adaptive management contained in the Plan, or future authorized changes to the Plan; and to ensure the protection of the natural system consistent with the goals and purposes of the Plan, including the establishment of interim goals to provide a means by which the restoration success of the Plan may be evaluated throughout the implementation process.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Gary M. Hardesty, Program Manager, Everglades Restoration, Department of Defense, U.S. Army Corps of Engineers, ATTN: CECW-B, 441 G Street NW, Washington, DC 20314-1000
Phone: 202 761-5854

RIN: 0710–AA49

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)
Final Rule Stage

614. PROPOSED REVISION TO THE CLEAN WATER ACT REGULATORY DEFINITIONS OF "FILL MATERIAL" AND THE "DISCHARGE OF FILL MATERIAL"

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344

CFR Citation: 33 CFR 323

Legal Deadline: None

Abstract: The regulation revises the Clean Water Act regulations defining the terms "fill material" and the "discharge of fill material." The purpose is to clarify those pollutants that are regulated by the U.S. Army Corps of Engineers under section 404 of the Clean Water Act.

Timetable:

Action	Date	FR Cite
NPRM	04/20/00	65 FR 21292
NPRM Comment Period End	06/19/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, State, Tribal, Federal

Agency Contact: Thaddeus J. Rugiel, Department of Defense, U.S. Army Corps of Engineers, CECW-OR (3F75), 441 G Street NW, Washington, DC 20314-1000
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RIN: 0710–AA48

Department of Defense (DOD)
U.S. Army Corps of Engineers (COE)
Long-Term Actions

615. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 320 to 330

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael D. Smith
Phone: 202 761-4598

RIN: 0710–AA30

616. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS—WETLAND DELINEATOR CERTIFICATION PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 320; 33 CFR 323; 33 CFR 325; 33 CFR 328; 33 CFR 333

Timetable:

Action	Date	FR Cite
NPRM	03/14/95	60 FR 13654
NPRM Comment Period End	04/13/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael D. Smith
Phone: 202 761-4598

RIN: 0710–AA38

617. REGULATORY PROGRAMS OF THE CORPS OF ENGINEERS, ENDANGERED SPECIES ACT; SCOPE OF ANALYSIS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 325

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Michael D. Smith
Phone: 202 761-4598

RIN: 0710–AA43

618. FLOOD CONTROL COST-SHARING REQUIREMENTS UNDER THE ABILITY TO PAY PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 33 CFR 241

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Harry M. Shoudy
Phone: 202 761-1977

RIN: 0710–AA44

Department of Defense (DOD)
Department of the Navy (NAVY)
Final Rule Stage

619. POLICIES AND RESPONSIBILITIES FOR IMPLEMENTATION OF THE NATIONAL ENVIRONMENTAL POLICY ACT WITHIN THE DEPARTMENT OF THE NAVY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 44502

CFR Citation: 32 CFR 775 (Revision)

Legal Deadline: None

Abstract: The Department of the Navy is revising its regulations, which establish the responsibilities and procedures for complying with the National Environmental Policy Act (NEPA). This revision clarifies when certain Department of the Navy actions must be studied to determine their effect on the human environment and what types of activities are excluded from the NEPA documentation requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/09/99	64 FR 37069
NPRM Comment Period End	09/07/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

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DOD—NAVY — **Final Rule Stage**

Government Levels Affected: None

Agency Contact: Tom Egeland, Department of Defense, Department of the Navy, Office of the Assistant Secretary of the Navy (Installations and Environment), 2000 Navy Pentagon, Washington, DC 20350-2000
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RIN: 0703–AA51

Department of Defense (DOD)
Department of the Navy (NAVY) — **Long-Term Actions**

620. USE OF DEPARTMENT OF THE NAVY AVIATION FACILITIES BY OTHER THAN UNITED STATES DEPARTMENT OF DEFENSE AIRCRAFT

Priority: Substantive, Nonsignificant

CFR Citation: 32 CFR 766

Timetable:

Action	Date	FR Cite
NPRM	12/01/94	59 FR 61561
NPRM Comment Period End	01/03/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Beaton
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RIN: 0703–AA48

621. SHIPBUILDING CAPABILITY PRESERVATION AGREEMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 5231 (New)

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66826
Interim Final Rule Effective	12/22/97	
Interim Final Rule Comment Period End	02/20/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Clarence Belton
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RIN: 0703–AA50

Department of Defense (DOD)
Department of the Air Force (AF) — **Final Rule Stage**

622. INSTALLATION ENTRY POLICY, CIVIL DISTURBANCE INTERVENTION AND DISASTER ASSISTANCE

Priority: Info./Admin./Other

Legal Authority: 10 USC 332-333, 50 USC 797

CFR Citation: 32 CFR 808 (previously 32 CFR 809a)

Legal Deadline: None

Abstract: This rule prescribes the installation commander's authority for enforcing orders within or near Air Force installations and controlling entry. It also provides for guidance for use of military personnel in controlling civil disturbances and in supporting disaster relief operations.

Timetable:

Action	Date	FR Cite
NPRM	07/12/01	66 FR 36523
NPRM Comment Period End	09/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Walter Filipak, SMSgt, Department of Defense, Department of the Air Force, HQ AFSFC/SFO, 1720 Patrick Street, Lackland AFB, TX 78236-5226
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RIN: 0701–AA64

623. WAKE ISLAND CODE

Priority: Info./Admin./Other

Legal Authority: 74 Stat 424, PL 86-6244, EO 11048

CFR Citation: 32 CFR 935 (Revised)

Legal Deadline: None

Abstract: Revises and updates the Code to reflect current and anticipated use of Wake Island. Provides regulations for conduct not otherwise provided by law and provides a judicial system to enforce those requirements. Delegates authority to the Commander of Pacific Air Forces to perform most of the functions of civil administration.

Timetable:

Action	Date	FR Cite
NPRM	10/25/00	65 FR 63826
NPRM Comment Period End	12/26/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This is the information for legal authority as it is generally listed. There is some duplication of information.

Sec. 48, Act of 12 July 1960; 74 Stat. 424, Pub. L. 86-624, E.O. 11048, Sept. 1, 1962, 27 FR 8851; agreement between Department of Interior and Department of the Air Force, dated June 19, 1972, 37 FR 12255, and Secretary of the Air Force, Order 111.1, dated April 26, 1999.

Agency Contact: Philip Sheuerman, Associate General Counsel, Department of Defense, Department of the Air Force, Room 4C921, SAF/GCN, 1740 Air Force Pentagon, Washington, DC 20330-1740
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DOD—AF — **Final Rule Stage**

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RIN: 0701–AA65

Department of Defense (DOD)
Office of Assistant Secretary for Health Affairs (DODOASHA) — **Proposed Rule Stage**

624. • CHAMPUS/TRICARE; IMPLEMENTATION OF THE PHARMACY BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule is designed to implement section 701 of the National Defense Authorization Act for Fiscal Year 2000. This rule establishes procedures for the inclusion of pharmaceutical agents on a Uniform Formulary based upon relative clinical effectiveness and cost effectiveness; establishes cost-sharing requirements, including a tiered co-payment structure, for generic, formulary and non-formulary pharmaceutical agents; establishes procedures to assure the availability of pharmaceutical agents not included on the Uniform Formulary to eligible beneficiaries at the non-formulary cost-share tier; establishes procedures to receive pharmaceutical agents not included on the Uniform Formulary, but considered clinically necessary, under the same terms and conditions as an agent on the Uniform Formulary; establishes procedures to assure the availability of clinically appropriate non-formulary pharmaceutical agents to members of the Uniformed Services; establishes procedures for prior authorization when required; and establishes a Department of Defense Pharmacy and Therapeutics Committee (DoD P&T Committee) and a Uniform Formulary Beneficiary Advisory Panel. Other administrative amendments are also made to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Kottyan, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3520

RIN: 0720–AA63

625. • COLLECTION FROM THIRD-PARTY PAYERS OF REASONABLE CHARGES OF HEALTHCARE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 1095; 5 USC 301

CFR Citation: 32 CFR 220

Legal Deadline: None

Abstract: This rule implements provisions of the National Defense Authorization Act for Fiscal Year 2000, which amended 10 U.S.C. 1095 to replace the "reasonable cost" basis of the Third-Party Collection Program with a "reasonable charge" basis and which added 10 U.S.C. 1097b(b) to authorize methods to be used for the computation of reasonable charges. We propose to adopt the "reasonable charge" basis and generally to use CHAMPUS payment rates as the reasonable charges under the Program. This rule also implements 10 U.S.C. 1079b, as added by section 732 of the National Defense Authorization Act for Fiscal Year 2002. This section specifically addresses the charging of fees for care to civilians who are not covered beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LtCol Rose Layman, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-8910

RIN: 0720–AA67

626. • CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); VOLUNTARY DISENROLLMENT FROM THE TRICARE RETIREE DENTAL PROGRAM (TRDP)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 726 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001, which amended 10 U.S.C. 1076c to allow for voluntary disenrollment from the TRICARE Retiree Dental Program in certain circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/30/02	67 FR 4375
NPRM Comment Period End	04/01/02	
Final Action	06/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Winter, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3682

RIN: 0720–AA69

627. • TRICARE; WAIVER OF CERTAIN TRICARE DEDUCTIBLES; CLARIFICATION OF THE TRICARE PRIME ENROLLMENT PERIOD

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

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DOD—DODOASHA — Proposed Rule Stage

Abstract: This rule implements section 714 of the National Defense Authorization Act for Fiscal Year 2000, which authorizes the Secretary of Defense to waive the TRICARE deductible in certain cases for care provided to a dependent of a member of a Reserve Component or the National Guard who is called to active duty for more than 30 days but less than one year. In implementing this rule, we are limiting this to Reserve Component and National Guard members called to active duty in support of contingency operations. The term "contingency operations" is defined at 10 U.S.C. 101(a)(13). This rule also establishes circumstances under which eligible beneficiaries may enroll in TRICARE Prime for a period of less than 1 year.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA72

Department of Defense (DOD) — Final Rule Stage
Office of Assistant Secretary for Health Affairs (DODOASHA)

628. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); HOSPITAL PAYMENT FOR AMBULATORY CARE (DOD 6010.8-R)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule establishes a new payment method for ambulatory care (other than ambulatory surgery) provided by hospitals to CHAMPUS beneficiaries, under which payment amounts would be based on the cost of the service rather than on the billed charge, as at present.

Timetable:

Action	Date	FR Cite
NPRM	01/20/94	59 FR 3046
NPRM Comment Period End	03/21/94	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA20

629. TRICARE; REVISIONS TO COVERAGE CRITERIA FOR TRANSPLANTS, CARDIAC AND PULMONARY REHABILITATION AND AMBULANCE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements a number of regulatory revisions relating to TRICARE coverage for transplants and related services, cardiac and pulmonary rehabilitation and ambulance services. They are (1) clarification of TRICARE coverage and time limitations on preauthorizations for solid-organ and stem cell transplantation for beneficiaries whose conditions are considered appropriate for transplantation according to guidelines adopted by the Executive Director, TRICARE Management Activity (TMA), or a designee; (2) clarification of TRICARE coverage for ambulance service for organ and stem cell transplant candidates; (3) recognition of certain transplant centers as authorized TRICARE institutional providers according to provisions adopted by the Executive Director, TMA, or a designee; (4) clarification of pediatric consortium programs for organ transplantation according to provisions adopted by the Executive Director, TMA, or a designee; (5) extension of coverage for cardiac rehabilitation for those patients who have had heart valve surgery, heart or heart-lung transplantation; (6) establishment of coverage for pulmonary rehabilitation for beneficiaries whose conditions are considered appropriate for pulmonary rehabilitation according to guidelines adopted by the Executive Director, TMA, or a designee; and (7) elimination of payment restrictions for Military Treatment Facility (MTF) ordered ambulance transfers.

Timetable:

Action	Date	FR Cite
NPRM	03/17/95	60 FR 14403
NPRM Comment Period End	05/16/95	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marty Maxey, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3627

RIN: 0720–AA28

630. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); EXCEPTION TO THE CHAMPUS DUAL COMPENSATION/CONFLICT OF INTEREST PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: Currently, any individual who is a civilian employee of the United States Government cannot be authorized by CHAMPUS as a provider of medical services. We propose to provide an exception to this prohibition to permit these individuals to be authorized CHAMPUS providers if they meet three conditions. First, they must be employed by the Government agency on a part-time basis, that is, less than twenty (20) hours per week. Second, the agency must certify that unique or special circumstances detrimental to the delivery of quality health care exist that can be overcome only by employing part-time, non-Government physicians. Third, the agency and the physician must certify that they understand and have taken appropriate measures to avoid violation of Standards of Conduct, dual compensation, and conflict of interest requirements including protection against referral of patients to the employee's private practice.

Timetable:

Action	Date	FR Cite
NPRM	08/26/97	62 FR 45196
NPRM Comment Period End	10/27/97	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA41

631. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); PROSTHETIC DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 702 of the National Defense Authorization Act for Fiscal Year 1998 (Pub. L. 105-85), which authorizes purchase of prosthetic devices, as determined by the Secretary of Defense, to be necessary because of significant conditions resulting from trauma, congenital anomalies, or disease. The Act changes the existing limited provisions for prosthetic devices, expands coverage to include cost sharing of other prostheses; e.g., noses, ears, and fingers.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	05/20/99	64 FR 45453
Interim Final Rule	08/20/99	64 FR 45453
Interim Final Rule Comment Period End	10/19/99	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

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RIN: 0720–AA49

632. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); DOUBLE COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule clarifies our double coverage policy for non-institutional claims for beneficiaries with primary health insurance. TRICARE network, non-network but participating, and non-participating providers are all reimbursed differently under current procedures. This has had the unintended effect of discouraging TRICARE network participation since non-network but participating providers receive the most favorable treatment with respect to double coverage calculations. The Department proposes to revise double coverage reimbursement calculations by reimbursing all providers up to 100 percent of the CHAMPUS Maximum Allowable Charge after the primary health insurance has paid, or 115 percent for nonparticipating providers.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32451
NPRM Comment Period End	08/16/99	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: LTC Kathleen Larkin, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA50

633. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); TRICARE PROGRAM; DOUBLE COVERAGE; THIRD-PARTY RECOVERIES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 711 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, which allows the Secretary of Defense to authorize certain CHAMPUS/TRICARE claims to be paid, even though other health insurance may be the primary payer, with authority to collect from the other health insurance (third-party payer) the CHAMPUS/TRICARE costs incurred on behalf of the beneficiary.

Timetable:

Action	Date	FR Cite
NPRM	10/19/99	64 FR 56283
NPRM Comment Period End	12/20/99	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Robert Shepherd, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3705

RIN: 0720–AA52

DOD—DODOASHA — Final Rule Stage

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634. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ESTABLISHMENT OF AN APPEALS PROCESS FOR TRICARE CLAIMCHECK DENIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 714 of the National Defense Authorization Act for FY 1999, which requires the establishment of an appeals process for denials by TRICARE Claimcheck (TCC) or any similar software system. This rule enhances the current appeals process by adding an additional level of appeal conducted at the TRICARE Management Activity (TMA) and by codifying the entire process in this part.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2085
NPRM Comment Period End	03/13/00	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Donald Wagner, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3411

RIN: 0720–AA56

635. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); METHODOLOGY FOR COVERAGE OF NIH-SPONSORED CLINICAL TRIALS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule modifies the general prohibition against CHAMPUS cost-sharing of unproven drugs, devices, and medical treatments or procedures by adding a provision allowing a waiver of the prohibition in connection with clinical trials sponsored by the National Institutes of Health, if it is determined that such a waiver will promote access by covered beneficiaries to promising new treatments and contribute to the development of such treatments.

Timetable:

Action	Date	FR Cite
NPRM	05/31/00	65 FR 34627
NPRM Comment Period End	07/31/00	
Final Rule	01/31/01	66 FR 8365
Final Rule Withdrawn	02/07/01	66 FR 9199
Final Rule Effective	03/02/01	66 FR 8365
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Steve Lillie, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA57

636. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); BONUS PAYMENTS IN MEDICALLY UNDERSERVED AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements a bonus payment, in addition to the amount normally paid under the allowable charge methodology, to providers in medically underserved areas. For purposes of this rule, medically underserved areas are the same as those determined by the Secretary of Health and Human Services for the Medicare program. Such bonus payments shall be equal to the bonus payments authorized by Medicare, except as necessary to recognize any unique or distinct characteristics or requirements of the TRICARE program and as described in instructions issued by the Executive Director, TRICARE Management Activity. This rule promotes a reimbursement enhancement to a limited number of providers designed to increase TRICARE beneficiary access to care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/03/00	65 FR 41002
Interim Final Rule Effective	08/02/00	
Interim Final Rule Comment Period End	09/01/00	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stan Regensberg, Department of Defense, Office of Assistant Secretary for Health Affairs, Washington, DC
Phone: 303 676-3742

RIN: 0720–AA60

637. CHAMPUS/TRICARE; PARTIAL IMPLEMENTATION OF PHARMACY BENEFITS PROGRAM; IMPLEMENTATION OF NATIONAL DEFENSE AUTHORIZATION ACT MEDICAL BENEFITS FOR FISCAL YEAR 2001

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, April 1, 2001, Implements Public Law 106-398.
Provisions of act effective October 30, 2000, or 180 days thereafter.

Abstract: This rule implements several sections of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The rule allows coverage of physical examinations for beneficiaries ages 5 through 11 that are required in connection with school enrollment; provides an additional 2-year period for survivors of deceased active-duty members to remain eligible for TRICARE medical and dental benefits at active-duty dependent rates; extends eligibility for medical and dental benefits to Medal of Honor recipients and their immediate dependents in the same manner as if the recipient were entitled to retired pay; partially implements the Pharmacy Benefits Program establishing revised copays and cost-shares for the prescription drug benefit; implements the TRICARE Senior Pharmacy Program by establishing a new eligibility for prescription drug benefits for Medicare-eligible retirees; allows a waiver of copayments, cost-shares, and deductibles for all Uniformed Services TRICARE-eligible active-duty family members residing with their TRICARE Prime Remote-eligible Active-Duty Service Member Sponsor within a TRICARE Prime Remote designated area until implementation of the TRICARE Prime Remote for Family Member Program or October 30, 2001, whichever is later; provides for the elimination of TRICARE Prime copayments for active-duty family members enrolled in TRICARE Prime; provides for the reimbursement of reasonable travel expenses for TRICARE Prime beneficiaries referred by a primary care provider to a specialty care provider who provides services over 100 miles away; and reduces the maximum amount which retirees, their family members, and survivors would be liable from $7,500 to $3,000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/01	66 FR 9651
Interim Final Rule; Correction	03/26/01	66 FR 16400
Interim Final Rule; Change in Effective Date	04/01/01	66 FR 10367
Interim Final Rule Comment Period End	04/10/01	66 FR 9651
Interim Final Rule Effective	04/10/01	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tariq Shahid, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 303 676-3801

RIN: 0720–AA62

638. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES; INDIVIDUAL CASE MANAGEMENT PROGRAM FOR PERSONS WITH EXTRAORDINARY CONDITIONS (ICMP-PEC)

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: The Department of Defense proposes to amend its regulations of the Individual Case Management Program (ICMP) to implement requirements stipulated by section 703 of the Fiscal Year 2000 National Defense Authorization Act, section 8118 of the Fiscal Year 2000 Defense Appropriations Act, section 701 of the Fiscal Year 2001 National Defense Authorization Act, and section 8100 of the Fiscal Year 2001 Defense Appropriations Act. Other administrative amendments are also proposed to clarify specific policies that relate to the program.

Timetable:

Action	Date	FR Cite
NPRM	08/01/01	66 FR 39699
NPRM Comment Period End	10/01/01	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Stockdale, Department of Defense, Office of Assistant Secretary for Health Affairs
Phone: 703 681-0039

RIN: 0720–AA65

639. TRICARE; CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ELIGIBILITY AND PAYMENT PROCEDURES FOR CHAMPUS BENEFICIARIES AGE 65 AND OVER

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: Final, Statutory, October 1, 2001, Implements section 712 of FY 2001 NDAA.

Abstract: This rule implements section 712 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. Section 712 extends TRICARE eligibility to persons age 65 and over who would otherwise have lost their TRICARE eligibility due to attainment of entitlement to hospital insurance benefits under Part A of Medicare. In order for these individuals to retain their TRICARE eligibility, they must be enrolled in the supplementary medical insurance program under Part B of Medicare. In general, in the case of medical or dental care provided to these individuals for which payment may be made under both Medicare and TRICARE, Medicare is the primary payer and TRICARE will normally pay the actual out-of-pocket costs incurred by the person. This rule prescribes TRICARE payment procedures and makes revisions to TRICARE rules to accommodate Medicare-eligible CHAMPUS beneficiaries. The Department is publishing this rule as an interim final rule in order to meet the statutorily required effective date.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/03/01	66 FR 40601
Interim Final Rule Effective	10/01/01	
Interim Final Rule Comment Period End	10/02/01	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Isaacson, Department of Defense, Office of Assistant Secretary for Health Affairs
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RIN: 0720–AA66

640. • TRICARE PRIME REMOTE FOR ACTIVE DUTY FAMILY MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements 10 U.S.C. 1079(p), as added by section 722(b) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. This rule provides coverage for medical care for active-duty family members who reside with an active-duty member of the Uniformed Services assigned to remote areas and eligible for the program known as TRICARE Prime Remote. Active-duty family members who enroll in TRICARE Prime Remote for Active-Duty Family Members (TPRADFM) will enjoy benefits generally comparable to TRICARE Prime enrollees including access standards, benefit coverage, and cost-shares.

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Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/02	67 FR 5477
Interim Final Rule Comment Period End	04/08/02	
Interim Final Rule Effective	04/08/02	
Final Action	06/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LCDR Robert Styron, Department of Defense, Office of Assistant Secretary for Health Affairs Phone: 703 681-0064

RIN: 0720–AA68

641. • CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS): ENURETIC DEVICES, BREAST RECONSTRUCTIVE SURGERY, PFPWD VALID AUTHORIZATION PERIOD, EARLY INTERVENTION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule removes the exclusion of enuresis alarms, corrects contradictory language as it relates to breast reconstructive surgery, changes the valid period of an authorization for services and items under the Program for Persons with Disabilities, implements section 640 of Public Law 105-17, which establishes the CHAMPUS payment relationship for IDEA part C and items, and revises a statement to the paragraph at 32 CFR 199.4(g)(15)(i)(D).

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 68957
NPRM Comment Period End	01/16/01	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Second Agency Contact: Mike Kottyan, 303 676-3520

Agency Contact: Margaret Brown, Department of Defense, Office of Assistant Secretary for Health Affairs Phone: 303 676-3581 Fax: 303 676-3579 Email: margaret.brown@tma.osd.mil

RIN: 0720–AA70

642. • TRICARE; SUB-ACUTE CARE PROGRAM; UNIFORM SKILLED NURSING FACILITY BENEFIT; HOME HEALTH CARE BENEFIT; ADOPTING MEDICARE PAYMENT METHODS FOR SKILLED NURSING FACILITIES AND HOME HEALTH CARE PROVIDERS

Priority: Other Significant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule partially implements the TRICARE "sub-acute and long-term care program reform" enacted by Congress in the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107, specifically: (1) Establishment of "an effective, efficient, and integrated sub-acute care benefits program," with skilled nursing facility and home health care benefits modeled after those of the Medicare Program; (2) adoption of Medicare payment methods for skilled nursing facility, home health care, and certain other institutional health care providers; (3) adoption of Medicare rules on balance billing of beneficiaries, prohibiting it by institutional providers and limiting it by non-institutional providers; (4) change in the statutory exclusion of coverage for custodial and domiciliary care.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Interim Final Rule Effective	05/00/02	
Interim Final Rule Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Additional Agency Contacts: David Bennett, 303 676-3494, and Stan Regensberg, 303 676-3742

Agency Contact: Tariq Shahid, Department of Defense, Office of Assistant Secretary for Health Affairs Phone: 303 676-3801

RIN: 0720–AA73

Department of Defense (DOD)
Office of Assistant Secretary for Health Affairs (DODOASHA)

Completed Actions

643. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ENROLLMENT OF CERTAIN FAMILY MEMBERS OF E-4 AND BELOW INTO TRICARE PRIME

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule provides for enrollment of certain family members of E-4 and below in TRICARE Prime. Sponsors with non-enrolled family members will be automatically referred to the local TRICARE Service Center for enrollment. They will be given the opportunity to select or be assigned a primary care manager or to refuse enrollment into TRICARE Prime. This enrollment may be terminated at any time and these family members may re-enroll at any time.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/28/00	65 FR 39804
Interim Final Rule Effective	07/28/00	
Interim Final Rule Comment Period End	08/28/00	
Final Action	02/12/02	67 FR 6408
Final Action Effective	02/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Duaine Goodno, Department of Defense, Office of Assistant Secretary for Health Affairs Phone: 703 681-0039

RIN: 0720–AA59

644. CIVILIAN HEALTH AND MEDICAL PROGRAM OF THE UNIFORMED SERVICES (CHAMPUS); ENHANCEMENT OF DENTAL BENEFITS UNDER THE TRICARE RETIREE DENTAL PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 55; 5 USC 301

CFR Citation: 32 CFR 199

Legal Deadline: None

Abstract: This rule implements section 704 of the National Defense Authorization Act for Fiscal Year 2000 to allow additional benefits under the retiree dental insurance plan for Uniformed Services retirees and their family members that may be comparable to those under the Dependents Dental Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/00	65 FR 49491
Interim Final Rule Effective	08/14/00	
Final Action Effective	10/01/00	67 FR 4353
Interim Final Rule Comment Period End	10/13/00	65 FR 49491
Final Action	01/30/02	67 FR 4353

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Winter, Department of Defense, Office of Assistant Secretary for Health Affairs Phone: 303 676-3682

RIN: 0720–AA61

[FR Doc. 02–7661 Filed 05–10–02; 8:45 am]
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Federal Register

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Part VI

Department of Education

Semiannual Regulatory Agenda

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DEPARTMENT OF EDUCATION (ED)

DEPARTMENT OF EDUCATION

Office of the Secretary

34 CFR Subtitles A and B

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, Education.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Secretary of Education publishes a semiannual agenda of Federal regulations. The agenda is issued under the authority of section 4(b) of Executive Order 12866 "Regulatory Planning and Review." The purpose of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Questions or comments related to specific regulations listed in this agenda should be directed to the agency contact listed for the regulations. Questions or comments related to preparation of this agenda should be directed to Sandy Jablonski, Division of Regulatory Services, Office of the General Counsel, Department of Education, Room 6E107, FB-6, 400 Maryland Avenue SW., Washington, DC 20202-2241; telephone: (202) 401-8300. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339.

SUPPLEMENTARY INFORMATION: Section 4(b) of Executive Order 12866, dated September 30, 1993, requires the Department of Education (ED) to publish, at a time and in a manner specified by the Administrator of the Office of Information and Regulatory Affairs, OMB, an agenda of all regulations under development or review. The Regulatory Flexibility Act, 5 U.S.C. 602(a), requires ED to publish, in October and April of each year, a regulatory flexibility agenda.

The regulatory flexibility agenda may be combined with any other agenda that satisfies the statutory requirements (5 U.S.C. 605(a)). In compliance with the Executive order and the Regulatory Flexibility Act, the Secretary publishes this agenda.

For each set of regulations listed, the agenda provides the title of the document, the type of document, a citation to any rulemaking or other action taken since publication of the most recent agenda, and planned dates of future rulemaking. In addition, the agenda provides the following information:

- An abstract, which includes a description of the problem to be addressed, any principal alternatives being considered, and potential costs and benefits of the action.
- An indication of whether the planned action is likely to have significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601(b)).
- A reference to where a reader can find the current regulations in the Code of Federal Regulations.
- A citation of legal authority.
- The name, address, and telephone number of the contact person at the Department from whom a reader can obtain additional information regarding the planned action.

In accordance with the Department's Principles for Regulating listed in its regulatory plan (66 FR 61530; published December 3, 2001), ED is committed to regulating that improves the quality and equality of services to its customers, learners of all ages. ED will regulate only when absolutely necessary and then in the most flexible, most equitable, least burdensome way possible.

Interested members of the public are invited to comment on any of the items listed in this agenda that they believe are not consistent with the Principles for Regulating. Members of the public are also invited to comment on regulations listed in this agenda that are designated for periodic review under the Regulatory Flexibility Act (5 U.S.C. 610).

This publication in the **Federal Register** does not impose any binding obligation on the Department with regard to any specific item in the agenda. The Department may elect not to pursue any of the regulatory actions listed here, and regulatory action in addition to the items listed is not precluded. Dates of future regulatory actions are subject to revision in subsequent agendas.

Electronic Access to This Document

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To use PDF, you must have Adobe Acrobat Reader, which is available free at this site. If you have questions about using PDF, call the U.S. Government Printing Office (GPO) toll free, at 1-888-293-6498, or in the Washington, DC, area at (202) 512-1530.

Note: The official version of this document is the document published in the **Federal Register**. Free Internet access to the official edition of the **Federal Register** and the Code of Federal Regulations is available on GPO Access at:

http://www.access.gpo.gov/nara/index.html

Dated: March 25, 2002.

Brian W. Jones,

General Counsel.

Departmental Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
645	Student Rights in Research, Experimental Programs, and Testing	1880-AA66

ED

Office of the Chief Financial Officer—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
646	Governmentwide Requirement for Drug-Free Workplace (Financial Assistance) and Governmentwide Debarment and Suspension (Nonprocurement)	1890-AA07
647	Protection of Human Subjects (Classified Research)	1890-AA08

Office of the Chief Financial Officer—Completed Actions

Sequence Number	Title	Regulation Identification Number
648	Education Department General Administrative Regulations (EDGAR)	1890-AA02

Office of Elementary and Secondary Education—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
649	Reauthorization of Title I of the Elementary and Secondary Education Act of 1965 **(Section 610 Review)**	1810-AA91
650	Improving the Academic Achievement of the Disadvantaged	1810-AA92

Office of Federal Student Aid—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
651	Student Assistance General Provisions; Institutional Eligibility; GEAR UP; Federal Pell Grant Program; Federal Work-Study Programs	1845-AA24
652	Federal Perkins Loan Program	1845-AA22
653	Federal Family Education Loan Program and William D. Ford Federal Direct Loan Program	1845-AA23

Office of Special Education and Rehabilitative Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
654	Early Intervention Program for Infants and Toddlers With Disabilities	1820-AB53

Department of Education (ED)

Departmental Management (EDMAN)

Proposed Rule Stage

645. STUDENT RIGHTS IN RESEARCH, EXPERIMENTAL PROGRAMS, AND TESTING

Priority: Other Significant

Legal Authority: 20 USC 1232h

CFR Citation: 34 CFR 98

Legal Deadline: None

Abstract: These regulations are needed to implement section 1017 of the Goals 2000: Educate America Act (Pub. L. 103-227, 20 U.S.C. 1232h). That provision amends the Protection of Pupil Rights Amendment (PPRA) to require schools, in certain instances, to make specific educational materials available to parents for inspection. The provision also amends the PPRA to prohibit schools from requiring a student to submit to certain surveys, analyses, or evaluations without prior parental consent. The regulations are being developed in accordance with the Department's Principles for Regulating. New legislation amending the PPRA passed as part of the No Child Left Behind Act of 2001. As our next action we will issue a new NPRM based on this new legislation.

Timetable:

Action	Date	FR Cite
NPRM	08/28/95	60 FR 44696
NPRM Comment Period End	10/27/95	
Second NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

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ED—EDMAN — **Proposed Rule Stage**

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Campbell, Family Policy Compliance Office, Department of Education, Room 2W101, 400 Maryland Avenue SW, FB-6, Washington, DC 20202-4605
Phone: 202 260-3887

RIN: 1880–AA66

Department of Education (ED)
Office of the Chief Financial Officer (OCFO) — **Long-Term Actions**

646. GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE) AND GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Other Significant

Legal Authority: EO 12549; EO 12689; 20 USC 1082; 20 USC 1094; 20 USC 1221e-3; 20 USC 3474; sec 2455, PL 103-355, 108 Stat 3243 at 3327

CFR Citation: 34 CFR 84; 34 CFR 85; 34 CFR 668; 34 CFR 682

Legal Deadline: None

Abstract: These regulations are part of a common rule amending the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988. These regulations clarify the relationship between debarment and suspension actions and limitation, suspension, and termination actions under title IV of the HEA. Additionally, these regulations set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. These regulations also relocate the Drug-Free Workplace Act regulations in a separate part from the debarment and suspension regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3326
NPRM Comment Penod End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter Wathen-Dunn, General Attorney, Department of Education, Office of the Chief Financial Officer, Room 6E211, 400 Maryland Avenue SW, FB-6, Washington, DC 20202-2243
Phone: 202 401-6700

RIN: 1890–AA07

647. PROTECTION OF HUMAN SUBJECTS (CLASSIFIED RESEARCH)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 42 USC 300v-1(b)

CFR Citation: 34 CFR 97

Legal Deadline: None

Abstract: These amendments would revise existing regulations to eliminate certain waiver and expedited review provisions by adopting additional protection pertaining to human subjects in classified research.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Transferred from RIN 1880-AA79

Agency Contact: Helene Deramond, Department of Education, Office of the Chief Financial Officer, Room 3652, ROB-3, 400 Maryland Avenue SW, Washington, DC 20202
Phone: 202 260-5353

RIN: 1890–AA08

Department of Education (ED)
Office of the Chief Financial Officer (OCFO) — **Completed Actions**

648. EDUCATION DEPARTMENT GENERAL ADMINISTRATIVE REGULATIONS (EDGAR)

Priority: Substantive, Nonsignificant

CFR Citation: 34 CFR 75

Completed:

Reason	Date	FR Cite
Final Action	11/30/01	66 FR 60136

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Valerie A. Sinkovits
Phone: 202 708-7568
Fax: 202 205-0667
Email: valerie.sinkovits@ed.gov

RIN: 1890–AA02

Department of Education (ED)
Office of Elementary and Secondary Education (OESE) — **Proposed Rule Stage**

649. REAUTHORIZATION OF TITLE I OF THE ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965 (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: PL 107-110

CFR Citation: 34 CFR 200

Legal Deadline: Final, Statutory, July 8, 2002.

Abstract: These regulations would implement changes made by the reauthorization of title I of the Elementary and Secondary Education Act of 1965. This action is a notice that ED is reviewing the regulations in 34 CFR part 200 under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review is to determine if these regulations should be continued without change, or should be amended or rescinded, to minimize any significant economic impact upon a substantial number of small entities. We are requesting comment on the continued need for the regulations; the complexity of the regulations; the extent to which they overlap, duplicate, or conflict with other Federal, State, or local government rules; and the degree to which technology, economic conditions, or other relevant factors have changed since the regulations were promulgated.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Susan Wilhelm, Compensatory Education Programs, Department of Education, Office of Elementary and Secondary Education, Room 3W202, 400 Maryland Avenue SW, Washington, DC 20202-6132
Phone: 202 260-0826

RIN: 1810–AA91

650. • IMPROVING THE ACADEMIC ACHIEVEMENT OF THE DISADVANTAGED

Priority: Other Significant

Legal Authority: PL 107-110

CFR Citation: 34 CFR 200

Legal Deadline: Final, Statutory, January 8, 2003.

Abstract: These regulations are needed to implement title I, Improving the Academic Achievement of the Disadvantaged, of the Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, and are subject to negotiated rulemaking. The proposed changes concern, at a minimum, standards and assessments.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan Wilhelm, Compensatory Education Programs, Department of Education, Office of Elementary and Secondary Education, Room 3W202, 400 Maryland Avenue SW, Washington, DC 20202-6132
Phone: 202 260-0826

RIN: 1810–AA92

Department of Education (ED)
Office of Federal Student Aid (OFSA) — **Proposed Rule Stage**

651. • STUDENT ASSISTANCE GENERAL PROVISIONS; INSTITUTIONAL ELIGIBILITY; GEAR UP; FEDERAL PELL GRANT PROGRAM; FEDERAL WORK-STUDY PROGRAMS

Priority: Other Significant

Legal Authority: 20 USC 1001 et seq

CFR Citation: 34 CFR 600; 34 CFR 668; 34 CFR 673; 34 CFR 675; 34 CFR 690; 34 CFR 693; ...

Legal Deadline: None

Abstract: These regulations will implement various changes to the Student Assistance General Provisions, the regulations governing institutional eligibility, the GEAR UP program, the Federal Pell Grant Program, the general provisions for the Federal Perkins Program, Federal Work-Study Program, and Federal Supplemental Educational Opportunity Grant Program and will be negotiated with the financial aid, higher education, and other related community members through the negotiated rulemaking process under section 492 of the Higher Education Act of 1965, as amended.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Wendy Macias, Department of Education, Office of Postsecondary Education, Room 8056, 1990 K Street NW, Washington, DC 20006
Phone: 202 502-7526

RIN: 1845–AA24

652. • FEDERAL PERKINS LOAN PROGRAM

Priority: Other Significant

Legal Authority: 20 USC 1001 et seq

CFR Citation: 34 CFR 674

Legal Deadline: None

Abstract: These regulations will implement various changes to the Perkins Loan Program and will be negotiated with the financial aid, higher education, and other related community members through the negotiated rulemaking process under section 492 of the Higher Education Act of 1965, as amended.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gail McLarnon, Department of Education, Office of Postsecondary Education, Room 8062, 1990 K Street NW, Washington, DC 20006

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ED—OFSA **Proposed Rule Stage**

Phone: 202 219-7048
RIN: 1845–AA22

653. • FEDERAL FAMILY EDUCATION LOAN PROGRAM AND WILLIAM D. FORD FEDERAL DIRECT LOAN PROGRAM

Priority: Other Significant
Legal Authority: 20 USC 1001 et seq
CFR Citation: 34 CFR 682; 34 CFR 685
Legal Deadline: None

Abstract: These regulations will implement various changes to the FFEL and Direct Loan Programs and will be negotiated with the financial aid, higher education, and other related community members through the negotiated rulemaking process under section 492 of the Higher Education Act of 1965, as amended.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined
Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Gail McLarnon, Department of Education, Office of Postsecondary Education, Room 8062, 1990 K Street NW, Washington, DC 20006
Phone: 202 219-7048
RIN: 1845–AA23

Department of Education (ED) **Completed Actions**
Office of Special Education and Rehabilitative Services (OSERS)

654. EARLY INTERVENTION PROGRAM FOR INFANTS AND TODDLERS WITH DISABILITIES

Priority: Other Significant
CFR Citation: 34 CFR 303

Completed:

Reason	Date	FR Cite
Withdrawn	01/10/02	67 FR 1410

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: JoLeta Reynolds
Phone: 202 205-5507
RIN: 1820–AB53

[FR Doc. 02–8352 Filed 05–10–02; 8:45 am]
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Part VII

Department of Energy

Semiannual Regulatory Agenda

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DEPARTMENT OF ENERGY (DOE)

DEPARTMENT OF ENERGY

10 CFR Chs. II, III, and X

48 CFR Ch. 9

Regulatory Agenda

AGENCY: Department of Energy.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Energy has prepared and today is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601-612 (1988).

FOR FURTHER INFORMATION CONTACT: For further information about any particular item on the regulatory agenda, please contact the individual listed under that item. For further information on the regulatory agenda in general, please contact: Richard L. Farman, Room 6E-078, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8145.

SUPPLEMENTARY INFORMATION: Entries appended to this notice reflect the status of activities as of approximately March 15, 2002. They are divided into categories first by subagencies and then according to their stage of rulemaking action: prerule, proposed rulemaking, final rulemaking, long-term action, or completed action.

A draft of this regulatory agenda has been transmitted to the Chief Counsel for Advocacy of the U.S. Small Business Administration for comment, if any, pursuant to 5 U.S.C. 602(b).

Issued in Washington, DC, on April 29, 2002.

Lee Liberman Otis,
General Counsel.

Energy Efficiency and Renewable Energy—Prerule Stage

Sequence Number	Title	Regulation Identification Number
655	Energy Efficiency Standards for Residential Furnaces, Boilers, and Mobile Home Furnaces	1904-AA78
656	Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets	1904-AA98
657	Energy Efficiency Standards for Electric Distribution Transformers	1904-AB08
658	Energy Efficiency Standards for Commercial Central Air Conditioning Units and Heat Pumps Rated 65-240 kBtus/Hr	1904-AB09

Energy Efficiency and Renewable Energy—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
659	Test Procedures for Electric Distribution Transformers	1904-AA85
660	Test Procedures for Dishwashers - Amendment	1904-AB10
661	Test Procedures for Residential Refrigerators and Refrigerator-Freezers	1904-AB12

Energy Efficiency and Renewable Energy—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
662	Test Procedures for Central Air Conditioners and Heat Pumps—Amendments	1904-AA46
663	National Voluntary Residential Energy Efficiency Rating Guidelines	1904-AA74
664	Energy Efficiency Standards for Central Air Conditioners and Heat Pumps	1904-AA77
665	Test Procedures for Commercial Water Heaters	1904-AA95
666	Test Procedures for Commercial Warm Air Furnaces	1904-AA96
667	Test Procedures for Commercial Air Conditioning Equipment	1904-AA97
668	Test Procedures for Commercial Package Boilers	1904-AB02

Energy Efficiency and Renewable Energy—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
669	Energy Efficiency Code for New Federal Residential Low Rise Buildings	1904-AA53
670	State and Local Incentives Program: Alternative Fuels	1904-AA66
671	Determination for High Intensity Discharge Lamps	1904-AA86
672	Determination for Small Electric Motors	1904-AA87
673	Energy Efficiency Standards for Clothes Dryers and Dishwashers	1904-AA89

DOE

Energy Efficiency and Renewable Energy—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
674	Energy Efficiency Standards for Pool Heaters and Direct Heating Equipment	1904-AA90
675	Energy Efficiency Standards for 1-200 HP Electric Motors	1904-AA91
676	Energy Efficiency Standards for Fluorescent and Incandescent Lamps	1904-AA92

Energy Efficiency and Renewable Energy—Completed Actions

Sequence Number	Title	Regulation Identification Number
677	Test Procedures for Dishwashers—Amendment	1904-AB04
678	Weatherization Assistance Program for Low-Income Persons	1904-AB05
679	Energy Efficiency Program for Certain Commercial and Industrial Equipment: Extension of Time for Electric Motor Manufacturers To Certify Compliance With Energy Efficiency Standards	1904-AB11

Defense and Security Affairs—Prerule Stage

Sequence Number	Title	Regulation Identification Number
680	Computer Security; Access to Information on National Nuclear Security Administration Computer Systems	1992-AA27

Defense and Security Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
681	Physical Protection of Security Interests	1992-AA23
682	Procedural Rules for DOE Nuclear Security Activities	1992-AA28
683	Human Reliability Program	1992-AA29
684	Criteria and Procedure for Establishment of the Personnel Security Assurance Program and Determinations of an Individual's Eligibility for Access to a Personnel Security Assurance Program Position	1992-AA30

Departmental and Others—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
685	Freedom of Information Act	1901-AA32
686	Payments for Special Burdens and In Lieu of Taxes	1901-AA58
687	Research Misconduct	1901-AA89
688	Revision of ACS-02 Control Area Service Rate: Generation Imbalance Service Rate	1901-AA92
689	Administrative Procedures and Sanctions; Electric Power System Permits and Reports; Short-Term Imports and Exports of Natural Gas	1901-AA93

Departmental and Others—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
690	Radiation Protection of the Public and the Environment	1901-AA38
691	Economic Development Transfers of Real Property	1901-AA82
692	Nondiscrimination in Federally Assisted Programs or Activities	1901-AA86
693	Reimbursement for Costs of Remedial Action at Active Uranium and Thorium Processing Sites: Technical Amendments	1901-AA88

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Departmental and Others—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
694	Guidelines for Physician Panel Determinations on Worker Requests for Assistance in Filing for State Workers' Compensation Benefits	1901-AA90

Departmental and Others—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
695	Annotation of Land Records for Remediated Properties in the Uranium Mill Tailings Remedial Action Project (UMTRA)	1901-AA57

Departmental and Others—Completed Actions

Sequence Number	Title	Regulation Identification Number
696	Enforcement of Employee Safety Standards at Nuclear Weapons Facilities	1901-AA44
697	Privacy Act System of Records Update	1901-AA69
698	Community Transition Activities	1901-AA77
699	Policy Review of Three Issues Arising Under Bonneville Power Administration's New Large Single Load (NLSL) Policy	1901-AA91

Office of Procurement and Assistance Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
700	Financial Assistance Regulation: Administrative Requirements Related to For-Profit Organizations	1991-AB57
701	Energy Department Motor Vehicle Fleet Fuel Efficiency	1991-AB59
702	DEAR: Part 970 Rewrite Continuation	1991-AB60

Office of Procurement and Assistance Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
703	DEAR: Recycling	1991-AB47
704	DEAR: Purchasing by DOE Management and Operating Contractors From Affiliated Sources	1991-AB52
705	Acquisition Regulation: Payment of Fee Relating to Security Issues	1991-AB54
706	DEAR: Patent Rights	1991-AB55

Office of Procurement and Assistance Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
707	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1991-AB56

DOE

Office of Procurement and Assistance Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
708	Classified National Security Information—E.O. 12958	1991-AB42
709	DEAR: Technical Amendments	1991-AB51

Office of General Counsel—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
710	Conduct of Employees	1990-AA19
711	Claims for Damages Against Department of Energy Employees	1990-AA26

Department of Energy (DOE)

Prerule Stage

Energy Efficiency and Renewable Energy (EE)

655. ENERGY EFFICIENCY STANDARDS FOR RESIDENTIAL FURNACES, BOILERS, AND MOBILE HOME FURNACES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430

Legal Deadline: Final, Statutory, January 1, 1994.

Abstract: The Energy Policy and Conservation Act, as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

This is the initial review of the statutory standards for furnaces, boilers and mobile home furnaces.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
Screening Workshop	07/17/01	
Venting Workshop	05/00/02	
ANPRM	01/00/03	
NPRM	02/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Cyrus Nasseri, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA78

656. ALTERNATIVE FUELED VEHICLE ACQUISITION REQUIREMENTS FOR PRIVATE AND LOCAL GOVERNMENT FLEETS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 13257

CFR Citation: 10 CFR 490

Legal Deadline: NPRM, Statutory, May 1, 1999.
Final, Statutory, April 1, 2000.

Abstract: The Energy Policy Act of 1992 (the Act) requires DOE to initiate a rulemaking to determine whether a private and local fleet program is deemed necessary to meet the fuel displacement goals of the Act. The criteria for making this determination is mandated by the Act. DOE conducted a series of informal workshops, including two for State and local government officials, to discuss regulatory options and other issues related to the alternative fueled vehicle requirements under the Act. The analysis required to make the determination is more extensive than originally estimated. Before DOE can make its determination, it must first evaluate the program goals.

Timetable:

Action	Date	FR Cite
ANPRM	04/17/98	63 FR 19372
Notice of Public Workshops	07/20/00	65 FR 44987
Notice of Goals Evaluation	06/00/02	
Goals Evaluation Workshop	07/00/02	
Notice of Determination	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

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RIN: 1904–AA98

657. ENERGY EFFICIENCY STANDARDS FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

DOE—EE — **Prerule Stage**

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act, as amended, (EPCA) establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment. The EPCA generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the current standard for a covered product should be amended.

This is the initial review of the statutory standards for electric distribution transformers

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
ANPRM	09/00/02	
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Antonio Bouza, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20676
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RIN: 1904–AB08

658. ENERGY EFFICIENCY STANDARDS FOR COMMERCIAL CENTRAL AIR CONDITIONING UNITS AND HEAT PUMPS RATED 65-240 KBTUS/HR

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standard levels for most types of major residential appliances and certain types of commercial equipment. The EPCA generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the current standard for a covered product should be amended.

This is the initial review of the statutory standards for these products.

Timetable:

Action	Date	FR Cite
Screening Workshop	10/01/01	66 FR 43123
ANPRM	03/00/03	
NPRM	03/00/04	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1904–AB09

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE) — **Proposed Rule Stage**

659. TEST PROCEDURES FOR ELECTRIC DISTRIBUTION TRANSFORMERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe testing requirements for electric distribution transformers for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	10/22/97	62 FR 54809
NPRM	11/12/98	63 FR 63359
Supplemental NPRM	06/00/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority, and the Department is working actively on this action.

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RIN: 1904–AA85

660. • TEST PROCEDURES FOR DISHWASHERS - AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action would add a new test procedure for soil-sensing dishwashers, using soiled dishes. It would also incorporate standby power consumption, where applicable.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Twigg, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB10

DOE—EE — **Proposed Rule Stage**

661. • TEST PROCEDURES FOR RESIDENTIAL REFRIGERATORS AND REFRIGERATOR-FREEZERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293(b)

CFR Citation: 10 CFR 430 subpart B, app A1

Legal Deadline: None

Abstract: This action would revise the test procedures for residential refrigerators and refrigerator-freezers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Raymond, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB12

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE) — **Final Rule Stage**

662. TEST PROCEDURES FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS—AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: These revisions to the test procedures for central air conditioners and heat pumps in accordance with the Energy Policy and Conservation Act will reorganize the document in a logical order and update the references. The revisions include an updated nomenclature compatible with the eventual test procedure for combined (domestic hot water and central air conditioners or heat pumps) appliances, additional tables listing test tolerances, a clearer specification for the demand defrost credit, and test methods for ECM (electronically commutated motor) blowers and history-dependent defrosts.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6768
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1904–AA46

663. NATIONAL VOLUNTARY RESIDENTIAL ENERGY EFFICIENCY RATING GUIDELINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 8236

CFR Citation: 10 CFR 437

Legal Deadline: Final, Statutory, April 24, 1994.

Abstract: DOE is required to establish by rule national voluntary guidelines for home energy rating systems. The guidelines are designed to encourage uniformity with regard to systems for rating the annual energy efficiency of residential buildings. The guidelines may be used to enable and encourage the assignment of energy efficiency ratings to residential buildings and the development of criteria for attractive financial instruments for energy efficient homes.

In response to the directives of the Energy Policy Act of 1992, DOE collaborated with hundreds of stakeholders and organizations, including the Home Energy Rating System (HERS) Council, the National Association of State Energy Officials, and HERS providers, many of whom had been meeting regarding HERS since about 1987. Based on input from all the stakeholders, DOE issued for public comment a Notice of Proposed Rulemaking on voluntary guidelines.

Most of the comments that DOE received on the proposed rule were readily resolved. But the issue of "fuel neutrality" was not easily incorporated into the rule. "Fuel neutrality" involved an interpretation of the requirement that the rule not "discriminate among fuel types" for which the EPACT legislation provided no clarification. Yet, in spite of an intensive effort by DOE to work with both the electric and gas industries, a definition regarding fuel neutrality was not resolved and remains hotly disputed.

In the fall of 2002, DOE plans to issue a Report to Congress on the HERS and Energy Efficient Mortgages, as required by Congress. This report will note that despite the fact that DOE has not issued a final rule, home energy raters are now available in 47 States, and the guidelines used by these raters are generally consistent in content to DOE's Notice of Proposed Rulemaking on voluntary HERS guidelines.

Timetable:

Action	Date	FR Cite
NPRM	07/25/95	60 FR 37949
NPRM Comment Period End	05/09/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1904–AA74

664. ENERGY EFFICIENCY STANDARDS FOR CENTRAL AIR CONDITIONERS AND HEAT PUMPS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

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CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, January 1, 1994.

Abstract: The Energy Policy and Conservation Act, as amended, establishes initial energy-efficiency standard levels for most types of major residential appliances and generally requires DOE to undergo two subsequent rulemakings, at specified times, to determine whether the extant standard for a covered product should be amended.

This is the initial review of the statutory standards for central air conditioners and heat pumps.

Timetable:

Action	Date	FR Cite
ANPRM	09/08/93	58 FR 47326
Screening Workshop	06/30/98	
Supplemental ANPRM	11/24/99	64 FR 66305
NPRM	10/05/00	65 FR 59589
Final Rule	01/22/01	66 FR 7170
Supplemental NPRM and Proposal to Withdraw Final Rule	07/25/01	66 FR 38821
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 1904–AA77

665. TEST PROCEDURES FOR COMMERCIAL WATER HEATERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial water heaters, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial water heaters. This action will incorporate by reference energy conservation standards and test procedures, revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48852
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1904–AA95

666. TEST PROCEDURES FOR COMMERCIAL WARM AIR FURNACES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial heating equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial heating equipment. This action will also incorporate by reference energy conservation standards and test procedures, revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers (ASHRAE), and will establish certification and compliance requirements for commercial heating equipment.

Timetable:

Action	Date	FR Cite
NPRM	12/13/99	64 FR 69597
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1904–AA96

667. TEST PROCEDURES FOR COMMERCIAL AIR CONDITIONING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial air conditioning equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify the energy conservation standards and test procedures established in the EPCA for commercial air conditioning equipment. This action will also incorporate by reference energy conservation standards and test procedures, revised by the Air Conditioning and Refrigeration Institute or by the American Society of Heating, Refrigeration and Air Conditioning Engineers (ARI/ASHRAE).

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48828
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA97

668. TEST PROCEDURES FOR COMMERCIAL PACKAGE BOILERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes energy conservation standards for commercial heating equipment, prescribes test procedures, and requires labeling for such equipment. This action would codify these provisions. It would also incorporate by reference energy conservation standards and test procedures revised by the American Society of Heating, Refrigerating, and Air Conditioning Engineers.

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48838
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cyrus Nasseri, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB02

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)

Long-Term Actions

669. ENERGY EFFICIENCY CODE FOR NEW FEDERAL RESIDENTIAL LOW RISE BUILDINGS

Priority: Other Significant

Legal Authority: 42 USC 6834

CFR Citation: 10 CFR 435

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: Title III of the Energy Conservation and Production Act as amended by the Energy Policy Act of 1992 (PL 102-486, October 24, 1992) provides that DOE establish Federal building energy standards that require in new Federal buildings those energy efficiency measures that are technologically feasible and economically justified. The standards for Federal buildings are intended to parallel closely the voluntary building energy codes of the Energy Policy Act for private sector construction. Interim energy performance standards which DOE had issued before enactment of the Energy Policy Act are to remain in effect for the Federal sector until the new Federal building energy standards become effective.

Timetable:

Action	Date	FR Cite
NPRM	05/02/97	62 FR 24164
NPRM Comment Period End	07/14/97	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen P. Walder, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9209

RIN: 1904–AA53

670. STATE AND LOCAL INCENTIVES PROGRAM: ALTERNATIVE FUELS

Priority: Other Significant

Legal Authority: 42 USC 13235

CFR Citation: 10 CFR 409

Legal Deadline: Final, Statutory, April 24, 1993.

Abstract: The Energy Policy Act of 1992 requires DOE to issue regulations establishing the State and Local Incentives Program. Under this program DOE may grant financial assistance to States for projects in DOE-approved State plans to promote use of alternative fuels and alternative-fueled vehicles. With the publication of an integrated Sfate Energy Program (61 FR 35890), the alternative fuel grant programs may be a part of the State grant special projects, depending on funding availability. The next action will be a cancellation notice of any separate State grant program.

Timetable:

Action	Date	FR Cite
NPRM	03/21/95	60 FR 15020
NPRM Comment Period End	05/22/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Dorothy Wormley, Program Manager, EE-34, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-7028

RIN: 1904–AA66

671. DETERMINATION FOR HIGH INTENSITY DISCHARGE LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 430

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe test procedures and efficiency standards for high intensity discharge lamps for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority and the Department does not plan to work on it this year.

Agency Contact: Ronald Lewis, Department of Energy, Energy Efficiency and Renewable Energy, Office of Building Research and Standards, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AA86

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672. DETERMINATION FOR SMALL ELECTRIC MOTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6317

CFR Citation: 10 CFR 431

Legal Deadline: Other, Statutory, April 24, 1995, Determination Notice.

Abstract: The Energy Policy Act of 1992 requires the Department to prescribe test procedures for small electric motors for which the Secretary makes a determination that energy conservation standards would be technologically feasible and economically justified, and would result in significant energy savings.

Timetable:

Action	Date	FR Cite
Determination Notice	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Department's regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a high priority and the Department has initiated work to gather information and conduct analyses in preparation for a determination under 42 U.S.C. 6317(b).

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RIN: 1904–AA87

673. ENERGY EFFICIENCY STANDARDS FOR CLOTHES DRYERS AND DISHWASHERS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, May 14, 1996, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

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RIN: 1904–AA89

674. ENERGY EFFICIENCY STANDARDS FOR POOL HEATERS AND DIRECT HEATING EQUIPMENT

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430

Legal Deadline: Final, Statutory, January 1, 1992, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

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RIN: 1904–AA90

675. ENERGY EFFICIENCY STANDARDS FOR 1-200 HP ELECTRIC MOTORS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 6313

CFR Citation: 10 CFR 431

Legal Deadline: Final, Statutory, October 24, 1999, Determination Notice.

Abstract: The Energy Policy and Conservation Act (EPCA), as amended, establishes initial energy efficiency standards and test procedures for commercial and industrial electric motors. EPCA requires the Department to revise the standards periodically to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for the next two fiscal years.

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RIN: 1904–AA91

676. ENERGY EFFICIENCY STANDARDS FOR FLUORESCENT AND INCANDESCENT LAMPS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6295

CFR Citation: 10 CFR 430.32

Legal Deadline: Final, Statutory, November 15, 1998, Determination Notice.

Abstract: The statute requires the Department to revise the standards to achieve the maximum improvement in energy efficiency which the Secretary determines is technologically feasible and economically justified.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: Due to the Department's limited staff and financial resources, regulatory actions related to energy efficiency standards have been categorized as high, medium, and low priority based on significant input from the public. This action is a low priority, and the Department does not plan to begin substantive work on this action for at least the next two fiscal years.

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RIN: 1904–AA92

Department of Energy (DOE)
Energy Efficiency and Renewable Energy (EE)

Completed Actions

677. TEST PROCEDURES FOR DISHWASHERS—AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6293

CFR Citation: 10 CFR 430

Legal Deadline: None

Abstract: This action would improve the testing specifications for the current dishwasher test procedure, revise the calculation of estimated annual operating cost, and change the definitions of compact and standard models.

Timetable:

Action	Date	FR Cite
NPRM	09/28/99	64 FR 52248
NPRM Comment Period End	02/14/00	65 FR 2077
Final Action	12/18/01	66 FR 65091

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Twigg, EE-41, Program Manager, Office of Building Research and Standards, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB04

678. WEATHERIZATION ASSISTANCE PROGRAM FOR LOW-INCOME PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6861; 42 USC 7101

CFR Citation: 10 CFR 440

Legal Deadline: None

Abstract: This would amend the Weatherization Assistance Program for Low-Income Persons to include the three statutory changes made to the program by the Congress. The changes would add clarifying language, delete obsolete provisions, improve the overall operation of the program, and give State and local agencies additional flexibility.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4331
NPRM Comment Period End	03/27/00	
Interim Final Rule	12/08/00	65 FR 77209
Final Action	11/21/01	66 FR 58364

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Gregory Reamy, Office of Technology Assistance, EE-42, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4074

RIN: 1904–AB05

679. • ENERGY EFFICIENCY PROGRAM FOR CERTAIN COMMERCIAL AND INDUSTRIAL EQUIPMENT: EXTENSION OF TIME FOR ELECTRIC MOTOR MANUFACTURERS TO CERTIFY COMPLIANCE WITH ENERGY EFFICIENCY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6311 to 6316

CFR Citation: 10 CFR 431

Legal Deadline: None

Abstract: This procedural rule amends the Compliance Certification section of subpart G, Certification and Enforcement, of 10 CFR Part 431, by revising the deadline from November 5,2001 to June 7, 2002, for certain electric motor manufacturers.

Timetable:

Action	Date	FR Cite
Final Action	11/09/01	66 FR 56604

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Raba, EE-41, Energy Technology Program Specialist, Department of Energy, Energy Efficiency and Renewable Energy, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1904–AB11

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Department of Energy (DOE)
Defense and Security Affairs (DSA)

Prerule Stage

680. COMPUTER SECURITY; ACCESS TO INFORMATION ON NATIONAL NUCLEAR SECURITY ADMINISTRATION COMPUTER SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7101 et seq; 42 USC 2011 et seq; 50 USC 2425; 50 USC 2483(c)

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, January 3, 2000.

Abstract: This action would codify rules governing access by any individual to information on National Nuclear Security Administration computer systems.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Philip Sibert, Office of Defense Nuclear Security (NA-3), Department of Energy, National Nuclear Security Administration, 1000 Independence Avenue SW, Washington, DC 20585
Phone: 202 586-2541

RIN: 1992–AA27

Department of Energy (DOE)
Defense and Security Affairs (DSA)

Proposed Rule Stage

681. PHYSICAL PROTECTION OF SECURITY INTERESTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 7101

CFR Citation: 10 CFR 1046 subpart A; 10 CFR 1046 subpart B

Legal Deadline: None

Abstract: 10 CFR part 1046, subparts A and B, establishes DOE contractor requirements in the areas of protective force medical, physical fitness, and firearms qualifications and training. The proposed revisions are to ensure protective force personnel receive quality medical services that are consistent with the Americans with Disabilities Act of 1990. They also will enhance communications between Designated Physicians and personnel responsible for supervising physical fitness training and certification to assure better understanding of the risk of injury to Security Police Officers and Security Officers participating in physical fitness activities. Additionally, Security Police Officer I and Security Police Officer II were better defined to eliminate confusing physical fitness requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ronnie M. Edge, Department of Energy, Office of Security, Germantown, MD 20874
Phone: 301 903-4247

RIN: 1992–AA23

682. PROCEDURAL RULES FOR DOE NUCLEAR SECURITY ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011 et seq; 42 USC 7101 et seq; 42 USC 2282(b)

CFR Citation: 10 CFR 824

Legal Deadline: None

Abstract: This action would define the process for the imposition of civil penalties on contractors for violations relating to the safeguarding or security of classified or sensitive data.

Timetable:

Action	Date	FR Cite
NPRM	04/01/02	67 FR 15339
NPRM Comment Period End	07/01/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Geralyn C. Praskievicz, Department of Energy, Office of Security, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4451

RIN: 1992–AA28

683. HUMAN RELIABILITY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 710; 10 CFR 711; 10 CFR 712

Legal Deadline: None

Abstract: This action would establish a Human Reliability Program that would consolidate the Department's Personnel Security Assurance Program (PSAP) and its Personnel Assurance Program (PAP). PSAP is an access authorization program for individuals who apply for or occupy certain positions that are critical to the national security. The PSAP requires an initial and annual supervisory review, medical assessment, management evaluation, and a DOE personnel security review of all applicants or incumbents. The PAP is a nuclear explosives safety program using many of the evaluations of the PSAP to ensure that employees assigned to nuclear explosive duties do not have emotional, mental, or physical conditions that could result in an accidental or unauthorized detonation of nuclear explosives.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Repass, Department of Energy, Office of Security, 19902 Germantown Road, Germantown, MD 20874
Phone: 301 903-4800
Fax: 301 903-6545
Email: linda.repass@hq.doe.gov

RIN: 1992–AA29

DOE—DSA

Proposed Rule Stage

684. CRITERIA AND PROCEDURE FOR ESTABLISHMENT OF THE PERSONNEL SECURITY ASSURANCE PROGRAM AND DETERMINATIONS OF AN INDIVIDUAL'S ELIGIBILITY FOR ACCESS TO A PERSONNEL SECURITY ASSURANCE PROGRAM POSITION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2165; 42 USC 2201; EO 10450; 42 USC 7251, 7254, and 7256

CFR Citation: 10 CFR 710, subpart B

Legal Deadline: None

Abstract: This action would amend the Department's regulations to allow newly hired individuals in security police officer positions who have received an interim Q access authorization through DOE's Accelerated Access Authorization Program to be eligible to hold a Personnel Security Assurance Program (PSAP) position. Currently, DOE's regulations require a Q access authorization based on a full background investigation for all PSAP positions.

Timetable:

Action	Date	FR Cite
NPRM	04/04/02	67 FR 16061
NPRM Comment Period End	05/06/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Repass, Department of Energy, Office of Security, 19902 Germantown Road, Germantown, MD 20874
Phone: 301 903-4800
Fax: 301 903-6545
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RIN: 1992–AA30

Department of Energy (DOE)
Departmental and Others (ENDEP)

Proposed Rule Stage

685. FREEDOM OF INFORMATION ACT

Priority: Other Significant

Legal Authority: 5 USC 552

CFR Citation: 10 CFR 1004

Legal Deadline: None

Abstract: On October 23, 1991, DOE proposed to amend the procedures and principles to be applied in responding to requests for records under the Freedom of Information Act (FOIA) 5 USC 552. The proposal updated names and addresses of organizational entities, and updated guidelines for the schedule of fees associated with processing requests. A proposed section on policies clarified DOE's operation of a first-in, first-out policy in responding to FOIA requests, and the role of the Office of Hearings and Appeals was clarified. The proposal also included a statement of DOE policy on contractor records.

On December 12, 1994, DOE adopted the contractor records policy, with certain modifications. DOE expects to take final action on the remainder of the proposal in the near future.

The new regulations will clarify the FOIA process by clearly defining the roles of the FOIA Officer and the Denying Official and comply with the new requirements of the Electronic Freedom of Information Act Amendment of 1996. The new regulations will be written in a more customer-friendly manner in plain English.

Timetable:

Action	Date	FR Cite
Final Rule (Contractor Records)	12/12/94	59 FR 63882
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Abel Lopez, Director, FOIA and Privacy Act Division, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-5955
Email: abel.lopez@hq.doe.gov

RIN: 1901–AA32

686. PAYMENTS FOR SPECIAL BURDENS AND IN LIEU OF TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2208 Atomic Energy Act of 1954, sec 168

CFR Citation: 10 CFR 610

Legal Deadline: None

Abstract: This action will revise the Department of Energy's policy on making payments for special burdens and in lieu of taxes to State and local taxing jurisdictions pursuant to the Atomic Energy Act of 1954. Prior to the 1987 issuance of DOE Order 2100.12, the Department and its predecessor agencies approved such payment requests on an ad hoc basis. To ensure all eligible taxing jurisdictions are provided appropriate opportunity to comment, the revised policy is being established through the rulemaking process. The Department anticipates no added costs by issuing the revised policy as a regulation rather than as an internal directive revision.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local

Federalism: Undetermined

Agency Contact: Helen O. Sherman, Director, Office of Financial Policy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4860

RIN: 1901–AA58

687. RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7101 et seq; 50 USC 2401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action would establish policies and procedures for handling research misconduct allegations.

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DOE—ENDEP — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William J. Valdez, Director, Office of Planning and Analysis, Department of Energy, Office of Science, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-9942
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Email: bill.valdez@science.doe.gov

RIN: 1901–AA89

688. • REVISION OF ACS-02 CONTROL AREA SERVICE RATE: GENERATION IMBALANCE SERVICE RATE

Priority: Substantive, Nonsignificant

Legal Authority: PL 96-501, sec. 7; PL 102-486, sec. 824k(i)(2)

CFR Citation: None

Legal Deadline: None

Abstract: BPA's Transmission Business Line (TBL) announces its proposal to revise the Generation Imbalance Service rate (rate) found in its 2002 Transmission and Ancillary Service Rate Schedules, Schedule ACS-02. Generation Imbalance Service is taken when there is a difference between scheduled and actual energy delivered from a generation resource in the BPA Control Area during a schedule hour. The existing Generation Imbalance Service rate was established in BPA's TR-02 2002 Transmission Rate Proceeding and subsequently was approved by the Federal Energy Regulatory Commission (FERC) for use during the October 1, 2001 to September 30, 2003 rate period. The current rate charges the higher of BPA's incremental cost for energy plus 10 percent or 100 mills/kWh for imbalances outside the Deviation Band when the actual energy delivered from a resource in a schedule hour is less than the energy scheduled for that hour.

The TBL believes that wind generation resources are not able to accurately predict generation and respond to dispatch instructions during the delivery hour, and that charging the 100 mill floor rate may have deleterious effects on the development of wind generation resources in the BPA Control Area. Therefore, TBL proposes to eliminate the 100 mill/kWh floor rate when applying the rate to wind generation resources. This will result in the Generation Imbalance Service rate for wind generation resources being BPA's incremental cost for energy plus 10 percent. All other aspects of the existing Generation Imbalance Service rate are unchanged.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local, Tribal, Federal

Agency Contact: Mary A. Dalton, Transmission Rates Manager, Department of Energy, Bonneville Power Administration, P.O. Box 491, 5411 NE Highway 99, Vancouver, WA 98663
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Email: madalton@bpa.gov

RIN: 1901–AA92

689. • ADMINISTRATIVE PROCEDURES AND SANCTIONS; ELECTRIC POWER SYSTEM PERMITS AND REPORTS; SHORT-TERM IMPORTS AND EXPORTS OF NATURAL GAS

Priority: Substantive, Nonsignificant

Legal Authority: PL 95-91; PL 10485 as amended by EO 12038; 15 USC 717 b; 42 USC 7101 et seq; EO 12009

CFR Citation: 10 CFR 205.300; 10 CFR 590

Legal Deadline: None

Abstract: This action would streamline the existing procedures for applying to the DOE for Presidential permits and electricity export authorizations by eliminating the use of FERC procedures and establishing a less adversarial process of decisonmaking. It would also establish that the DOE's decisional criterion is only electric power system reliability and impacts to the environment and not the economic or commercial viability of projects. These actions are in response to the restructuring of the electric power industry.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Russell, Department of Energy, FE-27, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1901–AA93

Department of Energy (DOE)
Departmental and Others (ENDEP) — **Final Rule Stage**

690. RADIATION PROTECTION OF THE PUBLIC AND THE ENVIRONMENT

Priority: Other Significant

Legal Authority: 42 USC 2201; 42 USC 7191

CFR Citation: 10 CFR 834

Legal Deadline: None

Abstract: This action would add a new 10 CFR 834 to DOE's regulations establishing a body of rules setting forth the basic requirements for ensuring radiation protection of the public and environment in connection with DOE nuclear activities. These requirements stem from the Department's ongoing effort to strengthen the protection of health, safety, and the environment from the nuclear and chemical hazards posed by these DOE activities. Major elements of the proposal included a dose limitation system for protection of the public; requirements for liquid discharges; reporting and monitoring requirements; and residual radioactive material requirements.

DOE—ENDEP — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	03/25/93	58 FR 16268
Second NPRM	08/31/95	60 FR 45381
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andrew Wallo III, Director, Air, Water and Radiation Division, Department of Energy, Office of Environmental Guidance, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4996

RIN: 1901–AA38

691. ECONOMIC DEVELOPMENT TRANSFERS OF REAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-85, sec 3158

CFR Citation: 10 CFR 770

Legal Deadline: None

Abstract: This action would establish procedures for indemnifying and disposing of real property by sale or lease at the Department's defense nuclear facilities for the purpose of permitting economic development. It would also establish procedures for reporting actions to Congress, informing those acquiring the property of the availability of indemnification for injury to people or property from releases or threatened releases of hazardous materials, requesting indemnification, and making claims for indemnification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/29/00	65 FR 10685
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew Duran, Realty Officer, ME-90, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-4548
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RIN: 1901–AA82

692. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OR ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 10 CFR 1040

Legal Deadline: None

Abstract: This action would amend the definition of "program."

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Wyatt, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-2256
Fax: 202 586-0888
Email: sharon.wyatt@hq.doe.gov

RIN: 1901–AA86

693. REIMBURSEMENT FOR COSTS OF REMEDIAL ACTION AT ACTIVE URANIUM AND THORIUM PROCESSING SITES: TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2296a et seq

CFR Citation: 10 CFR 765

Legal Deadline: None

Abstract: This action would adopt several technical and administrative amendments to the procedural regulations governing the reimbursement of remedial action costs at active uranium and thorium processing sites. The original legislation authorizing the program has been amended three times to increase the amounts authorized for reimbursement, extend certain program dates, and make other technical corrections. The amendments to 10 CFR part 765 will reflect the legislative amendments and make other technical corrections that have been identified since the original rule was issued.

Timetable:

Action	Date	FR Cite
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David E. Mathes, Leader, Albuquerque/Nevada Team, Department of Energy, Small Sites Closure Office (EM-34), Cloverleaf Building, 19901 Germantown Road, Germantown, MD 20874-1290
Phone: 301 903-7222

RIN: 1901–AA88

694. GUIDELINES FOR PHYSICIAN PANEL DETERMINATIONS ON WORKER REQUESTS FOR ASSISTANCE IN FILING FOR STATE WORKERS' COMPENSATION BENEFITS

Priority: Other Significant

Legal Authority: 42 USC 7384 et seq; 42 USC 2201 and 7101 et seq; 50 USC 2401 et seq

CFR Citation: 10 CFR 852

Legal Deadline: None

Abstract: This action would establish procedures to implement subtitle D of the Energy Employees Occupational Illness Compensation Program Act of 2000 under which a DOE contractor employee or the employee's estate can seek assistance from DOE in filing a claim with the appropriate State workers' compensation system based on an illness or death caused by exposure to a toxic substance during the course of employment at a DOE facility.

Timetable:

Action	Date	FR Cite
NPRM	09/07/01	66 FR 46742
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kate Kimpan, Office of Worker Advocacy, EH-8, Department of Energy, 100 Independence Avenue, SW., Washington, DC 20585
Phone: 202 586-3997

RIN: 1901–AA90

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Department of Energy (DOE)
Departmental and Others (ENDEP)

Long-Term Actions

695. ANNOTATION OF LAND RECORDS FOR REMEDIATED PROPERTIES IN THE URANIUM MILL TAILINGS REMEDIAL ACTION PROJECT (UMTRA)

Priority: Substantive, Nonsignificant

Legal Authority: PL 95-604, sec 104(d); PL 104-259, sec 4(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Under section 104(d) of the Uranium Mill Tailings Radiation Control Act of 1978, the Department of Energy (DOE) is required to issue appropriate rules and regulations concerning the annotation of land records of designated inactive uranium mill sites and vicinity properties included for remedial action under the Act. The annotation is intended to ensure that future purchasers of remediated inactive uranium mill sites and vicinity properties will be notified, prior to such purchase, of the condition of the land.

Timetable:

Action	Date	FR Cite
NPRM	04/14/89	54 FR 29732
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Additional Information: Public Law 104-259, signed into law on October 9, 1996, amended the annotation requirement to provide for States to receive certification from the Secretary for "a program which would achieve the purposes" of the annotation under section 104(d) of the UMTRCA in regards to vicinity properties. Letters have been sent to the affected States regarding the amendment language.

Agency Contact: David E. Mathes, Leader, Albuquerque/Nevada Team, Department of Energy, Small Sites Closure Office (EM-34), Cloverleaf Building, 19901 Germantown Road, Germantown, MD 20874-1290
Phone: 301 903-7222

RIN: 1901–AA57

Department of Energy (DOE)
Departmental and Others (ENDEP)

Completed Actions

696. ENFORCEMENT OF EMPLOYEE SAFETY STANDARDS AT NUCLEAR WEAPONS FACILITIES

Priority: Other Significant

Legal Authority: PL 102-190, sec 3131

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Public Law 102-190, section 3131, directs the Department of Energy to assess civil penalties against contractors at DOE nuclear weapons facilities who fail either to provide training to employees engaged in hazardous substance response and emergency response or fail to certify that such workers have been adequately trained.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/94	59 FR 44139
Withdrawn	03/25/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Harry Pettengill, Director, Occupational Health and Safety Policy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 301 903-4343

RIN: 1901–AA44

697. PRIVACY ACT SYSTEM OF RECORDS UPDATE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a

CFR Citation: 10 CFR 1008

Legal Deadline: None

Abstract: This action will amend the Department's Privacy Act Regulations, 10 CFR 1008, to add three additional systems of records to the list of systems of records that are exempt from certain provisions of the Privacy Act.

Timetable:

Action	Date	FR Cite
NPRM	06/14/01	66 FR 32272
Final Action	01/24/02	67 FR 4167

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Abel Lopez, Director, FOIA and Privacy Act Division, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-5955
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RIN: 1901–AA69

698. COMMUNITY TRANSITION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7274h

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Section 3161 of the National Defense Authorization Act for Fiscal Year 1993, 42 USC 7274h, provides authority for DOE to provide impact assistance to communities that are adversely affected by workforce restructuring. This action would establish the regulations governing the community transition program.

Timetable:

Action	Date	FR Cite
Withdrawn	03/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Baney, Office of Worker and Community Transition, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-3751

RIN: 1901–AA77

699. POLICY REVIEW OF THREE ISSUES ARISING UNDER BONNEVILLE POWER ADMINISTRATION'S NEW LARGE SINGLE LOAD (NLSL) POLICY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 839a(13)

CFR Citation: None

Legal Deadline: None

DOE—ENDEP

Completed Actions

Abstract: BPA is directed by law to determine whether large retail loads of consumer facilities served by a public body, cooperative, investor-owned utility, or Federal agency customer, whose power requirements increase or are in excess of 10 aMWs in any consecutive 12-month period, fall within the definition of NLSL. BPA may not sell electric power at the Priority Firm (PF) rate to utilities for service to NLSLs. Electric power sold by BPA for utility service to NLSLs is sold at the New Resources (NR) rate (which historically has been a higher rate), with one exception. Any load for which service by the utility customer was "committed to or contracted for" (CTCF) prior to September 1, 1979, is served at the lower PF rate. The BPA Administrator determines whether a consumer facility is a CFCT load. The Bonneville Power Administration (BPA) has invited public comment on three specific issues relating to its existing NLSL policy: (1) whether BPA should allow current and future direct service industry (DSI) customer production load served at BPA's Industrial Firm (IP) rate (or any other rate) to transfer and receive service from a public body, cooperative, or Federal agency customer at the PF rate; (2) whether a load at a facility previously determined to be a CTCF load should be allowed to receive service from a different BPA preference customer and retain its CTCF status; and (3) whether BPA should close the class of future CFCT loads after providing customers one last opportunity to identify and request, if any, a CFCT load determination by BPA. After receipt of public comments, BPA will determine whether changes to its current NLSL policy are warranted.

Timetable:

Action	Date	FR Cite
Notice	06/25/01	66 FR 33671
Comment Period End	08/10/01	
Record of Decision	11/01/01	66 FR 55171

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Fitzsimmons, Account Executive, PSW-6, Department of Energy, Bonneville Power Administration, 905 NE 11th Avenue, Portland, OR 97232
Phone: 503 230-3685

RIN: 1901–AA91

Department of Energy (DOE)
Office of Procurement and Assistance Management (PR)

Proposed Rule Stage

700. FINANCIAL ASSISTANCE REGULATION: ADMINISTRATIVE REQUIREMENTS RELATED TO FOR-PROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7173

CFR Citation: 10 CFR 600

Legal Deadline: None

Abstract: This action seeks comments on whether to issue a rule that prescribes administrative requirements for financial assistance awards tailored specifically to for-profit organizations.

Timetable:

Action	Date	FR Cite
ANPRM	05/08/01	66 FR 23197
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Trudy Wood, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1991–AB57

701. ENERGY DEPARTMENT MOTOR VEHICLE FLEET FUEL EFFICIENCY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201

CFR Citation: 48 CFR 947; 48 CFR 970.52

Legal Deadline: None

Abstract: This action would implement sections 403 and 505 of Executive Order 13101, Greening the Government through Federal Fleet and Transportation Efficiency.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB59

702. DEAR: PART 970 REWRITE CONTINUATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 7254

CFR Citation: 48 CFR 970; 48 CFR 901 to 952

Legal Deadline: None

Abstract: This action would revise part 970 and related parts of DEAR to eliminate provisions that are unnecessary, obsolete, or duplicated elsewhere in title 48.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
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DOE—PR — Proposed Rule Stage

Phone: 202 586-8175
RIN: 1991–AB60

Department of Energy (DOE) — **Final Rule Stage**
Office of Procurement and Assistance Management (PR)

703. DEAR: RECYCLING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 42 USC 486(c)

CFR Citation: 48 CFR 923; 48 CFR 970.52; 48 CFR 970.23

Legal Deadline: None

Abstract: This action would implement E.O. 13101, Greening the Government Through Recycling, Waste Prevention, and Federal Acquisition. It would increase the procurement of products containing recycled materials and reduce waste generation at DOE facilities.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71292
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
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RIN: 1991–AB47

704. DEAR: PURCHASING BY DOE MANAGEMENT AND OPERATING CONTRACTORS FROM AFFILIATED SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 909; 48 CFR 970

Legal Deadline: None

Abstract: This action would amend provisions that cover organizational conflicts of interest and purchases from affiliated sources to protect the Department in transactions involving a DOE M&O contractor and its affiliates.

Timetable:

Action	Date	FR Cite
NPRM	10/13/99	64 FR 55453
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8264

RIN: 1991–AB52

705. ACQUISITION REGULATION: PAYMENT OF FEE RELATING TO SECURITY ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 970

Legal Deadline: None

Abstract: This action would make the payment of fees to the Department's major operating contractors conditional on meeting safeguard and security requirements.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8560
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael L. Righi, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8175

RIN: 1991–AB54

706. DEAR: PATENT RIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 40 USC 486(c)

CFR Citation: 48 CFR 927; 48 CFR 970

Legal Deadline: None

Abstract: This action would update the Department's regulations on patent rights to reflect the current practices employed in its major facility contracts.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 68932
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert M. Webb, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8264

RIN: 1991–AB55

Department of Energy (DOE) — **Long-Term Actions**
Office of Procurement and Assistance Management (PR)

707. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689; PL 103-355, sec 2455

CFR Citation: 10 CFR 1036

Legal Deadline: None

Abstract: This Governmentwide rulemaking proposes changes to clarify and simplify the debarment and suspension process and drug-free workplace requirements.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Yee, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1140

RIN: 1991–AB56

Department of Energy (DOE) — **Completed Actions**
Office of Procurement and Assistance Management (PR)

708. CLASSIFIED NATIONAL SECURITY INFORMATION—E.O. 12958

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254; 42 USC 486(c)

CFR Citation: 48 CFR 904; 48 CFR 952; 48 CFR 970

Legal Deadline: None

Abstract: This action implements Executive Order 12958, which prescribes a uniform system for classifying, safeguarding, and declassifying national security information.

Timetable:

Action	Date	FR Cite
Final Action	03/28/02	67 FR 14873

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard B. Langston, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-8247
Email: richard.langston@pr.doe.gov

RIN: 1991–AB42

709. DEAR: TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7254

CFR Citation: 48 CFR 900 to 970

Legal Deadline: None

Abstract: This action would make corrections and technical changes to the Department of Energy Acquisition Regulations.

Timetable:

Action	Date	FR Cite
Final Action	03/28/02	67 FR 14869

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Denise Wright, Procurement Analyst, Department of Energy, Office of Procurement and Assistance Management, 1000 Independence Avenue, SW., Washington, DC 20588
Phone: 202 586-6217

RIN: 1991–AB51

Department of Energy (DOE) — **Final Rule Stage**
Office of General Counsel (OGC)

710. CONDUCT OF EMPLOYEES

Priority: Info./Admin./Other

Legal Authority: 42 USC 7211 et seq; PL 103-160, sec 3161; EO 12674

CFR Citation: 10 CFR 1010; 5 CFR 2635

Legal Deadline: None

Abstract: The DOE regulation on conduct of employees needs to be revised to reflect the issuance of the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635) and the repeal of conflict-of-interest provisions formerly applicable to DOE employees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/05/96	61 FR 35085
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Susan Beard, Deputy Assistant General Counsel for Standards of Conduct, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1522

RIN: 1990–AA19

711. CLAIMS FOR DAMAGES AGAINST DEPARTMENT OF ENERGY EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 2672; 42 USC 7101 et seq

CFR Citation: 10 CFR 1014

Legal Deadline: None

Abstract: This action would provide for the indemnification of employees or former employees of the Department of Energy who are personally liable to pay

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DOE—OGC **Final Rule Stage**

damages for their official acts or omissions as a result of an adverse judgment or settlement.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Susan Beard, Deputy Assistant General Counsel for Standards of Conduct, Department of Energy, Office of General Counsel, 1000 Independence Avenue SW., Washington, DC 20585
Phone: 202 586-1522

RIN: 1990–AA26

[FR Doc. 02–11124 Filed 05–10–02; 8:45 am]
BILLING CODE 6450–01–S



Federal Register

Monday,
May 13, 2002

Part VIII

Department of Health and Human Services

Semiannual Regulatory Agenda

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DEPARTMENT OF HEALTH AND HUMAN SERVICES (HHS)

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

21 CFR Ch. I

42 CFR Chs. I-V

45 CFR Subtitle A; Subtitle B, Chs. II, III, and XIII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of the Secretary, HHS.

ACTION: Semiannual agenda.

SUMMARY: The Regulatory Flexibility Act of 1980 and Executive Order 12866 require the semiannual publication of an inventory of all rulemakings that will be under development or review during the ensuing 12-month period. The purpose of this effort is to encourage more effective public participation in the regulatory process by publicly providing, at an early stage, information about regulatory actions that the Department is working on. All interested members of the public are thus invited to communicate to the Department their views on the rulemakings prospectively outlined below.

FOR FURTHER INFORMATION CONTACT: Ann Stallion, Department of Health and Human Services, Washington, DC 20201, (202) 690-7449, or the contact person for a specific component of the Department as listed below.

SUPPLEMENTARY INFORMATION: The regulatory actions capsulized below reflect an effort to present for public scrutiny a realistic forecast of the rulemaking activities that the Department will engage in over the next 12 months. Comments on the policy directions that these rulemakings will take should be sent to the agency representatives listed below, depending on the HHS component and the specific agenda entry that is of interest. Comments may be directed to the Office of the Secretary, if the responsible component of the Department is not apparent, or if a comment covers subjects crossing program lines.

Administration on Aging: Harry Posman, Executive Secretariat, Room 4741, 330 Independence Avenue SW., Washington, DC 20201; Phone (202) 260-0669.

Administration on Children and Families: Madeline Mocko, Director, Division of Policy and Legislation, 7th Floor, 370 L' Enfant Promenade SW., Washington, DC 20447; Phone (202) 401-9223.

Agency for Health Care Policy and Research: Phyllis Zucker, 2101 East Jefferson Street, Suite 603, Rockville, MD; 20852; Phone (301) 594-1455.

Centers for Disease Control and Prevention: Verla Neslund, Director, Executive Secretariat, 1600 Clifton Road, Building 16, Atlanta, GA 30333; Phone (404) 639-7120.

Centers for Medicare & Medicaid Services: Michelle Shorrt, Director, Division of Regulations and Issuances, 7500 Security Boulevard, C4-26-05, Baltimore, MD 21244; Phone (410) 786-4675.

Food and Drug Administration: Ed Dutra, Director, Regulatory Policy and Management Staff, 5600 Fishers Lane, Rockville, MD 20857; Phone (301) 827-3480.

Health Resource Services Administration: Dolores R. Etherith, 5600 Fishers Lane, Room 14-A-08, Rockville, MD 20857; Phone (301) 443-1786.

Indian Health Service: Betty Gould, 12300 Twinbrook Parkway, Suite 450, Rockville, MD 20857; Phone (301) 443-1116.

National Institutes of Health: Jerry Moore, 9000 Rockville Pike, Building 31, Room 1B25, Bethesda, MD 20205; Phone (301) 496-4606.

Office of the Secretary: Ann C. Agnew, Executive Secretary to the Department, Room 603H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201; Phone (202) 690-7699.

Substance Abuse and Mental Health Services Administration: Joe Faha, 5600 Fishers Lane, Room 12-A-17, Rockville, MD 20857; Phone (301) 443-4640.

We have indicated as "withdrawn" numerous rulemakings mentioned in previous agendas because we do not plan any developmental work on them during the period covered by this agenda. Should work on these rulemakings begin again, appropriate new entries about them will appear in future agendas.

Dated: April 25, 2002.

Ann C. Agnew,

Executive Secretary to the Department.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
712	Safe Harbor for Arrangements Involving Federally Qualified Health Centers	0991-AB06
713	Implementing the Bioterrorism Prevention and Response Act of 2001	0991-AB15

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
714	Shared Risk Exception to the Safe Harbor Provisions	0991-AA91
715	Amending the Regulations Governing Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, Sex, and Age To Conform to the Civil Rights Restoration Act of 1987	0991-AB10

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Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
716	Revisions to 42 CFR Part 1003	0991-AB03
717	Civil Money Penalty Safe Harbor To Protect Payment of Medicare and Medigap Premiums for ESRD Beneficiaries	0991-AB04
718	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	0991-AB12
719	Modifications to Standards for Privacy of Individually Identifiable Health Information	0991-AB14

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
720	Safe Harbor for Ambulance Restocking	0991-AB05
721	Revisions and Technical Corrections to 42 CFR Chapter V	0991-AB09

Substance Abuse and Mental Health Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
722	Seclusion and Restraint for Non-Medical Residential Facilities	0930-AA10

Substance Abuse and Mental Health Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
723	Community Mental Health Services Block Grant	0930-AA08
724	Substance Abuse and Mental Health Services Administration Mental Health and Substance Abuse Emergency Response Criteria	0930-AA09

Centers for Disease Control and Prevention—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
725	Control of Communicable Diseases	0920-AA03
726	Amendments to Quality Assurance and Administrative Provision for Approval of Respiratory Protective Devices	0920-AA04

Centers for Disease Control and Prevention—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
727	Methods for Estimating Radiation Dose and Guidelines for Assessing Probability of Cancer for Energy Employees Occupational Illness Compensation Program	0920-AA05

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Centers for Disease Control and Prevention—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
728	DHHS Statement of Policy—Procedures for Designating Classes of Employees as Members of the Special Exposure Cohort Under the Energy Employee Occupational Illness Compensation Act of 2000	0920-AA07

Centers for Disease Control and Prevention—Completed Actions

Sequence Number	Title	Regulation Identification Number
729	Packaging and Handling of Infectious Substances and Select Agents	0920-AA02

Departmental Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
730	Implementation of the Equal Access to Justice Act in Agency Proceedings	0990-AA02

Departmental Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
731	Administrative Wage Garnishment	0990-AA05

Food and Drug Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
732	Requirements for Submission of In Vivo Bioequivalence Data	0910-AC23

Food and Drug Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
733	Over-the-Counter (OTC) Drug Review	0910-AA01
734	Establishment Registration and Product Listing for Drugs and Biologics	0910-AA49
735	Investigational New Drugs: Export Requirements for Unapproved New Drug Products	0910-AA61
736	Safety Reporting Requirements for Human Drug and Biological Products	0910-AA97
737	Blood Initiative	0910-AB26
738	Applications for FDA Approval to Market a New Drug; Complete Response Letter; Amendments to Unapproved Applications	0910-AB34
739	Current Good Manufacturing Practice for Medicated Feeds	0910-AB70
740	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements	0910-AB88
741	Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format	0910-AB91
742	Requirements Pertaining to Sampling Services and Private Laboratories Used in Connection With Imported Food	0910-AB96
743	Status Reports of Distribution and Use Information for Antimicrobial Animal Drug Products Used in Food-Producing Animals	0910-AC04
744	Control of Salmonella Enteritidis in Shell Eggs During Production and Retail	0910-AC14
745	Institutional Review Boards: Registration Requirements	0910-AC17
746	Aluminum in Large- and Small-Volume Parenterals Used in Total Parenteral Nutrition	0910-AC18
747	Use of Materials Derived From Bovine and Ovine Animals in FDA-Regulated Products	0910-AC19

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Food and Drug Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
748	Postmarketing Reports of Substandard or Ineffective Bulk Ingredients and Bulk Ingredients From Unapproved Sources	0910-AC20
749	Chronic Wasting Disease: Control of Food Products and Cosmetics Derived From Exposed Animal Populations	0910-AC21
750	Exception From General Requirements for Informed Consent; Request for Comments and Information	0910-AC25
751	Bar Code Label Requirements for Human Drug Products	0910-AC26
752	Medical Devices; Anesthesiology Devices; Proposed Reclassification of Pressure Regulators for Use With Medical Oxygen	0910-AC30
753	Medical Devices; Patient Examination and Surgeons' Gloves; Adulteration	0910-AC32
754	Amendments to the Performance Standard for Diagnostic X-Ray Systems and Their Major Components	0910-AC34

Food and Drug Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
755	Determination That Informed Consent Is Infeasible or Is Contrary to the Best Interest of Recipients	0910-AA89
756	Labeling for Human Prescription Drugs; Revised Format	0910-AA94
757	Use of Ozone-Depleting Substances	0910-AA99
758	FDA Export Reform and Enhancement Act of 1996; Reporting and Recordkeeping Requirements for Unapproved or Violative Products Imported for Further Processing or Incorporation and Later Export	0910-AB24
759	Revisions to the General Safety Requirements for Biological Products; Final Rule	0910-AB51
760	Supplements and Other Changes to an Approved Application	0910-AB61
761	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims	0910-AB66
762	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV (Lookback)	0910-AB76
763	Antibiotic Resistance Labeling	0910-AB78
764	Food Additives: Food Contact Substances Notification System	0910-AB94
765	Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission into the United States	0910-AB95
766	Efficacy Evidence Needed for Products To Be Used Against Toxic Substances When Human Studies Are Unethical	0910-AC05
767	Additional Safeguards for Children in Clinical Investigations of FDA Regulated Products	0910-AC07
768	Revocation of Conditions for Marketing Digoxin Products for Oral Use	0910-AC12
769	Postmarket Surveillance	0910-AC31
770	Redacting 510(k) Submissions	0910-AC33
771	Section 17 Best Pharmaceuticals for Children Act	0910-AC35

Food and Drug Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
772	Infant Formula: Requirements Pertaining to Good Manufacturing Practice, Quality Control Procedures, Quality Factors, Notification Requirements, and Records and Reports	0910-AA04
773	Investigational Use New Animal Drug Regulations **(Section 610 Review)**	0910-AB02
774	Eligibility Determination for Donors of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)	0910-AB27
775	Current Good Tissue Practice for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)	0910-AB28
776	Premarket Notice Concerning Bioengineered Foods	0910-AC15

Food and Drug Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
777	Exports; Notification and Recordkeeping Requirements	0910-AB16

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Food and Drug Administration—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
778	Foreign Establishment Registration and Listing	0910-AB21
779	Amendment of Regulations Regarding Certain Label Statements on Prescription Drugs	0910-AB39
780	State Certification of Mammography Facilities	0910-AB98
781	Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded	0910-AC22

Food and Drug Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0910-AA02	New Animal Drug Approval Process; Implementation of Title I of the Generic Animal Drug and Patent Term Restoration Act (GADPTRA)	03/20/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA19	Food Labeling Review	03/05/2002	Withdrawn
0910-AA20	Medical Foods	03/05/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA45	Current Good Manufacturing Practice; Amendment of Certain Requirements for Finished Pharmaceuticals	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA51	Bioavailability and Bioequivalence Requirements	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA86	Safety Reporting and Recordkeeping Requirements for Marketed OTC Drugs	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA90	Direct-to-Consumer Promotion Regulations	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AA98	Current Good Manufacturing Practice; Revision of Certain Labeling Controls	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB00	Radioactive Drugs for Basic Research	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB14	Administrative Practices and Procedures; Advisory Opinions and Guidelines	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB33	Antibiotic Drug Approval and Exclusivity	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB37	Expanded Access to Investigational Therapies	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB42	Electronic Submission of Postmarketing Safety Reports	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB43	Distinguishing Marks for Drug Products Containing Insulin	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB44	Pregnancy Labeling	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB49	Supplements and Other Changes to Approved New Animal Drug Applications	03/05/2002	Withdrawn
0910-AB50	Requirements for Liquid Medicated Feed and Free-Choice Medicated Feed	03/05/2002	Withdrawn

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Food and Drug Administration—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
0910-AB56	Natural Rubber-Containing Drugs; User Labeling	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB57	Bulk Drug Substances for Use in Pharmacy Compounding	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB58	Pharmacy and Physician Compounding of Drug Products	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB59	Drug Products That Present Demonstrable Difficulties for Compounding Because of Reasons of Safety or Effectiveness	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB60	Discontinuation of a Lifesaving Product	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB63	Positron Emission Tomography Drugs; Current Good Manufacturing Practice	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB68	Presubmission Conferences	03/05/2002	Withdrawn
0910-AB71	Implementation of the Import Tolerance Provisions of the Animal Drug Availability Act of 1996	03/05/2002	Withdrawn
0910-AB72	Mandatory HACCP Regulations for Manufacturers of Rendered Products	03/05/2002	Withdrawn
0910-AB73	Citizen Petitions; Actions That Can Be Requested by Petition; Denials, Withdrawals, and Referrals for Other Administrative Action	03/05/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB74	Surgeon's and Patient Examination Gloves; Reclassification	03/13/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB79	Fixed-Combination Prescription and Over-the-Counter Drugs for Human Use	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB80	180-Day Generic Drug Exclusivity for Abbreviated New Drug Applications	03/06/2002	Withdrawn
0910-AB81	Repackaging Approval Requirements	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB82	Stability Testing of Drugs	03/06/2002	Withdrawn
0910-AB90	Substances Prohibited From Use in Animal Food or Feed	03/05/2002	Withdrawn
0910-AB92	Fees Relating to Drugs; Waiver and Reduction of Fees	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB93	Periodic Testing for Certain Human Drug, Veterinary Drug, and Biological Product Final Specifications	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AB99	Medical Devices, Medical Device Establishment Registration and Listing Requirements; Amendment	03/13/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC00	Availability for Public Disclosure and Submission to FDA for Public Disclosure of Certain Data and Information Related to Gene Therapy or Xenotransplantation	03/05/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC01	Addition to the List of Drug Products That Have Been Withdrawn From the Market for Reasons of Safety or Effectiveness	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC02	Reporting Information Regarding Falsification of Data	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC03	Examination of Administrative Record and Other Advisory Committee Records	03/06/2002	Withdrawn - Publication is not projected in the next 12 months

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Food and Drug Administration—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
0910-AC08	Addition to the List of Drug Products That Have Been Withdrawn or Removed From the Market for Reasons of Safety or Effectiveness	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC09	Labeling Dietary Supplements for Women Who Are or May Become Pregnant	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC10	Overwrap for Inhalation Products Packaged in Low Density Polyethylene (LDPE) Containers	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC11	Implementing Court Decisions, ANDA Approvals, and 180-Day Exclusivity	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC13	Regulation of Carcinogenic Compounds Used in Food-Producing Animals; Definition of "No Residue"	03/20/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC16	Rescission of Substantially Equivalent Decisions and Rescission Appeal Procedures	03/05/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC24	Requirements for Medical Gas Containers and Closure Systems	03/06/2002	Withdrawn - Publication is not projected in the next 12 months
0910-AC27	Promotion and Charging For Investigational Drugs	03/06/2002	Withdrawn - Publication is not projected in the next 12 months

Health Resources and Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
782	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Medical Malpractice Payments Reporting Requirements	0906-AA41
783	Designation of Medically Underserved Populations and Health Professional Shortage Areas	0906-AA44
784	National Practitioner Data Bank for Adverse Information on Physicians and Other Health Care Practitioners: Reporting Adverse and Negative Actions	0906-AA57

Health Resources and Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
785	National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table	0906-AA55

Health Resources and Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
786	National Vaccine Injury Compensation Program: Revisions and Additions to the Vaccine Injury Table	0906-AA58
787	Adoption of the Interim Final Rule as a Final Rule With Amendments for Ricky Ray Hemophilia	0906-AA59

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Indian Health Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
788	Tribal Self-Governance Amendments	0917-AA05

Indian Health Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
789	Indian Child Protection and Family Violence Prevention Act Minimum Standards of Character	0917-AA02

National Institutes of Health—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
790	Undergraduate Scholarship Program Regarding Professions Needed by the NIH	0925-AA10
791	National Institutes of Health Loan Repayment Program for Research	0925-AA18
792	NIH Center Grants	0925-AA24
793	NIH Training Grants	0925-AA28

National Institutes of Health—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
794	Scientific Peer Review of Research Grant Applications and Research and Development Contract Projects	0925-AA20

National Institutes of Health—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
795	Standards for a National Chimpanzee Sanctuary System	0925-AA31

National Institutes of Health—Completed Actions

Sequence Number	Title	Regulation Identification Number
796	National Institutes of Health AIDS Research Loan Repayment Program	0925-AA02
797	National Cancer Institute Clinical Cancer Education Program	0925-AA17
798	National Institute of Child Health and Human Development Contraception and Infertility Research Loan Repayment Program	0925-AA19
799	National Institutes of Health Clinics Research Loan Repayment Program for Individuals From Disadvantaged Backgrounds	0925-AA25
800	NIH Loan Repayment Program for Minority Health Disparities Research	0925-AA26
801	Pediatric Research Loan Repayment Program	0925-AA27
802	National Institutes of Health Loan Repayment Program for Clinical Researchers	0925-AA30

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Office of Public Health and Science—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
803	Public Health Services Policies on Research Misconduct	0940-AA04

Office of Public Health and Science—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
804	Public Health Service Standards for the Protection of Research Misconduct Whistleblowers	0940-AA01

Office of Public Health and Science—Completed Actions

Sequence Number	Title	Regulation Identification Number
805	Federal Policy (Common Rule) for the Protection of Human Subjects	0940-AA03
806	Protection of Human Research Subjects	0940-AA05

Centers for Medicare & Medicaid Services—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
807	Requirements for Establishing and Maintaining Medicare Billing Privileges (CMS-6002-P)	0938-AH73
808	National Standard for Identifiers of Health Plans (CMS-1212-P)	0938-AH87
809	Medicare Hospice Care Amendments (CMS-1022-P)	0938-AJ36
810	End-Stage Renal Disease Bad Debt Payment (CMS-1126-P)	0938-AK02
811	Conditions of Participation of Intermediate Care Facilities for Persons With Mental Retardation (CMS-3046-P)	0938-AK23
812	Review of National Coverage Determinations and Local Coverage Determinations (CMS-3063-P)	0938-AK60
813	Revised Process for Making Medicare Coverage Determinations (NCDs) (CMS-3062-N)	0938-AK61
814	Health Insurance Reform: Claims Attachments Standards (CMS-0050-P)	0938-AK62
815	Health Insurance Reform: Modifications to Standards for Electronic Transactions (CMS-0003-P)	0938-AK64
816	Rate of Reimbursement of Photocopy Expenses for Prospective Payment System Providers (CMS-3055-P)	0938-AK68
817	Modifications to Medicare Managed Care Rules (CMS-4041-P)	0938-AK71
818	Revisions to Transaction and Code Set Standards for Electronic Transactions (CMS-0005-P)	0938-AK76
819	Elimination of Statement of Intent Procedures for Filing Medicare Claims (CMS-1185-P)	0938-AK79
820	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates (CMS-1206-P)	0938-AL19
821	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2003 (CMS-1202-P)	0938-AL20
822	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 (CMS-1204-P)	0938-AL21
823	Hospital Inpatient Rehabilitation Prospective Payment System for FY 2003 (CMS-1205-N)	0938-AL22
824	Hospital Inpatient Prospective Payment System for FY 2003 (CMS-1203-P)	0938-AL23
825	Payment for Respiratory Assist Devices with Bi-Level Capability and a Back-Up Rate (CMS-1167-P)	0938-AL27
826	Self-Declaration of Citizenship (CMS-2085-P)	0938-AL33
827	Hospice Wage Index for FY 2003 (CMS-1211-N)	0938-AL41
828	Electronic Submission of Cost Reports (CMS-1199-P)	0938-AL51
829	Health Insurance Reform: National Standard for Identifiers of Health Plans (CMS-1212-F)	0938-AL52
830	Revised Civil Money Penalties, Assessments, Exclusions, and Related Appeals Procedures (CMS-6146-P)	0938-AL53
831	Effect of Change of Ownership on Provider and Supplier Penalties (CMS-2215-P)	0938-AL72
832	Health Coverage Portability: Tolling Certain Time Periods and Interactions With Family and Medical Leave Act (CMS-2158-P)	0938-AL88
833	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates (CMS-1471-P)	0938-AL91

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Centers for Medicare & Medicaid Services—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
834	Security Standards (CMS-0049-F)	0938-AI57
835	National Standard Employer Identifier (CMS-0047-F)	0938-AI59
836	External Quality Review of Medicaid Managed Care Organizations (CMS-2015-F)	0938-AJ06
837	Rural Health Clinics: Amendments to Participation Requirements and Payment Provisions, and Establishment of a Quality Assessment and Improvement Program (CMS-1910-F)	0938-AJ17
838	Hospital Conditions of Participation: Laboratory Services (CMS-3014-F)	0938-AJ29
839	Non-Federal Governmental Plans Exempt From Health Insurance Portability Requirements (CMS-2033-IFC)	0938-AK00
840	Fire Safety Requirements for RNHCI, ASC, Hospices, PACE, Hospitals, and Long-Term Care Facilities and ICFs for the Mentally Retarded (CMS-3047-P)	0938-AK35
841	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (CMS-3050-F)	0938-AK40
842	Supplementary Medical Insurance Premium Surcharge Agreements (CMS-4007-F)	0938-AK42
843	Payment for Upgraded Durable Medical Equipment; Withdrawal of Proposed Rule (CMS-1084-WN)	0938-AK50
844	Prospective Payment System for Long-Term Care Hospitals for FY 2003 (CMS-1177-P)	0938-AK69
845	Medicare Inpatient Disproportionate Share Hospital (DSH) Adjustment Formula (CMS-1171-IFC)	0938-AK77
846	State Allotments for Payment of Medicare Part B Premiums for Qualified Individuals; Federal Fiscal Year 2001 (CMS-2087-PN)	0938-AK91
847	Medicaid Managed Care; New Provisions (CMS-2104-F)	0938-AK96
848	Modifications to the State Children's Health Insurance Program (CMS-2006-F)	0938-AL00
849	Home Health Prospective Payment System Rate Update for FY 2003 (CMS-1198-NC)	0938-AL16
850	Medicare Program; Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative (CMS-4027-P)	0938-AL28
851	Peer Review Organizations: Name and Other Changes—Technical Amendments (CMS-3088-FC)	0938-AL38
852	End-Stage Renal Disease—Rescission of Waiver of Conditions for Coverage Under a State of Emergency in Houston, Texas Area (CMS-3074-F2)	0938-AL39
853	Prospective Payment System for Inpatient Rehabilitation Hospital; Correcting Amendment (CMS-1069-F2)	0938-AL40
854	Physician Fee Schedule for CY 2002: Correction Notice (CMS-1169-CN)	0938-AL48
855	Notice of Modification of Beneficiary Assessment Requirements for Skilled Nursing Facilities (CMS-1209-N)	0938-AL55
856	Inpatient Hospital Deductible and Hospital and Extended Care Services Coinsurance Amounts for Calendar Year 2003 (CMS-8013-N)	0938-AL56
857	Revision of the Procedures for Requesting Exceptions to Cost Limits for Skilled Nursing Facilities and Elimination of Reclassifications; Correction (CMS-1883-F3)	0938-AL61
858	Monthly Actuarial Rates and Monthly Supplementary Medical Insurance Premium Rate Beginning January 1, 2003 (CMS-8014-N)	0938-AL63
859	Request for Information on Benefit-Specific Waiting Periods (CMS-2150-N)	0938-AL64
860	Part A Premiums for 2003 for the Uninsured Aged and for Certain Disabled Individuals Who Have Exhausted Other Entitlement (CMS-8015-N)	0938-AL69
861	Medicaid Managed Care: Withdrawal (CMS-2001-F4)	0938-AL83
862	FY 1999 SCHIP Reallocation Notice (CMS-2137-N)	0938-AL86

Centers for Medicare & Medicaid Services—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
863	"Without Fault" and Beneficiary Waiver of Recovery As It Applies to Medicare Overpayment Liability (CMS-6007-F)	0938-AD95
864	Revision of Medicare/Medicaid Hospital Conditions of Participation (CMS-3745-F)	0938-AG79
865	Home Health Agency (HHA) Conditions of Participation (CoPs) (CMS-3819-FC)	0938-AG81
866	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**	0938-AG82
867	Criteria for Approval of Facilities to Perform Covered Heart, Liver, Lung, Pancreas, and Intestinal Transplants (CMS-3835-P)	0938-AH17
868	Hospice Care—Conditions of Participation (CMS-3844-P)	0938-AH27
869	Medicare and Medicaid Programs; Terms, Definitions, and Addresses: Technical Amendments (CMS-9877-F)	0938-AH53
870	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS-0045-F)	0938-AH99
871	Medical Child Support and Health Insurance Coverage of Dependent Children (CMS-2081-P)	0938-AI21
872	Appeals of Carrier Determination That a Supplier Fails To Meet the Requirements for Medicare Billing Privileges (CMS-6003-F)	0938-AI49
873	Coverage of Religious Non-Medical Health Care Institutions (CMS-1909-F)	0938-AI93

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Sequence Number	Title	Regulation Identification Number
874	Reporting Outcome and Assessment Information Set (OASIS) Data as Part of the Conditions of Participation for Home Health Agencies (CMS-3006-F)	0938-AJ10
875	Use of Restraint and Seclusion in Residential Treatment Facilities Providing Inpatient Psychiatric Services to Individuals Under Age 21 (CMS-2065-F)	0938-AJ96
876	Application of Inherent Reasonableness to All Medicare Part B Services (Other than Physician Services) (CMS-1908-F)	0938-AJ97
877	Supplier Standards for Home Oxygen, Therapeutic Shoes, Home Nutrition Therapy, and Consignment Closets (CMS-6010-P)	0938-AJ98
878	Clinical Lab Requirements—Revisions to Regulations Implementing CLIA (CMS-2226-F)	0938-AK24
879	Improvements to the Medicare+Choice Appeals and Grievance Procedures (CMS-4024-F)	0938-AK48
880	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships—Phase II (CMS-1810-FC)	0938-AK67
881	Organ Procurement Organization Condition for Coverage (CMS-3064-IFC)	0938-AK81
882	Modifications to Managed Care Rules Based on Payment Provisions in BIPA and Technical Corrections (CMS-4040-F)	0938-AK90
883	Extending Medicare Entitlement When Disability Benefit Entitlement Ends Because of Substantial Gainful Activity (CMS-4018-P)	0938-AK94
884	Medicare Limits on the Valuation of a Depreciable Asset Recognized as an Allowance for Depreciation and Interest on Capital Indebtedness After a Change of Ownership (CMS-1004-F)	0938-AL12
885	Update Interest Assessment on Medicare Overpayment and Underpayment (CMS-6014-P)	0938-AL14
886	Requirements for Paid Feeding Assistants in Long-Term Care Facilities (CMS-2131-P)	0938-AL18
887	Use of Restraint and Seclusion in Medicare and Medicaid Participating Facilities that Provide Inpatient or Residential Care (CMS-2130-P)	0938-AL26
888	Medicare-Endorsed Prescription Drug Discount Card Assistance Initiative for State Sponsors (CMS-4032-P)	0938-AL30
889	State Children's Health Insurance Program; Eligibility for Unborn Children (CMS-2127-F)	0938-AL37
890	Health Coverage Portability for Group Health Plans and Group Health Insurance Issuers (CMS-2151-F)	0938-AL43
891	Interim Final Amendment for Mental Health Parity (CMS-2152-IFC)	0938-AL44
892	Permitting Premium Reductions as Additional Benefits Under Medicare+Choice Plans (CMS-1208-P)	0938-AL49
893	Prospective Payment System for Psychiatric Hospitals (CMS-1213-P)	0938-AL50
894	Provider Reimbursement Determinations and Appeals (CMS-1727-P)	0938-AL54
895	Definition of Severe Medically Determinable Impairment (CMS-2143-P)	0938-AL57
896	Program for All-Inclusive Care for the Elderly (PACE): Program Revisions (CMS-1201-IFC)	0938-AL59
897	SCHIP; Purchase of Family Coverage—Benefit Flexibility in Parent Coverage (CMS-2148-P)	0938-AL62
898	Revisions to Medicaid Cost-Sharing Regulations (CMS-2144-P)	0938-AL66
899	Revisions to the Medicare Appeals Process (CMS-4004-P)	0938-AL67
900	Notice of Intent to Conduct Negotiated Rulemaking for Special Payment Provisions and Standards for Suppliers of Custom-Fabricated Orthotics and Prosthetics (CMS-6012-N)	0938-AL68
901	DMERC Service Areas and Related Matters (CMS-1219-P)	0938-AL76
902	State Allotments for Payment of Medicare Part B Premiums for Qualifying Individuals; Federal Fiscal Year 2002 (CMS-2136-PN)	0938-AL79
903	Revisions to Conditions for Coverage for Ambulatory Surgical Centers (CMS-3887-P)	0938-AL80
904	Flexibility in Payment Methods for Services of Hospitals, Nursing Facilities, and Intermediate Care Facilities for the Mentally Retarded (CMS-2004-F)	0938-AL81
905	Continue to Allow States an Option Under the Medicaid Spousal Impoverishment Provisions to Increase the Community Spouse's Income When Adjusting the Protected Resource Allowance (CMS-2128-F)	0938-AL84
906	Medicaid Coverage Rules for Inmates of Public Institutions (CMS-2077-P)	0938-AL85
907	Targeted Case Management (CMS-2061-P)	0938-AL87
908	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS-1470-P)	0938-AL89
909	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2004 (CMS-1469-P)	0938-AL90
910	Prospective Payment System for Long-Term Care Hospitals: FY 2004 (CMS-1472-P)	0938-AL92
911	Prospective Payment System for Psychiatric Hospitals (CMS-1477-P)	0938-AL93
912	Home Health Prospective Payment System Rate Update for FY 2004 (CMS-1473-NC)	0938-AL94
913	Prospective Payment System for Inpatient Rehabilitation Hospitals (CMS-1474-P)	0938-AL95
914	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS-1476-P)	0938-AL96

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Centers for Medicare & Medicaid Services—Completed Actions

Sequence Number	Title	Regulation Identification Number
915	Medicare Program; Coverage and Administrative Policies for Clinical Diagnostic Laboratory Tests (CMS-3250-F)	0938-AI92
916	Fee Schedule for Payment of Ambulance Services and Revisions to the Physician's Certification Requirements for Coverage of Nonemergency Ambulance Services (CMS-1002-FC)	0938-AK30
917	Medicare Program; Reporting and Repayment of Overpayments (CMS-6011-P)	0938-AK45
918	Prospective Payment System for Hospital Outpatient Services: Criteria for Establishing New Pass-Through Categories for Medical Devices (CMS-1179-IFC)	0938-AK59
919	Qualification Requirements for Directors of Laboratories Performing High Complexity Testing (CMS-2094-P)	0938-AK83
920	Medicaid Upper Payment Limit for Non-State Government-Owned or -Operated Hospitals (CMS-2134-F)	0938-AL05
921	Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships; Delay of Effective Date of the "Set in Advance" Provision (CMS-1809-IFC)	0938-AL29
922	Deductible Amount for Medigap High Deductible Options for Calendar Year 2002 (CMS-2135-N)	0938-AL34
923	Prospective Payment System for Hospital Outpatient Services; Delay in Effective Date of Calendar Year 2002 Payment Rates and the Pro Rata Reduction on Transitional Pass-Through Payment (CMS-1159-F3)	0938-AL35
924	Disapproval of Alcon Laboratories Request for an Adjustment in Payment Amounts for New Technology Intraocular Lenses Furnished by Ambulatory Surgical Centers (CMS-3061-FN)	0938-AL36
925	Correction of Certain Calendar Year 2003 Payment Rates Under the Hospital Outpatient Prospective Payment System and the Pro Rata Reduction on Transitional Pass-Through Payment (CMS-1159-F4)	0938-AL42
926	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Correction Notice (CMS-1163-CN)	0938-AL47

Centers for Medicare & Medicaid Services—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0938-AH81	Update of Ratesetting Methodology, Payment Rates and the List of Covered Surgical Procedures for Ambulatory Surgical Centers (CMS-1885-FC)	03/03/2002	Withdrawn
0938-AI48	Surety Bond Requirements for Comprehensive Outpatient Rehabilitation Facilities, Rehabilitation Agencies (CMS-6005-P)	03/06/2002	Withdrawn
0938-AI75	Advance Refunding of Debt and Methodology for Repayment of Loan (CMS-1777-P)	03/20/2002	Withdrawn
0938-AI89	Medicare Coverage of, and Payment for, Bone Mass Measurements (CMS-3004-F)	03/06/2002	Withdrawn
0938-AJ39	Emergency Medical Treatment and Labor Act (EMTALA) (CMS-1063-P)	03/03/2002	Withdrawn
0938-AJ44	Protection for Women Who Elect Reconstruction After a Mastectomy (CMS-2040-IFC)	03/04/2002	Withdrawn
0938-AJ64	Surety Bonds Requirements for Suppliers of Durable Medical Equipment (CMS-6006-P)	03/14/2002	Withdrawn
0938-AJ81	Surety Bond Requirements for Home Health Agencies (HHAS) (CMS-6001-P)	03/14/2002	Withdrawn
0938-AK15	Payment for Clinical Psychology Training Programs (CMS-1089-F)	03/03/2002	Withdrawn
0938-AK39	Medicare Provider and Supplier Hearing Procedures (CMS-2093-P)	03/06/2002	Withdrawn
0938-AK43	Medical Devices Coverage Decisions Related to Health Care Technology (CMS-3059-P)	03/20/2002	Withdrawn
0938-AK53	Recognition of the American Osteopathic Association for Ambulatory Surgical Center Programs (CMS-2079-FN)	03/04/2002	Withdrawn
0938-AK63	Health Insurance Reform: Standards for Electronic Signatures (CMS-0051-F)	03/03/2002	Withdrawn
0938-AK87	Hospital Reference Laboratory and Medicare Secondary Payer (CMS-1187-P)	03/03/2002	Withdrawn
0938-AK88	Portability in the Group Health Insurance Market—Shared HHS Provisions (CMS-2048-F)	03/20/2002	Withdrawn
0938-AK92	Extended Medicaid for Certain Families Who Lose Medicaid Eligibility Because of Earned Income and the Residency of Minor Parents and Pregnancy (CMS 2026-F)	03/04/2002	Withdrawn
0938-AK93	Home Health Prospective Payment System Refinements (CMS-1161-P)	03/20/2002	Withdrawn
0938-AK99	Relief From Medicare Part A Late Enrollment Penalty for Group Buy-In for State and Local Retirees (CMS-4022-P)	03/20/2002	Withdrawn

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Centers for Medicare & Medicaid Services—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
0938-AL06	Continue To Allow States an Option Under the Medicaid Spousal Impoverishment Provisions To Increase the Community Spouse's Income When Adjusting the Protected Resource Allowance (CMS-2128-P)	03/06/2002	Withdrawn
0938-AL45	Requirements for Long-term Care Facilities (CMS-3096-P)	03/06/2002	Withdrawn

Administration for Children and Families—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
927	Program Performance Standards for the Operation of Head Start Programs	0970-AB99
928	Safeguarding Child Support and Expanded FPLS Information	0970-AC01
929	Developmental Disabilities and Bill of Rights Act	0970-AC07

Administration for Children and Families—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
930	Construction and Major Renovation of Head Start and Early Head Start Facilities	0970-AB54
931	Child Support Enforcement for Indian Tribes	0970-AB73
932	Child Support Enforcement Program Omnibus Conforming Regulation	0970-AB81
933	Family Child Care Program Option for Head Start Programs	0970-AB90
934	Technical Revision of Head Start Regulations To Make Them Conform to Recent Statutory Revisions	0970-AC00

Administration for Children and Families—Completed Actions

Sequence Number	Title	Regulation Identification Number
935	High Performance Bonus Awards Under the TANF Program	0970-AC06

Administration on Aging—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
936	Grants for State and Community Programs on Aging, Training, Research, and Discretionary Programs; Vulnerable Elder Rights; and Grants to Indians and Native Hawaiians	0985-AA00

Department of Health and Human Services (HHS) — **Proposed Rule Stage**
Office of the Secretary (OS)

712. SAFE HARBOR FOR ARRANGEMENTS INVOLVING FEDERALLY QUALIFIED HEALTH CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 100-93, sec 14(a)

CFR Citation: 42 CFR 1001

Legal Deadline: None

Abstract: This rule would set forth a new anti-kickback safe harbor addressing remuneration between Federal Qualified Health Centers and certain service providers where a significant community benefit exists.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

HHS—OS — **Proposed Rule Stage**

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201 Phone: 202 619-0089

Related RIN: Related To 0991-AA91

RIN: 0991–AB06

713. IMPLEMENTING THE BIOTERRORISM PREVENTION AND RESPONSE ACT OF 2001

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: A variety of regulations will be required once the Bioterrorism Prevention and Response Act has been signed into law. These regulations would implement provisions that address, among other things, biological agents that have the potential to pose a national security threat, provisions relating to foods including recordkeeping regarding foods, food-shipment importation procedures and related matters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Alex Azar, General Counsel, Department of Health and Human Services, Office of the Secretary Phone: 202 690-7741

RIN: 0991–AB15

Department of Health and Human Services (HHS) — **Final Rule Stage**
Office of the Secretary (OS)

714. SHARED RISK EXCEPTION TO THE SAFE HARBOR PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1320a-7b; 42 USC 1395hh; PL 104-191, sec 216(b)

CFR Citation: 42 CFR 1001

Legal Deadline: Final, Statutory, January 1, 1997.

Abstract: This final rule establishes a new statutory exception for risk-sharing arrangements under the Federal health care programs' anti-kickback provisions. The rule sets forth an exception from liability for remuneration between an eligible organization and an individual or entity providing items or services in accordance with a written agreement between these parties. The rule allows remuneration between an organization and an individual or entity if a written agreement places the individual or entity at "substantial financial risk" for the cost or utilization of the items or services that the individual or entity is obligated to provide.

Timetable:

Action	Date	FR Cite
ANPRM	05/23/97	62 FR 28410
ANPRM Comment Period End	06/09/97	
Interim Final Rule	11/19/99	64 FR 63504
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Interim final regulations were published on November 19, 1999 (64 FR 63504) and are currently in effect. See 42 CFR 1001.952(t) and (u).

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201 Phone: 202 619-0089

Related RIN: Related To 0991-AB06

RIN: 0991–AA91

715. AMENDING THE REGULATIONS GOVERNING NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, SEX, AND AGE TO CONFORM TO THE CIVIL RIGHTS RESTORATION ACT OF 1987

Priority: Other Significant

Legal Authority: PL 100-259, Civil Rights Restoration Act of 1987

CFR Citation: 45 CFR 80; 45 CFR 84; 45 CFR 86; 45 CFR 90; 45 CFR 91

Legal Deadline: None

Abstract: The Secretary proposes to amend the Department's regulations implementing title VI of the Civil Rights Act of 1964, as amended, section 504 of the Rehabilitation Act of 1973, as amended, title IX of the Education Amendments of 1972, and the Age Discrimination Act of 1975, as amended. The principal proposed conforming change is to amend the regulations to add the definitions of "program or activity" or "program" that correspond to the statutory definitions enacted under the Civil Rights Restoration Act of 1987.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal, Tribal

Agency Contact: Robinsue Frohboese, Acting Director, Office for Civil Rights, Department of Health and Human Services, Office of the Secretary Phone: 202 619-0403

RIN: 0991–AB10

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Department of Health and Human Services (HHS)
Office of the Secretary (OS)
Long-Term Actions

716. REVISIONS TO 42 CFR PART 1003

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1320a-7a; 42 USC 1395mm; 42 USC 1395w-27; 42 USC 1396b; 42 USC 1396u-2

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: This proposed rule would revise part 1003, addressing the Office of Inspector General's authority to propose the imposition of civil money penalties and assessments, by reorganizing and simplifying existing regulatory text and eliminating obsolete references contained in the current regulations. Among the proposed revisions, this rule would establish separate subparts within part 1003 for various categories of violations; modify the current definition for the term "claim;" update various references to managed care organization authorities; and clarify the application of section 1140 of the Social Security Act with respect to the misuse of certain Departmental symbols, emblems or names through Internet and e-mail communications.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991–AB03

717. CIVIL MONEY PENALTY SAFE HARBOR TO PROTECT PAYMENT OF MEDICARE AND MEDIGAP PREMIUMS FOR ESRD BENEFICIARIES

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1128A(a)(5)

CFR Citation: 42 CFR 1003

Legal Deadline: None

Abstract: The proposed final rule would set forth in the OIG's civil money penalty provisions in 42 CFR part 1003 a new safe harbor for unlawful inducements to beneficiaries to provide protection for independent dialysis facilities that pay, in whole or in part, premiums for Supplementary Medical Insurance (Medicare part B) or Medicare Supplemental Health Insurance policies (Medigap) for financially needy Medicare beneficiaries with end-stage renal disease (ESRD). The safe harbor would specifically establish various standards that, if met, would result in the particular arrangement being protected from civil penalties under section 1128A(a)(5) of the Social Security Act.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer, Regulations Officer, Department of Health and Human Services, Office of the Secretary, Office of Inspector General (OCIG), 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0089

RIN: 0991–AB04

718. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 41 USC 701 et seq, sec 2455; PL 103-355; 31 USC 6101 note; EO 12689; EO 12549

CFR Citation: 45 CFR 76; 45 CFR 82

Legal Deadline: None

Abstract: This proposed common rule is revised to simplify and streamline nonprocurement debarment and suspension requirements, as well as correspond to procurement regulations where possible. The revision will separate the debarment and suspension and Drug-Free Workplace regulations, and will be written in the plain language format.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Osterhus, Federal Assistance Policy Specialist, Department of Health and Human Services, Office of the Secretary, Room 517D, Office of Grants and Acquisition Management, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 690-5729
Fax: 202 690-6901
Email: diane.osterhus@hhs.gov

RIN: 0991–AB12

719. MODIFICATIONS TO STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 1320d-2; 42 USC 1320d-3; PL 104-191, sec 262; PL 104-191, sec 264

CFR Citation: 45 CFR 160; 45 CFR 164

Legal Deadline: None

Abstract: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) required the Department of Health and Human Services (the Department) to issue standards for health plans, health care clearinghouses, and certain health care providers to protect the privacy of individually identifiable health information. The Department published these standards, entitled "Standards for Privacy of Individually Identifiable Health Information" (the Privacy Rule), as a final rule on December 28, 2000. The final rule was effective on April 14, 2001. The proposed rule would amend the Privacy Rule to, among other things, support the delivery of the highest quality of health care to patients and address concerns regarding the workability of the rule for entities subject to its requirements.

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Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14775
NPRM Comment Period End	04/26/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Susan McAndrew, Senior Health Information, Policy Specialist, Department of Health and Human Services, Office of the Secretary, Office for Civil Rights, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 205-8725

RIN: 0991–AB14

Department of Health and Human Services (HHS)
Office of the Secretary (OS)
Completed Actions

720. SAFE HARBOR FOR AMBULANCE RESTOCKING

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 1001

Completed:

Reason	Date	FR Cite
Final Action	12/04/01	66 FR 62679

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joel Jay Schaer
Phone: 202 619-0089

RIN: 0991–AB05

721. REVISIONS AND TECHNICAL CORRECTIONS TO 42 CFR CHAPTER V

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 1001; 42 CFR 1003; 42 CFR 1008

Completed:

Reason	Date	FR Cite
Final Action	03/18/02	67 FR 11928

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Joel Jay Schaer
Phone: 202 619-0089

RIN: 0991–AB09

Department of Health and Human Services (HHS)
Substance Abuse and Mental Health Services Administration (SAMHSA)
Long-Term Actions

722. SECLUSION AND RESTRAINT FOR NON-MEDICAL RESIDENTIAL FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-310

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, April 2001.

Abstract: The Secretary is required by statute to publish regulations governing States that license non-medical, community-based residential facilities for children and youth. The regulation requires States to develop licensing rules and monitoring requirements concerning behavior management practice that will ensure compliance; requires States to develop and implement such licensing rules and implementation requirements within one year; and ensures that States require such facilities to have adequate staff and that the States provide training for professional staff.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Joseph Denis Faha, Director, DLEA, SAMHSA, Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Room 12C-15, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443-7017
Fax: 301 443-1450
Email: jfaha@samhsa.gov

RIN: 0930–AA10

Department of Health and Human Services (HHS)
Substance Abuse and Mental Health Services Administration (SAMHSA)
Completed Actions

723. COMMUNITY MENTAL HEALTH SERVICES BLOCK GRANT

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 96

Completed:

Reason	Date	FR Cite
Withdrawn	03/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Joseph Denis Faha
Phone: 301 443-7017
Fax: 301 443-1450
Email: jfaha@samhsa.gov

RIN: 0930–AA08

724. SUBSTANCE ABUSE AND MENTAL HEALTH SERVICES ADMINISTRATION MENTAL HEALTH AND SUBSTANCE ABUSE EMERGENCY RESPONSE CRITERIA

Priority: Other Significant

CFR Citation: 42 CFR 51d

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HHS—SAMHSA — **Completed Actions**

Completed:

Reason	Date	FR Cite
Interim Final Rule	10/11/01	66 FR 51873

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Denis Faha
Phone: 301 443-7017
Fax: 301 443-1450
Email: jfaha@samhsa.gov

RIN: 0930–AA09

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC) — **Proposed Rule Stage**

725. CONTROL OF COMMUNICABLE DISEASES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 264; 42 USC 271

CFR Citation: 42 CFR 70; 42 CFR 71

Legal Deadline: None

Abstract: This proposal updates existing regulations related to prevention of the introduction, transmission, or spread of communicable diseases from foreign countries to the U.S. and from State to State. The regulation addresses the process by which persons infected with, or who have been exposed to, modern communicable diseases should be quarantined; surveillance of quarantined persons and requirements for carriers (e.g., airlines, etc.) to maintain passenger manifests for a determined period of time.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: John Moore, Department of Health and Human Services, Centers for Disease Control and Prevention, 1600 Clifton Road NE., Atlanta, GA 30333
Phone: 404 639-7070

RIN: 0920–AA03

726. AMENDMENTS TO QUALITY ASSURANCE AND ADMINISTRATIVE PROVISION FOR APPROVAL OF RESPIRATORY PROTECTIVE DEVICES

Priority: Other Significant

Legal Authority: 29 USC 651 et seq; 30 USC 3; 30 USC 5; 30 USC 7; 30 USC 811; 30 USC 842(h); 30 USC 844

CFR Citation: 42 CFR 84

Legal Deadline: None

Abstract: NIOSH plans to modify the Administrative/Quality Assurance sections of 42 CFR part 84, Approval of Respiratory Protective Devices. Areas for potential modification in this module are: 1) upgrade of Quality Assurance requirements; 2) ability to use private sector quality auditors and private sector testing laboratories in the approval program; 3) revised approval label requirements; 4) updated and restructured fee schedule; and 5) fee retention in the respirator program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roland Berry Ann, Team Leader, Policy Development, Respirator Branch, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, P04, 1095 Willowdale Road, Morgantown, WV 26505
Phone: 304 285-5907

RIN: 0920–AA04

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC) — **Final Rule Stage**

727. METHODS FOR ESTIMATING RADIATION DOSE AND GUIDELINES FOR ASSESSING PROBABILITY OF CANCER FOR ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 73847; EO 13179

CFR Citation: 42 CFR 81; 42 CFR 82

Legal Deadline: None

Abstract: Pursant to Executive Order 13179, which implements section 3623 of the Energy Employees Occupational Illness Compensation Program Act, Public Law 106-398, NIOSH plans to finalize regulations to establish: 1) guidelines to assess the likelihood that an individual with cancer sustained that cancer in the performance of duty at a Department of Energy facility, or an atomic weapons employer facility, as defined in that Act; and 2) methods for arriving at, and providing reasonable estimates of, the radiation doses received by individuals applying for assistance under this program for whom there are inadequate records of radiation exposure.

Timetable:

Action	Date	FR Cite
Final Rule	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Larry Elliott, Director, Office of Compensation Analysis and Support, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, R44, 5555 Ridge Avenue, Cincinnati, OH 45213
Phone: 513 841-4400

RIN: 0920–AA05

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC) — **Long-Term Actions**

728. • DHHS STATEMENT OF POLICY—PROCEDURES FOR DESIGNATING CLASSES OF EMPLOYEES AS MEMBERS OF THE SPECIAL EXPOSURE COHORT UNDER THE ENERGY EMPLOYEE OCCUPATIONAL ILLNESS COMPENSATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7384g; EO 13129

CFR Citation: None

Legal Deadline: None

Abstract: Pursuant to the Energy Employees Occupational Illness Compensation Program Act, HHS plans to propose procedures to petition the Secretary to be added to the Special Exposure Cohort.

Timetable:

Action	Date	FR Cite
Statement of Proposed Procedures	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Elliott, Director, Office of Compensation Analysis and Support, Department of Health and Human Services, Centers for Disease Control and Prevention, NIOSH, R44, 5555 Ridge Avenue, Cincinnati, OH 45213
Phone: 513 841-4400

RIN: 0920–AA07

Department of Health and Human Services (HHS)
Centers for Disease Control and Prevention (CDC) — **Completed Actions**

729. PACKAGING AND HANDLING OF INFECTIOUS SUBSTANCES AND SELECT AGENTS

Priority: Other Significant

CFR Citation: 42 CFR 72.6 (Renumbered); 42 CFR 72.7 (Renumbered); 42 CFR 72.1-5 (Revision)

Completed:

Reason	Date	FR Cite
Withdrawn	03/21/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jonathan Y. Richmond
Phone: 404 639-2453

RIN: 0920–AA02

Department of Health and Human Services (HHS)
Departmental Management (HHSDM) — **Proposed Rule Stage**

730. IMPLEMENTATION OF THE EQUAL ACCESS TO JUSTICE ACT IN AGENCY PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504(c)(1)

CFR Citation: 45 CFR 13

Legal Deadline: None

Abstract: The Equal Access to Justice Act requires agencies to pay fees to parties prevailing against the Government in certain administrative proceedings. The Act has been amended several times since its 1980 enactment, most recently by the Contract with America Advancement Act of 1996, which increased the amount of the hourly fees payable. The proposed rule revises 45 CFR part 13 (HHS' regulation implementing the Equal Access to Justice Act) to conform with statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	06/19/87	52 FR 23311
NPRM Comment Period End	08/17/87	
Second NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy M. White, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0990–AA02

Department of Health and Human Services (HHS)
Departmental Management (HHSDM) — **Final Rule Stage**

731. ADMINISTRATIVE WAGE GARNISHMENT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720D; 28 CFR 285.11

CFR Citation: 42 CFR 32

Legal Deadline: None

Abstract: The Department will add a new part 32 to title 42 of the Code of Federal Regulations (CFR) to implement the Administrative Wage Garnishment provisions of the Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321 to 1358, codified at 31 U.S.C. 3720D, and implemented by the Department of Treasury at 31 C.F.R. 285.11. The proposed rule will be another tool for the Department to collect its debts by allowing the Department to garnish the wages of non-Federal employees administratively (i.e., without the need for a court order). The wage withholding order will be required to withold amounts from an employee's wages and pay those amounts to the

HHS—HHSDM — **Final Rule Stage**

Department in satisfaction of the indebtedness.

Timetable:

Action	Date	FR Cite
NPRM	03/13/02	67 FR 11264
NPRM Comment Period End	05/13/02	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Timothy M. White, Associate General Counsel, Business and Administrative Law Division, Department of Health and Human Services, Room 5362, HHS Cohen Building, 330 Independence Avenue SW., Washington, DC 20201
Phone: 202 619-0150

RIN: 0990–AA05

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Prerule Stage

732. REQUIREMENTS FOR SUBMISSION OF IN VIVO BIOEQUIVALENCE DATA

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 355a; 21 USC 356; 21 USC 356a; 21 USC 356b; 21 USC 356c; 21 USC 371; 21 USC 374; 21 USC 379

CFR Citation: 21 CFR 314.96(a)(1); 21 CFR 314.94(a)(7); 21 CFR 320.21(b)(1)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations on submission of bioequivalence (BE) data to require an abbreviated new drug application (ANDA) applicant to submit data from all BE studies the applicant conducts on a drug product formulation submitted for approval. In the past, ANDA applicants have submitted BE studies demonstrating that a generic product meets BE criteria for FDA to approve the ANDA but have not typically submitted additional BE studies conducted on the same drug product formulation. FDA is proposing to require ANDA applicants to submit information, in either a complete or summary report, from all additional passing and nonpassing BE studies conducted on the same drug product formulation submitted for approval.

Timetable:

Action	Date	FR Cite
ANPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Aida L. Sanchez, Special Assistant to the Director, Department of Health and Human Services, Food and Drug Administration, HFD-650, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-5847

RIN: 0910–AC23

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Proposed Rule Stage

733. OVER-THE-COUNTER (OTC) DRUG REVIEW

Priority: Routine and Frequent

Legal Authority: 21 USC 321p; 21 USC 351 to 353; 21 USC 355; 21 USC 360a; 21 USC 371a; 21 USC 331; 21 USC 360; 21 USC 360b; 21 USC 361; 21 USC 371

CFR Citation: 21 CFR 310; 21 CFR 340 to 345; 21 CFR 330; 21 CFR 333 to 339

Legal Deadline: None

Abstract: The OTC drug review establishes conditions under which OTC drugs are considered generally recognized as safe and effective and not misbranded. After a final monograph (i.e., final rule) is issued, only OTC drugs meeting the conditions of the monograph, or having an approved new drug application, may be legally marketed.

SMALL ENTITIES AFFECTED: The effects, if any, vary depending on the individual rulemaking. However, the Agency anticipates that the rules would not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act.

Timetable:

Antidiarrheal Products
NPRM (Amendment)(Trav. Diar.) 09/00/02
Final Action 09/00/02
Antiemetic Products
Final Action (Amendment) (Warning) 08/00/02
Antifungal (Topical) Products
Final Action Clotrimazole 02/08/02 (67 FR 5942)
Antiperspirant Products
Final Action 04/00/03
Cough/Cold (Antihistamine) Products
Final Action (Amendment)(Warning) 08/00/02
Cough/Cold (Antitussive) Products
Final Action (Amendment)(Warning) 08/00/02
Cough/Cold (Combination) Products
Final Action 04/00/03
Cough/Cold (Nasal Decongestant) Products
NPRM (Phenylpropanolamine) 10/00/02
Eligibility Criteria for Additional Conditions
Final Action 01/23/02 (67 FR 3060)
External Analgesic Products
Final Action (Amendment)(Warning) 08/00/02
Ingrown Toenail Relief Products
NPRM 12/00/02
Internal Analgesic Products
NPRM (Amendment)(Ibuprofen) 09/00/02
NPRM (Amendment) (Pediatric) 04/00/03
Labeling of Drug Products for OTC Human Use
Final Action (Ca/Mg/K/Na) 06/00/02
Final Action (Sodium Labeling) 06/00/02
NPRM (Sodium Labeling) 06/00/02
NPRM (Convenience Sizes) 12/00/02
Nighttime Sleep Aid Products
Final Action (Amendment)(Warning) 08/00/02
Ophthalmic Products
NPRM (Emergency First Aid Eyewashes) 04/00/03
Oral Health Care Products
ANPRM (Plaque/Gingivitis) 04/00/03
Pediculicide Products
NPRM (Labeling Amendment) 06/00/02
Salicylate (Reye Syndrome)
Final Action (Warning) 09/00/02
Skin Protectant Products
Final Action 08/00/02
Final Action (Astringent) 11/00/02
NPRM (Astringent) 11/00/02
Status of Certain Category II and III Ingredients
Final Action 04/00/02
Final Action 06/00/02
Sunscreen Products
Final Action (Names) 07/00/02
ANPRM (and Insect Repellent) 10/00/02
NPRM (UVA/UVB) 04/00/03
Vaginal Contraceptive Products
NPRM (Amendment) 12/00/02
Weight Control Products
NPRM (Phenylpropanolamine) 10/00/02

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gerald M. Rachanow, Regulatory Counsel, Division of Over-the-Counter Drug Products, Department of Health and Human Services, Food and Drug Administration, HFD-560, Center for Drug Evaluation and Research, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-2241
Fax: 301 827-2315
Email: rachanow@cder.fda.gov

RIN: 0910–AA01

HHS—FDA — **Proposed Rule Stage**

734. ESTABLISHMENT REGISTRATION AND PRODUCT LISTING FOR DRUGS AND BIOLOGICS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360; 21 USC 360b; 21 USC 371; 21 USC 374; 42 USC 262

CFR Citation: 21 CFR 201; 21 CFR 207; 21 CFR 314

Legal Deadline: None

Abstract: The proposed rule would amend FDA regulations on the registration of producers of drugs and the listing of drugs in commercial distribution. The proposed revisions would reorganize, consolidate, clarify, and modify current regulations concerning who must register establishments and list drug or biological products. The proposal describes when, how, and where to register and list, and what information must be submitted for registration and listing. The proposed regulations would also require the electronic submission of most registration and listing information.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AA49

735. INVESTIGATIONAL NEW DRUGS: EXPORT REQUIREMENTS FOR UNAPPROVED NEW DRUG PRODUCTS

Priority: Routine and Frequent

Legal Authority: 21 USC 321; 21 USC 381; 21 USC 382; 21 USC 393; 42 USC 241; 42 USC 243; 42 USC 262; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371

CFR Citation: 21 CFR 312.110

Legal Deadline: None

Abstract: The proposed rule would amend the regulations on the exportation of unapproved new drug products, including biological products, for investigational use. In general, the proposed rule would provide four different routes for exporting an unapproved new drug product for investigational use. One route would permit exportation, if the drug is the subject of an investigational new drug application (IND) and is being exported for use in the investigation. A second route would permit exportation, without prior Food and Drug Administration (FDA) approval and without an IND, if the product is to be exported for use in a clinical investigation and has received marketing authorization in certain developed countries. The third route would permit exportation, without prior FDA approval and without an IND, if the product is to be exported for use in a clinical investigation in certain specified developed countries. The fourth route would permit exportation without an IND, to any country provided that the exporter sends a written certification to FDA at the time the drug is first exported. Drugs exported under any of the first three routes would, however, be subject to certain statutory requirements, such as not conflicting with the foreign country's laws and not being sold or offered for sale in the United States. Drugs exported under either the second or third routes would be subject to additional statutory requirements, such as being in substantial conformity with the current good manufacturing practices and certain labeling requirements. These provisions would implement changes in FDA's export authority resulting from the FDA Export Reform and Enhancement Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 827-0587
Fax: 301 827-4774
Email: pchao@oc.fda.gov

RIN: 0910–AA61

736. SAFETY REPORTING REQUIREMENTS FOR HUMAN DRUG AND BIOLOGICAL PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262; 42 USC 263; 42 USC 263a-n; 42 USC 264; 42 USC 300aa; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360b-j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 21 USC 381

CFR Citation: 21 CFR 310; 21 CFR 312; 21 CFR 314; 21 CFR 320; 21 CFR 600; 21 CFR 601; 21 CFR 606

Legal Deadline: None

Abstract: This regulation is one component of the Secretary's initiative to reduce medical errors. The proposed

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rule would amend the expedited and periodic safety reporting regulations for human drugs and biological products to revise certain definitions and reporting formats as recommended by the International Conference on Harmonisation and to define new terms; to possibly add to or revise current reporting requirements; to consider revising certain reporting time frames; and to suggest other revisions to these regulations to enhance the quality of safety reports received by FDA.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Audrey Thomas, Regulatory Policy Analyst, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AA97

737. BLOOD INITIATIVE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264

CFR Citation: 21 CFR 600; 21 CFR 601; 21 CFR 606; 21 CFR 607; 21 CFR 610; 21 CFR 640; 21 CFR 660; 21 CFR 680

Legal Deadline: None

Abstract: In multiple rulemakings, the Food and Drug Administration is amending the biologics regulations by removing, revising, or updating specific regulations applicable to blood, blood components, source plasma, and blood-derivative products to be more consistent with current practices and to remove unnecessary or outdated requirements. This action is based on a comprehensive review of the regulations that has been performed by FDA. It is also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on House Resources and Intergovernmental Relations; the General Accounting Office; the Institute of Medicine, as well as public comments. Some of the subjects intended to be addressed in the rulemakings include: 1) labeling; 2) notification of end users of plasma-derivative products of product safety information; and 3) requirements for donor suitability and testing. These actions are intended to help ensure the continued safety of the Nation's blood supply.

Timetable:

Action	Date	FR Cite
Albumin (Human), Plasma Protein Fraction (Human) and Immune Globulin (Human); Rev. of Reqs.		
Direct Final Rule	05/14/99	64 FR 26282
NPRM	05/14/99	64 FR 26344
DFR: Confirmation in Part and Tech. Amendment	03/14/00	65 FR 13678
Final Action	08/28/00	65 FR 52016
Gen. Reqs. for Blood, Blood Compon., and Plasma Derivatives; Notification of Deferred Donors		
NPRM	08/19/99	64 FR 45355
Final Action	06/11/01	66 FR 31165
Plasma Derivatives and Similar Recombinant-Based Products; Reqs. for Notification of Recalls and Withdrawals		
ANPRM	08/19/99	64 FR 45383
NPRM	04/00/03	
Regulations for Human Blood and Blood Components Intended for Transfusion or For Further Manufacturing Use		
NPRM	04/00/03	
Reqs. for Testing Human Blood Donors for Evid. of Infection Due to Communicable Disease Agents		
NPRM	08/19/99	64 FR 45340
Final Action	06/11/01	66 FR 31146
Rev. to the Requirements Applicable to Blood, Blood Components, and Source Plasma		
Direct Final Rule	08/19/99	64 FR 45366
NPRM	08/19/99	64 FR 45375
DFR: Confirmation in Part and Tech. Amendment	01/10/01	66 FR 1834
Final Action	08/06/01	66 FR 40886
Revisions to Labeling and Storage Requirements for Blood and Blood Components, Including Source Plasma		
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
Phone: 301 827-6210
Fax: 301 594-1944

Related RIN: Related To 0910-AB76

RIN: 0910–AB26

738. APPLICATIONS FOR FDA APPROVAL TO MARKET A NEW DRUG; COMPLETE RESPONSE LETTER; AMENDMENTS TO UNAPPROVED APPLICATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371; 21 USC 374; 21 USC 379e

CFR Citation: 21 CFR 312; 21 CFR 314

Legal Deadline: None

Abstract: The proposed rule would amend the regulations on marketing approval of new drugs to discontinue the use of approvable and not approvable letters when taking action on a marketing application and instead use complete response letters. The proposed rule would also amend the regulations on extension of the review clock because of amendments to applications.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brian L. Pendleton, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
Phone: 301 594-2041
Fax: 301 827-5562
Email: pendletonb@cder.fda.gov

RIN: 0910–AB34

739. CURRENT GOOD MANUFACTURING PRACTICE FOR MEDICATED FEEDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 351; 21 USC 352; 21 USC 360b; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 225

Legal Deadline: None

Abstract: This proposal is in response to a citizen petition request to merge the separate requirements of the current good manufacturing practice (CGMP) regulations, 21 CFR part 225 applicable to licensed and unlicensed feed manufacturing facilities, respectively. The merger would produce a single set of updated, streamlined CGMPs that apply to all medicated feed manufacturers. This consolidation of existing CGMPs would preserve and strengthen food safety, be more appropriate given the changing structure of the medicated feed industry, and enhance uniformity and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: George Graber, Director, Division of Animal Feeds, Department of Health and Human Services, Food and Drug Administration, HFV-220, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
Phone: 301 827-6651
Email: ggraber@cvm.fda.gov

RIN: 0910–AB70

740. CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING DIETARY INGREDIENTS AND DIETARY SUPPLEMENTS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 21 USC 321; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 393; 42 USC 264

CFR Citation: 21 CFR 111

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) announced in an advance notice of proposed rulemaking (ANPRM) of February 6, 1997 (62 FR 5700), its plans to consider developing regulations establishing current good manufacturing practices (CGMP) for dietary supplements and dietary ingredients. The ANPRM was published in order for FDA to solicit comments on whether it should initiate action to establish CGMP regulations and if so, what constitutes CGMP for these products. FDA announced that this effort was in response to the section of the Federal Food, Drug, and Cosmetic Act (the Act) that provides authority to the Secretary of Health and Human Services to promulgate CGMP regulations and to a submission from the dietary supplement industry asking that FDA consider an industry-proposed CGMP framework as a basis for CGMP regulations. The ANPRM also responds to concerns that such regulations are necessary to ensure that consumers are provided with dietary supplement products which have not been adulterated as a result of manufacturing, packing, or holding; which have the identity and provide the quantity of dietary ingredients declared in labeling; and which meet the quality specifications that the supplements are represented to meet.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/97	62 FR 5700
ANPRM Comment Period End	06/06/97	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 0910–AB88

741. REQUIREMENTS FOR SUBMISSION OF LABELING FOR HUMAN PRESCRIPTION DRUGS AND BIOLOGICS IN ELECTRONIC FORMAT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 21 USC 379e; ...

CFR Citation: 21 CFR 314; 21 CFR 601

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend its regulations governing the format in which certain labeling in new drug applications, abbreviated new drug applications, certain biological license applications, supplements, and annual reports is required to be submitted. The proposal would require that certain labeing content described under section 201.160(d)(3) be submitted to FDA in electronic format.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Virginia G. Beakes, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB91

742. REQUIREMENTS PERTAINING TO SAMPLING SERVICES AND PRIVATE LABORATORIES USED IN CONNECTION WITH IMPORTED FOOD

Priority: Routine and Frequent

Legal Authority: 21 USC 331; 21 USC 333; 21 USC 334; 21 USC 335b; 21 USC

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335c; 21 USC 342; 21 USC 343; 21 USC 351; 21 USC 352; 21 USC 361; 21 USC 362; 21 USC 371; 21 USC 372; 21 USC 374; 21 USC 376; 21 USC 381

CFR Citation: 21 CFR 59

Legal Deadline: None

Abstract: The proposed rule would establish requirements for importers and other persons who use sampling services and private laboratories in connection with imported food. For example, the proposal would pertain to persons who use sample collection services and private laboratories and would describe some responsibilities for such persons, sample collection services, and private laboratories. These responsibilities might include recordkeeping requirements to ensure that the correct sample is collected and analyzed, and a notification requirement if a person intends to use a private laboratory in connection with imported food. The proposed rule is intended to help insure the integrity and scientific validity of data and results submitted to FDA.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AB96

743. STATUS REPORTS OF DISTRIBUTION AND USE INFORMATION FOR ANTIMICROBIAL ANIMAL DRUG PRODUCTS USED IN FOOD-PRODUCING ANIMALS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 360b(e); 21 USC 371(a)

CFR Citation: 21 CFR 510.300

Legal Deadline: None

Abstract: After approving a new animal drug application, the Food and Drug Administration (FDA) requires the sponsor to submit adverse experience and use information on the product. Because of concern about the effect of the use of antimicrobial drugs in food-producing animals on the development rate and extent of resistance in human pathogens, FDA published a document describing a proposed framework for evaluating and protecting human health. The Framework Document describes the need for more detailed drug distribution information to assist in the evaluation of a correlation between changes in resistance and the use of antimicrobial drugs in food-producing animals. The regulatory proposal would require the reporting of the total number of distributed units of each size, strength, or potency (distribution data or quantity marketed data) and provide FDA with the more detailed information to help assess the correlation between resistance in human pathogens and the use of antimicrobial drugs in food-producing animals.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: William Keller, Division Director, Division of Surveillance, Department of Health and Human Services, Food and Drug Administration, (HFV-210), Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
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RIN: 0910–AC04

744. CONTROL OF SALMONELLA ENTERITIDIS IN SHELL EGGS DURING PRODUCTION AND RETAIL

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 21 USC 321; 21 USC 342; 21 USC 371; 21 USC 381; 21 USC 393; 42 USC 243; 42 USC 264; 42 USC 271; ...

CFR Citation: 21 CFR 16; 21 CFR 116; 21 CFR 118

Legal Deadline: None

Abstract: The President's Council on Food Safety was established in August 1998 to improve the safety of the food supply through science-based regulations and well-coordinated inspection, enforcement, research, and education programs. The Council has identified egg safety as one component of the public health issue of food safety that warrants immediate Federal, interagency action.

In July 1999, the Food and Drug Administration (FDA) and the Food Safety Inspection Service (FSIS) committed to developing an action plan to address the presence of salmonella enteritidis (SE) in shell eggs and egg products using a farm-to-table approach. FDA and FSIS held a public meeting on August 26, 1999, to obtain stakeholder input on the draft goals, as well as to further develop the objectives and action items for the action plan. The Egg Safety Action Plan was announced on December 11, 1999. The goal of the Action Plan is to reduce egg-related SE illnesses by 50 percent by 2005 and eliminate egg-related SE illnesses by 2010.

The Egg Safety Action Plan consists of eight objectives covering all stages of the farm-to-table continuum as well as support functions. On March 30, 2000 (Columbus, OH), April 6, 2000 (Sacramento, CA), and July 31, 2000 (Washington, DC), joint public meetings were held by FDA and FSIS to solicit and discuss information related to the implementation of the objectives in the Egg Safety Action Plan.

In accordance with discussions at the public meetings, FDA intends to publish a proposed rule to require that shell eggs be produced under an SE risk reduction plan that is designed to prevent transovarian SE from contaminating eggs at the farm during production.

Because egg safety is a farm-to-table effort, FDA intends to include in its proposal certain provisions of the 1999 Food Code that are relevant to how eggs are handled, prepared, and served at certain retail establishments. In addition, the agency plans to propose specific requirements for certain retail establishments that serve populations most at-risk of egg-related illness (i.e., the elderly, children, and the immunocompromised).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, 3B-033/HFS-306, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC14

745. INSTITUTIONAL REVIEW BOARDS: REGISTRATION REQUIREMENTS

Priority: Info./Admin./Other

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 351 to 353; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n; 42 USC 264

CFR Citation: 21 CFR 56.106

Legal Deadline: None

Abstract: The proposed rule would require institutional review boards (IRB) to register with FDA. The registration information would include the name of the institution operating the IRB, and names, addresses, phone numbers, facsimile (fax) numbers, and electronic mail (e-mail) addresses of the senior officer of the institution and IRB chair or contact, the range of active protocols (small, medium, or large) involving FDA-regulated products reviewed in the previous calendar year, and a description of the types of FDA-regulated products reviewed. The proposed rule would make it easier for FDA to inspect IRBs and to convey information to IRBs.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AC17

746. ALUMINUM IN LARGE- AND SMALL-VOLUME PARENTERALS USED IN TOTAL PARENTERAL NUTRITION

Priority: Other Significant

Legal Authority: 21 USC 321(n); 21 USC 352; 21 USC 355; 21 USC 371(a); 21 CFR 201.51; 21 CFR 201.100; 21 CFR 314.125

CFR Citation: 21 CFR 201.323(c)

Legal Deadline: None

Abstract: The proposed rule would revise 21 CFR 323(c) to permit small-volume parenterals and pharmacy bulk packages that contain no more than 25 ug/L of aluminum to state "contains no more than 25ug/L" rather than the exact amount of aluminum.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC18

747. USE OF MATERIALS DERIVED FROM BOVINE AND OVINE ANIMALS IN FDA-REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Department of Agriculture's Animal and Plant Health Inspection Service maintains, by regulation in 9 CFR 94.18(a), a list of countries: 1) where bovine spongiform encephalopathy (BSE) exists; and 2) that present an undue risk of introducing BSE into the United States. This proposed rule would restrict, in FDA-regulated products, the use of most materials derived from bovine and ovine animals born, raised, or slaughtered in a country listed in 9 CFR 94.18(a). In addition, there would be a waiver provision that could be used under appropriate criteria.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, 3B-033/HFS-306, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC19

748. POSTMARKETING REPORTS OF SUBSTANDARD OR INEFFECTIVE BULK INGREDIENTS AND BULK INGREDIENTS FROM UNAPPROVED SOURCES

Priority: Info./Admin./Other

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 371; 21 USC 374; 21 USC 379e

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CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed rule would address reporting and other issues relating to the importation or receipt of bulk ingredients that are substandard, ineffective, or come from unapproved sources. The proposal is intended to enhance FDA's ability to help ensure that human drug products have the strength, quality, and purity appropriate for an approved human drug product.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AC20

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749. CHRONIC WASTING DISEASE: CONTROL OF FOOD PRODUCTS AND COSMETICS DERIVED FROM EXPOSED ANIMAL POPULATIONS

Priority: Other Significant

Legal Authority: 42 USC 264; 21 USC 301 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to prohibit the use of cervids (deer, elk) for food, including dietary supplements, and cosmetics if the cervids have been exposed to chronic wasting disease (CWD). FDA is proposing this regulation because of potential risks to health.

CWD is a type of transmissible spongiform encephalopathy (TSE), a group of fatal, neurodegenerative diseases that include bovine spongiform encephalopathy (BSE) in cattle, scrapie in sheep, and Creutzfeldt-Jakob disease (CJD) in humans. CWD affects cervids in the United States and Canada.

CWD is endemic in cervid populations in certain areas of Colorado, Nebraska, and Wyoming. The disease has been identified in wild and farmed elk and wild deer populations. At least one published scientific article has reported that infectious CWD prion proteins in vitro can convert normal, non-infectious human prion proteins into abnormal, infectious forms. These data suggest that the agent of CWD could be transmitted to humans.

Currently, there are no validated analytical tests to identify animals in the pre-clinical phase of CWD, or any other TSE. CWD typically exhibits a long incubation period, during which time animals appear normal but are likely to be infectious. Therefore, FDA is proposing to require that food or cosmetic products derived from animals exposed to CWD not enter into commerce.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Rebecca Buckner, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, 3B-033/HFS-306, Office of Plant and Dairy Foods and Beverages, Center for Food Safety and Applied Nutrition, 5100 Paint Branch Parkway, College Park, MD 20740
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RIN: 0910–AC21

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750. EXCEPTION FROM GENERAL REQUIREMENTS FOR INFORMED CONSENT; REQUEST FOR COMMENTS AND INFORMATION

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 360bbb; 21 USC 360c; 21 USC 360d; 21 USC 360e; 21 USC 360f; 21 USC 360h; 21 USC 360i; 21 USC 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 241; 42 USC 262; 42 USC 263b-263n

CFR Citation: 21 CFR 50.23

Legal Deadline: None

Abstract: FDA is proposing to clarify its regulations about the exception from the general requirement for informed consent in life-threatening situations necessitating the use of a test article. This clarification will explain how the regulations would apply during emergencies, including a response to chemical or biological terrorism, requiring the use of investigational products regulated by FDA.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bonnie M. Lee, Associate Director for Human Subject Protection Policy, Department of Health and Human Services, Food and Drug Administration, Room 9C24 (HF-34), Office of Good Clinical Practice, Office of Science Coordination & Communication, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AC25

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751. BAR CODE LABEL REQUIREMENTS FOR HUMAN DRUG PRODUCTS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 201.25; 21 CFR 601.67

Legal Deadline: None

Abstract: This regulation is one component of the Secretary's initiative to reduce medical errors. The proposal would require human drug products and biological products and possibly other products to have a bar code. The bar code would contain certain information about the product and, when used in conjunction with bar code scanners and computer equipment, would help reduce the number of medication errors.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AC26

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752. • MEDICAL DEVICES; ANESTHESIOLOGY DEVICES; PROPOSED RECLASSIFICATION OF PRESSURE REGULATORS FOR USE WITH MEDICAL OXYGEN

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 351; 21 USC 360c(e)(1); 21 USC 371

CFR Citation: 21 CFR 868.2700; 21 CFR 868.5905

Legal Deadline: None

Abstract: The Food and Drug Administration is proposing to reclassify pressure regulators for use with medical oxygen from class I to class II and to establish a special control for oxygen pressure regulators to address problems of fire and explosion associated with use of these devices. The special control will be a guidance document that includes standardized testing, performance, and labeling guidance for industry. Devices that meet the special control will be exempt from the premarket notification requirements of the act. The agency believes it is taking a least burdensome approach for industry. This rule will enable all manufacturers to most easily comply by implementing a phase-in compliance approach that will minimize the cost. FDA seeks to reclassify these devices under section 513(e)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360c(e)(1)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC30

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753. • MEDICAL DEVICES; PATIENT EXAMINATION AND SURGEONS' GLOVES; ADULTERATION

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 371; 21 USC 374

CFR Citation: 21 CFR 800.20

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to amend the sampling plans, test method, and acceptable quality levels in 21 CFR 800.20. As prescribed by this regulation, FDA samples patient examination and surgeons' gloves and examines them for visual defects and water leaks. Glove lots are considered adulterated if they do not meet specified quality levels. This proposal would clarify sampling plans and the scoring of defects, lower acceptance rates for leaking gloves, raise rejection rates for leaking gloves, and add tightened inspection schemes for reexamined glove lots. The rule is intended to facilitate industry compliance and enhance the safety and effectiveness of gloves.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC32

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754. • AMENDMENTS TO THE PERFORMANCE STANDARD FOR DIAGNOSTIC X-RAY SYSTEMS AND THEIR MAJOR COMPONENTS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 301 et seq; 21 USC 360kk et seq

CFR Citation: 21 CFR 1020.30; 21 CFR 1020.31; 21 CFR 1020.32

Legal Deadline: None

Abstract: This rule amends the performance standard for diagnostic x-ray systems and their components in 21 CFR 1020.30, 1020.31, and 1020.32 to address the changes in technology and practice and to fully utilize the currently accepted metric system.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Final Rule Stage

755. DETERMINATION THAT INFORMED CONSENT IS INFEASIBLE OR IS CONTRARY TO THE BEST INTEREST OF RECIPIENTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 352; 21 USC 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 312

Legal Deadline: None

Abstract: The final rule would establish criteria and standards for the President to apply in making a determination that informed consent is not feasible or is contrary to the best interest of military personnel engaged in specific military operations. Under Federal law, the President is authorized to waive the Federal Food, Drug, and Cosmetic Act's informed consent requirements in military operations, if the President finds that obtaining consent is infeasible, contrary to the best interests of recipients, or contrary to national security interests.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/99	64 FR 54180
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Philip L. Chao, Senior Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Room 15-61 (HF-23), Office of Policy, Planning and Legislation, 5600 Fishers Lane, Rockville, MD 20857
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RIN: 0910–AA89

756. LABELING FOR HUMAN PRESCRIPTION DRUGS; REVISED FORMAT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 360gg to 360ss; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 201

Legal Deadline: None

Abstract: This regulation is one component of the Secretary's initiative to reduce medical errors. The regulation would amend the regulations governing the format and content of professional labeling for human prescription drug and biologic products, 21 CFR 201.56 and 201.57. The regulation would require that professional labeling include a section containing highlights of prescribing information, and a section containing an index to prescribing information; reorder currently required information and make minor changes to its content, and establish minimum graphical requirements for professional labeling. The regulation would also eliminate certain unnecessary statements that are currently required to appear on prescription drug labels and move certain information to professional labeling.

Timetable:

Action	Date	FR Cite
NPRM	12/22/00	65 FR 81082
NPRM Comment Period End	03/22/01	
NPRM Comment Period Reopened	03/30/01	
NPRM Comment Period Reopening End	06/22/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Lee D. Korb, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AA94

757. USE OF OZONE-DEPLETING SUBSTANCES

Priority: Other Significant

Legal Authority: 15 USC 402; 15 USC 409; 21 USC 321; 21 USC 331; 21 USC 335; 21 USC 342; 21 USC 346a; 21 USC 348; 21 USC 351; 21 USC 352; 21 USC 355; 21 USC 360b; 21 USC 361; 21 USC 371

CFR Citation: 21 CFR 2

Legal Deadline: None

Abstract: FDA is amending the regulation that permits the use of ozone-depleting substances in particular circumstances to set the standard FDA will use to determine when the use of ozone-depleting substances (ODS) is no longer essential under the Clean Air Act (CAA) and set a new standard to determine when a new essential-use designation should be granted after the effective date of the rule. FDA is also amending the regulations to better conform to other statutes and regulations relating to ozone-depleting substances to eliminate potential confusion and conflicts. FDA is eliminating out-of-date transitional provisions and making other nonsubstantive housekeeping changes to its regulations on ozone-depleting substances. The intended effect of the rule is to protect the health and safety of medical product users while complying with the CAA and the Montreal Protocol.

Timetable:

Action	Date	FR Cite
ANPRM	03/06/97	62 FR 10242
ANPRM Comment Period End	05/05/97	
NPRM	09/01/99	64 FR 47719
NPRM Comment Period End	11/30/99	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Wayne H. Mitchell, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AA99

HHS—FDA

Final Rule Stage

758. FDA EXPORT REFORM AND ENHANCEMENT ACT OF 1996; REPORTING AND RECORDKEEPING REQUIREMENTS FOR UNAPPROVED OR VIOLATIVE PRODUCTS IMPORTED FOR FURTHER PROCESSING OR INCORPORATION AND LATER EXPORT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1453 to 1455; 21 USC 321; 21 USC 343; 21 USC 352; 21 USC 355; 21 USC 360b; 21 USC 362; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 382; 21 USC 393; 42 USC 216

CFR Citation: 21 CFR 1.84

Legal Deadline: None

Abstract: The final rule would establish reporting and recordkeeping requirements to implement sections 801(d)(3) and 801(d)(4) of the Federal Food, Drug, and Cosmetic Act (the Act) as amended by the Food and Drug Administration (FDA) Export Reform and Enhancement Act of 1996. Section 801(d)(3) of the Act provides that, under prescribed conditions, drug and device components, food and color additives, and dietary supplements may be imported if they are to be further processed or incorporated into products that are to be exported from the United States in accordance with sections 801(e) or 802 of the Act or section 351(h) of the Public Health Service (PHS) Act. Section 801(d)(4) of the Act provides that blood, blood components, source plasma, or source leukocytes, or a component, accessory, or part thereof, may not be imported under section 801(d)(3) of the Act unless the importation complies with section 351(a) of the PHS Act or FDA permits the importation under FDA-determined appropriate circumstances and conditions. Additionally, section 801(d)(4) of the Act prohibits the importation of tissue or a component or part of tissue under section 801(d)(3) of the Act unless the importation complies with section 361 of the PHS Act.

Timetable:

Action	Date	FR Cite
NPRM	11/24/98	63 FR 64930
NPRM Comment Period End	02/08/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0910–AB24

759. REVISIONS TO THE GENERAL SAFETY REQUIREMENTS FOR BIOLOGICAL PRODUCTS; FINAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 351

CFR Citation: 21 CFR 610.11(g)

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) issued a direct final rule and companion proposed rule to amend the biologics regulations by adding "cellular therapy products" to the list of products excepted from the general safety test (GST) and by adding an administrative procedure for obtaining an exemption from the GST requirements for other biological products. Because the agency received significant adverse comment on the administrative procedure portion of the direct final rule, FDA withdrew that portion of the rule and confirmed the remaining portion. FDA intends to finalize the companion proposed rule to respond to the significant adverse comment on the administrative procedure portion of the rule. FDA is taking this action because the GST may not be relevant or necessary for all biological products, including cellular therapy products, currently in various stages of development. This action is part of FDA's continuing effort to achieve the objectives of the "Reinventing Government" initiative, and is intended to reduce the burden of unnecessary regulations on biological products without diminishing the protection of the public health.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/20/98	53 FR 19399
Proposed Rule - Companion Document to Direct Final Rule	04/20/98	63 FR 19431
Direct Final Rule Confirmation in Part	08/05/98	63 FR 41718
Direct Final Rule Withdrawn in Part	08/05/98	63 FR 41718
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen M. Ripley, Team Leader, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
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RIN: 0910–AB51

760. SUPPLEMENTS AND OTHER CHANGES TO AN APPROVED APPLICATION

Priority: Other Significant

Legal Authority: 21 USC 356a

CFR Citation: 21 CFR 314

Legal Deadline: None

Abstract: Section 116 of the Food and Drug Administration Modernization Act of 1997 (Pub. L. 105-115) added section 506A to the Food, Drug, and Cosmetic Act (21 U.S.C. 356a). Pursuant to section 116, the rulemaking will revise current procedures for approving manufacturing changes and generally classify such changes into four categories. Major manufacturing changes, which are of a type determined by the Secretary to have a substantial potential to adversely affect the identity, strength, quality, purity, and potency of the drug as they may relate to the safety and effectiveness of a drug, require prior approval of a supplemental application. A second category of changes may be made if FDA has not notified the company within 30 days after the submission of a supplement that prior approval is required. A third category of changes may be made upon submission of a supplement to the agency. The rule will also identify another category of changes that may be made without the submission of a supplement but which must be reported in an annual report.

Timetable:

Action	Date	FR Cite
NPRM	06/28/99	64 FR 34608
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Howard P. Muller, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB61

761. FOOD LABELING: TRANS FATTY ACIDS IN NUTRITION LABELING, NUTRIENT CONTENT CLAIMS, AND HEALTH CLAIMS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 371; ...

CFR Citation: 21 CFR 101

Legal Deadline: None

Abstract: Section 403(q) of the Federal Food, Drug, and Cosmetic Act, which was added by the Nutrition Labeling and Education Act of 1990 (NLEA), requires that the label or labeling of food products bear nutrition information. Among other things, section 403(q) of the Act authorizes the Food and Drug Administration (FDA) to add or delete nutrients that are to be declared on the labels or labeling of food products by regulation if it finds such action necessary to assist consumers in maintaining healthy dietary practices. FDA issued final regulations implementing NLEA in 1993. FDA subsequently received a citizen petition requesting that FDA amend its regulations on food labeling to require that the amount of trans fatty acids be listed in the nutrition label and be limited wherever saturated fat limits are placed on nutrient content claims, health claims, or disqualifying levels and disclosure levels. In response to this petition and based on new evidence, FDA proposed the actions requested in the petition on November 17, 1999 (64 FR 62746). In addition, FDA proposed to define the claim "trans fat free."

Timetable:

Action	Date	FR Cite
NPRM	11/17/99	64 FR 62746
NPRM Comment Period Reopened	12/05/00	65 FR 75887
NPRM Comment Period End	01/19/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0910–AB66

762. CGMPS FOR BLOOD AND BLOOD COMPONENTS: NOTIFICATION OF CONSIGNEES AND TRANSFUSION RECIPIENTS RECEIVING BLOOD AND BLOOD COMPONENTS AT INCREASED RISK OF TRANSMITTING HCV (LOOKBACK)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 371; 21 USC 374; 42 USC 216; 42 USC 262; 42 USC 263; 42 USC 263a; 42 USC 264; 42 USC 300aa-25

CFR Citation: 21 CFR 606; 21 CFR 610

Legal Deadline: None

Abstract: This rulemaking is one of a number of actions being taken to amend the biologics regulations to remove, revise, or update the regulations applicable to blood, blood components, and blood derivatives. These actions are based on a comprehensive review of the regulations performed by FDA, and are also based on reports by the U.S. House of Representatives Committee on Government Reform and Oversight, Subcommittee on House Resources and Intergovernmental Relations, the General Accounting Office, and the Institute of Medicine, as well as public comments. In this rulemaking, FDA will amend the biologics regulations to require that blood establishments prepare and follow written procedures for appropriate action when it is determined that blood and blood components pose an increased risk for transmitting hepatitis C virus (HCV) infection because they have been collected from a donor who, at a later date, tested reactive for evidence of HCV. The HIV lookback regulations will be amended for consistency.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69377
NPRM Comment Period End	02/14/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
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Related RIN: Related To 0910-AB26

RIN: 0910–AB76

763. ANTIBIOTIC RESISTANCE LABELING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 358; 21 USC 360; 21 USC 360b; 21 USC 371; 21 USC 374; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 262; ...

CFR Citation: 21 CFR 201.24

Legal Deadline: None

Abstract: The final rule would require the inclusion of certain statements about the use of antibiotics in the prescription drug labeling of these products. These statements will emphasize the proper use of these products in an effort to reduce the development of drug-resistant bacterial strains.

Timetable:

Action	Date	FR Cite
NPRM	09/19/00	65 FR 56511
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers, Regulatory Counsel, Department of Health and Human Services, Food and Drug Administration, Suite 3059 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AB78

764. FOOD ADDITIVES: FOOD CONTACT SUBSTANCES NOTIFICATION SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321 et seq

CFR Citation: 21 CFR 20.100; 21 CFR 58.3; 21 CFR 170.3; 21 CFR 170.100; 21 CFR 170.101; 21 CFR 170.102; 21 CFR 170.103; 21 CFR 170.104; 21 CFR 170.105; 21 CFR 171.1; 21 CFR 171.4; 21 CFR 174.5; 21 CFR 179.25; 21 CFR 170.106; ...

Legal Deadline: None

Abstract: In November 1997, Congress amended the Federal Food, Drug, and Cosmetic Act (FFD&C) to establish a notification process whereby manufacturers and suppliers of components of food contact materials may notify FDA 120 days prior to marketing a new food contact substance. If FDA does not object to the notification within 120 days, the substance may be marketed with the same status as a regulated food additive. FDA is authorized to publish regulations outlining the information required to be submitted in premarket notifications for food-contact substances submitted to the agency. FDA is also authorized to publish regulations that identify when a food additive petition is required in lieu of a premarket notification. FDA is not required to accept a premarket notification in any fiscal year for which an appropriation is not specifically made for this program. FDA expects that the majority of food-contact substances that are currently the subject of food additive petitions will be the subject of premarket notifications. FDA also expects that substances currently reviewed under the agency's threshold of regulation process will be reviewed as premarket notifications under the new process. Unlike food additive regulations, premarket notifications will be specific to the notifier. The proposed use of a similar or identical substance produced by another manufacturer will require a separate premarket notification submission. Also, unlike food additive petitions, the existence of the notification and any otherwise releasable data within the notification is not publicly available until the 120-day period has expired. FDA maintains a publicly available list of effective premarket notifications to assist manufacturers, distributors, and users of food packaging and other food-contact materials. FDA published a proposed rule on the notification process for food contact substances on July 13, 2000. The comment period on the proposed rule ended on September 26, 2000. Three comments were received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/13/00	65 FR 43269
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0910–AB94

765. MARKING REQUIREMENTS FOR AND PROHIBITIONS ON THE REIMPORTATION OF IMPORTED FOOD PRODUCTS THAT HAVE BEEN REFUSED ADMISSION INTO THE UNITED STATES

Priority: Other Significant

Legal Authority: 15 USC 145; 15 USC 1454; 15 USC 1455; 21 USC 321; 21 USC 343; 21 USC 352; 21 USC 355; 21 USC 360b; 21 USC 362; 21 USC 371; 21 USC 374; 21 USC 381; 21 USC 382; 21 USC 393; 42 USC 216; 42 USC 241; 42 USC 243; 42 USC 262; 42 USC 264

CFR Citation: 21 CFR 1.98

Legal Deadline: None

Abstract: The rule would require food products that have been refused entry into the United States for safety reasons to be marked, "United States Refused Entry." The proposed rule is intended to protect the public health against contaminated or unsafe imported food products and to facilitate FDA's examination of imported products.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6502
NPRM Comment Period End	04/09/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0910–AB95

766. EFFICACY EVIDENCE NEEDED FOR PRODUCTS TO BE USED AGAINST TOXIC SUBSTANCES WHEN HUMAN STUDIES ARE UNETHICAL

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1451 to 1561; 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; PL 105-115, sec 122, 111 stat 2322 (21 USC 355 note); 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 374; 21 USC 379e; 21 USC 381; 42 USC 216; 42 USC 241; 42 USC 262; 42 USC 263b

CFR Citation: 21 CFR 314; 21 CFR 601

Legal Deadline: None

Abstract: The agency plans to publish a final rule that would amend its new drug and biological product regulations to identify the information needed to provide substantial evidence of the effectiveness of new drug and biological products used to reduce or prevent the toxicity of chemical, biological, radiological, or nuclear substances when adequate and well-controlled efficacy studies in humans cannot be ethically conducted. Efficacy studies in humans cannot be conducted

ethically if: 1) the studies would involve administering a potentially lethal or permanently disabling toxic substance or organism to healthy human volunteers; and 2) field trials (assessment of use of the product after accidental or hostile exposure to the substance) are not feasible. FDA is taking this action because it recognizes the importance of improving medical responses to the use of lethal or permanently disabling chemical, biological, radiological, and nuclear substances in order to protect individuals exposed to these substances.

Timetable:

Action	Date	FR Cite
NPRM	10/05/99	64 FR 53960
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0910–AC05

767. ADDITIONAL SAFEGUARDS FOR CHILDREN IN CLINICAL INVESTIGATIONS OF FDA REGULATED PRODUCTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 21 USC 321; 21 USC 343; 21 USC 346; 21 USC 346a; 21 USC 348; 21 USC 350a; 21 USC 350b; 21 USC 351 to 353; 21 USC 355; 21 USC 360; 21 USC 360c to 360f; 21 USC 360h to 360j; 21 USC 371; 21 USC 379e; 21 USC 381; 41 USC 216; 41 USC 241; 41 USC 262; 41 USC 263b to 263n

CFR Citation: 21 CFR 50; 21 CFR 56

Legal Deadline: Other, Statutory, April 17, 2001, The Children's Health Act of 2000 requires that, within six months of the date of its enactment on 10/17/2000, FDA adopt existing HHS regulations providing additional protections for children involved as subjects in research. FDA published an interim rule in April 2001.

Abstract: The final rule will finalize the interim rule that published in April 2001 and provide additional protections for children involved as subjects in clinical investigations of FDA-regulated products, as required by the Children's Health Act of 2000.

Timetable:

Action	Date	FR Cite
Interim Rule	04/24/01	66 FR 20589
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carol Drew, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, Suite 3037 (HFD-7), Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC07

768. REVOCATION OF CONDITIONS FOR MARKETING DIGOXIN PRODUCTS FOR ORAL USE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 321; 21 USC 331; 21 USC 351 to 353; 21 USC 355; 21 USC 360b-f; 21 USC 360j; 21 USC 361a; 21 USC 371; 21 USC 374; 21 USC 375; 21 USC 379e; 42 USC 216; 42 USC 241; 42 USC 242a; 42 USC 262; 42 USC 263b-n

CFR Citation: 21 CFR 310.500

Legal Deadline: None

Abstract: The final rule will revoke the regulation (21 CFR 310.500) that established conditions for marketing digoxin products for oral use.

Timetable:

Action	Date	FR Cite
NPRM	11/24/00	65 FR 70538
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary E. Catchings, Regulatory Counsel, Office of Regulatory Policy, Department of Health and Human Services, Food and Drug Administration, HFD-7, Center for Drug Evaluation and Research, 1451 Rockville Pike, Rockville, MD 20852
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RIN: 0910–AC12

769. • POSTMARKET SURVEILLANCE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 331; 21 USC 352; 21 USC 360i; 21 USC 360l; 21 USC 371; 21 USC 374; ...

CFR Citation: 21 CFR 822

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is implementing a final rule for the postmarket surveillance provisions of the Federal Food, Drug, and Cosmetic Act (the Act), as amended by the Food and Drug Administration Modernization Act of 1997 (FDAMA). The purpose of this rule is to provide for the collection of useful data about devices that can reveal unforeseen adverse events or other information necessary to protect the public health.

Timetable:

Action	Date	FR Cite
NPRM	08/29/00	65 FR 52376
NPRM Comment Period End	11/27/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC31

770. • REDACTING 510(K) SUBMISSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 331; 21 USC 351; 21 USC 352; 21 USC 360; 21 USC 360c; 21 USC 360e; 21 USC 360i; 21 USC 360j; 21 USC 371; 21 USC 374; ...

CFR Citation: 21 CFR 807

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is issuing a final rule that amends the premarket notification provisions of our regulations at 21 CFR part 807 to require a 510(k) holder to submit a redacted version of a medical device premarket notification submission once we find the device to be substantially equivalent to another legally marketed device. The purpose of this requirement is to facilitate the release and dissemination of useful information to the health care community, the medical device industry, and the public, while providing the applicant a more timely opportunity to protect trade secret and confidential commercial information contained in the premarket notification. FDA will provide the redacted version to the public through the internet. The information to be released is information to which the public is entitled under the Federal Food, Drug, and Cosmetic Act, the Freedom of Information Act, and FDA's Public Information regulation. The regulation does not require submission of a redacted version of any premarket notification received by FDA prior to the effective date of the regulation.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph M. Sheehan, Chief, Regulations Staff, Department of Health and Human Services, Food and Drug Administration, HFZ-215, Center for Devices and Radiological Health, 1350 Piccard Drive, Rockville, MD 20850
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RIN: 0910–AC33

771. • SECTION 17 BEST PHARMACEUTICALS FOR CHILDREN ACT

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 21 USC 355a

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, January 4, 2003.

Abstract: To require drug product labeling to include a toll-free number for reports of adverse events regarding drug products, and a statement that the number is to be used for reporting purposes only and not to receive medical advice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 0910–AC35

Department of Health and Human Services (HHS) Food and Drug Administration (FDA) — Long-Term Actions

772. INFANT FORMULA: REQUIREMENTS PERTAINING TO GOOD MANUFACTURING PRACTICE, QUALITY CONTROL PROCEDURES, QUALITY FACTORS, NOTIFICATION REQUIREMENTS, AND RECORDS AND REPORTS

Priority: Other Significant

Legal Authority: 21 USC 321; 21 USC 350a; 21 USC 371; ...

CFR Citation: 21 CFR 106; 21 CFR 107

Legal Deadline: None

Abstract: The agency published a proposed rule on July 9, 1996 that would establish current good manufacturing practice regulations, quality control procedures, quality factors, notification requirements, and records and reports for the production of infant formula. This proposal was issued in response to the 1986 Amendments to the Infant Formula Act of 1980.

Timetable:

Current Good Mfg. Practices; Qual. Control Proc.		
	NPRM	07/09/96 (61 FR 36154)
	NPRM Comment Period End	12/06/96
	Final Action To Be Determined	
Infant Form Cons Comp, Micro Test & Recd Retention Req		
	NPRM	01/26/89 (54 FR 3783)
	NPRM Comment Period End	03/27/89
	Final Rule	12/24/91 (56 FR 66566)
Infant Formula Quality Factors		
	NPRM	07/09/96 (61 FR 36154)
	NPRM Comment Period End	12/06/96
	Final Action	09/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 0910–AA04

773. INVESTIGATIONAL USE NEW ANIMAL DRUG REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 610; 21 USC 351; 21 USC 353; 21 USC 360b; 21 USC 371; 21 USC 321; 21 USC 352

CFR Citation: 21 CFR 511; 21 CFR 512

Legal Deadline: None

Abstract: FDA is proposing to revise its regulations governing investigational use of new animal drugs by proposing to delete 21 CFR 511 and establish in 21 CFR part 512 revised investigational use of new animal drug regulations.

The investigational use new animal drug regulations are expected to include regulations to implement provisions of the Animal Drug Availability Act of 1996, specifically presubmission conferences, and implement parts of the President's National Performance Report, "Reinventing the Regulation of Animal Drugs," May 1996. In the reinventing regulations report, FDA proposed to revise its regulations to reflect numerous new process changes and programs that will enable a more streamlined animal drug application review and approval process, and that would result in less regulatory burden upon industry and FDA while maintaining the safety and effectiveness of new animal drugs. In addition, FDA is initiating a review of this rule under section 610 of the Regulatory Flexibility Act. The purpose of the section 610 review is to determine if the rule should be amended to minimize adverse economic impacts on small entities. FDA will solicit and consider comments on the following: 1) the continued need for the rule; 2) the nature of complaints or comments received concerning the rule; 3) the complexity of the rule; 4) the extent to which the rule overlaps, duplicates, or conflicts with other Federal, State, or local government rules; and 5) the degree to which technology, economic conditions, or other factors have changed in the area affected by the rule.

Timetable:

Action	Date	FR Cite
ANPRM	11/21/96	61 FR 59209
ANPRM Comment Period End	01/21/97	
Begin Review	04/03/00	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marty Schoenemann, Department of Health and Human Services, Food and Drug Administration, HFV-126, Center for Veterinary Medicine, 7500 Standish Place, Rockville, MD 20855
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RIN: 0910–AB02

774. ELIGIBILITY DETERMINATION FOR DONORS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS (HCT/PS)

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 262; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 210.1(c); 21 CFR 210.2(a); 21 CFR 210.2(b); 21 CFR 211.1(b); 21 CFR 820.1(a)(1); 21 CFR 820.1(c); 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration is requiring certain manufacturers of human cells, tissues, and cellular and tissue-based products to take actions to screen the donors of cells and tissues used in those products for evidence of, or risk factors for, relevant communicable disease. As part of this action, the agency is amending the current good manufacturing practice regulations that apply to human cells, tissues, and cellular and tissue-based products regulated as drugs, medical devices, and/or biological products to incorporate the new donor suitability requirements into existing good manufacturing practice regulations for those products.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52696
NPRM Comment Period End	12/29/99	
NPRM Comment Period Reopened	04/18/00	65 FR 20774
NPRM Comment Period Reopened End	07/17/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 0910–AB27

775. CURRENT GOOD TISSUE PRACTICE FOR MANUFACTURERS OF HUMAN CELLS, TISSUES, AND CELLULAR AND TISSUE-BASED PRODUCTS (HCT/PS)

Priority: Other Significant

Legal Authority: 42 USC 216; 42 USC 243; 42 USC 263a; 42 USC 264; 42 USC 271

CFR Citation: 21 CFR 1271

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is proposing to require certain manufacturers of human cells and tissue to follow current good tissue practice (GTP), which includes proper handling, processing, and storage of human cells and tissue, recordkeeping, the maintenance of a quality program, labeling, reporting, inspections, and enforcement.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1508
NPRM Comment Period End	05/08/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Paula S. McKeever, Regulatory Policy Analyst, Department of Health and Human Services, Food and Drug Administration, Suite 200N (HFM-17), Center for Biologics Evaluation and Research, 1401 Rockville Pike, Rockville, MD 20852-1448
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Fax: 301 594-1944

RIN: 0910–AB28

776. PREMARKET NOTICE CONCERNING BIOENGINEERED FOODS

Priority: Other Significant

Legal Authority: 21 USC 342; 21 USC 343; 21 USC 348; 21 USC 321; 21 USC 371

CFR Citation: 21 CFR 192; 21 CFR 592

Legal Deadline: None

Abstract: The Food and Drug Administration (FDA) is requiring the submission to the agency of data and information regarding plant-derived bioengineered foods that would be consumed by humans or animals. FDA is requiring that this submission be made at least 120 days prior to the commercial distribution of such foods. FDA took this action to ensure that it has the appropriate amount of information about bioengineered foods to help to ensure that all market entry decisions by the industry are made consistently and in full compliance with the law. The action will permit the agency to assess on an ongoing basis whether plant-derived bioengineered foods comply with the standards of the Federal Food, Drug, and Cosmetic Act.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4706
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Linda Kahl, Consumer Safety Officer, Department of Health and Human Services, Food and Drug Administration, HFS-206, Center for Food Safety and Applied Nutrition, 200 C Street SW., Washington, DC 20204
Phone: 202 418-3101
Fax: 202 418-3131
Email: lkahl@cfsan.fda.gov

RIN: 0910–AC15

Department of Health and Human Services (HHS)
Food and Drug Administration (FDA)

Completed Actions

777. EXPORTS; NOTIFICATION AND RECORDKEEPING REQUIREMENTS

Priority: Routine and Frequent

CFR Citation: 21 CFR 1.101

Completed:

Reason	Date	FR Cite
Final Action	12/19/01	66 FR 65429

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Philip L. Chao
Phone: 301 827-0587
Fax: 301 827-4774
Email: pchao@oc.fda.gov

RIN: 0910–AB16

778. FOREIGN ESTABLISHMENT REGISTRATION AND LISTING

Priority: Other Significant

CFR Citation: 21 CFR 207.3; 21 CFR 207.7; 21 CFR 207.10; 21 CFR 207.20; 21 CFR 207.21; 21 CFR 207.25; 21 CFR 207.37; 21 CFR 207.40; 21 CFR 607.3; 21 CFR 607.7; 21 CFR 607.20; 21 CFR 607.22; 21 CFR 607.25; 21 CFR 607.26; 21 CFR 607.31; 21 CFR 607.35; 21 CFR 607.37; 21 CFR 607.40; 21 CFR 607.65; 21 CFR 807.3; 21 CFR 807.20; 21 CFR 807.25; 21 CFR 807.40

Completed:

Reason	Date	FR Cite
Final Action	11/27/01	66 FR 59138

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Philip L. Chao
Phone: 301 827-0587
Fax: 301 827-4774
Email: pchao@oc.fda.gov

RIN: 0910–AB21

779. AMENDMENT OF REGULATIONS REGARDING CERTAIN LABEL STATEMENTS ON PRESCRIPTION DRUGS

Priority: Substantive, Nonsignificant

CFR Citation: 21 CFR 201; 21 CFR 250; 21 CFR 310; 21 CFR 329; 21 CFR 361; 21 CFR 369; 21 CFR 290

Completed:

Reason	Date	FR Cite
Final Action	02/01/02	67 FR 4904

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christine F. Rogers
Phone: 301 594-2041
Fax: 301 827-5562

RIN: 0910–AB39

780. STATE CERTIFICATION OF MAMMOGRAPHY FACILITIES

Priority: Other Significant

CFR Citation: 21 CFR 900.2; 21 CFR 900.20 to 900.25

Completed:

Reason	Date	FR Cite
Final Rule	02/06/02	67 FR 5446

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Ruth Fischer
Phone: 301 827-2960

RIN: 0910–AB98

781. ADDITIONAL CRITERIA AND PROCEDURES FOR CLASSIFYING OVER-THE-COUNTER DRUGS AS GENERALLY RECOGNIZED AS SAFE AND EFFECTIVE AND NOT MISBRANDED

Priority: Economically Significant

CFR Citation: 21 CFR 330

Completed:

Reason	Date	FR Cite
Final Action	01/23/02	67 FR 3060

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Gerald M. Rachanow
Phone: 301 827-2241
Fax: 301 827-2315
Email: rachanow@cder.fda.gov

RIN: 0910–AC22

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Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)
Proposed Rule Stage

782. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: MEDICAL MALPRACTICE PAYMENTS REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11131

CFR Citation: 45 CFR 60.7

Legal Deadline: None

Abstract: This NPRM proposes to require that, in addition to reporting to the National Practitioner Data Bank medical malpractice payments made where physicians or other health care practitioners are named in medical malpractice actions or claims, judgments or settlements, payments be reported where they are made for the benefit of physicians or other health care practitioners not named in the judgments or settlements but who furnished or failed to furnish the health care services upon which the actions or claims were based. The purpose of this NPRM is to prevent the evasion of the medical malpractice payment reporting requirement of the Data Bank through the agreement of the parties to a lawsuit to use the corporate health care entity to "shield" practitioners. It would also require malpractice payers, in very limited circumstances, when it is impossible to identify the practitioner who furnished or failed to furnish the health care services upon which the actions or claims were based, to report why the practitioner could not be identified and to provide the name of the corporate health care entity.

Timetable:

Action	Date	FR Cite
NPRM	12/24/98	63 FR 71255
NPRM Comment Period End	02/22/99	
Second NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Public Health Service, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443-2300
Fax: 301 443-6725

RIN: 0906–AA41

783. DESIGNATION OF MEDICALLY UNDERSERVED POPULATIONS AND HEALTH PROFESSIONAL SHORTAGE AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 254b; 42 USC 254e

CFR Citation: 42 CFR 5; 42 CFR 51c

Legal Deadline: None

Abstract: This rule would consolidate the process for designating areas of health professional shortage and medical underservice that apply in several department programs, and would improve the criteria for designating medically underserved populations (MUPs) and Primary Care Health Professional Shortage Areas (HPSAs). This NPRM will address issues raised by comments received in a previous NPRM, dated September 1, 1998.

Timetable:

Action	Date	FR Cite
NPRM	09/01/98	63 FR 46538
NPRM Comment Period End	01/04/99	
Second NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerilyn A. Thornburg RN., MPH., Chief, Shortage Designation Branch, Department of Health and Human Services, Health Resources and Services Administration, Room 91C4, National Center for Health Workforce Analysis, Bureau of Health Professions, 4350 East-West Highway, Bethesda, MD 20814
Phone: 301 594-0197
Email: dsd@hrsa.gov

RIN: 0906–AA44

784. NATIONAL PRACTITIONER DATA BANK FOR ADVERSE INFORMATION ON PHYSICIANS AND OTHER HEALTH CARE PRACTITIONERS: REPORTING ADVERSE AND NEGATIVE ACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1396r-2

CFR Citation: 45 CFR 60

Legal Deadline: None

Abstract: Public Law 100-93 amended section 1921 of the Social Security Act to require that each State have in effect a system of reporting disciplinary licensure actions taken against all licensed health care practitioners and entities. It also requires States to report any negative action or finding which a peer review organization, private accreditation entity or a State has concluded against a health care practitioner or entity. Section 1921 directs the Secretary to provide for maximum appropriate coordination in the implementation of these reporting requirements with those of the Health Care Quality Improvement Act of 1986 (title IV of Pub. L. 99-660). Section 1921 requirements will be incorporated into the National Practitioner Data Bank (NPDB).

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: John M. Heyob, Director, Division of Practitioner Data Banks, Department of Health and Human Services, Public Health Service, Suite 300, 7519 Standish Place, Rockville, MD 20957
Phone: 301 443-2300
Fax: 301 443-6725

RIN: 0906–AA57

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)
Final Rule Stage

785. NATIONAL VACCINE INJURY COMPENSATION PROGRAM: REVISIONS AND ADDITIONS TO THE VACCINE INJURY TABLE

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-170; 42 USC 300aa-14

CFR Citation: 42 CFR 100

Legal Deadline: None

Abstract: This NPRM proposes several changes to the Vaccine Injury Table (Table) (42 CFR 100.3), which will have an effect upon petitions for compensation under the National Childhood Vaccine Injury Compensation Program including the following: 1) amending the Table by adding the injury of intussusception to the Table for vaccines containing live, oral, rhesus-based rotavirus, a category of rotavirus vaccines; 2) removing residual seizure disorder and early onset Hib disease from the Table's Qualifications and Aids to Interpretation; 3) removing hemophilus influenzae type b polysaccharide vaccines from and adding pneumococcal conjugate vaccines to the Table; and 4) changing certain dates of coverage under the Table.

Timetable:

Action	Date	FR Cite
NPRM	07/05/01	66 FR 36735
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Geoffrey Evans, Medical Director, Division of Vaccine Injury Compensation, BHPR, Department of Health and Human Services, Health Resources and Services Administration, Room 8A-45, 5600 Fishers Lane, Rockville, MD 20857
Phone: 301 443-4998
Fax: 301 443-8196
Email: gevans@hrsa.gov

Related RIN: Duplicate of 0906-AA58

RIN: 0906–AA55

Department of Health and Human Services (HHS)
Health Resources and Services Administration (HRSA)
Completed Actions

786. NATIONAL VACCINE INJURY COMPENSATION PROGRAM: REVISIONS AND ADDITIONS TO THE VACCINE INJURY TABLE

Timetable:

Action	Date	FR Cite
Duplicate of 0906-AA55	05/01/02	

RIN: 0906–AA58

787. ADOPTION OF THE INTERIM FINAL RULE AS A FINAL RULE WITH AMENDMENTS FOR RICKY RAY HEMOPHILIA

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 130

Completed:

Reason	Date	FR Cite
Final Rule	11/23/01	66 FR 58667

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas C. Croft
Phone: 301 443-2300

RIN: 0906–AA59

Department of Health and Human Services (HHS)
Indian Health Service (IHS)
Proposed Rule Stage

788. TRIBAL SELF-GOVERNANCE AMENDMENTS

Priority: Other Significant

Legal Authority: PL 106-260, sec 517(a)(2); 25 USC 450, Tribal Self-Governance Amendments

CFR Citation: None

Legal Deadline: NPRM, Statutory, August 18, 2001, Expiration of authority to promulgate final rule: May 18, 2002.

Abstract: Title V of the Tribal Self-Governance Amendments of 2000 (Pub. L. 106-260) made permanent the demonstration program which allowed tribes full control over the operation and redesign of various activities historically managed by IHS. The proposal includes provisions that govern how IHS and Tribes will carry out their responsibilities under the Act.

Timetable:

Action	Date	FR Cite
NPRM	02/14/02	67 FR 6998
NPRM Comment Period End	04/15/02	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, Tribal

Agency Contact: Paula K. Williams, Director of Tribal Self-Governance, Department of Health and Human Services, Indian Health Service, Suite 240, Thompson Building, 801 Thompson Avenue, Rockville, MD 20852
Phone: 301 443-7821

RIN: 0917–AA05

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Department of Health and Human Services (HHS)
Indian Health Service (IHS)
Final Rule Stage

789. INDIAN CHILD PROTECTION AND FAMILY VIOLENCE PREVENTION ACT MINIMUM STANDARDS OF CHARACTER

Priority: Info./Admin./Other

Legal Authority: 25 USC 3201 et seq

CFR Citation: 42 CFR 36

Legal Deadline: None

Abstract: The Indian Health Service (IHS) is proposing to establish regulations as mandated by the Indian Child Protection and Family Violence Protection Act, Public Law 101-630, 25 U.S.C. 3201 to 3211, that prescribe minimum standards of character for individuals whose duties and responsibilities involve regular contact with, or control over, Indian children.

Timetable:

Action	Date	FR Cite
NPRM	03/25/99	64 FR 14559
NPRM Comment Period End	07/26/99	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Ramona D. Williams, Child Protection Coordinator, Department of Health and Human Services, Indian Health Service, Suite 605, 12300 Twinbrook Parkway, Rockville, MD 20852
Phone: 301 443-1589

RIN: 0917–AA02

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Proposed Rule Stage

790. UNDERGRADUATE SCHOLARSHIP PROGRAM REGARDING PROFESSIONS NEEDED BY THE NIH

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288-4

CFR Citation: 42 CFR 68b

Legal Deadline: None

Abstract: Section 487D of the Public Health Service Act, as added by the National Institutes of Health Revitalization Act of 1993, creates a program offering scholarships, in an amount not to exceed $20,000 per year of academic study, to individuals from disadvantaged backgrounds who are enrolled as full-time students at accredited institutions pursuing academic programs appropriate for careers in professions needed by the NIH. For each year of scholarship support, the recipient agrees to service (employment) after graduation, at the NIH, for one year. Additionally, the individual agrees to at least 10 consecutive weeks of service (employment) at the NIH during which the individual is attending the educational institution and receiving the NIH scholarship. The proposed new regulations will cover this program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA10

791. NATIONAL INSTITUTES OF HEALTH LOAN REPAYMENT PROGRAM FOR RESEARCH

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 288-3

CFR Citation: 42 CFR 68d

Legal Deadline: None

Abstract: Regulations will be issued to govern the awarding of educational loan repayments to qualified health professionals who agree to conduct research as employees of the National Institutes of Health.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA18

792. NIH CENTER GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; PL 106-310; PL 106-505; PL 106-525

CFR Citation: 42 CFR 52a

Legal Deadline: None

Abstract: NIH proposes to amend the current center grants regulations to reflect new authorities set forth in sections 409C, 452E, 485F, and 445l of the PHS Act. Section 409C concerns centers of excellence regarding research on autism; section 452E concerns centers regarding research on "fragile X;" section 485F concerns centers of excellence for research education and training for individuals who are members of minority health disparity populations; and section 445I concerns centers of excellence in Alzheimer's disease research and treatment.

Timetable:

Action	Date	FR Cite
NPRM	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA24

HHS—NIH
Proposed Rule Stage

793. NIH TRAINING GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; PL 106-310

CFR Citation: 42 CFR 63a

Legal Deadline: None

Abstract: NIH proposes to amend the training grants regulations to implement the new authority under section 452G of the PHS Act. This action is necessitated by enactment of the Children's Act of 2000. Section 1002 of this act adds a new section 452G that authorizes the Director of National Institute of Child Health and Human Development (NICHHD) in consultation with the Administrator of Health Resources and Services Administration (HRSA), to support activities to provide for an increase in the number and size of institutional training grants to institutions supporting pediatric training.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA28

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Final Rule Stage

794. SCIENTIFIC PEER REVIEW OF RESEARCH GRANT APPLICATIONS AND RESEARCH AND DEVELOPMENT CONTRACT PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 282(b)(6); 42 USC 284(c)(3); 42 USC 289a; 42 USC 290aa-3

CFR Citation: 42 CFR 52h

Legal Deadline: None

Abstract: NIH staff have been reexamining the peer review process as part of its reinvention of Government initiatives and have found ambiguities, misstatements, and voids in the existing regulations. These regulations, which govern the first level of review, are being amended to reflect current policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57132
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA20

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Long-Term Actions

795. STANDARDS FOR A NATIONAL CHIMPANZEE SANCTUARY SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 287a-3a

CFR Citation: 42 CFR 8

Legal Deadline: NPRM, Statutory, June 18, 2001.

Abstract: The National Institutes of Health proposes to establish standards for operating a national chimpanzee sanctuary system to provide for the permanent retirement of federally-owned or supported chimpanzees no longer needed for research.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry Moore, NIH Regulations Officer, Department of Health and Human Services, National Institutes of Health, Room 601 MSC 7669, 6011 Executive Boulevard, Rockville, MD 20852
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA31

Department of Health and Human Services (HHS)
National Institutes of Health (NIH)
Completed Actions

796. NATIONAL INSTITUTES OF HEALTH AIDS RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jerry Moore
Phone: 301 496-4606
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RIN: 0925–AA02

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HHS—NIH — Completed Actions

797. NATIONAL CANCER INSTITUTE CLINICAL CANCER EDUCATION PROGRAM

Priority: Info./Admin./Other

CFR Citation: 42 CFR 52d

Completed:

Reason	Date	FR Cite
Withdrawn	03/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA17

798. NATIONAL INSTITUTE OF CHILD HEALTH AND HUMAN DEVELOPMENT CONTRACEPTION AND INFERTILITY RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68c

Completed:

Reason	Date	FR Cite
Final Rule	04/11/02	67 FR 17650

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA19

799. NATIONAL INSTITUTES OF HEALTH CLINICS RESEARCH LOAN REPAYMENT PROGRAM FOR INDIVIDUALS FROM DISADVANTAGED BACKGROUNDS

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68a

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA25

800. NIH LOAN REPAYMENT PROGRAM FOR MINORITY HEALTH DISPARITIES RESEARCH

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68f

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA26

801. PEDIATRIC RESEARCH LOAN REPAYMENT PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68f

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA27

802. NATIONAL INSTITUTES OF HEALTH LOAN REPAYMENT PROGRAM FOR CLINICAL RESEARCHERS

Priority: Substantive, Nonsignificant

CFR Citation: 42 CFR 68f

Completed:

Reason	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerry Moore
Phone: 301 496-4606
Email: jm40z@nih.gov

RIN: 0925–AA30

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) — Proposed Rule Stage

803. PUBLIC HEALTH SERVICES POLICIES ON RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 93

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes substantial revisions to the existing regulations at 42 CFR part 50, subpart A, "Responsibilities of Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science," 54 FR 32449, August 8, 1989. The National Institutes of Health Revitalization Act of 1993 (NIH Act), Public Law 103-43, contains provisions that affect the current rule. For example, section 161 of the NIH Act established the Office of Research Integrity (ORI) as an independent entity reporting to the Secretary, and recent organizational changes have also affected the ORI's operations. In addition, the Office of Science and Technology Policy (OSTP) published a governmentwide policy that applies to federally-funded research and proposals submitted to the Federal agencies for research funding, 65 FR 76260, December 6, 2000. The proposed revised regulation will implement this OSTP policy, which contains a definition of research misconduct and basic guidelines for the response of Federal agencies and research institutions to allegations of research misconduct. The current regulation, which implemented section 493(e) of the Public Health Service Act, would be deleted, and a new part 93, subparts A, B, C, D, and E would be added.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

HHS—OPHS — Proposed Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Bullman, Policy Analyst, Department of Health and Human Services, Office of Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-5300
Fax: 301 443-5351

Related RIN: Related To 0940-AA01

RIN: 0940–AA04

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) — Final Rule Stage

804. PUBLIC HEALTH SERVICE STANDARDS FOR THE PROTECTION OF RESEARCH MISCONDUCT WHISTLEBLOWERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 216; 42 USC 241; 42 USC 289b

CFR Citation: 42 CFR 94

Legal Deadline: None

Abstract: To implement section 493(e) of the Public Health Service Act (added by section 163 of the National Institutes of Health Revitalization Act of 1993, Pub. L. 103-43), the Department is proposing to add a new part 94 to title 42 of the Code of Federal Regulations. Under this proposed regulation, covered institutions must follow certain requirements for preventing and responding to occurrences of retaliation against whistleblowers. The purpose of this part is to protect: (1) persons who make a good faith allegation that a covered institution or member thereof engaged in, or failed to respond adequately to, an allegation of research misconduct; and (2) persons who cooperate in good faith with an investigation of research misconduct.

Timetable:

Action	Date	FR Cite
NPRM	11/28/00	65 FR 70830
NPRM Comment Period End	01/29/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Bullman, Policy Analyst, Department of Health and Human Services, Office of Public Health and Science, Suite 700, 5515 Security Lane, Rockville, MD 20852
Phone: 301 443-5300
Fax: 301 443-5351

Related RIN: Related To 0940-AA04

RIN: 0940–AA01

Department of Health and Human Services (HHS)
Office of Public Health and Science (OPHS) — Completed Actions

805. FEDERAL POLICY (COMMON RULE) FOR THE PROTECTION OF HUMAN SUBJECTS

Priority: Other Significant

CFR Citation: 45 CFR 46

Completed:

Reason	Date	FR Cite
Withdrawn	04/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Glen Drew
Phone: 301 402-4994
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RIN: 0940–AA03

806. PROTECTION OF HUMAN RESEARCH SUBJECTS

Priority: Other Significant

CFR Citation: 45 CFR 46

Completed:

Reason	Date	FR Cite
Final Rule	11/13/01	66 FR 56775

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Irene Stith-Coleman, Ph.D
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Fax: 202 205-0493
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RIN: 0940–AA05

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS) — Proposed Rule Stage

807. REQUIREMENTS FOR ESTABLISHING AND MAINTAINING MEDICARE BILLING PRIVILEGES (CMS-6002-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This regulation is needed as part of the Administration's anti-fraud and abuse efforts. It would give us the authority to enroll and re-enroll providers with time frames for re-enrollment.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Formerly known as HCFA-1023-P

Agency Contact: Michael Collett, OFM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6121

RIN: 0938–AH73

808. NATIONAL STANDARD FOR IDENTIFIERS OF HEALTH PLANS (CMS-1212-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 1320d to 1320d-8

CFR Citation: 45 CFR 160; 45 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998.

Abstract: This rule would implement a standard identifier to identify health plans that process and pay certain electronic health care transactions. It would implement one of the requirements for administrative simplification in section 262 of the Health Insurance Portability and Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Helen Dietrick, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1-07-17, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7448

RIN: 0938–AH87

809. MEDICARE HOSPICE CARE AMENDMENTS (CMS-1022-P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 105-33, sec 4441(a); PL 105-33, sec 4442 to 4444; PL 105-33, sec 4448 to 4449

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule revises certain regulations governing coverage and payments for hospice care under the Medicare program as required by the BBA of 1997.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Carol Blackford, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5909
Email: cblackford@hcfa.gov

Related RIN: Previously reported as 0938-AH73

RIN: 0938–AJ36

810. END-STAGE RENAL DISEASE BAD DEBT PAYMENT (CMS-1126-P)

Priority: Other Significant

Legal Authority: Sec 110 of the Social Security Act; sec 1812(d) of the Social Security Act; sec 1814(b) of the Social Security Act; sec 1815 of the Social Security Act; sec 1833(a) of the Social Security Act; sec 1833(i) of the Social Security Act; sec 1833(n) of the Social Security Act; sec 1861(v) of the Social Security Act; sec 1866 of the Social Security Act; sec 1871 of the Social Security Act; sec 1881 of the Social Security Act; sec 1883 of the Social Security Act; 42 USC 1302; 42 USC 1395f(b); 42 USC 1395g; 42 USC 1395(a); 42 USC 1395(i); 42 USC 1395(n); 42 USC 1395x(v); 42 USC 1395cc; 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395tt

CFR Citation: 42 CFR 413.178

Legal Deadline: None

Abstract: This proposed rule would implement a court settlement agreement and remove the cap on End-Stage Renal Disease (ESRD) bad debt reimbursement, which limits payment of allowable bad debts to the facility's unrecovered costs. The final rule following this proposed rule would be effective for cost reporting periods beginning on or after January 1, 2001.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Katie Walker, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-03-03, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7278

RIN: 0938–AK02

811. CONDITIONS OF PARTICIPATION OF INTERMEDIATE CARE FACILITIES FOR PERSONS WITH MENTAL RETARDATION (CMS-3046-P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1302; 42 USC 1396d

CFR Citation: 42 CFR 400; 42 CFR 435; 42 CFR 440; 42 CFR 441; 42 CFR 483

Legal Deadline: None

Abstract: This proposed rule would revise the conditions of participation for ICFs/MR. We would set forth these new requirements that ICFs/MR must meet to adhere to current trends in the field of developmental disabilities. It would address recent developments in some facilities in the District of Columbia to further protect the health and safety of this vulnerable population.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Nancy Archer, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-05-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 401 786-0596

RIN: 0938–AK23

812. REVIEW OF NATIONAL COVERAGE DETERMINATIONS AND LOCAL COVERAGE DETERMINATIONS (CMS-3063-P)

Priority: Other Significant

Legal Authority: Sec 522 of the BIPA 2000

CFR Citation: 42 CFR 405

Legal Deadline: NPRM, Statutory, October 1, 2001, The effective date for regulation changes is 10/01/01.

Abstract: This proposed rule would announce a new process for beneficiaries to appeal national and local coverage determinations (LCDs).

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James Bossenmeyer, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-9317
Email: jbossenmeyer@hcfa.gov

RIN: 0938–AK60

813. REVISED PROCESS FOR MAKING MEDICARE COVERAGE DETERMINATIONS (NCDS) (CMS-3062-N)

Priority: Other Significant

Legal Authority: Sec 522 of the BIPA

CFR Citation: None

Legal Deadline: Other, Statutory, October 1, 2001, Revision notice.

Abstract: This notice will announce a revised process for making Medicare National Coverage Ddecisions.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Vadim Lubarsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-16-03, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0840

RIN: 0938–AK61

814. HEALTH INSURANCE REFORM: CLAIMS ATTACHMENTS STANDARDS (CMS-0050-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 1320d-2(a)(2)(B)

CFR Citation: 45 CFR 162

Legal Deadline: Final, Statutory, August 21, 1998.

Abstract: This proposed rule proposes an electronic standard for claims attachments. The standard is required by the Health Insurance Portability and Accountability Act. It would be used to transmit clinical data, beyond those data contained in the claims standard, to help establish medical necessity for coverage.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: James Krall, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6999

RIN: 0938–AK62

815. HEALTH INSURANCE REFORM: MODIFICATIONS TO STANDARDS FOR ELECTRONIC TRANSACTIONS (CMS-0003-P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1871

CFR Citation: 45 CFR 162

Legal Deadline: None

Abstract: This proposed rule would adopt a revised National Council for Prescription Drug Programs (NCPDP) standard for batched retail pharmacy transactions. This rule is not significant because the changes are technical with no policy or budget implications.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Gladys Wheeler, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N2-14-17, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0273

RIN: 0938–AK64

816. RATE OF REIMBURSEMENT OF PHOTOCOPY EXPENSES FOR PROSPECTIVE PAYMENT SYSTEM PROVIDERS (CMS-3055-P)

Priority: Economically Significant

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1154; Social Security Act, sec 1159; Social Security Act, sec 1866; Social Security Act, sec 1871

CFR Citation: 42 CFR 476.78

Legal Deadline: None

Abstract: This proposed rule would increase the rate of reimbursement of photocopy expenses as required by the regulations governing Utilization and Quality Control Peer Review Organizations. Our current regulations identify the photocopying reimbursement methodology for prospective payment system hospitals.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Valerie Mattison-Brown, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5958

RIN: 0938–AK68

817. MODIFICATIONS TO MEDICARE MANAGED CARE RULES (CMS-4041-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: BIPA, sec 605; BIPA, sec 606; BIPA, sec 612; BIPA, sec 615 to 617; BIPA, sec 620; BIPA, sec 621; BIPA, sec 623

CFR Citation: 42 CFR 409; 42 CFR 417; 42 CFR 422

Legal Deadline: None

Abstract: This proposed rule would implement certain Medicare payment provisions of the Medicare, Medicaid, and SCHIP Benefits and Improvement Act of 2000. The policy changes include premium reductions for M+C enrollees, uniform coverage for M+C plans in multiple locations, eliminating health disparities, ESRD enrollees, and increased civil money penalties for M+C organizations that terminate contracts mid-year. Moreover, this proposed rule describes authority to waive or modify requirements that hinder the design of, the offering of, or the enrollment in the M+C plans offered to employers or labor unions.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: CMS-4041-P was previously identified as CMS-1180-P.

Agency Contact: Alfred G. D'Alberto, Office of Managed Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1100

RIN: 0938–AK71

818. REVISIONS TO TRANSACTION AND CODE SET STANDARDS FOR ELECTRONIC TRANSACTIONS (CMS-0005-P)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1171 to 1179; PL 104-191

CFR Citation: 45 CFR 162

Legal Deadline: None

Abstract: This proposed rule would adopt revisions to the standards for electronic health care transactions adopted by the Secretary in regulations published August 2000. These revisions would enable covered entities to comply with the standards.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Gladys Wheeler, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N2-14-17, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0273

RIN: 0938–AK76

819. ELIMINATION OF STATEMENT OF INTENT PROCEDURES FOR FILING MEDICARE CLAIMS (CMS-1185-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424

Legal Deadline: None

Abstract: This proposed rule would revise the requirements concerning the written statement of intent procedures for filing Medicare claims from the current Medicare regulation.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: David Walczak, Center for Health Plans and Providers, Plan and Provider Purchasing Policy Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-07-07, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4475

RIN: 0938–AK79

820. CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2003 PAYMENT RATES (CMS-1206-P)

Priority: Other Significant. Major status under 5 USC 601 is undetermined.

Legal Authority: 42 USC 1395(L); BBA '97; BBRA '99; BIPA '00

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would revise the Medicare hospital outpatient payment system beginning January 1, 2003.

Timetable:

Action	Date	FR Cite
NPRM with Comment Period	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Cindy Read, Division of Medical Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21207
Phone: 410 786-0378

RIN: 0938–AL19

821. PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2003 (CMS-1202-P)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: Social Security Act, sec 1888(e)

CFR Citation: None

Legal Deadline: NPRM, Statutory, April 12, 2002.
Final, Statutory, July 31, 2002.

Abstract: This annual proposed rule updates the payment rates used under the SNF PPS beginning October 1, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: William Ullman, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-13-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 401 786-5667

RIN: 0938–AL20

822. REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2003 (CMS-1204-P)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1395W-4

CFR Citation: 42 CFR 410; 42 CFR 414

Legal Deadline: None

Abstract: This rule would make several changes affecting Medicare part B payment.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Latesha Walker, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1101

RIN: 0938–AL21

823. HOSPITAL INPATIENT REHABILITATION PROSPECTIVE PAYMENT SYSTEM FOR FY 2003 (CMS-1205-N)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 105-33, sec 4421; 42 USC 1395ww(j), sec 1886(j) of the Social Security Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A prospective payment system was implemented for inpatient rehabilitation services on 8/7/01, with an effective date of 1/1/02. Since 2002 is the first year of operation under the new system, there is not sufficient data for a proposed and final notice. This notice is limited to updating the marketbasket and wage rates for this category of facilities.

Timetable:

Action	Date	FR Cite
Notice	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Laurence Wilson, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4603

RIN: 0938–AL22

824. HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM FOR FY 2003 (CMS-1203-P)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Sec 1886(d) of the Social Security Act

CFR Citation: 42 CFR 405; 42 CFR 412; 42 CFR 413; 42 CFR 485; 42 CFR 489

Legal Deadline: NPRM, Statutory, April 1, 2002.
Final, Statutory, August 1, 2002.

Abstract: We are proposing to revise the Medicare acute care hospital inpatient prospective payment systems for operating and capital costs to implement changes arising from our continuing experience with these systems. These changes would be applicable to discharges occurring on or after October 1, 2002. We also are setting forth proposed rate-of-increase limits, as well as proposed policy changes for hospitals and hospital units excluded from the prospective payment systems.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stephen Phillips, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-05-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4548

RIN: 0938–AL23

825. PAYMENT FOR RESPIRATORY ASSIST DEVICES WITH BI-LEVEL CAPABILITY AND A BACK-UP RATE (CMS-1167-P)

Priority: Other Significant

Legal Authority: 42 CFR 1302; 42 CFR 1395hh; 42 CFR 1395rr(b)(1); PL 103-66

CFR Citation: 42 CFR 414

Legal Deadline: None

Abstract: This rule removes respiratory assist devices with bi-level capability and a back-up rate from the category for items requiring frequent and substantial servicing, and places them in the category for other items, or capped rental items. This rule corrects an error that occurred in 1992, where these devices were inappropriately placed in the category for items requiring frequent and substantial servicing.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joel Kaiser, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4499

RIN: 0938–AL27

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826. • SELF-DECLARATION OF CITIZENSHIP (CMS-2085-P)

Priority: Info./Admin./Other

Legal Authority: Public Law 104-193, Sec 431

CFR Citation: 42 CFR 435.410; 42 CFR 436.410

Legal Deadline: None

Abstract: This proposed rule would require States, on a post-determination basis, to carry out a process for verifying citizenship in a sample of cases to ensure that program integrity is being maintained. This proposed rule would also clearly state that acceptance of the individual's self-declaration is an option.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Sarah DeLone, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7010

RIN: 0938–AL33

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827. • HOSPICE WAGE INDEX FOR FY 2003 (CMS-1211-N)

Priority: Routine and Frequent

Legal Authority: 42 USC 1395f(i)(1)

CFR Citation: None

Legal Deadline: None

Abstract: This notice will announce the annual update to the hospice wage index.

Timetable:

Action	Date	FR Cite
Notice	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Lynn Riley, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-02/23, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1286

RIN: 0938–AL41

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828. • ELECTRONIC SUBMISSION OF COST REPORTS (CMS-1199-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1815(a); Social Security Act, sec 1833(e)

CFR Citation: 42 CFR 413.24

Legal Deadline: None

Abstract: This proposed rule would establish the requirement for ESRD facilities, hospices, rural health clinics, and federally qualified health centers to file cost reports in a standardized electronic format. This rule would also provide a delay or waiver of this requirement where implementation would result in financial hardship. The provisions of this rule would allow for more accurate preparation and more efficient processing of each cost report.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Talbott, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-01-01, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4592

RIN: 0938–AL51

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829. • HEALTH INSURANCE REFORM: NATIONAL STANDARD FOR IDENTIFIERS OF HEALTH PLANS (CMS-1212-F)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 1320d to 1320d-8

CFR Citation: 45 CFR 162

Legal Deadline: Final, Statutory, February 2, 1998.

Abstract: This proposed rule implements a standard identifier to identify health plans that process and pay certain electronic health care transactions. It implements one of the requirements for administrative simplification in section 262 of the Health Insurance Portability & Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Helen Dietrick, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1-07-17, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7448

RIN: 0938–AL52

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830. • REVISED CIVIL MONEY PENALTIES, ASSESSMENTS, EXCLUSIONS, AND RELATED APPEALS PROCEDURES (CMS-6146-P)

Priority: Info./Admin./Other

Legal Authority: PL 97-35, sec 2105; PL 105-33, sec 4311(b); PL 105-33, sec 4317; PL 105-33, sec 4031(a)(2); PL 105-33, sec 4531(b)(2); PL 104-191, sec 231c

CFR Citation: 42 CFR 402 subpart C

Legal Deadline: None

Abstract: This proposed rule revises CMS civil money penalty authorities. These proposed revisions are intended to add the specific exclusion sanction authorities as established in the procedures for imposing civil money penalties, assessments, and exclusions for certain violations of the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joel Cohen, Office of Financial Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-04-06, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-3349

RIN: 0938–AL53

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831. • EFFECT OF CHANGE OF OWNERSHIP ON PROVIDER AND SUPPLIER PENALTIES (CMS-2215-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1866

CFR Citation: 42 CFR 405; 42 CFR 489

Legal Deadline: None

Abstract: This proposed rule would amend regulations on provider and certain supplier agreements by clarifying the effect a change of ownership has on penalties and sanctions incurred by the former provider or supplier.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Goldman, Division of Integrated Health Systems, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-6813

RIN: 0938–AL72

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832. • HEALTH COVERAGE PORTABILITY: TOLLING CERTAIN TIME PERIODS AND INTERACTIONS WITH FAMILY AND MEDICAL LEAVE ACT (CMS-2158-P)

Priority: Other Significant

Legal Authority: 42 USC 300 gg; PL 104-191

CFR Citation: 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.120; 45 CFR 146.145

Legal Deadline: None

Abstract: This proposed rule would clarify certain portability requirements for group health plans and issuers of health insurance coverage offered in connection with a group health plan. This rule would implement changes made to the Internal Revenue Code, the Employee Retirement Income Security Act, and the Public Health Service Act enacted as part of the Health Insurance Portability and Accountability Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local, Federal

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL88

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833. • CHANGES TO THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND CALENDAR YEAR 2004 PAYMENT RATES (CMS-1471-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1395L; BBA'97; BBRA'99; BIPA'00

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule would revise the Medicare hospital outpatient department prospective payment system for the January 2, 2004 update.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Cindy Read, Division of Medical Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21207
Phone: 410 786-0378

RIN: 0938–AL91

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Final Rule Stage

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834. SECURITY STANDARDS (CMS-0049-F)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 104-191; 42 USC 1320d-2(d)

CFR Citation: 45 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998.

Abstract: This final rule is being jointly developed by CMS and the Department of Commerce. This final rule adopts standards for the security of certain electronic identifiable health information of health plans, health care clearinghouses, and certain health care providers. It implements administrative simplification initiatives that have a national scope beyond the Medicare and Medicaid programs.

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Timetable:

Action	Date	FR Cite
NPRM	08/12/98	63 FR 43242
NPRM Comment Period End	10/13/98	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

Agency Contact: Barbara Clark, Office of Information Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N2-14-10, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-3017

RIN: 0938–AI57

835. NATIONAL STANDARD EMPLOYER IDENTIFIER (CMS-0047-F)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 104-191; 42 USC 1320d to 1320d-8

CFR Citation: 45 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998.

Abstract: This rule is being jointly developed by CMS, Treasury, Labor, and Defense. The regulation adopts an employer's tax ID number as the standard for electronic transactions, implementing an administrative simplification initiative that has a national scope beyond the Medicare and Medicaid programs.

Timetable:

Action	Date	FR Cite
NPRM	06/16/98	63 FR 32784
NPRM Comment Period End	08/17/98	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Patricia Peyton, Office of Information Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-20-05, 7500 Security Boulevard, Baltimore, MD 21224-1850
Phone: 410 786-1812

RIN: 0938–AI59

836. EXTERNAL QUALITY REVIEW OF MEDICAID MANAGED CARE ORGANIZATIONS (CMS-2015-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1302

CFR Citation: 42 CFR 438

Legal Deadline: None

Abstract: This final rule will require State agencies to contract with managed care organizations and to monitor and evaluate their performances through annual external, independent reviews conducted by accrediting organizations that are approved by CMS.

Timetable:

Action	Date	FR Cite
NPRM	12/01/99	64 FR 67223
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Sharon Gilles, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1177

RIN: 0938–AJ06

837. RURAL HEALTH CLINICS: AMENDMENTS TO PARTICIPATION REQUIREMENTS AND PAYMENT PROVISIONS, AND ESTABLISHMENT OF A QUALITY ASSESSMENT AND IMPROVEMENT PROGRAM (CMS-1910-F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 405; 42 CFR 491

Legal Deadline: None

Abstract: This rule amends the Medicare certification and payment requirements for rural health clinics (RHCs), as required by section 4205 of the Balanced Budget Act of 1997.

Timetable:

Action	Date	FR Cite
NPRM	02/28/00	65 FR 10450
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: David Worgo, Center for Health Plans and Providers, Division of Integrated Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-15-18, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5919

RIN: 0938–AJ17

838. HOSPITAL CONDITIONS OF PARTICIPATION: LABORATORY SERVICES (CMS-3014-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482.27

Legal Deadline: None

Abstract: This final rule revises requirements for hospitals that transfuse blood and blood products regarding written procedures, quarantine, testing, and counseling for hepatitis C virus (HCV) and records maintenance.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69416
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Collins, OCSQ, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3189

RIN: 0938–AJ29

839. NON-FEDERAL GOVERNMENTAL PLANS EXEMPT FROM HEALTH INSURANCE PORTABILITY REQUIREMENTS (CMS-2033-IFC)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 45 CFR 146

Legal Deadline: None

Abstract: This interim final rule revises certain procedural requirements associated with the filing of an election to exempt certain non-Federal governmental group health plans from various Federal requirements of HIPAA that are generally applicable to employment-related group health plans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Dave Holstein, Insurance Standards Team, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1564

RIN: 0938–AK00

840. FIRE SAFETY REQUIREMENTS FOR RNHCI, ASC, HOSPICES, PACE, HOSPITALS, AND LONG-TERM CARE FACILITIES AND ICFS FOR THE MENTALLY RETARDED (CMS-3047-P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 403; 42 CFR 416; 42 CFR 418; 42 CFR 460; 42 CFR 482; 42 CFR 483

Legal Deadline: None

Abstract: This rule adopts the 2000 edition of the National Fire Protection Association's Life Safety Code as the fire standards for Religious Non-Medical Health Care Institutions, Ambulatory Surgery Centers, Hospices that provide in-patient services, Programs of All-Inclusive Care for the Elderly, Hospitals, Long-Term Care Facilities, and Intermediate Care Facilities for the Mentally Retarded.

Timetable:

Action	Date	FR Cite
NPRM	10/26/01	66 FR 54179
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Tamara Syrek, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services
Phone: 410 786-3529

RIN: 0938–AK35

841. HOSPITAL CONDITIONS OF PARTICIPATION: QUALITY ASSESSMENT AND PERFORMANCE IMPROVEMENTS (CMS-3050-F)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482.21

Legal Deadline: None

Abstract: This final rule addresses provisions relating to the development and implementation of a QAPI program and its components. It imposes several requirements that are designed to increase patient safety and track the methodologies and/or programs or both used to increase patient safety.

Timetable:

Action	Date	FR Cite
NPRM	12/19/97	62 FR 66725
NPRM Comment Period End	02/17/98	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Stephanie Dyson, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-9226

RIN: 0938–AK40

842. SUPPLEMENTARY MEDICAL INSURANCE PREMIUM SURCHARGE AGREEMENTS (CMS-4007-F)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1839(e)

CFR Citation: 42 CFR 408.200; 42 CFR 408.201; 42 CFR 408.202; 42 CFR 408.205; 42 CFR 408.207; 42 CFR 408.210; ...

Legal Deadline: None

Abstract: This proposed rule would provide a special payment arrangement with States and local government entities for the payment of part B premium late enrolment surcharges.

Timetable:

Action	Date	FR Cite
NPRM	10/26/01	66 FR 54186
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Marty Abeln, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1032

Sandy Clarke, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Center for Beneficiary Choices, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7451

RIN: 0938–AK42

843. PAYMENT FOR UPGRADED DURABLE MEDICAL EQUIPMENT; WITHDRAWAL OF PROPOSED RULE (CMS-1084-WN)

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This notice will withdraw the proposed rule that was published in the Federal Register on April 27, 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/27/00	65 FR 24666
Final Rule	04/00/02	

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HHS—CMS — Final Rule Stage

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William J. Long, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-08-27, Center for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21228
Phone: 410 786-5655
Email: wlong@hcfa.gov

RIN: 0938–AK50

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844. PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS FOR FY 2003 (CMS-1177-P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: BBRA, sec 123; BIPA, sec 307; PL 105-33, sec 4422; PL 106-113, sec 123; PL 106-544, sec 307(b)

CFR Citation: 42 CFR 412

Legal Deadline: NPRM, Statutory, October 1, 2002, Effective date.

Abstract: This rule would establish a PPS for long-term care facilities effective October 1, 2002.

Timetable:

Action	Date	FR Cite
NPRM	03/22/02	67 FR 13416
NPRM Comment Period End	05/21/02	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Local, Federal

Federalism: Undetermined

Agency Contact: Judith H. Richter, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-07-07, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-2590

RIN: 0938–AK69

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845. MEDICARE INPATIENT DISPROPORTIONATE SHARE HOSPITAL (DSH) ADJUSTMENT FORMULA (CMS-1171-IFC)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 412106

Legal Deadline: None

Abstract: This interim final rule clarifies the Medicare DSH adjustment calculation in reference to the inclusion of Medicaid patient days. It describes the criteria to use in calculating the Medicare DSH adjustment for hospitals for purposes of payment under the hospital inpatient prospective payment system.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stephen Phillips, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-05-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4548

RIN: 0938–AK77

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846. STATE ALLOTMENTS FOR PAYMENT OF MEDICARE PART B PREMIUMS FOR QUALIFIED INDIVIDUALS; FEDERAL FISCAL YEAR 2001 (CMS-2087-PN)

Priority: Other Significant

Legal Authority: 42 USC 1396a(a)(10)(E); 42 USC 1396x

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the Federal fiscal year 2001 allotments that are available for State agencies to pay Medicare part B premiums for two specific eligibility groups of low-income Medicare beneficiaries, referred to as Qualified Individuals.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3713
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Robert Nakielny, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4466

RIN: 0938–AK91

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847. MEDICAID MANAGED CARE; NEW PROVISIONS (CMS-2104-F)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Balanced Budget Act of 1997, sec 4701 to 4710; Social Security Act, sec 1932

CFR Citation: 42 CFR 400; 42 CFR 430; 42 CFR 431; 42 CFR 434; 42 CFR 435; 42 CFR 438; 42 CFR 440; 42 CFR 447

Legal Deadline: None

Abstract: This final rule will revise recently published provisions for the Medicaid Managed Care Program. The provisions involve quality of care and services under Medicaid managed care arrangements. The provisions affect enrollee rights and responsibilities, as well as contracts between State Medicaid agencies and managed care organizations.

Timetable:

Action	Date	FR Cite
NPRM	08/20/01	66 FR 43613
NPRM Comment Period End	10/19/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Bruce Johnson, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD
Phone: 410 786-0615

Deirdre Duzor, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-13-15, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4626

RIN: 0938–AK96

HHS—CMS — Final Rule Stage

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848. MODIFICATIONS TO THE STATE CHILDREN'S HEALTH INSURANCE PROGRAM (CMS-2006-F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33

CFR Citation: 42 CFR 435; 42 CFR 436; 42 CFR 457

Legal Deadline: None

Abstract: This final rule responds to public comments received and will revise certain provisions to the State Children's Health Insurance Program (SCHIP) final rule, published on January 11, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/01	66 FR 33810
Interim Final Rule Comment Period End	07/26/01	
Interim Final Rule Effective	08/24/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Regina Fletcher, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3293

RIN: 0938–AL00

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849. HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR FY 2003 (CMS-1198-NC)

Priority: Other Significant

Legal Authority: Balanced Budget Act, PL 105-33, sec 460.3(a); OCESAA, PL 105-277, sec 5101(c); OCESAA, PL 105-277, sec 5101(d); Balanced Budget Act Refinement Act of 1999, PL 100-113, sec 305; Balanced Budget Act Refinement Act of 1999, PL 100-113, sec 306; Medicare, Medicaid & SCHIP Benefits Improve.& Protection Act of 2000, PL 106-544; ...

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, October 1, 2002, Publish by 06/28/2002.

Abstract: This notice with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies for FY 2003.

Timetable:

Action	Date	FR Cite
Notice	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Susan Levy, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-08-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-9364

RIN: 0938–AL16

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850. MEDICARE PROGRAM; MEDICARE-ENDORSED PRESCRIPTION DRUG DISCOUNT CARD ASSISTANCE INITIATIVE (CMS-4027-P)

Priority: Economically Significant

Legal Authority: 42 USC 1395b-3; 42 USC 1302; 42 USC 1302b-10

CFR Citation: None

Legal Deadline: None

Abstract: This final rule would set forth a Department of Health and Human Services' initiative for a Medicare endorsement to entities currently offering prescription drug discounts to the general public to offer prescription drug discount cards to Medicare beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	03/06/02	67 FR 10262
NPRM Comment Period End	05/06/02	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Paula Stannard, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Room 707F, 200 Independence Avenue SW., Washington, DC 20201
Phone: 202 690-7741

Teresa Decaro, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-17-14, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6604
Email: tdecaro@cms.hhs.gov

RIN: 0938–AL28

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851. • PEER REVIEW ORGANIZATIONS: NAME AND OTHER CHANGES—TECHNICAL AMENDMENTS (CMS-3088-FC)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1871

CFR Citation: 42 CFR 400

Legal Deadline: None

Abstract: This final rule with comment period changes the term "peer review organization" to "quality improvement organization" in the CFR.

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Valerie Mattison-Brown, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Office of Clinical Standards, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5958

RIN: 0938–AL38

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852. • END-STAGE RENAL DISEASE—RESCISSION OF WAIVER OF CONDITIONS FOR COVERAGE UNDER A STATE OF EMERGENCY IN HOUSTON, TEXAS AREA (CMS-3074-F2)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This final rule removes an emergency waiver of the Medicare end-stage renal disease conditions for coverage granted to permit the transplant team of an approved renal transplant center to furnish kidney transplant services in three specific hospitals in the Houston, TX area during a state of emergency.

Timetable:

Action	Date	FR Cite
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lori Davis, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0710

RIN: 0938–AL39

853. • PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITAL; CORRECTING AMENDMENT (CMS-1069-F2)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1886(j); PL 105-33; PL 106-554; PL 106-113

CFR Citation: 42 CFR 412; 42 CFR 413

Legal Deadline: None

Abstract: This notice corrects typographical and data errors identified in the August 7, 2001 rule.

Timetable:

Action	Date	FR Cite
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Kuhl, Technical Advisor, Bureau of Policy Development, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-11-06, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4597

RIN: 0938–AL40

854. • PHYSICIAN FEE SCHEDULE FOR CY 2002: CORRECTION NOTICE (CMS-1169-CN)

Priority: Info./Admin./Other

Legal Authority: 42 USC 1395W-4

CFR Citation: 42 CFR 405; 42 CFR 410; 42 CFR 411; 42 CFR 414; 42 CFR 415

Legal Deadline: None

Abstract: This notice corrects technical errors that occurred in the final rule with comment period published on November 1, 2001. The final rule sets forth the physician fee schedule for CY 2002.

Timetable:

Action	Date	FR Cite
Notice	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Diane Milstead, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3355

RIN: 0938–AL48

855. • NOTICE OF MODIFICATION OF BENEFICIARY ASSESSMENT REQUIREMENTS FOR SKILLED NURSING FACILITIES (CMS-1209-N)

Priority: Info./Admin./Other

Legal Authority: None

CFR Citation: None

Legal Deadline: None

Abstract: This notice offers skilled nursing facilities the option of using a modified, shorter version of the minimum data set to satisfy Medicare payment and quality requirements.

Timetable:

Action	Date	FR Cite
Notice	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Dana Burley, Policy Analyst, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-06-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4547

RIN: 0938–AL55

856. • INPATIENT HOSPITAL DEDUCTIBLE AND HOSPITAL AND EXTENDED CARE SERVICES COINSURANCE AMOUNTS FOR CALENDAR YEAR 2003 (CMS-8013-N)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1395e-2(g)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the inpatient hospital deductible and the hospital and extended care services coinsurance amounts for services furnished in calendar year 2003 under the Medicare hospital insurance program (part A). The Medicare statute specifies the formula used to determine these amounts.

Timetable:

Action	Date	FR Cite
Notice	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AL56

857. • REVISION OF THE PROCEDURES FOR REQUESTING EXCEPTIONS TO COST LIMITS FOR SKILLED NURSING FACILITIES AND ELIMINATION OF RECLASSIFICATIONS; CORRECTION (CMS-1883-F3)

Priority: Info./Admin./Other

Legal Authority: 42 USC 1302; 42 USC 1395d(d); 42 USC 1395F(b); 42 USC 1395(g); 42 USC 13951(a); 42 USC 13951(n); 42 USC 1395hh; 42 USC 1395rr; 42 USC 1395tt; 42 USC 1395ww

CFR Citation: 42 CFR 413.30(d)

Legal Deadline: None

Abstract: This technical correction corrects an error in 42 CFR 413.30(d) found in the technical correction dated October 10, 2000.

Timetable:

Action	Date	FR Cite
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Julie Stankiuic, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-06-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5725

RIN: 0938–AL61

858. • MONTHLY ACTUARIAL RATES AND MONTHLY SUPPLEMENTARY MEDICAL INSURANCE PREMIUM RATE BEGINNING JANUARY 1, 2003 (CMS-8014-N)

Priority: Economically Significant

Legal Authority: 42 CFR 1395r; Social Security Act, sec 1839

CFR Citation: 42 CFR 407; 42 CFR 408

Legal Deadline: NPRM, Statutory, September 27, 2002.

Abstract: This notice announces the monthly actuarial rates for aged and disabled enrollees in the Medicare Supplementary Medical Insurance (SMI) program for 2003. It also announces the monthly SMI premium to be paid by all enrollees during 2003.

Timetable:

Action	Date	FR Cite
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carter S. Warfield, Office of Medicare and Medicaid Cost Estimates, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6396

RIN: 0938–AL63

859. • REQUEST FOR INFORMATION ON BENEFIT-SPECIFIC WAITING PERIODS (CMS-2150-N)

Priority: Info./Admin./Other

Legal Authority: None

CFR Citation: None

Legal Deadline: None

Abstract: This notice requests information on the use of benefit-specific waiting periods by group health plan and group health insurance issuers.

Timetable:

Action	Date	FR Cite
Notice	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL64

860. • PART A PREMIUMS FOR 2003 FOR THE UNINSURED AGED AND FOR CERTAIN DISABLED INDIVIDUALS WHO HAVE EXHAUSTED OTHER ENTITLEMENT (CMS-8015-N)

Priority: Other Significant

Legal Authority: 42 USC 1395i-2(d)(2); 42 USC 1395i-2a(d)(2)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the hospital insurance premium for calendar year 2003 under Medicare's hospital insurance program (part A) for the uninsured aged and for certain disabled individuals who have exhausted other entitlement. (The statute requires that this notice be published September 30, 2002.)

Timetable:

Action	Date	FR Cite
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clare McFarland, Deputy Directory, Medicare and Medicaid Cost Estimates Group, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-26-24, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6390

RIN: 0938–AL69

861. • MEDICAID-MANAGED CARE: WITHDRAWAL (CMS-2001-F4)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This final rule withdraws the January 2001 Medicaid Managed Care final rule and finalizes the IFC rule published on August 17, 2001. It will be published at the same time as the new final Medicaid Managed Care Final Rule, CMS-2104-F.

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce Johnson, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD
Phone: 410 786-0615

RIN: 0938–AL83

862. • FY 1999 SCHIP REALLOCATION NOTICE (CMS-2137-N)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-554, sec 801

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the application of statutory provisions concerning the redistribution and availability of unexpended funds appropriated for fiscal year 1999 for SCHIP. Title XXI of the Social Security Act authorizes payment of Federal matching funds to States, the District of Columbia, and U.S. Territories and Commonwealths to initiate and expand health insurance coverage to uninsured, low-income children under the State

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Children's Health Insurance Program (SCHIP).

Timetable:

Action	Date	FR Cite
Notice	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard Strauss, Deputy Director, Division of Financial Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-13-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-2019
Email: rstrauss@hcfa.gov

RIN: 0938–AL86

Department of Health and Human Services (HHS)
Centers for Medicare & Medicaid Services (CMS)

Long-Term Actions

863. "WITHOUT FAULT" AND BENEFICIARY WAIVER OF RECOVERY AS IT APPLIES TO MEDICARE OVERPAYMENT LIABILITY (CMS-6007-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1395gg; Social Security Act, sec 1870

CFR Citation: 42 CFR 401; 42 CFR 466.86; 42 CFR 466.94; 42 CFR 473.14; 42 CFR 403.310; 42 CFR 405; 42 CFR 410.1; 42 CFR 411.23; 42 CFR 411.28; 42 CFR 413.20; 42 CFR 413.153; 42 CFR 447.31

Legal Deadline: None

Abstract: This rule amends the Medicare regulations to clarify the interpretation of "without fault" as it applies to physicians, providers, suppliers and beneficiary liability for overpayments.

Timetable:

Action	Date	FR Cite
NPRM	03/25/98	63 FR 14506
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Barbara Wright, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-14-00, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4292

RIN: 0938–AD95

864. REVISION OF MEDICARE/MEDICAID HOSPITAL CONDITIONS OF PARTICIPATION (CMS-3745-F)

Priority: Other Significant

Legal Authority: 42 USC 1395x; 42 USC 1302; 42 USC 1395(cc); 42 USC 1395hh; 42 USC 13206-8

CFR Citation: 42 CFR 416; 42 CFR 482; 42 CFR 485; 42 CFR 489

Legal Deadline: None

Abstract: This rule will revise the requirements that hospitals must meet to participate in the Medicare and Medicaid programs. The revised requirements focus on patient care, and the outcomes of that care reflect a cross-functional view of patient treatment and unnecessary procedural requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/19/97	62 FR 66726
NPRM Comment Period End	03/20/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Stephanie Dyson, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-9226

RIN: 0938–AG79

865. HOME HEALTH AGENCY (HHA) CONDITIONS OF PARTICIPATION (COPS) (CMS-3819-FC)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x; 42 USC 1395cc(a); 42 USC 1395hh; 42 USC 1395bb

CFR Citation: 42 CFR 484

Legal Deadline: None

Abstract: This final rule revises the existing CoPs that HHAs must meet to participate in the Medicare program. The requirements focus on the actual care delivered to patients by HHAs, reflect an interdisciplinary view of patient care, allow HHAs greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements. These changes are an integral part of the Administration's efforts to achieve broad-based improvements and measurements of the quality of care furnished through Federal programs, while at the same time reducing procedural burdens on providers.

Timetable:

Action	Date	FR Cite
NPRM	03/10/97	62 FR 11005
NPRM Comment Period End	06/09/97	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Janice Stevenson, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4882

Rachael Weinstein, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6775

RIN: 0938–AG81

866. END STAGE RENAL DISEASE (ESRD) CONDITIONS FOR COVERAGE (CMS-3818-P) (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 42 USC 1395rr

CFR Citation: 42 CFR 400; 42 CFR 405; 42 CFR 406; 42 CFR 409; 42 CFR 410; 42 CFR 412 to 414; 42 CFR 489; 42 CFR 494

Legal Deadline: None

Abstract: This proposed rule would revise the requirements that end stage renal disease (ESRD) facilities must meet to be certified under the Medicare program.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Businesses, Organizations

Government Levels Affected: None

Agency Contact: Robert Miller, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, Office of Clinical Standards and Quality, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-6797
Email: rmiller@cms.hhs.gov

Theresa Casey, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-05-04, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7215

RIN: 0938–AG82

867. CRITERIA FOR APPROVAL OF FACILITIES TO PERFORM COVERED HEART, LIVER, LUNG, PANCREAS, AND INTESTINAL TRANSPLANTS (CMS-3835-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395hh

CFR Citation: 42 CFR 482

Legal Deadline: None

Abstract: This proposed rule would establish conditions of participation for Medicare-covered transplants.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Marty Abeln, Department of Health and Human Services, Centers for Medicare & Medicaid Services, Centers for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1032

Kathy Linstromberg, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-8279

Eva Fung, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-06-6, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7539

RIN: 0938–AH17

868. HOSPICE CARE—CONDITIONS OF PARTICIPATION (CMS-3844-P)

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 1395x(dd); 42 USC 1395hh

CFR Citation: 42 CFR 418

Legal Deadline: None

Abstract: This proposed rule would revise existing conditions of participation that hospices must meet to participate in the Medicare program. The proposed requirements focus on the actual care delivered to patients and patients' families by hospices and the results of that care, reflect an interdisciplinary view of patient care, allow hospices greater flexibility in meeting quality standards, and eliminate unnecessary procedural requirements.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mary Rossi Coajou, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6051

Rachael Weinstein, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6775

RIN: 0938–AH27

869. MEDICARE AND MEDICAID PROGRAMS; TERMS, DEFINITIONS, AND ADDRESSES: TECHNICAL AMENDMENTS (CMS-9877-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395x(v)(1)(A); 42 USC 1395hh

CFR Citation: 42 CFR 400 to 440; 42 CFR 442 to 447; 42 CFR 455; 42 CFR 456; 42 CFR 462 to 466; 42 CFR 473 to 476; 42 CFR 482 to 489; 42 CFR 491 to 498

Legal Deadline: None

Abstract: This rule would initiate the rationalization of our system of definitions, correct outdated addresses and formulas, clarify which steps of the appeals process are binding and which are final, remove content that is duplicative or unnecessary, and make other clarifying editorial changes.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3641
NPRM Comment Period End	03/26/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Agency Contact: Margaret Teeters, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-14-03, Division of Regulation and Issuances, 7500 Security Boulevard, Balitmore, MD 21244
Phone: 410 786-4678

RIN: 0938–AH53

870. HEALTH INSURANCE REFORM: STANDARD UNIQUE HEALTH CARE PROVIDER IDENTIFIER (CMS-0045-F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1320D-2(b)(1)

CFR Citation: 42 CFR 160; 42 CFR 162

Legal Deadline: Final, Statutory, February 21, 1998.

Abstract: This rule establishes a standard unique ID for all health care providers under HIPAA. The rule implements administrative simplification initiatives that have a national scope beyond Medicare and Medicaid.

Timetable:

Action	Date	FR Cite
NPRM	05/07/98	63 FR 25320
NPRM Comment Period End	07/06/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: None

Agency Contact: Patricia Peyton, Office of Information Services, Department of Health and Human Services, Centers for Medicare & Medicaid Services, N3-20-05, 7500 Security Boulevard, Baltimore, MD 21224-1850
Phone: 410 786-1812

RIN: 0938–AH99

871. MEDICAL CHILD SUPPORT AND HEALTH INSURANCE COVERAGE OF DEPENDENT CHILDREN (CMS-2081-P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1396(a)(25); 42 USC 1396(a)(45); 42 USC 1396(a)(60); 42 USC 1396(o); 42 USC 1396g-1; 42 USC 1396(k)

CFR Citation: 42 CFR 433.135; 42 CFR 433.137; 42 CFR 433.170

Legal Deadline: None

Abstract: This rule would require States to provide assurances that laws relating to medical child support have satisfactorily been implemented in accordance with the Social Security Act. These laws would impose requirements on insurers, employers, and State Medicaid agencies that would result in greater enrollment opportunities for children, facilitate the filing of claims by custodial parents, and establish new payment disbursement criteria. This requirement would implement section 13623, OBRA of 1993.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Sue Knefley, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0488

RIN: 0938–AI21

872. APPEALS OF CARRIER DETERMINATION THAT A SUPPLIER FAILS TO MEET THE REQUIREMENTS FOR MEDICARE BILLING PRIVILEGES (CMS-6003-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302; 42 USC 1395u(b)(3)(C); 42 USC 1395ff(b)

CFR Citation: 42 CFR 405.874

Legal Deadline: None

Abstract: This rule would extend appeal rights to all suppliers whose enrollment applications for Medicare billing privileges are disallowed by a carrier or whose Medicare billing privileges are revoked, except for those suppliers covered under other existing appeals provisions of our regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/25/99	64 FR 57431
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles Waldhauser, Division of Provider/Supplier Enrollment, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-6140

Yvonne West, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Blvd., Baltimore, MD 21244
Phone: 410 786-6479

RIN: 0938–AI49

873. COVERAGE OF RELIGIOUS NON-MEDICAL HEALTH CARE INSTITUTIONS (CMS-1909-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1395i-5; 42 USC 1395x(e); 42 USC 1395x(y); 42 USC 1395x(ss); 42 USC 1302

CFR Citation: 42 CFR 403; 42 CFR 440.170; 42 CFR 488.2; 42 CFR 488.6; 42 CFR 489.102; 42 CFR 412.90; 42 CFR 412.98; 42 CFR 431.610; 42 CFR 440.155; 42 CFR 442.12; 42 CFR 456.351; 42 CFR 456.601; 42 CFR 466.1

Legal Deadline: Final, Statutory, July 1, 1998, BBA, Section 4454(d).

Abstract: This final rule follows an Interm Final with Comment that removed all references in the Medicare regulations to specific religious institutions to include all religious nonmedical institutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/30/99	64 FR 67028
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Jean Marie Moore, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3508

RIN: 0938–AI93

874. REPORTING OUTCOME AND ASSESSMENT INFORMATION SET (OASIS) DATA AS PART OF THE CONDITIONS OF PARTICIPATION FOR HOME HEALTH AGENCIES (CMS-3006-F)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 1302; 42 USC 1395(hh)

CFR Citation: 42 CFR 484.11; 42 CFR 484.20; 42 CFR 488.68

Legal Deadline: None

Abstract: This final rule requires home health agencies to electronically report OASIS data as a condition of participation in the Medicare program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/25/99	64 FR 3748
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Janice Stevenson, Office of Clinical Standards and Quality, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4882

RIN: 0938–AJ10

875. USE OF RESTRAINT AND SECLUSION IN RESIDENTIAL TREATMENT FACILITIES PROVIDING INPATIENT PSYCHIATRIC SERVICES TO INDIVIDUALS UNDER AGE 21 (CMS-2065-F)

Priority: Economically Significant

Legal Authority: 42 USC 1302; 42 USC 1396d

CFR Citation: 42 CFR 441; 42 CFR 483

Legal Deadline: None

Abstract: This rule addresses standards of practices that residential treatment facilities providing inpatient psychiatric services for individuals under age 21 must meet with regard to the use of restraints and seclusion.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/22/01	66 FR 7148
Interim Final Rule Comment Period End	03/23/01	
Interim Final Rule Effective	03/23/01	
60-Day Delay of Effective Date To 05/22/2001	03/21/01	66 FR 15800
Interim Final Rule Amendment with Clarification	05/22/01	66 FR 28110
Interim Final Rule Comment Period End	07/23/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry Cutler, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5903

RIN: 0938–AJ96

876. APPLICATION OF INHERENT REASONABLENESS TO ALL MEDICARE PART B SERVICES (OTHER THAN PHYSICIAN SERVICES) (CMS-1908-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 105-33, sec 4316

CFR Citation: 42 CFR 405

Legal Deadline: None

Abstract: This final rule sets forth the process for establishing realistic and equitable payment amounts for all Medicare part B items and services (other than physician services) when the existing payment amounts are inherently unreasonable because they are either grossly excessive or grossly deficient.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/07/98	63 FR 687
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: William J. Long, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-08-27, Center for Medicare Management, 7500 Security Boulevard, Baltimore, MD 21228
Phone: 410 786-5655
Email: wlong@hcfa.gov

RIN: 0938–AJ97

877. SUPPLIER STANDARDS FOR HOME OXYGEN, THERAPEUTIC SHOES, HOME NUTRITION THERAPY, AND CONSIGNMENT CLOSETS (CMS-6010-P)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 424.57

Legal Deadline: None

Abstract: This rule would establish service standards for suppliers of home oxygen equipment, therapeutic shoes, home infusion therapy, and standards for consignment closets.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Frank Whelan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-02-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1302

RIN: 0938–AJ98

878. CLINICAL LAB REQUIREMENTS—REVISIONS TO REGULATIONS IMPLEMENTING CLIA (CMS-2226-F)

Priority: Other Significant

Legal Authority: PL 100-578

CFR Citation: 42 CFR 493

Legal Deadline: None

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Abstract: This final rule finalizes certain laboratory requirements under the Clinical Laboratory Improvement Amendments of 1988 (CLIA).

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Cecelia Hinkel, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services
Phone: 410 786-3347

RIN: 0938–AK24

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879. IMPROVEMENTS TO THE MEDICARE+CHOICE APPEALS AND GRIEVANCE PROCEDURES (CMS-4024-F)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: BBA, sec 4001; PL 105-33; Social Security Act, sec 1851 to 1859

CFR Citation: 42 CFR 422; 42 CFR 489

Legal Deadline: NPRM, Judicial, January 19, 2001.

Abstract: This final rule sets forth several improvements to the Medicare+Choice (M+C) appeal and grievance procedures. This rule addresses the termination date of provider services, independent review process, and discharge notices.

Timetable:

Action	Date	FR Cite
NPRM	01/24/01	66 FR 7593
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Additional Information: The Settlement Agreement in Grijalva v. Shalala contemplates that a final rule will be published by the end of 2002.

Agency Contact: Tony Culotta, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4661

RIN: 0938–AK48

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880. PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS—PHASE II (CMS-1810-FC)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1302; 42 USC 1395hh; 42 USC 1395nn

CFR Citation: 42 CFR 411

Legal Deadline: None

Abstract: This final rule addresses the provisions of sections 1877 and 1903(s) of the Social Security Act that preclude payment for services under the Medicare program if a physician makes a referral to a facility in which he/she has a financial interest. This rule with comment period will address comments from the January 9, 1998 proposed rule concerning the ownership and investment exceptions and the compensation exceptions. In addition, this rule will address comments from the January 4, 2001 Phase I final rule with comment period.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Joanne Sinsheimer, Technical Advisor, CMM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4620

RIN: 0938–AK67

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881. ORGAN PROCUREMENT ORGANIZATION CONDITION FOR COVERAGE (CMS-3064-IFC)

Priority: Other Significant

Legal Authority: 42 USC 1320b-8(b)(1)(A)(i); 42 USC 273(b)(2)

CFR Citation: 42 CFR 486.301

Legal Deadline: Final, Statutory, January 1, 2002, Requires promulgation of new conditions.

Abstract: This rule will establish conditions for coverage for organ procurement organizations (OPOSs) to be certified by the Secretary to receive payment from Medicare and Medicaid for organ procurement costs, and to be designated by the Secretary for a specific geographic service area.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jacqueline Morgan, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4282

RIN: 0938–AK81

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882. MODIFICATIONS TO MANAGED CARE RULES BASED ON PAYMENT PROVISIONS IN BIPA AND TECHNICAL CORRECTIONS (CMS-4040-F)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: BIPA, sec 601 to 605; BIPA, sec 601 to 603; BIPA, sec 607; BIPA, sec 608; BIPA, sec 613; BIPA, sec 619; BIPA, sec 634; ...

CFR Citation: 42 CFR 417; 42 CFR 422

Legal Deadline: None

Abstract: This final rule will implement certain technical and minor changes of the provisions of sections 601 to 634 of the Medicare payment provisions of the Medicare, Medicaid & SCHIP Benefits Improvement and Protection Act of 2000. It is significant because although the changes mandated by BIPA are minor and technical in nature, they involve updates to payment rates.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Alfred G. D'Alberto, Office of Managed Care, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1100

RIN: 0938–AK90

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883. EXTENDING MEDICARE ENTITLEMENT WHEN DISABILITY BENEFIT ENTITLEMENT ENDS BECAUSE OF SUBSTANTIAL GAINFUL ACTIVITY (CMS-4018-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Sec. 202 of the TWWIIA of 1999; PL 106-170 of the TWWIIA of 1999

CFR Citation: 42 CFR 406.12

Legal Deadline: None

Abstract: This rule would provide working disabled individuals with continued Medicare entitlement for an additional 54 months beyond the current limit. It would implement the Ticket to Work and Work Incentives Improvement Act of 1999.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Denise Cox, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3195

RIN: 0938–AK94

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884. MEDICARE LIMITS ON THE VALUATION OF A DEPRECIABLE ASSET RECOGNIZED AS AN ALLOWANCE FOR DEPRECIATION AND INTEREST ON CAPITAL INDEBTEDNESS AFTER A CHANGE OF OWNERSHIP (CMS-1004-F)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: Sec 1861(v)(1)(O) of the Social Security Act, as amended

CFR Citation: 42 CFR 413.134

Legal Deadline: None

Abstract: This final rule responds to public comments received and makes technical corrections to the Medicare provider reimbursement regulations that set forth requirements related to allowable costs.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann Pash, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4516
Email: apash@hcfa.gov

RIN: 0938–AL12

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885. UPDATE INTEREST ASSESSMENT ON MEDICARE OVERPAYMENT AND UNDERPAYMENT (CMS-6014-P)

Priority: Other Significant

Legal Authority: Social Security Act, sec 1815(d); Social Security Act, sec 1833(j)

CFR Citation: 42 CFR 405.378

Legal Deadline: None

Abstract: This proposed rule would change the formula used to compute interest on provider, supplier overpayments and underpayments.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Paul Thomas Reed, Financial Management Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-15-07, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4001
Email: preed2@cms.hhs.gov

RIN: 0938–AL14

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886. REQUIREMENTS FOR PAID FEEDING ASSISTANTS IN LONG-TERM CARE FACILITIES (CMS-2131-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Sec 1819(a) to (f) of the Social Security Act; sec 1919(a) to (g) of the Social Security Act; PL 100-203

CFR Citation: 42 CFR 483.73; 42 CFR 483.75(c)

Legal Deadline: None

Abstract: This final rule would allow long-term care facilities to use paid feeding assistants to supplement the services of certified nurse aides. If facilities choose this option, feeding assistants must complete a specified training program.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15149
NPRM Comment Period End	05/28/02	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Nola Petrovich, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4671

RIN: 0938–AL18

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887. USE OF RESTRAINT AND SECLUSION IN MEDICARE AND MEDICAID PARTICIPATING FACILITIES THAT PROVIDE INPATIENT OR RESIDENTIAL CARE (CMS-2130-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Children's Health Act of 2000

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would implement provisions of the Children's Health Act related to the use of restraints or seclusion for individuals receiving services in health care

facilities that receive Federal funding. The rule would establish common terminology and basic expectations for the use of restraints and seclusion for health care facilities that furnish inpatient or residential care and receive Medicare or Medicaid funding.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Frank Sokolik, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-13-23, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-7089

RIN: 0938–AL26

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888. • MEDICARE-ENDORSED PRESCRIPTION DRUG DISCOUNT CARD ASSISTANCE INITIATIVE FOR STATE SPONSORS (CMS-4032-P)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: None

Legal Deadline: None

Abstract: This proposed rule would outline steps that support State efforts to make affordable prescription drugs available to Medicare beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	03/06/02	67 FR 10293
NPRM Comment Period End	05/06/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Teresa Decaro, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-17-14, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6604
Email: tdecaro@cms.hhs.gov

RIN: 0938–AL30

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889. • STATE CHILDREN'S HEALTH INSURANCE PROGRAM; ELIGIBILITY FOR UNBORN CHILDREN (CMS-2127-F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2110

CFR Citation: 42 CFR 457

Legal Deadline: None

Abstract: This regulation would provide States with the option to consider an unborn child to be a targeted low-income child and therefore eligible for SCHIP if other applicable State eligibility requirements are met. This would mean that regardless of the age of the mother, eligibility for the unborn child may be established thereby making services including prenatal care and delivery available.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 9936
NPRM Comment Period End	05/06/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathleen Muriel Farrell, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-03-18, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3285

RIN: 0938–AL37

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890. • HEALTH COVERAGE PORTABILITY FOR GROUP HEALTH PLANS AND GROUP HEALTH INSURANCE ISSUERS (CMS-2151-F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 300gg; PL 104-191

CFR Citation: 45 CFR 144.103; 45 CFR 146.101; 45 CFR 146.111; 45 CFR 146.113; 45 CFR 146.115; 45 CFR 146.117; 45 CFR 146.119; 45 CFR 146.145; ...

Legal Deadline: None

Abstract: This final rule addresses limitations on preexisting exclusions periods and requests for special enrollments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
Interim Final Rule Effective	07/07/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL43

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891. • INTERIM FINAL AMENDMENT FOR MENTAL HEALTH PARITY (CMS-2152-IFC)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2705; PL 107-116; PL 104-191

CFR Citation: 45 CFR 146.136

Legal Deadline: None

Abstract: This interim final rule changes the sunset date of regulations under the Mental Health Parity Act of 1996.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/22/97	62 FR 66932
Interim Final Rule Effective	01/01/98	
Interim Final Rule Comment Period End	03/23/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: David Mlawsky, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-16-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6851

RIN: 0938–AL44

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892. • PERMITTING PREMIUM REDUCTIONS AS ADDITIONAL BENEFITS UNDER MEDICARE+CHOICE PLANS (CMS-1208-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 408.ff

Legal Deadline: Final, Statutory, January 1, 2003.

Abstract: This proposed rule would implement section 606 of BIPA to allow M+C organizations to elect a reduction in capitation payments so that these organizations could offer Medicare part B premium reductions to enrollees.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michele Sanders, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0808

RIN: 0938–AL49

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893. • PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS (CMS-1213-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 106-113, Sec 124

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, October 1, 2002, per section 124 of Public Law 106-113.

Abstract: This proposed rule would set forth a prospective payment system for psychiatric hospitals.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Federal

Federalism: Undetermined

Agency Contact: Lana Price, Director, Division of End-Stage Renal Disease, Bureau of Policy Development, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-05-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4533

RIN: 0938–AL50

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894. • PROVIDER REIMBURSEMENT DETERMINATIONS AND APPEALS (CMS-1727-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1878 of the Social Security Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed rule would redefine, clarify, and update the guidelines and procedures for provider reimbursement review board appeals.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Morton Marcus, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-26-22, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4477

RIN: 0938–AL54

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895. • DEFINITION OF SEVERE MEDICALLY DETERMINABLE IMPAIRMENT (CMS-2143-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 106-170, sec 201(a)(2)(D)

CFR Citation: 42 CFR 430; 42 CFR 435; 42 CFR 436

Legal Deadline: None

Abstract: This proposed rule would define "severe medically determinable impairment" for purposes of eligibility to Medicaid buy-in programs for employed individuals with a medically improved disability. States have the option, under the Ticket to Work and Work Incentives Improvement Act, of amending their State plans to include workers with a medically improved disability.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Federalism: Undetermined

Agency Contact: Carey M. O'Connor, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-2117

RIN: 0938–AL57

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896. • PROGRAM FOR ALL-INCLUSIVE CARE FOR THE ELDERLY (PACE): PROGRAM REVISIONS (CMS-1201-IFC)

Priority: Other Significant

Legal Authority: 42 USC 1395, as revised by sec 903 of BIPA; 42 USC 1396, as revised by sec 903 of BIPA

CFR Citation: 42 CFR 460ff

Legal Deadline: None

Abstract: This rule revises the interim final rule with comment period that established requirements for Programs of All-Inclusive Care for the Elderly (PACE) under the Medicare and Medicaid programs. These are pre-paid, capitated programs for beneficiaries who meet special eligibility requirements and who elect to enroll. The revisions in this rule will implement section 903 of BIPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

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Government Levels Affected: State, Tribal

Federalism: Undetermined

Agency Contact: Janet Samen, Center for Medicare Management, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-08-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-9161

RIN: 0938–AL59

897. • SCHIP; PURCHASE OF FAMILY COVERAGE—BENEFIT FLEXIBILITY IN PARENT COVERAGE (CMS-2148-P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2110

CFR Citation: 42 CFR 457

Legal Deadline: None

Abstract: This proposed rule would provide flexibility to States in defining their benefit package for adults covered under the State Children's Health Insurance Program (SCHIP) family coverage options.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terese Klitenic, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-25-02, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5942

RIN: 0938–AL62

898. • REVISIONS TO MEDICAID COST-SHARING REGULATIONS (CMS-2144-P)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: 42 CFR 447

Legal Deadline: None

Abstract: This proposed rule would revise existing regulations related to cost-sharing in Medicaid.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Federalism: Undetermined

Agency Contact: Ginni Hain, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-16-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-6036

RIN: 0938–AL66

899. • REVISIONS TO THE MEDICARE APPEALS PROCESS (CMS-4004-P)

Priority: Other Significant

Legal Authority: Sec 521 of BIPA

CFR Citation: 42 CFR 426

Legal Deadline: NPRM; Statutory, October 1, 2002, Statutory effective date 10/01/2002.

Abstract: This rule will incorporate recommendations from an SSA/HHS workgroup to improve the Administrative Law Judge (ALJ) hearing process. ALJs within the SSA who conduct hearings for Medicare fee-for-service and managed care cases are currently governed by the SSA disability regulations. These regulations apply to disability cases and not to Medicare. In an effort to improve the integrity of the appeals process, CMS has recognized the need to develop regulations that are specific to the adjudication of Medicare cases.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Tony Culotta, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4661

RIN: 0938–AL67

900. • NOTICE OF INTENT TO CONDUCT NEGOTIATED RULEMAKING FOR SPECIAL PAYMENT PROVISIONS AND STANDARDS FOR SUPPLIERS OF CUSTOM-FABRICATED ORTHOTICS AND PROSTHETICS (CMS-6012-N)

Priority: Substantive, Nonsignificant

Legal Authority: Section 1834(h)(i); 42 USC 1395m(h)(i)

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces standards for suppliers allowed to bill for prosthetics and certain customized orthotics. The Congress requires this proposed rule to be developed by a negotiated rulemaking advisory committee.

Timetable:

Action	Date	FR Cite
Notice	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kathryn S Cox, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C3-02-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5954

RIN: 0938–AL68

901. • DMERC SERVICE AREAS AND RELATED MATTERS (CMS-1219-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1842; Social Security Act, sec 1834(a)(12); Social Security Act, sec 1834(h)(3); Social Security Act, sec 1834(j)(1)(E)

CFR Citation: 42 CFR 421.210(c); 42 CFR 421.210(d); 42 CFR 421.210(e)

Legal Deadline: None

Abstract: This proposed rule would allow flexibility in regulatory changes to the DMERC contractor structure.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James Holt, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S1-14-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1953
Email: jholt@cms.hhs.gov

RIN: 0938–AL76

902. • STATE ALLOTMENTS FOR PAYMENT OF MEDICARE PART B PREMIUMS FOR QUALIFYING INDIVIDUALS; FEDERAL FISCAL YEAR 2002 (CMS-2136-PN)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: Social Security Act, sec 1902(a)(10); Social Security Act, sec 1933; 42 USC 139; PL 105-33

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed notice announces the Federal FY 2002 allotments that are available for State agencies to pay Medicare part B premiums for two distinct categories of low-income Medicare beneficiaries. The eligible groups are called qualified individuals.

Timetable:

Action	Date	FR Cite
Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Nakielny, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4466

RIN: 0938–AL79

903. • REVISIONS TO CONDITIONS FOR COVERAGE FOR AMBULATORY SURGICAL CENTERS (CMS-3887-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1102; Social Security Act, sec 1832; Social Security Act, sec 1871

CFR Citation: 42 CFR 410; 42 CFR 424; 42 CFR 416; 42 CFR 488; 42 CFR 489

Legal Deadline: None

Abstract: This proposed rule would revise the ambulatory surgical center conditions for coverage to reflect current innovations in healthcare delivery, quality assessment, and performance improvement.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Agency Contact: Joan Brooks, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-5526

RIN: 0938–AL80

904. • FLEXIBILITY IN PAYMENT METHODS FOR SERVICES OF HOSPITALS, NURSING FACILITIES, AND INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED (CMS-2004-F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33

CFR Citation: 42 CFR 435; 42 CFR 436; 42 CFR 457

Legal Deadline: None

Abstract: This final rule removes all references to the "Boren Amendment" and grants States greater flexibility in setting payment rates for inpatient hospital and long-term care services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/25/01	66 FR 33810
Interim Final Rule Comment Period End	07/25/01	
Interim Final Rule Effective	08/24/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Regina Fletcher, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-01-16, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3293

RIN: 0938–AL81

905. • CONTINUE TO ALLOW STATES AN OPTION UNDER THE MEDICAID SPOUSAL IMPOVERISHMENT PROVISIONS TO INCREASE THE COMMUNITY SPOUSE'S INCOME WHEN ADJUSTING THE PROTECTED RESOURCE ALLOWANCE (CMS-2128-F)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1924 of the Social Security Act

CFR Citation: 42 CFR 431

Legal Deadline: None

Abstract: This rule will continue CMS' policy of giving States an option to either require, or not require, that income be contributed to a community spouse before additional resources are made available in making certain calculations related to spousal impoverishment protection.

Timetable:

Action	Date	FR Cite
NPRM	09/07/01	66 FR 46763
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Trudel, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-20-15, Center for Medicaid and State Operations, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-3417

Related RIN: Previously reported as 0938-AL06

RIN: 0938–AL84

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906. • MEDICAID COVERAGE RULES FOR INMATES OF PUBLIC INSTITUTIONS (CMS-2077-P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Social Security Act, sec 1905(a)(A)

CFR Citation: 42 CFR 435.1008; 42 CFR 435.1009; 42 CFR 435.1012; 42 CFR 436.1004

Legal Deadline: None

Abstract: This rule would provide a new interpretation of the statute in order to eliminate confusion among the States and to ensure consistent application of the FFP exclusionary rules for services provided to inmates of a public institution.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Tom Shenk, Center for Medicaid and State Operations, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-3295

RIN: 0938–AL85

907. • TARGETED CASE MANAGEMENT (CMS-2061-P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1915(g) of the Social Security Act

CFR Citation: 42 CFR 431; 42 CFR 440; 42 CFR 441

Legal Deadline: None

Abstract: This proposed rule would amend the Medicaid regulations to provide for optional coverage of case management services furnished to specific groups, geographic areas, or political subdivisions within a State. This proposed rule rescinds the proposed rule that was published on 10/15/93.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Poisal, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S2-14-26, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-5940

RIN: 0938–AL87

908. • CHANGES TO THE HOSPITAL INPATIENT PROSPECTIVE PAYMENT SYSTEM AND FY 2004 RATES (CMS-1470-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Sec 1886(d) of the Social Security Act

CFR Citation: 42 CFR 412 to 413; 42 CFR 485; 42 CFR 489

Legal Deadline: NPRM, Statutory, April 1, 2003.
Final, Statutory, August 1, 2003.

Abstract: We would revise the Medicare acute hospital inpatient prospective payment systems for operating and capital market costs to implement changes arising from our continuing experience with these systems. These changes apply to discharges occurring on or after October 1, 2003.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stephen Phillips, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-05-27, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-4548

RIN: 0938–AL89

909. • PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—UPDATE FOR FY 2004 (CMS-1469-P)

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: Sec 1888(e) of the Social Security Act

CFR Citation: None

Legal Deadline: NPRM, Statutory, April 1, 2003.
Final, Statutory, July 31, 2003, final rule to be published before August 1, 2003.

Abstract: This annual proposed rule updates the payment rates used under the SNF PPS beginning October 1, 2003.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Ullman, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-13-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 401 786-5667

RIN: 0938–AL90

910. • PROSPECTIVE PAYMENT SYSTEM FOR LONG-TERM CARE HOSPITALS: FY 2004 (CMS-1472-P)

Priority: Substantive, Nonsignificant

Legal Authority: BBRA 1999, sec 123; BIPA 2000, sec 307(b)

CFR Citation: 42 CFR 412; 42 CFR 413

Legal Deadline: None

Abstract: This rule establishes a Prospective Payment System for Medicare payment of inpatient hospital services provided by long-term care hospitals to replace the reasonable cost-based payment system under which they are currently paid. It implements section 123 of the Medicare, Medicaid, and SCHIP Balanced Budget Refinement Act of 1999 and section 307(b) of the Medicare, Medicaid, and SCHIP Benefits Improvement and Protection Act of 2000.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tzvi Hefter, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-07-07, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-1304

RIN: 0938–AL92

911. • PROSPECTIVE PAYMENT SYSTEM FOR PSYCHIATRIC HOSPITALS (CMS-1477-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 106-113, sec 124

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, October 1, 2002.

Abstract: This proposed rule would implement a per diem inpatient psychiatric prospective payment system as required by section 124 of Public Law 106-113.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Lana Price, Director, Division of End-Stage Renal Disease, Bureau of Policy Development, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C5-05-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4533

RIN: 0938–AL93

912. • HOME HEALTH PROSPECTIVE PAYMENT SYSTEM RATE UPDATE FOR FY 2004 (CMS-1473-NC)

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, June 28, 2003, notice must be published by 06/28/2003 deadline in order to meet statutory effective date of 10/01/2003.

Abstract: This notice with comment period sets forth an update to the 60-day national episode rates and the national per-visit amounts under the Medicare prospective payment system for home health agencies for FY 2004. (We must publish this notice by 06/28/04 to meet the statutory effective date of 10/01/04.)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Susan Levy, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-05-27, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-9364

RIN: 0938–AL94

913. • PROSPECTIVE PAYMENT SYSTEM FOR INPATIENT REHABILITATION HOSPITALS (CMS-1474-P)

Priority: Substantive, Nonsignificant

Legal Authority: Social Security Act, sec 1886(j); PL 105-33; PL 106-554; PL 106-113

CFR Citation: 42 CFR 412 to 413

Legal Deadline: None

Abstract: This rule will address comments on the published proposed rule and finalizes a new prospective payment system for inpatient rehabilitation facilities beginning on or after 1/1/2004.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Kuhl, Technical Advisor, Bureau of Policy Development, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-11-06, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4597

RIN: 0938–AL95

914. • REVISIONS TO PAYMENT POLICIES UNDER THE PHYSICIAN FEE SCHEDULE FOR CALENDAR YEAR 2004 (CMS-1476-P)

Priority: Other Significant

Legal Authority: 42 USC 1395W-4

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Revisions to payment policies under the physician fee schedule for calendar year 2004.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Latesha Walker, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-1101

RIN: 0938–AL96

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915. MEDICARE PROGRAM; COVERAGE AND ADMINISTRATIVE POLICIES FOR CLINICAL DIAGNOSTIC LABORATORY TESTS (CMS-3250-F)

Priority: Other Significant. Major under 5 USC 801.

CFR Citation: 42 CFR ch 410

Completed:

Reason	Date	FR Cite
Final Action	11/25/01	66 FR 50788

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Jacqueline Sheridan
Phone: 410 786-4635

RIN: 0938–AI92

916. FEE SCHEDULE FOR PAYMENT OF AMBULANCE SERVICES AND REVISIONS TO THE PHYSICIAN'S CERTIFICATION REQUIREMENTS FOR COVERAGE OF NONEMERGENCY AMBULANCE SERVICES (CMS-1002-FC)

Priority: Other Significant

CFR Citation: 42 CFR 410; 42 CFR 414

Completed:

Reason	Date	FR Cite
Final Rule	02/27/02	67 FR 9100

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Glenn McGuirk
Phone: 410 786-5723

RIN: 0938–AK30

917. MEDICARE PROGRAM; REPORTING AND REPAYMENT OF OVERPAYMENTS (CMS-6011-P)

Priority: Other Significant

CFR Citation: 42 CFR 401.310

Completed:

Reason	Date	FR Cite
Merged With 0938-AD95	03/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Wright
Phone: 410 786-4292

RIN: 0938–AK45

918. PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES: CRITERIA FOR ESTABLISHING NEW PASS-THROUGH CATEGORIES FOR MEDICAL DEVICES (CMS-1179-IFC)

Priority: Other Significant

CFR Citation: 42 CFR 419

Completed:

Reason	Date	FR Cite
Interim Final Rule with Comment Period	11/02/01	66 FR 55850

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Edwards
Phone: 410 786-0378
Email: nedwards@cms.hhs.gov

RIN: 0938–AK59

919. QUALIFICATION REQUIREMENTS FOR DIRECTORS OF LABORATORIES PERFORMING HIGH COMPLEXITY TESTING (CMS-2094-P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

CFR Citation: 42 CFR 493.1443

Completed:

Reason	Date	FR Cite
NPRM	12/28/01	66 FR 67163
Merged With 0938-AK24	03/21/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cecelia Hinkel
Phone: 410 786-3347

RIN: 0938–AK83

920. MEDICAID UPPER PAYMENT LIMIT FOR NON-STATE GOVERNMENT-OWNED OR -OPERATED HOSPITALS (CMS-2134-F)

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 42 CFR 447.321

Completed:

Reason	Date	FR Cite
NPRM	11/23/01	66 FR 58694
Final Rule	01/18/02	67 FR 2602
Notice	03/19/02	67 FR 12479

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Larry Reed
Phone: 410 786-3325

RIN: 0938–AL05

921. • PHYSICIANS' REFERRALS TO HEALTH CARE ENTITIES WITH WHICH THEY HAVE FINANCIAL RELATIONSHIPS; DELAY OF EFFECTIVE DATE OF THE "SET IN ADVANCE" PROVISION (CMS-1809-IFC)

Priority: Other Significant

Legal Authority: 42 USC 1395

CFR Citation: 42 CFR 411.354(d)(1)

Legal Deadline: None

Abstract: This final rule temporarily delays for a one-year period the effective date of the "set in advance" provision in section 411.354(d)(1) contained in the rule entitled "Medicare and Medicaid Programs; Physicians' Referrals to Health Care Entities With Which They Have Financial Relationships," published in the Federal Register on January 4, 2001 (66 FR 856).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/03/01	66 FR 60154
Interim Final Rule Comment Period End	02/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joanne Sinsheimer, Technical Advisor, CMM, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 410 786-4620

RIN: 0938–AL29

922. • DEDUCTIBLE AMOUNT FOR MEDIGAP HIGH DEDUCTIBLE OPTIONS FOR CALENDAR YEAR 2002 (CMS-2135-N)

Priority: Other Significant

Legal Authority: None

CFR Citation: None

Legal Deadline: None

Abstract: This notice announces the annual deductible amount for the Medicare supplemental health insurance (Medigap) high deductible options for 2002. The deductible amount represents the annual out-of-pocket expenses (excluding premiums) that a beneficiary who chooses one of these options must pay before the policy begins paying benefits.

Timetable:

Action	Date	FR Cite
Notice	12/28/01	66 FR 67266

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathryn McCann, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-7623

RIN: 0938–AL34

923. • PROSPECTIVE PAYMENT SYSTEM FOR HOSPITAL OUTPATIENT SERVICES; DELAY IN EFFECTIVE DATE OF CALENDAR YEAR 2002 PAYMENT RATES AND THE PRO RATA REDUCTION ON TRANSITIONAL PASS-THROUGH PAYMENT (CMS-1159-F3)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1395L

CFR Citation: 42 CFR 419

Legal Deadline: None

Abstract: This final rule delays the effective date of the payment rates announced for Medicare hospital outpatient services paid under the prospective payment system for calendar year 2002. These rates were announced in a November 30, 2001 final rule (66 FR 59856). In addition, this final rule delays the effective date of the uniform reduction to be applied to each of the transitional pass-through payments for CY 2002.

Timetable:

Action	Date	FR Cite
NPRM	08/24/01	66 FR 44672
NPRM Comment Period End	10/03/01	
Final Action	12/31/01	66 FR 67494
Final Action Effective	04/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Hart, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-2033

RIN: 0938–AL35

924. • DISAPPROVAL OF ALCON LABORATORIES REQUEST FOR AN ADJUSTMENT IN PAYMENT AMOUNTS FOR NEW TECHNOLOGY INTRAOCULAR LENSES FURNISHED BY AMBULATORY SURGICAL CENTERS (CMS-3061-FN)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1832(a)(2)(F)(i) of the Social Security Act; 42 USC 1833(i)(2)(A) of the Social Security Act; 42 USC 1395K(a)(2)(F)(i); 42 USC 13951(i)(2)(A)

CFR Citation: None

Legal Deadline: Other, Statutory, February 22, 2002, Notice.

Abstract: This final notice responds to comments received and announces which lenses will qualify as new technology intraocular lenses.

Timetable:

Action	Date	FR Cite
Notice	02/22/02	67 FR 8270

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lori Davis, Health Insurance Specialist, Department of Health and Human Services, Centers for Medicare & Medicaid Services, S3-02-01, 7500 Security Boulevard, Baltimore, MD 21244
Phone: 410 786-0710

RIN: 0938–AL36

925. • CORRECTION OF CERTAIN CALENDAR YEAR 2003 PAYMENT RATES UNDER THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENT SYSTEM AND THE PRO RATA REDUCTION ON TRANSITIONAL PASS-THROUGH PAYMENT (CMS-1159-F4)

Priority: Other Significant

Legal Authority: 42 USC 1395L; BBA 97; BBRA 99; BIPA 00

CFR Citation: 42 CFR 419

Legal Deadline: None

Abstract: This final rule corrects errors that affect the amount and factors used to determine the payment rates for services paid under the hospital prospective payment system as published in the November 30, 2001 final rule. This final rule also corrects the amount of the uniform reduction to be applied to each of the transitional pass-through payments CY 2002.

Timetable:

Action	Date	FR Cite
Final Action	03/01/02	67 FR 9556
Final Action Effective	04/01/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Joan H. Sanow, Center for Health Plans and Providers, Department of Health and Human Services, Centers for Medicare & Medicaid Services, 7500 Security Boulevard, C4-11-16, Baltimore, MD 21244
Phone: 410 786-5763

RIN: 0938–AL42

926. • PROSPECTIVE PAYMENT SYSTEM AND CONSOLIDATED BILLING FOR SKILLED NURSING FACILITIES—CORRECTION NOTICE (CMS-1163-CN)

Priority: Other Significant

Legal Authority: None

CFR Citation: None

Legal Deadline: None

Abstract: This correction notice will clarify special responsibilities of Medicare hospitals that offer services for treatment of emergency medical conditions, to promote consistent application of the Emergency Treatment and Labor Act to situations not discussed in current regulations.

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HHS—CMS — **Completed Actions**

Timetable:

Action	Date	FR Cite
Notice	03/27/02	67 FR 13278

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Ullman, Department of Health and Human Services, Centers for Medicare & Medicaid Services, C4-13-15, 7500 Security Boulevard, Baltimore, MD 21244-1850
Phone: 401 786-5667

Related RIN: Previously reported as 0938-AK47

RIN: 0938–AL47

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) — **Proposed Rule Stage**

927. PROGRAM PERFORMANCE STANDARDS FOR THE OPERATION OF HEAD START PROGRAMS

Priority: Other Significant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1304

Legal Deadline: None

Abstract: The education component of the Head Start Performance Standards will be revised to ensure the school readiness of children participating in a Head Start program and to assure that Head Start children have certain understandings in the areas of language and numeracy.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB99

928. SAFEGUARDING CHILD SUPPORT AND EXPANDED FPLS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 652 to 654A; 42 USC 663

CFR Citation: 45 CFR 303.3; 45 CFR 303.21; 45 CFR 303.70

Legal Deadline: None

Abstract: The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 made far-reaching amendments to title IV-D of the Social Security Act, which governs the child support enforcement program. The Balanced Budget Act of 1997, the Adoption and Safe Families Act of 1997 and the Child Support Performance and Incentive Act of 1998 further amended title IV-D. A significant result of this legislation is an expansion in the scope of information available to State IV-D child support enforcement agencies. The legislation has rendered obsolete or inconsistent several regulations at 45 CFR chapter III, Office of Child Support Enforcement, including the regulations on the Federal Parent Locator Service, the State Parent Locator Services, offset of Federal payments for purposes of collecting child support, and safeguarding of information. This regulation would update various sections in 45 CFR chapter III to reflect the statutory changes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Eileen C. Brooks, Program Specialist, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5369
Email: ebrooks@acf.dhhs.gov

RIN: 0970–AC01

929. DEVELOPMENTAL DISABILITIES AND BILL OF RIGHTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-402; USC 15001 et seq

CFR Citation: 45 CFR 1385 to 1388

Legal Deadline: Final, Statutory, October 30, 2001, The final rule for the "Indicator of Progress" must be effective by October 1, 2001. All other changes to the regulation are required to be made by October 30, 2001.

Abstract: A notice of proposed rulemaking will be published in the Federal Register to amend current regulations and to implement changes made by the Developmental Disabilities Assistance and Bill of Rights Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Elsbeth Wyatt, Program Specialist, Department of Health and Human Services, Administration for Children and Families, ADD HHH-300F, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 690-5841

RIN: 0970–AC07

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) — **Final Rule Stage**

930. CONSTRUCTION AND MAJOR RENOVATION OF HEAD START AND EARLY HEAD START FACILITIES

Priority: Other Significant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1309

Legal Deadline: None

Abstract: This rule establishes procedures to be used by Head Start and Early Head Start agencies in requesting to use Head Start grant funds to construct or perform major renovation on a Head Start or Early Head Start Facility.

Timetable:

Action	Date	FR Cite
NPRM	02/08/99	64 FR 6013
NPRM Comment Period End	04/09/99	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB54

931. CHILD SUPPORT ENFORCEMENT FOR INDIAN TRIBES

Priority: Other Significant

Legal Authority: 42 USC 655(f)

CFR Citation: 45 CFR 309

Legal Deadline: None

Abstract: This rule specifies how tribes can obtain direct payments from the Department of Health and Human Services for provision of child support enforcement services if they submit a plan meeting the objectives of title IV-D, including establishment of paternity, modification and enforcement of support orders, and location of absent parents.

Timetable:

Action	Date	FR Cite
NPRM	08/21/00	65 FR 50800
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Paige Biava, Division of Policy and Planning, Department of Health and Human Services, Administration for Children and Families, Office of Child Support Enforcement, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-9386

RIN: 0970–AB73

932. CHILD SUPPORT ENFORCEMENT PROGRAM OMNIBUS CONFORMING REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1302

CFR Citation: 45 CFR 301 to 305

Legal Deadline: None

Abstract: This rule eliminates child support enforcement program regulations rendered obsolete or inconsistent with the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, and its technical amendments, the Balanced Budget Act of 1997, the Adoption and Safe Families Act of 1997, and the Child Support Performance and Incentive Act of 1998.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/99	64 FR 6237
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Eileen C. Brooks, Program Specialist, Department of Health and Human Services, Administration for Children and Families, 4th Floor East, OCSE, DPP, 370 L'Enfant Promenade SW., Washington, DC 20447
Phone: 202 401-5369
Email: ebrooks@acf.dhhs.gov

RIN: 0970–AB81

933. FAMILY CHILD CARE PROGRAM OPTION FOR HEAD START PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1304; 45 CFR 1306

Legal Deadline: None

Abstract: This rule would allow Head Start programs to choose Family Child Care as a Head Start program option.

Timetable:

Action	Date	FR Cite
NPRM	08/29/00	65 FR 52394
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569
Email: dklafehn@acf.dhhs.gov

RIN: 0970–AB90

934. TECHNICAL REVISION OF HEAD START REGULATIONS TO MAKE THEM CONFORM TO RECENT STATUTORY REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9801 et seq

CFR Citation: 45 CFR 1301 to 1303; 45 CFR 1308

Legal Deadline: None

Abstract: This rule will correct several Head Start regulations that define Head Start programs as "nonprofit" agencies. Recent statutory changes now allow "for-profit" agencies to receive Head Start grant funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Douglas Klafehn, Deputy Associate Commissioner, Head Start, Department of Health and Human Services, Administration for Children and Families, 330 C Street SW., Washington, DC 20447
Phone: 202 205-8569

HHS—ACF **Final Rule Stage**

Email: dklafehn@acf.dhhs.gov
RIN: 0970–AC00

Department of Health and Human Services (HHS)
Administration for Children and Families (ACF) **Completed Actions**

935. HIGH PERFORMANCE BONUS AWARDS UNDER THE TANF PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 270

Completed:

Reason	Date	FR Cite
Withdrawn	03/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Stephanie Fanjul
Phone: 202 690-6782
Email: sfanjul@acf.dhhs.gov

RIN: 0970–AC06

Department of Health and Human Services (HHS)
Administration on Aging (AOA) **Proposed Rule Stage**

936. GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING, TRAINING, RESEARCH, AND DISCRETIONARY PROGRAMS; VULNERABLE ELDER RIGHTS; AND GRANTS TO INDIANS AND NATIVE HAWAIIANS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3001 et seq

CFR Citation: 45 CFR 1321; 45 CFR 1326; 45 CFR 1328

Legal Deadline: None

Abstract: In response to the recent reauthorization of the Older Americans Act, Public Law 106-501, the Administration on Aging (AoA) proposes to issue a notice of proposed rulemaking by fall of 2002.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Tribal

Federalism: Undetermined

Additional Information: Incorrectly reported as under Section 610 Review in April 2001.

Agency Contact: Edwin Walker, Director, Office of Program Operations and Development, Department of Health and Human Services, Administration on Aging, Room 4733, 330 Independence Avenue SW., Cohen Building, Washington, DC 20201
Phone: 202 619-0011

RIN: 0985–AA00
[FR Doc. 02–11100 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part IX

Department of Housing and Urban Development

Semiannual Regulatory Agenda

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT (HUD)

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

24 CFR Subtitles A and B

[Docket No. FR-4756-N-01]

Semiannual Agenda of Regulations

AGENCY: Department of Housing and Urban Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with section 4(b) of Executive Order 12866, "Regulatory Planning and Review," as amended, HUD is publishing its agenda of regulations already issued or that are expected to be issued over the next several months, and currently effective rules that are under review. The agenda also describes regulations that may affect small entities as required by section 602 of the Regulatory Flexibility Act. The purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about pending regulatory activities.

FOR FURTHER INFORMATION CONTACT: Aaron Santa Anna, Assistant General Counsel for Regulations, Office of General Counsel, Department of Housing and Urban Development, Room 10276, 451 Seventh Street SW., Washington, DC 20410, (202) 708-3055. (This is not a toll-free number.) A telecommunications device for hearing- and speech-impaired individuals (TTY) is available at 1-800-877-8339 (Federal Information Relay Service).

SUPPLEMENTARY INFORMATION: Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735), as amended by Executive Order 13258 (67 FR 9385), requires each agency to publish semiannually an agenda of (1) regulations that the agency has issued or expects to issue, and (2) currently effective regulations that are under agency review. The Regulatory Flexibility Act (5 U.S.C. 601-612) requires each agency to publish semiannually a regulatory agenda of rules expected to be proposed or promulgated that are likely to have a significant economic impact on a substantial number of "small entities," meaning small businesses, small organizations, or small governmental jurisdictions.

Executive Order 12866, as amended, and the Regulatory Flexibility Act each permit incorporation of the agenda required by these two authorities with any other prescribed agenda. Therefore, the agenda set out below combines the information required by Executive Order 12866, as amended, and the Regulatory Flexibility Act. In addition, the agenda contains certain information not required by either the Executive Order or by the Regulatory Flexibility Act which the Department considers useful, both better to inform the public and to enhance the Department's own inventory control over its body of regulations.

Section 610(c) of the Regulatory Flexibility Act requires each agency to publish annually a list of the rules that have a significant economic impact on a substantial number of small entities, and that are to be reviewed in accordance with the requirements of section 610 during the succeeding 12 months. Existing regulations that HUD proposes to amend by rules described and published in this agenda are reviewed in accordance with the principles of section 610 of the Regulatory Flexibility Act. The purpose of the review is to determine whether the rule should be continued without change, amended or rescinded. Proposed changes to existing regulations provide the opportunity for the Department to conduct a section 610 review.

The Department also is subject to certain rulemaking requirements set forth in the Department of Housing and Urban Development Act (42 U.S.C. 3531 *et seq.*). Section 7(o) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires that the Secretary transmit to the congressional committees having jurisdictional oversight of HUD (the Senate Committee on Banking, Housing and Urban Affairs and the House Committee on Banking and Financial Services) a semiannual agenda of all rules or regulations which are under development or review by the Department. A rule appearing on the agenda cannot be published for comment before or during the first 15 calendar days after transmittal of the agenda. Section 7(o) provides that if, within that period, either committee notifies the Secretary that it intends to review any rule or regulation which appears on the agenda, the Secretary must submit to both committees a copy of the rule or regulation, in the form it is intended to be proposed, at least 15 calendar days before it is published for comment. The semiannual agenda published today is the agenda transmitted to the committees in compliance with this requirement.

HUD has attempted to list in this agenda all regulations and regulatory reviews pending at the time of publication, except for minor and routine or repetitive actions, but some may have been inadvertently omitted, or may have arisen too late to be included in the published agenda. There is no legal significance to the omission of an item from the agenda. Also, where dates are provided for the next rulemaking actions, the dates are estimates and are not commitments to act on or by the date shown.

In some cases HUD has withdrawn rules that were placed on previous agendas and for which there has been no publication activity. Withdrawal of a rule does not necessarily mean that HUD will not proceed with the rulemaking. Withdrawal allows the HUD Administration to further assess the subject matter and determine whether rulemaking for this subject matter is appropriate. Following this review, the Department may determine that certain rules listed as withdrawn under this agenda are appropriate. If that determination is made, the rules will be included in a succeeding semiannual agenda.

In addition, for a few rules that have been published as a proposed or interim rule, and therefore require further rulemaking, HUD has identified the timing of the next action stage as "undetermined." These are rules that are still under review by the HUD Administration and for which a determination of the next action stage and timing of the next action stage has not yet been made.

The format of the agenda remains unchanged from previous years. HUD's agenda items are divided first by program office. Within each program office, the agenda items are divided into five groups: (i) pre-rulemaking actions, (ii) publication or other implementations of notices of proposed rulemaking, (iii) publication or other implementations of final rules, (iv) long-term actions, and (v) completed actions. Within each grouping, rules are listed in chronological order by the part number

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of the CFR affected. Where a rule affects multiple parts of the CFR, the rule is listed by the first affected part number.

Since the purpose of publication of the agenda is to encourage more effective public participation in the regulatory process by providing the public with early information about the Department's future regulatory actions, HUD invites all interested members of the public to comment on the rules listed in the agenda.

Dated: April 9, 2002.
Alphonso Jackson,
Deputy Secretary.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
937	24 CFR 5.603 Exclusion of Veterans' Disability Benefits from Income (FR-4746)	2501-AC86
938	24 CFR 17 Administrative Wage Garnishment (FR-4711)	2501-AC85
939	24 CFR 24 Common Rule on Suspension and Debarments (FR-4692)	2501-AC81
940	24 CFR 203 Single Family Mortgage Insurance; Treble Damages for Failure to Engage in Loss Mitigation Activities (FR-4553)	2501-AC66
941	24 CFR 58 Environmental Review Procedures for Entities Assuming HUD's Environmental Responsibilities (FR-4523)	2501-AC83

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
942	24 CFR 1 Rule To Conform Regulatory Definitions Civil Rights Restoration Act (FR-4587)	2501-AC70
943	24 CFR 5 Temporary Assistance to Needy Families (TANF); Conforming Changes to Annual Income Requirements for HUD's Public Housing and Section 8 Assistance Programs (FR-4635)	2501-AC77
944	24 CFR 5 Uniform Financial Reporting Standards for HUD Housing Programs, Additional Entity Filing Requirements (FR-4681)	2501-AC80
945	24 CFR 92 HOME Investment Partnerships Program — Amendments (FR-4111)	2501-AC30
946	24 CFR 888 Fair Market Rents for the Section 8 Tenant-Based Rental Housing and Homeownership Programs; Higher Fair Market Rents for Certain FMR Areas (FR-4606)	2501-AC75

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
947	24 CFR 5 Electronic Document Retention and Consumer Disclosure Requirements in HUD-Related Transactions (FR-4686)	2501-AC79
948	24 CFR 28 Adjustment of HUD's Civil Money Penalties Pursuant to the Federal Civil Penalties Inflation Adjustment Act of 1990 (FR-4555)	2501-AC67
949	24 CFR 40 Accessibility Standards for Design, Construction and Alteration of Certain Facilities Financed with Public Funds (FR-4317)	2501-AC47
950	24 CFR 81 The Secretary of HUD's Regulation of Fannie Mae and Freddie Mac; Prohibiting the Purchase of Certain Loans With High Costs and/or Predatory Features (FR-4614)	2501-AC76
951	24 CFR 84 Adoption of Revisions to OMB Circular A-110 (FR-4573)	2501-AC68

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
952	24 CFR 30 Amendments to HUD's Civil Money Penalty Regulations (FR-4399)	2501-AC56

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Office of the Secretary—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2501-AC33	24 CFR 55 Floodplain Management and Protection of Wetlands (FR-4142)	03/05/2002	Withdrawn
2501-AC62	24 CFR 91 Consolidated Plan Amendments; Needs of Public Housing and Treatment of Troubled PHAs (FR-4518)	03/05/2002	Withdrawn
2501-AC71	24 CFR 92 Home Investment Partnerships Program: Grandfamilies (FR-4599)	03/05/2002	Withdrawn

Office of Housing—Prerule Stage

Sequence Number	Title	Regulation Identification Number
953	24 CFR 200.208 FHA Appraiser Watch Initiative (FR-4744)	2502-AH81

Office of Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
954	24 CFR ch II Sale of Unoccupied and Substandard HUD-Held Housing to Local Governments and Community Development Organizations (FR-4658)	2502-AH61
955	24 CFR 202 Revisions to FHA Credit Watch/Termination Initiative (FR-4625)	2502-AH60
956	24 CFR 203 Upfront Mortgage Insurance Premiums: Remittance Requirements (FR-4690)	2502-AH67
957	24 CFR 203 Prohibition of Predatory Lending Practices: Limit on FHA Single Family Loan Fees (FR-4700)	2502-AH70
958	24 CFR 203.18 Limitation of FHA-Insured Loans to Nonprofit Agencies (FR-4702)	2502-AH71
959	24 CFR 203 Amendments to the Section 203(k) Rehabilitation Loan Insurance Program (FR-4701)	2502-AH73
960	24 CFR 203.60 FHA Inspector Roster (FR-4720)	2502-AH76
961	24 CFR 203 Lender Accountability for Appraisals (FR-4722)	2502-AH78
962	24 CFR 203.50 Up-Front Mortgage Insurance Premiums for Loans Insured Under 24 CFR 203(k) and 234(c) (FR-4749)	2502-AH82
963	24 CFR 203.49 Eligibility of Adjustable Rate Mortgages (ARMs) (FR-4745)	2502-AH84
964	24 CFR 207, 255 Agreements for Using FHA's Total Mortgage Scorecard (FR-4717)	2502-AH75
965	24 CFR 234 FHA Approval of Condominium Developments Located in the Commonwealth of Puerto Rico for Mortgage Insurance Under the Section 234(c) Program (FR-4713)	2502-AH80
966	24 CFR 236 Section 236 Excess Rental Charges (FR-4689)	2502-AH68
967	24 CFR 245 Tenant Participation in State-Financed, HUD-Assisted Housing Developments (FR-4611)	2502-AH55
968	24 CFR 291 Disposition of HUD-Owned Single Family Assets in Revitalization Areas (FR-4471)	2502-AH40
969	24 CFR 291, subpart F Disposition of HUD-Acquired Single Family Property; Officer/Teacher Next Door Sales Programs (FR-4712)	2502-AH72
970	24 CFR 880 Special Rent Adjustments (FR-4721)	2502-AH77
971	24 CFR 891 Mixed Finance Development for Supportive Housing for the Elderly and Persons with Disabilities (FR-4725)	2502-AH83
972	24 CFR 3280 Implementation of Manufactured Housing Improvement Act of 2000 (FR-4665)	2502-AH62
973	24 CFR 3500 et seq RESPA - Improving the Process for Obtaining Mortgages (FR-4727)	2502-AH85

Office of Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
974	24 CFR 200 Delegation of Insuring Authority to Direct Endorsement Mortgagees (FR-4169)	2502-AG87
975	24 CFR 203 Nonprofit Organization Participation in Certain FHA Single Family Activities; Placement and Removal Procedures (FR-4585)	2502-AH49
976	24 CFR 200 Appraiser Qualifications for Placement on FHA Single Family Appraiser Roster (FR-4620)	2502-AH59
977	24 CFR 203 Single Family Mortgage Insurance; Section 203(k) Consultant Placement and Removal Procedures (FR-4592)	2502-AH51
978	24 CFR 203 Prohibition of Property Flipping in HUD's Single Family Mortgage Insurance Programs (FR-4615)	2502-AH57

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Office of Housing—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
979	24 CFR 206 Insurance for Mortgages To Refinance Existing HECMs (FR-4667)	2502-AH63
980	24 CFR 207 Mortgage Insurance Premiums in Multifamily Housing Programs (FR-4679)	2502-AH64
981	24 CFR 402 Renewal of Expiring Section 8 Project-Based Assistance Contract (FR-4551)	2502-AH47
982	24 CFR 880 Distributions to Nonprofit Owners of Certain HUD-Assisted Multifamily Rental Projects (FR-4602)	2502-AH52
983	24 CFR 3280 Manufactured Home Construction and Safety Standards (FR-4376)	2502-AH23

Office of Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
984	24 CFR 242 Mortgage Insurance for the Refinancing of Existing Debt of Existing Hospitals (FR-4618)	2502-AH58
985	24 CFR 401 Release of Information to Tenants and Other Parties Pursuant to MAHRA (FR-4531)	2502-AH45
986	24 CFR 401 Mark-to-Market Program Amendments (FR-4751)	2502-AH86
987	24 CFR 891 Supportive Housing for the Elderly and Persons With Disabilities; Duration of Capital Advance (FR-4466)	2502-AH36

Office of Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
988	24 CFR 3280 Manufactured Homes Construction and Safety Standards: Smoke Alarms (FR-4552)	2502-AH48

Office of Housing—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2502-AH35	24 CFR 236 Rehabilitation Grants for Certain Multifamily Projects (FR-4465)	03/05/2002	Withdrawn
2502-AH65	24 CFR 891 Prepayment and Refinancing of Section 202 Loans (FR-4678)	03/05/2002	Withdrawn
2502-AH69	FHA Accelerated Claim Disposition Demonstration Program (FR-4691)	03/11/2002	Withdrawn

Office of Community Planning and Development—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
989	24 CFR 570 CDBG Brownfields/Slum/Blight (FR-4699)	2506-AC12
990	24 CFR 574 Housing Opportunities for Persons with AIDS (HOPWA) (FR-4708)	2506-AC11
991	24 CFR 583 Supportive Housing Program (FR-4616)	2506-AC07

Office of Community Planning and Development—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
992	24 CFR 570 CDBG Program for States; Community Revitalization Strategy Requirements and Miscellaneous Technical Amendments (FR-4081)	2506-AB83
993	24 CFR 570 Community Development Block Grant - Assisted Demolition of HUD-Owned Housing Units (FR-4698)	2506-AC10
994	24 CFR 583 Supportive Housing Program—Increasing Operating Cost Percentage (FR-4576)	2506-AC05
995	24 CFR 598 Designation of Renewal Communities and Third Round Empowerment Zones (FR-4663)	2506-AC09

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Office of Community Planning and Development—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
996	24 CFR 570 Prohibition on Use of CDBG Assistance for Job-Pirating Activities (FR-4556)	2506-AC04

Office of Fair Housing and Equal Opportunity—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
997	24 CFR 100 Fair Housing Act Regulation; Conforming Amendment; Update To Reflect Current Edition of American National Standards Institute (ANSI) (FR-4554)	2529-AA88
998	24 CFR 115 Certification and Funding of State and Local Fair Housing Enforcement Agencies (FR-4748)	2529-AA90

Office of Fair Housing and Equal Opportunity—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
999	24 CFR 100 Fair Housing Act Regulations Amendments: Standards Governing Sexual Harassment (FR-4597)	2529-AA89
1000	24 CFR 135 Economic Opportunities for Low- and Very-Low-Income Persons (FR-2898)	2529-AA49

Office of Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1001	48 CFR 2401 HUD Acquisition Regulation (FR-4705)	2535-AA26

Office of the Inspector General—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1002	24 CFR 2002 Implementation of the Freedom of Information Act (FR-4716)	2508-AA12
1003	24 CFR 2004 Office of Inspector General Subpoenas and Production in Response to Subpoenas or Demands of Courts or Other Authorities (FR-4742)	2508-AA13

Office of Public and Indian Housing—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1004	24 CFR 902 Amended Public Housing Assessment System (PHAS) Rule (FR-4707)	2577-AC32
1005	24 CFR 902 Deregulation for Small PHAs (FR-4753)	2577-AC34
1006	24 CFR 905 Public Housing Capital Fund Program (FR-4507)	2577-AC16
1007	24 CFR 941 Mixed-Finance Public Housing Development (FR-4499)	2577-AC09
1008	24 CFR 960.204 Denial of Admission and Termination of Tenancy of Fugitive Felons (FR-4758)	2577-AC38
1009	24 CFR 964 Resident Participation in Public and Section 8 Housing (FR-4657)	2577-AC26
1010	24 CFR 970 Public Housing Demolition and Disposition (FR-4598)	2577-AC20
1011	24 CFR 972 Conversion of Developments From Public Housing Stock; Methodology for Comparing Costs of Public Housing and Tenant-Based Assistance (FR-4718)	2577-AC33
1012	24 CFR 1000 Implementation of Summary Revisions to NAHASDA (FR-4750)	2577-AC37
1013	24 CFR 1000 NAHASDA Housing Assistance for Native Hawaiians (FR-4668)	2577-AC27

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Office of Public and Indian Housing—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1014	24 CFR 5 Implementation of Public Law 106-504: Eligibility of Citizens of the Freely Associated States for Federally Assisted Housing (FR-4754)	2577-AC35
1015	24 CFR 903 Public Housing Agency Plans: Deconcentration - Amendment to Established Income Range Definition (FR-4677)	2577-AC31
1016	24 CFR 906 Public Housing Homeownership Programs (FR-4504)	2577-AC15
1017	24 CFR 941 Public Housing Development Total Development Cost (TDC) (FR-4489)	2577-AC05
1018	24 CFR 972 Required Conversion of Development From Public Housing Stock (FR-4475)	2577-AC01
1019	24 CFR 972 Voluntary Conversion of Developments From Public Housing Stock (FR-4476)	2577-AC02
1020	24 CFR 982 Section 8 Housing Choice Voucher Program; Expansion of Payment Standards Protection (FR-4586)	2577-AC18
1021	24 CFR 982 Section 8 Homeownership Program; Pilot Program for Homeownership Assistance for Disabled Families (FR-4661)	2577-AC24
1022	24 CFR 982 Section 8 Homeownership Program: Downpayment Assistance Grants and Streamlining Amendments (FR-4670)	2577-AC28
1023	24 CFR 982 Exception Payment Standard to Offset Increase in Utility Costs In the Housing Choice Voucher Program (FR-4672)	2577-AC29
1024	24 CFR 982 Housing Choice Voucher Program Homeownership Option: Eligibility of PHA-owned or Controlled Units (FR-4759)	2577-AC39
1025	24 CFR 983 Project-Based Voucher Program (FR-4636)	2577-AC25
1026	24 CFR 985 Revisions to SEMAP Lease-Up Indicator (FR-4604)	2577-AC21

Office of Public and Indian Housing—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1027	24 CFR 990 Operating Fund Allocation Formula (FR-4425)	2577-AB88

Office of Public and Indian Housing—Completed Actions

Sequence Number	Title	Regulation Identification Number
1028	24 CFR 1000 HUD Policy for the Administration of HUD Programs on Indian Reservations and Other Indian Areas (FR-4580)	2577-AC06
1029	24 CFR 1005 Loan Guarantee for Indian Housing; Direct Guarantee Processing (FR-4241)	2577-AB78

Office of Public and Indian Housing—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2577-AC17	24 CFR ch IX HOPE VI Program (FR-4530)	03/20/2002	Withdrawn
2577-AC23	24 CFR 909 Public Housing Relocation Requirements (FR-4634)	03/18/2002	Withdrawn
2577-AC30	24 CFR 1000 Revisions to Indian Housing Block Grant Allocation Formula (FR-4676)	03/18/2002	Withdrawn

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Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Proposed Rule Stage

937. • EXCLUSION OF VETERANS' DISABILITY BENEFITS FROM INCOME (FR-4746)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 1437a (b)(4)

CFR Citation: 24 CFR 5.603; 24 CFR 5.609; 24 CFR 92.203; 24 CFR 583.315

Legal Deadline: None

Abstract: This rule would exclude service-related veterans' disability payment from the calculation of income for eligibility and tenant rent purposes in HUD assisted housing programs.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Housing Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-0744

RIN: 2501–AC86

938. • ADMINISTRATIVE WAGE GARNISHMENT (FR-4711)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514; 28 USC 2672; 42 USC 3535(d)

CFR Citation: 24 CFR 17

Legal Deadline: None

Abstract: This rule will implement the authority established under the Debt Collection Improvement Act of 1996 for HUD to collect its past-due debts through administrative wage garnishments.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10818
NPRM Comment Period End	05/07/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Samuel B. Rothman, Attorney Advisor, Office of Program Enforcement, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708-4184

RIN: 2501–AC85

939. COMMON RULE ON SUSPENSION AND DEBARMENTS (FR-4692)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 23

Legal Deadline: None

Abstract: This rule proposes substantive changes and amendments to the governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug Free Workplace Act of 1988. This rule is part of a common rule on debarment and suspension that would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. Also, the proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

RIN: 2501–AC81

940. SINGLE FAMILY MORTGAGE INSURANCE; TREBLE DAMAGES FOR FAILURE TO ENGAGE IN LOSS MITIGATION ACTIVITIES (FR-4553)

Priority: Other Significant

Legal Authority: 12 USC 1715u; 12 USC 1735f-14; 42 USC 3535(d)

CFR Citation: 24 CFR 203; 24 CFR 30

Legal Deadline: None

Abstract: This rule would implement sections 601(f)(g)(h) of the fiscal year 1999 HUD Appropriations Act (Pub. L. 105-276, approved October 21, 1998). These sections amend the National Housing Act, which establishes the basic framework for HUD's single family mortgage insurance programs. Specifically, section 601(f) amends section 230 of the National Housing Act (42 U.S.C. 1715u) (entitled Authority to Assist Mortgagors in Default) to provide that, upon default of an insured single family mortgage, lenders must engage in loss mitigation activities for the purpose of providing an alternative to foreclosure. Further, sections 601(g) and (h) amend section 536 of the National Housing Act (12 U.S.C. 1735f-14) (entitled Civil Money Penalties Against Mortgagees, Lenders, and Other Participants in FHA Programs) to provide for the imposition of treble civil money penalties on lenders that fail to engage in loss mitigation activities, as required under amended section 230.

Timetable:

Action	Date	FR Cite
ANPRM	12/06/00	65 FR 76520
ANPRM Comment Period End	02/05/01	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing, Room 9172
Phone: 202 708-1672

RIN: 2501–AC66

941. ENVIRONMENTAL REVIEW PROCEDURES FOR ENTITIES ASSUMING HUD'S ENVIRONMENTAL RESPONSIBILITIES (FR-4523)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1707 note; 25 USC 4115; 42 USC 1437o(i)(1); 42 USC 1437o(i)(2);.42 USC 1437x; 42 USC 3535(d); 42 USC 3547; 42 USC 4332; 42 USC 4852; 42 USC 5304 (g); 42 USC 11402; 42 USC 12588; ...

CFR Citation: 24 CFR 58; 24 CFR 574; 24 CFR 582; 24 CFR 583; 24 CFR 941; 24 CFR 968; 24 CFR 970; ...

Legal Deadline: None

Abstract: This rule would update the list of programs and statutory authorities for which other entities may assume HUD's environmental responsibilities and make other changes to update the regulations on assumption of HUD's environmental responsibilities.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Walter Prybyla, Deputy Director for Policy Environmental Review Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1201

RIN: 2501–AC83

HUD—HUDSEC

Proposed Rule Stage

Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Final Rule Stage

942. RULE TO CONFORM REGULATORY DEFINITIONS CIVIL RIGHTS RESTORATION ACT (FR-4587)

Priority: Other Significant

Legal Authority: 42 USC 2000d-1; 42 USC 2000d-7; 42 USC 3535(d)

CFR Citation: 24 CFR 1; 24 CFR 8; 24 CFR 146

Legal Deadline: None

Abstract: Title VI of the Civil Rights Act of 1964 (Title VI), section 504 of the Rehabilitation Act of 1972 (Section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act) prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to Title VI, and it added a definition of "program or activity" to Section 504 and the Age Discrimination Act. The promulgation of this rule incorporates the CRRA's definition of "program or activity" and "program" into title VI, section 504, and Age Discrimination Act regulations.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pamela Walsh, Director, Program Standards Division, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2288

RIN: 2501–AC70

943. TEMPORARY ASSISTANCE TO NEEDY FAMILIES (TANF); CONFORMING CHANGES TO ANNUAL INCOME REQUIREMENTS FOR HUD'S PUBLIC HOUSING AND SECTION 8 ASSISTANCE PROGRAMS (FR-4635)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437d; 42 USC 1437f; 42 USC 1437n; 42 USC 3535(d); ...

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule updates and clarifies HUD's annual income requirements for its public housing and Section 8 assistance programs. Specifically, this rule clarifies that annual income includes payments under the Temporary Assistance for Needy Families (TANF) program, but only to the extent such payments qualify as "assistance" under the TANF program regulations issued by the Department of Health and Human Services and are not otherwise excluded under HUD's regulation. The clarifications will make the annual income requirements easier to understand for both program participants and public housing agencies. These changes will also ensure greater conformity between HUD's annual income requirements and the TANF program regulations. The final rule follows publication of an April 20, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	04/20/01	66 FR 20368
NPRM Comment Period End	06/19/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0744

RIN: 2501–AC77

944. UNIFORM FINANCIAL REPORTING STANDARDS FOR HUD HOUSING PROGRAMS, ADDITIONAL ENTITY FILING REQUIREMENTS (FR-4681)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 5; 24 CFR 202

Legal Deadline: None

Abstract: This rule would amend HUD's regulation on Uniform Financial Reporting Standards by adding HUD Approved Title I and Title II nonsupervised lenders, nonsupervised mortgagees and loan correspondents to the covered entities required to electronically submit annual financial information to HUD prepared in accordance with generally accepted accounting principles. Under long-standing regulatory and contractual requirements, these entities already submit financial information to HUD on an annual basis.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 50133
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Agency Contact: Stacey Kniff, Department of Housing and Urban Development, Real Estate Assessment Center
Phone: 202 708-4932

RIN: 2501–AC80

945. HOME INVESTMENT PARTNERSHIPS PROGRAM — AMENDMENTS (FR-4111)

Priority: Other Significant

Legal Authority: 42 USC 12701 to 12839; 42 USC 3535(d)

CFR Citation: 24 CFR 92

Legal Deadline: None

Abstract: This rule makes final a provision published for comment as part of an otherwise final rule published on August 22, 1997, with respect to rents for over-income tenants in HOME-assisted units that "float." This rule also makes other technical clarifications.

Timetable:

Action	Date	FR Cite
NPRM	12/11/96	61 FR 65298
NPRM Comment Period End	02/10/97	
Final Rule	08/22/97	62 FR 44838
Final Rule Effective	09/22/97	
Comment Period End	10/21/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Kolesar, Director, Office of Affordable Housing Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-2470

RIN: 2501–AC30

946. FAIR MARKET RENTS FOR THE SECTION 8 TENANT-BASED RENTAL HOUSING AND HOMEOWNERSHIP PROGRAMS; HIGHER FAIR MARKET RENTS FOR CERTAIN FMR AREAS (FR-4606)

Priority: Economically Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 888; 24 CFR 982; 24 CFR 985

Legal Deadline: None

Abstract: This rule follows the interim final rule that implemented HUD's new fair market rent (FMR) policy. The new FMR policy targets relief to areas where higher FMRs are needed to help families, assisted under HUD's Housing Choice Voucher Program as well as other HUD programs, find and lease decent and affordable housing. The new FMR policy increases FMRs needed to promote residential choice, help families move closer to areas of job growth, and deconcentrate poverty. The increased FMR applies to all the HUD programs that use FMRs in that metropolitan area.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/02/00	65 FR 58870
Interim Final Rule Comment Period End	11/16/00	
Interim Final Rule Effective	12/01/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2501–AC75

Department of Housing and Urban Development (HUD) Office of the Secretary (HUDSEC) — Long-Term Actions

947. ELECTRONIC DOCUMENT RETENTION AND CONSUMER DISCLOSURE REQUIREMENTS IN HUD-RELATED TRANSACTIONS (FR-4686)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 12 USC 1715Z-13a; 12 USC 2601 to 2617; 15 USC 1701 to 1706; 15 USC 7001 to 7006; ...

CFR Citation: 24 CFR 5

Legal Deadline: None

Abstract: This rule will implement the Electronic Signature Act which allows agencies to issue regulations, pursuant to their existing regulatory authority, interpreting section 101 of ESIGN (15 U.S.C. 7001) and setting performance standards for the accuracy, integrity, and accessibility of electronically retained documents. The rule will set performance standards for the accessibility, integrity and accuracy of electronically retained documents.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Koren McKenzie-John, Attorney-Advisor, Multifamily Mortgage Division, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708-4090

RIN: 2501–AC79

948. ADJUSTMENT OF HUD'S CIVIL MONEY PENALTIES PURSUANT TO THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990 (FR-4555)

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 31 USC 3701 note

CFR Citation: 24 CFR 28; 24 CFR 30; 24 CFR 3282; 24 CFR 3500; 24 CFR 81

Legal Deadline: None

Abstract: This final rule would adjust for inflation the maximum amounts of HUD's civil money penalties, as required by the Federal Civil Money Penalties Inflation Adjustment Act of 1990 (28 U.S.C. 2461 note), as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 note). HUD is required to adjust the maximum amounts of its civil money penalties at least once every 4 years. HUD last adjusted these maximum amounts in a final rule that became effective October 24, 1996 (61 FR 50208). Accordingly, HUD must adjust the maximum amounts of its civil money penalties before October 24, 2000.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

RIN: 2501–AC67

949. ACCESSIBILITY STANDARDS FOR DESIGN, CONSTRUCTION AND ALTERATION OF CERTAIN FACILITIES FINANCED WITH PUBLIC FUNDS (FR-4317)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 4151 et seq

CFR Citation: 24 CFR 40; 24 CFR 41

Legal Deadline: None

Abstract: The U.S. Architectural and Transportation Barriers Compliance Board (Access Board), of which HUD is a voting member, is revising and updating its accessibility guidelines for buildings and facilities covered by the Americans with Disabilities Act and the Architectural Barriers Act (ABA). The guidelines cover new construction and alterations and serve as the basis for enforceable standards issued by other Federal agencies, including HUD. HUD, as one of the four standard setting agencies, must adopt standards that are equivalent to or stricter than those guidelines issued by the Access Board. Thus, HUD must both update its regulations for the ABA at 24 CFR 40 and 41, and must also update/replace its Uniform Federal Accessibility Standards (UFAS) with standards equivalent to or stricter than the Access Board's guidelines.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Milton Turner, Director, Program Compliance and Disability Rights Support Division, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2333

RIN: 2501–AC47

950. THE SECRETARY OF HUD'S REGULATION OF FANNIE MAE AND FREDDIE MAC; PROHIBITING THE PURCHASE OF CERTAIN LOANS WITH HIGH COSTS AND/OR PREDATORY FEATURES (FR-4614)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 12 USC 1451 et seq; 12 USC 1716 et seq; 12 USC 4501 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 81

Legal Deadline: None

Abstract: A report issued in June 2000 by HUD and the Department of Treasury entitled "Curbing Predatory Home Mortgage Lending" noted that by providing a source of funding, entities that purchase or securitize loans with high cost and/or predatory features are, knowingly or unknowingly, supporting the activities of predatory loan originators. The report recommended regulatory restrictions that would prohibit the two Government-Sponsored Enterprises (GSEs), Fannie Mae and Freddie Mac, from purchasing certain types of loans with high costs and/or predatory features altogether. Through this rulemaking, HUD will establish regulatory restrictions, consistent with the GSEs' voluntary restrictions, that will prohibit the GSEs from purchasing certain loans with high costs and/or predatory features.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sandra Fostek, Director, GSE, Regulatory Staff, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2224

RIN: 2501–AC76

951. ADOPTION OF REVISIONS TO OMB CIRCULAR A-110 (FR-4573)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 5; 24 CFR 44; 24 CFR 45; 24 CFR 84; 24 CFR 85

Legal Deadline: None

Abstract: This document presents the final revision to the codification, at 24 CFR part 84, of Office of Management and Budget (OMB) Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." OMB issued a final revision to Circular A-110 on September 30, 1999, as required by Public Law 105-227. This rule provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations. FR-4258 (RIN 2501-AC39), which makes final an interim rule that adopted revised OMB Circular A-133 to obtain consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards, is also merged with this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/11/00	65 FR 30498
Interim Final Rule Effective	06/12/00	
Interim Final Rule Comment Period End	07/10/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Dorf, Director, Office of Departmental Grants Management and Oversight, Department of Housing and Urban Development, Office of Administration
Phone: 202 708-0667

RIN: 2501–AC68

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Department of Housing and Urban Development (HUD)
Office of the Secretary (HUDSEC)

Completed Actions

952. AMENDMENTS TO HUD'S CIVIL MONEY PENALTY REGULATIONS (FR-4399)

Priority: Other Significant

CFR Citation: 24 CFR 30

Completed:

Reason	Date	FR Cite
Final Action	12/06/01	66 FR 63436

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dane Narode
Phone: 202 708-2350

RIN: 2501–AC56

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Prerule Stage

953. • FHA APPRAISER WATCH INITIATIVE (FR-4744)

Priority: Other Significant

Legal Authority: 12 USC 1701 to 1715z-18; 42 USC 3535(d)

CFR Citation: 24 CFR 200.208

Legal Deadline: None

Abstract: This notice requests comments on issues related to the implementation of the Federal Housing Administration (FHA) Appraiser Watch Initiative. Through the Appraiser Watch Initiative, HUD plans to establish and monitor a performance standard that appraisers must meet to maintain their status on the Appraiser Roster. HUD is considering an approach modeled on FHA's Credit Watch Termination Initiative that would provide for an electronic, fully computerized Appraiser Watch monitoring system, and would permit an appraiser to be removed from the Roster if the rate of defaults and claims on closed mortgages linked to the appraiser exceeds a rate established by HUD.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH81

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Proposed Rule Stage

954. SALE OF UNOCCUPIED AND SUBSTANDARD HUD-HELD HOUSING TO LOCAL GOVERNMENTS AND COMMUNITY DEVELOPMENT ORGANIZATIONS (FR-4658)

Priority: Other Significant

Legal Authority: 12 USC 1715z-11a; 42 USC 3535(d)

CFR Citation: 24 CFR ch II

Legal Deadline: None

Abstract: This proposed rule would provide for a program to sell properties that are vacant or substandard to local governments and community development corporations. The properties must be used for community revitalization purposes, and must be held in the HUD inventory for at least 6 months.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beverly Miller, Director, Office of Multifamily Asset Management, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3730

RIN: 2502–AH61

955. REVISIONS TO FHA CREDIT WATCH/TERMINATION INITIATIVE (FR-4625)

Priority: Other Significant

Legal Authority: 12 USC 1703; 12 USC 1709; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 202

Legal Deadline: None

Abstract: This rule would make several amendments to HUD's regulations for the Federal Housing Administration (FHA) Credit Watch/Termination Initiative. Under the Credit Watch/Termination Initiative, HUD identifies mortgagees with unsatisfactory performance levels and takes ameliorative action at an early stage. The proposed rule would provide that HUD will no longer provide mortgagees with written notification of Credit Watch status. Rather, mortgagees will be responsible for using HUD's Electronic Neighborhood Watch System to monitor their performance. Among other changes, the rule would also prohibit a mortgagee that has received a notice of proposed termination of its origination approval agreement from establishing a new branch for the origination of FHA-insured mortgages in the lending area covered by the proposed termination. The rule also would establish that the default and claim thresholds underlying the Credit Watch/Termination Initiative apply to both underwriting and originating mortgagees.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Phillip Murray, Director, Office of Lender Activities and Program Compliance, Department of Housing and Urban Development, Office of Housing, P3214, 451 7th Street SW., Washington, DC 20410
Phone: 202 708-1515

RIN: 2502–AH60

HUD—OH

Proposed Rule Stage

956. UPFRONT MORTGAGE INSURANCE PREMIUMS: REMITTANCE REQUIREMENTS (FR-4690)

Priority: Other Significant

Legal Authority: 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule will change the remittance period of mortgage insurance premiums. The rule will also implement a more precise definition of when the remittance period begins.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH67

957. PROHIBITION OF PREDATORY LENDING PRACTICES: LIMIT ON FHA SINGLE FAMILY LOAN FEES (FR-4700)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 12 USC 1715z to 1720; 42 USC 3535(d); ...

CFR Citation: 24 CFR 203; 24 CFR 206

Legal Deadline: None

Abstract: This proposed rule would implement one of several new HUD initiatives to combat predatory lending in the Federal Housing Administration (FHA) single family mortgage insurance programs. Specifically, the proposed rule would limit the fees that may be charged on FHA-insured single family mortgages. The maximum amount would include charges paid by the seller and lender on behalf of the borrower. The proposed fee limits would exclude legitimate fees paid to service providers, reasonable and customary discount charges and certain prepaid expenses. The proposed cap on fees will protect FHA borrowers from becoming unwitting victims of excessive, frequently hidden, loan fees and charges.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH70

958. • LIMITATION OF FHA-INSURED LOANS TO NONPROFIT AGENCIES (FR-4702)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 203.18; 24 CFR 203.36; 24 CFR 291.210(a)

Legal Deadline: None

Abstract: This rule limits nonprofit corporations to ten outstanding single-family insured loans at any one time. In addition, the rule limit nonprofits to loans secured by properties with no more than one dwelling unit.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Margaret Burns, Director, Program Support Division, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-0317

RIN: 2502–AH71

959. • AMENDMENTS TO THE SECTION 203(K) REHABILITATION LOAN INSURANCE PROGRAM (FR-4701)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535 (d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This proposed rule would make two amendments to HUD's regulations for the Section 203(k) Rehabilitation Loan Insurance Program. The 203(k) Program is the Federal Housing Administration's (FHA's) primary program for the rehabilitation and repair of single family properties. The proposed rule would limit 203(k) rehabilitation loan insurance to one-unit properties. HUD also proposes to cap the total cost of rehabilitation to twenty percent of the single family mortgage limit established by HUD for a one-unit home in a "high cost area." These changes would simplify the 203(k) Program for both lenders and homebuyers, and strengthen HUD's capacity to safeguard the FHA mortgage insurance fund.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH73

960. • FHA INSPECTOR ROSTER (FR-4720)

Priority: Other Significant

Legal Authority: 12 USC 1709; 42 USC 3535(d)

CFR Citation: 24 CFR 203.60

Legal Deadline: None

Abstract: This rule establishes the criteria for inclusion on, and removal from, the FHA Inspector Roster. FHA officials will review the credentials of

individuals desiring placement on this Roster or recertification to the Roster. The rule also identifies when a mortgagee must use the services of those individuals appearing on the Roster.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH76

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961. • LENDER ACCOUNTABILITY FOR APPRAISALS (FR-4722)

Priority: Other Significant

Legal Authority: 12 USC 1708 to 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 25; 24 CFR 203

Legal Deadline: None

Abstract: This rule would clarify and strengthen HUD's regulations concerning the responsibilities of lenders in assuring the quality of Federal Housing Administration (FHA) appraisals. First, the rule would codify HUD's policy that lenders are responsible, equally with appraisers, for the quality of appraisals on properties that secure FHA insured mortgages. Further, the rule clarifies that lenders are subject to sanction by the HUD Mortgagee Review Board for submitted appraisals that are inconsistent with FHA requirements. HUD believes these proposed changes will help ensure that homebuyers receive an accurate statement of value. These changes also will ensure that an accurate appraised value is received for calculating the maximum mortgage amount that can be insured, which will in turn better protect the FHA mortgage insurance funds.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH78

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962. • UP-FRONT MORTGAGE INSURANCE PREMIUMS FOR LOANS INSURED UNDER 24 CFR 203(K) AND 234(C) (FR-4749)

Priority: Other Significant

Legal Authority: 12 USC 1709(c); 42 USC 3535(d)

CFR Citation: 24 CFR 203.50; 24 CFR 203.84; 24 CFR 203.85

Legal Deadline: None

Abstract: This rule amends 24 CFR Part 203 to require an up-front payment at the beginning of the loan of the insurance premium for loans insured under sections 203(k) and 234(c) of the National Housing Act. Formerly, these loans required only monthly premium payments.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Beavers, Loan Specialist (Realty), Department of Housing and Urban Development, Office of Housing, Room 9270, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-2121

RIN: 2502–AH82

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963. • ELIGIBILITY OF ADJUSTABLE RATE MORTGAGES (ARMS) (FR-4745)

Priority: Other Significant

Legal Authority: 12 USC 1715z-16; 42 USC 3535(d)

CFR Citation: 24 CFR 203.49

Legal Deadline: None

Abstract: This rule would implement section 206 of HUD's FY 2002 Appropriations Act and enhance home buying opportunities through additional product offerings, "hybrid ARMs," tailored to the financial conditions of lenders. Except for additional provisions for the frequency and magnitude of the interest rate changes, these products would be subject to existing regulatory requirements at 24 CFR 203.49.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH84

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964. • AGREEMENTS FOR USING FHA'S TOTAL MORTGAGE SCORECARD (FR-4717)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 12 USC 1709, 1710, 1715b and 1715y

CFR Citation: 24 CFR 207, 255

Legal Deadline: None

Abstract: On December 6, 2000, the Department issued a notice in the Federal Register regarding its intention to deploy its recently developed mortgage scorecard and replace any and all proprietary scorecards developed by system vendors with the Technology Open to All Lenders (TOTAL) mortgage scorecard. FHA has developed a draft Use Agreement which sets forth the requirements and responsibilities for implementation and use of the FHA TOTAL Scorecard by qualified lenders, government sponsored enterprises and their contractors, sponsors, loan correspondents and authorized agents that purchase, sell, underwrite or document HUD/FHA mortgage loans for lenders under HUD/FHA/s Direct Endorsement procedures for various HUD/FHA mortgage insurance programs (hereinafter "Lenders"). This regulation will announce this fact to automated underwriting system vendors and mortgage lenders.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH75

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965. • FHA APPROVAL OF CONDOMINIUM DEVELOPMENTS LOCATED IN THE COMMONWEALTH OF PUERTO RICO FOR MORTGAGE INSURANCE UNDER THE SECTION 234(C) PROGRAM (FR-4713)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1715b; 12 USC 1715y; 42 USC 3535(d)

CFR Citation: 24 CFR 234

Legal Deadline: None

Abstract: This rule would amend the Department's regulations under part 234 to provide that the date of recordation for purposes of obtaining FHA approval of a condominium development in the Commonwealth of Puerto Rico for mortgage insurance under the 234(c) program is the date the condominium legal documents are presented to the Commonwealth Registry of the Property.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH80

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966. SECTION 236 EXCESS RENTAL CHARGES (FR-4689)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1; 42 USC 3535(d)

CFR Citation: 24 CFR 236

Legal Deadline: None

Abstract: This rule would establish the terms and conditions to permit owners of projects receiving section 236 rental assistance to participate in retaining some or all of their excess charges for project use. In addition, it would permit owners to retain excess charges for non-project use after a determination by HUD that the project is well maintained housing in good condition and that the owner has not engaged in material adverse financial or managerial actions or omissions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice Nimmer, Housing Project Manager, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3944

RIN: 2502–AH68

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967. TENANT PARTICIPATION IN STATE-FINANCED, HUD-ASSISTED HOUSING DEVELOPMENTS (FR-4611)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1a; 12 USC 1715z-1b; 42 USC 3535(d)

CFR Citation: 24 CFR 245

Legal Deadline: None

Abstract: HUD's current regulations protecting the statutory right of tenants in HUD-assisted and insured multifamily housing developments to organize and participate in the operation of the development do not currently cover State-financed housing developments that receive assistance under certain HUD programs. However, the statutory right of tenants to organize includes those State-financed housing developments. This rule will extend the protection of tenant organization to include State-financed developments assisted under certain HUD programs. This rule also makes a minor technical correction to a citation in the existing tenant participation regulation. Section 245.135(a)(3) of the rule intended to cross-reference 24 CFR part 24, subpart G; the CFR part was omitted.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH55

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968. DISPOSITION OF HUD-OWNED SINGLE FAMILY ASSETS IN REVITALIZATION AREAS (FR-4471)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 12 USC 1710(h); 42 USC 3535(d)

CFR Citation: 24 CFR 291

Legal Deadline: NPRM, Statutory, October 21, 2000.

Abstract: This rule would implement section 602 of the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1999 (Pub. L. 105-276, 112 Stat. 2519, approved October 21, 1998). Section 602 directs HUD to carry out a program under which HUD-owned homes and mortgages are made available in a manner that promotes expanded homeownership opportunities in designated revitalization areas. Under section 602, the Secretary will designate revitalization areas, in consultation with affected units of general local government and interested nonprofit organizations. Section 602 provides that the Secretary shall provide a preference in the sale of HUD-owned homes and mortgages to nonprofit organizations or to the unit of general local government having jurisdiction in the revitalization area.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

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Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Thompson, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3175

RIN: 2502–AH40

969. • DISPOSITION OF HUD-ACQUIRED SINGLE FAMILY PROPERTY; OFFICER/TEACHER NEXT DOOR SALES PROGRAMS (FR-4712)

Priority: Other Significant

Legal Authority: 12 USC 1701 et seq; 42 USC 1441; 42 USC 1441a; 42 USC 1551a; 42 USC 3535(d)

CFR Citation: 24 CFR 291, subpart F

Legal Deadline: None

Abstract: This rule codifies the policies and procedures concerning the Teacher Next Door (TND) Sales Program. The TND Sales Program has been operating since December 7, 1999 as a temporary program. This rule establishes the TND Sales Program as a permanent part of HUD's single family property disposition program. Through the TND Sales Program, HUD makes HUD-acquired single family properties available to eligible teachers for purchase at a discount from the list price. The TND Sales Program is closely modelled after HUD's Officer Next Door (OND) Sales Program, which provides the same benefits to eligible law enforcement officers. In addition to codifying the TND Sales Program, the rule would also clarify and revise certain requirements applicable to both the OND and TND Sales Programs. Among other such changes, the proposed rule would: (1) expand eligibility for the OND Sales Program to include Native American tribal police officers; (2) cap the total number of HUD-acquired homes that will be sold in a fiscal year under the OND/TND Sales Program; (3) establish new requirements regarding refinancing.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Joseph McCloskey, Director, Office of Single Family Asset Management, Department of Housing and Urban Development, Office of Housing, Room 9172
Phone: 202 708-1672

RIN: 2502–AH72

970. • SPECIAL RENT ADJUSTMENTS (FR-4721)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 2437f; 42 USC 3535(d); 42 USC 12701; 42 USC 13611-13619; ...

CFR Citation: 24 CFR 880; 24 CFR 886

Legal Deadline: None

Abstract: The purpose of this rule is to conform the regulatory language that governs special rent adjustments for Section 8 New Construction, Substantial Rehabilitation, State Agency, Loan Management and Property Disposition contracts with the statutory language that allows special rent adjustments for increases in real property taxes, utility rates or similar costs.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter J. Giaquinto, Housing Project Manager, Department of Housing and Urban Development, Office of Housing, Washington, DC 20410
Phone: 202 708-2866

RIN: 2502–AH77

971. • MIXED FINANCE DEVELOPMENT FOR SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES (FR-4725)

Priority: Other Significant

Legal Authority: Section 831-834 American Homeownership and Economic Opportunity Act of 2000

CFR Citation: 24 CFR 891

Legal Deadline: None

Abstract: This rule permits for-profit limited partners to partner with a non-profit general partner in developing assisted housing for elderly and disabled using a mixed finance model, where HUD funding and non-Federal funding sources are combined in a single project. This rule would implement this program, providing for rules for the use of different funding sources, application procedures, procedures for the dispersal of funds, and other matters involved in program implementation.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Aretha Williams, Housing Project Manager, Department of Housing and Urban Development, Office of Housing, Room 6142, Washington, DC 20410
Phone: 202 708-2866

RIN: 2502–AH83

972. IMPLEMENTATION OF MANUFACTURED HOUSING IMPROVEMENT ACT OF 2000 (FR-4665)

Priority: Other Significant

Legal Authority: PL 106-569, title VI; 42 USC 5424; 42 USC 3535(d)

CFR Citation: 24 CFR 3280; 24 CFR 3282

Legal Deadline: None

Abstract: On December 27, 2000, the Manufactured Housing Improvement Act of 2000 was approved. This Act establishes a consensus rulemaking process for HUD's manufactured housing program, and provides for the establishment of installation, dispute resolution programs, and fees among other things. As a result of this new statute, amendments are necessary to HUD's existing Manufactured Housing Program regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth Cocke, Acting Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-6409

RIN: 2502–AH62

973. • RESPA - IMPROVING THE PROCESS FOR OBTAINING MORTGAGES (FR-4727)

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 2617; 42 USC 3535(d)

CFR Citation: 24 CFR 3500 et seq

Legal Deadline: None

Abstract: This rule would amend HUD's RESPA regulations to improve the disclosure of mortgage costs to consumers.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kenneth A. Markison, Assistant General Counsel for GSE/RESPA, Department of Housing and Urban Development, Office of the General Counsel
Phone: 202 708-3137

RIN: 2502–AH85

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Final Rule Stage

974. DELEGATION OF INSURING AUTHORITY TO DIRECT ENDORSEMENT MORTGAGEES (FR-4169)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1701 to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 200; 24 CFR 202; 24 CFR 203; 24 CFR 206

Legal Deadline: None

Abstract: This rule would make final the June 2, 1997 interim rule that implemented the Lender Insurance program, which reflects the Secretary's authority to delegate the issuance of Mortgage Insurance Certificates (MICs) to mortgagees that are approved under the Direct Endorsement program. This rule provides that eligible mortgagees that participate in the Lender Insurance program will be responsible for conducting a pre-endorsement review during the origination of their single family mortgage loans and they will be responsible for endorsing the mortgages for insurance. Delegating this insurance authority through the Lender program is a more efficient and less burdensome process for providing single family mortgage insurance. This final rule follows publication of the June 2, 1997 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/02/97	62 FR 30222
Interim Final Rule Effective	07/02/97	
Interim Final Rule Comment Period End	08/01/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AG87

975. NONPROFIT ORGANIZATION PARTICIPATION IN CERTAIN FHA SINGLE FAMILY ACTIVITIES; PLACEMENT AND REMOVAL PROCEDURES (FR-4585)

Priority: Other Significant

Legal Authority: 12 USC 1702 to 1715z-21; 42 USC 3535(d)

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This rule establishes regulatory placement and removal procedures for HUD's Nonprofit Organization Roster. The Roster lists nonprofit organizations that HUD has determined are qualified to participate in certain specified Federal Housing Administration (FHA) single family activities. These activities may include acting as a mortgagor; purchasing HUD's Real Estate Owned Properties (HUD Homes) at a discount; providing secondary financing; and imposing legal restrictions on conveyance as part of affordable housing programs. Presently, there are no regulatory procedures for placing a nonprofit organization on, nor for removing a poorly performing nonprofit organization from, the Roster. The establishment of these placement and removal procedures will better protect participants in the FHA single family programs and safeguard FHA insurance funds. This rule follows publication of a September 17, 2001 proposed rule, and takes into consideration the two public comments received on the proposed rule. After careful consideration of the comments, HUD has decided to adopt the proposed rule without change.

Timetable:

Action	Date	FR Cite
NPRM	09/17/01	66 FR 48080
NPRM Comment Period End	11/16/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

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HUD—OH

Final Rule Stage

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH49

976. APPRAISER QUALIFICATIONS FOR PLACEMENT ON FHA SINGLE FAMILY APPRAISER ROSTER (FR-4620)

Priority: Other Significant

Legal Authority: 12 USC 1701 to 1715z-18; 42 USC 3535(d)

CFR Citation: 24 CFR 200

Legal Deadline: None

Abstract: This rule makes several regulatory changes designed to strengthen the licensing and certification requirements for placement on the Federal Housing Administration (FHA) Appraiser Roster. First, the rule requires that appraisers on the Appraiser Roster must have professional credentials that are based on the minimum licensing/certification standards issued by the Appraiser Qualifications Board of the Appraisal Foundation. The rule also clarifies that an appraiser may be removed from the Appraiser Roster if the appraiser loses his or her license or certification in any State due to disciplinary action, even if the appraiser continues to be licensed or certified in another State. Finally, the rule provides that an appraiser who is licensed or certified in a single State and whose license or certification has expired, or has been revoked, suspended or surrendered as a result of a State disciplinary action, will be automatically suspended from the Appraiser Roster until HUD receives evidence demonstrating renewal or that the State-imposed sanction has been lifted. This final rule follows publication of a November 30, 2001 proposed rule and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 60128
NPRM Comment Period End	01/29/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH59

977. SINGLE FAMILY MORTGAGE INSURANCE; SECTION 203(K) CONSULTANT PLACEMENT AND REMOVAL PROCEDURES (FR-4592)

Priority: Other Significant

Legal Authority: 12 USC 1702 to 1715z-21; 42 USC 3535(d)

CFR Citation: 24 CFR 200; 24 CFR 203

Legal Deadline: None

Abstract: This rule establishes placement and removal procedures for HUD's list of qualified consultants under the Section 203(k) Rehabilitation Loan Insurance program. The 203(k) Program is HUD's primary program for the rehabilitation and repair of single family properties. A 203(k) lender may select a qualified independent consultant, who is an expert in the field of home inspection and construction, to perform various tasks required for the rehabilitation of the property. Presently, there are no regulatory procedures for placing a consultant on, nor for removing a poorly performing consultant from, the list. The establishment of these placement and removal procedures will better protect 203(k) borrowers and lenders and safeguard Federal Housing Administration (FHA) insurance funds. This final rule follows publication of an October 24, 2001 proposed rule. No public comments were received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	10/24/01	66 FR 53930
NPRM Comment Period End	12/24/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH51

978. PROHIBITION OF PROPERTY FLIPPING IN HUD'S SINGLE FAMILY MORTGAGE INSURANCE PROGRAMS (FR-4615)

Priority: Other Significant

Legal Authority: 12 USC 1709; 12 USC 1710; 12 USC 1715b; 12 USC 1715u; 42 USC 3535(d)

CFR Citation: 24 CFR 203

Legal Deadline: None

Abstract: This rule addresses property "flipping," the practice whereby a property recently acquired is resold for a considerable profit with an artificially inflated value, often abetted by a lender's collusion with the appraiser. Specifically, the final rule will establish certain new requirements regarding the eligibility of properties for FHA mortgage insurance. The regulatory amendments made by this rule will protect FHA borrowers from becoming unwitting victims of property flipping. Further, the proposed changes comply with congressional mandates to maintain the FHA Insurance Fund in a sound actuarial manner. The final rule follows publication of a September 5, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/05/01	66 FR 46502
NPRM Comment Period End	11/05/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH57

HUD—OH

Final Rule Stage

979. INSURANCE FOR MORTGAGES TO REFINANCE EXISTING HECMS (FR-4667)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715z to 1720; 42 USC 3535(d)

CFR Citation: 24 CFR 206

Legal Deadline: Final, Statutory, June 27, 2001, Section 201 of the American Homeownership and Economic Opportunity Act of 2000 requires that HUD issue final regulations within 180 days of enactment.

Abstract: This rule amends HUD's regulations for the Home Equity Conversion Mortgage (HECM) Program to implement the amendments made by section 201(a) of the American Homeownership and Economic Opportunity Act of 2000. The HECM Program enables older homeowners to withdraw some of the equity in their homes in the form of payments for life, a fixed term, or at intervals through a line of credit. Section 201(a) authorizes HUD to offer mortgage insurance for refinancing of existing HECMs, and provides consumer safeguards for such refinancings. This rule follows publication of a June 5, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/05/01	66 FR 30278
NPRM Comment Period End	07/05/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Vance Morris, Director, Office of Single Family Program Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-2121

RIN: 2502–AH63

980. MORTGAGE INSURANCE PREMIUMS IN MULTIFAMILY HOUSING PROGRAMS (FR-4679)

Priority: Other Significant

Legal Authority: 12 USC 1701z-11(e); 12 USC 1709(c)(1); 12 USC 1713; 12 USC 1715b; 42 USC 3535(d)

CFR Citation: 24 CFR 207

Legal Deadline: None

Abstract: This rule amends the regulations for HUD's multifamily mortgage insurance programs by revising 24 CFR part 207 to permit the Secretary to set mortgage insurance premiums (MIPs) at any rate within his statutory authority, rather than setting specific MIP rates by regulation. Under this rule, HUD will be able to set mortgage insurance premiums at any rate between one-fourth and one percent of the outstanding principal balance of the insured loan. For several insured housing programs, this underwriting change will eliminate the need for positive credit subsidy. Promulgation of this rule will allow HUD to avoid a shutdown of these mortgage insurance programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/02/01	66 FR 35070
Interim Final Rule Effective	08/01/01	
Interim Final Rule Comment Period End	08/31/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local, Federal, State

Agency Contact: Michael McCullough, Director, Office of Multifamily Development, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-1142

RIN: 2502–AH64

981. RENEWAL OF EXPIRING SECTION 8 PROJECT-BASED ASSISTANCE CONTRACT (FR-4551)

Priority: Other Significant

Legal Authority: 12 USC 1715z-1; 12 USC 1735f-19(b); 42 USC 1437(c)(8); 42 USC 1437f note; 42 USC 3535(d)

CFR Citation: 24 CFR 401; 24 CFR 402

Legal Deadline: None

Abstract: This rule will replace interim part 402, which was published on September 11, 1998, together with interim part 401 that established the Mark-to-Market program. Subsequently HUD decided to separate the two parts and publish final part 401 separately, although the current rule makes minor conforming amendments to part 401 as well. Final part 402 will set forth the regulations governing the renewal of expiring Section 8 project-based assistance contracts, whether the projects rents are above or below market, except for renewals made as part of a Mark-to-Market Restructuring Plan under part 401.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH47

982. DISTRIBUTIONS TO NONPROFIT OWNERS OF CERTAIN HUD-ASSISTED MULTIFAMILY RENTAL PROJECTS (FR-4602)

Priority: Other Significant

Legal Authority: 12 USC 1710 to 1715

CFR Citation: 24 CFR 880; 24 CFR 881; 24 CFR 883

Legal Deadline: None

Abstract: This rule adds an exception to HUD's current Section 8 regulations that prohibit any distributions to nonprofit owners of projects receiving project-based assistance. HUD may now permit distributions of surplus cash to owners of projects with expiring Section 8 project-based assistance contracts who agree to renew their contracts, if distributions are necessary to ensure continued participation of the owners in the Section 8 program.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance

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and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH52

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983. MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS (FR-4376)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d); 42 USC 5403; 42 USC 5424

CFR Citation: 24 CFR 3280

Legal Deadline: None

Abstract: This rule will amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to update many of the standards that are incorporated by reference therein. These reference standards, which are developed by voluntary consensus or industry groups, provide necessary technical standards for the FMHCSS. These amendments will keep the FMHCSS current with the industries that use these reference standards by incorporating the latest edition of these standards and new relevant standards.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 58570
NPRM Comment Period End	12/29/98	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Cocke, Acting Director, Office of Consumer and Regulatory Affairs, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-6409

RIN: 2502–AH23

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Long-Term Actions

984. MORTGAGE INSURANCE FOR THE REFINANCING OF EXISTING DEBT OF EXISTING HOSPITALS (FR-4618)

Priority: Other Significant

Legal Authority: 12 USC 1715b; 12 USC 1715n; 12 USC 1715z-7; 42 USC 3535(d)

CFR Citation: 24 CFR 242

Legal Deadline: None

Abstract: This interim rule implements Section 223(f) of the National Housing Act, which authorizes the Secretary of HUD to insure mortgages executed in connection with refinancing the debt of existing multifamily properties and health care facilities. This interim rule implements this authority with respect to acute care hospitals. The purpose of the Section 223(f) program is to provide hospitals the opportunity to refinance their long-term debt so that the hospitals can reduce their annual debt service and thus improve their financial viability. This in turn will further the congressional policy of assisting urgently needed hospitals that treat and care for persons who are acutely ill or injured and who otherwise require medical care and related services customarily furnished only by hospitals.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger Miller, Acting Director for Office of Insured Health Facilities, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-0599

RIN: 2502–AH58

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985. RELEASE OF INFORMATION TO TENANTS AND OTHER PARTIES PURSUANT TO MAHRA (FR-4531)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1437f note

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: The rule is designed to provide tenants and other interested parties with access to the information needed for meaningful participation in the development of a Restructuring Plan, while ensuring appropriate protection of legitimate interest of project owners in confidential and proprietary business information.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

RIN: 2502–AH45

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986. • MARK-TO-MARKET PROGRAM AMENDMENTS (FR-4751)

Priority: Other Significant

Legal Authority: PL 107-116, title VI

CFR Citation: 24 CFR 401

Legal Deadline: None

Abstract: This rule would make conforming changes to the Mark-to-Market regulations as necessary to fully implement the Mark-to-Market Program Extension Act of 2001, enacted as Title VI of Pub. L. 107-116.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH86

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987. SUPPORTIVE HOUSING FOR THE ELDERLY AND PERSONS WITH DISABILITIES; DURATION OF CAPITAL ADVANCE (FR-4466)

Priority: Other Significant

Legal Authority: 12 USC 1701q; 42 USC 1437f; 42 USC 3535(d); 42 USC 8013

CFR Citation: 24 CFR 891

Legal Deadline: None

Abstract: This rule amends the regulations for the Supportive Housing Programs for the Elderly and Persons with Disabilities (also referred to as the Section 202 Program and the Section 811 Program, respectively) to extend the duration of the fund reservation, for project development, from 24 months to 36 months. The extension to 36 months better coincides with the amount of time that is frequently involved to commence construction of supportive housing for the elderly and for persons with disabilities.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Willie Spearmon, Director, Office of Housing Assistance and Grant Administration, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-3000

RIN: 2502–AH36

Department of Housing and Urban Development (HUD)
Office of Housing (OH)

Completed Actions

988. MANUFACTURED HOMES CONSTRUCTION AND SAFETY STANDARDS: SMOKE ALARMS (FR-4552)

Priority: Other Significant

CFR Citation: 24 CFR 3280; 24 CFR 3282

Completed:

Reason	Date	FR Cite
Final Action	03/19/02	67 FR 12812
Final Action Effective	09/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Cocke
Phone: 202 708-6409

RIN: 2502–AH48

Department of Housing and Urban Development (HUD)
Office of Community Planning and Development (CPD)

Proposed Rule Stage

989. CDBG BROWNFIELDS/SLUM/BLIGHT (FR-4699)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5301 et seq

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will improve the ability of entitlement communities and States' grant recipients to use Community Development Block Grant (CDBG) funds for brownfields activities. The rule will clarify the eligibility of activities involving the cleanup and development of environmentally contaminated properties under section 105(a) of the Housing and Community Development Act of 1974, as amended. The rule also will increase CDBG recipients' flexibility to undertake activities meeting the national objective of preventing or eliminating slums or blighting conditions. The criteria for meeting the slum/blight national objective will be revised to specifically recognize economic obsolescence of buildings and the presence of environmental contaminants as blighting influences on an area or property. This rule will further clarify the list of activities that may be undertaken to address the slum/blight national objective criteria on a spot basis. Finally, this rule makes corresponding changes in the eligibility regulations governing the Section 108 Loan Guarantee component of the CDBG program.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Steve Johnson, Director, State and Small Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1322

RIN: 2506–AC12

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990. HOUSING OPPORTUNITIES FOR PERSONS WITH AIDS (HOPWA) (FR-4708)

Priority: Other Significant

Legal Authority: 42 USC 12901 et seq

CFR Citation: 24 CFR 574

Legal Deadline: None

Abstract: The Housing Opportunities for Persons with AIDS (HOPWA) program was authorized in 1992 by title VIII, subtitle D, of the Cranston-Gonzalez national Affordable Housing Act/the AIDS Housing Opportunity Act. The Program is designed to provide States and localities with resources and incentives to provide long-term comprehensive strategies for meeting the housing needs of persons with HIV/AIDS. This update to the regulation is intended to respond to the increased program knowledge in administering housing programs for persons living with HIV/AIDS.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Vos, Director, Office of HIV/AIDS Housing, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1934

RIN: 2506–AC11

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991. SUPPORTIVE HOUSING PROGRAM (FR-4616)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11381; 42 USC 11389; 42 USC 3535 (d)

CFR Citation: 24 CFR 583

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HUD—CPD — **Proposed Rule Stage**

Legal Deadline: None

Abstract: The Department of Housing and Urban Development is proposing to amend the Supportive Housing Program regulations. The regulations will be updated to clarify existing program requirements and to add new program requirements in accordance with recent statutory changes including requirements for some local matching funds and for permanent housing. Additionally, this rule will make the Supportive Housing Program regulations clearer and allow for the full flexibility of the McKinney Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: John Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-4300

RIN: 2506–AC07

Department of Housing and Urban Development (HUD)
Office of Community Planning and Development (CPD) — **Final Rule Stage**

992. CDBG PROGRAM FOR STATES; COMMUNITY REVITALIZATION STRATEGY REQUIREMENTS AND MISCELLANEOUS TECHNICAL AMENDMENTS (FR-4081)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11331 to 11388; 42 USC 12701 to 12711; 42 USC 12741 to 12756; 42 USC 12901 to 12912; 42 USC 3535(d); 42 USC 3601 to 3619; 42 USC 5300 to 5320

CFR Citation: 24 CFR 570; 24 CFR 91

Legal Deadline: None

Abstract: This rule integrates the Community Revitalization Strategies concept with the State CDBG program. This concept will provide States additional flexibility in meeting certain requirements regarding the program's national objectives and public benefit. This rule also makes several technical amendments to correct errors from previous rulemaking and to enhance and clarify the regulation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/96	61 FR 54914
Interim Final Rule Effective	11/21/96	
Interim Final Rule Comment Period End	02/16/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steve Johnson, Director, State and Small Cities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1322

RIN: 2506–AB83

993. COMMUNITY DEVELOPMENT BLOCK GRANT - ASSISTED DEMOLITION OF HUD-OWNED HOUSING UNITS (FR-4698)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3535(d); 42 USC 5301; 42 USC 5320

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will ensure that HUD receives notification of a grantee's intent to use CDBG funds to demolish HUD-owned housing units.

Timetable:

Action	Date	FR Cite
NPRM	01/22/02	67 FR 2958
NPRM Comment Period End	03/25/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sue Miller, Director, Entitlement Communities Division, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-1577

RIN: 2506–AC10

994. SUPPORTIVE HOUSING PROGRAM—INCREASING OPERATING COST PERCENTAGE (FR-4576)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11389; 42 USC 3535(d)

CFR Citation: 24 CFR 583

Legal Deadline: None

Abstract: This rule amended the Supportive Housing Program regulations by changing the number of years for which the grant can cover 75 percent of operating costs from the first two years to all years of the grant term. This rule will be made final as part of FR-4616, revising the Supportive Housing Program generally.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/12/00	65 FR 30822
Interim Final Rule Effective	06/12/00	
Interim Final Rule Comment Period End	07/11/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: John Garrity, Director, Office of Special Needs Assistance Programs, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-4300

RIN: 2506–AC05

995. DESIGNATION OF RENEWAL COMMUNITIES AND THIRD ROUND EMPOWERMENT ZONES (FR-4663)

Priority: Other Significant

Legal Authority: PL 106-554; 26 USC subchapter U; 26 USC subchapter X; 42 USC 3535(d)

CFR Citation: 24 CFR 598; 24 CFR 599

Legal Deadline: Final, Statutory, April 23, 2001, Community Renewal Tax Relief Act of 2000 requires Renewal Communities regulations no later than

HUD—CPD — **Final Rule Stage**

4 months after the date of enactment, December 21, 2000.

Abstract: Renewal Communities: This part of the rule will implement section 101 of the Community Renewal and Tax Relief Act of 2000 by setting forth policies and procedures applicable to the designation of Renewal Communities, authorized under Subchapter X of the Internal Revenue Code of 1986.

Empowerment Zones: Third Round - This part of the rule will implement section 111 of the Community Renewal and Tax Relief Act of 2000 by setting forth policies and procedures applicable to the third round of designations of urban Empowerment Zones, authorized under Subchapter U of the Internal Revenue Code 1986.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/09/01	66 FR 35850
Interim Final Rule Effective	08/08/01	
Interim Final Rule Comment Period End	09/07/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pamela Glekas, Director, Empowerment Zones/Empowerment Communities Initiative, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-6339

RIN: 2506–AC09

Department of Housing and Urban Development (HUD)
Office of Community Planning and Development (CPD) — **Long-Term Actions**

996. PROHIBITION ON USE OF CDBG ASSISTANCE FOR JOB-PIRATING ACTIVITIES (FR-4556)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 5301 to 5320

CFR Citation: 24 CFR 570

Legal Deadline: None

Abstract: This rule will implement section 588 of the Quality Housing and Work Responsibility Act of 1998 by revising HUD's regulations for the Community Development Block Grant (CDBG) program. Section 588 prohibits State and local governments from using CDBG funds for "job pirating" activities that are likely to result in significant job loss. Job-pirating, in this context, refers to the use of CDBG funds to lure or attract a business and its jobs from one community to another community.

Timetable:

Action	Date	FR Cite
NPRM	10/24/00	65 FR 63756
NPRM Comment Period End	12/26/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Richard Kennedy, Office of Block Grant Assistance, Department of Housing and Urban Development, Office of Community Planning and Development
Phone: 202 708-3587

RIN: 2506–AC04

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity (FHEO) — **Proposed Rule Stage**

997. FAIR HOUSING ACT REGULATION; CONFORMING AMENDMENT; UPDATE TO REFLECT CURRENT EDITION OF AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI) (FR-4554)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 3600 to 3620

CFR Citation: 24 CFR 100

Legal Deadline: None

Abstract: Subpart D of HUD's Fair Housing Act regulations (24 CFR part 100), which address the accessibility requirements of the Fair Housing Act, has not been updated since 1991. These regulations reference compliance with the building standards of the American National Standards Institute (ANSI), but the reference to the ANSI edition of 1986 has long been superseded by two more recent editions of 1992 and 1998. Although parties subject to the Fair Housing Act regulations may continue to refer to the 1986 edition of ANSI, the regulations need to be updated to also offer compliance with the 1992 and 1998 editions as a safe harbor for compliance. This rule will update the regulations to provide that compliance with the appropriate requirements of the 1986, 1992 or 1998 editions of ANSI A117.1 suffices to satisfy the accessibility requirements of the Fair Housing Act.

Timetable:

Action	Date	FR Cite
Notice	03/23/00	65 FR 15740
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Cheryl Kent, Special Advisor for Disability Policy, Office of Enforcement, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-2333

RIN: 2529–AA88

998. • CERTIFICATION AND FUNDING OF STATE AND LOCAL FAIR HOUSING ENFORCEMENT AGENCIES (FR-4748)

Priority: Other Significant

Legal Authority: 42 USC 3601-3619; 42 USC 3535(d)

CFR Citation: 24 CFR 115

Legal Deadline: None

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HUD—FHEO — **Proposed Rule Stage**

Abstract: The Fair Housing Assistance Program (FHAP) provides assistance to State and local fair housing enforcement agencies to build an intergovernmental enforcement structure to further fair housing. HUD provides assistance to State and local fair housing enforcement agencies that administer fair housing laws that are substantially equivalent to the Fair Housing Act (Title VIII of the Civil Rights Act of 1968; 42 USC 3601-3619). The FHAP program provides support for complaint processing, training, technical assistance, education and outreach, data and information systems and other activities that will further fair housing within the state or local agency's jurisdiction. HUD intends to update its part 115 regulations with respect to both the certification of substantially equivalent agencies and the overall administration of the FHAP program.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Kenneth Carroll, Program Analyst, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 708-0800

RIN: 2529–AA90

Department of Housing and Urban Development (HUD)
Office of Fair Housing and Equal Opportunity (FHEO) — **Long-Term Actions**

999. FAIR HOUSING ACT REGULATIONS AMENDMENTS: STANDARDS GOVERNING SEXUAL HARASSMENT (FR-4597)

Priority: Other Significant

Legal Authority: 42 USC 3535(d); 42 USC 3600 to 3620

CFR Citation: 24 CFR 100

Legal Deadline: None

Abstract: This final rule would amend HUD's Fair Housing regulations to clarify the standards the Department will use in sexual harassment cases.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67666
NPRM Comment Period End	01/12/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Enzel, Deputy Asistant Secretary for Enforcement and Programs, Department of Housing and Urban Development, Office of Fair Housing and Equal Opportunity
Phone: 202 619-8046

RIN: 2529–AA89

1000. ECONOMIC OPPORTUNITIES FOR LOW- AND VERY-LOW-INCOME PERSONS (FR-2898)

Priority: Other Significant

Legal Authority: 12 USC 1701u; 42 USC 1450; 42 USC 3301; 42 USC 3535(d)

CFR Citation: 24 CFR 135

Legal Deadline: Final, Statutory, April 28, 1993.

Abstract: The regulations at 24 CFR 135 were revised substantially to incorporate the statutory amendments in the Housing and Community Development Act of 1992, to reflect certain changes in the design of the Department's programs that are subject to the section 3 regulations, to clarify the obligations of individuals and entities subject to the requirements of section 3, and to simplify the Department's administration of section 3 requirements. The final rule may make further revisions in response to public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/08/93	58 FR 52534
Notice	11/09/93	58 FR 59423
Notice Comment Period End	12/08/93	
Interim Final Rule	06/30/94	59 FR 33886
Interim Final Rule Effective	08/01/94	
Interim Final Rule Comment Period End	08/29/94	
Extension of Effective Period of Interim Rule	05/31/95	60 FR 28325
Extension Effective	06/30/96	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Casimir Bonkowski, Director, Office of Management & Policy, Department of Housing and Urban Development, Office of the Secretary
Phone: 202 708-0444

RIN: 2529–AA49

Department of Housing and Urban Development (HUD)
Office of Administration (OA) — **Proposed Rule Stage**

1001. HUD ACQUISITION REGULATION (FR-4705)

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 41 USC 251; 42 USC 3535(d)

CFR Citation: 48 CFR 2401

Legal Deadline: None

Abstract: This rule will implement miscellaneous changes to the HUD Acquisition Regulation (HUDAR) including but not limited to corrections of regulatory citations due to revisions made to the Federal Acquisition Regulation (FAR) since the last publication of the HUDAR; revisions reflecting changes in the Department's requirements regarding organizational conflict of interest, ratification of unauthorized commitments, and disclosure of information provided to contractors.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward L. Girovasi Jr., Director, Policy & Field Operations
Division, Office of the Chief Procurement Officer, Department of Housing and Urban Development, Office of Administration
Phone: 202 708-0294

RIN: 2535–AA26

Department of Housing and Urban Development (HUD)
Office of the Inspector General (HUDIG) — **Proposed Rule Stage**

1002. • IMPLEMENTATION OF THE FREEDOM OF INFORMATION ACT (FR-4716)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 42 USC 3535(d)

CFR Citation: 24 CFR 2002

Legal Deadline: None

Abstract: HUD's regulations at 24 CFR part 15 contain the policies and procedures governing public access to HUD records under the Freedom of Information Act (FOIA). The Inspector General Act of 1978 (5 USC App. 3) was enacted to "create independent and objective units" to perform various investigative and monitoring functions within Executive agencies of the Federal Government, including HUD. In furtherance of the goals of independence and objectivity, in 1984 the Inspector General implemented 24 CFR part 2002, which explains the procedures for requesting information from the OIG under the FOIA. Part 2002 is generally similar to HUD's FOIA regulations at 24 CFR part 15, except that OIG officials, as opposed to HUD officials, make determinations concerning the release of OIG records.

Timetable:

Action	Date	FR Cite
NPRM	03/12/02	67 FR 11208
NPRM Comment Period End	05/13/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, Office of the Inspector General, Room 8260, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-1613

RIN: 2508–AA12

1003. • OFFICE OF INSPECTOR GENERAL SUBPOENAS AND PRODUCTION IN RESPONSE TO SUBPOENAS OR DEMANDS OF COURTS OR OTHER AUTHORITIES (FR-4742)

Priority: Routine and Frequent

Legal Authority: Inspector General Act of 1976 as authorized (5 USC app.) and 42 USC 3537(d)

CFR Citation: 24 CFR 2004

Legal Deadline: None

Abstract: This rule would amend the regulations of the Office of Inspector General (OIG) to implement the statutory requirements concerning the issuance of OIG subpoenas, and responses to subpoenas issued to OIG employees in proceedings where OIG is not a party.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryan Saddler, Counsel to the Inspector General, Department of Housing and Urban Development, Office of the Inspector General, Room 8260, 451 7th Street, SW, Washington, DC 20410
Phone: 202 708-1613

RIN: 2508–AA13

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH) — **Proposed Rule Stage**

1004. AMENDED PUBLIC HOUSING ASSESSMENT SYSTEM (PHAS) RULE (FR-4707)

Priority: Other Significant

Legal Authority: 42 USC 1437d(j); 42 USC 3535(d)

CFR Citation: 24 CFR 902

Legal Deadline: None

Abstract: Through this rule, the Department will be revising the regulations that govern the Public Housing Assessment System (PHAS). This rule will incorporate the input of public housing stakeholders groups in the public housing assessment process.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth Hanson, Acting Director, Real Estate Assessment Center, Department of Housing and Urban Development, Office of Housing
Phone: 202 708-4932

Judy Wojciechowski, Director, PHAS Operations, Office of Troubled Agency Recovery, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-4932

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1005. • DEREGULATION FOR SMALL PHAS (FR-4753)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437d(j); 42 USC 1437F; 42 USC 3535(d)

CFR Citation: 24 CFR 902; 24 CFR 903; 24 CFR 985

Legal Deadline: None

Abstract: This rulemaking would require that PHAs with no more than 250 public housing units receive PHAS ratings every other year, unless the PHA is troubled or elects to have the rating done annually. It would eliminate the resident survey as part of PHAS for these small PHAs. Additionally, it would adjust SEMAP indicators so that very small variations in PHA performance (e.g., failure to lease one or two units) do not make a disproportionate difference in scoring. PHA Plan deregulation would cover only (1) Capital Fund work items; (2) standard certifications and a certification listing any changed policies, and indicating the changes were (a) provided to the Resident Advisory Board for comment (b) duly approved by the Board of Commissioners, and (c) were locally available to the public; and (3) allow PHAs to certify to reasonable efforts to sustain RABs.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Local

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC34

1006. PUBLIC HOUSING CAPITAL FUND PROGRAM (FR-4507)

Priority: Other Significant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 905

Legal Deadline: None

Abstract: This rule will implement the new Capital Fund Program for the capital and management improvement needs of public housing agencies. The rule will complement the rule for the Public Housing Capital Fund Program formula allocation funding system published on March 16, 2000 (65 FR 14422). This rule will implement the regulatory framework for the Capital Fund Program that will govern the use of the assistance made available through the Capital Fund formula. The new rule at part 905 will replace and remove several other rules that currently govern a PHA's use of HUD assistance including part 941 - Public Housing Development and part 968 - Public Housing Modernization. This rule will continue and expand the streamlining of procedures and requirements initiated under the Comprehensive Grant and Comprehensive Improvement programs at part 968.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Thorson, Director, Office of Capital Improvements, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1640

RIN: 2577–AC16

1007. MIXED-FINANCE PUBLIC HOUSING DEVELOPMENT (FR-4499)

Priority: Other Significant

Legal Authority: 42 USC 1437z-7; 42 USC 3535(d)

CFR Citation: 24 CFR 941

Legal Deadline: None

Abstract: This rule will implement amendments to the Department's Mixed Finance Program to reflect statutory changes enacted on October 21, 1998. Also, the rule will revise the Mixed Finance Program so that the program conforms to HUD's new Capital Fund regulations and will clarify the specific program requirements and procedures that apply to the Mixed Finance Program, including operating-subsidy-only mixed-finance developments.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing Investments, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401-8881

RIN: 2577–AC09

1008. • DENIAL OF ADMISSION AND TERMINATION OF TENANCY OF FUGITIVE FELONS (FR-4758)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13661 (c); 42 USC 1437d (l); 42 USC 1437f (d)(1)(B)

CFR Citation: 24 CFR 960.204; 24 CFR 966.4; 24 CFR 982.310; 24 CFR 982.553

Legal Deadline: None

Abstract: This rule amends the regulation for public housing and Section 8 programs to provide for denial of admission and termination of tenancy for fugitive felons.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia Arnaudo, Senior Program Manager, Office of Public and Assisted Housing Delivery, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0744

RIN: 2577–AC38

1009. RESIDENT PARTICIPATION IN PUBLIC AND SECTION 8 HOUSING (FR-4657)

Priority: Other Significant

Legal Authority: 42 USC 1437c-1; 42 USC 1437r; 42 USC 1437t; 42 USC 1437z-6; 42 USC 3535(d); 42 USC 1437d; 42 USC 1437g; 42 USC 1437l; 42 USC 1437; 12 USC 1715z-1b(a)

CFR Citation: 24 CFR 964

Legal Deadline: None

Abstract: This rule would update existing provisions of 24 CFR 964 and incorporate new provisions of the Quality Housing and Work Responsibility Act of 1998 related to resident/tenant participation. In particular, the rule would establish policies, procedures, and requirements for participating in the Resident Opportunities and Self-Sufficiency (ROSS) Program. Additionally, the proposed rule contains expanded definitions and other general information sections as part of HUD's long-standing efforts to support resident organizations and resident self-sufficiency.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Jeraldene White, Senior Program Manager, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-4214

RIN: 2577–AC26

1010. PUBLIC HOUSING DEMOLITION AND DISPOSITION (FR-4598)

Priority: Other Significant

Legal Authority: 42 USC 1437p; 42 USC 3535(d)

CFR Citation: 24 CFR 970

Legal Deadline: None

Abstract: This rule will revise HUD's regulations regarding demolition and disposition of public housing projects, in accordance with section 531 of the Quality Housing and Work Responsibility Act of 1998 (Pub. L. 105-276). This rule will establish the general and specific requirements for HUD approval of demolition and disposition applications, relocation of residents, resident participation in the form of consultation and opportunity to purchase, new requirements regarding resident relocation, the PHA Plan and local government consultation and a new authority for a PHA to demolish a small number of their units without a formal application under certain circumstances, referred to as "de minimis" demolition.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William Thorson, Director, Office of Capital Improvements, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1640

RIN: 2577–AC20

1011. • CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK; METHODOLOGY FOR COMPARING COSTS OF PUBLIC HOUSING AND TENANT-BASED ASSISTANCE (FR-4718)

Priority: Other Significant

Legal Authority: 42 USC 1437t; 1437z-5; 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule would establish the cost methodology that Public Housing Agencies (PHAs) must use under HUD's programs for the required and voluntary conversion of public housing developments to tenant-based assistance. Both programs require that PHAs, before undertaking any conversion activity, compare the cost of providing tenant-based assistance with the cost of continuing to operate the development as public housing. The cost methodology would be codified as an appendix to HUD's regulations for the required and voluntary conversion programs at 24 CFR part 972. The cost methodology was originally contained in HUD's July 23, 1999 proposed rule on voluntary conversions (although the methodology also applies to required conversions). HUD has decided to significantly revise the proposed cost methodology, based both on the public comments received on the proposed rule and upon further consideration of the cost factors that should be assessed by PHAs in making conversion determinations. Accordingly, HUD has decided to issue this new rule, which will provide the public with an additional opportunity to comment on the methodology that will be used for the required cost comparisons.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC33

1012. • IMPLEMENTATION OF SUMMARY REVISIONS TO NAHASDA (FR-4750)

Priority: Other Significant

Legal Authority: 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1000

Legal Deadline: None

Abstract: This rule would implement statutory amendments made to the Native American Housing Assistance and Self-Determination Act of 1996 (25 USC 4101 et seq) (NAHASDA) by the American Homeownership and Economic Opportunity Act (Pub.L. 106-569, approved December 27, 2000) and the Omnibus Indian Advancement Act (Pub.L. 106-568, approved December 27, 2000)(with minor exception, these two laws made identical amendments to NAHASDA). The rule will: (1) allow HUD to waive the NAHASDA cooperation agreement requirements if the recipient has made a good faith effort to fulfill the requirement and agrees to make payments in lieu of taxes; and (2) provides an exception to the Davis-Bacon wage rate requirements if tribal law provides for the payment of prevailing wage rates. In addition, the rule will update the NAHASDA regulations to conform to self-implementing statutory amendments not reflected in the regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, Washington, DC 20741
Phone: 202 401-7914

RIN: 2577–AC37

1013. NAHASDA HOUSING ASSISTANCE FOR NATIVE HAWAIIANS (FR-4668)

Priority: Other Significant

Legal Authority: 12 USC 1715z-13a; 25 USC 4101 et seq; 42 USC 3535(d)

CFR Citation: 24 CFR 1006; 24 CFR 1007

Legal Deadline: Final, Statutory, October 1, 2001.
Section 807 of the American Homeownership and Economic Opportunity Act of 2001 requires that HUD issue final regulations by October 1, 2001.

Abstract: This rule implements the provisions contained in title V, subtitle B of the American Homeownership and Economic Opportunity Act of 2000. These provisions add a new title VIII to the Native American Housing Assistance and Self-Determination Act (NAHASDA) of 1996. Under NAHASDA, HUD provides grants, loan guarantees, and technical assistance to Indian tribes and Alaska Native villages for the development and operation of low-income housing in Indian areas. New title VIII expands the scope of NAHASDA to include housing assistance to Native Hawaiians, and establishes statutory requirements specific to Native Hawaiian NAHASDA assistance. Part 1006 of this rule will implement the Native American Hawaiian Housing Block Grant Program. Part 1007 will implement the Native Hawaiian Housing Loan Guarantee Program. HUD will publish a separate rule with additional program administration requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ted Key, Acting Deputy Assistant Secretary for Native American Programs, Department of Housing and Urban Development, Office of Public and Indian Housing, Washington, DC 20741
Phone: 202 401-7914

RIN: 2577–AC27

Department of Housing and Urban Development (HUD) — Final Rule Stage
Office of Public and Indian Housing (PIH)

1014. • IMPLEMENTATION OF PUBLIC LAW 106-504: ELIGIBILITY OF CITIZENS OF THE FREELY ASSOCIATED STATES FOR FEDERALLY ASSISTED HOUSING (FR-4754)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-504

CFR Citation: 24 CFR 5; 24 CFR 960.206; 24 CFR 960.207; 24 CFR 960.407

Legal Deadline: None

Abstract: Section 3(b) of Public Law 106-504, enacted November 13, 2001 amends Section 214(a) of the Housing and Community Development Act of 1980 (USC 1436(a)) to provide that an alien who is a lawful resident in the United States and its territories and its possessions under section 141 of the compacts of Free Associations between the government of the United States and the governments of the Marshall Islands, the Federated States of Micronesia and Palau is eligible for financial assistance. Section 3(b) also includes a preference provision applicable only to Guam. This rule will update HUD's regulations to reflect these statutory changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC35

1015. PUBLIC HOUSING AGENCY PLANS: DECONCENTRATION - AMENDMENT TO ESTABLISHED INCOME RANGE DEFINITION (FR-4677)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 1437c; 42 USC 3535(d)

CFR Citation: 24 CFR 903

Legal Deadline: None

Abstract: This rule will amend the deconcentration component of HUD's Public Housing Agency Plans regulations to revise the definition of Established Income Range (EIR) to include within the EIR those developments in which the average income level is at or below 30 percent of the area median income, and therefore ensure that such developments cannot be categorized as having average income "above" the Established Income Range. An income level that is at or below 30 percent of the area median income is defined as "extremely low income" in HUD's regulations. HUD believes that developments with an average family income at or below 30 percent of the area median income should not be categorized as higher income developments for purposes of income mixing because efforts to place lower income families into these developments would not result in income deconcentration as contemplated by the statute. This rule follows publication of an August 15, 2001 proposed rule, and takes into consideration the public comments on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	08/15/01	66 FR 42926
NPRM Comment Period End	10/15/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC31

1016. PUBLIC HOUSING HOMEOWNERSHIP PROGRAMS (FR-4504)

Priority: Other Significant

Legal Authority: 42 USC 1437z-4; 42 USC 3535(d)

CFR Citation: 24 CFR 906

Legal Deadline: None

Abstract: This rule will set forth the requirements and procedures governing a new statutory homeownership program to be administered by public housing agencies. Under this rule, a PHA makes public housing dwelling units available for purchase by low-income families as their principal residences.

Timetable:

Action	Date	FR Cite
NPRM	09/14/99	64 FR 49932
NPRM Comment Period End	11/15/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milan Ozdinec, Deputy Assistant Secretary, Office of Public Housing Investments, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 401-8881

RIN: 2577–AC15

1017. PUBLIC HOUSING DEVELOPMENT TOTAL DEVELOPMENT COST (TDC) (FR-4489)

Priority: Other Significant

Legal Authority: 42 USC 1437b; 42 USC 1437c; 42 USC 1437g; 43 USC 3535(d)

CFR Citation: 24 CFR 941

Legal Deadline: None

Abstract: This rule will amend HUD's regulations governing Total Development Cost (TDC) for the development of public housing. The amendments will implement changes made to the statutory TDC requirements. Among other changes, this rule will limit the amount of public housing funds that a public housing agency may use to pay for housing construction costs. The rule will also provide that demolition and environmental hazard remediation costs are included in TDC only to the extent that such costs are associated with the replacement of public housing units on the project site.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 1008
NPRM Comment Period End	03/05/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Thorson, Director, Office of Capital Improvements, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1640

RIN: 2577–AC05

1018. REQUIRED CONVERSION OF DEVELOPMENT FROM PUBLIC HOUSING STOCK (FR-4475)

Priority: Other Significant

Legal Authority: 42 USC 1437z-5; 42 USC 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule implements a revision to the statute that authorizes HUD's public housing and Section 8 housing assistance programs. The revision requires Public Housing Agencies (PHAs) to identify distressed public housing developments that must be converted to tenant-based assistance. If it would be more expensive to modernize and operate a distressed development for its remaining useful life than to provide tenant-based assistance to all residents, or the PHA cannot assure the long-term viability of a distressed development, then the PHA must develop and carry out a five-year plan to remove the development from its public housing inventory, and convert it to tenant-based assistance. This rule follows publication of a July 23, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 40232
NPRM Comment Period End	09/21/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC01

1019. VOLUNTARY CONVERSION OF DEVELOPMENTS FROM PUBLIC HOUSING STOCK (FR-4476)

Priority: Other Significant

Legal Authority: 42 USC 1437t; 42 USC 3535(d)

CFR Citation: 24 CFR 972

Legal Deadline: None

Abstract: This rule implements a revision to the statute authorizing HUD's public housing and Section 8 housing assistance programs. The revision authorizes Public Housing Agencies (PHAs) to convert a development to tenant-based assistance by removing the development (or a portion of a development) from its public housing inventory and providing for relocation of the residents or provision of tenant-based assistance to them. This action is permitted only when that change would be cost

effective, be beneficial to residents of the development and the surrounding area, and not have an adverse impact on the availability of affordable housing. This rule follows publication of a July 23, 1999 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	07/23/99	64 FR 40240
NPRM Comment Period End	09/21/99	
Final Rule	06/22/01	66 FR 33616
Final Rule Effective	07/23/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rod J. Solomon, Deputy Assistant Secretary for Policy, Program and Legislative Initiatives, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0713

RIN: 2577–AC02

1020. SECTION 8 HOUSING CHOICE VOUCHER PROGRAM; EXPANSION OF PAYMENT STANDARDS PROTECTION (FR-4586)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: On October 21, 1999, HUD published a final rule implementing the statutory merger of the Section 8 tenant-based and certificate programs into the new Housing Choice Voucher program. This rule amends HUD's regulations governing this merger program to expand the regulatory payment standard protection against subsidy reduction. The October 21, 1999 final rule limited payment standard protection to the first 24 months of the lease term. This rule provides that a family is not subject to a subsidy reduction until the second regular reexamination of family income and composition following the payment standard reduction. This protection extends for the duration of the lease term. This final rule follows publication of a July 10, 2000 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/10/00	65 FR 42508
Interim Final Rule Effective	08/09/00	
Interim Final Rule Comment Period End	09/08/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC18

1021. SECTION 8 HOMEOWNERSHIP PROGRAM; PILOT PROGRAM FOR HOMEOWNERSHIP ASSISTANCE FOR DISABLED FAMILIES (FR-4661)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule implements the three-year pilot program authorized by section 302 of the American Homeownership and Economic Opportunity Act of 2000 (Pub.L. 106-569, approved December 27, 2000). A public housing agency (PHA) may elect to provide homeownership assistance to a disabled family under the pilot program, rather than under the Housing Choice Voucher Program homeownership option. Under the pilot program, a PHA provides homeownership assistance to a disabled family residing in a home purchased and owned by one or more members of the family. The final rule incorporates the requirements for the pilot program in HUD's regulations for the homeownership option. In addition to the amendments implementing section 302, HUD has taken the opportunity afforded by this rule to make several clarifying and technical amendments to its September 12, 2000 final rule establishing the homeownership option. This final rule follows publication of a June 22, 2001 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/22/01	66 FR 33610
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	08/21/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC24

1022. SECTION 8 HOMEOWNERSHIP PROGRAM: DOWNPAYMENT ASSISTANCE GRANTS AND STREAMLINING AMENDMENTS (FR-4670)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule implements section 301 of the American Homeownership and Economic Opportunity Act of 2000, which amends the "homeownership option" under the Housing Choice Voucher Program. Under section 301, a Public Housing Agency (PHA) may, in lieu of paying a monthly homeownership assistance payment on behalf of a family, provide homeownership assistance for the family in the form of a single grant to be used toward the downpayment required in connection with the purchase of the home. Funding for these downpayment assistance grants is anticipated for Federal Fiscal Year 2003. In addition to implementation of section 301, this final rule also clarifies and streamlines several regulatory requirements applicable to both downpayment grants and monthly homeownership assistance payments provided under the homeownership option. This rule follows publication of a June 13, 2001 proposed rule, and takes into consideration the public comments received on the proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 32198
NPRM Comment Period End	08/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC28

1023. EXCEPTION PAYMENT STANDARD TO OFFSET INCREASE IN UTILITY COSTS IN THE HOUSING CHOICE VOUCHER PROGRAM (FR-4672)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule amends the regulations for the Housing Choice Voucher program to temporarily authorize PHAs to use an exception payment standard of up to 120% of current Fair Market Rents (FMRs) to take into account increased utility costs because of increases in the price of energy. The changes made by the rule expired on October 1, 2001, when new FMRs went into effect. This rule will clarify the expiration of these temporary amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/06/01	66 FR 30566
Interim Final Rule Effective	07/06/01	
Interim Final Rule Comment Period End	08/06/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC29

1024. • HOUSING CHOICE VOUCHER PROGRAM HOMEOWNERSHIP OPTION: ELIGIBILITY OF PHA-OWNED OR CONTROLLED UNITS (FR-4759)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1437f; 42 USC 3535(l)

CFR Citation: 24 CFR 982

Legal Deadline: None

Abstract: This rule provides that properties owned or controlled by a Public Housing Agency (PHA) are eligible for purchase under the housing choice voucher program homeownership option. The interim rule also establishes procedures to remove any potential conflicts of interest for the PHA in the sale of these properties. Specifically, the rule provides that an independent entity must perform certain duties for which the PHA would normally be responsible. Among other duties, the independent entity must review the contract of sale, conduct the initial Housing Quality Standards (HQS) inspection, review the independent inspection report, and determine the reasonableness of the sales price and any PHA provided financing. These independent reviews shall be conducted in accordance with the homeownership option regulations. The independent entity must be selected by the PHA and approved by HUD in accordance with existing procedures under the voucher rental program. Further, the PHA may not direct families to purchase PHA-owned properties.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC39

1025. PROJECT-BASED VOUCHER PROGRAM (FR-4636)

Priority: Other Significant

Legal Authority: 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 983

Legal Deadline: None

Abstract: The rule will implement the new Section 8 project-based voucher program. It is based on comprehensive legislation that Congress passed along with HUD's FY 2001 appropriation. Among the many changes made by the law, the rule will cover requirements on: competition, consistency of the PHA plan and deconcentration efforts, definition of supportive services, and HQS inspections.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: Gerald J. Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC25

1026. REVISIONS TO SEMAP LEASE-UP INDICATOR (FR-4604)

Priority: Other Significant

Legal Authority: 42 USC 1437a; 42 USC 1437c; 42 USC 1437f; 42 USC 3535(d)

CFR Citation: 24 CFR 985

Legal Deadline: None

Abstract: This rule revises the way HUD measures and verifies performance under the lease-up

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indicator for the Section 8 Management Assessment Program (SEMAP). Specifically, the rule revises the lease-up standard to measure the number of units leased against the number of units reserved and under Annual Contributions Contract (ACC), instead of against the number of units budgeted. This revised standard is consistent with established HUD policy on voucher renewals and unit allocations as formulated during negotiated rulemaking pursuant to the Quality Housing and Work Responsibility Act of 1998. In addition, this rule also revises the SEMAP regulations to provide for automated signature of the required SEMAP certification. This final rule follows publication of an October 1, 2001 interim rule, and takes into consideration the public comments received on the interim rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/01/01	66 FR 50004
Interim Final Rule Effective	10/31/01	
Interim Final Rule Comment Period End	11/30/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gerald Benoit, Director, Real Estate and Housing Performance Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-0477

RIN: 2577–AC21

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH) **Long-Term Actions**

1027. OPERATING FUND ALLOCATION FORMULA (FR-4425)

Priority: Other Significant

Legal Authority: 42 USC 1437g; 42 USC 3535(d)

CFR Citation: 24 CFR 990

Legal Deadline: None

Abstract: This final rule will follow publication of a March 29, 2001 interim rule that governs the determination of funding distribution to public housing agencies under the Operating Fund and will reflect the results of a Congressionally mandated cost study. The Conference Report to HUD's FY 2000 Appropriations Act (Pub. L. 106-74, approved October 20, 1999) directs HUD to contract with the Harvard University Graduate School of Design to conduct a study of the cost incurred in operating well run public housing and provides the results to the negotiated rulemaking committee and the appropriate congressional committees). As portions of the study are completed, HUD is meeting with representatives of the negotiated rulemaking committee that helped HUD develop the Operating Fund proposed rule, as well as other interested parties. These meetings have also been open to the public. HUD will develop the final rule based on the results of the cost study, the comments on the interim rule and further input from the members of the Operating Fund proposed rule negotiating committee and other interested members of the public.

Timetable:

Action	Date	FR Cite
Notice	02/03/99	64 FR 5570
Notice Comment Period End	03/05/99	
NPRM	07/10/00	65 FR 42488
NPRM Comment Period End	08/09/00	
Interim Final Rule	03/29/01	66 FR 17276
Interim Final Rule Effective	04/30/01	
Interim Final Rule Comment Period End	05/29/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Sprague, Funding and Financial Management Division, Department of Housing and Urban Development, Office of Public and Indian Housing
Phone: 202 708-1872

RIN: 2577–AB88

Department of Housing and Urban Development (HUD)
Office of Public and Indian Housing (PIH) **Completed Actions**

1028. HUD POLICY FOR THE ADMINISTRATION OF HUD PROGRAMS ON INDIAN RESERVATIONS AND OTHER INDIAN AREAS (FR-4580)

Priority: Substantive, Nonsignificant

CFR Citation: 24 CFR 1000

Completed:

Reason	Date	FR Cite
Notice	09/28/01	66 FR 49784

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Ed Fagan
Phone: 202 401-7914

RIN: 2577–AC06

1029. LOAN GUARANTEE FOR INDIAN HOUSING; DIRECT GUARANTEE PROCESSING (FR-4241)

Priority: Other Significant

CFR Citation: 24 CFR 1005

Completed:

Reason	Date	FR Cite
Final Rule	04/19/02	67 FR 19492
Final Rule Effective	05/20/02	

HUD—PIH **Completed Actions**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Ted Key
Phone: 202 401-7914

RIN: 2577–AB78

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Federal Register

Monday,
May 13, 2002

Part X

Department of the Interior

Semiannual Regulatory Agenda

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DEPARTMENT OF THE INTERIOR (DOI)

DEPARTMENT OF THE INTERIOR

Office of the Secretary

25 CFR Ch. I

30 CFR Chs. II and VII

36 CFR Ch. I

43 CFR Subtitle A, Chs. I and II

48 CFR Ch. 14

50 CFR Chs. I and IV

Semiannual Regulatory Agenda

AGENCY: Office of the Secretary, Interior.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for review or development between April 2002 and October 2002. The Regulatory Flexibility Act and Executive Order 12866 require publication of the agenda.

ADDRESSES: Unless otherwise indicated, all agency contacts are located at the Department of the Interior, 1849 C Street NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: You should direct all comments and inquiries with regard to these rules to the appropriate agency contact. You should direct general comments relating to the agenda to the Office of Regulatory Affairs, Department of the Interior, at the address above or on 202-208-5257 or 202-208-3071.

SUPPLEMENTARY INFORMATION: With this publication, the Department satisfies the requirement of Executive Order 12866 that the Department publish an agenda of rules that we have issued or expect to issue and of currently effective rules that we have scheduled for review.

Simultaneously, the Department meets the requirement of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) to publish an agenda in April and October of each year identifying rules that will have significant economic effects on a substantial number of small entities. We have specifically identified in the agenda rules that will have such effects.

Date: March 19, 2002.

Richard A. Stephan,

Federal Register Liaison Officer.

Assistant Secretary for Policy, Management and Budget—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1030	Natural Resource Damage Assessments: Type B Procedures	1090-AA29
1031	Department Hearings and Appeals; Special Rules Applicable to Public Land Hearings and Appeals	1090-AA68
1032	Department Hearings and Appeals; Procedures Applicable in Adjudications Before the Hearings Division	1090-AA73
1033	Non-Procurement Suspension and Debarment; Drug-Free Workplace Grant Requirements	1090-AA79
1034	Department Hearings and Appeals Procedures; Procedures Applicable in Indian Probate Hearings	1090-AA81

Assistant Secretary for Policy, Management and Budget—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1035	Records and Testimony; Freedom of Information Act	1090-AA61
1036	Nondiscrimination in Federally Assisted Programs of the Department of the Interior on the Basis of Race, Color, National Origin, Handicap, or Age	1090-AA77

Assistant Secretary for Policy, Management and Budget—Completed Actions

Sequence Number	Title	Regulation Identification Number
1037	Department Hearings and Appeals Procedures; Rules Applicable in Indian Affairs Hearings and Appeals	1090-AA78
1038	Change of Address for the Office of Hearings and Appeals	1090-AA80

Assistant Secretary for Policy, Management and Budget—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1090-AA44	Revised Statute 2477 Rights-of-Way	03/05/2002	Withdrawn - No further action to be taken at this time.
1090-AA66	Administrative and Audit Requirements and Cost Principles for Assistance Programs; Buy American Act	03/05/2002	Withdrawn

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United States Fish and Wildlife Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1039	Consideration of Listing the Green Iguana (Iguana Iguana) as Injurious, Pursuant to the Lacey Act	1018-AF08
1040	Partners for Fish and Wildlife Program	1018-AH98
1041	Release of Captive-Reared Mallards	1018-AI05
1042	North American Wetlands Conservation Act Grant Administration Policies	1018-AI13

United States Fish and Wildlife Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1043	General Provisions and General Permit Procedures—50 CFR Part 13	1018-AC57
1044	Seizure and Forfeiture Procedures, 50 CFR Part 12	1018-AC89
1045	Revisions to the Federal Aid Administrative Requirements	1018-AE17
1046	U.S. Proposals for CITES Appendix III;-American Eel	1018-AF09
1047	Humane and Healthful Transport of Wild Mammals, Birds, Reptiles and Amphibians to the United States	1018-AF27
1048	Endangered and Threatened Wildlife and Plants; Establishment of a Special Rule for the Canada Lynx	1018-AF40
1049	Endangered and Threatened Wildlife and Plants; Removal of the Douglas County, Oregon, Population of the Columbia White-Tailed Deer From the List of Endangered and Threatened Species	1018-AF43
1050	Importation, Exportation, and Transportation of Wildlife, 50 CFR Part 14	1018-AF46
1051	Endangered and Threatened Wildlife and Plants; Tibetan Antelope	1018-AF49
1052	Injurious Wildlife; Addition of the Asian Swamp Eel	1018-AF53
1053	Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Straight-Horned Markhor Population of the Torghar Region of Baluchistan, Pakistan, From Endangered to Threatened	1018-AG00
1054	Federal Falconry Standards and Falconry Permitting	1018-AG11
1055	Endangered and Threatened Wildlife and Plants; Determination of Endangered Status and Designation of Critical Habitat for the Gila Chub	1018-AG16
1056	Endangered and Threatened Wildlife and Plants; Delisting the Gulf Coast Distinct Population Segment of the Brown Pelican Population in the Southeastern United States	1018-AG40
1057	Wild Bird Conservation Act: Review of Approved List of Captive-Bred Species	1018-AG64
1058	Injurious Wildlife - Addition of Black Carp	1018-AG70
1059	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Keck's Checkermallow	1018-AG93
1060	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Baker's Larkspur and the Yellow Larkspur	1018-AG96
1061	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Two Cave Invertebrates from Kauai	1018-AH01
1062	Endangered and Threatened Wildlife and Plants; Critical Habitat for 58 Plants in Hawaii	1018-AH02
1063	Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 20 Plants and Re-Proposed Designations for 32 Plants From Molokai, Hawaii	1018-AH08
1064	Endangered and Threatened Wildlife and Plants; Critical Habitat for Plants of the Northwest Islands, Hawaii	1018-AH09
1065	Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 8 Plants and Re-Proposed Designations for 18 Plants From Lanai, Hawaii	1018-AH10
1066	Endangered and Threatened Wildlife and Plants; Prudency and Critical Habitat for a Mollusk, the Carolina Heelsplitter	1018-AH31
1067	Endangered and Threatened Wildlife; Establishment of a Nonessential Experimental Population of 2 Fishes in Shoal Creek, Alabama and Tennessee	1018-AH44
1068	Endangered and Threatened Plants; Removal of the Truckee Barberry From the List of Endangered and Threatened Plants	1018-AH47
1069	Endangered and Threatened Plants; Reclassification of the Papery Whitlow-Wort, Wireweed and Sandlace From Endangered to Threatened.	1018-AH51
1070	Endangered and Threatened Wildlife; Removal of the San Marcos Gambusia, a Fish, From the List of Endangered and Threatened Wildlife	1018-AH52
1071	Endangered and Threatened Plants; Removal of the Johnston's Frankenia From the List of Endangered and Threatened Plants	1018-AH53
1072	Endangered and Threatened Wildlife; Reclassification of the Gila Trout From Endangered to Threatened	1018-AH57
1073	Endangered and Threatened Plants; Reclassification of the Missouri Bladder-Pod, a Plant, From Endangered to Threatened	1018-AH59
1074	Export of Live Alligators	1018-AH65
1075	Audit Resolution Policy	1018-AH69

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United States Fish and Wildlife Service—Proposed Rule Stage (Continued)

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1077	Eagle Permits: New Definitions, Permits for Incidental Taking of Bald Eagles Necessary To Protect Other Interests in Any Particular Locality	1018-AH74
1078	Export of Caviar: Labeling of Sturgeon and Paddlefish (Acipenseriformes) Caviar Containers Intended for International Trade; 50 CFR 23	1018-AH78
1079	Endangered and Threatened Wildlife and Plants; Establishment of Protection Areas for the West Indian Manatee in Florida	1018-AH80
1080	Marine Mammals: Incidental Take During Specified Activities (Manatees)	1018-AH86
1081	Procedures for Establishing Spring/Summer Subsistence Harvest Regulations for Migratory Birds	1018-AH88
1082	Importation of Exotic Wild Birds Into the United States; Adding Blue-Fronted Amazon Parrots From Argentina's Approved Sustainable Use Management Plan to the Approved List of Non-Captive Bred Species	1018-AH89
1083	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Rio Grande Silvery Minnow	1018-AH91
1084	Marine Mammals: Incidental Take During Specified Activities (Beaufort Sea Polar Bear and Walrus)	1018-AH92
1085	Endangered and Threatened Wildlife and Plants; Safe Harbor Agreements and Candidate Conservation Agreements With Assurances	1018-AH93
1086	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Blackburn's Sphinx Moth	1018-AH94
1087	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Newcomb's Snail	1018-AH95
1088	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Great Plains Breeding Population of the Piping Plover	1018-AH96
1089	Civil Procedures for CAFRA Compliant Wildlife Investigative Seizures	1018-AH97
1090	Endangered and Threatened Wildlife and Plants; Reclassification of Two Australian Parakeets from Endangered to Threatened	1018-AI04
1091	Endangered and Threatened Wildlife and Plants; Beluga Sturgeon	1018-AI11
1092	Corrections to Rights-of-Way Regulations	1018-AI12
1093	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Topeka Shiner	1018-AI20
1094	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Ventura Marsh Milkvetch	1018-AI21
1095	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Gulf Sturgeon	1018-AI23
1096	Endangered and Threatened Wildlife and Plants; Critical Habitat for 103 Oahu, Hawaii, Plants	1018-AI24
1097	Endangered and Threatened Wildlife and Plants; Critical Habitat for 6 Guam Species	1018-AI25
1098	Endangered and Threatened Wildlife and Plants; Critical Habitat for Four Fairy Shrimp and 11 Plants in California	1018-AI26
1099	Migratory Bird Hunting; Proposed 2002-2003 Migratory Game Bird Hunting Regulations (Preliminary) With Requirements for Indian Tribal Proposals	1018-AI30
1100	Migratory Bird Permits; Regulations for Managing Resident Canada Geese Populations	1018-AI32
1101	Migratory Bird Hunting; Approval of Tungsten-Iron-Nickel-Tin Shot as Nontoxic for Hunting Waterfowl and Coots	1018-AI33
1102	2002-2003 Refuge-Specific Hunting and Sport Fishing Regulations	1018-AI34
1103	Injurious Wildlife Species; Snakeheads	1018-AI36
1104	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2004 Subsistence Taking of Fish and Shellfish Regulations	1018-AI37
1105	Subsistence Management Regulations for Public Lands in Alaska, Subpart C—Nonrural Determinations	1018-AI38
1106	Endangered and Threatened Wildlife and Plants; Reclassification of the Gray Bat From Endangered to Threatened	1018-AI40
1107	Endangered and Threatened Wildlife and Plants; Reclassification of the American Crocodile From Endangered to Threatened	1018-AI41
1108	Endangered and Threatened Wildlife and Plants; Reclassification of the Schaus Swallowtail Butterfly From Endangered to Threatened	1018-AI42
1109	Endangered and Threatened Wildlife and Plants; Listing the Southwest Alaskan Distinct Population Segment of the Northern Sea Otter	1018-AI44
1110	Endangered and Threatened Wildlife and Plants; Listing the Mountain Plover With a Special Rule	1018-AI45
1111	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Preble's Meadow Jumping Mouse	1018-AI46
1112	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for 9 Invertebrate Species in Bexar County, Texas	1018-AI47
1113	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Cactus Ferruginous Pygmy Owl	1018-AI48
1114	Endangered and Threatened Wildlife and Plants; Listing the Slickspot Peppergrass	1018-AI50
1115	Endangered and Threatened Wildlife and Plants; Listing the Flat-tailed Horned Lizard	1018-AI51
1116	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Columbia-Klamath Distinct Population Segment of the Bull Trout	1018-AI52

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United States Fish and Wildlife Service—Final Rule Stage

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1118	Convention on International Trade in Endangered Species (CITES)	1018-AD87
1119	Reclassification of the Vicuna From Endangered to Threatened With a Special Rule	1018-AE04
1120	Injurious Wildlife; Addition of Brush-Tailed Possum	1018-AE34
1121	Endangered and Threatened Wildlife and Plants; Reclassification of the Gray Wolf in Certain Parts of Its Range	1018-AF20
1122	Endangered and Threatened Wildlife and Plants; Delisting of the Bald Eagle Throughout the Lower 48 States	1018-AF21
1123	Endangered and Threatened Wildlife and Plants; Prebles Meadow Jumping Mouse; Special Rule	1018-AF30
1124	Endangered and Threatened Wildlife and Plants; Listing the Chiricahua Leopard Frog with a Special Rule	1018-AF41
1125	Importation of Captive-Bred Exotic Birds Into the United States From Breeding Facilities in Other Countries	1018-AF44
1126	Endangered and Threatened Wildlife and Plants; Listing and Special Rule for the Coastal Cutthroat Trout	1018-AF45
1127	Administration of the National Coastal Wetlands Conservation Grant Program	1018-AF51
1128	Policy for Evaluation of Conservation Efforts in Endangered Species Decisionmaking	1018-AF55
1129	Policy on General Conservation Permits	1018-AF63
1130	U.S. Proposals for CITES Appendix III; Certain Turtle Species	1018-AF69
1131	Endangered and Threatened Wildlife and Plants; Endangered Status for Southern California Distinct Vertebrate Population Segment (DPS) of Mountain Yellow-Legged Frog	1018-AF83
1132	Endangered and Threatened Wildlife and Plants; Endangered Status for San Diego Ambrosia	1018-AF86
1133	Endangered and Threatened Wildlife and Plants; Establishment of Nonessential Experimental Populations for Four Fishes: Duskytail Darter, Smoky Madtom, Yellowfin Madtom, and Spotfin Chub	1018-AF96
1134	Endangered and Threatened Wildlife and Plants; Delisting of the Hoover's Wooly-Star	1018-AG41
1135	National Wildlife Refuge System; Mission, Goals, and Purposes	1018-AG46
1136	Endangered and Threatened Wildlife and Plants; Determinations of Whether Designation of Critical Habitat Is Prudent for 81 Plants and Proposed Designations for 76 Plants From Kauai and Niihau, Hawaii	1018-AG71
1137	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Santa Cruz Tarplant	1018-AG73
1138	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Purple Amole	1018-AG75
1139	Endangered and Threatened Wildlife and Plants; Critical Habitat for Three Coastal California Plants	1018-AG88
1140	Endangered and Threatened Wildlife and Plants; Critical Habitat for Kneeland Prairie Pennycress	1018-AG92
1141	Endangered and Threatened Wildlife and Plants; Critical Habitat for the Otay Tarplant	1018-AH00
1142	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Chorizanthe Pungens var. Pungens (Monterey Spineflower)	1018-AH04
1143	Endangered and Threatened Wildlife and Plants; Prudency and Critical Habitat Designation for a Mollusk, the Appalachian Elktoe	1018-AH33
1144	Interagency Policy on the Prescription of Fishways Under Section 18 of the Federal Power Act	1018-AH42
1145	Endangered and Threatened Wildlife; Removal of the Guam Broadbill and Mariana Mallard From the List of Endangered and Threatened Wildlife	1018-AH50
1146	Endangered and Threatened Plants; Removal of the Robin's Cinquefoil From the List of Endangered and Threatened Species	1018-AH56
1147	Addition of the Basking Shark and the Stag Beetle to Appendix III Under CITES	1018-AH66
1148	Endangered and Threatened Wildlife and Plants; Reopening of Comment Period on the Threatened Status of the Sacramento Splittail (Pogonichthys Macrolepidotis)	1018-AH73
1149	Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Polygonum Hickmanii (Scotts Valley Polygonum)	1018-AH76
1150	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Polygonum Hickmanii (Scotts Valley Polygonum) and Chorizanthe Robusta var. Hartwegii (Scotts Valley Spineflower)	1018-AH82
1151	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for Chorizanthe Robusta var. Robusta (Robust Spineflower)	1018-AH83
1152	Subsistence Management Regulations for Public Lands in Alaska, Subparts A and B; Interim Rule	1018-AH85
1153	Migratory Bird Permits; Regulations Governing Rehabilitation Activities	1018-AH87
1154	Public Notice for CITES Appendix III Listing of Spanish Cedar and Bigleaf Mahogany by the Government of Peru	1018-AH99
1155	Endangered and Threatened Wildlife and Plants: Retention of Threatened Status for Argali in Kyrgyzstan, Mongolia, and Tajikistan	1018-AI02
1156	Endangered and Threatened Wildlife and Plants; Establishment of a Nonessential Experimental Population of Grizzly Bears in the Bitterroot Area of Idaho and Montana; Removal of Regulations	1018-AI03
1157	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002-2003 Subsistence Taking of Wildlife Regulations	1018-AI06
1158	Migratory Bird Hunting and Permits; Regulations for Managing Harvest of Light Goose Populations	1018-AI07
1159	Addition by Indonesia of Ramin to Appendix III Under the Convention on International Trade in Endangered Species of Wild Fauna and Flora	1018-AI08

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United States Fish and Wildlife Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
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1161	Endangered and Threatened Wildlife and Plants; Listing and Designation of Critical Habitat for Three Snails and One Amphipod	1018-AI15
1162	Endangered and Threatened Wildlife and Plants; Emergency Listing of the Pygmy Rabbit	1018-AI17
1163	Endangered and Threatened Wildlife and Plants; Emergency Listing of the Carson's Wandering Skipper	1018-AI18
1164	Endangered and Threatened Wildlife and Plants; Emergency Listing of the Tumbling Creek Cavesnail	1018-AI19
1165	Endangered and Threatened Wildlife and Plants; Critical Habitat for Five Carbonate Plants in California	1018-AI27
1166	Subsistence Management Regulations for Public Lands in Alaska, Subpart D; Subsistence Taking of Fish, Customary Trade	1018-AI31
1167	Endangered and Threatened Wildlife and Plants; Listing of Cook's Lomatium and Large-Flowered Woolly Meadowfoam	1018-AI43

United States Fish and Wildlife Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1168	Migratory Bird Permits; Specific Permit Provisions; Import and Export Permits; Banding or Marking Permits; and Scientific Collecting Permits	1018-AE63
1169	Migratory Bird Permits; Introduction, General Requirements and Exceptions	1018-AE64
1170	Implementation of the 1994 Amendments to the Marine Mammal Protection Act	1018-AE72
1171	Taking of Marine Mammals by Level B Harassment; Issuance of General Authorization for Scientific Research and Permits for Photography, Educational, and Commercial Purposes	1018-AF26
1172	Endangered and Threatened Wildlife and Plants; Delisting the Northern Population of the Tidewater Goby	1018-AF67
1173	Endangered and Threatened Wildlife and Plants; Special Rule for Bull Trout in Washington State	1018-AF71
1174	Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Plants From the Mariana Islands and Guam	1018-AG09
1175	Endangered and Threatened Wildlife and Plants; Endangered Status for 12 Species of Picture-Wing Flies From the Hawaiian Islands	1018-AG23
1176	Migratory Bird Permits; Take of Migratory Birds by Federal Agencies	1018-AG56
1177	Endangered and Threatened Wildlife and Plants; Listing of the Miami Blue Butterfly	1018-AH30
1178	Endangered and Threatened Wildlife and Plants; Determination of Critical Habitat for the Scaleshell Mussel	1018-AH35
1179	Endangered and Threatened Wildlife and Plants; Listing of the Sacramento Mountains Checkerspot Butterfly and Proposed Designation of Critical Habitat	1018-AH40
1180	Endangered and Threatened Wildlife; Removal of Four Ash Meadow Species From the List of Endangered and Threatened Wildlife and Plants	1018-AH49
1181	Endangered and Threatened Wildlife; Establishment of a Nonessential Experimental Population of the Black-Footed Ferret in Wyoming	1018-AH54
1182	Endangered and Threatened Wildlife; Reclassification of the Marianna Fruit Bat on Guam from Endangered to Threatened	1018-AH55
1183	Endangered and Threatened Wildlife and Plants; Listing the Dolly Varden as a Threatened Species in Washington Due to Similarity of Appearance to Bull Trout	1018-AH68
1184	Migratory Bird Permits; Regulations Governing Education; 50 CFR 21	1018-AH71
1185	National Wildlife Refuge System; Miscellaneous Receipts	1018-AH81
1186	Endangered and Threatened Wildlife and Plants; Removal of the Tinian Monarch Flycatcher From the List of Endangered and Threatened Species	1018-AI14
1187	Endangered and Threatened Wildlife and Plants; Listing of the Rota Bridled White-Eye	1018-AI16
1188	Endangered and Threatened Wildlife and Plants; Listing of the Island Fox	1018-AI28
1189	Migratory Bird Permits; Regulations for Managing Double-crested Cormorant Damages	1018-AI39
1190	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Southwestern Willow Flycatcher	1018-AI49

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United States Fish and Wildlife Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1191	Endangered and Threatened Wildlife; Listing the Golden Sedge	1018-AF68
1192	Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Plant Hackelia Venusta (Showy Stickseed)	1018-AF75
1193	Endangered and Threatened Wildlife and Plants; Proposal To List the Mississippi Gopher Frog Distinct Population Segment of Dusky Gopher Frog as Endangered	1018-AF90
1194	Endangered and Threatened Wildlife and Plants; Listing of Buena Vista Lake Shrew as Endangered	1018-AG04
1195	Endangered and Threatened Wildlife and Plants; Listing of Vermilion Darter as Endangered	1018-AG05
1196	Endangered and Threatened Wildlife and Plants; Reclassification of Scutellaria Montana (Large-Flowered Skullcap) From Endangered to Threatened	1018-AG07
1197	Endangered and Threatened Wildlife and Plants; Critical Habitat Designation for the Oahu Elepaio, a Bird, in Hawaii	1018-AG99
1198	Endangered and Threatened Wildlife and Plants; Designation of Critical Habitat for the Quino Checkerspot Butterfly	1018-AH03
1199	Endangered and Threatened Wildlife and Plants; Critical Habitat for the San Bernardino Kangaroo Rat	1018-AH07
1200	Endangered and Threatened Wildlife and Plants; 12-Month Petition Finding for the Big Cypress Fox Squirrel	1018-AH29
1201	Endangered and Threatened Wildlife and Plants; Prudency and Critical Habitat for the Rock Gnome Lichen	1018-AH32
1202	Endangered and Threatened Plants; Reclassification of the Wireweed From Endangered to Threatened in Florida	1018-AH58
1203	Conferring Designated Port Status on Anchorage, Alaska	1018-AH75
1204	Subsistence Management Regulations for Public Lands in Alaska, Subpart C and Subpart D—2002 Subsistence Taking of Fish and Shellfish Regulations	1018-AH77
1205	Migratory Bird Hunting; Proposed 2001-2002 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals	1018-AH79
1206	Endangered and Threatened Wildlife and Plants; Listing the Desert Yellowhead as Threatened	1018-AI35

United States Fish and Wildlife Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1018-AE01	Endangered and Threatened Wildlife and Plants; Proposed Establishment of Nonessential Experimental Population of Ten Freshwater Mussels in Holston River System in TN and VA	04/24/2002	Withdrawn
1018-AE33	Exportation of Marine Mammal Products for Cultural Exchange, 50 CFR Part 18	03/15/2002	Withdrawn
1018-AG59	Clean Vessel Act Guidance Revision	02/28/2002	Withdrawn
1018-AG68	Endangered and Threatened Wildlife and Plants: 5-Year Review of Foreign Species	02/28/2002	Withdrawn
1018-AI10	Administrative Requirements, Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts	02/28/2002	Withdrawn
1018-AI29	Migratory Bird Nest Destruction	03/05/2002	Withdrawn

National Park Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1207	Vehicles and Traffic Safety; Operating Under the Influence of Alcohol or Drugs	1024-AC69
1208	Procedures for State, Tribal, and Local Government Historic Preservation Programs	1024-AC79
1209	Commercial Use Authorizations	1024-AC85
1210	Glen Canyon National Recreation Area; Personal Watercraft	1024-AC90
1211	Lake Mead National Recreation Area; Personal Watercraft	1024-AC91
1212	Big Thicket National Preserve; Personal Watercraft	1024-AC92
1213	Pictured Rocks National Lakeshore; Personal Watercraft	1024-AC93
1214	Fire Island National Seashore; Personal Watercraft	1024-AC94
1215	Gateway National Recreation Area; Personal Watercraft	1024-AC95
1216	Bighorn Canyon National Recreation Area; Personal Watercraft	1024-AC96
1217	Lake Meredith Recreation Area; Personal Watercraft	1024-AC97

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National Park Service—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1218	Chickasaw Recreation Area; Personal Watercraft	1024-AC98
1219	Curecanti Recreation Area; Personal Watercraft	1024-AC99
1220	Amistad Recreation Area; Personal Watercraft	1024-AD00
1221	Lake Roosevelt Recreation Area; Personal Watercraft	1024-AD01
1222	Assateague Island National Seashore; Personal Watercraft	1024-AD02
1223	Dry Tortugas National Park; Special Regulations	1024-AD04
1224	Native American Graves Protection and Repatriation Act; Future Applicability	1024-AD05
1225	Yellowstone National Park, Grand Teton National Park, John D. Rockefeller Memorial Parkway Winter Use Regulations	1024-AD06

National Park Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1226	Native American Graves Protection and Repatriation Act Regulations; Civil Penalties	1024-AC84
1227	Virgin Islands Coral Reef National Monument; Special Regulations	1024-AC89

National Park Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1228	World Heritage Convention	1024-AC74
1229	Special Regulations of the National Park System; Religious Ceremonial Collection of Golden Eaglets in Wupatki National Monument	1024-AC86
1230	Golden Gate National Recreation Area; Special Regulations	1024-AD03

National Park Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1231	Leasing Regulations	1024-AC78
1232	Wrangell-St. Elias National Park and Preserve Resident Zone Communities	1024-AC83

National Park Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1024-AC82	Snowmobile Use in National Park Service Areas	03/05/2002	Withdrawn - No further action to be taken at this time.
1024-AC87	Special Regulations of the National Park System; Canyonlands National Park Road Closure	03/05/2002	Withdrawn - No further action to be taken at this time.

Bureau of Indian Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1233	Irrigation Projects and Systems	1076-AD44
1234	Indian Electric Power Utilities	1076-AD45
1235	Arrangement With States, Territories, or Other Agencies for Relief of Distress and Social Welfare of Indians	1076-AD98

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Bureau of Indian Affairs—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1236	Buy Indian Act Regulations	1076-AE07
1237	Indian Reservation Roads Program	1076-AE17
1238	Trust Management Reform: Repeal of Outdated Rules	1076-AE20
1239	Appeals of Administrative Actions	1076-AE21
1240	Trust Funds for Tribes and Individual Indians	1076-AE22
1241	Leases and Permits	1076-AE23
1242	Tribal Revenue Allocation Plans	1076-AE24
1243	Probate of Indian Estates Except for Members of the Five Civilized Tribes	1076-AE25
1244	Adult Education Program	1076-AE29

Bureau of Indian Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1245	Indian Business Development Program	1076-AD70
1246	Certificates of Degree of Indian Blood	1076-AD97
1247	Alaska Resupply Operation	1076-AE04
1248	Indian School Equalization Program - Provisions for Exceptional Children	1076-AE14
1249	Protection of Products of Indian Art and Craftsmanship	1076-AE16

Bureau of Indian Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
1250	Indian Reservation Roads Program	1076-AE06
1251	Distribution of Fiscal Year 2002 Indian Reservation Roads Funds	1076-AE28

Bureau of Indian Affairs—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1076-AC81	Navajo Partitioned Lands Grazing Regulations	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD05	Preference in Employment	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD08	Grants to Tribally Controlled Community Colleges and Navajo Community College	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD09	Indian School Equalization Program	03/01/2002	Withdrawn - No further action scheduled.
1076-AD15	Indian Tribal Justice Support	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD33	Leasing Restricted Lands of Members of the Five Civilized Tribes, Oklahoma, for Mining	03/01/2002	Withdrawn - No further action scheduled.
1076-AD34	Leasing Osage Reservation Lands for Mining of Minerals Other Than Oil and Gas	03/01/2002	Withdrawn - No further action will be taken.
1076-AD35	Lead and Zinc Mining Operations and Leases on Quapaw Indian Lands	03/01/2002	Withdrawn - No further action will be taken.
1076-AD36	Exploration, Mining, and Reclamation of Lands	03/01/2002	Withdrawn - No further action scheduled.
1076-AD46	Tribal Reorganization Under a Federal Statute	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD47	Petitioning Procedures	03/01/2002	Withdrawn - No further action scheduled.

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Bureau of Indian Affairs—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
1076-AD50	Appeals From Administrative Actions	03/01/2002	Withdrawn - Duplicate of RIN 1076-AE21
1076-AD55	Academic and Dormitory Standards	03/01/2002	Withdrawn - No further action scheduled.
1076-AD58	Education Contracts Under the Johnson-O'Malley Act	03/01/2002	Withdrawn - No further action scheduled.
1076-AD59	Loans to Indians From the Revolving Loan Fund	03/01/2002	Withdrawn - Will be published at a future date.
1076-AD69	School Construction Contracts for Public Schools	03/01/2002	Withdrawn - No further action scheduled.
1076-AD75	Job Placement and Training Program	03/01/2002	Withdrawn - No further action scheduled.
1076-AD76	Courts of Indian Offenses	03/01/2002	Withdrawn - Further action postponed until later.
1076-AD83	Use of Columbia River Fish Access Sites	03/01/2002	Withdrawn - No further action scheduled.
1076-AD86	Use of Columbia River In-Lieu Fishing Sites	03/01/2002	Withdrawn - No further action scheduled.
1076-AD94	Use or Distribution of Indian Judgment Funds	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AD96	Indian Child Protection	03/01/2002	Withdrawn - No further action will be taken at this time.
1076-AE30	Address Correction	03/01/2002	Withdrawn - No further action will be taken at this time.

Minerals Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1252	Late and Overpayment Interest	1010-AC27
1253	Takes vs. Entitlements Reporting	1010-AC29
1254	Accounting Relief for Marginal Properties	1010-AC30
1255	Prepayment of Royalties	1010-AC31
1256	Plans and Information	1010-AC47
1257	Incident Reporting	1010-AC57
1258	Royalty Relief Terms	1010-AC58
1259	MMS Hearings and Investigations	1010-AC79
1260	Appeals of Minerals Management Service Orders	1010-AC80
1261	Proprietary Terms and Data Disclosure	1010-AC81
1262	Definition of Control	1010-AC88
1263	Documents Incorporated by Reference — API RP 14F and API 510	1010-AC89
1264	Reporting Amendments	1010-AC90
1265	Rights-of-Use and Easements and Pipeline Rights-of-Way	1010-AC91

Minerals Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1266	Oil and Gas Drilling Operations	1010-AC43
1267	Prospecting for Minerals Other Than Oil, Gas, and Sulphur in the Outer Continental Shelf	1010-AC48
1268	Decommissioning Activities	1010-AC65
1269	Oil and Gas and Sulphur Operations in the Outer Continental Shelf—Safety Measures and Procedures for Pipeline Modifications and Repairs	1010-AC75
1270	Documents Incorporated by Reference — API Specification 2C	1010-AC82
1271	Dealing with Sustained Casing Pressure	1010-AC83

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Minerals Management Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1272	Documents Incorporated by Reference for Offshore Floating Production Facilities	1010-AC85
1273	Technical Amendments	1010-AC87
1274	Suspension of Operations for Exploration Under Salt Sheets	1010-AC92
1275	Documents Incorporated by Reference - API RP 14C	1010-AC93
1276	Outer Continental Shelf Oil and Gas Leasing - Clarifying Amendments	1010-AC94
1277	Document Incorporated by Reference—API 510—Pressure Vessel Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration	1010-AC95

Minerals Management Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1278	Deep Water Royalty Relief for Outer Continental Shelf Oil and Gas Leases Issued After 2000	1010-AC71

Minerals Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1279	Requirements Governing Surety Bonds for the Outer Continental Shelf	1010-AC68
1280	Solid Minerals Reporting Requirements	1010-AC86

Minerals Management Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1010-AC24	Valuation of Oil From Indian Leases	04/01/2002	Withdrawn
1010-AC63	Forms and Reports	03/01/2002	Withdrawn - Combined With RIN 1010-AC90.
1010-AC64	Records and Files Maintenance	03/01/2002	Withdrawn - To Be Published at a Future Date.
1010-AC78	Well Control and Production Safety Training	03/01/2002	Withdrawn - No Further Action Will Be Taken.

Office of Surface Mining Reclamation and Enforcement—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1281	Abandoned Coal Refuse Sites—Title I	1029-AB70
1282	Contemporaneous Reclamation	1029-AB79
1283	Emergency Action Plans—Impoundments	1029-AB92
1284	Abandoned Mine Land Reclamation Notices	1029-AB99
1285	Revegetation	1029-AC02
1286	Placement of Excess Spoil	1029-AC04

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Office of Surface Mining Reclamation and Enforcement—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1287	Indian Lands	1029-AB83

Office of Surface Mining Reclamation and Enforcement—Completed Actions

Sequence Number	Title	Regulation Identification Number
1288	Electronic Filing of the OSM-1 Form	1029-AB95
1289	Civil Penalty Adjustments	1029-AC00
1290	Changes of Address	1029-AC03

Office of Surface Mining Reclamation and Enforcement—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1029-AB98	Prime Farmlands	03/01/2002	Withdrawn - No further action will be taken at this time.

Bureau of Reclamation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1291	Authorization of Law Enforcement Officers at Reclamation Facilities	1006-AA42

Bureau of Reclamation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1292	Acreage Limitation	1006-AA43
1293	Trespass on Reclamation Lands and Facilities	1006-AA44

Bureau of Land Management—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1294	Sales—Federal Land Policy and Management Act	1004-AB77
1295	Desert Land Entries	1004-AC56
1296	Disposal of Reserved Minerals Under the Stock Raising Homestead Act	1004-AC59
1297	Mineral Patent Applications; Adverse Claims, Protests, and Conflicts	1004-AD32
1298	Conservation; Helium Leasing	1004-AD35
1299	Hazardous Materials Compliance	1004-AD38
1300	Grazing Administration—Exclusive of Alaska	1004-AD42
1301	Coal Management: Noncompetitive Leases; Management Provisions and Limitations	1004-AD43
1302	Permits for Recreation on Public Lands	1004-AD45
1303	Disclaimers of Interest	1004-AD50
1304	Surface Management; Segregated or Withdrawn Lands	1004-AD51
1305	Mining Claims Under the General Mining Laws; Surface Management	1004-AD53
1306	Wilderness Management	1004-AD54

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Bureau of Land Management—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1307	Cost Recovery; Mineral Filings and Operations	1004-AC64
1308	Rights-of-Way, Principles and Procedures; Rights-of-Way Under the Mineral Leasing Act	1004-AC74
1309	Indian Allotments	1004-AC77
1310	Use Authorizations (Recreation)	1004-AD25
1311	Location Recording and Maintenance of Mining Claims and Sites	1004-AD31
1312	Wilderness Management	1004-AD46
1313	Location Recording and Maintenance of Mining Claims or Sites	1004-AD52

Bureau of Land Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1314	Leases, Permits, and Easements	1004-AB51
1315	Coalbed Methane Development	1004-AC27
1316	Carey Act Grants	1004-AC80
1317	Oil and Gas Leasing and Operations	1004-AC94
1318	Appeals Procedures; Hearings Procedures	1004-AC99
1319	Supplementary Rules for Public Demonstrations at Grand Staircase-Escalante National Monument	1004-AD40

Bureau of Land Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
1320	Oil and Gas Leasing; National Petroleum Reserve, Alaska—Unit Agreements	1004-AD13
1321	Mineral Materials Disposal	1004-AD29

Bureau of Land Management—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1004-AC63	Land Withdrawals	03/01/2002	Withdrawn - No further action to be taken at this time.
1004-AC78	Land Classification	03/05/2002	Withdrawn - No further action to be taken at this time.
1004-AD00	Color of Title and Omitted Lands	03/05/2002	Withdrawn - No further action to be taken at this time.
1004-AD10	Geothermal Resource Unit Agreement	03/05/2002	Withdrawn - No further action to be taken at this time.
1004-AD11	Coal Management	03/05/2002	Withdrawn - No further action to be taken at this time.
1004-AD48	Onshore Oil and Gas Operations	03/05/2002	Withdrawn - No further action to be taken at this time.
1004-AD49	Financial Guarantees Procedures	03/05/2002	Withdrawn - No further action to be taken at this time.

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1322	Wild and Scenic Rivers	1093-AA08

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Department of the Interior (DOI) — **Proposed Rule Stage**
Assistant Secretary for Policy, Management and Budget (ASPMB)

1030. NATURAL RESOURCE DAMAGE ASSESSMENTS: TYPE B PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 9651(c)

CFR Citation: 43 CFR 11

Legal Deadline: None

Abstract: CERCLA and the Clean Water Act allow natural resource trustees to bring a claim against a potentially responsible party for resources that have been injured by a release of a hazardous substance. CERCLA requires that natural resource damage assessment regulations be promulgated and that the regulations be reviewed, and revised as appropriate, every two years. This rulemaking is the biennial review of the administrative process for conducting assessments as well as the so-called type B procedures for determining injury and damages through scientific and economic studies. This rulemaking will also address the calculation of lost non-use values of natural resources, in compliance with State of Ohio v. Department of the Interior, 880 F.2d 432 (D.C. Cir. 1989), which ordered the Department to allow for the assessment of all reliably calculated values lost as a result of a natural resource injury.

Timetable:

Action	Date	FR Cite
ANPRM	07/16/96	61 FR 37031
ANPRM Comment Period End	09/16/96	
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Frank DeLuise, Assessment Program, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Room 4449, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4143

RIN: 1090–AA29

1031. DEPARTMENT HEARINGS AND APPEALS; SPECIAL RULES APPLICABLE TO PUBLIC LAND HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1201

CFR Citation: 43 CFR 4.401(c)(2); 43 CFR 4.403 to 4.408; 43 CFR 4.414; 43 CFR 4.415; 43 CFR 4.422(c)(2); 43 CFR 4.450-5

Legal Deadline: None

Abstract: This document proposes to amend procedural rules governing hearings and appeals in public-lands cases. The amendments are necessary to conform the rules to procedural practices contained in decisions of the Interior Board of Land Appeals. The amended rules would provide parties more complete information and more up-to-date procedures than the existing rules.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Will A. Irwin, Administrative Judge, Department of the Interior, Assistant Secretary for Policy, Management and Budget, Interior Board of Appeals, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235-3750

RIN: 1090–AA68

1032. DEPARTMENT HEARINGS AND APPEALS; PROCEDURES APPLICABLE IN ADJUDICATIONS BEFORE THE HEARINGS DIVISION

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374; 30 USC 1201 et seq; 43 USC 1201; 5 USC 571 to 583

CFR Citation: 25 CFR 15; 30 CFR 301; 43 CFR 1850; 43 CFR 4

Legal Deadline: None

Abstract: This proposed rule will amend regulations governing case management and case processing by administrative law judges in the field offices of OHA to increase efficiency.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Charles E. Breece, Principal Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235-3810

RIN: 1090–AA73

1033. NON-PROCUREMENT SUSPENSION AND DEBARMENT; DRUG-FREE WORKPLACE GRANT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 6101; 41 USC 252a; 41 USC 701 et seq; EO 12549; EO 12689; PL 103-355

CFR Citation: 43 CFR 42; 43 CFR 43

Legal Deadline: None

Abstract: This proposed rule would implement a common Governmentwide rule for debarment and suspension and a common Governmentwide rule for the Drug-Free Workplace Act of 1988, including several specific provisions that apply to the Department of the Interior.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Debra E. Sonderman, Property Management, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-6431

RIN: 1090–AA79

DOI—ASPMB — **Proposed Rule Stage**

1034. • DEPARTMENT HEARINGS AND APPEALS PROCEDURES; PROCEDURES APPLICABLE IN INDIAN PROBATE HEARINGS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 2; 25 USC 9; 25 USC 331; 25 USC 372; 25 USC 373; 25 USC 373a; 25 USC 373b; 25 USC 374

CFR Citation: 43 CFR 4

Legal Deadline: None

Abstract: This proposed rule will revise the procedural rules for the Hearings Division of the Office of Hearings and Appeals concerning probate hearings. Hearings Division regulations must be amended to reflect OHA policy changes, new developments in probate case law, and other probate developments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles E. Breece, Principal Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235-3810

RIN: 1090–AA81

Department of the Interior (DOI) — **Final Rule Stage**
Assistant Secretary for Policy, Management and Budget (ASPMB)

1035. RECORDS AND TESTIMONY; FREEDOM OF INFORMATION ACT

Priority: Info./Admin./Other. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 552

CFR Citation: 43 CFR 2

Legal Deadline: None

Abstract: 43 CFR part 2; subparts A and B, are being revised in their entirety to reflect the provisions of the new FOIA law Electronic FOIA Amendments of 1996, Pub. L. 104-231, the recommendations of the National Performance Review lab, and to make other changes as necessary.

Timetable:

Action	Date	FR Cite
NPRM	07/16/01	66 FR 36966
NPRM Comment Period End	09/14/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alexandra Mallus, DOI FOIA Officer (OIRM), Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5342

RIN: 1090–AA61

1036. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF THE DEPARTMENT OF THE INTERIOR ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, OR AGE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-1; 42 USC 6101 et seq

CFR Citation: 43 CFR 17

Legal Deadline: None

Abstract: This proposed joint rule will incorporate the broadened definitions of the terms program and program or activity as contained in the Civil Rights Restoration Act of 1987 (CRRA). The CRRA broadened the definitions of those terms so that all operations of an entity that receives Federal financial assistance are covered, not just the particular part receiving the Federal assistance.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Melvin C. Fowler, Civil Rights Staff Assistant, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-3455

RIN: 1090–AA77

Department of the Interior (DOI) — **Completed Actions**
Assistant Secretary for Policy, Management and Budget (ASPMB)

1037. DEPARTMENT HEARINGS AND APPEALS PROCEDURES; RULES APPLICABLE IN INDIAN AFFAIRS HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 4

Completed:

Reason	Date	FR Cite
Final Action	12/31/01	66 FR 67652
Final Action Effective	01/30/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles E. Breece
Phone: 703 235-3810

RIN: 1090–AA78

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DOI—ASPMB — Completed Actions

1038. • CHANGE OF ADDRESS FOR THE OFFICE OF HEARINGS AND APPEALS

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 5 USC 552; 5 USC 552a; 31 USC 9701; 43 USC 1201

CFR Citation: 43 CFR 2; 43 CFR 4; 43 CFR 7; 43 CFR 10; 43 CFR 13; 43 CFR 35

Legal Deadline: None

Abstract: This rule revises Department of the Interior regulations governing administrative appeals to reflect a change of address for the Office of Hearings and Appeals.

Timetable:

Action	Date	FR Cite
Final Action	01/30/02	67 FR 4367
Final Action Effective	02/11/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles E. Breece, Principal Deputy Director, Department of the Interior, Assistant Secretary for Policy, Management and Budget, 801 N. Quincy Street, Suite 300, Arlington, VA 22203
Phone: 703 235-3810

RIN: 1090–AA80

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Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS) — Prerule Stage

1039. CONSIDERATION OF LISTING THE GREEN IGUANA (IGUANA IGUANA) AS INJURIOUS, PURSUANT TO THE LACEY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: The Humane Society of the United States requested that the Service list the green iguana as injurious under the Lacey Act. Iguanas are released into the wild by their owners for various reasons. These iguanas may be carriers of Salmonella bacteria and could negatively impact native populations. A notice requesting information will be published so that data can be gathered as to the injurious nature of the iguanas. This information will be analyzed to determine whether listing is warranted.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari__duncan@fws.gov

RIN: 1018–AF08

1040. PARTNERS FOR FISH AND WILDLIFE PROGRAM

Priority: Info./Admin./Other

Legal Authority: 16 USC 742(a) to 754

CFR Citation: None

Legal Deadline: None

Abstract: Portions of the U.S. Fish and Wildlife Service manual are being revised to update policy on the implementation of the Partners for Fish and Wildlife Program. This program provides private landowners with cost-sharing and restoration expertise to restore fish and wildlife habitat. The program does not acquire lands and is a voluntary incentive program. The revisions update policy, incorporate Office of Inspector General recommendations, and clarify technical assistance and cost-sharing in light of changes in U.S. Department of Agriculture conservation programs.

Timetable:

Action	Date	FR Cite
Notice of Availability	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1718

RIN: 1018–AH98

1041. RELEASE OF CAPTIVE-REARED MALLARDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: This notice announces our intent to resume review of all aspects of regulations pertaining to the release and harvest of captive-reared mallards.

Timetable:

Action	Date	FR Cite
Notice of Intent	08/28/01	66 FR 45274
Notice of Availability	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AI05

1042. NORTH AMERICAN WETLANDS CONSERVATION ACT GRANT ADMINISTRATION POLICIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 16 USC 4401 et seq

CFR Citation: None

Legal Deadline: None

Abstract: Grant Administration Policies are being published as an interim measure to guide the North American Wetlands Conservation Act (NAWCA) grants process and to provide advance notice of rulemaking; the Service intends to engage in rulemaking to set out its own regulations for NAWCA grants administration that will supersede the Grant Administration Policies.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: David A Smith, Chief, Division of Bird Habitat Conservation, Department of the Interior, United States Fish and Wildlife Service, Suite 110, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1784
Fax: 703 358-2282

RIN: 1018–AI13

DOI—FWS — Prerule Stage

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS) — Proposed Rule Stage

1043. GENERAL PROVISIONS AND GENERAL PERMIT PROCEDURES—50 CFR PART 13

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668a; 16 USC 704; 16 USC 712; 16 USC 742j-1; 16 USC 1382; 16 USC 1538(d); 16 USC 1539; 16 USC 1540(f); 16 USC 3374; 16 USC 4901 to 4916; 18 USC 42; 19 USC 1202; 31 USC 9701; EO 11911

CFR Citation: 50 CFR 13

Legal Deadline: None

Abstract: The Service proposes to amend 50 CFR part 13, which provides uniform permit procedures relating to the general administration of Service permits, to update the permit application fee schedule. Permit fees have not been revised since 1982. This change is necessary in order to recover a larger percentage of the cost of processing the permits.

Timetable:

Action	Date	FR Cite
NPRM	09/05/95	60 FR 46087
NPRM Correction	09/27/95	60 FR 49976
NPRM Comment Period Reopened	11/15/95	60 FR 57386
Second NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AC57

1044. SEIZURE AND FORFEITURE PROCEDURES, 50 CFR PART 12

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4222 to 4241; 16 USC 4901 to 4916; 18 USC 42

CFR Citation: 50 CFR 12

Legal Deadline: None

Abstract: The Service proposes to amend regulations in 50 CFR part 12 that establish procedures relating to property seized and administrative forfeiture under various laws enforced by the Service. This revision is intended to provide uniform guidance for the bonded release, appraisement, administrative proceeding petition for remission, and disposal of items subject to forfeiture. Also, these revisions are intended to provide for greater consistency of Service seizure and forfeiture procedures with those of the U.S. Customs Service. In August 2000, the Civil Asset Forfeiture Reform Act became law. CAFRA mandated many changes to 50 CFR 12 that are incorporated in this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	11/27/95	60 FR 58468
Second NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949
Email: kevin__adams@fws.gov

RIN: 1018–AC89

1045. REVISIONS TO THE FEDERAL AID ADMINISTRATIVE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 777i; 16 USC 669i; 18 USC 701

CFR Citation: 50 CFR 80

Legal Deadline: None

Abstract: The Service proposes to revise part 80 to clarify the language in the administrative requirements section and simplify some of the procedures to enable the States and the public to better understand the procedures and requirements for obtaining and administering grants under the Federal Aid in Fish and Federal Aid in Wildlife Restoration Acts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Jack Hicks, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1851
Email: jack__hicks@fws.gov

RIN: 1018–AE17

1046. U.S. PROPOSALS FOR CITES APPENDIX III; AMERICAN EEL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

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CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: Listing of native U.S. species in appendix III to CITES for more effective monitoring of trade, to ensure that traded specimens are legally acquired in their State(s) of origin, and to obtain the cooperation of other countries that are parties to CITES, in controlling the trade in such specimens.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: marie__maltese@fws.gov

RIN: 1018–AF09

1047. HUMANE AND HEALTHFUL TRANSPORT OF WILD MAMMALS, BIRDS, REPTILES AND AMPHIBIANS TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42; 16 USC 3371 to 3378

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: The proposed rule contains amendments designed to add numerous transport standards to part 14 for reptiles and amphibians. Standards have already been promulgated for mammals and birds.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AF27

1048. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A SPECIAL RULE FOR THE CANADA LYNX

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.40

Legal Deadline: None

Abstract: The Fish and Wildlife Service plans to propose a special rule under section 4(d) of the Endangered Species Act to provide an alternative voluntary mechanism for the authorization of incidental take of lynx resulting from otherwise lawful trapping or hunting of wildlife other than lynx. The rule will establish criteria that must be satisfied by State or tribal trapping and hunting programs to minimize the likelihood of the incidental take of lynx by trappers and hunters pursuing bobcat or other species.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF40

1049. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE DOUGLAS COUNTY, OREGON, POPULATION OF THE COLUMBIA WHITE-TAILED DEER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to repropose the rule to remove the Douglas County, Oregon, population of the Columbia white-tailed deer from the list of endangered and threatened species. This reproposal is based upon new information.

Timetable:

Action	Date	FR Cite
NPRM	05/11/99	64 FR 25263
NPRM Comment Period Reopened	11/03/99	64 FR 59729
NPRM Comment Period Reopened	12/29/99	64 FR 72992
Second NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF43

1050. IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE, 50 CFR PART 14

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 704, 712, 1382, 1538(d) to (f), and 1540(f); 16 USC 3371 to 3378, 4223 to 4244, and 4901 to 4916; 18 USC 42; 31 USC 483(a)

CFR Citation: 50 CFR 14

Legal Deadline: None

Abstract: This proposed rule will revise the importation, exportation and transportation regulations pertaining to the movement of all wildlife into or out of the United States.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38143
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949

Email: kevin__adams@fws.gov

RIN: 1018–AF46

1051. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; TIBETAN ANTELOPE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, 12 month finding.

Abstract: We received a petition to list the Tibetan antelope as endangered. We must determine if status review shows that the petitioned action is warranted. If so, we will propose endangered status for the Tibetan antelope, or chiru (Pantholops hodgsoni). The antelope is a wild ungulate native to Tibet, Kashmir, and north-central China. It is threatened by illegal trade in its wool, known as shahtoosh, which is exceptionally fine. The wool and shawls made from it are in great demand on the black market, resulting in the slaughter of thousands of these animals annually. The species has experienced dramatic declines in recent years despite efforts by range countries to control poaching, as well as a prohibition on international commercial trade through listing in Appendix I of CITES.

Timetable:

Action	Date	FR Cite
Notice	04/25/00	65 FR 24171
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt__johnson@fws.gov

RIN: 1018–AF49

1052. INJURIOUS WILDLIFE; ADDITION OF THE ASIAN SWAMP EEL

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biologic information on the Asian swamp eel (tentatively identified as Monopterus albus) for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari__duncan@fws.gov

RIN: 1018–AF53

1053. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED RECLASSIFICATION OF THE STRAIGHT-HORNED MARKHOR POPULATION OF THE TORGHAR REGION OF BALUCHISTAN, PAKISTAN, FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, 12 month finding.

Abstract: We received a petition to reclassify a certain population of the straight-horned markhor from endangered to threatened. We must determine if a status review shows that the petitioned action is warranted and if so, we will propose to change the classification of the straight-horned markhor population of the Torghar Hills region of Baluchistan Province, Pakistan, from endangered to threatened under the Endangered Species Act of 1973. The markhor is a species of wild goat that occurs in small, isolated populations in rugged, arid mountain habitats in Afghanistan, India, Pakistan, Tajikistan, Turkmenistan, and Uzbekistan.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt__johnson@fws.gov

RIN: 1018–AG00

1054. FEDERAL FALCONRY STANDARDS AND FALCONRY PERMITTING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 711

CFR Citation: 50 CFR 21.28; 50 CFR 21.29

Legal Deadline: None

Abstract: We will propose changes in the regulations governing the practice of falconry in the United States. We propose substantial reorganization of the current regulations, combining 50 CFR 21.28 and 21.29 and reorganizing the topics in those sections. We will add or change some provisions in the current regulations. The changes will make it easier to understand the requirements for falconry and the procedures for obtaining a falconry permit.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AG11

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1055. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATION OF ENDANGERED STATUS AND DESIGNATION OF CRITICAL HABITAT FOR THE GILA CHUB

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, August 18, 2001, Court Order.

Abstract: We are proposing endangered status and the designation of critical habitat for the Gila chub.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG16

1056. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE GULF COAST DISTINCT POPULATION SEGMENT OF THE BROWN PELICAN POPULATION IN THE SOUTHEASTERN UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the remaining Gulf coast population of the Brown pelican (Texas, Louisiana, Mississippi) from the list of threatened and endangered species.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG40

1057. WILD BIRD CONSERVATION ACT: REVIEW OF APPROVED LIST OF CAPTIVE-BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: Under the Wild Bird Conservation Act, a species may be exempt from the prohibitions of the Act if it qualifies for inclusion in an approved list. One way for a species to be included is if the species occurs in trade only as captive-bred specimens. We intend to seek information and consider whether to amend this approved list, which was established in 1994.

Timetable:

Action	Date	FR Cite
Notice	05/29/01	66 FR 29072
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: michael__kreger@fws.gov

RIN: 1018–AG64

1058. INJURIOUS WILDLIFE - ADDITION OF BLACK CARP

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biological information on the Black carp (Mylopharyngodon piceus) for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari__duncan@fws.gov

RIN: 1018–AG70

1059. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE KECK'S CHECKERMALLOW

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 10, 2002, Court order.

Abstract: We propose to designate critical habitat for the Keck's checkermallow in California.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG93

1060. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE BAKER'S LARKSPUR AND THE YELLOW LARKSPUR

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 10, 2002, Court order.

Abstract: We propose to determine critical habitat for the Baker's larkspur and the Yellow larkspur in California.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG96

1061. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR TWO CAVE INVERTEBRATES FROM KAUAI

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, January 1, 2002, Court order to finalize by 01/01/02.

Abstract: We propose to designate critical habitat for the Kauai cave amphipod and the Kauai cave wolf spider.

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14671
NPRM Comment Period End	05/28/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH01

1062. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 58 PLANTS IN HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, April 30, 2002, 145 plants final by 04/30/02.

Abstract: We propose to determine critical habitat for 58 plants on the island of Hawaii. This action is part of litigation involving 245 Hawaiian plants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH02

1063. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 20 PLANTS AND RE-PROPOSED DESIGNATIONS FOR 32 PLANTS FROM MOLOKAI, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, March 20, 2002, Settlement agreement.

Abstract: We re-propose to determine critical habitat for 50 plants on Molokai, Hawaii, and 2 plants in the Maui/NUI Complex, Hawaii, as the result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 83157
NPRM Comment Period Extended	02/22/01	66 FR 11132
Second NPRM	04/05/02	67 FR 16491
Second NPRM Comment Period End	05/20/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH08

1064. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR PLANTS OF THE NORTHWEST ISLANDS, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2000, 100 Hawaiian plants.
Final, Judicial, November 30, 2001, 100 Hawaiian plants.

Abstract: We propose to determine critical habitat for 8 plants on the Northwest Islands of Hawaii, as a result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH09

1065. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 8 PLANTS AND RE-PROPOSED DESIGNATIONS FOR 18 PLANTS FROM LANAI, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 16, 2002, settlement.

Abstract: We will determine critical habitat for listed plants on the island of Hawaii, as a result of litigation.

Timetable:

Action	Date	FR Cite
NPRM	12/27/00	65 FR 82085
NPRM	02/22/01	66 FR 11133
NPRM	04/06/01	66 FR 18223
NPRM	03/04/02	67 FR 9805
NPRM Comment Period End	04/18/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH10

1066. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY AND CRITICAL HABITAT FOR A MOLLUSK, THE CAROLINA HEELSPLITTER

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, April 1, 2002, Settlement agreement.

Abstract: We determine critical habitat for the mollusk, the Carolina Heelsplitter, in North Carolina and South Carolina.

Timetable:

Action	Date	FR Cite
NPRM	07/11/01	66 FR 36229
NPRM Comment Period End	08/27/01	
NPRM Comment Period Reopened	03/06/02	67 FR 10118
NPRM Comment Period End	04/05/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH31

1067. ENDANGERED AND THREATENED WILDLIFE; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF 2 FISHES IN SHOAL CREEK, ALABAMA AND TENNESSEE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose the establishment of nonessential experimental populations for 2 fishes, the Boulder darter and Spotfin chub, in Shoal Creek, Alabama and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH44

1068. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE TRUCKEE BARBERRY FROM THE LIST OF ENDANGERED AND THREATENED PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Truckee barberry from the List of Endangered and Threatened Plants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH47

1069. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE PAPERY WHITLOW-WORT, WIREWEED AND SANDLACE FROM ENDANGERED TO THREATENED.

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Papery whitlow-wort, Wireweed and Sandlace plants from Endangered to Threatened.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH51

1070. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF THE SAN MARCOS GAMBUSIA, A FISH, FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to remove the San Marcos gambusia, a fish, from the List of Endangered and Threatened Wildlife.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH52

1071. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE JOHNSTON'S FRANKENIA FROM THE LIST OF ENDANGERED AND THREATENED PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove the Johnston's frankenia, a plant which occurs in Texas, from the List of Endangered and Threatened Plants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH53

1072. ENDANGERED AND THREATENED WILDLIFE; RECLASSIFICATION OF THE GILA TROUT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to reclassify from endangered to threatened the Gila trout.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH57

1073. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE MISSOURI BLADDER-POD, A PLANT, FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Missouri bladder-pod, a plant, from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH59

1074. EXPORT OF LIVE ALLIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: EO 13112

CFR Citation: 50 CFR 13; 50 CFR 17; 50 CFR 23

Legal Deadline: None

Abstract: This policy will prohibit the export of live American alligators because of invasive species concerns in the countries of destination of the animals.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter_thomas@fws.gov

RIN: 1018–AH65

1075. AUDIT RESOLUTION POLICY

Priority: Substantive, Nonsignificant

Legal Authority: OMB Circular A-133

CFR Citation: 50 CFR 80; 43 CFR 12

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Legal Deadline: None

Abstract: We will publish 6 USFWS Manual chapters regarding Federal Government auditing standards as they pertain to State grantees.

Timetable:

Action	Date	FR Cite
Policy	12/14/01	66 FR 64845
Policy	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Jack Hicks, Management Analyst, Division of Federal Aid, Department of the Interior, United States Fish and Wildlife Service, MS 140, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1851
Email: jack__hicks@fws.gov

RIN: 1018–AH69

1076. ENDANGERED AND THREATENED WILDLIFE AND PLANTS: REPROPOSED DETERMINATIONS OF PRUDENCY AND PROPOSED DESIGNATIONS OF CRITICAL HABITAT FOR PLANTS FROM MAUI AND KAHOOLAWE, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2000, 100 Hawaii plants. Final, Judicial, November 30, 2001, 100 Hawaii plants.

Abstract: We will determine critical habitat for approximately 63 plants from Maui and Kahoolawe, Hawaii.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 79191
NPRM	02/22/01	66 FR 11131
NPRM Comment Period End	04/02/01	
NPRM	04/03/02	67 FR 15855
NPRM Comment Period End	05/20/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH70

1077. EAGLE PERMITS: NEW DEFINITIONS, PERMITS FOR INCIDENTAL TAKING OF BALD EAGLES NECESSARY TO PROTECT OTHER INTERESTS IN ANY PARTICULAR LOCALITY

Priority: Other Significant

Legal Authority: 16 USC 668a

CFR Citation: 50 CFR 22

Legal Deadline: None

Abstract: This rule would allow take of bald eagles under the Eagle Protection Act incidental to otherwise lawful activities, in the event the species is removed from the U.S. Endangered Species List.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal, Federal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AH74

1078. EXPORT OF CAVIAR: LABELING OF STURGEON AND PADDLEFISH (ACIPENSERIFORMES) CAVIAR CONTAINERS INTENDED FOR INTERNATIONAL TRADE; 50 CFR 23

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action will require the labeling of exports of native American caviar to comply with labeling requirements adopted by the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), of which the United States is a party country.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AH78

1079. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF PROTECTION AREAS FOR THE WEST INDIAN MANATEE IN FLORIDA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 2001, Settlement agreement. Final, Judicial, January 2002, Settlement agreement.

Abstract: In August 2001, pursuant to a settlement agreement, we published a proposal to create 16 manatee protection areas in Florida. On January 7, 2002, we published a final rule establishing manatee refuges at two of those sites, while deferring action on making a determination in a final rule on the remaining 14 sites until December 2002. Now, in response to comments received during the public comment period on the August 2001 proposed rule, we are proposing to create an exception to the regulations governing the Barge Canal manatee refuge in Brevard County. Under this exception, parties may apply for authorization to conduct otherwise prohibited activities in the refuge if they can demonstrate to us that the activity can be pursued in such a manner that manatees will not be taken. This exception is being proposed only for the Barge Canal refuge so that we may assess the efficacy of the process in a controlled fashion before considering whether to make the exception more widely available.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42318
NPRM	08/29/01	66 FR 45662
Final Rule	01/07/02	67 FR 680
NPRM	04/16/02	67 FR 18572
NPRM Comment Period End	06/17/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH80

1080. MARINE MAMMALS: INCIDENTAL TAKE DURING SPECIFIED ACTIVITIES (MANATEES)

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18

Legal Deadline: NPRM, Judicial, March 6, 2001, Settlement agreement.

Abstract: We intend to develop a rule that would allow for the incidental, unintentional take of small numbers of Florida manatees that results from government activities related to watercraft and watercraft access facilities within the geographic area of the species' range in Florida for a period of not more than 5 years.

Timetable:

Action	Date	FR Cite
ANPRM	03/12/01	66 FR 14352
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1718

RIN: 1018–AH86

1081. PROCEDURES FOR ESTABLISHING SPRING/SUMMER SUBSISTENCE HARVEST REGULATIONS FOR MIGRATORY BIRDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 92

Legal Deadline: None

Abstract: These regulations establish procedures for implementing a spring/summer migratory bird subsistence harvest in Alaska during the 2002-2003 migratory bird hunting season.

Timetable:

Action	Date	FR Cite
NPRM	04/08/02	67 FR 16707
NPRM Comment Period End	05/24/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Bob Stevens, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3499

RIN: 1018–AH88

1082. IMPORTATION OF EXOTIC WILD BIRDS INTO THE UNITED STATES; ADDING BLUE-FRONTED AMAZON PARROTS FROM ARGENTINA'S APPROVED SUSTAINABLE USE MANAGEMENT PLAN TO THE APPROVED LIST OF NON-CAPTIVE BRED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15

Legal Deadline: None

Abstract: This rule would allow the import into the United States of parrots removed from the wild in Argentina under an approved sustainable use management plan. This is the first such plan that, if approved, would contribute to the goals of the Wild Bird Conservation Act to promote the conservation of exotic birds through sustainable use.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AH89

1083. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE RIO GRANDE SILVERY MINNOW

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

Abstract: We propose to designate critical habitat for the Rio Grande silvery minnow in New Mexico.

Timetable:

Action	Date	FR Cite
Notice of Intent	04/05/01	66 FR 18107
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH91

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1084. MARINE MAMMALS: INCIDENTAL TAKE DURING SPECIFIED ACTIVITIES (BEAUFORT SEA POLAR BEAR AND WALRUS)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Marine Mammal Protection Act authorizes issuance of regulations to allow the incidental, unintentional take of small numbers of marine mammals in activities (other than commercial fishing) in specific geographical areas. These regulations would authorize incidental take of polar bears and walrus in the Beaufort Sea during oil and gas energy activities for up to 5 years, when current regulations expire on March 31, 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1718

RIN: 1018–AH92

1085. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; SAFE HARBOR AGREEMENTS AND CANDIDATE CONSERVATION AGREEMENTS WITH ASSURANCES

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 13; 50 CFR 17

Legal Deadline: None

Abstract: Presently, Safe Harbor Agreements and Candidate Conservation Agreements with Assurances only allow incidental take of species. The Service is proposing to amend the policies to allow for intentional take of species.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH93

1086. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR BLACKBURN'S SPHINX MOTH

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 2001, Court order.

Abstract: We propose to designate critical habitat for the Blackburn's sphinx moth.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH94

1087. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR NEWCOMB'S SNAIL

Priority: Other Significant

Legal Authority: 16 USC 1361 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 2001, Court order.

Abstract: We propose to designate critical habitat for the Newcomb's snail.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3849
NPRM Comment Period Extended	03/29/02	67 FR 15159
NPRM Comment Period End	04/29/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH95

1088. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE GREAT PLAINS BREEDING POPULATION OF THE PIPING PLOVER

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, March 15, 2002, Court order.

Abstract: We will designate critical habitat for the Great Plains population of the piping plover.

Timetable:

Action	Date	FR Cite
NPRM	06/12/01	66 FR 31760
NPRM	07/06/01	66 FR 35580
NPRM Comment Period Reopened	12/28/01	66 FR 67165
NPRM Comment Period Reopened	03/21/02	67 FR 13123
NPRM Comment Period End	05/20/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH96

1089. CIVIL PROCEDURES FOR CAFRA COMPLIANT WILDLIFE INVESTIGATIVE SEIZURES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3371

CFR Citation: 50 CFR 11

Legal Deadline: None

Abstract: These regulations will contain uniform rules and procedures for the assessment of civil penalties in connection with violations of certain laws and regulations enforced by the Service.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kevin Adams, Assistant Director for Law Enforcement, Department of the Interior, United States Fish and Wildlife Service
Phone: 703 358-1949
Email: kevin_adams@fws.gov

RIN: 1018–AH97

1090. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF TWO AUSTRALIAN PARAKEETS FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to reclassify these two species of Australian parakeets so that their listing under the Endangered Species Act accurately reflects their current status.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Michael Kreger, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: michael_kreger@fws.gov

RIN: 1018–AI04

1091. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; BELUGA STURGEON

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: Other, Statutory, Notice of 90-day finding.
We must determine if petitioned action is warranted within 90 days or as soon as possible after receipt of petition.

Abstract: Based upon a review of the species in response to a petition, we may propose to list the Beluga sturgeon (Huso huso) as endangered. This species historically inhabited the Caspian, Black, Azov and Adriatic Seas and all rivers flowing into them. The Adriatic Sea population has been extirpated, and no wild Beluga sturgeon has been found in the Sea of Azov since the mid 1980s. This species has declined due to fishing pressure. This species is highly valued for its caviar and is subject to both legal and substantial levels of illegal fishing. The Beluga sturgeon has also been impacted by dam building and other forms of habitat modification.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Marie Maltese, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: marie_maltese@fws.gov

RIN: 1018–AI11

1092. CORRECTIONS TO RIGHTS-OF-WAY REGULATIONS

Priority: Info./Admin./Other

Legal Authority: PL 101-475

CFR Citation: 50 CFR 29

Legal Deadline: None

Abstract: The Service proposes to make revisions to the Rights-of-Way General Regulations in 50 CFR 29 - subpart B. The revisions will correct the address of our Region 5 Office in 50 CFR 29.21-2(c)(5). We will also implement section 1 of Public Law 101-475 by correcting the names of the House and Senate Committees we must notify upon receipt of an application for a right-of-way for an oil and gas pipeline that is 24 inches or more in diameter and again before granting right-of-way. Finally, the proposed revised regulation will delete the reference to a 60-day waiting period after notification of our intent to grant the right-of-way. (The waiting period was repealed by Congress.)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Barbara Ann Wyman, Program Manager, Division of Realty, Department of the Interior, United States Fish and Wildlife Service, Room 622, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1811
Fax: 703 358-2223
Email: barbara_wyman@fws.gov

RIN: 1018–AI12

1093. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE TOPEKA SHINER

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 13, 2002, Settlement agreement.

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Abstract: We propose to designate critical habitat for the fish, the Topeka shiner, which occurs in Iowa, Kansas, Minnesota, Missouri, and South Dakota.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI20

1094. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE VENTURA MARSH MILKVETCH

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for the plant, the Ventura Marsh milkvetch, which occurs in California.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI21

1095. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE GULF STURGEON

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 2, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for the Gulf sturgeon.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI23

1096. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 103 OAHU, HAWAII, PLANTS

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, April 30, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for 103 Oahu, Hawaii, plants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI24

1097. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR 6 GUAM SPECIES

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 1, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for 6 Guam species. These include two mammals, the Little Mariana fruit bat and the Mariana fruit bat, and four birds, the Guam broadbill, the Mariana crow, the Guam Micronesian kingfisher and the Guam bridled white-eye.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI25

1098. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR FOUR FAIRY SHRIMP AND 11 PLANTS IN CALIFORNIA

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

Abstract: We propose to designate critical habitat for four fairy shrimp and 11 plants in California. The fairy shrimp are the Conservancy fairy shrimp, the Longhorn fairy shrimp, the Vernal Pool fairy shrimp and the Vernal Pool tadpole shrimp.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI26

1099. • MIGRATORY BIRD HUNTING; PROPOSED 2002-2003 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUIREMENTS FOR INDIAN TRIBAL PROPOSALS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: This action establishes annual migratory game bird hunting regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12501
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AI30

1100. • MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING RESIDENT CANADA GEESE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: This rule would establish a regulation authorizing State wildlife agencies to conduct indirect and/or direct population control management activities on resident Canada geese including the take of birds. The intent of this rule is to allow State wildlife management agencies sufficient flexibility to deal with problems caused by resident Canada geese and guide and direct Canada goose population growth and management activities in the conterminous United States.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AI32

1101. • MIGRATORY BIRD HUNTING; APPROVAL OF TUNGSTEN-IRON-NICKEL-TIN SHOT AS NONTOXIC FOR HUNTING WATERFOWL AND COOTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20

Legal Deadline: None

Abstract: We will propose approval of shot comprised of 65 percent tungsten, 10.4 percent iron, 2.8 percent nickel, and 21.8 percent tin for waterfowl and coot hunting.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AI33

1102. • 2002-2003 REFUGE-SPECIFIC HUNTING AND SPORT FISHING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 16 USC 460; 16 USC 664; 16 USC 668(dd) to 668(ee); 16 USC 715(i)

CFR Citation: 50 CFR 32

Legal Deadline: None

Abstract: We propose to open additional National Wildlife Refuges to hunting and/or sport fishing and to provide refuge-specific regulations for those activities. This is an annual update for the National Wildlife Refuge System that ensures adequate public notice of openings/changes each fall. We operate hunting/fishing programs on National Wildlife Refuges in furtherance of the implementation of the National Wildlife Refuge System Improvement Act of 1997 directives to facilitate compatible priority wildlife-dependent recreational opportunities.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Leslie Marler, Management Analyst, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, Room 670, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2397

RIN: 1018–AI34

1103. • INJURIOUS WILDLIFE SPECIES; SNAKEHEADS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: We will review economic and biological information on snakeheads (a type of fish in the Family Channidae) for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari_duncan@fws.gov

RIN: 1018–AI36

1104. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2004 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will revise the regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2004 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI37

1105. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C—NONRURAL DETERMINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the rural/nonrural determinations based on the new 2000 Federal census data. This review/revision is called for in 50 CFR 100.15 and 36 CFR 242.15.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI38

1106. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE GRAY BAT FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Gray bat from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI40

1107. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE AMERICAN CROCODILE FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the American crocodile from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI41

1108. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE SCHAUS SWALLOWTAIL BUTTERFLY FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to reclassify the Schaus swallowtail butterfly from endangered to threatened.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI42

1109. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SOUTHWEST ALASKAN DISTINCT POPULATION SEGMENT OF THE NORTHERN SEA OTTER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will propose listing the southwest Alaskan distinct population segment of the Northern sea otter, found mostly in the Aleutian Islands and the Alaska peninsula and adjacent waters.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI44

1110. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE MOUNTAIN PLOVER WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, February 16, 2000.

Abstract: We will amend our proposed listing of the Mountain plover based on new information. We will also publish a proposed Special Rule under section 4(d) of the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	02/16/99	64 FR 7587
NPRM Comment Period Extended	04/19/99	64 FR 19108
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI45

1111. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE PREBLE'S MEADOW JUMPING MOUSE

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 4, 2002.

Abstract: We will propose critical habitat for the Preble's Meadow jumping mouse, which is found in Colorado and Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI46

1112. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR 9 INVERTEBRATE SPECIES IN BEXAR COUNTY, TEXAS

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, June 30, 2002.

Abstract: We will propose designation of critical habitat for 9 species of cave-dwelling invertebrates found in Bexar County, Texas.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI47

1113. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE CACTUS FERRUGINOUS PYGMY OWL

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, July 13, 2002.

Abstract: We will propose a new designation of critical habitat for the Cactus ferruginous pygmy owl distinct population segment found in Arizona.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI48

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DOI—FWS

Proposed Rule Stage

1114. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE SLICKSPOT PEPPERGRASS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will propose listing the slickspot peppergrass, a plant found in Idaho, under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI50

1115. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE FLAT-TAILED HORNED LIZARD

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, December 26, 2001, court order.

Abstract: We will reconsider our 1997 withdrawal of a proposed rule to list the Flat-tailed horned lizard under the Endangered Species Act. As directed by the 9th Circuit Court, on December 26, 2001, we published a notice reinstating our 1993 proposal. A decision to list would extend the protection of the ESA to this species.

Timetable:

Action	Date	FR Cite
Notice	12/26/01	66 FR 66384
NPRM	05/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI51

1116. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE COLUMBIA-KLAMATH DISTINCT POPULATION SEGMENT OF THE BULL TROUT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 1, 2002.

Abstract: We propose to designate critical habitat for the Columbia-Klamath distinct population segment of the Bull trout.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI52

Department of the Interior (DOI)
United States Fish and Wildlife Service (FWS)

Final Rule Stage

1117. LIST OF MIGRATORY BIRDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 704; 16 USC 712

CFR Citation: 50 CFR 10.13

Legal Deadline: None

Abstract: The List of Migratory Birds found at 50 CFR 10.13 is being revised to (1) bring the list into conformity with generally accepted taxonomy and nomenclature—English (common) and scientific names, as reflected in four published supplements to the 6th (1983) edition of the American Ornithologists' Union Checklist of North American Birds; and (2) add species that are of regular occurrence in the United States that are not included on the current list.

Timetable:

Action	Date	FR Cite
NPRM	05/09/95	60 FR 24686
Second NPRM	10/12/01	66 FR 52281
Second NPRM Comment Period End	11/13/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon_andrew@fws.gov

RIN: 1018–AB72

1118. CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES (CITES)

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This will be a revision to an existing rule that will incorporate decisions/interpretations made at nine Conferences of the Parties to the Convention on International Trade in Endangered Species of Wild Fauna and Flora.

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Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	05/08/00	65 FR 26663
Correction	06/29/00	65 FR 40167
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter_thomas@fws.gov

RIN: 1018–AD87

1119. RECLASSIFICATION OF THE VICUNA FROM ENDANGERED TO THREATENED WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: This special rule will be associated with the proposed reclassification of vicuna from endangered to threatened under the Endangered Species Act. The rule will provide for the conservation of the species and will stipulate conditions that must be met to allow for the importation of commercial specimens of the species (i.e., wool and wool products).

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48743
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt_johnson@fws.gov

RIN: 1018–AE04

1120. INJURIOUS WILDLIFE; ADDITION OF BRUSH-TAILED POSSUM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 42

CFR Citation: 50 CFR 16

Legal Deadline: None

Abstract: The Service proposes to review the economic and biological information on the brush-tailed possum of genus Trichosurus for possible addition to the list of injurious wildlife under the Lacey Act.

Timetable:

Action	Date	FR Cite
ANPRM	01/24/96	61 FR 1893
ANPRM Comment Period End	03/25/96	
NPRM	11/02/99	64 FR 59149
NPRM Comment Period End	01/03/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kari Jonell Duncan, Fishery Biologist, Division of Environmental Quality, Department of the Interior, United States Fish and Wildlife Service, Room 810B, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2464
Email: kari_duncan@fws.gov

RIN: 1018–AE34

1121. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF THE GRAY WOLF IN CERTAIN PARTS OF ITS RANGE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to reclassify certain populations of the gray wolf from endangered to threatened status under the Endangered Species Act, based on the recent recovery achievements, and to establish distinct population segments.

Timetable:

Action	Date	FR Cite
NPRM	07/13/00	65 FR 43449
Notice - Meetings and Hearings	07/26/00	65 FR 45956
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF20

1122. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF THE BALD EAGLE THROUGHOUT THE LOWER 48 STATES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The bald eagle was reclassified to threatened status throughout the lower 48 States in 1995. Continued recovery gains and increasing population trends now make it possible to consider removing the bald eagle from the endangered species list. The Service plans to make a final determination on the proposal to delist the bald eagle.

Timetable:

Action	Date	FR Cite
NPRM	07/06/99	64 FR 36454
NPRM Comment Period End	10/06/99	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF21

DOI—FWS

Final Rule Stage

1123. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PREBLES MEADOW JUMPING MOUSE; SPECIAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.40

Legal Deadline: None

Abstract: We plan to finalize an amendment to the proposed special rule under the Endangered Species Act which allows limited incidental take of the Prebles Meadow jumping mouse in Colorado and Wyoming.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66777
NPRM Comment Period Reopened	01/29/99	64 FR 4607
NPRM Comment Period Reopened	03/06/99	64 FR 12924
NPRM Comment Period Reopened	03/16/99	
NPRM Comment Period Reopened	06/23/00	65 FR 39117
Final Rule	05/22/01	66 FR 28125
NPRM	08/30/01	66 FR 45829
NPRM Comment Period End	10/01/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF30

1124. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE CHIRICAHUA LEOPARD FROG WITH A SPECIAL RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17.11

Legal Deadline: None

Abstract: We will list the Chiricahua leopard frog (Arizona and New Mexico) under the Endangered Species Act, with a special rule.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37343
NPRM Comment Period Reopened	09/27/00	65 FR 58033
NPRM Comment Period End	10/27/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF41

1125. IMPORTATION OF CAPTIVE-BRED EXOTIC BIRDS INTO THE UNITED STATES FROM BREEDING FACILITIES IN OTHER COUNTRIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 4901 to 4916

CFR Citation: 50 CFR 15.41; 50 CFR 15.42

Legal Deadline: None

Abstract: We will establish the information requirements and approval criteria for the import of captive-bred wild exotic birds from overseas breeding facilities. This rule applies primarily to species listed in the appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), which are otherwise prohibited from import by the Wild Bird Conservation Act of 1992. The rule also describes the process for handling petitions to approve qualifying facilities, establishes the duration of approval, provides for the suspension and revocation of approval, and provides for notice of approved facilities in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	03/17/94	59 FR 12784
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Gabel, Chief, Branch of Consultation and Monitoring, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, Room 750, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: roddy_gabel@fws.gov

RIN: 1018–AF44

1126. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING AND SPECIAL RULE FOR THE COASTAL CUTTHROAT TROUT

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, June 23, 2002, Settlement agreement.

Abstract: Together with the National Marine Fisheries Service, we will list the southeastern Washington/Columbia River population of the coastal cutthroat trout under the provisions of the Endangered Species Act. We will also determine whether to remove from the list the Umpqua River population. In addition, we will propose a special rule that would exempt certain recreational fishing and forest practices from the ESA prohibitions against take for this species.

Timetable:

Action	Date	FR Cite
NPRM - Listing	04/05/99	64 FR 16397
Final Rule - Umpqua Population	04/26/00	65 FR 24420
NPRM - Clarification	07/14/00	65 FR 43730
NPRM Comment Period Reopened	09/06/00	65 FR 53974
NPRM Comment Period Reopened	11/23/01	66 FR 58706
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF45

DOI—FWS

Final Rule Stage

1127. ADMINISTRATION OF THE NATIONAL COASTAL WETLANDS CONSERVATION GRANT PROGRAM

Priority: Other Significant

Legal Authority: 16 USC 3951 et seq

CFR Citation: 50 CFR 87

Legal Deadline: None

Abstract: We will establish the requirements of the National Coastal Wetlands Conservation Grant Program, authorized by section 305 of the Coastal Wetlands Planning, Protection and Restoration Act. The program is designed to assist coastal States by providing grants to State agencies to protect and restore their coastal wetland ecosystems. The proposed rule includes the goals of the program, eligibility requirements, ranking criteria, and grant administration procedures.

Timetable:

Action	Date	FR Cite
NPRM	08/20/01	66 FR 43555
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Hannibal Bolton, Chief, Division of Fish and Wildlife Management and Habitat Restoration, Department of the Interior, United States Fish and Wildlife Service, Room 840, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1718

RIN: 1018–AF51

1128. POLICY FOR EVALUATION OF CONSERVATION EFFORTS IN ENDANGERED SPECIES DECISIONMAKING

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Fish and Wildlife Service and the National Marine Fisheries Service announce a draft policy for the evaluation of conservation efforts in making listing decisions under the Endangered Species Act of 1973, as amended (Act). The policy identifies criteria to be used in determining whether conservation agreements, conservation plans, management plans, or other formalized conservation efforts remove the need to list a species as threatened or endangered under the Act.

Timetable:

Action	Date	FR Cite
NPRM	06/13/00	65 FR 37102
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF55

1129. POLICY ON GENERAL CONSERVATION PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 1361 et seq; 16 USC 703 et seq

CFR Citation: None

Legal Deadline: None

Abstract: This policy will contain provisions to issue permits to qualified organizations to conduct general conservation activities over a specified period of time instead of issuing multiple permits for each activity.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy	10/28/99	64 FR 58086
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter_thomas@fws.gov

RIN: 1018–AF63

1130. U.S. PROPOSALS FOR CITES APPENDIX III; CERTAIN TURTLE SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action would add certain native turtle species to Appendix III of the Convention on International Trade in Endangered Species of Wild Fauna and Flora. If adopted, exports of the species would require CITES documentation from the Service to ensure that foreign countries accept the shipments. This action is necessary to monitor the impact of trade on the species in an effort to maintain healthy populations.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4217
NPRM Comment Period End	03/13/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt_johnson@fws.gov

RIN: 1018–AF69

1131. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR SOUTHERN CALIFORNIA DISTINCT VERTEBRATE POPULATION SEGMENT (DPS) OF MOUNTAIN YELLOW-LEGGED FROG

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, June 22, 2002, settlement.

Abstract: The U.S. Fish and Wildlife Service will list the southern California distinct vertebrate population segment (DPS) of Mountain yellow-legged frog as endangered under the Endangered Species Act of 1973 (Act). This proposal, when made final, will extend the Act's protection to this species.

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Timetable:

Action	Date	FR Cite
NPRM	12/22/99	64 FR 71714
NPRM Comment Period End	02/22/00	
NPRM Comment Period Reopened	03/20/00	65 FR 14936
NPRM Comment Period Reopened	05/19/00	65 FR 31870
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF83

1132. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR SAN DIEGO AMBROSIA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, June 15, 2002.

Abstract: The Service will list the San Diego ambrosia as endangered under the Endangered Species Act of 1973 (Act). This plant is restricted to San Diego and Riverside Counties, California and Baja California, Mexico from Colonet to Lake Chapala. This proposed rule, when made final, will extend protection under the Act to the San Diego ambrosia.

Timetable:

Action	Date	FR Cite
NPRM	12/29/99	64 FR 72993
NPRM Comment Period End	02/28/00	
NPRM	03/30/00	65 FR 16869
NPRM Comment Period End	05/30/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF86

1133. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF NONESSENTIAL EXPERIMENTAL POPULATIONS FOR FOUR FISHES: DUSKYTAIL DARTER, SMOKY MADTOM, YELLOWFIN MADTOM, AND SPOTFIN CHUB

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to designate nonessential experimental population (NEP) status under Section 10(j) of the Endangered Species Act of 1973 (Act), and reintroduce two federally listed endangered fishes—the duskytail darter and smoky madtom—and two Federally listed threatened fishes—the yellowfin madtom and spotfin chub—into the Tellico River between the backwaters of the Tellico Reservoir (approximately Tellico River mile (TRM) 19 and TRM 33), near the Tellico Ranger Station, in Monroe County, Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	06/08/01	66 FR 30853
NPRM Comment Period End	08/07/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF96

1134. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING OF THE HOOVER'S WOOLY-STAR

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Hoover's Wooly-Star from the list of Endangered and Threatened Plants. This action is based on information that indicates this plant is more widespread and abundant than previously thought, more resilient and less vulnerable to certain activities, and adequately protected on public lands.

Timetable:

Action	Date	FR Cite
NPRM	03/06/01	66 FR 13474
NPRM Comment Period End	05/07/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG41

1135. NATIONAL WILDLIFE REFUGE SYSTEM; MISSION, GOALS, AND PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668(dd) to 668(ee)

CFR Citation: None

Legal Deadline: None

Abstract: This proposed policy will address the mission, goals and purposes of the National Wildlife Refuge System in the context of the National Wildlife Refuge System Improvement Act of 1997.

Timetable:

Action	Date	FR Cite
Proposed Policy	01/16/01	66 FR 3668
Comment Period Extended	03/15/01	66 FR 15136

Action	Date	FR Cite
NPRM Comment Period Reopened	05/15/01	66 FR 26879
NPRM Comment Period Reopened	06/21/01	66 FR 33268
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: James W. Kurth, Deputy Chief, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, MS 670 ARLSQ, Washington, DC 20240
Phone: 703 358-1744

RIN: 1018–AG46

1136. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATIONS OF WHETHER DESIGNATION OF CRITICAL HABITAT IS PRUDENT FOR 81 PLANTS AND PROPOSED DESIGNATIONS FOR 76 PLANTS FROM KAUAI AND NIIHAU, HAWAII

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500; 16 USC 1531 to 1544

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, December 16, 2001, Court Order.

Abstract: We propose to designate for a second time critical habitat for 77 plants from the islands of Kauai and Niihau, Hawaii.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66807
Correction	11/13/00	65 FR 67796
NPRM Comment Period Reopened	03/07/01	66 FR 13691
Second NPRM	01/28/02	67 FR 3939
Correction	02/11/02	67 FR 6214
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG71

1137. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE SANTA CRUZ TARPLANT

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500; 16 USC 1531 to 1544

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Court order.

Abstract: We will determine critical habitat for the Santa Cruz tarplant in California.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57525
NPRM Comment Period End	01/14/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG73

1138. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE PURPLE AMOLE

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Settlement agreement.

Abstract: We will determine critical habitat for the Purple amole in California.

Timetable:

Action	Date	FR Cite
NPRM	11/08/01	66 FR 56508
NPRM Comment Period End	01/07/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG75

1139. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THREE COASTAL CALIFORNIA PLANTS

Priority: Other Significant

Legal Authority: 16 USC 1531 to 1544; 16 USC 1361 to 1407; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Court order.

Abstract: We propose to designate critical habitat for three coastal plants in California: LaGraciosa thistle; Lompac Yerba Santa; and Gaviota tarplant.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57559
NPRM Comment Period End	01/14/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG88

1140. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR KNEELAND PRAIRIE PENNYCRESS

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 30, 2001, Court order.

Abstract: We propose to designate critical habitat for the Kneeland Prairie pennycress in California.

Timetable:

Action	Date	FR Cite
NPRM	10/24/01	66 FR 53756
NPRM Comment Period End	12/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG92

1141. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE OTAY TARPLANT

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, May 30, 2001, Settlement agreement.

Abstract: We will designate critical habitat for the Otay tarplant in California.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 32052
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG00

1142. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR CHORIZANTHE PUNGENS VAR. PUNGENS (MONTEREY SPINEFLOWER)

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, January 15, 2001, Settlement agreement.

Abstract: We will determine critical habitat for the Monterey spineflower in Southern California.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 10440
NPRM Comment Period Reopened	09/19/01	66 FR 48228
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH04

1143. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY AND CRITICAL HABITAT DESIGNATION FOR A MOLLUSK, THE APPALACHIAN ELKTOE

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, July 16, 2002, Settlement agreement.

Abstract: We designate critical habitat for the Appalachian elktoe, a mollusk, in North Carolina and Tennessee.

Timetable:

Action	Date	FR Cite
NPRM	02/08/01	66 FR 9540
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH33

1144. INTERAGENCY POLICY ON THE PRESCRIPTION OF FISHWAYS UNDER SECTION 18 OF THE FEDERAL POWER ACT

Priority: Other Significant

Legal Authority: 16 USC 791(a) et seq

CFR Citation: None

Legal Deadline: None

Abstract: This will invite public comment on proposed policy guidance for us and the National Marine Fisheries Service regarding the prescription of fishways under section 18 of the Federal Power Act, for non-Federal hydropower projects licensed by the Federal Energy Regulatory Commission.

Timetable:

Action	Date	FR Cite
Notice	12/22/00	65 FR 80898
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Dr. Benjamin Tuggle, Chief, Division of Federal Program Activities, Department of the Interior, United States Fish and Wildlife Service, Room 400, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2161
Fax: 703 358-1869

RIN: 1018–AH42

1145. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF THE GUAM BROADBILL AND MARIANA MALLARD FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the Guam broadbill and the Mariana mallard from the List of Endangered and Threatened Wildlife.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3675
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH50

1146. ENDANGERED AND THREATENED PLANTS; REMOVAL OF THE ROBIN'S CINQUEFOIL FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to make a final determination on the proposed rule to remove the plant, Robin's cinquefoil, from the list of endangered and threatened wildlife.

Timetable:

Action	Date	FR Cite
NPRM	06/08/01	66 FR 30860
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH56

1147. ADDITION OF THE BASKING SHARK AND THE STAG BEETLE TO APPENDIX III UNDER CITES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This action will amend the regulations in 50 CFR part 23 by adding the basking shark and the stag beetle to appendix III under the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AH66

1148. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REOPENING OF COMMENT PERIOD ON THE THREATENED STATUS OF THE SACRAMENTO SPLITTAIL (POGONICHTHYS MACROLEPIDOTIS)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, January 31, 2002, Settlement Agreement.

Abstract: We were ordered by a court to reanalyze the information concerning the listing decision for the Sacramento splittail. Therefore, we have reopened the comment period for this issue. The previous regulatory action that finalized the listing decision for the Sacramento splittail was assigned RIN 1018-AC26, and was completed with the publication of the final rule designating the Sacramento splittail as a threatened species, effective March 10, 1999 (64 FR 5963). Since RIN 1018-AC26 has been completed, we are considering the reopening of the comment period on this issue to be a new regulatory action, which has been assigned this current RIN.

Timetable:

Action	Date	FR Cite
Comment Period Extended	01/12/01	66 FR 2828
Comment Period Reopened	05/08/01	66 FR 23181
Comment Period End	06/07/01	
Comment Period Reopened	08/17/01	66 FR 43145
Comment Period End	10/01/01	
NPRM Comment Period Reopened	03/21/02	67 FR 13095
NPRM Correction	04/01/02	67 FR 15337
NPRM Comment Period End	05/20/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH73

1149. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR POLYGONUM HICKMANII (SCOTTS VALLEY POLYGONUM)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, October 19, 2001, Settlement agreement.

Abstract: We propose to list the Scotts Valley polygonum as an endangered species.

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Timetable:

Action	Date	FR Cite
NPRM	11/09/00	65 FR 67335
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH76

1150. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR POLYGONUM HICKMANII (SCOTTS VALLEY POLYGONUM) AND CHORIZANTHE ROBUSTA VAR. HARTWEGII (SCOTTS VALLEY SPINEFLOWER)

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 1, 2001, Settlement Agreement.
Final, Judicial, October 19, 2001, Settlement Agreement.

Abstract: We designate critical habitat for the Scotts Valley polygonum and the Scotts Valley spineflower.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 10469
NPRM Comment Period Reopened	09/19/01	66 FR 48227
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH82

1151. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR CHORIZANTHE ROBUSTA VAR. ROBUSTA (ROBUST SPINEFLOWER)

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 1, 2001, Settlement Agreement.
Final, Judicial, October 19, 2001, Settlement Agreement.

Abstract: We designate critical habitat for the Robust spineflower in California.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 10419
Correction	05/03/01	66 FR 22141
NPRM Comment Period Reopened	09/19/01	66 FR 48225
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH83

1152. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPARTS A AND B; INTERIM RULE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: Other, Statutory, April 30, 2001, Interim Final Rule.

Abstract: This interim rule will clarify the appeal process and expand the number of items that the Federal Subsistence Board may delegate to agency field officials.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/01	66 FR 31533
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AH85

1153. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING REHABILITATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the Migratory Bird Permit regulations which authorize permits to take, possess, transport, sell, purchase, barter, import and export migratory birds. The Service proposes to establish a new section to authorize rehabilitation permits, which currently are authorized under 50 CFR 21.27, Special Purpose permits.

Timetable:

Action	Date	FR Cite
NPRM	12/06/01	66 FR 63349
NPRM Comment Period End	03/06/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon_andrew@fws.gov

RIN: 1018–AH87

1154. PUBLIC NOTICE FOR CITES APPENDIX III LISTING OF SPANISH CEDAR AND BIGLEAF MAHOGANY BY THE GOVERNMENT OF PERU

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This notice advises the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Peru has listed Spanish cedar and bigleaf mahogany in CITES appendix III. This listing invokes certain permitting requirements to assist Peru in controlling trade in these species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Julie Lyke, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: julie_lyke@fws.gov

RIN: 1018–AH99

1155. ENDANGERED AND THREATENED WILDLIFE AND PLANTS: RETENTION OF THREATENED STATUS FOR ARGALI IN KYRGYZSTAN, MONGOLIA, AND TAJIKISTAN

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will withdraw the 1993 proposed rule to list the Kyrgyzstan, Mongolia, and Tajikistan populations of the Argali sheep as endangered under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Kurt Johnson, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: kurt_johnson@fws.gov

RIN: 1018–AI02

1156. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF GRIZZLY BEARS IN THE BITTERROOT AREA OF IDAHO AND MONTANA; REMOVAL OF REGULATIONS

Priority: Economically Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service plans to make a final determination on the proposal to select the no-action alternative, as analyzed in the Bitterroot Final Environmental Impact Statement, as the preferred alternative.

Timetable:

Action	Date	FR Cite
NPRM	06/22/01	66 FR 33620
NPRM Comment Period End	08/21/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI03

1157. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2002-2003 SUBSISTENCE TAKING OF WILDLIFE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rule will revise the regulations for seasons, harvest limits, methods and means for the subsistence taking of wildlife during the 2002 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	08/27/01	66 FR 45081
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI06

1158. MIGRATORY BIRD HUNTING AND PERMITS; REGULATIONS FOR MANAGING HARVEST OF LIGHT GOOSE POPULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 703 to 712; 16 USC 742(a) to 742(j)

CFR Citation: 50 CFR 20; 50 CFR 21 subpart E

Legal Deadline: None

Abstract: This rule authorizes new methods of take for light goose hunting under 50 CFR part 20 and revises subpart E of 50 CFR part 21 for the management of overabundant light goose populations. It also modifies the conservation order that will increase take of such populations under the authority of this subpart.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52077
NPRM Correction	11/07/01	66 FR 56266
NPRM Comment Period Extended	12/10/01	66 FR 63665
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203

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Phone: 703 358-1714
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RIN: 1018–AI07

1159. ADDITION BY INDONESIA OF RAMIN TO APPENDIX III UNDER THE CONVENTION ON INTERNATIONAL TRADE IN ENDANGERED SPECIES OF WILD FAUNA AND FLORA

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq; 16 USC 4201; PL 99-625

CFR Citation: 50 CFR 23

Legal Deadline: None

Abstract: This notice advises the public that, by unilateral action provided for in the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), the Government of Indonesia has listed the tree species, Ramin, in CITES Appendix III. This listing invokes certain permitting requirements to assist Indonesia in controlling trade in this species.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Pat Ford, Biologist, Division of Scientific Authority, Department of the Interior, United States Fish and Wildlife Service, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1708
Email: pat_ford@fws.gov

RIN: 1018–AI08

1160. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2003 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will revise the regulations for seasons, harvest limits, methods, and means related to taking of fish and shellfish for subsistence uses during the 2003 regulatory year. This rulemaking is necessary because subpart D is subject to an annual review cycle.

Timetable:

Action	Date	FR Cite
NPRM	02/11/02	67 FR 6334
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI09

1161. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING AND DESIGNATION OF CRITICAL HABITAT FOR THREE SNAILS AND ONE AMPHIPOD

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, February 6, 2002, Settlement agreement.

Abstract: We propose to list and designate critical habitat for Koster's tyronia, Noel's amphipod, Pecos assiminea and the Roswell springsnail in New Mexico and Texas.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6459
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI15

1162. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE PYGMY RABBIT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, November 23, 2001, Settlement agreement.

Abstract: We are emergency listing the Columbia Basin Distinct Population Segment of the Pygmy rabbit in Washington.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 59769
Emergency Final Rule	11/30/01	66 FR 59734
NPRM Comment Period Reopened	02/07/02	67 FR 5780
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI17

1163. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE CARSON'S WANDERING SKIPPER

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, November 23, 2001, Settlement agreement.

Abstract: We are emergency listing the Carson's wandering skipper, a butterfly that occurs in Nevada.

Timetable:

Action	Date	FR Cite
NPRM	11/29/01	66 FR 59550
Emergency Final Rule	11/29/01	66 FR 59537
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI18

1164. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; EMERGENCY LISTING OF THE TUMBLING CREEK CAVESNAIL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, December 17, 2001, Settlement agreement.

Abstract: We are emergency listing the Tumbling Creek cavesnail, which is known to occur in only one cave in Missouri.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66868
Emergency Final Rule	12/27/01	66 FR 66803
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI19

1165. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR FIVE CARBONATE PLANTS IN CALIFORNIA

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, January 30, 2002, Settlement agreement.

Abstract: We propose to designate critical habitat for five carbonate plants in California: Parish's daisy; Cushenbury buckwheat; Cushenbury milk-vetch; San Bernardino Mountains bladderpod; and Cushenbury oxytheca.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6577
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI27

1166. • SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART D; SUBSISTENCE TAKING OF FISH, CUSTOMARY TRADE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 3124

CFR Citation: 50 CFR 100; 36 CFR 242

Legal Deadline: None

Abstract: This rulemaking will establish the guidelines under which the subsistence taking of fish and shellfish can be considered customary trade.

Timetable:

Action	Date	FR Cite
NPRM	02/27/02	67 FR 8918
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: William Knauer, Office of Subsistence Management, Department of the Interior, United States Fish and Wildlife Service, 1011 East Tudor Road, Anchorage, AK 99503
Phone: 907 786-3888

RIN: 1018–AI31

1167. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF COOK'S LOMATIUM AND LARGE-FLOWERED WOOLLY MEADOWFOAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, October 31, 2002, court order.

Abstract: We will make a final listing determination for Cook's lomatium and the large-flowered woolly meadowfoam, two plants in Oregon.

Timetable:

Action	Date	FR Cite
NPRM	05/15/00	65 FR 30941
NPRM Comment Period Reopened	01/14/02	67 FR 1712
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI43

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Long-Term Actions

1168. MIGRATORY BIRD PERMITS; SPECIFIC PERMIT PROVISIONS; IMPORT AND EXPORT PERMITS; BANDING OR MARKING PERMITS; AND SCIENTIFIC COLLECTING PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the Migratory Bird Permit Regulations providing permits for the taking, possession, transportation, sale, purchase, importation, exportation, and banding or marking of migratory birds. The Service is revising the requirements for scientific collecting, banding or marking permits and import and export permits.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AE63

1169. MIGRATORY BIRD PERMITS; INTRODUCTION, GENERAL REQUIREMENTS AND EXCEPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the migratory-bird permit regulations providing permits for the taking, possession, transportation, sale, purchase, and barter of migratory birds. The Service is revising these permit regulations to update them, simplify language, and ensure consistency in text between all parts and sections.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon__andrew@fws.gov

RIN: 1018–AE64

1170. IMPLEMENTATION OF THE 1994 AMENDMENTS TO THE MARINE MAMMAL PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1374

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: Section 104 of the Marine Mammal Protection Act authorizes the Director of the Service, acting on behalf of the Secretary of the Interior, to issue permits for activities otherwise prohibited by the Act. Regulations will be developed for issuance of permits and the 1994 amendments to the Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AE72

1171. TAKING OF MARINE MAMMALS BY LEVEL B HARASSMENT; ISSUANCE OF GENERAL AUTHORIZATION FOR SCIENTIFIC RESEARCH AND PERMITS FOR PHOTOGRAPHY, EDUCATIONAL, AND COMMERCIAL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-238; 16 USC 1361 to 1407

CFR Citation: 50 CFR 18

Legal Deadline: None

Abstract: The Service proposes to issue regulations that would allow us to authorize harassment but not injury or death of marine mammals under our jurisdiction, for scientific research and for photography for educational or commercial purposes. This rule would further implement the 1994 Amendments to the Marine Mammal Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Peter Thomas, Chief, Division of Management Authority, Department of the Interior, United States Fish and Wildlife Service, Room 700, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2104
Email: peter__thomas@fws.gov

RIN: 1018–AF26

1172. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DELISTING THE NORTHERN POPULATION OF THE TIDEWATER GOBY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service plans to make a final determination on the proposed rule to remove the northern population of the tidewater goby from the List of Threatened and Endangered Species. Currently, all tidewater goby populations in California are on the List of Endangered and Threatened Species.

Timetable:

Action	Date	FR Cite
NPRM	06/24/99	64 FR 33816
NPRM Comment Period Reopened	02/15/00	65 FR 7483
NPRM Comment Period Reopened	01/03/01	66 FR 345
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF67

DOI—FWS

Long-Term Actions

1173. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; SPECIAL RULE FOR BULL TROUT IN WASHINGTON STATE

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: This rule would provide special regulations to authorize incidental take of bull trout in Washington State. This action would provide for enhanced Federal, State and local management options for this threatened species.

Timetable:

Action	Date	FR Cite
NPRM	11/01/99	64 FR 58934
NPRM Comment Period End	12/16/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AF71

1174. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR THREE PLANTS FROM THE MARIANA ISLANDS AND GUAM

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Statutory, June 1, 2001.

Abstract: We, the U.S. Fish and Wildlife Service (Service), propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for three plants (no common names): Nesogenes rotensis, Osmoxylon mariannense, and Tabernaemontana rotensis. Nesogenes rotensis and O. mariannense are found only on the island of Rota in the U.S. Commonwealth of the Northern Mariana Islands (CNMI). Tabernaemontana rotensis occurs on both Rota and the United States Territory of Guam.

Timetable:

Action	Date	FR Cite
NPRM	06/01/00	65 FR 35025
NPRM Comment Period Reopened	10/30/00	65 FR 64649
NPRM Comment Period End	11/29/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG09

1175. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; ENDANGERED STATUS FOR 12 SPECIES OF PICTURE-WING FLIES FROM THE HAWAIIAN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: Final, Judicial, July 31, 2001, Court Order.

Abstract: We propose endangered status pursuant to the Endangered Species Act of 1973, as amended (Act), for 12 species of Hawaiian picture-wing flies—Drosophila aglaia, D. differens, D. hemipeza, D. heteroneura, D. montgomeryi, D. mulli, D. musaphilia, D. neoclavisetae, D. obatai, D. ochrobasis, D. substenoptera, and D. tarphytrichia. These species are found on one or more of the following Hawaiian Islands: Kauai, Oahu, Molokai, Maui, and Hawaii. These 12 species face substantial threats from one or more of the following: habitat degradation, loss of host plants, biological pest control, and predation from alien arthropods.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3964
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AG23

1176. MIGRATORY BIRD PERMITS; TAKE OF MIGRATORY BIRDS BY FEDERAL AGENCIES

Priority: Other Significant

Legal Authority: 16 USC 703 to 712

CFR Citation: 50 CFR 21.15

Legal Deadline: None

Abstract: According to a recent ruling of the United States Court of Appeals for the District of Columbia Circuit, Federal Agencies are subject to the Migratory Bird Treaty Act (MBTA) and must have authorization under the MBTA to take migratory birds. Our current regulations authorize issuance of permits to take migratory birds for activities such as scientific research, education, and depredation control. For many other activities that result in take of migratory birds, no permits have been available. This rule would allow Federal activities to take migratory birds that are not covered by existing permit regulations, provided certain conditions are met, until more specific regulations can be developed.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and

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Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
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RIN: 1018–AG56

1177. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE MIAMI BLUE BUTTERFLY

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: Other, Judicial, December 2001, Settlement agreement. A 90-day finding for the Miami Blue butterfly must be completed by December 2001.

Abstract: We will complete a 12-month finding for the Miami Blue butterfly in Florida.

Timetable:

Action	Date	FR Cite
Notice of Petition Finding	01/03/02	67 FR 280
Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH30

1178. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DETERMINATION OF CRITICAL HABITAT FOR THE SCALESHELL MUSSEL

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, October 1, 2001, Settlement agreement.

Abstract: We propose to determine critical habitat for the Scaleshell, a mollusk, in Arkansas, Missouri, and Oklahoma.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH35

1179. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE SACRAMENTO MOUNTAINS CHECKERSPOT BUTTERFLY AND PROPOSED DESIGNATION OF CRITICAL HABITAT

Priority: Other Significant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, August 31, 2001, Court order.

Abstract: We will make a final listing determination for the Sacramento Mountain checkerspot butterfly as endangered, including a critical habitat determination in New Mexico. This will extend the protection of the Endangered Species Act to this species.

Timetable:

Action	Date	FR Cite
NPRM	09/06/01	66 FR 46575
NPRM Comment Period Extended	09/26/01	66 FR 49158
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH40

1180. ENDANGERED AND THREATENED WILDLIFE; REMOVAL OF FOUR ASH MEADOW SPECIES FROM THE LIST OF ENDANGERED AND THREATENED WILDLIFE AND PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to remove four species of Ash Meadow plants and animals from the List of Endangered and Threatened Wildlife and Plants: Ash Meadows Amargusa pupfish; Ash Meadows sunray; Ash Meadows gumplant; Spring Loving centuary.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH49

1181. ENDANGERED AND THREATENED WILDLIFE; ESTABLISHMENT OF A NONESSENTIAL EXPERIMENTAL POPULATION OF THE BLACK-FOOTED FERRET IN WYOMING

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to propose to establish an additional (the eighth) nonessential experimental population of the black-footed ferret in Campbell, Converse, Niobrara and Weston Counties, Wyoming.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH54

1182. ENDANGERED AND THREATENED WILDLIFE; RECLASSIFICATION OF THE MARIANNA FRUIT BAT ON GUAM FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We plan to reclassify the Marianna fruit bat on Guam from endangered to threatened.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior, United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH55

1183. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE DOLLY VARDEN AS A THREATENED SPECIES IN WASHINGTON DUE TO SIMILARITY OF APPEARANCE TO BULL TROUT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We propose to list the Dolly Varden (Salvelinus malma) as threatened under the "Similarity of Appearance" provision of the Endangered Species Act in Washington, due to its similarity of appearance to the bull trout.

Timetable:

Action	Date	FR Cite
NPRM	01/09/01	66 FR 1628
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AH68

1184. MIGRATORY BIRD PERMITS; REGULATIONS GOVERNING EDUCATION; 50 CFR 21

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712(2)

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: The Service proposes to amend the migratory bird permit regulations to establish a new section to authorize possession for education, which currently is authorized under 50 CFR 21.27, Special Purpose permits.

Timetable:

Action	Date	FR Cite
Notice	11/20/00	65 FR 69726
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon_andrew@fws.gov

RIN: 1018–AH71

1185. NATIONAL WILDLIFE REFUGE SYSTEM; MISCELLANEOUS RECEIPTS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 668(dd) to 668(ee)

CFR Citation: None

Legal Deadline: None

Abstract: This action provides specific guidance on the management and oversight of privately owned mineral rights within the National Wildlife Refuge System. The chapter clarifies the rights, responsibilities and options of both the Refuge Manager and the private holder of the reserved/excepted mineral rights.

Timetable:

Action	Date	FR Cite
Proposed Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Agency Contact: James W. Kurth, Deputy Chief, National Wildlife Refuge System, Department of the Interior, United States Fish and Wildlife Service, MS 670 ARLSQ, Washington, DC 20240
Phone: 703 358-1744

RIN: 1018–AH81

1186. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; REMOVAL OF THE TINIAN MONARCH FLYCATCHER FROM THE LIST OF ENDANGERED AND THREATENED SPECIES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: The Service is planning to make a final determination on the proposed rule to delist the Tinian monarch flycatcher from the list of endangered and threatened species, due to apparent increases in population numbers and likely improvement in habitat quality. This bird occurs on Tinian Island in the Marianas. The proposed rule was published in the Federal Register on February 22, 1999, page 8533, under RIN 1018-AE40.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener, Endangered Species: Division of Consultation, HCP's, Recovery and State Grants, Department of the Interior,

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United States Fish and Wildlife Service, Room 420, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI14

1187. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE ROTA BRIDLED WHITE-EYE

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat.3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, September 29, 2001, Settlement agreement.

Abstract: We propose to list a bird, the Rota bridled white-eye, which occurs in the Mariana Islands.

Timetable:

Action	Date	FR Cite
NPRM	10/03/01	66 FR 50383
NPRM Comment Period End	12/03/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI16

1188. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF THE ISLAND FOX

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1361 to 1407; 16 USC 1531 to 1544; 16 USC 4201 to 4245; PL 99-625; 100 Stat. 3500

CFR Citation: 50 CFR 17

Legal Deadline: NPRM, Judicial, November 30, 2001, Settlement agreement.

Abstract: We propose to list the Island fox, which occurs on the Channel Islands off California.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63654
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI28

1189. • MIGRATORY BIRD PERMITS; REGULATIONS FOR MANAGING DOUBLE-CRESTED CORMORANT DAMAGES

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 712

CFR Citation: 50 CFR 21

Legal Deadline: None

Abstract: We are proposing to establish, in cooperation with State wildlife agencies and USDA-APHIS-Wildlife Services, a cormorant damage management program. This program is designed to provide a biologically sound, cost-effective, and flexible method for the control of damages associated with cormorants.

Timetable:

Action	Date	FR Cite
ANPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Agency Contact: Jon Andrew, Chief, Division of Migratory Bird Management, Department of the Interior, United States Fish and Wildlife Service, Room 634, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-1714
Email: jon_andrew@fws.gov

RIN: 1018–AI39

1190. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE SOUTHWESTERN WILLOW FLYCATCHER

Priority: Other Significant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We will re-propose critical habitat for the Southwestern willow flycatcher, a small bird found in the southwestern United States.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI49

1191. ENDANGERED AND THREATENED WILDLIFE; LISTING THE GOLDEN SEDGE

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	01/23/02	67 FR 3120

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF68

1192. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSED ENDANGERED STATUS FOR THE PLANT HACKELIA VENUSTA (SHOWY STICKSEED)

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 18

Completed:

Reason	Date	FR Cite
Final Action	02/06/02	67 FR 5515

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF75

1193. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PROPOSAL TO LIST THE MISSISSIPPI GOPHER FROG DISTINCT POPULATION SEGMENT OF DUSKY GOPHER FROG AS ENDANGERED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	12/04/01	66 FR 62993

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AF90

1194. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF BUENA VISTA LAKE SHREW AS ENDANGERED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	03/06/02	67 FR 10101

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AG04

1195. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING OF VERMILION DARTER AS ENDANGERED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	11/28/01	66 FR 59367

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AG05

1196. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; RECLASSIFICATION OF SCUTELLARIA MONTANA (LARGE-FLOWERED SKULLCAP) FROM ENDANGERED TO THREATENED

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	01/14/02	67 FR 1662

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener
Phone: 703 358-2171

RIN: 1018–AG07

1197. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT DESIGNATION FOR THE OAHU ELEPAIO, A BIRD, IN HAWAII

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	12/10/01	66 FR 63751

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AG99

1198. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; DESIGNATION OF CRITICAL HABITAT FOR THE QUINO CHECKERSPOT BUTTERFLY

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	04/15/02	67 FR 18355

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH03

1199. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; CRITICAL HABITAT FOR THE SAN BERNARDINO KANGAROO RAT

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	04/23/02	67 FR 19811

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH07

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1200. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; 12-MONTH PETITION FINDING FOR THE BIG CYPRESS FOX SQUIRREL

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Notice of Petition Finding	02/25/02	67 FR 8499

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH29

1201. ENDANGERED AND THREATENED WILDLIFE AND PLANTS; PRUDENCY AND CRITICAL HABITAT FOR THE ROCK GNOME LICHEN

Priority: Other Significant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Notice of Finding	10/09/01	66 FR 51445

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin
Phone: 703 358-2171

RIN: 1018–AH32

1202. ENDANGERED AND THREATENED PLANTS; RECLASSIFICATION OF THE WIREWEED FROM ENDANGERED TO THREATENED IN FLORIDA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 17

Completed:

Reason	Date	FR Cite
Merged With RIN 1018-AH51	03/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ren Lohoefener
Phone: 703 358-2171

RIN: 1018–AH58

1203. CONFERRING DESIGNATED PORT STATUS ON ANCHORAGE, ALASKA

Priority: Substantive, Nonsignificant

CFR Citation: 50 CFR 14

Completed:

Reason	Date	FR Cite
Final Action	03/13/02	67 FR 11260

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kevin Adams
Phone: 703 358-1949
Email: kevin_adams@fws.gov

RIN: 1018–AH75

1204. SUBSISTENCE MANAGEMENT REGULATIONS FOR PUBLIC LANDS IN ALASKA, SUBPART C AND SUBPART D—2002 SUBSISTENCE TAKING OF FISH AND SHELLFISH REGULATIONS

Priority: Routine and Frequent

CFR Citation: 50 CFR 100; 36 CFR 242

Completed:

Reason	Date	FR Cite
Final Action	02/07/02	67 FR 5890

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William Knauer
Phone: 907 786-3888

RIN: 1018–AH77

1205. MIGRATORY BIRD HUNTING; PROPOSED 2001-2002 MIGRATORY GAME BIRD HUNTING REGULATIONS (PRELIMINARY) WITH REQUESTS FOR INDIAN TRIBAL PROPOSALS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 50 CFR 20

Completed:

Reason	Date	FR Cite
NPRM	10/11/01	66 FR 51919
Correction	11/13/01	66 FR 56780
Withdrawal of NPRM	11/23/01	66 FR 58707

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Tribal

Agency Contact: Jon Andrew
Phone: 703 358-1714
Email: jon_andrew@fws.gov

RIN: 1018–AH79

1206. • ENDANGERED AND THREATENED WILDLIFE AND PLANTS; LISTING THE DESERT YELLOWHEAD AS THREATENED

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1531 et seq

CFR Citation: 50 CFR 17

Legal Deadline: None

Abstract: We are listing the Desert yellowhead, a plant, as a threatened species under the Endangered Species Act.

Timetable:

Action	Date	FR Cite
NPRM	12/22/98	63 FR 70745
NPRM Comment Period Reopened	09/05/00	65 FR 53691
Final Action	03/14/02	67 FR 11442

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Chris Nolin, Chief, Office of Conservation and Classification, Department of the Interior, United States Fish and Wildlife Service, Room 452, 4401 North Fairfax Drive, Arlington, VA 22203
Phone: 703 358-2171

RIN: 1018–AI35

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Department of the Interior (DOI)
National Park Service (NPS)

Proposed Rule Stage

1207. VEHICLES AND TRAFFIC SAFETY; OPERATING UNDER THE INFLUENCE OF ALCOHOL OR DRUGS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462k; 16 USC 9a

CFR Citation: 36 CFR 4.23

Legal Deadline: None

Abstract: The National Park Service (NPS) is proposing to amend its regulations concerning motor vehicle operation under the influence of alcohol within units of the NPS. Current NPS regulations prohibit operation with a blood alcohol concentration (BAC) of 0.10 grams or more of alcohol per 100 milliliters of blood or 0.10 grams of alcohol per 210 liters of breath. On March 3, 1998, President Clinton directed the NPS to promulgate regulations adopting a stricter limit of 0.08 grams BAC within units of the NPS.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC69

1208. PROCEDURES FOR STATE, TRIBAL, AND LOCAL GOVERNMENT HISTORIC PRESERVATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 470 et seq

CFR Citation: 36 CFR 61

Legal Deadline: None

Abstract: The NPS proposes to establish the requirements and procedures by which those Indian tribes that choose to do so can assume State Historic Preservation Officer duties with regard to tribal lands and become eligible for grants-in-aid to carry out those duties.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Bryan Mitchell, Division Chief, Department of the Interior, National Park Service, NC330, 1849 C Street NW., Washington, DC 20240
Phone: 202 343-9558
Fax: 202 343-3921
Email: bryan_mitchell@nps.gov

RIN: 1024–AC79

1209. COMMERCIAL USE AUTHORIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-391

CFR Citation: 36 CFR 52

Legal Deadline: None

Abstract: Public Law 105-391 became effective on November 13, 1998. The new Act mandates revised procedures for issuing commercial use authorizations. Section 417 of Public Law 105-391 requires that the Secretary promulgate implementing regulations as soon as practicable after the effective date of the Act. Existing regulations governing commercial use within National Parks are not adequate to administer the provisions of the new statute and must be revised to reflect new requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Henry Benedetti, Chief of Concessions, Southeast Region, Department of the Interior, National Park Service, Atlanta Federal Center, 1924 Building, 100 Alabama St. S.W., Atlanta, GA 30303
Phone: 404 562-3108
Fax: 404 562-3204
Email: henry_benedetti@nps.gov

RIN: 1024–AC85

1210. GLEN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.70

Legal Deadline: None

Abstract: This proposed rule would allow personal watercraft use in designated areas of the park. This rulemaking is necesary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC90

1211. LAKE MEAD NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.48

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necesary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager,

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Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC91

1212. BIG THICKET NATIONAL PRESERVE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.85

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC92

1213. PICTURED ROCKS NATIONAL LAKESHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.32

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC93

1214. FIRE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.20

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC94

1215. GATEWAY NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.29

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC95

1216. BIGHORN CANYON NATIONAL RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.92

Legal Deadline: None

Abstract: This proposed rule would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC96

1217. LAKE MEREDITH RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.57

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC97

1218. CHICKASAW RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.50

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC98

1219. CURECANTI RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.51

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in units of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AC99

1220. AMISTAD RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.79

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AD00

1221. LAKE ROOSEVELT RECREATION AREA; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.55

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
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Fax: 202 208-6756
Email: kym_hall@nps.gov

RIN: 1024–AD01

1222. ASSATEAGUE ISLAND NATIONAL SEASHORE; PERSONAL WATERCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.65

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Proposed Rule Stage

Legal Deadline: None

Abstract: This proposed rulemaking would allow personal watercraft use in designated areas of the park. The rulemaking is necessary because the regulations that currently allow personal watercraft use in areas of the National Park System will expire on April 22, 2002.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-4206
Fax: 202 208-6756
Email: kym__hall@nps.gov

RIN: 1024–AD02

1223. DRY TORTUGAS NATIONAL PARK; SPECIAL REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 410xx; 16 USC 9a

CFR Citation: 36 CFR 7.104

Legal Deadline: None

Abstract: This rule will outline and enforce visitor use restrictions area closures, visitor use zones, and permit requirements that are necessary to implement a recent amendment to the park general management plan. In addition, the rule will close one use zone, a research natural area, in the park to fishing, and restrict species that may be taken in the remaining zones. It will also regulate the landing of aircraft. The rule will also seek consistency with regulation of the surrounding Florida Keys National Marine Sanctuary in order to pull together management of an ecosysytem that crosses jurisdictional boundaries.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Philip Selleck, Chief Ranger, Department of the Interior, National Park Service, Dry Tortugas National Park, 40001 State Road 9336, Homestead, FL 33034-6733
Phone: 305 242-7700

RIN: 1024–AD04

1224. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT; FUTURE APPLICABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10.13

Legal Deadline: None

Abstract: This proposed rule relates to one section of the regulations that implement the Native American Graves Protection and Repatriation Act. This section will clarify the applicability of NAGPRA to museums and Federal agencies following the statutory deadlines for completion of summaries and inventories.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins, Assistant Director, Cultural Resources, Department of the Interior, National Park Service, NC340, 1849 C Street NW., Washington, DC 20240
Phone: 202 343-3388
Fax: 202 343-5260
Email: john__robbins@nps.gov

RIN: 1024–AD05

1225. • YELLOWSTONE NATIONAL PARK, GRAND TETON NATIONAL PARK, JOHN D. ROCKEFELLER MEMORIAL PARKWAY WINTER USE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a; 16 USC 460(q); 16 USC 462(k)

CFR Citation: 36 CFR 7.13; 36 CFR 7.22

Legal Deadline: NPRM, Statutory, March 29, 2002.

Abstract: This rule will propose a delay of one year for implementing existing snowmobile regulations at the parks.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15145
NPRM Comment Period End	05/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kym A. Hall, Regulations Program Manager, Department of the Interior, National Park Service, 1849 C Street N.W., Washington, DC 20240
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Email: kym__hall@nps.gov

RIN: 1024–AD06

Department of the Interior (DOI)
National Park Service (NPS)

Final Rule Stage

1226. NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION ACT REGULATIONS; CIVIL PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 3001 et seq

CFR Citation: 43 CFR 10

Legal Deadline: None

Abstract: This final rule relates to one section of the regulations that implement the Native American Graves Protection and Repatriation Act of 1990. This section outlines procedures for assessing civil penalties upon museums that fail to comply with applicable provisions of the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/13/97	62 FR 1820
Interim Final Rule Effective	02/12/97	

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Final Rule Stage

Action	Date	FR Cite
Interim Final Rule Comment Period End	04/14/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Robbins, Assistant Director, Cultural Resources, Department of the Interior, National Park Service, NC340, 1849 C Street NW., Washington, DC 20240
Phone: 202 343-3388
Fax: 202 343-5260
Email: john__robbins@nps.gov

RIN: 1024–AC84

1227. VIRGIN ISLANDS CORAL REEF NATIONAL MONUMENT; SPECIAL REGULATIONS

Priority: Other Significant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 462(k); 16 USC 9a

CFR Citation: 36 CFR 7.103; 36 CFR 7.73

Legal Deadline: None

Abstract: This is an interim regulation to implement Presidential Proclamation No. 7932, which established the Virgin Islands Coral Reef National Monument. This regulation prohibits extractive uses, with some exceptions, and anchoring within the monument, and expands the boundaries of Buck Island Reef National Monument. The regulation also implements Presidential Proclamation No. 7399, which prohibits all extractive uses and boat anchoring, except in deep sand areas (all other anchoring is subject to permit) at Buck Island. Both proclamations require NPS to prepare management plans for each park within three years. We are soliciting comments on this interim rule and will take them into account in developing the final rule once we have completed the general management plans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: K.C. Becker, Attorney-Advisor, Department of the Interior, National Park Service, Office of the Solicitor, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-7957
Email: kc__becker@doi.gov

RIN: 1024–AC89

Department of the Interior (DOI)
National Park Service (NPS)

Long-Term Actions

1228. WORLD HERITAGE CONVENTION

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 470a-1; 16 USC 470a-2

CFR Citation: 36 CFR 73

Legal Deadline: None

Abstract: This rule will revise the existing World Heritage regulations to make necessary changes, such as correcting or eliminating the annual calendar for preparing and submitting U.S. nominations (now outdated), correcting the criteria for selecting sites (also outdated), and providing more explicit procedures for public participation. The underlying treaty (World Heritage Convention) and law (Historic Preservation Act Amendments of 1980) will remain in place unchanged.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/19/01	66 FR 57878
Interim Final Rule Effective	11/19/01	
Interim Final Rule Comment Period End	01/18/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: James Charleton, International Cooperation Specialist, Department of the Interior, National Park Service, MS 2252, Office of International Affairs, 1849 C Street N.W., MS 2252, Washington, DC 20240
Phone: 202 565-1280

RIN: 1024–AC74

1229. SPECIAL REGULATIONS OF THE NATIONAL PARK SYSTEM; RELIGIOUS CEREMONIAL COLLECTION OF GOLDEN EAGLETS IN WUPATKI NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 42 USC 1996; 42 USC 2000bb

CFR Citation: 36 CFR 7.101

Legal Deadline: None

Abstract: The NPS has preliminarily determined that under certain circumstances it is appropriate to allow the Hopi Tribe to collect golden eaglets within Wupatki National Monument for religious ceremonial purposes. This rule would authorize this activity upon terms and conditions sufficient to protect park resources against impairment, and consistent with the Bald and Golden Eagle Protection Act.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6516
NPRM Comment Period End	03/23/01	
Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Patricia L. Parker, Chief, American Indian Liaison Office, Department of the Interior, National Park Service, 1849 C Street N.W., Room 3410, Washington, DC 20240
Phone: 202 208-5475
Fax: 202 273-0870
Email: pat__parker@nps.gov

RIN: 1024–AC86

1230. GOLDEN GATE NATIONAL RECREATION AREA; SPECIAL REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1; 16 USC 3; 16 USC 9a

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CFR Citation: 36 CFR 7.97

Legal Deadline: None

Abstract: This advance notice of proposed rulemaking will seek public comment on a range of potential management options for addressing appropriate pet management within the Golden Gate National Recreation Area, consistent with protecting national park resources and assuring visitor safety.

Timetable:

Action	Date	FR Cite
ANPRM	01/11/02	67 FR 1424
ANPRM Comment Period End	03/12/02	
Undetermined	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mary Gibson Scott, Assistant Superintendent, Department of the Interior, National Park Service, Fort Mason, Building 201, San Francisco, CA 94123-0022
Phone: 415 561-4739
Fax: 415 561-4710
Email: mary_gibson_scott@nps.gov

RIN: 1024–AD03

Department of the Interior (DOI)
National Park Service (NPS) — **Completed Actions**

1231. LEASING REGULATIONS

Priority: Other Significant

CFR Citation: 36 CFR 18

Completed:

Reason	Date	FR Cite
Final Action	12/27/01	66 FR 66755

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurie Shaffer
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Fax: 303 987-6901
Email: laurie_shaffer@nps.gov

RIN: 1024–AC78

1232. WRANGELL-ST. ELIAS NATIONAL PARK AND PRESERVE RESIDENT ZONE COMMUNITIES

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 13

Completed:

Reason	Date	FR Cite
Final Action	02/25/02	67 FR 8481

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Hunter Sharp
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Email: hunter_sharp@nps.gov

RIN: 1024–AC83

BILLING CODE 4310–70–S

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA) — **Proposed Rule Stage**

1233. IRRIGATION PROJECTS AND SYSTEMS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 171

Legal Deadline: None

Abstract: BIA is revising this rule to incorporate new procedures on billing and collection of government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	07/05/96	61 FR 35167
NPRM Comment Period End	09/03/96	
Supplementary NPRM	05/00/02	
Supplementary NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5480

RIN: 1076–AD44

1234. INDIAN ELECTRIC POWER UTILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 385

CFR Citation: 25 CFR 175

Legal Deadline: None

Abstract: This rule contains procedures governing the operation of BIA-owned power utilities. BIA is revising this rule to incorporate new procedures on billing and collection of government debt. Once these changes are made, BIA will publish a new proposed rule for public comment.

Timetable:

Action	Date	FR Cite
NPRM	06/07/96	61 FR 29040
NPRM Comment Period End	08/06/96	
Supplementary NPRM	05/00/02	
Supplementary NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ross Mooney, Civil Engineer, Department of the Interior, Bureau of Indian Affairs, Room 4559, 1849 C Street N.W., Washington, DC 20240
Phone: 202 208-5480

RIN: 1076–AD45

DOI—BIA — **Proposed Rule Stage**

1235. ARRANGEMENT WITH STATES, TERRITORIES, OR OTHER AGENCIES FOR RELIEF OF DISTRESS AND SOCIAL WELFARE OF INDIANS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 2

CFR Citation: 25 CFR 21

Legal Deadline: None

Abstract: This part, which allows BIA to seek arrangements with States or counties or other Federal agencies to provide welfare for Indians residing in a State within the exterior boundaries of Indian reservations under BIA jurisdiction, will be deleted because it has never been used.

Timetable:

Action	Date	FR Cite
NPRM	03/26/02	67 FR 13733
NPRM Comment Period End	05/28/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry R. Blair, Chief, Division of Social Services, Department of the Interior, Bureau of Indian Affairs, MS 4641, 1849 C Street NW., Washington, DC 20240
Phone: 202 208-2721

RIN: 1076–AD98

1236. BUY INDIAN ACT REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 47; 36 Stat 861; 41 USC 253(c)(5)

CFR Citation: 48 CFR 14 app A

Legal Deadline: None

Abstract: This rule will regulate the implementation of BIA's longstanding policy of contracting with Indian-owned firms on a preferential basis and will regulate the determination of eligibility and availability of Indian firms to perform a specific requirement for products, services, and road construction outside the State of Oklahoma and regulate the authority to deviate from the general policy and will regulate the determination of eligibility throughout contractual performance.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Peter S. Markey, Procurement Analyst, Department of the Interior, Bureau of Indian Affairs, MS 2626C MIB, 1849 C Street NW, Washington, DC 20240
Phone: 703 390-6479

RIN: 1076–AE07

1237. INDIAN RESERVATION ROADS PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 202; 5 USC 301

CFR Citation: 25 CFR 170

Legal Deadline: None

Abstract: This proposed rule would establish policies and procedures governing the Indian Reservation Roads (IRR) Program. It expands transportation activities available to tribes and tribal organizations and provides guidance to tribes and tribal organizations for planning, designing, constructing, and maintaining transportation facilities. This rule also includes a proposed funding formula for allocating IRR Program funds based upon the relative needs of Indian tribes, and reservation or tribal communities, for transportation assistance; and the relative administrative capacities of various tribes.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Tribal

Agency Contact: LeRoy Gishi, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, MS 4058 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-4359

RIN: 1076–AE17

1238. TRUST MANAGEMENT REFORM: REPEAL OF OUTDATED RULES

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 121; 25 USC 331; 25 USC 355; 25 USC 408; 25 USC 474; 25 USC 500; 25 USC 883; 43 USC 1601

CFR Citation: 25 CFR 112; 25 CFR 116; 25 CFR 121; 25 CFR 123; 25 CFR 125; 25 CFR 154; 25 CFR 156; 25 CFR 178; 25 CFR 243

Legal Deadline: None

Abstract: BIA plans to repeal various outdated regulations in many different areas because the regulations are no longer required. Some of the regulations govern payments that have already been completed, other regulations pertain to programs that are obsolete or no longer reflect Department policy.

Timetable:

Action	Date	FR Cite
NPRM	02/21/02	67 FR 7985
NPRM Comment Period End	04/22/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Arthur Gary, Improvement Project, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6246
Fax: 202 219-1146
Email: arthur_gary@bia.gov

RIN: 1076–AE20

1239. APPEALS OF ADMINISTRATIVE ACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 9

CFR Citation: 25 CFR 2

Legal Deadline: None

Abstract: BIA plans to update the regulations governing administrative appeals to: (1) clarify who has the right to file an appeal; (2) provide firm deadlines for filing appeals and responses; (3) provide options to appellants if BIA delays making a decision on an appeal; and (4) provide an expedited process for certain types of appeals.

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Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Arthur Gary, Improvement Project, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6246
Fax: 202 219-1146
Email: arthur_gary@bia.gov

RIN: 1076–AE21

1240. TRUST FUNDS FOR TRIBES AND INDIVIDUAL INDIANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 161 (a); 25 USC 162a; 25 USC 164; 25 USC 4001

CFR Citation: 25 CFR 115

Legal Deadline: None

Abstract: BIA plans to revise that portion of the regulations relating to management of trust accounts of adult Indians. Technical corrections will also be made to other sections as necessary.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Arthur Gary, Improvement Project, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6246
Fax: 202 219-1146
Email: arthur_gary@bia.gov

RIN: 1076–AE22

1241. LEASES AND PERMITS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 380; 25 USC 403; 25 USC 403c; 25 USC 415d; 25 USC 425 ; 25 USC 477; 25 USC 635

CFR Citation: 25 CFR 162

Legal Deadline: None

Abstract: BIA plans to update the regulations governing leasing of Indian trust and restricted lands by adding a subpart covering business and residential leases and by revising those sections of the current regulations that affect only certain Indian reservations.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Arthur Gary, Improvement Project, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6246
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RIN: 1076–AE23

1242. TRIBAL REVENUE ALLOCATION PLANS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2; 25 USC 2710; 25 USC 9; 5 USC 301

CFR Citation: 25 CFR 290

Legal Deadline: None

Abstract: The Secretary of the Interior is responsible for reviewing tribal plans for allocating revenues from gaming activities. The Secretary must determine whether the proposed rule is sufficient to promote tribal economic development and fund essential tribal programs, benefits, and services. BIA plans to revise the regulations in part 290 to include additional criteria to assist the Secretary in making this determination.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: George Skibine, Director, Indian Gaming Management Staff, Department of the Interior, Bureau of Indian Affairs, MS 2070 MIB, 1849 C Street NW., Washington, DC 20240
Phone: 202 219-4066

RIN: 1076–AE24

1243. PROBATE OF INDIAN ESTATES EXCEPT FOR MEMBERS OF THE FIVE CIVILIZED TRIBES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 372; 25 USC 373; 25 USC 374

CFR Citation: 25 CFR 15

Legal Deadline: None

Abstract: BIA plans to revise the regulations covering probate of Indian estates (except for estates of members of the Five Civilized Tribes) to make necessary technical corrections.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Arthur Gary, Improvement Project, Department of the Interior, Bureau of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6246
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RIN: 1076–AE25

1244. • ADULT EDUCATION PROGRAM

Priority: Info./Admin./Other

Legal Authority: 43 USC 1457; 25 USC 2; 25 USC 9; 25 USC 13

CFR Citation: 25 CFR 46

Legal Deadline: None

Abstract: This rule changes our estimate of the time it takes to fill out the application form for adult education benefits. The new estimated completion time of four hours more accurately reflects the time that applicants must spend to provide the information that we request. This more accurate estimate satisfies the requirements of the Paperwork Reduction Act and Office of Management and Budget regulations. The application requirements themselves remain unchanged.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: William Mehojah, Programs, Department of the Interior, Bureau of Indian Affairs, MS -3530, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-6123
Fax: 202 273-0030

RIN: 1076–AE29

Department of the Interior (DOI) Bureau of Indian Affairs (BIA) — Final Rule Stage

1245. INDIAN BUSINESS DEVELOPMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 1524

CFR Citation: 25 CFR 286

Legal Deadline: None

Abstract: The rule for the Indian Business Development Program is being rewritten in plain English as part of the President's regulatory reform initiative. Entities already having received grants must submit business financial statements. BIA has consulted with tribes about the rule at various meetings and trade fairs. This consultation process will continue during the coming months before the final rule is published.

Timetable:

Action	Date	FR Cite
NPRM	01/30/97	62 FR 4497
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David B. Johnson, Department of the Interior, Bureau of Indian Affairs, Office of the Solicitor, Division of Indian Affairs, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-3026

RIN: 1076–AD70

1246. CERTIFICATES OF DEGREE OF INDIAN BLOOD

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 13; 25 USC 9

CFR Citation: 25 CFR 70

Legal Deadline: None

Abstract: This rule will codify procedures for processing certificates of degree of Indian blood.

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20775
NPRM Comment Period Extended	06/20/00	65 FR 38228
NPRM Comment Period End	07/17/00	
NPRM Comment Period Extended	08/16/00	
NPRM Comment Period Extended	06/25/01	66 FR 33654
NPRM Comment Period End	12/31/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Duane Bird Bear, Department of the Interior, Bureau of Indian Affairs, Tribal Government Services, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-5097

RIN: 1076–AD97

1247. ALASKA RESUPPLY OPERATION

Priority: Info./Admin./Other

Legal Authority: 25 USC 13; 25 USC 9; 38 Stat. 486; 42 Stat. 208; 5 USC 301; R.S. 463; R.S. 465

CFR Citation: 25 CFR 142

Legal Deadline: None

Abstract: This proposed rule makes technical revisions to reflect terms now in common usage, e.g., Regional Director and Traffic Manager. A new section refers to the application of Indian preference in hiring pursuant to the Indian Reorganization Act of 1934 (25 USC 479).

Timetable:

Action	Date	FR Cite
NPRM	08/03/00	65 FR 47704
NPRM Comment Period End	10/02/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Duncan Brown, Regulatory Analyst, Department of the Interior, Bureau of Indian Affairs, Room 7229 MIB, 1849 C Street NW, Washington, DC 20240
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RIN: 1076–AE04

1248. INDIAN SCHOOL EQUALIZATION PROGRAM - PROVISIONS FOR EXCEPTIONAL CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 13; 25 USC 2008

CFR Citation: 25 CFR 39

Legal Deadline: None

Abstract: This rule would change the current practice of identifying screening, testing, and placement of students in special education based on funding, not need. The Secretary and BIA Office of Indian Education Programs have assured the Department of Education that they will revise the funding mechanism as soon as feasible to ensure that placements do not violate the requirement of 20 U.S.C. 1412(a)(5)(A). The authority and need for this rule is 25 U.S.C. 13; 25 U.S.C. 2008. Rulemaking is preferable because the current special education procedures must be changed to comply with the Individuals with Disabilities Education Act Amendment of 1997, Public Law 105-17.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Glenn F. Allison, Education Specialist, Department of the Interior, Bureau of Indian Affairs, Office of Indian Education Programs, MS 3512 MIB; 1849 C Street NW, Washington, DC 20240

DOI—BIA **Final Rule Stage**

Phone: 202 208-3628
RIN: 1076–AE14

1249. PROTECTION OF PRODUCTS OF INDIAN ART AND CRAFTSMANSHIP

Priority: Substantive, Nonsignificant
Legal Authority: 18 USC 1159; 25 USC 305 et seq
CFR Citation: 25 CFR 309
Legal Deadline: None
Abstract: This rule establishes regulations to provide guidance to persons who produce, market, or purchase products marketed as Indian arts and crafts, as defined under the Indian Arts and Crafts Act of 1990, PL 101-644. The proposed regulations further clarify the definition of "Indian product" by including specific examples of "Indian product," as well as examples of what is not an "Indian product," in the regulations implementing the Indian Arts and Crafts Enforcement Act of 2000, Public Law 101-497, an amendment to the Indian Arts and Crafts Act of 1990, Public Law 101-644.

Timetable:

Action	Date	FR Cite
NPRM	05/21/01	66 FR 27915
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Meridith Stanton, Department of the Interior, Bureau of Indian Affairs, Indian Arts and Crafts Board, Room 4004 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-3773
RIN: 1076–AE16

Department of the Interior (DOI)
Bureau of Indian Affairs (BIA) **Completed Actions**

1250. INDIAN RESERVATION ROADS PROGRAM

Priority: Substantive, Nonsignificant
CFR Citation: 25 CFR 170
Completed:

Reason	Date	FR Cite
Final Action Effective	01/09/01	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: Tribal
Agency Contact: LeRoy Gishi
Phone: 202 208-4359
RIN: 1076–AE06

1251. • DISTRIBUTION OF FISCAL YEAR 2002 INDIAN RESERVATION ROADS FUNDS

Priority: Other Significant
Legal Authority: 36 Stat 861; 78 Stat 241; 76 Stat 253; 76 Stat 257; 45 Stat 750; 25 USC 47; 25 USC 2000e(b); 47 USC 2000e(i); 23 USC 101(a); 23 USC 202; 23 USC 204
CFR Citation: 25 CFR 170
Legal Deadline: None
Abstract: This temporary rule required distribution of 75 percent of the fiscal year 2002 Indian Reservation Roads (IRR) funds to projects on or near Indian reservations using the relative need formula. In this distribution, up to $19.5 million was reserved to allow Federally recognized tribes to apply for $35,000 each for administrative capacity building and other transportation activities. The balance of the remaining 25 percent of FY 2002 IRR program funds was distributed according to the relative need formula. The rule is effective from January 10, 2002 through September 30, 2002.

Timetable:

Action	Date	FR Cite
Final Action	01/10/02	67 FR 1290
Final Action Effective	01/10/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: State, Local, Tribal
Agency Contact: LeRoy Gishi, Chief, Division of Transportation, Department of the Interior, Bureau of Indian Affairs, MS 4058 MIB, 1849 C Street NW, Washington, DC 20240
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RIN: 1076–AE28
BILLING CODE 4310–02–S

Department of the Interior (DOI)
Minerals Management Service (MMS) **Proposed Rule Stage**

1252. LATE AND OVERPAYMENT INTEREST

Priority: Substantive, Nonsignificant
Legal Authority: 25 USC 1001 et seq; 25 USC 1301 et seq; 25 USC 1331 et seq; 25 USC 1701 et seq; 25 USC 1735; 25 USC 1801 et seq; 25 USC 181 et seq; 25 USC 2101 et seq; 25 USC 351 et seq; 25 USC 3716; 25 USC 3720a; 25 USC 396 et seq; 25 USC 396a et seq; 25 USC 9701; 5 USC 301 et seq
CFR Citation: 30 CFR 206; 30 CFR 218; 30 CFR 230
Legal Deadline: None
Abstract: This rule allows MMS to pay interest on Federal onshore and offshore oil and gas royalty overpayments and makes interest charges more equitable between the payor and the recipient. Interest will be paid on overpayments related to royalty, rent and estimates resulting from sales of Federal onshore and offshore oil and gas production.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses

DOI—MMS **Proposed Rule Stage**

Government Levels Affected: None
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RIN: 1010–AC27

1253. TAKES VS. ENTITLEMENTS REPORTING

Priority: Substantive, Nonsignificant
Legal Authority: 30 USC 1735
CFR Citation: 30 CFR 205
Legal Deadline: None
Abstract: This rule addresses reporting and payment requirements for production removed and sold from a Federal lease, unit participating area, or communitization agreement beginning September 1996.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: State
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RIN: 1010–AC29

1254. ACCOUNTING RELIEF FOR MARGINAL PROPERTIES

Priority: Substantive, Nonsignificant
Legal Authority: 30 USC 1735
CFR Citation: 30 CFR 204
Legal Deadline: None
Abstract: This rule allows reporters to seek accounting, reporting, and auditing relief for their marginal properties in accordance with section 117(c) of the Federal Oil and Gas Royalty Management Act of 1982 as amended by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3360
NPRM Comment Period End	03/22/99	
Supplementary NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: State
Agency Contact: Carol Shelby, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225-0165
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RIN: 1010–AC30

1255. PREPAYMENT OF ROYALTIES

Priority: Substantive, Nonsignificant
Legal Authority: 30 USC 1735
CFR Citation: 30 CFR 204
Legal Deadline: None
Abstract: This rule allows payors to prepay royalty in lieu of monthly royalty payments for their marginal properties with approval from the affected States. It will establish the criteria used by payors, States, and MMS to calculate, report, and monitor royalty prepayments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: State
Agency Contact: Carol Shelby, Regulatory Specialist, Department of the Interior, Minerals Management Service, MS 320B2, P.O. Box 25165, Denver, CO 80225-0165
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RIN: 1010–AC31

1256. PLANS AND INFORMATION

Priority: Substantive, Nonsignificant
Legal Authority: 43 USC 1331 et seq
CFR Citation: 25 CFR 250
Legal Deadline: None
Abstract: MMS requires companies to submit for approval their exploration and development plans for activities on the Outer Continental Shelf. The companies must submit these plans before they can begin any activities, except preliminary activities. This rule would rewrite the requirements into clearer language and organize them into discrete sections by topic, to make them easier to follow.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC47

1257. INCIDENT REPORTING

Priority: Substantive, Nonsignificant
Legal Authority: 43 USC 1331 et seq
CFR Citation: 30 CFR 250
Legal Deadline: None
Abstract: There continues to be rapid growth in offshore exploration and production activities in the Gulf of Mexico. Since safety is our top priority, we must upgrade our accident investigation functions. To do this we need accurate and timely information. This rule is the only way to require operators, lessees, and permit holders in the Outer Continental Shelf (OCS) to give us a written report about each OCS accident. It will also establish clearer guidelines for accident reporting thresholds and timing.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

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Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC57

1258. ROYALTY RELIEF TERMS

Priority: Substantive, Nonsignificant

Legal Authority: 25 USC 396 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: This rule amends the circumstances that discontinue the existing royalty relief for end-of-life leases and also introduces a categorical royalty relief program for deep gas drilling on existing shallow water tracts.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC58

1259. MMS HEARINGS AND INVESTIGATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1717

CFR Citation: 30 CFR 240

Legal Deadline: None

Abstract: This rule will explain how the Minerals Management Service will conduct hearings and investigations necessary and appropriate to carrying out the Secretary's duties under the Federal Oil and Gas Royalty Management Act of 1982.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC79

1260. APPEALS OF MINERALS MANAGEMENT SERVICE ORDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 242; 30 CFR 290; 43 CFR 4

Legal Deadline: None

Abstract: This rule streamlines the appeals process to facilitate processing appeals within the 33-month deadline required by the Federal Oil and Gas Royalty Simplification and Fairness Act of 1996 (RSFA). It also implements the requirements of OMB Circular A-25, which establishes guidelines for Federal agencies to assess fees to cover the costs of Government-provided services or benefits beyond those accruing to the general public. The proposed rule will: (1) Require the Appellant to file its Notice of Appeal and Statement of Reasons directly with the MMS Appeals Division and file copies with the office that issued the order; (2) implement most of the recommendations made by the Royalty Policy Committee; (3) eliminate the requirement for an MMS Field Report containing MMS's arguments; (4) clarify the right of the States and tribes to participate in the appeals process; and (5) provide for settlement negotiations as required in RSFA.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC80

1261. PROPRIETARY TERMS AND DATA DISCLOSURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250; 30 CFR 251

Legal Deadline: None

Abstract: This rule would modify the proprietary terms for geophysical data and information and any of their derivatives that MMS acquires under 30 CFR part 251. We propose to change the beginning of the proprietary terms from the date of submission to MMS to the date MMS issues the permit. The rule would also allow selective disclosure of geological and geophysical data and information and allow selective disclosure of data and information generated on a lease to persons with a direct interest in issues concerning field determination and royalty relief eligibility.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1010–AC81

1262. DEFINITION OF CONTROL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq; 5 USC 2101 et seq; 5 USC 301 et seq; 5 USC 396 et seq; 5 USC 396a et seq

CFR Citation: 30 CFR 206

Legal Deadline: None

Abstract: MMS is amending the definition of "control" in 30 CFR part 206 based upon the relevance to MMS regulations of the decision National Mining Association v. Department of the Interior, 177 F.3rd 1 (DC Cir., May 28, 1999).

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC88

1263. DOCUMENTS INCORPORATED BY REFERENCE — API RP 14F AND API 510

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule will update a document incorporated by reference and incorporate by reference a new document. Incorporation by reference makes a widely available technical document part of our regulations. The updated reference, API RP 14F, is the fourth edition of the American Petroleum Institute's (API) "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Class 1, Division 1, and Division 2 Locations." The new document, API RP 14 FZ, is titled "Recommended Practice for Design and Installation of Electrical Systems for Fixed and Floating Offshore Petroleum Facilities for Unclassified and Unclassified and Class 1, Zone 0, Zone 1, and Zone 2 Locations."

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1010–AC89

1264. REPORTING AMENDMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2107; 25 USC 396; 30 USC 1023; 30 USC 1751(a); 30 USC 189; 30 USC 190; 30 USC 359; 31 USC 3716; 31 USC 9701; 43 USC 1334; 43 USC 1801; 44 USC 3506(a); 5 USC 301 et seq

CFR Citation: 30 CFR 206; 30 CFR 210; 30 CFR 216; 30 CFR 218

Legal Deadline: None

Abstract: MMS is amending its regulations to: (1) update reporting instructions; (2) eliminate unnecessary report forms; (3) add approved information collections previously omitted; (4) remove the extended due date for production reports submitted electronically; (5) require production reporting on leases and agreements until all production has ceased and all inventory has been disposed of; and (6) eliminate certain reporting assessments and electronic reporting options.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC90

1265. RIGHTS-OF-USE AND EASEMENTS AND PIPELINE RIGHTS-OF-WAY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to modify requirements governing rights-of-use and easement and pipeline rights-of-way in the Outer Continental Shelf. These changes will increase rental rates for pipeline rights-of-way and establish rentals for rights-of-use and easement. The proposed rule will also allow MMS to charge additional payment when the right-of-use and easement or the pipeline right-of-way prevents MMS from making the area available to other companies for exploration and possible development and production. This change is needed because of requests by lessees and pipeline right-of-way holders to use large areas outside of the area covered by their lease and pipeline right-of-way for accessory structures.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC91

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Department of the Interior (DOI)
Minerals Management Service (MMS)

Final Rule Stage

1266. OIL AND GAS DRILLING OPERATIONS

Priority: Other Significant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule will be written in plain English, substantive changes will be incorporated, and the rule will reflect the results of the blowout preventer study.

Timetable:

Action	Date	FR Cite
NPRM	06/21/00	65 FR 38453
NPRM Comment Period End	10/19/00	65 FR 46126
Final Action	06/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC43

1267. PROSPECTING FOR MINERALS OTHER THAN OIL, GAS, AND SULPHUR IN THE OUTER CONTINENTAL SHELF

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 280

Legal Deadline: None

Abstract: This rule will expand the provisions governing research by requiring everyone conducting geological and geophysical scientific research without a permit to file a notice with MMS. These revisions respond to changes in technology and practice.

Timetable:

Action	Date	FR Cite
NPRM	12/08/99	64 FR 68649
NPRM Comment Period End	02/07/00	
Final Action	09/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC48

1268. DECOMMISSIONING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a)

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule will amend MMS' regulations governing operations in the Outer Continental Shelf to update decommissioning requirements. The new layout of the rule follows the logical sequence of plugging a well, decommissioning the platform and pipeline, and clearing the waste site. The proposed rule also updates the requirements to reflect changes in technology. We have restructured the requirements to make the regulations easier to read and understand. The proposed technical changes will help ensure that lessees decommission operations safely and effectively.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 41892
NPRM Comment Period End	10/05/00	
Final Action	06/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC65

1269. OIL AND GAS AND SULPHUR OPERATIONS IN THE OUTER CONTINENTAL SHELF—SAFETY MEASURES AND PROCEDURES FOR PIPELINE MODIFICATIONS AND REPAIRS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: The rule will address problems that arise out of the fact that eventually all pipeline valves leak internally. This is due to abrasion and deposition of operational residues on valve seats. Internal valve leakage poses a potential safety problem to offshore workers at the time pipeline repairs are performed because hydrocarbons and pressure differentials in the lines can pose a significant hazard of fire and explosion. The rule will require that lessees and operators consider and submit in writing the measures they plan to take and the procedures they plan to follow to ensure the safety of company or contract workers and to prevent pollution before beginning a pipeline modification or repair, and it will amend section 250.1006(b)(1) by requiring that a blind flange be installed at the platform end of any pipeline taken out of service to prevent seepage into the line through leaking valves.

Timetable:

Action	Date	FR Cite
NPRM	08/11/01	
NPRM Comment Period End	10/29/01	
Final Action	09/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC75

1270. DOCUMENTS INCORPORATED BY REFERENCE — API SPECIFICATION 2C

Priority: Routine and Frequent

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to incorporate by reference the Fifth Edition of the American Petroleum Institute's Specification for Offshore Cranes into our regulations. MMS is proposing this action to establish a minimum design standard for new

DOI—MMS

Final Rule Stage

cranes installed on fixed platforms on the Outer Continental Shelf (OCS) and to require all existing cranes installed on OCS fixed platforms to be equipped with anti-two block safety devices. This proposed rule would ensure that OCS lessees use the best available and safest technologies for the design and construction of cranes used in the OCS.

Timetable:

Action	Date	FR Cite
NPRM	07/19/01	66 FR 37611
NPRM Comment Period End	10/17/01	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC82

1271. DEALING WITH SUSTAINED CASING PRESSURE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This proposed rulemaking amends subpart E (Oil and Gas Well-Completion Operations) of MMS operating regulations. It describes procedures for dealing with sustained casing pressure in oil and gas wells on the Outer Continental Shelf. Currently lessees must request a departure from MMS regulations to operate a well that has sustained casing pressure. When granting a departure, MMS requires that lessees perform periodic checks and evaluations to ensure that the pressure is not a danger to personnel, equipment, or the environment. This proposed rule will codify these procedures and ensure uniform regulatory practices among MMS regional offices. The proposed changes will also help ensure that lessees will continue to conduct operations in a safe manner.

Timetable:

Action	Date	FR Cite
NPRM	11/09/01	66 FR 56620
Comment Period Extended to 3/9/2002	01/03/02	67 FR 275
NPRM Comment Period End	01/08/02	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC83

1272. DOCUMENTS INCORPORATED BY REFERENCE FOR OFFSHORE FLOATING PRODUCTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: We are proposing to amend our regulations to better address floating offshore platforms that, until now, have not been expressly covered. This will require a complete rewrite of subpart I to include floating production systems. These systems are variously described as column-stabilized units; floating production, storage, and offloading facilities; tension-leg platforms; spars; etc. We are also incorporating into our regulations a body of industry standards pertaining to floating productions systems, and this will save the public the costs of developing government standards.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66851
Comment Period Extended to 3/27/2002	02/12/02	67 FR 6453
NPRM Comment Period End	02/25/02	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC85

1273. TECHNICAL AMENDMENTS

Priority: Info./Admin./Other

Legal Authority: 25 USC 2101 et seq; 25 USC 396 et seq; 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 31 USCA 3335; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 201; 30 CFR 206; 30 CFR 212; 30 CFR 216; 30 CFR 217; 30 CFR 218; 30 CFR 219; 30 CFR 220; 30 CFR 227; 30 CFR 228; 30 CFR 230; 30 CFR 241; 30 CFR 243

Legal Deadline: None

Abstract: MMS is amending its regulations to reflect updated cross-references, organization names, publication titles, and other administrative changes.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC87

1274. SUSPENSION OF OPERATIONS FOR EXPLORATION UNDER SALT SHEETS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is proposing to modify requirements governing suspensions of operations for oil and gas leases in the Outer Continental Shelf (OCS). There are instances where oil and gas companies begin to conduct timely analysis of geophysical data early in the

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lease term; however, this data may be inconclusive because of problems caused by the existence of salt sheets. In such cases, the proposed rule will allow companies to apply for a suspension to avoid the possibility of having to drill a well before completing the necessary geophysical analysis. In return for the consideration for additional time to analyze geophysical data under the salt sheet, the lessee must show they have made and will continue to make substantial efforts and financial commitment in the processing and reprocessing of their geophysical data.

Timetable:

Action	Date	FR Cite
NPRM	01/09/02	67 FR 1171
NPRM Comment Period End	02/08/02	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC92

1275. DOCUMENTS INCORPORATED BY REFERENCE - API RP 14C

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: MMS is updating one document incorporated by reference in regulations governing oil, gas, and sulphur operations in the Outer Continental Shelf (OCS). This final rule revises the American Petroleum Institute (API) Recommended Practice (RP) 14C (API RP 14C), Sixth Edition, March 1998, currently incorporated by reference into our regulations. We are updating the API RP 14C document to the Seventh Edition, March 2001. The new edition will allow lessees to use updated industry standard technologies while operating in the OCS.

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC93

1276. OUTER CONTINENTAL SHELF OIL AND GAS LEASING - CLARIFYING AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 260

Legal Deadline: None

Abstract: This rule proposes clarifying amendments to regulations on OCS bidding systems in 30 CFR part 260, revised as of July 1, 2001. The proposed amendments make explicit that water depth and production timing on leases issued after 2000 and placed on a field with leases issued earlier play no role in the way we determine the royalty suspension volume applicable to eligible leases on the field.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6454
NPRM Comment Period End	03/14/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1010–AC94

1277. DOCUMENT INCORPORATED BY REFERENCE—API 510—PRESSURE VESSEL INSPECTION CODE: MAINTENANCE INSPECTION, RATING, REPAIR, AND ALTERATION

Priority: Routine and Frequent

Legal Authority: 43 USC 1331 et seq

CFR Citation: 30 CFR 250

Legal Deadline: None

Abstract: This rule proposes adding a document to be incorporated by reference into MMS's regulations governing oil and gas and sulphur operations in the outer continental shelf (OCS). This revision will ensure that lessees use the best available and safest technologies while operating in the OCS. The new document, API 510, is titled "Pressure Inspection Code: Maintenance Inspection, Rating, Repair, and Alteration."

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66848
NPRM Comment Period End	02/25/02	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray, Geologist, Department of the Interior, Minerals Management Service, 381 Elden Street, Herndon, VA 20170
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RIN: 1010–AC95

1278. DEEP WATER ROYALTY RELIEF FOR OUTER CONTINENTAL SHELF OIL AND GAS LEASES ISSUED AFTER 2000

Priority: Other Significant

Legal Authority: 30 USC 1001 et seq; 30 USC 1701 et seq; 30 USC 181 et seq; 30 USC 351 et seq; 31 USC 9701; 43 USC 1301 et seq; 43 USC 1331 et seq; 43 USC 1801 et seq

CFR Citation: 30 CFR 203

Legal Deadline: None

Abstract: The rule explains who is eligible for relief, how they apply for relief, and the criteria they must meet to receive relief. The proposed rule makes a new class of leases, those sold after 2000 in the central and western Gulf of Mexico (GOM), eligible to apply for royalty suspensions to supplement any that may have been included in their original lease terms. Also, it updates certain requirements and authorizes royalty relief in special situations.

Statement of Need: Because of the variation of geologic and economic circumstance standard leasing terms do not encourage development of all potential reserves in the deep water GOM. The Deep Water Royalty Relief Act (DWRRA)(Pub. L. 104-58) authorized the Minerals Management Service (MMS) to promote development of marginal reserves. The existing regulations at 30 CFR 203 give detailed instructions on how deep water leases issued before the DWRRA may apply and qualify for royalty suspension on a case-by-case basis. This proposed rule revises and extends these instructions to certain additional categories of OCS leases, especially those issued after 2000. Revisions to the existing instructions reflect experience with cases over the last 5 years. Also the proposed rule identifies circumstances when MMS may consider special royalty relief outside our established end-of-life and DWRR programs.

Summary of Legal Basis: The OCS Lands Act is the basis for our regulations on suspending or lowering royalties on producing OCS leases. The DWRRA is the basis for regulations to reduce or eliminate royalty on non-producing leases in the GOM west of 87 degrees, 30 minutes West longitude. It gives the Secretary of the Interior this authority to (1) promote development or increased production on producing and non-producing leases or (2) encourage production of marginal resources on producing and non-producing leases.

Alternatives: The specificity with which the current regulations were written was driven by the DWRRA to facilitate planning by potential applicants. Those regulations do not leave room for anything but a rulemaking fix. Otherwise, those new leases that legitimately need development assistance would be relegated to seeking relief under ad hoc special relief rules. Alternatively an extension of the DWRRA terms to fill a perceived gap may give future deep water lessees royalty-suspension terms that are not sufficiently responsive to current market conditions. Moreover, it is fairer to both applicants and taxpayers to establish clear and coherent rules by which individual leases can obtain the amount of royalty relief actually needed to induce development.

Anticipated Cost and Benefits: This rule extends the benefit of discretionary royalty relief to certain OCS leases after November 2000 that qualify as marginally uneconomic. Lessees who choose to seek this discretionary royalty relief pay user fees that range from $12,000 to $49,000 per application, in addition to their internal costs of assembling the necessary data. Benefits from this rule come from production that otherwise would not occur or be deferred indefinitely. To date, one field qualifying for relief has gone into production and added 15 million barrels of oil equivalent to reserves in the GOM. Another on the verge of starting development would add 400 billion cubic feet of natural gas to reserves that otherwise would not be produced in the GOM.

Risks: The risk of not modifying the discretionary royalty relief rule is that some marginal resources will be bypassed. Alternatively, royalty receipts could fall because overly generous relief will be given to many leases to avoid the loss in production by a few.

Timetable:

Action	Date	FR Cite
NPRM	11/16/00	65 FR 69259
Comment Period Extended	12/15/00	65 FR 78431
Final Rule	01/15/02	67 FR 1862
Final Rule Effective	02/14/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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Email: marshall.rose@mms.gov

RIN: 1010–AC71

Department of the Interior (DOI)
Minerals Management Service (MMS) Completed Actions

1279. REQUIREMENTS GOVERNING SURETY BONDS FOR THE OUTER CONTINENTAL SHELF

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 256

Completed:

Reason	Date	FR Cite
Final Action	12/03/01	66 FR 60147
Final Action Effective	01/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kumkum Ray
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Email: kumkum_ray.mms.gov

RIN: 1010–AC68

1280. SOLID MINERALS REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 206; 30 CFR 210; 30 CFR 216; 30 CFR 218

Completed:

Reason	Date	FR Cite
Final Action	08/30/01	66 FR 45760
Final Action Effective	10/01/01	

DOI—MMS **Completed Actions**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carol Shelby
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RIN: 1010–AC86

BILLING CODE 4310–MR–S

Department of the Interior (DOI) **Proposed Rule Stage**
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1281. ABANDONED COAL REFUSE SITES—TITLE I

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 785; 30 CFR 829; 30 CFR 830; 30 CFR 845; 30 CFR 870

Legal Deadline: None

Abstract: OSM intends to propose new rules governing permitting and performance standards for the recovery of coal from abandoned coal refuse piles. The rules are required to implement section 2503(e) of the Energy Policy Act of 1992.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Inhi Hong, Engineer, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, MS 120-SIB, 1951 Constitution Avenue NW., Washington, DC 20240
Phone: 202 208-2628

RIN: 1029–AB70

1282. CONTEMPORANEOUS RECLAMATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 773; 30 CFR 780; 30 CFR 816

Legal Deadline: None

Abstract: This rule will amend our regulations to ensure that coal mine operators reclaim their operations in a contemporaneous manner using site-based standards.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Craynon, Chief, Technology Development Staff, Department of the Interior, Office of Surface Mining Reclamation and Enforcement
Phone: 202 208-2866

RIN: 1029–AB79

1283. EMERGENCY ACTION PLANS—IMPOUNDMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 816; 30 CFR 817

Legal Deadline: None

Abstract: This rule amends requirements governing impoundments meeting the criteria in 30 CFR 816.49(a)(12) and 817.49(a)(12). If an inspection of these impoundments reveals potential hazards, operators must develop emergency procedures (called an emergency action plan, or EAP). The proposed rule would specify what must be included in an EAP. The rule would also require operators to develop an EAP before operating any of these impoundments that are located within 500 feet of an underground coal mine.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Larry Trainor, Mining Engineer, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2617

RIN: 1029–AB92

1284. ABANDONED MINE LAND RECLAMATION NOTICES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 875

Legal Deadline: None

Abstract: This rule will eliminate the requirement to publish a Federal Register notice announcing the receipt of, and seeking comments on, applications for construction of public facilities that are funded from the abandoned mine land fund. The publication requirement will become a discretionary action. Previous Federal Register notices have generated little interest from the public and have added delays to the construction of AML projects.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Danny Lytton, Program Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Room 120 SIB, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2788
TDD Phone: 202 219-2737
Fax: 202 219-0239

RIN: 1029–AB99

1285. • REVEGETATION

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 816

Legal Deadline: None

Abstract: This rule will revise the topsoil replacement and revegetation standards. The revisions will encourage species diversity on reclaimed lands, remove a possible impediment to the use of woody vegetation in revegetating mined land, and provide similar revegetation success standards in both areas of more than 26 inches of precipitation and in areas of less than 26 inches of precipitation.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Scott Boyce, Agronomist, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, Room 203 SIB, 1951 Constitution Avenue NW., Washington, DC 20240
Phone: 202 208-2986
TDD Phone: 202 208-2737
Fax: 202 208-3276
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RIN: 1029–AC02

DOI—OSMRE **Proposed Rule Stage**

1286. • PLACEMENT OF EXCESS SPOIL

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 701; 30 CFR 773; 30 CFR 780; 30 CFR 781; 30 CFR 785; 30 CFR 816; 30 CFR 817

Legal Deadline: None

Abstract: This rule will establish permit application requirements and review procedures for applications that propose to place excess spoil from surface coal mining operations into waters of the United States. In addition, it will modify the backfilling and grading regulations to minimize the creation of excess spoil and it will revise the regulations governing surface coal mining operations within 100 feet of a perennial or intermittent stream to more closely track the underlying statutory provisions.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Craynon, Chief, Technology Development Staff, Department of the Interior, Office of Surface Mining Reclamation and Enforcement
Phone: 202 208-2866

RIN: 1029–AC04

Department of the Interior (DOI) **Final Rule Stage**
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1287. INDIAN LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 700; 30 CFR 740; 30 CFR 750

Legal Deadline: None

Abstract: OSM regulates mining on Indian lands and the State regulates mining on non-Indian lands. OSM proposes to amend its regulations to clarify that the definition of "Indian lands" at 30 CFR 700.5 includes individual Indian trust allotments located within an approved tribal land consolidation area. The proposed clarification was required under the terms of a settlement agreement between the Department of the Interior and the Navajo Nation and Hopi Tribe to settle the tribes' challenges to a May 1989 Indian lands rulemaking. OSM has developed a preliminary draft rule that specifies that allotted lands would qualify as Indian lands for purposes of the Surface Mining Control and Reclamation Act when OSM determines, on a case-by-case basis, that the allotments are supervised by an Indian tribe.

Timetable:

Action	Date	FR Cite
NPRM	02/19/99	64 FR 8464
NPRM Comment Period End	06/21/99	64 FR 18585
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Suzy Hudak, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, 1951 Constitution Avenue NW, Washington, DC 20240
Phone: 202 208-2713

RIN: 1029–AB83

Department of the Interior (DOI) **Completed Actions**
Office of Surface Mining Reclamation and Enforcement (OSMRE)

1288. ELECTRONIC FILING OF THE OSM-1 FORM

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 870

Completed:

Reason	Date	FR Cite
Final Action	05/23/01	66 FR 28634

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sean Spillane
Phone: 303 236-0330

RIN: 1029–AB95

1289. CIVIL PENALTY ADJUSTMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 30 CFR 723; 30 CFR 724; 30 CFR 845; 30 CFR 846

Completed:

Reason	Date	FR Cite
Final Action	11/21/01	66 FR 58644

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andy DeVito
Phone: 202 208-2701

RIN: 1029–AC00

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DOI—OSMRE — **Completed Actions**

1290. • CHANGES OF ADDRESS

Priority: Info./Admin./Other

Legal Authority: 30 USC 1201 et seq

CFR Citation: 30 CFR 724.18; 30 CFR 846.17

Legal Deadline: None

Abstract: This rule changes the address to use when writing to the Office of Hearings and Appeals.

Timetable:

Action	Date	FR Cite
Final Action	02/05/02	67 FR 5203

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andy DeVito, Regulatory Analyst, Department of the Interior, Office of Surface Mining Reclamation and Enforcement, MS 10 SIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 208-2701

RIN: 1029–AC03

BILLING CODE 4310–05–S

Department of the Interior (DOI)
Bureau of Reclamation (RB) — **Proposed Rule Stage**

1291. • AUTHORIZATION OF LAW ENFORCEMENT OFFICERS AT RECLAMATION FACILITIES

Priority: Other Significant

Legal Authority: 16 USC 4602-31; 43 USC 373b

CFR Citation: 43 CFR 422

Legal Deadline: None

Abstract: The Bureau of Reclamation is issuing this rule to establish criteria for the use of non-Reclamation law enforcement personnel within a Bureau project or on Reclamation lands. We are required by law to issue this rule in order to provide for the security of dams, facilities, and resources under our jurisdiction.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry Todd, Director of Operations, Department of the Interior, Bureau of Reclamation, Room 7465 MIB, 1849 C Street NW, Washington, DC 20240
Phone: 202 513-0615
Fax: 202 513-0314

RIN: 1006–AA42

Department of the Interior (DOI)
Bureau of Reclamation (RB) — **Final Rule Stage**

1292. • ACREAGE LIMITATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 301

CFR Citation: 43 CFR 426.24

Legal Deadline: None

Abstract: The Office of Hearings and Appeals has recently moved. This rule changes the Office's address to reflect this move.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Rizzi, Land and Water Regulatory Specialist, Department of the Interior, Bureau of Reclamation, MS D-5200, PO Box 25007, Denver, CO 80225
Phone: 303 445-2400
Fax: 303 445-6470

RIN: 1006–AA43

1293. • TRESPASS ON RECLAMATION LANDS AND FACILITIES

Priority: Other Significant

Legal Authority: PL 107-69; PL 102-575

CFR Citation: 43 CFR 423

Legal Deadline: None

Abstract: This rule establishes the minimum requirements necessary to ensure the safety of the public, Reclamation employees, dams, facilities, and other resources under our jurisdiction. We are developing a comprehensive public conduct rule that will replace this rule at a later date. We will use comments received on this rule to aid us in drafting a proposed public conduct rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diana Trujillo, Land Management Policy Analyst, Department of the Interior, Bureau of Reclamation, D-5300 Bldg. 67, PO Box 25007, Denver, CO 80225
Phone: 303 445-2914
Fax: 303 445-6690

RIN: 1006–AA44

BILLING CODE 4310–09–S

Department of the Interior (DOI)
Bureau of Land Management (BLM) — **Proposed Rule Stage**

1294. SALES—FEDERAL LAND POLICY AND MANAGEMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701; 43 USC 1713

CFR Citation: 43 CFR 2710

Legal Deadline: None

Abstract: This rule will amend 43 CFR part 2710 to provide for improved administration of sales of public land under the Federal Land Policy and Management Act. It will add a provision to allow the sale of public land to State or local government entities for affordable housing. Such sales may be for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AB77

1295. DESERT LAND ENTRIES

Priority: Info./Admin./Other

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2520

Legal Deadline: None

Abstract: This rule will transfer much of the regulation on entries of desert land to the BLM Manual if the underlying statute is not repealed as no longer practical.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C. Street, NW., Washington, DC 20240
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RIN: 1004–AC56

1296. DISPOSAL OF RESERVED MINERALS UNDER THE STOCK RAISING HOMESTEAD ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 299

CFR Citation: 43 CFR 3814

Legal Deadline: Final, Statutory, October 13, 1993.

Abstract: This rule will establish new procedures for mineral exploration and development under the General Mining Law of 1872 on lands where the surface was patented under the Stock Raising Homestead Act of 1916 and the mineral estate remains reserved to the Federal Government.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
Phone: 202 452-0355
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RIN: 1004–AC59

1297. MINERAL PATENT APPLICATIONS; ADVERSE CLAIMS, PROTESTS, AND CONFLICTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 22 to 54; 43 USC 1201; 43 USC 1740

CFR Citation: 43 CFR 3730; 43 CFR 3740; 43 CFR 3820; 43 CFR 3860; 43 CFR 3870

Legal Deadline: None

Abstract: This rule will revise the filing and administrative procedures for mineral patent applications. It will also revise the procedures for filing adverse claims or protests against mineral patent applications and for mineral-in-character challenges to non-mineral land entries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Barbara Gauthier-Warinner, Mineral Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD32

1298. CONSERVATION; HELIUM LEASING

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq; 50 USC 167

CFR Citation: 43 CFR 16; 43 CFR 3196

Legal Deadline: None

Abstract: This rule will redesignate, amend, and extend the regulations on conservation of helium to facilitate administration and implementation of provisions in the Helium Privatization Act. The rule will move these regulations to 43 CFR subpart 3196 to consolidate helium-related regulations in one area for ease in finding and complying with them.

Timetable:

Action	Date	FR Cite
ANPRM	12/19/00	65 FR 79325
ANPRM Comment Period End	03/26/01	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Joseph B. Peterson, Chief, Division of Helium Resources, Department of the Interior, Bureau of Land Management, Amarillo Field Office, 801 S. Fillmore, Suite 500, Amarillo, TX 79101
Phone: 806 324-2614

RIN: 1004–AD35

1299. HAZARDOUS MATERIALS COMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1701 et seq

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CFR Citation: 43 CFR 1890

Legal Deadline: None

Abstract: This rule will clarify the respective responsibilities of BLM and the holders of various BLM authorizations with regard to releases of hazardous materials and other violations of environmental law caused by the holder or the holder's operator on public lands.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Cynthia Ellis, Regulatory Analyst, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD38

1300. GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 118(d); 43 USC 1701 et seq; 43 USC 1901 et seq; 43 USC 315 et seq; 7 USC 1012

CFR Citation: 43 CFR 4100

Legal Deadline: None

Abstract: This rule will remove provisions for conservation use of grazing privileges. These provisions were determined by the Federal Circuit Court to be not consistent with the statutory authority of the Secretary of the Interior. The rule will also correct errors and omissions, and provide clarification.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth M. Visser, Rangeland Management Specialist, Department of the Interior, Bureau of Land Management, 314 L Street, Washington, DC 20240
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Email: kenneth_visser@blm.gov

RIN: 1004–AD42

1301. COAL MANAGEMENT: NONCOMPETITIVE LEASES; MANAGEMENT PROVISIONS AND LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 181 et seq; 43 USC 1740; PL 106-463

CFR Citation: 43 CFR 3430; 43 CFR 3470

Legal Deadline: None

Abstract: This rule will increase the maximum acreage of Federal coal leases that may be leased to one entity in any one State from 46,080 to 75,000 acres to conform with legislation enacted in 2000, and to correct a technical error in the regulations by removing the requirements of a public hearing and publication of a notice of availability of environmental analysis documents for coal lease modifications. It will also raise the nationwide acreage limitation on coal leases that one entity can hold from 100,000 to 150,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	01/18/02	67 FR 2618
NPRM Comment Period End	02/19/02	
NPRM Comment Period Reopened	04/12/02	67 FR 17962
NPRM Comment Period End	05/13/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD43

1302. PERMITS FOR RECREATION ON PUBLIC LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2930

Legal Deadline: None

Abstract: This rule would add a section on prohibited acts to the regulations on campgrounds and other fee areas to facilitate law enforcement at these sites.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lee Larson, Recreation Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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Email: lee_larson@blm.gov

RIN: 1004–AD45

1303. DISCLAIMERS OF INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 1864

Legal Deadline: None

Abstract: BLM proposes to make two minor amendments to the recordable disclaimer regulations at 43 CFR 1864.1-1 and .1-3. Presently the regulations state that any present owner of record may file an application to have a disclaimer of interest issued. Neither FLPMA nor its implementing regulations define the term present owner of record. Neither the Federal Courts nor the Interior Board of Land Appeals have defined or elaborated on the phrase. As such, BLM wishes to amend the regulations to eliminate the phrase. Such an amendment would prevent any legal challenge to BLM's interpretation of the phrase to include state applications.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8216
NPRM Comment Period End	04/23/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C. Street, NW., Washington, DC 20240
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Email: jeff_holdren@blm.gov

RIN: 1004–AD50

1304. • SURFACE MANAGEMENT; SEGREGATED OR WITHDRAWN LANDS

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1280; 30 USC 22; 30 USC 612; 43 USC 1201; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1781; 43 USC 1782

CFR Citation: 43 CFR 3809

Legal Deadline: None

Abstract: This rule will provide that a mineral examination is not required for claims on specific categories of withdrawn lands in Alaska before approving plans of operations or allowing notice-level mining to begin, but will be discretionary with BLM on those lands. For mining claims on lands withdrawn for inclusion in land conservation systems like wildnerness, wild and scenic rivers, etc., mineral examinations will remain mandatory.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5198
Email: michael_schwartz@blm.gov

RIN: 1004–AD51

1305. • MINING CLAIMS UNDER THE GENERAL MINING LAWS; SURFACE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1280; 30 USC 22; 30 USC 612; 43 USC 1201; 43 USC 1732; 43 USC 1733; 43 USC 1740; 43 USC 1781; 43 USC 1782

CFR Citation: 43 CFR 3809

Legal Deadline: None

Abstract: This rule will amend existing regulations by removing certain provisions of the regulations and restoring others to those in effect on January 19, 2001, intending to prevent unnecessary or undue degradation of BLM-administered lands by mining operations authorized under the mining laws. The approach BLM will take will balance the Nation's need to maintain reliable sources of strategic and industrial minerals, while ensuring protection of the environment and natural resources on public lands. The rule will make the hardrock mining regulations consistent with the recommendations of the National Research Council and protect the Federal Government from financial risk if operators are unable to perform reclamation.

Timetable:

Action	Date	FR Cite
NPRM	10/30/01	66 FR 54863
NPRM Comment Period End	02/15/02	
NPRM Comment Period Reopened	04/12/02	67 FR 17962
NPRM Comment Period End	05/13/02	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael H. Schwartz, Group Manager, Regulatory Affairs, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5198
Email: michael_schwartz@blm.gov

RIN: 1004–AD53

1306. • WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 1133; 43 USC 1733; 43 USC 1740; 43 USC 1782

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule will add provisions on use of timber on mining claims and clarify procedures on issuing patents for mining claims.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5189
Email: jeff_jarvis@blm.gov

Related RIN: Related To 1004-AB69

RIN: 1004–AD54

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Final Rule Stage

1307. COST RECOVERY; MINERAL FILINGS AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 1001 et seq; 30 USC 181 et seq; 30 USC 22; 30 USC 351 to 360; 31 USC 9701; 43 USC 1734; 50 USC app 565

CFR Citation: 43 CFR 3100; 43 CFR 3200; 43 CFR 3400; 43 CFR 3500; 43 CFR 3600; 43 CFR 3700; 43 CFR 3800

Legal Deadline: None

Abstract: This rule will amend regulations for user fees for locatable minerals, mineral materials, and leasable minerals (solids and fluids) to adjust current fees or establish new fees in accordance with title V of the Independent Offices Appropriations Act of 1952 (user charges), OMB Circular A-25 User Charges and section 304 of the Federal Land Policy and Management Act of 1976.

Timetable:

Action	Date	FR Cite
NPRM	12/15/00	65 FR 78440
NPRM Comment Period End	02/13/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Durga N. Rimal, Geologist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AC64

1308. RIGHTS-OF-WAY, PRINCIPLES AND PROCEDURES; RIGHTS-OF-WAY UNDER THE MINERAL LEASING ACT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 2800; 43 CFR 2880

Legal Deadline: None

Abstract: The rule will amend the regulations governing rights-of-way issued under both the Federal Land Policy and Management Act and the Mineral Leasing Act by revising cost recovery policies and procedures and adjusting cost recovery fees to reflect cost increases since the current regulations became effective in 1987. The rule will also eliminate the automatic exemptions from cost recovery for Federal agencies except when they are exempted by law. It will also establish policies on paying rent in advance and a financial penalty for paying rent late.

Timetable:

Action	Date	FR Cite
NPRM	06/15/99	64 FR 32106
NPRM Comment Period End	10/13/99	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ron Montagna, Realty Specialist, Department of the Interior, Bureau of Land Management, 260, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AC74

1309. INDIAN ALLOTMENTS

Priority: Info./Admin./Other

Legal Authority: 25 USC 334; 25 USC 336; 43 USC 1201

CFR Citation: 43 CFR 2530

Legal Deadline: None

Abstract: This rule will convert existing regulations to plain English and remove those portions that relate to procedural matters.

Timetable:

Action	Date	FR Cite
NPRM	10/16/96	61 FR 53887
NPRM Comment Period End	09/13/99	64 FR 38172
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C. Street, NW., Washington, DC 20240
Phone: 202 452-7779
Fax: 202 452-7708
Email: jeff_holdren@blm.gov

RIN: 1004–AC77

1310. USE AUTHORIZATIONS (RECREATION)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 460l-6a; 43 USC 1740

CFR Citation: 43 CFR 8370

Legal Deadline: None

Abstract: This rule will revise the regulations on the issuance of special recreation permits for purposes of clarification and updating and will add regulations on the issuance of recreation use permits for the use of fee areas.

Timetable:

Action	Date	FR Cite
NPRM	05/16/00	65 FR 31233
NPRM Comment Period End	07/17/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lee Larson, Recreation Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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Email: lee_larson@blm.gov

RIN: 1004–AD25

1311. LOCATION RECORDING AND MAINTENANCE OF MINING CLAIMS AND SITES

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 30 USC 22 to 54; 43 USC 1201; 43 USC 1740

CFR Citation: 43 CFR 3710; 43 CFR 3730; 43 CFR 3810; 43 CFR 3820; 43 CFR 3830; 43 CFR 3840; 43 CFR 3850

Legal Deadline: None

Abstract: This rule will amend the mining claim recordation and annual fee collection procedures to conform to the fiscal year 1999 Interior and Related Agencies Appropriations Act. It will also consolidate duplicative portions of 43 CFR part 3700 et seq. into 43 CFR part 3800 et seq., and remove the duplicative portions of these regulations from title 43. The interim final rule only implemented the statutory changes in the FY 99 Appropriations Act.

Timetable:

Action	Date	FR Cite
NPRM	08/27/99	64 FR 47023
Interim Final Rule	08/27/99	64 FR 47018
NPRM Comment Period End	10/26/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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Email: roger_haskins@blm.gov

RIN: 1004–AD31

1312. WILDERNESS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1740

CFR Citation: 43 CFR 6300

Legal Deadline: None

Abstract: This rule would add provisions on use of fixed anchors for rock climbing in wilderness areas.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Jeff Jarvis, Wilderness Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
Phone: 202 452-5189
Email: jeff_jarvis@blm.gov

Related RIN: Split From 1004-AD54, Related To 1004-AB69

RIN: 1004–AD46

1313. • LOCATION RECORDING AND MAINTENANCE OF MINING CLAIMS OR SITES

Priority: Info./Admin./Other

Legal Authority: 30 USC 621 to 625; 43 USC 1701 et seq; 30 USC 28f to 28k

CFR Citation: 43 CFR 3730; 43 CFR 3820; 43 CFR 3830; 43 CFR 3850

Legal Deadline: None

Abstract: This rule will respond to a recent law extending until September 30, 2003, the provisions that (1) require claimants to pay location and maintenance fees on unpatented mining claims or sites, and (2) allow annual maintenance fee waivers for small miners. The rule will change dates in the regulations to conform to expiration dates in the law. BLM collected these fees and provided for waivers under the existing regulations based on a previous law that expired on September 30, 2001.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roger Haskins, Mining Law Specialist, Department of the Interior, Bureau of Land Management, 1849 C Street NW., Washington, DC 20240
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Email: roger_haskins@blm.gov

RIN: 1004–AD52

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Long-Term Actions

1314. LEASES, PERMITS, AND EASEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 43 USC 1732; 43 USC 1740

CFR Citation: 43 CFR 2920

Legal Deadline: None

Abstract: This rule will amend the existing regulations to provide for improved administration of leases, permits and easements under the Federal Land Policy and Management Act.

Timetable:

Action	Date	FR Cite
NPRM	11/21/90	55 FR 48810
NPRM Comment Period End	01/22/91	
Second NPRM	02/09/95	60 FR 7878
Second NPRM Comment Period End	04/10/95	
Final Rule for Minimum Impact Land Use Permits Only	06/24/96	61 FR 32351
Final Rule Effective for Minimum Impact Land Use Permits Only	07/24/96	
Third NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C. Street, NW., Washington, DC 20240
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Fax: 202 452-7708
Email: jeff_holdren@blm.gov

RIN: 1004–AB51

1315. COALBED METHANE DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13368

CFR Citation: 43 CFR 3170

Legal Deadline: Final, Statutory, October 24, 1995.

Abstract: The rule will implement section 1339 of the Energy Policy Act of 1992. It will prevent conflicts in ownership of coalbed methane from impeding development of that resource by requiring pooling of development and payment of the proceeds into an escrow account until the ownership issue is resolved by a State entity of competent jurisdiction. The rule will also allow States to avoid the Federal regulations by promulgating their own regulations that substantially comply with Federal requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/15/95	60 FR 47920
NPRM Comment Period End	11/14/95	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Agency Contact: David R. Stewart, Mineral Resources, Department of the Interior, Bureau of Land Management
Phone: 703 440-1728
Email: dave_stewart@blm.gov

RIN: 1004–AC27

1316. CAREY ACT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 641 et seq

CFR Citation: 43 CFR 2610

Legal Deadline: None

Abstract: This rule will update these regulations as they are inconsistent with present-day management policies. Application of these provisions of the Carey Act is rarely feasible due to limited water and suitable lands.

Timetable:

Action	Date	FR Cite
NPRM	09/10/96	61 FR 47725

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Action	Date	FR Cite
NPRM Comment Period End	10/10/96	
Supplementary NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff O. Holdren, Deputy Group Manager, Department of the Interior, Bureau of Land Management, 1849 C. Street, NW., Washington, DC 20240
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Fax: 202-452-7708
Email: jeff_holdren@blm.gov

RIN: 1004–AC80

1317. OIL AND GAS LEASING AND OPERATIONS

Priority: Other Significant

Legal Authority: 30 USC 181 et seq

CFR Citation: 43 CFR 3100 to 3180

Legal Deadline: None

Abstract: This rule will revise BLM's current Federal oil and gas leasing and operations regulations, except those concerning drainage (section 3100.2-2), combined hydrocarbon leasing (part 3140) and oil and gas leasing in the National Petroleum Reserve—Alaska (part 3130). The rule will: (1) Cite industry standards and incorporate them by reference rather than repeat those standards in the rule; (2) incorporate the requirements of the Onshore Oil and Gas Orders and national notices to lessees into the regulations to eliminate overlap with current regulations; (3) use performance standards in certain places instead of prescriptive requirements to allow more flexibility for operators and to protect the environment and Federal royalty interests; (4) increase certain bonding requirements and (5) eliminate redundancies, clarify procedures and regulatory requirements and streamline procedures.

Statement of Need: This rulemaking complies with the requirements of the Government Performance and Results Act, the recommendations of the National Performance Review, and other initiatives. It will be presented in a user-friendly format, presented by process rather than by subject matter.

Summary of Legal Basis: The Mineral Leasing Act gives BLM the authority to issue and administer the terms of oil and gas leases on Federal lands, to conduct inspections of drilling operations and to promulgate and enforce regulations pertaining to oil and gas leasing and operations. BLM is the only Federal agency with authority to issue leases for publicly owned oil and gas resources.

Alternatives: The only alternative to the proposed regulations would be to continue to operate under the existing regulations. These regulations are not performance-based and are at times ambiguous and hard to understand. Further, the important information found in Onshore Operating Orders is published separately from the regulations and at irregular intervals.

Anticipated Cost and Benefits: BLM anticipates the following benefits: (1) More clearly written rules will be better understood by both oil and gas lessees and operators and members of the general public; (2) performance standards, rather than prescriptive requirements, will allow lessees and operators and BLM greater flexibility to deal with unique geological or engineering circumstances within the standards set by the rule; and (3) streamlining and clarifying procedures will result in better customer service and decreased time and money for both BLM and the user public.

Risks: The public may misunderstand one or more performance standards. BLM will publish user guides that explain in detail the standards and will provide examples of how operators might meet specific standards.

Timetable:

Action	Date	FR Cite
NPRM	12/03/98	63 FR 66840
NPRM Comment Period End	07/19/99	64 FR 29256
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Local

Agency Contact: Ian Senio, Regulatory Analyst, Department of the Interior, Bureau of Land Management, MS 401, Regulatory Management Team (WO-630), 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AC94

1318. APPEALS PROCEDURES; HEARINGS PROCEDURES

Priority: Info./Admin./Other

Legal Authority: 43 USC 1701; 43 USC 1740

CFR Citation: 43 CFR 1840; 43 CFR 1850

Legal Deadline: None

Abstract: BLM proposes to amend its regulations that govern administrative review procedures for protests of proposed decisions, contested appeals of BLM decisions, and hearings on the record. The proposed regulations would provide more consistent procedures for administrative review of BLM decisions, and would clarify when and how BLM decisions go into effect and whether an appeal will stay the effectiveness of a BLM decision.

Timetable:

Action	Date	FR Cite
NPRM	10/17/96	61 FR 54120
NPRM Comment Period End	01/17/97	61 FR 58160
Second NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Ellis, Regulatory Analyst, Department of the Interior, Bureau of Land Management, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AC99

1319. SUPPLEMENTARY RULES FOR PUBLIC DEMONSTRATIONS AT GRAND STAIRCASE-ESCALANTE NATIONAL MONUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 43 CFR 8365.1-6

CFR Citation: 43 CFR 8365

Legal Deadline: None

Abstract: This interim final rule would require a permit for public demonstrations at Grand Staircase-Escalante National Monument and associated facilities, and establish procedures for obtaining such a permit. It would also provide for some locations to be designated as open for demonstrations, and others to be closed to protect sensitive resources and public health and safety.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/01/00	65 FR 53516
Interim Final Rule Comment Period End	10/02/00	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ted Hudson, Regulatory Analyst, Department of the Interior, Bureau of Land Management, Room 420, 1849 C Street N.W., Washington, DC 20240
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RIN: 1004–AD40

Department of the Interior (DOI)
Bureau of Land Management (BLM)

Completed Actions

1320. OIL AND GAS LEASING; NATIONAL PETROLEUM RESERVE, ALASKA—UNIT AGREEMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 3130; 43 CFR 3135

Completed:

Reason	Date	FR Cite
Final Action	04/11/02	67 FR 17866
Final Action Effective	06/10/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erick Kaarlela
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RIN: 1004–AD13

1321. MINERAL MATERIALS DISPOSAL

Priority: Substantive, Nonsignificant

CFR Citation: 43 CFR 3600; 43 CFR 3610; 43 CFR 3620

Completed:

Reason	Date	FR Cite
Final Action	11/23/01	66 FR 58892
Final Action Effective	12/24/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Durga N. Rimal
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RIN: 1004–AD29

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Department of the Interior (DOI)
Office of the Secretary (OS)

Final Rule Stage

1322. WILD AND SCENIC RIVERS

Priority: Other Significant

Legal Authority: 16 USC 1278

CFR Citation: 43 CFR 39

Legal Deadline: None

Abstract: This rule would establish uniform standards and procedures by which the Department of the Interior, through its agencies that administer rivers in the National Wild and Scenic Rivers System (Bureau of Land Management, Fish and Wildlife Service, and National Park Service), will consider Federal licensing of, or assistance to, water resources projects affecting designated Wild and Scenic Rivers or congressionally authorized Study Rivers.

Timetable:

Action	Date	FR Cite
NPRM	12/09/98	63 FR 67834
NPRM Comment Period End	02/08/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: John Haubert, Outdoor Recreation Planner, Department of the Interior, Office of the Secretary, Room 3230, 1849 C Street NW., Washington, DC 20240
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RIN: 1093–AA08

[FR Doc. 02–8353 Filed 05–10–02; 8:45 am]

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Part XI

Department of Justice

Semiannual Regulatory Agenda

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DEPARTMENT OF JUSTICE (DOJ)

DEPARTMENT OF JUSTICE

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28 CFR Ch. I

Regulatory Agenda

AGENCY: Department of Justice.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Department of Justice is publishing its spring 2002 regulatory agenda pursuant to E.O. 12866 "Regulatory Planning and Review," 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. sections 601-612 (1988).

FOR FURTHER INFORMATION CONTACT: Robert Hinchman, Senior Counsel, Office of Policy Development, Department of Justice, Room 4258, 950 Pennsylvania Avenue NW., Washington, DC 20530, (202) 514-8059.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) requires that, each year, the Department publish a list of those regulations that have a significant economic impact upon a substantial number of small entities and are to be reviewed under section 610 of the Act during the succeeding 12 months. This edition of the Department's Unified Agenda includes three regulations requiring such a review: "Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements" (RIN 1115-AB73), "Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities" (RIN 1190-AA44), and "Nondiscrimination on the Basis of Disability in State and Local Government Services" (RIN 1190-AA46). In accordance with the RFA, comments are specifically invited on these regulations. Those comments should be addressed to the contact person listed in the entries for these items.

Dated: April 4, 2002.

Viet D. Dinh,

Assistant Attorney General, Office of Legal Policy.

Bureau of Prisons—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1323	Release of Information	1120-AA96
1324	Infectious Disease Management	1120-AB03
1325	Drug Abuse Treatment Program: Subpart Revision and Clarification	1120-AB07

Bureau of Prisons—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1326	Volunteer Community Service Projects	1120-AA03
1327	Intensive Confinement Centers	1120-AA11
1328	Incoming Publications	1120-AA15
1329	Infectious Diseases	1120-AA23
1330	Postsecondary Education Programs	1120-AA25
1331	Literacy Program	1120-AA33
1332	Telephone Regulations and Inmate Financial Responsibility	1120-AA39
1333	Telephone Regulations and Inmate Financial Responsibility	1120-AA49
1334	Incoming Publications: Nudity and Sexually Explicit Material or Information	1120-AA59
1335	Good Conduct Time	1120-AA62
1336	Administrative Remedy Program: Excluded Matters	1120-AA72
1337	Visiting Regulations: Prior Relationship	1120-AA77
1338	Over-the-Counter (OTC) Medications	1120-AA81
1339	Designation of Offenses Subject to Sex Offender Release Notification	1120-AA85
1340	Inmate Commissary Account Deposit Procedures	1120-AA86
1341	Drug Abuse Treatment Programs: Disincentives and Enhanced Incentives	1120-AA88
1342	Searches of Housing Units, Inmates, Inmate Work Areas, and Persons Other Than Inmates: Electronic Devices	1120-AA90
1343	Occupational Educational Programs	1120-AA92
1344	Drug Testing Program	1120-AA95
1345	Correspondence: Inspection of Outgoing General Correspondence	1120-AA98
1346	Release Gratuities, Transportation, and Clothing: Aliens	1120-AA99
1347	Religious Beliefs and Practices: Nomenclature Change	1120-AB04
1348	District of Columbia Educational Good Time Credit	1120-AB05
1349	Suicide Prevention Program	1120-AB06

DOJ

Bureau of Prisons—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1120-AA79	Smoking/No Smoking Areas	02/24/2002	Withdrawn
1120-AA83	Administrative Safeguards for Psychiatric Treatment and Medication; Military Prisoners and District of Columbia Code Violators	03/05/2002	Withdrawn
1120-AB02	Literacy Program: GED Requirements	03/28/2002	Withdrawn

Civil Rights Division—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1350	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**	1190-AA44
1351	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)**	1190-AA46
1352	Nondiscrimination on the Basis of Disability in State and Local Government Services; Public Accommodations and Commercial Facilities; Accessibility Standards; Recreation Facilities	1190-AA47
1353	American Competitiveness and Workforce Improvement Act of 1998 Complaint Process	1190-AA48
1354	Nondiscrimination on the Basis of Disability in State or Local Government Facilities; Public Accommodations and Commercial Facilities; Accessibility Standards; Play Areas	1190-AA50
1355	Amendments to Procedures Advising States and Political Subdivisions Specially Covered Under the Voting Rights Act How To Seek Preclearance From the Attorney General of Proposed Voting Changes	1190-AA51
1356	Amendments to Coordination of Enforcement of Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964	1190-AA52
1357	Procedures To Review Police Departments for a Pattern or Practice of Conduct That Deprives Persons of Rights, Privileges, or Immunities Secured or Protected by the Constitution or Laws of the U.S.	1190-AA53

Civil Rights Division—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1358	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1190-AA49

Civil Rights Division—Completed Actions

Sequence Number	Title	Regulation Identification Number
1359	Nondiscrimination on the Basis of Disability in State and Local Government Services	1190-AA36

Drug Enforcement Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1360	Chemical Mixtures Containing Gamma-Butyrolactone	1117-AA64
1361	Chemical Mixtures Containing Listed Forms of Phosphorus	1117-AA66

Drug Enforcement Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1362	Guidelines for Providing Controlled Substances to Ocean Vessels	1117-AA40

DOJ

Drug Enforcement Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1363	Sale by Federal Departments or Agencies of Chemicals Usable To Manufacture a Controlled Substance	1117-AA47
1364	Exemption From Import/Export Requirements for Personal Medical Use	1117-AA56
1365	Electronic Orders for Schedule I and II Controlled Substances	1117-AA60
1366	Electronic Prescriptions for Controlled Substances	1117-AA61
1367	Security Requirements for Handlers of Pseudoephedrine, Ephedrine, and Phenylpropanolamine	1117-AA62
1368	Reorganization and Clarification of DEA Regulations	1117-AA63
1369	Chemical Registration Waivers; Exemption From Chemical Registration Fees for Certain Persons	1117-AA67

Drug Enforcement Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1370	Definition and Registration of Reverse Distributors	1117-AA19
1371	Exemption of Chemical Mixtures	1117-AA31
1372	Registration and Reregistration Application Fees	1117-AA34
1373	Chemical Registration and Reregistration Fees	1117-AA50
1374	Placement of Gamma-Butyrolactone in List I of the Controlled Substances Act (21 U.S.C. 802)	1117-AA52
1375	Industrial Use of Products and Materials Derived From Cannabis Plants	1117-AA55
1376	Control of Red Phosphorus, White Phosphorus, and Hypophosphorous Acid (and Its Salts) as List I Chemicals	1117-AA57
1377	Allowing Central Fill Pharmacies To Fill Prescriptions for Controlled Substances on Behalf of Retail Pharmacies	1117-AA58
1378	Change of Address for Filing Chemical Import/Export Declarations (DEA Form 486), Reports for the Importation or Exportation of Tableting and Encapsulating Machines, and Other Related Reports	1117-AA65

Drug Enforcement Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1379	Implementation of the Methamphetamine Control Act; Regulation of Pseudoephedrine, Phenylpropanolamine, and Combination Ephedrine Drug Products; Reports of Certain Transactions to Nonregulated Persons	1117-AA44

Executive Office for Immigration Review—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1380	Suspension of Deportation and Cancellation of Removal for Certain Battered Spouses and Children; Motions To Reopen for Certain Battered Spouses and Children	1125-AA35

Executive Office for Immigration Review—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1381	Suspension of Deportation and Cancellation of Removal	1125-AA25
1382	Authorities Delegated to the Director of the Executive Office for Immigration Review	1125-AA27
1383	Motions To Reopen for Suspension of Deportation and Special Rule Cancellation of Removal Pursuant to Section 1505(c) of the LIFE Act Amendments	1125-AA31
1384	Section 212(c) Relief for Aliens With Certain Criminal Convictions Before April 1, 1997	1125-AA33
1385	Board of Immigration Appeals; Procedural Reforms To Improve Case Management	1125-AA36

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Executive Office for Immigration Review—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1386	Authority of Immigration Judges To Issue Civil Money Penalties	1125-AA18

Federal Bureau of Investigation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1387	Implementation of the National Stolen Passenger Motor Vehicle Information System (NSPMVIS)	1110-AA01
1388	Claims of Exemptions From Provisions of the Privacy Act as to FBI Records	1110-AA08
1389	Federal Bureau of Investigation Criminal Justice Information Service Division Systems and Procedures	1110-AA09

Federal Bureau of Investigation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1390	Implementation of Sections 104 and 109 of the Communications Assistance for Law Enforcement Act	1110-AA00
1391	Regulations Under the Pam Lychner Sexual Offender Tracking and Identification Act	1110-AA04
1392	National Instant Criminal Background Check System	1110-AA07

Immigration and Naturalization Service—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1393	Restricting Citizens of Bangladesh, India, Pakistan, and Sri Lanka From Participation in the International-to-International (ITI) Program	1115-AG30

Immigration and Naturalization Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1394	Revised Grounds of Inadmissibility, Exceptions, and Waivers for Immigrants and Nonimmigrants, and Exceptions	1115-AB45
1395	Fees for Participation in Dedicated Commuter Lanes at Selected Ports of Entry; Collection of Fees Under the Dedicated Commuter Lane Program	1115-AD82
1396	Inspection of Persons Applying for Admission; International-to-International User Fee	1115-AE37
1397	Filing Factual Statements About Alien Prostitutes	1115-AE60
1398	Employment Verification by Employers That Are Members of a Multi-Employer Association	1115-AE67
1399	Use of Parole for Humanitarian Reasons or Significant Public Benefit and Report to Congress	1115-AE68
1400	Certification of Certain Health Care Workers	1115-AE73
1401	Requiring Aliens Ordered Removed From the United States to Surrender to the Immigration and Naturalization Service for Removal	1115-AE82
1402	Special Immigrant Juvenile Petitions	1115-AF11
1403	Immigrant Petitions; Religious Workers	1115-AF12
1404	Documentary Requirements for Returning Residents	1115-AF26
1405	Dismissal of Asylum Application for Unexcused Failure To Appear and Effect on Eligibility for Employment Authorization	1115-AF38
1406	Special Immigrant Status for Certain NATO Civilian Employees	1115-AF44
1407	Contracts With Transportation Lines	1115-AF46
1408	Adjustment of Status Under the 1966 Cuban Adjustment Act	1115-AF48
1409	Adjustment of Fees for Services at Land Border Ports of Entry	1115-AF55
1410	Inadmissibility To Enter the United States for Former U.S. Citizens Who Renounced Citizenship To Avoid Taxation	1115-AF69
1411	Imposition of Fines for Violations of the Immigration and Nationality Act	1115-AF70
1412	Establishment of Fee for Processing Genealogical Research Requests for INS Records	1115-AF88

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1414	Academic Honorarium for B Nonimmigrant Aliens	1115-AF97
1415	Time Limit for Appeal From Denial of Relative Visa Petition	1115-AF99
1416	Adoption of Siblings, Adopted Alien Children Less Than 18 Years of Age Considered a "Child"	1115-AG04
1417	Adjustment to Lawful Resident Status of Certain Class Action Participants Who Entered Before January 1, 1982, Under the Legal Immigration and Family Equity Act (LIFE Act)	1115-AG06
1418	Procedures for Checking Juvenile Criminal Records and Submitting Fingerprints of That Additional Class of Aliens Ineligible for Family Unity	1115-AG07
1419	Adjustment of Status Under Section 245(k)	1115-AG10
1420	American Competitiveness in the 21st Century Act of 2000 and Other Related Bills, American Competitiveness and Workforce Improvement Act (ACWIA)	1115-AG11
1421	Construction Work and the B Nonimmigrant Visa Classification	1115-AG15
1422	Adjustment of Fees for Dedicated Commuter Lanes and Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Programs at Land Border Ports of Entry	1115-AG18
1423	Removal and Adjustment Procedures for Victims of Trafficking and Certain Criminal Activities	1115-AG21
1424	Definitions of Notice To Appear and Arrest Warrant	1115-AG24
1425	Visa Waiver Program: Guam Visa Waiver Program	1115-AG25
1426	Procedures for Detainee Hunger Strikes	1115-AG26
1427	Consent To Reapply for Admission After Removal	1115-AG28
1428	Waivers of the 2-Year Foreign Residence Requirement for Certain Exchange Visitors	1115-AG31
1429	Extension of the Validity Period for Employment Authorization Documents for Aliens Seeking Adjustment of Status	1115-AG32
1430	Illegal Entries, Unlawful Presence, and Automatic Voiding of Nonimmigrant Visas	1115-AG36
1431	Medical Examination Requirements and Designation of Civil Surgeons	1115-AG37
1432	Medical Grounds of Inadmissibility and Waivers	1115-AG38
1433	New Classification for Victims of Certain Criminal Activity; Eligibility for the U Nonimmigrant Status	1115-AG39
1434	Limiting the Period of Admission for B Nonimmigrant Aliens	1115-AG43
1435	Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt	1115-AG47
1436	Judicial Review of the Decisions of the Immigration and Naturalization Service	1115-AG49
1437	Revision of the Regulations Concerning F, J, and M Nonimmigrant Classifications	1115-AG55
1438	Limiting the Number of Transit Without Visa (TWOV) Stops in the United States to One	1115-AG59
1439	Address Notification To Be Filed With Designated Applications	1115-AG61

Immigration and Naturalization Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1440	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**	1115-AB73
1441	Adjustment of Status to That of Person Admitted for Permanent Residence: Conditional Residents and Fiance(e)s	1115-AC70
1442	Nonimmigrant Classes; S Classification; Law Enforcement Initiatives; Alien Witnesses	1115-AD86
1443	Establishing Criteria for Determining Countries Whose Citizens Are Ineligible for the Transit Without Visa (TWOV) Program	1115-AD96
1444	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or as a Preference Immigrant; Self-Petitioning for Certain Battered or Abused Alien Spouses and Children	1115-AE04
1445	Conditions on Nonimmigrant Status; Disclosure of Information	1115-AE17
1446	Employer Sanctions Modifications	1115-AE21
1447	Inspection and Expedited Removal of Aliens; Detention and Removal of Aliens; Conduct of Removal Proceedings	1115-AE47
1448	Agreement Promising Non-Deportation or Other Immigration Benefits	1115-AE50
1449	Definition of the Term "Lawfully Present" for Purposes of Eligibility for Public Benefits	1115-AE51
1450	Affidavit of Support on Behalf of Immigrants	1115-AE58
1451	Suspension of Privilege To Transport Aliens to the United States	1115-AE59
1452	Limiting Liability for Certain Technical and Procedural Violations of Paperwork Requirements	1115-AE70
1453	Implementation of Hernandez v. Reno Settlement Agreement; Certain Aliens Eligible for Family Unity Benefits After Sponsoring Family Member's Naturalization	1115-AE72
1454	Regulations Pertaining to Battered Aliens and to Mail Order Bride Businesses, as Mandated by IIRIRA	1115-AE77
1455	Establishment of Preinspected Automated Lane (PAL) Program at Immigration and Naturalization Service	1115-AE80
1456	Early Release for Removal of Criminal Aliens in State Custody for Nonviolent Offenses	1115-AE83

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Immigration and Naturalization Service—Final Rule Stage (Continued)

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1458	Adjustment of Status, Continued Validity of Nonimmigrant Status and Unexpired Employment Authorization for Applicants Maintaining Nonimmigrant H or L Status	1115-AE96
1459	Verification of Eligibility for Public Benefits	1115-AE99
1460	Fingerprinting Applicants and Petitioners for Immigration Benefits; Establishing a Fee for Fingerprinting by the Service	1115-AF03
1461	Processing, Detention, and Release of Juveniles	1115-AF05
1462	Suspension of Deportation and Special Rule Cancellation of Removal for Certain Nationals of Guatemala, El Salvador, and Former Soviet Bloc Countries	1115-AF14
1463	Powers of the Attorney General To Authorize State or Local Law Enforcement Officers To Carry Out Immigration Enforcement	1115-AF20
1464	Elimination of Immigration and Naturalization Service-Issued Mexican and Canadian Border Crossing Cards	1115-AF24
1465	Filing of Proposals for Designation as a Regional Center Approved To Participate in the Immigrant Investor Pilot Program	1115-AF27
1466	Nonimmigrant Visa Exemption for Nationals of the British Virgin Islands Entering the United States Through St. Thomas, United States Virgin Islands	1115-AF28
1467	Delegation of the Adjudication of Certain H-2A Petitions to the Department of Labor	1115-AF29
1468	Regulations Concerning the Convention Against Torture	1115-AF39
1469	Application for Refugee Status; Acceptable Sponsorship Agreement Guaranty of Transportation	1115-AF49
1470	Nonimmigrant Classes: Q-2 Irish Peace Process Cultural and Training Program Visitor	1115-AF51
1471	Clarification of Parole Authority	1115-AF53
1472	Battered and Abused Conditional Residents; Termination of Marriage by Conditional Residents	1115-AF59
1473	Extension of 25-Mile Limit at Select Arizona Ports-of-Entry	1115-AF60
1474	Revoking Grants of Naturalization	1115-AF63
1475	Entry Requirements for Citizens of the Republic of the Marshall Islands, the Federated States of Micronesia, and Palau	1115-AF65
1476	Registration and Fingerprinting of Aliens in the United States: Control of Employment of Aliens	1115-AF71
1477	National Interest Waivers for Second Preference Employment-Based Immigrant Physicians Serving in Medically Underserved Areas or at Department of Veterans Affairs Facilities	1115-AF75
1478	Petitioning Requirements for the H-1C Nonimmigrant Classification Under Public Law 106-95	1115-AF76
1479	Expansion of Dedicated Commuter Lanes; Clarification of Driver's License Requirement for Applicants to Dedicated Commuter Lanes and Automated Permit Port Programs	1115-AF77
1480	Waiving the Fingerprinting Requirement for Certain Disabled Naturalization Applicants	1115-AF80
1481	Update of List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AF81
1482	Implementation of the Numerical Limit on Asylum Grants and Refugee Admissions Based on Resistance to Coercive Population Control Measures	1115-AF84
1483	Adding Actuaries and Plant Pathologists to Appendix 1603.D.1 of the North American Free Trade Agreement	1115-AF85
1484	Power of Attorney General To Terminate Deportation Proceedings and Initiate Removal Proceedings	1115-AF87
1485	Employment Authorization for Certificate of Citizenship Applicants	1115-AF90
1486	Adjustment of Status to That of Person Admitted for Permanent Residence; Temporary Removal of Certain Restrictions of Eligibility	1115-AF91
1487	Asylum and Withholding Definitions	1115-AF92
1488	Petition To Classify Alien as Immediate Relative of a U.S. Citizen or Preference Immigrant; Adjustment of Status to That of a Person Admitted for Permanent Residence	1115-AF94
1489	Children Born Outside the United States; Applications for Certificate of Citizenship	1115-AF98
1490	Allowing for the Filing of Form I-140 Visa Petition Concurrently With a Form I-485 Application in Certain Circumstances	1115-AG00
1491	Special Immigrant Visa for Fourth Preference Employment-Based Broadcasters	1115-AG01
1492	Establishing Premium Processing Service for Employment-Based Petitions and Applications	1115-AG03
1493	Nonimmigrant Classes; Spouses and Children of Lawful Permanent Residents; V Classification	1115-AG08
1494	K Nonimmigrant Classification, Legal Immigration Family Equity Act (LIFE)	1115-AG12
1495	Adjustment of Status for Certain Syrian Nationals Granted Asylum in the United States	1115-AG13
1496	Adjustment of Status of Certain Aliens from Vietnam, Cambodia, and Laos in the United States	1115-AG14
1497	Adding Colombia to the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AG16
1498	New Classification for Victims of Severe Forms of Trafficking in Persons Eligible for the T Nonimmigrant Status	1115-AG19
1499	Protection and Assistance for Victims of Trafficking	1115-AG20

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Immigration and Naturalization Service—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1500	Removing Russia From the List of Countries Whose Citizens or Nationals Are Ineligible for Transit Without Visa (TWOV) Privileges to the United States Under the TWOV Program	1115-AG27
1501	Detention of Aliens Subject to Final Orders of Removal	1115-AG29
1502	Allowing Citizens and Nationals of the People's Republic of China Limited Transit Without Visa (TWOV) Privileges at TWOV-Designated Alaska International Airports	1115-AG33
1503	Custody Procedures	1115-AG40
1504	Control of Aliens Departing From the United States	1115-AG42
1505	Documentary Requirements for Certain Temporary Residents	1115-AG44
1506	Change in Business Practices; Acceptance of Payments of Fees By Credit Card and Other Electronic Means Where Possible	1115-AG48
1507	Adding and Removing Institutions To and From the List of Recognized American Institutions of Research	1115-AG52
1508	Manifest Requirements and Imposition of Fines Under Section 231 of the Act	1115-AG57
1509	Requiring Change of Status From B to F-1 or M-1 Nonimmigrant Prior To Pursuing a Course of Study	1115-AG60
1510	Reengineering of Part 214, Nonimmigrant Classes To Clarify and Restate Admission Requirements	1115-AG62

Immigration and Naturalization Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1511	Visa Waiver Program	1115-AB93
1512	Regulations Relating to Temporary Protected Status	1115-AE26
1513	Authorizing Suspension of Employment Authorization Requirements on the Basis of Severe Economic Hardship for F-1 Students and Emergent Circumstances	1115-AF15
1514	Availability of Material Under Freedom of Information Act and Privacy Act	1115-AF32
1515	Interim Designation of Acceptable Receipts for Employment Eligibility Verification	1115-AF42
1516	Inadmissibility and Deportability on Public Charge Grounds	1115-AF45
1517	Expansion of Expedited Removal of Certain Criminal Aliens Held in Federal, State, and Local Jails	1115-AF50
1518	Extending the Period of Duration of Status for Certain F and J Nonimmigrant Aliens	1115-AF54
1519	Authorizing Collection of Fee Levied on F, J, and M Nonimmigrant Classifications Under Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)	1115-AF56
1520	Waiver of Fees	1115-AG02
1521	Adjustment of Status for Certain Nationals of Nicaragua, Cuba, and Haiti	1115-AG05
1522	Increasing the Number of Officers Authorized To Issue Notices To Appear and Arrest Warrants for Immigration Violations	1115-AG22

Immigration and Naturalization Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
1523	Adjustment of Certain Fees of the Immigration Examinations Fee Account	1115-AF61
1524	Increasing Immigration User Fee at Ports-of-Entry	1115-AG46

Immigration and Naturalization Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1115-AD95	90-Day Modified Inspection of Alien Crew Members	03/01/2002	Withdrawn
1115-AE06	Employment Authorization Document Applications and Process	03/01/2002	Withdrawn
1115-AE55	Corporate Reorganizations (Mergers and Acquisitions) and E, H, L Nonimmigrant Classification	03/01/2002	Withdrawn
1115-AE56	Petition for Employment Creation Aliens	03/01/2002	Withdrawn
1115-AE63	F-1 Visa Abusers and Foreign Students	03/01/2002	Withdrawn
1115-AE78	Public Charge Bond Pilot Program	03/01/2002	Withdrawn

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Immigration and Naturalization Service—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
1115-AE98	En Route Inspections and Reimbursement for Immigration and Naturalization Service Costs	03/01/2002	Withdrawn
1115-AF40	H-1B Nonimmigrant Worker Complaints Regarding U.S. Employer Violations Under the American Competitiveness and Workforce Improvement Act (ACWIA)	03/01/2002	Withdrawn-Merged with RIN 1115-AG11
1115-AF41	Additional Petitioning Requirements for the H-1B Nonimmigrant Classification Under Public Law 105-277	02/18/2002	Withdrawn-Merged with RIN 1115-AG11
1115-AF57	Manifest Requirements and Imposition of Fines Under Section 231 of the Act	03/02/2002	Withdrawn-Merged with 1115-AG57
1115-AG09	Authorizing Part-Time Study for F-1 Commuter Students in Contiguous Territories	03/01/2001	Withdrawn

Legal Activities—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1525	Revision of 28 CFR Part 15 Pertaining to the Defense of Certain Suits Against Federal Employees To Conform to the Federal Employees Liability Reform and Tort Compensation Act	1105-AA62
1526	Designation of Agencies To Receive and Investigate Reports Required Under the Protection of Children From Sexual Predators Act	1105-AA65
1527	Motor Vehicle Salvage Regulations	1105-AA71
1528	Claims Under the Radiation Exposure Compensation Act Amendments of 2000: Technical Amendments; Expansion of Coverage to Uranium Mill Workers and Ore Transporters	1105-AA75

Legal Activities—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1529	Foreign Agents Registration Act; Regulations Revised and Clarified To Reflect Changes in the Law	1105-AA45
1530	Ethical Standards for Attorneys for the Government	1105-AA67
1531	Enhanced Notice and Release Procedures for Owners of Seized Property Pursuant to the CAFRA of 2000; Disposition of Seized Property Too Costly To Maintain; Consoiidation of Department Regulations	1105-AA74
1532	Establishment of Minimum Safety and Security Standards for Private Companies That Transport Violent Prisoners	1105-AA77
1533	Regulations Under the DNA Analysis Backlog Elimination Act of 2000	1105-AA78
1534	Screening of Aliens and Other Designated Individuals Seeking Flight Training	1105-AA80
1535	Guidelines for the Campus Sex Crimes Prevention Act Amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act	1105-AA81

Legal Activities—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1536	Waiver for Firearm Prohibition on Nonimmigrant Visa Holders	1105-AA66

Legal Activities—Completed Actions

Sequence Number	Title	Regulation Identification Number
1537	September 11th Victim Compensation Fund of 2001	1105-AA79

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Legal Activities—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1105-AA29	Violent Crime and Drug Emergency Areas	03/29/2002	Withdrawn - No action expected in the next 12 months.
1105-AA42	False Claims Amendments Act of 1986—Civil Investigative Demands	03/05/2002	Withdrawn - No action expected in next 12 months.

Office of Justice Programs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1538	Correctional Facilities on Tribal Lands Grant Program	1121-AA41
1539	Public Safety Officers' Benefits Program	1121-AA56
1540	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	1121-AA57
1541	Criminal Intelligence Systems Operating Policies	1121-AA59
1542	Victims of Crime Act (VOCA) Program Regulations for the Victim Compensation Grant Program; and Victim Assistance Program	1121-AA61
1543	Violence Against Women Grant Programs	1121-AA64

Office of Justice Programs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1544	Bulletproof Vest Partnership Grant Acts of 1998 and 2000	1121-AA48
1545	Environmental Impact Review Procedures for the VOI/TIS Grant Program	1121-AA52

Office of Justice Programs—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1546	International Terrorism Victim Compensation Program	1121-AA63

Office of Justice Programs—Completed Actions

Sequence Number	Title	Regulation Identification Number
1547	Emergency Federal Law Enforcement Assistance	1121-AA60

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Proposed Rule Stage

1323. RELEASE OF INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 31 USC 3711(f)

CFR Citation: 28 CFR 513

Legal Deadline: None

Abstract: This document revises Bureau regulations implementing the Freedom of Information Act and the Privacy Act in order to simplify the procedures and to eliminate unnecessary regulatory text.

DOJ—BOP

Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Room 741, Washington, DC 20534
Phone: 202 307-6303
Fax: 202 307-0828
Email: squreshi@bop.gov

RIN: 1120–AA96

1324. INFECTIOUS DISEASE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; ...

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: This document is a proposed rule (split from the interim final rule, RIN 1120-AA23) on the correctional management of tuberculosis, HIV, and hepatitis B. The changes to the regulations address the circumstances under which the Bureau conducts voluntary and involuntary testing.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Room 741, Washington, DC 20534
Phone: 202 307-6303
Fax: 202 307-0828
Email: squreshi@bop.gov

RIN: 1120–AB03

1325. DRUG ABUSE TREATMENT PROGRAM: SUBPART REVISION AND CLARIFICATION

Priority: Info./Admin./Other

Legal Authority: 18 USC 3521 to 3528, 4042, 4046, 4081, 4082, 5006 to 5024, 5039; 28 USC 848, 509, 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; ...

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: In this document, the Bureau of Prisons proposes to amend its regulations on the drug abuse treatment program. We intend this amendment to streamline and clarify these regulations, eliminating unnecessary text and obsolete language, and removing internal agency procedures that need not be in rules text.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Room 741, Washington, DC 20534
Phone: 202 307-6303
Fax: 202 307-0828
Email: squreshi@bop.gov

RIN: 1120–AB07

Department of Justice (DOJ)
Bureau of Prisons (BOP)

Final Rule Stage

1326. VOLUNTEER COMMUNITY SERVICE PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 1512; 18 USC 5039; 28 USC 509 to 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024

CFR Citation: 28 CFR 551.60

Legal Deadline: None

Abstract: This document finalizes provisions for Volunteer Community Service Projects. A volunteer community service project is a project designed to provide for the public good, which has been developed by local government or by a nonprofit charitable organization for approval by the Bureau.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/19/93	58 FR 5210
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sarah N. Qureshi, Rules Administrator, Department of Justice, Bureau of Prisons, 320 First Street NW, HOLC Building, Room 741, Washington, DC 20534
Phone: 202 307-6303
Fax: 202 307-0828
Email: squreshi@bop.gov

RIN: 1120–AA03

1327. INTENSIVE CONFINEMENT CENTERS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 524.31 to 524.34

Legal Deadline: None

Abstract: This document finalizes procedures for the operation of a specialized program combining features of a military boot camp with the traditional correctional values of the Bureau of Prisons. Inmates who successfully complete this program may be placed in community-based programs for longer periods of time than ordinarily permitted.

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Timetable:

Action	Date	FR Cite
Interim Final Rule	04/26/96	61 FR 18658
Interim Final Rule Effective	05/28/96	
Interim Final Rule Comment Period End	06/25/96	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA11

1328. INCOMING PUBLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 18 USC 5039; 28 USC 509 to 510; 28 USC 1346(b); 28 USC 2671 to 2680; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024

CFR Citation: 28 CFR 540.71

Legal Deadline: None

Abstract: This document amends Bureau regulations on Incoming Publications to require that inmates in medium security, high security, and administrative institutions may receive softcover publications only from the publisher, book club, or bookstore.

Timetable:

Action	Date	FR Cite
NPRM	01/18/94	59 FR 2668
NPRM Comment Period End	03/21/94	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA15

1329. INFECTIOUS DISEASES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 549

Legal Deadline: None

Abstract: This document finalizes regulations on the correctional management of tuberculosis, HIV, and hepatitis B.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/95	60 FR 52278
Interim Final Rule Comment Period End	12/04/95	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA23

1330. POSTSECONDARY EDUCATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544

Legal Deadline: None

Abstract: This document revises the Bureau's regulations on postsecondary education to exclude courses which are offered as part of an occupational education program. Courses which are offered as part of an occupational education program are to be covered by the Bureau's regulations on occupational education. The inmate is consequently responsible for paying postsecondary education tuition costs either through personal funds, community resources, or scholarships available to the inmate. This revision is intended to simplify the organization of the Bureau's regulations.

Timetable:

Action	Date	FR Cite
NPRM	07/17/00	65 FR 44400
NPRM Comment Period End	09/15/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA25

1331. LITERACY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544.70 to 544.76

Legal Deadline: None

Abstract: This document makes changes to the Bureau's literacy program regulations for the sake of clarification or simplification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50791
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA33

1332. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 540

Legal Deadline: None

Abstract: This document postpones the effective date for certain provisions of the final rule on telephone regulations and inmate financial responsibility, which was published on April 4, 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/96	61 FR 90
Interim Final Rule Comment Period End	03/04/96	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA39

1333. TELEPHONE REGULATIONS AND INMATE FINANCIAL RESPONSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 18 USC 3663; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 5 USC 552a; 18 USC 1791; 18 USC 3013; 18 USC 3571; 18 USC 3572; 18 USC 3621; 18 USC 3622; 18 USC 3624

CFR Citation: 28 CFR 540.105; 28 CFR 545.11

Legal Deadline: None

Abstract: On January 2, 1996, BOP published an NPRM proposing limitations on telephone privileges and commissary privileges for inmates who refuse to participate in the inmate financial responsibility program (BOP 1050). On December 28, 1999, BOP finalized that portion of the NPRM pertaining to limitations on commissary privileges. BOP is continuing to work on addressing issues raised by its proposed limitations on telephone privileges for inmates who are inmate financial responsibility program refusees. BOP will finalize that portion of its January 1996 NPRM in a separate document (BOP 1102).

Timetable:

BOP 1050
NPRM 01/02/96 (61 FR 92)
NPRM Comment Period End 03/04/96
Final Action 12/28/99 (64 FR 72798)
Final Action Effective 01/27/00

BOP 1102
Final Action 11/00/02
Final Action Effective 01/00/03

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA49

1334. INCOMING PUBLICATIONS: NUDITY AND SEXUALLY EXPLICIT MATERIAL OR INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 18 USC 5039; 28 USC 509 to 510; PL 104-208; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024

CFR Citation: 28 CFR 540.70 to 540.72

Legal Deadline: None

Abstract: This rule modifies the Bureau of Prisons rule on Incoming Publications in order to implement the provisions of the Fiscal Year 1997 Omnibus Budget Act (Public Law 104-208) prohibiting use of appropriated funds for distributing or making available to an inmate any commercially published information or material when such information or material is sexually explicit or features nudity.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/06/96	61 FR 57568
Interim Final Rule Effective	12/01/96	
Interim Final Rule Comment Period End	01/06/97	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA59

1335. GOOD CONDUCT TIME

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3568; 28 USC 509 to 510; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 523

Legal Deadline: None

Abstract: This document notes the statutory requirements for the awarding of good conduct time, including the Bureau's consideration in instances where the inmate does not have a high school diploma or GED and is not making satisfactory progress toward earning a high school diploma or GED.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/97	62 FR 50786
Interim Final Rule Effective	11/03/97	
Interim Final Rule Comment Period End	11/25/97	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

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RIN: 1120–AA62

1336. ADMINISTRATIVE REMEDY PROGRAM: EXCLUDED MATTERS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 542

Legal Deadline: None

Abstract: This document amends Bureau regulations on the Administrative Remedy Program to provide for the processing of certain requests or appeals which previously had been excluded. This amendment is intended to comply with provisions of the Prisoner Litigation Reform Act pertaining to exhaustion of available administrative remedies.

Timetable:

Action	Date	FR Cite
NPRM	06/27/00	65 FR 39767
NPRM Comment Period End	08/28/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA72

1337. VISITING REGULATIONS: PRIOR RELATIONSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 28 USC 509 to 510; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 540.44

Legal Deadline: None

Abstract: This document revises regulations on visiting to require that visiting privileges at all institutions ordinarily shall be extended to friends and associates only when the relationship had been established prior to confinement. Previously this requirement was applicable only at Medium Security Level, High Security Level, and Administrative Institutions.

Timetable:

Action	Date	FR Cite
NPRM	05/18/99	64 FR 27166
NPRM Comment Period End	07/19/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA77

1338. OVER-THE-COUNTER (OTC) MEDICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 28 USC 509 to 510; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4045; 18 USC 4081 to 4082; 18 USC 4241 to 4247; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 549.30 to 549.31

Legal Deadline: None

Abstract: This document establishes procedures governing inmate access to over-the-counter (OTC) medications. Selected OTC medications are currently available to the inmate population through commissary purchase. The Bureau will continue to dispense OTC medications at sick call only if the inmate does not already have the OTC medications and health services staff determine the inmate has an immediate medical need that needs to be addressed before the inmate's regularly scheduled commissary visit or that the inmate is without funds.

Timetable:

Action	Date	FR Cite
NPRM	03/01/99	64 FR 10094
NPRM Comment Period End	04/30/99	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA81

1339. DESIGNATION OF OFFENSES SUBJECT TO SEX OFFENDER RELEASE NOTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3565; 18 USC 5006 to 5024; 18 USC 5031 to 5042; 28 USC 509 to 510; 18 USC 2568 to 3569; 18 USC 3582; 18 USC 3621 to 3622; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 4201 to 4218

CFR Citation: 28 CFR 571

Legal Deadline: None

Abstract: This document designates various offenses as sexual offenses for purposes of 18 U.S.C. 4042(c). The designations ensure that notifications can be made for military offenders, for District of Columbia Code offenders, and for these and other Federal inmates with a sex offense in their criminal history.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/16/98	63 FR 69386
Interim Final Rule Comment Period End	02/16/99	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA85

1340. INMATE COMMISSARY ACCOUNT DEPOSIT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 509 to 510; 31 USC 725; 18 USC 3624; 18 USC 4001; 18 USC 4005; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039

CFR Citation: 28 CFR 506; 28 CFR 540.23; 28 CFR 540.51

Legal Deadline: None

Abstract: This document specifies how an inmate may receive funds from family, friends, and other sources. Any funds sent from family or friends will be sent directly to a centralized inmate commissary account for receipt and posting. Funds received from other sources such as tax refunds, dividends from stocks, or State benefits will be forwarded for deposit to the centralized inmate commissary account.

Timetable:

Action	Date	FR Cite
NPRM	04/23/99	64 FR 20126
NPRM Comment Period End	06/22/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA86

1341. DRUG ABUSE TREATMENT PROGRAMS: DISINCENTIVES AND ENHANCED INCENTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3521 to 3528; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4046; 18 USC 4081; 18 USC 4082

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document broadens the eligibility criteria for the drug abuse education program. In addition, this document establishes disincentives which may be imposed for the purpose of encouraging inmates to participate in the residential drug treatment program.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56840
NPRM Comment Period End	11/20/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA88

1342. SEARCHES OF HOUSING UNITS, INMATES, INMATE WORK AREAS, AND PERSONS OTHER THAN INMATES: ELECTRONIC DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 751 to 752; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 18 USC 1791 to 1793; 18 USC 3050; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4012; 18 USC 4042; 18 USC 4081 to 4082

CFR Citation: 28 CFR 511; 28 CFR 552

Legal Deadline: None

Abstract: This document clarifies provisions in the Bureau's regulations which pertain to the use of electronic devices in searches of inmates and persons other than inmates.

Timetable:

Action	Date	FR Cite
NPRM	02/25/99	64 FR 9431
NPRM Comment Period End	04/26/99	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA90

1343. OCCUPATIONAL EDUCATIONAL PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 544

Legal Deadline: None

Abstract: This rule revises the Bureau's regulations on occupational educational programs to remove obsolete or redundant provisions.

Timetable:

Action	Date	FR Cite
NPRM	07/17/00	65 FR 44401
NPRM Comment Period End	09/15/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1120–AA92

1344. DRUG TESTING PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC

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DOJ—BOP **Final Rule Stage**

4042; 18 USC 4081 to 4082; 18 USC 4251 to 4255; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 550

Legal Deadline: None

Abstract: This document consolidates into a single drug testing program separately stated regulations on alcohol testing and urine surveillance. The consolidated regulations provide for more flexibility in the use of testing methods.

Timetable:

Action	Date	FR Cite
NPRM	09/21/00	65 FR 57126
NPRM Comment Period End	11/20/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA95

1345. CORRESPONDENCE: INSPECTION OF OUTGOING GENERAL CORRESPONDENCE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551; 5 USC 552a; 18 USC 1791; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 540.14

Legal Deadline: None

Abstract: This document amends the Bureau's regulations on correspondence to require that outgoing inmate general correspondence at all institutions may not be sealed and may be read and inspected by staff. This amendment is intended to provide for the continued efficient and secure operation of the institution and to protect the public. The requirement does not apply to special mail.

Timetable:

Action	Date	FR Cite
NPRM	07/27/99	64 FR 40718
NPRM Comment Period End	09/27/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AA98

1346. RELEASE GRATUITIES, TRANSPORTATION, AND CLOTHING: ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3565; 18 USC 3568 to 3569; 18 USC 3582; 18 USC 3621 to 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081 to 4082; 18 USC 4161 to 4166; 18 USC 4201 to 4218; 18 USC 5006 to 5024; 18 USC 5031 to 5042; 28 USC 509 to 510

CFR Citation: 28 CFR 571.21

Legal Deadline: None

Abstract: This document amends the Bureau's regulations on release gratuities, transportation, and clothing to require that aliens being released to immigration authorities for the purpose of release, transfer to a community corrections center, or another processing center, be provided a $10 gratuity. Aliens being released with an order of deportation, exclusion, or removal, or aliens detained or serving 60 days or less in contract facilities would not receive the gratuity.

Timetable:

Action	Date	FR Cite
NPRM	10/04/99	64 FR 53872
NPRM Comment Period End	12/03/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1120–AA99

1347. RELIGIOUS BELIEFS AND PRACTICES: NOMENCLATURE CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510; 42 USC 1996; ...

CFR Citation: 28 CFR 548

Legal Deadline: None

Abstract: This regulation renames the special diet that accommodates inmates' religious dietary practices. The old name was "common fare" and the new name will be "the religious diet menu."

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB04

1348. DISTRICT OF COLUMBIA EDUCATIONAL GOOD TIME CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3568; 18 USC 3621; 18 USC 3622; 18 USC 3624; 18 USC 4001; 18 USC 4042; 18 USC 4081; 18 USC 4082; 18 USC 4161 to 4166; 18 USC 5006 to 5024; 18 USC 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 523

Legal Deadline: None

DOJ—BOP **Final Rule Stage**

Abstract: This rule establishes procedures for awarding educational good time credit consistent with the D.C. Code for D.C. Code offenders in Bureau institutions or Bureau contract facilities, under the National Capital Revitalization and Self-Government Improvement Act of 1997, who committed their offenses before August 5, 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB05

1349. SUICIDE PREVENTION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 3621, 3622, 3624, 4001, 4042, 4081, 4082, 5006 to 5024, 5039; 28 USC 509 to 510

CFR Citation: 28 CFR 552

Legal Deadline: None

Abstract: This document revises Bureau regulations on the suicide prevention program for the sake of clarity and in order to remove Agency management procedures which do not need to be stated in regulations. The revised regulations more clearly delineate for the inmate the procedures used to identify and protect inmates deemed to be at risk for suicide.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67670
NPRM Comment Period End	01/12/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1120–AB06

Department of Justice (DOJ) Civil Rights Division (CRT)

Proposed Rule Stage

1350. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES (SECTION 610 REVIEW)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 5 USC 301; 28 USC 509; 28 USC 510; 42 USC 12186(b)

CFR Citation: 28 CFR 36

Legal Deadline: None

Abstract: In 1991, the Department of Justice published regulations to implement title III of the Americans with Disabilities Act of 1990 (ADA). Those regulations include the ADA Standards for Accessible Design, which establish requirements for the design and construction of accessible facilities that are consistent with the ADA Accessibility Guidelines (ADAAG) published by the U.S. Architectural and Transportation Barriers Compliance Board (Access Board). In the time since the regulations became effective, the Department of Justice and the Access Board have each gathered a great deal of information regarding the implementation of the Standards. The Access Board is currently in the process of revising ADAAG, and it published a Notice of Proposed Rulemaking (NPRM) on November 16, 1999. In order to maintain consistency between ADAAG and the ADA Standards, the Department is reviewing its title III regulations and expects to propose, in one or more stages, to adopt the revisions proposed by the Access Board and to make related revisions to the Department's title III regulations. In addition to maintaining consistency between ADAAG and the Standards, the purpose of this review and these revisions will be to more closely coordinate with voluntary standards; to clarify areas which, through inquiries and comments to the Department's technical assistance phone lines, have been shown to cause confusion; to reflect evolving technologies in areas affected by the Standards; and to comply with section 610 of the Regulatory Flexibility Act, which requires agencies once every 10 years to review rules that have a significant economic impact upon a substantial number of small entities.

The adoption of revised ADAAG will also serve to address changes to the ADA Standards previously proposed in RIN 1190-AA26 and RIN 1190-AA38, which have been withdrawn. These changes will include technical specifications for facilities designed for use by children and accessibility standards for State and local government facilities that have previously been published by the Access Board.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above-described title III rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title III regulation, this notice will propose to adopt revised ADAAG as the ADA Standards for Accessible Design and will initiate the review of the regulation in accordance with the requirements of section 610 of the Regulatory Flexibility Act, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

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Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA).

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035-6738
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA44

1351. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES (SECTION 610 REVIEW)

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; PL 101-336

CFR Citation: 28 CFR 35

Legal Deadline: None

Abstract: On July 26, 1991, the Department published its final rule implementing title II of the Americans with Disabilities Act (ADA). On November 16, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) issued its first comprehensive review of the ADA Accessibility Guidelines, which form the basis of the Department's ADA Standards for Accessible Design. The ADA (section 204(c)) requires the Department's standards to be consistent with the Access Board's guidelines. Therefore, the Department will publish a Notice of Proposed Rulemaking (NPRM) proposing to adopt the revisions proposed by the Access Board. The Department will also, in one or more stages, review its title II regulations for purposes of section 610 of the Regulatory Flexibility Act and make related changes to its title II regulations.

In addition to the statutory requirement for the rule, the social and economic realities faced by Americans with disabilities dictate the need for the rule. Individuals with disabilities cannot participate in the social and economic activities of the Nation without being able to access the programs and services of State and local governments. Further, amending the Department's ADA regulations will improve the format and usability of the ADA Standards for Accessible Design; harmonize the differences between the ADA Standards and national consensus standards and model codes; update the ADA Standards to reflect technological developments that meet the needs of persons with disabilities; and coordinate future ADA Standards revisions with national standards and model code organizations. As a result, the overarching goal of improving access for persons with disabilities so that they can benefit from the goods, services, and activities provided to the public by covered entities will be met.

The timetable set forth below refers to the notice of proposed rulemaking that the Department will issue as the first stage of the above-described title II rulemaking. This notice of proposed rulemaking will be issued under both title II and title III. For purposes of the title II regulation, this notice will propose to eliminate the Uniform Federal Accessibility Standards (UFAS) as an alternative to the ADA Standards for Accessible Design and to adopt revised ADAAG as the ADA Standards.

Timetable:

1190-AA26 (Completed)
NPRM 06/20/94 (59 FR 31808)
NPRM Comment Period End 08/19/94
Merged into RIN 1190-AA46 02/15/00 (65 FR 22968)
1190-AA36 (Completed)
NPRM 11/27/95 (60 FR 58462)
NPRM Comment Period End 01/26/96
NPRM Comment Period Extended to 3/1/1996 02/06/96 (61 FR 4389)
Merged into RIN 1190-AA46 03/05/02
1190-AA38 (Completed)
NPRM 07/22/96 (61 FR 37964)
NPRM Comment Period End 10/21/96
Merged into RIN 1190-AA46 02/15/00 (65 FR 22968)
1190-AA46 (Active)
NPRM 12/00/02
NPRM Comment Period End 02/00/03

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: RIN 1190-AA46, which will effect changes to 28 CFR 35 (the Department's regulation implementing title II of the ADA), is related to another rulemaking of the Civil Rights Division, RIN 1190-AA44, which will effect changes to 28 CFR 36 (the Department's regulation implementing title III of the ADA). By adopting revised ADAAG, this rulemaking will, among other things, address changes to the ADA Standards previously proposed in RINs 1190-AA26, 1190-AA36, and 1190-AA38, which have been withdrawn and merged into this rulemaking. These changes include accessibility standards for State and local government facilities that had been previously published by the Access Board (RIN 1190-AA26) and the timing for the compliance of State and local governments with the curb-cut requirements of the title II regulation (RIN 1190-AA36). In order to consolidate regulatory actions implementing title II of the ADA, on February 15, 2000, RINs 1190-AA26 and 1190-AA38 were merged into this rulemaking and on March 5, 2002, RIN 1190-AA36 was merged into this rulemaking.

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TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA46

1352. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; RECREATION FACILITIES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101-336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On July 9, 1999, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published a Notice of Proposed Rulemaking to amend the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. After receiving public comments, the Access Board published a summary of proposed changes to the guidelines for public comment on July 21, 2000. This Notice of Proposed Rulemaking would, for the first time, establish accessibility guidelines for the design of recreation facilities, such as health clubs, golf courses, and amusement parks. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the revisions proposed by the Access Board and proposing related changes to the Department's regulations with respect to the operation of recreation facilities.

Individuals with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. The proposed rule will ensure that new recreation facilities are readily accessible to and usable by individuals with disabilities. As new recreation facilities are designed and constructed to be accessible, individuals with disabilities will enjoy the benefits of these facilities. Operators of recreation facilities will experience increased usage and patronage by individuals with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035-6738
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA47

1353. AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT OF 1998 COMPLAINT PROCESS

Priority: Other Significant

Legal Authority: 8 USC 1182(n)(5)

CFR Citation: 28 CFR 44.500

Legal Deadline: None

Abstract: The American Competitiveness and Workforce Improvement Act (ACWIA)—enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1998—made various changes to the Immigration and Nationality Act (the INA) relating to temporary nonimmigrant professionals. In this rule (RIN 1190-AA48), the Department's Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) will implement the ACWIA "failure to select" protections—codified in the INA at section 212(n)(5)—by establishing a process under which U.S. workers may file complaints against employers for denying them employment opportunities by improperly hiring temporary foreign professionals on H-1B visas. Under this process, OSC may receive and review these complaints, and then—if there is reasonable cause to believe the allegations—initiate binding arbitration proceedings through the Federal Mediation and Conciliation Service (FMCS). A companion to this rule will include changes to the regulations of the Office of the Chief Administrative Hearing Officer of the Executive Office for Immigration Review to provide for the review of arbitrators' decisions and, where appropriate, the award of administrative relief. These rules are being coordinated with the Immigration and Naturalization Service (INS), the Department of Labor (DOL), and the FMCS.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: Through RIN 1115-AF40 (INS No. 1974-99), INS will implement the ACWIA "whistleblower" protection provisions—codified in the INA at section 212(n)(2)(C)(iv) and (v)—prohibiting retaliation against H-1B workers who disclose information which they believe indicates their employer has violated the law or regulations pertaining to labor condition applications for nonimmigrants. That rule will also enable an H-1B worker who files a complaint alleging retaliation to remain in the United States and seek authorization to work in the United States for a temporary period while his or her complaint is under review.

Through RIN 1115-AF41 (INS No. 1975-99), INS will implement portions of ACWIA pertaining to new penalties for employers misrepresenting material facts in an H-1B application. That rule complements regulations issued by the Department of Labor (DOL). It also defines the term "United States employer" and implements other provisions of ACWIA.

Agency Contact: Juan Carlos Benitez, Special Counsel, Department of Justice, Civil Rights Division, Office of Special Counsel for Immigration Related Unfair Employment Practices, 950 Pennsylvania Avenue, NW, Washington, DC 20530
Phone: 202 616-5594
Fax: 202 616-5509

Larry P. Cote, Department of Justice, Executive Office for Immigration Review, 2400 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
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RIN: 1190–AA48

1354. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE OR LOCAL GOVERNMENT FACILITIES; PUBLIC ACCOMMODATIONS AND COMMERCIAL FACILITIES; ACCESSIBILITY STANDARDS; PLAY AREAS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 12134; 42 USC 12186; PL 101-336

CFR Citation: 28 CFR 35; 28 CFR 36

Legal Deadline: None

Abstract: On October 18, 2000, the U.S. Architectural and Transportation Barriers Compliance Board (Access Board) published a final rule to supplement the ADA Accessibility Guidelines (ADAAG), which form the basis of the Department's ADA Standards for Accessible Design. These guidelines establish for the first time accessibility guidelines for the design of play areas. The ADA (sections 204(c) and 306(c)) requires the Department's accessibility standards to be consistent with the Access Board's guidelines. Therefore, the Department expects to publish a Notice of Proposed Rulemaking proposing to adopt the revisions of the Access Board and proposing related changes to the Department's regulations with respect to the operation of play areas.

Persons with disabilities cannot participate in the social and economic realms of the Nation without being able to access public entities and public accommodations throughout the country. Promulgating this amendment to the Department's ADA regulations will ensure that the regulations are consistent with the ADAAG, thereby preventing the confusion that could develop if the Department's regulations were inconsistent with the Access Board Guidelines. In addition, amending the Department's ADA regulations will improve the Department's overarching goal of improving access for persons with disabilities. This rule is designed to ensure that new play areas are readily accessible to and usable by persons with disabilities. As new play areas are designed and constructed to be accessible, persons with disabilities will enjoy the benefits of these areas. Operators of play areas will experience increased usage and patronage by persons with disabilities. Designers and manufacturers will have a clear and consistent set of standards with which to work. Establishing uniform standards for accessibility has resulted in innovation and new designs that are cost effective and beneficial to everyone.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: John L. Wodatch, Chief, Disability Rights Section, Department of Justice, Civil Rights Division, P.O. Box 66738, Washington, DC 20035-6738
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA50

1355. AMENDMENTS TO PROCEDURES ADVISING STATES AND POLITICAL SUBDIVISIONS SPECIALLY COVERED UNDER THE VOTING RIGHTS ACT HOW TO SEEK PRECLEARANCE FROM THE ATTORNEY GENERAL OF PROPOSED VOTING CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509 to 510; 42 USC 1973a(c); 42 USC 1973c

CFR Citation: 28 CFR 51

Legal Deadline: None

Abstract: Section 5 of the Voting Rights Act of 1965 requires that certain States and their political subdivisions (covered jurisdictions) obtain "preclearance" from the Federal Government of proposed changes in voting practices and procedures prior to their implementation. Preclearance may be obtained either through litigation in the United States District Court for the District of Columbia or administratively from the Attorney General. In 1971 the Department first issued procedures for the administration of section 5 to inform covered jurisdictions concerning the manner in which they could comply with section 5 in the administrative proceeding before the Attorney General. In subsequent years, the Department has amended these procedures to reflect changes in section 5 law, in the Attorney General's internal practices, and to make the procedures clearer and easier to follow. In the 14 years since the last major amendment to the procedures, there have been significant changes in section 5 law and in the practices employed by the Department in processing submissions, which are not reflected in the existing Procedures.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Joseph D. Rich, Chief, Voting Section, Department of Justice, Civil Rights Division, Room 7254, 1800 G Street NW, Washington, DC 20006
Phone: 202 307-2870

RIN: 1190–AA51

1356. AMENDMENTS TO COORDINATION OF ENFORCEMENT OF NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d et seq; 29 USC 706; 29 USC 794; EO 12250

CFR Citation: 28 CFR 42.401 to 42.415; 28 CFR 41.1 to 41.58

Legal Deadline: None

Abstract: In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. In a joint rulemaking described at RIN 1190-AA49, the Department and other Federal agencies are conforming their implementation regulations to the CRRA and to several other statutes.

In the rulemaking described under this RIN (1190-AA52) the Department of Justice proposes to make amendments to its coordination regulations concerning agency enforcement of title VI of the Civil Rights Act of 1964, 28 CFR 42.401 to 42.415, and agency enforcement of section 504 of the Rehabilitation Act of 1972, 28 CFR 41.1 to 41.58. The proposed amendments explicitly incorporate the CRRA's definition of "program or activity" and "program" into the Department's title VI and section 504 coordination regulations.

Further, this joint rule will include similar amendments to the regulations of the Department of Defense and the Department of Housing and Urban Development implementing title VI, section 504, and/or the Age Discrimination Act, which are not participating in the joint rule at 1190-AA49.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Merrily A. Friedlander, Chief, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66560, Washington, DC 20035-6560
Phone: 202 307-2222
TDD Phone: 202 307-2678
Fax: 202 307-0595
Email: merrily.a.friedlander@usdoj.gov

RIN: 1190–AA52

1357. PROCEDURES TO REVIEW POLICE DEPARTMENTS FOR A PATTERN OR PRACTICE OF CONDUCT THAT DEPRIVES PERSONS OF RIGHTS, PRIVILEGES, OR IMMUNITIES SECURED OR PROTECTED BY THE CONSTITUTION OR LAWS OF THE U.S.

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 28 USC 509

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Pursuant to the Violent Crime Control and Law Enforcement Act of 1994, 42 U.S.C. section 14141 ("section 14141"), the Attorney General is authorized to file lawsuits seeking court orders to reform police departments engaging in a pattern or practice of conduct that deprives persons of rights, privileges, or immunities secured by the Constitution or laws of the United States. To date, the Department of Justice has conducted reviews of police departments pursuant to section 14141 using informal procedures. The purpose of this rule is to formalize the procedures by which the Department reviews police departments for a pattern or practice of unlawful conduct.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Robert Driscoll, Deputy Assistant Attorney General, Department of Justice, Civil Rights Division, Room 5541, 950 Pennsylvania Avenue, NW, Washington, DC 20530
Phone: 202 353-0742

RIN: 1190–AA53

Department of Justice (DOJ)
Civil Rights Division (CRT)

Final Rule Stage

1358. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Legal Deadline: None

Abstract: The Department of Justice is amending its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's regulation will be published as part of a joint final rule involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Merrily A. Friedlander, Chief, Coordination and Review Section, Department of Justice, Civil Rights Division, P.O. Box 66560, Washington, DC 20035-6560
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RIN: 1190–AA49

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Department of Justice (DOJ)
Civil Rights Division (CRT)

Completed Actions

1359. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN STATE AND LOCAL GOVERNMENT SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 35

Completed:

Reason	Date	FR Cite
Merged into RIN 1190-AA46	03/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: John L. Wodatch
Phone: 800 514-0301
TDD Phone: 800 514-0383
Fax: 202 307-1198

RIN: 1190–AA36

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Prerule Stage

1360. • CHEMICAL MIXTURES CONTAINING GAMMA-BUTYROLACTONE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In previous rulemakings, DEA made gamma-butyrolactone (GBL) a List I chemical and established thresholds for transactions involving this chemical. DEA is requesting information from interested persons in order to propose regulations governing chemical mixtures containing gamma-butyrolactone (GBL), a List I chemical. GBL is used in the illicit manufacture of GHB, a Schedule I controlled substance. Specifically, DEA is seeking information on the types of products containing GBL; the concentration levels of GBL in the product formulations; and the packaging, distribution, use, and commercial availability of these products. This information will help to determine whether there are chemical mixtures containing GBL which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	08/00/02	
ANPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-222

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA52

RIN: 1117–AA64

1361. • CHEMICAL MIXTURES CONTAINING LISTED FORMS OF PHOSPHORUS

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: In a previous rulemaking, DEA made red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) List I chemicals. DEA is requesting information from interested parties to propose regulations governing chemical mixtures containing the List I chemicals red phosphorus, white phosphorus, and hypophosphorous acid (and its salts). These three List I chemicals are used industrially and have multiple commercial purposes. They are also used in the illicit production of methamphetamine and amphetamine. Information sought will help determine whether there are chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts) which should be exempt from the regulations governing listed chemicals.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	
ANPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-228

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA57

RIN: 1117–AA66

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Proposed Rule Stage

1362. GUIDELINES FOR PROVIDING CONTROLLED SUBSTANCES TO OCEAN VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is considering whether to propose amending its regulations regarding the supply of controlled substances to ocean vessels to provide a means of supply more consistent with current industry practices for other materials. The decision on whether to propose amendments will be based on the information and comments submitted in response to this notice of proposed rulemaking and DEA's experience with the existing procedures and practices for supplying controlled substances to ocean vessels.

Timetable:

Action	Date	FR Cite
ANPRM	09/18/96	61 FR 49086
ANPRM Comment Period End	11/18/96	
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-142

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA40

1363. SALE BY FEDERAL DEPARTMENTS OR AGENCIES OF CHEMICALS USABLE TO MANUFACTURE A CONTROLLED SUBSTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b); 21 USC 880; 21 USC 958(f); 21 USC 965; 21 USC 890

CFR Citation: 21 CFR 1310; 21 CFR 1316

Legal Deadline: None

Abstract: DEA is proposing to amend its regulations to provide that a Federal department or agency may not sell from the stocks of the department or agency any chemical which could be used in the manufacture of a controlled substance unless the Administrator of DEA certifies in writing to the head of the department or agency that there is no reasonable cause to believe that the sale of the chemical would result in the illegal manufacture of a controlled substance. The proposed rulemaking provides regulatory guidelines and establishes a procedure for prospective bidder and/or broker to appeal if they are aggrieved by DEA's failure to provide such certification.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: DEA-176

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA47

1364. EXEMPTION FROM IMPORT/EXPORT REQUIREMENTS FOR PERSONAL MEDICAL USE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 956

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: DEA is proposing to amend its regulations to restrict to 50 dosage units the total quantity of Schedule II, III, IV, and V controlled substances that may be imported for personal medical use by United States (U.S.) residents entering the U.S. A dosage unit is considered by DEA to be the basic unit used to quantify the amount to be taken in normal usage. The proposed 50 dosage unit limit would not apply to a U.S. resident who has a valid U.S. practitioner's prescription. This proposed rulemaking implements and extends the provisions of the Controlled Substances Trafficking Prohibition Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-192

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA56

1365. ELECTRONIC ORDERS FOR SCHEDULE I AND II CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 827; 21 USC 828; 21 USC 871(b); 21 USC 958(e); 21 USC 965

CFR Citation: 21 CFR 1304; 21 CFR 1305

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA) (21 U.S.C. 801 et seq.). The regulations will propose that this electronic system may also be used for controlled substances in Schedules III, IV, and V. These proposed regulations would be in addition to, not a replacement of, the existing rules. These regulations are needed to give manufacturers, distributors, importers, exporters, pharmacies, and hospitals the option to use modern technology for controlled substance transactions. The proposed regulations would reduce paperwork and transaction times for DEA registrants who distribute, purchase, or handle controlled substances. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106-229, the "Electronic

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Signatures in Global and National Commerce Act," while maintaining a closed system of distribution of controlled substances and ensuring security and authentication. In addition, DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions.

Timetable:

Electronic Orders for Schedule I and II Controlled Substances
ANPRM 03/05/01 (66 FR 13274)
NPRM 12/00/02
NPRM Comment Period End 02/00/03
Notice of Intent to Conduct Performance Verification Testing of Public Key Infrastructure Enabled Controlled Substance Orders
Notice 01/11/02 (67 FR 1507)

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ANPRM: DEA-214

Notice: DEA-224

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA61

RIN: 1117–AA60

1366. ELECTRONIC PRESCRIPTIONS FOR CONTROLLED SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 829; 21 USC 871(b)

CFR Citation: 21 CFR 1306

Legal Deadline: None

Abstract: DEA is proposing to revise its regulations to permit DEA-registered prescribers to electronically write, sign, and transmit prescriptions. These proposed regulations would be an addition to, not a replacement of, the existing rules. These regulations are needed to give pharmacies, hospitals, and practitioners the ability to use modern technology for controlled substance prescriptions, while maintaining the closed system of distribution of controlled substances dispensing. The proposed regulations would reduce paperwork and transaction times for DEA registrants who dispense or prescribe controlled substances. The proposed regulations would also reduce the number of prescription errors caused by illegible handwriting and misunderstood oral prescriptions. They would allow pharmacies and hospitals to integrate prescription records into other medical records more directly, increasing efficiency, and would reduce the time patients spend waiting to have prescriptions filled. These proposed regulations are consistent with paperwork reduction mandates. These proposed regulations also respond to the requirements of Public Law 106-229, the "Electronic Signatures in Global and National Commerce Act," while ensuring security and authentication. In addition, DEA is proposing to revise its regulations to provide the option of ordering Schedule I and II controlled substances electronically in a manner consistent with the requirements of the Controlled Substances Act (CSA)(21 USC 801 et seq.)

Timetable:

Action	Date	FR Cite
ANPRM	03/05/01	66 FR 13274
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: DEA 214

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

Related RIN: Related To 1117-AA60

RIN: 1117–AA61

1367. SECURITY REQUIREMENTS FOR HANDLERS OF PSEUDOEPHEDRINE, EPHEDRINE, AND PHENYLPROPANOLAMINE

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: DEA is proposing to require that manufacturers, distributors, importers and exporters of pseudoephedrine, ephedrine and phenylpropanolamine implement security procedures similar to those of Schedules III-V controlled substances to prevent the theft and diversion of these List I chemicals. Pseudoephedrine and ephedrine are used in the illegal manufacture of methamphetamine, and phenylpropanolamine is used in the illegal manufacture of amphetamine.

The vast majority of these clandestine laboratories were producing methamphetamine using over-the-counter regulated drug products. Some of the product found at these clandestine laboratories came from thefts at manufacturers, distributors, importers and exporters. Almost all of the reports of List I chemical thefts reported to DEA in the past few years have involved pseudoephedrine, ephedrine, or phenylpropanolamine.

Therefore, to address the problem of diversion of pseudoephedrine, ephedrine and phenylpropanolamine through theft, DEA is proposing that manufacturers, distributors, importers and exporters of these three chemicals implement security procedures similar to those now used by registrants handling Schedules III through V controlled substances. These procedures include the storage of substances in a secure safe or steel cabinet, cage, or room and installation of a monitored alarm system linked to a central location. Keeping pseudoephedrine, ephedrine, and phenylpropanolamine products in such secure areas will limit the opportunity for theft.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-211

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA62

1368. REORGANIZATION AND CLARIFICATION OF DEA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 871(b)

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1302; 21 CFR 1303; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307; 21 CFR 1308; 21 CFR 1309; 21 CFR 1310; 21 CFR 1312; 21 CFR 1313; ...

Legal Deadline: None

Abstract: DEA is proposing a revision and reorganization of Title 21, Code of Federal Regulations, Chapter II. These regulations relate to the manufacture, distribution, dispensing, importation, and exportation of controlled substances and the manufacture, distribution, importation, and exportation of listed chemicals. This action is being taken to further clarify and reorganize the current regulations. The regulations will be drafted in plain language to make them easier to understand.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-221

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA63

1369. • CHEMICAL REGISTRATION WAIVERS; EXEMPTION FROM CHEMICAL REGISTRATION FEES FOR CERTAIN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871(b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309; 21 CFR 1310

Legal Deadline: None

Abstract: DEA is proposing amending its regulations to waive the requirement of registration for contract processors, medical/first aid kit providers, distributors of sample packages of drug products, distributors of research/reference standards, and rural wholesale distributors. These actions are being taken in response to industry comments and suggestions. DEA has determined that requiring registration for these activities is not necessary for effective enforcement under the Controlled Substances Act (CSA), and waiving the requirement of registration will ease regulatory burdens for the affected industries. DEA is also proposing exempting charitable organizations and governmental entities from initial and renewal registration fees. These fee exemptions will bring the chemical regulations into conformance with the controlled substances regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Federal

Additional Information: DEA-189

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA67

Department of Justice (DOJ)
Drug Enforcement Administration (DEA)

Final Rule Stage

1370. DEFINITION AND REGISTRATION OF REVERSE DISTRIBUTORS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871(b); 21 USC 875; 21 USC 877

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: In years past, most pharmaceutical manufacturers and wholesalers, as a service to their customers, accepted returns of outdated/damaged merchandise. Also, agencies such as DEA and State Boards of Pharmacy accepted surrendered drugs or witnessed their disposal by controlled substance registrants. Over the past several years, environmental concerns and regulations have eliminated many of the disposal options which had been available. As a result, drug producers and government agencies alike are increasingly reluctant to be involved in the disposal process. Due to these factors and the time and resources expended by DEA and manufacturers, DEA is proposing the establishment of this essential link in the legitimate distribution chain.

Timetable:

Action	Date	FR Cite
NPRM	08/23/95	60 FR 43732
NPRM Comment Period End	10/23/95	
Interim Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-108

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA19

1371. EXEMPTION OF CHEMICAL MIXTURES

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

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CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: The Domestic Chemical Diversion Control Act of 1993 removed the exemption from regulation for chemical mixtures. Chemical mixtures are now regulated, unless specifically exempted by the Administrator. In the proposed rule regarding the implementation of the Domestic Chemical Diversion Control Act of 1993, DEA proposed regulations regarding exemption of chemical mixtures. Based on industry comments, the proposed regulations were subsequently withdrawn for reassessment and consultation with industry. Based on extensive consultations with industry, DEA has published proposed regulations intended to establish the least possible burden on industry while remaining consistent with the requirements of the law. Comments received on the proposed regulations are currently being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	09/16/98	63 FR 49506
NPRM Comment Period Extended to 04/16/99	02/12/99	64 FR 7144
NPRM Comment Period End	04/16/99	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-137

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

RIN: 1117–AA31

1372. REGISTRATION AND REREGISTRATION APPLICATION FEES

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 822; 21 USC 871(b)

CFR Citation: 21 CFR 1301

Legal Deadline: None

Abstract: In furtherance of the DEA's 1992 final rule regarding the increase of application fees (57 FR 60148), DEA is publishing this explanation of the components of the diversion control program.

Timetable:

Action	Date	FR Cite
Final Rule Republished for Further Comment	12/30/96	61 FR 68624
Comment Period End	03/31/97	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-140

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA34

1373. CHEMICAL REGISTRATION AND REREGISTRATION FEES

Priority: Other Significant

Legal Authority: 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 830; 21 USC 871 (b); 21 USC 875; 21 USC 877; 21 USC 958

CFR Citation: 21 CFR 1309

Legal Deadline: None

Abstract: The Drug Enforcement Administration (DEA) proposes to amend its application fees for registration and reregistration of manufacturers, distributors, importers, and exporters of List I chemicals, as authorized by section 3(a) of the Domestic Chemical Diversion Control Act of 1993 (DCDCA), reducing the fees from $595.00 to $326.00 for initial registration, and the reregistration fees from $477.00 to $171.00. Fees for retail registrants will increase from $255.00 to $326.00 for registration, and from $116.00 to $171.00 for reregistration. Office of Management and Budget Circular A-25 requires a periodic review of user charges for agency programs. This review will bring fees into alignment with current changes in costs or market values.

Timetable:

Action	Date	FR Cite
NPRM	12/01/99	64 FR 67216
NPRM Comment Period End	01/31/00	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: DEA-185

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA50

1374. PLACEMENT OF GAMMA-BUTYROLACTONE IN LIST I OF THE CONTROLLED SUBSTANCES ACT (21 U.S.C. 802)

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: Public Law 106-172, signed into law on February 18, 2000, and known as the "Hillary J. Farias and Samantha Reid Date-Rape Drug Prohibition Act of 1999" amends section 102(34) of the Controlled Substances Act as amended (CSA) by designating gamma-butyrolactone (GBL), the precursor to gamma-hydroxybutyric acid (GHB), as a List I chemical. Reflecting this change in statute, the Drug Enforcement Administration (DEA) amended its regulation to reflect the status of GBL as a List I chemical subject to the requirements of the CSA and its regulations. Establishment of a threshold for GBL is the subject of a separate rulemaking. Therefore, unless and until a threshold is established, any distribution of GBL is a regulated transaction as described by 21 CFR 1300.02(b)(28). All handlers of GBL must comply with the CSA regulatory requirements pertaining to List I chemicals as described in the body of this document. Further, DEA is considering regulations regarding exemption of chemical mixtures containing GBL.

Timetable:

Placement of Gamma-Butyrolactone in List I of the Controlled Substance Act (21 U.S.C. 802)
Final Rule 04/24/00 (65 FR 21645)
Threshold for Gamma-Butyrolactone
NPRM 10/24/01 (66 FR 53746)
Correction 12/12/01 (66 FR 64173)
NPRM Comment Period End 12/24/01
Final Action 09/00/02

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-199, DEA-203

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA64

RIN: 1117–AA52

1375. INDUSTRIAL USE OF PRODUCTS AND MATERIALS DERIVED FROM CANNABIS PLANTS

Priority: Other Significant

Legal Authority: 21 USC 802; 21 USC 811; 21 USC 812; 21 USC 871(b)

CFR Citation: 21 CFR 1308

Legal Deadline: None

Abstract: DEA published three rules simultaneously in the Federal Register regarding the status of products manufactured from the cannabis plant. It is anticipated that the three rules will be as follows.

The first rule will be an interpretive rule, which will provide DEA's interpretation of existing law with respect to the listing of tetrahydrocannabinols (THC) in Schedule I of the Controlled Substances Act (CSA) and DEA regulations. (Please see "Additional Information" for further details.)

The second rule will be a proposed rule, which will propose to revise the wording of the DEA regulations to more clearly reflect DEA's interpretation of the law as set forth in the interpretive rule. The proposed rule would make clear that the listing of THC in Schedule I includes both natural and synthetic THC and that any substance containing any amount of THC is a Schedule I controlled substance—even if such substance is made from "hemp."

The third rule will be an interim rule, which will exempt from application of the CSA and DEA regulations certain industrial "hemp" products. DEA would be issuing this rule to allow the continuation of what have historically been considered legitimate industrial uses of "hemp." Under this rule, industrial "hemp" products such as paper, rope, and clothing may continue to be marketed in the United States without being subject to the CSA. At the same time, in order to protect the public health and safety, the interim rule will not allow "hemp" products that result in THC entering the human body. In this manner, it will remain clear that the only lawful way THC may enter the human body is when a person is using a federally approved drug or when the person is the subject of federally approved research.

Timetable:

Clarification of Listing of Tetrahydrocannabinols
NPRM 10/09/01 (66 FR 51535)
NPRM Comment Period End 12/10/01
Final Action 05/00/02
Exemption from Control of Certain Industrial Products and Material Derived From the Cannabis Plant
Interim Final Rule 10/09/01 (66 FR 51539)
Interim Final Rule Comment Period End 12/10/01
Interim Final Rule extending grace period 02/15/02 (67 FR 7073)
Final Action 05/00/02

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: While agencies are not required to include information regarding interpretive rules in the Unified Agenda, DEA is providing a description of this interpretive rule for informational purposes. The interpretive rule will provide DEA's interpretation of existing law with respect to the listing of tetrahydrocannabinols (THC) in Schedule I of the Controlled Substances Act (CSA) and DEA regulations. The rule will further provide DEA's interpretation of the current legal status of products containing THC. In recent months, DEA has received numerous inquiries from members of the public about the legal status of products made from "hemp" (portions of the cannabis plant excluded from the CSA definition of marijuana). As stated in this rule, DEA interprets the CSA such that any substance containing any amount of THC is a Schedule I controlled substance—even if such substance is made from "hemp."

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

RIN: 1117–AA55

1376. CONTROL OF RED PHOSPHORUS, WHITE PHOSPHORUS, AND HYPOPHOSPHOROUS ACID (AND ITS SALTS) AS LIST I CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b)

CFR Citation: 21 CFR 1310

Legal Deadline: None

Abstract: Because of their use and importance in the illicit manufacture of methamphetamine, a Schedule II controlled substance, DEA is proposing the addition of red phosphorus, white phosphorus (also known as yellow phosphorus), and hypophosphorous acid (and its salts) as List I chemicals. These phosphorus chemicals have been identified as being important chemicals for the illicit production of methamphetamine. As List I chemicals, handlers of these materials will be subject to Controlled Substances Act (CSA) chemical regulatory controls including registration, recordkeeping, reporting, and import/export requirements. DEA has determined that these controls are necessary to prevent the diversion of these chemicals to clandestine drug laboratories.

DEA has conducted an extensive review of the phosphorus industry, publishing an Advanced Notice of Proposed Rulemaking. DEA's review indicated that there are only two domestic producers of white phosphorus and three producers of red phosphorus, or hypophosphorous acid (and its salts). While producers of white phosphorus will be required to register with DEA and maintain records of each regulated transaction (i.e., all transactions of these chemicals), over 98 percent of the phosphorus produced is converted to a form not impacted by this regulation. The remaining 2

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percent of the phosphorus (used domestically) is utilized in its elemental form (i.e., as red phosphorus or white phosphorus) or used to produce all other phosphorus chemicals. Therefore, this regulation will only affect the distribution of less than 2 percent of the industry at the end user level. Further, DEA is considering regulations regarding the exemption of chemical mixtures containing red phosphorus, white phosphorus, and hypophosphorous acid (and its salts).

Timetable:

Action	Date	FR Cite
ANPRM	02/02/00	65 FR 4913
ANPRM Comment Period End	04/03/00	
NPRM	09/25/00	65 FR 57577
NPRM Comment Period End	11/24/00	
Final Rule	10/17/01	66 FR 52670
Comment Period End	11/16/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-198

Agency Contact: Frank Sapienza, Chief, Drug and Chemical Evaluation Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7183

Related RIN: Related To 1117-AA66

RIN: 1117–AA57

1377. ALLOWING CENTRAL FILL PHARMACIES TO FILL PRESCRIPTIONS FOR CONTROLLED SUBSTANCES ON BEHALF OF RETAIL PHARMACIES

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 821; 21 USC 822; 21 USC 823; 21 USC 824; 21 USC 871 (b); 21 USC 875; 21 USC 877

CFR Citation: 21 CFR 1300; 21 CFR 1301; 21 CFR 1304; 21 CFR 1305; 21 CFR 1306; 21 CFR 1307

Legal Deadline: None

Abstract: DEA is amending its regulations to provide for the use of central fill pharmacies, also known as refill pharmacies, fulfillment centers, or call centers. Unlike retail pharmacies which dispense controlled substances directly to the patient, central fill pharmacies provide a service to retail pharmacies by preparing and packaging prescriptions for retail pharmacies to dispense to the patient. Prescription information is transmitted from a retail pharmacy to a central fill pharmacy where the prescription is filled or refilled. The filled prescription is delivered to the retail pharmacy for pickup by the patient. Industry has expressed interest in utilizing central fill pharmacy operations to allow for more efficient delivery of prescriptions to patients.

Timetable:

Action	Date	FR Cite
NPRM	09/06/01	66 FR 46567
NPRM Comment Period End	11/05/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-208

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA58

1378. • CHANGE OF ADDRESS FOR FILING CHEMICAL IMPORT/EXPORT DECLARATIONS (DEA FORM 486), REPORTS FOR THE IMPORTATION OR EXPORTATION OF TABLETING AND ENCAPSULATING MACHINES, AND OTHER RELATED REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 21 USC 802; 21 USC 830; 21 USC 871(b); 21 USC 971

CFR Citation: 21 CFR 1310; 21 CFR 1313

Legal Deadline: None

Abstract: DEA is amending the Code of Federal Regulations to change the address to which certain required chemical-related reports are submitted.

Timetable:

Action	Date	FR Cite
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: DEA-229

Agency Contact: Patricia M. Good, Chief, Liaison and Policy Section, Department of Justice, Drug Enforcement Administration, Office of Diversion Control, Washington, DC 20537
Phone: 202 307-7297

RIN: 1117–AA65

Department of Justice (DOJ)
Drug Enforcement Administration (DEA) **Completed Actions**

1379. IMPLEMENTATION OF THE METHAMPHETAMINE CONTROL ACT; REGULATION OF PSEUDOEPHEDRINE, PHENYLPROPANOLAMINE, AND COMBINATION EPHEDRINE DRUG PRODUCTS; REPORTS OF CERTAIN TRANSACTIONS TO NONREGULATED PERSONS

Priority: Other Significant

CFR Citation: 21 CFR 1300; 21 CFR 1309; 21 CFR 1310

Completed:

Reason	Date	FR Cite
Final Action	03/28/02	67 FR 14853
Final Action Effective	04/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia M. Good
Phone: 202 307-7297

RIN: 1117–AA44

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR) **Proposed Rule Stage**

1380. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL FOR CERTAIN BATTERED SPOUSES AND CHILDREN; MOTIONS TO REOPEN FOR CERTAIN BATTERED SPOUSES AND CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1101 note; 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224-1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1251a; 8 USC 1252b; 8 USC 1324b; 8 USC 1362; 28 USC 509-510; 28 USC 1746; Reorg Plan No. 2 of 1950; 3 CFR 1949-53 Comp., sec 2; PL 105-100, sec 202-203; PL 105-277, sec 902; PL 106-386, sec 1506; PL 106-554, sec 1505; PL 106-554, sec 1510; 8 CFR 2; 8 CFR 3; 8 CFR 240

CFR Citation: 8 CFR 3; 8 CFR 240

Legal Deadline: None

Abstract: This rule amends Department regulations by establishing procedures incorporating the amended requirements of cancellation of removal for battered spouses and children under 240A(b)(2) of the Immigration and Nationality Act (Act), and suspension of deportation under former section 244(a)(3) of the Act (as it existed before April 1, 1997), which were amended by section 1504 of the Battered Immigrant Women Protection Act of 2000.

This rule also amends Department regulations by establishing procedures for certain battered spouses and children to reopen their removal or deportation proceedings to apply for the relief of cancellation of removal or suspension of deportation under 240(c)(6)(C)(iv) of the Act (as amended by section 1506 of the Battered Immigrant Women Protection Act of 2000).

Additionally, this rule establishes procedures which must be followed by EOIR when an alien applies for a domestic violence victim waiver under section 237(a)(7) of the Act (as amended by section 1505(b) of the Battered Immigrant Women Protection Act of 2000).

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA35

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR) **Final Rule Stage**

1381. SUSPENSION OF DEPORTATION AND CANCELLATION OF REMOVAL

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224 to 1227; 8 USC 1251 to 1252; 8 USC 1362; PL 105-100, sec 202

CFR Citation: 8 CFR 240

Legal Deadline: None

Abstract: This rule amends the regulations of the Executive Office for Immigration Review and the Immigration and Naturalization Service by eliminating the conditional grant process at 8 CFR 240.21 and establishing a permanent procedure for processing suspension of deportation and cancellation of removal cases. This rule is necessary to implement the numerical limitation on suspension of deportation and cancellation of removal and adjustment of status imposed by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/98	63 FR 52134
Interim Final Rule Comment Period End	11/30/98	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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Government Levels Affected: None

Additional Information: This rule supersedes rule published October 3, 1997, in the Federal Register at 62 FR 51760 through 51762 (RIN 1125-AA19).

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA25

1382. AUTHORITIES DELEGATED TO THE DIRECTOR OF THE EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1252 note; 8 USC 1252b; 8 USC 1362; 28 USC 509-10; 28 USC 1746

CFR Citation: 8 CFR 3; 8 CFR 240; 28 CFR

Legal Deadline: None

Abstract: This rule outlines the authorities and powers (and limitations thereto) delegated by the Attorney General to the Director of the Executive Office for Immigration Review (EOIR), the Chairman of the Board of Immigration Appeals (BIA), and the Chief Immigration Judge. These authorities include such managerial responsibilities as: Issuing operational instructions, setting policies, providing for the training of staff, and ensuring the efficient disposition of cases. One of the limitations on the powers of the Director of EOIR, the Chairman of the BIA, and the Chief Immigration Judge is that they cannot direct the result of a case adjudication assigned to someone else. Further, the Director of EOIR cannot adjudicate cases.

Additionally, this rule makes technical amendments to better describe EOIR's components: The Board of Immigration Appeals (BIA), the Office of the Chief Immigration Judge (OCIJ), and the Office of the Chief Administrative Hearing Officer (OCAHO).

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81434
NPRM Comment Period End	02/26/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA27

1383. MOTIONS TO REOPEN FOR SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL PURSUANT TO SECTION 1505(C) OF THE LIFE ACT AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1103, 1252 note, 1252b, 1324b, 1362; 28 USC 509 to 510; 28 USC 1746; sec 203 of PL 105-100; secs 1506 and 1510 of PL 106-386; sec 1505 of PL 106-554

CFR Citation: 8 CFR 3

Legal Deadline: None

Abstract: The rule amends the regulations of the Executive Office for Immigration Review (EOIR) by establishing a special procedure for the filing and adjudication of motions to reopen to apply for suspension of deportation and cancellation of removal pursuant to section 1505(c) of the Legal Immigration Family Equity Act Amendments of 2000 (LIFE Act Amendments). Motions to reopen under this rule must be filed on or before October 16, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/17/01	66 FR 37119
Interim Final Rule Comment Period End	09/17/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA31

1384. SECTION 212(C) RELIEF FOR ALIENS WITH CERTAIN CRIMINAL CONVICTIONS BEFORE APRIL 1, 1997

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1186a; 8 USC 1224-1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 8 USC 1252b; PL 105-110, sec 202-203; PL 105-277, sec 902; 8 CFR part 2

CFR Citation: 8 CFR 3

Legal Deadline: None

Abstract: The rule amends the regulations of the EOIR and the INS by establishing procedures for certain lawful permanent residents (LPRs) with certain criminal convictions to apply for a waiver of inadmissibility pursuant to former section 212(c) of the INA. It is only applicable to certain LPRs whose convictions were prior to April 1, 1997. It applies to certain LPRs who have cases pending before EOIR or are under final administrative orders. This rule will broaden eligibility for INA section 212(c) relief in light of the recent Supreme Court decision in INS v. St. Cyr, 121 (S.Ct. 2271(2001).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA33

1385. • BOARD OF IMMIGRATION APPEALS; PROCEDURAL REFORMS TO IMPROVE CASE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1252 note; 8 USC 1252b; 8 USC 1324b; 8 USC 1362; 28 USC 509; 28 USC 510; 28 USC 1746; Reorg Plan No 2 of 1950 sec 2; 3 cfr 1949 to 1953 Comp, p.1002; 8 USC 1103; 8 USC 1221; 8 USC 1223; 8 USC 1227; 8 USC 1229; 8 USC 1253; 8 USC 1281; 8 USC 1283 to 1286; 8 USC 1322 to 1323; 8 USC 1330; 66 Stat 173; 66 Stat 195; 66 Stat 197; 66 Stat 201; 66 Stat 203; 66 Stat 212; 66 Stat 219; 66 Stat 221 to 223; 66 Stat 226 to 227; 66 Stat 230; PL 101-410, 104 stat 890 (amended); PL 104-134, 110 stat 1321

CFR Citation: 8 CFR 3; 8 CFR 280

Legal Deadline: None

Abstract: This rule revises the structure and procedures of the Board of Immigration Appeals (Board), provides for an enhanced case management procedure, and expands the number of cases referred to a single Board member for disposition. These procedures are intended to reduce delays in the review process, enable the Board to keep up with its caseload and reduce the existing backlog of cases, and allow the Board to focus more attention on those cases presenting significant issues for resolution by a three-member panel.

The rule incorporates the previously proposed rule published by Attorney General Reno that set forth to clarify and strengthen the management authority of the Director of the Executive Office for Immigration Review (EOIR), the Chairman of the Board, and the Chief Immigration Judge with respect to the efficient disposition of cases pending before the Board and immigration judges. See 65 FR 81434 (Dec. 26, 2000).

In addition, the rule restores grounds for summary dismissal of frivolous appeals. Frivolous appeals include those appeals filed for an improper purpose or appeals that lack an arguable basis in fact or law. The restoration of the summary dismissal grounds allows the EOIR disciplinary counsel to develop a factual record in order to support appropriate disciplinary action against attorneys or representatives who repeatedly file frivolous appeals.

Finally, this rule transfers the Board's current jurisdiction over appeals from decision by the Immigration and Naturalization Service imposing various kinds of administrative fines (see 8 CFR 280) to the Office of the Chief Administrative Hearing Officer.

Timetable:

Action	Date	FR Cite
NPRM	02/19/02	67 FR 7309
NPRM Comment Period End	03/21/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1125–AA36

Department of Justice (DOJ)
Executive Office for Immigration Review (EOIR)

Long-Term Actions

1386. AUTHORITY OF IMMIGRATION JUDGES TO ISSUE CIVIL MONEY PENALTIES

Priority: Other Significant

CFR Citation: 8 CFR 1; 8 CFR 3

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
NPRM Comment Period End	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Adkins-Blanch
Phone: 703 305-0470

RIN: 1125–AA18

Department of Justice (DOJ)
Federal Bureau of Investigation (FBI)

Proposed Rule Stage

1387. IMPLEMENTATION OF THE NATIONAL STOLEN PASSENGER MOTOR VEHICLE INFORMATION SYSTEM (NSPMVIS)

Priority: Other Significant

Legal Authority: 49 USC 33109 to 33111

CFR Citation: 28 CFR 89

Legal Deadline: None

Abstract: The Attorney General is required to establish a National Stolen Passenger Motor Vehicle Information System (NSPMVIS) pursuant to the Anti Car Theft Act of 1992 (49 U.S.C. 33109 to 33111). The FBI is coordinating efforts in this matter and, under delegated authority from the Attorney General, the FBI is issuing this rule to establish a national system to verify the theft status of major motor vehicle component parts and junk or salvage vehicles. The system will include certain information about each passenger motor vehicle reported to a law enforcement agency as stolen and not recovered. The rule provides how an individual or entity may obtain information from the system on whether a vehicle or part is listed as stolen. The rule also provides verification procedures to be followed by insurance carriers and certain motor vehicle part businesses. In order to verify the theft status of a part or junk or salvage vehicle, an identification number will have to be obtained from the part or vehicle.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17027
NPRM Comment Period End	06/10/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: (RIN 1110-AA01 has been transferred from RIN 1105-AA44.)

The Criminal Division will issue a related regulation to implement the National Motor Vehicle Title Information System (NMVTIS). As required by statute, 49 U.S.C. section

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30504(a), the regulation will direct junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the NMVTIS concerning vehicles in their possession. (See RIN 1105-AA71.)

Agency Contact: Stephen A. Bucar, Domestic Projects Planning Unit, Department of Justice, Federal Bureau of Investigation, CJIS Division, Module C-3, 1000 Custer Hollow Road, Clarksburg, WV 26306
Phone: 304 625-2751
Fax: 304 625-3875

RIN: 1110–AA01

1388. CLAIMS OF EXEMPTIONS FROM PROVISIONS OF THE PRIVACY ACT AS TO FBI RECORDS

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a

CFR Citation: 28 CFR 16.96

Legal Deadline: None

Abstract: This rule clarifies the meaning of 28 CFR 16.96 "Exemption of Federal Bureau of Investigation Systems—Limited Access" by reorganizing the material and amplifying the reasons for exempting various FBI record systems from some provisions of the Privacy Act. The benefits will be greater ease of use by the public and more understandable, targeted claims of exemptions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth Haley, Assistant General Counsel, Department of Justice, Federal Bureau of Investigation, Room 7338, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW., Washington, DC 20535-0001
Phone: 202 324-4523

RIN: 1110–AA08

1389. FEDERAL BUREAU OF INVESTIGATION CRIMINAL JUSTICE INFORMATION SERVICE DIVISION SYSTEMS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 534

CFR Citation: 28 CFR 20.3(b); 28 CFR 20.3(g)

Legal Deadline: None

Abstract: The FBI is publishing for public comment and consideration a proposal to amend regulations relating to FBI criminal justice information systems. These changes will include the term "sentencing" in the definition of the administration of criminal justice and to clarify that "sentencing" includes the establishment of sentencing guidelines and related activities.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Harold M. Sklar, Attorney-Advisor, Department of Justice, Federal Bureau of Investigation, CJIS Division Module E-3, 1000 Custer Hollow Road, Clarksburg, WV 26306
Phone: 304 625-2000

RIN: 1110–AA09

Department of Justice (DOJ)
Federal Bureau of Investigation (FBI)

Final Rule Stage

1390. IMPLEMENTATION OF SECTIONS 104 AND 109 OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant

Legal Authority: PL 103-414 Communications Assistance for Law Enforcement Act; PL 104-208 Omnibus Consolidated Appropriations Act of 1997

CFR Citation: 28 CFR 100

Legal Deadline: Other, Statutory, October 25, 1998, While CALEA required telecommunications carriers to be in compliance with section 103 by October 25, 1998, the FCC exercised (continued in Additional Information).

Abstract: As required by section 109 of the Communications Assistance for Law Enforcement Act (CALEA), the FBI promulgated Cost Recovery Regulations allowing telecommunications carriers to recover certain costs associated with implementing CALEA. The final rule was published on March 20, 1997 (62 FR 13307), and became effective on April 21, 1997. In response to public comment received during this rulemaking, the FBI published an ANPRM on November 19, 1996 (61 FR 58799), which solicited input on the definition of the term "significant upgrade or major modification" as used by CALEA. The "significant upgrade or major modification" NPRM was published on April 28, 1998 (63 FR 23231). The FBI is currently preparing a supplemental notice of proposed rulemaking, which will define the terms "replaced" and "significantly upgraded or otherwise undergone major modification," which when codified will amend the Cost Recovery Regulations.

Additionally, CALEA section 104 requires the Attorney General to publish a Notice of Actual and Maximum Capacity in order to provide telecommunications carriers with the information they will need to meet law enforcement's future simultaneous electronic surveillance requirements. For local exchange, cellular, and broadband PCS, the FBI published an Initial Notice of Capacity on October 16, 1995 (60 FR 53643), and a Second Notice of Capacity on January 14, 1997 (62 FR 1902). The FBI published the Final Notice of Capacity for local exchange, cellular, and broadband PCS on March 12, 1998 (63 FR 12218). Additionally, the FBI published a Notice of Inquiry (NOI) in the Federal Register on December 18, 1998 (63 FR 70160), which solicited information on and suggestions for developing reasonable methodologies for characterizing capacity requirements for telecommunications services and technologies other than local exchange, cellular, and broadband PCS. Comments were due on February 16, 1999. Information gathered in response to the NOI was used in publishing the Further Notice of Inquiry (FNOI) on June 30, 2000 (65 FR 40694). Comments were due August 29, 2000. Information gathered in response to the FNOI will be used in the publication of an Initial Notice of Capacity for developing reasonable capacity methodologies for the paging, mobile satellite, specialized mobile radio, and enhanced specialized mobile radio services.

Timetable:

"Significant upgrade or major modification"		
ANPRM	11/19/96	61 FR 58799
ANPRM Comment Period End	12/19/96	
NPRM	04/28/98	63 FR 23231
NPRM Comment Period End	06/29/98	
Supplemental NPRM Proposing Definitions	10/05/01	66 FR 50931
Supplemental NPRM Comment Period End	12/04/01	
Final Action	09/00/02	
Cost Recovery Rule (Telecom. Carriers)		
NPRM	05/10/96	61 FR 21396
NPRM Comment Period End	07/09/96	
Final Rule	03/20/97	62 FR 13307
Final Rule Effective	04/21/97	
Notice of Actual and Max. Cap.-local exch, cellular, broadb PCS		
Initial Notice	10/16/95	60 FR 53643
Second Notice	01/14/97	62 FR 1902
Final Notice	03/12/98	63 FR 12217
Notice of Actual and Max. Cap.-paging, MSS, SMR, ESMR		
Notice of Inquiry (Cap Methodology)	12/18/98	63 FR 70160
Further Notice of Inquiry (Cap Methodology)	06/30/00	65 FR 40694
Initial Notice of Capacity	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: STATUTORY DEADLINE CONT: its authority under section 107 of CALEA to grant carriers extensions of this compliance date. As a result of the FCC's order, carriers must now be in compliance with section 103 by June 30, 2000. If compliance is not reasonably achievable through application of available technology, the carrier may petition the FCC for a section 107 extension of up to 2 years. By subsequent FCC orders, the assistance capability compliance date for packet mode communication is November 19, 2001, and for the additional capabilities/"punchlist" capabilities is June 30, 2002. Carriers may again petition the FCC for a section 107 extension. Lastly, as a result of the publication of the Final Notice of Capacity for local exchange, cellular, and broadband PCS carriers, these carriers must be in compliance with section 104 by March 12, 2001.

Transferred from RIN 1105-AA39.

Agency Contact: Walter V. Meslar, Unit Chief, Telecommunications Contracts and Audit Unit, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814-4900

Charles Fogle, SSA, CALEA Implementation Section, Department of Justice, Federal Bureau of Investigation, Suite 300, 14800 Conference Center Drive, Chantilly, VA 20151
Phone: 703 814-4836

RIN: 1110–AA00

1391. REGULATIONS UNDER THE PAM LYCHNER SEXUAL OFFENDER TRACKING AND IDENTIFICATION ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 104-236, sec 9

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, October 3, 1999, The Act does not distinguish between NPRM and final regulations.

Abstract: The FBI is issuing regulations to carry out the Pam Lychner Sexual Offender Tracking and Identification Act of 1996. These regulations include guidelines as to the operation and use of the national sex offender registry established by the FBI and the notice to be provided to the FBI in the event a registered sex offender moves interstate. On February 16, 1999, at 64 FR 7562, the FBI published a Notice of Proposed Rulemaking (NPRM) on this subject. Comments submitted on the NPRM are currently being reviewed.

Timetable:

Action	Date	FR Cite
NPRM	02/16/99	64 FR 7562
NPRM Comment Period End	04/19/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Additional Information: Transferred from RIN 1105-AA56.

Agency Contact: Venetia Sims, Department of Justice, Federal Bureau of Investigation, Criminal Justice Information Systems Division, Clarksburg, WV 26306
Phone: 304 625-2000

RIN: 1110–AA04

1392. NATIONAL INSTANT CRIMINAL BACKGROUND CHECK SYSTEM

Priority: Other Significant

Legal Authority: 18 USC 922 to 925; 5 USC 605(b); EO 12866; EO 13132; 5 USC 804; ...

CFR Citation: 28 CFR 25(b)(1); 28 CFR 25(b)(2); 28 CFR 25(b)(3); 28 CFR 25.9(b)(4); 28 CFR 25.2; ...

Legal Deadline: Other, Judicial, October 22, 2001, Written comments regarding proposed rule must be submitted on or before.

Abstract: The Department promulgated regulations to govern the National Instant Criminal Background Check System (NICS) in 1998 when the NICS became operational, and adopted amendments which became effective on July 3, 2001.

In this proposed rule, the Department published for public comment and further consideration, five proposals to make additional changes in the NICS regulations. The proposed changes balance the legitimate privacy interests of law-abiding firearms purchasers and the Department's obligation to enforce the Brady Act and the Gun Control Act to prevent prohibited persons from purchasing firearms.

Timetable:

Action	Date	FR Cite
NPRM	07/06/01	66 FR 35567
NPRM Comment Period End	09/04/01	
NPRM Comment Period Reopened	09/20/01	66 FR 48390
NPRM Reopened Comment Period End	10/22/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Agency Contact: Fanny L. Haslebacher, Attorney Advisor, Access Integrity Unit, Department of Justice, Federal Bureau of Investigation, CJIS Division,

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DOJ—FBI — **Final Rule Stage**

1000 Custer Hollow Road, Clarksburg, WV 26306-0147

Phone: 304 625-2000

RIN: 1110–AA07

Department of Justice (DOJ)
Immigration and Naturalization Service (INS) — **Prerule Stage**

1393. RESTRICTING CITIZENS OF BANGLADESH, INDIA, PAKISTAN, AND SRI LANKA FROM PARTICIPATION IN THE INTERNATIONAL-TO-INTERNATIONAL (ITI) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR Sec 212 part 1(f) (2)

Legal Deadline: None

Abstract: This regulatory action advises the public that the Immigration and Naturalization Service (Service) is amending its policy that allowed citizens from Bangladesh, India, Pakistan, and Sri Lanka the privilege to participate in the International-to-International (ITI) program despite Service regulations at title 8, section 212, part 1(f) (2) barring the citizens of these countries from participation in the Transit Without Visa (TWOV) and ITI programs. This notice proposes to correct this conflict between policy and regulations.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/02	
ANPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2157-01

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG30

Department of Justice (DOJ)
Immigration and Naturalization Service (INS) — **Proposed Rule Stage**

1394. REVISED GROUNDS OF INADMISSIBILITY, EXCEPTIONS, AND WAIVERS FOR IMMIGRANTS AND NONIMMIGRANTS, AND EXCEPTIONS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 552; 8 USC 1158; 8 USC 1159; 8 USC 1160; 8 USC 1182; 8 USC 1183; 8 USC 1184; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1157

CFR Citation: 8 CFR 103; 8 CFR 207; 8 CFR 208; 8 CFR 210; 8 CFR 212; ; 8 CFR 240; 8 CFR 241; 8 CFR 245; 8 CFR 245a; 8 CFR 249; 8 CFR 274a; 8 CFR 299; ...

Legal Deadline: None

Abstract: This rulemaking covers several grounds of inadmissibility applicable to those aliens seeking admission to the United States temporarily or permanently—criminal, security, labor certification, licensure requirements for foreign medical graduates and health care workers, failure to attend a removal proceeding, fraud, improperly issued immigrant visa, permanent ineligibility for U.S. citizenship and miscellaneous grounds. It implements several pieces of legislation. The most significant is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), signed on September 30, 1996, which substantially revised most grounds of inadmissibility under section 212 of the Act and the waivers available to both immigrants and nonimmigrants.

The original plan was to publish one large regulation. Instead, for logistical and practical reasons, and for ease of reading, the INS will publish an all-encompassing regulation, (consisting of 13 subparts.) Separately, INS will also publish the following regulations which focus on specific issues and include the following proposed rules: "Medical Examination Requirements and Designation of Civil Surgeons" RIN 1115-AG37, INS No. 2165-01; "Consent to Reapply for Admission After Removal" RIN 1115-AG28, INS No. 2147-01; "Waivers of the 2-Year Foreign Residence Requirement for Certain Exchange Visitors" RIN 1115-AG35, INS No. 2158-01; "Illegal Entries, Unlawful Presence, and Automatic Voidance of Nonimmigrant Visas" RIN 1115-AG36, INS No. 2166-01 and "Medical Grounds of Inadmissibility and Waivers" RIN 1115-AG38, INS No.2167-01.

In addition, the INS will publish one larger rule encompassing these points that were not broken out into separate rules. This larger rule addresses several grounds of inadmissibility including fraud, smuggling, and criminal grounds among others.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: INS No. 1413-92

Consolidated INS Rules 1304, RIN 1115-AC01; 1235, RIN 1115-AB39; 1232, RIN 1115-AB45; and 1648, RIN 1115-AD62.

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536

DOJ—INS — **Proposed Rule Stage**

Phone: 202 514-4754

Related RIN: Merged With 1115-AB39

RIN: 1115–AB45

1395. FEES FOR PARTICIPATION IN DEDICATED COMMUTER LANES AT SELECTED PORTS OF ENTRY; COLLECTION OF FEES UNDER THE DEDICATED COMMUTER LANE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356; 8 USC 1182; 8 USC 1183

CFR Citation: 8 CFR 103; 8 CFR 235; 8 CFR 286; 8 CFR 299

Legal Deadline: None

Abstract: These rules provide for the collection of a fee at the time of application for participation in a Dedicated Commuter Lane (DCL), instead of at the time of approval of the application. The DCL program is a pilot project established at selected land border ports of entry to expedite the transborder movement of eligible, pre-screened, low-risk groups through designated traffic lanes. The first interim rule clarifies the requirements for the use of the DCL (INS No. 1675). The second interim rule will set forth the fee required of participants in order to cover the technological costs (INS No. 1794).

INS No. 2058-00 will propose to remove restrictions currently in place that limit the locations where the INS can establish commuter lanes. In addition, the proposed rule will incorporate other projects designed to enhance border security and effective traffic management at port of entry. Finally, the rule may adjust the fee structure in order to administer these projects.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1675 Eff. 9/29/95; Comment Period End 11/28/95	09/29/95	60 FR 50386
Interim Final Rule Comment Period End	11/28/95	
Interim Final Rule (INS 1794-96)	10/11/96	61 FR 53303
Final Action (INS 1675-94)--Effective 10/16/1996	10/16/96	61 FR 53830
NPRM (INS 2058-00)	01/00/03	
Final Action (INS 1794-96)	01/00/03	
NPRM Comment Period End (INS 2058-00)	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Organizations

Government Levels Affected: Federal

Additional Information: INS Nos. 1675 and 1794-96

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4214, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9246

RIN: 1115–AD82

1396. INSPECTION OF PERSONS APPLYING FOR ADMISSION; INTERNATIONAL-TO-INTERNATIONAL USER FEE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1356

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations to require air carriers to charge and collect a user fee from every International-to-International (ITI) passenger arriving in the United States, except those individuals exempted under section 286(e)(1) of the Immigration and Nationality Act (Act). This action is necessary since the Service is required to inspect all aliens who are applicants for admission or otherwise seeking admission or readmission to or transit through the United States.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1757

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AE37

1397. FILING FACTUAL STATEMENTS ABOUT ALIEN PROSTITUTES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 2424; PL 104-208

CFR Citation: 28 CFR 94

Legal Deadline: None

Abstract: On September 30, 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) was enacted. This law not only amended significant portions of title 8 of the United States Code, but also changed the provisions of title 18 United States Code (Crimes and Criminal Procedures). Because section 325 amends 18 U.S.C., the Immigration and Naturalization Service will publish an implementing regulation dealing with the filing of statements by individuals who keep, maintain, control, support, or harbor alien prostitutes.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1810-96	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1810-96

Agency Contact: Elizabeth Goyer, Senior Special Agent, Investigations, Office of Field Operations, Department of Justice, Immigration and Naturalization Service, 425 I Street, NW, Washington, DC 20536
Phone: 202 616-3722

RIN: 1115–AE60

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1398. EMPLOYMENT VERIFICATION BY EMPLOYERS THAT ARE MEMBERS OF A MULTI-EMPLOYER ASSOCIATION

Priority: Other Significant

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The INS will issue regulations regarding when an employer that is a member of a multi-employer association employing an individual under a collective bargaining agreement entered into between one or more employee organizations and the multi-employer association may rely upon an Employment Eligibility Verification Form (Form I-9) completed for the individual by a previous employer that is a member of the same multi-employer association.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re INS No. 1817-96; PL 104-208, title 4

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE67

1399. USE OF PAROLE FOR HUMANITARIAN REASONS OR SIGNIFICANT PUBLIC BENEFIT AND REPORT TO CONGRESS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1182

CFR Citation: 8 CFR 212

Legal Deadline: NPRM, Statutory, September 11, 1997.

Abstract: Changes to the current regulations are necessitated by section 602 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. This section has reworded certain parole authority by stipulating parole on a case-by-case basis for urgent humanitarian reasons or significant public benefit.

Timetable:

Action	Date	FR Cite
NPRM (INS No. 1840-97)	12/00/02	
Final Rule-INS No. 1840-97	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: INS No. 1840-97

This rule affects the following section of the I&NA—section 212, as amended by sections 602 IIRIRA.

See RIN 1115-AF53 (INS No. 2004-99): This interim final rule published on December 28, 2000, amended the regulations concerning the authority to grant the parole of aliens from Service custody by specifically identifying the scope of that authority to include the Commissioner, the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and Regional Directors. This action was taken to clarify which individuals are authorized by the Attorney General, acting through the Commissioner, to grant parole from Service custody. INS will be issuing a final action addressing any public comments by January 2003.

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, Attn: ULLICO Bldg, Third Floor, 111 Massachusetts Avenue NW, Washington, DC 20001
Phone: 202 305-2670

RIN: 1115–AE68

1400. CERTIFICATION OF CERTAIN HEALTH CARE WORKERS

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(5); PL 104-208

CFR Citation: 8 CFR 204; 8 CFR 212; 8 CFR 214.2; 8 CFR 245; 8 CFR 248

Legal Deadline: Other, Statutory, January 19, 2001, Abraham v. Reno (D.D.C.).

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. Section 343 prohibits the entry of any alien who seeks to enter the U.S. for the purpose of performing labor as a health care worker (other than a physician) without a certificate as to the alien's qualifications and English ability from the Commission on Graduates of Foreign Nursing Schools (CGFNS) or an equivalent independent organization approved by the Attorney General.

The Service published an interim rule (INS 1879-97) to address shortages in the occupations of nursing and occupational therapy on October 14, 1998. In addition, the Service issued a second interim rule on April 30, 1999, to grant CGFNS authorization to issue certificates to foreign health care workers in the occupations of occupational therapy and physical therapy. This rule also granted the Foreign Credentialing Commission on Physical Therapy the authority to issue certificates to foreign-trained physical therapists. The second interim rule (INS 1979-99) was published under RIN 1115-AF43 and now is consolidated with this Unified Agenda of Federal Regulations entry. A third interim rule (INS 2082-00) was published on January 16, 2001, to address certification requirements for Speech Language Pathologists, Audiologists, Medical Technologists, and Physician Assistants.

The Service will be publishing a proposed rule (INS 2089-02) to fully implement section 343, including solicitation of public comments on the requirements relating to the designation of covered health care occupations, the procedures and requirements for certifying organizations, the content of the certificates, and the process for presentation of the certificates.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS 1879	10/14/98	63 FR 55007
Interim Final Rule Effective-INS 1879	12/14/98	
Interim Final Rule Comment Period End-INS 1879	02/11/99	
Interim Final Rule-INS 1979-99	04/30/99	64 FR 23174
Interim Final Rule Comment Period End-INS 1979-99	06/29/99	
Interim Final Rule Effective-INS 1979-99	06/29/99	
Interim Final Rule-INS 2089-00	01/16/01	66 FR 3440
Interim Final Rule Comment Period End	03/19/01	
Interim Final Rule Effective-INS 2089-00	03/19/01	
NPRM-INS No. 2089-02	09/00/02	
NPRM-INS No. 2080-02: Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Brown, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AE73

1401. REQUIRING ALIENS ORDERED REMOVED FROM THE UNITED STATES TO SURRENDER TO THE IMMIGRATION AND NATURALIZATION SERVICE FOR REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1254a; 8 USC 1245a note

CFR Citation: 8 CFR 240.13; 8 CFR 240.14; 8 CFR 240.15; 8 CFR 240.16

Legal Deadline: None

Abstract: This rule requires aliens subject to a final order of removal to surrender to the INS. This rule also establishes procedures for surrender and bars persons violating these procedures from obtaining discretionary immigration benefits.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47205
NPRM Comment Period End	11/03/98	
Supplemental NPRM	05/00/02	
Supplemental NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel Brown, Assistant General Counsel, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7977

RIN: 1115–AE82

1402. SPECIAL IMMIGRANT JUVENILE PETITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Service proposes to amend its regulations to add eligibility and consent requirements for approvals of special immigrant juvenile petitions (Form I-360). The proposed rule would require petitioners for special immigrant juvenile classification to demonstrate that a dependency order relating to the juvenile beneficiary (juvenile) was granted on account of abuse, neglect, or abandonment and establish that a court has determined that the juvenile should not be returned to the home country. The proposed rule would also provide that a dependency order may not serve as a precondition to the approval of the petition unless the Attorney General gives his express consent. These changes are necessary to conform the regulations to the statutory eligibility changes made by the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act of 1998 (the Appropriations Act of 1998).

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1948-98

Agency Contact: Michael C. Biggs, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536
Phone: 202 353-7705
Email: michael.c.biggs@usdoj.gov

RIN: 1115–AF11

1403. IMMIGRANT PETITIONS; RELIGIOUS WORKERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: On June 8, 1995, at 60 FR 29751, INS published a final rule that provided that all persons, other than ministers, immigrating to the U.S. as religious workers must immigrate or adjust status to permanent residence before October 1, 1997. By statute this special immigrant category for religious workers expired on October 1, 2000. Congress has extended the category again for an additional 3 years, until October 1, 2003. This regulation will implement the extension of this category and impose additional qualifying employment experience requirements for those persons affected by this provision of immigration regulations.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1436-94	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1436-94

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF12

1404. DOCUMENTARY REQUIREMENTS FOR RETURNING RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This rule proposes to amend INS regulations to specify how an alien admitted for permanent residence, on returning to the United States, may prove that he or she is not to be considered an applicant for admission. This rule is necessary to implement section 101(a)(13)(C) of the Act and to clarify the responsibility for carriers who transport to the United States aliens who claim to be to be returning residents. This rule will ensure that aliens who present themselves as lawful permanent residents are properly documented as such.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1932-98	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1932-98.

Agency Contact: Una Brien, Director, National Fines Office, Inspections Division, Field Operations, Department of Justice, Immigration and Naturalization Service, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305-7018

RIN: 1115–AF26

1405. DISMISSAL OF ASYLUM APPLICATION FOR UNEXCUSED FAILURE TO APPEAR AND EFFECT ON ELIGIBILITY FOR EMPLOYMENT AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2; 8 USC 1101; 8 USC 1329a

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: On December 6, 2000, the Service published a final rule to implement the asylum provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule proposes to amend the current rule to clarify that dismissal of an asylum application will result in ineligibility for asylum-based employment authorization.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2011-99

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 3rd Floor, 111 Massachusetts Avenue NW, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF38

1406. SPECIAL IMMIGRANT STATUS FOR CERTAIN NATO CIVILIAN EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing procedures for certain North Atlantic Treaty Organization (NATO) civilian employees and their family members to receive special immigrant status in the U.S. and become lawful permanent residents of this country. This rule also offers nonimmigrant status to any parent or child of a NATO civilian employee who has been granted special immigrant status. This rule is intended to ensure the qualifying NATO employees and their family members are aware of their opportunity to acquire special immigrant status and adjustment of status or otherwise obtain corresponding nonimmigrant status.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1984-99

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF44

1407. CONTRACTS WITH TRANSPORTATION LINES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1228

CFR Citation: 8 CFR 233

Legal Deadline: None

Abstract: This rule proposes to amend INS regulations by providing signature authority for forms I-420, Agreement Between Transportation Line and the U.S., I-425, Agreement (Pre-Inspection) Between Transportation Line and the U.S. (At Places Outside U.S.), and I-426, Immediate and Continuous Transit Agreement Between a Transport Line & U.S., to the Commissioner or her delegated representative. This change is required by section 308 of IIRIRA which amended section 233 (a) of the I&NA by requiring carriers transporting aliens to the U.S. from all "foreign territory and adjacent islands" to enter into a contract with the U.S. prior to transportation of such aliens. Another change is to remove the signature authority of the Associate Commissioner for Examinations for the aforementioned Agreements because the position was abolished.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1994-99

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AF46

1408. ADJUSTMENT OF STATUS UNDER THE 1966 CUBAN ADJUSTMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; PL 105-100, sec 202; ...

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This interim rule specifies what effect an alien's arrival in the United States at a place other than an open port of entry will have on the alien's ability to obtain permanent residence under section 1 of the Cuban Adjustment Act of 1966, as amended. This rule is necessary to establish uniform rules relating to both the alien's eligibility for this relief and to the proper exercise of the discretion to grant or deny this relief.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzy Nguyen, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF48

1409. ADJUSTMENT OF FEES FOR SERVICES AT LAND BORDER PORTS OF ENTRY

Priority: Other Significant

Legal Authority: PL 100-459; 8 USC 1356(m),(n); PL 101-515; PL 82-137; 31 USC 9701

CFR Citation: 8 CFR 239; 8 CFR 287

Legal Deadline: None

Abstract: This rule proposes to adjust the fees charged by the INS for three documents processed at land border ports of entry (POEs): (1) Form I-94, (2) Form I-94W, and (3) Form I-68. The I-94 and I-94(W) Arrival/Departure Record grants nonimmigrant visitors entering the U.S. the privilege to stay longer than 72 hours and to travel more than 25 miles from the border point of entry. The I-68, Canadian Border Boat Landing Permit, grants the privilege of making entries on the U.S. side of a body of water without reporting to a U.S. port of entry when traveling by small pleasure craft. Visits shall not exceed 72 hours nor shall travel exceed 25 miles from the border. The fee adjustment is necessary to ensure that full costs are recovered and that sufficient funds are available to service present and future applicants. The fees collected from persons filing those documents are deposited into the Immigration Examinations Fee Account (IFEA).

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2007-99

Agency Contact: Suzanne H Wilson, Chief, Border Management Branch, Department of Justice, Immigration and Naturalization Service, Room 5307, 425 I Street, Washington, DC 20536
Phone: 202 514-4721
Email: suzanne.wilson@usdoj.gov

RIN: 1115–AF55

1410. INADMISSIBILITY TO ENTER THE UNITED STATES FOR FORMER U.S. CITIZENS WHO RENOUNCED CITIZENSHIP TO AVOID TAXATION

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(10); PL 104-208

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing procedures to be followed by Service personnel and Department of State personnel in determining whether or not an expatriate alien is inadmissible to the United States under section 212(a)(10)(E) of the Immigration and Nationality Act. This ground of inadmissibility relates to former U.S. citizens who renounced U.S. citizenship on or after September 30, 1996, and the Attorney General has determined that such renunciation was done for the purpose of avoiding taxation by the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2039-99

Agency Contact: Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF69

1411. IMPOSITION OF FINES FOR VIOLATIONS OF THE IMMIGRATION AND NATIONALITY ACT

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1221; 8 USC 1223; 8 USC 1227; 8 USC 1229

CFR Citation: 8 CFR 280

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service's (Service) regulations to reflect the actual process used to recommend and impose fines for violations of the Immigration and Nationality Act (Act). Since the publication of 8 CFR part 280, the Service had centralized the fines process and made some adjustments to certain procedures. The 8 CFR part 280 will be renumbered sequentially and reordered to group related issues in one section. This part will also be expanded to provide for fines imposed under section 231A(d)(2) and 274D of the Act and will introduce procedures for detaining vessels and posting bonds, as well as giving the

Commissioner discretion in requiring bonds.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2041-00

Agency Contact: Una Brien, Director, National Fines Office, Inspections Division, Field Operations, Department of Justice, Immigration and Naturalization Service, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209 Phone: 202 305-7018

RIN: 1115–AF70

1412. ESTABLISHMENT OF FEE FOR PROCESSING GENEALOGICAL RESEARCH REQUESTS FOR INS RECORDS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: Under the Freedom of Information Act and Privacy Act the Immigration and Naturalization Service (Service) processes all requests for Service records including historical and genealogical records. This rule proposes to amend the Service's regulations by establishing the Historical Records Services (HRS) Program to process requests for the Service's historical records. The Service will charge a fee to recover the cost of searching, locating, retrieving, copying, reviewing, and mailing these records to the requester. The HRS program is necessary to provide a more timely response to requests for genealogical and historical records.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: INS No. 2074-00

Agency Contact: Marian L. Smith, Historian, Office of Files and Forms Management, Department of Justice, Immigration and Naturalization Service, Room 1100, 425 I Street NW, Washington, DC 20536 Phone: 202 514-2837 Fax: 202 305-8251

RIN: 1115–AF88

1413. INTERCOUNTRY ADOPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Immigration and Naturalization Service (Service) proposes to amend its regulations regarding the immigration of children of foreign states adopted by United States citizens. The proposed rule would establish a new definition of child to include children adopted from countries which have implemented the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (Convention). The proposed rule would also change evidentiary requirements for the immigration of adopted children to state that a certificate of adoption or custody issued by the Secretary of State of the United States is conclusive evidence of the relationship between an adoptive parent and the adoptive child. These changes are necessary to conform the regulations to the Intercountry Adoption Act of 2000(IAA). (Pub. L. 106-279)

The proposed rule would also make other technical changes.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2098-00: The legal deadline for this rulemaking is 1 year from implementation of the Hague Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption.

Agency Contact: Michael C. Biggs, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536 Phone: 202 353-7705 Email: michael.c.biggs@usdoj.gov

RIN: 1115–AF96

1414. ACADEMIC HONORARIUM FOR B NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-277; 8 USC 1182; 8 USC 1184

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The Immigration and Naturalization Service is proposing to amend its regulations relating to the acceptance of academic honoraria by nonimmigrant aliens admitted to the United States as a B visa visitor status. This is necessary to implement changes to section 212 of the Immigration and Nationality Act made by the American Competitiveness and Workforce Improvement Act of 1998. The amendment outlines the proposed procedures necessary for a nonimmigrant alien visiting the United States in valid B visa status to accept honoraria in connection with usual academic activities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2100-00

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536 Phone: 202 616-7867 Fax: 202 514-0198

Email: craig.s.howie@usdoj.gov

RIN: 1115–AF97

1415. TIME LIMIT FOR APPEAL FROM DENIAL OF RELATIVE VISA PETITION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: In this rule, the Immigration and Naturalization Service proposes to amend the regulations to provide a 15-day time-limit for an appeal to the Board of Immigration Appeals from the denial of a relative visa petition. Previously, the regulation specified a 15-day limit for such appeal. However, in 1992, that time-limit was inadvertently omitted from an amendment to the regulation, although the form for filing such an Appeal, Form EOIR-29, Notice of Appeal to the Board of Immigration Appeals for Decision of the Director still states that there is a 15-day limit. Nevertheless, the Board of Immigration Appeals has allowed appeals filed at any time after the denial on the ground that the regulations do not specify a time-limit. A time-limit is needed so that appeals may not be filed years after a denial and so that decisions will become final within a reasonable time period.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2105-00

Agency Contact: Ian Hinds, Attorney, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536 Phone: 202 514-2895

RIN: 1115–AF99

1416. ADOPTION OF SIBLINGS, ADOPTED ALIEN CHILDREN LESS THAN 18 YEARS OF AGE CONSIDERED A "CHILD"

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-139; 8 USC 1103; 8 CFR 2

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This proposed rule changes the definition of an adopted "child" or "orphan" from 16 years old to 18 years old in cases where the alien has a younger sibling, under the age of 16, who is also the subject of an orphan petition held by the same U.S. citizen or lawful permanent resident. The change is necessary to conform the regulations to the statutory eligibility changes made by Public Law 106-139. This change allows natural siblings, who might otherwise be separated, to be adopted together into the family of a citizen or lawful permanent resident of the United States.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2110-01

Agency Contact: Michael C. Biggs, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536 Phone: 202 353-7705 Email: michael.c.biggs@usdoj.gov

RIN: 1115–AG04

1417. ADJUSTMENT TO LAWFUL RESIDENT STATUS OF CERTAIN CLASS ACTION PARTICIPANTS WHO ENTERED BEFORE JANUARY 1, 1982, UNDER THE LEGAL IMMIGRATION AND FAMILY EQUITY ACT (LIFE ACT)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1255a; 8 USC 1225a note

CFR Citation: 8 CFR 245a

Legal Deadline: None

Abstract: This interim rule (INS No. 2115-01) implements section 1104 of the Legal Immigration Family Equity Act (LIFE Act) and LIFE Act Amendments pertaining to adjustment of status of certain class action participants (specifically, Catholic Social Services v. Meese (CSS), 509 U.S. 43 (1993), League of United Latin American Citizens v. INS (LULAC), 509 U.S. 43 (1993), and Zambrano v. INS, 509 U.S. 918 (1993) class applicants) who entered before January 1, 1982, to that of person admitted for lawful residence. This rule establishes procedures for a 1-year application period to allow CSS, LULAC, and Zambrano class applicants to apply for adjustment of status to that of lawful permanent residence.

INS No. 2145-01 proposes to amend the Service's regulations by establishing procedures to apply for Family Unity benefits for certain spouses and unmarried children of aliens who adjusted to lawful permanent resident (LPR) status pursuant to section 1104 of the Legal Immigration Family Equity (LIFE) Act — known as the LIFE Legalization provision. It applies to those persons who are no longer present in the United States to allow them to apply for Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments. This rule also establishes procedures for certain spouses and unmarried children who previously were granted Family Unity benefits pursuant to section 1504 of the LIFE Act Amendments to apply for an extension of their Family Unity benefits. This rule is necessary to ensure that those aliens eligible to apply for, and extend, Family Unity benefits under the provisions of the LIFE Act Amendments are able to do so in a timely manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule (INS 2115 Life Legalization)	06/01/01	66 FR 29661
Interim Final Rule Comment Period End	07/31/01	
Notice	08/29/01	66 FR 45694
NPRM (INS 2145 Family Unity Benefits)	05/00/02	
NPRM Comment Period End	06/00/02	
Final Action	08/00/02	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2115-01

INS No. 2145-01

Agency Contact: Suzy Nguyen, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG06

1418. PROCEDURES FOR CHECKING JUVENILE CRIMINAL RECORDS AND SUBMITTING FINGERPRINTS OF THAT ADDITIONAL CLASS OF ALIENS INELIGIBLE FOR FAMILY UNITY

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 5031

CFR Citation: 8 CFR 236

Legal Deadline: None

Abstract: This rule describes procedures necessary for INS Service Centers, District Offices, and Application Support Centers to follow when checking juvenile criminal records and fingerprints of aliens who committed a specific act of juvenile delinquency that, if committed by an adult, would be classified as a felony "crime of violence against another individual." Section 383 of Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that aliens who committed a specific act of juvenile delinquency, as defined in 18 U.S.C. 5031, are ineligible for benefits under the Family Unity Program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
NPRM Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 2116-01

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG07

1419. ADJUSTMENT OF STATUS UNDER SECTION 245(K)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-119

CFR Citation: 9 CFR 245

Legal Deadline: None

Abstract: This rule proposes amending Service regulations for persons using section 245(k) of the Immigration and Nationality Act to adjust status to that of lawful permanent resident (LPR). Section 245(k) of the Act allows an alien with an approved employment-based petition to adjust status to LPR despite violations of status if those violations have lasted no longer than 180 days since the alien's last entry. This rule proposes eligibility criteria and adjustment procedures for persons wishing to use this section of the Act to become an LPR without leaving the United States.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2120-01

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2763
Email: michael.valverde@justice.usdoj.gov

RIN: 1115–AG10

1420. AMERICAN COMPETITIVENESS IN THE 21ST CENTURY ACT OF 2000 AND OTHER RELATED BILLS, AMERICAN COMPETITIVENESS AND WORKFORCE IMPROVEMENT ACT (ACWIA)

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; ...

CFR Citation: 8 CFR 103; 8 CFR 202; 8 CFR 212; 8 CFR 214; 8 CFR 245; ...

Legal Deadline: None

Abstract: The American Competitiveness in the 21st Century Act, Public Law 106-313, was enacted on October 17, 2000, along with two bills, the Visa Waiver Permanent Program Act, Public Law 106-311, and a bill to increase the fee for certain H-1B petitions. An earlier piece of legislation, the American Competitiveness and Workforce Improvement Act (ACWIA), Public Law 105-277, was enacted to place certain conditions on the employment of H-1B workers. Together, these bills make significant changes to the H-1B classification. Public Law 106-313 increases the numerical H-1B cap to 195,000 for FY 2000-2002 and the percentage of the fees that INS receives to 4 percent. It exempts certain aliens from the numerical cap, provides for the "portability" of employment authorization, and in certain circumstances extensions of stay for certain aliens who have permanent residence applications pending. Public Law 105-277 imposes penalties for employers violating certain representations and prohibits retaliation against H-1B workers who disclose these violations. This regulation clarifies several interpretive questions raised by the bills and ensures INS practice is consistent with these laws.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS rule (RIN 1115-AF40) that implemented the American Competitiveness and Workforce Improvement Act (ACWIA) was merged into the INS rule (RIN 1115-AG11) because three additional pieces of legislation relating to H-1B classification became law while rule AF40 was being reviewed by the Department of Justice. ACWIA increased the numerical cap on H-1B nonimmigrant aliens; required certain dependent employers to make additional attestations to the Department of Labor (DOL); increased the penalties for employers who have been found to be in violation of DOL's rules; and created a "whistleblower" clause to protect H-1B workers who filed complaints against their employer.

In 1190-AA48, the Civil Rights Division, in cooperation with DOL, will implement in the Justice Department's regulations the ACWIA "failure to select" protections — codified in the Immigration and Nationality Act at section 212(n)(5) — by establishing a process under which United States workers may file complaints against employers for denying them employment opportunities by improperly hiring temporary foreign professionals on H-1B visas. Under that process, the Attorney General is to receive and review these complaints and then — where there is reasonable cause to believe a complainant's allegations — initiate binding arbitration proceedings through Federal Mediation and Conciliation Service.

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

Deborah Misir, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 307-6596

RIN: 1115–AG11

1421. CONSTRUCTION WORK AND THE B NONIMMIGRANT VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: The INS is soliciting comments from the public on the issue of aliens admitted to the U.S. as B nonimmigrant visitors whose intent is to engage in construction work during the alien's stay. In particular the Service is exploring the feasibility of defining the term construction as it relates to B nonimmigrant visitors. A standard definition of construction may assist both the public and the Service in determining if an alien admitted as a B nonimmigrant visitor may engage in construction during his or her period of authorized stay.

Timetable:

Action	Date	FR Cite
ANPRM	09/19/01	66 FR 48223
ANPRM Comment Period End	11/19/01	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2126-01

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AG15

1422. ADJUSTMENT OF FEES FOR DEDICATED COMMUTER LANES AND SECURE ELECTRONIC NETWORK FOR TRAVELERS' RAPID INSPECTION (SENTRI) PROGRAMS AT LAND BORDER PORTS OF ENTRY

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to adjust the fees for the Land Border Inspection Fee Account (LBIFA) for the Form I-823, Application for Alternative Inspection Services at land border ports of entry and related systems cost fees for participants in the Dedicated Commuter Lane (DCL) program. Form I-823 is used by applicants to the Port Passenger Accelerated Service System (PORTPASS) that includes the DCL program and several other land border programs. The Secure Electronic Network for Travelers' Rapid Inspection (SENTRI) Program at certain assigned POEs is part of the overall DCL program.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2031-99

Agency Contact: Suzanne H Wilson, Chief, Border Management Branch, Department of Justice, Immigration and Naturalization Service, Room 5307, 425 I Street, Washington, DC 20536
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Email: suzanne.wilson@usdoj.gov

RIN: 1115–AG18

1423. REMOVAL AND ADJUSTMENT PROCEDURES FOR VICTIMS OF TRAFFICKING AND CERTAIN CRIMINAL ACTIVITIES

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 8 USC 1255; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 8 CFR 204; 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: This rule sets forth measures by which certain victims of severe forms of trafficking and victims of certain crimes who have been granted T or U nonimmigrant status may apply for adjustment to permanent resident status in accordance with Public Law 106-386, the Victims of Trafficking and Violence Protection Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2134-01

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG21

1424. DEFINITIONS OF NOTICE TO APPEAR AND ARREST WARRANT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This proposed rule adds definitions for the terms Notice to Appear and Arrest Warrant. This proposed revision clarifies what is meant by those terms as they relate to the administration of immigration law. The action is necessary to improve the efficiency of the INS and to clarify how a Notice to Appear and an Arrest Warrant issued pursuant to the Immigration and Nationality Act differ from such documents issued under another statute.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2140-01

Agency Contact: Donna Kay Barnes, Acting Special Assistant, Office of Field Operations, Department of Justice, Immigration and Naturalization Service, Room 7114, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7488

Related RIN: Related To 1115-AG22

RIN: 1115–AG24

1425. VISA WAIVER PROGRAM: GUAM VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1184; 8 USC 1187; ...

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 212; 8 CFR 217; 8 CFR 233; ...

Legal Deadline: None

Abstract: On October 30, 2000, the Visa Waiver Permanent Program Act, Public Law 106-396 made the Visa Waiver Pilot Program (VWPP) permanent with some modifications. The VWPP permits nationals from participating countries to apply for admission to the U.S. for 90 days or less as nonimmigrant visitors for business or pleasure without first obtaining a nonimmigrant visa. The proposed rule will clarify and explain the new VWP requirements as well as ensure that the VWP removal provisions apply fairly and equally to all inadmissible nonimmigrants regardless of nationality. This rule also proposes to amend the Guam Visa Waiver program regulations to allow asylum applicants arriving on Guam under section 212(l) of the Immigration and Nationality Act to have their case heard before an immigration judge without having to proceed through a credible fear interview.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Merges actions pending for INS Nos. 1447-91, 1622-94, 1685-95, 1777-96, 1782, 17686, 2002-99, and 2188-02 into INS No. 1799.

See also INS No. 2099-00, RIN 1115-AF95

Agency Contact: Marty Newingham, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7992

RIN: 1115–AG25

1426. PROCEDURES FOR DETAINEE HUNGER STRIKES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; ...

CFR Citation: 8 CFR 241.19

Legal Deadline: None

Abstract: This rule proposes standards and procedures for responding to hunger strikes by individuals detained by the Service. All proposed medical treatments in this regulation conform to accepted medical practice. Also, this rule would supersede the INS Detention Standard on Hunger Strikes.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2142-01

Agency Contact: Nik Maravich, Detention and Deportation Officer, Department of Justice, Immigration and Naturalization Service, Room 920, Detention and Deportation Division, Office of Programs, 801 I Street NW., Washington, DC 20536
Phone: 202 514-4099

RIN: 1115–AG26

1427. CONSENT TO REAPPLY FOR ADMISSION AFTER REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 299

Legal Deadline: None

Abstract: This rule proposes to amend the provisions regarding consent to reapply after removal to conform with the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rulemaking intends to remove the provisions contained in 8 CFR 212.2(i) relating to a request for consent to reapply in conjunction with an application for admission at a port-of-entry or with an application for adjustment of status. The proposed removal of section 212.2(i) reflects the overall scope of the changes made by IIRIRA and congressional intent to impose severe penalties on aliens who enter illegally or otherwise violate the U.S. immigration laws, by restricting the relief available to them in the U.S.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2147-01

Agency Contact: Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG28

1428. WAIVERS OF THE 2-YEAR FOREIGN RESIDENCE REQUIREMENT FOR CERTAIN EXCHANGE VISITORS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212 and 299

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations relating to the 2-year foreign residence requirement under section 212(e) of the Immigration and Nationality Act (Act). The proposed changes would conform to the requirements of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), and the Department of Justice Appropriations Act, 2000. The proposed rulemaking would affect aliens who enter the United States as J-1 or J-2 nonimmigrant exchange visitors and who are subject to the requirement of section 212(e) of the Act, which stipulates that they must return to their home country for a period of 2 years before they are eligible to change to a different nonimmigrant classification or apply for lawful permanent residence in the United States.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2158-01

Agency Contact: Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG31

1429. EXTENSION OF THE VALIDITY PERIOD FOR EMPLOYMENT AUTHORIZATION DOCUMENTS FOR ALIENS SEEKING ADJUSTMENT OF STATUS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; ...

CFR Citation: 8 CFR 247.a12 (c) (9)

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations by enabling the INS to issue Employment Authorization Documents (EADs) for those applying for work authorization under 8 CFR 274a.12(c) (9) for a validity period of up to 2 years. This category is reserved for those applying for adjustment of status, having filed Form I-485, Application to Register Permanent Residence or Adjust Status with the Service. The rule change would give INS the flexibility to issue EADs for the length of time it anticipates that adjudication of a given case will take.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2152-01

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG32

1430. ILLEGAL ENTRIES, UNLAWFUL PRESENCE, AND AUTOMATIC VOIDING OF NONIMMIGRANT VISAS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 103; 8 CFR 212; ; 8 CFR 299

Legal Deadline: None

Abstract: This proposed rule defines the categories of aliens who are not eligible to be issued a visa or be admitted if: they are in the U.S. illegally because they entered without proper inspection at a port-of-entry (section 212(a)(6)(A) of the Act); they accumulated certain periods of unlawful presence because they entered the U.S. illegally or stayed in the U.S. longer than authorized (section 212(a)(9)(B) of the Act); or they entered the U.S. illegally (or attempted an illegal entry) after they accumulated unlawful presence or after they were removed (section 212(a)(9)(C) of the Act). This proposed rule also describes how a nonimmigrant visa becomes automatically void, as provided under section 222(g) of the Act. This proposed rule also explains when the provisions for unlawful presence (sections 212(a)(9)(B) and (C) of the Act) do not apply, and the legal and documentary requirements for a waiver. Promulgation of this rule ensures that the admission to the U.S. of any ineligible alien would not adversely affect the national welfare, safety, or security of the U.S.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

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Action	Date	FR Cite
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Related RIN 1115-AB45, "Revised Grounds of Inadmissibility, Waivers for Immigrants and Nonimmigrants, and Exceptions."

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG36

1431. MEDICAL EXAMINATION REQUIREMENTS AND DESIGNATION OF CIVIL SURGEONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1222; ...

CFR Citation: 8 CFR parts 103, 232, and 299

Legal Deadline: None

Abstract: This proposed rule defines the medical examination requirements for arriving aliens. It also overhauls the civil surgeon program to create standards for designation, procedures for periodic review of the civil surgeon designation, and specific provisions for revocation, when necessary.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Related RIN 1115-AB45, "Revised Grounds of Inadmissibility, Waivers for Immigrants and Nonimmigrants, and Exceptions."

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG37

1432. MEDICAL GROUNDS OF INADMISSIBILITY AND WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1157; ...

CFR Citation: 8 CFR parts 103, 212, and 299.

Legal Deadline: None

Abstract: This proposed rule describes the medical grounds of inadmissibility under section 212(a)(1) of the Immigration and Nationality Act (Act). It also describes which medical grounds of inadmissibility can be waived and the requirements for those waivers (including conditions for compliance).

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Split out of INS No. 1413 to move forward as a stand-alone rule.

Agency Contact: Sophia Cox, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

Kevin J. Cummings, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG38

1433. NEW CLASSIFICATION FOR VICTIMS OF CERTAIN CRIMINAL ACTIVITY; ELIGIBILITY FOR THE U NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; ...

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 212; 8 CFR 214; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant status. The U classification is for non-United States Citizen/Lawful Permanent Resident victims of certain crimes who cooperate with an investigation or prosecution of those crimes. There is a limit of 10,000 principals per year.

This rule establishes the procedures to be followed in order to petition for the U nonimmigrant classifications. Specifically, the rule addresses: the essential elements that must be demonstrated to receive the nonimmigrant classification; procedures that must be followed to make an application; and evidentiary guidance to assist in the petitioning process. Eligible victims will be allowed to remain in the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG39

1434. • LIMITING THE PERIOD OF ADMISSION FOR B NONIMMIGRANT ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1101; 8 USC 1101 note; 8 USC 1102; 8 USC 1103; 8 USC 1182; ...

CFR Citation: 8 CFR 214; 8 CFR 235; 8 CFR 248

Legal Deadline: None

Abstract: This rule eliminates the minimum admission period of a B-2 visitor for pleasure, reducing the maximum admission period of B-1 and B-2 visitors from 1 year to 6 months, and establishing greater control over a B visitor's ability to extend the status or to change status to that of a nonimmigrant student. These changes will enhance the Service's authority under sections 214(a) and 248 of the Immigration and Nationality Act (Act) and will help lessen the probability that alien visitors will establish permanent ties in the United States and thus remain in the country illegally.

Timetable:

Action	Date	FR Cite
NPRM	04/12/02	67 FR 18065
NPRM Comment Period End	05/13/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 2176-01

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AG43

1435. • ESTABLISHMENT OF A $3 IMMIGRATION USER FEE FOR CERTAIN COMMERCIAL VESSEL PASSENGERS PREVIOUSLY EXEMPT

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1356; PL 107-77

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: The rule removes the current exemption for cruise ship passengers whose journeys originated in Canada, Mexico, a territory or possession of the United States and adjacent islands and will allow the Immigration and Naturalization Service to collect a $3 fee for passengers, according to the Department of Justice Appropriation Act (Public Law 107-77), dated November 28, 2001. Also, the regulations will be modified to exempt passengers of Great Lakes International ferries or vessels on the Great Lakes or connecting waterways when they operate on a regular schedule. This fee will be used to pay for inspection services and other related activities.

Timetable:

Action	Date	FR Cite
NPRM	04/03/02	67 FR 15753
NPRM Comment Period End	05/03/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2180-01

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Justice, Immigration and Naturalization Service, Room 6034, 425 I Street NW, Washington, DC 20536
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Email: georgia.a.mayers@usdoj.gov

Jennifer Beasley, Budget Analyst, Department of Justice, Immigration and Naturalization Service, Room 5236, 425 I Street NW, Washington, DC 20536
Phone: 202 514-8294
Email: jennifer.beasley@usdoj.gvo

RIN: 1115–AG47

1436. • JUDICIAL REVIEW OF THE DECISIONS OF THE IMMIGRATION AND NATURALIZATION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552(a); 5 USC 704; 8 USC 1101; 8 USC 1103; ...

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations to clarify that, if the Administrative Procedure Act (APA) provides the authority for judicial review, a person must exhaust all administrative appeals available as a matter of right before the person may seek judicial review of a Service decision under the Immigration and Nationality Act (Act) that is within the appellate jurisdiction of the Board of Immigration Appeals or of the Associate Commissioner for Examinations. This amendment is necessary to prevent the filing of premature lawsuits, by ensuring that the proper administrative appellate authority has the opportunity to review and correct any errors in the original decision before the party may seek judicial review.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1785-96.

1115-AE46 was the old RIN assigned to this rule when it was final; it then changed to a proposed rule.

Agency Contact: Janice B. Podolny, Associate General, Chief Examinations Division, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG49

DOJ—INS

Proposed Rule Stage

1437. • REVISION OF THE REGULATIONS CONCERNING F, J, AND M NONIMMIGRANT CLASSIFICATIONS

Priority: Other Significant

Legal Authority: 5 USC 552, 552(a); 8 USC 1101, 1103, 1201, 1252 note, 1252(b), 1304, 1356; 31 USC 9701; EO 12356; 8 USC part 2; ...

CFR Citation: 8 CFR 103; 8 CFR 214

Legal Deadline: None

Abstract: This rule proposes to amend the Immigration and Naturalization Service (Service) regulations governing the retention and reporting of information about F, J, and M nonimmigrants. This rule will implement the Student Visitor Information System (SEVIS), and establish a process for electronic reporting by designated school officials of information required by the Service. This is needed to improve and streamline the reporting and recording of F, J, and M nonimmigrants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2185-02 (See also RIN 1115-AF56, INS No. 1991-99 which amends Service regulations to establish a fee for F, J, and M nonimmigrants.)

Agency Contact: Maura Deadrick, Adjudications Officer, Adjudication Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AG55

1438. • LIMITING THE NUMBER OF TRANSIT WITHOUT VISA (TWOV) STOPS IN THE UNITED STATES TO ONE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282

CFR Citation: 8 CFR 214.2 (c)

Legal Deadline: None

Abstract: The Office of Inspector General (OIG) recently completed a follow-up review of the Immigration and Naturalization Service's (Service) efforts to improve security of the Transit Without Visa (TWOV) program. The OIG report found that several security concerns described in the original 1993 report continue to exist, specifically 1) the continued allowance for TWOV passengers to make two stops in the United States, with the second stop being a domestic arrival; and 2) lack of carrier standards and accountability for supervising TWOV passengers waiting for their connecting flights in public, domestic areas. This proposed rule informs the public that the Service intends to amend its regulations by limiting the number of transit stops in the United States for TWOV passengers to one stop. These TWOV program modifications will enhance U.S. national security while still providing the traveling public TWOV privileges.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG59

1439. • ADDRESS NOTIFICATION TO BE FILED WITH DESIGNATED APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1304; ...

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: The Board of Immigration Appeals' decision in Matter of G-Y-R-23 I&N Dec. 181 (BIA 2001) focused on the issue of constructive notice of the initiation of removal proceedings in a case where the INS knew that the subject alien did not actually receive the Notice to Appear (Form I-862) because it was returned by the Postal Service as undeliverable. In that circumstance, the Board held that an in absentia order or removal is inappropriate, because the record reflected that the alien did not actually receive, and could not be charged with receiving the Notice to Appear informing the alien of the statutory address obligations associated with removal proceedings and of the consequences of failing to provide a current address.

This rule will provide a mechanism for the Service to provide notice to aliens of their legal obligations to provide a current address to the Attorney General within 10 days of a change of address, and for the aliens to acknowledge that they have received this notification in amended INS benefit request forms.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2198-02

Agency Contact: Barry O'Melinn, Chief, Appellate Counsel, Department of Justice, Immigration and Naturalization Service, 200, 5113 Leesburg Pike, Falls Church, VA 22041
Phone: 703 756-6257

RIN: 1115–AG61

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Final Rule Stage

1440. REDUCTION OF THE NUMBER OF ACCEPTABLE DOCUMENTS AND OTHER CHANGES TO EMPLOYMENT VERIFICATION REQUIREMENTS (SECTION 610 REVIEW)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: Final, Statutory, March 31, 1998, An interim rule, published September 30, 1997, makes the minimal changes required by statute. The provisions will remain in effect until completion of this rulemaking.

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Section 412(a) of IIRIRA requires a reduction in the number of documents that may be accepted in the employment verification process. Section 412(d) clarifies the applicability of section 274A to the Federal Government. Section 610 of the Regulatory Flexibility Act requires agencies to review rules that have a significant economic impact on a substantial number of small entities every 10 years. The Service is conducting this review in conjunction with IIRIRA implementation. The proposed rulemaking published 2/12/98 implements sections 212(a) and (d) of IIRIRA and proposes other changes to the employment verification process identified through that review. A revised Form I-9 was included with the proposed rulemaking.

The comment period closed on 4/3/98. The Service is analyzing the comments and taking into consideration issues raised by the Alien Registration (MD) (I-551) program. It should be noted that this action supersedes the previously published regulatory plan titled "Reduction in the Number of Documents Accepted for Employment Verification." In order to avoid confusion, this regulatory action is being referenced under the current RIN, which captures all prior actions related to employment verification.

INS No. 1947-98, Interim Rule published 2/9/99 (64 FR 6187). The "Receipt Rule" permits employees to present their employer certain types of "receipts" in lieu of a document listed on the Form I-9. (Previously under RIN 1115-AE94, which was withdrawn and placed under AB73 due to the relationship of the regulations.)

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1399 Comment Period End 12/23/93	11/23/93	58 FR 61846
NPRM-INS No. 1339S Comment Period End 07/24/95	06/22/95	60 FR 32472
Notice-INS No. 1713 INS No. 1713 Applications Due 01/29/96	11/30/95	60 FR 61630
Appl. Extension Through 3/8/96 Notice Pilot Demonstration Program-INS No. 1713	02/06/96	61 FR 4378
Final Rule-INS No. 1399E	09/04/96	61 FR 46534
Interim Final Rule INS No. 1818	09/30/97	62 FR 51001
NPRM-INS No. 1890-97 Comment Period End 04/03/98	02/02/98	63 FR 5287
Final Rule INS No. 1890-97	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: The deadline for implementing section 412(a) of IIRIRA was extended to March 31, 1998, by Public Law 105-54. This rulemaking has been delayed by the need to coordinate implementation with other provisions of IIRIRA, by several complex policy and regulatory issues that have taken time to resolve, and by the review required by section 610 of the Regulatory Flexibility Act.

INS No. 1890-97; PL 104-208, title 4.

INS Nos. 1399 and 1399S-94, Control of Employment of Aliens, Supplemental Rule; Action for INS Nos. 1399 and 1399S is canceled as a result of IIRIRA requirements.

INS No. 1399E is an extracted portion of INS No. 1399, published separately to allow for the production of a new, more secure Employment Authorization Document.

INS No. 1713-95, Demonstration Project for Electronic I-9s, contact Bob Reed, (202) 514-2998.

Interim Rule INS No. 1818 was published on 9/30/97 at 62 FR 51001 to maintain the status quo as much as possible until the Service completes the more comprehensive document reduction initiative designated by INS No. 1890-97.

Agency Contact: Felica Colvin, Director, Business Liaison Branch, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 305-2529
Fax: 202 305-2523

RIN: 1115–AB73

1441. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE: CONDITIONAL RESIDENTS AND FIANCE(E)S

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: This rule clarifies procedures for fiance(e)s who marry after the 90-day period of fiance(e) admission has ended and also clarifies that persons who have had conditional residence terminated are not eligible to adjust status.

Timetable:

Action	Date	FR Cite
NPRM	08/20/96	61 FR 43028
NPRM Comment Period End	10/21/96	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1353-91

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AC70

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DOJ—INS

Final Rule Stage

1442. NONIMMIGRANT CLASSES; S CLASSIFICATION; LAW ENFORCEMENT INITIATIVES; ALIEN WITNESSES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1324a; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299; 8 CFR 103

Legal Deadline: None

Abstract: Two regulatory initiatives dealing with the processing of alien witnesses have been prepared by the INS. INS No. 1683-94 provides the application and approval process for the admission of aliens in S nonimmigrant classification. It provides guidance to the various law enforcement agencies needing alien witnesses and informants to complete critical law enforcement initiatives in the United States. INS No. 1728-95 establishes a fee for the processing of Form I-854, Inter-Agency Alien Witness and Informant Record, for Law Enforcement Agency (LEA) requests for S nonimmigrant classification for eligible alien witnesses and informants. The fee recovers the costs of the processing of requests for immigration benefits and is needed to comply with specific Federal immigration laws and Federal user fee statute and regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1683 Eff. 8/25/95; Comment Period End 12/4/95	08/25/95	60 FR 44260
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52068
Interim Final Rule-INS No. 1683 Correction	10/05/95	60 FR 52248
Final Action-INS No.1683	05/00/02	
NPRM-INS No. 1728	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: INS No. 1683-94; and INS No. 1728-95.

Agency Contact: Gregory S. Bednarz, Deputy Assistant Commissioner, Investigations, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 633-2997

RIN: 1115–AD86

1443. ESTABLISHING CRITERIA FOR DETERMINING COUNTRIES WHOSE CITIZENS ARE INELIGIBLE FOR THE TRANSIT WITHOUT VISA (TWOV) PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 CFR 2; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1252; 8 USC 1221; 8 USC 1229

CFR Citation: 8 CFR 212; 8 CFR 234.2

Legal Deadline: None

Abstract: This rule proposes to amend Service regulations by removing the list of those countries that are ineligible to participate in the TWOV program from the regulation. In its place the Service proposes to publish and update the list of countries that are ineligible to participate in the TWOV program by Federal Register notice. This rule also sets forth a non-exhaustive list of factors that may be considered in determining those countries whose citizens or nationals are ineligible countries and provides for a regular review of all countries to determine their eligibility for participation in the TWOV program. The TWOV program allows the Service, acting jointly with the Department of State, to waive the passport and visa requirement for aliens from certain countries who request immediate and continuous transit privileges through the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1053
NPRM Comment Period End	03/05/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1696-95

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AD96

1444. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR AS A PREFERENCE IMMIGRANT; SELF-PETITIONING FOR CERTAIN BATTERED OR ABUSED ALIEN SPOUSES AND CHILDREN

Priority: Other Significant

Legal Authority: 8 USC 1101; PL 103-322; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The INS intends to finalize the interim rule published on 3/26/1996. This final rule allows battered and abused spouses and children of United States citizens and lawful permanent residents to petition for immigrant classification. The consent of the abuser would not be required. The final rule uses the term abused to mean either battered or subjected to extreme cruelty.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/96	61 FR 13061
Interim Final Rule Effective	03/26/96	
Interim Final Rule Comment Period End	05/28/96	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1705-95, See RIN 1115-AB73

Agency Contact: Laura J. Dawkins, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-4754
Email: laura.dawkins@usdoj.gov

RIN: 1115–AE04

DOJ—INS

Final Rule Stage

1445. CONDITIONS ON NONIMMIGRANT STATUS; DISCLOSURE OF INFORMATION

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186A; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 214

Legal Deadline: None

Abstract: This rule removes the current regulatory language conditioning an alien's nonimmigrant status on his or her providing full and truthful information requested by the INS, regardless of the requested information's materiality. This rule would clarify that the nonimmigrant's stay is conditioned on, among other things, the provision of all information deemed necessary to ensure that the alien has acquired, and is maintaining, lawful nonimmigrant status during the entire period of his or her stay, or is eligible to receive any other benefit under the INA.

Timetable:

Action	Date	FR Cite
NPRM	06/14/96	61 FR 30188
NPRM Comment Period End	08/13/96	
Final Action	05/00/02	
Final Action (Comment Period Ends)	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1732-95

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AE17

1446. EMPLOYER SANCTIONS MODIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 CFR 2

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: The Service is considering further changes to streamline the verification and enforcement process requirements related to the Employer Sanctions provisions of the Immigration Reform and Control Act.

INS No. 1738 will allow INS to issue and serve a Warning Notice upon an alleged violator after the INS has determined that a person or entity has violated section 274a of the Act. This rule will also allow interested parties to electronically generate blank copies of the Employment Eligibility Verification Form (Form I-9).

Comments from the public were received in response to the publication of the interim rule. The response to the comments and the writing of the final rule are currently on hold.

On September 30, 1996, IIRIRA was enacted. Section 411(a) of IIRIRA allows employers who have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures before such failures are deemed to be violations of the I&NA. INS issued a proposed rule on April 7, 1998, INS No. 1819, to implement this provision and is in the process of preparing a final rule. Because the issuance of Warning Notices requires that violation determinations be made, it is being examined in conjunction with INS No. 1819 in light of section 411(a) of IIRIRA. The anticipated publication date of a final rule will not be determined until issues regarding implementation of section 411(a) of IIRIRA are resolved.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1738	10/07/96	61 FR 52235
Correction (Interim Final Rule)	10/29/96	61 FR 55840
Interim Final Rule Comment Period End	11/06/96	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: INS Nos. 1737 and 1738.

Agency Contact: Angelo Sorrento, Special Agent, Investigations Enforcement, Office Field of Operations, Department of Justice, Immigration and Naturalization Service, Room 1000, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7487

RIN: 1115–AE21

1447. INSPECTION AND EXPEDITED REMOVAL OF ALIENS; DETENTION AND REMOVAL OF ALIENS; CONDUCT OF REMOVAL PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1182; 8 USC 1183; 8 USC 1184; 8 USC 1185; 8 USC 1186a; 8 USC 1187; 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1154; 8 USC 1181

CFR Citation: 8 CFR 1; 8 CFR 213; 8 CFR 214; 8 CFR 216; 8 CFR 217; 8 CFR 221; 8 CFR 223; 8 CFR 3; 8 CFR 103; 8 CFR 204; 8 CFR 207; 8 CFR 209; 8 CFR 211; 8 CFR 212; ...

Legal Deadline: Other, Statutory, March 1, 1997, The statute requires the Attorney General to promulgate implementing regulations by March 1, 1997.

Abstract: Many of the provisions of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) became effective April 1, 1997. Some provisions of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) that were not superseded by IIRIRA became effective November 1, 1996. On March 6, 1997, INS and EOIR published an interim rule revising the asylum process; providing a mechanism for the determination and review of certain applicants who demonstrate a credible fear of persecution if returned to their own country; defining the inspection and admission process including new expedited removal procedures for aliens attempting to enter the United States through fraud or misrepresentation by apprehension, detention, and removal of aliens; addressing conduct of removal proceedings; and revising many other sections of the regulations to conform with the new laws. On December 6, 2000, INS published the rule "Asylum Procedures" (INS No. 1865-97; RIN 1115-AE93) which finalized the asylum portions of this interim rule. INS still intends to publish a final rule under RIN 1115-AE47 to finalize the portions of this rulemaking relating to inspection and expedited removal of aliens, detention and deportation and

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removal of aliens, and the conduct of removal proceedings.

Timetable:

Action	Date	FR Cite
Final Action-INS No. 1669-94	03/22/96	61 FR 11717
NPRM-INS No. 1788-96 Comment Period End 2/3/97	01/03/97	62 FR 444
Interim Final Rule-INS No. 1788-96 Comment Period End 7/15/97	03/06/97	62 FR 10312
Interim Final Rule Correction (Effective 04/01/97)	04/01/97	62 FR 15362
Interim Final Rule-INS No. 1788-96 Correction	04/09/97	62 FR 17048
Final Rule-INS No. 1920-98	07/22/98	63 FR 39217
Final Action INS No. 1788-96	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1788-96 (Final Action)

CFR CITATIONS CONT: 8 CFR 232, 233, 234, 235, 236, 237, 238, 239, 240, 241, 242, 243, 244, 245, 246, 248, 251, 252, 253, 274a, 286, 287, 292, 299, 316, 318, and 329.

LEGAL AUTHORITY CONT: 8 USC 1186b, 1187, 1201, 1203, 1221, 1222, 1223, 1224, 1225, 1226, 1227, 1251, 1252, 1252 note, 1252a, 1252b, 1253, 1254, 1254a note, 1255, 1256, 1258, 1259, 1281, 1282, 1304, 1324a, 1330, 1356, 1357, 1362, 1429, 1440, 1443, 1447; 28 USC 509, 510, 1746; 31 USC 9701; 3 CFR, 1982 Comp, p 166; 8 CFR part 2.

INS Rule No. 1920-98 makes a correction to the services regulations that govern the documentary requirements for immigrants and corresponding waivers. This rule relates to changes promulgated by INS 1169-94 and INS No. 1788-96.

INS Rule No. 1865-97, AG Order No. 2340-2000, Final Rule, Asylum Procedures published on December 6, 2000, at 65 FR 76121, amended portions of the title III IIRIRA governing cases in which an applicant has established past persecution or in which an applicant may be able to avoid persecution in a particular country by relocating to another area of that country.

Agency Contact: Linda Loveless, Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7489

Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1115–AE47

1448. AGREEMENT PROMISING NON-DEPORTATION OR OTHER IMMIGRATION BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 301; 28 USC 509; 28 USC 510; 28 USC 515; 28 USC 516; 28 USC 517; 28 USC 518; 28 USC 519

CFR Citation: 28 CFR 0.197

Legal Deadline: None

Abstract: This final rule requires Federal prosecutors, law enforcement agencies, and other officials to obtain written consent from the Immigration and Naturalization Service when entering into a plea agreement, cooperation agreement, or similar agreement promising an alien favorable treatment by the Service. This rule ensures that favorable treatment under the immigration laws is extended only after a full consideration of its effect on overall immigration enforcement, alleviates confusion over the authority to enforce the immigration laws, and prevents the Service from being bound by agreements undertaken without its knowledge and approval. The rule codifies a long-standing position of the Department of Justice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/13/96	61 FR 48405
Interim Final Rule Comment Period End	11/12/96	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1791-96

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE50

1449. DEFINITION OF THE TERM "LAWFULLY PRESENT" FOR PURPOSES OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 5 USC 552; 31 USC 9701; EO 12356; 47 FR 14874 to 15557; 3 CFR 1982 comp; 8 CFR 2; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252B; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103

Legal Deadline: None

Abstract: Section 401(a) of the Personal Responsibility and Work Reconciliation Act of 1996 (PRWORA) provides that, with limited exceptions, only qualified aliens, as defined under section 431, may receive certain Federal public benefits. Section 401(b)(2) provides an exception which allows aliens who are "lawfully present in the United States" as determined by the Attorney General to receive social security benefits under title II of the Social Security Act. PRWORA, and other laws, use the term "lawfully present" in other benefit-related contexts as well.

The interim final rule published September 6, 1996, amended the Immigration and Naturalization Service (Service) regulations to define the term "an alien who is lawfully present in the United States" so that the Social Security Administration may determine which aliens are eligible for benefits under title II of the Social Security Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/96	61 FR 47039
Interim Final Rule Comment Period End	11/05/96	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No. 1792-96

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AE51

1450. AFFIDAVIT OF SUPPORT ON BEHALF OF IMMIGRANTS

Priority: Other Significant

Legal Authority: 8 USC 1183a; PL 104-208; PL 104-193; 8 CFR 2

CFR Citation: 8 CFR 213a; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends the INS regulations by establishing that an individual (the sponsor) who files an affidavit of support under section 213A of the Immigration and Nationality Act (INA) on behalf of an intending immigrant incurs an obligation that may be enforced by a civil action. This rule also specifies the requirements that Federal, State, or local agencies or private entities must meet to request reimbursement from the sponsor for provision of means-tested public benefits and provides procedures for imposing the civil penalty provided for under section 213A of the INA, if the sponsor fails to give notice of any change of address. This rule is necessary to ensure that sponsors of aliens meet their obligations under section 213A of the INA.

Timetable:

Action	Date	FR Cite
Interim Final Rule - INS No. 1807-96; Comment Period End 02/7/98	10/20/97	62 FR 52346
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1807-96; PL 104-208, title IV; and PL 104-193, title IV

Agency Contact: Lisa Roney, Policy Analyst, Office of Policy and Planning, Department of Justice, Immigration and Naturalization Service, Room 6052, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3242

Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AE58

1451. SUSPENSION OF PRIVILEGE TO TRANSPORT ALIENS TO THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227

CFR Citation: 8 CFR 103; 8 CFR 273

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) added a provision to the Immigration and Nationality Act that allows INS to suspend a commercial airline's privilege to transport aliens to the United States if the carrier has a record of bringing in aliens who have fraudulent documents. After consultation with other interested Government agencies, INS is proposing to implement appropriate standards and procedures governing the use of this power to suspend a carrier's privilege to transport aliens to the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/23/98	63 FR 56869
NPRM Comment Period End	12/22/98	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: This rule required coordination with several other Government agencies. INS No. 1809-96.

Agency Contact: Una Brien, Director, National Fines Office, Inspections Division, Field Operations, Department of Justice, Immigration and Naturalization Service, Suite 425, 1525 Wilson Boulevard, Arlington, VA 22209
Phone: 202 305-7018

RIN: 1115–AE59

1452. LIMITING LIABILITY FOR CERTAIN TECHNICAL AND PROCEDURAL VIOLATIONS OF PAPERWORK REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1324a; PL 104-208

CFR Citation: 8 CFR 274a

Legal Deadline: None

Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). This rule will implement section 411 of IIRIRA which allows employers that have made a good faith attempt to comply with a particular employment verification requirement to correct technical or procedural failures to meet the requirement before such failures are deemed to be violations of the Act. This rule will explain the good faith rule, define the term technical or procedural failure to meet such requirement, and explain how an employer can correct technical or procedural failures.

Timetable:

Action	Date	FR Cite
NPRM	04/07/98	63 FR 16909
NPRM Comment Period End	06/08/98	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: INS No. 1819-96 and Public Law 104-208, title IV.

Agency Contact: Marguerite Przbylski Kleczek, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AE70

1453. IMPLEMENTATION OF HERNANDEZ V. RENO SETTLEMENT AGREEMENT; CERTAIN ALIENS ELIGIBLE FOR FAMILY UNITY BENEFITS AFTER SPONSORING FAMILY MEMBER'S NATURALIZATION

Priority: Other Significant

Legal Authority: 8 USC 1225a note; PL 104-208

CFR Citation: 8 CFR 236.23

Legal Deadline: None

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Abstract: On September 30, 1996, the President signed the Illegal Immigration Reform and Immigrant Responsibility Act of 1996. The INS will publish a regulation implementing a new basis of ineligibility for Family Unity benefits for certain juvenile offenders.

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1823-96	07/14/00	65 FR 43677
Interim Final Rule Comment Period End	09/12/00	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1823-96; PL 104-208, title III, section 38; and this regulation will affect 8 CFR 242.5 that will be renumbered 8 CFR 236.25.

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AE72

1454. REGULATIONS PERTAINING TO BATTERED ALIENS AND TO MAIL ORDER BRIDE BUSINESSES, AS MANDATED BY IIRIRA

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1641(c); PL 104-208

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) included a number of provisions relating to battered aliens and to mail order bride businesses. The INS anticipates rulemaking in the following areas:

INS document No. 1845-97 is necessitated by section 501 of IIRIRA, which provides certain types of public benefits for those aliens who have made a prima facie case for eligibility pursuant to the INS interim rule on self-petitions by battered aliens, published at 61 FR 13061 (March 26, 1995; INS No. 1705-95). This new rule will define what constitutes a prima facie case.

INS document No. 1838-97, an advance notice of proposed rulemaking, is to solicit public input into the regulation of certain functions of the international matchmaking industry (also referred to as "mail order bride businesses"), as required by section 652 of IIRIRA, was published on 7/16/97 (62 FR 38041).

Timetable:

Action	Date	FR Cite
ANPRM-INS No. 1838-97 Comments Due 09/15/97	07/16/97	62 FR 38041
Interim Final Rule-INS No. 1845-97	11/13/97	62 FR 60769
Interim Final Rule Comment Period End-INS 1845-97	01/12/98	
Final Action (INS 1845)	12/00/02	
NPRM (INS No. 1838)	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1838-97. The Service submitted its report on international matchmaking organizations which can be found on the INS web site. The Service is currently preparing the informational brochures which the organizations will be required to provide to women recruits.

Agency Contact: Laura J. Dawkins, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 307-4754
Email: laura.dawkins@usdoj.gov

RIN: 1115–AE77

1455. ESTABLISHMENT OF PREINSPECTED AUTOMATED LANE (PAL) PROGRAM AT IMMIGRATION AND NATURALIZATION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; 8 USC 1252; 8 USC 1357; 8 CFR 2

CFR Citation: 8 CFR 287; 8 CFR 299

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by establishing a Preinspected Automated Lane (PAL) Program for the use of eligible persons and vehicles at immigration checkpoints within the United States. This rule will facilitate the passage of people and vehicles through INS checkpoints while safeguarding the integrity of law enforcement objectives at the checkpoints.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Request for Comments by 06/17/97	04/18/97	62 FR 19024
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1830-97

Agency Contact: Rudolph J. Miranda, Chief Patrol Agent, Department of Justice, Immigration and Naturalization Service, Room 4226, 425 I Street, NW, Washington, DC 20536
Phone: 202 514-3072

RIN: 1115–AE80

1456. EARLY RELEASE FOR REMOVAL OF CRIMINAL ALIENS IN STATE CUSTODY FOR NONVIOLENT OFFENSES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1251; 8 USC 1253; 8 USC 1255; 8 USC 1330; 8 CFR 2

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: The final rule will amend the INS regulations relating to the apprehension and removal of aliens under section 241 of the Immigration and Nationality Act (Act). This regulatory action establishes an administrative process whereby criminal aliens in State custody convicted of nonviolent offenses may be removed prior to completion of their sentence of imprisonment. The rule will implement the authority contemplated by Congress to enhance the ability of the United States to remove criminal aliens.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1848-97	07/12/99	64 FR 37461
NPRM Comment Period End	09/10/99	
Final Action-INS No. 1848-97	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No.1848-97

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

Ron Dodson, Supervisory Special Agent, Headquarters Investigations, Department of Justice, Immigration and Naturalization Service, Room 1000, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7310

RIN: 1115–AE83

1457. AMENDMENT OF THE REGULATORY DEFINITION OF ARRIVING ALIEN

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 CFR 2

CFR Citation: 8 CFR 1

Legal Deadline: None

Abstract: This rule amends the INS regulations by changing the regulatory definition of an arriving alien. Under section 235(b)(1)(A)(i) of the Immigration and Nationality Act (Act), which was effective on April 1, 1997, certain arriving aliens are subject to expedited removal procedures. The existing regulatory definition of arriving aliens includes parolees. As a matter of policy, the Department has decided that it is appropriate to exempt from the new expedited removal procedures aliens who were paroled into the United States before April 1997. This rule clarifies that these aliens as well as certain other aliens who were paroled into the United States pursuant to advance parole, will not be subjected to expedited removal upon termination at parole. The rule also makes several changes in the ordering of 1.1(q) to use language that is clearer and more consistent with the wording of the statute.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/98	63 FR 19382
Interim Final Rule Comment Period End	06/19/98	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Re: INS No. 1868-97

Agency Contact: Frances De Choudens, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 353-0591

RIN: 1115–AE87

1458. ADJUSTMENT OF STATUS, CONTINUED VALIDITY OF NONIMMIGRANT STATUS AND UNEXPIRED EMPLOYMENT AUTHORIZATION FOR APPLICANTS MAINTAINING NONIMMIGRANT H OR L STATUS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1282; 8 CFR 2; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1255; 8 USC 1281

CFR Citation: 8 CFR 214; 8 CFR 245

Legal Deadline: None

Abstract: Over the last several years, the Service has issued numerous policy statements regarding its position on employment authorization, advance parole, and extension of nonimmigrant status for certain skilled nonimmigrant workers who have filed for adjustment to permanent resident status. This rulemaking intends to: (1) Codify existing Service policy statements by incorporating them into the Service's regulations and (2) eliminate the requirement for service permission for overseas travel for adjustment applicants who are maintaining H-1 or L nonimmigrant status.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29208
Interim Final Rule Comment Period End	08/02/99	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1881-97

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2763
Email: michael.valverde@justice.usdoj.gov

RIN: 1115–AE96

1459. VERIFICATION OF ELIGIBILITY FOR PUBLIC BENEFITS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1642

CFR Citation: 8 CFR 104

Legal Deadline: NPRM, Statutory, November 3, 1997.
Final, Statutory, February 22, 1998, Statutory deadline to promulgate regulations for State and local public benefits was previously 11/03/98. Deadline for regulations for Federal public benefits was 02/22/98.

Abstract: This regulatory action requires entities (other than nonprofit charitable organizations) providing Federal public benefits (with certain exceptions) to verify by examining documents and using an INS automated verification system that alien applicants are eligible for the benefits under Federal benefit reform legislation. This rule also sets forth provisions by which State or local governments can verify whether aliens applying for State or local public benefits are eligible for such benefits under Federal laws. In addition, the rule establishes procedures for verifying the U.S. nationality of individuals applying for benefits in a fair and nondiscriminatory manner.

The Interim Verification Guidelines were published as a notice on 11/17/97

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at 62 FR 61344. The guidelines set forth procedures that benefit-granting agencies can use to verify U.S. citizens, non-citizen nationals, and qualified aliens for eligibility under title IV of the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) prior to issuance of final regulations.

The proposed rule for the Verification of Eligibility for Public Benefits was published on 8/04/98 at 63 FR 41662. The changes made in response to the comments received on the proposed rule were significant enough and dealt with complex and important issues that another opportunity to comment is warranted. The next version of the rule will be issued as an interim rule, rather than a final rule, in order to implement the statutory directive to promulgate verification regulations and start the subsequent 2-year period in which Federal public benefit-granting agencies must come into compliance. The interim rule is in the concurrence process and has not yet been published.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1902-98	08/04/98	63 FR 41662
NPRM Comment Period End	10/05/98	
Interim Rule-INS No. 1902-98	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Additional Information: INS No. 1902-98 should be referenced for any inquiries concerning this rulemaking action.

Agency Contact: John Nahan, Director, SAVE Branch, Files and Forms Management Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Ullico Building, 1st Floor, Washington, DC 20536
Phone: 202 514-2317

RIN: 1115–AE99

1460. FINGERPRINTING APPLICANTS AND PETITIONERS FOR IMMIGRATION BENEFITS; ESTABLISHING A FEE FOR FINGERPRINTING BY THE SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252 note; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 316; 8 CFR 335

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations relating to fingerprinting applicants and petitioners for benefits under the Immigration and Nationality Act by: Canceling the Designated Fingerprinting Service program; requiring applicants and petitioners for benefits to be fingerprinted at either a Service Office, a State or local law enforcement agency, or at a United States consular or military office; establishing a fee for fingerprinting by the Service; and requiring confirmation from the Federal Bureau of Investigation (FBI) that a full criminal background check has been completed before adjudication of a naturalization application is completed.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/98	63 FR 12979
Interim Final Rule Effective	03/29/98	
Interim Final Rule Correction	04/09/98	63 FR 17489
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: INS No. 1891-97

Agency Contact: Pamela T. Wallace, Staff Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 K Street NW, Washington, DC 20536
Phone: 202 305-1229

RIN: 1115–AF03

1461. PROCESSING, DETENTION, AND RELEASE OF JUVENILES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1362

CFR Citation: 8 CFR 236.3

Legal Deadline: Final, Judicial, July 31, 1998.
The court-approved settlement agreement in Flores v. Reno (C.D. Cal.) required INS to initiate action to publish regulations in July 1998. However, the changes brought by AEDPA and IIRIRA delayed issuance of regs. The INS later re-published the rule for comments. The comment period expires March 15, 2002.

Abstract: The rule amends the Immigration and Naturalization Service regulations by establishing the procedures for processing alien juveniles from custody and the detention of unreleased juveniles in State-licensed programs and detention facilities. This rule also governs the transportation and transfer of juveniles in Service custody.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1906-98	07/24/98	63 FR 39759
NPRM Comment Period End	09/22/98	
NPRM Comment Period Reopened	01/14/02	67 FR 1670
Second NPRM Comment Period End	03/15/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1906-98.

Agency Contact: Mark A. Matese, Director of Juvenile Affairs, Department of Justice, Immigration and Naturalization Service, 8th Floor, Office of Field Operations, 801 I Street, NW, Washington, DC 20536
Phone: 202 514-2162

RIN: 1115–AF05

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1462. SUSPENSION OF DEPORTATION AND SPECIAL RULE CANCELLATION OF REMOVAL FOR CERTAIN NATIONALS OF GUATEMALA, EL SALVADOR, AND FORMER SOVIET BLOC COUNTRIES

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1251; 8 USC 1252 note; 8 USC 1252a; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1158; 8 USC 1182; 8 USC 1186a; 8 USC 1224

CFR Citation: 8 CFR 103; 8 CFR 208; 8 CFR 240; 8 CFR 246; 8 CFR 274a; ...

Legal Deadline: None

Abstract: This rule implements section 203 of the Nicaraguan Adjustment and Central American Relief Act (NACARA), enacted as title II of Public Law No. 105-100, 111 Stat. 2160, 2193 (1997) (as amended by Technical Corrections to the Nicaraguan Adjustment and Central American Relief Act (NACARA), Public Law 105-139, Stat. 2644 (1997)). Section 203 of NACARA provides that certain Guatemalans, Salvadorans, and nationals of former Soviet Bloc countries are eligible to apply for cancellation of removal under the standards for suspension of deportation similar to those that existed prior to enactment of Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). The rule establishes the authority of INS asylum officers to adjudicate certain applications under section 203 of NACARA, provides application and adjudication procedures, identifies factors and standards relevant to eligibility, and establishes a rebuttable presumption of extreme hardship for certain NACARA beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1915-98	11/24/98	63 FR 64895
NPRM Comment Period End-INS No. 1915-98	01/25/99	
Interim Rule-INS No. 1915-98	05/21/99	64 FR 27856
Interim Rule Comment Period End	07/20/99	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1915-98

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Attn: Ullico Building 3rd Floor, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF14

1463. POWERS OF THE ATTORNEY GENERAL TO AUTHORIZE STATE OR LOCAL LAW ENFORCEMENT OFFICERS TO CARRY OUT IMMIGRATION ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 8 USC 1101; 8 USC 1103; 8 USC 1201

CFR Citation: 28 CFR 65

Legal Deadline: None

Abstract: In order to provide a more effective and efficient response to a mass migration event, this rule implements provisions in the Immigration and Nationality Act allowing the Attorney General to authorize certain State and local law enforcement officers to perform various functions related to the enforcement of the immigration laws during the period of an actual or imminent mass influx of aliens. This rule would place designated State/local law enforcement officers under the direction of the INS when enforcing immigration law. This rule also allows the Commissioner to enter into advance written agreements with State and local law enforcement officials setting forth the terms and conditions of the functions to be performed during a Federal response to a mass influx of aliens, including reimbursement of expenses.

Timetable:

Action	Date	FR Cite
NPRM	04/08/99	64 FR 17128
NPRM Comment Period End	06/07/99	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: INS No. 1924

Agency Contact: Ron Dodson, Supervisory Special Agent, Headquarters Investigations, Department of Justice, Immigration and Naturalization Service, Room 1000, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7310

RIN: 1115–AF20

1464. ELIMINATION OF IMMIGRATION AND NATURALIZATION SERVICE-ISSUED MEXICAN AND CANADIAN BORDER CROSSING CARDS

Priority: Other Significant

Legal Authority: 5 USC 552; 8 USC 1228; 8 USC 1252; 8 USC 1304; 8 USC 1356; 8 USC 1304; 8 USC 1356; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1201; 8 USC 1225; 8 USC 1226; 8 USC 1227

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 214; 8 CFR 235; 8 CFR 247; 8 CFR 264; 8 CFR 286; 8 CFR 299

Legal Deadline: Final, Statutory, October 1, 2001.

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations to eliminate the use of Form I-175, Application for Nonresident Alien Canadian Border Crossing Card, and Form I-190, Application for Nonresident Alien Mexican Border Crossing Card. It also terminates the production of Form I-185, Nonresident Alien Canadian Border Crossing Card, and Form I-586, Nonresident Alien Mexican Border Crossing Card. In addition, this rule prohibits the use of Form I-186 (previous version of Mexican Border Crossing Card), Form I-185 and Form I-586 Border Crossing Cards (BCCs) after September 30, 2001, or whatever other date may be enacted for required use of a card containing a machine readable biometric identifier for entry (such as the fingerprint or handprint of the alien). Under the provisions of this rulemaking, an alien seeking entry into the United States by presentation of a BCC must complete a biometric verification upon each entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	
Interim Final Rule Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1931-98

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9247

RIN: 1115–AF24

1465. FILING OF PROPOSALS FOR DESIGNATION AS A REGIONAL CENTER APPROVED TO PARTICIPATE IN THE IMMIGRANT INVESTOR PILOT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1154; 8 USC 1182; 8 USC 1186a

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: The regulation changes the location for the filing and adjudication of proposals to participate in the Immigrant Investor Pilot Program from Headquarters, Adjudication, to the Texas and California Service Centers. This change is necessary to ensure the uniform and effective adjudication of these complex proposals related to economic development, export trade, and job creation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/00/02	
Interim Final Rule Comment Period End	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: INS No. 1944-98

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF27

1466. NONIMMIGRANT VISA EXEMPTION FOR NATIONALS OF THE BRITISH VIRGIN ISLANDS ENTERING THE UNITED STATES THROUGH ST. THOMAS, UNITED STATES VIRGIN ISLANDS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1252; 8 USC 1102; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service's regulations to allow nonimmigrant visitors for business or pleasure who are nationals of the British Virgin Islands to apply for admission to the United States without a visa at the ports-of-entry of St. Thomas, United States Virgin Islands. Since visas are no longer issued from the British Virgin Islands by the Department of State, all persons needing a nonimmigrant visa have to either travel or mail their applications to Barbados, the nearest visa-issuing location. The Service's action will facilitate travel to the United States for nationals of the British Virgin Islands while still ensuring that the proper application provisions of the I&NA are met.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/18/99	64 FR 7989
Interim Final Rule Comment Period End	04/18/99	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Additional Information: INS No. 1956-98

Agency Contact: Marty Newingham, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7992

RIN: 1115–AF28

1467. DELEGATION OF THE ADJUDICATION OF CERTAIN H-2A PETITIONS TO THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1258; 8 USC 1281; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 103; 8 CFR 214; 8 CFR 248; 8 CFR 264

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service's regulations by delegating the adjudication of certain H-2A petitions to the United States Department of Labor (DOL). The Service has made these changes in order to streamline the existing H-2A petitioning process for certain foreign agricultural workers. This rule will make it easier and less burdensome for United States employers to file petitions for foreign agricultural workers.

A related proposed rule, INS No. 2059-00, will require alien workers to sign a petition request for change of status or extension of stay. It also provides that all petition requests including extension of stay and change of status petitions must be filed with the DOL and provides that the current Service petition fee will be collected by DOL as part of a combined fee. These changes will further streamline the H-2A petitioning process.

Timetable:

Action	Date	FR Cite
Final Action	09/28/01	66 FR 49514
INS No. 1946-98		
NPRM 12/07/98 (63 FR 67431)		
NPRM Comment Period End 02/05/99		
Final Action 07/13/00 (65 FR 43527)		
Final Action-Delay of effective date until 10/01/2001 11/13/00 (65 FR 67616)		
Final Action-Delay of effective date to 10/1/2002 09/28/01 (66 FR 49514)		
INS No. 2059-00		
NPRM 07/13/00 (65 FR 43535)		
NPRM Comment Period End 08/14/00		
NPRM Comment Period End-Extended Date 08/17/00 (65 FR 50166)		
Final Action 10/00/02		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

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Additional Information: INS No. 1946-98

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AF29

1468. REGULATIONS CONCERNING THE CONVENTION AGAINST TORTURE

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282

CFR Citation: 8 CFR 3; 8 CFR 208; 8 CFR 235; 8 CFR 238; 8 CFR 240; 8 CFR 241

Legal Deadline: Other, Statutory, February 18, 1999, The Act requires promulgation by 02/18/99.

Abstract: This rule implements Article 3 of the United Nations Convention Against Torture or Other Forms of Cruel, Inhuman, or Degrading Treatment or Punishment for persons who may be subject to removal from the United States under the provisions of the Immigration and Nationality Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/19/99	64 FR 8478
Interim Final Rule Effective	03/22/99	
Interim Final Rule Corrections	03/22/99	64 FR 13881
Interim Final Rule Comment Period End	04/20/99	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1976-99

Agency Contact: Kelly Ryan, Chief, Refugee and Asylum Branch, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

Charles Adkins-Blanch, General Counsel, Department of Justice, Executive Office for Immigration Review, 2600 Skyline Tower, 5107 Leesburg Pike, Falls Church, VA 22041
Phone: 703 305-0470

RIN: 1115–AF39

1469. APPLICATION FOR REFUGEE STATUS; ACCEPTABLE SPONSORSHIP AGREEMENT GUARANTY OF TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1157; 8 USC 1158; ...

CFR Citation: 8 CFR 207

Legal Deadline: None

Abstract: Section 207 of the Immigration and Nationality Act authorizes the Attorney General to admit refugees to the United States under certain conditions, including those provided for by regulation. The Immigration and Naturalization Service regulations require that sponsorship agreements be secured before an applicant is granted admission as a refugee at a U.S. port-of-entry (POE). The determination of whether or not someone is classified as a refugee is described in the Act as a separate decision from whether a refugee may be admitted to the United States in refugee status. This rule amends the Service regulations by removing language that erroneously implies that the Service requires a sponsorship agreement and guarantee of transportation prior to determining whether an applicant is a refugee. This rule is necessary to clarify issues that may appear ambiguous in the existing regulation, and provides more advantageous treatment for the limited number of applicants for refugee status who have their Service interviews before sponsorship agreements have been secured.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/99	64 FR 27660
Interim Final Rule Comment Period End	07/20/99	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 1999-99

Agency Contact: Kathleen Thompson, Director, Refugee Branch, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, Office of International Affairs, 425 I Street NW, 3rd Floor, Ullico Bldg., Washington, DC 20536
Phone: 202 305-2662

RIN: 1115–AF49

1470. NONIMMIGRANT CLASSES: Q-2 IRISH PEACE PROCESS CULTURAL AND TRAINING PROGRAM VISITOR

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1186; 8 USC 1187; ...

CFR Citation: 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274

Legal Deadline: None

Abstract: This rule amends the regulations to establish a new visa classification, Q-2. Public Law 105-319, also known as the Irish Peace Process Cultural and Training Program Act of 1998, provides the basis for this regulatory change. The Q-2 visa classification identifies those visitors from Northern Ireland and certain designated counties in the Republic of Ireland to come to the United States temporarily for training employment and to experience coexistence and conflict resolution in a diverse society.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/17/00	65 FR 14774
Interim Final Rule Effective	03/17/00	
Interim Final Rule Comment Period End	05/16/00	
Revised Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2000-99

Agency Contact: Donna Crump, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AF51

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1471. CLARIFICATION OF PAROLE AUTHORITY

Priority: Info./Admin./Other

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations concerning the authority to grant the parole of aliens from Service custody by specifically identifying the scope of that authority to include the Commissioner, the Deputy Commissioner, the Executive Associate Commissioner for Field Operations, and regional directors. This action is being taken to clarify which individuals are authorized by the Attorney General, acting through the Commissioner, to grant parole from Service custody.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/28/00	65 FR 82254
Interim Final Rule Comment Period End	12/28/00	
Interim Final Rule Delay of Effective Date until 03/30/2001	01/26/01	66 FR 7863
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2004-99

(See Also 1115-AE68)

Agency Contact: Kenneth Leutbecker, Director, Parole and Humanitarian Assistance Branch, Office of International Affairs, Department of Justice, Immigration and Naturalization Service, Attn: ULLICO Bldg, Third Floor, 111 Massachusetts Avenue NW, Washington, DC 20001
Phone: 202 305-2670

RIN: 1115–AF53

1472. BATTERED AND ABUSED CONDITIONAL RESIDENTS; TERMINATION OF MARRIAGE BY CONDITIONAL RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1154; 8 USC 1184; 8 USC 1186a

CFR Citation: 8 CFR 216; 8 CFR 299

Legal Deadline: None

Abstract: Enacted on November 10, 1986, the Immigration Marriage Fraud Amendments of 1986 (IMFA) made a number of changes to the Act to deter aliens from marrying solely to obtain immigration benefits. IMFA established a conditional resident status for aliens who obtained lawful permanent resident status based upon a marriage of less than 2 years duration. The interim rule published on May 16, 1991, established procedures to allow a conditional resident who married in good faith but whose marriage was terminated by the United States citizen or lawful permanent resident spouse to seek a waiver of the joint filing requirement. The interim rule published on 5/16/91 also was necessary to provide a method by which a battered conditional resident, or a conditional resident parent of an abused conditional resident child, may apply for removal of the conditional basis of resident status without filing a joint petition. This interim rule implements certain technical changes made by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) and addresses comments received in response to the interim rule published on 5/16/91.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/91	56 FR 22635
Interim Final Rule	05/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Interim Rule for INS No. 1423-91 that was published on 5/16/1991.

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF59

1473. EXTENSION OF 25-MILE LIMIT AT SELECT ARIZONA PORTS-OF-ENTRY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; ...

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations to extend the distance Mexican nationals with border crossing cards to travel into the United States without obtaining additional Immigration documentation at selected ports-of-entry (POEs) along the United States and Mexico border. The selected POEs are located in the State of Arizona at Sasabe, Nogales, Mariposa, Douglas, and Naco. Once visitors to Arizona meet the inspection requirements of legal entry to the United States, they will be able to travel within the 75-mile border region of Arizona. This rule is intended to promote commerce in the Southern Arizona border area while still ensuring that sufficient safeguards are in place to prevent illegal entry to the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/99	64 FR 68616
Interim Final Rule Comment Period End	02/07/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2026-99

Agency Contact: Frances De Choudens, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service,

DOJ—INS

Final Rule Stage

Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 353-0591

RIN: 1115–AF60

1474. REVOKING GRANTS OF NATURALIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1443

CFR Citation: 8 CFR 340

Legal Deadline: None

Abstract: This rule amends the INS regulations relating to administrative revocation of naturalization by changing the burden of proof the INS must satisfy in order to administratively revoke a grant of naturalization and clarifying the 180-day period for the rendering of the district director's decision. This rule provides that INS will only initiate revocation proceedings based on clear, unequivocal, and convincing evidence with the burden of proof remaining with INS throughout the administrative process and through the issuance of the final decision. This rule clarifies the issues raised by the promulgation of the final rule that was published in 1996 at 61 FR 5550. A final rule requesting comments was published in the Federal Register on October 28, 1996, at 61 FR 55550.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/00	65 FR 17127
Interim Final Rule Comment Period End	05/30/00	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.1858-97

Agency Contact: Michael Neifach, Attorney, Office of the General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AF63

1475. ENTRY REQUIREMENTS FOR CITIZENS OF THE REPUBLIC OF THE MARSHALL ISLANDS, THE FEDERATED STATES OF MICRONESIA, AND PALAU

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR 2

CFR Citation: 8 CFR 211; 8 CFR 212

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by adding documentary requirements for a naturalized citizen of the Marshall Islands, the Federated States of Micronesia, or Palau (Compact Countries) to enter into the United States, lawfully engage in occupations, accept employment, and establish residence as a nonimmigrant in the United States and its territories and possessions. This rule also clarifies the documentary requirements for an adopted child from Compact Countries who is immigrating to the United States. Without clarification of the documentary requirements for an adopted child from the Compact Countries, the Compact Countries may not consent to the adoption of children by U.S. citizens and legal permanent residents.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37429
NPRM Comment Period End	08/17/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2047-00

Agency Contact: Michael C. Biggs, Assistant Director, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street, NW, Washington, DC 20536
Phone: 202 353-7705
Email: michael.c.biggs@usdoj.gov

RIN: 1115–AF65

1476. REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES: CONTROL OF EMPLOYMENT OF ALIENS

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1201; 8 USC 1201a; 8 USC 1301; 8 USC 1305

CFR Citation: 8 CFR 264; 8 CFR 274a

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations governing applications for renewal of 10-year Permanent Resident Cards upon their expiration. This rule adds documents to the acceptable list of registration requirements and clarifies the requirements for Lawful Permanent Resident (LPRs) to file Form I-90, Application to Replace Alien Registration Card, if they are also applying for naturalization. This rule also provides additional methods to verify employment eligibility for those in the process of renewing their expired or expiring Form I-551, Permanent Resident Card. These changes are necessary to facilitate the 10-year Form I-551 renewal process. This rule also clarifies the fingerprinting requirements for lawful permanent residents who reach the age of 14 years.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	
Interim Final Rule Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2042-00

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF71

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1477. NATIONAL INTEREST WAIVERS FOR SECOND PREFERENCE EMPLOYMENT-BASED IMMIGRANT PHYSICIANS SERVING IN MEDICALLY UNDERSERVED AREAS OR AT DEPARTMENT OF VETERANS AFFAIRS FACILITIES

Priority: Other Significant

Legal Authority: PL 106-113; 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: On November 29, 1999, Public Law 106-113 was enacted. Section 117 amended the Immigration and Nationality Act (Act) at section 203 to provide national interest waivers to alien physicians agreeing to practice 5 years in designated medically underserved areas or at Veterans Affairs facilities. The Service proposes an amendment to 8 CFR 204 and 245 in order to implement the new statutory provisions. The Service issued an interim regulation so that applicants may begin to take advantage of the new provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/06/00	65 FR 53889
Correction to Interim Final Rule	09/27/00	65 FR 57943
Interim Final Rule Effective	10/06/00	
Correction to Interim Final Rule	10/20/00	65 FR 63118
Interim Final Rule Comment Period End	11/06/00	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2048-00

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AF75

1478. PETITIONING REQUIREMENTS FOR THE H-1C NONIMMIGRANT CLASSIFICATION UNDER PUBLIC LAW 106-95

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; ...

CFR Citation: 8 CFR 214.2

Legal Deadline: None

Abstract: On November 12, 1999, the Nursing Relief for Disadvantaged Areas Act (NRDAA) was enacted creating a new H-1C nonimmigrant nurse category. This rule amends the Service's regulations in order to implement the NRDAA as it relates to the adjudication petitions for H-1C classification. This rule will facilitate the hiring of alien registered nurses to reduce the shortage of nurses in certain areas of the United States while protecting the rights of U.S. nurses.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/11/01	66 FR 31107
Interim Final Rule Comment Period End	08/10/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2050-00

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AF76

1479. EXPANSION OF DEDICATED COMMUTER LANES; CLARIFICATION OF DRIVER'S LICENSE REQUIREMENT FOR APPLICANTS TO DEDICATED COMMUTER LANES AND AUTOMATED PERMIT PORT PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1183; 8 USC 1201; ...

CFR Citation: 8 CFR 235

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations governing the Dedicated Commuter Lanes (DCL) and Automated Permit Port programs by establishing DCLs along the northern borders of the United States. The rule proposes to clarify that non-driving passengers who do not have a driver's license, for example, children, certain elderly people, and others who are ineligible to drive or otherwise choose not to drive, are not required to have or present a driver's license before their application is approved.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2058-00

Agency Contact: Thomas C. Campbell, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4214, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9246

RIN: 1115–AF77

1480. WAIVING THE FINGERPRINTING REQUIREMENT FOR CERTAIN DISABLED NATURALIZATION APPLICANTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1443; 8 USC 1447; 29 USC 794(a), The Rehabilitation Act of 1973

CFR Citation: 8 CFR 316; 8 CFR 335

Legal Deadline: None

Abstract: Currently, all naturalization applicants filing Form N-400, Application for Naturalization, are required to be fingerprinted on Form FD-258 Applicant Card for the purpose of conducting criminal background checks by the Federal Bureau of Investigation (FBI). This rule amends the Immigration and Naturalization Service regulations by providing a fingerprinting waiver for naturalization applicants who, because of a permanent impairment, are unable to provide any fingerprints. It also provides an alternative method for collecting the required background clearances.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Request for Comments	10/00/02	
Interim Final Rule Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2060-00

Agency Contact: Pamela T. Wallace, Adjudications Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
Phone: 202 514-9475

RIN: 1115–AF80

1481. UPDATE OF LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1221; 8 USC 1225; 8 USC 1226; 8 USC 1228; 8 USC 1229; 8 USC 1252

CFR Citation: 8 CFR 212; 8 CFR 233

Legal Deadline: None

Abstract: This interim rule (INS No. 2020-99) updates the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program. This rule also removes certain countries from the ineligible listing so that aliens from these countries can have their passport and visa requirements waived. This rule is intended to benefit the traveling public by expanding the number of countries whose citizens or nationals may transit the United States without a visa while preventing an increase in the abuse of the TWOV program by citizens or nationals of countries placed on the ineligible list.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/01	66 FR 1017
Interim Final Rule Delay of Effective Date	02/02/01	66 FR 8743
Interim Final Rule Comment Period End	03/06/01	
Interim Final Rule Effective	04/06/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2020-99

Negotiations are under way between the Department of State and the Immigration and Naturalization Service.

INS No.2129-01

Related RIN 1115-AD96, "Establishing Criteria for Determining Countries Whose Citizens Are Ineligible for the Transit Without Visa (TWOV) Program."

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AF81

1482. IMPLEMENTATION OF THE NUMERICAL LIMIT ON ASYLUM GRANTS AND REFUGEE ADMISSIONS BASED ON RESISTANCE TO COERCIVE POPULATION CONTROL MEASURES

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1157; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208; 8 CFR 274a

Legal Deadline: None

Abstract: Section 601(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA) provides that, for any fiscal year, not more than a total of 1,000 refugees may be admitted or granted asylum based solely on resistance to coercive population control measures. This rule authorizes the Immigration and Naturalization Service and the Executive Office for Immigration Review to make conditional grants of asylum in those cases in which an applicant is found to merit asylum solely on the basis of resistance to coercive population control measures and establishes a mechanism for converting no more than 1,000 conditional grants per fiscal year to final asylum grants. The rule also establishes procedures for administering a waiting list in those years that the number of conditional grants exceeds the statutory limit for final grants, reserves a certain number of authorization numbers for purposes of refugee admission, and addresses procedures for administering derivative conditional grants, terminating conditional grants, and other procedures specific to this rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule With Request for Comments	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2067-00

Agency Contact: Joanna Ruppel, Supervisor for Asylum Operations, International Affairs, Department of Justice, Immigration and Naturalization Service, 3rd Floor, 111 Massachusetts Avenue NW, Washington, DC 20536
Phone: 202 305-2663

RIN: 1115–AF84

1483. ADDING ACTUARIES AND PLANT PATHOLOGISTS TO APPENDIX 1603.D.1 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186a; 8 USC 1187; 8 USC 1221; 8 USC 1281; 8 USC 1282

CFR Citation: 8 CFR 2

Legal Deadline: None

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Abstract: The rule proposes to amend 8 CFR 214.6 by adding the occupations of actuary and plant pathologists to Appendix 1603.D.1. This rule proposes to modify the licensure requirements for Canadian citizens seeking admission to the U.S. as a TN nonimmigrant category alien. These amendments are being proposed to reflect the agreements made among the three parties to the North American Free Trade Agreement.

Timetable:

Action	Date	FR Cite
NPRM	12/19/00	65 FR 79320
NPRM Comment Period End	02/20/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2068-00

Agency Contact: Irene Hoffman, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7435

RIN: 1115–AF85

1484. POWER OF ATTORNEY GENERAL TO TERMINATE DEPORTATION PROCEEDINGS AND INITIATE REMOVAL PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-208

CFR Citation: 8 CFR 309

Legal Deadline: None

Abstract: This rule proposes to implement section 309(c)(3) of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) by affording certain aliens rendered ineligible for relief from deportation by recent changes in the law the opportunity to have their deportation proceedings terminated and removal proceedings initiated in order to apply for relief. Certain permanent resident aliens rendered ineligible for section 212(c) relief by the Antiterrorism and Effective Death Penalty Act (AEDPA) and certain non-permanent resident aliens rendered ineligible for suspension of deportation by the stop-time rule in IIRIRA may apply for "repapering" (as it is commonly known) under this rule. This process would not apply to aliens eligible for 212(c) relief pursuant to the procedures described in the Executive Office for Immigration Review (EOIR) rulemaking (RIN 1125-AA29).

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71273
NPRM Comment Period End	01/29/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2083-00

Agency Contact: Kyle D. Latimer, Associate General Counsel, Department of Justice, Immigration and Naturalization Service, Office of the General Counsel, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 616-2604

RIN: 1115–AF87

1485. EMPLOYMENT AUTHORIZATION FOR CERTIFICATE OF CITIZENSHIP APPLICANTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1324a; 8 USC 1443; 8 USC 1448; 8 CFR 2

CFR Citation: 8 CFR 274a. 8 CFR 341

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations by providing a procedure under which aliens who, believing they are actually citizens, have filed applications for certificates of citizenship (Forms N-600) may obtain employment authorization while their applications are pending. This interim rule is necessary to establish a uniform procedure to accommodate Form N-600 applicants, without creating a strong incentive for aliens to file applications in bad faith, seeking simply to obtain employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No.2076-00

Agency Contact: Richard Sheridan, Staff Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
Phone: 202 616-0583

RIN: 1115–AF90

1486. ADJUSTMENT OF STATUS TO THAT OF PERSON ADMITTED FOR PERMANENT RESIDENCE; TEMPORARY REMOVAL OF CERTAIN RESTRICTIONS OF ELIGIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1201; 8 USC 1252; 8 USC 1252b; 8 USC 1304; 8 USC 1356

CFR Citation: 8 CFR 103; 8 CFR 205; 8 CFR 245

Legal Deadline: None

Abstract: The Immigration and Naturalization Service is amending its regulations governing eligibility for adjustment of status under section 245(i) of the Immigration and Nationality Act to conform the regulations to existing policy and procedures and to remove language that has been superseded by subsequent legislation. Specifically, this interim rule conforms the regulations to include the changes made by Public Law 105-119 and Public Law 106-544. It also provides for the changes contained in the Legal Immigration Family Equity Act of 2000 (LIFE ACT). As required by the Life Act, this rule changes the sunset date of section 245(i) of the Immigration and Naturalization Act to the new date of April 30, 2001, for filing of qualifying petitions or applications that enable the applicant to apply to adjust status using section 245(i) and clarifies the effect of the new sunset date on eligibility. This means that in order to preserve the ability to apply for adjustment of status under section 245(i), an alien must be the beneficiary of a visa petition for classification under section 204 of the Act or application for labor certification properly filed on or before April 30, 2001, and determined to have approval when filed. This rule also provides guidance on the standard for review of filing for immigrant visa petitions and applications for labor certification on or before April 30, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/26/01	66 FR 16383
Interim Final Rule Effective	03/26/01	
Interim Final Rule Comment Period End	05/25/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2078-00; This rulemaking supersedes RIN 1115-AD83.

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
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RIN: 1115–AF91

1487. ASYLUM AND WITHHOLDING DEFINITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158; 8 USC 1226; 8 USC 1252; 8 USC 1282; 8 CFR 2

CFR Citation: 8 CFR 208

Legal Deadline: None

Abstract: This rule proposes to amend the Department regulations that govern establishing asylum eligibility. This rule is intended to provide guidance on certain issues that have arisen in the context of asylum adjudications. The amendments focus on portions of the regulations that deal with the definitions of persecution, membership in a particular social group, and State action. This rule codifies long-standing concepts of the definition of persecution. It clarifies that gender can be a basis for membership in a particular social group. It also clarifies that a person who has suffered or fears domestic violence may be considered a member of a particular social group. The Department of Justice believes this issue required further examination after the Board of Immigration Appeals decision, Matter of R-A. This rule also clarifies that the factors considered in Ninth Circuit case law regarding membership in a particular social group are non-determinative. Finally, the rule offers further guidance on what is required to show a State's inability or unwillingness to control a persecutor.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76588
NPRM Comment Period End	01/22/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2092-00

Agency Contact: Dorthea Lay, Attorney, Office of the General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 305-8414
Fax: 202 514-0455

RIN: 1115–AF92

1488. PETITION TO CLASSIFY ALIEN AS IMMEDIATE RELATIVE OF A U.S. CITIZEN OR PREFERENCE IMMIGRANT; ADJUSTMENT OF STATUS TO THAT OF A PERSON ADMITTED FOR PERMANENT RESIDENCE

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; ...

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: This final rule amends regulations of the Immigration and Naturalization Service (Service) to provide an exception from the general prohibition against approval of immigration benefits based upon a marriage entered into during removal proceedings. The rule creates a good faith exception to the prohibition. This final rule completes the regulatory implementation of the Immigration Act of 1990 (IMMACT 90).

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/13/01	66 FR 32138
Interim Final Rule Effective	06/13/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See INS No. 1419-91

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AF94

1489. CHILDREN BORN OUTSIDE THE UNITED STATES; APPLICATIONS FOR CERTIFICATE OF CITIZENSHIP

Priority: Other Significant

Legal Authority: PL 106-395

CFR Citation: 8 CFR 103; 8 CFR 299; 8 CFR 310; 8 CFR 320; 8 CFR 322; 8 CFR 338; 8 CFR 341; 8 CFR 499; ...

Legal Deadline: Final, Statutory, February 27, 2001, Mandated by Law.

Abstract: This rule implements title I of the Child Citizenship Act of 2000 (CCA), Public Law 106-395. First, it amends the Immigration and Naturalization Service (Service) regulations by adding a new part which addresses application procedures for foreign-born children residing in the United States pursuant to a lawful admission for permanent residence, who acquire citizenship automatically under section 320 of the Immigration and Nationality Act (Act), as amended. This rule established procedures for these foreign-born children, including adopted children, to obtain certificates of citizenship. Second, this rule also addresses application procedures for foreign-born children residing outside the United States, who can acquire citizenship under section 322 of the Act, as amended, by approval of an application and taking the oath of allegiance.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: See INS No. 1419-91

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

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Interim Final Rule Comment Period End	08/13/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2101-00

Agency Contact: Richard Sheridan, Staff Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, Room 980, 801 I Street NW, Washington, DC 20536
Phone: 202 616-0583

RIN: 1115–AF98

1490. ALLOWING FOR THE FILING OF FORM I-140 VISA PETITION CONCURRENTLY WITH A FORM I-485 APPLICATION IN CERTAIN CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204; 8 CFR 245

Legal Deadline: None

Abstract: The current regulations provide that an alien worker who wants to apply for permanent residence by filing the appropriate Form I-485, Application To Register Permanent Residence or Adjust Status, cannot do so until he or she obtains approval of the underlying petition, Form I-140, Immigrant Petition for Alien Worker. This procedure has resulted in aliens experiencing unnecessary delays due to the heavy backlog created by increasing numbers of cases received by the Immigration and Naturalization Service. This rule amends the Service's regulations by allowing the Forms I-140 and I-485 to be filed concurrently when a visa is immediately available, thereby improving the efficiency of the system, as well as customer service. This rule will also allow the alien worker to apply for employment authorization (Form I-765, Application for Employment Authorization) and advance parole authorization (Form I-131, Application for Travel Document) while the Form I-485 is pending.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2104-00

Agency Contact: Maurice R. Berez, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AG00

1491. SPECIAL IMMIGRANT VISA FOR FOURTH PREFERENCE EMPLOYMENT-BASED BROADCASTERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1151; 8 USC 1153; 8 USC 1154; 8 USC 1182; 8 USC 1186a; 8 USC 1255; 8 USC 1641

CFR Citation: 8 CFR 204

Legal Deadline: None

Abstract: This interim rule amends the Immigration and Naturalization Service regulations by establishing the procedure under which the International Broadcasting Bureau of the United States Broadcasting Board of Governors (BBG), or a BBG grantee organization, may file special fourth preference immigrant petitions for alien broadcasters. This rule explains the requirements the alien broadcaster must meet in order to be the beneficiary of an immigrant visa petition. This regulatory change is necessary in order to assist the BBG in fulfilling its statutory obligation to hire alien broadcasters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/11/01	66 FR 51819
Interim Final Rule Effective	11/13/01	
Interim Final Rule Comment Period End	12/10/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2106-00

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7867
Fax: 202 514-0198
Email: craig.s.howie@usdoj.gov

RIN: 1115–AG01

1492. ESTABLISHING PREMIUM PROCESSING SERVICE FOR EMPLOYMENT-BASED PETITIONS AND APPLICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103

CFR Citation: 8 CFR 103; 8 CFR 299

Legal Deadline: None

Abstract: This rule changes the Immigration and Naturalization Service regulations to establish premium processing service for certain employment-based petitions and applications. If an individual pays a fee for premium processing service, the INS will process the petition or application in 15 days. Premium Processing Service will give American businesses an option to pay for more rapid processing of petitions and applications to meet their needs for foreign workers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/01	66 FR 29682
Interim Final Rule Effective	06/01/01	
Interim Final Rule Comment Period End	07/31/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2108-01

Agency Contact: Cindy Keiss, Adjudications Officer, Immigration Services Division, Department of Justice, Immigration and Naturalization Service, 10th Floor, 800 K Street NW, Washington, DC 20536
Phone: 202 305-8010

RIN: 1115–AG03

1493. NONIMMIGRANT CLASSES; SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENTS; V CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1102; PL 106-553

CFR Citation: 8 CFR 103; 8 CFR 204; 8 CFR 205; 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 299

Legal Deadline: None

Abstract: Section 1102 of the LIFE Act of 2000 amends the Immigration and Nationality Act to create a new nonimmigrant classification V for the spouses and children of lawful permanent residents awaiting the availability of an immigrant visa number in the appropriate preference category in accordance with the State Department's monthly Visa Bulletin. Eligible spouses and children of lawful permanent residents residing abroad that obtain the V nonimmigrant visa from the Department of State may work and reside in the United States on the basis of the V classification until they can apply for adjustment of status to that of lawful permanent resident. Certain eligible spouses and children of lawful permanent residents already present in the United States may be granted V classification until they can apply to adjust status to that of lawful permanent resident. This rule sets forth eligibility criteria and procedures for obtaining the V visa classification and related employment authorization.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/07/01	66 FR 46697
Interim Final Rule Effective	09/07/01	
Interim Final Rule Comment Period End	11/06/01	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2117-01

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG08

1494. K NONIMMIGRANT CLASSIFICATION, LEGAL IMMIGRATION FAMILY EQUITY ACT (LIFE)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-553

CFR Citation: 8 CFR 212; 8 CFR 214; 8 CFR 245; 8 CFR 248; 8 CFR 274a

Legal Deadline: Final, Statutory, December 21, 2000.

Abstract: Section 1103 of the Legal Immigration Family Equity Act (LIFE), Public Law 106-553, creates a new nonimmigrant classification under INA 101(a)(15)(K) for the spouses and children of U.S. citizens who have pending immigrant visa applications. This rule establishes this classification in the INS regulations, including creating filing and adjudication procedures, as well as procedures for adjusting status from this new nonimmigrant classification to that of a lawful permanent resident.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/14/01	66 FR 42587
Interim Final Rule Comment Period End	10/15/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: LIFE creates another separate nonimmigrant classification V and also amends the INA for other purposes. Each of these will be addressed in a separate rule. [INS No. 2127-01]

Agency Contact: Michael Hardin, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG12

1495. ADJUSTMENT OF STATUS FOR CERTAIN SYRIAN NATIONALS GRANTED ASYLUM IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255; sec 202, PL 105-100, 111 Stat 2160, 2193; 8 CFR 2

CFR Citation: None

Legal Deadline: None

Abstract: On October 27, 2000, the President signed into law Public Law 106-378, which provides for the adjustment of status to lawful permanent resident of certain Syrian nationals, without regard to the annual numerical limitation requirement. This interim rule discusses eligibility and sets forth application procedures for persons wishing to adjust status on the basis of Public Law 106-378. The INS has issued this action as an interim rule because Public Law 106-378 provided for a 1-year application period, which will end on October 26, 2001. Publication of the interim rule ensures that applicants were provided with as much time as possible to apply for the benefits under Public Law 106-378. The Service is now reviewing comments and is drafting a final rule.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/17/01	66 FR 27445
Interim Final Rule Effective	05/17/01	
Interim Final Rule Comment Period End	07/17/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG13

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1496. ADJUSTMENT OF STATUS OF CERTAIN ALIENS FROM VIETNAM, CAMBODIA, AND LAOS IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1255

CFR Citation: 8 CFR 245

Legal Deadline: None

Abstract: On November 6, 2000, the President signed into law Public Law 106-429, the Foreign Operations Appropriations Act of 2001, section 586 of which provides for the adjustment of status for certain aliens from Vietnam, Cambodia, and Laos. To apply for adjustment under this provision, eligible applicants must have been physically present in the United States since October 1, 1997, and inspected and paroled into the United States from Vietnam under the Orderly Departure Program from a refugee camp in East Asia or from a displaced persons camp administered by the United Nations in Thailand. This rule further discusses eligibility, sets forth application procedures, and amends Service regulations to provide for adjustments of status on the basis of section 586 of Public Law 106-429.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Effective	06/00/02	
Interim Final Rule Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2124-01

Agency Contact: Michael Valverde, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG14

1497. ADDING COLOMBIA TO THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1228; 8 USC 1252; 8 USC 1227

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service in accordance with section 233(c) of the Act. This interim rule adds Colombia to the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be ineligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/01	66 FR 17321
Interim Final Rule Effective	04/02/01	
Interim Final Rule Comment Period End	05/29/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2129-01

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG16

1498. NEW CLASSIFICATION FOR VICTIMS OF SEVERE FORMS OF TRAFFICKING IN PERSONS ELIGIBLE FOR THE T NONIMMIGRANT STATUS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1104; 8 USC 1182; 8 USC 1184; 8 USC 1187; 8 USC 1201; 8 USC 1224; 8 USC 1225; 8 USC 1226; 8 USC 1227; 8 USC 1252; 8 USC 1252a; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 8 CFR 103; 8 CFR 212; 8 CFR 212; 8 CFR 214; 8 CFR 274a; 8 CFR 299

Legal Deadline: None

Abstract: This rule sets forth application requirements for a new nonimmigrant classification. The T classification was created by 107(e) of the Victims of Trafficking and Violence Protection Act of 2000 (VTVPA), Public Law 106-386. The T nonimmigrant classification was designed for eligible victims of severe forms of trafficking in persons who aid the Government with their case against the traffickers and who can establish that they would suffer extreme hardship involving unusual and severe harm if they were removed from the United States after having completed their assistance to law enforcement. The rule establishes application procedures and responsibilities for the Immigration and Naturalization Service (Service) and provides guidance to the public on how to meet certain requirements to obtain T nonimmigrant status.

There is a statutory cap for T nonimmigrant status for victims of a severe form of trafficking (principals), which is set at 5,000 per annum. The law also provides that certain family members can derive T status through the principal's application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/02	67 FR 4784
Effective Date	03/04/02	
Comment Period Ends	04/01/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Additional Information: INS No. 2132-01; AG Order No. 2554-2002

There is a related rulemaking, INS No. 2170-01, the new U nonimmigrant status. [RIN 1115-AG39]

Agency Contact: Pearl Chang, Branch Chief, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7440

RIN: 1115–AG19

1499. PROTECTION AND ASSISTANCE FOR VICTIMS OF TRAFFICKING

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 552; 5 USC 552a; 8 USC 1101; 8 USC 1103; 8 USC 1104; 8 USC 1252; 22 USC 7101; 22 USC 7105; ...

CFR Citation: 28 CFR 1100

Legal Deadline: Other, Statutory, April 28, 2001, Statutory deadline for promulgation of regulations.

Abstract: This rule amends 28 CFR and sets forth implementing guidance for section 107(c) of the Victims of Trafficking and Violence Protection Act of 2000. The Attorney General and the Secretary of State are promulgating these regulations for law enforcement, Immigration, and Department of State (DOS) officials regarding the protection of victims of severe forms of trafficking who are in custody, the access of such victims to information about their rights and translation services, and the training of appropriate Department of Justice and DOS personnel in identifying and protecting such victims. The rule also addresses the authority of Federal law enforcement officials to permit the continued presence in the United States of certain victims of severe forms of trafficking who are potential witnesses in order to aid prosecutions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/24/01	66 FR 38514
Interim Final Rule Comment Period End	10/22/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: INS No 2133-01

Agency Contact: Mark Mullins, Acting Director, Program Strategy and Development Branch, Department of Justice, Immigration and Naturalization Service, Investigations Division, 425 I Street NW, Washington, DC 20536
Phone: 202 514-3479

RIN: 1115–AG20

1500. REMOVING RUSSIA FROM THE LIST OF COUNTRIES WHOSE CITIZENS OR NATIONALS ARE INELIGIBLE FOR TRANSIT WITHOUT VISA (TWOV) PRIVILEGES TO THE UNITED STATES UNDER THE TWOV PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without a passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233 (c) of the Immigration and Nationality Act (Act). This interim rule removes Russia from the list of those countries that the Service, acting on behalf of the Attorney General and jointly with the Department of State, has determined to be eligible for participation in the TWOV program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/01	66 FR 32529
Interim Final Rule Comment Period End	08/15/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2144-01

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
Email: robert.f.hutnick@usdoj.gov

RIN: 1115–AG27

1501. DETENTION OF ALIENS SUBJECT TO FINAL ORDERS OF REMOVAL

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1223; 8 USC 1227; 8 USC 1231; 8 USC 1253; ...

CFR Citation: 8 CFR 241

Legal Deadline: None

Abstract: This rule amends the custody review process governing the detention of aliens who are the subject of a final order of removal, deportation or exclusion (see 8 CFR 241.4) in light of the decision of the U.S. Supreme Court in Zadvydas v. Davis, 533 U.S., 121 S. Ct. 2491 (2001). This rule adds new provisions governing cases for the Immigration and Naturalization Service (Service) to determine whether there is a significant likelihood that an alien will be removed from the United States in the reasonably foreseeable future, and cases where there are special circumstances justifying the continued detention of certain aliens. This rule also makes conforming changes to the existing post-removal period detention regulations, and provides procedures to implement the statutory provision for the extension of the removal period beyond 90 days if the alien conspires or acts to prevent his or her removal or fails or refuses to assist the Service in obtaining documents necessary to his or her removal.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/14/01	66 FR 56967
Interim Final Rule Comment Period End	01/14/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2156-01

Agency Contact: Joan S. Lieberman, Attorney, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 514-2895

RIN: 1115–AG29

1502. ALLOWING CITIZENS AND NATIONALS OF THE PEOPLE'S REPUBLIC OF CHINA LIMITED TRANSIT WITHOUT VISA (TWOV) PRIVILEGES AT TWOV-DESIGNATED ALASKA INTERNATIONAL AIRPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101; 8 USC 1102; 8 USC 1103; 8 USC 1182; 8 USC 1184; ...

CFR Citation: 8 CFR part 212

Legal Deadline: None

Abstract: The Transit Without Visa (TWOV) Program allows certain aliens to transit the United States en route to a specified foreign country without passport or visa provided they are traveling on a carrier signatory to an agreement with the Immigration and Naturalization Service (Service) in accordance with section 233(c) of the Act and meet certain other requirements as enumerated in Service regulations at 8 CFR 212.1(f) and 214.2(c). This interim rule allows citizens and nationals of the People's Republic of China limited TWOV privileges at TWOV-designated Alaska international airports provided they meet additional requirements enumerated in the rule. This rule is intended to benefit the economy of Alaska by allowing citizens and nationals of the People's Republic of China to transit the United States without a visa at TWOV-designated Alaska international airports while limiting the risk of abuse of the TWOV program by citizens or nationals of the People's Republic of China by restricting this policy to certain Alaskan ports of entry.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	
Interim Final Rule Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2160-01;

Agency Contact: Robert F. Hutnick, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7499
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RIN: 1115–AG33

1503. CUSTODY PROCEDURES

Priority: Other Significant

Legal Authority: 8 USC 1103; 8 USC 1182; 8 USC 1225; 8 USC 1226; 8 USC 1251; ...

CFR Citation: 8 CFR part 287

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service (Service) regulations on the period of time after an alien's arrest within which the Service must make a determination whether the alien will be continued in custody or released on bond or recognizance and whether to issue a notice to appear and warrant of arrest. This rule provides that unless voluntary departure has been granted, the Service must make such determinations within 48 hours of arrest, except in the event of emergency or other extraordinary circumstance in which case the Service must make such determinations within an additional reasonable period of time.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	09/17/01	66 FR 48334
Interim Final Rule Published	09/20/01	66 FR 48334
Interim Final Rule Comment Period End	11/19/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2171-01

Agency Contact: Daniel Brown, Assistant General Counsel, Office of General Counsel, Department of Justice, Immigration and Naturalization Service, Room 6100, 425 I Street NW, Washington, DC 20536
Phone: 202 616-7977

RIN: 1115–AG40

1504. • CONTROL OF ALIENS DEPARTING FROM THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1158

CFR Citation: 8 CFR 215

Legal Deadline: None

Abstract: The Immigration and Naturalization Service (Service) provides Prevent Departure Lists (PDLs) to airlines, cruise ship companies, bus companies and other carriers, business entities and hard copies only to individuals. The PDLs consist of the names of individuals that the Federal Bureau of Investigation (FBI) has determined need to be interviewed before being permitted to depart the United States. These interviews will be done by the Service and/or the FBI.

To improve the Service's efficiency, it is amending its regulations affecting the controls of aliens departing the United States by allowing (PDLs) to be distributed by electronic mail and computer disks instead of hard-copy delivery. However, the Service will continue to send a hard copy of the PDLs if the carrier or other business entity does not have electronic mail or the capability to use the information on computer disk.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	
Interim Final Rule Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2175-01

Agency Contact: Cindy N. Lechner, Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 514-8592

RIN: 1115–AG42

1505. • DOCUMENTARY REQUIREMENTS FOR CERTAIN TEMPORARY RESIDENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1203; 8 USC 1225; 8 USC 1257; 8 CFR part 2

CFR Citation: 8 CFR 211

Legal Deadline: None

Abstract: This final rule adds a document to the list of documents that may be presented by certain returning temporary residents in lieu of an immigrant visa. This rule will allow the Form I-797, Notice of Action, issued to certain aliens who have adjusted to temporary resident status pursuant to 8 CFR 245a to be used as an entry document at a port-of-entry. This rule is necessary to ensure that those temporary resident aliens eligible to reenter the United States with a Form I-797 are able to do so.

Timetable:

Action	Date	FR Cite
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2177-01

Agency Contact: Elizabeth N. Lee, Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
Phone: 202 514-4754

RIN: 1115–AG44

1506. • CHANGE IN BUSINESS PRACTICES; ACCEPTANCE OF PAYMENTS OF FEES BY CREDIT CARD AND OTHER ELECTRONIC MEANS WHERE POSSIBLE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: PL 98-369; 31 USC 3720

CFR Citation: 8 CFR 103.7

Legal Deadline: None

Abstract: The Immigration and Naturalization Service proposes to expand the acceptance of credit cards and other electronic means to collect fees from the public. The Service currently accepts fees at seven locations in three of its 33 districts. The Service proposes to implement credit card acceptance at 16 of these districts by the end of FY 2002 with full implementation by the end of FY 2003. The intended benefit is two-fold: To provide the Service with a faster, more efficient collection and record keeping mechanism while affording the customer a convenient alternative payment method.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No 2181-01

Agency Contact: Francis Joseph Maguire, Management and Program Analyst, Department of Justice, Immigration and Naturalization Service, Room 6034, 425 I Street NW, Washington, DC 20536
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Fax: 202 514-7860
Email: francis.j.maguire@usdoj.gov

RIN: 1115–AG48

1507. • ADDING AND REMOVING INSTITUTIONS TO AND FROM THE LIST OF RECOGNIZED AMERICAN INSTITUTIONS OF RESEARCH

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1103; 8 USC 1181; 8 USC 1182; 8 USC 1443; 8 USC 1447

CFR Citation: 8 CFR 316

Legal Deadline: None

Abstract: This rule amends the Immigration and Naturalization Service regulations by adding the Rutgers, Indiana and Harvard Universities to the list of American institutions of research located in section 316 of the Immigration and Naturalization Act, recognized by the Attorney General for the purpose of preserving residence in the United States for naturalization eligibility. This rule also removes the recently dissolved Harvard Institute for International Development from the same list.

Timetable:

Action	Date	FR Cite
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2131-01

Agency Contact: Gerard Casale, Senior Adjudications Officer, Adjudications and Nationality, Department of Justice, Immigration and Naturalization Service, Room 3214, 425 I Street NW, Washington, DC 20536
Phone: 202 514-5014

RIN: 1115–AG52

1508. • MANIFEST REQUIREMENTS AND IMPOSITION OF FINES UNDER SECTION 231 OF THE ACT

Priority: Other Significant

Legal Authority: PL 107-77; PL 106-96; 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1221; 8 USC 1228; 8 USC 1229

CFR Citation: 8 CFR 231

Legal Deadline: Final, Statutory, October 1, 2002.
Public law 106-396, the Visa Waiver Permanent Program (VWPPA) sets a mandatory deadline of October 1, 2002.

Abstract: This interim rule amends the Immigration and Naturalization Service's (Service) regulations by requiring private and public carriers to provide arrival and departure manifests electronically in advance of individuals traveling by air or water to the United States (U.S). Aircraft or vessels arriving in the U.S. from or departing to Canada or arriving in the U.S. directly from the British Virgin Islands are required to send their manifests electronically. Also, section 231(d) of the Immigration and Nationality Act gives the Service the authority to fine those carriers who do not submit a properly completed electronic arrival or departure manifest.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	
Interim Final Rule Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

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Government Levels Affected: None

Additional Information: INS No. 2182-01

Agency Contact: Michael J. Flemmi, Assistant Chief Inspector, Inspections Division, Department of Justice, Immigration and Naturalization Service, Room 4064, 425 I Street NW, Washington, DC 20536
Phone: 202 305-9247

RIN: 1115–AG57

1509. • REQUIRING CHANGE OF STATUS FROM B TO F-1 OR M-1 NONIMMIGRANT PRIOR TO PURSUING A COURSE OF STUDY

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1184; 8 USC 1258; 8 CFR Part 2

CFR Citation: 8 CFR 214; 8 CFR 248

Legal Deadline: None

Abstract: The interim rule amends the Immigration and Naturalization Service (Service) regulation by eliminating the current provision allowing a nonimmigrant visitor for business or pleasure to enroll in a Service-approved school without first obtaining approval of a change of nonimmigrant status request from the Service. The amendment will ensure that no B nonimmigrant is allowed to begin taking classes until the Service has approved the alien's request to change nonimmigrant status to that of F or M student

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/02	67 FR 18062
Interim Final Rule Comment Period End	06/11/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2195-02

Agency Contact: Craig S. Howie, Senior Adjudications Officer, Adjudications Division, Department of Justice, Immigration and Naturalization Service, Room 3040, 425 I Street NW, Washington, DC 20536
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RIN: 1115–AG60

1510. • REENGINEERING OF PART 214, NONIMMIGRANT CLASSES TO CLARIFY AND RESTATE ADMISSION REQUIREMENTS

Priority: Other Significant

Legal Authority: 8 USC 1101; 8 USC 1103; 8 USC 1182; 8 USC 1184; 8 USC 1186; ...

CFR Citation: 8 CFR 214; 8 CFR 252

Legal Deadline: None

Abstract: The purpose of this regulation is to reorganize, streamline and rewrite 8 CFR 214 and to move certain provisions into several newly created parts of title 8 (parts 131, 132, 133, 134, 135, 136, and 137). This is an administrative action only, making no substantive changes to the requirements for nonimmigrant admission or status.

The current regulation has grown in size and complexity, especially during the past 15 years, as Congress has added at least 10 new nonimmigrant classes and expanded the requirements and restrictions on many of the existing classes. The regulatory outline for part 214 has become extremely complicated, making the placement and revision of new materials and even the identification of correct paragraph citations exceedingly difficult. The INS plans to break up the existing part 214 by adding additional parts, one for each nonimmigrant classification.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Interim Final Rule Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Efren Hernandez, Chief, Business and Trade Branch, Adjudications Division, Department of Justice, Immigration and Naturalization Service, 425 I Street NW, Washington, DC 20536
Phone: 202 353-8177

RIN: 1115–AG62

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Long-Term Actions

1511. VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 217

Timetable:

Action	Date	FR Cite
NPRM-INS No. 1406-91 Comment Period End 5/22/91	05/07/91	56 FR 21101
Final Rule-INS No. 1406-91 Eff. 7/18/91*	07/18/91	56 FR 32952
Interim Final Rule-INS No. 1447 Eff. 10/1/91; Comment Period End 10/15/91	09/13/91	56 FR 46716
Interim Final Rule-1622-93; Eff. 7/29/93; Com. End 8/30/93; (To be merged with 1447R-93)*	07/29/93	58 FR 40581
Public Notice-INS No. 1674 Eff. 10/25/94, Comment Period End 09/30/96	02/21/95	60 FR 9699
Interim Final Rule-INS No. 1685 Eff. 4/1/95; Comment Period End 5/30/95	03/28/95	60 FR 15855
Interim Final Rule-INS No. 1777	07/08/96	61 FR 35598
Interim Final Rule-INS No. 1782-96 With Comments (Australia)	07/29/96	61 FR 39721
Interim Final Rule-INS No. 1786-96 With Comments (Slovenia)	09/30/97	62 FR 50998

Action	Date	FR Cite
Final Rule-INS No. 1799	12/30/98	63 FR 71726
Interim Final Rule-INS 2002-99 With Comments (Portugal, Singapore, and Uruguay)	08/03/99	64 FR 42006
Interim Final Rule-INS 2188-02 (Removing Argentina)	02/21/02	67 FR 7943
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marty Newingham
Phone: 202 616-7992

RIN: 1115–AB93

1512. REGULATIONS RELATING TO TEMPORARY PROTECTED STATUS

Priority: Other Significant

CFR Citation: 8 CFR 103; 8 CFR 244; 8 CFR 299

Timetable:

Action	Date	FR Cite
TPS Final Rule (INS No. 1612) Removal of Obsolete Sections Covering TPS for Salvadorans	09/10/96	61 FR 47667
TPS Notice (INS No. 1832-97) Extension and Redesignation of Liberia	04/07/97	62 FR 16608
TPS Notice (INS No. 1853-97) Extension and Termination of Rwanda Eff. 06/07/97	06/19/97	62 FR 33442
TPS Notice (INS No. 1862-97) Extension of Bosnia-Herzegovina	08/01/97	62 FR 41420
TPS Notice (INS No. 1863-97) Extension of Somalia	08/01/97	62 FR 41421
TPS Notice (INS No. 1878-97) TPS Designation of Montserrat	08/28/97	62 FR 45685
TPS Notice (INS No. 1775-96) TPS Designation of Burundi	11/04/97	62 FR 59735
TPS Notice (INS No. 1877-97) TPS Designation of Sierra Leone	11/04/97	62 FR 59736
TPS Notice (INS No. 1780-97) TPS Designation of Sudan	11/04/97	62 FR 59737
TPS Notice (INS No. 1910-98) Termination of Designation of Liberia	03/31/98	63 FR 15437
TPS Notice (INS No. 1929-98) TPS Designation of Province	06/09/98	63 FR 31527
TPS Notice (INS No. 1945-98) Extension of Designation of Somalia	09/28/98	63 FR 51602
TPS Notice (INS No. 1953-98) Redesignation of Liberia	09/29/98	63 FR 51958
TPS Notice (INS No. 1957-98) TPS Extension of Designation of Burundi	11/03/98	63 FR 59334
TPS Notice (INS No. 1958-98) TPS Extension of Designation of Sierra Leone	11/03/98	63 FR 59336
TPS Notice (INS No. 1959-98) Extension of Designation of Sudan	11/03/98	63 FR 59337
Final Action, Temporary Protected Status, Exception to Registration Deadlines	11/16/98	63 FR 63593
TPS Notice (INS No. 1964-98) TPS Designation of Honduras	01/05/99	64 FR 524
TPS Notice (INS No. 1965-98) TPS Designation of Nicaragua	01/05/99	64 FR 526
TPS Notice (INS No. 1960-98) TPS Designation of Guinea-Bissau	03/11/99	64 FR 12181
TPS Notice (INS No. 1986-99) TPS Extension and Redesignation of the Province of Kosovo	06/08/99	64 FR 30542
TPS Notice (INS No. 1953-99) Termination of TPS Designation of Liberia	07/30/99	64 FR 41453
TPS Notice (INS No. 2009-99) Extension of the TPS Registration Period for Hondurans and Nicaraguans	08/06/99	64 FR 42991
TPS Notice (INS No. 2006-99) Extension of TPS Designation of Bosnia-Herzegovina	08/11/99	64 FR 43720
TPS Notice (INS No. 2010-99) Extension of TPS Designation of Montserrat	09/02/99	64 FR 48190
TPS Notice (INS No. 2015-99) Extension of TPS Designation of Somalia	09/13/99	64 FR 49511
TPS Notice (INS No. 2022-99) Extension and Redesignation of Burundi Under Temporary Protected Status	11/05/99	64 FR 61123
TPS Notice (INS No. 2024-99) Extension and Redesignation of Sierra Leone Under Temporary Protected S	11/09/99	64 FR 61125
TPS Notice (INS No. 2023-99) Extension and Redesignation of Sudan Under the Temporary Protected Stat	11/09/99	64 FR 61128
TPS Notice (INS No. 2043-00) Extension and Termination of Designation of Guinea-Bissau Under TPS	03/20/00	65 FR 15016
TPS Notice (INS No. 2044-00) Designation of Angola Under TPS	03/29/00	65 FR 16634
TPS Notice (INS No. 2065-00) Extension of Designation Hondurans	05/11/00	65 FR 30438
TPS Notice (INS No. 2064-00) Extension of Nicaragua Designation	05/11/00	65 FR 30440
TPS Notice (INS No. 2066-00) Termination of the Kosovo...	05/23/00	65 FR 33356
TPS Notice (INS No. 2065R-00) Extension of Re-Registration for Hondurans	06/09/00	65 FR 36719

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Action	Date	FR Cite
TPS Notice (INS No. 2064R-00) Extension of Re-Registration for Nicaraguans	06/09/00	65 FR 36729
TPS Notice (INS No. 2079-00) Termination of Bosnia-Herzegovina	08/30/00	65 FR 52789
TPS Notice (INS No. 2087-00) Extension of Designation of Montserrat Under Temporary Protected Status	10/02/00	65 FR 58806
TPS Notice (INS No. 2096-00) Extension of Designation of Burundi	11/09/00	65 FR 67404
TPS Notice (INS No. 2095-00) Extension of Designation of Sierra Leone	11/09/00	65 FR 67405
TPS Notice (INS No. 2094-00) Extension of Designation of Sudan	11/09/00	65 FR 67407
Correction TPS Notice (INS No.2090-00) Extension of Designation of Somalia	12/08/00	65 FR 69789
TPS Notice (INS 2125-01) Designation of El Salvador	03/09/01	66 FR 14214
TPS Notice (INS 2114-01) Extension and Redesignation of Angola	04/05/01	66 FR 18111
TPS Notice (INS 2135-01) Extension of Designation of Honduras under TPS	05/08/01	66 FR 23269
TPS Notice (INS 2136-01) Extension of Designation of Nicaragua under TPS	05/08/01	66 FR 23271
TPS Notice (INS 2148-01) Automatic Ext. of Work Authorization for Hondurans & Nicaraguans Under TPS	07/03/01	66 FR 35270
TPS Notice (INS 2146-01) Extension of the Designation of Montserrat under TPS	08/03/01	66 FR 40834
TPS Notice (INS 2162-01) Extension of Designation of Burundi under TPS	08/31/01	66 FR 46027
TPS Notice (INS 2163-01) Extension of the Designation of Sierra Leone under TPS	08/31/01	66 FR 46029
TPS Notice (INS 2164-01) Extension of the Designation of Sudan under TPS	08/31/01	66 FR 46031
TPS Notice (INS 2151-01) Extension of Redesignation of Somalia under TPS	09/04/01	66 FR 46288
TPS Notice (INS 2114-01) Extension of the Designation of Angola under TPS	02/01/02	67 FR 4997

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth N. Lee
Phone: 202 514-4754

RIN: 1115–AE26

1513. AUTHORIZING SUSPENSION OF EMPLOYMENT AUTHORIZATION REQUIREMENTS ON THE BASIS OF SEVERE ECONOMIC HARDSHIP FOR F-1 STUDENTS AND EMERGENT CIRCUMSTANCES

Priority: Other Significant

CFR Citation: 8 CFR 214

Timetable:

Action	Date	FR Cite
Interim Final Rule-INS No. 1914-98	06/10/98	63 FR 31871
Interim Final Rule Comment Period End	08/10/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Maura Deadrick
Phone: 202 353-8177

RIN: 1115–AF15

1514. AVAILABILITY OF MATERIAL UNDER FREEDOM OF INFORMATION ACT AND PRIVACY ACT

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 103

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mildred Carter
Phone: 202 514-1722

RIN: 1115–AF32

1515. INTERIM DESIGNATION OF ACCEPTABLE RECEIPTS FOR EMPLOYMENT ELIGIBILITY VERIFICATION

Priority: Other Significant

CFR Citation: 8 CFR 274a

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/99	64 FR 6187
Interim Final Rule Comment Period End	04/12/99	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marguerite Przbylski Kleczek
Phone: 202 514-2895

RIN: 1115–AF42

1516. INADMISSIBILITY AND DEPORTABILITY ON PUBLIC CHARGE GROUNDS

Priority: Other Significant

CFR Citation: 8 CFR 212; 8 CFR 237

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28676
NPRM Comment Period End	07/26/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kevin J. Cummings
Phone: 202 514-4754

RIN: 1115–AF45

1517. EXPANSION OF EXPEDITED REMOVAL OF CERTAIN CRIMINAL ALIENS HELD IN FEDERAL, STATE, AND LOCAL JAILS

Priority: Other Significant

CFR Citation: 8 CFR 212; 8 CFR 235

Timetable:

Action	Date	FR Cite
ANPRM	09/22/99	64 FR 51338
ANPRM Comment Period End	11/22/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Robert Evans
Phone: 202 353-7218

RIN: 1115–AF50

1518. EXTENDING THE PERIOD OF DURATION OF STATUS FOR CERTAIN F AND J NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 214

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/15/99	64 FR 32146
Interim Final Rule Comment Period End	08/16/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Irene Hoffman
Phone: 202 616-7435

Efren Hernandez
Phone: 202 353-8177

RIN: 1115–AF54

1519. AUTHORIZING COLLECTION OF FEE LEVIED ON F, J, AND M NONIMMIGRANT CLASSIFICATIONS UNDER ILLEGAL IMMIGRATION REFORM AND IMMIGRANT RESPONSIBILITY ACT (IIRIRA)

Priority: Other Significant

CFR Citation: 8 CFR 103; 8 CFR 214; 8 CFR 299

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71323
NPRM Comment Period End	02/22/00	
Final Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Maura Deadrick
Phone: 202 353-8177

RIN: 1115–AF56

1520. WAIVER OF FEES

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 103; 8 CFR 244

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Irene Hoffman
Phone: 202 616-7435

RIN: 1115–AG02

1521. ADJUSTMENT OF STATUS FOR CERTAIN NATIONALS OF NICARAGUA, CUBA, AND HAITI

Priority: Other Significant

CFR Citation: 8 CFR 241; 8 CFR 245

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/31/01	66 FR 29449
Interim Final Rule Comment Period End	05/31/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kevin J. Cummings
Phone: 202 514-4754

RIN: 1115–AG05

1522. INCREASING THE NUMBER OF OFFICERS AUTHORIZED TO ISSUE NOTICES TO APPEAR AND ARREST WARRANTS FOR IMMIGRATION VIOLATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 8 CFR 239; 8 CFR 287

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christina Hamilton
Phone: 202 514-2895

RIN: 1115–AG22

Department of Justice (DOJ)
Immigration and Naturalization Service (INS)

Completed Actions

1523. ADJUSTMENT OF CERTAIN FEES OF THE IMMIGRATION EXAMINATIONS FEE ACCOUNT

Priority: Other Significant

CFR Citation: 8 CFR 103

Completed:

Reason	Date	FR Cite
Final Action	12/21/01	66 FR 65811

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Paul Schlesinger
Phone: 202 616-2754

RIN: 1115–AF61

1524. • INCREASING IMMIGRATION USER FEE AT PORTS-OF-ENTRY

Priority: Other Significant

Legal Authority: 8 USC 1356; PL 107-77, sec 109

CFR Citation: 8 CFR 286

Legal Deadline: None

Abstract: This rule amends Immigration User Fee regulations so they comply with the 2002 Department of Justice Appropriations Act. This act revises the fee structure of the Immigration User Fee by increasing the current $6 fee to $7. The $7 immigration will be collected from every passenger arriving at a port-of-entry in the United States or for the reinspection of a passenger at a place outside the United States prior to such arrival, abroad a commercial aircraft or commercial vessel, except those individuals exempted under section 286(e)(1) of the Immigration and Nationality Act (Act) or under title 8, part 286 of the Immigration and Naturalization Act. This increase does

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not apply to immigration inspection at designated ports-of-entry for passengers arriving by the following vessels, when operating on a regular schedule: Great Lakes international ferries, or Great Lakes Vessels on the Great Lakes and connecting waterways.

Timetable:

Action	Date	FR Cite
Final Action	04/01/02	67 FR 15333
Final Action Effective	05/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: INS No. 2179-01

Agency Contact: Georgia Mayers, Chief of Cash Management, Department of Justice, Immigration and Naturalization Service, Room 6034, 425 I Street NW, Washington, DC 20536
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RIN: 1115–AG46

Department of Justice (DOJ)
Legal Activities (LA)

Proposed Rule Stage

1525. REVISION OF 28 CFR PART 15 PERTAINING TO THE DEFENSE OF CERTAIN SUITS AGAINST FEDERAL EMPLOYEES TO CONFORM TO THE FEDERAL EMPLOYEES LIABILITY REFORM AND TORT COMPENSATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2679(b)

CFR Citation: 28 CFR 15

Legal Deadline: None

Abstract: This rule revises 28 CFR part 15, pertaining to the defense of certain suits against Federal employees, to conform the regulations to changes made by the Federal Employee Liability Reform and Tort Compensation Act, Public Law 100-694. Under prior law, the defense of suits against Federal employees for torts committed in the scope of their employment was limited to claims involving the operation of motor vehicles. Public Law 100-694 expanded the coverage of the immunity provisions to include all common law torts committed by Federal employees in the scope of their employment. This rule conforms the Department's regulations to the expanded coverage of the statute.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: CIV 102

Agency Contact: James G. Touhey Jr., Trial Attorney, Torts Branch, Department of Justice, P.O. Box 888, Benjamin Franklin Station, Washington, DC 20004
Phone: 202 616-4292

RIN: 1105–AA62

1526. DESIGNATION OF AGENCIES TO RECEIVE AND INVESTIGATE REPORTS REQUIRED UNDER THE PROTECTION OF CHILDREN FROM SEXUAL PREDATORS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13032

CFR Citation: 28 CFR 81

Legal Deadline: NPRM, Statutory, April 28, 1999.

Abstract: On October 30, 1998, Congress passed the Protection of Children from Sexual Predators Act of 1998 (PCSPA). The PCSPA requires providers of an electronic communication service or a remote computing service to the public, through a facility or means of interstate or foreign commerce, to report incidents of child pornography as defined by sections 2251, 2251A, 2252, 2252A, or 2260 of title 18, United States Code, to the appropriate Federal agency. In order to facilitate effective reporting, the PCSPA requires the Attorney General to "designate an agency" to receive and investigate such reports of child pornography. The proposed rule previously published set forth the Attorney General's proposed designations and certain other matters covered by the PCSPA's reporting requirements.

On November 29, 1999, as part of the Consolidated Appropriations Act, 2000, Public Law 106-113, 113 Stat. 1501, Congress amended 42 U.S.C. 13032 to require providers to report such incidents to the Cyber Tipline at the National Center for Missing and Exploited Children, which shall forward that report to a law enforcement agency or agencies designated by the Attorney General. A second proposed rule is being prepared for publication that will reflect the change in the Agency to receive the reports.

Timetable:

Action	Date	FR Cite
NPRM	05/26/99	64 FR 28422
NPRM Comment Period End	07/26/99	
Second NPRM	08/00/02	
Second NPRM Comment Period End	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andrew Oosterbaan, Chief, Child Exploitation and Obscenity Section, Department of Justice, 1400 New York Avenue, NW, Suite 600, Washington, DC 20530
Phone: 202 514-5780

RIN: 1105–AA65

1527. MOTOR VEHICLE SALVAGE REGULATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 30504

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Attorney General is required to issue regulations directing

junk yard and salvage yard operators and insurance carriers to file monthly reports with the operator of the National Motor Vehicle Title Information System (NMVTIS) concerning vehicles in their possession. The reports are required by statute, 49 U.S.C. section 30504(a) and (b), to provide the vehicle identification numbers, the date on which the vehicle was obtained, and the name of the individual or entity from whom the vehicle was obtained. Salvage and junk yard operators are also required to provide a statement of whether the automobile was crushed or disposed of for sale or other purposes. Insurance carriers are also required to provide the name of the owner of the automobile at the time the report is filed.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On a related issue, the FBI expects to issue regulations implementing the National Stolen Passenger Motor Vehicle Information System (NSPMVIS). (See RIN 1110-AA01.)

Agency Contact: Deborah Sorkin, Trial Attorney, Department of Justice, Office of Enforcement Operations, Criminal Division, 1301 New York Avenue NW, Washington, DC 20530
Phone: 202 305-4023
Fax: 202 305-0562

RIN: 1105–AA71

1528. CLAIMS UNDER THE RADIATION EXPOSURE COMPENSATION ACT AMENDMENTS OF 2000: TECHNICAL AMENDMENTS; EXPANSION OF COVERAGE TO URANIUM MILL WORKERS AND ORE TRANSPORTERS

Priority: Other Significant

Legal Authority: 42 USC 2210 note, Radiation Exposure Compensation Act; PL 106-245, Radiation Exposure Compensation Act Amendments of 2000; PL 106-553, Consolidated Appropriations Act for Fiscal Year 2001

CFR Citation: 28 CFR 79

Legal Deadline: Final, Statutory, January 6, 2001.

Abstract: The Department is amending existing regulations to implement the Radiation Exposure Compensation Act Amendments of 2000, enacted on July 10, 2000. The Department is issuing two related rulemakings under this RIN to implement the Act. The first of the two related rulemakings is a final rule, technical in nature, providing conforming amendments (CIV 100). These technical revisions: (1) Expand the list of radiogenic and chronic diseases that are currently compensable for "downwinder" and "onsite participant" claimants; (2) lower the radiation exposure threshold for "uranium miner" claimants; (3) enlarge the number of uranium mining states where miners may be eligible for compensation; (4) include "aboveground" miners within the definition of "uranium miner"; (5) eliminate smoking distinctions for all claimants; (6) amend the list of geographical areas to provide additional radiation-affected areas for "downwinder" claimants; (7) modify the burden of proof for purposes of claims processing; (8) allow claimants who have previously been denied compensation to file up to three times; and (9) make other technical revisions consistent with the amended Act.

The second related rulemaking under this RIN is a proposed rule (CIV 101) expanding compensation to two new claimant categories: Uranium mill workers and individuals involved in the transport of uranium ore or vanadium-uranium ore. These amendments: (1) Set forth eligibility criteria for the new claimant categories; (2) provide definitions explaining the types of mill-related and ore-transporting employment that would be compensable under the Act; (3) describe the documentation that would be required to establish proof of employment in a uranium mill or as an ore transporter; (4) determine the medical documentation necessary to establish the existence of renal cancer and chronic renal disease; and (5) provide clarification of the attorney fee provision contained in section 9 of the amended law.

On March 22, 1999, the Department published a final rule in the Federal Register, 64 FR 13686, amending its existing regulations to allow the use of pathology reports of tissue biopsies as evidence of disease; include "in situ" lung cancers under the definition of primary cancers of the lung; and to allow claimants whose claims had been denied prior to the implementation of the regulations to file another three times. Both rulemakings (CIV 100 and CIV 101) will make changes to Department regulations in addition to the changes that had been made by the 1999 final rule.

Timetable:

CIV 100 - Technical Amendments
Final Action 06/00/02
CIV 101 - Expansion of Coverage
NPRM 06/00/02
NPRM Comment Period End 08/00/02

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dianne S. Spellberg, Trial Attorney, Department of Justice, Room 3123, 1425 New York Avenue NW, Washington, DC 20005
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Department of Justice (DOJ)
Legal Activities (LA)

Final Rule Stage

1529. FOREIGN AGENTS REGISTRATION ACT; REGULATIONS REVISED AND CLARIFIED TO REFLECT CHANGES IN THE LAW

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 611 et seq Foreign Agents Registration Act of 1938

CFR Citation: 28 CFR 5.5(d)(10); 28 CFR 5.203(a); 28 CFR 5.204(a); 28 CFR 5.205(a); 28 CFR 5.206(b); 28 CFR 5.304(c); 28 CFR 5.306(a); 28 CFR 5.5(d)(11); 28 CFR 5.100(c); 28 CFR 5.100(d); 28 CFR 5.200(b); 28 CFR 5.201(a)(1); 28 CFR 5.201(a)(2); 28 CFR 5.202(b); 28 CFR 5.202(e); ...

Legal Deadline: None

Abstract: As a result of the passage of the Lobbying Disclosure Act of 1995 (LDA) and the Lobbying Disclosure Technical Amendments Act of 1998 (LDTAA), the Foreign Agents Registration Unit of the Criminal Division is issuing new regulations concerning changes in the Foreign Agents Registration Act of 1938 (FARA), as amended, 22 U.S.C. 611, et seq. These regulations replace the term "political propaganda" in the existing regulations with "informational materials" as provided in the LDA and make other changes to the FARA regulations required by the passage of the LDA and the LDTAA. The regulations also make other modifications to the existing regulations to facilitate the administration of FARA.

Timetable:

Action	Date	FR Cite
NPRM	07/09/99	64 FR 37065
NPRM Comment Period End	09/07/99	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: CFR CITATIONS CONT: 28 CFR 5.307; 28 CFR 5.400(a) to (c); 28 CFR 5.401; 28 CFR 5.402(a) to (g); 28 CFR 5.500(a)(4); 28 CFR 5.600; 28 CFR 5.601(a); 28 CFR 5.601(b).

Agency Contact: Marshall R. Williams, Chief, Registration Unit, Internal Security Section, Criminal Division, Department of Justice, Room 9300, 1400 New York Avenue NW, Washington, DC 20530
Phone: 202 514-1216

RIN: 1105–AA45

1530. ETHICAL STANDARDS FOR ATTORNEYS FOR THE GOVERNMENT

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 530B

CFR Citation: 28 CFR 77

Legal Deadline: Final, Statutory, April 19, 1999.

Abstract: This rule supersedes the Department of Justice regulations relating to Communications with Represented Persons and implements 28 U.S.C. 530B pertaining to ethical standards for attorneys for the Government. Under that provision, an attorney for the Government shall be subject to State laws and rules, and local Federal court rules governing attorneys in each State where such attorney engages in that attorney's duties, to the same extent and in the same manner as other attorneys in that State. This rule fulfills the Attorney General's obligation under section 530B and provides guidance to all Department of Justice employees who are subject to section 530B regarding their obligations and responsibilities under this new provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/99	64 FR 19273
Interim Final Rule Comment Period End	06/21/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Claudia J. Flynn, Director, Professional Responsibility Advisory Office, Department of Justice, Suite 500, National Theatre Building, 1325 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 514-0458
Fax: 202 353-7491

RIN: 1105–AA67

1531. ENHANCED NOTICE AND RELEASE PROCEDURES FOR OWNERS OF SEIZED PROPERTY PURSUANT TO THE CAFRA OF 2000; DISPOSITION OF SEIZED PROPERTY TOO COSTLY TO MAINTAIN; CONSOLIDATION OF DEPARTMENT REGULATIONS

Priority: Other Significant

Legal Authority: 5 USC 301; 8 USC 1103; 8 USC 1324(b); 15 USC 1177; 17 USC 509; 18 USC 981 to 983; 18 USC 1467; 18 USC 1955; 18 USC 1963; 18 USC 2253 to 2254; 18 USC 2513; 19 USC 1606 to 1608; 19 USC 1610; 19 USC 1612(b); 19 USC 1613; 19 USC 1618; 21 USC 822; 21 USC 853; 21 USC 871 to 872; 21 USC 880 to 881; 21 USC 958; 21 USC 965; 22 USC 401; 28 USC 509 to 510; 28 USC 524; PL 100-690, sec 6079

CFR Citation: 8 CFR 274; 21 CFR 1316; 28 CFR 8 (Revision); 28 CFR 9 (Revision)

Legal Deadline: Final, Statutory, August 23, 2000, CAFRA applies to all forfeiture actions commenced on or after 8/23/00.

Abstract: By this rule, the Department does five things.

First, the Department is implementing new forfeiture procedures required by the recently enacted Civil Asset Forfeiture Reform Act of 2000 (CAFRA). CAFRA's procedural changes enhance the ability of property owners to contest the forfeiture of seized property. CAFRA also makes other changes beneficial to property owners. In particular: 1) The requirement to file a bond for costs with a claim is eliminated; 2) the time for filing a claim is extended; and 3) the release of seized property is required under various circumstances. Congress made CAFRA's changes applicable to forfeiture proceedings commenced on or after August 23, 2000.

Second, the Department is adding a provision allowing the pre-forfeiture disposition of seized property when the expense of holding the property is disproportionate to its value. This provision is needed to implement the pre-existing authority of 19 U.S.C. section 1612(b)—one of the customs laws procedural statutes incorporated by reference in forfeiture statutes enforced by the Department. This provision will enable the Department to use the authority of section 1612(b) in appropriate cases to avoid disproportionately high storage and maintenance costs for seized property pending forfeiture.

Third, this rule consolidates previously existing forfeiture regulations of the INS, DEA, and the FBI in order to achieve greater consistency and promote overall fairness in the administrative forfeiture process by avoiding unnecessary differences in component procedures.

Fourth, the rule updates the forfeiture regulations by adding 18 U.S.C. section 981 seizure-for-forfeiture authority for INS in light of CAFRA's expansion of 18 U.S.C. section 981(a)(1)(C) forfeiture authority, which now includes proceeds of Immigration and Nationality Act offenses and visa and passport fraud offenses. The rule also adds seizure-for-forfeiture authority for FBI and INS in 18 U.S.C. section 1594 cases (forfeiture of property involved in peonage and slavery (P.L. 106-386; 114 Stat. 1464 (October 28, 2000)). In addition, to reflect reorganization of INS, the rule replaces references to INS Regional Directors with references to the INS Director, Asset Forfeiture Office.

Fifth, the rule modifies the regulations at 28 CFR part 9 governing petitions for remission or mitigation of forfeiture to refer only to DEA's "Forfeiture Counsel" as the pertinent official in DEA's forfeiture cases; to replace the reference to "INS Regional Directors" with "INS Director Asset Forfeiture Office or designee," as the pertinent official with authority to grant remission or mitigation in INS administrative forfeiture cases; to incorporate where applicable CAFRA's statutory criteria for innocent ownership; and to provide discretionary authority for the Ruling Officer to waive the payment of forfeiture-related costs and expenses as a condition of remission in cases in which the petitioner is a victim of the underlying offense.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	
Interim Final Rule Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph T. Donnelly, Acting Director, Department of Justice, Immigration and Naturalization Service, Office of Asset Forfeiture, Room 1040, CAB Building, 425 I Street NW, Washington, DC 20536
Phone: 202 305-8303

John Hieronymus, Forfeiture Counsel, Department of Justice, Drug Enforcement Administration, Office of Domestic Operations, Asset Forfeiture Section, Caller Number 91017, Arlington, VA 22202
Phone: 202 307-7636

Maury V. Taylor, Forfeiture Counsel, Department of Justice, Legal Forfeiture Unit, FBI, Office of the General Counsel, J. Edgar Hoover Building, 935 Pennsylvania Avenue NW, Washington, DC 20535
Phone: 202 324-9700

RIN: 1105–AA74

1532. ESTABLISHMENT OF MINIMUM SAFETY AND SECURITY STANDARDS FOR PRIVATE COMPANIES THAT TRANSPORT VIOLENT PRISONERS

Priority: Other Significant

Legal Authority: PL 106-560

CFR Citation: 20 CFR 97

Legal Deadline: Final, Statutory, June 19, 2001.

Abstract: This rule proposes to implement the Interstate Transportation of Dangerous Criminals Act of 2000, Public Law 106-560 (114 Stat. 2784)(enacted December 21, 2000). In that Act, Congress found that State and local jurisdictions are increasingly turning to private companies to transport their violent prisoners, and that escapes have occurred. Congress determined that minimum regulations for the private prisoner transport industry were necessary to provide protection against risks to the public that are inherent in the transportation of violent prisoners and to assure the safety of those being transported.

Accordingly, this rule proposes that private prisoner transport companies comply with minimum standards for background checks and preemployment drug testing for potential employees, provide minimum standards for the length and type of employee training, and establish restrictions on the number of hours that transportation employees can be on duty during a given time period.

This rule also proposes that private prisoner transport companies comply with minimum standards for the use of restraints while transporting violent prisoners, and establishes categories of violent offenders required to wear identifying clothing. Further, the rule proposes a minimum guard-to-offender ratio that must be observed while transporting violent prisoners, and proposes that private prisoner transport companies comply with standards regarding employee uniforms and employee identification.

In addition, the rule proposes to require private prisoner transport companies to notify local law enforcement officials 24 hours in advance of any scheduled stops in their jurisdiction when transporting violent prisoners. In the event of an escape by a violent offender, the proposed rule requires the private prisoner transport company personnel immediately to notify appropriate law enforcement officials in the jurisdiction where the escape occurs, as well as the governmental entity that contracted with the private prisoner transport company for the transport of the escaped violent prisoner.

Finally, the rule proposes that private prisoner transport companies adopt certain minimum standards in order to protect the safety of violent prisoners in accordance with applicable Federal and State law.

Timetable:

Action	Date	FR Cite
NPRM	12/17/01	66 FR 64934
NPRM Comment Period End	02/15/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Lizette D. Benedi, Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue, NW, Room 4529, Washington, DC 20530
Phone: 202 514-3824

RIN: 1105–AA77

1533. REGULATIONS UNDER THE DNA ANALYSIS BACKLOG ELIMINATION ACT OF 2000

Priority: Other Significant

Legal Authority: 28 USC 509; 28 USC 510; 42 USC 14132; 41 USC 14135a;

DOJ—LA

Final Rule Stage

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DOJ—LA

Final Rule Stage

42 USC 14135b; 10 USC 1565; PL 106-546

CFR Citation: 28 CFR 28

Legal Deadline: Other, Statutory, April 18, 2001, Determination of qualifying Federal offenses.
Final, Statutory, June 17, 2001, Commencement of collection of DNA samples.

Abstract: This rule implements section 3 of Public Law 106-546, the DNA Analysis Backlog Elimination Act of 2000 (the Act). The rule specifies the Federal offenses that will be treated as qualifying offenses for purposes of collecting DNA samples from Federal offenders, sets forth the responsibilities of the Bureau of Prisons for collecting DNA samples from individuals in its custody, and sets forth related responsibilities of the Federal Bureau of Investigation for analyzing and indexing DNA samples.

All 50 States authorize the collection and analysis of DNA samples from convicted State offenders and entry of resulting information into the Combined DNA Index System (CODIS), which the Federal Bureau of Investigation (FBI) has established pursuant to 42 U.S.C. 14132. Until recently, however, there was no statutory authorization to collect DNA samples from convicted Federal, military, and District of Columbia offenders. Congress acted to fill this gap in the DNA identification system through provisions of the Act.

Section 3 of the Act addresses the categories of Federal offenders from whom DNA samples will be collected, the responsibility of the Bureau of Prisons (BOP) and Federal probation offices to collect DNA samples from offenders in their custody or supervision, and the responsibility of the FBI to analyze and index DNA samples. This rule is issued pursuant to subsection (e) of section 3, which provides that, with the exception of the activities of the probation offices, the section shall be carried out under regulations prescribed by the Attorney General. The rule also addresses certain responsibilities of BOP and the FBI under other sections of the Act, which are closely related to the matters addressed in section 3.

The rule adds a new part 28 to title 28 of the Code of Federal Regulations relating to the DNA identification system. The new part contains subparts A and B, which relate respectively to the Federal offenses for which DNA samples will be collected and the responsibilities of BOP and the FBI in collecting, analyzing, and indexing DNA samples.

Further, section 503 of the USA PATRIOT Act, Public Law 107-56, 115 Stat. 272, amended the DNA Analysis Backlog Elimination Act of 2000 to include terrorism crimes and crimes of violence generally as qualifying offenses for the purpose of collecting DNA samples from federal offenders. The Department will be publishing second interim rule to reflect this statutory expansion of DNA sample collection.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/28/01	66 FR 34363
Interim Final Rule Comment Period End	08/27/01	
Second Interim Rule	09/00/02	
Second Interim Rule Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David J. Karp, Senior Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4503, Washington, DC 20530
Phone: 202 514-3273

RIN: 1105–AA78

1534. • SCREENING OF ALIENS AND OTHER DESIGNATED INDIVIDUALS SEEKING FLIGHT TRAINING

Priority: Other Significant

Legal Authority: PL 107-71, sec 113

CFR Citation: 28 CFR 105

Legal Deadline: None

Abstract: On November 19, 2001, Congress enacted the Aviation and Transportation Security Act (ATSA), Public Law 107-71. Upon enactment, section 113 of ATSA, 49 U.S.C. 44939, imposed notification and reporting requirements on certain persons who provide aviation training to aliens and other specified individuals. Under this section, certain aviation training providers subject to regulation by the Federal Aviation Administration (FAA) are prohibited from providing training to aliens and other designated individuals in the operation of aircraft with a maximum certificated takeoff weight of 12,500 pounds or more, unless they provide prior notification to the Attorney General. This interim rule implements a process by which aviation training providers may provide the required notification and resume instruction for candidates who do not appear to pose a risk to aviation and national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Interim Final Rule Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Keith E. Halsey, Department of Justice, Federal Bureau of Investigation, Mailbox 27, Washington, DC 20535
Phone: 703 414-9535

RIN: 1105–AA80

1535. • GUIDELINES FOR THE CAMPUS SEX CRIMES PREVENTION ACT AMENDMENT TO THE JACOB WETTERLING CRIMES AGAINST CHILDREN AND SEXUALLY VIOLENT OFFENDER REGISTRATION ACT

Priority: Info./Admin./Other

Legal Authority: 42 USC 14071

CFR Citation: None

Legal Deadline: None

Abstract: These guidelines implement an amendment to the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act enacted by the Campus Sex Crimes Prevention Act (CSCPA). Section 170101 of the Violent Crime Control and Law Enforcement Act of 1994, Public Law 103-322, 108 Stat. 1796, 2038 (codified at 42 U.S.C. 14071) contains the Jacob Wetterling Crimes Against Children and Sexually Violent Offender Registration Act (the "Wetterling Act"). The Wetterling Act sets minimum national standards for State sex offender registration and community notification programs, and directs the Attorney General to issue guidelines for such programs. The current Wetterling Act guidelines were published on January 5, 1999, in the Federal Register (64 FR 572, with corrections at 64 FR 3590). States that fail to comply with the Wetterling Act's requirements (as implemented and explained in the Attorney General's guidelines) are subject to a mandatory 10 percent reduction of the formula grant funding available under the Edward Byrne Memorial State and Local Law Enforcement Assistance Program (42 U.S.C. 3756), which is administered by the Bureau of Justice Assistance of the Department of Justice.

Subsequent to the publication of the current Wetterling Act guidelines, the Wetterling Act was amended by the Campus Sex Crimes Prevention Act (the CSCPA), Public Law 106-386, div. B, section 1601, 114 Stat. 1464, 1537 (2000). The CSCPA provides special requirements relating to registration and community notification for sex offenders who are enrolled in or work at institutions of higher education. These supplementary guidelines are necessary to take account of the CSCPA amendment to the Wetterling Act. The deadline for state compliance with the CSCPA amendment is October 27, 2002.

The CSCPA provisions appear in subsection (j) of the Wetterling Act (42 U.S.C. 14071(j)). As provided in subsection (j), any person required to register under a State sex offender registration program must notify the State concerning each institution of higher education (i.e., post-secondary school) in the State at which the person is a student or works, and of each change in enrollment or employment status of the person at such an institution.

Timetable:

Action	Date	FR Cite
Proposed Guidelines	03/08/02	67 FR 10758
Proposed Guidelines Comment Period End	05/07/02	
Final Guidelines	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: David J. Karp, Senior Counsel, Department of Justice, Office of Legal Policy, 950 Pennsylvania Avenue NW, Room 4503, Washington, DC 20530
Phone: 202 514-3273

RIN: 1105–AA81

DOJ—LA

Final Rule Stage

Department of Justice (DOJ)
Legal Activities (LA)

Long-Term Actions

1536. WAIVER FOR FIREARM PROHIBITION ON NONIMMIGRANT VISA HOLDERS

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 25

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Frank A.S. Campbell
Phone: 202 514-2283

RIN: 1105–AA66

Department of Justice (DOJ)
Legal Activities (LA)

Completed Actions

1537. • SEPTEMBER 11TH VICTIM COMPENSATION FUND OF 2001

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: Title IV of PL 107-42; 49 USC 40101, note

CFR Citation: 28 CFR 104

Legal Deadline: Other, Statutory, December 21, 2001, Interim final regulations.

Abstract: Shortly after the September 11, 2001, terrorist attacks, the President signed the "September 11th Victim Compensation Fund of 2001" (the Fund) into law as title IV of Public Law 107-42 ("Air Transportation Safety and System Stabilization Act") (the Act). The Act authorizes compensation to any individual (or the personal representative of a deceased individual) who was physically injured or killed as a result of the terrorist-related aircraft crashes on that day.

On November 5, 2001, the Department published at 66 FR 55901 a Notice of Inquiry and Advance Notice of Rulemaking to obtain as much public comment as feasible before issuing the regulations required by the Act. The Act provides that the Fund will be administered by a Special Master appointed by the Attorney General. On November 26, 2001, the Attorney General appointed Kenneth R. Feinberg as Special Master.

The Department, in consultation with the Special Master, issued certain procedural rules so the Special Master could commence operations of the program as soon as practicable. In order to allow the Special Master to begin distributing funds, the Department issued these rules as an Interim Final Rule on December 21, 2001 at 66 FR 66274. As part of the Interim Rule, the Department and the Special Master solicited public comments.

The Department received, reviewed, and considered over 10,000 comments submitted by victims, victims' families, public officials, and the general public since November 2001. On March 13, 2002, the Department, in consultation with the Special Master, issued a Final Rule making refinements and clarifications to the compensation program in response to comments received.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/01	66 FR 55901
ANPRM Comment Period End	11/26/01	
Interim Final Rule	12/21/01	66 FR 66274
Interim Final Rule Effective	12/21/01	
Interim Final Rule Comment Period End	01/22/02	
Final Action	03/13/02	67 FR 11233
Final Action Effective	03/13/02	

DOJ—LA

Completed Actions

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Agency Contact: Paul Clinton Harris Sr., Deputy Assistant Attorney General, Civil Division, Department of Justice, Main Building, Room 3129, 950 Pennsylvania Avenue NW, Washington, DC 20530
Phone: 202 514-5421
Fax: 202 514-8071
Email: paulharri@usdoj.gov

RIN: 1105–AA79

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Proposed Rule Stage

1538. CORRECTIONAL FACILITIES ON TRIBAL LANDS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this second Notice of Proposed Rulemaking to amend the title and the definitions of "Indian tribe" and "construction" within 28 CFR part 91, subpart C (which outlines the requirements and procedures to award grants to Indian tribes for constructing jails on tribal lands for the incarceration of offenders subject to tribal jurisdiction). Congress has mandated a new definition of "Indian tribe," and with this broader definition federal funds through the Office of Justice Programs are now available to a larger universe of tribal entities. The amendment to the definition of "construction" is simply to expand and clarify the existing definition, to assist applicants and grantees in better understanding the allowable scope a project may take.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/24/96	61 FR 49969
Correction	10/18/96	61 FR 54333
Interim Final Rule Comment Period End	10/24/96	
Second NPRM	06/00/02	
Second NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Tribal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2550

RIN: 1121–AA41

1539. PUBLIC SAFETY OFFICERS' BENEFITS PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 3711 et seq

CFR Citation: 28 CFR 32

Legal Deadline: None

Abstract: The Bureau of Justice Assistance will be proposing a major, substantive revision of the existing regulations (28 CFR part 32) that govern the Public Safety Officers' Benefits (PSOB) Program, to streamline all aspects of the program and relieve claimants of administrative burdens no longer deemed necessary. Further, the program will need to change as BJA moves into a paperless, electronic, Web-based application/review/payment program. The proposed revised regulations will affect all components of the program: death benefits, disability benefits, education benefits, and the related administrative components governing hearing officers and independent medical examinations. As the result of the 9/11/01 terrorist attacks, the PSOB program is expected to make awards totaling more than $100 million this year.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Harri J. Kramer, Deputy Director, Department of Justice, Office of Justice Programs, Bureau of Justice Assistance, 810 7th Street, NW, Washington, DC 20531
Phone: 202 616-6500

RIN: 1121–AA56

1540. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355, sec 2455; EO 12549

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Department of Justice will be adopting the proposed common rule on debarment and suspension, as promulgated by another agency, as a cost-saving and efficiency matter. The rule, as adopted, would limit the mandatory lower-tier application of an exclusion to the first procurement level under a nonprocurement covered transaction. Second, this proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000. Third, both this proposed rule on debarment and suspension, and the proposed rule on drug-free workplace requirements, would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. Fourth, the proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

DOJ—OJP

Proposed Rule Stage

Government Levels Affected: None

Agency Contact: Linda Fallowfield, Attorney-Advisor, Department of Justice, Office of Justice Programs, Office of the General Counsel, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2534

RIN: 1121–AA57

1541. CRIMINAL INTELLIGENCE SYSTEMS OPERATING POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3711

CFR Citation: 28 CFR 23

Legal Deadline: None

Abstract: The purpose of this regulation is to assure that all criminal intelligence systems operating through support under the Omnibus Crime Control and Safe Streets Act of 1968 are used as authorized by law. This revision of 28 CFR part 23 updates the regulation for modern technological advances, extends the use of criminal intelligence systems for public safety purposes, and is drafted in plainer language.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Alan M. Fisher, Attorney Advisor, Department of Justice, Office of Justice Programs, Office of the General Counsel, 810 Seventh Street NW, Room 5341, Washington, DC 20531
Phone: 202 616-3540
Fax: 202 307-1419
Email: fisheral@ojp.usdoj.gov

RIN: 1121–AA59

1542. • VICTIMS OF CRIME ACT (VOCA) PROGRAM REGULATIONS FOR THE VICTIM COMPENSATION GRANT PROGRAM; AND VICTIM ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 10604, sec 1407(a), Victims of Crime Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Victims of Crime Act (VOCA) funds are obtained from the Crime Victims Fund in the U.S. Treasury, which consists of fines, fees, and bond forfeitures from Federal offenders.

The program regulations for the Victim Compensation Grant Program provide the parameters under which State agencies may use these funds to reimburse crime victims directly for expenses related to crime. Expenses that must be covered are lost wages, medical and mental health costs, and funeral and burial costs. States, at their discretion, may cover loss of support, crime scene cleanup, and other such expenses.

The Victim Assistance Program Regulations provide the parameters under which State agencies may use these funds to award grants to government and nonprofit organizations to provide direct services to crime victims. Local programs include child abuse, homicide survivor, drunk driving, sexual assault, and domestic violence. More than 3 million crime victims are served through these grants.

Costs to States are limited, as the VOCA grant provides for administrative costs for these programs.

Timetable:

Action	Date	FR Cite
OJP-1350 VOCA: Program Regulations for Victim Compensation Grant Program		
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
OJP-1405 VOCA Victim Assistance Program Regulations		
NPRM	09/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Carol Watkins, Director, Department of Justice, Office of Justice Programs, State Compensation and Assistance Division, 810 7th Street NW, Washington, DC 20531
Phone: 202 514-6383

RIN: 1121–AA61

1543. • VIOLENCE AGAINST WOMEN GRANT PROGRAMS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-386, Violence Against Women Act of 2000

CFR Citation: 28 CFR 90

Legal Deadline: None

Abstract: This proposed rule updates the existing regulations for the STOP (Services, Training, Officers, Prosecutors) Violence Against Women Formula Grant Program, the STOP Violence Against Indian Women Discretionary Grant Program, the Grants to Encourage Arrest Policies Program, and the Grants to Combat Violent Crimes Against Women on Campuses Program, to incorporate statutory changes pursuant to the Violence Against Women Act of 2000. The purpose of the original Violence Against Women Act of 1994 was to improve the criminal justice system's response to domestic violence, sexual assault, and stalking, and to increase the availability of services to victims of these crimes. VAWA 2000 reauthorized existing grant programs created under VAWA 1994, established new grant programs, and strengthened various provisions of Federal law. These grant programs are expected to award a total of over $100 million per year.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marnie Shiels, Attorney-Advisor, Department of Justice, Office of Justice Programs, Violence Against Women Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-2981

RIN: 1121–AA64

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Department of Justice (DOJ)
Office of Justice Programs (OJP)

Final Rule Stage

1544. BULLETPROOF VEST PARTNERSHIP GRANT ACTS OF 1998 AND 2000

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 3796ll

CFR Citation: 28 CFR 33

Legal Deadline: NPRM, Statutory, September 14, 1998.

Abstract: The Bureau of Justice Assistance is publishing final regulations implementing the Bulletproof Vest Partnership Grant Acts of 1998 and 2000, which authorize BJA funds to eligible States, units of local government, and Indian tribes to purchase armored vests for use by law enforcement officers. This final rule reflects the revised process by which eligible jurisdictions may register, apply, and request funding under BJA's Internet-Based Bulletproof Vest Partnership Grant Program.

On September 23, 1998, BJA published an interim final rule, with a request for comments (63 FR 50759). The interim final rule established the process by which BJA would implement the Bulletproof Vest Partnership Grant Act of 1998. BJA did not receive any comments in response to the interim final rule. Nevertheless, BJA initiated numerous outreach efforts, in the form of focus groups and beta testing, to ensure that all affected parties had ample opportunity to review and participate in the program's design and development.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/23/98	63 FR 50759
Interim Final Rule Effective	09/23/98	
Interim Final Rule Comment Period End	11/23/98	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Agency Contact: Robert T. Watkins, Program Manager, Department of Justice, Office of Justice Programs, 810 7th Street NW, Washington, DC 20053
Phone: 202 514-3447

RIN: 1121–AA48

1545. ENVIRONMENTAL IMPACT REVIEW PROCEDURES FOR THE VOI/TIS GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 13701 et seq. as amended by PL 104-134; 42 USC 4321 et seq; 40 CFR 1500 to 1508

CFR Citation: 28 CFR 91

Legal Deadline: None

Abstract: The Office of Justice Programs is issuing this final rule to set forth the procedures that it and the States that are awarded Federal funds under the Violent Offender Incarceration/Truth-in-Sentencing Grants Program must follow in order to comply with the environmental impact review procedures mandated by the National Environmental Policy Act, the Council on Environmental Quality's implementing regulations, and other related Federal environmental impact review requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/08/00	65 FR 48592
Interim Final Rule Effective	08/08/00	
Interim Final Rule Comment Period End	10/10/00	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Philip Merkle, Special Advisor to the Director, Department of Justice, Office of Justice Programs, Correction Program Office, 810 7th Street NW, Washington, DC 20531
Phone: 202 305-5550

RIN: 1121–AA52

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Long-Term Actions

1546. • INTERNATIONAL TERRORISM VICTIM COMPENSATION PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 10603c, sec 1404c; PL 104-208, (Victims of Trafficking and Violence Protection Act of 2000)

CFR Citation: None

Legal Deadline: None

Abstract: The Office of Justice Programs (OJP) will develop these regulations to implement the International Terrorism Victim Compensation Program provisions contained in the Victims of Trafficking and Violence Protection Act of 2000 (Pub. L. 104-208), which directs OJP to carry out a program to compensate victims of acts of international terrorism that occur outside the United States, for expenses associated with that victimization.

Timetable:

Action	Date	FR Cite
Proposed Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Barbara Johnson, Program Manager, Department of Justice, Office of Justice Programs, Terrorism and International Victims Unit, Office for Victims of Crime, 810 7th Street NW, Washington, DC 20531
Phone: 202 307-5983

RIN: 1121–AA63

Department of Justice (DOJ)
Office of Justice Programs (OJP)

Completed Actions

1547. EMERGENCY FEDERAL LAW ENFORCEMENT ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 28 CFR 32

Completed:

Reason	Date	FR Cite
Final Rule	02/19/02	67 FR 7269
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Linda Fallowfield
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RIN: 1121–AA60

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Part XII

Department of Labor

Semiannual Regulatory Agenda

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DEPARTMENT OF LABOR (DOL)

DEPARTMENT OF LABOR

Office of the Secretary

20 CFR Chs. I, IV, V, VI, VII, and IX

29 CFR Subtitle A and Chs. II, IV, V, XVII, and XXV

30 CFR Ch. I

41 CFR Ch. 60

48 CFR Ch. 29

Semiannual Agenda of Regulations

AGENCY: Office of the Secretary, Labor.

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Department's semiannual agenda of regulations that have been selected for review or development during the coming year. The Department's agencies have carefully assessed their available resources and what they can accomplish in the next twelve months and have adjusted their agendas accordingly.

The agenda complies with the requirements of both Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists all regulations that are expected to be under review or development between April 2002 and April 2003 as well as those completed during the past six months.

FOR FURTHER INFORMATION CONTACT: Barbara Bingham, Acting Director for the Office of Regulatory Policy, Office of the Assistant Secretary for Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room S-2312, Washington, DC 20210, (202) 693-5959.

NOTE: Information pertaining to a specific regulation can be obtained from the agency contact listed for that particular regulation.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. As permitted by law, the Department of Labor is combining the publication of its agendas under the Regulatory Flexibility Act and Executive Order 12866.

Executive Order 12866 became effective September 30, 1993, and, in substance, requires the Department of Labor to publish an agenda listing all the regulations it expects to have under active consideration for promulgation, proposal, or review during the coming 1-year period. The focus of all departmental regulatory activity will be on the development of effective rules that advance the Department's goals and that are understandable and usable to the employers and employees in all affected workplaces.

The Regulatory Flexibility Act became effective on January 1, 1981, and applies only to regulations for which a notice of proposed rulemaking was issued on or after that date. It requires the Department of Labor to publish an agenda, listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities" (5 U.S.C. 602).

The Regulatory Flexibility Act (under section 610) also requires agencies to periodically review rules "which have or will have a significant economic impact upon a substantial number of small entities" and to annually publish a list of the rules that will be reviewed during the succeeding 12 months. The purpose of the review is to determine whether the rule should be continued without change, amended, or rescinded.

All interested members of the public are invited and encouraged to let departmental officials know how our regulatory efforts can be improved, and, of course, to participate in and comment on the review or development of the regulations listed on the agenda.

Elaine L. Chao,
Secretary of Labor.

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
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Employment Standards Administration—Proposed Rule Stage

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1550	Regulations To Implement the Federal Acquisition Streamlining Act of 1994	1215-AA96
1551	Implementation of the 1996 Amendments to the Fair Labor Standards Act	1215-AB13
1552	Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors for Special Disabled Veterans and Veterans of the Vietnam Era	1215-AB24
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Employment Standards Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
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1555	Government Contractors: Nondiscrimination and Affirmative Action Obligations, Executive Order 11246 (ESA/OFCCP) (Revised)	1215-AB28
1556	Claims for Compensation Under the Energy Employees Occupational Illness Compensation Program Act of 2000, as Amended	1215-AB32

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Employment Standards Administration—Completed Actions

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Employment and Training Administration—Final Rule Stage

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Employment and Training Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
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Employment and Training Administration—Long-Term Actions (Continued)

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Employment and Training Administration—Completed Actions

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Pension and Welfare Benefits Administration—Proposed Rule Stage

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Pension and Welfare Benefits Administration—Final Rule Stage

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1582	Reporting Requirements for MEWAs Providing Medical Care Benefits	1210-AA64
1583	Rulemaking Relating to the Women's Health and Cancer Rights Act of 1998	1210-AA75
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Pension and Welfare Benefits Administration—Completed Actions

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Pension and Welfare Benefits Administration—Completed Actions (Continued)

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Mine Safety and Health Administration—Prerule Stage

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Mine Safety and Health Administration—Proposed Rule Stage

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Mine Safety and Health Administration—Final Rule Stage

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Mine Safety and Health Administration—Completed Actions

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Office of the Assistant Secretary for Administration and Management—Final Rule Stage

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1616	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**	1218-AB60
1617	Fall Protection in the Construction Industry	1218-AB62
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1619	Grain Handling Facilities **(Section 610 Review)**	1218-AB73
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Occupational Safety and Health Administration—Proposed Rule Stage

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Occupational Safety and Health Administration—Proposed Rule Stage (Continued)

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1635	Standards Improvement (Miscellaneous Changes) for General Industry, Marine Terminals, and Construction Standards (Phase II)	1218-AB81
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Occupational Safety and Health Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1638	Access and Egress in Shipyards (Part 1915, Subpart E) (Shipyards: Emergency Exits and Aisles)	1218-AA70
1639	Update and Revision of the Exit Routes Standard	1218-AB82
1640	Signs, Signals, and Barricades	1218-AB88
1641	Changes to State Plans	1218-AB91
1642	Revision and Update of Subpart S—Electrical Standards	1218-AB95
1643	Procedures for Handling of Discrimination Complaints Under the Aviation Investment and Reform Act	1218-AB99
1644	Occupational Injury and Illness Recording and Reporting Requirements	1218-AC06

Occupational Safety and Health Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1645	Accreditation of Training Programs for Hazardous Waste Operations (Part 1910)	1218-AB27

Occupational Safety and Health Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1646	Scaffolds in Shipyards (Part 1915 — Subpart N)	1218-AA68
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Office of the Assistant Secretary for Veterans' Employment & Training—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1649	Annual Report for Federal Contractors (2002 Revisions)	1293-AA08

Office of the Assistant Secretary for Veterans' Employment & Training—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1650	Annual Report from Federal Contractors	1293-AA07

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Department of Labor (DOL)
Office of the Secretary (OS)

Proposed Rule Stage

1548. PRODUCTION OR DISCLOSURE OF INFORMATION OR MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 552 as amended; 5 USC Reorganization Plan No. 6 of 1950; EO 12600, 52 FR 23781 (June 25, 1987)

CFR Citation: 29 CFR 70

Legal Deadline: None

Abstract: The regulation will incorporate the provisions of the 1996 FOIA amendments. These include extending DOL processing time from 10 to 20 days for most FOIA requests and requiring that all reading room materials created since November 1, 1996, be made available by electronic means such as the Internet.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Miriam McD. Miller, Co-Counsel for Administrative Law, Division of Legislation and Legislative Counsel, Department of Labor, Office of the Secretary, Room N2428, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-5500
Email: miller-miriam@dol.gov

RIN: 1290–AA17

Department of Labor (DOL)
Employment Standards Administration (ESA)

Proposed Rule Stage

1549. DEFINING AND DELIMITING THE TERM "ANY EMPLOYEE EMPLOYED IN A BONA FIDE EXECUTIVE, ADMINISTRATIVE, OR PROFESSIONAL CAPACITY" (ESA/W-H)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 29 USC 213(a)(1)

CFR Citation: 29 CFR 541

Legal Deadline: None

Abstract: These regulations set forth the criteria for exemption from the Fair Labor Standards Act's minimum wage and overtime requirements for "executive," "administrative," "professional" and "outside sales employees." To be exempt, employees must meet certain tests relating to duties and responsibilities and be paid on a salary basis at specified levels. A final rule increasing the salary test levels was published on January 13, 1981 (46 FR 3010), to become effective on February 13, 1981, but was indefinitely stayed on February 12, 1981 (46 FR 11972). On March 27, 1981, a proposal to suspend the final rule indefinitely was published (46 FR 18998), with comments due by April 28, 1981. As a result of numerous comments and petitions from industry groups on the duties and responsibilities tests, and as a result of case law developments, the Department concluded that a more comprehensive review of these regulations was needed. An ANPRM reopening the comment period and broadening the scope of review to include all aspects of the regulations was published on November 19, 1985, with the comment period subsequently extended to March 22, 1986.

The Department has revised these regulations since the ANPRM to address specific issues. In 1991, as the result of an amendment to the Fair Labor Standards Act (FLSA), the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also, in 1992 the Department issued a final rule which modified the exemption's requirement for payment on a "salary basis" for otherwise exempt public sector employees.

Statement of Need: These regulations contain the criteria used to determine if an employee is exempt from the FLSA as an "executive," "administrative," "professional," or "outside sales" employee. The existing salary test levels used in determining which employees qualify as exempt were adopted in 1975 on an interim basis. These salary level tests are outdated and offer little practical guidance in applying the exemption. In addition, numerous comments and petitions have been received from industry groups regarding the duties and responsibilities tests in the regulations, requesting a review of these regulations. These regulations have been revised to deal with specific issues. In 1991, as the result of an amendment to the FLSA, the regulations were revised to permit certain computer systems analysts, computer programmers, software engineers, and other similarly skilled professional employees to qualify for the exemption, including those paid on an hourly basis if their rates of pay exceed 6 1/2 times the applicable minimum wage. Also in 1991, the Department undertook separate rulemaking on another aspect of the regulations, the definition of "salary basis" for public-sector employees. Because of the limited nature of these revisions, the regulations are still in need of updating and clarification.

Summary of Legal Basis: These regulations are issued under the statutory exemption from minimum wage and overtime pay provided by section 13(a)(1) of the Fair Labor Standards Act, 29 USC 213(a)(1), which requires the Secretary of Labor to issue regulations that define and delimit the terms "any employee employed in a bona fide, executive, administrative, or professional capacity... or in the capacity of outside salesman..." for purposes of applying the exemption to employees who meet the specified criteria.

Alternatives: The Department will involve affected interest groups in developing regulatory alternatives. Following completion of these outreach and consultation activities, full regulatory alternatives will be developed.

DOL—ESA

Proposed Rule Stage

Although legislative proposals have been introduced in Congress to address certain aspects of these regulations, the Department continues to believe revisions to the regulations are the appropriate response to the concerns raised. Alternatives likely to be considered range from particular changes to address "salary basis" and salary level issues to a comprehensive overhaul of the regulations that also addresses the duties and responsibilities tests.

Anticipated Cost and Benefits: Some 19 to 26 million employees are estimated to be within the scope of these regulations. Legal developments in court cases are changing the guiding interpretations under this exemption and creating law without considering a comprehensive analytical approach to current compensation concepts and workplace practices. Clear, comprehensive, and up-to-date regulations would provide for central, uniform control over the application of these regulations and ameliorate many concerns. In the public sector, State and local government employers contend that the rules are based on production workplace environments from the 1940s and 1950s that do not readily adapt to contemporary government functions. The Federal Government also has concerns regarding the manner in which the courts and arbitration decisions are applying the exemption to the Federal workforce. Resolution of confusion over how the regulations are to be applied in the public sector will ensure that employees are protected, that employers are able to comply with their responsibilities under the law, and that the regulations are enforceable. Preliminary estimates of the specific costs and benefits of this regulatory action will be developed once the various regulatory alternatives are identified.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Indefinite Stay of Final Rule	02/12/81	46 FR 11972
Proposal To Suspend Rule Indefinitely	03/27/81	46 FR 18998
ANPRM	11/19/85	50 FR 47696
Extension of ANPRM Comment Period From 01/21/86 to 03/22/86	01/17/86	51 FR 2525
ANPRM Comment Period End	03/22/86	
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AA14

1550. REGULATIONS TO IMPLEMENT THE FEDERAL ACQUISITION STREAMLINING ACT OF 1994

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355, 108 Stat. 3243

CFR Citation: 29 CFR 4; 29 CFR 5; 41 CFR 50–201; 41 CFR 50–206

Legal Deadline: NPRM, Statutory, May 11, 1995.
Final, Statutory, October 1, 1995.

Abstract: The Federal Acquisition Streamlining Act of 1994, signed on October 13, 1994, amended several Acts administered by the Department of Labor: (1) the Contract Work Hours and Safety Standards Act (CWHSSA) to limit its applicability to contracts in an amount of $100,000 or greater; (2) the Davis-Bacon Act (DB) to provide waivers from the Act's prevailing wage requirements under selected laws for volunteers performing services to a State or local government or agency and for volunteers performing services to a public or private nonprofit recipient of Federal assistance; and (3) the Walsh-Healey Public Contracts Act (PCA) to eliminate the requirements that contractors on covered contracts be either manufacturers or regular dealers in the items to be supplied under the contract but retains the Secretary of Labor's authority to define the terms "regular dealer" and "manufacturer." A final rule implementing the CWHSSA and PCA changes was published on August 5, 1996 (61 FR 40714).

Timetable:

Action	Date	FR Cite
NPRM	09/07/95	60 FR 46553
NPRM Comment Period End	10/10/95	
Final Rule - Walsh-Healey/CWHSSA Rule	08/05/96	61 FR 40714
Second NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AA96

1551. IMPLEMENTATION OF THE 1996 AMENDMENTS TO THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: PL 104-188, sec 2101 to 2105; 29 USC 201 et seq

CFR Citation: 29 CFR 4; 29 CFR 531; 29 CFR 541; 29 CFR 778; 29 CFR 785; 29 CFR 790; 29 CFR 870; 41 CFR 50-202

Legal Deadline: None

Abstract: The "Small Business Job Protection Act of 1996" (H.R. 3448) was enacted on August 20, 1996, as Public Law 104-188. Title II of this enactment amended the Portal-to-Portal Act (PA) and the Fair Labor Standards Act (FLSA). The PA amendment excludes (under certain circumstances) from compensable "hours worked" the time spent by an employee in home-to-work travel in an employer-provided vehicle. The FLSA amendments: (1) increase the $4.25 Federal minimum hourly wage by $.90 in two steps over two years (i.e., to $4.75 on October 1, 1996, and to

$5.15 on September 1, 1997); (2) provide a $4.25 subminimum wage for youth under age 20 in their first 90 calendar days of employment with an employer; (3) set the employer's direct wage payment obligation for tipped employees at $2.13 per hour (provided such employees receive the balance of the full minimum wage in tips); and (4) set the hourly compensation requirements at not less than $27.63 per hour for certain exempt professional employees in computer-related occupations. Changes will be required in the regulations to reflect these amendments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
Phone: 202 693-0051
Fax: 202 693-1432

RIN: 1215–AB13

1552. AFFIRMATIVE ACTION AND NONDISCRIMINATION OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS FOR SPECIAL DISABLED VETERANS AND VETERANS OF THE VIETNAM ERA

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 4211; 38 USC 4212; PL 102-16; PL 102-127; PL 102-484; PL 95-520; PL 93-508, amended; PL 94-502; PL 96-466; PL 101-237; PL 97-306; PL 98-223; PL 105-339

CFR Citation: 41 CFR 60-250

Legal Deadline: None

Abstract: OFCCP proposes to amend the regulations implementing the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA) 38 USC 4212, to conform with the Veterans Employment Opportunities Act (the Act) of 1998 and the Veterans Benefits and Health Care Improvement Act of 2000 (VBHCIA). The Act increases the current threshold for coverage from $10,000 to $25,000. The Act and VBHCIA of 2000 expand the scope of protection under VEVRAA to include recently separated veterans and veterans who served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized. Recently separated veterans means any veteran during the one-year period beginning on the date of such veteran's discharge or release from active duty.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James I. Melvin, Director, Division of Policy, Planning, and Program Development, OFCCP, Department of Labor, Employment Standards Administration, Room N3424, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1215–AB24

1553. STOCK OPTIONS, STOCK APPRECIATION RIGHTS, AND BONA FIDE EMPLOYEE STOCK PURCHASE PROGRAMS UNDER THE FAIR LABOR STANDARDS ACT

Priority: Other Significant

Legal Authority: 29 USC 207(e)(8); PL 106-202, sec 2(e)

CFR Citation: 29 CFR 546; 29 CFR 778

Legal Deadline: None

Abstract: The Worker Economic Opportunity Act, Public Law 106-202 (May 18, 2000), amended section 7(e) of the Fair Labor Standards Act to clarify how certain employer-provided stock option programs are to be treated for purposes of overtime pay. Certain programs meeting prescribed criteria would not have to be factored into the "regular rate" otherwise required when calculating "time-and-one-half" overtime premium pay for overtime hours of work. The legislation calls for regulations to be promulgated as necessary, which will include amendments to some of the existing regulations on overtime pay.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
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RIN: 1215–AB31

Department of Labor (DOL)
Employment Standards Administration (ESA)

Final Rule Stage

1554. CHILD LABOR REGULATIONS, ORDERS, AND STATEMENTS OF INTERPRETATION (ESA/W-H)

Priority: Other Significant

Legal Authority: 29 USC 203(e)

CFR Citation: 29 CFR 570

Legal Deadline: None

Abstract: Section 3(l) of the Fair Labor Standards Act requires the Secretary of Labor to issue regulations with respect to minors between 14 and 16 years of age ensuring that the periods and conditions of their employment do not interfere with their schooling, health, or well-being. The Secretary is also directed to designate occupations that are particularly hazardous for minors 16 and 17 years of age. Child Labor Regulation No. 3 sets forth the permissible industries and occupations in which 14- and 15-year-olds may be employed, and specifies the number of hours in a day and in a week, and time periods within a day, that such minors may be employed. The Department has invited public comment in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders, and whether changes are needed in some of the applicable hazardous occupation orders. Comment has also been solicited on whether revisions should be considered in the permissible hours and time-of-day standards for 14- and 15-year-olds. Comment has been sought on appropriate changes required to implement school-to-work transition programs. Additionally, Congress enacted Public Law 104-174 (August 6, 1996), which amended FLSA section 13(c) and requires changes in the regulations under Hazardous Occupation Order No. 12 regarding power-driven paper balers and compactors, to allow 16- and 17-year-olds to load, but not operate or unload, machines meeting applicable American National Standards Institute (ANSI) safety standards and certain other conditions. Congress also passed the Drive for Teen Employment Act, Public Law 105-334 (October 31, 1998), which prohibits minors under age 17 from driving automobiles and trucks on public roads on the job and sets criteria for 17-year-olds to drive such vehicles on public roads on the job.

Statement of Need: Because of changes in the workplace and the introduction of new processes and technologies, the Department is undertaking a comprehensive review of the regulatory criteria applicable to child labor. Other factors necessitating a review of the child labor regulations are changes in places where young workers find employment opportunities, the existence of differing Federal and State standards, and the divergent views on how best to correlate school and work experiences.

Under the Fair Labor Standards Act, the Secretary of Labor is directed to provide by regulation or by order for the employment of youth between 14 and 16 years of age under periods and conditions which will not interfere with their schooling, health and well-being. The Secretary is also directed to designate occupations that are particularly hazardous for youth between the ages of 16 and 18 years or detrimental to their health or well-being. The Secretary has done so by specifying, in regulations, the permissible industries and occupations in which 14- and 15-year-olds may be employed, and the number of hours per day and week and the time periods within a day in which they may be employed. In addition, these regulations designate the occupations declared particularly hazardous for minors between 16 and 18 years of age or detrimental to their health or well-being.

Public comment has been invited in considering whether changes in technology in the workplace and job content over the years require new hazardous occupation orders or necessitate revision to some of the existing hazardous orders. Comment has also been invited on whether revisions should be considered in the permissible hours and time-of-day standards for the employment of 14- and 15-year-olds, and whether revisions should be considered to facilitate school-to-work transition programs. When issuing the regulatory proposals (after review of public comments on the advance notice of proposed rulemaking), the Department's focus was on assuring healthy, safe and fair workplaces for young workers, and at the same time promoting job opportunities for young people and making regulatory standards less burdensome to the regulated community.

Summary of Legal Basis: These regulations are issued under sections 3(1), 11, 12, and 13 of the Fair Labor Standards Act, 29 USC sections 203(1), 211, 212, and 213 which require the Secretary of Labor to issue regulations prescribing permissible time periods and conditions of employment for minors between 14 and 16 years old so as not to interfere with their schooling, health, or well-being, and to designate occupations that are particularly hazardous or detrimental to the health or well-being of minors under 18 years old.

Alternatives: Regulatory alternatives developed based on recent legislation and the public comments responding to the advance notice of proposed rulemaking included specific proposed additions or modifications to the paper baler, teen driving, explosive materials, and roofing hazardous occupation orders, and proposed changes to the permissible cooking activities that 14- and 15-year-olds may perform in retail establishments.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits of this regulatory action indicated that the rule was not economically significant. Benefits will include safer working environments and the avoidance of injuries with respect to young workers.

Risks: The child labor regulations, by ensuring that permissible job opportunities for working youth are safe and healthy and not detrimental to their education as required by the statute, produce positive benefits by reducing health and productivity costs employers may otherwise incur from higher accident and injury rates to young and inexperienced workers. Given the limited nature of the changes in the proposed rule, a detailed assessment of the magnitude of risk was not prepared.

Timetable:

Action	Date	FR Cite
Final Action HOs 2, 10 and 12	11/20/91	56 FR 58626
Final Action Effective	12/20/91	
ANPRM	05/13/94	59 FR 25167
ANPRM Comment Period End	08/11/94	59 FR 40318
NPRM	11/30/99	64 FR 67130
NPRM Comment Period End	01/31/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1215–AA09

1555. GOVERNMENT CONTRACTORS: NONDISCRIMINATION AND AFFIRMATIVE ACTION OBLIGATIONS, EXECUTIVE ORDER 11246 (ESA/OFCCP) (REVISED)

Priority: Substantive, Nonsignificant

Legal Authority: EO 11246, as amended; 38 USC 4211; PL 94-502; PL 97-306; PL 102-484; 38 USC 4212; PL 93-508, amended; PL 96-466; PL 101-237; EO 11758; PL 98-223; PL 102-16; PL 102-127; PL 95-520; PL 105-339; 29 USC 706; 29 USC 793; EO 11758

CFR Citation: 41 CFR 60-1 (Revision); 41 CFR 60-250 (Revision); 41 CFR 60-741 (Revision)

Legal Deadline: None

Abstract: The NPRM would remove the obligation to visit an establishment during a compliance check, which is currently required by section 60-1.20(a)(3) in order to enhance efficiency in resource allocation. OFCCP proposes also to make the same revision in section 60-250.60(a)(3) of the regulations implementing the affirmative action provisions of the Vietnam Era Veterans' Readjustment Assistance Act (VEVRAA). Lastly, OFCCP proposes to conform regulations implementing section 503 of the Rehabilitation Act of 1973, as amended, to the compliance evaluation procedures contained in the regulations implementing Executive Order 11246, as amended, and the affirmative action provisions of VEVRAA, both of which expressly authorize OFCCP to use additional investigative procedures to determine a contractor's compliance with the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/12/00	65 FR 60815
NPRM Comment Period End	12/11/00	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: James I. Melvin, Director, Division of Policy, Planning, and Program Development, OFCCP, Department of Labor, Employment Standards Administration, Room N3424, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1215–AB28

1556. CLAIMS FOR COMPENSATION UNDER THE ENERGY EMPLOYEES OCCUPATIONAL ILLNESS COMPENSATION PROGRAM ACT OF 2000, AS AMENDED

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7384 et seq; EO 13179

CFR Citation: 20 CFR 30

Legal Deadline: Other, Statutory, May 31, 2001, Interim Final Rule.
By executive order, regulations for administration of program were to be promulgated by 5/31/2001.

Abstract: The Department of Labor has issued regulations for its administration of the provisions of the Energy Employees Occupational Illness Compensation Program Act of 2000, as amended. These regulations address all questions arising under this act which have not been specifically assigned to the Secretary of Health and Human Services, to the Secretary of Energy, or to the Attorney General.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/25/01	66 FR 28948
Interim Final Rule Effective	07/24/01	
Interim Final Rule Comment Period End	09/24/01	66 FR 47382
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter M. Turcic, Director, Division of Energy Employees Occupational Illness Compensation, OWCP, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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RIN: 1215–AB32

Department of Labor (DOL)
Employment Standards Administration (ESA)

Long-Term Actions

1557. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H-1B VISAS IN SPECIALTY OCCUPATIONS AND AS FASHION MODELS

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(H)(i)(b); 8 USC 1182(n); 8 USC 1184; 29 USC 49 et seq; PL 102-232; PL 105-277

CFR Citation: 20 CFR 655, subparts H and I

Legal Deadline: None

Abstract: The H-1B visa program of the Immigration and Nationality Act allows employers to temporarily employ nonimmigrants admitted into the United States under the H-1B visa category in specialty occupations and as fashion models, under specified labor conditions. An employer must file a labor condition application with the Department of Labor before the Immigration and Naturalization Service may approve a petition to employ a foreign worker on an H-1B visa. The Department's Employment and Training Administration administers the labor condition application process; the Wage and Hour Division of the Department's Employment Standards Administration handles complaints and investigations regarding labor condition applications. The Department published a proposed rule on January 5, 1999, in response to statutory changes in the H-1B program made by the American Competitiveness and Workforce Improvement Act of 1998 (Title IV, Pub. L. 105-277; Oct. 21, 1998). Those changes placed additional obligations on "H-1B-dependent" employers (generally, those with work forces comprised of more than 15 percent H-1B workers) and on willful violators. These employers must recruit for U.S. workers, hire U.S. workers who are at least as qualified as H-1B workers, and not displace U.S. workers by hiring H-1B workers or placing them at another employer's job site. The 1998 amendments also imposed additional obligations on all H-1B employers, such as offering benefits to H-1B workers on the same basis and according to the same criteria as offered to U.S. workers, and payment to H-1B workers during periods they are not working for an employment-related reason. The 1999 proposed rule also requested further public comment on earlier proposed provisions published in October 1995, and on particular interpretations of the statute and of the existing regulations which the Department proposed to incorporate into the regulations. Since publishing the proposed rule, Congress enacted further amendments to the H-1B provisions under the American Competitiveness in the Twenty-First Century Act of 2000 (Pub. L. 106-313; Oct. 17, 2000), the Immigration and Nationality Act - Amendments (Pub. L. 106-311; Oct. 17, 2000), and section 401 of the Visa Waiver Permanent Program Act (Pub. L. 106-396; Oct. 30, 2000). On December 20, 2000, the Department published an Interim Final Rule to implement the recent amendments and clarify the existing rules, and requested further public comment on those provisions.

Statement of Need: Statutory amendments to the Immigration and Nationality Act relating to the H-1B visa program were enacted in 1998 and again in 2000. Under the H-1B visa program, employers may temporarily employ nonimmigrants admitted into the U.S. under H-1B visas in specialty occupations and as fashion models, provided certain conditions are met. Section 412(d) of the American Competitiveness and Workforce Improvement Act of 1998 (Title IV of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999, Public Law 105-277), provides that some of the amendments made by the 1998 legislation (those relating to "H-1B-dependent" employers and willful violators) do not take effect until the Department of Labor issues implementing regulations, which are the subject of this rulemaking.

Summary of Legal Basis: This rule is issued pursuant to provisions of the Immigration and Nationality Act, as amended, and the American Competitiveness and Workforce Improvement Act of 1998, 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; sec. 303(a)(8), Pub. L. 102-232 (8 U.S.C. 1182 note); and secs. 412(d) and (e), Pub. L. 105-277. The objectives of the rule are to enable employers to understand and comply with applicable requirements of the amended H-1B visa program, and to advise employees and applicants for employment of the protections afforded by the amendments to U.S. and H-1B workers.

Alternatives: Various regulatory alternatives were considered during the notice-and-comment period for implementing the statutory provisions, as discussed in the preamble to the December 2000 interim final rule. Alternatives considered included, among others, various approaches to the manner and timing for determining H-1B dependency status (and the meaning of "full-time equivalent employees" (FTEs) in the employer's work force), documentation of the dependency determination and designation of such status on the Labor Condition Application, and implementing the requirements for no "displacement" and recruitment of U.S. workers, payment of required wages and benefits to H-1B and U.S. workers, and determining short-term placement options.

Anticipated Cost and Benefits: The Department concluded that the anticipated costs and benefits of this rule were not economically significant. This conclusion was based on the analysis that the direct, incremental costs that employers would incur because of the rule that were above customary business expenses associated with recruiting qualified job applicants and retaining qualified employees in specialized jobs would not exceed $100 million per year or otherwise trigger "economic significance" under Executive Order 12866. However, because of the importance of the rule to the public, it was treated as a significant regulatory action and was, therefore, reviewed by the Office of Management and Budget under Executive Order 12866.

Risks: This action does not directly affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/31/95	60 FR 55339
NPRM Comment Period End	11/30/95	
NPRM	01/05/99	64 FR 628
NPRM Comment Period End	02/04/99	
Interim Final Rule	12/20/00	65 FR 80110
Interim Final Rule Effective	01/19/01	
Interim Final Rule Comment Period End	04/23/01	66 FR 10865
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 1215–AB09

1558. OBLIGATION OF FEDERAL CONTRACTORS AND SUBCONTRACTORS, NOTICE OF EMPLOYEE RIGHTS CONCERNING PAYMENT OF UNION DUES OR FEES

Priority: Other Significant

Legal Authority: EO 13201

CFR Citation: 29 CFR 470

Legal Deadline: None

Abstract: On January 2, 2002, the Federal District Court for the District of Columbia issued a decision in UAW-Labor Employment & Training Corp v. Chao, holding the Executive Order 13201 is invalid because it conflicts with the National Labor Relations Act. The court permanently enjoined the Department of Labor from implementing and enforcing Executive Order 13201. The Department is considering options for responding to the decision.

This regulation will implement E.O. 13201 which requires Government contractors and subcontractors to post notices informing their employees that (1) under Federal law they cannot be required to join a union or maintain membership in a union to retain their jobs, and (2) employees who choose not to be union members may object to the use of their compulsory union dues and fees for activities other than collective bargaining, contract administration, and grievance adjustment, and may be entitled to a refund and an appropriate reduction in their future payments. The proposed regulation, in accordance with E.O. 13201, will also require that, where applicable, each Government contracting agency include certain provisions of the Order in its Government contracts, and that Government contractors and subcontractors include these provisions in their nonexempt subcontracts and purchase orders.

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Statement of Need: The regulation is necessary in order to implement Executive Order 13201.

Summary of Legal Basis: The legal basis for this regulation is section 1(b) of Executive Order 13201. The legal basis for the Executive Order is the Constitution and laws of the United States, including the Federal Property and Administrative Services Act, 40 U.S.C. 471 et seq.

As noted above, on January 2, 2002, the Federal District Court for the District of Columbia issued a decision holding that Executive Order 13201 is invalid and the Department is considering options for responding to that decision.

Alternatives: There is no feasible alternative to issuing regulations. Regulations are needed in order to implement Executive Order 13201 by (1) clarifying the obligations of Federal contractors and subcontractors, (2) providing exemptions as authorized by the Executive order, and (3) establishing enforcement mechanisms as authorized by the Executive order. Alternatives to the specific provisions of the proposed rule suggested in comments by the public will be considered in developing the final rule.

Anticipated Cost and Benefits: The only costs that Federal contractors will incur are for (1) posting the notice and (2) applying for waivers from the posting requirement. These will be minimal since (1) under the proposed regulation, the Department will supply the posters, and (2) the Department's experience under similar posting requirements is that few contractors request waivers. The benefits of the Executive order and the implementing regulation are the promotion of economy and efficiency in Government procurement by having workers who are informed of their rights regarding union membership and the use of union dues and fees.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
Interim Procedural Rule	04/18/01	66 FR 19988
NPRM	10/01/01	66 FR 50010
NPRM Comment Period End	11/30/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Don Todd, Deputy Assistant Secretary, Department of Labor, Employment Standards Administration, 200 Constitution Avenue NW., FP Building, Room N5605, Washington, DC 20210
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RIN: 1215–AB33

Department of Labor (DOL)
Employment Standards Administration (ESA)

Completed Actions

1559. APPLICATION OF THE FAIR LABOR STANDARDS ACT TO DOMESTIC SERVICE

Priority: Other Significant

Legal Authority: Sec 13(a)(15), Fair Labor Standards Act (FLSA), as amended; Sec 13(b)(21), FLSA, as amended; 29 USC 213(a)(15); 29 USC 213(b)(21) 88 Stat 62; Sec 29(b), FLSA of 1974; PL 93-259 88, Stat 76

CFR Citation: 29 CFR 552

Legal Deadline: None

Abstract: Section 13(a)(15) of the Fair Labor Standards Act (FLSA) provides an exemption from minimum wage and overtime compensation for domestic service employees engaged in providing companionship services. Section 13(b)(21) of the FLSA provides an exemption from overtime compensation for live-in domestic service employees. DOL proposed certain technical amendments to update the regulations, 29 CFR part 552, Application of the Fair Labor Standards Act to Domestic Service, and to clarify the applicability of these exemptions to third-party employers (58 FR 69310). After reviewing the public comments, the Department adopted technical changes to update the regulations, including a revision necessitated by amendments to title II of the Social Security Act under Public Law 103-387 (Social Security Domestic Employment Reform Act) 10/22/94, (see 60 FR 46766) and reopened the public comment period on proposed revisions affecting third-party employers (section 552.109). After further review of the history and background to this exemption, a new proposed rule was published for public comment on 1/19/2001 (66 FR 5481).

Timetable:

Action	Date	FR Cite
NPRM	12/30/93	58 FR 69310
NPRM Comment Period End	02/28/94	
Second NPRM	09/08/95	60 FR 46797
Final Rule	09/08/95	60 FR 46766
Third NPRM	01/19/01	66 FR 5481
NPRM Comment Period End	03/20/01	
Third NPRM Comment Period End Extended to 07/23/2001	04/23/01	66 FR 20411
Withdrawn	04/08/02	67 FR 17760

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
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RIN: 1215–AA82

1560. MINIMUM WAGE AND OVERTIME VIOLATIONS—CIVIL MONEY PENALTIES (29 CFR 578); CHILD LABOR VIOLATIONS—CIVIL MONEY PENALTIES (29 CFR 579); ADJUSTMENT OF CIVIL MONEY PENALTIES FOR INFLATION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 216(e); PL 101-410; PL 104-134

CFR Citation: 29 CFR 578; 29 CFR 579

Legal Deadline: Final, Statutory, October 23, 1996.

Abstract: The Debt Collection Improvement Act of 1996 (PL 104-134) amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (PL 101-410) to require Federal agencies to adjust certain civil money penalties for inflation. The Department is proposing adjustments in the civil money penalties that may be assessed under section 16(e) of the Fair Labor Standards Act for (1) repeated or willful violations of the minimum wage or overtime provisions; and (2) child labor violations. Any increase in the penalty amounts shall apply only to violations which occur after the effective date of the increase. The final rule was published 12/07/2001, 66 FR 63501, effective 01/07/2002.

Timetable:

Action	Date	FR Cite
NPRM	12/28/98	63 FR 71405
NPRM Comment Period End	01/27/99	
Final Action	12/07/01	66 FR 63501
Final Action Effective	01/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Tammy D. McCutchen, Administrator, Wage and Hour Division, Department of Labor, Employment Standards Administration, 200 Constitution Avenue, NW, FP Building, Room S3502, Washington, DC 20210
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RIN: 1215–AB20

Department of Labor (DOL)
Employment and Training Administration (ETA)

Proposed Rule Stage

1561. LABOR CERTIFICATION PROCESS FOR THE PERMANENT EMPLOYMENT OF ALIENS IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 8 USC 1182(a)(5)(A), 1189(p)(1); 29 USC 49 et seq

CFR Citation: 20 CFR 656

Legal Deadline: None

Abstract: The Employment and Training Administration (ETA) is in the process of reengineering the permanent labor certification process. ETA's goals are to make fundamental changes and refinements that will: streamline the process, save resources, improve the effectiveness of the program and better serve the Department of Labor's (DOL) customer.

Statement of Need: The labor certification process has been described as being complicated, costly and time consuming. Due to the increases in the volume of applications received and a lack of adequate resources, it can take up to 2 years or more to complete processing an application. The process also requires substantial State and Federal resources to administer and is reportedly costly and burdensome to employers as well. Cuts in Federal funding for both the permanent labor certification program and the U.S. Employment Service have made it difficult for State and Federal administrators to keep up with the process. ETA, therefore, is taking steps to improve effectiveness of the various regulatory requirements and the application processing procedures, with a view to achieving savings in resources both for the government and employers, without diminishing protections now afforded U.S. workers by the current regulatory and administrative requirements.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 212(a)(5)(A) of the Immigration and Nationality Act.

Alternatives: Regulatory alternatives are now being developed by the Department. The public will be afforded an opportunity to comment on the Department's plans for streamlining the permanent labor certification process in a notice of proposed rulemaking which will be published in the Federal Register.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits have not been determined at this time. Preliminary estimates will be developed after a decision is made as to what regulatory amendments are necessary and after the implementing forms and automated systems to support a streamlined permanent labor certification process have been developed.

Risks: Possible alternative: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Federal

Agency Contact: Dale Ziegler, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
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RIN: 1205–AA66

1562. FEDERAL-STATE UNEMPLOYMENT COMPENSATION (UC) PROGRAM; CONFIDENTIALITY AND DISCLOSURE OF INFORMATION IN STATE UC RECORDS

Priority: Other Significant

Legal Authority: 42 USC 1302 (a); 42 USC 503; 42 USC 1320b-7; 26 USC ch 23; Secretary's Orders 4-75 and 14-75

CFR Citation: 20 CFR 603

Legal Deadline: None

Abstract: The Employment and Training Administration of the Department of Labor is preparing to issue a notice of proposed rulemaking (NPRM) on confidentiality and disclosure of information in State records collected, created, or maintained for purposes of the Federal-State UC program. The NPRM would modify and expand the regulations implementing the Income and Eligibility Verification System (IEVS) to include the statutory requirements in title III of the Social Security Act, the Federal Unemployment Tax Act, and the Wagner-Peyser Act concerning confidentiality and disclosure of information in State UC records. The use of unemployment compensation wage records under these and other statutes has increased in recent years while privacy and confidentiality issues have not yet been addressed.

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Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: Formerly RIN 1205-AA74; was taken off regulatory agenda in 1994 due to inactivity. An NPRM was published 3/23/92 at 57 FR 10063 with comment period ending 5/22/92.

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Room C4512, 200 Constitution Avenue NW, FB Building, Washington, DC 20210
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RIN: 1205–AB18

1563. SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 3056(b)(2)

CFR Citation: 20 CFR 641

Legal Deadline: None

Abstract: The Employment and Training Administration will implement new regulations to govern the Senior Community Service Employment Program (SCSEP) under title V of the Older Americans Act Amendments of 2000. SCSEP is the only Federally sponsored job creation program targeted to low-income older Americans. The program subsidizes part-time community service jobs for low-income persons age 55 years and older who have poor employment prospects. Approximately 100,000 program enrollees annually work in a wide variety of community service jobs, including nurse's aides, teacher aides, librarians, clerical workers and day care assistants. The Department of Labor allocates funds to operate the program to State agencies on aging and to national organizations.

Proposed regulations will improve integration of SCSEP with the broader workforce investment system.

Statement of Need: As the baby boom generation ages, the demand for employment and training services and income support for low-income older persons will increase. Low-income seniors generally must continue working and many may not be able to find employment without work experience and additional training. The basic goals of the SCSEP are to provide community service employment for older workers with few skills and little work experience, and to move many of those seniors into unsubsidized employment. The Employment and Training Administration will issue regulations and other guidance, provide technical assistance, and establish performance standards that will drive State and national grantees' efforts towards the program's goals.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 502(b)(2) of Pub. L. 106-501 of the Older Americans Act Amendments of 2000.

Alternatives: The public provided comments on changes to the statute due to the Older Americans Act Amendments of 2000 during Town Hall meetings held throughout the country in spring 2001. The public also will be afforded an opportunity to comment on the Department's plans for implementing the Amendments in a notice of proposed rulemaking that will be published in the Federal Register.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs of this regulatory action have not been determined at this time and will be determined at a later date.

Risks: This action does not affect public health, safety, or the environment.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

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RIN: 1205–AB28

Department of Labor (DOL)
Employment and Training Administration (ETA)

Final Rule Stage

1564. INDIAN AND NATIVE AMERICAN WELFARE-TO-WORK PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 612(a)(3)(c)(iii); PL 106-113, Division B, section 1000(a)(4)

CFR Citation: 20 CFR 646

Legal Deadline: Final, Statutory, November 4, 1997, 90 days from enactment. Citation mandates Secretary to prescribe regulations within 90 days of enactment, to publish interim final rule by 10/31/98.
Other, Statutory, January 1, 2000, for 1999 amendments.

Abstract: These are program regulations needed to implement the Indian and Native American set-aside under the Welfare-to-Work program authorized by section 412(a)(3) of the Social Security Act. New interim final regulations are being issued to implement changes made by the Welfare-to-Work and Child Support Amendments of 1999 and other legislation. The Consolidated Appropriations Act of 2001 authorized the Department to extend welfare-to-work grants an additional two years. Therefore, the grants may operate until September 2004.

The Department received 14 comments on the March 1, 1998 interim final rule, and none would substantively change the regulations. The Department will provide guidance in response to those comments. The March 1, 1998 Interim Final Rule will be adopted as the final rule, subject to the changes made by the new interim final rule implementing the 1999 amendments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/98	63 FR 15985
Interim Final Rule Effective	04/01/98	
Interim Final Rule Comment Period End	06/01/98	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Additional Information: Congress has changed eligibility criteria. A final rule will be published to conform with the State programs.

Agency Contact: Gregory Gross, Department of Labor, Employment and Training Administration, Room N4641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-3752
Email: ggross@doleta.gov

RIN: 1205–AB16

1565. LABOR CERTIFICATION AND PETITION PROCESS FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIENS IN AGRICULTURE IN THE UNITED STATES; MODIFICATION OF FEE STRUCTURE

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(h)(ii)(a); 8 USC 1184; 8 USC 1188; 29 USC 49 et seq

CFR Citation: 8 CFR 655

Legal Deadline: None

Abstract: The Employment and Training Administration (ETA) of the Department of Labor (Department or DOL) proposes to amend its regulations relating to the temporary employment of nonimmigrant agricultural workers (H-2A workers) in the United States. The proposed amendments would require employers to submit fees for labor certification and the associated H-2A petitions with consolidated application form at the time of filing. The proposal also would modify the fee structure for labor certification. If the application is denied, both fees will be refunded to the employer. It is conceivable in rare instances that the statutory and regulatory standards for issuance of the certification will be met, but those applicable to the petition will not be met. In such occurrence, neither fee will be refunded because the certification fee is an issuance, while the petition fee is a processing fee.

The Department published a Notice of Proposed Rulemaking (NPRM) at 65 FR 43545 (July 13, 2000). Because of the continuing interest in the proposal, the Department published at 65 FR 50170 (August 17, 2000) a proposed rule reopening and extending the comment period on the July 13, 2000, NPRM. The comments received as a result of this reopening and extension of the comment period did not provide sufficient information to permit the Department to draft a final rule concerning a number of issues raised by commenters.

Timetable:

Action	Date	FR Cite
NPRM	07/13/00	65 FR 43545
NPRM Comment Period Reopened and Extended	09/18/00	65 FR 50170
NPRM Comment Period Reopened and Extended to 10/29/2001	09/27/01	66 FR 49328
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dale Ziegler, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
Phone: 202 693-2942
Fax: 202 693-2760
Email: dziegler@doleta.gov

RIN: 1205–AB24

1566. LABOR CERTIFICATION AND PETITION PROCESS FOR THE TEMPORARY EMPLOYMENT OF NONIMMIGRANT ALIENS IN AGRICULTURE IN THE U.S.: DELEGATION OF AUTHORITY TO ADJUDICATION PETITIONS; DEFERRAL OF EFFECTIVE DATE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 8 USC 1101(a)(15)(H)(ii)(a); 8 USC 1184; 8 USC 1188; 29 USC 49 et seq; 8 CFR 103.1(f)(iii)(j); 8 CFR 103.1(f)(iii)(w); 8 CFR 214.2(h)(5); 8 CFR 214.2(h)(11); 8 CFR 214.2(h)(12)

CFR Citation: 20 CFR 655, subpart B

Legal Deadline: None

Abstract: The Department of Labor (DOL or Department) published a final rule in this rulemaking in the Federal Register at 65 FR 43538 (July 13, 2000), with an effective date of November 13, 2000, implementing a delegation of authority from the INS to the Department of adjudicate petitions for the temporary employment of nonimmigrant aliens in agriculture in the United States. Concurrently, the INS published a final rule at 65 FR 43528 (July 13, 2000) with an effective date of November 13, 2000, transferring to the Secretary of Labor the authority to adjudicate petitions for temporary agricultural workers and the authority to decide appeals on these decisions and to make determinations for revocation of petition approvals.

Subsequently, the INS at 65 FR 67616 (November 13, 2000) published a final rule and DOL at 65 FR 67628 (November 13, 2000) published an interim final rule (IFR) deferring the effective dates of their final rules. The Department in its IFR invited comments on the deferral of the effective date. No comments were received by DOL on the deferral of the effective date.

The Department also reopened and extended the comment period at 65 FR 50170 (August 17, 2000) on a companion notice of proposed rulemaking (NPRM) published at 65 FR 43545 (July 13, 2000) and again at 66 FR 9382 (September 27, 2001) setting forth implementation measures necessary to the successful implementation of the delegation of authority to adjudicate petitions.

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DOL—ETA — Final Rule Stage

Finalizing the proposed rule is essential to the effective implementation of any delegation of authority to DOL to adjudicate petitions for temporary employment of nonimmigrant aliens in the United States. Therefore, the Department has determined to defer the effective date of the July 13, 2000, final rule until September 27, 2002, which should be sufficient time to complete the rulemaking on the companion NPRM.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/27/01	66 FR 49275
Interim Final Rule Comment Period End	10/29/01	
Interim Final Rule Effective	09/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dale Ziegler, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
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Fax: 202 693-2760
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RIN: 1205–AB30

1567. DISASTER UNEMPLOYMENT ASSISTANCE PROGRAM AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 1302; 42 USC 5177; EO 12673

CFR Citation: 20 CFR 625.5

Legal Deadline: None

Abstract: This new rule on the Disaster Unemployment Assistance Program will only address one aspect of part 625; it adds a definition of "unemployment is a direct result of the major disaster." ETA had not defined this term in its previous rule. The purpose of the new definition is to clarify eligibility for disaster unemployment assistance in the wake of the major disasters as a result of the terrorist attacks of September 11, 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/13/01	66 FR 56959
Interim Final Rule Effective	11/13/01	
Interim Final Rule Comment Period End	12/13/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Betty E. Castillo, Chief, Division of Unemployment Insurance Operations, Department of Labor, Employment and Training Administration, Room S4231, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-3032

RIN: 1205–AB31

Department of Labor (DOL)
Employment and Training Administration (ETA) — Long-Term Actions

1568. FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM; UNEMPLOYMENT INSURANCE PERFORMANCE SYSTEM

Priority: Other Significant

Legal Authority: 42 USC 501 to 504; 42 USC 1302(a); 26 USC 3301 to 3311; 5 USC 8501 to 8508; 5 USC 8521 to 8525; 42 USC 5177 to 5189a; 19 USC 2271 to 2322; 40 FR 18515

CFR Citation: 20 CFR 602; 20 CFR 640; 20 CFR 650; 20 CFR 609.6(f); 20 CFR 614.6(f); 20 CFR 614.7(c); 20 CFR 609.7(c); 20 CFR 617.51(b)

Legal Deadline: None

Abstract: This regulation will formally establish a comprehensive system for helping ensure continuous improvement in UI operational performance. It will enunciate as the system's building blocks principles for Federal and State cooperation, key nationwide performance measures, criteria distinguishing satisfactory from unsatisfactory performance, an annual planning process, and actions which the Department may take when a State fails to perform satisfactorily.

The UI PERFORMS Regulation is consistent with the Administration's and the Secretary's emphasis on improved grants management. It is needed now to help complete the development and implementation of the UI PERFORMS system and will replace other regulations, two of which establish Secretary's Standards for first payment and lower appeals timeliness. Until those regulations have been replaced the related UI PERFORMS measures and criteria cannot be put in place. It will also establish a definitive framework for enforcing, if necessary, the elements and performance standards established as parts of the UI PERFORMS system. Until the regulation is in place, UI PERFORMS will remain incomplete.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/97	62 FR 2543
ANPRM Comment Period End	03/17/97	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gerard Hildebrand, Chief, Division of Legislation, Department of Labor, Employment and Training Administration, Room C4512, 200 Constitution Avenue NW, FB Building, Washington, DC 20210
Phone: 202 693-3038
Email: ghildebrand@doleta.gov

RIN: 1205–AB10

1569. ATTESTATIONS BY FACILITIES TEMPORARILY EMPLOYING H-1C NONIMMIGRANT ALIENS AS REGISTERED NURSES

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(H)(i)(c); 8 USC 1182(m); 8 USC 1184; 29 USC 49 et seq; PL 106-95, 113 Stat. 1312

CFR Citation: 20 CFR 655, subparts L and M

DOL—ETA — Long-Term Actions

Legal Deadline: Final, Statutory, February 11, 2000.
Final or Interim Final regulations required within 90 days of enactment.

Abstract: The Nursing Relief for Disadvantaged Areas Act of 1999 (P.L. 106-95; November 12, 1999) amended the Immigration and Nationality Act to create a new temporary visa program for nonimmigrant aliens to work as registered nurses for up to three years in facilities serving health professional shortage areas, subject to certain conditions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/22/00	65 FR 51137
Interim Final Rule Comment Period End	09/21/00	
Interim Final Rule Effective	09/21/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Federal

Agency Contact: Michael Ginley, Director, Office of Enforcement Policy, Wage and Hour Division, Department of Labor, Employment Standards Administration, Room N3510, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-0745

RIN: 1205–AB27

Department of Labor (DOL)
Employment and Training Administration (ETA) — Completed Actions

1570. LABOR CONDITION APPLICATIONS AND REQUIREMENTS FOR EMPLOYERS USING NONIMMIGRANTS ON H-1B VISAS; IMPLEMENTATION OF ELECTRONIC FILING

Priority: Other Significant

Legal Authority: 8 USC 1101(a)(15)(h)(i)(b); 8 USC 1182(n); 8 USC 1184(c)

CFR Citation: 20 CFR 655, subparts H and I

Legal Deadline: None

Abstract: The Department of Labor is amending its regulations governing the filing and processing of labor condition applications for the employment of nonimmigrant aliens on H-1B visas in specialty occupations and as fashion models. The amendments will allow employers the option of submitting LCAs electronically, utilizing Web-based forms and instructions. The electronic filing system will be convenient and less burdensome for employers, since, unlike a system based on filing applications by facsimile transmission or by mail, the new system will allow the filing of an applications without the submission of a "hard copy." Submission by mail or fax will continue to be permitted for employers who prefer one of those formats.

Statement of Need: The current regulations permit employers to submit labor condition applications (LCAs) by facsimile transmission (FAX) or by mail. Although submission of LCAs by FAX and processing of such applications have generally been more efficient than submission and processing of LCAs by mail, operational problems delayed the processing of some LCAs submitted by FAX for the first several months of its operation. To improve customer service, the Department will, through this Final Rule, provide employers the option to utilize an electronic filing system which will permit employers to fill out their LCAs on a Department of Labor website and submit them electronically to the Department's Employment and Training Administration (ETA). Electronic filing will permit more efficient ETA electronic processing of LCAs without the technical and administrative uncertainties inherent in the technology currently available to process applications that are submitted by FAX. Further, since the scope of the Department's review of LCAs under section 212(n)(1)(D) of the INA is limited to "completeness and obvious inaccuracies," the filing and processing of LCAs is particularly amenable to an electronic filing system. Because the electronic filing system includes guidance to the employers in filling out their LCAs "on line," the LCAs will have fewer incomplete or obviously inaccurate entries and will, therefore, ordinarily be acceptable for immediate electronic certification.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 212(n) of the Immigration and Nationality Act.

Alternatives: The current regulations which allow employers to submit LCAs only by mail or by facsimile transmission.

Anticipated Cost and Benefits: It is expected that allowing employers to submit LCAs electronically will result in savings to employers and the Government since hard copies of the applications will not have to be filled and mailed by employers nor processed and stored by the Government. We have not determined at this time the precise amount of the savings.

Risks: This action does not affect public health, safety or the environment.

Timetable:

Action	Date	FR Cite
Final Action	12/05/01	66 FR 63298
Final Action Effective	01/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dale Ziegler, Chief, Division of Foreign Labor Certification, Department of Labor, Employment and Training Administration, 200 Constitution Avenue NW., Room C4318, FP Building, Washington, DC 20210
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RIN: 1205–AB29

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Department of Labor (DOL) **Prerule Stage**
Pension and Welfare Benefits Administration (PWBA)

1571. BONDING RULES UNDER THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974 (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1135; 29 USC 1112

CFR Citation: 29 CFR 2580

Legal Deadline: None

Abstract: PWBA is conducting a review of the temporary bonding rules under section 412 of ERISA (29 CFR part 2580) in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate or conflict with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in industries affected by the rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N-5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA82

1572. REQUESTS FOR ENFORCEMENT PURSUANT TO SECTION 502(B)(2) (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1132(b)(2)

CFR Citation: 29 CFR 2560.502-1

Legal Deadline: None

Abstract: PWBA is conducting a review of its regulation (29 CFR 2560.502-1) relating to requests for enforcement pursuant to section 502(b)(1) of ERISA (formerly ERISA) section 502(b)(2)) of ERISA in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rule; the extent to which the rules overlap, duplicate or conflict with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in industries affected by the rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N-5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA83

1573. CIVIL PENALTIES UNDER ERISA SECTION 502(C)(2) (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1132(c)(2)

CFR Citation: 29 CFR 2560.502(c)(2)

Legal Deadline: None

Abstract: PWBA is conducting a review of its regulations on civil penalties under section 502(c)(2) of ERISA (29 CFR 2560.502(c)(2) in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate or conflict with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in industries affected by the rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N-5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA84

1574. PROCEDURES FOR THE ASSESSMENT OF CIVIL PENALTIES UNDER ERISA SECTION 502(C)(2) (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1135; 29 USC 1132(c)(2)

CFR Citation: 29 CFR 2570.60 et seq

Legal Deadline: None

Abstract: PWBA is conducting a review of its regulations relating to the procedures for the assessment of civil penalties under section 502(c)(2) of ERISA (29 CFR 2570.60 et seq.) in accordance with the requirements of section 610 of the Regulatory Flexibility Act. The review will cover the continued need for the rules; the nature of complaints or comments received from the public concerning the rules; the complexity of the rules; the extent to which the rules overlap, duplicate or conflict with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in industries affected by the rules.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/00	
End Review	05/00/02	

Regulatory Flexibility Analysis Required: No

DOL—PWBA **Prerule Stage**

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Rudy Nuissl, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, N-5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA85

Department of Labor (DOL) **Proposed Rule Stage**
Pension and Welfare Benefits Administration (PWBA)

1575. ADEQUATE CONSIDERATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1002(18); 29 USC 1135

CFR Citation: 29 CFR 2510

Legal Deadline: None

Abstract: The Department intends to update its rulemaking record concerning this regulation by publishing a second notice of proposed rulemaking. The regulation would provide guidance as to what constitutes "adequate consideration" under section 3(18) of ERISA for assets other than securities for which there is a generally recognized market.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17632
NPRM Comment Period End	07/17/88	
Second NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Paul D. Mannina, Staff Attorney, Plan Benefits Security Division, Department of Labor, Pension and Welfare Benefits Administration, Room N4611, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-5600

RIN: 1210–AA15

1576. RULEMAKING RELATING TO NOTICE REQUIREMENTS FOR CONTINUATION OF HEALTH CARE COVERAGE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1136

CFR Citation: 29 CFR 2520

Legal Deadline: None

Abstract: This rulemaking will provide guidance concerning the notification requirements pertaining to continuation coverage under the Employee Retirement Income Security Act of 1974 (ERISA). Section 606 of ERISA requires that group health plans provide employees notification of the continuation coverage provisions of the plan and imposes notification obligations upon plan administrators, employers, employees, and qualified beneficiaries relating to certain qualifying events.

Statement of Need: Part 6 of title I of ERISA requires that group health plans provide employees with notice of the continuation of health care coverage provisions of the plan; it imposes notification requirements upon employers, employees, plan administrators, and qualified beneficiaries in connection with certain qualifying events. The public needs guidance from the Department with regard to how they can fulfill their respective obligations under these statutory provisions.

Summary of Legal Basis: Section 606 ERISA specifies the respective notification requirements for employers, employees, plan administrators, and qualified beneficiaries in connection with group health plan provisions relating to continuation of health care coverage. Section 606(a) of ERISA specifically refers to regulations to be issued by the Secretary of Labor clarifying these requirements. Section 505 of ERISA authorizes the Secretary to issue regulations clarifying the provisions of title I of ERISA.

Alternatives: Regulatory alternatives will be developed once determinations have been made with regard to the scope and nature of the regulatory guidance which is needed by the public.

Anticipated Cost and Benefits: Preliminary estimates of the anticipated costs and benefits will be developed once decisions are reached regarding the alternatives to be considered.

Risks: Failure to provide guidance to the public concerning their notification obligations under section 606 of ERISA may complicate compliance by the public with the law and may reduce the availability of continued health care coverage in certain commonly encountered situations.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/97	62 FR 49894
ANPRM Comment Period End	11/24/97	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Susan G. Lahne, Senior Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA60

1577. REGULATION EXEMPTING CERTAIN BROKER-DEALERS AND INVESTMENT ADVISERS FROM BONDING REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1112

CFR Citation: 29 CFR 2580

Legal Deadline: None

Abstract: This proposed regulation would provide an exemption from the bonding requirements of Section 412(a) of ERISA for certain broker-dealers and investment advisers who handle plan assets.

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Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Stacey L. DeWalt, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA80

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Final Rule Stage

1578. DEFINITION OF COLLECTIVE BARGAINING AGREEMENT (ERISA SECTION 3(40))

Priority: Other Significant

Legal Authority: 29 USC 1002(40)

CFR Citation: 29 CFR 2510.3-40

Legal Deadline: None

Abstract: The regulation will establish standards for determining whether an employee benefit plan is established or maintained under or pursuant to one or more collective bargaining agreements for purposes of its exclusion from the Multiple Employer Welfare Arrangement (MEWA) definition in section 3(40) of ERISA, and thus exempted from State regulation. The regulation will clarify the scope of the exception from the MEWA definition for plans established or maintained under or pursuant to one or more collective bargaining agreements by providing criteria which will serve to distinguish welfare benefit arrangements which are maintained by legitimate unions pursuant to bona fide collective bargaining agreements from insurance arrangements promoted and marketed under the guise of ERISA-covered plans exempt from State insurance regulation. The regulation will also serve to limit the extent to which plans maintained pursuant to bona fide collective bargaining agreements may extend plan coverage to individuals not covered by such agreements.

Timetable:

Action	Date	FR Cite
NPRM	08/01/95	60 FR 39208
NPRM Comment Period Extended to 11/16/95	09/29/95	60 FR 50508
Notice Establishing Negotiated Rulemaking Advisory Committee	09/22/98	63 FR 50542
Second NPRM	10/27/00	65 FR 64498
Second NPRM Comment Period End	12/26/00	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Elizabeth A. Goodman, Pension Law Specialist, Office of Regulations and Interpretations, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA48

1579. REGULATIONS IMPLEMENTING THE HEALTH CARE ACCESS, PORTABILITY AND RENEWABILITY PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 104-91, sec 101; 29 USC 1027; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1172; 29 USC 1177

CFR Citation: 29 CFR 2590

Legal Deadline: Other, Statutory, April 1, 1997, Interim Final Rule.
Per section 734 of ERISA as added by section 101 of HIPAA.

Abstract: The Health Insurance Portability and Accountability Act of 1996 (HIPAA) amended title I of ERISA by adding a new part 7, designed to improve health care access, portability and renewability. This rulemaking will provide regulatory guidance to implement these provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Effective	06/07/97	
Interim Final Rule Comment Period End	07/07/97	
Request for Information	10/25/99	64 FR 57520
Comment Period End	01/25/00	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Director, Office of Health Plan Standards, Department of Labor, Pension and Welfare Benefits Administration, Room N5677, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA54

1580. MENTAL HEALTH BENEFITS PARITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1135; 29 USC 1182 (PL 104-204; 110 Stat 2944); 29 USC 1194

CFR Citation: 29 CFR 2590

Legal Deadline: None

Abstract: The Mental Health Parity Act of 1996 (MHPA) was enacted on September 26, 1996 (P.L. 104-204). MHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974 (ERISA), as amended, to provide for parity in the application of limits on certain mental health benefits with limits on medical and surgical benefits. MHPA provisions are set forth in

chapter 100 of subtitle K of the Code, title XXVII of the PHSA, and part 7 of subtitle B of title I of ERISA. On January 10, 2002, President Bush signed H.R. 3061 (Pub. L.107-116, 115 Stat.2177), the 2002 Appropriations Act for the Departments of Labor, Health and Human Services, and Education. This legislation amended ERISA, the Code, and the PHSA to extend the original sunset date so that MHPA's provisions will not apply to benefits for services furnished on or after December 31, 2002. As a result, and to assist employers, plan administrators, and workers concerning the extension of MHPA's sunset provision, the Departments are developing an interim final amendment to the current regulation for publication in the Federal Register.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/22/97	62 FR 66932
Interim Final Amendment	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: LEGAL AUTHORITIES CONT: Secs. 107, 209, 505, 701-703, 711, 712 731-734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171-1173, 1181 1182, 1191-1194), as amended by HIPAA (Pub. L. 104-191, 101 Stat. 1936) and NMHPA (Pub. L. 104-204) and Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

Agency Contact: Mark Connor, Supervisory Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room C5331, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA62

1581. HEALTH CARE STANDARDS FOR MOTHERS AND NEWBORNS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1027, ERISA sec 107; 29 USC 1059, ERISA sec 209; 29 USC 1135, ERISA sec 505; 29 USC 1171 to 1173, ERISA sec 701 to 703; 29 USC 1181, ERISA sec 711; 29 USC 1182, ERISA sec 712; 29 USC 1191 to 1194, ERISA sec 731 to 734; PL 104-191, 101 Stat 1936 (HIPAA); PL 104-204, 110 Stat 2935 (NMHPA); Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987

CFR Citation: 29 CFR 2590.711

Legal Deadline: None

Abstract: The Newborns' and Mothers' Health Protection Act of 1996 (NMHPA) was enacted on September 26, 1996 (PL 104-204). NMHPA amended the Public Health Service Act (PHSA) and the Employee Retirement Income Security Act of 1974, as amended, (ERISA) to provide protection for mothers and their newborn children with regard to the length of hospital stays following the birth of a child. NMHPA provisions are set forth in title XXVII of the PHSA and part 7 of subtitle B of title I of ERISA. This rulemaking will provide further guidance with regard to the provisions of the NMHPA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/27/98	63 FR 57546
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: LEGAL AUTHORITY CONT: Secs. 107, 209, 505, 701-703, 711, 712 731-734 of ERISA (29 U.S.C. 1027, 1059, 1135, 1171-1173, 1181 1182, 1191-1194), as amended by HIPAA (Pub. L. 104-191, 101 Stat. 1936) and NMHPA (Pub. L. 104-204) and Secretary of Labor's Order No. 1-87, 52 FR 13139, April 21, 1987.

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RIN: 1210–AA63

1582. REPORTING REQUIREMENTS FOR MEWAS PROVIDING MEDICAL CARE BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1135; 29 USC 1021(g)(h) (PL 104-191; 110 Stat 1952); 29 USC 1194

CFR Citation: 29 CFR 2520

Legal Deadline: None

Abstract: These interim final rules govern certain reporting requirements under title I of the Employee Retirement Income Security Act of 1974, as amended (ERISA) for multiple employer welfare arrangements (MEWAs) that provide benefits consisting of medical care. In part, the rules implement recent changes made to ERISA by the Health Insurance Portability and Accountability Act of 1996 (HIPAA). The rules also set forth elements that MEWAs would be required to file with the Department of Labor for the purpose of determining compliance with the portability, nondiscrimination, renewability and other requirements of part 7 of subtitle B of title I of ERISA including the requirements of the Mental Health Parity Act of 1996 and the Newborns' and Mothers' Protection Act of 1996. The rules provide guidance with respect to section 502(c)(5) of ERISA which authorizes the Secretary of Labor to assess a civil penalty of up to $1,000 a day for failure to comply with the new reporting requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/11/00	65 FR 7152
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy Turner, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room C5331, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1210–AA64

1583. RULEMAKING RELATING TO THE WOMEN'S HEALTH AND CANCER RIGHTS ACT OF 1998

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1185; PL 105-277; 112 Stat 2681; 29 USC 1135; 29 USC 1194

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Women's Health and Cancer Rights Act of 1998 (WHCRA) was enacted on October 21, 1998 (P.L. 105-277). WHCRA amended the Employee Retirement Income Security Act of 1974 (ERISA) and the Public Health Service Act (PHS Act) to

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provide protection for patients who elect breast reconstruction in connection with a mastectomy. The WHCRA provisions are set forth in part 7 of subtitle B of title I of ERISA and in title XXVII of the PHS Act. These interim rules will provide guidance with respect to the WHCRA provisions.

Timetable:

Action	Date	FR Cite
Request for Information (RFI)	05/28/99	64 FR 29186
RFI Comment Period End	06/28/99	
Interim Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Elena Hornsby, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room C5331, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-8335

RIN: 1210–AA75

1584. PROHIBITING DISCRIMINATION AGAINST PARTICIPANTS AND BENEFICIARIES BASED ON HEALTH STATUS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1027; 52 FR 13139, April 21, 1987; 29 USC 1059; 29 USC 1135; 29 USC 1171; 29 USC 1167; 29 USC 1194; PL 104-191 sec 101; 29 USC 1181, 101 Stat 1936; Secretary of Labor's Order No. 1-37

CFR Citation: 29 CFR 2590.702

Legal Deadline: None

Abstract: Section 702 of the Employee Retirement Income Security Act of 1974, amended by the Health Insurance Portability and Accountability Act of 1996 (HIPAA), establishes that a group health plan or a health insurance issuer may not establish rules for eligibility (including continued eligibility) of any individual to enroll under the terms of the plan based on any health status-related factor. These provisions are also contained in the Internal Revenue Code under the jurisdiction of the Department of the Treasury, and the Public Health Service Act under the jurisdiction of the Department of Health and Human Services.

On April 8, 1997, the Department, in conjunction with the Departments of the Treasury and Health and Human Services (collectively, the Departments) published interim final regulations implementing the nondiscrimination provisions of HIPAA. These regulations can be found at 26 CFR 54.9802-1 (Treasury), 29 CFR 2590.702 (Labor), and 45 146.121 (HHS). That notice of rulemaking also solicited comments on the nondiscrimination provisions and indicated that the Departments intend to issue further regulations on the nondiscrimination rules. This rulemaking contains additional regulatory interim guidance under HIPAA's nondiscrimination provisions. In addition, the rulemaking contains proposed guidance on bona fide wellness programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/08/97	62 FR 16894
Interim Final Rule Comment Period End	07/07/97	
NPRM: Wellness	01/08/01	66 FR 1421
Second Interim Final Rule	01/08/01	66 FR 1378
NPRM Comment Period End	04/09/01	
Interim Final Rule Comment Period End	04/09/01	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: This item has been split off from RIN 1210-AA54 in order to provide focused guidance on section 702 of ERISA, which prohibits discrimination against participants and beneficiaries by group health plans and health insurance issuers based on health status.

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RIN: 1210–AA77

Department of Labor (DOL)
Pension and Welfare Benefits Administration (PWBA)

Completed Actions

1585. CIVIL PENALTIES UNDER ERISA SECTION 502(1)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 1132

CFR Citation: 29 CFR 2570.80 (Procedural); 29 CFR 2560.502(l)-1 (Substantive)

Legal Deadline: None

Abstract: Section 502(l) of ERISA requires the Secretary of Labor to assess a civil penalty against a fiduciary who breaches a fiduciary duty under, or commits a violation of, part 4 of title I of ERISA, or any other person who knowingly participates in such breach or violation. The Department has published an interim rule setting forth the procedures for the assessment of penalties under ERISA section 502(l) and for petitioning the Secretary to exercise his or her discretion to waive or reduce the mandated assessment, as well as a proposed rule that defines the following pivotal terms contained in section 502(l): "applicable recovery amount," "breach of fiduciary responsibility or violation," "settlement agreement," and "court order."

Timetable:

Action	Date	FR Cite
NPRM	06/20/90	55 FR 25284
Interim Final Rule	06/20/90	55 FR 25284
NPRM Comment Period End	08/20/90	
Withdrawn	03/04/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: This item is being withdrawn from PWBA's regulatory agenda due to competing priorities.

Agency Contact: Vicki Shteir-Dunn, Staff Attorney, Plan Benefits Security Division, Department of Labor, Pension and Welfare Benefits Administration, Room N4638, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-5600

RIN: 1210–AA37

1586. ELIMINATION OF FILING REQUIREMENTS FOR SUMMARY PLAN DESCRIPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1024; 29 USC 1135; PL 105-34, sec 1503

CFR Citation: 29 CFR 2520.104a-2; 29 CFR 2520.104a-3; 29 CFR 2520.104a-4; 29 CFR 2520.104a-7

Legal Deadline: None

Abstract: This rulemaking removed from the CFR certain regulations that have been superseded by amendments to title I of ERISA effected by the Taxpayer Relief Act of 1997 (PL 105-34) that eliminate the requirement for plan administrators to file summary plan descriptions (SPDs), summaries of material modifications (SMMs), and updated SPDs with the Department of Labor. Under the amendments plan administrators must continue to furnish participants and beneficiaries with copies of these documents. Separate rulemakings (RINs 1210-AA67 and 1210-AA68) implement the Taxpayer Relief Act amendments that require plan administrators to furnish copies of SPDs and any other documents relating to the plan to the Department on request, and authorize the Secretary of Labor to assess a civil penalty for failure to do so.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42792
NPRM Comment Period End	10/04/99	
Final Action	01/07/02	67 FR 772

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa M. Fields, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5625, 200 Constitution Avenue NW., FP Building, Washington, DC 20210
Phone: 202 693-8500

RIN: 1210–AA66

1587. REQUIREMENT TO FURNISH PLAN DOCUMENTS UPON REQUEST BY THE SECRETARY OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1024; 29 USC 1135; PL 105-34, sec 1503

CFR Citation: 29 CFR 2520.104a-8

Legal Deadline: None

Abstract: This rulemaking implements an amendment to title I of ERISA made by section 1503 of the Taxpayer Relief Act of 1997 (PL 105-34) which requires plan administrators to furnish copies of any documents relating to the plan to the Department on request.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42797
NPRM Comment Period End	10/04/99	
Final Action	01/07/02	67 FR 777

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 1210–AA67

1588. CIVIL PENALTY FOR FAILURE TO FURNISH CERTAIN PLAN DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-34, sec 1503; 29 USC 1135; 29 USC 1132

CFR Citation: 29 CFR 2560; 29 CFR 2570

Legal Deadline: None

Abstract: This rulemaking implements the enforcement aspects of amendments to title I of ERISA made by section 1503 of the Taxpayer Relief Act of 1997 (Public Law 105-34) which, while eliminating the requirement that plan administrators file summary plan descriptions (SPDs), summaries of material modifications (SMMs) and updated SPDs with the Department of Labor, also provided that administrators must furnish copies of any documents relating to the plan, including but not limited to SPDs, to the Department on request. In particular, this rulemaking implements the amendments that authorize the Secretary of Labor to assess a civil penalty of up to $100 a day, up to a maximum of $1,000 per request, against a plan administrator who fails to furnish the requested documents on a timely basis.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42797
NPRM Comment Period End	10/04/99	
Final Action	01/07/02	67 FR 777

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 1210–AA68

1589. ELECTRONIC DISCLOSURE OF EMPLOYEE BENEFIT PLAN INFORMATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 1024; 29 USC 1135; PL 105-34, Taxpayer Relief Act; Secretary of Labor's Order No. 1-87, April 21, 1987

CFR Citation: 29 CFR 2520.104b

Legal Deadline: NPRM, Statutory, December 31, 1998.

Abstract: This rulemaking will improve the ability of sponsors and administrators of all employee benefit plans covered by title I of ERISA to make certain disclosures of plan information to participants and beneficiaries through electronic means. The rule will provide guidance with respect to the conditions under which electronic disclosures will be deemed to satisfy the disclosure requirements under title I of ERISA. The rule also will establish recordkeeping standards

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for maintaining or storing data in electronic form.

Timetable:

Action	Date	FR Cite
NPRM	01/28/99	64 FR 4506
NPRM Comment Period End	03/29/99	
Final Action	04/09/02	67 FR 17264
Final Action Effective	10/09/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 1210–AA71

1590. VOLUNTARY FIDUCIARY CORRECTION PROGRAM (VFC PROGRAM)

Priority: Other Significant

Legal Authority: 29 USC 1132; 29 USC 1134

CFR Citation: 29 CFR 2560

Legal Deadline: None

Abstract: Section 409 of ERISA provides that an employee benefit plan fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon him or her by part 4 of title I of ERISA shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits that such fiduciary may have made through use of assets of the plan. The Department has the authority under section 504 of ERISA to conduct investigations to deter and correct violations of title I of ERISA and under section 502(a)(2) and 502(a)(5) to bring civil actions to enforce the provisions thereof. Section 502(l) of ERISA requires the assessment of a civil penalty in an amount equal to 20 percent of the applicable recovery amount with respect to any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary.

To encourage and facilitate voluntary correction of certain breaches of fiduciary responsibility, PWBA is adopting a Voluntary Fiduciary Correction Program (VFC Program). Under the VFC Program, plan officials will be relieved of the possibility of investigation and civil action by the Department and imposition of civil penalties, to the extent that plan officials satisfy the conditions for correcting breaches described in the program.

Statement of Need: The VFC Program is a key element in PWBA's effort to encourage and facilitate fiduciary voluntary correction of certain breaches of fiduciary responsibility. Under the Program, plan officials will be relieved of the possibility of investigation and civil action by the Department and imposition of civil penalties, to the extent that they satisfy the conditions for correcting breaches described in the Program.

Summary of Legal Basis: Section 409 of ERISA provides that an employee benefit plan fiduciary who breaches any of the responsibilities, obligations, or duties imposed upon him or her by part 4 of title I of ERISA shall be personally liable to make good to such plan any losses to the plan resulting from each such breach, and to restore to such plan any profits that such fiduciary may have made through use of the assets of the plan. The Department has the authority under section 504 of ERISA to conduct investigations to deter and correct violations of title I of ERISA and under sections 502(a)(2) and 502(a)(5) of ERISA to bring civil actions to enforce the provisions thereof. Section 502(1) of ERISA requires the assessment of a civil penalty in the amount equal to 20 percent of the applicable recovery amount with respect to any breach of fiduciary responsibility under (or other violation of) part 4 by a fiduciary.

Alternatives: The VFC Program is essentially a deregulatory initiative, and participation in the Program is entirely voluntary. PWBA has determined that this approach is more flexible, efficient and protective of plans than regulatory alternatives which do not serve to encourage voluntary correction of fiduciary breaches.

Anticipated Cost and Benefits: Participation in the VFC Program is entirely voluntary and, as such, it is assumed that plan officials will elect to participate only when the potential benefits to them are expected to exceed the costs of participation. Benefits may include the reduction of exposure to the risk of investigation and subsequent litigation, the potential cost of which cannot be specifically quantified, and the savings of penalties under section 502(1) of ERISA which would otherwise be payable on amounts required to be restored to plans by fiduciaries pursuant to a settlement agreement with the Department or court order.

Risks: Failure to adopt the VFC Program would deprive plan officials of significant opportunities to voluntarily correct fiduciary breaches and to avoid costly litigation and civil penalties. Because the VFC Program encourages and facilitates compliance with the law, failure to implement the VFC Program may serve as a disincentive to the proper management of employee benefit plans.

Timetable:

Action	Date	FR Cite
Enforcement Policy	03/15/00	65 FR 14164
Comment Period End	05/15/00	
Final Action	03/28/02	67 FR 15062
Final Action Effective	04/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Phone: 202 693-8500

RIN: 1210–AA76

1591. DELINQUENT FILER VOLUNTARY COMPLIANCE PROGRAM (DFVC PROGRAM)

Priority: Other Significant

Legal Authority: 29 USC 1132

CFR Citation: None

Legal Deadline: None

Abstract: Under ERISA section 502(c)(2) the Secretary of Labor is authorized to assess civil penalties of up to $1100 per day against plan administrators who fail or refuse to file complete and timely Form 5500 Series Annual Returns/Reports. The Secretary may waive all or part of the civil penalty upon showing by the plan administrator of reasonable cause for failure to file a timely annual report.

The Department determined that the possible assessment of these civil penalties may deter certain delinquent filers from voluntarily complying with the annual reporting requirements under title I of ERISA and adopted, on April 27, 1995, the Delinquent Filer Voluntary Compliance (DFVC) Program which was published as a Federal Register rule-related notice (60 FR 20874). The DFVC Program permits delinquent plan administrators, who are otherwise subject to the assessment of higher civil penalties under ERISA section 502(c)(2), to pay reduced civil penalties for voluntarily complying with their annual reporting obligations under title I of ERISA.

PWBA has adopted modifications to the DFVC Program to further encourage and facilitate voluntary compliance by plan administrators who are delinquent in filing annual reports under title I of ERISA. The modifications also simplify the procedures governing participation in the DFVC Program and conform the program's provisions to the ERISA Filing Acceptance System (EFAST).

Statement of Need: Title I of ERISA authorizes the Secretary of Labor to assess civil penalties of up to $1100 per day against plan administrators who fail or refuse to file complete and timely Form 5500 Annual Returns/Reports for employee benefit plans. ERISA also authorizes the Secretary to waive all or part of the civil penalty upon a showing of reasonable cause for failure to file a timely report. The DFVC Program, adopted in 1995, permits delinquent plan administrators, who are otherwise subject to the assessment of higher civil penalties, to pay reduced civil penalties for voluntarily complying with their annual reporting obligations under title I of ERISA. The modifications to the DFVC Program provided by this rulemaking will further encourage and facilitate voluntary compliance by plan administrators, simplify the procedures governing participation in the Program, and conform the Program to the ERISA Filing Acceptance System (EFAST).

Summary of Legal Basis: Section 502(c)(2) authorizes the Secretary of Labor to assess the civil penalties described above upon plan administrators who are delinquent in fulfilling their annual reporting requirements with respect to employee benefit plans. A notice adopting the DFVC Program was published by the Department in the Federal Register on April 27, 1995, at 60 FR 20874. This notice will modify that Program.

Alternatives: The DFVC Program is essentially a deregulatory initiative, and participation in the program is entirely voluntary. PWBA has determined that this approach is more flexible, efficient and protective of plans than regulatory alternatives which do not serve to encourage voluntary compliance with the statutory annual reporting requirements for employee benefit plans.

Anticipated Cost and Benefits: Adoption of the DFVC Program modifications incorporated in this initiative will not impose increased costs upon participants, but will instead simplify the procedures for participation in the Program and facilitate compliance. Since participation in the Program is entirely voluntary, plan administrators would not be likely to participate if the costs in doing so were to exceed the benefits.

Risks: Failure to adopt the modifications to the DFVC Program represented by this rulemaking would complicate compliance with ERISA's reporting requirements by plan administrators and may serve to discourage timely and complete reporting with regard to the operation of employee benefit plans.

Timetable:

Action	Date	FR Cite
Modified Enforcement Policy	03/28/02	67 FR 15052
Policy Effective	03/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eric A. Raps, Pension Law Specialist, Department of Labor, Pension and Welfare Benefits Administration, Room N5669, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1210–AA86

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Prerule Stage

1592. OCCUPATIONAL EXPOSURE TO COAL MINE DUST (LOWERING CONCENTRATION LIMIT)

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 70; 30 CFR 71; 30 CFR 90

Legal Deadline: None

Abstract: MSHA is considering rulemaking to lower the respirable coal mine dust concentration limit because miners continue to be at risk of developing dust-induced occupational lung disease.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marvin W. Nichols Jr., Director, Office of Standards, Department of Labor, Mine Safety and Health Administration, Room 631, 4015 Wilson Boulevard, Arlington, VA 22203
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RIN: 1219–AB08

1593. ASBESTOS EXPOSURE LIMIT

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 71

Legal Deadline: None

Abstract: MSHA's permissible exposure limit (PEL) for asbestos applies to surface (30 CFR part 56) and underground (30 CFR part 57) metal and nonmetal mines and to surface coal mines and surface areas of underground coal mines (30 CFR part 71) and is over 20 years old. Current scientific data indicate that this existing PEL is not

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DOL—MSHA **Prerule Stage**

adequate to protect miners' health. MSHA is considering rulemaking to lower the PEL in order to reduce the risk of miners developing asbestos-induced occupational disease. A recent report by the Office of the Inspector General (OIG) recommended that MSHA lower its existing permissible exposure limit for asbestos to a more protective level, and address take-home contamination from asbestos. It also recommended that MSHA use Transmission Electron Microscopy to analyze fiber samples that may contain asbestos.

Statement of Need: Current scientific data indicate that the existing asbestos PEL is not protective of miners' health. MSHA's asbestos regulations date to 1967 and are based on the Bureau of Mines (MSHA's predecessor) standard of 5 mppcf (million particles per cubic foot of air). In 1969, the Bureau proposed a 2 mppcf and 12 fibers/ml standard. This standard was promulgated in 1969. In 1970, the Bureau proposed to lower the standard to 5 fibers/ml, which was promulgated in 1974. MSHA issued its current standard of 2 fibers/ml at the end of 1978 for metal and nonmetal mining [43 FR 54064]. Since enactment of the Mine Act, MSHA has conducted regular inspections at both surface and underground operations at metal and nonmetal mines. During these inspections, MSHA routinely takes samples, which are analyzed for compliance with its standard.

Other Federal agencies have addressed this issue by lowering their PEL for asbestos. For example, the Occupational Safety and Health Administration, working in conjunction with the Environmental Protection Agency, enacted a revised asbestos standard in 1994 that lowered the permissible exposure limit and the excursion limit to an eight (8) hour time-weighted average limit of 0.1 fiber per cubic centimeter of air and to 1.0 fiber per cubic centimeter of air (1 f/cc) as averaged over a sampling period of thirty (30) minutes. These lowered limits reflected increased asbestos-related disease risk to asbestos-exposed workers.

Alternatives: The Agency has increased sampling efforts in an attempt to determine current miners' exposure levels to asbestos, including taking samples at all existing vermiculite, taconite, talc, and other mines to determine whether asbestos is present and at what levels. Since the spring of 2000, MSHA has taken almost 900 samples at more than 40 operations employing more than 4,000 miners. During those sampling events, the MSHA staff also discussed with the miners and mine operators the potential hazards of asbestos and the types of preventive measures that could be implemented to reduce exposures. The course of action MSHA takes in addressing asbestos hazards to miners will, in part, be based on these sampling results.

Anticipated Cost and Benefits: MSHA will develop a preliminary economic analysis to accompany any proposed rule that may be developed.

Risks: There is concern that miners could be exposed to the hazards of asbestos during mine operations where the ore body contains asbestos. There is also potential for exposure at facilities in which installed asbestos-containing material is present. Overexposure to asbestos causes mesothelioma and other forms of cancers, such as cancers of the digestive system, as well as asbestosis.

Timetable:

Action	Date	FR Cite
ANPRM	03/29/02	67 FR 15134
Notice of Public Meetings; Notice of Close of Record	03/29/02	
Notice of Change to Public Meetings	04/18/02	67 FR 19140
ANPRM Comment Period End	06/27/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The Office of the Inspector General's "Evaluation of MSHA's Handling of Inspections at the W.R. Grace & Company Mine in Libby, Montana," was issued in March 2001.

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RIN: 1219–AB24

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA) **Proposed Rule Stage**

1594. BELT ENTRY USE AS INTAKE AIRCOURSE TO VENTILATE WORKING SECTIONS

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 957; 30 USC 961

CFR Citation: 30 CFR 75; 30 CFR 12; 30 CFR 48

Legal Deadline: None

Abstract: Currently, mine operators must apply to MSHA for a modification of the existing regulations if they want to use belt entries for ventilation purposes. MSHA's current regulations prohibit belt entries from being used to ventilate areas where coal is being mined. The intent was to prevent smoke from a conveyor belt fire from traveling to a miner's workplace. Improved technology, including sophisticated monitoring devices, such as atmospheric monitoring systems (AMS), makes it possible to use belt entries safely to ventilate these areas in mines, provided certain conditions are met. An AMS is a network consisting of hardware and software capable of measuring atmospheric parameters, such as carbon monoxide and oxygen concentrations; transmitting these measurements to the surface; providing local and remote alarms; manipulating and cataloging atmospheric data; and providing reports.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

DOL—MSHA **Proposed Rule Stage**

Additional Information: In 1985 MSHA published a "pre-proposal" that included a belt air provision as part of the revisions to the ventilation regulations. In 1988, MSHA published a proposed rule that would have allowed belt air to ventilate the area where coal is being mined. Also in 1988, MSHA held six hearings to receive public comment on the proposed rule. Several thousand miners attended the hearings to voice their opposition to the belt air provision. As a result, in 1989 MSHA formed the Belt Air Ventilation Review Committee to review the use of belt air. The Committee concluded that the use of belt air could be allowed, provided environmental sensors are used to detect belt fires. Another hearing took place in 1990 to solicit further comment on the use of belt air. In 1991, the Secretary of Labor formed a Federal Advisory Committee on the use of belt air. MSHA published final ventilation rules in 1992 that omitted the use of belt air, deferring further action until the Advisory Committee recommendations were completed. In December 1992, the Advisory Committee published a report that concluded that belt air can be used to safely ventilate areas where coal is being mined, provided certain conditions are met.

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RIN: 1219–AA76

1595. INDEPENDENT LABORATORY TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957

CFR Citation: 30 CFR 6; 30 CFR 29; 30 CFR 33; 30 CFR 35; 30 CFR 18; 30 CFR 19; 30 CFR 20; 30 CFR 7; 30 CFR 22; 30 CFR 23; 30 CFR 27; 30 CFR 28; 30 CFR 36

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and streamline requirements. Our current regulations set out approval requirements for MSHA testing and evaluation for approval of certain products used in gassy underground mines. The rule as proposed would allow us to accept testing and evaluation of certain mine equipment by independent laboratories; and approve products which satisfy alternative testing and evaluation requirements if those requirements are equivalent to ours, or could be enhanced to be equivalent. We are considering reproposing the rule to assure that the proposed changes are appropriate.

Timetable:

Action	Date	FR Cite
NPRM	11/30/94	59 FR 61376
NPRM Comment Period Extended to 2/21/1995	02/13/95	60 FR 8209
Public Hearing Notice	10/10/95	60 FR 52640
Notice to Reschedule Public Hearing to 4/30/1996	02/09/96	61 FR 15743
Comment Period End	05/31/96	
Second NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 1219–AA87

1596. IMPROVING AND ELIMINATING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 1 to 199

Legal Deadline: None

Abstract: This rulemaking will revise text in the CFR to reduce burden or duplication, and to streamline requirements. We have reviewed our current regulations and identified provisions that are outdated, redundant, unnecessary or otherwise require change. We will be making these changes through notice and comment rulemaking where necessary. We will also consider new regulations that reflect "best practices" in the mining industry. We view this effort to be evolving and ongoing and will continue to accept recommendations from the public.

Timetable:

Action	Date	FR Cite
NPRM - Phase 5 Miscellaneous Technology Improvements (Methane Testing)	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1219–AA98

1597. VERIFICATION OF UNDERGROUND COAL MINE OPERATORS' DUST CONTROL PLANS AND COMPLIANCE SAMPLING FOR RESPIRABLE DUST

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 70; 30 CFR 75; 30 CFR 90

Legal Deadline: None

Abstract: Our current regulations require that all underground coal mine operators develop and follow a mine ventilation plan for each mechanized mining unit that we approve. However, we do not have a requirement that provides for verification of each plan's effectiveness under typical mining conditions. Consequently, plans may be implemented by mine operators that could be inadequate to control respirable dust. The proposed rule provides for MSHA to verify the effectiveness of mine ventilation plans to control respirable dust under typical mining conditions. For longwall mine operators, we proposed to permit the limited use of either approved loose-fitting powered air purifying respirators (PAPRs) or verifiable administrative controls as a supplemental means of compliance if we have determined that further reduction in respirable dust levels cannot be achieved using all feasible engineering controls.

Furthermore, MSHA proposed to assume responsibility for all compliance sampling for respirable dust in underground coal mines as required under 30 CFR parts 70 and 90. However, given significant public comments, MSHA will repropose this rule.

Statement of Need: Respirable coal mine dust levels in this country are significantly lower than they were two decades ago. Despite this progress, there continues to be concern about the respirable coal mine dust sampling program and its effectiveness in maintaining exposure levels in mines at or below the applicable standard. Our regulations require that all underground coal mine operators develop and follow a mine ventilation plan approved by us. The dust control portion of the mine ventilation plan is the key element of an operator's strategy to control respirable dust in the work environment. Although such plans are required to be designed to control respirable dust, there is no current requirement that provides for verification of each proposed plan's effectiveness under typical mining conditions. Consequently, plans may be implemented that may be inadequate to control respirable dust.

Therefore, we proposed to revoke existing operator respirable dust sampling and to implement new regulations that would require each underground coal mine operator to have a verified ventilation plan. MSHA would verify the effectiveness of the mine ventilation plan for each mechanized mining unit in controlling respirable dust under typical mining conditions.

Summary of Legal Basis: Promulgation of these regulations is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives: In developing the proposed rule, we considered alternatives related to typical production levels, the use of appropriate dust control strategies, use of supplemental controls for mining entities other than longwalls, and the level of protection of loose-fitting powered air purifying respirators (PAPRS) in underground coal mines.

Anticipated Cost and Benefits: Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of over-exposures to respirable coal dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments. There would be a cost savings for mine operators when MSHA completely takes over compliance and abatement sampling for respirable dust. We developed cost estimates and made them available for public review.

Risks: Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause black lung and silicosis, which are potentially disabling and can cause death. We are pursuing both regulatory and non-regulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and the reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42122
Notice of Hearings; Close of Record	07/07/00	65 FR 42186
Extension of Comment Period; Close of Record	09/08/00	65 FR 49215
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219-AB18 (Determination of Concentration of Respirable Coal Mine Dust).

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RIN: 1219–AB14

1598. MINE RESCUE TEAMS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 811; 30 USC 825

CFR Citation: 30 CFR 49

Legal Deadline: None

Abstract: We are assessing our current regulations to identify areas where we might increase flexibility and encourage underground mine operators to provide mine rescue and recovery capability at their mines. We hope to increase the number and improve the quality of mine rescue teams available to assist miners in life threatening emergencies.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting	03/12/02	67 FR 11145
Public Meeting	03/28/02	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1219–AB20

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Final Rule Stage

1599. HAZARD COMMUNICATION

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 47

Legal Deadline: None

Abstract: Today's complex mining environment exposes miners to many hazards, such as wastes being burned as fuel supplements at cement kilns and other chemicals brought onto mine property.

On October 3, 2000, MSHA published an interim final Hazard Communication (HazCom) rule and opened a short additional comment period which closed on November 17, 2000.

The purpose of this standard is to reduce chemically related injuries and illnesses among miners by increasing their knowledge and awareness of chemical hazards. It ensures that miners have the same protections that have been available to workers under OSHA's jurisdiction since 1987. MSHA's rule is consistent with OSHA's HazCom rule to the extent appropriate.

The interim final rule would have become effective on October 3, 2001. MSHA reopened the record and held public hearings to provide an additional opportunity for comment on any issue relevant to the rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/30/88	53 FR 10257
ANPRM Comment Period End	07/31/88	
NPRM	11/02/90	55 FR 46400
NPRM Comment Period End	01/31/92	56 FR 48720
Reopen Record	03/30/99	64 FR 15144
NPRM Comment Period End	06/30/99	
Interim Final Rule	10/03/00	65 FR 59048
Interim Final Rule Comment Period End	11/17/00	
Public Hearing and Extension of Comment Period to 12/19/00	12/11/00	65 FR 77292
Delay Effective Date of Interim Final Rule; Reopening of Record; Public Hearings; Close of Record	08/28/01	66 FR 45167
Comment Period End for Reopening of Record	10/17/01	
Interim Final Rule Effective	06/30/02	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 1219–AA47

1600. AIR QUALITY, CHEMICAL SUBSTANCES, AND RESPIRATORY PROTECTION STANDARDS

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 56; 30 CFR 57; 30 CFR 58; 30 CFR 70; 30 CFR 71; 30 CFR 72; 30 CFR 75; 30 CFR 90

Legal Deadline: None

Abstract: Our current regulations for exposure to hazardous airborne contaminants are over 25 years old. They do not fully protect today's miners, who are potentially exposed to an array of toxic chemicals, and other hazards. Examples of these include lead, cyanide, arsenic benzene, asbestos and other well documented hazards. MSHA plans to withdraw this item.

Timetable:

Action	Date	FR Cite
Notice of Availability of Preproposal Draft	07/06/83	48 FR 31171
ANPRM	11/19/85	50 FR 47702
NPRM	08/29/89	54 FR 35760
NPRM Comment Period Extended to 3/2/1990	10/19/89	54 FR 43026
NPRM Comment Period End	08/30/91	56 FR 29201
Final Rule: Abrasive Blasting and Drill Dust Control	02/18/94	59 FR 8318
Withdrawal Notice	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1219–AA48

1601. REQUIREMENTS FOR APPROVAL OF FLAME-RESISTANT CONVEYOR BELTS

Priority: Substantive, Nonsignificant

Legal Authority: 30 USC 957; 30 USC 811

CFR Citation: 30 CFR 14; 30 CFR 18; 30 CFR 75

Legal Deadline: None

Abstract: Our current regulations require conveyor belts used in underground coal mines to be flame-resistant. The rule, as proposed, would set new procedures and requirements for testing and approval of these belts to evaluate their resistance to fire ignition and propagation. The proposal would also require purchase of the improved belts after one year. MSHA plans to withdraw this item.

Timetable:

Action	Date	FR Cite
NPRM	12/24/92	57 FR 61524
Extension of Comment Period to 3/26/93	02/11/93	58 FR 8028
Reopen Record and Notice of Public Hearing	03/31/95	60 FR 16589
Record Closed	06/05/95	60 FR 16558
Record Reopened	10/31/95	60 FR 55353
Extension of Comment Period to 2/5/1996	12/20/95	60 FR 65509
Record Reopened	12/28/99	64 FR 72617
Withdrawal Notice	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 1219–AA92

1602. DETERMINATION OF CONCENTRATION OF RESPIRABLE COAL MINE DUST

Priority: Other Significant

Legal Authority: 30 USC 811

CFR Citation: 30 CFR 72

Legal Deadline: None

Abstract: The National Institute for Occupational Safety and Health and the

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Mine Safety and Health Administration jointly proposed that a single, full-shift measurement ("single, full-shift sample") will accurately represent the atmospheric condition to which a miner is exposed. The proposed rule addresses the U.S. Court of Appeals' concerns raised in National Mining Association v. Secretary of Labor, 153 F3d 1264 (11th Cir. 1998).

Statement of Need: Respirable coal mine dust levels in this country are significantly lower than they were over two decades ago. Despite this progress, there continues to be concern about our current sampling programs' ability to accurately measure and maintain respirable coal mine dust exposure at or below the applicable standard on each shift. For as long as miners have taken coal from the ground, many have suffered respiratory problems due to their occupational exposures to respirable coal mine dust. These respiratory problems affect the current workforce and range from mild impairment of respiratory function to more severe diseases, such as silicosis and pulmonary massive fibrosis. For some miners, the impairment of their respiratory systems is so severe, they die prematurely. Since there is a clear relationship between a miner's cumulative exposure to respirable coal mine dust and the severity of the resulting respiratory conditions, it is imperative that each miner's exposure not exceed the applicable standard on each and every shift.

Summary of Legal Basis: Promulgation of this regulation is authorized by section 101 of the Federal Mine Safety and Health Act of 1977.

Alternatives: The requirements of this rule ("single full-shift sample rule") will work in tandem with those of the proposed rule (RIN 1219-AB14) in which MSHA proposed to verify the effectiveness of ventilation plans as well as conduct all compliance sampling in underground coal mines. However, given significant public comments, MSHA will repropose RIN 1219-AB14 - Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust.

Anticipated Cost and Benefits: Benefits sought are reduced dust levels over a miner's working lifetime by the elimination of over-exposures to respirable coal dust on each and every production shift. Additional benefits include reduced health care costs and disability and black lung benefit payments.

Risks: Respirable coal mine dust is one of the most serious occupational hazards in the mining industry. Occupational exposure to excessive levels of respirable coal mine dust can cause workers' pneumoconiosis and silicosis, which are potentially disabling and can cause death. We are pursuing both regulatory and nonregulatory actions to eliminate these diseases through the control of coal mine respirable dust levels in mines and reduction of miners' exposure.

Timetable:

Action	Date	FR Cite
NPRM	07/07/00	65 FR 42068
Notice of Hearings; Close of Record	07/07/00	65 FR 42185
Extension of Comment Period; Close of Record	09/08/00	65 FR 49215
Reopen Record for Comments	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN 1219-AB14 (Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust).

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RIN: 1219–AB18

Department of Labor (DOL)
Mine Safety and Health Administration (MSHA)

Completed Actions

1603. ELECTRIC MOTOR-DRIVEN MINE EQUIPMENT AND ACCESSORIES AND HIGH-VOLTAGE LONGWALL EQUIPMENT STANDARDS FOR UNDERGROUND COAL MINES

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 957

CFR Citation: 30 CFR 18; 30 CFR 75

Legal Deadline: None

Abstract: Our current regulations require that high-voltage cables and transformers be kept at least 150 feet from coal extraction areas. These requirements are intended to eliminate an ignition source for methane and coal dust in close proximity to the work area. Highly productive longwall mining systems are now in widespread use in the mining industry. They use safe high-voltage electrical equipment and associated cables. Mine operators, however, currently must apply to us for a modification from the existing regulations if they want to use this high-voltage equipment. The final rule eliminates the need for a modification to use this equipment and establishes safety requirements for the design, construction, installation, use, and maintenance of high-voltage longwall equipment and associated cables.

Timetable:

Action	Date	FR Cite
NPRM	08/27/92	57 FR 39036
Extension of Comment Period to 11/13/1992	10/23/92	57 FR 48350
Reopen Record	10/18/95	60 FR 53891
Extension of Comment Period	11/14/95	60 FR 57203
Comment Period End	12/18/95	
Reopen Record	12/28/99	64 FR 72620
Comment Period End	02/28/00	
Final Rule	03/11/02	67 FR 10971
Final Rule Effective	05/10/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The first high-voltage longwall system started operating in 1985. Since that time we have issued approximately 130 system design approvals for high-voltage longwall equipment. Over the last 16 years, no electrical-type fatalities or serious injuries occurred to miners because of high-voltage equipment used in accordance with over 100 granted high-voltage petitions for modification (petitions). Because of this new improved high-voltage technology, the designed safety benefits and the observed use experience, MSHA is revising its existing 30 CFR part 18 electric motor-driven mine equipment and accessories approval requirements and part 75 safety standards by adding specific design and safety requirements for high-voltage longwall equipment in underground coal mines.

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RIN: 1219–AA75

1604. DIESEL PARTICULATE EXPOSURE OF UNDERGROUND METAL AND NONMETAL MINERS

Priority: Other Significant

Legal Authority: 30 USC 811; 30 USC 813

CFR Citation: 30 CFR 57

Legal Deadline: None

Abstract: This final rule addresses two provisions of the Mine Safety and Health Administration's final rule pertaining to "Diesel Particulate Matter Exposure of Underground Metal and Nonmetal Miners," published in the Federal Register on January 19, 2001 (66 FR 5706, RIN 1219-AB11). The final rule was scheduled to become effective on March 20, 2001, but MSHA delayed the effective date of the rule until May 21, 2001 in accordance with a January 20, 2001 memorandum from the President's Chief of Staff. On May 21, 2001, MSHA delayed the effective date of the final rule until July 5, 2001. The final rule was challenged by mining industry trade associations, several mining companies and the United Steelworkers of America. On July 5, 2001, MSHA published a proposed rule addressing two provisions: section 57.5066(b) (regarding the tagging provision of the maintenance standard) and section 57.5067(b) (regarding the definition of "introduced" in the engine standard). The proposal gave notice of MSHA's intent to revise these two provisions and requested comments from the mining community. The Agency also held a public hearing to receive further input from the public. The final rule is identical to the proposed rule and with the comprehensive January 19, 2001 final rule (66 FR 5706). The requirements of the final rule will work in tandem with the provisions that were effective on July 5, 2001 (66 FR 35518).

Timetable:

Action	Date	FR Cite
NPRM	07/05/01	66 FR 35521
NPRM Comment Period End	08/06/01	
Public Hearing	08/16/01	
Post-hearing Comment Period End and Close of Record	08/20/01	66 FR 35521
Final Action	02/27/02	67 FR 9180
Final Action Effective	03/29/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking is related to RIN: 1219-AB11, which was effective on July 5, 2001 (66 FR 35518), and to the comprehensive final rule 1219-AB11 published on January 19, 2001 (66 FR 5706).

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RIN: 1219–AB28

Department of Labor (DOL)
Office of the Assistant Secretary for Administration and Management (OASAM)

Proposed Rule Stage

1605. NONDISCRIMINATION ON THE BASIS OF AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE FROM THE DEPARTMENT OF LABOR

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq, Age Discrimination Act of 1975

CFR Citation: 29 CFR 35

Legal Deadline: NPRM, Statutory, September 10, 1979, Deadline requires publication of the NPRM within 90 days of publication and submission to HHS of final rule within 120 days of NPRM.

Abstract: The proposed regulatory action implements the Age Discrimination Act of 1975 (the Act). The Act prohibits discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Act also contains specific exceptions that permit the use of certain age distinctions and factors other than age that meet the Age Act's requirements. This NPRM is a republication of an NPRM published on December 29, 1998, with updates to reflect the passage of the Workforce Investment Act of 1998 and to add the term "program or activity" as it is defined in the Civil Rights Restoration Act of 1987. These changes do not alter the substance of the NPRM.

Timetable:

Action	Date	FR Cite
NPRM	12/29/98	63 FR 71714
NPRM Comment Period End	03/01/99	
Second NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

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RIN: 1291–AA21

Department of Labor (DOL) — Final Rule Stage
Office of the Assistant Secretary for Administration and Management (OASAM)

1606. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7501 Single Audit Act Amendments of 1996; OMB Circular A-110; OMB Circular A-133

CFR Citation: 29 CFR 99

Legal Deadline: None

Abstract: This action adds a new title 29 CFR 99 "Audits of States, Local Governments, and Non-Profit Organizations" as a new regulation which codifies the revised Office of Management and Budget (OMB) Circular A-133 in its entirety. The Single Audit Act Amendments of 1996 (Public Law 104-156, 110 Stat. 136) and the June 24, 1997, revision of OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," required agencies to adopt in codified regulations the standards in the revised OMB Circular A-133 by August 29, 1997, so that they will apply to audits of fiscal years beginning after June 30, 1996. The revised OMB Circular A-133 co-located audit requirements for States, local governments, and nonprofit organizations. As a consequence, the OMB rescinded OMB Circular A-128, "Audits of States and Local Governments." On August 29, 1997, the Department of Labor amended its grants common rules at 29 CFR 95 and 29 CFR 97 in accordance with OMB guidance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/25/99	64 FR 14537
Interim Final Rule Effective	03/25/99	
Interim Final Rule Comment Period End	05/24/99	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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RIN: 1291–AA26

1607. AUDIT REQUIREMENTS FOR GRANTS, CONTRACTS, AND OTHER AGREEMENTS

Priority: Info./Admin./Other

Legal Authority: 31 USC 7500 et seq; OMB Circular A-133

CFR Citation: 29 CFR 96

Legal Deadline: None

Abstract: This interim final rule revises title 29 of the Code of Federal Regulations (CFR) part 96 "Audit Requirements for Grants, Contracts, and Other Agreements" to consolidate various provisions and ensure consistency, continuity, and ameliorate conflicts with subtitle A of 29 CFR parts 95 and 97.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/25/99	64 FR 14537
Interim Final Rule Effective	03/25/99	
Interim Final Rule Comment Period End	05/24/99	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Additional Information: The interim final rule is in effect. The final rule is expected the first quarter of fiscal year 2002.

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RIN: 1291–AA27

1608. IMPLEMENTATION OF THE NONDISCRIMINATION AND EQUAL OPPORTUNITY REQUIREMENTS OF THE WORKFORCE INVESTMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 2938 Workforce Investment Act

CFR Citation: 29 CFR 37

Legal Deadline: Final, Statutory, August 7, 1999.

Abstract: The Workforce Investment Act of 1998 (WIA) was signed into law by President Clinton on August 7, 1998. Section 188 prohibits discrimination by recipients of financial assistance under Title I of WIA on the grounds of race, color, national origin, sex, age, disability, religion, political affiliation or belief, and for beneficiaries only, participant status, and against certain noncitizens. Section 188(e) requires that the Secretary of Labor issue regulations necessary to implement section 188 not later than one year after the date of the enactment of the WIA. Such regulations will include standards for determining compliance and procedures for enforcement that are consistent with the Acts referred to in section 188(a)(1), as well as procedures to ensure that complaints filed under section 188 and such acts are processed in a manner that avoids duplication of effort.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/12/99	64 FR 61692
Interim Final Rule Comment Period End	12/13/99	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

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RIN: 1291–AA29

1609. EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964 AND IMPLEMENTATION OF SECTION 504 OF THE REHABILITATION ACT OF 1973

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000(d); 29 USC 794

CFR Citation: 29 CFR 31; 29 CFR 32

Legal Deadline: None

Abstract: This proposal would incorporate into 29 CFR parts 31 and 32 the term "program or activity" and the definition of that term as it was defined in the Civil Rights Restoration Act of 1987. Part 31 effectuates title VI of the Civil Rights Act of 1964, which prohibits discrimination on the basis of race, color or national origin in programs or activities that receive financial assistance from the Department of Labor. Part 32 implements section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs or activities that receive financial assistance from the Department of Labor.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

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RIN: 1291–AA31

1610. • DEPARTMENT OF LABOR ACQUISITION REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 40 USC 486(C)

CFR Citation: 48 CFR 2900 to 2999

Legal Deadline: None

Abstract: Revisions to the DOLAR reflect changes in the Federal Acquisition Regulation and organizational changes within DOL. The changes to the DOLAR are extensive and reflect the large number of changes made to the Federal Acquisition Regulation since 1986.

Timetable:

Action	Date	FR Cite
Internal Review and Drafting	05/00/02	
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey D. Saylor, Procurement Analyst, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue NW., Room N5425, FP Building
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RIN: 1291–AA34

Department of Labor (DOL) — Long-Term Actions
Office of the Assistant Secretary for Administration and Management (OASAM)

1611. GRANTS AND AGREEMENTS

Priority: Other Significant

Legal Authority: PL 105-277

CFR Citation: 29 CFR 95

Legal Deadline: None

Abstract: The Department is joining with other Federal agencies to establish revised regulations for Grants. Congress included a two-sentence provision in OMB's appropriation for fiscal year 1999, contained in Public Law 105-277, directing OMB to revise section 95.36 of Circular A-110 "to require Federal awarding agencies to ensure that all data produced under an award will be made available to public through the procedures established under the Freedom of Information Act." Circular A-110 applies to grants and cooperative agreements with institutions of higher education, hospitals, and nonprofit institutions, from all Federal agencies. OMB finalized the revision on September 30, 1999 (64 FR 54926). This interim final rule amends the agencies' codification of Circular A-110 so they reflect OMB's recent action.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14405
Interim Final Rule Effective	04/17/00	
Interim Final Rule Comment Period End	05/15/00	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HHS is the lead agency and will coordinate the next action with OMB.

Agency Contact: Phyllis McMeekin, Director, Office of the Acquisition Advocate, Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N5425, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1291–AA30

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DOL—OASAM — Long-Term Actions

1612. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) 29 CFR 98

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 40 USC 486(c); 41 USC 701

CFR Citation: 29 CFR 94; 29 CFR 98

Legal Deadline: None

Abstract: This document proposed substantive changes and amendments to the Governmentwide nonprocurement common rule for debarment and suspension and the governmentwide rule implementing the Drug-Free Workplace Act of 1988. The most significant changes are: (1) This proposed common rule on debarment and suspension would limit the mandatory lower tier application of an exclusion to the first procurement level under a nonprocurement covered transaction; (2) This proposed common rule on debarment and suspension would set the dollar threshold on prohibited lower-tier procurement transactions with excluded persons at $25,000; (3) Both this proposed rule on debarment and suspension and the proposed rule on drug-free workplace requirements would eliminate the mandate for agencies and participants to obtain written certifications from awardees or persons with whom they propose to enter into covered transactions. The proposed rules will allow agencies and participants the flexibility to use other means if they so choose, such as award conditions or electronic access to the GSA List on the internet, to enforce compliance with the rules; and (4) The proposed rule on drug-free workplace requirements would be separated from this proposed rule on debarment and suspension. The drug-free workplace requirements currently are in subpart F of the Debarment and Suspension Nonprocurement Common Rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: OMB is waiting for other agencies participating in the common rule to submit their packages.

Agency Contact: Jeffrey D. Saylor, Procurement Analyst, Department of Labor, Office of the Assistant Secretary for Administration and Management, 200 Constitution Avenue NW., Room N5425, FP Building
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RIN: 1291–AA33

Department of Labor (DOL) — Completed Actions
Office of the Assistant Secretary for Administration and Management (OASAM)

1613. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794 Rehabilitation Act of 1973, as amended

CFR Citation: 29 CFR 32

Legal Deadline: None

Abstract: This item is being withdrawn from this agenda but will appear in the fall 2002 agenda.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Annabelle T. Lockhart, Director, Civil Rights Center, Department of Labor, Office of the Assistant Secretary for Administration and Management, Room N4123, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1291–AA28

Department of Labor (DOL) — Prerule Stage
Occupational Safety and Health Administration (OSHA)

1614. OCCUPATIONAL EXPOSURE TO HEXAVALENT CHROMIUM (PREVENTING OCCUPATIONAL ILLNESS: CHROMIUM)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: In July 1993, the Occupational Safety and Health Administration (OSHA) was petitioned for an emergency temporary standard (ETS) to reduce the permissible exposure limit (PEL) for occupational exposures to hexavalent chromium. The Oil, Chemical, and Atomic Workers International Union (OCAW) and Public Citizen's Health Research Group (HRG) petitioned OSHA to promulgate an ETS to lower the PEL for hexavalent chromium (CrVI) compounds to 0.5 micrograms per cubic meter of air (ug/m3) as an eight-hour, time-weighted average (TWA). This would represent a significant reduction in the current PEL. The current PEL in general industry is found in 29 CFR 1910.1000 Table Z and is a ceiling value of 100 ug/m3, measured as chromium (VI) and reported as chromic anhydride (CrO3). The amount of chromium (VI) in the anhydride compound equates to a PEL of 52 ug/m3. This ceiling limit applies to all forms of hexavalent chromium (VI), including chromic acid and chromates, lead chromate, and zinc chromate. The current PEL for hexavalent chromium (VI) in the construction industry is 100 ug/m3 as a TWA PEL, which also equates to a PEL of 52 ug/m3. After reviewing the petition, OSHA denied the request for an ETS and initiated a section 6(b)(5) rulemaking.

The major illnesses associated with occupational exposure to hexavalent chromium are lung cancer and dermatoses. OSHA estimates that approximately one million workers are exposed to hexavalent chromium on a regular basis in all industries. The major uses of hexavalent chromium are: as a structural and anti-corrosive element in the production of stainless steel, ferrochromium, iron and steel, and in electroplating, welding and painting.

Timetable:

Action	Date	FR Cite
Request for Information	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB45

1615. CONFINED SPACES IN CONSTRUCTION (PART 1926): PREVENTING SUFFOCATION/EXPLOSIONS IN CONFINED SPACES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.36

Legal Deadline: None

DOL—OSHA — Prerule Stage

Abstract: In January 1993, OSHA issued a general industry rule to protect employees who enter confined spaces (29 CFR 1910.146). This standard does not apply to the construction industry because of differences in the nature of the worksite in the construction industry. In discussions with the United Steel Workers of America on a settlement agreement for the general industry standard, OSHA agreed to issue a proposed rule to extend confined-space protection to construction workers appropriate to their work environment. OSHA intends to issue a proposed rule addressing this construction industry hazard next year.

Timetable:

Action	Date	FR Cite
Initiate Work for a SBREFA Panel	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Russell B. Swanson, Director, Directorate of Construction, Department of Labor, Occupational Safety and Health Administration, Room N3468, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB47

1616. OCCUPATIONAL EXPOSURE TO ETHYLENE OXIDE (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 553; 5 USC 610

CFR Citation: 29 CFR 1910.1047

Legal Deadline: None

Abstract: OSHA has undertaken a review of the ethylene oxide (ETO) standard in accordance with the requirements of the Regulatory Flexibility Act and section 5 of EO 12866. The review has considered the continued need for the rule, the impacts of the rule, comments on the rule received from the public, the complexity of the rule, whether the rule overlaps, duplicates or conflicts with other Federal, State or local regulations, and the degree to which technology, economic conditions or other factors may have changed since the rule was last evaluated. The Agency's findings with respect to this review will be published in a report available to the public in 2002.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/96	
End Review	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John F. Martonik, Director, Office of Program Audits and Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB60

1617. FALL PROTECTION IN THE CONSTRUCTION INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: OSHA issued an ANPRM to gather information on fall protection issues regarding certain construction processes such as residential home building, precast concrete operations and post frame construction. The issues relate to the fall protection rules as they now apply to roofing work, residential construction operations, climbing reinforcement steel and vendors delivering materials to construction projects. These issues have arisen since OSHA revised the fall protection standard in August 1994. OSHA has determined that additional information is needed.

Timetable:

Action	Date	FR Cite
ANPRM	07/14/99	64 FR 38077
ANPRM Comment Period End	01/24/00	
Request for Infomation	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Russell B. Swanson, Director, Directorate of Construction.

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RIN: 1218–AB62

1618. OCCUPATIONAL EXPOSURE TO CRYSTALLINE SILICA

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910; 29 CFR 1926; 29 CFR 1915; 29 CFR 1917; 29 CFR 1918

Legal Deadline: None

Abstract: OSHA is considering a consensus-based rulemaking to address the hazards posed by silica. Silica exposure remains a serious threat to nearly 2 million U.S. workers, including more than 100,000 workers in high risk jobs such as abrasive blasting, foundry work, stonecutting, rock drilling, quarry work and tunneling. The seriousness of the health hazards associated with silica exposure is demonstrated by the fatalities and disabling illnesses that continue to occur in sandblasters and rock drillers and by recent studies that indicate a statistically significant increase in lung cancer among silica-exposed workers. Exposure studies and OSHA enforcement data indicate that some workers are still exposed to very high levels of silica. OSHA plans in this rulemaking to modernize and standardize the Agency's current PELs for silica so that they will be consistent across all sectors.

Timetable:

Action	Date	FR Cite
Initiate SBREFA Process or Initiate Consensus-Based Process	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined.

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-1950

RIN: 1218–AB70

1619. GRAIN HANDLING FACILITIES (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 553; 5 USC 610

CFR Citation: 29 CFR 1910.272

Legal Deadline: None

Abstract: OSHA is undertaking a review of its grain handling standard (29 CFR 1910.272) in accordance with the requirements of section 610 of the Regulatory Flexibility Act and section 5 of EO 12866. The review will cover the continued need for the rule; the nature of complaints or comments received from the public concerning the rule; the complexity of the rule; the extent to which the rule overlaps, duplicates or conflicts with other Federal rules and, to the extent feasible, with State and local rules; and the degree to which technology, economic conditions, or other factors have changed in the industries affected by the rule.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/97	
End Review	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John F. Martonik, Director, Office of Program Audits and Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB73

1620. OCCUPATIONAL EXPOSURE TO BERYLLIUM

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910

Legal Deadline: None

Abstract: OSHA intends to issue a Request for Information and to evaluate the extensive research related to the mechanisms of disease underlying Chronic Beryllium Disease or beryllium sensitization and to identify the best ways of reducing employee exposure to beryllium. OSHA will also be identifying processes, industries, and kind of businesses that involve the use of beryllium. This information is necessary if OSHA is to develop a rule to reduce worker exposure to dust or fumes from beryllium metal, metal oxides, or alloys, all of which may cause serious and sometimes fatal lung disease (chronic beryllium disease (CBD), lung cancer, and skin disease). In 1999 and in 2001, OSHA was petitioned to issue an emergency temporary standard by the Paper, Allied-Industrial, Chemical, and Energy Workers Union (PACE), Public Citizen Health Research group and others. The Agency denied these petitions but stated its intent to work on a standard to be issued under section 6(b)(5) of the Act to protect workers from beryllium-related disease. Before OSHA can do so, however, it needs a substantial amount of information on beryllium's toxicity, risks, and patterns of use. The Request for Information will be designed to obtain this information.

Timetable:

Action	Date	FR Cite
Request for Information	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-1950
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RIN: 1218–AB76

1621. HEARING LOSS PREVENTION IN CONSTRUCTION WORKERS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926.52

Legal Deadline: None

Abstract: OSHA issued a section 6(b)(5) health standard mandating a comprehensive hearing conservation program for noise exposed workers in general industry in 1983. However, a number of recent studies have shown that a large number of construction workers experience work-related hearing loss. In addition, the use of engineering, administrative and personal protective equipment to reduce exposures to noise is low in this industry. OSHA intends to issue an Advance Notice of Proposed Rulemaking (ANPRM) in 2002, and to initiate stakeholder meetings to gather information on the extent of noise-induced hearing loss among workers in different trades in this industry, current practices to reduce this loss, and additional approaches and protections that could be used to prevent such loss in the future.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB89

1622. EXCAVATIONS (SECTION 610 REVIEW)

Priority: Other Significant

Legal Authority: 5 USC 610; 29 USC 651 et seq

CFR Citation: 29 CFR 1926.650 to 1926.652

Legal Deadline: None

Abstract: OSHA will undertake a review of the Agency's trenching and excavations standard (29 CFR 1926.650 to 1926.652) in accordance with the requirements of the Regulatory Flexibility Act and Section 5 of Executive Order 12866. The review will consider the continued need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: John F. Martonik, Director, Office of Program Audits and Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AC02

1623. PRESENCE SENSING DEVICE INITIATION OF MECHANICAL POWER PRESSES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 610; 29 USC 651 et seq

CFR Citation: 29 CFR 1910.217(h), app A,B,C

Legal Deadline: None

Abstract: OSHA will undertake a review of the Agency's Presence Sensing Device Initiation of Mechanical Power Presses rule (29 CFR 1910.217) in accordance with the requirements of the Regulatory Flexibility Act and section 5 of Executive Order 12866. The review will consider among other things, the need for the rule, the impacts of the rule, public comments on the rule, the complexity of the rule, and whether the rule overlaps, duplicates, or conflicts with other regulations.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/01	
Request for Comments	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: John F. Martonik, Director, Office of Program Audits and Evaluation, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AC03

1624. • CONTROLLED NEGATIVE PRESSURE FIT TESTING PROTOCOL: AMENDMENT TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Info./Admin./Other

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134). In the final revised respirator standard, OSHA set up a mechanism for OSHA's acceptance of new fit test protocols under Mandatory Appendix A. Any person may submit to OSHA an application for approval of a new fit test protocol, and if the application meets certain criteria, OSHA will initiate a rulemaking proceeding under 6(b)(7) of the OSH Act to determine whether to list the new protocol as an approved fit test protocol in Appendix A. OSHA has been petitioned to allow the use of a modified Controlled Negative Pressure (CNP) fit test protocol.

Employers, employees, and safety and health professionals use fit testing to select respirators. Currently OSHA relies on fit testing methods specified in Appendix A of the final revised Respiratory Protection standard.

When OSHA published the final Respiratory Protection standard in 1998, it allowed for later rulemaking on new fit test methods. This rulemaking action will allow for the

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incorporation of new fit test methods into 1910.134.

Timetable:

Action	Date	FR Cite
Next Action To Be Determined	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AC05

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Proposed Rule Stage

1625. ASSIGNED PROTECTION FACTORS: AMENDMENTS TO THE FINAL RULE ON RESPIRATORY PROTECTION

Priority: Other Significant

Legal Authority: 29 USC 655(b); 29 USC 657

CFR Citation: 29 CFR 1910.134

Legal Deadline: None

Abstract: In January 1998, OSHA published the final Respiratory Protection standard (29 CFR 1910.134), except for reserved provisions on assigned protection factors (APFs) and maximum use concentrations (MUCs). APFs are numbers that describe the effectiveness of the various classes of respirators in reducing employee exposure to airborne contaminants (including particulates, gases, vapors, biological agents, etc.). Employers, employees, and safety and health professionals use APFs to determine the type of respirator to protect the health of employees in various hazardous environments. Maximum use concentrations establish the maximum airborne concentration of a contaminant in which a respirator with a given APF may be used.

Currently, OSHA relies on the APFs developed by NIOSH in the 1980s unless OSHA has assigned a different APF in a substance-specific health standard. However, many employers follow the more recent APFs published in the industry consensus standard, ANSI Z88.2-1992. For some classes of respirators, the NIOSH and ANSI APFs vary greatly.

When OSHA published the final Respiratory Protection standard in 1998, it reserved for later rulemaking those provisions of the standard dealing with APFs and MUCs. This rulemaking action will complete the 1998 standard, reduce compliance confusion among employers, and provide employees with consistent and appropriate respiratory protection.

Statement of Need: About 5 million employees wear respirators as part of their regular job duties. Due to inconsistencies between the APFs found in the current industry consensus standard (ANSI Z88.2-1992) and in the NIOSH Respirator Decision Logic, employers, employees, and safety and health professionals are often uncertain about what respirator to select to provide protection against hazardous air contaminants. Several industry and professional groups have asked OSHA to proceed with this rulemaking to resolve these inconsistencies and provide reliable protection of employees' health in cases where respirators must be worn.

Summary of Legal Basis: The legal basis for this proposed rule is the determination that assigned protection factors and maximum use concentrations are necessary to complete the final Respiratory Protection standard and provide the full protection of that standard.

Alternatives: OSHA has considered allowing the current situation to continue, in which OSHA generally enforces NIOSH APFs but many employers follow the more recent consensus standard APFs. However, allowing the continuation of this situation results in inconsistent enforcement, lack of guidance for employers, and the potential for inadequate employee protection.

Anticipated Cost and Benefits: The scope of the proposed APF table is still under development, and estimates of the costs and benefits have not yet been developed.

Risks: The preamble to the final Respiratory Protection rule (63 FR 1270, Jan. 8, 1998) discusses the significance of the risks potentially associated with the use of respiratory protection. No independent finding of significant risk will be made for the APF rulemaking, since it only addresses a single provision of the larger rule.

Timetable:

Action	Date	FR Cite
ANPRM	05/14/82	47 FR 20803
ANPRM Comment Period End	09/13/82	
NPRM	11/15/94	59 FR 58884
Final Rule	01/08/98	63 FR 1152
Final Rule Effective	04/08/98	
NPRM on APFs or Initiate SBREFA Process	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-1950

RIN: 1218–AA05

1626. LONGSHORING AND MARINE TERMINALS (PARTS 1917 AND 1918) — REOPENING OF THE RECORD (VERTICAL TANDEM LIFTS (VTLS))

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC 941; 29 USC 655(b)

CFR Citation: 29 CFR 1918.11; 29 CFR 1918.85

Legal Deadline: None

Abstract: OSHA issued a final rule on Longshoring on July 25, 1997 (62 FR 40142). However, in that rule, the Agency reserved provisions related to vertical tandem lifts. Vertical tandem lifts (VTLs) involve the lifting of two or more empty intermodal containers, secured together with twist locks, at the same time. Because some commenters to the record questioned the safety of allowing such tandem lifts and the record did not contain adequate information to allow the Agency to address this issue, OSHA continues to work with national and international organizations and gathering additional information on the safety of VTLs.

Timetable:

Action	Date	FR Cite
NPRM on Longshoring/Marine Terminals	06/06/94	59 FR 28594
NPRM Comment Period End	09/23/94	
Final Rule on Longshoring/Marine Terminals	07/25/97	62 FR 40142
Public Meeting on VTLs - 1/27/1998	10/09/97	62 FR 52671
Reopening of Record	10/00/02	
Second NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
Phone: 202 693-2222
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RIN: 1218–AA56

DOL—OSHA — Proposed Rule Stage

1627. GLYCOL ETHERS: 2-METHOXYETHANOL, 2-ETHOXYETHANOL, AND THEIR ACETATES: PROTECTING REPRODUCTIVE HEALTH

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655; 29 USC 657; 29 USC 651

CFR Citation: 29 CFR 1910.1000; 29 CFR 1910.1031

Legal Deadline: None

Abstract: OSHA published an advance notice of proposed rulemaking (ANPRM) on April 2, 1987 (52 FR 10586). OSHA used the information received in response to the ANPRM, as well as other information and analysis, and published a proposal on March 23, 1993 (58 FR 15526), that would reduce the permissible exposure limits for four glycol ethers and provide protection for approximately 46,000 workers exposed to these substances. OSHA plans to re-open the record to collect updated information before determining what action should be taken.

Timetable:

Action	Date	FR Cite
ANPRM	04/02/87	52 FR 10586
ANPRM Comment Period End	07/31/87	
NPRM	03/23/93	58 FR 15526
NPRM Comment Period End	06/07/93	
Reopen Record	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AA84

1628. INJURY AND ILLNESS PREVENTION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 653; 29 USC 655; 29 USC 657

CFR Citation: 29 CFR 1900.1

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA), many States, members of the safety and health community, insurance companies, professional organizations, companies participating in the Agency's Voluntary Protection Programs, and many proactive employers in all industries recognize the value of worksite-specific injury and illness prevention programs in reducing and preventing job-related injuries, illnesses, and fatalities. The reductions in job-related injuries and illnesses, workers' compensation costs, and absenteeism that occur after employers implement such programs dramatically demonstrate their effectiveness. OSHA has decided to develop an injury and illness prevention rule because occupational injuries, illnesses, and fatalities are continuing to occur at an unacceptably high rate. For example, an average of about 16 workers were killed each day in 1999. This number does not include an estimated 137 daily deaths associated with job-related chronic illnesses. The Agency is currently evaluating the appropriate scope and form of the proposed rule, as well as the hazards the rule will address, and is considering a number of regulatory and non-regulatory alternatives.

Timetable:

Action	Date	FR Cite
Initiate SBREFA Process	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB41

1629. OCCUPATIONAL EXPOSURE TO TUBERCULOSIS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.1035

Legal Deadline: None

Abstract: In 1993, the Labor Coalition to Fight TB in the Workplace petitioned the Occupational Safety and Health Administration (OSHA) to develop an occupational health standard to protect workers who care for or oversee patients or others with active tuberculosis (TB) against the transmission of TB. After reviewing the available information, OSHA

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preliminarily concluded that a significant risk of occupational transmission of TB exists for some workers in some work settings and began rulemaking on a proposed standard. Examples of workers at risk of contracting TB as a result of their work are health care workers, detention facility personnel, and homeless shelter employees. On October 17, 1997, OSHA published its proposed standard for occupational exposure to TB (62 FR 54160). The proposed standard would require employers to protect TB-exposed workers using infection control measures that have been shown to be highly effective in reducing or eliminating work-related TB infections. Such measures include procedures for the early identification of individuals with infectious TB, isolation of individuals with infectious TB using appropriate ventilation, use of respiratory protection in certain situations, and skin testing and training of employees.

After the close of the written comment period for the proposed standard, informal public hearings were held in Washington, DC, Los Angeles, CA, New York City, NY, and Chicago, IL. The post-hearing comment period closed on October 5, 1998. On June 17, 1999 OSHA reopened the rulemaking record for 90 days to submit the Agency's report on homeless shelters and certain other documents that became available to the Agency after the close of the post-hearing comment period. During this limited reopening of the rulemaking record, OSHA also requested interested parties to submit comments and data on the Agency's preliminary risk assessment in order to obtain the best, most recent data for providing the most accurate estimates of the occupational risk of tuberculosis. At the request of Congress, the Institute of Medicine of the National Academy of Sciences (IOM) conducted a study of OSHA's proposal and the need for a TB standard. That study was completed in January 2001, and concluded that OSHA should move forward with a standard modeled after the CDC guidelines and tailored to the extent of TB risk present in the community. The IOM study concluded that an OSHA standard was needed to maintain national TB rates among health care and other employees at their current levels and to prevent future outbreaks of multi-drug resistant and other forms of TB among these workers. OSHA has reopened the record to obtain comment on the IOM study, the draft final risk assessment and the peer reviewers' comment on the risk assessment.

Timetable:

Action	Date	FR Cite
SBREFA Panel	09/10/96	
NPRM	10/17/97	62 FR 54160
NPRM Comment Period End	02/17/98	62 FR 65388
Post Hearing Comment End	10/05/98	
Record Reopening	06/17/99	64 FR 32447
Second Reopening Comment Period End	06/28/99	64 FR 34625
Reopening Comment Period End	08/02/99	
Third Reopening Comment Period	01/24/02	67 FR 3465
Extension of Comment Period of Reopening	03/05/02	67 FR 9934
Reopening Comment Period End	03/25/02	
Comment Period End	05/24/02	
Next Step To Be Determined	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB46

1630. GENERAL WORKING CONDITIONS FOR SHIPYARD EMPLOYMENT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915 subpart F

Legal Deadline: None

Abstract: During the 1980s, OSHA embarked on a project to update and consolidate the various OSHA shipyard standards that were applied in the shipbuilding, shiprepair, and shipbreaking industry. Publication of a proposal addressing general working conditions in shipyards is part of this project. The operations addressed in this rulemaking relate to general working conditions such as housekeeping, illumination, sanitation, first aid, and lockout/tagout. Over 100,000 workers are exposed annually to these hazards.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 1218–AB50

1631. FIRE PROTECTION IN SHIPYARD EMPLOYMENT (PART 1915, SUBPART P) (SHIPYARDS: FIRE SAFETY)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655

CFR Citation: 29 CFR 1915, subpart P

Legal Deadline: None

Abstract: This proposal is being developed through the negotiated rulemaking process. The rule will update and revise an important but outdated part of OSHA's shipyard rules. The original rule was adopted by OSHA in 1971 and has remained unchanged since then. The negotiated rulemaking committee was convened on October 15, 1996; members of the committee include: OSHA, state government, Federal agency, small and large shipyard employers, and maritime and firefighter union representatives.

Statement of Need: Fires in the shipyard environment claim the lives of several workers every year and thus account for a substantial number of deaths and more than 50 serious burns occurring in this 100,000-employee workforce. Updating OSHA's outdated shipyard requirements for fire extinguishers, sprinkler systems, detection systems, alarm systems, and fire brigades will facilitate compliance by employers and employees and reduce these fire-related injuries and fatalities.

Summary of Legal Basis: The legal basis for this proposed rule is a preliminary determination that an unacceptable risk of fire-related injuries and fatalities exists in the shipyard industry.

Alternatives: OSHA has considered but rejected the alternative of allowing the existing rule to remain in place, because the Agency believes that doing so would contribute to the unacceptable number of fire-related accidents occurring in shipyards every year.

Anticipated Cost and Benefits: Detailed cost and benefits estimates have not yet been made for the rule, because it is still in draft form.

Risks: A detailed risk analysis has not yet been completed for this rule.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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RIN: 1218–AB51

1632. ELECTRIC POWER TRANSMISSION AND DISTRIBUTION; ELECTRICAL PROTECTIVE EQUIPMENT IN THE CONSTRUCTION INDUSTRY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1910.136; 29 CFR 1910.137; 29 CFR 1910.269; 29 CFR 1926.97; 29 CFR 1926 subpart V

Legal Deadline: None

Abstract: Electrical hazards are a major cause of occupational death in the United States. The annual fatality rate for power line workers is about 50 deaths per 100,000 employees. The construction industry standard addressing the safety of these workers during the construction of electric power transmission and distribution lines is nearly 30 years old. OSHA is developing a revision of this standard that will prevent many of these fatalities, add flexibility to the standard, and update and streamline the standard. In addition, OSHA intends to amend the corresponding standard for general industry so that requirements for work performed during the maintenance of electric power transmission and distribution installations are the same as those for similar work in construction.

Timetable:

Action	Date	FR Cite
Initiate SBREFA Process	05/00/02	
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 1218–AB67

1633. EMPLOYER PAYMENT FOR PERSONAL PROTECTIVE EQUIPMENT

Priority: Other Significant

Legal Authority: 29 USC 655(b); 29 USC 657; 33 USC 941; 40 USC 333

CFR Citation: 29 CFR 1910.132; 29 CFR 1915.152; 29 CFR 1917.96; 29 CFR 1918.106; 29 CFR 1926.95

Legal Deadline: None

Abstract: Generally, OSHA standards require that protective equipment (including personal protective equipment (PPE)) be provided and used when necessary to protect employees from hazards that can cause them injury, illness, or physical harm. In this discussion, OSHA uses the abbreviation "PPE" to cover both personal protective equipment and other protective equipment. The Agency has proposed to revise its PPE standards to clarify who is required to pay for required PPE and under what circumstances. OSHA continues to consider the issue and review the rulemaking docket.

Timetable:

Action	Date	FR Cite
NPRM	03/30/99	64 FR 15401
NPRM Comment Period End	06/14/99	
Informal Public Hearing End	08/13/99	
Next Step to be determined	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

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RIN: 1218–AB77

1634. WALKING WORKING SURFACES AND PERSONAL FALL PROTECTION SYSTEMS (1910) (SLIPS, TRIPS AND FALL PREVENTION)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655 (b)

CFR Citation: 29 CFR 1910, Subparts D and I

Legal Deadline: None

Abstract: In 1990, OSHA proposed (55 FR 13360) a rule addressing slip, trip, and fall hazards and establishing requirements for personal fall protection systems. Since that time, new technologies and procedures have become available to protect employees from these hazards. The Agency has been working to update these rules to reflect current technology.

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Timetable:

Action	Date	FR Cite
NPRM	04/10/90	55 FR 13360
NPRM Comment Period End	08/22/90	
Hearing	09/11/90	55 FR 29224
NPRM (Subparts D and I)	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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RIN: 1218–AB80

1635. STANDARDS IMPROVEMENT (MISCELLANEOUS CHANGES) FOR GENERAL INDUSTRY, MARINE TERMINALS, AND CONSTRUCTION STANDARDS (PHASE II)

Priority: Other Significant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.142; 29 CFR 1910.178; 29 CFR 1910.219; 29 CFR 1910.261; 29 CFR 1910.265; 29 CFR 1910.410; 29 CFR 1910.1001 to 1910.1052; 29 CFR 1926.60; 29 CFR 1926.62; 29 CFR 1926.1101; 29 CFR 1926.1127; 29 CFR 1926.1129; 29 CFR 1917.92; 29 CFR 1910, subpart Z

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) proposes to remove or revise provisions in its health standards that are out of date, duplicative, unnecessary, or inconsistent. The Agency is proposing these changes to reduce the burden imposed on the regulated community by these requirements. In this document, substantive changes are proposed for standards that will revise or eliminate duplicative, inconsistent, or unnecessary regulatory requirements without diminishing employee protections. Phase I of this Standards Improvement process was completed in June 1998 (63 FR 33450). OSHA plans to initiate Phase III of this project at a future date to address problems in various safety standards.

Statement of Need: Some of OSHA's standards are out of date, duplicative, unnecessary, or inconsistent. The Agency needs to periodically review its standards and make needed corrections. This effort results in standards that are easier for employers and employees to follow and comply with, and thus enhances compliance and worker protection.

Summary of Legal Basis: The legal basis for the proposed rule is a preliminary finding that the OSHA standards need to be updated to bring them up to date, reduce inconsistency, and remove unneeded provisions.

Alternatives: OSHA has considered updating each standard as problems are discovered, but has determined that it is better to make such changes to groups of standards so it is easier for the public to comment on like standards. OSHA has also considered the inclusion of safety standards that need to be updated. However, the Agency has decided to pursue a separate rulemaking for safety issues because the standards to be updated are of interest to different stakeholders.

Anticipated Cost and Benefits: This revision of OSHA's standards is a deregulatory action. It will reduce employers' compliance obligations.

Risks: The project does not address specific risks, but is intended to improve OSHA's standards by bringing them up do date and deleting unneeded provisions. The anticipated changes will have no negative effects on worker safety and health.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
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RIN: 1218–AB81

1636. COMMERCIAL DIVING OPERATIONS: REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910.423; 29 CFR 1910.426

Legal Deadline: None

Abstract: OSHA's Commercial Diving Operations standard (29 CFR 1910.401 to 1910.441) was published in 1977. In the intervening years, major changes in the technology of diving systems and equipment have occurred. In December 1999, OSHA granted a permanent variance to Dixie Divers, Inc. permitting recreational diving instructors employed by that company to comply with the provisions of the variance rather than with paragraphs (b)(2) and (c)(3)(iii) of 1910.423 and paragraph (b)(1) of 1910.426. Since OSHA granted the variance, other employers of recreational diving instructors have asked OSHA to clarify the applicability of the variance to their operations. OSHA intends to issue a notice of proposed rulemaking to amend the commercial diving operations standard to reflect the alternative specified in the permanent variance granted to Dixie Divers, Inc.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB97

1637. CRANES, DERRICKS, HOISTS, ELEVATORS, AND CONVEYORS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart N addresses hazards associated with various types of hoisting equipment used at construction sites. Such equipment includes cranes, derricks, hoists, elevators and conveyors. The existing rule, which dates back to 1971, is based in part on industry consensus standards from 1958, 1968 and 1969. There have been considerable technological changes since those consensus standards were developed. Industry consensus standards for derricks and for crawler, truck and locomotive cranes were updated as recently as 1995. A number of industry stakeholders have asked OSHA to update Subpart N.

OSHA's Subpart N is now 30 years old, and is based in part on industry consensus standards as much as 42 years old. No changes have been made to the OSHA standard since 1971. Significant changes have occurred in the industry since the OSHA standard was promulgated.

A cross-section of the industry has stated that there is a need to update Subpart N. OSHA has determined that the existing rule needs to be revised.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Negotiated Rulemaking Committee	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 1218–AC01

Department of Labor (DOL)
Occupational Safety and Health Administration (OSHA)

Final Rule Stage

1638. ACCESS AND EGRESS IN SHIPYARDS (PART 1915, SUBPART E) (SHIPYARDS: EMERGENCY EXITS AND AISLES)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.72; 29 CFR 1915.74; 29 CFR 1915.75; 29 CFR 1915.76

Legal Deadline: None

Abstract: In the 1980s, OSHA embarked on a project to update and consolidate OSHA standards that applied to the shipbuilding, shiprepair, and shipbreaking industry. Shipyard employers are subject to both the shipyard and general industry standards, and this project aimed at establishing a vertical standard for shipyard employment. A proposal on access and egress was issued in November 1988 (53 FR 48092). OSHA plans to withdraw this proposal.

Timetable:

Action	Date	FR Cite
NPRM	11/29/88	53 FR 48130
NPRM Comment Period End	02/27/89	
Withdrawal Notice	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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RIN: 1218–AA70

1639. UPDATE AND REVISION OF THE EXIT ROUTES STANDARD

Priority: Other Significant

Legal Authority: 29 USC 655(b); 5 USC 353

CFR Citation: 29 CFR 1910.35; 29 CFR 1910.36; 29 CFR 1910.37; 29 CFR 1910.38

Legal Deadline: None

Abstract: Many Occupational Safety and Health Administration (OSHA) standards were adopted under section 6(a) of the Occupational Safety and Health Act (OSH Act; 29 U.S.C. 655(a)). This section of the OSH Act authorized the Agency, in its first 2 years of existence, to adopt national consensus standards without prior notice and comment. The versions of the consensus standards OSHA adopted are now typically well over 30 years old and have been superseded by newer ones. In addition, many of these old standards were written in technical jargon and were hard for many employers and employees to understand.

To address these problems, OSHA is undertaking a consensus standards initiative to revise OSHA's exit routes (also known as means of egress) standard. The revisions will rewrite the standard in simple, easy-to-understand language that will be easier for employers and employees to follow.

Statement of Need: The standard being revised in this initiative is one of OSHA's oldest and most difficult to understand. The Agency has identified the exit routes standard as a standard in need of revision because it is out of date and unnecessarily complex, and stakeholders have recommended that the standard be updated quickly. OSHA also believes that revising the standard will lead to better voluntary compliance and fewer disputes about violations. With OSHA's limited resources, any effort that can substantially increase opportunities for compliance without sacrificing employee safety and health protection will have long-term benefits.

Summary of Legal Basis: The legal basis for the final rule will be a finding that, by making these OSHA standards easier to understand and comply with, the Agency will increase compliance and reduce work-related injuries and deaths.

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Alternatives: The alternative considered - leaving the outdated standard on the books - has been rejected because doing so would not encourage compliance or enhance safety.

Anticipated Cost and Benefits: The final standard for exit routes will have no economic impacts because this revision will not increase employers' obligations or reduce employee protections.

Risks: Employees can be injured or killed if they are not able to exit an area safely when a fire or other emergency occurs.

Timetable:

Action	Date	FR Cite
NPRM	09/10/96	61 FR 47712
Public Hearing	04/29/97	62 FR 9402
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB82

1640. SIGNS, SIGNALS, AND BARRICADES

Priority: Other Significant

Legal Authority: 29 USC 651(b); 29 USC 655(b); 40 USC 333

CFR Citation: 29 CFR 1926

Legal Deadline: None

Abstract: Subpart G of 29 CFR part 1926 addresses the types of signs, signals and barricades that must be used in situations such as work areas on highways. OSHA's rule incorporates a 1971 ANSI standard, known as the MUTCD (Manual on Uniform Traffic Control Devices). Since the early 1970's, the U.S. Department of Transportation has drafted updates to the MUTCD. DOT requires all States to comply with its updates.

Several years ago, industry stakeholders asked OSHA to update its standard to reflect new technology and provide more flexibility for compliance. OSHA has decided to use a Direct Final Rule to update its standard since it anticipates widespread support for and few objections to the change. The Agency's Advisory Committee on Construction Safety and Health endorsed using a Direct Final Rule to make this change in its Winter 2000 meeting.

With the current emphasis on rebuilding the Nation's highways and improving safety in work zone areas, OSHA's update is particularly appropriate.

Statement of Need: The safe and efficient flow of traffic through construction work zones is a major concern to transportation officials, the highway industry and the traveling public. Today the majority of highway funds are being used on system preservation-type projects (resurfacing, restoration, rehabilitation, and reconstruction) on the existing highway system; highway construction of this type is at an all time high and will continue for several years to come.

The fatality rate for highway construction workers is twice the rate for other types of construction trades (DOT FHWA Office of Program Quality Coordination, Sept. 1998).

Summary of Legal Basis: The legal basis for this direct final rule is a finding by the Secretary of Labor that the number of highway work zone injuries and fatalities is high and that the outdated OSHA standard may be contributing to this result.

Alternatives: The Directorate of Construction has formed a task group to formulate a plan for reducing the number of highway work zone fatalities. In order for this group to accomplish its mission the standards must reflect new technology and best practices. Other alternatives, such as compliance assistance and partnership programs, will not achieve these goals.

Anticipated Cost and Benefits: The overwhelming majority of public roads are currently covered by DOT regulations and their related State traffic control manuals. Moreover, private roads constitute the minority of total roads, and some local governments extend coverage to these roads. Accordingly, OSHA will be solely responsible for regulating only a fraction of all highway work. The costs of compliance for those solely regulated by OSHA will, therefore, be much lower than those estimated for compliance with DOT regulations. Because DOT has found no significant costs of compliance for revisions of the MUTCD over the years, the costs of compliance for OSHA's direct final rule likewise will not be significant under Executive Order 12866.

Risks: OSHA believes that the adoption of the direct final rule will have a direct impact on the safety of workers engaged in work zone activities, although the extent of this risk reduction has not been quantified at this point.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1218–AB88

1641. CHANGES TO STATE PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 667

CFR Citation: 29 CFR 1953

Legal Deadline: None

Abstract: Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that States that wish to assume responsibility for developing and enforcing their own occupational safety and health standards relating to any occupational safety or health issue may do so by submitting and obtaining Federal approval of a State plan. A State plan consists of the laws, standards and other regulations, and procedures under which the State operates its occupational safety and health program. From time to time after initial plan approval, States may make changes to their plans as a result of legislative, regulatory or administrative actions. If the State makes a change to its plan which differs from the Federal program, the State must notify OSHA of the change to its plan which differs from the Federal program (referred to as a plan supplement). OSHA then reviews the changes; if they meet the approval criteria OSHA publishes a notice announcing the approval of the change; if the change does not meet the criteria OSHA initiates procedures to reject the change.

OSHA is proposing to amend its regulations regarding State plan changes to streamline the review and approval process and to allow more organizational flexibility in this process. Changes which are identical to components of the Federal program would not require formal review. The proposal also would reorganize 29 CFR part 1953 to eliminate repetitive language. Cross references to part 1953 in the CFR would be changed as necessary to reflect the correct references.

Timetable:

Action	Date	FR Cite
NPRM	11/06/01	66 FR 56043
NPRM Comment Period End and Request for Hearings	01/07/02	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1218–AB91

1642. REVISION AND UPDATE OF SUBPART S—ELECTRICAL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 29 USC 655(b)

CFR Citation: 29 CFR 1910 subpart S

Legal Deadline: None

Abstract: On March 8, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, commonly known as the Air Act. Section 519 of the Act (49 USC 42121) prohibits air carriers or air carrier contractors or subcontractors from discharging or otherwise discriminating against employees for exercising specified rights under the Act. The Act further provides that the Secretary of Labor investigate employee claims of discrimination and ultimately issue a determination and order after an opportunity for either party to request a hearing on the record. Procedural rules are needed for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/01/02	67 FR 15453
Interim Final Rule Effective	04/01/02	
Interim Final Rule Comment Period End	05/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1218–AB99

1643. PROCEDURES FOR HANDLING OF DISCRIMINATION COMPLAINTS UNDER THE AVIATION INVESTMENT AND REFORM ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-181, Wendell H. Ford Aviation Investment and Reform Act, sec 519; 49 USC 42121

CFR Citation: 29 CFR 1979

Legal Deadline: None

Abstract: On March 8, 2000, Congress enacted the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, commonly known as the Air Act. Section 519 of the Act (49 USC 42121) prohibits air carriers or air carrier contractors or subcontractors from discharging or otherwise discriminating against employees for exercising specified rights under the Act. The Act further provides that the Secretary of Labor investigate employee claims of discrimination and ultimately issue a determination and order after an opportunity for either party to request a hearing on the record. Procedural rules are needed for filing, investigating, litigating, and adjudicating complaints filed pursuant to the Act.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
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RIN: 1218–AB95

1644. • OCCUPATIONAL INJURY AND ILLNESS RECORDING AND REPORTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 29 USC 657; 29 USC 553

CFR Citation: 29 CFR 1904.10; 29 CFR 1904.12; 29 CFR 1904.29(b)(7)(vi)

Legal Deadline: None

Abstract: The Occupational Safety and Health Administration (OSHA) issued a final rule on Occupational Injury and Illness Recording and Reporting Requirements (66 FR 5916, January 19, 2001), scheduled to become effective on January 1, 2002. Following a careful review conducted pursuant to White House Chief of Staff Andrew Card's memorandum (66 FR 7702), the Agency has determined that all but two provisions of the final rule, regarding

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DOL—OSHA — Final Rule Stage

the recording of occupational hearing loss and musculoskeletal disorders (MSDs), would take effect as scheduled (66 FR 35113, July 3, 2001). The Agency issued a proposed rule on July 3, 2001, seeking comment on a delay of the two sections, and on the criteria that should be used for the recording of occupational hearing loss (RIN 1218-AC00). The record on this proposal closed on September 4, 2001. OSHA published a final rule delaying the effective dates for sections 1904.10, 1910.12 and a note to 1904.29(b)(7)(vi) until January 1, 2003. The same final rule provided interim guidance on recording hearing loss and MSD cases during 2002 (66 FR 52031, October 12, 2001).

OSHA is continuing to reconsider these two provisions for recording occupational hearing loss based on the occurrence of a Standard Threshold Shift (STS) in hearing acuity (section 1904.10), defining "musculoskeletal disorders" and checking the column on the OSHA 300 Log identifying a recordable case as an MSD (section 1904.12). OSHA will issue a subsequent final rule to deal with these injury and illness recording issues for the years 2003 and beyond.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35113
NPRM Comment Period End	09/04/01	
Final Action Delaying Effective Dates	10/12/01	66 FR 52031
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-1950

RIN: 1218–AC06

Department of Labor (DOL) — Long-Term Actions
Occupational Safety and Health Administration (OSHA)

1645. ACCREDITATION OF TRAINING PROGRAMS FOR HAZARDOUS WASTE OPERATIONS (PART 1910)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); PL 101-549 (November 15, 1990); 5 USC 552(a); 5 USC 553

CFR Citation: 29 CFR 1910.121

Legal Deadline: None

Abstract: The Superfund Amendments and Reauthorization Act (SARA) of 1986 (Public Law 99-499) established the criteria under which OSHA was to develop and promulgate the Hazardous Waste Operations and Emergency Response standard. OSHA issued an interim final standard on December 19, 1986 (51 FR 45654) to comply with the law's requirements. OSHA issued a permanent final rule with provisions on training to replace this interim rule on March 9, 1989 (29 CFR 1910.120).

On December 22, 1987, as part of an omnibus budget reconciliation bill (PL 100-202), Congress amended section 126(d)(3) of SARA to include accreditation of training programs for hazardous waste operations. OSHA issued a proposal on January 26, 1990 (55 FR 2776) addressing this issue. OSHA received public comments following the issuance of the proposal. OSHA also reopened the record in June 1992 to allow additional public comment on an effectiveness of training study that the Agency had conducted. Since that time, OSHA has developed nonmandatory guidelines to address training criteria for hazardous waste workers, and these have been widely adopted. In addition, the private sector has since established training accreditation procedures. At this time, the next action in this rulemaking is undetermined.

Timetable:

Action	Date	FR Cite
NPRM	01/26/90	55 FR 2776
NPRM Comment Period End	04/26/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
Phone: 202 693-2222
Fax: 202 693-1663

RIN: 1218–AB27

Department of Labor (DOL) — Completed Actions
Occupational Safety and Health Administration (OSHA)

1646. SCAFFOLDS IN SHIPYARDS (PART 1915 — SUBPART N)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655(b); 33 USC 941

CFR Citation: 29 CFR 1915.71

Legal Deadline: None

Abstract: During the 1980s, OSHA embarked on a project to update and consolidate the various OSHA standards that were applied in the shipbuilding, shiprepair, and shipbreaking industry. Shipyard employers are subject to both shipyard and general industry standards, and this project aimed at establishing a vertical standard for shipyard employment. A proposal on scaffolds was issued in November 1988 (53 FR 48092). OSHA plans to withdraw this proposal.

DOL—OSHA — Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	11/29/88	53 FR 48182
NPRM Comment Period End	02/27/89	
Reopened Record	04/12/94	59 FR 17290
Comment Period End	06/13/94	
Withdrawal Notice	03/21/02	67 FR 13117

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Steven F. Witt, Acting Director, Directorate of Safety Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3605, 200 Constitution Avenue, NW, FP Building, Washington, DC 20210
Phone: 202 693-2222
Fax: 202 693-1663

RIN: 1218–AA68

1647. INDOOR AIR QUALITY IN THE WORKPLACE

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 29 USC 655

CFR Citation: 29 CFR 1910; 29 CFR 1915; 29 CFR 1926; 29 CFR 1928

Legal Deadline: None

Abstract: The health of American workers may be affected by indoor air pollution in the workplace. After reviewing and analyzing available information, OSHA published a proposed indoor air quality rule on April 5, 1994. The proposal would require employers to write and implement indoor air quality compliance plans that would include inspection and maintenance of current building ventilation systems to ensure they are functioning as designed. In buildings where smoking is allowed, the proposal would require designated smoking areas that would be separate, enclosed rooms where the air would be exhausted directly to the outside. Other proposed provisions would require employers to maintain healthy air quality during renovation, remodeling, and similar activities. As proposed, the provisions for indoor air quality would apply to 70 million workers and more than 4.5 million nonindustrial indoor work environments, including schools and training centers, offices, commercial establishments, health care facilities, cafeterias and factory break rooms. The proposed environmental tobacco smoke provisions would apply to all 6 million industrial and nonindustrial work environments under OSHA's jurisdiction.

On December 17, 2001, OSHA withdrew its Indoor Air Quality proposal and terminated the rulemaking proceeding (66 FR 64946). In the years since the proposal was issued in 1994 a great many state and local governments and private employers have taken action to curtail smoking in public areas and in workplaces. In addition, the portion of the proposal not related to environmental tobacco smoke (ETS) received little attention during the rulemaking proceedings and the record evidence supporting the non-ETS portion of the proposal is sparse. The Agency found that withdrawal of the proposal would allow it to devote its resources to other projects.

Timetable:

Action	Date	FR Cite
Request for Information	09/20/91	56 FR 47892
NPRM	04/05/94	59 FR 15968
NPRM Comment Period End	08/13/94	59 FR 30560
Record Closed	02/09/96	
Withdrawn	12/17/01	66 FR 64946

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Steven F. Witt, Director, Directorate of Health Standards Programs, Department of Labor, Occupational Safety and Health Administration, Room N3718, 200 Constitution Avenue NW, FP Building, Washington, DC 20210
Phone: 202 693-1950
Fax: 202 693-1678

RIN: 1218–AB37

1648. • ADVISORY COMMITTEES

Priority: Info./Admin./Other

Legal Authority: 29 USC 656; 29 USC 657; 5 USC 553

CFR Citation: 29 CFR 1912.3; 29 CFR 1912.10; 29 CFR 1912.11; 29 CFR 1912a.3

Legal Deadline: None

Abstract: OSHA is amending its rules governing membership on advisory committees to clarify that the Secretary has the discretion to remove and replace an advisory committee member at any time. This is a rule of agency organization, practice, or procedure, and does not require notice and comment procedures (5 USC 553(b)).

Timetable:

Action	Date	FR Cite
Final Action	01/07/02	67 FR 658
Final Action Effective	01/07/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Frank Frodyma, Acting Director, Directorate of Policy, Department of Labor, Occupational Safety and Health Administration, Room N3641, 200 Constitution Avenue NW, FPBuilding, Washington, DC 20210
Phone: 202 693-2400
Email: frank.frodyma@osha.gov

RIN: 1218–AC04

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Department of Labor (DOL) — **Proposed Rule Stage**

Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

1649. ANNUAL REPORT FOR FEDERAL CONTRACTORS (2002 REVISIONS)

Priority: Other Significant

Legal Authority: PL 106-419 Veterans Benefits and Health Care Improvement Act of 2000

CFR Citation: 41 CFR 61-250

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) is proposing to issue a notice of proposed rulemaking (NPRM) to implement changes required by the Veterans' Benefits and Health Care Improvement Act of 2000. The Act adds an additional category of veterans, "recently separated veterans," to the list of protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). This proposal will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210
Phone: 202 693-4731
Fax: 202 693-4755

RIN: 1293–AA08

Department of Labor (DOL) — **Final Rule Stage**

Office of the Assistant Secretary for Veterans' Employment & Training (ASVET)

1650. ANNUAL REPORT FROM FEDERAL CONTRACTORS

Priority: Other Significant

Legal Authority: PL 105-339 Veterans Employment Opportunities Act of 1998

CFR Citation: 41 CFR 61-250

Legal Deadline: None

Abstract: The Veterans' Employment and Training Service (VETS) issued a final rule implementing changes required by the Veterans' Employment Opportunities Act of 1998. The Act requires non-exempt Federal contractors and subcontractors with a contract in the amount of $25,000 or more to report their efforts toward hiring and employment of qualified veterans. The Act adds an additional category of veterans, "other veterans who have served on active duty during a war or in a campaign or expedition for which a campaign badge has been authorized," to the list of protected veterans under the Vietnam Era Veterans' Readjustment Assistance Act, as amended (VEVRAA). The Act also adds the requirement that covered contractors and subcontractors report their minimum and maximum number of employees. This rule will assist VETS in meeting the statutory requirement of annually collecting the VETS-100 Report. After publication VETS learned that the final rule may inadvertently increase the recordkeeping burden on some contractors. Accordingly, an interim final rule was published permitting contractors flexibility in how they determine the maximum and minimum number of employees reported. A notice has been published to request comments on best practices to determine how to calculate the minimum and maximum number of employees reported. Guidance that takes the comments into consideration will then be published.

Timetable:

Action	Date	FR Cite
NPRM	10/05/00	65 FR 59683
NPRM Comment Period End	12/06/00	
Final Rule	10/11/01	66 FR 51997
Final Rule Effective	11/13/01	
Interim Final Rule	12/19/01	66 FR 65452
Notice	03/08/02	67 FR 10804
Notice Comment Period End	04/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Norm Lance, Chief, Investigations and Compliance, VETS, Department of Labor, Office of the Assistant Secretary for Veterans' Employment & Training, S-1316, 200 Constitution Avenue, NW, Washington, DC 20210
Phone: 202 693-4731
Fax: 202 693-4755

RIN: 1293–AA07

[FR Doc. 02–7662 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part XIII

Department of State

Semiannual Regulatory Agenda

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DEPARTMENT OF STATE (STATE)

DEPARTMENT OF STATE

22 CFR Ch. I

[Public Notice 3948]

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of State.

ACTION: Semiannual regulatory agenda.

SUMMARY: Consistent with the Regulatory Flexibility Act of 1980, 5 U.S.C. 602, and OMB guidance to the Department of State pursuant to Executive Order 12866, the spring 2002 agenda of the Department of State is set forth below. The purpose of this publication is to provide information to the public on the Department's regulatory plans. Consistent with OMB guidance, this agenda includes active continuing items from prior agendas.

FOR FURTHER INFORMATION CONTACT: Jamison Selby Borek, Assistant Legal Adviser for Legislation and General Management, Department of State, Room 3422, 2201 C Street NW., Washington, DC 20520, telephone (202) 647-2318.

Dated: March 21, 2002.

Grant Green,

Under Secretary of State for Management.

Department of State—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1651	Cultural Exchange Programs, Annual Reports	1400-AB14

Department of State—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1652	Hague Intercountry Adoption Convention Implementation	1400-AA88
1653	Amendment to the ITAR: Offset Arrangements and Enhancements to Congressional Notifications	1400-AB18

Department of State—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1654	Foreign Prohibitions on Longshore Work by U.S. Nationals	1400-AA34
1655	Transit Without Visa (TWOV)	1400-AA48
1656	B-1 Visa Classification	1400-AA54
1657	Addition of "S" Nonimmigrant Visa Classification	1400-AA91
1658	Nonimmigrant Visa Fees	1400-AA97
1659	Revision to Department of State Acquisition Regulation (DOSAR)	1400-AB06
1660	Cultural Exchange Program, Summer Work/Travel	1400-AB10
1661	Cultural Exchange Programs, Reinstatement	1400-AB11
1662	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	1400-AB17
1663	Documentation of Nonimmigrants: Visa Waiver Program	1400-AB21
1664	Documentation of Immigrants: International Broadcasters	1400-AB22
1665	Documentation of Nonimmigrants: Victims of Trafficking in Persons, Victims of Criminal Activities, and Aliens Inadmissible for Trafficking in Persons	1400-AB23
1666	Documentation of Nonimmigrants: Spouses and Children of Lawful Permanent Residents	1400-AB24
1667	Documentation of Nonimmigrants: Spouses and Children of U.S. Citizens	1400-AB25
1668	Documentation of Immigrants and Nonimmigrants Under the Immigration and Nationality Act, As Amended—Refusals of Individual Visas	1400-AB27
1669	Students and Exchange Visitors—Fee Receipts	1400-AB29
1670	Grounds of Inadmissibility	1400-AB32
1671	Documentation of Nonimmigrants—Classification of Spouses of Foreign Diplomats	1400-AB35
1672	Documentation of Nonimmigrants—Automatic VISA Revalidation	1400-AB36
1673	Documentation of Nonimmigrants and Immigrants Access to Criminal History; Sharing Data Records	1400-AB37
1674	Documentation of Immigrants—Immediate Relatives	1400-AB38
1675	Documentation of Immigrants—Issuance of New or Replacement Visas	1400-AB39
1676	Final Exemptions for U.S. Institutions of Higher Learning	1400-AB40

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Department of State—Completed Actions

Sequence Number	Title	Regulation Identification Number
1677	Documentation of Immigrants: Diversity Immigrants	1400-AB26
1678	Classification of Nonimmigrants and Immigrants	1400-AB28
1679	International Organization Employees—INTELSAT Employees	1400-AB30
1680	Revisions of Grants Management Common Rules on Debarment, Suspension, and Drug-Free Workplace Requirements	1400-AB33
1681	Amendments to the List of Proscribed Destinations	1400-AB41

Department of State—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1400-AA56	Establishing of Registry in State Department for Information About Execution of International Wills	04/24/2002	Withdrawn
1400-AA75	Addition of Countries Eligible To Participate in the Visa Waiver Program	03/19/2002	Withdrawn
1400-AB15	Amendments to the ITAR: Reporting of Shipments, Offset Arrangements, and Enhancements to Congressional Notifications	03/14/2002	Withdrawn
1400-AB20	Amendments to the ITAR: Reporting of Shipments	03/14/2002	Withdrawn

Department of State (STATE) **Prerule Stage**

1651. CULTURAL EXCHANGE PROGRAMS, ANNUAL REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(a)(15)(J), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105-277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR, 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.15

Legal Deadline: None

Abstract: The Department is amending the Exchange Visitor Program regulations regarding annual report requirements.

Timetable:

Action	Date	FR Cite
ANPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sally J. Lawrence, Chief Exchange Visitor Program, Department of State, Room 734, Washington, DC 20547
Phone: 202 401-9810
Fax: 202 401-9809
Email: slawrence@pd.state.gov

RIN: 1400–AB14

Department of State (STATE) **Proposed Rule Stage**

1652. HAGUE INTERCOUNTRY ADOPTION CONVENTION IMPLEMENTATION

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Regulations will implement the Hague Convention on Protection of Children and Cooperation in Respect of Intercountry Adoption and its associated legislation. The convention was submitted for Senate advice and consent in 1998, and the proposed implementing legislation was submitted to the full Congress in 1998 and again in 1999. Health and Human Services and the Immigration and Naturalization Service will also write regulations regarding this convention and legislation.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Edward A. Betancourt, Director, Office of Policy Review and Interagency Liaison, Department of State, Bureau of Consular Affairs, 2201 C Street NW, Washington, DC 20520-5816
Phone: 202 312-9723
Fax: 202 312-9744

RIN: 1400–AA88

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Proposed Rule Stage

1653. AMENDMENT TO THE ITAR: OFFSET ARRANGEMENTS AND ENHANCEMENTS TO CONGRESSIONAL NOTIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778; secs 1243 and 1245 of the Defense Offsets; Disclosure Act of 1999

CFR Citation: 22 CFR 120; 22 CFR 123; 22 CFR 124

Legal Deadline: None

Abstract: New requirement to require reporting and a description of any proposed offset agreement connected with a proposed export of any major defense equipment sold under a contract in the amount of $14,000,000 or more of defense articles or defense services sold under a contract in the amount of $50,000,000 or more. Also, a new requirement was added that 45 days must elapse since receipt by the Congress of an enhancement to a case notified to Congress as required by 22 U.S.C. 2776(c) (l).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 13th Floor, 2401 E Street NW, Washington, DC 20037
Phone: 202 663-2700
Fax: 202 261-8199

RIN: 1400–AB18

Department of State (STATE)

Final Rule Stage

1654. FOREIGN PROHIBITIONS ON LONGSHORE WORK BY U.S. NATIONALS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1288(d)

CFR Citation: 22 CFR 89 (Revision)

Legal Deadline: Final, Statutory, December 31, 1998. Legal deadline reflects the statutory requirement that the list be updated on an annual basis.

Abstract: The above-mentioned statute requires the Secretary of State to compile and update annually, through notice-and-comment rulemaking procedures, a list, by particular longshore activity, of countries where performance of such activity is prohibited by law, regulation, or in practice in the country concerned. According to the statute cited above, the Attorney General will use this list for enforcing restrictions on work performed by crewmembers of vessels from such countries. Compilation of the list itself does not involve any significant costs and is based upon information being provided to the Department of State by U.S. diplomatic missions overseas, as well as by the public. Questions regarding the policy justification for the list and its use are best directed to the Departments of Labor, Transportation, and Justice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/30/91	
Final Rule	12/27/91	56 FR 66970
Final Rule Effective	01/01/92	
Final Rule Correction	01/04/92	57 FR 1384
NPRM	02/12/02	67 FR 6447
NPRM Comment Period End	03/12/02	
Final Action	06/00/02	

Updated List of Countries
NPRM 11/04/92 (57 FR 52600)
NPRM Comment Period End 12/04/92
Final Rule 12/13/93 (58 FR 65118)
Final Rule Effective 12/13/93
NPRM 03/24/94 (59 FR 13904)
NPRM Comment Period End 04/25/94
NPRM 11/24/95 (60 FR 58026)
NPRM Comment Period End 12/26/95
NPRM Comment Period Extended to 01/26/96 (60 FR 65609)
NPRM Comment Period Extended to 02/02/96 (61 FR 2915)
NPRM 06/06/96 (61 FR 29115)
Final Rule 06/13/96 (61 FR 29941)
NPRM 02/12/02 (67 FR 6447)
NPRM Comment Period End 03/12/02

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: In accordance with the mandate to maintain annually the list of countries, the Department will issue final rules to amend the list as appropriate.

Agency Contact: Stephen Miller, Office of Maritime and Land Transport, Bureau of Economic and Business Affairs, Department of State, 2201 C Street NW, Washington, DC 20520-5816
Phone: 202 647-6961

RIN: 1400–AA34

1655. TRANSIT WITHOUT VISA (TWOV)

Priority: Substantive, Nonsignificant

Legal Authority: sec 212(d)(4)(C) of the Immigration & Nationality Act (INA)

CFR Citation: 22 CFR 41.2(i)

Legal Deadline: None

Abstract: Under the provision of section 212(d)(4)(C), the Secretary of State and the Attorney General, acting jointly, have the authority to waive nonimmigrant visa requirements for aliens in continuous and direct transit through the United States. Yugoslavia was removed from the list of countries participating in this program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/16/93	58 FR 43438
Interim Final Rule Effective	09/15/93	
NPRM	01/05/01	66 FR 1064
NPRM Comment Period End	03/06/01	
Interim Final Rule	01/05/01	66 FR 1033
Interim Final Rule Effective	02/05/01	
Interim Final Rule Comment Period End	03/06/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AA48

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Final Rule Stage

1656. B-1 VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-649, Immigration Act of 1990

CFR Citation: 22 CFR 41.31

Legal Deadline: NPRM, Statutory, October 1, 1991.

Abstract: B Visa regulation revisions, which incorporate 9FAM notes and INS OI, reflect changes in interpretation of B Visa classes resulting from enactment of Immigration and Naturalization Act of 1990 and MATINA.

Timetable:

Action	Date	FR Cite
NPRM	07/26/93	58 FR 40024
NPRM Comment Period Extended to 11/23/93	09/23/93	58 FR 49456
NPRM Comment Period End	09/24/93	
NPRM Comment Period Extended to 12/06/93	11/23/93	58 FR 61856
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AA54

1657. ADDITION OF "S" NONIMMIGRANT VISA CLASSIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.83

Legal Deadline: None

Abstract: Implements section 130003 of Public Law 103-322 by adding a new nonimmigrant visa classification (S) under INA 101(a)(15)(S). This visa classification provides for the admission of certain alien witnesses and informants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/24/96	61 FR 1837
Interim Final Rule Comment Period End	03/25/96	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AA91

1658. NONIMMIGRANT VISA FEES

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-177, sec 410; 8 USC 1104

CFR Citation: 22 CFR 41.107

Legal Deadline: None

Abstract: This regulation reduces the fee for border crossing cards for aliens under age 15 and removes the fees for U.N. Observer Mission personnel.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/29/00	65 FR 52306
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AA97

1659. REVISION TO DEPARTMENT OF STATE ACQUISITION REGULATION (DOSAR)

Priority: Substantive, Nonsignificant

Legal Authority: PL 93-400; PL 96-83

CFR Citation: 48 CFR 6

Legal Deadline: None

Abstract: This revision to the DOSAR will make minor changes to conform the DOSAR to continuing changes in the Federal Acquisition Regulation (FAR).

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gladys G. Gines, Procurement Analyst, Office of the Procurement Executive, Department of State, SA-6, Room 603. Washington, DC 20522-0602
Phone: 703 516-1691
Fax: 703 875-6155
Email: ginesgg@state.gov

RIN: 1400–AB06

1660. CULTURAL EXCHANGE PROGRAM, SUMMER WORK/TRAVEL

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(2)(15)(J), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105-277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR, 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.32

Legal Deadline: None

Abstract: The Department is adopting specific regulations governing participation in summer work/travel programs conducted by Department-designated sponsors pursuant to Public Law 105-277. These regulations supersede program guidelines promulgated by the USIA and published at 61 FR 13760 (March 28, 1996).

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Transfered from 3116-AA16.

Agency Contact: Sally J. Lawrence, Chief Exchange Visitor Program, Department of State, Room 734, Washington, DC 20547

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RIN: 1400–AB10

1661. CULTURAL EXCHANGE PROGRAMS, REINSTATEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1101(a)(15)(j), 1182, 1184, 1258; 22 USC 1431 to 1442, 1475e, 2451 to 2460; Foreign Affairs Reform and Restructuring Act, PL 105-277, 112 Stat 2681 et seq; Reorganization Plan No 2 of 1977, 3 CFR, 1977 Comp, p 200; EO 12048 of March 27, 1978, 3 CFR, 1978 Comp, p 168

CFR Citation: 22 CFR 62.45

Legal Deadline: NPRM, Statutory, April 2000.

Abstract: The Department is amending the Exchange Visitor Program regulations regarding reinstatement of J-1 exchange visitors to valid program status.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/13/99	64 FR 44023
Interim Final Rule Comment Period End	09/13/99	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sally J. Lawrence, Chief Exchange Visitor Program, Department of State, Room 734, Washington, DC 20547
Phone: 202 401-9810
Fax: 202 401-9809
Email: slawrence@pd.state.gov

RIN: 1400–AB11

1662. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 141 to 143

Legal Deadline: None

Abstract: The Department of State participated with 21 other Federal agencies to amend regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI, section 504, and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gloria J. Jackson, EEO Manager for Compliance Programs, Department of State, S/EEOCR; Room 4216, 2201 C Street NW, Washington, DC 20520
Phone: 202 647-9897
Fax: 202 647-4969
Email: jacksongj@state.gov

RIN: 1400–AB17

1663. DOCUMENTATION OF NONIMMIGRANTS: VISA WAIVER PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.2(1)

Legal Deadline: None

Abstract: Makes permanent the Visa Waiver Program.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB21

1664. DOCUMENTATION OF IMMIGRANTS: INTERNATIONAL BROADCASTERS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.32(d)(8)

Legal Deadline: None

Abstract: Adds a new category of special immigrants, international broadcasters.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/18/01	66 FR 15349
Interim Final Rule Comment Period End	12/18/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB22

1665. DOCUMENTATION OF NONIMMIGRANTS: VICTIMS OF TRAFFICKING IN PERSONS, VICTIMS OF CRIMINAL ACTIVITIES, AND ALIENS INADMISSIBLE FOR TRAFFICKING IN PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.84; 22 CFR 41.85; 22 CFR 40.27

Legal Deadline: None

Abstract: Creates a new nonimmigrant status for aliens who are victims of trafficking in persons (T) or victims of criminal activities (U) to enter the U.S. as nonimmigrants. Makes aliens who are involved in trafficking of persons inadmissible.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB23

1666. DOCUMENTATION OF NONIMMIGRANTS: SPOUSES AND CHILDREN OF LAWFUL PERMANENT RESIDENTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.86

Legal Deadline: None

Abstract: Permits spouses and children of lawful permanent residents, who are beneficiaries of immigrant petitions filed or approved 3 or more years prior, to enter the U.S. as (V) nonimmigrants.

Timetable:

Action	Date	FR Cite
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Condayan, Acting Director, Office of Foreign Missions, Department of State, Room 2105, 2201 C Street NW, Washington, DC 20520
Phone: 202 647-3416

H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB24

1667. DOCUMENTATION OF NONIMMIGRANTS: SPOUSES AND CHILDREN OF U.S. CITIZENS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.81

Legal Deadline: None

Abstract: Provides nonimmigrant status for spouses and children of U.S. citizens who are awaiting approval of immigrant visa petitions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB25

1668. DOCUMENTATION OF IMMIGRANTS AND NONIMMIGRANTS UNDER THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED—REFUSALS OF INDIVIDUAL VISAS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.41; 22 CFR 41.121; 22 CFR 41.122; 22 CFR 42.81

Legal Deadline: None

Abstract: Adds to grounds of ineligibility for nonimmigrants. Adds a new restriction on place of application for alien overstays.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB27

1669. STUDENTS AND EXCHANGE VISITORS—FEE RECEIPTS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 41.61 and 41.62

Legal Deadline: None

Abstract: Requires F, J, and M nonimmigrants to produce receipts for payment of CIPRIS fees.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB29

1670. GROUNDS OF INADMISSIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 40.63; 22 CFR 40.92; 22 CFR 40.104

Legal Deadline: None

Abstract: Adds exceptions for aliens inadmissible under INA 212(a)(6)(C)(ii), INA 212(a)(9)(B), and INA 212(a)(10)(D)

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: H. Edward Odom, Chief, Legislation and Regulations Division, Visa Office, Department of State, SA-1, Room L603-C, 2401 E Street NW, Washington, DC 20522-0106
Phone: 202 663-1204
Fax: 202 663-3898

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STATE **Final Rule Stage**

Email: odomher@state.gov

RIN: 1400–AB32

1671. • DOCUMENTATION OF NONIMMIGRANTS—CLASSIFICATION OF SPOUSES OF FOREIGN DIPLOMATS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104; PL 105-277, 112 Stat 2681 et seq

CFR Citation: 22 CFR 41.22

Legal Deadline: None

Abstract: Classification of Spouses of Foreign Diplomats as Gs to permit employment with international organizations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB35

1672. • DOCUMENTATION OF NONIMMIGRANTS—AUTOMATIC VISA REVALIDATION

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104; PL 105-277, 112 Stat 2681 et seq

CFR Citation: 22 CFR 41.112D

Legal Deadline: None

Abstract: Excludes automatic revalidation benefits for aliens returning from short visits to other North American countries or adjacent islands. Exclusion for aliens who are nationals of countries identified as State sponsors of terrorism.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB36

1673. • DOCUMENTATION OF NONIMMIGRANTS AND IMMIGRANTS ACCESS TO CRIMINAL HISTORY; SHARING DATA RECORDS

Priority: Other Significant

Legal Authority: 8 USC 1104

CFR Citation: 20 CFR 40.5; 22 CFR 41.105(b); 22 CFR 42.72(c)

Legal Deadline: None

Abstract: Access to certain criminal history records from the FBI. Fingerprinting of immigrants and nonimmigrants.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/25/02	67 FR 8477
Interim Final Rule Comment Period End	04/26/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB37

1674. • DOCUMENTATION OF IMMIGRANTS—IMMEDIATE RELATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.21

Legal Deadline: None

Abstract: Expands the definition of immediate relative for spouses and children of U.S. citizens whose spouses or parents were killed in the 09/11/01 terrorist attack.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1414
Interim Final Rule Comment Period End	02/12/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB38

1675. • DOCUMENTATION OF IMMIGRANTS—ISSUANCE OF NEW OR REPLACEMENT VISAS

Priority: Substantive, Nonsignificant

Legal Authority: 8 USC 1104

CFR Citation: 22 CFR 42.72(b)

Legal Deadline: None

Abstract: Removal of citation to INA 124. The provision is no longer in effect.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1415
Interim Final Rule Comment Period End	03/12/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen K. Fischel, Office Director, Legislation and Regulation and Advisory Assistance, Department of State, 2401 E Street NW, SA-1, Washington, DC 20522-0113
Phone: 202 663-1204
Fax: 202 663-3898
Email: fishelsk@state.gov.

RIN: 1400–AB39

1676. • FINAL EXEMPTIONS FOR U.S. INSTITUTIONS OF HIGHER LEARNING

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

STATE **Final Rule Stage**

CFR Citation: 22 CFR 123; 22 CFR 125

Legal Deadline: None

Abstract: New exemption from export licensing requirements for U.S. universities, university-based international fundamental research cooperative activities in unclassified space research with universities located in the member countries of NATO, major non-NATO allies, the European Union and European Space Agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: State

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 13th Floor, 2401 E Street NW, Washington, DC 20037
Phone: 202 663-2700
Fax: 202 261-8199

RIN: 1400–AB40

Department of State (STATE) **Completed Actions**

1677. DOCUMENTATION OF IMMIGRANTS: DIVERSITY IMMIGRANTS

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 42.33

Completed:

Reason	Date	FR Cite
Final Action	10/26/01	66 FR 54135

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB26

1678. CLASSIFICATION OF NONIMMIGRANTS AND IMMIGRANTS

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 41.12 and 42.11

Completed:

Reason	Date	FR Cite
Final Action	06/18/01	66 FR 32740
Correction	07/23/01	66 FR 38153

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB28

1679. INTERNATIONAL ORGANIZATION EMPLOYEES—INTELSAT EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 41.24 and 42.32(d)(5)

Completed:

Reason	Date	FR Cite
Interim Final Rule	01/11/02	67 FR 1413
Interim Final Rule Comment Period End	03/12/02	
Final Action	04/17/02	67 FR 18821

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Edward Odom
Phone: 202 663-1204
Fax: 202 663-3898
Email: odomher@state.gov

RIN: 1400–AB30

1680. REVISIONS OF GRANTS MANAGEMENT COMMON RULES ON DEBARMENT, SUSPENSION, AND DRUG-FREE WORKPLACE REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 22 CFR 137; 22 CFR 133 (New)

Completed:

Reason	Date	FR Cite
Final Action	01/23/02	67 FR 3265

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Gladys G. Gines
Phone: 703 516-1691
Fax: 703 875-6155
Email: ginesgg@state.gov

RIN: 1400–AB33

1681. • AMENDMENTS TO THE LIST OF PROSCRIBED DESTINATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2778

CFR Citation: 22 CFR 126

Legal Deadline: Final, Statutory, January 9, 2002, Direction of the UnderSecretary for Arms Control and International Security.

Abstract: This regulation removed Tajikistan and the Federal Republic of Yugoslavia (Serbia and Montenegro) from the list of proscribed destinations.

Timetable:

Action	Date	FR Cite
Final Action	01/09/02	67 FR 1074

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Agency Contact: Mary Frances Sweeney, Munitions Control Analyst, Department of State, 13th Floor, 2401 E Street NW, Washington, DC 20037
Phone: 202 663-2700
Fax: 202 261-8199

RIN: 1400–AB41

[FR Doc. 02–7663 Filed 05–10–02; 8:45 am]
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Part XIV

Department of Transportation

Semiannual Regulatory Agenda

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DEPARTMENT OF TRANSPORTATION (DOT)

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

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OST Docket 99-5129

Department Regulatory Agenda; Semiannual Summary

AGENCY: Office of the Secretary, DOT.

ACTION: Semiannual regulatory agenda.

SUMMARY: The regulatory agenda is a semiannual summary of all current and projected rulemakings, reviews of existing regulations, and completed actions of the Department. The agenda provides the public with information about the Department of Transportation's regulatory activity. It is expected that this information will enable the public to be more aware of and allow it to more effectively participate in the Department's regulatory activity. The public is also invited to submit comments on any aspect of this agenda.

FOR FURTHER INFORMATION CONTACT:

General

You should direct all comments and inquiries on the agenda in general to Neil R. Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street SW., Washington, DC 20590, (202) 366-4723.

Specific

You should direct all comments and inquiries on particular items in the agenda to the individual listed for the regulation or the general rulemaking contact person for the operating administration in Appendix B.

Individuals who use a telecommunications device for the deaf (TDD) may call (202) 755-7687.

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SUPPLEMENTARY INFORMATION:

Background

Improvement of our regulations is a prime goal of the Department of Transportation (Department or DOT). There should be no more regulations than necessary and those that are issued should be simpler, more comprehensible, and less burdensome. Regulations should not be issued without appropriate involvement of the public; once issued, they should be periodically reviewed and revised, as needed, to assure that they continue to meet the needs for which they originally were designed.

To help the Department achieve these goals and in accordance with Executive Order 12866 "Regulatory Planning and Review" (58 FR 51735; October 4, 1993) and the Department's Regulatory Policies and Procedures (44 FR 11034; February 26, 1979), the Department prepares a semiannual regulatory agenda. It summarizes all current and projected rulemaking, reviews of existing regulations, and completed actions of the Department. These are matters on which action has begun or is projected during the succeeding 12 months or such longer period as may be anticipated or for which action has been completed since the last agenda.

The agendas are based on reports submitted by the offices initiating the rulemaking and are reviewed by the Department Regulations Council. The Department's last agenda was published in the **Federal Register** on December 3, 2001 (66 FR 61898). The next one is scheduled for publication in the **Federal Register** in October 2002.

In light of the September 11, 2001, terrorist attacks in the United States and the potential for further attacks in this country; Congress enacted the Aviation and Transportation Security Act, which established the Transportation Security Administration (TSA) an operating administration within the Department. Effective February 17, 2002, TSA assumed the civil aviation security functions and responsibilities currently performed by the Federal Aviation Administration (FAA). Several new rulemaking actions have been added in this Agenda for TSA; however, further assessment is needed to determine which FAA rulemakings will move to TSA. We will reflect these changes in the next Agenda.

The Department has created an Internet site that provides general information about its rulemaking responsibilities and activities. It includes hypertext links to numerous other departmental sites providing helpful information about DOT regulation. The web address for this site is http://regs.dot.gov.

Significant/Priority Rulemakings

The agenda covers all rules and regulations of the Department. We have classified rules as a DOT agency priority in the agenda if they are, essentially, very costly, controversial, or of substantial public interest under our Regulatory Policies and Procedures. All DOT agency priority rulemaking documents are subject to review by the Secretary of Transportation. If the Office of Management and Budget (OMB) decides a rule is subject to its review under Executive Order 12866, we have classified it as significant in the agenda.

Explanation of Information on the Agenda

The format for this agenda is required by Office of Management and Budget memorandum of February 25, 2002.

First, the agenda is divided by initiating offices. Then, the agenda is divided into five categories: (1) Prerule stage, (2) proposed rule stage, (3) final rule stage, (4) long-term actions, and (5) completed actions. For each entry, the agenda provides the following information: (1) Its "significance"; (2) a short descriptive title; (3) its legal basis; (4) the related regulatory citation in the Code of Federal Regulations; (5) any legal deadline and, if so, for what action (e.g., NPRM, final rule); (6) an abstract; (7) a timetable, including the earliest expected date for a decision on whether to take the action; (8) whether the rulemaking will affect small entities and/or levels of government and, if so, which categories; (9) whether a

DOT

Regulatory Flexibility Act (RFA) analysis is required (for rules that would have a significant economic impact on a substantial number of small entities); (10) a listing of any analyses an office will prepare or has prepared for the action (With minor exceptions, DOT requires an economic analysis for all its rulemakings.); (11) an agency contact office or official who can provide further information; (12) a Regulation Identifier Number (RIN) assigned to identify an individual rulemaking in the agenda and facilitate tracing further action on the issue; (13) whether the action is subject to the Unfunded Mandates Reform Act; (14) whether the action is subject to the Energy Act; and (15) whether the action is major under the congressional review provisions of the Small Business Regulatory Enforcement Fairness Act. If there is information that does not fit in the other categories, it will be included under a separate heading entitled "Additional Information."

For nonsignificant regulations issued routinely and frequently as a part of an established body of technical requirements (such as the Federal Aviation Administration's Airspace Rules), to keep those requirements operationally current, we only include the general category of the regulations, the identity of a contact office or official, and an indication of the expected number of regulations; we do not list individual regulations.

In the "Timetable" column, we use abbreviations to indicate the particular documents being considered. ANPRM stands for Advance Notice of Proposed Rulemaking, SNPRM for Supplemental Notice of Proposed Rulemaking, and NPRM for Notice of Proposed Rulemaking. Listing a future date in this column does not mean we have made a decision to issue a document; it is the earliest date on which we expect to make a decision on whether to issue it. In addition, these dates are based on current schedules. Information received subsequent to the issuance of this agenda could result in a decision not to take regulatory action or in changes to proposed publication dates. For example, the need for further evaluation could result in a later publication date; evidence of a greater need for the regulation could result in an earlier publication date.

Finally, a dot (•) preceding an entry indicates that the entry appears in the agenda for the first time.

Request for Comments

General

Our agenda is intended primarily for the use of the public. Since its inception, we have made modifications and refinements that we believe provide the public with more helpful information, as well as make the agenda easier to use. We would like you, the public, to make suggestions or comments on how the agenda could be further improved.

Reviews

We also seek your suggestions on which of our existing regulations you believe need to be reviewed to determine whether they should be revised or revoked. We particularly draw your attention to the Department's review plan in Appendix D.

Regulatory Flexibility Act

The Department is especially interested in obtaining information on requirements that have a "significant economic impact on a substantial number of small entities" and, therefore, must be reviewed under the Regulatory Flexibility Act. If you have any suggested regulations, please submit them to us, along with your explanation of why they should be reviewed.

In accordance with the Regulatory Flexibility Act, comments are specifically invited on regulations that we have targeted for review under section 610 of the Act. The phrase (Section 610 Review) appears at the end of the title for these reviews. Please see Appendix D for the Department's section 610 review plans.

Federalism

Executive Order 13132 requires us to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" are defined in the Executive Order to include regulations that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we encourage State and local governments to provide us with information about how the Department's rulemakings impact them.

Purpose

The Department is publishing this regulatory agenda in the **Federal Register** to share with interested members of the public the Department's preliminary expectations regarding its future regulatory actions. This should enable the public to be more aware of the Department's regulatory activity and should result in more effective public participation. This publication in the **Federal Register** does not impose any binding obligation on the Department or any of the offices within the Department with regard to any specific item on the agenda. Regulatory action, in addition to the items listed, is not precluded.

Issued in Washington, DC, on April 25, 2002.

Norman Y. Mineta,

Secretary of Transportation.

Appendix A - Instructions for Obtaining Copies of Regulatory Documents

To obtain a copy of a specific regulatory document in the agenda, you should communicate directly with the contact person listed with the regulation at the address below. We note that most if not all such documents, including the Semiannual Agenda, are available through our Internet-accessible docket at http://dms.dot.gov. See Appendix C for more information.

Transportation Security Administration (TSA)

(Name of contact person), Transportation Security Administration, 400 7th Street SW., Washington, DC 20590.

United States Coast Guard (USCG)

(Name of contact person), United States Coast Guard, 2100 2nd Street SW., Washington, DC 20593.

Federal Highway Administration (FHWA)

(Name of contact person), Federal Highway Administration, 400 7th Street SW., Washington, DC 20590.

Federal Motor Carrier Safety Administration (FMCSA)

(Name of contact person), Federal Motor Carrier Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Railroad Administration (FRA)

(Name of contact person), Federal Railroad Administration, 400 7th Street SW., Washington, DC 20590.

National Highway Traffic Safety Administration (NHTSA)

(Name of contact person), National Highway Traffic Safety Administration, 400 7th Street SW., Washington, DC 20590.

Federal Transit Administration (FTA)

(Name of contact person), Federal Transit Administration, 400 7th Street SW., Washington, DC 20590.

Saint Lawrence Seaway Development Corporation (SLSDC)

(Name of contact person), Saint Lawrence Seaway Development Corporation, 400 7th Street SW., Room 5424, Washington, DC 20590.

Research and Special Programs Administration (RSPA)

(Name of contact person), Research and Special Programs Administration, 400 7th Street SW., Washington, DC 20590.

Maritime Administration (MARAD)

Joel C. Richard, Secretary, Maritime Administration, 400 7th Street SW., Room 7210, Washington, DC 20590, (202) 366-5746.

Bureau of Transportation Statistics (BTS)

(Name of contact person), Bureau of Transportation Statistics,400 7th Street SW., Room 7210, Washington, DC 20590.

Federal Aviation Administration (FAA)

The FAA has a mailing list system for notices and advance notices of proposed rulemaking (NPRMs and ANPRMs). Persons interested in obtaining future copies of all of those documents to be issued by the FAA or only of those concerning certain parts of the Federal Aviation Regulations should request a copy of Advisory Circular No. 11-2, which describes the application procedure, by calling (202) 267-3484 or by writing to: Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591.

Office of the Secretary (OST)

To obtain a copy of a specific regulatory document or to receive future copies of the Department's regulatory agenda write to: Assistant General Counsel for Regulation and Enforcement, C-50, Office of the General Counsel, Department of Transportation, Washington, DC 20590, (202) 366-4723.

Appendix B - General Rulemaking Contact Persons

The following is a list of persons who can be contacted within the Department for general information concerning the rulemaking process within the various operating administrations.

TSA — Mardi R. Thompson, Office of Chief Counsel, 400 7th Street SW., Washington, DC 20590, telephone: (202) 267-3226.

USCG — Steve G. Venckus, Chief, Office of Regulations and Administrative Law, USCG Headquarters Building, Room 3406, 2100 2nd Street SW., Washington, DC 20593; telephone: (202) 267-1534.

FAA - Donald Byrne, Office of Chief Counsel, Regulations and Enforcement Division, 800 Independence Avenue SW., Room 915A, Washington, DC 20591; telephone: (202) 267-3073.

FHWA — Julie Downey, Office of Chief Counsel, 400 7th Street SW., Room 4223, Washington, DC 20590; telephone: (202) 366-0761.

FMCSA - Suzanne O'Malley, Office of Chief Counsel, 400 7th Street SW., Room 8201, Washington, DC 20590; telephone: (202) 366-1367.

FRA — Kathryn Shelton, Office of Chief Counsel, 400 7th Street SW., Mail Stop 10, Washington, DC 20590; telephone: (202) 493-6028.

NHTSA - Steve Wood, Office of Chief Counsel, 400 7th Street SW., Room 5219, Washington, DC 20590; telephone: (202) 366-2992.

FTA - Richard Wong, Office of Chief Counsel, 400 7th Street SW., Room 9316, Washington, DC 20590; telephone: (202) 366-4011.

SLSDC - Marc Owen, General Counsel's Office, 400 7th Street SW., Room 5424, Washington, DC 20590; telephone: (202) 366-0108.

RSPA - Edward Bonekemper, Office of Chief Counsel, 400 7th Street SW., Room 8405, Washington, DC 20590; telephone: (202) 366-4400.

MARAD — Edmund Sommer, Jr., Office of Chief Counsel, Maritime Administration, 400 7th Street SW., Room 7221, Washington, DC 20590; telephone: (202) 366-5181.

BTS — Robert Monniere SW., Room 3430, Washington, DC 20590; telephone: (202) 366-5498.

OST - Neil Eisner, Office of Regulation and Enforcement, 400 7th Street SW., Room 10424, Washington, DC 20590; telephone: (202) 366-4723.

Appendix C - Public Rulemaking Dockets

The public may review or submit comments to the dockets for all of DOT via the Internet at the following address: http://dms.dot.gov. Examples of documents that may be in the dockets are proposed rules, public comments received, supporting analyses, studies, and reports.

The public also may review regulatory dockets at, or deliver comments on proposed rulemakings to, the Dockets Office at 400 7th Street SW., Room PL 401, Washington, DC 20590, 1-800-647-5527. Working Hours: 9-5.

Appendix D - Review Plans for Section 610 and Other Requirements

Part I - The Plan

General

The Department of Transportation has long recognized the importance of regularly reviewing its existing regulations to determine whether they need to be revised or revoked. Our 1979 Regulatory Policies and Procedures require such reviews. We also have responsibilities under E.O. 12866 ("Regulatory Planning and Review") and section 610 of the Regulatory Flexibility Act to conduct such reviews. This will include the use of plain language techniques in new rules and to consider rewriting existing rules when we have the opportunity and resources permit. The Department is currently conducting a number of reviews of existing rules and is engaged in rulemaking actions resulting from these reviews.

Section 610 Review Plan

Section 610 requires that we conduct reviews of rules that (1) have been published within the last ten years and (2) have a "significant economic impact on a substantial number of small entities" (SEIOSNOSE). It also requires that we publish in the **Federal Register** each year a list of any such rules that we will review during the next year. To better comply with section 610, the Department has updated its regulatory review plan published on June 29, 1981, to accomplish a more systematic review of all of its regulations. The Office of the Secretary and each of the Department's Operating Administrations (except for FMCSA) have a 10-year review plan. These reviews are in accordance with section 610 of the Regulatory Flexibility Act.

Other Review Plans

All elements of the Department, except for the FMCSA and Federal Aviation Administration (FAA), have also elected to use this 10-year plan process to comply with the review requirements of the Department's Regulatory Policies and Procedures, and Executive Order 12866. FMCSA and FAA are using different approaches, which are described in Part II to this Appendix.

Changes to the Review Plan

Some reviews may be conducted earlier than scheduled. For example, to the extent resources permit, the plain language reviews will be conducted more quickly. Other events, such as accidents, may result in the need to conduct earlier reviews of some rules. Other factors may also result in the need to make changes; for example, we may make changes in response to public comment on this plan or in response to a Presidentially mandated review. If there is any change to the review plan, we will note the change in the following Unified Agenda. For any section 610 review, we will provide the required notice prior to the review.

Part II - The Review Process

The Analysis

Generally, the agencies have divided their rules into 10 different groups and plan to analyze one group each year. For purposes of these reviews, a year will coincide with the fall-to-fall schedule for publication of the Agenda. Thus, Year 1 (1998) began in the fall of 1998 and ends in the fall of 1999; Year 2 (1999) begins in the fall of 1999 and ends in the fall of 2000; and so on. We request public comment on the timing of the reviews. For example, is there a reason for scheduling an analysis and review for a particular rule earlier than we have? Any comments concerning the plan or particular analyses can be submitted to the regulatory contacts listed in Appendix B, General Rulemaking Contact Persons.

Section 610 Review

The agency will analyze each of the rules in a given year's group to determine whether any rule has a SEIOSNOSE and, thus, requires review in accordance with section 610 of the Regulatory Flexibility Act. The level of analysis will, of course, depend on the nature of the rule and its applicability.

Publication of agencies' section 610 analyses list each fall in this Agenda provides the public with notice and an opportunity to comment consistent with the requirements of the Regulatory Flexibility Act. We request that public comments be submitted to us early in the analysis year concerning the small entity impact of the rules to help us in making our determinations.

In each October's Agenda, the agency will publish the results of the analyses it has completed during the previous year. For rules that had a negative finding on SEIOSNOSE, we will give a short explanation (e.g., "these rules only establish petition processes that have no cost impact" or "these rules do not apply to any small entities"). For parts, subparts or other discrete sections of rules that do have a SEIOSNOSE, we will announce that we will be conducting a formal section 610 review during the following 12 months. At this stage, we will add an entry to the Agenda in the prerulemaking section describing the review in more detail. We also will seek public comment on how best to lessen the impact of these rules and provide a name or docket to which public comments can be submitted. In some cases, the section 610 review may be part of another unrelated review of the rule. In such a case, we plan to clearly indicate which parts of the review are being conducted under section 610.

Other Reviews

The agency will also examine the specified rules to determine whether any other reasons exist for revising or revoking the rule or for rewriting the rule in plain language. In each October's Agenda, the agency will also publish information on the results of the examinations completed during the previous year.

FAA

The Federal Aviation Administration, in addition to reviewing its rules in accordance with the schedule below, has established a process by which the public is asked for its comments on which rules need review the most. Any information that the FAA receives in connection with its annual section 610 analyses would, of course, also be reviewed in the spirit of E.O. 12866. In addition, in response to a recommendation of the White House Commission on Aviation Safety and Security, the FAA has completed a review of all its existing regulations to identify those in need of rewriting as performance-based or plain language regulations. The agency also reviewed ongoing regulatory projects and proposals to identify additional candidates for revision. In all, the agency reviewed 68 parts of the CFR, containing 3,884 sections, appendices, and Special Federal Aviation Regulations. In addition to using plain language in its current and future regulations, the FAA intends to revise those regulations identified in its study when it has the opportunity and resources to do so.

FMCSA

The Federal Motor Carrier Safety Administration has underway a comprehensive, multiyear project to develop modern, uniform safety regulations that are up-to-date, clear, concise, easier to understand, and more performance oriented. The FMCSA has held 11 public outreach meetings, announced in the **Federal Register**, to solicit public involvement in this review; a total of 110 industry and government safety representatives participated in 14 one-day focus group sessions; over 2,000 comments have been received in the public docket so far.

On November 23, 1994, the FMCSA published a final rule removing obsolete and redundant regulations identified through this review. In addition, on June 18, 1998, the FMCSA published another final rule (63 FR 33254) removing and amending additional provisions of the Federal Motor Carrier Safety Regulations identified through zero-base review.

The FMCSA is developing a notice of proposed rulemaking that will propose a complete revision of the Federal Motor Carrier Safety Regulations implementing the results of the FMCSA's zero-base review of those regulations. The NPRM will include a complete reorganization of the safety regulations and a rewrite of those regulations using plain language and a question-and-answer format to enhance the clarity and understandability of those regulations. In addition, the notice will focus the regulations on safety while adopting a

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performance-based approach to the regulations and reducing the paperwork associated with compliance with the regulations. The FMCSA believes that this effort will produce regulations which are simpler to understand and to comply with, especially for small motor carriers. Because of these long-term, ongoing efforts, FMCSA is not currently reviewing these rules.

Part III- List of Pending Section 610 Reviews

The Agenda identifies the pending DOT Section 610 Reviews by inserting "(Section 610 Review)" after the title for the specific entry. Also, a Governmentwide list of section 610 reviews can be located in an index at the end of the Agenda. For further information on the pending reviews, see the Agenda entries.

OFFICE OF THE SECRETARY
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	14 CFR parts 200 through 212	1998	1999
2	14 CFR parts 213 through 232	1999	2000
3	14 CFR parts 234 through 254	2000	2001
4	14 CFR parts 255 through 298 and part 40	2001	2002
5	14 CFR parts 300 through 373	2002	2003
6	14 CFR parts 374 through 398	2003	2004
7	14 CFR part 399 and 49 CFR parts 1 through 11	2004	2005
8	49 CFR parts 17 through 28	2005	2006
9	49 CFR parts 29 through 39 and parts 41 through 89	2006	2007
10	49 CFR parts 91 through 99, 48 CFR parts 1201 through 1253, and new parts and subparts	2007	2008

Year 3 (Fall 2000) List of Rules continuing to be analyzed
14 CFR part 234 — Airline service quality performance reports
14 CFR part 240 — Inspection of accounts and property
14 CFR part 241 — Uniform system of accounts and reports for large certified air carriers
14 CFR part 243 — Passenger manifest information
14 CFR part 247 — Direct airport-to-airport mileage records
14 CFR part 248 — Submission of audit reports
14 CFR part 249 — Preservation of air carrier records
14 CFR part 250 — Oversales
14 CFR part 252 — Smoking aboard aircraft
14 CFR part 253 — Notice of terms of contract of carriage
14 CFR part 254 — Domestic baggage liability

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year
14 CFR part 255 — Carrier-owned computer reservation systems
14 CFR part 256 — Display of joint operations in carrier-owned computer reservation systems
14 CFR part 257 — Disclosure of code-sharing arrangements and long-term wet leases
14 CFR part 258 — Disclosure of change-of-gauge services
14 CFR part 271 — Guidelines for subsidizing air carriers providing essential air transportation
14 CFR part 272 — Essential air service to the Freely Associated States
14 CFR part 291 — Cargo operations in interstate air transportation
14 CFR part 292 — International cargo transportation
14 CFR part 293 — International passenger transportation
14 CFR part 294 — Canadian charter air taxi operators
14 CFR part 296 — Indirect air transportation of property
14 CFR part 297 — Foreign air freight forwarders and foreign cooperative shippers associations
14 CFR part 298 — Exemptions for air taxi and commuter air carrier operations
49 CFR part 40 — Procedures for transportation workplace drug testing programs

UNITED STATES COAST GUARD
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	33 CFR parts 1 through 124	1998	1999
2	33 CFR parts 125 through 199	1999	2000
3	46 CFR parts 1 through 40	2000	2001
4	46 CFR parts 41 through 69	2001	2002
5	46 CFR parts 70 through 89	2002	2003
6	46 CFR parts 90 through 139	2003	2004
7	46 CFR parts 140 through 155	2004	2005

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UNITED STATES COAST GUARD (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
8	46 CFR parts 156 through 165	2005	2006
9	46 CFR parts 166 through 199	2006	2007
10	New parts and subparts	2007	2008

Year 3 (Fall 2000) List of rules continuing to be analyzed
33 CFR part 126 — Handling of Class 1 (explosive) materials or other dangerous cargoes within or contiguous to waterfront facilities
33 CFR part 127 — Waterfront facilities handling liquefied natural gas and liquefied hazardous gas
33 CFR part 128— Security of passenger terminals
33 CFR part 135 — Offshore oil pollution compensation fund
33 CFR part 138 — Financial responsibility for water pollution (vessels)
33 CFR part 140 — General
33 CFR part 141 — Personnel
33 CFR part 142 — Workplace safety and health
33 CFR part 143 — Design and equipment
33 CFR part 144 — Lifesaving appliances
33 CFR part 145 — Firefighting equipment
33 CFR part 146 — Operations
33 CFR part 151 — Vessels carrying oil, noxious liquid substances, garbage, municipal or commercial waste, and ballast water
33 CFR part 153 — Control of pollution by oil or hazardous substances, discharge removal
33 CFR part 154 — Facilities transferring oil or hazardous materials in bulk
33 CFR part 155 — Oil or hazardous material pollution prevention regulations for vessels
33 CFR part 156 — Oil or hazardous material transfer operations
33 CFR part 157 — Rules for the protection of the marine environment relating to tank vessels carrying oil in bulk
33 CFR part 158 — Reception facilities for oil, noxious liquid substances, and garbage
33 CFR part 161 — Vessel traffic management
33 CFR part 162 — Inland waterways navigation regulations
33 CFR part 163 — Towing of barges
33 CFR part 164 — Navigation safety regulations
33 CFR part 165 — Regulated navigation areas and limited access areas
33 CFR part 168 — Escort requirements for certain tankers
33 CFR part 173 — Vessel numbering and casualty and accident reporting
33 CFR part 179 — Defect notification
33 CFR part 181 — Manufacturer requirements
33 CFR part 183 — Boats and associated equipment
33 CFR part 184 — 186 Reserved
33 CFR part 187 — Vessel identification system
33 CFR parts 188 through 199 — Reserved
46 CFR part 1 — Organization, general course and methods governing marine safety functions
46 CFR part 2 — Vessel inspections
46 CFR part 3 — Designation of oceanographic research vessels
46 CFR part 4 — Marine casualties and investigations
46 CFR part 5 — Marine investigation regulations — personnel action
46 CFR part 6 — Waivers of navigation and vessel inspection laws and regulations
46 CFR part 7 — Boundary lines
46 CFR part 8 — Vessel inspection alternatives
46 CFR part 9 — Extra compensation for overtime services
46 CFR part 10 — Licensing of maritime personnel
46 CFR part 12 — Certification of seamen
46 CFR part 13 — Certification of tankermen
46 CFR part 14 — Shipment and discharge of merchant mariners
46 CFR part 15 — Manning requirements
46 CFR part 16 — Chemical testing
46 CFR part 24 — General provisions
46 CFR part 25 — Requirements
46 CFR part 26 — Operations
46 CFR part 28 — Requirements for commercial fishing industry vessels
46 CFR part 30 — General provisions

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46 CFR part 31 — Inspection and certification
46 CFR part 32 — Special equipment, machinery, and hull requirements
46 CFR part 34 — Firefighting equipment
46 CFR part 35 — Operations
46 CFR part 36 — Elevated temperature cargoes
46 CFR part 38 — Liquefied flammable gases
46 CFR part 39 — Vapor control systems

Year 4 (Fall 2001) List of rules that will be analyzed during the next year
46 CFR part 42 — Domestic and foreign voyages by sea
46 CFR part 44 — Special service limited domestic voyage
46 CFR part 45 — Great lakes load lines
46 CFR part 46 — Subdivision load lines for passenger vessels
46 CFR part 47 — Combination load lines
46 CFR part 50 — General provisions
46 CFR part 52 — Power boilers
46 CFR part 53 — Heating boilers
46 CFR part 54 — Pressure vessels
46 CFR part 56 — Piping systems and appurtenances
46 CFR part 57 — Welding and brazing
46 CFR part 58 — Main auxiliary machinery and related systems
46 CFR part 59 — Repairs to boilers, pressure vessels and appurtenances
46 CFR part 61 — Periodic tests and inspections
46 CFR part 62 — Vital systems automation
46 CFR part 63 — Automatic auxiliary boilers
46 CFR part 64 — Marine portable tanks and cargo handling systems
46 CFR part 67 — Documentation of vessels
46 CFR part 68 — Documentation of vessels pursuant to extraordinary legislative grants
46 CFR part 69 — Measurement of vessels

FEDERAL AVIATION ADMINISTRATION
SECTION 610 REVIEW PLAN

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	14 CFR parts 1 through 21	1998	1999
2	14 CFR parts 23 through 34	1999	2000
3	14 CFR parts 35 through 49	2000	2001
4 *	14 CFR parts 61 through 77	2001	2002
5	14 CFR parts 91 through 105	2002	2003
6	14 CFR parts 107 through 133	2003	2004
7	14 CFR parts 135 through 147	2004	2005
8	14 CFR parts 150 through 169	2005	2006
9	14 CFR parts 170 through 198	2006	2007
10	14 CFR parts 400 through 415	2007	2008

* FAA will also review all other rules dealing with alcohol and drugs

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results
14 CFR 23 —.Airworthiness standards: normal, utility, acrobatic, and commuter category airplanes
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 27 — Airworthiness standards: normal, utility, acrobatic, and commuter category rotorcraft
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 29 — Airworthiness standards: transport category rotorcraft
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 31 — Airworthiness standards: manned free ballons
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.

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- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 33 — Airworthiness standards: aircraft engines
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR 34 — Fuel venting and exhaust emission requirements for turbine engine powered airplanes
- Section 610; No SEIOSNOSE. This rule applies to a significant number of small entities but amendments over the past decade do not have a substantial economic impact. Accordingly, a periodic review was not required.
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 35 — Airworthiness standards: propellers
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 36 — Noise standards; aircraft type and airworthiness certification
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 39 — Airworthiness directives
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 43 — Maintenance, preventive maintenance; rebuilding and alteration
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 45 — Identification and registration marking
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 47 — Aircraft registration
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

14 CFR part 49 — Recording of aircraft titles and security documents
- Section 610; FAA will conduct a formal 610 review during the following 12 months*
- Plain Language: To the extent that the FAA's plain language study identified a need for revisions in this part, revisions will be made when the FAA has the opportunity and resources to do so.

Year 4 (Fall 2001) List of rules that will be analyzed during the next year
14 CFR part 61 — Certification: pilots, flight instructors and ground instructions
14 CFR part 63 — Certification: flight crewmembers other than pilots
14 CFR part 65 — Certification: airmen other than flight crewmembers
14 CFR part 67 — Medical standards and certification
14 CFR part 70 — Designation of class A, class B, class C, class D and class E airspace areas; airways routes and reporting points
14 CFR part 73 — Special use airspace
14 CFR part 77 — Objects affecting navigable airspace
*A description for this action will be included in the Spring 2002 agenda or published in a separate notice in the *Federal Register*

FEDERAL HIGHWAY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	None	1998	1999
2	None	1999	2000
3	23 CFR parts 450, 657 and 771	2000	2001
4	23 CFR parts 1-260	2001	2002
5	23 CFR parts 420, 460-480	2002	2003
6	23 CFR part 500	2003	2004
7	23 CFR parts 600-656, 658-669	2004	2005

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FEDERAL HIGHWAY ADMINISTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
8	23 CFR parts 710-924	2005	2006
9	23 CFR parts 1200-1252	2006	2007
10	New parts and subparts	2007	2008

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results

23 CFR part 450 — Ongoing review of regulations governing Statewide and Metropolitan Transportation Planning

- The FHWA and the FTA received numerous comments to the docket in response to this NPRM. The agencies are currently reviewing the comments and discussing the options with the new Administration to determine what action should follow.

23 CFR part 657 — Ongoing review of certification of size and weight requirements

- Section 610: No SEIOSNOSE. This rule does not in any way have an impact on small governments or businesses as this regulation outlines the requirements that State governments follow in order to comply with the annual certification requirement in 23 U.S.C. 141.
- Plain language: In an upcoming rulemaking, the FHWA will rewrite the regulation using plain language.
- General: We are continuing our review of the type of information and data that should be submitted by the States in support of their annual certification of enforcement and will revise as appropriate.

23 CFR part 771— Ongoing review of regulations governing Assessment of Environmental Impact and Related procedures (NEPA Implementing Regulations)

- The FHWA and the FTA received numerous comments to the docket in response to this NPRM. The agencies are currently reviewing the comments and discussing the options with the new Administration to determine what action should follow.

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year

23 CFR part 1 — General management and administration
23 CFR part 140 — Payment procedures
23 CFR part 172 — Administration of engineering and design related service contracts
23 CFR part 180 —Credit assistance for surface transportation projects
23 CFR part 190 — Incentive procedures for controlling outdoor advertising on the interstate system
23 CFR part 192 — Drug offenders driver's license suspension
23 CFR part 200 — Title IV program and related statutes-implementation and review procedures
23 CFR part 230 — External equal employment opportunity programs
23 CFR part 260 — Education and training programs

Federal-Aid Highway Program

The FHWA has adopted regulations in title 23 of the CFR, chapter I, related to the Federal-aid highway program. These regulations implement and carry out the provisions of Federal law relating to the administration of Federal aid for highways. The primary law authorizing Federal aid for highways is chapter 1 of title 23 of the USC. Section 145 of title 23 expressly provides that chapter 1 provides for a federally assisted State program. For this reason, the regulations adopted by the FHWA in title 23 of the CFR primarily relate to requirements that States must meet to receive Federal funds for the construction and other work related to highways.

Because the regulations in title 23 primarily relate to States, which are not defined as small entities under the Regulatory Flexibility Act, the FHWA believes that its regulations in title 23 do not have a significant economic impact on a substantial number of small entities. The FHWA solicits public comment on this preliminary conclusion.

The FHWA, jointly with the Federal Transit Administration, has issued notices of proposed rulemaking that would revise the regulations currently codified at 23 CFR parts 450 and 771. These regulations will be issued in a new chapter IV of 23 CFR as "intermodal" rules renumbered respectively as 23 CFR part 1410 (planning assistance and standards) and 23 CFR part 1420 and 1430 (environmental impact and related matters). In the course of developing the notice of proposed rulemaking (NPRM) for each of these regulations, the FHWA and FTA solicited comment on their potential for impact on small entities, including small governments. The FHWA and the FTA received numerous comments in response to these NPRMs and are currently reviewing the data and discussing the options under the guidance of the new administration. All issues pertaining to the potential for impact will be addressed in the final regulations.

NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	49 CFR parts 501 through 526 and 571.213	1998	1999
2	49 CFR parts 571.131 and 571.220 through 571.222	1999	2000

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NATIONAL HIGHWAY TRAFFIC SAFETY ADMINISTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
3	49 CFR parts 591 through 594	2000	2001
4	49 CFR parts 571.101 through 571.110 and 571.135	2001	2002
5	49 CFR parts 529 through 579, except part 571	2002	2003
6	49 CFR parts 571.111 through 571.129 and parts 580 through 590	2003	2004
7	49 CFR part 571.201 through 571.212	2004	2005
8	49 CFR parts 571.214 through 571.219	2005	2006
9	49 CFR parts 571.223 through 571.304, part 500 and new parts and subparts under 49 CFR	2006	2007
10	23 CFR parts 1200's and 1300's and new parts and subparts under 23 CFR	2007	2008

Year 3 (Fall 2000) List of Rules that will continue to be analyzed during the next year

Part 591 — Implementation of vehicles and equipment subject to Federal safety, bumper and theft prevention standards
Part 592 — Registered importers of vehicles not originally manufactured to conform to the Federal Motor Vehicle Safety Standards
Part 593 — Determinations that a vehicle not originally manufactured to conform to the Federal Motor Vehicle Safety Standards is eligible for importation
Part 594 — Schedule of fees authorized by 49 U.S.C. 30141

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year

49 CFR parts 571.101 — Standard No. 101; Controls and displays
49 CFR parts 571.102 — Standard No. 102; Transmission shift lever sequence starter interlock, and transmission braking effect
49 CFR parts 571.103 — Standard No. 103; Windshield defrosting and defogging systems
49 CFR parts 571.104 — Standard No. 104; Windshield wiping and washing systems
49 CFR parts 571.105 — Standard No. 105; Hydraulic and electric brake systems
49 CFR parts 571.106 — Standard No. 106; Brake hoses
49 CFR parts 571.107 — Standard No. 107; [Reserved]
49 CFR parts 571.108 — Standard No. 108; lamps, reflective devices, and associated equipment
49 CFR parts 571.109 — Standard No. 109; New pneumatic tires
49 CFR parts 571.110 — Standard No. 110; Tire selection and rims
49 CFR parts 571.135 — Standard No. 135; Passenger car brake systems

NHTSA Request for Comments

On September 13, 2000, NHTSA published in the **Federal Register** a request for comments on whether these rules have a significant economic impact on a substantial number of small entities. NHTSA received and granted a request to extend the comment period to November 13, 2000.

FEDERAL RAILROAD ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	49 CFR parts 200 through 201	1998	1999
2	49 CFR parts 207, 209, 211, 215, and 256	1999	2000
3	49 CFR parts 210, 212, 214, and 217	2000	2001
4	49 CFR parts 219	2001	2002
5	49 CFR parts 218 and 221	2002	2003
6	49 CFR parts 216 and 228 through 229	2003	2004
7	49 CFR parts 223 and 233	2004	2005
8	49 CFR parts 225, 231, and 234	2005	2006
9	49 CFR parts 235 through 236, 250, 260, and 266	2006	2007
10	49 CFR parts 213, 220, 230, 232, 239, 240, and 265	2007	2008

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results

49 CFR part 210 — Railroad noise emission compliance regulations

- Section 610: No SEIOSNOSE. These are minimum compliance regulations for enforcement of noise emission standards established by EPA. To FRA's knowledge, the Railroad Noise Emission Compliance Regulation has not imposed any significant burden on any small railroads.
- Plain Language: FRA's plain language review of these rules indicates no need for substantial revision.

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- General: Having a national uniform noise emission standard benefits small railroads to the extent local government authorities would otherwise seek to impose more stringent noise emission requirements. The existence of these standards provides uniformity and benefits the small railroads as a class.

49 CFR part 212 — State safety participation regulations
- Section 610: No SEIOSNOSE. These regulations establish standards and procedures for State participation in investigative and surveillance activities under the Federal railroad safety laws and regulations. The program is entirely voluntary, and the "regulated community" is composed of those States which choose to participate. No State is a "small entity" under any reasonable definition..
- Plain Language: FRA's plain language review indicates no need for substantial revision..
- General: FRA encourages States to participate in the program, and considers State inspectors an important element in the enforcement of Federal safety laws. Training and funding is provided by FRA to the States to offset the costs of participation. In addition, FRA employs a full-time State participation program manager to work with the States to encourage participation and assist in program implementation.

49 CFR part 214 — Railroad workplace safety
- Section 610: There is a SEIOSNOSE for subpart B. FRA will conduct a formal review to identify whether additional opportunities may exist to further reduce the burden on small railroads without compromising safety. No SEIOSNOSE for subpart C. Impacts on small entities are directly related to the volume of traffic on a right-of-way, and most small railroads have low enough volume to minimize the impact.
- Plain Language: FRA's plain language review indicates no need for substantial revision. As resources permit, FRA will make such changes as may be necessary.
- General: The existence of Federal workplace safety laws benefits small entities. In the absence of Federal laws, small railroads would be subject to a wide variety of State and local laws. Even the smallest of railroads might find it necessary to understand and comply with several different sets of laws from the jurisdictions in which they operate. Federal law preempts local laws in this area, and simplifies compliance on the part of the regulated community.

49 CFR part 217 — Railroad operating rules
- Section 610: No SEIOSNOSE. FRA finds that there is a continuing need to collect information on railroad operating rules and practices, in order to monitor changes in railroad operating practice. The required periodic inspections and employee training are important for safety.
- Plain Language: FRA's plain language review of these rules indicates no need for substantial revision. The regulation is clearly written.
- General: part 217 contains provisions to mitigate the burden on small entities by reducing their record filing and recordkeeping requirements

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year
49 CFR part 219 — Alcohol and drug regulations

FEDERAL TRANSIT ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	None	1998	1999
2	None	1999	2000
3	None	2000	2001
4	49 CFR part 661	2001	2002
5	49 CFR part 665	2002	2003

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year
49 CFR part 661 — Buy America requirements — Surface Transportation Assistance Act of 1982, as amended

MARITIME ADMINISTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	46 CFR parts 201 through 207	1998	1999
2	46 CFR parts 221 through 232	1999	2000
3	46 CFR parts 249 through 295	2000	2001
4	46 CFR parts 298	2001	2002
5	46 CFR parts 307 through 310	2002	2003
6	46 CFR parts 315 through 399	2003	2004
7	46 CFR parts 340 and 347	2004	2005
8	46 CFR parts 349 through 380	2005	2006
9	46 CFR parts 381 through 387	2006	2007
10	46 CFR parts 390 through 391	2007	2008

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Year 3 (Fall 2000) List of Rules analyzed and a summary of the results
46 CFR 249 Approval of underwriters for marine hull insurance
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: As resources permit, MARAD will rewrite the regulations using plain language techniques.
- General: No changes are necessary because the requirements regulate in the most cost-effective manner, the benefits of the regulations justify their costs, and the regulations impose the least burden on society.

46 CFR 251 Application for subsidies and other direct financial aid
46 CFR 252 Operating-differential subsidy for bulk cargo vessels engaged in worldwide services
46 CFR 272 Requirements and procedures for conducting condition surveys and administering maintenance and repair subsidy
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant. Congress has withdrawn MARAD's authority to issue operational-differential subsidy.
- Plain Language: We will rewrite any remaining regulations using plain language techniques.
- General: We will continue our review of operating-differential subsidy regulations and will initiate a rulemaking to eliminate these regulations as the last operating-differential subsidy contracts terminate.

46 CFR 276 Construction-differential subsidy repayment
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant. Plain Language: We will rewrite any remaining regulations using plain language techniques.
- General: No changes are necessary because the requirements regulate in the most cost-effective manner, the benefits of the regulations justify their costs, and the regulations impose the least burden on society.

46 CFR 277 Domestic and foreign trade; interpretations
46 CFR 280 Limitations on the award and payment of operating-differential subsidy for liner operators
46 CFR 281 Information and procedure required under liner operating-differential subsidy agreements
46 CFR 282 Operating-differential subsidy for liner vessels engaged in essential services in the foreign commerce of the United States
46 CFR 283 Dividend policy for operators receiving operating-differential subsidy
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant. Congress has withdrawn MARAD's authority to issue operational-differential subsidy.
- Plain Language: We will rewrite any remaining regulations using plain language techniques.
- General: We will continue our review of operating-differential subsidy regulations and will probably initiate a rulemaking to eliminate these regulations as the last operating-differential subsidy contracts terminate.

46 CFR 287 Establishment of construction reserve funds
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: We will rewrite the regulations using plain language techniques.
- General: We will continue our review and schedule this part for revision as appropriate.

46 CFR 295 Maritime Security Program
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: The text is clear and well-organized.
- General: We will revise the regulations if necessary.

Year 4 (Fall 2001) List of Rules analyzed and a summary of the results
46 CFR part 298 — Obligation Guarantees
- Section 610: No SEIOSNOSE. Some small entities may be affected, but the economic impact on small entities will not be significant.
- Plain Language: These regulations were rewritten in plain language in 2000.
- General: In 2000, MARAD amended part 298 by simplifying existing administrative practices governing ship financing guarantees. The revisions simplify the process for applicants. MARAD will continue to review these regulations and make additional changes when appropriate.

Year 5 (Fall 2002) List of Rules that will be analyzed during the next year
46 CFR part 307 — Establishment of mandatory position reporting system for vessels
46 CFR part 308 — War risk insurance
46 CFR part 309 — Values for war risk insurance
46 CFR part 310 — Merchant marine training

RESEARCH AND SPECIAL PROGRAMS ADMINSTRATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	49 CFR sections 171.15, 171.16 (incident reports)	1998	1999
2	49 CFR parts 106 and 107 (hazardous materials safety procedures), 171 (general hazmat requirements), 190 (pipeline safety procedures), and 195 (hazardous liquid pipeline corrosion control)	1999	2000

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RESEARCH AND SPECIAL PROGRAMS ADMINSTRATION (Continued)
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
3	49 CFR parts 174, 177 (rail and highway carriage), 191 (gas pipeline transportation reports), and 192 (gas pipeline corrosion control)	2000	2001
4	49 CFR parts 176 (vessel carriage) and 199 (pipeline employee drug and alcohol testing)	2001	2002
5	49 CFR parts 172, 173, 174, 175, 176, 177, and 178 (radioactive material)	2002	2003
6	49 CFR parts 172, 173, 174, 176, and 178 (explosives), and 193 (liquefied natural gas facilities), and parts 172, 173, 178, and 180 (cylinders)	2003	2004
7	49 CFR 173 (shipper requirements) and 194 (onshore oil pipeline response plans)	2004	2005
8	49 CFR parts 178 (non-bulk packaging) and 195 (hazardous liquid pipeline transportation)	2005	2006
9	49 CFR parts 178 through 180 (bulk packaging) and 198 (State pipeline safety grants)	2006	2007
10	49 CFR parts 172 (communications, emergency response, training and hazmat table) and 175 (air carriage)	2007	2008

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results
49 CFR part 174 — Carriage by rail
- Section 610: No SEIOSNOSE. While these requirements apply to a substantial number of small entities, they do not have a significant economic impact on those entities. For the most part, the operating requirements impose only minimal costs above costs incurred as a result of normal business practices. Further, the requirements have little or no impact on entry to or exit from the industry.
- Plain Language: As resources permit, RSPA will rewrite regulations using plain language techniques.

49 CFR part 177 — Carriage by public highway
- Section 610: No SEIOSNOSE. While these requirements apply to a substantial number of small entities, they do not have a significant economic impact on those entities. For the most part, the operating requirements impose only minimal costs above costs incurred as a result of normal business practices. Further, the requirements have little or no impact on entry to or exit from the industry.
- Plain Language: As resources permit, RSPA will rewrite regulations using plain language techniques.

49 CFR part 191 — Gas pipeline transportation reports
- Section 610: No SEIOSNOSE. The regulations do not impose any additional costs because they are consistent with current requirements for reporting of accidents and annual reporting.
- Plain Language: Plain language techniques will be used in the revisions to incident and annual reporting requirements.
- General: Reviewed incident and annual reporting requirements and will issue rules to improve cause categories and clarify requirements.

49 CFR part 192 — Gas pipeline corrosion control
- Section 610: No SEIOSNOSE. The regulations do not impose any additional costs because they are consistent with customary industry corrosion control and cathodic protection practices.
- Plain Language: Plain language techniques will be used in any amended regulations that result from rulemaking.
- General: Reviewed corrosion control regulations with state and industry experts; changes will be proposed to incorporate modern criteria for adequate corrosion protection.

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year
49 CFR part 176 — Carriage by vessel
49 CFR part 199 — Pipeline employee drug and alcohol testing

BUREAU OF TRANSPORTATION STATISTICS
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	14 CFR part 241, Form 41	1998	1999
2	14 CFR part 241, Schedule T-100, and part 217	1999	2000
3	14 CFR part 298, 49 CFR 1420	2000	2001
4	14 CFR part 241, section 19-7	2001	2002
5	14 CFR part 291	2002	2003
6	14 CFR part 234	2003	2004
7	14 CFR part 249	2004	2005
8	14 CFR part 248	2005	2006
9	14 CFR part 250	2006	2007
10	14 CFR part 374a, ICAO	2007	2008

Year 3 (Fall 2000) List of Rules analyzed and a summary of the results
14 CFR part 298, subpart F — Schedule 298-C, Report of Financial and Operating Statistics for Small Aircraft Operators

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- Section 610: potential SEIOSNOSE. This reporting is by small entities; comments will be requested from the affected small entities to assess the economic impact of the proposed changes.
- Plain Language: A proposed rule is being drafted using plain language techniques.
- General: This rule is being reviewed as part of an overall program analysis of aviation data requirements and modernization. During the review process, BTS identified certain data gaps that exist in the current traffic statistics reported by small aircraft operators. BTS has added a notice of proposed rulemaking (RIN 2139-AA08) to its Regulatory Agenda that is intended to address the gaps in the data.

49 CFR part 1420 — Reports of motor carriers
- Section 610: No SEIOSNOSE. This reporting is by Class I and Class II motor carriers that are not small entities.
- Plain Language: Plain language techniques will be used in drafting any necessary rule changes.
- General: We will continue our review and schedule this part for revision as appropriate.

Year 4 (Fall 2001) List of Rules that will be analyzed during the next year
14 CFR part 241, section 19-7-Passenger Origin and Destination Survey

SAINT LAWRENCE SEAWAY DEVELOPMENT CORPORATION
SECTION 610 AND OTHER REVIEWS

Year	Regulations to be Reviewed	Analysis Year	Review Year
1	33 CFR parts 401 through 403	1998	1999

Office of the Secretary—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1682	+Computer Reservations System Regulations Comprehensive Review	2105-AC65
1683	+Aviation Data Requirements Review and Modernization Program	2105-AC71
1684	Nondiscrimination on the Basis of Disability in Air Travel	2105-AC97
1685	Reporting Requirement for Air Carriers Regarding Disability-Related Complaints	2105-AD04

+ DOT-designated significant regulation

Office of the Secretary—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1686	+Direct Air Carrier Responsibility for Returning Stranded Charter Passengers	2105-AA40
1687	Air Travelers: Age Discrimination	2105-AA45
1688	Direct Flights	2105-AA73
1689	Diversion of Flights Within a Metropolitan Area	2105-AA78
1690	Simplified Aviation Exemption Procedures	2105-AA82
1691	Baggage Liability Notices in International Air Transportation	2105-AA84
1692	Simplified Airline Counter-Sign Notices	2105-AA88
1693	+Price Advertising	2105-AB50
1694	+Procedures for Transportation Workplace Drug-Testing Programs	2105-AB71
1695	+Transportation for Individuals With Disabilities (Accessibility Guidelines)	2105-AC06
1696	Use of Direct Final Rulemaking	2105-AC11
1697	Overbooking of Flights: Elimination of Airport Notice Signs	2105-AC45
1698	Fees and Charges for Special Services: Reinvention	2105-AC47
1699	Amendments to Modal Alcohol Testing Rules: Pre-Employment Testing	2105-AC50
1700	Nondiscrimination in Air Travel; Boarding Where Level-Entry Is Unavailable	2105-AC81
1701	+Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2105-AC83
1702	+Americans With Disabilities Act Accessibility Standards	2105-AC86
1703	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs: Memorandum of Understanding With Small Business Administration; Uniform Forms and Other Revisions	2105-AC88
1704	Participation by Minority Business Enterprises in Department of Transportation Financial Assistance Programs: Threshold Requirements and Other Technical Revisions	2105-AC89
1705	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs	2105-AC91
1706	Statement of Policy on Alternative Dispute Resolution	2105-AC94
1707	Nondiscrimination in Federally Assisted Programs	2105-AC96

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Office of the Secretary—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1708	Over the Road Buses: Extension of Due Date for Information Collection	2105-AC98
1709	Standard Time Zone Boundary in the State of North Dakota: Morton County	2105-AD03
1710	Nondiscrimination on the Basis of Disability in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Transportation Services for Individuals With Disabilities (ADA)	2105-AD05
1711	+Procedures for Compensation of Air Carriers	2105-AD06
1712	Reporting Prohibited Communications	2105-AD10

+ DOT-designated significant regulation

Office of the Secretary—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1713	Policy Statement on Airline Preemption	2105-AA46
1714	+Statement of Enforcement Policy on Rebating	2105-AB39
1715	+Accessibility of Passenger Vessels to Individuals With Disabilities	2105-AB87
1716	Use of Oxygen by Air Carrier Passengers	2105-AC29
1717	+Domestic Passenger Manifest Information	2105-AC62
1718	Electronic Filing Option in DOT Proceedings	2105-AC79
1719	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace Grants	2105-AD01
1720	Governmentwide Debarment and Suspension (Nonprocurement) /Governmentwide Requirements for Drug-Free Workplace (Financial Assistance)	2105-AD07
1721	Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation	2105-AD08

+ DOT-designated significant regulation

Office of the Secretary—Completed Actions

Sequence Number	Title	Regulation Identification Number
1722	Extension of Computer Reservations Systems Regulations	2105-AD09

Transportation Security Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1723	+Imposition and Collection of Passenger Civil Aviation Security Fees	2110-AA01
1724	+Aviation Security Infrastructure Fees	2110-AA02
1725	+Civil Aviation Security Rules	2110-AA03
1726	+Security Programs for Aircraft Weighing 12,500 Pounds or More	2110-AA04

+ DOT-designated significant regulation

U.S. Coast Guard—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1727	+Standards for Living Organisms in Ships' Ballast Water Discharged in U.S. Waters (USCG-2001-10486)	2115-AG21

+ DOT-designated significant regulation

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U.S. Coast Guard—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1728	Claims Procedures Under the Oil Pollution Act of 1990 (CGD 91-035)	2115-AD90
1729	+Salvage and Marine Firefighting Requirements; Vessel Response Plans for Oil (USCG-1998-3417)	2115-AF60
1730	Deepwater Ports (USCG-1998-3884)	2115-AF63
1731	Allowing Alternative Source to Incandescent Light in Private Aids to Navigation (USCG-2000-7466)	2115-AF98
1732	+Vessel and Facility Response Plans for Oil: 2003 Removal Equipment Requirements and Alternative Technology Revisions (USCG-2001-8661)	2115-AG05
1733	+Post Casualty Drug and Alcohol Testing (USCG-2001-8773)	2115-AG07
1734	+Vessel Documentation: Lease Financing for Vessels Engaged in the Coastwise Trade (USCG-2001-8825)	2115-AG08
1735	Territorial Seas, Navigable Waters, Jurisdiction - Conforming Amendments (USCG-2001-9044)	2115-AG13
1736	Federal Requirements for Propeller Injury Avoidance Measures (USCG 2001-10163)	2115-AG18
1737	Update of Rules on Aids to Navigation affecting Buoys, Sound Signals, International Rules at Sea, Communications Procedures, and Large Navigational Buoys (USCG-2001-10714)	2115-AG25
1738	Marine Events: Permit Procedures (USCG-2001-10713)	2115-AG26
1739	Drawbridge Operations Regulations; Revisions (USCG-2001-10881)	2115-AG27
1740	Liferaft Servicing Intervals (USCG-2001-11118)	2115-AG28
1741	Rates for Pilotage on the Great Lakes (USCG-2002-11288)	2115-AG30
1742	Safety Zone for Outer Continental Shelf Facility in the Gulf of Mexico (CGD08-01-043)	2115-AG31
1743	Wearing of Personal Flotation Devices by Persons Operating or Riding on Personal Watercraft or Being Towed Behind Recreational Vessels (USCG-2002-11421)	2115-AG32
1744	Protection of Naval Vessels (LANT AREA-02-001 and PAC AREA-02-001)	2115-AG33
1745	Notifications of Arrival and Departure in Ports or Places in the United States	2115-AG35
1746	+Automatic Identification System Carriage Requirement (USCG-2002-11721)	2115-AG36

+ DOT-designated significant regulation

U.S. Coast Guard—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1747	Safety/Security Zone Regulations	2115-AA97
1748	Special Anchorage Areas/Anchorage Grounds Regulations	2115-AA98
1749	Reporting Marine Casualties (USCG-2000-6927)	2115-AD98
1750	Handling of Explosives or Other Dangerous Cargoes Within or Contiguous to Waterfront Facilities (USCG-1998-4302)	2115-AE22
1751	Regatta Regulations	2115-AE46
1752	Drawbridge Regulations	2115-AE47
1753	+Escort Vessels in Certain U.S. Waters (CGD 91-202a)	2115-AE56
1754	Regulated Navigation Areas	2115-AE84
1755	Numbering of Undocumented Barges (USCG-1998-3798)	2115-AF13
1756	Licensing and Manning for Officers of Towing Vessels (USCG 1999-6224)	2115-AF23
1757	Limited Service Domestic Voyage Load Lines for River Barges on Lake Michigan (USCG-1998-4623)	2115-AF38
1758	Outer Continental Shelf Activities (USCG-1998-3868)	2115-AF39
1759	Fire-Suppression Systems and Voyage Planning for Towing Vessels (USCG 2000-6931)	2115-AF53
1760	+Emergency Response Plans for Passenger Vessels (USCG-1998-3473)	2115-AF61
1761	+Improvements to Maritime Safety in Puget Sound-Area Waters (USCG-1998-4501)	2115-AF68
1762	Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (USCG-1999-5040)	2115-AF69
1763	Vessel Traffic Service Lower Mississippi River (USCG-1998-4399)	2115-AF75
1764	Barges Carrying Bulk Liquid Hazardous Material (USCG-1999-5117)	2115-AF77
1765	Anchorage Ground; Safety Zone; Speed Limit; Tongass Narrows and Ketchikan, AK (CGD17-99-002)	2115-AF81
1766	Training and Qualifications for Personnel on Passenger Ships (USCG 1999-5610)	2115-AF83
1767	Alternate Hull Examination Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels (USCG-2000-6858)	2115-AF95
1768	Cargo Securing on Vessels Operating in U.S. Waters (USCG-2000-7080)	2115-AF97
1769	Notification of Arrival: Addition of Charterer to Required Information (USCG-2001-8659)	2115-AG06
1770	Electronic Chart Display and Information System (ECDIS) (USCG-2001-8826)	2115-AG09
1771	+Tank Level or Pressure Monitoring Devices (USCG-2001-9046)	2115-AG10
1772	Inspection and Enforcement of Coast Guard Regulations for Fixed Facilities by Minerals Management Service (USCG-2001-9045)	2115-AG14

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U.S. Coast Guard—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1773	Revise Options for Responding to Notices of Violations (USCG-2001-9175)	2115-AG15
1774	Traffic Separation Scheme: In Prince William Sound, Alaska (USCG-2001-10254)	2115-AG20
1775	Safety Zones for Outer Continental Shelf Facilities in the Gulf of Mexico (CGD08-01-025)	2115-AG22
1776	Protection of Naval Vessels (LANT AREA-01-001 and PAC AREA-01-001)	2115-AG23

+ DOT-designated significant regulation

U.S. Coast Guard—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1777	+Discharge-Removal Equipment for Vessels Carrying Oil (CGD 90-068)	2115-AD66
1778	+Escort Vessels for Certain Tankers (CGD 91-202)	2115-AE10
1779	State Access to the Oil Spill Liability Trust Fund (CGD 92-014)	2115-AE19
1780	+Marine Transportation-Related Facility Response Plans for Hazardous Substances (USCG-1999-5705)	2115-AE87
1781	+Tank Vessel Response Plans for Hazardous Substances (USCG-1998-4354)	2115-AE88
1782	+Implementation of the 1995 Amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW) (CGD 95-062)	2115-AF26
1783	Rules of Practice, Procedure, and Evidence for Administrative Proceedings of the Coast Guard (USCG 1998-3472)	2115-AF59
1784	Commercial Diving Operations (USCG-1998-3786)	2115-AF64
1785	+Alternate Tonnage Convention: Small Passenger Vessels	2115-AG29
1786	Port Security Plans	2115-AG37
1787	Facility Security Plan	2115-AG38
1788	Passenger Facility Security Plan	2115-AG39
1789	Maritime Security: Passenger Vessel Security	2115-AG40
1790	Maritime Security: High Consequence Vessels	2115-AG41
1791	Identification Credentials for Maritime Security	2115-AG42

+ DOT-designated significant regulation

U.S. Coast Guard—Completed Actions

Sequence Number	Title	Regulation Identification Number
1792	Permits for the Transportation of Municipal and Commercial Wastes (USCG-2000-7442)	2115-AD23
1793	Propeller Injury Prevention Aboard Rental Boats (USCG-2001-10299)	2115-AF28
1794	Carriage of Bulk Solid Materials Requiring Special Handling (USCG-2000-6932)	2115-AF47
1795	Implementation of the National Invasive Species Act of 1996 (USCG-1998-3423)	2115-AF55
1796	Pollution Prevention for Oceangoing Ships and Certain Vessels in Domestic Service (USCG-2000-7641)	2115-AF56
1797	Certification of Navigation Lights for Uninspected Commercial Vessels and Recreational Vessels (USCG 1999-6580)	2115-AF70
1798	Vessel Documentation (USCG-1998-4784)	2115-AF71
1799	Vapor Control Systems (USCG-1999-5150)	2115-AF78
1800	Mandatory Ship Reporting System off the Northeast and the Southeast Coasts of the United States (USCG-1999-5525)	2115-AF82
1801	Raising the Threshold of Property Damage for Reports of Accidents Involving Recreational Vessels (USCG-1999-6094)	2115-AF87
1802	Revision of Auxiliary Regulations (USCG-1999-6712)	2115-AF94
1803	Noxious Liquid Substances, Obsolete Hazardous Materials in Bulk, and Current Hazardous Materials in Bulk (USCG-2000-7079)	2115-AF96
1804	Wearing of Personal Flotation Devices (PFDs) by Certain Children Aboard Recreational Vessels (USCG-2000-8589)	2115-AG04
1805	Shipboard Marine Pollution Emergency Plans for Oil and/or Noxious Liquid Substances (USCG-2001-9174)	2115-AG16
1806	Alternate Compliance Program (USCG-2001-10164)	2115-AG17
1807	Portable Tanks and Intermediate Bulk Containers (USCG-2001-10180)	2115-AG19
1808	Technical and Formal Update of Rules on Officers and Seaman of the Merchant Marine (USCG-2002-11359)	2115-AG34

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Federal Aviation Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1809	+Improved Water Survival Equipment	2120-AC72
1810	+Retrofit of Improved Seats in Air Carrier Transport Category Airplanes	2120-AC84
1811	+Corrosion Control Program	2120-AE92
1812	+National Air Tour Safety Standards	2120-AF07
1813	+Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements	2120-AF63
1814	+False and Misleading Statements Regarding Aircraft Parts	2120-AG08
1815	+Noise Limitations for Aircraft Operations in the Vicinity of Grand Canyon National Park	2120-AG34
1816	Licensing and Safety Requirements for Launch	2120-AG37
1817	+Child Restraint Systems	2120-AG43
1818	Revision of Air Carrier Crewmember and Training Regulations	2120-AG57
1819	Training in the Recognition of Hazardous Material	2120-AG75
1820	+Air Tour Operations in State of Hawaii	2120-AH02
1821	+Flight Simulation Device Qualification	2120-AH07
1822	Antidrug and Alcohol Misuse Prevention Programs for Personnel Engaged in Specified Aviation Activities	2120-AH14
1823	Airworthiness Directives	2120-AH17
1824	+Certification of Pilots, Aircraft, and Repairmen for the Operation of Light Sport Aircraft	2120-AH19
1825	Powered Lift Operations	2120-AH20
1826	Refusal to Submit to an Authorized Drug Test	2120-AH23
1827	Public Address System	2120-AH30
1828	Safe, Efficient Use, and Preservation of the Navigable Airspace	2120-AH31
1829	Design Requirements for Pressurization and Pneumatic Systems Installed on Transport Category Airplanes	2120-AH33
1830	Design Standards for Fuselage Doors on Transport Category Airplanes	2120-AH34
1831	Reverse Thrust and Propeller Pitch Settings Below the Flight Regime	2120-AH35
1832	Material Strength Properties and Design Values	2120-AH36
1833	Revisions to Various Powerplant Installation Requirements for Transport Category Airplanes	2120-AH37
1834	Trim Systems and Protective Breathing Equipment	2120-AH40
1835	Revisions to Passenger Facility Charge Rule for Compensation to Air Carriers	2120-AH43
1836	Noise Stringency Increase for Single-Engine Propeller-Driven Small Airplanes	2120-AH44
1837	Airworthiness Standards for Classes B and F Cargo Compartment for Transport Category Airplanes	2120-AH47
1838	Modification of the Dimensions of the Grand Canyon National Park Special Flight Rules Area and Flight Free Zones	2120-AH48
1839	Flight Restrictions in the Vicinity of Niagara Falls	2120-AH57
1840	Powerplant Controls on Transport Category Airplanes, General	2120-AH65

+ DOT-designated significant regulation

Federal Aviation Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1841	Objects Affecting Navigable Airspace	2120-AA09
1842	Miscellaneous Amendments	2120-AA50
1843	IFR Altitudes; Miscellaneous Amendments	2120-AA63
1844	Airworthiness Directives	2120-AA64
1845	Standard Instrument Approach Procedures; Miscellaneous Amendments	2120-AA65
1846	Airspace Actions	2120-AA66
1847	Aircraft Engines: Fuel and Induction Systems	2120-AB76
1848	1-G Stalling Speed as a Basis for Aircraft Parts	2120-AD40
1849	+Revision of Part 108, Aircraft Operator Security	2120-AD45
1850	+Revision of Part 107, Airport Security	2120-AD46
1851	+Aging Aircraft Safety	2120-AE42
1852	Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System	2120-AE81
1853	Flight Attendant English Language Proficiency	2120-AE98
1854	+Revised Access to Type III Exits	2120-AF01
1855	Los Angeles, CA, Class B Airspace	2120-AF16
1856	+Revision of Emergency Evacuation Demonstration Procedures To Improve Participant Safety	2120-AF21
1857	+Overflights of Units of the National Park System	2120-AF46
1858	Revised Precision Approach Landing Systems Policy	2120-AG16

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Federal Aviation Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1859	+Screening of Checked Baggage on Flights Within the United States	2120-AG51
1860	+Policy Regarding Airport Rates and Charges	2120-AG58
1861	Revision of Braking Systems Airworthiness Standards to Harmonize With European Airworthiness Standards for Transport Category Airplanes	2120-AG80
1862	+Certification of Screening Companies	2120-AG84
1863	+Revisions to Digital Flight Data Recorder Regulations for B-737 Airplanes and for Part 125 Operators	2120-AG87
1864	+Traffic Alert and Collision Avoidance Systems	2120-AG90
1865	+Improved Flammability Standards for Thermal/Acoustic Insulation Materials Used in Transport Category Airplanes	2120-AG91
1866	Fire Protection of Electrical System Components on Transport Category Airplanes	2120-AG92
1867	+Certification Procedures for Products and Parts **(Section 610 Review)**	2120-AG93
1868	+Certification of Airports	2120-AG96
1869	Special Flight Rules in the Vicinity of Grand Canyon National Park	2120-AG97
1870	Noise Certification Standards for Subsonic Jet Airplanes and Subsonic Transport Category Large Airplanes	2120-AH03
1871	+Fractional Ownership	2120-AH06
1872	Noise Certification Regulations for Helicopters	2120-AH10
1873	Alcohol and Antidrug Misuse Prevention Program for Personnel Engaged in Specified Aviation Activities	2120-AH15
1874	Revision to Airspeed Indicating System Requirements for Transport Category Airplanes	2120-AH26
1875	Electrical Installation, Nickel Cadmium Battery Installation, and Nickel Cadmium Battery Storage	2120-AH27
1876	Design and Installation of Electronic Equipment on Transport Category Airplanes	2120-AH28
1877	Electrical Cables	2120-AH29
1878	Lower Deck Service Compartments on Transport Category Airplanes	2120-AH38
1879	Transition to an All Stage 3 Fleet Operating in the 48 Contiguous United States and the District of Columbia	2120-AH41
1880	Harmonization of Noise Certification Standards for Propeller-Driven Small Airplanes	2120-AH42
1881	DFDR Resolutions Requirements	2120-AH46
1882	+Criminal History Background Checks	2120-AH53
1883	Enduring Freedom Special Federal Aviation Regulation (SFAR)	2120-AH58
1884	+Screeners, Qualifications, Training, and Testing	2120-AH59
1885	Procedures for Reimbursement of Airports, On-Airport Parking Lots and Vendors of On-Airfield Direct Services to Air Carriers for Security Mandates	2120-AH60
1886	+Enhanced Security Procedures for Operations at Certain Airports	2120-AH62

+ DOT-designated significant regulation

Federal Aviation Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1887	+Fuel System Vent Fire Protection	2120-AA49
1888	Low Fuel Quantity Alerting System	2120-AB46
1889	Installation of Crashworthy Fuselage Fuel Tanks and Fuel Lines	2120-AC87
1890	+Drug Enforcement Assistance	2120-AD16
1891	Airplane Engine Cowling Retention	2120-AD34
1892	Type Certificates for Some Surplus Aircraft of the Armed Forces	2120-AE41
1893	+Aircraft Ground Deicing and Anti-Icing Program	2120-AE70
1894	Civil Penalty Assessment Procedures	2120-AE84
1895	+Training and Checking in Ground Icing Conditions	2120-AF09
1896	Miscellaneous Cabin Safety Changes	2120-AF77
1897	Bird Strike	2120-AF80
1898	+Security Programs of Foreign Air Carriers and Foreign Operators of U.S. Registered Air Carriers Engaged in Common Carriage	2120-AG13
1899	+Prohibition of the Transportation of Devices Designed as Chemical Generators as Cargo in Aircraft	2120-AG35
1900	+Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes	2120-AG42
1901	Miscellaneous Flight Requirements	2120-AH39

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Federal Aviation Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1902	+Flight Operational Quality Assurance Program	2120-AF04
1903	Safe Disposition of Life Limited Aircraft Parts	2120-AH11
1904	Reduced Vertical Separation Minimum in the West Atlantic Route System Airspace	2120-AH12
1905	Civil Penalty Inflation Adjustment Revisions	2120-AH21
1906	Security Control of Air Traffic	2120-AH25
1907	Temporary Extension of Time Allowed for Certain Training and Testing	2120-AH51
1908	+Flightcrew Compartment Access and Door Designs	2120-AH52
1909	+Flight Crew Door Designs Access	2120-AH54
1910	+Flight Crews Compartment Access and Door Design	2120-AH55
1911	+Security Considerations in the Design of the Flightdeck on Transport Category Airplanes	2120-AH56
1912	+Airspace and Flight Operations Requirements for the 2002 Winter Olympic Games at Salt Lake City, UT	2120-AH61
1913	Removal of the Prohibition Against Certain Flights Within the Territory and Airspace of Afghanistan	2120-AH64

+ DOT-designated significant regulation

Federal Highway Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1914	Work Zone Mobility and Safety	2125-AE29

Federal Highway Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1915	Certification of Size and Weight Enforcement	2125-AC60
1916	Advanced Construction of Federal Aid Projects	2125-AD59
1917	+Federal Lands Highway Program; Management Systems Pertaining to the National Park Service, Including the Park Roads and Parkways Program	2125-AE52
1918	+Federal Lands Highway Program; Management Systems Pertaining to the Bureau of Indian Affairs, Including the Indian Reservations Road Program	2125-AE53
1919	+Federal Lands Highway Program; Management Systems Pertaining to the Fish and Wildlife Service, Including the Refuge Roads Program	2125-AE54
1920	+Federal Lands Highway Program; Management Systems Pertaining to the Forest Service, Including the Forest Highways Program	2125-AE55
1921	Revision of the Manual on Uniform Traffic Control Devices; Traffic Control Devices on Federal-Aid and Other Streets and Highways; Standards	2125-AE78
1922	+Railroad-Highway Crossing Projects	2125-AE81
1923	Landscape Development	2125-AE85
1924	+National Bridge Inspection Standards	2125-AE86
1925	Commercial Vehicle Width Exclusive Devices	2125-AE90
1926	Debt Financing	2125-AE91
1927	Manual on Uniform Traffic Control Devices	2125-AE93
1928	+Designation of Dromedary Equipped Truck Tractor-Semitrailers as Specialized Equipment	2125-AE94

+ DOT-designated significant regulation

Federal Highway Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1929	Federal-Aid Highway Systems	2125-AD74
1930	Railroad Highway Projects	2125-AD86
1931	Administration of Engineering and Design Related Services Contracts	2125-AE45

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Federal Highway Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
1932	Standards for Dedicated Short Range Communications (DSRC) Applications for Use by Commercial Vehicles in Intelligent Transportation Systems Projects	2125-AE63
1933	Revision of Color Specifications for Signs and Pavement Marking Retroreflective Materials	2125-AE67
1934	+Design-Build Contracting	2125-AE79
1935	National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Accessible Pedestrian Signals	2125-AE83
1936	Planning and Research Program Administration	2125-AE84
1937	Discretionary Bridge Candidate Rating Factor	2125-AE88

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Federal Highway Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1938	Indian Reservation Road Bridge Program	2125-AE57
1939	+Statewide and Metropolitan Planning	2125-AE62
1940	+NEPA and Related Procedures for Transportation Decisionmaking; Protection of Public Parks, Wildlife and Waterfowl Refuges and Historic Sites	2125-AE64
1941	Revisions to Highway Bridge Replacement and Rehabilitation Program	2125-AE75
1942	Planning Assistance and Standards	2125-AE92

+ DOT-designated significant regulation

Federal Highway Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1943	Truck Length and Width Exclusive Devices	2125-AC30
1944	Highway Beautification	2125-AD24
1945	National Standards for Traffic Control Devices; MUTCD; Minimum Retroreflectivity Requirements for Traffic Signs	2125-AE39
1946	Engineering Services	2125-AE73
1947	Procedures for Abatement of Highway Traffic Noise and Construction Noise	2125-AE80
1948	Right-of-Way	2125-AE82
1949	Design Standards for Highways	2125-AE89

Federal Motor Carrier Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
1950	+Qualification of Drivers; Vision	2126-AA05
1951	+Commercial Driver Physical Fitness as Part of the CDL Process	2126-AA10
1952	Safety Performance History of New Drivers	2126-AA17
1953	+Unified Registration System	2126-AA22
1954	Safety Fitness Procedures	2126-AA37
1955	Rules of Practice for Administrative Proceedings	2126-AA63
1956	Posting of Employee Protections Information	2126-AA68
1957	+Certification of Compliance With Federal Motor Vehicle Safety Standards (FMVSS)	2126-AA69

+ DOT-designated significant regulation

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Federal Motor Carrier Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
1958	+Railroad-Highway Grade Crossing Safety	2126-AA18
1959	+Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**	2126-AA23
1960	Development of a North American Standard for Protection Against Shifting and Falling Cargo	2126-AA27
1961	Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**	2126-AA32
1962	+Application by Certain Mexico-Domiciled Motor Carriers To Operate Beyond U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border	2126-AA34
1963	+Safety Monitoring System and Compliance Initiative for Mexico-Domiciled Motor Carriers Operating in the United States	2126-AA35
1964	Out-of-Service Criteria	2126-AA36
1965	Federal Motor Carrier Safety Regulations; Waivers, Exemptions, and Pilot Programs; Rules and Procedures	2126-AA41
1966	Brake Performance Requirements for CMVs Inspected by Performance-Based Brake Testers	2126-AA46
1967	+Federal Motor Carrier Safety Regulations; Safety Requirements for Operators of Small Passenger-Carrying Commercial Motor Vehicles Used in Interstate Commerce	2126-AA52
1968	Commercial Driver's License Standards; Requirements and Penalties; Noncommercial Motor Vehicle Violations	2126-AA55
1969	+New Entrant Safety Assurance Process	2126-AA59
1970	Commercial Driver's License Standards; Requirements and Penalties; Commercial Driver's License Program Improvements	2126-AA60
1971	Parts and Accessories Necessary for Safe Operation; General Amendments	2126-AA61
1972	+Certification of Safety Auditors, Safety Investigators, and Safety Inspectors	2126-AA64
1973	+Limitations on Issuance of Commercial Drivers' Licenses With a Hazardous Materials Endorsement	2126-AA70
1974	Penalties, Inspection, and Decal Display Requirements for Mexico-Domiciled Motor Carriers	2126-AA72

+ DOT-designated significant regulation

Federal Motor Carrier Safety Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
1975	+Commercial Driver's License Standards; Biometric Identifier	2126-AA01
1976	Commercial Learner Permits	2126-AA03
1977	+Federal Motor Carrier Safety Regulations; General Transportation of Hazardous Materials	2126-AA07
1978	+Minimum Training Requirements for Operators and Training Instructors of Multiple Trailer Combination Vehicles	2126-AA08
1979	+Training for Entry-Level Drivers of Commercial Motor Vehicles	2126-AA09
1980	Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motor Coaches	2126-AA12
1981	Rules of Practice for Motor Carrier Proceedings; Investigations; Disqualifications and Penalties	2126-AA15
1982	Parts and Accessories Necessary for Safe Operation; Television Receivers and Data Display Units	2126-AA19
1983	Electronic Filing of Surety Bonds, Trust Fund Agreements, Insurance Certificates; Cancellations	2126-AA24
1984	General Jurisdiction Over Freight Forwarder Service	2126-AA25
1985	+English Language Requirement; Qualifications of Drivers	2126-AA31
1986	+General Requirements; Inspection, Repair, and Maintenance; Intermodal Container Chassis and Trailers	2126-AA38
1987	+Federal Motor Carrier Safety Regulations; Zero-Base Revision	2126-AA39
1988	+Post-Accident Controlled Substances and Alcohol Test Results; Reporting Requirements for the Fatality Analysis Reporting System	2126-AA50
1989	+Federal Motor Carrier Safety Regulations; Interstate School Bus Safety	2126-AA53
1990	Security and Hazardous Materials Requirements	2126-AA71
1991	+Hazardous Materials Tire Checks	2126-AA74
1992	+Hazardous Material Route Plans	2126-AA75

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Federal Motor Carrier Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
1993	+Revision of Regulations and Application Form for Mexico-Domiciled Motor Carriers To Operate in U.S. Municipalities and Commercial Zones on the U.S.-Mexico Border	2126-AA33
1994	Motor Carrier Identification Report	2126-AA57

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
1995	Review: Odometer Fraud	2127-AF53
1996	Review: American Automobile Labeling Act	2127-AG18
1997	Review: Heavy Truck Conspicuity	2127-AG19
1998	Motorcycle Mounted Reflex Reflector Height	2127-AG92
1999	Child Restraints for Older Children	2127-AH14
2000	Ejection Mitigation Using Advanced Glazing	2127-AH50
2001	Review: Head Restraints for Light Trucks	2127-AH98
2002	Adaptation of Instrumented Lower Legs for Hybrid III Male and Female Adult Dummies	2127-AI39
2003	Retroactive Certification (Policy Statement)	2127-AI59
2004	Event Data Recorders	2127-AI72

National Highway Traffic Safety Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2005	Procedures for Considering Environmental Impacts	2127-AB79
2006	Seating Systems Performance	2127-AD08
2007	Certification Requirements of Multistage Vehicles	2127-AE27
2008	Convex Cross-View Mirrors	2127-AG41
2009	Upgrade Roof Crashworthiness	2127-AG51
2010	Hybrid III 95th Percentile Male	2127-AG79
2011	Buy American Requirements	2127-AG99
2012	Political Subdivision Participation in State Highway Safety Programs and State Highway Safety Agency	2127-AH00
2013	Definition of Community Transportation Vehicles	2127-AH23
2014	Metric Conversion—Phase III	2127-AH27
2015	Upgrade Door Retention Performance	2127-AH34
2016	Administrative Rewrite of the Lighting Requirements Other Than Headlamps	2127-AH37
2017	Exemption for Inconsequential Defect or Noncompliance	2127-AH58
2018	Compliance and Enforcement	2127-AH63
2019	Accelerator Control Systems	2127-AH71
2020	+Frontal Offset Protection	2127-AH73
2021	Special Purpose Vehicles	2127-AH75
2022	Brake Hoses	2127-AH79
2023	Low-Speed Vehicle Performance Requirements	2127-AH80
2024	Headlamp Glare	2127-AH81
2025	Stowable or Fold-Away Child Restraint Anchorages	2127-AH85
2026	Defect Reporting and Notification	2127-AH89
2027	Motorcycle Headlamp System	2127-AH92
2028	Improve Motorcycle Helmet Head Protection	2127-AI03
2029	Label Placement on Rear Impact Guards	2127-AI04
2030	Reorganize and Harmonize Controls and Displays	2127-AI09
2031	Confidential Business Information	2127-AI13
2032	+Improving the Safety of Child Restraints	2127-AI34
2033	Seat Belt Fit	2127-AI36
2034	Seat Belt Emergency Locking Retractor	2127-AI38
2035	Voluntarily Installed Seat Belt Assembly Anchorages	2127-AI40

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National Highway Traffic Safety Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2036	Idle Stop Technology Used in Some Hybrid Electric Vehicles	2127-AI43
2037	+Operation of Motor Vehicles by Intoxicated Persons	2127-AI44
2038	Procedures for Participating In and Receiving Data From the National Driver Registration Problem Driver Pointer System	2127-AI45
2039	Expanding the Auto Parts Marking Requirement	2127-AI46
2040	Parking Brakes for Non-School Bus Vehicles	2127-AI47
2041	Cargo Carrying Capacity	2127-AI50
2042	Convex Mirrors for Commercial Trucks	2127-AI52
2043	Enhance Passenger-Side Mirror System	2127-AI53
2044	Horizontal Discharge Trailers	2127-AI56
2045	Heavier Hybrid III Type 6-Year-Old Size Test Dummy	2127-AI58
2046	Record Retention of Retroactively Certified Vehicles	2127-AI60
2047	Daytime Running Lamps Voltage and Conspicuity	2127-AI62
2048	Allow Roll-bar During Brake Testing	2127-AI63
2049	Importation of Commercial Motor Vehicles	2127-AI64
2050	Child Restraint System Webbing Strength	2127-AI66
2051	Motorcycle Handlebar Lever	2127-AI67
2052	+Light Truck Average Fuel Economy Standard, Model Years 2005-2010	2127-AI70
2053	Static Out-of-Position Test Requirements at S23 Using 6-Year-Old Dummy	2127-AI71
2054	Insurer Reporting Requirements/List of Insurers Required To File Reports for October 2002	2127-AI73
2055	Theft Data for Calendar Year 2000	2127-AI75
2056	GM Petition on Amending FMVSS No. 301 and FMVSS Nos. 208, 212, 219, 303, and 305	2127-AI76
2057	Schedule of Fees Authorized by 49 U.S.C. 30141	2127-AI77
2058	Exemption for Inconsequential Defect or Noncompliance	2127-AI78

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2059	Brake Lining	2127-AC66
2060	+Platform Lift Systems	2127-AD50
2061	Radiator Safety Cap	2127-AE59
2062	Upgrade Fuel Integrity Performance Requirements	2127-AF36
2063	Alternative Geometric Visibility Requirements for Lamps	2127-AF75
2064	Power-Operated Windows: Roof Panels	2127-AF83
2065	Door Latch Exemption for Vehicles Equipped With Wheelchair Lifts and Ramps	2127-AG16
2066	Dealer Notification of Defect or Noncompliance Determination	2127-AG27
2067	Power Window Safety Switches	2127-AG36
2068	Seat Belt Positioning Devices	2127-AG49
2069	Glare Reduction From Daytime Running Lamps	2127-AG86
2070	Administrative Rewrite for Headlamp Requirements	2127-AG87
2071	Signal Lamps Used With Light Emitting Diodes	2127-AG88
2072	+Allocation of Fuel Economy Credits	2127-AG97
2073	Placement of Wheelchair Restraints on Buses	2127-AH03
2074	Incorporate the 1996 Revision of the American National Standards Institute (ANSI)	2127-AH08
2075	+Harmonization of Head Restraints	2127-AH09
2076	Heavy Vehicle Antilock Brake System (ABS) Performance Requirement	2127-AH16
2077	Upper Interior Impact	2127-AH61
2078	Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards	2127-AH67
2079	Vehicles With Raised Roofs	2127-AH74
2080	Clarify Test Procedures for Brake Fluids	2127-AH96
2081	Guidelines for States on Enforcement of Light Transmission	2127-AH97
2082	Child Restraint Anchorage Systems—Part 2	2127-AH99
2083	Hybrid III Type 6-Year-Old Size Test Dummy	2127-AI00
2084	Fifth Percentile Female Test Dummy	2127-AI01

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National Highway Traffic Safety Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2085	Moving Barrier Tire Specification	2127-AI05
2086	Early Warning Defect Reporting Requirements	2127-AI25
2087	Defects in Foreign Countries	2127-AI26
2088	Acceleration of Manufacturer Remedy Program	2127-AI27
2089	Reimbursement Prior to Recall	2127-AI28
2090	Disposition of Replaced Tires	2127-AI29
2091	Prohibition of Sale or Lease of Equipment	2127-AI30
2092	Improve Tire Safety Information	2127-AI32
2093	+Automotive Fuel Economy Manufacturing Incentive for Alternative Fuel Vehicles	2127-AI41
2094	Trailer Test Rig	2127-AI48
2095	Compliance for Multistage Manufacturers and Alterers	2127-AI49
2096	+Improved Tire Safety	2127-AI54
2097	Child Safety Information Labels	2127-AI55
2098	List of Nonconforming Vehicles Eligible for Importation	2127-AI61
2099	Child Restraint Safety Rating	2127-AI65
2100	Modified Front-Opening Hood Requirements	2127-AI69
2101	High-Theft Lines for Model Year 2002	2127-AI74

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2102	+Crashworthiness Ratings	2127-AA03
2103	+Flammability of Interior Materials—School Buses	2127-AA44
2104	+Review: Side Impact Protection	2127-AF54
2105	Review: Child Safety Seat Registration	2127-AG93
2106	Review: Air Bag On-Off Switches	2127-AH12
2107	Review: Redesigned Air Bags	2127-AH13
2108	Use of Universal Child Seats in Aircraft	2127-AH56
2109	Review: Antilock Brake Systems for Heavy Trucks	2127-AI14
2110	Review: Rear Impact Guards for Truck Trailers	2127-AI15
2111	+Tire Pressure Monitoring System	2127-AI33
2112	Civil Penalties	2127-AI42

+ DOT-designated significant regulation

National Highway Traffic Safety Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2113	Truck Air Braking Requirements	2127-AH11
2114	School Bus Body Joint Strength	2127-AH84
2115	Hybrid III Type 3-Year-Old Size Test Dummy	2127-AI02
2116	+Advanced Air Bags	2127-AI10
2117	Record Retention (Amendment)	2127-AI31
2118	Electrical Vehicle Safety	2127-AI57
2119	+Light Truck Average Fuel Economy Standard, Model Year 2004	2127-AI68

+ DOT-designated significant regulation

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Federal Railroad Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2120	Locomotive Crashworthiness	2130-AB23
2121	Locomotive Event Recorders	2130-AB34
2122	Revision to Railroad Safety Enforcement Procedures	2130-AB35
2123	Rules of Practice	2130-AB36
2124	Railroad Car Conspicuity	2130-AB41
2125	Revision to the Accident/Incident Reporting Regulations and Guide	2130-AB51

Federal Railroad Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2126	Local Rail Freight Assistance to States	2130-AA60
2127	+Whistle Bans at Highway-Rail Grade Crossings	2130-AA71
2128	+Standards for Development and Use of Processor-Based Signal and Train Control Systems	2130-AA94
2129	Small Railroads; Policy Statement on Enforcement Program	2130-AB15
2130	+Regulations on Safety Integration Plans Governing Railroad Consolidations, Mergers, Acquisitions of Control and Start-Up Operations	2130-AB24
2131	Roadway Maintenance Machines	2130-AB28
2132	Annual Adjustment of Monetary Threshold for Reporting Rail Equipment Accidents/Incidents	2130-AB30
2133	Determination of Minimum Testing Rate for Random Drug and Alcohol Testing	2130-AB31
2134	+Locational Requirement for Dispatching of United States Rail Operations	2130-AB38
2135	Passenger Equipment Safety Standards	2130-AB48

+ DOT-designated significant regulation

Federal Railroad Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2136	Blue Signal and Related Protections	2130-AA90
2137	Crane Safety Standards	2130-AB27
2138	+Application of Random Testing and Other Alcohol and Drug Regulations to Employees of Foreign Railroads	2130-AB39
2139	+Minimum Standards for Temperature in the Locomotive Cab	2130-AB46
2140	Improvements to the System for Reporting Train Accidents	2130-AB50
2141	Automatic Train Control (ATC) and Advanced Civil Speed Enforcement System (ACSES); Northeast Corridor (NEC) Railroads	2130-AB55

+ DOT-designated significant regulation

Federal Railroad Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2142	Freight Car Safety Standards: Maintenance-of-Way Equipment	2130-AA68
2143	Locomotive Cab Working Conditions	2130-AA89
2144	Bridge Worker Safety Standards	2130-AB25
2145	Brake System Safety Standards for Freight and Other Non-Passenger Trains and Equipment; End-of-Train Devices	2130-AB52
2146	Alcohol/Drug Regulations: Temporary Post-Accident Blood Testing Procedures	2130-AB54

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Federal Transit Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2147	+Clean Fuels Formula Grant Program	2132-AA64
2148	State Safety Oversight; Rail Fixed Guideway Systems	2132-AA69

+ DOT-designated significant regulation

Federal Transit Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2149	+Bus Testing	2132-AA30
2150	+NEPA and Related Procedures for Transportation Decisionmaking; Protection of Public Works, Wildlife and Waterfowl Refuges and Historic Sites	2132-AA43
2151	Buy America Requirements; Amendment to Certification Procedures	2132-AA62
2152	+Statewide Metropolitan Planning	2132-AA66
2153	School Bus Operations	2132-AA67
2154	Buy America Requirements; Permanent Waiver for Microcomputers	2132-AA68

+ DOT-designated significant regulation

Federal Transit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2155	+Requirement for Third-Party Contracting With FTA Recipients	2132-AA70

+ DOT-designated significant regulation

Saint Lawrence Seaway Development Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
2156	Seaway Regulations and Rules: Ballast Water	2135-AA13
2157	Seaway Tariff of Tolls	2135-AA14

Research and Special Programs Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2158	Hazardous Materials: Revision of Requirements for Carriage by Aircraft	2137-AD18

Research and Special Programs Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2159	Pipeline Safety: Gas Gathering Line Definition	2137-AB15
2160	Hazardous Materials: Requirements for Cargo Tanks	2137-AC90
2161	Pipeline Safety: Further Regulatory Review; Gas Pipeline Safety Standards	2137-AD01
2162	+Pipeline Safety: Recommendations To Change Hazardous Liquid Pipeline Safety Standards	2137-AD10
2163	Hazardous Materials: Hazard Communication Requirements—Petitions for Rulemaking and Miscellaneous Amendments	2137-AD28
2164	Hazardous Materials: Air Carrier Emergency Telephone Number Requirements	2137-AD29

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Research and Special Programs Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2165	+Hazardous Materials: Safety Requirements for External Product Piping on Cargo Tanks Transporting Flammable Liquids	2137-AD36
2166	Hazardous Materials: Adoption of Latest IAEA and Other Miscellaneous Revisions and Clarifications	2137-AD40
2167	Pipeline Safety: Producer-Operated Outer Continental Shelf Gas and Hazardous Liquid Pipelines That Cross Directly Into State Waters	2137-AD42
2168	Hazardous Materials: Miscellaneous Amendments for Unloading IM Portable Tanks on a Transport Vehicle - Petition for Rulemaking	2137-AD44
2169	Hazardous Materials: Transportation of Lithium Batteries	2137-AD48
2170	Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Gas Transmission Pipeline Operators)	2137-AD54
2171	Hazardous Materials: Frangible Discs on Tank Cars	2137-AD57
2172	Pipeline Safety: Hazardous Liquid Pipeline Operator Annual Reports	2137-AD59
2173	Hazardous Materials: Harmonization With the United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization Technical Instructions	2137-AD66
2174	Hazardous Materials: Security Requirements for Offerors and Transporters of Hazardous Materials	2137-AD67
2175	Pipeline Safety: Annual Update of Standards Incorporated by Reference	2137-AD68

+ DOT-designated significant regulation

Research and Special Programs Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2176	+Hazardous Materials: Requirements for Cylinders	2137-AA92
2177	DOT 3AL Aluminum Cylinders; Safety Problems	2137-AB51
2178	+Pipeline Safety: Response Plans for Onshore Oil Pipelines	2137-AC30
2179	Hazardous Materials: Retention of Shipping Papers	2137-AC64
2180	Hazardous Materials: Revisions to Standards for Infectious Substances and Genetically Modified Microorganisms	2137-AD13
2181	Hazardous Materials: Revised and Clarified Hazardous Materials Safety Rulemaking and Program Procedures	2137-AD20
2182	Hazardous Materials: Revisions to Incident Reporting Requirements and Detailed Hazardous Materials Incident Report DOT Form	2137-AD21
2183	Pipeline Safety: Periodic Updates to Pipeline Safety Requirements (1999)	2137-AD35
2184	Harmonization With United Nations Recommendations, International Maritime Dangerous Goods Code, and International Civil Aviation Organization's Technical Instructions	2137-AD41
2185	Revisions; Definition of Administrator	2137-AD43
2186	Hazardous Materials: Revision of the Requirements for Hazardous Waste Manifests	2137-AD50
2187	Hazardous Materials: Reduction of Registration Fees	2137-AD53
2188	Hazardous Materials: Requirements for Maintenance, Requalification, and Repair of DOT Specification Cylinders	2137-AD58
2189	Pipeline Safety: High Consequence Areas for Gas Transmission Operators	2137-AD64
2190	Hazardous Materials: Hazardous Substances - Additions, Revisions and Deletions.	2137-AD65

+ DOT-designated significant regulation

Research and Special Programs Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2191	Pipeline Safety: Passage of Internal Inspection Devices	2137-AB71
2192	+Safeguarding Food From Contamination During Transportation	2137-AC00
2193	Pipeline Safety: Periodic Underwater Inspections	2137-AC54
2194	+Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage	2137-AC68
2195	Pipeline Safety: Enforcement Procedures	2137-AD22
2196	Pipeline Safety: Pressure Testing Older Pipelines in Terminals	2137-AD26
2197	+Hazardous Materials Safety: Transportation of Oxygen Cylinders and Oxygen Generators Aboard Aircraft	2137-AD33
2198	Hazardous Materials: Cargo Tank Rollover Requirements	2137-AD34
2199	Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Hazardous Liquid Operators With Less Than 500 Miles of Pipeline)	2137-AD49

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Research and Special Programs Administration—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2200	Pipeline Safety: Integrity Management Communication	2137-AD62
2201	Pipeline Safety: Controlling Corrosion on Gas Pipelines	2137-AD63

+ DOT-designated significant regulation

Research and Special Programs Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2202	Quantity Limitations Aboard Aircraft	2137-AA85
2203	+Maps and Records of Pipeline Locations and Characteristics; Notification of State Agencies; Pipe Inventory	2137-AB48
2204	Filling of Propane Cylinders	2137-AC86
2205	Pipeline Safety: Controlling Corrosion on Hazardous Liquid and Carbon Dioxide Pipelines	2137-AD24
2206	Hazardous Materials: Revised and Clarified Hazardous Materials Exemptions Procedures	2137-AD30
2207	Hazardous Materials: Limited Extension of Requirements for Labeling Certain Shipments of Materials Poisonous by Inhalation (PIH)	2137-AD37
2208	Pipeline Safety: Hazardous Liquid Pipeline Accident Reporting Revisions	2137-AD56
2209	Hazardous Materials Regulations: Editorial Corrections and Clarifications	2137-AD60
2210	Pipeline Safety: Pipeline Integrity Management in High Consequence Areas (Repair Criteria)	2137-AD61

+ DOT-designated significant regulation

Maritime Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2211	+Cargo Preference Regulations—Carriage of Agricultural Exports	2133-AB37
2212	Requirements To Document U.S.-Flag Fishing Industry Vessels of 100 Feet or Greater in Registered Length and To Hold Preferred Mortgage on Such Vessels	2133-AB46
2213	Amendment of MARAD's Regulations Establishing and Administering Deposit Funds Authorized by Section 1109 of Merchant Marine Act, 1936, as Amended	2133-AB47

+ DOT-designated significant regulation

Maritime Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
2214	Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain Fishery Endorsement to Vessel's Documentation	2133-AB45

Bureau of Transportation Statistics—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2215	Modernizing the Passenger Origin-Destination Survey	2139-AA01

Bureau of Transportation Statistics—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2216	Amendment to Definitions of Revenue and Nonrevenue Passengers	2139-AA07

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Bureau of Transportation Statistics—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2217	Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market	2139-AA08
2218	+Amendment to Part 234 To Collect Causal Information for Airline Delays and Cancellations	2139-AA09

+ DOT-designated significant regulation

Department of Transportation (DOT)
Office of the Secretary (OST)

Proposed Rule Stage

1682. +COMPUTER RESERVATIONS SYSTEM REGULATIONS COMPREHENSIVE REVIEW

Priority: Other Significant

Legal Authority: 49 USC 41712; 49 USC 40101(a); 49 USC 40113(a); 49 USC 40105

CFR Citation: 14 CFR 255; 14 CFR 399

Legal Deadline: Final, Statutory, December 31, 1997.

Abstract: The Department regulates computer reservations systems owned by airlines or airline affiliates that are used by travel agencies. The current rules are designed to prevent the systems from unreasonably prejudicing the competitive position of other airlines and to ensure that travel agencies can provide accurate and unbiased information to the public. The Department is reexamining its rules to see whether they should be readopted and, if so, whether they should be changed in response to greater use of the Internet in airline reservations and ticketing and changes in the industry. The Department is also reviewing its policies on the requirements for advertising fares by airline travel agencies that charge fees for brokering airline tickets. As part of this action, we will be looking at ways to lessen impacts on small entities.

Timetable:

Action	Date	FR Cite
ANPRM	09/10/97	62 FR 47606
Notice Extending Comment Period	10/30/97	62 FR 58700
Request for Comments	11/07/97	62 FR 60195
ANPRM Comment Period End	11/10/97	
Extended Comment Period End	12/09/97	
Notice Extending Reply Comment Period	01/23/98	63 FR 3491
Extended Comment Period End	02/03/98	
SANPRM	07/24/00	65 FR 45551
SANPRM Comment Period End	09/22/00	
SANPRM Reply Comment Period End	10/23/00	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The extensions for the existing rule are under RINs 2105-AC75 and 2105-AD00 and AD09.

Agency Contact: Thomas Ray, Office of General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4731

RIN: 2105–AC65

1683. +AVIATION DATA REQUIREMENTS REVIEW AND MODERNIZATION PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 40101; 49 USC 41101; 49 USC 41708; 49 USC 41709; 49 USC 41301; 49 USC 41501; 49 USC 41701

CFR Citation: 14 CFR 241; 14 CFR 250; 14 CFR 298; 14 CFR 374a; 14 CFR 234

Legal Deadline: None

Abstract: The Department is undertaking an aviation data requirements review and modernization program. The review is designed to harmonize the Department's aviation data systems with current regulatory and statutory needs; improve the quality of the Department's aviation databases; and eliminate obsolete data reporting and processing systems. The ANPRM was the first step in an outreach program to review aviation data collected by the Department and the measures that should be taken to modernize and improve aviation data reporting and processing systems. The Department solicited public comments from aviation data users on the nature, scope, source, and means for collecting, processing, and distributing airline traffic, fare, and financial data. Specifically, the Department invited comments to determine whether existing aviation data should be amended, supplemented, or replaced; whether selected forms and reports should be retained, modified, or eliminated; whether the Department should require all aviation data to be filed electronically; and how the aviation data system should be reengineered to enhance efficiency and to reduce costs for both the Department and airline industry. The Department has reviewed the comments and reply comments and is in the process of redefining the data elements and restructuring the data reporting requirements to be included in a NPRM. This action is significant due to substantial public and industry interest.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/98	63 FR 38128
ANPRM Comment Period End	09/14/98	
Reply Comment Period End	10/13/98	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

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DOT—OST — Proposed Rule Stage

Agency Contact: Todd Homan, Industry Economist, Department of Transportation, Office of the Secretary, X-55, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC71

1684. NONDISCRIMINATION ON THE BASIS OF DISABILITY IN AIR TRAVEL

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 41702; 14 USC 41705; 14 USC 41712

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: The Department is proposing to amend its rules implementing the Air Carrier Access Act of 1986 concerning requirements for movable aisle armrests. The amendment would clarify the application of the movable armrest requirement to all classes of service in an aircraft. In addition, in response to changed practices in parts of the airline industry, the Department is proposing to require preboarding to be made available for passengers with disabilities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
TDD Phone: 202 755-7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC97

1685. REPORTING REQUIREMENT FOR AIR CARRIERS REGARDING DISABILITY-RELATED COMPLAINTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41702; 49 USC 41705

CFR Citation: 49 CFR 382

Legal Deadline: Other, Statutory, Implementation of Plan Required by PL 106-181, sec 707.

Abstract: The Office of the Secretary will propose in the NPRM a reporting requirement for air carriers to periodically file information with DOT regarding disability-related complaints they receive. The NPRM will include detailed categories for the reporting which will be of use to DOT, disabled air travelers, and Congress. DOT will report to Congress each year, on the results of the review, as required by the Wendell H. Ford Aviation Investment and Reform Act for the 21st century.

Timetable:

Action	Date	FR Cite
NPRM	02/14/02	67 FR 6892
NPRM Comment Period End	04/15/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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TDD Phone: 202 755-7687
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RIN: 2105–AD04

Department of Transportation (DOT)
Office of the Secretary (OST)

Final Rule Stage

1686. +DIRECT AIR CARRIER RESPONSIBILITY FOR RETURNING STRANDED CHARTER PASSENGERS

Priority: Other Significant

Legal Authority: 49 USC 1324; 49 USC 1371

CFR Citation: 14 CFR 207; 14 CFR 208

Legal Deadline: None

Abstract: This action proposed to make direct air carriers responsible for returning charter passengers stranded by strikes or other service interruptions, by eliminating the force majeure clause from charter contracts. However, the CAB subsequently issued an interpretive rule (ER-1387, 49 FR 33436) which was affirmed in court. (Arrow Air, Inc. v. Dole, 784 F2d 1118 (1986)) Therefore, this action is now moot; the NPRM will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	07/11/80	45 FR 46812
NPRM Comment Period End	09/25/80	
Reply Comment Period End	10/10/80	
To Be Withdrawn	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: EDR 405, Docket 37169.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA40

1687. AIR TRAVELERS: AGE DISCRIMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6102

CFR Citation: 14 CFR 376

Legal Deadline: None

Abstract: This rulemaking action was initiated by the Civil Aeronautics Board to implement the Age Discrimination Act of 1975. A draft final rule was submitted to HHS, as required by that Act, and was approved. However, in view of current airline practices with respect to travel by the elderly, and the absence of complaints of discrimination based on age, there no longer appears to be a need for further rulemaking action, and the NPRM will be withdrawn.

DOT—OST — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/26/79	44 FR 55383
Final Action Adopted by the Board	04/10/80	
HHS Approved Final Rule With Changes	07/13/84	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SPDR-74, Docket 36639.

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
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Email: bob.ashby@ost.dot.gov

RIN: 2105–AA45

1688. DIRECT FLIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1381

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: Donald L. Pevsner petitioned the CAB to institute a rulemaking proceeding to ban use of the term "direct flight" because it is deceptive, and to declare use of the term to be a prima facie violation of section 411 of the Federal Aviation Act of 1958. The Department is now considering what action to take in response to the petition.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The petition is filed in Docket 41217.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA73

1689. DIVERSION OF FLIGHTS WITHIN A METROPOLITAN AREA

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1305; 49 USC 1324; 49 USC 1371; 49 USC 1375; 49 USC 1377 to 1379; 49 USC 1381; 49 USC 1382; 49 USC 1386; 49 USC 1461; 49 USC 1481; 49 USC 1482; 49 USC 1502; 49 USC 1504; PL 96-354; 5 USC 601

CFR Citation: 14 CFR 253; 14 CFR 399

Legal Deadline: None

Abstract: The CAB proposed to amend its rules requiring notice of contract terms for domestic travel to require that actual notice be given to passengers of terms absolving carriers from any responsibility to transport a passenger to the destination named on the ticket, or to reimburse the passenger for expenses in reaching the airport noted on the ticket when a flight is diverted to another airport in the same metropolitan area. Alternatively, the Board proposed to declare it to be an unfair and deceptive practice to divert a passenger without arranging and paying for alternate transportation to the destination airport named on the passenger's ticket. The Board considered a final rule but did not decide what action to take. DOT is withdrawing the NPRM as unnecessary since it appears that carriers no longer have the policies that promoted the CAB's concern.

Timetable:

Action	Date	FR Cite
NPRM	09/23/83	48 FR 43343
NPRM Comment Period End	11/07/83	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41683, EDR 468/PSDR-81.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA78

1690. SIMPLIFIED AVIATION EXEMPTION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1371; 49 USC 1372; 49 USC 1386

CFR Citation: 14 CFR 302; 14 CFR 389; 14 CFR 399

Legal Deadline: None

Abstract: A Civil Aeronautics Board rulemaking proposed to revise and simplify the requirements and procedures for applying for exemptions under section 416(b) of the Federal Aviation Act. This action has become unnecessary since the Department included most of its provisions in its rule transferring the CAB's rules to DOT. Therefore, the NPRM will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	10/05/84	49 FR 39337
NPRM Comment Period End	12/04/84	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: PDR-88/ODR-27/PSDR-83.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA82

1691. BAGGAGE LIABILITY NOTICES IN INTERNATIONAL AIR TRANSPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481 to 1482

CFR Citation: 14 CFR 221

Legal Deadline: None

Abstract: In response to a petition by Mr. Howard Boros, the CAB proposed to amend the baggage liability notices provided to passengers in foreign air travel. The NPRM proposed to eliminate the disclaimer of liability for fragile and perishable items because that notice is false and misleading.

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Because of the amount of time that has elapsed since the proposal was issued, the Department is withdrawing it.

Timetable:

Action	Date	FR Cite
NPRM	12/18/84	49 FR 49111
NPRM Comment Period End	03/19/85	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41690; EDR-477.

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA84

1692. SIMPLIFIED AIRLINE COUNTER-SIGN NOTICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1301; 49 USC 1302; 49 USC 1324; 49 USC 1371 to 1374; 49 USC 1381; 49 USC 1386; 49 USC 1481; 49 USC 1482

CFR Citation: 14 CFR 221; 14 CFR 250; 14 CFR 256

Legal Deadline: None

Abstract: The American Association of Airport Executives, the Airport Operators Council International, and the Air Transport Association of America petitioned the CAB to simplify its counter-sign requirements. Presently, airlines are required to display four different consumer protection notices on their ticket counters. The petitioners alleged that the current notices are hard to read and, therefore, do not provide much notice to passengers. They proposed replacing the four notices with one simplified counter sign. A CAB NPRM proposed a number of alternatives, such as a long and/or short notice, where the notices would be required to be posted, and whether a smoking notice should be included. DOT decided not to act on these counter signs separately, but rather to consider whether there should be a comprehensive re-examination of all forms of notice to passengers, including notices on tickets. This NPRM will be withdrawn.

Timetable:

Action	Date	FR Cite
NPRM	08/01/84	49 FR 30742
NPRM Comment Period End	09/17/84	
Reply Comment Period End	10/02/84	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket 41971; EDR-474

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AA88

1693. +PRICE ADVERTISING

Priority: Other Significant

Legal Authority: 49 USC 1371; 49 USC 1381

CFR Citation: 14 CFR 380; 14 CFR 399

Legal Deadline: None

Abstract: The Department proposed in 1989 to amend its rule and policy statement with respect to air transportation price advertising. This rulemaking is significant because of substantial public interest. Because of the amount of time that has elapsed since the proposal was issued, the Department is withdrawing it.

Timetable:

Action	Date	FR Cite
NPRM	07/26/89	54 FR 31052
NPRM Extended Comment Period	08/23/89	54 FR 35005
NPRM Comment Period End	08/25/89	
NPRM Comment Period End	09/25/89	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AB50

1694. +PROCEDURES FOR TRANSPORTATION WORKPLACE DRUG-TESTING PROGRAMS

Priority: Other Significant

Legal Authority: 49 USC 101; 49 USC 102; 49 USC 301; 49 USC 302; 49 USC 322

CFR Citation: 49 CFR 40

Legal Deadline: None

Abstract: The NPRM in 1990 concerned the question of to whom reports of negative drug test results may be sent. It will be formally withdrawn when the Department issues an NPRM under RIN 2105-AC49, Update of Drug and Alcohol Procedural Rules. This action is significant because of substantial public and congressional interest, and multimodal impact.

Timetable:

Action	Date	FR Cite
NPRM	07/13/90	55 FR 28782
NPRM Comment Period End	08/13/90	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ANALYSIS: Regulatory Evaluation, 07/13/90, 55 FR 28782

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
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RIN: 2105–AB71

1695. +TRANSPORTATION FOR INDIVIDUALS WITH DISABILITIES (ACCESSIBILITY GUIDELINES)

Priority: Other Significant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 27; 49 CFR 37

Legal Deadline: None

Abstract: This action would amend the rules implementing the Americans with Disabilities Act by adopting the revised accessibility guidelines issued by the Architectural and Transportation Barriers Compliance Board, published June 20, 1994 (59 FR 31676) as interim final rules. The proposed rule would also conform the Department's rule implementing section 504 of the Rehabilitation Act of 1973.

Timetable:

Action	Date	FR Cite
NPRM	06/20/94	59 FR 31818
NPRM Comment Period End	08/19/94	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
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RIN: 2105–AC06

1696. USE OF DIRECT FINAL RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1657

CFR Citation: 49 CFR 5.21; 49 CFR 5.35

Legal Deadline: None

Abstract: The Department is considering a new rulemaking procedure to expedite the processing of noncontroversial changes to its regulations. Rules that the Secretary judges to be unlikely to result in public comment would be published as direct final rules. Such direct final rules would advise the public that no adverse comment is anticipated and that, unless written adverse comment or notice of intent to submit such comment is received within a specified number of days, the rule will become effective 60 days from the date of publication in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	08/04/95	60 FR 39919
NPRM Comment Period End	10/03/95	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil Eisner, Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, Room 10424 Nassif Building, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-9313

RIN: 2105–AC11

1697. OVERBOOKING OF FLIGHTS: ELIMINATION OF AIRPORT NOTICE SIGNS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 401; 49 USC 411; 49 USC 413; 49 USC 417

CFR Citation: 14 CFR 250

Legal Deadline: None

Abstract: This action would eliminate a consumer notice about airline overbooking of flights that is required to appear on signs at airports, city ticket offices, and travel agencies. However, that information would be available to consumers because it must accompany every ticket.

Timetable:

Action	Date	FR Cite
NPRM	06/03/96	61 FR 27818
NPRM Comment Period End	07/18/96	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Other rulemakings: RIN 2105-AA88, Simplified Airline Counter-Sign Notices. RIN 2105-AC36, Ticketless Travel: Passenger Notices, Statement of Compliance Policy published 4/22/97, 62 FR 19473.

Agency Contact: Tim Kelly, Aviation Consumer Protection Division, Office of the General Counsel, Department of Transportation, Office of the Secretary, C-75, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5952

RIN: 2105–AC45

1698. FEES AND CHARGES FOR SPECIAL SERVICES: REINVENTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 40101; 49 USC 46101; 31 USC 9701

CFR Citation: 14 CFR 389

Legal Deadline: None

Abstract: This action would remove or update obsolete provisions and organizational references, and adjust the fee schedule for certain special services related to aviation economic proceedings that the Department makes available to the public. The regulation has not been comprehensively updated since 1985 and the revisions will take the form of a complete reissuance of part 389.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3229
NPRM Comment Period End	03/22/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: John Miller, Analyst, Planning and Special Projects Office, Department of Transportation, Office of the Secretary, X-60, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4868

RIN: 2105–AC47

1699. AMENDMENTS TO MODAL ALCOHOL TESTING RULES: PRE-EMPLOYMENT TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 102; 49 USC 301; 49 USC 5331; 49 USC 20140; 49 USC 31306; 49 USC 45101; 49 USC 45106

CFR Citation: 49 CFR 219; 49 CFR 382; 49 CFR 653; 49 CFR 654; 49 CFR 121

Legal Deadline: None

Abstract: This rule would implement a statutory change required by the National Highway Systems Act of 1995, section 342, to the existing pre-employment alcohol testing provisions. It would make pre-employment testing voluntary for employers.

Timetable:

Action	Date	FR Cite
NPRM	05/09/96	61 FR 21149

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Final Rule Stage

Action	Date	FR Cite
NPRM Comment Period End	07/08/96	
To Be Withdrawn	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This action involves four operating administrations: FAA, FHWA, FTA, and FRA. On May 10, 1995 (60 FR 24765), DOT suspended its pre-employment alcohol testing requirements after a court decision vacated the requirements of the FHWA alcohol testing rule.

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
TDD Phone: 202 755-7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC50

1700. NONDISCRIMINATION IN AIR TRAVEL; BOARDING WHERE LEVEL-ENTRY IS UNAVAILABLE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41702; 49 USC 41705; 49 USC 41712

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: This action requires air carriers and airports to work jointly to make lifts or other boarding devices available for aircraft, of whatever size, where level-entry loading bridges or existing lifts are not present. This action is intended to facilitate the boarding of aircraft by individuals with disabilities. It amends existing rules that implement the Air Carrier Access Act of 1986 and the Rehabilitation Act of 1973.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46611
NPRM Comment Period End	11/24/99	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC81

1701. +UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Other Significant

Legal Authority: 49 USC 322(a)

CFR Citation: 49 CFR 19

Legal Deadline: None

Abstract: This action implements changes to OMB Circular A-110 that were issued by OMB on October 8, 1999, providing uniform guidance for administering grants to institutions of higher education, hospitals, and other nonprofit organizations. The change provides guidance on making data produced under awards available to the public. The regulation is essentially a word-for-word issuance of the requirements in OMB Cirular A-110. An interim final rule was issued because of the limited ability to change the requirements from those in the Circular.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC83

1702. +AMERICANS WITH DISABILITIES ACT ACCESSIBILITY STANDARDS

Priority: Other Significant

Legal Authority: 5 USC 552a

CFR Citation: 49 CFR 27; 49 CFR 37

Legal Deadline: None

Abstract: The Department of Transportation is proposing to amend its rules implementing the Americans with Disabilities Act (ADA) by adopting as its standards revised accessibility guidelines proposed by the Architectural and Transportation Barriers Compliance Board (Access Board). The Access Board published a notice of proposed rulemaking (NPRM) to revise and update the accessibility guidelines for the ADA and the Architectural Barriers Act (ABA) in the November 16, 1999 issue of the Federal Register. This proposed rule would adopt the Access Board's revised and updated ADA guidelines and make a conforming change to the Department's rule implementing the ADA.

Timetable:

Action	Date	FR Cite
NPRM	08/08/00	65 FR 48444
NPRM Comment Period End	09/07/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC86

DOT—OST

Final Rule Stage

1703. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS: MEMORANDUM OF UNDERSTANDING WITH SMALL BUSINESS ADMINISTRATION; UNIFORM FORMS AND OTHER REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178; 112 Stat. 107 and 113; 42 USC 2000d; PL 102-581

CFR Citation: 49 CFR 26

Legal Deadline: None

Abstract: This rule would implement a memorandum of understanding (MOU) between DOT and the Small Business Administration. The MOU would establish reciprocity and streamline certification procedures for participation in SBA's 8(a) Business Development and Small Disadvantaged Business program, and DOT's DBE program. This document would provide a uniform certification application form and a uniform reporting form.

Timetable:

Action	Date	FR Cite
NPRM	05/08/01	66 FR 23208
NPRM Comment Period End	06/07/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Laura Aguilar, Attorney, Department of Transportation, Office of the Secretary, C-10, Room 10102
Phone: 202 366-0365
Fax: 202 366-9170
Email: laura.aguilar@ost.dot.gov

RIN: 2105–AC88

1704. PARTICIPATION BY MINORITY BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS: THRESHOLD REQUIREMENTS AND OTHER TECHNICAL REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178, TEA-21; PL 102-581

CFR Citation: 49 CFR 26.11 (Revision); 49 CFR 26.21 (Revision); 49 CFR 26.37 (Revision); 49 CFR 26.45 (Revision); 49 CFR 26.55 (Revision)

Legal Deadline: None

Abstract: This interim final rule changes threshold requirements for Federal Transit Administration and Federal Aviation Administration recipients to establish DBE programs and overall goals. Each August 1, recipients must submit DBE goals for the following fiscal year. This change will reduce burdens on entities receiving smaller Federal grants. The DOT is issuing an interim final rule in order to reduce the burden, this fiscal year, for the smallest grant recipients. This document also makes technical changes to 49 CFR part 26.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 68949
Interim Final Rule Effective	11/15/00	
Interim Final Rule Comment Period End	01/02/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura Aguilar, Attorney, Department of Transportation, Office of the Secretary, C-10, Room 10102
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RIN: 2105–AC89

1705. PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 324; 42 USC 2000d et seq; 49 USC 1611, 47107, 47113, 47123; EO 12138; 3 CFR 1951 comp., p. 393, sec. 1101 (b); ...

CFR Citation: 49 CFR 2a, subpart G

Legal Deadline: Final, Statutory, June 30, 1993.

Abstract: In May 1997, the Department issued a supplemental notice of proposed rulemaking (SNPRM) to revise its disadvantaged business enterprise (DBE) regulation. The SNPRM included proposals for revising the airport concessions portion of the DBE program. When the Department, in February 1999, issued a final rule based on the SNPRM, we did not publish a final version of the airport concessions proposal.

This SNPRM seeks comments on an airport concessions subpart to part 26 that takes into account comments on the May 1997 SNPRM, adapts provisions of the rest of part 26 to the concessions context, and proposes options for provisions affecting car rental operations at airports. These options are based in part on a recent memorandum of understanding between the American Car Rental Association and the Airport Minority Advisory Council making recommendations to the Department on this aspect of the rulemaking. This SNPRM was inadvertently published under RIN 2105-AB92.

Timetable:

Action	Date	FR Cite
SNPRM	09/08/00	65 FR 54454
SNPRM Comment Period End	10/23/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723
TDD Phone: 202 755-7687
Email: bob.ashby@ost.dot.gov

RIN: 2105–AC91

1706. STATEMENT OF POLICY ON ALTERNATIVE DISPUTE RESOLUTION

Priority: Info./Admin./Other

Legal Authority: 5 USC 571 to 583; 5 USC 561 to 570

CFR Citation: None

Legal Deadline: None

Abstract: This Statement of Policy defines Alternative Dispute Resolution (ADR) and commits the Department to considering ADR and furthering its use across the Department. It also states that the Department will provide ADR-related training to employees, allocate

resources to support ADR, and evaluate and assess our ADR uses. This Statement of Policy encourages employees and persons who interact with the Department to identify opportunities for collaborative, consensual approaches to dispute resolution or rulemaking.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/15/00	65 FR 69121
Interim Final Rule Comment Period End	01/16/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Judith S. Kaleta, Senior Counsel for Dispute Resolution, Department of Transportation, Office of the Secretary, Room 10428, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-0992
Fax: 202 366-3388
Email: judy.kaleta@ost.dot.gov

RIN: 2105–AC94

1707. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 49 CFR 21; 49 CFR 27

Legal Deadline: None

Abstract: This rule proposes to amend DOT's regulations implementing Title VI of the Civil Rights Act of 1964 (Title VI), Section 504 of the Rehabilitation Act of 1972 (Section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to Title VI and added a definition of "program or activity" to Section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation incorporates the CRRA's definition of "program or activity" and "program" into Title VI, Section 504, and the Age Discrimination Act regulations. This proposed regulation also promotes consistency and enforceability of these statutes. This is a joint notice of proposed rulemaking with other Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
Phone: 202 366-9342
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Email: blane.workie@ost.dot.gov

Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC96

1708. OVER THE ROAD BUSES: EXTENSION OF DUE DATE FOR INFORMATION COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12101-12213; 49 USC 322

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department of Transportation is amending its Americans with Disabilities Act regulations concerning accessibility of over-the-road buses with respect to information collection requirements by postponing the requirement for bus companies to submit information reporting ridership on accessible fixed route service and the acquisition of buses and designating of the Federal Motor carrier Safety Administration as the recipient of the data.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/06/01	66 FR 10968
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Blane A. Workie, Attorney, Department of Transportation, Office of the Secretary, Room 4116/C-70, 400 7th Street SW., Washington, DC 20590
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TDD Phone: 202 755-7687
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Email: blane.workie@ost.dot.gov

RIN: 2105–AC98

1709. STANDARD TIME ZONE BOUNDARY IN THE STATE OF NORTH DAKOTA: MORTON COUNTY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 260 to 267

CFR Citation: 49 CFR 71

Legal Deadline: None

Abstract: This rule would relocate Morton County, ND, from mountain time to central time. This proposal is based on a request from the Chairman of the Board of County Commissioners for Morton County, ND.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40666
NPRM Comment Period End	09/17/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joanne Petrie, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4723

RIN: 2105–AD03

1710. • NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS AND ACTIVITIES RECEIVING OR BENEFITING FROM FEDERAL FINANCIAL ASSISTANCE; TRANSPORTATION SERVICES FOR INDIVIDUALS WITH DISABILITIES (ADA)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 16(a); 49 USC 16 (d); 49 USC 142; 42 USC 12101-12213; 47 USC 225; 49 USC 322; ...

CFR Citation: 44 CFR 27; 44 CFR 37

Legal Deadline: None

Abstract: This rule would create a procedure within the Department to improve coordination of guidance and interpretations related to disability issues.

Timetable:

Action	Date	FR Cite
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AD05

1711. • +PROCEDURES FOR COMPENSATION OF AIR CARRIERS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 104-42

CFR Citation: 49 CFR 62

Legal Deadline: None

Abstract: This rule establishes procedures for air carriers to apply for direct compensation authorized by the Air Transportation Safety and System Stabilization Act of 2001. The rule governs the distribution of $1.775 billion of authorized funds.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	10/29/01	66 FR 54616
Final Rule Effective	10/29/01	
Comment Period End	11/13/01	
NPRM	01/02/02	67 FR 263
Final Rule	01/02/02	67 FR 250
Final Rule Effective	01/02/02	
NPRM Comment Period End	01/16/02	
Final Rule; Amendment	02/01/02	67 FR 4899
Final Rule Effective	02/01/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Randall Bennett, Acting Director, Office of Aviation Analysis, Department of Transportation, Office of the Secretary, X-50, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1053
Email: randall.bennett@ost.dot.gov

RIN: 2105–AD06

1712. • REPORTING PROHIBITED COMMUNICATIONS

Priority: Info./Admin./Other

Legal Authority: 49 USC 401, 411, 413, 415, 417, 419, 421, 449, 461, 463, 465

CFR Citation: 49 CFR 300

Legal Deadline: None

Abstract: The proposed amendment to 14 CFR 300.3, dealing with the reporting of prohibited communications, would update that section in order to reflect the Department's conversion to an electronic docket management system (DMS). The proposed changes apply to procedures already in place thereby omitting obsolete references, and would make section 300.3 consistent with the rest of the DOT's regulations already taking DMS into account.

Timetable:

Action	Date	FR Cite
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Colleen Hanley, Attorney Advisor, Department of Transportation, Office of the Secretary, Room 10118, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2105–AD10

Department of Transportation (DOT)
Office of the Secretary (OST)

Long-Term Actions

1713. POLICY STATEMENT ON AIRLINE PREEMPTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41713

CFR Citation: 14 CFR 399

Legal Deadline: None

Abstract: The Civil Aeronautics Board in 1979 issued an interim Policy Statement on preemption. It discusses the policy of the Department with respect to three areas in which State law has been preempted by the Airline Deregulation Act of 1978: regulation of commuter air carriers and air taxis, the rights of airport proprietors, and general State authority as it directly or indirectly affects air transportation competition. The Supreme Court has classified that section 105 of the ADA preempts even indirect State regulation that "has a connection with or reference to" airline rates, routes, or services, but does not preempt State contract law with respect to interpretation and enforcement of agreements voluntarily entered into by air carriers. Other courts continue to issue decisions applying this provision to a multitude of different circumstances. The Department believes that this process of exploring the interpretation of section 105 will continue, and is considering the admissibility of terminating this proceeding.

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Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/79	44 FR 9948
Interim Final Rule Comment Period End	04/16/79	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Federal

Additional Information: PSDR-56, Docket 34684 The 1995 decision issued by the Supreme Court is American Airlines v. Wolens (S. Ct. No. 93-1286).

Agency Contact: Paul Smith, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9285

RIN: 2105–AA46

1714. +STATEMENT OF ENFORCEMENT POLICY ON REBATING

Priority: Other Significant

Legal Authority: 5 USC 601; 49 USC 1301 to 1302; 49 USC 1305; 49 USC 1324(a); 49 USC 1371 to 1379; 49 USC 1381 to 1382; 49 USC 1384; 49 USC 1386; 49 USC 1461; 49 USC 1481 to 1482; 49 USC 1502; 49 USC 1504

CFR Citation: 14 CFR 399.80; 14 CFR 399.85

Legal Deadline: None

Abstract: The Department is proposing to provide formal notice to the public of its enforcement policy concerning the rebating of international air fares by adopting that policy as a policy statement in the regulations. No change in the substance of that policy is intended. The Department also proposes to revoke an existing policy statement on the advertising of rebates that is contrary to DOT's current enforcement policy. The proposal responds to a request for such action by the American Society of Travel Agents. The proposed regulation is significant because it involves important departmental policies and substantial industry interest.

Timetable:

Action	Date	FR Cite
NPRM	10/21/88	53 FR 41353
NPRM Comment Period End	12/20/88	
NPRM Comment Period Extended	02/03/89	54 FR 5497
Correction	02/10/89	54 FR 6475
Extended Comment Period End	02/21/89	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Betsy Wolf, Senior Trial Attorney, Office of the General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9349

RIN: 2105–AB39

1715. +ACCESSIBILITY OF PASSENGER VESSELS TO INDIVIDUALS WITH DISABILITIES

Priority: Other Significant

Legal Authority: 42 USC 12101 et seq; PL 101-336, Americans with Disabilities Act

CFR Citation: 49 CFR 37

Legal Deadline: None

Abstract: The Department's Americans with Disabilities Act (ADA) final rule, published September 6, 1991 (56 FR 45584); reserved portions of the rule concerning passenger vessels. The ADA covers passenger vessels, but issuing accessibility requirements for vessels involves complex issues unlike those affecting land transportation. This action will address these issues and propose feasible requirements to make passenger vessels accessible to, and usable by, individuals with disabilities. DOT is participating in an ongoing advisory committee effort convened by the Access Board to study passenger vessel accessibility issues. September and November 1998 meetings were held. This rulemaking is considered significant because of substantial public and congressional interest.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AB87

1716. USE OF OXYGEN BY AIR CARRIER PASSENGERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41705

CFR Citation: 14 CFR 382

Legal Deadline: None

Abstract: The Department is considering the use of regulatory negotiation to seek consensus among air carriers, consumers, airports, equipment manufacturers, oxygen suppliers, and safety regulators concerning the use of oxygen by passengers on air carriers when individuals need special private supplies. The need for action stems from a current situation where all carriers do not allow passengers to bring their own oxygen aboard. Issues involve conformance with RSPA and FAA hazardous materials rules and the question of providing oxygen during long layovers. The Department is considering whether to begin a regulatory negotiation.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2105–AC29

1717. +DOMESTIC PASSENGER MANIFEST INFORMATION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 40101; 49 USC 40113 to 40114; 49 USC 41702; 49 USC 41708 to 41709; 49 USC 41711; 49 USC 46301; 49 USC 46310; 49 USC 46316

CFR Citation: 14 CFR 243

Legal Deadline: None

Abstract: This notice requested comments concerning operational and cost issues related to U.S. air carriers collecting information such as full name, date of birth and/or social security number, emergency contact and telephone number from passengers traveling on flights within the United States. This notice was issued on the Department's initiative in response to difficulties with notification in the aftermath of domestic aviation disasters and to comply with a recommendation contained in the initial report of the White House Commission on Aviation Safety and Security (1996) that urged the Department to explore immediately the costs and effects of a comprehensive passenger manifest requirement on the domestic aviation system. DOT will review the implementation of the international passenger manifest requirements (RIN 2105-AB78, 2/18/98, 63 FR 8258) as it determines how to proceed with this rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	03/13/97	62 FR 11789
ANPRM Comment Period End	05/12/97	
Comment Period Reopened	05/30/97	62 FR 29313
Comment Period End	06/20/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Bernestine Allen, Director, Office of International Transportation and Trade, Department of Transportation, Office of the Secretary, X-20, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4368

RIN: 2105–AC62

1718. ELECTRONIC FILING OPTION IN DOT PROCEEDINGS

Priority: Info./Admin./Other

Legal Authority: 49 USC 322; 49 USC 1655; 49 USC 1657; 45 USC 431

CFR Citation: 14 CFR 11

Legal Deadline: None

Abstract: This action amends existing rules, where necessary, to allow electronic filing in all DOT proceedings as an alternative to filing hard copy. The electronic filing option will help us serve the public more quickly and efficiently and will enable the public to participate more easily in DOT proceedings. This rulemaking addresses only the procedures for filing electronically, not technical issues such as media, word-processing formats, and mechanisms for payment of filing fees.

Timetable:

Action	Date	FR Cite
Notice Requesting Comment	05/26/98	63 FR 28545
Comment Period End	07/27/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This is a procedural change that presents no substantive issue that we could reasonably expect to produce further meaningful comment. It also will relieve a restriction. Therefore, good cause exists to publish this rule without prior formal notice and comments.

Agency Contact: Charlotte Boeck, Administrative Officer, Office of the General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20015
Phone: 202 366-4713

RIN: 2105–AC79

1719. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355; EO 11738; EO 12549; EO 12689

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: This action would provide DOT-specific amendments for a uniform Governmentwide rule on debarment and suspension (nonprocurement) and drug-free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ladd Hakes, Department of Transportation, Office of the Secretary, Office of the Senior Executive (M-62), 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4268
Email: ladd.hakes@ost.dot.gov

RIN: 2105–AD01

1720. • GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) /GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

Legal Authority: EO 11738; EO 12689; EO 12549; PL 103-355; PL 108; 31 USC 6101

CFR Citation: 49 CFR 29; 49 CFR 32

Legal Deadline: None

Abstract: Executive Orders 12549 and 12689 established a Governmentwide system for nonprocurement suspension and debarment. All Federal departments and major agencies codified these requirements as part of a common rule. DOT is joining 34 other departments and major agencies to update those requirements. Part one of this action is separating the drug-free workplace provisions from the existing common rule and placing them in a separate part.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

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Agency Contact: Ladd Hakes, Department of Transportation, Office of the Secretary, Office of the Senior Executive (M-62), 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4268
Email: ladd.hakes@ost.dot.gov

RIN: 2105–AD07

1721. • SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE DEPARTMENT OF TRANSPORTATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 301; 5 USC 7301; 5 USC 7353

CFR Citation: 5 CFR 6100

Legal Deadline: Final, Statutory, November 16, 2001.

Abstract: This rule amends the Supplemental Standards of Ethical Conduct for Employees of the Department of Transportation. The amendment adds authority to waive the general prohibition against Federal Aviation Administration employees holding stock or other securities in airline or aircraft manufacturing companies or suppliers of aircraft parts. The exercise of this waiver authority will be conditioned in each case upon determination that employee conduct will not result in an appearance of misuse of position or loss of impartiality.

Timetable:

Action	Date	FR Cite
Final Rule	12/03/01	66 FR 60131
Final Rule Effective	12/03/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: William R. Register, Attorney, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9161

RIN: 2105–AD08

Department of Transportation (DOT)
Office of the Secretary (OST) — Completed Actions

1722. • EXTENSION OF COMPUTER RESERVATIONS SYSTEMS REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41712

CFR Citation: 14 CFR 255

Legal Deadline: Existing rules have a Sunset Date of March 31, 2002.

Abstract: The department is proposing to maintain its existing CRS rules for another year while it completes its reexamination of the rules, their effectiveness, and the need for them.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7100
NPRM Comment Period End	03/18/02	
Final Action	03/28/02	67 FR 14846

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Thomas Ray, Office of General Counsel, Department of Transportation, Office of the Secretary, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4731

RIN: 2105–AD09

Department of Transportation (DOT)
Transportation Security Agency (TSA) — Final Rule Stage

1723. • +IMPOSITION AND COLLECTION OF PASSENGER CIVIL AVIATION SECURITY FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44940

CFR Citation: 49 CFR 1510

Legal Deadline: None

Abstract: The Transportation Security Agency announces the imposition of a security service fee in the amount of $2.50 per emplanement on passengers of domestic and foreign carriers in air transportation, foreign air transportation, and intrastate air transportation originating in the US.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67698
Notice	02/19/02	67 FR 7582
Interim Final Rule Comment Period End	03/01/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: A. Thomas Park, Acting Deputy Chief Financial Officer, Department of Transportation, Transportation Security Agency, Room 10101, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-9161

RIN: 2110–AA01

1724. • +AVIATION SECURITY INFRASTRUCTURE FEES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 49 USC 44940

CFR Citation: 49 CFR 1511

Legal Deadline: None

Abstract: TSA announces the imposition of an air carrier fee each fiscal year on air carriers and foreign air carriers in air transportation, foreign air transportation, and intrastate air transportation.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	02/18/02	
Interim Final Rule	02/20/02	67 FR 7926

DOT—TSA — Final Rule Stage

Action	Date	FR Cite
Correction	02/22/02	67 FR 8579
Notice	02/28/02	67 FR 9355
Interim Final Rule Comment Period End	03/18/02	
Comment Period Extended	03/20/02	67 FR 12954
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: A. Thomas Park, Acting Deputy Chief Financial Officer, Department of Transportation, Transportation Security Agency, Room 10101, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-9161

RIN: 2110–AA02

1725. • +CIVIL AVIATION SECURITY RULES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107-71

CFR Citation: 49 CFR XII

Legal Deadline: Final, Statutory, February 17, 2002.

Abstract: This action transfers the FAA security rules to the Transportation Security Administration.

Timetable:

Action	Date	FR Cite
Final Rule Effective	02/17/02	
Final Rule	02/22/02	67 FR 8340
Final Rule Comment Period End	03/25/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mardi Ruth Thompson, Regulations Division, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3073

RIN: 2110–AA03

1726. • +SECURITY PROGRAMS FOR AIRCRAFT WEIGHING 12,500 POUNDS OR MORE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: PL 107-71

CFR Citation: 49 CFR 1544

Legal Deadline: Final, Statutory, February 17, 2002.

Abstract: This action establishes security programs for aircraft with a maximum certificated takeoff weight of 12,500 pounds or more.

Timetable:

Action	Date	FR Cite
Final Rule	02/22/02	67 FR 8205
Final Rule Comment Period End	04/23/02	
Final Rule Effective	06/24/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mardi Thompson, Regulations Division, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3073

RIN: 2110–AA04

Department of Transportation (DOT)
U.S. Coast Guard (USCG) — Prerule Stage

1727. +STANDARDS FOR LIVING ORGANISMS IN SHIPS' BALLAST WATER DISCHARGED IN U.S. WATERS (USCG-2001-10486)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 4711

CFR Citation: 33 CFR 151

Legal Deadline: None

Abstract: This rulemaking would add a performance standard (to 33 CFR part 151, subpart D) for all ballast water treatment methods being used as alternatives to mid-ocean ballast water exchange. It supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
ANPRM	03/04/02	67 FR 9632
ANPRM Comment Period End	06/03/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: G-MSO Dr. Richard Everett, Project Manager, Department of Transportation, U.S. Coast Guard
Phone: 202 267-2243

RIN: 2115–AG21

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Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Proposed Rule Stage

1728. CLAIMS PROCEDURES UNDER THE OIL POLLUTION ACT OF 1990 (CGD 91-035)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2713; 33 USC 2714

CFR Citation: 33 CFR 136

Legal Deadline: None

Abstract: This rulemaking implements section 1013 (Claims Procedures) and section 1014 (Designation of Source and Advertisement) of the Oil Pollution Act of 1990. The Interim Rule provides the requirements for the filing of claims for uncompensated removal costs or damages resulting from the discharge of oil, for the designation of the sources of the discharge, and for the advertisement of where claims are to be filed. The Interim Rule also included the processing of natural resource damage (NRD) claims. The NRD claims, however, were not processed until September 25, 1997, when the Department of Justice issued an opinion that the Oil Spill Liability Trust Fund (OSTLF) is available without further appropriation to pay trustee NRD claims under the general claims provisions of the Oil Pollution Act of 1990, 33 U.S.C. 2712(a)(4). Release of the more comprehensive NPRM has been delayed while the Coast Guard gained experience on NRD claims, as well as other OPA damages.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/12/92	57 FR 36314
Correction	09/09/92	57 FR 41104
Interim Final Rule Comment Period End	12/10/92	
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Agency Contact: Linda Burdette, Project Manager, National Pollution Fund Center, Department of Transportation, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203-1804
Phone: 202 493-6831

RIN: 2115–AD90

1729. +SALVAGE AND MARINE FIREFIGHTING REQUIREMENTS; VESSEL RESPONSE PLANS FOR OIL (USCG-1998-3417)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 155

Legal Deadline: None

Abstract: Current vessel response plan regulations require that the owners or operators of vessels carrying groups I through V petroleum oil as a primary cargo identify in their response plans a salvage company with expertise and equipment, and a company with firefighting capability that can be deployed to a port nearest to the vessel's operating area within 24 hours of notification (groups I-IV) or a discovery of a discharge (group V). Numerous requests for clarification revealed widespread misunderstanding and confusion regarding the regulatory language, which will make the implementation of this requirement difficult. Based on comments received after the Vessel Response Plan final rule publication (61 FR 1052; January 12, 1996) and during a Coast Guard hosted workshop, the Coast Guard intends to better define the terms "salvage expertise and equipment" and "vessel firefighting capability" requirements and will reconsider the 24-hour deployment requirement which was scheduled to go into effect on February 18, 1998. Therefore, the Coast Guard suspended the effective dates of the 24-hour deployment requirements as published in the final rule. The Coast Guard will continue with this project to better define the requirements. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of the natural resources. This rulemaking is significant because it concerns a matter of substantial public interest or controversy.

Statement of Need: This rulemaking is intended to reduce the impact of oil spills from vessels.

Summary of Legal Basis: The statutory authority for this rulemaking is 33 U.S.C. 1321.

Alternatives: The Coast Guard hosted a workshop to solicit comments from the public on potential alternatives to the salvage and marine firefighting requirements contained in the vessel response plan rule.

Anticipated Cost and Benefits: Undetermined

Risks: The purpose of this rulemaking is to better define the terms "salvage expertise and equipment" and "vessel firefighting capability" requirements and to reconsider the 24-hour deployment requirement. The objective is to improve response and reduce environmental damage from oil spills.

Timetable:

Action	Date	FR Cite
Final Rule - Partial Suspension	02/12/98	63 FR 7069
Final Rule - Partial Suspension	01/17/01	66 FR 3876
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Partial suspension of regulations created through the Vessel Response Plan final rule, docket no. 91-034, RIN 2115-AD81. The project was originally titled "Salvage and Firefighting Equipment; Vessel Response Plans." The change was made in order to distinguish this project from other similarly titled projects within the Coast Guard.

Agency Contact: Douglas Lincoln, Project Manager, G-MOR-3, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0448

RIN: 2115–AF60

1730. DEEPWATER PORTS (USCG-1998-3884)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1503

CFR Citation: 33 CFR 148 to 150

Legal Deadline: None

Abstract: The purpose of this rulemaking is to update the Deepwater Port Regulations. Section 502 of the Coast Guard Authorization Act of 1996 necessitates changes to the current Deepwater Port regulations. These regulations were developed in the 1970s when there were no deepwater ports in the United States. The Coast Guard will be revising the regulations to: remove from the regulations, and place in the license conditions, those requirements which belong in the license conditions; and remove from the regulations those things which can be addressed in an operations manual. The Coast Guard will also consider revising the regulations to address technological advancements and operational experience gained over the last 20 years. In accordance with section 610 of the Regulatory Flexibility Act, the Coast Guard is also reviewing these regulations for their impacts on small businesses and the potential to reduce any such impacts. Public comment on small business impacts is specifically requested. This rulemaking will encompass a complete review of the Deepwater Port Regulations. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
ANPRM	08/29/97	62 FR 45774
ANPRM Comment Period End	10/13/97	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ANPRM was published under Docket Number USCG-1998-4441. This docket number is replaced with USCG-1998-3884.

Agency Contact: CDR Mark Prescott, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0225

RIN: 2115–AF63

1731. ALLOWING ALTERNATIVE SOURCE TO INCANDESCENT LIGHT IN PRIVATE AIDS TO NAVIGATION (USCG-2000-7466)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 83; 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 66

Legal Deadline: None

Abstract: The Coast Guard is seeking to let the lighting industry and owners of private aids to navigation take advantage of a recent improvement in technology—one that enables the use of lanterns based on Light-Emitting Diodes (LEDs), which would reduce the consumption of power and simplify the maintenance of the aids. The use of these lanterns should stimulate competition in the industry, reduce maintenance and therefore operating costs, and allow the marking of the aids in a desirable manner. This rule supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/04/00	65 FR 59124
Direct Final Rule Withdrawn	01/02/01	66 FR 8
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Coast Guard withdrew the direct final rule because it received an adverse comment. The Coast Guard will publish an NPRM to solicit additional comments from the public.

Agency Contact: Daniel Andrusiak, Project Manager, G-OPN-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0327

RIN: 2115–AF98

1732. +VESSEL AND FACILITY RESPONSE PLANS FOR OIL: 2003 REMOVAL EQUIPMENT REQUIREMENTS AND ALTERNATIVE TECHNOLOGY REVISIONS (USCG-2001-8661)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 153; 33 CFR 154; 33 CFR 155

Legal Deadline: None

Abstract: This rulemaking will propose changes to the Vessel Response Plans and Marine Transportation Facility Response Plans, and revise the language in the Code of Federal Register concerning methods and procedures for removing oil from coastal waters. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Pond, Project Manager, G-MOR-2, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-6603

RIN: 2115–AG05

1733. +POST CASUALTY DRUG AND ALCOHOL TESTING (USCG-2001-8773)

Priority: Other Significant

Legal Authority: PL 105-383, sec 304

CFR Citation: 46 CFR 4

Legal Deadline: None

Abstract: This project will revise the requirements for chemical testing following a serious marine incident. The revision will establish procedures to ensure that alcohol testing be conducted within 2 hours of a serious marine incident, as required by the Coast Guard Authorization Act of 1998. The rule will also make additional minor procedural changes to the part. This rule supports the Coast Guard strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions, Businesses

Government Levels Affected: Undetermined

Agency Contact: Robert C. Schoening, Project Manager, G-MOA-1, Department of Transportation, U.S. Coast Guard, 2100 Second Stereet SW, Washington, DC 20593-0001
Phone: 202 267-0684

RIN: 2115–AG07

DOT—USCG

Proposed Rule Stage

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1734. +VESSEL DOCUMENTATION: LEASE FINANCING FOR VESSELS ENGAGED IN THE COASTWISE TRADE (USCG-2001-8825)

Priority: Other Significant

Legal Authority: 46 USC 12106; 46 USC 12120; 46 USC 12122

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: This rulemaking will amend the regulations on the documentation of vessels engaged in the coastwise trade. It is a spin-off of Vessel Documentation (USCG 1998-4784) RIN 2115-AF71. These proposals address statutory amendments eliminating certain barriers to seeking foreign financing by lease for U.S. flag vessels. These proposals would clarify the information needed to determine the eligibility of a vessel financed in this manner for a coastwise endorsement. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/02/01	66 FR 21902
NPRM Comment Period Extended to 09/04/2001	05/29/01	66 FR 34603
NPRM Comment Period End	07/02/01	
NPRM Comment Period Reopened	12/14/01	66 FR 64784
Reopened Comment Period End	01/28/02	
Supplemental NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Patricia Williams, Project Manager, NVDC, Department of Transportation, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson Drive, Falling Waters, WV 25419
Phone: 304 271-2506

RIN: 2115–AG08

1735. TERRITORIAL SEAS, NAVIGABLE WATERS, JURISDICTION - CONFORMING AMENDMENTS (USCG-2001-9044)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306 to 3307; 46 USC 3703; 49 USC 1804; 49 USC 1655; 14 USC 633; 14 USC 80; ...

CFR Citation: 33 CFR 2; 33 CFR 26; 33 CFR 62; 33 CFR 64; 33 CFR 95; 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: This project will make substantive changes to current regulations, but only to the extent required to conform to the congressionally mandated changes in the laws administered and enforced by the Coast Guard as listed in section 301 of the Coast Guard Authorization Act of 1998 (a. Ports and Waterways Safety Act, b. subtitle II of title 46). We will redefine the "territorial sea," "navigable waters of the United States," "high seas," "contiguous zone," and "exclusive economic zone" to clarify the varying definitions of those terms under different laws administered and enforced by the Coast Guard, as well as relevant Presidential proclamations. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Alex Weller, Project Manager (G-LMI), Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0097

RIN: 2115–AG13

1736. FEDERAL REQUIREMENTS FOR PROPELLER INJURY AVOIDANCE MEASURES (USCG 2001-10163)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would establish Federal requirements for non-planing recreational houseboats equipped with propeller driven propulsion located aft of the transom. This rule would require owners of these non-planing recreational houseboats to install either one or two propulsion unit measures (a propeller guard or a jet pump drive) or employ three combined measures (use of an ignition cut-off switch, where installed, and install a swim ladder interlock device and an aft-visibility device). Owners of rental houseboats would have to also install an ignition cut-off switch, if not already installed. These requirements would reduce the number of boaters who are seriously or fatally injured when struck by the propeller of a non-planing recreational houseboat. This rulemaking would implement recommendations made by the National Boating Safety Advisory Council. It supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63645
NPRM Comment Period End	03/11/02	
NPRM Comment Period Extended	03/26/02	67 FR 13738
NPRM Comment Period End	05/11/02	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

Related RIN: Related To 2115-AF28

RIN: 2115–AG18

1737. • UPDATE OF RULES ON AIDS TO NAVIGATION AFFECTING BUOYS, SOUND SIGNALS, INTERNATIONAL RULES AT SEA, COMMUNICATIONS PROCEDURES, AND LARGE NAVIGATIONAL BUOYS (USCG-2001-10714)

Priority: Info./Admin./Other

Legal Authority: 14 USC 81; 33 USC 1231; 43 USC 1333; 46 USC 4302

CFR Citation: 33 CFR 60-76

Legal Deadline: None

Abstract: The Assistant Commandant for Operations proposes to revise 33 CFR subchapter C — Aids to Navigation: parts 60 through 76. In these parts, he would update technical information concerning buoys, sound signals, international rules at sea, communications procedures, and Large Navigational Buoys (LNBs). The Assistant Commandant for Operations would also rewrite these parts using plain language. The proposed changes would update the existing rules both to reflect current practices and to make them easier to understand

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel Andrusiak, Project Manager, G-OPN-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0327

RIN: 2115–AG25

1738. • MARINE EVENTS: PERMIT PROCEDURES (USCG-2001-10713)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: This rule would revise Coast Guard procedures to expedite approval of organized marine events conducted on the navigable waters of the United States. These new procedures would establish general permits with nationwide or regional applicability and would allow sponsors to submit information to the Coast Guard by electronic means. These new procedures would reduce the paperwork burden on both the public and the Coast Guard without adversely affecting vessel safety or the environment in the event areas. This project supports the Coast Guard's strategic goals of maritime safety and maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG26

1739. • DRAWBRIDGE OPERATIONS REGULATIONS; REVISIONS (USCG-2001-10881)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: The Coast Guard is proposing changes to its drawbridge regulations that provide guidance for general requirements relating to the use and operation of drawbridges. This project will create a new deviation for short-term closures, provide Coast Guard Eight District Bridges Administration St. Louis with a general bridge closure requirement during the winter season when navigation is reduced and eliminate any unnecessary distinction between commercial and recreational vessels in subpart B. It will also make changes throughout part 117 to remove redundancies, make amendments and technical corrections, and remove special bridge regulations that are no longer functional. Corrections and clarification of these requirements will help to streamline the drawbridge regulatory process and should shorten and simplify part 117 for the reader. This rulemaking supports the Coast Guard's strategic goal of maritime mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: J. Christopher Jaufmann, Project Manager (G-OPT-1), Department of Transportation, U.S. Coast Guard, U.S. Coast Guard Headquarters, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0377

RIN: 2115–AG27

1740. • LIFERAFT SERVICING INTERVALS (USCG-2001-11118)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306; 46 USC 3307; 46 USC 3703; 46 USC 3316

CFR Citation: 46 CFR 28.140; 46 CFR 109.301; 46 CFR 122.730; 46 CFR 131.580; 46 CFR 185.730; ...

Legal Deadline: None

Abstract: This rulemaking would eliminate inconsistencies in the requirements for the first servicing of inflatable liferafts in 46 CFR, chapter I, subchapters C, I-A, K, L, Q, R, T, and W. The equipment regulations in subchapter Q, and vessel regulations in subchapters C and L, allow the first servicing of a new inflatable liferaft on a non-SOLAS vessel to be deferred to two years from initial packing. Subchapters I-A, K, R, T, and W do not incorporate this allowance. This inconsistency results in an unnecessary burden on operators of vessels, as well as confusion among both the public and Coast Guard field personnel. This project supports the Coast Guard's strategic goals of maritime safety and mobility.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 9939
Correction to NPRM	03/14/02	67 FR 11549
NPRM Comment Period End	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Heinz, Project Manager, G-MSE-4, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-1444

RIN: 2115–AG28

1741. • RATES FOR PILOTAGE ON THE GREAT LAKES (USCG-2002-11288)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 9303(f)

CFR Citation: 46 CFR 401

Legal Deadline: None

Abstract: The Coast Guard conducts an annual review of the Great Lakes

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Pilotage based on the "Ratemaking Analyses and Methodology" published in the Federal Register on May 9, 1996. Depending on the results of this review, the Coast Guard can make rate adjustments in accordance with 46 CFR 404 app. A (d) step 7, or if the director determines that pilotage rates are within a reasonable range of their target, make no rate adjustments. This rulemaking will take place annually. This rulemaking supports the Coast Guard's strategic goal of martime mobility.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tom Lawler, Project Manager, G-MW-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20590
Phone: 202 267-1241

RIN: 2115–AG30

1742. • SAFETY ZONE FOR OUTER CONTINENTAL SHELF FACILITY IN THE GULF OF MEXICO (CGD08-01-043)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 85; 43 USC 1333

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish a safety zone around a high-production, manned oil and natural gas facility in the Outer Continental Shelf in the Gulf of Mexico in Green Canyon 205A. The facility needs to be protected from vessels operating outside the normal shipping channels and fairways. Placing a safety zone around the facility will significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the facility except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zone is necessary to protect life, property and the environment and supports the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	04/02/02	67 FR 15505
NPRM Comment Period End	06/03/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LT Karrie Trebbe, Department of Transportation, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589-6271

RIN: 2115–AG31

1743. • WEARING OF PERSONAL FLOTATION DEVICES BY PERSONS OPERATING OR RIDING ON PERSONAL WATERCRAFT OR BEING TOWED BEHIND RECREATIONAL VESSELS (USCG-2002-11421)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175

Legal Deadline: None

Abstract: This rule would require every person to wear a personal flotation device (PFD)—also called a lifejacket—while operating or riding on personal watercraft (PWC) or being towed behind a recreational vessel. On waters subject to the jurisdiction of the United States within any State or territory, the rule would not preempt any requirement established for such persons as specified by that State. The rule would set a Federal requirement on waters subject to the jurisdiction of the United States within any State or territory. The new requirement would reduce the number of persons who drown while participating in these activities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG32

1744. • PROTECTION OF NAVAL VESSELS (LANT AREA-02-001 AND PAC AREA-02-001)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 91; 14 USC 633

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: The Coast Guard is establishing regulations for the safety and security of U.S. naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of U.S. naval vessels in the navigable waters of the United States. This rule supports the strategic goal of marine safety and security.

Timetable:

Action	Date	FR Cite
NPRM (Atlantic Area)	02/21/02	67 FR 7992
NPRM (Pacific Area)	03/20/02	67 FR 12940
NPRM (Pacific Area) Correction	04/08/02	67 FR 16668
First NPRM Comment Period End	04/22/02	
Second NPRM Comment Period End	05/06/02	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chris Doane, Commander (Amr), Department of Transportation, U.S. Coast Guard, Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704-5004
Phone: 757 398-6372

Steve Danscuk, Commander (Pmt), Department of Transportation, U.S. Coast Guard, Coast Guard Pacific Area, Coast Guard Island, Alameda, CA 94501
Phone: 510 437-5839

Related RIN: Related To 2115-AG23

RIN: 2115–AG33

1745. • NOTIFICATIONS OF ARRIVAL AND DEPARTURE IN PORTS OR PLACES IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)(5); 33 USC 1226; 33 USC 1231

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: The Coast Guard needs to permanently amend its regulations relating to the Notifications of Arrival (NOA) and Departure (NOD) requirements in 33 CFR part 160 to ensure port safety, security, and environmental protection as well as maintain the uninterrupted flow of commerce. Subsequent to the terrorist attacks of September 2001, we published an emergency temporary final rule (96-hour rule) amending the NOA and NOD requirements for commercial vessels bound for or departing from ports or places in the United States. The temporary final rule terminates on June 15, 2002. In this rulemaking we propose to make permanent most of the changes introduced by the temporary final rule.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LT(Jg) Marcus Lines, G-MSE-4, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-6854

RIN: 2115–AG35

1746. • +AUTOMATIC IDENTIFICATION SYSTEM CARRIAGE REQUIREMENT (USCG-2002-11721)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 33 USC 1223(a)

CFR Citation: 33 CFR 161; 33 CFR 164; 33 CFR 165

Legal Deadline: None

Abstract: This project will implement an Automatic Identification System (AIS) carriage requirement for SOLAS vessel and non-SOLAS vessels operating on designated waters (i.e., Vessel Traffic Service [VTS] areas, coastal zones, inland waterways and other major waterways). AIS automatically exchanges navigational and positional information in ship-to-ship and ship-to-shore-to-ship modes. Traditional VTS have been based on radar and video surveillance and rely on voice communications by VHF-FM radio; AIS-based VTS will use this technology to perform the majority of both surveillance and information exchange. AIS unburdens mariners from VTS reporting, reduces the cost of operating a VTS and eliminates much of the potentially distracting voice communications associated with traditional VTS operations. Establishing an AIS-based VTS will meet clear Congressional direction and maritime community desires to improve port efficiency and vessel traffic safety (particularly on the Lower Mississippi River area). This rulemaking supports the Coast Guard's strategic goals of safety, protection of natural resources and mobility. These include reducing: the number of collisions, allisions and groundings; the number of tank vessel groundings and collisions resulting from inadequate passage or port transit planning; the number of and/or impact of waterway impediments; crewmember deaths/injuries on U.S. commercial vessels; reduce the risk of major loss of life on passenger vessels; the amount of oil discharged into the marine environment; and the amount of chemicals entering the environment. At the Department of Transportation level, this rulemaking supports the goals of safety, mobility and protection of the human and natural environment. Additionally, AIS will be a key link between maritime transportation and DOT's Intelligent Transportation System Initiative and is a major element within the Marine Transportation System Initiative. This rulemaking is significant because of significant public interest in this proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jorge Arroyo, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6277

Related RIN: Related To 2115-AF75

RIN: 2115–AG36

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Final Rule Stage

1747. SAFETY/SECURITY ZONE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1233; 33 USC 1225

CFR Citation: 33 CFR 100; 33 CFR 165

Legal Deadline: None

Abstract: The Coast Guard uses these routine and frequent regulations to establish control of access to areas to ensure the safety or security of events, vessels, waterfront facilities, or individuals. Many of these zones are of short duration, ranging from a few hours to a few days, and all are geographically limited in area. Safety zones are established for events such as fireworks displays, high speed races, or the transit of dangerous cargoes such as explosives or liquefied petroleum gas. Security zones are established for Presidential or Vice Presidential visits, high profile events such as the Olympics, controversial events such as transport of spent nuclear fuel, and in response to the threat of terrorist attacks. Safety and security zones are promulgated by Captains of the Port or District Commanders. These routine and frequent rulemakings support the Coast Guard's strategic goals of marine safety, mobility, maritime security, and national defense. Total actions expected 10/01/2001 to 10/01/2002: 350.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This is an open docket for routine field regulations.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AA97

1748. SPECIAL ANCHORAGE AREAS/ANCHORAGE GROUNDS REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 471; 33 USC 2030; 33 USC 2035; 33 USC 2071

CFR Citation: 33 CFR 110

Legal Deadline: None

Abstract: These routine and frequent regulations are established where maritime and commercial interests require them for safety of navigation. Special anchorage areas are areas in which vessels of not more than 65 feet may anchor without displaying the required lights or sound signals. These special anchorage areas are limited geographically, and depending upon the purpose, establish both long- and short-term anchorages. Anchorage grounds are limited geographically, delineate the types and size of vessel which may use the anchorage, and may place time and other restrictions on its use. Special anchorage areas and anchorage grounds are promulgated by District Commanders in response to requests from appropriate officials. These routine and frequent rulemakings support the Coast Guard's strategic goal of marine safety. Total actions expected 10/01/2001 to 10/01/2002: 10.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This is an open docket for routine field regulations.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AA98

1749. REPORTING MARINE CASUALTIES (USCG-2000-6927)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 6101; 33 USC 1901 et seq

CFR Citation: 33 CFR 151; 46 CFR 4

Legal Deadline: None

Abstract: This action would add to the definition of a reportable marine casualty, "significant harm to the environment." Some casualty reporting requirements are extended to include foreign tank vessels operating in U.S. waters, including the Exclusive Economic Zone. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the consequence of pollution incidents and further supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	12/20/94	59 FR 65522
Comment Period End	02/20/95	
NPRM	11/02/00	65 FR 65808
Supplemental NPRM	07/12/01	66 FR 36530
Supplemental NPRM Comment Period End	09/10/01	
To Be Withdrawn	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking was formerly docketed under CGD 91-216.

Agency Contact: LCDR Scott Budka, Project Manager, G-MOA-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW
Phone: 202 267-2026

RIN: 2115–AD98

1750. HANDLING OF EXPLOSIVES OR OTHER DANGEROUS CARGOES WITHIN OR CONTIGUOUS TO WATERFRONT FACILITIES (USCG-1998-4302)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1231

CFR Citation: 33 CFR 126

Legal Deadline: None

Abstract: This rulemaking was intended to revise existing regulations covering waterfront facilities that handle dangerous cargoes. The present regulations are outdated and do not reflect improved safety procedures and modern transportation methods, such as the use of containers. Where appropriate, the regulations would have incorporated industry standards regarding the handling of hazardous materials at waterfront facilities. This project would have supported the Vice Commandant's workload reduction initiative, and also supports the Coast Guard's strategic goal of maritime safety by reducing deaths and injuries in the maritime industry.

Timetable:

Action	Date	FR Cite
ANPRM	01/13/93	58 FR 4127
ANPRM Comment Period End	04/13/93	
NPRM	10/29/98	63 FR 57964
NPRM Comment Period End	12/28/98	
NPRM Comment Period Reopened	01/12/99	64 FR 1770
NPRM Comment Period End	03/01/99	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: An independent study has been completed and incorporated with comments from the public in the preparation of the rulemaking. Old Docket Number CGD 92-026.

Agency Contact: LCDR Charles Srioudom, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0626

RIN: 2115–AE22

1751. REGATTA REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 1233

CFR Citation: 33 CFR 100

Legal Deadline: None

Abstract: These routine and frequent special local regulations ensure the safety of participants and spectators in regattas and marine parades. They specify such things as separate participant and spectator areas, separation schemes for watercraft in the area of the event, and temporary restrictions on waterways to accommodate the event. These rules are short-term, usually applying to a single event not exceeding 8 hours in duration, and usually encompassing only a small portion of a navigable waterway. These rules are promulgated by District Commanders in response to a request from a sponsoring organization. These routine and frequent rulemakings support the Coast Guard's strategic goal of maritime safety and maritime mobility of commercial and recreational vessel traffic. Total actions expected 10/01/2001 to 10/01/2002: 75.

Timetable:

Action	Date	FR Cite
Action Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: This is an open docket for routine field regulations.

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AE46

1752. DRAWBRIDGE REGULATIONS

Priority: Routine and Frequent

Legal Authority: 33 USC 499

CFR Citation: 33 CFR 117

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating schedules, and notice requirements, for drawbridges across navigable waterways. Drawbridge regulations establish the permanent draw operation schedules for bridges and specify what notice mariners must give to request an opening. Short-term deviations from the permanent schedule may be issued for bridge repairs or to test the effectiveness of a proposed new opening schedule. Drawbridge regulations are promulgated by District Commanders usually at the request of the bridge owner or operator, or of local officials or local Coast Guard bridge administration officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of maritime safety and maritime mobility of commercial and recreational vessel traffic. Total actions expected 10/01/2001 to 10/01/2002: 150.

Timetable:

Action	Date	FR Cite
Action Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: This is an open docket for routine field regulations.

Agency Contact: Alesia Steinberger, Project Manager, G-OPT-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6215

RIN: 2115–AE47

1753. +ESCORT VESSELS IN CERTAIN U.S. WATERS (CGD 91-202A)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This regulation would have designated those U.S. waters, other than Prince William Sound and Puget Sound, where tankers and other vessels must be escorted by a towing vessel or other appropriate vessel. This project would have supported the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. This action was considered significant because of substantial public and State government interest. It is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	04/27/93	58 FR 25766
Comment Period End	06/28/93	
Request for Comments	12/21/94	59 FR 65741
Comment Period End	02/13/95	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Additional Information: This rulemaking is a companion to 2115-AE10, which concerns Prince William Sound and Puget Sound.

Agency Contact: CDR Tim M. Close, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0177

RIN: 2115–AE56

1754. REGULATED NAVIGATION AREAS

Priority: Routine and Frequent

Legal Authority: 33 USC 1233; 50 USC 191

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: These routine and frequent regulations establish operating requirements for vessels within specified geographic areas to ensure safety on the navigable waters where some special or unusual circumstance exists. Regulated navigation areas are limited areas in which the Coast Guard specifies operational or vessel restrictions such as vessel entry, movement or departure; and vessel size, speed, horsepower, or draft limitations. Regulated navigation areas are promulgated by District Commanders, usually at the request of Coast Guard marine safety or local maritime safety officials. These routine and frequent rulemakings support the Coast Guard's strategic goals of waterways management, marine safety, and maritime mobility. Total actions expected 10/01/2001 to 10/01/2002: 10.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This is an open docket for routine field regulations.

Agency Contact: Ed LaRue, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0416

RIN: 2115–AE84

1755. NUMBERING OF UNDOCUMENTED BARGES (USCG-1998-3798)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 12301

CFR Citation: 33 CFR 189

Legal Deadline: None

Abstract: Title 46 U.S.C. 12301, as amended by the Abandoned Barge Act of 1992, requires all undocumented barges more than 100 gross tons operating on the navigable waters of the United States be numbered. This rulemaking would establish a numbering system for these barges. The numbering of undocumented barges will allow identification of owners of barges found abandoned and help prevent future marine pollution. This rulemaking supports the Coast Guard's strategic goal of protection of natural resources. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Request for Comments	10/18/94	59 FR 52646
Comment Period End	01/17/95	
ANPRM	07/06/98	63 FR 36384
ANPRM Comment Period End	11/03/98	
NPRM	01/11/01	66 FR 2385
NPRM Comment Period End	04/11/01	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 93-091.

Agency Contact: Thomas Willis, Project Manager, National Vessel Documentation Center, Department of Transportation, U.S. Coast Guard, 792 T. J. Jackson Dr, Falling Waters, WV 25419-9502
Phone: 304 271-2506

RIN: 2115–AF13

1756. LICENSING AND MANNING FOR OFFICERS OF TOWING VESSELS (USCG 1999-6224)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7106; 46 USC 7107; 46 USC 7701

CFR Citation: 46 CFR 10; 46 CFR 15

Legal Deadline: None

Abstract: This rulemaking is necessary as part of an overall initiative by the Coast Guard to improve navigational safety for towing vessels. It will help ensure that the mariner piloting a towing vessel has the proper training and qualifications to handle the tug and tow. It has introduced a third level of license where there have been only two. Each level requires greater experience and proficiency than the one before. This rulemaking also introduces a requirement for demonstration of proficiency as a prerequisite to being issued an original license. This will be in addition to the current requirements for sea service, physical examination, testing for drugs, and successful testing for competence. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	06/19/96	61 FR 31332
Correction	07/11/96	61 FR 36608
Correction	08/07/96	61 FR 41208
Notice of Meeting	08/26/96	61 FR 43720
NPRM Comment Period End	10/17/96	
Notice of Intent	12/18/96	61 FR 66642
SNPRM	10/27/97	62 FR 55548
Public Meeting Memphis 02/11/98	01/21/98	63 FR 3070
Public Meeting Houston 02/13/98	01/21/98	63 FR 3070
Public Meeting Boston 02/18/98	01/21/98	63 FR 3070
Public Meeting Seattle 02/24/98	01/21/98	63 FR 3070
SNPRM Comment Period End	02/24/98	
Interim Final Rule	11/19/99	64 FR 63213
Interim Final Rule Comment Period End	02/17/00	
Interim Final Rule	10/27/00	65 FR 64388
Notice Concerning Review	02/09/01	66 FR 9673
Interim Final Rule	04/26/01	66 FR 20931
Interim Final Rule Effective	05/21/01	
Notice of Public Meeting	07/11/01	66 FR 36223
Interim Final Rule Comment Period End	07/25/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-055.

Agency Contact: LCDR Luke Harden, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW., Washington, DC 20593-0001
Phone: 202 267-1838

RIN: 2115–AF23

1757. LIMITED SERVICE DOMESTIC VOYAGE LOAD LINES FOR RIVER BARGES ON LAKE MICHIGAN (USCG-1998-4623)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 51

CFR Citation: 46 CFR 45

Legal Deadline: None

Abstract: This regulatory project will allow certain unmanned dry cargo river barges operating on Lake Michigan to be exempted from the normal Great Lakes load line requirements. Instead, they may qualify for a conditional load line exemption, or for a limited service domestic voyage load line (depending on which Lake Michigan route). This rulemaking pertains to two specific routes: Chicago to Milwaukee, and Chicago to Muskegon. This will allow certain non-hazardous cargoes originating at inland river ports to be transported as far as Milwaukee and Muskegon by river barge, thereby benefiting from the relatively low cost per ton-mile of river barge transportation. Compliance is not mandatory other than for those river barge operators who voluntarily seek to expand their operations onto these routes. This rulemaking supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58679
NPRM Comment Period Extended	12/28/98	63 FR 71411
Comment Period End	01/04/99	
NPRM Comment Period End	03/04/99	
Interim Final Rule	04/23/02	67 FR 19685
Interim Final Rule Effective	05/23/02	
Interim Final Rule Comment Period End	10/23/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95-015.

Agency Contact: Thomas Jordan, Project Manager, G-MSE-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2988

RIN: 2115–AF38

1758. OUTER CONTINENTAL SHELF ACTIVITIES (USCG-1998-3868)

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1333(d)(1); 43 USC 1348(c); 43 USC 1356

CFR Citation: 33 CFR 140 to 147

Legal Deadline: None

Abstract: This project would revise the regulations on Outer Continental Shelf (OCS) activities to: add new requirements for fixed OCS facilities for lifesaving, fire protection, training, hazardous materials used as stores, and accommodation spaces; require foreign vessels engaged in OCS activities to comply with requirements similar to those imposed on U.S. vessels similarly engaged; and allow all mobile inland drilling units (MIDUs) to operate on the OCS out to a defined boundary line if they meet requirements for lifesaving, firefighting, and operations similar to those for fixed OCS facilities. This project would affect the owners and operators of facilities and vessels engaged in offshore activities associated with the exploration for, development of, or production of, the resources of the OCS. The preliminary estimate of costs imposed by these amendments varies according to the unit. The Coast Guard is consulting with the Minerals Management Service, part of the Department of the Interior. It supports the Coast Guard's strategic goal of marine safety and environmental protection.

Timetable:

Action	Date	FR Cite
Request for Comments	06/27/95	60 FR 33185
Comment Period End	09/25/95	
NPRM	12/07/99	64 FR 68416
NPRM Correction	02/22/00	65 FR 8671
NPRM Comment Period Extended	03/16/00	65 FR 14226
NPRM Comment Period Extended	06/30/00	65 FR 40559
NPRM Comment Period End	11/30/00	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The Notice of Request for Comments published 27 June 1995, was assigned Coast Guard docket number 95-016. Following the request for comments this docket was terminated. This project continues under docket USCG-1998-3868 and RIN 2115-AF39.

Agency Contact: James Magill, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1082

RIN: 2115–AF39

1759. FIRE-SUPPRESSION SYSTEMS AND VOYAGE PLANNING FOR TOWING VESSELS (USCG 2000-6931)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3719; 46 USC 4102

CFR Citation: 33 CFR 157; 46 CFR 27

Legal Deadline: NPRM, Statutory, October 1, 1997.

Abstract: The Coast Guard proposes requirements for (a) total-flooding or other installed systems for suppressing fires on existing towing vessels and (b) voyage-planning. The purpose of this rulemaking is to reduce oil spills from single-hull, non-self-propelled barges. Drifting oil barges have run aground and spilled their cargoes, causing considerable damage to marine life and the environment. This project was developed in cooperation with the Towing Safety Advisory Committee. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52057
Comment Period End	01/05/98	
Comment Period Reopened	02/27/98	63 FR 9980
Notice of Public Meeting	02/27/98	63 FR 9980
Comment Period End	05/11/98	
SNPRM	11/08/00	65 FR 66941
Notice of Public Meeting	12/28/00	65 FR 82303
SNPRM Comment Period End	03/08/01	
SNPRM; Notice of Mtg. & Second Reopening Comment Period	07/11/01	66 FR 36223
Second Reopened Comment Period End	09/15/01	
Interim Rule	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking was formerly titled "Towing Vessel Safety (Fire Suppression Systems and Other Measures for Towing Vessels)" (CGD 97-064). It originally proposed requirements for three sets of issues relative to the safety of towing vessel safety issues: fire-suppression systems and other measures; control measures for tank barges; and fire-protection measures for towing vessels. The latter two components have developed into separate rulemakings: Emergency Control Measures for Tank Barges (USCG 1998-4443) (RIN 2115-AF65) and Fire Protection Measures for Towing Vessels (USCG 1998-4445) (RIN 2115-AF66).

Agency Contact: Randall Eberly, Project Manager, G-MSE-4, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001

DOT—USCG

Final Rule Stage

Phone: 202 267-1861
RIN: 2115–AF53

1760. +EMERGENCY RESPONSE PLANS FOR PASSENGER VESSELS (USCG-1998-3473)

Priority: Other Significant

Legal Authority: 14 USC 633; 33 USC 1221; 33 USC 1223; 33 USC 1224; 33 USC 1231; 33 USC 1232; 46 USC 3306

CFR Citation: 46 CFR 1; 46 CFR 7 to 10; 46 CFR 199

Legal Deadline: None

Abstract: This rulemaking would require owners or operators of high-capacity passenger vessels in domestic service to develop, maintain, and exercise emergency response plans. Such plans would establish a process that prevents injury and loss of life during collisions, allisions, groundings, fires, and other emergencies. They would address issues such as passenger egress, crew training, and available emergency resources both on a vessel and in a vessel's operating area. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources. It is significant because of substantial public interest in passenger safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	02/26/98	63 FR 9916
ANPRM Comment Period End	06/28/98	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Agency Contact: Rajiv Khandpur, Project Manager, G-MOC, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0494

RIN: 2115–AF61

1761. +IMPROVEMENTS TO MARITIME SAFETY IN PUGET SOUND-AREA WATERS (USCG-1998-4501)

Priority: Other Significant

Legal Authority: 33 USC 1223 to 1224

CFR Citation: 33 CFR 1

Legal Deadline: None

Abstract: This rulemaking would promulgate measures to improve maritime safety in Puget Sound-Area waters including Puget Sound, the Strait of Juan de Fuca, passages around and through the San Juan Islands, and the Olympic Coast National Marine Sanctuary. Based on a determination by the Secretary of Transportation regarding the status of maritime safety in the Puget Sound area, the Coast Guard has initiated a comprehensive cost-benefit analysis to study the feasibility of implementing new safety measures, including extended tug escort requirements and a dedicated response vessel. Public input will help focus this cost-benefit analysis and develop any future proposed rules, if deemed necessary. This rulemaking supports the Coast Guard Marine Safety and Environmental Protection Program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protection of natural resources. This is a significant action due to substantial public interest. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	11/24/98	63 FR 64937
ANPRM Comment Period End	05/24/99	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: CDR Tim M. Close, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0177

RIN: 2115–AF68

1762. SAFETY OF UNINSPECTED PASSENGER VESSELS UNDER THE PASSENGER VESSEL SAFETY ACT OF 1993 (USCG-1999-5040)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2101; 46 USC 2113; 46 USC 3306; 46 USC 4105

CFR Citation: 46 CFR 15; 46 CFR 24 to 28; 46 CFR 70; 46 CFR 169; 46 CFR 175; 33 CFR 175; 33 CFR 177; 33 CFR 179; 33 CFR 181; 33 CFR 183; 46 CFR 10; 46 CFR 2; 46 CFR 30; 46 CFR 90; 46 CFR 114; 46 CFR 188; 46 CFR 199; ...

Legal Deadline: None

Abstract: This rulemaking implements the Passenger Vessel Safety Act (PVSA) (Pub. L. 103-206) by amending the rules for Uninspected Passenger Vessels (UPVs). Specifically, the Coast Guard is considering amending existing UPV definitions to create a new class of UPV of at least 100 gross tons carrying not more than 12 passengers. The Coast Guard is considering operating, equipment, licensing and special permit application requirements appropriate for the new class of vessel. The Coast Guard is also considering adding definitions of "passenger," "passenger for hire," and "consideration" to bring its rules into conformity with the PVSA. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
ANPRM	04/01/99	64 FR 15709
ANPRM Comment Period End	06/30/99	
NPRM	03/02/00	65 FR 11410
Interim Final Rule	04/28/00	65 FR 24878
NPRM Comment Period End	05/31/00	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 200593-000
Phone: 202 267-0836

RIN: 2115–AF69

1763. VESSEL TRAFFIC SERVICE LOWER MISSISSIPPI RIVER (USCG-1998-4399)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223(a)

CFR Citation: 33 CFR 26; 33 CFR 161; 33 CFR 165

Legal Deadline: None

DOT—USCG

Final Rule Stage

Abstract: This project proposes to establish a new Vessel Traffic Service (VTS) area in the Lower Mississippi River region. This Vessel Traffic Service Area (VTSA) will span from 20 miles north of Baton Rouge (mile 255 AHP) out to sea, including the South and Southwest Pass. As part of the VTSA, a VTS Special Area will be designated between mile 93.5 and 95 AHP. Unlike traditional VTSs, which are based on radar and video surveillance and rely on voice communications by VHF-FM radio, when fully operational VTS Lower Mississippi River will use Automatic Identification System transponder technology to perform the majority of both surveillance and information exchange. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	04/26/00	65 FR 24616
NPRM Comment Period End	07/25/00	
NPRM Comment Period Reopened	08/18/00	65 FR 50479
NPRM Comment Period End	12/01/00	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project was originally entitled "Vessel Traffic Service Lower Mississippi/Automatic Identification System Carriage Requirement." The VTS LMR will retain RIN 2115-AF75. The AIS carriage requirement will be developed in a separate rulemaking.

Agency Contact: Jorge Arroyo, Project Manager, G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6277

RIN: 2115–AF75

1764. BARGES CARRYING BULK LIQUID HAZARDOUS MATERIAL (USCG-1999-5117)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 151

Legal Deadline: None

Abstract: This rulemaking project will update the regulations for barges carrying bulk hazardous material to account for modernization of the industry. The current regulations for barges carrying bulk liquid hazardous materials were originally published in 1970. Over the past three decades, technology has advanced and industry practices have changed. This project will first ask for public comment to identify the rules which need to be updated. Once those rules are identified, the project will propose appropriate revisions to the Code of Federal Regulations. This project supports the Coast Guard's strategic goal of marine safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	09/09/99	64 FR 48976
ANPRM Comment Period End	03/07/00	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas Felleisen, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0085

RIN: 2115–AF77

1765. ANCHORAGE GROUND; SAFETY ZONE; SPEED LIMIT; TONGASS NARROWS AND KETCHIKAN, AK (CGD17-99-002)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 471; 33 USC 1231; 33 USC 2071

CFR Citation: 33 CFR 162; 33 CFR 165; 33 CFR 110

Legal Deadline: None

Abstract: This rulemaking would grant an exemption from the present 7-knot speed limit in Tongass Narrows, AK, for float plane take-off and landing and vessels 26 feet in length or less. The geographic area for the speed limit would be expanded. A safety zone used for cruise ship anchorages would be redesignated as an anchorage area to reflect actual usage of the area and transiting vessels would be required to move quickly and directly through the anchorage, without rapid course changes, to increase safety. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
NPRM	03/25/99	64 FR 14414
NPRM Comment Period End	05/10/99	
Interim Final Rule	06/02/99	64 FR 29554
Interim Final Rule Comment Period End	11/30/99	
Interim Final Rule	04/07/00	65 FR 18242
Interim Final Rule Comment Period End	10/31/00	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: LT Kenneth Kostecki, Project Manager, Department of Transportation, U.S. Coast Guard, 2030 Sealevel Drive, Suite 203, Ketchikan, AK 99901
Phone: 907 225-4496

RIN: 2115–AF81

1766. TRAINING AND QUALIFICATIONS FOR PERSONNEL ON PASSENGER SHIPS (USCG 1999-5610)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC ch 71; 46 USC ch 73

CFR Citation: 46 CFR 12; 46 CFR 15; 46 CFR 10

Legal Deadline: None

Abstract: This project will implement new amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), that impose requirements for training and qualifications of masters, officers, engineers, and "ratings." The following training courses are mandatory for the personnel on passenger ships other than roll-on, roll-off, carrying more than 12 passengers operating on international voyages: (1) Crisis Management and Human Behavior; (2) Crowd Management; (3) Special Safety; (4) Passenger Safety, with special attention given to disabled persons and others needing assistance; and (5)

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Special Familiarization. This rulemaking supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	06/15/00	65 FR 37507
NPRM Comment Period End	09/13/00	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark Gould, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6890

RIN: 2115–AF83

1767. ALTERNATE HULL EXAMINATION PROGRAM FOR CERTAIN PASSENGER VESSELS, AND UNDERWATER SURVEYS FOR PASSENGER, NAUTICAL SCHOOL, AND SAILING SCHOOL VESSELS (USCG-2000-6858)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3305; 46 USC 3308

CFR Citation: 46 CFR 71; 46 CFR 115; 46 CFR 167; 46 CFR 169; 46 CFR 176

Legal Deadline: None

Abstract: The regulatory project will establish hull examination alternatives and a drydock extension policy for qualifying passenger vessels that operate exclusively on benign, low-risk environments, and that have limited time under way. In addition, the proposed regulations would provide the option of alternating drydock examinations with underwater surveys for passenger vessels. This project supports the Coast Guard's strategic goal Marine Safety and Environmental Protection Program's goal of mobility by facilitating commerce and eliminate interruptions and impediments to the economical movement of goods and people.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This project is a split-off of RIN 2115-AF73. The split was a result of comments received under the NPRM that was published under RIN 2115-AF73, 11/15/1999, 64 FR 62018, entitled Frequency of Inspection Alternate Hull Exam Program for Certain Passenger Vessels, and Underwater Surveys for Passenger, Nautical School, and Sailing School Vessels.

Agency Contact: Martin Walker, Project Manager, G-MOC, Department of Transportation, U.S. Coast Guard, 2100 Second St. SW,, Washington, DC 20593-0001
Phone: 202 267-1047

RIN: 2115–AF95

1768. CARGO SECURING ON VESSELS OPERATING IN U.S. WATERS (USCG-2000-7080)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3306

CFR Citation: 33 CFR 97

Legal Deadline: None

Abstract: This rulemaking would amend the cargo stowage and securing rules for U.S. vessels operating in U.S. waters. In addition, it would amend rules to require cargo securing manuals for U.S. or foreign vessels of 500 gross tons or more on international voyages. Its goal is to reduce hazardous material cargo losses from vessels in U.S. waters. It supports the Coast Guard's strategic goals of maritime safety and protection of natural resources. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
NPRM	12/01/00	65 FR 75201
NPRM Comment Period End	03/01/01	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 200593-000
Phone: 202 267-0836

RIN: 2115–AF97

1769. NOTIFICATION OF ARRIVAL: ADDITION OF CHARTERER TO REQUIRED INFORMATION (USCG-2001-8659)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1231

CFR Citation: 33 CFR 160

Legal Deadline: None

Abstract: This rulemaking will require an owner, master, operator, or person in charge of a vessel to provide the identification of a vessel's charterer in addition to the already required information when making an advance notice of arrival for vessels bound for ports or places in the United States. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
Request for Comments	08/18/00	65 FR 50481
Comment Period End	10/02/00	
NPRM	05/01/01	66 FR 21710
Correction Notice	05/16/01	66 FR 27216
Correction Notice	05/24/01	66 FR 28774
NPRM Comment Period End	07/02/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: CDR Mark Prescott, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0225

RIN: 2115–AG06

1770. ELECTRONIC CHART DISPLAY AND INFORMATION SYSTEM (ECDIS) (USCG-2001-8826)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223; 33 USC 1231; 46 USC 2103; 46 USC 3703; 46 USC 6101; 46 USC 8502

CFR Citation: 33 CFR 164

Legal Deadline: None

Abstract: This rulemaking would allow commercial vessels the option of using an IMO-approved Electronic Charting Display and Information System (ECDIS) as a primary means of navigation in U.S. waters instead of paper charts. Compliance with this rule would be optional; any vessel choosing not to use such an ECDIS must could continue to navigate using corrected and updated printed charts and publications. This regulation supports the Coast Guard's strategic goal of maritime safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/01	66 FR 21899
ANPRM Comment Period End	07/02/01	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Detweiler, Project Manager G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-0574

RIN: 2115–AG09

1771. +TANK LEVEL OR PRESSURE MONITORING DEVICES (USCG-2001-9046)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 3703

CFR Citation: 46 CFR 32; 33 CFR 157

Legal Deadline: Final, Statutory, August 1991, Section 4110 of the Oil Pollution Act of 1990 (OPA 90).
Final, Judicial, May 2002.

Abstract: The U.S. Court of Appeals for the District of Columbia issued a writ of mandamus requiring the Coast Guard to promulgate regulations for tank level or pressure monitoring (TLPM) devices as mandated by OPA 90. This regulatory project will establish performance standards for TLPM devices and require tank vessels to install such devices. This project is considered significant because of substantial public and industry interest and the considerable economic impact of the rulemaking. This rulemaking falls under the Coast Guard's strategic goal of protection of natural resources.

Statement of Need: This rulemaking is required by section 4110 of the Oil Pollution Act of 1990, P.L. 101-380.

Summary of Legal Basis: This rule is required by section 4110 of the Oil Pollution Act of 1990 as determined by the U.S. Court of Appeals for the D.C. circuit in May 2001. The Coast Guard is under a writ of mandamus to publish a rule requiring the use of Tank Vessel Pressure Monitoring devices.

Alternatives: Alternatives considered for analysis include two performance standards, however, the same cost will be achieved using either standard. We also considered the applicability of the rule to different types of vessels. Variations of these alternatives are presented as eight options in the NPRM.

Anticipated Cost and Benefits: The present value cost of the proposed rule over the 13-year period of analysis (2002-2014) would range from approximately $64 million to $211 million depending on the option selected. Virtually all of the costs will be incurred during the 3-year or 5-year phase-in period. Under the most expensive option, the cost in nominal terms is estimated to be $80 million. Over the 13-year period of analysis, this analysis estimates that TLPM devices will reduce the amount of oil spilled in the United States by an estimated range of 211 barrels to 1,425 barrels, depending on the option selected.

Risks: This rule addresses the risk of slow leakage from tank vessels that might otherwise go undetected. It is one of the many statutory requirements mandated by the Oil Pollution Act of 1990, which eliminates a number of oil pollution risks.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49877
NPRM Comment Period End	11/30/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Energy Effects: Statement of Energy Effects planned as required by Executive Order 13211.

Additional Information: This project is reopened with a new RIN and DMS docket number. The Coast Guard is reopening this project per writ of mandamus by the D.C. Circuit Court directing the Coast Guard to implement certain provisions of the Oil Pollution Act of 1990. It was previously captioned with docket number 90-071, and RIN 2115-AD69.

Agency Contact: LCDR Glen Mine, Project Manager, G-MSR-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1303

RIN: 2115–AG10

1772. INSPECTION AND ENFORCEMENT OF COAST GUARD REGULATIONS FOR FIXED FACILITIES BY MINERALS MANAGEMENT SERVICE (USCG-2001-9045)

Priority: Substantive, Nonsignificant

Legal Authority: 43 USC 1348

CFR Citation: 33 CFR 140

Legal Deadline: None

Abstract: The Coast Guard proposes to authorize the Mineral Management Service (MMS) to perform inspections, on behalf of the Coast Guard, on fixed facilities engaged in Outer Continental Shelf activities and to enforce Coast Guard regulations applicable to those facilities. MMS already performs inspections on these facilities to determine whether they comply with MMS regulations. By authorizing MMS to also check for compliance with Coast Guard regulations, we avoid duplicating functions, reduce Federal costs, and increase the frequency of inspections. This project supports the Coast Guard's strategic goals of maritime safety and environmental protection.

Timetable:

Action	Date	FR Cite
NPRM	05/10/01	66 FR 23871
NPRM Comment Period End	07/09/01	
Final Rule	02/07/02	67 FR 5912
Final Rule Effective	06/07/02	
Final Rule; Announcement of Effective Date (See Addl Info)	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: Section 140.103(c) contains a collection-of-information requirement that has not been approved by the Office of Management and Budget. When it is approved, we will publish an announcement of the effective date of that section in the Federal Register.

Agency Contact: James Magill, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1082

RIN: 2115–AG14

1773. REVISE OPTIONS FOR RESPONDING TO NOTICES OF VIOLATIONS (USCG-2001-9175)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; PL 100-690

CFR Citation: 33 CFR 1.07; 49 CFR 1.46

Legal Deadline: None

Abstract: This project would revise 33 CFR 1.07, Notice of violation, to change the process for a "no action" option. This change would preserve the existing options of paying the "ticket" and closing the case, or requesting a hearing; it would replace the current default of the "no action resulting in referral to a hearing officer" to "no action resulting in a finding of proved and assessment of a penalty." This project supports the Commandant's workload reduction initiative by increasing the efficiency of Coast Guard resources by removing a time-consuming, unnecessary step in the processing of notices of violations for which no response was received.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63640
NPRM Comment Period End	02/08/02	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Doug Rabe, Project Manager, G-MOA, Department of Transportation, U.S. Coast Guard, Room 2407, 2100 Second Street SW., Washington, DC 20593
Phone: 202 267-1428

RIN: 2115–AG15

1774. TRAFFIC SEPARATION SCHEME: IN PRINCE WILLIAM SOUND, ALASKA (USCG-2001-10254)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1223

CFR Citation: 33 CFR 167; 33 CFR 161

Legal Deadline: None

Abstract: This rulemaking would implement amendments to the existing Prince William Sound Traffic Separation Scheme (TSS). The amendments to the TSS have been approved by the International Maritime Organization, and have been validated by a recent Port Access Route Study (PARS). Implementing these amendments into the Code of Federal Regulations would provide straight traffic lanes between the Bligh Reef Pilot Station and Cape Hinchinbrook, and should reduce the risk for vessels operating within the area. The length of transit in Prince William Sound would also be reduced. With the course change removed from the original TSS, the minimum distance from the center of the southbound traffic lane to Naked Island would increase from six (6) to nine (9) nautical miles, reducing the risk of drift groundings. This project supports the Coast Guard's strategic goals of increasing maritime mobility, protecting natural resources and improving marine safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
NPRM	02/06/02	67 FR 5538
NPRM Comment Period End	03/08/02	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: George Detweiler, Project Manager G-MWV, Department of Transportation, U.S. Coast Guard, 2100 Second St., SW, Washington, DC 20593-0001
Phone: 202 267-0574

RIN: 2115–AG20

1775. SAFETY ZONES FOR OUTER CONTINENTAL SHELF FACILITIES IN THE GULF OF MEXICO (CGD08-01-025)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 85; 33 USC 2071

CFR Citation: 33 CFR 147

Legal Deadline: None

Abstract: The Coast Guard proposes to establish safety zones around five petroleum and gas production facilities in the Outer Continental Shelf in the Gulf of Mexico. The four platforms and one moored spar buoy need to be protected from vessels operating outside the normal shipping channels and fairways. Placing safety zones around these facilities will significantly reduce the threat of allisions, oil spills and releases of natural gas. The proposed regulation would prevent all vessels from entering or remaining in specified areas around the platforms except for the following: An attending vessel; a vessel under 100 feet in length overall not engaged in towing; or a vessel authorized by the Eighth Coast Guard District Commander. The proposed safety zones are necessary to protect the safety of life, property and the environment and support the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63642
NPRM Comment Period End	02/08/02	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LT Karrie Trebbe, Department of Transportation, U.S. Coast Guard, Eighth Coast Guard District Commander, Hale Boggs Federal Bldg., 501 Magazine Street, New Orleans, LA 70130
Phone: 504 589-6271

RIN: 2115–AG22

1776. PROTECTION OF NAVAL VESSELS (LANT AREA-01-001 AND PAC AREA-01-001)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 91

CFR Citation: 33 CFR 165

Legal Deadline: None

Abstract: Following terrorist attacks in New York and Washington, D.C., the Coast Guard is establishing temporary regulations for the safety or security of U.S. naval vessels in the navigable waters of the United States. The regulations are issued under the authority contained in 14 U.S.C. 91. Naval Vessel Protection Zones will provide for the regulation of vessel traffic in the vicinity of U.S. naval vessels in the navigable waters of the United States. This rule supports the strategic goal of marine safety and security.

Timetable:

Action	Date	FR Cite
Temporary Final Rule Effective	09/14/01	
Temporary Final Rule	09/21/01	66 FR 48780
Temporary Final Rule Ends	06/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joe Billy, Commander (Poft), Department of Transportation, U.S. Coast Guard, Coast Guard Pacific Area, Coast Guard Island, Alameda, CA 94501
Phone: 510 437-3505

Chris Doane, Commander (Amr), Department of Transportation, U.S. Coast Guard, Coast Guard Atlantic Area, 431 Crawford Street, Portsmouth, VA 23704-5004
Phone: 757 398-6372

Related RIN: Related To 2115-AG33

RIN: 2115–AG23

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Long-Term Actions

1777. +DISCHARGE-REMOVAL EQUIPMENT FOR VESSELS CARRYING OIL (CGD 90-068)

Priority: Other Significant

Legal Authority: 33 USC 1321

CFR Citation: 33 CFR 155

Legal Deadline: Final, Statutory, August 18, 1992.

Abstract: The Oil Pollution Act of 1990 directed the President by August 18, 1992, to require periodic inspection of discharge-removal equipment to ensure that it is available in an emergency, and to require carriage of discharge-removal equipment by vessels operating in the navigable waters of the United States and carrying oil or hazardous substances. This action implemented those provisions. This project supports the Coast Guard's strategic goal of protection of natural resources. This project is considered significant because of substantial public interest. We are in the process of deciding how to respond to comments.

Timetable:

Action	Date	FR Cite
ANPRM	08/30/91	56 FR 43534
ANPRM Comment Period End	10/16/91	
NPRM	09/29/92	57 FR 44912
NPRM Comment Period Extended	10/26/92	57 FR 48489
NPRM Comment Period End	10/29/92	
NPRM Comment Period Extended	11/16/92	
Interim Final Rule	12/22/93	58 FR 67988
Interim Final Rule Effective	01/21/94	
Correction	01/26/94	59 FR 3749
Interim Final Rule Comment Period End	02/22/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David DuPont, Project Manager, G-MSR-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001
Phone: 202 267-0971

RIN: 2115–AD66

1778. +ESCORT VESSELS FOR CERTAIN TANKERS (CGD 91-202)

Priority: Other Significant

Legal Authority: 46 USC 3703

CFR Citation: 33 CFR 168

Legal Deadline: None

Abstract: This rulemaking developed standards which implement section 4116(c) of the Oil Pollution Act of 1990. It addressed the areas of Prince William and Puget Sounds and requires a two-vessel escort for single-hull tankers greater than 5,000 gross tons. On November 1, 1994, the crash stop criteria were suspended because of industry concerns about meeting the criteria. On February 1, 1995, a notice of availability of a two-part study assessing the capability of escort tugs to control disabled tankers in Prince William Sound was published. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the amount of oil discharged into the marine environment and the Coast Guard's strategic goal of protecting natural resources. This project is considered significant because of substantial public and State government interest. We are in the process of deciding how to respond to comments.

Timetable:

Action	Date	FR Cite
NPRM	07/07/92	57 FR 30058
NPRM Comment Period End	09/08/92	
NPRM Comment Period Reopened	03/26/93	58 FR 16391
Notice of Public Hearings	04/29/93	58 FR 25959
Correction	05/19/93	58 FR 29157
NPRM Comment Period End	06/24/93	
Part 1 of Study	01/10/94	59 FR 1411
Final Rule	08/19/94	59 FR 42962
Final Rule - Partial Suspension Crash Stop Criteria	11/01/94	59 FR 54519
Final Rule Effective - Partial Suspension	11/17/94	59 FR 54519
Notice of Availability Part II of Study	02/01/95	60 FR 6345

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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Additional Information: The Coast Guard, in cooperation with the Prince William Sound Regional Citizens Advisory Council, PWS Tanker Association, and Alaska Pipeline, conducted a disabled-tanker towing study. The result of the study was incorporated into this rulemaking. Tug escort requirements in areas other than Prince William Sound and Puget Sound are addressed in the project listed under RIN 2115-AE56.

ANALYSIS: Regulatory Evaluation, 08/19/94, 59 FR 42962

Agency Contact: CDR Tim M. Close, Project Manager, G-MSE-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0177

RIN: 2115–AE10

1779. STATE ACCESS TO THE OIL SPILL LIABILITY TRUST FUND (CGD 92-014)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2712

CFR Citation: 33 CFR 133

Legal Deadline: NPRM, Statutory, February 18, 1991.

Abstract: Pursuant to the Oil Pollution Act of 1990 (OPA 90), this action specifies how the authority to obligate the pollution trust fund for oil spill response and cleanup efforts and to enter into agreements with the states will be exercised. The Coast Guard is evaluating the performance of the Interim Rule. This rulemaking supports the Coast Guard's strategic goal of the protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Rule	11/13/92	57 FR 53968
Interim Final Rule Comment Period End	02/11/93	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: Rulemaking was downgraded from Other Significant to Substantive Nonsignificant in the 11/14/94 Agenda; however, due to administrative error, the document erroneously reflected Other Significant in subsequent Agenda entries.

Agency Contact: Al Thuring, Project Manager, National Pollution Funds Center, Department of Transportation, U.S. Coast Guard, Suite 1000, 4200 Wilson Boulevard, Arlington, VA 22203-1804
Phone: 202 493-6801

RIN: 2115–AE19

1780. +MARINE TRANSPORTATION-RELATED FACILITY RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG-1999-5705)

Priority: Other Significant

Legal Authority: 33 USC 1321(j); PL 101-380

CFR Citation: 33 CFR 154

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a marine transportation-related facility transferring bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to marine transportation-related facilities that, because of their location, could cause harm to the environment by discharging a hazardous substance into or on the navigable waters or adjoining shoreline. A separate rulemaking, under RIN 2115-AE88, was developed in tandem with this rulemaking and addresses hazardous substances response plan requirements for tank vessels. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the amount of chemicals entering the environment, as well as reducing the consequence of pollution incidents. This action is considered significant because of substantial public and industry interest.

Statement of Need: This rulemaking is intended to reduce the impact from hazardous substance spills from marine transportation-related facilities.

Summary of Legal Basis: Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 U.S.C. 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although section 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate final rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under 33 U.S.C. 1321, "hazardous substances" are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. The Coast Guard has identified 82 hazardous substances currently carried in bulk by vessels, and transferred to or from marine transportation-related facilities.

Alternatives: The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some of the spilled substances may not be recoverable from the water and other actions may be necessary. Plans are required, by statute, to address responses to a "worst case discharge." For facilities, a "worst case discharge" is "the largest foreseeable discharge in adverse weather conditions."

Anticipated Cost and Benefits: The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts for response resources, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include reduced risk of human exposure and enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances. The analysis indicates that this project will not be economically significant. A regulatory assessment addressing costs and benefits of this rule is available in the public docket.

Risks: Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of facilities involved in transferring hazardous substances in bulk or have a significant impact on the volume of hazardous substances shipped by marine transportation-related facilities. Most facilities involved in transferring hazardous substances in bulk have developed plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/31/00	65 FR 17416
NPRM Comment Period End	06/29/00	
Interim Final Rule	02/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-048. Public hearings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public meetings for the NPRM were held in New Orleans, LA, on May 10 and 11, 2000.

Agency Contact: LT Susan Klein, Project Manager, G-MOR, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0417

RIN: 2115–AE87

1781. +TANK VESSEL RESPONSE PLANS FOR HAZARDOUS SUBSTANCES (USCG-1998-4354)

Priority: Other Significant

Legal Authority: 33 USC 1231; 33 USC 1321(j); PL 101-380

CFR Citation: 33 CFR 155

Legal Deadline: None

Abstract: This project would implement provisions of the Oil Pollution Act of 1990 that require an owner or operator of a tank vessel carrying bulk hazardous substances to develop and operate in accordance with an approved response plan. The regulations would apply to vessels operating on the navigable waters or within the Exclusive Economic Zone (EEZ) of the United States that carry bulk hazardous substances. A separate rulemaking under RIN 2115-AE87 would address hazardous substances response plan requirements for marine transportation-related facilities. This project supports the Coast Guard's strategic goals of maritime safety and protection of natural resources by reducing the amount of chemicals entering the environment, as well as reducing the consequences of pollution incidents. This project is considered significant because of substantial public and industry interest.

Statement of Need: This rulemaking is intended to reduce the impact from hazardous substance spills from vessels.

Summary of Legal Basis: Section 4202(a) of the Oil Pollution Act of 1990 (OPA 90), codified at 33 U.S.C. 1321(j)(5), mandates that the President issue regulations requiring the preparation of oil and hazardous substance discharge response plans. Although 4202(b)(4) of OPA 90 established an implementation schedule for these response plans for oil, it did not establish a deadline for submission or approval of hazardous substances response plans. The Coast Guard has issued separate final rules governing response plan requirements for vessels carrying oil in bulk as cargo and facilities that handle, store, or transport oil in bulk. Under section 1321, "hazardous substances" are designated by the Administrator of the Environmental Protection Agency. The Administrator has designated 297 chemicals as hazardous substances under this section. The Coast Guard has identified 82 hazardous substances currently carried in bulk by vessels.

Alternatives: The Coast Guard intends to determine what types of response strategies would be required to address spills of different types of hazardous substances. For some substances, containment and recovery may be the appropriate response. However, some spilled substances may not be recoverable from the water and other actions may be necessary. Plans are required, by statute, to address responses to a "worst case discharge." For vessels, a "worst case discharge" is "a discharge in adverse weather conditions of its entire cargo."

Anticipated Cost and Benefits: The potential costs of this rulemaking may include the costs of developing and implementing a hazardous substance response plan, maintaining contracts for spill-response resources, reviewing and updating hazardous substance response plans, maintaining any required equipment, and training and exercising response personnel. Potential benefits include reduced risk to human health, enhanced environmental quality from improved ability to respond to, contain, and recover spilled hazardous substances and a reduction in the severity of the impact of accidental hazardous substance discharges. A regulatory assessment addressing costs and benefits of this rule is available in the public docket.

Risks: Response plans are required by statute. A response plan will not prevent a discharge of a hazardous substance, but it may improve the response and help to minimize personal injury and damage to the environment. This rule should not affect the economic viability of vessels involved in transferring hazardous substances in bulk, or have a significant impact on the volume of hazardous substances shipped by vessel. Most vessels carrying hazardous substances in bulk have developed response plans, but there have not been requirements for standardization.

Timetable:

Action	Date	FR Cite
ANPRM	05/03/96	61 FR 20084
Notice of Public Hearings	07/03/96	61 FR 34775
ANPRM Comment Period End	09/03/96	
NPRM	03/22/99	64 FR 13734
Notice of Public Hearing	06/15/99	64 FR 31994
NPRM Comment Period Extended	06/15/99	
NPRM Comment Period End	06/21/99	
NPRM Extended Comment Period End	08/30/99	
Interim Final Rule	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 94-032.

Public meetings regarding this rulemaking were held in Washington, DC, on July 30, 1996; Houston, TX, on August 5, 1996; and Houston, TX, on February 26 and 27, 1997. Public

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meetings for the NPRM were held in Houston, TX on August 12 and 13, 1999.

Agency Contact: LT Susan Klein, Project Manager, G-MOR, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0417

RIN: 2115–AE88

1782. +IMPLEMENTATION OF THE 1995 AMENDMENTS TO THE INTERNATIONAL CONVENTION ON STANDARDS OF TRAINING, CERTIFICATION AND WATCHKEEPING FOR SEAFARERS, 1978 (STCW) (CGD 95-062)

Priority: Other Significant

Legal Authority: 44 USC 3507; 46 USC 2103; 46 USC 7101; 46 USC 7107

CFR Citation: 46 CFR 10; 46 CFR 12; 46 CFR 15

Legal Deadline: None

Abstract: The International Maritime Organization (IMO) comprehensively amended the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW), in 1995. The amendments came into force on February 1, 1997. This project implements them by revising current regulations to ensure that the United States complies with their requirements on: the training of merchant mariners, the documenting of their qualifications, and watch-standing and other arrangements aboard seagoing merchant ships of the United States. This project supports the Coast Guard's strategic goal of maritime safety. It also supports the goal of our directorate for Marine Safety and Environmental Protection for reducing deaths and injuries of crewmembers on domestic merchant vessels and eliminating substandard vessels from the navigable waters of the United States. This rulemaking is significant due to the potential impact on industry and the potential effect on international interests.

Timetable:

Action	Date	FR Cite
Notice of Meeting	08/02/95	60 FR 39306
Comment Period End	09/29/95	
Notice of Inquiry	11/13/95	60 FR 56970
Comment Period End	01/12/96	
NPRM	03/26/96	61 FR 13284
Notice of Public Meetings	04/08/96	61 FR 15438
Comment Period End	07/24/96	
Notice of Intent	02/04/97	62 FR 5197
Interim Rule	06/26/97	62 FR 34505
Interim Rule Effective	07/28/97	
Final Rule	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95-062.

Agency Contact: Mark Gould, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6890

RIN: 2115–AF26

1783. RULES OF PRACTICE, PROCEDURE, AND EVIDENCE FOR ADMINISTRATIVE PROCEEDINGS OF THE COAST GUARD (USCG 1998-3472)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 7701; 46 USC 7702; 33 USC 1321; 42 USC 9609

CFR Citation: 33 CFR 20; 46 CFR 5

Legal Deadline: None

Abstract: The Coast Guard maintains two separate sets of procedural rules: for administrative adjudication against merchant mariners' licenses, certificates of registry, and documents, and for the adjudication of class II civil penalties. The rules for suspension and revocation, contained in part 5 of title 46 of the Code of Federal Regulations (CFR), date from 1948 and are based on criminal procedure. The rules for class II civil penalties, contained in part 20 of title 33 of the CFR, date from 1994 and are based on the Model Rules of Administrative Procedure and on other modern rules for civil procedure. Neither set implements the authority of the Oil Pollution Act of 1990 (OPA 90), which provides for the temporary suspension of a license, certificate of registry, or document for up to 45 days without a hearing, in certain circumstances, and a hearing within 30 days of any such suspension. This rulemaking would consolidate all procedural rules for administrative adjudications for class II civil penalties, and allow the Coast Guard to promulgate regulations implementing the OPA 90 authority. This project supports the strategic goal of the Coast Guard to promote marine safety. We are in the process of deciding how to respond to comments.

Timetable:

Action	Date	FR Cite
NPRM	04/06/98	63 FR 16731
NPRM Comment Period End	05/06/98	
NPRM Comment Period Reopened	05/20/98	63 FR 27700
NPRM Comment Period End	06/19/98	
Interim Final Rule	05/24/99	64 FR 28054
Interim Final Rule Effective	06/23/99	
Interim Final Rule Correction	06/28/99	64 FR 34540
Interim Final Rule Comment Period End	07/23/99	
Interim Final Rule Comment Period Reopened	10/05/99	64 FR 53970
Interim Final Rule Comment Period End	04/03/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This rulemaking revises in part the previous docket of CGD 94-101 (RIN 2115-AD94), which was terminated on December 20, 1995.

Agency Contact: George Jordan, Project Manager, G-CJ, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2940

RIN: 2115–AF59

1784. COMMERCIAL DIVING OPERATIONS (USCG-1998-3786)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1509; 43 USC 1333; 46 USC 3306; 46 USC 3703; 46 USC 6101

CFR Citation: 46 CFR 197; 49 CFR 1.46

Legal Deadline: None

Abstract: This project involves reviewing and updating the commercial diving regulations, which are over 20 years old. A review of the commercial diving regulations is needed to determine what parts should be updated or changed based on the current standards of safety, technology, and industry practices and to evaluate and minimize any significant economic impact of the rules upon small entities. The project supports the Coast Guard Marine Safety and Environmental Protection Program's goal to reduce deaths and injuries on U.S. commercial vessels and the Coast Guard's strategic goal of safety.

Timetable:

Action	Date	FR Cite
ANPRM	06/26/98	63 FR 34840
ANPRM Comment Period Extended	09/23/98	63 FR 50848
ANPRM Comment Period End	11/09/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 200593-000
Phone: 202 267-0836

RIN: 2115–AF64

1785. • +ALTERNATE TONNAGE CONVENTION: SMALL PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 14 USC 14104

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The referenced initiative is not a current rulemaking project and therefore we have not yet determined the USCG strategic goals that regulatory action would serve. We are considering whether to exercise the Coast Guard's discretionary authority to undertake rulemaking. Rulemaking would amend small passenger vessel regulations, retaining the tonnage thresholds based on measurement under 46 U.S.C. 14502, but adding alternate tonnage thresholds based on measurement under 46 U.S.C. 14302.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Steve Venckus, Chief, Office of Regulations and Adm. Law, Department of Transportation, U.S. Coast Guard, (G-LRA), 2100 Second Street SW, Washington, DC 20593
Phone: 202 267-1534

Peter D. Earekson, Project Manager, Marine Safety Center, Department of Transportation, U.S. Coast Guard, 400 7th Street SW, Washington, DC 20590-0001
Phone: 202 366-6502

RIN: 2115–AG29

1786. • PORT SECURITY PLANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update plans for port security. We are currently reviewing comments from the public workshop of January 2002 on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of availability of workshop agenda published January 16, 2002 (67 FR 2271)). This project would support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LT Michael Roldan, Project Manager, G-MP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-6164

RIN: 2115–AG37

1787. • FACILITY SECURITY PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for facilities other than passenger facilities. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR John Farthing, G-MWP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2420

RIN: 2115–AG38

1788. • PASSENGER FACILITY SECURITY PLAN

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update passenger facility security plans. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR John Farthing, G-MWP, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-2420

RIN: 2115–AG39

1789. • MARITIME SECURITY: PASSENGER VESSEL SECURITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1231

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for passenger vessels. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR Stephen Shapiro, G-MPV, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-1005

RIN: 2115–AG40

1790. • MARITIME SECURITY: HIGH CONSEQUENCE VESSELS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1231

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to establish security plans for high consequence and other vessels. We are currently reviewing comments from the January 2002 public workshop on maritime security (notice of meeting published December 17, 2001 (66 FR 65020) and notice of workshop agenda published January 16, 2002 (67 FR 2271)). This project would be expected to support the Coast Guard strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR Stephen Shapiro, G-MPV, Department of Transportation, U.S. Coast Guard, 2100 Second Street, SW, Washington, DC 20593-0001
Phone: 202 267-1005

RIN: 2115–AG41

1791. • IDENTIFICATION CREDENTIALS FOR MARITIME SECURITY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 46 USC 2103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Coast Guard is considering a project to update standards and procedures for identifying people aboard vessels, and at ports and facilities on waterfronts. These standards and procedures might include checks of backgrounds for people in security-sensitive positions, but would take account of (and as far as possible be compatible with) efforts to the same effect from international bodies, other Federal agencies, and States.

The purpose of the project would be to deter terrorism. The project would support the Coast Guard's strategic goals of maritime security, maritime safety, protection of natural resources, and mobility.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: LCDR Gerald Miante, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0221

RIN: 2115–AG42

Department of Transportation (DOT)
U.S. Coast Guard (USCG)

Completed Actions

1792. PERMITS FOR THE TRANSPORTATION OF MUNICIPAL AND COMMERCIAL WASTES (USCG-2000-7442)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2602

CFR Citation: 33 CFR 151

Legal Deadline: Final, Statutory, June 15, 1989.

Abstract: In May 1989, the Coast Guard began a rulemaking to incorporate into regulation certain elements of the Shore Protection Act. The objective is to help prevent trash, medical debris, and other unsightly and potentially harmful materials from being deposited into the coastal waters of the United States as a result of sloppy waste-handling procedures. This project supports the Coast Guard's strategic goal of protection of natural resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/24/89	54 FR 22546
Correction	06/05/89	54 FR 24078
Comment Period End	08/24/89	54 FR 22546
Notice	12/13/95	60 FR 64001
Reopen Comment Period	05/03/01	66 FR 22137
Comment Period End	08/01/01	
Final Rule	02/11/02	67 FR 6171
Final Rule Effective	03/13/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Old Docket Number CGD 89-014. This project was formerly known as "Implementation of the Shore Protection Act of 1988."

ANALYSIS: Regulatory Evaluation, 05/24/89, 54 FR 22546

Agency Contact: Michael Jendrossek, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 200593-000
Phone: 202 267-0836

RIN: 2115–AD23

1793. PROPELLER INJURY PREVENTION ABOARD RENTAL BOATS (USCG-2001-10299)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 173; 33 CFR 174; 33 CFR 175; 33 CFR 177; 33 CFR 179; 33 CFR 181; 33 CFR 183; 33 CFR 187

Legal Deadline: None

Abstract: This rulemaking examined the number and nature of injuries sustained from vessel propellers and helped the Coast Guard determine the need for Federal or State regulation of these vessels, the livery companies leasing these vessels, or the operators of these vessels. It considered regulations to reduce further injuries and fatalities involving rented boasts. The National Boating Safety Advisory Council (NBSAC) recommended that the Coast Guard consider a number of alternatives to prevent injuries, including: installing pump jets, propeller cages or a combination of boarding ladder interlocks or shaft alarms, big warning placards, or other warning devices. This rulemaking was withdrawn because of the lack of substantive information about benefits to prevent propeller strike injuries and to simplify the development of a series of new regulatory projects initiated in response to recent NBSAC recommendations. This rulemaking supported the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
Request for Comments	05/11/95	60 FR 25191
Comment Period End	07/10/95	
Comment Period Reopened	08/09/95	60 FR 40545
Comment Period End	11/07/95	
ANPRM	03/26/96	61 FR 13123
ANPRM Comment Period End	09/01/96	
Request for Comments	04/28/97	62 FR 22991
Comment Period End	07/28/97	
Withdrawn	12/10/01	66 FR 63650

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Old Docket Number CGD 95-041.

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

Related RIN: Related To 2115-AG18

RIN: 2115–AF28

1794. CARRIAGE OF BULK SOLID MATERIALS REQUIRING SPECIAL HANDLING (USCG-2000-6932)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1321; 46 USC 3306; 46 USC 3703; 46 USC 5111; 46 USC 6101; 49 USC 1804; EO 11735; EO 12234

CFR Citation: 46 CFR 90; 46 CFR 97; 46 CFR 148

Legal Deadline: None

Abstract: This project will add materials carried with special permits issued under Coast Guard regulations and other materials contained in the International Maritime Organization Code of Safe Practice for Solid Bulk Cargoes (IMO Bulk Solids Code, or "BC Code"), including coal, to the list of materials permitted under the regulations. The special handling procedures associated with these materials are also included in the new rules. The revisions will harmonize U.S. regulations with recommended international practice, and eliminate the need to apply for special permits, except for newly classified hazardous materials. This project supports the Coast Guard's strategic goal of marine safety and mobility. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Additional Information: This project was initiated with an ANPRM (28 April 1989), and further developed in an NPRM (12 April 1994). In prioritizing resources, it was terminated on 13 April 1995. This regulatory project can now be reinitiated. Based on comments to the docket (previously CGD 87-069 and CGD 97-037), this is a non-controversial amendment to existing regulations.

Agency Contact: Brian Robinson, Project Manager, G-MSO-3, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0018

RIN: 2115–AF47

1795. IMPLEMENTATION OF THE NATIONAL INVASIVE SPECIES ACT OF 1996 (USCG-1998-3423)

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 4701; 16 USC 4702; 16 USC 4711 to 4714; 16 USC 4721 to 4728; 16 USC 4741; 16 USC 4751

CFR Citation: 33 CFR 151

Legal Deadline: NPRM, Statutory, October 26, 1997.

Abstract: This rulemaking establishes voluntary ballast water exchange guidelines applicable to all vessels entering U.S. waters, and mandatory reporting and sampling procedures to monitor compliance. Ballast water has been identified as a major pathway for the introduction and spread of Aquatic Nuisance Species (ANS). This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the volume of untreated ballast water discharged into United States waters, and the Coast Guard's strategic goal of protection of natural resources.

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Timetable:

Action	Date	FR Cite
NPRM	04/10/98	63 FR 17782
NPRM Comment Period End	06/09/98	
Interim Final Rule	05/17/99	64 FR 26672
Interim Final Rule Effective	07/01/99	
Final Rule	11/21/01	66 FR 58381
Final Rule Effective	12/21/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: Old Docket Number CGD 97-068.

Agency Contact: LCDR M. Pat McKeown, Project Manager, G-MSO, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0500

RIN: 2115–AF55

1796. POLLUTION PREVENTION FOR OCEANGOING SHIPS AND CERTAIN VESSELS IN DOMESTIC SERVICE (USCG-2000-7641)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 2103; 46 USC 3306; 46 USC 3703; 33 USC 1231; 33 USC 1321(j); 33 USC 1903

CFR Citation: 33 CFR 151; 33 CFR 155; 33 CFR 157; 46 CFR 170; 46 CFR 172

Legal Deadline: None

Abstract: This rulemaking concerns pollution prevention and the operational discharge of oil from vessels. It will align existing regulations on oil-water separators, operational discharge, damage and intact stability, and term of validity of International Oil Pollution Prevention Certificates with recent amendments under the International Convention for the Prevention of Pollution from Ships, 1973 (MARPOL). It will affect U.S.-flagged tank ships of 10 gross tons or more and other U.S.-flagged ships of 400 gross tons or more. It will eliminate and reduce requirements for shore connections on certain vessels of 100 gross tons or more. This project supports the Coast Guard's Marine Safety and Environmental Protection program's goal to reduce the amount of oil discharged into United States waters from maritime sources by 20 percent, and the Coast Guard's strategic goals of marine safety and protection of natural resources.

Timetable:

Action	Date	FR Cite
NPRM	08/08/00	65 FR 48548
Final Rule	11/02/01	66 FR 55566
Final Rule Effective	12/03/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Previous Docket Number CGD 97-072.

Agency Contact: Robert M. Gauvin, Project Manager, G-MSO-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1053

RIN: 2115–AF56

1797. CERTIFICATION OF NAVIGATION LIGHTS FOR UNINSPECTED COMMERCIAL VESSELS AND RECREATIONAL VESSELS (USCG 1999-6580)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2071; 33 USC 1602; 33 USC 1607

CFR Citation: 33 CFR 84; 33 CFR 181; 33 CFR 183; 46 CFR 111

Legal Deadline: None

Abstract: This rule places navigation lights for recreational vessels and uninspected commercial vessels under regulatory control similar to that already in place for inspected commercial vessels. Specifically, it requires certification that installed navigation lights are in compliance with the Navigation Rules' specifications, as evidenced by laboratory testing to a performance standard; this level of control is currently in place for other items of safety equipment. This action is in accordance with recommendations made by the National Boating Safety Advisory Council (NBSAC), the Navigation Safety Advisory Council (NAVSAC), and the National Association of State Boating Law Administrators (NASBLA). This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	08/04/00	65 FR 47936
NPRM Comment Period End	10/03/00	
Final Rule	11/01/01	66 FR 55086
Final Rule; Delay of Effective Date	01/17/02	67 FR 2329
Final Rule Effective	11/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This rulemaking was formerly titled Certification of Navigation Lights on Recreational Vessels (CGD 97-060).

Agency Contact: Randolph J. Doubt, Project Manager, G-OPB-3, Department of Transportation, U.S. Coast Guard, 2100 Second Steet SW, Washington, DC 20593-0001
Phone: 202 267-6810

RIN: 2115–AF70

1798. VESSEL DOCUMENTATION (USCG-1998-4784)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 12103(d); 46 USC 31321(a)

CFR Citation: 46 CFR 67

Legal Deadline: None

Abstract: This rulemaking will propose regulations to: (1) combine a Manufacturer's Certificate of Origin (MCO) with the Builder's Certificate (form CG12-1261); (2) require that the Hull Identification Number (HIN) be included on the Application for Documentation of recreational vessels for those vessels required to have an assigned HIN; (3) require the submission of the original state title, or if not a state title, the original State registration and/or official replacements issued by a titling/registering authority when documentation is based on those methods of establishing title and; (4) establish procedures for electronic submission of instruments. These four initiatives offer increased efficiency of the vessel documentation process and increased fraud protection for vessel owners; implement statutory changes from the Coast Guard Authorization Act of 1996, (Pub. L. 104-324); and implement statutory changes from the Coast Guard Authorization of 1998 (Pub. L. 105-383). This rulemaking supports the Coast Guard's strategic goal of maritime mobility. This rule is being withdrawn so the Coast Guard conforms on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Dennis Nelson, Project Manager, Department of Transportation, U.S. Coast Guard, National Vessel Documentation Center, 792 T.J. Jackson DR, Falling Waters, WV 25419
Phone: 304 271-2400

RIN: 2115–AF71

1799. VAPOR CONTROL SYSTEMS (USCG-1999-5150)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1225; 33 USC 1231; 33 USC 1321; 46 USC 3306; 46 USC 3703

CFR Citation: 46 CFR 39; 33 CFR 154.E

Legal Deadline: None

Abstract: This project will revise the facility marine vapor control systems (VCS) safety regulations and the vessel VCS safety regulations. These existing regulations require revision to reflect new Federal and State air emissions control requirements, VCS technology developments, and to evaluate and minimize any significant economic impacts of the rules upon small entities. The revisions will also incorporate Coast Guard policies and guidelines developed to support the existing regulations and a Navigation and Vessel Inspection Circular which provides safety guidelines for the design and operation of a marine VCS at tank barge cleaning facilities. This project supports the Coast Guard Marine Safety and Environmental Protection Program's goal to reduce crewmember deaths and injuries on U.S. commercial vessels, it seeks to reduce the amount of oil and chemicals discharged into the Nation's waterways, and it promotes the Coast Guard's strategic goal of marine safety. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sara Ju, Project Manager, G-MSO-3, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0081

RIN: 2115–AF78

1800. MANDATORY SHIP REPORTING SYSTEM OFF THE NORTHEAST AND THE SOUTHEAST COASTS OF THE UNITED STATES (USCG-1999-5525)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1230(d)

CFR Citation: 33 CFR 169

Legal Deadline: None

Abstract: This regulatory project establishes two mandatory ship reporting systems in areas off the U.S. Atlantic Coast to protect the endangered Northern Right Whale. These areas are critically important calving and feeding grounds for that species. Although right whales are also found outside of these areas, the two areas are targeted because they have both large numbers of whales and a high volume of ship traffic. Ship collisions are the largest known source of human-related mortality of right whales. Communication between shore-based authorities and ships will minimize the risk of collision damage to ships and the whales as well as provide beneficial information to ships. The reporting system requires ships over 300 gross tons to notify the Coast Guard of their intention to enter these areas. In return, the mariners are provided with automated information about the last known locations of any right whales. This project supports the Coast Guard's strategic goal of protecting the natural resources.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/01/99	64 FR 29229
Interim Final Rule Comment Period End	07/01/99	
Interim Final Rule Effective	07/01/99	
Final Rule	11/20/01	66 FR 58066
Final Rule Effective	12/20/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The International Maritime Organization established a June 30, 1999 implementation for a mandatory reporting system. Fewer than 300 northern right whales are now known to exist. Designing an effective and simple reporting program in conjunction with other Federal agencies eliminated the availability of time to propose the regulations for comment prior to promulgation. However, the Coast Guard may revise the regulations in response to comments.

Agency Contact: LT Alan Blume, Project Manager, G-MWV-2, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0550

RIN: 2115–AF82

1801. RAISING THE THRESHOLD OF PROPERTY DAMAGE FOR REPORTS OF ACCIDENTS INVOLVING RECREATIONAL VESSELS (USCG-1999-6094)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 6101; 46 USC 6102

CFR Citation: 33 CFR 173; 33 CFR 174

Legal Deadline: None

Abstract: This rule would increase the threshold for reporting recreational-boat accidents involving only property damage. Because of inflation since the threshold was last revised, the threshold now requires the reporting of a large number of minor accidents. These numbers distort the statistical base for the program in Recreational Boating Safety and increase the burden of paperwork on the boating public. Raising the threshold to an appropriate level would provide for a consistent statistical base and reduce the administrative burden on the Coast Guard and on States' accident-investigation personnel as well as the burden of paperwork on the boating public. This rule supports the Coast

Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	06/20/00	65 FR 38229
NPRM Comment Period End	10/18/00	
Final Rule	05/01/01	66 FR 21671
Final Rule, Partial Suspension	06/26/01	66 FR 33844
Final Rule Effective	07/02/01	
Final Rule, Partial Suspension, Comment Period End	09/24/01	
Comment Period Reopened	10/24/01	66 FR 53754
Comment Period End	11/23/01	
Final Rule Removing Suspended Provision	03/27/02	67 FR 14643
Final Rule Effective	03/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce Schmidt, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0955

RIN: 2115–AF87

1802. REVISION OF AUXILIARY REGULATIONS (USCG-1999-6712)

Priority: Substantive, Nonsignificant

Legal Authority: 14 USC 633; 14 USC 892

CFR Citation: 33 CFR 5

Legal Deadline: None

Abstract: This project will revise regulations that govern the operation and administration of the Coast Guard Auxiliary. These regulations need to be changed to conform to the provisions of the Coast Guard Authorization Act of 1996 which amended the relevant statutes in title 14, United States Code. These provisions clarified the organization and status of the Auxiliary, broadened the role of the Auxiliary, and provided additional liability protection for Auxiliary members assigned to Coast Guard duty. This project supports the Coast Guard strategic goals of maritime safety, maritime mobility, maritime security, and protection of natural resources. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: CDR Chris Olin, Project Manager, G-OCX, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-1012

RIN: 2115–AF94

1803. NOXIOUS LIQUID SUBSTANCES, OBSOLETE HAZARDOUS MATERIALS IN BULK, AND CURRENT HAZARDOUS MATERIALS IN BULK (USCG-2000-7079)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1321, 1903; 46 USC 2103, 3306, 3703

CFR Citation: 33 CFR 151; 46 CFR 30, 150, 151, and 153

Legal Deadline: None

Abstract: The Coast Guard revises rules on carriage of hazardous materials in bulk, treating the rules in three parts:

First, the Coast Guard revises its rules on Noxious Liquid Substances (NLSs) to include substances recently authorized for carriage by the Coast Guard or added to the Chemical Codes of the International Maritime Organization (IMO) and by making minor technical and editorial changes based on the actions taken in part C.

Second, the Coast Guard revises its rules, tables, and lists on carriage of hazardous materials in bulk by deleting from its rules, tables, and lists commodities that are no longer liquid cargoes transportable in bulk, and by canceling the classifications of obsolete commodities not included in those rules, tables, and lists.

Third, the Coast Guard revises its rules on carriage of hazardous materials in bulk by adding cargoes recently authorized for carriage by the Coast Guard or added to the Chemical Codes of the IMO and by making minor technical and editorial changes.

This three-part revision will update the tables of hazardous materials transportable in bulk and better inform persons shipping any such materials of the materials' compatibility and of special handling requirements. This project supports the Coast Guard's strategic goal of marine safety.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/08/00	65 FR 67136
Direct Final Rule Effective	03/08/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In the Agenda for October 2001 we contemplated an interim final rule. On further review, however, we think the direct final rule can stand as published even if it entails technical amendments from time to time.

Agency Contact: Curtis Payne, Project Manager, G-MSO-3, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0016

RIN: 2115–AF96

1804. WEARING OF PERSONAL FLOTATION DEVICES (PFDS) BY CERTAIN CHILDREN ABOARD RECREATIONAL VESSELS (USCG-2000-8589)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 4302

CFR Citation: 33 CFR 175, subpart B

Legal Deadline: None

Abstract: This rule requires every child under the age of 13 to wear a personal flotation device (PFD)—also called a lifejacket—while aboard a recreational vessel under way and while not below decks or in an enclosed cabin. It adopts, on waters subject to the jurisdiction of the United States within any State, any requirement for the wearing of a PFD established by that State for a child under an age specified by that State. The rule also sets, on waters subject to the jurisdiction of the United States within any State lacking any such requirement, its own, comparable requirements. After publication of the final rule, the State Boating Law Administrator (BLA) of Ohio raised a concern about possible adverse impacts due to Federal enforcement of PFD wearing requirements because of vessel length. Withdrawal of the final rule before the effective date will enable the Coast Guard to develop and allow public comment on a new alternative. This project supports the Coast Guard's strategic goal of maritime safety.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21717
NPRM Comment Period End	08/29/01	
Final Rule	02/27/02	67 FR 8881
Notice of Withdrawal of Final Rule	03/27/02	67 FR 19643

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carlton Perry, Project Manager, G-OPB-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0979

RIN: 2115–AG04

1805. SHIPBOARD MARINE POLLUTION EMERGENCY PLANS FOR OIL AND/OR NOXIOUS LIQUID SUBSTANCES (USCG-2001-9174)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1901 to 1915

CFR Citation: 33 CFR 151

Legal Deadline: Other, Statutory, January 1, 2003, Approved by Flag State of Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Annex II, Regulation 16.

Abstract: This project would implement the requirements of the International Convention for the Prevention of Pollution from Ships (MARPOL 73/78), Annex II, Regulation 16. Regulation 16 requires that every ship of 150 gross tons and above, certified to carry noxious liquid substances (NLS), carry a shipboard marine pollution emergency plan for oil and/or NLS. Regulation 16 requires these plans be approved by the Flag State no later than January 1, 2003. This project will modify existing regulations in 33 CFR part 151 for Shipboard Oil Pollution Emergency Plans (SOPEP) to address this new requirement. This project supports the Coast Guard's strategic goal of protection of the marine environment. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LT Susan Klein, Project Manager, G-MOR, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0417

RIN: 2115–AG16

1806. ALTERNATE COMPLIANCE PROGRAM (USCG-2001-10164)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 3316

CFR Citation: 46 CFR 126

Legal Deadline: None

Abstract: This regulatory project will incorporate Offshore Supply Vessels into the Coast Guard's Alternate Compliance Program. It supports the Coast Guard's strategic plan of marine safety.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/23/01	66 FR 53542
Direct Final Rule Comment Period End	12/24/01	
Confirmation of Effective Date	01/17/02	67 FR 2343
Final Rule Effective	01/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Benjamin Nicholson, Lieutenant, G-MSO, Department of Transportation, U.S. Coast Guard, Rm. 1304, 2100 Second ST SW, Washington, DC 20593-0001
Phone: 202 267-0143

RIN: 2115–AG17

1807. PORTABLE TANKS AND INTERMEDIATE BULK CONTAINERS (USCG-2001-10180)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1903; 49 USC app 1804; EO 12234; 45 FR 58801; 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; ...

CFR Citation: 46 CFR 98.30

Legal Deadline: None

Abstract: This project would revise the rules to permit the use of certain types of portable tanks and other bulk containers for the transfer of hazardous liquid cargoes while on board vessels. These tanks and containers are currently recognized for the transport of various hazardous materials in accordance with both the Hazardous Materials regulations (HMR) of the Department of Transportation in title 49, Code of Federal Regulations, subchapter C, and the International Maritime Dangerous Goods (IMDG) Code. This project supports the Coast Guard's strategic plans for marine safety and maritime mobility. This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Emmanuel Pfersich, Project Manager, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0083

RIN: 2115–AG19

1808. • TECHNICAL AND FORMAL UPDATE OF RULES ON OFFICERS AND SEAMAN OF THE MERCHANT MARINE (USCG-2002-11359)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 31 USC 9701; 33 USC 1231; 44 USC 3507; 46 USC 2101; ...

CFR Citation: 46 CFR 10; 46 CFR 12; 46 CFR 13; 46 CFR 14; 46 CFR 15

Legal Deadline: None

Abstract: This rulemaking would extensively reorganize, clarify, and

DOT—USCG **Completed Actions**

update subchapter B of title 46, Code of Federal Regulations, Merchant Marine Officers and Seamen. Affected would be parts 10 (Licensing of Maritime Personnel), 12 (Certification of Seamen), 13 (Certification of Tankermen), 14 (Shipment and Discharge of Merchant Mariners), and 15 (Manning Requirements), though not 16 (Chemical Testing).

The major thrust of this initiative would be to embrace several rulemakings central to domestic implementation of the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978, as amended (STCW): (1) CGD 95-062, Implementation of the 1995 Amendments to STCW (integrating the Treaty into domestic rules); and (2) currently undocketed rulemaking on Medical and Physical Standards for U.S. Mariners. (This rulemaking would integrate those just identified with several other important ones); (3) USCG-1999-6224, Licensing and Manning for Officers of Towing Vessels; (4) USCG-1997-3198, Alternate Convention Tonnage; (5) USCG-1999-5610, Implementation of the 1997 amendments to STCW Regulation V/3 (Special Training for Merchant Mariners Serving on Passenger Ships other than Roll-on/Roll-off [Ro-Ro] Passenger Ships ["STCW II"]); and (6) currently undocketed Implementing the 1998 Amendments to the STCW Code, Tables A-II/1 and A-II/2 (Training for Safe Handling of Solid Bulk Cargoes).

This rule is being withdrawn so the Coast Guard can focus on new security projects.

Timetable:

Action	Date	FR Cite
Withdrawn	03/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: LCDR Gerald Miante, Project Manager, G-MSO-1, Department of Transportation, U.S. Coast Guard, 2100 Second Street SW, Washington, DC 20593-0001
Phone: 202 267-0221

RIN: 2115–AG34

Department of Transportation (DOT)
Federal Aviation Administration (FAA) **Proposed Rule Stage**

1809. +IMPROVED WATER SURVIVAL EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would add new requirements for water survival equipment carried aboard airplanes and rotorcraft. The requirements would apply, after specified dates, to U.S.-certificate holders that conduct common-carriage operations with airplanes and rotorcraft. This action is in response to the Airport and Airway Safety and Capacity Enhancement Act of 1987 (PL 100-223) and relates to safety recommendations by the National Transportation Safety Board. The requirements are intended to increase the likelihood of aircraft passengers surviving a crash landing in water and, thus, this rulemaking is significant because of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/30/88	53 FR 24890
NPRM Comment Period End	11/28/88	
SNPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AIR-85-265R.

ANALYSIS: Regulatory Evaluation, 06/30/88, 53 FR 24890

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9574

RIN: 2120–AC72

1810. +RETROFIT OF IMPROVED SEATS IN AIR CARRIER TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: NPRM, Statutory, April 28, 1988.

Abstract: This action would require that all seats of transport category airplanes used in air carrier operations and transport category airplanes used in scheduled intrastate service comply with improved crashworthiness standards. The Airport and Airways Safety and Capacity Expansion Act of 1987 directs the Secretary of Transportation to initiate a rulemaking proceeding to consider requiring all seats on board all air carrier aircraft to meet improved crashworthiness standards based upon the best available testing standards. The intended effect of this action is to increase passenger protection and survivability in survivable impact accidents. This rulemaking is considered significant because of its safety implications and statutory requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/17/88	53 FR 17650
NPRM Comment Period End	10/14/88	
NPRM Comment Period Reopened	10/30/98	63 FR 58331
NPRM Comment Period End	01/08/99	
SNPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

DOT—FAA **Proposed Rule Stage**

Government Levels Affected: None

Additional Information: Docket 25611. Project Number: AIR-88-13&R.

ANALYSIS: Regulatory Evaluation, 05/17/88, 53 FR 17650

Agency Contact: Hal Jensen, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9574

RIN: 2120–AC84

1811. +CORROSION CONTROL PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44902

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135

Legal Deadline: None

Abstract: This project would ensure that airplanes used or not used in common carriage in air transportation have a comprehensive corrosion prevention program within their maintenance or inspection programs. In April 1988, a commercial transport airplane experienced an in-flight decompression and separation of approximately 18 feet of the fuselage skin and structure at the top of the airplane. The airplane had been in service for 19 years and had flown almost 90,000 flights. The National Transportation Safety Board concluded that the failure of the airline to detect skin disbonding resulted in corrosion and metal fatigue leading to separation of the airplane's skin structure. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-93-382R

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7355

RIN: 2120–AE92

1812. +NATIONAL AIR TOUR SAFETY STANDARDS

Priority: Other Significant

Legal Authority: 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44702; 49 USC 44705

CFR Citation: 14 CFR 91; 14 CFR 135

Legal Deadline: None

Abstract: FAA will propose new regulations for air tour and sightseeing operations that are currently allowed to operate under less stringent regulations than those applied to other types of commercial operations. Over the past decade the number of these operations and the number of accidents and incidents associated with these operations have increased. Hot air balloons and gliders would not be included in this amendment. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-91-012R. RIN 2120-AF61 which was proposed as a new item for this agenda was a duplicate of this rulemaking and has been terminated. This rulemaking was previously titled "Sightseeing Operations."

ANALYSIS: Regulatory Evaluation, 04/00/01

Agency Contact: Katherine M. Perfetti, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3760

RIN: 2120–AF07

1813. +FLIGHT CREWMEMBER DUTY PERIOD LIMITATIONS, FLIGHT TIME LIMITATIONS, AND REST REQUIREMENTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44701; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This rulemaking would amend the regulations on duty period limitations, flight time limitations, and rest requirements for flight crewmembers engaged in air transportation. The FAA proposes additional changes in response to comments received on the NPRM. The changes are necessary to ensure that the rules will continue to provide the minimum level of safety. This rulemaking responds to public and congressional interest in regulating flight crewmember rest requirements, NTSB Safety Recommendations, petitions for rulemaking, and scientific data. This action is considered significant because of substantial public interest.

Statement of Need: The aviation community requires 24-hour activities to meet operational demands. Growths in long-haul, regional, overnight cargo, and short-haul domestic operations are increasing. Therefore, shift work, night work, irregular work schedules, and time zone changes will continue to be commonplace.

With this growth, the scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. Some of the scientific knowledge has indicated that aviators experience performance-impairing fatigue from sleep loss resulting from current flight and duty practices.

In addition, industry and individuals have told the FAA that the current regulations are confusing and difficult to enforce. Therefore, a second purpose of the rulemaking is to establish

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consistent and clear duty period limitations and rest requirements for all types of operations.

Summary of Legal Basis: Section 44701, title 49 of the United States Code states that the Administrator shall promote safety of flight of civil aircraft in air commerce by prescribing minimum standards required in the interest of safety.

Alternatives: One obvious alternative would be to continue with the current rules; however, these regulations are rapidly becoming obsolete. As a second alternative, one commenter asked that the FAA develop a standard and then allow each carrier to design a rest/duty program that would meet that standard while accommodating differences in operations. While this works for certain rules, such as training regulations where the standard is training to proficiency, there is no way to apply this application to individual pilots on a daily basis.

Anticipated Cost and Benefits: Undetermined.

Risks: Although there has been only one identifiable accident due to pilot fatigue, fatigue is increasingly becoming the focus of possible causes following all accidents. Pilot reports of being fatigued to the point of incapacity are not uncommon, and intuitively, it is reasonable, given the sheer volume of air traffic, to expect fatigue to be a factor in future accidents if the regulations are not corrected.

Timetable:

Action	Date	FR Cite
NPRM	12/20/95	60 FR 65951
NPRM Comment Period End	03/19/96	
NPRM Comment Period Extended to 6/19/96	03/20/96	61 FR 11492
SNPRM	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-94-443R

ANALYSIS: Regulatory Evaluation, 12/20/95, 60 FR 65951

Agency Contact: Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8321

Quentin Smith, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AF63

1814. +FALSE AND MISLEADING STATEMENTS REGARDING AIRCRAFT PARTS

Priority: Other Significant

Legal Authority: 49 USC 44913

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This action proposes additional rules that would prohibit certain false or misleading statements regarding civil aircraft, airframes, aircraft engines, propellers, appliances, component parts, and materials, including standard parts, that are used, or may be used, on civil aircraft. The proposals would also permit increased inspection by the FAA of records regarding the quality of aircraft parts. The additional rules are needed to help prevent persons from representing parts as suitable for use on civil aircraft when in fact they may not be. The proposals are intended to provide assurance that aircraft owners and operators, and persons who maintain aircraft, have truthful information on which to determine whether a part may be used in a given civil aircraft application. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AVR-94-549R.

ANALYSIS: Regulatory Evaluation 08/00/01

Agency Contact: Mardi Ruth Thompson, Regulations Division, Office of the Chief Counsel, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3073

RIN: 2120–AG08

1815. +NOISE LIMITATIONS FOR AIRCRAFT OPERATIONS IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40109; 49 USC 40113; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 46301

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This rulemaking will establish noise limitations for certain aircraft operated in the vicinity of Grand Canyon National Park. This action is one part of an overall strategy to reduce further the impact of aircraft noise on the park environment and to assist the National Park Service (NPS) in achieving its statutory mandate imposed by Public Law 100-91 to provide for the substantial restoration of natural quiet and experience in Grand Canyon National Park. The supplemental amendment removes two sections from the December 31, 1996, notice of proposed rulemaking (NPRM) that proposed to establish a corridor through the National Canyon area as an incentive route for quiet technology aircraft. The FAA and NPS have determined not to proceed with an air tour route in the vicinity of National Canyon and are presently considering alternatives to this route. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	12/31/96	61 FR 69334
NPRM Comment Period End	03/31/97	
SNPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: A final rule, which was published on 12/31/96 (61 FR 69302), establishes new operating restrictions at Grand Canyon National Park. See RIN 2120-AF93 published elsewhere in this Agenda.

ANALYSIS: Regulatory Evaluation, 12/31/96, 61 FR 69334

Agency Contact: Tom Connor, Flight Standards Service, Department of

Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8933

RIN: 2120–AG34

1816. LICENSING AND SAFETY REQUIREMENTS FOR LAUNCH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 70101 to 70119

CFR Citation: 14 CFR 415; 14 CFR 417

Legal Deadline: None

Abstract: This action would establish requirements for licensing the conduct of a launch from a non-Federal launch site. The law requires anyone who proposes to conduct a launch within the United States, or a U.S. citizen proposing to conduct a launch site outside the United States, to obtain a license from DOT. This action would govern obtaining a license to conduct such a launch. Currently, commercial rocket launches take place from Federal Government installations operated by the Department of Defense and NASA. Licensing requirements for those launches are being developed in a related licensing rulemaking (RIN 2120-AF99). In this action, DOT proposes to implement rules regarding obtaining a license to conduct a launch from a commercial launch site, where DOT, rather than NASA or the military, has primary responsibility.

Timetable:

Action	Date	FR Cite
NPRM	10/25/00	65 FR 63922
NPRM Comment Period End	02/22/01	
SNPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project Number: AST-97-088R.

ANALYSIS: Regulatory Evaluation, 10/25/00, 65 FR 63922.

Agency Contact: Michael Dook, Licensing and Safety Division, Office of Commercial Space, Department of Transportation, Federal Aviation Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9305

RIN: 2120–AG37

1817. +CHILD RESTRAINT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715 to 44718; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46502

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action sought public comment on issues relating to the use of child restraint systems in aircraft during all phases of flight (i.e., taxi, takeoff, landing, or any other time the seat belt sign is illuminated). Specifically, the agency sought information about existing child restraint systems, the development of new and improved child restraint systems, the ease with which existing or new child restraint systems can be used, and the effectiveness of changing the current child restraint system regulations. The advance notice gathered information in response to a recommendation made by the White House Commission on Aviation Safety and Security. Approximately 130 comments were received on the ANPRM. This information is needed so that the FAA can determine the best way to ensure the safety of children while on board aircraft. After such a determination is made, the FAA may issue a Notice of Proposed Rulemaking with specific regulatory proposals that respond to the Commission's recommendations regarding the use of child restraint systems. This action is considered significant because of safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/18/98	63 FR 8324
ANPRM Comment Period End	06/18/98	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: Project Number: AFS-97-261R

Agency Contact: Cindy Nordlie, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7627

RIN: 2120–AG43

1818. REVISION OF AIR CARRIER CREWMEMBER AND TRAINING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 60; 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise title 14 of the Code of Federal Regulations part 121 subparts N, O, and P. The proposed revision and creation will address Advanced Qualification Programs and additional training programs. The rulemaking is needed to enhance crew resource management training, to permit rapid changes to training and checking requirements for emerging technologies, to improve safety, and to respond to numerous recommendations from various sources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-97-335R.

Agency Contact: Jan Demuth, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8922

RIN: 2120–AG57

1819. TRAINING IN THE RECOGNITION OF HAZARDOUS MATERIAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC

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44705; 49 USC 44709 to 4711; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: The FAA will clarify the requirement for "will not carry" certificate holders in parts 121 and 135 to provide hazardous material recognition training so that such materials are not inadvertently placed onboard aircraft.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Wilkening, Office of Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-5885

RIN: 2120–AG75

1820. +AIR TOUR OPERATIONS IN STATE OF HAWAII

Priority: Other Significant

Legal Authority: 49 USC 106(g): 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46504; 49 USC 46506; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47530

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action proposes to extend SFAR 71, which established certain procedural, operational, and equipment requirements for air tour operators in the State of Hawaii. The FAA intends to issue a national air tour safety proposal in the near future, but until this rulemaking becomes final, there is a need to extend SFAR 71 to ensure the continuing safe environment for conducting air tours in Hawaii. During the 9 year period between 1982 and 1991, there were 11 air tour accidents with 24 fatalities in Hawaii. The apparent causes of the accidents ranged from engine power loss to encounters with adverse weather. On September 26, 1994, the FAA published an emergency final rule as SFAR 71. The rule established additional operating procedures, including minimum safe altitudes (and associated increases in visual flight rules weather minimums), minimum equipment requirements, and operational limitations for air tour aircraft in the State of Hawaii. SFAR 71 was subsequently extended until October 26, 2000. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8166

RIN: 2120–AH02

1821. +FLIGHT SIMULATION DEVICE QUALIFICATION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 1; 14 CFR 11; 14 CFR 60; 14 CFR 61; 14 CFR 63; 14 CFR 141; 14 CFR 142

Legal Deadline: None

Abstract: The FAA proposes to amend the regulations to establish flight simulation device qualification requirements for all certificate holders in a new part. The basis of these requirements currently exists in different parts of the FAA's regulations and in advisory circulars. The proposed changes would consolidate and update flight simulation device requirements. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward Cook, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337 Phone: 404 305-6100

RIN: 2120–AH07

1822. ANTIDRUG AND ALCOHOL MISUSE PREVENTION PROGRAMS FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46301

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the FAA's Antidrug and Alcohol Misuse Prevention Programs in accordance with changes the Department of Transportation is making to 49 CFR 40. In addition, the FAA proposes some minor revisions to its Antidrug and Alcohol Misuse Prevention Program so that the requirements conform to 14 CFR 67.

Timetable:

Action	Date	FR Cite
NPRM	02/28/02	67 FR 9366
NPRM Comment Period End	05/29/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Wood, Acting Manager, Drug Abatement Branch, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 366-6710

RIN: 2120–AH14

1823. AIRWORTHINESS DIRECTIVES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: The FAA proposes to move several standard provisions currently found in every airworthiness directive into its regulations pertaining to airworthiness directives. The FAA will no longer include these provisions in individual airworthiness directives. This will shorten individual airworthiness directives, making them easier for readers to use. Also, the FAA is proposing this regulation in plain language. The regulation has been reworded and reorganized using plain language techniques.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald P. Byrne, Assistant Chief Counsel, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3073

RIN: 2120–AH17

1824. +CERTIFICATION OF PILOTS, AIRCRAFT, AND REPAIRMEN FOR THE OPERATION OF LIGHT SPORT AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40105; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 45102 to 45103; 49 USC 45301 to 45303; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 21; 14 CFR 61; 14 CFR 65; 14 CFR 91

Legal Deadline: None

Abstract: The FAA is proposing to establish the certification and training requirements for pilots and repairmen to operate and maintain light-sport aircraft. The FAA is proposing a new sport pilot certificate and a flight instructor certificate with a sport pilot rating. The FAA also is proposing two new light-sport aircraft airworthiness certificates for existing and newly manufactured light-sport aircraft. In addition, this action proposes a new type of repairman certificate for individuals who would inspect and maintain light-sport aircraft. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5268
NPRM Comment Period End	05/06/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3735

RIN: 2120–AH19

1825. POWERED LIFT OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40101; 49 USC 40102; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44106; 49 USC 44111; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 44722; 49 USC 44901; 49 USC 44903; 49 USC 44904; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 1; 14 CFR 43; 14 CFR 61; 14 CFR 91; 14 CFR 119; 14 CFR 133; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA is proposing to amend its regulations to cover powered-lift aircraft, a new category of aircraft that can perform as an airplane and a helicopter. This action is necessary because, as a new category of aircraft, powered-lift aircraft can't operate under the regulations that govern airplanes or helicopters. The intended effect of this action is to allow the operation of powered-lift aircraft under FAA regulations.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William H. Wallace, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-3771

RIN: 2120–AH20

1826. REFUSAL TO SUBMIT TO AN AUTHORIZED DRUG TEST

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44703; 49 USC 44707; 49 USC 44709 to 44711; 49 SUC 45102 to 45103; 49 USC 45301 to 45303

CFR Citation: 14 CFR 67

Legal Deadline: None

Abstract: This action proposes to amend airman medical standards to add as a medical disqualification the refusal to submit to an authorized drug test. Refusal to submit to a drug test includes adulteration or substitution of a urine sample. The intended effect is to ensure that airmen who may have substance abuse problems are not allowed to gain flight status until they have been examined and found fit by the Federal Air Surgeon.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sheri deVries, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-8693

RIN: 2120–AH23

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1827. PUBLIC ADDRESS SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to shorten the time for passenger announcements in an emergency in transport category airplanes. This proposal would shorten the time for passenger announcements in an emergency from 10- to 3-seconds between the removal of the microphone from its stowage by a flight crewmember and its operation. Adopting this proposal would eliminate regulatory differences between the airworthiness standards for the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-227.

Agency Contact: Kirk Baker, Aircraft Certification Serbice, Department of Transportation, Federal Aviation Administration, 3960 Paramount Boulevard, Lakewood, CA 90712
Phone: 562 627-5345

RIN: 2120–AH30

1828. SAFE, EFFICIENT USE, AND PRESERVATION OF THE NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This notice of proposed rulemaking proposes to add and amend definitions for terms commonly used during the aeronautical evaluation process. This action proposes amendments to obstruction standards for civil airport imaginary surfaces in order to promote and facilitate harmonization with other FAA directives. This proposal also proposes to simplify and clarify the rule language in accordance with the plain language initiative.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATA-00-490.

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3155

RIN: 2120–AH31

1829. DESIGN REQUIREMENTS FOR PRESSURIZATION AND PNEUMATIC SYSTEMS INSTALLED ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposal would revise the airworthiness standards for transport category airplanes by incorporating the more defined design and compliance criteria currently contained in the counterpart European standards. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth Frey, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW,, Renton, WA 98055-4056
Phone: 425 227-2673

RIN: 2120–AH33

1830. DESIGN STANDARDS FOR FUSELAGE DOORS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the design standards for fuselage doors, hatches, and exits on transport category airplanes. This proposal would relieve a certification burden on industry by eliminating regulatory differences between the air standards of the United States and Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-96-398.

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AH34

1831. REVERSE THRUST AND PROPELLER PITCH SETTINGS BELOW THE FLIGHT REGIME

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to require a means to prevent the flightcrew on turbo-propeller-powered airplanes from inadvertently or intentionally placing the power lever below flight idle while in flight, unless the airplane has been certified for in-flight operation. This action proposes to eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-700.

Agency Contact: Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

Mike Kaszycki, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-2137

RIN: 2120–AH35

1832. MATERIAL STRENGTH PROPERTIES AND DESIGN VALUES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to revise the material strength properties and material design values requirement for transport category airplanes by incorporating changes developed in cooperation with the Joint Aviation Authorities of Europe and the U.S. and European aviation industry through the Aviation Rulemaking Advisory Committee. This proposal is intended to achieve common requirements and language between the requirements of the U.S. regulations and the Joint Aviation Requirements of Europe, while maintaining at least the level of safety provided by the current regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/29/02	67 FR 4318
NPRM Comment Period End	04/01/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-98-300.

Agency Contact: Rich Yarges, Airframe and Airworthiness Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2143

RIN: 2120–AH36

1833. REVISIONS TO VARIOUS POWERPLANT INSTALLATION REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to revise the standards applicable to thrust or power augmentation systems, fuel filling points, designated fire zones, and powerplant instruments. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/31/02	67 FR 4856
NPRM Comment Period End	04/01/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-01-467.

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AH37

1834. TRIM SYSTEMS AND PROTECTIVE BREATHING EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This proposed action would amend airworthiness standards for transport category airplanes concerning trim systems and protective breathing equipment. The proposed action would add language that would require a clearly marked range on the trim indication system where take-off is safe for all center of gravity positions. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-567.

Agency Contact: Kenneth Frey, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW,, Renton, WA 98055-4056
Phone: 425 227-2673

RIN: 2120–AH40

1835. REVISIONS TO PASSENGER FACILITY CHARGE RULE FOR COMPENSATION TO AIR CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40116 to 40117; 49 USC 47111; 49 USC 47114 to 47116; PL 106-181

CFR Citation: 14 CFR 158

Legal Deadline: None

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Abstract: FAA proposes to amend the passenger facility charge (PFC) rules by changing the amount and basis of compensation an air carrier may receive for collecting, handling, and remitting PFC revenue. This action is necessary because statute mandates that air carriers receive fair and reasonable compensation for their expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: APP-00-672R.

Agency Contact: Eric Gabler, Passenger Facility Charge Branch, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3845

RIN: 2120–AH43

1836. NOISE STRINGENCY INCREASE FOR SINGLE-ENGINE PROPELLER-DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: The FAA is proposing a change to the noise limits for propeller-driven small airplanes. The FAA, the European Joint Aviation Authorities (JAA), and representatives from the United States and European propeller-driven small airplane industries developed the ICAO Annex 16 noise limit change in a joint effort. The proposed change would provide nearly uniform noise certification standards for airplanes certificated in the United States and in the JAA countries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-01-133R.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7703

RIN: 2120–AH44

1837. • AIRWORTHINESS STANDARDS FOR CLASSES B AND F CARGO COMPARTMENT FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes to incorporate revised standards for Class B cargo compartments and establish standards for a new Class F cargo compartment, and to harmonize those requirements with standards proposed for the European Joint Aviation Requirements 25.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-93-725-A.

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, VA 98055
Phone: 425 227-2142

RIN: 2120–AH47

1838. • MODIFICATION OF THE DIMENSIONS OF THE GRAND CANYON NATIONAL PARK SPECIAL FLIGHT RULES AREA AND FLIGHT FREE ZONES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 14 USC 40103; 49 USC 40113

CFR Citation: 14 CFR 91; 14 CFR 93

Legal Deadline: None

Abstract: This action proposes to modify the Grand Canyon National Park Special Flight Rules Area and two-associated Flight Free Zones in the east end of the Park.. In addition this action proposes minor modifications to the Bright Angel and Desert View Flight Free Zone. The FAA is proposing these actions to assist the National Park Service in fulfilling its statutory mandate to substantially restore the natural quiet and experience in Grand Canyon National Park.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard Nesbitt, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 493-4981

RIN: 2120–AH48

1839. • FLIGHT RESTRICTIONS IN THE VICINITY OF NIAGARA FALLS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40109; 49 USC 40113; 49 USC 44502; 49 USC 444514; 49 USC 44701; 49 USC 44719; 49 USC 46301

CFR Citation: 14 CFR 93

Legal Deadline: None

Abstract: This action proposes to codify current flight restrictions for aircraft operating in U.S. airspace in the vicinity of Niagara Falls, NY. The FAA is proposing this action to complement flight management procedures established for Niagara Falls by Transport Canada.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terry Brown, Airspace and Rules Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8783

RIN: 2120–AH57

DOT—FAA — Proposed Rule Stage

1840. • POWERPLANT CONTROLS ON TRANSPORT CATEGORY AIRPLANES, GENERAL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking proposes to amend the airworthiness standards for transport category airplanes concerning design requirements for powerplant valves controlled from the flightdeck. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AH65

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Final Rule Stage

1841. OBJECTS AFFECTING NAVIGABLE AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113 to 40114; 49 USC 44502; 49 USC 44701; 49 USC 44718; 49 USC 46101 to 46102; 49 USC 46104

CFR Citation: 14 CFR 77

Legal Deadline: None

Abstract: This action would amend the standards, aeronautical studies, scope, and notice provisions concerning objects affecting navigable airspace. The notice consisted primarily of changes required by recent legislation or recommended by a government/industry task group of the National Airspace Review Advisory Committee. This action would also cover electromagnetic interference phenomena that could create a hazard to air navigation.

Timetable:

Action	Date	FR Cite
Notice of Review	06/19/78	43 FR 26322
Review Conference	12/08/80	
NPRM	08/03/90	55 FR 31722
NPRM Correction	08/13/90	55 FR 32999
NPRM Correction	08/16/90	55 FR 33577
NPRM Correction	08/28/90	55 FR 35152
NPRM Correction	09/10/90	55 FR 37287
NPRM Comment Period End	12/31/90	
SNPRM	10/16/95	60 FR 53680
SNPRM Comment Period End	11/30/95	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ATO-85-015R.

ANALYSIS: Regulatory Evaluation, 08/03/90, 55 FR 31722

Agency Contact: Ellen Crum, Air Traffic Rules Procedures Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3155

RIN: 2120–AA09

1842. MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 5103; 49 USC 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44703; 49 USC 44705; 49 USC 44706; 49 USC 44707; 49 USC 44709; 49 USC 44710; 49 USC 44711; 49 USC 44712

CFR Citation: 14 CFR 21; 14 CFR 65; 14 CFR 107; 14 CFR 121; 14 CFR 135; 14 CFR 145

Legal Deadline: None

Abstract: The FAA is withdrawing a previously published notice of proposed rulemaking (NPRM) that proposed to amend various sections of the regulations. The proposal was to clarify language, correct improper or obsolete references, and to relax certain existing requirements. Since publication of the NPRM, many other completed, in-process, or planned actions have addressed or will address many of the issues involved. The FAA has determined that all unresolved issues should be included in more recent actions dealing with the specific sections of the regulations.

Timetable:

Action	Date	FR Cite
NPRM	10/03/83	48 FR 45214
NPRM Comment Period End	12/02/83	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. 23781. Project Number: ARM-81-128R.

ANALYSIS: Regulatory Evaluation, 10/03/83, 48 FR 45214

Agency Contact: Linda L. Williams, Office of Rulemaking, ARM-100, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9685

RIN: 2120–AA50

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1843. IFR ALTITUDES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44719; 49 USC 44721; 49 USC 106(g); 49 USC 40103; 49 USC 40106; 49 USC 40113; 49 USC 40114

CFR Citation: 14 CFR 95

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which prescribes altitudes for the operation of aircraft under instrument flight rules (IFR) on Federal airways, jet routes, area navigation low or high routes, or other direct routes for which a minimum en route IFR altitude is designated in 14 CFR part 95. In addition, mountainous areas and changeover points are designated. These regulations are an established body of technical requirements that are issued routinely and frequently to maintain operational efficiency. Total actions expected—300. 10/00/2001 - 10/00/2002.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8212

Jennifer Abdul-Wali, Transportation Specialist, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6322
Fax: 202 366-9313
Email: jennifer.abdul-wali@ost.dot.gov

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954-4161

RIN: 2120–AA63

1844. AIRWORTHINESS DIRECTIVES

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701

CFR Citation: 14 CFR 39

Legal Deadline: None

Abstract: The FAA issues type certificates for "products," which are aircraft, engines, propellers, and some appliances. The FAA issues a regulation called an Airworthiness Directive (AD) to address an unsafe condition in a type certificated product, if that unsafe condition is likely to exist or develop in products of the same type design. Part 39 of title 14 requires each operator of a product affected by an AD to comply with the terms of the AD, in order to operate that product; the AD may mandate operational limitations, maintenance, or alterations for the affected product. The vast majority of routine and frequent Airworthiness Directives are nonsignificant. Total actions expected-650. 10/00/2001 to 10/00/2002.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Jack McGrath, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9580

RIN: 2120–AA64

1845. STANDARD INSTRUMENT APPROACH PROCEDURES; MISCELLANEOUS AMENDMENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 40103; 49 USC 40106; 49 USC 40113 to 40114; 49 USC 40120; 49 USC 44502; 49 USC 44514; 49 USC 44701; 49 USC 44719; 49 USC 44721 to 44722; 49 USC 106(g)

CFR Citation: 14 CFR 97

Legal Deadline: None

Abstract: Standard Instrument Approach Procedures (SIAP) provide for instrument letdown to airports in the United States. They are a nonsignificant body of regulations that are complex and technical in nature and require routine and frequent rulemaking to maintain efficiency. The FAA issues, revises, and cancels SIAPs by adopting amendments that are incorporated into 14 CFR part 97. Contemporaneously with publication in the Federal Register, the SIAPs are made available to the Aeronautical Charting and Cartography Office in the FAA and other publishers of aeronautical charts where they are published as approach procedure charts or "approach plates." These charts are made available to the members of the aviation community for use by pilots in making instrument approaches. Total actions expected—2,500. 10/00/2001 - 10/00/2002.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael L. Henry, General Aviation and Commercial Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8212

Don Pate, Mike Monroney Aeronautical Center, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur, Oklahoma City, OK 73125
Phone: 405 954-4161

RIN: 2120–AA65

1846. AIRSPACE ACTIONS

Priority: Routine and Frequent

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; EO 10854

CFR Citation: 14 CFR 71; 14 CFR 73; 14 CFR 75

Legal Deadline: None

Abstract: This is a nonsignificant body of regulations which designates airspace areas, airways, routes, and reporting points to facilitate safe navigation. These regulations are technical in nature and are issued routinely and frequently to maintain operational efficiency. Total actions expected—400. 10/00/2001 through 10/00/2002.

Timetable:

Action	Date	FR Cite
Actions Will Continue Through	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Pat Crawford, Manager, Airspace Branch, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9255

RIN: 2120–AA66

1847. AIRCRAFT ENGINES: FUEL AND INDUCTION SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 33

Legal Deadline: None

Abstract: This action would have added a new section 33.35(f) to the Federal Aviation Regulations which would incorporate a requirement for the fuel mixture and throttle controls to automatically move to a position allowing continued safe flight if either control becomes disconnected. Based upon comments and after further analysis, the FAA is withdrawing this rulemaking. There are existing regulations that adequately cover the issues contained in the NPRM, and Advisory Circular No. 20-143, Installation, Inspection, and Maintenance of Controls for General Aviation Reciprocating Aircraft Engines, issued on June 6, 2000, provides additional guidance on maintenance procedures.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/86	51 FR 7224
ANPRM Comment Period End	04/29/86	
NPRM	10/20/92	57 FR 47934
NPRM Comment Period End	02/17/93	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANE-85-002R. Former title: Engine Fuel and Induction Systems.

ANALYSIS: Regulatory Evaluation, 10/20/92, 57 FR 47934

Agency Contact: Locke Easton, Engine and Propeller Standards Staff, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, New England Region, 12 New England Executive Park, Burlington, MA 01803
Phone: 617 273-7088

RIN: 2120–AB76

1848. 1-G STALLING SPEED AS A BASIS FOR AIRCRAFT PARTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 25; 14 CFR 36

Legal Deadline: None

Abstract: This action would amend the Federal Aviation Regulations to redefine the airplane reference stalling speed as the 1-g stalling speed in lieu of the minimum stalling speed. It would: (1) provide for a consistent, repeatable reference stalling speed; (2) ensure consistent and dependable maneuvering margins; (3) clarify the requirement for the use of 1-g stalling speeds in determining structural design speeds; (4) increase the head-on gust structural design requirement; and (5) provide for adjusted multiplying factors to maintain essentially equivalent requirements in areas where the use of minimum stalling speed has proven adequate. These changes are needed since the stalling characteristics of modern jet transports as determined by current methods can result in inconsistent reference stalling speeds. These changes may result in a higher level of safety where current methods have resulted in artificially low reference stalling speeds.

Timetable:

Action	Date	FR Cite
NPRM	01/18/96	61 FR 1260
Correction	02/26/96	61 FR 7157
NPRM Comment Period End	05/17/96	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-86-041R.

ANALYSIS: Regulatory Evaluation, 01/18/96, 61 FR 1260

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AD40

1849. +REVISION OF PART 108, AIRCRAFT OPERATOR SECURITY

Priority: Other Significant

Legal Authority: 40 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108

Legal Deadline: None

Abstract: This action amends part 108 of the Federal Aviation Regulations to incorporate new requirements in response to worldwide terrorist activity. This final rule contains changes that are intended to enhance security for the traveling public, and aircraft operators. A final rule establishing a compliance program is forthcoming, which would require compliance programs for Aircraft Operators. This rulemaking is considered significant because of its safety implications and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/01/97	62 FR 41730
Notice of Public Meeting	09/15/97	62 FR 48190
NPRM Comment Period End	12/01/97	
Notice of Public Meeting	04/21/98	63 FR 19691

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Action	Date	FR Cite
NPRM Comment Period Reopened	08/10/99	64 FR 43322
Comment Period End	09/24/99	
Final Action	07/17/01	66 FR 37330
Final Action Effective	11/14/01	
Final Action; Compliance Program	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ACS-87-107R.

ANALYSIS: Regulatory Evaluation, 08/01/97, 62 FR 41730

Agency Contact: Linda Valencia, Office of Civil Aviation Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3413

RIN: 2120–AD45

1850. +REVISION OF PART 107, AIRPORT SECURITY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44706; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 107

Legal Deadline: None

Abstract: This action will amend part 107 of the Federal Aviation Regulations to incorporate new requirements in response to the worldwide terrorist activity. The intent of this final rule is to enhance security for the traveling public, aircraft operators, and persons employed by or conducting business at public airports by increasing awareness of and compliance with civil aviation security measures. A final rule is forthcoming on compliance, which would require compliance program for airport security. This rulemaking is considered significant because of its safety implications and substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/01/97	62 FR 41760
Notice of Public Meeting	09/15/97	62 FR 48190
NPRM Comment Period End	12/01/97	
Comment Period End 6/26/98	04/21/98	63 FR 19691
Notice of Public Meeting	04/21/98	63 FR 19691
NPRM Comment Period Reopened	08/10/99	64 FR 43321
Final Action	07/17/01	66 FR 37274
Final Action Effective	11/14/01	
Final Action; Compliance Program	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ACS-87-106R.

ANALYSIS: Regulatory Evaluation, 08/01/97, 62 FR 41760

Agency Contact: Bob Cammaroto, Office of Civil Aviation Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7723

RIN: 2120–AD46

1851. +AGING AIRCRAFT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 129; 14 CFR 135; 14 CFR 183

Legal Deadline: Other, Statutory, April 24, 1992, Action must be initiated by 04/24/92 per Aging Aircraft Safety Act of 1991.

Abstract: On October 5, 1993, the FAA published an NPRM that proposed to require air carriers of certain aircraft used in air transportation to demonstrate that the aircraft's maintenance has been adequate to ensure the highest degree of safety. After further review, and taking into consideration public comments to the NPRM, the FAA withdrew that NPRM. On March 19, 1999, the FAA issued a new NPRM that would ensure the continuing airworthiness of the most significant aging airplanes operating in air transportation by mandating aging aircraft records reviews and inspections for certain air carriers and certain aircraft and also by applying modern damage-tolerance analyses and inspection techniques to older airplane structures that were certificated before such techniques were available. The comment period closed on October 18, 1999. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	10/05/93	58 FR 51944
NPRM Comment Period End	02/02/94	
Comment Period End 3/4/94	02/08/94	59 FR 5741
NPRM	04/02/99	64 FR 16298
NPRM Comment Period End	08/02/99	
NPRM Comment Period Reopened	08/18/99	64 FR 45090
Comment Period End	10/08/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number AFS-92-029R.

ANALYSIS: Regulatory Evaluation, 04/02/99, 64 FR 16298

Agency Contact: Frederick Sobeck, Aircraft Maintenance Division, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7355

RIN: 2120–AE42

1852. AIR TRAFFIC CONTROL RADAR BEACON SYSTEM AND MODE S TRANSPONDER REQUIREMENTS IN THE NATIONAL AIRSPACE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121; 14 CFR 135

DOT—FAA — Final Rule Stage

Legal Deadline: None

Abstract: This action would revise the Mode S transponder requirement for all aircraft operating under part 135 and certain aircraft operating under part 121 based on the expected availability of operational capabilities of Mode S ground sensors. For part 121 operators, the action would affect only those aircraft not required to have Traffic Alert and Collision Avoidance System II. An aviation rulemaking advisory committee has recommended that the FAA conduct a study of the installed Mode S ground sensor to determine the extent of the benefits derived and the costs involved in equipage. This action is a relieving action made necessary by the fact that ground sensors are not in place to support the requirement. Further, FAA is studying the need for Mode S transponders in part 135 and certain part 121 operations in light of the fact that transponders may not substantially increase ATC ability to view air traffic.

Timetable:

Action	Date	FR Cite
NPRM	05/23/96	61 FR 26036
NPRM Correction	06/17/96	61 FR 30551
NPRM Comment Period End	07/22/96	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-92-297R.

ANALYSIS: Regulatory Evaluation, 05/23/96, 61 FR 26036

Agency Contact: Daniel V. Meier, Jr., Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3749

RIN: 2120–AE81

1853. FLIGHT ATTENDANT ENGLISH LANGUAGE PROFICIENCY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 91; 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA has reviewed the Aviation Rulemaking Advisory Committee recommendation to proceed with this rulemaking. The FAA has determined that it would be most appropriate to address the flight attendant English language issue in the overall context of crew training. Therefore, because the FAA will incorporate the flight attendant English language issue into the proposed revision of part 121 subpart N and O notice of proposed rulemaking, this rulemaking entry will be withdrawn.

Timetable:

Action	Date	FR Cite
ANPRM	04/18/94	59 FR 18456
ANPRM Comment Period End	07/18/94	
To Be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AFS-93-745A

Agency Contact: Cindy Nordlie, Office of Rulemaking, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7627

RIN: 2120–AE98

1854. +REVISED ACCESS TO TYPE III EXITS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This action proposed to adjust requirements for access to type III emergency exits in transport category airplanes with 60 or more passenger seats. The adjustments would reflect new data from tests conducted at the FAA's Civil Aeromedical Institute (CAMI) and intended to improve the ability of occupants to evacuate an airplane under emergency conditions. The FAA is withdrawing this proposed rulemaking as some of the information is outdated. The CAMI research is still ongoing. The FAA may issue a new rulemaking in the future. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	01/30/95	60 FR 5794
NPRM Comment Period End	05/01/95	
To be Withdrawn	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-93-005R.

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, VA 98055
Phone: 425 227-2142

RIN: 2120–AF01

1855. LOS ANGELES, CA, CLASS B AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; EO 10854

CFR Citation: 14 CFR 71

Legal Deadline: None

Abstract: The FAA is withdrawing a previously published notice of proposed Rrlemaking (NPRM) that proposed to alter the Los Angeles, CA, Class B airspace area. The proposal would have lowered certain ceilings while raising others to provide more visual flight rules altitudes to circumnavigate the Los Angeles Class B airspace and to provide for better containment of arriving turbojets. This action will be handled as a routine airspace action.

Timetable:

Action	Date	FR Cite
NPRM	11/22/94	59 FR 60244
NPRM Comment Period End	01/23/95	
To Be Withdrawn	08/00/02	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATP-94-035T RIN 2120-AF38 was inadvertently used when this rulemaking was published in the Federal Register on November 22, 1994. The correct RIN is 2120-AF16.

ANALYSIS: Regulatory Evaluation, 11/22/94, 59 FR 60244

Agency Contact: William Nelson, Airspace and Obstruction Evaluation Branch, Air Traffic Rules and Procedures Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591 Phone: 202 267-9295

RIN: 2120–AF16

1856. +REVISION OF EMERGENCY EVACUATION DEMONSTRATION PROCEDURES TO IMPROVE PARTICIPANT SAFETY

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25; 49 CFR 1.47

Legal Deadline: None

Abstract: This action would amend part 25 of the FAR by revising appendix J, Emergency Evacuation, to allow certain alternative procedures in conducting full-scale emergency evacuation demonstrations for transport category airplanes. This is in response to recommendations from the Aviation Rulemaking Advisory Committee. The changes, which are intended to make full-scale emergency evacuation demonstrations safer for participants and to codify existing practices, would also affect manufacturers and operators of transport category airplanes. This action is considered significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	07/18/95	60 FR 36932
Correction	08/25/95	60 FR 44387
NPRM Comment Period End	10/16/95	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-94-124A

ANALYSIS: Regulatory Evaluation, 07/18/95, 60 FR 36932

Agency Contact: Franklin Tiangsing, Regulations Branch, ANM-114, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056 Phone: 425 227-2121

RIN: 2120–AF21

1857. +OVERFLIGHTS OF UNITS OF THE NATIONAL PARK SYSTEM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709; 49 USC 44711 to 44713; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306

CFR Citation: 14 CFR 91; 14 CFR 93; 14 CFR 121; 15 CFR 135

Legal Deadline: None

Abstract: The FAA and National Park Service (NPS) established a joint working group which is tasked with developing a notice of proposed rulemaking to reduce or prevent adverse effects of aircraft noise over our national park system. At the same time, the working group is charged with affording those persons who wish to visit our national parks from the air the opportunity to do so. The working group met from May to November 1997, and developed a concept paper that was approved by the Aviation Rulemaking Advisory Committee and the NPS Advisory Board in December 1997. A notice of proposed rulemaking has been developed and is now being reviewed by the FAA and NPS. In April 1999, the FAA issued a disposition of comments to the ANPRM. That document summarizes those comments to the ANPRM and provides an update to the public on matters concerning air tours over units of the national park system. In response to Public Law 106-181, April 5, 2000, the FAA and NPRS developed an NPRM that proposes to codify the language of the legislation and to adopt an altitude that would define a commercial air tour operation. This rulemaking is significant because of substantial public interest.

Statement of Need: The need to reduce or prevent the adverse effects of aircraft noise over the national parks is apparent for the preservation of a valuable national resource. In its Report to Congress, the National Park Service identified 98 parks that potentially have an overflight problem. The FAA recognizes its role both to provide for the safe and efficient use of airspace and to enhance the environment by minimizing the adverse effects of aviation in the national parks.

Summary of Legal Basis: The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. (49 U.S.C. 40101 et seq.) The FAA also has responsibility to protect persons and property on the ground. The President's Memorandum of April 22, 1996, directed the FAA, working with the National Park Service, to issue a notice of proposed rulemaking for the management of sightseeing aircraft in those National Parks where it is deemed necessary to reduce or prevent the adverse effects of noise from such aircraft. Finally, title VIII of Public Law 106-181, National Parks Air Tour Management Act of 2000 gives the FAA the authority to minimize, mitigate or prevent the adverse effect of aircraft over national parks.

Alternatives: During its working sessions, the working group considered a variety of criteria for defining an air tour, various triggering events for determining which parks are at risk, and various means for the NPS and FAA to work together to develop an air tour management plan.

Anticipated Cost and Benefits: Undetermined.

Risks: This rulemaking addresses the risk of destruction of valuable national resources and the right to enjoy the natural quiet in our national parks. At the same time, taking this risk has to be balanced against any potential safety problems that restrictions on overflights might create. Both the National Park Service and FAA are confident that a solution can be reached whereby all visitors to the park may be accommodated through an agreed upon park airspace management plan.

Timetable:

Action	Date	FR Cite
ANPRM	03/17/94	59 FR 12740
ANPRM Correction	04/01/94	59 FR 15350
ANPRM Comment Period End	06/15/94	
Comment Period End 07/15/94	06/20/94	59 FR 31883
Notice of Public Meeting	06/06/97	62 FR 31187
Notice of Public Meeting	04/07/98	63 FR 17040
Disposition of Comments	04/09/99	64 FR 17293
NPRM	04/27/01	66 FR 21264
NPRM Comment Period End	06/11/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Refer to 1999 Regulatory Plan entry RIN 2120-AF93, Airspace Management: Special Flight Rules in the Vicinity of the Grand Canyon and also RIN 2120-AG11, Special Flight Rules in the Vicinity of the Rocky Mountain National Park. Project Number: ARM-97-318A

Agency Contact: Howard Nesbitt, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 493-4981

RIN: 2120–AF46

1858. REVISED PRECISION APPROACH LANDING SYSTEMS POLICY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This statement announces the FAA's proposed policy for acquisition, installation, maintenance, and decommissioning of the instrument landing system (ILS) and the microwave landing system (MLS) during the transition to the global positioning system (GPS). The policy statement of December 1989 announced the transition from the ILS to the MLS for precision approach service in the National Airspace System. Since that time, advancement of GPS-based landing system technology has provided a more economical means of providing approach services.

Timetable:

Action	Date	FR Cite
Policy Statement	12/27/89	54 FR 53231
Policy Statement	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Wedge, Airway Facilities Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591 Phone: 202 267-7848

RIN: 2120–AG16

1859. +SCREENING OF CHECKED BAGGAGE ON FLIGHTS WITHIN THE UNITED STATES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44901 to 44905; 49 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108

Legal Deadline: None

Abstract: The FAA is proposing the screening or bag matching of passenger checked baggage on domestic flights by utilizing an FAA-approved Computer Assisted Passenger Screening (CAPS) system. This is in response to a recommendation from the White House Commission on Aviation Safety and Security (the Commission) "Final Report to President Clinton." The Commission recommended that one of the steps that should be taken to improve airline passenger security is the implementation by the FAA of a computerized system for profiling airline passengers flying out of airports located in the United States. This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/19/99	64 FR 19220
Correction	05/03/99	64 FR 23554
Correction	05/28/99	64 FR 28945
Comment Period Extended	06/11/99	64 FR 31686
NPRM Comment Period End	06/18/99	
Comment Period End	08/17/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lon M. Siro, Aviation Security Specialist, Department of Transportation, Federal Aviation Administration, ACP-100, 800 Independence Avenue SW, Office of Civil Aviation Security Policy and Planning, Washington, DC 20591 Phone: 202 267-8058

RIN: 2120–AG51

1860. +POLICY REGARDING AIRPORT RATES AND CHARGES

Priority: Other Significant

Legal Authority: 49 USC 47129

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A statement of policy, Policy Regarding Airport Rates and Charges (Policy Statement), which was required by Congress as part of the DOT Authorization Act of 1994, was published in the Federal Register (61 FR 31994) on June 21, 1996. That Policy Statement announced DOT and FAA policy on the fees charged by federally assisted airports to air carriers and other aeronautical users. This proposed action requests comments on replacement provisions for the portions of the Policy Statement vacated by the United States Court of Appeals for the District of Columbia Circuit. The Court disallowed a portion of the policy that had to do with historic cost valuation of airport property. DOT and FAA are beginning this proceeding in order to carry out their responsibility to establish reasonableness guidelines for airport fees. This policy is significant due to substantial industry interest.

Timetable:

Action	Date	FR Cite
Advance Notice of Proposed Policy	08/12/98	63 FR 43228
Comment Period End	10/13/98	

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Action	Date	FR Cite
Comment Period Extended	12/22/98	63 FR 70834
Comment Period End	01/31/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Cite per reference in Abstract paragraph, United States Court of Appeals for the District of Columbia Circuit in Air Transport Association of America v. Department of Transportation, 119 F.3d 38 (D.C. Cir. 1997), as modified on rehearing, Order of Oct. 15, 1997. Previous RIN for the Policy Statement published in the Federal Register is 2120-AF90.

Agency Contact: Barry Molar, Manager, Airport Compliance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3446

RIN: 2120–AG58

1861. REVISION OF BRAKING SYSTEMS AIRWORTHINESS STANDARDS TO HARMONIZE WITH EUROPEAN AIRWORTHINESS STANDARDS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to revise the airworthiness standards for transport category airplanes to harmonize braking systems design and test requirements with standards proposed for the European Joint Aviation Requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43570
Correction	08/20/99	64 FR 45589
NPRM Comment Period End	11/08/99	
SNPRM	12/18/00	65 FR 79278
SNPRM Comment Period End	02/16/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-98-302A.

ANALYSIS: Regulatory Evaluation, 08/10/99, 64 FR 43570

Agency Contact: Mahinder K. Wahi, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW., Renton, VA 98055
Phone: 425 227-2142

RIN: 2120–AG80

1862. +CERTIFICATION OF SCREENING COMPANIES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44707; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44905; 49 USC 44906; 49 USC 44907; 49 USC 44913 to 44914

CFR Citation: 14 CFR 108; 14 CFR 109; 14 CFR 111; 14 CFR 129

Legal Deadline: None

Abstract: This action will require that all companies that perform aviation security screening be certificated by the FAA and meet enhanced requirements. This action is in response to a recommendation by the White House Commission on Aviation Safety and Security and to a Congressional mandate in the Federal Aviation Reauthorization Act of 1996. The action is intended to improve the screening of passengers, accessible property, checked baggage, and cargo, and to provide standards for consistent high performance and increased accountability of screening companies. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	01/05/00	65 FR 560
NPRM Comment Period End	04/04/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ACP-98-299R.

ANALYSIS: Regulatory Evaluation, 01/05/2000, 65 FR 560

Agency Contact: Scott Cummings, Office of Civil Aviation Security Policy and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3946

RIN: 2120–AG84

1863. +REVISIONS TO DIGITAL FLIGHT DATA RECORDER REGULATIONS FOR B-737 AIRPLANES AND FOR PART 125 OPERATORS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 125

Legal Deadline: None

Abstract: The FAA proposes to amend the digital flight data recorder rules for transport category airplanes to add a requirement for all Boeing 737 (B-737) series airplanes to record additional flight data parameters. This amendment is based on safety recommendations issued by the National Transportation Safety Board following the investigation of the 1994 USAir Flight 427 accident. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/18/99	64 FR 63139
NPRM Comment Period End	12/20/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AIR-99-272R.

ANALYSIS: Regulatory Evaluation, 11/18/99, 64 FR 63139

Agency Contact: George Kaseote, Policy and Procedures Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8541

RIN: 2120–AG87

1864. +TRAFFIC ALERT AND COLLISION AVOIDANCE SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121; 14 CFR 129

Legal Deadline: None

Abstract: This action proposes to require the installation and use of a traffic alert and collision system (TCAS) on certain cargo airplanes. Current regulations do not require TCAS installation on all-cargo airplanes. However, because the air cargo industry has experienced rapid growth and is increasingly sharing air space with other air carriers, the FAA is proposing this action to minimize the possibility of midair collisions involving cargo airplanes. This rulemaking proposes that affected airplanes be equipped with TCAS II, or another approved traffic alert and collision avoidance system, as appropriate, no later than October 31, 2003. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	11/01/01	66 FR 55506
NPRM Comment Period End	12/31/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project No. AFS-98-314R

Agency Contact: Alberta Brown, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8321

RIN: 2120–AG90

1865. +IMPROVED FLAMMABILITY STANDARDS FOR THERMAL/ACOUSTIC INSULATION MATERIALS USED IN TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This document proposes upgraded flammability standards that specifically address flame propagation and entry of an external fire into the airplane (burnthrough) under realistic fire scenarios. The proposed standards are intended to reduce the incidence and severity of cabin fires, particularly those ignited in inaccessible areas where thermal/acoustic insulation materials are typically installed. Also the proposed standards would provide an increased level of safety with respect to post-crash fires by delaying the entry of such a fire into the cabin, thereby providing additional time for evacuation and enhancing survivability. The new standards would apply to new type designs, and newly manufactured airplanes entering parts 91, 121, 125, and 135 service. This action is significant because of substantial public interest.

Statement of Need: Service history and laboratory testing demonstrate that the current flammability requirements applicable to thermal/acoustic insulation materials may not be providing the intended protection against the spread of fires. Additionally, the FAA considers that increased protection against external fire penetrating the fuselage can be provided by proper selection of the same material. These new test methods would not only provide for increased in-flight fire safety, by reducing the flammability of thermal/acoustic insulation blankets, but would provide increased time for evacuation during externally fed, post crash fires by increasing fuselage burnthrough resistance.

Summary of Legal Basis: 49 USC 4401 empowers the Administrator to prescribe regulations and minimum standards in the interest of safety for aircraft and equipment.

Alternatives: The FAA considered several options to identify the least intrusive and most cost effective alternative to increase the level of safety for insulation materials. The alternatives considered were as follows: (1) Utilize the industry test instead of the requirements proposed; this would not screen out certain types of materials shown to propagate a fire under more realistic conditions, but would screen out the worst performers. (2) Limit replacement of insulation materials to only certain parts of the airplane; it is not feasible to specify areas of the airplane that are more crucial than others. This would be an economic consideration that would not address safety issues. (3) Change the effectivity or compliance times to reduce the number of airplanes affected; the proposal will be designed to optimize costs versus benefits in this regard. Changes to either would be less than optimal. (4) Propose some combination of the above. Other combinations would either reduce the level of safety or be less cost-effective.

Anticipated Cost and Benefits: The total cost of this rule is $68.0 million, or $36.5 million discounted to present value if only blanket material changes are made to the aircraft. If manufacturers need to make configuration changes to the aircraft as well as material changes to their drawings, the FAA estimates that total costs would be $103.1 million or $68.2 million discounted to present value. The FAA is unable to quantify the benefits for this rule. However, preventing the loss of one airplane and its passengers over the 20-year period is not likely. Assuming such a loss would occur at the midpoint of the analysis, or in 2009, with 169 passengers, the nondiscounted loss would be $455.5 million, or $231.5 million discounted to present value (again, assuming society's willingness to pay $2.7 million to avoid a fatality). This loss does not include the value of the airplane. Even without loss of life, as several of the incidents show, a hull loss could exceed tens of millions of dollars. The FAA therefore has determined that this proposed rule would be cost beneficial.

Risks: The FAA is aware of several events in which the flammability characteristics of thermal/acoustic insulation material may have been a contributing factor of airplane fires. The FAA initiated investigations and research to determine the appropriateness of applying existing

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Bunsen burner flammability criteria to thermal/acoustic insulation, as typically installed in concealed and inaccessible areas. This rule is necessary to decrease the risk of fires on airplanes and to improve airplane fire safety.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56992
NPRM Comment Period End	01/18/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-99-086R.

ANALYSIS: Regulatory Evaluation, 04/00/01

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AG91

1866. FIRE PROTECTION OF ELECTRICAL SYSTEM COMPONENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 40 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rulemaking will amend the airworthiness standards for transport category airplanes concerning the protection of electrical system components. This action will eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26964
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mahinder Wahi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2589

Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AG92

1867. +CERTIFICATION PROCEDURES FOR PRODUCTS AND PARTS (SECTION 610 REVIEW)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40101; 49 USC 40103; 49 USC 40109; 49 USC 40113; 49 USC 44110; 49 USC 44502; 49 USC 44701; 49 USC 44702; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: The FAA intends to conduct a 610 review (a review under section 610 of the Regulatory Flexibility Act) of this part and RIN 2120-AG93 has been added to the Agenda to reflect this review. The FAA carries out its responsibility to promote safety of flight of civil aircraft in air commerce by prescribing minimum standards governing the design and construction of aircraft, aircraft engines and propellers and appliances as may be required in the interest of safety. The FAA has established procedural requirements in 14 CFR part 21 for the issuance of the following certificates and approvals: (1) type certificates and changes to type certificates; (2) production certificates; (3) airworthiness certificates; (4) export airworthiness certificates and approvals; and (5) approvals of certain materials, parts processes and appliances produced for sale or installation on a type certificated product. Also contained in this part are the rules governing the holders of certificates. In order to be issued a type certificate, the applicant must show that the product complies with the airworthiness standards for the product (aircraft, aircraft engine, or propeller). The airworthiness standards are amended as needed to reflect continually changing technology, correct design deficiencies, and provide safety enhancements.

Timetable:

Action	Date	FR Cite
Review To Be Completed	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Paul Larson, Office of Aviation Policy and Plans, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, Washington, DC 20591
Phone: 202 267-3296

RIN: 2120–AG93

1868. +CERTIFICATION OF AIRPORTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44706; 49 USC 44709 to 40711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44719; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 46105

CFR Citation: 14 CFR 121; 14 CFR 139

Legal Deadline: None

Abstract: This action proposes to revise the current airport certification regulation and to establish certification requirements for airports serving scheduled air carrier operations in aircraft with 10 to 30 seats. In addition, changes are proposed to address National Transportation Safety Board recommendations and petitions for exemptions and rulemaking. A section of an air carrier operation regulation also would be amended to conform with proposed changes to airport certification requirements. The FAA believes that these proposed revisions are necessary to ensure safety in air transportation and to provide a comparable level of safety at all certificated airports. This action is significant because of substantial public interest.

Statement of Need: The last major revision to the airport certification regulation occurred in 1987, and since then, industry practices, and technology have changed. To respond to such changes, the FAA is proposing to revise the regulation to clarify and update several requirements. Additionally, with the passage of the 1996 FAA Reauthorization Act, Congress provided the FAA the necessary authority to certificate airports serving scheduled air carrier operations with 10 to 30 seat aircraft, except in the State of Alaska (in addition to existing authority to regulate airports serving air carrier operations using aircraft with more than 30 seats). To achieve a comparable level of safety at all covered airports, FAA now proposes to exercise this authority and amend the regulation to incorporate airports serving smaller air carrier aircraft into the FAA's airport certification program. Also, the 2000 FAA Reauthorization Act (P.L. 106-181) mandates publication of the NPRM within 60 days of the Act's enactment; and publication of the final rule within one year of the close of comment period for airports serving smaller air carrier aircraft.

Summary of Legal Basis: FAA has general and specific authority to regulate airports as set out in 49 USC 106(g) and 44701.

Alternatives: The FAA has considered several alternative approaches to this proposed rulemaking and has attempted to minimize the potential economic impact of the proposal, especially the impact on small entities. In addition, this action fulfills the FAA's responsiblilty to meet deadlines established by Congress to certificate airports serving scheduled air carrier operations with 10 to 30 seat aircraft, except for the State of Alaska. The FAA considered alternatives based on two issues. Issue 1 was the revision of 14 CFR 139, and Issue 2 was the certification of airports serving scheduled operations of small air carrier aircraft with 10-30 passenger seats. The FAA determined that it was necessary to revise 14 CFR 139 and that the revised part 139 should include the certification of airports serving scheduled air carrier operations with 10 to 30 passenger seat aircraft.

Anticipated Cost and Benefits: Most of the costs of this proposed rule are associated with the proposed improvements to safety and operational requirements. Most of these costs result from the expansion of ARFF services. The present value of the total cost of the rule over a 10-year period is approximately $46 million, which includes training, additional emergency response protection, wildlife management, and an updated airport certification manual that better reflects current best practices. With the tremendous cost of aviation accidents, the proposed rule provides the potential for enhanced safety for a reasonable cost. The expected benefit of this proposed rule is an enhanced level of safety resulting in reduced fatalities, injuries, and property damage at airports with scheduled air carrier operations, particularly operations in aircraft configured with 10 to 30 passenger seats. The cost of a single accident of a 30-seat scheduled passenger aircraft is greater than the total cost of the proposal. Other benefits of this proposal include provisions for snow and ice control, wildlife management, and training.

Risks: The purpose of this rulemaking is to expand and enhance the safety benefits of the current regulation by providing, to the extent possible, a comparable level of safety at all airports used by air carriers.

Timetable:

Action	Date	FR Cite
NPRM	06/21/00	65 FR 38636
Correction	08/21/00	65 FR 50669
NPRM Comment Period Extended	08/22/00	65 FR 50945
NPRM Comment Period End	09/19/00	
NPRM Comment Period End	11/03/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AAS-97-072R.

ANALYSIS: Regulatory Evaluation, 06/21/00

Agency Contact: Linda Bruce, Office of Civil Aviation Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8553

RIN: 2120–AG96

1869. SPECIAL FLIGHT RULES IN THE VICINITY OF GRAND CANYON NATIONAL PARK

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44704; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 48528 to 47531

CFR Citation: 14 CFR 91; 14 CFR 93; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action will further postpone the effective date for the flight-free zones, Special Flight Rules Area, and corridors portions of the December 31, 1996, Grand Canyon final rule until January 31, 2001. The FAA finds that this rule is needed so that it may issue new regulations that will substantially restore natural quiet to the Grand Canyon National Park.

Timetable:

Action	Date	FR Cite
Final Rule Effective	01/31/00	
Final Rule; Request for Comments	02/03/00	65 FR 5396
Comment Period End	03/06/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Reginald C. Matthews, Office of Air Traffic Airspace Management, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8783

RIN: 2120–AG97

1870. NOISE CERTIFICATION STANDARDS FOR SUBSONIC JET AIRPLANES AND SUBSONIC TRANSPORT CATEGORY LARGE AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

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Abstract: This action proposes changes to the noise certification standards for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes are based on the joint effort of the FAA, the European Joint Aviation Authorities (JAA), and Aviation Rulemaking Advisory Committee (ARAC), to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements for subsonic jet airplanes and subsonic transport category large airplanes. These proposed changes would provide nearly uniform noise certifications standards for airplanes certificated in the U.S. and in the JAA countries. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

Timetable:

Action	Date	FR Cite
NPRM	07/11/00	65 FR 42796
NPRM Comment Period End	10/10/00	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Skalecky, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3699

RIN: 2120–AH03

1871. +FRACTIONAL OWNERSHIP

Priority: Other Significant

Legal Authority: 49 USC 106(g0; 49 USC 1155; 49 USC 40103; 49 USC 40119; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 61; 14 CFR 91; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: The FAA proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. Current regulations do not adequately define fractional ownership programs nor clearly allocate responsibility and authority for safety and compliance with the regulations. This proposal will define fractional ownership programs and their participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/18/01	66 FR 37520
NPRM Comment Period End	10/16/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Katherine Hakala Perfetti, Flight Standards Service, Department of Transportation, Federal Aviation Administration
Phone: 202 267-3760

RIN: 2120–AH06

1872. NOISE CERTIFICATION REGULATIONS FOR HELICOPTERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g): 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44715; PL 96-193; EO 11514

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This proposal is based on a joint effort by the FAA, the European Joint Aviation Authorities (JAA), and the Aviation Rulemaking Advisory Committee (ARAC) to harmonize the U.S. noise certification regulations and the European Joint Aviation Requirements (JAR) for helicopters. The proposed changes would provide nearly uniform noise certification standards for helicopters certificated in the U.S., the JAA countries, and other countries that have adopted as their national regulation either the U.S. regulations, the JAA regulations, or the International Civil Aviation Organization standards. The harmonization of the noise certification standards would simplify airworthiness approvals for import and export purposes.

Timetable:

Action	Date	FR Cite
NPRM	10/05/00	65 FR 59634
NPRM Comment Period End	01/04/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-94-367A.

Agency Contact: Sandy Liu, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 493-4864

RIN: 2120–AH10

1873. ALCOHOL AND ANTIDRUG MISUSE PREVENTION PROGRAM FOR PERSONNEL ENGAGED IN SPECIFIED AVIATION ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 46301

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to eliminate the need for approval by FAA of antidrug program and alcohol misuse prevention program plans and delete periodic drug testing requirement, and change the pre-employment testing requirements to require pre-hire rather than preemployment drug testing. This proposal will also make other minor or terminological changes to the regulations. The FAA believes that changing or eliminating these requirements would not compromise safety and would lessen a burden on the regulated public.

Timetable:

Action	Date	FR Cite
NPRM	04/30/01	66 FR 21492

Action	Date	FR Cite
NPRM Comment Period End	06/14/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Diane Wood, Acting Manager, Drug Abatement Branch, Office of Aviation Medicine, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 366-6710

RIN: 2120–AH15

1874. REVISION TO AIRSPEED INDICATING SYSTEM REQUIREMENTS FOR TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning the airspeed indicating system. This rule adds airspeed indication requirements for speeds greater than and less than the speed range for which airspeed indication accuracy requirements currently apply, would add a requirement that airspeed indications not cause the pilot undue difficulty between the initiation of rotation and the achievement of a steady climbing condition during takeoff, and would also add a requirement to limit the effects of airspeed lag. Adopting this rulemaking eliminates a regulatory difference between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26948
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH27

1875. ELECTRICAL INSTALLATION, NICKEL CADMIUM BATTERY INSTALLATION, AND NICKEL CADMIUM BATTERY STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning electrical equipment and nickel cadmium battery installations, and nickel cadmium battery storage. This rulemaking eliminates regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/17/01	66 FR 27582
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH28

1876. DESIGN AND INSTALLATION OF ELECTRONIC EQUIPMENT ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action amends the airworthiness standards for transport category airplanes concerning the design and installation of electronic equipment. The rule requires that such equipment be designed and installed so that it does not cause essential loads to become inoperative as a result of electrical power supply transients or transients from other causes. Adopting this rulemaking would eliminate regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26956
NPRM Comment Period End	07/16/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH28

1877. ELECTRICAL CABLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This rule amends the airworthiness standards for transport category airplanes concerning electrical cables. This action harmonizes part 25 and JAR-25 requirements concerning cable installations and clarify the cable

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design requirements ensuring that the designer considers the critical conditions, routings, and markings of a proper installation. This rulemaking eliminates regulatory differences between the airworthiness standards of the United States and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	05/15/01	66 FR 26942
NPRM Comment Period End	07/16/01	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Massoud Sadeghi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2117

RIN: 2120–AH29

1878. LOWER DECK SERVICE COMPARTMENTS ON TRANSPORT CATEGORY AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to require that two-way voice communication systems between lower deck service compartments and the flight deck remain available following loss of the normal electrical power generating system. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/24/02	67 FR 3456
NPRM Comment Period End	03/25/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-554.

Agency Contact: Jayson Claar, Transport Airplane Directorate, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue, SW
Phone: 425 227-2194

RIN: 2120–AH38

1879. TRANSITION TO AN ALL STAGE 3 FLEET OPERATING IN THE 48 CONTIGUOUS UNITED STATES AND THE DISTRICT OF COLUMBIA

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506; 49 USC 46507; 49 USC 47122; z49 USC 47508; 49 USC 47528 to 487531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This final rule removes outdated language, revises several sections, and adds one new section to the noise operating regulations. Some revisions are a result of recent statutory changes to the Airport Noise and Capacity Act. The new section defines specific filing procedures and criteria for special flight authorizations. These revisions will make the noise operating regulations consistent with recent statutory provisions.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-00-159.

Agency Contact: Laurie Fisher, Policy and Regulatory Division, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3561

RIN: 2120–AH41

1880. HARMONIZATION OF NOISE CERTIFICATION STANDARDS FOR PROPELLER-DRIVEN SMALL AIRPLANES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321; 49 USC 106(g); 49 USC 40113; 49 USC 44701; 49 USC 44702; 49 USC 44704; 49 USC 44715

CFR Citation: 14 CFR 36

Legal Deadline: None

Abstract: This final rule harmonizes two technical items with international regulations to provide uniform noise certification standards for airplanes certificated in the U.S. and JAA (European Joint Aviation Authorities) countries. This will help to simplify airworthiness approvals for import and export purposes. The revisions to these two items will apply only to a small number of older technology airplanes.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AEE-01-134.

Agency Contact: Mehmet Marsan, Office of Environment and Energy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7703

RIN: 2120–AH42

1881. • DFDR RESOLUTIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44713; 49 USC 44715 to 44717; 49 USC 44722; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105; 49 USC 44113

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action allows operators of specified airplanes to operate those airplanes under parts 121, 125, or 135 without meeting the resolution requirements for certain parameters of information recorded by flight data recorders. This action is needed to allow operators of these airplanes to continue operating these airplanes with their current recording capabilities until the FAA is able to determine the appropriate remedy for this problem.

Timetable:

Action	Date	FR Cite
Final Rule Effective	08/17/01	
Final Rule; Request for Comments	08/22/01	66 FR 44270
Comment Period End	09/21/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AFS-01-551-E.

Agency Contact: Gary Davis, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AH46

1882. • +CRIMINAL HISTORY BACKGROUND CHECKS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44706; 49 USC 44901 to 44905; 40 USC 44907; 49 USC 44913 to 44914; 49 USC 44932; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 107; 14 CFR 108

Legal Deadline: None

Abstract: This rule requires each airport operator and aircraft operator that has adopted a security program under part 107 and part 108, respectively, to conduct fingerprint-based criminal history record checks for individuals if they have not already undergone criminal history record checks. This rule will ensure that individuals in these positions do not have disqualifying criminal offenses. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule; Request for Comments	12/06/01	66 FR 63473
Final Rule Effective	12/06/01	
Comment Period End	01/07/02	
Comment Period Reopened	01/25/02	67 FR 3810
Comment Period End	03/11/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Valencia, Office of Civil Aviation Security, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3413

RIN: 2120–AH53

1883. • ENDURING FREEDOM SPECIAL FEDERAL AVIATION REGULATION (SFAR)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 1354(a); 49 USC 1355; 49 USC 1421; 49 USC 1422; 49 USC 1427

CFR Citation: 14 CFR 61; 14 CFR 63; 14 CFR 65

Legal Deadline: None

Abstract: The FAA is issuing a Special Federal Aviation Regulation (SFAR) that allows Flight Standards District Offices (FSDO) to accept expired flight instructor certificates and inspection authorizations for renewals from civilian and military personnel who serve in Operation Enduring Freedom. The effect of this action is to give these airmen extra time to meet certain eligibility requirements in the current rules.

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Lynch, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-3844

RIN: 2120–AH58

1884. • +SCREENERS, QUALIFICATIONS, TRAINING, AND TESTING

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5103; 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44701 to 44702; 49 USC 44705 to 44706; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44907; 49 USC 44913 to 44914; 49 USC 44935 to 44936; 49 USC 46105

CFR Citation: 14 CFR 108; 14 CFR 129; 14 CFR 191

Legal Deadline: None

Abstract: This final rule provides additional qualifications, training, and testing of individuals who screen persons and property that are carried in passenger aircraft. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Cummings, Office of Civil Aviation Security, Policy, and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20951
Phone: 202 267-3413

RIN: 2120–AH59

1885. • PROCEDURES FOR REIMBURSEMENT OF AIRPORTS, ON-AIRPORT PARKING LOTS AND VENDORS OF ON-AIRFIELD DIRECT SERVICES TO AIR CARRIERS FOR SECURITY MANDATES

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-71; 115 Stat. 597

CFR Citation: 14 CFR 154

Legal Deadline: None

Abstract: The FAA is proposing procedures for certain operators to apply for reimbursement of allowable

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costs incurred to comply with certain security requirements imposed by the FAA or Transportation Security Administration on or after September 11, 2001. These procedures are needed to inform airport operations, on-airport parking lots, and vendors of on-airfield direct services to air carriers how to apply for reimbursement of allowable costs.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 66238
NPRM Comment Period End	01/22/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barry Molar, Manager, Airport Compliance Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3446

RIN: 2120–AH60

1886. • +ENHANCED SECURITY PROCEDURES FOR OPERATIONS AT CERTAIN AIRPORTS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 40101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This rule requires any person operating an aircraft to or from College Park Airport, Potomac Airfield, and Washington Executive/Hyde Field to conduct those operations in accordance with security procedures approved by the Administrator. This action is being taken to restore aircraft operations at these airports while attempting to counter possible terrorist threats to the National Capital region. This action is significant public interest and safety implications.

Timetable:

Action	Date	FR Cite
Final Rule Effective	02/13/02	
Final Rule; Request for Comments	02/19/02	67 FR 7538
Comment Period End	04/22/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce Landry, Office of Civil Aviation Security Policy, and Planning, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20591
Phone: 202 267-8320

RIN: 2120–AH62

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Long-Term Actions

1887. +FUEL SYSTEM VENT FIRE PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44721; 49 USC 44722; 49 USC 44901

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action would amend the airworthiness standards for transport category airplanes to require fuel vent system protection during post-crash ground fires. This proposed rule would apply to air carriers, air taxi operators, and commercial operators of transport category airplanes, as well as the manufacturers of such airplanes. This action is considered significant because of substantial public interest and the safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/84	49 FR 38078
ANPRM Comment Period End	01/25/85	
NPRM	02/02/95	60 FR 6632
NPRM Comment Period End	06/02/95	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket 24251. Formerly entitled Implementation of SAFER Propulsion System Recommendations. Project Number: ANM-82-050R.

ANALYSIS: Regulatory Evaluation, 02/02/95, 60 FR 6632

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AA49

1888. LOW FUEL QUANTITY ALERTING SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the airworthiness standards for transport category airplanes to require a means to alert the flight crew of potentially unsafe low fuel quantities. There have been several fuel depletion incidents involving loss of power or thrust on all engines that could have resulted in forced landings and injury or loss of life. Most of these incidents resulted from improper fuel management techniques. This proposed amendment would require new transport category airplane designs to incorporate a low fuel quantity alert system that would allow for correction of certain fuel

management errors or provide the flight crew the opportunity to make a safe landing prior to engine fuel starvation.

Timetable:

Action	Date	FR Cite
NPRM	05/12/87	52 FR 17890
NPRM Comment Period End	09/09/87	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. 25213. Project Number: ANM-83-039R.

ANALYSIS: Regulatory Evaluation, 05/12/87, 52 FR 17890

Agency Contact: Neil Schalekamp, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2112

RIN: 2120–AB46

1889. INSTALLATION OF CRASHWORTHY FUSELAGE FUEL TANKS AND FUEL LINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: NPRM, Statutory, February 3, 1989.

Abstract: This preliminary action was initiated to determine the feasibility of installing, in all air carrier aircraft, crashworthy fuselage fuel tanks and fuselage fuel lines which are rupture resistant and which disconnect and seal in the event of an accident. This notice solicited public participation in identifying and selecting a regulatory course of action by inviting interested persons to submit specific comments and arguments concerning this proposed regulatory action. Originally this rulemaking was considered significant. However, because there is no substantial public interest, this rulemaking is no longer significant.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/89	54 FR 18824
ANPRM Comment Period End	10/30/89	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project No. AFS-89-035R.

ANALYSIS: Regulatory Evaluation, 03/12/90, 55 FR 9270

Agency Contact: Sharon Ashford, Registry Modernization Staff, Department of Transportation, Federal Aviation Administration, 6500 South MacArthur Boulevard, Oklahoma City, OK 73125-4939
Phone: 405 954-7038

RIN: 2120–AD16

1890. +DRUG ENFORCEMENT ASSISTANCE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44101 to 44108; 49 USC 44110 to 44111; 49 USC 44702 to 44703; 49 USC 44704; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111

CFR Citation: 14 CFR 13; 14 CFR 47

Legal Deadline: Final, Statutory, September 18, 1989.

Abstract: This action would revise certain requirements concerning registration of aircraft, certification of pilots, and penalties associated with registration and certification violations. This notice also announced new procedures for processing major repair and alteration forms which pertain to fuel system modifications. Actions announced in this notice respond to the FAA Drug Enforcement Assistance Act. The requirements and adopted procedures are intended to assist law enforcement agencies in their efforts to stop drug trafficking in general aviation aircraft. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	03/12/90	55 FR 9270
NPRM Comment Period End	05/11/90	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

1891. AIRPLANE ENGINE COWLING RETENTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action would amend the airworthiness standards for transport category airplanes to require improved cowling retention devices. A review of a number of inflight incidents where engine cowlings were lost revealed that the largest single cause of such losses was improper latching of the cowlings. If adopted, this proposal would provide additional design standards to detect improperly latched cowlings and ensure the integrity of the latching system.

Timetable:

Action	Date	FR Cite
NPRM	09/19/89	54 FR 38610
NPRM Comment Period End	03/19/90	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-87-004R.

Agency Contact: Mike McRae, Airframe and Propulsion Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2133

RIN: 2120–AD34

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1892. TYPE CERTIFICATES FOR SOME SURPLUS AIRCRAFT OF THE ARMED FORCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7572; 49 USC 106(g); 49 USC 40105; 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44707; 49 USC 44709; 49 USC 44711; 49 USC 44713; 49 USC 44715; 49 USC 45303

CFR Citation: 14 CFR 21

Legal Deadline: None

Abstract: Following World War II, a substantial number of surplus military airplanes were offered for sale to the public in order to meet an increased demand for civilian-use aircraft not being met by the civil aircraft industry. The current regulation permits both type and airworthiness certification for surplus military aircraft based on the particular aircraft's safety record and condition. As military aircraft have become increasingly complex and sophisticated, that practice is no longer acceptable. This action would remove the regulations for issuing type certificates for these surplus aircraft and eliminate references to obsolete standards. Surplus military aircraft would still be certificated in the normal, utility, acrobatic, commuter, transport, and restricted categories upon compliance with the applicable regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/21/94	59 FR 19114
NPRM Comment Period End	06/20/94	
Comment Period End 08/26/94	07/07/94	59 FR 34779

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Project Number: AIR-91-354R.

ANALYSIS: Regulatory Evaluation, 04/21/94, 59 FR 19114

Agency Contact: Brian Yanez, Policy and Procedures Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-6561

RIN: 2120–AE41

1893. +AIRCRAFT GROUND DEICING AND ANTI-ICING PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action establishes a requirement for part 121 certificate holders to develop an FAA-approved ground deicing/anti-icing program and to comply with that program any time conditions are such that frost, ice, or snow could adhere to the aircraft's wings, control surfaces, or propellers. This action is necessary because several accidents and the recent International Conference on Airplane Ground Deicing indicate that, under present procedures, the pilot in command may be unable to effectively determine whether critical airplane components are free of all frost, ice, or snow prior to attempting a takeoff. The action provides an added level of safety to flight operations in adverse weather conditions, and is considered significant because of its safety implications.

Timetable:

Action	Date	FR Cite
NPRM	07/23/92	57 FR 32846
NPRM Comment Period End	08/07/92	
Interim Final Rule	09/29/92	57 FR 44924
Interim Final Rule Effective	11/01/92	
Interim Final Rule Correction	11/09/92	57 FR 53385
Interim Final Rule Comment Period End	04/15/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-92-280-R.

A proposed advisory circular providing guidance on the program elements that should be included in an air carrier's approved ground deicing and anti-icing program was published September 29, 1992, requesting comments (57 FR 44944).

Various documents of this proceeding were erroneously published under RIN 2120-AE51.

ANALYSIS: Regulatory Evaluation, 09/29/92, 57 FR 44924

Agency Contact: James Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9579

RIN: 2120–AE70

1894. CIVIL PENALTY ASSESSMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 6002; 49 USC 106(g); 49 USC 5121 to 5124; 49 USC 40113 to 40114; 49 USC 44103 to 44106; 49 USC 44702 to 44703; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111; 49 USC 47122

CFR Citation: 14 CFR 13

Legal Deadline: None

Abstract: This action would revise the procedures for the assessment of civil penalties for violations of the Federal Aviation Regulations and other provisions. The procedures proposed would implement the requirements of the FAA Civil Penalty Administrative Assessment Act of 1992, as they modify the procedures for adjudicating a civil penalty against a person acting in the capacity of a pilot, flight engineer, mechanic, or repairman.

Timetable:

Action	Date	FR Cite
NPRM	08/05/94	59 FR 40192
NPRM Comment Period End	10/04/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: AGC-93-076R. This rulemaking was considered significant; however, after receiving only two comments on the NPRM issued in 8/94, and the lack of controversy regarding this rule, the FAA does not consider this a significant rulemaking.

ANALYSIS: Regulatory Evaluation, 08/05/94, 59 FR 40192

Agency Contact: Joyce Redos, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7158

RIN: 2120–AE84

1895. +TRAINING AND CHECKING IN GROUND ICING CONDITIONS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44710 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722

CFR Citation: 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This amendment requires parts 125 and 135 certificate holders to provide pilot training or testing in ground deicing/anti-icing procedures and to check the airplane for contamination by frost, ice, or snow during ground icing conditions. The proposal is intended to provide an added level of safety to flight operations in adverse weather conditions under parts 125 and 135. This rulemaking is significant because it affects a substantial portion of the aviation industry.

Timetable:

Action	Date	FR Cite
NPRM	09/21/93	58 FR 49164
NPRM Comment Period End	10/06/93	
Interim Final Rule	12/30/93	58 FR 69620
Advisory Circular Published	12/30/93	58 FR 69631
Interim Final Rule Effective	01/31/94	58 FR 69620

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-93-459R

ANALYSIS: Regulatory Evaluation, 12/30/93, 58 FR 69620

Agency Contact: James Gardner, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-9579

RIN: 2120–AF09

1896. MISCELLANEOUS CABIN SAFETY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 46105; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action proposes to revise the airworthiness standards for transport category airplanes relating to flight attendant assist space, flight attendant assist handles, door hold open features, outside viewing means, interior compartment doors and portable oxygen equipment. With one exception, these proposals are not the result of any specific incident or recommendation, but are part of the FAA's continuing effort to upgrade the regulations to improve the overall level of safety in areas where the state-of-the-art and good design practice have indicated that such upgrades are warranted. These proposals would result in both new type design regulations as well as requirements applicable to existing designs implemented via the operating rules.

Timetable:

Action	Date	FR Cite
NPRM	07/24/96	61 FR 38552
NPRM Comment Period End	11/21/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-90-016R.

ANALYSIS: Regulatory Evaluation, 07/24/96, 61 FR 38552

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AF77

1897. BIRD STRIKE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: This action proposes to develop or revise requirements for the evaluation of transport category airplane structure for in-flight collision with a bird, including the size of the bird and the location of the impact on the airplane. These changes are intended to harmonize the bird strike requirements of the FAR and the Joint Aviation Requirements.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-93-762A. This is an Aviation Rulemaking Advisory Committee project.

Agency Contact: Bill Perrella, Transport Airplane Directorate, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2116

RIN: 2120–AF80

1898. +SECURITY PROGRAMS OF FOREIGN AIR CARRIERS AND FOREIGN OPERATORS OF U.S. REGISTERED AIR CARRIERS ENGAGED IN COMMON CARRIAGE

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40104 to 40105; 49 USC 40113; 49 USC 40119; 49 USC 44701 to 44702; 49 USC 44712; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901 to 44904; 49 USC 44906

CFR Citation: 14 CFR 129

Legal Deadline: None

Abstract: As an action intended to implement the Antiterrorism and

Effective Death Penalty Act of 1996 (PL 104-132, 4/14/96), the FAA is proposing to amend existing airplane operator security rules for foreign air carriers and foreign operators of U.S. registered aircraft. The proposed amendment would require the Administrator to accept a foreign air carrier's program only if the Administrator finds that the security program provides for identical security measures to those provided by U.S. air carriers serving the same airport. The proposed rule will establish the obligation to use identical security measures. The actual measures to be used will be identified through changes to the nonpublic security program of the foreign air carriers. This rule is considered significant due to substantial public interest and concern of foreign governments.

Timetable:

Action	Date	FR Cite
NPRM	11/23/98	63 FR 64764
Notice of Public Meeting	11/23/98	63 FR 64764
Second NPRM	03/22/99	64 FR 13880
NPRM Comment Period End	03/23/99	
Second NPRM Comment Period End	05/24/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ACP-96-363R.

Agency Contact: Moira Lozada, Civil Aviation Security Division, Office of Civil Aviation Security Policy, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-3373

RIN: 2120–AG13

1899. +PROHIBITION OF THE TRANSPORTATION OF DEVICES DESIGNED AS CHEMICAL GENERATORS AS CARGO IN AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716; 49 USC 44722; 49 USC 46301

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This rulemaking proposes to ban the transportation of devices designed to chemically generate oxygen in certain aircraft, with limited exceptions. This proposed ban applies to newly manufactured chemical oxygen generators that have never been filled with chemicals. It would also apply to devices designated as chemical oxygen generators that have been discharged (spent) or that are past their expiration dates. The FAA believes that newly manufactured chemical oxygen generators might be manufactured in one location and transported to another location to be filled. This could lead to human factors errors in determining whether the device designed as a chemical oxygen generator is actually empty.

In a final rule effective March 1, 2000, the Research and Special Programs Administration (RSPA) prohibited the transportation on an aircraft of a "spent" chemical oxygen generator, i.e., a generator whose means of ignition and all or a part of its chemical contents have been expended. (See RIN 2137-AC92)

This rulemaking is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	08/27/98	63 FR 45912
Correction	09/24/98	63 FR 51048
NPRM Comment Period End	10/26/98	
Correction	11/10/98	63 FR 69276

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: Project Number: AFS-97-065R

ANALYSIS: Regulatory Evaluation, 08/27/98, 63 FR 45912

Agency Contact: David Catey, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AG35

1900. +REVISED STANDARDS FOR CARGO OR BAGGAGE COMPARTMENTS IN TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 49 USC 44715 to 44717; 49 USC 106(g); 49 USC 40113; 49 USC 44701 to 44702; 49 USC 44704; 49 USC 44705; 49 USC 44711 to 44713

CFR Citation: 14 CFR 25; 14 CFR 121; 14 CFR 135

Legal Deadline: None

Abstract: This action upgrades the fire safety standards for cargo or baggage compartments in certain transport category airplanes by eliminating Class D compartments altogether. Compartments that could no longer be designated as Class D would have to meet the standards for Class C or Class E compartments, as applicable. Certain other transport category airplanes that would not have to meet these new standards for type certification would have to meet them for use in air carrier, commuter, on-demand, or commercial service. These improved standards are needed to increase protection from possible in-flight fires. This rulemaking is considered significant because of the safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/13/97	62 FR 32412
NPRM Comment Period End	09/11/97	
Final Rule Request for Comments	02/17/98	63 FR 8032
Final Rule Effective	03/19/98	
Final Rule Comment Period End	06/17/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: ANM-97-009R

ANALYSIS: Regulatory Evaluation, 06/13/97, 62 FR 32412

Regulatory Evaluation, 02/17/98, 63 FR 8032

Agency Contact: Mahinder Wahi, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2589

RIN: 2120–AG42

1901. MISCELLANEOUS FLIGHT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 25

Legal Deadline: None

Abstract: The FAA proposes to amend the airworthiness standards for transport category airplanes concerning miscellaneous flight requirements. Adopting this proposal would eliminate regulatory differences between the airworthiness standards of the U.S. and the Joint Aviation Requirements of Europe, without affecting current industry design practices.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1846
NPRM Comment Period End	03/15/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ANM-00-226.

Agency Contact: Don Stimson, Flight Test and Systems Branch, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, Northwest Mountain Region, 1601 Lind Avenue SW., Renton, WA 98055-4056
Phone: 425 227-4056

RIN: 2120–AH39

Department of Transportation (DOT)
Federal Aviation Administration (FAA)

Completed Actions

1902. +FLIGHT OPERATIONAL QUALITY ASSURANCE PROGRAM

Priority: Other Significant

Legal Authority: 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44712; 49 USC 44713; 49 USC 44715; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 106(g); 49 USC 40113; 49 USC 40119

CFR Citation: 14 CFR 121; 14 CFR 125; 14 CFR 135

Legal Deadline: None

Abstract: This action codifies FAA policy encouraging the voluntary implementation of Flight Operational Quality Assurance (FOQA) programs for the routine analysis of flight data generated during line operations that reveal situations which require corrective action to prevent safety problems. The rule also clarifyies the circumstances under which information obtained from voluntary FOQA programs could be used in enforcement actions against air carriers, commercial operators, or airmen. The rule would require air carriers participating in FOQA program to submit aggregate FOQA data to the FAA for use in monitoring safety trends. This rulemaking is significant because of substantial public interest.

Statement of Need: The primary purpose of a FOQA program is the enhancement of safety. It involves the routine analysis of line operational data to reveal situations that require corrective action and to enable early action before problems occur. Data is collected and aggregated from numerous operations, which is of more value than the assessment of a single situation or event. A secondary benefit of FOQA is a cost savings to the carriers. The collection of aggregated data may point to certain inefficiencies in operations, such as fuel management.

Summary of Legal Basis: The FAA has broad authority and responsibility to regulate the operation of aircraft and the use of the airspace and to establish safety standards for and regulate the certification of airmen, aircraft, and air carriers. Additionally, section 510 of PL 106-181 requires the Administrator to issue a notice of proposed rulemaking proposing "Flight Operations Quality Assurance Rules." The proposed rules in this NPRM respond to section 510 and provide safeguards that will ensure that aviation safety is not compromised.

Alternatives: One alternative is not to propose such a program. This, however, would mean that the FAA would not be able to collect valuable data that could lead to correction or prevention of safety problems. Another alternative is to obtain the data by other than voluntary means, e.g., monitoring of flight data recorders. This alternative is less desirable since it could lead to an atmosphere of mistrust between the carriers and the FAA. One benefit of FOQA is a communicative and shared interest in safety.

Anticipated Cost and Benefits: The FAA has determined that the costs associated with this rulemaking would be minimal.

Risks: The costs associated with this rulemaking would be minimal.

Timetable:

Action	Date	FR Cite
Policy Statement	12/07/98	63 FR 67505
NPRM	07/05/00	65 FR 41528
NPRM Comment Period End	10/03/00	
Final Action	10/31/01	66 FR 55042
Final Action Effective	11/30/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Project Number: AFS-93-154R

Agency Contact: Thomas Longridge, Flight Standards Services, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591
Phone: 202 267-3789

RIN: 2120–AF04

1903. SAFE DISPOSITION OF LIFE LIMITED AIRCRAFT PARTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 44109; 49 USC 40113 to 40114; 49 USC 44101 to 44105; 49 USC 44107 to 44108; 49 USC 44110 to 44111; 49 USC 44504; 49 USC 44701; 49 USC 44703; 49 USC 44705; 49 USC 45302 to 45303; 49 USC 46104; 49 USC 46304; 49 USC 46306; 49 USC 47122

CFR Citation: 14 CFR 43; 14 CFR 45

Legal Deadline: None

Abstract: This action responds to the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century

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by proposing that all persons who remove any life-limited aircraft part be required to have a method to prevent the installation of a part that has reached its life limit. Current regulations do not adequately control the disposition of life-limited parts. This action would reduce the risk of life-limited parts from being used beyond their life limits. This final rule also requires that manufacturers of the parts provide marking instructions, when requested.

Timetable:

Action	Date	FR Cite
NPRM	10/02/00	65 FR 58879
NPRM Comment Period End	01/30/01	
Final Action	01/15/02	67 FR 2098
Final Action Effective	04/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Al Michaels, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7501

RIN: 2120–AH11

1904. REDUCED VERTICAL SEPARATION MINIMUM IN THE WEST ATLANTIC ROUTE SYSTEM AIRSPACE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711; 49 USC 44712; 49 USC 44715; 49 USC 44716; 49 USC 44717; 49 USC 44722; 49 USC 46306; 49 USC 46315; 49 USC 46316; 49 USC 46502; 49 USC 46504; 49 USC 46506 to 46507; 49 USC 47122; 49 USC 47508; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action amends airspace rules where Reduced Vertical Separation Minimum (RVSM) may be applied to include the West Atlantic Route System (WATRS) airspace. RVSM is the reduction of the vertical separation of aircraft from 2,000 feet to 1,000 feet at flight levels (FLs) between FL 290 (29,000 feet) and FL 410 (41,000 feet). RVSM is applied only between aircraft that meet stringent altimeter and autopilot performance requirements. RVSM is currently applied in North Atlantic (NAT) Minimum Navigation Performance Specifications (MNPS) and Pacific airspace.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 79284
NPRM Comment Period End	02/16/01	
Final Action	12/10/01	66 FR 63888
Final Action Effective	12/10/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Regulatory Evaluation 12/18/00; 65 FR 79284.

Agency Contact: Dave Maloy, Flight Technologies and Procedures Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW,, Washington, DC 20591
Phone: 860 654-1006

RIN: 2120–AH12

1905. CIVIL PENALTY INFLATION ADJUSTMENT REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113 to 40114; 49 USC 44103 to 44106; 49 USC 44702 to 44703; 49 USC 44709 to 44710; 49 USC 44713; 49 USC 46101 to 46110; 49 USC 46301 to 46316; 49 USC 46501 to 46502; 49 USC 46504 to 46507; 49 USC 47106; 49 USC 47111; 49 USC 47122; 49 USC 47306; 49 USC 47531 to 47532

CFR Citation: 14 CFR 13

Legal Deadline: None

Abstract: This action adjusts for inflation the amount of each statutory civil penalty subject to the Federal Aviation Administration's jurisdiction. This action is issued as a final rule without prior notice and comment because the changes are administrative and required by statute. Also, the immediate adoption of these changes is in the public interest and is necessary for the agency to properly execute its functions.

Timetable:

Action	Date	FR Cite
Final Action	02/11/02	67 FR 6364
Final Action Effective	03/13/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Joyce Redos, Regulations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-7158

RIN: 2120–AH21

1906. SECURITY CONTROL OF AIR TRAFFIC

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40101; 49 USC 40103; 49 USC 40106; 49 USC 40113; 49 USC 40120; 49 USC 44502; 49 USC 44721

CFR Citation: 14 CFR 99

Legal Deadline: None

Abstract: This action modifies regulations governing security control of air traffic. Specifically, this action revises the boundaries of the contiguous United States and Alaska air defense identification zones and amends flight plan and communications requirements for those pilots planning flight into, within, or out of any of these zones. This action conforms FAA regulations with Presidential Proclamation No. 5928, supports the Department of Defense in accomplishing its National defense and drug interdiction missions, and assists law enforcement agencies in their efforts to stop the transportation of illegal drugs by aircraft.

Timetable:

Action	Date	FR Cite
Final Rule	09/28/01	66 FR 49818
Final Rule Effective	11/13/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Project Number: ATA-95-294R.

Agency Contact: Sheri Edgett Baron, Office of Air Traffic Airspace Management, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-9354

RIN: 2120–AH25

1907. • TEMPORARY EXTENSION OF TIME ALLOWED FOR CERTAIN TRAINING AND TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44113; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44707; 49 USC 44709 to 44711; 49 USC 45102 to 45103; 49 USC 45301 to 45302

CFR Citation: 14 CFR 61; 14 CFR 63; 14 CFR 121; 14 CFR 135; 14 CFR 142

Legal Deadline: None

Abstract: This final rule extends the time allowed to meet certain qualification requirements. This action will temporarily extend the time allowed to complete the requirements needed to remain qualified or to become qualified to perform certain functions. This action is being taken because the affected persons may not have been able to timely fulfill requirements due to the circumstances in the wake of the September 11, 2001 terrorist attacks.

Timetable:

Action	Date	FR Cite
Final Action Effective	10/01/01	
Final Action	10/12/01	66 FR 52278

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kent Stephens, Flight Standards Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20951
Phone: 202 267-9518

RIN: 2120–AH51

1908. • +FLIGHTCREW COMPARTMENT ACCESS AND DOOR DESIGNS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action allows airline operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action is being taken in the wake of the September 11, 2001, terrorist attacks against four U.S. commercial airplanes. This rulemaking is significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
Final Rule	10/09/01	66 FR 51546
Final Rule Effective	10/09/01	
Final Rule Effective	10/17/01	66 FR 52834

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kimberly Smith, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7424

RIN: 2120–AH52

1909. • +FLIGHT CREW DOOR DESIGNS ACCESS

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1153; 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44722; 49 USC 44901; 49 USC 46105

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This rulemaking temporarily authorizes variances from existing design standards for the flightcrew compartment door and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action also clarifies the 90 day and 180 day time frames in earlier versions of this Special Federal Aviation Regulation. This action is significant because of substantial public interest and safety implications.

Timetable:

Action	Date	FR Cite
Final Action	11/21/01	66 FR 58650
Final Action Effective	11/21/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Smith Kimberly, Aircraft Ceterification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20591
Phone: 202 267-7242

RIN: 2120–AH54

1910. • +FLIGHT CREWS COMPARTMENT ACCESS AND DOOR DESIGN

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 41706; 49 USC 44101; 49 USC 44701 to 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; 49 USC 44722; 49 USC 44901; 49 USC 44903 to 44904; 49 USC 44912; 49 USC 46105

CFR Citation: 14 CFR 121

Legal Deadline: None

Abstract: This action will allow operators to quickly modify the flightcrew compartment door to delay or deter unauthorized entry to the flightcrew compartment. This action temporarily authorizes variances from existing design standards for the doors and allows for approval for return to service of modified airplanes without prior approved data if the modification constitutes a major alteration. This action further prohibits the possession of flightdeck compartment door keys by other than the flightcrew during flight, unless the flightdeck door has an internal flightdeck locking device installed, operative and in use.

Timetable:

Action	Date	FR Cite
Final Rule	01/15/02	67 FR 2112
Final Rule	03/19/02	67 FR 12820
Final Rule Effective	01/15/03	
Final Rule Effective 03/19/2002 to	04/09/03	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kimberly Smith, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591
Phone: 202 267-7424

RIN: 2120–AH55

1911. • +SECURITY CONSIDERATIONS IN THE DESIGN OF THE FLIGHTDECK ON TRANSPORT CATEGORY AIRPLANES

Priority: Other Significant

Legal Authority: 31 USC 9701; 49 USC 106(g); 49 USC 40113; 49 USC 40119; 49 USC 44101; 49 USC 44701; 49 USC 44702; 49 USC 44705; 49 USC 44709 to 44711; 49 USC 44713; 49 USC 44716 to 44717; ...

CFR Citation: 14 CFR 25; 14 CFR 121

Legal Deadline: None

Abstract: This action implements two security design requirements governing transport category airplane design. The amendment requires a means to protect the fightdeck from unauthorized intrusion and small arms fire or fragmentation devices. The FAA is also requiring that certain operators of passenger-carrying airplanes comply with this amendment to prevent unauthorized access to the flightdeck. These amendments are being adopted to further enhance air carrier security in response to the heightened threat to U.S. civil aviation. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Rule	01/15/02	67 FR 2118
Final Rule Effective	01/15/02	
Comment Period End	03/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeff Gardlin, Aircraft Certification Service, Department of Transportation, Federal Aviation Administration, 1601 Lind Avenue SW, Renton, WA 98055-4056
Phone: 425 227-2136

RIN: 2120–AH56

1912. • +AIRSPACE AND FLIGHT OPERATIONS REQUIREMENTS FOR THE 2002 WINTER OLYMPIC GAMES AT SALT LAKE CITY, UT

Priority: Other Significant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44701; 49 USC 44711; 49 USC 44716; 49 USC 44722; 49 USC 46315; 49 USC 46504; 49 USC 46507; 49 USC 47528 to 47531

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This Special Federal Aviation Regulation establishes restrictions for aircraft operations in the vicinity of the 2002 Winter Olympic Games to be held in Salt Lake City, UT. This action also establishes a security process for certain flight arrivals and departures at specified airports in the vicinity of the Olympic Games. This action is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/15/02	
Final Action	01/18/02	67 FR 2774

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cliff Armstrong, Special Operations Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW.,, Washington, DC 20591
Phone: 202 267-9155

RIN: 2120–AH61

1913. • REMOVAL OF THE PROHIBITION AGAINST CERTAIN FLIGHTS WITHIN THE TERRITORY AND AIRSPACE OF AFGHANISTAN

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 106(g); 49 USC 1155; 49 USC 40103; 49 USC 40113; 49 USC 40120; 49 USC 44101; 49 USC 44111; 49 USC 44701; 49 USC 44709; 49 USC 44711

CFR Citation: 14 CFR 91

Legal Deadline: None

Abstract: This action removes Special Federal Aviation Regulation No. 90, which prohibits flight operations within the territory and airspace of Afghanistan. This action is taken because the heightened threat to civil aviation within the territory and airspace of Afghanistan, which warranted the issuance of the emergency rule, no longer exists.

Timetable:

Action	Date	FR Cite
Final Rule Effective	09/19/01	
Final Rule	09/24/01	66 FR 48942
Final Action Effective	02/01/02	
Final Action	02/07/02	67 FR 5888

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David L. Catey, Air Transportation Division, Department of Transportation, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591
Phone: 202 267-8166

RIN: 2120–AH64

Department of Transportation (DOT) — Prerule Stage
Federal Highway Administration (FHWA)

1914. WORK ZONE MOBILITY AND SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 105; 23 USC 106; 23 USC 109; 23 USC 110; 23 USC 115; 23 USC 315; 23 USC 320; PL 102-240, sec 1051; PL 104-59, sec 358

CFR Citation: 23 CFR 636; 23 CFR 1.32; 49 CFR 1.48; 23 CFR 630

Legal Deadline: None

Abstract: The FHWA is proposing to amend its regulations on traffic safety and mobility in highway and street work zones. Section 1051 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) required the Secretary of Transportation (Secretary) to develop and implement a highway work zone safety program which would improve work zone safety at highway construction sites. This provision of ISTEA was implemented through non-regulatory action.

A notice published in the Federal Register on October 24, 1995 (60 FR 54562) provided an outline of the work zone safety initiative.

The current proposed regulatory action will further enhance the work zone safety initiative by expanding its focus to include both safety and mobility. The proposed action will incorporate the use of new work zone techniques and technologies, update current policy and regulation, and emphasize issues affecting the safety and mobility of highway workers and highway users.

Timetable:

Action	Date	FR Cite
ANPRM	02/06/02	67 FR 5532
ANPRM Comment Period End	06/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Scott Battles, Office of Transportation Operations, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4372

RIN: 2125–AE29

Department of Transportation (DOT) — Proposed Rule Stage
Federal Highway Administration (FHWA)

1915. CERTIFICATION OF SIZE AND WEIGHT ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 127; 23 USC 141; 23 USC 315

CFR Citation: 23 CFR 657

Legal Deadline: None

Abstract: The FHWA has resumed consideration of changes in the guidance provided to State agencies for preparing the annual size and weight enforcement certifications. Previous efforts in this area were suspended by the agency in 1994 as a result of a commitment by the Federal Highway Administrator to Congress in June 1994 to conduct a comprehensive study of all aspects of the truck size and weight issue. That study is nearly completed. Accordingly, public comment is again requested on the type of information and data that should be submitted by the States in support of their annual certification of enforcement, and how the FHWA should use the information.

Timetable:

Action	Date	FR Cite
ANPRM	12/16/93	58 FR 65830
ANPRM Comment Period Extended to 05/18/94	03/15/94	59 FR 11956
ANPRM Comment Period End	03/16/94	
Supplemental ANPRM	09/28/00	65 FR 58233
Supplemental ANPRM Comment Period End	12/27/00	
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert E.L. Davis, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2997

RIN: 2125–AC60

1916. ADVANCED CONSTRUCTION OF FEDERAL AID PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104 to 106; 23 USC 109; 23 USC 110; 23 USC 113; 23 USC 115; 23 USC 118; 23 USC 120(e); 23 USC 121(c); 23 USC 125; 23 USC 134; 23 USC 315; 23 USC 320

CFR Citation: 23 CFR 630; 23 CFR 1.32; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA is proposing to revise the existing regulations that prescribe policies and procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the States. These regulations should be revised to conform to changes made to title 23, United States Code, by technical amendments in the Transportation Equity Act of the 21st Century (TEA-21), Pub. L. 105-178, and changes made by the National Highway System Designation Act of 1995 (NHS), Pub. L. 104-59.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/95	60 FR 36991
Interim Final Rule Comment Period End	09/18/95	
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Max Inman, Office of Budget and Finance, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2853

RIN: 2125–AD59

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1917. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE NATIONAL PARK SERVICE, INCLUDING THE PARK ROADS AND PARKWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to the National Park Service (NPS) and the park roads and parkways program. The comments generally supported the development of a separate rule for each agency including one for the NPS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) implementing safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the NPS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47749
ANRPM Comment Period End	11/01/99	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9486

RIN: 2125–AE52

1918. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE BUREAU OF INDIAN AFFAIRS, INCLUDING THE INDIAN RESERVATIONS ROAD PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 315; PL 105-178; 23 USC 134; 23 USC 135; 23 USC 204

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Eight organizations provided comments on the ANPRM pertaining to the Bureau of Indian Affairs (BIA) and the Indian reservation roads program. The comments generally supported the development of a separate rule for each agency including one for the BIA. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21), for the proposed safety, bridge, pavement, and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the BIA. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47746
ANPRM Comment Period End	11/01/99	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9486

RIN: 2125–AE53

1919. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FISH AND WILDLIFE SERVICE, INCLUDING THE REFUGE ROADS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal Land Management agencies are also given the authority to develop safety, bridge, pavement, and congestion management systems for roads funded under the Federal lands highways program (FLHP). The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Six organizations provided comments on the ANPRM pertaining to the Fish and Wildlife Service (FWS) and the refuge roads program. The comments generally supported the development of a separate rule for each agency including one for the FWS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FWS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47741
ANPRM Comment Period End	11/01/99	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9486

RIN: 2125–AE54

1920. +FEDERAL LANDS HIGHWAY PROGRAM; MANAGEMENT SYSTEMS PERTAINING TO THE FOREST SERVICE, INCLUDING THE FOREST HIGHWAYS PROGRAM

Priority: Other Significant

Legal Authority: 23 USC 135; 23 USC 204; 23 USC 315; PL 105-178; 23 USC 134

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The FHWA was delegated the authority to serve as the lead agency to develop transportation planning procedures pertaining to the National Park Service, the Forest Service, the Fish and Wildlife Service and the Bureau of Indian Affairs that are consistent with the metropolitan and statewide transportation planning processes. The FHWA and the appropriate Federal land managment agencies are given the authority to develop safety, bridge pavement, and congestion management systems for roads funded under the Federal lands highways program. The roads funded under the FLHP include park roads and parkways, forest highways, refuge roads and Indian reservation roads.

The FHWA sought public comment on four related ANPRMs that were published on September 1, 1999. The comment period closed on November 1, 1999. Seven organizations provided comments on the ANPRM pertaining to the Forest Service (FS) and the forest highway program. The comments generally supported the development of a separate rule for each agency including one for the FS. In an NPRM, the FHWA will seek public comment on a proposed rule to implement section 1115(d) of the Transportation Equity Act for the 21st Century (TEA-21) for the proposed safety, bridge, pavement and congestion management systems developed by FHWA's Federal Lands Highway program office in consultation with the FS. The NPRM is designated as significant under E.O. 12866 and the DOT regulatory policies and procedures because of the high level of interagency interest in the notices and involved program. The transportation planning procedures will be addressed in a separate NPRM.

Timetable:

Action	Date	FR Cite
ANPRM	09/01/99	64 FR 47744
ANPRM Comment Period End	11/01/99	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Butch Wlaschin, Federal Lands Highway Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9486

RIN: 2125–AE55

1921. REVISION OF THE MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES; TRAFFIC CONTROL DEVICES ON FEDERAL-AID AND OTHER STREETS AND HIGHWAYS; STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 105; 23 USC 109(d); 23 USC 114(a); 23 USC 135; 23 USC 217; 23 USC 307; 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The MUTCD is incorporated by reference in 23 CFR part 655, subpart F, and is recognized as the national standard for traffic control devices on all public roads. Due to the reorganization of the FHWA and the deletion of 23 CFR 1204.4 by the National Highway Traffic Safety Administration (NHTSA), 23 CFR part 655.603 is outdated. The proposed amendments included herein will bring 23 CFR part 655 up to date.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D.L. Huckaby, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590 Phone: 202 366-9064

RIN: 2125–AE78

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DOT—FHWA

Proposed Rule Stage

1922. +RAILROAD-HIGHWAY CROSSING PROJECTS

Priority: Other Significant

Legal Authority: PL 91-458

CFR Citation: 23 CFR 646

Legal Deadline: None

Abstract: The FHWA proposes to amend its regulations on railroad-highway crossing projects to clarify that installation projects for passive crossing control devices, done solely to meet the minimum crossing signing requirements of Federal law or regulation, do not preempt or displace State laws concerning the adequacy of such devices. This proposal is in response to a recent decision by the Supreme Court that held that FHWA's current regulations have broad preemptive effect.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Rudolph M. Umbs, Office of Highway Safety, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2177

RIN: 2125–AE81

1923. LANDSCAPE DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: EO 13148; EO 13112

CFR Citation: 23 CFR 752

Legal Deadline: None

Abstract: This action, which would change the current regulation at 23 CFR 752.4, Landscape Development, is necessary to clarify and reflect FHWA policy change for the improvement of landscaping best management practices. Specifically, two recent Executive orders, E.O. 13148 and E.O. 13112, call for the improvement of Federal landscape development programs and practice. E.O. 13148 encourages the use of native plants as much as practicable. E.O. 13112 warns against the planting of known exotic and invasive plants.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Bonnie Harper-Lore, Landscape Architect, Department of Transportation, Federal Highway Administration, Galtier Plaza, Box 75, 175 E. Fifth Street, Suite 500, St. Paul, MN 55101-2904
Phone: 651 291-6104

RIN: 2125–AE85

1924. +NATIONAL BRIDGE INSPECTION STANDARDS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 23 USC 109(a); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; EO 11988; ...

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: In this action, the FHWA would solicit comments on whether its regulation on National Bridge Inspection Standards (NBIS) should be revised and updated. The FHWA would solicit comment on whether there is a need to update the regulations to incorporate current, state of the art bridge inspection practices which public authorities may be using. A public authority means a Federal, State, county, town, or township, Indian tribe, municipal or other local government or instrumentality with the authority to finance, build, operate, or maintain toll or toll-free facilities. The primary purpose of the NBIS is to identify bridges that need work to ensure the safety of the traveling public. The NBIS regulation was last updated 14 years ago.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49154
ANPRM Comment Period End	12/26/01	
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-9487

RIN: 2125–AE86

1925. COMMERCIAL VEHICLE WIDTH EXCLUSIVE DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31111; 49 USC 31113

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: This action responds to two unique requests with respect to the exclusion of certain devices from established truck length and width requirements.

Proposed is an increase from 3 to 4 inches of the distance from the side of a commercial vehicle within which non-cargo carrying devices are excluded from vehicle width measurement.

In a separate matter, the Senate Committee on Appropriations has requested the FHWA consider a special allowance, within reasonable safety limitations, concerning the commercial movement of recreational vehicles (RVs) with incidental appurtenances, such as retractable awnings, that extend beyond current Federal width limitations. A number of States have enacted laws that allow incidental appurtenances on noncommercial RVs to exceed State width limitations.

The FHWA intends to issue a notice of proposed rulemaking inviting public comment and addressing all aspects of these proposed special exclusions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Robert E.L. Davis, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2997

RIN: 2125–AE90

DOT—FHWA

Proposed Rule Stage

1926. DEBT FINANCING

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 122

CFR Citation: 23 CFR 140

Legal Deadline: None

Abstract: In this action, the FHWA proposes to amend its regulation on reimbursement for bond issue projects to implement the changes made to 23 USC 122 by the National Highway System Designation Act of 1995 (NHS) (Pub. L. 104-59, November 28, 1995, 109 Stat. 568). Section 311 of the NHS amended 23 USC 122 to make debt financing costs related to title 23 projects eligible for Federal reimbursement.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dale M. Gray, Federal-Aid Financial Management Division, Department of Transportation, Federal Highway Administration, Room 4313, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-0978

RIN: 2125–AE91

1927. • MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655, subpart F

Legal Deadline: None

Abstract: The Manual on Uniform Traffic Control Devices contains the Standards, Guidance, and Options for installing all traffic control devices (signs, traffic signals, and pavement markings) on the nation's roadways opened to public travel. By following the Manual drivers, pedestrians, and bicyclists encounter the same uniform signs, traffic signals, and pavement markings, used in identical ways, along their trip. As a result of changes in technology, materials, and management strategies, the devices in the Manual and their uses need to be updated and amended on an annual basis.

This proposed amendment is in keeping with the Secretary of Transportation's authority under 23 U.S.C. 109(d), 315, and 402(a) to promulgate uniform guidelines to promote the safe and efficient use of highways.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest D. L. Huckaby, Office of Highway Safety, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE93

1928. • +DESIGNATION OF DROMEDARY EQUIPPED TRUCK TRACTOR-SEMITRAILERS AS SPECIALIZED EQUIPMENT

Priority: Other Significant

Legal Authority: 49 USC 31111(g)

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA is requesting comments on this proposal, which would designate dromedary equipped truck tractor-semitrailers, when hauling munitions for the Department of Defense (DOD), as specialized equipment. No State would be able to limit this combination to less than 75 feet.

This proposal is in response to a petition from DOD that would help expedite the hauling of munitions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom Klimek, Transportation Specialist, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2212

RIN: 2125–AE94

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Final Rule Stage

1929. FEDERAL-AID HIGHWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 103(b); 23 USC 103(c); 23 USC 315

CFR Citation: 23 CFR 470

Legal Deadline: None

Abstract: This regulatory action amends 23 CFR 470 in accordance with legislation enacted in 1991, 1995, and 1998. The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) rescinded the Federal-aid Primary and Secondary and Urban Systems; established an interim National Highway System (NHS); and defined Federal-aid highways. The NHS Designation Act of 1995 (NHS Act) authorized the initial National Highway System and also authorized the Secretary to approve modifications. The Transportation Equity Act for the 21st Century (TEA-21) authorized the initial NHS connectors to major intermodal terminals and recodified 23 U.S.C. 103 (Federal-aid systems). The action also consolidates in appendices all nonregulatory guidance material issued previously by the FHWA on Federal-aid highway systems.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/19/97	62 FR 33351
Interim Final Rule Effective	07/21/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Additional Information: The FHWA issued an interim final rule with an opportunity for public comment. This rule amends regulations that the States comply with as part of the Federal-aid highway program. The FHWA has worked closely with the States, and the States have operated under the basic policies covered by this regulation for many years. A number of technical revisions are required as a result of the TEA-21 recodification of 23 U.S.C. 103, including incorporation of the provisions of former 23 U.S.C. 139 (Additions to Interstate System).

Agency Contact: Frank Clark, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5006

RIN: 2125–AD74

1930. RAILROAD HIGHWAY PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 315; 23 USC 109(e); 23 USC 120(c); 23 USC 130

CFR Citation: 23 CFR 140; 23 CFR 646

Legal Deadline: None

Abstract: The FHWA amends its regulations on railroad highway projects. The amendments now require railroads to submit final billings within one year following completion of work, delete the requirements of a State's certification that work was completed, increase the ceiling for lump sum agreements from $25,000 to $100,000 and incorporate changes brought about by ISTEA. The FHWA believes these changes will conform railroad/highway regulations to more recent laws or regulations, and provide State highway agencies clarification and more flexibility in implementing them.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/27/97	62 FR 45326
Interim Final Rule Comment Period End	10/27/97	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Robert Winans, Office of Highway Safety Information, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4656

RIN: 2125–AD86

1931. ADMINISTRATION OF ENGINEERING AND DESIGN RELATED SERVICES CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 112(b); 23 USC 114(a); 23 USC 302; 23 USC 315; 23 USC 402; 41 USC 253; 41 USC 259

CFR Citation: 23 CFR 172; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: This action would amend procurement procedures on administration of engineering and design related services contracts to reflect the changes made by section 307 of Public Law 104-59, National Highway System Designation Act and section 1205 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178, June 9, 1998.

Timetable:

Action	Date	FR Cite
NPRM	07/18/00	65 FR 44486
NPRM Comment Period End	09/18/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Gary E. Moss, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4654

RIN: 2125–AE45

1932. STANDARDS FOR DEDICATED SHORT RANGE COMMUNICATIONS (DSRC) APPLICATIONS FOR USE BY COMMERCIAL VEHICLES IN INTELLIGENT TRANSPORTATION SYSTEMS PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 307; 23 USC 315; 23 USC 502 note; PL 102-240, sec. 6055(b); PL 105-178, sec. 5206(e)

CFR Citation: 23 CFR 1001; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA proposes to amend its regulations to require the use of Dedicated Short Range Communications (DSRC) Standards for ITS commercial vehicle projects using Federal funds. DSRC Systems use microwave communications over very short distances to allow moving vehicles to communicate with fixed roadside locations. In commercial motor vehicle applications, DSRC devices can transfer information regarding vehicle safety, performance, regulatory compliance and credentials from the vehicle to inspection stations.

The use of DSRC standards would promote interoperability among, and enable integration of ITS systems for North American commercial vehicle applications, such as electronic clearance, automated weight stations and border crossings. Interoperability would also encourage institutional integration and cooperation.

Timetable:

Action	Date	FR Cite
NPRM	12/30/99	64 FR 73674
NPRM Comment Period End	02/28/00	
Supplemental NPRM	12/12/00	65 FR 77534
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William S. Jones, ITS Joint Program Office, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2128

RIN: 2125–AE63

1933. REVISION OF COLOR SPECIFICATIONS FOR SIGNS AND PAVEMENT MARKING RETROREFLECTIVE MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(d); 23 USC 114(a); 23 USC 315; 23 USC 402(a)

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA proposes to revise its color specifications for retroreflective sign materials. This revision would include daytime and nighttime specification for both assigned and unassigned colors found in the Manual on Uniform Traffic Control Devices (MUTCD). Color specifications for fluorescent colors and pavement marking material also would be included.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71354
NPRM Comment Period End	06/23/00	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ernest Huckaby, Office of Highway Safety, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE67

1934. +DESIGN-BUILD CONTRACTING

Priority: Other Significant

Legal Authority: PL 105-178, sec 1307(c); 23 USC 112

CFR Citation: 23 CFR 635

Legal Deadline: Final, Statutory, June 9, 2001.

Abstract: The FHWA proposes to revise its regulations to implement design-build contracting as mandated by section 1307(c) of the Transportation Equity Act for the 21st Century (TEA-21), enacted on June 9, 1998. TEA-21 requires the Secretary of Transportation to issue regulations to allow design-build contracting for selected projects. The regulations would list the criteria and procedures that will be used by the FHWA in approving the use of design-build contracting by State Transportation Departments (STDs). The regulation would not require the use of design-build contracting but rather would allow it as an optional technique in addition to traditional contracting methods.

The FHWA is soliciting comments on its proposed regulation which would establish prescribed policies and procedures for utilizing the design-build contracting technique for Federal-aid highway projects. This action is significant because of the substantial State and industry interest in the design-build contracting technique.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53288
NPRM Comment Period End	12/19/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Additional Information: The NPRM published at 66 FR 53288 on October 19, 2001, contained an incorrect docket number. The correct docket number for the NPRM is FHWA-2000-7799. A notice of correction was published in the Federal Register on October 31, 2001 (67 FR 54964).

Agency Contact: Gerald Yakowenko, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-1562

Carol Jacoby, Office of Program Administration, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-1561

RIN: 2125–AE79

1935. NATIONAL STANDARDS FOR TRAFFIC CONTROL DEVICES; MANUAL ON UNIFORM TRAFFIC CONTROL DEVICES; ACCESSIBLE PEDESTRIAN SIGNALS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a); 23 USC 104; 23 USC 109(d); 23 USC 114(a); 23 USC 217; 23 USC 315; 23 USC 402(a); ...

CFR Citation: 23 CFR 655

Legal Deadline: None

Abstract: The FHWA, in response to comment, amends the 2000 Millennium Edition of the Manual on Uniform Traffic Control Devices (MUTCD) that became effective on January 17, 2001. Section 4E.06 of the MUTCD relates to accessible pedestrian signals. Upon publication of the Millennium Edition, the FHWA was advised that the support and guidance statements relative to evaluation of signalized intersections to accommodate persons with visual disabilities did not adequately address the needs of such persons. Accordingly, the FHWA revises these support and guidance statements.

The FHWA issued an interim final rule to provide an opportunity for the public to review and make comments on the necessary changes to the pertinent electronic files on the FHWA's MUTCD internet site (http://mutcd.fhwa.dot.gov) to comply with section 508 of the Rehabilitation Act of 1973. After reviewing comments regarding these electronic files, the FHWA may modify the interim final rule and issue a final rule.

Timetable:

Action	Date	FR Cite
Notice of Proposed Amendments	05/17/01	66 FR 27480
Comment Period End	06/18/01	
Interim Final Rule	02/15/02	67 FR 7073
Interim Final Rule Effective	03/18/02	
Interim Final Rule Comment Period End	04/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ernest D. L. Huckaby, Office of Highway Safety, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-9064

RIN: 2125–AE83

1936. PLANNING AND RESEARCH PROGRAM ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 104(f); 23 USC 103(c); 23 USC 115; 23 USC 120; 23 USC 133(b); 23 USC 134(b); 23 USC 303(g); 23 USC 315; 23 USC 505

CFR Citation: 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is updating its regulations for administration of planning and research funds provided to State DOTs under the provisions of title 23, United States Code. The revisions are necessary to reflect current legislation and OMB grant administration circulars.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59188
NPRM Comment Period End	01/28/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

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DOT—FHWA — Final Rule Stage

Government Levels Affected: None

Agency Contact: Tony Solury, Program Coordinator, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5003

RIN: 2125–AE84

1937. DISCRETIONARY BRIDGE CANDIDATE RATING FACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109(a); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; ...

CFR Citation: 23 CFR 650

Legal Deadline: None

Abstract: The FHWA proposes to revise its regulation on the discretionary bridge program rating factor in order to incorporate several administrative considerations that have proven effective in the project selection process. This proposed action would amend the current regulations according to a provision in TEA-21 which requires the Secretary of Transportation to publish both the statutory and regulatory criteria that will apply to the discretionary bridge program.

These proposed changes would require that the candidate projects be ready to begin construction in the fiscal year in which funds are available for obligation; allow leveraged funds from local, State, county, or private sources to be used to reduce the total project cost for use in the rating factor formula; disallow any discretionary allocation to a State that has transferred Highway Bridge Replacement and Rehabilitation Program funds to other categories of Federal funding in the previous year; and change the definition of one term in the rating factor formula.

Timetable:

Action	Date	FR Cite
NPRM	01/22/02	67 FR 2837
NPRM Comment Period End	03/25/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Ernst, Office of Bridge Technology, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4619

RIN: 2125–AE88

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Long-Term Actions

1938. INDIAN RESERVATION ROAD BRIDGE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 120(j) and (k); 23 USC 202; 23 USC 315; PL 105-178, sec 1115; 49 CFR 1.48

CFR Citation: 23 CFR 661

Legal Deadline: None

Abstract: Section 1115 of the Transportation Equity Act for the 21st Century establishes a nationwide priority program for improving deficient Indian reservation road (IRR) bridges and reserves $13 million of IRR funds per year to replace and rehabilitate bridges that are in poor condition. The FHWA, Federal Lands Highway Office (FLH), and the Bureau of Indian Affairs, Division of Transportation (BIADOT), intend to implement the IRR bridge program (IRRBP) to promptly address the deficient IRR bridges. Toward that end, the FLH and the BIADOT, in consultation with Indian tribal governments, have developed project selection/fund allocation procedures for uniform application of the legislation. The FHWA is announcing the project selection/fund allocation procedures for the IRRBP.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/99	64 FR 38565
Interim Final Rule Effective	07/19/99	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Public comment was solicited in a February 12, 1999, Federal Register notice (64 FR 7229). These comments will be addressed in the final rule.

Agency Contact: Wade F. Casey, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-9487

RIN: 2125–AE57

1939. +STATEWIDE AND METROPOLITAN PLANNING

Priority: Other Significant

Legal Authority: 23 USC 104(f); 23 USC 134; 23 USC 135; 23 USC 217; 23 USC 315; 42 USC 7410 et seq; 49 USC 5305 to 5309

CFR Citation: 23 CFR 450; 49 CFR 613; 49 CFR 1.48(b); 49 CFR 1.51

Legal Deadline: None

Abstract: In this action, the FHWA and the FTA are jointly proposing to revise the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and States. These revisions are the product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA-21), which requires a continuous, comprehensive and coordinated process in metropolitan areas and States. The regulation at 23 CFR part 450 would be modified to reflect the impacts of the TEA-21.

Statement of Need: The Transportation Equity Act for the 21st Century (TEA-21) amended 23 U.S.C. 134 and 135, which require a continuing, comprehensive and coordinated transportation planning process in metropolitan areas and States. Revisions have been proposed for existing regulatory language to make it consistent with current statutory requirements.

Summary of Legal Basis: Sections 1203, 1204, and 1308 of the TEA-21 (Public Law 105-178), amended 23 U.S.C. 134 and 135. Similar changes were made by sections 3004, 3005, and 3006 of the TEA-21 to 49 U.S.C. 5303-5306 which address the metropolitan planning process in the context of the FTA's responsibilities.

DOT—FHWA — Long-Term Actions

The agencies (FHWA and FTA) have received numerous comments to the docket in response to the NPRM. The comments are currently being analyzed by both agencies to determine what action should follow.

Alternatives: Recent court decisions and statutory changes direct at least some modification of existing regulations (e.g., reduction in planning factors from 16 to 7). If regulatory changes are restricted to only those required to reconcile existing law and regulations, the remaining changes could be accomplished through guidance.

Anticipated Cost and Benefits: The agencies sought comments regarding the potential economic impacts of these proposed rules on small entities and governments. Of specific concern are the additional costs of the incremental changes in regulatory requirements. The agencies believe that these costs have been offset largely by reduced statutory requirements and the flexibility built into the regulations. The agencies have requested comments on these issues.

Risks: A failure to issue a regulation could generate increased implementation challenges in working with affected agencies, i.e., difficulty in achieving compliance with expected regulatory outcomes.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33958
NPRM Comment Period Extended	07/07/00	65 FR 41891
NPRM Comment Period End	09/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Sheldon M. Edner, Team Leader, Department of Transportation, Federal Highway Administration, Room 3232, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4066
Email: sheldon.edner@fhwa.dot.gov

Charles Goodman, Division Chief, Department of Transportation, Federal Transit Administration, Room 9413, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1924

RIN: 2125–AE62

1940. +NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING; PROTECTION OF PUBLIC PARKS, WILDLIFE AND WATERFOWL REFUGES AND HISTORIC SITES

Priority: Other Significant

Legal Authority: 42 USC 4321 et seq; 49 USC 303; 23 USC 109; 23 USC 128; 23 USC 134; 23 USC 138; 23 USC 315; ...

CFR Citation: 23 CFR 530; 23 CFR 540

Legal Deadline: None

Abstract: The Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA), issued an NPRM proposing to update and revise the National Environmental Policy Act implementing regulation for FHWA and FTA funded or approved projects. The current regulations were issued in 1987 (23 CFR part 771, August 28, 1987) and experience since that time, as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA-21), call for an updated approach to implementation of NEPA for FHWA and FTA projects and actions.

The FTA and the FHWA received numerous comments to the docket in response to this NPRM. The agencies are currently reviewing these comments to determine what action should follow.

Statement of Need: The current NEPA regulation was issued in 1987 and experience since that time, as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA-21), call for an updated approach to implementation of NEPA for FHWA and FTA projects and actions.

Summary of Legal Basis: By including the environmental streamlining provision in section 1309 of the TEA-21, (Public Law 105-178, 112 Stat. 108 at 232), the Congress intended that transportation planning and environmental considerations be better coordinated and that project delivery schedules be improved through a process that is efficient, comprehensive, and streamlined.

Alternatives: The existing regulation has not been revised since 1987 and has been overtaken by at least two transportation reauthorization bills. It needs to be comprehensively updated to ensure consistency with current statutes and legal precedent. A minimal nonregulatory approach might achieve some desired outcomes, but would be insufficient. Environmental streamlining outcomes will be achieved largely through interagency coordination among Federal resource and permit agencies, but would be more effective if supported by this revision.

Anticipated Cost and Benefits: It is anticipated that the economic impact of this rulemaking will be minimal. Most costs associated with these rules are attributable to the provisions of the TEA-21, the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), the Clean Air Act (as amended) and other statutes, including earlier highway acts. The agencies consider this proposal to be a means to simplify, clarify, and reorganize existing regulatory requirements.

Risks: Statutory directives require at least some regulatory changes. Environmental streamlining may be achieved through interagency collaboration, but would be substantially enhanced by the issuance of a final rule.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33960
NPRM Comment Period Extended	07/07/00	65 FR 41892
NPRM Comment Period End	09/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fred Skaer, Office of Environment and Planning, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2058

RIN: 2125–AE64

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1941. REVISIONS TO HIGHWAY BRIDGE REPLACEMENT AND REHABILITATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424, sec 161; 23 USC 109(a); 23 USC 144(g); PL 105-178, sec 1101(a)(3); 23 USC 109(h); 23 USC 144; 23 USC 151; 23 USC 315; 23 USC 319; 33 USC 401; 33 USC 409 et seq; 33 USC 511 et seq; PL 97-134, sec 4(b); PL 105-206; ...

CFR Citation: 23 CFR 650; 23 CFR 1.32; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is seeking comments regarding improvements that can be made to its regulation outlining the highway bridge replacement and rehabilitation program. In addition, the FHWA is considering the inclusion and/or modification of existing policies so that they provide the flexibility necessary for the State and local governments to better manage their bridge assets. Accordingly, the FHWA intends to publish an advanced notice of proposed rulemaking.

The FHWA is also considering proposed revisions to the discretionary bridge program rating factor, which will be addressed in a separate rulemaking action.

Timetable:

Action	Date	FR Cite
ANPRM	09/26/01	66 FR 49152
ANPRM Comment Period End	12/26/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raymond McCormick, Director, Office of Bridge Technology, Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590
Phone: 202 366-4675

RIN: 2125–AE75

1942. • PLANNING ASSISTANCE AND STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 134

CFR Citation: 23 CFR 450.322

Legal Deadline: None

Abstract: The FHWA is considering amending its regulation on Planning and Assistance Standards, specifically the metropolitan transportation planning process, to provide New York City Metropolitan Area additional time to review and update its transportation plan in light of the terrorist attacks that occurred on September 11, 2001. The Metropolitan Planning Organization (MPO) for the New York City area is the New York Metropolitan Council (NYMTC). NYMTC occupied office space in the World Trade Towers in New York City. Because NYMTC's offices and files were destroyed on September 11, 2001, it will be impossible for NYMTC to review and update its transportation plan by 2002 as required by 23 CFR 450.322(2). Accordingly, the FHWA is considering proposing to provide NYMTC an additional three years to review and update its transportation plan.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Sheldon M. Edner, Team Leader, Department of Transportation, Federal Highway Administration, Room 3232, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4066
Email: sheldon.edner@fhwa.dot.gov

RIN: 2125–AE92

Department of Transportation (DOT)
Federal Highway Administration (FHWA)

Completed Actions

1943. TRUCK LENGTH AND WIDTH EXCLUSIVE DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 315; 49 USC 31111; 49 USC 31112; 49 USC 31113; 49 USC 31114

CFR Citation: 23 CFR 658

Legal Deadline: None

Abstract: The FHWA is issuing a final rule, under 49 USC 31111 through 31113, stating which safety or efficiency-enhancing devices are to be excluded when measuring the length and width of vehicles for compliance with federally mandated dimensions.

The Surface Transportation Assistance Act of 1982 (STAA), Pub. L. 97-424, 96 Stat. 2097, gave the Secretary of Transportation the authority to determine what safety and energy conservation devices are necessary for safe and efficient operation of commercial motor vehicles (CMVs), and what could be excluded when measuring vehicle length (section 411(h))(49 U.S.C. 31111(d)), and what could be excluded when measuring width (section 416(b))(49 U.S.C. 31113(b)).

Section 411(h) also provided that no device excluded from length measurement by the Secretary could have, by design or use, the capability to carry cargo.

Timetable:

Action	Date	FR Cite
ANPRM	12/26/89	54 FR 52951
ANPRM Comment Period End	03/26/90	
ANPRM Comment Period Extended	06/01/90	
ANPRM Docket Reopened; Comment Period Extended to 08/21/90	06/22/90	55 FR 25673
NPRM	08/18/00	65 FR 50471
NPRM Comment Period End	11/16/00	
Final Action	03/29/02	67 FR 15102
Final Action Effective	04/29/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Tom Klimek, Transportation Specialist, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2212

RIN: 2125–AC30

1944. HIGHWAY BEAUTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 131; 23 USC 315; 49 USC 1651

CFR Citation: 23 CFR 750

Legal Deadline: None

Abstract: The FHWA has decided not to proceed with this rulemaking action at this time. This in no way precludes the FHWA from pursuing a rulemaking action on this subject in the future.

Timetable:

Action	Date	FR Cite
Action Terminated	02/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clyde Johnson, Department of Transportation, Federal Highway Administration, Southern Resource Center, 60 Forsyth Street, SW., Atlanta, GA 30303
Phone: 404 562-3584

RIN: 2125–AD24

1945. NATIONAL STANDARDS FOR TRAFFIC CONTROL DEVICES; MUTCD; MINIMUM RETROREFLECTIVITY REQUIREMENTS FOR TRAFFIC SIGNS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101; 23 USC 104; 23 USC 105; 23 USC 109(d); 23 USC 114(a); 23 USC 135; 23 USC 217; 23 USC 307; 23 USC 315; 23 USC 402(a); PL 102-388

CFR Citation: 23 CFR 1.32; 49 CFR 1.48

Legal Deadline: None

Abstract: The FHWA originally intended to revise the MUTCD to include a standard for a minimum level of retroreflectivity that must be maintained for traffic signs. This minimum level is to ensure that highway users can detect and read the sign during nighttime conditions. Although the MUTCD states that regulatory and warning signs, and some guide signs, need to reflectorize, no level of retroreflectivity is specified. In recognition of this situation, the United States Congress directed the U.S. Department of Transportation, through the 1993 Department of Transportation Appropriations Act, to revise the MUTCD to include a standard for minimum levels of retroreflectivity that must be maintained.

Since 1993 the Federal Highway Administration has been working with the transportation community on identifying and developing options for implementing the minimum standards for sign retroreflectivity. Likewise, there have been significant changes in the roadway and vehicle environment in the last several years that require the previous research study values to be reconsidered and updated. The minimum levels of sign retroreflectivity need to be revised to address significant changes in vehicle headlamps, older driver population, and changes in vehicle fleet composition.

Therefore, we are removing this item from the agenda until such time as the above mentioned studies have been completed.

Timetable:

Action	Date	FR Cite
Action Terminated	02/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Peter Hatzi, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8036

RIN: 2125–AE39

1946. ENGINEERING SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 315; PL 105-178, sec 1212(a); 23 USC 302

CFR Citation: 23 CFR 1; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: In this action, the FHWA amends its regulation for engineering services by removing a sentence that defined expenditures for the establishment, maintenance, general administration, supervision, and other overhead of the State highway department, or other instrumentality or entity referred to in the regulation, as ineligible for Federal participation.

This amendment to the regulation stems from a provision in the Transportation Equity Act for the 21st Century (TEA-21) that changed statutory requirements to allow for eligibility of administrative costs for State transportation departments.

Timetable:

Action	Date	FR Cite
NPRM	07/26/00	65 FR 45941
NPRM Comment Period End	09/25/00	
Final Action	11/23/01	66 FR 58665
Final Action Effective	12/24/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Max Inman, Office of Budget and Finance, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2853

RIN: 2125–AE73

1947. PROCEDURES FOR ABATEMENT OF HIGHWAY TRAFFIC NOISE AND CONSTRUCTION NOISE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 23 USC 109(h); 23 USC 109(i); 42 USC 4331; 42 USC 4332

CFR Citation: 23 CFR 772; 49 CFR 1.48(b)

Legal Deadline: None

Abstract: The FHWA is requesting comments on whether its regulations on noise insulation of private residences should be revised to allow Federal participation when a traffic noise impact occurs, i.e., when predicted traffic noise levels substantially exceed the existing noise levels. Currently, Federal participation in the noise insulation of private residences is allowable only in situations where severe traffic noise impacts exist or are expected, and normal noise abatement measures are physically infeasible or economically unreasonable. In these instances, the FHWA may approve a State's request for unusual or extraordinary abatement measures on a case-by-case basis.

When considering extraordinary abatement measures, the State must demonstrate that the affected activities experience traffic noise impacts to a far greater degree than other similar activities adjacent to highway facilities.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/00	65 FR 82301
ANPRM Comment Period End	02/26/01	
Withdrawn	03/26/02	67 FR 13731

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Armstrong, Office of Environment and Planning, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2073

RIN: 2125–AE80

1948. RIGHT-OF-WAY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 101(a)(3)

CFR Citation: 23 CFR 710

Legal Deadline: None

Abstract: The FHWA amends section 710.203 of its right-of-way regulations for federally assisted transportation projects to provide a clarification. The amendment makes it clear that Federal financial assistance, provided by the FHWA pursuant to title 23, United States Code, may be used in relocation assistance benefits, provided by State and local agencies pursuant to State law, that are in addition to the relocation benefits prescribed by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended.

Timetable:

Action	Date	FR Cite
NPRM	05/09/01	66 FR 23636
NPRM Comment Period End	07/09/01	
Final Action	03/20/02	67 FR 12861
Final Action Effective	04/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Satorius, Office of Real Estate Services, Department of Transportation, Federal Highway Administration, 555 Zang Street, Lakewood, CO 80228
Phone: 303 969-5772

RIN: 2125–AE82

1949. DESIGN STANDARDS FOR HIGHWAYS

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 109; 23 USC 315; 23 USC 402; PL 102-240, sec 1073; 105 Stat. 1914; 105 Stat. 2012

CFR Citation: 23 CFR 625; 49 CFR 1.48(b); 49 CFR 1.48(n)

Legal Deadline: None

Abstract: The standards, policies, and standard specifications that have been adopted by the Federal Highway Administration (FHWA) for application on all construction and reconstruction projects on the National Highway System (NHS) are incorporated by reference in 23 CFR 625. The current document specified in paragraph 625.4(a)(1) is "A Policy on Geometric Design of Highways and Streets 1994, AASHTO" (Policy).

AASHTO recently revised the Policy and published the 2001 edition which FHWA proposes to adopt as its policy for design standards for all construction and reconstruction projects on the NHS. The primary reason for development of the new document is to incorporate the results of research since 1994.

Timetable:

Action	Date	FR Cite
NPRM	09/18/01	66 FR 48103
NPRM Comment Period End	11/19/01	
Final Action	02/12/02	67 FR 6393
Final Action Effective	03/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Seppo I. Sillan, Chief, Geometric and Roadside Design Branch, Department of Transportation, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1327

RIN: 2125–AE89

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Proposed Rule Stage

1950. +QUALIFICATION OF DRIVERS; VISION

Priority: Other Significant

Legal Authority: 49 USC 504; 49 USC 31502

CFR Citation: 49 CFR 391

Legal Deadline: None

Abstract: As part of a review of the medical qualification standards applicable to interstate CMV drivers, the FMCSA requested comments on the need, if any, to amend its driver qualification requirements relating to the vision standard. A temporary waiver program was initiated and was concluded on March 31, 1996, to permit the FHWA, predecessor agency to the FMCSA, to observe and collect data on the driving experience of a group of vision—deficient drivers who meet certain preconditions. Additionally, FHWA considered further research to develop comprehensive performance-based visual standards for all commercial drivers. Information about the proposed research plan and public hearing on the subject was published on June 5, 1996, at 61 FR 28547. The FMCSA entered into a contract with a medical center to develop medically-based recommendations for amending the current Federal vision requirements. Recommendations were delivered in October 1998. These recommendations are being evaluated and considered in deciding what, if any, further proposals should be made concerning the vision standard. Based on the findings of the medical panel, the FMCSA anticipates publishing an NPRM to amend its regulation governing the visual field requirement in the vision standard.

Section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), Public Law 105-178) enacted

effective June 9, 1998, changed the agency's authority to issue waivers and exemptions. Procedures to implement the new authority were published on December 8, 1998 (63 FR 67600). We are, and have been, considering all requests for exemptions from the vision requirements in the Federal Motor Carrier Safety Regulations.

This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/92	57 FR 6793
ANPRM Comment Period End	04/28/92	
Notice Request for Comments	06/05/96	61 FR 28547
Interim Final Rule	12/08/98	63 FR 67600
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: FHWA adopted a final rule to allow drivers holding valid waivers from both the vision and diabetes standards to continue to operate in interstate commerce after March 31, 1996. See NPRM (61 FR 606, Jan. 8, 1996); Final Rule (61 FR 13338, March 26, 1996); Final Rule; technical correction (61 FR 17253, April 19, 1996). (See notices published February 28, 1992 (57 FR 6793); March 25, 1992 (57 FR 10295); June 3, 1992 (57 FR 22370); October 6, 1994 (59 FR 50887); and November 17, 1994 (59 FR 59386).

Agency Contact: Sandra L. Zywokarte, Health and Welfare Specialist, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, 400 Seventh Street NW., Washington, DC 20590
Phone: 202 366-2987

RIN: 2126–AA05

1951. +COMMERCIAL DRIVER PHYSICAL FITNESS AS PART OF THE CDL PROCESS

Priority: Other Significant

Legal Authority: PL 106-159, sec. 215; 49 USC 31305; 49 USC 31502

CFR Citation: 49 CFR 391; 49 CFR 383; 49 CFR 1.73; 49 CFR 391.11; 49 CFR 391.45

Legal Deadline: None

Abstract: FMCSA is proposing to include the certification of fitness to operate a CMV in the commercial driver's license (CDL) process. Incorporating the commercial driver fitness determination into State-administered CDL procedures could allow elimination of the requirement that CMV drivers carry a separate medical certificate. The CDL would be evidence that the CMV driver is physically fit as well as operationally qualified to operate CMVs safely. This action addresses the driver's physical qualifications as they relate to the CDL process; it does not address whether those standards are correct or should be changed. This action is significant due to anticipated substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	07/15/94	59 FR 36338
ANPRM Comment Period End	11/14/94	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Governmental Jurisdictions, Businesses

Government Levels Affected: Undetermined

Additional Information: With respect to the advisory committee, please note the following notice publications: 61 FR 18713 (04/29/96); 61 FR 38133 (07/26/96); 61 FR 43725 (08/26/96); 61 FR 52401 (10/07/96); 61 FR 56936 (11/05/96); 61 FR 66250 (12/17/96); and 62 FR 6753 (02/13/96).

Agency Contact: Teresa Doggett, Transportation Specialist, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2990

RIN: 2126–AA10

1952. SAFETY PERFORMANCE HISTORY OF NEW DRIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 508; 49 USC 31133; 49 USC 31136; 49 USC 31301 et seq; 49 USC 31502; PL 103-311

CFR Citation: 49 CFR 382; 49 CFR 383; 49 CFR 390; 49 CFR 391; 49 CFR 1.73

Legal Deadline: NPRM, Statutory, January 1999, See PL 105-178, sec 4014.

Abstract: FMCSA proposes amending its motor carrier regulations to include minimum safety information that new or prospective employers must seek from former employers during the investigation of a driver's employment record. FMCSA also proposes to increase the time period that carriers must record accident information in the accident register, from one year to three years. The Hazardous Materials Reauthorization Act of 1994 initially mandated this revision. The agency is currently drafting a supplemental notice of proposed rulemaking in response to Small Business Administration (SBA) comments to the docket and section 4014 of TEA-21 (Pub. L. 105-178). SBA had requested more in-depth Paperwork Reduction Act and Regulatory Flexibility Act analyses of the proposal. The TEA-21 provided limited employer protection from liability, strengthened employee due process provisions, and established a new statutory deadline.

Timetable:

Action	Date	FR Cite
NPRM	03/14/96	61 FR 10548
NPRM Comment Period End	05/13/96	
Supplemental NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David Goettee, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4097

RIN: 2126–AA17

1953. +UNIFIED REGISTRATION SYSTEM

Priority: Other Significant

Legal Authority: PL 104-88; 49 USC 13908

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, January 1, 1998.

Abstract: Section 103 of the ICC Termination Act of 1995 which added

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49 USC 13908, required the Secretary to initiate a rulemaking proceeding to replace the current USDOT identification number system, the single State registration system, the registration/licensing system, and the financial responsibility system, with a single, on-line Federal system. This action is considered significant due to substantial public interest. The statutory deadline was not met due to range and depth of issues involved.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/96	61 FR 43816
ANPRM Comment Period End	10/25/96	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Agency Contact: Nathaniel Jackson, Office of Bus and Truck Standards and Operations, Div. of Driver and Carrier Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6406

RIN: 2126–AA22

1954. SAFETY FITNESS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31144

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: FHWA, the predecessor agency to the FMCSA, published a final rule of RIN 2125-AC71 on November 6, 1997 (62 FR 60035), which incorporated the safety fitness rating methodology into 49 CFR 385 as appendix B. In that document, FHWA identified its ultimate goal as creating a more performance-based means of determining the fitness of carriers to conduct commercial motor vehicle (CMV) operations in interstate commerce. The ANPRM requested comments on the future of a rating system that could be used both in making safety fitness determinations and meeting the demands of shippers, insurers and other present and potential users interested in evaluating motor carrier performance.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38788
ANPRM Comment Period End	09/18/98	
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA37

1955. RULES OF PRACTICE FOR ADMINISTRATIVE PROCEEDINGS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 205

CFR Citation: 49 CFR 386

Legal Deadline: None

Abstract: FMCSA proposes to adopt procedural rules in order to conduct administrative proceedings under section 205 of the Motor Carrier Safety Improvement Act of 1999 (MCSIA). This section provides for the issuance of out-of-service orders. On February 16, 2000, FMCSA issued a final rule amending the Rules of Practice to include violations of commercial regulations. However, this modification to the administrative rules applied only to civil penalty proceedings.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David M. Lehrman, Attorney, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0994

RIN: 2126–AA63

1956. POSTING OF EMPLOYEE PROTECTIONS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: FMCSA is considering requiring employers to display a poster to notify commercial motor vehicle (CMV) operators and other employees of their whistleblower rights under 49 U.S.C. 31105. The poster would also provide information on filing a complaint with the Occupational Safety and Health Administration for investigation.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Goettee, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4097

RIN: 2126–AA68

1957. • +CERTIFICATION OF COMPLIANCE WITH FEDERAL MOTOR VEHICLE SAFETY STANDARDS (FMVSS)

Priority: Other Significant

Legal Authority: PL 102-240, sec. 1041(b); 105 Stat. 1914; 49 USC 31136; 49 USC 31502; 49 CFR 1.73

CFR Citation: 49 CFR 393.8

Legal Deadline: None

Abstract: FMCSA proposes to amend the Federal Motor Carrier Safety Regulations so that motor carriers ensure that each commercial motor vehicle (CMV) they operate in interstate commerce displays a label certifying that the vehicle complies with all applicable Federal Motor Vehicle Safety Standards (FMVSS) in effect on the date of manufacture. This rulemaking ensures that all motor carriers operating CMVs in the United States use only vehicles that were certified by the manufacturer as meeting all applicable Federal safety performance requirements.

This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12782
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah M. Freund, Senior Transportation Specialist, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC
Phone: 202 366-4009
Email: deborah.freund@fhwa.dot.gov

Related RIN: Related To 2127-AI59, Related To 2127-AI60, Related To 2127-AI64

RIN: 2126–AA69

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Final Rule Stage

1958. +RAILROAD-HIGHWAY GRADE CROSSING SAFETY

Priority: Other Significant

Legal Authority: PL 102-240; PL 103-311; 49 USC 5101; 49 USC 31136; 49 USC 31502; 49 CFR 1.73

CFR Citation: 49 CFR 392

Legal Deadline: Final, Statutory, February 26, 1995.

Abstract: This action would prohibit operators of commercial motor vehicles from driving onto a railroad grade crossing unless there is sufficient space to drive completely through the crossing without stopping. This action is required by the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, sec. 112), and it is intended to reduce the incidence of collisions between trains and commercial motor vehicles. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
NPRM	07/30/98	63 FR 40691
NPRM Comment Period End	11/27/98	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: David M. Lehrman, Attorney, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0994

RIN: 2126–AA18

1959. +HOURS OF SERVICE OF DRIVERS; DRIVER REST AND SLEEP FOR SAFE OPERATIONS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 31136; 49 USC 31502; PL 74-255; PL 84-939; PL 98-554; PL 103-311; PL 104-59; PL 104-88; PL 106-159

CFR Citation: 49 CFR 1.73; 49 CFR 395

Legal Deadline: Other, Statutory, March 1, 1996, ANPRM. PL 104-88,sec 408(a).
NPRM, Statutory, November 5, 1997, PL 104-88, sec 408(b).
Final, Statutory, November 5, 1999, PL 104-88, sec 408(b).

Abstract: This action would revise the regulations for commercial motor vehicle driver rest requirements and duty period limitations for safe highway transportation. A broad rulemaking was required by the ICC Termination Act of 1995 (ICCTA), Pub. L. 104-88. Other congressional actions before the ICCTA required modifications to the current rules.

This rulemaking responded to public and congressional interest in regulating commercial motor vehicle driver rest requirements, the NTSB's safety recommendations, petitions for rulemaking, and scientific data. There is substantial public and congressional interest in the regulation of medium- and heavy-duty truck and bus drivers' sleep, off-duty, and working periods of time. FMCSA proposed new rules based upon comments and scientific data submitted to the advance notice of proposed rulemaking docket. The proposed rule included an initial regulatory flexibility analysis, a cost-benefit analysis, an unfunded mandates analysis, and a paperwork reduction analysis. This action is considered significant because of substantial public and congressional interest.

Statement of Need: The motor carrier industry requires 24-hour activities to meet the operational demands of a healthy U.S. economy. Growth in long-haul, regional, overnight, local, for-hire and private carriage operations is increasing with the unprecedented growth of the U.S. economy. Therefore, night work, shift work, and irregular work schedules continue to be commonplace.

The scientific knowledge about sleep, sleep disorders, circadian physiology, fatigue, and performance decrements has also grown. One of the purposes of this rulemaking is to incorporate as much of the scientific knowledge as possible into the applicable regulations.

Summary of Legal Basis: Section 31136 of title 49, United States Code, authorizes the Secretary of Transportation to prescribe minimum safety standards for commercial motor vehicles (Motor Carrier Safety Act of 1984, Pub. L. 98-554, Title II, October 30, 1984). Regulations prescribed under this section must ensure that: (1) commercial motor vehicles are operated safely; (2) the responsibilities imposed on operators of commercial motor vehicles do not impair their ability to operate the vehicle safely (3) the

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physical condition of operators of commercial motor vehicles is adequate to enable them to operate the vehicles safely; and (4) the operation of commercial motor vehicles does not have a deleterious effect on the physical condition of the operators.

Section 31502 of Title 49, United States Code, authorizes the Secretary of Transportation to prescribe maximum hours-of-service and qualifications requirements for operators of motor carriers when needed to promote the safety of operations (Motor Carrier Act of 1935, Pub. L. 74-255, August 9, 1935; and Migrant Farm Workers-Regulation of Interstate Transportation Act, Public Law 84-939, August 3, 1956).

Section 113 of the Hazardous Materials Transportation Authorization Act of 1994 (Pub. L. 103-311, August 26, 1994) requires the Secretary of Transportation to prescribe regulations amending part 395 to improve the compliance by commercial motor vehicle drivers and motor carriers with HOS requirements and the effectiveness and efficiency of Federal and State enforcement officers reviewing such compliance.

Section 345 of the National Highway System Designation Act of 1995 (Pub. L. 104-159, November 28, 1995) created four specific exemptions from the hours-of-service-of-drivers requirements of part 395. A fifth exemption applied only to commercial driver licensing-related requirements requiring testing of operators for alcohol and controlled substances. The Secretary of Transportation was authorized to conduct rulemaking, except for the water well drilling hours-of-service exemption, to negate or modify the exemptions upon a determination, after a rulemaking proceeding, that the exemption is not in the public interest and would have a significant adverse impact on the safety of commercial motor vehicles.

Section 408 of the ICC Termination Act of 1995 (Pub. L. 104-88, December 29, 1995) requires the Federal Highway Administration (functions transferred to the Federal Motor Carrier Safety Administration under Pub. L. 106-159) to issue a final rule dealing with a variety of fatigue-related issues pertaining to commercial motor vehicle safety (including 8 hours of continuous sleep after 10 hours of driving, loading and unloading operations, automated and tamper-proof recording devices, rest and recovery cycles, fatigue and stress in longer combination vehicles, fitness for duty, and other appropriate regulatory and enforcement countermeasures for reducing fatigue-related incidents and increasing driver-alertness).

Alternatives: FMCSA proposed replacing the current rules with an alternative set of rules based upon scientific knowledge and submitted comments. FMCSA also proposed different regulations for different types of drivers and operations.

FMCSA considered modifying the information collection burdens that have been placed upon the motor carrier industry, including the following types of recordkeeping methods: (1) Reducing the required items on the record of duty status (log book); (2) adding electronic on-board recording devices to commercial motor vehicles; (3) eliminating all FMCSA hours-of-service record keeping requirements while relying exclusively on the duplicative hours-of-work record keeping system required by the U.S. Department of Labor under the Fair Labor Standards Act of 1938, as amended.

FMCSA proposed a revision that would require motor carriers to provide their drivers with better opportunities to obtain sleep than the current rules, and thereby reduce the number of fatigue-related crashes involving these drivers. The agency estimated that 755 fatalities and 19,705 injuries occur each year on the Nation's roads because of drowsy, tired or fatigued CMV drivers.

The proposed rules would make three major changes. First, and most importantly, the new rules would be science-based (related to sleep cycles) and put all drivers in a 24-hour daily cycle. Second, they would reduce the total number of hours behind the wheel in a given 24-hour cycle to no more than 12 hours. Under current rules, a driver can reach the 60-hour on-duty limit in 4 days and 4 hours, and the 70-hour limit in less than 5 days. Third, long-haul and regional drivers (who spend one or more nights away from their normal work reporting locations) would be required, eventually, to use electronic on-board recording devices (EOBRs). These proposed changes would abandon a one-size-fits-all approach to work-rest cycles and adopt different rest periods for different types of operations.

FMCSA has received more than 53,000 comments to date. The agency was committed to fully exploring all issues and concerns of stakeholders; we held eight public hearings in May, June and July 2000, and followed up with three public roundtable discussions in September and October 2000.

The roundtables drew broad public participation and elicited in-depth discussion and exchange of supporting data on critical issues, including issues surrounding the economic analyses and assumptions used by the agency. The discussions provided the agency with information requiring careful analysis. This will help FMCSA identify any necessary changes to the proposal that would address stakeholders' divergent concerns and support the development of a successful rule.

The FY 2001 Department of Transportation Appropriations Act, Pub. L. 106-346, included language prohibiting the Department from adopting a final rule before October 1, 2001. As a result, the Department pledged to carefully review and consider the extensive record on the rulemaking before deciding on the next appropriate steps in the rulemaking process.

Anticipated Cost and Benefits: FMCSA has placed a Preliminary Regulatory Evaluation (PRE) in the docket. The PRE evaluates five options, based on identified key parameters. The selected option, which divides the industry into different types of motor carrier operations, is projected to save 115 lives and 2,995 injuries per year with a total net benefit of almost $3.359 billion, assuming that 15 percent of CMV-involved crashes are fatigue-related. For additional information, you may see the PRE and the preamble of the NPRM.

Risks: Fatigue is increasingly becoming the focus of possible causes following many crashes. Driver reports of being fatigued to the point of incapacity are not uncommon, and intuitively, it is reasonable, given the sheer volume of traffic, to expect fatigue to be a factor in future crashes if the regulations are not corrected. Fatigue was identified by the industry, public, and government as the highest priority safety issue at a 1995 Truck and Bus Safety Summit in Kansas City, MO.

FMCSA has established a goal to reduce by 50 percent over ten years the number of fatalities from crashes involving any commercial motor vehicle. FMCSA anticipates its proposal will reduce fatigue-related crashes by at least 15 percent each year to assist in its efforts to meet its overall goal of 50 percent reduction in deaths. The agency will re-analyze the reduction of fatigue-related crashes in its revised Regulatory Evaluation.

Timetable:

Action	Date	FR Cite
ANPRM	11/05/96	61 FR 57251
Notice of Meeting	02/11/97	62 FR 6161
ANPRM Comment Period End	03/31/97	
NPRM	05/02/00	65 FR 25540
Notice of Hearing	05/05/00	65 FR 26166
Notice of Hearing	05/22/00	65 FR 32070
Notice of Change in Hearing Structure	05/26/00	65 FR 34132
NPRM; Correction	05/31/00	65 FR 34904
Notice of Hearing	06/12/00	65 FR 36809
Comment Period Extended	06/19/00	65 FR 37956
Comment Period Extended; Roundtable Meetings	08/15/00	65 FR 49780
NPRM Comment Period End	12/15/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: During the agency's broad section 610 review of the 65-year history of the rule and all its amendments and revisions, the agency found that RINs 2125-AD52, 2125-AD81, 2126-AA16, and 2126-AA29 also contain pertinent actions that must be incorporated into this action. Therefore, the agency incorporated them and has published a combined proposal addressing the entire topic of hours-of-service of drivers and related recordkeeping issues.

In the DOT's Docket Management System, this rulemaking is currently identified as docket number FMCSA-1997-2350.

The NPRM is a proposal. The FMCSA has extensively solicited public comments at 8 public hearings and 3 public roundtable discussions. The agency has received more than 53,000 comments in the docket. FMCSA has reviewed these comments and has made a decision about the next step in the rulemaking process. The agency is proceeding to develop a final rule.

Agency Contact: David R. Miller, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5011

RIN: 2126–AA23

1960. DEVELOPMENT OF A NORTH AMERICAN STANDARD FOR PROTECTION AGAINST SHIFTING AND FALLING CARGO

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is amending its regulations concerning cargo securement requirements for commercial motor vehicles engaged in interstate commerce. The FMCSA intends to adopt new cargo securement guidelines that will be based upon the results of a multi-year comprehensive research program to evaluate current regulations and industry practices.

Timetable:

Action	Date	FR Cite
ANPRM	10/17/96	61 FR 54142
ANPRM Comment Period End	12/16/96	
Notice of Meeting	04/21/97	62 FR 19252
NPRM	12/18/00	65 FR 79050
NPRM Comment Period End	03/19/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA27

1961. TRANSPORTATION OF HOUSEHOLD GOODS; CONSUMER PROTECTION REGULATIONS (RULEMAKING RESULTING FROM A SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: PL 74-255; 49 USC 13301; 49 USC 14104; PL 104-88; PL 106-59; 49 USC 13101; 49 USC 13501 et seq.; 49 USC 14104; 49 USC 14708; 49 USC 14901 et seq.; 49 USC 14912; 49 USC 13301 et seq.

CFR Citation: 49 CFR 375; 49 CFR 377; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA proposed to amend the regulations governing the transportation of household goods. These regulations protect individual consumers who ship household goods, as defined in 49 USC 13102(10), by commercial motor vehicle. This action is necessary to implement the ICC Termination Act of 1995 (ICCTA),and to update the regulations. The intended effect of this proposal is to make the regulations easier to read and understand, remove an outdated report, address hostage freight problems (situations where non-binding estimates are lower than actual charges and the carrier refuses to deliver freight even after 110 percent of the estimate is paid at the time of delivery), modify a consumer protection publication, consider industry requests to change the rules, and propose conforming and technical amendments.

Timetable:

Action	Date	FR Cite
NPRM	05/15/98	63 FR 27126
NPRM Comment Period End	07/14/98	
NPRM Extension and Reopening of Comment Period	08/12/98	63 FR 43128
NPRM Comment Period End	10/13/98	
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lee Payne, Office of Enforcement and Compliance, Division of Insurance, Department of

Transportation, Federal Motor Carrier Safety Administration, MC-ECI, 400 Virginia Avenue SW., Suite 600, Washington, DC 20024
Phone: 202 358-7029
Fax: 202 358-7100

RIN: 2126–AA32

1962. +APPLICATION BY CERTAIN MEXICO-DOMICILED MOTOR CARRIERS TO OPERATE BEYOND U.S. MUNICIPALITIES AND COMMERCIAL ZONES ON THE U.S.-MEXICO BORDER

Priority: Other Significant

Legal Authority: 5 USC 553; 5 USC 559; 16 USC 1456; 49 USC 13101; 49 USC 13301; 49 USC 13901 et seq; 49 USC 31138; 49 USC 31144

CFR Citation: 49 CFR 365; 49 CFR 1.73

Legal Deadline: None

Abstract: This action proposed collection of some new information and also proposed revisions to the registration application form filed by one of the two classes of Mexican carriers. This class of Mexican carriers operates in the U.S. and has operations that go beyond the established border commercial zones. This proposed unified application form would be used by both Mexican property and passenger carriers who provide services pursuant to provisions of NAFTA. This action is intended to increase the information available concerning these Mexican carriers' safety profiles. This action is significant because of substantial public interest.

Statement of Need: The Administration has announced its intention to implement the entry provisions of the North American Free Trade Act (NAFTA). Since 1982, there has been a moratorium on the grant of operating authority by the former Interstate Commerce Commission to Mexican motor carriers.The FMCSA proposes changes to its regulations to cover applications by Mexican motor carriers to operate beyond the municipalities and commercial zones at the United States-Mexico border. The FMCSA also proposes changes to the form to be submitted by such applicants. The changes are needed to ensure that FMCSA receives sufficient information to decide whether a Mexican carrier can meet the safety standards established for operating in interstate commerce. The information would also be used for safety enforcement.

Summary of Legal Basis: Under sections 13101, 13301, 13901-13906, 14708, 31138,and 31144 of Title 49, U.S. Code, the FMCSA has authority to set the standards and procedures for the grant of operating authority for motor carriers to operate in interstate commerce in the United States. Under the Motor Carrier Safety Improvement Act of 1999, the FMCSA was created as a separate administration in the Department of Transportation to carry out motor carrier functions previously performed by the Federal Highway Administration and the Interstate Commerce Commisssion.

In the 2002 Department of Transportation Appropriations Act, Pub. L. 107-87, sec. 350, DOT was limited from obligating or expending funds for the review or processing of applications resulting from this rulemaking until FMCSA and DOT completes specific tasks, including adding requirements within this rulemaking proceeding. These specific requirements have been incorporated in this proceeding.

Alternatives: In 1994, the former Interstate Commerce Commission issued regulations to govern the processing of Mexican applications. These regulations were challenged, and they do not cover all the changes to motor carrier regulations since the creation of the FMCSA. The FMCSA could process applications under its existing procedures, but this would not provide sufficient data to determine if the applicants meet the applicable safety standards.

Anticipated Cost and Benefits: The FMCSA anticipates that the economic impact of the rulemaking will be minimal; however it prepared a regulatory evaluation. The proposal should not have any impact on small U.S.motor carriers. The FMCSA looked at a range of numbers estimating how many new applicants would apply in the first and subsequent years. Applicants will have to fill out the application and ensure that their operating procedures will satisfy safety standards for operating in interstate commerce in the United States. The benefit of the regulations will include the additional information available to FMCSA for evaluating applications and targeting enforcement.

Risks: The proposed regulations are intended to enhance the safety of current regulations by increasing the amount of information available before granting operating authority and in order to take appropriate enforcement actions.

Based on comments to the proposal, the agency has completed an environmental assessment and it will be available for review on the date the interim final rule is published in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22371
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12702
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective	05/03/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2125-AE32.

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, P.O. Box 530870, San Diego, CA 92153-0870
Phone: 909 653-2299

RIN: 2126–AA34

1963. +SAFETY MONITORING SYSTEM AND COMPLIANCE INITIATIVE FOR MEXICO-DOMICILED MOTOR CARRIERS OPERATING IN THE UNITED STATES

Priority: Other Significant

Legal Authority: 49 USC 113; 49 USC 504; 49 USC 521(b)(5)(A); 49 USC 5113; 49 USC 31136; 49 USC 31144; 49 USC 31502; Pub. L. 107-87, Sec. 350

CFR Citation: 49 CFR 385

Legal Deadline: None

Abstract: This action would implement an accelerated safety fitness screen as part of the Motor Carrier Management Information System (MCMIS). A new screening program is being targeted to collect more information on Mexican carriers. The data will be collected and stored using the existing systems and

information gathering structures that are used for domestic carriers. The data collected will be used to oversee operations of both classes of Mexican motor carriers, those operating in the U.S.-Mexico border commercial zones and those operating in the U.S. pursuant to the various entry provisions of NAFTA. This action is significant due to anticipated public interest and safety-related issues.

Statement of Need: The Administration has stated that it intends to implement the entry provisions of the North American Free Trade Agreement (NAFTA). The FMCSA proposes a safety oversight program to ensure that FMCSA can evaluate the performance of new Mexican carriers during the first 18 months of temporary operating authority and take appropriate enforcement action, if necessary.

Summary of Legal Basis: Under the Motor Carrier Safety Improvement Act of 1999, the FMCSA was directed to grant conditional operating authority for 18 months in order to assess the safety performance of new entrants before granting permanent authority. The FMCSA is beginning this program with Mexican carriers and will expand it to all new entrants.

The Fiscal Year 2002 Department of Transportation Appropriations Act, Pub. L. 107-87, Sec. 350, limited the DOT from obligating or expending funds for the review or processing of applications resulting from this rulemaking until FMCSA and DOT completes specific tasks, including adding requirements within this rulemaking proceeding. These specific requirements have been incorporated in this proceeding.

Alternatives: The FMCSA could treat all new Mexican carriers under existing regulations. This would not assist FMCSA in ensuring that new Mexican carriers develop appropriate safety-based operating procedures or in monitoring the performance of these carriers.

Anticipated Cost and Benefits: The proposed regulations would not have a significant economic impact; however the FMCSA prepared a regulatory evaluation. The evaluation discusses a range of numbers for how many Mexican carriers would operate under the regulations costs are expected to fall between $1 and $5 million per year. The vast majority of these costs will be borne by Mexican carriers. The benefits of the regulation would include the additional data available to FMCSA on which to base enforcement strategies, plus an anticipated reduction in crashes from safety audits and increased oversight.

Risks: The purpose of the regulations is to enhance safety by providing additional opportunities for FMCSA to monitor performance by new Mexican carriers.

Based on comments to the proposal, the agency has completed an environmental assessment and it will be available for review on the date the Interim Final Rule is published in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22415
NPRM Comment Period End	07/02/01	
Interim Final Rule	03/19/02	67 FR 12758
Interim Final Rule Comment Period End	04/18/02	
Interim Final Rule Effective	05/03/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, P.O. Box 530870, San Diego, CA 92153-0870
Phone: 909 653-2299

Michael Lamm, Team Leader, Office of Enforcement and Compliance, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECE, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-9699

RIN: 2126–AA35

1964. OUT-OF-SERVICE CRITERIA

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 31133; 49 USC 31136; 49 USC 31310; 49 USC 31502; PL 104-59

CFR Citation: 49 CFR 395; 49 CFR 396; 49 CFR 1.73

Legal Deadline: None

Abstract: This action seeks public comment on the "North American Uniform Out-of-Service Criteria" (OOS Criteria). During roadside inspections, Federal, State, and local safety inspectors use the OOS Criteria as a guide in determining whether to place commercial motor vehicles (CMVs), or their drivers, "out of service." Such a status means that the CMVs or drivers are so unsafe that corrections must be undertaken before operations can resume. The FHWA is seeking public comment on the future scope and effect of the OOS Criteria, which are not part of the Federal Motor Carrier Safety Regulations (FMCSRs). In addition, the FMCSA is seeking information regarding whether it needs to formalize these guidelines pursuant to a notice and comment rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	07/20/98	63 FR 38791
ANPRM Comment Period End	09/18/98	
Extension of Comment Period	10/09/98	63 FR 54432
Comment Period End	12/08/98	
To Be Terminated	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2125-AE35.

Agency Contact: Larry Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA36

1965. FEDERAL MOTOR CARRIER SAFETY REGULATIONS; WAIVERS, EXEMPTIONS, AND PILOT PROGRAMS; RULES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31315; PL 105-178, sec 4007

CFR Citation: 49 CFR 381

Legal Deadline: Final, Statutory, December 9, 1998.

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Abstract: FMCSA is adopting regulations to implement section 4007 of the Transportation Equity Act for the 21st Century (TEA-21), concerning waivers and exemptions from the Federal Motor Carrier Safety Regulations (FMCSRs), and the Administration of pilot programs to evaluate innovative alternatives to the regulations. The regulations establish the procedures persons must follow to request waivers and to apply for exemptions from the FMCSRs, and the procedures FMCSA will use to process the requests for waivers and applications for exemptions. The regulations also codify statutory requirements concerning the agency's administration of pilot programs. This rulemaking is intended to provide procedures to ensure the timely processing of requests for waivers and applications for exemptions, and public disclosure of the procedures the agency would use in initiating and managing pilot programs. The predecessor agency to FMCSA, the FHWA, issued an interim final rule with an opportunity for public comment after publication in order to meet the statutory deadline for issuance of a final rule (180 days after date of enactment of TEA-21).

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/08/98	63 FR 67600
Interim Final Rule Effective	12/08/98	
Interim Final Rule Comment Period End	02/08/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2125-AE48.

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA41

1966. BRAKE PERFORMANCE REQUIREMENTS FOR CMVS INSPECTED BY PERFORMANCE-BASED BRAKE TESTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240, sec 1041(b); 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is proposing to amend the Federal Motor Carrier Safety Regulations (FMSCRs) to establish pass/fail criteria for use with performance based brake testers (PBBTs), which measure the braking performance of commercial motor vehicles (CMVs). The specific types of PBBTs addressed in this action are the roller dynamometer, breakaway torque tester, and flat-plate tester. This proposal would allow State and local enforcement officials to issue citations based on PBBT braking force measurements.

Timetable:

Action	Date	FR Cite
NPRM	08/09/00	65 FR 48660
NPRM Comment Period End	10/10/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary R. Woodford, Office of Bus and Truck Standards and Operations, Vehicle and Roadside Operations Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA46

1967. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; SAFETY REQUIREMENTS FOR OPERATORS OF SMALL PASSENGER-CARRYING COMMERCIAL MOTOR VEHICLES USED IN INTERSTATE COMMERCE

Priority: Other Significant

Legal Authority: 49 USC 13301; 49 USC 13902; 49 USC 31132; 49 USC 31133; 49 USC 31136; 49 USC 31502; 49 USC 31504; PL 104-88, sec 204

CFR Citation: 49 CFR 1.73; 49 CFR 390

Legal Deadline: Final, Statutory, December 9, 2000, PL 106-159, sec 212.

Abstract: FMCSA is proposing to amend the Federal Motor Carrier Safety Regulations (FMCSRs) to require that motor carriers operating commercial motor vehicles (CMVs), designed or used to transport between 9 and 15 passengers (including the driver) in interstate commerce, comply with the FMCSRs when they are directly compensated for such service, and the transportation of any passenger covers a distance greater than 75 air miles (86.3 statute miles or 138.9 kilometers). Motor carriers, drivers, and the vehicles operated by them would be subject to the same safety requirements imposed upon motorcoach operations, with the exception of the commercial driver's license, controlled substances and alcohol testing regulations. The agency is proposing that any requirements implemented be made applicable to these motor carriers 90 days after the effective date of the final rule. This action is is response to section 212 of the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	01/11/01	66 FR 2767
NPRM Comment Period End	04/11/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA52

1968. COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES; NONCOMMERCIAL MOTOR VEHICLE VIOLATIONS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 201(b); PL 106-159, sec 202(h)

CFR Citation: 49 CFR 383; 49 CFR 384

Legal Deadline: Final, Statutory, December 9, 2000, PL 106-159, sec 201(b).

Abstract: FMCSA proposes regulations specifying that a driver who holds a commercial driver's license (CDL) and is convicted of a drug- or alcohol-related offense or another offense that results in the revocation, cancellation, or suspension of the CDL, while operating a noncommercial motor vehicle, be disqualified from operating a commercial motor vehicle. This action is required by sections 201(b) and 202(h) of the Motor Carrier Safety Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	05/04/01	66 FR 22499
NPRM Comment Period End	08/02/01	
To be Merged With RIN 2126-AA60	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

Related RIN: Merged With 2126-AA60

RIN: 2126–AA55

1969. +NEW ENTRANT SAFETY ASSURANCE PROCESS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: PL 106-159, sec 210

CFR Citation: 49 CFR 385

Legal Deadline: NPRM, Statutory, PL 106-159, sec 210.

Abstract: This action will establish minimum requirements for new entrant motor carriers to ensure that they are knowledgeable about applicable Federal motor carrier safety standards. After ensuring that they are knowledgeable, the new entrants will operate for 18 months in which time they must pass a safety review in order to receive permanent operating authority. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA59

1970. COMMERCIAL DRIVER'S LICENSE STANDARDS; REQUIREMENTS AND PENALTIES; COMMERCIAL DRIVER'S LICENSE PROGRAM IMPROVEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 103(c); PL 106-159, sec 103(e); PL 106-159, sec 201(c); PL 106-159, sec 202; PL 106-159, sec 203; PL 106-159, sec 208; PL 106-159, sec 214

CFR Citation: 49 CFR 350; 49 CFR 383; 49 CFR 384

Legal Deadline: None

Abstract: This action will amend various provisions of the Commercial Driver's License (CDL) program requirements to implement changes mandated by the Motor Carrier Safety Improvement Act of 1999. Specific issues to be addressed include the following:

(1) Emergency grants to States in non-compliance with CDL requirements;

(2) Withholding MCSAP funds from States in non-compliance with CDL requirements;

(3) Disqualification for driving while suspended; Disqualified and causing a fatality;

(4) Emergency disqualification of drivers posing an imminent hazard;

(5) Expanding the definition of serious traffic violations;

(6) Expanded driver record check;

(7) New notification requirements;

(8) Prohibition on hardship license to drivers who lose base license;

(9) Penalties for violating minimum licensing requirements;

(10) Maintaining a record of all violations;

(11) Masking prohibition;

(12) Decertification of State CDL programs for non-compliance;

(13) Definition of imminent hazard;

(14) School bus endorsement.

Timetable:

Action	Date	FR Cite
NPRM	07/27/01	66 FR 39248
NPRM Comment Period End	10/25/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

Related RIN: Merged With 2126-AA55

RIN: 2126–AA60

1971. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; GENERAL AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240, sec 1041(b); 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 392; 49 CFR 393

Legal Deadline: None

Abstract: FMCSA is amending part 393 of the Federal Motor Carrier Safety Regulations (FMCSRs), Parts and Accessories Necessary for Safe Operation. The amendments are intended to remove obsolete and redundant regulations; respond to several petitions for rulemaking; provide improved definitions of vehicle types, systems, and components; resolve inconsistencies between part 393 and the National Highway Traffic Safety Administration's Federal Motor

Vehicle Safety Standards (49 CFR 571); and codify certain FMCSA regulatory guidance concerning the requirements of part 393. Generally, the amendments do not involve the establishment of new or more stringent requirements but a clarification of existing requirements.

Timetable:

Action	Date	FR Cite
NPRM	04/14/97	62 FR 18170
NPRM Comment Period Extended	06/12/97	62 FR 32066
NPRM Comment Period End	06/13/97	
Comment Period End	07/28/97	
Public Meeting	02/20/98	63 FR 8606
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA61

1972. +CERTIFICATION OF SAFETY AUDITORS, SAFETY INVESTIGATORS, AND SAFETY INSPECTORS

Priority: Other Significant

Legal Authority: PL 106-159, sec 211

CFR Citation: 49 CFR 385

Legal Deadline: NPRM, Statutory, December 9, 2000.

Abstract: This rule would require that any safety inspection, audit, or review be conducted by a certified investigator. It would give the FMCSA authority to decertify an investigator, including a third-party investigator for failure to meet the prescribed certification standards. It is required by section 211 of the Motor Carrier Safety Improvement Act of 1999. This rule is significant because of public and congressional interest in rules required by MCSIA.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/02	67 FR 12776
Interim Final Rule Comment Period End	05/20/02	
Interim Final Rule Effective	06/17/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Larry M. Minor, Chief, Vehicle and Roadside Operations, Office of Bus and Truck Standards and Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSV, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4009

RIN: 2126–AA64

1973. • +LIMITATIONS ON ISSUANCE OF COMMERCIAL DRIVERS' LICENSES WITH A HAZARDOUS MATERIALS ENDORSEMENT

Priority: Other Significant

Legal Authority: 49 USC 5103a; PL 107-56, sec. 1012

CFR Citation: 49 CFR 383

Legal Deadline: None

Abstract: This rule amends the Federal Motor Carrier Safety Regulations to prohibit States from issuing, renewing, transferring, or upgrading a Hazardous Materials Endorsement for a CDL: unless and until the U.S. Department of Justice has first conducted a background records check of the applicant; and the U.S. Department of Transportation has determined that the applicant does not pose a security risk which would warrant denial of the Hazardous Materials Endorsement. This interim final action implements Sec. 1012 of the USA Patriot Act of 2001.

This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Valerie Height, Office of Policy Plans and Regulations, Regulatory Development Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0901
Email: valerie.height@fhwa.dot.gov

RIN: 2126–AA70

1974. • PENALTIES, INSPECTION, AND DECAL DISPLAY REQUIREMENTS FOR MEXICO-DOMICILED MOTOR CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; 49 USC 31502; PL 107-87, sec. 350

CFR Citation: 49 CFR 386; 49 CFR 396

Legal Deadline: None

Abstract: FMCSA amends part 396 of the Federal Motor Carrier Safety Regulations (FMCSRs) to incorporate the requirement, as codified in parts 365 and 385, that all commercial motor vehicles operated by Mexico-domiciled motor carriers holding authority to transport property or passengers beyond the commercial zones of U.S. municipalities on the United States-Mexico border must display a Commercial Vehicle Safety Alliance (CVSA) decal issued by a CVSA-certified inspector. Adding this requirement to part 396 will enable FMCSA to assess civil penalties against Mexico-domiciled long-haul motor carriers that operate vehicles without the necessary CVSA decal. This rule also clarifies that carriers will be required to obtain the necessary inspection decal before proceeding beyond border ports of entry. By providing for more effective enforcement of the inspection and decal requirements, this rule will help to ensure that these motor carriers operate safe vehicles in the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, P.O. Box 530870, San Diego, CA 92153-0870

Phone: 909 653-2299

RIN: 2126–AA72

Department of Transportation (DOT) **Long-Term Actions**
Federal Motor Carrier Safety Administration (FMCSA)

1975. +COMMERCIAL DRIVER'S LICENSE STANDARDS; BIOMETRIC IDENTIFIER

Priority: Other Significant

Legal Authority: PL 100-690, sec 9105

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 31, 1990.

Abstract: The Truck and Bus Regulatory Reform Act of 1988 (1) required the DOT Secretary to issue regulations establishing minimum uniform standards for a biometric identification system for commercial motor vehicle (CMV) operators; and (2) authorized the Secretary to use specific funds to implement a pilot demonstration project using such a system. Alternatives including retinal eye scans and advanced fingerprint technologies were considered. After analyzing public comments to the ANPRM and reviewing demonstration project results, the FHWA, predecessor agency to the FMCSA, determined that current technology had not progressed to the point where an identification system could be established nationwide in a cost-effective manner and still provide the benefits for which a system was intended. The FHWA subsequently published an informational notice summarizing the results of the pilot study and the comments to the ANPRM to demonstrate how the technologies studied fell short of the demands in a commercial licensing environment.

Section 4011(c) of the TEA-21, 49 USC 31308 amended, requires each commercial driver's license (CDL) issued by the States after January 1, 2001, to have unique identifiers (which may include biometric identifiers); however, as a minimum, unique identifiers in CDLs must contain the name, address, and physical description of the individual issued the CDL; the social security number or other number or information to identify the individual; the class or type of CMV the individual is authorized to operate; the name of the State that issued the license, and the dates the license is valid.

FMCSA has established a pilot study to collect over 16,000 sample digital facial images and sets of fingerprints from volunteers. California is the lead State for this study. The estimated date of completion is May 2002. Therefore, no further action will occur until completion of the pilot study.

This action is significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
ANPRM	05/15/89	54 FR 20875
ANPRM Comment Period End	07/14/89	
Information Notice	03/08/91	56 FR 9925
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State

Agency Contact: Ronald Finn, Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0647

RIN: 2126–AA01

1976. COMMERCIAL LEARNER PERMITS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; PL 99-570; 49 USC 31102

CFR Citation: 49 CFR 384; 49 CFR 383; 49 CFR 386; 49 CFR 395; 49 CFR 1.73

Legal Deadline: None

Abstract: The FHWA, predecessor agency to the Federal Motor Carrier Safety Administration (FMCSA), reviewed learner permit practices of the states for processing a driver from the initial non-CDL driver to being a fully licensed CDL driver. A number of variations in state learner permit practices were found. The FHWA planned to establish more uniform practices, such as: 1) screening drivers before permitting them to initially drive a CMV without having obtained a full CDL; 2) the length of time a state allows the driver to hold a learner's permit; 3) procedures for drivers to obtain CDL training in a state other than their normal residency; 4) supervision requirements for learner permit drivers; 5) commercial driver license information systems (CDLIS) recordkeeping requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/22/90	55 FR 34478
NPRM Comment Period End	10/22/90	
NPRM Comment Period Extended to 11/30/90	10/23/90	55 FR 42741
Supplemental NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Because other regulatory changes have been made since the NPRM was published in 1990, the FMCSA intends to issue a supplemental NPRM to solicit comments on including additional requirements consistent with changes in the CDL program.

ANALYSIS: Regulatory Evaluation, 08/22/90, 55 FR 34478

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

RIN: 2126–AA03

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1977. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; GENERAL TRANSPORTATION OF HAZARDOUS MATERIALS

Priority: Other Significant

Legal Authority: 49 USC 5105; 49 USC 5109

CFR Citation: 49 CFR 390.3; 49 CFR 397; 49 CFR 1.73

Legal Deadline: Final, Statutory, November 15, 1991.

Abstract: This rulemaking will implement the statutory requirements of 49 USC 5109 and 49 USC 5105. Section 5109 addresses the establishment of motor carrier safety permit regulations for motor carriers transporting Class A or B explosives, liquefied natural gases, hazardous materials designated as extremely toxic by inhalation, or highway route controlled quantity radioactive materials. Section 5105 requires inspection of vehicles transporting those radioactive materials before each trip. The proposed rule will incorporate those provisions into the safety permit regulations. This action is considered significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	06/17/93	58 FR 33418
NPRM Comment Period End	08/16/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William A. Quade, Chief, Hazardous Materials Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ECH, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2172
Fax: 202 366-7908
Email: william.quade@fhwa.dot.gov

RIN: 2126–AA07

1978. +MINIMUM TRAINING REQUIREMENTS FOR OPERATORS AND TRAINING INSTRUCTORS OF MULTIPLE TRAILER COMBINATION VEHICLES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: PL 102-240, sec 4007(b)(2)

CFR Citation: 49 CFR 383

Legal Deadline: Final, Statutory, December 18, 1993.

Abstract: This action proposes minimum training requirements for operators of multiple trailer combination vehicles and the instructors who train these operators. The training would include certification of an operator's proficiency by an instructor who has met the requirements established by the Secretary of Transportation. This action is significant due to public interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/15/93	58 FR 4638
ANPRM Comment Period End	03/16/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Robert Redmond, Senior Transportation Specialist, State Programs Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-ESS, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5014

RIN: 2126–AA08

1979. +TRAINING FOR ENTRY-LEVEL DRIVERS OF COMMERCIAL MOTOR VEHICLES

Priority: Other Significant

Legal Authority: PL 102-240, sec 4007

CFR Citation: 49 CFR 383

Legal Deadline: NPRM, Statutory, December 18, 1992.
Final, Statutory, December 18, 1993.

Abstract: Section 4007 of the Motor Carrier Act of 1991 (title IV of the Intermodal Surface Transportation Efficiency Act of 1991) required the Department to initiate a rulemaking on the need to require training of all entry-level drivers of commercial motor vehicles. On 02/05/96, the agency submitted a report to Congress on the effectiveness of private sector efforts to ensure adequate training of all entry-level drivers. This report included a cost-benefit study of requiring training of entry-level drivers. Public comments were solicited on the report. This rulemaking action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	06/21/93	58 FR 33874
ANPRM Comment Period End	08/20/93	
Report to Congress	02/05/96	
Notice of Availability of Report	04/25/96	61 FR 18355

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The report is available through the National Technical Information Service (Order No. PB96-141536). For further information, please call 1-800-553-6847.

Agency Contact: David M. Lehrman, Attorney, Office of Policy Plans and Regulations, Division of Regulatory Development, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PRR, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0994

RIN: 2126–AA09

1980. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; SLEEPER BERTHS ON MOTOR COACHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: Comments have been sought on the suitability of existing driver sleeper berth regulations for motor coaches and possible amendment to account for design differences between trucks and motor coaches.

Timetable:

Action	Date	FR Cite
ANPRM	01/12/94	59 FR 1706
ANPRM Comment Period End	03/14/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Philip Hanley, Ofc of Truck and Bus Standards and Operations, Commercial Passenger Carrier Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSB, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6811

RIN: 2126–AA12

1981. RULES OF PRACTICE FOR MOTOR CARRIER PROCEEDINGS; INVESTIGATIONS; DISQUALIFICATIONS AND PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 113; 49 USC 307

CFR Citation: 49 CFR 301; 49 CFR 302; 49 CFR 303; 49 CFR 304; 49 CFR 385; 49 CFR 386

Legal Deadline: None

Abstract: FMCSA proposes to amend its rules of practice for motor carrier safety, hazardous materials, and other enforcement proceedings, motor carrier safety ratings, driver qualification proceedings and its schedule of penalties for violations of the FMCSRs and the Hazardous Materials Regulations. FMCSA further proposes to add provisions on investigative authority and procedures and general motor carrier responsibilities. These rules would increase the efficiency of the procedures, enhance due process and the awareness of the public and regulated community, and accommodate recent programmatic changes. The rules would apply to all motor carriers, other business entities and individuals involved in motor carrier safety and hazardous materials administrative actions on the effective date of the final rule.

Timetable:

Action	Date	FR Cite
NPRM	04/29/96	61 FR 18866
NPRM Comment Period End	07/29/96	
SNPRM	10/21/96	61 FR 54601
SNPRM Comment Period End	11/20/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: A final rule regarding adjustments to civil penalties due to inflation was published under a separate rulemaking action on 3/13/98.

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RIN: 2126–AA15

1982. PARTS AND ACCESSORIES NECESSARY FOR SAFE OPERATION; TELEVISION RECEIVERS AND DATA DISPLAY UNITS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-240; 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 393; 49 CFR 1.73

Legal Deadline: None

Abstract: The FHWA, predecessor agency to the FMCSA, proposed to amend the Federal Motor Carrier Safety Regulations (FMCSRs) concerning television viewers or screens in commercial motor vehicles. The agency was concerned that the current restrictions on locations of such devices may have the unintended effect of discouraging use of certain Intelligent Transportation System (ITS) technologies, such as collision avoidance and traveler information systems, which could improve the safety and efficiency of commercial vehicle operations. In response to comments to the April 3, 1993 NPRM (61 FR 14733) to rescind the regulation concerning television viewers or screens, FMCSA is considering an SNPRM to propose retaining an explicit prohibition against television viewers or screens but revising the regulation to ensure that it does not impede the development and use of ITS-related technologies.

Timetable:

Action	Date	FR Cite
NPRM	04/03/96	61 FR 14733
NPRM Comment Period End	06/03/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gladys Cole, Chief, Insurance Compliance, Department of Transportation, Federal Motor Carrier

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RIN: 2126–AA24

1984. GENERAL JURISDICTION OVER FREIGHT FORWARDER SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 13701

CFR Citation: 49 CFR 373; 49 CFR 1.73

Legal Deadline: None

Abstract: This action gives notice of the FMCSA's general jurisdiction over all segments of the freight forwarding industry (not just household good freight forwarders), in accordance with the ICC Termination Act of 1995, proposes changes to existing regulations to comport with those mandated by Congress, and clarifies the FMCSA's jurisdiction over freight forwarders in other areas.

Timetable:

Action	Date	FR Cite
NPRM	01/28/97	62 FR 4096
NPRM Comment Period End	03/31/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Transferred from RIN 2125-AE00.

Agency Contact: Michael Falk, Office of the Chief Counsel, Department of Transportation, Federal Motor Carrier Safety Administration, MC-CC, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0834

RIN: 2126–AA25

1985. +ENGLISH LANGUAGE REQUIREMENT; QUALIFICATIONS OF DRIVERS

Priority: Other Significant

Legal Authority: 49 USC 504; 49 USC 31133; 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 391; 49 CFR 1.73

Legal Deadline: None

Abstract: The current regulation is little changed from the original rule adopted in 1936. The American Civil Liberties Union (ACLU) has written to the Department asserting that the regulation, as written, is overly broad and subject to arbitrary enforcement, causing potential interference with constitutional guarantees of due process and equal protection. The ACLU requested an opportunity to submit a comprehensive analysis of this issue. The ANPRM was intended to provide the ACLU with such an opportunity and to open this issue for public comment. The FMCSA seeks to modify its current regulation to require drivers to possess the basic functional communication/comprehension ability necessary to ensure safety, consistent with applicable law. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	08/26/97	62 FR 45200
ANPRM Comment Period End	10/27/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Transferred from RIN 2125-AE19.

Agency Contact: Robert Schultz, Office of Truck and Bus Standards and Operations, Div. of Driver and Carrier Operations, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSD, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4001

RIN: 2126–AA31

1986. +GENERAL REQUIREMENTS; INSPECTION, REPAIR, AND MAINTENANCE; INTERMODAL CONTAINER CHASSIS AND TRAILERS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 504; 49 USC 31133; 49 USC 31136; 49 USC 31502

CFR Citation: 49 CFR 1.73; 49 CFR 390; 49 CFR 396

Legal Deadline: None

Abstract: In response to a petition for rulemaking filed by the American Trucking Association, Inc. (ATA) and the ATA Intermodal Conference (the petitioners), the FHWA, the predecessor agency to the FMCSA, agreed to consider revisions to the requirements in parts 390 and 396 of the Federal Motor Carrier Safety regulations (FMCSRs) that place upon motor carriers the responsibility for maintaining intermodal container chassis and trailers. These regulations provide the requirements for the inspection, repair and maintenance of commercial motor vehicles. This action is considered significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	02/17/99	64 FR 7849
ANPRM Comment Period End	04/19/99	
Comment Period End	05/05/99	64 FR 24128
Comment Period Extended	08/30/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 2126–AA38

1987. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; ZERO-BASE REVISION

Priority: Other Significant

Legal Authority: 49 USC 113; 49 USC 501; 49 USC 504; 49 USC 13101; 49 USC 13301; 49 USC 13902; 49 USC 31101; 49 USC 31132; 49 USC 31136; 49 USC 31301; 49 USC 31502; PL 104-88

CFR Citation: 49 CFR 325; 49 CFR 393; 49 CFR 398; 49 CFR 399; 49 CFR 1.73

Legal Deadline: None

Abstract: FMCSA is revising the Federal Motor Carrier Safety Regulations (FMCSRs) and related regulations. In 1992, a "Zero-Base Review" was launched to improve the organization, format and clarity of the FMCSRs and collateral regulations. This proposal represents the most recent phase of a "zero-based" review of motor carrier safety regulations to establish more effective, enforceable requirements. This action is the product of that review. It proposes provisions that could affect public safety and potentially raises novel policy issues concerning federalism.

FMCSA plans to release the new rulebook in an incremental fashion to allow an ordered approach to analyzing comments. We will ensure that the final product is a unified, consistent and compatible rulebook. The completed rulebook would constitute a major rewrite of the FMCSRs, including significant format and organizational changes, as well as a significant decrease in administration, recordkeeping, and paperwork burdens. This action is significant under the regulatory policies and procedures of the DOT because of substantial public interest concerning motor carrier safety issues.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Previous rulemakings from this comprehensive effort have included removing and redesignating redundant or obsolete safety regulations (RIN 2125-AD55 and RIN 2125-AD28) and more substantive and complex revisions of the FMCSRs (RIN 2125-AD72). This action is also incorporating the issues contained in 2125-AD64.

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RIN: 2126–AA39

1988. +POST-ACCIDENT CONTROLLED SUBSTANCES AND ALCOHOL TEST RESULTS; REPORTING REQUIREMENTS FOR THE FATALITY ANALYSIS REPORTING SYSTEM

Priority: Other Significant

Legal Authority: PL 74-255; PL 98-554; PL 99-570; PL 102-143; PL 106-159; 49 USC 31136; 49 USC 31301 et seq; 49 USC 31502

CFR Citation: 49 CFR 1.73; 49 CFR 382

Legal Deadline: None

Abstract: FMCSA is considering amending its controlled substances and alcohol testing regulations to require employers subject to those requirements to report certain information to State-employed Fatality Analysis Reporting System (FARS) analysts concerning fatal crashes/accidents. Currently, only FMCSA and State officials with regulatory authority over the employer or any of its drivers may obtain information concerning controlled substances and alcohol testing results and records.

This rulemaking would propose to require employers to provide information to FARS analysts, irrespective of their State authority, working under contract with the National Highway Traffic Safety Administration (NHTSA). The information employers would be required to submit to the analysts would enable NHTSA, working in conjunction with the FMCSA, to compile and analyze data on the incidence of commercial motor vehicle (CMV) drivers who test positive for controlled substances and/or alcohol use in post-accident tests conducted after fatal crashes.

The data would also be used by FMCSA to help assess the effectiveness of its controlled substances and alcohol testing regulations. This action is intended to improve the FMCSA's and NHTSA's CMV crash data and assess the need for new initiatives to further reduce the use of controlled substances and alcohol by CMV drivers.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: Local, Federal

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RIN: 2126–AA50

1989. +FEDERAL MOTOR CARRIER SAFETY REGULATIONS; INTERSTATE SCHOOL BUS SAFETY

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 105-178, sec 4024

CFR Citation: 49 CFR 390; 49 CFR 391; 49 CFR 392; 49 CFR 393; 49 CFR 395

Legal Deadline: Other, Statutory, December 9, 1999, PL 105-178, sec. 4024.

Abstract: FMCSA is considering making the FMCSRs applicable to all interstate school transportation operations by local educational agencies. This action is in response to sec. 4024 of the Transportation Equity Act for the 21st Century (TEA-21) which mandates the FMCSA to make a determination whether to make the FMCSRs applicable to such operations. The FMCSA requests comments, data, and information to assist the agency in making this determination.

This action is considered significant because of the anticipated substantial interest by the public sector and private sector if the FMCSA expands the applicability of the FMCSRs to government operated school buses in interstate commerce.

Timetable:

Action	Date	FR Cite
ANPRM	10/22/01	66 FR 53373
ANPRM Comment Period End	01/22/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Philip Hanley, Ofc of Truck and Bus Standards and Operations, Commercial Passenger Carrier Division, Department of Transportation, Federal Motor Carrier Safety Administration, MC-PSB, 400 Seventh Street SW., Washington, DC 20590

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1990. • SECURITY AND HAZARDOUS MATERIALS REQUIREMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 322; 49 USC 5112 and 5125; 49 USC 31136 and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: The ANPRM would discuss security concerns involving transporting high risk hazardous materials and steps that DOD and DOE have taken to protect their shipments such as escorts, pre-notification of States, and satellite tracking. It would also discuss other technology such as electronic ignition locks that could improve HM security. FMCSA would ask for comments on the feasibility of mandating one or more of these strategies for some segment (the highest risk) of HM transportation. The agency woould also ask for comments on the need for "safe havens" or the need for standards about what can be a safe haven. Currently, there are no standards for safe havens.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 2126–AA71

1991. • +HAZARDOUS MATERIALS TIRE CHECKS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 31136 and 31502; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: This action would impose to eliminate the periodic tire inspections for vehicles carrying HM because of technological advances related to tire fires and because of terrorist concerns associated with numerous stops. This action is considered significant because of substantial public and congressional interest and safety implications.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2126–AA74

1992. • +HAZARDOUS MATERIAL ROUTE PLANS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 5112 and 5125; 49 CFR 1.73

CFR Citation: 49 CFR 397

Legal Deadline: None

Abstract: HM carriers would be required to prepare and sign a route plan. The plan must be in the posession of the driver of any Table 1 hazardous material (explosives, radioactive materials, poison by inhalation hazard materials).

This action is significant because of substantial public and congressional interest and safety implications..

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 2126–AA75

Department of Transportation (DOT)
Federal Motor Carrier Safety Administration (FMCSA)

Completed Actions

1993. +REVISION OF REGULATIONS AND APPLICATION FORM FOR MEXICO-DOMICILED MOTOR CARRIERS TO OPERATE IN U.S. MUNICIPALITIES AND COMMERCIAL ZONES ON THE U.S.-MEXICO BORDER

Priority: Other Significant

Legal Authority: 49 USC 13907

CFR Citation: 49 CFR 368; 49 CFR 1.73

Legal Deadline: None

Abstract: This action proposed collection of some new information and also proposed revisions to the registration application form filed by one of the two classes of Mexico-domiciled motor carriers that operate in the U.S. This class of carriers operates within the U.S.-Mexico border commercial zones which existed before NAFTA. This action is intended to increase the information available concerning these Mexican property carriers' safety profiles. This action is significant because of substantial public interest.

Statement of Need: The Administration has announced its commitment to implementing the entry provisions of the North American Free Trade Agreement (NAFTA). Changes are necessary so that FMCSA will have an accurate data base of carriers that operate solely in the U.S. municipalities and commercial zones adjacent to Mexico in Texas, New Mexico, Arizona, and California. Other changes are necessary to reflect the transfer of motor carrier functions to FMCSA.

Summary of Legal Basis: Sections 13301 and 13902 of Title 49 of the U.S. Code authorize the award of certificates of registration to certain Mexico-domiciled motor carriers. Since 1982, significant limitations have been in place concerning operations by Mexico-domiciled motor carriers in the United States. A moratorium on grants of operating authority under the jurisdiction of the former Interstate Commerce Commission has existed. Access outside the ICC's jurisdiction has been allowed only through certificates of registration to operate in the limited areas of municipalities and commercial zones on the United States-Mexico border as well as for certain private carriers and carriers of exempt goods who operate beyond this limited area.

Alternatives: One alternative would be to continue using the current, obsolete regulations. This would be confusing for carriers seeking to obtain the correct type of registration. Another alternative would be to have a single application process for all Mexico-domiciled motor carriers. This would make it difficult for FMCSA to maintain useful safety and economic data on two different types of trucking activity.

Anticipated Cost and Benefits: This proposal would require all current holders of certificates of registration to refile with FMCSA. We have estimated that between 4500 and 11,787 Mexico-domiciled carriers may need to respond to the regulations. It is expected that completing the form would take approximately four hours. In addition, these carriers would have to update data every two years. This will allow FMCSA to maintain more accurate data that is increasingly tied to safety enforcement. The overall costs of this rule are expected to be extremely small.

Risks: The purpose of this rulemaking is to enhance safety by improving FMCSA's data bases and ability to review the safety performance of the Mexico-domiciled carriers covered by the regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/03/01	66 FR 22328
Comment Period End	07/02/01	
Final Rule	03/19/02	67 FR 12652
Final Rule Effective	04/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Joanne Cisneros, Transborder Office, Department of Transportation, Federal Motor Carrier Safety Administration, P.O. Box 530870, San Diego, CA 92153-0870
Phone: 909 653-2299
RIN: 2126–AA33

1994. MOTOR CARRIER IDENTIFICATION REPORT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-159, sec 217

CFR Citation: 49 CFR 385

Legal Deadline: Final, Statutory, December 9, 2000, PL 106-159, sec 217.

Abstract: FMCSA amended the Federal Motor Carrier Safety Regulations (FMCSRs) to revise the requirements for filing the Motor Carrier Identification Report (MCS-150). This action is in response to the Motor Carrier Safety Improvement Act of 1999 (MCSIA). Section 217 of MCSIA required FMCSA to require periodic updating, not more frequently than once every 2 years, of the Motor Carrier Identification Report filed by each motor carrier conducting operations in interstate or foreign commerce. These motor carriers are required to file this report prior to commencing operations. As a result of this action, motor carriers are required to file an update of their report every 24 months.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/24/00	65 FR 70509
Interim Final Rule Comment Period End	01/23/01	
Final Rule	03/01/02	67 FR 9410
Final Rule Effective	04/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2126–AA57

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Prerule Stage

1995. REVIEW: ODOMETER FRAUD

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 580

Legal Deadline: None

Abstract: This review involves analysis of the incident rates and costs of odometer fraud and an assessment of State and Federal efforts to combat odometer fraud. To complete this review, the agency requested permission to collect a sample of odometer readings of registered passenger cars that are less than 10 years old from vehicle dealers, distributors, vehicle title files, and State Department of Motor Vehicle agencies. Congress directed the agency to conduct this review.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/95	
Collection of Information	09/23/96	61 FR 49809
Comment Period End	11/11/96	
Collection of Information	06/06/97	62 FR 31186
Comment Period End	07/07/97	
End Review	11/00/02	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

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RIN: 2127–AF53

1996. REVIEW: AMERICAN AUTOMOBILE LABELING ACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 32304

CFR Citation: 49 CFR 583

Legal Deadline: None

Abstract: The American Automobile Labeling Act requires new passenger cars and light trucks, beginning October 1, 1994, to bear labels providing information on the extent to which their parts are of domestic origin. The objective of this review is to determine the extent to which new-vehicle buyers know about, understand and use this information, and to estimate the effect of the labels on vehicle production and sales.

Timetable:

Action	Date	FR Cite
Begin Review	12/01/95	
Collection of Information	07/24/97	62 FR 39886
Comment Period End	09/22/97	
Collection of Information	02/18/98	63 FR 8249
Collection of Information	02/26/98	63 FR 9897
Technical Report	03/06/01	66 FR 13625
End Review	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: In a survey of 646 recent or imminent new-vehicle buyers, over 75 percent were unaware of the existence of automobile parts content labels. Among those who had read the labels, many said they used the country-of-assembly information, but none said they used the numerical U.S./Canadian parts content score. Overall U.S./Canadian parts content in new cars and light trucks dropped from an average of 70 percent in model year 1995 to 67.6 percent in 1988. However, it increased from 47 to 59 percent in transplants while dropping from 89 to 84 percent in Big 3 vehicles.

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RIN: 2127–AG18

1997. REVIEW: HEAVY TRUCK CONSPICUITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is conducting a study to evaluate the safety effects of the conspicuity systems requirement (section 5.7) of Federal Motor Vehicle Safety Standard No. 108. To carry out the study, the agency had special motor vehicle crash data collected by the Florida Highway Patrol and the Pennsylvania State Police.

Timetable:

Action	Date	FR Cite
Begin Review	09/01/95	
Collection of Information	07/01/96	61 FR 33891
Comment Period End	08/30/96	
Technical Report	05/04/01	66 FR 22640
End Review	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Retroreflective tape enhances the visibility of heavy trailers in the dark. The tape reduces side and rear impacts by other vehicles into trailers by 29 percent in dark conditions (including dark-not-lighted, dark-lighted, dawn and dusk). In dark-not-lighted conditions, the tape reduces side and rear impacts by 41 percent. When all heavy trailers have the tape, it will prevent an estimated 191-350 fatalities, 3,100-5,000 injuries and 7,800 crashed per year.

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RIN: 2127–AG19

1998. MOTORCYCLE MOUNTED REFLEX REFLECTOR HEIGHT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering allowing a lower minimum mounting height for side reflex reflectors on motorcycles. The intent is to harmonize United States lighting safety standards with European and Asian reflector position regulations and improve the flow of trade by creating "windows of harmonization" that will allow manufacturers to market "common" vehicles in global markets.

Timetable:

Action	Date	FR Cite
Agency Decision	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5280
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RIN: 2127–AG92

1999. CHILD RESTRAINTS FOR OLDER CHILDREN

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested

comments on whether the child restraint standard should be amended to facilitate the production of lap belt-installed booster seats and other child restraints for children weighing over 18 kilograms, such as by allowing use of a tether in some of the compliance tests.

Timetable:

Action	Date	FR Cite
Request for Comment	07/07/99	64 FR 36657
Comment Period End	09/07/99	
Agency Decision	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH14

2000. EJECTION MITIGATION USING ADVANCED GLAZING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: In response to the Intermodal Surface Transportation Efficiency Act of 1991, the agency requested comments on the report titled "Ejection Mitigation Using Advanced Glazing: Status Report II." This report is to inform the public about the agency's research findings to date on advanced glazing materials that may prevent ejection on vehicle occupants through motor vehicle windows during crashes.

Timetable:

Action	Date	FR Cite
Request for Comments	07/19/00	65 FR 44710
Comment Period End	11/16/00	
Agency Decision	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH50

2001. REVIEW: HEAD RESTRAINTS FOR LIGHT TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: This standard requires pick-up trucks, vans, and sport utility vehicles with gross vehicle weight of 10,000 pounds or less, manufactured after September 1, 1991, to have head restraints or high seatbacks for the driver and right-front passenger. The agency will compare the occupant injury rates in rear-crashes of trucks equipped with head restraints and trucks not equipped with head restraints. The cost of the standard will also be established. This regulation was selected for review of its costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	09/29/99	
Technical Report	05/10/01	66 FR 23974
End Review	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AH98

2002. ADAPTATION OF INSTRUMENTED LOWER LEGS FOR HYBRID III MALE AND FEMALE ADULT DUMMIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing the use of crash test dummies with instrumented lower legs to assess the crashworthiness and the potential of lower limb injuries to occupants of passenger cars, vans, light trucks, and sport utility vehicles. The new legs would be retrofits for un-instrumented legs in current Hybrid III male and female adult size dummies. The legs will be used to monitor both the inertial impact and floor pan intrusion effects upon injury potential to the knees, tibia, ankle and feet. The new legs will permit the agency to assess the injury potential to the lower legs in current motor vehicles during crashes and also enable the vehicle manufacturers to design and construct vehicles that will minimize lower limb injuries.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI39

2003. • RETROACTIVE CERTIFICATION (POLICY STATEMENT)

Priority: Info./Admin./Other

Legal Authority: 49 CFR 322; 49 CFR 30111; 49 CFR 30115; 49 CFR 30166; 49 CFR 32502; ...

CFR Citation: 49 CFR 567

VOL 67 ISS 92 MY 13 2002 UMI

DOT—NHTSA — **Prerule Stage**

Legal Deadline: None

Abstract: Policy statement will detail circumstances under which the agency will allow retroactive certification of heavy trucks and buses manufactured for use in Canada and Mexico.

Timetable:

Action	Date	FR Cite
Request for Comments	03/19/02	67 FR 12790
Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI59

2004. • EVENT DATA RECORDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined:

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In the past several years, there has been considerable interest from the safety community in establishing requirements for Event Data Recorders (EDRs). We believe it is timely to consider what role NHTSA should take in implementing EDRs in motor vehicles. Recently, NHTSA received a petition requesting that NHTSA initiate rulemaking to require the installation of EDRs in new vehicles. The agency decided to issue a Federal Register notice asking for comments. NHTSA will decide what to do after review of comments and other related information.

Timetable:

Action	Date	FR Cite
Request for Comments	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 2127–AI72

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Proposed Rule Stage

2005. PROCEDURES FOR CONSIDERING ENVIRONMENTAL IMPACTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321 et seq (National Environmental Policy Act-NEPA)

CFR Citation: 49 CFR 520

Legal Deadline: None

Abstract: NHTSA's regulation will be reviewed and revised, as necessary, where it conflicts with or is duplicative of the regulations of Council on Environmental Quality (CEQ), 40 CFR parts 1500-1508, and with DOT Order 5610.1C, each of which implements the National Environmental Policy Act (NEPA), 42 USC 4321 et seq.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Wood, Division Chief, Rulemaking Division, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AB79

2006. SEATING SYSTEMS PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.207

Legal Deadline: None

Abstract: Environmental Research and Safety Technologists of Flagstaff, AZ, petitioned the agency to reexamine the seatback performance requirements of the standard in rear impact crashes.

Timetable:

Action	Date	FR Cite
ANPRM	10/04/89	54 FR 40896
ANPRM Comment Period End	12/04/89	
Request for Comments	11/23/92	57 FR 54958
Comment Period End	01/22/93	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Petitions for rulemaking were granted 07/24/89. See a related rulemaking action involving these petitioners under RIN 2127-AC57. The first part of the research is complete. A computer model and a prototype seat were developed. Information on this research is available in the docket along with a report on crash data analysis. The agency is currently evaluating the research results and conducting vehicle seat testing.

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RIN: 2127–AD08

DOT—NHTSA — **Proposed Rule Stage**

2007. CERTIFICATION REQUIREMENTS OF MULTISTAGE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 567; 49 CFR 568; 49 CFR 1.50

Legal Deadline: None

Abstract: The agency proposed to amend the certification requirements that apply to incomplete vehicles other than chassis-cabs. Incomplete vehicles are vehicles that include at least a frame and chassis structure, power train, steering system, suspension system, and brake system, but need further manufacturing performed on them to become completed vehicles. The agency proposed to extend the certification requirements currently applying to chassis-cabs to all types of incomplete vehicles. The agency recognizes that manufacturers who build vehicles in more than one stage are faced with somewhat different problems than manufacturers who build vehicles in a single stage, especially when it comes to certifying vehicles to meet Federal Motor Vehicle Safety Standards. The agency held a public meeting to listen to the views of these groups and others with respect to improving the vehicle certification process. The agency established a negotiated rulemaking advisory committee to develop recommended amendments to the existing regulations. The agency will publish the findings and recommendations of the negotiated rulemaking advisory committee and request comments from the public.

Timetable:

Action	Date	FR Cite
NPRM	12/03/91	56 FR 61392
NPRM Comment Period End	01/31/92	
Announced Public Meeting	11/17/95	60 FR 57694
Notice of Intent	05/20/99	64 FR 27499
Notice of Formation of Advisory Committee	11/26/99	64 FR 66447
Notice of Meetings	02/07/00	65 FR 5847
Notice	04/19/00	65 FR 20936
SNPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The agency has published a list of scheduled meetings.
ANALYSIS: Regulatory Evaluation, 12/03/91, 56 FR 61392

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AE27

2008. CONVEX CROSS-VIEW MIRRORS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency requested comments on the issue of rear mounted cross-view mirrors on light and medium duty trucks for the purpose of eliminating the blind spot directly behind the vehicle. The petitioner requested that these mirrors be mandated to eliminate backing accidents where children could be seriously injured or killed. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	06/17/96	61 FR 30586
Comment Period End	10/15/96	
ANPRM	11/27/00	65 FR 70681
ANPRM Comment Period End	01/26/01	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG41

2009. UPGRADE ROOF CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to upgrade the roof crashworthiness particularly since a larger percentage of American vehicles consist of light duty and utility vehicles, a class of vehicles more prone to rollover accidents. Petition was granted.

Timetable:

Action	Date	FR Cite
Request for Comments	10/22/01	66 FR 53376
Comment Period End	12/06/01	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG51

2010. HYBRID III 95TH PERCENTILE MALE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572; 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is examining the possibility of proposing specifications for a new 95th percentile male Hybrid III size test dummy for possible use in test procedures being proposed in amendments to Federal Motor Vehicle Safety Standard No. 208. The new test dummy and procedures are being proposed to facilitate the development and introduction of new advanced air

bags and other types of advanced restraints technologies for crash protection in frontal impacts.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG79

2011. BUY AMERICAN REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The agency is proposing to exempt certain purchases by grantees from the requirements of the Department of Transportation's Buy American provisions to streamline and improve the grant process. These proposed exemptions will include small purchases not to exceed the current small purchase threshold.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Donaldson, Senior Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AG99

2012. POLITICAL SUBDIVISION PARTICIPATION IN STATE HIGHWAY SAFETY PROGRAMS AND STATE HIGHWAY SAFETY AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 402

CFR Citation: 23 CFR 1250; 23 CFR 1251

Legal Deadline: None

Abstract: The agency is proposing to amend certain provisions concerning the State Highway Safety Programs to streamline them, address statutory changes, and delete obsolete or unnecessary requirements.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: John Donaldson, Senior Attorney, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH00

2013. DEFINITION OF COMMUNITY TRANSPORTATION VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 9 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to amend various sections of part 571 to create a new vehicle type, tentatively called community transportation vehicles, that will have to meet the crashworthiness standards applicable to school buses, but will not have to meet some of the crash avoidance standards (i.e., stop arms, flashing lights, etc.). This would allow manufacturers to certify vehicles that will be less expensive and as safe as a school bus for transportation of Head Start students because we have tentatively decided that the school bus crash avoidance features are unnecessary when there is no curb-side pickup.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH23

2014. METRIC CONVERSION—PHASE III

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; PL 100-418, sec 5164

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: The agency is amending selected Federal motor vehicle safety standards by converting English measurements in those standards to metric measurements. This rulemaking is the third and final in a series that the agency will undertake to implement the Federal policy that the metric system is the preferred system of weights and measures for U.S. trade and commerce. The conversions are not intended to change the stringency of the affected Federal motor vehicles safety standards.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Noble Bowie, Director, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0842

RIN: 2127–AH27

2015. UPGRADE DOOR RETENTION PERFORMANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: Based upon annual average estimates from the 1988 through 1996 Fatal Analysis Reporting System (FARS) and the National Automotive Sampling System (NASS), there is an annual average of 2,515 fatalities and 1,882 serious injuries due to door ejections. Side door ejections are the second leading cause of ejections in all crashes, superseded only by ejections through fixed glazing. One of the activities of agency rollover research focuses on reducing injuries and fatalities resulting from side door ejections. This research has led the agency to identify potential significant solutions to mitigating a substantial number of these fatalities and injuries by improving side door retention performance. Therefore, the agency is proposing to upgrade the door retention requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH34

2016. ADMINISTRATIVE REWRITE OF THE LIGHTING REQUIREMENTS OTHER THAN HEADLAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to rewrite the reflective devices and associated equipment requirements to make the standard more readable and understandable. The standard has grown over the last 30 years by the incorporation of dozens of amendments. The document has become unwieldy to use and the agency decided to rewrite it to seperate it into sections that address each lighting function separately. These sections will state the basic performance necessary for each lighting function and for lamp installation on various vehicle types. The rewrite will continue to reference Society of Automotive Engineers (SAE) and other standards and recommended practices for test procedures if too lengthy to incorporate changes. Moreover, it will codify various agency interpretations of its rules to make the standard more explicit and objective. The administrative rewrite of the headlamp regulations can be found under RIN 2127-AG87.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH37

2017. EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30113

CFR Citation: 49 CFR 556

Legal Deadline: None

Abstract: Present regulation requires a petitioner to submit data "supporting its petition" which advocates excusing it from its notification and remedial obligations. Because the petitioner may have pertinent data relevant to the agency's decision that would not support granting it, the agency is proposing a clarification that all data pertaining to the subject in the possession of the petitioner be part of the petition. The agency also is proposing the petitioner provide a full and accurate analysis of its petition and certify that it is accurate and complete. NHTSA had deferred action on this rulemaking action on 8/2/01, to allow it to focus its limited resources on the defects and noncompliance related rulemaking actions required by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AH58

2018. COMPLIANCE AND ENFORCEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: The agency is proposing to codify our long-standing general policy that motor vehicles and items of motor vehicle equipment must be cable of satisfying the requirements of each particular standard or regulation with the adjustable components of the vehicle or vehicle equipment adjusted to any position they can occupy while the vehicle is being operated unless the particular standard or regulation specifies otherwise or the manufacturer explicitly warns against placing the equipment or vehicle in that position. The agency is also proposing that where a standard provides manufacturers with more than one compliance option, manufacturers must

select which compliance option(s) they are certifying to by the time they certify a vehicle or equipment item.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen Wood, Division Chief, Rulemaking Division, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AH63

2019. ACCELERATOR CONTROL SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.124

Legal Deadline: None

Abstract: The agency reviewed this standard and published a "Request for Comment" to obtain information on electronic accelerator controls. After reviewing the comments received on this notice, the agency plans to propose a revision of the standard that will make explicit the application of the standard to electronic accelerator controls and the electric vehicles. The proposal will recognize that electronic engine controls vastly increase the ways manufacturers can achieve fail-safe performance in the event of a disconnection or severance of the accelerator control system and will propose a number of alternative compliance tests for fail-safe performance to avoid design restrictions.

Timetable:

Action	Date	FR Cite
Request for Comments	12/04/95	60 FR 62061
Comment Period End	02/02/96	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH71

2020. +FRONTAL OFFSET PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is considering establishing a Federal motor vehicle safety standard for high speed frontal offset crash testing. The frontal offset test is a crash test for automobiles and light trucks in which the subject vehicles are run into a deformable honeycomb barrier. The barrier contacts only 40 percent of the front of the vehicle simulating an off-center frontal collision. The agency is considering adding the offset test to the frontal occupant protection standard to measure vehicle structural integrity and reduce the number and severity of lower-body injuries.

Statement of Need: While the Federal motor vehicle safety standards already contain a frontal crash test, injuries and fatalities still occur in various types of frontal crashes. The European Union determined that the best test for frontal occupant protection would be an offset test with belted test dummies. As part of the House of Representatives Conference Report 104-785, to accompany H.R. 3675, the National Highway Traffic Safety Administration was directed on September 16, 1996, to conduct research "...toward establishing a Federal motor vehicle safety standard for frontal offset crash testing." Such a standard would be largely harmonized with the European Union frontal crash standard. Subsequent research results with the 50th percentile male and the 5th percentile female Hybrid III dummies suggest that additional safety benefits would be provided under the offset test conditions.

Summary of Legal Basis: Section 30111, title 49 of the United States Code, states the Secretary shall prescribe motor vehicle safety standards. As part of the House of Representatives Conference Report 104-785, to accompany H.R. 3675, the National Highway Traffic Safety Administration was directed on September 16, 1996, to conduct research "...toward establishing a Federal motor vehicle safety standard for frontal offset crash testing."

Alternatives: The agency will focus on existing test procedures. However, the agency is working through the national and international biomechanical engineering community to develop better test devices such as improved dummy legs. Comments will be sought on the best dummy designs in the agency's proposal.

Anticipated Cost and Benefits: A report prepared for the Australian Government estimates that adding an offset test may result in a 15 percent reduction in "Harm." Harm is a calculation of the cost of trauma and is the product of the frequency of injury and cost to the community. Most of these benefits would be seen in reduction in lower body and leg injuries. The agency has not determined the specific benefits of this test procedure.

The agency estimates that for vehicles that cannot currently pass this test, vehicle modifications would cost $14 per vehicle. Based on an estimate that 25 percent of the fleet would need to be modified, the total annual cost to the consumers would be $60 million dollars.

Risks: Current motor vehicles provide numerous occupant protection systems, such as safety belts and strategically-placed energy absorption materials such as foam padding. However, an estimated 3,300 people per year are killed and 400,000 people per year are injured in frontal offset crashes.

The agency knows of no disadvantages to implementing this requirement.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH73

2021. SPECIAL PURPOSE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the standard for new trailers and semitrailers with a Gross Vehicle Weight Rating (GVWR) of 4,536 kilograms (10,000 pounds) or more be equipped with a rear impact guard by revising the definition of "special purpose vehicles." These are vehicles with rear mounted liftgates that operate by swinging through the area or reside in any part of the area that is designated for the horizontal member of the rear impact guard.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH75

2022. BRAKE HOSES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.106

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to adopt portions of the brake component Federal safety provisions that are now in the Federal Highway Administration regulations into the agency's brake regulation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH79

2023. LOW-SPEED VEHICLE PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.500

Legal Deadline: None

Abstract: Low-speed vehicles (LSV) have a maximum speed of between 20 and 25 miles per hour (mph). These vehicles are required to have certain equipment some of which does not have any performance requirements. The agency is proposing to set performance criteria for the various safety systems and hardware necessary for use on these vehicles.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard L. Van Iderstine, Division Chief, Visibility and Control Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5280

RIN: 2127–AH80

2024. HEADLAMP GLARE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The current standard sets minimum and maximum intensities for headlamps to ensure that the two most important aspects of head lighting performance are balanced. These often conflicting aspects are (1) to assure the driver of the vehicles sees as much of the roadway possibie, while (2) minimizing glare for other drivers using the road. The balance the agency has chosen of these two areas has changed very little since 1970. The agency has been receiving a significant number of public complaints about glare from other vehicles' headlamps. In light of significant technological changes, including improved halogen lamps and high intensity discharge lamps, fleet mix changes (nearly half of all new vehicles sold in 1998 were light trucks, with higher-mounted headlamps), and an increase in the age of the population, the agency wants to reexamine the balance it has chosen between seeing distance and glare to see if it is still appropriate. The agency asked the public for comments and information to begin exploring this area more fully.

Timetable:

Action	Date	FR Cite
Request for Comments	09/28/01	66 FR 49594
Reopen Comment Period	11/30/01	66 FR 59769
Comment Period End	12/22/01	
Comment Period End	01/28/02	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH81

2025. STOWABLE OR FOLD-AWAY CHILD RESTRAINT ANCHORAGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action proposes requests by petitions for reconsideration to permit stowing and fold-away anchors on vehicles. The proposal would set performance and other requirements for such anchors. This pertains to the requirements established in the final rule published March 5, 1999 (64 FR 10785, RIN 2127-AG50).

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Other issued raised by the petitioners are being addressed in RIN 2127-AH65 - Child Restraint Anchorage Systems - Part 1 and RIN 2127-AH86 - Child Restraint Anchorage Systems - Part 2.

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH85

2026. DEFECT REPORTING AND NOTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102 to 30103; 49 USC 30112; 49 USC 30115 to 30121; 49 USC 30166 to 30167

CFR Citation: 49 CFR 573; 49 CFR 576; 49 CFR 577

Legal Deadline: None

Abstract: The agency is proposing to amend its current regulations on Defect and Noncompliance Reports and Defect and Noncompliance Notification. The amendments are intended to implement the investigative and recall provisions by increasing the availability of information regarding safety related defects and noncompliance and by improving notification to consumers of recalls of defective and noncomplying motor vehicle equipment. NHTSA deferred action on this rulemaking action on 8/2/01, to allow it to focus its limited resources on the defects and noncompliance related rulemaking actions required by the Transportation Recall Enhancement, Accountability, and Documentation Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jonathan D. White, Chief, Recall Analysis Division, Office of Defects Investigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-7882

RIN: 2127–AH89

2027. MOTORCYCLE HEADLAMP SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to modify the motorcycle headlamp system height of upper beam and number of headlamp and light source.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard L. Van Iderstine, Division Chief, Visibility and Control Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5280

RIN: 2127–AH92

2028. IMPROVE MOTORCYCLE HELMET HEAD PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.218

Legal Deadline: None

Abstract: In 1998, 2,284 motorcyclists were killed and 49,000 injured in traffic crashes on U.S. highways. The agency believes that helmet usage by motorcyclists is the most effective method to reduce deaths and injuries in motorcycle crashes. In order to improve the head protection for motorcyclists, the agency is proposing to upgrade the performance standards and test procedures to incorporate the technological advancements available in the current market and to review the standard for harmonization with other major helmet standards.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590

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RIN: 2127–AI03

2029. LABEL PLACEMENT ON REAR IMPACT GUARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223

Legal Deadline: None

Abstract: In response to petitions for rulemaking, the agency is proposing to allow trailer manufacturers additional flexibility in the placement of the permanent label on the guard to minimize the probability that the label will be exposed to conditions - environmental, operational, or otherwise - that may damage or destroy the guard while maintaining a location that is easily accessible and visible for inspection and enforcement purposes. Other portions of the petitions are denied.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15154
NPRM Comment Period End	05/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI04

2030. REORGANIZE AND HARMONIZE CONTROLS AND DISPLAYS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 SC 30166

CFR Citation: 49 CFR 571.101

Legal Deadline: None

Abstract: The agency is proposing to reorganize the controls and displays requirements to make them more user-friendly and to harmonize the standard with the Canadian Motor Vehicle Safety Standard No. 101 on the same subject. These proposed changes will list the symbols used in the standard to improve driver recognition of the function of controls and the meaning of telltales.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI09

2031. CONFIDENTIAL BUSINESS INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30166(M)

CFR Citation: 49 CFR 512

Legal Deadline: None

Abstract: This will propose a revision to the agency's confidential business information regulations to reflect a new provision signed into law under the Transportation Recall Enhancement, Accountability and Documentation (TREAD) Act, which provides for the disclosure of confidential business information received under the act under limited circumstances. This NPRM will propose also changes to the regulation that will streamline procedures, eliminate duplication, ensure the use of plain language and update its provision, consistent with current case law.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-1834

RIN: 2127–AI13

2032. +IMPROVING THE SAFETY OF CHILD RESTRAINTS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Final, Statutory, November 30, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking that will improve the safety of child restraints, including minimizing head injuries from side impact collisions. The agency will consider whether to (1) require more comprehensive tests of child restraints using an array of crash conditions and an updated test seat assembly; (2) use test dummies that represent a greater range of sizes of children and that incorporate current technologies; (3) require improved protection from head injuries in side- and rear-impact crashes; (4) provide consumer information on the physical compatibility of child restraints and vehicle seats on a model-by-model basis; (5) prescribe clearer and simpler labels and instructions on child restraints; (6) consider restraints for children weighing up to 80 pounds; (7) apply scaled injury criteria performance levels, including neck injury; and (8) include a child restraint in each vehicle crash tested under the New Car Assessment Program.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and

Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI34

2033. SEAT BELT FIT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency is reviewing a petition for rulemaking requesting the extension of seat belt length be an option when purchasing a new vehicle and requesting vehicle manufacturers to make seat belt extenders available for all models.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI36

2034. SEAT BELT EMERGENCY LOCKING RETRACTOR

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.209

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing clarifications concerning the test procedure for the acceleration pulse shape, onset rate, time duration, and acceleration tolerance for seat belt emergency locking retractor.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI38

2035. VOLUNTARILY INSTALLED SEAT BELT ASSEMBLY ANCHORAGES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.210

Legal Deadline: None

Abstract: In a final rule published June 12, 1998 (63 FR 32143, RIN 2127-AF91), the agency required anchorages for voluntarily installed shoulder belts to comply with the current requirements for 3-point belts. This change applied mainly to seat locations where belts are required, such as the center rear seat in passenger cars. This change did not apply to seats where no seat belt was required. The agency is proposing to extend the anchorage requirement to seats where the entire seat belt assembly is voluntarily installed. This change will mainly affect passenger seats on large buses and large school buses where the customer decides to order the bus with seat belts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action is currently in research.

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RIN: 2127–AI40

2036. IDLE STOP TECHNOLOGY USED IN SOME HYBRID ELECTRIC VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.102

Legal Deadline: None

Abstract: The agency is proposing to amend the standard to clarify the intent of the standard and allow it to accommodate "idle stop technology" used in some hybrid electric vehicles. This will respond to existing interpretations which promised such a modification.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-6346
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RIN: 2127–AI43

2037. +OPERATION OF MOTOR VEHICLES BY INTOXICATED PERSONS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 106-346, sec 351

CFR Citation: 23 CFR 1225

Legal Deadline: None

Abstract: The Transportation Equity Act for the 21st Century (TEA-21) established a grant program under which states could qualify for incentive funds if they enacted and enforced a law that provides that any person with a blood alcohol concentration of .08 percent or greater while operating a motor vehicle in the state is deemed to have committed a per se offense of driving while intoxicated or an equivalent per se offense. The agency published a final rule implementing that incentive grant program. Section 351 of the Department of Transportation (DOT) Appropriations Act for Fiscal Year (FY) 2001 (PL 106-346) contains a new provision requiring the withholding of certain Federal-aid highway funds from a state, beginning in fiscal year 2004, if the state has not enacted and is not enforcing such a law. The agency is proposing to amend the regulation implementing the incentive grant program established in TEA-21 to reflect the new sanctions provisions established in the DOT appropriations set for FY 2001.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Marlene Markison, Chief, Program Support, Office of State and Community Services, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2121

RIN: 2127–AI44

2038. PROCEDURES FOR PARTICIPATING IN AND RECEIVING DATA FROM THE NATIONAL DRIVER REGISTRATION PROBLEM DRIVER POINTER SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30301 to 30308; PL 106-159, sec 204

CFR Citation: 23 CFR 1327

Legal Deadline: None

Abstract: The agency is proposing to amend the National Driver Register regulations to implement an amendment made by the Motor Carrier Safety Improvement Act of 1999 (PL 106-159). The amendment requires a State, before issuing or renewing a motor vehicle operator's license to an individual, to query both the National Driver Register and the Commercial Driver's License Information System on the individual's driving record.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Edward Milton, Acting Division Chief, Driver Regier Register and Traffic Records Division,, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 366-4800

RIN: 2127–AI45

2039. EXPANDING THE AUTO PARTS MARKING REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33103

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: In accordance with the Anti Car Theft Act of 1992, the Attorney General was required to report on the effectiveness of expanding the parts marking requirements of the theft prevention standard to the remaining motor vehicle lines. On the basis of the available evidence presented, the Attorney General found that the evidence did not support a finding that requiring parts marking would not substantially inhibit chop shop operations and auto theft and therefore, recommended expanding the parts marking requirements to the remaining motor vehicle lines. Based on the results of the report, the agency is required to conduct a rulemaking to extend the theft prevention standard to the remaining motor vehicle lines.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI46

2040. PARKING BRAKES FOR NON-SCHOOL BUS VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to update the standard to require non-school bus vehicles with a gross vehicle weight rating (GVWR) over 10,000 pounds to be equipped with a hydraulic parking brake system.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI47

2041. CARGO CARRYING CAPACITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering

mandatory consumer information in the form of a label that will inform the consumer of the Cargo Carrying Capacity (CCC) of motor homes, travel trailers, and 5th wheel travel trailers. Such labeling will help the consumer make informed decisions during the purchasing process, act as a reference during cargo loading and encourage the recreational vehicle industry to allow for greater cargo carrying capacities which in turn will reduce instances of overloading.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI50

2042. CONVEX MIRRORS FOR COMMERCIAL TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering amending the standard to require that all commercial trucks traveling on the interstate highway system have convex mirrors affixed to their front right and left fenders (such as those required on school buses).

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Vanlderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI52

2043. ENHANCE PASSENGER-SIDE MIRROR SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.111

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering amending the standard by extending the requirements to MPVs and trucks (independent of their weight) to allow enhanced passenger-side mirror systems.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Vanlderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI53

2044. HORIZONTAL DISCHARGE TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 UCS 30117; 49 USC 30166

CFR Citation: 49 CFR 571.224

Legal Deadline: None

Abstract: In response to two petitions for rulemaking, the agency is considering excluding semitrailers equipped with "horizontal discharge trailers" from the current standard.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI56

2045. HEAVIER HYBRID III TYPE 6-YEAR-OLD SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; ...

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is proposing to incorporate a heavier 6-year-old child dummy as part of the Hybrid III test dummy family. This dummy will have weight added to the existing dummy, making it heavier than 60 pounds. The weighted 6-year-old dummy would have application for testing child restraint systems which are rated for weights above the current 6-year-old dummy weight and would serve as an interim device until such time as the Hybrid III 10-year-old dummy has been fully developed.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI58

2046. • RECORD RETENTION OF RETROACTIVELY CERTIFIED VEHICLES

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Record retention requirements for manufacturers who retroactively certify that heavy trucks and buses manufactured for use in Canada and Mexico met all applicable Federal motor vehicle safety standards on date of original manufacture.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12800
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rebecca MacPherson, Attorney Advisor, Office of Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI60

2047. • DAYTIME RUNNING LAMPS VOLTAGE AND CONSPICUITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency is proposing to further lower glare while minimizing the change in conspicuity.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard Vanlderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI62

2048. • ALLOW ROLL-BAR DURING BRAKE TESTING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105

Legal Deadline: None

Abstract: The agency is proposing to allow vehicles with a gross vehicle weight rating of over 10,000 pounds to use a roll-bar during braking tests.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI63

2049. • IMPORTATION OF COMMERCIAL MOTOR VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112

CFR Citation: 49 CFR 591

Legal Deadline: None

Abstract: This rulemaking would propose a definition of the term "import".

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12806
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AI64

2050. • CHILD RESTRAINT SYSTEM WEBBING STRENGTH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: The agency is proposing to require minimum breaking strengths for child restraint systems webbing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI66

2051. • MOTORCYCLE HANDLEBAR LEVER

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.123

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to allow a handlebar lever instead of a

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foot pedal to control the rear brakes on motorcycles which have no clutch control.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI67

2052. • +LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARD, MODEL YEARS 2005-2010

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 329

CFR Citation: 49 CFR 533

Legal Deadline: None

Abstract: The purpose of this request for comments is to acquire information to assist the agency in developing a proposal for fuel economy standards for light trucks beyond model year 2004. The agency plans to propose standards for some or all of model years 2005 to 2010. The agency is seeking information that will help it assess the extent to which manufacturers can improve light truck fuel economy during the period in question, the benefits and costs to consumers of fuel economy improvements, the benefits to the nation of reducing fuel consumption, and the number of model years that should be covered by the proposal. The agency is also seeking comments on possible modifications and/or reforms to the Corporate Average Fuel Economy program.

Timetable:

Action	Date	FR Cite
Request for Comments	02/07/02	67 FR 5767
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosalind Proctor, Division Chief, Consumer Programs Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI70

2053. • STATIC OUT-OF-POSITION TEST REQUIREMENTS AT S23 USING 6-YEAR-OLD DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: In response to petition for rulemaking, the agency is considering:

(a) Defer for 3 years the implementation of the static out-of-position test requirements at S23 using the 6 year old dummy; (b) modify the 300 msec data collection requirement to be 10 msec after dummy interaction with the air bag ceases to allow facilitation of Low Risk Deployment (LRD) as either a compliance option or redundant protection for suppression systems; (c) provide a limited allowance for a manual 3-way override switch (on-off automatic) for 3-position front seating systems; and (d) reduce the first year phase-in from 35 percent to 10 percent.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI71

2054. • INSURER REPORTING REQUIREMENTS/LIST OF INSURERS REQUIRED TO FILE REPORTS FOR OCTOBER 2002

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33112

CFR Citation: 49 CFR 544

Legal Deadline: None

Abstract: NHTSA proposes to update its lists in appendices A, B, and C of part 544 of passenger motor vehicle insurers that are required to file reports on their motor vehicle theft loss experience. If these revised appendices are adopted in a final rule, each insurer included in any of these appendices must file a report for the 1998 calendar year not later than October 25, 2002. Further, as long as the insurer remains listed, it must submit reports by each subsequent October 25.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/02	67 FR 11161
NPRM	03/27/02	67 FR 14667
NPRM Comment Period End	05/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI73

2055. • THEFT DATA FOR CALENDAR YEAR 2000

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 33104 (b) (4)

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action will publish the preliminary theft data on passenger motor vehicles that occurred in calendar year 2000 for MY 2000 vehicles. The theft data indicate the overall vehicles' theft rate in 2000. Publication of this data fulfills the agency's obligation to periodically obtain accurate and timely data and publish the information for review and comment.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah Mazyck, Program Analyst, Department of Transportation, National Highway Traffic Safety Administration, NPS-32, Office of Planning and Consumer Programs, 400 Seventh Street, Room 5320, Washington, DC 20590
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RIN: 2127–AI75

2056. • GM PETITION ON AMENDING FMVSS NO. 301 AND FMVSS NOS. 208, 212, 219, 303, AND 305

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1392; 15 USC 1497

CFR Citation: 49 CFR 571.208; 49 CFR 571.212; 49 CFR 571.219; 49 CFR 571.301; 49 CFR 571.303; ...

Legal Deadline: None

Abstract: NHTSA published an NPRM on November 13, 2002, proposing to upgrade the rear and side impact tests in FMVSS No. 301, Fuel System Integrity. The NPRM requested comments on a number of particular issues. One of the requests, item 3.h, proposed to eliminate the second sentence in the standard's S7.11(b), which describes the test vehicle loading conditions. GM submitted comments on the issue and recommended specific changes. In addition, GM petitioned NHTSA to amend FMVSS Nos. 208, 212, 219, 303 and 305 with identical language that GM recommended for amending FMVSS No. 301.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI76

2057. • SCHEDULE OF FEES AUTHORIZED BY 49 U.S.C. 30141

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141; 31 USC 9701

CFR Citation: 49 CFR Part 594

Legal Deadline: None

Abstract: NHTSA proposes to amend its regulations establishing fees authorized by 49 U.S.C. 30141 for the purpose of reimbursing the agency for certain costs incurred in administering the vehicle importation program. The amendments will adjust the fees to the level necessary for the agency to recover its actual costs. Section 301419(e) requires the agency to review and adjust these fees at least every two years. The fees were last adjusted in September 2000.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Taylor Vinson, Senior Attorney, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI77

2058. • EXEMPTION FOR INCONSEQUENTIAL DEFECT OR NONCOMPLIANCE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30118(d), 30120(h); Delegation of Authority at 49 CFR 1.50

CFR Citation: 49 CFR 556

Legal Deadline: None

Abstract: Amendment to existing rules on inconsequential petitions to address appeals to the agency of denials of petitions for exemptions from notification and remedy requirements on the grounds that the noncompliance or defect is inconsequential as it relates to motor vehicle safety.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI78

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Final Rule Stage

2059. BRAKE LINING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571

Legal Deadline: None

Abstract: Petitions from R. Grabowsky and American Trucking Association (ATA) requested initiation of rulemaking concerning brake linings (all vehicles and aftermarket). Mr. Grabowsky petitioned relative to stability, friction level, fade, wear, and identification of linings. ATA petitioned relative to friction level and

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identification of linings for heavy vehicles only. Petitions concerned both performance levels and test procedures, and were granted.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Email: gsoodoo@nhtsa.dot.gov

RIN: 2127–AC66

2060. +PLATFORM LIFT SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.403; 49 CFR 571.404

Legal Deadline: None

Abstract: The supplemental notice proposed to establish two new safety standards: an equipment standard specifying requirements for platform lifts; and a vehicle standard for all vehicles equipped with such lifts. This supplemental notice significantly differed from our original proposal in several respects. Most notably, the scope of our proposal expanded to platform lifts installed on all motor vehicles. Other significant changes were additional interlock requirements, improved wheelchair retention and platform slip resistance tests, and, in some instances, lesser compliance standards for lifts installed on vehicles typically used solely for private transport. This action is considered significant due to substantial public interest in transportation of individuals with disabilities.

Timetable:

Action	Date	FR Cite
NPRM	02/26/93	58 FR 11562
NPRM Comment Period End	04/27/93	
SNPRM	07/27/00	65 FR 46227
Correction	08/04/00	65 FR 47946
SNPRM Comment Period End	10/25/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gayle Dalrymple, Safety Engineer, Vehicle Controls and Adapted Vehicle Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5559

RIN: 2127–AD50

2061. RADIATOR SAFETY CAP

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.402

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing a new Federal motor vehicle safety standard regulating new radiator caps and coolant reservoir caps, and new passenger cars, multipurpose passenger vehicles and light trucks with such caps. The agency believes that this new standard, if implemented, would result in fewer scald injuries that occur when people attempt to remove caps from motor vehicle radiators or coolant reservoirs that are under high pressure and contain hot fluids. However, this rulemaking would not require that radiator caps or coolant reservoir caps be provided on any motor vehicle.

Timetable:

Action	Date	FR Cite
Request for Comments	06/10/93	58 FR 32503
Comment Period End	08/09/93	
NPRM	06/01/01	66 FR 29747
NPRM Comment Period End	07/31/01	
NPRM Comment Period Extended	08/02/01	66 FR 40176
NPRM Comment Period End	09/28/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AE59

2062. UPGRADE FUEL INTEGRITY PERFORMANCE REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.301

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking in 1995 announced the agency's plan to consider upgrading the standard by making the current crash requirements more stringent and by broadening the standard's focus to include mitigation concepts related to fuel system components and environmental and aging tests related to components. The notice also requested comments on the agency's plan to explore a three-phase approach to upgrading the standard, data, methods, and strategies which may assist in the agency's regulatory decisions in defining specific requirements and test procedures for upgrading the standard. Based on the responses to the notice and available data, the agency proposed replacing the current rear impact test procedures with a more stringent test procedure. The agency also proposed replacing the standard's current side impact test requirements with the side impact test requirements of Federal Motor Vehicle Safety Standard No. 214, Side Impact Protection.

Timetable:

Action	Date	FR Cite
Request for Comments	12/14/92	57 FR 59041
Comment Period End	02/12/93	
ANPRM	04/12/95	60 FR 18566
ANPRM Comment Period End	06/12/95	
NPRM	11/13/00	65 FR 67693

Action	Date	FR Cite
NPRM Comment Period End	02/12/01	66 FR 78461
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action will respond to RIN 2127-AE83. On December 15, 2000, an extension of comment period was published in response to petitions.

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RIN: 2127–AF36

2063. ALTERNATIVE GEOMETRIC VISIBILITY REQUIREMENTS FOR LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to harmonize the lighting standard's geometric visibility requirements for signal lamps and rear side marker color with those of the ECE. Harmonization of the standard worldwide, without reducing safety, would allow manufacturers to reduce costs by producing to a single world vehicle standard rather than several, thus reducing costs and improving the flow of trade. The agency issued additional/alternative proposals.

Timetable:

Action	Date	FR Cite
NPRM	10/26/95	60 FR 54833
NPRM Comment Period End	12/26/95	
SNPRM	12/10/98	63 FR 68233
SNPRM Comment Period End	03/10/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On February 27, 1997 (62 FR 8883), the agency terminated rulemaking in which the agency had asked for comments on whether the performance and installation of front and rear fog lamps should be regulated. In response to these comments, the SAE has established a Fog Lamp Task Force to develop an internationally-acceptable fog lamp standard, on which a Federal standard could be based.

ANALYSIS: Regulatory Evaluation, 10/26/95, 60 FR 54833

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AF75

2064. POWER-OPERATED WINDOWS: ROOF PANELS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering whether to amend the test procedure used to demonstrate compliance by adding an alternative testing specification for a non-contact automatic reversal system, in order to provide a more meaningful and realistic method for evaluating the compliance of such systems which do not rely on contact to sense an obstruction. Petition was granted.

Timetable:

Action	Date	FR Cite
NPRM	06/04/96	61 FR 28124
Correction	06/14/96	61 FR 30209
NPRM Comment Period End	08/05/96	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patrick Boyd, Division Chief, Vehicle Controls & Adapted Vehicles Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AF83

2065. DOOR LATCH EXEMPTION FOR VEHICLES EQUIPPED WITH WHEELCHAIR LIFTS AND RAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.206

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is proposing to modify the "Door Locks and Door Retention Components" requirements by exempting vehicles with wheelchair ramps and to establish uniform requirements for vehicles with wheelchair lifts and ramps. These modifications are necessary because of changes in the types of vehicles equipped with wheelchair lifts/ramps and changes in lift/ramp structural designs which have come to pass in recent years. Petition was granted.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On 05/31/96 (61 FR 27325), the agency published a grant notice. The agency believes that the suggested changes made by the petitioner merit additional study and research. The agency is currently conducting research to determine if door latch exemptions are still necessary. Simultaneously, the agency is developing a door latch procedure for sliding doors.

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RIN: 2127–AG16

2066. DEALER NOTIFICATION OF DEFECT OR NONCOMPLIANCE DETERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102; 49 USC 30103; 49 USC 30111; 49 USC 30112; 49 USC 30115; 49 USC 30116; 49 USC 30118; 49 USC 30119; 49 USC 30120; 49 USC 30163; 49 USC 30165

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: The rule will implement an amendment to 49 USC chapter 301 which prohibits dealers from selling motor vehicles or motor vehicle equipment that have been determined to contain a safety-related defect or noncompliance with a Federal motor vehicle safety standard until the defect or noncompliance is remedied. It will set forth criteria to govern the timing and content of notifications of defects and noncompliances that manufacturers must send to their dealers.

Timetable:

Action	Date	FR Cite
NPRM	09/27/93	58 FR 50314
NPRM Comment Period End	10/27/93	
SNPRM	05/19/99	64 FR 27227
SNPRM Comment Period End	06/18/99	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jonathan D. White, Chief, Recall Analysis Division, Office of Defects Investigation, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG27

2067. POWER WINDOW SAFETY SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.118

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to require each power operated window, interior partition, and roof panel in a motor vehicle to be equipped with a switch designed so that contact by a form representing a small child's knee would not close window, partition, or panel.

Timetable:

Action	Date	FR Cite
NPRM	11/15/96	61 FR 58504
NPRM Comment Period End	01/14/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG36

2068. SEAT BELT POSITIONING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed a labeling requirement for seat belt positioning devices. This label would consist of a warning regarding the suitability of these devices for a particular height/weight/age of child.

Timetable:

Action	Date	FR Cite
NPRM	08/13/99	64 FR 44164
NPRM Comment Period End	10/12/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AG49

2069. GLARE REDUCTION FROM DAYTIME RUNNING LAMPS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency proposed to amend the lighting standard to reduce glare from daytime running lamps (DRLs). It would do this in three stages. One year after publication of the final rule, DRLs utilizing the upper headlamp beam would not be permitted to exceed 3,000 candela (cd) at any point, thus becoming subject to the maximum candela permitted for DRLs other than headlamps. This same limit would be applied to the upper half of lower beam DRLs two years after publication of the final rule. Finally, four years after publication of the final rule, all DRLs, except lower beam DRLs, would be subject to a flat 1,500 cd limit. Lower beam DRLs would be limited to 1,500 cd at horizontal or above. This action is intended to provide the public with all the conspicuity benefits of DRLs while reducing glare and is based on research that has become available since the final rule establishing DRLs was published in 1993.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42348
NPRM Comment Period End	09/21/98	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG86

2070. ADMINISTRATIVE REWRITE FOR HEADLAMP REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: The agency has proposed to rewrite the sections relating to headlighting. The rewrite is important because of the standard's age and numerous amendments which have made it difficult to read and interpret. The revised standard should reduce burden especially to small manufacturers because of improved clarity. The reorganization of the sections relating to other lamps will be addressed in a separate rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	11/12/98	63 FR 63258
NPRM Comment Period Extended to 4/11/99	02/08/99	64 FR 6021
NPRM Comment Period End	02/10/99	
Final	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG87

2071. SIGNAL LAMPS USED WITH LIGHT EMITTING DIODES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.108

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to revise the requirements for signal lamps equipped with 3 or more light emitting diodes (LED). The current requirements have become design restrictive and a service burden for vehicle and signal lamp manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	06/24/98	63 FR 34350
NPRM Comment Period Extended	08/03/98	63 FR 41222
NPRM Comment Period End	10/09/98	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AG88

2072. +ALLOCATION OF FUEL ECONOMY CREDITS

Priority: Other Significant

Legal Authority: 49 USC 32903

CFR Citation: 49 CFR 534

Legal Deadline: None

Abstract: The agency is proposing rulemaking to clarify when and how predecessor and successor automobile manufacturers may use the fuel economy credits of the predecessor or successor. The use of carry forward or carry back credits will be specified for manufacturers that merge. This action is considered significant because it will affect the treatment of the Corporate Average Fuel Economy (CAFE) penalties.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 6523
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Edward Glancy, Senior Attorney Advisor, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2992

RIN: 2127–AG97

2073. PLACEMENT OF WHEELCHAIR RESTRAINTS ON BUSES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30117; 49 USC 30166; 49 USC 322; 49 USC 30111; 49 USC 30115

CFR Citation: 49 CFR 571.217

Legal Deadline: None

Abstract: To prevent blocking of the emergency exits, the agency proposed to add a new section to the standard to not allow the placement of wheelchair securement anchorages or other devices that protrude into the aisle of an emergency exit in all buses.

Timetable:

Action	Date	FR Cite
NPRM	03/05/99	64 FR 10604
NPRM Comment Period End	05/04/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590

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RIN: 2127–AH03

2074. INCORPORATE THE 1996 REVISION OF THE AMERICAN NATIONAL STANDARDS INSTITUTE (ANSI)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.205

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed to incorporate the 1996 revision of the American National Standards Institute (ANSI) standard for safety glazing used in motor vehicles and other minor revisions into the agency's current standard for safety glazing used in motor vehicles.

Timetable:

Action	Date	FR Cite
NPRM	08/04/99	64 FR 42330
NPRM Comment Period End	10/04/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH08

2075. +HARMONIZATION OF HEAD RESTRAINTS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166; 49 USC 322

CFR Citation: 49 CFR 571.202

Legal Deadline: None

Abstract: The agency has proposed to upgrade the current head restraint requirements to increase safety. The proposal also, until the upgraded requirements become effective, allows manufacturers to certify their vehicles either to the existing U.S. requirements or to the Economic Commission for Europe (ECE) Regulation No. 25. The upgrade proposed performance requirements intended to assure that the head restraint, if adjusted, will remain locked in specific height positions and calls for the installation of head restraints in rear seats. This action is considered significant due to the expected high cost to the private sector for the modifications to the standard.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 967
NPRM Comment Period End	03/05/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH09

2076. HEAVY VEHICLE ANTILOCK BRAKE SYSTEM (ABS) PERFORMANCE REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: The agency has proposed performance tests for ABS-equipped single unit trucks and buses. ABS equipment requirements became effective for air-braked single unit trucks, buses, and trailers on March 1, 1998, and for hydraulic-braked trucks and buses becomes effective on March 1, 1999. The agency indicated in prior rulemaking notices that it would consider supplementing these ABS equipment requirements with performance requirements after conducting tests to determine if such testings are practicable and repeatable for trucks and buses.

Timetable:

Action	Date	FR Cite
NPRM	12/21/99	64 FR 71377
NPRM Comment Period End	02/22/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH16

2077. UPPER INTERIOR IMPACT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.201

Legal Deadline: None

Abstract: At the request of the manufacturers' organizations, the agency proposed to amend the upper interior impact requirements (1) to modify the minimum distance between certain targets on vertical surfaces inside a vehicle and (2) add new definitions and test procedures for new-style door frames and vertical seat belt mounting structures.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 17843
NPRM Comment Period End	06/05/00	
NPRM Comment Period Extended	06/07/00	65 FR 36106
NPRM Comment Period End	07/05/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH61

2078. REGISTERED IMPORTERS OF VEHICLES NOT ORIGINALLY MANUFACTURED TO CONFORM WITH THE FEDERAL MOTOR VEHICLE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30141; 49 USC 30147

CFR Citation: 49 CFR 592

Legal Deadline: None

Abstract: The agency proposed to reduce regulatory burdens associated with importation of Canadian vehicles for resale in the United States when those vehicles already comply in essential respects with the Federal motor vehicle safety standards. This proposal would enhance safety by revising application procedures to ensure a higher caliber of registered importers and clarifying existing obligations.

Timetable:

Action	Date	FR Cite
NPRM	11/20/00	65 FR 69810
NPRM Comment Period	02/01/01	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Taylor Vinson, Senior Attorney, Office of the Chief Counsel, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH67

2079. VEHICLES WITH RAISED ROOFS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.216

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on April 27, 1999 (64 FR 22567, RIN 2127-AF40) that made testing more suitable for vehicles with raised or sloped roof structures, the petitioners requested that the agency modify the portion of the rule that pertains to raised roof vehicles, particularly those vehicles used for transporting disabled persons. The petitioners claim that the test plate position requirement for these vehicles causes the plate's rear edge to contact the raised roof structure in a manner which causes abnormal penetration and failure.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/31/00	65 FR 4579
Interim Final Rule Effective	01/31/00	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Roger Saul, Director, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH74

2080. CLARIFY TEST PROCEDURES FOR BRAKE FLUIDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.116

Legal Deadline: None

Abstract: The agency has proposed to revise the corrosion and evaporation test procedures. These revisions were intended to improve the levels of compliance test repeatability and/or reproducibility.

Timetable:

Action	Date	FR Cite
NPRM	01/16/01	66 FR 3527
NPRM Comment Period End	03/19/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH96

2081. GUIDELINES FOR STATES ON ENFORCEMENT OF LIGHT TRANSMISSION

Priority: Substantive, Nonsignificant

Legal Authority: 23 USC 402(a)

CFR Citation: 49 CFR 553.21

Legal Deadline: None

Abstract: The agency is requesting comments to gather information that will help develop uniform guidelines for states to use in the enforcement of the light transmission standards for window glazing on passenger cars and light trucks. This action responds to a statutory directive to establish these guidelines.

Timetable:

Action	Date	FR Cite
Request for Comment	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Richard VanIderstine, Division Chief, Visibility and Injury Prevention Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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Heidi L. Coleman, Assistant Chief Counsel for General Law, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH97

2082. CHILD RESTRAINT ANCHORAGE SYSTEMS—PART 2

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: This action responds to several petitions for reconsideration concerning long-term testing procedures regarding the strength and other issues of universal child restraint anchors. These requirements were established by the final rule on universal child restraint anchorages published on March 5, 1999 (64 FR 10785, RIN 2127-AG50). An earlier action (RIN 2127-AH65) responded to other issues raised by the petitions.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AH99

2083. HYBRID III TYPE 6-YEAR-OLD SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration of our final rule published January 13, 2000 (65 FR 2059, RIN 2127-AG76) which established design and performance specifications for a new, more advanced 6-year-old child dummy.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI00

2084. FIFTH PERCENTILE FEMALE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency is responding to petitions for reconsideration of our final rule published March 1, 2000 (65 FR 10961, RIN 2127-AG66) which adopted the Hybrid III small female size dummy.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Stanley Backaitis, Engineer, Office of Crashworthiness Standards, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI01

2085. MOVING BARRIER TIRE SPECIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214; 49 CFR 571.301

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency proposed changing the currently specified G78-15 tires used in the moving barrier test and replacing them with P215-75R15 radial tires. The current tires are not readily available.

Timetable:

Action	Date	FR Cite
NPRM	10/10/01	66 FR 51629
NPRM Comment Period End	12/10/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI05

2086. EARLY WARNING DEFECT REPORTING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-414

CFR Citation: 49 CFR 554; 49 CFR 573

Legal Deadline: Final, Statutory, June 30, 2002.
Initiation of rulemaking required not later than March 1, 2001.

Abstract: Tread Act requires NHTSA to publish a rule requiring manufacturers of motor vehicles and motor vehicle equipment to report on possible defects in their products, whether in United States or abroad, based on information in the possession of the manufacturer.

Timetable:

Action	Date	FR Cite
ANPRM	01/22/01	66 FR 6532
ANPRM Comment Period End	03/23/01	
NPRM	12/21/01	66 FR 66190
NPRM Comment Period End	02/04/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This will also respond to RIN AI31. This Rulemaking will combine the two RIN's AI25 and AI31 as of 8/2/01.

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RIN: 2127–AI25

2087. DEFECTS IN FOREIGN COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30166(m)

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rulemaking to implement statutory requirement that a manufacturer of motor vehicle and equipment report to NHTSA when it determines to conduct a safety-related recall on identical or substantially similar products outside the U.S. and when a foreign government determines that a safety-related campaign should be conducted.

Timetable:

Action	Date	FR Cite
NPRM	10/11/01	66 FR 51907
NPRM Comment Period End	12/10/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2127–AI26

2088. ACCELERATION OF MANUFACTURER REMEDY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(c)

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rule to implement Sec. 6(a) of the TREAD Act, PL 106-414 by amending NHTSA's existing regulation on Defect and Noncompliance Reports (49 CFR Part 573) to require manufacturers to accelerate recalls that are not likely to be capable of completion in a reasonable time.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64087
NPRM Comment Period End	02/11/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael Goode, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI27

2089. REIMBURSEMENT PRIOR TO RECALL

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(d)

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: Rule to implement section 6(b) of the TREAD Act, PL 106-414 by amending 49 CFR part 573, Defect and Noncompliance Notification, to add requirements that manufacturers' remedy programs concerning safety-related defects and noncompliance include plans for reimbursing owners or purchasers who incurred the cost of remedy within a "reasonable time" prior to the manufacturer's notification of the defect or noncompliance.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64078
NPRM Comment Period End	02/11/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Andrew DiMarsico, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI28

2090. DISPOSITION OF REPLACED TIRES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30102 to 30103; 49 USC 30112; 49 USC 30117 to 30121; 49 USC 30166 to 30167; Delegation of authority 49 CFR 1.50

CFR Citation: 49 CFR 573

Legal Deadline: None

Abstract: Rule to implement section 7 of the TREAD Act, PL 106-414 49 USC 30120(d) by requiring a manufacturer who conducts a campaign to remedy a safety-related defect or noncompliance that involves the replacement of tires to develop a plan regarding the disposition of the tires that are replaced. The plan would address how to prevent, by means reasonably within the manufacturer's control, the disposal of replaced tires in landfills, particularly through shredding, crumbling, recycling, recovery, and other alternative beneficial non-vehicular uses.

Timetable:

Action	Date	FR Cite
NPRM	12/18/01	66 FR 65165
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Enid Rubenstein, Trial Attorney, Department of Transportation, National Highway Traffic Safety Administration, 5219, NCC-10, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2127–AI29

2091. PROHIBITION OF SALE OR LEASE OF EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30120(j)

CFR Citation: 49 CFR 573; 49 CFR 577

Legal Deadline: None

Abstract: Rule regarding statutory prohibitions on the sale or lease of noncompliant and defective motor vehicles and equipment.

Timetable:

Action	Date	FR Cite
NPRM	07/23/01	66 FR 38247
NPRM Comment Period End	09/21/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Lloyd Guerci, Assistant Chief Counsel for Litigation, Department of Transportation, National Highway Traffic Safety Administration, 5219, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI30

2092. IMPROVE TIRE SAFETY INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: Other, Statutory, December 1, 2000, Advanced Notice of Proposed Rulemaking.
Final, Statutory, June 1, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the labeling of tires to assist consumers in identifying tires that may be the subject of a safety recall. Pursuant to that Act, the Agency published an ANPRM stating that the agency is considering amendments to its regulations to improve the tire information and its availability and understandability to consumers. To aid in this effect, the agency sought responses from the public to questions relating to such matters as Tire Identification Number content, readability and location, loading, plies and cords, tread wear indicator, Uniform Tire Quality Grading System, speed rating, run-flat and extended mobility tires, tire inflation pressure, and dissemination of tire safety information.

Timetable:

Action	Date	FR Cite
ANPRM	12/01/00	65 FR 75222
ANPRM Comment Period End	01/30/01	
NPRM	12/19/01	66 FR 65535
Comment Period End	02/19/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2057

RIN: 2127–AI32

2093. +AUTOMOTIVE FUEL ECONOMY MANUFACTURING INCENTIVE FOR ALTERNATIVE FUEL VEHICLES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 32905(f); 49 USC 32906(a)(l)(B)

CFR Citation: 49 CFR 538

Legal Deadline: Final, Statutory, December 31, 2001, Notice to either extend up to four years or discontinue the program after Model Year 2004.

Abstract: The agency must, by December 31, 2001, publish a notice that either extends the incentive program whereby automotive manufacturers earn Corporate Average Fuel Economy credits for the production of dual-fuel vehicles for up to four years beyond Model Year 2004, with a maximum allowable increase in average fuel economy per manufacturer of 0.9 miles per gallon, or explains the rationale for not extending the incentive program.

Timetable:

Action	Date	FR Cite
Notice of Intent	01/07/02	67 FR 713
NPRM	03/11/02	67 FR 10873
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth Richard Katz, Lead Engineer, Consumer Program Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI41

2094. TRAILER TEST RIG

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency is considering a technical amendment to the standard to delete a figure which is no longer referenced and to correct several typographical errors and omissions.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI48

2095. COMPLIANCE FOR MULTISTAGE MANUFACTURERS AND ALTERERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.225

Legal Deadline: None

Abstract: The agency is responding to a petition for extraordinary relief of the compliance date by which final-stage manufacturers and alterers must install tether anchorages in affected vehicles to comply with our final rule published March 5, 1999 (64 FR 10786, RIN 2127-AG50).

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Mouchahoir, Team Leader, Special Vehicles and Systems Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI49

2096. +IMPROVED TIRE SAFETY

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.139

Legal Deadline: Final, Statutory, June 1, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the safety requirements of tires. The agency is proposing a new tire standard applicable to radial and non-radial tires that are mounted on passenger cars, light truck vehicles, and multipurpose vehicles, but not tires for motorcycles and heavy trucks. The proposed requirements include tests for high speed performance, endurance, low pressure validation, low pressure high speed performance, road hazard impact, resistance to bead unseating and aging.

Timetable:

Action	Date	FR Cite
NPRM	03/05/02	67 FR 10050
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Soodoo, Division Leader, Vehicle Dynamics Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2127–AI54

2097. CHILD SAFETY INFORMATION LABELS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: Final, Statutory, November 1, 2002.

Abstract: The recently enacted Transportation Recall Enhancement Accountability and documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to improve the consumer information for child restraints by prescribing clearer and simpler labels and instructions that are required to be placed on child restraints.

Timetable:

Action	Date	FR Cite
NPRM	11/02/01	66 FR 55623
Correction	11/29/01	66 FR 59549
NPRM Comment Period End	01/02/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Versailles, Office of Planning and Consumer Programs, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-2057

RIN: 2127–AI55

2098. • LIST OF NONCONFORMING VEHICLES ELIGIBLE FOR IMPORTATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30141

CFR Citation: 49 CFR 593

Legal Deadline: None

Abstract: This final action will amend the list of vehicles not originally manufactured to conform to all applicable Federal Motor Vehicle Safety Standards that NHTSA has decided to be eligible for importation. This list is published as an appendix to NHTSA's regulations at 49 CFR part 593 that establish the procedures through which the agency makes import eligibility decisions. The amendments will add to the list all vehicles that NHTSA has decided are to be eligible for importation since the list was last published on October 1, 2000.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Because this rule only furnishes information and imposes no regulatory requirement, the agency has good cause to dispense with notice and comments on it.

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RIN: 2127–AI61

2099. • CHILD RESTRAINT SAFETY RATING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 575

Legal Deadline: NPRM, Statutory, November 1, 2001.

Abstract: The recently-enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires a notice of proposed rulemaking be issued to establish a child restraint safety rating consumer information program to provide practicable, readily understandable, and timely information to consumers for use in making informed decisions in the purchase of child restraint systems (CRS).

Timetable:

Action	Date	FR Cite
NPRM	11/06/01	66 FR 56048
NPRM Comment Period End	01/07/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: On 11/06/2001 (66 FR 56146), the agency published a request for comment notice on a proposed safety rating program for child restraint systems.

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RIN: 2127–AI65

2100. • MODIFIED FRONT-OPENING HOOD REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.401

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on August 17, 2001 (66 FR 43113 RIN 2127-AI51) which specifically excluded passenger cars with a back door, such as hatchbacks and station wagons, from the standard and revised the definitions of "trunk lid" and "trunk compartment" to exclude interior storage compartments and sub-compartments within the trunk compartment from the requirements of the standard, the agency is adding a paragraph indicating that in passenger cars with front opening hoods, the interior trunk release must release the primary, but not the secondary, latch when the passenger car is in motion. At all other times, the interior trunk release must completely release all latches.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard L. Van Iderstine, Division Chief, Visibility and Control Division, Department of Transportation, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5280

RIN: 2127–AI69

2101. • HIGH-THEFT LINES FOR MODEL YEAR 2002

Priority: Substantive, Nonsignificant

Legal Authority: 49 CFR 33104

CFR Citation: 49 CFR 541

Legal Deadline: None

Abstract: This action will list the likely high-theft vehicle lines that are subject to the parts-marking requirements of the theft prevention standard and high theft lines that are exempted from the parts-marking requirements for model year 2003.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI74

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Long-Term Actions

2102. +CRASHWORTHINESS RATINGS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 5

Legal Deadline: None

Abstract: This action would require manufacturers to disseminate crashworthiness performance information concerning their cars to the public, to provide consumers with comparative information on the crashworthiness performance of new car models. This rulemaking is considered significant because of the impact on manufacturers, the interest shown by consumers, and the potential significant effects on the automotive marketplace. The agency requested public comments on the National Academy of Sciences (NAS) study titled "Shopping for Safety - Providing Consumer Automotive Safety Information," (TRB Special Report 248) and how that study should be reflected in the agency's decision on whether, and if so, how, to proceed with a crashworthiness rating for automobiles.

Timetable:

Action	Date	FR Cite
NPRM	01/22/81	46 FR 7025

Action	Date	FR Cite
NPRM Comment Period End	04/22/81	
Request for Comments	05/20/97	62 FR 27648
Comment Period End	08/18/97	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AA03

2103. +FLAMMABILITY OF INTERIOR MATERIALS—SCHOOL BUSES

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.302

Legal Deadline: None

Abstract: Advance notice of proposed rulemaking requested comments regarding possible upgrade of Standard 302 to reduce the risk of fire to school bus occupants. This rulemaking is significant because of substantial public interest.

Timetable:

Action	Date	FR Cite
ANPRM	11/04/88	53 FR 44627
ANPRM Comment Period End	01/03/89	
Request for Comments	02/26/91	56 FR 7826
Comment Period End	04/29/91	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AA44

2104. +REVIEW: SIDE IMPACT PROTECTION

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.214

Legal Deadline: None

Abstract: This standard requires passenger cars manufactured affer September 1, 1996, to provide occupant protection when impacted in the side by a moving deformable barrier. The agency has compared the actual risk of occupant injury in side impact crashes of cars meeting the standard to the risk in pre-standard cars. The cost of the standard has been estimated. The Technical Report has been published. This regulation was selected for review because of its costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/94	
Technical Report: Phase I	12/08/99	64 FR 68717
Comment Period End	04/06/00	
Summary and Discussion of Public Comments sent to Docket (Phase 1)	08/11/00	
End Review	06/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The Phase I evaluation report indicates that the test injury criterion TTI(d) has a statistically significant association with fatality risk in actual side-impact crashes on the highway. In model years 1981-93 cars, make models with low TTI(d) on the Federal motor vehicle safety standard no. 214 test tend to have low fatality risk.

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RIN: 2127–AF54

2105. REVIEW: CHILD SAFETY SEAT REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213; 49 CFR 588

Legal Deadline: None

Abstract: This evaluation involves analysis of the effectiveness of registering child safety seats to increase response to reports of recalled seats. This regulation was selected for review because of public interest in child passenger safety.

Timetable:

Action	Date	FR Cite
Begin Review	10/01/97	
End Review	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2127–AG93

2106. REVIEW: AIR BAG ON-OFF SWITCHES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 40 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard allows passenger vehicles to be equipped with an on-off switch for the right front passenger air bag if the rear seat cannot accommodate a rear-facing infant seat. The standard also enables vehicle owners to obtain an on-off switch for their passenger and/or driver air bag if they transport people who should not be exposed to an air bag deployment. The agency will determine, by

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observation of vehicles in use, the percentage of on-off switches that are being correctly used. This regulation was selected for review because of its public interest and potential benefit.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/98	
End Review	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Preliminary results of the observational survey are that the switches were left on (when they should be off) for 9 percent of infant passengers, 27 percent of child passengers age 1-6, and 56 percent of child passenger age 7-12. They were turned off for 18 percent of teen and adult passengers, depriving them of any potential benefits of air bags.

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RIN: 2127–AH12

2107. REVIEW: REDESIGNED AIR BAGS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: This standard was temporarily amended to make the unbelted test for vehicles with air bags less stringent and, in effect, make it easier for manufacturers to quickly depower their air bags. Redesigned air bags are likely to benefit out-of-position occupants and reduce drivers' arm injuries, but they might be less effective than earlier air bags for some occupants. This regulation was selected for review because of public interest, potential benefits, and possibility of higher risk for some vehicle occupants.

Timetable:

Action	Date	FR Cite
Begin Review	05/01/98	
End Review	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2127–AH13

2108. USE OF UNIVERSAL CHILD SEATS IN AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.213

Legal Deadline: None

Abstract: This action responds to a concern expressed by the Federal Aviation Administration (FAA) regarding some new universal child seats that may be equipped with rigid connectors or prongs. FAA believes that if a universal child seat equipped with non-folding, non-retracting rigid connectors or prongs were installed on an aircraft seat, the connectors or prongs might damage the aircraft seat cushions and might protrude into the leg space and egress path of the passenger sitting immediately behind the child seat.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: See RIN 2127-AG50 for the Uniform Child Restraint Anchorage Systems rule.

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RIN: 2127–AH56

2109. REVIEW: ANTILOCK BRAKE SYSTEMS FOR HEAVY TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.105; 49 CFR 571.121

Legal Deadline: None

Abstract: These standards require antilock brake systems (ABS) on truck-tractors manufactured after March 1, 1997, semi-trailers and single-unit trucks equipped with air brakes after March 1, 1998, and single-unit trucks over 10,000 pounds GVWR equipped with hydraulic brakes after March 1, 1999. The agency will study the influence of ABS on crash involvement rates and estimate the cost of ABS. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/01/00	
Evaluation Plan Published	08/14/00	65 FR 49633
End Review	12/00/06	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI14

2110. REVIEW: REAR IMPACT GUARDS FOR TRUCK TRAILERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.223; 49 CFR 571.224

Legal Deadline: None

Abstract: These standards set requirements for the geometry, configuration, strength, and energy absorption capability of rear impact guards on full trailers and semi-trailers over 10,000 pounds GVWR manufactured after January 26, 1998. The agency will study the influence of these guards on injuries in passenger vehicles that rear-impact trailers. The cost of the standards will also be estimated. These regulations were selected for review because of their costs, potential benefits, and public interest.

Timetable:

Action	Date	FR Cite
Begin Review	04/15/00	
Evaluation Plan Published	08/14/00	65 FR 49633
End Review	12/00/06	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI15

2111. +TIRE PRESSURE MONITORING SYSTEM

Priority: Economically Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.138; 49 CFR 571.101

Legal Deadline: Final, Statutory, November 30, 2001.

Abstract: The recently-enacted Transportation Recall Enhancement Accountability and Documentation (TREAD) Act requires the Secretary of Transportation to initiate rulemaking to require a warning system in new motor vehicles to indicate to the operator when a tire is significantly underinflated. The agency proposed to establish a new standard for Tire Pressure Monitoring System (TPMS) on every new vehicle that uses a passenger car tire. A TPMS would detect low pressure in a tire and alert the driver through a "low tire" warning signal.

Timetable:

Action	Date	FR Cite
NPRM	07/26/01	66 FR 38982
NPRM Comment Period End	09/06/01	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI33

2112. CIVIL PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 31 USC 3701 note

CFR Citation: 49 CFR 578

Legal Deadline: Final, Statutory, March 4, 2001.
Statute requires civil penalty adjustments at least once every 4 years.

Abstract: Civil penalties for violations of certain statutes administered by NHTSA are required to be adjusted for inflation at least once every 4 years. They were last increased effective March 1997.

Timetable:

Action	Date	FR Cite
NPRM	05/18/01	66 FR 27621
Final Rule	08/07/01	66 FR 41149
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI42

Department of Transportation (DOT)
National Highway Traffic Safety Administration (NHTSA)

Completed Actions

2113. TRUCK AIR BRAKING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.121

Legal Deadline: None

Abstract: In response to a petition for rulemaking, the agency has modified the air brake requirements for five of the ten recommended modifications. These areas are to provide consistency between table I., Stopping Sequence, item 4(b) and S5.7.3(b); provide wording for single-unit vehicles to prevent single-unit axle overloading; clarify emergency brake requirements for trucks and buses; address the misconceptions about the wheel lock provisions as they apply to vehicles with tandem axles; and correct two minor typographical errors. The other five recommendations are denied.

Timetable:

Action	Date	FR Cite
NPRM	02/03/99	64 FR 5259
NPRM Comment Period End	04/05/99	
Final Action	12/12/01	66 FR 64154
Final Action Effective	01/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AH11

2114. SCHOOL BUS BODY JOINT STRENGTH

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.221

Legal Deadline: None

Abstract: In response to petitions for reconsideration of a final rule published on November 5, 1998 (63 FR 59732 RIN 2127-AC19) which extended the applicability of Standard No. 221, school bus body joint strength, to school buses with a gross vehicle weight rating (GVWR) of 10,000 pounds or less, narrowed an exclusion of maintenance access panels from the requirements of the standard, and revised testing requirements, the agency has amended the definition of bus body and allowing for the testing of surrogate bus body joint. Changing the definition could exclude those joints in the van cutaway chassis and enhance the possibility of allowing van cutaways to be manufactured into school buses.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/06/00	65 FR 11751
Interim Final Rule Effective	04/05/00	
Final Action	12/13/01	66 FR 64358
Final Action Effective	01/01/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: In response to petitions for reconsideration, this final rule (4/20/01, 66 FR 20199) extends the effective date of the November 5, 1998, final rule to 06/01/2002. Other issues are still under consideration. This final rule was inadvertently published under RIN 2127-AC19.

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RIN: 2127–AH84

2115. HYBRID III TYPE 3-YEAR-OLD SIZE TEST DUMMY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 572

Legal Deadline: None

Abstract: The agency has responded to petitions for reconsideration of our final rule published March 22, 2000 (65 FR 15254, RIN 2127-AG77) which established design and performance specifications for a new, more advanced 3-year-old child dummy.

Timetable:

Action	Date	FR Cite
Final Action	12/13/01	66 FR 64368
Final Action Effective	01/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This action was inadvertently published under RIN 2127-AH02.

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RIN: 2127–AI02

2116. +ADVANCED AIR BAGS

Priority: Other Significant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.208

Legal Deadline: None

Abstract: The agency has responded to petitions for reconsideration of our final rule published May 12, 2000 (65 FR 30679, RIN 2127-AG70) which required future air bags be designed to create less risk of serious air bag-induced injuries that current air bags, particularly for small women and young children; and provided improved frontal crash protection for all occupants, by means that included advanced air bag technology. This action is considered significant because of substantial public interest and controversy.

Timetable:

Action	Date	FR Cite
Announces Technical Workshop	11/14/00	65 FR 68107
Final Action	12/18/01	66 FR 65375
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Agency held a technical workshop on December 6, 2000, to give the agency an opportunity to make sure it understands the petitions' issues concerning some of the test procedures for the advanced air bag final rule.

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RIN: 2127–AI10

2117. RECORD RETENTION (AMENDMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 30112; 49 USC 30115 to 30121; 49 USC 30166

CFR Citation: 49 CFR 576

Legal Deadline: None

Abstract: This will propose to amend 49 CFR part 576 (Record Retention) to extend its recordkeeping requirements in order to implement newly enacted requirements under the Transportation Recall, Enhancement, Accountability, and Documentation (TREAD) Act PL 106-414 signed 11/1/00), codified at 49 USC 30120.

Timetable:

Action	Date	FR Cite
Withdrawn	02/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: RIN AI31 is being closed out because this rulemaking Action is being combined with RIN AI25 "Early Warning" Defect Reporting Requirements as of 8/2/01.

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RIN: 2127–AI31

2118. ELECTRICAL VEHICLE SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 322; 49 USC 30111; 49 USC 30115; 49 USC 30117; 49 USC 30166

CFR Citation: 49 CFR 571.305

Legal Deadline: None

Abstract: In this final rule, the agency is responding to petitions for reconsideration of a final rule published on September 27, 2000 (65 FR 57980, RIN 2127-AF34) that established a new safety standard that addressed safety issues exclusive to electric vehicles (EV). The petitioners requested changes in: (1) the application section to make it clear that the 48 volts applicability was nominal voltage; (2) changes to the battery state of charge requirements to take into account hybrid-electric vehicles that do not contain provisions for external charging; and (3) changes to the electrical isolation test procedure measurement locations.

Timetable:

Action	Date	FR Cite
Final Action Effective	12/01/01	
Final Action	12/03/01	66 FR 60157

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 2127–AI57

2119. • +LIGHT TRUCK AVERAGE FUEL ECONOMY STANDARD, MODEL YEAR 2004

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 49 USC 329

CFR Citation: 49 CFR 533

Legal Deadline: None

Abstract: The agency is establishing the fuel economy standards for manufacturers of light truck fleets for model year 2004.

Timetable:

Action	Date	FR Cite
NPRM	01/24/02	67 FR 3470
Correction	01/30/02	67 FR 4379
NPRM Comment Period End	02/25/02	
Final Rule	04/04/02	67 FR 16052
Final Rule Effective	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2127–AI68

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Proposed Rule Stage

2120. LOCOMOTIVE CRASHWORTHINESS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: Final, Statutory, March 3, 1995, Rule or Report to Congress. Report to Congress issued 9/18/96.

Abstract: The agency has proposed to address the crashworthiness of locomotives pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated locomotive crashworthiness, as well as a variety of locomotive working conditions (See RIN 2130-AA89) and reported its finding to Congress. On October 31, 1996, the Railroad Safety Advisory Committee (RSAC) accepted a preliminary planning task to schedule handling of these issues. The Locomotive Crew Safety Working Group met on January 23, 1997 to develop task statements that were forwarded to the full RSAC and accepted on June 24, 1997. The RSAC Locomotive Crashworthiness Working Group is considering specific recommendations for regulatory action. Originally this project was considered significant; however, it appears likely that important incremental changes in current design standards can be made without significant disruption or controversy.

Timetable:

Action	Date	FR Cite
Open Meeting Notice	07/22/94	59 FR 37528
Report to Congress	09/18/96	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was originally included in

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RIN 2130-AA89, Locomotive Cab Working Conditions.

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RIN: 2130–AB23

2121. LOCOMOTIVE EVENT RECORDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA will propose improvements in the crashworthiness of event recorders and will propose additional requirements for data capture and recording for event recorders installed in new and rebuilt locomotives. FRA is awaiting the advice and recommendations of RSAC before taking further regulatory action.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: This rulemaking was previously titled "Crashworthy Event Recorders".

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RIN: 2130–AB34

2122. REVISION TO RAILROAD SAFETY ENFORCEMENT PROCEDURES

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 209

Legal Deadline: None

Abstract: This action will revise and update FRA's enforcement procedures. This action is expected to address the recodification of the railroad safety laws and revise certain administrative hearing procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kathryn E. Shelton, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2130–AB35

2123. RULES OF PRACTICE

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 211

Legal Deadline: None

Abstract: This action will revise and update FRA's rulemaking procedures, and the procedures for participation in the rulemaking process, such as petitions for rulemaking, petitions for reconsideration, and petitions for waiver. These procedures will be modified to reflect the recodification of the railroad safety laws, and changes in the application of FRA's regulatory procedures that have developed over time.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Colleen A. Brennan, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2130–AB36

2124. RAILROAD CAR CONSPICUITY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20148

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: FRA is considering requiring that retroreflective tape be applied to all railroad cars. FRA has established a docket so that interested parties may submit relevant information.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2130–AB41

2125. REVISION TO THE ACCIDENT/INCIDENT REPORTING REGULATIONS AND GUIDE

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20901; 49 USC 20902

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: FRA intends to conform its regulations for accident/incident reporting to revised OSHA regulations, and to make appropriate revisions to the FRA Guide for Preparing Accident/Incident Reports. On January 19, 2001, OSHA published revised regulations for Occupational Injury and Illness Recording and Reporting (66 FR 5965). FRA accident/incident regulations pertaining to occupational injury and illness are patterned after the prior OSHA regulations and must be maintained in general conformity with those regulations to permit compatibility of data and integration of railroad industry data into national statistical databases. OSHA's final rule became effective on January 1, 2002. Accordingly, FRA needs to revise its own injury codes and narratives, cause codes and narratives, and circumstance codes and narratives (as set forth in the FRA Reporting Guide) as soon as feasible. Minor administrative issues have also arisen since the last general revision of Part 225 on January 1, 1997 that will be considered in relation to possible amendments to the regulations or the Reporting Guide.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Nancy Friedman, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6034

RIN: 2130–AB51

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Final Rule Stage

2126. LOCAL RAIL FREIGHT ASSISTANCE TO STATES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 22101

CFR Citation: 49 CFR 266

Legal Deadline: None

Abstract: This action is to revise the procedures and requirements for the receipt of financial assistance contained in part 266. These changes are required to reflect statutory modifications resulting from the Local Rail Service Reauthorization Act of 1989. The Local Freight Assistance Program has not been reauthorized after FY 1995. However, final regulations are necessary because States continue to submit applications for new projects to be funded from loan funds repaid to States by previous borrowers. FRA is reconsidering the need for these regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/30/90	55 FR 49648
NPRM Comment Period End	12/31/90	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: While this action was to be terminated in October of 1995, the agency reconsidered and decided to move forward with a final rule. FRA is now reconsidering that determination.

ANALYSIS: Regulatory Evaluation, 11/30/90, 55 FR 49648

Agency Contact: JoAnne McGowan, Chief, Freight Programs Division, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2130–AA60

2127. +WHISTLE BANS AT HIGHWAY-RAIL GRADE CROSSINGS

Priority: Other Significant

Legal Authority: 49 USC 20153

CFR Citation: 49 CFR 222

Legal Deadline: Final, Statutory, November 2, 1996, subsequent enactment prohibited issuance prior to July 1, 2001.

Abstract: This action would govern when train whistles at grade crossings must be sounded. FRA has found that failing to use the locomotive horn can significantly increase the number of collisions with motorists using the crossing. This action is considered significant because of substantial public interest. This action is being taken pursuant to statutory mandate. FRA studied the consequences of the proposed action and prepared a draft environmental impact statement (EIS) for the proposed rule.

Statement of Need: This rule is required by the Swift Development Act of 1994 (Act). The Act requires the use of locomotive horns at every public highway-rail grade crossing but gives FRA the authority to make reasonable exceptions. Studies have shown that highway-rail grade crossing accidents increase 62 percent at gated crossings where whistle bans are in effect. Congress amended this law in 1996 to require that FRA take into account the interest of the communities with pre-existing restrictions on locomotive horns. In 2000, Congress prohibited FRA from issuing a rule before July 1, 2001.

Summary of Legal Basis: Issuance of this rule is required by 49 USC 20153.

Alternatives: There was no alternative to initiating this rulemaking, as it is required by statute. However, the rule would provide a list of supplementary measures the FRA has determined to be effective substitutes for the locomotive horn in the prevention of highway-rail grade crossing casualties. The rule would also allow for whistle bans if there are alternative safety measures that compensate for the lack of a locomotive horn.

Anticipated Cost and Benefits: The problems considered by this rule are collisions and their associated casualties and property damage involving vehicles on public highways and trains at whistle-ban grade crossings.

The costs of this rulemaking will be incurred predominantly by communities. However, there are also costs to railroads and to the Federal Government. At this time, FRA does not know how many businesses would be impacted or the severity of the impact if a community elects to follow the mandate and become subject to whistleblowing at crossings.

Risks: As a result of studies conducted on accident rates at crossings at which locomotive horns are banned, FRA has concluded that such crossings generally have a higher risk of accident than crossings at which horns are sounded. FRA has compared the number of collisions occurring within ten different groups of crossings grouped by risk and found that the risk of a collision was 62 percent greater at crossings equipped with automatic gates and flashing lights than at similarly equipped crossings across the nation without bans. FRA analysis also

indicated that whistle ban crossings without gates, but equipped with flashing light signals and/or other types of active warning devices, on average, experienced 119 percent more collisions than similarly equipped crossings without whistle bans. Congress required that FRA issue a regulation requiring the sounding of locomotive horns at all public highway rail grade crossings. However, an exception to the requirement is permissible in circumstances in which there is not a significant risk of loss of life or serious personal injury, use of the locomotive horn is impractical, or supplementary safety measures fully compensate for the absence of the warning provided by the horn. Issuance of the rule would lower the increased collision risk associated with crossings at which no locomotive horns are sounded.

Timetable:

Action	Date	FR Cite
NPRM	01/13/00	65 FR 2230
NPRM Comment Period End	05/26/00	
Final Action	11/30/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: An Omnibus Bill at the end of the 106th Congress prohibited publication of a final rule before July 2001.

Agency Contact: Mark Tessler, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6061

RIN: 2130–AA71

2128. +STANDARDS FOR DEVELOPMENT AND USE OF PROCESSOR-BASED SIGNAL AND TRAIN CONTROL SYSTEMS

Priority: Other Significant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 234; 49 CFR 236; 49 CFR 209

Legal Deadline: None

Abstract: Consistent with congressional mandate, FRA has continued its commitment to supporting Positive Train Control (PTC) technology development, testing and compatibility; and promoting deployment of PTC technology in the near future. In September 1997, FRA initiated joint fact finding efforts through the Railroad Safety Advisory Committee (RSAC) Working Group on PTC. The advice and recommendations of RSAC formed the basis of an NPRM that would facilitate introduction of advanced technology, including systems that support PTC functions. The NPRM addresses technical standards for all processor-based signal and train control products, amending 49 CFR part 236. The comment period ended 11/08/01, and FRA is now preparing a final rule. After reviewing comments and meeting with RSAC, FRA published its final rule on April 4, 2002. Most of the requirements become effective on June 3, 2002.

Statement of Need: Current FRA regulations do not adequately address the use of signal and train control technology that is processor-based. In fact, application of current regulations to processor-based systems can create unnecessarily burdensome requirements. Recently, use of this technology has begun to increase on the general system of North American railroads, placing new demands on agency resources to ensure the safety objectives contemplated by the current regulations are achieved. The existence of federal regulations addressing this subject matter would further encourage safe use of the technology, which would reduce the risk of train-to-train collisions, better enforce speed restrictions, and increase the level of protection to roadway workers and their equipment. These improvements will likely result in fewer fatalities, injuries, and economic damage associated with such risks. Given the potential for substantial safety benefits that this program represents, this initiative is extremely important to the agency.

Summary of Legal Basis: FRA is issuing this rule pursuant to its general rulemaking authority. 49 U.S.C. 20103(a). Currently, railroads may discontinue or materially alter a signal system initially required by the Secretary of Transportation only with approval from the Secretary. 49 U.S.C. 20502. Exercise of both of these powers has been delegated to the FRA Administrator. 49 C.F.R. 1.49.

Alternatives: Currently, FRA accepts waiver applications from railroads that seek relief from FRA safety regulations in order to test new signal and train control equipment. Since FRA must consider the safety ramifications of each application on a case-by-case basis, this procedure can take years.

Prior to this action, FRA has considered: (1) leaving the existing regulatory requirement as is, and (2) adopting a single standard for the design of processor-based signal and train control systems. However, agency inaction would hinder introduction of new, safer technology into railroad signal and train control; elimination of all railroad signal and train control system regulation would be a total abdication of the agency's statutory duties; and a single design standard would inhibit innovative signal and train control system designs.

Anticipated Cost and Benefits: The proposed rule would provide flexible performance standards for the design of processor-based signal and train control systems, but would not mandate their usage. FRA believes that a railroad would adopt such a system under one or more of the following conditions: (1) the new system is safer; (2) the new system is less expensive; and (3) continued maintenance of the existing system is no longer feasible. The rule would ensure that any replacement system is at least as safe as the current system. Concerning existing processor-based systems, the rule would require railroads to adopt a software management plan, which will ensure proper software configuration, resulting in decreased risk of train accidents due to signal malfunction. FRA has not quantified these benefits because of the difficulties in estimating how many systems are likely to be affected by this rule, what the incremental cost would be, and when the benefits would accrue.

Most of the costs of this proceeding are associated with safety documentation required to demonstrate compliance with the performance standard. As with many performance standards, this rule would require substantial safety documentation from the railroad to demonstrate compliance, both up front and during the life cycle of the system. It appears that the primary cost involved in this rule would be the product risk assessment, a one-time expense presently incurred by product suppliers. For current processor-based systems, railroads face the cost of implementing a software management control plan, which is less expensive than attempting to satisfy current requirements, which did not contemplate the use of processor-based technology.

Overall, it appears that the benefits of the rule would outweigh the costs.

Risks: The risk category addressed by the proposed rule is that of accidents that occur due to improper train operations and certain types of vandalism. Types of accidents that may be prevented include train-to-train collisions, derailments due to excessive train speed, and trains penetrating the work limits of roadway workers.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42351
NPRM Comment Period End	11/08/01	
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2130–AA94

2129. SMALL RAILROADS; POLICY STATEMENT ON ENFORCEMENT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 601 et seq; PL 104-121; 49 USC 20101 et seq

CFR Citation: 49 CFR 209

Legal Deadline: Other, Statutory, March 29, 1997, 180 Days to Final Rule.

Abstract: The Small Business Regulatory Enforcement Act (SBREFA) of 1996 requires, among other things, that Federal agencies establish communication and enforcement programs to address the unique concerns and operations of small entities.

Pursuant to SBREFA, FRA published communication and enforcement policies with respect to small entities in an Interim Statement of Agency Policy and undertook an interim definition of "small entity" in this process. Also, FRA invited comment from the public for the purpose of adopting a new definition of "small entity" in the future, and conducted a public meeting with all interested parties to discuss this issue. FRA will issue a Final Statement of Policy.

Timetable:

Action	Date	FR Cite
Interim Policy Statement	08/11/97	62 FR 43024
Interim Policy Statement Effective	10/10/97	
Comment Period End	11/30/97	
Final Policy Statement	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Local

Additional Information: A public meeting was held on September 28, 1999. (See 64 FR 46468, 8/25/99.)

Agency Contact: Nancy Lummen Lewis, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6047

RIN: 2130–AB15

2130. +REGULATIONS ON SAFETY INTEGRATION PLANS GOVERNING RAILROAD CONSOLIDATIONS, MERGERS, ACQUISITIONS OF CONTROL AND START-UP OPERATIONS

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20107; 49 USC 21301; 28 USC 2461

CFR Citation: 49 CFR 244; 49 CFR 1.49

Legal Deadline: None

Abstract: FRA prepared a proposed rule that would require a railroad to file a Safety Integration Plan with the Federal Railroad Administration (1) whenever a Class I railroad, the National Railroad Passenger Corporation, or a railroad providing commuter service proposes to merge, consolidate or acquire control of one another; (2) whenever an entity proposes to start operations as a railroad; (3) whenever a Class II railroad proposes to consolidate, merge, or acquire control of another Class II railroad with which it would directly interchange freight, or (4) whenever a railroad merger, consolidation or acquisition of control would result in operations that generate revenue in excess of the Class I threshold. The proposed rule prescribed content and subject matter areas that must be addressed in each plan before FRA may approve of such plan. FRA prepared a final rule and coordinated with the Surface Transportation Board to issue rulemaking actions covering these transactions within the framework of each agency's jurisdiction.

Statement of Need: This rule is necessary to ensure advance planning of operations to promote rail safety. Given the safety problems encountered in previous transactions and the need for the merging or acquiring railroad to integrate and harmonize information systems, training, operational practices and safety procedures on a massive scale, the need to require detailed plans setting forth the manner in which the parties intend to safely implement integration plans became apparent to FRA.

Summary of Legal Basis: Because this rule concerns rail safety, FRA is vested with statutory authority to issue regulations governing these regulated transactions. See 49 USC 20101 et seq.

Alternatives: The rule authorizes a railroad carrying out a regulated transaction to petition for a waiver of compliance. The railroad must follow the procedures prescribed in 49 CFR 211 in filing such a petition. FRA may grant the petition if waiver of compliance is consistent with the public interest and railroad safety. FRA does not intend to regulate Class III railroads for the purposes of this rule. Nevertheless, the agency solicited comments from interested parties about whether the rule should cover any Class III railroad seeking to carry out a regulated transaction.

Anticipated Cost and Benefits: In this rulemaking action, FRA addressed the costs and benefits of issuing the rule. See 63 FR 72225, 72235 (December 31, 1998). For Class I railroads, the agency estimates that a SIP would cost between $300,000 and $800,000 to

prepare, but will prevent $1.5 million to $12 million in accident costs. For Class II railroads, FRA estimates that a SIP would cost between $50,000 and $200,000 to prepare, but will prevent between $60,000 and $1.2 million in accident costs. The agency added that the safety planning process may save railroads from experiencing substantial service difficulties that correspond to these complex transactions.

Risks: The problems that surfaced after the merger of the Union Pacific and the Southern Pacific indicated that safety could be significantly compromised in implementing a consolidation unless the parties addressed the safety issues specifically, formally and systematically, particularly if the merger was large and complex. To address safety-related problems stemming from a merger, FRA needed a projection into the future of the safety consequences of consolidating the systems. To accomplish this, in response to the proposed acquisition of Conrail by Norfolk Southern and CSX Transportation, FRA suggested, and the STB required, that the merger applicants develop and submit well-defined Safety Integration Plans as part of the merger application process. The rule requires, that such Plans be filed by certain railroads in the context of proposed mergers and acquisitions and similar circumstances.

Timetable:

Action	Date	FR Cite
NPRM	12/31/98	63 FR 72225
NPRM Comment Period Extended	04/21/99	64 FR 19512
Public Hearing - Notice	04/21/99	64 FR 19512
NPRM Comment Period End	05/04/99	
Final Action	03/15/02	67 FR 11582
Final Action Effective	04/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: A public hearing on this rulemaking was held on May 4, 1999.

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RIN: 2130–AB24

2131. ROADWAY MAINTENANCE MACHINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 214

Legal Deadline: None

Abstract: FRA proposed regulations governing operational and design safety of on-track equipment used by railroads for track maintenance. The regulations would cover self-propelled rail-mounted non-highway machines where light weight exceeds 7500 pounds. This rulemaking was requested by the Brotherhood of Maintenance of Way Employees (BMWE) as part of the organization's petition requesting revision of the track safety standards. FRA decided to respond to this portion of the BMWE petition in a rulemaking separate from the track safety standards revision. FRA is now preparing the final rule.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1930
NPRM Comment Period End	03/12/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This rulemaking is an offshoot of the rulemaking to revise the track safety standards. FRA has changed the title of the current entry to the Unified Regulatory Agenda, which was originally entitled "Roadway Maintenance Machine Safety" to more accurately reflect what this action is expected to address.

Agency Contact: Nancy Lummen Lewis, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2130–AB28

2132. ANNUAL ADJUSTMENT OF MONETARY THRESHOLD FOR REPORTING RAIL EQUIPMENT ACCIDENTS/INCIDENTS

Priority: Routine and Frequent

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: This annual determination establishes the monetary threshold for reporting rail equipment accidents/incidents involving railroad property damage. This action ensures and maintains comparability between different years of data by having the threshold keep pace with fluctuations in equipment and labor costs. It is required by statute. The reporting threshold is based on the formula adopted in a final rule 5/18/96, 61 FR 60632. This agenda entry will be updated each year to show the latest annual determination. Cites for determinations already issued are provided below.

Timetable:

Action	Date	FR Cite
Notice	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: The 2001 final rule of 12/26/2001, 66 FR 66346, increases the monetary threshold from $6,600 to $6,700 for accidents/incidents that occur during the calendar year 2002. After the 1997 final rule of 2/2/97, 62 FR 63675, increased the monetary threshold from $6,500 to $6,600, the monetary threshold remained at $6,600 from calendar years 1998 through 2000. The 1996 final rule of 11/29/96, 61 FR 60632, increased the monetary threshold from $6,300 to $6,500.

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RIN: 2130–AB30

2133. DETERMINATION OF MINIMUM TESTING RATE FOR RANDOM DRUG AND ALCOHOL TESTING

Priority: Info./Admin./Other

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 219

Legal Deadline: None

Abstract: Each year FRA announces the minimum random drug and alcohol testing rates for the following year for the railroad industry. This determination is based on a review of rail industry drug and alcohol management information system data, as well as data from compliance reviews of rail industry drug and alcohol testing programs. Procedures were established in a final rule published on December 2, 1994, 59 FR 62218. For the calendar year 2002, the minimum random drug and alcohol testing rates of covered railroad employees continue to be 25 percent and 10 percent, respectively. This agenda entry will be updated each year to show the latest annual determination. Cites for determinations already issued are provided below.

Timetable:

Action	Date	FR Cite
Annual Determination	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: In the notice of determination of January 2, 2002 (67 FR 21), the minimum random drug and alcohol testing rates of covered railroad employees remained at 25 percent and 10 percent, respectively, for calendar year 2002. In the notices of determination of 2/18/98 (63 FR 8143), 12/30/98 (63 FR 71789), 12/27/99 (64 FR 72289), and 12/19/00 (65 FR 79318), the minimum rates remained at 25 percent and 10 percent for calendar years 1998, 1999, 2000 and 2001.

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Phone: 202 493-6060
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RIN: 2130–AB31

2134. +LOCATIONAL REQUIREMENT FOR DISPATCHING OF UNITED STATES RAIL OPERATIONS

Priority: Other Significant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 241

Legal Deadline: None

Abstract: This interim final rule requires that all railroad operations in the United States be dispatched in the United States, with certain exceptions. This action is considered significant because of substantial interdepartmental concerns.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63942
Interim Final Rule Effective	01/10/02	
Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
Phone: 202 493-6067

RIN: 2130–AB38

2135. PASSENGER EQUIPMENT SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20133; 49 USC 20103

CFR Citation: 49 CFR 216; 49 CFR 238

Legal Deadline: None

Abstract: This action responds to the remaining issues raised in the petitions for reconsideration of FRA's May 12, 1999 final rule, which established comprehensive Federal safety standards for railroad passenger equipment. See 64 FR 25540. This action clarifies and amends the final rule, principally those sections related to fire safety and the structure of railroad passenger equipment. This action follows a response to the petitions for reconsideration related to the inspection, testing, and maintenance of railroad passenger equipment, as well as the movement of defective equipment provisions of the May 12, 1999 final rule. See 65 FR 41284.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Daniel Alpert, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6026

RIN: 2130–AB48

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Long-Term Actions

2136. BLUE SIGNAL AND RELATED PROTECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 218

Legal Deadline: None

Abstract: FRA is in the process of reconsidering amendments to its "Blue Signal" regulations, which prescribe minimum requirements for the protection of railroad employees engaged in the inspection, testing, repair, and servicing of rolling equipment. This task was assigned to RSAC and the working group met for the first time in October, 2000. There have been six subsequent meetings. Currently, the working group is still considering several issues and, thus, the next action on this rule is undetermined.

Timetable:

Action	Date	FR Cite
Final Rule Amendments	03/01/95	60 FR 11047
Comment Period End	05/01/95	
Comment Period Reopened	06/09/95	60 FR 30469
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The final rule on utility employees was published August 16, 1993 (58 FR 43287). RIN

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2130-AA77. FRA has changed the title of the current entry to the Unified Regulatory Agenda, which was originally titled "Protection of Utility Employees" to more accurately reflect what this action is expected to address.

Agency Contact: John A. Winkle, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW, Washington, DC 20590
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RIN: 2130–AA90

2137. CRANE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In response to a petition for rulemaking, FRA will consider whether to adopt regulations governing functional and design safety of on-track railroad cranes used for track maintenance. FRA is awaiting the advice and recommendations of RSAC before taking further regulatory action.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Christine Beyer, Deputy Assistant Chief Counsel, Department of Transportation, Federal Railroad Administration, 400 Seventh Street, SW., Washington DC 20590
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RIN: 2130–AB27

2138. +APPLICATION OF RANDOM TESTING AND OTHER ALCOHOL AND DRUG REGULATIONS TO EMPLOYEES OF FOREIGN RAILROADS

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20140

CFR Citation: 49 CFR 219

Legal Deadline: None

Abstract: This action would apply FRA's random testing and other alcohol and drug requirements to employees of a foreign railroad whose primary reporting point is outside the United States, and who perform train service or dispatching service in the United States. Such employees are currently exempt from random testing, pre-employment testing, and requirements for employee self-referral and co-worker report policies. This action is considered significant because of substantial inter-departmental concerns.

Timetable:

Action	Date	FR Cite
NPRM	12/11/01	66 FR 64000
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

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RIN: 2130–AB39

2139. +MINIMUM STANDARDS FOR TEMPERATURE IN THE LOCOMOTIVE CAB

Priority: Other Significant

Legal Authority: 49 USC 20103; 49 USC 20701 to 20703

CFR Citation: 49 CFR 229

Legal Deadline: None

Abstract: FRA is considering amending current minimum temperature requirements and establishing maximum cab temperature requirements.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6064

RIN: 2130–AB46

2140. IMPROVEMENTS TO THE SYSTEM FOR REPORTING TRAIN ACCIDENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20901; 49 USC 20902

CFR Citation: 49 CFR 225

Legal Deadline: None

Abstract: FRA initiated a pilot study to investigate a possible approach for developing a new system of reporting train accidents, potentially leading to a revision of the regulations for reporting rail equipment accidents/incidents involving railroad property damage. Under the current system, railroads are required to report any event involving property damage or injury if the total cost of the event for all railroads involved exceeds a threshold. The cost of repairing the damage therefore acts as a surrogate measure of severity. Repair cost, however, is unsatisfactory as a surrogate measure of severity. Costs can be substantially affected by factors that have no relevancy to severity, such as the newness of any destroyed equipment and facilities. Nevertheless, current regulations mandate that if a locomotive engineer has been found to be at fault for causing an event, he or she can be disqualified only if it is reportable as a train accident. The perceived unfairness of disqualification being only loosely tied to accident severity is something FRA wishes to remedy by changing the reporting requirement to more closely reflect the severity of the event rather than just the book cost.

FRA is also interested in changing the system to reduce time and effort spent by railroads in reporting and recording train accidents. The current reporting system causes substantial inconvenience and places a burden on the railroads. The railroads' initial estimates of repair costs are somewhat subjective, yet they have to decide whether to report an event on the basis of the estimate. In addition, if the actual cost of an event deviates from initial estimates by more than 10% and exceeds the threshold, then the railroad would be required to submit a report if the initial estimate was below the threshold and an amendment if the initial estimate was above. The uncertainty about the status of an event may put undue pressure on railroads to report more events as train accidents than necessary.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The results of the pilot study were insufficient to permit FRA to try out certain aspects of the proposed approach to developing a new system. Further action to be determined.

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RIN: 2130–AB50

2141. • AUTOMATIC TRAIN CONTROL (ATC) AND ADVANCED CIVIL SPEED ENFORCEMENT SYSTEM (ACSES); NORTHEAST CORRIDOR (NEC) RAILROADS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: None

Legal Deadline: None

Abstract: An order is in effect, but amendments for technical matters or for the phasing of implementation will be added as needed. Through this amendment, FRA granted a second extension of a previously granted exception that allows MBTA to follow temporary operating protocols whenever it cannot dispatch a train equipped with ACSES. This exception, which would have expired on February 1, 2002, now runs through April 5, 2002.

Timetable:

Action	Date	FR Cite
Amendment	02/12/02	67 FR 6573
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2130–AB55

Department of Transportation (DOT)
Federal Railroad Administration (FRA)

Completed Actions

2142. FREIGHT CAR SAFETY STANDARDS: MAINTENANCE-OF-WAY EQUIPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 215

Legal Deadline: None

Abstract: This action originally proposed to amend the freight car safety standards to subject all maintenance-of-way vehicles to FRA's safety standards, with the exception of stenciled cars not used in revenue service and restricted to a speed of less than 20 miles per hour. This action was originally considered significant because of anticipated public and industry interest.

Timetable:

Action	Date	FR Cite
NPRM	03/10/94	59 FR 11238
NPRM Comment Period End	02/27/95	
Notice of Termination	03/27/02	67 FR 14665

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The original NPRM comment period ended on 4/11/94 but was twice extended; first, to 11/28/94 (59 FR 49374) and then to 02/27/95 (59 FR 67266). Due to various contentious issues raised during the NPRM comment period, FRA believed it might be advantageous to resolve differences in an open forum. Therefore, on September 30, 1997, FRA formally proposed this rulemaking as a new task (Task 97-8) for the Railroad Safety Advisory Committee (RSAC). After discussion, the RSAC declined to accept the task at that time. The need to complete other, higher priority projects has not permitted further action on this rulemaking.

ANALYSIS: Regulatory Evaluation, 03/10/94, 59 FR 11238

Agency Contact: Thomas Herrmann, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6036

RIN: 2130–AA68

2143. LOCOMOTIVE CAB WORKING CONDITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 229

Legal Deadline: Final, Statutory, March 3, 1995, Rule or Report to Congress. Report to Congress issued 9/18/96.

Abstract: The agency has proposed to address crew working conditions on locomotives, pursuant to the Rail Safety Enforcement and Review Act (1992). FRA investigated a variety of locomotive working conditions, including sanitation, noise and temperature, and reported its findings to Congress. On October 31, 1996, the Railroad Safety Advisory Committee (RSAC) accepted a preliminary planning task to schedule handling of these issues, and established the Locomotive Crew Safety Working Group. The Working Group prepared recommendations addressing sanitation in locomotive cabs. The Working Group presented RSAC with these recommendations and the full RSAC voted to refer them to FRA as the basis for a Notice of Proposed Rulemaking (NPRM). FRA used these recommendations as the basis for an NPRM, which was published January 2, 2001.

Timetable:

Action	Date	FR Cite
Open Meeting Notice	07/22/94	59 FR 37528
Report to Congress	09/18/96	
NPRM (Sanitation)	01/02/01	66 FR 136
NPRM Comment Period End	03/05/01	
Final Action	04/04/02	67 FR 16032

Regulatory Flexibility Analysis Required: Yes

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Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Christina McDonald, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6032

RIN: 2130–AA89

2144. BRIDGE WORKER SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 214

Legal Deadline: None

Abstract: In response to a petition for rulemaking, FRA amended the Bridge Worker Safety Rules through promulgation of an interim final rule. The interim final rule prohibits the use of safety belts as fall protection, but would continue to require the use of harnesses, which are more commonly used in present industry practice. The interim final rule also makes technical clarifications to the existing standards. This action is supported by the industry and is consistent with new policies of the Occupational Safety and Health Administration. Data shows that safety belts present unnecessary safety risks, and are generally disfavored by companies involved with working at heights.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/15/02	67 FR 1903

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Walters, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6064

RIN: 2130–AB25

2145. • BRAKE SYSTEM SAFETY STANDARDS FOR FREIGHT AND OTHER NON-PASSENGER TRAINS AND EQUIPMENT; END-OF-TRAIN DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103

CFR Citation: 49 CFR 232

Legal Deadline: Other, Statutory, December 31, 1993, Final Rule; Response to Petitions for Reconsideration.

Abstract: Pursuant to the Federal Railroad Safety Enforcement and Review Act of 1992, FRA revised the regulations related to freight power brakes. On January 17, 2001, FRA issued a final rule revising the freight power brake standards (66 FR 4104). On August 1, 2001, FRA issued an initial response to petitions for reconsideration of the final rule related to the periodic maintenance and test requirements contained in subpart D of the final rule (66 FR 39683). This document responds to the remaining issues raised in the petitions for reconsideration of the final rule.

Timetable:

Action	Date	FR Cite
Final Rule; Response to Petitions for Reconsideration	04/10/02	67 FR 17556

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas Herrmann, Trial Attorney, Department of Transportation, Federal Railroad Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 493-6036

RIN: 2130–AB52

2146. • ALCOHOL/DRUG REGULATIONS: TEMPORARY POST-ACCIDENT BLOOD TESTING PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 20103; 49 USC 20107; 49 USC 20111; 49 USC 20113; 49 USC 20140; ...

CFR Citation: 49 CFR 1.49(m)

Legal Deadline: None

Abstract: Temporary post-accident blood testing procedures to be followed until all FRA post-accident kits have fresh blood tubes.

Timetable:

Action	Date	FR Cite
Notice	12/31/01	66 FR 67623

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Patricia V. Sun, Trial Attorney, Department of Transportation, Federal Railroad Administration, 1120 Vermont Avenue, N.W. STOP-10, Washington, DC 20590
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RIN: 2130–AB54

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Final Rule Stage

2147. +CLEAN FUELS FORMULA GRANT PROGRAM

Priority: Other Significant

Legal Authority: PL 105-178, sec 3008; 49 USC 5308

CFR Citation: 49 CFR 624

Legal Deadline: None

Abstract: Section 3008 of the Transportation Equity Act for the 21st Century establishes the Clean Fuels Formula Grant Program. This grant program will assist transit systems in purchasing or leasing clean fuel vehicles; constructing clean fuel or electrical re-charging facilities; modifying existing garage facilities to accommodate clean fuel vehicles; repowering pre-1993 engines with clean fuel technology which meets the current bus emission standards; and retrofitting or rebuilding pre-1993 engines before their half-life for rebuilding. This provision requires the Secretary to issue an implementing regulation that sets forth eligibility requirements and an apportionment formula for eligible projects. In FY 1999, all funds were apportioned to earmarked projects. This action is considered significant because of considerable congressional and public interest.

Statement of Need: This rulemaking is intended to assist nonattainment and maintenance areas in achieving or maintaining air quality attainment status. The program also seeks to support emerging clean fuel and advanced propulsion technologies for transit buses and to create markets for these technologies.

Timetable:

Action	Date	FR Cite
NPRM	08/28/01	66 FR 45551
NPRM Comment Period End	10/21/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Scheryl Portee, Attorney Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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Fax: 202 366-3809

RIN: 2132–AA64

2148. STATE SAFETY OVERSIGHT; RAIL FIXED GUIDEWAY SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5330

CFR Citation: 49 CFR 659

Legal Deadline: None

Abstract: On the basis of State Safety Oversight audits that the Federal Transit Administration has been conducting over the past year, the agency will propose several amendments to the rule. An NPRM seeking comments to amend the regulation will be published. Additionally, a direct final rule is being issued to change the definition of "accident" to "major incident", as defined in the National Transit Database. This regulation was previously reported under RIN 2132-AA39 and RIN 2132-AA59.

Timetable:

Action	Date	FR Cite
Direct Final Rule	04/03/02	67 FR 15725

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Jerry Fisher, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA69

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Long-Term Actions

2149. +BUS TESTING

Priority: Other Significant

Legal Authority: 49 USC 5323(c)

CFR Citation: 49 CFR 665

Legal Deadline: None

Abstract: This regulation implements a statutory provision that requires any new bus model purchased after September 30, 1989, to be tested at a facility established pursuant to 49 USC 5318. This regulation is significant because of the large amount of public interest.

Timetable:

Action	Date	FR Cite
NPRM	05/25/89	54 FR 22716
NPRM Comment Period End	07/24/89	
Interim Final Rule	08/23/89	54 FR 35158
Comment Period Reopened	11/30/89	54 FR 49297
Interim Final Rule - Second	10/09/90	55 FR 41174
Interim Procedures	09/13/91	56 FR 46572
Interim Final Rule - New Vehicle Types	07/28/92	57 FR 33394
Interim Final Rule - Partial Effectiveness Postponed	10/13/92	57 FR 46814
Interim Final Rule - Comment Period Reopened to 01/29/93	01/07/93	58 FR 2989
Interim Final Rule - Partial Effectiveness Postponed	02/23/93	58 FR 10989
Notice of Meeting	02/26/93	58 FR 11549
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Former section 12(h) of the FT Act, as amended (now 49 USC 5302(a)(9)), defines a "new bus model" as a bus model which has not been used in mass transportation service in the United States before the date of production of such model, or a bus model which has been used in such service, but which is being produced with a major change in configuration or components. A third interim final rule, published on 07/28/92, added two new categories of buses required to be tested. On 10/13/92 FTA published a notice postponing the application of the interim final rule for these vehicle types until 02/10/93. FTA's fourth interim final rule, issued on 11/3/93, established four subcategories of small vehicles to facilitate the phase-in of testing.

Initially, FTA had intended to issue a final rule. However, FTA now believes that prior to the issuance of a final rule, the public should have the opportunity to provide additional comment, especially considering advances in technology and developments within the industry during the period that the interim final rule has been in effect.

ANALYSIS: Regulatory Evaluation, 07/28/92, 57 FR 33394

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RIN: 2132–AA30

2150. +NEPA AND RELATED PROCEDURES FOR TRANSPORTATION DECISIONMAKING; PROTECTION OF PUBLIC WORKS, WILDLIFE AND WATERFOWL REFUGES AND HISTORIC SITES

Priority: Other Significant

Legal Authority: 23 USC 109, 128, 134, 138 and 315; 42 USC 2000d-2000d-4, 4321 et seq. and 7401 et seq.; 49 USC 303 , 5301(e), 5303, 5309 and 5324(b) and (c); 49 CFR 1.48 and 1.51; 33 CFR 115.60(b); 40 CFR 1500 to 1508

CFR Citation: 23 CFR 771; 23 CFR 1420; 23 CFR 1430; 49 CFR 622; 49 CFR 623

Legal Deadline: None

Abstract: The Federal Transit Administration and the Federal Highway Administration issued an NPRM to propose updating and revising the National Environmental Policy Act (NEPA) implementing regulation for FTA- and FHWA-funded or approved projects. The current regulations were issued in 1987 (23 CFR part 771, August 28, 1987) and experience since that time as well as changes in legislation, most recently by the Transportation Equity Act for the 21st Century (TEA-21), call for an updated approach to implementation of NEPA for FTA and FHWA projects and actions.

The FTA and the FHWA received numerous comments to the docket in response to this NPRM. The agencies are currently reviewing these comments to determine what action should follow.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33960
NPRM Comment Period Extended	07/07/00	65 FR 41892
NPRM Comment Period End	09/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: The corresponding FHWA RIN is 2125-AE64. This incorporates the issues contained in RIN 2125-AD32.

Agency Contact: Scott Biehl, Assistant Chief Counsel, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-0952
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RIN: 2132–AA43

2151. BUY AMERICA REQUIREMENTS; AMENDMENT TO CERTIFICATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-178, sec 3020(b)

CFR Citation: 49 CFR 661.11; 49 CFR 661.13

Legal Deadline: None

Abstract: This action would amend FTA's Buy America regulation, 49 CFR 661 in accordance with section 3020(b) of the Transportation Equity Act for the 21st Century. Section 3020(b) amended 49 USC 5323(g) to allow a bidder on an FTA-funded contract to correct an incomplete certification or a certification of noncompliance with Buy America resulting from an inadvertent or clerical error.

Timetable:

Action	Date	FR Cite
NPRM	02/18/99	64 FR 8051
NPRM Comment Period End	04/19/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA62

2152. +STATEWIDE METROPOLITAN PLANNING

Priority: Other Significant

Legal Authority: 23 USC 134; 23 USC 135; 23 USC 315; 42 USC 7410 et seq.; 49 USC 5303 to 5305; 49 CFR 1.48 and 1.51

CFR Citation: 23 CFR 450; 23 CFR 1410; 49 CFR 613; 49 CFR 621

Legal Deadline: None

Abstract: In this action, FTA and FHWA are jointly proposing to revise the regulations governing the development of transportation plans and programs for urbanized (metropolitan) areas and States. These revisions are the product of statutory changes made by the Transportation Equity Act for the 21st Century (TEA-21), which requires a continuous, comprehensive, and coordinated process in metropolitan areas and States. The regulations at 23 CFR part 450 and 49 CFR part 613 would be modified to reflect the impacts of TEA-21.

The agencies (FTA and FHWA) have received numerous comments to the docket in response to the NPRM. The comments are currently being analyzed by both agencies to determine what action should follow.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33922
NPRM Comment Period Extended	07/07/00	65 FR 41891
NPRM Comment Period End	09/23/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: The corresponding FHWA RIN is 2125-AE62.

Agency Contact: Scott Biehl, Assistant Chief Counsel, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA66

2153. SCHOOL BUS OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5323(f)

CFR Citation: 49 CFR 605

Legal Deadline: None

Abstract: This rulemaking amends the definition of "tripper" service, which is mass transportation service modified to meet the needs of school students and personnel. The amended definition will prohibit the use of certain signage without the express written permission of the FTA Administrator, and provides that tripper buses must stop only at stops that are marked as available to the public. In the previous agenda, FTA had stated that it intended to withdraw the proposed amendment. However, upon further consideration, the agency has decided to hold this matter in abeyance pending reauthorization of the Transportation Equity Act for the 21st Century (TEA-21).

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23590
NPRM Comment Period End	07/02/99	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Elizabeth S. Martineau, Attorney Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA67

2154. BUY AMERICA REQUIREMENTS; PERMANENT WAIVER FOR MICROCOMPUTERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 97-424

CFR Citation: 49 CFR 661

Legal Deadline: None

Abstract: Section 165(b)(2) of the Surface Transportation Assistance Act of 1982 provides that a waiver of the Buy America requirements may be granted if materials and products being procured are not produced in the United States in sufficient and reasonable quantities and of satisfactory quality. Such a waiver was permanently granted in 1986 for microcomputers, as FTA grantees were experiencing difficulty in purchasing domestically produced microcomputer equipment appropriate to their needs. At that time, FTA reserved the right to reassess the need for a waiver based on the changing market for microcomputers. Since both the international and domestic market for microcomputers has changed since the permanent waiver was issued, FTA is soliciting comments as to whether this waiver should be revoked, modified or retained.

Timetable:

Action	Date	FR Cite
ANPRM	10/08/99	64 FR 54855
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Meghan Ludtke, Attorney Advisor, Department of Transportation, Federal Transit Administration, Room 9316, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA68

Department of Transportation (DOT)
Federal Transit Administration (FTA)

Completed Actions

2155. +REQUIREMENT FOR THIRD-PARTY CONTRACTING WITH FTA RECIPIENTS

Priority: Other Significant

Legal Authority: 49 USC 322(a); 49 USC 5301 et seq; 49 USC 107(c); 49 CFR 18 and 19

CFR Citation: 49 CFR 635

Legal Deadline: None

Abstract: Federal Transit Administration had proposed putting FTA Circular 4220.1D, "Third-Party Contracting Requirements" into regulatory form, based on the belief that these procurement regulations would make the third-party contracting process more equitable and understandable. Upon further consideration and in consulation with industry representatives, FTA has determined that there is no clear need for this regulation at this time. Consequently, FTA will be terminating this rulemaking action.

Timetable:

Action	Date	FR Cite
Withdrawn	04/30/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Agency Contact: Richard Wong, Attorney-Advisor, Department of Transportation, Federal Transit Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2132–AA70

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Department of Transportation (DOT)
Saint Lawrence Seaway Development Corporation (SLSDC)

Completed Actions

2156. • SEAWAY REGULATIONS AND RULES: BALLAST WATER

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 983(a); 33 USC 984(a); 49 CFR 1.52

CFR Citation: 33 CFR 401

Legal Deadline: None

Abstract: Under agreement with the Saint Lawrence Seaway management Corporation of Canada, the SLSDC is proposing to amend the joint Seaway Regulations and Rules to make compliance with applicable Great Lakes shipping industry codes for ballast water management and practices a mandatory prerequisite for clearance of a commercial vessel for transit of the seaway system.

Timetable:

Action	Date	FR Cite
NPRM	01/24/02	67 FR 3465
NPRM Comment Period End	02/25/02	
Final Action	02/27/02	67 FR 8885
Final Action Effective	03/26/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc C. Owen, Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-6823
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RIN: 2135–AA13

2157. • SEAWAY TARIFF OF TOLLS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 983(a), 984(a)(4), 988; 49 CFR 1.52

CFR Citation: 33 CFR 402

Legal Deadline: None

Abstract: Under international agreement, the Saint Lawrence Seaway Development Corporation (SLSDC) and the Canadian Saint Lawrence Seaway Management Corporation jointly publish and administer the Seaway Tariff of Tolls. This rule amends the tariff to reflect the Canadian only fees and charges for the 2002 navigation season.

Timetable:

Action	Date	FR Cite
Final Action	02/14/02	67 FR 6869
Final Action Effective	03/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc C. Owen, Chief Counsel, Department of Transportation, Saint Lawrence Seaway Development Corporation, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2135–AA14

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Prerule Stage

2158. HAZARDOUS MATERIALS: REVISION OF REQUIREMENTS FOR CARRIAGE BY AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 48 USC 5101 to 5127

CFR Citation: 49 CFR 175

Legal Deadline: None

Abstract: Part 175 is being revised and rewritten in order to simplify and clarify the requirements, further align them with the international requirements (ICAO) and eliminate obsolete requirements.

Timetable:

Action	Date	FR Cite
ANPRM	02/26/02	67 FR 8769
ANPRM Comment Period End	05/31/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: Docket No. HM-228.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD18

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Proposed Rule Stage

2159. PIPELINE SAFETY: GAS GATHERING LINE DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: Final, Statutory, October 24, 1994.

Abstract: The existing definition of "gathering line" would be clearly defined to eliminate confusion in distinguishing these pipelines from transmission lines in rural areas. The costs should be minimal since the definition will conform to prevailing practices in government and industry.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48505
Request for Comments	03/11/99	64 FR 12147
Electronic Public Meeting	04/13/99	64 FR 12147
Extension of Comment Period	04/30/99	64 FR 23256
Comment Period Ends	07/07/99	64 FR 23256
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

DOT—RSPA

Proposed Rule Stage

Government Levels Affected: None

Additional Information: Docket No. RSPA-98-4868 (Formerly PS-122).

ANALYSIS: Regulatory Evaluation, 09/25/91, 56 FR 48505

Agency Contact: L.E. Herrick, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5523

RIN: 2137–AB15

2160. HAZARDOUS MATERIALS: REQUIREMENTS FOR CARGO TANKS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 173; 49 CFR 178; 49 CFR 180

Legal Deadline: None

Abstract: This rulemaking proposes to revise and clarify certain manufacturing, maintenance and use requirements pertaining to cargo tank motor vehicles that may be used for hazardous materials transportation. FMCSA inspections have resulted in a preliminary determination that these regulations need to be amended to make them more practical, understandable, and enforceable.

Timetable:

Action	Date	FR Cite
NPRM	12/04/01	66 FR 63905
NPRM Comment Period Extended	02/01/02	67 FR 4941
NPRM Comment Period End	04/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations, Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: HM-213

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AC90

2161. PIPELINE SAFETY: FURTHER REGULATORY REVIEW; GAS PIPELINE SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: This action would change miscellaneous gas pipeline safety standards to provide clarity, eliminate unnecessary or overly burdensome requirements, and foster economic growth. The proposed changes result from RSPA's further review of the standards and changes recommended by the National Association of Pipeline Safety Representatives (NAPSR) in its November 1992 report on the standards and by the State Industry Regulatory Review Committee in its April 26, 1999 report. The proposed changes would reduce costs in the pipeline industry without compromising safety.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. PS-124. The NAPSR report was published November 9, 1993, at 58 FR 59431, as part of the earlier review of the standards.

Early in 1992, RSPA began an extensive review of the federal gas pipeline safety regulations (49 CFR 192) and invited the public to participate (57 FR 4745; February 7, 1992). RSPA published a Notice of Proposed Rulemaking (NPRM), proposing changes to 38 regulations in part 192 (Notice 1: 57 FR 39572; August 31, 1992). In addition, the National Association of Pipeline Safety Representatives (NAPSR) reported on a separate but related review of part 192. Because the NAPSR report concerned a few of the regulations covered by the NPRM and had similar objectives, we published the report and requested public comment on its various recommended rule changes (Notice 2: 58 FR 59431; November 9, 1992) and later extended the comment period (Notice 3: 58 FR 68382; December 27, 1993). A final rule was published on June 6, 1996. However, not all the changes suggested by the commenters were incorporated in the final rule. A further review of the regulations in Part 192, based on the record in this docket, was initiated in late 1996. This review identified proposals from the Gas Piping Technology Committee (GPTC), the ASME B31.8 (gas pipeline safety standards) committee, and NAPSR that have not yet been addressed.

In October 1997, NAPSR and the gas pipeline industry formed the State Industry Regulatory Review Committee (SIRRC), to discuss the regulatory proposals of NAPSR and other issues. On May 3, 1999, the SIRRC provided OPS a report on outcome of the discussion on 39 proposed changes in the gas pipeline safety regulations.

Most of the SIRRC recommendations will be addressed in a subsequent notice of proposed rulemaking. However, the welding recommendations are being adopted in the periodic update (Docket No. RSPA-99-6106 RIN 2137-AD35). And, the corrosion control recommendations are being considered in a review of the gas pipeline corrosion regulations in (RIN 2137-AD63)

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Phone: 202 366-4559

RIN: 2137–AD01

2162. +PIPELINE SAFETY: RECOMMENDATIONS TO CHANGE HAZARDOUS LIQUID PIPELINE SAFETY STANDARDS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 60101 to 60128

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: In 1995, the National Association of Pipeline Safety Representatives (NAPSR) completed its review of the hazardous liquid pipeline safety regulations. NAPSR provided RSPA with 28 recommendations for changes to 49 CFR part 195, the hazardous liquid pipeline regulations. NAPSR's recommendations are aimed at making the regulations more explicit, understandable, and enforceable. This

action would address the need to change part 195 as NAPSR recommended.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA-97-2717.

Agency Contact: L. M. Furrow, Regulations Manager, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4559

RIN: 2137–AD10

2163. HAZARDOUS MATERIALS: HAZARD COMMUNICATION REQUIREMENTS—PETITIONS FOR RULEMAKING AND MISCELLANEOUS AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172

Legal Deadline: None

Abstract: This rulemaking action would amend the Hazardous Materials Regulations (HMR) to continue improving the hazard communication requirements to better identify hazardous materials in transportation, in response to several petitions for rulemaking and RSPA initiatives. The primary areas addressed are shipping papers, marking, labeling, and placarding requirements. The proposed action is intended to improve safety for transportation workers, emergency responders, and the public. The effect of the proposed regulatory action would be to simplify, clarify, correct, or provide relief from certain regulatory requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM-206B

Agency Contact: Hêlen Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD28

2164. HAZARDOUS MATERIALS: AIR CARRIER EMERGENCY TELEPHONE NUMBER REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: The rulemaking addresses safety recommendations from the National Transportation Safety Board to require that air carriers transporting hazardous materials have the means, 24 hours per day, to quickly retrieve and provide to emergency responders consolidated specific information about the identify and location of all hazardous materials on an aircraft in a timely manner.

Timetable:

Action	Date	FR Cite
ANPRM	08/15/00	65 FR 49777
ANPRM Comment Period End	11/13/00	
NPRM	02/13/02	67 FR 6669
NPRM Comment Period End	04/26/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM-206C

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-8553
Fax: 202 366-3012
Email: rules@rspa.dot.gov

RIN: 2137–AD29

2165. +HAZARDOUS MATERIALS: SAFETY REQUIREMENTS FOR EXTERNAL PRODUCT PIPING ON CARGO TANKS TRANSPORTING FLAMMABLE LIQUIDS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173; 49 CFR 180

Legal Deadline: None

Abstract: This rulemaking will address requirements to reduce the risks associated with the retention of flammable liquid in unprotected product piping on a cargo tank motor vehicle during transportation (Wetlines). It responds to an NTSB recommendation. It is significant because of industry concerns about its cost implications.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-213B.

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD36

2166. HAZARDOUS MATERIALS: ADOPTION OF LATEST IAEA AND OTHER MISCELLANEOUS REVISIONS AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking proposes to harmonize the requirements for the packaging and transportation of Class 7 (radioactive) materials with the International Atomic Energy Agency (IAEA) regulations for the safe transportation of radioactive material and the UN recommendations.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/99	64 FR 72633
ANPRM Comment Period Extended	03/01/00	65 FR 11028
ANPRM Comment Period End	03/29/00	
ANPRM Comment Period End	06/29/00	
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-230.

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD40

2167. PIPELINE SAFETY: PRODUCER-OPERATED OUTER CONTINENTAL SHELF GAS AND HAZARDOUS LIQUID PIPELINES THAT CROSS DIRECTLY INTO STATE WATERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This proposed rule would implement a provision of the December 10, 1996 Memorandum of Understanding (MOU) between the Department of the Interior (DOI) and the Department of Transportation (DOT) regarding Outer Continental Shelf (OCS) Pipelines. This rule would address producer-operated pipelines that cross into State waters without first connecting with a transporting operator's facility on the OCS. It is complementary to the Direct Final Rule that addressed OCS oil or gas pipelines located upstream of the points at which operating responsibility for the pipelines transfers from a producing operator to a transporting operator (62 FR 61692, November 19, 1997; and 63 FR 126598, March 16, 1998). The proposed rule also would address the procedures by which producer and transportation pipeline operators would petition for permission to operate under either DOT or DOI regulations governing pipeline design, construction, operation, and maintenance according to the operational circumstances of their respective pipelines.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-99-6132.

Agency Contact: L.E. Herrick, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5523

RIN: 2137–AD42

2168. HAZARDOUS MATERIALS: MISCELLANEOUS AMENDMENTS FOR UNLOADING IM PORTABLE TANKS ON A TRANSPORT VEHICLE - PETITION FOR RULEMAKING

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 177

Legal Deadline: None

Abstract: RSPA is proposing a rule in response to a petition for rulemaking regarding the requirements applicable to the unloading of Intermodal (IM) portable tanks while on a transport vehicle.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8220
NPRM Comment Period End	04/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-218A.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD44

2169. HAZARDOUS MATERIALS: TRANSPORTATION OF LITHIUM BATTERIES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172 to 175

Legal Deadline: None

Abstract: RSPA is revising requirements applicable to lithium batteries for consistency with international requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-224C

Agency Contact: John A. Gale, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD48

2170. PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH CONSEQUENCE AREAS (GAS TRANSMISSION PIPELINE OPERATORS)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5121; 49 USC 60102 to 60104; 49 USC 60108, 60117, 60118, 60124; 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: An October 21, 1999, notice announced a public meeting to consider the need for additional safety and environmental regulations for gas transmission lines, hazardous liquid pipelines, and distribution pipelines in high-density population areas, commercially navigable waterways, and areas unusually sensitive to environmental damage. The public meeting was held on November 18-19, 1999 in Herndon, Virginia. The meeting was to determine the extent to which operators now have integrity management programs, to explore

effective ways to promote their development and implementation by all operators, and to discuss mechanisms to confirm the adequacy of such operator-developed programs. Participants in the meeting discussed a practical definition of high consequence areas, as well as the need, if any, for increased inspection, enhanced damage prevention, improved emergency response, and other measures to prevent and mitigate pipeline leaks and ruptures in these areas. Comments from the public were due by January 17, 2000.

A final rule was published to require validation/testing of the integrity of certain hazardous liquid pipelines in high consequence areas (RIN 2137-AD45).

Consideration of a similar gas rule is underway. A public meeting was held on February 12-14, 2001 to present information on integrity requirements for gas transmission pipelines. Additional information was requested June 27, 2001 (66 FR 34318). Rulemakings addressing gas transmission line high consequence areas, direct assessment, and overall integrity management program will be published in 2002.

Timetable:

Action	Date	FR Cite
NPRM Integrity Management Program	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-00-7666.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD54

2171. HAZARDOUS MATERIALS: FRANGIBLE DISCS ON TANK CARS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: RSPA proposed to clarify current inspection requirements for frangible discs in pressure relief devices on rail tank cars used to transport hazardous materials.

Timetable:

Action	Date	FR Cite
Undetermined	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: HM Docket: HM-216A

Agency Contact: Eileen Edmonson, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD57

2172. PIPELINE SAFETY: HAZARDOUS LIQUID PIPELINE OPERATOR ANNUAL REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: and 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: This rulemaking would amend the pipeline safety regulations to require hazardous liquid pipeline operators to submit a Hazardous Liquid Operator Annual Report. The information on the hazardous liquid operator annual report form is needed to normalize hazardous liquid accident information for identifying safety trends in the accident data. The inventory information that the annual report would provide addresses a major deficiency in the current information collection. Through a separate rulemaking, RSPA is also improving the hazardous liquid accident form by expanding "failure cause" categories and collecting more detailed information about the impact of failed pipelines. Together with the improved hazardous liquid accident report, the proposed Hazardous Liquid Operator Annual Report will address the concerns of RSPA/OPS, the National Transportation Safety Board (NTSB), Congress, and others, increase the overall usefulness of the data and make analysis more efficient and meaningful.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-01-9832.

Agency Contact: Roger Little, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4569

RIN: 2137–AD59

2173. • HAZARDOUS MATERIALS: HARMONIZATION WITH THE UNITED NATIONS RECOMMENDATIONS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND INTERNATIONAL CIVIL AVIATION ORGANIZATION TECHNICAL INSTRUCTIONS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: To amend the Hazardous Materials Regulations (HMR; 49 CFR Parts 171-180) to maintain alignment with international standards by incorporating numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations and vessel stowage requirements.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM-215E.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD66

2174. • HAZARDOUS MATERIALS: SECURITY REQUIREMENTS FOR OFFERORS AND TRANSPORTERS OF HAZARDOUS MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 172; 49 CFR 173; 49 CFR 177; 49 CFR 397

Legal Deadline: None

Abstract: This interim final rule will establish certain requirements designed to enhance the security of hazardous materials in transportation.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket HM-232.

Agency Contact: Susan Gorsky, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD67

2175. • PIPELINE SAFETY: ANNUAL UPDATE OF STANDARDS INCORPORATED BY REFERENCE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5103, 60102, 60103, 60104, 60108, 60109, 60110, 60113, and 60118

CFR Citation: 49 CFR 191; 49 CFR 193; 49 CFR 195

Legal Deadline: None

Abstract: More than 70 voluntary consensus technical standards are incorporated by reference in the Federal gas pipeline, hazardous liquid pipeline, and liquefied natural gas (LNG) safety regulations. The Office of Pipeline Safety will propose to incorporate updated standards early in each calendar year.

Timetable:

Action	Date	FR Cite
NPRM	03/01/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Docket No RSPA-02-11457.

Agency Contact: Richard Huriaux, Manager - Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4565

RIN: 2137–AD68

Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Final Rule Stage

2176. +HAZARDOUS MATERIALS: REQUIREMENTS FOR CYLINDERS

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 173; 49 CFR 178

Legal Deadline: None

Abstract: This rulemaking proposed to amend the Hazardous Materials Regulations (HMR) by updating and consolidating requirements for the manufacture, maintenance, requalification, repair, and use of compressed gas cylinders. Because of significant adverse comment, this rulemaking will be terminated. RSPA will address the proposals in this rulemaking applicable to maintenance, requalification and repair of DOT specification cylinders; approval for cylinder requalifiers, independent inspection agencies, and non-domestic chemical analyses and tests in a final rule under RIN 2137-AD58. Cylinder manufacturing issues will be addressed in a separate rulemaking action.

Summary of Legal Basis: Section 5103 of title 49 U.S.C. specifies that the Secretary shall prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce. These regulations apply to persons transporting or causing to transport hazardous materials in commerce, and persons manufacturing, fabricating, marking, maintaining, repairing or testing packagings that are represented, marked, certified, or sold by such persons as qualified for use in transporting hazardous materials in commerce.

Risks: Improving the integrity of cylinders will reduce the risk of leakage in overturns and other accidents. In addition, simplifying the regulations will reduce misunderstandings and the possibility of processing errors that may adversely affect safety.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 58460
NPRM Comment Period Extended to 09/30/1999	05/28/99	64 FR 28065
NPRM Comment Period End	05/28/99	
Termination Notice	02/13/02	67 FR 6667
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Formerly entitled Review: Consolidation of Specifications for High-Pressure Seamless Cylinders. Docket No. HM-220.

Agency Contact: Charles Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AA92

2177. DOT 3AL ALUMINUM CYLINDERS; SAFETY PROBLEMS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: Certain DOT 3AL cylinders made of aluminum alloy 6351 have developed cracks during service, and occasionally leaks developed resulting

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in loss of contents. The ANPRM was intended to alert and inform all persons possessing these cylinders of the problems, identify those cylinders at risk, and suggest steps to minimize risks. Safety issues will be handled and this rulemaking addressed under RIN 2137-AD58.

Timetable:

Action	Date	FR Cite
ANPRM	07/10/87	52 FR 26027
ANPRM Comment Period End	08/10/87	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: Docket No. HM-176A. Safety issues originally considered by this action are being addressed in Docket HM-220D, RIN 2137-AD58.

ANALYSIS: Regulatory Evaluation

Agency Contact: Charles Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AB51

2178. +PIPELINE SAFETY: RESPONSE PLANS FOR ONSHORE OIL PIPELINES

Priority: Other Significant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 194

Legal Deadline: Final, Statutory, August 18, 1992.

Abstract: The interim final rule established regulations requiring response plans for certain onshore oil pipelines. Those regulations are mandated by the Federal Water Pollution Control Act as amended by the Oil Pollution Act of 1990 (Pub. L. 101-380). Pipeline operators filed response plans under this interim final rule, and numerous tabletop exercises and area exercises have been conducted to validate the planning process. The purpose of these requirements is to improve response capabilities and minimize the impact of onshore oil spills from pipelines. This rule is significant because of substantial public and congressional interest. Because of time that has passed since issuance of interim final rule, an advisory bulletin and an interpretation will be issued to address technical issues. Subsequently, a new NPRM will be issued to update record and support issuance of a final rule later in 2001.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/93	58 FR 244
Interim Final Rule Comment Period End	02/19/93	
Notice of Public Meeting	06/15/94	59 FR 30755
Notice of Public Hearing	11/29/96	61 FR 60679
Correction	01/21/97	62 FR 2989
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. PS-130.

ANALYSIS: Regulatory Evaluation, 01/05/93, 58 FR 244

Agency Contact: James Taylor, Response Plans Officer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8860

RIN: 2137–AC30

2179. HAZARDOUS MATERIALS: RETENTION OF SHIPPING PAPERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177

Legal Deadline: None

Abstract: This action proposes to amend the Hazardous Materials Regulations by requiring shippers and carriers to retain a copy of the hazardous material shipping paper or an electronic image of the shipping paper for a period of 375 days. A one-year retention of shipping papers is a current statutory requirement in 49 U.S.C. 5110(e); this rule will make the public, which relies almost exclusively on the HMR, aware of this requirement.

Timetable:

Action	Date	FR Cite
NPRM	09/12/01	66 FR 47443
NPRM Comment Period End	11/13/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Docket No. HM-207B.

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AC64

2180. HAZARDOUS MATERIALS: REVISIONS TO STANDARDS FOR INFECTIOUS SUBSTANCES AND GENETICALLY MODIFIED MICROORGANISMS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1321; 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 174; 49 CFR 175; 49 CFR 176; 49 CFR 177; 49 CFR 178

Legal Deadline: None

Abstract: This rulemaking proposes to amend the Hazardous Materials Regulations to provide for the transport of infectious medical waste in bulk packagings, remove the blanket exception for transporting biological products and diagnostic specimens and revise the definition, hazardous communication, and packaging requirements for other infectious substances and genetically modified microorganisms to make them consistent with international transportation requirements. RSPA held a public meeting on the ANPRM via the internet.

Timetable:

Action	Date	FR Cite
ANPRM	09/02/98	63 FR 46844
ANPRM Comment Period End	12/01/98	
NPRM	01/22/01	66 FR 7942
NPRM Comment Period End	04/23/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Docket No. HM-226. DMS Docket No. RSPA- 98-3971.

Agency Contact: Eileen Edmonson, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD13

2181. HAZARDOUS MATERIALS: REVISED AND CLARIFIED HAZARDOUS MATERIALS SAFETY RULEMAKING AND PROGRAM PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 106; 49 CFR 107

Legal Deadline: None

Abstract: This rulemaking will make minor substantive changes to 49 CFR parts 106 and 107 of the hazardous materials procedural regulations, and will result in a revision of those parts in language that is easier to understand. This action is being taken in order to update RSPA's hazardous materials procedural regulations and to rewrite the current requirements in a new question and answer format that will be more user-friendly.

Timetable:

Action	Date	FR Cite
NPRM	12/11/98	63 FR 68624
NPRM Comment Period End	02/09/99	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: Docket No. HM-229.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD21

2183. PIPELINE SAFETY: PERIODIC UPDATES TO PIPELINE SAFETY REQUIREMENTS (1999)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 et seq

CFR Citation: 49 CFR 190; 49 CFR 191; 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: This periodic update revises and updates the pipeline safety regulations to provide clarity and remove unnecessary burdens to the regulated pipeline community. Revisions include updated references to voluntary specifications and standards incorporated by reference in the pipeline safety regulations, and various clarifications and grammatical corrections. These updates reflect the most recent editions of each specification and standard incorporated by reference. These updates enable pipeline operators to utilize current technology, materials, and practices, thereby reducing costs and enhancing economic growth.

Timetable:

Action	Date	FR Cite
NPRM	03/22/00	65 FR 15290
NPRM Comment Period End	05/22/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-99-6106

Agency Contact: Richard Huriaux, Manager - Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD35

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DOT—RSPA — Final Rule Stage

2184. HARMONIZATION WITH UNITED NATIONS RECOMMENDATIONS, INTERNATIONAL MARITIME DANGEROUS GOODS CODE, AND INTERNATIONAL CIVIL AVIATION ORGANIZATION'S TECHNICAL INSTRUCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171 to 180

Legal Deadline: None

Abstract: RSPA proposed to amend the Hazardous Materials Regulations (HMR) to maintain alignment with international standards, promulgated by the United Nations, the International Maritime Organization, the International Civil Aviation Organization, and the International Atomic Agency, by incorporating numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air-transport quantity limitations and vessel stowage requirements.

In a final rule published in the Federal Register on February 1, 2001, RSPA adopted some of the standards proposed in the NPRM. In a subsequent final rule, RSPA intends to adopt the other proposed standards.

Timetable:

Action	Date	FR Cite
NPRM	10/23/00	65 FR 63294
NPRM Comment Period End	12/23/00	
Final Rule	02/01/01	66 FR 8644
Final Rule	06/21/01	66 FR 33316
Correction	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-215D. Docket No. RSPA-00-7702.

Agency Contact: Joan McIntyre, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD41

2185. REVISIONS; DEFINITION OF ADMINISTRATOR

Priority: Info./Admin./Other

Legal Authority: 33 USC 1321; 49 USC 5101 to 5127, 44701, 60101 et seq; PL 104-121, sec 212 to 213; 49 CFR 1.45 and 1.53

CFR Citation: 49 CFR 171 to 180; 49 CFR 190 to 199

Legal Deadline: None

Abstract: Modifies or adds the definition of "Administrator" for clarification and consistency within the RSPA regulations.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Astrid Lopez-Goldberg, Attorney, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4400

RIN: 2137–AD43

2186. HAZARDOUS MATERIALS: REVISION OF THE REQUIREMENTS FOR HAZARDOUS WASTE MANIFESTS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101-5127

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: The NPRM proposed to update the Hazardous Waste Manifest requirements to accommodate changes the Environmental Protection Agency has proposed, including the use of electronic versions of the Hazardous Waste Manifest and electronic signatures.

Timetable:

Action	Date	FR Cite
NPRM	08/08/01	66 FR 41490
NPRM Comment Period End	10/04/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Additional Information: HM Docket: HM-206E

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD50

2187. HAZARDOUS MATERIALS: REDUCTION OF REGISTRATION FEES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107

Legal Deadline: None

Abstract: RSPA proposed to reduce the hazmat registration fee for all persons who transport or offer for transportation certain categories and quantities of hazmat, replace the reference to the standard industrial classification (SIC) code with the North American Industry Classification System (NAICS), and clarify the registration fee for not-for-profit organizations. RSPA is delaying final action on these proposals because of their interaction with final action on the FY 2003 Federal budget.

Timetable:

Action	Date	FR Cite
NPRM	12/07/00	65 FR 76890
NPRM Comment Period End	02/02/01	
NPRM; Status	05/02/01	66 FR 22080
Partial Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. HM-208D.

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RIN: 2137–AD53

DOT—RSPA — Final Rule Stage

2188. HAZARDOUS MATERIALS: REQUIREMENTS FOR MAINTENANCE, REQUALIFICATION, AND REPAIR OF DOT SPECIFICATION CYLINDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 171 to 173; 49 CFR 177 to 178; 49 CFR 180

Legal Deadline: None

Abstract: The rulemaking will make changes to the Hazardous Materials Regulations to revise the requirements for maintenance, requalification and repair of all DOT specification cylinders. In addition it will revise the requirements for approval of cylinder requalifiers, independent inspection agencies, and nondomestic chemical analysis and tests, and revise certain requirements in certain cylinder inspections. Certain cylinder manufacturing proposals will be handled in a separate rulemaking action. The NPRM was under RIN 2127-AA92.

Timetable:

Action	Date	FR Cite
NPRM	10/30/98	63 FR 38460
NPRM Comment Period End	09/30/99	64 FR 28965
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: HM Docket: HM-220D

Agency Contact: Charles E. Betts, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD58

2189. • PIPELINE SAFETY: HIGH CONSEQUENCE AREAS FOR GAS TRANSMISSION OPERATORS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60118 and 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: The Office of Pipeline Safety (OPS) considers "high consequence" areas (HCA) to be areas where the potential consequences of a gas pipeline accident may be significant, including the risk of significant harm to people and property. For gas transmission pipelines, this rulemaking proposes to define HCAs to include all Class 3 and 4 areas (as specified in part 192); any areas within 660 feet of the pipeline (or within 1,000 feet where the pipeline is greater than 30 inches in diameter and operates at MAOP of 100 psig or greater) where there are hospitals, schools, day-care centers, retirement homes, prisons, or other hard to evacuate places occupied by 20 or more persons; and any area within 660 feet of the pipeline (or within 1,000 feet where the pipeline is greater than 30 inches in diameter and operates at MAOP of 100 psig or greater) where at least 20 people congregate at least 50 days in any 12 month period (such as beaches, recreational facilities, camping grounds and museums, etc.).

Timetable:

Action	Date	FR Cite
NPRM	01/09/02	67 FR 1108
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: Docket No. RSPA-00-7666. This proceeding relates to RIN 2137-AD54.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD64

2190. • HAZARDOUS MATERIALS: HAZARDOUS SUBSTANCES - ADDITIONS, REVISIONS AND DELETIONS.

Priority: Routine and Frequent

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172

Legal Deadline: None

Abstract: RSPA is making minor revisions, additions, and deletions to the Hazardous Substances Reportable Quantities (RQ) Table to reflect changes in the 42 CFR section 302.4 table which designates hazardous substances and their reportable quantities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA). This action is necessary to comply with the Superfund Amendments and Reauthorization Act (LSARA) of 1986 which amended CERCLA (1980) to mandate RSPA to regulate, under the HMR, all hazardous substances designated by the Environmental Protection Agency (EPA).

Timetable:

Action	Date	FR Cite
Final Action	03/05/02	67 FR 9926
Final Action Effective	10/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-145M.

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD65

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Department of Transportation (DOT)
Research and Special Programs Administration (RSPA)

Long-Term Actions

2191. PIPELINE SAFETY: PASSAGE OF INTERNAL INSPECTION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: A final rule (59 FR 17275; April 12, 1994) amended the gas and hazardous liquid pipeline safety regulations to require that new and certain replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices ('smart pigs'). This action was in response to a mandate in the pipeline Safety Reauthorization Act of 1988. The intended effected of amended regulations was to improve the safety of gas, hazard liquid, and carbon dioxide pipelines by permitting their inspection by 'smart pigs' using the latest technology for detecting and recording abnormalities in the pipe wall. This rule required new and replacement pipelines to be capable of passing a 'pig' for internal inspection.

In response to two petitions for reconsideration, Notice 2 (59 FR 49896; September 30, 1994) was published to extend the compliance date for existing gas transmission lines and to modify the requirements for modification of line sections based on partial replacement of gas transmission pipelines located offshore and in rural areas. Subsequently, Notice 3 (60 FR 7133; February 7, 1995) was published to suspend enforcement of the final rule requirements for new and existing offshore gas transmission lines and for modifications to line segments based on partial replacement of pipe in existing onshore gas transmission lines. Nonetheless, hazardous liquid pipelines, carbon dioxide pipelines, new onshore gas transmission lines, and the actual replaced components in existing onshore gas transmission lines must comply with the final rule of April 1994. The next action is undetermined.

Timetable:

Action	Date	FR Cite
NPRM	11/20/92	57 FR 54745
NPRM Comment Period End	01/19/93	
Final Rule	04/12/94	59 FR 17275
NPRM	09/30/94	59 FR 49896
NPRM Correction	10/19/94	59 FR 52863
Limited Suspension of Enforcement	02/07/95	60 FR 7133

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. PS-126. The integrity testing proposal in "Proposals for Pipeline Safety," RIN 2137-AB27, was consolidated, in part, into this rulemaking. The final rule (59 FR 17275; April 12, 1994) amended the gas and hazardous liquid pipeline safety regulations to require that new and certain replacement pipelines be designed and constructed to accommodate the passage of instrumented internal inspection devices ('smart pigs'). This action was in response to a mandate in the Pipeline Safety Reauthorization Act of 1988. The intended effect of these amended regulations was to improve the safety of gas, hazardous liquid, and carbon dioxide pipelines by permitting their inspection by 'smart pigs' using the latest technology for detecting and recording abnormalities in the pipe wall. This rule required new and replacement pipelines to be capable of passing a 'pig' for internal inspection.

ANALYSIS: Regulatory Evaluation, 04/12/94, 59 FR 17275

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Phone: 202 366-4565

RIN: 2137–AB71

2192. +SAFEGUARDING FOOD FROM CONTAMINATION DURING TRANSPORTATION

Priority: Other Significant

Legal Authority: 49 USC 5701 to 5714

CFR Citation: 49 CFR 1

Legal Deadline: Final, Statutory, August 1, 1991.

Abstract: The Sanitary Food Transportation Act of 1990 (49 USC 5701 et seq.) requires the Secretary of Transportation, in consultation with the Secretaries of Agriculture and Health and Human Services and the Administrator of the Environmental Protection Agency, to issue regulations concerning the transportation of food, food additives, drugs, devices, and cosmetics in motor and rail vehicles also used to transport nonfood products that could pose an unreasonable danger to human or animal health when so transported. This rulemaking will implement the statutory requirements. This rulemaking is significant because of substantial public and congressional interest. RSPA's next action is undetermined because it has requested personnel resources from Congress necessary to perform these food safety functions.

Timetable:

Action	Date	FR Cite
ANPRM	02/20/91	56 FR 6934
04/29/91	03/21/91	56 FR 11982
NPRM	05/21/93	58 FR 29698
Notice of Public Hearing	05/21/93	58 FR 29698
NPRM Comment Period End	10/18/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: ANALYSIS: Regulatory Evaluation, 05/21/93, 58 FR 29698

Agency Contact: Michael Johnsen, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AC00

2193. PIPELINE SAFETY: PERIODIC UNDERWATER INSPECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: Final, Statutory, October 24, 1995.

Abstract: This action would require operators of natural gas and hazardous liquid pipelines to conduct periodic underwater inspections of offshore pipelines and those in navigable waterways. This action would also define what constitutes an exposed underwater pipeline and what constitutes a hazard to navigation.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: Docket No. RSPA-97-3001. This action could include requirements for the reburial of exposed pipelines. Under an OPS contract, Texas A&M University completed a study of the issues related to burial depth and inspection requirements for underwater pipelines.

An NPRM is being drafted that will incorporate the Texas A&M recommendation for a risk-based approach.

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Phone: 202 366-5523

RIN: 2137–AC54

DOT—RSPA

Long-Term Actions

2194. +APPLICABILITY OF THE HAZARDOUS MATERIALS REGULATIONS TO LOADING, UNLOADING, AND STORAGE

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 106 to 107; 49 CFR 171 to 180

Legal Deadline: None

Abstract: This rulemaking proposes to better define the applicability of the Federal Hazardous Materials Regulations (HMR) in order to clarify the relationship among Federal, State, local, and tribal agencies in the regulation of hazardous materials. Under circumstances specified in Federal statutes, the regulations of other Federal agencies (EPA and OSHA) and non-Federal governments (States, localities, and Indian tribes) must be consistent with or defer to RSPA's regulation of the transportation of hazardous materials in commerce. However, other Federal and non-Federal requirements are generally not limited where hazardous materials are not in transportation. Activities relating to loading, unloading, and storage of hazardous materials have become areas of particular uncertainty and concern to both industry and non-Federal governments. This action is significant because of the substantial public interest in reducing uncertainty and avoiding conflicting regulations.

Statement of Need: In recent years, RSPA has issued interpretations and administrative decisions on a case-by-case basis about whether particular activities are in "transportation" and therefore subject to regulation under the HMR. Because of increasing State and local regulation of hazardous materials, RSPA concluded that an overall rulemaking is appropriate, rather than just case-by-case decisions. RSPA believes that better overall definitions of the applicability of the HMR will reduce uncertainty by the regulated community and other regulatory agencies (both Federal and non-Federal) as to which agency has regulatory authority. Greater certainty in this regard should promote improved compliance with the HMR and also with the requirements of other regulatory agencies.

Summary of Legal Basis: Section 5103 of title 49 U.S.C. specifies that the Secretary shall prescribe regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce applicable to, among others, any person who offers hazardous materials for transportation or who transport hazardous materials in commerce. In addition, section 5125 of title 49 U.S.C. sets forth the circumstances under which differing non-Federal requirements are preempted.

Alternatives: Commenters to the ANPRM and SANPRM suggested alternative ways to describe the applicability of the HMR. One suggestion is to describe the applicability of the HMR in relationship to specific transportation functions. Another is to describe the applicability of the HMR over specific regulated entities, such as those who offer hazardous materials for transportation or those who transport hazardous materials. RSPA is considering each of the alternatives proposed.

Anticipated Cost and Benefits: RSPA made a preliminary determination that there is neither an increase nor decrease in the costs of compliance with the HMR for persons who offer hazardous materials for transportation or transport hazardous materials in commerce. The preliminary regulatory evaluation was entered into the docket and is available for review.

Risks: Clarifying the applicability of the HMR should reduce uncertainty as to which regulatory agency's requirements apply to any particular activity involving hazardous materials and improve compliance with the HMR, the requirements of EPA and OSHA, and non-Federal requirements. This should result in improved compliance with the applicable regulatory requirements, and improve hazardous materials transportation safety, reduce risks to the environment from hazardous materials, and promote workplace safety at facilities that manufacture or handle hazardous materials.

Timetable:

Action	Date	FR Cite
ANPRM	07/29/96	61 FR 39522
ANPRM Comment Period End	11/30/96	
SANPRM	04/27/99	64 FR 22718
SANPRM Comment Period End Extended to 08/25/1999	07/26/99	
NPRM	06/14/01	66 FR 32420
NPRM Comment Period Extended to 08/02/2001 & Public Meetings	08/02/01	66 FR 40174
NPRM Comment Period End	11/30/01	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: Docket No. HM-223. As a result of comments received to the ANPRM, we have upgraded this rulemaking to significant.

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RIN: 2137–AC68

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2195. PIPELINE SAFETY: ENFORCEMENT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 190.209; 49 CFR 190.213

Legal Deadline: None

Abstract: This action will revise RSPA's pipeline safety enforcement procedures to minimize paperwork in uncontested cases where a person pays a proposed civil penalty or agrees to a proposed compliance order. The procedures will be changed to show that both responses are considered offenses in determining any future civil penalty assessments. These changes will streamline the enforcement process.

Timetable:

Action	Date	FR Cite
NPRM	08/12/99	64 FR 43972
NPRM Comment Period End	10/12/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-98-4284. The changes to part 190 modify agency rules of practice and procedure.

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RIN: 2137–AD22

2196. PIPELINE SAFETY: PRESSURE TESTING OLDER PIPELINES IN TERMINALS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 195.302

Legal Deadline: None

Abstract: Certain older pipelines in terminals and tank farms must be pressure tested before December 7, 2003. Based on a petition, RSPA is reconsidering this testing requirement in light of the risk and low operating stress of these pipelines. RSPA has stayed enforcement of the testing requirement against pipelines designed not to operate above 20 percent of specified minimum yield strength.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: Docket No. RSPA-98-4316. Notice requesting comment 2/10/98 (63 FR 6677) in Docket No. PS-121. Enforcement Stay (63 FR 63210; November 12, 1998).

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RIN: 2137–AD26

2197. +HAZARDOUS MATERIALS SAFETY: TRANSPORTATION OF OXYGEN CYLINDERS AND OXYGEN GENERATORS ABOARD AIRCRAFT

Priority: Other Significant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 172; 49 CFR 175

Legal Deadline: None

Abstract: RSPA proposes to amend the Hazardous Materials Regulations to require oxygen cylinders and oxygen generators, when transported aboard aircraft, to be packed in an outer packaging that meets prescribed thermal and heat resistance requirements. These requirements will increase the level of safety associated with transportation of oxidizing gases by air. This rule has no impact on the use of passenger-owned oxygen cylinders. This rule is significant due to public interest.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM-224B. A separate rulemaking addressing the use of passenger owned cylinders of oxygen during a flight is under RIN 2105-AC29. Previously titled Hazardous Materials Safety: Transportation of oxygen cylinders on Aircraft.

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RIN: 2137–AD33

2198. HAZARDOUS MATERIALS: CARGO TANK ROLLOVER REQUIREMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 178

Legal Deadline: None

Abstract: The purpose of this advance notice of proposed rulemaking is to request comments concerning the need, if any, for amending the Hazardous Materials Regulations with regard to standards for cargo tank rollover protection devices on specification DOT 406, 407 and 412 cargo tank motor vehicles.

Timetable:

Action	Date	FR Cite
ANPRM	11/16/99	64 FR 62161
ANPRM Comment Period End	05/15/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: HM Docket: HM-213A

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, Washington, DC 20590
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RIN: 2137–AD34

2199. PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH CONSEQUENCE AREAS (HAZARDOUS LIQUID OPERATORS WITH LESS THAN 500 MILES OF PIPELINE)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5121; 49 USC 60102 to 60104; 49 USC 60117 to 60118; 49 USC 60124; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: The rule will apply to hazardous liquid pipeline operators who own or operate less than 500 miles of pipelines. The rule will require integrity assessment of pipeline segments that could affect high consequence areas, and consideration of additional preventive and mitigative actions to protect these locations from pipeline spills. OPS is proposing that an operator develop and follow an integrity management program that continually assesses and evaluates the integrity of those pipelines that could affect a high consequence area, through internal inspection or pressure testing, and data integration and analysis.

Timetable:

Action	Date	FR Cite
NPRM	03/21/01	66 FR 15821
NPRM Comment Period End	05/21/01	
Final Action	01/16/02	67 FR 2136

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-00-7408.

Agency Contact: L.M. Furrow, Manager, Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4559

RIN: 2137–AD49

2200. PIPELINE SAFETY: INTEGRITY MANAGEMENT COMMUNICATION

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60110, 601132, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: In connection with the series of rules Pipeline Integrity Management in High Consequence Areas, the Office of Pipeline Safety (OPS) may propose related rules governing operator communications with local public officials and agencies. To assist in this effort, the OPS Technical Advisory Committees created an Integrity Management Communications Subcommittee to focus on communications issues. The Subcommittee has equal representation from the public, government agencies, and the pipeline industry. It provides feedback, insight, and information to the advisory committee on the content and delivery of information conveyed to local officials and public about pipeline operations, systems, and the risks they pose in or near high consequence areas. The Subcommittee is also assisting OPS in finalizing a primer to educate local officials on pipelines and their operations. It held its first meeting on August 28, 2000, to discuss the content and delivery of pipeline information to be conveyed to local officials and members of the public in or near high consequence areas.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-00-7795.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AD62

2201. PIPELINE SAFETY: CONTROLLING CORROSION ON GAS PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60113, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 192

Legal Deadline: None

Abstract: The corrosion-control regulations for gas pipelines will be revised to incorporate the latest safety practices for corrosion protection of steel pipe. Updated criteria for corrosion protection will be incorporated into the federal pipeline safety regulations including, if possible, the incorporation by reference of voluntary consensus standards. Any change will be designed to improve the corrosion protection of new and existing piping for corrosion and to control any deleterious effects. Any changes will be comparable to the requirements for hazardous liquid and carbon dioxide pipelines in 49 CFR Part 195.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-01-10337. Information in Docket No. RSPA-97-2762 (RIN 2137-AD24) will be considered in this proceeding.

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RIN: 2137–AD63

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Department of Transportation (DOT)
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Completed Actions

2202. QUANTITY LIMITATIONS ABOARD AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 175

Legal Deadline: None

Abstract: This action responded to a petition for rulemaking that proposed to remove the fifty-pound limit on the quantity of hazardous materials that may be stowed in an inaccessible cargo location on passenger-carrying aircraft. Comments to the NPRM indicated that further evaluation is needed. RSPA has decided to withdraw this proposal and consider the petition for rulemaking in its overall revision of 49 CFR part 175, in HM-228, RIN 2317-AD18.

Timetable:

Action	Date	FR Cite
ANPRM	04/06/84	49 FR 13717
ANPRM Comment Period End	09/01/84	
NPRM	02/13/85	50 FR 6013
NPRM Comment Period End	05/30/85	
Withdrawn	02/26/02	67 FR 8769

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: This project was formerly entitled: Limitation Aboard Aircraft. Docket HM-192. A related rulemaking is "Prohibition of Oxidizers Aboard Aircraft," HM-224A, RIN 2127-AC92. The proposal was terminated under M-228, RIN 3217-AD18.

ANALYSIS: Regulatory Evaluation, 02/13/85, 50 FR 6013

Agency Contact: Deborah Boothe, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
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RIN: 2137–AA85

2203. +MAPS AND RECORDS OF PIPELINE LOCATIONS AND CHARACTERISTICS; NOTIFICATION OF STATE AGENCIES; PIPE INVENTORY

Priority: Other Significant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: Final, Statutory, November 1, 1989.

Abstract: This action proposes to equalize as far as possible the requirements that gas and hazardous liquid pipeline operators keep maps and records to show the location and other characteristics of pipelines. Operators would be required to keep an inventory of pipe and periodically report mileage and other facts. In addition, operators would be required to provide certain information to State agencies upon request. This is a significant action because of congressional and State concerns about the need for appropriate public officials to have pipeline information.

Timetable:

Action	Date	FR Cite
Public Notice	05/07/97	62 FR 25013
Notice and Request for Comments	08/26/97	62 FR 45287
Public Workshops	07/01/98	63 FR 36030
Withdrawn	01/25/02	67 FR 3675

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Docket No. RSPA-97-2426. In furtherance of this rulemaking, the Department of Transportation's Office of Pipeline Safety (OPS) is working with other Federal and State agencies and pipeline industry to create a voluntary national pipeline mapping system. This system, when complete, will show the location and selected attributes of the major natural gas and hazardous liquid pipelines and liquefied natural gas facilities operating in the United States. OPS will add additional data layers into the system, including layers on population densities, unusually sensitive areas, natural disaster probability and high consequence areas, hydrography, and transportation networks. OPS will use the system to depict pipelines in relation to the public and the environment, and to work with other government agencies and industry during an incident.

A joint government/industry Mapping Quality Action Team (MQAT II) drafted national pipeline mapping standards that are being used to create the digital pipeline layer. These include standards for electronic data submissions, paper map submissions, and metadata (data on the data). The team also drafted standards that are being used by the pipeline mapping repository receiving the pipeline information. The team has pilot tested the draft standards and established relationships with State agencies, industry, and others to exchange data that meets the standards.

The National Pipeline Mapping System (NPMS) is a full-featured geographic information system that allows the Office of Pipeline Safety (OPS), for the first time, to accurately view pipelines in relation to the communities and environments they cross. The pipeline data layers being assembled cover both interstate and intrastate natural gas transmission pipelines and hazardous liquid trunk lines. In conjunction with the pipeline data layers, the NPMS contains layers depicting population, urbanized areas, political boundaries, roads, railroads, hydrography, consequence and hazard areas, and usually sensitive areas. The NPMS will eventually include three accurate base data layers of differing scale derived from USGS hard-copy quads. The base layers not only provide an accurate base on which to view the location of pipelines but also contain important textual information such as places, roads, contours, and hydrography.

OPS has worked with the interstate natural gas transmission and hazardous liquid trade associations to identify a mapping contact for each operator. The operators have been contacted and OPS is assisting them in preparing their data for submission. Many of these operators have data in a digital format, which theoretically is easier and less time-consuming to process than hard-copy maps. OPS is currently working with the intrastate natural gas trade associations to recruit widespread participation in the NPMS by intrastate natural gas transmission pipeline companies.

The NPMS currently consists of a single National Repository and twelve state repositories located in Alabama, California, Connecticut, Kansas, Kentucky, Louisiana, Maine, Minnesota, New Jersey, Oklahoma, Pennsylvania, and Texas. OPS published two more Commerce Business Daily announcements in February 2000 - one for additional state repositories and the other for a regional repository.

OPS is collecting the liquid trunk line and natural gas transmission pipeline data. OPS regulates approximately 157,000 miles of liquid trunk line and 352,000 miles of natural gas transmission pipelines for a total of 509,000 miles.

Operators are submitting data to the NPMS.

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RIN: 2137–AB48

DOT—RSPA

Completed Actions

2204. FILLING OF PROPANE CYLINDERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 173

Legal Deadline: None

Abstract: In an ANPRM, RSPA solicited comments on the merits of a petition for rulemaking to require registration and training of persons who fill propane cylinders, certification of filling equipment operators, and proof of financial responsibility. The petition would also allow filling of propane cylinders by volume rather than by weight, which is currently required by the Hazardous Materials Regulations. This action was terminated and the petition for rulemaking was denied because, based on the comments, there is no safety justification for imposing the costs of a registration, training and financial responsibility program for cylinder fillers.

Timetable:

Action	Date	FR Cite
ANPRM	09/23/96	61 FR 43515
ANPRM Comment Period End	11/21/96	
Termination Notice	01/08/02	67 FR 852

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: Docket No. HM-220C.

Agency Contact: Gigi L. Corbin, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW, Washington, DC 20590
Phone: 202 366-8553
Fax: 202 366-3012
Email: rules@rspa.dot.gov

RIN: 2137–AC86

2205. PIPELINE SAFETY: CONTROLLING CORROSION ON HAZARDOUS LIQUID AND CARBON DIOXIDE PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 60101 to 60125

CFR Citation: 49 CFR 192; 49 CFR 195

Legal Deadline: None

Abstract: The corrosion-control regulations for hazardous liquid and carbon dioxide pipelines will be revised to reflect the latest safety practices for corrosion protection of steel pipe. Specific criteria for cathodic protection will be adopted.

Timetable:

Action	Date	FR Cite
Notice of Public Meeting	04/07/99	64 FR 16885
NPRM	12/08/00	65 FR 76968
NPRM Comment Period End	02/06/01	
Final Action	12/27/01	66 FR 66993

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: Docket No. RSPA-97-2762. Notice of public meeting 10/29/97 (62 FR 56141). The docket contains comments and recommendations on gas pipeline corrosion control that will be considered in RIN 2137-AD63.

Agency Contact: L.M. Furrow, Manager, Regulations, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4559

RIN: 2137–AD24

2206. HAZARDOUS MATERIALS: REVISED AND CLARIFIED HAZARDOUS MATERIALS EXEMPTIONS PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 107

Legal Deadline: None

Abstract: This proposed rulemaking will not be pursued at the present time and is being withdrawn. We have limited agency resources devoted to pending substantive rulemaking actions; therefore our plan is to improve the clarity and the regulations as they are being substantively revised, rather than to separately re-write existing regulations.

Timetable:

Action	Date	FR Cite
Withdrawn	03/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: This is follow-on rulemaking to Docket No. RSPA-98-3974 (RSP-4).

Agency Contact: Karin V. Christian, Attorney, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4400
Email: rules@rspa.dot.gov

RIN: 2137–AD30

2207. HAZARDOUS MATERIALS: LIMITED EXTENSION OF REQUIREMENTS FOR LABELING CERTAIN SHIPMENTS OF MATERIALS POISONOUS BY INHALATION (PIH)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5101 to 5127

CFR Citation: 49 CFR 171; 49 CFR 172

Legal Deadline: None

Abstract: In an interim final rule, RSPA provided a limited exception, until October 1, 2001, from the requirements for PIH labels on certain packages intended for transportation in international commerce. The interim final rule was intended to facilitate

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international commerce and to provide more time for the UN Committee of Experts to consider U.S. proposals for adopting the PIH labels and placards. The final rule responds to two comments received on the interim final rule and addresses further exceptions from PIH labeling and placarding requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/16/99	64 FR 50260
Interim Final Rule Effective	10/01/99	
Interim Final Rule Comment Period End	11/15/99	
Final Rule	08/22/01	66 FR 44251
Effective Date	10/01/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM-206D

Agency Contact: Helen L. Engrum, Transportation Regulations Specialist, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD37

2208. PIPELINE SAFETY: HAZARDOUS LIQUID PIPELINE ACCIDENT REPORTING REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: This rulemaking will amend the pipeline safety regulations to lower the reporting threshold for hazardous liquid pipeline spills from 50 barrels to 5 gallons with an accompanying revision to the hazardous liquid accident report form to improve its usefulness. New reporting for spills for less than 5 gallons will require reporting minimal information, whereas any spill in water of 5 gallons or more, or where otherwise reportable according to existing reporting criteria as outlined in CFR 195.50, will require completion of the entire new proposed accident report.

Timetable:

Action	Date	FR Cite
NPRM	03/21/01	66 FR 15681
NPRM Comment Period End	05/21/01	
Final Action	01/08/02	67 FR 831

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-01-8663.

Agency Contact: Roger Little, Department of Transportation, Research and Special Programs Administration
Phone: 202 366-4569

RIN: 2137–AD56

2209. HAZARDOUS MATERIALS REGULATIONS: EDITORIAL CORRECTIONS AND CLARIFICATIONS

Priority: Routine and Frequent

Legal Authority: 49 USC 49 5101 to 5127

CFR Citation: 49 CFR 107; 49 CFR 171; 49 CFR 172; 49 CFR 173; 49 CFR 176; 49 CFR 177; 49 CFR 178; 49 CFR 179; 49 CFR 180; ...

Legal Deadline: None

Abstract: The purpose of this Final Rule is to correct editorial errors and to enhance the clarity of certain provisions in the Hazardous Materials Regulations.

Timetable:

Action	Date	FR Cite
Final Action	08/28/01	66 FR 45177
Final Action Effective	10/01/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: HM Docket: HM-189S

Agency Contact: Michael Stevens, Transportation Specialist, Department of Transportation, Research and Special Programs Administration, Washington, DC 20590
Phone: 202 366-8553
Email: rules@rspa.dot.gov

RIN: 2137–AD60

2210. PIPELINE SAFETY: PIPELINE INTEGRITY MANAGEMENT IN HIGH CONSEQUENCE AREAS (REPAIR CRITERIA)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 5103, 60102, 60104, 60108, 60109, 60118; 49 CFR 1.53

CFR Citation: 49 CFR 195

Legal Deadline: None

Abstract: The final rule on integrity management for hazardous liquid pipelines with 500 or more miles of pipelines (December 1, 2000, 65 FR 75378) requires operators to assess, evaluate, repair, and validate through comprehensive analysis the integrity of hazardous liquid pipeline segments that, in the event of a leak, could affect high consequence areas. An operator must develop a schedule that prioritizes defects for evaluation and repair, including time frames for promptly reviewing and analyzing the integrity assessment and completing the repairs. An operator must also provide additional protection for these pipeline segments through other remedial actions, and preventive and mitigative measures. This additional action is required because OPS completely restructured the section of the rule pertaining to actions an operator must take to address pipeline integrity issues and allowed 60 days for comments on the provisions in section 195.452(h). We are now evaluating these comments and will likely issue an additional final rule to modify the repair requirements or notice stating that the section stands as written.

Timetable:

Action	Date	FR Cite
Final Action	01/14/02	67 FR 1650

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Docket No. RSPA-99-6355.

Agency Contact: Mike Israni, General Engineer, Department of Transportation, Research and Special Programs Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4571
Email: mike.israni@rpsa.dot.gov

RIN: 2137–AD61

2211. +CARGO PREFERENCE REGULATIONS—CARRIAGE OF AGRICULTURAL EXPORTS

Priority: Other Significant

Legal Authority: 46 app USC 1101; 1114(b), 1122(d), 1241

CFR Citation: 46 CFR 381; 49 CFR 1.66

Legal Deadline: None

Abstract: This action proposes to clarify the Maritime Administration's cargo preference regulations governing the carriage of agricultural exports. The rulemaking will concern, among other issues, (1) incorporating into part 381 MARAD's existing rules on priority of service of various U.S.-flag services; (2) clarifying how shipper agencies should comply with the existing provisions of the regulations regarding geographic areas and booking cargo on U.S.-flag vessels before foreign-flag vessels; (3) redefining certain terms for clarity to bring them in line with commercial practices; and other related issues. This rule is significant because of public interest.

Timetable:

Action	Date	FR Cite
ANPRM	01/28/99	64 FR 4382
ANPRM Comment Period End	03/29/99	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas W. Harrelson, Director, Office of Cargo Preference, Room 8118, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5515

RIN: 2133–AB37

2212. • REQUIREMENTS TO DOCUMENT U.S.-FLAG FISHING INDUSTRY VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH AND TO HOLD PREFERRED MORTGAGE ON SUCH VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-20

CFR Citation: 46 CFR 356

Legal Deadline: None

Abstract: The Maritime Administration is soliciting public comments on amendments to its regulations at 46 CFR part 356 which implement the U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (AFA) for vessels of 100 feet or greater in registered length for which a fishery endorsement to the vessel's documentation is sought.

On July 24, 2001, Congress passed a package of amendments to the AFA as part of the Supplemental Appropriations Act, 2001, section 2202, PL 107-20. This NPRM proposes to implement those new statutory requirements for owners and mortgagees of Fishing Vessels, Fish Processing Vessels and Fish Tender Vessels of 100 feet or greater (collectively referred to as "Fishing Industry Vessels"), amends the requirements to hold a preferred mortgage on such Fishing Industry Vessels, and makes other minor amendments to the regulations to address issues that arose during the early stages of MARAD's implementation of the new AFA regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/16/02	67 FR 18547
NPRM Comment Period End	06/17/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John T. Marquez Jr., Attorney Advisor, Division of Maritime Assistance Programs, Room 7228, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5320
Email: john.marquez@marad.dot.gov

RIN: 2133–AB46

2213. • AMENDMENT OF MARAD'S REGULATIONS ESTABLISHING AND ADMINISTERING DEPOSIT FUNDS AUTHORIZED BY SECTION 1109 OF MERCHANT MARINE ACT, 1936, AS AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-107

CFR Citation: 46 CFR 298

Legal Deadline: None

Abstract: Recent legislation amended section 1109 of the Merchant Marine Act, 1936, as amended. Section 1109 now authorizes the Secretary of Transportation to deposit with the United States Treasury and invest in Treasury obligations, funds belonging to Title XI obligors as collateral for the United States. As a consequence, MARAD will no longer deposit Title XI funds (held as collateral) in private banks. This notice of proposed rulemaking will propose changes to existing procedures for establishing Construction Funds and Reserve Funds. The intended effect of the amendments would be to simplify, reduce costs of, and expedite Title XI closings.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard M. Lorr, Assistant Chief Counsel for Ship Financing, Department of Transportation, Maritime Administration, 400 Seventh St., SW, Washington, DC 20590
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RIN: 2133–AB47

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Department of Transportation (DOT)
Maritime Administration (MARAD)

Completed Actions

2214. ELIGIBILITY OF U.S.-FLAG VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN FISHERY ENDORSEMENT TO VESSEL'S DOCUMENTATION

Priority: Substantive, Nonsignificant

Legal Authority: 46 app USC 12102; PL 105-277; 49 CFR 1.66

CFR Citation: 46 CFR 356

Legal Deadline: None

Abstract: The Maritime Administration (MARAD) published an interim final rule amending regulations implementing the new U.S. citizenship requirements set forth in the American Fisheries Act of 1998 (AFA). This new regulation will allow MARAD to waive any procedural requirement if there is good cause to do so and if the waiver would not be inconsistent with the AFA and the intent of 46 CFR part 356. The final rule is the final action in this rulemaking.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/31/01	66 FR 45945
Interim Final Rule Effective	08/31/01	
Interim Final Rule Comment Period End	10/01/01	
Final Action	03/18/02	67 FR 11939
Final Action Effective	03/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Murray A. Bloom, Chief, Division of Maritime Aids, Department of Transportation, Maritime Administration, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-5164

RIN: 2133–AB45

Department of Transportation (DOT)
Bureau of Transportation Statistics (BTS)

Prerule Stage

2215. MODERNIZING THE PASSENGER ORIGIN-DESTINATION SURVEY

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41708; 49 USC 41709

CFR Citation: 14 CFR 241

Legal Deadline: None

Abstract: Historically, the source document for the Passenger Origin-Destination Survey was the auditor's coupon of the ticket. Until recently, these coupons provided all the information that was needed for the Survey. In the last few years, the carriers have begun using trip passes in conjunction with the tickets, thereby eliminating some of the data that is required to be reported in the Survey. Other innovations used by the industry, such as change-of-gauge flights and code-sharing, have impacted the Survey and obscured some of the data that is required to be reported, such as change of planes and junction points. This rulemaking will explore whether there are alternative sources for the data and modernize the collection system to keep pace with the industry.

Timetable:

Action	Date	FR Cite
ANPRM	05/00/02	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: This action is related to and may be affected by RIN 2105-AC71. This action was formally under RIN 2137-AB92 but is now being administered by the Bureau of Transportation Statistics (BTS) under RIN 2139-AA01 since the Office of Aviation Information has been transferred to BTS from RSPA.

Agency Contact: M. Clay Moritz, Jr., Acting Chief, Regulations Division, Office of Airline Information, K-25, Department of Transportation, Bureau of Transportation Statistics, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA01

Department of Transportation (DOT)
Bureau of Transportation Statistics (BTS)

Final Rule Stage

2216. AMENDMENT TO DEFINITIONS OF REVENUE AND NONREVENUE PASSENGERS

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 329

CFR Citation: 14 CFR 217; 14 CFR 241; 14 CFR 298

Legal Deadline: None

Abstract: This action would revise definitions of revenue passenger and nonrevenue passenger. It would specify that a passenger traveling on a ticket or voucher received as compensation for denied boarding or as settlement of a consumer complaint is considered to be a revenue passenger. The revised definitions will harmonize Departmental regulations with those adopted by the International Civil Aviation Organization (ICAO). This will prevent air carriers from being required to keep two sets of traffic enplanement statistics.

Timetable:

Action	Date	FR Cite
NPRM	08/22/00	65 FR 50946
NPRM Comment Period End	10/23/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, Department of Transportation, Bureau of Transportation Statistics, K-25, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA07

DOT—BTS

Final Rule Stage

2217. AIR CARRIER TRAFFIC AND CAPACITY DATA BY NONSTOP SEGMENT AND ON-FLIGHT MARKET

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 41708

CFR Citation: 14 CFR 217; 14 CFR 241; 14 CFR 291; 14 CFR 298

Legal Deadline: None

Abstract: The Department of Transportation is considering modifying certain parts of the Traffic Reporting System to require operating carriers to report joint-service operations. This proposal would require a report change for small certificated, commuter, and all-cargo air carriers on their air traffic activity. This would also require U.S. carriers to report the detailed market and segment information for all their military, domestic all-cargo, and domestic charter flights.

Timetable:

Action	Date	FR Cite
NPRM	08/28/01	66 FR 45201
NPRM Comment Period End	11/26/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, K-25, Department of Transportation, Bureau of Transportation Statistics, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA08

2218. +AMENDMENT TO PART 234 TO COLLECT CAUSAL INFORMATION FOR AIRLINE DELAYS AND CANCELLATIONS

Priority: Other Significant

Legal Authority: PL 106-181, sec 227

CFR Citation: 14 CFR 234

Legal Deadline: None

Abstract: DOT proposes to collect information on the causes of airline delays and cancellations. The information will be used by the Office of the Secretary, the Federal Aviation Administration, air carriers and airport operators to identify specific problem areas within the national aviation system. With this knowledge, the appropriate party or parties can take action to reduce or rectify the problem.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66833
NPRM Comment Period End	02/25/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: M. Clay Moritz Jr., Acting Chief, Regulations Division, Office of Airline Information, K-25, Department of Transportation, Bureau of Transportation Statistics, 400 Seventh Street SW., Washington, DC 20590
Phone: 202 366-4385

RIN: 2139–AA09

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Part XV

Department of the Treasury

Semiannual Regulatory Agenda

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DEPARTMENT OF THE TREASURY (TREAS)

DEPARTMENT OF THE TREASURY

31 CFR Subtitle A, Chs. I and II

Semiannual Agenda

AGENCY: Department of the Treasury.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, September 19, 1980) and Executive Order (E.O.) 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication by the Department of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: For additional information about a specific entry in the agenda, contact the "Agency Contact" identified in the agenda item relating to that regulation.

SUPPLEMENTARY INFORMATION: The semiannual agenda of the Department of the Treasury conforms to the Unified Agenda format developed by the Regulatory Information Service Center (RISC).

Dated: April 10, 2002.

Richard S. Carro,

Senior Advisor to the General Counsel for Regulatory Affairs.

Departmental Offices—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2219	17 CFR 420 Amendments to the Large Position Rules	1505-AA88

Departmental Offices—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2220	31 CFR 104 Counter Money Laundering Requirements—Correspondent Accounts; Foreign Shell Banks	1505-AA87

Departmental Offices—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2221	31 CFR ch II Possible Regulation of Access to Accounts at Financial Institutions Through Payment Service Providers	1505-AA74
2222	Financial Activities of Financial Subsidiaries	1505-AA80
2223	Financial Subsidiaries	1505-AA81
2224	12 CFR 1501.2 Secretary's Determination of Real Estate Brokerage	1505-AA84
2225	12 CFR 1501.2 Secretary's Determination of Other Activities Financial in Nature	1505-AA85
2226	31 CFR 19 Common Rule Suspension and Debarment	1505-AA86

Financial Crimes Enforcement Network—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2227	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Delegation of Authority to Assess Civil Money Penalties on Depository Institutions	1506-AA08
2228	31 CFR 103.90 Financial Crimes Enforcement Network; Special Information Sharing Procedures to Deter Money Laundering and Terrorist Activity	1506-AA27

Financial Crimes Enforcement Network—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2229	31 CFR 103 Amendment to the Bank Secrecy Act Regulations Regarding Reporting of Cross-Border Transportation of Certain Monetary Instruments	1506-AA15
2230	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Suspicious Activity Reporting—Broker/Dealers	1506-AA21
2231	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Suspicious Activity Reporting—Casinos	1506-AA22

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Financial Crimes Enforcement Network—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2232	31 CFR 103 Amendment to the Bank Secrecy Act Regulations—Exemptions from the Requirement to Report Transactions in Currency	1506-AA23
2233	31 CFR 103.30 Amendment to the Bank Secrecy Act Regulations—Requirement that Nonfinancial Trades or Businesses Report Certain Currency Transactions	1506-AA25
2234	31 CFR 103.65 Amendments to the Bank Secrecy Act Regulations—Requirement that Financial Institutions Establish Anti-Money Laundering Programs	1506-AA28

Financial Crimes Enforcement Network—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2235	31 CFR 103 Amendments to the Bank Secrecy Act Regulations—Special Reporting and Recordkeeping Requirements—Money Services Businesses (MSBs)	1506-AA19

Financial Crimes Enforcement Network—Completed Actions

Sequence Number	Title	Regulation Identification Number
2236	31 CFR 103.20(f) Amendment to the BSA Regulations—Requirement that Money Transmitters and Money Order and Travelers Check Issuers, Sellers, and Redeemers Report Suspicious Transactions-Implementation Date	1506-AA24

Financial Management Service—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2237	31 CFR 245 Claims on Account of Treasury Checks	1510-AA51
2238	31 CFR 203 Payment of Federal Taxes and the Treasury Tax and Loan Program	1510-AA79
2239	31 CFR 206 Management of Federal Agency Receipts and Disbursements; Operation of the Cash Management Improvement Fund	1510-AA86
2240	31 CFR 215 Withholding of District of Columbia, State, City and County Income or Employment Taxes by Federal Agencies	1510-AA90

Financial Management Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2241	31 CFR 205 Rules and Procedures for Efficient Federal-State Funds Transfers	1510-AA38
2242	31 CFR 240 Indorsement and Payment of Checks Drawn on the United States Treasury	1510-AA45
2243	31 CFR 281 Foreign Exchange Operations	1510-AA48
2244	31 CFR 256 Payments Under Judgment and Private Relief Acts	1510-AA52
2245	31 CFR 285.5 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past-Due, Legally Enforceable Nontax Debt	1510-AA65
2246	31 CFR 285.7 Salary Offset	1510-AA70
2247	31 CFR 285.8 Offset of Tax Refund Payment To Collect State Income Tax Obligations	1510-AA78
2248	31 CFR 210 2003 ACH Rules	1510-AA89

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Financial Management Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2249	31 CFR 285.6 Offset of Federal Payments (Other Than Tax Refund and Federal Benefit Payments) To Collect Past-Due Debts Owed to States (Other Than Child Support)	1510-AA66
2250	31 CFR 285.14 Public Dissemination of Identity of Delinquent Debtors	1510-AA72
2251	31 CFR 223 Surety Bond Reimbursement Fund	1510-AA85

Financial Management Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2252	31 CFR 210 Federal Government Participation in the Automated Clearinghouse	1510-AA81
2253	31 CFR 211 Delivery of Checks and Warrants to Addresses Outside the United States	1510-AA88

Bureau of Alcohol, Tobacco and Firearms—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2254	27 CFR 9 American Viticultural Areas	1512-AA07
2255	27 CFR 7 Revision of Brewery Regulations and Issuance of Regulations for Taverns on Brewery Premises (Brewpubs)	1512-AB37
2256	27 CFR 4 Prohibition of Alcohol Beverage Containers and Standard of Fill for Distilled Spirits and Wine	1512-AB89
2257	27 CFR 4 Amended Standard of Identity for Sherry	1512-AB96
2258	27 CFR 16 Alcohol Beverage Health Warning Statement	1512-AC12
2259	27 CFR 24 Production of Agricultural Wines	1512-AC48
2260	27 CFR 9 Petition to Establish the Santa Barbara Highlands Viticultural Area	1512-AC53
2261	27 CFR 9 Petition to Establish the Trinity Lake Viticultural Area	1512-AC62
2262	27 CFR 4 Correction of Technical Error in 27 CFR Part 4	1512-AC63
2263	27 CFR 4 Proposal to Recognize Synonyms for Petite Sirah and Zinfandel Grape Varieties	1512-AC65
2264	27 CFR 9 Petition to Establish "Seneca Lake" as an American Viticultural Area	1512-AC70
2265	27 CFR 9 Petition to Establish "Capay Valley" as an American Viticultural Area	1512-AC71
2266	27 CFR 9 Petition for the Establishment of "Red Hill" as an American Viticultural Area	1512-AC76
2267	27 CFR 55 Commerce in Explosives (Including Explosives in the Fireworks Industry)	1512-AB48
2268	27 CFR Part 55 Identification Markings Placed on Explosive Materials	1512-AC25
2269	27 CFR 178 Implementation of Public Law 105-277, Making Omnibus Consolidated and Emerg. Supplemental Appropriations for FY 1999, Relating to the Permanent Provisions of the Brady Handgun Violence Prevention Act	1512-AB83
2270	27 CFR 178 Implementation of P.L. 105-277 Relating to Secure Gun Storage	1512-AC67
2271	27 CFR 7 Plain Language in Part 7	1512-AC10
2272	27 CFR 44 Regulatory Changes From Customs Service Final Rule (2001R-90T)	1512-AC56

Bureau of Alcohol, Tobacco and Firearms—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2273	27 CFR 5 Labeling of Unaged Grape Brandy	1512-AB46
2274	27 CFR 19.11 Distilled Spirits Plant Regulatory Initiative Proposal	1512-AB58
2275	27 CFR 24.278 Implementation of Wine Credit Provisions of Public Law 104-188	1512-AB65
2276	27 CFR 24.66 Implementation of Public Law 105-34, Section 1416, Relating to Refund of Tax for Domestic Wine Returned to Bond Regardless of Merchantability (Taxpayer Relief Act of 1997)	1512-AB74
2277	27 CFR 4 Health Claims and Other Health Related Statements in the Labeling and Advertising of Alcohol Beverages	1512-AB97
2278	27 CFR 251 Recodification of Part 251	1512-AC27
2279	27 CFR 4 Albarino, Black Corinth and Fiano Grape Varieties	1512-AC29
2280	27 CFR 252 Delegation of Authority in 27 CFR Part 252	1512-AC44
2281	27 CFR 31 Liquor Dealers; Recodification of Regulations	1512-AC45

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Bureau of Alcohol, Tobacco and Firearms—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2282	27 CFR 31 Delegation of Authority in 27 CFR Part 31	1512-AC49
2283	27 CFR 251 Delegation of Authority in 27 CFR Part 251	1512-AC58
2284	27 CFR 178 Commerce in Firearms and Ammunition (Omnibus Consolidated Appropriations Act of 1997)	1512-AB64
2285	27 CFR 178 Residency Requirement for Persons Acquiring Firearms	1512-AB66
2286	27 CFR 55 Implementation of Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997, Relating to the Establishment of a National Repository for Arson and Explosives Information	1512-AB73
2287	27 CFR 178 Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for FY99, Relating to Firearms Disabilities for Nonimmigrant Aliens	1512-AB93
2288	27 CFR 178 Commerce in Firearms and Ammunition—Annual Inventory	1512-AC08
2289	27 CFR 275 Tobacco Products and Cigarette Papers and Tubes Shipped from Puerto Rico to the United States	1512-AC24
2290	27 CFR 270 Elimination of Application to Remove Tobacco Products from Manufacturer's Premises for Experimental Purposes	1512-AC32
2291	27 CFR 44 Delegation of Authority in 27 CFR Part 44	1512-AC36
2292	27 CFR 41 Importation of Tobacco Products and Cigarette Papers and Tubes; Recodification of Regulations	1512-AC46

Bureau of Alcohol, Tobacco and Firearms—Long-Term Actions

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2294	27 CFR 7 Alcoholic Content Labeling for Malt Beverages	1512-AB17
2295	Sake Regulations	1512-AC09
2296	Flavored Malt Beverages	1512-AC11
2297	27 CFR 4.32(d) Removal of Requirement to Disclose Saccharin in the Labeling of Wine, Distilled Spirits and Malt Beverages	1512-AC17
2298	27 CFR 4 Proposed Addition of "Tannat" as a Grape Variety Name for American Wines	1512-AC50
2299	27 CFR 5.22 Petition to Amend the Standards of Identity for Whisky and Brandy	1512-AC51
2300	27 CFR 19, subpart W Proposed Revisions of 27 CFR Part 19	1512-AC52
2301	27 CFR 9 Proposed San Bernabe Viticultural Area	1512-AC60
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2303	27 CFR 9 Petition to Establish "Bennett Valley" as an American Viticultural Area	1512-AC72
2304	27 CFR 17 Taxpaid Distilled Spirits Used in Manufacturing Products Unfit for Beverage Use	1512-AC73
2305	27 CFR 9 Petition to Change the Temecula Viticultural Area's Name to Temecula Valley	1512-AC77
2306	27 CFR 19 Delegation of Authority in 27 CFR Part 19	1512-AC06
2307	27 CFR 47 Commerce in Firearms and Ammunition; Recodification of Regulations (2002R-013P)	1512-AC68
2308	27 CFR 47 Machine Guns, Destructive Devices, and Certain Other Firearms; Recodification of Regulations	1512-AC69
2309	27 CFR 70 Delegation of Authority for Part 70	1512-AC74
2310	27 CFR 275 Implementation of Public Law 105-33, Section 9302, Requiring the Qualification of Tobacco Product Importers and Miscellaneous Technical Amendments	1512-AC07
2311	27 CFR 275 Prohibited Marks on Packages of Tobacco Products and Cigarette Papers and Tubes Imported or Brought into the United States	1512-AC14
2312	27 CFR 270 Determination of Tax and Recordkeeping on Large Cigars	1512-AC22
2313	27 CFR 270 Elimination of Statistical Classes for Large Cigars	1512-AC33
2314	27 CFR 40 Delegation of Authority in 27 CFR Part 40	1512-AC54
2315	27 CFR 40 Shipments of Tobacco Products or Cigarette Papers or Tubes Without Payment of Tax.	1512-AC57
2316	27 CFR 44 Voluntary Waiver of Filing Claim for Credit, Refund, Allowance or Credit of Tax for Tobacco Products Manufactured in Canada	1512-AC64
2317	27 CFR 45 Removal of Tobacco Products and Cigarette Papers and Tubes Without Payment of Tax for Use of the United States	1512-AC75

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2319	27 CFR 45 Delegation of Authority in 27 CFR Parts 45 and 46	1512-AC59

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Regulation Identification Number	Title	Date Withdrawn	Comments
1512-AB81	27 CFR 200 Balanced Budget Act of 1997, Public Law 105-33, Restriction on the Importation of Domestic Tobacco Products and Cigarette Papers and Tubes Returned to the United States	03/13/2002	Withdrawn
1512-AB90	5 CFR 1320.7(f)(2) Implementation of the Paperwork Reduction Act	03/13/2002	Withdrawn
1512-AC30	27 CFR 55 Commerce in Explosives-Sport Rocket Motors	03/13/2002	Withdrawn

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2321	Fair Credit Reporting Regulations	1557-AB78
2322	12 CFR 5 Rules, Policies, and Procedures for Corporate Activities and Bank Activities and Operations	1557-AB97
2323	12 CFR 19 Maintenance of Records	1557-AB99
2324	12 CFR 5 Payday Lending	1557-AC01
2325	12 CFR 5 Financial Subsidiaries and Noncontrolling Investments of Federal Branches and Agencies	1557-AC02
2326	12 CFR 28 International Banking Activities	1557-AC04
2327	31 CFR 103 Identity Verification Program	1557-AC06

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2331	31 CFR 1 Notice of Exempt Privacy Act Systems of Records	1557-AB83
2332	12 CFR 25 Prohibition Against Use of Interstate Branches Primarily for Deposit Production	1557-AB95
2333	12 CFR 28.15 International Banking Activities: Capital Equivalency Deposit	1557-AC05

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2335	12 CFR 34 Real Estate Appraisals	1557-AB70
2336	Recordkeeping Requirements for Bank Exceptions from Securities Broker or Dealer Registration	1557-AB93
2337	12 CFR 25 Community Reinvestment Act Regulation	1557-AB98

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2339	12 CFR 21 Minimum Security Devices and Procedures	1557-AB71
2340	12 CFR 9 Fiduciary Activities of National Banks	1557-AB79
2341	12 CFR 8 Assessment of Fees	1557-AC00

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2342	19 CFR 12 Textiles and Textile Products Subject to Textile Trade Agreements	1515-AB54
2343	19 CFR 159 Liquidation; Extension; Suspension	1515-AB66
2344	19 CFR 12 Detention, Seizure, and Forfeiture of "Bootleg" Sound Recording and Music Videos of Live Musical Performances	1515-AB74
2345	19 CFR 142 Reconciliation	1515-AB85
2346	19 CFR 111 Remote Location Filing	1515-AC23
2347	19 CFR 123 Simplification of In-Transit Truck Shipments Between Canada and the United States	1515-AC65
2348	19 CFR 142 Requirements for Future Customs Transactions When Payment to Customs on Prior Transactions is Delinquent and/or Dishonored	1515-AC68
2349	19 CFR 145 Customs Examination of In-Transit Mail Shipments	1515-AC71
2350	19 CFR 146 Expanded Weekly Entry Procedure for Foreign Trade Zones	1515-AC74
2351	19 CFR 24 Reimbursable Customs Inspectional Services: Increase in Hourly Rate Charge	1515-AC77
2352	19 CFR 24 User Fees	1515-AC81
2353	19 CFR 10 Prototypes Used Solely For Product Development, Testing, Evaluation or Quality Control Purposes	1515-AC88
2354	19 CFR 24 Procedures Governing the Border Release Advanced Screening and Selectivity (BRASS) Program	1515-AC92
2355	19 CFR 12 Patent Surveys	1515-AC93
2356	19 CFR 141 Single Entry for Unassembled or Disassembled Entities Imported on Multiple Conveyances	1515-AC94
2357	19 CFR 133 Civil Fines For Importation of Merchandise Bearing a Counterfeit Mark	1515-AC98
2358	19 CFR 122 Re-Use of Air Waybill Number on Air Cargo Manifest	1515-AD01
2359	19 CFR 141 Conditional Release Period and Customs Bond Obligations For Food, Drugs, Devices and Cosmetics	1515-AD05

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2361	19 CFR 24 Donated Cargo Exemption From Harbor Maintenance Fee	1515-AA87
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2363	19 CFR 141 Customs Entry Documentation Pursuant to Anticounterfeiting Consumer Protection Act	1515-AC15
2364	19 CFR 134 Country-of-Origin Marking	1515-AC32
2365	19 CFR 24 Expanded Methods of Payment of Duties, Taxes, Interest and Fees	1515-AC40
2366	19 CFR 113 Importation and Entry Bond Conditions Regarding Other Agency Documentation Requirements	1515-AC44
2367	19 CFR 177 Administrative Rulings	1515-AC56
2368	19 CFR 4 General Order Warehouses	1515-AC57
2369	19 CFR 4 Deferral of Duty on Large Yachts Imported for Sale	1515-AC58
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2372	19 CFR 191 Merchandise Processing Fee Eligible to be Claimed as Unused Merchandise Drawback	1515-AC67
2373	19 CFR 10 African Growth and Opportunity Act and Generalized System of Preferences	1515-AC72
2374	19 CFR 122 Private Aircraft Programs: Establishment of the General Aviation Telephonic Entry (GATE) Program and Revisions to the Overflight Program	1515-AC73
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2397	19 CFR 181 North American Free Trade Agreement	1515-AD08

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1515-AB25	19 CFR 113 Automated Surety Interface	02/14/2002	Withdrawn
1515-AB61	19 CFR 134 Country-of-Origin Marking Requirements for Frozen Produce Packages	02/14/2002	Withdrawn
1515-AC00	19 CFR 12 Determination of the Country-of-Origin of Textiles and Textile Products	02/14/2002	Withdrawn
1515-AC13	19 CFR 103 Public Disclosure of Aircraft Manifests	02/14/2002	Withdrawn
1515-AC25	19 CFR 102 NAFTA Preference Override	02/14/2002	Withdrawn
1515-AC50	19 CFR 19 Personal-Use Limitation for Purchases at Duty-Free Stores	02/14/2002	Withdrawn

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2578	Guidance Under Section 355(e); Recognition of Gain on Certain Distributions of Stock or Securities in Connection with an Aquisition	1545-BA55
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Internal Revenue Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2580	Income Tax—Definition of Qualified Possession Source Investment Income for Purposes of Puerto Rico and Possession Tax Credit	1545-AC10
2581	FSC Transfer Pricing Rules, Distributions, Dividends Received, Deduction, and Other Special Rules for FSC	1545-AI16
2582	Information From Passport and Immigration Applicants	1545-AJ93
2583	Foreign Insurance Companies	1545-AL82
2584	Income of Foreign Governments and International Organizations	1545-AL93
2585	Clarification of Treatment of Separate Limitation Losses	1545-AM11
2586	Computation of a Branch's Taxable Income; Taxation of Exchange Gain or Loss on Branch Remittances	1545-AM12
2587	Earnings and Profits of Controlled Foreign Corporations	1545-AM90
2588	CBI Investments of Section 936 Funds	1545-AM91
2589	Section 361 Outbound Transfers of Property to Foreign Corporations	1545-AM97
2590	Railroad Unemployment Repayment Tax	1545-AN40
2591	Consolidated Alternative Minimum Tax	1545-AN73
2592	Conforming Taxable Years of CFCs and FPHCs: 1989 Change	1545-AO22
2593	Taxation of Global Trading	1545-AP01
2594	Information Reporting and Record Maintenance Under Section 6038C	1545-AP10
2595	Charitable Contributions	1545-AP30
2596	Guidance in Notice 89-37, Which Treats the Receipt of a Corporate Partner's Stock by the Corporate Partner as a Circumvention of General Utilities Repeal	1545-AP52
2597	Use of GAAP Earnings as E&P of Foreign Corporations	1545-AQ55
2598	The Treatment of Accelerated Death Benefits Under Sections 101, 7702 and 7702A of the Internal Revenue Code	1545-AQ70
2599	Integrated Financial Transaction	1545-AR20
2600	Section 6048 Regulations	1545-AR25
2601	Applications of Section 1503(d) to Partnerships and Other Items	1545-AR26
2602	Allocation of Accrued Benefits Between Employer and Employee Contributions	1545-AT82
2603	Proposed Regulation Under Sections 882 and 884	1545-AT96

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Internal Revenue Service—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2604	Application of Grantor Trust Rules to Nonexempt Employees' Trust	1545-AU29
2605	Recomputation of Life Insurance Reserves	1545-AU49
2606	Application of Attribution Rules to Foreign Trusts	1545-AU91
2607	Definition of "Private Activity Bonds" Allocation and Accounting Regulations	1545-AU98
2608	Required Distributions From Qualified Plans and Individual Retirement Plans	1545-AV82
2609	Foreign Tax Credit Anti-abuse Regulation	1545-AV97
2610	Section 988—Contingent Debt Instrument	1545-AW33
2611	Source of Income From Certain Space and Ocean Activities and for Communications Income	1545-AW50
2612	Guaranteed Investment Contracts	1545-AX22
2613	Definition of Private Activity Bond—Refunding Regulations	1545-AX55
2614	Stock Transfer Rules: Carryover of Earnings and Taxes	1545-AX65
2615	Definition of Passive Foreign Investment Company Under Section 1297	1545-AX78
2616	HIPAA Portability	1545-AX84
2617	Capitalization of Interest and Carrying Charges Properly Allocable to Straddles	1545-AX92
2618	Hedging Transactions Under Section 1221(a)(7) and Section 446	1545-AY02
2619	Guidance Under Section 894	1545-AY13
2620	Active Conduct of an Insurance Business Under PFIC Rules	1545-AY20
2621	Disallowance of Deductions and Credits for Failure to File Timely Return	1545-AY26
2622	Section 367(d) Regulations	1545-AY41
2623	Special Rules for S Corporations Under Section 301.7701(b)-7	1545-AY44
2624	Required Distributions from Retirement Plans	1545-AY70
2625	Obligation of States and Political Subdivisions	1545-AY71
2626	Treatment of Community Income for Certain Individuals Not Filing Joint Returns	1545-AY83
2627	Section 1441 Proposed Regulation (Promulgates Notices 2000-4 and 2000-11)	1545-AY92
2628	Proposed Regulation for Procurement/Purchasing Card Reporting	1545-BA17

Internal Revenue Service—Completed Actions

Sequence Number	Title	Regulation Identification Number
2629	Effect of the Family and Medical Leave Act on the Operation of Cafeteria Plans	1545-AT47
2630	Averaging of Farm Income	1545-AW05
2631	Allocation of Loss on Disposition of Personal Property	1545-AW09
2632	Payment of Taxes by Credit Card and Debit Card	1545-AW37
2633	Conversion to the Euro	1545-AW43
2634	Notice and Opportunity for Hearing Before Levy	1545-AW90
2635	Notice and Opportunity for Hearing Upon Filing of Notice of Lien	1545-AW91
2636	Dollar-Value LIFO Regulations	1545-AX20
2637	Check the Box Regulations—Amendment	1545-AY16
2638	Disqualified Persons	1545-AY19
2639	Liabilities Assumed in Certain Corporate Transactions	1545-AY55
2640	Excise Taxes on Excess Benefit Transactions	1545-AY65
2641	Disclosure of Returns and Return Information by Other Agencies (Temporary)	1545-AY78
2642	Amendment to the Definition of Private Business Use Applicable to Tax-exempt Bonds Issued by State and Local Governments	1545-AY88
2643	Certain Property Transfer to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs)	1545-BA21
2644	Withholding at Treaty Rate Exception for Taxpayer Identifying Number	1545-BA39
2645	Disallowance of Deductions and Credits for Failure to File Timely Return	1545-BA40
2646	Special Form 720 Filing Rule for Eligible Air Carriers	1545-BA42
2647	Proposed Amendment to Section 6050I Cross-Referencing Section 5331 of Title 31	1545-BA48
2648	New Markets Tax Credit (Temp)	1545-BA49
2649	Loss Limitation Rules (Temp)	1545-BA51

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Internal Revenue Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1545-AU95	Special Rules Applicable to Sales of Debt Instrument Between Record Dates and the End of Accrual Periods	02/28/2002	Withdrawn
1545-AX51	Address Correction	02/28/2002	Withdrawn
1545-AX54	Tax on Insurance Companies Other Than Life Insurance Companies	03/04/2002	Withdrawn
1545-AX86	Procurement/Purchasing Card Reporting	03/11/2002	Withdrawn
1545-AY03	Guidance Under Section 894	03/11/2002	Withdrawn
1545-AY40	Section 83-1032 Conforming Changes	01/25/2002	Withdrawn
1545-AY99	Tort Type Rights Test	12/31/2001	Withdrawn
1545-BA03	Entertainment Expenses Treated as Compensation	01/06/2002	Withdrawn
1545-BA19	Eligibility for Receiving LITC Grants	11/06/2001	Withdrawn
1545-BA20	Guidance Regarding the Active Trade or Business Requirement of Section 355(b)	12/07/2001	Withdrawn
1545-BA23	Catch-Up Contributions for Individuals Age 50 or Over (TEMP)	03/12/2002	Withdrawn
1545-BA28	Dealings Between Taxpayers and Their QBLIS	10/11/2001	Withdrawn

Office of Thrift Supervision—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2650	12 CFR 567 Capital Rules	1550-AB11

Office of Thrift Supervision—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2651	12 CFR 563b Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions	1550-AB24
2652	12 CFR 571 Fair Credit Reporting	1550-AB33
2653	12 CFR 550 Recordkeeping and Confirmation Requirements for Securities Transactions; Fiduciary Powers of Savings Associations	1550-AB49
2654	12 CFR 560 Alternative Mortgage Transaction Parity Act; Preemption	1550-AB51

Office of Thrift Supervision—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2655	12 CFR 567 Capital: Qualifying Mortgage Loan, Interest Rate Risk Component, and Miscellaneous Changes	1550-AB45

Office of Thrift Supervision—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2656	12 CFR 545 Directors and Officers	1550-AB19
2657	12 CFR 563e Community Reinvestment Act	1550-AB48

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Office of Thrift Supervision—Completed Actions

Sequence Number	Title	Regulation Identification Number
2658	12 CFR 560 Lending and Investment	1550-AB37

Office of Thrift Supervision—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1550-AB25	12 CFR 590 Due-On-Sale and Usury Preemption	01/22/2002	Withdrawn
1550-AB52	12 CFR 584 Authority for Nongrandfathered Savings and Loan Holding Companies	01/22/2002	Withdrawn

Department of the Treasury (TREAS)
Departmental Offices (DO)
Proposed Rule Stage

2219. • AMENDMENTS TO THE LARGE POSITION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78o-5(f)

CFR Citation: 17 CFR 420

Legal Deadline: None

Abstract: This proposal would amend the large position recordkeeping and reporting requirements pertaining to very large positions in certain Treasury securities. The modifications will improve the information available to Treasury and other regulators.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 1505–AA88

Department of the Treasury (TREAS)
Departmental Offices (DO)
Final Rule Stage

2220. • COUNTER MONEY LAUNDERING REQUIREMENTS—CORRESPONDENT ACCOUNTS; FOREIGN SHELL BANKS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318; 31 USC 5318A; PL 107-56, sec 311; PL 107-56, sec 313; PL 107-56, sec 319; PL 107-56, sec 352

CFR Citation: 31 CFR 104

Legal Deadline: None

Abstract: This rule implements the new provisions of the Bank Secrecy Act, added by the USA PATRIOT Act of 2001 that: 1) prohibit certain financial institutions from providing correspondent accounts to foreign shell banks; 2) require such financial institutions to take reasonable steps to ensure that correspondent accounts provided to foreign banks are not being used to indirectly provide banking services to foreign shell banks; 3) require certain financial institutions that provide correspondent accounts to foreign banks to maintain records of the ownership of such foreign banks and their agents in the United States designated to receive service of legal process; and 4) require the termination of correspondent accounts of foreign banks that fail to turn over their account records in response to a lawful request from the Secretary of the Treasury or the Attorney General.

Timetable:

Action	Date	FR Cite
NPRM	12/28/01	66 FR 67460
NPRM Comment Period End	02/11/02	
Final Rule	07/00/02	

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TREAS—DO — **Final Rule Stage**

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton, Senior Banking Counsel, Office of General Counsel, Department of the Treasury, Room 2014, 1500 Pennsylvania Avenue NW., Washington, DC 20220
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Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA87

Department of the Treasury (TREAS)
Departmental Offices (DO) — **Long-Term Actions**

2221. POSSIBLE REGULATION OF ACCESS TO ACCOUNTS AT FINANCIAL INSTITUTIONS THROUGH PAYMENT SERVICE PROVIDERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR ch II

Timetable:

Action	Date	FR Cite
ANPRM	01/08/99	64 FR 1149
ANPRM Comment Period End	04/08/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Roger Bezdek
Phone: 202 622-1807

RIN: 1505–AA74

2222. FINANCIAL ACTIVITIES OF FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/00	65 FR 14819
Interim Final Rule Effective	03/14/00	
Interim Final Rule Comment Period End	05/15/00	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA80

2223. FINANCIAL SUBSIDIARIES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA81

2224. SECRETARY'S DETERMINATION OF REAL ESTATE BROKERAGE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 307
NPRM Comment Period End	03/02/01	
NPRM Comment Period Extended	05/01/01	66 FR 12440

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA84

2225. SECRETARY'S DETERMINATION OF OTHER ACTIVITIES FINANCIAL IN NATURE

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1501.2

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/02/01	66 FR 257
Interim Final Rule Effective	01/02/01	
Interim Final Rule Comment Period End	02/02/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary W. Sutton
Phone: 202 622-1976
Fax: 202 622-1974
Email: gary.sutton@do.treas.gov

RIN: 1505–AA85

2226. COMMON RULE SUSPENSION AND DEBARMENT

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 19; 31 CFR 20

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cathy Thomas
Phone: 202 622-0817
Fax: 202 622-2318

RIN: 1505–AA86

BILLING CODE 4810–25–S

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Proposed Rule Stage**

2227. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—DELEGATION OF AUTHORITY TO ASSESS CIVIL MONEY PENALTIES ON DEPOSITORY INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5321(e), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This NPRM proposes to delegate to the appropriate Federal banking regulatory agencies, the authority to assess civil money penalties on depository institutions for violations of the Bank Secrecy Act. The regulation would prescribe the parameters of the delegated authority.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA08

2228. • FINANCIAL CRIMES ENFORCEMENT NETWORK; SPECIAL INFORMATION SHARING PROCEDURES TO DETER MONEY LAUNDERING AND TERRORIST ACTIVITY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5331; PL 107-56

CFR Citation: 31 CFR 103.90; 31 CFR 103.110

Legal Deadline: Final, Statutory, February 25, 2002, PL 107-56, sec 314.

Abstract: FinCEN, a bureau of the Treasury Department, is issuing regulations to implement the provision in the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001 that encourages information sharing among financial institutions for purposes of identifying and reporting activity that may involve terrorist acts or money laundering activities.

Timetable:

Action	Date	FR Cite
NPRM	03/04/02	67 FR 9878
Interim Final Rule	03/04/02	67 FR 9873
NPRM Comment Period End	04/03/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA27

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Final Rule Stage**

2229. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS REGARDING REPORTING OF CROSS-BORDER TRANSPORTATION OF CERTAIN MONETARY INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5312(a)(3), Bank Secrecy Act

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This rule will require reporting of cross-border transportation of certain negotiable instruments.

Timetable:

Action	Date	FR Cite
NPRM	01/22/97	62 FR 3249
NPRM Comment Period End	04/22/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA15

2230. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SUSPICIOUS ACTIVITY REPORTING—BROKER/DEALERS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(g)

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This NPRM will propose to require suspicious activity reporting by broker/dealers.

Timetable:

Action	Date	FR Cite
NPRM	12/31/01	66 FR 67670
NPRM Comment Period End	03/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA21

2231. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SUSPICIOUS ACTIVITY REPORTING—CASINOS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5318(g)

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This NPRM will propose to require suspicious activity reporting by casinos.

Timetable:

Action	Date	FR Cite
NPRM	05/18/98	63 FR 27230
Final Action	12/00/02	

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TREAS—FINCEN — **Final Rule Stage**

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA22

2232. AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—EXEMPTIONS FROM THE REQUIREMENT TO REPORT TRANSACTIONS IN CURRENCY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 to 5330

CFR Citation: 31 CFR 103

Legal Deadline: None

Abstract: This document contains an interim rule that further reforms and simplifies the process by which depository institutions may exempt transactions of retail and other businesses from the requirement to report transactions in currency in excess of $10,000. The interim rule is part of a continuing program to reduce unnecessary burdens upon financial institutions complying with the Bank Secrecy Act and increase the cost-effectiveness of the counter-money laundering policies of the Department of the Treasury.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/28/00	65 FR 46356
Interim Final Rule Effective	07/31/00	
Interim Final Rule Comment Period End	09/26/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Small Entities Affected: No

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
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RIN: 1506–AA23

2233. • AMENDMENT TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT NONFINANCIAL TRADES OR BUSINESSES REPORT CERTAIN CURRENCY TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1829b; 12 USC 1951 to 1959; 31 USC 5311 et seq.; PL 107-56

CFR Citation: 31 CFR 103.30

Legal Deadline: Final, Statutory, April 26, 2002, Interim rule published 12/31/2001.

Abstract: This document contains an interim rule amending the Bank Secrecy Act regulations to require certain persons to report currency received in the course of their trade or business.

Timetable:

Action	Date	FR Cite
NPRM	12/31/01	66 FR 67685
Interim Final Rule	12/31/01	66 FR 67680
NPRM Comment Period End	03/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA25

2234. • AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—REQUIREMENT THAT FINANCIAL INSTITUTIONS ESTABLISH ANTI-MONEY LAUNDERING PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 5316(h)

CFR Citation: 31 CFR 103.65; 31 CFR 103.66; 31 CFR 103.67

Legal Deadline: Final, Statutory, April 24, 2002, PL 107-56, sec 352.

Abstract: FinCEN will issue a series of regulations regarding anti-money laundering program requirements for various financial institutions, as defined in the Bank Secrecy Act (BSA).

Timetable:

Anti-Money Laundering Programs for Financial Institutions
Interim Final Rule 04/29/02 (67 FR 21110)
Anti-Money Laundering Programs for Money Services Businesses
Interim Final Rule 04/29/02 (67 FR 21114)
Anti-Money Laundering Programs for Mutual Funds
Interim Final Rule 04/29/02 (67 FR 21117)
Anti-Money Laundering Programs for Operators of a Credit Card System
Interim Final Rule 04/29/02 (67 FR 21121)

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judith R. Starr, Chief Counsel, Department of the Treasury, Financial Crimes Enforcement Network, P.O. Box 39, Vienna, VA 22183
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA28

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Long-Term Actions**

2235. AMENDMENTS TO THE BANK SECRECY ACT REGULATIONS—SPECIAL REPORTING AND RECORDKEEPING REQUIREMENTS—MONEY SERVICES BUSINESSES (MSBS)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103

Timetable:

Action	Date	FR Cite
NPRM	05/21/97	62 FR 27909
NPRM Comment Period End	09/30/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Judith R. Starr
Phone: 703 905-3590
Fax: 703 905-3735

RIN: 1506–AA19

Department of the Treasury (TREAS)
Financial Crimes Enforcement Network (FINCEN) — **Completed Actions**

2236. AMENDMENT TO THE BSA REGULATIONS—REQUIREMENT THAT MONEY TRANSMITTERS AND MONEY ORDER AND TRAVELERS CHECK ISSUERS, SELLERS, AND REDEEMERS REPORT SUSPICIOUS TRANSACTIONS-IMPLEMENTATION DATE

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 103.20(f); 31 CFR 103.41

Completed:

Reason	Date	FR Cite
Withdrawn	12/01/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrice A. Motz
Phone: 800 949-2732

RIN: 1506–AA24

BILLING CODE 4820–02–S

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Proposed Rule Stage**

2237. CLAIMS ON ACCOUNT OF TREASURY CHECKS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3328; 31 USC 3331; 31 USC 3343; 31 USC 3702; 31 USC 3712

CFR Citation: 31 CFR 245

Legal Deadline: None

Abstract: Title 31 CFR part 245 governs the issuance of replacement checks for checks drawn on the United States Treasury when: 1) the original check has been lost, stolen, destroyed or mutilated or defaced to such an extent that it is rendered non-negotiable; 2) the original check has been negotiated and paid on a forged or unauthorized indorsement; and 3) the original check has been cancelled pursuant to 31 CFR part 240. This regulation is being revised to update the regulation's definitions to make them consistent with the language of the proposed revisions to the definitions in 31 CFR part 240. Other revisions will govern the use of the Check Forgery Insurance Fund (Fund). The Fund is a revolving fund established to settle payee claims of non-receipt where the original check has been fraudulently negotiated. The Fund ensures that innocent payees, whose Treasury checks have been fraudulently cashed, receive replacement checks in a timely manner.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Ella White, Customer Liaison Specialist, Department of the Treasury, Financial Management Service, Room 8D25, 3700 East-West Highway, Hyattsville, MD 20782
Phone: 202 874-8445

RIN: 1510–AA51

2238. PAYMENT OF FEDERAL TAXES AND THE TREASURY TAX AND LOAN PROGRAM

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 12 USC 90; 12 USC 265; 12 USC 266; 12 USC 321; 12 USC 323; 12 USC 332; 12 USC 391; 12 USC 1452(d); 12 USC 1464(k); 12 USC 1767; 12 USC 1789(a); 12 USC 2013; 12 USC 2122; 12 USC 3102; 12 USC 6302; 31 USC 3301 to 3304

CFR Citation: 31 CFR 203

Legal Deadline: None

Abstract: This first rule amends the regulation to provide the Secretary greater flexibility to adjust the rate of interest charged on funds loaned through the Treasury Tax and Loan (TT&L) program. The rule also allows for a new TT&L investment option for financial institutions. This second rule includes general revisions which will provide needed updates to support operational changes to the system used for the collection of corporate withholding taxes and the investment of the Government's excess operating funds; streamline the regulation by converting to the plain language standard; and incorporate other needed updates.

Timetable:

General Revisions
NPRM 09/00/02
Final Action 06/00/03

Treasury Tax and Loan Rate of Interest
NPRM 07/30/99 (64 FR 41747)
NPRM Comment Period End 09/28/99
Final Action 03/15/02 (67 FR 11573)

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA79

2239. MANAGEMENT OF FEDERAL AGENCY RECEIPTS AND DISBURSEMENTS; OPERATION OF THE CASH MANAGEMENT IMPROVEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3327; 31 USC 3332; 31 USC 3335; 31 USC 3720; 31 USC 6503

CFR Citation: 31 CFR 206

Legal Deadline: None

Abstract: This regulation governs collection and deposit regulations requiring timely methods, principally Electronic Funds Transfer (EFT), for the collection and deposit of funds as authorized by section 2652 of the Deficit Reduction Act of 1984. This regulation also incorporates revisions authorized by the Cash Management

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Act of 1990 and the Cash Management Improvement Act Amendments of 1992. These revisions require executive agencies to use effective, efficient disbursement mechanisms, principally EFT, in the delivery of payments. An agency's failure to comply with this regulation may result in a charge equal to the cost of such non-compliance to the Treasury's General Fund.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 420, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6966
Email: stephen.kenneally@fms.treas.gov

RIN: 1510–AA86

2240. • WITHHOLDING OF DISTRICT OF COLUMBIA, STATE, CITY AND COUNTY INCOME OR EMPLOYMENT TAXES BY FEDERAL AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5516; 5 USC 5517; 5 USC 5520; EO 1197, sec 4

CFR Citation: 31 CFR 215

Legal Deadline: None

Abstract: This regulation governs the agreements entered into by the Department of the Treasury and State and local governments for the withholding of State and local income taxes from the compensation of Federal employees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 420, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6966
Email: stephen.kenneally@fms.treas.gov

RIN: 1510–AA90

Department of the Treasury (TREAS)
Financial Management Service (FMS)

Final Rule Stage

2241. RULES AND PROCEDURES FOR EFFICIENT FEDERAL-STATE FUNDS TRANSFERS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 5 USC 301; 31 USC 321; 31 USC 3335; 31 USC 6501; 31 USC 6503

CFR Citation: 31 CFR 205

Legal Deadline: None

Abstract: This regulation governs the transfer of Federal assistance funds to State governments and implements the Cash Management Improvement Act of 1990, as amended. Revisions to the regulation will address concerns raised by both States and Federal agencies about intergovernmental financing. Rules and procedures for funds transfers will be revised to provide more options and greater flexibility.

Timetable:

Action	Date	FR Cite
NPRM	10/12/00	65 FR 60796
Comment Period End	01/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 420, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6966
Email: stephen.kenneally@fms.treas.gov

RIN: 1510–AA38

2242. INDORSEMENT AND PAYMENT OF CHECKS DRAWN ON THE UNITED STATES TREASURY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 12 USC 391; 31 USC 321; 31 USC 3327; 31 USC 3328; 31 USC 3331; 31 USC 3334; 31 USC 3343; 31 USC 3702; 31 USC 3702 note; 31 USC 3711; 31 USC 3712; 31 USC 3716; 31 USC 3717; 318 US 363 (1943); 332 US 234 (1947)

CFR Citation: 31 CFR 240

Legal Deadline: None

Abstract: Notice of proposed rulemaking II (NPRM II) was a reissuance of NPRM I published on 9/21/95, which proposed to fix the time by which Treasury can decline payment on Treasury checks, provide financial institutions with a date certain for final payments, and provide greater clarity by defining previously undefined terms. NPRM I also proposed that the Department of the Treasury may instruct Federal Reserve Banks to intercept benefit payment checks to deceased payees and to return, unpaid, those checks. In addition to the revisions proposed in NPRM I, NPRM II announced the Department of the Treasury's intent that this regulation supersede Federal common law regarding the risk of loss on checks containing forged disbursing officer signatures, such as counterfeits. The Interim Final Rule will amend this regulation to implement provisions of the Debt Collection Improvement Act of 1996 authorizing the collection of debts owed by presenting banks through Treasury Check Offset. NPRM III is a reissuance of NPRM II and will address, at a minimum, the issues in NPRMs I and II.

Timetable:

Action	Date	FR Cite
NPRM I	09/21/95	60 FR 48940
NPRM Comment Period End	11/06/95	
NPRM II	05/30/97	62 FR 29314
Interim Final Rule	06/00/02	
NPRM III	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Lester Smalls, Manager, Reclamation Branch, Department of the Treasury, Financial Management Service, Room 700D, 3700 East-West Highway, Hyattsville, MD 20782
Phone: 202 874-7770
Email: lester.smalls@fms.treas.gov

RIN: 1510–AA45

2243. FOREIGN EXCHANGE OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2363; 31 USC 3513; EO 10488; EO 10900

CFR Citation: 31 CFR 281

Legal Deadline: None

Abstract: This regulation governs the administration of the purchase, custody, deposit, transfer, sale and reporting of foreign exchange (including credits and currencies) by executive departments and agencies. Currently, this regulation allows the purchase of foreign currency to an amount which, together with the balance on hand in the bank, may not exceed estimated requirements for a 30-day period. The revised rule allows the purchase of foreign currency to a balance "commensurate with immediate disbursing requirements."

Timetable:

Action	Date	FR Cite
NPRM	01/29/96	61 FR 2750
NPRM Comment Period End	02/28/96	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Stephen Kenneally, Financial Program Specialist, Cash Management Policy and Planning Division, Department of the Treasury, Financial Management Service, Room 420, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6966
Email: stephen.kenneally@fms.treas.gov

Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA48

2244. PAYMENTS UNDER JUDGMENT AND PRIVATE RELIEF ACTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-53; PL 104-316; 28 USC 2414; 28 USC 2517; 31 USC 1304

CFR Citation: 31 CFR 256

Legal Deadline: None

Abstract: This regulation governs the procedure for securing payment for money judgments against the United States. The proposed revision will update the procedure for making claims. This will benefit claimants and others in understanding the claims process. This regulation currently describes a process that involves the General Accounting Office (GAO) and the Treasury Department. The change will eliminate the GAO from this description to reflect legislative amendments that effect this change. Also, the regulation currently identifies monetary thresholds that no longer exist. The change will reflect the removal of these monetary limitations and the resulting submission requirements. These changes in the regulation will make it consistent with current practices for claimants securing money judgments against the United States.

Timetable:

Action	Date	FR Cite
NPRM	01/08/96	61 FR 552
NPRM Comment Period End	02/07/96	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Wanda Rogers, Director, Financial Accounting and Services Division, Department of the Treasury, Financial Management Service, Room 620D, 3700 East-West Highway, Hyattsville, MD 20782
Phone: 202 874-8380
Email: wanda.rogers@fms.treas.gov

RIN: 1510–AA52

2245. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST-DUE, LEGALLY ENFORCEABLE NONTAX DEBT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 321; 31 USC 3716

CFR Citation: 31 CFR 285.5

Legal Deadline: None

Abstract: This rule governs the administrative offset of Federal payments by disbursing officials of the United States.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6660

RIN: 1510–AA65

2246. SALARY OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514

CFR Citation: 31 CFR 285.7

Legal Deadline: None

Abstract: This rule governs the centralized computer matching of Federal Employee Records for purposes of salary offset to collect nontax delinquent debt owed the Federal Government.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/28/98	63 FR 23353
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg, Financial Program Specialist, Debt Management Service, Department of the Treasury, Financial Management Service, Room 44AB, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6660

RIN: 1510–AA70

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TREAS—FMS — **Final Rule Stage**

2247. OFFSET OF TAX REFUND PAYMENT TO COLLECT STATE INCOME TAX OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6402(e)

CFR Citation: 31 CFR 285.8

Legal Deadline: None

Abstract: This rule governs the offset of Federal tax refund payments to collect delinquent State income taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71233
Interim Final Rule	12/20/99	64 FR 71227
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Federalism: Undetermined

Agency Contact: Dean Balamaci, Director, Business and Agency Liaison Division, Department of the Treasury, Financial Management Service
Phone: 202 874-6660

RIN: 1510–AA78

2248. • 2003 ACH RULES

Priority: Other Significant

Legal Authority: 5 USC 5525; 12 USC 391; 31 USC 321; 31 USC 3301; 31 USC 3302; 31 USC 3321; 31 USC 3332; 31 USC 3335; 31 USC 3720

CFR Citation: 31 CFR 210

Legal Deadline: None

Abstract: This revision of 31 CFR part 210 will reconcile Government Automated Clearing House (ACH) regulations and private industry rules, as set forth by the National Automated Clearing House Association, by updating the incorporation of certain industry rules into Federal law for the year 2003.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Walt Henderson, Senior Financial Program Specialist, Cash Management Policy and Planning Directorate, Department of the Treasury, Financial Management Service, 401 14th Street SW., Washington, DC 20227
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA89

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Long-Term Actions**

2249. OFFSET OF FEDERAL PAYMENTS (OTHER THAN TAX REFUND AND FEDERAL BENEFIT PAYMENTS) TO COLLECT PAST-DUE DEBTS OWED TO STATES (OTHER THAN CHILD SUPPORT)

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.6

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: Undetermined

Agency Contact: Gerry Isenberg
Phone: 202 874-6660

RIN: 1510–AA66

2250. PUBLIC DISSEMINATION OF IDENTITY OF DELINQUENT DEBTORS

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 285.14

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gerry Isenberg
Phone: 202 874-6660

RIN: 1510–AA72

2251. SURETY BOND REIMBURSEMENT FUND

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 31 CFR 223

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Wanda Rogers
Phone: 202 874-8380
Email: wanda.rogers@fms.treas.gov

RIN: 1510–AA85

Department of the Treasury (TREAS)
Financial Management Service (FMS) — **Completed Actions**

2252. FEDERAL GOVERNMENT PARTICIPATION IN THE AUTOMATED CLEARINGHOUSE

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 210

Completed:

Reason	Date	FR Cite
Final Action (2002 ACH Rules; Check Conversion and Internet Transactions)	04/11/02	67 FR 17896

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Walt Henderson
Phone: 202 874-6705
Email: walt.henderson@fms.treas.gov

RIN: 1510–AA81

TREAS—FMS — **Completed Actions**

2253. DELIVERY OF CHECKS AND WARRANTS TO ADDRESSES OUTSIDE THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 31 CFR 211

Completed:

Reason	Date	FR Cite
Interim Final Rule	12/10/01	66 FR 63623

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William S. Mehr
Phone: 202 874-6932

RIN: 1510–AA88

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Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF) — **Proposed Rule Stage**

ALCOHOL

2254. AMERICAN VITICULTURAL AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: This rule establishes grape-growing regions as American viticultural areas for purposes of labeling and advertising of wine.

Timetable:

California Coast, CA (contact Nancy Sutton)
NPRM 09/26/00 (65 FR 57763)
Final Action To Be Determined
Expansion of Lodi Viticultural Area (contact Nancy Sutton)
NPRM 02/07/00 (65 FR 5828)
Final Action 09/00/02
Oak Knoll District, CA (contact Joanne Brady)
NPRM 09/00/02
Rockpile AVA (Nancy Sutton)
NPRM 05/01/01 (66 FR 21707)
Final Rule 02/28/02 (67 FR 9192)
Final Rule Effective 04/29/02
Yadkin Valley (contact Tim DeVanney)
NPRM 02/07/02 (67 FR 5756)
NPRM Comment Period End 04/08/02
Final Action To Be Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: See Supplemental Timetable, American Viticultural Areas, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8230

RIN: 1512–AA07

2255. REVISION OF BREWERY REGULATIONS AND ISSUANCE OF REGULATIONS FOR TAVERNS ON BREWERY PREMISES (BREWPUBS)

Priority: Other Significant

Legal Authority: 26 USC 5051 to 5056; 26 USC 5401 to 5417; 27 USC 205

CFR Citation: 27 CFR 7; 27 CFR 25

Legal Deadline: None

Abstract: ATF intends to streamline regulations applying to breweries. ATF will eliminate obsolete regulatory provisions. A formula system for manufactured beer products will replace statements of process attached to the brewers notice. The annual notice for small brewers to pay the reduced rate of tax will be eliminated. Separate regulations for brewpubs will be added to part 25. A section will be added to part 25 to authorize and regulate the alternating use of brewery premises by different brewers. Regulations authorizing the operation of brew-on-premises facilities will be added to part 25.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles N. Bacon, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 617 557-1250

RIN: 1512–AB37

2256. PROHIBITION OF ALCOHOL BEVERAGE CONTAINERS AND STANDARD OF FILL FOR DISTILLED SPIRITS AND WINE

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: ATF proposes to amend regulations to clarify the standards of fill for distilled spirits and wine. ATF also proposes to amend regulations to prohibit certain alcohol beverage containers that are likely to mislead consumers as to the identity or character of the distilled spirits, wine, or malt beverage products or to be confused with other (nonalcohol) food products.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6486
NPRM Comment Period End	04/12/99	
Revised NPRM Aggregate Packaging	05/00/02	
Revised NPRM Deceptive Packaging	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB89

2257. AMENDED STANDARD OF IDENTITY FOR SHERRY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: ATF is considering a petition to allow certain types of wine to be labeled as "sherry" rather than "light sherry."

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Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AB96

2258. ALCOHOL BEVERAGE HEALTH WARNING STATEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205; 27 USC 215

CFR Citation: 27 CFR 16

Legal Deadline: None

Abstract: ATF is considering amending the regulations concerning the placement, legibility, and noticeability of the congressionally mandated health warning statement required to appear on the labels of all containers of alcohol beverages. Based on a petition we have received, we wish to gather information by inviting comments from the public and industry as to whether the existing regulations should be revised.

Timetable:

Action	Date	FR Cite
ANPRM	05/22/01	66 FR 28135
ANPRM Comment Period End	08/20/01	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC12

2259. PRODUCTION OF AGRICULTURAL WINES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5381; 26 USC 5382; 26 USC 5385; 26 USC 5386; 26 USC 5387

CFR Citation: 27 CFR 24

Legal Deadline: None

Abstract: ATF has received two petitions relating to the production of agricultural wines. One petition proposes that the wine regulations be amended to allow for the production of dried fruit wines with an alcohol by volume content of more than 14 percent. The second petition proposes that the regulations be amended to allow for the production of honey wines with a starting Brix of less than 22 degrees.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC48

2260. PETITION TO ESTABLISH THE SANTA BARBARA HIGHLANDS VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms (ATF) has received a petition proposing the establishment of Santa Barbara Highlands as an American viticultural area. The proposed Santa Barbara Highlands area is located in Santa Barbara and Ventura Counties in California. The petition was submitted by Mr. Nebil Zarif, President, Barnwood Vineyards.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tim DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8196

RIN: 1512–AC53

2261. PETITION TO ESTABLISH THE TRINITY LAKE VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition from Keith Groves of Alpen Cellars proposing the establishment of a viticultural area located in Trinity County, California. The proposed Trinity Lake viticultural area consists of approximately 96,000 acres.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tim DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8196

RIN: 1512–AC62

2262. CORRECTION OF TECHNICAL ERROR IN 27 CFR PART 4

Priority: Info./Admin./Other

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is correcting a technical error in 27 CFR 4.22(b) regarding the ameliorating of non-grape wines.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC63

2263. • PROPOSAL TO RECOGNIZE SYNONYMS FOR PETITE SIRAH AND ZINFANDEL GRAPE VARIETIES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is proposing to amend the list of prime grape names for American wines to recognize the name "Durif" as a synonym for the Petite Sirah grape and to recognize the name "Primitivo" as a synonym for the Zinfandel grape. This is in response to the result of recent DNA research into the identity of these grape varieties.

Timetable:

Action	Date	FR Cite
NPRM	04/10/02	67 FR 17312
NPRM Comment Period End	06/10/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC65

2264. • PETITION TO ESTABLISH "SENECA LAKE" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is requesting comments from any interested parties concerning the proposed establishment of "Seneca Lake" as an American viticultural area. The proposed Seneca Lake viticultural area encompasses about 180,000 acres of land surrounding Seneca Lake in upstate New York. This area is located within the approved Finger Lakes viticultural area in the State of New York.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8206

RIN: 1512–AC70

2265. • PETITION TO ESTABLISH "CAPAY VALLEY" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is requesting comments concerning the proposed establishment of "Capay Valley" as an American viticultural area. The proposed Capay Valley is located in northwestern Yolo County, California. This area is approximately 20 miles long and 5 miles wide. Approximately 25 acres are currently planted in wine grapes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kristy Colon, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8206

RIN: 1512–AC71

2266. • PETITION FOR THE ESTABLISHMENT OF "RED HILL" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 205(e)

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms has received a petition proposing the establishment of "Red Hill" as an American viticultural area located within the State of Oregon. The proposed viticultural area consists of approximately 1,668 acres or 8.6 square miles.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tim DeVanney, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8196

RIN: 1512–AC76

EXPLOSIVES

2267. COMMERCE IN EXPLOSIVES (INCLUDING EXPLOSIVES IN THE FIREWORKS INDUSTRY)

Priority: Other Significant

Legal Authority: 5 USC 552(a); 31 USC 9303; 31 USC 9304; 40 USC 304(k); 18 USC 847; 18 USC 921 to 930; 18 USC 1261; 19 USC 1612; 19 USC 1613; 19 USC 1618; 26 USC 7101; 26 USC 7322 to 7326; 31 USC 9301

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: Pursuant to section 610 of the Regulatory Flexibility Act, ATF published a notice on January 10, 1997, seeking public comments on whether it should revise its regulations, codified at 27 CFR part 55, governing Commerce in Explosives (Including Explosives in the Fireworks Industry). Based on comments received, ATF plans to initiate a rulemaking to revise these regulations in 2001.

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Timetable:

Action	Date	FR Cite
General Notice of Regulatory Review	01/10/97	62 FR 1386
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

RIN: 1512–AB48

2268. IDENTIFICATION MARKINGS PLACED ON EXPLOSIVE MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: ATF is considering amending the regulations to require licensed importers to legibly identify by marking all imported explosive materials. Based on a petition we have received, we wish to gather information by inviting comments from the public and industry on whether the regulations should be amended.

Timetable:

Action	Date	FR Cite
ANPRM	11/03/00	65 FR 67669
ANPRM Comment Period End	01/12/01	
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

RIN: 1512–AC25

FIREARMS

2269. IMPLEMENTATION OF PUBLIC LAW 105-277, MAKING OMNIBUS CONSOLIDATED AND EMERG. SUPPLEMENTAL APPROPRIATIONS FOR FY 1999, RELATING TO THE PERMANENT PROVISIONS OF THE BRADY HANDGUN VIOLENCE PREVENTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF will amend the regulations to implement the provision of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999, relating to the permanent provisions of the Brady Handgun Violence Prevention Act. The new law allows a licensed pawnbroker to contact the national instant criminal background check system (NICS) prior to taking or receiving a firearm in pawn. If NICS advises the pawnbroker that receipt or possession of the firearm would be in violation of the law, the licensee must advise local law enforcement within 48 hours after receipt of information.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

RIN: 1512–AB83

2270. • IMPLEMENTATION OF P.L. 105-277 RELATING TO SECURE GUN STORAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 421 to 430; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms will issue a notice of proposed rulemaking amending the regulations to implement the provisions of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999. Regulations are proposed with regard to: 1) certification by applicants for dealers' licenses that secure gun storage or safety devices will be available at any place where firearms are sold to nonlicensed individuals; and 2) an amended definition of "antique firearm," to include certain muzzle loading firearms.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

Related RIN: Related To 1512-AB93

RIN: 1512–AC67

PROCEDURAL

2271. PLAIN LANGUAGE IN PART 7

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 7

Legal Deadline: None

Abstract: This project revises regulations to plain language. The revision will make no substantive changes to the current 27 CFR part 7.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226

Phone: 202 927-8210

RIN: 1512–AC10

TOBACCO PRODUCTS

2272. REGULATORY CHANGES FROM CUSTOMS SERVICE FINAL RULE (2001R-90T)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 44

Legal Deadline: None

Abstract: The temporary rule prescribes ATF regulations relating to a U.S. Customs Service (USCS) final rule (T.D. 92-181, 57 FR 37692). The USCS published this final rule to create a separate class of customs bonded warehouses, class 9 (duty-free store). A class 9 customs bonded warehouse (duty-free store) may receive tobacco products or cigarette papers or tubes without payment of Federal excise tax. The temporary rule prescribes the regulations that allow a manufacturer of tobacco products or cigarette papers and tubes and an export warehouse proprietor to send such articles to a class 9 customs bonded warehouse. In addition, the temporary rule prescribes regulations that allow a proprietor of a customs bonded manufacturing warehouse where cigars are manufactured to send such cigars to a class 9 customs bonded warehouse. This notice of proposed rulemaking invites comments on the temporary rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

RIN: 1512–AC56

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Final Rule Stage

ALCOHOL

2273. LABELING OF UNAGED GRAPE BRANDY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 5

Legal Deadline: None

Abstract: ATF proposes to amend the regulations to permit the use of the word "unaged" as an alternative to "immature," to describe grape brandy that has not been stored in oak containers.

Timetable:

Action	Date	FR Cite
NPRM	06/13/96	61 FR 30015
NPRM Comment Period End	09/11/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226 Phone: 202 927-8210

RIN: 1512–AB46

2274. DISTILLED SPIRITS PLANT REGULATORY INITIATIVE PROPOSAL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 19.11; 27 CFR 19.1003; 27 CFR 19.1010; 27 CFR 19.49; 27 CFR 19.153; 27 CFR 19.201 to 206; 27 CFR 19.311; 27 CFR 19.454; 27 CFR 19.605; 27 CFR 19.770; 27 CFR 19.1001

Legal Deadline: None

Abstract: ATF proposes changes to the distilled spirits plant regulations to reduce the regulatory burden and streamline requirements. ATF believes these proposed changes will benefit distilled spirits plant proprietors and other industry members by enabling them to operate more easily and with less regulatory oversight from the Government. ATF is also requesting comments on the possibility of revising the distilled spirits plant recordkeeping requirements to accomplish the reinventing Government goals through a system that would be based, as much as possible, on proprietors' own recordkeeping methods.

Timetable:

Action	Date	FR Cite
NPRM	11/30/98	63 FR 65720
NPRM Comment Period End	01/29/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne Brady, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms Phone: 215 597-5288

RIN: 1512–AB58

2275. IMPLEMENTATION OF WINE CREDIT PROVISIONS OF PUBLIC LAW 104-188

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 26 USC 5041

CFR Citation: 27 CFR 24.278; 27 CFR 24.279

Legal Deadline: None

Abstract: ATF is amending wine regulations to implement a change in the law that allows certain transferees in bond to deduct the tax credit for small wine producers. Changes to bond calculations are also included in this regulation.

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 29681
Interim Final Rule	06/02/97	62 FR 29663
NPRM Comment Period End	08/01/97	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Agency Contact: Marjorie D. Ruhf, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AB65

2276. IMPLEMENTATION OF PUBLIC LAW 105-34, SECTION 1416, RELATING TO REFUND OF TAX FOR DOMESTIC WINE RETURNED TO BOND REGARDLESS OF MERCHANTABILITY (TAXPAYER RELIEF ACT OF 1997)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5044; 26 USC 5361; 26 USC 5367; 26 USC 5371

CFR Citation: 27 CFR 24.66; 27 CFR 24.295; 27 CFR 24.312

Legal Deadline: None

Abstract: ATF is issuing changes to the wine regulations as a result of the enactment of the Taxpayer Relief Act of 1997 and the Internal Revenue Service Reconstruction and Reform Act of 1998. This amendment informs interested parties of changes by these acts that provide for a refund of the tax for all wine returned to bond, rather than exclusively for unmerchantable or domestic wine returned to bond.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB74

2277. HEALTH CLAIMS AND OTHER HEALTH RELATED STATEMENTS IN THE LABELING AND ADVERTISING OF ALCOHOL BEVERAGES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4; 27 CFR 5; 27 CFR 7

Legal Deadline: None

Abstract: ATF proposes to amend the regulations to prohibit the appearance on labels or in advertisements of any statement that makes a substantive claim regarding health benefits associated with the consumption of alcohol beverages unless such claim is properly qualified. This notice also addresses the use of directional health-related statements and seeks comments on whether the negative consequences of alcohol consumption or abuse disqualify these products entirely from entitlement to any health-related statements.

Timetable:

Action	Date	FR Cite
NPRM	10/25/99	64 FR 57413
NPRM Comment Period End	02/22/00	
Public Hearing	02/28/00	65 FR 10434
Cancellation/ Rescheduling of Hearing	04/25/00	65 FR 24158
Comment Period Extended	04/25/00	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB97

2278. RECODIFICATION OF PART 251

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 81(c); 19 USC 1202; 26 USC 5001; 26 USC 5007; 26 USC 5008; 26 USC 5041; 26 USC 5051; 26 USC 5054; 26 USC 5061; 26 USC 5111; 26 USC 5112; 26 USC 5114; 26 USC 5121; 26 USC 5122; 26 USC 5124; 26 USC 5201; 26 USC 5205; 26 USC 5207; 26 USC 5232; 26 USC 5273; 26 USC 5301; 26 USC 5313; 26 USC 5355; 26 USC 6302; 26 USC 7805; 27 USC 203; 27 USC 205; 27 USC 206; 27 USC 215; ...

CFR Citation: 27 CFR 251

Legal Deadline: None

Abstract: Part 251 will be updated and recodified. It will be reissued as 27 CFR part 27.

Timetable:

Action	Date	FR Cite
NPRM	08/05/96	61 FR 40568
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC27

2279. ALBARINO, BLACK CORINTH AND FIANO GRAPE VARIETIES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 4

Legal Deadline: None

Abstract: ATF has received petitions proposing to add the Albarino, Black Corinth and Fiano grapes to the list of prime grape variety names for use in designating American wines.

Timetable:

Action	Date	FR Cite
NPRM	07/19/01	66 FR 37609
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jennifer Berry, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 111 W. Huron Street, Room 219, Buffalo, NY 14202-2301
Phone: 716 551-4048

RIN: 1512–AC29

2280. DELEGATION OF AUTHORITY IN 27 CFR PART 252

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 252

Legal Deadline: None

Abstract: This final rule places most ATF authorities with the "appropriate ATF officer" and requires that persons file documents with the "appropriate ATF officer" or in accordance with the instructions on the ATF form.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC44

2281. LIQUOR DEALERS; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 31; 27 CFR 194; ...

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms (ATF) is recodifying the regulations pertaining to liquor dealers. The purpose of this recodification is to reissue the regulations in part 194 of title 27 of the Code of Federal Regulations (CFR) as 27 CFR part 31. This change improves the organization of title 27 CFR.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Joedicke, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-7460

RIN: 1512–AC45

2282. DELEGATION OF AUTHORITY IN 27 CFR PART 31

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 31

Legal Deadline: None

Abstract: This final rule places all ATF authorities contained in part 31, title 27 of the Code of Federal Regulations (CFR), with the "appropriate ATF officer" and requires that persons file documents required by 27 CFR part 31 with the "appropriate ATF officer" or in accordance with the instructions on the form. Also, this final rule removes the definitions of, and references to, specific officers subordinate to the Director.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karl Joedicke, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-7460

RIN: 1512–AC49

2283. DELEGATION OF AUTHORITY IN 27 CFR PART 251

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 251

Legal Deadline: None

Abstract: This final rule places most ATF authorities with the "appropriate ATF officer" and requires that persons file documents with the "appropriate ATF officer" or in accordance with the instructions on the ATF form.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC58

FIREARMS

2284. COMMERCE IN FIREARMS AND AMMUNITION (OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997)

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 847; 18 USC 921 to 930

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The Omnibus Consolidated Appropriations Act of 1997 contains amendments to the Gun Control Act of 1986 (18 U.S.C. chapter 44). These amendments add to the category of "prohibited persons" anyone convicted of a "misdemeanor crime of domestic violence." The amendments require individuals acquiring handguns from Federal firearms licensees to certify (in accordance with the Brady Law) that they have not been convicted of such a crime. The amendments also provide for sales between Federal firearms licensees of curio and relic firearms away from their licensed premises.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35551
Interim Final Rule	06/30/98	63 FR 35520
NPRM Comment Period End	09/28/98	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB64

2285. RESIDENCY REQUIREMENT FOR PERSONS ACQUIRING FIREARMS

Priority: Other Significant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

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CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: The temporary rule amends the regulations to provide for a firearms purchaser's affirmative statement of his or her State of residence on ATF Form 4473 (Firearms Transaction Record) and ATF Form 5300.35 (Statement of Intent to Obtain a Handgun) in acquiring a firearm from a Federal firearms licensee. The temporary rule also amends the regulations to require that aliens purchasing firearms provide proof of residency through the use of substantiating documentation, such as utility bills or a lease agreement. In addition, the regulations are being amended to require that licensees examine a photo identification document from aliens purchasing firearms. These regulations implement firearms initiatives intended to protect the American public from gun violence.

Timetable:

Action	Date	FR Cite
NPRM	04/21/97	62 FR 19446
Interim Final Rule	04/21/97	62 FR 19442
NPRM Comment Period End	07/21/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB66

2286. IMPLEMENTATION OF PUBLIC LAW 104-208, THE OMNIBUS CONSOLIDATED APPROPRIATIONS ACT OF 1997, RELATING TO THE ESTABLISHMENT OF A NATIONAL REPOSITORY FOR ARSON AND EXPLOSIVES INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 18 USC 846(b)

CFR Citation: 27 CFR 55

Legal Deadline: None

Abstract: ATF will issue this notice of proposed rulemaking to implement certain provisions of Public Law 104-208, the Omnibus Consolidated Appropriations Act of 1997 (the Act), enacted September 30, 1996. The Act amended the Federal explosives laws in 18 U.S.C. chapter 40 to require all Federal agencies to report to ATF any information involving arson or the suspected criminal misuse of explosives. The Act also authorizes ATF to establish a repository for this information. In addition, the law provides that such repository will contain information on incidents voluntarily reported to ATF by State and local authorities.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57404
NPRM Comment Period End	02/13/02	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB73

2287. PUBLIC LAW 105-277, MAKING OMNIBUS CONSOLIDATED AND EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FY99, RELATING TO FIREARMS DISABILITIES FOR NONIMMIGRANT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF will issue a temporary rule amending the regulations to implement the provisions of Public Law 105-277, Making Omnibus Consolidated and Emergency Supplemental Appropriations for Fiscal Year 1999. The regulations implement the law by prohibiting, with certain exceptions, the transfer to and possession of firearms by aliens admitted to the United States under a nonimmigrant visa.

Timetable:

Action	Date	FR Cite
NPRM	02/05/02	67 FR 5428
Interim Final Rule	02/05/02	67 FR 5422
Comment Period End	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AB93

2288. COMMERCE IN FIREARMS AND AMMUNITION—ANNUAL INVENTORY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552(a); 18 USC 847; 18 USC 921 to 930; 44 USC 3504(h)

CFR Citation: 27 CFR 178

Legal Deadline: None

Abstract: ATF is proposing to amend the regulations to require federally licensed importers, manufacturers, and dealers of firearms to take at least one physical inventory each year. The proposed regulations also specify the circumstances under which these licensees must conduct a special physical inventory. In addition, these proposed regulations clarify who is responsible for reporting a firearm that is stolen or lost in transit between licensees.

Timetable:

Action	Date	FR Cite
NPRM	08/28/00	65 FR 52054
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Ficaretta, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC08

TOBACCO PRODUCTS

2289. TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES SHIPPED FROM PUERTO RICO TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 5701; 27 USC 7652

CFR Citation: 27 CFR 275

Legal Deadline: None

Abstract: This temporary rule eliminates ATF onsite supervision of tobacco products and cigarette papers and tubes of Puerto Rican manufacture that are shipped from Puerto Rico to the United States. It also eliminates related ATF forms. This rule requires that persons who ship such articles maintain records so that the amount of tax is calculated and recorded for ATF audit and examination. Also, this temporary rule revises certain sections to simplify and clarify, and it corrects a few errors.

Timetable:

Action	Date	FR Cite
NPRM	03/08/01	66 FR 13864
NPRM Comment Period End	05/07/01	
Interim Final Rule	03/08/01	66 FR 13849
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC24

2290. ELIMINATION OF APPLICATION TO REMOVE TOBACCO PRODUCTS FROM MANUFACTURER'S PREMISES FOR EXPERIMENTAL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5704

CFR Citation: 27 CFR 40

Legal Deadline: None

Abstract: This rule eliminates the requirement that manufacturers of tobacco products apply to ATF to remove tobacco products from their factories in bond for experimental purposes. It is replaced with the requirement to keep records.

Timetable:

Action	Date	FR Cite
NPRM	10/17/01	66 FR 52730
NPRM Comment Period End	12/17/01	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC32

2291. DELEGATION OF AUTHORITY IN 27 CFR PART 44

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 44

Legal Deadline: None

Abstract: This final rule places most ATF authorities with the appropriate ATF officer and requires that persons file documents with the appropriate ATF officer or in accordance with the instructions on the ATF form.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC36

2292. IMPORTATION OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 41; 27 CFR 275

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is recodifying the regulations in part 275, Importation of Tobacco Products and Cigarette Papers and Tubes. The purpose of this recodification is to reissue the regulations in part 275 of title 27 of the Code of Federal Regulations (CFR) as 27 CFR part 41. This change improves the organization of title 27 CFR.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC46

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Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Long-Term Actions

ALCOHOL

2293. EXPORTATION OF LIQUORS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 252

Timetable:

Action	Date	FR Cite
ANPRM	09/08/92	57 FR 40887
ANPRM Comment Period End	10/08/92	
ANPRM Comment Period Extended	10/15/92	57 FR 47320
ANPRM Comment Period Extended End	12/07/92	
ANPRM	08/09/96	61 FR 41500
ANPRM Comment Period End	12/10/96	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne Brady
Phone: 215 597-5288

RIN: 1512–AA98

2294. ALCOHOLIC CONTENT LABELING FOR MALT BEVERAGES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 7

Timetable:

Action	Date	FR Cite
NPRM	04/19/93	58 FR 21233
Interim Final Rule	04/19/93	58 FR 21228
NPRM Comment Period End	07/19/93	
NPRM Comment Period Extended	07/19/93	58 FR 38543
NPRM Comment Period Extended End	09/17/93	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
Phone: 503 356-1341

RIN: 1512–AB17

2295. SAKE REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Bernard J. Kipp
Phone: 503 356-1341

RIN: 1512–AC09

2296. FLAVORED MALT BEVERAGES

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Charles N. Bacon
Phone: 617 557-1250

RIN: 1512–AC11

2297. REMOVAL OF REQUIREMENT TO DISCLOSE SACCHARIN IN THE LABELING OF WINE, DISTILLED SPIRITS AND MALT BEVERAGES

Priority: Info./Admin./Other

CFR Citation: 27 CFR 4.32(d); 27 CFR 5.32(b)(6); 27 CFR 7.22(b)(5)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marjorie D. Ruhf
Phone: 202 927-8210
Email: mdruhf@atfhq.atf.treas.gov

RIN: 1512–AC17

2298. PROPOSED ADDITION OF "TANNAT" AS A GRAPE VARIETY NAME FOR AMERICAN WINES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 4

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3135
NPRM Comment Period End	03/25/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Berry
Phone: 716 551-4048

RIN: 1512–AC50

2299. PETITION TO AMEND THE STANDARDS OF IDENTITY FOR WHISKY AND BRANDY

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 5.22

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel J. Hiland
Phone: 202 927-8210

RIN: 1512–AC51

2300. PROPOSED REVISIONS OF 27 CFR PART 19

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 19

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel J. Hiland
Phone: 202 927-8210

RIN: 1512–AC52

2301. PROPOSED SAN BERNABE VITICULTURAL AREA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 9

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Sutton
Phone: 415 947-5192

RIN: 1512–AC60

2302. • PETITION TO ESTABLISH RED HILLS AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: This proposed viticultural area of northern California lies within the Clear Lake viticultural area in Lake County, which is entirely within the multi-county North Coast viticultural area. The area consists of approximately 31,250 acres of hilly terrain covered with rocky, volcanic soil.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC66

TREAS—BATF

Long-Term Actions

2303. • PETITION TO ESTABLISH "BENNETT VALLEY" AS AN AMERICAN VITICULTURAL AREA

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed 8,100-acre viticultural area is located entirely within the North Coast viticultural area of northern California, Sonoma County, and predominantly within the Sonoma Valley viticultural area. There are small overlaps into the Sonoma Coast and Sonoma Mountain viticultural areas. The petitioned area is approximately 40 miles northeast of San Francisco and is bordered by mountains, foothills, and the City of Santa Rosa. Currently, there are 650 acres of vineyards.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC72

2304. • TAXPAID DISTILLED SPIRITS USED IN MANUFACTURING PRODUCTS UNFIT FOR BEVERAGE USE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 5010; 26 USC 5131 to 5134; 26 USC 5143; 26 USC 5206; 26 USC 5273; ...

CFR Citation: 27 CFR 17

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms (ATF) proposes to amend the regulations on taxpaid distilled spirits used to manufacture nonbeverage products to allow manufactures to use natural and artificial 1 percent solutions without having to file ATF Form 5154.1, Formula and Process for Nonbeverage Product. This proposal is part of an ongoing effort to streamline the ATF National Laboratory Center's flavor formula approval process.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Wade-Chapman, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 202 927-8181

RIN: 1512–AC73

2305. • PETITION TO CHANGE THE TEMECULA VITICULTURAL AREA'S NAME TO TEMECULA VALLEY

Priority: Substantive, Nonsignificant

Legal Authority: 27 USC 205

CFR Citation: 27 CFR 9

Legal Deadline: None

Abstract: The proposed name change from Temecula to Temecula Valley is intended to provide a more accurate portrayal of the viticultural area, geographically and politically, and to provide clarity to wine consumers. The boundaries will not change.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Sutton, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms
Phone: 415 947-5192

RIN: 1512–AC77

PROCEDURAL

2306. DELEGATION OF AUTHORITY IN 27 CFR PART 19

Priority: Info./Admin./Other

CFR Citation: 27 CFR 19

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC06

2307. • COMMERCE IN FIREARMS AND AMMUNITION; RECODIFICATION OF REGULATIONS (2002R-013P)

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 47; 27 CFR 50; 27 CFR 178; 27 CFR 179; 27 CFR 70

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is recodifying the regulations pertaining to commerce in firearms and ammunition. The purpose of this recodification is to reissue the regulations in part 178 of title 27, Code of Federal Regulation (27 CFR part 178) as 27 CFR part 50. This change will improve the organization of 27 CFR.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226

Phone: 202 927-8210

RIN: 1512–AC68

2308. • MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS; RECODIFICATION OF REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 47; 27 CFR 51; 27 CFR 55; 27 CFR 70; 27 CFR 179; ...

Legal Deadline: None

Abstract: The Bureau of Alcohol, Tobacco and Firearms is recodifying the regulations pertaining to machine guns, destructive devices, and certain other firearms. The purpose of this recodification is to reissue the regulations in part 179 of title 27, Code of Federal Regulations (27 CFR part 179) as 27 CFR part 51. This change will improve the organization of title 27 CFR.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser, ATF Specialist, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC69

2309. • DELEGATION OF AUTHORITY FOR PART 70

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 70

Legal Deadline: None

Abstract: This final rule references an additional ATF order, ATF Order 1130.32, for delegating certain ATF authorities contained in its Procedure and Administration regulations. ATF Order 1130.32 delegates the authority to accept or reject offers in compromise other than forfeiture to the appropriate ATF officer. A previous final rule (T.D. ATF-450, 66 FR 29021) referenced only ATF Order 1130.19. ATF Order 1130.19 delegates all other authorities in its Procedure and Administration regulations.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC74

TOBACCO PRODUCTS

2310. IMPLEMENTATION OF PUBLIC LAW 105-33, SECTION 9302, REQUIRING THE QUALIFICATION OF TOBACCO PRODUCT IMPORTERS AND MISCELLANEOUS TECHNICAL AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	12/22/99	64 FR 71955
Interim Final Rule	12/22/99	64 FR 71947
Interim Final Rule Effective	01/01/00	
Interim Final Rule Comment Period End	05/03/00	65 FR 17477
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC07

2311. PROHIBITED MARKS ON PACKAGES OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES IMPORTED OR BROUGHT INTO THE UNITED STATES

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC14

2312. DETERMINATION OF TAX AND RECORDKEEPING ON LARGE CIGARS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 270; 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC22

2313. ELIMINATION OF STATISTICAL CLASSES FOR LARGE CIGARS

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 40; 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC33

2314. DELEGATION OF AUTHORITY IN 27 CFR PART 40

Priority: Info./Admin./Other

CFR Citation: 27 CFR 40

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC54

2315. SHIPMENTS OF TOBACCO PRODUCTS OR CIGARETTE PAPERS OR TUBES WITHOUT PAYMENT OF TAX.

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 40; 27 CFR 275

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC57

2316. VOLUNTARY WAIVER OF FILING CLAIM FOR CREDIT, REFUND, ALLOWANCE OR CREDIT OF TAX FOR TOBACCO PRODUCTS MANUFACTURED IN CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 44

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC64

2317. • REMOVAL OF TOBACCO PRODUCTS AND CIGARETTE PAPERS AND TUBES WITHOUT PAYMENT OF TAX FOR USE OF THE UNITED STATES

Priority: Info./Admin./Other

Legal Authority: 26 USC 7805

CFR Citation: 27 CFR 45

Legal Deadline: None

Abstract: This proposed rule revises, in plain language, the existing regulations relating to the removal of tobacco products and cigarette papers and tubes, without payment of tax, for use of the United States. ATF is proposing this rule to clearly communicate the requirements of these regulations. In addition, we are liberalizing the requirements for emergency variations.

Timetable:

Action	Date	FR Cite
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf, Program Manager, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue NW., Washington, DC 20226
Phone: 202 927-8210

RIN: 1512–AC75

Department of the Treasury (TREAS)
Bureau of Alcohol, Tobacco and Firearms (BATF)

Completed Actions

2318. DISTRIBUTION OF DENATURED ALCOHOL AND RUM

Priority: Substantive, Nonsignificant

CFR Citation: 27 CFR 20

Completed:

Reason	Date	FR Cite
Final Action	04/12/02	67 FR 17937

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa Marie Gesser
Phone: 202 927-8210

RIN: 1512–AB57

2319. DELEGATION OF AUTHORITY IN 27 CFR PARTS 45 AND 46

Priority: Info./Admin./Other

CFR Citation: 27 CFR 45; 27 CFR 46

Completed:

Reason	Date	FR Cite
Final Action	02/27/02	67 FR 8878

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert P. Ruhf
Phone: 202 927-8210

RIN: 1512–AC59

BILLING CODE 4810–31–S

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Proposed Rule Stage

2320. UNIFORM RULES OF PRACTICE AND PROCEDURE; REGULATION REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504; 12 USC 1831o; 12 USC 1972; 12 USC 3102; 12 USC 3108; 12 USC 3909; 5 USC 554 to 557; 12 USC 93a; 12 USC 93(b); 12 USC 164; 12 USC 505; 12 USC 1817; 12 USC 1818; 12 USC 1820

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The OCC is considering what regulatory actions may be necessary to implement section 112(g)(4) of the Federal Deposit Insurance Corporation Improvement Act of 1991 to develop joint agency procedures for the suspension and debarment of accountants, upon a showing of good cause, from performing certain audit services.

Timetable:

Action	Date	FR Cite
NPRM - Suspension and Debarment of Accountants	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative

and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB43

2321. FAIR CREDIT REPORTING REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 15 USC 1681s; PL 106-102, sec 506

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The rule will address the sharing of transactional, experiential, and other consumer information among persons related by common ownership or affiliated by corporate control. Such sharing of this information constitutes an exclusion from the definition of "consumer report" under section 603(d) of the Fair Credit Reporting Act (15 U.S.C. 1681a(d)).

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Lee Walzer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Analysis Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB78

2322. RULES, POLICIES, AND PROCEDURES FOR CORPORATE ACTIVITIES AND BANK ACTIVITIES AND OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 92a; 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 1828(n); 12 USC 1828 note; 12 USC 1831n note; 12 USC 1831o; 12 USC 1835; 12 USC 3102; 12 USC 3108; 12 USC 3901 et seq; 12 USC 3907; 12 USC 3909; Section 5136 of the Revised Statutes (12 USC 24a); 15 USC 78q; 15 USC 78q-1; 15 USC 78w

CFR Citation: 12 CFR 3; 12 CFR 5; 12 CFR 6; 12 CFR 7; 12 CFR 9; 12 CFR 28

Legal Deadline: None

Abstract: The OCC plans to amend part 5 to implement the authority for national banks to merge with one or more of their nonbank affiliates contained in section 1206 of the American Homeownership and Economic Opportunity Act of 2000 (AHEOA). The proposal will also amend part 5 to implement the authority in section 1204 of AHEOA by adding a new section setting forth the application and prior approval requirements for national banks contemplating reorganization as a subsidiary of a bank holding company. In addition, the OCC also plans to implement section 1205 of AHEOA by amending part 7 to permit national banks to adopt by-laws providing for staggered boards of directors and to permit national banks to apply to expand the size of their boards of directors over 25 members. The OCC also plans to make other amendments to parts 5, 7, and 9, as well as certain technical amendments to parts 3, 6, 7, and 28.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Andra Shuster, Counsel, Department of the Treasury, Comptroller of the Currency
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RIN: 1557–AB97

2323. MAINTENANCE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504; 5 USC 554 to 557; 12 USC 93a; 12 USC 93(b); 12 USC 164; 12 USC 481; 12 USC 505; 12 USC 1817; 12 USC 1818; 12 USC 1820; 12 USC 1831o; 12 USC 1867; 12 USC 1972; 12 USC 3102; 12 USC 3108(a); 12 USC 3909; 12 USC 4717; 15 USC 78(h); 15 USC 78(i); 15 USC 78o-4(c); 15 USC 78o-5; 15 USC 78q-1; 15 USC 78u; 15 USC 78-u2; 15 USC 78-u3; 15 USC 78w; 28 USC 2461 note; 31 USC 330; 31 USC 5321; 42 USC 4012a

CFR Citation: 12 CFR 19

Legal Deadline: None

Abstract: The notice of proposed rulemaking would invite comment on a rule that would add a new subpart P to 12 CFR part 19, which would require national banks, national bank affiliates, Federal branches and agencies of foreign banks, and bank service companies that perform services for, or contract with, national banks to establish and maintain accurate and complete documentation and records, and allow the OCC timely access to such records.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB99

2324. PAYDAY LENDING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24(Seventh); 12 USC 93a; 12 USC 1818; 12 USC 1861 to 1867

CFR Citation: 12 CFR 5; 12 CFR 32

Legal Deadline: None

Abstract: The OCC is considering amending 12 CFR part 5 and 12 CFR part 32 to address payday lending activities engaged in by national banks through arrangements with third-party lending companies. The purpose of this rulemaking would be to adopt provisions intended to ensure that payday lending is conducted in a manner that is consistent with safe and sound banking practices.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC01

2325. • FINANCIAL SUBSIDIARIES AND NONCONTROLLING INVESTMENTS OF FEDERAL BRANCHES AND AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24a; 12 USC 24 (Seventh); 12 USC 93a, 12 USC 3101 et seq

CFR Citation: 12 CFR 5

Legal Deadline: None

Abstract: The OCC proposes to clarify that a Federal branch or agency may establish, acquire, or maintain a qualified subsidiary company in generally the same manner that a national bank may establish and operate a financial subsidiary if certain conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090

RIN: 1557–AC02

2326. • INTERNATIONAL BANKING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 3101 et seq; 12 USC 3901 et seq

CFR Citation: 12 CFR 28

Legal Deadline: None

Abstract: The OCC plans to issue a notice of proposed rulemaking to clarify or revise a number of application or notice procedures, including the standards for approval that would apply. In addition, the OCC plans to implement a number of OCC interpretations regarding the capital equivalency deposit required of Federal branch and agencies. Finally, the OCC plans to revise several definitions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090

RIN: 1557–AC04

2327. • IDENTITY VERIFICATION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 31 USC 5318(l)

CFR Citation: 31 CFR 103

Legal Deadline: Final, Statutory, October 26, 2002, Must take effect one year before date of enactment of USA Patriot Act.

Abstract: The Secretary of the Treasury, the OCC, the Board of Governors of the Federal Reserve System, the FDIC, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies) plan to issue a regulation implementing section 326 of the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001. Section 326 requires a regulation that contains minimum standards that financial institutions must implement: 1) to verify the identity of any person seeking to open an account; 2) to maintain records of the information used to verify the person's identity; and 3) to determine whether the person appears on any lists of known or suspected terrorists or terrorist organizations provided to the financial institution by any Government agency.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Katz, Senior Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Divison, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AC06

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Final Rule Stage

2328. CAPITAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 161; 12 USC 1828 note; 12 USC 1828(n); 12 USC 1831n note; 12 USC 1835; 12 USC 3907; 12 USC 3909

CFR Citation: 12 CFR 3

Legal Deadline: None

Abstract: As part of the OCC's ongoing efforts to develop and refine capital standards to ensure the safety and soundness of the national banking system and to implement statutory

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requirements, the OCC is amending various provisions of the capital rules for national banks. Specifically, these changes include: 1) claims on securities firms; 2) domestic capital framework (formerly referred to as bifurcated capital for complex and noncomplex banks); 3) securities borrowing transactions; and 4) managed assets. The OCC is conducting all of these rulemakings jointly with the other Federal banking agencies.

Timetable:

Claims on Securities Firms
NPRM 12/06/00 (65 FR 76180)
NPRM Comment Period End 01/22/01
Final Rule 04/09/02 (67 FR 16971)
Final Rule Effective 07/01/02
Domestic Capital Framework (formerly Bifurcated Capital for Complex and Noncomplex Banks)
ANPRM 11/03/00 (65 FR 66193)
ANPRM Comment Period End 02/01/01
NPRM 12/00/02
Managed Assets
ANPRM 09/00/02
Securities Borrowing Transactions
Interim Final Rule 12/05/00 (65 FR 75856)
Interim Final Rule Comment Period End 01/19/01
Final Rule 12/00/02

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ron Shimabukuro, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB14

2329. DEBT CANCELLATION CONTRACTS AND DEBT SUSPENSION AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24(Seventh); 12 USC 93a

CFR Citation: 12 CFR 37

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking governing the offering of debt cancellation contracts and debt suspension agreements. The purposes of the customer protections are to facilitate customers' informed choice about whether to purchase debt cancellation contracts and debt suspension agreements, based on an understanding of the costs, benefits, and limitations of the products, and to discourage inappropriate or abusive practices.

Timetable:

Action	Date	FR Cite
ANPRM	01/26/00	65 FR 4176
ANPRM Comment Period End	03/27/00	
NPRM	04/18/01	66 FR 19901
NPRM Comment Period End	06/18/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 1557–AB75

2330. BANK ACTIVITIES AND OPERATIONS (ELECTRONIC BANKING)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 93a

CFR Citation: 12 CFR 7.1002; 12 CFR 7.1019; 12 CFR 7.5000 to 7.5010

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking that addressed ways to facilitate national banks' efforts to engage in various forms of electronic banking consistent with safety and soundness. The proposal addresses national banks' exercise of their Federally authorized powers through electronic means; the applicability of state law to the exercise of those powers; the location of a national bank that engages in electronic activities; and the disclosures required when a national bank provides its customers with access to other service providers through hyperlinks in the bank's web site or other shared electronic space.

Timetable:

Action	Date	FR Cite
ANPRM	02/02/00	65 FR 4895
ANPRM Comment Period End	04/03/00	
NPRM	07/02/01	66 FR 34855
NPRM Comment Period End	08/31/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Heidi M. Thomas, Special Counsel, Department of the Treasury, Comptroller of the Currency, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB76

2331. NOTICE OF EXEMPT PRIVACY ACT SYSTEMS OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 321; 5 USC 552; 5 USC 552a

CFR Citation: 31 CFR 1

Legal Deadline: None

Abstract: The OCC, with the concurrence of the Department of the Treasury, is issuing a notice of proposed rulemaking to amend the Treasury Regulation that sets forth the systems of records maintained by Treasury Department agencies and bureaus that are exempt from certain provisions of the Privacy Act of 1974 (Privacy Act). The OCC is amending this regulation to update and expand the list of its systems of records that are exempt from certain provisions of the Privacy Act and to clarify the bases for these exemptions.

Timetable:

Action	Date	FR Cite
NPRM	10/26/01	66 FR 54175
NPRM Comment Period End	11/26/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Harold J. Hansen, Assistant Director, Department of the Treasury, Comptroller of the Currency, Administrative and Internal Law Division, 250 E Street SW, Washington, DC 20219
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Fax: 202 874-4555
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RIN: 1557–AB83

2332. PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 21; 12 USC 22; 12 USC 26; 12 USC 27; 12 USC 30; 12 USC 36; 12 USC 93a; 12 USC 161; 12 USC 215; 12 USC 215a; 12 USC 481; 12 USC 1814; 12 USC 1816; 12 USC 1828(c); 12 USC 1835a; 12 USC 2901 through 2907; 12 USC 3101 through 3111

CFR Citation: 12 CFR 25

Legal Deadline: None

Abstract: The notice of proposed rulemaking invited comment on a rule that would amend regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 to effectuate the amendment of section 109 of the Gramm-Leach-Bliley Act of 1999. Section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state for the purpose of deposit production. Additionally, section 109 contains guidelines for determining whether a bank is reasonably helping to meet the credit needs of communities served by an out-of-state branch or branches. The proposed rule amends the section 109 deposit production prohibition to include any bank or branch controlled by an out-of-state bank holding company, including a bank consisting only of a main office.

Timetable:

Action	Date	FR Cite
NPRM	04/09/01	66 FR 18411
NPRM Comment Period End	06/08/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB95

2333. • INTERNATIONAL BANKING ACTIVITIES: CAPITAL EQUIVALENCY DEPOSIT

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq; 12 USC 24 (Seventh); 12 USC 93a; 12 USC 161; 12 USC 602; 12 USC 1818; 12 USC 3101 et seq; 12 USC 3901 et seq

CFR Citation: 12 CFR 28.15

Legal Deadline: None

Abstract: The OCC plans to issue an interim rule with request for comment that would be effective immediately upon publication. Specifically, the OCC would revise some of the requirements and prohibitions relating to the capital equivalency deposit that a foreign bank must establish and maintain for its Federal branch or agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/02	67 FR 4325
Interim Final Rule Effective	01/30/02	
Interim Final Rule Comment Period End	04/01/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Martha Vestal Clarke, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities, Division, 250 E Street SW, Washington, DC 20219
Phone: 202 874-5090

RIN: 1557–AC05

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC)

Long-Term Actions

2334. RULES AND PROCEDURES FOR CLAIMS AGAINST OCC-APPOINTED RECEIVERSHIPS FOR UNINSURED FINANCIAL INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 192; 12 USC 206; 12 USC 3108

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This regulation will establish rules and procedures for processing claims against receivers for uninsured Federal institutions that are chartered by the OCC.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB59

2335. REAL ESTATE APPRAISALS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 3331 et seq

CFR Citation: 12 CFR 34

Legal Deadline: None

Abstract: This rulemaking would amend the OCC's appraisal regulation to exempt transactions involving mortgage-backed securities (MBS) from its principal appraisal requirements.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Mitchell Plave, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB70

2336. RECORDKEEPING REQUIREMENTS FOR BANK EXCEPTIONS FROM SECURITIES BROKER OR DEALER REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 1828(t)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This notice of proposed rulemaking will seek comment on recordkeeping requirements for banks relying on exceptions to the definitions of broker or dealer in paragraphs (4) and (5) of section 3(a) of the Securities Exchange Act of 1934.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Katz, Senior Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Divison, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB93

2337. COMMUNITY REINVESTMENT ACT REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 21; 12 USC 22; 12 USC 26; 12 USC 27; 12 USC 30; 12 USC 36; 12 USC 93a; 12 USC 161; 12 USC 215; 12 USC 215a; 12 USC 481; 12 USC 1814; 12 USC 1816; 12 USC 1828(c); 12 USC 1835a; 12 USC 2901 to 2907; 12 USC 3101 to 3111

CFR Citation: 12 CFR 25

Legal Deadline: None

Abstract: The OCC, in conjunction with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision (the agencies), has issued an advance notice of proposed rulemaking to solicit comment on the agencies' existing Community Reinvestment Act (CRA) regulations. The agencies are conducting a review of their CRA regulations to determine their effectiveness in achieving their goals.

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Margaret Hesse, Special Counsel, Department of the Treasury, Comptroller of the Currency, Community and Consumer Law Division, 250 E Street SW, Washington, DC 20219
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Email: margaret.hesse@occ.treas.gov

Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency
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RIN: 1557–AB98

Department of the Treasury (TREAS)
Comptroller of the Currency (OCC) — Completed Actions

2338. QUALIFICATION REQUIREMENTS FOR TRANSACTIONS IN CERTAIN SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 1818; 12 USC 1831p-1

CFR Citation: 12 CFR 12

Legal Deadline: None

Abstract: The regulation will require bank employees to meet certain qualification standards before selling nondeposit investment products in a bank.

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68823
Withdrawn	03/16/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark J. Tenhundfeld, Assistant Director, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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RIN: 1557–AB54

2339. MINIMUM SECURITY DEVICES AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 1882

CFR Citation: 12 CFR 21

Legal Deadline: None

Abstract: The OCC is considering a rulemaking that would amend the OCC's Minimum Security Devices and Procedures regulation to address recent changes made to the definition of the term "branch" in the National Bank Act by the Economic Growth and Paperwork Reduction Act of 1996 (EGRPRA). This amendment would clarify that the regulation applies to automated teller machines (ATMs) and remote service units (RSUs).

Timetable:

Action	Date	FR Cite
Withdrawn	03/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patrick Tierney, Attorney, Department of the Treasury, Comptroller of the Currency, Legislative

TREAS—OCC — Completed Actions

and Regulatory Activities Division, 250 E Street SW, Washington, DC 20219
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Email: patrick.tierney@occ.treas.gov

RIN: 1557–AB71

2340. FIDUCIARY ACTIVITIES OF NATIONAL BANKS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1 et seq.; 12 USC 24 (Seventh); 12 USC 24a; 12 USC 92; 12 USC 92a(b); 12 USC 93a; 15 USC 78q; 15 USC 78q-1; 15 USC 78w

CFR Citation: 12 CFR 5; 12 CFR 9

Legal Deadline: None

Abstract: The OCC issued an advance notice of proposed rulemaking (ANPRM) that would amend 12 CFR part 9. The ANPRM solicited comments on the standards of care generally applicable to the exercise of national bank fiduciary powers authorized by 12 U.S.C. 92a and part 9.

Timetable:

Action	Date	FR Cite
ANPRM	12/05/00	65 FR 75872
ANPRM Comment Period End	02/05/01	
Withdrawn	03/18/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Andra Shuster, Counsel, Department of the Treasury, Comptroller of the Currency
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Email: andra.shuster@occ.treas.gov

RIN: 1557–AB79

2341. ASSESSMENT OF FEES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 93a; 12 USC 481; 12 USC 482; 12 USC 1867; 12 USC 3102; 12 USC 3108; 15 USC 78c; 15 USC 781; 26 DC Code

CFR Citation: 12 CFR 8

Legal Deadline: None

Abstract: The OCC issued a notice of proposed rulemaking that would amend 12 CFR part 8 to permit the charging of a minimum assessment on all national banks, regardless of asset size.

Timetable:

Action	Date	FR Cite
NPRM	09/25/01	66 FR 48983
NPRM Comment Period End	10/25/01	
Final Rule	11/16/01	66 FR 57645
Final Rule Effective	12/31/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michele Meyer, Counsel, Department of the Treasury, Comptroller of the Currency, Legislative and Regulatory Activities Division, 250 E Street SW.
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RIN: 1557–AC00

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Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS) — Proposed Rule Stage

2342. TEXTILES AND TEXTILE PRODUCTS SUBJECT TO TEXTILE TRADE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 7 USC 1854

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to the country of origin standards and documentary requirements applicable to textiles and textile products subject to section 204 of the Agricultural Act of 1956. Amendment involves simplification of regulatory text, has no substantive effect on the U.S. textile import program as administered by Customs, and is intended to ensure that the wording of the Customs Regulations is consistent with the product coverage of section 204.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dick Crichton, Operations Officer, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0162

RIN: 1515–AB54

2343. LIQUIDATION; EXTENSION; SUSPENSION

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1500; 19 USC 1504; 19 USC 1624

CFR Citation: 19 CFR 159

Legal Deadline: None

Abstract: Document would amend the Customs Regulations to implement amendments to section 504 of the Tariff Act of 1930, as amended, which pertains to limitations on the liquidation of entries that were contained in the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act. Amendments would allow the reconciliation of entries to be treated as if they were entry summaries, subject to normal liquidation requirements; authorize the electronic transmittal of notices of extension and suspension of liquidation; extend the time period in which Customs must liquidate a suspended entry after the suspension is removed; remove the application of the four-year limitation to suspended entries; and provide that Customs must also inform sureties when an entry is suspended or extended.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination

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Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2077

RIN: 1515–AB66

2344. DETENTION, SEIZURE, AND FORFEITURE OF "BOOTLEG" SOUND RECORDING AND MUSIC VIDEOS OF LIVE MUSICAL PERFORMANCES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 17 USC 602; 17 USC 603; 31 USC 9701; 19 USC 66; 19 USC 1202; 19 USC 58a; 19 USC 58b; 19 USC 58c; 19 USC 66; 17 USC 101; 17 USC 601

CFR Citation: 19 CFR 12; 19 CFR 24; 19 CFR 133

Legal Deadline: None

Abstract: Amendment to provide for the detention, seizure, and forfeiture of unauthorized (bootleg) copies of sound recordings and music videos of live musical performances recorded outside of and imported into the United States, as provided by section 513(a) of the Uruguay Round Agreements Act.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: George F. McCray, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2387

RIN: 1515–AB74

2345. RECONCILIATION

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1484; 19 USC 1500; 19 USC 1624

CFR Citation: 19 CFR 142; 19 CFR 159

Legal Deadline: None

Abstract: Amendment to allow those elements of an entry, other than those elements relating to the admissibility of the merchandise, that are undetermined at the time an entry summary or an import activity summary is required to be submitted, to be provided to Customs at a later date.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Durant, Director, Commercial Rulings Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2244

RIN: 1515–AB85

2346. REMOTE LOCATION FILING

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1484; 19 USC 1624; 19 USC 1641

CFR Citation: 19 CFR 111; 19 CFR 113; 19 CFR 141; 19 CFR 143

Legal Deadline: None

Abstract: Amendment to allow entry filers to electronically file entries of merchandise with Customs from locations within the United States other than at the port of arrival of the merchandise or the location of examination of the merchandise.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Millie Gleason, Chief, Summary Management, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0625

RIN: 1515–AC23

2347. SIMPLIFICATION OF IN-TRANSIT TRUCK SHIPMENTS BETWEEN CANADA AND THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1553; 19 USC 1624

CFR Citation: 19 CFR 123

Legal Deadline: None

Abstract: Amendment to simplify reporting procedures for the in-transit movement of truck shipments between Canada and the United States. Amendment is designed to reduce traffic congestion along the northern border by reducing the number of reporting stops.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Raymond Janiszewski, Supervisory Import Specialist, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0365

Walter Lechowski, Assistant Director, Operations, Department of the Treasury, United States Customs Service, Building 10, East Great Lakes CMC, 4455 Genesee Street, Buffalo, NY 14225
Phone: 716 626-0400

RIN: 1515–AC65

2348. REQUIREMENTS FOR FUTURE CUSTOMS TRANSACTIONS WHEN PAYMENT TO CUSTOMS ON PRIOR TRANSACTIONS IS DELINQUENT AND/OR DISHONORED

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624; 5 USC 301; 19 USC 1505

CFR Citation: 19 CFR 142; 19 CFR 24

Legal Deadline: None

Abstract: Amendment concerning how Customs will handle the future transactions of importers or other parties financially obligated to Customs who are delinquent in a payment to Customs or have had payments to the agency returned as dishonored by their financial institution. Amendment provides, among other things, that where an importer or other party financially obligated to Customs ("debtor") has not paid monies owed to Customs by the due date in a Customs bill or collection notice, including a bill or collection notice requesting payment of an amount owed to Customs that has been returned as dishonored by the debtor's financial institution, Customs may require the debtor to file entry summary documentation at the time of entry with estimated duties, taxes and fees attached (to make "live entry"). This requirement will be imposed on all the debtor's future importations at all ports of entry until Customs receives full payment of the debtor's overdue amount, including accrued interest, or until the debt has been resolved other than by Customs termination of the collection action. Amendment also concerns when Customs will require all future payments be made by certified check, money order, cash, or if authorized, by Automated Clearinghouse credit payment. Amendments are necessary to support Customs collection efforts and to ensure a uniform and consistent approach in the manner by which Customs responds to delinquent and dishonored payments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley, Financial Officer, Financial Management Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1504

RIN: 1515–AC68

2349. CUSTOMS EXAMINATION OF IN-TRANSIT MAIL SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 145

Legal Deadline: None

Abstract: Amendment to provide that Customs has the authority to examine and search international mail without regard as to whether it is transiting the United States or the U.S. Virgin Islands, or is being delivered within the Customs territory of the United States or the U.S. Virgin Islands.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Glen E. Vereb, Senior Attorney, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1327

RIN: 1515–AC71

2350. EXPANDED WEEKLY ENTRY PROCEDURE FOR FOREIGN TRADE ZONES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 81a to 81u; 19 USC 1202; 19 USC 1484i; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 146

Legal Deadline: None

Abstract: Amendment in conformance with the Trade and Development Act of 2000 to expand the weekly entry procedure for foreign trade zones to include merchandise involved in activities other than exclusively assembly-line production operations. Under the expanded weekly procedure, weekly entries covering estimated removals of merchandise from a foreign trade zone for any seven-day period and the associated entry summaries will have to be filed exclusively through the Automated Broker Interface, with duties, fees and taxes being scheduled for payment through the Automated Clearinghouse.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce Ingalls, Chief, Entry and Drawback Management, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1082

RIN: 1515–AC74

2351. REIMBURSABLE CUSTOMS INSPECTIONAL SERVICES: INCREASE IN HOURLY RATE CHARGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 5 USC 6103; 19 USC 58a to 58c; 19 USC 66; 19 USC 261; 19 USC 267; 19 USC 1202; 19 USC 1450 to 1452; 19 USC 1456; 19 USC 1505; 19 USC 1557; 19 USC 1562; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment to increase the rate of charge for reimbursable Customs inspectional services.

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8554
NPRM Comment Period End	04/02/01	
Second NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dennis Lomax, Accountant, Department of the Treasury, United States Customs Service, Accounting Services Division, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AC77

2352. USER FEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1505; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701

CFR Citation: 19 CFR 24; 19 CFR 111

Legal Deadline: None

Abstract: Amendment to reflect amendments to 19 U.S.C. 58c, the Customs user fee statute, made by the Miscellaneous Trade and Technical Corrections Act of 1999 (the Act), as well as prior legislative changes to that user fee statute. Amendment sets forth, pursuant to the Act, the new fee structure for passengers arriving in the United States aboard commercial vessels and aircraft, and clarifies how Customs administers certain user fees.

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Timetable:

Action	Date	FR Cite
NPRM	03/18/02	67 FR 11954
NPRM Comment Period End	05/17/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Reiley, Financial Officer, Financial Management Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1504

RIN: 1515–AC81

2353. PROTOTYPES USED SOLELY FOR PRODUCT DEVELOPMENT, TESTING, EVALUATION OR QUALITY CONTROL PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; PL 106-476

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, September 9, 2001, Public Law 106-476.

Abstract: Amendment to establish rules and procedures under the Product Development and Testing Act of 2000 (PDTA). The purpose of the PDTA is to promote product development and testing in the United States by allowing the duty-free entry of articles, commonly referred to as prototypes, that are to be used exclusively in product development, testing, evaluation and quality control. Amendments set forth the procedures for both the identification of those prototypes properly entitled to duty-free entry, as well as the permissible sale of such prototypes, following use in the United States, as scrap, waste, or for recycling.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10636
NPRM Comment Period End	04/08/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Fitzpatrick, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1106

RIN: 1515–AC88

2354. PROCEDURES GOVERNING THE BORDER RELEASE ADVANCED SCREENING AND SELECTIVITY (BRASS) PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 24; 19 CFR 123; 19 CFR 132; 19 CFR 142

Legal Deadline: None

Abstract: Amendment to provide for the Border Release Advanced Screening and Selectivity (BRASS) Program, an improved automated and electronic system that will replace the Line Release method of processing certain repetitive and high volume shipments of merchandise into the U.S.

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4930
NPRM Comment Period End	04/02/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Enrique S. Tamayo, Operations Officer, Trade Programs, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0693

RIN: 1515–AC92

2355. PATENT SURVEYS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 24

Legal Deadline: None

Abstract: Amendment to eliminate patent surveys.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Louis Alfano, Customs Officer, Commercial Enforcement, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0005

RIN: 1515–AC93

2356. SINGLE ENTRY FOR UNASSEMBLED OR DISASSEMBLED ENTITIES IMPORTED ON MULTIPLE CONVEYANCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 142

Legal Deadline: Final, Statutory, May 9, 2001, Public Law 106-476.

Abstract: Amendment to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single entity which, due to its size or nature, arrives in the United States on separate conveyances. Amendment implements statutory changes made to the merchandise entry laws by the Tariff Suspension and Trade Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/08/02	67 FR 16664
NPRM Comment Period End	06/07/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Keith Fleming, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington
Phone: 202 927-1049

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Phone: 202 927-1106

RIN: 1515–AC94

2357. • CIVIL FINES FOR IMPORTATION OF MERCHANDISE BEARING A COUNTERFEIT MARK

Priority: Substantive, Nonsignificant

Legal Authority: 17 USC 101; 17 USC 601 to 603; 19 USC 66; 19 USC 1624; 31 USC 9701

CFR Citation: 19 CFR 133

Legal Deadline: None

Abstract: Amendment pertaining to the importation of merchandise bearing a counterfeit mark to clarify the limit on the amount of a civil fine which may be assessed by Customs when merchandise bearing a counterfeit mark is imported. Current regulations use, as a measurement for determining the limit, the domestic value of merchandise as if it had been genuine, based on the manufacturer's suggested retail price of the merchandise at the time of seizure. The amendment adheres more closely to the statutory language, basing the limit of the civil fine on the value of the genuine goods according to the manufacturer's suggested retail price, without any reference to domestic value.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lynne O. Robinson, Attorney, Penalties Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2346

RIN: 1515–AC98

2358. • RE-USE OF AIR WAYBILL NUMBER ON AIR CARGO MANIFEST

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; ~~19~~ USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment pertaining to air commerce to provide that once an air waybill number is used on an air cargo manifest, one year must elapse before the same air waybill number may be used on another air cargo manifest. Current regulations prohibit the re-use of an air waybill number for three years after it is used on an air cargo manifest. Amendment also specifies that air cargo manifests must reference an 11-digit air waybill number for each air waybill it covers.

Timetable:

Action	Date	FR Cite
NPRM	03/01/02	67 FR 9423
NPRM Comment Period End	04/30/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Scholtens, Operations Officer, Trade Programs, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-3459

RIN: 1515–AD01

2359. • CONDITIONAL RELEASE PERIOD AND CUSTOMS BOND OBLIGATIONS FOR FOOD, DRUGS, DEVICES AND COSMETICS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1448; 19 USC 1484; 19 USC 1499; 19 USC 1623; 19 USC 1624; 21 USC 381

CFR Citation: 19 CFR 141; 19 CFR 151

Legal Deadline: None

Abstract: Amendment to provide for a specific conditional release period for any food, drug, device, or cosmetic which has been released under bond and for which admissibility is to be determined under the provisions of the Food, Drug and Cosmetic Act. Amendment also clarifies the amount of liquidated damages that may be assessed when there is a breach of the terms and conditions of the Customs bond. Lastly, amendment authorizes any representative of the Food and Drug Administration to obtain a sample of any food, drug, device, or cosmetic, the importation of which is governed by section 801 of the Food, Drug and Cosmetic Act, as amended.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1176

RIN: 1515–AD05

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Final Rule Stage

2360. HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; PL 99-662; 19 USC 66; 19 USC 81a to 81u; 19 USC 623; 19 USC 1202; 19 USC 1624; 31 USC 9701; PL 99-272; PL 99-509

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 146; 19 CFR 178

Legal Deadline: Final, Statutory, April 1, 1987.

Abstract: Amendments to the Customs Regulations to implement provisions of the Water Resources Development Act of 1986, which authorizes Customs to

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assess a harbor maintenance fee of 0.125 percent (.00125) on the value of commercial cargo loaded on or unloaded from a commercial vessel at a port unless specifically exempted from the fee. Proceeds of the fee are deposited in a trust fund for the U.S. Army Corps of Engineers to use for the improvement and maintenance of U.S. ports and harbors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/30/87	52 FR 10198
Interim Final Rule Effective	03/01/87	
Interim Final Rule Comment Period End	05/29/87	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson, Accountant, Accounts Receivable Branch, Department of the Treasury, United States Customs Service, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AA57

2361. DONATED CARGO EXEMPTION FROM HARBOR MAINTENANCE FEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a; 19 USC 66; 19 USC 1202; 19 USC 1624; 31 USC 9701; 19 USC 58b; 19 USC 58c

CFR Citation: 19 CFR 24

Legal Deadline: None

Abstract: Amends interim Customs Regulations relating to harbor maintenance fees. The interim regulations established a shipping fee for transporting cargo on specified U.S. waterways. The Act was amended to include an exemption for nonprofit organizations or cooperatives, which own or finance cargo determined by Customs to be intended for use in humanitarian or development assistance overseas. This amendment sets forth the applicability and terms of this exemption.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/92	57 FR 607
Interim Final Rule Effective	01/08/92	
Interim Final Rule Comment Period End	03/09/92	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson, Accountant, Accounts Receivable Branch, Department of the Treasury, United States Customs Service, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AA87

2362. NORTH AMERICAN FREE TRADE AGREEMENT (NAFTA)—IMPLEMENTATION OF DUTY-DEFERRAL PROGRAM PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1481; 19 USC 1484; 19 USC 1202; 19 USC 1315; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 181; 19 CFR 113; 19 CFR 141; 19 CFR 144; 19 CFR 10

Legal Deadline: Final, Statutory, January 1, 1996.

Abstract: Document amends regulations to establish procedural and other requirements that apply to the collection, waiver, and reduction of duties under the duty-deferral program provisions of the North American Free Trade Agreement. The document prescribes the documentary and other requirements that must be followed when merchandise is withdrawn from a U.S. duty-deferral program, either for exportation to another NAFTA country or for entry into a duty-deferral program of another NAFTA country, the procedures that must be followed in filing a claim for a waiver or reduction of duties collected on such merchandise, and the procedures for finalization of duty collections and duty waiver or reduction claims.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/96	61 FR 2908
Interim Final Rule Effective	01/01/96	
Interim Final Rule Comment Period End	04/01/96	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne R. Stump, Chief, Intellectual Property Rights, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-3315

RIN: 1515–AC15

2363. CUSTOMS ENTRY DOCUMENTATION PURSUANT TO ANTICOUNTERFEITING CONSUMER PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141

Legal Deadline: Final, Statutory, January 2, 1997.

Abstract: Document implements section 12 of the Anticounterfeiting Consumer Protection Act of 1996 (ACPA), which was enacted by Congress to protect consumers and American businesses from counterfeit copyrighted and trademarked products. Section 12 of the ACPA concerns the content of entry documentation required by Customs to determine whether the imported merchandise or its packaging bears an infringing trademark. Amendment requires importers to provide on the invoice a listing of all trademarks appearing on imported merchandise and its packaging.

Timetable:

Action	Date	FR Cite
NPRM	09/13/99	64 FR 49423
NPRM Comment Period End	12/13/99	64 FR 62135
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joanne R. Stump, Chief, Intellectual Property Rights, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-3315

RIN: 1515–AC15

2364. COUNTRY-OF-ORIGIN MARKING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1304; 19 USC 1624

CFR Citation: 19 CFR 134

Legal Deadline: None

Abstract: Amendments clarify the country-of-origin marking rules set forth in part 134 of the Customs Regulations. Amendments promote the concept of informed compliance by the trade and proper field administration of the statutory requirement.

Timetable:

Action	Date	FR Cite
NPRM	01/26/00	65 FR 4193
NPRM Comment Period End	04/26/00	65 FR 17473
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Monika Rice Brenner, Attorney-Advisor, Special Classification and Marking Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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Kristen VerSteeg, Attorney-Advisor, Special Classification and Marking Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1515–AC32

2365. EXPANDED METHODS OF PAYMENT OF DUTIES, TAXES, INTEREST AND FEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 197; 19 USC 198; 19 USC 58a; 19 USC 58b; 19 USC 58c; 19 USC 66; 19 USC 1202; 19 USC 1450; 19 USC 1624; 31 USC 9701

CFR Citation: 19 CFR 24

Legal Deadline: None

Abstract: Amendment to expand the number of ways that Customs will accept payment of duties, taxes, fees, interest and other charges. Currently, the regulations allow for credit or charge cards, which have been authorized by the Commissioner of Customs, to be used at designated Customs-serviced locations with a limitation that this method of payment may only be used by noncommercial entities. Amendment allows payment of duties, taxes, fees, interest and other charges by any electronic technology or charge cards (either debit or credit cards) that are authorized by the Commissioner of Customs and by removing the limitation that these methods of payment may only be used by noncommercial entities.

Timetable:

Action	Date	FR Cite
NPRM	03/17/99	64 FR 13141
NPRM Comment Period End	05/17/99	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Lloyd, Financial Officer, Financial Policy Division, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0119

RIN: 1515–AC40

2366. IMPORTATION AND ENTRY BOND CONDITIONS REGARDING OTHER AGENCY DOCUMENTATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 113

Legal Deadline: None

Abstract: Amendment with regard to the basic importation and entry bond condition under which, if merchandise is conditionally released to the principal named in the bond, the principal agrees to furnish Customs with any document or evidence as required by law or regulation. Amendment would extend this requirement, and consequently the potential liability for payment of liquidated damages for a breach of the bond condition, to documents and evidence submitted to other Government agencies under laws and regulations of those other agencies.

Timetable:

Action	Date	FR Cite
NPRM	07/17/01	66 FR 37370
NPRM Comment Period End	10/17/01	66 FR 45235
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Elkins, Chief, Textiles Branch, Office of Regulations and Rulings, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1515–AC44

2367. ADMINISTRATIVE RULINGS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1502; 19 USC 1624; 19 USC 1625

CFR Citation: 19 CFR 177

Legal Deadline: None

Abstract: Document revises those provisions of the Customs Regulations that concern the issuance of administrative rulings and related written determinations and decisions on prospective and current transactions arising under the Customs and related laws. Changes include amendments in response to statutory changes made to the administrative ruling process by section 623 of the Customs Modernization provisions of the North American Free Trade Agreement Implementation Act, as well as substantive and organizational changes to clarify current administrative practice, and otherwise improve the layout and readability of the present regulatory texts.

Timetable:

Action	Date	FR Cite
NPRM	08/06/99	64 FR 42872
NPRM Comment Period End	10/05/99	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1515–AC56

2368. GENERAL ORDER WAREHOUSES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1311; 19 USC 1312; 19 USC 1484; 19 USC 1485; 19 USC 1490 to 1493; 19 USC 1506; 19 USC 1559; 19 USC 1563

CFR Citation: 19 CFR 4; 19 CFR 19; 19 CFR 122; 19 CFR 123; 19 CFR 127

Legal Deadline: None

Abstract: Amendment principally creates a new class of bonded warehouse exclusively for the receipt of general order merchandise and includes procedures for authorizing and operating general order warehouses. Amendment also implements certain amendments to the law made by the Customs modernization portion of the North American Free Trade Agreement Implementation Act concerning the circumstances where the title to unclaimed and abandoned merchandise vests in the Government, in lieu of sale of the merchandise at public auction.

Timetable:

Action	Date	FR Cite
NPRM	07/12/00	65 FR 42893
NPRM Comment Period End	09/11/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Raymond Janiszewski, Supervisory Import Specialist, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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RIN: 1515–AC57

2369. DEFERRAL OF DUTY ON LARGE YACHTS IMPORTED FOR SALE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1484b; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 4; 19 CFR 113

Legal Deadline: None

Abstract: Amendment to set forth procedures for the deferral of entry filing and duty collection on certain yachts imported for sales at boat shows in the United States.

Timetable:

Action	Date	FR Cite
NPRM	06/15/00	65 FR 37501
NPRM Comment Period End	08/14/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2269

RIN: 1515–AC58

2370. CIVIL AIRCRAFT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 10

Legal Deadline: None

Abstract: Amendment concerning the duty-free entry of civil aircraft merchandise to reflect amendments to General Note 6 of the Harmonized Tariff Schedule of the United States made by the Miscellaneous Trade and Technical Corrections Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	06/29/00	65 FR 40067
NPRM Comment Period End	08/28/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dixie Staple, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1131

RIN: 1515–AC59

2371. USER AND NAVIGATION FEES; OTHER REIMBURSABLE CHARGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1505; 19 USC 1624; 31 USC 9701; 46 USC 2110 to 2112

CFR Citation: 19 CFR 4; 19 CFR 24; 19 CFR 101

Legal Deadline: None

Abstract: Amendment regarding the proper assessment of user and navigation fees, as well as other reimbursement charges for Customs services performed in connection with, among other things, the processing of vehicles, vessels, aircraft and merchandise arriving in the United States. The purpose of the amendment is to conform the regulations with the intent of the Customs user fee statute and to reflect existing operational policy and administrative practice in this area.

Timetable:

Action	Date	FR Cite
NPRM	05/01/01	66 FR 21705
NPRM Comment Period End	07/02/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Nott, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1364

RIN: 1515–AC63

2372. MERCHANDISE PROCESSING FEE ELIGIBLE TO BE CLAIMED AS UNUSED MERCHANDISE DRAWBACK

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1313; 19 USC 1624

CFR Citation: 19 CFR 191

Legal Deadline: None

Abstract: Amendment to indicate that merchandise processing fees are eligible to be claimed as unused merchandise drawback. The change is made to reflect a recent court decision in which merchandise processing fees were found to be assessed under Federal law and imposed by reason of importation and therefore eligible to be claimed as unused merchandise drawback pursuant to 19 U.S.C. 1313(j).

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/01	66 FR 9647
Interim Final Rule Effective	02/09/01	
Interim Final Rule Comment Period End	04/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2077

RIN: 1515–AC67

2373. AFRICAN GROWTH AND OPPORTUNITY ACT AND GENERALIZED SYSTEM OF PREFERENCES

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2461; 19 USC 3314; 19 USC 3721

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Public Law 106-200.

Abstract: Amendments to implement the trade benefit provisions for sub-Saharan Africa contained in title I of the Trade and Development Act of 2000. The trade benefits under title I, also referred to as the African Growth and Opportunity Act; apply to sub-Saharan African countries designated by the President and involve the extension of duty-free treatment under the Generalized System of Preferences (GSP) to non-import-sensitive, non-textile articles normally excluded from GSP duty-free treatment, and the entry of specific textile and apparel articles free of duty and free of any quantitative limits.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/00	65 FR 59668
Interim Final Rule Effective	10/01/00	
Interim Final Rule Comment Period End	12/04/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
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Phone: 202 927-9704

RIN: 1515–AC72

2374. PRIVATE AIRCRAFT PROGRAMS: ESTABLISHMENT OF THE GENERAL AVIATION TELEPHONIC ENTRY (GATE) PROGRAM AND REVISIONS TO THE OVERFLIGHT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122; 19 CFR 123

Legal Deadline: None

Abstract: Amendment provides for the GATE Program and revises the Overflight Program. The GATE Program is a voluntary program designed to facilitate Customs processing of certain prequalified frequent travelers on preregistered general aviation aircraft arriving in the United States directly from Canada. The Overflight Program exempts certain private aircraft arriving in the continental United States from the special landing requirements applicable to such aircraft. The revision to the Overflight Program involves modifying the application process and centralizing the processing of requests for overflight privileges.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40649
NPRM Comment Period End	10/02/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steve Gilbert, Programs Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1391

RIN: 1515–AC73

2375. UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT AND CARIBBEAN BASIN INITIATIVE

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2000, Public Law 106-200.

Abstract: Amendments to implement the trade benefit provisions for Caribbean Basin countries contained in title II of the Trade and Development Act of 2000. The trade benefits under title II, also referred to as the United States-Caribbean Basin Trade Partnership Act (the CBTPA), apply to Caribbean Basin countries designated by the President and involve the entry of specific textile and apparel articles free of duty and free of any quantitative restrictions, limitations, or consultation levels and the extension of NAFTA duty treatment standards to non-textile articles that are excluded from duty-free treatment under the Caribbean Basin Initiative program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/05/00	65 FR 59650
Interim Final Rule Effective	10/01/00	
Interim Final Rule Comment Period End	12/04/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

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Phone: 202 927-1361

RIN: 1515–AC76

2376. DUTY-FREE TREATMENT FOR CERTAIN BEVERAGES MADE WITH CARIBBEAN RUM

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: None

Abstract: Amendment to implement a change made by the Trade and Development Act of 2000 to the Caribbean Basin Economic Recovery Act, also known as the Caribbean Basin Initiative (CBI), that enables certain liquers and spirituous beverages to obtain duty-free entry under specified conditions when the beverages are processed in the territory of Canada from rum that is the growth, product or manufacture either of a CBI beneficiary country or of the U.S. Virgin Islands. The regulations set forth the certification and supporting documentation requirements that are necessary to establish compliance with the statutory law, thereby enabling that the rum beverages are properly entitled to duty-free entry under the CBI.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/09/01	66 FR 9643
Interim Final Rule Effective	02/09/01	
Interim Final Rule Comment Period End	04/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-9704

RIN: 1515–AC78

2377. RULES OF ORIGIN FOR TEXTILE AND APPAREL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 3314; 19 USC 3592

CFR Citation: 19 CFR 102

Legal Deadline: None

Abstract: Amendment to align the existing country of origin rules for textiles and apparel products with the statutory amendments to section 334 of the Uruguay Round Agreements Act, as set forth in section 405 within title IV of the Trade and Development Act of 2000. The amendment to the Customs Regulations reflects the amendments set forth in section 405 regarding the processing operations necessary to confer country of origin status to certain textile fabrics and made-up articles.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/01/01	66 FR 21660
Interim Final Rule Effective	05/01/01	
Interim Final Rule Comment Period End	07/02/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1361

RIN: 1515–AC80

2378. AMENDED PROCEDURE FOR OBTAINING REFUNDS OF HARBOR MAINTENANCE FEES PAID ON EXPORTS OF MERCHANDISE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58a to 58c; 19 USC 66; 19 USC 1202; 19 USC 1505; 19 USC 1624; 26 USC 4461; 26 USC 4462; 31 USC 9701

CFR Citation: 19 CFR 24

Legal Deadline: None

Abstract: Amendment to simplify the procedure for requesting refunds of harbor maintenance fees paid on exports of merchandise.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/28/01	66 FR 16854
Interim Final Rule Effective	03/28/01	
Interim Final Rule Comment Period End	04/27/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deborah Thompson, Accountant, Accounts Receivable Branch, Department of the Treasury, United States Customs Service, Office of Finance, Indianapolis, IN 46278
Phone: 317 298-1200

RIN: 1515–AC82

2379. LICENSES FOR CERTAIN WORSTED WOOL FABRICS SUBJECT TO TARIFF-RATE QUOTA

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1508; 19 USC 1509; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 132; 19 CFR 163

Legal Deadline: None

Abstract: Amendment to set forth the form and manner by which an importer establishes that a valid license, issued under regulations of the U.S. Department of Commerce, is in effect for certain worsted wool fabric that is the subject of a tariff-rate quota.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/01/01	66 FR 21664
Interim Final Rule Effective	05/01/01	66 FR 27453
Interim Final Rule Comment Period End	07/02/01	66 FR 21664
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erin Riley, Trade Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-5395

RIN: 1515–AC83

2380. AMENDMENT TO WOOL DUTY REFUND PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 3314; PL 106-200

CFR Citation: 19 CFR 10

Legal Deadline: None

Abstract: Amendment to the provision regarding the refund of duties paid on imports of wool products pursuant to section 505 of the Trade and Development Act of 2000. Principally, the document rectifies an interpretive error regarding the description of the types of wool products that are eligible to provide the basis for a wool duty refund for claim year 2000.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/01	66 FR 20392
Interim Final Rule Effective	04/23/01	
Interim Final Rule Comment Period End	06/22/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bruce Ingalls, Chief, Entry and Drawback Management, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1082

RIN: 1515–AC85

2381. DOG AND CAT PROTECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1308; 19 USC 1592; 19 USC 1593a; 19 USC 1624

CFR Citation: 19 CFR 12; 19 CFR 113; 19 CFR 151; 19 CFR 162

Legal Deadline: Final, Statutory, August 9, 2001, Public Law 106-476.

Abstract: Amendment to implement certain provisions of the Dog and Cat Protection Act of 2000. The Dog and Cat Protection Act of 2000 prohibits the importation of any products containing dog or cat fur, and provides for civil and criminal penalties for violations of the Act. Amendment sets forth the prohibitions on dog and cat fur importations and the penalties for violations. Amendment also implements the provision of the Act pertaining to Customs certification process of commercial laboratories, both domestic and foreign, that can determine if articles intended to be imported into the United States contain dog or cat fur.

Timetable:

Action	Date	FR Cite
NPRM	08/10/01	66 FR 42163
NPRM Comment Period End	10/09/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Luan Cotter, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1249

Renee Stevens, Science Officer, Department of the Treasury, United States Customs Service, Office of Laboratories and Scientific Services, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0941

Jeremy Baskin, Attorney-Advisor, Penalties Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-1176

RIN: 1515–AC87

2382. PREFERENTIAL TREATMENT OF BRASSIERES UNDER THE UNITED STATES-CARIBBEAN BASIN TRADE PARTNERSHIP ACT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1321; 19 USC 1481; 19 USC 1484; 19 USC 1498; 19 USC 1508; 19 USC 1623; 19 USC 1624; 19 USC 2701; 19 USC 3314

CFR Citation: 19 CFR 10; 19 CFR 163

Legal Deadline: Final, Statutory, October 1, 2001, Public Law 106-200.

Abstract: Amendment to implement those provisions within the United States-Caribbean Basin Trade Partnership Act (the CBTPA) that establish standards for preferential treatment for brassieres imported from CBTPA beneficiary countries. The amendments involve specifically the methods, procedures and related standards that will apply for purposes of determining compliance with the 75 percent aggregate U.S. fabric components content requirement under the CBTPA brassieres provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/04/01	66 FR 50534
Interim Final Rule Effective	10/04/01	
Correction	10/11/01	66 FR 51864
Interim Final Rule Comment Period End	12/03/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dick Crichton, Operations Officer, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0162

Cynthia Reese, Senior Attorney, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229

Phone: 202 927-1361

RIN: 1515–AC89

2383. SINGLE ENTRY FOR SPLIT SHIPMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1448; 19 USC 1484; 19 USC 1624

CFR Citation: 19 CFR 141; 19 CFR 142

Legal Deadline: Final, Statutory, May 9, 2001, Public Law 106-476.

Abstract: Amendment to allow an importer of record, under certain conditions, to submit a single entry to cover multiple portions of a single shipment which was split by the carrier and arrives in the United States at different times.

Timetable:

Action	Date	FR Cite
NPRM	11/16/01	66 FR 57688
NPRM Comment Period End	01/15/02	
Comment Period Extended	02/14/02	67 FR 3135
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Larry L. Burton, Chief, Entry Procedures and Carriers Branch, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2269

Keith Fleming, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington
Phone: 202 927-1049

RIN: 1515–AC91

2384. • PASSENGER AND CREW MANIFESTS REQUIRED FOR PASSENGER FLIGHTS IN FOREIGN AIR TRANSPORTATION TO THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 49 USC 44909(c); 19 USC 1431

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act which requires that each air carrier, foreign and domestic, operating a passenger flight in foreign air transportation to the United States electronically transmit to Customs in advance of arrival a passenger and crew manifest that contains certain specified information. The submission of this information to Customs is required for purposes of ensuring aviation safety and protecting national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/31/01	66 FR 67482
Interim Final Rule Comment Period End	03/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Jeffers, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4444

RIN: 1515–AC99

2385. • MANUFACTURING SUBSTITUTION DRAWBACK: DUTY APPORTIONMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1313; 19 USC 1624

CFR Citation: 19 CFR 191

Legal Deadline: None

Abstract: Amendment to provide the method for calculating manufacturing substitution drawback where imported merchandise, which is dutiable on its value, contains a chemical element and amounts of that chemical element are used in the manufacture or production of articles which are either exported or destroyed under Customs supervision. Recent court cases have held that a chemical element that is contained in an imported material that is subject to an ad valorem rate of duty may be designated as same kind and quality merchandise for drawback purposes. Amendment provides the method by which the duty attributable to the chemical element can be apportioned. Amendment requires a drawback claimant, where applicable, to make this apportionment calculation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2077

RIN: 1515–AD02

2386. • ACCESS TO CUSTOMS SECURITY AREAS AT AIRPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendments regarding the standards for employee access to Customs security areas at airports that accommodate international air commerce. Amendments involve the addition of a biennial access approval reapplication requirement, an expansion of the grounds for denial of an application for access, the addition of a requirement that each employee granted access must report to Customs certain changes in the employee's circumstances, the inclusion of several new employer responsibilities, an expansion of the grounds for revocation or suspension of access and for proposed revocation or suspension of access, and a limitation of the opportunity to have a hearing in a revocation or suspension action to only cases in which there is a genuine issue regarding a material fact. The changes are needed to enhance the security areas and are commensurate with the heightened enforcement posture of the Federal Government following the September 11, 2001, terrorist attacks.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth Tritt, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-4434

RIN: 1515–AD04

2387. • PASSENGER NAME RECORD INFORMATION REQUIRED FOR PASSENGERS ON FLIGHTS IN FOREIGN AIR TRANSPORTATION TO OR FROM THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 58b; 19 USC 66; 19 USC 1433; 19 USC 1436; 19 USC 1448; 19 USC 1459; 19 USC 1590; 19 USC 1594; 19 USC 1623; 19 USC 1624; 19 USC 1644; 19 USC 1644a; 19 USC 1431; 49 USC 44909(c)

CFR Citation: 19 CFR 122

Legal Deadline: None

Abstract: Amendment to implement a provision of the Aviation and Transportation Security Act which requires that air carriers make Passenger Name Record (PNR) information available to Customs upon request. The availability of PNR information to Customs is necessary for purposes of ensuring aviation safety and protecting national security.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Liliana Quintero, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenu NW., Washington, DC 20229
Phone: 202 927-2531

RIN: 1515–AD06

2388. • ELIMINATION OF TARIFF-RATE QUOTA ON IMPORTED LAMB MEAT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1623; 19 USC 1624

CFR Citation: 19 CFR 132; 19 CFR 163

Legal Deadline: None

Abstract: Amendment to remove the regulation requiring that lamb meat subject to tariff-rate quota be covered by an export certificate in order to obtain the in-quota rate of duty. The regulation is no longer necessary because the tariff-rate quota imposed on imported lamb meat products was eliminated by Presidential Proclamation 7502 of November 14, 2001.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Fitzpatrick, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-5385

RIN: 1515–AD09

Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)

Long-Term Actions

2389. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12; 19 CFR 113

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/26/97	62 FR 8620
Interim Final Rule Effective	02/26/97	
Interim Final Rule Comment Period End	04/28/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927-9704

RIN: 1515–AB97

2390. DESIGNATED LAND BORDER CROSSING LOCATIONS FOR CERTAIN CONVEYANCES

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 123

Timetable:

Action	Date	FR Cite
NPRM	11/17/97	62 FR 61251
NPRM Comment Period End	01/16/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Dennis Dore
Phone: 202 927-3274

RIN: 1515–AC12

2391. ENTRY OF SOFTWOOD LUMBER SHIPMENTS FROM CANADA

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 12

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/00	65 FR 33251
Interim Final Rule Effective	05/23/00	
Interim Final Rule Comment Period End	07/24/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward
Phone: 202 927-9704

RIN: 1515–AC62

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Department of the Treasury (TREAS)
United States Customs Service (CUSTOMS)
Completed Actions

2392. CIVIL ASSET FORFEITURE

Priority: Substantive, Nonsignificant

CFR Citation: 19 CFR 162; 19 CFR 171

Completed:

Reason	Date	FR Cite
Final Action	02/28/02	67 FR 9188
Final Action Effective	02/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeremy Baskin
Phone: 202 927-1176

RIN: 1515–AC69

2393. • IMPORT RESTRICTIONS IMPOSED ON ARCHAEOLOGICAL AND ETHNOLOGICAL MATERIALS FROM BOLIVIA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 2612

CFR Citation: 19 CFR 12

Legal Deadline: None

Abstract: Amendment to reflect the imposition of import restrictions on certain archaeological and ethnological materials originating in Bolivia. These restrictions are being imposed pursuant to an agreement between the United States and Bolivia that has been entered into under the authority of the Convention on Cultural Property Implementation Act in accordance with the 1970 United Nations Educational, Scientific and Cultural Organization (UNESCO) Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property.

Timetable:

Action	Date	FR Cite
Final Action	12/07/01	66 FR 63490
Final Action Effective	12/07/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph Howard, Attorney, Intellectual Property Rights Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2336

Alfred Morawski, Chief, Other Government Agencies Branch, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0402

RIN: 1515–AC95

2394. • DRAWBACK; CONFORMING AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1313; 19 USC 1624

CFR Citation: 19 CFR 191

Legal Deadline: None

Abstract: Amendment relating to drawback to conform regulations to changes that were made to the drawback law by the Miscellaneous Trade and Technical Corrections Act of 1999. The amendments concern drawback on packaging material and drawback in connection with the substitution of finished petroleum derivatives.

Timetable:

Action	Date	FR Cite
Final Action	04/08/02	67 FR 16634
Final Action Effective	04/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Rosoff, Chief, Duty Refund and Determination Branch, Department of the Treasury, United States Customs Service, Office of Regulations and Rulings, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2077

RIN: 1515–AD00

2395. • ANDEAN TRADE PREFERENCE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 3; 19 USC 66; 19 USC 1431; 19 USC 1433;.19 USC 1434; 19 USC 1505; 19 USC 1624; 46 USC app 3; 46 USC app 91

CFR Citation: 19 CFR 141

Legal Deadline: None

Abstract: Duty-free treatment for eligible articles from beneficiary countries under the Andean Trade Preference Act (ATPA) expired on December 4, 2001. This amendment provides that effective February 15, 2002, importers of eligible articles that, but for the expiration of the ATPA would have been entitled to duty-free treatment under the ATPA, may exercise the option to defer the payment of estimated Customs duties and fees after entry of those articles until May 16, 2002. The Administation anticipates that the duty-free treatment accorded to merchandise under the provisions of the ATPA will be restored and made retroactive to the date that duty-free treatment under the ATPA expired. The amendment is intended to relieve the importing public from having to deposit estimated duties on eligible merchandise and then having to apply for refund of these duties in the event duty-free treatment is retroactively re-authorized. This temporary rule expires on May 16, 2002.

Timetable:

Action	Date	FR Cite
Temporary rule	02/15/02	67 FR 7070
Final Action Effective	02/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leon Hayward, Operations Officer, Department of the Treasury, United States Customs Service, Office of Field Operations, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-9704

RIN: 1515–AD03

2396. • PAYMENT OF DUTIES ON CERTAIN STEEL PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 19 USC 66; 19 USC 1431; 19 USC 1433; 19 USC 1434; 19 USC 1505; 19 USC 1624; 46 USC app 3; 46 USC app 91

CFR Citation: 19 CFR 141

Legal Deadline: None

Abstract: Temporary amendment that requires importers of steel products described in Presidential Proclamation 7529 To Facilitate Positive Adjustment to Competition From Imports of Certain Steel Products to defer until April 19, 2002, the deposit of the estimated duties described in the Proclamation on those products entered or withdrawn

TREAS—CUSTOMS
Completed Actions

from warehouse for consumption in the Customs territory of the United States on or after 12:01 a.m., EST, March 20, 2002 and up to April 4, 2002. The rule implements an instruction of the President regarding the Presidential Proclamation.

Timetable:

Action	Date	FR Cite
Temporary rule	03/20/02	67 FR 12860
Final Action Effective	03/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Considine, Chief, Cargo Control Branch, Office of Field Operations, Department of the Treasury, United States Customs Service, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-0533

RIN: 1515–AD07

2397. • NORTH AMERICAN FREE TRADE AGREEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 19 USC 66; 19 USC 1202; 19 USC 1624; 19 USC 3314

CFR Citation: 19 CFR 181

Legal Deadline: None

Abstract: Amendment to implement the preferential tariff treatment and other Customs-related provisions of the North American Free Trade Agreement (NAFTA) entered into by the United States, Canada and Mexico. Amendments involve technical rectifications and other conforming changes to reflect amendments to the NAFTA uniform regulations agreed upon by the three NAFTA parties and to reflect changes to the Harmonized Tariff of the United States.

Timetable:

Action	Date	FR Cite
Final Action	04/02/02	67 FR 15480
Final Action Effective	04/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Valentine, Attorney-Advisor, Department of the Treasury, United States Customs Service, International Agreements Staff, 1300 Pennsylvania Avenue NW., Washington, DC 20229
Phone: 202 927-2255

RIN: 1515–AD08

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Department of the Treasury (TREAS)
Internal Revenue Service (IRS)
Proposed Rule Stage

2398. GOLDEN PARACHUTE PAYMENTS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 280G

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules relating to restrictions on golden parachute payments. The regulations will provide guidance to taxpayers, who must comply with section 280G, by delineating the circumstances under which payments may be considered excess parachute payments.

Timetable:

Action	Date	FR Cite
NPRM	05/05/89	54 FR 19390
NPRM Comment Period End	07/05/89	
Hearing	11/21/89	54 FR 39548
Second NPRM	02/20/02	67 FR 7630
Second NPRM Comment Period End	06/05/02	
Public Hearing	06/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209114-90 (EE-30-90)

Drafting attorney: Erinn Madden (202) 622-6060

Reviewing attorney: Robert Misner (202) 622-6060

CC:TEGE

Agency Contact: Erinn Madden, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–AH49

2399. FOREIGN INSURANCE COMPANY—DOMESTIC ELECTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 953

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide substantive and procedural rules regarding the election under section 953(d) to treat certain controlled foreign corporations engaged in the insurance business as domestic corporations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-208980-89 (INTL-765-89)

Drafting attorney: Valerie A. Mark Lippe (202) 622-3840

Reviewing attorney: Phyllis Marcus (202) 622-3840

CC:INTL

Agency Contact: Valerie A. Mark Lippe, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–AO25

2400. INTERCOMPANY TRANSFER PRICING FOR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will address the transfer pricing of services between related parties.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-209579-92 (INTL-051-92)

Drafting attorney: J. Peter Luedtke (202) 874-1490

Reviewing attorney: Elizabeth Beck (202) 874-1490

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: J. Peter Luedtke, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza SW, Washington, DC 20024
Phone: 202 874-1490

RIN: 1545–AR32

2401. REPORTING REQUIREMENTS FOR WIDELY HELD FIXED INVESTMENT TRUSTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: This regulation relates to the reporting requirements for widely held fixed investment trusts.

Timetable:

Action	Date	FR Cite
NPRM	08/13/98	63 FR 43354
Hearing	11/05/98	
NPRM Comment Period End	11/12/98	
Second NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106871-00 (PS-6-96)

Drafting attorney: Faith Colson (202) 622-3060

Reviewing attorney: J. Thomas Hines (202) 622-3060

Treasury attorney: Viva Hammer (202) 622-0869

CC:P&SI

Agency Contact: Faith Colson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3060

RIN: 1545–AU15

2402. SOURCE RULES FOR PAYMENTS MADE PURSUANT TO CERTAIN SWAP ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 863; 26 USC 7701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the source and character of payments made in certain swap transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-253560-96

Drafting attorney: Milton M. Cahn (202) 622-3870

Reviewing attorney: Paul S. Epstein (202) 622-3870

CC:INTL

Agency Contact: Milton M. Cahn, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3870

RIN: 1545–AU89

2403. REMOVAL OF TEMPORARY REGULATIONS THAT PROVIDE RULES FOR SUBSTANTIATING TRAVEL EXPENSE DEDUCTIONS FOR MEMBERS OF CONGRESS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 5

Legal Deadline: None

Abstract: This project will remove temporary income tax regulations section 5e.274-8 (published as TD 7802 in 47 FR 2986). The regulations provide rules for the substantiation of Congress members' travel expenses, and the regulations are currently out of date because the authorizing legislation was subsequently repealed.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105513-97

Drafting attorney: Edwin B. Cleverdon (202) 622-4920

Reviewing attorney: Robert A. Berkovsky (202) 622-4920

Reviewing attorney: Linda Kroening (202) 622-4800

CC:IT&A

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Phone: 202 622-4920

RIN: 1545–AV55

2404. TRANSPORTATION OF PERSONS AND PROPERTY BY AIR—SECTIONS 4261 AND 4271

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 4261; 26 USC 4271; 26 USC 7805

CFR Citation: 26 CFR 49

Legal Deadline: None

Abstract: The proposed regulations provide guidance concerning the excise taxes imposed on the amounts paid for the transportation of persons and property by air.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106167-98

Drafting attorney: Patrick S. Kirwan (202) 622-3130

Reviewing attorney: Richard Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

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Phone: 202 622-3130

RIN: 1545–AW19

2405. ESTATE TAX DEDUCTION FOR QUALIFIED FAMILY-OWNED BUSINESS INTERESTS (QFOBI)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 2057; 26 USC 7805

CFR Citation: 26 CFR 20

Legal Deadline: None

Abstract: The proposed regulations will address the estate tax deduction for certain qualified family-owned business interests.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106430-98

Drafting attorney: Lian A. Mito (202) 622-7830

Reviewing attorney: Melissa Liquerman (202) 622-7076

CC:P&SI

Agency Contact: Lian A. Mito, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7830

RIN: 1545–AW21

2406. CAPITAL GAIN GUIDANCE RELATING TO CRTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1; 26 USC 664

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides capital gain guidance relating to charitable remainder trusts in light of the changes made to section 1(h) of the Internal Revenue Code by the Taxpayer Relief Act of 1997.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-110896-98

Drafting attorney: Tara P. Volungis (202) 622-3080

Reviewing attorney: Mary Beth Collins (Carchia) (202) 622-3080

CC:P&SI

Agency Contact: Tara P. Volungis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–AW35

2407. MERCHANDISE REGULATION

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 471; 26 USC 7805; 26 USC 446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies when the requirement to use inventory accounting applies. It also clarifies the definition of merchandise and provides guidance with respect to when merchandise will be regarded as an income producing factor in a taxpayer's business.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-122333-97

Drafting attorney: Cheryl L. Oseekey (202) 622-4970

Reviewing attorney: Thomas A. Luxner (202) 622-4970

Treasury attorney: Christine Turgeon (202) 622-0865

CC:IT&A

Agency Contact: Cheryl L. Oseekey, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4970

RIN: 1545–AW61

2408. REPORTING OF PAYMENTS TO ATTORNEY

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6045

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides information reporting requirements for payments of gross proceeds made in the course of a trade or business to attorneys in connection with legal services.

Timetable:

Action	Date	FR Cite
NPRM	05/21/99	64 FR 27730
Second NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126024-01

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: Michael Montermurro (202) 622-4920

Treasury attorney: Michael Novey (202) 622-1339

CC:P&A:APJP

Agency Contact: Sara P. Shepherd, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4960

RIN: 1545–AW72

2409. CONSTRUCTIVE SALES OF APPRECIATED FINANCIAL POSITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1259

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to principles for determining if a taxpayer has constructively sold an appreciated financial position.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG-102191-98

Drafting attorney: Kathleen Sleeth (202) 622-3920

Reviewing attorney: Alvin Kraft (202) 622-3920

Treasury attorney: Michael Novey (202) 622-1339

CC:FI&P

Agency Contact: Kathleen Sleeth, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3920

RIN: 1545–AW97

2410. RULES FOR SOURCING CERTAIN TRANSPORTATION INCOME, SPACE OR OCEAN ACTIVITY INCOME, AND RELATED FOREIGN BASE COMPANY SHIPPING INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance to shipping and aircraft companies for application of the source rules for certain income under sections 863(c) and 863(d), and for related space or ocean activity income that is also foreign-based company shipping income under section 954(f).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-115557-98

Drafting attorney: Patricia A. Bray (202) 622-3880

Reviewing attorney: Elizabeth Karzon (202) 622-3880

Treasury attorney: Dirk Suringa (202) 622-1779

CC:INTL

Agency Contact: Patricia A. Bray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–AX02

2411. HIGHWAY VEHICLE—DEFINITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: This proposed regulation provides amendments to regulations relating to definition of highway vehicle.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103829-99

Drafting attorney: Bernard H. Weberman (202) 622-3130

Reviewing attorney: Richard Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Bernard H. Weberman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–AX10

2412. GUIDANCE ON COST RECOVERY IN THE ENTERTAINMENT INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation relates to the application of the income forecast method under section 167(g) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103823-99

Drafting attorney: Bernard P. Harvey III (202) 622-3110

Reviewing attorney: Charles B. Ramsey (202) 622-3110

Treasury attorney: Christopher Ohmes (202) 622-0865

CC:P&SI

Agency Contact: Bernard P. Harvey III, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3110

RIN: 1545–AX12

2413. STRADDLES—ONE SIDE LARGER THAN THE OTHER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: A "straddle" occurs, for purposes of section 1092 of the Internal Revenue Code, when a taxpayer enters into two separate positions in financial instruments that "offset" each other. Positions offset each other when, taken together, they substantially diminish the taxpayer's risk of loss. A taxpayer in a "straddle" is subject to various limitations on recognition of loss on the positions until both positions are liquidated. These regulations deal with the situation in which one position is larger than the other (that is, the diminution of the risk of loss for one position is only partial).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107335-99

Drafting attorney: Charles W. Culmer (202) 622-3960

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Treasury attorney: Viva Hammer (202) 622-0869

CC:FI&P

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Phone: 202 622-3960

RIN: 1545–AX16

2414. DEFINITION OF ACCOUNTING METHOD

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will clarify the definition of a change in method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105228-99

Drafting attorney: Jeffery G. Mitchell (202) 622-4970

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Treasury attorney: Christine Turgeon (202) 622-0865

CC:IT&A

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Phone: 202 622-4970

RIN: 1545–AX21

2415. SECTIONS 401(K) AND 410(M) CASH OR DEFERRED ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation updates and revises regulations on qualified cash or deferred arrangements, "matching" contributions, and employee contributions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-108639-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AX26

2416. INSPECTION OF WRITTEN DETERMINATIONS UNDER SECTION 6110 OF THE INTERNAL REVENUE CODE

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation amends Treasury Regulation section 301.6110 to include Chief Counsel Advice.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113129-98

Drafting attorney: Deborah Lambert-Dean (202) 622-4570

Reviewing attorney: Donald Squires (202) 622-4570

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

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Fax: 202 622-9888

RIN: 1545–AX40

2417. 401(K) AND 401(M) REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations update and revise regulations for cash or deferred arrangements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-108639-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AX43

2418. SECTION 7430 REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

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67
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CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed amendments to the Treasury Regulations incorporate the 1997 and 1998 amendments to 26 U.S.C. 7430, relating to the awarding of attorney's fees in administrative and court proceedings. The amendments to 26 U.S.C. 7430 were enacted under the Taxpayer Relief Act of 1997 and the IRS Restructuring and Reform Act of 1998.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-111833-99

Drafting attorney: Kerry H. Bryan (202) 622-7940

Reviewing attorneys: Susan T. Mosley (202) 622-7940, Henry S. Schneiderman (202) 622-7820

Treasury attorney: Rita Cavanagh (202) 622-1981

CC:PA:APJP

Agency Contact: Kerry H. Bryan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–AX46

2419. SECTION 414(Q) REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide the definition of highly compensated employee.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-111277-99

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AX48

2420. COMPENSATION DEFERRED UNDER ELIGIBLE SECTION 457(B) PLANS (SECTION 457 REGULATIONS)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 457

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to deferred compensation plans of State and Local governments and tax-exempt entities under section 457 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-105885-99

Drafting attorney: Cheryl E. Press (202) 622-6060

Reviewing attorney: Robert Patchell (202) 622-6060

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

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RIN: 1545–AX52

2421. MODIFICATION TO SECTION 367(A) STOCK TRANSFER REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 367

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The section 367(a) stock transfer regulations will be modified to address abuses under check-the-box and through the use of convertible stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116053-99

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–AX77

2422. STATUTE OF LIMITATIONS ON COLLECTION INSTALLMENT AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6331

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The purpose of this regulation is to provide for the prohibition of levy while an installment agreement is pending with the Secretary, while an installment agreement is in effect, and following the rejection or termination of an installment agreement. This levy prohibition is established in section 6331(k) of title 26, as added by the IRS Restructuring and Reform Act of 1998. The goal of the regulations is to clarify when levy is prohibited and the effect of the prohibition on the statute of limitations for collection.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104762-00

Drafting attorney: Frederick W. Schindler (202) 622-3620

Reviewing attorney: Lawrence Schattner (202) 622-3620

CC:P&A:CB&S

Agency Contact: Frederick W. Schindler, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3620

RIN: 1545–AX89

2423. CLARIFICATION OF FOREIGN-BASED COMPANY SALES INCOME RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies when a controlled foreign corporation cannot exclude sales income from foreign-based company sales income under the manufacturing exception by reason of activities of a contract manufacturer. Likewise, the branch rule under IRC section 954(d)(2) does not apply to a contract manufacturer.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-106356-00

Drafting attorney: Valerie A. Mark Lippe (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Valerie A. Mark Lippe, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AX91

2424. ASSUMPTION OF PARTNERSHIP LIABILITIES

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 752

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation prevents the acceleration or duplication of losses through the assumption of liabilities in transactions involving partnerships.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106736-00

Drafting attorney: Horace Howells (202) 622-3050

Reviewing attorney: Shannon Cohen (202) 622-3060

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Horace Howells, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–AX93

2425. LIKE-KIND EXCHANGES UNDER SECTION 168

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 148; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations relate to like-kind exchanges, under section 168 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106590-00

Drafting attorney: Alan H. Cooper (202) 622-3110

Reviewing attorney: Charles Ramsey (202) 622-3110

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:P&SI

Agency Contact: Alan H. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3110

RIN: 1545–AX95

2426. DEFINITION OF DIESEL FUEL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The proposed regulations will revise the definition of diesel fuel.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106457-00

Drafting attorney: Frank K. Boland (202) 622-3130

Reviewing attorney: Richard Kocak (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

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RIN: 1545–AX97

2427. GUIDANCE NECESSARY TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6011

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: This regulation will amend regulations to allow electronic filing of the Form 1040.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107184-00

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: John McGreevy (202) 622-4960

Treasury attorney: John Parcell (202) 622-2578

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RIN: 1545–AY04

2428. DAMAGES UNDER SECTION 7433

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed regulation will implement a number of new provisions of section 7433, including raising the cap on damages for the intentional or reckless disregard of the Internal Revenue Code, or regulations in connection with a collection action, authorizing actions for the negligent disregard of the Code or regulations. It will provide rules with respect to administrative claims for damages caused by violations of the automatic stay and discharge provisions of the Bankruptcy Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107366-00

Drafting attorney: Robert A. Miller (202) 622-3640

Kevin B. Connelly (202) 622-3630

CC:P&A:CB&S

Agency Contact: Kevin B. Connelly, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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Robert A. Miller, Technical Assistant, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3640

RIN: 1545–AY08

2429. INVESTMENT TYPE PROPERTY (PREPAYMENT)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation defines investment type property for purposes of determining whether bonds are arbitrage bonds under section 148 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	08/25/99	64 FR 46320
Second NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-105369-00

Drafting attorney: Johanna L. Som de Cerff (202) 622-3980

Reviewing attorney: Rebecca L. Harrigal (202) 622-3980

Treasury attorney: Stephen Watson (202) 622-1322

CC:TEGE

Agency Contact: Johanna L. Som de Cerff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
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RIN: 1545–AY12

2430. ELECTING MARK-TO-MARKET FOR MARKETABLE STOCK OF A PFIC

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1296

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation describes the methods and procedures for electing mark-to-market treatment for marketable stock of a PFIC.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-112306-00

Drafting attorney: Laurie Hatten-Boyd (202) 622-3860

Reviewing attorney: Phyllis Marcus (202) 622-3840

CC:INTL

Agency Contact: Laurie M. Hatten-Boyd, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–AY17

2431. GUIDANCE ON CHANGES TO THE LAWS FOR CORPORATE ESTIMATED TAXES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6655

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed regulations provide guidance on changes to the law for corporate estimated taxes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-107722-00

Drafting attorney: Robert A. Desilets, Jr. (202) 622-4910

Reviewing attorney: Pamela W. Fuller (202) 622-4910

Treasury attorney: Christopher Ohmes (202) 622-1335

CC:P&A:APJP

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RIN: 1545–AY22

2432. SECTION 1445 REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1445; 26 USC 897

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation requires the use of taxpayer identifying numbers on submissions made by foreign taxpayers to reduce or eliminate tax under sections 897 and 1445 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-106876-00

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

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RIN: 1545–AY24

2433. SECTION 1503(D) REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will revise provisions in section 1503(d) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-106879-00

Drafting attorney: Kathryn Holman (202) 622-3860

Reviewing attorney: Michael H. Frankel (202) 622-3860

CC:INTL

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Phone: 202 622-3860

RIN: 1545–AY27

2434. WITHHOLDING TAX ON FOREIGN PARTNERS' SHARE OF EFFECTIVELY CONNECTED INCOME

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 1446

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance for partnership withholding on partners' allocable share of partnership's effectively connected income.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-108524-00

Drafting attorney: David J. Sotos (202) 622-3860

Reviewing attorney: Eliana D. Dolgoff (202) 622-3860

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

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Phone: 202 622-3050

RIN: 1545–AY28

2435. TAXABLE YEARS OF CFCS AND FPHCS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 898

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide definitions and rules for determining the required year for CFCs and FPHCs.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-108523-00

Drafting attorney: Carl M. Cooper (202) 622-3840

Reviewing attorney: Phyllis Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

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Phone: 202 622-3840

RIN: 1545–AY30

2436. IRS NPRM GUIDANCE UNDER SECTION 6050P REGARDING INFORMATION REPORTING ON CANCELLATION OF INDEBTEDNESS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 6050

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation relates to information reporting on the cancellation of indebtedness.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-107524-00

Drafting attorney: Sharon Lee Hall (202) 622-4950

Reviewing attorney: Christopher F. Kane (202) 622-4950

Treasury attorney: Michael Novey (202) 622-1339

CC:IT&A

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Phone: 202 622-4950

RIN: 1545–AY35

2437. ALLOCATION OF INCOME AND DEDUCTIONS FROM INTANGIBLES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will address the allocation of income and deductions from intangible property.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-115037-00

Drafting attorney: John M. Breen (202) 874-1490

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Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

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RIN: 1545–AY38

2438. DOLLAR-VALUE LIFO

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 472; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance under the dollar-value last-in, first-out (LIFO) inventory method for taxpayers that define LIFO items based on components of cost.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-107580-00

Drafting attorney: Scott H. Rabinowitz (202) 622-4970

Reviewing attorney: Jeffery G. Mitchell (202) 622-4970

Treasury attorney: Christine Turgeon (202) 622-0865

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Agency Contact: Scott H. Rabinowitz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4970

RIN: 1545–AY39

2439. GUIDANCE UNDER SECTION 817A REGARDING MODIFIED GUARANTEED CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 817A

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance to issuers of modified guaranteed contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-248110-96

Drafting attorney: Ann H. Logan (202) 622-3970

Reviewing attorney: Donald J. Drees (202) 622-3970

CC:FI&P

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Phone: 202 622-3970

RIN: 1545–AY48

2440. APPLICATION OF SECTION 338 TO INSURANCE COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 148; 26 USC 7805; 26 USC 721; 26 USC 338

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations prescribe the manner in which the various provisions of subchapter L, chapter 1, subtitle A of the Internal Revenue Code apply to asset acquisitions deemed to occur by reason of a section 338 election as well as to actual acquisitions of insurance company assets subject to section 1060.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10640
Public Hearing	09/18/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-118861-00

Drafting attorneys: Mark Weiss (202) 622-7790

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RIN: 1545–AY49

2441. PREVIOUSLY TAXED EARNINGS AND PROFITS UNDER SUBPART F

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 959

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address previously taxed earnings and profits under subpart F.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-121509-00

Drafting attorney: Kelly M. Kogan (202) 622-3810

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RIN: 1545–AY54

2442. GUIDANCE NECESSARY TO FACILITATE ELECTRONIC TAX ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6011

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: This regulation amends regulations to allow electronic filing of the Form 1040.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107184-00

Drafting attorney: Sara P. Shepherd (202) 622-4960

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Treasury attorney: John Parcell (202) 622-2578

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RIN: 1545–AY56

2443. NORMAL RETIREMENT AGE FOR PENSION PLANS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: These regulations will provide guidance regarding the determination of normal retirement age in a pension plan, including a money purchase pension plan, target benefit plan and defined benefit plan. Section 411(a)(8) defines the term normal retirement age as the earlier of: 1) the time a participant attains normal retirement age under the plan; or 2) the later of the time a plan participant attains age 65, or the 5th anniversary of the time a plan participant commenced participation in the plan. These regulations also would provide section 411(d)(6) relief for amendments that modify a pension plan's normal retirement age to conform with the proposed regulation.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125499-00

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

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RIN: 1545–AY61

2444. LIABILITIES ASSUMED IN CERTAIN CORPORATE TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 357

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations relate to the assumption of liabilities in certain corporate transactions under section 357 of the Internal Revenue Code. The regulations affect corporations and their shareholders.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-100818-01

Drafting attorney: Douglas C. Bates (202) 622-7550

Reviewing attorney: Debra Carlisle (202) 622-7550

CC:CORP

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Phone: 202 622-7550

RIN: 1545–AY74

2445. NORMALIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 167; 26 USC 168; 26 USC 46

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to the sale or deregulation of generation assets.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-104385-01

Drafting attorney: David Selig (202) 622-3040

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Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

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RIN: 1545–AY75

2446. QUALIFIED S ELECTION FOR TESTAMENTARY TRUSTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1361

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations relate to the qualified subchapter S election for testamentary trusts. A testamentary trust may qualify as a permitted shareholder of an S corporation for a two-year period beginning on the day the stock is transferred to the trust. This proposed amendment would provide that the beneficiary of a qualifying testamentary trust that also qualifies as a qualified subchapters S trust (QSST) may make a QSST election at any time up to the end of the 16-day-and-2-month period beginning after the two-year qualifying period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106431-00

Drafting attorney: Deane M. Burke (202) 622-3070

Reviewing attorney: Mary Beth Collins (202) 622-3070

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&SI

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Phone: 202 622-3070

RIN: 1545–AY76

2447. LOW-INCOME TAXPAYER CLINICS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will amend the regulations pertaining to the definition of income tax return preparer to exclude low-income taxpayer clinics and their volunteers when operating as authorized by 26 U.S.C. 7526.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-115285-01

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Judith M. Wall (202) 622-4940

Treasury attorney: Julian Kim (202) 622-1981

CC:P&A:APJP

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Phone: 202 622-4940

RIN: 1545–AY84

2448. CHARITABLE LEAD INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 2055; 26 USC 2522; 26 USC 170

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations conform the regulations under sections 170, 2055, and 2522 in the decision in Estate of Boeshore v. Commissioner, T.C. 523 (1982) acq. in result, 1987-2 C.B. 1. The opinion found that section 20.2055-2(c)(2)(vi)(e) was invalid to the extent that it held that an estate tax charitable deduction was precluded because a private unitrust interest was payable from the trust before the commencement of the charitable unitrust interest.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-115781-01

Drafting attorney: Susan B. Hurwitz (202) 622-3090

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CC:P&SI

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RIN: 1545–AY86

2449. DISCLOSURE OF RETURNS AND RETURN INFORMATION IN JUDICIAL AND ADMINISTRATIVE TAX PROCEEDINGS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed rule relates to the disclosure of returns and return information in judicial and administrative tax proceedings pursuant to 26 U.S.C. 6103(h)(4).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-120297-01

Drafting attorney: Stuart D. Murray (202) 622-4580

Reviewing attorney: David L. Fish (202) 622-4580

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DPL

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Phone: 202 622-4580

RIN: 1545–AY89

2450. SECTION 736(B)(3)(B)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 736

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations relate to section 736(b)(3)(B), regarding payments for interest in a partnership if the retiring or deceased partner was a general partner in the partnership.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123382-01

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Christine Ellison (202) 622-3070

CC:P&SI

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Phone: 202 622-3070

RIN: 1545–AY90

2451. NET GIFT TREATMENT—SECTION 2519

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 25

Legal Deadline: None

Abstract: This proposed regulation is intended to cover the effect of gift tax entitled to be recovered by the donor, pursuant to the right of recovery under section 2207A, on the amount of the gift under section 2519 (i.e., whether the transfer is a "net gift"). The section was reserved when the regulations under section 2519 were finalized, because of uncertainty regarding whether section 2207A shifts the liability for the gift tax to the beneficiaries of the transfer. After considering the issue in conjunction with several TAMS and PLRS, we have adopted a position that section 2207A does not shift the liability for the gift tax imposed on a section 2519 transfer.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-123345-01

Drafting attorney: DeAnn K. Malone (202) 622-7830

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CC:P&SI

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Phone: 202 622-7830

RIN: 1545–AY91

2452. DEFINITION OF AGENT FOR PURPOSES OF I.R.C. SECTIONS 6103(1) AND (M) AND SAFEGUARD CERTIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 U.S.C 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed rule relates to the definition of agent for purposes of I.R.C. sections 6103(1) and (m) and safeguard certifications.

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4938
NPRM Comment Period End	05/02/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal, Local

Additional Information: REG-120135-01

Drafting attorney: Helene R. Newsome (202) 622-4580

Reviewing attorney: David L. Fish (202) 622-4580

CC:P&A:D&PL

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RIN: 1545–AY94

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2453. TERMINATION OF QSUB ELECTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1361; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides revised examples under section 1.1362-5(c)(3) relating to corporations terminating QSub elections.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-126859-01

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CC:P&SI

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RIN: 1545–AY95

2454. REGULATIONS UNDER SECTIONS 6662 AND 6664 REGARDING TAX SHELTER PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6662; 26 USC 6664

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulations relate to sections 6662 and 6664 regarding tax shelter penalties. The project has arisen in connection with the revision to Circular 230.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126016-01

Drafting attorney: Brinton T. Warren (202) 622-4940

Reviewing attorney: Richard S. Goldstein (202) 622-7820

CC:P&A:AP JP

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RIN: 1545–AY97

2455. EXPENDITURES IN CONNECTION WITH THE CREATION OF INTANGIBLE ASSETS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations provide guidance on the treatment of costs incurred in connection with the creation of an intangible asset.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125638-01

Drafting attorney: Andrew J. Keyso, Jr. (202) 622-4950

Reviewing attorney: Robert Casey (202) 622-4950

Treasury attorney: Jodi Cohen (202) 622-0160

CC:IT&A

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RIN: 1545–BA00

2456. TITLE—ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This rule provides guidance with respect to methods of apportioning interest expense under section 864(e) of the Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-129447-01

Drafting attorney: Melissa D. Arndt (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

Treasury attorneys: Michael Caballero (202) 622-0851, John Harrington (202) 622-0589

CC:INTL

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RIN: 1545–BA02

2457. MERGERS INVOLVING DISREGARDED ENTITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 368

Legal Deadline: None

Abstract: The proposed rules will provide guidance concerning the requirements to be met in order for a merger or consolidation to qualify as a reorganization under section 368(a)(1)(A). They will also address whether certain mergers involving disregarded entities can qualify as reorganizations under section 368(a)(1)(A).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126485-01

Drafting attorneys: Reginald Mombrun (202) 622-7750, Marlene Oppenheim (202) 622-7770

Reviewing attorney: Mark S. Jennings (202) 622-7770

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CC:CORP

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RIN: 1545–BA06

2458. NOTICE OF SIGNIFICANT REDUCTION IN THE RATE OF FUTURE BENEFIT ACCRUAL

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 4980

CFR Citation: 26 CFR 1; 26 CFR 54; 26 CFR 602

Legal Deadline: None

Abstract: The proposed regulations will update the regulations currently in section 1.411(d) for changes made as a result of the Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA). EGTRAA amends ERISA section 204(h) and adds section 4980F to the Code. Section 4980F imposes an excise tax for failure to satisfy notice requirements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-136193-01

Drafting attorney: Janet A. Laufer (202) 622-6090

Treasury attorney: William Bortz (202) 622-6090

CC:TEGE

Agency Contact: Janet A. Laufer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090
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RIN: 1545–BA08

2459. REDUCTIONS OF ACCRUALS AND ALLOCATIONS BECAUSE OF INCREASED AGE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 411; 26 USC 411

CFR Citation: 26 CFR 1

Legal Deadline: Final, Statutory, February 1, 1988.

Abstract: These regulations will prescribe rules regarding the requirement that accruals and allocations under qualified retirement plans cannot be reduced because of the attainment of any age.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: REG-209500-86

Drafting attorney: Linda S.F. Marshall (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6090

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: Linda S.F. Marshall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–BA10

2460. GUIDANCE UNDER SECTION 1502 REGARDING TRANSACTIONS INVOLVING OBLIGATIONS OF CONSOLIDATED GROUP MEMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations are in regard to intercompany obligations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-107592-00

Drafting attorney: Heather Johnson (202) 622-7750

Reviewing attorney: Michael J. Wilder (202) 622-7750

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Heather Johnson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7750

RIN: 1545–BA11

2461. GUIDANCE REGARDING THE TREATMENT BY A CORPORATION OF FINANCIAL INSTRUMENTS BASED ON THE VALUE OF THAT CORPORATION'S STOCK

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations being considered would provide guidance regarding the application of section 1032 with respect to financial instruments based on the value of the corporation's stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-139865-01

Drafting attorney: Krishna Vallabhaneni (202) 622-7550

CC:CORP

Agency Contact: Krishna Vallabhaneni, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224
Phone: 202 622-7550

RIN: 1545–BA12

2462. DEDUCTIBILITY OF EMPLOYER CONTRIBUTIONS FOR DEFERRED COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will update and clarify the general rules for deductibility of employer contributions to qualified retirement plans and other deferred compensation arrangements.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-139449-01

Drafting attorney: Linda S.F. Marshall (202) 622-6090

Reviewing attorney: Mark Schwimmer (202) 622-6090

Treasury attorney: Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: Linda S.F. Marshall, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–BA13

2463. CONTINUATION OF A CONSOLIDATED GROUP UNDER 1.1502-75

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation project addresses issues related to the continuation of consolidated groups under 1.1502-75.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126022-01

Drafting attorney: Christopher M. Bass (202) 622-7770

CC:CORP

Agency Contact: Christopher M. Bass, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

RIN: 1545–BA14

2464. CONSOLIDATED RETURNS; INVESTMENT ADJUSTMENTS INVOLVING PREFERRED STOCK

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations makes amendments to section 1.1502-32(c) of the consolidated return regulations dealing with the allocation of stock basis adjustments between common and preferred stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-141652-01

Drafting attorney: Thomas I. Russell (202) 622-7930

Reviewing attorney: Steve Hankin (202) 622-7930

CC:CORP

Agency Contact: Thomas I. Russell, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7930

RIN: 1545–BA15

2465. COUNTING 2100 NOTICES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 3406

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations will amend the rule for determining the number of notices a payer received from the Internal Revenue Service for purposes of determining whether a payer must impose backup withholding pursuant to section 31.3406(d).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116644-01

Drafting attorney: Nancy L. Rose (202) 622-4910

Reviewing attorney: Pamela W. Fuller (202) 622-4910

Treasury attorney: Jodi Cohen (202) 622-0160

CC:P&A:APJP

Agency Contact: Nancy L. Rose, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4910

RIN: 1545–BA18

2466. AMENDING 301.6334-1, PROPERTY EXEMPT FROM LEVY

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6334

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The purpose of this regulation is to describe the judicial procedures for approval of a principal residence seizure, pursuant to I.R.C. sections 6334(a)(13(B)(i) and 6334(e)(1).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-140378-01

Drafting attorney: Robin M. Ferguson (202) 622-3610

Reviewing attorney: Alan Levine (202) 622-3610

CC:P&A:CB&S

Agency Contact: Robin M. Ferguson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3610

RIN: 1545–BA22

2467. UNIT LIVESTOCK PRICING METHOD

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 471; 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The proposed regulation reexamines requirements to annually reevaluate and upwardly adjust unit livestock prices.

Timetable:

Action	Date	FR Cite
NPRM	02/04/02	67 FR 5074
Public Hearing	06/12/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-125626-01

Drafting attorney: A. Katharine Kiss (202) 622-4930

Reviewing attorney: Jeffery G. Mitchell (202) 622-4930

CC:IT&A

Agency Contact: A. Katharine Kiss, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4930

RIN: 1545–BA25

2468. APPLICATION OF THE FEDERAL INSURANCE CONTRIBUTIONS ACT, FEDERAL UNEMPLOYMENT TAX ACT AND COLLECTION OF INCOME TAX AT SOURCE TO STATUTORY STOCK OPTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 3101;26 USC 3111; 26 USC 3121; 26 USC 3301; 26 USC 3306; 26 USC 3401; 26 USC 3402; 26 USC 7805

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: The regulations under sections 424, 3121, 3306, 3401 contained in the Notice of Proposed Rulemaking clarify the application of the Federal Insurance Contributions Act (FICA), Federal Unemployment Tax Act (FUTA), and the Collection of Income Tax at Source to statutory stock options; i.e., incentive stock options under section 422 (ISOs) and options granted under employee stock purchase plans under section 423 (ESPP options). The proposed regulations provide that at the time of the exercise of a statutory stock option, the individual who was granted the statutory stock option receives wages for FICA and FUTA purposes. The proposed regulations also provide that the amount of wages received equals the excess of the fair market value of the stock acquired pursuant to the exercise of the statutory stock option over the amount paid for the stock. The proposed regulations also provide that income tax withholding is not required when an individual exercises a statutory stock option because no income is recognized at the time of exercise by reason of section 421(a)(1).

Timetable:

Action	Date	FR Cite
NPRM	11/13/01	66 FR 57023
Public Hearing	05/14/02	67 FR 5076
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142686-01

Drafting attorney: Stephen B. Tackney (202) 622-6040

Reviewing attorney: Michael A. Swim (202) 622-6040

Treasury attorney: Bill Bortz (202) 622-1352

CC:TEGE

Agency Contact: Stephen B. Tackney, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6040

RIN: 1545–BA26

2469. GASOLINE TAX CLAIMS UNDER SECTION 6416(A)(4)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 48

Legal Deadline: None

Abstract: The proposed regulation will provide guidance regarding claims for credit or refund of the gasoline tax under section 6416(a)(4) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
ANPRM	10/23/01	66 FR 53564
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Additional Information: REG-143219-01

Drafting attorney: Frank K. Boland (202) 622-3130

CC:P&SI

Agency Contact: Frank K. Boland, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3130

RIN: 1545–BA27

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2470. • SUSPENSION OF STATUTES OF LIMITATION IN JOHN DOE AND THIRD PARTY SUMMONS DISPUTES AND EXPANSION OF TAXPAYERS' RIGHTS TO RECEIVE NOTICE AND SEEK JUDICIAL REVIEW OF THIRD PARTY SUMMONSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The proposed regulation provides guidance regarding modified rules for serving summonses on third-party recordkeepers, the broadened range of summonses subject to the notice requirements, and the suspension of limitations periods when court actions are brought or when a summoned third party fails to fully respond to a summons. This proposed regulation incorporates the changes enacted in RRA 1998, OBRA 1990, TAMRA 1988, and TRA 1986. This regulation is a continuation of the regulation project previously numbered at REG-208225-88.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-153037-01

Drafting attorney: Elizabeth D. Rawlins (202) 622-3630

Reviewing attorney: Robert A. Miller (202) 622-3630

CC:P&A:CB&S

Agency Contact: Elizabeth D. Rawlins, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3630

RIN: 1545–BA31

2471. • AMENDMENTS TO RULES FOR ALLOCATION OF BASIS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 755

CFR Citation: 26 CFR 755

Legal Deadline: None

Abstract: The proposed regulation amends the regulations under section 755 (Section 1.755-1) in order to better coordinate with recent revisions to section 1.755-2.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-155345-01

Drafting attorney: Craig A. Gerson (202) 622-3050

Reviewing attorney: Mathew Lay (202) 622-3050

Treasury attorney: Deborah Harrington (202) 622-1788

CC:PS&I

Agency Contact: Craig A. Gerson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BA32

2472. • GUIDANCE REGARDING FOREIGN PERSONAL HOLDING COMPANY INCOME

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7605; 26 USC 954(h)(8)

CFR Citation: 26 CFR 1.954-2(f); 26 CFR 1.954-2(g)

Legal Deadline: None

Abstract: These proposed regulations relate to the definition of foreign personal holding company income in the case of gain or loss arising from certain commodities hedging transactions and in the case of currency gain or loss arising from certain interest-bearing liabilities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-154920-01

Drafting attorneys: Theodore Setzer (202) 622-3870, Kenneth P. Christman (202) 622-3870.

Reviewing attorney: Jeffrey Dorfman (202) 622-3870.

Treasury attorney: Patrick Brown: (202) 622-1754.

CC:INTL

Agency Contact: Kenneth P. Christman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3870

RIN: 1545–BA33

2473. • 1.32-2 EARNED INCOME CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation removes 26 CFR 1.32-2 because of legislative changes.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-135061-01

Drafting attorney: Karin Loverud (202) 622-6060

Reviewing attorney: Mark Schwimmer (202) 622-6080

CC:TEGE

Agency Contact: Karin Loverud, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–BA34

2474. • DISCLOSURES OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This proposed rule is on disclosure of telephone number from Form 1040/Schedule F to officers and employees of the Department of Agriculture for certain statistical purposes and related activities pursuant to 6103(j)(5) of the Code.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-156293-01

Drafting attorney: Joseph E. Conely (202) 622-4580

Reviewing attorney: David Fish (202) 622-4580

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DP&L

Agency Contact: Joseph E. Conley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4580

RIN: 1545–BA35

2475. • INCOME FROM SOURCES WITHIN SPECIFIED POSSESSION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 931; 26 USC 911

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will remove the reference to section 911 in the section 931 regulations and update the definition of a possession under those regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-159068-01

Drafting attorney: Kate Y. Hwa (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Michael Mundaca (202) 622-1752

CC:INTL

Agency Contact: Kate Y. Hwa, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–BA37

2476. • TREATMENT OF CERTAIN OBLIGATION-SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864(c)(6); 26 USC 7701(e)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation proposes a rule that applies to a single taxpayer engaging in certain tax-motivated obligation-shifting transfers to prevent tax avoidance. Similar multi-party tax avoidance techniques are addressed by Property Treasury Regulation section 1.7701(i)-2 (1996). This regulation also would modify a rule in the proposed regulation dealing with certain related-party transfers that might, in its present form, present opportunities for tax avoidance.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-160799-01

Drafting attorney: Jeffrey L. Vinnik (202) 622-3840

Reviewing attorney: Roger Brown (202) 622-3800

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: Jeffrey L. Vinnik, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–BA41

2477. • INFORMATION REPORTING FOR QUALIFIED TUITION AND RELATED EXPENSES; MAGNETIC MEDIA FILING REQUIREMENTS FOR INFORMATION RETURNS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050; 26 USC 6011(e)

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: This proposed regulation provides guidance to eligible educational institutions that enroll any individual for any academic period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-161424-01

Drafting attorney: Donna J. Welch (202) 622-4910

Reviewing attorney: John McGreevy (202) 622-4910

Treasury attorney: Susan Brown (202) 622-0999

CC:P&A:APJP

Agency Contact: Donna J. Welch, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–BA43

2478. • SPLIT-DOLLAR LIFE INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7872

CFR Citation: 26 CFR 1

Legal Deadline: None

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Abstract: This proposed regulation provides guidance under sections 7872, 61, and 83 on the taxation of split-dollar life insurance arrangements pursuant to Notice 2001-10 and Notice 2002-8.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-164754-01

Drafting attorney: Rebecca E. Asta (202) 622-3940

Reviewing attorney: David Silber (202) 622-3524

Treasury attorney: Mike Novey (202) 622-1339

CC: FI&P

Agency Contact: Rebecca E. Asta, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3940

RIN: 1545–BA44

2479. • MULTI-FAMILY HOUSING BONDS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These are rules regarding various issues with respect to multi-family housing bonds.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-163765-01

Drafting attorney: Rose M. Weber (202) 622-3353

Reviewing attorney: Bruce M. Serchuk (202) 622-3980

Treasury attorney: Stephen J. Watson (202) 6622-1322

CC:TEGE

Agency Contact: Rose M. Weber, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–BA45

2480. • AMENDMENT TO THE DEFINITION OF REFUNDING AND CONTROLLED GROUP

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation would amend the definition of a refunding issue applicable to tax-exempt bonds issued by States and local governments.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: REG-165706-01

Drafting attorney: Michael P. Brewer (202) 622-3980

Reviewing attorney: Bruce Serchuk (202) 622-3980

CC:TEGE

Agency Contact: Michael P. Brewer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3980

RIN: 1545–BA46

2481. • SECTION 419A GUIDANCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 419A

Legal Deadline: None

Abstract: This proposed regulation provides special rules concerning employer deductions for contributions to employee welfare benefit funds.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-165868-01

Drafting attorney: Betty J. Clary (202) 622-6080

Reviewing attorney: Mark Schwimmer (202) 622-6080

Treasury attorney: Harlan Weller (202) 622-1001

CC:TEGE

Agency Contact: Betty J. Clary, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–BA47

2482. • DETERMINATION OF BASIS OF PARTNER'S INTEREST; SPECIAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: These proposed regulations will provide the appropriate basis adjustment under section 705 in certain situations in which a corporation has a direct or indirect interest in a partnership that owns stock in that corporation where the partnership distributes money or other property to another partner and that partner recognizes gain on the distribution during a year in which the partnership does not have an election under section 754 in effect, and the partnership subsequently sells or exchanges the stock.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-167648-01

Drafting attorney: Barbara MacMillan (202) 622-3050

Reviewing attorney: David Haglund (202) 622-3050

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:PS&I

Agency Contact: Barbara MacMillan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–BA50

2483. • LOSS LIMITATION RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337(d)

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The proposed regulations provide guidance on the treatment of certain losses recognized on sales of subsidiary stock by members of a consolidated group under section 337(d) and section 1502 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-102740-02

Drafting attorney: Lola L. Johnson (202) 622-7550

Reviewing attorney: Sean P. Duffley (202) 622-7770

CC:CORP

Agency Contact: Lola L. Johnson, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7550

RIN: 1545–BA52

2484. • PARTNERSHIP OPTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 704; 26 USC 721

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation provides tax treatment of partnership options.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-103580-02

Drafting attorney: Audrey W. Ellis (202) 622-3188

Reviewing attorneys: Matthew Lay (202) 622-3060, Jeanne Sullivan (202) 622-3060

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Audrey W. Ellis, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3188

RIN: 1545–BA53

2485. • USER FEES FOR OFFERS TO COMPROMISE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 31 USC 9701

CFR Citation: 26 CFR 300

Legal Deadline: None

Abstract: The regulations relating to user fees would be amended to provide for the imposition of user fees for processing and acceptance of offers to compromise. The charging of user fees implements the Independent Offices Appropriations Act, 31 U.S.C. 9701.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103777-02

Drafting attorney: Gene W. Beard (202) 622-3620

Reviewing attorney: Larry H. Schattner (202) 622-3620

Treasury attorney: Jodi Cohen (202) 622-0160

CC:P&A:CB&S

Agency Contact: Gene W. Beard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3620

RIN: 1545–BA54

2486. • COMPENSATORY STOCK OPTIONS UNDER SECTION 482

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 482

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These proposed regulations will provide rules for treatment of stock options with regard to qualified cost sharing arrangements, non-integral services, and other section 482 purposes.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-106359-02

Drafting attorney: Douglas L. Giblen (202) 874-1490

Reviewing attorney: Elizabeth G. Beck (202) 874-1895

Treasury attorney: Rocco Femia (202) 622-1755

CC:INTL

Agency Contact: Douglas L. Giblen, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 950 L'Enfant Plaza SW, Washington, DC 20024
Phone: 202 874-1490

RIN: 1545–BA57

2487. • MODIFICATION OF CHECK THE BOX (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The "Modification of Check the Box" regulations will add a new section to the 301.7701-2 regulations to provide that in certain circumstances, namely State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106681-02

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Jeanne Sullivan (202) 622-3070

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:PSI

Agency Contact: James M. Gergurich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–BA58

2488. • MODIFICATION OF CHECK THE BOX

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The "Modification of Check the Box" will add a new section to the 301.7701-2 regulations to provide that in certain circumstances, namely State law mergers and conversions, a surviving disregarded entity will be regarded for purposes of assessment and collection of prior year tax liabilities of predecessor entities. Thus, following a transaction in which a regarded entity is merged or converted into a disregarded entity, the Commissioner will be able to exercise collection and assessment authority against the disregarded entity for any liabilities stemming from tax periods of the regarded entity prior to the date of the transaction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106681-02

Drafting attorney: James M. Gergurich (202) 622-3070

Reviewing attorney: Jeanne Sullivan (202) 622-3070

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:PSI

Agency Contact: James M. Gergurich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3070

RIN: 1545–BA59

2489. • REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 401(a)(9)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed rule relates to required minimum distributions from defined benefit plans and annuity contracts.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-108697-02

Drafting attorney: Cathy A. Vohs (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6000

CC:TEGE

Agency Contact: Cathy A. Vohs, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

Related RIN: Related To 1545-AY69, Related To 1545-AY70

RIN: 1545–BA60

2490. • ABATEMENT OF INTEREST ON LARGE ERRONEOUS REFUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 6404(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proposed regulation will provide rules which address whether the Internal Revenue Service may abate interest on an erroneous refund exceeding $50,000 pursuant to I.R.C. section 6404(e) (26 U.S.C. 6404(e)).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-167500-01

Drafting attorney: David A. Abernathy (202) 622-7940

Reviewing attorney: Richard Goldman (202) 622-7940

CC:P&A:AP JP

Agency Contact: David A. Abernathy, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7940

RIN: 1545–BA61

2491. • MODIFICATION OF TAX SHELTER RULES III

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6011; 26 USC 6111; 26 USC 6112

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: These proposed regulations provide the public with additional guidance to comply with the disclosure rules under section 6011(a), the registration requirement under section 6111(d), and the list maintenance requirement under section 6112 applicable to tax shelters.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103735-00, 103736-00, 110311-98

Drafting attorney: Danielle M. Grimm (202) 622-3043

Reviewing attorney: Christine Ellison (202) 622-3070

CC:P&SI

Agency Contact: Danielle M. Grimm, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–BA62

2492. • PRIMARY PROFIT MOTIVE UNDER SECTION 165(C)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 165(c)

CFR Citation: 26 CFR 1.165-1(c)

Legal Deadline: None

Abstract: This proposed regulation will clarify that individual taxpayers must have a primary profit motive for a transaction resulting in a tax loss.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113148-02

Drafting attorney: Glenn N. Bogdonoff (202) 622-4950

Reviewing attorney: Robert M. Casey (202) 622-4950

CC:IT&A

Agency Contact: Glenn N. Bogdonoff, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4950

RIN: 1545–BA63

2493. • ALLOCATION AND APPORTIONMENT RULES: GUIDANCE ON SELECTED ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 863

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance with respect to the allocation and apportionment under section 861 of selected deductions, e.g., charitable contributions and research and experimentation expenses.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-128240-01

Drafting attorney: Teresa B. Hughes (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

CC:INTL

Agency Contact: Teresa B. Hughes, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–BA64

2494. • PROVISIONS REGARDING CROSS-BORDER TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 368(a)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation will make conforming changes to account for cross-border section 368(a)(1)(A) mergers.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: REG-125628-01

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles Besecky (202) 622-3860

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–BA65

2495. • MODIFICATION OF TAX SHELTER RULES III

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6662; 26 USC 6664

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide the public with guidance needed to comply with the exceptions in section 6664 to the penalties for negligence or intentional disregard of the rules and regulations and substantial understatement of tax under section 6662.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

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TREAS—IRS — **Proposed Rule Stage**

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113434-02

Drafting attorney: Richard S. Goldstein (202) 622-7820

Reviewing attorney: George E. Bowden (202) 622-3400

Treasury attorney: Eric Solomon (202) 622-0868

CC:P&A:AP JP

Agency Contact: Richard S. Goldstein, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7820

RIN: 1545–BA66

2496. • MODIFICATION OF TAX SHELTER RULES III (TEMPORARY)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6662; 26 USC 6664

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations provide the public with guidance needed to comply with the exceptions in section 6664 to the penalties for negligence or intentional disregard of the rules and regulations and substantial understatement of tax under section 6662.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113434-02

Drafting attorney: Richard S. Goldstein (202) 622-7820

Reviewing attorney: George E. Bowden (202) 622-3400

Treasury attorney: Eric Solomon (202) 622-0869

CC:P&A:AP JP

Agency Contact: Richard S. Goldstein, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7820

RIN: 1545–BA67

Department of the Treasury (TREAS)
Internal Revenue Service (IRS) — **Final Rule Stage**

2497. INCOME TAX—TAXPAYER'S OBLIGATION TO FILE A NOTICE OF REDETERMINATION OF FOREIGN TAX AND CIVIL PENALTIES FOR FAILURE TO FILE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 905; 26 USC 6689

CFR Citation: 26 CFR 1; 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: The regulations will establish procedures for taxpayers by which they must notify the Service of a change in foreign tax liability for a taxable year for which they claimed the foreign tax credit. In addition, the regulations set forth deadlines for compliance with the notification requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/23/88	53 FR 23659
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209020-86 (INTL-061-86)

Drafting attorney: Margaret A. Hogan (202) 622-3850

Reviewing attorney: Bethany Ingwalson (202) 622-3850

CC:INTL

Agency Contact: Margaret A. Hogan, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–AC09

2498. INCOME TAX—RECIPROCAL EXEMPTIONS FOR CERTAIN TRANSPORTATION INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 883; 26 USC 872

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide rules with respect to whether a foreign country will be considered to grant a reciprocal Aircraft/Shipping exemption to U.S. corporations for purposes of section 883 of the Code, or to U.S. citizens for purposes of section 872 of the Code. This regulation will also provide rules with respect to whether a foreign corporation satisfies the ownership requirements of section 883(c) and the activity requirements of section 883(a).

Timetable:

Action	Date	FR Cite
NPRM	02/08/00	65 FR 6065
Public Hearing	06/08/00	65 FR 6065
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-208280-86 (INTL-948-86)

Drafting attorney: Patricia A. Bray (202) 622-3880

Reviewing attorney: Elizabeth Karzon (202) 622-3880

Treasury attorney: Dirk Suringa (202) 622-1779

CC:INTL

Agency Contact: Patricia A. Bray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–AJ57

TREAS—IRS — **Final Rule Stage**

2499. REGULATIONS UNDER SECTION 367 TO REFLECT SECTION 131 OF THE TAX REFORM ACT OF 1984 (PUB. L. 98-369)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 367

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The income tax regulations under section 367 will be amended to reflect the changes made to that section by the Tax Reform Act of 1984. Section 367 now provides generally that a foreign corporation will not be considered to be a corporation, for purposes of certain nonrecognition provisions of the Code, upon the transfer of property to such corporation by a U.S. person. The statute provides certain exceptions to that rule, exemptions to those exceptions, and special rules applicable to certain specified transfers. The regulations will provide guidance concerning the applicability of the general rule and its exceptions and special rules, including guidance concerning transfers of assets for use in the active conduct of a trade or business, stock transfers, transfers of intangible assets, and transfers of branch operations that have operated at a loss.

Timetable:

Action	Date	FR Cite
NPRM	05/16/86	51 FR 17990
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209042-86 (INTL-610-86)

Drafting attorney: Michael H. Frankel (202) 622-3860

Reviewing attorney: Charlie Besecky (202) 622-3860

CC:INTL

Agency Contact: Michael H. Frankel, Senior Technical Reviewer, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–AK74

2500. NONRECOGNITION OF CORPORATE DISTRIBUTIONS AND REORGANIZATIONS UNDER THE FOREIGN INVESTMENT IN REAL PROPERTY TAX ACT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 897

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations will provide rules concerning the effect of certain distributions including dividends, redemptions, distributions pursuant to reorganizations, and liquidations on corporations and their shareholders under the Foreign Investment in Real Property Tax Act. Regulations will also provide rules for determining the extent to which nonrecognition would apply to certain transfers of real property interests and the extent to which certain reorganizations will be treated as sales of property at fair market value.

Timetable:

Action	Date	FR Cite
NPRM	05/05/88	53 FR 16233
Hearing	03/01/89	54 FR 1189
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209039-87 (INTL-491-87)

Drafting attorney: Robert W. Lorence (202) 622-3860

Reviewing attorney: Charles P. Besecky (202) 622-3860

CC:INTL

Agency Contact: Robert W. Lorence, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3860

RIN: 1545–AK79

2501. LIMITATIONS ON PASSIVE ACTIVITY LOSSES AND CREDITS—SELF-CHARGED ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 0469

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation addresses the treatment of self-charged items of income and expense in connection with transactions between passthrough entities and owners of interests in those entities.

Timetable:

Action	Date	FR Cite
NPRM	04/05/91	56 FR 14034
Hearing	09/06/91	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209365-89 (PS-39-89)

Drafting attorney: Danielle M. Grimm (202) 622-3080

Reviewing attorney: Jeanne Sullivan (202) 622-3080

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

Agency Contact: Danielle M. Grimm, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–AN64

2502. EARNINGS STRIPPING PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This proposed regulation addresses the deductibility of interest under section 163 being limited when paid by a corporation to related persons not subject to U.S. tax.

Timetable:

Action	Date	FR Cite
NPRM	06/18/91	56 FR 27907
Hearing	09/25/91	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209059-89 (INTL-870-89)

Drafting attorney: Milton M. Cahn (202) 622-3870

Reviewing attorney: Jeffrey L. Dorfman (202) 622-3870

CC:INTL

Agency Contact: Milton M. Cahn, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3870

RIN: 1545–AO24

2503. FRINGE BENEFIT SOURCING UNDER SECTION 861

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 861

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the circumstances in which an allocation of income of an individual for the performance of services, both within and outside the United States, is appropriately made only on the time basis.

Timetable:

Action	Date	FR Cite
NPRM	01/21/00	65 FR 3402
Public Hearing	07/18/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-208254-90 (INTL-107-90)

Drafting attorney: David F. Bergkuist (202) 622-3850

Reviewing attorney: Anne Devereaux (202) 622-3850

CC:INTL

Agency Contact: David F. Bergkuist, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3850

RIN: 1545–AO72

2504. SECTION 1.163-1(B)(2)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 165

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation project will finalize all outstanding proposed regulations under section 1.163-1(b)(2).

Timetable:

Action	Date	FR Cite
NPRM	01/21/93	58 FR 5316
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-208245-90 (INTL-115-90)

Drafting attorney: Carl M. Cooper (202) 622-3840

Reviewing attorney: Valerie A. Mark (202) 622-3840

CC:INTL

Agency Contact: Carl M. Cooper, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–AP33

2505. INTEREST-FREE ADJUSTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6205

CFR Citation: 26 CFR 31

Legal Deadline: None

Abstract: Under section 6205(a)(1) of the Code, if less than the correct amount of tax imposed under the FICA, the RRTA, or the income tax withholding provisions is paid with respect to any payment of wages or compensation, proper adjustments with respect to both the tax and amount to be deducted must be made without interest in such manner and in such times as the Secretary may by regulations prescribe. The proposed amendments would add language to clarify that an interest-free adjustment can be made in certain situations in which the error is ascertained before the appropriate return is filed. The proposed amendments are intended to apply only to situations in which no return was filed because the employer improperly failed to treat its workers as employees.

Timetable:

Action	Date	FR Cite
NPRM	12/10/92	57 FR 58423
NPRM Comment Period End	02/08/93	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209538-92 (EE-12-92)

Drafting attorney: Karin Loverud (202) 622-6060

Reviewing attorney: Mary Oppenheimer (202) 622-6010

CC:TEGE

Agency Contact: Karin Loverud, Tax Law Specialist, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–AQ61

2506. DEFINITION OF "HIGHLY COMPENSATED EMPLOYEE"

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 414

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations define the term "highly compensated employee" under section 414(q) of the Code. Temporary and proposed regulations, under sections 414(q) and 414(s), were published February 19, 1988 (53 FR 4965). Final regulations, under section 414(s), were published September 19, 1991 (56 FR 47659) under project EE-129-86. The regulations under 414(q) were split off from project EE-129-86. It is anticipated that final regulations under section 414(q) will be published in the future under project REG-209558-92 (EE-32-92).

Timetable:

Action	Date	FR Cite
NPRM	02/19/88	53 FR 4999
NPRM Comment Period End	04/19/88	
Partially Closed by TD 8548	06/27/94	59 FR 32911
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: Undetermined

Additional Information: REG-209558-92

Drafting attorney: R. Lisa Mojiri-Azad (202) 622-6080

Reviewing attorney: Marjorie Hoffman (202) 622-6030

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: R. Lisa Mojiri-Azad, Senior Attorney, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6080

RIN: 1545–AQ74

2507. ESCROW FUNDS AND OTHER SIMILAR FUNDS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 0468B

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides further guidance relating to certain escrow funds and other similar funds.

Timetable:

Action	Date	FR Cite
NPRM	02/01/99	64 FR 4801
NPRM Comment Period End	05/03/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-209619-93 (IA-17-93)

Drafting attorney: Richard Shevark (202) 622-4930

Reviewing attorney: Jeffery G. Mitchell (202) 622-4930

CC:IT&A

Agency Contact: Richard Shevak, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4930

RIN: 1545–AR82

2508. MARK-TO-MARKET UPON DISPOSITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 475

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations address the relationship between mark-to-market accounting and accrual of stated interest, discount and premium, and between mark-to-market accounting and the tax treatment of bad debts. Regulations also provide that securities are to be marked to market upon disposition by a dealer and the exemption from marking to market in certain securitization transactions.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 397
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209724-94 (FI-42-94)

Drafting attorney: Robert B. Williams (202) 622-3960

Reviewing attorney: Al Kraft (202) 622-3920

CC:FI&P

Sections 1.475(a)-3 finalized in TD 8700. Sections 1.475(b)-4 finalized in TD 8700. Sections 1.475(c)-2 finalized in TD 8700.

Agency Contact: Robert B. Williams, Assistant to Chief, Branch 3, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3960

RIN: 1545–AS85

2509. STRADDLES—MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This project holds equity swaps to be straddles.

Timetable:

Action	Date	FR Cite
NPRM	05/02/95	60 FR 21482
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209768-95 (FI-21-95)

Drafting attorney: Mary Truchly (202) 622-3960

Reviewing attorney: Robert B. Williams (202) 622-3960

CC:FI&P

Agency Contact: Mary Truchly, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3960

RIN: 1545–AT46

2510. TREATMENT OF OBLIGATION-SHIFTING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7701

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations recharacterize obligation-shifting transactions. Obligation-shifting transactions are transactions in which the transferee assumes obligations, or acquires property subject to obligations under an existing lease or similar agreement. The transferor or any other party has already received, or retains the right to receive amounts that are allocable to periods after the transfer. The regulations prevent tax avoidance by recharacterizing obligation-shifting transactions in a manner that clearly reflects the parties' income.

Timetable:

Action	Date	FR Cite
NPRM	12/27/96	61 FR 68175
NPRM Comment Period End	04/08/97	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Additional Information: REG-209817-96 (FI-10-96)

Drafting attorney: Christina A. Morrison (202) 622-3950

Reviewing attorney: Alice M. Bennett (202) 622-3950

Treasury attorney: Eric Solomon (202) 622-0140

CC:FI&P

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RIN: 1545–AU19

2511. ELECTING SMALL BUSINESS TRUST

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 7805; 26 USC 1361; 26 USC 641

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: This regulation provides necessary guidance for defining and taxing electing small business trusts, which are now eligible shareholders of S Corporations, as provided by the Small Business Job Protection Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 82963
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-251701-96

Drafting attorney: James A. Quinn (202) 622-3060

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Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&SI

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Phone: 202 622-3060

RIN: 1545–AU76

2512. FASIT—START-UP/OPERATIONAL/TRANSITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301; 26 CFR 1

Legal Deadline: None

Abstract: These regulations will address issues concerning the start-up and operation of a Financial Asset Securitization Investment Trust (FASIT), and transitional rules for eligible existing entities that elect to be treated as a FASIT.

Timetable:

Action	Date	FR Cite
ANPRM	11/04/96	61 FR 56648
ANPRM Comment Period End	12/31/96	
NPRM	02/07/00	65 FR 5807
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-100276-97

Drafting attorney: Courtney Shepardson (202) 622-3930

Reviewing attorneys: Lon Smith (202) 622-3900, Dale Collinson (202) 622-3900

Treasury attorney: Michael Novey (202) 622-1339

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Phone: 202 622-3930

RIN: 1545–AU94

2513. AGREEMENTS FOR PAYMENT OF TAX LIABILITIES IN INSTALLMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations reflect the amendment of IRC section 6159, section 202 of the Taxpayer Bill of Rights 2, which provides that upon request by a taxpayer the Secretary shall provide an independent review of the termination of an installment agreement. The regulations reflect the amendment to section 6159, which guarantees the availability of installment agreements to taxpayers.

Timetable:

Action	Date	FR Cite
NPRM	12/31/97	62 FR 68241
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-100841-97

Drafting attorney: Frederick W. Schindler (202) 622-3620

Reviewing attorney: Lawrence Schattner (202) 622-3620

CC:P&A:CB&S

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RIN: 1545–AU97

2514. RETURN OF LEVIED PROPERTY IN CERTAIN CASES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Section 501(b) of the Taxpayer Bill of Rights 2 amended section 6343 of the Internal Revenue Code to authorize the Secretary to return levied property in four enumerated circumstances. Section 1102(d)(1)(B) of RRA 98 changed "Taxpayer Advocate" to "National Taxpayer Advocate" as a person who determines what is in the best interest of the taxpayer. The regulations set forth the circumstances in which the Secretary may return property and procedures to implement these sections.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10249
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-101520-97

Drafting attorney: Kevin B. Connelly (202) 622-3630

Reviewing attorney: Robert Miller (202) 622-3630

Treasury attorney: Rita Cavanagh (202) 622-1981

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RIN: 1545–AV01

2515. REGULATIONS UNDER SECTION 1441 REGARDING THE ELECTRONIC TRANSMISSION OF WITHHOLDING CERTIFICATES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6061; 26 USC 1441

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance for the electronic transmission of withholding certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/14/97	62 FR 53504
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107872-97

Drafting attorney: Carl M. Cooper (202) 622-3840

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CC:INTL

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Phone: 202 622-3840

RIN: 1545–AV27

2516. INTEREST ON EDUCATION LOANS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 221; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on the deduction of interest on education loans under section 221.

Timetable:

Action	Date	FR Cite
NPRM	01/21/99	64 FR 3257
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116826-97

Drafting attorney: Nicole E. Francis (202) 622-4950

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RIN: 1545–AW01

2517. MARK-TO-MARKET ACCOUNTING FOR DEALERS IN COMMODITIES AND TRADERS IN SECURITIES AND COMMODITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 475; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance concerning mark-to-market accounting for securities traders and commodities dealers and traders.

Timetable:

Action	Date	FR Cite
NPRM	01/28/99	64 FR 4374
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104924-98

Drafting attorney: Stephen J. Coleman (202) 622-3060

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CC:FI&P

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RIN: 1545–AW06

2518. STOCKS AND SECURITIES SAFE HARBOR EXCEPTION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulatory action will amend 26 CFR 1 to clarify and update the safe harbor that one is not engaged in a trade or business as a result of trading in stocks and securities. The amendment will provide additional guidance regarding the definitions of stocks and securities.

Timetable:

Action	Date	FR Cite
NPRM	06/12/98	63 FR 32164
Hearing	09/09/98	
NPRM Comment Period End	09/10/98	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106031-98

Drafting attorney: Milton M. Cahn (202) 622-3870

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RIN: 1545–AW13

2519. ELECTION TO TREAT TRUST AS ESTATE—SECTION 645

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 645; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance regarding the operation of section 645 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 79015
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106542-98

Drafting attorney: Faith Colson (202) 622-3060

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RIN: 1545–AW24

2520. CORPORATE TAX SHELTER REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6111

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation project provides guidance on the registration requirements for confidential corporate tax shelters under section 6111(d) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11272
Public Hearing	06/20/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-110311-98

Drafting attorney: Danielle M. Grimm (202) 622-3080

Reviewing attorney: Christine Ellison (202) 622-3070

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RIN: 1545–AW26

2521. INTERCOMPANY OBLIGATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1502; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides clarification of the tax treatment of certain transfers of intercompany obligations by or to a member of a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	12/18/98	63 FR 70354
NPRM Comment Period End	03/22/99	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105964-98

Drafting attorney: Theresa Abell (202) 622-7700

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RIN: 1545–AW30

2522. DISREGARDED ENTITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance under section 368 of the Internal Revenue Code, regarding corporate transactions involving disregarded entities.

Timetable:

Action	Date	FR Cite
NPRM	05/16/00	65 FR 31115
Comment Period End	08/14/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106186-98

Drafting attorney: Reginald Mombrun (202) 622-7750

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Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

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RIN: 1545–AW36

2523. MIDDLEMAN REGULATION UNDER SECTIONS 6041 AND 6045

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 6041; 26 USC 6045

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance on the legal obligation to file information returns by: 1) an intermediary or middleman who makes payments on behalf of another person; and 2) an investment advisor.

Timetable:

Action	Date	FR Cite
NPRM	10/17/00	65 FR 61292
Public Hearing	02/07/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-246249-96

Drafting attorney: Nancy L. Rose (202) 622-4910

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Treasury attorney: Jeffrey Paravano (202) 622-1336

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Phone: 202 622-4910

RIN: 1545–AW48

2524. GUIDANCE UNDER SUBPART F RELATING TO CERTAIN HYBRID TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 954

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance on the treatment under subpart F of certain payments involving branches of a CFC that are treated as separate entities for foreign tax purposes or partnerships in which CFCs are partners.

Timetable:

Action	Date	FR Cite
NPRM	07/13/99	64 FR 37727
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-113909-98

Drafting attorney: Valerie A. Mark Lippe (202) 622-3840

Reviewing attorney: Phyllis Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

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RIN: 1545–AW63

2525. RELIEF FROM JOINT AND SEVERAL LIABILITY ON JOINT RETURN

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6015

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide procedures as are necessary to carry out the provisions of section 6015, including: 1) methods for allocation of items other than the methods under section 6015(d)(3); and 2) providing the opportunity for an individual to have notice of, and an opportunity to participate in, any administrative proceeding with respect to an election made under section 6015(b) or section 6015(c) by the other individual filing the joint return.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3888
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106446-98

Drafting attorney: Charles A. Hall (202) 622-4940

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Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:APJP

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RIN: 1545–AW64

2526. EDUCATION CREDITS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 25

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide individual taxpayers with guidance on the Hope Scholarship Credit and the Lifetime Learning Credit.

Timetable:

Action	Date	FR Cite
NPRM	01/06/99	64 FR 794
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106388-98

Drafting attorney: Donna J. Welch (202) 622-4910

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RIN: 1545–AW65

2527. INFORMATION REPORTING FOR PAYMENTS OF INTEREST ON EDUCATION LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050

CFR Citation: 26 CFR 1; 26 CFR 301

Legal Deadline: None

Abstract: The regulations relate to the requirements for filing information returns for interest received on qualified education loans. The regulations prescribe magnetic media filing requirements for these information returns.

Timetable:

Action	Date	FR Cite
NPRM	12/20/00	65 FR 79788
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-105316-98

Drafting attorney: Donna J. Welch (202) 622-4910

Reviewing attorney: John McGreevy (202) 622-4910

Treasury attorney: Susan Brown (202) 622-0999

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RIN: 1545–AW67

2528. MODIFICATIONS AND ADDITIONS TO THE UNIFIED PARTNERSHIP AUDIT PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6230; 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations modify the Unified Partnership Audit Procedures based on statutory changes enacted in 1997 and 1998. As part of this project, all of the Unified Partnership Audit Procedure regulations will be finalized.

Timetable:

Action	Date	FR Cite
NPRM	01/25/99	64 FR 3886
Cancellation of Public Hearing	04/06/99	64 FR 16640
Correction To NPRM	04/19/99	64 FR 19217
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106564-98

Drafting attorney: Horace Howells (202) 622-3050

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Treasury attorney: Deborah Harrington (202) 622-1788

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Phone: 202 622-3050

RIN: 1545–AW86

2529. COMPROMISES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7122

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The purpose of this regulation is to provide expanded compromise authority, pursuant to section 7122 of title 26, as amended by the Restructuring and Reform Act of 1998. Prior to the amendment, doubt as to collectibility, doubt as to liability, or both, were the only grounds for consideration of compromise cases. The goal of this regulation is to permit consideration of other factors in compromising tax liability.

Timetable:

Action	Date	FR Cite
NPRM	07/21/99	64 FR 39106
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116991-98

Drafting attorney: Frederick W. Schindler (202) 622-3620

Reviewing attorney: Lawrence Schattner (202) 622-3620

Treasury attorney: Rita Cavanagh (202) 622-1981

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RIN: 1545–AW88

2530. CERTAIN ASSET TRANSFERS TO REGULATED INVESTMENT COMPANIES (RICS) AND REAL ESTATE INVESTMENT TRUSTS (REITS)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations implement provisions of the Tax Reform Act of 1986 relating to certain property transfers to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Timetable:

Action	Date	FR Cite
NPRM	02/03/00	65 FR 5805
Comment Period Ends	04/19/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-209135-88

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RIN: 1545–AW92

2531. TRANSFER OF REMIC RESIDUAL INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will amend the rules on transfers of non-economic residual interests to add to and clarify the safe harbor rules for establishing lack of improper knowledge under existing law.

Timetable:

Action	Date	FR Cite
NPRM	02/07/00	65 FR 5807
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-122450-98

Drafting attorney: Courtney Shepardson (202) 622-3930

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RIN: 1545–AW98

2532. QUALIFIED OFFERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation relates to the qualified offer rule allowing the recovery of reasonable administrative or litigation costs.

Timetable:

Action	Date	FR Cite
NPRM	01/04/01	66 FR 749
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-121928-98

Drafting attorney: Thomas D. Moffitt (202) 622-7900

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RIN: 1545–AW99

2533. NOTICE OF CONTACT OF THIRD PARTIES—SECTION 7602(C)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation implements and interprets section 7602(c) of the Internal Revenue Code, concerning third-party contacts. The Restructuring and Reform Act of 1998, section 3417(a), created a new section 7602(c), which provides that the IRS may not contact third parties with respect to the determination or collection of the tax liability of a taxpayer without providing reasonable notice to the taxpayer in advance. It also requires the IRS to keep a list of contacts and provide it periodically to the taxpayer.

Timetable:

Action	Date	FR Cite
NPRM	01/02/01	66 FR 77
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104906-99

Drafting attorney: Charles B. Christopher (202) 622-3630

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RIN: 1545–AX04

2534. ALLOCATION OF RESEARCH CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will provide guidance on the proper method of computing the research credit for a controlled group. In addition, this regulation will provide guidance on the allocation of the research credit among members of the controlled group.

Timetable:

Action	Date	FR Cite
NPRM	01/04/00	65 FR 258
Public Hearing	04/26/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-105606-99

Drafting attorney: Lisa Shuman (202) 622-3120

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Treasury attorney: Christopher Ohmes (202) 622-1335

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RIN: 1545–AX05

2535. DELAY RENTAL PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 263

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations clarify that section 1.612-3(c) applies to delay rental payments to the extent that section 263A does not require the payments to be capitalized.

Timetable:

Action	Date	FR Cite
NPRM	02/08/00	65 FR 6090
Public Hearing	05/26/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103882-99

Drafting attorney: Brenda M. Stewart (202) 622-3120

Reviewing attorney: J.H. Makurath (202) 622-3120

Treasury attorney: John Parcell (202) 622-2578

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RIN: 1545–AX06

2536. CHANGE OF ANNUAL ACCOUNTING PERIOD

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 26 USC 442

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation states under what circumstances taxpayers should be allowed to change their annual accounting period, either on an automatic basis, or with the prior approval of the Commissioner.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 31850
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106917-99

Drafting attorney: Michael F. Schmit (202) 622-4960

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Treasury attorney: Christine Turgeon (202) 622-0865

CC:IT&A

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RIN: 1545–AX15

2537. COORDINATION OF SECTIONS 755 AND 1060

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 755; 26 USC 1060

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide rules for determining the fair market value of partnership assets for the purpose of allocating basis adjustments under sections 732(d), 734(b) and 743(b) among partnership assets under section 755, using the residual method of section 1060 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 17829
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107872-99

Drafting attorney: Craig A. Gerson (202) 622-3050

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CC:P&SI

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Phone: 202 622-3050

RIN: 1545–AX18

2538. EXCLUSION OF GAIN ON THE SALE OR EXCHANGE OF PRINCIPAL RESIDENCE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 121

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These rules reflect changes made by the Taxpayer Relief Act of 1997 to sections 121 and 1034 of the Code, relating to the exclusion of gain from the sale or exchange of a taxpayer's principal residence.

Timetable:

Action	Date	FR Cite
NPRM	10/10/00	65 FR 60136
Public Hearing	01/23/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105235-99

Drafting attorney: Sara P. Shepherd (202) 622-4960

Reviewing attorney: George Baker (202) 622-4960

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:APJP

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RIN: 1545–AX28

2539. SPECIAL RULES FOR RETROACTIVE PAYMENTS UNDER SECTION 417(A)(7)(A) FOR QUALIFIED RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 417; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation provides guidance regarding the special rule in IRC section 417(a)(7)(A), which permits qualified retirement plans to provide written explanation of QJSA after the annuity starting date.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3916
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-109481-99

Drafting attorney: Robert M. Walsh (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6000

CC:TEGE

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Phone: 202 622-6090

RIN: 1545–AX34

2540. CHANGES IN ENTITY CLASSIFICATION: SPECIAL RULE FOR CERTAIN FOREIGN ELIGIBLE ENTITIES '

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7701

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides rules relating to certain conversions of foreign eligible entities under the entity classification rules.

Timetable:

Action	Date	FR Cite
NPRM	11/29/99	64 FR 66591
Public Hearing	01/31/00	
NPRM Comment Period End	02/28/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-110385-99

Drafting attorney: Aaron A. Farmer (202) 622-3860

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CC:INTL

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RIN: 1545–AX39

2541. AGENT FOR THE GROUP UNDER SECTION 1.1502-77

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation revises the rules under section 1.1502-77 governing the common parent as agent for the consolidated group and the designation of a new agent when the common parent ceases to exist; revises the rule under section 1.1502-78 for an application for carryback adjustment with respect to a loss arising in another consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	09/26/00	65 FR 57755
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103805-99

Drafting attorney: George Robert Johnson (202) 622-7930

Reviewing attorney: Gerald B. Fleming (202) 622-7770

Treasury attorney: Stephanie Robinson (202) 622-9858

CC:CORP

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RIN: 1545–AX56

2542. EQUITY OPTIONS WITH FLEXIBLE TERMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 1092

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance about qualified covered call treatment for equity options with flexible terms.

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4751
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: REG-115560-99

Drafting attorney: Pamela Lew (202) 622-3950

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Treasury attorney: Viva Hammer (202) 622-0869

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RIN: 1545–AX66

2543. LOANS UNDER SECTION 72(P)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 72

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide guidance on the application of rules for determining the income tax treatment to be accorded loans to participants or beneficiaries from qualified employer plans. The loans rules are provided in section 72(p) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	07/31/00	65 FR 46677
Hearing	12/06/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-116495-99

Drafting attorney: Vernon Carter (202) 622-6070

Reviewing attorney: Catherine Fernandez (202) 622-6090

Treasury attorney: William Bortz (202) 622-1352

CC:TEGE

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RIN: 1545–AX68

2544. ALLOCATION AND APPORTIONMENT OF INTEREST EXPENSE AND CERTAIN OTHER EXPENSES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 864

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide rules for the allocation and apportionment of interest expenses and certain other expenses for purposes of the foreign tax credit and certain other international tax provisions.

Timetable:

Action	Date	FR Cite
NPRM	02/05/90	55 FR 3750
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-117608-99

Drafting attorney: David F. Bergkuist (202) 622-3850

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CC:INTL

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RIN: 1545–AX72

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2545. CLARIFICATION OF ENTITY CLASSIFICATION RULES REGARDING ENTITIES CLASSIFIED AS CORPORATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation provides a special rule to clarify the per se list of corporate entities.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2854
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-101739-00

Drafting attorney: Camille B. Evans (202) 622-3860

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RIN: 1545–AX75

2546. REQUIREMENT TO MAINTAIN LIST OF INVESTORS IN POTENTIALLY ABUSIVE TAX SHELTERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6112; 26 USC 7805

CFR Citation: 26 CFR 301; 26 CFR 602

Legal Deadline: None

Abstract: These regulations require the maintenance of lists of investors in potentially abusive tax shelters described in section 6112 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11271
Hearing	06/20/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103736-00

Drafting attorney: Danielle M. Grimm (202) 622-3080

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RIN: 1545–AX79

2547. TAX SHELTER DISCLOSURE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6011; 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations require certain corporate taxpayers to file a statement under section 6011 and maintain certain documents under section 6001 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	03/02/00	65 FR 11269
Public Hearing	06/20/00	65 FR 11270
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103735-00

Drafting attorney: Danielle M. Grimm (202) 622-3080

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RIN: 1545–AX81

2548. DISCLOSURE OF RETURN AND RETURN INFORMATION TO DESIGNEE OF TAXPAYER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The purpose of this regulation is to implement the amendment contained in the Taxpayer Bill of Rights II (TBOR II) to Internal Revenue Code section 6103(c). TBOR II eliminated the requirement for a request or consent for disclosure to be in writing. The proposed regulations would permit the Internal Revenue Service to disclose returns and return information to a taxpayer's designee, pursuant to a non-written request for or consent to disclosure. The regulations will also provide rules and guidance for consent in an electronic environment. Additionally, the regulations will provide guidance to Internal Revenue Service personnel to clarify a number of issues that have arisen since the regulation was initially promulgated in the late 1970s.

Timetable:

Action	Date	FR Cite
NPRM	01/11/01	66 FR 2373
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-103320-00

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CC:P&A:D&PL

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RIN: 1545–AX85

2549. APPLICATION OF SEPARATE FOREIGN TAX CREDIT LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 904; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation clarifies the application of separate foreign tax credit limitations under sections 904(b) and 904(d) of the Code and revises the rules for computing post-1986 undistributed earnings and taxes of foreign corporations under section 902 of the Code.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 319
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104683-00

Drafting attorney: Bethany Ingwalson (202) 622-3850

Reviewing attorney: Barbara A. Felker (202) 622-3850

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

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RIN: 1545–AX88

2550. DETERMINATION OF BASIS OF PARTNERS' INTEREST; SPECIAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 705; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will limit the increase to basis under section 705, where a corporation directly or indirectly acquires an interest in a partnership that holds stock in the same corporation.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 315
Public Hearing	05/03/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-106702-00

Drafting attorney: Barbara MacMillan (202) 622-3050

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Treasury attorney: Stephanie Robinson (202) 622-9858

CC:P&SI

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RIN: 1545–AX94

2551. DEFINITION OF INCOME UNDER SECTION 643

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 643; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations provide guidance under section 643 of the Internal Revenue Code, on whether State law definition of trust income is trust income for Federal tax purposes.

Timetable:

Action	Date	FR Cite
NPRM	02/15/01	66 FR 1039
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: REG-106513-00

Drafting attorney: Bradford R. Poston (202) 622-3060

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CC:P&SI

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RIN: 1545–AX96

2552. CONSTRUCTIVE TRANSFERS AND TRANSFERS OF PROPERTY TO THIRD PARTIES ON BEHALF OF A SPOUSE

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulation will provide rules for determining when a redemption by a corporation of the stock of one spouse or former spouse results in a constructive transfer to the other spouse or former spouse of the proceeds of the redemption.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40659
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107151-00

Drafting attorney: Edward C. Schwartz (202) 622-4960

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RIN: 1545–AX99

2553. REGULATIONS GOVERNING PRACTICE BEFORE THE INTERNAL REVENUE SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 330

CFR Citation: 31 CFR 10

Legal Deadline: None

Abstract: This regulation amends the rules governing practice before the IRS, which appears in the Code of Federal Regulations and in pamphlet form as Treasury Department Circular No. 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, Enrolled Agents, Enrolled Actuaries, and Appraisers Before the IRS. The regulation addresses general standards of practice and standards of practice in the case of tax shelters.

Timetable:

Action	Date	FR Cite
ANPRM	05/05/00	65 FR 30375
NPRM	01/12/01	66 FR 30375
Public Hearing	05/02/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-111835-99

Drafting attorney: Brinton T. Warren (202) 622-4940

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RIN: 1545–AY05

2554. "AUTHORIZED PLACEMENT AGENCY" UNDER SECTION 152

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 152

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations amend the definition of "authorized placement agency" (for purposes of determining whether a child placed for legal adoption in a taxpayer's home is a dependent of the taxpayer) to include biological parents and other persons authorized by State law to place children for legal adoption.

Timetable:

Action	Date	FR Cite
NPRM	11/30/00	65 FR 71277
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107279-00

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RIN: 1545–AY18

2555. MID-CONTRACT CHANGE IN TAXPAYER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 460

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The regulations will address issues presented by a change in the taxpayer accounting for a long-term contract.

Timetable:

Action	Date	FR Cite
NPRM	02/16/01	66 FR 10643
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-105946-00

Drafting attorney: John M. Aramburu (202) 622-4960

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CC:IT&A

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RIN: 1545–AY31

2556. HIPAA GENERAL NONDISCRIMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 9833

CFR Citation: 26 CFR 54

Legal Deadline: None

Abstract: These regulations provide guidance regarding the requirements imposed on group health plans not to discriminate in rules for eligibility under the plan on the basis of any health factor, and not to require any individual to pay a higher premium or contribution for coverage under the plan than any similarly situated individual based on any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1435
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-114082-00

Drafting attorney: Russell Weinheimer (202) 622-6080

Reviewing attorney: Alan Tawshunsky (202) 622-6000

Treasury attorney: Kevin Knopf (202) 622-2329

CC:TEGE

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RIN: 1545–AY32

2557. HIPAA NONDISCRIMINATION/EXCEPTION FOR CHURCH PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 7853

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance on the exception for certain grandfathered church plans from the general rule requiring group health plans not to discriminate in rules for eligibility on the basis of any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1437
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-114083-00

Drafting attorney: Russell Weinheimer (202) 622-6080

Reviewing attorney: Alan Tawnshunsky (202) 622-6000

Treasury attorney: Kevin Knopf (202) 622-2329

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RIN: 1545–AY33

2558. HIPAA NONDISCRIMINATION/BONA FIDE WELLNESS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 9833

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance regarding the exception for certain wellness programs to the general rule imposed on group health plans not to require a higher premium or contribution from an individual than from a similarly situated individual based on any health factor.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1421
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-114084-00

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Reviewing attorney: Alan Tawnshunsky (202) 622-6080

Treasury attorney: Kevin Knopf (202) 622-2329

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RIN: 1545–AY34

2559. GUIDANCE UNDER SECTION 355(E); RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OF SECURITIES IN CONNECTION WITH AN ACQUISITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 355(e)(5)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: On January 2, 2001, a notice of proposed rulemaking was published in the Federal Register (REG-107566-00; 66 FR 66) under section 355(e) of the Internal Revenue Code of 1986. A public hearing regarding those proposed regulations was held on May 15, 2001. On August 3, 2001, those proposed regulations were published as temporary regulations in the Federal Register (REG-107566-00). This notice of proposed rulemaking will both withdraw the notice of proposed rulemaking that was published on January 2, 2001 and provide new rules under section 355(e) of the Internal Revenue Code of 1986 by cross-reference to temporary regulations to be published in the same issue of the Federal Register.

This regulation provides guidance on section 355(e) of the Internal Revenue Code. Section 355(e) provides that a distributing corporation will recognize gain on the distribution of stock of a controlled corporation if 50 percent of the stock of the distributing corporation or controlled corporation is acquired pursuant to a plan that includes the distribution.

Timetable:

Action	Date	FR Cite
NPRM	01/02/01	66 FR 66
Hearing	05/15/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: REG-163892-01

Drafting attorney: Amber R. Cook (202) 622-7530

Reviewing attorney: Stephen P. Fattman (202) 622-7700

Treasury attorney: Audrey Nacamuli (202) 622-5721

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RIN: 1545–AY42

2560. GUIDANCE UNDER SUBPART F RELATING TO PARTNERSHIPS

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations provide guidance for the treatment under subpart F of a controlled foreign corporation partner's distributive share of subpart F income.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56836
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: REG-112502-00

Drafting attorney: Jonathan A. Sambur (202) 622-3840

Reviewing attorney: Phyllis Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

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RIN: 1545–AY45

2561. ELECTRONIC FURNISHING OF PAYEE STATEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050; 26 USC 6051; 26 USC 6041; 26 USC 6724

CFR Citation: 26 CFR 1; 26 CFR 31

Legal Deadline: None

Abstract: This regulation amends the regulations to allow for the electronic furnishing of Forms W-2, 1098-E and 1098-T.

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Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10247
NPRM Comment Period End	07/06/01	66 FR 32279
Public Hearing	07/25/01	66 FR 32279
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: REG-107186-00

Drafting attorney: James C. Gibbons (202) 622-4910

Reviewing attorney: James C. Gibbons (202) 622-4910

Treasury attorney: John Parcell (202) 622-2578

CC:PA:APJP

Agency Contact: Laura C. Nash, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3050

RIN: 1545–AY50

2562. DISCLOSURE OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF COMMERCE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: The regulations relate to additions to the list of items of information disclosed to the Bureau of the Census for use in the Longitudinal Employer-Household Dynamics (LEHD) project and the Survey of Income and Program Participation (SIPP) project.

Timetable:

Action	Date	FR Cite
NPRM	02/13/01	66 FR 9991
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-121109-00

Drafting attorney: Stuart D. Murray (202) 622-4580

Reviewing attorney: David Fish (202) 622-4580

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:PA:DPL

Agency Contact: Stuart D. Murray, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4580

RIN: 1545–AY52

2563. GUIDANCE UNDER SECTION 1275(A)(1)(B)(II)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations address what is an insurance company subject to tax under subchapter L for purpose of section 1275(a)(1)(B)(ii) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2852
Cancelled Public Hearing	05/23/01	66 FR 28407
Public Hearing	05/30/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125237-00

Drafting attorney: Patrick E. White (202) 622-3920

Reviewing attorney: Mark S. Smith (202) 622-3970

Treasury attorney: Michael S. Novey (202) 622-1339

CC:FI&P

Agency Contact: Patrick E. White, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3920

RIN: 1545–AY60

2564. GUIDANCE ON REPORTING OF DEPOSIT INTEREST PAID TO NONRESIDENT ALIENS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides guidance on the reporting requirements for interest on deposits maintained at the U.S. office of certain financial institutions and paid to NRAs. These proposed regulations affect persons making payment of interest with respect to such a deposit.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3925
Hearing	06/21/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-126100-00

Drafting attorney: Kate Y. Hwa (202) 622-3840

Reviewing attorney: Valerie A. Mark (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

Agency Contact: Kate Y. Hwa, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3840

RIN: 1545–AY62

2565. SECTION 706 AND FOREIGN PARTNERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The regulations will provide guidance regarding the determination under section 706(b) of the taxable year of a partnership with foreign partners.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3920
Public Hearing	06/06/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-104876-00

Drafting attorney: Daniel Carmody (202) 622-3080

Reviewing attorney: Jeanne Sullivan (202) 622-3070

Treasury attorney: Deborah Harrington (202) 622-1788

CC:P&SI

Agency Contact: Daniel Carmody, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3080

RIN: 1545–AY66

2566. TAX TREATMENT OF CAFETERIA PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 125

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation provides information about the tax treatment of cafeteria plans.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 1923
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-209461-79

Drafting attorney: Janet Laufer (202) 622-6090

Reviewing attorney: Harry Beker (202) 622-6080

CC:TEGE

Agency Contact: Janet A. Laufer, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090
Fax: 202 622-4084

RIN: 1545–AY67

2567. NOTICE TO INTERESTED PARTIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: These regulations set forth the applicable standards by which a plan sponsor may satisfy the notice to interested parties requirement. Before the Service can issue a determination letter, a plan sponsor must provide evidence that it has notified all persons who qualify as interested parties that an application for an advance determination will be filed regarding the qualification of the sponsor's plan. The proposed regulations affect retirement plan sponsors, interested parties, and certain representatives of interested parties.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3954
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-129608-00

Drafting attorney: Pamela R. Kinard (202) 622-6060

Reviewing attorney: Marjorie Hoffman (202) 622-6060

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: Pamela R. Kinard, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–AY68

2568. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: 26 CFR 1; 26 CFR 54

Legal Deadline: None

Abstract: This regulation amends the Income Tax Regulations (26 CFR part 1) and the Pension Excise Taxes Regulations (26 CFR part 54) under sections 401, 403, 408, and 4974 of the Internal Revenue Code of 1986. These amendments are proposed to conform the regulations to sections 1121 and 1852 of the Tax Reform Act of 1986 (TRA of 1986) (100 Stat. 2464 and 2864), sections 521 and 713 of the Tax Reform Act of 1984 (TRA of 1984) (98 Stat. 865 and 955), sections 242 and 243 of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) (96 Stat. 521), and section 1404 of the Small Business Job Protection Act of 1996 (SBJPA) 110 Stat. 1791. The regulations provide guidance on the minimum distribution requirements under section 401(a)(9) for plans qualified under section 401(a). The rules are incorporated by reference for other retirement plans under section 408(a)(3) and (b)(6) for IRAs, section 403(b)(10) for tax sheltered annuities, and section 457(d) for eligible deferred compensation plans. Comprehensive proposed regulations under section 401(a)(9) were previously published in 1987. In 1997, amendments to those proposed regulations were published addressing the limited issue of trusts as designated beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3928
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-130477-00

Drafting attorney: Cathy A. Vohs (202) 622-6090

Reviewing attorney: Marjorie Hoffman (202) 622-6090

Treasury attorney: W. Thomas Reeder (202) 622-1341

CC:TEGE

Agency Contact: Cathy A. Vohs, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6090

RIN: 1545–AY69

2569. DISCLOSURE OF RETURNS AND RETURN INFORMATION BY OTHER AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

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CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: This regulation permits the Commissioner to authorize agencies with access to returns and return information under section 6103 of the Code to redisclose such returns and return information, with the Commissioner's approval, to the Congressional Budget Office and other agencies authorized to receive such information in accordance with IRC section 6103.

Timetable:

Action	Date	FR Cite
NPRM	12/17/01	66 FR 64386
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-105344-01

Drafting attorney: Julie C. Schwartz (202) 622-4570

Reviewing attorney: David L. Fish (202) 622-4580

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:D&PL

Agency Contact: Julie C. Schwartz, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4570

RIN: 1545–AY77

2570. RESEARCH CREDIT III

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 41

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulation relates to the computation of the research credit under section 41(c) and the definition of the qualified research under section 41(d) of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
NPRM	12/26/01	66 FR 66362
Hearing	03/27/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-112991-01

Drafting attorney: Lisa Shuman (202) 622-3120

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Leslie Finlow (202) 622-3120

Treasury attorney: Chris Ohmes (202) 622-1335

CC:PS&I

Agency Contact: Lisa Shuman, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3120

RIN: 1545–AY82

2571. NEW MARKET TAX CREDIT

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 45D; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These regulations relate to the new markets tax credit under section 45D, which was enacted by section 121(a) of the Community Renewal Tax Relief Act of 2000 (Pub. L. 106-554).

Timetable:

Action	Date	FR Cite
ANPRM	05/01/01	66 FR 21844
NPRM	12/26/01	66 FR 66376
Public Hearing	03/14/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-119436-01

Drafting attorney: Paul F. Handleman (202) 622-3040

Reviewing attorney: Susan Reaman (202) 622-3040

Treasury attorney: Steve Watson (202) 622-1322

CC:P&SI

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Phone: 202 622-3040
Fax: 202 622-4753

RIN: 1545–AY87

2572. GUIDANCE UNDER IRC SECTION 4374

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 4374

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation is intended to amend Treasury Regulation section 46.4374-1(a), which deals with an excise tax imposed on foreign insurers or reinsurers. The existing regulation was published in 1970 and provides that the "tax shall be remitted by the person who makes the payment of the premium to a foreign insurer or reinsurer or to any nonresident agent, solicitor, or broker. For purposes of this paragraph, the person who makes payment means that resident person who actually transfers the money, check, or its equivalent to the foreign insurer or reinsurer (including transfers to any bank, trust fund, or similar recipient, designated by the foreign insurer or reinsurer), or to any nonresident agent, solicitor, or broker." In 1976, I.R.C. section 4374 was amended to impose liability on "any person who makes, signs, issues, or sells any of the documents and instruments subject to the tax, or for whose use or benefit the same are made, signed, issued or sold." For example, there have been cases recently where a foreign parent corporation has purchased from a foreign insurer policies covering risks and policies for the benefit of a U.S. subsidiary. The IRS often has no ability to collect the excise tax on such a policy from the foreign parent, and the U.S. subsidiary has relied on the existing regulation to argue that the IRS may not collect the tax from the subsidiary, because it did not actually pay the premium to the foreign insurer.

Timetable:

Action	Date	FR Cite
NPRM	01/07/02	67 FR 708
NPRM Comment Period End	02/26/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: REG-125450-01

Drafting attorney: Amanda A. Ehrlich (202) 622-3880

Reviewing attorney: W. Edward Williams (202) 622-3880

Treasury attorney: Michael Caballero (202) 622-0851

CC:INTL

Agency Contact: Amanda A. Ehrlich, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–AY93

2573. CONFORMING AMENDMENTS TO SECTION 446

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 446; 26 USC 1502

CFR Citation: 26 CFR 446

Legal Deadline: None

Abstract: The proposed regulation is related to the treatment of the consolidated return intercompany transaction rules as a method of accounting.

Timetable:

Action	Date	FR Cite
NPRM	11/07/01	66 FR 56262
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-125161-01

Drafting attorney: Marie C. Milnes-Vasquez (202) 622-7770

Reviewing attorney: Edward Cohen (202) 622-7770

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Marie Milnes-Vasquez, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7770

RIN: 1545–BA05

2574. CONSOLIDATED RETURNS; NON-APPLICABILITY OF SECTION 357(C)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1502

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: The proposed regulations make amendments to section 1.1502-80(d) of the consolidated return regulations dealing with the scope of the non-applicability of section 357(c) in a consolidated group.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57021
Public Hearing	03/21/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-137519-01

Drafting attorney: Thomas I. Russell (202) 622-7930

Reviewing attorney: Al Bishop (202) 622-7930

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Thomas I. Russell, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7930

RIN: 1545–BA09

2575. CATCH-UP CONTRIBUTIONS FOR INDIVIDUALS AGE 50 OR OVER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805

CFR Citation: None

Legal Deadline: None

Abstract: The proposed regulations would provide guidance for plans that permit individuals age 50 or over to make catch-up contributions under the plan.

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53555
Public Hearing	04/30/02	67 FR 7656
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-142499-01

Drafting attorney: John T. Ricotta (202) 622-6060

Reviewing attorney: Marjorie Hoffman (202) 622-6060

Treasury attorney: Elizabeth Drigotas (202) 622-1332

CC:TEGE

Agency Contact: John T. Ricotta, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-6060

RIN: 1545–BA24

2576. • TRANSFERS OF C CORPORATION PROPERTY TO RICS OR REITS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 337

CFR Citation: 26 CFR 337; 26 CFR 7805

Legal Deadline: None

Abstract: These regulations implement provisions of the Tax Reform Act of 1986 relating to Certain Property TransferS to Regulated Investment Companies (RICs) and Real Estate Investment Trusts (REITs).

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 48
Comment Period End	04/20/02	
Public Hearing	05/01/02	67 FR 1672
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: REG-142299-01

Drafting attorney: Lisa A. Fuller (202) 622-7750

Reviewing attorney: Mark S. Jennings (202) 622-7750

Treasury attorney: Deborah Harrington (202) 622-1788

CC:CORP

Agency Contact: Lisa A. Fuller, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7750

RIN: 1545–BA36

2577. • WITHHOLDING AT TREATY RATE EXCEPTION FOR TAXPAYER IDENTIFYING NUMBER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1441

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the taxpayer identifying number rule when taxpayer claims treaty rate and is entitled to an immediate payment.

Timetable:

Action	Date	FR Cite
NPRM	01/17/02	67 FR 2387
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-159079-01

Drafting attorney: Jonathan A. Sambur (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Jonathan A. Sambur, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington
Phone: 202 622-3840

RIN: 1545–BA38

2578. • GUIDANCE UNDER SECTION 355(E); RECOGNITION OF GAIN ON CERTAIN DISTRIBUTIONS OF STOCK OR SECURITIES IN CONNECTION WITH AN AQUISITION

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 355(e)(5)

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: These temporary regulations relating to the recognition of gain on certain distribution of stock or securities in connection with an acquisition will withdraw previously published temporary regulations (REG-107566-0); 66 FR 40590), and provide new rules under section 355(e) of the Internal Revenue Code of 1986.

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-163892-01

Drafting attorney: Amber R. Cook (202) 622-7530

Reviewing attorney: Stephen P. Fattman (202) 622-7700

Treasury attorney: Audrey Nacamuli (202) 622-5721

CC:CORP

Agency Contact: Amber R. Cook, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-7530

RIN: 1545–BA55

2579. • DISCLOSURES OF RETURN INFORMATION TO OFFICERS AND EMPLOYEES OF THE DEPARTMENT OF AGRICULTURE FOR CERTAIN STATISTICAL PURPOSES AND RELATED ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6103(j)(5)

CFR Citation: 26 CFR 301

Legal Deadline: None

Abstract: Temporary rule on disclosure of telephone number from Form 1040/Schedule F to officers and employees of the Department of Agriculture for certain statistical purposes and related activities pursuant to section 6103(j)(5).

Timetable:

Action	Date	FR Cite
Temporary Regulation	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-156293-01

Drafting attorney: Joseph E. Conley (202) 622-4580

Reviewing attorney: David L. Fish (202) 622-4580

Treasury attorney: Elizabeth Askey (202) 622-0224

CC:P&A:DP&L

Agency Contact: Joseph E. Conley, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-4580

RIN: 1545–BA56

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

Long-Term Actions

2580. INCOME TAX—DEFINITION OF QUALIFIED POSSESSION SOURCE INVESTMENT INCOME FOR PURPOSES OF PUERTO RICO AND POSSESSION TAX CREDIT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/21/86	51 FR 2726
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: W. Edward Williams
Phone: 202 622-3880

RIN: 1545–AC10

2581. FSC TRANSFER PRICING RULES, DISTRIBUTIONS, DIVIDENDS RECEIVED, DEDUCTION, AND OTHER SPECIAL RULES FOR FSC

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/03/87	52 FR 6467
NPRM Comment Period End	05/02/87	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Douglas L. Giblen
Phone: 202 874-1490

RIN: 1545–AI16

2582. INFORMATION FROM PASSPORT AND IMMIGRATION APPLICANTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Timetable:

Action	Date	FR Cite
NPRM	12/24/92	57 FR 61373
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amanda A. Ehrlich
Phone: 202 622-3880

RIN: 1545–AJ93

2583. FOREIGN INSURANCE COMPANIES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven D. Jensen
Phone: 202 622-3870

RIN: 1545–AL82

2584. INCOME OF FOREIGN GOVERNMENTS AND INTERNATIONAL ORGANIZATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	06/27/88	53 FR 24100
NPRM Comment Period End	08/26/88	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David A. Juster
Phone: 202 622-3850

RIN: 1545–AL93

2585. CLARIFICATION OF TREATMENT OF SEPARATE LIMITATION LOSSES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard L. Chewning
Phone: 202 622-3850

RIN: 1545–AM11

2586. COMPUTATION OF A BRANCH'S TAXABLE INCOME; TAXATION OF EXCHANGE GAIN OR LOSS ON BRANCH REMITTANCES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48457
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622-3870

RIN: 1545–AM12

2587. EARNINGS AND PROFITS OF CONTROLLED FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/25/90	55 FR 2535
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622-3850

RIN: 1545–AM90

2588. CBI INVESTMENTS OF SECTION 936 FUNDS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	05/13/91	56 FR 21963
Hearing	07/12/91	56 FR 21963
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: W. Edward Williams
Phone: 202 622-3880

RIN: 1545–AM91

2589. SECTION 361 OUTBOUND TRANSFERS OF PROPERTY TO FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Aaron A. Farmer
Phone: 202 622-3860

RIN: 1545–AM97

2590. RAILROAD UNEMPLOYMENT REPAYMENT TAX

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 31

Timetable:

Action	Date	FR Cite
NPRM	05/13/93	58 FR 28374
NPRM Comment Period End	07/12/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jean Marie Casey
Phone: 202 622-6060

RIN: 1545–AN40

2591. CONSOLIDATED ALTERNATIVE MINIMUM TAX

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/92	57 FR 62251
NPRM Comment Period End	03/01/93	
Hearing	04/06/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Martin Scully
Phone: 202 622-4960

RIN: 1545–AN73

2592. CONFORMING TAXABLE YEARS OF CFCS AND FPHCS: 1989 CHANGE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/05/93	58 FR 290

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carl M. Cooper
Phone: 202 622-3840

RIN: 1545–AO22

2593. TAXATION OF GLOBAL TRADING

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
ANPRM	08/28/90	55 FR 35152
NPRM	03/06/98	63 FR 11177
NPRM Comment Period End	06/04/98	
Hearing	07/14/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622-3870

RIN: 1545–AP01

2594. INFORMATION REPORTING AND RECORD MAINTENANCE UNDER SECTION 6038C

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Garrett D. Gregory
Phone: 202 622-3870

RIN: 1545–AP10

2595. CHARITABLE CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/12/91	56 FR 10395
Hearing	08/01/91	56 FR 23823

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Teresa B. Hughes
Phone: 202 622-3850

RIN: 1545–AP30

2596. GUIDANCE IN NOTICE 89-37, WHICH TREATS THE RECEIPT OF A CORPORATE PARTNER'S STOCK BY THE CORPORATE PARTNER AS A CIRCUMVENTION OF GENERAL UTILITIES REPEAL

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59324
NPRM Comment Period End	01/20/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa K. Leong
Phone: 202 622-7530

RIN: 1545–AP52

2597. USE OF GAAP EARNINGS AS E&P OF FOREIGN CORPORATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	07/01/92	57 FR 29246

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret A. Hogan
Phone: 202 622-3850

RIN: 1545–AQ55

2598. THE TREATMENT OF ACCELERATED DEATH BENEFITS UNDER SECTIONS 101, 7702 AND 7702A OF THE INTERNAL REVENUE CODE

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/15/92	57 FR 59319
NPRM Comment Period End	02/26/93	
Hearing	03/19/93	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ann H. Logan
Phone: 202 622-3970

RIN: 1545–AQ70

2599. INTEGRATED FINANCIAL TRANSACTION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622-3870

RIN: 1545–AR20

2600. SECTION 6048 REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Rennie Quarrie
Phone: 202 622-3880

RIN: 1545–AR25

2601. APPLICATIONS OF SECTION 1503(D) TO PARTNERSHIPS AND OTHER ITEMS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth D. Allison
Phone: 202 622-3860

RIN: 1545–AR26

2602. ALLOCATION OF ACCRUED BENEFITS BETWEEN EMPLOYER AND EMPLOYEE CONTRIBUTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/22/95	60 FR 66532
NPRM Comment Period End	03/21/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janet A. Laufer
Phone: 202 622-6090
Fax: 202 622-4084

RIN: 1545–AT82

2603. PROPOSED REGULATION UNDER SECTIONS 882 AND 884

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	03/08/96	61 FR 9377

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kenneth P. Christman
Phone: 202 622-3870

RIN: 1545–AT96

2604. APPLICATION OF GRANTOR TRUST RULES TO NONEXEMPT EMPLOYEES' TRUST

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	09/27/96	61 FR 50778
NPRM Comment Period End	12/26/96	
Hearing	01/15/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: M. Grace Fleeman
Phone: 202 622-3880

Linda S.F. Marshall
Phone: 202 622-6090

James A. Quinn
Phone: 202 622-3060

RIN: 1545–AU29

2605. RECOMPUTATION OF LIFE INSURANCE RESERVES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/02/97	62 FR 71

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mark S. Smith
Phone: 202 622-3970

RIN: 1545–AU49

2606. APPLICATION OF ATTRIBUTION RULES TO FOREIGN TRUSTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: W. Edward Williams
Phone: 202 622-3880

RIN: 1545–AU91

2607. DEFINITION OF "PRIVATE ACTIVITY BONDS" ALLOCATION AND ACCOUNTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/94	59 FR 67658
NPRM Comment Period End	05/01/95	

Next Action Undetermined

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce M. Serchuk
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AU98

2608. REQUIRED DISTRIBUTIONS FROM QUALIFIED PLANS AND INDIVIDUAL RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/97	62 FR 67780
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

RIN: 1545–AV82

2609. FOREIGN TAX CREDIT ANTI-ABUSE REGULATION

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bethany Ingwalson
Phone: 202 622-3850

RIN: 1545–AV97

2610. SECTION 988—CONTINGENT DEBT INSTRUMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Milton M. Cahn
Phone: 202 622-3870

RIN: 1545–AW33

2611. SOURCE OF INCOME FROM CERTAIN SPACE AND OCEAN ACTIVITIES AND FOR COMMUNICATIONS INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3903
Hearing	05/23/01	66 FR 12916
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Edward R. Barret
Phone: 202 874-1490

RIN: 1545–AW50

2612. GUARANTEED INVESTMENT CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	08/27/99	64 FR 46876
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rose M. Weber
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AX22

2613. DEFINITION OF PRIVATE ACTIVITY BOND—REFUNDING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/30/94	59 FR 67658
NPRM Comment Period End	05/01/95	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bruce M. Serchuk
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AX55

2614. STOCK TRANSFER RULES: CARRYOVER OF EARNINGS AND TAXES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	11/15/00	65 FR 69138
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bethany Ingwalson
Phone: 202 622-3850

RIN: 1545–AX65

2615. DEFINITION OF PASSIVE FOREIGN INVESTMENT COMPANY UNDER SECTION 1297

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc Korab
Phone: 202 622-3840

RIN: 1545–AX78

2616. HIPAA PORTABILITY

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 54

Timetable:

Action	Date	FR Cite
NPRM	04/08/97	62 FR 16977
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Russell Weinheimer
Phone: 202 622-6080

RIN: 1545–AX84

2617. CAPITALIZATION OF INTEREST AND CARRYING CHARGES PROPERLY ALLOCABLE TO STRADDLES

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4746
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary Truchly
Phone: 202 622-3960

RIN: 1545–AX92

2618. HEDGING TRANSACTIONS UNDER SECTION 1221(A)(7) AND SECTION 446

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 602

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4738
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth Handler
Phone: 202 622-3940

RIN: 1545–AY02

2619. GUIDANCE UNDER SECTION 894

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	02/27/01	66 FR 12445
Hearing	06/26/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Karen Rennie Quarrie
Phone: 202 622-3880

RIN: 1545–AY13

2620. ACTIVE CONDUCT OF AN INSURANCE BUSINESS UNDER PFIC RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Mark R. Pollard
Phone: 202 622-3860

RIN: 1545–AY20

2621. DISALLOWANCE OF DEDUCTIONS AND CREDITS FOR FAILURE TO FILE TIMELY RETURN

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/29/02	67 FR 4217
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Nina E. Chowhdry
Phone: 202 622-3880

RIN: 1545–AY26

2622. SECTION 367(D) REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: David A. Juster
Phone: 202 622-3850

RIN: 1545–AY44

2623. SPECIAL RULES FOR S CORPORATIONS UNDER SECTION 301.7701(B)-7

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301; 26 CFR 601

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Eliana D. Dolgoff
Phone: 202 622-3860

RIN: 1545–AY41

2624. REQUIRED DISTRIBUTIONS FROM RETIREMENT PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1; 26 CFR 54

Timetable:

Action	Date	FR Cite
NPRM	01/17/01	66 FR 3928
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cathy A. Vohs
Phone: 202 622-6090

RIN: 1545–AY70

2625. OBLIGATION OF STATES AND POLITICAL SUBDIVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/18/01	66 FR 4754
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Rose M. Weber
Phone: 202 622-3980
Fax: 202 622-4437

RIN: 1545–AY71

2626. TREATMENT OF COMMUNITY INCOME FOR CERTAIN INDIVIDUALS NOT FILING JOINT RETURNS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	01/22/02	67 FR 2841
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robin M. Tuczak
Phone: 202 622-4940

RIN: 1545–AY83

2627. SECTION 1441 PROPOSED REGULATION (PROMULGATES NOTICES 2000-4 AND 2000-11)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Laurie M. Hatten-Boyd
Phone: 202 622-3840

RIN: 1545–AY92

2628. PROPOSED REGULATION FOR PROCUREMENT/PURCHASING CARD REPORTING

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Donna J. Welch
Phone: 202 622-4910
Fax: 202 927-9248

RIN: 1545–BA17

Department of the Treasury (TREAS)
Internal Revenue Service (IRS)

2629. EFFECT OF THE FAMILY AND MEDICAL LEAVE ACT ON THE OPERATION OF CAFETERIA PLANS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8966	10/17/01	66 FR 52675

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Shoshanna Chaiton
Phone: 202 622-6080

RIN: 1545–AT47

2630. AVERAGING OF FARM INCOME

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8972	01/08/02	67 FR 817

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Amy J. Pfalzgraf
Phone: 202 622-7900

RIN: 1545–AW05

2631. ALLOCATION OF LOSS ON DISPOSITION OF PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8973	12/28/01	66 FR 67081

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: David A. Juster
Phone: 202 622-3850

RIN: 1545–AW09

2632. PAYMENT OF TAXES BY CREDIT CARD AND DEBIT CARD

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8969	12/14/01	66 FR 740

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brinton T. Warren
Phone: 202 622-4940

RIN: 1545–AW37

2633. CONVERSION TO THE EURO

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8927	01/11/01	66 FR 8927

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John W. Rogers
Phone: 202 622-3870

RIN: 1545–AW43

2634. NOTICE AND OPPORTUNITY FOR HEARING BEFORE LEVY

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8980	01/18/02	67 FR 2549

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerome D. Sekula
Phone: 202 622-3610

RIN: 1545–AW90

2635. NOTICE AND OPPORTUNITY FOR HEARING UPON FILING OF NOTICE OF LIEN

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8979	01/18/02	67 FR 2558

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jerome D. Sekula
Phone: 202 622-3610

RIN: 1545–AW91

2636. DOLLAR-VALUE LIFO REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8976	01/09/02	67 FR 1075

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leo F. Nolan
Phone: 202 622-4970

RIN: 1545–AX20

2637. CHECK THE BOX REGULATIONS—AMENDMENT

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8970	12/17/01	66 FR 64911

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beverly Katz
Phone: 202 622-3050

RIN: 1545–AY16

2638. DISQUALIFIED PERSONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8982	02/01/02	67 FR 4907

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brendan O'Hara
Phone: 202 622-7900

RIN: 1545–AY19

2639. LIABILITIES ASSUMED IN CERTAIN CORPORATE TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8964	09/27/01	66 FR 49278

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Douglas C. Bates
Phone: 202 622-7550

RIN: 1545–AY55

2640. EXCISE TAXES ON EXCESS BENEFIT TRANSACTIONS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 53; 26 CFR 301; 26 CFR 602

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8978	01/23/02	67 FR 3076

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: None

Agency Contact: Phyllis D. Haney
Phone: 202 622-4290

RIN: 1545–AY65

2641. DISCLOSURE OF RETURNS AND RETURN INFORMATION BY OTHER AGENCIES (TEMPORARY)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8968	12/13/01	66 FR 64351

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Julie C. Schwartz
Phone: 202 622-4570

RIN: 1545–AY78

2642. AMENDMENT TO THE DEFINITION OF PRIVATE BUSINESS USE APPLICABLE TO TAX-EXEMPT BONDS ISSUED BY STATE AND LOCAL GOVERNMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
Final Action Completed by TD 8967	11/20/01	66 FR 58061

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Michael P. Brewer
Phone: 202 622-3980

RIN: 1545–AY88

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2643. CERTAIN PROPERTY TRANSFER TO REGULATED INVESTMENT COMPANIES (RICS) AND REAL ESTATE INVESTMENT TRUSTS (REITS)

Priority: Substantive, Nonsignificant

CFR Citation: 26 CFR 1

Completed:

Reason	Date	FR Cite
NPRM	01/02/02	67 FR 48
Final Action Completed by TD 8975	01/02/02	67 FR 8

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lisa A. Fuller
Phone: 202 622-7750

RIN: 1545–BA21

2644. • WITHHOLDING AT TREATY RATE EXCEPTION FOR TAXPAYER IDENTIFYING NUMBER

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 1441

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation will address the taxpayer identifying rule where taxpayer claims treaty rate and is entitled to an immediate payment.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8977	01/17/02	67 FR 2327

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-159079-01

Drafting attorney: Johathan A. Sambur (202) 622-3840

Reviewing attorney: Phyllis E. Marcus (202) 622-3840

Treasury attorney: Patrick Brown (202) 622-1754

CC:INTL

Agency Contact: Jonathan A. Sambur, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington
Phone: 202 622-3840

RIN: 1545–BA39

2645. • DISALLOWANCE OF DEDUCTIONS AND CREDITS FOR FAILURE TO FILE TIMELY RETURN

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 882(c); 26 USC 874; 26 USC 7805

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This document reviews and amends regulations concerning disallowance of deductions and credits claimed by foreign corporations and nonresident aliens for failure to timely file a U.S. income tax return in accordance with IRC sections 882(c) and 874(a).

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8981	01/29/02	67 FR 4173

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-107100-00

Drafting attorney: Nina E. Chowdhry (202) 622-3880

Reviewing attorney: W. Edward Williams (202) 622-3880

Treasury attorney: Dirk Suringa (202) 622-1779

CC:INTL

Agency Contact: Nina E. Chowhdry, Attorney-Advisor, Department of the Treasury, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224
Phone: 202 622-3880

RIN: 1545–BA40

2646. • SPECIAL FORM 720 FILING RULE FOR ELIGIBLE AIR CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6071

CFR Citation: 26 CFR 40.6071(a)-3

Legal Deadline: None

Abstract: These regulations relate to the time for filing the quarterly return required under section 40.6011(a)-1(a)(2) for the third calendar quarter 2001 in the case of eligible air carriers reporting air transportation excise taxes.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8983	02/06/02	67 FR 5471

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-162288-01

Drafting attorney: Susan Athy (202) 622-3130

Reviewing attorney: Ruth Hoffman (202) 622-3130

Treasury attorney: John Parcell (202) 622-2578

CC:P&SI

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RIN: 1545–BA42

2647. • PROPOSED AMENDMENT TO SECTION 6050I CROSS-REFERENCING SECTION 5331 OF TITLE 31

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 6050I

CFR Citation: 26 CFR 1

Legal Deadline: None

Abstract: This regulation amends the regulations to cross-reference section 5331 of title 31.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8974	12/31/01	66 FR 67687

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-166992-01

Drafting attorney: Tiffany P. Smith (202) 622-4910

Reviewing attorney: Pamela W. Fuller (202) 622-4910

Treasury attorney: Richard Carro (202) 622-1146

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RIN: 1545–BA48

2648. • NEW MARKETS TAX CREDIT (TEMP)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 450

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The temporary regulations will provide guidance to taxpayers claiming the new markets tax credit under section 45D.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8971	12/26/01	66 FR 66307

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-119436-01

Drafting attorney: Paul F. Handleman (202) 622-3040

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Treasury attorney: Steven Watson (202) 622-1322

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RIN: 1545–BA49

2649. • LOSS LIMITATION RULES (TEMP)

Priority: Substantive, Nonsignificant

Legal Authority: 26 USC 7805; 26 USC 337(d)

CFR Citation: 26 CFR 1; 26 CFR 602

Legal Deadline: None

Abstract: The regulations provide guidance on the treatment of certain losses recognized on sales of subsidiary stock by members of a consolidated group under section 337(d) and section 1502 of the Internal Revenue Code.

Timetable:

Action	Date	FR Cite
Final Action Completed by TD 8984	03/12/02	67 FR 11034

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: REG-102740-02

Drafting attorney: Lola L. Johnson (202) 622-7550

Reviewing attorney: Sean P. Duffley (202) 622-7770

CC:CORP

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RIN: 1545–BA51

BILLING CODE 4830–01–S

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Prerule Stage

2650. CAPITAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1835; 12 USC 1848; 12 USC 4808

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: OTS has underway a number of regulatory amendments to its capital standards for savings associations. These amendments implement section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994 (CDRIA). CDRIA requires the Federal banking agencies to make their capital rules and other rules more uniform.

The agencies jointly issued a final rule that treats recourse obligations and direct credit substitutes consistently. The rule also adds new standards for the treatment of residual interests, including a concentration limit for credit-enhancing interest only strips. In addition, the rule varies the risk-based capital requirement for positions in securitized asset transactions according to relative risk exposure.

The agencies issued an advance notice of proposed rulemaking developing a simplified capital adequacy framework for small, non-complex institutions. Based on this ANPRM, the agencies plan to issue a proposed rule modifying the capital adequacy framework for domestic institutions that are not subject to the Basel Accord. Also, the agencies may issue an ANPRM or proposed rule addressing the treatment of assets under management in asset securitizations. Finally, the agencies will shortly issue a final rule on risk-based capital standards for claims on securities firms.

Timetable:

Claims on Securities Firms
NPRM 12/06/00 (65 FR 76180)
NPRM Comment Period End 01/22/01
Final Rule 04/09/02 (67 FR 16971)

Managed Assets
ANPRM 09/00/02

Modified Domestic Capital Framework (Simplified Capital Adequacy Framework for Small, Non-Complex Institutions)
ANPRM 11/03/00 (65 FR 66193)
ANPRM Comment Period End 02/01/01
NPRM 12/00/02

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Recourse Arrangements and Direct Credit Substitutes/Residuals in Securitizations
Recourse ANPRM 05/25/94 (59 FR 27116)
Recourse NPRM 05/25/94 (59 FR 27116)
Recourse NPRM 11/05/97 (62 FR 59944)
Recourse NPRM Correction 11/20/97 (62 FR 62234)
Recourse NPRM 03/08/00 (65 FR 12320)
Recourse NPRM Comment Period End 06/07/00
Residuals NPRM 09/27/00 (65 FR 57993)
Residuals NPRM Comment Period End 12/26/00
Recourse/Residuals Final Rule 11/29/01 (66 FR 59614)

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael D. Solomon, Senior Program Manager for Capital Policy, Supervision Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
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RIN: 1550–AB11

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Proposed Rule Stage

2651. MUTUAL SAVINGS ASSOCIATIONS, MUTUAL HOLDING COMPANY REORGANIZATIONS, AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 15 USC 78n; 15 USC 78w; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 2901; 15 USC 78c; 15 USC 78l; 15 USC 78m

CFR Citation: 12 CFR 563b; 12 CFR 575

Legal Deadline: None

Abstract: OTS issued an interim final rule: 1) amending its regulations governing repurchases of stock of insured savings associations following a conversion; 2) implementing changes regarding dividend waivers for mutual holding companies; and 3) incorporating changes resulting from the Gramm-Leach-Bliley Act.

OTS also issued a notice of proposed rulemaking that would implement a comprehensive strategy governing mutual institutions, mutual holding company reorganizations, and the mutual to stock conversion process.

OTS will publish a revised NPRM seeking comments on developing issues since the original NPRM.

Timetable:

Action	Date	FR Cite
NPRM	07/12/00	65 FR 43092
Interim Final Rule	07/12/00	65 FR 43088
NPRM Comment Period End	11/09/00	65 FR 60123
Interim Final Rule Comment Period End	11/09/00	65 FR 60095
Second NPRM	04/09/02	67 FR 17228
Second NPRM Comment Period End	05/09/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mary Jo Johnson, Project Manager, Supervision Policy, Department of the Treasury, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552
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RIN: 1550–AB24

2652. FAIR CREDIT REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; 12 USC 1828; ...

CFR Citation: 12 CFR 571

Legal Deadline: Final, Statutory, May 12, 2000.

Abstract: OTS and the other Federal banking agencies are developing regulations implementing provisions of the Fair Credit Reporting Act. Subject to certain conditions, these regulations would permit institutions to share "other information" with affiliates without becoming consumer reporting agencies (affiliate sharing). The proposed regulations would specify that institutions must provide notice and an opportunity to opt-out to consumers before sharing "other information" with their affiliates.

The agencies have analyzed the comments received and are now in the process of developing a revised notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
NPRM Update	03/27/01	66 FR 16624
Second NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1550–AB33

2653. RECORDKEEPING AND CONFIRMATION REQUIREMENTS FOR SECURITIES TRANSACTIONS; FIDUCIARY POWERS OF SAVINGS ASSOCIATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462a; 12 USC 1463; 12 USC 1464

CFR Citation: 12 CFR 550; 12 CFR 551

Legal Deadline: None

Abstract: OTS plans to issue a proposed rule adopting new recordkeeping and confirmation requirements for securities transactions. This rule would afford thrift customers the same protections and disclosures as bank customers; ensure that OTS examiners will be able to evaluate a thrift's compliance with securities laws and to assess whether thrifts effect securities transactions safely and soundly; and provide savings associations with formal guidance for effecting securities transactions. OTS also will amend its regulations governing the fiduciary powers of Federal savings associations to codify recent OTS interpretive letters and make other changes.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 1550–AB49

2654. ALTERNATIVE MORTGAGE TRANSACTION PARITY ACT; PREEMPTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; ...

CFR Citation: 12 CFR 560

Legal Deadline: None

Abstract: OTS is reviewing its lending regulations affecting residential mortgage lending, including rules implementing the Alternative Mortgage Transaction Parity Act.

Timetable:

Action	Date	FR Cite
NPRM	04/25/02	67 FR 20468
NPRM Comment Period End	06/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

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RIN: 1550–AB51

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Final Rule Stage

2655. CAPITAL: QUALIFYING MORTGAGE LOAN, INTEREST RATE RISK COMPONENT, AND MISCELLANEOUS CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1462; 12 USC 1462a; 12 USC 1463; 12 USC 1464; 12 USC 1467a; ...

CFR Citation: 12 CFR 567

Legal Deadline: None

Abstract: OTS will issue a rule finalizing its NPRM making miscellaneous changes to its capital regulations. The changes would eliminate unnecessary capital burdens and align OTS capital regulations more closely to those of the other banking agencies.

Timetable:

Action	Date	FR Cite
NPRM	03/15/01	66 FR 15049
NPRM Comment Period End	05/14/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 1550–AB45

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Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Long-Term Actions

2656. DIRECTORS AND OFFICERS

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 545; 12 CFR 563

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robyn Dennis
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Sally Watts
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David A. Permut
Phone: 202 906-7505

RIN: 1550–AB19

2657. COMMUNITY REINVESTMENT ACT

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 563e

Timetable:

Action	Date	FR Cite
Joint ANPRM	07/19/01	66 FR 37602
Joint ANPRM Comment Period End	10/17/01	
Joint NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Richard Bennett
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RIN: 1550–AB48

Department of the Treasury (TREAS)
Office of Thrift Supervision (OTS)

Completed Actions

2658. LENDING AND INVESTMENT

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 559; 12 CFR 560

Completed:

Reason	Date	FR Cite
NPRM	11/01/01	66 FR 55131
Final Rule	12/21/01	66 FR 65822

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: William J. Magrini
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RIN: 1550–AB37

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Monday,
May 13, 2002

Part XVI

Department of Veterans Affairs

Semiannual Regulatory Agenda

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DEPARTMENT OF VETERANS AFFAIRS (VA)

DEPARTMENT OF VETERANS AFFAIRS

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Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Department of Veterans Affairs.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Department of Veterans Affairs (VA) will have under development or review during the 12-month period beginning April 2002. The purpose in publishing the Department's regulatory agenda is to allow all interested persons the opportunity to participate in VA's regulatory planning.

ADDRESSES: Interested persons are invited to comment on the entries listed in the agenda by contacting the individual agency contact listed for each entry or by writing to: Director, Office of Regulations Management (02D), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420.

FOR FURTHER INFORMATION CONTACT: Gloria Armstrong at (202) 273-8605.

SUPPLEMENTARY INFORMATION: This document is issued pursuant to Executive Order 12866 "Regulatory Planning and Review" (and implementing guidance) and the Regulatory Flexibility Act, which require that executive agencies semiannually publish in the **Federal Register** an agenda of regulations that VA will have under development or review.

Roland Halstead,

Acting Director, Office of Regulatory Law.

Department of Veterans Affairs—Prerule Stage

Sequence Number	Title	Regulation Identification Number
2659	Loan Guaranty: Availability of Vendee Financing for VA-Acquired Properties	2900-AL16

Department of Veterans Affairs—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2660	Waivers	2900-AK29
2661	Enrollment Priority Category Status Changes	2900-AK38
2662	Loan Guaranty: Multifamily Transitional Housing for Homeless Veterans Program	2900-AK58
2663	Enrollment—Provision of Hospital and Outpatient Care to Veterans	2900-AK92
2664	Payment for Non-VA Medical Services and Inpatient Care Provided at Non-VA Facilities	2900-AK94
2665	Reasonable Charges for Medical Care or Services	2900-AL06
2666	Fisher Houses and Other Temporary Lodging	2900-AL13
2667	Schedule for Rating Disabilities—The Orthopedic System	2900-AE91
2668	Schedule for Rating Disabilities—Neurological Conditions and Convulsive Disorders	2900-AF23
2669	Schedule for Rating Disabilities—Digestive System	2900-AF24
2670	Evidence on File at Date of Death	2900-AH42
2671	Schedule for Rating Disability: The Spine	2900-AJ60
2672	Education Provisions of the Veterans Programs Enhancement Act of 1998	2900-AJ68
2673	Definition of Psychosis for Certain VA Purposes	2900-AK21
2674	National Service Life Insurance—Plain English Revision	2900-AK43
2675	Additional Disability or Death Due to Hospital Care, Medical or Surgical Treatment, Examination, Training and Rehabilitation Services, or Compensated Work Therapy Program	2900-AK77
2676	Veterans and Dependents Education: Topping Up Tuition Assistance and Payment for Licensing and Certification Tests	2900-AK80
2677	Veterans Education: Additional Opportunity To Participate in the Montgomery GI Bill and Other Miscellaneous Issues	2900-AK81
2678	Schedule for Rating Disabilities: Evaluation of Tinnitus	2900-AK86
2679	Time Limit for Request for De Novo Review	2900-AK97
2680	Accelerated Payments Under the Montgomery GI Bill—Active Duty Program	2900-AL22
2681	Amendments to Training and Rehabilitation Programs	2900-AL24
2682	Universal Product Numbers (UPNs)	2900-AJ45
2683	Department of Veterans Affairs Acquisition Regulations Plain Language Rewrite	2900-AK78
2684	Board of Veterans' Appeals: Rules of Practice—Appeal Withdrawal	2900-AK71
2685	Board of Veterans' Appeals: Speeding Appellate Review for Aging Veterans	2900-AL08
2686	State Cemetery Grants: Aid to States for Establishment, Expansion, and Improvement of Veterans Cemeteries	2900-AH46
2687	Eligibility for Burial of Dependent Adult Children of Eligible Veterans; and Eligibility for Burial of Certain Filipino Veterans	2900-AI95
2688	Standards for Collection, Compromise, Suspension, or Termination of Collection Effort; Regional Office Committee on Waiver and Compromises	2900-AK10

VA

Department of Veterans Affairs—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2689	Audits of States, Local Governments, and Nonprofit Organizations; Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	2900-AJ62

Department of Veterans Affairs—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2690	Provision of Drugs and Medicines Prescribed by Non-VA Physicians	2900-AJ24
2691	Advanced Health Care Planning	2900-AJ28
2692	Provision of Drugs and Medicines to Certain Veterans in State Nursing Homes	2900-AJ34
2693	Grants to States for Construction and Acquisition of State Home Facilities	2900-AJ43
2694	Payment or Reimbursement for Emergency Treatment Furnished at Non-VA Facilities	2900-AK08
2695	Medical Benefits Package; Copayments for Extended Care Services	2900-AK32
2696	Reasonable Charges for Medical Care or Services	2900-AK39
2697	Copayments for Inpatient Hospital Care and Outpatient Medical Care	2900-AK50
2698	Reasonable Charges for Medical Care or Services	2900-AK73
2699	Health Care for Children Born With One or More Covered Birth Defects to Vietnam Veterans	2900-AK88
2700	Civilian Health and Medical Program of Department of Veterans Affairs (CHAMPVA)	2900-AK89
2701	Reasonable Charges for Medical Care or Services	2900-AL05
2702	Filipino Veterans Eligible for Hospital Care, Nursing Home Care, and Medical Services	2900-AL18
2703	Schedule for Rating Disabilities—The Skin	2900-AF00
2704	Revised Definition of Net Value and Revised Criteria for Pre-Foreclosure Debt Waivers	2900-AG20
2705	Total Disability Evaluations Based on Inability of the Individual To Engage in Substantially Gainful Employment	2900-AH21
2706	Vision	2900-AH43
2707	Intervertebral Disc Syndrome	2900-AI22
2708	Ankylosis and Limitation of Motion of Digits of the Hands	2900-AI44
2709	Exclusions From Income	2900-AJ52
2710	Accelerated Benefits Option for Servicemembers' Group Life Insurance and Veterans' Group Life Insurance	2900-AJ80
2711	State Department as Agent of Department of Veterans Affairs	2900-AK03
2712	Finality of Decisions	2900-AK18
2713	Renouncement of Benefits	2900-AK23
2714	Independent Medical Opinions	2900-AK31
2715	Evidence From Foreign Countries	2900-AK37
2716	Veterans Vocational Rehabilitation and Education: Title Change	2900-AK46
2717	Filipino Veterans Benefit Improvements	2900-AK65
2718	Monetary Allowances for Certain Children of Vietnam Veterans; Identification of Covered Birth Defects	2900-AK67
2719	Loan Guaranty: Pre-Purchase Counseling Requirements	2900-AK76
2720	Vocational Training for Certain Children of Vietnam Veterans—Covered Birth Defects and Spina Bifida	2900-AK90
2721	Extension of the Presumptive Period for Compensation for Gulf War Veterans' Undiagnosed Illnesses	2900-AK98
2722	Increase in Rates Payable Under the Educational Assistance Test Program	2900-AL02
2723	Plain Language (Reader Focused Writing) Initiative; National Service Life Insurance (NSLI)	2900-AL09
2724	Adjudication, Fiduciary Activities	2900-AL10
2725	Exceptions to Definition of Date of Receipt Based on Special or Unforeseen Circumstances	2900-AL12
2726	Increase in Rates Payable Under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance Program	2900-AL17
2727	Cross Reference Change in Forms To Be Furnished	2900-AL19
2728	Service Connection by Presumption of Aggravation of a Chronic Preexisting Disease	2900-AL20
2729	Duty Periods; Inactive Duty for Training	2900-AL21
2730	Loan Guaranty: Implementation of Public Law 107-103	2900-AL23
2731	Department of Veterans Affairs Acquisition Regulation—Simplified Acquisition Procedures for Health Care Resources	2900-AI71
2732	Sealed Bidding and Competitive Proposals	2900-AI99
2733	Construction and Architect-Engineer Contracts	2900-AJ56
2734	Veterans Affairs Acquisition Regulation: Revisions to VA Acquisition Regulations Parts 801 Through 805	2900-AK75
2735	Board of Veterans' Appeals—Rules of Practice—Attorney Fee Matters	2900-AI98
2736	The Board of Veterans' Appeals; Rules of Practice—Motion for Review of Decisions on Grounds of Clear and Unmistakable Error: Content of Record; Advancement on the Docket	2900-AJ85

VA

Department of Veterans Affairs—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2737	Rules of Practice: Medical Opinions From the Veterans Health Administration	2900-AK52
2738	Appeals Regulations: Title for Members of the Board of Veterans Appeals	2900-AK62
2739	Board of Veterans Appeals: Rules of Practice—Effect of Procedural Defects in Motions for Revision of Decisions on Grounds of Clear and Unmistakable Error	2900-AK74
2740	Board of Veterans' Appeals: Rules of Practice—Attorney Fee Matters; Notice of Disagreement Matters	2900-AL25
2741	Interment or Memorialization in VA National Cemeteries and Certain State Cemeteries—Federal or State Capital Crime	2900-AJ77
2742	Nondiscrimination on the Basis of Race, Color, or National Origin; Handicap; and Age in Programs and Activities Receiving Federal Assistance	2900-AK13
2743	Release of Information From Department of Veterans Affairs Records	2900-AH98
2744	Recognition of Organizations and Accreditation of Representatives	2900-AI93

Department of Veterans Affairs—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2745	Protection of Human Subjects	2900-AJ08
2746	Claims Based on Aggravation of Nonservice-Connected Disability	2900-AI42
2747	Governmentwide Debarment and Suspension (Nonprocurement) and Requirement for Drug-Free Workplace (Assistance)	2900-AK16
2748	Recoupment of Nondisability Severance Pay From VA Compensation	2900-AK95
2749	Appeals Regulations; Rules of Practice	2900-AE78
2750	Operation of Child Care Centers at VA Facilities	2900-AD48

Department of Veterans Affairs—Completed Actions

Sequence Number	Title	Regulation Identification Number
2751	Per Diem for Adult Day Health Care of Veterans in State Homes	2900-AJ74
2752	Policy Regarding Participation in National Practitioner Data Bank	2900-AJ76
2753	Compensated Work Therapy/Transitional Residences Program	2900-AK01
2754	Copayments for Medications	2900-AK85
2755	Amendments to Training and Rehabilitation Programs	2900-AG00
2756	Veterans Education: Reporting and Recordkeeping Requirements at Flight Schools	2900-AJ23
2757	Loan Guaranty: Advertising and Solicitation Disclosure Requirements	2900-AJ86
2758	Post-Traumatic Stress Disorder Claims Based on Personal Assault	2900-AK00
2759	Diseases Specific to Radiation-Exposed Veterans	2900-AK64
2760	Special Monthly Compensation for Women Veterans Who Lose a Breast as a Result of a Service-Connected Disability	2900-AK66
2761	Duty To Assist	2900-AK69
2762	Exclusion From Countable Income of Expenses Paid for Veteran's Last Illness Subsequent to Veteran's Death but Prior to Date of Death Pension Entitlement	2900-AK84
2763	Claims Based on Exposure to Ionizing Radiation	2900-AK87
2764	Certification for Eligibility for Adaptive Equipment for Automobiles or Other Conveyances	2900-AK96
2765	Increase in Rates Payable Under the Montgomery GI Bill—Selected Reserve	2900-AK99
2766	Increase in Rates Payable Under the Dependents' Educational Assistance Program	2900-AL00
2767	Increase in Rates Payable Under the Montgomery GI Bill—Active Duty	2900-AL01
2768	Notice of Appeal in Simultaneously Contested Claims	2900-AJ73
2769	Board of Veterans' Appeals: Obtaining Evidence and Curing Procedural Defects Without Remanding	2900-AK91
2770	Board of Veterans' Appeals Rules of Practice: Claim for Death Benefit by Survivor	2900-AL11
2771	Board of Veterans' Appeals—Title Change	2900-AL15
2772	Delegation of Authority—Decisionmaking Regarding Discrimination	2900-AJ63

VA

Department of Veterans Affairs—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2900-AG07	Rules of Practice; Hearings	03/06/2002	Withdrawn
2900-AG90	Rules of Practice: Medical Opinions; Appeal Processing and Submission of Additional Evidence	03/06/2002	Withdrawn
2900-AH45	Headstone and Marker Inscription Policy	03/06/2002	Withdrawn
2900-AJ19	Dependents Education: Eligibility and Entitlement Standards	02/27/2002	Withdrawn
2900-AJ20	Medical Care and Treatment for Which VA Will Not Seek Reimbursement	03/06/2002	Withdrawn
2900-AJ21	Clothing Allowance	02/27/2002	Withdrawn
2900-AJ48	Use of the Secretary's Authority as Provided by 38 U.S.C. 2402(6)	03/06/2002	Withdrawn
2900-AJ66	Delegations of Authority—Appeals Regulations and Rules of Practice	03/06/2002	Withdrawn
2900-AJ82	Evidence of Permanent and Total Disability	03/05/2002	Withdrawn
2900-AJ84	Schedule for Rating Disabilities: Global Assessment of Functioning Scale in the Evaluation of Mental Disorders	03/05/2002	Withdrawn
2900-AJ91	Loan Guaranty: Revision to VA Work Rules for Credit Scored Loans	12/18/2001	Withdrawn
2900-AJ92	Loan Guaranty: Credit Standards Revision	12/18/2001	Withdrawn
2900-AJ93	Benefit of the Doubt	03/05/2002	Withdrawn
2900-AJ95	Permanent Incapacity for Self-Support	12/31/2001	Withdrawn
2900-AJ96	Presumptive Service Connection for Hepatitis C Infection	04/30/2002	Withdrawn
2900-AK02	Minimum Active Duty Requirement	03/05/2002	Withdrawn
2900-AK05	Medication Prescribing Authority	04/03/2002	Withdrawn
2900-AK09	Commencement of the Period of Payment	03/05/2002	Withdrawn
2900-AK11	Service Connection and Chronic Disability	03/05/2002	Withdrawn
2900-AK17	Time Limits, Extensions, and Computation of Time Limits	03/05/2002	Withdrawn
2900-AK19	Delegation of Authority To Issue Decisions on Benefits Claims	03/05/2002	Withdrawn
2900-AK20	Individuals and Groups Considered To Have Performed Active Military, Naval, or Air Service	03/04/2002	Withdrawn
2900-AK22	Change of Law—Effect on Benefits	03/05/2002	Withdrawn
2900-AK24	Testimony in Support of Benefit Claims	03/05/2002	Withdrawn
2900-AK26	Acceptable Evidence of Marriage, Divorce, Birth, Age, Biological Relationship, Child's Relationship, and Death	03/05/2002	Withdrawn
2900-AK27	Acceptable Evidence of Void and Annulled Marriages	03/05/2002	Withdrawn
2900-AK33	Appeal Regulations, Rules of Practice: Use of Supplemental Statement of the Case	02/13/2002	Withdrawn
2900-AK35	Acceptable Evidence of Termination of Marital Relationship or Conduct	03/05/2002	Withdrawn
2900-AK49	Acceptable Evidence of Unexplained Absence for 7 Years	03/05/2002	Withdrawn
2900-AK59	Validity of Enlistments	03/05/2002	Withdrawn
2900-AK60	Computation of Service	03/05/2002	Withdrawn
2900-AK70	Acceptable Evidence of Change in Status or Number of Dependents	03/05/2002	Withdrawn
2900-AK82	Mandatory Disclosure of Social Security Number	03/05/2002	Withdrawn
2900-AK83	Presumption of Service Connection for Cirrhosis of the Liver in Former Prisoners of War	03/05/2002	Withdrawn
2900-AK93	Conditional Discharge	03/05/2002	Withdrawn
2900-AL03	Evidence Requirements for Service and Character of Discharge	03/05/2002	Withdrawn
2900-AL07	Veterans Education: Streamlining Approval of Courses	03/04/2002	Withdrawn

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Department of Veterans Affairs (VA) — **Prerule Stage**

VETERANS BENEFITS ADMINISTRATION

2659. • LOAN GUARANTY: AVAILABILITY OF VENDEE FINANCING FOR VA-ACQUIRED PROPERTIES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 36

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is requesting comments concerning whether VA should discontinue offering vendee (direct) loan financing on the sale of single-family residential real property VA acquires following the foreclosure of guaranteed and direct home loans made to veterans. VA wants to determine the impact that such action would have on real estate professionals, inventors, lenders, and the public.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Finneran, Assistant Director for Policy and Valuation (262), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL16

Department of Veterans Affairs (VA) — **Proposed Rule Stage**

VETERANS HEALTH ADMINISTRATION

2660. WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1722A; PL 106-117

CFR Citation: 38 CFR 17.105

Legal Deadline: None

Abstract: The purpose of this document is to provide regulations to formally establish the waiver process for veterans' copayments.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard, Senior Program Analyst (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK29

2661. ENROLLMENT PRIORITY CATEGORY STATUS CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; PL 106-117

CFR Citation: 38 CFR 17.36

Legal Deadline: None

Abstract: Pursuant to the Veteran's Health Care Eligibility Reform Act of 1996, VA implemented a national enrollment system to manage the delivery of VA hospital and outpatient care. Veterans are eligible to be enrolled based on the Secretary's determination concerning which of the seven priority categories of veterans to enroll. Section 112 of Public Law No. 106-117, the Veteran's Millennium Health Care and Benefits Act, amended the priority categories to include veterans awarded the Purple Heart in priority category three. Public Law No. 107-135, the Department of Veterans Affairs Health Care Programs Enhancement Act of 2001, requires the Secretary to amend Priority Group 7 and establish Priority Group 8. To be enrolled in Priority Group 7, a veteran's family income must be above a means test category 5 veteran, but below the family income criteria used by Housing and Urban Development for low-income housing. A veteran can be enrolled into Priority Group 8 if the veteran is required to complete a means test and the veteran's income and assets are above the Housing and Urban Development low-income criteria. Accordingly, we intend to change our medical care regulation at 38 CFR 17.35 to reflect these changes. We further propose to amend the regulations by removing "Chief Network Officer" wherever it appears and adding in its place "Assistant Deputy Under Secretary for Health." VA's disenrollment requirements set forth under 38 CFR 17.36(d)(4)(iii) to allow priority category 5 veterans enrolled in this category based on their annual income information to remain enrolled. Currently, under 38 CFR 17.36(d)(4)(iii), a veteran enrolled under paragraphs (d)(2) and (d)(3) will be disenrolled if a VA network or facility director, or the Chief Network Officer, determines that a veteran has been enrolled based on inclusion in priority category 5, the veteran was sent by mail a VA Form 10-10EZ, and the veteran failed to return the completed form to the address on the return envelope within 60 days from receipt of the form. We propose to continue their enrollment by changing their enrollment priority group to Priority Group 6 for conditions relating to exposure to Agent Orange, Ionizing Radiation, or Gulf War contaminants or to Priority Group 8.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roscoe G. Butler, Chief, Policy and Operations (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK38

VA — **Proposed Rule Stage**

2662. LOAN GUARANTY: MULTIFAMILY TRANSITIONAL HOUSING FOR HOMELESS VETERANS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 3772

CFR Citation: 38 CFR 17.1000 to 17.1020

Legal Deadline: None

Abstract: The Department of Veterans Affairs proposes to amend its medical regulations to add comprehensive regulations to implement the pilot program for guaranteed loans for multifamily transitional housing projects for homeless veterans.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Theresa Hayes, Program Manager (116E), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8445

RIN: 2900–AK58

2663. ENROLLMENT—PROVISION OF HOSPITAL AND OUTPATIENT CARE TO VETERANS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1705; PL 104-262

CFR Citation: 38 CFR 17

Legal Deadline: None

Abstract: VA has established a national enrollment system to manage the delivery of health care services. Veterans are eligible to be enrolled based on seven categories of priority. This document announces that VA will enroll all seven priority categories of veterans for the period October 1, 2001 through September 30, 2002.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Amy Hertz, Program Analyst, Office of Policy and Planning (105), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8412

RIN: 2900–AK92

2664. PAYMENT FOR NON-VA MEDICAL SERVICES AND INPATIENT CARE PROVIDED AT NON-VA FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 17

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs (VA) medical regulations to establish a payment methodology for inpatient care and outpatient medical services provided to eligible VA beneficiaries at non-VA facilities. It is proposed that when there is an amount already calculated under the Medicare Payment Systems for services, VA would pay the lesser of the actual billed charge, an amount negotiated with the provider or the provider's agent, or the calculated amount. It appears that the adoption of the proposal would help ensure that amounts paid for these services would better reflect the resource inputs used to furnish a service and better reflect the true value of services. Further, it is proposed that the regulations would continue to require that VA payment constitute payment in full. In our view, this is required by statute.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rex Gilmore, Health Administration Service (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8307

RIN: 2900–AK94

2665. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to veterans for nonservice-connected disabilities. This document amends the regulations to revise the charge structure and update other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, VHA Revenue Office (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8210
Fax: 202 273-4897

Related RIN: Related To 2900-AJ30, Related To 2900-AK39, Related To 2900-AK73, Related To 2900-AL05

RIN: 2900–AL06

2666. • FISHER HOUSES AND OTHER TEMPORARY LODGING

Priority: Other Significant

Legal Authority: PL 106-414, sec 221

CFR Citation: 38 CFR 60 (New)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to establish requirements regarding the use of Fisher Houses and other temporary lodging by veterans receiving VA medical care or Compensation and Pension (C&P) examinations and by family members or other persons accompanying veterans to provide the equivalent of familial support. This is necessary to implement provisions of the Veterans Benefits and Health Care Improvement Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	04/30/02	67 FR 21191
NPRM Comment Period End	07/01/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL13

VETERANS BENEFITS ADMINISTRATION

2667. SCHEDULE FOR RATING DISABILITIES—THE ORTHOPEDIC SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71(a)

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the orthopedic system.

Timetable:

Action	Date	FR Cite
ANPRM	12/28/90	55 FR 53315
ANPRM Comment Period End	02/26/91	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AE91

2668. SCHEDULE FOR RATING DISABILITIES—NEUROLOGICAL CONDITIONS AND CONVULSIVE DISORDERS

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.120; 38 CFR 4.121; 38 CFR 4.122; 38 CFR 4.123; 38 CFR 4.124; 38 CFR 4.124a

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the neurological system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20169
ANPRM Comment Period End	07/01/91	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AF23

2669. SCHEDULE FOR RATING DISABILITIES—DIGESTIVE SYSTEM

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.114

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate disabilities of the digestive system.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20168
ANPRM Comment Period End	07/01/91	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AF24

2670. EVIDENCE ON FILE AT DATE OF DEATH

Priority: Other Significant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.1000

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its adjudication regulations dealing with accrued benefits, those benefits to which an individual was entitled under existing ratings or decisions, or those based on "evidence in the file at date of death" which were due and unpaid at the time the individual died. "Evidence in the file at date of death" would be interpreted as evidence in VA's possession on or before the date of the beneficiary's death, even if such evidence was not physically located in VA claims folder on or before the date of death. Further, "evidence necessary to complete the application" for accrued benefits would be interpreted as information necessary to establish that the claimant is with the category of eligible persons and that circumstances exist which make the claimant the specific person entitled to the accrued benefits. These amendments reflect our interpretation of the governing statute.

Timetable:

Action	Date	FR Cite
NPRM	03/04/02	67 FR 9638
NPRM Comment Period End	05/03/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AH42

2671. SCHEDULE FOR RATING DISABILITY: THE SPINE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71a

Legal Deadline: None

Abstract: This amendment will contain additions, deletions, and revisions of terminology pertaining to spinal disabilities based on a systematic review of the medical criteria used to evaluate disabilities of the spine.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AJ60

2672. EDUCATION PROVISIONS OF THE VETERANS PROGRAMS ENHANCEMENT ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 16136; 38 USC 3034; 38 USC 3241; 38 USC 3485; 38 USC 3537; 38 USC 3677; 38 USC 3684; 38 USC 5101

CFR Citation: 38 CFR 21.4145; 38 CFR 21.4200; 38 CFR 21.4206; 38 CFR 21.4262

Legal Deadline: None

Abstract: This rule will bring VA's educational assistance regulations into agreement with the Veterans Program Enhancement Act of 1998. This will include revising the calculation of the reporting fee paid to educational institutions; making advance payments to work-study students optional rather than mandatory; and revising the approval criteria for on-job training programs offered by the Federal Government or by State or local governments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW shington, DC 20420
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RIN: 2900–AJ68

2673. DEFINITION OF PSYCHOSIS FOR CERTAIN VA PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.384

Legal Deadline: None

Abstract: This document proposes to amend the Department of Veterans Affairs adjudication regulations to define the term "psychosis." The term is used but not defined in certain statutes that provide presumptive service connection for compensation or health care purposes.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AK21

2674. NATIONAL SERVICE LIFE INSURANCE—PLAIN ENGLISH REVISION

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 38 USC 1901 to 1929; 38 USC 1981 to 1988

CFR Citation: 38 CFR 8.0; 38 CFR 8.1

Legal Deadline: None

Abstract: This document proposes to amend 38 CFR 8.0 and 8.1 by revising the text into a different format to promote better communication to policyholders and program administrators. This amendment is written in conjunction with VA's plain English (Reader Focused Writing) initiative.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George Poole, Chief, Program Administration and Oversight Staff (Insurance Service), Department of Veterans Affairs, Veterans Benefits Administration, P.O. Box 8079, Philadelphia, PA 19101
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RIN: 2900–AK43

2675. ADDITIONAL DISABILITY OR DEATH DUE TO HOSPITAL CARE, MEDICAL OR SURGICAL TREATMENT, EXAMINATION, TRAINING AND REHABILITATION SERVICES, OR COMPENSATED WORK THERAPY PROGRAM

Priority: Other Significant

Legal Authority: 38 USC 1151

CFR Citation: 38 CFR 3.358; 38 CFR 3.800

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend its adjudication regulations concerning awards of compensation or dependency and indemnity compensation for additional disability or death caused by VA hospital care, medical or surgical treatment, examination, training and rehabilitation services, or compensated work therapy (CWT) program. Under the proposed amendment, benefits will be payable for additional disability or death caused by hospital care, medical or surgical treatment, or examination only if VA is at fault or "an event not reasonably foreseeable" proximately caused the disability or

death. Benefits will also be payable for additional disability or death proximately caused by VA's provision of training and rehabilitation services or CWT program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff, Compensation and Pension Service (211A), Department of Veterans Affairs, Veterans Benefit Administration, 575 N Pennsylvania Street, Indianapolis, IN 46204
Phone: 317 226-5209

RIN: 2900–AK77

2676. VETERANS AND DEPENDENTS EDUCATION: TOPPING UP TUITION ASSISTANCE AND PAYMENT FOR LICENSING AND CERTIFICATION TESTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3014; 38 USC 3015; 38 USC 3032; 38 USC 3232; 38 USC 3452; 38 USC 3482; 38 USC 3501

CFR Citation: 38 CFR 21.4008 to 21.4009; 38 CFR 21.4146; 38 CFR 21.4150 to 21.4152; 38 CFR 21.4200; 38 CFR 21.4206; 38 CFR 21.4209 to 21.4212; 38 CFR 21.4216; 38 CFR 21.4230; 38 CFR 21.4234

Legal Deadline: None

Abstract: The Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 contains a provision that permits a service member to receive Montgomery GI Bill—Active Duty benefits for the difference between the service member's tuition and the portion of the tuition paid under 10 U.S.C. 2007. Appropriate regulations will be added to implement this provision of law.
The Veterans Benefits and Health Care Improvement Act provides that veterans and eligible persons may receive educational assistance to cover the cost of the tests needed to obtain an occupational license or certification. This improved benefit is available under the Post-Vietnam Era Veterans Educational Assistance Program, the Montgomery GI Bill—Active Duty and the Survivors' and Dependents' Educational Assistance Program. Regulations are needed to allow VA to properly implement this new benefit.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK80

2677. VETERANS EDUCATION: ADDITIONAL OPPORTUNITY TO PARTICIPATE IN THE MONTGOMERY GI BILL AND OTHER MISCELLANEOUS ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3011 to 3012; 38 USC 3015; 38 USC 3018C; 38 USC 3080; 38 USC 16132

CFR Citation: 38 CFR 21.4138; 38 CFR 21.7020; 38 CFR 21.7042; 38 CFR 21.7136; 38 CFR 21.7540

Legal Deadline: None

Abstract: The Veterans Benefits and Health Care Improvement Act of 2000 affects the Montgomery GI Bill—Active Duty and the Montgomery GI Bill—Selected Reserve. These include providing an opportunity for some service members to participate in the Montgomery GI Bill—Active Duty; repealing the requirement that only the initial period of active duty be considered in determining eligibility for the Montgomery GI Bill—Active Duty; increasing the Montgomery GI Bill—Active Duty for those who contribute additional money; and changing the rules for determining when benefits may be paid during the interval between terms. The regulations governing Montgomery GI Bill will be revised accordingly.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK81

2678. • SCHEDULE FOR RATING DISABILITIES; EVALUATION OF TINNITUS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.87 (Diagnostic Code 6260)

Legal Deadline: None

Abstract: Current schedule does not explain how to evaluate tinnitus that is bilateral. This would direct that a single evaluation be assigned for bilateral or unilateral tinnitus or tinnitus that is perceived somewhere in the head. It also directs that objective tinnitus (which is audible and has a defined cause) be evaluated as part of the underlying condition causing it. There are no costs associated with this regulation.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: RIN 2900-AK86 withdrawn

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AK86

2679. TIME LIMIT FOR REQUEST FOR DE NOVO REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5109(a); 38 USC 7105(a)

CFR Citation: 38 CFR 3.2600

Legal Deadline: None

Abstract: We are amending our regulations concerning the time a claimant has in which to request a de novo review of their claim at the Veterans Service Center level. (This would reduce the time from the current 60 days to 15 days.) We believe this amendment will reduce unnecessary delays in the appeals process and will not adversely affect claimants.

Timetable:

Action	Date	FR Cite
NPRM	03/11/02	67 FR 10866
NPRM Comment Period End	05/10/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bill Russo, Attorney-Advisor, Compensation and Pension (211), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK97

2680. • ACCELERATED PAYMENTS UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3013, 3014A; 38 USC 3034; 38 USC 3452; 38 USC 3501; 38 USC 3684

CFR Citation: 38 CFR 21.4000; 38 CFR 21.7020; 38 CFR 21.7076; 38 CFR 21.7140; 38 CFR 21.7142

Legal Deadline: None

Abstract: This document amends the education regulations governing various aspects of the educational assistance programs the Department of Veterans Affairs administers in order to implement some of the provisions of the Veterans Education and Benefits Expansion Act of 2001. These provisions include accelerated payments to individuals under the Montgomery GI Bill—Active Duty program who are enrolled in approved training programs that lead to employment in high tech industries and whose charged tuition and fees exceed an amount equal to 200 percent of the monthly basic rate of educational assistance otherwise payable. This document also amends the regulation defining educational institution to include certain private technology industries.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL22

2681. • AMENDMENTS TO TRAINING AND REHABILITATION PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3100 to 3121; PL 102-568; PL 104-275; PL 106-419; PL 107-103

CFR Citation: 38 CFR 21, subpart A

Legal Deadline: None

Abstract: This complete revision of 38 CFR 21 (subpart A) implements changes to the chapter 31 Vocational Rehabilitation and Employment Program. Substantive changes are required under the several public laws that this revision implements. This revision also implements a number of decisions by the U.S. Court of Appeals for Veterans Claims. The following changes are representative of the changes proposed: Authorizes increases in subsistence allowance; extends eligibility for vocational rehabilitation and employment to veterans with 10 percent service-connected conditions under certain circumstances; amends chapter 31 entitlement criteria; redefines employment handicap and serious employment handicap; changes requirements for an independent living program; requires veterans who complete training to actively participate in a job search to receive an employment adjustment allowance; prohibits benefits to fugitive felons; authorizes extensions of the period of chapter 31 eligibility and restoration of entitlement used by certain reservists recalled to active duty; and increases the limit on the number of new entrants into an independent living program in a fiscal year. This revision streamlines administrative procedures and clarifies the intent of the governing sections of title 38, United States Code. In addition, this revision also implements regulatory reform and plain-language English.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dr. Charles Albert Graffam, Consultant (282), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Related RIN: Merged With 2900-AG00

RIN: 2900–AL24

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

2682. UNIVERSAL PRODUCT NUMBERS (UPNS)

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 811; 48 CFR 852

Legal Deadline: None

Abstract: This rulemaking action would provide new contract clauses whereby Department of Veterans Affairs contracting officers could require contractors to furnish products marked at the case, box, and unit of use levels with Universal Product Numbers (UPNs) for scanning using bar code readers.

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Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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Email: donald.kaliher@mail.va.gov

RIN: 2900–AJ45

2683. DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATIONS PLAIN LANGUAGE REWRITE

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 48 USC 486(c)

CFR Citation: 38 CFR 8

Legal Deadline: None

Abstract: This rulemaking action would amend the Department of Veterans Affairs acquisition regulation to update position titles, to remove obsolete or duplicative material, to delegate authority, and to make plain language revisions to the text. In addition, the rule would update material to correspond to the requirements of the Federal Acquisition Regulation (FAR) and would provide agency procedures for compliance with FAR requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK78

BOARD OF VETERANS APPEALS

2684. BOARD OF VETERANS' APPEALS: RULES OF PRACTICE—APPEAL WITHDRAWAL

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7105(b)(2)

CFR Citation: 38 CFR 20.204

Legal Deadline: None

Abstract: The Board of Veterans' Appeals is removing a restriction in its Rules of Practice (Rule of Practice 204; 38 CFR 20.204) that bars an appellant's representative from withdrawing a Notice of Disagreement or a Substantive Appeal that the appellant filed personally without the appellant's written consent. VA believes that the restriction, adopted in the early 1960s, is an outdated and unnecessary intrusion into the relationship between appellants and their representatives, which creates needless delay through unnecessary procedural complexity.

Timetable:

Action	Date	FR Cite
NPRM	02/01/02	67 FR 4939
NPRM Comment Period End	04/02/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK71

2685. BOARD OF VETERANS' APPEALS: SPEEDING APPELLATE REVIEW FOR AGING VETERANS

Priority: Other Significant

Legal Authority: 38 USC 501(a); 38 USC 7107

CFR Citation: 38 CFR 20.900(c)

Legal Deadline: None

Abstract: The Board of Veterans' Appeals may advance a case on its docket for earlier consideration for "sufficient cause shown," 38 U.S.C. section 7107(a)(2). This regulation will expand the regulatory definition of "sufficient cause" in the Board's Rules of Practice to include advanced age. This will permit the Board, on motion, to expedite consideration of appeals from veterans and dependents, age 75 or more, who may be nearing the end of their life expectancy. There is now a sizable cohort of veterans of advanced age, particularly surviving combat veterans from World War II and the Korean War. No other alternatives are available. This amendment will not entail any risks or costs to the public or to the Government other than the costs normally associated with drafting, Agency review, and publication.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman, Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AL08

NATIONAL CEMETERY SYSTEM

2686. STATE CEMETERY GRANTS: AID TO STATES FOR ESTABLISHMENT, EXPANSION, AND IMPROVEMENT OF VETERANS CEMETERIES

Priority: Other Significant

Legal Authority: 38 USC 2408

CFR Citation: 38 CFR 39.1; 38 CFR 39.2; 38 CFR 39.3; 38 CFR 39.7; 38 CFR 39.8; 38 CFR 39.9 (New)

Legal Deadline: None

Abstract: The proposed rule revises 38 CFR part 39 to amend Department of Veterans Affairs (VA) regulations for the State Cemetery Grants Program to implement and update information on program requirements and the application process for participants. The amendment formalizes new standards and provides guidance on how States may obtain funding for grants to expand, establish, or improve State veterans cemeteries. The rule will be published as proposed in the Federal Register to provide information to the public on how to apply for Federal funding for State veterans cemeteries. A 60-day public comment period will be provided. It is subject to the requirements of the Administrative Procedures Act and E.O. 12866 because the rule is an interpretation of statute. The proposed rule will not have a significant economic impact on a substantial number of small entities; only those States that apply for funding may be direct beneficiaries.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Karen Barber, Program Analyst (402B1), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5183
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Email: karen.barber@mail.va.gov

RIN: 2900–AH46

2687. ELIGIBILITY FOR BURIAL OF DEPENDENT ADULT CHILDREN OF ELIGIBLE VETERANS; AND ELIGIBILITY FOR BURIAL OF CERTAIN FILIPINO VETERANS

Priority: Other Significant

Legal Authority: 38 USC 2402(5); PL 106-419

CFR Citation: 38 CFR 1.620(c)

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to amend regulations to specify that the eligibility of veterans' adult children for burial in a national cemetery is only for those who have become permanently incapable of self support before attaining the age of 21 years due to a physical or mental disability. Current regulations do not clearly express this requirement. It also proposes to amend regulations to specify that the eligibility of certain Filipino veterans will be eligible for burial in a National Cemetery. Certain Filipino veterans of WWII, to include Commonwealth Army veterans and veterans of Recognized Guerilla Forces, may be eligible if the veteran was a permanent resident of the U.S. and met other enabling conditions.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Barber, Program Analyst (402B1), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AI95

OFFICE OF FINANCIAL MANAGEMENT

2688. STANDARDS FOR COLLECTION, COMPROMISE, SUSPENSION, OR TERMINATION OF COLLECTION EFFORT; REGIONAL OFFICE COMMITTEE ON WAIVER AND COMPROMISES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3700 et seq; 38 USC 501; 38 USC 5302; 38 USC 5314; 38 USC 5315

CFR Citation: 31 CFR 900 to 904; 38 CFR 1.900 to 1.970

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) proposes to revise its current regulations on debt collection by eliminating some and cross-referencing the remainder to the revised DOJ/Treasury Governmentwide Federal Claims Collection Standards (31 CFR parts 900 to 904). These regulations will also be updated to comply with the Debt Collection Improvement Act of 1996. In addition, VA also proposes to amend regulations pertaining to the administration of our Regional Office Committees on Waivers and Compromises.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Peter T. Mulhern, Office of Finance (047GC1), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5570
TDD Phone: 202 273 6574

RIN: 2900–AK10

OFFICE OF POLICY AND PLANNING

2689. AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS; GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 75; 38 USC 501; PL 98-502

CFR Citation: 38 CFR 41; 38 CFR 49

Legal Deadline: None

Abstract: This document proposes to amend part 41 of VA's regulations to add new subparts to codify revised OMB Circular A-133. The Circular provides standards for consistency and uniformity among Federal agencies for the audits of States, local governments, and nonprofit organizations expending Federal awards. Further, this amendment proposes to add a new part 49 to VA's regulations to bring VA in step with other Federal agencies who have already adopted OMB Circular A-110 as a common rule. The Circular provides for uniform administrative requirements for Federal agencies with grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Agency Contact: Judith Jamison, Office of Policy and Planning (008), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-5117

RIN: 2900–AJ62

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Department of Veterans Affairs (VA) — Final Rule Stage

VETERANS HEALTH ADMINISTRATION

2690. PROVISION OF DRUGS AND MEDICINES PRESCRIBED BY NON-VA PHYSICIANS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.96

Legal Deadline: None

Abstract: This document amends the "Medical" regulations concerning the criteria for provision of drugs and medicines by non-VA physicians for certain veterans. It is our view that the statutory framework inherently requires that the drugs provided be suitable; i.e., FDA-approved, high quality, and best value. In this regard, we have established a list of suitable drugs and medicines in the VA national formulary. Also, we have established a mechanism for allowing the provision of drugs and medicines not listed in the formulary. These changes are needed to ensure that VA provides only those drugs and medicines intended to be provided under the statutory authority. Also, this document makes nonsubstantive changes for the purpose of avoiding unnecessary duplication.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeff Ramirez, Pharmacy Service (119), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8428

RIN: 2900–AJ24

2691. ADVANCED HEALTH CARE PLANNING

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.32

Legal Deadline: None

Abstract: This document amends the VA medical regulations to codify VA policy regarding advanced health care planning. The rule sets forth a mechanism for the use of written advance directives; i.e., a VA living will, a VA durable power of attorney for health care, and a State-authorized advance directive. The rule also sets forth a mechanism for honoring verbal or nonverbal instructions from a patient when the patient is admitted to care when critically ill and loss of capacity may be imminent and the patient is not physically able to sign an advance directive form or the appropriate form is not readily available. This is intended to help ensure that VA acts in compliance with patients' wishes concerning future health care.

Timetable:

Action	Date	FR Cite
NPRM	11/02/98	63 FR 58677
NPRM Comment Period End	01/04/99	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen Fox M.D., Director, National Center for Ethics (10AE), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6926

RIN: 2900–AJ28

2692. PROVISION OF DRUGS AND MEDICINES TO CERTAIN VETERANS IN STATE NURSING HOMES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.96

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs medical regulations concerning the provision of drugs and medicines prescribed by non-VA physicians for certain veterans who are permanently housebound or in need of regular aid and attendance. The regulations are amended to allow prescriptions to be filled by non-VA pharmacies in State homes under contract with VA for filling prescriptions for patients in State homes. This is consistent with VA's special relationship with State homes. It will eliminate duplication in services and will help improve timeliness for filling prescriptions in State homes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/14/98	63 FR 37779
Interim Final Rule Effective	07/14/98	
Interim Final Rule Comment Period End	09/14/98	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeff Ramirez, Pharmacy Service (119), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8428

RIN: 2900–AJ34

2693. GRANTS TO STATES FOR CONSTRUCTION AND ACQUISITION OF STATE HOME FACILITIES

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721

CFR Citation: 38 CFR 17.216; 38 CFR 17.222

Legal Deadline: None

Abstract: This rule amends the Department of Veterans Affairs regulations concerning State homes. VA provides funds to States for projects for the construction, acquisition, or renovation of State veterans nursing homes and State veterans domiciliaries. This rulemaking requests comments regarding what regulations should be established with respect to the priorities for awarding State home grants for construction, acquisition, or renovation.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/26/01	66 FR 33845
Interim Final Rule Comment Period End	08/27/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Frank Salvas, Geriatrics and Extended Care (114), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8536

RIN: 2900–AJ43

VA — Final Rule Stage

2694. PAYMENT OR REIMBURSEMENT FOR EMERGENCY TREATMENT FURNISHED AT NON-VA FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 38 USC 501; 38 USC 1725; PL 106-117

CFR Citation: 38 CFR 17

Legal Deadline: NPRM, Statutory, May 22, 2000, 180 days after effective date of PL 106-117.

Abstract: This document amends the Department of Veterans Affairs medical regulations by establishing a mechanism for payment or reimbursement for certain non-VA emergency services furnished to veterans for nonservice-connected conditions. This amendment is necessary to implement provisions of "The Veterans Millennium Health Care and Benefits Act."

Statement of Need: Public Law No. 106-117 "The Veterans Millennium Health Care and Benefits Act" requires this amendment to implement its provisions.

Summary of Legal Basis: 38 U.S.C. 1725 authorizes VA to establish provisions for payment or reimbursement for certain non-VA emergency services furnished to Veterans for nonservice-connected conditions.

Alternatives: The alternatives that the Department had to consider are the amount of reimbursement and the location where claimants can file a claim.

Anticipated Cost and Benefits: Cost projection for FY 2001 is $66 to $75 million. The FY 2003 budget, in accordance with section 1725 of title 38, will provide an updated estimate of the full year impact of this legislation expected to be incurred in FY 2003.

Risks: None.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/12/01	66 FR 36467
Interim Final Rule Effective	05/29/00	
Interim Final Rule Effective (38 CFR 17.004)	07/19/01	
Interim Final Rule Comment Period End (Information Collection)	07/19/01	
Interim Final Rule Comment Period End	09/10/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Roscoe G. Butler, Chief, Policy and Operations (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8302
Fax: 202 273-9609
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RIN: 2900–AK08

2695. MEDICAL BENEFITS PACKAGE; COPAYMENTS FOR EXTENDED CARE SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1710; PL 106-117

CFR Citation: 38 CFR 17.36; 38 CFR 17.38; 38 CFR 17.111

Legal Deadline: None

Abstract: This document proposes to amend VA's medical regulations by adding the following extended care services to the medical benefits package: Noninstitutional adult day health care, noninstitutional geriatric evaluation, and noninstitutional respite care. Also, we propose to amend VA's medical regulations to establish provisions regarding copayments for extended care services. These actions would implement provisions of the Veterans Millennium Health Care and Benefits Act.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50594
NPRM Comment Period End	12/03/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Howard, Senior Program Analyst (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Fax: 202 273-4897
Email: nancy.howard@hq.med.va.gov

RIN: 2900–AK32

2696. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Other Significant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran: For a non-service-connected disability for which the veteran is entitled to care (or the payment of expenses of care) under a health plan contract; for a non-service-connected disability incurred incident to the veteran's employment and covered under a worker's compensation law or plan that provides reimbursement or indemnification for such care and services; or for a non-service-connected disability incurred as a result of a motor vehicle accident in a State that requires automobile accident reparations insurance. This document amends the regulations to update data bases and other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/02/00	65 FR 65906
Interim Final Rule Comment Period End	01/02/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, VHA Revenue Office (174), Department of Veterans Affairs, Veterans Health

Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8210
Fax: 202 273-4897

Related RIN: Related To 2900-AJ30, Related To 2900-AK73, Related To 2900-AL05, Related To 2900-AL06

RIN: 2900–AK39

2697. COPAYMENTS FOR INPATIENT HOSPITAL CARE AND OUTPATIENT MEDICAL CARE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1710; PL 106-117

CFR Citation: 38 CFR 17.108; 38 CFR 17.110

Legal Deadline: None

Abstract: This document amends VA's medical regulations to set forth a mechanism for determining copayments for inpatient hospital care, outpatient medical care. This document is necessary to implement provisions of the Veterans Millennium Health Care and Benefits Act and to set forth our statutory interpretations regarding application of the copayment requirements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/06/01	66 FR 63446
Interim Final Rule Comment Period End	02/04/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Nancy Howard, Senior Program Analyst (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8198
Fax: 202 273-4897
Email: nancy.howard@hq.med.va.gov

RIN: 2900–AK50

2698. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends VA's medical regulations concerning "reasonable charges" for medical care or services provided or furnished by VA to a veteran for nonservice-connected disabilities.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/01	66 FR 23326
Interim Final Rule Comment Period End	07/09/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, VHA Revenue Office (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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Related RIN: Related To 2900-AJ30, Related To 2900-AK39, Related To 2900-AL05, Related To 2900-AL06

RIN: 2900–AK73

2699. HEALTH CARE FOR CHILDREN BORN WITH ONE OR MORE COVERED BIRTH DEFECTS TO VIETNAM VETERANS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 1721; PL 106-419

CFR Citation: 38 CFR 17.900 to 1905

Legal Deadline: None

Abstract: The document proposed to establish regulations regarding health care benefits for women Vietnam veterans' children with covered birth defects. It would revise the current regulations regarding health care for Vietnam veterans' children suffering from spina bifida to also encompass health care for women Vietnam veterans' children with certain other birth defects. This is necessary to provide health care for such children in accordance with recently enacted legislation (Pub. L. 106-419, November 1, 2000).

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 209
NPRM Comment Period End	02/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan K. Schmetzer, Chief, Policy and Strategic Planning, Health Administration Center, Department of Veterans Affairs, 300 South Jackson Street, Denver, CO 80209
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RIN: 2900–AK88

2700. CIVILIAN HEALTH AND MEDICAL PROGRAM OF DEPARTMENT OF VETERANS AFFAIRS (CHAMPVA)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-398; PL 107-14; 38 USC 1713

CFR Citation: 38 CFR 17.271; 38 CFR 17.272; 38 CFR 17.274

Legal Deadline: Final, Statutory, October 1, 2001.

Abstract: This document implements provisions of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 and the Veterans' Survivor Benefits Improvement Act of 2001. These changes extend CHAMPVA eligibility to persons age 65 and over who would have otherwise lost their CHAMPVA eligibility due to attainment of entitlement to hospital insurance benefits under Medicare Part A. This rule also implements coverage of physical examinations required in connection with school enrollment for beneficiaries through age 17 and reduces the catastrophic cap for CHAMPVA dependents and survivors for each calendar year. These regulatory changes implement the statutory provisions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/02	67 FR 4357
Interim Final Rule Effective	01/30/02	
Correction to Interim Final Rule	02/14/02	67 FR 6874
Interim Final Rule Comment Period End	04/01/02	67 FR 4357
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: EFFECTIVE DATES: This document was effective on January 30, 2002; except for 38 CFR 17.271(b) and 17.272(a)(31)(x) which was effective October 1, 2001, and for 38 CFR 17.274(c) which was effective January 1, 2002.

Agency Contact: Susan K. Schmetzer, Chief, Policy and Strategic Planning, Health Administration Center, Department of Veterans Affairs, 300 South Jackson Street, Denver, CO 80209
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RIN: 2900–AK89

2701. REASONABLE CHARGES FOR MEDICAL CARE OR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1729

CFR Citation: 38 CFR 17.101

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) medical regulations concerning "reasonable changes" for medical care or services provided or furnished by VA to veterans for nonservice-connected disabilities. This document amends the regulations to update data bases and other provisions for the purpose of providing more precise charges.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Cleaver, VHA Revenue Office (174), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8210
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Related RIN: Related To 2900-AJ30, Related To 2900-AK39, Related To 2900-AK73, Related To 2900-AL06

RIN: 2900–AL05

2702. • FILIPINO VETERANS ELIGIBLE FOR HOSPITAL CARE, NURSING HOME CARE, AND MEDICAL SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1721; 38 USC 1734; PL 106-377

CFR Citation: 38 CFR 3.42; 38 CFR 17.39

Legal Deadline: None

Abstract: This document amends VA's medical regulations to add provisions implementing statutory changes made by Public Law 106-377, the Department of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriation Act, 2001, providing that certain Filipino veterans in receipt of disability compensation at the full dollar rate are eligible for hospital care, nursing home care, and medical services in the same manner as American veterans.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roscoe G. Butler, Chief, Policy and Operations (10C3), Department of Veterans Affairs, Veterans Health Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL18

VETERANS BENEFITS ADMINISTRATION

2703. SCHEDULE FOR RATING DISABILITIES—THE SKIN

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.118

Legal Deadline: None

Abstract: These amendments will contain additions, deletions, and revisions of terminology resulting from a systematic review of the medical criteria used to evaluate skin conditions.

Timetable:

Action	Date	FR Cite
ANPRM	05/02/91	56 FR 20171
ANPRM Comment Period End	07/01/91	
NPRM	01/19/93	58 FR 4969
NPRM Comment Period End	03/22/93	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AF00

2704. REVISED DEFINITION OF NET VALUE AND REVISED CRITERIA FOR PRE-FORECLOSURE DEBT WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 3720(a); 38 USC 3732(a)

CFR Citation: 38 CFR 36.4301; 38 CFR 36.4323

Legal Deadline: None

Abstract: The Department of Veterans Affairs is proposing to amend its loan guaranty regulations to revise the definition of property improvements for purposes of determining the net value of a foreclosed property and to clarify VA's position on pre-foreclosure debt waivers for liable veterans in cases involving transferee defaults. These changes will account for actual property appraisal procedures and will clarify Agency policy on pre-foreclosure debt waivers. Note: Because the original Notice of Proposed Rulemaking (NPRM) was published on September 22, 1993 (58 FR 49251), VA republished the NPRM to provide for a new notice and comment period before proceeding with a final rule.

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VA — Final Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/22/93	58 FR 49251
NPRM Comment Period End	10/22/93	
Second NPRM	08/01/00	65 FR 46882
Second NPRM Comment Period End	10/02/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard Fyne, Assistant Director for Loan Management (261), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7380

RIN: 2900–AG20

2705. TOTAL DISABILITY EVALUATIONS BASED ON INABILITY OF THE INDIVIDUAL TO ENGAGE IN SUBSTANTIALLY GAINFUL EMPLOYMENT

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 512(a); 38 USC 1110; 38 USC 1131; 38 USC 1155; 38 USC 1502; 38 USC 1521(a)

CFR Citation: 38 CFR 3.321; 38 CFR 3.340; 38 CFR 3.341; 38 CFR 3.342; 38 CFR 4.16; 38 CFR 4.17; 38 CFR 4.18

Legal Deadline: None

Abstract: This action amends the regulations in part 3 of title 38, United States Code, and in the Schedule for Rating Disabilities in part 4 to provide clear and objective standards for determining whether a veteran is entitled to a total evaluation based on his or her inability to perform substantially gainful employment due to disability.

Timetable:

Action	Date	FR Cite
NPRM	10/01/01	66 FR 49886
NPRM Comment Period End	11/30/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janice Jacobs, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AH21

2706. VISION

Priority: Other Significant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.75

Legal Deadline: None

Abstract: This action will amend the vision portion of the rating schedule to provide current medical terminology, clarify ambiguous evaluation criteria, and add medical conditions not presently in the rating schedule.

Timetable:

Action	Date	FR Cite
NPRM	05/11/99	64 FR 25246
NPRM Comment Period End	07/12/99	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AH43

2707. INTERVERTEBRAL DISC SYNDROME

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71(a)

Legal Deadline: None

Abstract: This action ensures that veterans diagnosed with intervertebral disc syndrome meet uniform criteria and receive consistent evaluations.

Timetable:

Action	Date	FR Cite
NPRM	02/24/97	62 FR 8204
NPRM Comment Period End	04/25/97	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AI22

2708. ANKYLOSIS AND LIMITATION OF MOTION OF DIGITS OF THE HANDS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1155

CFR Citation: 38 CFR 4.71a

Legal Deadline: None

Abstract: This document revises the evaluation criteria for ankylosis and limitation of motion of the fingers to ensure that veterans diagnosed with these conditions receive consistent evaluations.

Timetable:

Action	Date	FR Cite
NPRM	11/02/01	66 FR 55614
NPRM Comment Period End	01/02/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AI44

2709. EXCLUSIONS FROM INCOME

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 10602(c)

CFR Citation: 38 CFR 3.261; 38 CFR 3.262; 38 CFR 3.272

Legal Deadline: None

Abstract: To exclude from countable income for VA purposes amounts received under the Victims of Crime Act of 1984.

VA — Final Rule Stage

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff (211A), Department of Veterans Affairs, 575 N. Pennsylvania St., Indianapolis, IN 46204
Phone: 317 226-5209

RIN: 2900–AJ52

2710. ACCELERATED BENEFITS OPTION FOR SERVICEMEMBERS' GROUP LIFE INSURANCE AND VETERANS' GROUP LIFE INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-368, sec 302; PL 107-14; 38 USC 1965; 38 USC 1967

CFR Citation: 38 CFR 9.1(b); 38 CFR 9.14

Legal Deadline: None

Abstract: Section 302 of the Veterans Program Enhancement Act of 1998 (Pub. L. 105-368) authorizes the payment of accelerated benefits in the Servicemembers' Group Life Insurance (SGLI) and Veterans' Group Life Insurance (VGLI) programs, effective February 9, 1999. This rule amends Department of Veterans Affairs (VA) regulations by providing an accelerated benefit option that will permit terminally ill members access to life insurance benefits before they die. Further, this document also reflects a change in the address for submitting an application for accelerated benefits.

Timetable:

Action	Date	FR Cite
NPRM	07/20/00	65 FR 44999
NPRM Comment Period End	08/18/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gregory C. Hosmer, Senior Attorney/Insurance Specialist, Insurance Program Administration & Oversight, Department of Veterans Affairs, P.O. Box 13399, Philadelphia, PA 19101
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RIN: 2900–AJ80

2711. STATE DEPARTMENT AS AGENT OF DEPARTMENT OF VETERANS AFFAIRS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 5106

CFR Citation: 38 CFR 3; 38 CFR 3.108

Legal Deadline: None

Abstract: This document reorganizes and rewrites in "plain language" the regulation that identifies the State Department as an agent of the Department of Veterans Affairs for purposes of accepting, developing, and assisting with claims and evidence. It incorporates a provision in the adjudication procedures manual regarding services offered by the Department of State.

Timetable:

Action	Date	FR Cite
NPRM	08/22/01	66 FR 44095
NPRM Comment Period End	10/22/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK03

2712. FINALITY OF DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 502; 38 USC 511; 38 USC 5104; 38 USC 5109A; 38 USC 5112(b)(6)

CFR Citation: 38 CFR 3.104

Legal Deadline: None

Abstract: This amendment informs claimants in "plain language" when a VA decision is final, how a decision by one VA office affects other VA offices, and under what circumstances a VA decision may be changed.

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53565
NPRM Comment Period End	12/24/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK18

2713. RENOUNCEMENT OF BENEFITS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5306

CFR Citation: 38 CFR 3.106

Legal Deadline: None

Abstract: This revision explains in "plain language" who has the right to renounce benefits, how to renounce benefits, and what renouncement means to a claimant. It discusses effective dates for the termination of renounced benefits, as well as the right to reapply for benefits that have been renounced. A substantive change in the effective date of a renouncement is proposed to cover the renouncement of benefits when an award is already in suspense.

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48845
NPRM Comment Period End	11/23/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK23

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2714. INDEPENDENT MEDICAL OPINIONS

Priority: Info./Admin./Other

Legal Authority: 38 USC 5109; 38 USC 5701(b)(1); 38 USC 52a(f)(3)

CFR Citation: 38 CFR 3.328

Legal Deadline: None

Abstract: This amendment is a plain language restatement of the existing regulation dealing with independent medical opinions that may be requested to resolve complex or controversial medical issues that may arise in a claim for veterans' benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/07/01	66 FR 64174
NPRM Comment Period End	02/11/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2900–AK31

2715. EVIDENCE FROM FOREIGN COUNTRIES

Priority: Info./Admin./Other

Legal Authority: 38 USC 5712

CFR Citation: 38 CFR 3.202

Legal Deadline: None

Abstract: This is a plain language restatement of the adjudication regulation dealing with the authentication requirements for evidence given under oath before an official in a foreign country.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53139
NPRM Comment Period End	12/18/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John Bisset Jr., Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefit Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK37

2716. VETERANS VOCATIONAL REHABILITATION AND EDUCATION: TITLE CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 512

CFR Citation: 38 CFR 21.50; 38 CFR 21.53; 38 CFR 21.60; 38 CFR 21.68; 38 CFR 21.4250; ...

Legal Deadline: None

Abstract: VA administers a vocational rehabilitation program that provides eligible veterans with compensable service-connected disabilities, all service and assistance necessary to enable them to achieve maximum independence in daily living, and to the maximum extent feasible, to become employable and to obtain and maintain suitable employment. Due to an increased emphasis on helping these veterans obtain and maintain suitable employment, VA has decided to change the title of those employees who deal principally with this program. All appropriate rules will be changed to show that these employees deal with vocational rehabilitation and employment.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Additional CFR Citations: 38 CFR 21.74; 38 CFR 21.98; 38 CFR 21.100; 38 CFR 21.155

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RIN: 2900–AK46

2717. FILIPINO VETERANS BENEFIT IMPROVEMENTS

Priority: Other Significant

Legal Authority: 38 USC 107

CFR Citation: 38 CFR 3.8; 38 CFR 3.10; 38 CFR 3.1600

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations to reflect changes made by the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, 2001, which changed the rate of compensation payments to certain Filipino veterans residing in the U.S., and the Veterans Benefits and Health Care Improvement Act of 2000, which changed the amount of the burial benefit paid to the survivors of certain Filipino veterans who were residing in the U.S. at the time of their deaths.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/27/01	66 FR 66763
Interim Final Rule Effective	12/27/01	
Interim Final Rule Comment Period End	02/25/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2900–AK65

2718. MONETARY ALLOWANCES FOR CERTAIN CHILDREN OF VIETNAM VETERANS; IDENTIFICATION OF COVERED BIRTH DEFECTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 1805(b)(3); 38 USC 1812; 38 USC 1815; 38 USC 5110(n); 38 USC 5312(c)(1)

CFR Citation: 38 CFR 3.27; 38 CFR 3.29; 38 CFR 3.114; 38 CFR 3.216; 38 CFR 3.261

Legal Deadline: None

Abstract: Section 401 of the Veterans Benefits and Health Care Improvement Act of 2000, Public Law 106-419, amended chapter 18 of title 38 United States Code by adding subchapter II authorizing VA to provide certain benefits, including a monthly monetary allowance, to children born with certain birth defects who are the natural children of women veterans who served in the Republic of Vietnam during the Vietnam era. This document amends existing VA adjudication regulations and adds a new section 3.815 to title 38 Code of Federal Regulations to implement this new authority. Section 1823 of title 38 United States Code specifies that receipt of this allowance shall not affect the right of the child, or the right of any individual based on the child's relationship to that individual, to receive any other benefit to which the child, or that individual, may be entitled under any law administered by VA, nor will the allowance be considered income or resources in determining eligibility for, or the amount of, benefits under any Federal or federally assisted program. We propose to amend 38 CFR 3.27, 3.29, 3.31, 3.114, 3.216, 3.261 to 263, 3.272, and 3.275 to reflect this statutory provision as it applies to VA's income-based benefit programs. The statute states that the birth defects identified may not include: A familial disorder, a birth-related injury, or a fetal or neonatal infirmity with well-established causes. The regulation will provide non-exclusive lists of included and excluded conditions for benefits. It also provides criteria to determine which of four levels of monthly monetary payment will be assigned, based on an assessment of the day-to-day functioning of affected individuals or to the extent of disfigurement of the head, face, or neck due to one or more covered birth defects or associated disabilities.

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 200
NPRM Comment Period End	02/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Caroll McBrine, Consultant, Regulations Staff (211B), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-7211

RIN: 2900–AK67

2719. LOAN GUARANTY: PRE-PURCHASE COUNSELING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 3203; 38 USC 3210; 38 USC 3220

CFR Citation: 38 CFR 36.4332

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its loan guaranty regulations to require that all first-time homebuyers seeking to obtain VA guaranteed home loans complete 3 hours of homeowners' counseling.

Timetable:

Action	Date	FR Cite
NPRM	10/11/01	66 FR 51893
NPRM Comment Period End	12/10/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK76

2720. VOCATIONAL TRAINING FOR CERTAIN CHILDREN OF VIETNAM VETERANS—COVERED BIRTH DEFECTS AND SPINA BIFIDA

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 101; 38 USC 501; 38 USC 512; 38 USC 5112; PL 106-419, sec 401

CFR Citation: 38 CFR 21.8010 to 21.8410

Legal Deadline: None

Abstract: This document proposes to establish regulations regarding provision of vocational training and rehabilitation for women Vietnam veterans' children with covered birth defects. It revises the current regulations regarding vocational training and rehabilitation for Vietnam veterans' children suffering from spina bifida to also encompass vocational training and rehabilitation for women Vietnam veterans' children with certain other birth defects.

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 215
NPRM Comment Period End	02/01/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK90

2721. EXTENSION OF THE PRESUMPTIVE PERIOD FOR COMPENSATION FOR GULF WAR VETERANS' UNDIAGNOSED ILLNESSES

Priority: Other Significant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 3.317

Legal Deadline: None

Abstract: The Department of Veterans Affairs extends the period within which undiagnosed illnesses due to service in the Gulf War Theater of Operations must become manifest to a compensable degree in order for service connection to be established, to an ending date of December 31, 2006.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/01	66 FR 56614
Interim Final Rule Effective	11/09/01	

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Action	Date	FR Cite
Interim Final Rule Comment Period End	01/08/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AK98

2722. INCREASE IN RATES PAYABLE UNDER THE EDUCATIONAL ASSISTANCE TEST PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 2143 to 2145

CFR Citation: 38 CFR 21.5820; 38 CFR 21.5822

Legal Deadline: None

Abstract: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based on the average actual cost of attendance at public institutions of higher education in the 12-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 2001-02 academic year should be increased by 4.7 percent over the rates payable for the 2000-01 academic year. The regulations dealing with these rates will be amended accordingly.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William G. Susling Jr., Assistant Director for Policy and Program Development (225), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL02

2723. PLAIN LANGUAGE (READER FOCUSED WRITING) INITIATIVE; NATIONAL SERVICE LIFE INSURANCE (NSLI)

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501; 38 USC 1901 to 1929; 38 USC 1981 to 1988

CFR Citation: 38 CFR 8.3 to 8.11

Legal Deadline: None

Abstract: This rule will amend 38 CFR 8.3 through 8.32 by revising the text into a different format to promote better communication to policyholders and program administrators. This amendment is written in conjunction with VA's Plain Language (Reader Focused Writing) Initiative.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gregory C. Hosmer, Senior Attorney/Insurance Specialist, Insurance Program Administration & Oversight, Department of Veterans Affairs, P.O. Box 13399, Philadelphia, PA 19101
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RIN: 2900–AL09

2724. • ADJUDICATION, FIDUCIARY ACTIVITIES

Priority: Info./Admin./Other

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 3; 38 CFR 14

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) regulations by making nonsubstantive changes. VA is amending its adjudication and fiduciary regulations to replace the titles of Adjudication Division, Adjudication Officer, Veterans Services Division, Veterans Services Officer, and Chief Benefits Director with Veterans Service Center, and Veterans Service Center Manager. Other, nonsubstantive changes are also made. These changes are made for clarity and accuracy.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL10

2725. • EXCEPTIONS TO DEFINITION OF DATE OF RECEIPT BASED ON SPECIAL OR UNFORESEEN CIRCUMSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5110

CFR Citation: 38 CFR 3.1(r)

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning the definition of "date of receipt" by authorizing the Under Secretary for Benefits to establish exceptions to the general rule when special or unforeseen circumstances hinder the normal course by which VA would receive a claim, information, or evidence. The intended effect is to ensure that a significant number of claimants are not deprived of potential entitlement to benefits because of unexpected delays or impediments not caused by the claimants.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Beth McCoy, Consultant, Regulations Staff (211A), Department of Veterans Affairs, 575 N. Pennsylvania St., Indianapolis, IN 46204
Phone: 317 226-5209

RIN: 2900–AL12

VA — Final Rule Stage

2726. • INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY AND SURVIVORS' AND DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 3015; 38 USC 3032; 38 USC 3532; 38 USC 3686; 38 USC 3687

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3131; 38 CFR 21.3300; 38 CFR 21.3333; 38 CFR 21.7136-7137

Legal Deadline: None

Abstract: By statute, the rates of basic educational assistance under the Montgomery GI Bill—Active Duty and Survivors' and Dependents' Educational Assistance programs must be adjusted each fiscal year. In accordance with the statutory formula, the regulations governing these programs for fiscal year 2003 are changed to show a 3.4 percent increase in these rates. In addition, the regulations are changed to show a separate increase for both programs effective January 1, 2002, due to an increase provided for in the Veterans Education and Benefits Expansion Act of 2001, Public Law No. 107-103. Public Law No. 107-103 also provides an increase in Montgomery GI Bill—Active Duty program rates for October 1, 2003, and October 1, 2004. The regulations are amended to show these two additional statutory rate increases.

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL17

2727. • CROSS REFERENCE CHANGE IN FORMS TO BE FURNISHED

Priority: Other Significant

Legal Authority: 38 USC 501

CFR Citation: 38 CFR 3.150

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations by updating a cross-reference listed at the end of a regulation. This amendment is necessary to ensure the regulation's cross-reference properly cites the new title of the changed regulation's subparagraph. The intended effect of this amendment is to ensure the accuracy of the cross-reference.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2900–AL19

2728. • SERVICE CONNECTION BY PRESUMPTION OF AGGRAVATION OF A CHRONIC PREEXISTING DISEASE

Priority: Other Significant

Legal Authority: 38 USC 1112; 38 USC 1116

CFR Citation: 38 CFR 3.307; 38 CFR 3.309

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs (VA) adjudication regulations concerning presumptive service connection to provide for service connection for aggravation of a chronic disease which preexisted the veteran's entry into military service. The United States Court of Appeals for the Federal Circuit has concluded that the current prohibition against granting service connection for aggravation of disability that preexisted the veteran's entry into active military service is not in accordance with the statute. This document also amends a VA adjudication regulation to conform to a recently enacted Public Law which eliminated the requirement that a Vietnam veteran must develop a disease associated with herbicide agents before the VA will presume exposure to herbicides during the veteran's service in Vietnam. This amendment is necessary to make the regulations conform with the statute.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt, Consultant, C&P Service, Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL20

2729. • DUTY PERIODS; INACTIVE DUTY FOR TRAINING

Priority: Other Significant

Legal Authority: 38 USC 101; 38 USC 106

CFR Citation: 38 CFR 3.6

Legal Deadline: None

Abstract: The Department of Veterans Affairs (VA) is amending its adjudication regulations regarding service connection for disabilities incurred or aggravated during inactive duty for training. This amendment is necessary to ensure the regulations accurately reflect the wording and intent of the statute.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt, Consultant, C&P Service, Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420

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RIN: 2900–AL21

2730. • LOAN GUARANTY: IMPLEMENTATION OF PUBLIC LAW 107-103

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 2102; 38 USC 3703(a)(1) and (c)(1); 38 USC 3714(d); 38 USC 3761

CFR Citation: 38 CFR 36.4302; 38 CFR 36.4308; 38 CFR 36.4404; 38 CFR 36.4527

Legal Deadline: None

Abstract: VA is amending its loan guaranty regulations to implement certain provisions of Public Law 107-103, the Veterans Education and Benefits Expansion Act of 2001. VA proposes to incorporate into the regulations the following changes: (1) An increase in the maximum amount of entitlement from $50,750 to $60,000; (2) a revision of the requirements for direct housing loans to Native American veterans; (3) a revision of the loan assumption notice requirement; and (4) an increase in the amount of assistance for specially adapted housing from $43,000 to $48,000 for severely disabled veterans and from $8,250 to $9,250 for less severely disabled veterans.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne DeSena, Assistant Director for Loan Policy and Valuation (262), Department of Veterans Affairs, Veterans Benefits Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AL23

OFFICE OF ACQUISITION AND MATERIEL MANAGEMENT

2731. DEPARTMENT OF VETERANS AFFAIRS ACQUISITION REGULATION—SIMPLIFIED ACQUISITION PROCEDURES FOR HEALTH CARE RESOURCES

Priority: Info./Admin./Other

Legal Authority: 38 USC 8153

CFR Citation: 48 CFR 801; 48 CFR 806; 48 CFR 812; 48 CFR 837; 48 CFR 852; 48 CFR 873

Legal Deadline: None

Abstract: VA withdrew the proposed rule concerning simplified acquisition procedures for health care resources published in the Federal Register on November 9, 1998 (63 FR 60256), and promulgated a new proposed rule concerning simplified acquisition procedures for health care resources. The new proposed rule document amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to establish simplified procedures for the competitive acquisition of health care resources, consisting of commercial services or the use of medical equipment or space, pursuant to 38 U.S.C. 8151-8153. Public Law 104-262, the Veterans' Health Care Eligibility Reform Act of 1996, authorized VA to prescribe simplified procedures for the procurement of health care resources. The rule prescribes those procedures.

Timetable:

Action	Date	FR Cite
NPRM	11/09/98	63 FR 60256
NPRM Comment Period End	01/08/99	
Second NPRM	06/07/01	66 FR 30659
Second NPRM Comment Period End	08/06/01	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-8819
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Email: donald.kaliher@mail.va.gov

RIN: 2900–AI71

2732. SEALED BIDDING AND COMPETITIVE PROPOSALS

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 806

Legal Deadline: None

Abstract: The Department of Veterans Affairs is amending its Acquisition Regulations. Section 806.401 is amended to remove material that conflicts with the Federal Acquisition Regulation.

Timetable:

Action	Date	FR Cite
NPRM	03/11/98	63 FR 11865
NPRM Comment Period End	05/11/98	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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Related RIN: Merged With 2900-AK78

RIN: 2900–AI99

2733. CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 801; 48 CFR 832; 48 CFR 836; 48 CFR 843; 48 CFR 846; 48 CFR 852

Legal Deadline: None

Abstract: This rule amends the Department of Veterans Affairs Acquisition Regulation (VAAR) to revise and update section numbers and titles, to make minor grammatical corrections and revisions, to delegate authority, and to update parts 836, Construction and Architect-Engineer Contracts, and 852, Solicitation Provisions and Contract Clauses, all to correspond to the Federal Acquisition Regulation (FAR). The rule would clarify how existing VAAR clauses relating to construction contracts are to be used, remove obsolete or duplicative materials, update the VAAR regarding certified cost or pricing data, and provide Agency procedures regarding disclosure of the Government cost estimate on construction contracts. The rule would also remove a "guarantee" clause from the VAAR and provide for VA contracting officers to use the FAR "warranty" clause for construction contracts.

Timetable:

Action	Date	FR Cite
NPRM	09/27/01	66 FR 49331
NPRM Comment Period End	11/26/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AJ56

2734. VETERANS AFFAIRS ACQUISITION REGULATION: REVISIONS TO VA ACQUISITION REGULATIONS PARTS 801 THROUGH 805

Priority: Info./Admin./Other

Legal Authority: 38 USC 501; 40 USC 486(c)

CFR Citation: 48 CFR 801 to 805; 48 CFR 842; 48 CFR 849; 48 CFR 852

Legal Deadline: None

Abstract: This rulemaking action would amend the Department of Veterans Affairs Acquisition Regulation to update position titles, to make minor grammatical corrections and revisions, to revise and update section numbers and titles and to relocate material to correspond to the Federal Acquisition Regulation, to remove obsolete or duplicative material, to make plain language revisions, and to delegate authority. In addition, the rule would update material regarding various internal VA administrative programs such as the VA's acquisition review, contracting officer's certification, and head of the contracting activity programs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Donald E. Kaliher, Senior Procurement Analyst (0495A), Department of Veterans Affairs, Office of Acquisition & Materiel Management, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AK75

BOARD OF VETERANS APPEALS

2735. BOARD OF VETERANS' APPEALS—RULES OF PRACTICE—ATTORNEY FEE MATTERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 5902; 38 USC 5904; 38 USC 5905

CFR Citation: 38 CFR 20.3; 38 CFR 20.609; 38 CFR 20.610

Legal Deadline: None

Abstract: The Board of Veterans Appeals is amending its rules of practice to end the practice of paying attorney fees from past-due benefits, establish safeguards in case of "disinterested third-party" payees who are individuals, and simplify certain notice procedures. These changes are necessary to permit VA to focus on activities more directly benefiting veterans and their families, i.e., deciding claims and coordinating benefit payments to veterans and their families, and to clarify the situations in which third parties may pay a claimants' legal fees.

Timetable:

Action	Date	FR Cite
NPRM	12/09/97	62 FR 64790
NPRM Comment Period End	02/09/98	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AI98

2736. THE BOARD OF VETERANS' APPEALS; RULES OF PRACTICE—MOTION FOR REVIEW OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR: CONTENT OF RECORD; ADVANCEMENT ON THE DOCKET

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7104(d); 38 USC 7111

CFR Citation: 38 CFR 20.1403; 38 CFR 20.1405(a); 38 CFR 20.1405(b)

Legal Deadline: None

Abstract: The Board of Veterans Appeals is amending its Rules of Practice at 38 CFR part 20 to add procedures which would (1) eliminate a provision relating to "constructive notice" as to the record to be reviewed in connection with challenges to Board decisions on the grounds of clear and unmistakable error (CUE) and (2) add a provision to provide for advancing CUE motions on the docket.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AJ85

2737. RULES OF PRACTICE: MEDICAL OPINIONS FROM THE VETERANS HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 5107(a)

CFR Citation: 38 CFR 20.901(a)

VA — Final Rule Stage

Legal Deadline: None

Abstract: The Board of Veterans' Appeals (Board) is amending its appeals regulations to clarify that it may obtain medical opinions from VA's Veterans Health Administration (VHA). The current rule, 38 CFR 20.901(a), makes an obsolete reference to the "Chief Medical Director," a title eliminated in 1992 and replaced by "Under Secretary for Health." The revised rule would clarify that the Board may obtain opinions from VHA, not from the individual who happens to be the Under Secretary for Health.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/23/01	66 FR 38158
Interim Final Rule Effective	07/23/01	
Interim Final Rule Comment Period End	09/21/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK52

2738. APPEALS REGULATIONS: TITLE FOR MEMBERS OF THE BOARD OF VETERANS APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 512; 38 USC 7101(a)

CFR Citation: 38 CFR 19.2

Legal Deadline: None

Abstract: The Board of Veterans' Appeals proposes to amend its appeals regulations to provide that a member of the Board of Veterans' Appeals (Board) may also be known as a "Veteran Law Judge." This duplicates, in proposed rule format, a final rule previously published in the Federal Register on September 14, 2000 (65 FR 55461). Individuals deciding appeals in other parts of the Federal Government are typically known as "judges"; e.g., "administrative law judges" and "administrative judges." Giving board members the title of "veteran law judges" would provide a more accurate title than "member" and would enhance confidence in the system through recognition that appeals are being adjudicated by legal professionals.

Timetable:

Action	Date	FR Cite
NPRM	03/06/01	66 FR 13463
NPRM Comment Period End	05/07/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK62

2739. BOARD OF VETERANS APPEALS: RULES OF PRACTICE—EFFECT OF PROCEDURAL DEFECTS IN MOTIONS FOR REVISION OF DECISIONS ON GROUNDS OF CLEAR AND UNMISTAKABLE ERROR

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 7111; PL 105-111

CFR Citation: 38 CFR 20.1404(b); 38 CFR 20.1409(b)

Legal Deadline: None

Abstract: The Board of Veterans Appeals amends its Rules of Practice regulations to provide that, when a motion to revise a Board decision on the grounds of clear and unmistakable error fails to provide specific allegations of error, the Board will dismiss the motion without prejudice to refiling. This amendment is made necessary by a decision of the United States Court of Appeals for the Federal Circuit.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/10/01	66 FR 35902
Interim Final Rule Comment Period End	09/10/01	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AK74

2740. • BOARD OF VETERANS' APPEALS: RULES OF PRACTICE—ATTORNEY FEE MATTERS; NOTICE OF DISAGREEMENT MATTERS

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a)

CFR Citation: 38 CFR 20.609

Legal Deadline: None

Abstract: The Board of Veterans' Appeals is amending its appeals regulations relating to attorney fees. We are removing the requirement that, in order to charge a fee, there must have been a notice of disagreement associated with the case filed on or after November 18, 1988. This change is required by section 603 of the Veterans Education and Benefits Expansion Act of 2001, Public Law No. 107-103 (December 27, 2001), which removed the referenced requirement.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AL25

NATIONAL CEMETERY SYSTEM

2741. INTERMENT OR MEMORIALIZATION IN VA NATIONAL CEMETERIES AND CERTAIN STATE CEMETERIES—FEDERAL OR STATE CAPITAL CRIME

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 2411; PL 105-116

CFR Citation: 38 CFR 1; 38 CFR 39

Legal Deadline: None

VA — Final Rule Stage

Abstract: Public Law No. 105-116, 111 Stat. 2381 (codified at 38 U.S.C. 2411) provides that, under certain circumstances, the remains of certain persons who committed Federal or State capital crimes may not be interred in a VA national cemetery and the memory of such persons may not be memorialized in a VA national cemetery. These statutory provisions also impose conditions on the receipt by a State of a VA grant to the State for veteran's cemetery regarding such interments or memorializations.

Timetable:

Action	Date	FR Cite
NPRM	07/21/00	65 FR 45332
NPRM Comment Period End	09/19/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Barber, Program Analyst (402B1), Department of Veterans Affairs, National Cemetery Administration, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AJ77

OFFICE OF EQUAL EMPLOYMENT OPPORTUNITY

2742. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, OR NATIONAL ORIGIN; HANDICAP; AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-1; 42 USC 6101

CFR Citation: 38 CFR 18

Legal Deadline: None

Abstract: The Department of Justice, pursuant to Executive Order 12250, is requesting that Federal agencies with title VI, section 504, and Age Discrimination Act regulations jointly issue amendments to their regulations to incorporate the Civil Rights Restoration Act of 1987 revisions.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tyrone Eddins, External Affairs Manager, Office of Resolution Management (08), Department of Veterans Affairs, 810 Vermont Avenue NW, Washington, DC 20420
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Fax: 202 501-2885

RIN: 2900–AK13

OFFICE OF THE GENERAL COUNSEL

2743. RELEASE OF INFORMATION FROM DEPARTMENT OF VETERANS AFFAIRS RECORDS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 38 USC 5701

CFR Citation: 38 CFR 1.500 to 1.584

Legal Deadline: None

Abstract: This document amends the Department of Veterans Affairs regulations governing the confidentiality and release of VA records subject to the Privacy Act, 5 U.S.C. 552a, the Freedom of Information Act (FOIA), 5 U.S.C. 552, and the veterans' records confidentiality statute (section 5701), 38 U.S.C. 5701. The amendments will implement court decisions and executive branch guidance issued since the regulations were originally published. The amendment is part of the Administration's effort to simplify, clarify, and modernize Federal regulations.

Timetable:

Action	Date	FR Cite
NPRM	09/10/98	63 FR 48455
NPRM Comment Period End	11/09/98	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lorraine M. Johnson, Deputy Assistant General Counsel (024A), Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 273-6381

RIN: 2900–AH98

2744. RECOGNITION OF ORGANIZATIONS AND ACCREDITATION OF REPRESENTATIVES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301; 38 USC 501(a); 38 USC 5901 to 5905

CFR Citation: 38 CFR 14.626 to 14.635

Legal Deadline: None

Abstract: The Department of Veterans Affairs proposes to revise and clarify existing procedures and requirements regarding certification or recognition of service organizations and their representatives and other individuals, agents, and attorneys representing claimants for benefits administered by VA. The revisions are designed to improve VA's ability to assure high quality representation of claimants.

Timetable:

Action	Date	FR Cite
NPRM	11/04/98	63 FR 59495
NPRM Comment Period End	01/04/99	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Richard J. Hipolit, Deputy Assistant General Counsel (022), Department of Veterans Affairs, Office of General Counsel, 810 Vermont Avenue NW, Washington, DC 20420
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RIN: 2900–AI93

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VETERANS HEALTH ADMINISTRATION

2745. PROTECTION OF HUMAN SUBJECTS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 16

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Judy Williams
Phone: 202 273-8284

RIN: 2900–AJ08

VETERANS BENEFITS ADMINISTRATION

2746. CLAIMS BASED ON AGGRAVATION OF NONSERVICE-CONNECTED DISABILITY

Priority: Other Significant

CFR Citation: 38 CFR 3.310

Timetable:

Action	Date	FR Cite
NPRM	06/04/97	62 FR 30547
NPRM Comment Period End	08/04/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
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RIN: 2900–AI42

2747. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND REQUIREMENT FOR DRUG-FREE WORKPLACE (ASSISTANCE)

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 44; 38 CFR 48 (New)

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3099
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert Finneran
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RIN: 2900–AK16

2748. RECOUPMENT OF NONDISABILITY SEVERANCE PAY FROM VA COMPENSATION

Priority: Other Significant

CFR Citation: 38 CFR 3.700

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
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RIN: 2900–AK95

BOARD OF VETERANS APPEALS

2749. APPEALS REGULATIONS; RULES OF PRACTICE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 19.3 (Revision); 38 CFR 20.609 (Revision); 38 CFR 20.903 (Revision); 38 CFR 20.1000; 38 CFR 20.1001; 38 CFR 20.1002; 38 CFR 20.1100 (Revision); 38 CFR 19.10; 38 CFR 19.15 (Revision); 38 CFR 19.39; 38 CFR 20.3; 38 CFR 20.101 (Revision); 38 CFR 20.102 (Revision); 38 CFR 20.201 (Revision); 38 CFR 20.605 (Revision); ...

Timetable:

Action	Date	FR Cite
NPRM	02/03/92	57 FR 4131
NPRM Comment Period End	03/04/92	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AE78

OFFICE OF THE ASSISTANT SECRETARY FOR ACQUISITION AND FACILITIES

2750. OPERATION OF CHILD CARE CENTERS AT VA FACILITIES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17

Timetable:

Action	Date	FR Cite
NPRM	12/27/89	54 FR 53078
NPRM Comment Period End	01/26/90	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Renee Bruce
Phone: 410 605-7388

RIN: 2900–AD48

2751. PER DIEM FOR ADULT DAY HEALTH CARE OF VETERANS IN STATE HOMES

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 51; 38 CFR 52; 38 CFR 58

Completed:

Reason	Date	FR Cite
Final Action	01/07/02	67 FR 660
Final Action Effective	02/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: L. Nan Stout
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RIN: 2900–AJ74

2752. POLICY REGARDING PARTICIPATION IN NATIONAL PRACTITIONER DATA BANK

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 46

Completed:

Reason	Date	FR Cite
Final Action	04/23/02	67 FR 19678
Final Action Effective	04/23/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathryn W. Enchelmayer
Phone: 202 273-8936

RIN: 2900–AJ76

2753. COMPENSATED WORK THERAPY/TRANSITIONAL RESIDENCES PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	01/31/02	67 FR 4667
Final Action Effective	01/31/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christine Woods
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Fax: 757 728-3143

RIN: 2900–AK01

2754. COPAYMENTS FOR MEDICATIONS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 38 CFR 17

Completed:

Reason	Date	FR Cite
Final Action	12/06/01	66 FR 63449
Final Action Effective	02/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Howard
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RIN: 2900–AK85

2755. AMENDMENTS TO TRAINING AND REHABILITATION PROGRAMS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.40; 38 CFR 21.6420; 38 CFR 21.6501; 38 CFR 21.6503; 38 CFR 21.6505; 38 CFR 21.6507; 38 CFR 21.6523; 38 CFR 21.260; 38 CFR 21.6005; 38 CFR 21.6042; 38 CFR 21.6050; 38 CFR 21.6052; 38 CFR 21.6054; 38 CFR 21.6056; 38 CFR 21.6058; ...

Completed:

Reason	Date	FR Cite
Merged With 2900-AL24 Proposed Rule	03/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Albert Graffam
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RIN: 2900–AG00

2756. VETERANS EDUCATION: REPORTING AND RECORDKEEPING REQUIREMENTS AT FLIGHT SCHOOLS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.4235; 38 CFR 21.4263

Completed:

Reason	Date	FR Cite
Final Action	03/19/02	67 FR 12473
Final Action Effective	03/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
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Fax: 202 275-2636
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RIN: 2900–AJ23

2757. LOAN GUARANTY: ADVERTISING AND SOLICITATION DISCLOSURE REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 36.4227; 38 CFR 36.4365

Completed:

Reason	Date	FR Cite
Final Action	03/01/02	67 FR 9402
Final Action Effective	03/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Finneran
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Email: lgyrfinn@vba.va.gov

RIN: 2900–AJ86

2758. POST-TRAUMATIC STRESS DISORDER CLAIMS BASED ON PERSONAL ASSAULT

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.304

Completed:

Reason	Date	FR Cite
Final Action	03/07/02	67 FR 10330
Final Action Effective	03/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bill Russo
Phone: 202 273-7211
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Email: capbruss@vba.va.gov

RIN: 2900–AK00

2759. DISEASES SPECIFIC TO RADIATION-EXPOSED VETERANS

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 38 CFR 3.309(d)

Completed:

Reason	Date	FR Cite
Final Action	01/25/02	67 FR 3612
Final Action Effective	03/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bill Russo
Phone: 202 273-7211
Fax: 202 275-1728
Email: capbruss@vba.va.gov

RIN: 2900–AK64

2760. SPECIAL MONTHLY COMPENSATION FOR WOMEN VETERANS WHO LOSE A BREAST AS A RESULT OF A SERVICE-CONNECTED DISABILITY

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 3.350; 38 CFR 4.116

Completed:

Reason	Date	FR Cite
Final Action	02/14/02	67 FR 6872
Final Action Effective	03/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Caroll McBrine
Phone: 202 273-7211

RIN: 2900–AK66

2761. DUTY TO ASSIST

Priority: Other Significant

CFR Citation: 38 CFR 3.102; 38 CFR 3.156; 38 CFR 3.159; 38 CFR 3.326

Completed:

Reason	Date	FR Cite
Final Action	08/29/01	66 FR 45620

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Janice Jacobs
Phone: 202 273-7211

RIN: 2900–AK69

2762. EXCLUSION FROM COUNTABLE INCOME OF EXPENSES PAID FOR VETERAN'S LAST ILLNESS SUBSEQUENT TO VETERAN'S DEATH BUT PRIOR TO DATE OF DEATH PENSION ENTITLEMENT

Priority: Other Significant

CFR Citation: 38 CFR 3.272(h)

Completed:

Reason	Date	FR Cite
Final Rule	02/28/02	67 FR 9209
Final Rule Effective	02/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth McCoy
Phone: 317 226-5209

RIN: 2900–AK84

2763. CLAIMS BASED ON EXPOSURE TO IONIZING RADIATION

Priority: Other Significant

CFR Citation: 38 CFR 3.311(b)

Completed:

Reason	Date	FR Cite
Final Action	02/14/02	67 FR 6870
Final Action Effective	02/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Beth McCoy
Phone: 317 226-5209

RIN: 2900–AK87

2764. CERTIFICATION FOR ELIGIBILITY FOR ADAPTIVE EQUIPMENT FOR AUTOMOBILES OR OTHER CONVEYANCES

Priority: Other Significant

CFR Citation: 38 CFR 3.808

Completed:

Reason	Date	FR Cite
Final Action	08/24/01	66 FR 44527
Final Action Effective	08/24/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Randy A. McKevitt
Phone: 202 273-7138
Fax: 202 273-1728
Email: caprmcke@vba.va.gov

RIN: 2900–AK96

2765. INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—SELECTED RESERVE

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.7636

Completed:

Reason	Date	FR Cite
Final Action	02/13/02	67 FR 6654
Final Action Effective	02/13/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
Phone: 202 273-7187
Fax: 202 275-2636
Email: edubsusl@vba.va.gov

RIN: 2900–AK99

2766. INCREASE IN RATES PAYABLE UNDER THE DEPENDENTS' EDUCATIONAL ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.3045; 38 CFR 21.3131; 38 CFR 21.3300; 38 CFR 21.3333

Completed:

Reason	Date	FR Cite
Merged With 2900-AL17	02/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
Phone: 202 273-7187
Fax: 202 275-2636
Email: edubsusl@vba.va.gov

RIN: 2900–AL00

2767. INCREASE IN RATES PAYABLE UNDER THE MONTGOMERY GI BILL—ACTIVE DUTY

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 21.7136 to 21.7137

Completed:

Reason	Date	FR Cite
Merged With 2900-AL17	02/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: William G. Susling
Phone: 202 273-7187
Fax: 202 275-2636
Email: edubsusl@vba.va.gov

RIN: 2900–AL01

2768. NOTICE OF APPEAL IN SIMULTANEOUSLY CONTESTED CLAIMS

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 19.192; 38 CFR 20.502

Completed:

Reason	Date	FR Cite
Final Action	12/03/01	66 FR 60152
Final Action Effective	01/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AJ73

2769. BOARD OF VETERANS' APPEALS: OBTAINING EVIDENCE AND CURING PROCEDURAL DEFECTS WITHOUT REMANDING

Priority: Substantive, Nonsignificant

CFR Citation: 38 CFR 19.31; 38 CFR 20.903; 38 CFR 20.1304

Completed:

Reason	Date	FR Cite
Final Action	01/23/02	67 FR 3099
Final Action Effective	03/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven L. Keller
Phone: 202 565-5978

RIN: 2900–AK91

2770. • BOARD OF VETERANS' APPEALS RULES OF PRACTICE: CLAIM FOR DEATH BENEFIT BY SURVIVOR

Priority: Substantive, Nonsignificant

Legal Authority: 38 USC 501(a); 38 USC 1311; 38 USC 1318

CFR Citation: 38 CFR 20.1106

Legal Deadline: Final, Judicial, April 8, 2002, Court Ordered.

Abstract: This document amends the Department of Veterans Affairs (VA) Rules of Practice at the Board of Veterans Appeals (Board) to clarify that the general rule that the Board is not bound by prior dispositions during the veteran's lifetime of issues involved in the survivor's claim does not include claims for "enhanced" Dependency and Indemnity Compensation (DIC). This amendment is necessary to eliminate confusion between the Board's current rule and another rule relating to DIC for survivors of certain veterans rated totally disabled at the time of death.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 65861
NPRM Comment Period End	01/22/02	
Final Action	04/05/02	67 FR 16309
Final Action Effective	05/06/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Affairs, Board of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AL11

2771. • BOARD OF VETERANS' APPEALS—TITLE CHANGE

Priority: Info./Admin./Other

Legal Authority: 38 USC 501

CFR Citation: 38 CFR ch 1

Legal Deadline: None

Abstract: The Board of Veterans' Appeals is amending 38 CFR chapter 1 to reflect a change in the title of a Board official with whom various documents are filed. Inasmuch as this change only deals with a nonsubstantive management matter, VA is dispensing with prior notice and comment and a delayed effective date.

Timetable:

Action	Date	FR Cite
Final Action	04/04/02	67 FR 16023
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven L. Keller, Senior Deputy Vice Chairman (01C), Department of Veterans Appeals, 810 Vermont Avenue NW, Washington, DC 20420
Phone: 202 565-5978

RIN: 2900–AL15

2772. DELEGATION OF AUTHORITY—DECISIONMAKING REGARDING DISCRIMINATION

Priority: Info./Admin./Other

CFR Citation: 38 CFR 2

Completed:

Reason	Date	FR Cite
Final Action	01/24/02	67 FR 3433
Final Action Effective	01/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James S. Jones
Phone: 202 501-2800
Email: jamess.jones@mail.va.gov

RIN: 2900–AJ63

[FR Doc. 02–7664 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part XVII

Agency for International Development

Semiannual Regulatory Agenda

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AGENCY FOR INTERNATIONAL DEVELOPMENT (AID)

AGENCY FOR INTERNATIONAL DEVELOPMENT

22 CFR Ch. II

Federal Regulations; USAID Regulatory Agenda Semiannual Summary

AGENCY: U.S. Agency for International Development.

ACTION: Semiannual regulatory agenda.

SUMMARY: The U.S. Agency for International Development (USAID) is publishing this agenda as required by Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993), and the Regulatory Flexibility Act. This agenda reports the status of those regulations currently under review and gives USAID's plan for the issuance of proposed regulations during the next 12 months. It is expected that the information provided in this agenda will enable the public to be more aware of and to participate more effectively in USAID's regulatory process.

FOR FURTHER INFORMATION CONTACT:

General: For further information on the agenda or the review list in general, contact: Joanne M. Paskar, Chief, Bureau for Management, Office of Administrative Services, Information and Records Division, U.S. Agency for International Development, Washington, DC 20523; Telephone (202) 712-1217, E-mail: jpaskar@usaid.gov.

Specific: For further information about any particular item on the agenda, contact the individual listed as the contact for that item.

SUPPLEMENTARY INFORMATION: Executive Order 12866 and the Regulatory Flexibility Act require the semiannual publication in the **Federal Register** of an agenda of regulations. The Regulatory Flexibility Act applies only to regulations for which a notice of proposed rulemaking was issued on or after September 19, 1980. USAID is required to publish an agenda listing all the regulations it expects to propose or promulgate that are likely to have a "significant economic impact on a substantial number of small entities." The Executive order became effective on September 30, 1993, and it is required that USAID publish a listing of all the regulations it expects to have under active consideration for proposal or review during the coming one-year period.

Roberto J. Miranda,

Director of Administrative Services.

Agency for International Development (AID) — Proposed Rule Stage

2773. USAID ACQUISITION REGULATION (AIDAR) DELETION OF APPENDIX D AND APPENDIX J

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR ch 7, app D; 48 CFR ch 7, app J

Legal Deadline: None

Abstract: Deletion of appendices D and J of the AIDAR, regarding personal service contracts with U.S. citizens and cooperating country and third country nationals. Policy statements in the appendices will be consolidated into internal policy manuals, and information of a regulatory nature will be incorporated into a new appendix A.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Agency for International Development, Room 7.08-106, Policy Division, Office of Procurement, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-5448
Fax: 202 216-3136
Email: thenson@usaid.gov

RIN: 0412–AA43

2774. • USAID ACQUISITION REGULATION (AIDAR) CREATION OF APPENDIX A

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 48 CFR ch 7, app A

Legal Deadline: None

Abstract: Appendix A will replace, in substance, the existing appendix D and J scheduled to be deleted commensurate to this action.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	01/00/03	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tom M. Henson, Senior Procurement Analyst, Agency for International Development, Room 7.08-106, Policy Division, Office of Procurement, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-5448
Fax: 202 216-3136
Email: thenson@usaid.gov

RIN: 0412–AA49

Agency for International Development (AID) — Final Rule Stage

2775. ADMINISTRATION OF GRANTS AND COOPERATIVE AGREEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 226

Legal Deadline: None

Abstract: This regulation will implement the Governmentwide uniform administrative requirements for grants and agreements with institutions of higher education, hospitals, and other nonprofit organizations issued by the Office of Management and Budget.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/19/95	60 FR 3743
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Organizations

Government Levels Affected: None

Agency Contact: Allen Eisenberg, Senior Policy Analyst, Agency for International Development, 1300 Pennsylvania Avenue NW., Washington, DC 20523
Phone: 202 712-0824
Email: aeisenberg@usaid.gov

RIN: 0412–AA21

2776. MISCELLANEOUS AMENDMENTS TO THE AIDAR (AIDAR NOTICE 98-2)

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 48 CFR 712; 48 CFR 727; 48 CFR 742; 48 CFR 752; 48 CFR ch 7, app I

Legal Deadline: None

Abstract: The USAID Acquisition Regulation will be amended to clarify USAID policy on the use of Government facilities and personnel in commercial products, establish an Agency policy regarding contract clauses to clarify withholding requirements under IQC contracts, revise reporting requirements, and coordinate the Agency's academic publication policy with the FAR's Rights in Data coverage by removing it from appendix I into a new part 727. This new AIDAR part will also provide for contractual coverage of Rights in Data in USAID's contracts performed overseas and awarded to U.S. organizations, provide guidance on Rights in Data coverage for overseas contracts with non-U.S. entities, and provide an alternate paragraph to add to the applicable FAR clause to reserve USAID's right to restrict release of data when release may negatively impact the Government's development or diplomatic relationship with the cooperating countries.

Timetable:

Action	Date	FR Cite
NPRM	11/04/98	63 FR 59501
NPRM Comment Period End	01/04/99	
Final Action	12/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane M. Howard, Senior Procurement Analyst, Agency for International Development, Room 7.08-082U, M/OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523-7801
Phone: 202 712-0206
Fax: 202 216-3395
Email: dhoward@usaid.gov

RIN: 0412–AA30

2777. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 22 CFR 209.1 to 209.13; 22 CFR 217.1 to 217.47; 22 CFR 218.01 to 218.39

Legal Deadline: None

Abstract: The Agency for International Development proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Jessalyn L. Pendarvis, Director, Office of Equal Opportunity Programs, Agency for International Development, Room 2.09-77, 1300 Pennsylvania Avenue NW., Washington, DC 20523-2901
Phone: 202 712-1110
Fax: 202 216-3370
Email: jpendarvis@usaid.gov

RIN: 0412–AA45

2778. ADDING VIETNAM, CAMBODIA AND AFGHANISTAN TO THE LIST OF COUNTRIES ELIGIBLE FOR USAID FINANCING

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2381

CFR Citation: 22 CFR 228

Legal Deadline: None

Abstract: Vietnam, Cambodia and Afghanistan will be removed from the restricted countries list for source/origin/nationality purposes.

Timetable:

Action	Date	FR Cite
Final Action	02/00/03	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

AID **Final Rule Stage**

Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Frances M. Maki, Senior Procurement Analyst, Agency for International Development, Room 7.08-094, M OP/P, 1300 Pennsylvania Avenue NW., Washington, DC 20523 Phone: 202 712-4978
Email: fmaki@usaid.gov
RIN: 0412–AA48

Agency for International Development (AID) **Long-Term Actions**

2779. GOVERNMENTWIDE DEBARMENT AND SUSPENSION; REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant
CFR Citation: 22 CFR 208; 22 CFR 210
Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Frances M. Maki
Phone: 202 712-4978
Email: fmaki@usaid.gov
RIN: 0412–AA47
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Part XVIII

Architectural and Transportation Barriers Compliance Board

Semiannual Regulatory Agenda

VOL 67 ISS 92 MY 13 2002 UMI

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD (ATBCB)

ARCHITECTURAL AND TRANSPORTATION BARRIERS COMPLIANCE BOARD

36 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Architectural and Transportation Barriers Compliance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Architectural and Transportation Barriers Compliance Board submits the following agenda of proposed regulatory activities, which may be conducted by the agency during the next 12 months. This regulatory agenda may be revised by the agency during the coming months as a result of action taken by the Board.

ADDRESSES: Architectural and Transportation Barriers Compliance Board, 1331 F Street NW., Suite 1000, Washington, DC 20004-1111.

FOR FURTHER INFORMATION CONTACT: For information concerning Board regulations and proposed actions, contact James J. Raggio, General Counsel, (202) 272-5434 (voice) or (202) 272-5449 (TDD).

James J. Raggio,

General Counsel, Architectural and Transportation Barriers Compliance Board.

Architectural and Transportation Barriers Compliance Board (ATBCB) — Proposed Rule Stage

2780. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: OUTDOOR DEVELOPED AREAS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to include requirements for outdoor developed areas.

Timetable:

Action	Date	FR Cite
Notice of Intent to Conduct Regulatory Negotiation	04/18/97	62 FR 19084
Establishment of Regulatory Negotiation Committee	06/04/97	62 FR 30546
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-5451
TDD Phone: 202 272-5449
Fax: 202 272-5447
Email: raggio@access-board.gov

RIN: 3014–AA22

Architectural and Transportation Barriers Compliance Board (ATBCB) — Final Rule Stage

2781. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: RECREATION FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1191

Legal Deadline: None

Abstract: To amend the Americans with Disabilities Act (ADA) Accessibility Guidelines to include requirements for recreational facilities.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee	02/03/93	58 FR 6949
Action	Date	FR Cite
Notice of Appointment of Advisory Committee Members	06/10/93	58 FR 32511
ANPRM	09/21/94	59 FR 48542
ANPRM Comment Period End	12/20/94	
NPRM	07/09/99	64 FR 37326
NPRM Comment Period End	12/08/99	
Availability of Dratt Final Guidelines Summary	07/21/00	65 FR 45331
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-5451
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Fax: 202 272-5447
Email: raggio@access-board.gov

RIN: 3014–AA16

2782. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990; 29 USC 792, Rehabilitation Act

ATBCB — Final Rule Stage

CFR Citation: 36 CFR 1191; 36 CFR 1190

Legal Deadline: None

Abstract: This regulation will revise and update the accessibility guidelines for the Americans with Disabilities Act (ADA) and the Architectural Barriers Act.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	04/06/94	59 FR 16175
Establishment of Advisory Committee	09/14/94	59 FR 47165
NPRM	11/16/99	64 FR 62248
NPRM Comment Period End	03/15/00	
Notice Extending Comment Period	03/09/00	65 FR 12493
Extension Period End	05/15/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-5451
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Fax: 202 272-5447
Email: raggio@access-board.gov

RIN: 3014–AA20

Architectural and Transportation Barriers Compliance Board (ATBCB) — Long-Term Actions

2783. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR TRANSPORTATION VEHICLES: PASSENGER VESSELS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act of 1990

CFR Citation: 36 CFR 1192

Legal Deadline: None

Abstract: This regulation will amend the Americans with Disabilities Act (ADA) Accessibility Guidelines for Transportation Vehicles to include additional requirements for ferries, excursion boats, and other passenger vessels.

Timetable:

Action	Date	FR Cite
Notice of Intent to Establish Advisory Committee	03/30/98	63 FR 15175
Establishment of Advisory Committee	08/12/98	63 FR 43136
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-5451
TDD Phone: 202 272-5449
Fax: 202 272-5447
Email: raggio@access-board.gov

RIN: 3014–AA11

2784. AMERICANS WITH DISABILITIES ACT (ADA) ACCESSIBILITY GUIDELINES FOR BUILDINGS AND FACILITIES: PUBLIC RIGHTS-OF-WAY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 12204, Americans with Disabilities Act; 29 USC 792, Rehabilitation Act

CFR Citation: 36 CFR 1190; 36 CFR 1191

Legal Deadline: None

Abstract: This regulation will amend the accessibility guidelines for the Americans with Disabilities Act and the Architectural Barriers Act to include requirements for public rights-of-way.

Timetable:

Action	Date	FR Cite
Notice of Intent to Form Advisory Committee	08/12/99	64 FR 43980
Notice of Appointment of Advisory Committee Members	10/20/99	64 FR 56482
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal, Federal

Federalism: Undetermined

Agency Contact: James J. Raggio, General Counsel, Architectural and Transportation Barriers Compliance Board, Suite 1000, 1331 F Street NW., Washington, DC 20004-1111
Phone: 202 272-5451
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RIN: 3014–AA26

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Part XIX

Commission on Civil Rights

Semiannual Regulatory Agenda

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COMMISSION ON CIVIL RIGHTS (CCR)

COMMISSION ON CIVIL RIGHTS

45 CFR Ch. VII

Semiannual Agenda of Regulations

AGENCY: Commission on Civil Rights.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the U.S. Commission on Civil Rights will have under development during the six-month period from April 1, 2002 through October 31, 2002. The purpose for publishing this agenda is to give notice of any regulatory activity by the Commission in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: For further information on any items in the agenda, contact Debra A. Carr, Deputy General Counsel, U.S. Commission on Civil Rights, Room 620, 624 Ninth Street NW., Washington, DC 20425, (202) 376-8351.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866, "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. 605), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year.

The regulations being considered by the Commission are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. The Commission has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public, nor will the regulations have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory analysis is required.

Debra A. Carr,

Deputy General Counsel.

Commission on Civil Rights (CCR) — Long-Term Actions

2785. COMMISSION ON CIVIL RIGHTS-UPDATE AND REVISION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1975 to 1975f; 5 USC 552(a); 5 USC 552(b)

CFR Citation: 45 CFR 701; 45 CFR 702; 45 CFR 703

Legal Deadline: None

Abstract: The regulation updates and revises most of the Commission's current regulations, specifically 45 CFR 701, 702, 703. 45 CFR 701 identifies the organization and functions of the Commission. 45 CFR 702 specifies the rules on hearings, reports, and meetings of the Commission. 45 CFR 703 identifies the operations and functions of the Commission's State Advisory Committees.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Debra A. Carr, Deputy General Counsel, Commission on Civil Rights, Room 625, 624 9th Street NW., Washington, DC 20425-0001
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RIN: 3035–AA02

[FR Doc. 02–7667 Filed 05–10–02; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Monday,
May 13, 2002

Part XX

Corporation for National and Community Service

Semiannual Regulatory Agenda

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE (CNCS)

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Chs. XII, XXV

Executive Order 12866 "Regulatory Planning and Review"

AGENCY: Corporation for National and Community Service.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations that the Corporation will have under development, revision, or review during the next year. The purpose for publishing this agenda is to give notice of any regulatory activity by the Agency in order to provide the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Corporation regulations or this semiannual agenda, contact Frank R. Trinity, General Counsel, Corporation for National and Community Service, 1201 New York Avenue NW., Washington, DC 20525, (202) 606-5000, ext. 290.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. 601), executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year.

The Corporation for National and Community Service has determined that the regulations under consideration will not impose compliance costs or reporting burdens on the public and that the regulations will not have a significant economic impact on a substantial number of small entities. Accordingly, no regulatory analysis is required under 5 U.S.C. 602.

Dated: March 14, 2002.
Wendy Zenker,
Chief Operating Officer.

Corporation for National and Community Service (CNCS) — Prerule Stage

2786. DISCRIMINATION COMPLAINT PROCEDURES FOR SERVICE MEMBERS, PARTICIPANTS, AND OTHER BENEFICIARIES

Priority: Other Significant

Legal Authority: 20 USC 1681 to 1687; 29 USC 794; 42 USC 2000d; 42 USC 5057; 42 USC 6101 et seq; 42 USC 12635

CFR Citation: 45 CFR 2504

Legal Deadline: None

Abstract: This regulation will identify the procedures used for processing complaints of discrimination based on race, color, national origin, sex, age, disability, religion, political affiliation, and other non-merit factors filed with the Corporation by service members, participants, and other beneficiaries under the Corporation's federally assisted or conducted programs.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, Room 7100, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
Fax: 202 565-2796
Email: nvoss@cns.gov

RIN: 3045–AA24

Corporation for National and Community Service (CNCS) — Proposed Rule Stage

2787. IMPLEMENTATION OF THE PRIVACY ACT OF 1974; AMENDMENT

Priority: Info./Admin./Other

Legal Authority: 5 USC 552a; 42 USC 12501 et seq; 42 USC 4950 et seq

CFR Citation: 45 CFR 2508

Legal Deadline: None

Abstract: This action updates several minor changes to the Corporation for National Service's current Privacy Act regulation found at 45 CFR 2508. These amendments are in accordance with the Privacy Act found at 5 U.S.C. 552a.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William L. Hudson Jr., Law Office Manager, General Counsel Office, Corporation for National and Community Service, Room 8200, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
TDD Phone: 202 565-2799
Fax: 202 565-2796
Email: whudson@cns.gov

RIN: 3045–AA25

2788. SENIOR COMPANION PROGRAM

Priority: Info./Admin./Other

Legal Authority: 42 USC 5013; 42 USC 12501 et seq

CFR Citation: 45 CFR 2551

Legal Deadline: None

Abstract: The amendments are needed to clarify the intent of the regulations published on March 24, 1999, to modify language that was too restrictive.

Timetable:

Action	Date	FR Cite
NPRM	04/17/02	67 FR 18846
Correction	04/25/02	67 FR 20485

Action	Date	FR Cite
NPRM Comment Period End	06/17/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Peter Boynton, Program Officer, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
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Email: pboynton@cns.gov

RIN: 3045–AA29

2789. FOSTER GRANDPARENT PROGRAM

Priority: Info./Admin./Other

Legal Authority: 42 USC 5011; 42 USC 12501 et seq

CFR Citation: 45 CFR 2552

Legal Deadline: None

Abstract: The amendments are needed to clarify the intent of the regulations published on March 24, 1999, to modify language that was too restrictive.

Timetable:

Action	Date	FR Cite
NPRM	04/17/02	67 FR 18847
NPRM Comment Period End	06/17/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Agency Contact: Peter Boynton, Program Officer, Corporation for National and Community Service, 1201 New York Avenue NW, Washington, DC 20525
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RIN: 3045–AA30

2790. • AMERICORPS GRANT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 12501 et seq

CFR Citation: 45 CFR 2520; 45 CFR 2521; 45 CFR 2522; 45 CFR 2524; 45 CFR 2525; 45 CFR 2526; 45 CFR 2528; 45 CFR 2550

Legal Deadline: None

Abstract: The proposed rule will amend the Corporation's AmeriCorps Grant Regulations by: Providing flexibility in the types of AmeriCorps member activities authorized in connection with disaster relief, homeland defense, or other compelling community needs; explicitly recognizes that religious organizations are eligible to receive AmeriCorps grants; eliminates the "six month rule" as a requirement for grantees; expands the types of educational expenses that may be paid with the education award; modifies the education award refund rules in the event a member does not complete a period of enrollment at an institution of higher education; provides that an AmeriCorps member's declaration under penalty of law may constitute sufficient documentation of that individual's attainment of a high school degree for purposes of enrolling as an AmeriCorps member and using the education award; modifies and strengthens the requirements relating to prohibited activities and clarifies that these requirements apply only to AmeriCorps programs funded under subtitle C of the National and Community Service Act; eliminates obsolete references to Palau; amends the regulations in conformance with the National and Community Service Act of 1990, as amended, to recognize that a territory that establishes a State commission is eligible to apply for administrative grant funds to support the activities of the State commission; and amends the definition of "Institution of Higher Education" to conform with the Higher Education Amendments of 1998.

Timetable:

Action	Date	FR Cite
NPRM	03/26/02	67 FR 13738
NPRM Comment Period End	05/28/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Frank Robert Trinity, General Counsel, Corporation for National and Community Service, 8th Floor, 1201 New York Avenue NW, Washington, DC 20525
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Email: ftrinity@cns.gov

RIN: 3045–AA32

Corporation for National and Community Service (CNCS) — Final Rule Stage

2791. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 45 CFR 1203; 45 CFR 1232

Legal Deadline: None

Abstract: The Corporation proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI) and section 504 of the Rehabilitation Act of 1972 (section 504). Together, these statutes prohibit discrimination on the basis of race, color, national origin, and disability in programs and activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this

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CNCS — **Final Rule Stage**

proposed regulation explicitly incorporates the CRAA's definition of "program or activity" and "program" into the Corporation's title VI and section 504 regulations. The Corporation's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	07/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: The RIN 3045-AA29, published in the Federal Register at 65 FR 76460 and 76512, dated December 6, 2000, was incorrect and should have been 3045-AA27.

Agency Contact: Nancy B. Voss, Director, Equal Opportunity, Corporation for National and Community Service, Room 7100, 1201 New York Avenue NW, Washington, DC 20525
Phone: 202 606-5000
Fax: 202 565-2796
Email: nvoss@cns.gov

RIN: 3045–AA27

Corporation for National and Community Service (CNCS) — **Long-Term Actions**

2792. CLAIMS COLLECTION

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2506

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/28/99	64 FR 4315
Interim Final Rule Comment Period End	03/29/99	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal

Agency Contact: Suzanne K. Dupre
Phone: 202 606-5000
Fax: 202 565-2796
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RIN: 3045–AA20

2793. AMERICORPS AND LEARN & SERVE GRANT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2510; 45 CFR 2513; 45 CFR 2515 to 2524; 45 CFR 2530 to 2533; 45 CFR 2540; 45 CFR 2550

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Frank Robert Trinity
Phone: 202 606-5000
Fax: 202 565-2796
Email: ftrinity@cns.gov

RIN: 3045–AA23

2794. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (FINANCIAL ASSISTANCE)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 2542; 45 CFR 2545

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne K. Dupre
Phone: 202 606-5000
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RIN: 3045–AA28

Corporation for National and Community Service (CNCS) — **Completed Actions**

2795. RETIRED AND SENIOR VOLUNTEER PROGRAM

Priority: Info./Admin./Other

CFR Citation: 45 CFR 2553

Completed:

Reason	Date	FR Cite
NPRM	11/13/01	66 FR 56793
Final Action	02/14/02	67 FR 6875

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Peter Boynton
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RIN: 3045–AA31

[FR Doc. 02–7668 Filed 05–10–02; 8:45 am]
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Part XXI

Court Services and Offender Supervision Agency for the District of Columbia

Semiannual Regulatory Agenda

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA (CSOSA)

COURT SERVICES AND OFFENDER SUPERVISION AGENCY FOR THE DISTRICT OF COLUMBIA

28 CFR Ch. VIII

Semiannual Regulatory Agenda

AGENCY: Court Services and Offender Supervision Agency for the District of Columbia.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866 (58 FR 51735) and the Regulatory Flexibility Act (5 U.S.C. chapter 6). The regulatory agenda lists all agency regulations that are scheduled for development during the next 12 months or that have been issued since the publication of the previous regulatory agenda.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Records Manager, Office of the General Counsel, CSOSA, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004 (telephone: (202) 220-5359; e-mail: roy.nanovic@csosa.gov).

SUPPLEMENTARY INFORMATION: CSOSA has identified two new regulations (Agency Seal and Acceptance of Gifts) for inclusion in this submission to the regulatory agenda.

George E. Pruden II,
General Counsel.

Court Services and Offender Supervision Agency for the District of Columbia—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2796	Disclosure of Records	3225-AA01
2797	Agency Seal	3225-AA05
2798	Acceptance of Gifts	3225-AA06

Court Services and Offender Supervision Agency for the District of Columbia—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2799	Community Supervision: Administrative Sanctions Schedule	3225-AA00
2800	Federal Tort Claims Act Procedures	3225-AA02
2801	District of Columbia Sex Offender Registration	3225-AA03
2802	Collection and Use of DNA Information	3225-AA04

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) — **Proposed Rule Stage**

2796. DISCLOSURE OF RECORDS

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a

CFR Citation: 28 CFR 802 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the disclosure of CSOSA or the District of Columbia Pretrial Services Agency (PSA) records. These regulations include procedures for processing requests for disclosure under the Freedom of Information Act, under the Privacy Act, and for production of records in response to a demand from a court or other noncongressional authority in connection with a proceeding to which CSOSA or PSA is not a party. The regulations also identify Privacy Act system of records exemptions for both CSOSA and PSA. These regulations are necessary in order to ensure that the public has appropriate access to information maintained by the CSOSA and PSA and that adequate safeguards are in place to protect the privacy rights of individuals.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11804
NPRM Comment Period End	05/14/02	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA01

2797. • AGENCY SEAL

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-33; 18 USC 506; 18 USC 1017

CFR Citation: 28 CFR 803 (New)

CSOSA — **Proposed Rule Stage**

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations on the use of its official seal and the official seal for the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. Use by any person or organization outside of the Agency may be made only with CSOSA's or PSA's prior written approval. Wrongful use of an official seal is subject to administrative action and/or criminal penalty.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
NPRM Comment Period End	09/00/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA05

2798. • ACCEPTANCE OF GIFTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 107-96

CFR Citation: 28 CFR 804 (New)

Legal Deadline: None

Abstract: CSOSA proposed to adopt regulations on the acceptance and use of gifts by itself and by the District of Columbia Pretrial Services Agency (PSA), an independent entity within CSOSA. CSOSA and PSA have been granted specific authority by Congress to accept and use gifts in the form of in-kind contributions of space and hospitality for the purpose of supporting offender and defendant programs and equipment and vocational training services to educate and train offenders and defendants. These regulations establish procedures for the public to follow when offering a gift, criteria for accepting and using gifts, and procedures for audit and public inspection of records pertaining to the acceptance and use of gifts.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	10/00/02	
Final Action Effective	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
Email: roy.nanovic@csosa.gov

RIN: 3225–AA06

Court Services and Offender Supervision Agency for the District of Columbia (CSOSA) — **Final Rule Stage**

2799. COMMUNITY SUPERVISION: ADMINISTRATIVE SANCTIONS SCHEDULE

Priority: Other Significant

Legal Authority: PL 105-33

CFR Citation: 28 CFR 810 (New)

Legal Deadline: None

Abstract: CSOSA issued interim regulations on administrative sanctions which may be imposed on offenders under CSOSA's supervision who violate the general or specific conditions of their release. The purpose of imposing sanctions is to enable CSOSA staff to respond as swiftly, certainly, and consistently as practicable to noncompliant behavior. Using sanctions will reduce the number of violation reports sent to the releasing authority (for example, the sentencing court or the United States Parole Commission). CSOSA staff will be able to refer offenders back to the releasing authority having demonstrated that CSOSA has exhausted the range of options at its disposal to change the offender's noncompliant behavior. The releasing authority may then concentrate on those referrals which fully merit scrutiny. The purpose of the regulations is to prevent crime, reduce recidivism, and support the fair administration of justice through the promotion of effective community supervision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/20/01	66 FR 48336
Interim Final Rule Effective	09/20/01	
Interim Final Rule Comment Period End	11/19/01	
Final Action	08/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
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RIN: 3225–AA00

2800. FEDERAL TORT CLAIMS ACT PROCEDURES

Priority: Other Significant

Legal Authority: PL 105-33; 28 CFR 14.11

CFR Citation: 28 CFR 801 (New)

Legal Deadline: None

Abstract: CSOSA proposes to adopt regulations to supplement Department of Justice regulations for processing administrative claims under the Federal Tort Claims Act (FTCA). These supplemental regulations state in plain language what members of the public need to do to file a claim for money damages under the FTCA with CSOSA or with the District of Columbia Pretrial Services Agency (PSA). These regulations are necessary to help ensure that persons who suffer proven monetary loss, personal injury, or wrongful death due to a negligent or otherwise wrongful act or omission of

a CSOSA or PSA employee committed while acting within the scope of his or her employment will be properly compensated.

Timetable:

Action	Date	FR Cite
NPRM	11/20/01	66 FR 58083
NPRM Comment Period End	01/22/02	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
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RIN: 3225–AA02

2801. DISTRICT OF COLUMBIA SEX OFFENDER REGISTRATION

Priority: Other Significant

Legal Authority: PL 105-23; PL 106-113

CFR Citation: 28 CFR 811 (New)

Legal Deadline: None

Abstract: CSOSA intends to issue interim regulations for the registration of sex offenders in the District of Columbia. These regulations provide notice to sex offenders of their duties under the law and under the regulations of the Metropolitan Police Department of the District of Columbia to register with CSOSA. In most instances, sex offenders will receive notification that they are subject to registration when they are being sentenced by the Superior Court of the District of Columbia after being found guilty (or found not guilty by reason of insanity or adjudicated as a sexual psychopath) or when CSOSA becomes responsible for their supervision. In those cases where the offender has previously committed a registration offense and is not currently under supervision, the offender must contact CSOSA to register in order to avoid possible criminal penalty. These regulations are intended to provide for the protection of the public and to ensure that the District of Columbia may provide appropriate notification regarding the presence of sex offenders in the community.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Final Action	09/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
Phone: 202 220-5359
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RIN: 3225–AA03

2802. COLLECTION AND USE OF DNA INFORMATION

Priority: Other Significant

Legal Authority: PL 106-546

CFR Citation: 28 CFR 812 (New)

Legal Deadline: Final, Statutory, June 17, 2001.

Abstract: CSOSA intends to adopt interim regulations on the collection and use of DNA information. DNA information is collected under CSOSA's supervision from individuals who have been convicted of specific offenses identified by District of Columbia statute. The DNA information becomes part of the combined DNA Index System (CODIS), a national data base of DNA profiles from convicted offenders, unsolved crime scenes, and missing persons. The regulations specify that the DNA sample will be collected in accordance with FBI guidelines. The regulations also establish procedures for cooperating with the Federal Bureau of Prisons to ensure that unnecessary samples will not be collected; establish a standard for what constitutes an individual's refusal to cooperate in the collection of the sample; define what steps CSOSA deems to be reasonably necessary to take when an individual refuses to cooperate; and list in an appendix the offenses which qualify for DNA collection.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/00/02	
Interim Final Rule Comment Period End	08/00/02	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Roy Nanovic, Records Manager, Court Services and Offender Supervision Agency for the District of Columbia, Room 1253, 633 Indiana Avenue NW., Washington, DC 20004
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RIN: 3225–AA04

[FR Doc. 02–7669 Filed 05–10–02; 8:45 am]
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Monday,
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Part XXII

Environmental Protection Agency

Semiannual Regulatory Agenda

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ENVIRONMENTAL PROTECTION AGENCY (EPA)

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Ch. I

FRL-7163-5

Spring 2002 Regulatory Agenda

AGENCY: Environmental Protection Agency.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Environmental Protection Agency (EPA) publishes the Semiannual Regulatory Agenda to update the public about:

- Regulations and major policies currently under development,
- Reviews of existing regulations and major policies, and
- Regulations and major policies completed or canceled since the last Agenda.

TO BE PLACED ON THE AGENDA MAILING LIST: If you would like to subscribe, please send an e-mail with your name and address to: ncepimal@one.net, or call 800-490-9198. There is no charge for single copies of the Agenda.

FOR FURTHER INFORMATION CONTACT: If you have questions or comments about a particular action, please get in touch with the agency contact listed in each Agenda entry. If you have general questions about the Agenda or about EPA's decisionmaking process, please contact: Phil Schwartz (1806A), Environmental Protection Agency, 1200 Pennsylvania Avenue NW., Washington, DC 20460; phone: (202) 564-6564; e-mail: schwartz.philip@epa.gov. We welcome your suggestions on how we can make the Agenda more useful to you and easier to use.

SUPPLEMENTARY INFORMATION:

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A. What Principles and Objectives Guide EPA in Developing Regulations and Policies?

The quality of the scientific, economic, and policy analyses that underlie EPA regulations is vital to the credibility of EPA decisions and ultimately our effectiveness in protecting human health and the environment. Additionally, continued testing and adoption of new environmental protection methods must be a central tenet in environmental problem solving. A well managed regulatory process and a strong commitment to innovative solutions will ensure that the significant environmental improvements that we all want to achieve are cost-effective, fair and fully protective.

Much of the success over the last 31 years and seven administrations in cleaning up the Nation's water, air, and land is attributable to the system of Federal and State regulation that has directed and coordinated private investment in pollution control and prevention. While regulation will remain an important tool to implement environmental policy, it is not the only one. Instead, EPA must increasingly act as an innovator, educator, and leader in administering a broad set of new tools — including new methods to design and administer regulations — that engage all segments of our society in responsive behaviors that protect the environment while promoting appropriate economic growth. For example, we have worked with businesses and community leaders to develop more than 40 voluntary partnership programs that help achieve environmental objectives with the greatest possible efficiency. For more information about these programs visit: www.epa.gov/partners.

EPA's regulatory process must ensure that the Nation's environmental system protects human health and the environment in a cost-effective manner. Appropriate scientific, economic and policy analyses must be planned at early stages in the regulatory development process so that senior Agency decisionmakers understand the benefits and costs of policy options from which to choose. Additionally, it is important that we continue to apply new methods to protect the environment—by building flexibility into regulations up front, through nonregulatory approaches where effective, by creating strong partnerships with States and businesses, and by vigorously using public outreach and involvement.

The basic legal requirements we must follow when we issue a regulation generally are contained in the Administrative Procedure Act, the Regulatory Flexibility Act as amended by the Small Business Regulatory Enforcement Fairness Act, the Unfunded Mandates Reform Act, the Paperwork Reduction Act, the National Technology Transfer and Advancement Act, and the Congressional Review Act. You can find information on many of these laws at http://www.law.cornell.edu/uscode/.

We also must meet a number of requirements contained in Executive orders. Of particular significance for EPA rulemakings are Executive Orders 12866 (Regulatory Planning and Review), 13045 (Children's Health Protection), 13175 (Consultation and Coordination with Indian Tribal Governments), 13132 (Federalism), and 13211 (Energy). You can find information on these and other Executive orders at http://www.nara.gov/fedreg/eo.html#top.

B. How Does EPA Develop Rules and Policies?

In order to improve the regulatory process within EPA, we established a task force to examine the Agency's rulemaking process, and to recommend ways to improve the internal process and strengthen the supporting science and analysis. The task force concluded that the regulatory process is essentially sound but improvements can be made in several areas to more effectively carry out our mission including: better scientific and economic analyses; broader consideration of policy options; greater accountability; and better management of significant nonregulatory decisions. For more information about EPA's decisionmaking process for rules, policies, and certain other important

actions go to: http://www.epa.gov/opei/regulatory.htm. We also discussed the steps we are taking to improve our decisionmaking in the FY2001 *Statement of Priorities* (http://ciir.cs.umass.edu/ua/October2001/priorities/environmental_protection_agency_(EPA).html).

C. What Actions Are Included in the Agenda?

EPA includes regulations and certain major noncodified policy documents in the Agenda. We generally do not include minor amendments or the following categories of actions in the Agenda:

- Administrative regulations such as delegations of authority, changes of address or phone numbers.
- Under the Clean Air Act: Revisions to State Implementation Plans; Equivalent Methods for Ambient Air Quality Monitoring; Deletions from the New Source Performance Standards source categories list; Delegations of Authority to States; Area Designations for Air Quality Planning Purposes.
- Under the Federal Insecticide, Fungicide, and Rodenticide Act: Actions regarding pesticide tolerances and food additive regulations; decision documents defining and establishing registration standards; decision documents and termination decisions for the Special Review Registration process; and data call-in requests made under section 3(c)(2)(B).
- Under the Resource Conservation and Recovery Act: Authorization of State solid waste management plans; hazardous waste delisting petitions.
- Under the Clean Water Act: State Water Quality Standards; deletions from the section 307(a) list of toxic pollutants; suspensions of toxic testing requirements under the National Pollutant Discharge Elimination System (NPDES); delegations of NPDES authority to States.
- Under the Safe Drinking Water Act: Actions on State underground injection control programs.

There is no legal significance to the omission of an item from the agenda.

D. How Is the Agenda Organized?

We have organized the agenda:

- First, by the law that would authorize a particular regulation;
- Second, by the current stage of development (proposal, final, etc.); and
- Third, by the section number of the statute which requires or authorizes the rule.

The following 14 sections deal with 13 laws that EPA administers and a fourteenth broader section called "General" that includes cross-cutting actions, such as rules authorized by multiple statutes and general acquisition rules:

1. General
2. The Clean Air Act (CAA)
3. The Atomic Energy Act (AEA)
4. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)
5. The Federal Food, Drug, and Cosmetic Act (FFDCA)
6. The Toxic Substances Control Act (TSCA)
7. The Emergency Planning and Community Right-to-Know Act (EPCRA)
8. Chemical Safety Information, Site Security and Fuels Regulatory Relief Act
9. The Resource Conservation and Recovery Act (RCRA)
10. The Oil Pollution Act (OPA)
11. The Comprehensive Environmental Response, Compensation, and Liability Act Superfund (CERCLA)
12. The Clean Water Act (CWA)
13. The Safe Drinking Water Act (SDWA)
14. The Shore Protection Act (SPA)

In each of these 14 sections, there are up to 5 headings covering the following stages of rulemaking:

1. Prerulemakings - Prerulemaking actions are intended to determine whether EPA should initiate rulemaking. Prerulemakings may include anything that influences or leads to rulemaking, such as advance notices of proposed rulemaking (ANPRMs), significant studies or analyses of the possible need for regulatory action, announcement of reviews of existing regulations required under section 610 of the Regulatory Flexibility Act, requests for public comment on the need for regulatory action, or important preregulatory policy proposals.
2. Proposed Rules - This section includes EPA rulemaking actions that are within a year of proposal (publication of Notices of Proposed Rulemakings (NPRMs)).
3. Final Rules - This section includes rules that are within a year of final promulgation.
4. Long-Term Actions - This section includes rulemakings for which the next scheduled regulatory action is after March 2003.
5. Completed Actions - This section contains actions that have been promulgated and published in the **Federal Register** since publication of the fall 2001 Agenda. It also includes actions that we are no longer considering. If an action appears in the completed section, it will not appear in future Agendas unless we decide to initiate action again, in which case it will appear as a new entry. EPA also announces the results of our Regulatory Flexibility Act section 610 reviews in this section of the Agenda.

E. What Information Is in Agenda Entries?

Agenda entries include the following information, where applicable:

Sequence Number: This indicates where the entry appears in the Agenda.

Title: Titles for new entries (those that have not appeared in previous Agendas) are preceded by a bullet (•). The notation "Section 610 Review" follows the title if we are reviewing the rule as part of our periodic review of existing rules under section 610 of the Regulatory Flexibility Act (5 U.S.C. 610).

Priority: Entries are placed into one of five categories described below.

Economically Significant: As defined in Executive Order 12866, a rulemaking action that may have an annual effect on the economy of $100 million or more or will adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. OMB reviews all

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economically significant rules under Executive Order 12866.

Other Significant: A rulemaking that is not economically significant but is considered significant by the agency. This category includes rules that are an EPA priority and rules that EPA anticipates will be reviewed by the Office of Management and Budget under Executive Order 12866 because they may:

- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights or obligations of recipients; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles in Executive Order 12866.

Substantive, Nonsignificant: A rulemaking that has substantive impacts but is neither Significant, nor Routine and Frequent, nor Informational/Administrative/Other.

Routine and Frequent: A rulemaking that is a specific case of a recurring application of a regulatory program in the Code of Federal Regulations (e.g., certain State Implementation Plans, National Priority List updates, Significant New Use Rules, State Hazardous Waste Management Program actions, and Tolerance exemptions). If an action that would normally be classified Routine and Frequent is reviewed by the Office of Management and Budget under E.O. 12866, then we would classify the action as either "Economically Significant" or "Other Significant."

Informational/Administrative/Other: A rulemaking that is primarily informational or pertains to agency matters not central to accomplishing the agency's regulatory mandate but that the agency places in the Agenda to inform the public of the activity.

Also, if we believe that a rule may be "major" as defined in the Congressional Review Act (5 U.S.C. 801, *et seq.*) because it is likely to result in an annual effect on the economy of $100 million or more or meets other criteria specified in this law, we indicate this under the "Priority" heading with the statement "Major under 5 U.S.C. 801."

Legal Authority: The sections of the United States Code (U.S.C.), Public Law (P.L.), Executive Order (E.O.), or common name of the law that authorizes the regulatory action.

CFR Citation: The sections of the Code of Federal Regulations that will be affected by the action.

Legal Deadline: An indication of whether the rule is subject to a statutory or judicial deadline, the date of that deadline, and whether the deadline pertains to a Notice of Proposed Rulemaking, a Final Action, or some other action.

Abstract: A brief description of the problem the regulation will address; the need for a Federal solution; to the extent available, the alternatives that the agency is considering to address the problem; and the potential advantages and disadvantages of the action.

Timetable: The dates (and citations) that documents for this action were published in the **Federal Register** and, where possible, a projected date for the next step. Projected publication dates frequently change during the course of a rule development. The projections in the Agenda are our best estimates as of the date we submit the Agenda for publication. For some entries, the timetable indicates that the date of the next action is "to be determined."

Regulatory Flexibility Analysis Required: Indicates whether EPA has prepared or anticipates that it will be preparing a regulatory flexibility analysis under section 603 or 604 of the Regulatory Flexibility Act. Generally, such an analysis is required for proposed or final rules that EPA believes may have a significant economic impact on a substantial number of small entities.

Small Entities Affected: Indicates whether we expect the rule to have any effect on small businesses, governments, or nonprofit organizations

Government Levels Affected: Indicates whether we expect the rule to have any effect on levels of government and, if so, whether the governments are State, local, tribal, or Federal.

Federalism Implications: Indicates whether the action is expected to have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

Unfunded Mandates: Section 202 of the Unfunded Mandates Reform Act requires an assessment of anticipated costs and benefits if a rule includes a mandate that may result in expenditures of more than $100 million in any one year by State, local, and tribal governments, in the aggregate, or by the private sector. If we expect to exceed this $100 million threshold, we note it in this section.

Energy Impacts: Indicates whether the action is a significant energy action under Executive Order 13211.

Agency Contact: The name, address, phone number, and e-mail address, if available, of a person who is knowledgeable about the regulation.

SAN Number: A code number that EPA uses to identify and track rulemakings.

RIN: The Regulatory Identifier Number is used by OMB to identify and track rulemakings. The first four digits of the RIN stand for the EPA office with lead responsibility for developing the action.

F. What Tools Are Available To Help Quickly Identify Actions That Are of Interest to You?

The Regulatory Information Service Center (RISC), the Government Printing Office (GPO), and the EPA have created a number of aids to help you find actions that are of interest to you.

For Rules That Directly Affect a Particular Industry: See Appendix F "Environmental Protection Agency Subject Index to the Unified Agenda." If you have access to the Internet, you can use the EPA Regulatory Agenda search engine which is located in the Small Business Regulatory Library section of the EPA website at www.epa.gov/regagenda. Click on "Search Regulatory Action Database" and then "Access the Database." This tool can be used to search all Agenda entries by keyword and we invite everyone to use it. The GPO also has a search engine which is located at http://www.access.gpo.gov/su_docs/multidb.html.

For Rules With Significant Impacts on Small Businesses, Small Governments, and Small Nonprofit Organizations:

Go to Appendix B following this Agenda for the lists of the rules that we expect may have a significant impact on a substantial number of small entities. These lists are also available on the Internet. The small businesses list is at http://ciir.cs.umass.edu/ua/Spring2002/entities/sm_index-2.html. The small governments list is at http://ciir.cs.umass.edu/ua/Spring2002/entities/sm_index-3.html. And the small organizations list is at http://ciir.cs.umass.edu/ua/Spring2002/entities/sm_index-4.html.

For Rules That We Expect Will Have Some Impact on Some Small Entities but Less Than a Significant Impact on a Substantial Number of Them:

See Appendix C following this Agenda, "Index to Entries That May Affect Small Entities When a Regulatory Flexibility Analysis Is Not Required." This list is available on the Internet at http://ciir.cs.umass.edu/ua/Spring2002/entities/smgov-5.html.

For Rules With Any Impact on State, Local, or Tribal Governments, or Other Federal Agencies:

See Appendix D following this Agenda, "Index to Entries That May Affect Government Levels." This list is available on the Internet at http://ciir.cs.umass.edu/ua/Spring2002/entities/smgov-8.html.

G. How Can You Access Federal Register Documents and Interpretive Documents via the Internet and via E-mail?

Like many organizations in the public and private sector, EPA is harnessing the power of the Internet to meet the needs of those we serve. The EPA Web site offers more than 100,000 files online. If you want to get automatic e-mails about areas of particular interest as they appear in the **Federal Register** (FR), we maintain 12 collections including: air; water; wastes and emergency response; pesticides; toxic substances; right-to-know and toxic release inventory; environmental impacts; endangered species; meetings; the Science Advisory Board; daily full-text notices with page numbers; and general information. For more information and to subscribe via our FR Web site, visit: http://www.epa.gov/fedrgstr/subscribe.htm. If you have e-mail without full Internet access, please send an e-mail to envsubset@epa.gov to request instructions for subscribing to the EPA Federal Register listservers.

Several Web sites allow access to the full text of **Federal Register** documents.

- The Government Printing Office site has a number of databases online including the Unified Agenda and the **Federal Register** going back to 1994. This site is the official source for the electronic **Federal Register**. It provides public access via telnet, Internet, and dial-up connection and is located at http://www.access.gpo.gov/su_docs/multidb.html.
- EPA's site (http://www.epa.gov/fedrgstr/) has environmental rules issued by EPA and other Federal agencies dating back to October 1994 and lets you search by date, page citation or keyword. It includes links to the Regulatory Information Service Center and Government Printing Office sites. We also have a Regulatory Agenda search engine at: http://www.epa/regagenda. To use, first select "Search Regulatory Action Database" and then select "Access the Database."
- The Regulatory Information Service Center of the General Services Administration maintains a site to help users who want to find information about Federal, State, and local regulations at http://www.reginfo.gov/. This site includes links to all agencies' regulatory agendas and regulatory plans going back to October 1995.

In the "Additional Information" section of many of the entries in this Agenda we include the Internet address for documents that we have already published as part of the rulemaking.

We have recently opened an Internet site through which you can access a collection of non-binding guidance materials issued by EPA Headquarters offices since January 1, 1999. The collection includes documents issued to Regions, States, and/or the regulated community that describe how the Agency intends to exercise its discretionary authority and explain what a statute or regulation means. The collection is located at: http://www.epa.gov/guidance/.

H What is EPA's New Regulatory Public Access System (RPAS)?

The Regulatory Public Access System (RPAS) will provide access to documents used and produced as a part of EPA's administrative rulemaking process. These documents include Federal Register notices, support documents, and public comments. Users may review these documents and submit comments on rulemaking actions online through RPAS. Furthermore, RPAS will also include certain nonregulatory information of general interest, such as selected guidance documents.

I. What Special Attention Do We Give to the Impacts of Rules on Small Businesses, Governments, and Nonprofit Organizations?

For each of our rulemakings we consider whether there will be any adverse impact on any small entity. We attempt to fit the regulatory requirements, to the extent feasible, to the scale of the businesses, organizations, and governmental jurisdictions subject to the regulation. As required by the Regulatory Flexibility Act (RFA), for rules which we expect may have a significant impact on a substantial number of small entities we convene a Small Business Advocacy Review Panel to consider the rulemaking. We also prepare regulatory flexibility analyses on these rules. See Appendix B at the end of the Agenda, "Index to Environmental Protection Agency Entries for which a Regulatory Flexibility Analysis is Required" for a list of these rules. See Appendix C for a list of the rules that may affect small entities, but which will not have a significant impact on a substantial number of them.

As required by Section 610 of the RFA, we review within 10 years of issuance all rules that were projected to have a significant economic impact on a substantial number of small entities. This year we have no rules scheduled for section 610 review.

J. Why Participate in EPA's Decisionmaking Process and How Can You Be Most Persuasive?

You may participate by getting in touch with the contact person provided in each Agenda entry. You may also participate by commenting on proposed rules that we publish in the **Federal Register**. Once we have proposed a rule, we will consider and address comments before issuing a final rule. To be most effective, comments should contain information and data that support your position, and you also should explain why we should incorporate your suggestion in the final rule. You can be particularly helpful and persuasive if you provide examples to illustrate your concerns and offer specific alternatives.

We believe that the best approach to making our rules more cost-effective and fairer includes having those of you who are stakeholders in a problem work

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with us in deciding on the solution. We urge you to participate with us in this process.

Dated: March 19, 2002.
Thomas J. Gibson,
Associate Administrator, Office of Policy, Economics, and Innovation.

GENERAL—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2803	SAN No. 4056 Utilization of Small, Minority and Women's Business Enterprises in Procurement Under Assistance Agreements	2020-AA39
2804	SAN No. 4319 Revisions to Acquisition Regulation Concerning Conflict of Interest	2030-AA67
2805	SAN No. 3580 Incorporation of Class Deviations Into EPAAR	2030-AA37
2806	SAN No. 3876 Incrementally Funding Fixed Price Contracts	2030-AA50
2807	SAN No. 4292 Proposed Revision to EPA's Implementing NEPA Regulations	2020-AA42
2808	SAN No. 4618 Revision of Procedural Rules for Hearings on Cancellations, Suspensions, Changes in Classifications, and Denials of Pesticide Registrations	2020-AA44
2809	SAN No. 4191 Revision to EPAAR 1552.211-73, Level of Effort	2030-AA64
2810	SAN No. 4463 Persistent, Bioaccumulative, and Toxic (PBT) Pollutants Strategy	2070-AD45
2811	SAN No. 4473 Regulatory Incentives for the National Environmental Performance Track Program	2090-AA13
2812	SAN No. 4533 New Jersey Gold Track Project XL Rule	2090-AA28

GENERAL—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2813	SAN No. 3817 Implementation of Changes to Governmentwide Debarment and Suspension Common Rule	2030-AA48
2814	SAN No. 4021 Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2020-AA36
2815	SAN No. 4180 Rewriting of EPA Regulations Implementing the Freedom of Information Act	2025-AA04
2816	SAN No. 4185 Electronic Funds Transfer	2030-AA57
2817	SAN No. 4187 EPAAR Coverage on Local Hiring and Training	2030-AA62
2818	SAN No. 4400 Administrative Corrections to EPAAR 1515, Contracting by Negotiation	2030-AA73
2819	SAN No. 4572 Fellowship Grant Regulation Revision	2030-AA77
2820	SAN No. 4530 EPA Agencywide Public Involvement Policy	2090-AA23
2821	SAN No. 4536 Project XL Site Specific Rulemaking for NASA White Sands Test Facility Electronic Reporting in Las Cruces, New Mexico	2090-AA27

GENERAL—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2822	SAN No. 3240 Public Information and Confidentiality Regulations	2025-AA02
2823	SAN No. 4270 Cross-Media Electronic Reporting (ER) and Recordkeeping Rule	2025-AA07
2824	SAN No. 3671 Guidelines for Carcinogen Risk Assessment	2080-AA06

GENERAL—Completed Actions

Sequence Number	Title	Regulation Identification Number
2825	SAN No. 3933 Environmental Impact Assessment of Nongovernmental Activities in Antarctica	2020-AA34
2826	SAN No. 4351 Notice to Proceed	2030-AA68
2827	SAN No. 4589 Empowerment Through Delegations of Authority and Miscellaneous Amendments	2030-AA78

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GENERAL—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2020-AA26	SAN No. 3807 Consolidation of Good Laboratory Practice Standards (GLPS) Regulations Currently Under TSCA and FIFRA Into One Rule	03/19/2002	Withdrawn The Agency plans no further action.

CLEAN AIR ACT (CAA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
2828	SAN No. 4511 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7); Third Party Audit Provisions	2050-AE85
2829	SAN No. 3263 Performance Warranty and Inspection/Maintenance Test Procedures	2060-AE20
2830	SAN No. 3262 Inspection/Maintenance Recall Requirements	2060-AE22
2831	SAN No. 3412 Operating Permits: Revisions (Part 70)	2060-AF70
2832	SAN No. 3649 Amendments to Method 24 (Water-Based Coatings)	2060-AF72
2833	SAN No. 3820 NESHAP: Plywood and Composite Wood Products	2060-AG52
2834	SAN No. 3969 NESHAP: Municipal Solid Waste Landfills	2060-AH13
2835	SAN No. 3958 Addition of Opacity Method to Appendix M of 40 CFR Part 51 (Method 203)	2060-AH23
2836	SAN No. 3917 Transportation Conformity Rule Amendment: Clarification of Trading Provisions	2060-AH31
2837	SAN No. 3910 Streamlined Evaporative Test Procedures	2060-AH34
2838	SAN No. 4107 NESHAP: Asphalt/Coal Tar Application on Metal Pipes	2060-AH78
2839	SAN No. 4119 Performance Specification 16 - Specifications and Test Procedures for Predictive Emission Monitoring Systems in Stationary Sources	2060-AH84
2840	SAN No. 4003 Technical Change to Dose Methodology for 40 CFR 191, Subpart A	2060-AH90
2841	SAN No. 3656 NESHAP: Reciprocating Internal Combustion Engine	2060-AG63
2842	SAN No. 3657 NESHAP: Combustion Turbine	2060-AG67
2843	SAN No. 3343 NESHAP: Iron Foundries and Steel Foundries	2060-AE43
2844	SAN No. 3452 National Emission Standards for Hazardous Air Pollutants: Miscellaneous Organic Chemical Manufacturing and Miscellaneous Coating Manufacturing	2060-AE82
2845	SAN No. 3449 NESHAP: Mercury Cell Chlor-Alkali Plants	2060-AE85
2846	SAN No. 3746 NESHAP: Paint Stripping Operations	2060-AG26
2847	SAN No. 3825 NESHAP: Miscellaneous Metal Parts and Products (Surface Coating)	2060-AG56
2848	SAN No. 3652 NESHAP: Refractory Products Manufacturing	2060-AG68
2849	SAN No. 3837 NESHAP: Industrial, Commercial and Institutional Boilers and Process Heaters	2060-AG69
2850	SAN No. 3651 NESHAP: Lime Manufacturing	2060-AG72
2851	SAN No. 3902 NESHAP: Semiconductor Production	2060-AG93
2852	SAN No. 3906 NESHAP: Metal Can Manufacturing (Surface Coating) Industry	2060-AG96
2853	SAN No. 3909 NESHAP: Fabric Printing, Coating and Dyeing	2060-AG98
2854	SAN No. 3907 NESHAP: Surface Coating of Automobiles and Light-Duty Trucks	2060-AG99
2855	SAN No. 3924 NESHAP: Primary Magnesium Refining	2060-AH03
2856	SAN No. 3968 NESHAP: Site Remediation	2060-AH12
2857	SAN No. 3972 NESHAP: Rocket Engine Test Firing	2060-AH35
2858	SAN No. 3971 NESHAP: Organic Liquids Distribution (Non-Gasoline)	2060-AH41
2859	SAN No. 3939 NESHAP: Group I Polymers and Resins and Group IV Polymers and Resins-Amendments	2060-AH47
2860	SAN No. 4546 NESHAP: Publicly Owned Treatment Works (POTW)-Amendments II	2060-AJ66
2861	SAN No. 3904 NESHAP: Wood Building Products (Surface Coating)	2060-AH02
2862	SAN No. 3673 Protection of Stratospheric Ozone: Reconsideration of Section 608 Sales Restriction	2060-AG20
2863	SAN No. 3824 Metal Furniture (Surface Coating) NESHAP	2060-AG55
2864	SAN No. 3826 Plastic Parts and Products (Surface Coating) NESHAP	2060-AG57
2865	SAN No. 4115 NESHAP: Chromium Electroplating Amendment	2060-AH69
2866	SAN No. 4340 Transportation Conformity Amendments: Response to March 2, 1999, Court Decision	2060-AI56
2867	SAN No. 4309 National VOC Emission Standards for Consumer Products; Proposed Amendments	2060-AI62
2868	SAN No. 4310 NESHAP for the Printing and Publishing Industry; Amendments	2060-AI66
2869	SAN No. 4343 NESHAP: Clay Ceramics Manufacturing	2060-AI68
2870	SAN No. 4313 Petitions to Delist Hazardous Air Pollutants (e.g., MEK, EGBE, Methanol, and MIBK) from Section 112(b)(1) of the CAA	2060-AI72
2871	SAN No. 4144 NESHAP: Engine Test Cells/Stands	2060-AI74
2872	SAN No. 4348 Inspection Maintenance Program Requirements for Federal Facilities; Amendment to the Final Rule	2060-AI97
2873	SAN No. 4393 Control of Methyl Tertiary Butyl Ether (MTBE)	2060-AJ00

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CLEAN AIR ACT (CAA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2874	SAN No. 4380 NESHAP: Taconite Iron Ore Processing Industry	2060-AJ02
2875	SAN No. 4415 Petitions to Delist Source Categories from the Source Category List, Developed Pursuant to Section 112(c) of the Clean Air Act	2060-AJ23
2876	SAN No. 4421 Revising Regulations on Ambient Air Quality Monitoring	2060-AJ25
2877	SAN No. 4428 Protection of Stratospheric Ozone: Phaseout of Chlorobromomethane (Halon 1011) Production and Consumption	2060-AJ27
2878	SAN No. 4441 Federal Plan Requirements for Commercial and Industrial Solid Waste Incineration Units Constructed on or Before November 30, 1999	2060-AJ28
2879	SAN No. 4457 NESHAP: Pesticides Active Ingredients—Amendments	2060-AJ34
2880	SAN No. 4478 Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills: Amendment	2060-AJ41
2881	SAN No. 4479 NESHAP: Gasoline Distribution Facilities — Amendment	2060-AJ42
2882	SAN No. 4495 Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States	2060-AJ50
2883	SAN No. 4524 NESHAP: Portland Cement Manufacturing Industry, Amendments to Rule to Implement Settlement Agreement	2060-AJ57
2884	SAN No. 4532 Motor Vehicle and Engine Compliance Program Fees for: Light-Duty Vehicles and Trucks; Heavy-Duty Vehicles and Engines; Nonroad Engines; and Motorcycles	2060-AJ62
2885	SAN No. 4555 Electric Arc Furnace NSPS Amendment	2060-AJ68
2886	SAN No. 4570 Control of Air Pollution From Motor Vehicles and Engines: Alternative Low-Sulfur Highway Diesel Fuel Transition Program for Alaska	2060-AJ72
2887	SAN No. 4583 Modification of Federal On-board Diagnostic Regulations for 2004 Model Year Vehicles Below 14,000 lbs	2060-AJ77
2888	SAN No. 4547 Modification of Authority to Grant Alternative Method Approvals	2060-AJ83
2889	SAN No. 4584 Performance Specifications for Continuous Parameter Monitoring Systems	2060-AJ86
2890	SAN No. 4591 Benzene Waste Operations NESHAP; Amendments	2060-AJ87
2891	SAN No. 4605 Proposed Amendments to Performance Standards and Monitoring Requirements for Particulate Matter at Stationary Sources	2060-AJ88
2892	SAN No. 4626 Control of Emissions from Spark Ignition Marine Vessels and Highway Motorcycles	2060-AJ90
2893	SAN No. 4325 NESHAP: Brick and Structural Clay Products Manufacturing	2060-AJ91
2894	SAN No. 4622 Control of Emissions of Air Pollution From New Marine Compression-Ignition Engines At or Above 30 Liters per Cylinder	2060-AJ98
2895	SAN No. 4625 Implementation Rule for 8-hour Ozone NAAQS	2060-AJ99
2896	SAN No. 4632 Modification of Anti-dumping Baselines for Gasoline Produced or Imported for Use in Hawaii, Alaska and the U.S. Territories	2060-AK02
2897	SAN No. 4633 Performance-Based Measurement System For Fuels: Criteria For Self-Qualifying Alternative Test Methods; Description of Optional Statistical Quality Control Measures	2060-AK03
2898	SAN No. 4634 Regulation of Fuel and Fuel Additives: Extension of California Enforcement Exemptions for Reformulated Gasoline to California Phase 3 Gasoline	2060-AK04
2899	SAN No. 4599 Protection of Stratospheric Ozone: Listing of Substitutes for Ozone-Depleting Substances—N-Propylbromide	2060-AK26
2900	SAN No. 4675 Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel	2060-AK27
2901	SAN No. 4676 New Source Review Routine Maintenance, Repair, and Replacement	2060-AK28

CLEAN AIR ACT (CAA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
2902	SAN No. 4315 Source-Specific Federal Implementation Plan for Navajo Generating Station; Navajo Nation	2009-AA00
2903	SAN No. 3569 Source-Specific Federal Implementation Plan for Navajo Generating Station; Four Corners Power Plant	2009-AA01
2904	SAN No. 3259 New Source Review (NSR) Improvement	2060-AE11
2905	SAN No. 3380 NSPS: Synthetic Organic Chemicals Manufacturing Industry - Wastewater (FINAL) & Amend. to Appendix C of Part 63 & Appendix J of Part 60	2060-AE94
2906	SAN No. 3549 NESHAP: Petroleum Refineries; Catalytic Cracking Units, Catalytic Reforming Units and Sulfur Recovery Units	2060-AF28

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CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
2907	SAN No. 2915 Methods for Measurement of Visible Emissions—Addition of Methods 203A, 203B, and 203C to Appendix M of Part 51	2060-AF83
2908	SAN No. 3741 Service Information Regulation for Light-Duty Vehicles and Trucks	2060-AG13
2909	SAN No. 3900 Addition of Method 207 to Appendix M of 40 CFR Part 51 Method for Measuring Isocyanates in Stationary Source Emissions	2060-AG88
2910	SAN No. 3970 NESHAP: Cellulose Production Manufacturing	2060-AH11
2911	SAN No. 3986 Consolidated Emissions Reporting Rule	2060-AH25
2912	SAN No. 4030 Expanded Definitions for Alternative-Fueled Vehicles and Engines Meeting Low-Emission Vehicle Exhaust Emission Standards	2060-AH52
2913	SAN No. 4120 Protection of Stratospheric Ozone: Allowance System for Controlling HCFC Production, Import & Export	2060-AH67
2914	SAN No. 4114 NESHAP: Polyvinyl Chloride and Copolymers Production	2060-AH82
2915	SAN No. 4096 Phase I Federal Implementation Plans (FIPs) To Reduce the Regional Transport of Ozone in the Eastern United States	2060-AH87
2916	SAN No. 4082 NESHAP: Wet-Formed Fiberglass Mat Production	2060-AH89
2917	SAN No. 4254 Revision to the Definition of Volatile Organic Compound (VOC) to Exclude Tertiary Butyl Acetate	2060-AI45
2918	SAN No. 4464 Rulemaking on Section 126 Petitions from New York and Connecticut Regarding Sources in Michigan; Revision of Definition of Applicable Requirement for Title V Operating	2060-AJ36
2919	SAN No. 3470 Requirements for Preparation, Adoption, and Submittal of State Implementation Plans (Guideline on Air Quality Models)	2060-AF01
2920	SAN No. 3340 NESHAP: Primary Copper Smelting	2060-AE46
2921	SAN No. 3551 Amendments to General Provisions Subparts A and B for 40 CFR 63	2060-AF31
2922	SAN No. 3749 NESHAP: Tire Manufacturing	2060-AG29
2923	SAN No. 3823 NESHAP: Large Appliance (Surface Coating)	2060-AG54
2924	SAN No. 3655 NESHAP: Asphalt Processing and Asphalt Roofing Manufacturing	2060-AG66
2925	SAN No. 3905 NESHAP: Metal Coil (Surface Coating) Industry	2060-AG97
2926	SAN No. 3964 NESHAP: Leather Finishing Operations	2060-AH17
2927	SAN No. 2665 Importation of Nonconforming Vehicles; Amendments to Regulations	2060-AI03
2928	SAN No. 3556 Protection of Stratospheric Ozone: Supplemental Rule Regarding a Recycling Standard Under Section 608	2060-AF36
2929	SAN No. 3560 Protection of Stratospheric Ozone: Refrigerant Recycling Rule Amendment To Include Substitute Refrigerants	2060-AF37
2930	SAN No. 3827 Paper and Other Web Coating NESHAP	2060-AG58
2931	SAN No. 4487 Federal Implementation Plans for Indian Reservations in Idaho, Oregon and Washington	2012-AA01
2932	SAN No. 4105 NESHAP: Generic MACT for Carbon Black, Ethylene, Cyanide and Spandex	2060-AH68
2933	SAN No. 4154 Emissions from Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines	2060-AI11
2934	SAN No. 4253 Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Applications of Methyl Bromide	2060-AI42
2935	SAN No. 4273 Amend Subpart H and I, 40 CFR Part 61, for Emissions of Radionuclides Other Than Radon From DOE Facilities	2060-AI90
2936	SAN No. 4433 Interstate Ozone Transport: Response to Court Decisions on the NOx SIP Call, NOx SIP Call Technical Amendments, and Section 126 Rules	2060-AJ16
2937	SAN No. 4460 NESHAP for Friction Products Manufacturing	2060-AJ18
2938	SAN No. 4466 Rulemakings for the Purpose of Reducing Interstate Ozone Transport	2060-AJ20
2939	SAN No. 4426 Clarification to Existing Part 63 NESHAP Delegations' Provisions-Work Practices	2060-AJ26
2940	SAN No. 4450 Guidelines for Best Available Retrofit Technology (BART)	2060-AJ31
2941	SAN No. 4538 Revisions to Part 97 Federal NOx Budget Trading Program, Part 75 Emissions Monitoring Provisions, Part 72 Permits Regulation Provisions, and Part 78 Appeal Procedures	2060-AJ43
2942	SAN No. 4454 Federal Plan for Small Municipal Waste Combustion Units	2060-AJ46
2943	SAN No. 4508 Standards of Performance for New Stationary Sources: Volatile Organic Liquid Storage Vessels; Amendments	2060-AJ53
2944	SAN No. 4554 Control of Hazardous Air Pollutants From Mobile Sources; Correction	2060-AJ67
2945	SAN No. 4558 Transportation Conformity Rule Amendments: Minor Revision and Addition of Grace Period for Newly Designated Nonattainment Areas	2060-AJ70
2946	SAN No. 4569 Control of Air Pollution from New Motor Vehicles; Second Amendment to the Tier 2/Gasoline Sulfur Regulations	2060-AJ71
2947	SAN No. 4574 Protection of Stratospheric Ozone: Availability of Allowances to Produce Methyl Bromide for Developing Countries	2060-AJ74

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CLEAN AIR ACT (CAA)—Final Rule Stage (Continued)

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2948	SAN No. 4604 Modification of the Anti-Dumping Baseline Date Cut-Off Limit for Data Used in Development of an Individual Baseline	2060-AJ82
2949	SAN No. 4548 Compilation of Source-Specific Alternative Methods Being Approved for Source-Category Wide Application	2060-AJ84
2950	SAN No. 4600 State and Federal Operating Permits Program: Removal of Amendments to Part 70 and Part 71 Compliance Certification Requirements	2060-AJ89
2951	SAN No. 4646 Amendments to NESHAP for Solvent Extraction for Vegetable Oil Production	2060-AJ93
2952	SAN No. 4614 NESHAP: Generic MACT Amendments	2060-AJ95
2953	SAN No. 4621 Control of Hazardous Air Pollutants From Mobile Sources: Default Baseline Revision and Minor Corrections	2060-AJ97
2954	SAN No. 4627 NESHAP: Pesticide Active Ingredient Production -Amendment	2060-AK00
2955	SAN No. 4631 Adoption of the Amended International NOx Standard for Aircraft Engines	2060-AK01
2956	SAN No. 4647 Reduction of the Ambient Air Monitoring Fine Particulate Collocated Precision Requirement	2060-AK05
2957	SAN No. 4648 Revision to Regulations Implementing the Federal Permits Program in Areas for which the Indian Country Status is in Question	2060-AK06
2958	SAN No. 4652 Direct Final Rulemaking for Modifications to Reformulated Gasoline (RFG) "Covered Area" Provisions	2060-AK07
2959	SAN No. 4671 Amendments to Compliance Certification Requirements for State and Federal Operating Permits Programs	2060-AK11
2960	SAN No. 4278 Project XL Site-Specific Rulemaking for Andersen Corporation's Facility in Bayport, Minnesota	2090-AA21

CLEAN AIR ACT (CAA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
2961	SAN No. 4607 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(7): Availability of Information to the Public; Technical Amendment	2050-AE95
2962	SAN No. 4619 Accidental Release Prevention Requirements: Risk Management Programs Under the Clean Air Act, Section 112(r)(3); Revisions to the List of Substances	2050-AE96
2963	SAN No. 3922 Revised Permit Revision Procedures for the Federal Operating Permits Program	2060-AG92
2964	SAN No. 3975 Review of Minor New Sources and Modifications in Indian Country	2060-AH37
2965	SAN No. 4046 Federal Major New Source Review (NSR) Program for Nonattainment Areas	2060-AH53
2966	SAN No. 4022 NESHAP: Coke Ovens: Pushing, Quenching, and Battery Stacks	2060-AH55
2967	SAN No. 4045 Rulemaking To Modify the List of Source Categories From Which Fugitive Emissions Are Considered in Major Source Determinations	2060-AH58
2968	SAN No. 4111 NESHAP: Fumed Silica Production	2060-AH72
2969	SAN No. 4104 NESHAP: Hydrochloric Acid Production Industry	2060-AH75
2970	SAN No. 4070 General Conformity Regulations; Revisions	2060-AH93
2971	SAN No. 4247 Revisions to Air Pollution Emergency Episode Requirements (Subpart H, 40 CFR Part 51)	2060-AI47
2972	SAN No. 3638 Revision of EPA's Radiological Emergency Response Plan	2060-AI49
2973	SAN No. 1002 NAAQS: Sulfur Dioxide (Response to Remand)	2060-AA61
2974	SAN No. 3346 NESHAP: Integrated Iron and Steel	2060-AE48
2975	SAN No. 3326 NESHAP: Reinforced Plastic Composites Production	2060-AE79
2976	SAN No. 2841 NESHAP: Chromium Electroplating Amendment	2060-AH08
2977	SAN No. 3479 Amendments to Parts 51, 52, 63, 70 and 71 Regarding the Provisions for Determining Potential To Emit	2060-AI01
2978	SAN No. 4162 NESHAP: Oil and Natural Gas Production	2060-AI13
2979	SAN No. 3751 NSPS and Emission Guidelines for Other Solid Waste Incinerators	2060-AG31
2980	SAN No. 3919 Prevention of Significant Deterioration of Air Quality: Permit Application Review Procedures for Non-Federal Class I Areas	2060-AH01
2981	SAN No. 3979 Review of Federal Test Procedures for Emissions From Motor Vehicles; Test Procedure Adjustments to Fuel Economy and Emission Test Results	2060-AH38
2982	SAN No. 3525 Protection of Stratospheric Ozone: Update of the Substitutes List Under SNAP Program	2060-AG12
2983	SAN No. 4542 Federal Implementation Plan (FIP) for the Billings/Laurel, Montana Sulfur Dioxide (SO2) Area	2008-AA00
2984	SAN No. 4266 Review of the National Ambient Air Quality Standards for Carbon Monoxide	2060-AI43
2985	SAN No. 4255 Review of the National Ambient Air Quality Standards for Particulate Matter	2060-AI44
2986	SAN No. 4276 Revision to NOx SIP Call Emission Budgets for Connecticut, Massachusetts, and Rhode Island	2060-AI80

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CLEAN AIR ACT (CAA)—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
2987	SAN No. 4383 Interstate Ozone Transport: Rulemaking on Section 126 Petitions from the District of Columbia, Delaware, Maryland, and New Jersey	2060-AI99
2988	SAN No. 4391 Rescinding Finding that Pre-existing PM10 Standards Are No Longer Applicable in Northern Ada County/Boise, Idaho	2060-AJ05
2989	SAN No. 4390 Utility Sector New Source Review (NSR) Alternative Compliance Program	2060-AJ14
2990	SAN No. 4449 NESHAP for Flexible Polyurethane Foam Fabrication Operations	2060-AJ19
2991	SAN No. 4531 Evaluation of Updated Test Procedures for the Certification of Gasoline Deposit Control Additives	2060-AJ61
2992	SAN No. 4535 Protection of Stratospheric Ozone: Process for Exempting Critical and Emergency Uses of Methyl Bromide	2060-AJ63
2993	SAN No. 4571 Electric Utility Steam Generating Unit MACT Regulation	2060-AJ65
2994	SAN No. 4585 Portland Cement Manufacturing Industry NESHAP: Amendment to Implement Court Remand	2060-AJ78
2995	SAN No. 4620 National Emission Standards for Coke Oven Batteries - Residual Risk Standards	2060-AJ96
2996	SAN No. 4653 NESHAP: Aerospace Manufacturing and Rework Facilities Residual Risk Standards	2060-AK08
2997	SAN No. 4654 NESHAP: Ethylene Oxide for Sterilization Facilities - Residual Risk Standards	2060-AK09
2998	SAN No. 4655 NESHAP: Gasoline Distribution (Stage I) Residual Risk Standards	2060-AK10
2999	SAN No. 4656 NESHAP: Group I Polymers and Resins — Residual Risk Standards	2060-AK12
3000	SAN No. 4657 NESHAP: Group II Polymers and Resins - Residual Risk Standards	2060-AK13
3001	SAN No. 4659 NESHAP: Hazardous Organic NESHAP (HON) Residual Risk Standards	2060-AK14
3002	SAN No. 4658 NESHAP: Group IV Polymers and Resins — Residual Risk Standards	2060-AK15
3003	SAN No. 4660 NESHAP: Industrial Process Cooling Towers Residual Risk Standards	2060-AK16
3004	SAN No. 4661 NESHAP: National Emission Standards for Marine Tank Vessel Loading Operations—Residual Risk Standard	2060-AK17
3005	SAN No. 4662 NESHAP: Perchloroethylene Dry Cleaning Facilities Residual Risk Standards	2060-AK18
3006	SAN No. 4665 NESHAP: Secondary Lead Smelting Residual Risk Standards	2060-AK19
3007	SAN No. 4666 NESHAP: Shipbuilding and Ship Repair Surface Coating — Residual Risk Standards	2060-AK20
3008	SAN No. 4667 NESHAP: Wood Furniture Manufacturing Operations — Residual Risk Standards	2060-AK21
3009	SAN No. 4668 NESHAP: Halogenated Solvent Cleaning - Residual Risk Standards	2060-AK22
3010	SAN No. 4669 NESHAP:Magnetic Tape Manufacturing Operations Residual Risk Standard	2060-AK23
3011	SAN No. 4664 NESHAP: Printing and Publishing Industry - Residual Risk Standards	2060-AK24
3012	SAN No. 4663 NESHAP: Petroleum Refineries — Residual Risk Standards	2060-AK25
3013	SAN No. 4471 Project XL Site-Specific Rulemaking for Georgia-Pacific Corporation's Facility in Big Island, Virginia	2090-AA26

CLEAN AIR ACT (CAA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3014	SAN No. 4098 NESHAP: Uranium Hexafluoride Production	2060-AH83
3015	SAN No. 4077 Protection of Stratospheric Ozone: Reconsideration of the 610 Nonessential Products Ban	2060-AH99
3016	SAN No. 4580 Withdrawal of Amendments for Testing and Monitoring Provisions to 40 CFR Parts 60, 61, and 63	2060-AJ85
3017	SAN No. 4636 NESHAP: From Phosphoric Acid Manufacturing Plants and Phosphate Fertilizers Production Plants—Amendments	2060-AJ94
3018	SAN No. 4316 NESHAP for Ethylene Oxide Commercial Sterilization Operations-Monitoring Amendments	2060-AI64
3019	SAN No. 4491 Section 126 Rule Revision Correcting NOx Allowance Allocations for Certain Units in the Federal NOx Budget Trading Program	2060-AJ47
3020	SAN No. 4507 Standards of Performance for New Sources and Emission Guidelines for Existing Sources: Large Municipal Waste Combustors Amendment of Startup, Shutdown, and Malfunction Provisions	2060-AJ52
3021	SAN No. 4529 Change in the Definition of Major Source for Operating Permits	2060-AJ60
3022	SAN No. 4573 Non-Conformance Penalties for 2004 and Later Model Year Heavy-Duty Diesel Engines and Heavy-Duty Diesel Vehicles	2060-AJ73
3023	SAN No. 4592 Regulation to Establish New Date for Receipt of Summer Grade RFG at Terminals	2060-AJ79
3024	SAN No. 4593 Relaxation Of Summer Gasoline Volatility Standard For Denver/Boulder, CO Area	2060-AJ80
3025	SAN No. 4594 Protection of Stratospheric Ozone: Allocation of Year 2002 Essential Use Allowances	2060-AJ81
3026	SAN No. 4284 NESHAP: Revision of Source Category List Under Section 112 of the CAA	2060-AJ92

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CLEAN AIR ACT (CAA)—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2020-AA32	SAN No. 2937 Field Citation Program	03/19/2002	Withdrawn The Agency plans no further action.
2060-AD90	SAN No. 3139 Location of Selective Enforcement Audits of Foreign Manufactured Vehicles and Engines; Amendment	03/13/2002	Withdrawn The Agency plans no further work.
2060-AF34	SAN No. 3553 Implementation of Ozone and Particulate Matter (PM) National Ambient Air Quality Standards (NAAQS) and Regional Haze Regulations	03/13/2002	Withdrawn - Superseded by SANs 4625, SAN 4450, and SAN 4495
2060-AH79	SAN No. 4113 NESHAP: Clay Minerals Processing	03/14/2002	Withdrawn - Merged with SAN 4325, RIN 2060-AJ91
2060-AI67	SAN No. 4325 NESHAP: Brick and Structural Clay Products Manufacturing	03/21/2002	Withdrawn - Merged into RIN 2060-AJ91, SAN 4325
2060-AI94	SAN No. 4299 Revision to Method 24 for Electrical Insulating Varnishes	03/19/2002	Withdrawn The Agency plans no further action.
2060-AI96	SAN No. 4306 Development of Reference Method for the Determination of Source Emissions of Filterable Fine Particulate Matter as PM2.5	03/15/2002	Withdrawn - The Agency plans no further action.
2060-AJ29	SAN No. 4442 NESHAP for Source Categories: Phosphoric Acid Manufacturing and Phosphate Fertilizers Production — Amendments	03/14/2002	Withdrawn - Merged with SAN 4636, RIN 2060-AJ94.
2060-AJ30	SAN No. 4448 Revisions to Part 97 Federal NOx Budget Trading Program Allowance Allocation Method and Part 75 Output and Emissions Monitoring Provisions	03/19/2002	Withdrawn - Superseded by SAN 4538, RIN 2060-AJ38.
2060-AJ45	SAN No. 4484 NESHAP: Amino/Phenolic Resins: Amendment	03/15/2002	Withdrawn - No further action will be taken on this amendment
2060-AJ49	SAN No. 4494 Indoor Air Toxics Strategy	03/14/2002	Withdrawn - No further action is planned
2060-AJ59	SAN No. 4528 Modification of the Anti-Dumping Baseline Date Cut-Off Limit for Data Used in Development of an Individual Baseline	03/25/2002	Withdrawn - Merged into RIN 2060-AJ82, SAN 4604

ATOMIC ENERGY ACT (AEA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3027	SAN No. 3602 Protective Action Guidance for Drinking Water	2060-AF39

ATOMIC ENERGY ACT (AEA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3028	SAN No. 4054 Environmental Radiation Protection Standards for the Disposal of Low-Activity Mixed Radioactive Waste	2060-AH63
3029	SAN No. 4403 Revision of the 40 CFR Part 194 Waste Isolation Pilot Plant Compliance Criteria	2060-AJ07

ATOMIC ENERGY ACT (AEA)—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2060-AJ75	SAN No. 4582 Modification of 40 CFR Part 194, Appendix A, Waste Isolation Pilot Plant Certification	01/14/2002	Withdrawn - The Agency plans no further action.

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FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3030	SAN No. 2687 Data Requirements for Pesticide Registration; Toxicology, Exposure and Residue Chemistry	2070-AC12
3031	SAN No. 4143 Endocrine Disruptor Screening Program	2070-AD26
3032	SAN No. 4170 Procedures for the Pesticide Registration Review Program	2070-AD29
3033	SAN No. 4173 Data Requirements for Antimicrobial Pesticide Registration	2070-AD30
3034	SAN No. 4216 Pesticide Emergency Exemption Regulations	2070-AD36
3035	SAN No. 4496 Data Requirement for Pesticide Registration; Environmental Fate and Ecological Effects	2070-AD47
3036	SAN No. 4596 Data Requirements; Biochemical and Microbial Pesticides	2070-AD51
3037	SAN No. 4609 Exemption of Medical Devices Treated with Antimicrobial Pesticides	2070-AD54
3038	SAN No. 4612 Plant-Incorporated Protectants (PIPs); Exemption for PIPs that Act by Primarily Affecting the Plant	2070-AD56

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3039	SAN No. 2659 Pesticide Management and Disposal; Standards for Pesticide Containers and Containment	2070-AB95
3040	SAN No. 3731 WPS; Pesticide Worker Protection Standard; Glove Amendment	2070-AC93
3041	SAN No. 3892 Registration Requirements for Antimicrobial Pesticide Products	2070-AD14

FEDERAL INSECTICIDE, FUNGICIDE, AND RODENTICIDE ACT (FIFRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3042	SAN No. 4027 Pesticides; Tolerance Processing Fees	2070-AD23
3043	SAN No. 4175 Pesticide Tolerance Reassessment Program	2070-AD24
3044	SAN No. 2684 Plant-Incorporated Protectants (Formerly Plant Pesticides) Rulemakings	2070-AC02
3045	SAN No. 4602 Plant-Incorporated Protectants (PIPs); Exemption for those Based on Viral Coat Proteins	2070-AD49
3046	SAN No. 3432 Pesticide Management and Disposal	2020-AA33
3047	SAN No. 3222 Groundwater and Pesticide Management Plan Rule	2070-AC46
3048	SAN No. 4611 Plant-Incorporated Protectants (PIPs); Exemption for Those Derived Through Genetic Engineering From Sexually Compatible Plants	2070-AD55
3049	SAN No. 4610 Acceptability of Research Using Human Subjects	2070-AD57

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3050	SAN No. 4174 Testing Agreement for Certain Oxygenated Fuel Additives	2070-AD28

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3051	SAN No. 2563 Test Rule; Certain Chemicals on the ATSDR Priority List of Hazardous Substances	2070-AB79
3052	SAN No. 3882 Test Rule; Certain Metals	2070-AD10
3053	SAN No. 4395 Test Rule; Developmental and Reproductive Toxicity	2070-AD44
3054	SAN No. 1923 Follow-Up Rules on Existing Chemicals	2070-AA58
3055	SAN No. 4512 Significant New Use Rule; Selected Flame Retardant Chemical Substances for Use in Residential Upholstered Furniture	2070-AD48
3056	SAN No. 2150 Polychlorinated Biphenyls (PCBs); Exemptions From the Prohibitions Against Manufacturing, Processing, and Distribution in Commerce	2070-AB20
3057	SAN No. 4179 Polychlorinated Biphenyls (PCBs); Use Authorizations	2070-AD27

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TOXIC SUBSTANCES CONTROL ACT (TSCA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3058	SAN No. 4598 TSCA Policy Statement on Oversight of Transgenic Organisms (Including Plants)	2070-AD53
3059	SAN No. 4635 Amendment to the Premanufacture Notification Exemptions; Revisions of Exemptions for Polymers	2070-AD58

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3060	SAN No. 3301 TSCA Inventory Update Rule Amendments	2070-AC61
3061	SAN No. 3493 Test Rule; Generic Entry for ITC-Related Testing Decisions	2070-AB94
3062	SAN No. 3487 Test Rule; Hazardous Air Pollutants (HAPs)	2070-AC76
3063	SAN No. 3990 Test Rule; Certain High Production Volume (HPV) Chemicals	2070-AD16
3064	SAN No. 4425 Test Rule; In Vitro Dermal Absorption Rate Testing of Certain Chemicals of Interest to the Occupational Safety and Health Administration	2070-AD42
3065	SAN No. 1976 Follow-Up Rules on Non-5(e) New Chemical Substances	2070-AA59
3066	SAN No. 3495 Significant New Use Rule (SNUR); Chemical-Specific SNURs To Extend Provisions of Section 5(e) Orders	2070-AB27
3067	SAN No. 3528 Significant New Use Rule; Refractory Ceramic Fibers	2070-AC37
3068	SAN No. 4475 Significant New Use Rule; Perfluoroalkyl Sulfonates	2070-AD43
3069	SAN No. 2779 Acrylamide and N-methylolacrylamide Grouts: Withdrawal of Proposed Ban	2070-AC17
3070	SAN No. 3252 Lead; Regulatory Investigation Under the Toxic Substances Control Act (TSCA) To Reduce Lead (Pb) Consumption and Use	2070-AC21
3071	SAN No. 2178 TSCA Section 8(a) Preliminary Assessment Information Rules	2070-AB08
3072	SAN No. 1139 TSCA Section 8(d) Health and Safety Data Reporting Rules	2070-AB11
3073	SAN No. 3118 TSCA Section 8(e) Policy; Notice of Clarification	2070-AC80
3074	SAN No. 4172 Lead; Notification Requirements for Lead-Based Paint Abatement Activities and Training	2070-AD31
3075	SAN No. 3508 Lead; Management and Disposal of Lead-Based Paint Debris	2070-AC72

TOXIC SUBSTANCES CONTROL ACT (TSCA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3076	SAN No. 2865 Voluntary Children's Chemical Evaluation Program (VCCEP)	2070-AC27
3077	SAN No. 3148 Asbestos Model Accreditation Plan Revisions	2070-AC51
3078	SAN No. 3559 Notice of TSCA Section 4 Reimbursement Period and TSCA Section 12(b) Export Notification Period Sunset Dates for TSCA Section 4 Substances	2070-AC84
3079	SAN No. 4376 Lead-Based Paint Activities; Training, Accreditation, and Certification Rule and Model State Plan Rule—Bridges and Structures	2070-AC64
3080	SAN No. 3557 Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling	2070-AC83
3081	SAN No. 4178 Chemical Right-to-Know Initiative; High Production Volume (HPV) Chemicals	2070-AD25
3082	SAN No. 4597 Disposal of Polychlorinated Biphenyls: Implementation Issues	2070-AD52

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3083	SAN No. 4392 TRI: APA Petition-EPCRA 313 Definition of Overburden as It Relates to the Mining Industry	2025-AA08

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EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3084	SAN No. 3215 Emergency Planning and Community Right-to-Know Act: Amendments and Streamlining Rule	2050-AE17
3085	SAN No. 3994 Response to a Petition Requesting Deletion of Phosmet from the Extremely Hazardous Substances (EHSs) List	2050-AE42
3086	SAN No. 4015 TRI; Review of Chemicals on the Original TRI List	2025-AA03
3087	SAN No. 4265 TRI; Revisions to the Otherwise-Use Activity Exemptions and the Coal Extraction Activities Exemption	2025-AA06
3088	SAN No. 4595 Rulemaking To Change Toxics Release Inventory (TRI) Reporting Requirements From Standard Industrial Classification (SIC) Codes to North American Industrial Classification System	2025-AA10
3089	SAN No. 4616 Clarify TRI Reporting Obligations Under EPCRA Section 313 for the Metal Mining Activities of Extraction and Beneficiation	2025-AA11

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3090	SAN No. 3993 Modification of Threshold Planning Quantity for Isophorone Diisocyanate	2050-AE43
3091	SAN No. 2425 TRI; Responses to Petitions Received To Add or Delete or Modify Chemical Listings on the Toxic Release Inventory	2025-AA00

EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT (EPCRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3092	SAN No. 3007 TRI; Chemical Expansion; Finalization of Deferred Chemicals	2025-AA01
3093	SAN No. 2847 TRI; Pollution Prevention Act Information Requirements	2025-AA09

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3094	SAN No. 4094 Land Disposal Restrictions; Notice of Data Availability: Mercury Treatability Studies	2050-AE54

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3095	SAN No. 4470 Standards for the Management of Coal Combustion Wastes Generated by Commercial Electric Power Producers	2050-AE81
3096	SAN No. 4469 Standards for the Management of Coal Combustion Wastes: Non-Power Producers and Minefilling	2050-AE83
3097	SAN No. 3989 Removal of Requirement To Use SW-846 Methods (Test Methods for Evaluating Solid Waste: Physical/Chemical Methods)	2050-AE41
3098	SAN No. 4230 Revisions to Solid Waste Landfill Criteria—Leachate Recirculation on Alternative Liners	2050-AE67
3099	SAN No. 4588 Research, Development, and Demonstration Permits for Municipal Solid Waste Landfill	2050-AE92
3100	SAN No. 4411 Regulation of Hazardous Oil-bearing Secondary Materials from Petroleum Refining Industry and other Hazardous Secondary Materials Processed in a Gasification System	2050-AE78
3101	SAN No. 4091 Modifications to RCRA Rules Associated With Solvent-Contaminated Shop Towels and Wipes	2050-AE51
3102	SAN No. 4092 Recycling of Cathode Ray Tubes (CRTs) and Mercury-Containing Equipment: Changes to Hazardous Waste Regulations	2050-AE52
3103	SAN No. 4501 Revision of Wastewater Treatment Exemptions for Hazardous Waste Mixtures	2050-AE84
3104	SAN No. 4651 Increase Metals Reclamation from F006 Waste Streams	2050-AE97
3105	SAN No. 4534 Project XL Site-specific rulemaking for Anne Arundel County Millersville Landfill, Severn, Maryland	2090-AA25

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RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3106	SAN No. 4565 Project XL Site-Specific Rulemaking for the IBM Semiconductor Manufacturing Facility in Hopewell Junction, New York	2090-AA29

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3107	SAN No. 4028 Standardized Permit for RCRA Hazardous Waste Management Facilities	2050-AE44
3108	SAN No. 3545 Revisions to the Comprehensive Guideline for Procurement of Products Containing Recovered Materials	2050-AE23
3109	SAN No. 3856 Management of Cement Kiln Dust (CKD)	2050-AE34
3110	SAN No. 4525 Criteria for Classification of Solid Waste Disposal Facilities and Practices and Criteria for Municipal Solid Waste Landfills: Disposal of Residential Lead-Based Paint Waste	2050-AE86
3111	SAN No. 4575 Municipal Solid Waste Landfill Location Restrictions for Airport Safety	2050-AE91
3112	SAN No. 4084 Office of Solid Waste Burden Reduction Project	2050-AE50
3113	SAN No. 4208 Requirements for Zinc Fertilizer Made From Recycled Hazardous Secondary Materials	2050-AE69
3114	SAN No. 4606 Revisions for Transboundary Shipments of Hazardous Waste for Recovery within the Organization for Economic Cooperation and Development	2050-AE93
3115	SAN No. 4439 Project XL — Ortho-McNeil Pilot Project Allowing On-Site Treatment of Low-Level Mixed Wastes Without RCRA Permit	2090-AA14
3116	SAN No. 4608 Project XL Site-Specific Rulemaking for Implementing Waste Treatment Systems at Two Virginia Landfills	2090-AA30

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3117	SAN No. 3147 Hazardous Waste Manifest Regulation	2050-AE21
3118	SAN No. 3189 Final Determination of the Applicability of the Toxicity Characteristic Rule to Petroleum-Contaminated Media and Debris from Underground Storage Tanks	2050-AD69
3119	SAN No. 3066 Listing Determination of Wastes Generated During the Manufacture of Azo, Anthraquinone, and Triarylmethane Dyes and Pigments	2050-AD80
3120	SAN No. 4670 Revisions to the Definition of Solid Waste	2050-AE98
3121	SAN No. 2647 RCRA Subtitle C Financial Test Criteria (Revision)	2050-AC71
3122	SAN No. 4233 Land Disposal Restrictions; Treatment Standards for Spent Potliners from Primary Aluminum Reduction (K088) and Regulatory Classification of K088 Vitrification Units	2050-AE65
3123	SAN No. 3333 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors—Phase II Covering Boilers and Certain Industrial Furnaces	2050-AE01
3124	SAN No. 4418 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors	2050-AE79

RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3125	SAN No. 4419 Amendments to the Corrective Action Management Unit Rule	2050-AE77
3126	SAN No. 3328 Hazardous Waste Identification Rule (HWIR): Identification and Listing of Hazardous Wastes	2050-AE07
3127	SAN No. 3805 Paint Manufacturing Wastes Listing: Hazardous Waste Management System: Identification and Listing of Hazardous Waste	2050-AE32
3128	SAN No. 4083 Listing of Hazardous Waste; Inorganic Chemical Wastes; Land Disposal Restrictions for Newly Listed Wastes; CERCLA Hazardous Substances Reportable Quantities	2050-AE49
3129	SAN No. 4615 Definition of Solid Waste; Codification of Mineral Processing Vacature (Classification of Battery Recyclers v. EPA) and Discussion of Future Proposed Rulemaking	2050-AE94

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RESOURCE CONSERVATION AND RECOVERY ACT (RCRA)—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3130	SAN No. 4566 NESHAPS: Standards for Hazardous Air Pollutants for Hazardous Waste Combustors - Parallel Proposed Rule	2050-AE90

OIL POLLUTION ACT (OPA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3131	SAN No. 2634 Oil Pollution Prevention Regulation: Revisions	2050-AC62

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3132	SAN No. 3423 Reportable Quantity Adjustments for Carbamates	2050-AE12
3133	SAN No. 3885 Streamlining the Preauthorization Mixed Funding for Application and Implementation of Claims Against Superfund	2050-AE38
3134	SAN No. 4177 Cooperative Agreements and Superfund State Contracts for Superfund Response Actions	2050-AE62

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3135	SAN No. 3929 Final Rule To Correct Typographical Errors and Remove Obsolete Language in 40 CFR Part 302	2050-AE88

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3136	SAN No. 3439 National Priorities List for Uncontrolled Hazardous Waste Sites: Proposed and Final Rules	2050-AD75
3137	SAN No. 4201 Criteria for the Designation of Hazardous Substances under CERCLA Section 102(a)	2050-AE63

COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION AND LIABILITY ACT—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2050-AB82	SAN No. 2394 Reporting Exemptions for Federally Permitted Releases of Hazardous Substances	03/14/2002	Withdrawn

CLEAN WATER ACT (CWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3138	SAN No. 4526 Revisions to the National Oil and Hazardous Substances Pollution Contingency Plan; Subpart J Product Schedule Listing Requirements	2050-AE87

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CLEAN WATER ACT (CWA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3139	SAN No. 4280 Effluent Guidelines and Standards for the Construction and Development Industry	2040-AD42
3140	SAN No. 4406 Effluent Guidelines and Standards for the Aquatic Animal Production Industry	2040-AD55
3141	SAN No. 4576 Effluent Guidelines 2002 Program Plan	2040-AD78
3142	SAN No. 4264 Water Quality Standards for Alabama—Phase II	2040-AD35
3143	SAN No. 4377 Test Procedures for the Analysis of Mercury Under the Clean Water Act (Method 245.7)	2040-AD52
3144	SAN No. 4378 Revisions to Method Detection and Quantification for Use Under the Clean Water Act and Safe Drinking Water Act	2040-AD53
3145	SAN No. 4540 Test Procedures: New and Updated Test Procedures for the Analysis of Pollutants Under the Clean Water Act and Safe Drinking Water Act	2040-AD71
3146	SAN No. 4474 Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 2	2040-AD62
3147	SAN No. 3999 NPDES Permit Requirements for Municipal Sanitary Sewer Collection Systems, Municipal Satellite Collection Systems, and Sanitary Sewer Overflows	2040-AD02
3148	SAN No. 4446 Ocean Discharges Criteria Revisions	2040-AD60
3149	SAN No. 2804 Clean Water Act Definition of Waters of the United States	2040-AB74
3150	SAN No. 4623 Total Maximum Daily Load (TMDL) Program Revisions	2040-AD82

CLEAN WATER ACT (CWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3151	SAN No. 2806 Effluent Guidelines and Standards for the Metal Products and Machinery Category, Phases 1 and 2	2040-AB79
3152	SAN No. 3833 Effluent Guidelines and Standards for the Iron and Steel Manufacturing Point Source Category (Revisions)	2040-AC90
3153	SAN No. 4153 National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)	2040-AD19
3154	SAN No. 4192 Effluent Guidelines and Standards for the Bleached Papergrade Kraft Subcategory of the Pulp, Paper, and Paperboard Category; Certification in Lieu of Monitoring for Chloroform	2040-AD23
3155	SAN No. 4047 Test Procedures for Analysis of Biological Contaminants Under Clean Water Act	2040-AD08
3156	SAN No. 4409 Test Procedures: Clean Water Act and Safe Drinking Water Act Methods Update	2040-AD59
3157	SAN No. 4541 Test Procedures for the Analysis of Mercury Under the Clean Water Act (Revisions to Method 1631)	2040-AD72
3158	SAN No. 4514 Rule to Revise and to Ratify or Withdraw Whole Effluent Toxicity Test Methods	2040-AD73
3159	SAN No. 3288 Comparison of Dredged Material to Reference Sediment	2040-AC14
3160	SAN No. 4375 Revision to Clean Water Act Regulatory Definition of Fill Material	2040-AD51
3161	SAN No. 3488 Round 2 Standards for the Use or Disposal of Sewage Sludge	2040-AC25
3162	SAN No. 4493 Clean Water State Revolving Fund Regulation Revisions Re: Use as Matching Funds	2040-AD68
3163	SAN No. 4624 Modification to Competitive Process Used by EPA for Water Quality Cooperative Agreements and Wetland Program Development Grants	2040-AD83

CLEAN WATER ACT (CWA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3164	SAN No. 4050 Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Category, Phase II	2040-AD10
3165	SAN No. 4370 Effluent Guidelines and Standards for the Pulp, Paper, and Paperboard Point Source Category, Dissolving Kraft and Dissolving Sulfite Subcategories (Phase III)	2040-AD49
3166	SAN No. 4407 Effluent Guidelines and Standards for the Meat and Poultry Products Point Source Category (Revisions)	2040-AD56
3167	SAN No. 4408 Effluent Guidelines and Standards for the Industrial Container and Drum Cleaning Point Source Category	2040-AD57
3168	SAN No. 4344 Water Quality Standards for Indian Country Waters	2040-AD46
3169	SAN No. 3702 Test Procedures for the Analysis of Trace Metals Under the Clean Water Act	2040-AC75
3170	SAN No. 3714 Test Procedures: Increased Method Flexibility for Test Procedures Approved for Clean Water Act Compliance Monitoring	2040-AC92

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CLEAN WATER ACT (CWA)—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3171	SAN No. 3713 Test Procedures: Performance-Based Measurement System (PBMS) Procedures and Guidance for Clean Water Act Test Procedures	2040-AC93
3172	SAN No. 3155 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase One	2040-AC95
3173	SAN No. 4049 Test Procedures for the Analysis of Co-Planar and Mono-Ortho-Substituted Polychlorinated Biphenyls (PCBs) Under the Clean Water Act	2040-AD09
3174	SAN No. 4089 Test Procedures for the Analysis of Miscellaneous Metals, Anions, and Volatile Organics Under the Clean Water Act, Phase Two	2040-AD12
3175	SAN No. 4357 Uniform National Discharge Standards for Vessels of the Armed Forces - Phase II	2040-AD39
3176	SAN No. 4543 Minimizing Adverse Environmental Impact from Cooling Water Intake Structures at Existing Facilities Under Section 316(b) of the Clean Water Act, Phase 3	2040-AD70
3177	SAN No. 3663 Streamlining the General Pretreatment Regulations for Existing and New Sources of Pollution	2040-AC58
3178	SAN No. 3786 NPDES Streamlining Rule — Round III	2040-AC84

CLEAN WATER ACT (CWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3179	SAN No. 4168 Effluent Guidelines and Standards for the Coal Mining Point Source Category (Revisions)	2040-AD24
3180	SAN No. 3444 Minimizing Adverse Environmental Impact From Cooling Water Intake Structures at New Facilities Under Section 316(b) of the Clean Water Act, Phase 1	2040-AC34
3181	SAN No. 4332 Recognition Awards Under the Clean Water Act	2040-AD44

CLEAN WATER ACT (CWA)—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2040-AC56	SAN No. 3662 Water Quality Standards Regulation — Revision	04/24/2002	Withdrawn - No further action planned.
2040-AD69	SAN No. 4515 Procedures for Tribes To Obtain Approval for Treatment as a State To Receive Funding for the Beaches Program	03/19/2002	Withdrawn - No further action planned at this time
2040-AD79	SAN No. 4617 Total Maximum Daily Load (TMDL) Program Regulations Revisions	02/27/2002	Withdrawn - Merged into RIN 2040-AD82, SAN 4623

SAFE DRINKING WATER ACT (SDWA)—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3182	SAN No. 4212 Use of Screening Methods for Compliance Monitoring of Drinking Water Contaminants	2040-AD31
3183	SAN No. 4447 Drinking Water: Regulatory Determinations Regarding Contaminants on the Drinking Water Contaminant Candidate List	2040-AD61

SAFE DRINKING WATER ACT (SDWA)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3184	SAN No. 4638 Unregulated Contaminant Monitoring Regulation: Analytical Method for Aeromonas. National Primary and Secondary Drinking Water Regulations: Analytical Methods for Chemical&Microbiological Contaminants	2040-AD81
3185	SAN No. 4341 National Primary Drinking Water Regulations: Long-Term 2 Enhanced Surface Water Treatment Rule	2040-AD37

EPA

SAFE DRINKING WATER ACT (SDWA)—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3186	SAN No. 4342 National Primary Drinking Water Regulations: Stage 2 Disinfection Byproducts Rule	2040-AD38

SAFE DRINKING WATER ACT (SDWA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3187	SAN No. 2340 National Primary Drinking Water Regulations: Groundwater Rule	2040-AA97
3188	SAN No. 4424 6-Year Review of Existing National Primary Drinking Water Regulations	2040-AD67
3189	SAN No. 4451 Underground Injection Control Class V Phase 2 Revisions	2040-AD63
3190	SAN No. 4561 Minor Revisions to the Public Notification Rule and the Consumer Confidence Report Rule	2040-AD77

SAFE DRINKING WATER ACT (SDWA)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3191	SAN No. 2281 National Primary Drinking Water Regulations: Radon	2040-AA94
3192	SAN No. 3238 National Primary Drinking Water Regulations: Aldicarb	2040-AC13
3193	SAN No. 4369 Regulated Drinking Water Contaminant Occurrence Reporting	2040-AD48
3194	SAN No. 4404 National Secondary Drinking Water Regulations (NSDWR): Methyl Tertiary Butyl Ether (MTBE) and Technical Corrections to the NSDWR	2040-AD54
3195	SAN No. 4236 Update of State Underground Injection Control Programs	2040-AD40

SAFE DRINKING WATER ACT (SDWA)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3196	SAN No. 4147 National Primary Drinking Water Regulations: Long-Term 1 Enhanced Surface Water Treatment Rule	2040-AD18
3197	SAN No. 4630 Unregulated Contaminant Monitoring Regulation for Public Water Systems: Establishment of Reporting Date	2040-AD80

SAFE DRINKING WATER ACT (SDWA)—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2040-AB75	SAN No. 2807 National Primary Drinking Water Regulations: Arsenic and Clarifications to Compliance and New Source Contaminant Monitoring	03/19/2002	Withdrawn from regulatory agenda.

SHORE PROTECTION ACT (SPA)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3198	SAN No. 2820 Shore Protection Act, Section 4103(b) Regulations	2040-AB85

Environmental Protection Agency (EPA) **Proposed Rule Stage**
General

2803. UTILIZATION OF SMALL, MINORITY AND WOMEN'S BUSINESS ENTERPRISES IN PROCUREMENT UNDER ASSISTANCE AGREEMENTS

Priority: Other Significant

Legal Authority: PL 101-507; PL 102-389; PL 101-549 sec 1001; 42 USC 9605(f); PL 100-590; EO 12432; EO 12138; EO 11625

CFR Citation: 40 CFR 33

Legal Deadline: None

Abstract: The regulation will codify revisions to the Agency's program for the utilization of Small, Minority and Women's Business Enterprises in procurements under assistance agreements (i.e., grants and cooperative agreements awarded by EPA as well as grants and cooperative agreements awarded by other agencies under interagency agreements with EPA). The revisions are necessary to ensure consistency with the Supreme Court's decision in Adarand Constructors, Inc. v. Pena, 115 S.Ct. 2097 (1995), and were identified as part of the Clinton Administration's review of affirmative action programs. They include: (1) placing greater emphasis on requiring assistance agreement recipients to submit documentation supporting proposed fair share procurement objectives for Minority Business Enterprises (MBEs) and Women's Business Enterprises (WBEs) based on the availability of qualified MBEs and WBEs in the relevant geographic market; (2) authorizing or requiring recipients and their prime contractors to take reasonable race/gender-conscious measures (e.g., bidding credits) in the event that race/gender-neutral efforts prove inadequate to meet fair share objectives; and (3) administering statutory MBE/WBE objectives as a national goal, allowing smaller or larger fair share objectives for particular grants or cooperative agreements based on the availability standard.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4056

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RIN: 2020–AA39

2804. REVISIONS TO ACQUISITION REGULATION CONCERNING CONFLICT OF INTEREST

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The purpose of this rule is to revise the Agency's conflict of interest (COI) acquisition regulations. The specific revisions involve more stringent requirements for submission of relevant information from Agency contractors and potential contractors regarding their relationships with parent companies, affiliates, subsidiaries, and sister companies. Current Agency regulations do not require the submission of this level of information. Receipt and evaluation of this information is critical in order for the Agency to decide whether or not COI situations exist and how they are to be handled. This revised rule will also codify several COI clauses that have been developed since the issuance of the previous rule in 1994.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4319

Sectors Affected: 5413 Architectural, Engineering and Related Services; 5416 Management, Scientific and Technical Consulting Services; 54162 Environmental Consulting Services; 5417 Scientific Research and Development Services; 562 Waste Management and Remediation Services

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RIN: 2030–AA67

2805. INCORPORATION OF CLASS DEVIATIONS INTO EPAAR

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1537; 48 CFR 1552

Legal Deadline: None

Abstract: The Agency has approved a number of class deviations (e.g., changes to reporting requirements and monthly progress reports) to the EPAAR since its promulgation in April 1994. This proposed rule would incorporate most of the class deviations to the EPAAR.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3580

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RIN: 2030–AA37

2806. INCREMENTALLY FUNDING FIXED PRICE CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 1532

Legal Deadline: None

Abstract: This proposed rule will add subpart 1532.7, Contract Funding, to the Environmental Protection Agency's Acquisition Regulation (EPAAR). It also will revise part 1552 of the EPAAR to include a clause for incrementally funding fixed price contracts.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3876

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RIN: 2030–AA50

2807. PROPOSED REVISION TO EPA'S IMPLEMENTING NEPA REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4321

CFR Citation: 40 CFR 6

Legal Deadline: None

Abstract: The proposed revision is necessary to clarify and update EPA's National Environmental Policy Act (NEPA) regulation. The revision would clarify Agency responsibilities for: Congressionally funded special appropriation projects and EPA-funded grant programs. The revision would clarify public involvement procedures and organization responsibilities. The proposal would revise the list of actions which are categorically excluded from analyses. The revision is also needed to incorporate a number of Executive orders and other cross-cutting requirements into the NEPA process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4292

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RIN: 2020–AA42

2808. REVISION OF PROCEDURAL RULES FOR HEARINGS ON CANCELLATIONS, SUSPENSIONS, CHANGES IN CLASSIFICATIONS, AND DENIALS OF PESTICIDE REGISTRATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a(c)to 136a(d); 7 USC 136b(d)to 136b(f); 7 USC 136d(b)to 7 USC 136d(e); 7 USC 136w(a)

CFR Citation: 40 CFR 164 (Revision)

Legal Deadline: None

Abstract: EPA is preparing a comprehensive revision of the Rules of Practice governing the conduct of licensing adjudications under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The existing Rules of Practice were originally promulgated by EPA in 1973. In the subsequent 19 years, Congress has substantially amended FIFRA, creating a number of additional types of licensing adjudications which are not expressly provided for in the existing Rules of Practice. In order to include provisions tailored to these new types of proceedings, and to incorporate the standard practices which have evolved and the precedents which have been established since these rules were first promulgated, EPA intends to comprehensively revise the FIFRA Rules of Practice.

Timetable:

Action	Date	FR Cite
NPRM Rules of Practice Governing Pesticide Cancellation Hearings, etc.	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4618

Sectors Affected: 111 Crop Production; 112 Animal Production; 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2020–AA44

2809. REVISION TO EPAAR 1552.211-73, LEVEL OF EFFORT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1552

Legal Deadline: None

Abstract: This rule will revise EPAAR 1552.211-73, Level of Effort, to define more concisely the services being acquired, and to more accurately reflect the relationship between services provided and fee payments.

Timetable:

Action	Date	FR Cite
NPRM Legal challenge to interpretation of clause	08/00/02	
Final Action Legal challenge to interpretation of clause	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4191

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RIN: 2030–AA64

2810. PERSISTENT, BIOACCUMULATIVE, AND TOXIC (PBT) POLLUTANTS STRATEGY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) has developed National Action Plans under a national strategy to overcome the remaining challenges in addressing priority PBT pollutants. These pollutants pose risks because they are toxic, persist in ecosystems, and accumulate in fish and up the food chain. The PBT challenges remaining stem from the pollutants' ability to travel long distances, to transfer rather easily among air, water, and land, and to linger for generations. EPA is committing, through this strategy, to create an enduring cross-office system that will address the cross-media issues associated with priority PBT pollutants. This strategy fortifies existing EPA commitments related to priority PBTs, such as the 1997 Canada / U.S. Binational Toxics Strategy (BNS), the North American Agreement on Environmental Cooperation, and the signed international agreement to control persistent organic pollutants (POPs). EPA is forging a new approach to reduce risks from and exposures to priority PBT pollutants through increased coordination among EPA national and regional programs. This approach also requires the significant involvement of stakeholders, including international, state, local, and tribal organizations, the regulated community, environmental groups, and private citizens. EPA is carrying out this strategy through the implementation of National Action Plans for Priority PBT Pollutants. EPA is initially focusing action on 12 BNS Level 1 substances either individually or as categories and two major cross-cutting issues (monitoring and outreach/risk communication). The action plans will use the full range of EPA's tools to prevent and reduce releases of these substances. These tools include international, voluntary, outreach, programmatic, remedial, compliance monitoring and assistance, enforcement, research, and regulatory tools. EPA will integrate and sequence actions within and across action plans, and will seek to leverage these actions on international and industry-sector bases. Beyond these first 12 substances EPA will identify additional PBTs for development of National Action Plans.

Timetable:

Action	Date	FR Cite
Notice Multimedia Strategy for PBTs	11/17/98	63 FR 63926
Notice Draft National Action Plan for Mercury	11/17/98	63 FR 63926
Notice Proposed National Action Plan for Alkyl-lead	08/25/00	65 FR 51823
Notice Draft Action Plan for Level 1 Pesticides	11/01/00	65 FR 65314
Notice Draft Action Plan for Hexachlorobenzene (HCB)	12/08/00	65 FR 77026
Notice Final Action Plan for Alkyl-lead	05/00/02	
Notice Draft Action Plan for Benzo(a)pyrene (B(a)P)	05/00/02	
Notice Final Action Plan for Mercury	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4463

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RIN: 2070–AD45

2811. REGULATORY INCENTIVES FOR THE NATIONAL ENVIRONMENTAL PERFORMANCE TRACK PROGRAM

Priority: Other Significant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The National Environmental Achievement Track is designed to recognize facilities that consistently meet their legal requirements and have implemented high-quality environmental management systems, and to encourage them to achieve more by continuously improving their environmental performance and informing and involving the public. Facilities gain entrance to Achievement Track by submitting an application that documents that four specific criteria are met: operating environmental management system; commitment to continuous environmental improvement through documented past improvements and future commitments; engaging the public; and a strong record of compliance. To promote participation in the program, and the environmental and other benefits that will come with it, EPA intends to offer several incentives. Among those incentives are the adjustments in current regulatory requirements that are the subject of this rulemaking. These include reducing the frequency of reports required under the Maximum Achievable Control Technology (MACT) provisions of the Clean Air Act; streamlining by publically owned treatment works (POTWs) under the Clean Water Act; and opportunity for Achievement Track facilities to consolidate reporting under various environmental statutes into a single report.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: SAN No. 4473

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RIN: 2090–AA13

2812. NEW JERSEY GOLD TRACK PROJECT XL RULE

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, This rule references a NJ rule which will be published 2/4/02.

Abstract: The Gold Track Program is a crucial part of NJDEP's efforts to create a State-run tiered performance-based program. Currently, facilities may join NJDEP's Silver Track Program, which is a lower-level tier that provides recognition for commitments to a certain level of environmental enhancement. Gold Track expands upon these environmental commitments, and offers proportionally greater recognition, as well as actual federal regulatory flexibility to participating facilities. NJDEP is partnering with EPA in the Gold Track effort under the XL program, so as to be able to offer federal regulatory flexibility to Gold Track participants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4533

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RIN: 2090–AA28

Environmental Protection Agency (EPA)

General — **Final Rule Stage**

2813. IMPLEMENTATION OF CHANGES TO GOVERNMENTWIDE DEBARMENT AND SUSPENSION COMMON RULE

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549; EO 12689 and FASA

CFR Citation: 40 CFR 32

Legal Deadline: None

Abstract: Periodically OMB amends the Governmentwide common rule for suspension and debarment of contractors and assistance participants who threaten the integrity of Federal programs because of criminal misconduct or poor performance. All agencies must issue changes to their individual codified versions to conform to the Common Rule. Recently, the Interagency Suspension and Debarment Coordinating Committee prepared recommendations for comprehensive changes to the Common Rule to conform to changes made in the Federal Acquisition Regulation (FAR) as a result of the Federal Acquisition Streamlining Act (FASA). In addition, several other proposals to improve or change the rule were recommended by various agencies. In December 1996, OMB declined to implement the changes at that time due to differences with some agencies about some changes unrelated to those occasioned by FASA.

Among other things, FASA replaced the small purchase threshold ($25,000) with the simplified acquisition amount ($100,000). That change unintentionally exposed certain EPA programs to participation by contractors who may have been debarred for serious misconduct already. OMB has agreed to permit agencies to amend the coverage section of their individual agency rules to reduce or eliminate exposure to suspended or debarred persons.

EPA intends to issue a notice of proposed rulemaking to amend 40 CFR 32.110 to reduce EPA exposure to such consequences.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3817

This is an assistance-related statutory requirement. There is no paperwork burden associated with this action.

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RIN: 2030–AA48

2814. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 28 CFR 42.101 to 42.112; 28 CFR 42.501 to 42.540; 28 CFR 42.700 to 42.736

Legal Deadline: None

Abstract: The Department of Justice proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these

statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of program or activity to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of program or activity and program into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4021

Agency Contact: Ann Goode, Environmental Protection Agency, Office of Enforcement and Compliance Assurance, 1201, Washington, DC 20460
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RIN: 2020–AA36

2815. REWRITING OF EPA REGULATIONS IMPLEMENTING THE FREEDOM OF INFORMATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 40 CFR 2

Legal Deadline: None

Abstract: This document proposes revisions to EPA's regulations under the Freedom of Information Act (FOIA). The FOIA regulations have been streamlined and written in plain English wherever possible. These revisions reflect the principles established by President Clinton and Attorney General Reno in their FOIA Policy Memoranda of October 4, 1993. They also reflect developments in the case law and include updated cost figures for calculating and charging fees. In addition, the proposed revisions include provisions implementing the Electronic Freedom of Information Act Amendments of 1996. These revisions will simplify and expedite responses to FOIA requests.

Timetable:

Action	Date	FR Cite
NPRM Revised Freedom of Information Act Regulations	04/12/00	65 FR 19703
Final Action Revised Freedom of Information Act Regulations	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4180

Formerly listed as RIN 2020-AA40.

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RIN: 2025–AA04

2816. ELECTRONIC FUNDS TRANSFER

Priority: Info./Admin./Other

Legal Authority: 5 USC 301 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1532.11

Legal Deadline: None

Abstract: This rule complies with the revised Federal Acquisition Regulations (FAR) coverage regarding implementation of the Debt Collection Improvement Act. Because the revised FAR offers choices in implementation, each agency must communicate to its vendor community its choices. This rule will let our vendor community know that EPA will require the use of FAR Clause 52.232-34, Payment by Electronic Funds Transfer (Non-CCR), as prescribed in FAR 32.1105(a)(2). Within the Clause, under (c) the payment office shall be inserted as the prescribed designated office. Further inserted shall be that the required EFT information shall be provided no later than 15 days prior to submission of the first request for payment.

Timetable:

Action	Date	FR Cite
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4185

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RIN: 2030–AA57

2817. EPAAR COVERAGE ON LOCAL HIRING AND TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 301 205(c); 63 Stat 390 as amended

CFR Citation: 48 CFR 1526; 48 CFR 1552

Legal Deadline: None

Abstract: This rule will amend the EPA Acquisition Regulation (EPAAR) to include part 1526, Other Socioeconomic Programs, and to revise part 1552, Solicitation Provisions and Contract Clauses. The purpose is to provide an incentive for prime contractors to utilize local hiring and provide training to local hires in specific geographical locations where contractual requirements will be performed. This incentive will support economic development in areas where EPA contracts are performed.

Timetable:

Action	Date	FR Cite
NPRM	12/09/98	63 FR 67845
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4187

Agency Contact: Frances Smith, Environmental Protection Agency,

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RIN: 2030–AA62

2818. ADMINISTRATIVE CORRECTIONS TO EPAAR 1515, CONTRACTING BY NEGOTIATION

Priority: Info./Admin./Other

Legal Authority: 5 USC 301

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Administrative corrections will be made to EPAAR 1515 for clarification purposes.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4400

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RIN: 2030–AA73

2819. FELLOWSHIP GRANT REGULATION REVISION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 46

Legal Deadline: None

Abstract: The Fellowship Rule (part 46) establishes the requirements applicable to granting all EPA fellowships. It supplements 40 CFR part 30, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations. The rule requires submission of data to the Agency; however a new ICR is not required. The rule is already cleared under current ICR approval.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4572

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RIN: 2030–AA77

2820. EPA AGENCYWIDE PUBLIC INVOLVEMENT POLICY

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Environmental Protection Agency is revising its 1981 Public Participation Policy. The Draft Policy was updated to reflect changes over the intervening years such as additional Agency responsibilities, new regulations, expanded public involvement techniques, and the changed nature of public access due to the Internet. The Policy will provide guidance and direction to EPA officials on reasonable and effective means to involve the public in its regulatory and program decisions.

Timetable:

Action	Date	FR Cite
Draft Public Involvement Policy	12/28/00	65 FR 82335
Final Public Involvement Policy	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4530

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RIN: 2090–AA23

2821. PROJECT XL SITE SPECIFIC RULEMAKING FOR NASA WHITE SANDS TEST FACILITY ELECTRONIC REPORTING IN LAS CRUCES, NEW MEXICO

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The purpose of the NASA White Sands Test Facility (WSTF) Electronic Reporting site specific rule is to enable the NASA WSTF to electronically submit compliance reports and permit information to the New Mexico Environmental Department (NMED) in lieu of submitting paper reports. The rule will set forth guidelines to ensure that the information submitted by NASA WSTF to NMED is accurate by outlining procedures for data authentication, use of electronic signature and encryption processes.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 55050
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4536

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RIN: 2090–AA27

2822. PUBLIC INFORMATION AND CONFIDENTIALITY REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2005; 15 USC 2601 et seq; 21 USC 346; 33 USC 1251 et seq; 33 USC 1414; 42 USC 11001 et seq; 42 USC 300(f) et seq; 42 USC 4912; 42 USC 6901 et seq; 42 USC 7401 et seq; 42 USC 9601 et seq; 5 USC 552; 7 USC 136 et seq

CFR Citation: 40 CFR 2; 40 CFR 57; 40 CFR 122; 40 CFR 123; 40 CFR 145; 40 CFR 233; 40 CFR 260; 40 CFR 270; 40 CFR 271; 40 CFR 281; 40 CFR 350; 40 CFR 403; 40 CFR 85; 40 CFR 86

Legal Deadline: NPRM, Statutory, August 31, 2000, Proposed rule to eliminate the special treatment of CBI substantiations.

Abstract: EPA regulations at 40 CFR part 2, subpart B, provide procedures for handling and disclosing information claimed as confidential business information (CBI). Although the current regulations have succeeded in protecting CBI, changes in Agency workload, practice, and statutory authority have made it difficult to handle CBI activities as expeditiously as desired. EPA is examining its CBI regulations to determine what changes are needed to make the regulations as efficient and effective as possible. Provision 40 CFR 2.205(c), which automatically protects CBI substantiations claimed as confidential, is being examined individually and as part of the CBI regulations as a whole.

Timetable:

Action	Date	FR Cite
NPRM/CBI Regs Proposal to revise EPA's CBI regulations	11/23/94	59 FR 60446
Final/CBI Substant. Final rule to eliminate special treatment of substantiations	To Be	Determined
NPRM/CBI Regs Proposal to revise CBI regs--40 CFR Part 2, Subpart B	To Be	Determined
Final Rule/CBI Regs Final rule revising CBI regs--40 CFR Part 2, Subpart B	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3240

Formerly listed as RIN 2020-AA21.

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RIN: 2025–AA02

2823. CROSS-MEDIA ELECTRONIC REPORTING (ER) AND RECORDKEEPING RULE

Priority: Other Significant

Legal Authority: PL 104-13; PL 105-277

CFR Citation: 40 CFR 3 (New); 40 CFR 9 (Revision)

Legal Deadline: None

Abstract: The Cross-Media Electronic Reporting (ER) and Recordkeeping Rule will provide a uniform legal framework for paperless electronic reporting and recordkeeping, including electronic signature/certification, across EPA's environmental compliance programs. The rule will both remove current legal requirements for paper that create obstacles to electronic reporting and recordkeeping and provide for mechanisms to assure the legal validity and authenticity of electronic documents and associated electronic signatures, whether transmitted as reports or maintained as records. This rule is important because the legal and electronic signature issues remain the chief obstacle to implementation of paperless electronic reporting, and affect the overall enforceability of environmental programs both federally and under State delegation/authorization. Also, the Government Paperwork Elimination Act of 1998 requirements and the Administrator's Reinventing Environmental Information (REI) Action Plan goal of universal ER availability by 2003 can only be met if this rulemaking has active participation by the AA-ships and moves on a fast track.

Timetable:

Action	Date	FR Cite
NPRM Resubmittal	08/31/01	66 FR 46161
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4270

Formerly listed as RIN 2020-AA41.

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RIN: 2025–AA07

2824. GUIDELINES FOR CARCINOGEN RISK ASSESSMENT

Priority: Info./Admin./Other

Legal Authority: Not applicable

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Agency will use these guidelines to evaluate suspect carcinogens in line with the policies and procedures established in the statutes administered by the EPA. These guidelines revise and replace EPA Guidelines for Carcinogen Risk Assessment published at 51 FR 33992, September 24, 1986. These guidelines provide EPA staff and decision-makers with the directions and perspectives necessary to develop and use risk assessments. The guidelines also provide the general public with basic information about the Agency's approaches to risk assessment.

To develop guidelines the Agency must find a balance between consistency and innovation. Consistent risk assessments provide consistent bases to support regulatory decision-making. On the other hand, innovation is necessary so the Agency will base its decisions on

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current scientific thinking. In balancing these and other science policies, the Agency relies on input from the general scientific community through established scientific peer review processes. The guidelines incorporate basic principles and science policies based on evaluation of the currently available information. The revisions place increased emphasis on the role of carcinogenic mechanisms in risk assessment and clearer explication of underlying assumptions in risk assessment.

These guidelines will have minimal to no impact on small businesses or State, local, and tribal governments.

Timetable:

Action	Date	FR Cite
Reproposed Guidelines	04/23/96	61 FR 17960
Implementation Policy	06/25/96	61 FR 32799
Final Guidelines	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3671

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RIN: 2080–AA06

Environmental Protection Agency (EPA) — Completed Actions

General

2825. ENVIRONMENTAL IMPACT ASSESSMENT OF NONGOVERNMENTAL ACTIVITIES IN ANTARCTICA

Priority: Other Significant

CFR Citation: 40 CFR 8

Completed:

Reason	Date	FR Cite
Final Action	12/06/01	66 FR 63454

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2020–AA34

2826. NOTICE TO PROCEED

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 1516

Completed:

Reason	Date	FR Cite
Final Action	07/31/01	66 FR 39456

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2030–AA68

2827. EMPOWERMENT THROUGH DELEGATIONS OF AUTHORITY AND MISCELLANEOUS AMENDMENTS

Priority: Info./Admin./Other

CFR Citation: 48 CFR 1501; 48 CFR 1502; 48 CFR 1515; 48 CFR 1517; 48 CFR 1536; 48 CFR 1552

Completed:

Reason	Date	FR Cite
Direct Final Rule	02/04/02	67 FR 5070

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2030–AA78

Environmental Protection Agency (EPA) — Proposed Rule Stage

Clean Air Act (CAA)

2828. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(7); THIRD PARTY AUDIT PROVISIONS

Priority: Other Significant

Legal Authority: 42 USC 7412(r); 7601 (a)(1)

CFR Citation: 40 CFR 68

Legal Deadline: None

Abstract: This action establishes requirements, incentives, and procedures for third party audits of Risk Management Plans (RMPs) under 40 CFR part 68 that would reduce the need for, and thus the incidence of, government audits of RMPs submitted by facilities that volunteer for such an audit. In this context, a third party is someone not employed by either an RMP-regulated facility or a government agency responsible for implementing the RMP program (implementing agency).

In the preamble to the final Risk Management Program rule, EPA endorsed the concept of using third parties to assist in rule compliance and oversight (61 FR 31705), provided that any such proposal: not weaken the compliance responsibilities of facility owner/operators; offer cost savings and benefits to the industry, community, and implementing agencies that significantly exceed the cost of implementing the approach; lead to a net increase in process safety, particularly for smaller, less technically sophisticated facilities; and promote cost-effective agency prioritization of oversight resources. However, no criteria or requirements were specified in the RMP rule to regulate the activities of facilities, implementing agencies, or third parties with respect to third party assistance.

A facility's participation in the third party audit program proposed by this action would be totally voluntary. For facilities who choose not to participate in the program, this action would have no effect. However if a facility participates, this regulation would establish the requirements and regulatory incentives for their participation. For participating sources, the action would offer the potential for reduced regulatory burden (while maintaining their compliance responsibilities), flexible auditing options, and other benefits, provided the source meets the applicable requirements described in the rule. This action also would specify the proposed qualification requirements for persons desiring to act as third party auditors.

EPA believes that this action would promote increased safety among facilities covered by the risk.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4511

Sectors Affected: 49312 Refrigerated Warehousing and Storage Facilities; 22132 Sewage Treatment Facilities; 22131 Water Supply and Irrigation Systems; 31161 Animal Slaughtering and Processing; 49311 General Warehousing and Storage Facilities; 42291 Farm Supplies Wholesalers; 42269 Other Chemical and Allied Products Wholesalers; 49313 Farm Product Warehousing and Storage Facilities; 32512 Industrial Gas Manufacturing; 11511 Support Activities for Crop Production

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RIN: 2050–AE85

2829. PERFORMANCE WARRANTY AND INSPECTION/MAINTENANCE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7541; 42 USC 7601

CFR Citation: 40 CFR 51; 40 CFR 85

Legal Deadline: None

Abstract: This action establishes a new short test procedure for use in I/M programs required by the Clean Air Act Amendments of 1990. Vehicles that are tested and failed using this procedure and that meet eligibility requirements established by the act would be eligible for free warranty repair from the manufacturers.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 3263

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RIN: 2060–AE20

2830. INSPECTION/MAINTENANCE RECALL REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7511(a)(2)(b); 42 USC 7511(a)(2)(b)(2)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This action specifies requirements for enhanced I/M programs to establish a program to ensure compliance with recall notices. This is pursuant to the Clean Air Act Amendments of 1990.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3262

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RIN: 2060–AE22

2831. OPERATING PERMITS: REVISIONS (PART 70)

Priority: Other Significant

Legal Authority: 42 USC 7661 et seq

CFR Citation: 40 CFR 51; 40 CFR 52; 40 CFR 70

Legal Deadline: None

Abstract: In response to litigation on the operating permits rule regulations, 40 CFR part 70, to provide more effective implementation of part 70, and to address comments provided in response to notices of proposed rulemaking, parts 70, 51 and 52 are being revised. The changes streamline the procedures for revising stationary-source operating permits issued by State and local permitting authorities under title V of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	08/29/94	59 FR 44460
Supplemental NPRM Part 71	04/27/95	60 FR 20804
Supplemental NPRM Part 70	08/31/95	60 FR 45530
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: SAN No. 3412

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RIN: 2060–AF70

2832. AMENDMENTS TO METHOD 24 (WATER-BASED COATINGS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

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CFR Citation: 40 CFR 60

Legal Deadline: Final, Statutory, June 15, 2001.

Abstract: The determination of volatile organic compounds (VOCs) content of a surface coating by reference Method 24 involves determination of its water content and calculation of its VOC content as the difference of the two measurements (volatile content minus water content). Method 24 is inherently less precise for water-based coatings than it is for solvent-based coatings and the imprecision increases as water content increases. This action will amend Method 24 by adding a direct measurement procedure for measuring VOC content of water-based coatings. This amendment will improve the precision of Method 24 for water-based coatings.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3649

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RIN: 2060–AF72

2833. NESHAP: PLYWOOD AND COMPOSITE WOOD PRODUCTS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 7412(d)

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants (NESHAP) by establishing maximum achievable control technology (MACT) for facilities manufacturing wood panels and engineered wood products. MACT standards are under development to reduce the release of hazardous air pollutants (HAP) from all industries to protect the public health and environment. Emissions of HAP from this industry have been associated with, but are not limited to, the drying of wood and binders. This rule is anticipated to apply to the manufacture of products involving wood and some kind of binder or bonding agent. This project may include, but is not limited to, facilities that manufacture waferboard, hardboard fiber board (MDF), oriented strandboard (OSB), medium density fiberboard, particleboard, strawboard, hardwood and softwood plywood, glue-laminated lumber, laminated veneer lumber, and engineered wood products. The source category may also include lumber drying kilns at sawmills which are located on the same site as a facility that manufactures any of the wood products mentioned above. The project may also include some coatings operations. The name of the source category was formerly Plywood and Particleboard MACT.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3820

Sectors Affected: 32121 Veneer, Plywood, and Engineered Wood Product Manufacturing

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RIN: 2060–AG52

2834. NESHAP: MUNICIPAL SOLID WASTE LANDFILLS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants (HAP) by establishing maximum achievable control technology (MACT) for municipal solid waste landfills.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66672
Supplemental NPRM	05/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3969

Sectors Affected: 562212 Solid Waste Landfill

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RIN: 2060–AH13

2835. ADDITION OF OPACITY METHOD TO APPENDIX M OF 40 CFR PART 51 (METHOD 203)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: Final, Statutory, June 15, 2001.

Abstract: This rulemaking proposes to add a method, Method 203, for the measurement of opacity from stationary sources, to appendix M (Example Test Methods for State Implementation Plans) in 40 CFR part 51. This action provides States with an instrumental test method which can be used in determining, on a continuous basis, compliance with stationary source opacity emission limitations.

Timetable:

Action	Date	FR Cite
NPRM	10/07/92	57 FR 46114
Supplemental NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3958

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RIN: 2060–AH23

2836. TRANSPORTATION CONFORMITY RULE AMENDMENT: CLARIFICATION OF TRADING PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671 CAA sec 176(c)

CFR Citation: 40 CFR 51; 40 CFR 93

Legal Deadline: None

Abstract: The transportation conformity rule, promulgated in November 1993, ensures that transportation and air quality planning are consistent with Clean Air Act air quality standards. The Open Market Trading Guidance provides guidance to states for establishing a method to quantify emissions reductions (called discrete emissions reductions or DERs) that can be traded among parties and how such trading should occur. This action will amend the transportation conformity rule to clarify how emissions trading could be reconciled in the conformity process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 3917

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RIN: 2060–AH31

2837. STREAMLINED EVAPORATIVE TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521(m)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: This action will streamline the test procedure used to establish compliance with evaporative emission requirements for light duty vehicles and trucks. The current test procedure requires both two and three day diurnal emission tests, as well as running-loss testing. The revisions will delete the three day requirement and add flexibilities for running-loss compliance. This will enable manufacturers to save significant resources without any decrease in environmental benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3910

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RIN: 2060–AH34

2838. NESHAP: ASPHALT/COAL TAR APPLICATION ON METAL PIPES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The Clean Air Act (CAA), as amended in 1990, requires the EPA to (1) publish an initial list of all categories of major and area sources of the hazardous air pollutants (HAPs) listed in section 112(b) of the CAA, (2) promulgate a schedule establishing a date for the promulgation of emission standards for each of the listed categories of HAPs emission sources, and (3) develop emission standards for each source of HAPs. These standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator. The Agency has determined that the application of asphalt or coal tar to metal pipes may reasonably be anticipated to emit several of the 189 HAPs listed in section 112(b) of the CAA. As a consequence, a regulatory development program is being pursued for the asphalt/coal tar application on metal pipes industry to promulgate emission standards.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4107

This action will be covered under Misc. Metal Parts & Products, SAN 3825, RIN 2060-AG56.

Sectors Affected: 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers

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RIN: 2060–AH78

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2839. PERFORMANCE SPECIFICATION 16 - SPECIFICATIONS AND TEST PROCEDURES FOR PREDICTIVE EMISSION MONITORING SYSTEMS IN STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411 CAA sec 111

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Performance Specification 16 is being proposed to provide performance criteria for predictive emission monitoring systems. Predictive systems represent a new technology that uses process information or parameters to predict pollutant emissions instead of directly measuring them. The Agency is allowing their use in recently-promulgated rules and they are being considered by a number of regulated facilities. The specification lists the requirements for acceptable systems that are met by passing tests that compare the monitoring system with standardized methods and audit gases to determine system accuracy and stability. Performance Specification 16 will primarily apply to facilities whose emissions can be predicted from process parameters such as combustion processes (including gas turbines and internal combustion engines).

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4119

Sectors Affected: 33241 Power Boiler and Heat Exchanger Manufacturing; 333611 Turbine and Turbine Generator Set Unit Manufacturing; 333618 Other Engine Equipment Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing

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RIN: 2060–AH84

2840. TECHNICAL CHANGE TO DOSE METHODOLOGY FOR 40 CFR 191, SUBPART A

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2021 Atomic Energy Act of 1954; Reorganization Plan No. 3 of 1970; Nuclear Waste Policy Act of 1982

CFR Citation: 40 CFR 190(B); 40 CFR 191(A)

Legal Deadline: None

Abstract: The purpose of this action is to make a technical change to the dose methodology used in subpart A of 40 CFR 191, entitled Environmental Radiation Protection Standards for the Management and Disposal of Spent Nuclear Fuel, High-Level Waste and Transuranic Waste The current methodology is outdated. The dose methodology used in the rule published on September 19, 1985, was based on the target organ approach recommended by the International Commission on Radiological Protection (ICRP) in Report No. 2. Since that time science has progressed and a new methodology based on an effective dose equivalent approach is currently being recommended by the ICRP in Report No. 26. This action would update the 40 CFR 191, subpart A dose limits published in 1985 from the target organ to the state-of-the-art effective dose equivalent system. There would be no change in the level of protection, just the scientific methodology for determining compliance with the levels of protection established in 1985.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4003

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RIN: 2060–AH90

2841. NESHAP: RECIPROCATING INTERNAL COMBUSTION ENGINE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7412 CAA sec 112; PL 101-549

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The stationary reciprocating internal combustion engine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. The EPA will gather information on HAP emissions from internal combustion engines and determine the appropriate maximum achievable control technology (MACT) to reduce HAP emissions. The EPA will use information that has already been developed, if possible, by gathering information by working with State/local agencies, vendors, manufacturers of internal combustion engines, owners and operators of internal combustion engines, and environmentalists.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3656

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RIN: 2060–AG63

2842. NESHAP: COMBUSTION TURBINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 44 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The combustion turbine source category is listed as a major source of hazardous air pollutants (HAPs) under section 112 of the Clean Air Act (CAA). A major source is one which emits more than 10 tons/yr of one HAP or more than 25 tons/yr of a combination of 189 HAPs. Combustion turbines also emit NOx, SO2, CO, and PM. Combustion turbines are already regulated for NOx and SO2 emissions under section 111 of the CAA. The EPA will gather information on HAP emissions from combustion turbines and determine the appropriate maximum achievable control technology (MACT) to reduce HAP emissions. The EPA information that has already been developed will be used if possible and additional information will be gathered by working with State/local agencies, vendors, manufacturers of combustion turbines, owners and operators of combustion turbines, and environmentalists.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3657

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RIN: 2060–AG67

2843. NESHAP: IRON FOUNDRIES AND STEEL FOUNDRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000, See additional information.

Abstract: Iron foundries and steel foundries have been identified by the EPA as potentially significant sources of air emissions of manganese compounds, lead compounds, and other substances that are among the pollutants listed as hazardous air pollutants in section 112 of the Clean Air Act, as amended in November of 1990. As such, these industries may be source categories for which national emission standards may be warranted.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3343

EPA is required to promulgate standards for all of the source categories listed in accordance with section 112(e) by November 15, 2000.

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RIN: 2060–AE43

2844. NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS: MISCELLANEOUS ORGANIC CHEMICAL MANUFACTURING AND MISCELLANEOUS COATING MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This regulation will cover organic chemical manufacturing processes not covered by the HON or other MACT standards. The regulation will control process vents (continuous and batch, including mixing operations), equipment leaks, storage tanks, wastewater, solvent recovery, and heat exchange systems.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3452

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AE82

2845. NESHAP: MERCURY CELL CHLOR-ALKALI PLANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Section 112(c)(6) of the Clean Air Act requires us to list categories of sources for seven specific pollutants (including mercury) assuring that sources accounting for not less than 90 percent of the aggregate emissions of each pollutant are subject to standards pursuant to section 112(d)(2). Chlor-alkali plants are among the source categories listed to achieve the 90 percent goal for mercury. Currently, the source category includes 11 plants located in 10 states engaged in the production of chlorine and caustic using mercury cells. Together, these plants account for 45 percent of the nationwide mercury inventory for non-combustion sources.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3449

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RIN: 2060–AE85

2846. NESHAP: PAINT STRIPPING OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The EPA has determined that paint stripping operations emit at least one of the HAP's listed in section 112(b) of the Clean Air Act. As a result, the source category was included on the initial list of HAP-emitting categories scheduled for promulgation within 10 years of enactment of the Act. There are several emission standards for other source categories (for example, aerospace manufacturing and wood furniture manufacturing) that already address emissions from paint stripping operations. We are currently in the process of determining if there are any other major sources of HAP emissions from paint stripping operations that are not already regulated. Furthermore, HAP emissions from paint stripping operations that are area sources will be regulated in the future as part of the urban air toxics strategy.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3746

This action being addressed under SAN 3825, RIN 2060-AG56.

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RIN: 2060–AG26

2847. NESHAP: MISCELLANEOUS METAL PARTS AND PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: This regulation will control emissions of hazardous air pollutants (HAPs) from operations that apply surface coatings to metal parts and products. Although this rule would cover a wide variety of coating operations, it would not apply to specific coating operations for which regulations have been developed (e.g., plastic parts coating, can coating, large appliance coating, etc.). This regulation is required under section 112 of the Clean Air Act of 1990.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 3825

Sectors Affected: 322214 Fiber Can, Tube, Drum, and Similar Products Manufacturing; 326199 All Other Plastics Product Manufacturing; 326291 Rubber Product Manufacturing for Mechanical Use; 326299 All Other Rubber Product Manufacturing; 331111 Iron and Steel Mills; 33121 Iron and Steel Pipes and Tubes Manufacturing from Purchased Steel; 331221 Cold-Rolled Steel Shape Manufacturing; 331316 Aluminum Extruded Product Manufacturing; 331319 Other Aluminum Rolling and Drawing; 331422 Copper Wire (except Mechanical) Drawing; 331511 Iron Foundries; 331524 Aluminum Foundries; 332311 Prefabricated Metal Building and Component Manufacturing; 81131 Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance

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RIN: 2060–AG56

2848. NESHAP: REFRACTORY PRODUCTS MANUFACTURING

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The proposed rulemaking will apply to existing and new refractory products manufacturing facilities. There are approximately 8 existing refractory products manufacturing facilities in the United States located at major source facilities. It is estimated that no new refractory products manufacturing facilities will be built at least for the next 3 years. The HAP that will be reduced by this proposed rule are polycyclic organic matter (POM), phenol, formaldehyde, methanol, and ethylene glycol. Implementation of the proposed rule would reduce emissions of air toxics by approximately 132 tons per year, a reduction of 46 percent from current levels. No significant adverse economic impact is expected to occur as a result of implementing this proposed rulemaking. The capital cost associated with the proposed rulemaking is approximately $3.5 million. The total annual cost of the proposed rulemaking is approximately $1.7 million.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3652

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RIN: 2060–AG68

2849. NESHAP: INDUSTRIAL, COMMERCIAL AND INSTITUTIONAL BOILERS AND PROCESS HEATERS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). Industrial boilers, institutional/commercial boilers and process heaters are among the potential source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for these source categories in 1987 and 1990. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology (MACT) as described in section 112 of the CAA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3837

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RIN: 2060–AG69

2850. NESHAP: LIME MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; 44 USC 350 et seq; 5 USC 605

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Section 112 of the Clean Air Act Amendments of 1990 requires the EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator of the EPA. The EPA has determined that some lime manufacturing plants may be major sources for one or more HAPs. As a consequence, a regulation (emission standards) is being developed for the lime manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3651

Sectors Affected: 32741 Lime Manufacturing

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RIN: 2060–AG72

2851. NESHAP: SEMICONDUCTOR PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 BBBBB

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Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This rule will establish a MACT (maximum available control technology) for semiconductor production facilities. There is currently 1 major source that would be affected by the NESHAP. This action will result in little or no additional emission reduction but will establish a Federal MACT level for large facilities.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3902

Sectors Affected: 334413 Semiconductor and Related Device Manufacturing

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RIN: 2060–AG93

2852. NESHAP: METAL CAN MANUFACTURING (SURFACE COATING) INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will result in the reduction of hazardous air pollutants emitted by the metal can industry. The Agency will study what pollutants are emitted and evaluate the control techniques, including pollution prevention, that are used to reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3906

Sectors Affected: 332431 Metal Can Manufacturing; 332812 Metal Coating, Engraving (except Jewelry and Silverware), and Allied Services to Manufacturers; 332115 Crown and Closure Manufacturing

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RIN: 2060–AG96

2853. NESHAP: FABRIC PRINTING, COATING AND DYEING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: This action will result in the reduction of hazardous air pollutants (HAP) emitted from fabric printing, coating, and dyeing. The Agency will identify and study the types and sources of HAP emissions from these processes, and evaluate pollution prevention and other control techniques which can reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN No. 3909

Sectors Affected: 3133 Textile and Fabric Finishing and Fabric Coating Mills; 3132 Fabric Mills; 3141 Textile Furnishings Mills; 3399 Other Miscellaneous Manufacturing

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RIN: 2060–AG98

2854. NESHAP: SURFACE COATING OF AUTOMOBILES AND LIGHT-DUTY TRUCKS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The Clean Air Act, as amended in 1990, requires EPA to develop emission standards for sources of hazardous air pollutants (HAPs). The surface coating of new automobiles and light-duty trucks is among the source categories to be regulated under section 112 of the CAA. Emissions of HAPs will be addressed by this rulemaking for both new and existing sources. EPA promulgated an NSPS for this source category in 1980. The standards for the NESHAP are to be technology-based and are to require the maximum achievable control technology as described in section 112 of the CAA.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3907

Sectors Affected: 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 336211 Motor Vehicle Body Manufacturing

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RIN: 2060–AG99

2855. NESHAP: PRIMARY MAGNESIUM REFINING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Section 112 of the Clean Air Act (Act), as amended November 1990, requires the EPA to regulate categories of major area sources of hazardous air pollutants (HAPs) listed in section 112(b). The EPA has determined that sources that manufacture primary magnesium may reasonably be anticipated to emit several of the 189 HAPs listed (including chlorine and hydrochloric acid) in quantities sufficient to designate them as a major source. As a consequence, primary magnesium refining is among the HAP emitting source categories selected for regulation and is in the group of categories for which final rules are scheduled to be promulgated by November 15, 2002 (58 FR 63941, December 3, 1993).

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 3924

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RIN: 2060–AH03

2856. NESHAP: SITE REMEDIATION

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 7401 et seq; PL 101-549 104 Stat. 2399

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.
Final, Statutory, November 15, 2000.

Abstract: Superfund, RCRA corrective action, gasoline stations, farms and residential sites are excluded from the source category description.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 3968

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RIN: 2060–AH12

2857. NESHAP: ROCKET ENGINE TEST FIRING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: As required by section 112(c) of the Clean Air Act, the Environmental Protection Agency has developed a list of categories of sources of hazardous air pollutants (HAP's). The HAP's are listed in section 112(b) of the Clean Air Act. The Rocket Engine Test Firing source category and the Engine Test Facilities source category are included on EPA's list of sources of HAP's. The Rocket Engine Test Firing source category includes facilities engaged in test firing of rocket engines using solid or liquid propellants. The Engine Test Facilities source category includes any facility engaged in the testing of stationary or mobile engines, including turbines and reciprocating engines.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: SAN No. 3972

This source category is now covered under the Engine Test Cells/Stands, SAN 4144, RIN 2060-AI74.

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RIN: 2060–AH35

2858. NESHAP: ORGANIC LIQUIDS DISTRIBUTION (NON-GASOLINE)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants by establishing maximum achievable control technology (MACT) for facilities distributing organic liquids. MACT standards are under development to reduce the release of hazardous air pollutants (HAPs) from all industries to protect the public health and environment. This project should include but is not limited to those activities associated with the storage and distribution of organic liquids other than gasoline at sites that serve as distribution points from which organic liquids may be obtained for further use and processing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3971

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RIN: 2060–AH41

2859. NESHAP: GROUP I POLYMERS AND RESINS AND GROUP IV POLYMERS AND RESINS-AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63.480 to 63.506 (Revision); 40 CFR 63.1310 to 63.1335 (Revision)

Legal Deadline: None

Abstract: During the development of the National Emission Standard for Hazardous Air Pollutants (NESHAP) for elastomers (Group I polymers and resins) and thermoplastics (Group IV polymers and resins) (RINs 2060-AD56 and 2060-AE37), many of the provisions contained in the Hazardous Organic NESHAP (HON) were referenced directly by these polymers and resins regulations due to similarities in processes, emission characteristics, and control technologies. On January 17, 1997, the EPA promulgated changes to the HON to remove ambiguity, to clearly convey EPA intent, and to make the rule easier to understand and implement in response to industry petitions. It is necessary to make parallel changes to the polymers and resins NESHAP; otherwise inconsistencies will exist for NESHAPs regulating similar source categories. An ANPRM was published in the Federal Register on 11/25/96 (61 FR 59849), to explain the nature of changes planned. Subsequently, six litigants have petitioned for review of the elastomers and thermoplastics regulations. Four companies have petitioned EPA to reconsider specific provisions in the thermoplastics regulation. Revisions will be proposed to parallel HON changes and to resolve petitioners' issues. There are no impacts anticipated for small businesses or State/local/tribal governments.

Timetable:

Action	Date	FR Cite
ANPRM Petitions for Jud. Rev-Dow,UCC,Exxon)	11/25/96	61 FR 59849
NPRM Petitions for Judicial Review-Prop. Amend.	03/09/99	64 FR 11559
NPRM Petition for Recons. - Equip. Leaks	06/08/99	64 FR 30453
Direct Final Action Petition for Reconsid.-Equip Leaks	06/08/99	64 FR 30406
Final Action Petitions for Judicial Rev-Amendments	06/19/00	65 FR 38030
Direct Final Rule Stay	08/29/00	65 FR 52319
Direct Final Rule Withdrawal - Polymers and Resins	10/26/00	65 FR 64161
Final Rule Amend. Petition for Recons.-Cooling Towers	02/23/01	66 FR 11233
Final Rule Amend. Petition for Jud. Review-Tech. Corr.	07/16/01	66 FR 36924
Final-Amend. & Denial Petition for Reconsideration-Equip. Leaks	08/06/01	66 FR 40903
NPRM Petition for Reconsideration-Cooling Towers	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3939

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AH47

2860. NESHAP: PUBLICLY OWNED TREATMENT WORKS (POTW)-AMENDMENTS II

Priority: Other Significant

Legal Authority: 42 USC 7412(e)(5) CAAA sec 112(e)(5); 42 USC 7412(n)(3) CAAA sec 112(n)(3)

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action will amend the existing rule to implement a settlement agreement with the Pharmaceutical Research and Manufacturers of America regarding their petition for judicial review.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 4546

Split from RIN 2060-AF26.

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RIN: 2060–AJ66

2861. NESHAP: WOOD BUILDING PRODUCTS (SURFACE COATING)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will result in the reduction of hazardous air pollutants (HAP) emitted by the wood building product surface coating industry. The Agency will study the various HAP emitted by the industry and evaluate pollution prevention and control techniques which can reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3904

Sectors Affected: 321212 Softwood Veneer and Plywood Manufacturing; 321219 Reconstituted Wood Product Manufacturing; 321911 Wood Window and Door Manufacturing; 321918 Other Millwork (including Flooring); 321999 All Other Miscellaneous Wood Product Manufacturing; 321211 Hardwood Veneer and Plywood Manufacturing; 32199 All Other Wood Product Manufacturing

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RIN: 2060–AH02

2862. PROTECTION OF STRATOSPHERIC OZONE: RECONSIDERATION OF SECTION 608 SALES RESTRICTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671(g) CAA sec 608

CFR Citation: 40 CFR 82 subpart F

Legal Deadline: None

Abstract: The rule will include the reconsideration of the sales restriction as it relates to split systems. The Agency was petitioned to reconsider the part of the sales restriction that included the sale of pre-charged split systems. It restricted such sales to certified technicians. Since then, EPA stayed that portion of the sales restriction in response to the petition. This rule will include the determination of the Agency related to the reconsideration. It addresses environmental problems of ozone depletion resulting from emissions of chlorofluorocarbons, hydrochlorofluorocarbons, and other ozone-depleting substances. Through restricting sales of certain pre-charged items to persons certified as technicians, emissions to the atmosphere are decreased. The impact on small businesses and governments would be negligible, since persons can become certified if the EPA determination is a full restriction. Most businesses and governments will have at least one certified technician on board. This action has no impact on small business and State, local, and tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3673

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RIN: 2060–AG20

2863. METAL FURNITURE (SURFACE COATING) NESHAP

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This regulation will apply to surface coating of metal furniture products and parts. This regulation will reduce nationwide emissions of HAPs from surface coating of metal furniture products and parts, which is required under section 112 of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN No. 3824

Sectors Affected: 337124 Metal Household Furniture Manufacturing; 33636 Motor Vehicle Fabric Accessories and Seat Manufacturing; 337215 Showcase, Partition, Shelving, and Locker Manufacturing; 337127 Institutional Furniture Manufacturing; 332116 Metal Stamping; 332612 Wire Spring Manufacturing; 337215 Showcase, Partition, Shelving, and Locker Manufacturing

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RIN: 2060–AG55

2864. PLASTIC PARTS AND PRODUCTS (SURFACE COATING) NESHAP

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action would address the hazardous air pollutants (HAP) emissions from the coating of plastic parts. Pollution prevention approaches will be considered.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3826

Sectors Affected: 337214 Nonwood Office Furniture Manufacturing; 32614 Polystyrene Foam Product Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing; 326199 All Other Plastics Product Manufacturing; 333313 Office Machinery Manufacturing; 33422 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 339111 Laboratory Apparatus and Furniture Manufacturing; 339112 Surgical and Medical Instrument Manufacturing; 33992 Sporting and Athletic Goods Manufacturing; 33995 Sign Manufacturing; 339999 All Other Miscellaneous Manufacturing

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RIN: 2060–AG57

2865. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: This proposed amendment will also allow hard chromium electroplating facilities using fume suppressants for emission control to meet a surface tension limit similar to the requirements for decorative chromium electroplating and chromium anodizing facilities instead of the present requirement to meet an emission limit. Facilities choosing to use fume suppressants for emission control would be required to monitor the surface tension at the same frequency currently required for decorative chromium and chromium anodizing tanks and demonstrate compliance with the surface tension operating limit. Like decorative chromium electroplating and chromium anodizing facilities, hard chromium electroplating facilities would now be allowed to monitor surface tension to demonstrate compliance in lieu of performance testing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4115

Sectors Affected: 332813 Electroplating, Plating, Polishing, Anodizing and Coloring

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RIN: 2060–AH69

2866. TRANSPORTATION CONFORMITY AMENDMENTS: RESPONSE TO MARCH 2, 1999, COURT DECISION

Priority: Other Significant

Legal Authority: 42 USC 7401-7671q

CFR Citation: 40 CFR 93

Legal Deadline: None

Abstract: The Clean Air Act requires EPA to promulgate rules that establish the criteria and procedures for determining whether highway and transit plans, programs, and projects conform to State air quality plans. Conformity means that the transportation actions will not cause or worsen violations of air quality standards or delay timely attainment of the standards. The original conformity rule was finalized on November 24, 1993, and most recently amended on August 15, 1997. On March 2, 1999, the U.S. Court of Appeals overturned certain provisions of the 1997 conformity amendments. This rulemaking will amend the conformity rule in compliance with the court decision. The rulemaking will formalize the May 14, 1999 EPA guidance and the June 18, 1999 DOT guidance that was issued to guide action on this issue until a rulemaking could be issued. Specifically, the rulemaking will clarify the types of projects that can be implemented in the absence of a conforming transportation plan. It will also explain EPA's process for reviewing newly submitted air quality plans and when those submissions can be used for conformity purposes.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4340

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RIN: 2060–AI56

2867. NATIONAL VOC EMISSION STANDARDS FOR CONSUMER PRODUCTS; PROPOSED AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 59

Legal Deadline: None

Abstract: Amendments to the consumer products rule are being proposed to clarify and correct the rule.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4309

Sectors Affected: 32599 All Other Chemical Product Manufacturing

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RIN: 2060–AI62

2868. NESHAP FOR THE PRINTING AND PUBLISHING INDUSTRY; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 1994.

Abstract: The amendments will clarify the rule and ensure it reflects the EPA's intent.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4310

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RIN: 2060–AI66

2869. NESHAP: CLAY CERAMICS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Ceramics are defined as a class of inorganic, nonmetallic solids that are subject to high temperature in manufacture and/or use. The clay ceramics manufacturing source category includes facilities that manufacture traditional ceramics. Traditional ceramics include ceramic tile, dinnerware, sanitaryware, pottery, and porcelain. The primary raw material used in the manufacture of traditional ceramics is clay. The manufacture of clay ceramics involves raw material processing (crushing, grinding, and screening), mixing, forming, shaping, drying, glazing, and firing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4343

Title in April 2001 Agenda: NESHAP: Clay Ceramics Manufacturing

Sectors Affected: 327122 Ceramic Wall and Floor Tile Manufacturing; 327111 Vitreous China Plumbing Fixture and China and Earthenware Fittings and Bathroom Accessories Manufacturing

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RIN: 2060–AI68

2870. PETITIONS TO DELIST HAZARDOUS AIR POLLUTANTS (E.G., MEK, EGBE, METHANOL, AND MIBK) FROM SECTION 112(B)(1) OF THE CAA

Priority: Substantive, Nonsignificant

Legal Authority: Clean Air Act Section 112(b)(3)

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, February 28, 2000.

Abstract: The Agency has received 4 petitions to remove certain pollutants (i.e., methanol, methyl ethyl ketone, ethylene glycol butyl ether, and methyl isobutyl ketone) from the list of hazardous air pollutants (HAPs) under Section 112(b) of the Clean Air Act. The Agency must review the petitions and either grant or deny the petition within 18 months of the date the complete petition was received. If the Agency grants a petition, a notice of proposed rulemaking will be published in the Federal Register, allowing the opportunity for public comment. If the

Agency denies a petition, a notice of denial will be published in the Federal Register providing an explanation for such denial. If the Agency grants a petition and ultimately removes the pollutant from the HAP list then sources emitting such pollutants would not be required to meet MACT emissions standards for the pollutant. If on the other hand, the Agency denies the petition, then MACT standards would be issued as currently planned under Section 112(c) and 112(d) of the Clean Air Act for sources emitting such pollutants. Depending on the 4 individual determinations, the Agency will issue separate notices for each.

Timetable:

Action	Date	FR Cite
Denial Notice: Methanol Methanol petition -- final action	05/02/01	66 FR 21929
Action:MEK Prop. rule to delist/denial notice-3 petitions by 06/2002	06/00/02	
Action: EGBE Prop. rule to delist or denial notice	09/00/02	
Action: MIBK Prop. rule to delist or denial notice	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4313

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RIN: 2060–AI72

2871. NESHAP: ENGINE TEST CELLS/STANDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: As required by section 112(c) of the Clean Air Act, the Environmental Protection Agency has developed a list of categories of sources of hazardous air pollutants (HAP's). The HAP's are listed in section 112(b) of the Clean Air Act. The Engine Test Facilities source category is included on EPA's list of sources of HAP's. The Engine Test Facilities source category includes any facility engaged in the testing of stationary or mobile engines, including turbines and reciprocating engines and rocket engines. Aircraft engine testing consists of facilities which perform testing on uninstalled aircraft engines. Non-aerospace engine test facilities consist of facilities which perform testing on uninstalled engines such as automotive engines, stationary turbines, IC engines, and diesel engines.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4144

This action will cover the rocket engine test firing source category RIN 2060-AH35.

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RIN: 2060–AI74

2872. INSPECTION MAINTENANCE PROGRAM REQUIREMENTS FOR FEDERAL FACILITIES; AMENDMENT TO THE FINAL RULE

Priority: Other Significant

Legal Authority: 23 USC 101; 42 USC 7401 et seq

CFR Citation: 40 CFR 51 (Revision); 40 CFR 93 (New)

Legal Deadline: None

Abstract: The Environmental Protection Agency (EPA) has had oversight and policy development authority for Inspection and Maintenance (I/M) programs since the passage of the Clean Air Act (CAA) in 1970. The 1977 amendments to the CAA mandated I/M for certain areas with long-term air quality problems and the 1990 amendments set forth standards for implementation of I/M programs. EPA used the statutory requirements of the Act, including I/M requirements for Federal facilities, to promulgate regulations which states would use in the development of their I/M State Implementation Plans (SIPs). Those rule requirements effectively gave States certain authorities over the Federal government. The Department of Justice has now ruled that Federal sovereign immunity was not fully waived under the CAA for those requirements and EPA should amend its rule to remove the requirement that States include those elements in their SIPs. EPA is proposing to: (1) Amend the Federal facilities I/M requirements by removing that section; (2) correct existing I/M SIP approval actions which include these elements; (3) establish new Federal facilities I/M program requirements which Federal facilities in I/M program areas must meet in order to comply with the Act; and (4) designate for each State which section of the Act Federal agencies must comply with based on how that State promulgated its I/M regulations. These changes will have minimal to no impact on the States as no new requirements are being created. The States are under no obligation, legal or otherwise, to modify existing SIPs meeting the previously applicable requirements as a result of this action, nor will emissions reduction credit be affected. However, the changes will clarify for affected Federal facilities what they must do to meet the CAA requirements by establishing new regulations per those requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4348

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RIN: 2060–AI97

2873. CONTROL OF METHYL TERTIARY BUTYL ETHER (MTBE)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: EPA is considering taking action to control the use of Methyl Tertiary Butyl Ether (MTBE), which is an organic compound that is primarily used as a fuel additive in gasoline. MTBE has been used to meet the oxygen requirement established by the Federal Reformulated Gasoline Program (RFG) established by the 1990 amendments to the Clean Air Act (CAA). Over 85 percent of reformulated gasoline contains MTBE. EPA is concerned that the widespread use of MTBE may have resulted in the contamination of groundwater and drinking water supplies, threatening their future use. While current detections levels are generally believed to be below levels that may cause public health concerns, low level MTBE contamination may render water unpotable due to offensive taste and odor. In November of 1998, EPA established a Blue Ribbon Panel to investigate air quality benefits and water quality concerns associated with oxygenates, including MTBE, in gasoline, and to provide independent advice and recommendations on ways to maintain air quality while protecting water quality. In September, 1999, the panel recommended that the use of MTBE be substantially reduced. EPA is now evaluating the Blue Ribbon Panel's recommendations, and has conducted a preliminary review of authorities available to address risks associated with MTBE. EPA intends to issue an Advance Notice of Proposed Rulemaking to inform the public of this preliminary inquiry, and to solicit public comment on possible regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	03/24/00	65 FR 16094
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Additional Information: SAN No. 4393

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RIN: 2060–AJ00

2874. NESHAP: TACONITE IRON ORE PROCESSING INDUSTRY

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The taconite iron ore processing source category is comprised of eight facilities operating in the United States. Six facilities are located in Minnesota and two are located in Michigan. The expected sources of HAP emissions for this source category include fossil fuel combustion sources, and possibly the handling and transfer of mined ore containing naturally occurring inorganic compounds. Anticipated HAP emissions released from these sources primarily include formaldehyde, manganese, nickel, arsenic, and chromium. The quantities of HAP released are expected to exceed major source levels.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4380

There are eight taconite processing facilities in the U.S.; six are located in Minnesota and two are located in Michigan. The MACT standard for this industry group will be shared between EPA and the State of Minnesota. State regulations currently in place include both air emissions limitations and prohibition of effluent discharge to Great Lakes waters, and both air and water monitoring requirements. Other existing Federal regulations may be affected under RCRA and TSCA.

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RIN: 2060–AJ02

2875. PETITIONS TO DELIST SOURCE CATEGORIES FROM THE SOURCE CATEGORY LIST, DEVELOPED PURSUANT TO SECTION 112(C) OF THE CLEAN AIR ACT

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Statutory, April 21, 2000.

Abstract: The EPA has received a petition to remove a SC (2-Piece Can Manufacturing) from the SC List developed pursuant to Section 112(c) of the Clean Air Act (CAA). The most current SC List was published on November 18, 1999 (64 FR 63025). Section 112(c)(9), which provides the legislative authority and guidelines for such actions, states that the Administrator may delete a SC from the list under Section 112(c), on petition of any person or on the Administrator's own motion, whenever the Administrator determines that no source in the category emits hazardous air pollutants (HAPs) in quantities

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which may cause a lifetime risk of cancer greater than 1 in one million to the individual in the population who is most exposed and that emissions from no source in the category exceed a level which is adequate to protect public health with an ample margin of safety and that no adverse environmental effect will result. As of August 30, 2001, 1 petition to delist a SC has been received. It contains information on HAP emissions, exposures, health effects, human risks, and potential ecological concerns as well as the petitioner's explanation why the 2-Piece Can Manufacturing should be removed from the SC List. The EPA will conduct a comprehensive review of the petition received then decide whether to grant or deny the petition. Section 112(c)(9) requires that within 12 months of receipt of a petition, the Administrator shall either grant or deny the petition by publishing a written explanation of the reasons for the Administrator's decision. We believe that petitions to delist source categories are non-significant actions because they do not meet any of the principles outlined in Section A above.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4415

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RIN: 2060–AJ23

2876. REVISING REGULATIONS ON AMBIENT AIR QUALITY MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 58 (Revision); 40 CFR 53 (Revision); 40 CFR 50 (Revision)

Legal Deadline: None

Abstract: Air pollution control authorities use air quality data to determine compliance with the National Ambient Air Quality Standards and in subsequent work to develop air pollution mitigation strategies. The data come primarily from ambient air monitoring stations run by state and local agencies, although federal, tribal, and industrial organizations also run stations. The design of the monitoring networks is regulated under 40 CFR 58. This rule was originally written in 1979 and several revisions have been made in the intervening years. Air pollution control authorities have improved their parts of the network in response to changes in air quality, advances in the understanding of the movements and health effects of air pollutants, and developments in air pollution measurement technology. EPA has also cooperated with air pollution control authorities to improve the networks, but we have not revised the applicable regulations comprehensively. The proposed revisions would remove real or perceived constraints on redeploying air monitoring stations; more accurately reflect the roles of EPA and other control authorities in designing, reviewing, and modifying networks; bring provisions related to quality assurance up to date; and recognize technological changes. The current regulations require states to develop plans to deploy air monitoring networks, but they do not emphasize administering the networks. States generally develop new plans only when new monitoring is needed, such as for a new NAAQS. The regulations should be revised to reflect the roles of EPA and the state and local agencies.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4421

Sectors Affected: 92411 Air and Water Resource and Solid Waste Management; 334519 Other Measuring and Controlling Device Manufacturing

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RIN: 2060–AJ25

2877. PROTECTION OF STRATOSPHERIC OZONE: PHASEOUT OF CHLOROBROMOMETHANE (HALON 1011) PRODUCTION AND CONSUMPTION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: EPA is proposing to add chlorobromomethane (CBM) to the list of controlled substances subject to production and consumption controls in accordance with both the Montreal Protocol on Substances that Deplete the Ozone Layer (Protocol) and EPA's regulations under the Clean Air Act Amendments of 1990. Today's action proposes to create a new Group (Group VIII) of class I substances for CBM, and to designate the value of CBM's ozone depleting potential as 0.12. In accordance with the Protocol, today's action proposes phasing out CBM production and consumption upon publication of the final rule with permitted exemptions. Today's action also proposes to restrict trade in CBM with countries who are not Parties to the Beijing Amendments to the Protocol.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4428

Sectors Affected: 325199 All Other Basic Organic Chemical Manufacturing; 325412 Pharmaceutical Preparation Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 42269 Other Chemical and Allied Products Wholesalers; 54138 Testing Laboratories; 6215 Medical and Diagnostic Laboratories; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2060–AJ27

2878. FEDERAL PLAN REQUIREMENTS FOR COMMERCIAL AND INDUSTRIAL SOLID WASTE INCINERATION UNITS CONSTRUCTED ON OR BEFORE NOVEMBER 30, 1999

Priority: Substantive, Nonsignificant

Legal Authority: 1990 Amendments to the Clean Air Act sections 111; 1990 Amendments to the Clean Air Act sections 129; 1990 Amendments to the Clean Air Act sections 301(a)(d)

CFR Citation: 40 CFR 62

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 directed the Environmental Protection Agency (EPA) to set emission guidelines for existing incinerators combusting commercial or industrial waste under sections 111 and 129. Final emission guidelines for Commercial and Industrial Solid Waste Incineration (CISWI) were published on December 1, 2000 (see 65 FR 75338). In accordance with section 129, any State with affected sources must submit a State plan by December 1, 2001 describing how the State will implement the emission guidelines for existing CISWI. Section 129 requires the Administrator to develop and implement a Federal plan for existing CISWI units located in any State which has not submitted an approvable plan within 2 years of promulgation of the emissions guidelines. In this CISWI Federal plan rulemaking, EPA becomes the implementing authority in those instances where the State has failed to submit a plan or a plan has not yet been approved. Therefore, consistent with section 129(b)(3) of the Act, EPA is proposing a plan that applies to CISWI in any State that has not submitted an approvable plan within the time allotted. This action makes no changes to the requirements in the rule, and is intended to fulfill EPA's duty under section 129(b)(3) to promulgate a Federal plan as a gap-filling measure until the State fulfills its statutory obligations. When the State submits an approvable State Plan, the Federal plan will no longer apply to units in that State.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State

Additional Information: SAN No. 4441

Sectors Affected: 321 Wood Product Manufacturing; 325 Chemical Manufacturing

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RIN: 2060–AJ28

2879. NESHAP: PESTICIDES ACTIVE INGREDIENTS—AMENDMENTS

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On June 23, 1999, EPA promulgated the NESHAP for Pesticide Active Ingredient Production (Production of Agricultural Chemicals). Subsequently, a petition was filed on this rule, and EPA received the list of issues filed with the court. There are four separate, but related petitions. Major issues include applicability determination for creosote producers, control requirements for left-over vents, averaging period, and wastewater applicability cutoffs.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4457

Split from RIN 2060-AE84.

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RIN: 2060–AJ34

2880. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: MUNICIPAL SOLID WASTE LANDFILLS: AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7429; 42 USC 7601

CFR Citation: 40 CFR 60.750; 40 CFR 60.751; 40 CFR 60.752(b)(2)(iii)(B); 40 CFR 60.752(b)(2)(iii)(C); 40 CFR 60.752(b)(2)(iii)(D); 40 CFR 60758

Legal Deadline: None

Abstract: This action will amend the existing regulation entitled Standards of Performance for New Stationary Sources: Municipal Solid Waste Landfills, subpart WWW of 40 CFR Part 60, promulgated on March 12, 1996. The amendment is being undertaken in response to requests to clarify our intent regarding what constitutes an adequate landfill gas treatment system. This action also clarifies our intent to exempt from control landfill gas that is treated/upgraded to pipeline quality natural gas. Furthermore, it clarifies who is responsible for control of untreated landfill gas that is sold. This

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action is necessary to clarify our intent regarding the issues discussed above. It will improve implementation and compliance with this regulation. There are no internal issues involved with the proposed amendment, and we anticipate no significant adverse reaction related to this action from regulators or environmentalists. Industry may comment on the landfill gas treatment language but in general supports the amendments.

Timetable:

Action	Date	FR Cite
NPRM NSPS: Municipal Solid Waste Landfills	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4478

Sectors Affected: 562212 Solid Waste Landfill

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RIN: 2060–AJ41

2881. NESHAP: GASOLINE DISTRIBUTION FACILITIES — AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401

CFR Citation: 40 CFR 63.425(e)

Legal Deadline: None

Abstract: This action will add a DOT test method as an alternative for measuring emissions from railcars. This method came to our attention subsequent to promulgation of the original rule.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4479

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RIN: 2060–AJ42

2882. REVISIONS TO REGIONAL HAZE RULE TO INCORPORATE SULFUR DIOXIDE MILESTONES AND BACKSTOP EMISSIONS TRADING PROGRAM FOR NINE WESTERN STATES

Priority: Other Significant

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470 to 7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.309

Legal Deadline: None

Abstract: This regulation is for an action anticipated by the regional haze rule that we published in July 1999. One portion of the regional haze rule was an optional visibility protection program for nine Western States. Part of this program for the West, a long-term program to reduce stationary source emissions of sulfur dioxide, was incomplete at the time of the 1999 rule. Accordingly, the rule required Western States to submit an Annex to an earlier report of the Grand Canyon Visibility Transport Commission. We required the Annex to contain sulfur dioxide milestones for the years 2003 to 2018, to establish a program to track emissions from stationary sources over this time period, and to provide the details of a market trading program that would be triggered if a milestone is exceeded. The Western Regional Air Partnership submitted the Annex on September 29, 2000. The purpose of this rulemaking is to determine whether the Annex meets the requirements of the regional haze rule and the Clean Air Act, and if it does, to amend the regional haze rule to incorporate its provisions.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4495

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RIN: 2060–AJ50

2883. NESHAP: PORTLAND CEMENT MANUFACTURING INDUSTRY, AMENDMENTS TO RULE TO IMPLEMENT SETTLEMENT AGREEMENT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 63.1340 to 63.1359

Legal Deadline: None

Abstract: The Portland Cement Manufacturing Industry NESHAP was promulgated June 14, 1999. The rule is codified in 40 CFR 63, Subpart LLL. This rule is being revised to reflect a pending settlement agreement with the American Portland Cement Alliance. The rule changes will be minor, and mostly will help to clarify requirements, provide monitoring alternatives and/or remove minor monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4524

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2060–AJ57

2884. MOTOR VEHICLE AND ENGINE COMPLIANCE PROGRAM FEES FOR: LIGHT-DUTY VEHICLES AND TRUCKS; HEAVY-DUTY VEHICLES AND ENGINES; NONROAD ENGINES; AND MOTORCYCLES

Priority: Other Significant

Legal Authority: 42 USC 7552; 31 USC 9701; 42 USC 4370(c)

CFR Citation: 40 CFR 86 (Revision)

Legal Deadline: None

Abstract: Under the Motor Vehicle and Engine Compliance (MVECP) Fee Program user fees are collected for certification and compliance activities. Currently, user fees are required by manufacturers of light-duty vehicles, light-duty trucks, heavy-duty vehicles, heavy-duty engines and motorcycles. Through this Notice, EPA is proposing to update the current fee provisions for the existing industries and incorporate fees for nonroad manufacturers. In addition, the fee schedule will be updated to reflect costs in administering compliance activities for new regulations such as the Tier 2 automobile standards and nonroad engine standards.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4532

Sectors Affected: 333 Machinery Manufacturing; 3331 Agriculture, Construction, and Mining Machinery Manufacturing; 333111 Farm Machinery and Equipment Manufacturing; 333112 Lawn and Garden Tractor and Home Lawn and Garden Equipment Manufacturing; 33312 Construction Machinery Manufacturing; 333131 Mining Machinery and Equipment Manufacturing; 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 33651 Railroad Rolling Stock Manufacturing; 3361 Motor Vehicle Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing; 33612 Heavy Duty Truck Manufacturing; 336311 Carburetor, Piston, Piston Ring and Valve Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 33661 Ship and Boat Building; 336991 Motorcycle, Bicycle and Parts Manufacturing; 333 Machinery Manufacturing; 33392 Material Handling Equipment Manufacturing; 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 33399 All Other General Purpose Machinery Manufacturing; 333991 Power-Driven Hand Tool Manufacturing

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RIN: 2060–AJ62

2885. ELECTRIC ARC FURNACE NSPS AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7411

CFR Citation: 40 CFR 60.270 to 60.276a

Legal Deadline: None

Abstract: Sources affected by the NSPS for electric arc furnaces (Subparts AA, and AAa) have expressed concerns with the requirements in the NSPS to use a continuous opacity monitor (COM) to monitor opacity and report periods when the COM indicated greater than 3 percent opacity as periods of excess emissions, and have petitioned the EPA to reconsider the COM requirements. These concerns arise from recent information that indicate that COM readings may have an error of up to 4 percent, which in itself is greater than the 3 percent excess emissions threshold. The EPA is reconsidering the COM requirements, and may amend the NSPS to add alternative monitoring requirements.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4555

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RIN: 2060–AJ68

2886. CONTROL OF AIR POLLUTION FROM MOTOR VEHICLES AND ENGINES: ALTERNATIVE LOW-SULFUR HIGHWAY DIESEL FUEL TRANSITION PROGRAM FOR ALASKA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7625-1

CFR Citation: 40 CFR 69 and 80 (Revision)

Legal Deadline: None

Abstract: This action will carry out a flexibility provision for Alaska that was included in EPA's heavy-duty diesel

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rule, which was promulgated on January 18, 2001. That rule established more stringent national emission standards for heavy-duty highway vehicles and engines for the 2007 model year, and a technology-enabling sulfur limit of 15 ppm for highway diesel fuel beginning in 2006. In that rule, EPA recognized Alaska's unique geographical, meteorological, air quality, and economic factors and provided Alaska an opportunity to develop its own plan to transition to low-sulfur highway diesel fuel, as an alternative to the national transition program. Our goal in offering this flexibility is to transition Alaska into the low-sulfur fuel program in a manner that minimizes costs, while ensuring that the new vehicles and engines receive the low-sulfur fuel they need. As stated in the Federal Register notice for the diesel rule, if Alaska submits an alternative plan by April 1, 2002, and if EPA determines that it provides a reasonable alternative, EPA intends to initiate rulemaking and, within one year from the date of Alaska's submittal, promulgate a final rule to incorporate the alternative plan. A stakeholder process to develop options is already underway in Alaska, and the State informed EPA that it intends to submit an alternative transition plan in late 2001 or early 2002. This action will be in response to that anticipated submittal.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4570

Sectors Affected: 336112 Light Truck and Utility Vehicle Manufacturing

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RIN: 2060–AJ72

2887. MODIFICATION OF FEDERAL ON-BOARD DIAGNOSTIC REGULATIONS FOR 2004 MODEL YEAR VEHICLES BELOW 14,000 LBS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1701q

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule proposes revisions to the existing Light-Duty On-Board Diagnostic Requirements, including revisions that will: (1) require vehicle manufacturers to monitor the catalyst for NOx emission performance in addition to existing requirements to monitor NMHC performance, whichever is more stringent; (2) require monitoring of the evaporative emissions systems for the presence of 0.020 leaks or greater and allow for non-intrusive, engine-off methods to perform monitoring instead of the current requirements to monitor for the presence of a 0.040 leak or greater during vehicle operation; (3) allow the use of the Control Area Network (CAN) Protocol (SAE 15765-4) for OBD communications in addition to the other allowable SAE (J1850, J1939) and ISO (9141, 14230-4); (4) new software and hardware changes to aid in OBD-I/M program implementation including adding vehicle identification number (VIN) to the generic datastream, confining the physical location of the data link connector, and allowing the use of the malfunction indicator lamp (MIL) and a special key sequence to indicate readiness; (5) add new generic data stream parameters to aid in the repair and diagnosis of vehicle malfunctions; (6) require manufacturers to record critical pieces of OBD information under the CAP 2000 In-Use Verification Program (IUVP); and (7) establish new OBD in-use performance demonstration standards used to determine appropriate frequency of monitoring in the real world; such in-use performance standards do not currently exist which places a greater burden on our in-use program.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4583

Sectors Affected: 33611 Automobile and Light Duty Motor Vehicle Manufacturing

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RIN: 2060–AJ77

2888. MODIFICATION OF AUTHORITY TO GRANT ALTERNATIVE METHOD APPROVALS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Currently, stationary source regulations cite specific test methods to demonstrate compliance. If a source locates a test method which will measure the regulated pollutant(s) with similar precision and accuracy to the method cited in the regulation, and would like to use the alternative method, the source must petition the EPA (along with data documenting the applicability of the alternative) to allow the alternative method. Each of these alternative method approvals by letter may currently only be granted to a specific source. Source category-wide approvals must be published for comment in the Federal Register. Due to budgetary and time constraints, the process constrains industry trade associations from developing and submitting alternative test methods. Therefore, the purpose of this rulemaking is to modify the regulations to allow source category-wide alternative method approvals to be issued by letter.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4547

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RIN: 2060–AJ83

2889. PERFORMANCE SPECIFICATIONS FOR CONTINUOUS PARAMETER MONITORING SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 60 app B (New); 40 CFR 60 app F (Revision)

Legal Deadline: None

Abstract: This action proposes Performance Specification 17 (PS-17), Quality Assurance (QA) Procedure 4, and amendments to Appendix F, QA Procedure 1. Performance Specification 17 and QA Procedure 4 apply to continuous parameter monitoring systems (CPMS). Many of the rules promulgated under 40 CFR part 63 require owners and operators of affected emission units to install and operate CPMS to monitor various parameters, such as temperature, pressure, flow rate, and pH, associated with the operation and performance of emission control devices. However, few, if any, of those rules specify complete procedures for ensuring the quality of the data measured by CPMS. The proposed PS-17 establishes procedures and other requirements that will ensure that those CPMS are properly selected, installed, and placed into operation. The proposed QA Procedure 4 specifies procedures that will ensure that those CPMS provide quality data on an ongoing basis. Both PS-17 and QA Procedure 4 will help to ensure compliance with emission limitations established under 40 CFR part 63. Procedure 1 of Appendix F currently addresses QA procedures for continuous emission monitoring systems (CEMS) that measure a single pollutant. The proposed amendments to QA Procedure 1 broaden the procedure to address the unique requirements of CEMS that are used for monitoring multiple pollutants. Because several of the regulations promulgated under 40 CFR part 63 require multiple pollutant CEMS, these amendments are needed to ensure those CEMS are operated in a manner that ensures the quality of the emission data collected. This action is not expected to have any impact on small entities or State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4584

Sectors Affected: 21 Mining; 22 Utilities; 31-33 Manufacturing; 486 Pipeline Transportation; 562212 Solid Waste Landfill; 562213 Solid Waste Combustors and Incinerators

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RIN: 2060–AJ86

2890. BENZENE WASTE OPERATIONS NESHAP; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401-7626

CFR Citation: 40 CFR 61

Legal Deadline: None

Abstract: This amendment will add a compliance option for tanks, making the Benzene Waste Operations NESHAP consistent with the RCRA CC rules. Hazardous waste treatment facilities have requested these amendments because they must comply with both rules. There is no emission reduction as a result of this action. However, facilities may save money. We expect no negative impacts on small businesses and State/local/tribal governments. Industry and government support this change.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4591

Sectors Affected: 562211 Hazardous Waste Treatment and Disposal; 3311 Iron and Steel Mills and Ferroalloy Manufacturing; 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2060–AJ87

2891. PROPOSED AMENDMENTS TO PERFORMANCE STANDARDS AND MONITORING REQUIREMENTS FOR PARTICULATE MATTER AT STATIONARY SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 60 app B; 40 CFR 60 app F

Legal Deadline: None

Abstract: This action would repropose some monitoring specifications that were originally included in an OSWER proposal to regulate air emissions from hazardous waste combustors (as explained further below). It revises several standards and requirements related to continuous emission monitoring systems for particulate matter (PM). These include: specifications and test procedures known as Performance Specification 11 (PS-11), and quality assurance requirements known as Procedure 2. The proposed revisions clarify and update performance standards and monitoring requirements for facilities required to install and use continuous monitoring equipment to measure particulate matter emissions from stacks and ducts. The action does not change any emission standards or add any additional recordkeeping requirements. This action is a supplement to actions by EPA's OSWER that included proposed regulations for hazardous waste

combustors. The first action was published in the Federal Register on December 30, 1997 (62 FR 67788). Recent OAR field studies have revealed needed revisions to PS-11 and Procedure 2. In view of the significant amount of time that has passed since the last proposal was published (December 30, 1997) and the significant amount of knowledge we have recently gained from our field studies, we believe that a supplemental proposal and another opportunity for the public to comment on PS-11 and Procedure 2 are appropriate. The need to do this reproposal only recently became evident, and we apologize for the short time between Tiering and the expected proposal date.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4605

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ88

2892. CONTROL OF EMISSIONS FROM SPARK IGNITION MARINE VESSELS AND HIGHWAY MOTORCYCLES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7401 to 7671(q)

CFR Citation: 40 CFR 94

Legal Deadline: None

Abstract: EPA is pursuing new evaporative controls on vessels powered by spark ignition engines. EPA is also developing tighter standards for highway motorcycles.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4626

Split from RIN 2060-AI11.

Sectors Affected: 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 335312 Motor and Generator Manufacturing; 42183 Industrial Machinery and Equipment Wholesalers

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RIN: 2060–AJ90

2893. • NESHAP: BRICK AND STRUCTURAL CLAY PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The brick and structural clay products industry primarily includes facilities that manufacture brick, clay, pipe, roof tile, extruded floor and wall tile, and other extruded dimensional clay products from clay, shale, or a combination of the two. The manufacture of brick and structural clay products involves mining, raw material processing (crushing, grinding, and screening), mixing, forming, cutting or shaping, drying, and firing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4325

Sectors Affected: 327121 Brick and Structural Clay Tile Manufacturing; 327123 Other Structural Clay Product Manufacturing

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RIN: 2060–AJ91

2894. • CONTROL OF EMISSIONS OF AIR POLLUTION FROM NEW MARINE COMPRESSION-IGNITION ENGINES AT OR ABOVE 30 LITERS PER CYLINDER

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7621 et seq; 42 USC 7542 et seq

CFR Citation: 40 CFR 94

Legal Deadline: NPRM, Judicial, April 30, 2002, Propose emission standards for new compression-ignition marine engines at or above 30 liters per cylinder.
Final, Judicial, January 31, 2003, Finalize emission standards for new compression-ignition marine engines at or above 30 liters per cylinder.

Abstract: This rule will set exhaust emission standards for new marine compression-ignition engines at or above 30 liters per cylinder installed on vessels flagged by the United States and will consider whether it is appropriate to apply these standards to foreign flag vessels that use U.S. ports.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4622

Sectors Affected: 333618 Other Engine Equipment Manufacturing; 3366 Ship and Boat Building

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RIN: 2060–AJ98

2895. • IMPLEMENTATION RULE FOR 8-HOUR OZONE NAAQS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7408; 42 USC 7410; 42 USC 7501-7511f; 42 USC 7601(a)(1)

CFR Citation: 40 CFR 51 (revision)

Legal Deadline: None

Abstract: This rule would provide specific requirements for State and local air pollution control agencies to prepare State implementation plans (SIPs) under the 8-hour national ambient air quality standard (NAAQS) for ozone, published by EPA on July 18, 1997. The Clean Air Act requires EPA to set ambient air quality standards and requires States to submit SIPs to implement those standards. The 1997 standards were challenged in court, but in February 2001, the Supreme Court determined that EPA has authority to implement a revised ozone standard, but ruled that EPA must reconsider its implementation plan for moving from the 1-hour standard to the revised standard. The Supreme Court identified conflicts between different parts of the Clean Air Act related to implementation of a revised NAAQS, provided some direction to EPA for resolving the conflicts, and left it to EPA to develop a reasonable approach for implementation. Thus, this rulemaking must address the requirements of the Clean Air Act and the Supreme Court's ruling. This rule would provide detailed provisions to address the Clean Air Act's requirements for State Implementation Plans (SIPs) and would thus affect State and local air agencies. States with areas that are not attaining the 8-hour ozone NAAQS will have to develop — as part of their SIPs — emission limits and other requirements to attain the NAAQS within the timeframes set forth in the Clean Air Act.

Tribal lands that are not attaining the 8-hour ozone standard may be affected, and could voluntarily submit a Tribal Implementation Plan (TIP), but would not be required to submit a TIP. In cases where a TIP is not submitted, EPA would have the responsibility for planning in those areas.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	01/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4625

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RIN: 2060–AJ99

2896. • MODIFICATION OF ANTI-DUMPING BASELINES FOR GASOLINE PRODUCED OR IMPORTED FOR USE IN HAWAII, ALASKA AND THE U.S. TERRITORIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80 (Revision)

Legal Deadline: None

Abstract: Dumping refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean-air purposes) take the pollutants removed from the clean fuels and dump them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing anti-dumping rules on the books that codify this Clean Air Act prohibition. This action proposes to allow refiners and importers of conventional gasoline produced or imported for use in Hawaii, Alaska, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands to petition EPA to modify their baselines to use the most appropriate seasonal baseline and Complex Model for purposes of compliance with the RFG program's anti-dumping requirements. Specifically, this action would allow refiners and importers to petition EPA to use the summer Complex Model for all anti-dumping baseline and compliance determinations for conventional gasoline produced or imported for use in Hawaii, the Commonwealth of Puerto Rico, the Virgin Islands, Guam and the Commonwealth of the Northern Mariana Islands. This action would allow refiners and importers to petition EPA to use the winter Complex Model for all anti-dumping baseline and compliance purposes in Alaska. We are proposing this action to address certain inconsistencies in the RFG program's anti-dumping provisions which may have significant unintended negative impacts on refiners and importers. In addition, this action proposes to modify the anti-dumping provisions to address compliance in certain situations where a refinery becomes non-operational during the annual averaging period. This action is intended to address compliance issues where a refinery does not produce sufficient summer gasoline to offset the higher emissions of winter gasoline due to the refinery becoming non-operational during the annual averaging period. Today's proposed actions would not compromise the environmental goals of the RFG program, or result in any environmental degradation. Today's proposed actions would not have any negative impact on small businesses or State/local/tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

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Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4632

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RIN: 2060–AK02

2897. • PERFORMANCE-BASED MEASUREMENT SYSTEM FOR FUELS: CRITERIA FOR SELF-QUALIFYING ALTERNATIVE TEST METHODS; DESCRIPTION OF OPTIONAL STATISTICAL QUALITY CONTROL MEASURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7545

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: Transportation fuels (like gasoline and diesel fuel) are regulated by EPA under the Clean Air Act to control the emissions that result when they are burned in engines, and also to protect engines' emission control equipment. Fuels regulations require measurement of various of the fuels' properties, and prescribe designated analytical methods for that purpose. This regulation is intended to provide a way for regulated parties to self-qualify alternatives to the designated measurement methods that may be cheaper, quicker, simpler, more amenable to automation, or otherwise preferable. The regulation will also prescribe a minimum level of statistical quality control for all fuels test methods, designated or alternative. The regulations should quicken the adoption of new measurement technologies by removing the need for multiple method-specific rule-makings, but to do so in a way that will not degrade the performance of the overall measurement system. The qualification criteria are designed to admit only methods that are as precise as the designated methods and can be made to accurately predict designated method measurements. Introduction of statistical quality control for all methods should improve measurement precision and accuracy in actual practice across all methods.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4633

Sectors Affected: 324199 All Other Petroleum and Coal Products Manufacturing; 54199 All Other Professional, Scientific and Technical Services; 42271 Petroleum Bulk Stations and Terminals; 48691 Pipeline Transportation of Refined; 334516 Analytical Laboratory Instrument Manufacturing

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RIN: 2060–AK03

2898. • REGULATION OF FUEL AND FUEL ADDITIVES: EXTENSION OF CALIFORNIA ENFORCEMENT EXEMPTIONS FOR REFORMULATED GASOLINE TO CALIFORNIA PHASE 3 GASOLINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81

Legal Deadline: None

Abstract: EPA is proposing to exempt refiners, importers, and blenders of gasoline subject to the State of California's reformulated gasoline regulations from certain enforcement provisions in the federal reformulated (RFG) regulations. Certain exemptions under the federal RFG program already apply to California Phase 2 gasoline, but additional exemptions are necessary to cover Phase 3 gasoline.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4634

Sectors Affected: 32411 Petroleum Refineries; 32511 Petrochemical Manufacturing

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RIN: 2060–AK04

2899. • PROTECTION OF STRATOSPHERIC OZONE: LISTING OF SUBSTITUTES FOR OZONE-DEPLETING SUBSTANCES—N-PROPYLBROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671 to 7671q

CFR Citation: 40 CFR 82 (Revision)

Legal Deadline: None

Abstract: This rule proposes to add n-propylbromide (nPB) to the list of acceptable substitutes for class I and class II ozone depleting substances used as solvents for general metals, precision, and electronics cleaning, as well as in aerosol solvent applications. This would provide another alternative to solvents with higher ozone depletion potential that industry is interested in using. The rule would propose finding nPB not acceptable as a substitute for use in adhesives due to its toxicity and the greater emissions from that application. The rule also would propose specific conditions on the use of nPB as a solvent. These might include limiting the specific applications in which it may be used to those with low emissions and requiring exposure limits consistent with industry practices. This will ensure that nPB is used in a manner that is safe and environmentally protective. OSHA does not currently regulate nPB. EPA would revise our ruling to adopt whatever OSHA requires if OSHA later regulates the use of nPB. If finalized as proposed, this rule would be consistent with most existing industry practices and would impose little or no burden on industry.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4599

Split from RIN 2060-AJ58. The previous ANPRM was under SAN No. 3525.

Sectors Affected: 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 32615 Urethane and Other Foam Product (except Polystyrene) Manufacturing

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RIN: 2060–AK26

2900. • CONTROL OF EMISSIONS OF AIR POLLUTION FROM NONROAD DIESEL ENGINES AND FUEL

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: CAA

CFR Citation: 40 CFR 89

Legal Deadline: None

Abstract: On October 23, 1998, EPA finalized emission standards for nonroad compression ignition (i.e., diesel) engines for engines over 37 kW(50hp). The regulation reduced the NOx + HC emissions standard by 30% to 37% (based on the power class) from the previous 6.9 g/hp-hr NOx and 1.0 g/hp-hr HC standard beginning in 1999. As a follow-up to that 1998 rulemaking, the Agency is now undertaking a technology review, pursuant to the Clean Air Act, to assess whether more stringent standards are now feasible, and to promulgate such standards if the findings are positive. The technology review will reassess the NOx + HC standards and will set the next phase of particulate matter standards for over 37 kW and up to 560 kW. The emission limits will also be reexamined for the under 37 kW scheduled for implementation in 2004. The issue of the sulfur content of nonroad diesel fuel will be raised and consideration given to lowering the fuel sulfur level with an ultimate 15 ppm cap. The certification duty cycle for this class of engines will also be revisited to implement a transient duty cycle that gives some assurance of better in-use control of particulate matter.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4675

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RIN: 2060–AK27

2901. • NEW SOURCE REVIEW ROUTINE MAINTENANCE, REPAIR, AND REPLACEMENT

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 51.165; 40 CFR 51.166.; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline: None

Abstract: This rulemaking provides a definition of the term routine maintenance, repair, and replacement for the New Source Review program. The current New Source Review regulations do not provide a definition of this term, and there has been considerable debate over the scope of activities that should be included. The new definition will provide a level of certainty for regulated entities and regulatory agencies with respect to program applicability. While this rule will affect small businesses and state/local/tribal governments, this rule is intended to simplify the regulatory process and decrease the burden on these entities.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Rule	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4676

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RIN: 2060–AK28

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Environmental Protection Agency (EPA)
Clean Air Act (CAA)

Final Rule Stage

2902. SOURCE-SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; NAVAJO NATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 49 CFR 123

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Navajo generating station. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48725
Notice	01/26/00	65 FR 4244
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4315

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RIN: 2009–AA00

2903. SOURCE-SPECIFIC FEDERAL IMPLEMENTATION PLAN FOR NAVAJO GENERATING STATION; FOUR CORNERS POWER PLANT

Priority: Other Significant

Legal Authority: 42 USC 1740

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: EPA proposes to federalize standards from the Arizona and New Mexico State Implementation Plans (SIPS) applicable to the Four Corners Plant, respectively. Where necessary, EPA's proposed emission standards modify the standards extracted from the States' regulatory programs to ensure comprehensive emission control and Federal consistency.

Timetable:

Action	Date	FR Cite
NPRM	09/08/99	64 FR 48731
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Additional Information: SAN No. 3569

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RIN: 2009–AA01

2904. NEW SOURCE REVIEW (NSR) IMPROVEMENT

Priority: Other Significant

Legal Authority: CAA as amended, title I

CFR Citation: 40 CFR 51.160 to 51.166; 40 CFR 52.21; 40 CFR 52.24

Legal Deadline: None

Abstract: This action is to revise the CAA new source review (NSR) regulations, which govern the preconstruction air quality review and permitting programs that are implemented by States and the Federal Government for new and modified major stationary sources of air pollution. This rulemaking will deregulate, that is, exclude from major NSR program requirements those activities of sources that, with respect to air pollution, have little environmental impact. The rulemaking will encourage pollution control and pollution prevention projects at existing sources. Control technology requirements will be clarified with respect to when and how they apply to sources that are covered. The action seeks to more clearly define the appropriate roles and requirements of sources, permitting authorities and Federal land managers and EPA in the protection of air-quality-related values in Federal Class I areas (i.e., certain national parks and wilderness areas) under the NSR regulations. State, local, and tribal permitting agencies will be given more flexibility to implement program requirements in a manner that meets their specific air quality management needs. Consequently, the rulemaking decreases the number of activities that are subject to NSR requirements and also expedites the permitting process for those sources that are subject to NSR. This action is designed to reduce the regulatory burden over all industries without respect to commercial size or capacity; therefore, it should have no detrimental impact on small businesses. This action also addresses several pending petitions for judicial review and administrative action pertaining to NSR applicability requirements and control technology review requirements. Regulations that will be affected are State implementation plan requirements for review of new sources and modifications to existing sources (40 CFR 51.160-166), the Federal prevention of significant deterioration program (40 CFR 52.21), and Federal restriction on new source construction (40 CFR 52.24). Finally, this NSR Improvement effort also includes a separate rulemaking (SAN 4390, Utility Sector New Source Review (NSR) Alternative Compliance Program), which will provide industries with the flexibility to focus more on existing pollution sources, with the goal of achieving as good or better environmental results than could be achieved by focusing strictly on new sources.

Timetable:

Action	Date	FR Cite
NPRM	07/23/96	61 FR 38249
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3259

See also SAN 4390

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RIN: 2060–AE11

EPA—Clean Air Act (CAA)

Final Rule Stage

2905. NSPS: SYNTHETIC ORGANIC CHEMICALS MANUFACTURING INDUSTRY - WASTEWATER (FINAL) & AMEND. TO APPENDIX C OF PART 63 & APPENDIX J OF PART 60

Priority: Other Significant

Legal Authority: CAAA

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This rule will develop a new source performance standard to control air emissions of volatile organic compounds from wastewater treatment operations of the synthetic chemical manufacturing industry.

Timetable:

Action	Date	FR Cite
NPRM	09/12/94	59 FR 46780
Supp NPRM-1st	10/11/95	60 FR 52889
Supp NPRM-2nd Appendix J to Part 60	12/09/98	63 FR 67988
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3380

Supp NPRM-2nd-
http://www.epa.gov/fedrgstr/EPA-

AIR/1998/December/Day-09/a28472a.htm

Sectors Affected: 3251 Basic Chemical Manufacturing

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RIN: 2060–AE94

2906. NESHAP: PETROLEUM REFINERIES; CATALYTIC CRACKING UNITS, CATALYTIC REFORMING UNITS AND SULFUR RECOVERY UNITS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq; PL 101-549 104 Stat. 2399

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Title III of the Clean Air Act Amendments of 1990 requires EPA to develop national emission standards for hazardous air pollutants (NESHAPs). EPA promulgated NESHAP rules for petroleum refineries on August 18, 1995 (RIN 2060-AD94). This action covers three process vents not covered under RIN 2060-AD94. These are the catalyst regeneration vents from fluid catalytic cracking units (FCCU) and catalytic reformers and the tail gas vents from sulfur recovery plants.

Timetable:

Action	Date	FR Cite
NPRM	09/11/98	63 FR 48889
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3549

NPRM-
http://www.epa.gov/fedrgstr/EPA-

AIR/1998/September/Day-11/a23508.htm

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2060–AF28

2907. METHODS FOR MEASUREMENT OF VISIBLE EMISSIONS—ADDITION OF METHODS 203A, 203B, AND 203C TO APPENDIX M OF PART 51

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401(b)(1); 42 USC 7410; 42 USC 7470 to 7479; 42 USC 7501 to 7508; 42 USC 7601(a)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: This rulemaking adds Test Methods 203A, 203B, and 203C to 40 CFR part 51, appendix M (entitled Example Test Methods for State Implementation Plans). These methods describe procedures for estimating the opacity of visible emissions. States have requested that EPA promulgate these methods so that they can use them in State Implementation Plans in enforcing visible emissions regulations from Stationary Sources.

Timetable:

Action	Date	FR Cite
NPRM	11/22/93	58 FR 61639
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 2915

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RIN: 2060–AF83

2908. SERVICE INFORMATION REGULATION FOR LIGHT-DUTY VEHICLES AND TRUCKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7521(m)

CFR Citation: 40 CFR 86

Legal Deadline: None

Abstract: This rule will require manufacturers of automobiles to provide necessary information needed to make use of emission control diagnostic systems as well as that needed to make emission-related diagnosis and repairs by any person engaged in the repairing or servicing of motor vehicles or motor vehicle

engines. This will allow independent service repair garages, individual owners, parts manufacturers, etc., to have access to emission control information to better service automobiles and ensure clean air compliance requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/08/01	66 FR 30830
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3741

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RIN: 2060–AG13

2909. ADDITION OF METHOD 207 TO APPENDIX M OF 40 CFR PART 51 METHOD FOR MEASURING ISOCYANATES IN STATIONARY SOURCE EMISSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 listed certain isocyanate compounds as hazardous air pollutants (HAPs). The Agency does not have any published test methods that would measure air emissions of these isocyanate compounds from stationary sources. This action would add a validated test method to measure isocyanate emissions to appendix M of part 51. Test methods in part 51 can be adopted by any State for use in any regulation that requires the measurement of any of the isocyanate compounds on the HAP list. This action would not impose any new regulatory requirements that do not already exist. It should benefit State governments by providing them with a validated test procedure for measuring the emissions of isocyanate compounds.

Timetable:

Action	Date	FR Cite
NPRM	12/08/97	62 FR 64532
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3900

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RIN: 2060–AG88

2910. NESHAP: CELLULOSE PRODUCTION MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This project is to develop national emission standards for hazardous air pollutants (NESHAPs) by establishing maximum achievable control technology (MACT) for facilities manufacturing cellulose ether, carboxymethyl cellulose ether, methyl cellulose ether, cellulose food casing, cellulosic sponges, producing rayon, and producing cellophane. MACT standards are under development to reduce the release of hazardous air pollutants (HAP) from all industries to protect the public health and environment. Emissions of HAP from this industry have been associated with, but are not limited to, product washing operations, material storage tanks, and film drying.

Timetable:

Action	Date	FR Cite
NPRM	08/28/00	65 FR 52166
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3970

Project combined with SAN 3963

Sectors Affected: 325221 Cellulosic Organic Fiber Manufacturing; 326113 Unsupported Plastics Film and Sheet (except Packaging) Manufacturing

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RIN: 2060–AH11

2911. CONSOLIDATED EMISSIONS REPORTING RULE

Priority: Substantive, Nonsignificant

Legal Authority: Clean Air Act sec 110(a)(2)(F)

CFR Citation: 40 CFR 51.321 to 51.323

Legal Deadline: None

Abstract: Three sections of the Clean Air Act and its amendments require State agencies to report emission estimates to EPA. Some of these sections contain obsolete wording, inconsistent instructions, and duplicate reporting requirements. This rule will consolidate the requirements into one area, eliminate obsolete wording, eliminate duplicate reporting requirements, and provide options for collecting and reporting data. There will be no impact on small businesses. State agencies will report point, area, and mobile source emissions statewide. State agencies will also report fine particulate matter and its precursors. The rule will provide for flexibility in collecting and reporting data.

Timetable:

Action	Date	FR Cite
NPRM	05/23/00	65 FR 33268
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3986

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RIN: 2060–AH25

2912. EXPANDED DEFINITIONS FOR ALTERNATIVE-FUELED VEHICLES AND ENGINES MEETING LOW-EMISSION VEHICLE EXHAUST EMISSION STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2001; 15 USC 2002; 15 USC 2003; 15 USC 2005; 15 USC 2006; 15 USC 213; 42 USC 7521; 42 USC 7522; 42 USC 7524; 42 USC 7525; 42 USC 7541; 42 USC 7542; 42 USC 7549; 42 USC 7550; 42 USC 7552

CFR Citation: 40 CFR 86; 40 CFR 88

Legal Deadline: None

Abstract: This action will ease the burden of certification for both Original Equipment Manufacturers (OEMs) and after-market conversion entities. This action will, for vehicles and engines meeting LEV emission standards, broaden the definition of the term dedicated fuel system, broaden the criteria for engine families, and provide an exemption from certification fees. This action is not a deregulatory action. This action will provide another means for small business to remain active entities in supplying alternatively fueled vehicles to the market place. The above three changes are intended to reduce the cost of complying with the requirements of certification, and small business will benefit from these changes. This action will enhance the ability of the regulated industry to provide alternatively fueled vehicles to the consumer in support of the Executive Order 13031.

Timetable:

Action	Date	FR Cite
NPRM	07/20/98	63 FR 38767
Notice	05/14/99	64 FR 26410
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4030

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RIN: 2060–AH52

2913. PROTECTION OF STRATOSPHERIC OZONE: ALLOWANCE SYSTEM FOR CONTROLLING HCFC PRODUCTION, IMPORT & EXPORT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 82.5(h); 40 CFR 82.6(h); 40 CFR 82.8; 40 CFR 82.4(n) to 82.4(s); 40 CFR 82.4(u)

Legal Deadline: None

Abstract: The Stratospheric Protection Division currently oversees an allowance allocation system for the class I ozone-depleting substances. An allowance allocation system for class II ozone-depleting substances or hydrochloroflurocarbons (HCFCs) had not been established prior to 1998 because consumption figures had hovered around 80% of the cap imposed by the Montreal Protocol in 1992. U.S. consumption for 1999 through 2001 has been fluctuating between 80% and 95%. In 1999, the Protocol imposed a production cap effective January 1, 2004. An allowance allocation system for HCFCs will allow the U.S. to remain under the consumption and production caps. This rule also contains the mechanisn to implement the phaseout of HCFC-141b, effective January 1, 2003.

Timetable:

Action	Date	FR Cite
ANPRM	04/04/99	64 FR 16373
NPRM	07/20/01	66 FR 38064
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4120

Additional deadline: Montreal Protocol. The Protocol requires compliance with formulary caps of all Parties' consumption and production of HCFCs. The ANPRM and the NPRM are available on the Internet at: http://www.epa.gov/ozone/title6/phaseout/ phaseout.html

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RIN: 2060–AH67

2914. NESHAP: POLYVINYL CHLORIDE AND COPOLYMERS PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1857

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: Title III of the Clean Air Act Amendments of 1990 requires EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the administrator of the EPA. The EPA has determined that some plants may be major sources for one or more HAPs. As a consequence, a regulation (emission standards) is being developed for the polyvinyl chloride industry, to be promulgated by November 15, 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/08/00	65 FR 76958
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4114

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RIN: 2060–AH82

2915. PHASE I FEDERAL IMPLEMENTATION PLANS (FIPS) TO REDUCE THE REGIONAL TRANSPORT OF OZONE IN THE EASTERN UNITED STATES

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7410

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: NPRM, Statutory, January 25, 2003, EPA is required to promulgate FIPs by January 25 2003 unless States submit approvable plans.

Abstract: This action would promulgate Federal Implementation Plans (FIPs) which require nitrogen oxides (NOx) emissions decreases. The intended effect is to reduce the transport of ozone (smog) pollution and one of its main precursors — NOx — across State boundaries in the eastern half of the United States. On October 27, 1998, EPA published a final rule (the NOx SIP Call) which allowed States 12 months to develop, adopt, and submit revisions to their State Implementation Plans (SIPs) to address the transport problem. The Administrator is required to promulgate a FIP within 2 years of: (1) finding that a State has failed to make a required submittal or (2) finding that a submittal is not complete or (3) disapproving a SIP submittal. On June 22, 2000, the D.C. Court of Appeals assigned a new SIP submittal date of October 30, 2000. Eleven States (Virginia, West Virginia, Alabama, Kentucky, North Carolina, South Carolina, Tennessee, Illinois, Indiana, Michigan, and Ohio) and the District of Columbia had not submitted adequate SIPs, as announced in a findings rule published on December 26, 2000. EPA is continuing to work with these States to assist them in adopting State plans that meet the requirements of the NOx SIP Call; 6 States and D.C. recently submitted fully approvable plans. (Note: The FIPs discussed here will apply to all elements of the NOx SIP call that were not remanded to EPA by the court on March 3, 2000. The portions of the SIP call that were remanded to EPA will be covered under Phase 2 SIPs, and if necessary, separate FIP actions will be prepared for those.)

Timetable:

Action	Date	FR Cite
NPRM	10/21/98	63 FR 56393
Findings Rule	12/26/00	65 FR 81366
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 4096

NPRM-
http://www.epa.gov/fedrgstr/EPA-AIR/1998/October/Day-21/a26431.htm
Findings

Sectors Affected: 322122 Newsprint Mills; 322121 Paper (except Newsprint) Mills; 32213 Paperboard Mills; 32211 Pulp Mills; 325998 All Other Miscellaneous Chemical Product Manufacturing; 325131 Inorganic Dye and Pigment Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325211 Plastics Material and Resin Manufacturing; 32511 Petrochemical Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 32512 Industrial Gas Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 327211 Flat Glass Manufacturing; 327213 Glass Container Manufacturing; 327212 Other Pressed and Blown Glass and Glassware Manufacturing; 32731 Cement Manufacturing; 324199 All Other Petroleum and Coal Products Manufacturing; 331111 Iron and Steel Mills; 331221 Cold-Rolled Steel Shape Manufacturing; 33611 Automobile and Light Duty Motor Vehicle Manufacturing; 333618 Other Engine Equipment Manufacturing; 333415 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation; 221121 Electric Bulk Power Transmission and Control; 48621 Pipeline Transportation of Natural Gas; 221122 Electric Power Distribution; 221112 Fossil Fuel Electric Power Generation; 221121 Electric Bulk Power Transmission and Control; 22133 Steam and Air-Conditioning Supply

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RIN: 2060–AH87

2916. NESHAP: WET-FORMED FIBERGLASS MAT PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, April 1, 2001.

Abstract: The CAA required the EPA to publish an initial list of all categories of major and area sources of hazardous air pollutants (HAPs) listed in section 112(b) of the CAA and to establish and meet dates for promulgation of emission standards for each of the listed categories of HAP emissions sources. The wet-formed fiberglass mat production industry is not included in the initial list of categories for standards development but information available to the Administrator suggests that the industry is a major source of HAP emissions and, as such, emission standards shall be developed for this industry. The standards are to be technology-based and are to require the maximum degree of reduction determined to be achievable by the Administrator. The EPA has determined that the wet-formed fiberglass mat production industry may be reasonably expected to emit one of the pollutants listed in section 112(b) of the CAA. The purpose of this action is to pursue a regulatory development program such that emission standards may be promulgated for this industry. Emission standards for this industry were proposed on May 26, 2000.

Timetable:

Action	Date	FR Cite
NPRM	05/26/00	65 FR 34278
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4082

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RIN: 2060–AH89

2917. REVISION TO THE DEFINITION OF VOLATILE ORGANIC COMPOUND (VOC) TO EXCLUDE TERTIARY BUTYL ACETATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401-7671q

CFR Citation: 40 CFR 51.100(s)

Legal Deadline: None

Abstract: The definition of VOC is proposed to be revised to add tertiary butyl acetate to the list of negligibly reactive compounds. This is a deregulatory action that will remove tertiary butyl acetate from the necessity to be controlled as a VOC in SIPs for attaining the ozone standard. This is not expected to have a significant impact on small businesses or local governments.

Timetable:

Action	Date	FR Cite
NPRM	09/30/99	64 FR 52731
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4254

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RIN: 2060–AI45

2918. RULEMAKING ON SECTION 126 PETITIONS FROM NEW YORK AND CONNECTICUT REGARDING SOURCES IN MICHIGAN; REVISION OF DEFINITION OF APPLICABLE REQUIREMENT FOR TITLE V OPERATING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 75; 40 CFR 97

Legal Deadline: None

Abstract: The EPA is proposing to revise the Section 126 Rule in light of the March 3, 2000 court decision on the NOx SIP Call. The court vacated, and remanded to EPA for further consideration, the inclusion of Georgia and Missouri in the NOx SIP Call in light of the Ozone Transport Assessment Group conclusions that emissions from coarse grid portions of States did not merit controls. The reasoning of the Court regarding the significance of NOx emissions from sources in Georgia and Missouri calls into question the inclusion of the coarse grid portion of Michigan in the NOx SIP Call. In a separate proposal, EPA is proposing to withdraw the NOx SIP Call requirements for the Michigan coarse grid area. The Section 126 Rule is based on many of the same analyses and information used for the NOx SIP call and covers part of Michigan. Thus, EPA is proposing to withdraw its section 126 findings and control requirements with respect to sources located in the small part of the coarse grid portion of Michigan that is currently covered by the Section 126 Rule. The EPA has not identified any existing section 126 sources that would be affected by the proposal, however this proposal would eliminate findings and control requirements for new sources locating in the coarse grid. This proposal does not create any new requirements, thus there are no associated costs. The EPA is also proposing to revise the definition of applicable requirement for title V operating permit programs by providing expressly that any standard or other requirement under section 126 is an applicable requirement and must be included in operating permits issued under title V of the CAA.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8386
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4464

Split from RIN 2060-AH88.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ36

2919. REQUIREMENTS FOR PREPARATION, ADOPTION, AND SUBMITTAL OF STATE IMPLEMENTATION PLANS (GUIDELINE ON AIR QUALITY MODELS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410 CAAA sec 110(a)(2); CAAA sec 165(e); CAAA sec 172(a); CAAA sec 172(c); 42 USC 7601 CAAA sec 301(a)(1); CAAA sec 320

CFR Citation: 40 CFR 51.112; 40 CFR 51.160; 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: This action proposes revisions to the Guideline on Air Quality Models, published as appendix W to 40 CFR part 51. Such models are used to predict ambient concentrations of pollutants for programs ranging from Prevention of Significant Deterioration

(PSD) to State Implementation Plans (SIPs) for controlling air pollution sources. Appendix W to 40 CFR part 51 fulfills a Clean Air Act mandate for EPA to specify models for air management purposes. This proposed rulemaking enhances appendix W with new and/or improved techniques.

Timetable:

Action	Date	FR Cite
NPRM	04/21/00	65 FR 21505
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3470

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RIN: 2060–AF01

2920. NESHAP: PRIMARY COPPER SMELTING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The primary copper smelting industry is known to emit a number of the hazardous air pollutants listed in section 112 of the Clean Air Act. The industry is comprised of seven smelters located in four states. All have extensive control systems for oxides of sulfur and HAPs. However, fugitive emissions may cause several smelters to exceed major source levels.

Timetable:

Action	Date	FR Cite
NPRM	04/20/98	63 FR 19582
NPRM	06/26/00	65 FR 39326
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3340

NPRM-
http://www.epa.gov/fedrgstr/EPA-AIR/1998/April/Day-20/a10142.htm

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RIN: 2060–AE46

2921. AMENDMENTS TO GENERAL PROVISIONS SUBPARTS A AND B FOR 40 CFR 63

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112; PL 101-549

CFR Citation: 40 CFR 63.1-15; 40 CFR 63.50-56

Legal Deadline: None

Abstract: The General Provisions (subpart A) were promulgated on March 16, 1994 (59 FR 12408). The General Provisions create the technical and administrative framework and establish general procedures and criteria for implementing MACT standards. On May 16, 1994, six litigants filed petitions for EPA to review certain provisions of the General Provisions. Subpart B, the procedures for implementing section 112(j), was promulgated on May 26, 1994. In June, 1994 litigants filed petitions for EPA to review the promulgated procedures. As a result of the litigation, it is anticipated that a number of technical and administrative amendments to subparts A and B will be proposed.

Timetable:

Action	Date	FR Cite
NPRM	03/23/01	66 FR 16318
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3551

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RIN: 2060–AF31

2922. NESHAP: TIRE MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This is a 10-year MACT covering the HAP emissions from the manufacturing of Rubber tires. The emission sources associated with the rubber compound mixing (banbury); extruding calendaring; building; curing and finishing are covered in this MACT. Forty-one facilities have been initially identified. This includes approximately 35 facilities of at least 10 tpy and 26 facilities of at least 25 tpy. Emissions are primarily associated with rubber processing and the use of HAP bearing solvent and cements. Several facilities have eliminated through substitution much of the HAP bearing solvent and cements. However, evaluation of the MACT and separation of the rubber processing emissions from HAP bearing solvents and cement will reduce the number of affected facilities to about 30. In addition, the tire cord coating operations will also be included. Typically these facilities are separate non-colocated operations. The major pollutant associated with tire cord is formaldehyde. There are approximately 12 affected major facilities.

Timetable:

Action	Date	FR Cite
NPRM	10/18/00	65 FR 62414
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3749

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RIN: 2060–AG29

2923. NESHAP: LARGE APPLIANCE (SURFACE COATING)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This regulation will apply to surface coating of large appliance products and parts. This regulation will reduce nationwide emissions of HAPs from surface coating of large appliances, a measure required by section 112 of the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	12/22/00	65 FR 81133
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3823

Sectors Affected: 335222 Household Refrigerator and Home Freezer Manufacturing; 335221 Household Cooking Appliance Manufacturing; 335224 Household Laundry Equipment Manufacturing; 335212 Household Vacuum Cleaner Manufacturing; 335228 Other Major Household Appliance Manufacturing; 333415 Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing; 333319 Other Commercial and Service Industry Machinery Manufacturing; 333312 Commercial Laundry, Drycleaning and Pressing Machine Manufacturing

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RIN: 2060–AG54

2924. NESHAP: ASPHALT PROCESSING AND ASPHALT ROOFING MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, May 1, 2001.

Abstract: The CAA required EPA to publish an initial list of all categories of major and area sources of hazardous air pollutants (HAPs) listed in section 112(b) of the CAA and to establish and meet dates for promulgation of emissions standards for each of the listed categories of HAP emissions sources. The standards are to be technology-based and are to require the maximum degree of reduction determined to be achievable by the Administrator. The EPA has determined that the asphalt roofing and processing industry may be reasonably anticipated to emit one or more of the pollutants listed in section 112(b) of the CAA. As a consequence, the source category is included on the initial list of HAP-emitting categories scheduled for standards promulgation within ten years of enactment of the CAA Amendments of 1990. The purpose of this action is to pursue a regulatory development program such that emission standards may be proposed and promulgated according to the mandated schedule.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58610
Interim Final	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3655

Sectors Affected: 324122 Asphalt Shingle and Coating Materials Manufacturing

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RIN: 2060–AG66

2925. NESHAP: METAL COIL (SURFACE COATING) INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: This action will result in the reduction of hazardous air pollutants emitted by the metal coil surface coating industry. The Agency will study what pollutants are emitted and evaluate the control techniques, including pollution prevention, that are used to reduce these emissions. The Agency will also determine what, if any, impact the rule would have on small businesses.

Timetable:

Action	Date	FR Cite
NPRM	07/18/00	65 FR 44616
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3905

Sectors Affected: 323122 Prepress Services; 339991 Gasket, Packing, and Sealing Device Manufacturing; 326113 Unsupported Plastics Film and Sheet (except Packaging) Manufacturing; 32613 Laminated Plastics Plate, Sheet and Shape Manufacturing; 32614 Polystyrene Foam Product

Manufacturing; 331112 Electrometallurgical Ferroalloy Product Manufacturing; 331221 Cold-Rolled Steel Shape Manufacturing; 33121 Iron and Steel Pipes and Tubes Manufacturing from Purchased Steel; 331312 Primary Aluminum Production; 331314 Secondary Smelting and Alloying of Aluminum; 331315 Aluminum Sheet, Plate and Foil Manufacturing; 331319 Other Aluminum Rolling and Drawing

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RIN: 2060–AG97

2926. NESHAP: LEATHER FINISHING OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 1, 2001.

Abstract: Title III of the Clean Air Act requires EPA to develop air emission standards for facilities that emit any of the 189 hazardous air pollutants. This action will develop a MACT standard for sources involved in leather finishing operations. Facilities involved in these operations release over 1.7 million pounds of hazardous air pollutants per year. Regulation of these facilities will result in a reduction of the emissions of hazardous air pollutants, several of which are highly toxic.

Timetable:

Action	Date	FR Cite
NPRM	10/02/00	65 FR 58702
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3964

Sectors Affected: 31611 Leather and Hide Tanning and Finishing

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RIN: 2060–AH17

2927. IMPORTATION OF NONCONFORMING VEHICLES; AMENDMENTS TO REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7522 CAA sec 203; 42 USC 7525 CAA sec 206; 42 USC 7541 CAA sec 207; 42 USC 7542 CAA sec 208; 42 USC 7601 CAA sec 301; 42 USC 7522 CAA sec 203; 42 USC 7550 CAA sec 216; 42 USC 7601 CAA sec 301

CFR Citation: 40 CFR 85

Legal Deadline: None

Abstract: This action will amend the regulations in 40 CFR part 85, subpart P to allow entry into the United States of vehicles which are originally sold in Canada and which are identical to their U.S. counterparts, without obtaining a certificate of conformity from EPA. This action is in response to a petition for review of import rules. The final rule also will address certain other issues in part 85, subpart P and subpart R, including: (1) formalizing a long-standing EPA policy regarding the importation of owned vehicles that are proven to be identical to a vehicle certified for sale in the United States; (2) establishing new emission standards applicable to imported nonconforming vehicles; (3) clarifying the regulatory language that concerns exclusions and exemptions from meeting Federal emission requirements; and (4) providing several minor clarifications to the existing regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/24/94	59 FR 13912
Supplemental NPRM	02/12/96	61 FR 5640
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 2665

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RIN: 2060–AI03

2928. PROTECTION OF STRATOSPHERIC OZONE: SUPPLEMENTAL RULE REGARDING A RECYCLING STANDARD UNDER SECTION 608

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq CAA sec 608

CFR Citation: 40 CFR 82 subpart F

Legal Deadline: None

Abstract: This rule will amend the recordkeeping aspects of the technician certification program, clarify aspects of a sales restriction, and adopt an updated version of ARI standard 740. The rule will also clarify the distinction between major and non-major repairs and amend several definitions including small appliances. The rule also addresses the transfers of unreclaimed refrigerant between majority-owned and majority-controlled subsidiaries.

Timetable:

Action	Date	FR Cite
NPRM 1	02/29/96	61 FR 7858
NPRM	11/01/96	61 FR 56493
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3556

Additional SANs 3895, 3896. This rule will address a potential adoption of a more flexible method for cleaning refrigerants for refrigerant transferred between appliances with different ownership with a potential adoption of a third party certification program for labs.

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RIN: 2060–AF36

2929. PROTECTION OF STRATOSPHERIC OZONE: REFRIGERANT RECYCLING RULE AMENDMENT TO INCLUDE SUBSTITUTE REFRIGERANTS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq; 42 USC 7671(g) CAA sec 608

CFR Citation: 40 CFR 82(F)

Legal Deadline: None

Abstract: This action would facilitate fulfillment of the statutory mandate to apply the venting prohibition to substitute refrigerants. The action would provide regulations covering recovery/recycling equipment, recovery/recycling practices, and applicable certifications that would be required to accomplish compliance with the venting prohibition. Requirements would parallel those of the current section 608 regulations, expanding applicability, where appropriate, to substitute refrigerants.

Timetable:

Action	Date	FR Cite
NPRM	06/11/98	63 FR 32044
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: None

Additional Information: SAN No. 3560

NPRM-
http://www.epa.gov/fedrgstr/EPA-AIR/1998/June/Day-11/a15003.htm

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RIN: 2060–AF37

2930. PAPER AND OTHER WEB COATING NESHAP

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 59; 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action would result in the reduction of hazardous air pollutants (HAPs) emitted by the paper and other web coating industries. The Agency will study the various HAP and VOC pollutants emitted by the industry and will evaluate pollution prevention and control techniques which can reduce these emissions.

Timetable:

Action	Date	FR Cite
NPRM	09/13/00	65 FR 55332
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3827

Sectors Affected: 322211 Corrugated and Solid Fiber Box Manufacturing; 322212 Folding Paperboard Box Manufacturing; 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing; 322222 Coated and Laminated Paper Manufacturing; 322223 Plastics, Foil, and Coated Paper Bag Manufacturing; 323111 Commercial Gravure Printing; 323116 Manifold Business Form Printing

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RIN: 2060–AG58

2931. FEDERAL IMPLEMENTATION PLANS FOR INDIAN RESERVATIONS IN IDAHO, OREGON AND WASHINGTON

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 49.121 to 49.139; 40 CFR 49.9861 to 49.17810

Legal Deadline: None

Abstract: This Federal Implementation Plan (FIP) proposes basic air rules to apply on Indian Reservations in Idaho, Oregon, and Washington. The rules provide some basic air quality protection similar to what the state implementation plans (SIPs) require for Idaho, Oregon, and Washington. These rules are needed to establish a level playing field and create basic federally enforceable rules under the Clean Air Act.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11748
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4487

EPA Region 10 would be responsible for implementing and enforcing these proposed rules. Tribes can choose to assist EPA or take over responsibility for their reservations, and EPA would provide funding to tribes through grants to support their efforts.

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RIN: 2012–AA01

2932. NESHAP: GENERIC MACT FOR CARBON BLACK, ETHYLENE, CYANIDE AND SPANDEX

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 1, 2001.

Abstract: Several of the source categories that are subject to MACT (maximum achievable control technology) standards contain only a few sources (e.g., less than five). EPA plans to develop a generic MACT standard for these source categories. Given the relatively few affected sources caught by the generic standard, the overall cost and environmental effects of this action are expected to be small, nationally.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76408
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4105

Sectors Affected: 325182 Carbon Black Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing

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RIN: 2060–AH68

2933. EMISSIONS FROM NONROAD SPARK-IGNITION ENGINES AND STANDARDS FOR RECREATIONAL SPARK-IGNITION ENGINES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 7401 to 7671(q)

CFR Citation: 40 CFR 94

Legal Deadline: NPRM, Judicial, September 14, 2001.
Final, Judicial, September 13, 2002.

Abstract: Emissions from large spark-ignition engines are currently unregulated. EPA and California Air Resources Board (CARB) are cooperating in an effort to set emission standards for these engines to substantially reduce their contribution to the emission inventory.

Timetable:

Action	Date	FR Cite
Proposed Finding	02/08/99	64 FR 6008
ANPRM Final Finding	12/07/00	65 FR 76790
NPRM	10/05/01	66 FR 51098
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4154

Sectors Affected: 333924 Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing; 335312 Motor and Generator Manufacturing; 42183 Industrial Machinery and Equipment Wholesalers

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RIN: 2060–AI11

2934. PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING QUARANTINE AND PRESHIPMENT APPLICATIONS OF METHYL BROMIDE

Priority: Other Significant

Legal Authority: 42 USC 7414; 42 USC 7671-7671(q)

CFR Citation: 40 CFR 82.1 to 82.13

Legal Deadline: None

Abstract: The Montreal Protocol exempts quarantine and preshipment from the methyl bromide production and import baseline; therefore, a regulation must be promulgated to allow for the exemption in EPA's current allowance system.

Timetable:

Action	Date	FR Cite
Interim Final Action	07/19/01	66 FR 37752
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4253

OLD TITLE: Protection of Stratospheric Ozone: Process for Exempting Quarantine and Preshipment Methyl Bromide Used in the United States and Baseline Adjustments

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RIN: 2060–AI42

2935. AMEND SUBPART H AND I, 40 CFR PART 61, FOR EMISSIONS OF RADIONUCLIDES OTHER THAN RADON FROM DOE FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA 112(g) (q); PL 95-95

CFR Citation: 40 CFR 61.93(a); 40 CFR 61.93(b)(2)(ii)

Legal Deadline: None

Abstract: Subparts H and I of 40 CFR part 61 establish limits, under the Clean Air Act, for radionuclide emissions (other than radon) from Department of Energy (DOE) and other non-DOE federal facilities. These Subparts require emission sampling, monitoring, and calculations to identify compliance with the standard. The current air sampling methodology required by the standards is embodied in ANSI-N13.1-1969, a consensus guidance document that is incorporated by reference in EPA's standards. That guidance was updated in 1999, and contains new technical recommendations (that differ from the 1969 version) for obtaining representative air samples. In this rule, EPA is updating subparts H and I to incorporate the new sampling guidance, ANSI-N13.1-1999, and require its use for new facilities and for those undergoing significant changes to ventilation systems. Existing facilities will be allowed to continue sampling in accordance with the current requirements.

Timetable:

Action	Date	FR Cite
NPRM	05/09/00	65 FR 29934
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4273

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RIN: 2060–AI90

2936. INTERSTATE OZONE TRANSPORT: RESPONSE TO COURT DECISIONS ON THE NOX SIP CALL, NOX SIP CALL TECHNICAL AMENDMENTS, AND SECTION 126 RULES

Priority: Other Significant

Legal Authority: 42 USC 7410(a)(2)(D); 7410(k)(5)

CFR Citation: 40 CFR 51 (Revision)

Legal Deadline: None

Abstract: On October 27, 1998 (63 FR 57355), EPA issued a rule to reduce smog in the eastern half of the country. The rule required 22 States and the District of Columbia to reduce emissions of nitrogen oxides (NOx), which reacts with other chemicals in the atmosphere to form smog. EPA required these reductions because pollution from each of these States was transported by the wind and significantly contributed to unhealthy air quality in downwind states. In response to litigation from several parties on the NOx SIP call, the United States Court of Appeals for the District of Columbia issued a decision on March 3, 2000 making it clear that EPA and States can and should move forward to implement this regional strategy. The ruling remanded certain relatively minor portions of the original rule back to the EPA. This rulemaking covers the portion of the rule associated with the remanded issues: certain cogeneration units, internal combustion engines, the partial State requirements for Georgia and Missouri and the exclusion of Wisconsin. In this rulemaking, EPA will consider the partial State issue for Alabama and Michigan and propose SIP submittal dates and compliance dates as well. The D.C. Circuit Court also remanded, or remanded and vacated, the cogeneration unit issue in decisions on the NOx SIP Call Technical Amendments, and Section 126 Rule on June 8, 2001 and May 15, 2001, respectively. These remands will also be addressed in this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	02/22/02	67 FR 8395
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4433

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RIN: 2060–AJ16

2937. NESHAP FOR FRICTION PRODUCTS MANUFACTURING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: This action will propose NESHAP for friction products manufacturing in order to comply with the Clean Air Act of 1990 (CAA). The friction products source category includes any facility that manufactures friction products such as brakes and clutches. The rule is expected to limit HAP emissions, including toluene, hexane, and 1,1,1 trichloroethane) from solvent mixing operations.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50768
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4460

Sectors Affected: 3363 Motor Vehicle Parts Manufacturing; 3364 Aerospace Product and Parts Manufacturing; 3369 Other Transportation Equipment Manufacturing

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RIN: 2060–AJ18

2938. RULEMAKINGS FOR THE PURPOSE OF REDUCING INTERSTATE OZONE TRANSPORT

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: The Clean Air Act (CAA) requires that a state implementation plan (SIP) contain provisions to prevent a States' facilities or sources from contributing significantly to air pollution that is transported downwind to other States, exacerbating their inability to meet the national ambient air quality standards for ozone.

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Through a 2-year effort known as the Ozone Transport Assessment Group (OTAG), EPA worked in partnership with the 37 easternmost States and the District of Columbia, industry representatives, and environmental groups to address ozone precursor and ozone transport. This multi-year collaboration resulted in the most comprehensive analysis of ozone transport ever conducted. The OTAG States voted in favor of a range of strategies to reduce nitrogen oxide emissions from utilities and other major sources. Building on the recommendations of OTAG, EPA issued a rule known as the NOx SIP Call (10/27/98, 63 FR 57355) requiring 22 States and the District of Columbia to submit revisions to their SIPs to address the regional transport of nitrogen oxides (a precursor to ozone formation known as NOx). By reducing emissions of NOx, the actions directed by these plans will decrease the formation and transport of ozone across State boundaries in the eastern half of the United States. This rule was challenged in court, and on March 3, 2000, the U.S. Court of Appeals for the District of Columbia issued a decision largely upholding the NOx SIP Call, but remanded four narrow issues to EPA for further rulemaking action. In an August 30, 2000 Court Order, emission reduction measures are required to be in place by May 31, 2004. On June 8, 2001, the Court made a related decision concerning the NOx SIP Call Technical Amendment rulemakings which largely upheld Phase I of the NOx SIP Call, but remanded one issue to EPA. EPA is now addressing in a separate rulemaking the remanded issues mentioned above (see SAN 4433 in today's Regulatory Agenda). Another remanded issue dealing with growth projections is being addressed separately. A notice of data availability was published on 8/3/01 which made new data publicly available for notice-and-comment. A second notice of data availability was published on March 11, 2002 listing additional items which were made publicly available. Final action is expected soon. In addition to the SIP Call provisions, Federal Implementation Plans (FIPs) may also be needed to reduce regional transport if any affected State fails to adequately revise its SIP to comply with the NOx SIP call (see SAN 4096 in today's Regulatory Agenda). In addition to the SIP Call remedy, the Clean Air Act also gave States the right to petition EPA to take other Federal action to prevent ozone transport that affects downwind States. Accordingly, under section 126 of the CAA, eight Northeastern States filed

Timetable:

Action	Date	FR Cite
NPRM NOx FIPs (SAN 4096)	10/21/98	63 FR 56393
Final Action NOx SIP Call	10/27/98	63 FR 57355
Final Action Section 126 Findings	05/25/99	64 FR 28250
Final Action Section 126 Approvals and Remedy	01/18/00	65 FR 2674
NODA Notice of Data Availability for NOx SIP Call/Section 126 rule	08/03/01	66 FR 40609
NPRM Response to NOx SIP Call Court Decision (SAN 4433)	02/22/02	67 FR 8395
NODA Notice of Data Availability for NOx SIP Call/Section126 Rule	03/11/02	67 FR 10844
Final Action Response to Remands Concerning Growth Factors	05/00/02	
Final Action Response to NOx SIP Call Court Decision (SAN 4433)	09/00/02	
Final Action NOx FIPS (SAN 4096)	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4466

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RIN: 2060–AJ20

2939. CLARIFICATION TO EXISTING PART 63 NESHAP DELEGATIONS' PROVISIONS-WORK PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: 40 CFR part 63 contains OAR's air-toxics emissions regulations, often referred to as MACT rules or NESHAPS. We are revising some part 63 standards to reflect changes in delegation provisions. We are also revising some sections in the part 63 regulations to clarify what are standards and what are compliance assurance measures. The benefits of the changes will include clarifying what authorities in each standard can be delegated to State and local air pollution control agencies and meshing the standards with revisions previously made to other part 63 regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/16/02	67 FR 2286
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4426

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RIN: 2060–AJ26

2940. GUIDELINES FOR BEST AVAILABLE RETROFIT TECHNOLOGY (BART)

Priority: Other Significant

Legal Authority: 42 USC 7410; 42 USC 7414; 42 USC 7421; 42 USC 7470-7479; 42 USC 7491; 42 USC 7492; 42 USC 7601; 42 USC 7602

CFR Citation: 40 CFR 51.308(e)(1); 40 CFR 51 Appendix Y (New)

Legal Deadline: None

Abstract: To meet the Clean Air Act's requirements, final regional haze regulations were published in the Federal Register on July 1, 1999 (64 FR 35714). These regulations include, in section 51.308(e), a requirement for best available retrofit technology (BART) for certain types of existing stationary sources of air pollutants. In the preamble to the regional haze rule, we committed to issuing further guidelines to clarify the BART requirements. The purpose of this rulemaking is to provide those BART guidelines.

Timetable:

Action	Date	FR Cite
NPRM	07/20/01	66 FR 38108
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4450

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RIN: 2060–AJ31

2941. REVISIONS TO PART 97 FEDERAL NOX BUDGET TRADING PROGRAM, PART 75 EMISSIONS MONITORING PROVISIONS, PART 72 PERMITS REGULATION PROVISIONS, AND PART 78 APPEAL PROCEDURES

Priority: Other Significant

Legal Authority: 42 USC 7601; 42 USC 7651 et seq; 42 USC 7401; 42 USC 7403; 42 USC 7426

CFR Citation: 40 CFR 75 (Revision); 40 CFR 97 (Revision)

Legal Deadline: None

Abstract: The purpose of these proposed revisions is to modify existing procedures for monitoring and reporting NOx and SO2 emissions for sources affected by the Acid Rain Program, the Federal NOx Budget Trading Program, and the October 27, 1998 NOx SIP call. The proposed changes will streamline part 75 by removing outdated provisions and give electricity generators added flexibility with the monitoring and reporting requirements; tighten the calibration error limit for some units to be more in line with industry's current accepted technical specifications; make technical corrections and changes necessary to correct printing, typographical, and grammatical errors in existing rules; and correct/clarify cross references between the subject Parts to ensure consistency among the rules.

Timetable:

Action	Date	FR Cite
NPRM	06/13/01	66 FR 31978
NPRM Extension of comment period	07/27/01	66 FR 39123
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4538

Split from RIN 2060-AJ30.

Sectors Affected: 221111 Hydroelectric Power Generation

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RIN: 2060–AJ43

2942. FEDERAL PLAN FOR SMALL MUNICIPAL WASTE COMBUSTION UNITS

Priority: Substantive, Nonsignificant

Legal Authority: 1990 Amendments to the Clean Air Act; sections 111(d) 129 and 301(a)(d)

CFR Citation: 40 CFR 62 (New)

Legal Deadline: None

Abstract: The Clean Air Act Amendments of 1990 directed the EPA to set emission guidelines for existing municipal waste combustion units (MWCs) under sections 111 and 129. On 12/19/95, the EPA adopted emission guidelines for MWCs under the authority of sections 111(d) and 129 of the Clean Air Act. These emission guidelines covered all MWC units located at plants with an aggregate plant combustion capacity larger than 35 tons per day of municipal solid waste. Subsequent litigation cancelled the emission guidelines for small MWC units, but the Court directed EPA to adopt a new rule for small MWC units. This rule was adopted on December 6, 2000. This action is a follow-on activity to this rulemaking. In this proposed MWC Federal Plan for small units, EPA becomes the implementing authority in those instances where the State or local Agency fails to submit a plan or a plan has not yet been approved. This action makes no changes to the rule and is intended to fulfill EPA's duty under section 129(b)(3) to promulgate a Federal Plan as a gap-filling measure until the State fulfills its statutory obligations. When the State submits an approvable State Plan, the Federal Plan will no longer apply to units in the State.

Timetable:

Action	Date	FR Cite
NPRM	06/14/01	66 FR 32484
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Additional Information: SAN No. 4454

About half the small municipal waste combustor owners are local governments.

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RIN: 2060–AJ46

2943. STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES: VOLATILE ORGANIC LIQUID STORAGE VESSELS; AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401; 42 USC 7411; 42 USC 7414; 42 USC 7416; 42 USC 7601

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: This direct final action revises existing standards for Volatile Organic Liquid Storage Vessels

(Including Petroleum Liquid Storage Vessels) by amending the storage vessel volume applicability criteria and adding a vapor pressure applicability criterion. This is a narrow technical amendment responding to new information that came in after the original rule was promulgated.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4508

Sectors Affected: 325 Chemical Manufacturing; 324 Petroleum and Coal Products Manufacturing; 42271 Petroleum Bulk Stations and Terminals

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RIN: 2060–AJ53

2944. CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES; CORRECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(l); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.81(a)(1)

Legal Deadline: None

Abstract: This rule corrects a final regulatory action which was published in the Federal Register on March 29, 2001 (66 FR 17230). The correction consists of restoring a paragraph that was inadvertently omitted when the final rule was published.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4554

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RIN: 2060–AJ67

2945. TRANSPORTATION CONFORMITY RULE AMENDMENTS: MINOR REVISION AND ADDITION OF GRACE PERIOD FOR NEWLY DESIGNATED NONATTAINMENT AREAS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 51; 40 CFR 93

Legal Deadline: None

Abstract: This action is the result of a recent amendment to the Clean Air Act and a 1999 court decision on the same Act. It provides greater flexibility and more time for State and local governments to evaluate and ensure that their transportation plans will not worsen air quality conditions in areas where air quality standards have been established to protect public health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50954
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4558

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RIN: 2060–AJ70

2946. CONTROL OF AIR POLLUTION FROM NEW MOTOR VEHICLES; SECOND AMENDMENT TO THE TIER 2/GASOLINE SULFUR REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7545; 42 USC 7601(a); 42 USC 7401 to 7521(l); 42 USC 7521(m) to 7671q

CFR Citation: 40 CFR 80; 40 CFR 86

Legal Deadline: None

Abstract: This direct final rule (and concurrent proposal) corrects, amends, and revises certain provisions of the Tier 2/Gasoline Sulfur regulations to assist regulated entities with program implementation and compliance. First, it makes minor corrections to clarify the regulations governing compliance with the gasoline sulfur standards. Second, with respect to the low sulfur gasoline program, it removes the anti-backsliding provision of the Geographic Phase-in Area (GPA) program by establishing a flat GPA gasoline standard of 150 ppm sulfur. Third, it amends certain provisions of the Averaging, Banking, and Trading (ABT) programs to assist domestic and foreign refiners and importers in generating sulfur credits and allotments. Fourth, it clarifies and amends certain downstream standards for parties in the gasoline distribution system to assist them with program compliance. Finally, this action makes minor revisions to the regulations governing compliance with the vehicle standards.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4569

Sectors Affected: 336111 Automobile Manufacturing; 336112 Light Truck and Utility Vehicle Manufacturing

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RIN: 2060–AJ71

2947. PROTECTION OF STRATOSPHERIC OZONE: AVAILABILITY OF ALLOWANCES TO PRODUCE METHYL BROMIDE FOR DEVELOPING COUNTRIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7671-7671q

CFR Citation: 40 CFR 82.1 to 82.13

Legal Deadline: None

Abstract: The U.S. regulatory program is being amended to reflect changes in the international treaty, The Montreal Protocol on Substances that Deplete the Ozone Layer. These amendments: (1) will change the amount of class I ozone-depleting substances that can be produced in the U.S. for export to developing countries, (2) will create procedures for the transfer of allowances and CFCs under the essential-use exemption for metered-dose inhalers, and (3) ban the trade of methyl bromide with countries that are not Parties (not signatories) to the Montreal Protocol.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4574

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing

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RIN: 2060–AJ74

2948. MODIFICATION OF THE ANTI-DUMPING BASELINE DATE CUT-OFF LIMIT FOR DATA USED IN DEVELOPMENT OF AN INDIVIDUAL BASELINE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80.91(b)(1)(i); 40 CFR 80.93(a)

Legal Deadline: None

Abstract: Dumping refers to the practice whereby refiners making clean fuels for certain markets (such as reformulated gasoline for clean-air purposes) take the pollutants removed from the clean fuels and dump them into other fuels they are producing for other markets. This, if allowed, would make those other fuels even dirtier than before, and so the Clean Air Act prohibits this practice. EPA has existing anti-dumping rules on the books that codify this Clean Air Act prohibition. This regulation is a minor technical amendment to those existing regulations. It would amend a portion of those regulations to allow the use of data collected after January 1, 1995 in the development of baselines, and it would establish a cut-off date of January 1, 2002 for the submission of all individual baselines under the anti-dumping program. This date is the same as that allowed for foreign refineries seeking a unique individual baseline under the anti-dumping program.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4604

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RIN: 2060–AJ82

2949. COMPILATION OF SOURCE-SPECIFIC ALTERNATIVE METHODS BEING APPROVED FOR SOURCE-CATEGORY WIDE APPLICATION

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Sources have applied for approval of alternative test methods for use at their facility. The Agency has approved these methods and issued letters of approval to each requestor. The Agency has determined that these methods could be used at similar sources, thus giving those sources an alternative test method to the one cited in the regulation. This action seeks to publish these facility-specific approvals in order to provide other facilities within the source category the option of using the alternative method.

Timetable:

Action	Date	FR Cite
Direct Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4548

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RIN: 2060–AJ84

2950. STATE AND FEDERAL OPERATING PERMITS PROGRAM: REMOVAL OF AMENDMENTS TO PART 70 AND PART 71 COMPLIANCE CERTIFICATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414a; 42 USC 7661 to 7661f

CFR Citation: 40 CFR 70; 40 CFR 71 (Revisions)

Legal Deadline: None

Abstract: Action is in response to the October 29, 1999, United States Circuit Court of Appeals decision to remand to EPA part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions to

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parts 70 and 71 compliance certification requirements. The Court ruled that the compliance certification must address whether the affected facility has been in continuous or intermittent compliance.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4600

Split from RIN 2060-AJ04

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RIN: 2060–AJ89

2951. • AMENDMENTS TO NESHAP FOR SOLVENT EXTRACTION FOR VEGETABLE OIL PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63.2852; 40 CFR 63.2861(d); 40 CFR 63.2870 (Table 1 Entry for 63.6(e))

Legal Deadline: None

Abstract: The final air-toxics rule (NESHAP) controlling emissions from solvent extraction for vegetable oil production was promulgated in April 2001. This and all other NESHAPs rely on another existing rule, called the Part 63 General Provisions, for definition of a number of housekeeping functions such as testing and monitoring. We are currently in the process of finalizing some amendments to the Part 63 General Provisions, and we have recently discovered that we need to simultaneously amend the existing vegetable oil NESHAP to avoid a number of minor inconsistencies with the amended General Provisions. The amendments in this package will eliminate these minor inconsistencies between the vegetable oil NESHAP and the revisions being made to the Part 63 General Provisions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4646

Sectors Affected: 311223 Other Oilseed Processing; 311222 Soybean Processing; 311223 Other Oilseed Processing; 311119 Other Animal Food Manufacturing; 311211 Flour Milling; 311221 Wet Corn Milling

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RIN: 2060–AJ93

2952. • NESHAP: GENERIC MACT AMENDMENTS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Several of the source categories that are subject to MACT (maximum available control technology) standards contain only a few sources (e.g., less than five). EPA developed a generic MACT standard for these source categories. This reinvention to the MACT standards development process will allow for proper participation by all stakeholders. Given the relatively few affected sources caught by the generic standard, the overall cost and environmental effects of this action are expected to be small, nationally. The MACT program addresses hazardous air pollutants. This action currently affects major sources of these HAPs. The source categories included in this standard are: Acrylic/Modacrylic (RIN 2060-AF06), Polycarbonates (RIN 2060-AF09), Acetal Resins, and Hydrogen Fluoride (RIN 2060-AG94).

Timetable:

Action	Date	FR Cite
NPRM Amendment for Storage Tanks	10/14/98	63 FR 55177
Final Action Amendment for Storage Tanks	06/30/99	64 FR 34853
NPRM Amendment for Storage Tanks	11/22/99	64 FR 63779
Final Action Amendment for Storage Tanks	11/22/99	64 FR 71852
Direct Final Rule Amendment for Process Vents	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4614

Split from RIN 2060-AG91.

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RIN: 2060–AJ95

2953. • CONTROL OF HAZARDOUS AIR POLLUTANTS FROM MOBILE SOURCES: DEFAULT BASELINE REVISION AND MINOR CORRECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414; 42 USC 7521(1); 42 USC 7545; 42 USC 7601(a)

CFR Citation: 40 CFR 80

Legal Deadline: Final, Statutory, October 31, 2001, 80.855(b)(2) directs EPA to revise the default baseline by this date.

Abstract: The final rule, Control of Emissions of Hazardous Air Pollutants From Mobile Sources (66 FR 17230, 3/29/01), directed EPA to revise the default toxics baselines in the rule to include year 2000 data when it becomes available. When revised, the default toxics baseline values will be the average toxics values for gasoline over the period 1998-2000. This data is now available, and this rule will promulgate those revised baseline values, and also incorporate several minor technical corrections to the existing rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4621

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RIN: 2060–AJ97

2954. • NESHAP: PESTICIDE ACTIVE INGREDIENT PRODUCTION -AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Amendment to change compliance date from 6/23/2002 to 12/23/2003.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4627

Split from RIN 2060-AE84.

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RIN: 2060–AK00

2955. • ADOPTION OF THE AMENDED INTERNATIONAL NOX STANDARD FOR AIRCRAFT ENGINES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq; CAA 231 to 232; 42 USC 7571 to 7572; 5 USC 552(a)

CFR Citation: 40 CFR 87.1; 40 CFR 87.21; 40 CFR 87.64; 40 CFR 87.71; 40 CFR 87.10; 40 CFR 87.31(b); 40 CFR 87.82; 40 CFR 87.89

Legal Deadline: None

Abstract: The purpose of this proposed rulemaking is to amend the existing United States regulations governing the exhaust emissions from new commercial aircraft gas turbine engines. The amendment will codify into United States law the recently amended voluntary NOx emission standard of the United Nations International Civil Aviation Organization (ICAO), thus bringing the United States emission standards into alignment with the internationally adopted standards. This NOx standard was adopted at the ICAO/Committee on Aviation Environmental Protection (CAEP) 4 meeting in 1998. The implementation of the standard is to begin in January 2004. Further, this amendment will establish consistency between U.S. and international requirements and test procedures. This action is necessary to ensure that domestic commercial aircraft meet international standards and so that the public can be assured that they are receiving the air quality benefits of the international standards.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4631

Sectors Affected: 3336 Engine, Turbine, and Power Transmission Equipment Manufacturing; 33641 Aerospace Product and Parts Manufacturing; 336412 Aircraft Engine and Engine Parts Manufacturing; 336413 Other Aircraft Part and Auxiliary Equipment Manufacturing

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RIN: 2060–AK01

2956. • REDUCTION OF THE AMBIENT AIR MONITORING FINE PARTICULATE COLLOCATED PRECISION REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410; 42 USC 7601(a); 42 USC 7619

CFR Citation: 40 CFR 58

Legal Deadline: None

Abstract: This rule will amend the regulations governing the monitoring of ambient fine particulate pollution (PM2.5) conducted by State and local governments as part of their programs to meet the National Ambient Air Quality Standard (NAAQS) for PM2.5. This direct final rule reduces the requirement to collocate PM2.5 samplers from 25 percent of a reporting organization's sites to 15 percent. Collocation is a technique used to provide an estimate of precision or repeatability of the PM2.5 network. The process involves setting up a second PM2.5 sampling instrument within 1 to 4 meters of the primary sampler instrument and collecting a sample during the same time period as the primary sampler. EPA analysis now shows that a reduction in the precision requirement would not significantly affect confidence in precision estimates. Since precision values are collected every sixth day at the monitoring sites and the precision data quality objectives are developed over 3 years, EPA feels that enough precision data will be collected at the proposed frequency (15 percent) to provide acceptable estimates of achievement of

the precision data quality objectives. This change should reduce the monitoring burden of all organizations implementing State and local Ambient Monitoring Sites.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4647

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RIN: 2060–AK05

2957. • REVISION TO REGULATIONS IMPLEMENTING THE FEDERAL PERMITS PROGRAM IN AREAS FOR WHICH THE INDIAN COUNTRY STATUS IS IN QUESTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 71.4(b); 40 CFR 71.9(p)

Legal Deadline: None

Abstract: The rulemaking responds to an order of the U.S. Court of Appeals for the District of Columbia, which vacated and remanded a portion of the regulations that authorize EPA to issue operating permits to large stationary sources of air pollution located in Indian country. The relevant portion of the regulation stated that EPA will treat areas for which EPA believes the Indian country status is in question as Indian country. To conform with the court's order, we are removing the regulatory language that treats areas in question as Indian country. A proposed rulemaking is not necessary for this action. The amendment may cause EPA not to issue permits to a few sources, which may result in permits being issued by State/local/tribal permitting authorities.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Tribal

Additional Information: SAN No. 4648

This action will have a minimal affect on State and tribal governments. As a result of this action, EPA may be unable to issue permits to a handful of sources which would then probably be permitted by State or tribal permitting agencies.

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RIN: 2060–AK06

2958. • DIRECT FINAL RULEMAKING FOR MODIFICATIONS TO REFORMULATED GASOLINE (RFG) "COVERED AREA" PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 CFR 80.72; 42 USC 7545(k)

CFR Citation: 40 CFR 80.70 (Revision)

Legal Deadline: None

Abstract: EPA will publish a direct final rulemaking (and parallel NPRM) to make several minor modifications to its reformulated gasoline (RFG) regulations to reflect changes in the geographical areas that are covered by the Federal RFG program, and to delete obsolete language and clarify existing language in the provisions listing the Federal RFG covered areas. These changes include: (1) deleting the seven southern counties in Maine from the RFG covered areas list, reflecting their opt-out of the RFG program, as of March 10, 1999, (2) adding the Sacramento Metro and San Joaquin Valley nonattainment areas to the list of RFG covered areas, reflecting the Sacramento Metro Area's inclusion in the RFG program as of June 1, 1996 and the San Joaquin Valley Area's inclusion in the RFG program on December 10, 2002; and (3) deleting the text which extended the RFG opt-in provisions to all ozone nonattainment areas including previously designated ozone nonattainment areas, reflecting a court decision in January 2000, which invalidated this language. This rulemaking also makes certain other minor changes in the provisions listing the RFG covered areas for purposes of clarification. A parallel NPRM will also be issued for use in case we receive negative comments on the direct final rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4652

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RIN: 2060–AK07

2959. • AMENDMENTS TO COMPLIANCE CERTIFICATION REQUIREMENTS FOR STATE AND FEDERAL OPERATING PERMITS PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7414a; 42 USC 7661 to 7661f

CFR Citation: 40 CFR 70; 40 CFR 71 (Revisions)

Legal Deadline: None

Abstract: Action is in response to the October 29, 1999, United States Circuit Court of Appeals decision to remand to EPA part of the October 22, 1997, Compliance Assurance Monitoring rulemaking that included revisions to parts 70 and 71 compliance certification requirements. The Court ruled that the compliance certification must address whether the affected facility has been in continuous or intermittent compliance.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4671

Split from RIN 2060-AJ04.

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RIN: 2060–AK11

2960. PROJECT XL SITE-SPECIFIC RULEMAKING FOR ANDERSEN CORPORATION'S FACILITY IN BAYPORT, MINNESOTA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 52

Legal Deadline: None

Abstract: This site-specific rule, applicable only to the Andersen Bayport facility, provides regulatory changes under the Clean Air Act (CAA) to implement Andersen Corporation's XL project. In this project, the facility will be allowed to increase production levels without undergoing case-by-case reviews prompted by its Volatile Organic Compounds (VOC) emission changes, as long as its VOC emissions per unit of production remain below the performance ration and its overall emissions remain below a facility-wide VOC cap.

Timetable:

Action	Date	FR Cite
NPRM	04/19/99	64 FR 19097
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4278

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RIN: 2090–AA21

Environmental Protection Agency (EPA)

Clean Air Act (CAA)

Long-Term Actions

2961. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(7); AVAILABILITY OF INFORMATION TO THE PUBLIC; TECHNICAL AMENDMENT

Priority: Info./Admin./Other

Legal Authority: CAA 112(r)

CFR Citation: 40 CFR 68.210

Legal Deadline: None

Abstract: Section 112(r)(7) of the Clean Air Act (CAA) and its implementing regulations at 40 CFR part 68 require certain stationary sources to report an Off-site Consequence Analysis (OCA), including a worst-case release scenario, in a Risk Management Plan (RMP) that is to be made available to the public. In response to concerns that posting OCA information on the Internet might increase the risk of terrorist and other criminal activities, on August 5, 1999 the Chemical Safety Information, Site Security and Fuels Regulatory Relief Act was enacted. The Act requires the President to promulgate regulations governing the distribution of the OCA sections of RMPs that, in the opinion of the President, would minimize the likelihood of accidental releases and the risk of terrorist and other criminal activities associated with posting this information. The President delegated his rulemaking authority to the Attorney General and the Administrator of EPA, who jointly promulgated the required regulations at 40 CFR part 1400. The Part 1400 regulations restrict the public's access to the OCA sections of RMPs in certain ways. As currently drafted, however, section 68.210(a) of part 68 states that RMPs are available to the public under CAA section 114, which makes information collected under the CAA, including RMPs in their entirety, available to the public, except for confidential business information. EPA is therefore revising 40 CFR section 68.210(a) to reflect the August 2000 rulemaking and the revision will state that OCA data is made available to the public under the provisions of 40 CFR part 1400.

Timetable:

Action	Date	FR Cite
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4607

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RIN: 2050–AE95

2962. ACCIDENTAL RELEASE PREVENTION REQUIREMENTS: RISK MANAGEMENT PROGRAMS UNDER THE CLEAN AIR ACT, SECTION 112(R)(3); REVISIONS TO THE LIST OF SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: CAA 112(r)

CFR Citation: 40 CFR 68.130

Legal Deadline: None

Abstract: The list of substances subject to the Chemical Accident Prevention requirements at 40 CFR part 68 was promulgated on January 31, 1994. The Clean Air Act states that the list may

be revised from time to time by EPA's own motion or by petition and shall be reviewed at least every 5 years. Since the January 1994 final list rule, EPA has modified the listing for hydrochloric acid; deleted a category of explosive chemicals; exempted flammable substances in gasoline used as fuel and in naturally occurring hydrocarbon mixtures prior to initial processing; and excluded flammable substances used as a fuel or held for sale as a fuel at a retail facility. In fulfillment of the statute's five-year review requirement, EPA has conducted a thorough review of the list. Based on that review, EPA is proposing additions, deletions and modifications to the list of substances. Deletions are based on EPA's review of the chemical toxicity, physical property, production/use quantity and accident history of currently listed substances and new information or erroneous data that impacts the basis of the chemical's listing. Other toxic and flammable chemicals are proposed to be added because they meet the criteria for listing a toxic or flammable substance. In addition, EPA proposes to revise the reporting threshold and toxic endpoints of several toxic substances based on updated toxicity information. Facilities with more than the threshold quantity of a listed substance in a process are required to develop a Risk Management Program and submit a Risk Management Plan to EPA. The proposed changes to the list will ensure that facilities are properly managing risks of the most acutely toxic and flammable chemicals that could have an adverse impact on the facility and surrounding community in event of an accidental release.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4619

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2050–AE96

2963. REVISED PERMIT REVISION PROCEDURES FOR THE FEDERAL OPERATING PERMITS PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7661(a)(d)(3)

CFR Citation: 40 CFR 71.7

Legal Deadline: None

Abstract: The proposed regulatory change would streamline permit revisions procedures for stationary air sources that are subject to the Federal operating permits program.

The Agency does not anticipate any significant impact on small businesses and State/local/tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	06/00/04	
Final Action	06/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3922

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RIN: 2060–AG92

2964. REVIEW OF MINOR NEW SOURCES AND MODIFICATIONS IN INDIAN COUNTRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7410

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: As required by the Clean Air Act's New Source Review (NSR) provisions, the EPA is proposing Federal regulations governing preconstruction permitting of minor and major stationary sources of air pollution in Indian country. Pursuant to the Tribal Air Rule, eligible Indian Tribes may receive EPA authorization to develop and implement such programs. The Federal NSR permitting programs would be effective throughout Indian country and would be implemented by EPA if eligible Indian Tribes do not elect, or do not receive authorization, to manage such programs. The proposed Federal minor NSR rule would require sources in Indian country, with certain exceptions, to obtain a permit prior to construction if they are: (1) new minor sources, (2) existing minor sources undergoing modification, or (3) existing major sources undergoing minor modification. The proposed rule also would allow new or existing stationary sources to accept enforceable limits on their production capacity or hours of operation in order to be considered minor sources and avoid being subject to other Clean Air Act requirements such as the title V operating permit program. The proposed Federal major NSR rule would require sources in nonattainment areas in Indian country to obtain a permit prior to construction if they are: (1) new major sources, or (2) existing major sources undergoing major modification. These rules would not impose any mandates on Tribal governments to implement NSR permitting programs. Tribal governments may be affected, however, insofar as they own or operate sources that must obtain a permit from the EPA under the final Federal permitting program regulations.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, Tribal

Additional Information: SAN No. 3975

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RIN: 2060–AH37

2965. FEDERAL MAJOR NEW SOURCE REVIEW (NSR) PROGRAM FOR NONATTAINMENT AREAS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 124; 40 CFR 51.165; 40 CFR 52.10; 40 CFR 52.24

Legal Deadline: None

Abstract: The Clean Air Act (Act) (title I, part D) requires that construction permit programs for new or modified major stationary sources of air pollution be established for areas not attaining the NAAQS. This action will add Federal rules at 40 CFR 52.10 for permitting the construction of new or modified major stationary sources in certain nonattainment areas where State, local, or tribal rules that meet the statutory permitting requirements are in place, in whole or in part. These rules will basically incorporate the requirements for State nonattainment NSR permit programs, codified at 40 CFR 51.165(a), with supplemental provisions added to make explicit the permit requirements of section 173 of the Act and certain long-standing policies regarding nonattainment NSR permitting. This action will also change 40 CFR 52.24 to specify that the requirements of 40 CFR 52.10 govern any permits issued in certain nonattainment areas where acceptable nonattainment NSR rules are not in place. Changes to 40 CFR part 124 will specify that the permit processing, public participation, and permit appeal requirements that otherwise apply to Federal PSD permitting will also apply, in most cases, to Federal nonattainment NSR permitting under 40 CFR 52.10.

Timetable:

Action	Date	FR Cite
NPRM	07/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4046

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RIN: 2060–AH53

2966. NESHAP: COKE OVENS: PUSHING, QUENCHING, AND BATTERY STACKS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: There are currently 20 active domestic coke plants, 20 of which are furnace coke plants and 5 of which are foundry coke plants. Coke oven batteries used to produce metallurgical coke at these plants emit hazardous air pollutants (HAPs) such as coke oven emissions and polycyclic organic matter listed in section 112 of the Clean Air Act (CAA). This action will establish a National Emission Standard for Hazardous Air Pollutants (NESHAP) for three specific operations associated with coke ovens, namely pushing, quenching, and battery stacks.

Timetable:

Action	Date	FR Cite
NPRM	07/03/01	66 FR 35326
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4022

Sectors Affected: 324199 All Other Petroleum and Coal Products Manufacturing; 331111 Iron and Steel Mills

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RIN: 2060–AH55

2967. RULEMAKING TO MODIFY THE LIST OF SOURCE CATEGORIES FROM WHICH FUGITIVE EMISSIONS ARE CONSIDERED IN MAJOR SOURCE DETERMINATIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7602 CAA sec 302(j)

CFR Citation: 40 CFR 51; 40 CFR 52; 40 CFR 70; 40 CFR 71

Legal Deadline: None

Abstract: This rulemaking will modify the list of source categories for which fugitive emissions are to be considered in major source determinations under the New Source Review (Prevention of Significant Deterioration and Nonattainment New Source Review) and title V programs. As provided by section 302(j) of the Act, EPA adopted rules on August 7, 1980 that require, for specific source categories, the inclusion of fugitive emissions when determining if a stationary source is a major source. In its 1980 rulemaking, EPA identified one such specific source category as those stationary source categories being regulated, as of August 7, 1980, under section 111 or 112 of the Clean Air Act. Moreover, EPA indicated that at the time of any future rulemaking proposing to regulate additional categories of sources under section 111 or 112, the EPA would conduct a parallel rulemaking under section 302(j) to determine whether fugitive emissions from sources within these source categories needed to be considered in determining whether the sources were major stationary sources. EPA did not conduct these parallel rulemakings as intended and is now conducting a rulemaking pursuant to section 302(j) to address the source categories which became subject to section 111 and 112 standards after August 7, 1980.

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Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4045

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RIN: 2060–AH58

2968. NESHAP: FUMED SILICA PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA Section 112; EO 12866

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Fumed silica is produced at four facilities in three states. There is no NSPS for the source category. Based on preliminary results of a screening study, the source category emits chlorine, HCl, and chlorinated organics. This source category was included in the hydrochloric acid production industry at proposal.

Timetable:

Action	Date	FR Cite
NPRM	09/18/01	66 FR 4874
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4111

This action merged with SAN 4104, RIN 2060-AH75.

Sectors Affected: 325188 All Other Basic Inorganic Chemical Manufacturing

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RIN: 2060–AH72

2969. NESHAP: HYDROCHLORIC ACID PRODUCTION INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1857 et seq; 44 USC 350 et seq; 5 USC 605; EO 12291; EO 12866

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Title III of the Clean Air Act Amendments of 1990 requires the EPA to develop emission standards for each major source category of hazardous air pollutants (HAPs). The standards are to be technology-based and are to require the maximum degree of emission reduction determined to be achievable by the Administrator of the EPA. The EPA has determined that some hydrochloric acid plants may be major sources of one or more HAPs. As a consequence, a regulation (emission standards) will be developed for the hydrochloric acid production industry.

Timetable:

Action	Date	FR Cite
NPRM	09/18/01	66 FR 48174
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4104

Sectors Affected: 325211 Plastics Material and Resin Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 325181 Alkalies and Chlorine Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing

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RIN: 2060–AH75

2970. GENERAL CONFORMITY REGULATIONS; REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401-7671

CFR Citation: 40 CFR 51.850 to 51.860; 40 CFR 93.150 to 93.160

Legal Deadline: None

Abstract: Section 176(c) of the Clean Air Act prohibits Federal entities from taking actions which do not conform to the State implementation plan (SIP) for the attainment and maintenance of the national ambient air quality standards (NAAQS). In November 1993, EPA promulgated two sets of regulations to implement section 176(c). First, on November 24, EPA promulgated the Transportation Conformity Regulations to establish the criteria and procedures for determining that transportation plans, programs, and projects which are funded under title 23 U.S.C. or the Federal Transit Act conform with the SIP. Then, on November 30, EPA promulgated regulations, known as the General Conformity Regulations, to ensure that other Federal actions also conformed to the SIPs. Since 1993, EPA has amended the transportation conformity rule three times in response to stakeholders' requests. The EPA is working on a separate revision to address transportation conformity in transitional areas which will be final by December 1998. The EPA has not reviewed or revised the General Conformity Regulations since their 1993 promulgation. Several Federal agencies have identified concerns over the implementation of the General Conformity Regulations, including the requirements for areas designated nonattainment for the newly promulgated NAAQS. In conjunction with an ad hoc work group of representatives from several Federal agencies, EPA will review the implementation of the General Conformity Regulations. The EPA will then propose and promulgate any

appropriate revision to those regulations.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 4070

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RIN: 2060–AH93

2971. REVISIONS TO AIR POLLUTION EMERGENCY EPISODE REQUIREMENTS (SUBPART H, 40 CFR PART 51)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410(a)(2)(G); 42 USC 7603

CFR Citation: 40 CFR 51 app L; 40 CFR 51.150 to 51.153

Legal Deadline: None

Abstract: 40 CFR part 51.150-51.153 require States to have contingency plans to prevent air pollution levels from reaching the significant harm level (SHL) for CO, O3, SO2, NOx, and PM. Appendix L provides example guidance to the States on appropriate courses of action to take at each episode stage (i.e., alert, warning, and emergency) to ensure the SHL is not reached. These requirements were developed in the 1970's, based on the NAAQS from that era. Since that time, ambient air quality levels have decreased nationwide. Today, many areas/sources that no longer need episode plans must still develop them. This rule would update and simplify the criteria used to determine which areas would require episode plans. Areas with no more than one exceedance of the Alert level over the past 5 years would not need to develop emergency episode plans. Sources with the potential to cause exceedances of the SHL due to a process/control equipment malfunction would need to develop source contingency plans to prevent (and to respond to) such malfunctions. Appendix L would also be revised to reflect the revised program requirements. The result will be a sensible, credible program replacing an outdated program.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4247

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RIN: 2060–AI47

2972. REVISION OF EPA'S RADIOLOGICAL EMERGENCY RESPONSE PLAN

Priority: Substantive, Nonsignificant

Legal Authority: EO 12777; PL 96-295 sec 304

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) Radiological Emergency Response Plan (RERP) establishes a framework for timely, coordinated EPA action to protect public health and safety and the environment in response to a peacetime radiological incident. The original EPA RERP was approved in 1986. This new revision updates authorities, responsibilities, capabilities, and procedures for implementing effective radiological emergency response actions by EPA Offices. The RERP presents the EPA organizational structure and concept of operations for responding to radiological incidents as a participant in a Federal multi-agency response using the Federal Radiological Emergency Response Plan (FRERP), the Federal Response Plan (FRP), and the National Oil and Hazardous Substances Pollution Contingency Plan (NCP). This revision incorporates recent changes to the FRERP and NCP, and many other policy updates. In short, this revision ensures that EPA maintains a comprehensive strategy to provide organized, effective assistance to State and local governments in the event of a radiological emergency.

Timetable:

Action	Date	FR Cite
Final Plan	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3638

Previously listed in the Regulatory Agenda as RIN 2060-AF85.

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RIN: 2060–AI49

2973. NAAQS: SULFUR DIOXIDE (RESPONSE TO REMAND)

Priority: Other Significant

Legal Authority: 42 USC 7409 CAA sec 109

CFR Citation: 40 CFR 50.4; 40 CFR 50.5

Legal Deadline: None

Abstract: On November 15, 1994, the Environmental Protection Agency (EPA) proposed not to revise the existing 24-hour and annual primary standards. The EPA sought public comment on the need to adopt additional regulatory measures to address the health risk to asthmatic individuals posed by short-term peak sulfur dioxide exposure. On March 7, 1995, EPA proposed implementation strategies for reducing short-term high concentrations of sulfur dioxide emissions in the ambient air. On May 22, 1996, EPA published its final decision not to revise the primary

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sulfur dioxide NAAQS. The notice stated that EPA would shortly propose a new implementation strategy to assist States in addressing short-term peaks of sulfur dioxide. The new implementation strategy - the Intervention Level Program - was proposed on January 2, 1997. In July 1996, the American Lung Association and the Environmental Defense Fund petitioned the U.S. Court of Appeals for the D.C. Circuit for a judicial review of EPA's decision not to establish a new 5-minute NAAQS. On January 30, 1998, the court found that EPA did not adequately explain its decision and remanded the case so EPA could explain its rationale more fully. EPA published a schedule for responding to the remand in the May 5, 1998 Federal Register. Since that notice, EPA has continued to work on the proposed response to the remand by reviewing additional SO2 air quality information. EPA published an informational notice in the Federal Register on January 9, 2001 (66 FR 1665).

Timetable:

Action	Date	FR Cite
NPRM NAAQS Review	11/15/94	59 FR 58958
NPRM NAAQS Implementation (Part 51)	03/07/95	60 FR 12492
Final Rule NAAQS Review	05/22/96	61 FR 25566
NPRM Revised NAAQS Implementation (Part 51)	01/02/97	62 FR 210
Notice Schedule for Response to NAAQS Remand	05/05/98	63 FR 24782
Informational FR Notice	01/09/01	66 FR 1665
Notice	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 1002

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RIN: 2060–AA61

2974. NESHAP: INTEGRATED IRON AND STEEL

Priority: Other Significant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The Clean Air Act, as amended November 1990, requires the EPA to regulate categories of major and area sources of hazardous air pollutants (HAP). The EPA has determined that integrated iron and steel mills emit several of the 188 HAP listed (including compounds of chromium, lead, manganese, toluene, and polycyclic organic matter) in quantities sufficient to designate them as major sources. As a consequence, integrated iron and steel facilities are among the HAP-emitting source categories selected for regulation.

Timetable:

Action	Date	FR Cite
NPRM	07/13/01	66 FR 36836
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3346

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RIN: 2060–AE48

2975. NESHAP: REINFORCED PLASTIC COMPOSITES PRODUCTION

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, November 15, 2000.

Abstract: Project is to develop a NESHAP for the source category which involves the manufacture of composite products involving thermoset resins and re-enforcements. Some of the specific products in the source category are tubs/showers, auto/truck parts, appliances, furniture, piping, construction materials, sporting goods using such materials, and intermediate compounds such as bulk molding compound and sheet molding compounds. The most common HAP in the resins used is styrene, which is present in polyester and vinylester resins as a monomer. Styrene is listed as a candidate urban area source HAP. So is methylene chloride, which is sometimes used for cleaning, and xylenes, which may appear in some mold release formulas. All HAP, except for methylene chloride, are also VOC's.

Timetable:

Action	Date	FR Cite
NPRM	08/02/01	66 FR 40324
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3326

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RIN: 2060–AE79

2976. NESHAP: CHROMIUM ELECTROPLATING AMENDMENT

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Final standards under section 112(d) for chromium emissions from hard and decorative chromium electroplating and chromium anodizing tanks (40 CFR 63, Subpart N) were promulgated on January 25, 1995. Since promulgation, the Agency has determined that a class of chromium electroplating operations were inadvertently excluded from regulation. Specifically, the final standards do not apply to sources engaged in continuous chromium electroplating of steel sheet used to make cans and other containers. It is the Agency's intent to regulate all facilities engaged in chromium electroplating. Therefore, the Agency plans to amend the chromium electroplating rule to extend its applicability to continuous chromium electroplating operations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 2841

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RIN: 2060–AH08

2977. AMENDMENTS TO PARTS 51, 52, 63, 70 AND 71 REGARDING THE PROVISIONS FOR DETERMINING POTENTIAL TO EMIT

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: This action proposes to amend regulations already established to implement the new Federal air toxics program under section 112, including the General Provisions, the Federal operating permit program under title V, and the major source preconstruction programs under parts C and D of title I.

The proposed rule will address issues related to the determination of a stationary source's potential to emit in response to three court decisions.

This action resulted from splitting of RINs 2060-AC98 and 2060-AC63.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3479

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RIN: 2060–AI01

2978. NESHAP: OIL AND NATURAL GAS PRODUCTION

Priority: Other Significant

Legal Authority: 42 USC 7412 CAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: On February 2, 1998, we proposed NESHAP for oil and gas production (major sources), oil and gas production (area sources), and natural gas transmission and storage in one package. On June 17, 1999, we promulgated NESHAP for oil and gas production (major sources) and natural gas transmission and storage. In this action, we will publish a supplemental proposal for the oil and gas production glycol dehydrators (area sources) and subsequently promulgate the proposal.

Timetable:

Action	Date	FR Cite
Supplemental NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

Additional Information: SAN No. 4162

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RIN: 2060–AI13

2979. NSPS AND EMISSION GUIDELINES FOR OTHER SOLID WASTE INCINERATORS

Priority: Other Significant

Legal Authority: 42 USC 7509 CAA sec 129

CFR Citation: 40 CFR 60

Legal Deadline: None

Abstract: Section 129 of the Clean Air Act of 1990 requires the Agency to promulgate New Source Performance Standards (NSPS) and Emission Guidelines (EG) for solid waste incinerators. Section 129 specifically required the Administrator to publish a schedule for regulating Other Solid Waste Incinerators (OSWI). A notice published on November 9, 2000 announced that the Administrator would promulgate OSWI standards by November 15, 2005. The notice also listed what classes of incinerators might be covered by the OSWI standards. Standards will be set for the following pollutants: particulate matter, opacity, sulfur dioxide, hydrogen chloride, oxides of nitrogen, carbon monoxide, lead cadmium, mercury, and dioxins and dibenzofurans.

Timetable:

Action	Date	FR Cite
ANPRM	11/09/00	65 FR 66850
NPRM	11/00/04	
Final Action	11/00/05	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: SAN No. 3751

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RIN: 2060–AG31

2980. PREVENTION OF SIGNIFICANT DETERIORATION OF AIR QUALITY: PERMIT APPLICATION REVIEW PROCEDURES FOR NON-FEDERAL CLASS I AREAS

Priority: Other Significant

Legal Authority: 42 USC 7670 to 7479, CAA sec 160 to 169

CFR Citation: 40 CFR 51.166; 40 CFR 52.21

Legal Deadline: None

Abstract: Under the Clean Air Act's prevention of significant deterioration (PSD) program, a State or tribe may redesignate their lands as class I areas to provide enhanced protection for their air quality resources. This rule will clarify the PSD permit review procedures for new and modified major stationary sources near these non-Federal class I areas. EPA seeks to develop clarifying PSD permit application procedures that are effective, efficient, and equitable.

Timetable:

Action	Date	FR Cite
ANPRM	05/16/97	62 FR 27158
NPRM	10/00/03	
Final Action	10/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Additional Information: SAN No. 3919

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RIN: 2060–AH01

2981. REVIEW OF FEDERAL TEST PROCEDURES FOR EMISSIONS FROM MOTOR VEHICLES; TEST PROCEDURE ADJUSTMENTS TO FUEL ECONOMY AND EMISSION TEST RESULTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-549

CFR Citation: 40 CFR 600; 40 CFR 86

Legal Deadline: None

Abstract: This action considers potential adjustments to fuel economy and emission test results to compensate for test procedure changes previously adopted; it applies to light-duty vehicles and light-duty trucks. This aspect of the previous rulemaking (SAN 3323, RIN 2060-AE27) was deferred.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3979

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RIN: 2060–AH38

2982. PROTECTION OF STRATOSPHERIC OZONE: UPDATE OF THE SUBSTITUTES LIST UNDER SNAP PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7414; 42 USC 7601; 42 USC 7671(k) CAA sec 612

CFR Citation: 40 CFR 82; 40 CFR 9

Legal Deadline: None

Abstract: Section 612 of the Clean Air Act requires EPA to identify alternatives to Class I and II ozone-depleting substances and to publish lists of acceptable and unacceptable substitutes. Producers of substitutes must notify EPA at least 90 days before alternatives are introduced into interstate commerce. Unlike acceptable alternatives (see Notices), substitutes which are deemed by EPA to be unacceptable or acceptable subject to use restrictions must go through notice and comment rulemaking. Substitute lists are updated intermittently depending on the volume of notifications.

Timetable:

Action	Date	FR Cite
ANPRM	01/16/92	57 FR 1984
NPRM	05/12/93	58 FR 28094
Final Rule	03/18/94	59 FR 13044
Notice 1	08/26/94	59 FR 44240
NPRM 1	09/26/94	59 FR 49108
Final Rule 1	06/13/95	60 FR 31092
NPRM 2	10/02/95	60 FR 51383
NPRM 3	05/22/96	61 FR 25604
Final Rule 2	05/22/96	61 FR 25585
Final Rule 3	10/16/96	61 FR 54030
Notice 6	03/10/97	62 FR 10700
Notice 7	06/03/97	62 FR 30275
Notice 8	02/24/98	63 FR 9151
Notice 9	05/22/98	63 FR 28251
Interim Final Rule 7	01/26/99	64 FR 3861
Interim Final Rule 8	01/26/99	64 FR 3865
ANPRM 9	02/18/99	64 FR 8043
NPRM 6	02/18/99	64 FR 8038
Notice 10	06/08/99	64 FR 30410
Notice 11	12/06/99	64 FR 68039
Notice 12	04/11/00	65 FR 19327
Notice 13	06/19/00	65 FR 37900
Notice Notice 14	12/18/00	65 FR 78977
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3525

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RIN: 2060–AG12

2983. FEDERAL IMPLEMENTATION PLAN (FIP) FOR THE BILLINGS/LAUREL, MONTANA SULFUR DIOXIDE (SO2) AREA

Priority: Other Significant

CFR Citation: 40 CFR 52

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 2008–AA00

2984. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR CARBON MONOXIDE

Priority: Other Significant

Legal Authority: Clean Air Act Title I

CFR Citation: 40 CFR 50

Legal Deadline: Final, Statutory, May 31, 2001, Clean Air Act requires reviews every five years.

Abstract: Review of the national ambient air quality standards (NAAQS) for carbon monoxide (CO) every 5 years is mandated by the Clean Air Act. This review assesses the available scientific data about the health and environmental effects of CO and translates the science into terms that can be used in making recommendations about whether or how the standards should be changed. The last review of the CO NAAQS was completed in 1994 with a final decision that revisions were not appropriate at that time.

Timetable:

Action	Date	FR Cite
NPRM	05/00/03	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4266

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RIN: 2060–AI43

2985. REVIEW OF THE NATIONAL AMBIENT AIR QUALITY STANDARDS FOR PARTICULATE MATTER

Priority: Economically Significant

Legal Authority: 42 USC 7408; 42 USC 7409

CFR Citation: 40 CFR 50

Legal Deadline: Final, Statutory, July 1, 2002, Under the Clean Air Act - the next standards review is to be completed July 2002.

Abstract: On July 18, 1997, the EPA published a final rule revising the national ambient air quality standards (NAAQS) for particulate matter (PM) (62 FR 38652). While retaining the PM10 standard levels, new standards were added for fine particles (PM2.5) to provide increased protection against both health and environmental effects of PM. On the same day, a Presidential Memorandum (62 FR 38421, July 16, 1997) was published that, among other things, directed EPA to complete the next review of the PM NAAQS by July 2002. The EPA's plans and schedule for the next periodic review of the PM NAAQS were published on October 23, 1997 (62 FR 55201). Due to the unprecedented volume of new research, the completion of the Criteria Document has been extended and as a result the overall schedule for the review of the PM NAAQS is anticipated to extend beyond the original target of July 2002. As with other NAAQS reviews, a rigorous assessment of relevant scientific information will be presented in a Criteria Document (CD), and the preparation of this document is currently under way by the EPA's National Center for Environmental Assessment. The EPA's Office of Air Quality Planning and Standards will also prepare a Staff Paper (SP) for the Administrator which will evaluate the policy implications of the key studies and scientific information contained in the CD and additional technical analyses, and identify critical elements that EPA staff believes should be considered in reviewing the standards. The SP and CD will be reviewed by the Clean Air Scientific Advisory Committee (CASAC) and the public; both will reflect the input received through these reviews. As the PM NAAQS review is completed, the Administrator's proposal to revise or reaffirm the PM NAAQS will be published with a request for public comment. Input received during the public comment period will be reflected in the Administrator's final decision.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4255

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RIN: 2060–AI44

2986. REVISION TO NOX SIP CALL EMISSION BUDGETS FOR CONNECTICUT, MASSACHUSETTS, AND RHODE ISLAND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7410(a)(2)(D); 42 USC 7410(k)(5)

CFR Citation: 40 CFR 51

Legal Deadline: None

Abstract: On October 27, 1998, EPA published a final rule (the OTAG SIP

Call) making a finding of significant contribution and assigning statewide NOx emission budgets to 22 States and the District of Columbia for purposes of reducing regional transport of ozone and its precursor, NOx. Subsequent to the promulgation of the SIP call, EPA and the States of Connecticut, Massachusetts and Rhode Island signed a memorandum of understanding that obligated EPA to propose to redistribute the budgets assigned to the three States in a different way. This action would carry out that obligation. This redistribution would not lead to an increase in the overall budget for the three States.

Timetable:

Action	Date	FR Cite
Direct Final Rule	09/15/99	64 FR 49987
Withdrawal of Direct Final Rule	11/01/99	64 FR 58792
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4276

Direct Final Action-http://www.epa.gov/fedrgstr/EPA-AIR/1999/September/Day-15/a23914.htm Withdrawal-http://www.epa.gov/fedrgstr/EPA-AIR/1999/November/Day-01/a28519.htm

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RIN: 2060–AI80

2987. INTERSTATE OZONE TRANSPORT: RULEMAKING ON SECTION 126 PETITIONS FROM THE DISTRICT OF COLUMBIA, DELAWARE, MARYLAND, AND NEW JERSEY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7426

CFR Citation: 40 CFR 52; 40 CFR 97

Legal Deadline: Final, Statutory, December 14, 1999, The rulemaking includes action on 4 separate petitions. See Additional Information.

Abstract: In April through July 1999, 3 Northeastern States (New Jersey, Maryland, and Delaware) and the District of Columbia submitted individual petitions to EPA in accordance with section 126 of the Clean Air Act (CAA). Each petition specifically requests that EPA make a finding that nitrogen oxides (NOx) emissions from certain stationary sources in other States significantly contribute to ozone nonattainment and maintenance problems with respect to the 1-hour and 8-hour ozone standards in the petitioning State. If EPA makes such a finding of significant contribution, EPA is authorized to establish Federal emissions limits for the sources. The petitions rely on the analyses from EPA's NOx SIP call. The sources targeted by the petitions are large electricity generating units and large non-electricity generating units, as defined in EPA's NOx SIP call. The CAA requires EPA to take final action on the petitions within 60 days of receipt, but may extend the deadline for up to 6 additional months to allow for public process. The EPA took rulemaking action on similar petitions from 8 other Northeastern States that were submitted in 1997.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4383

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RIN: 2060–AI99

2988. RESCINDING FINDING THAT PRE-EXISTING PM10 STANDARDS ARE NO LONGER APPLICABLE IN NORTHERN ADA COUNTY/BOISE, IDAHO

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 50.6(d); 40 CFR 52.676; 40 CFR 81.313

Legal Deadline: None

Abstract: The EPA had previously taken action to revoke the PM-10 national ambient air quality standards (NAAQS) for the Boise/Ada County area in anticipation that a revised PM-10 NAAQS would soon be in place. However, the DC Circuit court subsequently vacated the revised PM-10 NAAQS, the effectiveness of which served as the underlying basis for EPA's decision to revoke the pre-existing PM-10 NAAQS. Therefore, in order to protect public health in the Boise/Ada County area, EPA is proposing to reinstate the pre-existing PM-10 NAAQS. Without this action there would be no Federal PM-10 NAAQS applicable to this area. This action is tentatively subject to the terms of a settlement agreement that was signed by all parties in January 2001. A Federal Register notice of the proposed settlement requesting public comment was published January 30, 2001 in accordance with section 113(g) of the Act. Written comments on the proposed settlement agreement were due to EPA (Mike Prosper) by March 1, 2001. Unless EPA or DOJ determine, following the comment period, that consent is inappropriate the settlement agreement will then be executed by the parties. This action will then be fully subject to the terms of the settlement agreement. No negative comments were received. EPA/DOJ signed the settlement agreement and the State is in the process of carrying out its obligations under the settlement agreement.

Timetable:

Action	Date	FR Cite
NPRM	06/26/00	65 FR 39321
Extension of Comment Period	07/26/00	65 FR 45953
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Undetermined

Additional Information: SAN No. 4391

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RIN: 2060–AJ05

2989. UTILITY SECTOR NEW SOURCE REVIEW (NSR) ALTERNATIVE COMPLIANCE PROGRAM

Priority: Other Significant

Legal Authority: 42 USC 7401 to 7671q

CFR Citation: 40 CFR 51; 40 CFR 52.21

Legal Deadline: None

Abstract: The New Source Review (NSR) Program is the principal means by which EPA assures that new pollution sources install reasonably effective air pollution controls before they are allowed to begin operation. EPA is currently involved in a comprehensive rulemaking (NSR Improvement, SAN 3259), intended to streamline the NSR program and reduce its administrative burden. This new rulemaking is an outgrowth of that reform effort, and will provide industries with the flexibility to focus more on existing pollution sources, with the goal of achieving as good or better environmental results than could be achieved focusing strictly on new sources. The Utility Sector NSR Alternative Compliance Program is a proposed rulemaking that is an outgrowth of this action and will provide industries with the flexibility to focus more on existing pollution sources, with the goal of achieving as good or better environmental results than could be achieved focusing strictly on new sources.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
Final Action	04/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4390

See also SAN 3259

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RIN: 2060–AJ14

2990. NESHAP FOR FLEXIBLE POLYURETHANE FOAM FABRICATION OPERATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: Final, Statutory, November 15, 2000.

Abstract: The Clean Air Act (CAA) requires development of emission standards for major sources emitting any of the hazardous air pollutants (HAP) listed in section 112(b) of the CAA. The EPA is proposing a rule to reduce emissions of toxic air pollutants from flexible polyurethane foam fabrication operations. Toxic air pollutants, or air toxics, are those pollutants known, or suspected, to cause cancer and other serious health problems. EPA identified two subcategories under the flexible polyurethane foam fabrication operations source category. These subcategories are loop slitter HAP-based adhesive use and flame lamination. Loop slitters are equipment at foam fabrication operations that are used to slice large foam blocks into thin sheets. Flame lamination refers to the bonding of foam to other substrates (i.e., cloth, foam, plastic, and other materials), where the bonding agent is scorched or melted foam.

Timetable:

Action	Date	FR Cite
NPRM	08/08/01	66 FR 41718
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4449

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RIN: 2060–AJ19

2991. EVALUATION OF UPDATED TEST PROCEDURES FOR THE CERTIFICATION OF GASOLINE DEPOSIT CONTROL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 80

Legal Deadline: None

Abstract: All gasoline must contain additives to control the formation of deposits in the fuel supply system and engine of motor vehicles. If uncontrolled, such deposits can result in a significant increase in motor vehicle emissions. This action will propose that updated test procedures be adopted for the certification of gasoline deposit control additives regarding their ability to control fuel injector and intake valve deposits. The adoption of the updated procedures will ensure that the gasoline deposit control program continues to ensure an adequate level of deposit control, thereby preventing an increase in motor vehicle emissions. The updated test procedures require less time to perform and are less costly. Therefore, the adoption of the proposed procedures will reduce the burden on industry of complying with the gasoline deposit control program. The proposed action will not impact small businesses, or state, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4531

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RIN: 2060–AJ61

2992. PROTECTION OF STRATOSPHERIC OZONE: PROCESS FOR EXEMPTING CRITICAL AND EMERGENCY USES OF METHYL BROMIDE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7671c; PL 764

CFR Citation: 40 CFR 82

Legal Deadline: None

Abstract: With this action, EPA will revise the accelerated phaseout regulations that govern the production, import, export, transformation and destruction of substances that deplete the ozone layer. The amendments will incorporate exemptions permitted under the Montreal Protocol on Substances that Deplete the Ozone Layer and recent changes to the Clean Air Act. Specifically, the amendments will create a process to exempt production and consumption of quantities of methyl bromide for critical and emergency uses from the 2005 phaseout of methyl bromide. Because this is an exemption, the rule will confer a benefit on affected entities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 4535

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RIN: 2060–AJ63

2993. ELECTRIC UTILITY STEAM GENERATING UNIT MACT REGULATION

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Judicial, December 15, 2003.
Final, Judicial, December 15, 2004.

Abstract: In December 2000, the EPA determined that regulation of hazardous air pollutant emissions (HAP) from oil- and coal-fired electric utility steam generating units was necessary and appropriate. This finding was based on the results of the study mandated by section 112(n)(1)(A) of the Clean Air Act, as amended. The regulation(s) will be developed under section 112 and will result in standards based on the use of maximum achievable control technology (MACT). The primary benefit will be the reduction of mercury emissions to the atmosphere from coal-fired units but other HAP will also be reduced. Small businesses and State/local/tribal governments could be impacted (particularly those governments owning or operating oil- or coal-fired electric generation facilities).

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Rule	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4571

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2060–AJ65

2994. PORTLAND CEMENT MANUFACTURING INDUSTRY NESHAP: AMENDMENT TO IMPLEMENT COURT REMAND

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 63.1340 to 63.1359 (Revision)

Legal Deadline: None

Abstract: The Portland Cement Manufacturing Industry NESHAP was promulgated June 14, 1999, and has been codified in 40 Code of Federal Regulations 63, subpart LLL. The Sierra Club and the National Lime Association petitioned the court to review subpart LLL, while the American Portland Cement Alliance (APCA) opted to negotiate a settlement agreement. (Note that there is currently a separate rule under development to amend subpart LLL to implement the settlement agreement with the APCA — SAN 4524, RIN 2060-AJ57.) On December 15, 2000, a panel of the D.C. Circuit issued its opinion in National Lime Assn v. EPA. The Court remanded the three standards for which we established floors of no control (hydrogen chloride [HCl], total hydrocarbon [THC], and mercury [Hg]). The Court found that we committed error in not considering other means of control, in particular, control of HAPs in raw materials and in fossil fuels. The Court also remanded that we consider setting beyond-the-floor standards for HAP metals, for which particulate matter (PM) is a surrogate. This action will consist of amendments to respond to the court remand.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4585

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2060–AJ78

2995. • NATIONAL EMISSION STANDARDS FOR COKE OVEN BATTERIES - RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: NPRM, Statutory, October 27, 2001, National Emission Standards for Coke Ovens - Residual Risk Standards.

Abstract: The Clean Air Act (CAA) section 112(f) standard to protect health and the environment is the statutory authority for this rulemaking. In accordance with section 112(f)(2), EPA must promulgate residual risk standards 8 years after promulgation of emission standards. We promulgated emission standards for charging, topside leaks, and door leaks at coke ovens on October 27, 1993. This rule will further reduce coke oven emissions from charging, topside leaks, and door leaks at the affected coke plants.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4620

Sectors Affected: 331111 Iron and Steel Mills

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RIN: 2060–AJ96

2996. • NESHAP: AEROSPACE MANUFACTURING AND REWORK FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart GG. The current action, required by section 112(f) of the CAA, is to assess residual risks from the same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: SAN No. 4653

Sectors Affected: 33641 Aerospace Product and Parts Manufacturing

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RIN: 2060–AK08

2997. • NESHAP: ETHYLENE OXIDE FOR STERILIZATION FACILITIES - RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 6, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4654

Sectors Affected: 3254 Pharmaceutical and Medicine Manufacturing; 311942 Spice and Extract Manufacturing

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RIN: 2060–AK09

2998. • NESHAP: GASOLINE DISTRIBUTION (STAGE I) RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 14, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual

risks and develop additional emission standards, as necessary, to provide an ample margin of safety. The sources covered are Stage I gasoline distribution sources — i.e., sources of air emissions from processes involved with the wholesale distribution of gasoline to gas stations.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4655

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RIN: 2060–AK10

2999. • NESHAP: GROUP I POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 6, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart U. This source category covers chemical process units used to manufacture elastomer products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4656

Sectors Affected: 325212 Synthetic Rubber Manufacturing

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RIN: 2060–AK12

3000. • NESHAP: GROUP II POLYMERS AND RESINS - RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, March 8, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. This source category covers certain chemical process units used to manufacture products. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4657

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK13

3001. • NESHAP: HAZARDOUS ORGANIC NESHAP (HON) RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, April 22, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety. This rule will cover the major sources of air emissions within the synthetic organic chemical industry.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Additional Information: SAN No. 4659

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2060–AK14

3002. • NESHAP: GROUP IV POLYMERS AND RESINS — RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, September 12, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart JJJ. This source category covers chemical process units used to manufacture thermoplastic products from raw materials. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4658

Sectors Affected: 325211 Plastics Material and Resin Manufacturing

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RIN: 2060–AK15

3003. • NESHAP: INDUSTRIAL PROCESS COOLING TOWERS RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 30, 2002.

Abstract: A national emission standard for hazardous air pollutants (NESHAP) for industrial process cooling towers (IPCT) was previously promulgated under Section 112(d) of the Clean Air Act. That standard effectively bans the use of chromium-based water treatment chemicals in IPCT used to remove heat from chemical or industrial processes. The Clean Air Act Section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from IPCT and, if warranted, to develop new risk based standards.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN No. 4660

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RIN: 2060–AK16

3004. • NESHAP: NATIONAL EMISSION STANDARDS FOR MARINE TANK VESSEL LOADING OPERATIONS—RESIDUAL RISK STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 19, 2003, Final Action.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart Y. This source category covers tanks on ships that contain gasoline or crude oil in bulk. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4661

Sectors Affected: 483 Water Transportation

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RIN: 2060–AK17

3005. • NESHAP: PERCHLOROETHYLENE DRY CLEANING FACILITIES RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, September 22, 2002, Final Action.

Abstract: EPA developed technology-based emission standards for this source category under section 112(d) of the Clean Air Act. The current action, required by Section 112(f) of the Clean Air Act, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4662

Sectors Affected: 81232 Drycleaning and Laundry Services (except Coin-Operated)

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RIN: 2060–AK18

3006. • NESHAP: SECONDARY LEAD SMELTING RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, June 23, 2003, Final Action.

Abstract: National emission standards for hazardous air pollutants (NESHAP) for secondary lead smelting were promulgated on June 23, 1995 under Clean Air Act section 112(d). The standards establish emission limitations and work practice standards for all new and existing secondary lead smelters that produce refined lead from lead scrap, mainly lead acid batteries. Clean Air Act section 112(f) requires us to assess within 8 years of promulgation of a NESHAP the remaining risk to the public and to develop additional, more stringent standards if such standards are needed to protect the public health with an ample margin of safety. This action is to examine the remaining risk from secondary lead smelters and to develop new risk based standards, if warranted.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Additional Information: SAN No. 4665

Sectors Affected: 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum)

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RIN: 2060–AK19

3007. • NESHAP: SHIPBUILDING AND SHIP REPAIR SURFACE COATING — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 31, 2003, Final Action.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart II (that's not a capital two, it's a double I). This source category covers air-toxic emissions from the painting of ships under construction or repair in major sources. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4666

Sectors Affected: 336611 Ship Building and Repairing

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RIN: 2060–AK20

3008. • NESHAP: WOOD FURNITURE MANUFACTURING OPERATIONS — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 7, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR part 63, subpart JJ. This source category covers air-toxic emissions from wood-furniture manufacturing, including wood finishing, gluing, and painting. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4667

Sectors Affected: 337 Furniture and Related Product Manufacturing; 337211 Wood Office Furniture Manufacturing

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RIN: 2060–AK21

3009. • NESHAP: HALOGENATED SOLVENT CLEANING - RESIDUAL RISK STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 2, 2002.

Abstract: This action is required by the CAA to assess residual risk and develop standards as necessary to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4668

Sectors Affected: 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing; 337124 Metal Household Furniture Manufacturing; 335999 All Other Miscellaneous Electrical Equipment and Component Manufacturing; 336999 All Other Transportation Equipment Manufacturing; 332116 Metal Stamping; 336 Transportation Equipment Manufacturing; 339 Miscellaneous Manufacturing; 332999 All Other Miscellaneous Fabricated Metal Product Manufacturing

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RIN: 2060–AK22

3010. • NESHAP:MAGNETIC TAPE MANUFACTURING OPERATIONS RESIDUAL RISK STANDARD

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, December 15, 2002.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA. The current action, required by section 112(f) of the CAA, is to assess residual risks and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4669

Sectors Affected: 33461 Manufacturing and Reproducing Magnetic and Optical Media; 334613 Magnetic and Optical Recording Media Manufacturing

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RIN: 2060–AK23

3011. • NESHAP: PRINTING AND PUBLISHING INDUSTRY - RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, May 30, 2004.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart KK. This source category covers air-toxic emissions from many activities located at printing and publishing facilities — primarily the printing process itself, plus affiliated equipment such as cleaning, ink and solvent mixing, chemical storage, and solvent recovery. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4664

Sectors Affected: 322222 Coated and Laminated Paper Manufacturing; 322212 Folding Paperboard Box Manufacturing; 322221 Coated and Laminated Packaging Paper and Plastics Film Manufacturing; 322222 Coated and Laminated Paper Manufacturing; 322225 Laminated Aluminum Foil Manufacturing for Flexible Packaging Uses; 322223 Plastics, Foil, and Coated Paper Bag Manufacturing; 323111 Commercial Gravure Printing; 323112 Commercial Flexographic Printing; 323119 Other Commercial Printing

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RIN: 2060–AK24

3012. • NESHAP: PETROLEUM REFINERIES — RESIDUAL RISK STANDARDS

Priority: Other Significant

Legal Authority: 42 USC 7412

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CFR Citation: 40 CFR 63

Legal Deadline: Final, Statutory, August 31, 2003.

Abstract: EPA developed technology-based standards for this source category under section 112(d) of the CAA, codified in 40 CFR Part 63, Subpart CC. This source category covers air-toxic emissions from equipment at petroleum refineries, such as process vents, storage vessels, and valve leaks. The current action, required by section 112(f) of the CAA, is to assess residual risks from this same source category, and develop additional emission standards, as necessary, to provide an ample margin of safety.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4663

Sectors Affected: 32411 Petroleum Refineries

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RIN: 2060–AK25

3013. PROJECT XL SITE-SPECIFIC RULEMAKING FOR GEORGIA-PACIFIC CORPORATION'S FACILITY IN BIG ISLAND, VIRGINIA

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7401 et seq

CFR Citation: 40 CFR 63 (Revision)

Legal Deadline: None

Abstract: Under the Project XL program, the EPA is supporting a project for the Georgia-Pacific Corporation facility located in Big Island, Virginia. The EPA is promulgating this rule, applicable only to the Georgia-Pacific Big Island facility, to help implement the project. Under the XL project, Georgia-Pacific will install and operate the first commercial scale black liquor gasification system in the United States. This system will provide superior air emissions reductions and energy benefits compared to use of conventional recovery technology for black liquor in the pulp and paper industry. However, since this will be the first commercial scale demonstration of this technology, there is some risk that the technology will take longer than planned to work properly or may not ever work properly. If either of these scenarios happens, Georgia-Pacific requires relief from otherwise applicable air emission standards to allow time for the new technology to achieve expected performance or, in the event of failure, to allow time for Georgia-Pacific to build conventional recovery technology that will meet applicable standards. Without this relief, Georgia-Pacific would not undertake commercialization of this promising technology. Therefore, this rule provides relief (in the form of limited duration compliance extensions)from otherwise applicable hazardous air pollutant emission standards, as needed during the conduct of the XL project.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4471

Sectors Affected: 32211 Pulp Mills; 32211 Pulp Mills

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RIN: 2090–AA26

Environmental Protection Agency (EPA) Completed Actions

Clean Air Act (CAA)

3014. NESHAP: URANIUM HEXAFLUORIDE PRODUCTION

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Notice of Delisting	02/12/02	67 FR 6521

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2060–AH83

3015. PROTECTION OF STRATOSPHERIC OZONE: RECONSIDERATION OF THE 610 NONESSENTIAL PRODUCTS BAN

Priority: Other Significant

CFR Citation: 40 CFR 82(C)

Completed:

Reason	Date	FR Cite
Final Action	11/15/01	66 FR 57511

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AH99

3016. WITHDRAWAL OF AMENDMENTS FOR TESTING AND MONITORING PROVISIONS TO 40 CFR PARTS 60, 61, AND 63

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 60; 40 CFR 61; 40 CFR 63

Completed:

Reason	Date	FR Cite
Direct Final Rule	08/27/01	66 FR 44978

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ85

3017. • NESHAP: FROM PHOSPHORIC ACID MANUFACTURING PLANTS AND PHOSPHATE FERTILIZERS PRODUCTION PLANTS—AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 7412 CAAA sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: The rules are being amended to resolve specific issues and questions raised after promulgation. The changes do not change the projections for environmental benefits, compliance costs, burden on industry, or the number of affected facilities. There are no impacts on small businesses, State, local, or tribal governments. These amendments do not raise any cross-media issues.

Timetable:

Action	Date	FR Cite
Direct Final Rule	12/17/01	66 FR 65072

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4636

Split from RIN 2060-AE44.

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RIN: 2060–AJ94

3018. NESHAP FOR ETHYLENE OXIDE COMMERCIAL STERILIZATION OPERATIONS-MONITORING AMENDMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 63

Completed:

Reason	Date	FR Cite
Final Action	11/02/01	66 FR 55577

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

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RIN: 2060–AI64

3019. SECTION 126 RULE REVISION CORRECTING NOX ALLOWANCE ALLOCATIONS FOR CERTAIN UNITS IN THE FEDERAL NOX BUDGET TRADING PROGRAM

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 95.42(g)(2); 40 CFR 97.43(c)(9)(New); 40 CFR 97.43(a)

Completed:

Reason	Date	FR Cite
Final Action	09/21/01	66 FR 48567

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ47

3020. STANDARDS OF PERFORMANCE FOR NEW SOURCES AND EMISSION GUIDELINES FOR EXISTING SOURCES: LARGE MUNICIPAL WASTE COMBUSTORS AMENDMENT OF STARTUP, SHUTDOWN, AND MALFUNCTION PROVISIONS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 60

Completed:

Reason	Date	FR Cite
Direct Final Rule	11/16/01	66 FR 57824

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ52

3021. CHANGE IN THE DEFINITION OF MAJOR SOURCE FOR OPERATING PERMITS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 70.2

Completed:

Reason	Date	FR Cite
Final Action - Change to Definition of Major Source	11/27/01	66 FR 59161

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ60

3022. NON-CONFORMANCE PENALTIES FOR 2004 AND LATER MODEL YEAR HEAVY-DUTY DIESEL ENGINES AND HEAVY-DUTY DIESEL VEHICLES

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 86.1105

EPA—Clean Air Act (CAA) **Completed Actions**

Completed:

Reason	Date	FR Cite
Final Action	01/16/02	67 FR 2159

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ73

3023. REGULATION TO ESTABLISH NEW DATE FOR RECEIPT OF SUMMER GRADE RFG AT TERMINALS

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 80.78

Completed:

Reason	Date	FR Cite
NPRM	12/03/01	66 FR 60163
Final Action	02/26/02	67 FR 8729

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ79

3024. RELAXATION OF SUMMER GASOLINE VOLATILITY STANDARD FOR DENVER/BOULDER, CO AREA

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 80.27(a)(2) (Revision)

Completed:

Reason	Date	FR Cite
Direct Final Rule	01/24/02	67 FR 3435

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ80

3025. PROTECTION OF STRATOSPHERIC OZONE: ALLOCATION OF YEAR 2002 ESSENTIAL USE ALLOWANCES

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 82.4(t)(2)

Completed:

Reason	Date	FR Cite
NPRM	11/01/01	66 FR 55145
Final Action	02/11/02	67 FR 6352

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2060–AJ81

3026. • NESHAP: REVISION OF SOURCE CATEGORY LIST UNDER SECTION 112 OF THE CAA

Priority: Info./Admin./Other

Legal Authority: Clean Air Act sec 112

CFR Citation: 40 CFR 63

Legal Deadline: None

Abstract: Section 112 of the Clean Air Act requires the EPA to publish a list of major and area source categories which emit one or more of the hazardous air pollutants listed in section 112. An initial list of source categories was finalized in July 1992 and contained 174 categories, Section 112 further requires the Agency to prioritize the listed categories such that standards are promulgated for 40 source categories within 2 years of enactment, 25 percent of all initially listed categories within 4 years, 50 percent within 7 years, and 100 percent within 10 years. The schedule for the promulgation of emissions standards was published in December 1993. This action revises the list of source categories and the corresponding schedule for emission standards. This is in accordance with the statute, which requires the Agency to periodically amend the list in response to public comment or new information, and no less often than every eight years. The list and schedule were last updated on February 12, 2002.

Timetable:

Action	Date	FR Cite
Notice: Revision	06/04/96	61 FR 28197
Notice: Correction Second Notice	07/18/96	61 FR 37542
ANPRM Listing Research and Development Facilities	05/12/97	62 FR 25877
Notice Second Revision	02/12/98	63 FR 07155
Notice	05/17/99	64 FR 26743
Notice	11/18/99	64 FR 63025
Notice	01/30/01	66 FR 8220
Notice	02/12/02	67 FR 6521

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4284

2060-AI52

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RIN: 2060–AJ92

Environmental Protection Agency (EPA) **Prerule Stage**
Atomic Energy Act (AEA)

3027. PROTECTIVE ACTION GUIDANCE FOR DRINKING WATER

Priority: Other Significant

Legal Authority: 42 USC 2021(h) AEA of 1954 sec 274(h); Reorganization Plan No. 3 of 1970; PL 96-295 sec 304; EO 12241

CFR Citation: 41 CFR 351

Legal Deadline: None

Abstract: This action will result in Federal protective action guidance (PAG) for State and local officials to use in the event of a nuclear accident to protect the general public from the adverse health effects associated with the ingestion of drinking water that is contaminated with radioactive material. The PAG will be incorporated into the Revision of the PAG Manual. The draft guidance will be submitted to the PAG Subcommittee of the Federal Radiological Preparedness Coordinating Committee (FRPCC) for review and comment. Members of the PAG subcommittee include representatives from DOE, DOD, FEMA, NRC, HHS, USDA, DOT, and the Conference of Radiation Control Program Directors (CRCPD). When a consensus among the representatives is reached, the guidance is recommended to the full FRPCC for endorsement. After that endorsement is obtained a notice of the availability of a revised EPA 400-R-92-001, Manual of Protective Action Guides and Protective Actions for Nuclear Incidents will be published in the Federal Register. This action is temporarily delayed until the FDA's revised PAGs for Food can be evaluated.

Timetable:

Action	Date	FR Cite
Notice of Availability	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3602

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RIN: 2060–AF39

Environmental Protection Agency (EPA) **Proposed Rule Stage**
Atomic Energy Act (AEA)

3028. ENVIRONMENTAL RADIATION PROTECTION STANDARDS FOR THE DISPOSAL OF LOW-ACTIVITY MIXED RADIOACTIVE WASTE

Priority: Other Significant

Legal Authority: 42 USC 2021 Atomic Energy Act of 1954; Reorganization Plan No. 3 of 1970; Nuclear Waste Policy Act of 1982

CFR Citation: 40 CFR 193

Legal Deadline: None

Abstract: This voluntary action will allow low-activity mixed radioactive wastes to be disposed in facilities that meet the design requirements for RCRA-C disposal cells. The wastes intended to be disposed of in these cells are mixed wastes, consisting of a chemically hazardous component and low levels of radioactivity. These wastes are anticipated to arise in the commercial sector from various sources. The rule is intended to increase disposal options for these wastes and offer a streamlined regulatory process which melds hazardous chemical protection and radioactivity protection requirements while protecting public health and safety. The rule does not mandate a disposal method, but rather permits an alternative to existing disposal methods. The U.S. Nuclear Regulatory Commission is anticipated to be the implementing Agency for the application of this rule.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4054

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RIN: 2060–AH63

3029. REVISION OF THE 40 CFR PART 194 WASTE ISOLATION PILOT PLANT COMPLIANCE CRITERIA

Priority: Substantive, Nonsignificant

Legal Authority: 106 Stat. 4777 as amended by the 1996 LWA Amendments; PL 102-579; PL 104-201; Waste Isolation Pilot Plant Land Withdrawal Act of 1992

CFR Citation: 40 CFR 194.8(b)

Legal Deadline: None

Abstract: This rule would change some of the language in Section 194.8(b) of the Waste Isolation Pilot Plant (WIPP) Compliance Criteria without deleting any of the requirements for the Department of Energy's (DOE) compliance. Section 194.8(b) explains the process by which EPA inspects and approves waste characterization processes at DOE transuranic waste sites that send waste to the WIPP. The 194.8(b) process involves a public comment period. Most of the language in section 194.8(b) will be left intact. The most significant change would eliminate a statement that EPA will follow the 194.8(b) notice-and-comment process each time a previously approved site seeks to send a different waste stream to the WIPP. Other changes would correct certain terminology and clarify the important elements of our inspections. This rule would eliminate the ambiguity of the current language and replace it with: (1) a site can ship waste once EPA has approved it using a notice-and-comment process; (2) EPA will perform follow-up inspections under a separate authority that does not call for public comment; and (3) EPA can disallow shipment if an initial or follow-up inspection reveals significant compliance issues. The main purpose of this revision is to eliminate EPA's obligation to approve DOE sites on a waste stream by waste stream basis. Our understanding of DOE's operations has improved considerably since 194.8(b) went final in May 1998. We now recognize that approving sites by waste stream, using a comment period,

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is unnecessarily time-consuming for EPA staff, confusing for DOE, and generates almost no public comment. In addition, repetitive inspections at sites are expensive and provide little additional regulatory confidence. This rule will save money and will greatly improve the effectiveness of our interactions with DOE.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4403

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RIN: 2060–AJ07

Environmental Protection Agency (EPA) **Proposed Rule Stage**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3030. DATA REQUIREMENTS FOR PESTICIDE REGISTRATION; TOXICOLOGY, EXPOSURE AND RESIDUE CHEMISTRY

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a) to 136(y)

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements specifically necessary for the Agency to evaluate the registrability of pesticide products. The revisions will clarify all data requirements to reflect current practice. Procedural and explanatory sections of the current regulations will be amended to make them consistent with the revised data requirements and new use indexing. EPA intends to accomplish this revision through a series of proposals, covering different data disciplines and product types. This proposal is currently limited to product chemistry, and human health and exposure data requirements for conventional pesticides.

Timetable:

Action	Date	FR Cite
NPRM Product Chemistry and Human Health Portions	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 2687

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AC12

3031. ENDOCRINE DISRUPTOR SCREENING PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 2603 TSCA; 21 USC 346(a) FFDCA; 42 USC 300(a)(17) SDWA; 7 USC 136 FIFRA

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final policy statement will set forth EPA's Endocrine Disruptor Screening Program and the procedures to be followed by regulated entities and the Agency. EPA published a proposed policy statement setting forth the Screening Program on December 28, 1998. In the final policy statement, EPA will describe the screens and tests that it will require as part of the Program. It also will address certain issues related to implementing the Program. The major actions in 2003-2005 will be the standardization and validation of assays in the screening battery and the completion of the priority setting system.

Timetable:

Action	Date	FR Cite
Notice Outline of Screening Program	08/11/98	63 FR 42852
Notice Proposed Screening Program & Request for Comment	12/28/98	63 FR 71542
NPRM Proposed Procedural Rule	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4143

In August 2000, the Agency submitted the required status report to Congress. In March 2002, the Agency submitted the requested status report to Congress on the Endocrine Disruptor Methods Validation Subcommittee under the National Advisory Council on Environmental Policy and Technology.

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RIN: 2070–AD26

3032. PROCEDURES FOR THE PESTICIDE REGISTRATION REVIEW PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a (g); 7 USC 136w

CFR Citation: Not Yet Determined

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) **Proposed Rule Stage**

Legal Deadline: None

Abstract: The Agency will establish procedures to implement section 3(g) of the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA) which provides for periodic review of pesticide registrations. The goal of these regulations is to review a pesticide's registration every 15 years.

Timetable:

Action	Date	FR Cite
ANPRM Pesticides-Procedural Regulations for Registration Review	04/26/00	65 FR 24586
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4170

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD29

3033. DATA REQUIREMENTS FOR ANTIMICROBIAL PESTICIDE REGISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136a, 136c, 136w

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update and revise its pesticide data requirements for antimicrobial products. The data requirements specify the data that are required for EPA to evaluate the registrability of a pesticide product. The revisions will clarify all antimicrobial data requirements to reflect current practice.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4173

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD30

3034. PESTICIDE EMERGENCY EXEMPTION REGULATIONS

Priority: Other Significant

Legal Authority: 7 USC 136(p)

CFR Citation: 40 CFR 166

Legal Deadline: None

Abstract: EPA will propose revisions to its regulations on emergency exemptions under section 18 of the Federal Insecticide, Fungicide and Rodenticide Act. Emergency exemptions allow temporary use of a pesticide not in accordance with registration requirements when emergency conditions exist. In the 1995 Presidential Reinvention Initiative, EPA identified a number of issues, which have been refined through informal discussions with States, user groups, and other stakeholders.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4216

Sectors Affected: 9241 Administration of Environmental Quality Programs

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RIN: 2070–AD36

3035. DATA REQUIREMENT FOR PESTICIDE REGISTRATION; ENVIRONMENTAL FATE AND ECOLOGICAL EFFECTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a) to 136(y)

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements specifically necessary for the Agency to evaluate the registrability of pesticide products. The revisions will clarify all data requirements to reflect current practice. Procedural and explanatory sections of the current regulations will be amended to make them consistent with the revised data requirements and new use indexing. EPA intends to accomplish this revision through a series of proposals, covering different data disciplines and product types. This proposal covers the data requirements for environmental fate and ecological effects for conventional pesticides.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4496

Split from RIN 2070-AC12.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD47

3036. DATA REQUIREMENTS; BIOCHEMICAL AND MICROBIAL PESTICIDES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136

CFR Citation: 40 CFR 158

Legal Deadline: None

Abstract: EPA will update the data requirements necessary to register a biochemical or microbial pesticide product. The revisions will codify data requirements to reflect current regulatory and scientific standards. The data requirements will cover all scientific disciplines for biochemical and microbial pesticides, including product chemistry and residue chemistry, toxicology and environmental fate and effects. Efficacy data may also be included. The revision will not include plant-incorporated protectants.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4596

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD51

3037. EXEMPTION OF MEDICAL DEVICES TREATED WITH ANTIMICROBIAL PESTICIDES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136w

CFR Citation: 40 CFR 152.20

Legal Deadline: None

Abstract: This action will exempt from pesticide regulation medical devices treated with antimicrobial pesticides. EPA has determined that these treated medical devices are adequately regulated by the Food and Drug Administration. This action would eliminate dual regulation of these products by EPA and FDA. EPA would continue to regulate the antimicrobial pesticide used to treat the medical device.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4609

Sectors Affected: 32619 Other Plastics Product Manufacturing; 31499 All Other Textile Product Mills

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RIN: 2070–AD54

3038. PLANT-INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR PIPS THAT ACT BY PRIMARILY AFFECTING THE PLANT

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants that act by primarily affecting the plant to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to prevent, repel or mitigate any pest. These substances are also chemical pesticide residues under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants derived through genetic engineering from sexually compatible plants from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM FIFRA Exemption	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM	04/23/99	64 FR 19958
Supplemental NPRM	07/19/01	66 FR 37855
NPRM FFDCA Tolerance Exemption	09/00/02	
Final Action FFDCA Tolerance Exemption	12/00/03	
Final Action FIFRA Exemption	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4612

This action is a continuation of the action described in RIN 2070-AC02. Since several pieces of that action are now finalized, the Agency is splitting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD56

Environmental Protection Agency (EPA)

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

Final Rule Stage

3039. PESTICIDE MANAGEMENT AND DISPOSAL; STANDARDS FOR PESTICIDE CONTAINERS AND CONTAINMENT

Priority: Other Significant

Legal Authority: 7 USC 136(q) FIFRA sec 19; 7 USC 136(a) FIFRA sec 3; 7 USC 136(w) FIFRA sec 25

CFR Citation: 40 CFR 156; 40 CFR 165

Legal Deadline: None

Abstract: FIFRA section 19 gives EPA authority to regulate the management of pesticides and their containers, including storage, transportation and disposal. As proposed, this rule would establish standards for removal of pesticides from containers and for rinsing containers; facilitate the safe use, refill, reuse, and disposal of pesticide containers by establishing standards for container design, labeling, and refilling; and establish requirements for containment of stationary bulk containers and for containment of pesticide-dispensing areas.

Timetable:

Action	Date	FR Cite
NPRM (Container Design & Residue Removal & Bulk Containment)	02/11/94	59 FR 6712
Supplemental NPRM Extension of Comment Period	12/21/99	64 FR 71368
Supplemental NPRM Extension of Comment Period	02/24/00	65 FR 9234
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 2659

Supplemental NPRM-
http://www.epa.gov/fedrgstr/EPA-PEST/1999/October/Day-21/p27397.htm

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 11511 Support Activities for Crop Production; 42291 Farm Supplies Wholesalers

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RIN: 2070–AB95

3040. WPS; PESTICIDE WORKER PROTECTION STANDARD; GLOVE AMENDMENT

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(w)

CFR Citation: 40 CFR 170

Legal Deadline: None

Abstract: This final rule would create greater flexibility in requirements of the 1992 Worker Protection Standard related to the use of gloves by workers and applicators.

Timetable:

Action	Date	FR Cite
NPRM	09/09/97	62 FR 47544
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 3731

NPRM-
http://www.epa.gov/fedrgstr/EPA-PEST/1997/September/Day-09/p23833.htm

Sectors Affected: 1131 Timber Tract Operations; 115 Support Activities for Agriculture and Forestry; 1114 Greenhouse, Nursery and Floriculture Production; 111 Crop Production

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RIN: 2070–AC93

3041. REGISTRATION REQUIREMENTS FOR ANTIMICROBIAL PESTICIDE PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 136(a)(h); 7 USC 136(w)

CFR Citation: 40 CFR 152

Legal Deadline: Final, Statutory, September 15, 2000, The Final Rule is due 240 days after close of comment period.

Abstract: This regulation will specify antimicrobial registration reforms that will reduce to the extent possible the review time for antimicrobial pesticides. The regulation will clarify criteria for completeness of applications, and will specify or refer to a definition of the various classes of antimicrobial pesticide use patterns and the associated data and labeling requirements that would be consistent

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EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) **Final Rule Stage**

with the degree and type of risk presented by each class. In addition, the regulation will also include labeling standards for public health antimicrobial products. This regulation will also implement some general provisions of FIFRA pertaining to all pesticides, including labeling requirements. EPA intends to promulgate these last provisions separately from the antimicrobial portion of the proposal.

Timetable:

Action	Date	FR Cite
NPRM Reg. Require. for Anti Pest. Products/Other Pest Reg Changes	09/17/99	64 FR 50671
Notice Extends Comment Period to January 18, 2000	11/16/99	64 FR 62145
Final Action Labeling and Other Regulatory Portions	12/14/01	66 FR 64759
Final Action Antimicrobial Procedural Portion Only	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3892

Sectors Affected: 32519 Other Basic Organic Chemical Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 32561 Soap and Cleaning Compound Manufacturing

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RIN: 2070–AD14

Environmental Protection Agency (EPA) **Long-Term Actions**

Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

3042. PESTICIDES; TOLERANCE PROCESSING FEES

Priority: Other Significant

Legal Authority: 21 USC 346(a)

CFR Citation: 40 CFR 180.33

Legal Deadline: None

Abstract: In 1996, the Food Quality Protection Act amended the Federal Food, Drug, and Cosmetic Act to require EPA to charge tolerance fees that, in the aggregate, will cover all costs associated with processing tolerance actions, including filing a tolerance petition, and establishing, modifying, leaving in effect, or revoking a tolerance or tolerance exemption. Since 1983 (the last time a cost analysis was conducted), factors such as expanded data requirements, changes in risk assessment methods, improvements in data base management and tracking systems, and the increasing complexity of scientific review of petitions have resulted in costs substantially exceeding the fees currently charged. This rule will adjust the fee structure and fee amounts for tolerance actions. A congressional provision currently bars the Agency from finalizing this rulemaking.

Timetable:

Action	Date	FR Cite
NPRM Pesticides-Tolerance Processing Fees	06/09/99	64 FR 31039
Supplemental NPRM Processing Fees for Inert Ingredients	07/24/00	65 FR 45569
Supplemental NPRM Reopening of Comment Period	08/31/00	65 FR 52979
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4027

NPRM-
http://www.epa.gov/fedrgstr/EPA-PEST/1999/June/Day-09/p14477.htm
Supplemental NPRM-
http://www.epa.gov/fedrgstr/EPA-PEST/2000/July/Day-24/p18646.htm

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD23

3043. PESTICIDE TOLERANCE REASSESSMENT PROGRAM

Priority: Routine and Frequent

Legal Authority: 21 USC 346(a) to 346(q)

CFR Citation: 40 CFR 180

Legal Deadline: Other, Statutory, August 3, 2002. See additional information.

Abstract: EPA will reassess pesticide tolerances and exemptions for raw and processed foods established prior to August 3, 1996, to determine whether they meet the reasonable certainty of no-harm standard of the Federal Food, Drug and Cosmetic Act (FFDCA). FFDCA sec. 408(q), as amended by the Food Quality Protection Act (FQPA). FQPA requires that EPA conduct this reassessment on a phased 10-year schedule. Based on its reassessment, EPA will take a series of regulatory actions to modify or revoke tolerances. Since such actions are issued on a chemical-by-chemical basis, this regulatory plan entry does not list the individual actions that are likely to occur under this program. For status information about the individual chemicals, go to http://www.epa.gov/pesticides.

EPA—Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) **Long-Term Actions**

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4175

LEGAL DEADLINE CONT: EPA is required to complete reassessments on a phased schedule of: 33 percent by August 3; 1999; 66 percent by August 3; 2002; and 100 percent by August 3; 2006. The Agency will continue to assess pesticide tolerances throughout year.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD24

3044. PLANT-INCORPORATED PROTECTANTS (FORMERLY PLANT PESTICIDES) RULEMAKINGS

Priority: Other Significant

Legal Authority: 21 USC 346(a) et seq; 7 USC 136 et seq

CFR Citation: 40 CFR 152.20; 40 CFR 174

Legal Deadline: None

Abstract: Substances that plants produce to protect themselves against pests are pesticides under FIFRA if humans intend to use them to destroy, prevent, repel or mitigate any pest. The Agency designates these substances, along with the genetic material necessary to produce them, plant-pesticides. This rulemaking will change the name of these pesticides to plant-incorporated protectants and will clarify the relationship between plants and plant-incorporated protectants and exempt conventional breeding and establishes a new part in title 40 of the CFR, part 174, which consolidates regulations specific for plant-pesticides in one part of the CFR. The proposed consolidation is expected to benefit the public by providing greater focus, enhanced clarity and ease of use. These actions may reduce burden on both the regulated community and EPA.

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958
Final Action Plant-Incorporated Protectants (PIPs) Under FIFRA	07/19/01	66 FR 37771
Supplemental NPRM Seeks Additional Comment on Other Exemptions	07/19/01	66 FR 37855
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 2684

The Agency has created a new Agenda entry for the action that is still pending.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AC02

3045. PLANT-INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE BASED ON VIRAL COAT PROTEINS

Priority: Other Significant

Legal Authority: 21 USC 346(a) et seq; 7 USC 136 et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants based on viral coat proteins to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to prevent, repel or mitigate any pest. These substances are also chemical pesticide residues under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants derived through genetic engineering from sexually compatible plants from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958
Supplemental NPRM Seeks Additional Comment based on NAS Report	07/19/01	66 FR 37855
FFDCA Final Action	06/00/03	
FIFRA Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4602

This action is a continuation of the action described in RIN 2070-AC02. Since several pieces of that action are now finalized, the Agency is splitting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD49

3046. PESTICIDE MANAGEMENT AND DISPOSAL

Priority: Other Significant.

Legal Authority: 7 USC 136 et seq

CFR Citation: 40 CFR 165

Legal Deadline: None

Abstract: This action develops procedures for mandatory and voluntary recall actions under section 19(b) of FIFRA and would establish criteria for acceptable storage and disposal plans which registrants may submit to this Agency to become eligible for reimbursement of storage costs. This action establishes procedures for indemnification of owners of suspended and canceled pesticides for disposal.

Timetable:

Action	Date	FR Cite
NPRM	05/05/93	58 FR 26856
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 3432

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RIN: 2020–AA33

3047. GROUNDWATER AND PESTICIDE MANAGEMENT PLAN RULE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 7 USC 136(a) FIFRA sec 3; 7 USC 136(w)

CFR Citation: 40 CFR 152.170

Legal Deadline: None

Abstract: This regulation would establish Pesticide Management Plans (PMPs) as a new regulatory requirement for certain pesticides. Unless a State or tribal authority has an EPA-approved Plan specifying risk-reduction measures, use of the chemical would be prohibited. The rule would also specify procedures and deadlines for development, approval and modification of plans by States and tribal authorities.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33259
Notice of Availability re Metolachlor	02/23/00	65 FR 8925
Supplemental NPRM - Notice of Availability & Extension Comment Period	03/24/00	65 FR 15885
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3222

Sectors Affected: 9241 Administration of Environmental Quality Programs

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RIN: 2070–AC46

3048. PLANT-INCORPORATED PROTECTANTS (PIPS); EXEMPTION FOR THOSE DERIVED THROUGH GENETIC ENGINEERING FROM SEXUALLY COMPATIBLE PLANTS

Priority: Other Significant

Legal Authority: 7 USC 136 et seq; 21 USC 346a et seq

CFR Citation: 40 CFR 174

Legal Deadline: None

Abstract: EPA is considering the addition of plant-incorporated protectants derived through genetic engineering from sexually compatible plants to its plant-incorporated protectants exemptions at 40 CFR 174. Substances which plants produce for protection against pests, and the genetic material necessary to produce them, are pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), if humans intend these substances to prevent, repel or mitigate any pest. These substances are also chemical pesticide residues under the Federal Food, Drug, and Cosmetic Act (FFDCA). EPA has determined that it will no longer issue split registrations for biotechnology products. Therefore, EPA is concurrently considering the exemption of plant-incorporated protectants derived through genetic engineering from sexually compatible plants from the requirement of a tolerance under section 408 of the FFDCA. Due to public interest and new scientific information, additional public comment on this proposal, originally published in 1994, was requested in a recent Supplemental Proposal (66 FR 37855).

Timetable:

Action	Date	FR Cite
NPRM	11/23/94	59 FR 60496
Supplemental NPRM	07/22/96	61 FR 37891
Supplemental NPRM	05/16/97	62 FR 27132
Supplemental NPRM Request for Comment on Alternate Name	04/23/99	64 FR 19958

Action	Date	FR Cite
Supplemental NPRM Extension of Comment Period	08/20/01	66 FR 43552
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4611

This action is a continuation of the action described in RIN 2070-AC02. Since several pieces of that action are now finalized, the Agency is splitting this piece into a separate Agenda entry so that it can continue to be tracked separately.

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 111 Crop Production; 54171 Research and Development in the Physical Sciences and Engineering Sciences

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RIN: 2070–AD55

3049. ACCEPTABILITY OF RESEARCH USING HUMAN SUBJECTS

Priority: Other Significant

Legal Authority: 7 USC 136a; 21 USC 346a

CFR Citation: 40 CFR 26 (Revision)

Legal Deadline: None

Abstract: EPA is evaluating how its current policy with respect to the protection of human research subjects should be applied to testing not conducted or supported by the Agency. Current EPA regulations apply to research conducted or supported by the Agency or otherwise subject to regulation. No action has been taken to give effect to the otherwise-subject-to-regulation phrase. In addition, EPA has asked the advice of the National Academy of Sciences on several issues surrounding the acceptability and interpretation of third-party studies involving deliberate dosing of human subjects for the purpose of defining or quantifying toxic endpoints. EPA will seek public comment on issues related to Agency use of human research data in its regulatory decisionmaking. EPA believes the process being initiated will serve two important Agency goals: ensuring the availability of sound and appropriate scientific data in its decisions, and protection of the interests, rights and safety of human research subjects. EPA may issue one or more documents, which may include policy statements, rulemaking or requests for public comment.

Timetable:

Action	Date	FR Cite
ANPRM	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4610

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing

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RIN: 2070–AD57

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA)

Prerule Stage

3050. TESTING AGREEMENT FOR CERTAIN OXYGENATED FUEL ADDITIVES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA's Office of Air and Radiation (OAR), in the administration of section 211 of the Clean Air Act (CAA), has requested that OPPT use its TSCA section 4 testing authority to obtain health effects data on a number of oxygenated fuel additives (OFA's). These data are needed by EPA and others to increase understanding of the toxicity of these substances individually and in comparison to each other as well as to other OFAs such as methyl t-butyl ether (MTBE). EPA will be soliciting interested parties to work on an Enforceable Consent Agreement (ECA) under TSCA section 4, through which responsible parties can agree to provide data to EPA.

Timetable:

Action	Date	FR Cite
Notice Solicit Interested Parties	06/00/02	
Notice ECA	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4174

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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EPA—Toxic Substances Control Act (TSCA) **Prerule Stage**

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RIN: 2070–AD28

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA) **Proposed Rule Stage**

3051. TEST RULE; CERTAIN CHEMICALS ON THE ATSDR PRIORITY LIST OF HAZARDOUS SUBSTANCES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 42 USC 9604(i) CERCLA 104(i); 42 USC 9601 CEERCLA; 15 USC 2611 TSCA 12; 42 USC 7401 112(b)(4) CAA; 42 USC 7412 (b)(4)&(b)(1) CAA; 42 USC 7403 (d) CAA

CFR Citation: 40 CFR 790

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of eight chemicals to fulfill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(i). Under CERCLA, ATSDR is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific community. The information would be used in conducting comprehensive public health assessments of populations living near hazardous waste sites. Scientific data improves the quality of risk assessments used by EPA, other Federal agencies, and State and local governments. The risk assessments affect standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. In addition, this action would require manufacturers and processors to develop data for these chemicals that will be used by EPA under the Clean Air Act (CAA) to evaluate residual risks from hazardous air pollutants (HAPs) on the list of HAPs in the CAA under section 112(f), 42 USC 7412(f) and sections 112(d and e). Data from this action would also be used to support implementation of several provisions of section 112 of the CAA including, determining risks remaining after the application of technology-based standards under section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed (delisted) from section (b)(1) of the CAA list of HAPs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2563

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB79

3052. TEST RULE; CERTAIN METALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12; 15 USC 2625 TSCA 26; 42 USC 9604(i) CERCLA 104(i)

CFR Citation: 40 CFR 790

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) requiring manufacturers and processors of certain metals to fill data needs identified by the Agency for Toxic Substances and Disease Registry (ATSDR), the National Toxicology Program (NTP), and EPA pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) section 104(I). Under CERCLA, ATSDR is to establish a list of priority hazardous substances found at superfund sites, develop toxicological profiles for the hazardous substances, identify priority data needs, and establish a research program obtaining the necessary data. This action is a component of ATSDR's research program. Data from this action would provide specific information about the substances for the public and scientific community. The information would be used in conducting comprehensive public health assessments of populations living near hazardous waste sites. Scientific data improves the quality of risk assessments used by EPA, other Federal agencies, and State and local governments. The risk assessments affect standards, guidelines, listing/delisting, and other decisions affecting public health and the environment. The metals are also hazardous air pollutants (HAPs) under the Clean Air Act (CAA) section 112. Data from this action would also be used to implement several provisions of section 112 of the CAA, including determining risks remaining after the application of technology based on standards under section 112(d) of the CAA, estimating the risks associated with accidental releases, and determining whether or not substances should be removed from the CAA section (b)(1) list of HAPs (delisting).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

EPA—Toxic Substances Control Act (TSCA) **Proposed Rule Stage**

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3882

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD10

3053. TEST RULE; DEVELOPMENTAL AND REPRODUCTIVE TOXICITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2607(a); 15 USC 2611; 15 USC 2625

CFR Citation: 40 CFR 799; 40 CFR 704

Legal Deadline: None

Abstract: EPA is proposing a test rule under section 4 of the Toxic Substances Control Act (TSCA) that would require manufacturers, defined by statute to include importers, and processors of seven substances to conduct testing for developmental and/or reproductive toxicity. EPA is also proposing reporting rules for two of the seven substances. These rules would require the reporting of production volumes so it will be possible to determine when the testing program can be triggered for the two substances without causing a significant impact on reviewers. This is a reproposal of a test rule announced March 4, 1991 (56 FR 9092).

Timetable:

Action	Date	FR Cite
NPRM	03/04/91	56 FR 9092
NPRM Reproposal	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4395

Sectors Affected: 325 Chemical Manufacturing; 32411 Petroleum Refineries

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RIN: 2070–AD44

3054. FOLLOW-UP RULES ON EXISTING CHEMICALS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA 5; 15 USC 2607 TSCA 8

CFR Citation: 40 CFR 704; 40 CFR 721; 40 CFR 707; 40 CFR 710

Legal Deadline: None

Abstract: EPA has established a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support planned or ongoing risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 8 to require reporting of appropriate needed information by the manufacturers, importers and/or processors of these chemicals. Individual proposed or final rules will be published on at least the chemicals listed below.

Timetable:

Action	Date	FR Cite
NPRM 2,4-Pentanedione SNUR	09/27/89	54 FR 39548
NPRM Chloranil	05/12/93	58 FR 27980
NPRM Benzidine-based Chemical Substances	08/30/95	60 FR 45119
Final Action Benzidine-based Chemical Substances	10/07/96	61 FR 52287
NPRM Heavy Metal-Based Pigments in Aerosol Spray Paints SNUR	01/15/02	67 FR 1937
NPRM p-Amino-phenol & Bromochlo-romethane 8(a) Chemical Specific Rule	05/00/02	
NPRM 2 ,4-Pentanedione SNUR (Reproposal)	05/00/02	
Final Action Heavy Metal-Based Pigments in Aerosol Spray Paints SNUR	06/00/02	
NPRM Methylcyclopentane SNUR	06/00/02	
NPRM 2-Ethoxyethanol & 2-Methoxyethanol & 2-Methoxyethanol Acetate	06/00/02	
NPRM Amendment to Benzidine-based Chemical Substances SNUR	12/00/02	
NPRM o-Tolidine & o-Dianisidine-based Dyes (Benzidine Congener Dyes)	03/00/03	
NPRM Certain Chemical Substances No Longer in Production SNUR	06/00/03	
Final Action Amendment to Benzidine-based Chemical Substances SNUR	06/00/03	
Final Action Final Chloranil SNUR	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 1923

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AA58

3055. SIGNIFICANT NEW USE RULE; SELECTED FLAME RETARDANT CHEMICAL SUBSTANCES FOR USE IN RESIDENTIAL UPHOLSTERED FURNITURE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5

CFR Citation: 40 CFR 704; 40 CFR 721; 40 CFR 707; 40 CFR 710

Legal Deadline: None

Abstract: EPA is proposing a significant new use rule (SNUR) under section 5 of the Toxic Substances Control Act (TSCA) covering certain flame retardant chemicals for use in residential upholstered furniture. The SNUR would require companies wanting to import or manufacture these chemicals for the significant new uses described in the proposed rule to submit a significant new use notice (SNUN) to the Agency at least 90 days prior to beginning those activities.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4512

Split from RIN 2070-AA58.

Sectors Affected: 325 Chemical Manufacturing; 313 Textile Mills; 337121 Upholstered Household Furniture Manufacturing

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RIN: 2070–AD48

3056. POLYCHLORINATED BIPHENYLS (PCBS); EXEMPTIONS FROM THE PROHIBITIONS AGAINST MANUFACTURING, PROCESSING, AND DISTRIBUTION IN COMMERCE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2605 TSCA sec 6(e)(3)(B)

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: Section 6(e)(3)(B) of the Toxic Substances Control Act (TSCA) provides that the Administrator may grant, by rule, exemptions from the prohibitions against manufacturing, processing and distribution in commerce of PCBs upon finding that 1) no unreasonable risk to health or the environment will occur, and 2) good faith efforts have been made by the petitioner to develop a substitute for PCB which does not pose an unreasonable risk of injury to health or the environment. In addition, the Interim Procedural Rules were amended to require certain petitioners to reapply for EPA approval to continue PCB activities previously approved by EPA.

Timetable:

Action	Date	FR Cite
NPRM (1) Group I	12/06/94	59 FR 62875
NPRM (2) Group II	05/00/02	
Final Action (1) Group I	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 2150

Sectors Affected: 211 Oil and Gas Extraction; 2211 Electric Power Generation, Transmission and Distribution; 31-33 Manufacturing; 5133 Telecommunications; 6113 Colleges, Universities and Professional Schools; 622 Hospitals; 921 Executive, Legislative, Public Finance and General Government

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RIN: 2070–AB20

3057. POLYCHLORINATED BIPHENYLS (PCBS); USE AUTHORIZATIONS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 2605(e) TSCA sec 6(e)

CFR Citation: 40 CFR 761

Legal Deadline: None

Abstract: The notice of proposed rulemaking that was published on December 6, 1994, covered the manufacture (including import), processing, distribution in commerce, export use, disposal, and marking of PCBs. On June 29, 1998, EPA issued a final rule involving the disposal-related provisions. Other provisions, e.g., certain use authorizations and import provisions, were to be addressed in separate actions. This rulemaking addresses a use authorization for certain non-liquid PCB applications, which although currently in use have never been authorized under the PCB regulations at 40 CFR part 761.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/91	56 FR 26738
NPRM	12/06/94	59 FR 62788
Final Action 1 PCB Disposal Provisions	06/29/98	63 FR 35384
NPRM Notice of Data Availability, Reopening of Comment Period	12/10/99	64 FR 69358
NPRM Extension of Comment Period	04/06/00	65 FR 18018
NPRM Use Authorizations	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4179

Sectors Affected: 2211 Electric Power Generation, Transmission and Distribution; 211 Oil and Gas Extraction; 31-33 Manufacturing; 5133 Telecommunications; 622 Hospitals; 6113 Colleges, Universities and Professional Schools; 921 Executive, Legislative, Public Finance and General Government

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RIN: 2070–AD27

3058. TSCA POLICY STATEMENT ON OVERSIGHT OF TRANSGENIC ORGANISMS (INCLUDING PLANTS)

Priority: Other Significant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 720

Legal Deadline: None

Abstract: As a follow-up to the final Biotechnology Rule under the Toxic Substances Control Act (TSCA) EPA intends to address TSCA oversight of transgenic plants and other organisms. Recent information indicates that transgenic plants and other organisms are being developed for uses which appear to be subject to TSCA jurisdiction. For example, plants are being genetically modified to produce industrial grade, rather than food grade, oils. Many of these plants are subject to oversight by the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture while being tested in the environment. Following APHIS approval of a petition for non-regulated status filed pursuant to APHIS' regulations implementing the Federal Plant Pest Act at 7 CFR part 340, however, these plants cease to be subject to regulation by USDA. Additionally, transgenic animals that are not under the jurisdiction of FDA appear to be subject to TSCA. Such animals may be genetically improved livestock for commercial purposes. The policy statement would address whether EPA should exercise jurisdiction under TSCA over such transgenic organisms prior to their commercial use.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 4598

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RIN: 2070–AD53

3059. • AMENDMENT TO THE PREMANUFACTURE NOTIFICATION EXEMPTIONS; REVISIONS OF EXEMPTIONS FOR POLYMERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604

CFR Citation: 40 CFR 723

Legal Deadline: None

Abstract: This regulatory action will eliminate exemptions under the Polymer Exemption Rule for certain chemicals containing or related to perfluorooctyl sulfonate (PFOS) and perfluorooctonoic acid (PFOA). Based on data on PFOS and PFOA, EPA believes that these substances and other structurally related substances may persist in the environment, bioaccumulate, and be toxic. Certain polymers which contain PFOS, PFOA, or structurally similar substances, or which could release such substances as a degradation-on-incineration product would no longer qualify for exemption from TSCA section 5 reporting.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4635

Sectors Affected: 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 327 Nonmetallic Mineral Product Manufacturing

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RIN: 2070–AD58

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Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA)

Final Rule Stage

3060. TSCA INVENTORY UPDATE RULE AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 2607(a) TSCA 8(a)

CFR Citation: 40 CFR 710

Legal Deadline: None

Abstract: This action would amend the current Toxic Substances Control Act (TSCA) Inventory Update Rule (IUR) to require chemical manufacturers to report to EPA data on exposure-related information and the industrial and consumer end uses of chemicals they produce or import. Currently, EPA requires chemical manufacturers to report the names of the chemicals they produce, as well as the locations of manufacturing facilities and the quantities produced. About 3,000 facilities reported data on about 9,000 unique chemicals during the last reporting cycle under the IUR. Data obtained would be used by EPA and others to: better understand the potential for chemical exposures; screen the chemicals now in commerce and identify those of highest concern; establish priorities and goals for their chemical assessment, risk management and prevention programs, and monitor the programs' progress; encourage pollution prevention by identifying potentially safer substitute chemicals for uses of potential concern; and enhance the effectiveness of chemical risk communication efforts. Additionally, EPA is making other amendments to the IUR. These include removing the inorganic chemicals exemption, thereby providing the information to better assess and manage risks of inorganic chemicals; improving the linkages of IUR data to other data sources to enhance the data's usefulness; and altering the confidential business information (CBI) claim procedures to reduce the frequency of CBI claims, allowing the public greater access to relevant information on toxic chemicals. EPA has held meetings with representatives of the chemical industry, environmental groups, environmental justice leaders, labor groups, State governments and other Federal agencies to ensure public involvement in the TSCA Inventory Update Rule Amendments Project.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46771
Notice Comment Extension	10/22/99	64 FR 56998
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3301

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AC61

3061. TEST RULE; GENERIC ENTRY FOR ITC-RELATED TESTING DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is requiring testing via rules, or will obtain testing through enforceable consent agreements (ECAs) or publish a notice which provides the reasons for not doing so for chemicals listed herein. These chemicals have been designated for priority testing consideration by the ITC or recommended for testing consideration (for which the 12-month statutory requirement does not apply). The list also includes chemicals or categories of chemicals which have been identified for testing consideration by other Federal or other EPA offices through EPA review processes.

Timetable:

Action	Date	FR Cite
ANPRM Aryl Phosphates (ITC List 2)	12/29/83	48 FR 57452
NPRM Aryl Phosphates (ITC List 2)	01/17/92	57 FR 2138
Final Action-ECA DiBasic Esters (CPSC)	08/05/99	64 FR 42692
Final Action-ECA 1,1,2-Trichloroethane (TCE)	06/15/00	65 FR 37550
Final Action-ECA Ethylene Dichloride (EDC)	07/00/02	
Final Action ITC Chemicals (ITC List 28)	12/00/02	
Final Action-ECA Aryl Phosphates (ITC List 2)	12/00/02	
Final Action-ECA Maleic Anhydride	12/00/02	
Final Action-ECA Hydrogen Fluoride	12/00/02	
Final Action-ECA Phthalic Anhydride	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3493

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB94

3062. TEST RULE; HAZARDOUS AIR POLLUTANTS (HAPS)

Priority: Other Significant

Legal Authority: 15 USC 2603 TSCA 4; 42 USC 7412 CAA 112; 42 USC 7403 CAA 103; 15 USC 2611 TSCA 12

EPA—Toxic Substances Control Act (TSCA)

Final Rule Stage

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA is proposing health effects testing under TSCA section 4 in support of programs and activities required under section 112 of the Clean Air Act (CAA), governing Hazardous Air Pollutants (HAPs). Section 112 of the CAA directs EPA to determine the risk to health and the environment remaining after application of technology-based emissions standards to major and area sources. Section 112 also sets forth a mechanism for revising and modifying the statutory list of 189 HAPs under section 112(b), and requirements for an accidental release control program. These data will also be important for the right-to-know program given the large release of these chemicals to the atmosphere. In order to implement these and other programs and requirements under section 112, EPA must identify the health and environment effects of potential concern from exposure to HAPs, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs. In addition, under section 103(d), EPA is required to conduct a research program on the short- and long-term effects of air pollutants on human health, ascertain the minimum data needed to adequately characterize those health and environmental effects, and assess the risks posed by HAPs.

Timetable:

Action	Date	FR Cite
NPRM	06/26/96	61 FR 33178
Supplemental NPRM	12/24/97	62 FR 67466
Supplemental NPRM	04/21/98	63 FR 19694
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3487

Supplemental NPRM-
http://www.epa.gov/fedrgstr/EPA-TOX/1997/December/Day-24/t33451.htm

Supplemental NPRM-
http://www.epa.gov/fedrgstr/EPA-AIR/1998/April/Day-21/a10494.htm

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC76

3063. TEST RULE; CERTAIN HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603; 15 USC 2611 to 12; 15 USC 2625 to 26

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: This action is related to a challenge to industry on the eve of Earth Day, April 21, 1998, to come forward quickly with needed test data on high production volume (HPV) chemicals. This challenge encompasses approximately 2,800 chemicals which are manufactured (including imported) in the aggregate at more than 1 million pounds on an annual basis. The data needed on these chemicals are: acute toxicity, repeat dose toxicity, developmental and reproductive toxicity; mutagenicity ecotoxicity and environmental fate. This rule will require testing and recordkeeping requirements for certain chemicals for which industry does not voluntarily agree to provide testing in a timely manner. The action is part of the Chemical Right-to-Know Initiative, which is described in the Regulatory Plan. Industry has volunteered to conduct needed testing on over 2155 of these HPV chemicals. The first rule proposed testing for 37 unsponsored HPV chemicals with substantial worker exposure. The proposed rule was published in the Federal Register on December 26, 2000.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81658
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3990

See also the Regulatory Plan entry entitled Chemical Right-to-Know Initiative (RIN 2070-AD25; SAN 4176).

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD16

3064. TEST RULE; IN VITRO DERMAL ABSORPTION RATE TESTING OF CERTAIN CHEMICALS OF INTEREST TO THE OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 700 to 799

Legal Deadline: None

Abstract: EPA is requiring manufacturers (which is defined by statute to include importers) and processors of 38 chemical substances of interest to the Occupational Safety and Health Administration (OSHA) to conduct testing for in vitro dermal absorption rate testing. These chemicals, and others, were designated for in vitro dermal absorption rate testing in the 31st, 32nd, and 35th Reports of the TSCA section 4(e) Interagency Testing Committee (ITC) to the EPA. Each of the chemical substances included in this proposed rule is produced in an amount equal to or greater than one million pounds per year. In addition, each of the chemicals in this proposed rule was identified in the National Occupational Exposure Survey (NOES) as having a

total potential worker exposure of greater than 1,000 workers. OSHA has indicated that it needs quantitative measures of dermal absorption rate in order to evaluate the potential hazard of these chemicals to workers.

Timetable:

Action	Date	FR Cite
NPRM OSHA Chemicals Dermal Testing (ITC List 31, 32 & 35)	06/09/99	64 FR 31074
Final Action OSHA Chemical Dermal Testing	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 4425

Please note that this entry was previously identified under RIN 2070-AB07. TSCA requires EPA to publish the NPRM within one year of ITC designation.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD42

3065. FOLLOW-UP RULES ON NON-5(E) NEW CHEMICAL SUBSTANCES

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA sec 5

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA regulates the commercial development of new chemicals that have completed premanufacture notice (PMN) review. In a PMN review, the Agency assesses whether or not a chemical's manufacture, import, process, distribution, use, or disposal outside the activities described in the PMN may present an unreasonable risk. EPA will issue Significant New Use Rules (SNURs) requiring 90-day notification to EPA from any manufacturer, importer, or processor who would engage in activities that are designated as significant new uses. Under the Expedited Follow-up Rule (EFUR) which became effective on October 12, 1989, EPA will identify such new chemicals and publish them in a batch SNUR 3 to 4 times per year. Chemicals that were subject to a proposed SNUR before the effective date of the EFUR or do not qualify under the EFUR, may be regulated individually by notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM Alkyl & Sulfonic Acid & Ammonium Salt (84-1056)	06/11/86	51 FR 21199
NPRM 1-Decanimine-N-Decyl-N-Methyl-N-Oxide (86-566)	12/08/87	52 FR 46496
NPRM Aluminum Cross-linked Sodium Carboxy-methyl-cellulose	06/11/93	58 FR 32628
Final Action Alkyl & Sulfonic Acid & Ammonium Salt (84-1056)	06/00/02	
Final Action 1-Decanimine-N-Decyl-N-Methyl-N-Oxide (86-566)	10/00/02	
Final Action Aluminum Cross-linked Sodium Carboxy-methyl-cellulose	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 1976

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AA59

3066. SIGNIFICANT NEW USE RULE (SNUR); CHEMICAL-SPECIFIC SNURS TO EXTEND PROVISIONS OF SECTION 5(E) ORDERS

Priority: Routine and Frequent

Legal Authority: 15 USC 2604 TSCA sec 5

CFR Citation: 40 CFR 721

Legal Deadline: None

Abstract: When the Agency determines that uncontrolled manufacture, import, processing, distribution, use or disposal of a premanufacture notification (PMN) substance may present an unreasonable risk, it may issue a section 5(e) consent order to limit these activities. However, such orders apply only to the PMN submitter. Once the new substance is entered on the Toxic Substances Control Act (TSCA) chemical inventory, others can manufacture, import or process the substance without controls. Therefore, EPA extends the controls to apply to others by designating manufacture, import or processing of the substances for uses without the specified controls as significant new uses. Under the Expedited Follow-Up Rule, which became effective on October 10, 1989 (54 FR 31314), EPA routinely publishes batch SNURs containing routine section 5(e) and non-5(e) SNURs. However, certain activities, such as modifications, withdrawals, revocations, and SNURs upon which comments are received in the direct final publication process, are subject to notice and comment rulemaking and are listed below.

Timetable:

Action	Date	FR Cite
NPRM Batch SNUR: 84-660/-704 & 84-105/-106/-107 & 85-433	05/27/93	58 FR 30744
NPRM Aromatic Amino Ether (P90-1840)	06/06/94	59 FR 29255
NPRM Alkenyl Ether of Alkanetriol Polymer (93-458)	12/19/94	59 FR 65289

Action	Date	FR Cite
NPRM Certain Chemical Substances (91-1299/95-1667 91-1298 91-1297	06/26/97	62 FR 34421
NPRM Certain Chemical Substances	09/09/98	63 FR 48157
Final Action Batch SNUR: 84-660/-704 & 84-105/-106/-107 & 85-433	05/00/02	
Final Action Certain Chemical Substances (91-1299/95-1667 91-1298 91-1297	05/00/02	
Final Action Aromatic Amino Ether (P90-1840)	05/00/02	
Final Action Alkenyl Ether of Alkanetriol Polymer (93-458)	05/00/02	
Final Action Certain Chemical Substances	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3495

Sectors Affected: 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing

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RIN: 2070–AB27

3067. SIGNIFICANT NEW USE RULE; REFRACTORY CERAMIC FIBERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5; 15 USC 2605 TSCA 6

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA has instituted a program to monitor the commercial development of existing chemicals of concern and/or to gather information to support risk assessments on such chemicals. As these chemicals are identified, EPA will initiate rulemakings under the Toxic Substances Control Act (TSCA) sections 5 and/or 6 to require reporting by the manufacturers, importers and/or processors of these chemicals. Proposed rules may be published on at least the chemicals listed on the timetable below.

Timetable:

Action	Date	FR Cite
NPRM	03/21/94	59 FR 13294
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3528

Sectors Affected: 327999 All Other Miscellaneous Nonmetallic Mineral Product Manufacturing

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RIN: 2070–AC37

3068. SIGNIFICANT NEW USE RULE; PERFLUOROALKYL SULFONATES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2604 TSCA 5

CFR Citation: 40 CFR 704; 40 CFR 721

Legal Deadline: None

Abstract: EPA is proposing a significant new use rule (SNUR) under section 5 of the Toxic Substances Control Act (TSCA) covering certain perfluoroalkyl sulfonates. This SNUR would require companies who wanted to manufacture or import these chemicals for the significant new uses described in the proposed rule to submit a Significant New Use Notice (SNUN) to the Agency at least 90 days prior to beginning those activities.

Timetable:

Action	Date	FR Cite
NPRM	10/18/00	65 FR 62319
Notice of Extension of Comment Period	11/21/00	65 FR 69889
Notice of Public Meeting on Proposed Rule	02/23/01	66 FR 11243
Supplemental NPRM Supplemental Proposed Rule	03/11/02	67 FR 11014
Final Action for Certain Uses in the Proposal	03/11/02	67 FR 11008
Final Action for Remaining Uses in Proposal	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 4475

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2070–AD43

3069. ACRYLAMIDE AND N-METHYLOLACRYLAMIDE GROUTS: WITHDRAWAL OF PROPOSED BAN

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2605 TSCA sec 6; 15 USC 2607 TSCA sec 8

CFR Citation: 40 CFR 764

Legal Deadline: None

Abstract: On October 2, 1991, EPA proposed a regulation to prohibit the

manufacture, importation, distribution and use of acrylamide and NMA grouts based on the unreasonable risk to workers who apply these grouts. Since that time, personal protective equipment that can provide adequate protection to workers has become available. EPA now believes that it may not be necessary to prohibit the use of these grouts to protect the health of grouters.

Timetable:

Action	Date	FR Cite
NPRM	10/02/91	56 FR 49863
Notice Reopening Record for Comments on Durability of NMA	02/28/96	61 FR 7454
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2779

Sectors Affected: 23491 Water, Sewer, and Pipeline Construction; 32519 Other Basic Organic Chemical Manufacturing; 32519 Other Basic Organic Chemical Manufacturing; 42269 Other Chemical and Allied Products Wholesalers; 22132 Sewage Treatment Facilities

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RIN: 2070–AC17

3070. LEAD; REGULATORY INVESTIGATION UNDER THE TOXIC SUBSTANCES CONTROL ACT (TSCA) TO REDUCE LEAD (PB) CONSUMPTION AND USE

Priority: Other Significant

Legal Authority: 15 USC 2605 TSCA 6

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: This action initiates a regulatory investigation under the Toxic Substances Control Act (TSCA) section 6 to determine if uses of lead (Pb) present an unreasonable risk to human health and the environment. The investigation will involve examination of the potential sources of human or other exposure to lead throughout the life cycle. Based on information gathered, EPA may propose TSCA section 6(a) rules to control existing or new uses of Pb which pose an unreasonable risk to human health or the environment, and to explore the desirability and feasibility of discouraging overall consumption of Pb in general.

Timetable:

Action	Date	FR Cite
ANPRM	05/13/91	56 FR 22096
NPRM Proposed Ban of Fishing Sinkers	03/09/94	59 FR 11122
Final Action - Fishing Sinkers	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: SAN No. 3252

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RIN: 2070–AC21

3071. TSCA SECTION 8(A) PRELIMINARY ASSESSMENT INFORMATION RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(a) TSCA sec 8(a)

CFR Citation: 40 CFR 712

Legal Deadline: None

Abstract: These rules add chemicals to the list of chemicals and designated mixtures subject to the requirements of the Toxic Substances Control Act section 8(a) Preliminary Assessment Information Rule (40 CFR part 712). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee. Manufacturers and importers are required to submit exposure-related data (EPA Form No. 7710-35) on the chemicals. These data will be used to monitor the levels of production, import and/or processing of these substances and the avenues of human and environmental exposure to these substances. These data will also support risk assessment and test rule decisions.

Timetable:

Action	Date	FR Cite
Final Action 37th ITC List	02/28/96	61 FR 7421
Final Action 38th ITC List	10/29/96	61 FR 55871
Final Action 38th ITC List - Stay	12/11/96	61 FR 65186
Final Action 38th ITC List - Stay/Technical Amendments	01/07/98	63 FR 684
Final Action 38th ITC List - Revocation	01/11/00	65 FR 1548
Final Action 39th ITC List	01/11/00	65 FR 1548
Final Action 41st ITC List	07/05/00	65 FR 41371
Final Action 42nd ITC List	07/24/00	65 FR 45535
Final Action 47th ITC List	07/26/01	66 FR 38955
Final Action 48th ITC List	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 2178

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB08

3072. TSCA SECTION 8(D) HEALTH AND SAFETY DATA REPORTING RULES

Priority: Routine and Frequent

Legal Authority: 15 USC 2607(d) TSCA sec 8(d)

CFR Citation: 40 CFR 716

Legal Deadline: None

Abstract: These rules require manufacturers, importers and processors to submit unpublished health and safety data on chemicals added to the requirements of the Toxic Substances Control Act section 8(d) Health and Safety Data Reporting Rule (40 CFR part 716). These chemicals have been identified by the Office of Pollution Prevention and Toxics, other EPA offices, and other Federal agencies, as well as recommended for testing consideration by the Interagency Testing Committee.

Timetable:

Action	Date	FR Cite
Final 38th ITC List	10/29/96	61 FR 55871
Final 38th ITC List - Stay	12/11/96	61 FR 65186
Final 38th ITC List - Stay/Technical Amendment	01/07/98	63 FR 684
Final Action 38th ITC List - Revocation	01/11/00	65 FR 1548
Final Action 39th, 41st and 42nd ITC List	06/00/02	
Final Action 47th ITC List	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 1139

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AB11

3073. TSCA SECTION 8(E) POLICY; NOTICE OF CLARIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2607(e) TSCA sec 8(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The TSCA section 8(e) Notice of Clarification and Solicitation of Public Comment would change certain aspects of the 1978 TSCA section 8(e) Policy Statement. The 1978 Policy Statement describes the types of information that EPA considers reportable under section 8(e), the substantial risk reporting provision of TSCA, and describes the procedures for reporting such information to EPA. This clarification effort derives from a review of the existing section 8(e) guidance done in the context of questions raised by companies considering participating in the section 8(e) Compliance Audit Program (CAP). As a result of this review, EPA determined that parts of the 1978 Policy Statement concerning the reportability of information on widespread and previously unsuspected distribution in environmental media and emergency incidents of environmental contamination needed some refinement. The subject Federal Register action solicited comment on refined reporting guidance concerning widespread and previously unsuspected distribution in environmental media and provides additional circumstances where information is not reportable because it is considered known to the Administrator. Finally, the notice solicited comments on changes to the section 8(e) reporting deadline and the standards for claims of confidentiality for information contained in a notice of substantial risk under section 8(e).

Timetable:

Action	Date	FR Cite
NPRM	07/13/93	58 FR 37735
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: SAN No. 3118

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC80

3074. LEAD; NOTIFICATION REQUIREMENTS FOR LEAD-BASED PAINT ABATEMENT ACTIVITIES AND TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2682 TSCA 402; 15 USC 2687 TSCA 407; PL 102-550

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: EPA is issuing this rule under the authority of Section 407 of the Toxic Substances Control Act (TSCA) to establish notification procedures for lead abatement professionals (certified under 40 CFR 745.226) conducting lead-based paint activities, and training programs (accredited under 40 CFR 225) providing lead-based paint activities courses. Specifically, this rule seeks to establish procedures to notify the Agency prior to commencement of lead-based paint abatement activities as required by 40 CFR 745.227(e)(4). In addition, this rule seeks to establish provisions which would require training programs accredited under 40 CFR 745.225 to notify the Agency under the following conditions: 1) prior to providing lead-based paint activities, training, and 2) following completion of lead-based paint activities courses. These notification requirements are necessary to provide EPA compliance monitoring and enforcement personnel with information necessary to track compliance activity and to prioritize inspections. This rule supports 40 CFR part 745, subpart L to ensure that lead abatement professionals who inspect, assess and remove lead-based paint,

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dust or soil are well qualified, trained, and certified to conduct these activities.

Timetable:

Action	Date	FR Cite
NPRM	01/22/01	66 FR 7207
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4172

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AD31

3075. LEAD; MANAGEMENT AND DISPOSAL OF LEAD-BASED PAINT DEBRIS

Priority: Other Significant

Legal Authority: 15 USC 2601 to 2671; 42 USC 6901 to 6992

CFR Citation: 40 CFR 745

Legal Deadline: None

Abstract: Currently, waste derived from lead-based paint (LBP) abatements is managed under the Resource Conservation and Recovery Act (RCRA) hazardous waste regulations. Other Federal agencies (Department of Housing and Urban Development, Department of Health and Human Services) and several States and advocacy groups have expressed concern that the costs associated with the disposal of large volume architectural components (e.g., doors and windows) may interfere with abatement activities. EPA's Office of Prevention, Pesticides and Toxic Substances and the Office of Solid Waste have initiated a joint rulemaking to address the disposal of these architectural components. This rulemaking would develop disposal standards for these components under the Toxic Substances Control Act (TSCA) title IV, (the definition of abatement under TSCA title IV, section 401(1)(B), includes disposal). The TSCA regulations would establish appropriate disposal standards for LBP architectural components and identify recycling and incineration activities that would be controlled or prohibited. To minimize duplication of waste management requirements, EPA is developing a companion RCRA rule to suspend temporarily hazardous waste management regulations applicable to lead-based paint debris which will be subject to the new TSCA standards.

Timetable:

Action	Date	FR Cite
NPRM TSCA Proposal	12/18/98	63 FR 70189
Extension of Comment Period	02/12/99	64 FR 7159
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3508

See also RCRA companion rule: Temporary Suspension of Toxicity Characteristic Rule for Specified Lead-Based Paint Debris (SAN No.4263; RIN 2050-AE68),

NPRM-
http://www.epa.gov/fedrgstr/EPA-

TRI/1998/December/Day-18/tri33326.htm,

NPRM-
http://www.epa.gov/fedrgstr/EPA-

TRI/1998/December/Day-18/tri33326.htm

Sectors Affected: 23332 Commercial and Institutional Building Construction; 23521 Painting and Wall Covering Contractors; 23542 Drywall, Plastering, Acoustical and Insulation Contractors; 23511 Plumbing, Heating and Air-Conditioning Contractors; 23594 Wrecking and Demolition Contractors; 23592 Glass and Glazing Contractors; 54138 Testing Laboratories; 562111 Solid Waste Collection; 233 Building, Developing and General Contracting; 23321 Single Family Housing Construction

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RIN: 2070–AC72

Environmental Protection Agency (EPA)
Toxic Substances Control Act (TSCA) **Long-Term Actions**

3076. VOLUNTARY CHILDREN'S CHEMICAL EVALUATION PROGRAM (VCCEP)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12; 15 USC 2625 TSCA 26

CFR Citation: 40 CFR 790 to 799

Legal Deadline: None

Abstract: EPA has held public meetings to involve stakeholders in the design and development of a voluntary program to evaluate commercial chemicals to which children may have a high likelihood of exposure. The purpose of the voluntary program is to obtain toxicity and exposure data needed to assess the risk of childhood exposure to commercial chemicals. EPA launched a pilot of this program on December 26, 2000. Manufacturers of 20 of the 23 pilot chemicals have volunteered to sponsor their chemicals in tier 1 in the pilot. A workshop was held in December 2001 to provide sponsors with additional guidance on the scope and content of the exposure assessment they will prepare. A peer consultation process will be used to evaluate the scientific merits of the hazard, exposure, and risk assessments submitted by sponsors. The first assessments developed for VCCEP are expected to be received in mid 2002.

Timetable:

Action	Date	FR Cite
Notice Initiation of Stakeholder Process- Notice of Public Meetings	08/26/99	64 FR 46673
Notice Cancellation of Public Meeting	01/13/00	65 FR 2163
Notice Stakeholder Involvement Process - Notice of Public Meeting	03/29/00	65 FR 16590
Notice Voluntary Children's Chemical Evaluation Program - Pilot	12/26/00	65 FR 81700
Notice Phase I Report	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2865

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC27

EPA—Toxic Substances Control Act (TSCA) **Long-Term Actions**

3077. ASBESTOS MODEL ACCREDITATION PLAN REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2646 TSCA sec 206

CFR Citation: 40 CFR 763

Legal Deadline: Final, Statutory, November 28, 1992.

Abstract: The Asbestos School Hazard Abatement Reauthorization Act (ASHARA) amended TSCA to require that EPA revise its asbestos model accreditation plan (MAP) to extend training and accreditation requirements to include persons performing certain asbestos-related work in public or commercial buildings, to increase the minimum number of training hours required for accreditation purposes and to effect other changes necessary to implement the amendments.

Timetable:

Action	Date	FR Cite
Model Plan	05/13/92	57 FR 20438
Interim Final	02/03/94	59 FR 5236
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3148

Sectors Affected: 611519 Other Technical and Trade Schools

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RIN: 2070–AC51

3078. NOTICE OF TSCA SECTION 4 REIMBURSEMENT PERIOD AND TSCA SECTION 12(B) EXPORT NOTIFICATION PERIOD SUNSET DATES FOR TSCA SECTION 4 SUBSTANCES

Priority: Info./Admin./Other

Legal Authority: 15 USC 2603 TSCA 4; 15 USC 2611 TSCA 12

CFR Citation: 40 CFR 707; 40 CFR 790; 40 CFR 791; 40 CFR 799

Legal Deadline: None

Abstract: EPA is developing a list of substances that are or have been subject to TSCA section 4 testing actions which required testing under rules or Enforceable Consent Orders. EPA will identify sunset, or termination dates that will identify: (1) the end of section 4 reporting requirements (40 CFR 790); (2) the end of the reimbursement period under which persons subject to test rules are subject to an obligation to reimburse test sponsors (40 CFR 791); and (3) the end of the period during which export notification requirements under TSCA section 12(b) are triggered.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

Additional Information: SAN No. 3559

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AC84

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3079. LEAD-BASED PAINT ACTIVITIES; TRAINING, ACCREDITATION, AND CERTIFICATION RULE AND MODEL STATE PLAN RULE—BRIDGES AND STRUCTURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 2603 TSCA Title IV; PL 102-550 sec 402; PL 102-550 sec 404

CFR Citation: 40 CFR 745

Legal Deadline: Final, Statutory, April 28, 1994.

Abstract: The Residential Lead-Based Paint Hazard Reduction Act of 1992 mandates EPA promulgate regulations governing lead-based paint (LBP) activities to ensure that individuals engaged in such activities are properly trained, that LBP training programs are accredited, and that contractors engaged in such activities are certified. In addition, EPA must promulgate a model State program which may be adopted by any State which seeks to administer and enforce a State program. EPA promulgated regulations for training and certification of training programs for LBP activities and child-occupied facilities in 1996 (see 40 CFR 745). Regulations for LBP activities in public and commercial buildings and bridges and other structures are still under development.

Timetable:

Action	Date	FR Cite
NPRM (Buildings & Structures)	03/00/04	
Final Action (Buildings & Structures)	10/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4376

Sectors Affected: 23411 Highway and Street Construction; 611519 Other Technical and Trade Schools

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RIN: 2070–AC64

3080. LEAD-BASED PAINT ACTIVITIES; TRAINING AND CERTIFICATION FOR RENOVATION AND REMODELING

Priority: Other Significant. Major under 5 USC 801.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 2603 TSCA title IV; PL 102-550 sec 402(c)(3)

CFR Citation: 40 CFR 745

Legal Deadline: Final, Statutory, October 28, 1996.

Abstract: Under section 402(c)(2) of the Toxic Substances Control Act (TSCA) title IV, EPA conducted a study of the extent to which persons engaged in renovation and remodeling activities in target housing are exposed to lead in the conduct of such activities or disturb lead and create a lead-based paint hazard. EPA must use the results of this study and consult with interested parties to determine which categories of renovation and remodeling activities require training and certification. EPA must then revise the training and certification regulations originally developed for individuals performing lead-based paint abatement under section 402(c)(a) of TSCA title IV to apply them to the renovation and remodeling categories. If EPA determines that any category does not require certification, EPA must publish an explanation of the basis for that determination.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3557

Sectors Affected: 23321 Single Family Housing Construction; 23322 Multifamily Housing Construction; 23521 Painting and Wall Covering Contractors; 23551 Carpentry Contractors; 23599 All Other Special Trade Contractors; 53111 Lessors of Residential Buildings and Dwellings; 531311 Residential Property Managers; 54138 Testing Laboratories

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RIN: 2070–AC83

3081. CHEMICAL RIGHT-TO-KNOW INITIATIVE; HIGH PRODUCTION VOLUME (HPV) CHEMICALS

Priority: Other Significant

Legal Authority: 15 USC 4 TSCA; 15 USC 8 TSCA; 42 USC 313 TRI; 7 USC 136 FIFRA

CFR Citation: 40 CFR 700 et seq

Legal Deadline: None

Abstract: The Chemical RTK Initiative was established in 1998 in response to the finding that most commercial chemicals have very little, if any, publicly available toxicity information on which to make sound judgments about potential risks. There are three key components to this initiative, each of which is being implemented by EPA. These are: collecting and making public screening level toxicity data for 2,800 widely used commercial chemicals; additional health effects assessment for chemicals to which children are substantially exposed; and the listing and lowering of thresholds for persistent, bioaccumulative, toxic chemicals reported to the Toxic Release Inventory (TRI). This Initiative will involve several separate activities, with any regulatory-related actions included as separate entries in the Regulatory Agenda.

Timetable:

Action	Date	FR Cite
Notice Data Collection and Development on HPV Chemicals	12/26/00	65 FR 81686
Initiative Completed HPV Data To Be Received by 06/2005	06/00/05	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: SAN No. 4176

See also items identified under the following RINs: 2070-AD09; 2070-AD38; RIN 2070-AD16; RIN 2070-AC27.

Sectors Affected: 32411 Petroleum Refineries; 325 Chemical Manufacturing

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RIN: 2070–AD25

3082. DISPOSAL OF POLYCHLORINATED BIPHENYLS: IMPLEMENTATION ISSUES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 2607 (TSCA sec 6)

CFR Citation: 40 CFR 761 (Revision)

Legal Deadline: None

Abstract: This proposed regulation will clarify and expand on implementation issues that have arisen as a result of the publication of the 1998 PCB Disposal Amendments (63 FR 35384). Topics will include but not be limited to, Use Authorizations, Natural Gas Pipelines, Testing and Analysis, Manifesting of PCB Waste, Publication Process for Validated Alternate Decontamination Solvents and PCB Analytical Methods and Storage of Dedicated PCB Equipment.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4597

Sectors Affected: 92 Public Administration; 22 Utilities; 31-33 Manufacturing; 48-49 Transportation; 53 Real Estate and Rental and Leasing; 54 Professional, Scientific and Technical Services; 562 Waste Management and Remediation Services; 81 Other Services (except Public Administration)

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RIN: 2070–AD52

Environmental Protection Agency (EPA)

Emergency Planning and Community Right-to-Know Act (EPCRA)

Prerule Stage

3083. TRI: APA PETITION-EPCRA 313 DEFINITION OF OVERBURDEN AS IT RELATES TO THE MINING INDUSTRY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The regulatory definition for EPCRA section 313 defines overburden to mean any unconsolidated material that overlies a deposit of useful material or ores. It does not include any portion of ore or waste rock. Overburden generally lacks any recoverable materials and contains only trace amounts of EPCRA section 313 chemicals. Under section 313, all activities related to overburden are exempt from threshold determinations and release and other waste management calculations because overburden contains TRI chemicals in negligible amounts and reporting is unlikely to provide the public with valuable information. On December 22, 1998, the National Mining Association (NMA) petitioned EPA, pursuant to the Administrative Procedures Act (APA), to change the current EPCRA 313 definition of overburden to include both consolidated material and unconsolidated material. By making such a change, consolidated material that overlies an ore deposit would be eligible for the overburden exemption (i.e., overburden generally lacks any recoverable minerals and contains only trace amounts of EPCRA section 313 chemicals). NMA asserts that EPA's definition of overburden is inconsistent with that of industry. NMA considers overburden to be all material, both consolidated and unconsolidated, that overlies an ore deposit of useful material and must be removed to allow access to ore deposit.

Timetable:

Action	Date	FR Cite
Notice	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4392

Formerly listed as RIN 2070-AD41.

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RIN: 2025–AA08

Environmental Protection Agency (EPA) **Proposed Rule Stage**
Emergency Planning and Community Right-to-Know Act (EPCRA)

3084. EMERGENCY PLANNING AND COMMUNITY RIGHT-TO-KNOW ACT: AMENDMENTS AND STREAMLINING RULE

Priority: Other Significant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048; 42 USC 11021; 42 USC 11022

CFR Citation: 40 CFR 355; 40 CFR 370

Legal Deadline: None

Abstract: This rule will address the remaining issues from the proposed rule of June 8, 1998. (Reporting thresholds for gasoline and diesel fuel at retail gas stations were included in a separate final rule; 64 FR 7031, February 11, 1999.) A supplemental proposal will address reporting thresholds for chemicals that pose minimal risk. The final rule will address: reporting thresholds for rock salt, sand, gravel and other chemicals that pose minimal risk; plain language rewrite and may consider reporting thresholds for facilities with some similarities to gas stations (motor pools, marinas, etc.) and guidance on approaches to State flexibility.

Timetable:

Action	Date	FR Cite
NPRM	06/08/98	63 FR 31268
Supplemental NPRM	05/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 3215

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RIN: 2050–AE17

3085. RESPONSE TO A PETITION REQUESTING DELETION OF PHOSMET FROM THE EXTREMELY HAZARDOUS SUBSTANCES (EHSS) LIST

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: EPA has received a petition to remove Phosmet from the extremely hazardous substance (EHS) list under the Emergency Planning and Community Right-to-Know Act (EPCRA). This rulemaking will address the petitioner's claims.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3994

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RIN: 2050–AE42

3086. TRI; REVIEW OF CHEMICALS ON THE ORIGINAL TRI LIST

Priority: Other Significant

Legal Authority: 42 USC 1101 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: When TRI was established by Congress in 1986, the statutory language placed 309 chemicals and 20 categories of chemicals on the TRI list; that is referred to as the original TRI list. The chemicals on the original list were taken from two existing lists of toxic substances: the Maryland Chemical Inventory Report List of Toxic or Hazardous Substances, and the New Jersey Environmental Hazardous Substances list. This action constitutes the first systematic review of toxicology and environmental data for all the chemicals on the original TRI list to determine whether data for those chemicals conform with the statutory criteria for listing of chemicals on TRI. Chemicals for which data do not meet the statutory criteria will be delisted.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4015

Formerly listed as RIN 2070-AD18.

AFFECTED SECTORS: Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes

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4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169) Petroleum Bulk Terminals and Plants (SIC code 5171); and Solvent Recovery Services (SIC code 7389).

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RIN: 2025–AA03

3087. TRI; REVISIONS TO THE OTHERWISE-USE ACTIVITY EXEMPTIONS AND THE COAL EXTRACTION ACTIVITIES EXEMPTION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) requires reporting from facilities which manufacture or process at least 25,000 pounds of a listed chemical, or otherwise use 10,000 pounds of a listed chemical. In determining amounts of listed chemicals that are manufactured, processed or otherwise used, facilities may be entitled to consider specific exemptions from reporting. EPA is presently reviewing a group of these exemptions. The categories of exemptions presently being reconsidered by EPA are the structural component exemption, the routine janitorial and facility grounds maintenance exemption, the personal use exemption, and the motor vehicle maintenance exemption. Also known as the otherwise-use exemptions because they are limited to otherwise-use activities, these exemptions are expressly provided for at 40 CFR 372.38(c). EPA is also considering changes to the coal mining extraction activities exemption provided for at 40 CFR 372.38(g).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4265

Formerly listed as RIN 2070-AD39.

By Statute and Regulation, this rule will affect SIC codes 20-39, 10 (except SIC codes 1011, 1081, 1094), 12 (except SIC code 1241), 4911, 4931, 4939, 4953, 5169, 5171, and 7389.

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RIN: 2025–AA06

3088. RULEMAKING TO CHANGE TOXICS RELEASE INVENTORY (TRI) REPORTING REQUIREMENTS FROM STANDARD INDUSTRIAL CLASSIFICATION (SIC) CODES TO NORTH AMERICAN INDUSTRIAL CLASSIFICATION SYSTEM

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Office of Management and Budget (OMB) published a Federal Register Notice of final decision (62 FR 68) to adopt the North American Industry Classification System (NAICS) for the United States. This rulemaking initiates the conversion from TRI Reporting using Standard Industrial Classification (SIC) codes to TRI Reporting using NAICS codes. The TRI Program will convert to NAICS without producing any changes in the facilities that are now subject to TRI reporting. Therefore, there should be no increased burden resulting from this action.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Additional Information: SAN No. 4595

Sectors Affected: 212 Mining (except Oil and Gas); 221 Utilities; 562 Waste Management and Remediation Services; 422 Wholesale Trade, Nondurable Goods

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RIN: 2025–AA10

3089. CLARIFY TRI REPORTING OBLIGATIONS UNDER EPCRA SECTION 313 FOR THE METAL MINING ACTIVITIES OF EXTRACTION AND BENEFICIATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11001 et seq

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: The Toxics Release Inventory (TRI) currently requires reporting from metal mining facilities if they manufacture or process 25,000 pounds or more of a listed chemical or otherwise use 10,000 pounds or more of a listed chemical. These mining facilities engage in the removal of naturally occurring materials from the earth. EPA had considered naturally occurring materials to be manufactured by natural processes. A recent court order set aside EPA's interpretation of manufacture stating that naturally occurring ores can not be manufactured within the meaning of EPCRA section 313. EPA is considering clarifying how the definitions of manufacturing and

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processing under EPCRA section 313 apply to the mining sector processes of extraction and beneficiation. In this rule, EPA is also planning to review the de minimis exemption. This action will not affect the coal extraction activities exemption.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: SAN No. 4616

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RIN: 2025–AA11

Environmental Protection Agency (EPA) **Final Rule Stage**

Emergency Planning and Community Right-to-Know Act (EPCRA)

3090. MODIFICATION OF THRESHOLD PLANNING QUANTITY FOR ISOPHORONE DIISOCYANATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11002; 42 USC 11004; 42 USC 11048

CFR Citation: 40 CFR 355

Legal Deadline: None

Abstract: On October 12, 1994 (59 FR 51816), EPA proposed to modify the listing of several chemicals on the extremely hazardous substances (EHS) list under the Emergency Planning and Community Right-to-Know Act. One petitioner requested the removal of isophorone diisocyanate (IPDI). EPA rejected the petitioner's request. However, in the review of the petition, EPA noticed that there was an error in the setting of the threshold planning quantity (TPQ) for IPDI, and proposed to correct the error in the October 12, 1994 notice of proposed rulemaking. The other modifications to the EHS list were made final on May 7, 1996; however, the TPQ for IPDI was not included in that final rule. The goal is to finalize the TPQ for IPDI.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3993

Sectors Affected: 325 Chemical Manufacturing

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RIN: 2050–AE43

3091. TRI; RESPONSES TO PETITIONS RECEIVED TO ADD OR DELETE OR MODIFY CHEMICAL LISTINGS ON THE TOXIC RELEASE INVENTORY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 11013 EPCRA 313

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: These actions grant or deny petitions received to add or delete or modify chemicals on the list of toxic chemicals under section 313 of the Emergency Planning and Community Right to Know Act (EPCRA) that are subject to reporting under the Toxic Chemical Release Reporting Rule. The actions cover individual chemicals or groups of chemicals for which petitions have been received.

Timetable:

Action	Date	FR Cite
Notice DBNPA (Request To Delete)	10/27/95	60 FR 54949
Response Chromium, Antimony, Titanite Petition	08/00/02	
Final Response DBNPA (Request To Delete)	11/00/02	
Final Action Diidononyl Phthalate (DINP) Request To Add	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2425

Formerly listed as RIN 2070-AC00.

Statutory deadline: Within 180 days of receipt the Agency must either initiate rulemaking or explain why not in the Federal Register. Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products—Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and Solvent Recovery Services (SIC code 7389).

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RIN: 2025–AA00

Environmental Protection Agency (EPA) **Long-Term Actions**

Emergency Planning and Community Right-to-Know Act (EPCRA)

3092. TRI; CHEMICAL EXPANSION; FINALIZATION OF DEFERRED CHEMICALS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11013 EPCRA 313; 42 USC 11023; 42 USC 11048; 42 USC 11076

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: On November 30, 1994, EPA added 286 chemicals and chemical categories to the EPCRA section 313 list, including 39 chemicals as part of two delineated categories. Each chemical and chemical category was found to meet the statutory criteria described in EPCRA section 313(d)(2)(A)-(C). At this time, EPA deferred final action on 40 chemicals and one chemical category until a later date. These were deferred because the comments received on them raised difficult technical or policy issues which required additional time to address. EPA chose not to delay final action on the 286 chemicals and chemical categories because of the additional time needed to address the issues surrounding the smaller group of 40 chemicals and one chemical category; rather, EPA believed it to be in the spirit of community right-to-know to proceed with the final rulemaking of the additional chemicals and chemical categories.

Timetable:

Action	Date	FR Cite
NPRM	01/12/94	59 FR 1788
Supplemental NPRM Deferred Chemicals	12/00/03	
Final Action Deferred Chemicals	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 3007

Formerly listed as RIN 2070-AC47.

Includes SIC codes: Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and Solvent Recovery Services (SIC code 7389).

Sectors Affected: 42269 Other Chemical and Allied Products Wholesalers

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RIN: 2025–AA01

3093. TRI; POLLUTION PREVENTION ACT INFORMATION REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 11013 Pollution Prevention Act

CFR Citation: 40 CFR 372

Legal Deadline: None

Abstract: Section 6607(b) of the Pollution Prevention Act of 1990 (PPA) (Pub. L. 101-508) requires the addition of several data elements to the Toxic Chemical Release Inventory (TRI) reporting requirements as promulgated under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) (Pub. L. 99-499). Section 313 of EPCRA requires owners or operators of certain facilities that manufacture, process, or otherwise use listed toxic chemicals to annually report their releases of these chemicals to each environmental medium. The PPA mandates that section 313-covered facilities also report on source reduction and recycling activities relating to the toxic chemicals beginning with the 1991 reporting year. Since 1991 covered facilities have been providing this information to EPA in section 8, Source Reduction and Recycling Activities, of EPA Form R. On September 25, 1991 (56 FR 48475), EPA proposed regulations which would provide definitions and instructions for reporting the PPA data elements on the EPA Form R. In this action, EPA will amend certain aspects of the September 25, 1991, proposed rule.

Timetable:

Action	Date	FR Cite
NPRM	09/25/91	56 FR 48475
Supplemental NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2847

Formerly listed as RIN 2070-AC24.

Affected Sectors Include: Manufacturing industries in SIC codes 20-39 plus the following industries and SIC codes: Metal Mining (SIC code 10 except SIC codes 1011, 1081, and 1094); Coal Mining (SIC code 12 except SIC code 1241); Electric Utilities (SIC codes 4911, 4931, 4939); Commercial Hazardous Waste Treatment (SIC code 4953); Chemicals and Allied Products-Wholesale (SIC code 5169); Petroleum Bulk Terminals and Plants (SIC code 5171); and, Solvent Recovery Services (SIC code 7389).

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Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)
Prerule Stage

3094. LAND DISPOSAL RESTRICTIONS; NOTICE OF DATA AVAILABILITY: MERCURY TREATABILITY STUDIES

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6924

CFR Citation: 40 CFR 268

Legal Deadline: None

Abstract: In May 1999, EPA published an advance notice of proposed rulemaking that described the issues the Agency has with the current land disposal restrictions (LDR) treatment standards for mercury bearing hazardous wastes. Based on the comments received on this ANPRM as well as other information the Agency has collected, we are now conducting a series of mercury treatability studies in conjunction with DOE. The data from these studies will be presented in a Notice of Availability (NODA). These data are from a number of treatment vendors treating several different types of mercury wastes. In addition to examining TCLP data, we are also looking at alternative leaching methodologies and other factors which might affect long-term stability of the treated wasteforms.

Timetable:

Action	Date	FR Cite
ANPRM	05/28/99	64 FR 28949
NoDA	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4094

Sectors Affected: 3353 Electrical Equipment Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 32551 Paint and Coating Manufacturing; 325181 Alkalies and Chlorine Manufacturing

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RIN: 2050–AE54

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)
Proposed Rule Stage

3095. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES GENERATED BY COMMERCIAL ELECTRIC POWER PRODUCERS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6907(a)(3); 42 USC 6944(a)

CFR Citation: 40 CFR 257

Legal Deadline: None

Abstract: This action is for the development of proposed RCRA subtitle D regulations for the management of coal combustion wastes in landfills and surface impoundments that are generated by producers of electric power, including electric utilities and independent power producers. On April 25, 2000 EPA issued a regulatory determination for fossil fuel combustion wastes (65 FR 32214, May 22, 2000). The purpose of the determination was to decide whether certain wastes from the combustion of fossil fuels (including coal, oil and natural gas) should remain exempt from subtitle C (management as hazardous waste) of the Resource Conservation and Recovery Act (RCRA) for the coal, oil and natural gas combustion wastes that were addressed. The Agency's decision was to retain the exemption from hazardous waste management for all of the fossil fuel combustion wastes. However, the Agency also determined and announced that waste management regulations under RCRA subtitle D (management as non-hazardous wastes) are appropriate for certain coal combustion wastes that are disposed in landfills and surface impoundments. The utility industry has made significant improvements in its waste management practices over recent years, and most State regulatory programs are similarly improving. Nevertheless, public comments and other analyses have convinced the Agency that coal combustion wastes could pose risks to human health and the environment if they are not properly managed. There is sufficient evidence that adequate controls may not be in place. For example, while most States can now require newer waste management units to include liners and groundwater monitoring, 62 percent of existing utility surface impoundments do not have groundwater monitoring. In the Agency's view, this justifies the development of national regulations. We note, however, that some waste management units may not warrant liners and/or groundwater monitoring, depending on site-specific characteristics. The Agency is initiating this action to develop and issue appropriate waste management regulations under subtitle D of RCRA.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4470

This rule may also impact Federal, State, local or tribal governments that own coal-burning commercial electric power generating facilities.

Sectors Affected: 221112 Fossil Fuel Electric Power Generation

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RIN: 2050–AE81

EPA—Resource Conservation and Recovery Act (RCRA)
Proposed Rule Stage

3096. STANDARDS FOR THE MANAGEMENT OF COAL COMBUSTION WASTES: NON-POWER PRODUCERS AND MINEFILLING

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 6907(a)(3); 42 USC 6944

CFR Citation: 40 CFR 257

Legal Deadline: None

Abstract: EPA is developing proposed regulations for the management of coal combustion wastes that are generated by non-electric utility coal burners and managed in landfills and surface impoundments, and for the practice of minefilling of coal combustion wastes. On April 25, 2000 EPA issued a regulatory determination for fossil fuel combustion wastes (65 FR 32214, May 22, 2000) to announce its decision that certain wastes from the combustion of fossil fuels (including coal, oil and natural gas) should remain exempt from subtitle C (management as hazardous waste) of RCRA. This regulatory determination also announced that regulations under RCRA subtitle D (management as non-hazardous wastes) are appropriate for management of certain coal combustion wastes that are disposed in landfills and surface impoundments. In addition, EPA stated its plan to consult with the U.S. Department of the Interior on appropriate measures under the Surface Mining Control and Reclamation Act (SMCRA) or RCRA or some combination of both, to address the disposal of coal combustion wastes when used for minefilling in surface or underground mines.

Although industry has made significant improvements in waste management practices over recent years, and most State regulatory programs are similarly improving, public comments and other analyses have convinced the Agency that coal combustion wastes could pose risks to human health and the environment, if they are not properly managed. There is sufficient evidence that adequate controls may not be in place. For example, while most States can now require newer waste management units to include liners and groundwater monitoring, less than about 50 percent of existing non-utility landfills are lined (these statistics exclude municipal solid waste landfills which are not the subject of this action). EPA acknowledges that some waste management units may not warrant liners and/or groundwater monitoring, depending on site-specific characteristics. The Agency also decided that the practice of minefilling coal combustion wastes could present a danger to human health and the environment under certain circumstances. Since there are few States that currently operate comprehensive programs that specifically address the unique circumstances of minefilling, the Agency believes national regulations under RCRA subtitle D and/or SMCRA may be appropriate.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4469

This rule may also impact Federal, State, local or tribal governments that own/operate coal-burning facilities (excluding facilities that primarily generate electric power for sale) or coal mines that accept coal combustion wastes.

Sectors Affected: 311 Food Manufacturing; 313 Textile Mills; 337 Furniture and Related Product Manufacturing; 2121 Coal Mining; 322 Paper Manufacturing; 325 Chemical Manufacturing; 331 Primary Metal Manufacturing; 336 Transportation Equipment Manufacturing; 62 Health Care and Social Assistance; 22112 Electric Power Transmission, Control and Distribution

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RIN: 2050–AE83

3097. REMOVAL OF REQUIREMENT TO USE SW-846 METHODS (TEST METHODS FOR EVALUATING SOLID WASTE: PHYSICAL/CHEMICAL METHODS)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921-6927; 42 USC 6930; 42 USC 6934-6939; 42 USC 6974; 42 USC 9601; 42 USC 9614(c)

CFR Citation: 40 CFR 258; 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270; 40 CFR 279

Legal Deadline: None

Abstract: EPA has been actively working to break down the barriers that the environmental monitoring community faces when trying to use new monitoring techniques. As a first step, EPA has accelerated its review process for new methods by eliminating several unnecessary internal review steps, and by streamlining the internal approval process for each new method. However, there are currently 32 citations in title 40 of the Code of Federal Regulations (CFR) where the use of SW-846 methods is required. As a second step for speeding up the approval process, EPA plans to remove the requirements to use SW-846 methods for other than method defined parameters (i.e., where the method defines the regulations, such as the Toxicity Characteristic Leaching Procedure) from 40 CFR. This will likely lead to an even more streamlined approval process since SW-846 will then be able to be handled strictly as guidance and not need the regulatory process for approval. This additional streamlining will permit new, more cost-effective methods to attain public and regulatory authority acceptance in much less time, allowing required monitoring to be done more cheaply, faster and, in some cases, more accurately.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3989

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RIN: 2050–AE41

3098. REVISIONS TO SOLID WASTE LANDFILL CRITERIA—LEACHATE RECIRCULATION ON ALTERNATIVE LINERS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: EPA plans to propose a rule to allow leachate recirculation over alternative liner systems which meet the performance standard specified by the municipal solid waste landfill (MSWLF) criteria. The performance determination would be made by the State director of an approved MSWLF program. EPA also plans to propose a new section to the MSWLF criteria which will allow the alternative of clean closure of landfills rather than require the installation of a landfill cap, which would allow the solid waste in the MSWLF to be totally removed from the site and be properly disposed of at another site. Finally, EPA plans to propose an additional factor to 258.54 for determining the frequency of ground water monitoring for the detection monitoring program specified in this subpart. The additional factor for consideration concerns liner performance where there is some direct system for determining liner performance. However, the minimum monitoring frequency would still be no less than once a year as stated in the existing regulation.

Timetable:

Action	Date	FR Cite
NODA Request for Information and Data	04/06/00	65 FR 18014
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local, Tribal

Additional Information: SAN No. 4230

Sectors Affected: 562 Waste Management and Remediation Services

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RIN: 2050–AE67

3099. RESEARCH, DEVELOPMENT, AND DEMONSTRATION PERMITS FOR MUNICIPAL SOLID WASTE LANDFILL

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 258.4

Legal Deadline: None

Abstract: EPA is considering adding a new section to the Criteria for Municipal Solid Waste Landfills (MSWLF) to allow states to issue research, development, and demonstration (RD&D) permits for landfill operations at variance with some parts of the criteria, as long as it is demonstrated that these operations will not result in an increased risk to human health and the environment. Waivers of location restrictions, groundwater monitoring, corrective action requirements, the financial assurance criteria, and explosive gases control would not be allowed by this action. EPA is considering this alternative to stimulate new technologies and alternatives in the landfilling of municipal solid waste.

Timetable:

Action	Date	FR Cite
NoDA Request for Information and Data	04/06/00	65 FR 18014
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: SAN No. 4588

Split from RIN 2050-AE67.

Sectors Affected: 562 Waste Management and Remediation Services

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RIN: 2050–AE92

3100. REGULATION OF HAZARDOUS OIL-BEARING SECONDARY MATERIALS FROM PETROLEUM REFINING INDUSTRY AND OTHER HAZARDOUS SECONDARY MATERIALS PROCESSED IN A GASIFICATION SYSTEM

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925; 42 USC 6926; 42 USC 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937; 42 USC 6938; 42 USC 6939; ...

CFR Citation: 40 CFR 260; 40 CFR 261

Legal Deadline: None

Abstract: The U.S. Environmental Protection Agency (EPA) is planning to finalize revisions to the RCRA solid waste regulations to exclude oil-bearing secondary materials, generated by the petroleum refining industry and others, from the definition of solid waste if the materials are destined to be processed in a gasification device manufacturing synthesis gas fuel. We are planning to propose this exclusion in order to clarify and simplify RCRA jurisdiction, and to be consistent with other comparable existing exclusions. In this notice, we are also soliciting comment on an option to extend the exclusion to organic containing secondary materials generated by industries (other than the petroleum refining industry).

Timetable:

Action	Date	FR Cite
NPRM	03/25/02	67 FR 13684
NPRM Comment Period End	06/24/02	
Interim Final Rule Effective	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4411

This is an extension of a previous notice that contained the following RIN 2050-AD88.

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RIN: 2050–AE78

3101. MODIFICATIONS TO RCRA RULES ASSOCIATED WITH SOLVENT-CONTAMINATED SHOP TOWELS AND WIPES

Priority: Other Significant

Legal Authority: 42 USC 6921

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This action would modify RCRA rules that impact the management of solvent-contaminated shop towels and wipes. Solvent-contaminated shop towels and wipes are used throughout industry for equipment cleaning and other related facility operations. The spent shop towels and wipes can be hazardous wastes when the solvent used is either a characteristic or listed solvent. An examination of industry use and management practices reveals that many facilities may use only small amounts of solvent on their disposable wipes, and use small numbers of wipes daily — suggesting that these materials may sometimes pose little or no risk to human health and the environment if disposed in municipal landfills.

Similarly, situations exist where both disposable wipes and reusable shop towels are not being managed according to prescribed Federal and States' rules and policies. Problems with this issue have persisted since the late 1980s.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4091

Sectors Affected: 323 Printing and Related Support Activities; 325 Chemical Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 441 Motor Vehicle and Parts Dealers; 811 Repair and Maintenance; 812 Personal and Laundry Services

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RIN: 2050–AE51

3102. RECYCLING OF CATHODE RAY TUBES (CRTS) AND MERCURY-CONTAINING EQUIPMENT: CHANGES TO HAZARDOUS WASTE REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6923; 42 USC 6924; 42 USC 6925

CFR Citation: 40 CFR 261; 40 CFR 273

Legal Deadline: None

Abstract: This action will ultimately revise the existing Federal hazardous waste regulations to encourage recycling and better management of Cathode Ray Tubes (CRTs) by proposing a conditional exclusion from the definition of solid waste for CRTs being recycling. A CRT is display component of a television or computer monitor. A CRT is made largely of specialized glasses, some of which contain lead to protect the user from X-rays inside the CRT. Due to the lead, when they are disposed of or reclaimed, some CRTs are hazardous wastes under the Federal Resource Conservation and Recovery Act (RCRA) regulations. This rule will also propose to streamline RCRA requirements for managing mercury-containing equipment by adding such equipment to the universal waste rule. This rule is planned in response to a June 9, 1998 recommendation on CRT recycling from the Common Sense Initiative (CSI) Council to the Environmental Protection Agency (EPA), and in response to a petition from the Utilities Solid Waste Activities Group regarding mercury-containing equipment. CSI is a consensus-based process for developing cleaner, cheaper, smarter environmental improvements that includes representatives of: industry; environmental groups; community groups; environmental justice groups; labor and, Federal, State, local, and tribal governments. The goal of this proposal is to improve management and encourage recycling, thereby minimizing disposal of lead, increasing resource recovery, and enhancing protection of human health and the environment.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4092

Sectors Affected: 334411 Electron Tube Manufacturing

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RIN: 2050–AE52

3103. REVISION OF WASTEWATER TREATMENT EXEMPTIONS FOR HAZARDOUS WASTE MIXTURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6912(a); 6921; 6922; 6924; 6926

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CFR Citation: 40 CFR 261.3(a)(2)(iv)(A)-(E)(Revision)

Legal Deadline: None

Abstract: EPA is looking into proposing to add up to four solvents (benzene, 2-ethoxyethanol, 1,1,2-trichloroethane, and 2-nitropropane) to the hazardous waste exemptions for mixtures of spent solvents in wastewater treatment plants (headworks rule) at 40 CFR 261.3(a)(2)(iv)(A)-(B). Spent solvents are solvents that have been used and are no longer fit for use without being regenerated, reclaimed, or otherwise processed. In addition, EPA is considering proposing: (1) changes to implementation of rule from using mass balance only, to choice of using direct monitoring; (2) adding certain leachates to allowed categories of wastestreams; and (3) revising other provisions of rule, such as de minimis quantities and the definition of point of application of exemption.

Timetable:

Action	Date	FR Cite
NPRM Revisions for Wastewater Treatment Exemptions	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4501

Sectors Affected: 31-33 Manufacturing; 562 Waste Management and Remediation Services

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RIN: 2050–AE84

3104. • INCREASE METALS RECLAMATION FROM F006 WASTE STREAMS

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: Not Yet Determined

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: Currently wastewater treatment (WWT) sludges from electroplating operations (waste code F006) are identified as listed hazardous wastes. EPA is considering proposing changes to existing regulations intended to encourage safe recycling and management practices of this waste stream. We are considering reducing regulations for electroplating sludges that are sufficiently high in metal(s) and sufficiently low in other toxic constituents to be recovered.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4651

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RIN: 2050–AE97

3105. PROJECT XL SITE-SPECIFIC RULEMAKING FOR ANNE ARUNDEL COUNTY MILLERSVILLE LANDFILL, SEVERN, MARYLAND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6945; 42 USC 6949

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: Anne Arundel County proposes to demonstrate that a bioreactor with an alternative liner system is as effective, or superior to a bioreactor with the standard composite liner currently allowed by regulations. The main goal of this project is to deliver superior environmental performance (SEP) by capturing the additional airspace gained by accelerated decomposition of the waste. This benefits the County and its citizens by prolonging the life of the landfill and thereby postponing the siting of new solid waste management facilities, with their attendant social impacts, environmental impacts, and economic costs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

Additional Information: SAN No. 4534

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RIN: 2090–AA25

3106. PROJECT XL SITE-SPECIFIC RULEMAKING FOR THE IBM SEMICONDUCTOR MANUFACTURING FACILITY IN HOPEWELL JUNCTION, NEW YORK

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261.4(a)

Legal Deadline: None

Abstract: This rulemaking provides a site-specific exclusion from the regulatory definition of solid waste for certain wastewater treatment sludges (otherwise designated as Hazardous Waste No. F006) when they are used as ingredients in the production of cement. Without this exclusion, the sludges being legitimately recycled as substitutes for raw materials would remain subject to hazardous waste regulatory requirements, including the need for a storage permit by the cement manufacturer, which is a major disincentive to recycling the sludges in this manner. This XL project tests the presumption that these sludges can be safely recycled without regulatory oversight.

Timetable:

Action	Date	FR Cite
NPRM	06/06/01	66 FR 30349
Supplemental NPRM	05/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4565

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RIN: 2090–AA29

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)

Final Rule Stage

3107. STANDARDIZED PERMIT FOR RCRA HAZARDOUS WASTE MANAGEMENT FACILITIES

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912; 42 USC 6924; 42 USC 6925; 42 USC 6927; 42 USC 6939; 42 USC 6974

CFR Citation: 40 CFR 124; 40 CFR 267; 40 CFR 270

Legal Deadline: None

Abstract: EPA has proposed creating a new type of general permit, called a standardized permit, for facilities that generate waste and routinely manage the waste on-site in tanks, containers, and containment buildings. Under the standardized permit, facility owners and operators would certify compliance with generic design and operating conditions set on a national basis. The permitting agency would review the certifications submitted by the facility owners and operators. The permitting agency would also be able to impose additional site-specific terms and conditions for corrective action or other purposes, as called for by RCRA. Ensuring compliance with the standardized permit's terms and conditions would occur during inspection of the facility after the permit has been issued. The standardized permit should streamline the permit process by allowing facilities to obtain and modify permits more easily while maintaining the protectiveness currently existing in the individual RCRA permit process. The proposal raised issues for public comment on how all facilities receiving RCRA permits can satisfy RCRA corrective action requirements under appropriate alternative state cleanup programs and on financial assurance issues. The Agency is developing a final rule addressing this topic.

Timetable:

Action	Date	FR Cite
NPRM	10/12/01	66 FR 52192
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4028

Sectors Affected: 32411 Petroleum Refineries; 3251 Basic Chemical Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 325211 Plastics Material and Resin Manufacturing; 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32551 Paint and Coating Manufacturing; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring

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RIN: 2050–AE44

3108. REVISIONS TO THE COMPREHENSIVE GUIDELINE FOR PROCUREMENT OF PRODUCTS CONTAINING RECOVERED MATERIALS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6912(a) RCRA sec 6002(e)

CFR Citation: 40 CFR 247

Legal Deadline: None

Abstract: RCRA section 6002 and E.O. 13101 require EPA to prepare guidelines in the Federal Register which designate items that are or can be made with recovered materials and to issue recommendations for government procurement of these items. Once designated, procuring agencies are required to purchase these items with the highest percentage of recovered materials practicable. Government procurement of EPA-designated items containing recovered materials fosters markets for recovered materials and, thereby, closes the recycling loop. To date, EPA has designated 54 items under three Comprehensive Procurement Guidelines (CPG1, CPG2 and CPG3). EPA has also issued a Recovered Materials Advisory Notice (RMAN) with each CPG which provides recommendations on buying the designated items. The E.O. requires EPA to update the CPG every two years. The newest action issues final item designations in CPG4.

Timetable:

Action	Date	FR Cite
Notice -- Paper Products Recovered Materials Advisory Notice	06/08/98	63 FR 31214
Notice -- Recovered Materials Advisory Notice I Update	06/08/98	63 FR 31217
NPRM (CPG3 and RMAN 3)	08/26/98	63 FR 45558
Notice of Availability of Final Document	01/19/00	65 FR 3082
Final Action (CPG3 and RMAN 3)	01/19/00	65 FR 3069
NPRM (CPG4 and RMAN 4)	08/28/01	66 FR 45256

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Action	Date	FR Cite
Final Action (CPG4 and RMAN 4)	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3545

NPRM-
http://www.epa.gov/fedrgstr/EPA-WASTE/1998/August/Day-26/f22793.htm

Sectors Affected: 92111 Executive Offices; 92119 All Other General Government

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RIN: 2050–AE23

3109. MANAGEMENT OF CEMENT KILN DUST (CKD)

Priority: Other Significant

Legal Authority: 42 USC 6912(a) RCRA sec 2002(a); 42 USC 6921(a) RCRA sec 3001(b)

CFR Citation: 40 CFR 256; 40 CFR 259; 40 CFR 261; 40 CFR 264

Legal Deadline: None

Abstract: Cement kiln dust (CKD) is a high volume material byproduct of the cement manufacturing process, which potentially contains hazardous constituents such as lead, cadmium and chromium. CKD has been exempted since November 1980 from hazardous waste regulation under RCRA subtitle C by the Bevill Amendment. This amendment modified section 3001 of RCRA to exempt certain special wastes until further studies could be completed and any applicable regulations were promulgated. In December 1993, EPA submitted a Report to Congress with its findings on the nature and management practices associated with CKD. This was followed in January 1995 by an EPA regulatory determination published in the Federal Register (60 FR 7366, 2/7/95), which concluded that additional control of CKD is warranted. In the regulatory determination EPA committed to develop regulations that would be tailored to protect human health and the environment while limiting burden on the regulated community. These tailored regulations would be developed under RCRA subtitle C and, if necessary, the Clean Air Act. As part of its regulatory development effort, EPA has initiated further studies and has held informal discussions with stakeholders. A proposed rule was issued (64 FR 45632, 8/20/99) which included a comprehensive set of standards for the management of CKD. EPA is currently making an assessment as to which regulatory approach will be appropriate for CKD waste management.

Timetable:

Action	Date	FR Cite
NPRM	08/20/99	64 FR 45631
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 3856

Sectors Affected: 32731 Cement Manufacturing

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RIN: 2050–AE34

3110. CRITERIA FOR CLASSIFICATION OF SOLID WASTE DISPOSAL FACILITIES AND PRACTICES AND CRITERIA FOR MUNICIPAL SOLID WASTE LANDFILLS: DISPOSAL OF RESIDENTIAL LEAD-BASED PAINT WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907(a)(3); 42 USC 6912(a); 42 USC 6944; 42 USC 6949a

CFR Citation: 40 CFR 257; 40 CFR 258

Legal Deadline: None

Abstract: To help accelerate the pace of lead-based paint removal from residences, and thereby reduce exposure to children and adults from the health risks associated with lead, the Agency is expressly allowing residential lead-based paint waste to be disposed of in construction and demolition landfills. The rule will revise the definition of municipal solid waste landfill (MSWLF) unit, and add definitions of construction and demolition landfill and residential lead-based paint waste in the Criteria for Classification of Solid Waste Disposal Facilities and Practices (part 257) and Criteria for Municipal Solid Waste Landfills (part 258).

Timetable:

Action	Date	FR Cite
NPRM	10/23/01	66 FR 53566
Direct Final Rule	10/23/01	66 FR 53535
Direct Final Rule Withdrawn	12/28/01	66 FR 67108
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4525

Sectors Affected: 235 Special Trade Contractors; 23599 All Other Special Trade Contractors; 562212 Solid Waste Landfill

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RIN: 2050–AE86

3111. MUNICIPAL SOLID WASTE LANDFILL LOCATION RESTRICTIONS FOR AIRPORT SAFETY

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6902(a); 42 USC 6907; 42 USC 6912(a); 42 USC 6944; 42 USC 6945(c); 42 USC 6949(c)

CFR Citation: 40 CFR 258.10(e)-(f)

Legal Deadline: None

Abstract: The direct final rule would amend the municipal solid waste landfill (MSWLF) location restrictions for airport safety by adding location restrictions to conform with those contained in the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century. The rule would prohibit the construction or establishment of a new MSWLF within six miles of a public airport (1) that has received grants under the Airport and Airway Improvement Act of 1982, as amended, and (2) that is primarily designed for 60 passengers or less. MSWLFs in the State of Alaska are exempt. Because new MSWLFS are subject to the statutory location restrictions in addition to regulatory location restrictions currently in effect under 40 CFR 258.10, EPA is promulgating the rule amendment to prevent confusion regarding applicable location restrictions for MSWLFs for airport safety purposes, as well as to notify affected entities of these statutory restrictions. EPA is also proposing a parallel rule identical to this direct final action in order to provide opportunity for comment on the rule, although we view the action as noncontroversial and do not anticipate any adverse comments. The regulated entities are expected to be: (1) Federal agencies and state, local, municipal and tribal governments constructing or establishing new MSWLFs within six miles of a public airport and (2) industries involved in constructing or establishing new landfills within six miles of a public airport.

Timetable:

Action	Date	FR Cite
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4575

Sectors Affected: 23 Construction; 5622 Waste Treatment and Disposal; 56221 Waste Treatment and Disposal; 562212 Solid Waste Landfill

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RIN: 2050–AE91

3112. OFFICE OF SOLID WASTE BURDEN REDUCTION PROJECT

Priority: Other Significant

Legal Authority: 42 USC 6907; 42 USC 6912(a); 42 USC 6921 to 6927; 42 USC 6930; 42 USC 6934; 42 USC 6935; 42 USC 6937 to 6939; 42 USC 6944; 42 USC 6949(a); 42 USC 6974; PL 104-13

CFR Citation: 40 CFR 260; 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 268; 40 CFR 270

Legal Deadline: None

Abstract: EPA plans to reduce the burden imposed by the RCRA reporting and recordkeeping requirements to help meet the Federal government-wide goal established by the Paperwork Reduction Act (PRA).

In June 1999, EPA published a Notice of Data Availability (NODA) in the Federal Register (64 FR 32859) to seek comment on a number of burden reduction ideas. After reviewing the comments received on the NODA, EPA proposed to implement many of these ideas. The proposal was designed to eliminate duplicative and nonessential paperwork.

The main ideas for the final rulemaking are: (1) eliminating or modifying one-third of the 334 RCRA-required notices and reports that are sent by the regulated community to states and EPA; (2) eliminating the RCRA emergency response training requirements that overlap with the Occupational Safety and Health Administration requirements; (3) eliminating the need for facilities to record personnel descriptions; (4) decreasing the owner/operator self-inspection frequency of hazardous waste tanks to weekly; (5) providing states and EPA with the opportunity to lengthen owner/operator self-inspection frequencies on a case-by-case basis for containers, containment buildings, and tanks; (6) eliminating the Land Disposal Restrictions generator waste determinations, recycler notifications and certifications, hazardous debris notifications and characteristic waste determinations, and streamlining the characteristic waste notification procedures; and (7) modifying the groundwater monitoring requirements for hazardous waste facilities.

Timetable:

Action	Date	FR Cite
Notice of Data Availability	06/18/99	64 FR 32859
NPRM	01/17/02	67 FR 2518
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4084

Applicable SIC codes: Chemicals and Allied Products (28), Primary Metal Industries (33), Fabricated Metals (34), Industrial Machinery and Equipment (35), Electrical Equipment (36), Transportation Equipment (37), Other Manufacturing, Transportation and Utilities (40-49), Wholesale Trade (50-51), Services (70-89) and Other SIC Groups

Sectors Affected: 323 Printing and Related Support Activities; 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 334 Computer and Electronic Product Manufacturing; 562 Waste Management and Remediation Services

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3113. REQUIREMENTS FOR ZINC FERTILIZER MADE FROM RECYCLED HAZARDOUS SECONDARY MATERIALS

Priority: Other Significant

Legal Authority: 42 USC 1006 et seq

CFR Citation: 40 CFR 261; 40 CFR 266; 40 CFR 268; 40 CFR 271

Legal Deadline: NPRM, Judicial, November 15, 2000, Settlement agreement met deadline.
Final, Judicial, July 15, 2002, Settlement agreement.

Abstract: This rulemaking is intended to revise the current RCRA regulations that apply to recycling of hazardous wastes in the manufacture of zinc fertilizers. Specifically, it is intended to establish a more consistent application of these recycling requirements to zinc fertilizer products, to establish a set of standards for contaminants in RCRA-regulated zinc fertilizers that are more appropriate to fertilizers and are protective of human health and the environment, and to specify more appropriate, protective conditions for management of zinc-bearing hazardous secondary materials prior to recycling. These regulatory revisions are expected to directly affect companies that manufacture zinc fertilizers from hazardous secondary materials, and is likely to benefit such manufacturers that are small businesses by removing certain regulatory disincentives to legitimate recycling activities.

Timetable:

Action	Date	FR Cite
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4208

Sectors Affected: 32532 Pesticide and Other Agricultural Chemical Manufacturing; 32531 Fertilizer Manufacturing; 331111 Iron and Steel Mills; 331419 Primary Smelting and Refining of Nonferrous Metal (except Copper and Aluminum); 331492 Secondary Smelting, Refining, and Alloying of Nonferrous Metal (except Copper and Aluminum); 562112 Hazardous Waste Collection

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RIN: 2050–AE69

3114. REVISIONS FOR TRANSBOUNDARY SHIPMENTS OF HAZARDOUS WASTE FOR RECOVERY WITHIN THE ORGANIZATION FOR ECONOMIC COOPERATION AND DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6901 et seq

CFR Citation: 40 CFR 262 subpart H (Revision)

Legal Deadline: None

Abstract: The Agency is considering changing the existing regulation 40 CFR 262 Subpart H, which regulates transboundary movement of hazardous waste within all countries that are members of the Organization for Economic Cooperation and Development (OECD). This regulation would be amended to comply with changes passed by the OECD Council. Existing waste lists may be restructured to comply with the new OECD waste lists. As such, previously existing waste lists may be renamed according to adopted OECD terminology. Shipments of small waste amounts destined for laboratory analysis may be exempted from filing certain paperwork requirements that are otherwise required. A certificate of recovery may be required upon final recovery of wastes and timeframes for recovery operations may be changed to reflect the decisions made by the OECD Council.

Timetable:

Action	Date	FR Cite
Direct Final Rule Revisions for Transboundary Shipments of Hazardous Waste	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 4606

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RIN: 2050–AE93

3115. PROJECT XL — ORTHO-MCNEIL PILOT PROJECT ALLOWING ON-SITE TREATMENT OF LOW-LEVEL MIXED WASTES WITHOUT RCRA PERMIT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6922; 42 USC 6924(y); 42 USC 6938

CFR Citation: 40 CFR 261

Legal Deadline: None

Abstract: This site-specific rulemaking would allow Ortho-McNeil Pharmaceutical to treat small volumes of low-level mixed wastes on-site using a bench-scale catalytic oxidizing treatment unit. This treatment effectively destroys the organic component of the wastestream, yielding a residual that is only a low-level radioactive waste.

Timetable:

Action	Date	FR Cite
NPRM	07/24/01	66 FR 38395
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4439

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RIN: 2090–AA14

3116. PROJECT XL SITE-SPECIFIC RULEMAKING FOR IMPLEMENTING WASTE TREATMENT SYSTEMS AT TWO VIRGINIA LANDFILLS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6907; 42 USC 6912; 42 USC 6945; 42 USC 6949

CFR Citation: 40 CFR 258

Legal Deadline: None

Abstract: The Virginia Landfills XL project includes two solid waste municipal landfills (SWMLF) operated by subsidiaries of Waste Management Inc. (WMI): Maplewood Recycling and Waste Disposal Facility is located in Amelia County, Virginia and King George County Landfill and Recycling Center. Both landfills accept municipal solid waste and a small percentage of biodegradable products (e.g., construction debris). Through this XL project, the Maplewood and King George landfills propose to implement two variations of bioreactor landfill systems and compare the relative improvement in landfill performance at the two different bioreactor project sites. In a bioreactor landfill, controlled quantities of liquids are added and circulated through waste to accelerate the natural biodegradation rate of waste and therefore decrease the waste stabilization and composting time compared to a conventional landfill. The Maplewood bioreactor will recirculate liquids (primarily leachate) generated at the facility. The King George bioreactor will recirculate facility-generated leachate plus other liquids, such as non-hazardous liquid waste or storm water. These activities collectively should decrease emissions of landfill gas, accelerate waste decomposition, improve leachate quality, and increase the waste capacity of the existing landfills.

Timetable:

Action	Date	FR Cite
NPRM	12/28/01	66 FR 67152
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: SAN No. 4608

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RIN: 2090–AA30

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)

Long-Term Actions

3117. HAZARDOUS WASTE MANIFEST REGULATION

Priority: Other Significant

Legal Authority: 42 USC 6922 RCRA sec 3002; 42 USC 6923 RCRA sec 3003; 42 USC 6924 RCRA sec 3004; 42 USC 6926 RCRA sec 3006; PL 105-277, title 17 Government Paperwork Elimination Act

CFR Citation: 40 CFR 260; 40 CFR 262; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 271

Legal Deadline: None

Abstract: The Uniform Hazardous Waste Manifest (Form 8700-22) is a multi-copy form used to identify the quantity, composition, origin, routing, and destination of hazardous waste during its transportation. The manifest system's current reliance on paper results in significant paperwork and cost burden to waste handlers and States who choose to collect manifest information. The Agency intends to pursue an optional approach that would use information technologies to conduct the manifest process electronically, thereby reducing paperwork burden, and improving the speed and accuracy of preparing, transmitting, and recordkeeping the manifest form. In addition, the Agency intends to standardize further the manifest form elements, and to specify one format for the manifest that may be used in all states. The Agency also intends to announce standard requirements for tracking rejected wastes, container residues, and international shipments of hazardous wastes.

Timetable:

Action	Date	FR Cite
NPRM	05/22/01	66 FR 28240
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3147

Sectors Affected: 332 Fabricated Metal Product Manufacturing; 482 Rail Transportation; 483 Water Transportation; 484 Truck Transportation; 5622 Waste Treatment and Disposal; 5621 Waste Collection; 331 Primary Metal Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 2111 Oil and Gas Extraction; 2122 Metal Ore Mining; 2211 Electric Power Generation, Transmission and Distribution; 3221 Pulp, Paper, and Paperboard Mills; 323 Printing and Related Support Activities

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RIN: 2050–AE21

3118. FINAL DETERMINATION OF THE APPLICABILITY OF THE TOXICITY CHARACTERISTIC RULE TO PETROLEUM-CONTAMINATED MEDIA AND DEBRIS FROM UNDERGROUND STORAGE TANKS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6921 RCRA sec 3001

CFR Citation: 40 CFR 261

Legal Deadline: None

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Abstract: In the final hazardous waste Toxicity Characteristic (TC) rule published in June 1990, EPA decided to temporarily defer application of the TC rule to petroleum-contaminated media and debris, such as soils and groundwater, that result from underground storage tank (UST) corrective actions. This rule is part of the Agency's commitment to make a final determination regarding the UST temporary deferral. The temporary deferral was, in part, based on the Agency's concern that without such a deferral, UST cleanup procedures would be adversely affected, resulting in delays in remedial action and increases in remediation costs. Since this action is deregulatory, there are no adverse effects on small businesses, or on State, local, or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	02/12/93	58 FR 8504
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Additional Information: SAN No. 3189

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RIN: 2050–AD69

3119. LISTING DETERMINATION OF WASTES GENERATED DURING THE MANUFACTURE OF AZO, ANTHRAQUINONE, AND TRIARYLMETHANE DYES AND PIGMENTS

Priority: Other Significant

Legal Authority: 42 USC 6921 RCRA sec 3001; 42 USC 9602 Superfund (CERCLA) sec 102

CFR Citation: 40 CFR 261; 40 CFR 264; 40 CFR 265; 40 CFR 271; 40 CFR 302

Legal Deadline: None

Abstract: This action addresses the potential human health and environmental risks posed by wastes from the manufacture of dyes and pigments, and determines whether these wastes should be listed as hazardous wastes under RCRA to control any potentially unacceptable risks. If listed under RCRA, these wastes would also be added to the CERCLA list of hazardous substances. This action will be implemented by EPA and States authorized under RCRA. There may be some small business impacts. EPA proposed listing decisions for most wastes in 1994 (Dyes-I), and deferred decisions on several others. Two deferred waste streams (filter aids and triarylmethane sludges) are subject to separate deadlines for proposed and final action (Dyes II rulemaking). The Dyes II NPRM was published on July 23, 1999. The rules proposed in 1994 and 1999 were incomplete because they did not contain information claimed to be confidential by industry. Therefore, a NODA for each proposal will be necessary, when EPA is able to release an adequate record. The deadlines are based on recent settlement discussions with plaintiffs in EDF v. Browner, Civil Action No. 89-0598 D.D.C.

As part of the listing of dyes and pigments effort, EPA will also develop land disposal restrictions for these dyes and pigments.

Timetable:

Action	Date	FR Cite
NPRM Dyes I	12/22/94	59 FR 66072
NPRM Dyes II (deferred wastes)	07/23/99	64 FR 40192
NPRM Dyes I Land Disposal Restrictions	To Be	Determined
NoDA Dyes I Notice of Data Availability. See Additional Information.	To Be	Determined
NoDA Dyes II Notice of Data Availability. See Additional Information.	To Be	Determined
Final Action Dyes I. See Additional Information.	To Be	Determined
Final Action Dyes II (deferred wastes). See Additional Information.	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 3066

Judicial deadlines: Dyes II (deferred wastes) NPRM: met deadline of 6/30/1999. Dyes I & II NODAs due by 67 days after the injunction is lifted from Magruder case. NPRM for LDRs due 3 months after NODAs are signed. Dyes I and II final rules due 13 months after NODAs are signed.

Sectors Affected: 325132 Organic Dye and Pigment Manufacturing

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RIN: 2050–AD80

3120. • REVISIONS TO THE DEFINITION OF SOLID WASTE

Priority: Other Significant

Legal Authority: RCRA Section 1004(27); 42 USC 6903(27)

CFR Citation: 40 CFR 261.2

Legal Deadline: None

Abstract: Under RCRA, to be a hazardous waste, a material must also be a solid waste. EPA's framework for determining whether a material is a solid waste is based on what the material is, and how it's managed (e.g., how it is used, reused, etc.). For materials being recycled, RCRA jurisdiction is complex and the history of legal decisions related to the definition of solid waste is extensive (AMC I, API I, AMC II, ABR, API II, etc.). In response to one of the most recent decisions, the Association of Battery Recyclers, v. EPA 208 F.3d 1047 (2000) (ABR), EPA has decided to initiate development of a proposed rule to revise the definition of solid waste. We expect that the proposed rule will be broad in scope and will specifically address materials undergoing reclamation. In the context of reclamation, we plan to discuss options for how to distinguish materials that are discarded from materials that remain in use in a continuous industrial process and we anticipate proposing a definition of continuous industrial process. Generally, we believe that removing the specter of RCRA control where it is not necessary can spur increased reuse and recycling of hazardous waste, and will lead to better resource conservation and improved materials management overall.

Timetable:

Action	Date	FR Cite
NPRM	04/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4670

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RIN: 2050–AE98

3121. RCRA SUBTITLE C FINANCIAL TEST CRITERIA (REVISION)

Priority: Other Significant

Legal Authority: 42 USC 6912(a) RCRA sec 2002(a); 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 6926 RCRA sec 3006

CFR Citation: 40 CFR 264; 40 CFR 265; 40 CFR 280; 40 CFR 761

Legal Deadline: None

Abstract: The revised financial responsibility test is intended to improve the current test in predicting which firms will enter bankruptcy and not be able to cover their financial obligations for liability and closure costs of hazardous waste treatment, storage and disposal facilities. A bankrupt firm may be unable to afford the proper closure of a facility which would require the government to incur response costs at the facility. The rule would also qualify owners and operators of RCRA Treatment, Storage, and Disposal Facilities which must currently use more expensive ways, such as surety bonds or letters of credit, of demonstrating financial assurance, to use the less expensive corporate financial responsibility test for more of their obligations. The combined savings from screening out riskier firms and making the test more available to viable firms would be approximately $19 million annually in public and private costs. These regulatory amendments would have no effect on local or tribal governments.

Timetable:

Action	Date	FR Cite
NPRM	07/01/91	56 FR 30201
NPRM	10/12/94	59 FR 51523
Notice of Data Availability	06/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 2647

Sectors Affected: 323110 Commercial Lithographic Printing; 323114 Quick Printing; 325131 Inorganic Dye and Pigment Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 331311 Alumina Refining; 325211 Plastics Material and Resin Manufacturing; 32551 Paint and Coating Manufacturing; 32511 Petrochemical Manufacturing; 32512 Industrial Gas Manufacturing; 325188 All Other Basic Inorganic Chemical Manufacturing; 325193 Ethyl Alcohol Manufacturing; 325199 All Other Basic Organic Chemical Manufacturing; 325998 All Other Miscellaneous Chemical Product Manufacturing; 311942 Spice and Extract Manufacturing; 32411 Petroleum Refineries; 332813 Electroplating, Plating, Polishing, Anodizing and Coloring; 33271 Machine Shops; 33299 All Other Fabricated Metal Product Manufacturing; 333319 Other Commercial and Service Industry Machinery Manufacturing; 333999 All Other General Purpose Machinery Manufacturing; 336399 All Other Motor Vehicle Parts Manufacturing; 334 Computer and Electronic Product Manufacturing; 336 Transportation Equipment Manufacturing; 48422 Specialized Freight (except Used Goods) Trucking, Local; 56211 Waste Collection; 22111 Electric Power Generation; 221112 Fossil Fuel Electric Power Generation; 22132 Sewage Treatment Facilities; 56292 Materials Recovery Facilities

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RIN: 2050–AC71

3122. LAND DISPOSAL RESTRICTIONS; TREATMENT STANDARDS FOR SPENT POTLINERS FROM PRIMARY ALUMINUM REDUCTION (K088) AND REGULATORY CLASSIFICATION OF K088 VITRIFICATION UNITS

Priority: Other Significant

Legal Authority: 42 USC 6905; 42 USC 6912(a); 42 USC 6921; 42 USC 6924

CFR Citation: 40 CFR 268; 40 CFR 271

Legal Deadline: None

Abstract: On July 20, 2000, EPA proposed revised treatment standards for K088 wastes. Specifically, the Agency proposed to lower the cyanide treatment standard and reinstate a treatment standard for fluoride nonwastewaters based on a deionized water leach test. Comments to the proposed rule were significant and suggest that there are significant treatment issues yet to be resolved for K088 waste. The Agency needs to further assess the treatment universe for K088 and is considered extending the possible date of a final rule or to investigate other strategies both regulatory and non-regulatory to facilitate recycling of spent aluminum potliners.

Timetable:

Action	Date	FR Cite
NPRM	07/12/00	65 FR 42937
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4233

Sectors Affected: 3334 Ventilation, Heating, Air-Conditioning and Commercial Refrigeration Equipment Manufacturing

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RIN: 2050–AE65

3123. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS—PHASE II COVERING BOILERS AND CERTAIN INDUSTRIAL FURNACES

Priority: Other Significant

Legal Authority: 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 7412 CAA sec 112; 42 USC 7414 CAA sec 114

CFR Citation: 40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Legal Deadline: None

Abstract: Under the Clean Air Act (CAA), EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most hazardous waste combustors (HWCs) (i.e., incinerators, cement kilns, boilers, and some types of smelting furnaces). In addition, under the Resource Conservation and Recovery Act (RCRA), EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. The Agency is in the process of developing a proposal to address boilers and possibly other industrial furnaces, which combust hazardous wastes.

Timetable:

Action	Date	FR Cite
NPRM Cement Kilns & Lightweight Aggregate Kilns & Incinerators	04/19/96	61 FR 17358
Final Action MACT Fasttrack	06/19/98	63 FR 33782
Final Action Cement Kilns & LWAKs & Incinerators (Final-Phase I)	09/30/99	64 FR 52828
NPRM Boilers & Other Industrial Furnaces (Phase II)	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 3333

For information on the Phase I portion of this effort, see SAN 4418, RIN 2050-AE79.

Sectors Affected: 2123 Non-Metallic Mineral Mining and Quarrying; 2211 Electric Power Generation, Transmission and Distribution; 22132 Sewage Treatment Facilities; 3241 Petroleum and Coal Products Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3231 Printing and Related Support Activities; 3251 Basic Chemical Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 3253 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 3255 Paint, Coating, Adhesive, and Sealant Manufacturing; 3259 Other Chemical Product Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3273 Cement and Concrete Product Manufacturing; 3274 Lime, Gypsum and Gypsum Product Manufacturing; 3279 Other Nonmetallic Mineral Product Manufacturing; 3327 Machine Shops, Turned Product, and Screw, Nut and Bolt Manufacturing; 3328 Coating, Engraving, Heat Treating and Allied Activities; 3329 Other Fabricated Metal Product Manufacturing; 3332 Industrial Machinery Manufacturing; 3339 Other General Purpose Machinery Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 3342 Communications Equipment Manufacturing; 3343 Audio and Video Equipment Manufacturing; 3344 Semiconductor and Other Electronic Component Manufacturing; 3361 Motor Vehicle Manufacturing; 3362 Motor Vehicle Body and Trailer Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 4227 Petroleum and Petroleum Products Wholesalers

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RIN: 2050–AE01

3124. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS

Priority: Other Significant

Legal Authority: 42 USC 6924 RCRA sec 3004; 42 USC 6925 RCRA sec 3005; 42 USC 7412 CAA sec 112; 42 USC 7414 CAA sec 114

CFR Citation: 40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Legal Deadline: Final, Judicial, June 14, 2005.

Abstract: Under the Clean Air Act (CAA), EPA is required to establish National Emission Standards for Hazardous Air Pollutants (NESHAPs) for most hazardous waste combustors (HWCs) (i.e., incinerators, cement kilns, boilers, and some types of recovery furnaces). In addition, under the Resource Conservation and Recovery Act (RCRA), EPA is required to establish standards for all HWCs as necessary to ensure protection of human health and the environment. Consequently, the Agency established in the HWC Maximum Achievable Control Technology (MACT) rule new emissions standards for cement kilns, lightweight aggregate kilns, and incinerators under CAA authority on September 30, 1999 (64 FR 52828). Following promulgation, issues were raised by the regulated community through informal comments and through litigation. A clarification rule was proposed on July 3, 2001 (66 FR 35126). A final rule changed and clarified a subset of the proposed amendments to the final Phase I rule (February 14, 2002, 67 FR 6968). An interim final rule was issued on February 13, 2002 to establish amendments to certain implementation requirements (67 FR 6792). EPA will promulgate final replacement standards to replace the interim standards promulgated on February 13, 2002.

Timetable:

Action	Date	FR Cite
Final MACT Fasttrack	06/19/98	63 FR 33782
Final Cement Cement Kilns & LWAKs & Incinerators (Final-Phase I)	09/30/99	64 FR 52828
Parallel Proposal to Direct Final Rule	07/03/01	66 FR 35124
NPRM-Phase1 Phase I Amendments	07/03/01	66 FR 35126

Action	Date	FR Cite
Direct Final Rule Phase 1 Amendments	07/03/01	66 FR 35087
Direct Final Rule Partial Denial	10/15/01	66 FR 52361
Final (Good Cause) Emergency Extension of Compliance Date	11/29/01	66 FR 63313
Final Action Extension for Compliance	12/06/01	66 FR 63313
Interim Final Rule - Interim Standards for Phase I Amendments Final Rule	02/13/02	67 FR 6791
Final Rule - Standards for HAPs for HW Combustors - Phase I Amendments	02/14/02	67 FR 6967
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Federalism: Undetermined

Additional Information: SAN No. 4418

Split from RIN 2050-AE01.

Sectors Affected: 2123 Non-Metallic Mineral Mining and Quarrying; 2211 Electric Power Generation, Transmission and Distribution; 22132 Sewage Treatment Facilities; 3241 Petroleum and Coal Products Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3231 Printing and Related Support Activities; 3259 Other Chemical Product Manufacturing; 3271 Clay Product and Refractory Manufacturing; 3273 Cement and Concrete Product Manufacturing; 3274 Lime, Gypsum and Gypsum Product Manufacturing; 3279 Other Nonmetallic Mineral Product Manufacturing; 3327 Machine Shops, Turned Product, and Screw, Nut and Bolt Manufacturing; 3328 Coating, Engraving, Heat Treating and Allied Activities; 3332 Industrial Machinery Manufacturing; 3339 Other General Purpose Machinery Manufacturing; 3341 Computer and Peripheral Equipment Manufacturing; 3342 Communications Equipment Manufacturing; 3343 Audio and Video Equipment Manufacturing; 3344 Semiconductor and Other Electronic Component Manufacturing; 3361 Motor Vehicle Manufacturing; 3362 Motor Vehicle Body and Trailer Manufacturing; 3363 Motor Vehicle Parts Manufacturing; 4227 Petroleum and Petroleum Products Wholesalers; 45431 Fuel Dealers; 3255 Paint, Coating, Adhesive, and Sealant Manufacturing; 3252 Resin, Synthetic Rubber, and Artificial and Synthetic Fibers and Filaments Manufacturing; 3253 Pesticide, Fertilizer and Other Agricultural Chemical Manufacturing; 3254 Pharmaceutical and Medicine Manufacturing; 3251 Basic Chemical Manufacturing

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RIN: 2050–AE79

Environmental Protection Agency (EPA)
Resource Conservation and Recovery Act (RCRA)
Completed Actions

3125. AMENDMENTS TO THE CORRECTIVE ACTION MANAGEMENT UNIT RULE

Priority: Other Significant

CFR Citation: 40 CFR 260; 40 CFR 264; 40 CFR 271

Completed:

Reason	Date	FR Cite
Supplemental NPRM	11/20/01	66 FR 58085
Final Action	01/22/02	67 FR 2962

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE77

3126. HAZARDOUS WASTE IDENTIFICATION RULE (HWIR): IDENTIFICATION AND LISTING OF HAZARDOUS WASTES

Priority: Other Significant

CFR Citation: 40 CFR 261

Completed:

Reason	Date	FR Cite
Direct Final Rule	10/03/01	66 FR 50332
Parallel NPRM	10/03/01	66 FR 50379
Notice - Extension of Comment Period/Delay of Effective Date	12/03/01	66 FR 60153

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE07

3127. PAINT MANUFACTURING WASTES LISTING: HAZARDOUS WASTE MANAGEMENT SYSTEM: IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

Priority: Other Significant

CFR Citation: 40 CFR 261; 40 CFR 271; 40 CFR 302; 40 CFR 264; 40 CFR 265

Completed:

Reason	Date	FR Cite
Final Action	04/04/02	67 FR 16261

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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EPA—Resource Conservation and Recovery Act (RCRA) — **Completed Actions**

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RIN: 2050–AE32

3128. LISTING OF HAZARDOUS WASTE; INORGANIC CHEMICAL WASTES; LAND DISPOSAL RESTRICTIONS FOR NEWLY LISTED WASTES; CERCLA HAZARDOUS SUBSTANCES REPORTABLE QUANTITIES

Priority: Other Significant

CFR Citation: 40 CFR 261; 40 CFR 263; 40 CFR 264; 40 CFR 265; 40 CFR 268; 40 CFR 271; 40 CFR 302

Completed:

Reason	Date	FR Cite
Final Action	11/20/01	66 FR 58258

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE49

3129. DEFINITION OF SOLID WASTE; CODIFICATION OF MINERAL PROCESSING VACATURE (CLASSIFICATION OF BATTERY RECYCLERS V. EPA) AND DISCUSSION OF FUTURE PROPOSED RULEMAKING

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 261.2(c)(3); 40 CFR 261.4(a)(17)

Completed:

Reason	Date	FR Cite
Final Action	03/13/02	67 FR 11251

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 2050–AE94

3130. NESHAPS: STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR HAZARDOUS WASTE COMBUSTORS - PARALLEL PROPOSED RULE

Priority: Other Significant

CFR Citation: 40 CFR 60; 40 CFR 63; 40 CFR 260; 40 CFR 264; 40 CFR 265; 40 CFR 266; 40 CFR 270

Completed:

Reason	Date	FR Cite
Direct Final Rule Partial Denial (See 2050-AE79)	10/15/01	66 FR 52361
Final Action (See 2050-AE79)	02/14/02	67 FR 6968

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State

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RIN: 2050–AE90

Environmental Protection Agency (EPA)
Oil Pollution Act (OPA) — **Final Rule Stage**

3131. OIL POLLUTION PREVENTION REGULATION: REVISIONS

Priority: Other Significant

Legal Authority: 33 USC 1321 CWA sec 311(j)(1)(C)

CFR Citation: 40 CFR 112

Legal Deadline: None

Abstract: Following a major inland oil spill with substantial environmental impacts (i.e., Ashland Oil in Floreffe, PA, in January 1988), an interagency task force recommended steps to improve EPA's oil spill prevention program (40 CFR part 112). This program requires oil storage facilities to prevent and contain discharges that could reach waters of the United States. On October 22, 1991, the Agency proposed revisions to implement some of the task force recommendations and on February 17, 1993, the Agency proposed further clarifications and technical changes to the spill prevention regulations. On December 2, 1997, EPA supplemented the 1991 and 1993 proposed revisions with a proposal to reduce burdens associated with the oil spill prevention program by reducing the recordkeeping provisions or exempting some facilities from some recordkeeping requirements. This rule will take final action on the 1991, 1993, and 1997 proposals.

Timetable:

Action	Date	FR Cite
NPRM	10/22/91	56 FR 54612
NPRM	02/17/93	58 FR 8824
Supplemental NPRM	12/02/97	62 FR 63812
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2634

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RIN: 2050–AC62

Environmental Protection Agency (EPA)
Comprehensive Environmental Response, Compensation and Liability Act — **Proposed Rule Stage**

3132. REPORTABLE QUANTITY ADJUSTMENTS FOR CARBAMATES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 11004; 42 USC 9602(a)

CFR Citation: 40 CFR 302; 40 CFR 355

Legal Deadline: None

Abstract: EPA has listed carbamate waste streams as hazardous wastes under the Resource Conservation and Recovery Act (RCRA). RCRA listed wastes, by statute, automatically become hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) and are assigned a one pound statutory reportable quantity (RQ) unless EPA adjusts them. These substances also become subject to reporting requirements under the Emergency Planning and Community Right-to-Know Act (EPCRA) with a one pound threshold. EPA, in this action, will propose RQ adjustments for the carbamates. Most RQ adjustments are expected to be greater than one pound. Raising the RQs for these substances would decrease the burden on 1) the regulated community for complying with the reporting requirements under CERCLA and EPCRA; 2) Federal, State, and local authorities for program implementation; and 3) Federal, State, or local authorities, if they release hazardous substances at the RQ level or greater.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3423

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RIN: 2050–AE12

3133. STREAMLINING THE PREAUTHORIZATION MIXED FUNDING FOR APPLICATION AND IMPLEMENTATION OF CLAIMS AGAINST SUPERFUND

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9601

CFR Citation: 40 CFR 307

Legal Deadline: None

Abstract: Current regulations at 40 CFR part 307 provide for the preauthorization of claims against the Superfund in instances where the Agency makes a determination that mixed funding is appropriate. This process has been labeled by many stakeholders as overly burdensome. The Agency has reviewed the current process in order to identify areas in which burdens may be lessened and requirements may be streamlined. As a result, the Agency is considering a proposal to amend the current regulation to: streamline the application process by eliminating duplicative information requirements; minimize the requirements related to management, oversight, and reporting of the cleanup, by removing the requirement to be guided by the Federal Acquisition Requirements, and replacing the requirement of maximum free and open competition with a bright-line standard; allow claimants to provide independent certification of claims and supporting documentation; streamline the actual payment process by taking advantage of the electronic funds transfer process; ensure that cost recovery concerns are addressed by requiring claimants, within a settlement document, to reimburse the Fund for costs not recovered (only in the event cost recovery is initiated), due to claimants' failure to provide adequate documentary support or upon a determination that response costs expended (and claimed) were not reasonable or not incurred consistent with the National Contingency Plan and ensure proper accounting by requiring offsets for funds owed to the Agency by claimants.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3885

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RIN: 2050–AE38

3134. COOPERATIVE AGREEMENTS AND SUPERFUND STATE CONTRACTS FOR SUPERFUND RESPONSE ACTIONS

Priority: Other Significant

Legal Authority: 42 USC 9601 to 9675

CFR Citation: 40 CFR 35 subpart O

Legal Deadline: None

Abstract: 40 CFR part 35 subpart O is the Superfund Administrative Regulation that governs awarding of Superfund cooperative agreements (CAs) to States, Indian tribes, and territories of the United States. Subpart O covers State-lead, site-specific cooperative agreements for non-time-critical removal, preremedial, remedial, and enforcement actions, and site-specific management assistance for federal-lead projects. Also covered by subpart O are non-site-specific Core Program and Voluntary Cleanup Program State infrastructure development, as well as Brownfields pilots, and Brownfields assessments. The requirements for Superfund State contracts, financial administration, property, procurement, reporting, recordkeeping, and closeout are provided in subpart O.

Subpart O was promulgated 6/5/1990, and became effective on 7/5/1990. Many changes in the Superfund program have occurred over the past almost ten years and these need to be reflected in subpart O. The six categories of CAs presently used in subpart O need greater flexibility to accommodate the new types of CAs that have developed. For example, the number of Block Funding Reform pilots, begun in 1997, to consolidate several of the cooperative agreements

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offered in subpart O, has grown to about 16 for fiscal year 2000, and have generated at least 60 approved deviation requests from subpart O and 40 CFR part 31. These pilot projects offer considerable administrative relief to States, tribes, and EPA by reducing reporting requirements, broadening scope changes without amendment, increasing the ability to move monies within and among CAs, and relaxing application requirements regarding site-specific identification of cooperative agreement funds to certain activities, while maintaining site-specific drawdown requirements needed for cost recovery and Superfund accounting. Subpart O also needs to be conformed with part 31 (Uniform Administrative Requirements for Grants and Cooperative Agreements).

EPA expects to institutionalize the combining of CA types, create more flexible reporting requirements, permit greater scope changes without amendment, provide more flexible money movement within and among CAs, and other policy advances in State/tribal/EPA interaction.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4177

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RIN: 2050–AE62

Environmental Protection Agency (EPA) **Final Rule Stage**
Comprehensive Environmental Response, Compensation and Liability Act

3135. FINAL RULE TO CORRECT TYPOGRAPHICAL ERRORS AND REMOVE OBSOLETE LANGUAGE IN 40 CFR PART 302

Priority: Info./Admin./Other

Legal Authority: 42 USC 9602 to 9604; 33 USC 1231; 33 USC 1261

CFR Citation: 40 CFR 302 (Revision)

Legal Deadline: None

Abstract: EPA has reviewed the portions of the Code of Federal Regulations (CFR) related to the release reporting program under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Within these regulations, which appear in 40 CFR part 302, EPA has identified several categories of errors, including: (1) typographical errors in the table of CERCLA hazardous substances (Table 302.4 in 40 CFR 302.4); (2) definitions made legally obsolete because of changes in CERCLA's statutory provisions; and (3) redundant or unnecessary information (particularly in the Regulatory synonyms, Statutory RQ, and Final RQ Category columns of Table 302.4) that could be removed from the CFR to reduce potential confusion.

Correcting the typographical errors, updating definitions, and removing redundant information in 40 CFR part 302 will not affect the scope of what is regulated or how it is regulated. For this reason, EPA is developing a final rule to make these minor corrections.

EPA does not anticipate any substantial impact on small businesses or State/tribal/local governments because the final rule will not introduce any new regulations or impose new burdens. The corrections included in this rulemaking will serve to reduce confusion among the regulated community and government authorities.

Timetable:

Action	Date	FR Cite
Direct Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 3929

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RIN: 2050–AE88

Environmental Protection Agency (EPA) **Long-Term Actions**
Comprehensive Environmental Response, Compensation and Liability Act

3136. NATIONAL PRIORITIES LIST FOR UNCONTROLLED HAZARDOUS WASTE SITES: PROPOSED AND FINAL RULES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 9605 Superfund (CERCLA) sec 105

CFR Citation: 40 CFR 300.425

Legal Deadline: None

Abstract: This action will revise the sites included on the National Priorities List (NPL) of uncontrolled waste sites in the National Contingency Plan (NCP). CERCLA requires that the Agency revise the NPL at least annually. Periodic revisions will allow EPA to include sites on the NPL with known or threatened hazardous substance releases and to delete sites that have been cleaned up.

Timetable:

Action	Date	FR Cite
NPRM 24	03/06/98	63 FR 11340
Final Action 20	03/06/98	63 FR 11332
NPRM 25	07/28/98	63 FR 40247

EPA—Comprehensive Environmental Response, Compensation and Liability Act **Long-Term Actions**

Action	Date	FR Cite
Final Action 21	07/28/98	63 FR 40182
Final Action (Tex-Tin Corp)	09/18/98	63 FR 49855
NPRM 26	09/29/98	63 FR 51882
Final Action 22	09/29/98	63 FR 51848
NPRM 27	01/19/99	64 FR 2950
Final Action 23	01/19/99	64 FR 2942
NPRM (Midnight Mine)	02/16/99	64 FR 7564
NPRM 28	04/23/99	64 FR 19968
NPRM (Almeda)	05/10/99	64 FR 24990
Final Action 24	05/10/99	64 FR 24949
NPRM 29	07/22/99	64 FR 39886
Final Action 25	07/22/99	64 FR 39878
NPRM 30	10/22/99	64 FR 56992
Final Action	10/22/99	64 FR 56966
NPRM 31	02/04/00	65 FR 5468
Final Action 26	02/04/00	65 FR 5435
NPRM 32	05/11/00	65 FR 30489
Final Action 28	05/11/00	65 FR 30482
NPRM 33	07/27/00	65 FR 46131
Final Action 29	07/27/00	65 FR 46096
NPRM Alabama/Malone	08/24/00	65 FR 51567
NPRM 34	12/01/00	65 FR 75215
Final Action 30	12/01/00	65 FR 75179
NPRM 35	01/11/01	66 FR 2380
NPRM 36	06/14/01	66 FR 32287
Final Action 31	06/14/01	66 FR 32235
NPRM 37	09/13/01	66 FR 47612
Final Action 32	09/13/01	66 FR 47583
NPRM	02/26/02	67 FR 8836
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3439

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RIN: 2050–AD75

3137. CRITERIA FOR THE DESIGNATION OF HAZARDOUS SUBSTANCES UNDER CERCLA SECTION 102(A)

Priority: Other Significant

Legal Authority: 42 USC 9602

CFR Citation: 40 CFR 302.4

Legal Deadline: None

Abstract: This action will address the development of evaluation criteria for the designation of substances as hazardous under CERCLA. It is necessary to develop evaluation criteria because the Agency has the authority under CERCLA 102(a) to designate substances as hazardous; however, the Agency does not have criteria to do so. To date the only substances designated as CERCLA hazardous substances are as a result of their appearance on other Acts' lists defined under CERCLA 101(14). Using CERCLA designation criteria the Agency may establish CERCLA hazardous substances independently from other Acts, in the interest of public health and the environment.

The purpose of this action is to have well thought-out criteria for designating hazardous substances that may be applied to individual substances for evaluation and decision as to whether or not the substance should be appropriately designated a CERCLA 102(a) hazardous substance. The Agency already has the authority to designate substances as hazardous; in this action, criteria will be developed to implement that authority.

Timetable:

Action	Date	FR Cite
ANPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4201

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RIN: 2050–AE63

Environmental Protection Agency (EPA) **Proposed Rule Stage**
Clean Water Act (CWA)

3138. REVISIONS TO THE NATIONAL OIL AND HAZARDOUS SUBSTANCES POLLUTION CONTINGENCY PLAN; SUBPART J PRODUCT SCHEDULE LISTING REQUIREMENTS

Priority: Other Significant

Legal Authority: 33 USC 1321(d)(2); CWA section 311(d)(2)

CFR Citation: 40 CFR 300

Legal Deadline: None

Abstract: This action will propose revisions to subpart J of the National Contingency Plan (NCP) (40 CFR part 300.900). Section 311(d)(2)(G) of the Clean Water Act requires that EPA prepare a schedule of dispersants, other chemicals, and other spill mitigating devices and substances, if any, that may be used in carrying out the NCP. Under subpart J, respondents wishing to add a product to the Product Schedule must submit technical product data specified in 40 CFR 300.915 to EPA. This rulemaking will propose revisions to subpart J to clarify and change protocols for effectiveness and toxicity testing. It will clarify EPA authority to remove products from the Product Schedule. These changes will help ensure protection of the environment when these products are used to clean up and mitigate oil spills into or upon navigable waters, adjoining shorelines, the waters of the contiguous zone, or which may affect natural resources belonging to or under the exclusive management authority of the United States.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State

Additional Information: SAN No. 4526

Sectors Affected: 54 Professional, Scientific and Technical Services; 3259

Other Chemical Product Manufacturing; 325 Chemical Manufacturing; 3251 Basic Chemical Manufacturing

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RIN: 2050–AE87

3139. EFFLUENT GUIDELINES AND STANDARDS FOR THE CONSTRUCTION AND DEVELOPMENT INDUSTRY

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 33 USC 1311 CWA 301; 33 USC 1314 CWA 304; 33 USC 1316 CWA 306; 33 USC 1317 CWA 307; 33 USC 1318 CWA 308; 33 USC 1342 CWA 402; 33 USC 1361 CWA 501

CFR Citation: 40 CFR 450

Legal Deadline: NPRM, Judicial, May 15, 2002.
Final, Judicial, March 31, 2004.

Abstract: The effluent guidelines will apply to construction activities associated with new development, as well as to those associated with re-development activities. The regulations will address storm water runoff from construction sites during the active phase of construction, as well as post-construction runoff. Construction activity is a major source of sediment and other pollutants discharged to the nation's waters. Industries potentially affected by this rulemaking include land developers, home builders, builders of commercial and industrial property, and other private and public sector construction site owners and operators. EPA will develop design criteria for erosion and sediment controls and storm water best management practices (BMPs). These requirements will be implemented in NPDES storm water permits issued to construction site owners and operators.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	03/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4280

For more information on the construction and development rule visit web site.,

NPRM- http://www.epa.gov/ost/guide/construction

Sectors Affected: 233 Building, Developing and General Contracting; 234 Heavy Construction

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RIN: 2040–AD42

3140. EFFLUENT GUIDELINES AND STANDARDS FOR THE AQUATIC ANIMAL PRODUCTION INDUSTRY

Priority: Other Significant

Legal Authority: CWA sec 301; CWA sec 304; CWA sec 306; CWA sec 307; CWA sec 308; CWA sec 318; CWA sec 402; CWA sec 501

CFR Citation: 40 CFR 451

Legal Deadline: NPRM, Judicial, June 30, 2002.
Final, Judicial, June 30, 2004.

Abstract: EPA is focusing new efforts to help reduce nutrient loadings from commercial agricultural and industrial operations nationwide. Currently, there are no Federal technology-based standards for aquatic animal production facilities, which are part of the aquaculture industry. This action is a new effort to develop pollutant controls in the form of nationally applicable discharge standards for commercial and public aquaculture operations. In assessments of surface water quality, States most frequently cite siltation, nutrients, and pathogens as the major cause of water quality impairment. With the growth of the aquaculture industry, and inconsistent State regulatory oversight, EPA will examine available technologies for the control of pollutants, primarily nutrients. This action was formerly titled Aquaculture.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4406

Sectors Affected: 112511 Finfish Farming and Fish Hatcheries; 112512 Shellfish Farming; 112519 Other Animal Aquaculture

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RIN: 2040–AD55

3141. EFFLUENT GUIDELINES 2002 PROGRAM PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(m) CWA

CFR Citation: Not Yet Determined

Legal Deadline: Final, Judicial, August 28, 2002.

Abstract: The Effluent Guidelines Plan is published biennially as required by the Clean Water Act and a consent decree. This plan is sometimes referred to as the 304(m) plan, based on one relevant section of the Clean Water Act. This proposed Effluent Guidelines Program Plan describes the Agency's ongoing effluent guidelines development efforts and EPA's plans for development of new or revised effluent guidelines beginning in 2002 and 2003. In addition, this Plan describes EPA's draft Strategy for National Clean Water Industrial Regulations which EPA plans to notice in the near future. This document provides background information on national clean water industrial regulations, describes the role these regulations play in today's Clean Water Program, and describes a process that EPA proposes to use to develop future biennial plans that identify industrial categories for which EPA will develop or revise national clean water regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4576

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RIN: 2040–AD78

3142. WATER QUALITY STANDARDS FOR ALABAMA—PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1313 CWA 303

CFR Citation: 40 CFR 131

Legal Deadline: NPRM, Judicial, October 2002, See additional information.

Abstract: Under the CWA, States have primary authority in developing water quality standards for waters within their jurisdiction. EPA maintains oversight authority in that States must submit their water quality standards to EPA for review and approval or disapproval. If a State's water quality standards are not consistent with the requirements of the CWA and its supporting regulations, and are subsequently disapproved by EPA, the State must revise the disapproved water quality standards. If the State does not revise the disapproved water quality standards, the CWA requires the EPA Administrator to promulgate Federal water quality standards to supersede those disapproved provisions in the States' water quality standards. EPA is developing a proposed rule to determine the appropriate use designations for seven water bodies in Alabama that EPA disapproved in 1986 and 1991.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
Final Action	05/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4264

Judicial NPRM: Consent decree specifies that EPA will sign proposed Federal replacement standards by 01/15/2002 unless EPA approves State use designations.

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RIN: 2040–AD35

3143. TEST PROCEDURES FOR THE ANALYSIS OF MERCURY UNDER THE CLEAN WATER ACT (METHOD 245.7)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq; 33 USC 1314(h); 33 USC 1361(a); PL 92-500 76 Stat. 816; PL 95-217 91 Stat. 1567; PL 100-4 100 Stat. 7

CFR Citation: 40 CFR 136.3(IB)

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve a new analytical test procedure (method) for the determination of mercury in the wastewater program as authorized under the Clean Water Act (CWA). This new test procedure is capable of measuring mercury at low parts-per-trillion (ppt; ng/L) concentrations and would be an alternative to the recently promulgated EPA Method 1631, which also determines mercury at low ppt concentrations. EPA Method 245.7 uses similar technology to EPA Method 1631 (cold vapor atomic fluorescence spectrometry), but it does not require the use of a gold trap. Laboratories claim that EPA Method 245.7 is a less burdensome and more cost-effective method than EPA Method 1631.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4377

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RIN: 2040–AD52

3144. REVISIONS TO METHOD DETECTION AND QUANTIFICATION FOR USE UNDER THE CLEAN WATER ACT AND SAFE DRINKING WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); CWA 304(h); 33 USC 1361(a); CWA 501(a); 42 USC 300f; SDWA 1401

CFR Citation: 40 CFR 136(b)

Legal Deadline: NPRM, Judicial, February 28, 2003, Settlement Agreement.
Final, Judicial, September 30, 2004, Settlement Agreement.

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 related to the detection and quantification procedures currently used by EPA for analytes regulated in the wastewater program as authorized under the Clean Water Act (CWA) and in the drinking water program under

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the Safe Drinking Water Act (SDWA). The current method detection limit (MDL) procedure is set forth at 40 CFR part 136, appendix B. EPA has not promulgated a generic procedure for quantification but it uses the minimum level of quantitation (ML) in its wastewater program and the practical quantitation level (PQL) in its drinking water program. The ML is defined in analytical methods and is generally set at 3.18 times the MDL. The PQL is generally set at five to ten times the MDL. The Office of Water has been working to revise and refine these concepts in response to the need to regulate pollutants at low levels (often levels that are lower than measurement capabilities will allow) and to address other potential approaches to detection and quantification, including concepts being introduced by outside organizations such as voluntary consensus standards bodies (VCSBs). The rulemaking would also re-evaluate the current MDL and quantification approaches and assess alternative approaches.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4378

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RIN: 2040–AD53

3145. TEST PROCEDURES: NEW AND UPDATED TEST PROCEDURES FOR THE ANALYSIS OF POLLUTANTS UNDER THE CLEAN WATER ACT AND SAFE DRINKING WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq; 33 USC 1314(h); CWA 304(h); 33 USC 1361(a); CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR parts 136 and 141 to approve new and updated EPA methods for wastewater, ambient water quality, and drinking water, including new and updated versions of methods from voluntary consensus standards bodies and other organizations. These methods are used to comply with monitoring requirements in the wastewater, ambient water quality and/or drinking water programs, as authorized under the Clean Water Act (CWA) and Safe Drinking Water Act. This regulation would propose new methods for metals such as Method 1638 (which utilizes ICP/MS), new methods for chemical pollutants (e.g., Method 245.7), and updated methods for chemical and biological pollutants (e.g., Methods 625 and 1625), including methods from voluntary consensus standards bodies (VCSBs), and from other external organizations. The new and updated methods include methods from organizations such as the American Society for Testing and Materials (ASTM), Standard Methods, Association of Official Analytical Methods-International, and U.S. Geological Survey.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4540

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RIN: 2040–AD71

3146. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 2

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1316 CWA sec 306; 33 USC 1326 CWA sec 316; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline: NPRM, Judicial, February 28, 2002.
Final, Judicial, August 28, 2003.

Abstract: This rulemaking affects, at a minimum, existing electricity generating facilities that employ cooling water intake structures and whose intake flow levels exceed a minimum threshold to be determined by EPA during the rulemaking. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of the rulemaking is to minimize any adverse environmental impact that may be associated with the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life on intake screens or similar devices where they may be injured or killed. Entrainment occurs when smaller aquatic organisms, eggs, and larvae are drawn into a cooling system and then pumped back out, often with significant injury or mortality due to heat, physical stress or exposure to chemicals.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17122
NPRM Comment Period End	07/08/02	
Final Action	08/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4474

Split from RIN 2040-AC34.

Sectors Affected: 22111 Electric Power Generation; 22133 Steam and Air-Conditioning Supply; 311 Food Manufacturing; 3122 Tobacco Manufacturing; 313 Textile Mills; 321 Wood Product Manufacturing; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 327 Nonmetallic Mineral Product Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing; 61131 Colleges, Universities and Professional Schools; 21 Mining

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RIN: 2040–AD62

3147. NPDES PERMIT REQUIREMENTS FOR MUNICIPAL SANITARY SEWER COLLECTION SYSTEMS, MUNICIPAL SATELLITE COLLECTION SYSTEMS, AND SANITARY SEWER OVERFLOWS

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501(a)

CFR Citation: 40 CFR 122.38; 40 CFR 122.41; 40 CFR 122.42

Legal Deadline: None

Abstract: EPA is developing a notice of proposed rulemaking that would propose a broad-based regulatory framework for sanitary sewer collection systems under the NPDES program. The Agency is proposing standard permit conditions for inclusion in permits for publicly owned treatment works (POTWs) and municipal sanitary sewer collection systems. The standard requirements address reporting, public notification, and recordkeeping requirements for sanitary sewer overflows (SSOs), capacity assurance, management, operation and maintenance requirements for municipal sanitary sewer collection systems; and a prohibition on SSOs. The Agency is also proposing a regulatory framework for applying NPDES permit conditions, including applicable standard permit conditions, to municipal satellite collection systems. Municipal satellite collection systems are sanitary sewers owned or operated by a municipality that conveys wastewater to a POTW operated by a different municipality.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 3999

Note: This rule was formerly known as Revisions to NPDES Requirements for Compliance Reporting and Collection System Discharges.

Sectors Affected: 22132 Sewage Treatment Facilities

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RIN: 2040–AD02

3148. OCEAN DISCHARGES CRITERIA REVISIONS

Priority: Other Significant

Legal Authority: 33 USC 1343 et seq

CFR Citation: 40 CFR 125.121(a); 40 CFR 125.121(e); 40 CFR 125.122; 40 CFR 125.123; 40 CFR 125.124

Legal Deadline: None

Abstract: EPA is proposing to modify the existing regulations implementing the ocean protection provisions of section 403 of the Clean Water Act. A key element of the proposed rule would provide for establishment of baseline water quality standards for ocean waters beyond three miles offshore. These waters, designated "Healthy Ocean Waters," would be protected by both a narrative statement of desired quality and pollutant-specific numeric criteria. The proposed rule also would strengthen the requirements for a permit to discharge to any ocean waters, and would create a process for establishing Special Ocean Sites (SOSs), which are areas within ocean waters that are of outstanding value, where new and significantly expanded discharges would be prohibited. The proposed rule will enhance the protection of the ocean environment and meet the goals of the Executive Order on Marine Protected Areas (E.O. 13158).

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	
Final Action	04/00/03	

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EPA—Clean Water Act (CWA) — **Proposed Rule Stage**

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4446

Sectors Affected: 22132 Sewage Treatment Facilities; 221111 Hydroelectric Power Generation; 221112 Fossil Fuel Electric Power Generation; 42271 Petroleum Bulk Stations and Terminals; 325412 Pharmaceutical Preparation Manufacturing; 311711 Seafood Canning; 21111 Oil and Gas Extraction

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RIN: 2040–AD60

3149. CLEAN WATER ACT DEFINITION OF WATERS OF THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1361 CWA sec 501; 33 USC 1362 CWA sec 502

CFR Citation: 33 CFR 328.3(a); 40 CFR 110.1; 40 CFR 112.2; 40 CFR 116.3; 40 CFR 117.1; 40 CFR 122.2; 40 CFR 230.3(s); 40 CFR 232.2; 40 CFR 257.3-1(d); 40 CFR 300, appendix E; 40 CFR 401.11(l)

Legal Deadline: None

Abstract: This action involves joint rulemaking by EPA and the Department of the Army to amend the regulatory definition of waters of the United States. The proposal would clarify the jurisdictional status under the Clean Water Act (CWA) of so-called isolated intrastate waters and wetlands. The existing regulations contain language asserting jurisdiction over isolated intrastate waters, but that regulatory provision has been the subject of a January 9, 2001, U.S. Supreme Court opinion. Revision of the regulatory language is necessary to address the Court's decision, improve regulatory clarity, and provide more specificity regarding CWA jurisdiction. The rulemaking would clarify CWA jurisdiction for entities (e.g., industrial, commercial, governmental) that discharge pollutants, including dredged or fill material, to isolated intrastate surface waters or wetlands. Significant impacts on small entities or State/local/tribal governments are not anticipated, as the proposed regulatory revisions would be consistent with the Supreme Court ruling.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 2804

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RIN: 2040–AB74

3150. • TOTAL MAXIMUM DAILY LOAD (TMDL) PROGRAM REVISIONS

Priority: Other Significant

Legal Authority: 33 USC 1313

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule would amend regulations governing the TMDL program to ensure that it is effective, allows for active participation by all stakeholders including local governments and communities. The amendments will address: the scope and content of the list of impaired waters required by section 303(d) of the Clean Water Act, the scope and content of TMDLs, EPA's role in helping States establish 303(d) lists and TMDLs so that impaired waters are restored, and the pace/schedule for establishing TMDLs.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4623

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RIN: 2040–AD82

Environmental Protection Agency (EPA)
Clean Water Act (CWA) — **Final Rule Stage**

3151. EFFLUENT GUIDELINES AND STANDARDS FOR THE METAL PRODUCTS AND MACHINERY CATEGORY, PHASES 1 AND 2

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 413; 40 CFR 433; 40 CFR 438; 40 CFR 463; 40 CFR 464; 40 CFR 467; 40 CFR 471

Legal Deadline: NPRM, Judicial, October 31, 2000.
Final, Judicial, December 31, 2002.

Abstract: EPA is developing effluent limitations guidelines for facilities that generate wastewater while processing metal parts; metal products; and machinery, including manufacture, assembly, rebuilding, repair, and maintenance. In 1995 EPA proposed regulations for seven industrial groups: aircraft, aerospace, hardware, ordnance, stationary industrial equipment, mobile industrial equipment, and electronic equipment. EPA has consolidated this rulemaking with a second phase, whose scope would include additional industrial groups such as: bus and truck, household equipment, instruments, motor vehicles, office machines, precious metals and jewelry, railroads, job shops, printed circuit boards, and ships and boats. The deadlines and timetable apply to the consolidated Phase 1 and 2 rulemaking.

Timetable:

Action	Date	FR Cite
NPRM (Phase 1)	05/30/95	60 FR 28210
NPRM (Consolidated Phase 1 and 2)	01/03/01	66 FR 424
NODA	05/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 2806

For more information on Metal Products and Machinery on the Internet, please visit: http://www.epa.gov/ost/guide/mpm/index.html

Sectors Affected: 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing; 337 Furniture and Related Product Manufacturing; 339 Miscellaneous Manufacturing

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RIN: 2040–AB79

3152. EFFLUENT GUIDELINES AND STANDARDS FOR THE IRON AND STEEL MANUFACTURING POINT SOURCE CATEGORY (REVISIONS)

Priority: Other Significant

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1362 CWA sec 501

CFR Citation: 40 CFR 420

Legal Deadline: NPRM, Judicial, October 31, 2000.
Final, Judicial, April 30, 2002.

Abstract: EPA is revising the effluent limitations guidelines and standards for the Iron and Steel Manufacturing Point Source Category to reflect significant industry changes related to consolidation and modernization within the U.S. steelmaking industry as well as advances in manufacturing technologies, in-process pollution prevention, water conservation practices, and end-of-pipe wastewater treatment.

Timetable:

Action	Date	FR Cite
NPRM	12/27/00	65 FR 81963
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 3833

Sectors Affected: 331111 Iron and Steel Mills; 3312 Steel Product Manufacturing from Purchased Steel; 3328 Coating, Engraving, Heat Treating and Allied Activities; 324199 All Other Petroleum and Coal Products Manufacturing

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RIN: 2040–AC90

3153. NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM PERMIT REGULATION AND EFFLUENT LIMITATIONS GUIDELINES STANDARDS FOR CONCENTRATED ANIMAL FEEDING OPERATIONS (CAFOS)

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 122.23; 40 CFR 412

Legal Deadline: NPRM, Judicial, December 15, 2000, Effluent guidelines and standards only.
Final, Judicial, December 15, 2002, Effluent guidelines and standards only.

Abstract: Feedlot operations are covered by existing effluent guidelines at 40 CFR 412 and concentrated animal feeding operations (CAFOs) are covered by permitting regulations at 40 CFR 122.23. This action will revise the existing effluent guidelines primarily to address swine, poultry, beef, and dairy cattle operations and will revise the NPDES regulation for concentrated animal feeding operations. The existing regulations, which require the largest confined animal feeding operations to achieve zero discharge of wastes to

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surface waters except for certain storm related discharges, have not been sufficient to resolve water quality impairment from feedlot operations. Feedlot operations are substantial contributors of nutrients in surface waters that have severe anoxia (low levels of dissolved oxygen) and problem algae blooms.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2959
NODA	11/21/01	66 FR 58556
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4153

This rule was formerly known as Effluent Guidelines and Standards for Feedlots Point Source Category, and NPDES Regulation for Concentrated Animal Feeding Operations.

Sectors Affected: 11221 Hog and Pig Farming; 11232 Broilers and Other Meat Type Chicken Production; 11231 Chicken Egg Production; 112112 Cattle Feedlots; 11212 Dairy Cattle and Milk Production; 11241 Sheep Farming; 11233 Turkey Production; 11292 Horse and Other Equine Production; 11239 Other Poultry Production

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RIN: 2040–AD19

3154. EFFLUENT GUIDELINES AND STANDARDS FOR THE BLEACHED PAPERGRADE KRAFT SUBCATEGORY OF THE PULP, PAPER, AND PAPERBOARD CATEGORY; CERTIFICATION IN LIEU OF MONITORING FOR CHLOROFORM

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1317 CWA sec 307; 33 USC 1342 CWA sec 402; 33 USC 1318 CWA sec 308; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 430

Legal Deadline: None

Abstract: This action is a follow-on to the already-promulgated Pulp and Paper Cluster Rules covering the Bleached Papergrade Kraft Subcategory (Subpart B). EPA is considering allowing Subpart B mills to certify process changes (specifically, elimination of elemental chlorine and hypochlorite) and operating conditions in lieu of minimum monitoring to demonstrate compliance with the effluent limitations for chloroform.

Timetable:

Action	Date	FR Cite
NPRM	04/15/98	63 FR 18796
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4192

NPRM-
http://www.epa.gov/fedrgstr/EPA-WATER/1998/April/Day-15/w9615.htm

Sectors Affected: 3221 Pulp, Paper, and Paperboard Mills

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RIN: 2040–AD23

3155. TEST PROCEDURES FOR ANALYSIS OF BIOLOGICAL CONTAMINANTS UNDER CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361 CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve EPA Method 1622 and to approve microbiological methods for monitoring ambient water for the detection of Cryptosporidium, Giardiai, E. coli and Enterococci in ambient waters by filtration of a 10-L sample in laboratory, separation of target organisms from other debris using immunomagnetic separation, and detection of the organisms using immunofluorescence assay and differential interference contrast microscopy and confirmation examination of the organisms using vital dye stains. This proposed regulation would approve test procedures to be available for use by testing laboratories.

Timetable:

Action	Date	FR Cite
NPRM	08/30/01	66 FR 45811
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4047

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RIN: 2040–AD08

3156. TEST PROCEDURES: CLEAN WATER ACT AND SAFE DRINKING WATER ACT METHODS UPDATE

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq; CWA 304(h); 33 USC 1314(h); CWA 501(a); 33 USC 1361(a); SDWA 1412; 42 USC 300 g-1; 42 USC 300f(1); SDWA 1401(a); SDWA 1445; SDWA 1450(a); 42 USC 300j-4; 42 USC 300j-9(a)

CFR Citation: 40 CFR 136; 40 CFR 141; 40 CFR 143

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136, National Primary Drinking Water Regulations under 40 CFR part 141, and National Secondary Drinking Water Regulations under 40 CFR part 143 to approve updated versions of analytical test procedures (methods) from voluntary consensus standards bodies and other organizations. These methods are used to comply with monitoring requirements in the wastewater and drinking water programs, as authorized under the Clean Water Act (CWA) and the Safe Drinking Water Act (SDWA). This regulation would approve updated versions of methods for determination of chemical, radiological, and microbiological pollutants in wastewater and drinking water. The updates are to methods from voluntary consensus standards bodies (the American Society for Testing and Materials and Standard Methods) and from the U.S. Geological Survey and the Department of Energy. Previously approved versions of the methods being updated remain approved. Because EPA received adverse comments on the direct final rule published on January 16, 2001, the Agency withdrew the direct final on May 15, 2001. EPA plans to issue a final rulemaking addressing the adverse comments by early 2002, based on a companion proposal to the direct final rule.

Timetable:

Action	Date	FR Cite
Direct Final Rule	01/16/01	66 FR 3466
Notice of Withdrawal of Direct Final Rule	05/15/01	66 FR 26795
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4409

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RIN: 2040–AD59

3157. TEST PROCEDURES FOR THE ANALYSIS OF MERCURY UNDER THE CLEAN WATER ACT (REVISIONS TO METHOD 1631)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); CWA 304(h); 33 USC 1361(a); CWA 501(a)

CFR Citation: 40 CFR 136.3

Legal Deadline: NPRM, Judicial, September 30, 2001, Settlement agreement.
Final, Judicial, September 30, 2002, Settlement agreement.

Abstract: This proposal would amend EPA Method 1631 to add new requirements for clean techniques and quality control (QC) beyond those specified in EPA Method 1631 for the determination of mercury at water quality criteria levels. EPA Method 1631 was promulgated at 40 CFR 136 in June 1999. Later that year, the Alliance of Automobile Manufacturers, the Chemical Manufacturers Association, and the Utility Water Act Group (Petitioners) filed a petition for judicial review of the final rule. One of the issues in the petition related to the clean sampling techniques and QC requirements in the Method. As part of a Settlement Agreement in October 2000, EPA agreed to sign a Federal Register notice proposing additional clean techniques and QC requirements for Method 1631 by September 30, 2001, and to take final action by September 30, 2002.

Timetable:

Action	Date	FR Cite
Final Action - Technical Correction	06/18/01	66 FR 32774
NPRM	10/09/01	66 FR 51518
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4541

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RIN: 2040–AD72

3158. RULE TO REVISE AND TO RATIFY OR WITHDRAW WHOLE EFFLUENT TOXICITY TEST METHODS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h); CWA 304(h); 33 USC 1361(a); CWA 501(a)

CFR Citation: 40 CFR 136.3

Legal Deadline: NPRM, Judicial, September 24, 2001, Settlement agreement.
Final, Judicial, November 8, 2002, Settlement agreement.

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 by revising several whole effluent toxicity (WET) test methods and by ratifying or withdrawing WET test methods listed in Table IA for use under the Clean Water Act. These methods were promulgated on October 16, 1995 (60 FR 53529). The proposed regulation is needed to satisfy the terms of two settlement agreements (entered into by EPA and Edison Electric Institute, et al., and Western Coalition of Arid States on July 24, 1998; and entered into by EPA and Lone Star Steel in January 1997). This proposal will amend the 1995 rule by revising three WET method manuals, and by ratifying or withdrawing each of the WET test methods challenged in the settlement agreements from these three manuals. Specific revisions include: the requirement of blocking by parentage in Method 1002, the requirement for demonstration of valid concentration-response relationships, the inclusion of specific procedures to control pH drift, and the inclusion of procedures to reduce pathogenic interferences in Method 1000.

Timetable:

Action	Date	FR Cite
NPRM	09/28/01	66 FR 49794
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4514

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RIN: 2040–AD73

3159. COMPARISON OF DREDGED MATERIAL TO REFERENCE SEDIMENT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344 CWA sec 404

CFR Citation: 40 CFR 230

Legal Deadline: None

Abstract: This action would revise the testing provisions of the Clean Water Act section 404(b)(1) Guidelines to provide for comparisons between dredged material proposed for discharge and reference sediment. Reference sediment would be defined as sediment that reflects conditions at the disposal site had no dredged material disposal ever occurred there. Because the disposal site itself is currently used as the point of comparison, this action would make a technical improvement in assessing cumulative impacts and help make dredged material testing under section 404 more consistent with that conducted for ocean disposal, which currently employs a reference sediment approach. This action is not expected to have a significant impact on state, local, or tribal governments or small business, as the action will be limited to Corps projects and permit applications for which dredged material testing is necessary, and because the effect of the action will be limited to changing the location of an otherwise collected sample.

Timetable:

Action	Date	FR Cite
NPRM	01/04/95	60 FR 419
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Additional Information: SAN No. 3288

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RIN: 2040–AC14

3160. REVISION TO CLEAN WATER ACT REGULATORY DEFINITION OF FILL MATERIAL

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1344

CFR Citation: 33 CFR 323.2(e); 40 CFR 232.2

Legal Deadline: None

Abstract: Section 404 of the Clean Water Act requires a permit from the U.S. Army Corps of Engineers (Corps) for discharges of dredged or fill material to waters of the United States. The Environmental Protection Agency (EPA) and Corps' regulations implementing section 404 currently contain differing definitions of the term "fill material." In particular, the Corps regulations define fill material as being used for the primary purpose of replacing an aquatic area with dry land or changing the bottom elevation of a water body. In contrast, EPA's definition of fill material looks to whether the effect is to replace waters of the United States with dry land or change the bottom elevation of water bodies, and does not contain a primary purpose test as found in the Corps' regulations. In order to clarify what constitutes fill material for purposes of section 404 and provide improved regulatory certainty, the Corps and EPA are conducting notice and comment rulemaking to achieve greater consistency between the two agencies' definitions of fill material.

Timetable:

Action	Date	FR Cite
NPRM	04/20/00	65 FR 21292
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4375

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RIN: 2040–AD51

3161. ROUND 2 STANDARDS FOR THE USE OR DISPOSAL OF SEWAGE SLUDGE

Priority: Other Significant

Legal Authority: 33 USC 1345 CWA sec 405; 33 USC 1361(a) CWA sec 501(a)

CFR Citation: 40 CFR 503 (Revisions)

Legal Deadline: NPRM, Judicial, December 15, 1999.
Final, Judicial, October 17, 2003.

Abstract: This rulemaking concerns dioxin and dioxin-like compounds in sewage sludge that is applied to the land. Section 405 of the Clean Water Act (CWA) requires EPA to promulgate regulations providing guidelines for the use and disposal of sewage sludge, including numeric standards for toxic pollutants which may adversely affect human health and the environment and management practices. EPA promulgated the first round of regulations, which set standards for toxic pollutants in sewage sludge for which information was available and management practices for land application, surface disposal and incineration of sewage sludge (58 FR 9248, Feb. 19, 1993). EPA proposed the second round of regulations, for other toxic pollutants not regulated in the first round, in December 1999 (64 FR 72045, Dec. 23, 1999). The proposed rule would establish a limit of 300 nanograms of TEQ dioxins per kilogram of dry sewage sludge for land application along with monitoring requirements. The proposal also proposed to take no regulatory action with respect to dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator. EPA signed a final notice of its determination not to further regulate for dioxins in sewage sludge that is disposed of at a surface disposal site or incinerated in a sewage sludge incinerator, and stated that final action on the proposal to amend the land application rule will be published separately at a later date (66 FR 66228, Dec. 21, 2001). The deadline for taking final action on the land application rule is subject to a consent decree deadline of October 17, 2003.

Timetable:

Action	Date	FR Cite
NPRM	12/23/99	64 FR 72045
Final Notice - No Further Regulation Required for Surface Disposal and Incineration	12/21/01	66 FR 66228
Notice of Data Availability - Land Application	05/00/02	
Final Action - Land Application	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3488

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RIN: 2040–AC25

3162. CLEAN WATER STATE REVOLVING FUND REGULATION REVISIONS RE: USE AS MATCHING FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1383(h)

CFR Citation: 40 CFR 35.3125(b)(1)

Legal Deadline: None

Abstract: This regulation will revise the Clean Water State Revolving Fund (CWSRF) Regulations to allow the use of loans from the non-Federal and non-State match share of CWSRF funds as a match for infrastructure grants. In 1990, EPA issued regulations implementing the CWSRF program, established as Title VI of the Clean Water Act (CWA) in 1987. Section 603(h) of the CWA prohibits use of the CWSRF loan as matching funds with respect to the non-Federal share of the cost of a treatment works project for which a municipality or agency is receiving assistance from the Administrator under any other authority. In issuing its regulations at 40 CFR 35.3125(b)(1), EPA interpreted this prohibition broadly, applying the restriction to all treatment works construction. At that time, EPA believed the replacement of the construction grants program authorized by Title II of the CWA by the CWSRF would result in a significant decrease in the use of other Federal grant funds for treatment works construction. However, from FY 1995 onward, Congress has authorized and appropriated funds for infrastructure construction grants in various Appropriations Acts. There are currently over 700 projects totaling over $3.3 billion dollars. In several cases, EPA has been asked to allow CWSRF funds to be used as a match for these grants; but 40 CFR 35.3125(b)(1) prohibits such action. Upon reconsideration, EPA has decided its initial reading in 1990 was too broad, and the intent of Congress was only to prohibit use of CWSRF loans as a match for Title II construction grants. This action will revise the regulations to allow a State, in its operation of the CWSRF, to permit a CWSRF loan for non-Title II infrastructure construction grant projects to be used as a non-Federal match in certain circumstances. The prohibition on the use of CWSRF as a match for a Title II construction grant will continue.

Timetable:

Action	Date	FR Cite
Direct Final Rule With Companion NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4493

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RIN: 2040–AD68

3163. • MODIFICATION TO COMPETITIVE PROCESS USED BY EPA FOR WATER QUALITY COOPERATIVE AGREEMENTS AND WETLAND PROGRAM DEVELOPMENT GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251sec 104

CFR Citation: 40 CFR 35.362; 40 CFR 35.382

Legal Deadline: None

Abstract: EPA is proposing to modify 40 CFR 35.362 and 35.382, which provided that the Water Quality Cooperative Agreements (WQCA) and Wetland Program Development Grants (WPDG) will be awarded through a competitive process. The proposed modification to section 35.362 would provide Regions with the discretion to allocate a portion of WQCA funds to States in accordance with program guidance instead of awarding funds based on a competition among States. The proposed modification to section 35.382 would provide Regions with an option of allocating WPDG funds to States that meet established criteria. The proposed changes would provide State, interstate, and local agencies greater flexibility in developing comprehensive programs.

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Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

Additional Information: SAN No. 4624

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RIN: 2040–AD83

Environmental Protection Agency (EPA) **Long-Term Actions**
Clean Water Act (CWA)

3164. EFFLUENT GUIDELINES AND STANDARDS FOR THE PULP, PAPER, AND PAPERBOARD CATEGORY, PHASE II

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1311 CWA 301; 33 USC 1314 CWA 304; 33 USC 1316 CWA 306; 33 USC 1317 CWA 307; 33 USC 1318 CWA 308; 33 USC 1318 CWA 402; 33 USC 1361 CWA 501

CFR Citation: 40 CFR 430

Legal Deadline: None

Abstract: EPA will consider revising the technology-based effluent limitations guidelines and standards for 8 of the 12 subcategories for this industrial category: Unbleached Kraft Semi-Chemical; Mechanical Pulp; Non-Wood Chemical Pulp Secondary Fiber Deink; Secondary Fiber Non-Deink; Fine and Lightweight Papers from Purchased Pulp; and Tissue, Filter, Non-Woven, and Paperboard from Purchased Pulp. EPA proposed guidelines and standards for these subcategories as part of the Pulp and Paper Rules (also known as the Cluster Rules) in December 1993. The Agency intends to develop these revised effluent limitations in close coordination with the Office of Air Quality Planning and Standards.

Timetable:

Action	Date	FR Cite
NPRM	12/17/93	58 FR 66078
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local

Federalism: Undetermined

Additional Information: SAN No. 4050

Sectors Affected: 3221 Pulp, Paper, and Paperboard Mills

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RIN: 2040–AD10

3165. EFFLUENT GUIDELINES AND STANDARDS FOR THE PULP, PAPER, AND PAPERBOARD POINT SOURCE CATEGORY, DISSOLVING KRAFT AND DISSOLVING SULFITE SUBCATEGORIES (PHASE III)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1342; 33 USC 1361

CFR Citation: 40 CFR 430.10 to 430.18; 40 CFR 430.40 to 430.48

Legal Deadline: None

Abstract: On December 17, 1993, EPA proposed revised effluent limitations, guidelines and standards and best management practices regulations for the Dissolving Kraft and Dissolving Sulfite Subcategories of the Pulp, Paper, and Paperboard Point Source Category (40 CFR Part 430). This action, which OW refers to as Phase III of the Cluster Rules, will respond to comments and reflect new data. There are five domestic mills in these two subcategories. The final rule is anticipated to set limits for adsorbable organic halides (AOX), chemical oxygen demand (COD), chloroform, dioxin, furan, and 12 specific chlorinated phenolics.

Timetable:

Action	Date	FR Cite
NPRM	12/17/93	58 FR 66078
Final Action	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4370

Sectors Affected: 3221 Pulp, Paper, and Paperboard Mills

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RIN: 2040–AD49

3166. EFFLUENT GUIDELINES AND STANDARDS FOR THE MEAT AND POULTRY PRODUCTS POINT SOURCE CATEGORY (REVISIONS)

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311; 33 USC 1314; 33 USC 1316; 33 USC 1317; 33 USC 1318; 33 USC 1361

CFR Citation: 40 CFR 432 (Revision)

Legal Deadline: NPRM, Judicial, January 30, 2002.
Final, Judicial, December 31, 2003.

Abstract: The Agency has proposed revisions to the effluent limitations guidelines and standards for the Meat and Poultry Products Point Source Category. The current regulations, at 40 CFR 432, are more than 20 years old and are limited to a few conventional pollutants. Recent concerns about nutrient discharges from these facilities might be resolved by these additional effluent limitations. In particular, the current regulations do not address ammonia nitrogen for red meat slaughterhouses/packinghouses (Subparts A-D). Nutrients are a significant remaining water quality problem for impaired streams. Revisions to the current regulations also include effluent limitations for poultry processing, which is not currently covered by any effluent guideline.

Timetable:

Action	Date	FR Cite
NPRM	02/25/02	67 FR 8582
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4407

Sectors Affected: 311611 Animal (except Poultry) Slaughtering; 311612 Meat Processed from Carcasses; 311613 Rendering and Meat By-product Processing; 311615 Poultry Processing

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RIN: 2040–AD56

EPA—Clean Water Act (CWA) **Long-Term Actions**

3167. EFFLUENT GUIDELINES AND STANDARDS FOR THE INDUSTRIAL CONTAINER AND DRUM CLEANING POINT SOURCE CATEGORY

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Industrial facilities that clean out 55 gallon drums and other industrial sized containers are not currently subject to nationally applicable wastewater treatment standards. Many types of toxic and hazardous materials, including pesticides, solvents, and petrochemical products are transported in bulk via drums and containers. Most of these containers have a residue, or heel, present in the containers before they are cleaned. The accumulation of residue from large numbers of drums and containers may result in the discharge of pollutants to the Nation's waterways. This regulation is expected to cover those facilities that clean out drums and industrial-sized containers as a business, and would generally not cover industrial facilities that clean out their own drums and containers used on site.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Federalism: Undetermined

Additional Information: SAN No. 4408

Sectors Affected: 562998 All Other Miscellaneous Waste Management Services

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RIN: 2040–AD57

3168. WATER QUALITY STANDARDS FOR INDIAN COUNTRY WATERS

Priority: Other Significant

Legal Authority: 33 USC 1251 et seq

CFR Citation: 40 CFR 131; 40 CFR 121.17 (New); 40 CFR 122.4 (Amended); 40 CFR 123.1 (Amended); 40 CFR 131.4 (Amended); 40 CFR 131.40 (New); 40 CFR 230.10 (Amended); 40 CFR 233.1 (Amended); 40 CFR 233.51 (Amended)

Legal Deadline: None

Abstract: EPA is considering proposing a national rule containing core Federal water quality standards (WQS) to support tailored, site-specific decisions for certain waters in Indian country that do not have EPA-approved tribal standards. EPA is contemplating this rule as a first step towards ensuring that the core Clean Water Act (CWA) framework for protecting water quality is in place for all such waters. The core Federal water quality standards would establish: use designations consistent with CWA section 101(a) goals, cultural and traditional, and other uses; water quality criteria for protecting the designated uses; and an antidegradation policy designed to protect water quality. Such standards would provide a basis for EPA (in consultation with a tribe) to affect pollution discharges occurring upstream from tribal waters, provide a basis for including water quality based limitations or conditions in permits or certifications for discharges within Indian country; and provide the basis for establishing Total Maximum Daily Loads (TMDLs) for Indian country waters. A Federal promulgation would not prevent tribes from developing their own standards. The Office of Management and Budget reviewed the proposal and returned it to EPA on October 2, 2001, for further consideration and analysis. EPA is considering how to proceed.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Tribal

Additional Information: SAN No. 4344

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RIN: 2040–AD46

3169. TEST PROCEDURES FOR THE ANALYSIS OF TRACE METALS UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501

CFR Citation: 40 CFR 136

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Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve new EPA methods for the determination of trace metals at EPA's water quality criteria levels. These methods are necessary for the implementation of water quality-based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality-based permits are necessary when technology-based controls do not ensure that a particular water body would meet the State's designated water quality standard. Because the methods currently approved under 40 CFR part 136 were designed to support primarily technology-based permitting needs, and because these technology-based levels are as much as 280 times higher than water quality-based criteria for metals, approval of new EPA test procedures is necessary.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

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RIN: 2040–AC75

3170. TEST PROCEDURES: INCREASED METHOD FLEXIBILITY FOR TEST PROCEDURES APPROVED FOR CLEAN WATER ACT COMPLIANCE MONITORING

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304 (h); 33 USC 1361(a) CWA 501 (a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would highlight the flexibility already contained in the 600 and 1600 series of EPA Methods that are currently approved for Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. These methods typically contain a statement that, in recognition of advances that are occurring in analytical technology, and to allow the analyst to overcome sample matrix interferences, permits the analyst certain options to improve separations or lower the costs of measurements. These options include alternate extraction, concentration, cleanup procedures, and changes in columns and detectors. The methods further require the analyst to demonstrate that the method modifications will not adversely affect the quality of data by generating quality control results that meet the specifications contained in the method. Despite this stated flexibility, the Agency has found that many NPDES and pretreatment permitting authorities are not aware of this flexibility when issuing or enforcing NPDES and pretreatment permits. Therefore, this regulatory action will highlight the existing method flexibility and clarify EPA's position regarding its application. This action will also extend this flexibility to other methods currently approved under 40 CFR part 136. The purpose of extending this flexibility to other methods is to (1) increase consistency between methods, (2) provide for increased recognition of advances in analytical technology, and (3) reduce costs associated with analytical measurements.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AC92

3171. TEST PROCEDURES: PERFORMANCE-BASED MEASUREMENT SYSTEM (PBMS) PROCEDURES AND GUIDANCE FOR CLEAN WATER ACT TEST PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would establish the use of performance-based measurement procedures and guidance for use in Clean Water Act compliance monitoring under 40 CFR part 136, Guidelines Establishing Test Procedures for the Analysis of Pollutants. The new procedures would include guidance concerning the format, content, quality assurance/quality control, and data validation requirements for use of test methods. This regulatory action would also describe increased program guidance in the form of a clearinghouse, technical bulletins, and/or guidance documents geared towards clarifying technical and policy issues associated with the use of test methods approved for use in the program.

Timetable:

Action	Date	FR Cite
NPRM	03/28/97	62 FR 14975
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3713

NPRM-
http://www.epa.gov/fedrgstr/EPA-WATER/1997/March/Day-28/w7221.htm

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RIN: 2040–AC93

3172. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE ONE

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR part 136 to approve new procedures for the analysis of miscellaneous metals, anions, and volatile organics under the Clean Water Act (CWA). These methods are used for implementing water quality based permits under the National Pollutant Discharge Elimination System (NPDES) of the CWA. This regulation would approve test procedures to be used in measuring this group of compounds under the NPDES Program unless the Regional Administrator approves an alternative procedure. EPA plans to segment the rulemaking into two phases to accommodate different amounts of data for the long list of compounds.

Timetable:

Action	Date	FR Cite
NPRM	10/18/95	60 FR 53988
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3155

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RIN: 2040–AC95

3173. TEST PROCEDURES FOR THE ANALYSIS OF CO-PLANAR AND MONO-ORTHO-SUBSTITUTED POLYCHLORINATED BIPHENYLS (PCBS) UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1251 et seq; 33 USC 1314(h); CWA 304(h); 33 USC 1361(a); CWA 501(a)

CFR Citation: 40 CFR 136; 40 CFR 503

Legal Deadline: None

Abstract: This regulatory action would propose to amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR parts 136 and 503 to approve EPA Method 1668 for the congener-specific determination of co-planar and mono-ortho-substituted polychlorinated biphenyls (PCBs) in effluent, ambient water, and sludge. This method is necessary for the implementation of water quality-based permits under the National Pollutant Discharge Elimination System (NPDES) of the Clean Water Act. Water quality-based permits are necessary when technology-based controls do not ensure that a particular water body would meet the State's designated water quality standard. At present there is no EPA analytical method for determination of these PCBs at the levels of concern. Therefore, approval of a new EPA test procedure is necessary.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	06/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4049

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RIN: 2040–AD09

3174. TEST PROCEDURES FOR THE ANALYSIS OF MISCELLANEOUS METALS, ANIONS, AND VOLATILE ORGANICS UNDER THE CLEAN WATER ACT, PHASE TWO

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1314(h) CWA 304(h); 33 USC 1361(a) CWA 501(a)

CFR Citation: 40 CFR 136

Legal Deadline: None

Abstract: This regulatory action would amend the Guidelines Establishing Test Procedures for the Analysis of Pollutants under 40 CFR Part 136 to approve new procedures for the analysis of miscellaneous metals, anions, and volatile organics under the Clean Water Act (CWA). These methods are used for implementing water quality based permits under the National Pollutant Discharge Elimination System (NPDES) of the CWA. This regulation would approve test procedures to be used in measuring this group of compounds under the NPDES unless the Regional Administrator approves an alternative procedure. This rulemaking would

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constitute the second of two segments of rulemaking initially proposed as one action.

Timetable:

Action	Date	FR Cite
NPRM	10/18/95	60 FR 53988
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4089

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RIN: 2040–AD12

3175. UNIFORM NATIONAL DISCHARGE STANDARDS FOR VESSELS OF THE ARMED FORCES - PHASE II

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1322; 33 USC 1361

CFR Citation: 40 CFR 1700

Legal Deadline: Final, Statutory, May 10, 2001.

Abstract: This action is Phase II of implementing regulations on Uniform National Discharge Standards for Vessels of the Armed Forces. In 1996 the Clean Water Act was amended to create section 312(n), Uniform National Discharge Standards for Vessels of the Armed Forces. Section 312(n) directs EPA and DOD to work together to provide Armed Forces vessels with a nationally uniform set of discharge standards, which preempt State discharge standards for these vessels. The purpose of the statute is to allow DOD to plan, design and build environmentally sound vessels, to encourage innovative pollution control technology, and to improve operational flexibility. EPA and DOD jointly promulgated Phase I of these regulations, 40 CFR part 1700, on May 10, 1999 (64 FR 25126). The Phase I rulemaking concluded that 25 discharges from Armed Forces vessels would require control devices. Some of these discharges have the potential to introduce oil or other organics into receiving waters (such as bilge water); some have the potential to introduce copper or other metals (such as fire main); and some have the potential to introduce nonindigenous invasive aquatic species (such as ballast water). Phase II will establish performance standards for control devices for these 25 discharges. Once DOD implements rules for achieving the standards set in Phase II, covered discharges from Armed Forces vessels will be required to meet these standards, and will not be subject to discharge standards established by States.

Timetable:

Action	Date	FR Cite
NPRM	10/00/03	
Final Action	09/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Federalism: Undetermined

Additional Information: SAN No. 4357

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RIN: 2040–AD39

3176. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT EXISTING FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 3

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1316 CWA sec 306; 33 USC 1326 CWA sec 316; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Legal Deadline: NPRM, Judicial, June 15, 2003.
Final, Judicial, December 15, 2004.

Abstract: This rulemaking affects, at a minimum, existing facilities that use cooling water intake structures, and whose intake flow levels exceed a minimum threshold EPA will determine during this rulemaking. The affected facilities include (1) electricity generating facilities not covered by Phase 2 regulations; (2) pulp and paper manufacturing facilities; (3) chemicals and allied products manufacturing facilities; (4) petroleum and coal products manufacturing facilities; and (5) primary metals manufacturing facilities. Section 316(b) of the Clean Water Act provides that any standard established pursuant to sections 301 or 306 of the Clean Water Act and applicable to a point source shall require that the location, design, construction, and capacity of cooling water intake structures reflect the best technology available for minimizing adverse environmental impact. A primary purpose of this action is to minimize the impingement and entrainment of fish and other aquatic organisms by cooling water intake structures. Impingement refers to trapping fish and other aquatic life against cooling water intake structures. Entrainment occurs when aquatic organisms, eggs and larvae are drawn into the cooling system, through the heat exchanger, and then pumped back out with significant injury or mortality to the entrained organisms.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	
Final Action	12/00/04	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4543

Split from RIN 2040-AC34.

Sectors Affected: 61131 Colleges, Universities and Professional Schools; 21 Mining; 211111 Crude Petroleum and Natural Gas Extraction; 211112 Natural Gas Liquid Extraction; 22111 Electric Power Generation; 22133 Steam and Air-Conditioning Supply; 311 Food Manufacturing; 3122 Tobacco Manufacturing; 313 Textile Mills; 321 Wood Product Manufacturing; 322 Paper Manufacturing; 324 Petroleum and Coal Products Manufacturing; 325 Chemical Manufacturing; 326 Plastics and Rubber Products Manufacturing; 327 Nonmetallic Mineral Product Manufacturing; 331 Primary Metal Manufacturing; 332 Fabricated Metal Product Manufacturing; 333 Machinery Manufacturing; 334 Computer and Electronic Product Manufacturing; 335 Electrical Equipment, Appliance and Component Manufacturing; 336 Transportation Equipment Manufacturing

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RIN: 2040–AD70

3177. STREAMLINING THE GENERAL PRETREATMENT REGULATIONS FOR EXISTING AND NEW SOURCES OF POLLUTION

Priority: Other Significant

Legal Authority: 33 USC 1314 CWA sec 304; 33 USC 1317 CWA sec 307; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 403

Legal Deadline: None

Abstract: The final rule will be promulgated as a program streamlining activity. The rule will revise certain provisions in the General Pretreatment Regulations (40 CFR Part 403) that address restrictions on and oversight of industrial discharges into Publicly Owned Treatment Works (POTWs). The final rule will include exclusions or variable requirements for smaller facilities that contribute insignificant amounts of pollutants, clarify requirements for implementing Pretreatment Standards, and provide more flexible reporting, inspection and sampling requirements. The revisions should provide greater flexibility, reduce burden, and achieve improved environmental results at less cost for regulatory authorities and the regulated community.

Timetable:

Action	Date	FR Cite
NPRM	07/22/99	64 FR 39564
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3663

NPRM-
http://www.epa.gov/fedrgstr/EPA-WATER/1999/July/Day-22/w17773.htm

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RIN: 2040–AC58

3178. NPDES STREAMLINING RULE — ROUND III

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 1311 CWA sec 301; 33 USC 1312 CWA sec 302; 33 USC 1314 CWA sec 304; 33 USC 1316 CWA sec 306; 33 USC 1318 CWA sec 308; 33 USC 1342 CWA sec 402; 33 USC 1361 CWA sec 501

CFR Citation: 40 CFR 122; 40 CFR 123; 40 CFR 124

Legal Deadline: None

Abstract: EPA plans to issue several rulemaking packages to revise NPDES requirements in parts 122, 123, and 124 to eliminate redundant regulations, provide clarification, and remove or streamline unnecessary procedures. Revisions under consideration in this rule include adding additional permit modifications that can be considered minor modifications at 122.63, and changes to requirements concerning EPA's review of State permits. Other revisions may be considered as work on this rule progresses. This rulemaking is expected to affect entities which implement the NPDES program or are regulated by it. This includes small businesses and State, tribal and local governments. Most of these effects are expected to be deregulatory or streamlining in nature.

Timetable:

Action	Date	FR Cite
NPRM	11/00/06	
Final Action	08/00/07	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 3786

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RIN: 2040–AC84

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Environmental Protection Agency (EPA)
Clean Water Act (CWA)
Completed Actions

3179. EFFLUENT GUIDELINES AND STANDARDS FOR THE COAL MINING POINT SOURCE CATEGORY (REVISIONS)

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 434

Completed:

Reason	Date	FR Cite
Final Action	01/23/02	67 FR 3370

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD24

3180. MINIMIZING ADVERSE ENVIRONMENTAL IMPACT FROM COOLING WATER INTAKE STRUCTURES AT NEW FACILITIES UNDER SECTION 316(B) OF THE CLEAN WATER ACT, PHASE 1

Priority: Other Significant

CFR Citation: 40 CFR 9; 40 CFR 122; 40 CFR 123; 40 CFR 124; 40 CFR 125

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65256

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local

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RIN: 2040–AC34

3181. RECOGNITION AWARDS UNDER THE CLEAN WATER ACT

Priority: Substantive, Nonsignificant

CFR Citation: 40 CFR 105 (New)

Completed:

Reason	Date	FR Cite
Direct Final Rule	02/08/02	67 FR 6137

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD44

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)
Prerule Stage

3182. USE OF SCREENING METHODS FOR COMPLIANCE MONITORING OF DRINKING WATER CONTAMINANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f SDWA 1401; 42 USC 300g-1 SDWA 1412; 42 USC 300j-4 SDWA 1445

CFR Citation: 40 CFR 141; 40 CFR 143

Legal Deadline: None

Abstract: The 1996 Safe Drinking Water Act (SDWA) Amendments require EPA to review new analytical methods that may be used for regulated contaminants screening or analysis, including screening methods. After this review, EPA may approve such methods that are deemed more accurate or cost-effective than established reference methods for use in compliance monitoring or the monitoring of unregulated contaminants. In this advanced notice of proposed rulemaking, EPA announces its intention to integrate the use of screening methods in the overall scheme of drinking water compliance monitoring. Efforts will be made to keep the proposal consistent with the Office of Water plan for Performance-Based Methods (PBMs). EPA will identify regulated contaminants, types of monitoring and specific areas within each monitoring framework which are amenable to the use of screening methods. A logical application of screening procedures would be in a tiered monitoring mode where Tier 1 (screening phase) would identify the principal problem areas while Tier 2 would use sampling and analysis to more carefully identify and quantify specific contaminants. EPA would identify specific screening methods which are available for use based on their performance characteristics, tolerance to sample interferences, validation for drinking water analysis and correlation of results with traditional instrumental methods. The use of screening methods is expected to make drinking water compliance monitoring cheaper and faster, and provide flexibility to the Public Water Systems in the choice of analytical methods. Laboratory acceptance limits and other method performance requirements that were specified under previous rules will not be changed in this rulemaking. The final action would only add new analytical methods and/or analytical approaches and would not withdraw or modify previously approved methods.

Timetable:

Action	Date	FR Cite
ANPRM	10/00/02	
NPRM	07/00/03	
Final Action	07/00/04	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4212

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD31

EPA—Safe Drinking Water Act (SDWA)
Prerule Stage

3183. DRINKING WATER: REGULATORY DETERMINATIONS REGARDING CONTAMINANTS ON THE DRINKING WATER CONTAMINANT CANDIDATE LIST

Priority: Other Significant

Legal Authority: 42 USC 300f et seq; SDWA 1412(b)(1)(B)

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, August 6, 2001, Final Regulatory Determination.

Abstract: The 1996 amendments to the Safe Drinking Water Act (SDWA) requires EPA to publish a list of nonregulated contaminants every five years, which may warrant regulation due to their health effects and their potential for occurrence in public water systems (PWSs). The first list, called the Contaminant Candidate List (CCL), was published in the Federal Register on March 2, 1998 (63 FR 10274). When establishing the 1998 CCL, EPA divided the contaminants among three main categories: (1) contaminants which are priorities for additional research; (2) contaminants which need additional occurrence data; and (3) contaminants which are priorities for consideration for rulemaking. These contaminants are collectively referred to as the Regulatory Determination Priority contaminants. In addition to publishing the drinking water CCL, the SDWA also requires the Agency to select five or more contaminants from the CCL and determine, by August 2001, whether to regulate these contaminants with a National Primary Drinking Water Regulation (NPDWR). The Regulatory Determination Priority category is the list of contaminants from which the Agency will determine whether or not regulations are necessary. There are currently nine contaminants that have sufficient scientific information to make regulatory determinations: Acanthamoeba; Aldrin; Dieldrin; Hexachlorobutadiene; Manganese; Metribuzin; Naphthalene; Sodium; and Sulfate. In order to make a decision whether or not to develop a NPDWR for a contaminant, the SDWA requires three statutory tests be met: (1) the contaminant may have an adverse effect on the health of persons; (2) the contaminant is known to occur or there is a substantial likelihood that the contaminant will occur in public water systems with a frequency and at levels of public health concern; and (3) in the sole judgment of the Administrator, regulation of the contaminant presents a meaningful opportunity for health risk reduction for persons served by public water systems. Using these three statutory tests to make regulatory decisions, there are three possible outcomes: (1) regulate the contaminant with a NPDWR; (2) develop guidance (e.g., Health or Consumer Advisory); or (3) determine no action is necessary.

Timetable:

Action	Date	FR Cite
Notice of Preliminary Regulatory Determinations	05/00/02	
Notice of Final Regulatory Determinations	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4447

SDWA requires a final determination of whether or not NPDWR(s) are necessary for no less than 5 contaminants on the CCL.

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD61

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)
Proposed Rule Stage

3184. • UNREGULATED CONTAMINANT MONITORING REGULATION: ANALYTICAL METHOD FOR AEROMONAS. NATIONAL PRIMARY AND SECONDARY DRINKING WATER REGULATIONS: ANALYTICAL METHODS FOR CHEMICAL&MICROBIOLOGICAL CONTAMINANTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f; 42 USC 300g-l; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation: 40 CFR 141.40

Legal Deadline: None

Abstract: This action proposes the analytical method and an associated Minimum Reporting Level (MRL) for the analysis of Aeromonas to support the Unregulated Contaminant Monitoring Regulation's List 2 monitoring of 120 large and 180 small public water systems from January 1, 2003 through December 31, 2003. Only these 300 systems must monitor for Aeromonas. Additionally, EPA proposes to approve EPA Method 515.4 to support previously required National Primary Drinking Water Regulation (NPDWR) compliance monitoring for 2,4-D (as acid, salts and esters), 2,4,5-TP (Silvex), dinoseb, pentachlorophenol, picloram and dalapon, and EPA Method 531.2 to support previously required NPDWR monitoring for carbofuran and oxamyl. Finally, EPA proposed to approve eight additional industry developed analytical methods to support previously required NPDWR compliance monitoring. These eight methods include: a method for the determination of atrazine, two methods for the determination of cyanide, three methods for the determination of total coliforms, a method for the determination of heterotrophic bacteria and a method for the determination of turbidity.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10532
NPRM Comment Period End	05/06/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4638

Statutory Legal information: Further implements final regulations issued in August 1999 and January 2001.

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RIN: 2040–AD81

3185. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG-TERM 2 ENHANCED SURFACE WATER TREATMENT RULE

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 40 USC 300g-1(b); SDWA 1412(b); 42 USC 300f; 42 USC 300g-1; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation: 40 CFR 141 to 142; 40 CFR 9

Legal Deadline: None

Abstract: The Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) will control risk from microbial pathogens in drinking water. It is being developed simultaneously with the Stage 2 Disinfectants and Disinfection Byproducts Rule (DBPR) which will address risk caused by the use of disinfectants in drinking water. This rule could affect all public water systems that use surface water as a source. Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the LT2ESWTR, EPA will analyze a significant body of new survey data on microbial pathogens in source and finished waters, as well as data on parameters which could serve as indicators of microbial risk. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, will provide a substantially more comprehensive and complete picture of the occurrence of waterborne pathogens than was available previously. EPA will also use significant new data on the efficiency of treatment processes for the removal and inactivation of microorganisms, as well as new information on the pathogenicity of certain pathogens, to determine effective regulatory requirements for controlling microbial risk. On March 30, 1999, EPA established a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules and an agreement in principle was signed in September 2000 outlining the proposed rule options.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 4341

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD37

3186. NATIONAL PRIMARY DRINKING WATER REGULATIONS: STAGE 2 DISINFECTION BYPRODUCTS RULE

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments and the private sector.

Legal Authority: 40 USC 300g-1(b); SDWA 1412(b); 42 USC 300f; 42 USC 300g-2; 42 USC 300g-3; 42 USC 300g-4; 42 USC 300g-5; 42 USC 300g-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11

CFR Citation: 40 CFR 141 to 142; 40 CFR 9

Legal Deadline: Final, Statutory, July 14, 2003.

Abstract: This Regulation, along with a Long Term 2 Enhanced Surface Water Treatment Rule (LT2ESWTR) that will be promulgated simultaneously, is intended to expand existing public health protections and address concerns about risk trade-offs between pathogens and disinfection byproducts. This rule could affect all public water systems that add a disinfectant to the drinking water during any part of the treatment process although the impacts may be limited to community water systems (CWSs) and non-transient non-community water systems (NTNCWSs). Promulgating the LT2ESWTR and the Stage 2 DBPR as a paired rulemaking is necessary to ensure that adequate protection from microbial risk is maintained while EPA manages risk from disinfection byproducts. In developing the Stage 2 DBPR, EPA will analyze a significant body of new survey data on source water quality parameters, treatment data and disinfection byproduct occurrence. This survey data, which was collected under the Information Collection Rule (ICR), Supplemental Surveys to the ICR, and additional research projects, will provide a substantially more comprehensive and complete picture of the occurrence of DBPs and microbiological pathogens than was available previously. EPA will also use new information on the health effects of exposure to DBPs to determine effective regulatory requirements for controlling risk. On March 30, 1999, EPA reconvened a committee of stakeholders under the Federal Advisory Committee Act (FACA) to assist in the development of these rules, and an Agreement in Principle was signed in September 2000 outlining the proposed rule options.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	
Final Action	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 4342

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD38

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)

Final Rule Stage

3187. NATIONAL PRIMARY DRINKING WATER REGULATIONS: GROUNDWATER RULE

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect the private sector under PL 104-4.

Legal Authority: 42 USC 300f; SDWA 1412

CFR Citation: 40 CFR 141 400 to 406; 40 CFR 142 14 to 16 (Revision)

Legal Deadline: Final, Statutory, November 2003, Before Stage 2 Disinfection Byproducts Rule.

Abstract: EPA has proposed a targeted risk-based regulatory strategy for all public water systems served by ground water. The proposed requirements provide a meaningful opportunity to reduce public health risk associated with the consumption of waterborne pathogens from fecal contamination for a substantial number of people served by ground water sources. The proposed strategy addresses risks through a multiple-barrier approach that relies on five major components: periodic sanitary surveys of ground water systems requiring the evaluation of eight elements and the identification of significant deficiencies; hydrogeologic assessments to identify wells sensitive to fecal contamination; source water monitoring for systems drawing from sensitive wells without treatment or with other indications of risk; a requirement for correction of significant deficiencies and fecal contamination through the following actions: eliminate the source of contamination, correct the significant deficiency, provide an alternative source water, or provide a treatment which achieves at least 99.99 percent (4-log) inactivation or removal of viruses, and compliance monitoring to insure disinfection treatment is reliably operated where it is used.

Timetable:

Action	Date	FR Cite
NPRM	05/10/00	65 FR 30194
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 2340

Statutory deadline for final: After August 6,1999 but before the Administrator promulgates a stage II rulemaking for disinfection byproducts (currently scheduled for November 2003).

NPRM-
http://www.epa.gov/safewater/gwr.html

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AA97

3188. 6-YEAR REVIEW OF EXISTING NATIONAL PRIMARY DRINKING WATER REGULATIONS

Priority: Other Significant

Legal Authority: 42 USC 300f et seq

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, August 6, 2002, Complete review for contaminants with NPDWRs promulgated prior to August 1996.

Abstract: The Safe Drinking Water Act (SDWA) requires EPA to review and revise, if appropriate, all National Primary Drinking Water Regulations (NPDWRs) no less frequently than once every six years. According to SDWA, any revisions of drinking water regulations must maintain, or increase, the level of public health protection provided; however, EPA may identify regulatory changes that will streamline or reduce existing requirements without lessening the level of public health protection. As a part of this action, EPA will do two things: (1) develop an overall protocol for conducting each six year review; and (2) review 69 NPDWRs published prior to 1996. The remaining NPDWRs published prior to 1996 (e.g., arsenic, radionuclides, most microbiological NPDWRs) have been, or are being, reviewed in the context of recent or ongoing rulemakings. No new requirements will be imposed by this action. The purpose of the review is to determine whether new data, technology, or other factors exist that justify revisions to existing NPDWRs. The outcome of each review will be a Federal Register notice making

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available the results of the Agency's review and a planned rulemaking schedule for the regulations that the Agency believes are appropriate candidates for revision at that time. EPA may decide that any of the following need to be revised: maximum contaminant level goals, maximum contaminant levels, analytical methods, monitoring, treatment, recordkeeping and reporting requirements. EPA plans extensive stakeholder outreach and consultation in the development of the protocol and throughout the review process.

Timetable:

Action	Date	FR Cite
Notice of Preliminary Decision	04/17/02	67 FR 19030
Notice of Final Decision	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4424

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD67

3189. UNDERGROUND INJECTION CONTROL CLASS V PHASE 2 REVISIONS

Priority: Info./Admin./Other

Legal Authority: 42 USC 300(h); Safe Drinking Water Act 1421-1425

CFR Citation: Not Yet Determined

Legal Deadline: NPRM, Judicial, April 30, 2001.
Final, Judicial, May 31, 2002.

Abstract: The Safe Drinking Water Act (SDWA) requires EPA to protect current and future underground sources of drinking water (USDWs) from the endangerment posed by Class V underground injection control (UIC) wells. Class V UIC wells are typically shallow waste disposal systems that are diverse in purpose, design, geographic distribution, the nature of the fluids injected, and endangerment potential. In accordance with the judicial deadlines in a consent agreement, EPA finalized specific regulations addressing two types of high-risk UIC Class V injection wells (motor vehicle waste disposal wells and large-capacity cesspools) in December 1999. That regulatory action is informally referred to as the UIC Class V Phase 1 Rule. Also, in accordance with the consent agreement, on May 7, 2001, EPA published a proposed determination that existing Federal regulation of Class V wells is adequate to protect drinking water supplies, and that additional Federal UIC regulations are not needed at this time to prevent Class V wells from endangering underground sources of drinking water. EPA has evaluated the public comment received on the proposed determination and will publish a final determination by May 2002.

Timetable:

Action	Date	FR Cite
Notice of Proposed Determination	05/07/01	66 FR 22971
Final Action - Notice of Final Determination	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4451

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RIN: 2040–AD63

3190. MINOR REVISIONS TO THE PUBLIC NOTIFICATION RULE AND THE CONSUMER CONFIDENCE REPORT RULE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 141

Legal Deadline: None

Abstract: As part of a settlement agreement, EPA agreed to make specific changes to the health effects language, in the Public Notification and Consumer Confidence Report Rules, concerning di(2-ethylhexyl)adipate (DEHA) and di(2-ethylhexyl)phthalate (DEHP). With respect to DEHA, the proposed new wording would replace a reference to general toxic effects with specific toxic effects wording (i.e., weight loss and liver enlargement) and add the word possible to the reference to reproductive effects. With respect to DEHP, the proposed revision would add the word well in front of the phrase in excess of the MCL to describe when the health effects may be experienced. In addition, this proposal would include a negotiated paragraph on the proper use of the Agency's Integrated Risk Information System (IRIS). EPA is also making the following minor changes to the Consumer Confidence Report Rule: removing leaching from wood preservatives as a likely source for copper contamination; revising Appendix A to move some disinfection byproducts contaminants from the volatile organic contaminants section to the inorganic contaminants section; and revising Appendix A to change chloride dioxide to chlorine dioxide.

Timetable:

Action	Date	FR Cite
NPRM	09/07/01	66 FR 46928
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4561

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD77

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA) **Long-Term Actions**

3191. NATIONAL PRIMARY DRINKING WATER REGULATIONS: RADON

Priority: Economically Significant. Major under 5 USC 801.

Unfunded Mandates: This action may affect State, local or tribal governments.

Legal Authority: 42 USC 300f et seq; SDWA 1412

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: NPRM, Statutory, August 6, 1999.
Final, Statutory, November 2, 2000.
Other, Statutory, November 2, 2000, Publish radon health risk reduction and cost analysis.

Abstract: EPA proposed regulations for radon in drinking water that would provide flexibility in how to manage the health risks from radon, in both drinking water and in indoor air. States and systems would be able to focus their efforts on the highest radon risks to the public - in indoor air - while reducing the highest risks from radon in drinking water. The proposal was based on the unique framework in the 1996 Safe Drinking Water Act (SDWA). The proposed regulation would provide two options to States and water systems for reducing public health risks from radon. Under the first option, States may choose to develop enhanced State programs to address the health risks from indoor radon while water systems reduce radon levels in drinking water to at or below the higher, alternative maximum contaminant level MCL proposed at 4,000 pCi/L (picoCuries per liter, a standard unit of radiation). EPA is encouraging the States to adopt this approach as the most cost-effective way to achieve the greatest radon risk reduction. If a State does not elect this option, the second option would require water systems in that State to either reduce radon in drinking water levels to the MCL of 300 pCi/L, or to develop a local indoor radon program and reduce levels in drinking water to 4000 pCi/L.

Timetable:

Action	Date	FR Cite
ANPRM	09/30/86	51 FR 34836
NPRM-Old	07/18/91	56 FR 33050
Notice	02/26/99	64 FR 9560
NPRM	11/02/99	64 FR 59245
Notice	06/23/00	65 FR 39113
Final Action	09/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal, State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Additional Information: SAN No. 2281

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AA94

3192. NATIONAL PRIMARY DRINKING WATER REGULATIONS: ALDICARB

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 300f et seq; SDWA 1412

CFR Citation: 40 CFR 141; 40 CFR 142

Legal Deadline: None

Abstract: EPA promulgated MCLs for aldicarb, aldicarb sulfoxide, and aldicarb sulfone in the Phase II rulemaking in 1991 at levels of 0.003, 0.004, and 0.002 ug/l, respectively. In response to an administrative petition from the manufacturer Rhone-Poulenc, the Agency issued an administrative stay of the effective date. EPA will reexamine risk assessment and occurrence data on aldicarb and make a determination of what further action is appropriate.

Timetable:

Action	Date	FR Cite
NPRM	08/00/04	
Final Action	08/00/05	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 3238

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AC13

3193. REGULATED DRINKING WATER CONTAMINANT OCCURRENCE REPORTING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 300f; 42 USC 300g-1-6; 42 USC 300j-4; 42 USC 300j-9; 42 USC 300j-11; SDWA 1445(a)(6)

CFR Citation: 40 CFR 142.15

Legal Deadline: None

Abstract: The Office of Water will revise the National Primary Drinking Water Regulations to require public water systems and States to report regulated drinking water contaminant occurrence level data to EPA. At present, States only report violation data for the purpose of compliance tracking, as concentrations that exceed the Maximum Contaminant Level. The data will be compared to health effects levels and used to compare occurrence frequency with monitoring requirements. The results of these analyses may be used to modify existing regulations during the statutorily required 6-year regulatory review cycle.

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	
Final Action	06/00/05	

Regulatory Flexibility Analysis Required: Undetermined

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Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal, State, Local, Tribal

Federalism: Undetermined

Additional Information: SAN No. 4369

Sectors Affected: 22131 Water Supply and Irrigation Systems

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RIN: 2040–AD48

3194. NATIONAL SECONDARY DRINKING WATER REGULATIONS (NSDWR): METHYL TERTIARY BUTYL ETHER (MTBE) AND TECHNICAL CORRECTIONS TO THE NSDWR

Priority: Other Significant

Legal Authority: 42 USC 300f et seq

CFR Citation: 40 CFR 143 (Revision)

Legal Deadline: None

Abstract: Methyl tertiary butyl ether (MTBE) is a fuel additive used primarily to increase the oxygen content in gasoline. It has been used in increasing quantity in the 1990s to meet the requirements of the Federal Reformulated Gasoline (RFG) and Oxyfuels programs required by the Clean Air Act Amendments of 1990. Although the use of MTBE in gasoline has helped to reduce harmful air emissions, it is being detected in ground water and surface water throughout the country. In some instances the affected waters are drinking water sources. At relatively low levels, MTBE's taste and odor can make drinking water supplies unacceptable to consumers. In this action, EPA is proposing a secondary standard for MTBE, which would provide guidance for taste and odor acceptability and protect the public welfare.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: SAN No. 4404

Sectors Affected: 22131 Water Supply and Irrigation Systems

Agency Contact: James Taft, Environmental Protection Agency, Water, 4607M, Washington, DC 20460
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RIN: 2040–AD54

3195. UPDATE OF STATE UNDERGROUND INJECTION CONTROL PROGRAMS

Priority: Info./Admin./Other

Legal Authority: 42 USC 300h-1; SDWA Section 1422; 42 USC 300h-4; SDWA Section 1425

CFR Citation: 40 CFR 147 (Revision)

Legal Deadline: None

Abstract: EPA provides a place in part 147 of its UIC regulations where all the State UIC programs are summarized. Included in this summarization are all the authorities and regulations used by the States to implement the UIC program, as well as all other documents that are relevant to the program. The primary reason for this is to provide one place where all the UIC programs nationwide are presented. A second reason, more importantly, is to allow EPA to incorporate by reference into the Code of Federal Regulations the State program authorities. Current citations to State regulations in 40 CFR part 147 are out of date for many States. This update is necessary to ensure that the CFR accurately reflects current approved State UIC programs and that elements of those programs are federally enforceable if necessary. EPA Regional Offices will be submitting State revision packages as they are completed. Part 147 will then be updated in several stages. This is the first stage. This effort should have no impact on the regulated community because we will merely be incorporating by reference elements of already effective State programs.

Timetable:

Action	Date	FR Cite
Direct Final Rule	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State

Additional Information: SAN No. 4236

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RIN: 2040–AD40

Environmental Protection Agency (EPA)
Safe Drinking Water Act (SDWA)

Completed Actions

3196. NATIONAL PRIMARY DRINKING WATER REGULATIONS: LONG-TERM 1 ENHANCED SURFACE WATER TREATMENT RULE

Priority: Other Significant

CFR Citation: 40 CFR 9 (Revision); 40 CFR 141; 40 CFR 142 (Revision)

Completed:

Reason	Date	FR Cite
Final Action	01/14/02	67 FR 1812

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal, State, Local, Tribal

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RIN: 2040–AD18

3197. • UNREGULATED CONTAMINANT MONITORING REGULATION FOR PUBLIC WATER SYSTEMS: ESTABLISHMENT OF REPORTING DATE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 300(f); 42 USC 300(g)(1-5); 42 USC 300(j)(4); 42 USC 300(j)(9); 42 USC 300(j)(11)

CFR Citation: 40 CFR 141.35(c)

Legal Deadline: None

Abstract: The Safe Drinking Water Act (SDWA) requires EPA to establish criteria for a program to monitor unregulated contaminants and to publish a list of contaminants to be monitored. In fulfillment of this requirement, EPA published the Revisions to the Unregulated Contaminant Monitoring Regulations (UCMR) for public water systems in September 1999. The rule identified three lists of contaminants and established monitoring frequencies, schedules and data entry procedures, including the date by which approximately 2,800 large public water systems would need to begin reporting of monitoring results to EPA. This reporting date was changed by rule in January 2001 because the EPA database was not ready to receive the data. The reporting date was again delayed by rule in September 2001 to allow the initial version of the database to be completed and tested before operation. The database has now been in operation since October 1, 2001, and has been receiving data from large water systems. Today's rule would merely establish a new reporting date by which data resulting from monitoring must be reported. Reporting requirements for all subsequent monitoring data continue to remain as set forth in the original September 1999 rule.

Timetable:

Action	Date	FR Cite
NPRM	03/12/02	67 FR 11071
Direct Final Rule	03/12/02	67 FR 11043

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal, State, Local, Tribal

Additional Information: SAN No. 4630

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RIN: 2040–AD80

Environmental Protection Agency (EPA)
Shore Protection Act (SPA)

Final Rule Stage

3198. SHORE PROTECTION ACT, SECTION 4103(B) REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 33 USC 2601 Shore Protection Act of 1988; PL 100-688 4103(b)

CFR Citation: 40 CFR 237

Legal Deadline: None

Abstract: This rule will implement the Shore Protection Act (SPA) and is designed to prevent the deposit of municipal and commercial waste into U.S. Coastal Waters. This rule establishes minimum waste handling practices for vessels and waste handling facilities involved in the transport of municipal or commercial wastes in the coastal waters of the United States. The rule may require certain vessels and waste handling facilities to develop an operation and maintenance manual that identifies procedures to prevent, report, and clean up deposits of waste into coastal waters. All indications are that this regulation as proposed would have a minimal economic impact. This regulation is intended to result in reduction of municipal and commercial wastes deposited in coastal waters.

Timetable:

Action	Date	FR Cite
NPRM	08/30/94	59 FR 44798
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Local

Additional Information: SAN No. 2820

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RIN: 2040–AB85

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Part XXIII

Equal Employment Opportunity Commission

Semiannual Regulatory Agenda

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EQUAL EMPLOYMENT OPPORTUNITY COMMISSION (EEOC)

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Ch. XIV

Semiannual Regulatory Agenda

AGENCY: Equal Employment Opportunity Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Equal Employment Opportunity Commission (EEOC or Commission) is publishing its semiannual regulatory agenda pursuant to Executive Order 12866, 58 FR 51735, and the Regulatory Flexibility Act, 5 U.S.C. chapter 6. The agenda lists all regulations that are scheduled for review or development during the next 12 months or that have been finalized since the publication of the last agenda.

FOR FURTHER INFORMATION CONTACT: David L. Frank, Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507; telephone (202) 663-4614.

SUPPLEMENTARY INFORMATION: The Commission has identified four items in this regulatory agenda, one of which is being withdrawn.

Signed in Washington, DC, this 6th day of March 2002.

For the Commission.

Cari M. Dominguez,
Chair.

Equal Employment Opportunity Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3199	Procedures—The Age Discrimination in Employment Act	3046-AA54
3200	Coordination of Retiree Health Benefits With Medicare and State Health Benefits	3046-AA72

Equal Employment Opportunity Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3201	Federal Sector Equal Employment Opportunity	3046-AA57

Equal Employment Opportunity Commission—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3046-AA71	Conforming Treatment of Federal Sector Administrative Judge Decisions	03/06/2002	Withdrawn

Equal Employment Opportunity Commission (EEOC) — **Proposed Rule Stage**

3199. PROCEDURES—THE AGE DISCRIMINATION IN EMPLOYMENT ACT

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 628, sec 115, Civil Rights Act of 1991

CFR Citation: 29 CFR 1626

Legal Deadline: None

Abstract: Section 115 of the Civil Rights Act of 1991 deleted references to the Portal-to-Portal Act from the private suit provisions of the Age Discrimination in Employment Act (ADEA) and replaced them with a requirement that suit be filed no later than 90 days after termination of proceedings or dismissal of a charge by EEOC. Accordingly, section 1626.7(a) is being deleted and section 1626.15(b) is being revised because they were both based upon the Portal-to-Portal Act. New sections are being added concerning termination of EEOC proceedings and the issuance of notices of the new 90-day limitation period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

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TDD Phone: 202 663-7026
Fax: 202 663-4639

RIN: 3046–AA54

3200. • COORDINATION OF RETIREE HEALTH BENEFITS WITH MEDICARE AND STATE HEALTH BENEFITS

Priority: Other Significant

Legal Authority: 29 USC 628

CFR Citation: 29 CFR 1625

Legal Deadline: None

Abstract: This item will amend regulations governing age discrimination in employment to exempt from the prohibitions of the Age Discrimination in Employment Act (ADEA) the practice of altering, reducing, or eliminating employer-sponsored retiree health benefits when retirees become eligible for Medicare or comparable State retiree health benefits. This new rule will ensure that the application of the ADEA does not discourage employers from providing health benefits to their retirees.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lynn A. Clements, Attorney, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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RIN: 3046–AA72

EEOC — **Proposed Rule Stage**

Equal Employment Opportunity Commission (EEOC) — **Final Rule Stage**

3201. FEDERAL SECTOR EQUAL EMPLOYMENT OPPORTUNITY

Priority: Other Significant

Legal Authority: PL 102-569, The Rehabilitation Act Amendments of 1992; 42 USC 2000e-16; 29 USC 794a

CFR Citation: 29 CFR 1614

Legal Deadline: None

Abstract: The Commission proposes to change its Federal sector equal employment opportunity regulations to implement the Rehabilitation Act Amendments of 1992. The 1992 amendments provide that the standards used to determine if title I of the Americans with Disabilities Act has been violated will apply to complaints of nonaffirmative action employment discrimination under section 501 of the Rehabilitation Act.

Timetable:

Action	Date	FR Cite
NPRM	03/01/00	65 FR 11019
NPRM Comment Period End	05/01/00	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Carol Miaskoff, Assistant Legal Counsel, Office of Legal Counsel, Equal Employment Opportunity Commission, 1801 L Street NW, Washington, DC 20507
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RIN: 3046–AA57

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Part XXIV

Federal Emergency Management Agency

Semiannual Regulatory Agenda

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FEDERAL EMERGENCY MANAGEMENT AGENCY (FEMA)

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Emergency Management Agency.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Emergency Management Agency (FEMA) publishes its semiannual regulatory agenda in April and October to inform interested parties of progress on FEMA regulations. The agenda lists regulations that will be under development or review during the period April 30, 2002 to October 31, 2002.

ADDRESSES: For information about specific regulations, please contact the person listed as the agency contact in the agenda.

FOR FURTHER INFORMATION CONTACT: For general information on FEMA's regulatory agenda, contact Michael S. Herman, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646-4097, (Fax) (202) 646-4536 or e-mail michael.herman@fema.gov.

SUPPLEMENTARY INFORMATION: Executive Order 12866 "Regulatory Planning and Review" directs each executive agency to publish only such regulations as are required by law, are necessary to interpret the law, or are necessary by compelling public need. We and other Federal departments and agencies publish an agenda of regulations semiannually in order to give you adequate notice of agency rulemaking activities. We also publish a regulatory agenda of rules likely to be significant regulatory actions when that is appropriate.

To fulfill the requirements of Executive Order 12866, this agenda describes current and projected regulatory actions and rules that will be under review or development during the period April 30, 2002 to October 31, 2002. This agenda also contains information on regulations on which we completed action since the last FEMA semiannual agenda was published on December 3, 2001 at 66 FR 62398 to 62405.

We invite your comments on the agenda, including comments by State and local governments. Please submit any comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (Fax) (202) 646-4536 or e-mail: rules@fema.gov. Please refer to the title of the rule that you are inquiring about, or commenting on, and to the rule's Regulation Identifier Number (RIN) found at the end of each agenda entry.

The agenda is not limited to significant regulatory actions and it contains information about FEMA regulations to be developed, reviewed, or published in the next 12 months, except for routine flood elevation determinations, listings of eligible communities under the National Flood Insurance Program, listings of suspended communities and similar designations under the National Flood Insurance Program, and FEMA organizational and management matters.

Dated: March 15, 2002.

Michael D. Brown,

General Counsel.

Federal Emergency Management Agency—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3202	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3067-AD14
3203	Assistance to Firefighters (FIRE) Grant Program	3067-AD21

Federal Emergency Management Agency—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3204	Flood Mitigation Assistance Program	3067-AC45
3205	Criminal and Civil Penalties Under the Robert T. Stafford Disaster Relief and Emergency Assistance Act	3067-AC61
3206	Disaster Assistance; Hazard Mitigation Grant Program	3067-AC69
3207	Production or Disclosure of Information	3067-AC75
3208	Taxpayer Identification Numbers	3067-AC76
3209	Debt Collection	3067-AC77
3210	Debt Collection	3067-AC84
3211	National Urban Search and Rescue Response System	3067-AC93
3212	Administration of Grants: Audits of States, Local Governments, and Nonprofit Organizations	3067-AC98
3213	National Flood Insurance Program; Insurance Coverage and Rates	3067-AD02
3214	Organizational Units, Functions and Delegations of Authority	3067-AD03
3215	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations	3067-AD07
3216	Governmentwide Debarment and Suspension (Nonprocurement)	3067-AD15
3217	National Flood Insurance Program (NFIP); Inspection of Insured Structures by Communities	3067-AD16
3218	Disaster Assistance; Public Assistance Program and Community Disaster Loan Program Statutory Changes	3067-AD20

FEMA

Federal Emergency Management Agency—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3219	Disaster Assistance; Federal Assistance to Individuals and Households	3067-AD25
3220	Disaster Assistance Definitions; Statutory Change	3067-AD26

Federal Emergency Management Agency—Completed Actions

Sequence Number	Title	Regulation Identification Number
3221	National Flood Insurance Program (NFIP); Pilot Project—Public Entity Insurers	3067-AD17
3222	Changes to General Provisions and Communities Eligible for the Sale of Insurance That Include Future Conditions Flood Insurance Hazard Map Information on Flood Maps	3067-AD18
3223	Hazard Mitigation Planning	3067-AD22
3224	National Flood Insurance Program (NFIP); Increased Rates for Flood Coverage for Pre-FIRM Properties in Coastal Areas	3067-AD27

Federal Emergency Management Agency (FEMA) — Final Rule Stage

3202. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 44 CFR 7; 44 CFR 16

Legal Deadline: None

Abstract: This rule would amend FEMA's regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975. Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. Publication of this rule would explicitly incorporate the Civil Rights Restoration Act definitions of "program or activity" and "program."

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Pauline C. Campbell, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AD14

3203. ASSISTANCE TO FIREFIGHTERS (FIRE) GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 2201 et seq

CFR Citation: 44 CFR 152

Legal Deadline: None

Abstract: This interim final rule will provide guidance on a new program to make grants directly to fire departments of a State for the purpose of enhancing their ability to protect the health and safety of the public, as well as that of the firefighting personnel facing fire and fire-related hazards. The grants will be awarded on a competitive basis, based on demonstrated financial need for and maximum benefit to be derived from the grant funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/21/01	66 FR 15968
Second Interim Final Rule	02/27/02	67 FR 9142
Second Interim Final Rule Comment Period End	04/29/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Brian Cowan, Director, Grants Program Office, U.S. Fire Administration, Federal Emergency Management Agency, Room 304, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AD21

3204. FLOOD MITIGATION ASSISTANCE PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4104c; 42 USC 4104d

CFR Citation: 44 CFR 78

Legal Deadline: None

Abstract: This interim final rule implements sections 553 and 554 of the National Flood Insurance Reform Act of 1994, to provide grants under the National Flood Mitigation Fund to States and communities for planning assistance and for mitigation projects that reduce the risk of flood damages to structures covered under contracts for flood insurance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/97	62 FR 13346
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Gil Jamieson, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AC45

3205. CRIMINAL AND CIVIL PENALTIES UNDER THE ROBERT T. STAFFORD DISASTER RELIEF AND EMERGENCY ASSISTANCE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5157(d); PL 101-410; 28 USC 2461; PL 104-134, sec 31001(s)

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would increase the maximum civil penalty under the Robert T. Stafford Disaster Relief and Emergency Assistance Act from $5,000 to $5,500.

Timetable:

Action	Date	FR Cite
NPRM	02/10/97	62 FR 5957
NPRM Comment Period End	04/11/97	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472
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RIN: 3067–AC61

3206. DISASTER ASSISTANCE; HAZARD MITIGATION GRANT PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule would revise the categories of projects eligible for funding under the Hazard Mitigation Grant Program. It emphasizes nonstructural flood mitigation measures to reduce the number of floodprone structures and clarifies that major structural flood control projects will not be considered for funding under the grant program.

Timetable:

Action	Date	FR Cite
NPRM	05/01/98	63 FR 24143
NPRM Comment Period End	07/01/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert F. Shea, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472
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RIN: 3067–AC69

3207. PRODUCTION OR DISCLOSURE OF INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-231

CFR Citation: 44 CFR 5

Legal Deadline: None

Abstract: This rule would give the public access to Government information and records maintained in an electronic format: 1) provide for expedited processing of certain requests; 2) establish an "electronic reading room;" 3) require edited material to be estimated or indicated in an agency's delay in processing requests; and 4) require FEMA to make an agency reference guide available on the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
NPRM	08/28/98	63 FR 45982
NPRM Comment Period End	10/27/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eileen Leshan, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
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Email: eileen.leshan@fema.gov

RIN: 3067–AC75

3208. TAXPAYER IDENTIFICATION NUMBERS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7701(c)

CFR Citation: 44 CFR 6

Legal Deadline: None

Abstract: This rule would implement the Debt Collection Improvement Act requirement that any person doing business with a Federal agency must provide the agency with the person's taxpayer identification number.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472
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Email: robin.maresco@fema.gov

RIN: 3067–AC76

3209. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A

CFR Citation: 44 CFR 11

Legal Deadline: None

Abstract: Under this rule, FEMA will refer delinquent debts owed to this Agency to the Department of the Treasury for collection under the Governmentwide Treasury Offset Program and for tax-refund offsets at the same time. FEMA amends its regulations to allow administrative offset against delinquent debtor States and units of general local government. FEMA also amends its regulations to change the method for calculating interest, penalty and administrative charges assessed on delinquent debts and to make States and units of general local government subject to such changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/08/98	63 FR 1063
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472
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Email: robin.maresco@fema.gov

RIN: 3067–AC77

3210. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 3720A

CFR Citation: 44 CFR 11

Legal Deadline: None

Abstract: This rule would implement policies used by FEMA to collect debts under the Debt Collection Act of 1982, including measures to collect and to compromise or terminate collection action.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robin Maresco, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW, Washington, DC 20472
Phone: 202 646-4287
Email: robin.maresco@fema.gov

RIN: 3067–AC84

3211. NATIONAL URBAN SEARCH AND RESCUE RESPONSE SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 et seq

CFR Citation: 44 CFR 208

Legal Deadline: None

Abstract: This rule would prescribe policies and procedures pertaining to FEMA's National Urban Search and Rescue Response System.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Local

Agency Contact: Dave Webb, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3456
Email: dave.webb@fema.gov

RIN: 3067–AC93

3212. ADMINISTRATION OF GRANTS: AUDITS OF STATES, LOCAL GOVERNMENTS, AND NONPROFIT ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7501

CFR Citation: 44 CFR 14

Legal Deadline: None

Abstract: This rule implements the Single Audit Act of 1984, as amended, on an agencywide basis within FEMA. It requires recipients of financial assistance from FEMA to comply with OMB Circular A-133, which sets forth standards for obtaining consistency and uniformity among Federal agencies for the audit of States, local governments, and nonprofit organizations expending Federal awards.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard L. Skinner, Deputy Inspector General, Federal Emergency Management Agency, Washington, DC 20472
Phone: 202 646-3910
Fax: 202 646-3298
Email: rick.skinner@fema.gov

RIN: 3067–AC98

3213. NATIONAL FLOOD INSURANCE PROGRAM; INSURANCE COVERAGE AND RATES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 61

Legal Deadline: None

Abstract: This rule would apply full-risk premium rates under the NFIP to structures that have suffered multiple flood losses and whose owners decline an offer of funding to eliminate or reduce future flood damage.

Timetable:

Action	Date	FR Cite
NPRM	08/05/99	64 FR 42632
NPRM Comment Period End	09/07/99	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard Leikin, Deputy Administrator, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2784
Email: howard.leikin@fema.gov

RIN: 3067–AD02

3214. ORGANIZATIONAL UNITS, FUNCTIONS AND DELEGATIONS OF AUTHORITY

Priority: Info./Admin./Other

Legal Authority: Reorganization Plan No. 3 of 1978

CFR Citation: 44 CFR 2

Legal Deadline: None

Abstract: This rule revises 44 CFR part 2 to reflect changes in FEMA's organizational structure, functions of new directorates and offices, and delegations of authority.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Michael S. Herman, Legislative and Regulatory Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472
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Fax: 202 646-4536
Email: michael.herman@fema.gov

RIN: 3067–AD03

3215. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, AND OTHER NONPROFIT ORGANIZATIONS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: PL 105-277

CFR Citation: 44 CFR 13

Legal Deadline: None

Abstract: This interim final rule presents an interim final revision to the agencies' codification of OMB Circular A-110, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations." It provides uniform administrative requirements for all grants and cooperative agreements to institutions of higher education, hospitals, and other nonprofit organizations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles P. McNulty, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2976
Email: charles.mcnulty@fema.gov

RIN: 3067–AD07

3216. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-355; 31 USC 6101 note

CFR Citation: 44 CFR 17; 44 CFR 20

Legal Deadline: None

Abstract: This common rule would make changes to the existing Governmentwide nonprocurement common rule for debarment and suspension, and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Charles P. McNulty, Office of Financial Management, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-2976
Email: charles.mcnulty@fema.gov

RIN: 3067–AD15

3217. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); INSPECTION OF INSURED STRUCTURES BY COMMUNITIES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 4001 et seq

CFR Citation: 44 CFR 59; 44 CFR 61

Legal Deadline: None

Abstract: This rule would amend FEMA regulations to clarify that areas of Monroe County, Florida that incorporate on or after January 1, 1999 and become eligible for the sale of flood insurance must participate in the inspection procedure to help the communities of Monroe County and the Village of Islamorda verify that structures comply with the community's floodplain management ordinance, and to ensure that property owners pay flood insurance premiums to the NFIP commensurate with their flood risk.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/08/02	67 FR 10631
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Don Beaton, Federal Insurance Administration, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3442
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Email: donald.beaton@fema.gov

Lois Forster, Mitigation Directorate, Federal Emergency Management Agency
Phone: 202 646-2720
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Email: lois.forster@fema.gov

RIN: 3067–AD16

3218. DISASTER ASSISTANCE; PUBLIC ASSISTANCE PROGRAM AND COMMUNITY DISASTER LOAN PROGRAM STATUTORY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121

CFR Citation: 44 CFR 206

Legal Deadline: None

Abstract: This rule amends FEMA's regulations for the Public Assistance Program and the Community Disaster Loan Program to reflect statutory changes to these programs. Specifically the rule: 1) changes the Federal contribution for Large in Lieu Contributions also known as "alternate projects;" 2) adds irrigation districts to the list of eligible private nonprofit (PNP) facilities; 3) institutes a loan requirement for certain non-critical PNP facilities; and 4) limits Community Disaster Loans to $5 million and requires that loan applicants not be in arrears on any previous loan.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/04/01	66 FR 22443
Interim Final Rule Comment Period End	07/03/01	
Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret Earman, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4172

Email: margie.earman@fema.gov

RIN: 3067–AD20

3219. DISASTER ASSISTANCE; FEDERAL ASSISTANCE TO INDIVIDUALS AND HOUSEHOLDS

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 42 USC 5174; 42 USC 5178; PL 106-390 sec 206

CFR Citation: 44 CFR 206

Legal Deadline: Final, Statutory, May 1, 2002.

Abstract: This rule would implement subsection 206(a) of the Disaster Mitigation Act of 2000, that amends section 408 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and changes the title of the provision from "Temporary Housing Assistance" to "Federal Assistance to Individuals and Households." In addition, subsection 206(c) of the Disaster Mitigation Act of 2000 repeals section 411 of the Stafford Act.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3412
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

Agency Contact: Lumumba Yancey, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472
Phone: 202 646-3939
Fax: 202 646-4536
Email: lumumba.yancey@fema.gov

RIN: 3067–AD25

3220. DISASTER ASSISTANCE DEFINITIONS; STATUTORY CHANGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 5121 to 5204(c)

CFR Citation: 44 CFR 206.2

Legal Deadline: None

Abstract: This rule would amend the definitions of "State," "United States," and "Local Government," as set forth in the Code of Federal Regulations, to coincide with those definitions established by the Robert T. Stafford Disaster Relief and Emergency Assistance Act.

Timetable:

Action	Date	FR Cite
Interim Final Rule	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Michael S. Herman, Legislative and Regulatory Counsel, Federal Emergency Management Agency, Room 840, 500 C Street SW., Washington, DC 20472
Phone: 202 646-4097
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Email: michael.herman@fema.gov

RIN: 3067–AD26

Federal Emergency Management Agency (FEMA) — Completed Actions

3221. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); PILOT PROJECT—PUBLIC ENTITY INSURERS

Priority: Substantive, Nonsignificant

CFR Citation: 44 CFR 62

Completed:

Reason	Date	FR Cite
Final Rule	03/22/02	67 FR 13546
Final Rule Effective	04/22/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Edward T. Pasterick
Phone: 202 646-3343
Email: edward.pasterick@fema.gov

RIN: 3067–AD17

3222. CHANGES TO GENERAL PROVISIONS AND COMMUNITIES ELIGIBLE FOR THE SALE OF INSURANCE THAT INCLUDE FUTURE CONDITIONS FLOOD INSURANCE HAZARD MAP INFORMATION ON FLOOD MAPS

Priority: Substantive, Nonsignificant

CFR Citation: 44 CFR 59; 44 CFR 64

Completed:

Reason	Date	FR Cite
Final Rule	11/27/01	66 FR 59166
Final Rule Effective	12/27/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Matthew B. Miller
Phone: 202 646-3461
Email: matt.miller@fema.gov

RIN: 3067–AD18

3223. HAZARD MITIGATION PLANNING

Priority: Substantive, Nonsignificant

CFR Citation: 44 CFR 206

Completed:

Reason	Date	FR Cite
Interim Final Rule	02/26/02	67 FR 8844
Interim Final Rule Effective	02/26/02	
Interim Final Rule Comment Period End	04/29/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Margaret E. Lawless
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RIN: 3067–AD22

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FEMA **Completed Actions**

3224. NATIONAL FLOOD INSURANCE PROGRAM (NFIP); INCREASED RATES FOR FLOOD COVERAGE FOR PRE-FIRM PROPERTIES IN COASTAL AREAS

Priority: Substantive, Nonsignificant

CFR Citation: 44 CFR 61

Completed:

Reason	Date	FR Cite
NPRM	12/03/01	66 FR 60176
Final Rule	02/27/02	67 FR 8902
Final Rule Effective	05/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael S. Herman

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RIN: 3067–AD27

[FR Doc. 02–8354 Filed 05–10–02; 8:45 am]
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Part XXV

Federal Mediation and Conciliation Service

Semiannual Regulatory Agenda

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FEDERAL MEDIATION AND CONCILIATION SERVICE (FMCS)

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Ch. XII

Semiannual Regulatory Agenda

AGENCY: Federal Mediation and Conciliation Service (FMCS).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Federal Mediation and Conciliation Service's (FMCS) regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that FMCS expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of FMCS' current and future regulatory activities.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Karen D. Kline, Deputy General Counsel, Office of the General Counsel, Federal Mediation and Conciliation Service, at (202) 606-5444. For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, has a similar agenda requirement (5 U.S.C. 602). Under the law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation. All of the items on this agenda are current or projected rulemakings.

Dated: March 11, 2002.

Karen D. Kline,

Deputy General Counsel, FMCS.

Federal Mediation and Conciliation Service—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3225	Public Information	3076-AA06

Federal Mediation and Conciliation Service—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3226	Governmentwide Debarment and Suspension Nonprocurement: Governmentwide Requirement for Drug-Free Work Place	3076-AA08

Federal Mediation and Conciliation Service—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3076-AA07	Arbitrations Under the American Competitiveness and Workforce Improvement Act	04/01/2002	Withdrawn

Federal Mediation and Conciliation Service (FMCS) — **Final Rule Stage**

3225. PUBLIC INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552 et seq

CFR Citation: 29 CFR 1401 (Revision)

Legal Deadline: None

Abstract: The proposed revision to FMCS' Public Information regulations is intended to incorporate the recent amendments to the Freedom of Information Act into FMCS' portion of the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
NPRM	11/03/99	64 FR 59697
NPRM Comment Period End	01/03/00	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen D. Kline, Deputy General Counsel, Federal Mediation and Conciliation Service, 2100 K Street NW, Washington, DC 20427-0001

FMCS — **Final Rule Stage**

Phone: 202 606-5488

RIN: 3076–AA06

Federal Mediation and Conciliation Service (FMCS) — **Long-Term Actions**

3226. GOVERNMENTWIDE DEBARMENT AND SUSPENSION NONPROCUREMENT: GOVERNMENTWIDE REQUIREMENT FOR DRUG-FREE WORK PLACE

Priority: Substantive, Nonsignificant

CFR Citation: 29 CFR 1471 and 1472

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3322
NPRM Comment Period End	03/25/02	
Final Action	To Be	Determined
Final Action Effective	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen D. Kline
Phone: 202 606-5488

RIN: 3076–AA08

[FR Doc. 02–7672 Filed 05–10–02; 8:45 am]

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Part XXVI

General Services Administration

Semiannual Regulatory Agenda

GENERAL SERVICES ADMINISTRATION (GSA)

GENERAL SERVICES ADMINISTRATION

41 CFR Chs. 101, 102, 105, 300, 301, 302, 303, and 304

48 CFR Ch. 5

Spring 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: General Services Administration (GSA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that GSA plans for the next 12 months and those that were completed since the fall 2001 edition. This agenda was developed under the guidelines in an Office of Management and Budget memorandum, dated February 15, 2002. GSA's purpose in publishing this agenda is to allow interested persons an opportunity to participate in the rulemaking process. GSA also invites interested persons to recommend existing significant regulations for review to determine whether they should be modified or eliminated.

FOR FURTHER INFORMATION CONTACT:

Rodney P. Lantier, Acquisition Policy Division, (202) 501-2647.

Dated: March 19, 2002.

G. Martin Wagner,

Associate Administrator, Office of Governmentwide Policy.

General Services Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3227	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs	3090-AE32
3228	Discrimination Prohibited on the Basis of Age	3090-AH46
3229	Nondiscrimination in Programs Receiving Federal Financial Assistance	3090-AH47
3230	Nondiscrimination Based on Sex in All Programs and Activities Receiving Federal Surplus Property	3090-AH48
3231	Title IX of the Education Amendments Act	3090-AH49
3232	Enforcement of Nondiscrimination on the Basis of Handicap in Programs and Activities Conducted by General Services Administration	3090-AH59
3233	Telecommunications Management	3090-AG03
3234	Sale of Personal Property	3090-AH10
3235	Disposition of Seized and Forfeited, Voluntarily Abandoned, and Unclaimed Personal Property	3090-AH11
3236	Disposition of Personal Property With Special Handling Requirements	3090-AH21
3237	Personal Property Management	3090-AH31
3238	Internet GOV Domain	3090-AH41

General Services Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3239	GSA Privacy Act	3090-AH05
3240	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	3090-AH33
3241	Federal Travel Regulation (FTR), Chapter 304 Payment of Travel Expenses From a Non-Federal Source	3090-AE19
3242	FTR Interim Rule 7—Income Tax Reimbursement Allowance (ITRA)	3090-AG99
3243	General Services Administration Acquisition Regulation; Acquisition of Leasehold Interests in Real Property; Historic Preference	3090-AH01
3244	GSAR; Tax Adjustment	3090-AH03
3245	Mail Management	3090-AH13
3246	Clarification of HUBZone	3090-AH17
3247	GSAR; Identification of Energy-Efficient Office Equipment and Supplies Containing Recovered Materials or Other Environmental Attributes	3090-AH25
3248	GSAR; Guidance on Electronic Funds Transfer	3090-AH30
3249	Centralized Field Reproduction Services	3090-AH37
3250	Real Property Policies Update	3090-AH45
3251	Change in Consumer Price Index Minimal Value for Foreign Gifts	3090-AH53
3252	Federal Property Management Regulations (FPMR) Real Property Policies	3090-AH60
3253	Federal Travel Regulation (FTR) Amendment, Miscellaneous Corrections	3090-AH61
3254	Pricing Policy for Occupancy in GSA Space	3090-AG33

GSA

General Services Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3255	Prohibited Purchases of Property Sold by GSA	3090-AH50
3256	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3090-AH35

General Services Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3257	Annual Real Property Inventories	3090-AG55
3258	Donation of Surplus Personal Property	3090-AH20
3259	Federal Travel Regulation (FTR); Maximum Per Diem Rates	3090-AH51
3260	Federal Travel Regulation; Maximum Per Diem Rates	3090-AH52
3261	Federal Travel Regulation; Privately Owned Vehicle Mileage Reimbursement	3090-AH54
3262	Federal Travel Regulation; Relocation Income Tax (RIT) Allowance Tax Tables	3090-AH55
3263	Federal Travel Regulation; Maximum Per Diem Rates	3090-AH56
3264	Federal Travel Regulation; Using Promotional Materials and Frequent Traveler Programs	3090-AH57
3265	Federal Property Management Regulations; General Policies	3090-AH58

General Services Administration (GSA) — Proposed Rule Stage

OFFICE OF CIVIL RIGHTS

3227. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 101-8.3; 41 CFR 102-7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-8.3 in plain language and moves it into the Federal Management Regulation at 102-7. The revised regulation updates coverage for enforcement of section 504 of the Rehabilitation Act of 1973, as amended, in federally assisted programs or activities to include a cross-reference to the Uniform Federal Accessibility Standards.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Federal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AE32

3228. DISCRIMINATION PROHIBITED ON THE BASIS OF AGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 6101 et seq

CFR Citation: 41 CFR 101-8.7

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-8.7 in plain language and moves it into the Federal Management Regulation. The rule enforces the Age Discrimination Act of 1975, which prohibits discrimination based on age in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH46

3229. NONDISCRIMINATION IN PROGRAMS RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476; 42 2000d-1; 20 USC 1681

CFR Citation: 41 CFR 101-6; 41 CFR 102-4

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-6.2 in plain language and moves it into the Federal Management Regulation at 102-4. The rule enforces title VI of the Civil Rights Act of 1964, as amended, which prohibits discrimination based on race, color, or national origin in programs or activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH47

3230. NONDISCRIMINATION BASED ON SEX IN ALL PROGRAMS AND ACTIVITIES RECEIVING FEDERAL SURPLUS PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 476

CFR Citation: 41 CFR 101-6.2

Legal Deadline: None

Abstract: The Office of Civil Rights has no implementing regulation for this provision at this time. However, the statute states that this provision shall be enforced through agency provisions and rules similar to those under title VI.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH48

3231. TITLE IX OF THE EDUCATION AMENDMENTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 41 CFR 101-4.100 et seq

Legal Deadline: None

Abstract: Final common rule was published August 2000. Needs to be rewritten in plain language, then published for comment, then published in final. (Needs Department of Justice approval.)

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH49

3232. • ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS AND ACTIVITIES CONDUCTED BY GENERAL SERVICES ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 41 CFR 105-8

Legal Deadline: None

Abstract: This regulation enforces nondiscrimination on the basis of handicap in programs and activities conducted by GSA. This rulemaking will be revised and rewritten in plain language.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
Phone: 202 501-3852
Fax: 202 219-3369

RIN: 3090–AH59

OFFICE OF GOVERNMENTWIDE POLICY

3233. TELECOMMUNICATIONS MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 40 USC 1424(b)

CFR Citation: 41 CFR 101-35; 41 CFR 102-172

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-35 to update GSA's telecommunications management policy and moves it into the Federal Management Regulation at 102-172. The regulation is being rewritten in a plain language, question and answer format to make it easier to use and understand.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/07/96	61 FR 41003
Interim Final Rule Effective	08/08/96	
Interim Final Rule Comment Period End	10/07/96	
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Keith Thurston, Assistant to Deputy Associate Administrator, Office of Information Technology Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AG03

3234. SALE OF PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-45; 41 CFR 102-38

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-45 to streamline sales requirements and moves it into the Federal Management Regulation at 41 CFR 102-38. The regulation is being rewritten in a plain language, question and answer format to make it easier to use and understand.

Timetable:

Action	Date	FR Cite
NPRM	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH10

3235. DISPOSITION OF SEIZED AND FORFEITED, VOLUNTARILY ABANDONED, AND UNCLAIMED PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 484(m)

CFR Citation: 41 CFR 101-48; 41 CFR 102-41

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-48 and moves it into the Federal Management Regulation at 102-41. The regulation is being rewritten in a plain language, question and answer format to make the regulation easier to use and understand.

Timetable:

Action	Date	FR Cite
NPRM	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH11

3236. DISPOSITION OF PERSONAL PROPERTY WITH SPECIAL HANDLING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-42; 41 CFR 102-40

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-42 and moves it into the Federal Management Regulation at 102-40. The regulation revises use, handling, and disposal requirements for special categories of personal property. The rule is being rewritten in plain language in a question and answer format.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

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RIN: 3090–AH21

3237. PERSONAL PROPERTY MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 481; 40 USC 483 to 487

CFR Citation: 41 CFR 102-35

Legal Deadline: None

Abstract: This rulemaking provides a general outline of the policies governing the management of Federal personal property and summarizes the processes provided for in FMR parts 102-36 through 102-42.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Peter Zuidema, Acting Director, Personal Property Management Policy Division, General Services Administration, Office of Governmentwide Policy, Washington, DC 20405
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RIN: 3090–AH31

3238. INTERNET GOV DOMAIN

Priority: Other Significant

Legal Authority: sec 205, Federal Property and Admin Services Act of 1949 (40 USC 486(c))

CFR Citation: 41 CFR 102-173

Legal Deadline: None

Abstract: The General Services Administration (GSA) is adding coverage on the Internet GOV Domain to the Federal Management Regulation (FMR). This proposed rule establishes a new FMR part covering the Internet GOV Domain. This proposed rule provides mainly a framework for future Internet GOV Domain policy, but it also establishes policy on naming conventions for U.S. Government registration of domain names, located in subpart B of the new part.

Timetable:

Action	Date	FR Cite
NPRM	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Local

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RIN: 3090–AH41

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General Services Administration (GSA) — Final Rule Stage

OFFICE OF THE CHIEF PEOPLE OFFICER

3239. GSA PRIVACY ACT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 105

Legal Deadline: None

Abstract: This rulemaking updates GSA's privacy policy and procedures and provides current organizational citations, privacy-related responsibilities, and the names and addresses of persons to contact concerning the GSA Privacy Act Program and systems of records.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jinaita Kanarchuk, General Services Administration, Information Management Division (CAI), Office of the Chief People Officer, Washington, DC 20405
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RIN: 3090–AH05

OFFICE OF CIVIL RIGHTS

3240. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 41 CFR 101-6; 41 CFR 101-8

Legal Deadline: None

Abstract: This rulemaking proposes to amend the FPMR to implement title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. GSA's proposed rulemaking was published as part of a joint notice of proposed rulemaking involving up to 24 agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: James M. Taylor, Director, Office of Civil Rights, General Services Administration, Washington, DC 20405
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RIN: 3090–AH33

OFFICE OF GOVERNMENTWIDE POLICY

3241. FEDERAL TRAVEL REGULATION (FTR), CHAPTER 304 PAYMENT OF TRAVEL EXPENSES FROM A NON-FEDERAL SOURCE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709; 31 USC 1353; 40 USC 486(c)

CFR Citation: 41 CFR 301-1; 41 CFR 304-1

Legal Deadline: None

Abstract: This amendment finalizes the interim rule governing the acceptance of payment for travel, subsistence, and related expenses from a non-Federal source. This rule supersedes Interim Rule 4, published at 57 FR 53283, November 9, 1992, with request for comments. The economic impact of this amendment is favorable on all Federal agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/30/89	
Interim Final Rule	12/28/89	54 FR 53321
Interim Final Rule 3 Effective	03/06/91	
Interim Final Rule 3	03/08/91	56 FR 9878
Action	Date	FR Cite
Interim Final Rule 3 Comment Period End	05/07/91	
Interim Final Rule 4	11/09/92	57 FR 53283
Interim Final Rule 4 Effective	12/09/92	
Interim Final Rule 4 Comment Period End	01/08/93	
NPRM	05/04/01	66 FR 22491
NPRM Comment Period End	07/03/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AE19

3242. FTR INTERIM RULE 7—INCOME TAX REIMBURSEMENT ALLOWANCE (ITRA)

Priority: Other Significant

Legal Authority: 5 USC 5707

CFR Citation: 41 CFR 301-11

Legal Deadline: None

Abstract: This rulemaking amended the FTR to add authority to implement sections of the Travel and Transportation Reform Act of 1998, which authorize Federal agencies to reimburse Federal, State, and local income taxes incurred as a result of long-term official travel. It also allows for the reimbursement of penalty and interest payments due to incorrect withholdings by the employee's agency for tax years 1993 and 1994.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	01/01/93	
Interim Final Rule	06/18/99	64 FR 32812
Interim Final Rule Comment Period End	08/17/99	
Final Action	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

GSA — Final Rule Stage

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RIN: 3090–AG99

3243. GENERAL SERVICES ADMINISTRATION ACQUISITION REGULATION; ACQUISITION OF LEASEHOLD INTERESTS IN REAL PROPERTY; HISTORIC PREFERENCE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking updates GSAR clause 552.270-4, Historic Preference, that is used in the acquisition of leasehold interests. E.O. 13006 requires that Federal agencies give first consideration to historic properties within historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. As a result of the requirements of the E.O., 552.270-4 will be revised to establish the order of precedence.

Timetable:

Action	Date	FR Cite
NPRM	06/30/99	64 FR 35122
NPRM Comment Period End	08/30/99	
Second NPRM	10/19/01	66 FR 53193
NPRM Comment Period End	12/18/01	
Final Action	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH01

3244. GSAR; TAX ADJUSTMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes a provision at GSAR 552.270-74, Tax Adjustment. The provision outlines the methodology for calculating real estate taxes for use in solicitations for offers for acquisition of leasehold interests in real property.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33799
NPRM Comment Period End	07/24/00	
Final Action	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH03

3245. MAIL MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 44 USC 2904; PL 94-575, sec 2

CFR Citation: 41 CFR 101-9; 41 CFR 102-192

Legal Deadline: None

Abstract: This rulemaking revises FPMR 101-9 and moves it into the Federal Management Regulation at 102-192. The new rule, rewritten in plain language, establishes four requirements at the agency level. Specifically, all agencies must (1) have written security plans at the agency and facility level; (2) ensure that mail costs are identified at the program level; (3) ensure that all payments to the United States Postal Service are made using commercial payment processes (i.e., not using the Postal Service's Official Mail Accounting System)—the effective date of this requirement will be October 1, 2003; (4) have performance measures for mail operations. In addition, the new rule requires all agencies that spend over $1 million per year on postage to send GSA an annual report that states the total amounts spent on postage, verifies that facility security plans have been reviewed at the agency level, identifies performance measures in use, and describes the agency's plans to improve the efficiency and effectiveness of their mail operations.

Timetable:

Action	Date	FR Cite
NPRM	05/29/01	66 FR 29067
NPRM Comment Period End	07/30/01	
NPRM Comment Period Extended	07/31/01	66 FR 39473
NPRM Comment Period End	09/28/01	
Interim Final Rule	04/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH13

3246. CLARIFICATION OF HUBZONE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 519; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking will clarify how the HUBZone program applies to acquiring leasehold interests in real property.

Timetable:

Action	Date	FR Cite
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH17

3247. GSAR; IDENTIFICATION OF ENERGY-EFFICIENT OFFICE EQUIPMENT AND SUPPLIES CONTAINING RECOVERED MATERIALS OR OTHER ENVIRONMENTAL ATTRIBUTES

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 538; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking would amend the GSAR for consistency with the proposed FAR revision of energy conservation regulations and President Clinton's issuance of E.O. 13123 on efficient energy management.

Timetable:

Action	Date	FR Cite
NPRM	07/18/00	65 FR 44508
NPRM Comment Period End	09/18/00	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AH25

3248. GSAR; GUIDANCE ON ELECTRONIC FUNDS TRANSFER

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c)

CFR Citation: 48 CFR 532; 48 CFR 552

Legal Deadline: None

Abstract: This rulemaking establishes procedures for implementing the Debt Collection Improvement Act of 1996 in accordance with Department of Treasury rules at 31 CFR part 208 and OMB Prompt Payment Act rules at 5 CFR 1315. To comply with these rules, GSA must collect specific vendor information. 5 CFR 1315.9(b) requires a proper invoice to include the Taxpayer Identification Number (TIN) and banking information for electronic funds transfer, unless agency procedures provide otherwise. GSA will require the TIN on each invoice but will enter banking information on the GSA Form 300 in lieu of requiring it on the invoice.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Rodney P. Lantier, Director, Regulatory Secretariat (MVRS), Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH30

3249. • CENTRALIZED FIELD REPRODUCTION SERVICES

Priority: Info./Admin./Other

Legal Authority: 41 CFR 101-5.2

CFR Citation: 41 CFR 101-5.2

Legal Deadline: None

Abstract: In January of 1998, all GSA reproduction facilities were transferred to the Defense Automated Printing Service (DAPS), Department of Defense (DoD), thereby transferring the GSA mission of providing reproduction services for customer agencies. As a result, the contents of Federal Property Management Regulation (FPMR) 101-5.2 (41 CFR 101-5.2), Centralized Field Reproduction Services, will be removed from the FPMR. Any future regulation regarding GSA's involvement in centralized field reproduction services will be issued in the Federal Management Regulation (FMR).

Timetable:

Action	Date	FR Cite
Final Action	04/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3090–AH37

3250. REAL PROPERTY POLICIES UPDATE

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 102-71 to 41 CFR 102-83

Legal Deadline: None

Abstract: Final Rule FMR parts 102-71 to 102-82 was published in the Federal Register on January 18, 2001, and was effective on January 18, 2001. The completion of that regulatory action initiates the start of a new initiative entitled "Real Property Policies Update." The goal of this new initiative is to amend FMR parts 102-71 to 102-82 to complete the transfer of policy from the FPMR to the FMR and to update policies, such as location of space policy, outleasing policy, historic preservation/E.O. 13006 policy, and security policy. This regulatory action will also create a separate part, FMR part 102-83, to deal specifically with the updated location of space policy.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH45

3251. • CHANGE IN CONSUMER PRICE INDEX MINIMAL VALUE FOR FOREIGN GIFTS

Priority: Substantive, Nonsignificant

Legal Authority: sec 205(c), 63 Stat (40 USC 486(c)); sec 515, 91 Stat 862 (5 USC 7342)

CFR Citation: 41 CFR 102-42

Legal Deadline: None

Abstract: Public Law 95-105 requires that at 3-year intervals following January 1, 1981, minimal value be redefined by the Administrator of General Services, after consultation with Secretary of State, to reflect changes in the Consumer Price Index for the immediately preceding 3-year period.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Gary Thompson, Program Analyst, Personal Property Mgmt Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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RIN: 3090–AH53

3252. • FEDERAL PROPERTY MANAGEMENT REGULATIONS (FPMR) REAL PROPERTY POLICIES

Priority: Other Significant

Legal Authority: 40 USC 486(c)

CFR Citation: 41 CFR 101-6; 41 CFR 101-18; 41 CFR 101-19; 41 CFR 101-20; 41 CFR 101-33; ...

Legal Deadline: None

Abstract: The General Services Administration is transferring coverage on real property policies to the Federal Management Regulation (FMR). A final rule published in the Federal Register at 66 FR 5358 (January 18, 2001), moved many of the real property policies to the FMR. This final rule completes the transfer by removing all FPMR coverage on real property policies and providing cross references to direct readers to the coverage in the FMR.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AH60

3253. • FEDERAL TRAVEL REGULATION (FTR) AMENDMENT, MISCELLANEOUS CORRECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 et seq.; 20 USC 905(a); 31 USC 1353

CFR Citation: 41 CFR 300; 41 CFR 301; 41 CFR 302

Legal Deadline: None

Abstract: This final rule amends the Federal Travel Regulation (FTR) to clarify various provisions of chapters 300, 301, and 302 regarding temporary duty (TDY) travel and relocation allowances and makes certain grammatical corrections where applicable.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AH61

PUBLIC BUILDINGS SERVICE

3254. PRICING POLICY FOR OCCUPANCY IN GSA SPACE

Priority: Other Significant

Legal Authority: sec 210(j), Fed Prop and Admin Services Act of 1949, as amended (40 USC 490(j))

CFR Citation: 41 CFR 102-85

Legal Deadline: None

Abstract: The General Services Administration (GSA) is revising the Federal Property Management Regulations (FPMR) by moving coverage of GSA's Rent Program into the Federal Management Regulation (FMR). A cross-reference is added to the FPMR to direct readers to the coverage in the FMR. The FMR is written in plain language to provide agencies with updated regulatory material that is easy to read and understand. This interim rule establishes the pricing policy guidance for Occupancy Agreements between GSA and the customer agencies. It also governs intra-governmental pricing of space and services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/08/01	66 FR 23169
Interim Final Rule Effective	05/08/01	
Interim Final Rule Comment Period End	07/09/01	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 3090–AG33

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General Services Administration (GSA) — Long-Term Actions

OFFICE OF GENERAL COUNSEL

3255. PROHIBITED PURCHASES OF PROPERTY SOLD BY GSA

Priority: Info./Admin./Other

Legal Authority: 5 USC 7301; 5 CFR 2635.105; 5 CFR 2635.702; 5 CFR 2635.703

CFR Citation: 5 CFR 2635.105; 5 CFR 2635.702; 5 CFR 2635.703

Legal Deadline: None

Abstract: Under the current regulation at 5 CFR 6701.103, GSA employees (and their spouses and minor children) are prohibited from purchasing for themselves or others any personal or real property being sold by GSA. This regulation supplemented the prohibition on the use of public office for private gain at 5 CFR 2635.702 and the prohibition on the use of nonpublic information at 5 CFR 2635.703. GSA believes that the current prohibition at section 6701.103 for all GSA employees, their spouses, and minor children is unnecessarily broad and that the prohibition should be extended only to those employees where the possibility of using public office or nonpublic information for private gain exists or where the possibility of the appearance of a conflict of interest occurs. For that reason, GSA is retaining but liberalizing this provision, so as to allow the purchase by GSA employees of property sold by GSA, except for those GSA employees who personally and substantially participate in, or have official responsibility for, the sale of real and personal property.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eugenia Ellison, Associate General Counsel, General Law Division Office of General Counsel, General Services Administration, Washington, DC 20405
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RIN: 3090–AH50

OFFICE OF GOVERNMENTWIDE POLICY

3256. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Other Significant

Legal Authority: EO 12549 (2/18/86); 41 USC 701 et seq.; 40 USC 486(c)

CFR Citation: 41 CFR 105

Legal Deadline: None

Abstract: Rewrites current rule into plain language, question and answer format and clarifies ambiguities in existing rules.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3344
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

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RIN: 3090–AH35

General Services Administration (GSA) — Completed Actions

3257. ANNUAL REAL PROPERTY INVENTORIES

Priority: Other Significant

CFR Citation: 41 CFR 101-3; 41 CFR 102-84

Completed:

Reason	Date	FR Cite
Interim Final Rule	11/02/01	66 FR 55593
Interim Final Rule Effective	11/02/01	
Interim Final Rule Comment Period End	01/02/02	
Final Action	03/14/02	67 FR 11424
Final Action Effective	03/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3090–AG55

3258. DONATION OF SURPLUS PERSONAL PROPERTY

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 101-44; 41 CFR 102-37

Completed:

Reason	Date	FR Cite
Final Action	01/18/02	67 FR 2583
Final Action Effective	01/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Federal

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RIN: 3090–AH20

3259. FEDERAL TRAVEL REGULATION (FTR); MAXIMUM PER DIEM RATES

Priority: Substantive, Nonsignificant

CFR Citation: 41 CFR 300; 41 CFR 301

Completed:

Reason	Date	FR Cite
Final Action Effective	10/01/01	
Final Action	12/27/01	66 FR 66794

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Timothy J. Burke

GSA — Completed Actions

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RIN: 3090–AH51

3260. • FEDERAL TRAVEL REGULATION; MAXIMUM PER DIEM RATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5701 to 5709

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: Public Law 99-234 (99 Stat. 1756), January 2, 1986, provides the Administrator of General Services with authority to establish maximum per diem rates for travel within the continental United States (CONUS). Properties in high cost travel areas are under no obligation to provide lodging to Federal travelers at the per diem rate. Thus, the General Services Administration established the Federal Premier Lodging Program (FPLP) to contract directly with properties in high cost travel markets to make available a set number of rooms to Federal travelers at contract rates. FPLP contract results, along with the lodging survey data are integrated together to determine reasonable per diem rates that more accurately reflect lodging costs in these areas.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/01/02	
Final Action	01/15/02	67 FR 1899

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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Email: timothy.burke@gsa.gov

RIN: 3090–AH52

3261. • FEDERAL TRAVEL REGULATION; PRIVATELY OWNED VEHICLE MILEAGE REIMBURSEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5707(b)

CFR Citation: 41 CFR 301-10.300

Legal Deadline: None

Abstract: Pursuant to 5 U.S.C. 5707(b), the Administrator of General Services has the responsibility to establish the privately owned vehicle (POV) mileage reimbursement rates. Separate rates are set for airplanes, automobiles (including trucks), and motorcycles. In order to set these rates, GSA is required to conduct periodic investigations, in consultation with the Secretaries of Defense and Transportation, and representatives of Government employee organizations, of the cost of travel and the operation of POVs to employees while engaged on official business. As required, GSA conducted an investigation of the costs of operating a POV and reported the results to Congress.

Timetable:

Action	Date	FR Cite
Final Action	01/15/02	67 FR 1902
Final Action Effective	01/21/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Timothy J. Burke, Director, Travel Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-1538
Fax: 202 501-0349
Email: timothy.burke@gsa.gov

RIN: 3090–AH54

3262. • FEDERAL TRAVEL REGULATION; RELOCATION INCOME TAX (RIT) ALLOWANCE TAX TABLES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5738; 20 USC 905(a); EO 11609; 36 FR 13747; 3 CFR, 1971 to 1975 Comp, p 586

CFR Citation: 3 CFR 1971 to 1975 Comp, p 586

Legal Deadline: None

Abstract: The Federal, State, and Puerto Rico tax tables for calculating the relocation income tax (RIT) allowance must be updated yearly to reflect changes in Federal, State, and Puerto Rico income tax brackets and rates. The Federal, State, and Puerto Rico tax tables contained in this rule are for calculating the 2002 RIT allowance to be paid to relocating Federal employees.

Timetable:

Action	Date	FR Cite
Final Action Effective	02/15/02	
Final Action	02/19/02	67 FR 7283

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Timothy J. Burke, Director, Travel Management Policy

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GSA **Completed Actions**

Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
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Email: timothy.burke@gsa.gov

RIN: 3090–AH56

3264. • FEDERAL TRAVEL REGULATION; USING PROMOTIONAL MATERIALS AND FREQUENT TRAVELER PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5707; 31 USC 1353

CFR Citation: 41 CFR 301

Legal Deadline: None

Abstract: Federal Travel Regulation (FTR), chapter 301 is being amended. Chapter 301-53, Using Promotional Materials and Frequent Traveler Programs, is a part of the revisions being made to chapter 301 of the FTR.

Timetable:

Action	Date	FR Cite
Final Action	04/12/02	67 FR 17946
Final Action Effective	04/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Timothy J. Burke, Director, Travel Management Policy Division, Office of Governmentwide Policy, General Services Administration, Washington, DC 20405
Phone: 202 501-1538
Fax: 202 501-0349
Email: timothy.burke@gsa.gov

RIN: 3090–AH57

3265. • FEDERAL PROPERTY MANAGEMENT REGULATIONS; GENERAL POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: sec 205(c), 63 Stat 390; 40 USC 486(c)

CFR Citation: 41 CFR 101-25

Legal Deadline: None

Abstract: This final rule amends the Federal Property Management Regulations (FPMR), part 101-25, to remove those provisions requiring that promotional benefits, including frequent flyer miles earned on official travel, are the property of the Government. On December 28, 2001, the President signed into law a provision that Federal employees may retain such promotional items for personal use.

Timetable:

Action	Date	FR Cite
Final Action	04/11/02	67 FR 17650
Final Action Effective	04/11/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Henry Maury, Senior Policy Analyst, Office of Transportation and Personal Property (MT), General Services Administration, Washington, DC 20405
Phone: 202 208-7928
Fax: 202 501-6742
Email: henry.maury@gsa.gov

RIN: 3090–AH58

[FR Doc. 02–7673 Filed 05–10–02; 8:45 am]
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May 13, 2002

Part XXVII

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution

Semiannual Regulatory Agenda

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MORRIS K. UDALL FOUNDATION-U.S. INSTITUTE FOR ENVIRONMENTAL CONFLICT RESOLUTION (MKU-USIECR)

MORRIS K. UDALL SCHOLARSHIP AND EXCELLENCE IN NATIONAL ENVIRONMENTAL POLICY FOUNDATION

The United States Institute for Environmental Conflict Resolution

36 CFR Ch. XVI

Semiannual Regulatory Agenda

AGENCY: Morris K. Udall Scholarship and Excellence in National Environmental Policy Foundation (including the United States Institute for Environmental Conflict Resolution).

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice provides the semiannual agenda of rules scheduled for development during the next 12 months. It is issued pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

FOR FURTHER INFORMATION CONTACT: Ellen K. Wheeler, General Counsel, Morris K. Udall Foundation, 110 S. Church Avenue, Suite 3350, Tucson, AZ 85701; Telephone (520) 670-5299; Fax (520) 670-5530.

SUPPLEMENTARY INFORMATION: With this publication, the Foundation satisfies the requirement of Executive Order 12866 that it publish an agenda of rules that it expects to issue. The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) also requires publication of an agenda identifying rules that will have significant economic effect on a substantial number of small entities; the Foundation certifies that this proposed rule will not have a significant impact on small entities.

Dated: February 25, 2002.

Ellen K. Wheeler,

Deputy Executive Director and General Counsel.

Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution (MKU-USIECR) — **Long-Term Actions**

3266. CONFIDENTIALITY IN DISPUTE RESOLUTION PROCEEDINGS

Priority: Info./Admin./Other

Legal Authority: 5 USC 571 et seq; 20 USC 5601 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rule implements section 574 of title 5, United States Code, and provides that communications prepared for a dispute resolution proceeding in which the U.S. Institute for Environmental Conflict Resolution is involved as a third-party neutral will be confidential, except in certain specified circumstances.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Ellen K. Wheeler, General Counsel, Deputy Executive Director, Morris K. Udall Foundation-U.S. Institute for Environmental Conflict Resolution, Suite 3350, 110 South Church Avenue, Tucson, AZ 85701
Phone: 520 670-5299
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Email: wheeler@udall.gov

RIN: 3320–AA01

[FR Doc. 02–7674 Filed 05–10–02; 8:45 am]
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May 13, 2002

Part XXVIII

National Aeronautics and Space Administration

Semiannual Regulatory Agenda

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (NASA)

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Ch. V

Regulatory Agenda

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: NASA's regulatory agenda describes those regulations being considered for development or amendment by NASA, the need and legal basis for the actions being considered, the name and telephone number of the knowledgeable official, whether a regulatory analysis is required, and the status of regulations previously reported.

ADDRESSES: Director, Management Assessment Division (Code JM), Office of Management Systems, NASA Headquarters, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Nanette Jennings, (202) 358-0819.

SUPPLEMENTARY INFORMATION: OMB guidelines dated February 14, 2002, "Spring 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions" require a regulatory agenda of those regulations under development and review to be published in the **Federal Register** each April and October.

Dated: March 15, 2002.

John D. Werner,

Director, Management Assessment Division.

National Aeronautics and Space Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3267	Research Misconduct	2700-AC50

National Aeronautics and Space Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3268	Code of Conduct for International Space Station Crew	2700-AC40
3269	NASA Grant and Cooperative Agreement Handbook—Rewrite of Section D—Cooperative Agreements With Commercial Firms and Implementation of Section 319 of Public Law 106-391, Buy American Encouragement	2700-AC44
3270	Inventions and Contributions	2700-AC47
3271	Delegation of Authority	2700-AC54

National Aeronautics and Space Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3272	Tracking and Data Relay Satellite System; Use and Reimbursement Policy for Non-U.S. Government Users	2700-AA29
3273	Cross-Waiver of Liability	2700-AB51
3274	Miscellaneous Administrative Changes to the NASA Federal Acquisition Regulation Supplement (NFS)	2700-AC33
3275	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs and Activities Receiving Federal Financial Assistance	2700-AC41
3276	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	2700-AC43
3277	National Environmental Policy Act Implementing Procedures	2700-AC49
3278	NASA Grant and Cooperative Agreement Handbook—Miscellaneous Changes	2700-AC53

National Aeronautics and Space Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3279	NASA Standards of Conduct	2700-AC37
3280	Supplemental Standards of Ethical Conduct for Employees of the National Aeronautics and Space Administration	2700-AC45

NASA

National Aeronautics and Space Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
2700-AC35	Meritorious Claims Arising From the Conduct of NASA Functions Under 42 U.S.C. 2473(c)(13)	02/27/2002	Withdrawn
2700-AC46	Boards and Committees	02/27/2002	Withdrawn
2700-AC48	Patents and Other Intellectual Property Rights	02/27/2002	Withdrawn

National Aeronautics and Space Administration (NASA) — Proposed Rule Stage

3267. RESEARCH MISCONDUCT

Priority: Other Significant

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1275

Legal Deadline: None

Abstract: The proposed rule implements the "Federal Policy on Research Misconduct," issued by the Office of Science and Technology Policy in the Federal Register (FR) on December 6, 2000 (65 FR 76260). The proposed rule sets out the definition of research misconduct and the procedures for determining whether research misconduct has occurred and for recommending administrative action by NASA pursuant to applicable laws.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mayra N. Montrose, National Aeronautics and Space Administration, Office of the NASA Chief Scientist, Code AS, 300 E Street SW, Washington, DC 20744
Phone: 202 358-1492
Email: mmontros@mail.hq.nasa.gov

RIN: 2700–AC50

National Aeronautics and Space Administration (NASA) — Final Rule Stage

3268. CODE OF CONDUCT FOR INTERNATIONAL SPACE STATION CREW

Priority: Other Significant

Legal Authority: 42 USC 2455, 2473, 2475; 18 USC 799

CFR Citation: 14 CFR 1214, subpart 1214.4

Legal Deadline: None

Abstract: NASA is amending 14 CFR part 1214 by adding subpart 1214.4 to implement certain provisions of the International Space Station Intergovernmental Agreement regarding crew members' observance of a Code of Conduct.

Timetable:

Action	Date	FR Cite
Interim Final Rule Effective	10/01/00	
Interim Final Rule	12/21/00	65 FR 80302
Final Rule	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: E. Jason Steptoe, Associate General Counsel, National Aeronautics and Space Administration, Office of General Counsel (Code GS), 300 E Street SW, Washington, DC 20546
Phone: 202 358-2432

RIN: 2700–AC40

3269. NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—REWRITE OF SECTION D—COOPERATIVE AGREEMENTS WITH COMMERCIAL FIRMS AND IMPLEMENTATION OF SECTION 319 OF PUBLIC LAW 106-391, BUY AMERICAN ENCOURAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 6301 to 6308

CFR Citation: 14 CFR 1260 and 1274

Legal Deadline: None

Abstract: NASA's Grant and Cooperative Agreement Handbook will be revised to clarify and provide additional guidance on the award and administration of cooperative agreements with commercial firms. This includes incorporating appropriate guidance on risk-centered approaches to acquisitions under cooperative agreements.

Timetable:

Action	Date	FR Cite
NPRM	10/29/01	66 FR 54468
NPRM Comment Period End	12/28/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Eugene Johnson, Procurement Analyst, National Aeronautics and Space Administration, NASA Headquarters (Code HC), 300 E Street SW, Washington, DC 20546
Phone: 202 358-4703
Fax: 202 358-3220
Email: ejohnson@hq.nasa.gov

RIN: 2700–AC44

NASA — Final Rule Stage

3270. INVENTIONS AND CONTRIBUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2458, sec 306 of the National Aeronautics and Space Act of 1958; 15 USC 3710b(1), sec 12 of the Federal Technology Transfer Act of 1986

CFR Citation: 14 CFR 1240

Legal Deadline: None

Abstract: NASA is amending 14 CFR part 1240 to provide definitions (including a software definition), add a new category of initial awards for release of software, provide initial awards for the issuance of patents based upon continuation-in-part and divisional patent applications, increase the amount of certain awards, and change delegations of authority from the NASA Administrator.

Award amounts have not been changed since 1985, and this updates to current day dollars. This includes significant increases in initial awards for technical briefs from $150 to $350, multiple author software and patents from $250 to $500, and single author software and patents from $500 to $1,000. Any award of an amount less than $2,000 no longer requires the Administrator's signature.

Timetable:

Action	Date	FR Cite
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Paul A. Curto, Senior Technologist, National Aeronautics and Space Administration, NASA Headquarters, Code RI, Washington, DC 20546
Phone: 202 358-2279
Fax: 202 358-3197
Email: pcurto@hq.nasa.gov

RIN: 2700–AC47

3271. • DELEGATION OF AUTHORITY

Priority: Info./Admin./Other

Legal Authority: PL 105-389, as amended by PL 106-685

CFR Citation: 14 CFR 1204

Legal Deadline: None

Abstract: The Centennial of Flight Commemoration Act (the Act), Public Law 105-389, as amended by Public Law 106-685, was passed October 6, 1999. In section 9(a) and 9(b) of the Act, the NASA Administrator is given the sole and exclusive right to approve the usage of the U.S. Centennial of Flight Commission logo and name. NASA, with the concurrence of the U.S. Centennial of Flight Commission, now wishes to delegate to the Assistant Administrator for External Affairs this right to approve the usage of the U.S. Centennial of Flight Commission logo and name.

Timetable:

Action	Date	FR Cite
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Christy Foster, Executive Director, U.S. Centennial of Flight Commission, National Aeronautics and Space Administration, NASA Headquarters, 300 E Street SW, Code IA-1, Washington, DC 20546
Phone: 202 358-1903
Fax: 202 358-3155
Email: sfoster@hq.nasa.gov

RIN: 2700–AC54

National Aeronautics and Space Administration (NASA) — Long-Term Actions

3272. TRACKING AND DATA RELAY SATELLITE SYSTEM; USE AND REIMBURSEMENT POLICY FOR NON-U.S. GOVERNMENT USERS

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1215

Timetable:

Action	Date	FR Cite
Final Action for CY 1993 Rate Change	05/15/92	57 FR 20746
Final Action for CY 1994 Rate Change	09/28/93	58 FR 50515
Final Action for CY 1995 Rate Change	10/31/94	59 FR 54385
Final Action for CY 1997 Rate Change	05/15/95	60 FR 25843
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Joseph LaCurto
Phone: 202 358-2764

RIN: 2700–AA29

3273. CROSS-WAIVER OF LIABILITY

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1266

Timetable:

Action	Date	FR Cite
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Steven Mirmina
Phone: 202 358-0729
Fax: 202 358-4355
Email: smirmina@mail.hq.nasa.gov

RIN: 2700–AB51

3274. MISCELLANEOUS ADMINISTRATIVE CHANGES TO THE NASA FEDERAL ACQUISITION REGULATION SUPPLEMENT (NFS)

Priority: Info./Admin./Other

CFR Citation: 48 CFR 1801 to 1872

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Celeste M. Dalton
Phone: 202 358-1645
Email: cdalton@hq.nasa.gov

RIN: 2700–AC33

NASA — Long-Term Actions

3275. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1250; 14 CFR 1251; 14 CFR 1252

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: George E. Reese
Phone: 202 358-2167
Fax: 202 358-3336
Email: greese@hq.nasa.gov

RIN: 2700–AC41

3276. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1265

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane S. Thompson
Phone: 202 358-0514
Fax: 202 358-3220
Email: dthompso@hq.nasa.gov

RIN: 2700–AC43

3277. NATIONAL ENVIRONMENTAL POLICY ACT IMPLEMENTING PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 14 CFR 1216.3

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Ann Hooker
Phone: 202 358-0007
Email: ahooker@hq.nasa.gov

RIN: 2700–AC49

3278. • NASA GRANT AND COOPERATIVE AGREEMENT HANDBOOK—MISCELLANEOUS CHANGES

Priority: Info./Admin./Other

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2473

CFR Citation: 14 CFR 1260; 14 CFR 1274

Legal Deadline: None

Abstract: The Grant and Cooperative Agreement Handbook will be amended as necessary to reflect administrative and editorial changes to clarify internal procedures and amplify Government regulations for awarding and administering grants and cooperative agreements. This regulation was inadvertently entered as being complete. New RIN established to recharacterize the action as Long-Term.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rita Svarcas, National Aeronautics and Space Administration
Phone: 202 358-0464
Fax: 202 358-3220
Email: rsvarcas@hq.nasa.gov

Related RIN: Duplicate of 2700-AC51

RIN: 2700–AC53

National Aeronautics and Space Administration (NASA) — Completed Actions

3279. NASA STANDARDS OF CONDUCT

Priority: Info./Admin./Other

CFR Citation: 14 CFR 1207; 5 CFR 6901

Completed:

Reason	Date	FR Cite
Final Action	11/27/01	66 FR 59136

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurie P. Rafferty
Phone: 202 358-2028
Fax: 202 358-4355
Email: lraffert@hq.nasa.gov

Related RIN: Related To 2700-AC45

RIN: 2700–AC37

3280. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

Priority: Info./Admin./Other

CFR Citation: 5 CFR 6901; 14 CFR 1207

Completed:

Reason	Date	FR Cite
Final Action	11/27/01	66 FR 39135

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laurie P. Rafferty
Phone: 202 358-2028
Fax: 202 358-4355
Email: lraffert@hq.nasa.gov

Related RIN: Related To 2700-AC37

RIN: 2700–AC45

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Part XXIX

National Archives and Records Administration

Semiannual Regulatory Agenda

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION (NARA)

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Ch. XII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Archives and Records Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the proposed regulatory actions that the National Archives and Records Administration (NARA) plans for the next 12 months and those actions that have been completed since October 2001. This agenda was developed under the guidelines in OMB's Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions, dated February 14, 2002. NARA's purpose in publishing this agenda is to allow interested persons an opportunity to have more comprehensive documentation of NARA's regulatory plans and to participate in the rulemaking process. Some of the regulations listed in the agenda are considered significant under Executive Order 12866, "Regulatory Planning and Review."

FOR FURTHER INFORMATION CONTACT: Nancy Allard, Regulatory Contact, Policy and Communications Staff, (301) 837-1850.

Dated: March 15, 2002.

John W. Carlin,

Archivist of the United States.

National Archives and Records Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3281	Expanding Transfer Options for Electronic Records	3095-AB03
3282	Nixon Presidential Materials; Reproduction	3095-AB07
3283	NARA Facilities; Addresses and Hours	3095-AB08
3284	Nondiscrimination in Federally Assisted Programs—Implementation of Title VI of the Civil Rights Act of 1964	3095-AB09
3285	Revision of NARA Research Room Procedures	3095-AB10
3286	Restrictions on the Use of Records	3095-AB11
3287	NARA Official Seals	3095-AB12
3288	Presidential Records	3095-AB13

National Archives and Records Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3289	Debt Collection	3095-AA77
3290	Presidential Library Facilities	3095-AA82
3291	National Historical Publications and Records Commission Grant Regulations	3095-AA93
3292	Records Disposition	3095-AB02
3293	Micrographic Records Management	3095-AB06

National Archives and Records Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3294	Implementation of OMB Circular A-110, Section 36	3095-AA96
3295	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3095-AB04
3296	Records Management; Electronic Text Documents	3095-AB05

National Archives and Records Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3297	Limitations on Testimony by NARA Employees	3095-AA75
3298	Privacy Act	3095-AA99
3299	Research Room Procedures	3095-AB01

3281. EXPANDING TRANSFER OPTIONS FOR ELECTRONIC RECORDS

Priority: Other Significant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1228.270

Legal Deadline: None

Abstract: For agencies transferring electronic records to the National Archives of the United States, this rule would add certain magnetic tape cartridges with a storage capacity of up to 40GB to the list of acceptable transfer media. In addition, media-less transfer using File Transfer Protocol and the Internet will be added as an acceptable transfer mechanism.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	
Final Action	09/00/02	
Final Action Effective	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AB03

3282. NIXON PRESIDENTIAL MATERIALS; REPRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a); 44 USC 2111 Note

CFR Citation: 36 CFR 1275

Legal Deadline: None

Abstract: NARA is updating regulations affecting research use of the Nixon Presidential Materials in NARA custody to reflect a change in the 1996 Nixon Tapes Settlement Agreement. Beginning April 20, 2001, NARA may make available for sale and copying all tape recordings of conversations from the Nixon Presidency that have been released.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11632
NPRM Comment Period End	05/14/02	
Final Action	06/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, 4100, 8601 Adelphi Road, College Park, MD
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB07

3283. NARA FACILITIES; ADDRESSES AND HOURS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1253

Legal Deadline: None

Abstract: NARA is updating addresses and hours of operations for its nationwide facilites.

Timetable:

Action	Date	FR Cite
NPRM	04/15/02	67 FR 18146
NPRM Comment Period End	06/14/02	
Final Action	07/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, 4100, 8601 Adelphi Road, College Park, MD
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB08

3284. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS—IMPLEMENTATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Other Significant

Legal Authority: 44 USC 2104(a); 42 USC 2000d to 2000d-7; E0 12250

CFR Citation: 36 CFR 1213

Legal Deadline: None

Abstract: NARA is adopting Governmentwide regulations on nondiscrimination on the grounds of race, color, or national origin in any program or activity receiving Federal financial assistance from NARA. These regulations will affect the National Historical Publications and Records Commission grant program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	
Final Action	03/00/03	
Final Action Effective	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Federalism: Undetermined

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AB09

3285. REVISION OF NARA RESEARCH ROOM PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1254

Legal Deadline: None

Abstract: NARA is updating and revising in plain language its regulations concerning use of records and donated historical materials in NARA research rooms.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Action	04/00/03	
Final Action Effective	05/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives

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RIN: 3095–AB10

3286. RESTRICTIONS ON THE USE OF RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2101 to 2118; 22 USC 1461(b)

CFR Citation: 36 CFR 1256

Legal Deadline: None

Abstract: NARA is updating and rewriting in plain language its regulations on statutory and other restrictions on access to archival records and donated historical materials transferred to the National Archives of the United States.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	
Final Action	01/00/03	
Final Action Effective	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jennifer Davis Heaps, Policy Specialist, National Archives and Records Administration, 4100, 8601 Adelphi Road, College Park, MD
Phone: 301 837-1850
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Email: jennifer.heaps@nara.gov

RIN: 3095–AB11

3287. NARA OFFICIAL SEALS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(e); 44 USC 2116(b); 44 USC 2302

CFR Citation: 36 CFR 1200

Legal Deadline: None

Abstract: NARA is reviewing its regulation on its official seals and how they may be used. The regulations will be rewritten in plain language.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Kimberly Richardson, Policy Specialist, National Archives and Records Administration, Room 4100, 8601 Adelphi Road, College Park, MD 20602-6001
Phone: 301 837-1850
Fax: 301 837-0319
Email: kimberly.richardson@nara.gov

RIN: 3095–AB12

3288. • PRESIDENTIAL RECORDS

Priority: Other Significant

Legal Authority: 44 USC 2201 to 2207; EO 13233

CFR Citation: 36 CFR 1270

Legal Deadline: None

Abstract: NARA is revising its regulations implementing the Presidential Records Act to reflect the requirements of EO 13233, Further Implementation of the Presidential Records Act.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	
Final Action	08/00/03	
Final Action Effective	09/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Gary M. Stern, General Counsel, National Archives and Records Administration, Room 3110, 8601 Adelphi Road, College Park, MD 20740
Phone: 301 837-1750

RIN: 3095–AB13

National Archives and Records Administration (NARA) — Final Rule Stage

3289. DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5514; 31 USC 3701 to 3719

CFR Citation: 36 CFR 1201

Legal Deadline: None

Abstract: This regulation will establish NARA's policies and procedures for implementing the Debt Collection Improvement Act of 1996. It provides for the collection, compromise, or termination of debts owed to the United States and NARA by adopting the Federal Claims Collection Standards promulgated by the Department of the Treasury and Department of Justice.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Interim Final Rule Effective	06/00/02	
Interim Final Rule Comment Period End	07/00/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Christopher M. Runkel, Deputy General Counsel, National Archives and Records Administration, Room 3110, NGC, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1750
Fax: 301 837-0293
Email: christopher.runkel@nara.gov

Related RIN: Merged With 3095-AA76

RIN: 3095–AA77

3290. PRESIDENTIAL LIBRARY FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a); 44 USC 2112

CFR Citation: 36 CFR 1281

Legal Deadline: None

Abstract: NARA is issuing regulations relating to the acceptance of a Presidential library facility by the Archivist of the United States from a non-Federal group or institution. The regulations will address requirements in the Presidential Libraries Act of 1986 for architectural and design standards, certifications, and reporting to Congress.

Timetable:

Action	Date	FR Cite
NPRM	08/25/98	63 FR 45203
NPRM Comment Period End	10/26/98	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AA82

3291. NATIONAL HISTORICAL PUBLICATIONS AND RECORDS COMMISSION GRANT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC 2104(a); 44 USC 2504

CFR Citation: 36 CFR 1206

Legal Deadline: None

Abstract: NARA intends to rewrite the regulations into plain language and to make other updates and clarifications.

Timetable:

Action	Date	FR Cite
NPRM	02/06/02	67 FR 5542
NPRM Comment Period End	04/08/02	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Federalism: Undetermined

Agency Contact: Nancy Copp, Management and Program Analyst, National Archives and Records Administration, Room 111, NHPRC, 700 Pennsylvania Avenue NW., Washington, DC 20408-0001
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Email: nancy.copp@.nara.gov

RIN: 3095–AA93

3292. RECORDS DISPOSITION

Priority: Substantive, Nonsignificant

Legal Authority: 44 USC ch 5; 44 USC ch 21; 44 USC ch 29; 44 USC ch 33

CFR Citation: 36 CFR 1228.32; 36 CFR 1228.42; 36 CFR 1228.50; 36 CFR 1228.106; 36 CFR 1232.20; 36 CFR 1232.32; 36 CFR 1220; 36 CFR 1228; 36 CFR 1232; 36 CFR 1234; 36 CFR 1236

Legal Deadline: None

Abstract: This rule will update the procedures for Federal agencies' submission of printed or published records schedules to NARA; modify the applicability of new General Records Schedule items to records previously scheduled by individual agencies, and make corrections to cross-references.

Timetable:

Action	Date	FR Cite
NPRM	07/17/01	66 FR 37202
NPRM Comment Period End	09/17/01	
Changes in Disposition Procedures		
NPRM 07/17/01 (66 FR 37202)		
NPRM Comment Period End 09/17/01		
Final Action 05/00/02		
Final Action Effective 06/00/02		
Technical Corrections		
Final Action 05/16/01 (66 FR 27026)		
Final Action Effective 06/15/01		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
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RIN: 3095–AB02

3293. MICROGRAPHIC RECORDS MANAGEMENT

Priority: Other Significant

Legal Authority: 44 USC 2907; 44 USC 3302; 44 USC 3312

CFR Citation: 36 CFR 1230

Legal Deadline: None

Abstract: This rulemaking updates the micrographic industry standards incorporated by reference and rewrites the regulation in plain language.

Timetable:

Action	Date	FR Cite
NPRM	09/11/01	66 FR 47125
NPRM Comment Period End	11/13/01	
Final Action	05/00/02	
Final Action Effective	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
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National Archives and Records Administration (NARA) — **Long-Term Actions**

3294. IMPLEMENTATION OF OMB CIRCULAR A-110, SECTION 36

Priority: Other Significant

Legal Authority: 5 USC 301

CFR Citation: 36 CFR 1210

Legal Deadline: None

Abstract: This rule will incorporate the provisions of OMB Circular A-110, section 36, regarding the availability of data produced under an award through the Freedom of Information Act (FOIA) into our NHPRC grants administration regulation at 36 CFR part 1210.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/16/00	65 FR 14406
Interim Final Rule Comment Period End	05/15/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Federalism: Undetermined

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AA96

3295. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Other Significant

Legal Authority: 44 USC 2104(a); EO 12549; EO 12698; 31 USC 6101 note

CFR Citation: 36 CFR 1209; 36 CFR 1211

Legal Deadline: None

Abstract: This rule will modify the Governmentwide nonprocurement common rule for debarment and suspension and the Governmentwide rule implementing the Drug-Free Workplace Act of 1988.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AB04

3296. RECORDS MANAGEMENT; ELECTRONIC TEXT DOCUMENTS

Priority: Other Significant

Legal Authority: 44 USC 2104(a)

CFR Citation: 36 CFR 1234

Legal Deadline: None

Abstract: NARA will seek Federal agency and public comment concerning the management, scheduling and preservation of text documents created in electronic form.

Timetable:

Action	Date	FR Cite
ANPRM	10/10/01	66 FR 51740
ANPRM Comment Period End	01/08/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Nancy Allard, Regulatory Contact, National Archives and Records Administration, Room 4100, NPOL, 8601 Adelphi Road, College Park, MD 20740-6001
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AB05

National Archives and Records Administration (NARA) — **Completed Actions**

3297. LIMITATIONS ON TESTIMONY BY NARA EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1201; 36 CFR 1250; 36 CFR 1254

Completed:

Reason	Date	FR Cite
Withdrawn	03/14/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Christopher M. Runkel
Phone: 301 837-1750
Fax: 301 837-0293
Email: christopher.runkel@nara.gov

RIN: 3095–AA75

3298. PRIVACY ACT

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1202

Completed:

Reason	Date	FR Cite
Final Action	12/20/01	66 FR 65652
Final Action Effective	01/22/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Allard
Phone: 301 837-1850
Email: nancy.allard@nara.gov

RIN: 3095–AA99

3299. RESEARCH ROOM PROCEDURES

Priority: Substantive, Nonsignificant

CFR Citation: 36 CFR 1254.6

Completed:

Reason	Date	FR Cite
Final Action	02/22/02	67 FR 8200
Final Action Effective	03/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Nancy Allard
Phone: 301 837-1850

NARA — **Completed Actions**

Email: nancy.allard@nara.gov

RIN: 3095–AB01

[FR Doc. 02–7676 Filed 05–10–02; 8:45 am]
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National Foundation on the Arts and the Humanities

Institute of Museum and Library Services
Semiannual Regulatory Agenda

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INSTITUTE OF MUSEUM AND LIBRARY SERVICES (IMLS)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Institute of Museum and Library Services

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: Institute of Museum and Library Services, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to Executive Order 12866 and the Regulatory Planning and Review Act, the Institute of Museum and Library Services publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506, E-mail nweiss@imls.gov, or call (202) 606-5414.

Nancy E. Weiss,

General Counsel.

Institute of Museum and Library Services (IMLS) — Final Rule Stage

3300. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681 to 1683; 20 USC 1685; 20 USC 1686

CFR Citation: 45 CFR 1182

Legal Deadline: None

Abstract: Regulations will implement title IX of the Education Act Amendments of 1972, which ensure equality on the basis of sex in education programs and activities receiving Federal financial assistance.

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58567
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

Additional Information: Previously reported as completed in the October 2000 edition.

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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TDD Phone: 202 606-8636
Fax: 202 606-1077
Email: nweiss@imls.gov

RIN: 3137–AA10

3301. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR AND NATIONAL ORIGIN IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d to 2000d-7

CFR Citation: 45 CFR 1110.1 to 1110.13

Legal Deadline: None

Abstract: The Institute of Museum and Library Services proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI). This statute prohibits discrimination on the basis of race, color and national origin in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Institute's title VI regulations. The Institute's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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RIN: 3137–AA13

Institute of Museum and Library Services (IMLS) — Long-Term Actions

3302. NATIONAL LEADERSHIP DEMONSTRATION GRANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-208, sec 262, Museum and Library Services Act

CFR Citation: 45 CFR 1180

Legal Deadline: None

Abstract: Regulations will be published to provide guidelines on IMLS National Demonstration Leadership Grants to enhance quality of library services nationwide and to provide coordination between museums and libraries.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

IMLS — Long-Term Actions

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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TDD Phone: 202 606-8636
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Email: nweiss@imls.gov

RIN: 3137–AA08

3303. IMPLEMENTATION OF THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 45 CFR 1100.5

Legal Deadline: None

Abstract: Regulations will implement the Electronic Freedom of Information Act Amendments of 1996, which facilitate public requests for information.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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TDD Phone: 202 606-8636
Fax: 202 606-1077
Email: nweiss@imls.gov

RIN: 3137–AA12

3304. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12866

CFR Citation: 45 CFR 1185; 45 CFR 1186

Legal Deadline: None

Abstract: The proposed rule simplifies the language of the current Governmentwide debarment and suspension (nonprocurement) regulations; clarifies the scope of debarment and suspension coverage and reporting requirements; and separates out the rules concerning maintenance of a drug-free workplace.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3265
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Nancy E. Weiss, General Counsel, Institute of Museum and Library Services, Suite 802, 1100 Pennsylvania Avenue NW., Washington, DC 20506
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National Foundation on the Arts and the Humanities

National Endowment for the Arts
Semiannual Regulatory Agenda

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NATIONAL ENDOWMENT FOR THE ARTS (NEA)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts

45 CFR Ch. XI

Semiannual Regulatory Agenda

AGENCY: National Endowment for the Arts, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act (5 U.S.C. 605) and Executive Order 12866, the National Endowment for the Arts publishes this regulatory agenda describing agency regulations under development or review.

FOR FURTHER INFORMATION CONTACT: Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, or call (202) 682-5418.

Karen Elias,

Deputy General Counsel.

National Endowment for the Arts (NEA) — Final Rule Stage

3305. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794; 42 USC 2000d-7; 41 USC 6101; EO 12250

CFR Citation: 45 CFR ch XI

Legal Deadline: None

Abstract: The National Endowment for the Arts proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Arts Endowment's title VI, section 504, and Age Discrimination Act regulations. The Arts Endowment's proposed regulation will be published as part of the Department of Justice's joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Karen Elias, Deputy General Counsel, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 682-5418
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Email: eliask@arts.endow.gov

RIN: 3135–AA17

National Endowment for the Arts (NEA) — Long-Term Actions

3306. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES; EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1140

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Karen Elias
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RIN: 3135–AA10

3307. NONDISCRIMINATION ON THE BASIS OF SEX IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES—IMPLEMENTATION OF TITLE IX OF THE EDUCATION AMENDMENTS OF 1972

Priority: Other Significant

CFR Citation: 45 CFR 1155

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: State, Local, Tribal

Agency Contact: Hope O'Keeffe
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RIN: 3135–AA15

3308. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1154

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

NEA — Long-Term Actions

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Elias
Phone: 202 682-5418
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RIN: 3135–AA18

3309. GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1155

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3315
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Elias
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RIN: 3135–AA19

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NATIONAL ENDOWMENT FOR THE HUMANITIES (NEH)

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Humanities

45 CFR Ch. XI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601-612, and Executive Order 12866, "Regulatory Planning and Review," dated September 30, 1993, the National Endowment for the Humanities is required to publish in April and October of each year, an agenda of proposed regulations that the Endowment has issued or expects to issue and current rules that are under agency review.

FOR FURTHER INFORMATION CONTACT: Laura S. Nelson, Acting General Counsel, National Endowment for the Humanities, 1100 Pennsylvania Avenue NW., Washington, DC 20506; (202) 606-8322.

Lynne A. Munson,

Deputy Chairman, National Endowment for the Humanities.

National Endowment for the Humanities (NEH) — Final Rule Stage

3310. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2000d to 2000d-7; 29 USC 794

CFR Citation: 45 CFR 1110; 45 CFR 1170

Legal Deadline: None

Abstract: The National Endowment for the Humanities (NEH) proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI) and Section 504 of the Rehabilitation Act of 1972 (section 504). Together, these statutes prohibit discrimination on the basis of race, color, national origin, and disability in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the NEH's title VI and section 504 regulations. The NEH's proposed regulations will be published as part of a joint Department of Justice Notice of Proposed Rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76459
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Federal

Agency Contact: Laura S. Nelson, Acting General Counsel, National Endowment for the Humanities, Room 530, 1100 Pennsylvania Avenue NW., Washington, DC 20506
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA24

National Endowment for the Humanities (NEH) — Long-Term Actions

3311. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS AND ACTIVITIES

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1110; 45 CFR 1173

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA11

3312. IMPLEMENTATION OF TITLE IX OF THE EDUCATION ACT AMENDMENTS OF 1972

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1171

Timetable:

Action	Date	FR Cite
NPRM	10/29/99	64 FR 58568
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA14

3313. PRIVACY ACT REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1115

NEH — Long-Term Actions

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA18

3314. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL ENDOWMENT FOR THE HUMANITIES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 8501

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA22

3315. STANDARDS OF CONDUCT OF EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 1105

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA21

3316. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Info./Admin./Other

CFR Citation: 45 CFR 1169

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA25

3317. GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Info./Admin./Other

CFR Citation: 45 CFR 1173

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Laura S. Nelson
Phone: 202 606-8322
TDD Phone: 202 606-8282
Fax: 202 606-8600
Email: lnelson@neh.gov

RIN: 3136–AA26

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Part XXXIII

National Science Foundation

Semiannual Regulatory Agenda

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NATIONAL SCIENCE FOUNDATION (NSF)

NATIONAL SCIENCE FOUNDATION

45 CFR Ch. VI

Regulatory Agenda

AGENCY: National Science Foundation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Science Foundation is publishing its spring 2002 regulatory agenda pursuant to Executive Order 12866, "Regulatory Planning and Review" (3 CFR 1993 Comp., p. 638); the Regulatory Flexibility Act (5 U.S.C. 601-612); and the Office of Management and Budget Memorandum for Regulatory Policy Officers at Executive Departments and Agencies and Managing and Executive Directors of Certain Agencies and Commissions.

FOR FURTHER INFORMATION CONTACT: For further information on a particular item, call or write the individual identified as agency contact. General comments or inquiries about this agenda may be directed to Joan Ahl, Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, (703) 292-8060.

Dated: April 1, 2002.

Lawrence Rudolph,

General Counsel.

National Science Foundation (NSF) — Final Rule Stage

3318. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS AND ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1681 to 1683; 20 USC 1685 to 1688

CFR Citation: 45 CFR 618

Legal Deadline: None

Abstract: The National Science Foundation proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definitions of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Foundation's proposed regulation will be published as part of a joint notice of proposed rulemaking involving up to 24 Federal agencies.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Bijan Gilanshah, Assistant General Counsel, National Science Foundation, Room 1265, 4201 Wilson Boulevard, Arlington, VA 22230
Phone: 703 292-8060
Fax: 703 292-9041
Email: bgilansh@nsf.gov

RIN: 3145–AA38

National Science Foundation (NSF) — Completed Actions

3319. RESEARCH MISCONDUCT

Priority: Substantive, Nonsignificant

CFR Citation: 45 CFR 689

Completed:

Reason	Date	FR Cite
Final Action	03/18/02	67 FR 11936
Final Action Effective	04/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Anita Eisenstadt
Phone: 703 292-8060
Fax: 703 292-9041
Email: aeisenst@nsf.gov

RIN: 3145–AA39

[FR Doc. 02–8355 Filed 05–10–02; 8:45 am]
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Part XXXIV

Office of Federal Housing Enterprise Oversight

Semiannual Regulatory Agenda

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OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT (OFHEO)

OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

12 CFR Ch. XVII

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Office of Federal Housing Enterprise Oversight.

ACTION: Semiannual regulatory agenda.

SUMMARY: This notice is given pursuant to the requirements of the "Regulatory Flexibility Act" (Pub. L. 96-354, September 19, 1980) and Executive Order 12866 ("Regulatory Planning and Review," September 30, 1993), which require the publication of a semiannual agenda of regulations.

FOR FURTHER INFORMATION CONTACT: Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW., Washington, DC 20552, (202) 414-3788.

Dated: March 14, 2002.

Armando Falcon, Jr.,

Director, Office of Federal Housing Enterprise Oversight.

Office of Federal Housing Enterprise Oversight (OFHEO) — Long-Term Actions

3320. ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF DISABILITY IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE OFFICE OF FEDERAL HOUSING ENTERPRISE OVERSIGHT

Priority: Info./Admin./Other

Legal Authority: 29 USC 794

CFR Citation: 12 CFR 1706

Legal Deadline: None

Abstract: OFHEO will propose a regulation that will implement section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of disability in programs or activities conducted by OFHEO.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Isabella W. Sammons, Associate General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3790

RIN: 2550–AA11

3321. MINIMUM CAPITAL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4612

CFR Citation: 12 CFR 1750

Legal Deadline: None

Abstract: OFHEO will propose an amendment that will update the minimum capital regulation to accommodate changes in Generally Accepted Accounting Principles, clarify reporting requirements, and otherwise revise and update the rule for monitoring of capital.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David A. Felt, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3750

RIN: 2550–AA18

3322. CORPORATE GOVERNANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4513(a); 12 USC 4513(b)(1)

CFR Citation: 12 CFR 1710

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight (OFHEO) is responsible for ensuring the safe and sound operations of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation (Enterprises). In furtherance of that responsibility, OFHEO is adopting a regulation that sets forth minimum requirements with respect to corporate governance practices and procedures of the Enterprises.

Timetable:

Action	Date	FR Cite
NPRM	04/10/01	66 FR 18709
NPRM Withdrawn	04/20/01	66 FR 20217
NPRM	09/12/01	66 FR 47557
NPRM Comment Period End	11/13/01	
NPRM Comment Period Extended	12/13/01	66 FR 56619
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David W. Roderer, Deputy General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3804

RIN: 2550–AA20

3323. SAFETY AND SOUNDNESS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4513(a); 12 USC 4513(b)(1) to (b)(5); 12 USC 4517(a); 12 USC 4521(a)(2) to (a)(3); 12 USC 4631; 12 USC 4632; 12 USC 4636

CFR Citation: 12 CFR 1720

Legal Deadline: None

Abstract: The Office of Federal Housing Enterprise Oversight (OFHEO) will propose a regulation to increase transparency and public awareness of the supervisory standards that OFHEO applies in overseeing the safe and sound operation of the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

OFHEO — Long-Term Actions

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Alfred M. Pollard, General Counsel, Office of Federal Housing Enterprise Oversight, 1700 G Street NW, Washington, DC 20552
Phone: 202 414-3788
Email: apollard@ofheo.gov

RIN: 2550–AA22

Office of Federal Housing Enterprise Oversight (OFHEO) — Completed Actions

3324. RISK-BASED CAPITAL

Priority: Economically Significant. Major under 5 USC 801.

CFR Citation: 12 CFR 1750

Completed:

Reason	Date	FR Cite
Final Rule	09/13/01	66 FR 47730
Final Rule Effective	09/13/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David A. Felt
Phone: 202 414-3750

Related RIN: Related To 2550-AA23

RIN: 2550–AA02

3325. PROMPT SUPERVISORY RESPONSE AND PROMPT CORRECTIVE ACTION

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 1777

Completed:

Reason	Date	FR Cite
Final Action	01/25/02	67 FR 3587
Final Action Effective	02/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alfred M. Pollard
Phone: 202 414-3788
Email: apollard@ofheo.gov

RIN: 2550–AA12

3326. FLOOD INSURANCE

Priority: Info./Admin./Other

CFR Citation: 12 CFR 1773

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65097
Final Action Effective	12/18/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alfred M. Pollard
Phone: 202 414-3788
Email: apollard@ofheo.gov

RIN: 2550–AA21

3327. RISK-BASED CAPITAL

Priority: Other Significant

CFR Citation: 12 CFR 1750

Completed:

Reason	Date	FR Cite
NPRM	12/18/01	66 FR 65146
Final Action	03/15/02	67 FR 11849
Final Action Effective	04/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Leonard F. Reid
Phone: 202 414-3754

David A. Felt
Phone: 202 414-3750

Related RIN: Related To 2550-AA02

RIN: 2550–AA23

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Part XXXV

Office of Government Ethics

Semiannual Regulatory Agenda

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OFFICE OF GOVERNMENT ETHICS (OGE)

OFFICE OF GOVERNMENT ETHICS

5 CFR Ch. XVI

Semiannual Regulatory Agenda; Spring 2002

AGENCY: Office of Government Ethics.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Government Ethics (OGE) substantive and procedural regulations are scheduled for development or review during the period from April 1, 2002 through March 31, 2003. This agenda fulfills OGE's responsibility to publish a semiannual regulatory agenda under Executive Order 12866, Regulatory Planning and Review, and has been prepared in accordance with guidance received from the Office of Management and Budget. None of the OGE regulations in this agenda will have a significant economic impact on a substantial number of small entities as defined under the Regulatory Flexibility Act, 5 U.S.C. chapter 6. In addition, none of the listed OGE regulatory actions is procurement-related. Furthermore, the Office of Government Ethics' rulemakings are not included in the regulatory plan that is published each fall.

This publication in the **Federal Register** does not impose a binding obligation on the Office of Government Ethics with respect to any particular item on its agenda. The dates shown for the future steps of each action are estimates and not commitments to act by the date shown. Moreover, other OGE regulatory actions, in addition to the entries listed, are not precluded.

FOR FURTHER INFORMATION CONTACT: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917; Telephone: (202) 208-8000, ext. 1110; TDD: (202) 208-8025; Fax: (202) 208-8037.

Approved: March 12, 2002.

Amy L. Comstock,

Director, Office of Government Ethics.

Office of Government Ethics—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3328	Office of Government Ethics Gift Acceptance Authority and Organizational Update	3209-AA21
3329	Privacy Act Rules of the Office of Government Ethics	3209-AA18
3330	Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture	3209-AA00
3331	Executive Agency Ethics Training Programs	3209-AA07

Office of Government Ethics—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3332	Testimony by OGE Employees and Production of Official Records in Legal Proceedings	3209-AA23
3333	Standards of Ethical Conduct for Employees of the Executive Branch	3209-AA04
3334	Limitations on Outside Earned Income, Employment and Affiliations for Certain Noncareer Employees	3209-AA13
3335	Interpretation, Exemptions, and Waiver Guidance Concerning 18 U.S.C. 208 (Acts Affecting a Personal Financial Interest)	3209-AA09
3336	Post-Employment Conflict of Interest Restrictions	3209-AA14

Office of Government Ethics—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3337	Executive Agency Supplemental Standards of Ethical Conduct Regulations Issued Jointly With the Concurrence of the Office of Government Ethics	3209-AA15

Office of Government Ethics—Completed Actions

Sequence Number	Title	Regulation Identification Number
3338	Interpretation of 18 U.S.C. 209, the Constraint Against Private Supplementation of Salaries of Executive Branch Officials and Employees	3209-AA12

3328. OFFICE OF GOVERNMENT ETHICS GIFT ACCEPTANCE AUTHORITY AND ORGANIZATIONAL UPDATE

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2600

Legal Deadline: None

Abstract: This regulation will implement the agency gift acceptance authority of the Office of Government Ethics as set forth in the 1996 OGE Authorization Act. In addition, various provisions of OGE's part 2600 organization and functions regulation will be updated to reflect changes in OGE's organizational structure. This regulation will be written in "plain language."

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
NPRM Comment Period End	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: James P. O'Sullivan, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA21

3329. PRIVACY ACT RULES OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Other Significant

Legal Authority: 5 USC 552a; 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2606 (New)

Legal Deadline: None

Abstract: This proposed rule would establish for the Office of Government Ethics (OGE) regulatory procedures to implement the Privacy Act of 1974, including requests for access and amendment and appeals, and would reference certain OGE systems of records (which will also be updated and revised).

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Elaine Newton, Attorney Advisor, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA18

3330. EXECUTIVE BRANCH FINANCIAL DISCLOSURE, QUALIFIED TRUSTS, AND CERTIFICATES OF DIVESTITURE

Priority: Other Significant

Legal Authority: 5 USC app (Ethics in Government Act of 1978); EO 12674; EO 12731; 26 USC 1043; 28 USC 2461 note; PL 101-410; PL 104-134, sec 31001

CFR Citation: 5 CFR 2634

Legal Deadline: None

Abstract: Regulation revising the executive branch public and confidential financial disclosure report systems for high-level officials and certain mid-level employees, respectively, in light of the changes to the Ethics in Government Act effected by the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. These disclosure provisions apply to public reports filed since January 1, 1991. Subpart I of the regulation, effective October 5, 1992, superseded prior executive branchwide and agency-specific regulations and established a revised system of confidential reporting, modeled generally on the public reporting system, for executive branch agency mid-level employees with sensitive duties and special Government employees. This regulation also has a subpart dealing with certificates of divestiture.

Timetable:

Action	Date	FR Cite
NPRM	12/02/86	51 FR 43359
Interim Final Rule	04/07/92	57 FR 11800
Correction	05/22/92	57 FR 21854
Correction	12/31/92	57 FR 62605
Revised Interim Final Rule	07/21/93	58 FR 38911
Proposed Amendment to Interim Final Rule	09/01/93	58 FR 46096
Technical Amendments to Interim Final Rule	11/30/93	58 FR 63023
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Proposed Amendments-Certificates of No New Interests for Confidential Filers	01/15/97	62 FR 2048
Final Amendment-Certificates of No New Interests for Confidential Filers	06/24/97	62 FR 33972
Updating Amendment to Part 2634	09/17/97	62 FR 48746
Clarifying Amendment to Section 2634.906	03/31/98	63 FR 15273
Minor Amdt. to Part 2634 (Transfer of Inactive in Lieu of Honoraria Charitable Paymts. Reporting)	08/12/98	63 FR 43067
Paperwork Revisions to Appendixes A, B, and C	11/02/98	63 FR 58619
Technical Amendments to Part 2634	12/18/98	63 FR 69991
Technical Corrections to Part 2634	01/14/99	64 FR 2421
Proposed Gifts Reporting Waiver Amendments	05/13/99	64 FR 25849
Inflation Adjustments to Civil Monetary Penalties as Reflected in Part 2634	08/30/99	64 FR 47095
Final Gifts Reporting Waiver Amendments	09/14/99	64 FR 49639
Technical Amendments to Categories of Value Reporting and Gifts/Reimbursements Thresholds	11/20/00	65 FR 69655
Final Rule Amendment to Confer Additional Agency Confidential Report Filing Extension Authority	11/05/01	66 FR 55871
Proposed Rule Amendment Re: Excepted Investment Funds	06/00/02	

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OGE — Proposed Rule Stage

Action	Date	FR Cite
Final Rule Amendment on Increased Reporting Threshold for Gifts & Reimbursements	06/00/02	
Proposed Certificates of Divestiture Revisions (Subpart J)	07/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	11/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA00

3331. EXECUTIVE AGENCY ETHICS TRAINING PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2638.701 to 2638.704

Legal Deadline: None

Abstract: Regulation specifying the responsibilities of executive branch agencies and their designated agency ethics officials to develop and implement orientation and annual ethics training courses and to distribute appropriate guidance materials to their employees under section 301(b) and (c) of Executive Order 12674, as modified by Executive Order 12731. The Office of Government Ethics is rewriting the entire training regulation in "plain language."

Timetable:

Action	Date	FR Cite
NPRM	09/18/90	55 FR 38335
NPRM Comment Period End	11/17/90	
Final Rule on Executive Agency Ethics Training Programs	04/07/92	57 FR 11886
Correction	04/27/92	57 FR 15219
Amendment	12/10/92	57 FR 58399
Correction	12/28/92	57 FR 61612
Interim Amendments to Liberalize Certain Training Requirements	03/16/94	59 FR 12145
Interim Final Rule Comment Period End	05/16/94	
Interim Amendments to Refine Certain Training Requirements	03/12/97	62 FR 11307
Correction to Interim Training Reg. Amendments	03/19/97	62 FR 13213
Correction to Interim Training Reg. Amendments	03/27/97	62 FR 14737
Interim Amendments to Refine Certain Training Requirements Comment Period End	04/11/97	62 FR 11307
Most Interim Amendments to Refine Certain Training Requirements Effective	06/10/97	62 FR 13213
Interim Amendment to Rewrite Regulation in "Plain Language" and Restructure Its Provisions	02/14/00	65 FR 7275
New Proposed Amendment to Rewrite Regulation in "Plain Language" and Restructure Its Provisions	08/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA07

Office of Government Ethics (OGE) — Final Rule Stage

3332. TESTIMONY BY OGE EMPLOYEES AND PRODUCTION OF OFFICIAL RECORDS IN LEGAL PROCEEDINGS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978

CFR Citation: 5 CFR 2608 (New)

Legal Deadline: None

Abstract: This proposed rule would set forth proposed OGE procedures for responding to subpoenas and other requests and demands for testimony by OGE employees and documentary production relating to official OGE information and records (Touhy regulations).

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48824
NPRM Comment Period End	11/23/01	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
Phone: 202 208-8000
TDD Phone: 202 208-8025
Fax: 202 208-8037

RIN: 3209–AA23

OGE — Final Rule Stage

3333. STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE EXECUTIVE BRANCH

Priority: Other Significant

Legal Authority: 5 USC 7301; 5 USC 7351; 5 USC 7353; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731

CFR Citation: 5 CFR 2635

Legal Deadline: None

Abstract: Regulation implementing certain provisions of Executive Order 12674 on Principles of Ethical Conduct, as modified by Executive Order 12731, and the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. Effective February 3, 1993, this ethical conduct standards regulation generally superseded executive branch employee conduct and gifts rules, as well as pertinent portions of agency-specific conduct regulations issued under prior Executive Order 11222. For certain existing agency regulatory standards setting forth financial interest prohibitions and prior approval for outside employment/activities, an extended grace period was in effect until November 1, 1996, or until individual concerned agencies issued supplemental regulations, with Office of Government Ethics concurrence.

Timetable:

Action	Date	FR Cite
NPRM	07/23/91	56 FR 33778
NPRM Comment Period End	09/20/91	
Final Overall Regulation on Standards of Ethical Conduct	08/07/92	57 FR 35006
Correction	10/27/92	57 FR 48557
Correction	11/04/92	57 FR 52583
5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/94	59 FR 4779
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	02/02/95	60 FR 6390
NPRM on Widely Attended Gatherings	06/15/95	60 FR 31415
Minor Correction to One Citation	10/03/95	60 FR 51667
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	12/27/95	60 FR 66857
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension	08/07/96	61 FR 40950
Final Rule on Widely Attended Gatherings	08/20/96	61 FR 42965
Correction to Final Rule on Widely Attended Gatherings	09/16/96	61 FR 48733
Interim Rule on Gifts From Political Organizations	09/27/96	61 FR 50689
Final Rule on Gifts From Political Organizations	03/17/97	62 FR 12531
Updating Amendments to Part 2635	09/17/97	62 FR 48746
Proposed Amendments Re: Gifts (Subpart B)	08/04/98	63 FR 41476
Further Minor Proposed Amendments to Part 2635 / Seeking Employment and Outside Activities	08/26/98	63 FR 45415
Amendments to Subpart B Gifts From Outside Sources	12/18/98	63 FR 69992
Technical Corrections to Part 2635	01/14/99	64 FR 2421
Final Amendments to Part 2635 / Seeking Employment and Outside Activities	03/17/99	64 FR 13063
Interim Rule on Travel Expenses for Certain Unofficial Teaching, Speaking and Writing	09/05/00	65 FR 53650
Correction	09/12/00	65 FR 55076
Final Technical Amendment to Nonsponsor Widely Attended Gathering Gift Dollar Ceiling	11/20/00	65 FR 69655
Final Rule on Travel Expenses for Certain Unofficial Teaching, Speaking and Writing	11/30/01	66 FR 59673
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
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RIN: 3209–AA04

3334. LIMITATIONS ON OUTSIDE EARNED INCOME, EMPLOYMENT AND AFFILIATIONS FOR CERTAIN NONCAREER EMPLOYEES

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 28 USC 2461 note; PL 101-410; PL 104-134, sec 31001

CFR Citation: 5 CFR 2636

Legal Deadline: None

Abstract: The regulation had, in pertinent part, implemented, effective January 1, 1991, the prohibition on honoraria (now declared unconstitutional by the courts as to most rank and file executive branch employees and hence determined to be eviscerated as to all other Federal employees by the Office of Legal Counsel of the Justice Department). In addition, the regulation continues to implement the limitation on outside employment as provided in the 1989 Ethics Reform Act revisions to the Ethics in Government Act, as amended. The regulation has now been amended in light of the above-noted litigation and other pertinent developments.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/17/91	56 FR 1721
Deferral of Effective Date of 5 CFR 2636.205	05/10/91	56 FR 21589
Additional Deferral of Effective Date of 5 CFR 2636.205	10/11/91	56 FR 51319
Revision of Honorarium Definition in 5 CFR 2636.203(a)	01/08/92	57 FR 601
Further Deferral of Effective Date of 5 CFR 2636.205	02/14/92	57 FR 5369
Technical Correction to Interim Final Rule	12/30/93	58 FR 69176
Technical (Paperwork) Amendments to Interim Final Rule	07/07/94	59 FR 34755
Removal of Subpart B of Part 2636	08/12/98	63 FR 43067

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OGE — Final Rule Stage

Action	Date	FR Cite
Technical Corrections to Part 2636	01/14/99	64 FR 2421
Inflation Adjustment to Civil Monetary Penalty As Reflected in Part 2636	08/30/99	64 FR 47095
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	
Final Rule Removal of Obsolete In Lieu/Honoraria Provisions	11/00/02	
Final Action	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA13

3335. INTERPRETATION, EXEMPTIONS, AND WAIVER GUIDANCE CONCERNING 18 U.S.C. 208 (ACTS AFFECTING A PERSONAL FINANCIAL INTEREST)

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 208

CFR Citation: 5 CFR 2640

Legal Deadline: None

Abstract: This regulation interprets section 208(a) of title 18, U.S. Code, which prohibits officers and employees of the executive branch from officially participating personally and substantially in a particular matter in which there is a personal financial interest or a financial interest of a related person or organization (absent a waiver or exemption under 18 U.S.C. 208(b)). It also lists and describes interests considered too remote or too inconsequential to affect the integrity of the services of executive branch officers or employees, in accordance with 18 U.S.C. 208(b)(2). Such interests are exempt from the restrictions of 18 U.S.C. 208(a), generally requiring disqualification. The regulation also provides guidance to executive branch agencies as to the kinds of interests that are not so substantial as to be deemed likely to affect the integrity of the services the Government may expect from an employee and which, therefore, may be waived from the general rule of disqualification under 18 U.S.C. 208(a), pursuant to 18 U.S.C. 208(b)(1). In addition, guidance is provided concerning the issuance of waivers to special Government employee advisory committee members, pursuant to 18 U.S.C. 208(b)(3). A separate interim final rule, published in 1995 exempting certain financial interests arising from Federal Government executive branch employment as well as from Social Security or veterans' benefits from the general prohibition in section 208(a), was incorporated in the overall final rule. Additional exemptions are considered for development from time to time as appropriate.

Timetable:

Action	Date	FR Cite
Govt. Interests and Social Security and Veterans' Benefits Exemptions Interim Final Rule	08/28/95	60 FR 44706
Overall NPRM	09/11/95	60 FR 47208
Overall NPRM Comment Period End	11/13/95	
Overall Final Rule	12/18/96	61 FR 66830
Correction	01/09/97	62 FR 1361
Overall Final Rule Effective	01/17/97	
Correction	04/29/97	62 FR 23127
Interim Census Exemption Amendment	03/29/00	65 FR 16511
Final Census Exemption Amendment	08/04/00	65 FR 47830
Proposed Additional Exemption Amendments	09/06/00	65 FR 53942
Proposed Amendments Comment Period End	12/05/00	
Final Additional Exemption Amendments	03/19/02	67 FR 12443
Proposed Rule Amendment Re: Excepted Investment Funds	06/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA09

3336. POST-EMPLOYMENT CONFLICT OF INTEREST RESTRICTIONS

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 207

CFR Citation: 5 CFR 2641; 5 CFR 2637 (Continuation)

Legal Deadline: None

Abstract: Interpretive regulation giving guidance for the executive branch on the various substantive restrictions of the current version of the post-Government employment conflict of interest statute 18 U.S.C. 207, which became effective January 1, 1991, pursuant to title I of the Ethics Reform Act of 1989 (Pub. L. 101-194), as amended. Parts of the regulation, dealing with procedures for waivers by the Office of Government Ethics of certain senior official constraints (based on executive agency hardship), designated senior employees, and separate agency designations, have already been published in the Federal Register; such designations are periodically updated by the Office of Government Ethics. The Office of Government Ethics also has continued to publish in the CFR the interpretive regulation, 5 CFR part 2637 (but now without the no-longer-effective former Senior Employee and old agency component designation listings), under the lifetime bar of the prior version of the post-employment law which still applies to executive branch employees who left the Government before January 1, 1991. Once a complete current post-employment law final regulation is published, the old part 2637 regulation will be removed from the CFR.

Timetable:

Action	Date	FR Cite
Interim Final Rule for One-Year Restriction of Section 207(c)	02/01/91	56 FR 3951
Designation of Senior Employees and Separate Agency Components	01/28/92	57 FR 3115
Designation of Additional Separate Agency Component	04/07/92	57 FR 11673
Amendment to Prior Post-Employment Regulation (Part 2637)	12/31/92	57 FR 62467
Amendment to Interim Final Rule (Part 2641)	06/21/93	58 FR 33755
Technical Amendment to Authority Citation of 5 CFR Part 2637	12/30/93	58 FR 69176
Technical Amendments to Interim Final Rule	07/07/94	59 FR 34755
Exempted Senior Employee and Agency Separate Component Designation Update	05/16/97	62 FR 26915
Correction: Post-Employment Reg. Update	06/11/97	62 FR 31865
Agency Separate Component Designation Update	02/05/99	64 FR 5709
Agency Separate Component Designation Update Final Rule	05/00/02	
Final Rule Amendment to Clarify OGE Intent on Sole & Exclusive Agency Authority Conferred Under Reg.	09/00/02	
Overall NPRM	09/00/02	
Overall NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 3209–AA14

OGE — Final Rule Stage

Office of Government Ethics (OGE) — Long-Term Actions

3337. EXECUTIVE AGENCY SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT REGULATIONS ISSUED JOINTLY WITH THE CONCURRENCE OF THE OFFICE OF GOVERNMENT ETHICS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 5 CFR 2635.105

CFR Citation: 5 CFR 2635; 5 CFR ch XXI et seq

Legal Deadline: None

Abstract: The supplemental executive agency standards of ethical conduct regulations, once issued jointly with the concurrence of the Office of Government Ethics (OGE) at agency expense in new chapters at the end of 5 CFR, after OGE approval, supplement for each individual agency concerned the OGE executive branch standards of ethical conduct, as codified at 5 CFR part 2635. The supplemental regulations, as they are issued in accordance with sections 201(a) and 301(a) of Executive Order 12674, as modified by Executive Order 12731, set forth those agency-specific provisions under applicable law and regulation, such as regulatory restrictions on holding certain financial interests, designation of subunits and prior approval for outside employment, which are needed for certain agencies to round out the executive branchwide ethical standards for their employees.

Timetable:

Action	Date	FR Cite
FTC Employees (5 CFR Ch. XLVII) Interim Final Rule	05/27/93	58 FR 30695
OPIC Employees (5 CFR Ch. XXXIII) Interim Final Rule	06/17/93	58 FR 33319
Treasury Employees (5 CFR Ch. XXI) NPRM	08/03/93	58 FR 41193
ICC Employees (5 CFR Ch. XL) Final Rule	08/06/93	58 FR 41989
PRC Employees (5 CFR Ch. XLVI) Final Rule	08/12/93	58 FR 42839
DoD Employees (5 CFR Ch. XXVI) Interim Final Rule	09/10/93	58 FR 47619
CFTC Employees (5 CFR Ch. XLI) Final Rule	10/12/93	58 FR 52637
IAF Employees (5 CFR Ch. LXIII) Final Rule	01/27/94	59 FR 3771
5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/94	59 FR 4779
NRC Employees (5 CFR Ch. XLVIII) Final Rule	04/13/94	59 FR 17457
FDIC Employees (5 CFR Ch. XXII) NPRM	07/12/94	59 FR 35480
NASA Employees (5 CFR Ch. LIX)	09/28/94	59 FR 49335
FRTIB Employees (5 CFR Ch. LXXIV)	10/06/94	59 FR 50816
Education Employees (5 CFR Ch. LIII)	01/30/95	60 FR 5816
Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	02/02/95	60 FR 6390
OMB Employees (5 CFR Ch. LXXVII) Final Rule	03/07/95	60 FR 12396
USPS Employees (5 CFR Ch. LX)	03/27/95	60 FR 15700
Eximbank Employees (5 CFR Ch. LII)	04/07/95	60 FR 17625
FDIC Employees (5 CFR Ch. XXII)	04/25/95	60 FR 20171
Treasury Employees (5 CFR Ch. XXI) Final Rule	05/05/95	60 FR 22249

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OGE — Long-Term Actions

Action	Date	FR Cite
FCSIC Employees (5 CFR Ch. XXX)	06/12/95	60 FR 30773
FCA Employees (5 CFR Ch. XXXI)	06/12/95	60 FR 30778
HUD Employees (5 CFR Ch. LXV)	06/30/95	60 FR 34420
OPIC Employees (5 CFR Ch. XXXIII) Final Rule	07/21/95	60 FR 37555
USPS Employees (5 CFR Ch. LX) Final Rule	09/11/95	60 FR 47240
FCA Employees (5 CFR Ch. XXXI) Final Rule	09/13/95	60 FR 47453
OGE Concurrence in FCA Employees (5 CFR Ch. XXXI) Final Rule	12/06/95	60 FR 62319
BGFRS Employees (5 CFR Ch. LVIII)	12/19/95	60 FR 65249
Further 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	12/27/95	60 FR 66857
FCSIC Employees (5 CFR Ch. XXX) Final Rule	02/06/96	61 FR 4349
EEOC Employees (5 CFR Ch. LXII)	02/26/96	61 FR 7065
TVA Employees (5 CFR Ch. LXIX)	05/06/96	61 FR 20117
DOE Employees (5 CFR Ch. XXIII)	07/05/96	61 FR 35085
FDIC Employees (5 CFR Ch. XXII) Amendment	07/09/96	61 FR 35915
HUD Employees (5 CFR Ch. LXV)	07/09/96	61 FR 36246
OPM Employees (5 CFR Ch. XXXV)	07/16/96	61 FR 36993
HHS Employees (5 CFR Ch. XLV)	07/30/96	61 FR 39756
FMSHRC Employees (5 CFR Ch. LXXIV)	07/31/96	61 FR 39869
DOT Employees (5 CFR Ch. L)	07/31/96	61 FR 39901
EPA Employees (5 CFR Ch. LIV)	08/02/96	61 FR 40500
NARA Employees (5 CFR Ch. LXVI)	08/05/96	61 FR 40505
Further Additional 5 CFR 2635.403(a) and 2635.803 Grace Period Extension (by OGE)	08/07/96	61 FR 40950
FERC Employees (5 CFR Ch. XXIV)	08/23/96	61 FR 43411
BGFRS Employees (5 CFR Ch. LVIII) Final Rule	10/16/96	61 FR 53827
FCC Employees (5 CFR Ch. XXIX)	10/31/96	61 FR 56109
GSA Employees (5 CFR Ch. LVII)	11/01/96	61 FR 56399
DOL Employees (5 CFR Ch. XLII)	11/06/96	61 FR 57281
DOJ Employees (5 CFR Ch. XXVIII)	11/25/96	61 FR 59811
NSF Employees (5 CFR Ch. XLIII)	11/25/96	61 FR 59815
CPSC Employees (5 CFR Ch. LXXI)	12/13/96	61 FR 65457
FDIC Employees (5 CFR Ch. XXII) Amendment	01/27/97	62 FR 3771
NLRB Employees (5 CFR Ch. LXI)	02/12/97	62 FR 6445
DOJ Employees (5 CFR Ch. XXVIII) Final Rule	05/02/97	62 FR 23941
DOJ Employees (5 CFR Ch. XXVIII) Final Rule Correction	06/11/97	62 FR 31865
OPM Employees (5 CFR Ch. XXXV) Interim Rule Correction	06/17/97	62 FR 32859
EEOC Employees (5 CFR Ch. LXII) Final Rule	07/08/97	62 FR 36447
OPM Employees (5 CFR Ch. XXXV) Final Rule	08/11/97	62 FR 42897
DOI Employees (5 CFR Ch. XXV)	10/16/97	62 FR 53713
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/15/98	63 FR 18501
DOI Employees (5 CFR Ch. XXV) Interim Final Rule Correction	04/24/98	63 FR 20447
DOI Employees (5 CFR Ch. XXV) Final Rule	06/24/98	63 FR 34258
FTC Employees (5 CFR Ch. XLVII) Final Rule Amendments	08/12/98	63 FR 43069
DOL Employees (5 CFR Ch. XLII) Final Rule	12/30/99	64 FR 73852
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule	03/24/00	65 FR 15825
USDA Employees (5 CFR Ch. LXXIII) Interim Final Rule Correction	04/20/00	65 FR 21239
USDA Employees (5 CFR Ch. LXXIII) Final Rule	10/02/00	65 FR 58635
Treasury Employees (5 CFR Ch. XXI) Final Rule Amendments	02/01/01	66 FR 8505
NASA Employees (5 CFR Ch. LIX) Final Rule Amendments	11/27/01	66 FR 59135
DOT (FAA) Employees (5 CFR Ch. L) Final Rule Amendments	12/03/01	66 FR 60139
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: William E. Gressman, Senior Associate General Counsel, Office of Government Ethics, Suite 500, 1201 New York Avenue NW., Washington, DC 20005-3917
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RIN: 3209–AA15

Office of Government Ethics (OGE) — Completed Actions

3338. INTERPRETATION OF 18 U.S.C. 209, THE CONSTRAINT AGAINST PRIVATE SUPPLEMENTATION OF SALARIES OF EXECUTIVE BRANCH OFFICIALS AND EMPLOYEES

Priority: Other Significant

Legal Authority: 5 USC app, Ethics in Government Act of 1978; EO 12674; EO 12731; 18 USC 209

CFR Citation: 5 CFR 2639 (New)

Legal Deadline: None

Abstract: The Office of Government Ethics has now decided to issue a guidance memorandum instead of a proposed regulation on section 209 of title 18, U.S. Code, prohibiting the private supplementation of the Government salary of executive branch officers and employees.

Timetable:

Action	Date	FR Cite
Withdrawn	12/17/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Andrew Falcon, Associate General Counsel, Office of Government Ethics, 1201 New York Avenue NW., Washington, DC 20005-3917
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RIN: 3209–AA12

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Office of Management and Budget

Semiannual Regulatory Agenda

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OFFICE OF MANAGEMENT AND BUDGET (OMB)

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Ch. III and 48 CFR Ch. 01

Federal Regulations; OMB Circulars, OFPP Policy Letters, and CASB Cost Accounting Standards Included in the Semiannual Agenda of Federal Activities

AGENCY: Office of Management and Budget.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Office of Management and Budget (OMB) is publishing its semiannual agenda of upcoming activities for OMB Circulars, Office of Federal Procurement Policy (OFPP) Policy Letters, and Cost Accounting Standards Board (CASB) Cost Accounting Standards.

OMB Circulars and OFPP Policy Letters are published in accordance with OMB's internal procedures for implementing Executive Order 12866 (October 4, 1993, 58 FR 51735). OMB Policy guidelines are issued under authority derived from several sources including: subtitles I, II, and V of title 31, United States Code; Executive Order 11541; and other specific authority as cited. OMB Circulars and OFPP Policy Letters communicate guidance and instructions of a continuing nature to executive branch agencies. As such, most OMB Circulars and OFPP Policy Letters are not regulations. Nonetheless, because these issuances are typically of public interest, they are generally published in the **Federal Register** in both proposed (for public comment) and final stages. For this reason, they are presented below in the standard format of "prerule," "proposed rule," and "final rule" stages.

CASB Cost Accounting Standards are issued under authority derived from 41 U.S.C. 422. Cost Accounting Standards are rules governing the measurement, assignment, and allocation of costs to contracts with the United States Government.

For purposes of this agenda, we have excluded directives that outline procedures to be followed in connection with the President's budget and legislative programs and directives that affect only the internal functions, management, or personnel of Federal agencies.

FOR FURTHER INFORMATION CONTACT: See agency person listed for each entry in the agenda, c/o Office of Management and Budget, Washington, DC 20503. On the overall agenda, contact Cynthia A. Christian, (202) 395-3060, at the above address.

Dated: March 22, 2002.

Cynthia A. Christian,

Deputy Assistant Director for Administration.

Office of Management and Budget—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3339	Revision of OMB Circular A-127 To Implement the Federal Financial Management Improvement Act (FFMIA) and To Reflect Updated Financial Management Policies	0348-AB46
3340	Accounting for the Cost of Post-Retirement Benefit Plans (Health Care)	0348-AB54
3341	Policies on Management of Federal Information Resources (OMB Circular A-130)	0348-AB55

Office of Management and Budget—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3342	Federal Participation in the Development and Use of Volunteer Consensus Standards and in Conformity Assessment Activities (OMB Circular A-119)	0348-AB53

Office of Management and Budget—Completed Actions

Sequence Number	Title	Regulation Identification Number
3343	Regulations for Air Carner Guarantee Loan Program	0348-AB56

Office of Management and Budget (OMB) — **Proposed Rule Stage**

3339. REVISION OF OMB CIRCULAR A-127 TO IMPLEMENT THE FEDERAL FINANCIAL MANAGEMENT IMPROVEMENT ACT (FFMIA) AND TO REFLECT UPDATED FINANCIAL MANAGEMENT POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 503 et seq, Chief Financial Officer's Act of 1990; PL 104-208, Federal Financial Management Improvement Act of 1996; 31 USC 3111

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Federal Financial Management Improvement Act (FFMIA) of 1996 requires that financial management systems at each Federal agency covered by the CFOs Act, substantially comply with Federal financial management systems requirements, applicable Federal accounting standards, and the U.S. Government Standard General Ledger at the transaction level. The revisions are to incorporate this and other policy updates since the 1993 issuance of the last revision to A-127.

Timetable:

Action	Date	FR Cite
Proposed Revision	10/00/02	
Final Revision	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Federalism: Undetermined

Agency Contact: Jean Holcombe, Office of Federal Financial Management, Office of Management and Budget, Room 6025, NEOB, 725 17th Street NW., Washington, DC 20503
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RIN: 0348–AB46

3340. ACCOUNTING FOR THE COST OF POST-RETIREMENT BENEFIT PLANS (HEALTH CARE)

Priority: Substantive, Nonsignificant

Legal Authority: 41 USC 422

CFR Citation: 48 CFR 99

Legal Deadline: None

Abstract: The cost accounting standards board is proposing a new standard that provides criteria for measuring the costs of post-retirement benefit plans, assigning the measured costs to cost accounting periods, and allocating the assigned costs to segments of an organization.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/00	65 FR 59504
ANPRM Comment Period End	12/19/00	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board, Office of Management and Budget, Room 9013, NEOB, 725 17th Street NW., Washington, DC 20503
Phone: 202 395-4550

3341. POLICIES ON MANAGEMENT OF FEDERAL INFORMATION RESOURCES (OMB CIRCULAR A-130)

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-106

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A-130 establishes policy for the management of Federal information resources, and includes procedural and analytic guidelines for implementing aspects of these policies as appendices. OMB is reviewing the Circular for consistency with the Government Information Security Reform Act.

Timetable:

Action	Date	FR Cite
Proposed Revision	09/00/02	
Final Revision	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kamela White, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
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RIN: 0348–AB55

Office of Management and Budget (OMB) — **Long-Term Actions**

3342. FEDERAL PARTICIPATION IN THE DEVELOPMENT AND USE OF VOLUNTEER CONSENSUS STANDARDS AND IN CONFORMITY ASSESSMENT ACTIVITIES (OMB CIRCULAR A-119)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 1111; PL 104-113

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: OMB Circular A-119, "Federal Participation in the Development and Use of Voluntary Consensus Standards," contains reporting requirements regarding agency use of government-unique standards and voluntary consensus standards along with agency participation in voluntary consensus standards bodies. The Circular instructs agencies to use voluntary consensus standards in lieu of government-unique standards in their procurement and regulatory activities, except where inconsistent with law or otherwise impractical. Language in A-119 calls on OMB to review the Circular for effectiveness three years from the date of issuance (February 1998).

Timetable:

Action	Date	FR Cite
Proposed Revision	12/00/04	
Final Revision	04/00/05	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kamela White, Policy Analyst, Office of Management and Budget, Room 10236, NEOB, 725 17th Street NW., Washington, DC 20503
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OMB — Long-Term Actions

Email: kgwhite@omb.eop.gov
RIN: 0348–AB53

Office of Management and Budget (OMB) — Completed Actions

3343. • REGULATIONS FOR AIR CARRIER GUARANTEE LOAN PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: PL 107-42 sec 182(c)(2)(B)

CFR Citation: 14 CFR 1300

Legal Deadline: Final, Statutory, October 5, 2001, 14 days from enactment of PL 107-42 (09/22/2001).

Abstract: The rule establishes the application and minimum requirements that will apply to up to $10 billion in loan guarantees (or other Federal credit investments) to air carriers to compensate them for the losses they incurred as a result of the terrorist attacks on the United States that occurred September 11, 2001.

Timetable:

Action	Date	FR Cite
Final Rule	10/12/01	66 FR 52269

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Clare Doherty, Office of Management and Budget
Phone: 202 395-5704

RIN: 0348–AB56

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Part XXXVII

Office of Personnel Management

Semiannual Regulatory Agenda

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OFFICE OF PERSONNEL MANAGEMENT (OPM)

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Ch. I

Regulatory Agenda

AGENCY: Office of Personnel Management.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following Office of Personnel Management (OPM) regulations are scheduled for development or review from April 1, 2002 through March 31, 2003. This agenda carries out OPM's responsibilities to publish a semiannual agenda under Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act (5 U.S.C. chapter 6). This publication in the **Federal Register** does not impose a binding obligation on the Office of Personnel Management with regard to any specific item on the agenda. Regulatory action in addition to the items listed is not precluded.

FOR FURTHER INFORMATION CONTACT: Jacquline D. Carter, (202) 606-1973.

SUPPLEMENTARY INFORMATION: OPM has begun a comprehensive, systematic review of its Governmentwide personnel regulations. OPM has undertaken this initiative to make the regulations more readable wherever possible, to eliminate duplication, and to weed out obsolete references. OPM will incorporate any necessary substantive changes as part of this project. OPM intends to publish the revised regulations as proposed regulations during the coming year.

U.S. Office of Personnel Management.

Kay Coles James,

Director.

Office of Personnel Management—Proposed Rule Stage

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3345	Probation on Initial Appointment to a Competitive Position	3206-AI47
3346	Merit Promotion and Internal Placement	3206-AI20
3347	Reemployment Priority List	3206-AI34
3348	Amendment to Selective Service Registration Requirements	3206-AI52
3349	Other Than Full-Time Employment (Part-Time, Seasonal, Intermittent)	3206-AI22
3350	Order of Release From Competitive Level	3206-AI96
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3353	Classification Appeals of General Schedule Employees	3206-AH38
3354	Superior Qualifications Appointments	3206-AI00
3355	Pay Under the General Schedule; Subpart F—Locality-Based Comparability Payments	3206-AJ62
3356	Job Grading Reviews and Appeals of Federal Wage System Employees	3206-AI14
3357	Miscellaneous Changes in Pay and Leave Regulations	3206-AJ59
3358	Reemployment of Military and Civilian Retirees To Meet Exceptional Employment Needs	3206-AI32
3359	Miscellaneous Leave Regulations	3206-AI44
3360	Retirement; Credit for Military Service	3206-AG58
3361	Continuation of Eligibility for Certain Civil Service Benefits for Former Federal Employees of the Civilian Marksmanship Program.	3206-AJ55
3362	Retirement; Debt Collection	3206-AE72
3363	Retirement; Court Orders Awarding Survivor Annuities; Correcting or Supplementing the First Order Dividing Marital Property	3206-AG28
3364	Retirement; FERS Elections of Coverage	3206-AG96
3365	Federal Employees' Health Benefits Program: Continuing FEHB Coverage Into Retirement	3206-AI62
3366	Implementation of the Administrative Simplification Provisions of the Health Insurance Portability and Accountability Act of 1996 for the Federal Employees' Health Benefits Program	3206-AJ45
3367	Financial Sanctions of Health Care Providers in the Federal Employees' Health Benefits Program	3206-AJ42
3368	Federal Employees' Health Benefits Acquisition Regulation: Large Provider Agreements, Subcontracts, and Miscellaneous Changes	3206-AJ20
3369	Implementation of Additional Cost Principles in the Federal Employees' Health Benefits Program	3206-AJ10

Office of Personnel Management—Final Rule Stage

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3370	Excepted Service—Schedule A Authority for Nontemporary Part-Time or Intermittent Positions	3206-AJ06
3371	Excepted Service; Career and Career-Conditional Employment	3206-AJ28
3372	Excepted Service—Schedule A Authority for Chinese, Japanese, and Hindu Interpreters	3206-AJ43
3373	Time-in-Grade Restrictions	3206-AG06

Office of Personnel Management—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3374	Promotion and Internal Placement; Accelerated Qualifications	3206-AG19
3375	Reasonable Accommodation Language for Vacancy Announcements	3206-AJ11
3376	Recruitment and Selection Through Competitive Examination	3206-AJ52
3377	Official Duty Station Determinations for Pay Purposes	3206-AH84
3378	Holidays and Premium Pay	3206-AH86
3379	Prevailing Rate Systems; Definition of San Joaquin County, California, to a Nonappropriated Fund Wage Area	3206-AJ35
3380	Prevailing Rate Systems; Change in the Survey Cycle for the Portland, Oregon, Wage Area	3206-AJ60
3381	Prevailing Rate Systems; Definition of Santa Clara, California, Nonappropriated Fund Wage Area	3206-AJ61
3382	Basic Pay for Employees of Temporary Organizations	3206-AJ47
3383	Pay for Administrative Appeals Judge Positions	3206-AJ44
3384	Grade and Pay Retention	3206-AI88
3385	Pay Administration; Availability Pay for Criminal Investigators	3206-AJ49
3386	Premium Pay Limitations	3206-AJ56
3387	Administratively Uncontrollable Overtime Pay	3206-AJ57
3388	Repeal of Dual Compensation Reduction for Military Retirees	3206-AI92
3389	Retention Allowances	3206-AJ48
3390	Voluntary Separation Incentive Repayment Waivers	3206-AG20
3391	Cost-of-Living Allowances (Nonforeign Areas);Commissary/Exchange Rates; Survey Frequency; Gradual Reductions	3206-AJ40
3392	Cost-of-Living Allowances (Nonforeign Areas); Methodology Changes	3206-AJ41
3393	Retirement; Coverage—Nonappropriated Fund Instrumentalities	3206-AH57
3394	Coverage for Certain Employees of the District of Columbia	3206-AI02
3395	Retirement, Health, and Life Insurance Coverage for Certain Employees of the District of Columbia Under the District of Columbia Courts and Justice Technical Corrections Act of 1998	3206-AI55
3396	Retirement; State Income Tax Withholding Instrumentalities	3206-AH62
3397	Correction of Retirement Coverage Errors Under the Federal Erroneous Retirement Coverage Correction Act	3206-AJ38
3398	Retirement; General Administration	3206-AI83
3399	Federal Employees' Group Life Insurance Program: Miscellaneous Changes and Clarifications	3206-AG63
3400	Federal Employees' Group Life Insurance: Premium Changes and Change in Time Frames for Electing Insurance	3206-AJ46
3401	Federal Employees' Health Benefits Program: Payment of Premiums for Periods of Leave Without Pay or Insufficient Pay	3206-AG66
3402	Federal Employees' Health Benefits Program: Effective Dates	3206-AI37
3403	Implementation of Premium Conversion for Executive Branch Federal Employees Participating in the Federal Employees' Health Benefits (FEHB) Program	3206-AJ17
3404	Federal Employees' Health Benefits Children's Equity	3206-AJ34
3405	Suspension of Enrollment in the Federal Employees' Health Benefits Program To Enroll in the TRICARE	3206-AJ36
3406	Debarments and Suspensions of Health Care Providers From the Federal Employees' Health Benefits Program	3206-AD76
3407	Federal Employees' Group Life Insurance Federal Acquisition Regulation	3206-AI65

Office of Personnel Management—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3408	Personnel Security and Related Programs	3206-AC21
3409	Investigations	3206-AB92
3410	Law Enforcement Officer and Firefighter Retirement	3206-AJ39
3411	Retirement; FERS Basic Annuity	3206-AE73
3412	Governmentwide Debarment and Suspension (Nonprocurement)	3206-AJ31

Office of Personnel Management—Completed Actions

Sequence Number	Title	Regulation Identification Number
3413	Miscellaneous Changes in Office of Personnel Management's Regulations	3206-AJ54
3414	Federal Employment Priority Consideration for the District of Columbia Employees	3206-AI28

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Office of Personnel Management—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3415	Placement Assistance and Reduction in Force	3206-AJ18
3416	Career Transition Assistance for Surplus and Displaced Federal Employees	3206-AJ32
3417	Reduction in Force Retreat Rights	3206-AJ14
3418	Locality-Based Comparability Payments	3206-AI81
3419	Prevailing Rate Systems; Change in the Survey Cycle for the Pennington, South Dakota, Nonappropriated Fund Wage Area	3206-AJ30
3420	Firefighter Pay	3206-AI50
3421	Cost-of-Living Allowances (Nonforeign Areas); Interim COLA Rate Increases Pursuant to Settlement of Litigation	3206-AJ26
3422	Absence and Leave: Use of Restored Annual Leave	3206-AJ51

Office of Personnel Management—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3206-AF57	Performance Management Reform Initiatives	03/04/2002	Withdrawn
3206-AG78	Retirement Coverage for the District of Columbia Financial Control Board Employees	03/01/2002	Withdrawn
3206-AG92	Availability of Official Information	03/13/2002	Withdrawn
3206-AH37	Retirement; Service Credit	03/01/2002	Withdrawn
3206-AI46	Clarification of Hiring Authorities	04/01/2002	Withdrawn
3206-AI51	Excepted Service Promotion and Internal Placement	03/13/2002	Withdrawn
3206-AJ27	Cost-of-Living Allowances (Nonforeign Areas); Revised COLA Regulations Pursuant to Settlement of Litigation	03/04/2002	Withdrawn
3206-AJ37	Privacy Procedures for Personnel Records	03/13/2002	Withdrawn

Office of Personnel Management (OPM)

Proposed Rule Stage

3344. EMPLOYMENT IN THE EXCEPTED SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 8151; EO 10577

CFR Citation: 5 CFR 302

Legal Deadline: None

Abstract: The revised regulations will make it easier for agencies to understand how to run the excepted service employment system, so they can create better and more efficient employment procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AH83

3345. PROBATION ON INITIAL APPOINTMENT TO A COMPETITIVE POSITION

Priority: Other Significant

Legal Authority: 5 USC 3321

CFR Citation: 5 CFR 315, subpart H

Legal Deadline: None

Abstract: This regulation will permit agencies to use a competitive service probationary period of up to three years, when the work of the position cannot be properly evaluated in only one year. It will also establish one year as the minimum probationary period.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Linda Watson, Employment Service, Examining and Qualification Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023
Email: lmwatson@opm.gov

RIN: 3206–AI47

3346. MERIT PROMOTION AND INTERNAL PLACEMENT

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302

OPM

Proposed Rule Stage

CFR Citation: 5 CFR 316; 5 CFR 335

Legal Deadline: None

Abstract: In an effort to streamline selection procedures and provide agencies with greater flexibility, the Office of Personnel Management (OPM) is proposing to revise the regulations covering merit promotion and internal placement. These regulations will provide a framework within which agencies may develop merit-based programs for internal selections.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AI20

3347. REEMPLOYMENT PRIORITY LIST

Priority: Other Significant

Legal Authority: 5 USC 1315; 5 USC 8151

CFR Citation: 5 CFR 330, subpart B

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing regulations covering the operation and administration of the Reemployment Priority List (RPL). The RPL provides competitive service employees, separated by reduction in force, with the first opportunity for reemployment in their former agency over candidates who do not work for the agency. The RPL also provides the same priority to former employees who were separated or downgraded because of a compensable injury or disability and have fully recovered more than one year after compensation began. These proposed regulations would update RPL procedures in order to assist agencies in providing displaced employees with maximum reemployment opportunities.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jacqueline Yeatman, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI34

3348. AMENDMENT TO SELECTIVE SERVICE REGISTRATION REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3328

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: Delegates to agencies' determination whether a Federal job applicant's failure to register with the Selective Service was knowing and willful. This change is authorized by an amendment to 5 U.S.C. 3328.

Timetable:

Action	Date	FR Cite
NPRM	03/29/99	64 FR 14842
NPRM Comment Period End	04/28/99	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Lorenz, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830

RIN: 3206–AI52

3349. OTHER THAN FULL-TIME EMPLOYMENT (PART-TIME, SEASONAL, INTERMITTENT)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301

CFR Citation: 5 CFR 340; 5 CFR 110

Legal Deadline: None

Abstract: Grants agencies and employees more flexibility by clarifying agency authority to schedule part-time employees on a pay period, rather than weekly, basis; defines job sharing; modifies seasonal employment.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Diane Tyrrell, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 9th Floor, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0960
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RIN: 3206–AI22

3350. ORDER OF RELEASE FROM COMPETITIVE LEVEL

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3502; 5 USC 3503

CFR Citation: 5 CFR 351

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing retention regulations covering the order in which agencies release competing employees from their competitive levels in a reduction in force.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas A. Glennon, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI96

3351. RE-EMPLOYMENT RIGHTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3582; 5 USC 3301; PL 103-296

CFR Citation: 5 CFR 352

Legal Deadline: None

Abstract: Updates provisions to conform to law allowing employees assigned to international organizations under certain conditions to maintain FERS and FICA retirement coverage; current regulations only mention CSRS retirement.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mike Mahoney, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AI19

3352. TRAINING

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 4118

CFR Citation: 5 CFR 410

Legal Deadline: None

Abstract: Section 410.309 of title 5, CFR (continued service agreements) and 5 CFR 410.404 (expenses of training and meetings) need clarification. 5 CFR 410.309, as written, omits allowance for agency heads to delegate authority to define requirements for continued service. It also omits circumstances when the requirement for continued service can be waived, which has caused confusion for agencies in developing their continued service agreements. Amending 5 CFR 410.309 returns to regulation, language removed in 1996 that has had the unintended effect of limiting agency head authority in the area of continued service agreements for training. With increasing interest in academic education and service agreements, agencies have expressed concern about their legal authority with regard to these agreements.

As written, 5 CFR 410.404 does not sufficiently clarify distinctions between training and meetings. 5 U.S.C. 4109 provides agencies authority to pay the expenses of training. 5 U.S.C. 4110 provides them authority to pay the expenses of meetings. However, 5 CFR 410.404 blurs the distinctions between these two; amending it would make clear the distinctions and clarify conditions under which a meeting may be considered training.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: LaVeen Ponds, Office of Workforce Relations, Office of Personnel Management, Office of Human Resource Development, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-1394
Email: lmponds@opm.gov

RIN: 3206–AJ19

3353. CLASSIFICATION APPEALS OF GENERAL SCHEDULE EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5112

CFR Citation: 5 CFR 511, subpart A; 5 CFR 511, subpart F; 5 CFR 511, subpart G

Legal Deadline: None

Abstract: The position classification appeals regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Melissa Drummond, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2530
Fax: 202 606-2663
Email: madrummo@opm.gov

RIN: 3206–AH38

3354. SUPERIOR QUALIFICATIONS APPOINTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5333

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Revises regulations concerning the appointment of superior candidates above the minimum rate of pay for General Schedule positions. Clarifies and modifies what agencies should consider when making these superior qualifications appointments.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AI00

3355. • PAY UNDER THE GENERAL SCHEDULE; SUBPART F—LOCALITY-BASED COMPARABILITY PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5304

CFR Citation: 5 CFR 531

Legal Deadline: None

Abstract: Under current regulations, locality pay area boundaries change automatically whenever the Office of Management and Budget (OMB) modifies the geographic coverage of a metropolitan statistical area (MSA) or a consolidated metropolitan statistical area. OMB plans wholesale modifications in metropolitan area definitions in 2003 based on new criteria and 2000 census data. We plan to tie our locality pay area definitions to the geographic coverage of MSAs as defined in OMB Bulletin 99-4 so that locality pay area boundaries will not automatically change when OMB revises its metropolitan area definitions. This will allow the President's Pay Agent and the Federal Salary Council the opportunity to review the new metropolitan area definitions to see if they are appropriate for use in the locality pay program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Allan G. Hearne, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2838
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Email: aghearne@opm.gov

RIN: 3206–AJ62

3356. JOB GRADING REVIEWS AND APPEALS OF FEDERAL WAGE SYSTEM EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5346

CFR Citation: 5 CFR 532, subpart G

Legal Deadline: None

Abstract: The job grading reviews and appeals regulations require updating to reflect current organizational nomenclature following a reorganization within OPM.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Melissa Drummond, Office of Merit Systems Oversight and Effectiveness, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2530
Fax: 202 606-2663
Email: madrummo@opm.gov

RIN: 3206–AI14

3357. • MISCELLANEOUS CHANGES IN PAY AND LEAVE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5307; 5 USC 5514; 5 USC 5527; 5 USC 5334; 5 USC 5338; 5 USC 5542(c); 5 USC 5548; 5 USC 6311; 5 USC 4301 et seq; Fair Labor Standards Act of 1939, as amended, sec 4(f)

CFR Citation: 5 CFR 531; 5 CFR 550; 5 CFR 551; 5 CFR 630

Legal Deadline: None

Abstract: These interim regulations will correct or clarify several provisions dealing with the pay and leave of Federal employees. The changes are needed to make regulations consistent with law and current practice and to eliminate unnecessary agency reports to OPM. Questions and comments from users of the regulations prompted the changes. The interim regulations will assist agencies in administering pay and leave programs in a consistent manner and in accordance with applicable law.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryce Baker, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
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Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ59

3358. REEMPLOYMENT OF MILITARY AND CIVILIAN RETIREES TO MEET EXCEPTIONAL EMPLOYMENT NEEDS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8344; 5 USC 8468

CFR Citation: 5 CFR 553

Legal Deadline: None

Abstract: Establishes new criteria for granting exceptions for key positions in temporary organizations established by law or Executive order. This rule will also expand and clarify the criteria used in exercising this authority.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Lorenz, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830

RIN: 3206–AI32

3359. MISCELLANEOUS LEAVE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 6311

CFR Citation: 5 CFR 630

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing miscellaneous changes in the leave regulations in 5 CFR part 630. The proposed changes will include clarifying provisions on the Federal leave-sharing program, home leave, transfer of leave from the U.S. Postal Service, and leave entitlements for employees under 90-day appointments or under part-time or intermittent work schedules. The proposed regulations also will include changes to comply with new legislation requiring lump-sum payment for annual leave for employees transferring from a Department of Defense base that is closing.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Herzberg, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
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RIN: 3206–AI44

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3360. RETIREMENT; CREDIT FOR MILITARY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); 38 USC 4331

CFR Citation: 5 CFR 8347(a); 5 CFR 8461(g); 5 CFR 842.306; 5 CFR 842.307

Legal Deadline: None

Abstract: These regulations implement changes in the treatment of certain military service under CSRS and FERS required under the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Christopher H. Ziebarth, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AG58

3361. • CONTINUATION OF ELIGIBILITY FOR CERTAIN CIVIL SERVICE BENEFITS FOR FORMER FEDERAL EMPLOYEES OF THE CIVILIAN MARKSMANSHIP PROGRAM.

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1622(b), PL 104-106, 110 Stat. 515

CFR Citation: 5 CFR 831; 5 CFR 842; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations describe conditions and procedures applicable to continuation of eligibility for certain Civil Service benefits for former Federal employees of the Civilian Marksmanship Program.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Howard T. Newland Jr., Retirement and Insurance Service, Retirement Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ55

3362. RETIREMENT; DEBT COLLECTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 835(e)

Legal Deadline: None

Abstract: These regulations will amend the Civil Service Retirement System (CSRS) and Federal Employees Retirement System (FERS) regulations by consolidating and updating existing regulations in three different subparts of the CSRS regulations and 5 CFR 845 in the FERS regulations to eliminate duplication of the provisions governing debt collection. This item is for subpart E of the new part 835, which will address collections of Government claims from payments made by OPM.

Timetable:

Action	Date	FR Cite
NPRM	10/05/92	57 FR 45753
Second NPRM	05/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AE72

3363. RETIREMENT; COURT ORDERS AWARDING SURVIVOR ANNUITIES; CORRECTING OR SUPPLEMENTING THE FIRST ORDER DIVIDING MARITAL PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 838

Legal Deadline: None

Abstract: These regulations would establish standards for determining which supplemental or correcting court orders are not "modifications" and the procedures applicable to such orders. They also provide for the continuation of the former spouse's survivor coverage and the reduction in the retiree's annuity until the State court decides the extent of the former spouse's rights to retirement benefits.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AG28

3364. RETIREMENT; FERS ELECTIONS OF COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8461(g); PL 99-335, sec 301(d)(3)

CFR Citation: 5 CFR 846

Legal Deadline: None

Abstract: These regulations implement title III of the Federal Employees Retirement System (FERS) Act of 1986, as amended, dealing with the election of FERS coverage by employees under the Civil Service Retirement System and certain other employees. The regulations contain regulatory and interpretative rules concerning employees' eligibility to elect FERS coverage, procedures for electing FERS coverage, and basic benefits based on the service for employees who elect FERS coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/21/87	52 FR 19235
Interim Final Rule	09/13/93	58 FR 47821
Interim Final Rule	06/18/98	63 FR 33231
NPRM	12/00/02	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AG96

3365. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: CONTINUING FEHB COVERAGE INTO RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This proposed regulation would increase OPM's ability to waive requirements for continuing health benefits coverage into retirement when it is to the advantage of the Government to do so.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AI62

3366. IMPLEMENTATION OF THE ADMINISTRATIVE SIMPLIFICATION PROVISIONS OF THE HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 FOR THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-191

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: The administrative simplification provisions on the Health Insurance Portability and Accountability Act of 1996 (HIPAA) requires covered entities (providers, health plans and clearinghouses) to ensure the privacy of individually identifiable personal health information. The Federal Employees' Health Benefits (FEHB) Program has been deemed a health plan, and as such must comply with the security, privacy, and transaction standards that are part of the administrative simplification provisions of HIPAA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Abby L. Block, Assistant Director, Office of Insurance Programs, Office of Personnel Management, Retirement and Insurance Group Room 3425, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0770

RIN: 3206–AJ45

3367. FINANCIAL SANCTIONS OF HEALTH CARE PROVIDERS IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8902a

CFR Citation: 5 CFR 890, subpart J

Legal Deadline: None

Abstract: These regulations will implement the financial sanctions provisions of the Federal Employees' Health Care Protection Act of 1998 (Pub. L. 105-266). In cases where a health care provider had knowingly: (1) submitted false, fraudulent, or misleading claims; (2) failed to provide claims-related information requested by OPM or a FEHBP carrier; or (3) submitted claims while debarred, the statute authorizes OPM to effectuate civil monetary penalties of not more than $10,000 per item or service involved and to assess damages of not more than twice the amount claimed for each item or service. These financial sanctions may be imposed, in addition to suspension or debarment; the other forms of sanctions authorized by the statute. The regulatory provisions for suspension and debarment are being implemented in an earlier amendment to 5 CFR 890, subpart J.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2851
Fax: 202 606-2153
Email: jdcope@opm.gov

RIN: 3206–AJ42

3368. FEDERAL EMPLOYEES' HEALTH BENEFITS ACQUISITION REGULATION: LARGE PROVIDER AGREEMENTS, SUBCONTRACTS, AND MISCELLANEOUS CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1602; 48 CFR 1604; 48 CFR 1615

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is proposing a new policy that establishes notification and information requirements, including audit, for Federal Employees' Health Benefits (FEHB) experience-rated carrier large provider agreements. The proposed regulation also revises the threshold for advance approval of carrier subcontracts.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mike Kaszynski, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
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RIN: 3206–AJ20

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OPM — **Proposed Rule Stage**

3369. IMPLEMENTATION OF ADDITIONAL COST PRINCIPLES IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913; 40 USC 486(c); 48 CFR 1.301

CFR Citation: 48 CFR 1630; 48 CFR 1631; 48 CFR 1652

Legal Deadline: None

Abstract: The Office of Personnel Management is proposing a regulation that would inform experience-rated carriers in the Federal Employees' Health Benefits Program how it intends to implement additional cost principles.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne Easton, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004
Email: aseaston@opm.gov

RIN: 3206–AJ10

Office of Personnel Management (OPM) — **Final Rule Stage**

3370. EXCEPTED SERVICE—SCHEDULE A AUTHORITY FOR NONTEMPORARY PART-TIME OR INTERMITTENT POSITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3307

CFR Citation: 5 CFR 213

Legal Deadline: None

Abstract: The Office of Personnel Management proposes to revoke the schedule A excepted service appointing authority for nontemporary part-time or intermittent positions for which total annual compensation does not exceed 40 percent of GS-3, step 1 because the conditions justifying the original exception no longer exist.

Timetable:

Action	Date	FR Cite
NPRM	09/10/01	66 FR 46968
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AJ06

3371. EXCEPTED SERVICE; CAREER AND CAREER-CONDITIONAL EMPLOYMENT

Priority: Other Significant

Legal Authority: EO 13162

CFR Citation: 5 CFR 213; 5 CFR 315

Legal Deadline: None

Abstract: These regulations implement Executive Order 13162, which establishes the Federal Career Intern Program. This program will be used to attract exceptional men and women to the Federal workforce who have diverse professional experiences, academic training, or competencies and prepare them for careers in analyzing and implementing public programs.

This regulation supports the Administration's effort to recruit the highest caliber people to the Federal Government, develop their professional abilities, and retain them in Federal departments and agencies.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/14/00	65 FR 78077
Interim Final Rule Effective	12/14/00	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AJ28

3372. EXCEPTED SERVICE—SCHEDULE A AUTHORITY FOR CHINESE, JAPANESE, AND HINDU INTERPRETERS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301

CFR Citation: 5 CFR 213

Legal Deadline: None

Abstract: The Office of Personnel Management proposes to revoke the schedule A excepted service appointing authority for Chinese, Japanese and Hindu interpreters because the conditions justifying the original exception no longer exist.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3128
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AJ43

3373. TIME-IN-GRADE RESTRICTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; EO 10577

OPM — **Final Rule Stage**

CFR Citation: 5 CFR 300

Legal Deadline: None

Abstract: Eliminates requirement that employees serve one year in-grade to be eligible for promotion above the GS-5 level. This is separate from the qualifications requirement for one year's experience at the next lowest grade or equivalent for promotion.

Timetable:

Action	Date	FR Cite
NPRM	06/15/94	59 FR 30717
NPRM Comment Period End	01/10/95	60 FR 2546
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tina Vay, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390

RIN: 3206–AG06

3374. PROMOTION AND INTERNAL PLACEMENT; ACCELERATED QUALIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 3304

CFR Citation: 5 CFR 316; 5 CFR 335; 5 CFR 338

Legal Deadline: None

Abstract: OPM will issue final regulations on Accelerated Qualifications only to authorize agencies to establish intensive training programs for acquiring qualifications at an accelerated rate.

Timetable:

Action	Date	FR Cite
NPRM	02/20/96	61 FR 6324
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Karen Jacobs, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0023

RIN: 3206–AG19

3375. REASONABLE ACCOMMODATION LANGUAGE FOR VACANCY ANNOUNCEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 1302; 5 USC 3301; 5 USC 3302; 5 USC 3304(f); 5 USC 3327; ...

CFR Citation: 5 CFR 302; 5 CFR 317; 5 CFR 330; 5 CFR 333; 5 CFR 335

Legal Deadline: None

Abstract: The Office of Personnel Management is publishing interim regulations requiring a reasonable accommodation statement in agency vacancy announcements.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63905
Interim Final Rule Effective	01/10/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Linda Watson, Employment Service, Examining and Qualification Policy Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
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Email: lmwatson@opm.gov

RIN: 3206–AJ11

3376. RECRUITMENT AND SELECTION THROUGH COMPETITIVE EXAMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3301; 5 USC 3302

CFR Citation: 5 CFR 332

Legal Deadline: None

Abstract: OPM is issuing an interim regulation to allow agencies to decide how candidates are referred for competitive appointment when agencies fill multiple vacancies simultaneously. We are codifying a long-standing practice (5 U.S.C. 3301 and 3302) of providing agencies with the option of either certifying a candidate for only one vacancy at a time, or certifying a candidate simultaneously for all vacancies for which that candidate expresses an interest, is eligible, and is within reach.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/15/02	67 FR 7055
Interim Final Rule Effective	02/15/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzy Barker, Director, Examination and Qualification Policy Division, Office of Personnel Management, Employment Service, Washington, DC 20415
Phone: 202 606-0830
Fax: 202 606-0390
Email: smbarker@opm.gov

RIN: 3206–AJ52

3377. OFFICIAL DUTY STATION DETERMINATIONS FOR PAY PURPOSES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5305; 5 USC 5304; 5 USC 5941; EO 10000; PL 101-509, sec 404

CFR Citation: 5 CFR 530; 5 CFR 531; 5 CFR 591

Legal Deadline: None

Abstract: These proposed regulations would clarify the location-based pay entitlements of Federal employees who are detailed or temporarily assigned to work at a new location, including telework situations. Location-based pay entitlements include locality payments, special salary rates, and nonforeign area cost-of-living allowances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/09/97	62 FR 25423
Interim Final Rule Comment Period End	07/08/97	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858

Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AH84

3378. HOLIDAYS AND PREMIUM PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5548; 5 USC 6133; 29 USC 204(f)

CFR Citation: 5 CFR 532; 5 CFR 550; 5 CFR 551; 5 CFR 610

Legal Deadline: None

Abstract: These final regulations implement changes in law that provide: 1) authority for compensatory time off for prevailing rate (wage) employees in lieu of overtime pay; and 2) agency flexibility in determining the "in lieu of" holiday for employees on compressed work schedules when the actual holiday for the employee is on a non-workday. A current regulation is also corrected to comply with a provision of law authorizing use of alternative work schedules for civilian nonappropriated fund employees of the armed services.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/23/97	62 FR 28305
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AH86

3379. PREVAILING RATE SYSTEMS; DEFINITION OF SAN JOAQUIN COUNTY, CALIFORNIA, TO A NONAPPROPRIATED FUND WAGE AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: Because of the construction of a new Army and Air Force Exchange service distribution depot at the Sharpe Army Depot in San Joaquin County, California, the Office of Personnel Management will establish a new nonappropriated fund Federal Wage System wage area for San Joaquin County. Pay for Federal blue-collar workers who are paid from nonappropriated funds in the new San Joaquin wage area will be based on local wage surveys ordered to begin in February of each year.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/23/02	67 FR 3035
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chenty I. Carpenter, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-4264
Email: cicarpen@opm.gov

RIN: 3206–AJ35

3380. • PREVAILING RATE SYSTEMS; CHANGE IN THE SURVEY CYCLE FOR THE PORTLAND, OREGON, WAGE AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: To improve administration of local wage surveys for Federal Wage System employees in the Portland, OR, wage area, the Office of Personnel Management will change the dates of full-scale wage surveys in the wage area from August of each odd numbered fiscal year to August of each even numbered fiscal year.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/24/02	67 FR 20009
Interim Final Rule Effective	04/24/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chenty I. Carpenter, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2848
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RIN: 3206–AJ60

3381. • PREVAILING RATE SYSTEMS; DEFINITION OF SANTA CLARA, CALIFORNIA, NONAPPROPRIATED FUND WAGE AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5343

CFR Citation: 5 CFR 532

Legal Deadline: None

Abstract: Because of the closure of the Army and Air Force Exchange Service Oakland Distribution Center, the Office of Personnel Management (OPM) is abolishing the Alameda-Contra Costa, CA, nonappropriated fund Federal Wage System wage area. OPM will establish a new Santa Clara, CA, nonappropriated fund wage area with Santa Clara County defined as the wage area's survey area and Alameda, Contra Costa, and San Mateo Counties defined as the wage area's area of application.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chenty I. Carpenter, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2848
Fax: 202 606-4264
Email: cicarpen@opm.gov

RIN: 3206–AJ61

3382. BASIC PAY FOR EMPLOYEES OF TEMPORARY ORGANIZATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 3161(d)

CFR Citation: 5 CFR 534

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing final regulations on setting the rate of basic pay for employees of temporary organizations, as defined in 5 U.S.C. 3161(a).

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/05/02	67 FR 3581
Interim Final Rule Comment Period End	03/26/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ47

3383. PAY FOR ADMINISTRATIVE APPEALS JUDGE POSITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5372b

CFR Citation: 5 CFR 534, subpart F

Legal Deadline: None

Abstract: These interim regulations implement a pay system for administrative appeals judge positions. The administrative appeals judge pay system was recently authorized to cover positions that are not classifiable above GS-15 and for which the duties primarily involve reviewing decisions of administrative law judges. OPM is issuing regulations to ensure that agencies implement and administer the administrative appeals judge pay system in a consistent and equitable manner.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/11/01	66 FR 63906
Interim Final Rule Comment Period End	02/11/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ44

3384. GRADE AND PAY RETENTION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5361; 5 USC 5366

CFR Citation: 5 CFR 536

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing final regulations giving agencies discretionary authority to grant pay retention to certain employees moving to positions under pay systems other than the General Schedule or the Federal Wage System. This new flexibility will allow agencies to prevent eligible employees from suffering a reduction in pay that would otherwise result from a management action.

Timetable:

Action	Date	FR Cite
NPRM	05/25/00	65 FR 33785
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Sharon Herzberg, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
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Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AI88

3385. PAY ADMINISTRATION; AVAILABILITY PAY FOR CRIMINAL INVESTIGATORS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5545(h); 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: These final regulations will clarify a number of issues relating to the administration of availability pay, a form of premium pay for criminal investigators who are required to work, or be available to work, substantial amounts of unscheduled overtime duty based on the needs of the employing agency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/23/94	59 FR 66149
Second Interim Final Rule	01/29/99	64 FR 4517
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kevin Kitchelt, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ49

3386. • PREMIUM PAY LIMITATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5547; 5 USC 5548

CFR Citation: 5 CFR 550

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations to implement recent statutory amendments dealing with the premium pay limitations for Federal employees. Those amendments raise the premium pay caps for most employees, provide authority to use an annual cap instead of a biweekly cap in additional circumstances, and make certain other changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/19/02	67 FR 19319
Interim Final Rule Effective	04/29/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Bryce Baker, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ56

3387. • ADMINISTRATIVELY UNCONTROLLABLE OVERTIME PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5547

CFR Citation: 5 CFR 550.151

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim regulations concerning the rules governing payment of administratively uncontrollable overtime (AUO) pay. This interim rule permits agencies to pay AUO pay to an employee during a temporary assignment that would not otherwise warrant the payment of AUO pay, if the temporary assignment is directly related to a national emergency.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/13/02	67 FR 6640
Interim Final Rule Comment Period End	04/15/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kevin Kitchelt, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ57

3388. REPEAL OF DUAL COMPENSATION REDUCTION FOR MILITARY RETIREES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8344; 5 USC 8468

CFR Citation: 5 CFR 553

Legal Deadline: None

Abstract: The Office of Personnel Management is publishing final regulations to implement the repeal of reduction in military retired or retainer pay required of some military retirees in civilian positions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/12/00	65 FR 19643
Interim Final Rule Effective	04/12/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Larry Lorenz, Employment Service, Staffing and Restructuring Policy Division, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0830

RIN: 3206–AI92

3389. RETENTION ALLOWANCES

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 5 USC 5754

CFR Citation: 5 CFR 575, subpart C

Legal Deadline: None

Abstract: These final regulations would provide agencies with greater flexibility in the use of retention allowances by allowing them to pay such allowances to employees who are likely to leave their position for other Federal employment under certain limited circumstances.

Timetable:

Action	Date	FR Cite
NPRM	01/10/01	66 FR 5491
NPRM Comment Period End	03/20/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ48

3390. VOLUNTARY SEPARATION INCENTIVE REPAYMENT WAIVERS

Priority: Substantive, Nonsignificant

Legal Authority: PL 103-226

CFR Citation: 5 CFR 576

Legal Deadline: None

Abstract: Public Law 103-226 authorized OPM to waive repayment of a voluntary separation incentive payment under certain circumstances if a former employee, who accepted the incentive payment, is reemployed by an executive agency of the United States within five years of separation. Later Public Laws, written for specific agencies, usually contain a waiver of repayment provision.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/94	59 FR 55808
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Gray, Employee Service, Office of Personnel Management, Staffing Restructuring Policy Division, 1900 E Street NW., Wasington, DC 20415
Phone: 202 606-0960

RIN: 3206–AG20

3391. COST-OF-LIVING ALLOWANCES (NONFOREIGN AREAS);COMMISSARY/EXCHANGE RATES; SURVEY FREQUENCY; GRADUAL REDUCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5941

CFR Citation: 5 CFR 591

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is issuing regulations to implement recent amendments to Executive Order 10000 regarding nonforeign area cost-of-living allowances (COLAs). There regulations eliminate the separate COLA rate paid to Federal employees with commissary and exchange privileges; allow OPM to conduct COLA surveys less frequently; and permit OPM to reduce COLA rates gradually regardless of the cause of the reduction. These changes will accomplish several of the provisions agreed upon under a recent settlement of litigation concerning nonforeign area COLAs.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/09/01	66 FR 56751
Interim Final Rule Effective	11/09/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Springmann, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ40

3392. COST-OF-LIVING ALLOWANCES (NONFOREIGN AREAS); METHODOLOGY CHANGES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 5941

CFR Citation: 5 CFR 591

Legal Deadline: None

Abstract: The Office of Personnel Management (OPM) is making wide-ranging changes in the methodology used to determined nonforeign area cost-of-living allowances (COLAs). OPM is implementing these changes pursuant to the settlement of litigation regarding the COLA program.

Timetable:

Action	Date	FR Cite
NPRM	11/09/01	66 FR 56741
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kurt Springmann, Workforce Compensation and Performance Service, Office of Personnel Management, Office of Compensation Administration, 1900 E Street NW., Washington, DC 20415
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Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ41

3393. RETIREMENT; COVERAGE—NONAPPROPRIATED FUND INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 841 to 844; 5 CFR 847

Legal Deadline: Final, Statutory, August 9, 1996.

Abstract: These regulations implement the provisions of Public Law 104-106 and Public Law 107-107, which allow certain employees, who have been employed by nonappropriated fund instrumentalities under the jurisdiction of the armed forces, to obtain retirement credit under limited circumstances.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/09/96	61 FR 41714
Interim Final Rule	06/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AH57

3394. COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347(a); 5 USC 8361(g); PL 105-33, sec 11202(f), 11232(e), 11246(b); PL 106-522, sec 145

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These regulations implement provisions of the National Capital Revitalization and Self-Government Improvement Act of 1997, which requires that nonjudicial employees of the District of Columbia Courts, and under certain conditions, the District of Columbia Corrections Trustee, and the District of Columbia Pretrial Services, Parole, Adult Probation and Offender Supervision Trustee and their respective employees be considered Federal employees for purposes of Federal retirement, health, and life insurance coverage.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/30/97	62 FR 50995
Interim Final Rule Comment Period End	12/01/97	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AI02

3395. RETIREMENT, HEALTH, AND LIFE INSURANCE COVERAGE FOR CERTAIN EMPLOYEES OF THE DISTRICT OF COLUMBIA UNDER THE DISTRICT OF COLUMBIA COURTS AND JUSTICE TECHNICAL CORRECTIONS ACT OF 1998

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-274

CFR Citation: 5 CFR 831; 5 CFR 837; 5 CFR 842; 5 CFR 846; 5 CFR 870; 5 CFR 890

Legal Deadline: None

Abstract: These interim regulations implement the District of Columbia Courts and Justice Technical Corrections Act of 1998. The effect of these regulations is to extend Federal retirement, health insurance, and life insurance coverage to employees of the Public Defender Service of the District of Columbia under section 7 of the Act, and to exclude certain former employees of the District of Columbia, who are hired by the Department of Justice or by the Court Services and Offender Supervision Agency, from Federal retirement coverage if they elect, under section 3 of the Act, to continue their coverage under a

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retirement system for employees of the District of Columbia.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/31/99	64 FR 15286
Interim Final Rule Comment Period End	06/29/99	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AI55

3396. RETIREMENT; STATE INCOME TAX WITHHOLDING INSTRUMENTALITIES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8345; 5 USC 8347; 5 USC 8461; 5 USC 8469

CFR Citation: 5 CFR 831, subpart S; 5 CFR 841, subpart J

Legal Deadline: None

Abstract: These regulations modify existing regulations to reflect changes designed to expand and streamline the process of withholding State income tax from CSRS and FERS annuities.

Timetable:

Action	Date	FR Cite
NPRM	06/23/99	64 FR 33429
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia A. Rochester, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AH62

3397. CORRECTION OF RETIREMENT COVERAGE ERRORS UNDER THE FEDERAL ERRONEOUS RETIREMENT COVERAGE CORRECTION ACT

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-265

CFR Citation: 5 CFR 839

Legal Deadline: None

Abstract: The Office of Personnel Management is amending its regulations to include new rules for correcting certain retirement coverage errors. We are amending the regulations to implement the provisions of the Federal Erroneous Retirement Coverage Corrections Act (the FERCCA), title II of Public Law 106-265. The regulations will allow agencies to correct affected coverage errors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/19/01	66 FR 15605
Interim Final Rule Effective	03/19/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: James Giuseppe, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ38

3398. RETIREMENT; GENERAL ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347

CFR Citation: 5 CFR 841

Legal Deadline: None

Abstract: These regulations would allow an agency to retain the individual retirement record when an employee transfers within the same agency even though the employee would be serviced by another intra-agency payroll.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/20/00	65 FR 21119
Interim Final Rule Effective	04/20/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
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Email: combox@opm.gov

RIN: 3206–AI83

3399. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE PROGRAM: MISCELLANEOUS CHANGES AND CLARIFICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: These regulations include changes to FEGLI regulations that clarify procedures for signing and witnessing designations of beneficiary, accepting designations of beneficiary by facsimile, accepting DNA evidence to establish paternity, etc.

Timetable:

Action	Date	FR Cite
NPRM	10/27/00	65 FR 64530
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Leibach, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004
Email: kjleibac@opm.gov

RIN: 3206–AG63

3400. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE: PREMIUM CHANGES AND CHANGE IN TIME FRAMES FOR ELECTING INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; PL 106-398

CFR Citation: 5 CFR 870

Legal Deadline: None

Abstract: Public Law 105-311 allowed retiring employees to elect to continue their option B and/or option C coverage on an unreduced basis. Since this means that more people over age 65 will have these coverages and will continue to pay premiums, the previous age band structure (with the top age band being 60 and over) needed to be expanded. OPM previously added additional age bands to option C; we now need to expand these further and to add age bands to option B. In addition, the actuaries have determined that changes in mortality rates warrant further changes to the FEGLI premiums. We are also changing the time frame for electing optional insurance when an employee is first eligible from 31 days to 60 days and adding information relating to basic insurance for certain Department of Defense employees under Public Law 106-398.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/00/02	
Final Action	12/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Leibach, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004
Email: kjleibac@opm.gov

RIN: 3206–AJ46

3401. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: PAYMENT OF PREMIUMS FOR PERIODS OF LEAVE WITHOUT PAY OR INSUFFICIENT PAY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: Regulations that establish a requirement that Federal agencies counsel employees entering nonpay status, or whose pay is insufficient to cover their FEHB premium payments, of the options of continuing or terminating their FEHB coverage, and if continuing, of paying premiums directly on a current basis or incurring a debt to be withheld from future salary. These regulations are intended to ensure employees are fully aware of these alternatives. We have received comments on the interim rules, which are under review.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/22/96	61 FR 37807
Interim Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AG66

3402. FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM: EFFECTIVE DATES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: This proposed regulation would adopt January 1 as the effective date for all open season enrollment changes and new enrollment in the Federal Employees' Health Benefits Program.

Timetable:

Action	Date	FR Cite
NPRM	08/31/98	63 FR 46180
NPRM Comment Period End	09/30/98	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Barbara Myers, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004

RIN: 3206–AI37

3403. IMPLEMENTATION OF PREMIUM CONVERSION FOR EXECUTIVE BRANCH FEDERAL EMPLOYEES PARTICIPATING IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS (FEHB) PROGRAM

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 26 USC 125

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: At the President's direction, the Office of Personnel Management (OPM) issued regulations under the Federal Employees' Health Benefits (FEHB) Program to enable employees of all executive branch agencies to pay their share of FEHB premiums with pre-tax dollars in accordance with section 125 of the Internal Revenue Code. OPM simultaneously amended salary allotment regulations at 5 CFR 550, because employees participating in premium conversion must allot a portion of salary to their employing agency that agencies then use to pay the employee share of FEHB premiums.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/19/00	65 FR 44644
Interim Final Rule Effective	09/18/00	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Laurie Bodenheimer, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0770

RIN: 3206–AJ17

3404. FEDERAL EMPLOYEES' HEALTH BENEFITS CHILDREN'S EQUITY

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-394

CFR Citation: 5 CFR 890; 5 CFR 892

Legal Deadline: None

Abstract: Public Law 106-394 requires mandatory self and family coverage for FEHB-eligible employees who do not comply with a court or administrative order to provide health benefits for

their children. This regulation requires that employees subject to such an order be enrolled in self and family coverage in a plan that provides full benefits to his/her child(ren) in the area where they live or provide documentation to his/her employing office that he/she has other health coverage for the children. If the employee does not enroll in an appropriate health plan or provide documentation of other coverage for the children, the employing office will enroll the employee for self and family coverage in the option of the Blue Cross and Blue Shield Service Benefit Plan that provides the lower level of coverage. This type of mandatory coverage has been in effect for several years in the private sector. This regulation defines how this requirement will be implemented in the Federal Employees' Health Benefits Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/00/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Karen Leibach, Retirement and Insurance Service, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004
Email: kjleibac@opm.gov

RIN: 3206–AJ34

3405. SUSPENSION OF ENROLLMENT IN THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM TO ENROLL IN THE TRICARE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8913

CFR Citation: 5 CFR 890

Legal Deadline: None

Abstract: The National Defense Authorization Act for 2001 (Act) contains provisions that extend Tricare pharmacy coverage to Uniformed Services Medicare eligible retirees, spouses, and survivors effective April 1, 2001. This will allow Uniformed Services beneficiaries to get prescriptions through Tricare's retail, mail order, or military treatment facility pharmacies. The Act also allows these beneficiaries to regain eligibility for Tricare medical benefits effective October 1, 2001. Some enrollees in the FEHB Program served in the Uniformed Services prior to their civilian employment with the Federal Government. In certain cases, having served in both the Uniformed Services and as a civilian Federal employee entitles an individual to retirement benefits under both the Uniformed Services and the civil service retirement systems. The purpose of this proposed regulation is to allow FEHB Program annuitants to suspend their enrollment so they can use their Tricare benefits instead of their FEHB benefits. This regulation will also allow these individuals to voluntarily reenroll in the FEHB Program during the next Open Season if they no longer want to solely use the Tricare program to meet their health care needs. If an eligible individual is involuntarily disenrolled from the Tricare program, this proposed regulation would give the individual the right to immediately reenroll in the FEHB Program.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/26/01	66 FR 49081
Interim Final Rule Effective	09/26/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael W. Kaszynski, Retirement and Insurance Services, Office of Personnel Management, Insurance Policy and Information Division, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-0004
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Email: mwkaszyn@opm.gov

RIN: 3206–AJ36

3406. DEBARMENTS AND SUSPENSIONS OF HEALTH CARE PROVIDERS FROM THE FEDERAL EMPLOYEES' HEALTH BENEFITS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8902a

CFR Citation: 5 CFR 890, subpart J

Legal Deadline: None

Abstract: These regulations will implement section 2 of Public Law 105-266, which amends 5 U.S.C. section 8902a, authorizing OPM to debar health care providers who have committed certain types of legal offenses or program-related violations from participation in the Federal Employees' Health Benefits Program (FEHBP), and to levy monetary penalties and assessments against individuals who have improperly obtained payments of FEHBP funds. This legislation removes unnecessary administrative constraints on the agency, provides more flexible and less time-consuming procedures, and will improve OPM's administration of sanctions against unfit health care providers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/89	54 FR 43939
NPRM	12/12/01	66 FR 64160
NPRM Comment Period End	02/11/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2851
Fax: 202 606-2153
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RIN: 3206–AD76

3407. FEDERAL EMPLOYEES' GROUP LIFE INSURANCE FEDERAL ACQUISITION REGULATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8716; 40 USC 486(C)

CFR Citation: 48 CFR 1.301

Legal Deadline: None

Abstract: This proposed regulation would revise the existing Federal Employees' Group Life Insurance Federal Acquisition Regulation (LIFAR) by updating and revising policy regulation with respect to the acquisition and administration of life insurance contract(s) for Federal employees.

Timetable:

Action	Date	FR Cite
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anne Easton, Retirement and Insurance Services, Office of Insurance Programs, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0004
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RIN: 3206–AI65

Office of Personnel Management (OPM) Long-Term Actions

3408. PERSONNEL SECURITY AND RELATED PROGRAMS

Priority: Other Significant

Legal Authority: 5 USC 3301; 5 USC 3302; 5 USC 7312; 50 USC 403; EO 10450; EO 10577

CFR Citation: 5 CFR 732

Legal Deadline: None

Abstract: With the abolishment in December 1993 of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM must be considered for publication in another format. Since all of these policies and procedures are important to continued program operations, they will be incorporated in the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Interim Final Rule	09/16/94	59 FR 47527
Interim Final Rule Effective Date	10/17/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415-4000
Phone: 202 606-1042

RIN: 3206–AC21

3409. INVESTIGATIONS

Priority: Other Significant

Legal Authority: PL 93-579; 5 USC 552a

CFR Citation: 5 CFR 736

Legal Deadline: None

Abstract: With the abolishment in December 1993 of the Federal Personnel Manual (FPM), certain policies and procedures enunciated in the FPM must be considered for publication in another format. Since all of these policies and procedures are important to continued program operations, they will be incorporated in the Code of Federal Regulations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	04/23/91	56 FR 18650
Begin Review	10/01/93	
Interim Final Rule	09/16/94	59 FR 47527

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathy Dillaman, Associate Director, Investigations Service, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415-4000
Phone: 202 606-1042

RIN: 3206–AB92

3410. LAW ENFORCEMENT OFFICER AND FIREFIGHTER RETIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8347; 5 USC 8461

CFR Citation: 5 CFR 831; 5 CFR 842

Legal Deadline: None

Abstract: The Office of Personnel Management is issuing interim rules that permit certain police officers with the Metropolitan Washington Airports Authority to elect coverage under the special retirement provisions for law enforcement officers.

Timetable:

Action	Date	FR Cite
Interim Final Rule	07/25/01	66 FR 38523
Interim Final Rule Effective	07/25/01	
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patrick Jennings, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415-0001
Phone: 202 606-0299
Email: combox@opm.gov

RIN: 3206–AJ39

3411. RETIREMENT; FERS BASIC ANNUITY

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 8461

CFR Citation: 5 CFR 842, subparts B to G

Legal Deadline: None

Abstract: These final regulations will amend FERS Basic Annuity regulations governing Eligibility (subpart B), Credit for Service (subpart C), Computations (subpart F), and Alternative Forms of Annuity (subpart G). These regulations have been published at various times in interim final form, and have been affected by statutory changes.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/16/87	52 FR 2061
Interim Final Rule	01/16/87	52 FR 2067
Interim Final Rule	02/11/87	52 FR 4473
Interim Final Rule	02/11/87	52 FR 4479
Interim Final Rule	05/14/87	52 FR 18193
Interim Final Rule	04/08/88	53 FR 11635
Interim Final Rule	02/09/90	55 FR 4598
Final Rule	12/27/90	55 FR 53136
Interim Final Rule	02/19/91	56 FR 6549
Final Action	04/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Girouard, Retirement and Insurance Service, Retirement Policy Center, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-0299

Email: combox@opm.gov

RIN: 3206–AE73

3412. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)

Priority: Substantive, Nonsignificant

Legal Authority: EO 12549

CFR Citation: 5 CFR 970

Legal Deadline: None

Abstract: These regulations will implement within OPM the provisions of the Governmentwide nonprocurement suspension and debarment common rule.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: J. David Cope, Debarring Official, Office of the Inspector General, Office of Personnel Management, 1900 E Street NW, Washington, DC 20415
Phone: 202 606-2851
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Email: jdcope@opm.gov

RIN: 3206–AJ31

Office of Personnel Management (OPM) — Completed Actions

3413. • MISCELLANEOUS CHANGES IN OFFICE OF PERSONNEL MANAGEMENT'S REGULATIONS

Priority: Info./Admin./Other

Legal Authority: 5 USC 1103

CFR Citation: 5 CFR 213; 5 CFR 250; 5 CFR 293; 5 CFR 294; 5 CFR 300; 5 CFR 315; 5 CFR 316; 5 CFR 332; 5 CFR 339; 5 CFR 351; 5 CFR 352; 5 CFR 534; 5 CFR 550; 5 CFR 720; 5 CFR 732; 5 CFR 831; 5 CFR 837; 5 CFR 841; 5 CFR 930; 5 CFR 960

Legal Deadline: None

Abstract: The Office of Personnel Management issued a final rule to remove all references to the Federal Personnel Manual (FPM). These references are no longer in effect. This action does not make any substantive changes to the affected rules.

Timetable:

Action	Date	FR Cite
Final Action	12/27/01	66 FR 66709
Final Action Effective	12/27/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard B. Lowe, Executive Secretariat, Office of Personnel Management, Office of the Director, 1900 E Street NW., Washington, DC 20415
Phone: 202 606-1000
Email: rblowe@opm.gov

RIN: 3206–AJ54

3414. FEDERAL EMPLOYMENT PRIORITY CONSIDERATION FOR THE DISTRICT OF COLUMBIA EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 330

Completed:

Reason	Date	FR Cite
Final Action	02/13/02	67 FR 6639
Final Action Effective	03/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jacqueline Yeatman
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AI28

3415. PLACEMENT ASSISTANCE AND REDUCTION IN FORCE

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 330; 5 CFR 351

Completed:

Reason	Date	FR Cite
Final Action	02/05/02	67 FR 5195
Final Action Effective	02/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Pam Galemore
Phone: 202 606-0960
Fax: 202 606-2329

RIN: 3206–AJ18

3416. CAREER TRANSITION ASSISTANCE FOR SURPLUS AND DISPLACED FEDERAL EMPLOYEES

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 330, subpart F; 5 CFR 330, subpart G

Completed:

Reason	Date	FR Cite
Final Action	02/05/02	67 FR 5195
Final Action Effective	02/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jacqueline Yeatman
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Fax: 202 606-2329

RIN: 3206–AJ32

3417. REDUCTION IN FORCE RETREAT RIGHTS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 351

Completed:

Reason	Date	FR Cite
Final Action	02/05/02	67 FR 5196
Final Action Effective	02/05/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas A. Glennon
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RIN: 3206–AJ14

3418. LOCALITY-BASED COMPARABILITY PAYMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 531, subpart F

Completed:

Reason	Date	FR Cite
Final Action	12/28/01	66 FR 67069
Final Action Effective	12/28/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeanne D. Jacobson
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RIN: 3206–AI81

3419. PREVAILING RATE SYSTEMS; CHANGE IN THE SURVEY CYCLE FOR THE PENNINGTON, SOUTH DAKOTA, NONAPPROPRIATED FUND WAGE AREA

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 532

Completed:

Reason	Date	FR Cite
Final Action	03/25/02	67 FR 13553
Final Action Effective	04/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chenty I. Carpenter
Phone: 202 606-2848
Fax: 202 606-4264
Email: cicarpen@opm.gov

RIN: 3206–AJ30

3420. FIREFIGHTER PAY

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 410; 5 CFR 550; 5 CFR 551; 5 CFR 591; 5 CFR 630; 5 CFR 870

Completed:

Reason	Date	FR Cite
Final Action	04/02/02	67 FR 15463
Final Action Effective	05/02/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bryce Baker
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AI50

3421. COST-OF-LIVING ALLOWANCES (NONFOREIGN AREAS); INTERIM COLA RATE INCREASES PURSUANT TO SETTLEMENT OF LITIGATION

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 591

Completed:

Reason	Date	FR Cite
Final Action	11/09/01	66 FR 56738
Final Action Effective	12/10/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chenty Carpenter
Phone: 202 606-2838
Fax: 202 606-4264
Email: cola@opm.gov

RIN: 3206–AJ26

3422. ABSENCE AND LEAVE: USE OF RESTORED ANNUAL LEAVE

Priority: Substantive, Nonsignificant

CFR Citation: 5 CFR 630

Completed:

Reason	Date	FR Cite
Interim Final Rule	11/02/01	66 FR 55557
Interim Final Rule Effective	11/02/01	
Final Action	03/04/02	67 FR 9581
Final Action Effective	04/03/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon Herzberg
Phone: 202 606-2858
Fax: 202 606-4264
Email: payleave@opm.gov

RIN: 3206–AJ51

[FR Doc. 02–11102 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part XXXVIII

Peace Corps

Semiannual Regulatory Agenda

PEACE CORPS (PEACE)

PEACE CORPS

22 CFR Ch. III

Regulatory Agenda

AGENCY: Peace Corps.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda announces the regulations the Peace Corps will have under development during the 6-month period from April 1, 2002, through September 30, 2002. The purpose of publishing this agenda is to give notice of any regulatory activity by the Agency in order to allow the public an opportunity to participate in the rulemaking process.

FOR FURTHER INFORMATION CONTACT: The public is encouraged to contact the agency official listed for the particular agenda item. For other information concerning Peace Corps' regulations or this semiannual agenda, contact Suzanne B. Glasow, Associate General Counsel, Peace Corps, 1111 20th Street NW., Washington, DC 20526, (202) 692-2150.

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 entitled "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 601-612, executive agencies are required to publish in the **Federal Register** semiannual regulatory agendas in April and October of each year. The regulations being considered by the Peace Corps are not "significant" rules within the meaning of Executive Order 12866, and no regulatory impact analysis is required. In addition, the Peace Corps has determined, under the Regulatory Flexibility Act, that the regulations under consideration will not have a significant economic impact on a substantial number of small entities. Accordingly, no Regulatory Flexibility Analysis is required. The Agency has also determined that the regulations will not impose compliance costs or reporting burdens on the public.

Dated: March 13, 2002.

Michael Kole,

Director, Office of Administrative Services, Peace Corps

Peace Corps (PEACE) — Proposed Rule Stage

3423. HANDICAPPED DISCRIMINATION PROHIBITION AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 794

CFR Citation: 22 CFR 313

Legal Deadline: None

Abstract: The regulation implements section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), which prohibits discrimination on the basis of handicap in programs or activities conducted by executive agencies or the Postal Service.

Timetable:

Action	Date	FR Cite
NPRM	10/08/91	56 FR 50684
NPRM Comment Period End	12/09/91	
Second NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA03

3424. SUPPLEMENTAL STANDARDS OF CONDUCT FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: EO 12674; 5 CFR 2635.105

CFR Citation: 22 CFR 307; 5 CFR 67 (New)

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA09

3425. ELIGIBILITY AND STANDARDS FOR PEACE CORPS VOLUNTEER SERVICE RE: PROCEDURES—APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 75 Stat 612, secs 4(b), 5(a), and 22; 22 USC 2504; EO 12137, May 16, 1979; International Security & Development Coop. Act of 1981, sec 601; 95 Stat 1519 and 1540

CFR Citation: 22 CFR 305

Legal Deadline: None

Abstract: The Peace Corps is reviewing its Eligibility and Standards for Peace Corps Service, specifically with regard to establishing and publishing an appeals procedure for administrative and medical deselection. 42 U.S.C. 5057(c)(1), as amended, no longer provides authority for the listed agenda item. Therefore, 42 U.S.C. 5057, as above, shall be deleted from future printings of the Unified Agenda.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: RFA: N

PEACE — Proposed Rule Stage

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA10

3426. VOLUNTEER DISCRIMINATION COMPLAINT PROCEDURE

Priority: Substantive, Nonsignificant

Legal Authority: 22 USC 2503; 5 USC 553 and 554

CFR Citation: 22 CFR 306; 45 CFR 1225

Legal Deadline: None

Abstract: The Peace Corps is promulgating its own regulations regarding the Volunteer Discrimination Complaint Procedure to replace the current cross-reference to the former ACTION's regulations applicable to Peace Corps volunteers, which appear in 45 CFR part 1225.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Additional Information: RFA: N

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA11

3427. RESPONSIBILITIES AND ETHICAL STANDARDS FOR PEACE CORPS EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 7301; 5 USC app Ethics in Government Act of 1978; EO 12674; 5 CFR 2635.105; 5 CFR 2635.403; 5 CFR 2635.803

CFR Citation: 22 CFR 307

Legal Deadline: None

Abstract: The Peace Corps is removing part 307 from the Code of Federal Regulations. Part 307 provides the standards of conduct applicable to Peace Corps employees. Peace Corps employees are already subject to the Governmentwide regulations on employee standards of conduct, and the Peace Corps is considering the appropriate action to take in regard to its own supplemental standards of conduct.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA12

3428. INSPECTION AND COPYING OF RECORDS: RULES FOR COMPLIANCE WITH FREEDOM OF INFORMATION ACT

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 303

Legal Deadline: None

Abstract: The Peace Corps is revising its Freedom of Information Act (FOIA) regulation to implement the 1996 revisions to FOIA and to include Office of Inspector General provisions.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA14

3429. IMPLEMENTATION OF THE PRIVACY ACT OF 1974

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552a; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 308

Legal Deadline: None

Abstract: The Peace Corps is revising its Privacy Act regulation to be consistent with revisions to its systems of records and to delete unnecessary and outdated provisions.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA15

3430. ORGANIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552; 22 USC 2503(b); EO 12137

CFR Citation: 22 CFR 302

Legal Deadline: None

Abstract: The Peace Corps is removing this rule from the Code of Federal Regulations because it is outdated and unnecessary. Information on Peace Corps' organization is routinely updated and published in the Federal Register's "United States Government Manual."

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
NPRM Comment Period End	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite

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PEACE — **Proposed Rule Stage**

8200, 1111 20th Street NW, Washington, DC 20526-0001 | Phone: 202 692-2150 | Fax: 202 692-2151
RIN: 0420–AA16

Peace Corps (PEACE) — **Long-Term Actions**

3431. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

Legal Authority: sec 2455, PL 103-355, 108 Stat 3327; EO 12549, 3 CFR 1986 Comp, p 189; EO 12698, 3 CFR 1989 Comp, p 235

CFR Citation: 22 CFR 310

Legal Deadline: None

Abstract: The Peace Corps intends to publish proposed revisions to its Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Financial Assistance) rule in 22 CFR part 310 in conjunction with other participating agencies. Under the proposed rule, Peace Corps' debarment and suspension provisions would remain in part 310 and would set out procedures to be used by the Peace Corps when it has evidence that a recipient of Peace Corps funds pursuant to a nonprocurement agreement, such as grant or cooperative agreement, has committed fraud, embezzlement, forgery, or a variety of other serious offenses.

The rule's drug-free workplace provisions would be moved to a new rule, part 312, and would include requirements, prohibitions, and procedures regarding the unlawful manufacturing, distribution, dispensing, possession, or use of a controlled substance by a grantee of the Peace Corps in conducting any activity under a Peace Corps grant.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tyler S. Posey, General Counsel, Peace Corps, Suite 8200, 1111 20th Street NW, Washington, DC 20526-0001
Phone: 202 692-2150
Fax: 202 692-2151

RIN: 0420–AA17

[FR Doc. 02–7682 Filed 05–10–02; 8:45 am]
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Federal Register

Monday,
May 13, 2002

Part XXXIX

Pension Benefit Guaranty Corporation

Semiannual Regulatory Agenda

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PENSION BENEFIT GUARANTY CORPORATION (PBGC)

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Ch. XL

Agenda of Regulations Under Development

AGENCY: Pension Benefit Guaranty Corporation (PBGC).

ACTION: Semiannual regulatory agenda.

SUMMARY: This document sets forth the Pension Benefit Guaranty Corporation's regulatory agenda issued under Executive Order 12866 and the Regulatory Flexibility Act. The agenda lists regulations that are currently under development or review or that PBGC expects to have under development or review during the next 12 months. The effect of this agenda is to advise the public of PBGC's current and future regulatory activities.

ADDRESSES: Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, (202) 326-4024. (For TTY/TDD users, call the Federal relay service toll-free at 1-800-877-8339 and ask to be connected to (202) 326-4024.) For information about a specific regulation project listed on the agenda, contact the person designated in the agenda for that regulation.

SUPPLEMENTARY INFORMATION: Under the President's order on Regulatory Planning and Review, Executive Order 12866 (58 FR 51735, October 4, 1993), each agency is required to prepare an agenda of all regulations under development or review. The Regulatory Flexibility Act, Public Law 98-354, 5 U.S.C. 601, has a similar agenda requirement. Under that law, the agenda must list any regulation that is likely to have a significant economic impact on a substantial number of small entities.

The Office of Management and Budget has issued guidelines prescribing the form and content of the regulatory agenda. Under those guidelines, the agenda must list all regulatory activities being conducted or reviewed in the next 12 months and provide certain specified information on each regulation.

Dated: March 19, 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

Pension Benefit Guaranty Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3432	Filing Rules	1212-AA89
3433	Rules for Administrative Review of Agency Decisions	1212-AA97
3434	Allocation of Assets in Single-Employer Plans; Valuation of Benefits and Assets	1212-AA55
3435	Cash Balance Plans With Variable Indices	1212-AA96

Pension Benefit Guaranty Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3436	Assessment Of and Relief From Penalties	1212-AA95

Pension Benefit Guaranty Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
3437	Payment of Benefits in PBGC-Trusteed Plans	1212-AA35

Pension Benefit Guaranty Corporation (PBGC) **Proposed Rule Stage**

3432. FILING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1301 et seq

CFR Citation: 29 CFR 4000

Legal Deadline: None

Abstract: The PBGC's rules governing the date of filing vary, depending on the regulation involved and the method of filing used (e.g., mail postmarked by the United States Postal Service, metered mail, commercial delivery service, facsimile). The PBGC intends to clarify and simplify its filing rules and to provide greater flexibility in methods of filing (including by electronic means).

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

PBGC **Proposed Rule Stage**

Action	Date	FR Cite
NPRM Comment Period End	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas H. Gabriel, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA89

3433. RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1302(b)(3)

CFR Citation: 29 CFR 4003

Legal Deadline: None

Abstract: The PBGC plans to clarify and simplify the rules governing its administrative review process. As part of this rulemaking, the PBGC intends to explore ways to make its procedures more efficient.

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14663
NPRM Comment Period End	05/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas H. Gabriel, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA97

3434. ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS; VALUATION OF BENEFITS AND ASSETS

Priority: Other Significant

Legal Authority: 29 USC 1302(b)(3); 29 USC 1341; 29 USC 1301(a); 29 USC 1344; 29 USC 1362

CFR Citation: 29 CFR 4044, subpart B

Legal Deadline: None

Abstract: The Pension Benefit Guaranty Corporation is considering amending its benefit valuation and asset allocation regulations by adopting more current mortality tables and otherwise simplifying and improving its valuation assumptions and methods.

Timetable:

Action	Date	FR Cite
ANPRM	03/19/97	62 FR 12982
ANPRM Comment Period End	05/19/97	
NPRM	12/00/02	
NPRM Comment Period End	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James L. Beller, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA55

3435. CASH BALANCE PLANS WITH VARIABLE INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 29 USC 1301 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Many cash balance plans use variable indices to determine future retirement benefits. When such a plan terminates in a distress or involuntary termination, the PBGC must make a number of determinations that require it to project future retirement benefit amounts. To do so, the PBGC must make assumptions about the future performance of the variable index. This rulemaking will address these and related issues.

Timetable:

Action	Date	FR Cite
Request for Comments	06/06/00	65 FR 41610
Comment Period End	09/22/00	
NPRM	02/00/03	
NPRM Comment Period End	04/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4024
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112

RIN: 1212–AA96

Pension Benefit Guaranty Corporation (PBGC) **Final Rule Stage**

3436. ASSESSMENT OF AND RELIEF FROM PENALTIES

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2461 note; 29 USC 1302(b)(3); 29 USC 1303(a); 29 USC 1306; 29 USC 1307; 29 USC 1371

CFR Citation: 29 CFR 4003; 29 CFR 4007; 29 CFR 4071

Legal Deadline: None

Abstract: The PBGC has issued a number of policy statements about penalties over the last few years. For the convenience of the public, the PBGC proposes to replace those policy statements with an updated and expanded set of penalty policies codified in its regulations.

Timetable:

Action	Date	FR Cite
NPRM	01/12/01	66 FR 2856
NPRM Comment Period End	03/13/01	
Final Action	11/00/02	
Final Action Effective	12/00/02	

Regulatory Flexibility Analysis Required: No

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PBGC — **Final Rule Stage**

Small Entities Affected: No
Government Levels Affected: None
Agency Contact: Deborah C. Murphy, Attorney, Pension Benefit Guaranty Corporation, Office of the General Counsel, 1200 K Street NW, Washington, DC 20005-4026
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112
RIN: 1212–AA95.

Pension Benefit Guaranty Corporation (PBGC) — **Completed Actions**

3437. PAYMENT OF BENEFITS IN PBGC-TRUSTEED PLANS

Priority: Substantive, Nonsignificant
Legal Authority: 29 USC 1302(b)(3); 29 USC 1322; 29 USC 1342
CFR Citation: 29 CFR 4022
Legal Deadline: None
Abstract: When the PBGC assumes trusteeship of a terminated pension plan pursuant to sections 4041 and 4042 of ERISA, it pays benefits to participants pursuant to plan provisions and section 4022 of ERISA. This regulation fills gaps in the rules and otherwise clarifies matters that had been handled on a case-by-case basis in the past.
Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81456
NPRM Comment Period End	02/26/01	
Final Action	04/08/02	67 FR 16950
Final Action Effective	06/01/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
Agency Contact: Catherine B. Klion, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street NW, Washington, DC 20005-4024
Phone: 202 326-4024
TDD Phone: 800 877-8339
Fax: 202 326-4112
RIN: 1212–AA35

[FR Doc. 02–7683 Filed 05–10–02; 8:45 am]
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Federal Register

Monday,
May 13, 2002

Part XL

Presidio Trust

Semiannual Regulatory Agenda

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PRESIDIO TRUST (PRESIDIO)

PRESIDIO TRUST

36 CFR Ch. X

Semiannual Agenda of Regulations Pursuant to Executive Order 12866

AGENCY: The Presidio Trust.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Presidio Trust (Trust) is a wholly owned Government corporation created by Congress pursuant to title I of the Omnibus Parks and Public Lands Act of 1996, Public Law 104-333, 110 Stat. 4097. The Trust is charged with managing a portion of the former U.S. Army base known as The Presidio of San Francisco, located in San Francisco, California.

This regulatory agenda describes the regulations that the Trust will be proposing, developing, and reviewing between April 1, 2002, and September 30, 2002. This information is published in order to notify the public of the Trust's regulatory activities so that interested persons may participate in the Trust's rulemaking process.

FOR FURTHER INFORMATION CONTACT: For further information about the Trust's regulatory agenda or rulemaking process, contact Karen A. Cook, General Counsel, the Presidio Trust, 34 Graham Street, P.O. Box 29052, San Francisco, CA 94129-0052; telephone: 415-561-5300.

SUPPLEMENTARY INFORMATION: Pursuant to Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601), executive agencies must publish a semiannual regulatory agenda in the **Federal Register** in April and October of each year.

The Trust has determined and certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. section 601 *et seq.*, that the regulations under consideration will not have a significant economic effect on a substantial number of small entities nor will they impose compliance costs or reporting burdens on the public. Accordingly, no regulatory flexibility analysis is required under 5 U.S.C. 602.

Dated: March 7, 2002.

Steven Carp,

Legal Analyst.

Presidio Trust (PRESIDIO) — Long-Term Actions

3438. INTERIM MANAGEMENT OF THE PRESIDIO

Priority: Other Significant

Legal Authority: PL 104-333, sec 101 to 106

CFR Citation: 36 CFR 1001; 36 CFR 1002; 36 CFR 1004; 36 CFR 1005

Legal Deadline: None

Abstract: This interim final rule governs the use and management of the area administered by the Presidio Trust. The rule is derived from the National Park Service's (NPS) regulations for managing conduct at the Presidio during the four years when the Presidio was under the NPS's jurisdiction. These regulations cover public use and recreational activities; the protection of natural, cultural, and archeological resources; vehicle and traffic safety; and commercial and private operations.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/30/98	63 FR 35694
Interim Final Rule Comment Period End	08/31/98	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven Carp, Legal Analyst, Presidio Trust, P.O. Box 29052, 34 Graham Street, San Francisco, CA 94129-0052
Phone: 415 561-5339
Fax: 415 561-5308
Email: scarp@presidiotrust.gov

RIN: 3212–AA00

3439. MANAGEMENT OF THE PRESIDIO

Priority: Other Significant

Legal Authority: PL 104-333, sec 101 to 106; 5 USC 552; 5 USC 552a; 28 USC 2672

CFR Citation: 36 CFR 1001 to 1009

Legal Deadline: None

Abstract: This proposed rule, published in the Federal Register on September 18, 1998, at 63 FR 50024, revises and expands upon the interim final rule adopted when the Presidio was transferred from the National Park Service to the Presidio Trust (Trust). The interim final rule was published on June 30, 1998, and can be found at 63 FR 35694. These proposed rules cover general provisions (part 1001); public use and recreational activities and protection of natural, cultural, and archeological resources (part 1002); vehicle and traffic safety (part 1003); and commercial operations (part 1004) and have been revised to be consistent with existing regulations, conform with laws in neighboring jurisdictions, and simplify the language and organization of the regulations. The remaining proposed regulations address rights-of-way (part 1005); Presidio Trust symbols (part 1006); requests under the Freedom of Information and Privacy Acts (parts 1007 and 1008); and administrative claims under the Federal Tort Claims Act (part 1009).

By notice published on January 19, 1999, in the Federal Register at 64 FR 2870, the Trust held in abeyance until further notice a portion of the proposed rules: 36 CFR 1001, 1002, 1003, 1004, and 1006. Any future action on these rules will be noticed in the Federal Register and subject to additional public comment. In the interim, the Trust's final interim regulations at 36 CFR 1001, 1002, 1004, and 1005 remain in effect. The public comment period for proposed rule 36 CFR 1005 closed on January 8, 1999. Public comment on the remaining proposed rules, 36 CFR 1007, 1008, and 1009, closed on November 17, 1998, and the Trust issued final regulations on December 30, 1998, effective January 29, 1999. These regulations can be found at 63 FR 71771.

Timetable:

FOIA; Privacy Act; Federal Tort Claims Act
- NPRM 09/18/98 (63 FR 50024)
- NPRM Comment Period End 11/17/98 (63 FR 50024)
- Final Action 12/30/98 (63 FR 71771)
- Final Action Effective 01/29/99 (63 FR 71771)

PRESIDIO — Long-Term Actions

General; Resource Protection; Traffic Safety; Comm. Operations
- NPRM 09/18/98 (63 FR 50024)
- NPRM Comment Period End 11/17/98 (63 FR 50024)
- Comment Period Extended to 01/08/99 (63 FR 64023)
- Partial Abeyance of Proposed Rule 01/19/99 (64 FR 2870)
- Further Action To Be Determined

Rights-of-Way
- NPRM 09/18/98 (63 FR 50024)
- NPRM Comment Period End 11/17/98 (63 FR 50024)
- Comment Period Extended to 01/08/99 (63 FR 64023)
- Final Action To Be Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Steven Carp, Legal Analyst, Presidio Trust, P.O. Box 29052, 34 Graham Street, San Francisco, CA 94129-0052
Phone: 415 561-5339
Fax: 415 561-5308
Email: scarp@presidiotrust.gov

RIN: 3212–AA01

[FR Doc. 02–7684 Filed 05–10–02; 8:45 am]

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Federal Register

Monday,
May 13, 2002

Part XLI

Railroad Retirement Board

Semiannual Regulatory Agenda

RAILROAD RETIREMENT BOARD (RRB)

RAILROAD RETIREMENT BOARD

20 CFR Ch. II

Semiannual Agenda of Regulations Under Development or Review

AGENCY: Railroad Retirement Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda contains lists of regulations that the Board is developing or proposes to develop in the next 12 months and regulations that are scheduled to be reviewed in that period.

ADDRESSES: 844 North Rush Street, Chicago, Illinois 60611-2092.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, Assistant General Counsel, Office of General Counsel, Railroad Retirement Board, (312) 751-4945, FAX (312) 751-7102, TDD (312) 751-4701.

SUPPLEMENTARY INFORMATION: Regulations that are routine in nature or pertain solely to internal agency management have not been included in the agenda.

Dated: March 13, 2002.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

Railroad Retirement Board—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3440	Requests for Reconsideration and Appeals Within the Board	3220-AB03
3441	Employers' Contributions and Contribution Reports	3220-AB53
3442	Retirement Age	3220-AB54

Railroad Retirement Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3443	Application for Annuity or Lump Sum	3220-AB46
3444	Freedom of Information Act Requests	3220-AB47
3445	Appendix 1 to Part 220—Listing of Impairments	3220-AB51

Railroad Retirement Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3446	Reduction and Non-Payment of Annuities by Reason of Work	3220-AA61
3447	Determining Disability	3220-AA99
3448	Creditable Railroad Compensation	3220-AB23
3449	Determining Disability	3220-AB50

Railroad Retirement Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
3450	Designation of Central and Field Organization	3220-AB35
3451	Assessment or Waiver of Interest, Penalties, and Administrative Costs With Respect To Collection of Certain Debts	3220-AB48
3452	Employers' Contributions and Contribution Reports	3220-AB52

Railroad Retirement Board—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3220-AA75	Voluntary Quit	03/13/2002	Withdrawn

Railroad Retirement Board (RRB) — **Proposed Rule Stage**

3440. REQUESTS FOR RECONSIDERATION AND APPEALS WITHIN THE BOARD

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5); 45 USC 231g; 45 USC 355

CFR Citation: 20 CFR 260; 20 CFR 320

Legal Deadline: None

Abstract: The Railroad Retirement Board is amending 20 CFR sections 260 and 320 to provide for its field offices to make timeliness determinations on requests for reconsideration of decisions of the RRB's various adjudicating units.

Timetable:

Action	Date	FR Cite
NPRM	03/29/02	67 FR 15127
NPRM Comment Period End	05/28/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB03

3441. • EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 345 362(l)

CFR Citation: 20 CFR 345.202 to 204

Legal Deadline: None

Abstract: The Railroad Retirement Board amends sections 345.202 to 204 of 20 CFR part 345 to explain the effective date of consolidated employer records that result in the issuance of a joint contribution rate under the "experience rating" provisions of section 8 of the Railroad Unemployment Insurance Act. The amendment also incorporates a nomenclature change due to a recent agency reorganization.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB53

3442. • RETIREMENT AGE

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 218; 20 CFR 220; 20 CFR 225

Legal Deadline: None

Abstract: The Railroad Retirement Board amends title 20 CFR sections 218, 220, and 225, to update references in those sections to the "age" required for annuity eligibility to reflect changes to full retirement age under the Railroad Retirement Act.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB54

Railroad Retirement Board (RRB) — **Final Rule Stage**

3443. APPLICATION FOR ANNUITY OR LUMP SUM

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231d; 45 USC 231f

CFR Citation: 20 CFR 217.9; 20 CFR 217.30

Legal Deadline: None

Abstract: The Railroad Retirement Board amends sections 217.9 and 217.30 of its regulations to accept a spouse annuity application, when filed simultaneously with the railroad employee's application for a disability annuity, to be filed more than three months in advance of the earliest annuity beginning date.

Timetable:

Action	Date	FR Cite
NPRM	11/29/01	66 FR 59548
NPRM Comment Period End	01/28/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB46

3444. FREEDOM OF INFORMATION ACT REQUESTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5); 45 USC 362; 5 USC 552

CFR Citation: 20 CFR 200.4

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 200.4 to direct all Freedom of Information Act requests to the Board's General Counsel, and to extend the time within which responses may be made from 10 to 20

RRB **Final Rule Stage**

working days as provided by the Freedom of Information Act.

Timetable:

Action	Date	FR Cite
Direct Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB47

3445. APPENDIX 1 TO PART 220—LISTING OF IMPAIRMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.110; 20 CFR 220, app 1

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR 220.110 and appendix 1—Listing of Impairments, to conform the medical criteria that apply to disability determinations to the medical criteria in the Social Security Administration's regulations (20 CFR 404, subpart P, appendix 1).

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB51

Railroad Retirement Board (RRB) **Long-Term Actions**

3446. REDUCTION AND NON-PAYMENT OF ANNUITIES BY REASON OF WORK

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f(b)(5)

CFR Citation: 20 CFR 230

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR part 230 to explain how annuity deductions on account of work are assessed in accordance with current law.

Timetable:

Action	Date	FR Cite
NPRM	08/16/95	60 FR 42482
NPRM Comment Period End	09/25/95	60 FR 43999
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AA61

3447. DETERMINING DISABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.114

Legal Deadline: None

Abstract: The Railroad Retirement Board amends title 20 CFR 220.114 to expand the Board's description of the manner in which symptoms, including pain, are evaluated for purposes of determining disability.

Timetable:

Action	Date	FR Cite
NPRM	09/11/95	60 FR 47122
NPRM Comment Period End	11/13/95	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AA99

3448. CREDITABLE RAILROAD COMPENSATION

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231f

CFR Citation: 20 CFR 211.3

Legal Deadline: None

Abstract: The RRB amends its regulations regarding the creditability of pay for time lost to prohibit the crediting of pay for time lost beyond the date of a judgment or settlement, or in the absence of a judgment or settlement, beyond the date of payment. The Labor Member of the RRB dissents from this proposal and recommends allowing the crediting of pay for time lost in these circumstances when the accompanying railroad retirement taxes are paid on the compensation.

Timetable:

Action	Date	FR Cite
NPRM	12/04/97	62 FR 61488
NPRM Comment Period End	02/02/98	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701

RRB **Long-Term Actions**

Fax: 312 751-7102

RIN: 3220–AB23

3449. DETERMINING DISABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 231a; 45 USC 231f

CFR Citation: 20 CFR 220.143; 20 CFR 220.170

Legal Deadline: None

Abstract: The Railroad Retirement Board amends 20 CFR sections 220.143 and 220.170 to index the amount of earnings used to determine if an individual is engaged in substantial gainful activity (SGA) to any increase in the Social Security national average wage index, and to increase (from $200 to $530) the minimum amount of monthly earnings to count during a trial work period, and then to index that amount to the Social Security national average wage index.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB50

Railroad Retirement Board (RRB) **Completed Actions**

3450. DESIGNATION OF CENTRAL AND FIELD ORGANIZATION

Priority: Info./Admin./Other

CFR Citation: 20 CFR 200.1

Completed:

Reason	Date	FR Cite
Final Rule	02/07/02	67 FR 5723
Final Rule Effective	02/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB35

3451. ASSESSMENT OR WAIVER OF INTEREST, PENALTIES, AND ADMINISTRATIVE COSTS WITH RESPECT TO COLLECTION OF CERTAIN DEBTS

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 200.7

Completed:

Reason	Date	FR Cite
Final Rule	02/07/02	67 FR 5723
Final Rule Effective	02/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB48

3452. • EMPLOYERS' CONTRIBUTIONS AND CONTRIBUTION REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 45 USC 362(l)

CFR Citation: 20 CFR 345.111; 20 CFR 345.113 to 115; 20 CFR 345.124; 20 CFR 345.307

Legal Deadline: None

Abstract: The Railroad Retirement Board amends sections 345.111, 345.113 to 115, 345.124, and 345.307 of 20 CFR part 345, to provide for electronic filing of railroad employers' quarterly reports of contributions under the Railroad Unemployment Insurance Act, as required by the Government Paperwork Elimination Act.

Timetable:

Action	Date	FR Cite
NPRM	01/16/02	67 FR 2157
NPRM Comment Period End	03/18/02	
Final Action	03/25/02	67 FR 13567
Final Action Effective	03/25/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Marguerite P. Dadabo, Assistant General Counsel, Railroad Retirement Board, 844 North Rush Street, Chicago, IL 60611-2092
Phone: 312 751-4945
TDD Phone: 312 751-4701
Fax: 312 751-7102

RIN: 3220–AB52

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Part XLII

Selective Service System

Semiannual Regulatory Agenda

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SELECTIVE SERVICE SYSTEM (SSS)

SELECTIVE SERVICE SYSTEM

32 CFR Ch. XVI

Regulatory Agenda

AGENCY: Selective Service System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The purpose of this agenda is to report the proposed rulemaking activities of the Selective Service System that might affect the processing of registrants under the Military Selective Service Act (50 U.S.C. App. 451 *et seq.*). This information will allow the public to participate in the System's decisionmaking at an early stage.

FOR FURTHER INFORMATION CONTACT: Rudy G. Sanchez, Jr., Office of the General Counsel, Selective Service System, 1515 Wilson Boulevard, Arlington, Virginia 22209-2425; Telephone (703) 605-4012.

SUPPLEMENTARY INFORMATION: The agenda is published in accordance with the requirements of Executive Order 12866. Selective Service regulations appear in 32 CFR chapter XVI.

Dated: March 12, 2002.

Alfred Rascon,

Director of Selective Service System.

Selective Service System (SSS) — Long-Term Actions

3453. SELECTIVE SERVICE REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 50 USC app 451 et seq, Military Selective Service Act

CFR Citation: 32 CFR ch XVI

Legal Deadline: None

Abstract: Various sections of 32 CFR chapter XVI may be revised to increase clarity of expression or change procedures for registrant processing.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Rudy G. Sanchez Jr., Paralegal Specialist, Selective Service System, 5th Floor, Office of General Counsel, 1515 Wilson Boulevard, Arlington, VA 22209-2425
Phone: 703 605-4012
Fax: 703 605-4006
Email: rsanchez@sss.gov

RIN: 3240–AA01

[FR Doc. 02–7686 Filed 05–10–02; 8:45 am]

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Part XLIII

Small Business Administration

Semiannual Regulatory Agenda

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SMALL BUSINESS ADMINISTRATION (SBA)

SMALL BUSINESS ADMINISTRATION

13 CFR Ch. I

Improving Government Regulations; Semiannual Regulatory Agenda

AGENCY: Small Business Administration (SBA).

ACTION: Semiannual regulatory agenda.

SUMMARY: The entries below represent SBA's 46th semiannual regulatory agenda (agenda). SBA drafted the agenda to meet both the criteria and the spirit of the regulatory review process. SBA publishes this agenda pursuant to Executive Order 12866 and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*

FOR FURTHER INFORMATION CONTACT: For further information on agenda items, SBA encourages the public to contact the individual agency official referenced in each entry. For information concerning SBA's overall Regulatory Review and Development Program or general semiannual agenda questions, contact Martin S. Conrey, Attorney Advisor, U.S. Small Business Administration, 409 Third Street SW., Washington, DC 20416, (202) 619-0638.

SUPPLEMENTARY INFORMATION: SBA's semiannual regulatory agenda is designed to increase public knowledge of SBA's anticipated regulatory activities. Publication may encourage increased public participation in the regulatory review and development process.

SBA's agenda is divided into three parts. Part I, Proposed Rules, includes those rules that are likely to be proposed during the next 12 months. Part II, Final Rules, includes proposed rules that will probably be finalized during the agenda period. Part III, Completed Actions, includes regulations completed or withdrawn and any reviews completed since the preceding agenda.

Publication of the agenda does not impose any binding obligation on SBA with regard to any specific item. Moreover, regulatory actions not listed in the agenda are not precluded. SBA regulations are developed in a manner that promotes economic growth without imposing unnecessary regulatory burdens on the public.

Dated: March 18, 2002.

Hector V. Barreto,

Administrator.

Small Business Administration—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3454	Surety Bond Guarantee	3245-AE13
3455	Development Company Loan (504) Program Changes	3245-AE41

Small Business Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3456	Supplemental Standards of Ethical Conduct for Employees of the Small Business Administration	3245-AC96
3457	Record Disclosure and Privacy Regulations; Subpart B	3245-AE03
3458	Small Business Development Centers (SBDC) Program Revisions	3245-AE05
3459	Small Business Lending Companies Regulations	3245-AE14
3460	8(a) Business Development/Program Improvement and Technical Amendments	3245-AE38
3461	SDB Certification and Eligibility—Program Improvement and Technical Amendments	3245-AE47
3462	Size Standards: Subcontracting Size Standards	3245-AE57
3463	Small Business Investment Companies—Civil Penalties for Late Submission of Required Reports	3245-AE69
3464	Small Business Investment Companies—Amendment Under the Small Business Reauthorization Act of 2000	3245-AE70
3465	Small Business Size Regulation; 8(a) Business Development/Small Disadvantaged Business Status Determinations; Rules of Procedure Governing Cases Before the Office of Hearings and Appeals	3245-AE71
3466	Small Business Size Regulations; Small Business Innovation Research Program	3245-AE76
3467	Small Business Size Standards; Testing Laboratories	3245-AE78
3468	SBIC—Maximum Leverage Eligibility	3245-AE79
3469	Small Business Size Standards; Information Technology Value Added Resellers	3245-AE80
3470	Small Business Size Standards; Surety Bond Guarantee Program	3245-AE81
3471	Business Loans and Development Company Loans; Applications by Certified Development Companies (CDCs) for Liquidation and Litigation Authority/Uniform Liquidation and Litigation Procedures	3245-AE83
3472	Business Loans and Development Company Loans; Premier Certified Lender Program (PCLP)	3245-AE87
3473	Small Business Investment Companies	3245-AE88
3474	Small Business Size Standards; Forest Fire Suppression and Fuels Management Services	3245-AE89
3475	New Markets Venture Capital Program; Amendments	3245-AE91
3476	Small Business Size Regulations: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals	3245-AE92
3477	Record Disclosure and Privacy; The Electronic Freedom of Information Act Amendments of 1996	3245-AE94
3478	Small Business Size Standards; Travel Agencies	3245-AE95

SBA

Small Business Administration—Proposed Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3479	Small Business Technology Transfer Program Policy Directive	3245-AE96

Small Business Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3480	Pre-Disaster Mitigation Loan Program Amendments	3245-AE44
3481	Administrative Wage Garnishment and Administrative Offset	3245-AE50
3482	Size Standards: Inflation Adjustment	3245-AE56
3483	Nondiscrimination on the Basis of Race, Color, National Origin, Handicap, and Age in Programs or Activities Receiving Federal Financial Assistance	3245-AE59
3484	HUBZone Empowerment Contracting Program	3245-AE66
3485	Business Loans and Development Company Loans	3245-AE68
3486	Small Business Innovation Research (SBIR) Program Policy Directive	3245-AE72
3487	Small Business Size Regulation; Petroleum Refineries	3245-AE84

Small Business Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3488	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)	3245-AE61

Small Business Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3489	Size Standards for Compliance With Programs of Other Agencies	3245-AE42
3490	Disaster Loan Program	3245-AE82
3491	Small Business Size Regulation; Travel Agencies Affected by September 11, 2001	3245-AE93

Small Business Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3245-AE18	Small Business Size Standards; Electric Services	03/06/2002	Withdrawn
3245-AE65	The Women-Owned Small Business Federal Contract Assistance Program	04/24/2002	Withdrawn
3245-AE85	8(a) Business Development/Small Disadvantage Business Status Determination	03/18/2002	Withdrawn

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Small Business Administration (SBA) — Prerule Stage

3454. SURETY BOND GUARANTEE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC app 3; 15 USC 687b; 15 USC 694b; PL 105-135; 15 USC 687c; 15 USC 694a

CFR Citation: 13 CFR 115

Legal Deadline: None

Abstract: SBA is considering revising program regulations to include policy and procedural modifications. Planned regulatory changes would pertain to both the Prior Approval and the Preferred Surety Bond programs.

Timetable:

Action	Date	FR Cite
ANPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dionne Neal, Acting DAA/Office of Surety Guarantees, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-7601

RIN: 3245–AE13

3455. DEVELOPMENT COMPANY LOAN (504) PROGRAM CHANGES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 695

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: The Office of Financial Assistance proposes to publish an Advanced Notice of Proposed Rulemaking to solicit opinions regarding our intention to propose a regulation to consider 504 program changes including a better definition of "local economic development" and the organizational and program requirements Certified Development Companies (CDCs) must satisfy in order to be in compliance with this concept and whether CDCs should be allowed to establish entities to participate as 7(a) lenders. As part of the regulation, for-profit CDCs' organizational requirements will be dealt with specifically to ensure that they are in compliance with the congressional intent for the program.

Timetable:

Action	Date	FR Cite
ANPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Gail Hepler, Chief, 504 Branch, Small Business Administration, Room 804, 409 Third Street SW, Washington, DC 20416
Phone: 202 653-7530

RIN: 3245–AE41

Small Business Administration (SBA) — Proposed Rule Stage

3456. SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE SMALL BUSINESS ADMINISTRATION

Priority: Other Significant

Legal Authority: 15 USC 684; 15 USC 637(a)(18); 15 USC 637(a)(19); EO 12674

CFR Citation: 5 CFR 5400

Legal Deadline: None

Abstract: The SBA and the Office of Government Ethics (OGE) are jointly issuing this rule, which is designed to establish uniform standards of ethical conduct for the officers and employees of the SBA. The rule will be published at 5 CFR chapter XLIV and will supplement the Standards of Ethical Conduct for Employees of the executive branch issued by the OGE (57 FR 35006; August 7, 1992). The rule is necessary to supplement the standards issued by OGE because it addresses ethical issues that are unique to SBA.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Robinson S. Nunn, Chief Counsel for Ethics, Small Business Administration, 409 Third Street SW, 7th Floor, Washington, DC 20416
Phone: 202 205-6642

RIN: 3245–AC96

3457. RECORD DISCLOSURE AND PRIVACY REGULATIONS; SUBPART B

Priority: Substantive, Nonsignificant

Legal Authority: PL 104-231; 5 USC 552; 5 USC 552a

CFR Citation: 13 CFR 102

Legal Deadline: None

Abstract: This proposed regulation will amend 13 CFR 102, amendments to subpart B "The Privacy Act" (PA). This action proposes to add new routine disclosures, correct the definition of "system of records," require identification of requesters, clarify when lack of social security number can cause benefit denial, and provide for one free copy of an official personnel file.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Lisa Babcock, Chief, Freedom of Information Act Office, Small Business Administration, Room 2441, 409 Third Street SW, Washington, DC 20416
Phone: 202 401-8200
Fax: 202 205-7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE03

3458. SMALL BUSINESS DEVELOPMENT CENTERS (SBDC) PROGRAM REVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 634(b)(6); 15 USC 648

CFR Citation: 13 CFR 130

Legal Deadline: None

Abstract: SBA is revising its SBDC regulations to reflect statutory and other changes.

SBA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Johnnie L. Albertson, AA/SBDCs, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6766

RIN: 3245–AE05

3459. SMALL BUSINESS LENDING COMPANIES REGULATIONS

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(b)

CFR Citation: 13 CFR 120.470

Legal Deadline: None

Abstract: This rulemaking would amend 13 CFR 120.470 to clarify and strengthen the rules regarding Small Business Lending Companies (SBLCs) monitoring and oversight for safety and soundness, compliance, and related areas.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Janet A. Tasker, Associate Administrator for Lender Oversight, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-3049
Email: janet.tasker@sba.gov

RIN: 3245–AE14

3460. 8(A) BUSINESS DEVELOPMENT/PROGRAM IMPROVEMENT AND TECHNICAL AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 631

CFR Citation: 13 CFR 124

Legal Deadline: None

Abstract: This rule will make technical corrections and clarifying amendments to the 8(a) regulations. The amendments will clarify, and in some cases modify, certain requirements and procedures. For example, the rules governing the mentor/protege program will be clarified. Part 124 will also be amended to include certain new policies and procedures.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Martin Gold, Acting Deputy AA/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-7340

RIN: 3245–AE38

3461. SDB CERTIFICATION AND ELIGIBILITY—PROGRAM IMPROVEMENT AND TECHNICAL AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(j); 15 USC 637(a); 15 USC 637(d); PL 99-661; PL 100-656, sec 1207; PL 101-37; PL 101-574; 42 USC 9815

CFR Citation: 13 CFR 124; 13 CFR 134

Legal Deadline: None

Abstract: Program improvements and technical amendments to clarify regulations governing the SDB program. The proposed changes clarify requirements, enhance customer service, and correct omissions. For example: A procedure for recertifying eligible firms is established; circumstances under which SBA may reevaluate determinations made by Private Certifiers is broadened; provisions are made to prevent loss of SDB certification by a subcontractor following award of a contract; and stipulations are made requiring contracting officers to forward protests to SBA for determination of merit.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Martin Gold, Acting Deputy AA/Business Development, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-7340

RIN: 3245–AE47

3462. SIZE STANDARDS: SUBCONTRACTING SIZE STANDARDS

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule proposes to revise the size standards applicable to subcontractors to Federal prime contractors.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE57

3463. SMALL BUSINESS INVESTMENT COMPANIES—CIVIL PENALTIES FOR LATE SUBMISSION OF REQUIRED REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; 15 USC 662

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will provide for the imposition of civil penalties on small business investment companies that fail to file required reports by the applicable due date.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Harry Haskins, Acting Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6694
Fax: 202 205-6959

RIN: 3245–AE69

3464. SMALL BUSINESS INVESTMENT COMPANIES—AMENDMENT UNDER THE SMALL BUSINESS REAUTHORIZATION ACT OF 2000

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m; PL 106-554

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: The Small Business Reauthorization Act of 2000 made a number of changes to the Small Business Investment Act of 1958, as amended. For the Small Business Investment Companies (SBIC) Program, the changes include provisions effecting the definition of "long-term financing," the timing of permitted tax distributions by SBICs, and the establishment of subsidy fees to be paid by SBICs. This rule incorporates these changes.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Harry Haskins, Acting Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6694
Fax: 202 205-6959

RIN: 3245–AE70

3465. SMALL BUSINESS SIZE REGULATION; 8(A) BUSINESS DEVELOPMENT/SMALL DISADVANTAGED BUSINESS STATUS DETERMINATIONS; RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 504; 15 USC 632; 15 USC 634(b)(6); 15 USC 637(a)

CFR Citation: 13 CFR 134

Legal Deadline: None

Abstract: This rule amends the regulations governing proceedings before SBA's Office of Hearings and Appeals (OHA) to change and clarify procedures to make them easier to use and more efficient, codify OHA case law pertaining to its own procedures, and conform regulations to longstanding practice. In addition, the rule conforms OHA's regulations to reflect the North American Industry Classification System (NAICS), which has replaced the Standard Industrial Code (SIC) system.

Timetable:

Action	Date	FR Cite
NPRM	03/12/02	67 FR 11057
NPRM Comment Period End	04/11/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Federal

Agency Contact: Gloria Blazsik, Acting Assistant Administor for Hearings and Appeals, Small Business Administration, 409 Third Street SW, Suite 5900, Washington, DC 20416
Phone: 202 401-8200

RIN: 3245–AE71

3466. SMALL BUSINESS SIZE REGULATIONS; SMALL BUSINESS INNOVATION RESEARCH PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will allow wholly owned subsidiaries to be eligible for Small Business Innovation Research funding agreements. Current regulations limit the eligibility of the program to businesses owned by individuals.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE76

3467. SMALL BUSINESS SIZE STANDARDS; TESTING LABORATORIES

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the size standard for the Testing Laboratories industry. Changes in the composition of the industry indicate a higher size standard than $6 million is warranted to define which businesses are small businesses.

Timetable:

Action	Date	FR Cite
NPRM	04/09/02	67 FR 17020
NPRM Comment Period End	05/10/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE78

3468. SBIC—MAXIMUM LEVERAGE ELIGIBILITY

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 662; 15 USC 681 et seq; 15 USC 683; 15 USC 687(c); 15 USC 687b; 15 USC 687d; 15 USC 687g; 15 USC 687m

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This rule will implement a provision of the New Markets Venture Capital Program Act of 2000 that allows small business investment companies to be eligible for additional Government leverage based on their investments in low-income areas.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Harry Haskins, Acting Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6694
Fax: 202 205-6959

RIN: 3245–AE79

3469. SMALL BUSINESS SIZE STANDARDS; INFORMATION TECHNOLOGY VALUE ADDED RESELLERS

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for Information Technology (IT) Value Added Resellers. Current regulations apply the same eligibility requirements to these types of businesses as for dealers and nonmanufacturers. To establish more appropriate eligibility requirements for IT Value Added Resellers, a new industry category and size standard will be established.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE80

3470. SMALL BUSINESS SIZE STANDARDS; SURETY BOND GUARANTEE PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will revise the size standard applicable to construction and service companies seeking assistance under SBA's Surety Bond Guarantee Program. Changes in the program and economic trends support an increase to the current $6 million size standard.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE81

3471. • BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS; APPLICATIONS BY CERTIFIED DEVELOPMENT COMPANIES (CDCS) FOR LIQUIDATION AND LITIGATION AUTHORITY/UNIFORM LIQUIDATION AND LITIGATION PROCEDURES

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule would implement statutory provisions that give some Certified Development Companies (CDCs) authority to handle liquidation and litigation of loans that are funded with the proceeds of debentures guaranteed by the SBA under the 504 loan program. It also proposes uniform liquidation and litigation procedures for authorized CDCs and for lenders participating in the 7(a) business loan program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: James W. Hammersley, Director for Secondary Market Sales, Small Business Administration, 8th Floor, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6490

RIN: 3245–AE83

3472. • BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS; PREMIER CERTIFIED LENDER PROGRAM (PCLP)

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 696(3); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: This proposed rule identifies certain Premier Certified Lenders Program participation requirements and various policies and procedures designed to ensure the program is properly administered, managed, and controlled.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charles Thomas, Director, Program Development, Small Business Administration, Financial Assistance, 409 Third Street SW, 8th Floor, Washington, DC 20416
Phone: 202 205-6656

RIN: 3245–AE87

3473. • SMALL BUSINESS INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 681 et seq; 15 USC 683; 15 USC 687b; 15 USC 687(c); 15 USC 687d; 15 USC 687g; 15 USC 687m

CFR Citation: 13 CFR 107

Legal Deadline: None

Abstract: This proposed rule would allow a Small Business Investment Company (SBIC) to assume control over a small business concern, without

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notice to the SBA, and to retain such control for a period of up to 5 years or longer with SBA's approval. The proposed rule would also allow an SBIC to sell equity securities in a portfolio concern to a competitor to that portfolio concern.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Harry Haskins, Acting Associate Administrator for Investment, Small Business Administration, 409 Third Street SW, Suite 6300, Washington, DC 20416
Phone: 202 205-6694
Fax: 202 205-6959

RIN: 3245–AE88

3474. • SMALL BUSINESS SIZE STANDARDS; FOREST FIRE SUPPRESSION AND FUELS MANAGEMENT SERVICES

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644(c); 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule will establish a size standard for Forest Fire Suppression and Fuels Management.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE89

3475. • NEW MARKETS VENTURE CAPITAL PROGRAM; AMENDMENTS

Priority: Other Significant

Legal Authority: 15 USC 689-689q

CFR Citation: 13 CFR 108

Legal Deadline: None

Abstract: The SBA proposes to make several amendments to the regulations for the New Markets Venture Capital (NMVC) program. The majority of the proposed amendments make technical changes to the regulations, to correct typographical errors or to clarify language. SBA also proposes to make some substantive amendments to the regulations, which SBA believes will result in more efficient and effective delivery of NMVC program benefits to the targeted geographic areas.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin J. Belton, Director, Office of New Markets Venture Capital, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-7027

RIN: 3245–AE91

3476. • SMALL BUSINESS SIZE REGULATIONS: RULES OF PROCEDURE GOVERNING CASES BEFORE THE OFFICE OF HEARINGS AND APPEALS

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-135, sec 601 et seq, 111 Stat 2592; 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 102-486, 106 Stat 2776, 3133

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: The rule will amend SBA's Small Business Size Regulations and the regulations applying to appeals of size determinations. The rule will further amend the definitions of affiliation, annual receipts, and employees. It will also make procedural and technical changes to cover new programs such as SBA's HUBZone program and the Governmentwide Small Disadvantaged Business Program. The proposed rule will codify several long-standing precedents of SBA's Office of Hearing and Appeals and will clarify the jurisdiction of that office. Further, the rule will amend all references in part 134 from the Standard Industrial Classification code to the North American Industry Classification System (NAICS) code because on October 1, 2000, SBA converted to NAICS.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal, Tribal

Agency Contact: Luz Hopewell, Associate Administrator for Government Contracting, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6463

RIN: 3245–AE92

3477. • RECORD DISCLOSURE AND PRIVACY; THE ELECTRONIC FREEDOM OF INFORMATION ACT AMENDMENTS OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 552

CFR Citation: 13 CFR 102, subpart A

Legal Deadline: None

Abstract: The Electronic Freedom of Information Act Amendments of 1996 made several changes. The amended regulations will implement those changes, making more information available electronically, allow more time to respond to requests, increase processing fees, etc.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa Babcock, Chief, Freedom of Information Act Office, Small Business Administration, Room 2441, 409 Third Street SW, Washington, DC 20416
Phone: 202 401-8200
Fax: 202 205-7059
Email: lisa.babcock@sba.gov

RIN: 3245–AE94

3478. • SMALL BUSINESS SIZE STANDARDS; TRAVEL AGENCIES

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: The Small Business Administration proposes to increase the size standard for Travel Agencies (North American Industry Classification System (NAICS) code 561510) from $1 million to $3 million. This action will better define the size of businesses in this industry that the SBA believes should be eligible for Federal small business assistance programs.

Timetable:

Action	Date	FR Cite
NPRM	03/15/02	67 FR 11881
NPRM Comment Period End	04/15/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE95

3479. • SMALL BUSINESS TECHNOLOGY TRANSFER PROGRAM POLICY DIRECTIVE

Priority: Other Significant

Legal Authority: 15 USC 638

CFR Citation: None

Legal Deadline: None

Abstract: This policy directive proposes to incorporate recently enacted statutory requirements. The purpose of the directive is to provide guidance to participating Federal agencies for the general conduct of the Small Business Technology Transfer Program.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Directive	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Maurice Swinton, Assistant Administrator for Technology, Small Business Administration, Office of Government Contracting/Business Development, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6450

RIN: 3245–AE96

Small Business Administration (SBA) — Final Rule Stage

3480. PRE-DISASTER MITIGATION LOAN PROGRAM AMENDMENTS

Priority: Other Significant

Legal Authority: PL 106-24

CFR Citation: 13 CFR 123.400 et seq

Legal Deadline: None

Abstract: Necessary amendments to Pre-Disaster Mitigation Loan Program to permit implementation of the program. Amendments will clarify and add to existing regulations in areas of eligibility and process.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37307
NPRM Comment Period End	07/14/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: George Camp, Supervisory Program Analyst, Small Business Administration, Suite 6050, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-0734
Email: george.camp@sba.gov

RIN: 3245–AE44

3481. ADMINISTRATIVE WAGE GARNISHMENT AND ADMINISTRATIVE OFFSET

Priority: Other Significant

Legal Authority: 5 USC 504; 15 USC 632; 15 USC 634(b)(6); 15 USC 637(a); 31 USC 3711; 31 USC 3720; 31 USC 3716

CFR Citation: 13 CFR 134; 13 CFR 140

Legal Deadline: None

Abstract: SBA is issuing a rule adopting administrative wage garnishment and administrative offset regulations to implement the Debt Collection Improvement Act of 1996. The rule would allow SBA to garnish the wages of a person indebted to the United States for any non-tax debt without first obtaining a judgment. The debtor generally would be entitled to a hearing before an appropriate official. The proposed rule would also include administrative offset and other remedies to comply with Treasury directives.

Timetable:

Action	Date	FR Cite
NPRM	06/27/00	65 FR 39567
NPRM Comment Period End	08/28/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Arnold Rosenthal, Assistant Administrator for Portfolio Management, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6481

RIN: 3245–AE50

3482. SIZE STANDARDS: INFLATION ADJUSTMENT

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This final rule adjusts SBA's receipt-based size standards for inflation since the last time they were adjusted in 1994.

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SBA — **Final Rule Stage**

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/23/02	67 FR 3041
Interim Final Rule Comment Period End	02/22/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE56

3483. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN, HANDICAP, AND AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 13 CFR 112; 13 CFR 113; 13 CFR 117

Legal Deadline: None

Abstract: The Department of Justice proposes that 24 Federal agencies jointly issue amendments to their regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1972 (section 504), and the Age Discrimination Act of 1975 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Agency's title VI, section 504, and Age Discrimination Act regulations.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/06/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Carol L. Walker, Director, Office of Civil Rights Compliance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6750

RIN: 3245–AE59

3484. HUBZONE EMPOWERMENT CONTRACTING PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 644(c); 15 USC 662(5); PL 105-135, sec 601 et seq, 111 Stat 2592; sec 304, PL 103-403, 108 Stat 4175, 4188

CFR Citation: 13 CFR 121; 13 CFR 125; 13 CFR 126

Legal Deadline: None

Abstract: SBA proposes to amend its regulations for the HUBZone Empowerment Contracting Program to incorporate changes enacted by Public Law 106-554. The amended regulation addresses eligibility requirements for small business concerns owned by Native American Tribal Governments and Community Development Corporations and the addition of new HUBZone areas called redesignated areas. This rule proposes: (1) consolidating all subcontracting requirements into one regulation, (2) language on how to petition for changes in subcontracting requirements, (3) to apply nonmanufacturer rules consistently for all programs, (4) how small nonmanufacturers should submit products of any manufacturer for contracts below the simplified acquisition threshold, (5) addressing statutory amendments, and (6) making technical changes.

Timetable:

Action	Date	FR Cite
NPRM	01/28/02	67 FR 3826
NPRM Comment Period Extended	02/26/02	67 FR 8739
NPRM Comment Period End	02/27/02	
NPRM Comment Period End	03/29/02	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael P. McHale, Associate Administrator for HUBZone Empowerment Contracting Program, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6731

RIN: 3245–AE66

3485. BUSINESS LOANS AND DEVELOPMENT COMPANY LOANS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(a); 15 USC 636(h); 15 USC 696(3); 15 USC 697(a)(2)

CFR Citation: 13 CFR 120

Legal Deadline: None

Abstract: Recently enacted statutory amendments require changes to SBA rules concerning loan guaranty and loan amounts, minimum guaranteed dollar amount of 7(a) loans, percentages of financing which can be guaranteed by SBA, guarantee fees paid by lenders, real estate occupancy rules, and borrower prepayment penalties. This direct final rule would implement the statutory provisions.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/14/01	66 FR 56985
Direct Final Rule Comment Period End	12/14/01	
Direct Final Rule Withdrawn	12/14/01	66 FR 64739
Direct Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: James W. Hammersley, Director for Secondary Market Sales, Small Business Administration, 8th Floor, 409 Third Street SW, Washington, DC 20416

SBA — **Final Rule Stage**

Phone: 202 205-6490

RIN: 3245–AE68

3486. • SMALL BUSINESS INNOVATION RESEARCH (SBIR) PROGRAM POLICY DIRECTIVE

Priority: Other Significant

Legal Authority: 15 USC 638; PL 102-564, sec 202(d), 106 Stat 4294

CFR Citation: None

Legal Deadline: None

Abstract: This document proposes revisions to the Small Business Innovation Research (SBIR) Program Policy Directive. This revised proposed policy directive reflects recently enacted statutory requirements. It is proposed to provide guidance to participating Federal agencies for the general conduct of the SBIR Program.

Timetable:

Action	Date	FR Cite
Notice of Proposed Policy Directive	05/18/01	66 FR 27721
Comment Period End	06/18/01	
Comment Period Reopened	06/22/01	66 FR 33598
Comment Period End	07/23/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Maurice Swinton, Assistant Administrator for Technology, Small Business Administration, Office of Government Contracting/Business Development, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6450

RIN: 3245–AE72

3487. • SMALL BUSINESS SIZE REGULATION; PETROLEUM REFINERIES

Priority: Other Significant

Legal Authority: 15 USC 632(a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644; 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: This rule proposes to increase the size standard for petroleum refiners to 155,000 barrels per calendar day from 75,000 barrels per day. This size standard applies to only refiners competing on Federal contracts to provide petroleum products.

Timetable:

Action	Date	FR Cite
NPRM	02/12/02	67 FR 6437
NPRM Comment Period End	03/14/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE84

Small Business Administration (SBA) — Long-Term Actions

3488. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 145

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Michael Campilongo
Phone: 202 205-6879

RIN: 3245–AE61

Small Business Administration (SBA) — Completed Actions

3489. SIZE STANDARDS FOR COMPLIANCE WITH PROGRAMS OF OTHER AGENCIES

Priority: Substantive, Nonsignificant

CFR Citation: 13 CFR 121

Completed:

Reason	Date	FR Cite
Final Action	03/26/02	67 FR 13714
Final Action Effective	04/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carl Jordan
Phone: 202 205-6093
Fax: 202 205-6390

RIN: 3245–AE42

3490. • DISASTER LOAN PROGRAM

Priority: Other Significant

Legal Authority: 15 USC 634(b)(6); 15 USC 636(b); 15 USC 636(c); 15 USC 636(f); PL 102-395, 106 Stat 1828, 1864; PL 103-75, 107 Stat 739; PL 106-50, 113 Stat 245

CFR Citation: 13 CFR 123

Legal Deadline: None

Abstract: This interim final rule allows SBA to make economic injury disaster loans to eligible small business concerns outside the declared disaster areas that suffered substantial economic injury as a direct result of the destruction of the World Trade Center or damage to the Pentagon on September 11, 2001, or as a direct result of any related Federal action taken between September 11, 2001, and October 22, 2001.

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SBA **Completed Actions**

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/01	66 FR 53329
Interim Final Rule Comment Period End	11/21/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Herbert L. Mitchell, Associate Administrator for Disaster Assistance, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6734

RIN: 3245–AE82

3491. • SMALL BUSINESS SIZE REGULATION; TRAVEL AGENCIES AFFECTED BY SEPTEMBER 11, 2001

Priority: Other Significant

Legal Authority: 15 USC 632 (a); 15 USC 634(b)(6); 15 USC 637(a); 15 USC 638; 15 USC 644(c); 15 USC 662(5)

CFR Citation: 13 CFR 121

Legal Deadline: None

Abstract: SBA is increasing the size standard for Travel Agencies from $1 million to $3 million for purposes of eligibility of economic injury disaster loan assistance to small business concerns affected as a result of the terrorist attacks on the World Trade Center and the Pentagon.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/15/02	67 FR 11874
Interim Final Rule Comment Period End	04/15/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gary M. Jackson, AA/Size Standards, Small Business Administration, 409 Third Street SW, Washington, DC 20416
Phone: 202 205-6618

RIN: 3245–AE93

[FR Doc. 02–7687 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part XLIV

Social Security Administration

Semiannual Regulatory Agenda

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SOCIAL SECURITY ADMINISTRATION (SSA)

SOCIAL SECURITY ADMINISTRATION

Office of the Commissioner

20 CFR Ch. III

Semiannual Unified Regulatory Agenda

AGENCY: Social Security Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: Executive Order (E.O.) 12866, as amended by E.O. 13258, entitled Regulatory Planning and Review, issued September 30, 1993, and the Regulatory Flexibility Act of 1980 (Pub. L. 96-354) require each Federal agency to publish semiannually a brief description of all regulatory actions under development or review, expected to be under development or review for the next 12 months, or completed since the previous publication of the agenda. Our last agenda of regulations was published December 3, 2001.

FOR FURTHER INFORMATION CONTACT: For further information about a specific regulatory action, contact the person identified as the agency contact for that action. Comments or inquiries of a general nature should be directed to Georgia E. Myers, Regulations Officer, Social Security Administration, 2109 West Low Rise Building, 6401 Security Boulevard, Baltimore, MD 21235-6401; Telephone (410) 965-3632 or TTY (410) 966-5609.

SUPPLEMENTARY INFORMATION: The Social Security Administration (SSA) has responsibility for the retirement, survivors, and disability insurance programs under title II of the Social Security Act (the Act), the Supplemental Security Income (SSI) program under title XVI of the Act, and Special Benefits to Certain World War II Veterans under title VIII of the Act. We are not a regulatory agency. Our regulations generally do not impose burdens on the private sector or on State, local, or tribal governments. Our regulations document the rules under which we make eligibility determinations and set forth both the responsibilities of the Agency towards the public and beneficiaries' rights and responsibilities under the programs we administer.

Our regulatory efforts can be placed into one of the following three categories: (1) legislative implementation; (2) program changes to improve SSA service to the public; and (3) improvements or clarifications to enhance effective stewardship of SSA programs.

We continue to seek legislative improvements for the programs we administer. However, because of the complexity of our programs, statutory language is rarely detailed enough to govern the actions of agency adjudicative decision-makers. Supporting regulations are often required. In some instances, Congress directs SSA to issue implementing regulations. For other legislative provisions, SSA regulations provide program information to applicants for benefits, current beneficiaries and their legal counsels.

Included in our agenda are items that will amend our regulations to include all the provisions of "The Ticket to Work and Work Incentives Improvement Act of 1999," (Pub. L. 106-170), which was signed on December 17, 1999. Among the provisions still requiring regulations are provisions that will suspend continuing disability reviews based on work activity, expedite reinstatement of disability benefits terminated due to work activity, and provide protection and advocacy for people with disabilities who are seeking the Return-to-Work services.

An area in which we are working hard to deliver high quality service is our disability determination process. Several of our agenda items support improvements to disability program administration. We have tested a prototype involving a combination of modifications to the disability determination process. We plan to implement elements of the redesigned disability claims process (the prototype) that have been tested and found to further redesign goals. As we evaluate the prototype experience and identify the most positive elements of the prototype, we plan to publish regulations to implement specific elements nationally.

The agenda also contains updates to many of the medical listings to reflect advances in medical knowledge, treatment and methods of evaluation. These listing changes are included in President Bush's Management Agenda.

SSA is committed to enhancing the service that we provide to the public by reducing the time it takes them to receive a hearing and a decision. An important initiative listed in the Agenda, *Video Teleconferencing of Appearances before Administrative Law Judges of the Social Security Administration*, is expected to improve service to the public by providing faster access to a hearing before an Administrative Law Judge (ALJ). It removes the need for the claimant (and representative, if any) and the ALJ to be physically present at the same location.

Effective stewardship of SSA programs requires mechanisms to assure that benefits are used to meet the needs of beneficiaries who are not able to manage their own benefits due to legal incompetence or medical infirmity. A proposed regulation will make improvements to the representative payment procedures needed to assure program integrity. A final regulation that would impose sanctions on individuals who knowingly make false or misleading statements to SSA is also included.

We have also included in this agenda, two regulations that provide SSA with additional tools to strengthen the integrity of the Social Security and SSI programs. A proposed regulation implements a provision of the Foster Care Independence Act of 1999 authorizing SSA to obtain information from financial institutions in order to determine initial or continuing eligibility for SSI benefits. The second proposed regulation would allow SSA to use administrative wage garnishment to recover outstanding debts.

Simplifying the rules governing the SSI program is also important to SSA's efforts to enhance its service to the public. Three proposed regulations would help by changing the way we count clothing, one automobile, household goods and personal effects under the SSI program.

At this time of heightened interest in the privacy area, we are proposing to completely update our regulation on privacy and disclosure.

We continue to work diligently to improve our program benefit regulations and to develop partnerships with large segments of the community of interest groups concerned about Social Security programs. The remainder of our Unified Agenda items reflect such improvements and clarifications.

The April 2002 regulatory agenda for the Social Security Administration follows.

Dated: March 22, 2002.

Georgia E. Myers,

SSA Regulations Officer.

SSA

Social Security Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3492	Revised Medical Criteria for Endocrine Disorders (436P)	0960-AD78
3493	Definition of "Largest Benefit Amount" for Simultaneous Entitlement to Child's Benefits (481P)	0960-AD95
3494	Supplemental Standards for Ethical Conduct for Employees of the Social Security Administration (601P)	0960-AE48
3495	Deeming of Income From an Ineligible Spouse to an Eligible Individual and an Eligible Child (606P)	0960-AE50
3496	Effectuation of Title VI of the Civil Rights' Act of 1964, the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 in Programs Receiving Financial Assistance by SSA (617P)	0960-AE63
3497	Enforcement of Nondiscrimination in Social Security Programs or Activities (661P)	0960-AE78
3498	Privacy and Disclosure of Official Records and Information (711P)	0960-AE88
3499	Federal Salary Offset (Withholding a Portion of a Federal Employee's Salary To Collect a Delinquent Debt Owed to the Social Security Administration) (721P)	0960-AE89
3500	Administrative Wage Garnishment (To Repay a Debt Owed to the Social Security Administration) (724P)	0960-AE92
3501	Work Activity Standard as a Basis for Review of an Individual's Disabled Status (Ticket to Work and Work Incentives Improvement Act of 1999) (725P)	0960-AE93
3502	Medical Equivalence for Adults and Children (787P)	0960-AF19
3503	Expedited Reinstatement of Disability Benefits (Ticket to Work and Work Incentives Improvement Act) (790P)	0960-AF21
3504	SSI Trusts and Transfers of Resources (791P)	0960-AF22
3505	Revised Medical Criteria for Evaluating Genitourinary Disorders (802P)	0960-AF30
3506	Revised Medical Criteria of Evaluating Impairments Affecting Multiple Body Systems (803P)	0960-AF32
3507	Revised Medical Criteria for Evaluating Special Senses and Speech Disorders (805P)	0960-AF34
3508	Clarification of Rules Involving RFC Assessments; Clarification of Use of Vocational Experts & Other Sources of the Sequential Evaluation Process; Incorporation of "Special Profile" Into Regs (808P)	0960-AF37
3509	Wage Reports and Pension Information (809P)	0960-AF38
3510	Filing Claims Under the Federal Tort Claims Act and the Military Personnel and Civilian Employees Claims Act (785P)	0960-AF39
3511	Disability Insurance Program Demonstration Project Authority (Ticket to Work and Work Incentives Improvement Act of 1999) (789P)	0960-AF41
3512	Access to Information Held by Financial Institutions (815P)	0960-AF43
3513	Revisions to the Medical-Vocational Guidelines (823P)	0960-AF47
3514	Revised Medical Criteria for Evaluating Cardiovascular Disorders (826P)	0960-AF48
3515	Representative Payment Under Title II and XVI of the Social Security Act (827P)	0960-AF49
3516	Removal of Clothing from the Definition of Income and From the Definition of In-Kind Support and Maintenance Under the Supplemental Security Income Program (834P)	0960-AF50
3517	Exclusion of One Automobile From Resources (835P)	0960-AF51
3518	Exclusion of Household Goods and Personal Effects Under the Supplemental Security Income (SSI) Program (837P)	0960-AF55
3519	Non-Payment of Monthly Social Security Benefits to Aliens Residing in the United States Who Are Not Lawfully Present (849P)	0960-AF56
3520	Determining Disability for an Individual with Drug Addiction or Alcoholism (851P)	0960-AF57
3521	Revised Medical Criteria for Evaluating Respiratory System Disorders (859P)	0960-AF58
3522	Special Benefits for Certain World War II Veterans (880P)	0960-AF61
3523	Amendments to Annual Earnings Test Regulations (866P)	0960-AF62
3524	Revising the Rules on Consideration of Work History in Determining Whether an Individual is Disabled (875P)	0960-AF64
3525	Revising the Rules on the Steps for Evaluating Disability (894P)	0960-AF65
3526	Compensation for Qualified Organizations Serving as a Representative Payee (846P)	0960-AF66
3527	Clarification of the Disability Exclusion (915P)	0960-AF71
3528	Special Benefits for Certain World War II Veterans; Representative Payment, Reporting Requirements, Suspension and Termination Events, Overpayments, and Administrative Review Process (922P)	0960-AF72
3529	Elimination of Sanctions for Refusal of Vocational Rehabilitation Services Without Good Cause and Elimination of Referrals for Vocational Rehabilitation Services (925P)	0960-AF74
3530	Continued Payment of Benefits to Certain Individuals Who Medically Recover While Participating in Certain Vocational Rehabilitation Programs (926P)	0960-AF75

Social Security Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3531	Revised Medical Criteria for Evaluating Hematologic Disorders and Malignant Neoplastic Diseases (399F)	0960-AD67

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Social Security Administration—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3532	Repeal of Facility of Payment Provision (508F)	0960-AE02
3533	Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, Other Nonprofit Organizations, and Commercial Organizations (547F)	0960-AE25
3534	Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments (555F)	0960-AE28
3535	Restrictions on Lobbying in Connection with the Award of Grants, Contracts, and Cooperative Agreements (556F)	0960-AE29
3536	Technical Changes to Supplemental Security Income (SSI) Regulations (664F)	0960-AE79
3537	OASDI and SSI; Administrative Review Process; Video Teleconferencing Appearances Before Administrative Law Judges of the Social Security Administration (737F)	0960-AE97
3538	Cost of Living Increases in Primary Insurance Amounts (759F)	0960-AF14
3539	Change in Retirement Age (775F)	0960-AF16
3540	Revised Medical Criteria for Evaluating Impairments of the Digestive System (800F)	0960-AF28
3541	Revised Medical Criteria for Evaluating Skin Disorders (801F)	0960-AF29
3542	Implementing the Redesigned Disability Process (816F)	0960-AF44
3543	Exclusion of Representatives and Health Care Providers Convicted of Violations from Participation in Social Security Disability Programs (820F)	0960-AF46
3544	Filing of Applications and Related Forms (797F)	0960-AF52
3545	Collection of Supplemental Security Income Overpayments from Title VIII Benefits (819F)	0960-AF53
3546	Payment of Benefits to Aliens Residing Outside the United States (909F)	0960-AF70

Social Security Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3547	Old-Age, Survivors, and Disability Insurance Benefits; Replacing Social Security Number Cards (543F)	0960-AE18
3548	Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) (554F)	0960-AE27
3549	Dedicated Accounts and Installment Payments for Certain Past Due SSI Benefits (622F)	0960-AE59
3550	Assignment of Social Security Administration Numbers (SSN) for Nonwork Purposes (751P)	0960-AF05
3551	Revised Medical Criteria for Evaluating Immune System Disorders (804P)	0960-AF33
3552	Revised Medical Criteria for Evaluating Neurological Disorders (806P)	0960-AF35
3553	Revised Medical Criteria for Evaluating Growth Disorders (444P)	0960-AF67
3554	Revised Medical Criteria for Evaluating Mental Disorders (886P)	0960-AF69

Social Security Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3555	Technical Revisions to Medical Criteria for Determinations of Disability (740F)	0960-AE99
3556	Ticket to Work and Self-Sufficiency Program (Ticket to Work and Work Incentives Improvement Act of 1999) (767F)	0960-AF11
3557	Administrative Procedures for Imposing Penalties for False or Misleading Statements (784F)	0960-AF20
3558	Credit Bureau Reporting and Administrative Offset for SSI Overpayments (795F)	0960-AF31
3559	Supplemental Security Income for the Aged, Blind and Disabled; Student Child Earned Income Exclusion (865F)	0960-AF60

Social Security Administration—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
0960-AD23	OASDI and SSI for the Aged, Blind, and Disabled; Fees for Representation of Parties Under Title II and Title XVI of the Social Security Act (296P)	03/21/2002	Withdrawn
0960-AD93	Computation of SSI Benefits for the First Three Months of Payment (476P)	03/21/2002	Withdrawn

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Social Security Administration—Discontinued Entries (Continued)

Regulation Identification Number	Title	Date Withdrawn	Comments
0960-AE11	Administrative Review Process; Administrative Res Judicata and Related Rules (526P)	03/21/2002	Withdrawn
0960-AE15	Modification of Private Printing and Prescribed Applications and Other Forms (530P)	03/21/2002	Withdrawn
0960-AE16	OASDI; Nonpayment of Benefits to Incarcerated Individuals and Individuals Confined in Criminal Cases, Pursuant to Conviction or by Court Order Based on Findings of Insanity (531P)	03/21/2002	Withdrawn
0960-AE17	Supplemental Security Income; Plans for Achieving Self-Support (506P)	03/19/2002	Withdrawn
0960-AE40	Elimination of Rounding Distortion in the Calculation of the Contribution and Benefit Base and Earnings Test Exempt Amounts (512F)	03/21/2002	Withdrawn
0960-AE90	Private Collection Agencies (Using Private Collection Agencies to Help SSA Collect Delinquent Title II and Title XVI Overpayment Debts Owed by Former Beneficiaries) (722P)	03/21/2002	Withdrawn
0960-AE91	Charging Interest (Charging Interest on Delinquent Debts) (723P)	03/21/2002	Withdrawn
0960-AF17	Administrative Review Process; Prehearing and Posthearing Conferences (778F)	03/21/2002	Withdrawn
0960-AF23	Social Security Coverage of Employment for Residents of the Northern Mariana Islands, American Samoa, and Guam (792P)	03/21/2002	Withdrawn
0960-AF24	Effects of Being Considered a Child (793P)	03/21/2002	Withdrawn
0960-AF25	$30 Private Insurance (794P)	03/21/2002	Withdrawn
0960-AF63	Federal Old-Age, Survivors, Disability and Supplemental Security Income; De Novo Review at all Levels of Appeal (888P)	03/21/2002	Withdrawn
0960-AF68	Program: Cooperative Agreements for Benefits Planning, Assistance, and Outreach Projects (844P)	03/08/2002	Withdrawn

Social Security Administration (SSA)

Proposed Rule Stage

3492. REVISED MEDICAL CRITERIA FOR ENDOCRINE DISORDERS (436P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 9.00 and 109.00 of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those endocrine impairments that are considered severe enough to prevent a person from doing any gainful activity, or in the case of a child claiming SSA payments under title XVI, that cause marked and severe functional limitations. We are proposing to revise the criteria in these sections to reflect advances in medical knowledge, treatment, and methods of evaluating endocrine impairments. The Supplemental Security Income Program incorporates and uses the same medical criteria as the Old-Age, Survivors and Disability Insurance Program.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Maria D. Smith, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3661

RIN: 0960–AD78

3493. DEFINITION OF "LARGEST BENEFIT AMOUNT" FOR SIMULTANEOUS ENTITLEMENT TO CHILD'S BENEFITS (481P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(k); 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.304; 20 CFR 404.353(b); 20 CFR 404.407(d)

Legal Deadline: None

Abstract: Section 202(k)(2)(A) of the Act (42 U.S.C. 402(k)(2)(A)) contains the statutory requirements for determining the earnings record on which SSA will pay a person, who is simultaneously entitled to child's insurance benefits on the earnings records of more than one worker. Generally, the child's benefits will be paid on the earnings record that yields the highest primary insurance amount (PIA). However, under certain circumstances, the child's benefits will be paid on the earnings record that yields a lower PIA if that record produces the "largest benefit" to which the child could be entitled under section 202(d) without the application of the reduction under the "family maximum" provisions. In implementing section 202(k)(2)(A), SSA has determined the "largest benefit" under section 202(k)(2)(A) by comparing the original benefit amount determined under section 202(d)(2) of

the Act (42 U.S.C. 402(d)(2)) (i.e., 50 percent of the PIA of a living worker and 75 percent of the PIA of a deceased worker) calculated on the dependent and/or survivor claim of the child on the earnings record of each worker without applying any reductions or deductions. Some courts adopted a different interpretation and held that SSA must compare the amounts payable to the child under each earnings record after considering all applicable deductions and reductions other than the reduction under the family maximum provisions. Legal support for both interpretations can be found in the statutory language and legislative history of section 202(k)(2)(A) of the Act. We have found current regulations implementing section 202(k)(2)(A) to be ambiguous on the matter. We propose to clarify these regulations to reflect only the longstanding SSA interpretation.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bill Hilton, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-2468

Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AD95

3494. SUPPLEMENTAL STANDARDS FOR ETHICAL CONDUCT FOR EMPLOYEES OF THE SOCIAL SECURITY ADMINISTRATION (601P)

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC APP (Ethics in Government Act of 1978); 5 USC 7301; 5 USC 7353

CFR Citation: 5 CFR ch LXXXI (New)

Legal Deadline: None

Abstract: The Social Security Administration (SSA), with the concurrence of the Office of Government Ethics (OGE), proposes to issue regulations for officers and employees of SSA that supplement the OGE Standards of Ethical Conduct for Employees of the Executive Branch, which became effective February 3, 1993. The proposed rule specifies procedural and substantive requirements that are necessary to address ethical issues unique to SSA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Stuart M. Besser, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3194

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE48

3495. DEEMING OF INCOME FROM AN INELIGIBLE SPOUSE TO AN ELIGIBLE INDIVIDUAL AND AN ELIGIBLE CHILD (606P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381a; 42 USC 1382; 42 USC 1382a; 42 USC 1382b; 42 USC 1382c(f); 42 USC 1382j; 42 USC 1383

CFR Citation: 20 CFR 416.1160; 20 CFR 416.1165; 20 CFR 416.1166

Legal Deadline: None

Abstract: This rule would revise the method used under the SSI program to determine income for a child who lives with both parents where one parent is ineligible for SSI because of income deemed from an ineligible spouse. Instead of deeming any excess income from the ineligible spouse to the child, referred to as "pass-through deeming," we would deem income to the child using the method we use where neither parent files for SSI. Under current rules, "pass-through" deeming has had the unintended effect of deeming more income than would have been deemed if the regular rules for deeming from ineligible parents who do not file for SSI are used.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AE50

3496. EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964, THE REHABILITATION ACT OF 1973, AND THE AGE DISCRIMINATION ACT OF 1975 IN PROGRAMS RECEIVING FINANCIAL ASSISTANCE BY SSA (617P)

Priority: Substantive, Nonsignificant

Legal Authority: 20 USC 1405; 29 USC 794; 42 USC 290dd-2; 42 USC 902(a)(5); 42 USC 2000d-1; 42 USC 6101

CFR Citation: 20 CFR 431

Legal Deadline: None

Abstract: Prior to March 31, 1995, SSA was an operating component of HHS and the general regulatory authority for SSA programs and administration was vested in the Secretary of Health and Human Services (the Secretary) based on section 1102 of the Social Security Act (the Act) (42 U.S.C. 1302). The Social Security Independence and Program Improvements Act (SSIPIA) established SSA as an independent agency in the Executive Branch of the Federal Government effective March 31, 1995, and vested general regulatory authority in the Commissioner of Social Security (the Commissioner). Under section 106(b) of SSIPIA, HHS regulations in effect immediately prior to March 31, 1995, which relate to functions now vested in the Commissioner by reason of SSA's independence, continue to apply to SSA until such time as they are modified, suspended, terminated or repealed by the Commissioner. SSA is promulgating regulations at 20 CFR part 431, which are based in large measure upon the HHS regulations at 45 CFR parts 80, 81, 84, 85, 90, and 91. These SSA regulations reflect changes necessary to adapt the HHS regulations to SSA procedures. Upon SSA's rules becoming final regulations, the HHS regulations will cease to have application to SSA in accordance with section 106(b) of SSIPIA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eileen Houghton, Attorney, Social Security Administration, Office of the General Counsel, 6401 Security Bouleveard, Baltimore, MD 21235-6401
Phone: 410 965-4816

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE63

3497. ENFORCEMENT OF NONDISCRIMINATION IN SOCIAL SECURITY PROGRAMS OR ACTIVITIES (661P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1302; PL 103-296

CFR Citation: 20 CFR 431.100; 20 CFR 431.215; 20 CFR 431.220; 20 CFR 431.225; 20 CFR 431.230; 20 CFR 431.235; 20 CFR 431.240; 20 CFR 431.105; 20 CFR 431.110; 20 CFR 431.115; 20 CFR 431.120; 20 CFR 431.125; 20 CFR 431.130; 20 CFR 431.135; 20 CFR 431.140; 20 CFR 431.145; 20 CFR 431.150; 20 CFR 431.160; 20 CFR 431.200; 20 CFR 431.205; 20 CFR 431.210

Legal Deadline: None

Abstract: These proposed regulations are intended to ensure that individuals are not subjected to discrimination on the basis of disability, race, color, national origin, sex, age, or religion in any program or activity conducted by SSA.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE78

3498. PRIVACY AND DISCLOSURE OF OFFICIAL RECORDS AND INFORMATION (711P)

Priority: Other Significant

Legal Authority: 5 USC 552; 5 USC 552a; 42 USC 1306(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 401.30; 20 CFR 401.45; 20 CFR 401.55; 20 CFR 401.150; 20 CFR 401.180

Legal Deadline: None

Abstract: We propose to revise our privacy and disclosure rules to:

1. Describe safeguards against inappropriate disclosure of personal information when individuals request information about themselves by electronic means (e.g., through the Internet);

2. Revise our special procedures on an individual's access to medical records;

3. Add a new section to grant direct access to a minor's medical records by the minor's parent or legal guardian acting on the minor's behalf; and

4. Fully describe the role and function of the Privacy Officer.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Chris W. Johnson, Social Insurance Specialist, Social Security Administration, Office of Disclosure Policy, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-8563

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RIN: 0960–AE88

3499. FEDERAL SALARY OFFSET (WITHHOLDING A PORTION OF A FEDERAL EMPLOYEE'S SALARY TO COLLECT A DELINQUENT DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (721P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 404; 42 USC 405; 42 USC 902; 42 USC 1383; 5 USC 5514

CFR Citation: 20 CFR 422

Legal Deadline: None

Abstract: This initiative would enable the Social Security Administration (SSA) to collect from Federal salaries qualifying, delinquent title II and title XVI overpayment debts owed by former beneficiaries who are currently Federal employees. The debt collection would be accomplished by the partial reduction of the employee's disposable salary.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Edward Johns, Financial Management Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AE89

3500. ADMINISTRATIVE WAGE GARNISHMENT (TO REPAY A DEBT OWED TO THE SOCIAL SECURITY ADMINISTRATION) (724P)

Priority: Other Significant

Unfunded Mandates: Undetermined

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Legal Authority: 42 USC 405; 42 USC 902; 42 USC 1383; 31 USC 3720D

CFR Citation: 20 CFR 404.903; 20 CFR 416.1403; 20 CFR 422.311; 20 CFR 422.312; 20 CFR 422.317

Legal Deadline: None

Abstract: This initiative will enable the Social Security Administration (SSA) to use administrative wage garnishment to collect administrative debts and to collect qualifying, delinquent titles II and XVI overpayment debts owed by former beneficiaries who are now employed in other than Federal employment. Administrative wage garnishment allows SSA to order an employer to deduct a percentage of the disposable pay earned by the worker/debtor, and to send that amount to SSA as payment toward satisfying the delinquent debt. Administrative wage garnishment does not require a court judgment to impose the withholding order.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Edward Johns, Financial Management Analyst, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AE92

3501. WORK ACTIVITY STANDARD AS A BASIS FOR REVIEW OF AN INDIVIDUAL'S DISABLED STATUS (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (725P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 421

CFR Citation: 20 CFR 404.1590

Legal Deadline: NPRM, Statutory, January 1, 2002, Section 111 of Public Law 106-170, effective January 1, 2002.

Abstract: One of SSA's most important initiatives is to assure that Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI) beneficiaries with disabilities who want to work have the opportunity to do so. Individuals with disabilities face multiple barriers in attempting to return to work. Section 111 of Public Law 106-170 provides a new statutory work incentive by eliminating the scheduling of continuing disability medical reviews solely because of an SSDI beneficiary's work activity, once the beneficiary has received SSDI benefits for 24 months. (Such beneficiaries will continue to be subject to regularly scheduled continuing disability reviews, work investigations, and benefit termination due to earnings from work activity at the level of substantial gainful activity.)

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jack Baumel, Social Insurance Specialist, Social Security Administration, Office of Employment Support programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9834

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE93

3502. MEDICAL EQUIVALENCE FOR ADULTS AND CHILDREN (787P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1526; 20 CFR 404.1529; 20 CFR 416.926; 20 CFR 416.929

Legal Deadline: None

Abstract: This notice of proposed rulemaking will clarify that we will consider the medical severity of the individual's impairment, based on all relevant evidence in the case record when we make a finding regarding medical equivalence. These rules will clarify our medical equivalence policy in light of the decision in Hickman v. Apfel, 187 F.3d 683 (7th Cir. 1999).

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jane Deweib, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-9878

Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF19

3503. EXPEDITED REINSTATEMENT OF DISABILITY BENEFITS (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT) (790P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 423(i); 42 USC 1383(p)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: Individuals with disabilities face multiple barriers in attempting to return to work. Section 112 of Public Law 106-170 provides a new statutory work incentive by providing for expedited reinstatement of SSDI and SSI benefits terminated due to work activity, when the former beneficiary requests reinstatement within 60 months of termination because his or her disability prevents work activity. Section 112 also provides for payment of provisional benefits for up to six months until SSA makes a determination on the requester's entitlement to reinstated benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jack Baumel, Social Insurance Specialist, Social Security Administration, Office of Employment Support programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF21

3504. SSI TRUSTS AND TRANSFERS OF RESOURCES (791P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 1382a(a); 42 USC 1382b(c); 42 USC 1382b(e); PL 106-169, sec 205; PL 106-169, sec 206

CFR Citation: 20 CFR 416

Legal Deadline: None

Abstract: We propose to amend our regulations to reflect sections 205 and 206 of Public Law 106-169, the Foster Care Independence Act of 1999. Section 205 generally provides for counting certain trusts as resources in the SSI program. Section 206 generally provides for a period of ineligibility for SSI benefits as a result of transferring resources for less than fair market value.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Kenneth A. Brown, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Cynthia Pullen-Carroll, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3691

RIN: 0960–AF22

3505. REVISED MEDICAL CRITERIA FOR EVALUATING GENITOURINARY DISORDERS (802P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the Listings) that we use to evaluate genitourinary impairments. We apply these criteria at step three of our sequential evaluation processes for adults and children who claim Social Security or Supplemental Security Income benefits based on disability under title II and title XVI of the Social Security Act. The revisions reflect advances in medical knowledge, treatment, and methods of evaluating genitourinary impairments.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF30

3506. REVISED MEDICAL CRITERIA OF EVALUATING IMPAIRMENTS AFFECTING MULTIPLE BODY SYSTEMS (803P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving impairments affecting multiple body systems. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect current medical knowledge, treatment, and methods of evaluating impairments affecting multiple body systems.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Victoria Dorf, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF32

3507. REVISED MEDICAL CRITERIA FOR EVALUATING SPECIAL SENSES AND SPEECH DISORDERS (805P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving special senses and speech disorders. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating special senses and speech disorders.

Timetable:

Action	Date	FR Cite
NPRM	03/00/03	

Regulatory Flexibility Analysis Required: No

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Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF34

3508. CLARIFICATION OF RULES INVOLVING RFC ASSESSMENTS; CLARIFICATION OF USE OF VOCATIONAL EXPERTS & OTHER SOURCES OF THE SEQUENTIAL EVALUATION PROCESS; INCORPORATION OF "SPECIAL PROFILE" INTO REGS (808P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 4215; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(l); 42 USC 1383b

CFR Citation: 20 CFR 404.1501; 20 CFR 404.1505; 20 CFR 404.1512; 20 CFR 404.1520; 20 CFR 404.1545; 20 CFR 404.1546; 20 CFR 404.1560; 20 CFR 404.1561; 20 CFR 404.1563; 20 CFR 404.1569a; 20 CFR 404.1594

Legal Deadline: None

Abstract: We propose changing several sections of our rules to clarify how we make determinations and decisions at steps 4 and 5 of the sequential evaluation process. Among other things, the proposed rules would clarify (1) the responsibility that claimants have to provide evidence of their disability (including evidence related to their residual functional capacity), and (2) that SSA may use a vocational expert to help determine whether a claimant is able to do his or her past relevant work at step 4 of the sequential evaluation process.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF37

3509. WAGE REPORTS AND PENSION INFORMATION (809P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 432; 42 USC 902(a)(5)

CFR Citation: 20 CFR 422.114

Legal Deadline: None

Abstract: The Social Security Administration (SSA) proposes to amend its rules on processing reports of wages (paper Forms W-2, "Wage and Tax Statement," and W-3 "Transmittal of Income and Tax Statements," or equivalent W-2 and W-3 magnetic media or electronic reports) submitted annually by employers. We are proposing to eliminate the acceptance level for wage reports with unidentified or incorrectly identified wage items. We are proposing including electronic filing as a means of wage reporting. Also, we propose replacing references to obsolete technical instruction bulletins with Magnetic Media Reporting and Electronic Filing instructions. We have updated form names and updated the address for obtaining a publication. These rules are intended to ensure that wages are reported to SSA with accurate information so that earnings can be properly credited to employees' Social Security records.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF38

3510. FILING CLAIMS UNDER THE FEDERAL TORT CLAIMS ACT AND THE MILITARY PERSONNEL AND CIVILIAN EMPLOYEES CLAIMS ACT (785P)

Priority: Substantive, Nonsignificant

Legal Authority: 28 USC 2672; 31 USC 3721

CFR Citation: 20 CFR 429.101 to 429.110; 20 CFR 429.201 to 429.211

Legal Deadline: None

Abstract: We propose to establish a new subpart B in part 429 that would prescribe the procedures SSA follows when claims are filed by employees against SSA for personal property damage or loss incident to their service with SSA. We also propose to make corrections and clarifications to our current procedures and practices on claims against the government for damage to or loss of property or personal injury or death that is caused by the negligent or wrongful act or omission of an SSA employee.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Jonathan R. Cantor, General Attorney, Social Security Administration, General Law Division, Office of the General Counsel, 6401 Security Boulevard, Baltimore, MD 21235
Phone: 410 965-3166

Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF39

3511. DISABILITY INSURANCE PROGRAM DEMONSTRATION PROJECT AUTHORITY (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (789P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 434

CFR Citation: 20 CFR 404.1599

Legal Deadline: None

Abstract: One of SSA's most important initiatives is to assure that Social Security Disability Insurance (SSDI) beneficiaries with disabilities who want to work have the opportunity to do so. Section 301 of Public Law 106-170 provides the Commissioner of Social Security the authority to develop and carry out experiments and demonstration projects designed to determine the relative advantages and disadvantages of various alternative methods of treating the work activity of individuals entitled to disability insurance benefits.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: John Kearney, Social Insurance Specialist, Social Security Administration, Office of Policy, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF41

3512. ACCESS TO INFORMATION HELD BY FINANCIAL INSTITUTIONS (815P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 1383(e); PL 106-169, sec 213

CFR Citation: 20 CFR 416.200; 20 CFR 416.207; 20 CFR 416.421; 20 CFR 416.640; 20 CFR 416.1231; 20 CFR 416.1242; 20 CFR 416.1245; 20 CFR 416.1247; 20 CFR 416.1320; 20 CFR 416.1321; 20 CFR 416.1335; 20 CFR 416.1337; 20 CFR 416.1618

Legal Deadline: None

Abstract: We propose to implement a new law that will enhance our access to bank account information of Supplemental Security Income (SSI) applicants or recipients and other individuals whose income and resources we treat as belonging to the applicant or recipient.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Kathy Branch, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF43

3513. REVISIONS TO THE MEDICAL-VOCATIONAL GUIDELINES (823P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405(a); 42 USC 423; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404, subpart P, app 2

Legal Deadline: None

Abstract: This rule will make several clarifications to our medical-vocational guidelines. First, for individuals whose previous semiskilled or skilled work does not allow him or her to transfer skills to other semiskilled or skilled work within his or her residual functional capacity (RFC), we will treat the past work experience as if it were unskilled. It will also clarify which medical-vocational rules apply to individuals who are illiterate or unable to communicate in English.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elaine Tocco, Vocational Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 966-4163

RIN: 0960–AF47

3514. REVISED MEDICAL CRITERIA FOR EVALUATING CARDIOVASCULAR DISORDERS (826P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Listings 4.00 and 104.00 of appendix 1 to subpart P of our regulation (20 CFR 404.1501 through 404.1599) describe those cardiovascular impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that cause marked and severe functional limitations. We propose to revise the criteria that we use to evaluate cardiovascular impairments under the listings to reflect our program experience and advances in medical knowledge, treatment and methods of evaluating these disorders. The SSI program incorporates by reference and uses the same medical criteria as the old-age, survivors, and disability insurance program.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bonnie Davis, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401

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Cynthia Pullen-Carroll, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3691

RIN: 0960–AF48

3515. REPRESENTATIVE PAYMENT UNDER TITLE II AND XVI OF THE SOCIAL SECURITY ACT (827P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 902(a)(5); 42 USC 405 note; 42 USC 421 note; 42 USC 1383(a)(2); 42 USC 1383(d)(1); 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 405(j); 42 USC 405(k)

CFR Citation: 20 CFR 404.902; 20 CFR 404.2011; 20 CFR 404.2021; 20 CFR 404.2022; 20 CFR 404.2024; 20 CFR 404.2025; 20 CFR 404.2030; 20 CFR 404.2040a; 20 CFR 404.2041; 20 CFR 404.2050; 20 CFR 404.2065; 20 CFR 416.611; 20 CFR 416.621; 20 CFR 416.622; 20 CFR 416.624; 20 CFR 416.625; 20 CFR 416.630; 20 CFR 416.640a; 20 CFR 416.641; 20 CFR 416.650; 20 CFR 416.665; 20 CFR 416.1402

Legal Deadline: None

Abstract: Effective stewardship of SSA programs requires mechanisms to assure that benefits are used to meet the needs of beneficiaries who are not able to manage their own benefits due to legal incompetence or medical infirmity. We recognized that improvements to the representative payment procedures were needed to assure program integrity. These regulations are required to further our program integrity efforts.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Betsy Byrd, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF49

3516. REMOVAL OF CLOTHING FROM THE DEFINITION OF INCOME AND FROM THE DEFINITION OF IN-KIND SUPPORT AND MAINTENANCE UNDER THE SUPPLEMENTAL SECURITY INCOME PROGRAM (834P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1612 of the Social Security Act

CFR Citation: 20 CFR 416.1102 to 416.1104; 20 CFR 416.1121; 20 CFR 416.1124; 20 CFR 416.1130; 20 CFR 416.1133; 20 CFR 416.1140; 20 CFR 416.1142; 20 CFR 416.1144 to 416.1145; 20 CFR 416.1147 to 416.1149; 20 CFR 416.1157

Legal Deadline: None

Abstract: We propose to change the SSI rules to remove clothing from the definition of income and from the definition of in-kind support and maintenance. As a result, we generally will not count gifts of clothing as income when we decide whether a person can receive SSI benefits or when we compute the amount of benefits.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF50

3517. EXCLUSION OF ONE AUTOMOBILE FROM RESOURCES (835P)

Priority: Substantive, Nonsignificant

Legal Authority: Sec 1613(a)(2)(A) of the Social Security Act

CFR Citation: 20 CFR 416.1210; 20 CFR 416.1218

Legal Deadline: None

Abstract: We propose to simplify our rules on how we exclude an automobile in determining the resources of an SSI applicant or recipient. Specifically, we propose to exclude one automobile from resources if it is used for transportation, without consideration of its value.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF51

3518. EXCLUSION OF HOUSEHOLD GOODS AND PERSONAL EFFECTS UNDER THE SUPPLEMENTAL SECURITY INCOME (SSI) PROGRAM (837P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: Sec 1613(a)(2)(A) of the Social Security Act

CFR Citation: 20 CFR 416.1210; 20 CFR 416.1216

Legal Deadline: None

Abstract: We propose to change our resource counting rules in the SSI program by eliminating the dollar value limit for the exclusion of household goods and personal effects. As a result, we would not count household goods and personal effects as resources when we decide whether a person can receive SSI benefits.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF55

3519. NON-PAYMENT OF MONTHLY SOCIAL SECURITY BENEFITS TO ALIENS RESIDING IN THE UNITED STATES WHO ARE NOT LAWFULLY PRESENT (849P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 8 USC 1611(b)(2); 8 USC 1641; 42 USC 402(y)

CFR Citation: 20 CFR 404.401; 20 CFR 404.460; 20 CFR 404.481 (New); 20 CFR 404.482 (New); 20 CFR 404.483 (New); 20 CFR 404.485 (New); 20 CFR 404.486 (New); 20 CFR 404.487 (New); 20 CFR 404.488 (New); 20 CFR 404.489 (New); 20 CFR 404.490 (New)

Legal Deadline: None

Abstract: We propose to add rules to require evidence in our records of United States citizenship, status as a United States national or, in the case of an alien, lawful presence in the United States in order for an individual to receive benefits under title II of the Social Security Act while in the United States.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cynthia Pullen-Carroll, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3691

RIN: 0960–AF56

3520. DETERMINING DISABILITY FOR AN INDIVIDUAL WITH DRUG ADDICTION OR ALCOHOLISM (851P)

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: PL 104-121, sec 105; PL 105-33, sec 5525; PL 106-170, sec 401

CFR Citation: 20 CFR 404.315; 20 CFR 404.316; 20 CFR 404.321; 20 CFR 404.332; 20 CFR 404.335; 20 CFR 404.337; 20 CFR 404.350; 20 CFR 404.352; 20 CFR 404.402; 20 CFR 404.470; 20 CFR 404.480; 20 CFR 404.902; 20 CFR 404.1535 to 404.1541; 20 CFR 1500, app 1; 20 CFR 416.202; 20 CFR 416.214; 20 CFR 416.262; 20 CFR 416.265; 20 CFR 416.535; 20 CFR 416.542; 20 CFR 416.544; 20 CFR 416.558; 20 CFR 416.601; 20 CFR 416.610; 20 CFR 416.925; 20 CFR 416.935; 20 CFR 416.1123; 20 CFR 416.1326; 20 CFR 416.1331; 20 CFR 416.1335; 20 CFR 416.1402; 20 CFR 416.1701; 20 CFR 416.1720; 20 CFR 416.1725

Legal Deadline: None

Abstract: We propose to revise our regulations that address drug addiction and alcoholism (DAA) under title II and XVI of the Social Security Act. The proposed rules reflect provisions of section 105 of the Contract with America Advancement Act of 1996, Public Law 104-121; section 5525 of the Balanced Budget Act of 1997, Public Law 105-33; and section 401 of the Ticket to Work and Work Incentives Improvement Act of 1999, Public Law 106-170.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Deborah Barnes, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235
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Phone: 410 965-1769

RIN: 0960–AF57

3521. REVISED MEDICAL CRITERIA FOR EVALUATING RESPIRATORY SYSTEM DISORDERS (859P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving respiratory system disorders. The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating respiratory disorders.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Carolyn Kiefer, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-3691

RIN: 0960–AF58

3522. SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS (880P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 405(j); 42 USC 405(k); 42 USC 902(a)(5); 42 USC 1001 to 1013

CFR Citation: 20 CFR 408.101 (New); 20 CFR 408.105 (New); 20 CFR 408.110

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(New); 20 CFR 408.120 (New); 20 CFR 408.201 (New); 20 CFR 408.202 (New); 20 CFR 408.204 (New); 20 CFR 408.206 (New); 20 CFR 408.208 (New); 20 CFR 408.210 (New); 20 CFR 408.212 (New); 20 CFR 408.214 (New); 20 CFR 408.216 (New); 20 CFR 408.218 (New); 20 CFR 408.220 (New); 20 CFR 408.222 (New); 20 CFR 408.224 (New); 20 CFR 408.226 (New); 20 CFR 408.228 (New); 20 CFR 408.230 (New); 20 CFR 408.232 (New); 20 CFR 408.234 (New); 20 CFR 408.301 (New); 20 CFR 408.305 (New); 20 CFR 408.310 (New); 20 CFR 408.315 (New); 20 CFR 408.320 (New); 20 CFR 408.325 (New); 20 CFR 408.330 (New); 20 CFR 408.340 (New); 20 CFR 408.345 (New); 20 CFR 408.351 (New); 20 CFR 408.355 (New); 20 CFR 408.360 (New); 20 CFR 408.401 (New); 20 CFR 408.402 (New); 20 CFR 408.403 (New); 20 CFR 408.404 (New); 20 CFR 408.405 (New); 20 CFR 408.406 (New); 20 CFR 408.410 (New); 20 CFR 408.412 (New); 20 CFR 408.413 (New); 20 CFR 408.420 (New); 20 CFR 408.425 (New); 20 CFR 408.430 (New); 20 CFR 408.432 (New); 20 CFR 408.435 (New); 20 CFR 408.437 (New); 20 CFR 408.501 (New); 20 CFR 408.505 (New); 20 CFR 408.510 (New); 20 CFR 408.515 (New); 20 CFR 408.601 (New); 20 CFR 408.610 (New); 20 CFR 408.615 (New); 20 CFR 408.620 (New); 20 CFR 408.621 (New); 20 CFR 408.622 (New); 20 CFR 408.624 (New); 20 CFR 408.625 (New); 20 CFR 408.635 (New); 20 CFR 408.640 (New); 20 CFR 408.641 (New); 20 CFR 408.645 (New); 20 CFR 408.650 (New); 20 CFR 408.655 (New); 20 CFR 408.660 (New); 20 CFR 408.665 (New)

Legal Deadline: None

Abstract: We propose to add to chapter 20 of the CFR 5 new subparts in a new part 408 that would set forth our rules applicable to claims for special veterans benefits (SVB) under title VIII of the Social Security Act. The title VIII program provides monthly benefits to certain WWII veterans who were previously eligible for supplemental security income payments under title XVI of the Act and reside outside the United States. These initial subparts would establish the legal basis for the title VIII program as well as codify the title VIII rules on qualification, filing applications, evaluating evidence, and computing and paying benefits. We will be proposing additional subparts dealing with other aspects of the title VIII at a later date.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of International Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF61

3523. AMENDMENTS TO ANNUAL EARNINGS TEST REGULATIONS (866P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 403(a); 42 USC 405(a); 42 USC 416; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5); PL 106-182

CFR Citation: 20 CFR 404.415; 20 CFR 404.416

Legal Deadline: None

Abstract: The Senior Citizen's Freedom to Work Act of 2000, enacted on April 7, 2000, eliminates the annual earnings test for beneficiaries, starting from the month in which they reach full retirement age.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF62

3524. REVISING THE RULES ON CONSIDERATION OF WORK HISTORY IN DETERMINING WHETHER AN INDIVIDUAL IS DISABLED (875P)

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 402; 42 USC 405(a); 42 USC 405(b); 42 USC 405(d) to 405(h); 42 USC 416(i); 42 USC 421(a); 42 USC 421(i); 42 USC 422(c); 42 USC 423; 42 USC 425; 42 USC 902(a)(5); 42 USC 1382; 42 USC 1382c; 42 USC 1382h; 42 USC 1383(a); 42 USC 1383(c); 42 USC 1383(d)(1); 42 USC 1383b

CFR Citation: 20 CFR 404.1520; 20 CFR 404.1560; 20 CFR 404.1565; 20 CFR 404.1594(b)(4)(iii); 20 CFR 416.920; 20 CFR 416.960; 20 CFR 416.965; 20 CFR 416.994(b)(l)(iv)(c)

Legal Deadline: None

Abstract: We propose to change some of the rules we use to decide whether an individual is "disabled." These rules govern how we look at an individual's past work history. Currently, we consider work performed in the last 15 years to be relevant when we decide whether an individual is "disabled." We propose to change our rules so that we only look at work performed in the last five years.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF64

3525. REVISING THE RULES ON THE STEPS FOR EVALUATING DISABILITY (894P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 usc 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1520; 20 CFR 416.920

Legal Deadline: None

Abstract: We propose to combine steps 4 and 5 of the current sequential evaluation process for evaluating disability into one step. Instead of having separate steps for determining whether a claimant can do any past relevant work and other work, we would have one step where we determine if a claimant can do any SGA at all. This would simplify the evaluation process and save time and resources.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cheryl A. Williams, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-4163

RIN: 0960–AF65

3526. COMPENSATION FOR QUALIFIED ORGANIZATIONS SERVING AS A REPRESENTATIVE PAYEE (846P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405(j)(4)(B); 42 USC 1383(a)(2)(D)

CFR Citation: 20 CFR 404.2040a; 20 CFR 416.640a

Legal Deadline: None

Abstract: We are proposing to amend these regulations to further define "bonded or licensed in the State in which an organizational payee serves as representative payee." We are proposing to further define the amount of bonding necessary to provide adequate protection for our beneficiaries and the nature of licenses that are pertinent for a fee-for-service organization.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Organizations, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Betsy Byrd, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF66

3527. • CLARIFICATION OF THE DISABILITY EXCLUSION (915P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 402; 42 USC 402(a); 42 USC 403(a); 42 USC 403(b); 42 USC 405(a); 42 USC 412 to 414; 42 USC 415 to 417; 42 USC 423; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.130(f); 20 CFR 404.211(b)(2); 20 CFR 404.211(e)(1); 20 CFR 404.320(a)

Legal Deadline: None

Abstract: These proposed rules amend our regulations at sections 404.130, 404.211 and 404.320 to clarify that if we count a prior period of disability in determining a person's insured status or benefit amount, the period of disability must be counted for both purposes. Similarly, if we exclude a prior period of disability when either determining insured status or the benefit amount, we must exclude it for both purposes.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Ines Riley, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF71

3528. • SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS; REPRESENTATIVE PAYMENT, REPORTING REQUIREMENTS, SUSPENSION AND TERMINATION EVENTS, OVERPAYMENTS, AND ADMINISTRATIVE REVIEW PROCESS (922P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405(a); 42 USC 405(j); 42 USC 405(k); 42 USC 902(a)(5); 42 USC 1001 to 1013; 42 USC 1104; 42 USC 1106

CFR Citation: 20 CFR 408.601; 20 CFR 408.610; 20 CFR 408.615; 20 CFR 408.620 to 408.622; 20 CFR 408.624; 20 CFR 408.625; 20 CFR 408.635; 20 CFR 408.640; 20 CFR 408.641; 20 CFR 408.645; 20 CFR 408.650; 20 CFR 408.655; 20 CFR 408.660; 20 CFR 408.665; 20 CFR 408.701; 20 CFR 408.704; 20 CFR 408.708; 20 CFR 408.710; 20 CFR 408.712; 20 CFR 408.714; 20 CFR 408.801 to 408.805; 20 CFR 408.810; 20 CFR 408.812; 20 CFR 408.814; 20 CFR 408.816; 20 CFR 408.818; 20 CFR 408.820; 20 CFR 408.900 to 408.905; 20 CFR 408.910 to 408.915; 20 CFR 408.918; 20 CFR 408.920; 20 CFR 408.922; 20 CFR 408.923; 20 CFR 408.930 to 408.933; 20 CFR 408.940 to 408.946; 20 CFR 408.1000 to 408.1007; 20 CFR 408.1009; 20 CFR 408.1011; 20 CFR 408.1013 to 408.1016; 20 CFR 408.1020 to 408.1022

Legal Deadline: None

Abstract: We propose to add 6 additional subchapters to part 408 (proposed) of our regulations. The title VIII program provides monthly benefits to certain World War II veterans who were previously eligible for supplemental security income payments under title XVI of the Act and reside outside the United States. These additional subparts would codify the title VIII requirements on representative payment, reporting responsibilities, suspension and

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termination events, overpayment and underpayment policies, and the administrative review process.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of International Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 966-0020

Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-7183

RIN: 0960–AF72

3529. • ELIMINATION OF SANCTIONS FOR REFUSAL OF VOCATIONAL REHABILITATION SERVICES WITHOUT GOOD CAUSE AND ELIMINATION OF REFERRALS FOR VOCATIONAL REHABILITATION SERVICES (925P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383; PL 106-170, sec 101(b)-(d)

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: We are updating our regulations to reflect the repeal of the provisions of the Social Security Act (the Act) which provided for the imposition of benefit sanctions when a Social Security disability beneficiary or disabled or blind Supplemental Security Income (SSI) recipient refused vocational rehabilitation (VR) services without good cause. These provisions of the Act were repealed by section 101(b) of Public Law 106-170, the Ticket to Work and Work Incentives Improvement Act of 1999, effective January 1, 2002. These regulations will remove the provisions in our regulations relating to these sanctions. We also are amending our regulations to reflect the elimination of the provisions of the Act which provide for referral of Social Security disability beneficiaries and disabled or blind SSI recipients to State VR agencies for necessary rehabilitation services. As we gradually implement the Ticket to Work and Self-Sufficiency program under section 1148 of the Act in selected States, the provisions of the Act for referring beneficiaries and recipients to State VR agencies will cease to be in effect in those States as provided in sections 101(b), (c), and (d) of Public Law 106-170. Additionally, under section 101 of Public Law 106-170, the use of alternate participants under the reimbursement programs under title II and title XVI of the Act will be phased out in the States as the Ticket to Work program is implemented. The regulations will reflect this phase-out of the use of alternate participants.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Mel Winer, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-9175

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RIN: 0960–AF74

3530. • CONTINUED PAYMENT OF BENEFITS TO CERTAIN INDIVIDUALS WHO MEDICALLY RECOVER WHILE PARTICIPATING IN CERTAIN VOCATIONAL REHABILITATION PROGRAMS (926P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404; 20 CFR 416

Legal Deadline: None

Abstract: We propose to amend our regulations relating to the continuation of benefit payments to certain individuals under section 225(b) and 1631(a)(6) of the Social Security Act (the Act). These sections of the Act permit the continued payment of Social Security benefits based on disability or SSI benefits based on disability or blindness to certain individuals whose disability or blindness ceases while they are participating in an approved vocational rehabilitation (VR) program. For benefits to continue, we must determine that completion of the program, or its continuation for a specified period of time, will increase the likelihood that the individual will not have to return to the disability or blindness benefit rolls. (Section 101(b) of Public Law 106-170, the Ticket to Work and Self-Sufficiency program under section 1148 of the Act.) The proposed rules will amend the existing regulations to carry out these amendments. They will expand the regulations to explain more fully the circumstances under which benefit payments may continue, including when an individual will be considered to be participating in an appropriate VR program.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mel Winer, Social Insurance Specialist, Social Security Administration, Office of Employment Support Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-9175

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RIN: 0960–AF75

3531. REVISED MEDICAL CRITERIA FOR EVALUATING HEMATOLOGIC DISORDERS AND MALIGNANT NEOPLASTIC DISEASES (399F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1

Legal Deadline: None

Abstract: Sections 7.00 and 107.00 (hemic and lymphatic system), and 13.00 and 113.00 (malignant neoplastic diseases) of appendix 1 to subpart P of part 404 of our regulations (404.1501 through 404.1599) describe those impairments that are considered severe enough to prevent a person from doing any gainful activity, or for a child claiming SSI payments under title XVI, that causes marked and severe functional limitations. We are proposing revisions to these sections to ensure that the medical evaluation criteria are up-to-date and consistent with the latest advances in medical knowledge and treatment. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59305
NPRM Comment Period End	01/28/02	
NPRM Comment Period End Extended	04/18/02	67 FR 19138
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michelle Hungerman, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-2289

Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-1769

RIN: 0960–AD67

3532. REPEAL OF FACILITY OF PAYMENT PROVISION (508F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 403(a)

CFR Citation: 20 CFR 404.402(b); 20 CFR 404.458

Legal Deadline: None

Abstract: These final rules amend our regulation to reflect section 309 of Public Law 103-296. That repeals the facility of payment provision under which Social Security benefits, subject to the family maximum, would not be redistributed in certain cases, and provides that the reduction for the family maximum will be made prior to a temporary suspension for work when the nonworking auxiliary resides in a separate household from the working auxiliary.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 966-9822

RIN: 0960–AE02

3533. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND AGREEMENTS WITH INSTITUTIONS OF HIGHER EDUCATION, HOSPITALS, OTHER NONPROFIT ORGANIZATIONS, AND COMMERCIAL ORGANIZATIONS (547F)

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 7505; 41 USC 403(11); 42 USC 902(a)(5)

CFR Citation: 20 CFR 435.000

Legal Deadline: None

Abstract: This final rule will create a new part in the Code of Federal Regulations. The new part will provide standards in the administration of grants and agreements with institutions of higher education, hospitals, other nonprofit organizations, and commercial organizations.

The Social Security Independence and Program Improvements Act of 1994, enacted August 15, 1994, established SSA as an independent agency separate from the Department of Health and Human Services (HHS), effective March 31, 1995. To implement its own set of grants regulations, SSA proposes to codify almost verbatim the text of the Office of Management and Budget (OMB) Circular Number A-110 "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Nonprofit Organizations." These regulations will establish SSA grants regulations, separate from the HHS regulations.

Timetable:

Action	Date	FR Cite
NPRM	04/27/00	65 FR 24767
NPRM Comment Period End	06/26/00	
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401 Phone: 410 965-7183

RIN: 0960–AE25

3534. UNIFORM ADMINISTRATIVE REQUIREMENTS FOR GRANTS AND COOPERATIVE AGREEMENTS TO STATE AND LOCAL GOVERNMENTS AND INDIAN TRIBAL GOVERNMENTS (555F)

Priority: Info./Admin./Other

Legal Authority: 41 USC 403(ii); 42 USC 902(a)(5)

CFR Citation: 20 CFR 437.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 92 into a new SSA regulation at 20 CFR part 437 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security

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Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AE28

3535. RESTRICTIONS ON LOBBYING IN CONNECTION WITH THE AWARD OF GRANTS, CONTRACTS, AND COOPERATIVE AGREEMENTS (556F)

Priority: Info./Admin./Other

Legal Authority: 31 USC 1352; 42 USC 902(a)(5)

CFR Citation: 20 CFR 438.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 93 into a new SSA regulation at 20 CFR part 438 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
Final Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AE29

3536. TECHNICAL CHANGES TO SUPPLEMENTAL SECURITY INCOME (SSI) REGULATIONS (664F)

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 20 CFR 416.1236; 20 CFR 416, app, subpart K

Legal Deadline: None

Abstract: We are amending the SSI regulations by making technical changes to our rules on income and resources. These technical changes update lists of exclusions from income and resources under the SSI program that are based on statutes other than the Social Security Act and make additional technical changes.

Timetable:

Action	Date	FR Cite
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Eric Ice, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AE79

3537. OASDI AND SSI; ADMINISTRATIVE REVIEW PROCESS; VIDEO TELECONFERENCING APPEARANCES BEFORE ADMINISTRATIVE LAW JUDGES OF THE SOCIAL SECURITY ADMINISTRATION (737F)

Priority: Other Significant

Legal Authority: 42 USC 205(a); 42 USC 205(b); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.929; 20 CFR 404.936; 20 CFR 404.938; 20 CFR 404.950; 20 CFR 416.1429; 20 CFR 416.1436; 20 CFR 416.1438

Legal Deadline: None

Abstract: This final rule revises our rules to permit us to conduct hearings before an administrative law judge (ALJ) at which a party or parties to the hearing and/or witness or witnesses may appear before the ALJ by video teleconference (VTC). The revised rules provide that if we schedule a hearing as one at which a party would appear by VTC, rather than in person, and the party objects to use of that procedure, we will reschedule the hearing as one at which the party may appear in person.

Timetable:

Action	Date	FR Cite
NPRM	01/05/01	66 FR 1059
NPRM Comment Period End	03/06/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cynthia Pullen-Carroll, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3691

Related RIN: Previously reported as 0960-AA05

RIN: 0960–AE97

3538. COST OF LIVING INCREASES IN PRIMARY INSURANCE AMOUNTS (759F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(a); 42 USC 405(a); 42 USC 415; 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.273 to 404.275

Legal Deadline: None

Abstract: This final rule revises our rules dealing with automatic cost-of-living increases to primary insurance amounts under title II of the Social Security Act. The revisions eliminate the restriction that we could only grant cost-of-living increases based on rises in the Consumer Price Index (CPI) or the Average Wage Index (AWI) if either the CPI or AWI increased by 3 percent or more during the prescribed measuring period. The 3 percent restriction was removed by legislation enacted in 1986. These regulations codify statutory provisions enacted in 1986.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jeff Kunkel, Actuary, Social Security Administration, Office of the Actuary, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF14

3539. CHANGE IN RETIREMENT AGE (775F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402; 42 USC 403; 42 USC 404(a); 42 USC 404(e); 42 USC 405(a); 42 USC 405(c); 42 USC 415; 42 USC 416; 42 USC 422(b); 42 USC 423; 42 USC 424a; 42 USC 425; 42 USC 428(a) to 428(e); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.201; 20 CFR 404.277; 20 CFR 404.304; 20 CFR 404.310 to 404.313; 20 CFR 404.317; 20 CFR 404.335 to 404.338; 20 CFR 404.352; 20 CFR 404.409 to 404.413; 20 CFR 404.421; 20 CFR 404.621; 20 CFR 404.623; 20 CFR 404.762

Legal Deadline: None

Abstract: These final rules amend our regulations to reflect section 201 of Public Law 98-21, the Social Security amendments of 1983. Section 201 increases the retirement age for unreduced old-age, wife or husband and widow or widower benefits from age 65 to 67.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bill Hilton, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 965-1769

RIN: 0960–AF16

3540. REVISED MEDICAL CRITERIA FOR EVALUATING IMPAIRMENTS OF THE DIGESTIVE SYSTEM (800F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We are proposing to revise the criteria in the Listing of Impairments (the Listings) that we use to evaluate claims involving digestive impairments. We apply these criteria at step three of our sequential evaluation processes to adults and children who claim Social Security or Supplemental Security Income (SSI) benefits based on disability under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating digestive impairments. We also propose to remove listings that are redundant and serve only to refer to other listings.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57009
NPRM Comment Period End	01/14/02	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Worbel, Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AF28

3541. REVISED MEDICAL CRITERIA FOR EVALUATING SKIN DISORDERS (801F)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: This final rule will revise the criteria in the Listing of Impairments (the Listings) we use for evaluating skin disorders in adults and to introduce corresponding medical criteria for evaluating skin disorders in children. We will revise the skin listings to ensure that the medical evaluation criteria are up-to-date and consistent and that the latest advances in medical knowledge and treatment are included.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63634
NPRM Comment Period End	02/08/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Cheryl Worbel, Policy Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF29

3542. IMPLEMENTING THE REDESIGNED DISABILITY PROCESS (816F)

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 42 USC 301

CFR Citation: 20 CFR 404.900; 20 CFR 404.901; 20 CFR 404.904; 20 CFR 404.904a; 20 CFR 404.905; 20 CFR 404.907; 20 CFR 404.908; 20 CFR 404.930; 20 CFR 404.948; 20 CFR 404.1512; 20 CFR 404.1526; 20 CFR 404.1527; 20 CFR 404.1529; 20 CFR 404.1546; 20 CFR 404.1615; 20 CFR 404.1616; 20 CFR 416.912; 20 CFR 416.926; 20 CFR 416.927; 20 CFR 416.929; 20 CFR 416.946; 20 CFR 416.1015; 20 CFR 416.1016; 20 CFR 416.1400; 20 CFR 416.1401; 20 CFR 416.1404; 20 CFR 416.1404a; 20 CFR 416.1405; 20 CFR 416.1407; 20 CFR 416.1408; 20 CFR 416.1430; 20 CFR 416.1448; 20 CFR 422.140; 20 CFR 422.203

Legal Deadline: None

Abstract: We plan to implement elements of the redesigned disability claims process (the prototype) that have

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been tested and found to further redesign goals. As we identify the most positive elements of the prototype, we plan to publish regulations to implement specific elements nationally.

Timetable:

Action	Date	FR Cite
NPRM	01/19/01	66 FR 5494
NPRM Comment Period End	03/20/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State, Federal

Agency Contact: Phillip Landis, Director, Disability Process Redesign Staff, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Related RIN: Merged With 0960-AE73

RIN: 0960–AF44

3543. EXCLUSION OF REPRESENTATIVES AND HEALTH CARE PROVIDERS CONVICTED OF VIOLATIONS FROM PARTICIPATION IN SOCIAL SECURITY DISABILITY PROGRAMS (820F)

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-169, sec 208; 42 USC 1320b-6

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This final rule would bar representatives and health care providers from participating in the Social Security disability programs if they are determined to have committed fraud. The bar would be 5 years, 10 years, and permanent exclusion for the first, second, and third offenses respectively.

Timetable:

Action	Date	FR Cite
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF46

3544. FILING OF APPLICATIONS AND RELATED FORMS (797F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 402(i); 42 USC 402(j); 42 USC 402(o); 42 USC 402(p); 42 USC 402(r); 42 USC 405; 42 USC 416(i)(2); 42 USC 423(b); 42 USC 428(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.610; 20 CFR 404.611; 20 CFR 422.505

Legal Deadline: None

Abstract: We will include language that explains the Internet applications completed on SSA's website and submitted to SSA are prescribed applications for filing for social security benefits. We plan to incorporate an explanation that once SSA has an approved electronic signature method in place, the signature method will be included as part of the Internet application process and will be required for the applications.

Timetable:

Action	Date	FR Cite
NPRM	08/17/01	66 FR 43136
NPRM Comment Period End	10/16/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Saundra Robinson, Social Insurance Speecialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-640
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RIN: 0960–AF52

3545. COLLECTION OF SUPPLEMENTAL SECURITY INCOME OVERPAYMENTS FROM TITLE VIII BENEFITS (819F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902; 42 USC 1320b-17; 42 USC 1383(b)

CFR Citation: 20 CFR 416.570; 20 CFR 416.572

Legal Deadline: None

Abstract: We plan to modify our rules for the recovery of Supplemental Security Income (SSI) benefit overpayments under title XVI of the Social Security Act (the Act). The final rules would implement statutory authority for SSA to recover SSI overpayments by adjusting the amount of special veterans benefits payable under title VIII of the Act. (Title VIII provides monthly benefits to certain World War II veterans residing outside the United States.) This collection practice would be used when the overpaid individual is no longer eligible for SSI cash benefits. Also, the amount of the SSI overpayment recoverable in a month would be limited to 10 percent of the benefit payable in a month under title VIII unless a different rate of collection is requested and approved or the overpaid person (or that person's spouse) willfully misrepresented or concealed information in connection with the overpayment. In cases of misrepresentation or concealment, the entire title VIII benefit would be subject to adjustment to recover the overpayment.

Timetable:

Action	Date	FR Cite
NPRM	07/26/01	66 FR 38963
NPRM Comment Period End	09/24/01	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of International Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AF53

3546. • PAYMENT OF BENEFITS TO ALIENS RESIDING OUTSIDE THE UNITED STATES (909F)

Priority: Other Significant

Legal Authority: 42 USC 402(k); 42 USC 405(a); 42 USC 902(a)(5)

CFR Citation: 20 CFR 404.460

Legal Deadline: None

Abstract: We are revising our rules to remove Democratic Kampuchea (now Cambodia) and Vietnam from the list of countries to which social security benefits may not be sent to aliens in those countries under Department of the Treasury (Treasury) restrictions. The removal of the Treasury restrictions on these countries permits benefit payments to accrue for aliens who are entitled to benefits for title II months in which they reside in either Cambodia or Vietnam provided they are not subject to other non-payment provisions for those months. These benefits may be paid to them if they go to the United States or to a country to which SSA can send benefits or if we receive assurance of free access to beneficiaries and vital records from appropriate officials in the country in which they reside. The revisions are necessary to reflect that Treasury has published regulations that have removed their restriction on sending Federal payments to any payees living in these countries.

Timetable:

Action	Date	FR Cite
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Robert J. Augustine, Social Insurance Specialist, Social Security Administration, Office of International Programs, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF70

Social Security Administration (SSA) — Long-Term Actions

3547. OLD-AGE, SURVIVORS, AND DISABILITY INSURANCE BENEFITS; REPLACING SOCIAL SECURITY NUMBER CARDS (543F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405

CFR Citation: 20 CFR 422.103

Legal Deadline: None

Abstract: These final rules will support the process for replacing Social Security number cards when we receive a request by telephone. We tested replacing the card based on information furnished by telephone, without requiring additional documentation. SSA is now evaluating the results of that test.

Timetable:

Action	Date	FR Cite
Interim Final Rule	06/22/95	60 FR 32444
Interim Final Rule Comment Period End	08/21/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Daniel T. Bridgewater, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-3298

RIN: 0960–AE18

3548. GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS) (554F)

Priority: Info./Admin./Other

Legal Authority: 41 USC 403(11); 41 USC 701 et seq; 42 USC 902(a)(5)

CFR Citation: 20 CFR 436.000

Legal Deadline: None

Abstract: This final regulation migrates the HHS grants regulation at 45 CFR part 76 into a new SSA regulation at 20 CFR part 436 now that SSA is an independent agency.

Timetable:

Action	Date	FR Cite
NPRM	01/23/02	67 FR 3266
NPRM Comment Period End	03/25/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Hora, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-7183

RIN: 0960–AE27

3549. DEDICATED ACCOUNTS AND INSTALLMENT PAYMENTS FOR CERTAIN PAST DUE SSI BENEFITS (622F)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 902(a)(5); 42 USC 1381; 42 USC 1381a; 42 USC 1382(c); 42 USC 1382(e); 42 USC 1383(a) to 1383(d); 42 USC 1383(g)

CFR Citation: 20 CFR 416.545; 20 CFR 416.546; 20 CFR 416.640; 20 CFR 416.1210; 20 CFR 416.1247

Legal Deadline: Final, Statutory, November 22, 1996.
Interim Final Rules were published on 12/20/1996.

Abstract: These regulations reflect amendments to the Social Security Act made by sections 213 and 221 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996. Section 213 requires the establishment of accounts in financial institutions for the payment of past-due SSI benefits after reimbursement to a

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State for Interim Assistance Reimbursement exceeding 6 months' benefits to representative payees on behalf of children under age 18. These accounts will be dedicated for certain purposes by restrictions on the use of such past-due benefits.

Section 221 requires past-due SSI benefits after reimbursement to a State for Interim Assistance Reimbursement which equals or exceeds 12 months' benefits to be paid in installments, with certain exceptions.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/96	61 FR 67203
Interim Final Rule Comment Period End	02/18/97	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Suzanne DiMarino, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 965-1769

RIN: 0960–AE59

3550. ASSIGNMENT OF SOCIAL SECURITY ADMINISTRATION NUMBERS (SSN) FOR NONWORK PURPOSES (751P)

Priority: Other Significant

Legal Authority: 42 USC 405; 42 USC 432; 42 USC 902(a)(5); 42 USC 1320b-1; 42 USC 1320b-13

CFR Citation: 20 CFR 422.104

Legal Deadline: None

Abstract: SSA published an advanced notice of proposed rulemaking regarding when we will assign an SSN to an alien who is legally in the United States (U.S.) but not under authority of law permitting him or her to work in the U.S. We are considering a proposal to assign an SSN to an alien who is legally in the U.S. but does not have authorization to work only if there is a Federal statute or regulation that requires the alien to furnish an SSN to receive a federally-funded benefit or service. Under such a proposal, we would no longer assign an SSN to an alien if the alien's sole reason for applying for the SSN is to satisfy a State or local statute or regulation that requires an individual to furnish an SSN in order to receive a benefit or service. The intent of such a proposed change would be to reduce the possibility of fraud through misuse of SSNs.

Timetable:

Action	Date	FR Cite
ANPRM	10/12/99	64 FR 55217
ANPRM Comment Period End	12/13/99	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Agency Contact: Arthur LaVeck, Social Insurance Specialist, Social Security Administration, Office of Program Benefits, 6401 Security Boulevard, Baltimore, MD 21235-6401
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Phone: 410 966-9822

RIN: 0960–AF05

3551. REVISED MEDICAL CRITERIA FOR EVALUATING IMMUNE SYSTEM DISORDERS (804P)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments that we use to evaluate claims involving impairments affecting the Immune System. We apply these criteria when you claim benefits based on disability under title II and title XVI of the Social Security Act.

Timetable:

Action	Date	FR Cite
NPRM	09/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Victoria Dorf, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF33

3552. REVISED MEDICAL CRITERIA FOR EVALUATING NEUROLOGICAL DISORDERS (806P)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404, subpart P, app 1

Legal Deadline: None

Abstract: We propose to revise the criteria in the Listing of Impairments (the listings) that we use to evaluate claims involving neurological disorders at the third step of our sequential evaluation processes for adults and children under title II and title XVI of the Social Security Act (the Act). The proposed revisions reflect advances in medical knowledge, treatment, and methods of evaluating neurological disorders.

Timetable:

Action	Date	FR Cite
NPRM	08/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fran O. Thomas, Social Insurance Specialist, Social Security Administration, Office of Process and Innovation Management, 6401 Security Boulevard, Baltimore, MD 21235-6401
Phone: 410 966-9822

RIN: 0960–AF35

3553. REVISED MEDICAL CRITERIA FOR EVALUATING GROWTH DISORDERS (444P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1302; 42 USC 1383

CFR Citation: 20 CFR 404 subpart P, app 1; 20 CFR 416 subpart I

Legal Deadline: None

Abstract: Section 100.00 of part B of appendix 1 to subpart P of part 404 of the Disability Regulations describes growth impairments considered severe enough to cause marked and severe functional limitations in a child under age 18. We are proposing revisions to the growth impairment listings. The revisions contained in these regulations reflect advances in medical knowledge, treatment, and methods of evaluating growth impairments. The Supplemental Security Income program incorporates and uses the same medical criteria as the Old-Age, Survivors, and Disability Insurance program.

Timetable:

Action	Date	FR Cite
NPRM	06/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: This regulation is cross-referenced with 0960-AD80.

Agency Contact: Regina Connell, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF67

3554. REVISED MEDICAL CRITERIA FOR EVALUATING MENTAL DISORDERS (886P)

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 405; 42 USC 902(a)(5); 42 USC 1383

CFR Citation: 20 CFR 404.1500, app 1; 20 CFR 404.1520; 20 CFR 404.1520a; 20 CFR 404.1528; 20 CFR 416.920a; 20 CFR 416.928

Legal Deadline: None

Abstract: We proposed to revise the criteria in the Listing of Impairments (the Listing) that we use to evaluate claims for disability benefits where the individual is alleging a mental impairment. The Listing describes, for each of the major body systems, impairments that are considered severe enough to prevent a person from doing any gainful activity. Our proposed revisions will reflect advances in medical knowledge, treatment, and methods of evaluating mental impairments in both adults and children.

Timetable:

Action	Date	FR Cite
NPRM	11/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Cathy Lively, Social Insurance Specialist, Social Security Administration, Office of Disability, 6401 Security Boulevard, Baltimore, MD 21235-6401
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RIN: 0960–AF69

Social Security Administration (SSA) — Completed Actions

3555. TECHNICAL REVISIONS TO MEDICAL CRITERIA FOR DETERMINATIONS OF DISABILITY (740F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 404 subpart P, app 1

Completed:

Reason	Date	FR Cite
Final Action	04/24/02	67 FR 20018
Final Action Effective	05/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carolyn Kiefer
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RIN: 0960–AE99

3556. TICKET TO WORK AND SELF-SUFFICIENCY PROGRAM (TICKET TO WORK AND WORK INCENTIVES IMPROVEMENT ACT OF 1999) (767F)

Priority: Other Significant

CFR Citation: 20 CFR 411.100 to 411.730

Completed:

Reason	Date	FR Cite
Final Action	12/28/01	66 FR 67369
Final Action Effective	01/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Agency Contact: Geoffrey Funk
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RIN: 0960–AF11

3557. ADMINISTRATIVE PROCEDURES FOR IMPOSING PENALTIES FOR FALSE OR MISLEADING STATEMENTS (784F)

Priority: Other Significant

CFR Citation: 20 CFR 404.475; 20 CFR 416.1339

Completed:

Reason	Date	FR Cite
Final Action	04/29/02	67 FR 20890
Final Action Effective	07/10/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 0960–AF20

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3558. CREDIT BUREAU REPORTING AND ADMINISTRATIVE OFFSET FOR SSI OVERPAYMENTS (795F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 416.590; 20 CFR 416.1403; 20 CFR 422.301; 20 CFR 422.305

Completed:

Reason	Date	FR Cite
Final Action	12/28/01	66 FR 67078
Final Action Effective	01/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Hora
Phone: 410 965-7183

RIN: 0960–AF31

3559. SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND AND DISABLED; STUDENT CHILD EARNED INCOME EXCLUSION (865F)

Priority: Substantive, Nonsignificant

CFR Citation: 20 CFR 416.1161

Completed:

Reason	Date	FR Cite
Final Action	03/12/02	67 FR 11033
Final Action Effective	03/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cynthia Pullen-Carroll
Phone: 410 965-3691

RIN: 0960–AF60

[FR Doc. 02–7688 Filed 05–10–02; 8:45 am]
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Tennessee Valley Authority

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TENNESSEE VALLEY AUTHORITY (TVA)

TENNESSEE VALLEY AUTHORITY

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Regulatory Agenda

AGENCY: Tennessee Valley Authority (TVA).

ACTION: Semiannual regulatory agenda.

SUMMARY: As a nonregulatory agency, TVA originates few regulations. TVA has previously submitted a proposed regulation which would revise the requirements applicable to the construction and maintenance of obstructions in the Tennessee River system and codify policies related to management of shoreline land under the jurisdiction of TVA and, together with other Federal agencies, proposed regulations implementing title VI of the Civil Rights Act of 1964, section 504 of the Rehabilitation Act of 1973, and the Age Discrimination Act of 1975 related to the definitions of "program or activity" and "program." TVA is therefore publishing a regulatory agenda in voluntary compliance with Executive Order No. 12866.

FOR FURTHER INFORMATION CONTACT:

For further information, please contact the persons listed.

Maureen H. Dunn,

General Counsel.

Tennessee Valley Authority—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3560	Nondiscrimination in Federally Assisted Programs of TVA— Effectuation of Title VI of the Civil Rights Act of 1964	3316-AA20

Tennessee Valley Authority—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3561	Approval of Construction and Regulation of Structures in the Tennessee River System and Shoreline Management	3316-AA19

Tennessee Valley Authority—Completed Actions

Sequence Number	Title	Regulation Identification Number
3562	New Restrictions on Lobbying	3316-AA22

Tennessee Valley Authority (TVA) — **Final Rule Stage**

3560. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS OF TVA— EFFECTUATION OF TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 794; 42 USC 2000d to 2000d-7; 42 USC 6101 to 6107; EO 12250

CFR Citation: 18 CFR 1302; 18 CFR 1307; 18 CFR 1309

Legal Deadline: None

Abstract: The Department of Justice proposes to make amendments to its regulations implementing title VI of the Civil Rights Act of 1964 (title VI), section 504 of the Rehabilitation Act of 1973 (Age Discrimination Act). Together, these statutes prohibit discrimination on the basis of race, color, national origin, disability, and age in programs or activities that receive Federal financial assistance. In 1988, the Civil Rights Restoration Act (CRRA) added definitions of "program or activity" and "program" to title VI and added a definition of "program or activity" to section 504 and the Age Discrimination Act. The added definitions were designed to clarify the broad scope of coverage of recipients' programs or activities under these statutes. The promulgation of this proposed regulation explicitly incorporates the CRRA's definition of "program or activity" and "program" into the Department's title VI, section 504, and Age Discrimination Act regulations. The Department's proposed regulation will be published as part of a joint Notice of Proposed Rulemaking involving up to 24 Federal agencies, including TVA.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Franklin E. Alford, Manager, Supplier and Diverse Business Relations, Tennessee Valley Authority, 1101 Market Street, WR3J, Chattanooga, TN 37402
Phone: 423 751-7203

RIN: 3316–AA20

Tennessee Valley Authority (TVA) — **Long-Term Actions**

3561. APPROVAL OF CONSTRUCTION AND REGULATION OF STRUCTURES IN THE TENNESSEE RIVER SYSTEM AND SHORELINE MANAGEMENT

Priority: Substantive, Nonsignificant

Legal Authority: 16 USC 831 to 831dd

CFR Citation: 18 CFR 1304 (Revision)

Legal Deadline: None

Abstract: This action revises the requirements applicable to construction and maintenance of obstructions in the Tennessee River System to better describe the types of facilities that would be considered for approval. It also would codify policies related to management of certain shoreline lands under the jurisdiction, custody, and control of TVA.

Timetable:

Action	Date	FR Cite
NPRM	09/20/00	65 FR 56821
NPRM Comment Period End	11/20/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Robert L. Curtis, Specialist-Land Policy, Resource Stewardship, Tennessee Valley Authority, P.O. Box 1589, 17 Ridgeway Road, Norris, TN 37828
Phone: 865 632-1552

RIN: 3316–AA19

Tennessee Valley Authority (TVA) — **Completed Actions**

3562. NEW RESTRICTIONS ON LOBBYING

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-410, sec 4, as amended by PL 104-134

CFR Citation: 18 CFR 1315.400(a), (b), and (e)

Legal Deadline: None

Abstract: This action amends the Tennessee Valley Authority's rules regarding restrictions on lobbying to make inflation adjustments in the range of civil monetary penalties it may assess against persons who violate those rules.

Timetable:

Action	Date	FR Cite
Final Action	03/05/02	67 FR 9924

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Clifford L. Beach Jr., Attorney, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11A, Knoxville, TN 37902-1401
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RIN: 3316–AA22

[FR Doc. 02–7689 Filed 05–10–02; 8:45 am]

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Department of Defense
General Services Administration
National Aeronautics and Space Administration

Federal Acquisition Regulation; Semiannual Regulatory Agenda

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DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Ch. 1

Semiannual Regulatory Agenda

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Semiannual regulatory agenda.

SUMMARY: This agenda provides summary descriptions of regulations being developed by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council in compliance with Executive Order 12866 "Regulatory Planning and Review." This agenda is being published to allow interested persons an opportunity to participate in the rulemaking process.

The Federal Acquisition Regulation (FAR) Secretariat has attempted to list all regulations pending at the time of publication, except for minor and routine or repetitive actions; however, unanticipated requirements may result in the issuance of regulations that are not included in this agenda. There is no legal significance to the omission of an item from this listing. Also, the dates shown for the steps of each action are estimated and are not commitments to act on or by the dates shown.

FOR FURTHER INFORMATION CONTACT: Ms. Laurie Duarte, FAR Secretariat, Room 4035, GS Building, Washington, DC 20405, (202) 501-4755.

SUPPLEMENTARY INFORMATION: DoD, GSA, and NASA, under their several statutory authorities, jointly issue and maintain the FAR through periodic issuance of changes published in the **Federal Register** and produced electronically as Federal Acquisition Circulars (FACs).

The electronic version of the FAR, including changes, can be accessed on the FAR website at http://www.arnet.gov/FAR.

Dated: March 15, 2002.

Al Matera,

Director, Acquisition Policy Division.

DOD/GSA/NASA(FAR)—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3563	FAR Case 2001-005, Notification of Overpayment, Contract Financing Payments	9000-AJ20
3564	FAR Case 2001-030, Electronic Listing of Acquisition Vehicles For Use By More Than One Agency	9000-AJ30
3565	FAR Case 2001-029, Miscellaneous Cost Principles	9000-AJ33
3566	FAR Case 2000-009, Contract Terms and Conditions Required To Implement Statute or Executive Orders—Commercial Items	9000-AJ34
3567	FAR Case 2001-015, Prohibited Sources	9000-AJ35
3568	FAR Case 2001-008, Compensation Cost Principle	9000-AJ36

DOD/GSA/NASA(FAR)—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3569	FAR Case 99-303, Task Order and Delivery Order Contracts	9000-AI72
3570	FAR Case 99-616, Balance of Payments Program	9000-AI90
3571	FAR Case 2000-401, Definitions of Applied Research and Development	9000-AI91
3572	FAR Case 2000-007, Financing Policies	9000-AI92
3573	FAR Case 2000-304, Electronic Signatures	9000-AI94
3574	FAR Case 99-024, Preference for U.S.-Flag Vessels	9000-AI97
3575	FAR Case 99-400, Geographic Use of the Term "United States"	9000-AI99
3576	FAR Case 99-614, Federal Supply Schedule Order Disputes and Incidental Items	9000-AJ01
3577	FAR Case 2000-307, Preference for Performance-Based Contracting	9000-AJ12
3578	FAR Case 2001-016, E.O. 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects	9000-AJ14
3579	FAR Case 2000-306, Caribbean Basin Country End Products	9000-AJ27

DOD/GSA/NASA(FAR)—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3580	FAR Case 89-093, Implementation of the Anti-Lobbying Statute	9000-AD76

FAR

DOD/GSA/NASA(FAR)—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3581	FAR Case 91-078, Small Business Subcontracting Reporting	9000-AG04
3582	FAR Case 94-753, Travel Costs	9000-AG27
3583	FAR Case 95-013, Government Property	9000-AH60
3584	FAR Case 97-032, Relocation Costs	9000-AH96
3585	FAR Case 97-304, Electronic Commerce in Federal Procurement	9000-AI10
3586	FAR Case 99-025, Cost Accounting Standards Administration	9000-AI70
3587	FAR Case 2000-302, Veterans Entrepreneurship and Small Business Development Act of 1999	9000-AI93
3588	FAR Case 98-018, Trademarks for Government Products	9000-AI98
3589	FAR Case 2000-013, Contract Types for Commercial Item Acquisitions	9000-AJ03
3590	FAR Case 2000-608, New Consolidated Form for Selection of Architect-Engineer Contractors	9000-AJ15
3591	FAR Case 2000-308, Prompt Payment Under Cost-Reimbursement Contracts for Services	9000-AJ17
3592	FAR Case 2000-011, Revisions to Provisions/Clauses to Accommodated Sealed Bidding and Simplified Procedures in Commercial Item Acquisitions	9000-AJ18
3593	FAR Case 2000-406, Definition of "Claim" and Terms Relating to Termination	9000-AJ19
3594	FAR Case 98-020, Hazardous Material Safety Data	9000-AJ21
3595	FAR Case 2001-012, Payments Under Fixed-Price Construction Contracts	9000-AJ22
3596	FAR Case 2001-006, Progress Payment Requests Under Indefinite—Delivery Contracts	9000-AJ23
3597	FAR Case 2001-002, European Union Trade Sanctions	9000-AJ37

DOD/GSA/NASA(FAR)—Completed Actions

Sequence Number	Title	Regulation Identification Number
3598	FAR Case 99-010, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings	9000-AI40
3599	FAR Case 98-024, Procurement Integrity Rewrite	9000-AI61
3600	FAR Case 1999-022, Discussion Requirements	9000-AI68
3601	FAR Case 99-011, Energy Efficiency of Supplies and Services	9000-AI71
3602	FAR Case 2000-604, North American Industry Classification System (NAICS)	9000-AI75
3603	FAR Case 2000-402, Definitions for "Contract Action" and "Contracting Action"	9000-AI76
3604	FAR Case 2000-404, Definitions for Classified Acquisitions	9000-AI81
3605	FAR Case 99-017, JWOD Subcontract Preference Under Service Contracts	9000-AI82
3606	FAR Case 2000-403, Definitions for Sealed Bid and Negotiated Procurements	9000-AI84
3607	FAR Case 99-026, Final Contract Voucher Submission	9000-AI86
3608	FAR Case 99-023, Prompt Payment and the Recovery of Overpayment	9000-AI89
3609	FAR Case 99-612, Application of Labor Clauses	9000-AI95
3610	FAR Case 99-605, Subcontracts (Labor Standards)	9000-AI96
3611	FAR Case 2000-008, Acquisition of Helium	9000-AJ09
3612	FAR Case 2001-014, Contractor Responsibility, Labor Relations Costs, and Costs Relating to Legal and Other Proceedings—Revocation	9000-AJ10
3613	FAR Case 2000-609, Contractor Personnel in the Procurement of Information Technology Services	9000-AJ11
3614	FAR Case 2001-017, Executive Order 13204, Revocation of Executive Order on Nondisplacement of Qualified Workers Under Certain Contracts	9000-AJ13
3615	FAR Case 2000-015, Definitions of Component and End Product	9000-AJ24
3616	FAR Case 2000-017, Definition of Subcontract in FAR Subpart 15.4	9000-AJ25
3617	FAR Case 2001-025, Iceland—Newly Designated Country Under the Trade Agreements Act	9000-AJ26
3618	FAR Case 2002-002, Special Simplified Procedures for Purchases of Commercial Items in Excess of the Simplified Acquisition Threshold	9000-AJ28
3619	FAR Case 2001-013, Notification of Noncompliance With Cost Accounting Standards	9000-AJ29
3620	FAR Case 2000-012, Commercial Item—Standard Form 1449	9000-AJ31
3621	FAR Case 2001-003, HUBZone Program Applicability	9000-AJ32

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DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Proposed Rule Stage

3563. FAR CASE 2001-005, NOTIFICATION OF OVERPAYMENT, CONTRACT FINANCING PAYMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require the contractor to notify the contracting officer if the Government overpays the contractor when making a contract financing payment. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ20

3564. • FAR CASE 2001-030, ELECTRONIC LISTING OF ACQUISITION VEHICLES FOR USE BY MORE THAN ONE AGENCY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 5

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require contracting activities to input information online for Governmentwide acquisition contracts, multi-agency contracts, General Services Administration (GSA) Federal Supply Schedule (FSS) contracts, blanket purchase agreements (BPAs) under FSS contracts and other procurement instruments intended for multiple agency use. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7256
NPRM Comment Period End	04/16/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ30

3565. • FAR CASE 2001-029, MISCELLANEOUS COST PRINCIPLES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 31; 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to delete the cost principle concerning transportation costs, and to revise the cost principles concerning cost of money, other business expenses, and deferred research and developments. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13072
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ33

3566. • FAR CASE 2000-009, CONTRACT TERMS AND CONDITIONS REQUIRED TO IMPLEMENT STATUTE OR EXECUTIVE ORDERS—COMMERCIAL ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486; 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to update the clause regarding contract terms and conditions required to implement statute or Executive orders—commercial items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13076
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ34

3567. • FAR CASE 2001-015, PROHIBITED SOURCES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

FAR

Proposed Rule Stage

CFR Citation: 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement Executive Order 13192, Lifting and Modifying Measures with Respect to the Federal Republic of Yugoslavia (Serbia and Montenegro), and other regulations of the Department of Treasury that enforce economic sanctions imposed by the President. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. The rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	03/20/02	67 FR 13080
NPRM Comment Period End	05/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ35

3568. • FAR CASE 2001-008, COMPENSATION COST PRINCIPLE

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 16; 48 CFR 22; 48 CFR 31; 48 CFR 37; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the "compensation for personal services" cost principle. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19952
NPRM Comment Period End	06/24/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ36

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Final Rule Stage

3569. FAR CASE 99-303, TASK ORDER AND DELIVERY ORDER CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 16

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to further strengthen that policy and the implementation of subsection 804(a) and (b) of the National Defense Authorization Act for Fiscal Year 2000 in several ways. With respect to acquisition planning, the rule draws greater attention to the capital planning requirements of the Clinger-Cohen Act (40 U.S.C. 1422) and ensures more deliberation by agency acquisition planners before orders are placed under a Governmentwide acquisition contract, a task-order or delivery-order contract issued by another agency, or the multiple award schedules program. With respect to the structuring of orders and the consideration given to contract holders prior to order placement, the rule (1) increases attention to modular contracting principles to help agencies avoid unnecessarily large and inadequately defined orders, (2) facilitates information exchange during the fair opportunity process so that contractors may develop and propose solutions that enable the Government to award performance-based orders, and (3) revises existing documentation requirements to address best value tradeoff decisions, as well as the issuance of sole-source orders as logical follow-ons to orders already issued under the contract. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/23/01	66 FR 44518
NPRM Comment Period End	10/22/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI72

3570. FAR CASE 99-616, BALANCE OF PAYMENTS PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 13; 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to remove subpart 25.3, Balance of Payments Program, and makes conforming changes to FAR parts 13 and 52. This

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regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/11/00	65 FR 54936
NPRM Comment Period End	11/13/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI90

3571. FAR CASE 2000-401, DEFINITIONS OF APPLIED RESEARCH AND DEVELOPMENT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 31; 48 CFR 35

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to move the definitions of "applied research" and "development" from separate areas of the FAR into the same FAR section pertaining to definitions. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/11/00	65 FR 54940
NPRM Comment Period End	11/13/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI91

3572. FAR CASE 2000-007, FINANCING POLICIES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to permit the use of performance-based payments type of financing on fixed-price contracts prior to definitization and to establish a standard time period of 30 days that contractors have to pay their vendors after the contractors have billed the Government for incurred vendor costs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804

Timetable:

Action	Date	FR Cite
NPRM	09/18/00	65 FR 56454
NPRM Comment Period End	11/17/00	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI92

3573. FAR CASE 2000-304, ELECTRONIC SIGNATURES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 4

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to clarify and encourage the use of electronic signatures in Federal procurement. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804

Timetable:

Action	Date	FR Cite
NPRM	11/01/00	65 FR 65698
NPRM Comment Period End	01/02/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI94

3574. FAR CASE 99-024, PREFERENCE FOR U.S.-FLAG VESSELS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 12; 48 CFR 32; 48 CFR 47; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) regarding the applicability of statutory requirements for use of U.S.-flag vessels in the transportation of supplies by sea. The FAR presently waives these requirements for subcontracts for the acquisition of commercial items. The rule requires the use of U.S.-flag vessels under certain subcontracts for commercial items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

This is a procurement-related action for which there is no statutory requirement. There is a paperwork burden associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	11/07/00	65 FR 66920

Action	Date	FR Cite
NPRM Comment Period End	01/08/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AI97

3575. FAR CASE 99-400, GEOGRAPHIC USE OF THE TERM "UNITED STATES"

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 3; 48 CFR 4; 48 CFR 5; 48 CFR 6; 48 CFR 8; 48 CFR 9; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 23; 48 CFR 25; 48 CFR 26; 48 CFR 28; 48 CFR 29; 48 CFR 31; 48 CFR 35; 48 CFR 36; 48 CFR 42; 48 CFR 47; 48 CFR 52; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to review and clarify the use of the term "United States" in the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	07/27/01	66 FR 39230
NPRM Comment Period End	09/25/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW,. Washington, DC 20405
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RIN: 9000–AI99

3576. FAR CASE 99-614, FEDERAL SUPPLY SCHEDULE ORDER DISPUTES AND INCIDENTAL ITEMS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 8; 48 CFR 51

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to add policies on disputes and incidental items under Federal Supply Schedule contracts and to remove the requirement to notify the General Services Administration when a schedule contractor refuses to honor an order placed by a Government contractor. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 79702
NPRM Comment Period End	02/20/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ01

3577. FAR CASE 2000-307, PREFERENCE FOR PERFORMANCE-BASED CONTRACTING

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 37

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 821 of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001. The FAR rule explicitly establishes a preference for performance-based contracting when acquiring services. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/02/01	66 FR 22802
Interim Final Rule Effective	05/02/01	
Interim Final Rule Comment Period End	07/02/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ12

3578. FAR CASE 2001-016, E.O. 13202, PRESERVATION OF OPEN COMPETITION AND GOVERNMENT NEUTRALITY TOWARDS GOVERNMENT CONTRACTORS' LABOR RELATIONS ON FEDERAL AND FEDERALLY FUNDED CONSTRUCTION PROJECTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 17; 48 CFR 22; 48 CFR 36

Legal Deadline: None

Abstract: Executive Order (EO) 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects, which prohibits including requirements for affiliation with a labor organization as a condition for award of any contract or subcontract for construction or construction management services, is currently the subject of litigation in the Federal courts. The district court agreed

with the AFL-CIO's contention that the Labor Relations Act preempts the E.O. and granted an injunction against implementation of the E.O. An appeal of this decision is pending in the United States Court of Appeals for the District of Columbia Circuit. Pending resolution of this litigation, a stay for the interim rule was published in the Federal Register on March 7, 2002, to comply with the court order. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/16/01	66 FR 27414
Interim Final Rule Effective	05/16/01	
Interim Final Rule Comment Period End	07/16/01	
Interim Final Rule (Stay)	03/07/02	67 FR 10528
Interim Final Rule Effective	03/07/02	
Interim Final Rule Comment Period End	05/06/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 9000–AJ14

3579. • FAR CASE 2000-306, CARIBBEAN BASIN COUNTRY END PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement the determination of the United States Trade Representative (USTR) to extend the treatment of certain end products, from countries designated by the President as beneficiaries under the Caribbean Basin Economic Recovery Act, as eligible products under the Trade Agreements Act, with the exception of end products from the Dominican Republic, Honduras, and Panama. The rule also implements section 211 of the United States-Caribbean Basin Trade Partnership Act and the determination of the USTR as to which countries qualify for the enhanced trade benefits under that Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	02/08/02	67 FR 6116
Interim Final Rule Effective	02/20/02	
Interim Final Rule Comment Period End	04/09/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ27

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Long-Term Actions

3580. FAR CASE 89-093, IMPLEMENTATION OF THE ANTI-LOBBYING STATUTE

Priority: Substantive, Nonsignificant

Legal Authority: PL 101-121, sec 319

CFR Citation: 48 CFR 3; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 319 of Public Law 101-121, which added a new section 1352 to title 31 U.S.C. entitled "Limitation on Use of Appropriated Funds to Influence Certain Federal Contracting and Financial Transactions." Section 319 generally prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Section 319 also requires that each person who requests or receives a Federal contract, grant, or cooperative agreement, in excess of $100,000, or a loan or Federal commitment to insure or guarantee a loan, in excess of $150,000, must disclose lobbying with other than appropriated funds.

Timetable:

Action	Date	FR Cite
Interim Final Rule	01/30/90	55 FR 3190
Interim Final Rule Comment Period End	04/02/90	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Federal

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RIN: 9000–AD76

3581. FAR CASE 91-078, SMALL BUSINESS SUBCONTRACTING REPORTING

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 2301 to 2331; 42 USC 2473(c)

CFR Citation: 48 CFR 53.219

Legal Deadline: None

Abstract: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing to amend FAR 53.219 to authorize the addition of a column to the Standard Form 295, Summary Subcontract Report, to report the number of subcontracts awarded to small business concerns, small disadvantaged business concerns, and women-owned small business enterprises. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	09/26/94	59 FR 49037
NPRM Comment Period End	11/25/94	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: Federal

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RIN: 9000–AG04

3582. FAR CASE 94-753, TRAVEL COSTS

Priority: Other Significant

Legal Authority: PL 103-355

CFR Citation: 48 CFR 31.205-46

Legal Deadline: Final, Statutory, October 1, 1995, The Federal Acquisition Streamlining Act eliminated the statutory requirement to the travel cost principle concerning the Federal Travel Regulations. No regulatory implementation was required.

Abstract: This rule is issued pursuant to the Federal Acquisition Streamlining Act of 1994, Public Law 103-355 (the Act). The Federal Acquisition Regulatory Council is considering amending the Federal Acquisition Regulation (FAR) as a result of changes to 41 U.S.C. 22 by section 2191 of the Act. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	12/14/94	59 FR 64542
NPRM Comment Period End	02/13/95	
NPRM	05/20/99	64 FR 27654
NPRM Comment Period End	07/19/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AG27

3583. FAR CASE 95-013, GOVERNMENT PROPERTY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 45; 48 CFR 52

Legal Deadline: None

Abstract: The rule amends the Federal Acquisition Regulation (FAR) to simplify procedures, reduce recordkeeping, and eliminate requirements related to the management and disposition of Government property in the possession of contractors. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	06/02/97	62 FR 30186
NPRM Comment Period End	08/15/97	
NPRM	01/10/00	65 FR 1438
NPRM Comment Period End	03/10/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 9000–AH60

3584. FAR CASE 97-032, RELOCATION COSTS

Priority: Substantive, Nonsignificant

Legal Authority: 10 USC 2301 to 2331; 42 USC 2473(c)

CFR Citation: 48 CFR 31

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to remove the ceilings imposed on certain types of relocation costs; to permit reimbursement of relocation costs on an appropriate lump-sum basis; and to make allowable payments for spouse employment assistance and payments for increased employee income and social security taxes incident to allowable reimbursed relocation. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	05/25/99	64 FR 28330
NPRM Comment Period End	07/26/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AH96

3585. FAR CASE 97-304, ELECTRONIC COMMERCE IN FEDERAL PROCUREMENT

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-85, sec 850

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 5; 48 CFR 12; 48 CFR 13; 48 CFR 14; 48 CFR 19; 48 CFR 22; 48 CFR 34; 48 CFR 35; 48 CFR 36

Legal Deadline: Final, Statutory, May 16, 1998.

Abstract: This rule amends the Federal Acquisition Regulation to implement section 850 of the National Defense Act for FY 1998 (Pub. L. 105-85) to eliminate the preference for electronic commerce within the Federal Acquisition Computer Network. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/30/98	63 FR 58590
Interim Final Rule Effective	10/30/98	
Interim Final Rule Comment Period End	12/29/98	
NPRM	08/21/00	65 FR 50872
NPRM Comment Period End	10/20/00	
Interim Final Rule	05/16/01	66 FR 27407
Interim Final Rule Comment Period End	07/16/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 9000–AI10

3586. FAR CASE 99-025, COST ACCOUNTING STANDARDS ADMINISTRATION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 30; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to delineate the process for determining and resolving the cost impact on contracts and subcontracts when a contractor makes a compliant change to a cost accounting practice or follows a noncompliant practice. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	04/18/00	65 FR 20854
NPRM Comment Period End	06/19/00	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AI70

3587. FAR CASE 2000-302, VETERANS ENTREPRENEURSHIP AND SMALL BUSINESS DEVELOPMENT ACT OF 1999

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c); PL 106-50

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 5; 48 CFR 7; 48 CFR 19; 48 CFR 52; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 803 of the Small Business Reauthorization Act of 2000, part of the Consolidated Appropriations Act 2001 (Pub. L. 106-554). The Act established new assistance programs for veterans and service-disabled veterans who own and operate small businesses. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/11/00	65 FR 60542
Interim Final Rule Effective	10/11/00	
Interim Final Rule Comment Period End	12/11/00	
Interim Final Rule	10/22/01	66 FR 53492
Interim Final Rule Effective	10/22/01	
Interim Final Rule Comment Period End	12/21/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 9000–AI93

3588. FAR CASE 98-018, TRADEMARKS FOR GOVERNMENT PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(a); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 27; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to provide guidance on the use of names, symbols, and logos that describe Government products, services, systems, and programs. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

This is a procurement-related action for which there is no statutory requirement. There may be a paperwork burden associated with this action.

Timetable:

Action	Date	FR Cite
NPRM	08/09/01	66 FR 42102
NPRM Comment Period End	10/09/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AI98

3589. FAR CASE 2000-013, CONTRACT TYPES FOR COMMERCIAL ITEM ACQUISITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC 137; 42 USC 2473(c)

CFR Citation: 48 CFR 12; 48 CFR 16

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to provide clarification on what contract types are authorized for commercial item acquisitions. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	12/29/00	65 FR 83292
NPRM Comment Period End	02/27/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ03

3590. FAR CASE 2000-608, NEW CONSOLIDATED FORM FOR SELECTION OF ARCHITECT-ENGINEER CONTRACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 36

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to replace Standard Forms 254 and 255 with proposed Standard Form 330, Architect-Engineer Qualification. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53314
NPRM Comment Period End	12/18/01	
NPRM Comment Period End (Extended)	01/08/02	66 FR 65792

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ15

3591. FAR CASE 2000-308, PROMPT PAYMENT UNDER COST-REIMBURSEMENT CONTRACTS FOR SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require agencies to pay an interest penalty whenever they make an interim payment under a cost-reimbursement contract for services more than 30 days after the agency receives a proper invoice from the contractor. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Interim Final Rule	10/22/01	66 FR 53485
Interim Final Rule Effective	10/22/01	
Interim Final Rule Comment Period End	12/21/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ17

3592. FAR CASE 2000-011, REVISIONS TO PROVISIONS/CLAUSES TO ACCOMMODATED SEALED BIDDING AND SIMPLIFIED PROCEDURES IN COMMERCIAL ITEM ACQUISITIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to update FAR provisions relating to Instructions to Offerors-Commercial Items and Offeror Representations and Certifications-Commercial Items, to accommodate sealed bidding and simplified acquisitions. This regulatory action is not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/22/01	66 FR 44288
NPRM Comment Period End	10/22/01	
Final Action	To Be Determined	

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Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ18

3593. FAR CASE 2000-406, DEFINITION OF "CLAIM" AND TERMS RELATING TO TERMINATION

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 2; 48 CFR 17; 48 CFR 33; 48 CFR 49; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to clarify and move the definitions of "claim" and certain terms relating to termination to part 2 of the FAR. This regulatory action was not subject to Office of Management and Budget review under Executive 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	08/15/01	66 FR 42922
NPRM Comment Period End	10/15/01	
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Federal

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RIN: 9000–AJ19

3594. FAR CASE 98-020, HAZARDOUS MATERIAL SAFETY DATA

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 23; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to revise the language that provides policies and procedures for contractor submission of Material Safety Data Sheets (MSDSs). This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804. RIN 9000-AI87 was withdrawn in the April 2001 Unified Agenda, published in the Federal Register on May 14, 2001.

Timetable:

Action	Date	FR Cite
NPRM	01/04/02	67 FR 632
NPRM Comment Period End	03/05/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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Related RIN: Previously reported as 9000-AI87

RIN: 9000–AJ21

3595. • FAR CASE 2001-012, PAYMENTS UNDER FIXED-PRICE CONSTRUCTION CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to clarify in the certification language of the clause entitled Payments under Fixed-Price Construction Contracts that all payments due to subcontractors and suppliers have been made by the prime contractor from previous progress payments received from the Government. This regulatory action was not subject to review under Executive Order 12866, dated September 30, 1993, and is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	10/18/01	66 FR 53030
NPRM Comment Period End	12/17/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ22

3596. • FAR CASE 2001-006, PROGRESS PAYMENT REQUESTS UNDER INDEFINITE—DELIVERY CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 32; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to require, under indefinite—delivery contracts, the contractor to account for and submit progress payment requests under individual orders as if each order constitutes a separate contract, unless otherwise specified in the contract. This regulatory action was not subject to Office of Management and Budget Review under Executive Order 12866 dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
NPRM	11/14/01	66 FR 57294
NPRM Comment Period End	01/14/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ23

3597. • FAR CASE 2001-002, EUROPEAN UNION TRADE SANCTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 25

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to correct the clause prescription for the clauses that implement European Union trade sanctions by specifically exempting solicitations issued and contracts awarded by the Department of Defense. This regulatory was not subject to Office of Management review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ37

DEPARTMENT OF DEFENSE/GENERAL SERVICES ADMINISTRATION/NATIONAL AERONAUTICS AND SPACE ADMINISTRATION (FAR)

Completed Actions

3598. FAR CASE 99-010, CONTRACTOR RESPONSIBILITY, LABOR RELATIONS COSTS, AND COSTS RELATING TO LEGAL AND OTHER PROCEEDINGS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 9.104-1; 48 CFR 14.404-2; 48 CFR 15.503; 48 CFR 31.205-21; 48 CFR 31.205-47; 48 CFR 52.209-5; 48 CFR 52.212-3

Completed:

Reason	Date	FR Cite
Final Action(Termination of Stay of final rule)	12/27/01	66 FR 66984
Final Action Effective	12/27/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI40

3599. FAR CASE 98-024, PROCUREMENT INTEGRITY REWRITE

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 3; 48 CFR 4; 48 CFR 9; 48 CFR 15; 48 CFR 52; ...

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 13057
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI61

3600. FAR CASE 1999-022, DISCUSSION REQUIREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 15

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65368
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI68

3601. FAR CASE 99-011, ENERGY EFFICIENCY OF SUPPLIES AND SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 11; 48 CFR 15; 48 CFR 23; 48 CFR 42

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65351
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI71

3602. FAR CASE 2000-604, NORTH AMERICAN INDUSTRY CLASSIFICATION SYSTEM (NAICS)

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 5; 48 CFR 19; 48 CFR 23; 48 CFR 52; 48 CFR 53

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65370
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI75

3603. FAR CASE 2000-402, DEFINITIONS FOR "CONTRACT ACTION" AND "CONTRACTING ACTION"

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 1; 48 CFR 5; 48 CFR 8; 48 CFR 17; 48 CFR 19; 48 CFR 32; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 13053
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI76

3604. FAR CASE 2000-404, DEFINITIONS FOR CLASSIFIED ACQUISITIONS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 4; 48 CFR 14; 48 CFR 32

Completed:

Reason	Date	FR Cite
Final Action	02/08/02	67 FR 6113
Final Action Effective	02/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI81

3605. FAR CASE 99-017, JWOD SUBCONTRACT PREFERENCE UNDER SERVICE CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 8; 48 CFR 44; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65367
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 9000–AI82

3606. FAR CASE 2000-403, DEFINITIONS FOR SEALED BID AND NEGOTIATED PROCUREMENTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 3; 48 CFR 14; 48 CFR 15; 48 CFR 28; 48 CFR 35; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 13054
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI84

3607. FAR CASE 99-026, FINAL CONTRACT VOUCHER SUBMISSION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 42; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	02/08/02	67 FR 6118
Final Action Effective	02/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI86

3608. FAR CASE 99-023, PROMPT PAYMENT AND THE RECOVERY OF OVERPAYMENT

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 2; 48 CFR 32; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65353
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI89

3609. FAR CASE 99-612, APPLICATION OF LABOR CLAUSES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 13066
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AI95

3610. FAR CASE 99-605, SUBCONTRACTS (LABOR STANDARDS)

Priority: Economically Significant

CFR Citation: 48 CFR 22; 48 CFR 52; 48 CFR 53

Completed:

Reason	Date	FR Cite
Withdrawn	01/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AI96

3611. FAR CASE 2000-008, ACQUISITION OF HELIUM

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 8; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	03/20/02	67 FR 13064
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte
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RIN: 9000–AJ09

3612. FAR CASE 2001-014, CONTRACTOR RESPONSIBILITY, LABOR RELATIONS COSTS, AND COSTS RELATING TO LEGAL AND OTHER PROCEEDINGS—REVOCATION

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 9; 48 CFR 14; 48 CFR 15; 48 CFR 31; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	12/27/01	66 FR 66986
Final Action Effective	12/27/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ10

3613. FAR CASE 2000-609, CONTRACTOR PERSONNEL IN THE PROCUREMENT OF INFORMATION TECHNOLOGY SERVICES

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 39

Completed:

Reason	Date	FR Cite
Final Action	12/18/01	66 FR 65371
Final Action Effective	12/18/01	

Regulatory Flexibility Analysis Required: Yes

Government Levels Affected: Federal

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RIN: 9000–AJ11

3614. FAR CASE 2001-017, EXECUTIVE ORDER 13204, REVOCATION OF EXECUTIVE ORDER ON NONDISPLACEMENT OF QUALIFIED WORKERS UNDER CERTAIN CONTRACTS

Priority: Substantive, Nonsignificant

CFR Citation: 48 CFR 22; 48 CFR 52

Completed:

Reason	Date	FR Cite
Final Action	02/08/02	67 FR 6116
Final Action Effective	02/20/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

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RIN: 9000–AJ13

3615. • FAR CASE 2000-015, DEFINITIONS OF COMPONENT AND END PRODUCT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473

CFR Citation: 48 CFR 2; 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to restore the unique part 25 definitions of "component" and "end product" for acquisition of supplies. It also revises definitions of "component" and "cost of components" for acquisition of construction. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866 dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	12/18/01	66 FR 65349
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ24

3616. • FAR CASE 2000-017, DEFINITION OF SUBCONTRACT IN FAR SUBPART 15.4

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to exclude section 15.407-2 from application of the expanded definition of "subcontract" at FAR 5.401. This regulatory action was not subject to the Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	12/18/01	66 FR 65369
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ25

3617. • FAR CASE 2001-025, ICELAND—NEWLY DESIGNATED COUNTRY UNDER THE TRADE AGREEMENTS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 22; 48 CFR 25; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement the accession of Iceland to the Agreement on Government Procurement, by adding Iceland as a designated country under the Trade Agreements Act. This regulatory action

was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	12/18/01	66 FR 65370
Final Action Effective	02/19/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ26

3618. • FAR CASE 2002-002, SPECIAL SIMPLIFIED PROCEDURES FOR PURCHASES OF COMMERCIAL ITEMS IN EXCESS OF THE SIMPLIFIED ACQUISITION THRESHOLD

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486 (c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 13

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to implement section 823 of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 107-107). Section 823 extends the test of the special simplified procedures for purchases of commercial items greater than the simplified acquisition threshold, but not exceeding $5,000,000, until January 1, 2003. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	02/08/02	67 FR 6114
Final Action Effective	02/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ28

3619. • FAR CASE 2001-013, NOTIFICATION OF NONCOMPLIANCE WITH COST ACCOUNTING STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 15

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to remove the requirement for a contractor to notify the contracting officer when there is a cost accounting standard (CAS) noncompliance that has an immaterial cost impact. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	02/08/02	67 FR 6115
Final Action Effective	02/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405
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RIN: 9000–AJ29

3620. • FAR CASE 2000-012, COMMERCIAL ITEM—STANDARD FORM 1449

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 1; 48 CFR 53

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to update Standard Form 1449, Solicitation/Contract/Order for Commercial Items. This regulatory action was not subject to Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	03/20/02	67 FR 13049
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

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RIN: 9000–AJ31

3621. • FAR CASE 2001-003, HUBZONE PROGRAM APPLICABILITY

Priority: Substantive, Nonsignificant

Legal Authority: 40 USC 486(c); 10 USC ch 137; 42 USC 2473(c)

CFR Citation: 48 CFR 12; 48 CFR 19; 48 CFR 52

Legal Deadline: None

Abstract: This rule amends the Federal Acquisition Regulation (FAR) to simplify current FAR language that expands the applicability of the HUBZone Program to all agencies covered by the FAR after September 30, 2000. This regulatory action was not subject to review under Office of Management and Budget review under Executive Order 12866, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

Timetable:

Action	Date	FR Cite
Final Action	03/20/02	67 FR 13065
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Federal

Agency Contact: Laurie Duarte, FAR Secretariat, DOD/GSA/NASA (FAR), GSA (MVP), 1800 F Street NW, Washington, DC 20405

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RIN: 9000–AJ32

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Part XLVII

Commodity Futures Trading Commission

Semiannual Regulatory Agenda

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COMMODITY FUTURES TRADING COMMISSION (CFTC)

COMMODITY FUTURES TRADING COMMISSION

17 CFR Ch. I

Regulatory Flexibility Agenda

AGENCY: Commodity Futures Trading Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Commodity Futures Trading Commission, in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of significant rules which the Commission expects to propose or promulgate over the next year. The Commission welcomes comments from small entities and others on the agenda.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara Webster Black, Special Assistant to the Executive Director, Commodity Futures Trading Commission, 1155 21st Street NW., Washington, DC 20581, (202) 418-5130, bblack@cftc.gov.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that:

(a) During the months of April and October of each year, each agency shall publish in the **Federal Register** a regulatory flexibility agenda that shall contain:

(1) A brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable about the items listed in paragraph (1). 5 U.S.C. 602(a).

The Commission has prepared an agenda of significant rules which it presently expects may be considered during the course of the next year. These rules may have some impact on small entities.[1] In this regard, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Commission's spring 2002 regulatory flexibility agenda is set forth below.

Issued in Washington, DC, on February 27, 2002 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

Commodity Futures Trading Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3622	Denomination of Customer Funds and Location of Depositories	3038-AB31
3623	Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers	3038-AB64
3624	Regulation of Hybrid Instruments	3038-AB69
3625	Use of Broker-Dealers, Depository Institutions, and Farm Crediting System Institutions as Intermediaries on Derivatives Transaction Execution Facilities	3038-AB70
3626	Authority To Modify Security Futures Product Listing Standards	3038-AB73
3627	Compliance Date for Security Futures Products To Be Cleared by a Clearing Agency That Has Linked and Coordinated Clearing With Other Clearing Agencies	3038-AB74
3628	Offering and Selling Security Futures Products Traded on Foreign Boards of Trade to United States Persons	3038-AB75
3629	Requirements for Foreign Stock Index Contracts To Qualify as Non-Narrow-Based Indices	3038-AB78

Commodity Futures Trading Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3630	Performance Disclosures for Commodity Trading Advisors and Commodity Pool Operators	3038-AB39
3631	Registration Exemptions Pertaining to the Offer and Sale of Foreign Futures and Foreign Options Contracts to Customers Located in the United States	3038-AB45

[1] The Commission published its definition of small entity to be used in connection with rulemaking proceedings on April 30, 1982 (47 FR 18618). Pursuant to that definition, the Commission is not required to list many of the agenda items contained in this regulatory flexibility agenda. See 5 U.S.C. 602(a)(1). Moreover, the Commission has previously certified, pursuant to section 605 of the RFA, 5 U.S.C. 605, that certain items contained in this agenda will not have a significant economic impact on a substantial number of small entities. Accordingly, the listing of a rule in this regulatory flexibility agenda should not, in any event, be taken as a determination that a rule, when proposed or promulgated, will in fact require a regulatory flexibility analysis. However, the Commission hopes that the publication of an agenda which includes significant rules, regardless of their potential impact on small entities, may serve the public generally by providing an early and meaningful opportunity to participate in and comment on the formulation of new or revised regulations. In addition to publishing the regulatory flexibility agenda, the Commission also makes available to the public, on a monthly basis, a calendar and, on a weekly basis, posts an advisory on its website (http://www.cftc.gov) which lists rules that the Commission is considering or will consider in the near future.

CFTC

Commodity Futures Trading Commission—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3632	Margin Requirements for Security Futures Products	3038-AB71
3633	Avoidance of Duplicative or Conflicting Regulations Applicable to Dual Registrants	3038-AB76
3634	Cash Settlement and Regulatory Halts Required for Security Futures Products	3038-AB86

Commodity Futures Trading Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3635	Public Reporting by Operators of Certain Large Commodity Pools—Regulations 4.7, 4.12, and 4.27	3038-AB40
3636	Trade Options on Enumerated Agricultural Commodities	3038-AB61
3637	Exemption From Compliance With the Criterion for Linked and Coordinated Clearing	3038-AB72

Commodity Futures Trading Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3638	Prohibition Against Dual Trading	3038-AB83
3639	Regulation Concerning Conduct of Members and Employees and Former Members and Employees of the Commission, 17 CFR Part 140	3038-AB85
3640	Listing Standards and Conditions for Trading Security Futures Products	3038-AB87
3641	Reporting Levels for Large Trader Reports; Security Futures Products	3038-AB88

Commodity Futures Trading Commission—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3038-AB79	Special Procedures To Encourage and Facilitate Bona Fide Hedging by Agricultural Producers	02/01/2002	Withdrawn

Commodity Futures Trading Commission (CFTC) — Proposed Rule Stage

3622. DENOMINATION OF CUSTOMER FUNDS AND LOCATION OF DEPOSITORIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1a; 7 USC 2; 7 USC 5; 7 USC 6a to 6d; 7 USC 6f to 6g; 7 USC 12a; 7 USC 19

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is proposing rules requesting public comment on how to address the risks relating to holding segregated funds offshore or in foreign currencies.

Timetable:

Action	Date	FR Cite
Concept Release	12/30/97	62 FR 67841
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AB31

3623. MINIMUM FINANCIAL REQUIREMENTS FOR FUTURES COMMISSION MERCHANTS AND INTRODUCING BROKERS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6f

CFR Citation: 17 CFR 1.17

Legal Deadline: None

Abstract: The Commission is requesting public comment on proposed amendments to Rule 1.17 that

would adopt a risk-based capital requirement for futures commission merchants.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AB64

3624. REGULATION OF HYBRID INSTRUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required, after consulting with and obtaining the concurrence of the Board of Governors of the Federal Reserve System, to prescribe regulations to govern hybrid instruments if it determines that it is in the public interest and consistent with the Commodity Exchange Act, and the product is not predominantly a banking product under the test enumerated in title IV of the Commodity Futures Modernization Act of 2000.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3038–AB69

3625. USE OF BROKER-DEALERS, DEPOSITORY INSTITUTIONS, AND FARM CREDITING SYSTEM INSTITUTIONS AS INTERMEDIARIES ON DERIVATIVES TRANSACTION EXECUTION FACILITIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is required to coordinate with the Securities and Exchange Commission, the Secretary of the Treasury and Federal banking regulators (including the Farm Credit Administration) in adopting rules and taking any other appropriate action to implement the provisions of the Commodity Futures Modernization Act of 2000 relating to the use of broker-dealers, depository institutions, and farm credit system institutions as intermediaries on derivatives transaction execution facilities.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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Email: eritter@cftc.gov

RIN: 3038–AB70

3626. AUTHORITY TO MODIFY SECURITY FUTURES PRODUCT LISTING STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(D)(v)(I)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission may adopt rules to jointly modify security futures product listing standards requiring that any security underlying the security future, including each component security of a narrow-based security index, be registered pursuant to section 12 of the Securities Exchange Act of 1934, and that the security futures be based upon common stock and such other equity securities as both agencies jointly determine appropriate.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB73

3627. COMPLIANCE DATE FOR SECURITY FUTURES PRODUCTS TO BE CLEARED BY A CLEARING AGENCY THAT HAS LINKED AND COORDINATED CLEARING WITH OTHER CLEARING AGENCIES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission are required to jointly publish in the Federal Register a notice of the compliance date for requiring security futures products to be cleared by a clearing agency that has in place provisions for linked and coordinated clearing with other clearing agencies that clear security futures products to be purchased on one market and offset on another market that trades such product within 165 days of the compliance date.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB74

3628. OFFERING AND SELLING SECURITY FUTURES PRODUCTS TRADED ON FOREIGN BOARDS OF TRADE TO UNITED STATES PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission are required to jointly issue rules, regulations, or orders as are necessary and appropriate to permit the offer and sale of security futures products traded on or subject to the rules of a foreign board of trade to United States persons.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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Fax: 202 418-5524
Email: eritter@cftc.gov

RIN: 3038–AB75

3629. REQUIREMENTS FOR FOREIGN STOCK INDEX CONTRACTS TO QUALIFY AS NON-NARROW-BASED INDICES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, December 21, 2001, Prior to 12/21/2001.
Within one year after the date of enactment of the Commodity Futures Modernization Act of 2000.

Abstract: The Commission and the Securities and Exchange Commission are required to jointly adopt rules and regulations that set forth the requirements for foreign stock index contracts to qualify as non-narrow-based indices.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB78

Commodity Futures Trading Commission (CFTC) — Final Rule Stage

3630. PERFORMANCE DISCLOSURES FOR COMMODITY TRADING ADVISORS AND COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6n; 7 USC 6o; 7 USC 12a

CFR Citation: 17 CFR 4.25; 17 CFR 4.35

Legal Deadline: None

Abstract: The Commodity Futures Trading Commission is proposing amendments to the requirements concerning the presentation of rate of return data by commodity trading advisors and commodity pool operators. The Commission's proposed rules address computational and disclosure matters relating to participating in commodity trading advisor programs on a partially funded basis.

Timetable:

Action	Date	FR Cite
ANPRM	06/18/98	63 FR 33297
ANPRM Comment Period End	09/16/98	
NPRM	08/02/99	64 FR 41843
NPRM Comment Period End	10/01/99	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert B. Wasserman, Associate Director, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB39

3631. REGISTRATION EXEMPTIONS PERTAINING TO THE OFFER AND SALE OF FOREIGN FUTURES AND FOREIGN OPTIONS CONTRACTS TO CUSTOMERS LOCATED IN THE UNITED STATES

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(A); 7 USC 6(b); 7 USC 6c

CFR Citation: 17 CFR 30.1; 17 CFR 30.4; 17 CFR 30.10

Legal Deadline: None

Abstract: The Commission proposes to codify some of the interpretations and positions that its staff has taken regarding registration requirements under Part 30 of the Commission's rules, which governs, generally, the solicitation and sale of foreign futures and foreign options contracts to customers located in the United States. The Commission proposes to modify Rule 30.4(a) by clarifying that foreign futures and options brokers, including

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those with U.S. bank branches, are not required to register as futures commission merchants (FCMs) pursuant to Rule 30.4, or seek Rule 30.10 relief, if they fall generally into the following categories: (1) those that carry customer omnibus accounts for U.S. FCMs; (2) those that carry U.S. affiliate accounts that are proprietary to the foreign futures and options broker; and (3) those that carry U.S. accounts that are proprietary to a U.S. FCM. In addition, proposed Rule 30.10(a) will specify representations that must be made by a foreign futures and options broker that has U.S. bank branches in order to obtain a Rule 30.10 comparability exemption or to come within the registration exception of Rule 30.4.

Timetable:

Action	Date	FR Cite
NPRM	08/26/99	64 FR 46613
NPRM Comment Period End	10/25/99	
Final Action	06/00/02	
Final Action Effective	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Susan A. Elliott, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB45

3632. MARGIN REQUIREMENTS FOR SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: 17 CFR 41.43 to 41.48

Legal Deadline: None

Abstract: The Board of Governors of the Federal Reserve System on March 6, 2001 delegated its authority to have the Commission and the Securities and Exchange Commission, within a reasonable period of time after delegation, jointly prescribe regulations to establish margin requirements, including the establishment of levels of margin, for security futures products.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50719
NPRM Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608
Correction	11/13/01	66 FR 56902
Correction	11/19/01	66 FR 58007
Final Action	05/00/02	
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
Phone: 202 418-5120
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RIN: 3038–AB71

3633. AVOIDANCE OF DUPLICATIVE OR CONFLICTING REGULATIONS APPLICABLE TO DUAL REGISTRANTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 1 et seq, as amended by PL 106-554, 114 Stat. 2763

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission, in consultation with the Securities and Exchange Commission, is required to issue rules, regulations, or orders as are necessary to avoid duplicative or conflicting regulations applicable to dual registrants involving security futures products.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50785
NPRM Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608
Final Action	05/00/02	
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter, Acting Deputy General Counsel, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB76

3634. CASH SETTLEMENT AND REGULATORY HALTS REQUIRED FOR SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 2(a)(1)(D)(i)

CFR Citation: 17 CFR 41.25; 17 CFR 41.1

Legal Deadline: None

Abstract: The Commission and the Securities and Exchange Commission are required to jointly publish in the Federal Register requirements for listing standards for security futures products relating to the cash settlement of contracts and regulatory trading halts.

Timetable:

Action	Date	FR Cite
NPRM	08/30/01	66 FR 45903
NPRM Comment Period End	10/01/01	
Final Action	05/00/02	
Final Action Effective	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Richard A. Shilts, Acting Director, Division of Economic Analysis, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street NW., Washington, DC 20581
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RIN: 3038–AB86

3635. PUBLIC REPORTING BY OPERATORS OF CERTAIN LARGE COMMODITY POOLS—REGULATIONS 4.7, 4.12, AND 4.27

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 4.7; 17 CFR 4.12; 17 CFR 4.27 (Proposed)

Timetable:

Action	Date	FR Cite
NPRM	04/17/00	65 FR 20395
NPRM Comment Period End	06/16/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tobey Kaczensky
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RIN: 3038–AB40

3636. TRADE OPTIONS ON ENUMERATED AGRICULTURAL COMMODITIES

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 32.13

Timetable:

Action	Date	FR Cite
NPRM	12/13/00	65 FR 77838
NPRM Comment Period End	12/28/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3038–AB61

3637. EXEMPTION FROM COMPLIANCE WITH THE CRITERION FOR LINKED AND COORDINATED CLEARING

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	12/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Elizabeth L. Ritter
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RIN: 3038–AB72

Commodity Futures Trading Commission (CFTC) Completed Actions

3638. PROHIBITION AGAINST DUAL TRADING

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.27

Completed:

Reason	Date	FR Cite
Final Action	03/13/02	67 FR 11223
Final Action Effective	04/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Rachel F. Berdansky
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RIN: 3038–AB83

3639. REGULATION CONCERNING CONDUCT OF MEMBERS AND EMPLOYEES AND FORMER MEMBERS AND EMPLOYEES OF THE COMMISSION, 17 CFR PART 140

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 140.735

Completed:

Reason	Date	FR Cite
Final Action	02/08/02	67 FR 5938
Final Action Effective	02/08/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Federal

Agency Contact: Susan Nathan
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Email: snathan@cftc.gov

RIN: 3038–AB85

3640. LISTING STANDARDS AND CONDITIONS FOR TRADING SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

CFR Citation: 17 CFR 41.21 to 41.25

Completed:

Reason	Date	FR Cite
Final Action	11/01/01	66 FR 55078
Final Action Effective	11/01/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Richard A. Shilts
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RIN: 3038–AB87

3641. • REPORTING LEVELS FOR LARGE TRADER REPORTS; SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant

Legal Authority: 7 USC 6g; 7 USC 6i; 7 USC 7; 7 USC 7a; 7 USC 12a

CFR Citation: 17 CFR 15.03

Legal Deadline: None

Abstract: The Commission is amending part 15 of its rules to establish reporting levels for security futures products.

Timetable:

Action	Date	FR Cite
NPRM	12/13/01	66 FR 64383
NPRM Comment Period End	01/14/02	
Final Action	03/15/02	67 FR 11569
Final Action Effective	03/15/02	
Correction	03/25/02	67 FR 13680

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gary J. Martinaitis, Deputy Associate Director, Market Surveillance Section, Division of Economic Analysis, Commodity Futures Trading Commission
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CFTC **Completed Actions**

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RIN: 3038–AB88

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Part XLVIII

Consumer Product Safety Commission

Semiannual Regulatory Agenda

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CONSUMER PRODUCT SAFETY COMMISSION (CPSC)

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Ch. II

Regulatory Flexibility Act; Semiannual Regulatory Flexibility and Unified Agendas

AGENCY: Consumer Product Safety Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: In this document, the Commission publishes its semiannual regulatory flexibility agenda. In addition, this document includes an agenda of regulatory actions the Commission expects to be under development or review by the agency during the next year. This document meets the requirements of the Regulatory Flexibility Act and Executive Order 12866.

DATES: The Commission welcomes comments on each subject area of the agenda, particularly from small entities. Written comments concerning the agenda should be received in the Office of the Secretary by June 30, 2002.

ADDRESSES: Comments on the regulatory flexibility agenda should be mailed to the Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207-0001; telephone (301) 504-0800, or delivered to the Office of the Secretary, Room 502, 4330 East-West Highway, Bethesda, MD 20814-4423. Comments should be captioned "Regulatory Flexibility Agenda." Comments may also be filed by telefacsimile to (301) 504-0127, or by e-mail to cpsc-os@cpsc.gov.

FOR FURTHER INFORMATION CONTACT: For further information on the agenda in general, contact Stephen Lemberg, Office of the General Counsel, Consumer Product Safety Commission, Washington, DC 20207-0001, telephone (301) 504-0980, ext. 2218. For further information regarding a particular item on the agenda, consult the individual listed in the column headed "Contact" for that particular item.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (5 U.S.C. 601-612) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small businesses, small governmental organizations, and other small entities. Section 602 of the RFA (5 U.S.C. 602) requires each agency to publish twice each year a regulatory flexibility agenda containing a brief description of the subject area of any rule expected to be proposed or promulgated that is likely to have a "significant economic impact" on a "substantial number" of small entities. The agency must also provide a summary of the nature of the rule, and a schedule for acting on each rule for which the agency has issued a notice of proposed rulemaking.

The regulatory flexibility agenda is also required to contain the name and address of the agency official knowledgeable about the items listed. Further, agencies are required to provide notice of their agendas to small entities and to solicit their comments by direct notification, or by inclusion in publications likely to be obtained by such entities.

Additionally, Executive Order 12866 requires each agency to publish twice each year a regulatory agenda of regulations under development or review during the next year, and states that such an agenda may be combined with the agenda published in accordance with the RFA. The regulatory flexibility agenda published below lists the regulatory activities expected to be under development or review during the next 12 months. This agenda also includes regulatory activities that have been completed by the Commission prior to publication. It includes all such activities, whether or not they may have a significant economic impact on a substantial number of small entities.

The agenda contains a brief description and summary of each regulatory activity, including the objectives and legal basis for each; an approximate schedule of target dates, subject to revision, for the development or completion of each activity, and the name and telephone number of a knowledgeable agency official concerning particular items on the agenda. All agency contacts have the same address: Consumer Product Safety Commission, Washington, DC 20207-0001.

Dated: March 15, 2002.

Todd Stevenson,

Secretary, Consumer Product Safety Commission.

Consumer Product Safety Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3642	Amendment of the Standard for the Flammability of Clothing Textiles	3041-AB68
3643	Petition HP 99-1 for a Ban of Polyvinyl Chloride in Toys and Other Products Intended for Children 5 Years of Age and Under	3041-AB79
3644	Petition HP 00-2 Requesting a Rule Declaring Natural Rubber Latex a Strong Sensitizer	3041-AB88
3645	Petition HP 01-1 Requesting Development of Performance Standard for Bicycle Handlebars	3041-AB94
3646	Petition HP 01-03 Requesting a Ban on Use of Chromated-Cooper-Arsenate (CCA) Treated Wood in Playground Equipment	3041-AB97
3647	Petition CP 01-01 Requesting Rule Requiring Product Registration Cards for Products Intended for Children	3041-AB98

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Consumer Product Safety Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3648	Flammability Standard for Upholstered Furniture	3041-AB35
3649	Baby Walkers	3041-AB40
3650	Amendment of Safety Regulations for Cribs	3041-AB67
3651	Portable Bed Rails	3041-AB91
3652	Proposed Rule Exempting Certain Model Rocket Propellant Devices For Use With Lightweight Surface Vehicles	3041-AC00
3653	Proposed Rule on Baby Bath Seats	3041-AC03
3654	Rulemaking to Exempt Hormone Replacement Therapy Products From Special Packaging Requirements	3041-AC04
3655	Test Method for Determining Applicability of Cautionary Labeling and Child-Resistant Packaging to Hydrocarbon-Containing Products in Spray Packaging	3041-AC05

Consumer Product Safety Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3656	Proposed Ban of Candles with Lead-Containing Wicks and Wicks Sold for Candle-Making that Contain Lead	3041-AB96

Consumer Product Safety Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3657	Petition CP 02-01 Requesting Rule Adopting ASTM F400, Safety Standard For Lighters as a Consumer Product Safety Standard	3041-AC01
3658	Proposed Standard to Address Open Flame Ignition of Mattresses/Bedding	3041-AC02
3659	Standards of Conduct for Outside Attorneys Practicing Before the Consumer Product Safety Commission	3041-AC06

Consumer Product Safety Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3660	Petition HP 93-1 Requesting Development of a Rule To Ban Certain Backyard Playsets	3041-AB47
3661	Petition FP 99-1 Requesting Labeling Rule for Polyurethane Foam in Upholstered Furniture	3041-AB81
3662	Petitions FP 00-1, FP 00-2, FP 00-3, and FP 00-4 Requesting Requirements for Flammability of Mattresses	3041-AB89
3663	Petition CP 00-1 Requesting Performance Requirements for Non-Wood Baseball Bats	3041-AB90
3664	Petition HP 00-4 Requesting a Rule Banning Baby Bath Seats	3041-AB93
3665	Petition HP 01-02 Requesting Exemption for Model Rocket Propellant Devices Used With Ground Vehicles	3041-AB95

Consumer Product Safety Commission (CPSC) — Prerule Stage

3642. AMENDMENT OF THE STANDARD FOR THE FLAMMABILITY OF CLOTHING TEXTILES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1191, Flammable Fabrics Act

CFR Citation: 16 CFR 1610

Legal Deadline: None

Abstract: The Standard for the Flammability of Clothing Textiles prohibits the manufacture, importation, or sale of clothing, and fabrics and related materials intended for use in clothing, which are dangerously flammable because of rapid and intense burning. The standard prescribes the apparatus, procedure, and criteria to be used for testing to determine compliance with that standard. The standard was made mandatory by the Flammable Fabrics Act of 1953 (Pub. L. 83-88, 67 Stat. 111; June 30, 1953). Some of the equipment and procedures specified by the standard, particularly those for laundering and cleaning of test specimens, have become obsolete, unavailable, or unrepresentative of current practices. The staff is preparing a briefing package describing modifications of the standard that may

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Prerule Stage

be needed to assure that the test in the standard is conducted with equipment and procedures representative of conditions to which garments currently are exposed. After consideration of the briefing package, the Commission will decide whether to begin a proceeding for amendment of the standard.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to Commission	04/00/02	
Commission Decision	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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RIN: 3041–AB68

3643. PETITION HP 99-1 FOR A BAN OF POLYVINYL CHLORIDE IN TOYS AND OTHER PRODUCTS INTENDED FOR CHILDREN 5 YEARS OF AGE AND UNDER

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261 to 1278, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500

Legal Deadline: None

Abstract: The National Environmental Trust and 11 other organizations petitioned the Commission to ban polyvinyl chloride (PVC) in toys and other articles intended for the use of children 5 years and under, based upon concerns they have about the potential for health risks from phthalates (especially diisononyl phthalate (DINP)), lead, and cadmium that can be in PVC. A Federal Register notice was issued on December 22, 1998, requesting comment on the petition. Comments were received.

The Commission established a Chronic Hazard Advisory Panel (CHAP) of independent scientists to study issues related to the chronic toxicity and risk, including the risk of cancer, associated with exposure to DINP in children's PVC products. The CHAP submitted its report to the Commission on June 15, 2001. The Commission has completed an extensive exposure study to obtain a broader range of data from which to better define the amount of time children mouth products that could contain phthalates. The staff will send a briefing package to the Commission in spring 2002. The Commission will then decide whether to grant, deny, or defer the petition.

Timetable:

Action	Date	FR Cite
Notice Advising of Receipt of Petition	12/22/98	63 FR 70756
Initiated Formation of CHAP	02/16/99	
Comment Period End	02/22/99	
Awarded Contract for Child Observation Study	09/30/99	
First Meeting of CHAP	05/10/00	
Second Meeting of CHAP	06/20/00	
Third Meeting of CHAP	09/12/00	
CHAP Sent Report to Commission	06/15/01	
Staff Sends Briefing Package to Commission	05/00/02	
Commission Decision	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marilyn L. Wind Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AB79

3644. PETITION HP 00-2 REQUESTING A RULE DECLARING NATURAL RUBBER LATEX A STRONG SENSITIZER

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from Debi Adkins, Editor, Latex Allergy News, requests that the Commission issue a rule declaring that natural rubber latex (NRL) and products containing NRL are strong sensitizers under the Federal Hazardous Substances Act (FHSA) and requiring labeling. NRL is in such consumer products as gloves, adhesives, shoes, balloons, pacifiers, and carpet backing, as well as many medical products. The petitioner states that a portion of the population has developed an allergy to latex that can be debilitating, even causing death. On March 21, 2000, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. On May 24, 2000, at the request of several persons, the Commission published a notice extending the original due date for comments of May 22, 2000 for 30 days to June 21, 2000. Eighty-four comments were received. The staff will prepare a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	03/02/00	
Notice	03/21/00	65 FR 15133
Comment Period End	05/22/00	
Comment Period Extended	05/24/00	65 FR 33525
Comment Period End	06/21/00	
Staff Sends Briefing Package to Commission	05/00/02	
Commission Decision	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3041–AB88

3645. PETITION HP 01-1 REQUESTING DEVELOPMENT OF PERFORMANCE STANDARD FOR BICYCLE HANDLEBARS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from Flaura Koplin Winston, M.D., Ph.D., Director, Trauma Link: The Interdisciplinary Pediatric Injury Control Research Center, Children's Hospital of Philadelphia, requests that the Commission develop a performance standard for bicycle handlebars regarding energy dissipation and distribution during impact. The request was docketed as a petition on January 23, 2001. A notice requesting comment on the petition was published in the Federal Register on February 14, 2001. The initial comment period closed on April 16, 2001. The comment period was extended to May 16, 2001. The staff will prepare a briefing package for Commission consideration as to whether to grant, deny, or defer the petition.

Timetable:

Action	Date	FR Cite
Petition Docketed	01/23/01	
Notice	02/14/01	66 FR 10273
Comment Period End	04/16/01	
Notice	04/16/01	66 FR 19429
Comment Period End	05/16/01	
Staff Sends Briefing Package to Commission	06/00/02	
Commission Decision	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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RIN: 3041–AB94

3646. PETITION HP 01-03 REQUESTING A BAN ON USE OF CHROMATED-COOPER-ARSENATE (CCA) TREATED WOOD IN PLAYGROUND EQUIPMENT

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1262, Federal Hazardous Substance Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Environmental Working Group and Healthy Building Network, docketed June 20, 2001, requests that the Commission enact an immediate ban on the use of chromated copper arsenate (CCA) treated wood in playground equipment. This treatment is used as a pesticide in the wood. The petitioners assert that a ban is necessary because recent research has shown that arsenic is more carcinogenic than was previously recognized, and is present at significant concentrations on CCA treated wood and in underlying soil. They further assert that the health risks posed by this wood are greater than was previously recognized, and that past risk assessments were incomplete. On July 13, 2001, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The 60-day comment period ended on September 11, 2001. The petitioners also requested that the Commission review the safety of CCA treated wood for general use. Such a review would not require rulemaking to implement, therefore, the request was not docketed. On September 20, 2001, the Commission and the USEPA jointly published a notice in the Federal Register to solicit comments on protocols for field sampling of wood playground equipment and underlying soil. The comment period ended on October 22, 2001. Commission staff is reviewing comments received on the petition and the protocols. The Conference report to accompany the Commission's FY 2002 appropriation directed the CPSC to submit a report to Congress on its work on CCA treated wood and steps taken to inform state and local governments of that work. The report was submitted to the appropriations committees of both houses of Congress on February 15, 2002.

Timetable:

Action	Date	FR Cite
Petition Docketed	06/20/01	
Notice on Petition	07/13/01	66 FR 36756
Comment Period End	09/11/01	
Notice on Protocols	09/20/01	66 FR 48428
Comment Period End	10/22/01	
Staff Sends Briefing Package to Commission	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB97

3647. PETITION CP 01-01 REQUESTING RULE REQUIRING PRODUCT REGISTRATION CARDS FOR PRODUCTS INTENDED FOR CHILDREN

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2065(b), Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Consumer Federation of America requests that the Commission issue a rule requiring product registration cards with every product intended for children. The petitioner asks for a rule that would "require manufacturers (or distributors, retailers, or importers) of products intended for children provide along with every product a Consumer Safety Registration Card that allows the purchaser to register information, through the mail or electronically." This would enable a manufacturer to contact the purchaser if the product were recalled or otherwise presented a safety hazard. On August 1, 2001, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on October 1, 2001. The staff will prepare a briefing package for consideration by the Commission. The Commission has been considering how best to improve the effectiveness of recalls. That effort has included meetings on the use of credit card and electronic databases and will include additional meetings on measures of recall effectiveness and how best to improve the response and return rates of the recalls that the Commission conducts.

CPSC

Prerule Stage

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CPSC **Prerule Stage**

Timetable:

Action	Date	FR Cite
Petition Docketed	07/10/01	
Notice	08/01/01	66 FR 39737
Comment Period End	10/01/01	
Staff Sends Briefing Package to the Commission	05/00/02	
Commission Decision	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB98

Consumer Product Safety Commission (CPSC) **Proposed Rule Stage**

3648. FLAMMABILITY STANDARD FOR UPHOLSTERED FURNITURE

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 15 USC 1193, Flammable Fabrics Act

CFR Citation: 16 CFR 1640

Legal Deadline: None

Abstract: On June 15, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding for development of a flammability standard to address risks of death, injury, and property damage from fires associated with ignition of upholstered furniture by small open-flame sources such as matches, lighters, or candles. This ANPRM was issued after the Commission granted part of a petition requesting development of a mandatory flammability standard to address risks of injury from ignition of upholstered furniture by: (1) small open-flame sources; (2) large open-flame sources; and (3) cigarettes. The Commission voted to deny that part of the petition requesting development of a mandatory standard to address hazards associated with ignition of upholstered furniture by large open-flame sources. The Commission also voted to defer a decision on that part of the petition requesting development of a standard to address cigarette ignition, and directed the staff to report to the Commission on the effectiveness of, and the extent of industry compliance with, a voluntary program to reduce risks of ignition of upholstered furniture by cigarettes. The Commission staff developed a draft standard to address ignition of upholstered furniture by small open-flame sources.

In 1998, the Commission deferred action and held a public hearing to gather additional information on the potential toxicity of flame-retardant chemicals that might be used to meet a standard. In CPSC's 1999 appropriations legislation, Congress directed the Commission to contract with the National Academy of Sciences (NAS) for an independent study of potential health hazards associated with the use of flame retardant chemicals that might be used in upholstered furniture fabrics to meet a CPSC standard. The final NAS report was published in July 2000. The report concluded that of 16 flame-retardant chemicals reviewed, 8 could be used in upholstered furniture fabrics without presenting health hazards to consumers.

A CPSC staff risk assessment concluded that a number of flame-retardant chemicals are available that would not present health risks to consumers, although additional data are needed for some other chemicals. The CPSC staff is also working with the National Institute of Occupational Safety and Health and the Environmental Protection Agency to evaluate possible impacts of flame-retardant chemical use on worker safety and the environment.

In 2001, the CPSC staff forwarded a briefing package to the Commission, and the Commission voted to hold a public meeting to present the direction of the staff's draft standard, to discuss supporting technical data, and to receive comments and recommendations from interested parties. The staff is also continuing to cooperate with industry representatives and voluntary standards organizations to develop possible voluntary alternatives to CPSC's regulatory action.

Timetable:

Action	Date	FR Cite
ANPRM	06/15/94	59 FR 30735
ANPRM Comment Period End	08/15/94	
Staff Briefing of Commission on NPRM	12/18/97	
Commission Voted To Defer Action Pending Results of Toxicity Hearing	03/02/98	
Commission Hearing May 5 & 6, 1998 on Possible Toxicity of Flame Retardant Chemicals	03/17/98	63 FR 13017
NAS Study Completed (Required by Congress)	07/10/00	
Staff Sent Briefing Package to Commission	11/01/01	
Meeting Notice	03/20/02	67 FR 12916
Staff Holds Public Meeting	06/18/02	
Second Day of Public Meeting	06/19/02	
Staff Analysis of Information From Public Meeting	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB35

3649. BABY WALKERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act; 15 USC 1262, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500

Legal Deadline: None

Abstract: On August 2, 1994, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that may result in the issuance of mandatory design or performance requirements for baby walkers. A baby walker is a device that supports a child so that the child can use his or her feet to move about before or while learning to walk. Typically, a baby walker consists of a fabric seat that has leg openings and is mounted to a rigid plastic deck. The deck is attached to a base that is mounted on wheels to allow mobility. In 1994, an estimated 25,500 children younger than 15 months of age were treated in hospital emergency rooms for injuries associated with baby walkers. The majority of these injuries resulted from falls down stairs. Among the options under consideration by the Commission are mandatory performance or design requirements to reduce risks of injury associated with baby walkers, particularly those resulting to children from falls down stairs.

In response to the Commission's work in this area, the industry published revisions to the voluntary standard for baby walkers in 1997 to address the hazard of falling down stairs. The ASTM International standard contains performance requirements to address risks of injury to children from falls down stairs associated with baby walkers. In 2000, baby walker injuries to children under 15 months of age had dropped to 7,400. The staff is currently assessing the extent of industry conformance with that voluntary standard, designated "Standard Consumer Safety Specification for Infant Walkers," SF 977-97, published by ASTM. The staff will send that information to the Commission together with options for Commission action, including withdrawal of the ANPRM or further regulatory proceedings.

Timetable:

Action	Date	FR Cite
ANPRM	08/02/94	59 FR 39309
ANPRM Comment Period End	10/03/94	
Staff Provided Technical Recommendations to Revise Voluntary Standard	12/16/94	
Revised Voluntary Standard Approved	10/01/96	
Voluntary Certification Program Began	06/30/97	
Staff Completed Monitoring Conformance to Revised Voluntary Standard	05/31/00	
Staff Completed Special Study of Injury Data	09/29/00	
Staff Completed Testing of New Walker Designs	05/01/01	
Staff Sends Briefing Package to Commission	05/00/02	
Commission Decision	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB40

3650. AMENDMENT OF SAFETY REGULATIONS FOR CRIBS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553, Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: 16 CFR 1508; 16 CFR 1509

Legal Deadline: None

Abstract: On December 16, 1996, the Commission published an advance notice of proposed rulemaking (ANPRM) to begin a proceeding that may result in amendment of the safety regulations for full-size and non-full-size cribs, 16 CFR parts 1508 and 1509. Among the regulatory alternatives under consideration is amendment of the regulations to add tests to assure that slats will not disengage from the side panels of cribs. The Commission began this proceeding after considering information about incidents in which crib slats disengaged from the side panels of cribs, creating a risk that children may become entrapped between the remaining slats or fall out of the crib. At the urging of CPSC staff, in April 1999, the voluntary standard for cribs designated, "Specification for Full Size Baby Cribs (ASTM F1169-99)," and published by ASTM International was revised to include performance requirements for crib slats. The Commission will consider written comments received in response to the ANPRM, and assess conformance with the voluntary standard before deciding whether to continue the proceeding by publication of a notice of proposed rulemaking (NPRM), or terminate further proceedings in reliance on the voluntary standard.

Timetable:

Action	Date	FR Cite
Staff Recommended Revisions to Voluntary Standard	09/30/96	
ANPRM	12/16/96	61 FR 65996
ANPRM Comment Period End	02/14/97	
Revisions to Voluntary Standard Approved	04/10/99	
Voluntary Certification Program Begins	03/01/00	
Staff Began Monitoring Conformance to Revised Voluntary Standard	03/27/01	
Staff Completed Monitoring Conformance	12/28/01	
Staff Sends Briefing Package to Commission	05/00/02	
Commission Decision	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB67

CPSC **Proposed Rule Stage**

CPSC — Proposed Rule Stage

3651. PORTABLE BED RAILS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is considering whether certain portable bed rails present an unreasonable risk of injury that should be regulated. A portable bed rail is a device intended to be installed on an adult bed to prevent a child from falling out of the bed. Such bed rails may be constructed in a manner that children can become entrapped between the portable bed rail and the bed. This entrapment can result in serious injury or death. On October 30, 2001, the Commission decided to continue the rulemaking by issuing an NPRM.

Timetable:

Action	Date	FR Cite
Staff Sends Briefing Package to Commission	06/28/00	
Commission Decision	09/21/00	
ANPRM	10/03/00	65 FR 58968
ANPRM Comment Penod End	12/04/00	
Staff Sends Briefing Package to Commission	10/01/01	
Commission Decision	10/30/01	
Staff Sends NPRM to Commission	06/00/02	
Commission Decision on NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AB91

3652. • PROPOSED RULE EXEMPTING CERTAIN MODEL ROCKET PROPELLANT DEVICES FOR USE WITH LIGHTWEIGHT SURFACE VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1261(q)(1), Federal Hazardous Substances Act

CFR Citation: 16 CFR 1500.83(a)(36); 16 CFR 1500.85(a)(14)

Legal Deadline: None

Abstract: A notice of proposed rulemaking (NPRM), published in the Federal Register on January 30, 2002, proposed to exempt from banning under the Federal Hazardous Act certain model rocket propellant devices for model rocket ground vehicles if they meet requirements similar to those presently required for flyable model rockets. The Commission voted to publish the NPRM and proceed with rulemaking after considering a petition filed by Centuri Corporation that requested an exemption covering two prototype model rocket cars. The Commission decided to grant the petition in part and issue a proposed rule exempting only model rocket propellant devices to be used with surface vehicles like the smaller prototype car. The staff will address public comments received in response to the NPRM and prepare a briefing package for the Commission to determine whether to issue a final rule.

Timetable:

Action	Date	FR Cite
NPRM	01/30/02	67 FR 4373
NPRM Comment Period End	04/15/02	
Staff Sends Briefing Package to Commission	To Be	Determined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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Related RIN: Related To 3041-AB95

RIN: 3041–AC00

3653. • PROPOSED RULE ON BABY BATH SEATS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on August 1, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing baby bath seats. These are consumer products used to hold an infant in a bathtub while the child is being bathed. The Commission voted to publish the ANPRM and proceed with rulemaking after considering the staff's analysis of available data and information provided provided by the petitioners, the Consumer Federation of America and other consumer groups who requested that the Commission ban baby bath seats and bath rings. The staff is addressing public comments received in reponse to the ANPRM and preparing a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
ANPRM	08/01/01	66 FR 39692
ANPRM Comment Period End	10/01/01	
Staff Sends Briefing Package to Commission	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

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Related RIN: Related To 3041-AB93

RIN: 3041–AC03

CPSC — Proposed Rule Stage

3654. • RULEMAKING TO EXEMPT HORMONE REPLACEMENT THERAPY PRODUCTS FROM SPECIAL PACKAGING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act

CFR Citation: 16 CFR 1700.14(a)(10)

Legal Deadline: None

Abstract: The Commission has proposed a rule to exempt hormone replacement therapy (HRT) products from the child-resistant packaging requirements of the Poison Prevention Packaging Act. HRT refers to the use of estrogen alone or estrogen and progestin to treat menopausal symptoms. The proposed exemption is based on the low acute toxicity of these products.

Timetable:

Action	Date	FR Cite
NPRM	02/19/02	67 FR 7319
NPRM Comment Period End	05/06/02	
Staff Sends Briefing Package to Commission	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Jacqueline Ferrante Ph.D., Project Manager, Consumer Product Safety Commission, Directorate for Health Sciences, Washington, DC 20207
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RIN: 3041–AC04

3655. • TEST METHOD FOR DETERMINING APPLICABILITY OF CAUTIONARY LABELING AND CHILD-RESISTANT PACKAGING TO HYDROCARBON-CONTAINING PRODUCTS IN SPRAY PACKAGING

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1471, Poison Prevention Packaging Act; 15 USC 1261(p), Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On January 3, 2000 CPSC issued a notice of proposed rulemaking under the Poison Prevention Packaging Act (PPPA) to require child-resistant packaging of prepackaged products that contain liquid hydrocarbons of low viscosity, including aerosol/trigger/pump packaged products (spray products) that expel product in a stream. The final rule issued on October 25, 2001 covered liquid hydrocarbon-containing products other than these spray products.

Under current CPSC guidance, special cautionary labeling under the Federal Hazardous Substances Act (FHSA) would also be required for most hydrocarbon-containing spray products that expel product as a stream. The staff has now developed a quantitative test method to identify those hydrocarbon-containing spray products that pose an aspiration hazard. The staff is preparing a briefing package for the Commission's consideration that may recommend using this test method to determine applicability of the FHSA special cautionary labeling and PPPA child-resistant packaging requirements to spray products that expel product in a stream.

Timetable:

Action	Date	FR Cite
NPRM	01/03/00	
Staff Sends Briefing Package to Commission	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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Related RIN: Related To 3041-AB57

RIN: 3041–AC05

Consumer Product Safety Commission (CPSC) — Final Rule Stage

3656. PROPOSED BAN OF CANDLES WITH LEAD-CONTAINING WICKS AND WICKS SOLD FOR CANDLE-MAKING THAT CONTAIN LEAD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: An advance notice of proposed rulemaking (ANPRM), published in the Federal Register on February 20, 2001, requested comments on a rulemaking proceeding that could result in a mandatory rule addressing the use of lead in candle wicks. The Commission voted to publish the ANPRM and proceed with rulemaking after considering the staff's analysis of the available data on lead-cored candle wicks as well as information provided by the petitioners Public Citizen, National Apartment Association, and National Multi-Housing Council. The staff recommended that the Commission proceed with rulemaking to ban metal-cored wicks containing more than 0.06 percent lead by weight in the metal. The staff addressed public comments received in response to the ANPRM and prepared a briefing package for Commission consideration. On April 17, 2002, the Commission voted to issue a notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
ANPRM	02/20/01	66 FR 10863
ANPRM Comment Period End	04/23/01	
Staff Sent Briefing Package to Commission	03/20/02	
Commission Decision	04/17/02	
NPRM	04/24/02	67 FR 20062
NPRM Comment Period End	07/08/02	
Staff Sends Briefing Package to Commission	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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CPSC — Final Rule Stage

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RIN: 3041–AB96

Consumer Product Safety Commission (CPSC) — Long-Term Actions

3657. • PETITION CP 02-01 REQUESTING RULE ADOPTING ASTM F400, SAFETY STANDARD FOR LIGHTERS AS A CONSUMER PRODUCT SAFETY STANDARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2058, Consumer Product Safety Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: A petition from the Lighter Association, Inc. requests that the Commission issue a rule adopting an ASTM voluntary standard for lighters as a consumer product safety standard. The voluntary standard contains numerous safety requirements for cigarette lighters. On January 17, 2002, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The comment period closed on March 18, 2002. The staff is preparing a briefing package for consideration by the Commission.

Timetable:

Action	Date	FR Cite
Petition Docketed	12/26/01	
Notice	01/17/02	67 FR 2420
Comment Period End	03/18/02	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

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RIN: 3041–AC01

3658. • PROPOSED STANDARD TO ADDRESS OPEN FLAME IGNITION OF MATTRESSES/BEDDING

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1193, Flammable Fabrics Act

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission published an advance notice of proposed rulemaking (ANPRM) in the Federal Register of October 11, 2001 that requested comments on a rulemaking proceeding that could result in a mandatory flammability standard addressing open flame ignition of mattresses/bedding. In 1995, the Commission staff began a project on mattress fires, and the ANPRM reflects information obtained from that research. The ANPRM also addresses two subsequently filed petitions from the Children's Coalition for Fire-Safe Mattresses, FP 00-1 and FP 00-2, requesting certain standards to address the open flame ignition hazard with mattresses/bedding. On October 2, 2001, the Commission voted to grant these two petitions and issue an ANPRM addressing this mattress flammability hazard. The staff will address public comments on the ANPRM and prepare a briefing package for Commission consideration.

Timetable:

Action	Date	FR Cite
ANPRM	10/11/01	66 FR 51886
ANPRM Comment Period End	12/10/01	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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Related RIN: Related To 3041-AB89

RIN: 3041–AC02

3659. • STANDARDS OF CONDUCT FOR OUTSIDE ATTORNEYS PRACTICING BEFORE THE CONSUMER PRODUCT SAFETY COMMISSION

Priority: Info./Admin./Other

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has proposed to amend its regulations to add a new part addressing the behavior of attorneys on matters before the Commission. The behavior of attorneys who represent clients in Commission adjudicative proceedings is governed by separate regulations. The new part would cover attorney behavior in any matter before the Commission other than adjudication. It would also establish the procedure for addressing allegations against attorneys.

Timetable:

Action	Date	FR Cite
NPRM	11/06/00	65 FR 66515
NPRM Comment Period End	01/05/01	
Staff Sends Briefing Package to Commission	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3041–AC06

Consumer Product Safety Commission (CPSC) — Completed Actions

3660. PETITION HP 93-1 REQUESTING DEVELOPMENT OF A RULE TO BAN CERTAIN BACKYARD PLAYSETS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from the New York City Department of Consumer Affairs requests the Commission to develop a rule to ban certain backyard playsets. The petition asserts that backyard playsets present unreasonable risks of injury to children if they do not meet the requirements of a voluntary standard for home playground equipment published by the ASTM International; are not accompanied with adequate information about ground surfacing; or lack specific features described in the petition. On May 21, 1996, the Commission denied those parts of the petition requesting issuance of a rule to ban any backyard playset that does not conform to all requirements of the ASTM voluntary standard; that has an accessible height that exceeds six feet above protective surfacing; that does not have adequate fall zones under climbing structures; or that does not provide adequate space between any item of swinging equipment and any other item of swinging or stationary equipment. The Commission deferred a decision on those parts of the petition requesting a rule to ban backyard playsets that are not accompanied with instructions to use and maintain specified ground surfacing; that do not have handrails on all platforms that are 30 inches or higher above protective surfacing; that have swing seats made of wood, metal, plastic, or other hard material capable of inflicting serious injury to the head; that have free-swinging ropes; and that are unanchored playsets with swings. On January 14, 2002, the staff sent additional information to the Commission concerning revisions of the voluntary standard, conformance to the voluntary standard, and injury data. On March 15, 2002, the Commission voted to deny the remaining portions of the petition.

Timetable:

Action	Date	FR Cite
Partial Denial of Petition	05/21/96	
Revisions to Voluntary Standard Completed	07/10/98	
Staff Began Monitoring Conformance to Voluntary Standard	08/10/99	
Staff Completed Monitoring Conformance	08/31/00	
Staff Completed Injury Study	02/28/01	
Staff Sent Additional Information to Commission	01/14/02	
Balance of Petition Denied	03/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3041–AB47

3661. PETITION FP 99-1 REQUESTING LABELING RULE FOR POLYURETHANE FOAM IN UPHOLSTERED FURNITURE

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1191, Flammable Fabrics Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from the National Association of State Fire Marshals (NASFM) requested that the Commission require labels under the Flammable Fabrics Act warning that polyurethane foam in upholstered furniture poses a fire hazard. The Commisssion denied the petition on February 26, 2002.

Timetable:

Action	Date	FR Cite
Notice	04/06/99	64 FR 16711
Comment Period End	06/07/99	
Staff Sent Briefing Package to Commission	11/01/01	
Commission Decision	02/26/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Dale R. Ray, Project Manager, Directorate for Economic Analysis, Consumer Product Safety Commission, Washington, DC 20207
Phone: 301 504-0962
Email: dray@cpsc.gov

RIN: 3041–AB81

3662. PETITIONS FP 00-1, FP 00-2, FP 00-3, AND FP 00-4 REQUESTING REQUIREMENTS FOR FLAMMABILITY OF MATTRESSES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1191, Flammable Fabrics Act

CFR Citation: None

Legal Deadline: None

Abstract: The Commission has received correspondence from Whitney A. Davis, Director of the Children's Coalition for Fire-Safe Mattresses, requesting that the Commission take various actions concerning mattress flammability. The Commission has docketed as petitions his requests for rules requiring: (1) an open-flame standard similar to the full-scale test set forth in California Technical Bulletin 129; (2) an open flame standard similar to the component test set forth in British Standard 5852; (3) a warning label for flammable mattresses; and (4) a permanent mattress identification tag attached to the inner spring of the mattress. The petitioner focuses primarily on the role polyurethane foam plays in mattress fires. The Commission has docketed these petitions under provisions of the Flammable Fabrics Act. The Commission voted to grant petitions FP 00-1 requesting that the Commission adopt a standard similar to California TB 117 and FP 00-2 requesting that the Commission adopt a standard similar to British Standard 5852, and deny petitions FP 00-3 requesting that the Commission require a warning label and FP 00-4 requesting that the Commission require a permanent identification tag.

Timetable:

Action	Date	FR Cite
Petitions Docketed	05/22/00	
Notice	06/12/00	65 FR 36890
Comment Period End	08/11/00	

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Action	Date	FR Cite
Staff Sent Briefing Package to Commission	08/16/01	
Commission Decision	10/02/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Margaret L. Neily, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504-0508
Email: mneily@cpsc.gov

Related RIN: Previously reported as 3041-AC02

RIN: 3041–AB89

3663. PETITION CP 00-1 REQUESTING PERFORMANCE REQUIREMENTS FOR NON-WOOD BASEBALL BATS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 2051, Consumer Product Safety Act

CFR Citation: None

Legal Deadline: None

Abstract: The Commission has received correspondence from J.W. MacKay, Jr. requesting that the Commission issue a rule requiring that all non-wood baseball bats perform like wood bats. He states that such bats have a faster bat swing speed, a larger "sweet spot," and lower balance point than wood bats. These high performance bats, he asserts, allow the ball to achieve a faster exit velocity so that the pitcher does not have time to react if a ball is batted at him. The petitioner asserts that non-wood bats (primarily made of aluminum and composite materials) have become increasingly dangerous. For these reasons, the petitioner argues, such non-wood bats present an unreasonable risk of injury. The Commission docketed his request as a petition under the Consumer Product Safety Act and published a notice in the Federal Register on June 15, 2000 to solicit comments on the petition from interested persons. On December 28, 2001, the staff sent a briefing package to the Commission for its consideration as to whether to grant, deny, or defer the petition. The Commission voted to deny the petition on March 6, 2002.

Timetable:

Action	Date	FR Cite
Petition Docketed	05/24/00	
Notice	06/15/00	65 FR 37525
Comment Period End	08/14/00	
Staff Sent Briefing Package to Commission	12/28/01	
Commission Voted to Deny Petition	03/06/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Erlinda M. Edwards, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
Phone: 301 504-0504
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RIN: 3041–AB90

3664. PETITION HP 00-4 REQUESTING A RULE BANNING BABY BATH SEATS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e), Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from the Consumer Federation of America and other consumer groups, docketed on August 4, 2000, requests that the Commission ban baby bath seats and bath rings. These are consumer products used to hold an infant in a bathtub while the child is being bathed. The petitioners assert that bath seats pose an unreasonable risk of injury, primarily because they create a false sense of security that the child is safe in the bathtub. They assert that 66 incidents of drowning and 37 reports of near drowning involving baby bath seats have been identified. On August 22, 2000, the Commission published a notice in the Federal Register to solicit comments on the petition from all interested persons. The staff briefed the Commission on May 23, 2001. On May 30, 2001, the Commission granted the petition and voted to issue an advance notice of proposed rulemaking (ANPRM).

Timetable:

Action	Date	FR Cite
Petition Docketed	08/04/00	
Notice	08/22/00	65 FR 50968
Comment Period End	10/23/00	
Staff Sends Briefing Package to Commission	03/30/01	
Commission Decision	05/30/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Patricia L. Hackett, Project Manager, Consumer Product Safety Commission, Directorate for Engineering Sciences, Washington, DC 20207
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Related RIN: Related To 3041-AC03

RIN: 3041–AB93

3665. PETITION HP 01-02 REQUESTING EXEMPTION FOR MODEL ROCKET PROPELLANT DEVICES USED WITH GROUND VEHICLES

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553(e) Administrative Procedure Act; 15 USC 1261, Federal Hazardous Substances Act

CFR Citation: None

Legal Deadline: None

Abstract: A petition from Centuri Corporation requests that the Commission issue a rule exempting certain model rocket propellant devices to be used for model rocket ground vehicles. The petitioner requests that the Commission extend the existing exemption for motors used for flying model rockets to motors used for certain model rocket cars that travel on a tethered line along the ground. The request was docketed as a petition on February 14, 2001. A notice requesting comment on the petition was published in the Federal Register on March 8, 2001. The comment period closed on May 7, 2001. On November 1, 2001, the Commission granted the petition insofar as it pertained to the smaller model rocket car that the petitioner proposed to market, but denied the petition insofar as it pertained to the larger model rocket car that the petitioner proposed to market.

Timetable:

Action	Date	FR Cite
Petition Docketed	02/14/01	
Notice	03/08/01	66 FR 13914
Comment Period End	05/07/01	
Staff Sent Briefing Package to Commission	09/28/01	
Commission Decision	11/01/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terrance R. Karels, Project Manager, Consumer Product Safety Commission, Directorate for Economic Analysis, Washington, DC 20207
Phone: 301 504-0962
Email: tkarels@cpsc.gov

Related RIN: Related To 3041-AC00

RIN: 3041–AB95

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Part XLIX

Farm Credit Administration

Semiannual Regulatory Agenda

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FARM CREDIT ADMINISTRATION (FCA)

FARM CREDIT ADMINISTRATION

12 CFR Ch. VI

Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Farm Credit Administration.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Farm Credit Administration (FCA), as an independent regulatory agency, in compliance with Executive Order 12866, sets forth the following agenda of regulations, which it will have under development and review during the period of April 2002 through October 2002.

FOR FURTHER INFORMATION CONTACT: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102, (703) 883-4498, TDD (703) 883-4444.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) contains several provisions intended to reduce unnecessary and disproportionate regulatory requirements on small entities. FCA regulations, which apply to Farm Credit banks and associations, generally do not and will not have a substantial impact on "small entities" as that term is defined in the Regulatory Flexibility Act.

The FCA, as an independent regulatory agency, is exempt from certain provisions of Executive Order 12866. It participates in this joint publication to further the public interest by including the FCA in a single source of information concerning current and projected rulemaking and reviews of existing regulations, pursuant to section 4 of Executive Order 12866.

Dated: March 15, 2002.

Kelly Mikel Williams,

Secretary, Farm Credit Administration Board.

Farm Credit Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3666	Loan Policies and Operations (Distressed Loan Restructuring)	3052-AB69
3667	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Investments in Rural America)	3052-AB92
3668	Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations and Funding Operations (OFIs—Lending)	3052-AB96
3669	Loan Policies and Operations (Effective Interest Rate Disclosure)	3052-AC04
3670	Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Capital Adequacy)	3052-AC05
3671	Eligibility and Scope of Financing; Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; General Provisions (Credit and Related Services)	3052-AC06

Farm Credit Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3672	Organization (Reorganization Authorities for System Institutions)	3052-AB86
3673	Electronic Commerce; Disclosure to Shareholders (E-Commerce)	3052-AC02

Farm Credit Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3674	Organization and Functions (FCA Organization)	3052-AB82

Farm Credit Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3675	Loan Policies and Operations; Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Loan Purchases and Sales)	3052-AB93
3676	Loan Policies and Operations (Loans to Designated Parties)	3052-AB98

3666. LOAN POLICIES AND OPERATIONS (DISTRESSED LOAN RESTRUCTURING)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify the borrower rights regulations and remove unnecessary burden.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB69

3667. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (INVESTMENTS IN RURAL AMERICA)

Priority: Other Significant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6; 12 USC 2279aa; 12 USC 2279aa-3; 12 USC 2279aa-4; 12 USC 2279aa-6 to 2279aa-8; 12 USC 2279aa-10; 12 USC 2279aa-12

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This regulation develops safety and soundness standards and other criteria for investments in rural America.

Timetable:

Action	Date	FR Cite
NPRM	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB92

3668. LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS AND FUNDING OPERATIONS (OFIS—LENDING)

Priority: Other Significant

Legal Authority: 12 USC 2011; 12 USC 2013 to 2015; 12 USC 2017 to 2020; 12 USC 2071; 12 USC 2073 to 2076; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2097; 12 USC 2121; 12 USC 2122; 12 USC 2124; 12 USC 2128; 12 USC 2129; 12 USC 2131; 12 USC 2132; 12 USC 2141; 12 USC 2146; 12 USC 2149; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2183; 12 USC 2184; 12 USC 2199; ...

CFR Citation: 12 CFR 614; 12 CFR 615

Legal Deadline: None

Abstract: The regulation would remove impediments for System funding of other financing institutions (OFIs).

Timetable:

Action	Date	FR Cite
ANPRM	04/20/00	65 FR 21151
ANPRM Comment Period End	06/19/00	
Comment Period Extended	06/26/00	65 FR 39319
Public Meeting	07/05/01	66 FR 35428
Public Meeting	07/19/01	66 FR 37681
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB96

3669. LOAN POLICIES AND OPERATIONS (EFFECTIVE INTEREST RATE DISCLOSURE)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2075; 12 USC 2091; 12 USC 2093; 12 USC 2094; 12 USC 2096; 12 USC 2121; 12 USC 2013 to 2015; 12 USC 2017; 12 USC 2018; 12 USC 2071; 12 USC 2073; 12 USC 2074; ...

CFR Citation: 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would clarify and provide guidance for implementing the effective interest rate disclosure requirements of the statute.

FCA — Proposed Rule Stage

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC04

3670. FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (CAPITAL ADEQUACY)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2018 to 2020; 12 USC 2073 to 2076; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2132; 12 USC 2146; 12 USC 2154; 12 USC 2154a; 12 USC 2160; 12 USC 2202b; 12 USC 2211; 12 USC 2243; 12 USC 2252; 12 USC 2278b; 12 USC 2278b-6; ...

CFR Citation: 12 CFR 615

Legal Deadline: None

Abstract: This rulemaking would amend the capital regulations to address various issues (including FASB 133).

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC05

3671. ELIGIBILITY AND SCOPE OF FINANCING; LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS; GENERAL PROVISIONS (CREDIT AND RELATED SERVICES)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2013; 12 USC 2015; 12 USC 2017 to 2019; 12 USC 2073; 12 USC 2075; 12 USC 2093; 12 USC 2122; 12 USC 2128; 12 USC 2129; 12 USC 2143; 12 USC 2206a; 12 USC 2211 to 2213; 12 USC 2243; 12 USC 2252

CFR Citation: 12 CFR 613 to 615; 12 CFR 618

Legal Deadline: None

Abstract: This rulemaking would amend various regulations to incorporate interpretive guidance and remove unnecessary burden.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC06

Farm Credit Administration (FCA) — Final Rule Stage

3672. ORGANIZATION (REORGANIZATION AUTHORITIES FOR SYSTEM INSTITUTIONS)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2011; 12 USC 2243; 12 USC 2244; 12 USC 2252; 12 USC 2279a to 2279f-1; 12 USC 2279aa5(e); 12 USC 2021; 12 USC 2071; 12 USC 2091; 12 USC 2121; 12 USC 2142; 12 USC 2183; 12 USC 2203; 12 USC 2209

CFR Citation: 12 CFR 611; 12 CFR 614

Legal Deadline: None

Abstract: This rulemaking would establish regulations under which a bank or large association within the System can terminate its charter as provided by the Act.

Timetable:

Action	Date	FR Cite
NPRM	11/05/99	64 FR 60370
NPRM Comment Period End	02/03/00	
Supplemental NPRM	02/03/00	65 FR 5286
Comment Period End	03/06/00	
Second NPRM	08/20/01	66 FR 43536
Second NPRM Comment Period End	10/19/01	
Final Rule	04/12/02	67 FR 17907

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulation and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AB93

FCA — Final Rule Stage

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RIN: 3052–AB86

3673. ELECTRONIC COMMERCE; DISCLOSURE TO SHAREHOLDERS (E-COMMERCE)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2243; 5 USC 301; 12 USC 2252; 12 USC 2254; 12 USC 2279aa-11

CFR Citation: 12 CFR 609; 12 CFR 620

Legal Deadline: None

Abstract: This regulation would amend existing and adopt new regulations to enhance electronic commerce in the Farm Credit System.

Timetable:

Action	Date	FR Cite
NPRM	10/22/01	66 FR 53348
NPRM Comment Period End	11/21/01	
Final Rule	04/08/02	67 FR 16627

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: FEDERAL REGISTER LIAISON: Cindy R. Nicholson, Technical Editor, Regulations and Policy Division, Office of Policy and Analysis, 703-883-4498, nicholsonc@fca.gov

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RIN: 3052–AC02

Farm Credit Administration (FCA) — Long-Term Actions

3674. ORGANIZATION AND FUNCTIONS (FCA ORGANIZATION)

Priority: Info./Admin./Other

CFR Citation: 12 CFR 600

Timetable:

Action	Date	FR Cite
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Robert Edward Donnelly
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RIN: 3052–AB82

Farm Credit Administration (FCA) — Completed Actions

3675. LOAN POLICIES AND OPERATIONS; FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS (LOAN PURCHASES AND SALES)

Priority: Other Significant

CFR Citation: 12 CFR 614; 12 CFR 615

Completed:

Reason	Date	FR Cite
Final Rule	01/10/02	67 FR 1281
Final Rule Effective	03/04/02	67 FR 9581

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

3676. LOAN POLICIES AND OPERATIONS (LOANS TO DESIGNATED PARTIES)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 614

Completed:

Reason	Date	FR Cite
Second NPRM Comment Period End	10/18/01	
Withdrawn	03/12/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tong-Ching Chang

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FCA **Completed Actions**

Phone: 703 883-4498

RIN: 3052–AB98

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Federal Communications Commission

Semiannual Regulatory Agenda

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FEDERAL COMMUNICATIONS COMMISSION (FCC)

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

Unified Agenda of Federal Regulatory and Deregulatory Actions — Spring 2002

AGENCY: Federal Communications Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Twice a year, in spring and fall, the Commission publishes in the **Federal Register** a list in the Unified Agenda of those major items and other significant proceedings under development or review that pertain to the Regulatory Flexibility Act. *See* 5 U.S.C. 602. The Unified Agenda also provides the Code of Federal Regulations citations and legal authorities that govern these proceedings.

ADDRESSES: Federal Communications Commission, 445 12th Street SW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Maura McGowan, Telecommunications Specialist, Federal Communications Commission, 445 12th Street SW., Washington, DC 20554, (202) 418-0990.

SUPPLEMENTARY INFORMATION:

Unified Agenda of Major and Other Significant Proceedings

The Commission encourages public participation in its rulemaking process. To help keep the public informed of significant rulemaking proceedings, the Commission has prepared a list of important proceedings now in progress. The General Services Administration publishes the Unified Agenda in the **Federal Register** in April and October of each year.

The following terms may be helpful in understanding the status of the proceedings included in this report:

Docket Number — assigned to a proceeding if the Commission has issued either a Notice of Proposed Rulemaking or a Notice of Inquiry concerning the matter under consideration. The Commission has used docket numbers since January 1, 1978. Docket numbers consist of the last two digits of the calendar year in which the docket was established plus a sequential number that begins at 1 with the first docket initiated during a calendar year (*e.g.*, Docket No. 96-1 or Docket No. 99-1). The abbreviation for the responsible bureau usually precedes the docket number, as in "MM Docket No. 96-222," which indicates that the responsible bureau is the Mass Media Bureau. A docket number consisting of only five digits (*e.g.*, Docket No. 29622) indicates that the docket was established before January 1, 1978.

Notice of Inquiry (NOI) — issued by the Commission when it is seeking information on a broad subject or trying to generate ideas on a given topic. A comment period is specified during which all interested parties may submit comments.

Notice of Proposed Rulemaking (NPRM) — issued by the Commission when it is proposing a specific change to Commission rules and regulations. Before any changes are actually made, interested parties may submit written comments on the proposed revisions.

Further Notice of Proposed Rulemaking (FNPRM) —issued by the Commission when additional comment in the proceeding is sought.

Memorandum Opinion and Order (MO&O) — issued by the Commission to deny a petition for rulemaking, conclude an inquiry, modify a decision, or address a petition for reconsideration of a decision.

Rulemaking (RM) Number — assigned to a proceeding after the appropriate bureau or office has reviewed a petition for rulemaking, but before the Commission has taken action on the petition.

Report and Order (R&O) — issued by the Commission to state a new or amended rule or state that the Commission rules and regulations will not be revised.

William F. Caton,

Acting Secretary, Federal Communications Commission.

CABLE SERVICES BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3677	Cable Television Rate Regulation	3060-AF41
3678	Cable Television Rate Regulation: Cost of Service	3060-AF48
3679	Customer Service Standards	3060-AF69
3680	Cable Home Wiring	3060-AG02
3681	Closed Captioning	3060-AG26
3682	Cable Act Reform	3060-AG27
3683	Competitive Availability of Navigation Devices	3060-AG28
3684	Pole Attachment Provisions	3060-AG71
3685	Digital Must Carry	3060-AG91
3686	Horizontal Ownership Limits	3060-AH09
3687	Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission - SHVIA	3060-AH35
3688	Retransmission Consent Issues - SHVIA	3060-AH36
3689	Satellite Broadcasting Signal Carriage Requirements	3060-AH45
3690	Exclusive Contract Prohibition of the Program Access Rules	3060-AH91

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COMMON CARRIER BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3691	Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services	3060-AG72

COMMON CARRIER BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3692	Administration of the North American Numbering Plan	3060-AF50
3693	Use of N11 Codes and Other Abbreviated Dialing Arrangements	3060-AF51
3694	Implementation of the Universal Service Portions of the 1996 Telecommunications Act	3060-AF85
3695	Toll-Free Service Access Codes	3060-AG11
3696	Implementation of Section 273 of the Telecommunications Act of 1996	3060-AG36
3697	Policies and Rules Governing Interstate Pay-Per-Call and Other Information Services Pursuant to the Telecommunications Act of 1996	3060-AG42
3698	Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information	3060-AG43
3699	Implementation of the Subscriber Selection Changes Provision of the Telecommunications Act of 1996	3060-AG46
3700	Implementation of Section 402(b)(1)(a) of the Telecommunications Act of 1996; LEC Tariff Streamlining Provisions	3060-AG47
3701	Access Charge Reform	3060-AG49
3702	Implementation of the Local Competition Provisions of the Telecommunications Act of 1996	3060-AG50
3703	Enhanced 911 Services for Wireline	3060-AG60
3704	Detariffing of Competitive Local Exchange Carriers' Interstate Exchange Access Services	3060-AG73
3705	In the Matter of the Telecommunications Relay Services, the Americans With Disabilities Act of 1990, and the Telecommunications Act of 1996	3060-AG75
3706	1998 Biennial Regulatory Review — Review of Accounting and Cost Allocation Requirements	3060-AG98
3707	1998 Biennial Regulatory Review — Review of ARMIS Reporting Requirements	3060-AG99
3708	Performance Measurements and Reporting Requirements for Operations Support Systems, Interconnection, Operator Services, and Directory Assistance	3060-AH00
3709	Deployment of Wireline Services Offering Advanced Telecommunications Capability	3060-AH03
3710	Prescribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers	3060-AH18
3711	1998 Biennial Regulatory Review — Review of Depreciation Requirements for Incumbent Local Exchange Carriers	3060-AH20
3712	Comprehensive Review of Accounting Requirements and ARMIS Reporting Requirements, Phase 1	3060-AH43
3713	Local Telephone Networks That LECs Must Make Available to Competitors	3060-AH44
3714	2000 Biennial Regulatory Review — Telecommunications Service Quality Reporting Requirements	3060-AH72
3715	Access Charge Reform and Universal Service Reform	3060-AH74
3716	2000 Biennial Regulatory Review — Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 2 and Phase 3	3060-AH76
3717	Comprehensive Review of the Accounting Requirements and ARMIS Reporting Requirements for Incumbent Local Exchange Carriers; Phase 1	3060-AH77
3718	Streamlining Procedures for Common Carrier Transfers of Control	3060-AH79
3719	Numbering Resource Optimization	3060-AH80
3720	Performance Measurements and Standards for Unbundled Network Elements and Interconnection	3060-AI00
3721	Performance Measurements and Standards for Interstate Special Access Services	3060-AI01
3722	Customer Premises Equipment/Enhanced Services Bundling Restrictions in Computer II	3060-AI03

COMMON CARRIER BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
3723	Implementation of Non-Accounting Safeguards, Sec. 271 & 272 of Communications Act of 1996 & Regulatory Treatment of LEC Provisions of Interexchange Svcs. Orig. in LEC Local Exch. Area	3060-AG37
3724	Access Charge Reform for Rate-of-Return Local Exchange Carriers	3060-AH01

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CONSUMER INFORMATION BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3725	Implementation of Section 255 and Section 251(a)(2) of the Telecommunications Act of 1996; Access to Telecommunications Services Equipment and Customer Premise Equipment for Persons With Disabilities	3060-AG58
3726	In the Matter of Telecommunications Relay Services and Speech-to-Speech Services for Individuals With Hearing and Speech Disabilities; CC Docket No. 98-67	3060-AG76
3727	Establishment of Rules Governing Procedures To Be Followed When Informal Complaints Are Filed by Consumers Against Entities Regulated by the Commission	3060-AI02

ENFORCEMENT BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3728	In the Matter of Amendment of Part 73, Subpart G, of the Commission's Rules Regarding the Emergency Alert System	3060-AF21

OFFICE OF ENGINEERING AND TECHNOLOGY—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3729	MSS Spectrum Allocation	3060-AF75
3730	Unlicensed National Information Infrastructure at 5 GHz	3060-AG19
3731	Allocation of 455-456 MHz and 459-460 MHz	3060-AG89
3732	Dedicated Short Range Communications of Intelligent Transportation Services	3060-AG94
3733	Regulations for RF Lighting Devices	3060-AG95
3734	Industry Coordination Committee System for Broadcast Digital Television Service	3060-AH13
3735	3650-3700 Government Transfer Band	3060-AH14
3736	Certification of Equipment in the 24.05-24.25 GHz Band at Field Strengths Up to 2500 mV/m	3060-AH16
3737	Fixed Satellite Service and Terrestrial System in the Ku-Band	3060-AH17
3738	Spread Spectrum Devices	3060-AH25
3739	Wireless Medical Telemetry Service	3060-AH27
3740	Establishment of an Improved Model for Predicting the Broadcast Television Field Strength Received at Individual Locations	3060-AH37
3741	Conducted Emission Limits	3060-AH46
3742	Revision of the Rules Regarding Ultra-Wideband Transmission	3060-AH47
3743	Software Defined Radio Authorization	3060-AH64
3744	New Advanced Wireless Services	3060-AH65
3745	Reallocation of 27 MHz Spectrum	3060-AH66
3746	Revisions to Broadcast Auxiliary Service Rules	3060-AH78
3747	Part 15 Biennial Review	3060-AH92

OFFICE OF ENGINEERING AND TECHNOLOGY—Completed Actions

Sequence Number	Title	Regulation Identification Number
3748	Wind Profiler Radar Systems	3060-AF45
3749	Millimeter Wave Spectrum Allocation	3060-AF61
3750	Equipment Authorization Streamline II/Mutual Recognition Agreements and the GMPCS MOU	3060-AG96
3751	Uniden Scanners/Cellular Radio Signals	3060-AG97

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OFFICE OF GENERAL COUNSEL—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3752	Amendment of the Ex Parte Rules in Joint Board Proceedings	3060-AH02
3753	Amendment of Section 1.1204 of the Commission's Ex Parte Rules	3060-AH58
3754	Amendment of Section 1.17 of the Commission's Rules Concerning Truthful Statements to the Commission	3060-AH86

INTERNATIONAL BUREAU—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3755	Policies and Rules for Non-Geostationary Satellite Orbit, Fixed Satellite Service in the KA-Band; IB Docket No. 02-19	3060-AH93
3756	Enforcement of Other Nations' Prohibitions Against the Uncompleted Call Signaling Configuration of International Callback Service; IB Docket No. 02-18	3060-AH94
3757	Space Station Licensing Reform; IB Dockets 00-248 and 02-34	3060-AH98

INTERNATIONAL BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3758	Streamlining the Commission's Rules and Regulations for Satellite Application and Licensing Procedures; IB Docket No. 95-117	3060-AD70
3759	Satellite Communications — NGSO Mobile Satellite Service; CC Docket No. 92-166	3060-AF42
3760	Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Service in the L-Band; IB Docket No. 96-132	3060-AF89
3761	Preemption of Local Zoning Regulation of Satellite Earth Stations; IB Docket No. 95-59	3060-AF92
3762	Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band; IB Docket No. 95-91; GEN Docket No. 90-357	3060-AF93
3763	Redesignation of the 27.5-29.5 GHz Frequency Band; CC Docket No. 92-297	3060-AF94
3764	Amendment of Policy To Allow Non-U.S. Licensed Space Stations To Provide Service in the United States; IB Docket No. 96-111; CC Docket No. 93-23	3060-AG31
3765	Allocate & Designate: Spec for Fixed-Sat Srv (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHz Bands). Allocate: Fixed & Mobile 40.5-42.5 GHz; Wireless 46.9-47 GHz; Gov Oper 37-38 & 40-40.5 GHz; IB Doc No. 97-95	3060-AH23
3766	Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 GHz Band; IB Docket No. 99-81	3060-AH28
3767	Policies for the Direct Broadcast Satellite Service; IB Docket No. 98-21	3060-AH29
3768	1998 Biennial Regulatory Review — Review of Accounts Settlement in Maritime Mobile &Maritime Mobile-Satellite Radio Services and Withdrawal of the Commission as Accounting Authority; IB Doc No. 98-96	3060-AH30
3769	Amendment to Regulatory Policies Governing Domestic Fixed Satellites and Separate International Satellite Systems; IB Docket No. 95-41	3060-AH48
3770	Global Mobile Personal Communications by Satellite; IB Docket No. 99-67	3060-AH49
3771	Direct Broadcast Public Interest Obligations; MM Docket No. 93-25	3060-AH59
3772	Streamlining Earth Station Licensing Rules; IB Docket No. 00-248	3060-AH60
3773	2000 Biennial Review — Amendment of Parts 43 and 63 of the Commission's Rules; IB Docket No. 00-231	3060-AH62
3774	Licensing and Coordination of Earth Stations in the Fixed-Satellite Services; IB Docket No. 00-203	3060-AH63
3775	Alaska Bush Earth Station Policy; IB Docket No. 02-30	3060-AH99

INTERNATIONAL BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
3776	Streamlining Regulations Related to International Common Carriers; IB Docket No. 98-118	3060-AG84
3777	Redesignation 17.7-19.7 GHz Band, Blanket Licensing Sat Earth Stations 17.7-20.2 GHz & 27.5-30 GHz & Allocation 17.3-17.8 & 24.75-25.25 GHz Band for Broadcast Satellite Service Use; IB Doc No. 98-172	3060-AH21

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INTERNATIONAL BUREAU—Completed Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3778	Consideration of Applications Under the Cable Landing License Act; IB Docket No. 00-106	3060-AH50

MASS MEDIA BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3779	Transfer of Control of Non-Stock Entities (MM Docket No. 89-77)	3060-AE31
3780	Filing of Television Network Affiliation Contracts (MM Docket No. 95-40)	3060-AF80
3781	Rules Governing Broadcast Television Advertising (MM Docket No. 95-90)	3060-AF81
3782	Minor Modifications of Broadcast Licenses Without Prior Construction Permit (MM Docket No. 96-58)	3060-AG30
3783	Review of Technical Rules in Parts 73 and 74 (MM Docket No. 98-93)	3060-AG81
3784	Digital Audio Broadcasting Systems (MM Docket No. 99-325)	3060-AH40
3785	Ancillary or Supplemental Use of DTV Capacity by Non-Commercial Licensees (MM Docket No. 98-203)	3060-AH53
3786	Periodic Review of Rules and Policies Affecting the Conversion to DTV (MM Docket No. 00-39)	3060-AH54
3787	Children's TV, Obligations of Digital TV Broadcasters (MM Docket No. 00-167)	3060-AH68
3788	Extension of Filing Requirements for Children's TV Programming Report (MM Docket No. 00-44)	3060-AH69
3789	Radio Market Definitions (MM Docket No. 00-244)	3060-AH70
3790	Enhanced and Standardized Disclosure (MM Docket No. 00-168)	3060-AH71
3791	Revision of EEO Rules and Policies; MM Docket No. 98-204	3060-AH95
3792	Reexamination of Comparative Standards for Noncommercial Educational Applicants; MM Docket No. 95-31	3060-AH96
3793	Cross Ownership of Broadcast Stations and Newspapers	3060-AH97

MASS MEDIA BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
3794	Newspaper/Broadcast Cross-Ownership (MM Docket No. 96-197)	3060-AG53
3795	Dual Network Rule (MM Docket No. 00-108)	3060-AH51
3796	Experimental Broadcast Station Multiple Ownership Rule (MM Docket No. 00-105)	3060-AH52

OFFICE OF MANAGING DIRECTOR—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3797	Assessment and Collection of Regulatory Fees for FY 2002	3060-AH85

WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3798	Amendment of the Commission's Rules Concerning Maritime Communications	3060-AF14
3799	Future Development of 800 MHz SMR; Competitive Bidding Wide Area	3060-AF47
3800	Resale and Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060-AF58
3801	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; Narrowband PCS Competitive Bidding Rules	3060-AF99
3802	Implementation of Section 309(j) of the Communications Act, Competitive Bidding; 218-219 MHz Competitive Bidding Rules	3060-AG00
3803	39 GHz Channel Plan	3060-AG16
3804	Implementation of 309(j) of the Communications Act, Amendment of Parts 20 and 24 of the Commission's Rules - Broadband PCS Competitive Bidding and the Commercial Mobile Radio Service Spectrum Cap	3060-AG21
3805	Revision of the Rules To Ensure Compatibility With 911 Emergency Calling Systems	3060-AG34

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WIRELESS TELECOMMUNICATIONS BUREAU—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3806	In the Matter of the Communications Assistance for Law Enforcement Act	3060-AG74
3807	Development of Operational, Technical, and Spectrum Requirements for Public Safety Communications Requirements	3060-AG85
3808	Multiple Access Systems	3060-AG86
3809	Amendment of Part I of the Commission's Rules — Competitive Bidding Procedures	3060-AG87
3810	Amendment of Part 90 of the Rules To Adopt Regulations for Automatic Vehicle Monitoring Systems	3060-AH12
3811	Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules	3060-AH32
3812	Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended	3060-AH33
3813	1998 Biennial Regulatory Review — Spectrum Aggregation Limits for Wireless Telecommunications Carriers	3060-AH34
3814	Amendment to Parts 1, 2, 87 and 101 of the Rules to License Fixed Services at 24 GHz	3060-AH41
3815	Part 101 — Terrestrial Microwave Fixed Radio Services	3060-AH42
3816	Amendment of Parts 13 and 80 Governing Maritime Communications	3060-AH55
3817	Amendment of the Rules Regarding Installment Payment Financing for Personal Communications Services Licensees	3060-AH57
3818	Transfer of the 3650 Through 3700 MHz Band and the 4.9 GHz Band From Federal Government Use	3060-AH75
3819	2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services	3060-AH81
3820	In the Matter of Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets	3060-AH82
3821	In the Matter of Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services	3060-AH83
3822	Amendment of Part 90 for Licensing Low Power Operations in 450-470 MHz Band	3060-AH84
3823	Reallocation of the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands.	3060-AH87
3824	Review of Quiet Zones Application Procedures	3060-AH88
3825	Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59)	3060-AH89
3826	Implementation of 911 Act	3060-AH90

WIRELESS TELECOMMUNICATIONS BUREAU—Completed Actions

Sequence Number	Title	Regulation Identification Number
3827	Refarming	3060-AF35

Federal Communications Commission (FCC) **Long-Term Actions**

Cable Services Bureau

3677. CABLE TELEVISION RATE REGULATION

Priority: Other Significant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rate regulations to implement Section 623 of the 1992 Cable Act to ensure that cable subscribers nationwide enjoy the rates that would be charged by cable systems operating in a competitive environment. Reconsideration was requested. The 14th Order on Reconsideration addresses petitions on issues governing regulated services by cable systems.

Timetable:

Action	Date	FR Cite
NPRM	01/04/93	58 FR 48
R&O and FNPRM	05/21/93	58 FR 29736
MO&O and FNPRM	08/18/93	58 FR 43816
3rd R&O	11/30/93	58 FR 63087
Order on Recon, 4th R&O, and 5th NPRM	04/15/94	59 FR 17943
3rd Order on Recon	04/15/94	59 FR 17961
5th Order on Recon and FNPRM	10/13/94	59 FR 51869
4th Order on Recon	10/21/94	59 FR 53113
6th Order on Recon, 5th R&O, and 7th NPRM	12/06/94	59 FR 62614
7th Order on Recon	01/25/95	60 FR 4863
9th Order on Recon	02/27/95	60 FR 10512
8th Order on Recon	03/17/95	60 FR 14373
6th R&O and 11th Order on Recon	07/12/95	60 FR 35854
13th Order on Recon	10/05/95	60 FR 52106
12th Order on Recon	10/26/95	60 FR 54815
10th Order on Recon	04/08/96	61 FR 15388
Order on Recon of the 1st R&O and Further NPRM	04/15/96	61 FR 16447
MO&O	02/12/97	62 FR 6491
Report on Cable Industry Prices	02/24/97	62 FR 8245
R&O	03/31/97	62 FR 15118
14th Order on Recon	10/15/97	62 FR 53572
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

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Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Agency Contact: Nancy Stevenson, Attorney, Federal Communications Commission, Cable Services Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AF41

3678. CABLE TELEVISION RATE REGULATION: COST OF SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 543

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has established rules pursuant to which cable operators may set rates for regulated cable service in accordance with traditional cost-of-service principles, as modified to take account of unique characteristics of the cable industry. These rules are the subject of pending petitions for reconsideration. In addition, the Commission is considering comments received in response to a Further Notice of Proposed Rulemaking concerning the rate of return that should be applied in cost-of-service cases.

Timetable:

Action	Date	FR Cite
NPRM	07/30/93	58 FR 40762
R&O	04/15/94	59 FR 17975
2nd NPRM	04/15/94	59 FR 18066
MO&O	10/14/94	59 FR 52087
2nd R&O/1st Order on Recon/FNPRM	03/08/96	61 FR 9361
Correction in FR	03/22/96	61 FR 11749
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AF48

3679. CUSTOMER SERVICE STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i) to 154(j); 47 USC 303; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: NPRM, Statutory, April 3, 1993.

Abstract: The Commission has adopted customer service standards for cable operators nationwide to implement the provisions of the Cable Act of 1992. Such standards shall include, at a minimum, cable systems office hours, telephone availability, installations, outages, service calls, and communication between the cable operator and subscriber, including billing and refunds.

Timetable:

Action	Date	FR Cite
NPRM	12/23/92	57 FR 61038
R&O	04/19/93	58 FR 21107
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

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RIN: 3060–AF69

3680. CABLE HOME WIRING

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 544(i)

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: On October 6, 1997, the FCC adopted a Report and Order and Second Notice of Proposed Rulemaking (FCC 97-7360) that amends its cable inside wiring rules to enhance competition in the video distribution marketplace. The Second FNPRM seeks comment on, among other things, whether there are circumstances where the FCC should adopt restrictions on exclusive contracts in order to further promote competition in the multiple dwelling unit marketplace. A Petition for Review was filed in the U.S. Circuit Court of Appeals for the 8th Circuit on November 24, 1997. The FCC has received petitions for reconsideration and has requested the 8th Circuit to hold the pending court case in abeyance until the Commission takes action on the pending petitions. The Court granted the Commission's request.

Timetable:

Action	Date	FR Cite
NPRM	11/17/92	57 FR 54209
R&O	03/02/93	58 FR 11970
NPRM	02/01/96	61 FR 3657
First Order on Recon & FNPRM	02/16/96	61 FR 6210
FNRPM	09/03/97	62 FR 46453
R&O and Second FNPRM	11/14/97	62 FR 60165
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG02

3681. CLOSED CAPTIONING

Priority: Other Significant

Legal Authority: 47 USC 613

CFR Citation: 47 CFR 79.1; 47 CFR 79.2

Legal Deadline: None

Abstract: The FCC adopted regulations to ensure that video programming is accessible to persons with hearing disabilities through closed captioning. The rules were adopted in August 1997 and modified in response to petitions for reconsideration in September 1998. In April 2000, the FCC adopted rules

to ensure the accessibility of televised emergency information to persons with hearing disabilities through closed captioning or another method of visual presentation.

Timetable:

Action	Date	FR Cite
NOI	12/15/95	60 FR 65052
Order	01/29/96	61 FR 2781
Order	03/12/96	61 FR 9963
Report	08/14/96	61 FR 42249
NPRM	02/03/97	62 FR 4959
Order	03/24/97	62 FR 13853
R&O	09/16/97	62 FR 48487
FNRPM	01/21/98	63 FR 3070
Order	10/20/98	63 FR 55959
Order	06/23/99	64 FR 33424
Second R&O	05/09/00	65 FR 26757
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AG26

3682. CABLE ACT REFORM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 522; 47 USC 543; 47 USC 544; 47 USC 548; 47 USC 552

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: This proceeding implements the cable reform section of the Telecommunications Act of 1996. It addresses several issues, including the cable rate complaint process, effective competition and subscriber notifications.

Timetable:

Action	Date	FR Cite
Order & NPRM	04/30/96	61 FR 19013
Report & Order	07/02/99	64 FR 35948
Correction	08/06/99	64 FR 42855
Next Action Undetermined		

3683. COMPETITIVE AVAILABILITY OF NAVIGATION DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 549

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: The Commission has adopted rules to address the mandate expressed in section 629 of the Communications Act to ensure the commercial availability of "navigation devices," the equipment used to access video programming and other services from multichannel video programming systems. Petitions for reconsideration were resolved in a recent order. The Commission also issued a Further Notice of Proposed Rulemaking and Declaratory Ruling. The Further Notice sought comment as to the effectiveness of the Commission's rules for achieving the commercial availability of navigation devices. Accompanying the Further Notice was a Declaratory Ruling which found that technology licenses requiring copy protection measures to be located within a navigation host device are consistent with the Commission's navigation devices rules.

Timetable:

Action	Date	FR Cite
NPRM	03/05/97	62 FR 10011
R&O	07/15/98	63 FR 38089
Order on Reconsideration	06/02/99	64 FR 29599
FNPRM & Declaratory Ruling	09/28/00	65 FR 58255
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG28

3684. POLE ATTACHMENT PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 224; 47 USC 303; 47 USC 403

CFR Citation: 47 CFR 1.1401 to 1.1418

Legal Deadline: Final, Statutory, February 8, 1998.

Abstract: The Commission established rules relating to pole attachments. The Telecommunications Act of 1996 required that within two years the Commission prescribe regulations governing the charges for pole attachments for telecommunications attachers. These regulations are to be used by cable operators and telecommunications carriers to provide telecommunications services when the utility and attaching entity parties fail to resolve a dispute over such charges. The Report and Order released in 1998 prescribed regulations to govern these charges.

In April 2000, the Commission released a Report and Order addressing issues related to the formula used to calculate just and reasonable rates that utilities charge for pole attachments. Petitions for reconsideration of both the 1998 and 2000 orders were resolved by Order released in May 2001.

Timetable:

Action	Date	FR Cite
NPRM	08/18/97	62 FR 43963
R&O	03/12/98	63 FR 12013
R&O	05/17/00	65 FR 31270
Erratum	05/31/00	65 FR 34820
Reconsideration Order	06/29/01	66 FR 34569
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 3060–AG71

3685. DIGITAL MUST CARRY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 534

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 614(b)(4)(B) of the Communications Act requires that, at the time the Commission prescribes standards for advanced television, it should "initiate a proceeding to establish any changes in the signal carriage requirements of cable television systems necessary to ensure cable carriage of those broadcast signals of local commercial television stations which have been changed to conform with such modified standards." In August of 1998, the FCC issued a Notice of Proposed Rulemaking seeking comments on the requirements of that section. In June 2000, based on responses to the Notice of Proposed Rulemaking, the Commission clarified that DTV-only television stations, in the context of auctioning analog channels 59-69, will ultimately have must carry rights. In January of 2001, the Commission issued a First Report and Order and Further Notice of Proposed Rulemaking resolving a number of technical and legal issues, including clarification that digital-only TV stations are entitled to mandatory carriage.

Timetable:

Action	Date	FR Cite
NPRM	08/07/98	63 FR 42330
MO&O and FNPRM	07/12/00	65 FR 42879
FNPRM	03/26/01	66 FR 16523
First R&O	03/26/01	66 FR 16533
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AG91

3686. HORIZONTAL OWNERSHIP LIMITS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 533

CFR Citation: 47 CFR 76

Legal Deadline: None

Abstract: Section 613 of the Communications Act requires the Commission to "prescribe rules and regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person, or in which such person has an attributable interest." On October 8, 1999, the Commission issued a Third Report and Order, FCC 99-289, in this matter. The Commission revised the horizontal ownership rules as follows: (1) all multichannel video subscribers will be counted when calculating the 30 percent ownership limit; (2) actual subscriber numbers, rather than potential subscriber numbers, will be used for calculating an owner's share; and (3) the minority exception which allowed a 35 percent ownership limit for minority-owned entities under certain circumstances was eliminated. On March 2, 2001, the District of Columbia Circuit Court reversed and remanded the cable horizontal and vertical limits. (Time Warner Entertainment Co. v. FCC, 240 F.3d 1126 (DC cir.2001)). Pursuant to the court's remand, the Commission is soliciting comment.

Timetable:

Action	Date	FR Cite
Second MO&O on Recon and FNPRM	07/14/98	63 FR 37790
Third R&O	12/01/99	64 FR 67198
Order on Recon	03/08/00	65 FR 12135
MO&O	06/08/00	65 FR 36382
FNPRM	10/11/01	66 FR 51905
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH09

3687. APPLICATION OF NETWORK NONDUPLICATION, SYNDICATED EXCLUSIVITY, AND SPORTS BLACKOUT RULES TO SATELLITE RETRANSMISSION - SHVIA

Priority: Other Significant

Legal Authority: 47 USC 339

CFR Citation: 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: The FCC proposed rules on its implementation of certain aspects of the Satellite Home Viewer Improvement Act of 1999. In October of 2000, the FCC issued an order adopting rules that apply the current cable rules for network non-duplication, syndicated program exclusivity and sports blackout to satellite carriers. Petitions for reconsideration were filed in response to that order.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4927
Report and Order	11/14/00	65 FR 68082
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH35

3688. RETRANSMISSION CONSENT ISSUES - SHVIA

Priority: Other Significant

Legal Authority: 47 USC 325

CFR Citation: 47 CFR 76.64(m); 47 CFR 76.65

Legal Deadline: None

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires broadcasters, until the year 2006, to negotiate in good faith with satellite carriers and other multichannel video programming distributors (MVPDs) with respect to their transmission of the broadcasters' signals, and prohibits broadcasters from entering into exclusive retransmission agreements.

The First Report and Order (Order) determined that the statute does not intend to subject retransmission consent negotiation to detailed substantive oversight by the Commission. Instead, the Order concludes that Congress intended that the Commission follow established precedent, particularly in the field of labor law, in implementing the good faith retransmission consent negotiation requirement. Consistent with this conclusion, the Order adopts a two-part test for good faith. The first part of the test consists of a brief, objective list of negotiation standards. The second part of the good faith test is based on a totality of the circumstances standard. Under this standard, an MVPD may present facts to the Commission which, even though they do not allege a violation of the specific standards enumerated above, given the totality of the circumstances constitute a failure to negotiate in good faith. The Commission's rules regarding the good faith negotiation requirement sunset on January 1, 2006. An MVPD believing itself to be aggrieved may file a complaint with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	12/29/99	64 FR 72985
First R&O	03/23/00	65 FR 23805
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH36

3689. SATELLITE BROADCASTING SIGNAL CARRIAGE REQUIREMENTS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 338; 47 USC 534; 47 USC 535

CFR Citation: 47 CFR 76

Legal Deadline: Final, Statutory, November 29, 2000.

Abstract: The Satellite Home Viewer Improvement Act of 1999 (SHVIA) requires satellite carriers, by January 1, 2002, to carry upon request all local broadcast stations' signals. These signals must be carried in all local markets in which the satellite carriers carry at least one broadcast station signal, assuming this signal is licensed pursuant to section 122 of the Copyright Act. The SHVIA requires the Commission to issue rules implementing the Act's mandatory carriage requirements within one year of the SHVIA's enactment. On November 29, 2000 the Commission adopted a Report and Order that places satellite carriers on equal footing with cable operators with respect to the availability of programming. The applicable statutory provisions are found in section 1008 of the SHVIA and codified at section 338 of the Communications Act. The Commission implementing satellite broadcast signal carriage rule is 47 CFR 76.66.

Timetable:

Action	Date	FR Cite
NPRM	06/30/00	65 FR 40564
NPRM Comment Period End	08/04/00	
Report and Order	01/23/01	66 FR 7410
Announcement of Effective Date	06/29/01	66 FR 34582
Order on Reconsideration	09/26/01	66 FR 49124
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH45

3690. • EXCLUSIVE CONTRACT PROHIBITION OF THE PROGRAM ACCESS RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 548

CFR Citation: 47 CFR 76.1002

Legal Deadline: NPRM, Statutory, October 5, 2002.

Abstract: Section 628(c)(2)(D) of the Communications Act generally prohibits, in areas served by a cable operator, exclusive contracts for satellite cable programming between vertically integrated programming vendors and cable operators. Pursuant to section 628(c)(5), the prohibition on exclusive programming contracts contained in section 628(c)(2)(D) will cease to be effective on October 5, 2002, unless the FCC conducts a proceeding and finds that such prohibition continues to be necessary to preserve and protect competition and diversity in the distribution of video programming. In October 2001, the FCC issued an NPRM to initiate a proceeding in order to make that determination.

The NPRM sought comment on: (1) Whether section 628(c)(2)(D) of the Communications Act should cease to be effective pursuant to the sunset provision contained in section 628(c)(5); (2) the effect, if any, section 628(c)(2)(D) has had on competition in local and national markets; (3) the degree to which, if at all, clustering and continuing consolidation within the communications industry should inform our decision on the possible sunset of the exclusivity prohibition; (4) the effects of exclusivity in the multichannel video programming marketplace; (5) the impact the prohibition on exclusivity has had on diversity in programming; (6) whether it would be advisable, and consistent with the FCC's statutory authority, to retain the rule only for some types of programming or in some specific cases; (7) how other program access provisions would function should the exclusivity prohibition sunset; (8) what future procedures the FCC should undertake if the prohibition on exclusivity is retained; and (9) any other issues appropriate to our inquiry in accordance with section 628(c)(5).

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FCC—Cable Services Bureau **Long-Term Actions**

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 54972
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH91

Federal Communications Commission (FCC)
Common Carrier Bureau **Proposed Rule Stage**

3691. COMPUTER III FURTHER REMAND PROCEEDINGS: BELL OPERATING COMPANY PROVISION OF ENHANCED SERVICES

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 160; 47 USC 161; 47 USC 202 to 205; 47 USC 251; 47 USC 271; 47 USC 272; 47 USC 274 to 276

CFR Citation: 47 CFR 51; 47 CFR 53; 47 CFR 64

Legal Deadline: None

Abstract: On January 30, 1998, the FCC released a Further Notice of Proposed Rulemaking (FNPRM) proposing to streamline the safeguards under which the Bell Operating Companies (BOCs) provide information (or enhanced) services, such as voice mail and electronic messaging. The FCC sought comment on tentative conclusions relating to nonstructural safeguards, Comparably Efficient Interconnection (CEI) plans, and network information disclosure rules, among other things. Finally, the FNPRM sought to build a record on which to respond to a partial remand of certain orders by the Court of Appeals for the Ninth Circuit. On February 25, 1999, the Commission adopted a Report and Order which streamlined the Commission's CEI and network information disclosure rules. Although the BOCs must continue to comply with their CEI obligations, they are no longer required to obtain pre-approval of their CEI plans and amendments from the Commission before initiating or altering an intra-LATA information service. Instead, the Commission requires the BOCs to post their CEI plans on their publicly accessible Internet sites, and to notify the Common Carrier Bureau upon such posting. The Commission removed the network information disclosure rules set forth in the Computer II and Computer III proceedings, with the narrow exception of the Computer II rules that require carriers to disclose changes that could affect how customer premises equipment (CPE) is attached to the network. On March 7, 2001, the FCC released a Public Notice requesting further comment on the outstanding issues discussed in its January 30, 1998 FNPRM.

Because the issues in this FNPRM overlap with certain issues that the Commission is now considering in a separate docket regarding broadband services, the Commission has incorporated the FNPRM into the broadband proceeding insofar as the FNPRM relates to the BOCs' obligations to promote access to their networks with respect to broadband services. The broadband proceeding is entitled, "Appropriate Framework for Broadband Access to the Internet Over Wireline Facilities; Universal Service Obligations of Broadband Providers," CC Docket No. 02-33, NPRM, FCC 02-42 (rel. Feb. 15, 2002).

Timetable:

Action	Date	FR Cite
FNPRM	02/26/98	63 FR 9749
R&O	03/24/99	64 FR 14141
Public Notice	03/15/01	66 FR 15064
NPRM	02/15/02	67 FR 9232
NPRM Comment Period End	04/15/02	
Reply Comment Period End	05/14/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

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RIN: 3060–AG72

Federal Communications Commission (FCC)
Common Carrier Bureau **Long-Term Actions**

3692. ADMINISTRATION OF THE NORTH AMERICAN NUMBERING PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 3 to 4; 47 USC 151; 47 USC 152 to 155; 47 USC 154(i); 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218; 47 USC 225 to 227; 47 USC 251 to 252; 47 USC 271; 47 USC 332; 47 USC 403

CFR Citation: 47 CFR 52.1 to 52.99; 47 CFR 151; 47 CFR 154; 47 CFR 201 to 205; 47 CFR 403

Legal Deadline: None

Abstract: The Report and Order lays the foundation for the fair and effective administration of numbering in the United States. The Report and Order establishes a model for administration of numbering resources in a competitive environment. In this model, the FCC will set broad policy objectives, be the final arbiter of domestic numbering disputes and work closely with other member countries of the North American Numbering Plan (NANP), the States, industry and consumers to ensure fair and effective number administration. The Report and Order creates the North American Number Council (NANC) under the Federal Advisory Committee Act. In the Third Report and Order, released on October 9, 1997, the Commission affirmed the NANC's selection of Lockheed Martin IMS as the new NANP administrator. The NANP administrator is a nongovernmental entity that is not aligned with any particular telecommunications industry segment, and upon selection and following a transition period, assumed Bellcore's current NANP administrator functions and the central office code administration functions currently handled by the dominant local exchange carrier in each area code. The rules were expanded to accommodate the requirements of the Telecommunications Act of 1996. See FCC 96-337, released August 8, 1996.

FCC—Common Carrier Bureau **Long-Term Actions**

Timetable:

Action	Date	FR Cite
NOI	11/10/92	57 FR 53462
NPRM	05/10/94	59 FR 24103
R&O	07/28/95	60 FR 58737
Second R&O	09/06/96	61 FR 47284
Third R&O	10/23/97	62 FR 55179
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AF50

3693. USE OF N11 CODES AND OTHER ABBREVIATED DIALING ARRANGEMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 to 205; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1992, the FCC released a Notice of Proposed Rulemaking in CC Docket 92-105 proposing that local exchange carriers (LECs) be required to make N11 codes available for access to information service providers. In this proposal, LECs could establish any reasonable assignment criteria for such allocation, including "first come, first served." The FCC's General Counsel released a letter indicating it found no regulatory or legal obstacles to assignment of N11 codes for information services. On February 19, 1997, the FCC released a First Report and Order and Further Notice of Proposed Rulemaking in that Docket (FCC 97-51) which allows incumbent LECs, in addition to the States and Bell Communications Research (Bellcore), to continue to perform the N11 code administration functions that they performed at the time of enactment of the 1996 Act amendments to the 1934 Act, until further FCC action. The FCC concluded that: (1) 311 should be assigned as a national number for access to non-emergency police calls; (2) 711 should be assigned as a national number for access to telecommunications relay services (TRS); (3) all providers of telephone exchange service must be able to have their customers call 611 and 811 to reach their repair and business service offices; and (4) a LEC may not itself offer enhanced services using a 411 code or any other N11 code, unless that LEC offers access to the code on a reasonable nondiscriminatory basis to competing enhanced service providers in the local service area for which it is using the code to facilitate distribution of their enhanced services. In the FNPRM, the FCC asked for comment on: (1) the technical feasibility of implementing 711 for TRS access; (2) the possibility of developing an N11 gateway offering access to multiple TRS providers; (3) whether with such access, TRS calls would still be answered within mandatory minimum answer times; (4) whether such a gateway would be consistent with section 255; (5) whether other important disability services could be accessed thereby; (6) the possibility of providing both voice and text TRS services through the same abbreviated TRS code; (7) the proprietary nature of N11 codes; and (8) an FCC proposal to transfer administration of N11 codes at the local level from incumbent LECs to the North American Numbering Plan (NANP) administrator. Petitions for reconsideration or clarification on the order have been filed. Comments and replies were filed on March 31 and April 30, 1997, respectively. On June 16, 1999, the Commission released a Public Notice announcing that it would hold a public forum on September 8, 1999, on 711 access to TRS. The goal of the forum was to identify steps that must be taken to implement 711 access to TRS as well as obstacles to implementation and how those obstacles could be resolved.

On August 9, 2000, the Commission released a Second Report and Order (FCC 00-257) that addresses issues related to the deployment of 711 for access to TRS. The Commission required a nationwide rollout of 711 access to TRS and established an implementation framework. On July 31, 2000, the Commission released a Third Report and Order (FCC 00-256) that granted the petition of the United Way of America, and others, for nationwide assignment of the 211 abbreviated dialing code for access to community information and referral services. The Commission also granted the petition of the U.S. Department of Transportation for nationwide assignment of the 511 abbreviated dialing code for access to travel and traffic information. The Commission further addressed issues raised in petitions for reconsideration of the N11 First Report and Order and resolved outstanding issues from the N11 Further Notice of Proposed Rulemaking.

On August 29, 2000, the Commission released a Fourth Report and Order and Third Notice of Proposed Rulemaking in CC Docket 92-105 and a Notice of Proposed Rulemaking in WT Docket 00-110 (FCC 00-327) to implement the Wireless Communications and Public Safety Act of 1999. The Commission designated 911 as the universal emergency number and sought comment on appropriate transition periods and how the Commission should facilitate States' efforts to deploy comprehensive emergency communications systems.

Timetable:

Action	Date	FR Cite
NPRM	05/29/92	57 FR 22681
First R&O	02/26/97	62 FR 8633
FNPRM	02/26/97	62 FR 8671
Second R&O	09/11/00	65 FR 54799
Fourth R&O and Third NPRM	09/19/00	65 FR 56751
Third R&O	02/09/01	66 FR 9674
Second NPRM	04/05/01	66 FR 18059
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AF51

3694. IMPLEMENTATION OF THE UNIVERSAL SERVICE PORTIONS OF THE 1996 TELECOMMUNICATIONS ACT

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 et seq

CFR Citation: 47 CFR 54

Legal Deadline: NPRM, Statutory, March 8, 1996.
Other, Statutory, November 8, 1996, Recommended decision.
Final, Statutory, May 8, 1997, Federal-State Joint Board R&O released May 8, 1997.

Abstract: As required by the Telecommunications Act of 1996, the Commission sought comment on proposals for reforming universal service. On November 8, 1996, the Federal-State Joint Board on Universal Service issued a recommended decision on changes to the universal service support mechanisms. In addition, on January 10, 1997, the Commission issued an NPRM and NOI on changes to the Board of Directors of the National Exchange Carrier Association (NECA), regarding the administration of universal service. On May 8, 1997, the Commission, at the direction of Congress, released its order implementing the universal service portions of the 1996 Act. On December 30, 1997, the Commission issued the 4th Order on Reconsideration which made changes and clarifications to the May 8 Order. On June 22, 1998, the Commission issued the 5th Order on Reconsideration which revised the collection levels for the schools and libraries support mechanism through June 30, 1999, and revised the collection levels for the rural health care support mechanism through December 31, 1998. The 5th Order on Reconsideration also revised the priority with which schools and libraries and rural health care providers will receive support. On October 28, 1998, the Commission issued the 5th Report and Order, in which it adopted the model platform for its forward-looking economic cost methodology, which will be used to determine support for non-rural carriers beginning July 1, 1999. On November 21, 1998, the Commission issued the 8th Order on Reconsideration in which it consolidated the administration of universal service into a single entity known as the Universal Service Administrative Company or USAC. On November 25, 1998, the Federal-State Joint Board on Universal Service issued its Second Recommended Decision in which the Joint Board made certain recommendations to the Commission regarding the high cost support mechanism.

On May 28, 1999, the Commission issued the 13th Order on Reconsideration in which it adopted the principles of a Federal high-cost support mechanism that conformed to the Second Recommended Decision and in which it sought further comment on specific elements of the support methodology. In the 13th Order on Reconsideration, the Commission also decided to implement the new high-cost support mechanism on January 1, 2000 instead of July 1, 1999, as previously planned. On May 28, 1999, the Commission also issued a Further Notice of Proposed Rulemaking in which it sought comment on proposed input values to be used in the forward-looking model to determine non-rural LECs' cost of providing supported services in high cost areas. On August 5, 1999, the Commission adopted a Further Notice of Proposed Rulemaking in which it sought comment to ascertain the availability of, and to understand the possible impediments to, deployment and subscribership in unserved and underserved areas of the Nation, including tribal lands and other insular areas.

On November 1, 1999, the Commission issued the Fourteenth Order on Reconsideration, in which it eliminated the requirement that only carriers that have been certified as eligible telecommunications carriers may receive credit against their universal service contributions for providing telecommunications services to rural health care providers at the lower urban rates. On November 1, 1999, the Commission also issued the Fifteenth Order on Reconsideration, in which it authorized support for any commercially available telecommunications service regardless of the bandwidth, and simplified the method for determining how much support a rural health care provider can receive. On November 2, 1999, the Commission issued the Ninth Report and Order and Eighteenth Order on Reconsideration in which it adopted a new forward-looking high-cost support mechanism that will enable States to ensure the reasonable comparability of non-rural carriers' intrastate rates. On November 2, 1999, the Commission also issued the Tenth Report and Order in which it completed the selection of a cost model to estimate forward-looking cost by adopting input values for the previously adopted cost model.

On June 30, 2000, the Commission issued the Twelfth Report and Order, Memorandum Opinion and Order, and Further Notice of Proposed Rulemaking, in response to the Further Notice of Proposed Rulemaking it adopted on August 5, 1999. In the Twelfth Report and Order, the Commission adopted measures to promote telecommunications subscribership and infrastructure deployment within American Indian and Alaska Native tribal communities.

On October 12, 2000, the Commission released a Further Notice of Proposed Rulemaking and Order to seek comment on proposals to modify the Commission's rules relating to contributions to the Federal universal service support mechanisms. On January 12, 2001, the Commission released a Further Notice of Proposed Rulemaking seeking comment on the Recommended Decision of the Federal-State Joint Board on Universal Service (Joint Board) regarding a plan for reforming the universal service support mechanism for rural carriers. The Joint Board sent to the Commission the Rural Task Force Recommendation as a good foundation for implementing rural high-cost reform. The Rural Task Force recommends the use of a modified version of the current high-cost loop support mechanism based on carriers' embedded costs.

On May 23, 2001, the Commission released the Fourteenth Report and Order, Twenty-Second Order on Reconsideration and Further Notice of Proposed Rulemaking. In the Fourteenth Report and Order, the Commission adopted a five-year plan that makes modifications to the high-cost loop support mechanism for rural carriers. These modifications were based on the recommendation of the Joint Board and will provide predictable levels of support so that rural carriers can continue to provide affordable service in rural America, while ensuring that consumers in all areas of the nation, including rural areas, have access to affordable and quality telecommunications services.

On March 14, 2001, the Commission issued an order modifying the methodology used to assess contributions to universal service. The methodology was modified to reduce the interval between the accrual of revenues and the assessment of contributions based on those revenues. The order reduced the interval from an average of one year to an average of six months.

On May 8, 2001, the Commission issued a Notice of Proposed Rulemaking in which sought comment on how to streamline and reform both the manner in which the Commission assesses carrier contributions to the universal service fund and the manner in which carriers may recover those costs from their customers.

On May 22, 2001, the Commission adopted a five-year interim freeze of the Part 36 jurisdictional separations rules, pending comprehensive reform of the separations process. The five-year interim freeze was based upon the July 21, 2000 Recommended Decision of the Federal-State Joint Board on Separations. Under the interim freeze, the Part 36 categories and jurisdictional allocation factors of price cap incumbent LECs are frozen, while rate-of-return carriers had the option to freeze only their jurisdictional allocation factors. The interim freeze is in effect from July 1, 2001, to June 30, 2006 or until comprehensive reform is completed, whichever comes first.

On November 8, 2001, the Commission released the Fifteenth Report and Order and Further Notice of Proposed Rulemaking (Further Notice) reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order established a new interstate support mechanism to replace implicit support in the interstate access rate structure of rate-of-return carriers with explicit, portable support. Among other things, the Further Notice sought comment on consolidating the existing Long Term Support mechanism with the new support mechanism created in the Order.

On January 25, 2002, the Commission released a Further Notice of Proposed Rulemaking and Order (Further Notice), in which it sought comment on modifications to the rules governing the schools and libraries support mechanism. The modifications address changes that would make the program more efficient, ensure that the benefits of the program are distributed in an equitable manner, and prevent waste, fraud, and abuse. In addition, the order denied certain petitions for reconsideration relating to unused funds.

On February 15, 2002, the Commission released a Notice of Proposed Rulemaking and Order, in which it sought comment on the issues from the Ninth Report and Order remanded by the United States Court of Appeals for the Tenth Circuit. The Ninth Report and Order established a federal high-cost universal service support mechanism for non-rural carriers based on forward-looking economic costs. In addition, the order referred these issues to the Federal-State Joint Board on Universal Service for a recommended decision.

On February 15, 2002, the Commission issued a Notice of Proposed Rulemaking examining the appropriate legal and policy framework under the Communications Act of 1934, as amended, for broadband access to the Internet provided over domestic wireline facilities.

On February 26, 2002, the Commission issued a Further Notice of Proposed Rulemaking and Report and Order, in which it sought comment on specific proposals to change the manner in which universal service contributions are assessed and recovered, including one proposal to assess contributions based on the number and capacity of connections provided to a public network. This proceeding also made certain modifications to the existing contribution system.

Timetable:

Action	Date	FR Cite
Recommended Decision Federal-State Joint Board, Universal Service	11/08/96	61 FR 63778
1st R&O	05/08/97	62 FR 32862
2nd R&O	05/08/97	62 FR 32862
Order on Recon	07/10/97	62 FR 40742
R&O and 2nd Order on Recon	07/18/97	62 FR 41294
2nd R&O, and FNPRM	08/15/97	62 FR 47404
3rd R&O	10/14/97	62 FR 56118
2nd Order on Recon	11/26/97	62 FR 65036
4th Order on Recon	12/30/97	62 FR 2093
5th Order on Recon	06/22/98	63 FR 43088
5th R&O	10/28/98	63 FR 63993
8th Order on Recon	11/21/98	
2nd Recommended Decision	11/25/98	63 FR 67837
13th Order on Recon	06/09/99	64 FR 30917
FNPRM	06/14/99	64 FR 31780
FNPRM	09/30/99	64 FR 52738
14th Order on Recon	11/16/99	64 FR 62120
15th Order on Recon	11/30/99	64 FR 66778
10th R&O	12/01/99	64 FR 67372
9th R&O and 18th Order on Recon	12/01/99	64 FR 67416
19th Order on Recon	12/30/99	64 FR 73427
20th Order on Recon	05/08/00	65 FR 26513
Public Notice	07/18/00	65 FR 44507
12th R&O, MO&O and FNPRM	08/04/00	65 FR 47883
FNPRM and Order	11/09/00	65 FR 67322
FNPRM	01/26/01	66 FR 7867
R&O and Order on Recon	03/14/01	66 FR 16144
NPRM	05/08/01	66 FR 28718
Order	05/22/01	66 FR 35107
14th R&O and FNPRM	05/23/01	66 FR 30080
FNPRM and Order	01/25/02	
NPRM	02/15/02	67 FR 9232
NPRM and Order	02/15/02	
FNPRM and R&O	02/26/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

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RIN: 3060–AF85

3695. TOLL-FREE SERVICE ACCESS CODES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201 et seq; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This proceeding assures that toll-free numbers are allocated on an efficient, fair, and orderly basis.

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Timetable:

Action	Date	FR Cite
NPRM	10/05/95	60 FR 57157
Second R&O	04/25/97	62 FR 20126
Third R&O	10/09/97	62 FR 55179
Fourth R&O and MO&O	03/30/98	63 FR 16440
Fifth R&O	07/05/00	65 FR 53189

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG11

3696. IMPLEMENTATION OF SECTION 273 OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC 201 to 209; 47 USC 218; 47 USC 251; 47 USC 273; 47 USC 403

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This rulemaking implements provisions of the Telecommunications Act of 1996 relating to the manufacturing of telecommunications equipment and customer premises equipment by the Bell Operating Companies and their affiliates.

Timetable:

Action	Date	FR Cite
NPRM	01/24/97	62 FR 3638

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG36

3697. POLICIES AND RULES GOVERNING INTERSTATE PAY-PER-CALL AND OTHER INFORMATION SERVICES PURSUANT TO THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 228

CFR Citation: 47 CFR 64.1501; 47 CFR 64.1504; 47 CFR 64.1510

Legal Deadline: None

Abstract: The Commission has received comments on proposed rules designed to implement the 1996 Telecommunications Act with respect to information services to prevent abusive and deceptive practices by entities that might try to circumvent the statutory requirements. The proposed rules address generally the use of dialing sequences other than the 900 service access code to provide information services.

Timetable:

Action	Date	FR Cite
NPRM	06/20/96	61 FR 31481
NPRM Comment Period End	09/16/96	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG42

3698. TELECOMMUNICATIONS CARRIERS' USE OF CUSTOMER PROPRIETARY NETWORK INFORMATION AND OTHER CUSTOMER INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 222; 47 USC 275; 47 USC 303(r)

CFR Citation: 47 CFR 64.2001; 47 CFR 64.2003; 47 CFR 64.2005; 47 CFR 64.2007; 47 CFR 64.2009

Legal Deadline: None

Abstract: The Commission adopted rules implementing the new statutory framework governing carrier use and disclosure of customer proprietary network information (CPNI) created by section 222 of the Communications Act of 1934, as amended. CPNI includes, among other things, to whom, where, and when a customer places a call, as well as the types of service offerings to which the customer subscribes and the extent to which the service is used.

Timetable:

Action	Date	FR Cite
NPRM	05/28/96	61 FR 26483
Public Notice	02/25/97	62 FR 8414
Second R&O and FNPRM	04/24/98	63 FR 20364
Order on Reconsideration	10/01/99	64 FR 53242
Final Rule, Announcement of Effective Date	01/26/01	66 FR 7865
Clarification Order & Second NPRM	09/07/01	66 FR 50140

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG43

3699. IMPLEMENTATION OF THE SUBSCRIBER SELECTION CHANGES PROVISION OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 201; 47 USC 258

CFR Citation: 47 CFR 64.1100; 47 CFR 64.1150; 47 CFR 64.1160; 47 CFR 64.1170; 47 CFR 64.1180; 47 CFR 64.1190

Legal Deadline: None

Abstract: In December 1998, the Commission established new rules and policies implementing section 258 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, which makes it unlawful for any telecommunications carrier to "submit or execute a change in a subscriber's selection of a provider of telecommunications exchange service or telephone toll service except in accordance with such verification procedures as the Commission shall prescribe." The rules provide, among other things, that any telecommunications carrier that violates such verification procedures and that collects charges for telephone exchange service or telephone toll service from a subscriber, shall be liable to the carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after such violation. In the FNPRM, we sought comment on several proposals to further strengthen our slamming rules. In April 2000, the Commission modified the slamming liability rules by giving victims of slamming adequate redress, ensuring that carriers that slam do not profit from their fraud, and allowing states to act as the primary administrator of slamming complaints.

In July 2000, the Commission took further action to improve the existing carrier change process for both consumers and carriers, protect the right of consumers to exercise choice among carriers, and ensure that consumers' choices are honored. In December 2000, the Commission adopted a Biennial Review FNPRM seeking comment on proposals to amend the slamming rules to lighten administrative burdens associated with selling or transferring customer bases by eliminating the need to obtain a waiver, while continuing to protect consumers. In February 2001, the Commission adopted an order modifying and clarifying certain aspects of the reporting and registration requirements it had adopted in July 2000. In May 2001, the Commission adopted streamlined procedures for the carrier-to-carrier sale or transfer of customer bases, as proposed in the Biennial Review FNPRM.

Timetable:

Action	Date	FR Cite
MO&O on Recon and FNPRM	08/14/97	62 FR 43493
FNPRM Comment Period End	09/30/97	
Second Report & Order and Second FNPRM	02/16/99	64 FR 7745
First Order on Recon	04/13/00	65 FR 47678
Third Report & Order and Second Order on Recon	11/08/00	65 FR 66934
Third FNPRM	01/29/01	66 FR 8093
Order	03/01/01	66 FR 12877
First Report & Order and Fourth Report & Order	06/06/01	66 FR 30334

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG46

3700. IMPLEMENTATION OF SECTION 402(B)(1)(A) OF THE TELECOMMUNICATIONS ACT OF 1996; LEC TARIFF STREAMLINING PROVISIONS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154

CFR Citation: 47 CFR 1.773(a); 47 CFR 61.58

Legal Deadline: Final, Statutory, February 8, 1997, The Act of 1996 provides that streamlining provisions apply to any charge, classification, regulation, or practice filed on or after one year after date of enactment of the Act (i.e., 2/8/97).

Abstract: In this Report and Order, the FCC adopted rules to implement the specific streamlining requirements of the Telecommunications Act of 1996. Petitions for reconsideration were filed.

Timetable:

Action	Date	FR Cite
NPRM	09/24/96	61 FR 49987
NPRM Comment Period End	10/24/96	
R&O	02/07/97	62 FR 5757

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG47

3701. ACCESS CHARGE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 403; 47 USC 553

CFR Citation: 47 CFR 61.41 to 61.49; 47 CFR 69

Legal Deadline: None

Abstract: On December 24, 1996, the Commission initiated a rulemaking to revise its access charge rules to make them compatible with a competitive market envisioned by the Telecommunications Act of 1996. On May 7, 1997, the Commission adopted revised access charge rate structure rules and adjusted the price cap productivity factor. The Commission also adopted a market-based approach to reducing overall access charge levels and moving such levels toward forward-looking economic costs. The Commission adopted a Further Notice of Proposed Rulemaking seeking comment on proposals to allow presubscribed interexchange carrier charges on special access lines and to adjust the allocation of General Support Facilities costs recovered through interstate access charges.

On July 10, 1997, on its own motion, and on October 9, 1997, in response to reconsideration petitions, the Commission revised or clarified certain parts of the rules adopted in the May 1997 Access Charge Reform Order. On November 26, 1997, the Commission adopted rules requiring price cap carriers to adjust the allocation of General Support Facilities costs and to reduce their price cap indices to ensure that regulated access rates do not recover those costs which are related to nonregulated services. Reconsideration petitions filed in response to the Access Charge Reform Order, if not yet addressed, will be addressed in future reconsideration orders. On May 27, 1999, the Commission initiated a further rulemaking, seeking comment on how

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to adjust interstate access charges in conjunction with the removal from access charges of implicit universal service support for non-rural local exchange carriers. On August 5, 1999, the Commission adopted rules implementing the market-based approach to access charge reform, pursuant to which incumbent price cap local exchange carriers receive progressively greater pricing flexibility as competition develops. The Commission also initiated a Further Notice of Proposed Rulemaking, seeking comment on additional pricing flexibility, proposed changes to the rate structure for local switching and tandem-switched transport, and the need to constrain access charges imposed by competitive local exchange carriers. Reconsideration petitions filed in response to the November 1997 General Support Facilities Order will be addressed in a future reconsideration order. On May 31, 2000, the Commission adopted an industry proposal establishing a 5-year plan for price cap local exchange carriers and resolving many outstanding issues concerning interstate access charges and interstate universal service. On April 27, 2001, the Commission revised its tariff rules to establish benchmark access rates for competitive local exchange carriers, whereby access rates at or below the benchmark will be presumed just and reasonable and may be imposed by tariff, and access rates above the benchmark will be mandatorily detariffed. The Commission adopted a rural exemption to this benchmark scheme, recognizing that a higher level of access charges is justified for certain carriers serving rural areas. On May 21, 2001, the Commission determined that price cap local exchange carriers should not be permitted to assess prescribed interexchange carrier charges on special access lines.

Timetable:

Action	Date	FR Cite
NPRM	01/31/97	62 FR 4670
FNPRM	06/06/97	62 FR 31040
R&O	06/11/97	62 FR 31868
Second Report & Order	06/11/97	62 FR 31939
Order on Reconsideration	07/29/97	62 FR 40460
Second Order on Reconsideration	10/29/97	62 FR 56121
Third Report & Order	12/15/97	62 FR 65619
Public Notice	10/09/98	63 FR 54430
Third Order on Reconsideration	10/15/98	63 FR 55334
Fourth Report & Order and FNPRM	06/09/99	64 FR 30949
Fifth Report & Order and FNPRM	09/22/99	64 FR 51258
NPRM	10/04/99	64 FR 53648
Sixth Report & Order	06/21/00	65 FR 38684
Public Notice	06/26/00	65 FR 39335
Seventh Report & Order and FNPRM	05/21/01	66 FR 27892
Order	07/20/01	66 FR 37943

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG49

3702. IMPLEMENTATION OF THE LOCAL COMPETITION PROVISIONS OF THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 155; 47 USC 157; 47 USC 201 to 205; 47 USC 207 to 209; 47 USC 218

CFR Citation: 47 CFR 51; 47 CFR 52

Legal Deadline: Final, Statutory, August 8, 1996.

Abstract: The Second Report and Order and Memorandum Opinion and Order implemented the dialing parity, nondiscriminatory access, network disclosure, and number administration provisions of the Telecommunications Act of 1996. The Order also denied the Petition for Expedited Declaratory Ruling on the area code relief plan for Dallas and Houston filed with the FCC by the Texas Public Utilities Commission on May 9, 1996. Finally, this Order addressed petitions for clarification or reconsideration in the matters of proposed 708 Relief Plan and 630 Numbering Plan Area Code by Ameritech and the Administration of the North American Numbering Plan. On July 19, 1999, the Commission released an order denying the petition for reconsideration of the Local Competition Second Report and Order and Memorandum Opinion and Order filed by Beehive Telephone Company, Inc., Local Competition Second Report and Order, First Order on Reconsideration, CC Docket No. 96-98, FCC 99-170, 1999 WL 507245 (1999). On August 17, 1999, Beehive filed a Notice of Appeal of this order with the U.S. Court of Appeals for the D.C. Circuit. On May 18, 2000, the Court affirmed the Commission's decision without a published opinion. On June 30, 2000, Beehive filed a Petition for Rehearing with the Court. That petition was denied on July 18, 2000.

On September 9, 1999, the Commission released the Second Order on Reconsideration of the Local Competition Second Report and Order, FCC 99-227, resolving petitions for reconsideration of rules adopted in the Local Competition Second Report and Order to implement the requirement of section 251(b)(3), 47 U.S.C. section 251(b)(3), that LECs provide non-discriminatory access to directory assistance, directory listing and operator services. At the same time the Commission released a Notice of Proposed Rulemaking (NPRM), FCC 99-227, seeking comment on issues related to developments in, and the convergence of, directory publishing and directory assistance. On October 21, 1999, the Commission released the Third Order on Reconsideration of the Local Competition Second Report and Order, FCC 99-243, resolving the petitions for reconsideration regarding numbering administration under section 251(e)(1) of the Act, 47 U.S.C. section 251(e)(1).On January 9, 2002, the Commission released an Order on Reconsideration dismissing petitions for reconsideration or clarification of the Local Competition Second Report and order and Memorandum Opinion and Order regarding dialing parity under section 251(b)(3) of the Act, 47 U.S.C. section 251(b)(3), and network disclosure under Section 251(c)(1) of the Act, 47 U.S.C. section 251(c)(1). On January 23, 2001, the Commission released a First Report and Order, FCC 01-27, resolving issues raised in the September 9th NPRM, and concluding, among other things, that competing Directory Assistance (DA) providers that are certified as CLECs, are agents of CLECs, or that offer call completion services provide telephone exchange or telephone toll service, and thus are entitled to nondiscriminatory access to LEC local DA databases.

Timetable:

Action	Date	FR Cite
NPRM	04/25/96	61 FR 18311
NPRM Comment Period End	06/03/96	
Order	09/06/96	61 FR 47284
NPRM	09/27/99	64 FR 51949
Second Order on Recon	09/27/99	64 FR 51910
Third Order on Recon	11/18/99	64 FR 62983
First Report & Order	02/21/01	66 FR 10965

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

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RIN: 3060–AG50

3703. ENHANCED 911 SERVICES FOR WIRELINE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 201; 47 USC 222; 47 USC 251

CFR Citation: 47 CFR 64.706; 47 CFR 64.708; 47 CFR 68.2; 47 CFR 68.3; 47 CFR 68.3(a); 47 CFR 68.228; 47 CFR 68.308; 47 CFR 68.310

Legal Deadline: None

Abstract: The rules generally will assist State governments in drafting legislation that will ensure that multi-line telephone systems are compatible with the enhanced 911 network.

Timetable:

Action	Date	FR Cite
NPRM	10/11/94	59 FR 54878

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 3060–AG60

3704. DETARIFFING OF COMPETITIVE LOCAL EXCHANGE CARRIERS' INTERSTATE EXCHANGE ACCESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151 to 154; 47 USC 160; 47 USC 201-205

CFR Citation: 47 CFR 61.26

Legal Deadline: None

Abstract: In an Order released on April 27, 2001, the Commission addressed a number of interrelated issues concerning charges for interstate switched access services provided by competitive local exchange carriers (CLECs) and the obligations of interexchange carriers to exchange access traffic with CLECs. The Order seeks to ensure that CLEC access charges are just and reasonable, to reduce regulatory arbitrage opportunities, and to avoid disrupting the development of competition in the local telecommunications market.

In an attached Further Notice of Proposed Rulemaking, the Commission sought comment on whether tariffed CLEC-provided access service for toll free, or "8YY," numbers should be afforded different treatment than CLEC tariffed switched access traffic generally.

Timetable:

Action	Date	FR Cite
NPRM	07/17/97	62 FR 38244
FNPRM	09/22/99	64 FR 51280
Public Notice	06/26/00	65 FR 39335
Order	05/21/01	66 FR 27892
FNPRM	05/21/01	66 FR 27927

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AG73

3705. IN THE MATTER OF THE TELECOMMUNICATIONS RELAY SERVICES, THE AMERICANS WITH DISABILITIES ACT OF 1990, AND THE TELECOMMUNICATIONS ACT OF 1996

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225

CFR Citation: 47 CFR 64.604

Legal Deadline: None

Abstract: This item will address the requirement that telecommunications relay services be capable of handling any type of call normally provided by common carriers, including coin sent-paid calls. On April 5, 2001, the Commission published a Second FNPRM seeking comment on the coin sent-paid issue. This Second FNPRM suspended the enforcement of section 64.604(a)(3) of our rules until final rules in this proceeding are adopted and published in the Federal Register.

Timetable:

Action	Date	FR Cite
NPRM	12/04/90	55 FR 50037
R&O and Request for Comments	08/01/91	56 FR 36729
Order on Recon, Second R&O and FNPRM	03/03/93	58 FR 12175
MO&O	11/28/95	60 FR 58626
Order	08/23/00	
Second FNPRM	04/05/01	66 FR 18059

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: Additional Bureau: Consumer Information

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RIN: 3060–AG75

3706. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ACCOUNTING AND COST ALLOCATION REQUIREMENTS

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 161; 47 USC 220

CFR Citation: 47 CFR 32.11; 47 CFR 32.16; 47 CFR 32.2000(b); 47 CFR 32.2114; 47 CFR 32.2115; 47 CFR 32.2116; 47 CFR 32.5280; 47 CFR 32.6114; 47 CFR 32.6115; 47 CFR 32.6116; 47 CFR 64.903; 47 CFR 64.904

Legal Deadline: None

Abstract: This Report and Order modifies the FCC's cost allocation and accounting rules as part of the biennial regulatory review process. Specifically, it (1) raises the threshold significantly for Class A accountings, thus allowing mid-sized carriers currently required to use Class A accounts to use the more streamlined Class B accounts; (2) establishes less burdensome cost allocation manual (CAM) procedures for the mid-sized incumbent local exchange carriers (LECs) and reduces the frequency with which independent audits of the cost allocations are required; and (3) makes several changes to the uniform system of accounts to reduce accounting requirements and to eliminate or consolidate accounts.

Timetable:

Action	Date	FR Cite
NPRM	06/17/98	63 FR 45208
NPRM Comment Period End	09/04/98	
Report & Order	06/30/99	64 FR 50002

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AG98

3707. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ARMIS REPORTING REQUIREMENTS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 215; 47 USC 218; 47 USC 219; 47 USC 220; 47 USC 403

CFR Citation: 47 CFR 43.21

Legal Deadline: None

Abstract: This Report and Order reduces reporting requirements for incumbent local exchange carriers with annual operating revenues in excess of the annual indexed revenue threshold. These modifications are designed to minimize the reporting burden on carriers, improve the quality and use of the reported financial and operating data, and reduce the costs of collection, verification, and distribution of the data.

Timetable:

Action	Date	FR Cite
NPRM	07/17/98	63 FR 44220
NPRM Comment Period End	09/04/98	
Report & Order	06/30/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AG99

3708. PERFORMANCE MEASUREMENTS AND REPORTING REQUIREMENTS FOR OPERATIONS SUPPORT SYSTEMS, INTERCONNECTION, OPERATOR SERVICES, AND DIRECTORY ASSISTANCE

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 251; 47 USC 303

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On April 17, 1998, the FCC released an NPRM seeking comment on a set of model performance measurements and reporting requirements for operations support systems, interconnection, and access to operator services and to directory assistance.

Timetable:

Action	Date	FR Cite
NPRM	04/17/98	63 FR 27021
NPRM (To Terminate Proceeding)	11/19/01	66 FR 59759

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AH00

3709. DEPLOYMENT OF WIRELINE SERVICES OFFERING ADVANCED TELECOMMUNICATIONS CAPABILITY

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 153; 47 USC 154; 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 251; 47 USC 252; 47 USC 253; 47 USC 254; 47 USC 256; 47 USC 271; 47 USC 303(r)

CFR Citation: 47 CFR 51.5; 47 CFR 51.230; 47 CFR 51.231; 47 CFR 51.232; 47 CFR 51.233; 47 CFR 51.319; 47 CFR 51.321; 47 CFR 51.323; 47 CFR 51.605; 47 CFR 51.607

Legal Deadline: None

Abstract: On March 31, 1999, the Commission released a First Report and Order and Further Notice of Proposed Rulemaking (NPRM) (Advanced Services Order), in CC Docket No. 98-147, adopting several measures to enable competitive providers of advanced services such as those used to provide high-speed Internet access, to deploy new technologies on a faster, more cost-effective basis to consumers. This order is intended to create marketplace conditions conducive to the nationwide deployment of advanced telecommunications services consistent with the goals of section 706 of the Telecommunications Act of 1996. Because the Commission concluded that the record did not sufficiently address long-term spectrum compatibility issues, the Commission adopted a companion Further NPRM that sought comment on issues related to developing long-term standards and practices for spectrum compatibility and management. In the Further NPRM, the Commission also tentatively concluded that it is technically feasible for two different telecommunications carriers sharing a single line to provide traditional voice service and advanced services. The Further Notice sought comment on the operational, pricing, legal and policy ramifications of mandating such line sharing at the Federal level.

On November 9, 1999, the Commission released a Second Report and Order (Advanced Services Resale Order) in CC Docket No. 98-147, which addressed whether the discounted resale obligation of section 251(c)(4) applies to incumbent Local Exchange Carrier (LEC) provision of advanced services. The Commission determined that analysis of section 251(c)(4) requires a fact-specific evaluation of the features and characteristics of a particular transaction, and concluded that advanced services sold at retail by incumbent LECs to residential and business end-users are subject to the section 251(c)(4) discounted resale obligation, without regard to their classification as telephone exchange service or exchange access service. The Commission, however, reached a different result as to advanced services sold to Internet Service Providers for inclusion in a high-speed Internet service offering, concluding that these advanced services are inherently different from advanced services made available directly to business and residential end-users, and as such, are not subject to the discounted resale obligations of section 251(c)(4).

On December 9, 1999, the Commission released a Third Report and Order in CC Docket No. 98-147 and Fourth Report and Order in CC Docket No. 96-98 (Line Sharing Order). In the Line Sharing Order, the Commission adopted measures to promote the availability of competitive broadband Digital Subscriber Line (DSL) services, especially to residential and small business customers. The Third R&O amended the Commission's network unbundling rules to require incumbent LECs to provide unbundled access to a new network element, the high frequency portion of the local loop. This enables competitive LECs to compete with incumbent LECs to provide DSL services through telephone lines that the competitive LECs can share with incumbent LECs. In addition, the Line Sharing Order adopted spectrum management policies and rules to facilitate the competitive deployment of advanced services. These rules will significantly benefit the rapid and efficient deployment of DSL technologies.

On January 19, 2001, the Commission issued an Order on Reconsideration and a Further Notice of Proposed Rulemaking in which the Commission reinforced its line sharing rules to promote availability of unbundled access to the high frequency portion of the loop. It also addressed issues in a variety of petitions for clarification and/or reconsideration filed in response to the Line Sharing Order.

Timetable:

Action	Date	FR Cite
NPRM	08/24/98	63 FR 45140
Order	08/24/98	63 FR 45133
R&O and Further NPRM	04/30/99	64 FR 23229
Third R&O	01/10/00	65 FR 1331
Second R&O	02/11/00	65 FR 6912
Reconsideration Order and Further NPRM	02/06/01	66 FR 9035

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH03

3710. PRESCRIBING THE AUTHORIZED RATE OF RETURN FOR INTERSTATE SERVICES OF LOCAL EXCHANGE CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201(b); 47 USC 202 to 205; 47 USC 218 to 220; 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 65.301

Legal Deadline: None

Abstract: This Notice initiates a proceeding to represcribe the authorized rate of return for interstate access services provided by ILECs. It marks the first prescription proceeding since we revised the rules governing procedures and methodologies for prescribing and enforcing the rate of return for ILECs not subject to price cap regulation, and the first prescription proceeding since the Commission adopted its price cap rules for local exchange carriers. In this Notice, we seek comment on the methods by which we could calculate the ILECs' cost of capital. In the Notice, we propose corrections to errors in the codified formulas for the cost of debt and cost of preferred stock and seek comment on whether this proceeding warrants a change in the low-end formula adjustment for local exchange carriers subject to price caps.

Timetable:

Action	Date	FR Cite
NPRM	10/05/98	63 FR 55988
NPRM Comment Period End	04/08/99	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew G. Mulitz, Legal Branch Chief, Accounting Safeguards Division, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-0827
Email: amulitz@fcc.gov

RIN: 3060–AH18

3711. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF DEPRECIATION REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 201 to 205; 47 USC 215; 47 USC 218; 47 USC 220(h); 47 USC 403

CFR Citation: 47 CFR 32.2000; 47 CFR 43.43

Legal Deadline: None

Abstract: In the Report and Order we streamline further our depreciation prescription process by permitting summary filings and eliminating the prescription of depreciation rates for incumbent local exchange carriers,

provided that the carrier uses depreciation factors that are within the ranges adopted by the Commission; expanding the prescribed range for the digital switching plant account; and eliminating theoretical reserve studies for mid-sized carriers. We also set forth conditions pursuant to which a waiver from the Commission's depreciation prescription process may be appropriate. In the Memorandum Opinion and Order, we deny United States Telephone Association's petition for forbearance of our depreciation prescription process. We find that the petition did not meet the three-prong forbearance test under section 10 of the Act (47 U.S.C. section 160).

In the Second Report and Order, we declined to adopt a proposal to relieve carriers of our depreciation requirements where carriers elect an above-the-line accounting treatment of the regulatory-to-financial book differential.

Timetable:

Action	Date	FR Cite
NPRM	10/14/98	63 FR 56900
NPRM Comment Period End	12/08/98	
FNPRM	04/03/00	65 FR 19725
R&O and MO&O	04/10/00	65 FR 18926
Second Report and Order	02/09/01	66 FR 9681

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew G. Mulitz, Legal Branch Chief, Accounting Safeguards Division, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH20

3712. COMPREHENSIVE REVIEW OF ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS, PHASE 1

Priority: Other Significant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 220

CFR Citation: 47 CFR 32.13; 47 CFR 32.25; 47 CFR 32.27; 47 CFR 32.903; 47 CFR 32.904; 47 CFR 32.2002; 47 CFR 32.2003; 47 CFR 32.5999

Legal Deadline: None

Abstract: This Report and Order streamlines the FCC's accounting and reporting requirements by (1) eliminating the USOA expense matrix; (2) reducing audit burdens on incumbent local exchange carriers; (3) adopting a de minimis exception to the affiliate transactions rules; (4) eliminating other accounting requirements; and (5) streamlining reporting requirements in the ARMIS 43-02 USOA Report.

Timetable:

Action	Date	FR Cite
NPRM	07/14/99	64 FR 44877
NPRM Comment Period End	09/09/99	
Report and Order	03/28/00	65 FR 16328

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mika Savir, Attorney, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
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Email: msavir@fcc.gov

RIN: 3060–AH43

3713. LOCAL TELEPHONE NETWORKS THAT LECS MUST MAKE AVAILABLE TO COMPETITORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 251

CFR Citation: 47 CFR 51 (Revision)

Legal Deadline: None

Abstract: This revises the rules applicable to incumbent local exchange carriers (LECs) to permit competitive carriers to access portions of the incumbent LECs' networks on an unbundled basis. Unbundling allows competitors to lease portions of the incumbent LECs' network to provide telecommunications services. These rule changes are intended to remove uncertainty regarding the incumbent LECs' unbundling obligations under the Telecommunications Act of 1996 and are expected to accelerate the development of local exchange competition.

On April 10, 2001, the Commission issued a Public Notice seeking comment on a Joint Petition filed by BellSouth, SBC, and Verizon asking the Commission to find that high-capacity loops and dedicated transport should not be subject to mandatory unbundling. The Commission issued Public Notices on April 23, 2001 and May 14, 2001 seeking additional comment.

On December 20, 2001, the Commission issued a Notice of Proposed Rulemaking to comprehensively consider the appropriate changes, if any, to its unbundling policies in light of market developments and technological advances. 67 Fed. Reg. 1947. As part of this triennial review, the Commission incorporated the records of several pending proceedings on unbundling into this docket, including: (1) the availability of loops, transport, and combinations thereof; (2) high-capacity loops and dedicated transport; (3) local switching; and (4) next-generation networks.

Timetable:

Action	Date	FR Cite
Second Further NPRM	04/26/99	64 FR 20238
Fourth Further NPRM	01/14/00	65 FR 2367
Second Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Supplemental Order	01/18/00	65 FR 2542
Errata Third R&O and Fourth Further NPRM	01/18/00	65 FR 2542
Third R&O	01/18/00	65 FR 2542
Correction	04/11/00	65 FR 19334
Supplemental Order Clarification	06/20/00	65 FR 38214
Public Notice	02/01/01	66 FR 8555
Public Notice	03/05/01	66 FR 18279
Public Notice	04/10/01	
Public Notice	04/23/01	
Public Notice	05/14/01	
NPRM	01/15/02	67 FR 1947

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Agency Contact: Jeremy Miller, Attorney Advisor, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-1580
Fax: 202 418-1413

RIN: 3060–AH44

3714. 2000 BIENNIAL REGULATORY REVIEW — TELECOMMUNICATIONS SERVICE QUALITY REPORTING REQUIREMENTS

Priority: Other Significant. Major status under 5 USC 801 is undetermined..

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32; 47 CFR 32.11; 47 CFR 32.1220(h); 47 CFR 32.2311(f); 47 CFR 32.2003(b); 47 CFR 32.5280(c); 47 CFR 32.27(c); 47 CFR 64.903(a)

Legal Deadline: None

Abstract: This NPRM proposes to eliminate our current service quality reports (ARMIS Report 43-05 and 43-06) and replace them with a more consumer-oriented report. The NPRM proposes to reduce the reporting categories from more than 30 to 6, and addresses the needs of carriers, consumers, state public utility commissions, and other interested parties.

Timetable:

Action	Date	FR Cite
NPRM	12/04/00	65 FR 75657

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Mika Savir, Attorney, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH72

3715. ACCESS CHARGE REFORM AND UNIVERSAL SERVICE REFORM

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 201 to 205; 47 USC 254; 47 USC 403

CFR Citation: 47 CFR 36; 47 CFR 54; 47 CFR 61; 47 CFR 69

Legal Deadline: None

Abstract: On October 11, 2001, the Commission adopted an Order reforming the interstate access charge and universal service support system for rate-of-return incumbent carriers. The Order adopts three principal reforms. First, the Order modifies the interstate access rate structure for small carriers to align it more closely with the manner in which costs are incurred. Second, the Order removes implicit support for universal service from the rate structure and replaces it with explicit, portable support. Third, the Order permits small carriers to continue to set rates based on the authorized rate of return of 11.25 percent. The Order became effective on January 1, 2002, and the support mechanism established by the Order will be implemented beginning July 1, 2002.

The Commission also adopted a Further Notice of Proposed Rulemaking (FNPRM) seeking additional comment on proposals for incentive regulation, increased pricing flexibility for rate-of-return carriers, and proposed changes to the Commission's "all-or-nothing" rule. Comments on the FNPRM were due on February 14, 2002, and reply comments on March 18, 2002. After the comment cycle closes, the Commission intends to carefully review the record and work with the parties to expeditiously develop appropriate reforms based on the proposals outlined in the FNPRM.

Timetable:

Action	Date	FR Cite
NPRM	01/25/01	66 FR 7725
Report and Order	11/30/01	66 FR 59719
Further NPRM	11/30/01	66 FR 59761

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: William Scher, Attorney, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-7400

RIN: 3060–AH74

3716. 2000 BIENNIAL REGULATORY REVIEW — COMPREHENSIVE REVIEW OF THE ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS; PHASE 2 AND PHASE 3

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 161; 47 USC 201(b); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 32.1 et seq

Legal Deadline: None

Abstract: This NPRM seeks comment on various measures to streamline existing accounting and ARMIS reporting requirements.

Timetable:

Action	Date	FR Cite
NPRM	11/13/00	65 FR 67675
NPRM Comment Period End	03/14/01	
Public Notice	06/26/01	66 FR 33938
Public Notice Comment Period End	07/26/01	
R&O	02/06/02	67 FR 5669

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Peterson, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-1575

RIN: 3060–AH76

3717. COMPREHENSIVE REVIEW OF THE ACCOUNTING REQUIREMENTS AND ARMIS REPORTING REQUIREMENTS FOR INCUMBENT LOCAL EXCHANGE CARRIERS; PHASE 1

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 to 205; 47 USC 215; 47 USC 218 to 220

CFR Citation: 47 CFR 32.13; 47 CFR 32.25; 47 CFR 32.27; 47 CFR 32.2002; 47 CFR 32.2003; 47 CFR 32.5999; 47 CFR 64.903; 47 CFR 64.904

Legal Deadline: None

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Abstract: This Report and Order eliminates the expense matrix filing requirement in Section 32.5999(f) of the Commission's rules, 47 CFR Section 32.5999(f), and eliminates or streamlines several other accounting requirements. In addition, this Report and Order eliminates several tables and reporting items from our ARMIS report 43-02.

Timetable:

Action	Date	FR Cite
NPRM	08/18/99	64 FR 44877
Report and Order	10/02/00	65 FR 58661
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Timothy Peterson, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-1575

RIN: 3060–AH77

3718. STREAMLINING PROCEDURES FOR COMMON CARRIER TRANSFERS OF CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 152; 47 USC 154(i); 47 USC 154(j); 47 USC 201; 47 USC 214; 47 USC 303(r)

CFR Citation: 47 CFR 63.01; 47 CFR 63.51; 47 CFR 63.52

Legal Deadline: None

Abstract: On July 20, 2001, the Commission adopted a Notice of Proposed Rulemaking in CC Docket No. 01-150 (FCC 01-205) (Merger Streamlining NPRM). The Commission proposes to streamline application procedures under 47 USC 214 for common carrier authorizations to acquire domestic transmission lines through acquisitions of corporate control. The Commission requests comments on the criteria it should adopt for deciding which applications would require little scrutiny to determine that they would serve the public interests.

Timetable:

Action	Date	FR Cite
NPRM	08/09/01	66 FR 41823
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Henry Thaggert, Attorney Advisor, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH79

3719. NUMBERING RESOURCE OPTIMIZATION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 201 et seq.; 47 USC 251(e)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: In 1999, the Commission released the Numbering Resource Optimization Notice of Proposed Rulemaking (Notice) in CC Docket 99-200. The Notice examined and sought comment on several administrative and technical measures aimed at improving the efficiency with which telecommunications numbering resources are used and allocated. It incorporated input from the North American Numbering Council (NANC), a federal advisory committee, which advises the Commission on issues related to number administration.

In the Numbering Resource Optimization First Report and Order and Further Notice of Proposed Rulemaking (NRO First Report and Order), released on March 31, 2000, the Commission adopted a mandatory utilization data reporting requirement, a uniform set of categories of numbers for which carriers must report their utilization, and a utilization threshold framework to increase carrier accountability and incentives to use numbers efficiently. In addition, the Commission adopted a single system for allocating numbers in blocks of one thousand, rather than ten thousand, wherever possible, and established a plan for national rollout of thousands-block number pooling. The Commission also adopted numbering resource reclamation requirements to ensure that unused numbers are returned to the North American Numbering Plan (NANP) inventory for assignment to other carriers. Also, to encourage better management of numbering resources, carriers are required, to the extent possible, to first assign numbering resources within thousands blocks (a form of sequential numbering).

In the NRO Second Report and Order, the Commission adopted a measure that requires all carriers to use at least 60% of their numbering resources before they may get additional numbers in a particular area. That 60% utilization threshold increases to 75% over the next three years. The Commission also established a five-year term for the national Pooling Administrator and an auditing program to verify carrier compliance with the Commission's rules. Furthermore, the Commission addressed several issues raised in the Notice, concerning area code relief. Specifically, the Commission declined to amend the existing federal rules for area code relief or specify any new federal guidelines for the implementation of area code relief. The Commission also declined to state a preference for either all-services overlays or geographic splits as a method of area code relief. Regarding mandatory nationwide ten-digit dialing, the Commission declined to adopt this measure at the present time. Furthermore, the Commission declined to mandate nationwide expansion of the "D digit" (the "N" of an NXX or central office code) to include 0 or 1, or to grant state commissions the authority to implement the expansion of the D digit as a numbering resource optimization measure at the present time.

In the NRO Third Report and Order, the Commission addressed national thousands-block number pooling administration issues, including declining to alter the implementation date for covered CMRS carriers to participate in pooling. The Commission also addressed federal cost recovery for national thousands-block number pooling, and continued to require states to establish cost recovery mechanisms for costs incurred by carriers participating in pooling trials. The Commission reaffirmed the Months-to-Exhaust (MTE) requirement for carriers. The Commission declined to lower the utilization threshold established in the Second Report and Order, and declined to exempt pooling carriers from the utilization threshold. The Commission also established a safety valve mechanism to allow carriers that do not meet the utilization threshold in a given rate center to obtain additional numbering resources.

In the NRO Third Report and Order, the Commission lifted the ban on technology specific overlays (TSOs), and delegated authority to the Common Carrier Bureau, in consultation with the Wireless Telecommunications Bureau, to resolve anysuch petitions. Furthermore, the Commission found that carriers who violate our numbering requirements, or fail to cooperate with an auditor conducting either a "for cause" or random audit, should be denied numbering resources in certain instances. The Commission also reaffirmed the 180-day reservation period, declined to impose fees to extend the reservation period, and found that state commissions should be allowed password-protected access to the NANPA database for data pertaining to NPAs located within their state.

The measures adopted in the NRO orders will allow the Commission to monitor more closely the way numbering resources are used within the NANP, and will promote more efficient allocation and use of NANP resources by tying a carrier's ability to obtain numbering resources more closely to its actual need for numbers to serve its customers. These measures are designed to create national standards to optimize the use of numbering resources by: (1) minimizing the negative impact on consumers of premature area code exhausts; (2) ensuring sufficient access to numbering resources for all service providers to enter into or to compete in telecommunications markets; (3) avoiding premature exhaust of the NANP; (4) extending the life of the NANP; (5) imposing the least societal cost possible, and ensuring competitive neutrality, while obtaining the highest benefit; (6) ensuring that no class of carrier or consumer is unduly favored or disfavored by the Commission's optimization efforts; and (7) minimizing the incentives for carriers to build and carry excessively large inventories of numbers.

Timetable:

Action	Date	FR Cite
NPRM	06/17/99	64 FR 32471
R&O and Further NPRM	06/16/00	65 FR 37703
Second R&O and Second Further NPRM	02/08/01	66 FR 9528
Third R&O and Second Order on Recon	02/12/02	67 FR 643
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

Agency Contact: Sanford Williams, Attorney, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554
Phone: 202 418-1508

RIN: 3060–AH80

3720. • PERFORMANCE MEASUREMENTS AND STANDARDS FOR UNBUNDLED NETWORK ELEMENTS AND INTERCONNECTION

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 151, 152; 47 USC 154(i), 201; 47 USC 202, 206-209; 47 USC 251, 253; 47 USC 503,504,706

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 8, 2001, the Commission opened a rulemaking to consider whether it should adopt a modest group of national performance measurements and standards for evaluating the provision of unbundled network elements by Incumbent Local Exchange Carriers.

Timetable:

Action	Date	FR Cite
NPRM	11/30/01	66 FR 59759
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Uzoma Onyeije, Attorney, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554
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RIN: 3060–AI00

3721. • PERFORMANCE MEASUREMENTS AND STANDARDS FOR INTERSTATE SPECIAL ACCESS SERVICES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Unfunded Mandates: Undetermined

Legal Authority: 47 USC 101, 152; 47 USC 154(i); 47 USC 201, 202; 47 USC 206-209, 251; 47 USC 272, 503

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: On November 16, 2001, the Commission opened a rulemaking to consider whether it should adopt national performance measurements, standards, and penalties for the provision of interstate special access services.

Timetable:

Action	Date	FR Cite
NPRM	12/10/01	66 FR 63651
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Uzoma Onyeije, Attorney, Federal Communications Commission, 445 12th Street SW, Washington, DC 20554
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RIN: 3060–AI01

3722. • CUSTOMER PREMISES EQUIPMENT/ENHANCED SERVICES BUNDLING RESTRICTIONS IN COMPUTER II

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152; 47 USC 154, 160; 47 USC 161, 201-205; 47 USC 215, 218; 47 USC 220, 303(r)

CFR Citation: 47 CFR 64.702(e)

Legal Deadline: None

Abstract: This Further Notice of Proposed Rulemaking examines the need for certain restrictions on a common carrier's ability to bundle customer premises equipment (CPE), enhanced services, and regulated telecommunications services.

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FCC—Common Carrier Bureau — **Long-Term Actions**

Timetable:

Action	Date	FR Cite
FNPRM	10/09/98	63 FR 56892
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jodie Donovan-May, Attorney Advisor, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-1580
Fax: 202 418-1413

RIN: 3060–AI03

Federal Communications Commission (FCC)
Common Carrier Bureau — **Completed Actions**

3723. IMPLEMENTATION OF NON-ACCOUNTING SAFEGUARDS, SEC. 271 & 272 OF COMMUNICATIONS ACT OF 1996 & REGULATORY TREATMENT OF LEC PROVISIONS OF INTEREXCHANGE SVCS. ORIG. IN LEC LOCAL EXCH. AREA

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154; 47 USC 201 to 205; 47 USC 215; 47 USC 218; 47 USC 220; 47 USC 271; 47 USC 272; 47 USC 303(r)

CFR Citation: 47 CFR 1.720; 47 CFR 1.721; 47 CFR 1.735; 47 CFR 61.41; 47 CFR 61.58; 47 CFR 63.71; 47 CFR 64.702

Legal Deadline: None

Abstract: On December 24, 1996, the Commission adopted the Non-Accounting Safeguards Order in its proceeding implementing the non-accounting safeguards provision of the Communications Act of 1934, as amended by the Telecommunications Act of 1996. These provisions prescribe the manner in which the Bell Operating Companies (BOCs) may enter certain markets, including the provisions of in-region interLATA services. On October 1, 1999, the Commission denied several petitions for reconsideration of its initial Order and, on its own motion, clarified certain language in the Order relating to so-called "teaming arrangements." Certain BOCs subsequently appealed specific aspects of the Order to the U.S. Circuit Court for the District of Columbia. On October 27, 2000, the Court granted the Commission's motion for a voluntary remand, and remanded the matter to the Commission. On November 8, 2000, the Commission sought further comment on the specific issues raised by the appeal. On April 11, 2001, the Commission released an Order on Remand, in which it examined the scope of the term "InterLATA Services" as it relates to Section 271 of the Act.

Timetable:

Action	Date	FR Cite
NPRM	07/29/96	61 FR 39392
First R&O	01/21/97	62 FR 2927
FNPRM	01/21/97	62 FR 2991
Second Order on Recon	07/07/97	62 FR 36216
Order	04/06/98	63 FR 16696
Second R&O	04/24/98	63 FR 20326
Erratum	06/25/98	63 FR 34603
Third Order on Recon	10/01/99	64 FR 61527
Public Notice	11/08/00	
Order on Remand	04/27/01	66 FR 36206

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Brent Olson, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
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Fax: 202 418-1413

RIN: 3060–AG37

3724. ACCESS CHARGE REFORM FOR RATE-OF-RETURN LOCAL EXCHANGE CARRIERS

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 553; 47 USC 151; 47 USC 152; 47 USC 153; 47 USC 154; 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 251; 47 USC 254(g); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 36.111; 47 CFR 36.372; 47 CFR 61.1; 47 CFR 69.2; 47 CFR 69.4; 47 CFR 69.110; 47 CFR 69.112; 47 CFR 69.120; 47 CFR 69.125; 47 CFR 69.153(c); 47 CFR 69.307(c)

Legal Deadline: None

Abstract: In order to make the access charge rules compatible with a competitive marketplace as envisioned by the Telecommunications Act of 1996, the FCC on May 26, 1998, initiated a rulemaking to revise interstate access charge rules applicable to incumbent local exchange carriers subject to rate-of-return regulation. The NPRM proposes to permit rate-of-return LECs to adjust their subscriber line charge ceilings on non-primary residential and multi-line business lines to the level necessary to recover their average per-line interstate-allocated common line costs, subject to an inflation-adjusted $9.00 ceiling. The NPRM also proposes to permit rate-of-return LECs to recover common line revenues through a presubscribed interexchange carrier charge. The NPRM also proposes that per-minute residual carrier common line and residual transport interconnection charges will be eliminated as the presubscribed interexchange carrier charge ceilings increase. The NPRM seeks comment on proposals to allow presubscribed interexchange carrier charges on special access lines and to adjust the allocation of General Support Facilities costs recovered through interstate access charges to ensure that regulated access rates do not recover costs related to nonregulated services. The NPRM proposes that rate-of-return local exchange carriers recover marketing costs allocated to the interstate jurisdiction from end users on a per-line basis. In addition, to establish a new switched access rate element to accommodate a new service offering, the streamlined petition provisions of section 69.4(g) are proposed.

Timetable:

Action	Date	FR Cite
NPRM	07/20/98	63 FR 38774
Withdrawn	11/30/01	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

FCC—Common Carrier Bureau — **Completed Actions**

Agency Contact: Lynne Milne, Attorney, Federal Communications Commission, Common Carrier Bureau, 445 12th Street, SW., Washington, DC 20554
Phone: 202 418-7055
TDD Phone: 202 418-0484
Fax: 202 418-1567

RIN: 3060–AH01

Federal Communications Commission (FCC)
Consumer Information Bureau — **Long-Term Actions**

3725. IMPLEMENTATION OF SECTION 255 AND SECTION 251(A)(2) OF THE TELECOMMUNICATIONS ACT OF 1996; ACCESS TO TELECOMMUNICATIONS SERVICES EQUIPMENT AND CUSTOMER PREMISE EQUIPMENT FOR PERSONS WITH DISABILITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 255

CFR Citation: 47 CFR 6; 47 CFR 7

Legal Deadline: None

Abstract: This proceeding is initiated to implement the provisions of sections 251(a)(2) and 255 of the Communications Act and related sections of the Telecommunications Act of 1996 regarding the accessibility of telecommunications equipment and services to persons with disabilities.

Timetable:

Action	Date	FR Cite
NOI	09/26/96	61 FR 50465
NPRM	05/22/98	63 FR 28456
NPRM Comment Period End	08/14/98	
Report & Order	11/19/99	64 FR 63235
Further NOI	11/19/99	64 FR 63277
Further NOI Comment Period End	12/14/99	
Public Notice	07/13/00	65 FR 43372
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

Additional Information: Additional Bureau: Common Carrier

Agency Contact: Janet Sievert, Attorney Advisor, Federal Communications Commission, Consumer Information Bureau, 445 12th Street, SW., Washington, DC 20554
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TDD Phone: 202 418-1398
Fax: 202 418-1414
Email: jsievert@fcc.gov

RIN: 3060–AG58

3726. IN THE MATTER OF TELECOMMUNICATIONS RELAY SERVICES AND SPEECH-TO-SPEECH SERVICES FOR INDIVIDUALS WITH HEARING AND SPEECH DISABILITIES; CC DOCKET NO. 98-67

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 225; 47 USC 255; 47 USC 610

CFR Citation: 47 CFR 64.601; 47 CFR 64.603; 47 CFR 64.604; 47 CFR 64.605

Legal Deadline: None

Abstract: In the Report and Order, released on March 6, 2000, the FCC adopted additional rules to increase the availability and usefulness of the telecommunications system for Americans with hearing and speech disabilities. Specifically, the FCC required that speech to speech and Spanish language relay services be provided. The FCC also encouraged the provision of video relay interpreting service by making it eligible for reimbursement from the telecommunications relay service (TRS) fund. In addition, the FCC revised its minimum standards in accordance with the statutory mandate that TRS must be "functionally equivalent" to voice telecommunications service to the extent possible. Among other things, these rules will improve the speed at which calls are answered and conversations relayed.

In the Further Notice of Proposed Rulemaking (FNPRM), the FCC asked for comment on how to further improve TRS. Specifically, the FNPRM asked what changes are necessary to increase public awareness of TRS among all callers, not just those with disabilities, including how a national awareness education campaign can be established; and whether other technologies, services, and features should be made available to TRS users.

In the Order on Reconsideration released on June 5, 2000, the FCC, on its own motion, amended the effective date by which parties must comply with most of the amended rules adopted in the Report and Order. The Order on Reconsideration also established a fixed date for the annual submission of complaint log summaries by States and TRS providers to the FCC by July 1 of each year. The FCC also more rigorously conformed the text of the rules concerning the submission of contact information and the treatment of emergency calls to the precise language in the Report and Order. Moreover, the FCC clarified the requirement regarding the transfer of customer profile information between outgoing and incoming TRS providers, and clarified the review process and possible disposition of informal complaints under our amended TRS rules. In addition, the Order on Reconsideration changed the nomenclature in our rules from "video relay interpreting" to "video relay services." Finally, the Order on Reconsideration corrected various typographical errors.

Timetable:

Action	Date	FR Cite
NPRM	05/20/98	63 FR 32798
NPRM Comment Period End	09/14/98	
Order on Recon	06/21/00	65 FR 38432
Report and Order	06/21/00	65 FR 38432
FNPRM	06/21/00	65 FR 38490
Public Notice	07/19/01	66 FR 37631
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

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RIN: 3060–AG76

3727. • ESTABLISHMENT OF RULES GOVERNING PROCEDURES TO BE FOLLOWED WHEN INFORMAL COMPLAINTS ARE FILED BY CONSUMERS AGAINST ENTITIES REGULATED BY THE COMMISSION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152; 47 USC 154(i) and (j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.716 to 1.718

Legal Deadline: None

Abstract: This proceeding seeks comment on proposals to establish a unified, streamlined process for the intake and resolution of informal complaints filed by consumers in order to promote maximum compliance with the requirements of the Communications Act of 1934, as amended, (the Act) and our implementing rules and orders.

The Commission has previously emphasized that our consumer complaint mechanisms are a principal vehicle for achieving such compliance and promoting the pro-competitive goals underlying the Act and our rules. We are concerned, however, that our existing complaint mechanisms require consumers to navigate an array of rule provisions and disparate procedures administered by various offices within the Commission in order to file complaints about practices they believe violate the Act or our rules and orders. Our goal in this proceeding is to consolidate and streamline our consumer complaint mechanisms for consumers to use when submitting informal complaints to the Commission.

We propose to establish a consumer complaint mechanism patterned after our existing rules for informal complaints filed against common carriers pursuant to Section 208 of the Act contained in Sections 1.717-1.718 of the Commission's rules. We also invite comment on whether we should make changes to our existing informal common carrier complaint rules.

Timetable:

Action	Date	FR Cite
NPRM (Release Date)	02/28/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

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RIN: 3060–AI02

Federal Communications Commission (FCC)
Enforcement Bureau

Long-Term Actions

3728. IN THE MATTER OF AMENDMENT OF PART 73, SUBPART G, OF THE COMMISSION'S RULES REGARDING THE EMERGENCY ALERT SYSTEM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 544; 47 USC 606

CFR Citation: 47 CFR 11; 47 CFR 73; 47 CFR 76

Legal Deadline: None

Abstract: The Commission adopted new rules to replace the old Emergency Broadcast System (EBS) with a new Emergency Alert System (EAS), in order to alert the public in the event of a national emergency. The Report and Order requires broadcast stations and cable TV systems to participate in the EAS and streamlines operational procedures for system participants. The new rules prescribe how existing communications services such as broadcasting, cable, and other public service providers will function under the technical standards and operational procedures of the new system. It also removed the old part of the Commission's rules concerning EBS in its entirety and incorporated the new EAS rules in a new part of the Code of Federal Regulations.

The Commission issued a Further Notice of Proposed Rulemaking (NPRM) seeking comments regarding whether the Multipoint Distribution Service (MDS), Satellite Master Antenna TV (SMATV) system, and Video Dial Tone should also be required to participate in EAS. It also sought comments on several cable issues such as whether a defined class of small cable systems should be exempted from participation in EAS, and how the Commission should define small cable systems. The Commission subsequently adopted a Second Report and Order to (1) modify EAS as it applied to cable systems; (2) address whether other video providers should be required to participate in the system; and (3) adopt rules to address issues of concern to persons with hearing disabilities.

In response to concerns that voluntary EAS activations could interrupt the transmission of emergency programming by local broadcast stations, the Commission issued a Second Further NPRM requesting comment on whether it should adopt rules to prohibit cable systems from transmitting EAS alerts for state or local emergencies during the broadcast of emergency programming by a broadcast station. In the Third Report and Order, the Commission amended its rules to permit cable systems and broadcast systems to enter into voluntary agreements regarding the transmission of local emergency information. The Commission, however, declined to adopt rules requiring cable systems to prevent the interruption of local broadcast station emergency programming. In April 2000, the Commission issued an order in which

it deleted obsolete rules or rules that were no longer needed.

In March 2001, the Commission issued an NPRM proposing various revisions to the EAS rules and seeking comment on requests for rule changes filed by the National Weather Service and the Society of Broadcast Engineers.

The Commission adopted rule changes in the Report and Order that are intended to enhance the capabilities and performance of the EAS during state and local emergencies. The Commission adopted rules that add new state and local event codes to the EAS and rules that permit broadcast stations and cable stations to upgrade their existing EAS equipment to add the new event and location codes on a voluntary basis until the equipment is replaced. Additionally, the Commission adopted rules that require all existing and new models of EAS equipment manufactured after August 1, 2003, to be capable of receiving and transmitting the new codes. The Commission noted that this approach strikes an appropriate balance between promoting public safety by permitting enhancements to state and local EAS and ensuring that any such enhancements do not result in reduced voluntary participation in state and local EAS activities.

Timetable:

Action	Date	FR Cite
NPRM	10/09/91	
NPRM/FNPRM	09/17/92	57 FR 53874
R&O	12/28/94	59 FR 67090
FNPRM	12/28/94	59 FR 67104
MO&O	11/06/95	60 FR 55996
Second FNPRM	03/04/98	63 FR 15806
Second R&O	09/24/98	63 FR 29660
Third R&O	02/08/99	64 FR 5950
Order	04/24/00	65 FR 21657
NPRM	03/20/01	66 FR 16897
R&O (Release Date)	02/26/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Federal

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RIN: 3060–AF21

Federal Communications Commission (FCC)
Office of Engineering and Technology

Long-Term Actions

3729. MSS SPECTRUM ALLOCATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The Second Report and Order finalized the reallocation of the 1990-2025 MHz band from Broadcast Auxiliary Service, including the Cable Television Relay Service and the Local Television Transmission Service, licensees to the new Mobile-Satellite Service (MSS), and established rules for the relocation of incumbent licensees from the 1990-2110 MHz band as well as incumbent Fixed Service (FS) microwave licensees from the 2165-2200 MHz bands, in cases where sharing between MSS and FS is not possible. The Second Memorandum Opinion and Order confirmed the Commission's decision to require new MSS licensees to bear the cost of relocating incumbent licensees in these bands.

Timetable:

Action	Date	FR Cite
NPRM	01/31/95	60 FR 11644
Order	03/08/95	60 FR 13687
First R&O	04/22/97	62 FR 19509
R&O and FNPRM	04/22/97	62 FR 19538
MO&O	12/17/98	63 FR 69606
Second R&O and Second MO&O	08/07/00	65 FR 48174
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 95-18

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RIN: 3060–AF75

3730. UNLICENSED NATIONAL INFORMATION INFRASTRUCTURE AT 5 GHZ

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 15

Legal Deadline: None

Abstract: The MO&O amends the rules to permit fixed, point to point unlicensed National Information Infrastructure (U-NII) devices in the 5.725-5.285 GHz band to operate with one-watt maximum transmitter output power and directional antennas of up to 23 db:gain. It clarifies the rules regarding unwanted emissions and specifies these limits in terms of absolute radiated power levels. These actions will add to the flexibility and capability of U-NII operations without causing an increase in harmful interference to incumbent operations sharing the same spectrum.

Timetable:

Action	Date	FR Cite
NPRM	05/06/96	61 FR 24749
R&O	01/31/97	62 FR 4649
Public Notice	03/17/97	62 FR 12641
MO&O	07/31/98	63 FR 40831
Petition for Reconsideration	09/18/98	63 FR 49913
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: RM-8468 and RM-8653; ET Docket No. 96-102

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RIN: 3060–AG19

3731. ALLOCATION OF 455-456 MHZ AND 459-460 MHZ

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25

Legal Deadline: None

Abstract: The FCC proposes to amend its rules to allocate the 455-456 MHz and 459-460 MHz bands to the Mobile Satellite Services (Earth-to-Space) (MSS Uplinks) on a primary basis for non-voice, non-geostationary satellite services (NVNG MSS).

Timetable:

Action	Date	FR Cite
NPRM	10/31/97	62 FR 58932
NPRM Comment Period End	11/30/97	
Reply Comment Period End	12/15/97	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State

Additional Information: ET Docket No. 97-214

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RIN: 3060–AG89

3732. DEDICATED SHORT RANGE COMMUNICATIONS OF INTELLIGENT TRANSPORTATION SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 90

Legal Deadline: None

Abstract: The FCC proposes to allocate 75 megahertz of spectrum for use by Dedicated Short Range Communications (DSRC) of Intelligent Transportation Systems (ITS). DSRC systems are being designed that require a short range, wireless link to transfer information between vehicles and roadside systems. ITS services are expected to improve traveler safety, decrease traffic congestion, and facilitate reduction of air pollution and conservation of fossil fuels. This action furthers the goal of the U.S. Congress, the Department of Transportation, and the ITS industry to improve the efficiency of the Nation's transportation infrastructure and facilitate the growth of the ITS industry.

Timetable:

Action	Date	FR Cite
NPRM	06/30/98	63 FR 35558
NPRM Comment Period End	09/14/98	
Reply Comment Period End	10/31/98	
R&O	11/26/99	64 FR 66405
Petition for Reconsideration	02/16/00	65 FR 7873

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ET Docket No. 98-95

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RIN: 3060–AG94

3733. REGULATIONS FOR RF LIGHTING DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 18

Legal Deadline: None

Abstract: The FCC proposed to update the regulations for RF lighting devices. This action was taken in response to new developments in RF lighting technology. Recent developments and advances in microwave RF lighting technology offer potential economic and environmental benefits for consumers and industry. The current FCC rules do not easily accommodate these advancements, and thus hinder the further development and implementation of these promising new products.

Timetable:

Action	Date	FR Cite
ANPRM	04/24/98	63 FR 20362
First Report & Order	07/12/99	64 FR 37417

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 98-42

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RIN: 3060–AG95

3734. INDUSTRY COORDINATION COMMITTEE SYSTEM FOR BROADCAST DIGITAL TELEVISION SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 307; 47 USC 336

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: We seek comment on the establishment of an industry coordination committee to assist the Commission in the implementation of digital television (DTV) service. This committee system would evaluate proposed changes to the DTV Table of Allotments and perform other related functions.

Timetable:

Action	Date	FR Cite
NPRM	02/09/99	64 FR 6296
NPRM Comment Period End	03/29/99	
Reply Comment Period End	04/28/99	
Final Action	01/25/02	67 FR 3616

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 99-34

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RIN: 3060–AH13

3735. 3650-3700 GOVERNMENT TRANSFER BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The First Report and Order allocated 50 MHz of spectrum on the 3650-3700 MHz band to the fixed and mobile (base stations) terrestrial services on a primary basis. It also ensures the continuity of fixed satellite service (FSS) operations and permits new FSS operations to help alleviate congestion in the adjacent 3700-4200 MHz FSS band.

The Second Notice of Proposed Rule Making proposes to establish licensing and service rules for the assignment of fixed and mobile services licenses in the 3650-3700 MHz band. It also seeks comments on whether technical requirements or other reasons justify licensing the 3650-3700 MHz and the 4940-4990 MHz band at the same time.

Timetable:

Action	Date	FR Cite
NPRM	01/14/99	64 FR 2462
NPRM Comment Period End	03/01/99	
First R&O	11/17/00	65 FR 69454
Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 98-237

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RIN: 3060–AH14

3736. CERTIFICATION OF EQUIPMENT IN THE 24.05-24.25 GHZ BAND AT FIELD STRENGTHS UP TO 2500 MV/M

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Commission proposes to amend part 15 of its rules to allow the operation of fixed point-to-point transmitters in the 24.05-24.25 GHz band at field strength of up to 2500 mV/m.

Timetable:

Action	Date	FR Cite
NPRM	09/21/98	63 FR 50185
NPRM Comment Period End	01/04/99	
R&O	01/14/02	67 FR 1623

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 98-156

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RIN: 3060–AH16

3737. FIXED SATELLITE SERVICE AND TERRESTRIAL SYSTEM IN THE KU-BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25

Legal Deadline: None

Abstract: The Report and Order in this proceeding permits non-geostationary satellite orbit (NGSO) fixed-satellite service (FSS) providers to operate in certain segments of the Ku-band, and it adopted rules and policies to govern such operations. NGSO FSS can provide a variety of new services to the public, such as high speed Internet access, plus other types of high speed data, video and telephony services. NGSO FSS can bring advanced services to rural areas. We also conclude that a new terrestrial fixed Multichannel Video Distribution and Data Service can share the 12.2-12.7 GHz band with satellite operations without causing harmful interference.

Timetable:

Action	Date	FR Cite
NPRM	01/12/99	64 FR 1786
Order	02/16/99	64 FR 7577
Public Notice	12/15/99	64 FR 70028
FNPRM	01/24/01	66 FR 7607
R&O	02/16/01	66 FR 10601
Petitions for Reconsideration	04/09/01	66 FR 18474

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 98-206

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RIN: 3060–AH17

3738. SPREAD SPECTRUM DEVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Commission amended part 15 of the rules regarding the operation of non-licensed spread spectrum systems. The Commission revised the rules for frequency hopping systems operating in the 2.4 GHz band

(2400-2483.5 MHz) to allow for hopping channels up to 5 MHz wide. This action was taken to facilitate the continued development of spread spectrum technology, particularly for high data rate wireless applications, such as wireless computer local area networks and wireless cable modems.

Timetable:

Action	Date	FR Cite
NPRM	07/20/99	64 FR 38877
NPRM Comment Period End	11/02/99	
R&O	09/25/00	65 FR 57557
Petition for Reconsideration	11/08/00	65 FR 67009
Order	06/12/01	66 FR 31556
FNPRM	06/12/01	66 FR 31585
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 99-231

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RIN: 3060–AH25

3739. WIRELESS MEDICAL TELEMETRY SERVICE

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The Commission amended parts 2 and 95 of the rules to allocate spectrum and to establish rules for a Wireless Medical Telemetry Service. This action will allow potentially life critical medical telemetry equipment, which currently operates on a secondary basis, unprotected from interference, to operate on a blanket licensed, interference protected basis.

Timetable:

Action	Date	FR Cite
NPRM	08/02/99	64 FR 41891
NPRM Comment Period End	10/18/99	
R&O	07/17/00	65 FR 43995
MO&O	02/11/02	67 FR 6172
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Additional Information: ET Docket No. 99-255

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RIN: 3060–AH27

3740. ESTABLISHMENT OF AN IMPROVED MODEL FOR PREDICTING THE BROADCAST TELEVISION FIELD STRENGTH RECEIVED AT INDIVIDUAL LOCATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 334; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: Final, Statutory, May 29, 2000.

Abstract: The Commission adopted a prediction model for determining presumptively the ability of individual locations to receive over the air television stations. This model will be a useful means for establishing the eligibility of individual households to receive the signals of television broadcast network stations through satellite carriers. The Commission is complying with the new statutory requirements set forth in the Satellite Home Viewer Improvement Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	02/02/00	65 FR 4923
NPRM Comment Period End	03/07/00	
R&O	06/09/00	65 FR 36639
Petition for Reconsideration	07/31/00	65 FR 46713
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: ET Docket No. 00-11

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RIN: 3060–AH37

3741. CONDUCTED EMISSION LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15; 47 CFR 18

Legal Deadline: None

Abstract: The Commission proposes to revise the limits on the amount of radio frequency energy that is permitted to be conducted onto the AC power lines. The purpose of these limits is to protect radio services operating below 30 MHz from interference. The devices regulated are personal computers, TV and FM receivers, RF lighting devices, microwave ovens, induction cooking ranges, and ultrasonic equipment.

Timetable:

Action	Date	FR Cite
NPRM	11/16/99	64 FR 62159
NPRM Comment Period End	02/29/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-80

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RIN: 3060–AH46

3742. REVISION OF THE RULES REGARDING ULTRA-WIDEBAND TRANSMISSION

Priority: Economically Significant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307; 47 USC 544A

CFR Citation: 47 CFR 15

Legal Deadline: None

Abstract: The Commission proposed regulations that would permit the operation of ultra-wideband radio systems on an unlicensed basis under the Commission's rules.

Timetable:

Action	Date	FR Cite
NPRM	06/14/00	65 FR 37332
NPRM Comment Period End	10/12/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-153

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RIN: 3060–AH47

3743. SOFTWARE DEFINED RADIO AUTHORIZATION

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 155; 47 USC 225; 47 USC 303(r); 47 USC 309

CFR Citation: 47 CFR 1; 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to streamline the equipment authorization procedures for software defined radios. We propose to define software defined radios as a new class of equipment with equipment authorization rules that reflect the additional flexibility incorporated into such radios. The frequency and technology agility of software defined radios could increase the use of presently underutilized frequency bands.

Timetable:

Action	Date	FR Cite
NPRM	01/03/01	66 FR 341
Report & Order	10/05/01	66 FR 50834
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 00-47

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RIN: 3060–AH64

3744. NEW ADVANCED WIRELESS SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: This proceeding explores the possible uses of frequency bands below 3 GHz to support the introduction of new advanced wireless services, including third generations as well as future generations of wireless systems. Advanced wireless systems could provide for a wide range of voice data and broadband services over a variety of mobile and fixed networks.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7438
NPRM Comment Period End	03/09/01	
Final Report	04/11/01	66 FR 18740
MO&O	09/13/01	66 FR 47591
FNPRM	09/13/01	66 FR 47618
First R&O	10/25/01	66 FR 53973
Petition for Reconsideration	11/02/01	66 FR 55666
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 00-258

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RIN: 3060–AH65

3745. REALLOCATION OF 27 MHZ SPECTRUM

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 303(a); 47 USC 336

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: The NPRM proposes to reallocate a total of 27 MHz of spectrum, transferred from Federal Government use, for non-Government services pursuant to the Omnibus Budget Act of 1977. The transfer of these bands to non-Government use should enable the development of new technologies and services, provide additional spectrum relief for congested private land mobile frequencies, and fulfill our obligation as mandated by Congress to assign this spectrum for non-Government use.

Timetable:

Action	Date	FR Cite
NPRM	01/23/01	66 FR 7443
NPRM Comment Period End	03/26/01	
R&O and MO&O	02/11/02	67 FR 6172
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: ET Docket No. 00-221

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RIN: 3060–AH66

3746. REVISIONS TO BROADCAST AUXILIARY SERVICE RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 302; 47 USC 303(f); 47 USC 303(r); 47 USC 332; 47 USC 337

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 73; 47 CFR 74; 47 CFR 78

Legal Deadline: None

Abstract: The Notice of Proposed Rule Making conducts an extensive review of the Broadcast Auxiliary Services (BAS) rules and proposes changes to create a more efficient BAS that can readily adapt to regulatory and technological changes. The Commission examines the relationship between BAS, the Cable Television Relay Service (CARS), and the Fixed Microwave Television Service. The Commission also examines the use of wireless assist video devices (WAVDs) on unused television channels.

Timetable:

Action	Date	FR Cite
NPRM	05/24/01	66 FR 28686
NPRM Comment Period End	07/23/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: ET Docket No. 01-75

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RIN: 3060–AH78

3747. • PART 15 BIENNIAL REVIEW

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e)(f) and (r); 47 USC 304 and 307

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 18; 47 CFR 90

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking proposes to review and update certain rule sections contained in parts 2, 15, and 18 of the Commission's rules.

Timetable:

Action	Date	FR Cite
NPRM	11/27/01	66 FR 59209

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 01-278

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RIN: 3060–AH92

Federal Communications Commission (FCC)
Office of Engineering and Technology

Completed Actions

3748. WIND PROFILER RADAR SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 2

Legal Deadline: None

Abstract: Amendment of section 2.106 of the Commission's Rules to allocate spectrum for Wind Profiler Systems. Allocation of this spectrum for wind profilers will facilitate the automated collection of weather information, including data on severe storms that threaten life or property that is not obtainable in any other manner.

Timetable:

Action	Date	FR Cite
NPRM	04/01/93	58 FR 19644
Order	01/25/02	67 FR 3616

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: ET Docket No. 93-59

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RIN: 3060–AF45

3749. MILLIMETER WAVE SPECTRUM ALLOCATION

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 4; 47 USC 154; 47 USC 154(i); 47 USC 302; 47 USC 303; 47 USC 303(r); 47 USC 307

CFR Citation: 47 CFR 2; 47 CFR 15; 47 CFR 21

Legal Deadline: None

Abstract: The millimeter wave spectrum allocation proceeding began in October 1994 with the adoption of the first Notice of Proposed Rulemaking (NPRM). The purpose of the proceeding was to open the radio frequency spectrum above 40 GHz for commercial development. Millimeter wave technology is expected to support many short-range applications that require very high bandwidth, such as educational and medical applications, wireless access to libraries or other information databases, and automotive vehicle radar systems for collision avoidance. The Commission has allocated this spectrum for licensed services and unlicensed uses. The Third Report and Order adopted rules that will encourage the commercial development and use of millimeter wave frequencies above 40 GHz, and adopted rules to establish a spectrum etiquette for unlicensed operation in the 59-64 GHz band.

A Public Notice was issued to solicit comments from interested parties regarding harmonizing U.S. and European spectrum allocations above 40 GHz.

Timetable:

Action	Date	FR Cite
NPRM	11/08/94	59 FR 61304
Public Notice	06/23/95	60 FR 35166
2nd NPRM	03/29/96	61 FR 14041
First R&O	04/02/96	61 FR 14500
Comment Period End	05/28/96	
Reply Comments	06/27/96	
Second R&O	08/02/97	62 FR 43116
MO&O	08/27/97	62 FR 45330
Fourth NPRM	08/27/97	62 FR 45380
Public Notice on Recon	10/02/97	62 FR 51661
Third R&O	08/07/98	63 FR 42276
Third MO&O	06/21/00	65 FR 38431
Final Action	01/25/02	67 FR 3617

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 94-124; Additional Bureaus: Wireless Telecommunications.

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RIN: 3060–AF61

3750. EQUIPMENT AUTHORIZATION STREAMLINE II/MUTUAL RECOGNITION AGREEMENTS AND THE GMPCS MOU

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 25; 47 CFR 68

Legal Deadline: None

Abstract: The Commission proposes to amend the rules to provide the option of private sector approval of equipment that currently requires an approval by the Commission. It also proposes rule changes to implement a mutual recognition agreement (MRA) for product approvals with the European Community (EC) and to allow for similar agreements with other foreign trade parties. These actions are intended to eliminate the need for manufacturers to wait for approval from the FCC before marketing equipment in the United States, thereby reducing the time needed to bring a product to market.

Timetable:

Action	Date	FR Cite
NPRM	06/10/98	63 FR 31685
R&O	02/02/99	64 FR 4984
Petition for Reconsideration	04/01/99	64 FR 15755
MO&O	05/18/01	66 FR 27600

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

Additional Information: GEN Docket No. 98-68

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RIN: 3060–AG96

3751. UNIDEN SCANNERS/CELLULAR RADIO SIGNALS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 304; 47 USC 307

CFR Citation: 47 CFR 2; 47 CFR 15

Legal Deadline: None

Abstract: The FCC proposes to amend the rules to further prevent scanning receivers from receiving radio telephone calls.

Timetable:

Action	Date	FR Cite
ANPRM	06/10/98	63 FR 31684
Report & Order	04/27/99	64 FR 22559
Petition for Reconsideration	08/10/99	64 FR 43383
MO&O	06/15/01	66 FR 32580

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: ET Docket No. 98-76

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RIN: 3060–AG97

Federal Communications Commission (FCC)
Office of General Counsel

Long-Term Actions

3752. AMENDMENT OF THE EX PARTE RULES IN JOINT BOARD PROCEEDINGS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 303(r); 47 USC 403

CFR Citation: 47 CFR 1.1206

Legal Deadline: None

Abstract: The FCC proposes to amend its ex parte rules to facilitate communications by the states in Joint Board proceedings and proceedings before the FCC involving a recommendation from a Joint Board.

Timetable:

Action	Date	FR Cite
NPRM	07/15/98	63 FR 38142
NPRM Comment Period End	08/31/98	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

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Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AH02

3753. AMENDMENT OF SECTION 1.1204 OF THE COMMISSION'S EX PARTE RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 1.1204

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations specifying presentations that are treated as exempt under the ex parte rules. Under the current rule, presentations to or from the Department of Justice and the Federal Trade Commission regarding telecommunications competition matters are treated as exempt. The item would expand the scope of the exemption to include the Competition Directorate of the European Commission and other international and foreign bodies with analogous functions. The item would clarify that the term "telecommunications competition matters" in the existing rules was intended to be construed broadly and was not limited to common carriers.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81474
NPRM Comment Period End	02/09/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3060–AH58

3754. • AMENDMENT OF SECTION 1.17 OF THE COMMISSION'S RULES CONCERNING TRUTHFUL STATEMENTS TO THE COMMISSION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i), 47 USC 201(b), 47 USC 303(r)

CFR Citation: 47 CFR 1.17

Legal Deadline: None

Abstract: The Commission proposes to amend its regulations relating to the submission of truthful information to the Commission. Under the current rule, Commission regulatees must not, in any written statement submitted to the Commission, make any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. The item would: (1) provide that the rule prohibits incorrect statements or omissions resulting from negligence and not just intentional misrepresentation or lack of candor; (2) make clearer that the rule covers statements made to the Commission in all contexts; (3) include oral statements and not just written statements; and (4) include all persons making statements to the Commission (e.g. including non-regulatees).

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10658

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH86

Federal Communications Commission (FCC)
International Bureau

Proposed Rule Stage

3755. • POLICIES AND RULES FOR NON-GEOSTATIONARY SATELLITE ORBIT, FIXED SATELLITE SERVICE IN THE KA-BAND; IB DOCKET NO. 02-19

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 157(a); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: The NPRM seeks to determine a method to license multiple satellite network systems in spectrum designated on a primary basis for non-geostationary satellite orbit, fixed-satellite service. It also proposes service rules to apply to these licensees.

Timetable:

Action	Date	FR Cite
NPRM	03/04/02	67 FR 9641
NPRM Comment Period End	04/18/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH93

3756. • ENFORCEMENT OF OTHER NATIONS' PROHIBITIONS AGAINST THE UNCOMPLETED CALL SIGNALING CONFIGURATION OF INTERNATIONAL CALLBACK SERVICE; IB DOCKET NO. 02-18

Priority: Info./Admin./Other

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154 (j); 47 (USC 201(b); 47 USC 303(r); ...

CFR Citation: None

Legal Deadline: None

Abstract: The Notice of Proposed Rulemaking seeks comments on whether the Commission should eliminate the existing comity-based prohibitions and thus discontinue the policy that allows a foreign government or entity to make use of the enforcement mechanisms of the Commission to prohibit the U.S. carriers from offering one form of call-back abroad. International call-back arrangements allow foreign callers to take advantage of low U.S. international services rates, many of which are significantly lower than the rates available in their home countries.

Timetable:

Action	Date	FR Cite
NPRM	03/08/02	67 FR 10656
NPRM Comment Period End	05/15/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

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RIN: 3060–AH94

3757. • SPACE STATION LICENSING REFORM; IB DOCKETS 00-248 AND 02-34

Priority: Other Significant

Legal Authority: 47 USC 154(i); 47 USC 157; 47 USC 303(c); 47 USC (f); 47 USC 303(g); 47 USC 303(r)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has adopted a Notice of Proposed Rulemaking to streamline its procedures for reviewing satellite license applications. Currently, the Commission uses processing rounds to review those applications. In a processing round, when an application is filed, the International Bureau (Bureau) issues a public notice establishing a cut-off date for other mutually exclusive satellite applications, and then considers all those applications together. In cases where sufficient spectrum to accommodate all the applicants is not available, the Bureau directs the applicants to negotiate a mutually agreeable solution. Those negotiations usually take a long time, and delay provision of satellite services to the public.

The NPRM invites comment on two alternatives for expediting the satellite application process. One alternative is to replace the processing round procedure with a "first-come, first-served" procedure that would allow the Bureau to issue a satellite license to the first party filing a complete, acceptable application. The other alternative is to streamline the processing round procedure by adopting one or more of the following proposals: (1) placing a time limit on negotiations; (2) establishing criteria to select among competing applicants; (3) dividing the available spectrum evenly among the applicants.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12498
NPRM Comment Period End	06/03/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH98

Federal Communications Commission (FCC)
International Bureau

Long-Term Actions

3758. STREAMLINING THE COMMISSION'S RULES AND REGULATIONS FOR SATELLITE APPLICATION AND LICENSING PROCEDURES; IB DOCKET NO. 95-117

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 4; 47 USC 154; 47 USC 303; 47 USC 554; 47 USC 701 to 744

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: On February 10, 1997, the FCC adopted rules and policies that streamlined the application and licensing requirements of part 25 of its rules, which deals with communication satellites and earth stations. The streamlined rules waived the construction permit requirement for satellite space stations; changed the license term for temporary fixed earth stations; and adjusted or changed the rules concerning minor modifications and basic requirements for satellite service applications. The streamlined rules also resulted in the creation of a new application form, FCC Form 312. Form 312 eliminated from the International Bureau's use the FCC Form 493, FCC Form 430, FCC Form 702, and FCC Form 704. Petitions for Reconsideration were filed in this matter. In March 1997 the Commission released a Public Notice concerning these petitions, which are presently pending before the International Bureau.

Timetable:

Action	Date	FR Cite
NPRM	09/09/95	60 FR 46252
R&O, Recon Pending	02/10/97	62 FR 5924
Public Notice/Petitions for Recon	03/26/97	62 FR 14430

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local, Federal

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RIN: 3060–AD70

3759. SATELLITE COMMUNICATIONS — NGSO MOBILE SATELLITE SERVICE; CC DOCKET NO. 92-166

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 303

CFR Citation: 47 CFR 2; 47 CFR 25; 47 CFR 93

Legal Deadline: None

Abstract: The Commission adopted rules in 1994 for a voice-and-data mobile satellite service (MSS) in the 1610-1626.5 MHz and 2483.5-2500 MHz frequency bands. Licenses have been issued for five systems. The Commission issued a decision in a 1996 ruling on Petitions for Reconsideration of the Report and Order making some changes in the rules. Several petitions for further reconsideration are still pending.

Timetable:

Action	Date	FR Cite
NPRM	03/14/94	59 FR 11746
NPRM Comment Period End	06/04/94	
R&O	10/21/94	59 FR 53294
Begin Review	12/01/94	
First Recon Order	03/12/96	61 FR 9944
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

Additional Information: CC Docket No. 92-166

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RIN: 3060–AF42

3760. ESTABLISHING RULES AND POLICIES FOR THE USE OF SPECTRUM FOR MOBILE SATELLITE SERVICE IN THE L-BAND; IB DOCKET NO. 96-132

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303; 47 USC 316; 47 USC 403

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has established licensing policies to govern mobile-satellite services (MSS) in the L-band. Specifically, the Commission has modified the license of Motient Services, Inc. (Motient), the only U.S. MSS system currently authorized to operate in the L-band, to use up to 20 megahertz of spectrum across the entire L-band. Previously, Motient was authorized only to operate in the upper portion of the L-band. In addition, the Commission has adopted and incorporated into part 25 of the rules specific operational parameters and technical requirements to ensure the integrity of maritime distress and safety communications service will not be compromised by MSS operation in the lower portion of the L-band.

Timetable:

Action	Date	FR Cite
NPRM	06/18/96	61 FR 40772
NPRM Comment Period End	09/23/96	
R&O (Release Date)	02/07/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AF89

3761. PREEMPTION OF LOCAL ZONING REGULATION OF SATELLITE EARTH STATIONS; IB DOCKET NO. 95-59

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 165(j); 47 USC 303(r)

CFR Citation: 47 CFR 1.4000; 47 CFR 25.104

Legal Deadline: None

Abstract: The Commission adopted rules in March and August of 1996 to preempt regulations that restricted the installation and use of certain over-the-air reception devices. Staff work on the reconsideration of the March 1996 Report and Order is assigned to the International Bureau; work on the September 1996 Report and Order is assigned to the Cable Services Bureau.

Timetable:

Action	Date	FR Cite
NPRM	05/15/95	60 FR 28077
NPRM Comment Period End	08/15/95	
FNPRM	03/15/96	61 FR 10710
R&O	03/18/96	61 FR 10896
R&O	09/04/96	61 FR 46559
Public Notice	10/22/01	66 FR 53417
Public Notice	03/08/02	67 FR 10727
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: Undetermined

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RIN: 3060–AF92

3762. ESTABLISHMENT OF RULES AND POLICIES FOR THE DIGITAL AUDIO RADIO SATELLITE SERVICE IN THE 2310-2360 MHZ FREQUENCY BAND; IB DOCKET NO. 95-91; GEN DOCKET NO. 90-357

Priority: Routine and Frequent. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 151(i); 47 USC 154(j); 47 USC 157; 47 USC 309(j)

CFR Citation: 47 CFR 25.144

Legal Deadline: None

Abstract: The Commission is proposing rules to govern satellite digital audio radio services. Previously, the Office of Engineering and Technology allocated the spectrum on which the activities herein of the International Bureau are based. Since the spectrum allocation is completed, the Office of Engineering and Technology has no further role. See 62 FR 11083 and 62 FR 24073.

Timetable:

Action	Date	FR Cite
NPRM	06/15/95	60 FR 35166
R&O	03/11/97	62 FR 11083
FNPRM	04/18/97	62 FR 19095
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AF93

3763. REDESIGNATION OF THE 27.5-29.5 GHZ FREQUENCY BAND; CC DOCKET NO. 92-297

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 301; 47 USC 302

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 21; 47 CFR 25

Legal Deadline: None

Abstract: The Commission issued a Memorandum Opinion and Order that addressed a petition for clarification and/or reconsideration filed by Teledesic Corporation of the Commission's Third Report and Order, which established technical requirements and service rules for geostationary fixed satellite services (NGOS FSS) in the Ka-band.

Timetable:

Action	Date	FR Cite
NPRM	07/13/95	60 FR 43740
NPRM Comment Period End	09/07/95	
R&O	08/28/96	61 FR 44177
Third R&O	11/18/97	62 FR 61488
Order on Recon (Release Date)	02/06/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: CC Docket No. 92-297

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RIN: 3060–AF94

3764. AMENDMENT OF POLICY TO ALLOW NON-U.S. LICENSED SPACE STATIONS TO PROVIDE SERVICE IN THE UNITED STATES; IB DOCKET NO. 96-111; CC DOCKET NO. 93-23

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 25.113; 47 CFR 25.115; 47 CFR 25.130; 47 CFR 25.131; 47 CFR 25.137

Legal Deadline: None

Abstract: In the Second Order on Reconsideration in this proceeding, the Commission denied four petitions for reconsideration of the DISCO II Order.

Timetable:

Action	Date	FR Cite
NPRM	05/14/96	61 FR 32398
NPRM Comment Period End	08/16/96	
FNPRM	07/29/97	62 FR 40494
R&O	12/04/97	62 FR 64167
Public Notice	01/05/98	63 FR 227
Public Notice on Petitions for Recon	01/30/98	63 FR 4640
First Order on Recon	11/15/99	64 FR 61791
Second Order on Recon (Release Date)	11/05/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AG31

3765. ALLOCATE & DESIGNATE: SPEC FOR FIXED-SAT SRV (37.5-38.5, 40.5-41.5 & 48.2-50.2 GHZ BANDS). ALLOCATE: FIXED & MOBILE 40.5-42.5 GHZ; WIRELESS 46.9-47 GHZ; GOV OPER 37-38 & 40-40.5 GHZ; IB DOC NO. 97-95

Priority: Economically Significant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(e); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 304; 47 USC 307

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CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 25.208

Legal Deadline: None

Abstract: This item adopts a plan for non-government operations in the 36.0 - 51.4 GHz portion of the V-band, establishing priorities for different services in different parts of this band.

Timetable:

Action	Date	FR Cite
NPRM	04/04/97	62 FR 16129
Report & Order	01/15/99	64 FR 2585
Correction	02/08/99	64 FR 6138
Correction	02/10/99	64 FR 6565
Notice of Petition for Reconsideration	03/22/99	64 FR 13796
Order on Reconsideration	12/01/99	
Further NPRM	07/05/01	66 FR 35399
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: State, Local, Tribal

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RIN: 3060–AH23

3766. ESTABLISHMENT OF POLICIES AND SERVICE RULES FOR THE MOBILE SATELLITE SERVICE IN THE 2 GHZ BAND; IB DOCKET NO. 99-81

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 310; 47 USC 319

CFR Citation: 47 CFR 25.114; 47 CFR 25.115; 47 CFR 25.121; 47 CFR 25.133; 47 CFR 25.136; 47 CFR 25.137; 47 CFR 25.143; 47 CFR 25.201; 47 CFR 25.202; 47 CFR 25.203; 47 CFR 25.279

Legal Deadline: None

Abstract: The Commission amended the regulations covering the 1.6/2.4 GHz Mobile Satellite Service (MSS) to incorporate the rules for the 2 GHz MSS. The actions establish the band arrangement and service rules and policies for the 2 GHz MSS. The effect of amending the 1.6/2.4 GHz MSS rules to include 2 GHz MSS is to simplify and harmonize the rules for the types of satellite services.

Timetable:

Action	Date	FR Cite
NPRM	04/07/99	64 FR 16880
Report and Order	10/04/00	65 FR 59140
MO&O	09/13/01	66 FR 47591
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AH28

3767. POLICIES FOR THE DIRECT BROADCAST SATELLITE SERVICE; IB DOCKET NO. 98-21

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 25

Legal Deadline: None

Abstract: This proceeding streamlines and simplifies the Commission's rules governing direct broadcast satellite (DBS) service. It also harmonizes the rules for DBS with those of other satellite services.

Timetable:

Action	Date	FR Cite
NPRM	03/06/98	63 FR 11202
NPRM	02/02/01	66 FR 8774
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH29

3768. 1998 BIENNIAL REGULATORY REVIEW — REVIEW OF ACCOUNTS SETTLEMENT IN MARITIME MOBILE &MARITIME MOBILE-SATELLITE RADIO SERVICES AND WITHDRAWAL OF THE COMMISSION AS ACCOUNTING AUTHORITY; IB DOC NO. 98-96

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 154 (j); 47 USC 201; 47 USC 202; 47 USC 203; 47 USC 204; 47 USC 205; 47 USC 303(r)

CFR Citation: 47 CFR 3.10(e)

Legal Deadline: None

Abstract: The FCC has decided to withdraw from acting as an accounting authority for the settlement of accounts in the maritime mobile and maritime mobile-satellite (ship-to-shore) radio services, and to rely solely upon the various privately owned accounting authorities the FCC has authorized. In that connection the FCC amended section 3.10(e) of its rules to specify that private accounting authorities must serve the public non-discriminatorily (action 7-13-99). The Commission is gathering comment to develop a plan to ensure a smooth transition to private accounting authorities.

Timetable:

Action	Date	FR Cite
NPRM	07/24/98	63 FR 39800
Report & Order	07/28/99	64 FR 40774
Further NPRM	07/28/99	64 FR 40808
Comment Period Extended	09/03/99	64 FR 48337
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AH30

3769. AMENDMENT TO REGULATORY POLICIES GOVERNING DOMESTIC FIXED SATELLITES AND SEPARATE INTERNATIONAL SATELLITE SYSTEMS; IB DOCKET NO. 95-41

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 721(c)

CFR Citation: 47 CFR 25.110; 47 CFR 25.113; 47 CFR 25.114; 47 CFR 25.115; 47 CFR 25.117; 47 CFR 25.130; 47 CFR 25.131; 47 CFR 25.140; 47 CFR 25.202; 47 CFR 25.210; 47 CFR 25.211; 47 CFR 25.276

Legal Deadline: None

Abstract: The Commission adopted rules in January 1996 eliminating regulatory distinctions between U.S. domestic satellite systems and U.S. international separate satellite systems. In August 2001, the Commission reaffirmed its 1995 policy and modified the standards for obtaining a waiver of the unified financial showing requirement to make it easier for small firms to seek a waiver.

Timetable:

Action	Date	FR Cite
NPRM	05/10/95	60 FR 24817
R&O	03/12/96	61 FR 9946
Order on Recon (Release Date)	08/16/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH48

3770. GLOBAL MOBILE PERSONAL COMMUNICATIONS BY SATELLITE; IB DOCKET NO. 99-67

Priority: Economically Significant

Legal Authority: 47 USC 4(i); 47 USC 7(a); 47 USC 303(c); 47 USC 303(f); 47 USC 303(g); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 310

CFR Citation: 47 CFR 25.200; 47 CFR 25.213; 47 CFR 25.215; 47 CFR 216; 47 CFR 2.1204

Legal Deadline: None

Abstract: The FCC has proposed to adopt rules to facilitate transnational use of mobile terminals used for 2-way voice communication via satellite systems with global or international coverage. In the same NPRM the FCC proposed to adopt limits on out-of-band emissions from some global mobile personal communications by satellite terminals in order to protect reception of aeronautical satellite radionavigation signals in the 1559-1610 MHz band. The FCC also asked for comment on the advisability of adopting rules requiring providers of mobile telecommunication service via satellite to provide 911 emergency-calling features.

Timetable:

Action	Date	FR Cite
NPRM	04/06/99	64 FR 16687
NPRM Comment Period End	05/18/99	
Public Notice	01/17/01	66 FR 3960
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH49

3771. DIRECT BROADCAST PUBLIC INTEREST OBLIGATIONS; MM DOCKET NO. 93-25

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 335

CFR Citation: 47 CFR 25; 47 CFR 100

Legal Deadline: None

Abstract: The Commission adopted rules in 1998 that implement Section 25 of the Cable Television Consumer Protection and Competition Act of 1992, as codified at Section 335 of the Communications Act of 1934. Section 335 directs the Commission to impose certain public interest obligations on direct broadcast satellite providers. Several petitions for reconsideration are pending.

Timetable:

Action	Date	FR Cite
NPRM	03/08/93	58 FR 12917
Report and Order	02/08/99	64 FR 52399
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH59

3772. STREAMLINING EARTH STATION LICENSING RULES; IB DOCKET NO. 00-248

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 701 to 744

CFR Citation: 47 CFR 23; 47 CFR 25

Legal Deadline: None

Abstract: The Commission has found several cases in which modifying or eliminating rules could facilitate licensing of earth stations, thereby expediting the provision of useful satellite services to the public, without unreasonably increasing the risk of harmful interference to existing earth station or space station operators, or terrestrial wireless operators in shared frequency bands.

Specifically, this NPRM considers the following rule revisions: (1) codifying streamlined procedures for case-by-case examination of earth stations using "non-routine" antennas, non-routine power levels, or both; (2) relaxing some current requirements, such as increasing power and power density limits, and allowing some temporary fixed earth stations to begin operation sooner than is now permitted; (3) streamlining the very small aperture terminal (VSAT) rules, and revising the Commission's power level rules to provide for various types of VSAT multiple access methods; (4) adopting

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a simplified license application form for "routine" earth stations; and (5) other miscellaneous rule revisions. The Commission also invites comment on extending these proposed rules to the Ka-band.

Timetable:

Action	Date	FR Cite
NPRM	01/08/01	66 FR 1283
NPRM Comment Period End	05/07/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AH60

3773. 2000 BIENNIAL REVIEW — AMENDMENT OF PARTS 43 AND 63 OF THE COMMISSION'S RULES; IB DOCKET NO. 00-231

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 161; 47 USC 214; 47 USC 218; 47 USC 219; 47 USC 220; 47 USC 403

CFR Citation: 47 CFR 43.81; 47 CFR 63.10; 47 CFR 63.18; 47 CFR 63.19; 47 CFR 63.20; 47 CFR 63.22; 47 CFR 63.24

Legal Deadline: None

Abstract: This proceeding was initiated to propose further streamlining measures for international telecommunications services. The NPRM proposes amending the procedures for filing pro forma assignments and transfers of control of Section 214 international authorizations, eliminating the benchmark settlement rate condition, and modifying the rules requiring dominant international carriers to seek prior approval to discontinue service. The NPRM will clarify rules and eliminate others no longer needed.

Timetable:

Action	Date	FR Cite
NPRM	12/20/00	65 FR 79795

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH62

3774. LICENSING AND COORDINATION OF EARTH STATIONS IN THE FIXED-SATELLITE SERVICES; IB DOCKET NO. 00-203

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 301; 47 USC 302; 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 332; 47 USC 701 to 744

CFR Citation: 47 CFR 25; 47 CFR 101

Legal Deadline: None

Abstract: The Third Report and Order and/or Memorandum Opinion and Order will consider an industry proposal for either "blanket licensing" or other expedited licensing procedures for FSS earth stations in the portion of the KA-band that is shared with the terrestrial fixed service.

Timetable:

Action	Date	FR Cite
NPRM	11/24/00	65 FR 70541
First R&O	06/12/01	66 FR 31557
Second R&O	01/30/02	67 FR 7287

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH63

3775. • ALASKA BUSH EARTH STATION POLICY; IB DOCKET NO. 02-30

Priority: Other Significant

Legal Authority: 47 USC 301

CFR Citation: None

Legal Deadline: None

Abstract: The FCC is proposing to repeal a policy against licensing "duplicative" MTS earth stations in rural Alaska.

Timetable:

Action	Date	FR Cite
NPRM (Release Date)	02/15/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AH99

3776. STREAMLINING REGULATIONS RELATED TO INTERNATIONAL COMMON CARRIERS; IB DOCKET NO. 98-118

Priority: Other Significant

Legal Authority: 47 USC 34 to 39; 47 USC 151; 47 USC 154(j); 47 USC 203(r); 47 USC 214; 47 USC 307; 47 USC 309; 47 USC 310

CFR Citation: 47 CFR 1; 47 CFR 43; 47 CFR 63; 47 CFR 64

Legal Deadline: None

Abstract: The Commission received Petitions for Reconsideration of its rules applicable to international common carriers. The Commission has eliminated the requirement for prior approval of pro forma assignments and transfers of control. The Commission reduced the waiting period for granting new streamlined applications from 35 to 14 days. It also expanded the class of applications eligible for streamlined processing. The Commission will review the petitions and determine whether it should revise its rules.

Timetable:

Action	Date	FR Cite
NPRM	07/24/98	63 FR 39793
NPRM Comment Period End	08/24/98	
Report and Order	04/10/99	64 FR 19057
Notice of Petitions for Reconsideration	06/03/99	64 FR 31222
Parties Withdrew Petitions	07/15/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3060–AG84

3777. REDESIGNATION 17.7-19.7 GHZ BAND, BLANKET LICENSING SAT EARTH STATIONS 17.7-20.2 GHZ & 27.5-30 GHZ & ALLOCATION 17.3-17.8 & 24.75-25.25 GHZ BAND FOR BROADCAST SATELLITE SERVICE USE; IB DOC NO. 98-172

Priority: Economically Significant

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 154(j); 47 USC 301; 47 USC 303

CFR Citation: 47 CFR 25.115; 47 CFR 25.138; 47 CFR 25.208

Legal Deadline: None

Abstract: In the First Order on Reconsideration in this proceeding, we granted in part and denied in part the petitions for reconsideration of the 18 Ghz Order filed by Hughes Electronics Corporation (Hughes), the Fixed Wireless Communications Coalition (FWCC) and Winstar Communications, Inc. (Winstar). We defer for action in a future Commission order certain issues raised by Hughes relating to the band plan adopted in the 18 Ghz Order and blanket licensing. We also address a number of issues raised by Teledesic Corporation (Teledesic) in its letter to the Commission and its requests for judicial review of the rules adopted by the Commission in the 18 Ghz Order.

Timetable:

Action	Date	FR Cite
NPRM	10/08/98	63 FR 54100
NPRM Comment Period	12/07/98	63 FR 62258
Report and Order	09/07/00	65 FR 54155
First Order on Reconsideration	12/07/01	66 FR 63512

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local, Tribal

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RIN: 3060–AH21

3778. CONSIDERATION OF APPLICATIONS UNDER THE CABLE LANDING LICENSE ACT; IB DOCKET NO. 00-106

Priority: Substantive, Nonsignificant

Legal Authority: 3 USC 301; 47 USC 34 to 39; 47 USC 151; 47 USC 154(i); 47 USC 154(s); 47 USC 201 to 255; 47 USC 303(r)

CFR Citation: 47 CFR 1.767

Legal Deadline: None

Abstract: The Report and Order adopted streamlining procedures for processing applications for submarine cable landing licenses. The streamlining procedures track the streamlining procedures and competitive safeguards the Commission has in place for section 214 authorizations of international telecommunications services. The measures are designed to facilitate the expansion of capacity and facilities-based competition in the submarine cable market. The measures also are designed to enable submarine cable applicants and licensees to respond to the demands of the market with minimal regulatory oversight and delay, saving time and resources for both industry and government, while preserving the Commission's ability to guard against anti-competitive behavior.

Timetable:

Action	Date	FR Cite
NPRM	07/06/00	65 FR 41613
NPRM Comment Period End	09/20/00	
R&O	01/14/02	67 FR 1615

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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Federal Communications Commission (FCC) — **Long-Term Actions**

Mass Media Bureau

3779. TRANSFER OF CONTROL OF NON-STOCK ENTITIES (MM DOCKET NO. 89-77)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Commission will consider proposals concerning the treatment of corporations and other organizational structures that are not traditional commercial corporations.

Timetable:

Action	Date	FR Cite
NOI	03/16/89	54 FR 15957
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 3060–AE31

3780. FILING OF TELEVISION NETWORK AFFILIATION CONTRACTS (MM DOCKET NO. 95-40)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r)

CFR Citation: 47 CFR 73.3613(a)

Legal Deadline: None

Abstract: This proceeding considers changes to the requirement that stations file their network affiliation agreements with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/19/95	60 FR 19564
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Federal

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RIN: 3060–AF80

3781. RULES GOVERNING BROADCAST TELEVISION ADVERTISING (MM DOCKET NO. 95-90)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 154(j); 47 USC 301; 47 USC 303(r); 47 USC 313; 47 USC 314

CFR Citation: 47 CFR 73.658(h); 47 CFR 73.658(i)

Legal Deadline: None

Abstract: This proceeding considers changes to two rules regulating broadcast television advertising. The first advertising rule prohibits a broadcast television network from influencing or controlling the rates its affiliates set for the sale of their non-network advertising time. The second advertising rule prohibits a broadcast television network from representing any of its affiliates in the sale of non-network advertising time.

Timetable:

Action	Date	FR Cite
NPRM	07/05/95	60 FR 34959
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AF81

3782. MINOR MODIFICATIONS OF BROADCAST LICENSES WITHOUT PRIOR CONSTRUCTION PERMIT (MM DOCKET NO. 96-58)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 155(c)(1); 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: This proceeding will implement the Commission's new authority to eliminate the present requirement for a construction permit for a broadcast station in certain instances where the changed facilities would not have an adverse impact on other broadcast facilities. In these instances, licensees or permittees will be able to initiate the change without prior authority and file a license application to cover the change afterwards.

Timetable:

Action	Date	FR Cite
NPRM	04/08/96	61 FR 15439
R&O	09/30/97	62 FR 51052
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AG30

3783. REVIEW OF TECHNICAL RULES IN PARTS 73 AND 74 (MM DOCKET NO. 98-93)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 307; 47 USC 319

CFR Citation: 47 CFR 73; 47 CFR 74

Legal Deadline: None

Abstract: The Second Report and Order in this radio technical streamlining proceeding continues the Commission's efforts to make the broadcast application process simpler, faster, and more efficient. In the Second Report and Order, the Commission amended the separation requirements for short-spaced FM stations, section 73.215(e), to afford second- and third-adjacent channel stations minimum relief of six kilometers from the full spacing requirements of section 73.207. The order also expands the types of facility changes covered by expedited one-step licensing procedures and provides additional technical flexibility to FM stations licensed to Puerto Rico and the U.S. Virgin Islands. The order also relaxes noncommercial educational FM second adjacent channel standard and establishes a noncommercial educational FM community coverage standard. Finally, the item creates a new commercial FM class, class C-zero, and a mechanism to reclassify class C stations that do not meet the new class minimum antenna height where there is a competing demand for spectrum.

Timetable:

Action	Date	FR Cite
NPRM	06/22/98	63 FR 33892
Report & Order	04/21/99	64 FR 19498
Second Report & Order	12/20/00	65 FR 79773
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3060–AG81

FCC—Mass Media Bureau — **Long-Term Actions**

3784. DIGITAL AUDIO BROADCASTING SYSTEMS (MM DOCKET NO. 99-325)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 303

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The rulemaking proceeding was initiated to obtain comments concerning the Commission's proposals to foster the development and implementation of terrestrial digital audio broadcasting (DAB). In the NPRM, the Commission (1) reaffirms its commitment to providing radio broadcasters with the opportunity to take advantage of DAB technology; (2) identifies Commission public policy objectives for the introduction of DAB service; (3) proposes criteria for the evaluation of DAB models and systems; (4) evaluates IBOC and new-spectrum DAB models; (5) inquires as to the need for a mandatory DAB transmission standard; and (6) considers certain DAB system testing, evaluation and standard selection issues.

Timetable:

Action	Date	FR Cite
NPRM	11/09/99	64 FR 61054
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH40

3785. ANCILLARY OR SUPPLEMENTAL USE OF DTV CAPACITY BY NON-COMMERCIAL LICENSEES (MM DOCKET NO. 98-203)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: The Report and Order amends the Commission's rules to require that noncommercial educational (NCE) television licensees primarily provide a nonprofit, noncommercial educational service over their entire digital bitstream, including ancillary or supplementary service; and apply to them the same program to assess and collect fees as that established for commercial DTV licensees' use of DTV capacity for the provision of ancillary or supplementary services. This Report and Order also determines that the Communications Act of 1934 prohibition against the provision of advertising by NCE licensees does not apply to nonbroadcast services, such as subscription services provided on their DTV channels. The intended effect of these actions is to clarify the manner in which NCE licensees may use their excess DTV capacity for remunerative purposes.

Timetable:

Action	Date	FR Cite
NPRM	12/14/98	63 FR 68722
R&O	11/26/01	66 FR 58973
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH53

3786. PERIODIC REVIEW OF RULES AND POLICIES AFFECTING THE CONVERSION TO DTV (MM DOCKET NO. 00-39)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 4(i); 47 USC 4(j); 47 USC 303(r); 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73

Legal Deadline: None

Abstract: On January 18, 2001, the Commission adopted a Report and Order (R&O) and Further Notice of Proposed Rulemaking, addressing a number of issues related to the conversion of the nation's broadcast television system from analog to digital television. We received a number of petitions for reconsideration of the R&O. This Memorandum Opinion and Order on Reconsideration revised a number of the determinations the Commission made in the R&O, affirms other decisions, and provides clarification of certain rules and policies. The Commission also modifies the minimum hours of operation of certain DTV stations and establishes guidelines for television stations that may seek an extension of the May 1, 2002 and May 1, 2003 deadlines for construction of DTV facilities. The Commission will resolve several major technical issues in the R&O and FNPRM, including the issue of receiver performance standards, DTV tuners, revisions to certain components of the DTV transmission standard, and labeling requirements for television receivers, in a separate Report and Order.

Timetable:

Action	Date	FR Cite
NPRM	03/23/00	65 FR 15600
Report & Order	02/13/01	66 FR 9973

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Action	Date	FR Cite
MO&O	12/18/01	66 FR 65122
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH54

3787. CHILDREN'S TV, OBLIGATIONS OF DIGITAL TV BROADCASTERS (MM DOCKET NO. 00-167)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 336(d)

CFR Citation: 47 CFR 73.670; 47 CFR 73.671; 47 CFR 73.673

Legal Deadline: None

Abstract: This item seeks comment on a range of issues related to application of our existing children's programming rules to digital broadcasting. The NPRM focuses primarily on two areas: the obligation of commercial television broadcast licensees to provide educational and informational programming for children and the requirement that television broadcast licensees limit the amount of advertising in children's programs.

In addition, this document seeks comment on how to address the issue of the airing in programs viewed by children promotions that may be inappropriate for children to watch. Although this document seeks comment largely on challenges unique to the digital area, it also discusses several issues that apply equally to analog and digital broadcasting.

Timetable:

Action	Date	FR Cite
NPRM	11/08/00	65 FR 66951
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH68

3788. EXTENSION OF FILING REQUIREMENTS FOR CHILDREN'S TV PROGRAMMING REPORT (MM DOCKET NO. 00-44)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 308

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This document seeks comment on the tentative conclusion that broadcasters who maintain Internet websites should be required to post their completed quarterly Children's Television Programming Reports (FCC Form 398) on these sites. The FCC Form 398 is required to be filed by commercial television broadcast stations each quarter. This form is used to provide information on the efforts of commercial television stations to provide children's educational and informational programs aired to meet its obligation under the Children's Television Act of 1990. Although the Children's Television Programming Reports are available in a central location on the FCC's website, members of the public may look first to their local broadcast station for information about programming at the station, making station website posting useful.

Timetable:

Action	Date	FR Cite
NPRM	05/04/00	65 FR 25895
R&O	11/09/00	65 FR 67283
Further NPRM	11/09/00	65 FR 67331
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH69

3789. RADIO MARKET DEFINITIONS (MM DOCKET NO. 00-244)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 202(h); 47 USC 303; 47 USC 307

CFR Citation: 47 CFR 73.3555

Legal Deadline: None

Abstract: This FNPRM proposes changes to local ownership rules and policies concerning multiple ownership of radio broadcasting stations. The Commission examines the effect our current rules have had on the public and seeks comments to better serve our communities. This action is also intended to consider possible changes to our current local market radio ownership rules and policies in accordance with the Telecommunications Act of 1996. Because of the similarity of the issues presented in the Multiple Ownership of Radio Broadcast Stations in Local Markets to those in the Matter of Definition of Radio Market, the two actions were, in effect, consolidated.

Timetable:

Action	Date	FR Cite
NPRM	12/28/00	65 FR 82305
FNPRM	12/11/01	66 FR 63997
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH70

3790. ENHANCED AND STANDARDIZED DISCLOSURE (MM DOCKET NO. 00-168)

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 336

CFR Citation: 47 CFR 73.3526

Legal Deadline: None

Abstract: This item concerns rules and policies on how commercial television broadcast station licensees provide public interest information to the public. This document proposes amendments to the public inspection file rules that would standardize the format used for providing public interest information to the public and make information contained in public inspection files available on the Internet. The intended effect of this action is to propose rules that would make information regarding how television broadcast stations meet their fundamental public interest obligation to serve the needs and interests of their communities of license easier to understand or more accessible to the public.

Timetable:

Action	Date	FR Cite
NPRM	10/19/00	65 FR 62683
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3060–AH71

3791. • REVISION OF EEO RULES AND POLICIES; MM DOCKET NO. 98-204

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 257; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309; 47 USC 334; 47 USC 403; 47 USC 554

CFR Citation: 47 CFR 73.2080; 47 CFR 76.73; 47 CFR 76.75; 47 CFR 76.79; 47 CFR 76.1702

Legal Deadline: None

Abstract: This Second NPRM requests comments concerning a new broadcast equal employment opportunity rule and policies consistent with the decision of the U.S. Court of Appeals for the District of Columbia Circuit in Association. The Court therein found unconstitutional one of two options for achieving broad outreach provided by the broadcast EEO outreach requirements adopted in the Report and Order. The Second NPRM proposes to retain the Commission's ban on discrimination and to require broadcasters and cable entities to maintain an EEO program that would achieve broad and inclusive outreach in recruitment to ensure a fair opportunity for all job seekers and provide administrative relief to small entities.

Timetable:

Action	Date	FR Cite
NPRM	01/14/02	67 FR 1704
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH95

3792. • REEXAMINATION OF COMPARATIVE STANDARDS FOR NONCOMMERCIAL EDUCATIONAL APPLICANTS; MM DOCKET NO. 95-31

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This FNPRM solicits additional comments on how the Commission should allocate and license "non-reserved" spectrum (i.e., spectrum that has not been set aside for exclusive use by noncommercial educational broadcast stations) in which both commercial and noncommercial entities have an interest. This FNPRM was issued in response to a court decision in National Public Radio vs. FCC.

Timetable:

Action	Date	FR Cite
FNPRM	03/05/02	67 FR 9945
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

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RIN: 3060–AH96

3793. • CROSS OWNERSHIP OF BROADCAST STATIONS AND NEWSPAPERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303, 307, 309,310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: This NPRM initiates a proceeding to seek comment on whether and to what extent it should revise the newspaper/broadcast cross-ownership rule, which prohibits common ownership of a broadcast station and a newspaper in the same geographic area. The local multimedia marketplace in which broadcast stations and newspapers operate has changed significantly since the Commission adopted the rule in 1975. This proceeding seeks comment on the relevance of these changes to the newspaper/broadcast cross-ownership rule.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50991
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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FCC—Mass Media Bureau **Long-Term Actions**

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Federal Communications Commission (FCC) **Completed Actions**
Mass Media Bureau

3794. NEWSPAPER/BROADCAST CROSS-OWNERSHIP (MM DOCKET NO. 96-197)

Priority: Substantive, Nonsignificant
Legal Authority: 47 USC 154
CFR Citation: 47 CFR 73
Legal Deadline: None

Abstract: The Commission has terminated this proceeding because it has initiated a new rulemaking proceeding that considers broader issues that subsume those raised in this rulemaking.

Timetable:

Action	Date	FR Cite
NOI	10/15/96	61 FR 53694
Notice	10/18/01	66 FR 52921

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: None
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RIN: 3060–AG53

3795. DUAL NETWORK RULE (MM DOCKET NO. 00-108)

Priority: Substantive, Nonsignificant
Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 310
CFR Citation: 47 CFR 73.658(g)
Legal Deadline: None

Abstract: The Report and Order amends the Commission's "dual network" rule. That rule effectively prevented mergers among the four major television broadcast networks or between one of the four major networks (NBC, CBS, ABC, and Fox) and the UPN and/or the WB television networks. The action taken eliminates that portion of the rule that effectively prevents mergers between a major television network and the UPN and/or WB television networks.

Timetable:

Action	Date	FR Cite
NPRM	07/05/00	65 FR 41393
R&O	06/14/01	66 FR 32242

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: None
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RIN: 3060–AH51

3796. EXPERIMENTAL BROADCAST STATION MULTIPLE OWNERSHIP RULE (MM DOCKET NO. 00-105)

Priority: Substantive, Nonsignificant
Legal Authority: 47 USC 151; 47 USC 152(a); 47 USC 154(i); 47 USC 303; 47 USC 307; 47 USC 309; 47 USC 310
CFR Citation: 47 CFR 74.134
Legal Deadline: None

Abstract: The Report and Order eliminates the Commission rule that prohibited a broadcast licensee from having more than one experimental radio station license without first making a showing that its program of research requires a licensing of two or more separate stations. The rule was eliminated because other Commission rules prohibit the harms this rule was meant to address. Additionally, elimination of the rule would allow licensees to devote their resources to research more efficiently during the operation of experimental broadcast stations.

Timetable:

Action	Date	FR Cite
NPRM	07/05/00	65 FR 41401
R&O	04/10/01	66 FR 18570

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: None
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RIN: 3060–AH52

Federal Communications Commission (FCC) **Long-Term Actions**
Office of Managing Director

3797. • ASSESSMENT AND COLLECTION OF REGULATORY FEES FOR FY 2002

Priority: Economically Significant
Legal Authority: 47 USC 159
CFR Citation: 47 CFR 1.1151 et seq
Legal Deadline: None

Abstract: Section 9 of the Communications Act of 1934, as amended, 47 U.S.C. 159, requires the FCC to recover the costs of its activities by assessing and collecting annual regulatory fees from beneficiaries of the activities.

FCC—Office of Managing Director **Long-Term Actions**

Timetable:

Action	Date	FR Cite
NPRM (Adopted Date)	03/22/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: None
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RIN: 3060–AH85

Federal Communications Commission (FCC) **Long-Term Actions**
Wireless Telecommunications Bureau

3798. AMENDMENT OF THE COMMISSION'S RULES CONCERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant
Legal Authority: 47 USC 154; 47 USC 303
CFR Citation: 47 CFR 80
Legal Deadline: None

Abstract: Amendment of the Maritime Radio Service Rules to encourage growth and improve the regulatory structure in VHF maritime communications.

Timetable:

Action	Date	FR Cite
NOI/NPRM	11/05/92	57 FR 57717
First R&O	04/26/95	60 FR 34198
FNPRM	04/26/95	60 FR 35507
Second FNPRM	06/17/97	62 FR 37533
Second R&O	06/17/97	62 FR 40281
Third R&O and MO&O	07/06/98	63 FR 40059
MO&O	04/26/99	64 FR 26885
Third NPRM	12/08/00	65 FR 76966
Fourth R&O	12/13/00	65 FR 77821
Fourth NPRM	02/04/02	67 FR 5080
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses
Government Levels Affected: Undetermined
Additional Information: PR Docket No. 92-257.
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RIN: 3060–AF14

3799. FUTURE DEVELOPMENT OF 800 MHZ SMR; COMPETITIVE BIDDING WIDE AREA

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.
Legal Authority: 47 USC 153; 47 USC 154(i); 47 USC 303; 47 USC 309(j); 47 USC 332
CFR Citation: 47 CFR 90
Legal Deadline: None

Abstract: This proceeding adopts service rules and competitive bidding rules for 800 MHz SMR spectrum. It also proposes licensing rules and auction procedures for lower 80 SMR and general category channels.

Timetable:

Action	Date	FR Cite
NPRM	05/13/93	58 FR 33062
FNPRM	10/20/94	59 FR 6011
Eighth R&O	02/16/96	61 FR 6138
First R&O	02/16/96	61 FR 6212
Second FNPRM	02/16/96	61 FR 6212
Second R&O	06/23/97	62 FR 41190
MO&O	06/23/97	62 FR 41225
MO&O on Recon	10/08/99	64 FR 71042
Second MO&O on Recon	07/14/00	65 FR 43716
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes
Small Entities Affected: Businesses, Governmental Jurisdictions
Government Levels Affected: State, Local
Additional Information: PR Docket No. 93-144; GEN Docket No. 93-252; PP Docket No. 93-253
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3800. RESALE AND ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.
Legal Authority: PL 103-66, sec 6002, Omnibus Budget Reconciliation Act of 1993
CFR Citation: 47 CFR 20; 47 CFR 22
Legal Deadline: None

Abstract: On an interim basis, the First Report and Order extends to broadband PCS and covered SMR providers the cellular rule that prohibits restricting resale of communications services. The new rules sunset five years after the last group of initial licensees for currently allocated broadband PCS spectrum is awarded. The rules also eliminate all exceptions to the rule that allowed cellular licensees to restrict resale by competing with fully operational cellular licensees in the same geographic market. The Commission successfully adopted a Second Report and Order and Third Notice of Proposed Rulemaking in this proceeding. The Second Report and Order extends the Commission's cellular rules on manual roaming by any individual whose handset is capable of accessing the network of a cellular, broadband PCS, or covered SMR provider. The Third NPRM, among other things, sought comment on whether the Commission should adopt rules requiring cellular, broadband PCS, and covered SMR

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providers to provide automatic roaming in their coverage areas, and whether both automatic and manual roaming requirements should sunset five years after the initial grant of PCS licenses. The Third MO.O generally affirmed the Commission's earlier decision to extend the cellular resale rule to include certain PCS and SMR providers and to sunset the rule until November 24, 2002. However, it modified the prior decision by removing customer premise equipment (CPE) and CPE in bundled packages from the scope of the resale rule, by revising the scope of the resale rule to exclude all C, D, E, and F block PCS licensees that do not own and control and are not controlled by cellular or A or B block licensees, and by exempting from the rule all SMR and other CMRS providers that do not utilize in-network switching facilities.

Timetable:

Action	Date	FR Cite
NPRM	07/13/94	59 FR 35664
NOI	07/13/94	59 FR 35664
NPRM Comment Period End	09/29/94	
NPRM	04/04/95	60 FR 20949
NPRM Comment Period End	07/14/95	
First R&O	07/12/96	61 FR 38399
Second R&O and Third NPRM	08/15/96	61 FR 44026
MO&O and O on Recon	11/09/99	64 FR 61022

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Federal

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RIN: 3060–AF58

3801. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; NARROWBAND PCS COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: Report and Order and FNPRM to modify the competitive bidding rules for participation by designated entities in narrowband PCS.

Timetable:

Action	Date	FR Cite
Third MO&O	08/16/94	59 FR 44058
R&O	04/23/97	62 FR 27507
FNPRM	04/23/97	62 FR 27569
Second R&O	06/06/00	65 FR 35843
Second FNPRM	06/06/00	65 FR 35875
Third R&O and Order on Reconsideration	06/04/01	66 FR 29911

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: GEN Docket No. 90-314; ET Docket No. 92-100; PP Docket No. 93-253

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RIN: 3060–AF99

3802. IMPLEMENTATION OF SECTION 309(J) OF THE COMMUNICATIONS ACT, COMPETITIVE BIDDING; 218-219 MHZ COMPETITIVE BIDDING RULES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 95

Legal Deadline: None

Abstract: Tenth Report and Order modifies the competitive bidding rules for the upcoming auction of 218-219 MHz: (1) eliminates bidding credits available to women- and minority-owned 218-219 MHz applicants; (2) extends two levels of bidding credits to small businesses based on a two-tiered small business definition; (3) clarifies the attribution rules for affiliates of 218-219 MHz applicants; and (4) increases the amount of the upfront payments required to participate in the 218-219 MHz auction.

Timetable:

Action	Date	FR Cite
R&O	04/25/94	59 FR 24947
FNPRM	08/06/96	61 FR 49103
R&O	11/15/96	61 FR 60198
FNPRM	09/30/98	63 FR 52215
MO&O	10/08/98	63 FR 54073
R&O and MO&O	11/03/99	64 FR 59656
Order on Reconsideration	12/29/99	64 FR 72956
Second Order on Reconsideration	02/07/01	66 FR 9212

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 98-169

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RIN: 3060–AG00

3803. 39 GHZ CHANNEL PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154; 47 USC 302; 47 USC 524

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amends the FCC's rules to facilitate more effective use of the 39 GHz band.

Timetable:

Action	Date	FR Cite
NPRM	01/26/96	61 FR 2465
NPRM Comment Period End	02/12/96	
Order	02/22/96	61 FR 6809
Reply Comments	02/27/96	
Order	05/01/96	61 FR 19236
Second NPRM	01/21/98	63 FR 3075
R&O	02/06/98	63 FR 6079
MO&O	08/23/99	64 FR 45891

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: ET Docket No. 95-183, RM-8553; PP Docket No. 93-253

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RIN: 3060–AG16

3804. IMPLEMENTATION OF 309(J) OF THE COMMUNICATIONS ACT, AMENDMENT OF PARTS 20 AND 24 OF THE COMMISSION'S RULES - BROADBAND PCS COMPETITIVE BIDDING AND THE COMMERCIAL MOBILE RADIO SERVICE SPECTRUM CAP

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 301; 47 USC 302; 47 USC 303(r); 47 USC 309(j); 47 USC 332

CFR Citation: 47 CFR 24

Legal Deadline: None

Abstract: NPRM to modify the competitive bidding rules for the Broadband PCS F Block. Report and Order, adopted 6/21/96, modified the PCS/cellular rule and the cellular spectrum cap.

Timetable:

Action	Date	FR Cite
O on Recon of Fifth MO&O and D, E, & F R&O	11/15/00	65 FR 68927

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: PP Docket No. 93-253

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RIN: 3060–AG21

3805. REVISION OF THE RULES TO ENSURE COMPATIBILITY WITH 911 EMERGENCY CALLING SYSTEMS

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 134(i); 47 USC 151; 47 USC 201; 47 USC 208; 47 USC 215; 47 USC 303; 47 USC 309

CFR Citation: 47 CFR 20

Legal Deadline: None

Abstract: In a series of orders in several related proceedings issued since 1996, the Federal Communications Commission has taken action to improve the quality and reliability of 911 emergency services for wireless phone users. Rules have been adopted governing the availability of basic 911 services and the implementation of enhanced 911 (E911) for wireless services. Most recently, the Commission issued a Further Notice of Proposed Rulemaking regarding call back capability of 911-only wireless phones.

Timetable:

Action	Date	FR Cite
R&O	07/26/96	61 FR 40348
FNPRM	07/26/96	61 FR 40374
MO&O	01/16/98	63 FR 2631
Second Report & Order	06/28/99	64 FR 34564
Third R&O	11/04/99	64 FR 60126
Second MO&O	12/29/99	64 FR 72951
Fourth Report & Order, Third NPRM, and NPRM	09/19/00	65 FR 56752
Fourth MO&O	10/02/00	65 FR 58657
FNPRM	06/13/01	66 FR 31878
Order	11/02/01	66 FR 55618

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: CC Docket No. 94-102; CC Docket No. 96-115; CC Docket No. 92-105; WT Docket No. 00-110

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RIN: 3060–AG34

3806. IN THE MATTER OF THE COMMUNICATIONS ASSISTANCE FOR LAW ENFORCEMENT ACT

Priority: Other Significant. Major under 5 USC 801.

Legal Authority: 47 USC 229; 47 USC 1001 to 1008

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: All of the decisions in this proceeding thus far are aimed at implementation of provisions of the Communications Assistance for Law Enforcement Act.

Timetable:

Action	Date	FR Cite
NPRM	10/10/97	62 FR 63302
Order	01/13/98	63 FR 1943
FNPRM	11/16/98	63 FR 63639
Report & Order	01/29/99	64 FR 51462
Order	03/29/99	64 FR 14834
Second Report & Order	09/23/99	64 FR 51462
Third Report & Order	09/24/99	64 FR 51710
Order on Recon	09/28/99	64 FR 52244
Policy Statement	10/12/99	64 FR 55164
Second Order on Recon	05/04/01	66 FR 22446

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: CC Docket No. 97-213

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RIN: 3060–AG74

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3807. DEVELOPMENT OF OPERATIONAL, TECHNICAL, AND SPECTRUM REQUIREMENTS FOR PUBLIC SAFETY COMMUNICATIONS REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 303; 47 USC 337(a); 47 USC 403

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: This item takes steps toward developing a flexible regulatory framework to meet vital current and future public safety communications needs.

Timetable:

Action	Date	FR Cite
NPRM	10/09/97	62 FR 60199
Second NPRM	11/07/97	62 FR 60199
First R&O	08/06/98	63 FR 58645
Third NPRM	08/06/98	63 FR 58685
MO&O	04/26/99	64 FR 60123
Second R&O	08/08/00	65 FR 48393
Fourth NPRM	08/25/00	65 FR 51788
Second MO&O	09/05/00	65 FR 53641
Third R&O	11/07/00	65 FR 66644
Third MO&O	11/07/00	65 FR 66644
Fourth R&O	02/16/01	66 FR 10632
Fifth NPRM	02/16/01	66 FR 10660
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: WT Docket No. 96-86

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RIN: 3060–AG85

3808. MULTIPLE ACCESS SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: This proceeding amended the FCC's rules regarding multiple address systems (MAS) in the microwave service. It streamlined regulations and established a framework for MAS spectrum that provides opportunities for continued development of competitive service offerings by allowing a variety of services.

Timetable:

Action	Date	FR Cite
NPRM	01/19/97	62 FR 11407
Order	09/17/98	63 FR 53350
FNPRM	05/18/99	64 FR 38617
R&O	04/03/00	65 FR 17445
MO&O	07/03/01	66 FR 35107
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 97-81

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RIN: 3060–AG86

3809. AMENDMENT OF PART I OF THE COMMISSION'S RULES — COMPETITIVE BIDDING PROCEDURES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 202; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 21; 47 CFR 24; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: This proceeding proposes to amend and modify the competitive bidding rules for all auctionable services.

Timetable:

Action	Date	FR Cite
NPRM	03/21/97	62 FR 13570
NPRM Comment Period End	04/16/97	
Second FNPRM	01/07/98	63 FR 770
Third R&O	01/15/98	63 FR 2315
Fifth R&O, Order on Recon	08/29/00	65 FR 52323
Fourth FNPRM	08/29/00	65 FR 52401
Seventh R&O	10/29/01	66 FR 54447
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 97-82

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RIN: 3060–AG87

3810. AMENDMENT OF PART 90 OF THE RULES TO ADOPT REGULATIONS FOR AUTOMATIC VEHICLE MONITORING SYSTEMS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 251; 47 USC 252; 47 USC 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 90

Legal Deadline: None

Abstract: This Second Report and Order adopts rules and procedures governing competitive bidding for multilateration Location and Monitoring Service (LMS) frequencies.

Timetable:

Action	Date	FR Cite
NPRM	10/06/97	62 FR 52078
NPRM Comment Period End	11/20/97	
Second R&O	07/30/98	63 FR 40659
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The NPRM sought comment on the LMS auction following the general competitive bidding procedures of Part 1, Subpart Q; the establishment of a small business definition for LMS; whether small business provisions are sufficient to promote participation by businesses owned by minorities, women or rural telephone companies; partitioning and disaggregation.

PR Docket No. 93-61

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RIN: 3060–AH12

3811. SERVICE RULES FOR THE 746-764 AND 776-794 MHZ BANDS, AND REVISIONS TO PART 27 OF THE COMMISSION'S RULES

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 1; 47 USC 4(i); 47 USC 7; 47 USC 10; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 307; 47 USC 308; 47 USC 309(j); 47 USC 309(k); 47 USC 310; 47 USC 311; 47 USC 315; 47 USC 317; 47 USC 324; 47 USC 331; 47 USC 332; 47 USC 336

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Report and Order in this proceeding adopts service rules for licensing and auction of commercial services in spectrum in the 700 MHz band to be vacated by UHF television licensees.

Timetable:

Action	Date	FR Cite
NPRM	07/07/99	64 FR 36686
R&O	01/20/00	65 FR 3139
Second R&O	04/04/00	65 FR 17594
MO&O and FNPRM	07/12/00	65 FR 42879
Second MO&O	02/06/01	66 FR 9035
Third R&O	02/14/01	66 FR 10204
Second MO&O	02/15/01	66 FR 10374
Order on Recon of Third R&O	10/10/01	66 FR 51594
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: WT Docket No. 99-168; CS Docket No. 98-120; MM Docket No. 00-39

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RIN: 3060–AH32

3812. IMPLEMENTATION OF SECTIONS 309(J) AND 337 OF THE COMMUNICATIONS ACT OF 1934 AS AMENDED

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154(i); 47 USC 303(r); 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 22; 47 CFR 24; 47 CFR 26; 47 CFR 27; 47 CFR 73; 47 CFR 74; 47 CFR 80; 47 CFR 87

Legal Deadline: None

Abstract: This NPRM commences a proceeding to implement 309(j) and 337 of the Communications Act, as amended by the Balanced Budget Act of 1997, which was signed into law on 8/5/97. This notice seeks comment on changes to the Commission's rules and policies to implement the revised auction authority.

Timetable:

Action	Date	FR Cite
NPRM	05/03/99	64 FR 23571
R&O	01/02/01	66 FR 33
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: State, Local

Additional Information: WT Docket No. 99-87

Agency Contact: Gary D. Michaels, Chief, Legal Branch, Auctions and Industry Analysis Division, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AH33

3813. 1998 BIENNIAL REGULATORY REVIEW — SPECTRUM AGGREGATION LIMITS FOR WIRELESS TELECOMMUNICATIONS CARRIERS

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 161; 47 USC 332

CFR Citation: 20 CFR 20; 22 CFR 942

Legal Deadline: None

Abstract: The Commission is re-evaluating whether it should retain, modify, or repeal the spectrum aggregation limits and the cellular cross-interest rule in light of changes occurring in the wireless telecommunications market.

Timetable:

Action	Date	FR Cite
NPRM	12/10/98	63 FR 70727
R&O	10/07/99	64 FR 54564
MO&O on Recon	11/08/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 98-205

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RIN: 3060–AH34

3814. AMENDMENT TO PARTS 1, 2, 87 AND 101 OF THE RULES TO LICENSE FIXED SERVICES AT 24 GHZ

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154; 47 USC 303; 47 USC 309(j)

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 101

Legal Deadline: None

Abstract: This NPRM proposes licensing and service rules to govern the 24 GHz band generally.

Timetable:

Action	Date	FR Cite
NPRM	12/20/99	64 FR 71088

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Action	Date	FR Cite
R&O	08/05/00	65 FR 59350
Order	06/01/01	66 FR 29722

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Additional Information: WT Docket No. 99-327

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RIN: 3060–AH41

3815. PART 101 — TERRESTRIAL MICROWAVE FIXED RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 101

Legal Deadline: None

Abstract: Proceeding to streamline the Commission's rules, expedite processing of authorizations for terrestrial microwave fixed radio services and clarify rules concerning the terrestrial microwave fixed radio services.

Timetable:

Action	Date	FR Cite
NPRM	01/11/95	60 FR 2722
R&O	05/28/96	61 FR 26670
Order	03/05/98	63 FR 10778
Final Action Correction	03/24/98	63 FR 14039
NPRM	06/20/00	65 FR 38333
MO&O	06/20/00	65 FR 38324

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Additional Information: WT Docket No. 94-148 (closed); WT Docket No. 00-19

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RIN: 3060–AH42

3816. AMENDMENT OF PARTS 13 AND 80 GOVERNING MARITIME COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 302; 47 USC 303

CFR Citation: 47 CFR 13; 47 CFR 80

Legal Deadline: None

Abstract: This matter concerns the amendment of the rules governing maritime communications in order to consolidate, revise and streamline the regulations as well as address new international requirements and improve the operational ability of all users of marine radios.

Timetable:

Action	Date	FR Cite
NPRM	03/24/00	65 FR 21694
NPRM	08/17/00	65 FR 50173

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 00-48

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RIN: 3060–AH55

3817. AMENDMENT OF THE RULES REGARDING INSTALLMENT PAYMENT FINANCING FOR PERSONAL COMMUNICATIONS SERVICES LICENSEES

Priority: Substantive, Nonsignificant. Major under 5 USC 801.

Legal Authority: 47 USC 154; 47 USC 301 to 303; 47 USC 309; 47 USC 332

CFR Citation: 47 CFR 1; 47 CFR 24

Legal Deadline: None

Abstract: This proceeding proposes resumption of installment payments for broadband Personal Communications Services (PCS), e.g., for C and F Block, with payment deadline to be reinstated as of March 31, 1998. The proposal contemplates, inter alia, changes to the FCC's C Block rules to govern re-auction of surrendered spectrum in the C Block. The proposal was released on October 16, 1997, and published in the Federal Register.

Timetable:

Action	Date	FR Cite
2nd R&O	10/24/97	62 FR 55348
FNPRM	10/24/97	62 FR 55375
Order on Recon of Second R&O	04/08/98	63 FR 17111
Fourth R&O	09/23/98	63 FR 50791
Second Order on Recon of Second R&O	05/18/99	64 FR 26887
Recon of Fourth R&O	03/16/00	65 FR 14213
FNPRM	06/13/00	65 FR 37092
6th R&O and Order on Recon	09/05/00	65 FR 53620
Order on Recon	02/12/01	66 FR 9773

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: The Order on Reconsideration published in the Federal Register in April 1998 addresses 37 petitions, 17 oppositions, 16 replies to opposition, and 38 ex parte filings.

Additional RIN 3060-AG88.

WT Docket No. 97-82

Agency Contact: Audrey Bashkin, Staff Attorney, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
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Related RIN: Previously reported as 3060-AG88

RIN: 3060–AH57

3818. TRANSFER OF THE 3650 THROUGH 3700 MHZ BAND AND THE 4.9 GHZ BAND FROM FEDERAL GOVERNMENT USE

Priority: Economically Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 154; 47 USC 157; 47 USC 303; 47 USC 307; 47 USC 332

CFR Citation: 47 CFR 2.106; 47 CFR 25.202; 47 CFR 27.1; 47 CFR 27.4; 47 CFR 27.5; 47 CFR 27.14; 47 CFR 27.50; 47 CFR 27.53; 47 CFR 27.55; 47 CFR 27.57; 47 CFR 27.58; 47 CFR 27.61; ...

Legal Deadline: None

Abstract: This proceeding is intended to establish licensing and service rules for frequencies in the 3650 to 3700 MHz band, transferred from government use.

Timetable:

Action	Date	FR Cite
NPRM	03/16/00	65 FR 14230
First R&O and Second NPRM	11/17/00	65 FR 69612
Petition for Reconsideration	03/28/01	66 FR 16940

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions

Government Levels Affected: Federal

Additional Information: WT Docket No. 00-32; ET Docket No. 98-237

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RIN: 3060–AH75

3819. 2000 BIENNIAL REGULATORY REVIEW SPECTRUM AGGREGATION LIMITS FOR COMMERCIAL MOBILE RADIO SERVICES

Priority: Economically Significant. Major under 5 USC 801.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 20.6; 47 CFR 22.942

Legal Deadline: None

Abstract: The Commission has adopted a final rule in a proceeding reexamining the need for Commercial Mobile Radio Services spectrum aggregation limits.

Timetable:

Action	Date	FR Cite
NPRM	02/12/01	66 FR 9798
NPRM Comment Period End	05/14/01	
Final Rule	01/14/02	67 FR 1626
Correction to Final Rule	01/31/02	67 FR 4675

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 01-14

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RIN: 3060–AH81

3820. IN THE MATTER OF PROMOTING EFFICIENT USE OF SPECTRUM THROUGH ELIMINATION OF BARRIERS TO THE DEVELOPMENT OF SECONDARY MARKETS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151; 47 USC 154(i); 47 USC 157; 47 USC 160; 47 USC 201; 47 USC 202; 47 USC 208; 47 USC 214; 47 USC 301; 47 USC 303; 47 USC 308; 47 USC 309; 47 USC 310

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has opened a proceeding to examine actions it may take to remove unnecessary regulatory barriers to the development of more robust secondary markets in radio spectrum usage rights.

Timetable:

Action	Date	FR Cite
NPRM	12/26/00	65 FR 81475
NPRM Comment Period End	01/29/01	66 FR 8149
New NPRM Comment Period End	03/12/01	

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: WT Docket No. 00-230

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RIN: 3060–AH82

3821. IN THE MATTER OF AUTOMATIC AND MANUAL ROAMING OBLIGATIONS PERTAINING TO COMMERCIAL MOBILE RADIO SERVICES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151; 47 USC 152(n); 47 USC 154(i); 47 USC 154(j); 47 USC 201(b); 47 USC 251(a); 47 USC 253; 47 USC 303(r); 47 USC 332(c)(1)(B); 47 USC 309

CFR Citation: 47 CFR 20.12; 47 CFR 22.901

Legal Deadline: None

Abstract: This rulemaking considers whether the Commission should adopt an automatic roaming rule for Commercial Mobile Radio Services and sunset the current manual roaming requirement.

Timetable:

Action	Date	FR Cite
NPRM	11/01/00	65 FR 69891

Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

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Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Additional Information: WT Docket No. 00-193

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RIN: 3060–AH83

3822. AMENDMENT OF PART 90 FOR LICENSING LOW POWER OPERATIONS IN 450-470 MHZ BAND

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154; 47 USC 302; 47 USC 303; 47 USC 332

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: The proposed amendments facilitate the viability of low power operations in the private land mobile radio 450-470 MHz Band.

Timetable:

Action	Date	FR Cite
NPRM	07/24/01	66 FR 47435
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: WT Docket No. 01-146

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RIN: 3060–AH84

3823. • REALLOCATION OF THE 216-220 MHZ, 1390-1395 MHZ, 1427-1429 MHZ, 1429-1432 MHZ, 1432-1435 MHZ, 1670-1675 MHZ, AND 2385-2390 MHZ GOVERNMENT TRANSFER BANDS.

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 151, 154(i), 154(j), 155, 225, 303(r), 309, 325(e); 47 USC 154, 302(a), 303,336; 47 USC 154(i), 161, 303(g), 303(r), 332(c)(7); 47 USC 154, 303

CFR Citation: 47 CFR 1; 47 CFR 2; 47 CFR 27; 47 CFR 90; 47 CFR 95

Legal Deadline: None

Abstract: The reallocation proposes to establish new service rules for licensing 27 MHz of spectrum transferred from government to non-government use.

Timetable:

Action	Date	FR Cite
NPRM	02/15/02	67 FR 7113
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

Additional Information: WT Docket No. 02-08

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RIN: 3060–AH87

3824. • REVIEW OF QUIET ZONES APPLICATION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 1; 47 USC 154(i); 47 USC 161; 47 USC 303(g); 47 USC 303(r)

CFR Citation: 47 CFR 1

Legal Deadline: None

Abstract: Review of Quiet Zones rules for possible streamlining while ensuring adequate protection from interference.

Timetable:

Action	Date	FR Cite
NPRM	12/21/01	66 FR 65866
Action	Date	FR Cite
NPRM Comment Period End	02/06/02	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 3060–AH88

3825. • REALLOCATION AND SERVICE RULES FOR THE 698-746 MHZ SPECTRUM BAND (TELEVISION CHANNELS 52-59)

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 47 USC 151, 152, 154(i),155(c), 157, 201, 202, 208, 214, 301, 302(g), 303, 307; 47 USC 309, 310, 311, 314, 316, 319, 324, 331, 332, 333, 336, 534, 535

CFR Citation: 47 CFR 2; 47 CFR 27; 47 CFR 73

Legal Deadline: Other, Statutory, September 30, 2002, See 47 USC 309(j)()14)(c)(ii). Statutory deadline to auction recaptured broadcast spectrum.

Abstract: The Commission has adopted allocation and service rules for the 48 MHz of spectrum in the 698-746 MHz band currently occupied by television channels 52-59.

Timetable:

Action	Date	FR Cite
NPRM	03/28/01	66 FR 19106
Report & Order	01/18/02	67 FR 5491
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: GN Docket No. 01-74

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RIN: 3060–AH89

3826. • IMPLEMENTATION OF 911 ACT

Priority: Economically Significant

Legal Authority: 47 USC 151, 154(i),154(j), 157, 160, 210, 202, 208, 214, 251(e),301, 303, 308; 47 USC 309(j), 310

CFR Citation: 47 CFR 20.3; 47 CFR 20.18; 47 CFR 64.3000-3004

Legal Deadline: None

Abstract: This proceeding is separate from the Commission's proceeding on Enhanced 911 Emergency System in that it is intended to implement provisions of the Wireless Communications and Public Safety Act of 1999 through the promotion of public safety by the deployment of a seamless, nationwide emergency communications infrastructure that includes wireless communications services.

Timetable:

Action	Date	FR Cite
Final Rule	01/25/02	67 FR 3621
Next Action Undetermined		

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

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RIN: 3060–AH90

Federal Communications Commission (FCC) Completed Actions

Wireless Telecommunications Bureau

3827. REFARMING

Priority: Substantive, Nonsignificant

Legal Authority: 47 USC 154

CFR Citation: 47 CFR 90

Legal Deadline: None

Abstract: Replacement of part 90 by part 88 to revise private land mobile services and modify policies governing these services.

Timetable:

Action	Date	FR Cite
NPRM	11/16/92	57 FR 54034
R&O	07/19/95	60 FR 37152
MO&O	01/15/97	62 FR 2027
Second R&O	04/17/97	62 FR 18834
NPRM	11/27/98	63 FR 65568
Second MO&O	07/06/99	64 FR 36258
Third MO&O	09/16/99	64 FR 50257
Fourth MO&O	09/17/99	64 FR 50466
Fifth MO&O	02/05/01	66 FR 8899
Sixth MO&O	06/18/01	66 FR 32778

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: State, Local

Additional Information: PR Docket No. 92-235

Agency Contact: Michael Wilhelm, Federal Communications Commission, Wireless Telecommunications Bureau, 445 12th Street, SW., Washington, DC 20554
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RIN: 3060–AF35

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Federal Deposit Insurance Corporation

Semiannual Regulatory Agenda

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FEDERAL DEPOSIT INSURANCE CORPORATION (FDIC)

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Ch. III

Semiannual Agenda of Regulations

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is hereby publishing items for the Spring 2002 Unified Agenda of Regulatory and Deregulatory Actions. The agenda contains information about FDIC's current and projected rulemakings, existing regulations under review, and completed rulemakings.

FOR FURTHER INFORMATION CONTACT: Persons identified under regulations listed in the agenda. Unless otherwise noted, the address for all FDIC staff identified in the agenda is Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION: Twice each year, the FDIC publishes an agenda of regulations to inform the public of its regulatory actions and to enhance public participation in the rulemaking process. Publication of the agenda is in accordance with the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The FDIC amends its regulations under the general rulemaking authority prescribed in section 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819) and under specific authority granted by the Act and other statutes.

A number of the actions identified in this agenda have been developed to implement provisions of the Gramm-Leach-Bliley Act, or to implement other recent statutory mandates. Many of the FDIC's regulatory actions are coordinated with other Federal regulators of financial institutions, primarily the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRS), and the Office of Thrift Supervision (OTS). In some cases, the FDIC also coordinates with the National Credit Union Administration (NCUA).

Interested persons may petition the FDIC for the issuance, amendment, or repeal of any regulation by submitting a written petition to the Executive Secretary, Federal Deposit Insurance Corporation, Washington, DC 20429. Petitioners should include complete and concise statements of their interest in the subject matter and reasons why the petitions should be granted.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

Federal Deposit Insurance Corporation—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3828	12 CFR 327 Assessments—Assessment Base	3064-AB46

Federal Deposit Insurance Corporation—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3829	12 CFR 366 Contractor Conflict of Interest **(Section 610 Review)**	3064-AC29
3830	12 CFR 334 Fair Credit Reporting Act Regulations	3064-AC35
3831	12 CFR 313 Procedures for the Collection of Corporate Debt by Administrative Offset	3064-AC40
3832	Brokers and Dealers	3064-AC42
3833	12 CFR 330 Deposit Insurance Coverage	3064-AC43
3834	12 CFR 325 Simplified Capital Framework for Noncomplex Financial Institutions	3064-AC44
3835	12 CFR 303 Filing Procedures and Delegations of Authority	3064-AC51

Federal Deposit Insurance Corporation—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3836	12 CFR 342 Qualification Requirements for the Recommendation or Sale of Certain Securities	3064-AB85
3837	12 CFR 360 Payment of Post-Insolvency Interest in Receiverships With Surplus Funds	3064-AB92
3838	12 CFR 325 Risk-Based Capital Standards: Claims on Securities Firms	3064-AC17
3839	12 CFR 369 Prohibition Against Use of Interstate Branches Primarily For Deposit Production	3064-AC36
3840	12 CFR 325 Risk-Based Capital Guidelines: Market Risk Measure; Securities Borrowing Transactions	3064-AC46

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Federal Deposit Insurance Corporation—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3841	12 CFR 345 Community Reinvestment Act Regulations **(Section 610 Review)**	3064-AC50

Federal Deposit Insurance Corporation—Completed Actions

Sequence Number	Title	Regulation Identification Number
3842	12 CFR 308 Censure, Suspension, and Debarment of Independent Public Accountants	3064-AA64
3843	12 CFR 325 Capital Maintenance—Recourse Arrangements and Direct Credit Substitutes	3064-AB31
3844	12 CFR 325 Capital Maintenance—Collateralized Transactions	3064-AB78
3845	12 CFR 307 Notification of Assumption of Deposits and Change of Insured Status	3064-AB88
3846	12 CFR 328 Advertisement of Membership	3064-AB99
3847	12 CFR 325 Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance: Residual Interests in Asset Securitizations or Other Transfers of Financial Assets	3064-AC34
3848	12 CFR 325 Capital; Leverage and Risk-Based Capital Guidelines; Capital Adequacy Guidelines; Capital Maintenance; Nonfinancial Equity Investments	3064-AC47
3849	12 CFR 304 Technical Amendments to FDIC Regulations Relating to Forms, Instructions, and Reports	3064-AC52

Federal Deposit Insurance Corporation (FDIC) — Prerule Stage

3828. ASSESSMENTS—ASSESSMENT BASE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1441; 12 USC 1817 to 1819

CFR Citation: 12 CFR 327

Legal Deadline: None

Abstract: In 1994, the FDIC sought comment on a proposal to revise the assessment base used by insured institutions to determine the premium paid for deposit insurance. That initiative did not lead to a proposed rule. Instead, the FDIC plans to revisit the issue with a new ANPRM on alternative options for the deposit component of the assessment base and on options regarding the float deduction and use of average daily deposit balances.

Timetable:

Action	Date	FR Cite
ANPRM	10/05/94	59 FR 50710
ANPRM Comment Period End	02/02/95	
Second ANPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Steve Wagoner, Senior Assessment Specialist, Division of Finance, Federal Deposit Insurance Corporation
Phone: 202 416-7152

RIN: 3064–AB46

Federal Deposit Insurance Corporation (FDIC) — Proposed Rule Stage

3829. CONTRACTOR CONFLICT OF INTEREST (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819; 12 USC 1822(f)(3); 12 USC 1822(f)(4)

CFR Citation: 12 CFR 366

Legal Deadline: None

Abstract: This rulemaking clarifies that part 366 does not pertain to FDIC contractors who intend to purchase assets from the FDIC. Conflicts of interest regarding contractors who intend to purchase assets from the FDIC will be covered by an FDIC circular regarding the sale of assets to restricted contractors.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Donald Rosholt, Senior Ethics Program Specialist, Office of the Executive Secretary, Federal Deposit Insurance Corporation
Phone: 202 898-7287

RIN: 3064–AC29

3830. FAIR CREDIT REPORTING ACT REGULATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1681s; 12 USC 1819(a)(Tenth)

CFR Citation: 12 CFR 334

Legal Deadline: None

FDIC — Proposed Rule Stage

Abstract: Section 506 of the Gramm-Leach-Bliley Act requires bank regulators and FTC to publish FCRA regulations to implement the Fair Credit Reporting Act. Due to comments received from a joint notice of proposed rulemaking, dated October 20, 2000, it is anticipated that the agencies will issue a new proposed rulemaking for public comment.

Timetable:

Action	Date	FR Cite
NPRM	10/20/00	65 FR 63120
NPRM Comment Period End	12/04/00	
Second NPRM	08/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Deanna Caldwell, Senior Policy Analyst, Division of Compliance and Consumer Affairs, Federal Deposit Insurance Corporation
Phone: 202 942-3366

RIN: 3064–AC35

3831. PROCEDURES FOR THE COLLECTION OF CORPORATE DEBT BY ADMINISTRATIVE OFFSET

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819(a); 5 USC 5514; 31 USC 3711; 31 USC 3716

CFR Citation: 12 CFR 313

Legal Deadline: None

Abstract: This rulemaking establishes procedures for the collection of debts owed the FDIC. The rulemaking also implements the Debt Collection Improvement Act of 1996, which requires agencies to promulgate regulations on this subject. The regulation sets forth the procedures the FDIC would follow in collecting debts through salary offset, administrative offset, and tax refund offset.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Manuel Palau, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-8829

RIN: 3064–AC40

3832. BROKERS AND DEALERS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78a

CFR Citation: Not Yet Determined

Legal Deadline: Final, Statutory, May 12, 2001.

Abstract: This rulemaking implements section 204 of the Gramm-Leach-Bliley Act (GLBA), which requires the Federal banking agencies to establish recordkeeping requirements for banks relying on any of the broker-dealer exemptions listed in sections 201 and 202 of GLBA.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Keith Ligon, Chief, Policy Unit, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-3618

RIN: 3064–AC42

3833. DEPOSIT INSURANCE COVERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1813(l)

CFR Citation: 12 CFR 330

Legal Deadline: None

Abstract: This rulemaking establishes a uniform and streamlined appeals process for deposit insurance claims.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Richard Osterman, Assistant General Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 736-0617

RIN: 3064–AC43

3834. SIMPLIFIED CAPITAL FRAMEWORK FOR NONCOMPLEX FINANCIAL INSTITUTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a)

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This notice, sponsored jointly by the OCC, the FRS, the FDIC and OTS, advises the public that the Agencies are considering developing a regulatory capital framework tailored to the size, structure, complexity, and risk profile of domestic, noncomplex financial institutions. The Agencies are seeking comment on possible regulatory capital frameworks that may ease the burden on these financial institutions, such as a simplified risk-based or a modified leverage ratio framework.

Timetable:

Action	Date	FR Cite
ANPRM	11/03/00	65 FR 66193
ANPRM Comment Period End	02/01/01	
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Keith Ligon, Chief, Policy Unit, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-3618

RIN: 3064–AC44

3835. FILING PROCEDURES AND DELEGATIONS OF AUTHORITY

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 378

CFR Citation: 12 CFR 303

Legal Deadline: None

Abstract: This rulemaking eliminates the existing requirement that the FDIC's Board act on merger applications involving a combined market share above 35 percent; it also reflects certain required Gramm-Leach-Bliley changes and revisions to enforcement delegations as well as technical amendments to part 303.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Rae-Ann Miller, Assistant Director, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8523

RIN: 3064–AC51

Federal Deposit Insurance Corporation (FDIC) — Final Rule Stage

3836. QUALIFICATION REQUIREMENTS FOR THE RECOMMENDATION OR SALE OF CERTAIN SECURITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1818; 12 USC 1831

CFR Citation: 12 CFR 342

Legal Deadline: Final, Statutory, May 12, 2001, recordkeeping requirement.

Abstract: This proposal, sponsored jointly by the OCC, the FRS, and the FDIC, would establish qualifications for banks that sell certain securities to their customers without having to register as a broker under the Securities Exchange Act. FDIC staff are contemplating a recommendation to rescind this proposal and replace it with a second NPRM to exempt banks from registering with the NASD/SEC as securities brokers or dealers in the event that they qualify under any of the exemption criteria in Gramm-Leach-Bliley Act sections 201 or 202 (see NPRM described at 3064-AC42).

Timetable:

Action	Date	FR Cite
NPRM	12/30/96	61 FR 68824
NPRM Comment Period End	02/28/97	
Final Action	11/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Keith Ligon, Chief, Policy Unit, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-3618

RIN: 3064–AB85

3837. PAYMENT OF POST-INSOLVENCY INTEREST IN RECEIVERSHIPS WITH SURPLUS FUNDS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1821(d)(1); 12 USC 1821(d)(10)(C); 12 USC 1821(d)(11); 12 USC 1821(e)(1); 12 USC 1821(e)(8)(D)(i); 12 USC 1823(c)(4); 12 USC 1823(e)(2); PL 101-73; 103 Stat 357

CFR Citation: 12 CFR 360

Legal Deadline: None

Abstract: This rulemaking establishes uniform rules governing the payment and priority of postinsolvency interest in insured depository institution receiverships with surplus funds.

Timetable:

Action	Date	FR Cite
NPRM	12/18/01	66 FR 65144
NPRM Comment Period End	02/19/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Rodney D. Ray, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-3556

RIN: 3064–AB92

3838. RISK-BASED CAPITAL STANDARDS: CLAIMS ON SECURITIES FIRMS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; 12 USC 1835; 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819 (Tenth); 12 USC 1828(c)

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This rulemaking is sponsored jointly by the OCC, the FRS, the FDIC and OTS (the Agencies), and amends their respective risk-based capital standards for banks, bank holding companies, and savings associations with regard to the risk-weighting of claims on, and claims guaranteed by, qualifying securities firms. The rule reduces the risk weight applied to claims on, and claims guaranteed by, qualifying securities firms incorporated in countries that are members of the Organization for Economic Cooperation and Development (OECD) from 100 percent to 20 percent under the Agencies' risk-based capital rules.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76180
NPRM Comment Period End	01/22/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen G. Pfeifer, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8904

RIN: 3064–AC17

3839. PROHIBITION AGAINST USE OF INTERSTATE BRANCHES PRIMARILY FOR DEPOSIT PRODUCTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1819(Tenth); 12 USC 1835a

CFR Citation: 12 CFR 369

Legal Deadline: None

Abstract: The rulemaking implements section 106 of the Gramm-Leach-Bliley Act, which amends the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994, to provide that any branch of a bank controlled by an out-of-state bank holding company is considered to be an interstate branch for purposes of Riegle-Neal.

Timetable:

Action	Date	FR Cite
NPRM	04/09/01	66 FR 18411
NPRM Comment Period End	06/08/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Marc J. Goldstrom, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-8807

RIN: 3064–AC36

3840. RISK-BASED CAPITAL GUIDELINES: MARKET RISK MEASURE; SECURITIES BORROWING TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819(Tenth); 12 USC 1828(c); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; PL 102-233; 105 Stat 1761; 105 Stat 1789; 105 Stat 1790; PL 102-242; 105 Stat 2236; 105 Stat 2355; 105 Stat 2386

CFR Citation: 12 CFR 325

Legal Deadline: None

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FDIC — Final Rule Stage

Abstract: This rulemaking sponsored jointly by the OCC, the FRS and the FDIC, amends their market risk rules to revise the capital treatment for cash collateral that is posted in connection with certain securities borrowing transactions. The effect of the rule is to more appropriately align the capital requirements for these transactions with the risk involved and to provide a capital treatment for U.S. banking organizations that is more in line with the capital treatment applied to their domestic and foreign competitors.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/05/00	65 FR 75856
Interim Final Rule Effective	01/04/01	
Interim Final Rule Comment Period End	01/19/01	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen G. Pfeifer, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8904

RIN: 3064–AC46

Federal Deposit Insurance Corporation (FDIC) — Long-Term Actions

3841. COMMUNITY REINVESTMENT ACT REGULATIONS (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

CFR Citation: 12 CFR 345

Timetable:

Action	Date	FR Cite
ANPRM	07/19/01	66 FR 37602
ANPRM Comment Period End	10/17/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Deanna Caldwell
Phone: 202 942-3366

RIN: 3064–AC50

Federal Deposit Insurance Corporation (FDIC) — Completed Actions

3842. CENSURE, SUSPENSION, AND DEBARMENT OF INDEPENDENT PUBLIC ACCOUNTANTS

Priority: Substantive, Nonsignificant

Legal Authority: PL 102-242, sec 112

CFR Citation: 12 CFR 308

Legal Deadline: None

Abstract: This regulation implements section 36(g)(4) of the Federal Deposit Insurance Act (as amended by section 112 of FDICIA) and requires the FDIC, the OCC, the FRS, and the OTS, to develop joint rules of practice for the suspension, removal, or debarment of independent public accountants.

Timetable:

Action	Date	FR Cite
Withdrawn	03/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Doris L. Marsh, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8905

RIN: 3064–AA64

3843. CAPITAL MAINTENANCE—RECOURSE ARRANGEMENTS AND DIRECT CREDIT SUBSTITUTES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1816; 12 USC 1818(a); 12 USC 1819(Tenth); 12 USC 1828(d); 12 USC 1831o; 12 USC 3907; 12 USC 3909; 12 USC 1815(b); 12 USC 1818(b); 12 USC 1818(c); 12 USC 1818(t); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1835; 12 USC 4808; 12 USC 1828(c); PL 102-233; 105 Stat 1761; 105 Stat 1789; 105 Stat 1790; 105 Stat 2236

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: The interagency rulemaking revises risk-based capital standards by addressing the regulatory capital treatment of recourse obligations and direct credit substitutes that expose banks, bank holding companies, and thrifts to credit risk. The revision treats recourse obligations and direct credit substitutes more consistently than under the agencies' current risk-based capital standards. In addition, the revision allows the agencies to use credit ratings and certain alternative approaches to match the risk-based capital requirement more closely to a banking organization's relative risk of loss in asset securitizations. The rulemaking also requires the sponsor of a revolving credit securitization that involves an early amortization feature to hold capital against the amount of assets under management; i.e., the off balance sheet securitized receivables. The rulemaking is intended to result in more consistent treatment of recourse obligations and similar transactions among the agencies, more consistent risk-based capital treatment for certain types of transactions involving similar risk, and capital requirements that more closely reflect a banking organization's relative exposure to credit risk. This rulemaking and the rulemaking on residual interests (see 3064-AC34) are interrelated in that both address the regulatory capital treatment for residual interests in securitizations and other financial asset transfers. The agencies participating in these two rulemakings are ensuring that the treatment of residual interests will be consistent and may issue a single combined final rule rather than separate final rules.

FDIC — Completed Actions

Timetable:

Action	Date	FR Cite
Final Action	11/29/01	66 FR 59614
Final Action Effective	01/01/02	
Credit Ratings		
ANPRM 05/25/94 (59 FR 27116)		
Final Action 11/29/01 (66 FR 59614)		
Final Action Effective 01/01/02		
Recourse/Direct Credit Substitutes		
NPRM 05/25/94 (59 FR 27116)		
Second NPRM 03/08/00 (65 FR 12320)		
Second NPRM Comment Period End 06/07/00		
Final Action 11/29/01 (66 FR 59614)		
Final Action Effective 01/01/02		
Synthesis of Credit Ratings/Recourse/Direct Credit Substitutes		
NPRM 11/05/97 (62 FR 59944)		
Final Action 11/29/01 (66 FR 59614)		
Final Action Effective 01/01/02		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Robert F. Storch, Chief, Accounting Section, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8906

RIN: 3064–AB31

3844. CAPITAL MAINTENANCE—COLLATERALIZED TRANSACTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815; PL 102-233; PL 102-242; 12 USC 1816; 12 USC 1818; 12 USC 1819; 12 USC 1828; 12 USC 1831; 12 USC 3907; 12 USC 3909; 12 USC 4808

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This rule was developed in consultation with the OCC, the FRS, and the OTS (Agencies). It amends FDIC's risk-based capital standards to make the standards uniform with the Agencies' treatments for transactions supported by collateral. The effect of the proposal is to allow banks to hold less capital for certain transactions collateralized by cash or qualifying securities.

Timetable:

Action	Date	FR Cite
NPRM	08/16/96	61 FR 42565
NPRM Comment Period End	10/15/96	
Withdrawn	03/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen G. Pfeifer, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8904

RIN: 3064–AB78

3845. NOTIFICATION OF ASSUMPTION OF DEPOSITS AND CHANGE OF INSURED STATUS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1818; 12 USC 1819

CFR Citation: 12 CFR 307

Legal Deadline: None

Abstract: This rulemaking clarifies reporting and disclosure requirements already applicable to insured depository institutions. Due to comments received, a second NPRM on this subject will be issued rather than finalizing the rule proposed in May 1997.

Timetable:

Action	Date	FR Cite
NPRM	05/14/97	62 FR 26431
NPRM Comment Period End	07/14/97	
Withdrawn	03/14/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Rodney D. Ray, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-3556

RIN: 3064–AB88

3846. ADVERTISEMENT OF MEMBERSHIP

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1818; 12 USC 1819; 12 USC 1828

CFR Citation: 12 CFR 328

Legal Deadline: None

Abstract: This regulatory action consolidates provisions relating to display of official signs; extends the official advertising statement that is currently required for insured banks to all insured depository institutions; streamlines exceptions to the use of the statement; prohibits use of the statement in advertisements concerning nondeposit investment products; and delegates authority to approve translations of the statement to certain FDIC officials. In addition, this action solicits comment on issues relating to advertisement of membership in the FDIC over a computer network such as the Internet.

Timetable:

Action	Date	FR Cite
NPRM	02/11/97	62 FR 6142
NPRM Comment Period End	04/14/97	
Withdrawn	03/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marc J. Goldstrom, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-8807

RIN: 3064–AB99

3847. CAPITAL; LEVERAGE AND RISK-BASED CAPITAL GUIDELINES; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE: RESIDUAL INTERESTS IN ASSET SECURITIZATIONS OR OTHER TRANSFERS OF FINANCIAL ASSETS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819(Tenth); 12 USC 1828(c); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; 12 USC 1835; 12 USC 3907; 12 USC 3909; 12 USC 4808; PL 102-233; 105 Stat 1761; 105 Stat 1789

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This interagency rulemaking amends capital rules to restrict excessive concentrations in residual interests by limiting the amounts that are included in Tier 1 capital for both leverage and risk-based capital purposes. Residual interests in excess of this limitation would be deducted from Tier 1 capital. The rulemaking also requires that risk-based capital be held in an amount equal to the amount of residual interests that are within this limitation. This rulemaking and the rulemaking on recourse and direct credit substitutes (see 3064-AB31) are interrelated in that both address the

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regulatory capital treatment for residual interests in securitizations and other financial asset transfers. The agencies participating in these two rulemakings are ensuring that the treatment of residual interests will be consistent and may issue a single combined final rule rather than separate final rules.

Timetable:

Action	Date	FR Cite
NPRM	09/27/00	65 FR 57993
NPRM Comment Period End	12/26/00	
Final Action	11/29/01	66 FR 59614
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Keith Ligon, Chief, Policy Unit, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-3618

RIN: 3064–AC34

3848. CAPITAL; LEVERAGE AND RISK-BASED CAPITAL GUIDELINES; CAPITAL ADEQUACY GUIDELINES; CAPITAL MAINTENANCE; NONFINANCIAL EQUITY INVESTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1815(a); 12 USC 1815(b); 12 USC 1816; 12 USC 1818(a) to 1818(c); 12 USC 1818(t); 12 USC 1819(Tenth); 12 USC 1828(c); 12 USC 1828(d); 12 USC 1828(i); 12 USC 1828(n); 12 USC 1828(o); 12 USC 1831o; 12 USC 1835; 12 USC 3907; 12 USC 3909; 12 USC 4808; PL 102-233; 105 Stat 1761; 105 Stat 1789; PL 102-242; 105 Stat 2236

CFR Citation: 12 CFR 325

Legal Deadline: None

Abstract: This rulemaking, sponsored jointly by the OCC, the FRS and the FDIC, amends respective risk-based and leverage capital standards for banks and bank holding companies with respect to the capital treatment of nonfinancial equity investments. The rule would deduct from Tier 1 capital certain percentages of the adjusted carrying value of all nonfinancial equity investments.

Timetable:

Action	Date	FR Cite
NPRM	02/14/01	66 FR 10212
NPRM Comment Period End	04/16/01	
Final Action	01/25/02	67 FR 3784
Final Action Effective	04/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Stephen G. Pfeifer, Examination Specialist, Division of Supervision, Federal Deposit Insurance Corporation
Phone: 202 898-8904

RIN: 3064–AC47

3849. • TECHNICAL AMENDMENTS TO FDIC REGULATIONS RELATING TO FORMS, INSTRUCTIONS, AND REPORTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1817

CFR Citation: 12 CFR 304

Legal Deadline: None

Abstract: This rulemaking revises the FDIC regulation on forms, instructions and reports. The rulemaking also eliminates obsolete and incorrect references.

Timetable:

Action	Date	FR Cite
Final Action	04/17/02	67 FR 18793

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Philip Houle, Counsel, Legal Division, Federal Deposit Insurance Corporation
Phone: 202 898-3722

RIN: 3064–AC52

[FR Doc. 02–7695 Filed 05–10–02; 8:45 am]
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Federal Register

Monday,
May 13, 2002

Part LII

Federal Energy Regulatory Commission

Semiannual Regulatory Agenda

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FEDERAL ENERGY REGULATORY COMMISSION (FERC)

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Semiannual regulatory agenda.

SUMMARY: In accordance with guidance issued by the Office of Management and Budget (OMB), the Federal Energy Regulatory Commission voluntarily submits information about rulemakings under development. Of the 18 rulemakings listed, 11 are current or projected rulemakings, and 7 are completed actions.

DATES: The dates provided represent goals, not commitments, and may be revised due to shifts in workload, changes in priorities, or extensive public comments. See the various dates listed for each specific rulemaking.

ADDRESSES: Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Person listed for each specific rulemaking.

Magalie R. Salas,

Secretary.

Federal Energy Regulatory Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3850	Standards For Business Practices Of Interstate Natural Gas Pipelines	1902-AC22

Federal Energy Regulatory Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3851	Standards of Conduct for Transmission Providers	1902-AC07
3852	Electronic Service of Documents	1902-AC08
3853	Electronic Filing of Documents	1902-AC09
3854	Guidance for Filings in the Interim	1902-AC11
3855	Standards For Business Practices of Interstate Natural Gas Pipelines	1902-AC13
3856	Accounting and Reporting of Financial Instruments, Comprehensive Income, Derivatives and Hedging Activities	1902-AC14
3857	Standardizing Generator Interconnection Agreements and Procedures	1902-AC15
3858	Revised Public Utility Filing Requirements	1902-AC16
3859	Electricity Market Design and Structure	1902-AC18
3860	Electronic Filings	1902-AC19

Federal Energy Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3861	Electronic Filing of FERC Form Nos. 423, 714 and 715	1902-AB93
3862	Amendments to Rules Governing Off-the-Record Communications	1902-AC10
3863	Natural Gas Pipeline; Project Cost and Annual Limits	1902-AC12
3864	Policy on Certificates of Public Convenience and Necessity for Gas Transmission Facilities in the Offshore Southern Louisiana Area	1902-AC17
3865	Annual Update of Filing Fees	1902-AC20
3866	Update of the Federal Energy Regulatory Commission's Fees Schedule for Annual Charges for the Use of Government Lands	1902-AC21

Federal Energy Regulatory Commission—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
1902-AB57	Treatment of Responses to FERC Form No. 580 Interrogatories	03/15/2002	Withdrawn

Federal Energy Regulatory Commission (FERC) — Final Rule Stage

3850. • STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7532; 43 USC 1331 to 1356

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission amended its regulations governing standards for interstate pipeline business operations and communications to require that pipelines permit releasing shippers to recall released capacity and renominate such recalled capacity at each nomination opportunity. (Docket No. RM96-1-019.)

Timetable:

Action	Date	FR Cite
NPRM	10/19/01	66 FR 53134
NPRM Comment Period End	11/19/01	
Final Rule	03/18/02	67 FR 11906
Final Rule Effective	04/17/02	
Order on Rehearing	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Goldenberg, Attorney Advisor, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426
Phone: 202 208-2294

RIN: 1902–AC22

Federal Energy Regulatory Commission (FERC) — Long-Term Actions

3851. STANDARDS OF CONDUCT FOR TRANSMISSION PROVIDERS

Priority: Other Significant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3423; 16 USC 791 to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 37; 18 CFR 161; 18 CFR 250; 18 CFR 358

Legal Deadline: None

Abstract: The Commission is considering whether to promulgate new standards of conduct regulations that would apply uniformly to natural gas pipelines and public utilities that are currently subject to the gas standards of conduct of 18 CFR part 161 and the electric standards of conduct at 18 CFR part 37. (Docket No. RM01-10-000.)

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50919
NPRM Comment Period End	12/20/01	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Demetra E. Anas, Attorney, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 208-0178
Fax: 202 208-0057

RIN: 1902–AC07

3852. ELECTRONIC SERVICE OF DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: Other, Statutory, October 21, 2003, Government Paperwork Elimination Act.

Abstract: The Commission is considering whether to amend its regulations to provide for electronic service of Commission issuances. This would provide participants in Commission proceedings with faster, more efficient notice of orders and other documents. (Docket No. RM01-11-000.)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	10/04/01	66 FR 50591
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Wilbur Miller, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 208-0953
Email: wilbur.miller@ferc.fed.us

RIN: 1902–AC08

3853. ELECTRONIC FILING OF DOCUMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717z; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 49 USC 60502; 49 USC app 1 to 85 (1988)

CFR Citation: 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003, Government Paperwork Elimination Act.

Abstract: The Commission has issued a rulemaking to begin implementing electronic filing of documents via the Internet, in lieu of paper filings. At this time, only specified categories of documents are being accepted, but these categories will be expanded gradually over time, in some cases by further rulemakings. Ultimately, paper filings by regulated entities will be eliminated, with limited exceptions. (Docket No. RM00-12-000.)

Timetable:

Action	Date	FR Cite
Final Rule	09/21/00	65 FR 57088
Final Rule Effective	11/01/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Local, Tribal, Federal

Agency Contact: Wilbur Miller, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426

Phone: 202 208-0953
Email: wilbur.miller@ferc.fed.us

RIN: 1902–AC09

3854. • GUIDANCE FOR FILINGS IN THE INTERIM

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: 18 CFR 388

Legal Deadline: None

Abstract: The Commission is considering whether to revise its rules to address public availability of critical energy infrastructure information. (Docket No. RM02-4-000.)

Timetable:

Action	Date	FR Cite
Notice of Inquiry	01/23/02	67 FR 3129
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Undetermined

Agency Contact: Carol C. Johnson, Staff Attorney, Federal Energy Regulatory Commission, Office of the General Counsel, Washington, DC 20426
Phone: 202 208-0457
Email: carol.johnson@ferc.gov

RIN: 1902–AC11

3855. • STANDARDS FOR BUSINESS PRACTICES OF INTERSTATE NATURAL GAS PIPELINES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7532; 43 USC 1331 to 1356

CFR Citation: 18 CFR 284

Legal Deadline: None

Abstract: The Commission proposes to amend section 284.12 of its regulations governing standards for conducting business practices with interstate natural gas pipelines. (Docket No. RM96-1-020.)

Timetable:

Action	Date	FR Cite
NPRM	01/02/02	67 FR 44
NPRM Comment Period End	02/01/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Goldenberg, Attorney Advisor, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE., Washington, DC 20426
Phone: 202 208-2294

RIN: 1902–AC13

3856. • ACCOUNTING AND REPORTING OF FINANCIAL INSTRUMENTS, COMPREHENSIVE INCOME, DERIVATIVES AND HEDGING ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 42 USC 7651 to 7651o; 49 USC 60502; 49 app. USC 1 to 85 (1988)

CFR Citation: 18 CFR 101; 18 CFR 201; 18 CFR 352

Legal Deadline: None

Abstract: The Commission proposes to revise its regulations to update the accounting and reporting requirements under its Uniform Systems of Accounts for jurisdictional public utilities, natural gas companies and oil pipelines. (Docket No. RM02-3-000.)

Timetable:

Action	Date	FR Cite
NPRM	01/08/02	67 FR 1026
NPRM Comment Period End	03/11/02	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Julia A. Lake, General Attorney, Office of the General Counsel, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 208-2019

RIN: 1902–AC14

3857. • STANDARDIZING GENERATOR INTERCONNECTION AGREEMENTS AND PROCEDURES

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 35

Legal Deadline: None

Abstract: The Commission is seeking comments on a standard generator interconnection agreement and procedures. (Docket No. RM02-1-000.)

Timetable:

Action	Date	FR Cite
ANPRM	11/01/01	66 FR 55140
Extension of Time	12/21/01	66 FR 65858
Extension of Time	01/25/02	67 FR 3632
ANPRM Comment Period End	02/01/02	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Patrick G. Rooney, Federal Energy Regulatory Commission, Office of Markets, Tariffs and Rates, 888 First Street NE., Washington, DC 20426
Phone: 202 501-5546

RIN: 1902–AC15

3858. • REVISED PUBLIC UTILITY FILING REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 601; 15 USC 717 to 717w; 15 USC 3301 to 3342; 16 USC 791a to 825y; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352

CFR Citation: 18 CFR 2.8; 18 CFR 35.1; 18 CFR 35.10a; 18 CFR 35.10b; 18 CFR 37.6

Legal Deadline: None

Abstract: The Commission proposes to eliminate service agreements for market-based sales of electric energy and for certain transmission services, and quarterly transaction reports on short-term sales and purchases of electric energy. In their place, the Commission would require that an Index of Customers and transaction reports be filed and also posted on company websites. (Docket No. RM01-8-000.)

Timetable:

Action	Date	FR Cite
NPRM	08/06/01	66 FR 40929
NPRM Comment Period End	10/05/01	
Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: H. Keith Pierce, Market Tariffs and Rates, Federal Energy Regulatory Commission, 888 First Street NE, Washington, DC 20426
Phone: 202 208-0525

RIN: 1902–AC16

3859. • ELECTRICITY MARKET DESIGN AND STRUCTURE

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission is proposing to reform public utilities' open access tariffs to reflect a standardized wholesale market design and to enhance competition in wholesale electric markets and broaden the benefits and cost savings to all wholesale and retail customers. (Docket No. RM01-12-000.)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Alice Fernandez, Federal Energy Regulatory Commission, Office of Markets Tariffs and Rates, Washington, DC 20426
Phone: 202 208-0089

RIN: 1902–AC18

3860. • ELECTRONIC FILINGS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: OMB Circular A-130

CFR Citation: 18 CFR 131; 18 CFR 154; 18 CFR 157; 18 CFR 35; 18 CFR 250; 18 CFR 330; 18 CFR 341; 18 CFR 342; 18 CFR 344; 18 CFR 346; 18 CFR 348; 18 CFR 385

Legal Deadline: Other, Statutory, October 21, 2003, Government Paperwork Elimination Act.

Abstract: The Commission is considering making the electronic filing format of gas, electric, and oil tariffs mandatory. (Docket No. RM01-5-000.)

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Barbara Bourque, Federal Energy Regulatory Commission, Office of Markets Tariffs and Rates, Washington, DC 20426
Phone: 202 208-2338

RIN: 1902–AC19

Federal Energy Regulatory Commission (FERC) — Completed Actions

3861. ELECTRONIC FILING OF FERC FORM NOS. 423, 714 AND 715

Priority: Substantive, Nonsignificant

CFR Citation: 18 CFR 141.51; 18 CFR 141.61; 18 CFR 141.300; 18 CFR 385.2011

Completed:

Reason	Date	FR Cite
Final Rule	12/28/01	66 FR 67076
Final Rule Effective	01/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Patricia Morris
Phone: 202 208-6990

RIN: 1902–AB93

3862. • AMENDMENTS TO RULES GOVERNING OFF-THE-RECORD COMMUNICATIONS

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 551 to 557; 15 USC 717 to 717z; 15 USC 3301 to 3432; 16 USC 791a to 825r; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 49 USC 60502; 49 app USC 1 to 85 (1988)

CFR Citation: 18 CFR 385

Legal Deadline: None

Abstract: The Commission revised its regulations governing off-the-record communications. (Docket No. RM02-5-000.)

Timetable:

Action	Date	FR Cite
Final Rule	12/31/01	66 FR 67480
Final Rule Effective	12/31/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Moira Notargiacomo, Attorney Advisor, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE, Washington, DC 20426
Phone: 202 208-1079

RIN: 1902–AC10

3863. • NATURAL GAS PIPELINE; PROJECT COST AND ANNUAL LIMITS

Priority: Routine and Frequent

Legal Authority: 15 USC 717 to 717w; 15 USC 3301 to 3432; 42 USC 7101 to 7352

CFR Citation: 18 CFR 157

Legal Deadline: None

Abstract: The Commission computed and published the project cost and annual limits for natural gas pipelines. (Docket No. RM81-19-000.)

Timetable:

Action	Date	FR Cite
Final Rule Effective	01/01/02	
Final Rule	02/11/02	67 FR 6167

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael J. McGehee, Regulatory Gas Utility Specialist, Federal Energy Regulatory Commission, Division of Pipeline Certificates, 888 First Street NE, Washington, DC 20426
Phone: 202 208-2257

RIN: 1902–AC12

3864. • POLICY ON CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY FOR GAS TRANSMISSION FACILITIES IN THE OFFSHORE SOUTHERN LOUISIANA AREA

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 601; 15 USC 717 to 717w; 15 USC 3301 to 3432; 16 USC 792 to 825y; 16 USC 2601 to 2645; 42 USC 4321 to 4361; 42 USC 7101 to 7352

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FERC — Completed Actions

CFR Citation: 18 CFR 2.65

Legal Deadline: None

Abstract: The Commission removed from its regulations the general statement of policy with respect to the issuance of certificates of public convenience and necessity for the construction and operation of pipeline transmission facilities in the Louisiana Offshore area. The Commission announced a new policy with respect to pipeline constructions in the offshore Louisiana area in ANR Pipeline Company in 1997. Since the old policy has changed, the Commission removed it from the regulations. (Docket No. RM01-7-000.)

Timetable:

Action	Date	FR Cite
Final Rule Effective	03/13/02	
Final Rule	03/19/02	67 FR 12468

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Cecilia Desmond, Attorney Advisor, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street NE., Washington, DC 20426
Phone: 202 208-2280

RIN: 1902–AC17

3865. • ANNUAL UPDATE OF FILING FEES

Priority: Routine and Frequent

Legal Authority: 15 USC 717 to 717w; 16 USC 791 to 828c; 16 USC 2601 to 2645; 31 USC 9701; 42 USC 7101 to 7352; 49 USC 60502; 49 app USC 1 to 85 (1988)

CFR Citation: 18 CFR 381

Legal Deadline: None

Abstract: The Commission issued an update of its filing fees. The update adjusts the fees on the basis of the Commission's costs for Fiscal Year 2000. (Docket No. RM02-6-000.)

Timetable:

Action	Date	FR Cite
Final Rule	12/05/01	66 FR 63162
Final Rule Effective	01/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Troy Cole, Federal Energy Regulatory Commission, Office of the Executive Director, 888 First Street, N.E., Washington, DC 20426
Phone: 202 219-2970

RIN: 1902–AC20

3866. • UPDATE OF THE FEDERAL ENERGY REGULATORY COMMISSION'S FEES SCHEDULE FOR ANNUAL CHARGES FOR THE USE OF GOVERNMENT LANDS

Priority: Routine and Frequent

Legal Authority: 16 USC 791a to 825r; 42 USC 7101 to 7352

CFR Citation: 18 CFR 11

Legal Deadline: None

Abstract: The Commission updated its schedule of fees for the use of government lands. (Docket No. RM02-2-000.)

Timetable:

Action	Date	FR Cite
Final Rule Effective	10/01/01	66 FR 59361
Final Rule	11/28/01	66 FR 59361

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Fannie Kingsberry, Federal Energy Regulatory Commission, Financial Services Division, 888 First Street NE., Washington, DC 20426
Phone: 202 219-2885

RIN: 1902–AC21

[FR Doc. 02–7696 Filed 05–10–02; 8:45 am]
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Monday,
May 13, 2002

Part LIII

Federal Housing Finance Board

Semiannual Regulatory Agenda

FEDERAL HOUSING FINANCE BOARD (FHFB)

FEDERAL HOUSING FINANCE BOARD

12 CFR Ch. IX

Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Federal Housing Finance Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Federal Housing Finance Board (Finance Board) hereby publishes items for the Unified Agenda of Federal Regulatory and Deregulatory Actions, as required by section 4 of Executive Order 12866. These items reflect the status of the regulatory agenda of the Finance Board as of March 12, 2002. The Finance Board is an independent agency in the executive branch of the Government that is charged by statute with supervising and regulating the Nation's Federal Home Loan Bank (Bank) System and the Financing Corporation (FICO). The Bank System comprises 12 regional Federal Home Loan Banks that are each owned by their member financial institutions and that provide wholesale credit to members and certain nonmembers to be used for mortgage lending and related community lending activities. The Bank System also includes the Office of Finance, which issues Bank System consolidated obligations. FICO is a corporate entity separate from the Bank System that oversees outstanding debt issued to assist in resolving the savings and loan crisis of the 1980s. The Finance Board has an ongoing need to adopt various regulations dealing with the agency's internal administration and with Bank System and FICO issues.

ADDRESSES: Secretary to the Board, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, (202) 408-2837.

FOR FURTHER INFORMATION CONTACT: Mary H. Gottlieb, Office of General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006, (202) 408-2826; e-mail: gottliebm@fhfb.gov.

By the Federal Housing Finance Board.

James L. Bothwell,

Managing Director.

Federal Housing Finance Board—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3867	Definition of "Non-Mortgage Assets"	3069-AB10

Federal Housing Finance Board—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3868	Amendments to Privacy Act Regulation	3069-AB07
3869	Federal Home Loan Bank Securities Offerings	3069-AB08
3870	Multiple Bank Membership	3069-AB09

Federal Housing Finance Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
3871	Rules of Practice and Procedures	3069-AB03
3872	Unsecured Credit Limits	3069-AB11
3873	Technical Corrections Related to Regulatory Reorganization	3069-AB12
3874	Affordable Housing Program Amendments	3069-AB14
3875	Office of Finance Board of Directors Meetings	3069-AB15

Federal Housing Finance Board—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3069-AB13	Amendment of Housing Associate Regulation	02/04/2002	Withdrawn From Consideration

Federal Housing Finance Board (FHFB) — Proposed Rule Stage

3867. DEFINITION OF "NON-MORTGAGE ASSETS"

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1422b(a); 12 USC 1426(a)

CFR Citation: 12 CFR 966.3

Legal Deadline: None

Abstract: The Finance Board has published a proposed rule to redefine "non-mortgage assets" for purposes of calculating the appropriate assets-to-capital leverage limit that applies to each Bank, pending the Bank's compliance with the new capital regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10337
NPRM Comment Period End	04/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley, Deputy General Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2990
Fax: 202 408-2580
Email: crowleyn@fhfb.gov

RIN: 3069–AB10

Federal Housing Finance Board (FHFB) — Long-Term Actions

3868. AMENDMENTS TO PRIVACY ACT REGULATION

Priority: Info./Admin./Other

CFR Citation: 12 CFR 913

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Janice A. Kaye
Phone: 202 408-2505
Fax: 202 408-2580
Email: kayej@fhfb.gov

RIN: 3069–AB07

3869. FEDERAL HOME LOAN BANK SECURITIES OFFERINGS

Priority: Other Significant

CFR Citation: 12 CFR 990

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley
Phone: 202 408-2990
Fax: 202 408-2580
Email: crowleyn@fhfb.gov

RIN: 3069–AB08

3870. MULTIPLE BANK MEMBERSHIP

Priority: Other Significant

CFR Citation: 12 CFR 925

Timetable:

Action	Date	FR Cite
Multiple Bank Membership Solicitation of Comments	10/03/01	66 FR 50366
Extension of Comment Period	12/04/01	66 FR 63007
Solicitation of Comments Period End	03/04/02	

Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Neil R. Crowley
Phone: 202 408-2990
Fax: 202 408-2580
Email: crowleyn@fhfb.gov

RIN: 3069–AB09

Federal Housing Finance Board (FHFB) — Completed Actions

3871. RULES OF PRACTICE AND PROCEDURES

Priority: Other Significant

Legal Authority: 12 USC 1422b(a)(1); 12 USC 1422b(a)(5); 12 USC 4631(c); 12 USC 4631(f); 12 USC 1818(b)6 to 7; 12 USC 1422b(a)(2)

CFR Citation: 12 CFR 907; 12 CFR 908

Legal Deadline: None

Abstract: The Finance Board published final Rules of Practice and Procedure to implement enforcement powers conferred on the agency by the Federal Home Loan Bank System Modernization Act of 1999.

Timetable:

Action	Date	FR Cite
NPRM	12/18/00	65 FR 78994
NPRM Comment Period End	01/17/01	
Final Action	03/05/02	67 FR 9897
Final Action Effective	04/04/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Charlotte A. Reid, Special Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2510
Fax: 202 408-2580
Email: reidc@fhfb.gov

RIN: 3069–AB03

3872. UNSECURED CREDIT LIMITS

Priority: Other Significant

Legal Authority: 12 USC 1422b(a), 12 USC 1422(a)(3); 12 USC 1426; 12 USC 1440

CFR Citation: 12 CFR 932.9

Legal Deadline: None

Abstract: The Finance Board amended the unsecured credit provisions of the capital rule to require FHLBanks to base unsecured credit limits on the long-term credit rating of a

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counterparty, change the amount of unsecured credit that a FHLBank can extend to a Government-sponsored enterprise, and adjust the limits on overnight Federal funds transactions and on the amount of unsecured credit that can be extended to groups of affiliated counterparties. The amendments also clarified how an FHLBank calculates its credit exposure from on- and off-balance sheet items and derivative contracts, and made other clarifying and technical changes to the rule.

Timetable:

Action	Date	FR Cite
NPRM	03/07/01	66 FR 13688
NPRM Comment Period End	04/23/01	
NPRM	08/08/01	66 FR 41474
NPRM Comment Period End	09/07/01	
Final Action	12/27/01	66 FR 66718
Final Action Effective	03/27/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Thomas E. Joseph, Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2512
Fax: 202 408-2580
Email: josepht@fhfb.gov

RIN: 3069–AB11

3873. TECHNICAL CORRECTIONS RELATED TO REGULATORY REORGANIZATION

Priority: Info./Admin./Other

Legal Authority: 12 USC 1422b(a)

CFR Citation: 12 CFR ch IX

Legal Deadline: None

Abstract: In 2000, the Finance Board issued a final rule to reorganize and renumber its regulations. Because of the complexity of this rulemaking, several technical mistakes were made and several needed changes were overlooked. The Finance Board has issued a final rule making necessary technical corrections arising from the reorganization.

Timetable:

Action	Date	FR Cite
Final Rule	03/20/02	67 FR 12841
Final Rule Effective Date	03/20/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary H. Gottlieb, Federal Housing Finance Board, Office of General Counsel, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2826
Fax: 202 408-2580

RIN: 3069–AB12

3874. • AFFORDABLE HOUSING PROGRAM AMENDMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1430j

CFR Citation: 12 CFR 951

Legal Deadline: None

Abstract: The Finance Board has issued a final rule amending its regulations governing the operation of the Affordable Housing Program to improve its operation and effectiveness.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66813
NPRM Comment Period End	02/25/02	
Final Rule	04/17/02	67 FR 18796
Final Rule Effective Date	05/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sharon B. Like, Senior Attorney-Advisor, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2930
Fax: 202 408-2580
Email: likes@fhfb.gov

RIN: 3069–AB14

3875. • OFFICE OF FINANCE BOARD OF DIRECTORS MEETINGS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1422b

CFR Citation: 12 CFR 985

Legal Deadline: None

Abstract: The Finance Board has issued a final rule amending its regulation governing the minimum number of meetings that the board of directors of the Office of Finance must hold each year to require at least six in-person meetings.

Timetable:

Action	Date	FR Cite
NPRM	03/07/02	67 FR 10339
NPRM Comment Period End	04/08/02	
Final Rule	04/17/02	67 FR 18806
Final Rule Effective	05/17/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Charlotte A. Reid, Special Counsel, Federal Housing Finance Board, 1777 F Street NW., Washington, DC 20006
Phone: 202 408-2510
Fax: 202 408-2580
Email: reidc@fhfb.gov

RIN: 3069–AB15

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Monday,
May 13, 2002

Part LIV

Federal Maritime Commission

Semiannual Regulatory Agenda

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FEDERAL MARITIME COMMISSION (FMC)

FEDERAL MARITIME COMMISSION

46 CFR Ch. IV

Unified Agenda

AGENCY: Federal Maritime Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to section 4(b) of Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Commission anticipates having under consideration, during the period from April 1, 2002, to March 31, 2003, actions in the areas listed below.

FOR FURTHER INFORMATION CONTACT: For further information concerning Commission rulemaking proceedings or the status of any matter listed below, contact: Bryant L. VanBrakle, Secretary, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5725.

SUPPLEMENTARY INFORMATION: Section 602 of the Regulatory Flexibility Act (5 U.S.C. 602) requires the publication of an agenda of items for which regulatory agencies may propose or promulgate a rule which is likely to have a significant economic impact on a substantial number of small entities. Section 4(b) of Executive Order 12866 also requires agencies to publish a regulatory agenda. The agendas include information on regulatory activities being conducted or reviewed during the succeeding 12 months by the Commission.

The following is the Commission's unified regulatory agenda. The agenda does not necessarily include all petitions for rulemakings that are under staff review.

In addition, the Commission maintains a compilation of the status of pending rulemaking proceedings and a listing of rules that have become final since the publication of the most recent regulatory agenda. This will be made available to the public, including the press and interested persons.

Bryant L. VanBrakle,

Secretary.

Federal Maritime Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3876	Content of Ocean Common Carrier and Marine Terminal Operator Agreements Subject to the Shipping Act of 1984 (Docket No. 99-13)	3072-AC11
3877	Impact of Government Paperwork Elimination Act and Electronic Signatures in Global and National Commerce Act (Docket No. 01-08)	3072-AC17
3878	Update of Existing and Addition of New Filing and Service Fees	3072-AC19
3879	Requirements for Financial Responsibility for Nonperformance of Transportation by Passenger Vessel Operators	3072-AC20
3880	Common Carrier Status Under the Shipping Act of 1984	3072-AC21

Federal Maritime Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3881	Coloading Practices and Possible Section 16 Exemption for Coloading (Docket Nos. 93-22 and 94-26)	3072-AB75
3882	Port Restrictions and Requirements in the United States/Japan Trade (Docket No. 96-20)	3072-AB97

Federal Maritime Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3883	Financial Responsibility Requirements for Nonperformance of Transportation and Inquiry Into Alternative Forms (Docket No. 94-06; Further Notice of Proposed Rulemaking)	3072-AB80

3876. CONTENT OF OCEAN COMMON CARRIER AND MARINE TERMINAL OPERATOR AGREEMENTS SUBJECT TO THE SHIPPING ACT OF 1984 (DOCKET NO. 99-13)

Priority: Substantive, Nonsignificant

Legal Authority: 46 USC app 1701 et seq; PL 105-258

CFR Citation: 46 CFR 535

Legal Deadline: None

Abstract: The FMC is issuing this inquiry to solicit comments concerning the appropriate content of agreements filed with the Commission pursuant to the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998. The comments received will assist the Commission in preparing a proposal to update or refine the existing content standards.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	08/03/99	64 FR 42057
Inquiry Comment Period End	10/04/99	
NPRM	05/00/02	
NPRM Comment Period End	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David R. Miles, Acting General Counsel, Federal Maritime Commission
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AC11

3877. IMPACT OF GOVERNMENT PAPERWORK ELIMINATION ACT AND ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (DOCKET NO. 01-08)

Priority: Substantive, Nonsignificant

Legal Authority: PL 105-277, Government Paperwork Elimination Act; PL 106-229, Electronic Signatures in Global and National Commerce Act

CFR Citation: 46 CFR 500 et seq

Legal Deadline: Final, Statutory, October 21, 2003.

Abstract: The Federal Maritime Commission is issuing this inquiry to solicit information and comments concerning the impact of the Government Paperwork Elimination Act and the Electronic Signatures in Global and National Commerce Act on all sectors of the U.S. ocean shipping industry. These comments will assist the Commission as it analyzes the use and acceptance of documents in electronic form, as well as other means of engaging in electronic transactions. The Commission, via a rulemaking, plans to provide individuals or entities with the option to submit information or transact business with the Commission electronically, where practicable, and to maintain records electronically when practicable.

Timetable:

Action	Date	FR Cite
Notice of Inquiry	07/18/01	66 FR 37468
Comments Due	08/17/01	
Comment Period Extended to 09/17/2001	08/17/01	66 FR 43261
NPRM	01/00/03	
NPRM Comment Period End	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Austin L. Schmitt, Deputy Executive Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5800
Fax: 202 523-5827
Email: austins@fmc.gov

RIN: 3072–AC17

3878. • UPDATE OF EXISTING AND ADDITION OF NEW FILING AND SERVICE FEES

Priority: Substantive, Nonsignificant

Legal Authority: 31 USC 9701

CFR Citation: 46 CFR 502; 46 CFR 503; 46 CFR 515; 46 CFR 520; 46 CFR 530; ...

Legal Deadline: None

Abstract: The Federal Maritime Commission (FMC) proposes to revise its existing fees for (1) filing petitions and complaints; (2) various public information services, such as record searches, document copying, and admissions to practice; (3) filing ocean transportation intermediary applications; (4) applications for special permission; (5) service contracts; (6) agreements; and (7) passenger vessel performance and casualty certificate applications. These revised fees reflect current costs to the FMC. In addition, the FMC adds a new fee for the provision of a data base report on effective carrier agreements, makes nomenclature changes in certain CFR units with respect to FMC bureau designations, and makes section reference changes in certain CFR units to reflect numbering changes made in a previous rulemaking. The FMC also is republishing a fee requirement that previously was omitted.

Timetable:

Action	Date	FR Cite
NPRM	03/21/02	67 FR 13118
NPRM Comment Period End	04/22/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: JoAnn Baca, Special Assistant to the Executive Director, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5800
Fax: 202 523-5827
Email: joannb@fmc.gov

RIN: 3072–AC19

3879. • REQUIREMENTS FOR FINANCIAL RESPONSIBILITY FOR NONPERFORMANCE OF TRANSPORTATION BY PASSENGER VESSEL OPERATORS

Priority: Other Significant

Legal Authority: 5 USC 552 to 553; 31 USC 9701; 46 USC app 817d to 817e; 46 USC 1716

CFR Citation: 46 CFR 540

Legal Deadline: None

Abstract: The Federal Maritime Commission proposes to amend its procedures for establishing passenger vessel financial responsibility for nonperformance of transportation. The proposed rule would eliminate the availability of self-insurance and discontinue the use of a sliding scale for required coverage of unearned passenger revenue.

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FMC — **Proposed Rule Stage**

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19730
NPRM Comment Period End	05/23/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sandra L. Kusumoto, Director, Bureau of Consumer Complaints & Licensing, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5787
Fax: 202 523-5830
Email: sandrak@fmc.gov

RIN: 3072–AC20

3880. • COMMON CARRIER STATUS UNDER THE SHIPPING ACT OF 1984

Priority: Other Significant

Legal Authority: 5 USC 553; 46 USC app 1701 et seq; PL 105-258

CFR Citation: 46 CFR 515; 46 CFR 520; 46 CFR 530; 46 CFR 535

Legal Deadline: None

Abstract: The Federal Maritime Commission is proposing to amend its rules to address the criteria that it will use to establish ocean common carrier status under the Shipping Act of 1984.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
NPRM Comment Period End	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Florence A. Carr, Director, Bureau of Trade Analysis, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5796
Fax: 202 523-4372
Email: florence@fmc.gov

Vern W. Hill, Director, Bureau of Enforcement, Federal Maritime Commission, 800 North Capitol Street NW, Washington, DC 20573
Phone: 202 523-5783
Fax: 202 523-5785
Email: vernh@fmc.gov

RIN: 3072–AC21

Federal Maritime Commission (FMC) — **Long-Term Actions**

3881. COLOADING PRACTICES AND POSSIBLE SECTION 16 EXEMPTION FOR COLOADING (DOCKET NOS. 93-22 AND 94-26)

Priority: Substantive, Nonsignificant

CFR Citation: 46 CFR 520.11

Timetable:

Action	Date	FR Cite
NPRM	11/24/93	58 FR 62077
NPRM Comment Period End	03/11/94	59 FR 5974
Notice of Inquiry (Docket No. 94-26)	11/09/94	59 FR 55826
Comment Period End for NOI (Docket No. 94-26)	12/27/94	
NOI Comment Period Extended to 01/23/95	12/28/94	59 FR 66880
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David R. Miles
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AB75

3882. PORT RESTRICTIONS AND REQUIREMENTS IN THE UNITED STATES/JAPAN TRADE (DOCKET NO. 96-20)

Priority: Other Significant

CFR Citation: 46 CFR 551

Timetable:

Action	Date	FR Cite
NPRM	11/13/96	61 FR 58160
Comment Period Extended to 01/20/97	12/27/96	61 FR 68200
NPRM Comment Period End	01/13/97	
Final Rule - Report Due 08/26/1999 and Every 180 Days Thereafter	03/04/97	62 FR 9696
Final Rule Effective	04/14/97	
Status Reports and Comments Due 08/05/97	04/16/97	62 FR 18433
Amendment to Final Rule	04/16/97	62 FR 18532
Final Rule Effectiveness Extended to 09/04/97	04/16/97	62 FR 18533
Status Reports and Comments Due 07/01/97	04/16/97	62 FR 18533
Amendment to Final Rule - Denial of Petition	10/20/97	62 FR 54396
Final Rule Effectiveness Suspended 11/13/97	11/19/97	62 FR 61648
Final Rule Removed	06/07/99	64 FR 30245
Final Rule Removed Effective	06/07/99	
Requirement for Reporting Revised	08/15/01	66 FR 42859
Report Due 11/07/2001 and Every 180 Days Thereafter	08/15/01	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David R. Miles
Phone: 202 523-5740
Fax: 202 523-5738
Email: davidm@fmc.gov

RIN: 3072–AB97

Federal Maritime Commission (FMC) — **Completed Actions**

3883. FINANCIAL RESPONSIBILITY REQUIREMENTS FOR NONPERFORMANCE OF TRANSPORTATION AND INQUIRY INTO ALTERNATIVE FORMS (DOCKET NO. 94-06; FURTHER NOTICE OF PROPOSED RULEMAKING)

Priority: Other Significant

CFR Citation: 46 CFR 540.5; 46 CFR 540.9

Completed:

Reason	Date	FR Cite
Proceeding Discontinued	04/22/02	67 FR 19535

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Sandra L. Kusumoto
Phone: 202 523-5787
Fax: 202 523-5830
Email: sandrak@fmc.gov

RIN: 3072–AB80

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FEDERAL RESERVE SYSTEM (FRS)

FEDERAL RESERVE SYSTEM

12 CFR Ch. II

Semiannual Regulatory Flexibility Agenda

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Board is issuing this agenda under the Regulatory Flexibility Act and the Board's Statement of Policy Regarding Expanded Rulemaking Procedures. The Board anticipates having under consideration regulatory matters as indicated below during the period April 1 through October 1, 2002. The next agenda will be published in the fall of 2002.

DATES: Comments about the form or content of the agenda may be submitted any time during the next 6 months.

ADDRESSES: Comments should be addressed to Jennifer J. Johnson, Secretary of the Board, Board of Governors of the Federal Reserve System, Washington, DC 20551.

FOR FURTHER INFORMATION CONTACT: A staff contact for each item is indicated with the regulatory description below.

SUPPLEMENTARY INFORMATION: The Board is publishing its spring 2002 agenda as part of the Spring 2002 Unified Agenda of Federal Regulatory and Deregulatory Actions, which is coordinated by the Office of Management and Budget under Executive Order 12866. The agenda also identifies rules the Board has selected for review under section 610(c) of the Regulatory Flexibility Act, and public comment is invited on those entries. Participation by the Board in the Unified Agenda is on a voluntary basis.

The Board's agenda is divided into three sections. The first, Proposed Rule Stage, reports on matters the Board may consider for public comment during the next 6 months. The second section, Final Rule Stage, reports on matters that have been proposed and are under Board consideration. A third section, Completed Actions, reports on regulatory matters the Board has completed or is not expected to consider further. Matters begun and completed between issues of the agenda have not been included.

A dot (•) preceding an entry indicates a new matter that was not a part of the Board's previous agenda and which the Board has not completed.

Margaret McCloskey Shanks,
Assistant Secretary of the Board.

Federal Reserve System—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3884	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System	7100-AC73
3885	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control	7100-AC78
3886	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**	7100-AC88
3887	Regulation: T — Credit by Brokers and Dealers; Regulation: U — Credit by Banks; and Regulation: X — Borrowers of Securities Credit (Docket Number: R-0995)	7100-AC45
3888	Regulation: Y — Bank Holding Companies and Change in Bank Control	7100-AC66
3889	Regulation: BB — Community Reinvestment (Docket Number: R-1112) **(Section 610 Review)**	7100-AC87
3890	Regulation: DD — Truth in Savings Act **(Section 610 Review)**	7100-AC86

Federal Reserve System—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3891	Regulation: B — Equal Credit Opportunity (Docket Number: R-1008) **(Section 610 Review)**	7100-AC54
3892	Regulation: B — Equal Credit Opportunity; and Regulation: Z — Truth in Lending (Docket Numbers: R-1040 and R-1043)	7100-AC46
3893	Regulation: C — Home Mortgage Disclosure (Docket Numbers: R-1001 and R-1120)	7100-AC51
3894	Regulation: E — Electronic Fund Transfers (Docket Numbers: R-0919 and R-1041)	7100-AC06
3895	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R-1064)	7100-AC69
3896	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System (Docket Number: R-1099)	7100-AC84
3897	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-0930)	7100-AC13
3898	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1087)	7100-AC75
3899	Regulation: M — Consumer Leasing (Docket Number: R-1042)	7100-AC53
3900	Regulation: V — Fair Credit Reporting (Docket Number: R-1082)	7100-AC68
3901	Regulation: W — Transactions Between Banks and Their Affiliates (Docket Number: R-1103)	7100-AC63
3902	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1091)	7100-AC79

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Federal Reserve System—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
3903	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1094)	7100-AC81
3904	Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1092)	7100-AC82
3905	Regulation: DD — Truth in Savings (Docket Number: R-1044)	7100-AC34
3906	Misc. Interpretations: Application of Sections 23A and 23B of the Federal Reserve Act to Derivative Transactions with Affiliates and Intraday Extensions of Credit to Affiliates (Docket Number: R-1104)	7100-AC85

Federal Reserve System—Completed Actions

Sequence Number	Title	Regulation Identification Number
3907	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1085)	7100-AC76
3908	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1055)	7100-AB77
3909	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1097)	7100-AC65
3910	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1080)	7100-AC77
3911	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control (Docket Number: R-1084)	7100-AC80
3912	Regulation: K — International Banking Operations (Docket Number: R-0994)	7100-AC47
3913	Regulation: Z — Truth in Lending (Docket Number: R-1090)	7100-AC83

Federal Reserve System (FRS) — Proposed Rule Stage

3884. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1828(t)

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: Section 204 of the Gramm-Leach-Bliley Act added a new subsection (t) to section 18 of the Federal Deposit Insurance Act requiring the Board, in consultation with the Securities and Exchange Commission, to establish recordkeeping requirements for state member banks and branches and agencies of foreign banks that rely on the exceptions from the definition of broker or dealer provided in section 3(a)(4) or (5) of the Securities Exchange Act of 1934.

The Board anticipates issuing for public comment a rule that would implement these recordkeeping requirements. The Board notes that the Securities and Exchange Commission has, by rule, delayed the effective date of the new exemptions for banks contained in section 3(a)(4) and (5) of the Securities Exchange Act of 1934, and has requested comment on rules that would provide guidance concerning the scope of their exemptions. (Release No. 34-44570, July 18, 2001; Release No. 34-44291, 66 FR 27760, May 18, 2001). It is not anticipated that the Board's proposal, when issued, would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC73

3885. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: The Board will consider issuing for public comment proposed amendments to Regulations H and Y that will take into account the

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implications of the Gramm-Leach-Bliley Act (GLB Act) relating to the ability of state member banks to control operations subsidiaries. The proposed amendments will also include a series of technical changes to Regulation Y necessitated by the GLB Act, as well as a general reorganization of Regulation Y. The proposal should not have a substantive economic impact on small entities, as its substantive portions are expected to liberalize the Board's present rules.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2246

RIN: 7100–AC78

3886. • REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL, CAPITAL APPENDICES (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 24a; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; ...

CFR Citation: 12 CFR 208 app A; 12 CFR 208 app D; 12 CFR 208 app E; 12 CFR 225 app A; 12 CFR 225 app D; 12 CFR 225 app E

Legal Deadline: None

Abstract: The capital appendices to Regulations H and Y set forth guidelines for institutions in calculating their regulatory capital requirements, both risk-based and leverage.

While the guidelines are continuously monitored and updated as required to reflect market innovations, accounting changes, or modifications to supervisory policy, the Board is undertaking a more comprehensive review of the guidelines to minimize regulatory burden, clarify issues arising from the Gramm-Leach-Bliley Act, enhance the overall risk sensitivity, and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. Following the review, the Board will publish a notice of proposed rulemaking.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Barbara Bouchard, Assistant Director, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-3072

RIN: 7100–AC88

3887. REGULATION: T — CREDIT BY BROKERS AND DEALERS; REGULATION: U — CREDIT BY BANKS; AND REGULATION: X — BORROWERS OF SECURITIES CREDIT (DOCKET NUMBER: R-0995)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78G, Securities Exchange Act of 1934, as amended

CFR Citation: 12 CFR 220; 12 CFR 221; 12 CFR 224

Legal Deadline: None

Abstract: As part of the regular review of its regulations and in accordance with requirements of section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, and section 610(c) of the Regulatory Flexibility Act of 1994, the Board is conducting a review of its margin regulations. In order to complete this review, the Board approved issuing for public comment an advance notice of proposed rulemaking in December 1997 (63 FR 2840, January 16, 1998). The advance notice highlights issues raised by interested persons in response to previous requests for comment that had not been addressed by the Board in the course of its periodic review. It also provides an opportunity to further harmonize the treatment of bank and nonbank lenders under the revised Regulation U adopted by the Board at the same time as the advance notice. The advance notice also invites comment on all areas of the regulations.

Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/16/98	63 FR 2840
Further Board action by	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Scott J. Holz, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2966

RIN: 7100–AC45

3888. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1844(b)

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: Title I of the Gramm-Leach-Bliley Act (GLB Act) makes a number of miscellaneous amendments to sections 3, 4, and 5 of the Bank Holding Company Act of 1956 (BHC Act) and adds a new section 10A to the BHC Act. These amendments, among other things, prohibit the Board from determining that new activities are closely related to banking under section 4(c)(8) of the BHC Act; streamline the Board's reporting, examination, and other supervisory authority over bank holding companies and their subsidiaries; reduce the restrictions applicable to companies that control "nonbank banks" that are exempt from the nonbanking restrictions of the BHC Act under section 4(f) of that Act; and repeal the savings bank life insurance provisions currently set forth in section 3(g) of the BHC Act.

The Board will consider issuing for public comment amendments to Regulation Y to implement the provisions of the GLB Act affecting the BHC Act that are not addressed in proposed rules described elsewhere in the Board's agenda. It is not anticipated that the proposals will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC66

3889. REGULATION: BB — COMMUNITY REINVESTMENT (DOCKET NUMBER: R-1112) (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2901

CFR Citation: 12 CFR 228

Legal Deadline: None

Abstract: In 1995, the Board issued Regulation BB which implements the Community Reinvestment Act (CRA). Substantially similar regulations were issued by the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS). The goal of these regulations was to achieve more objective performance-based CRA examinations and to minimize burden. At the time these regulations were issued, the agencies committed to conducting a 2002 comprehensive review of the regulations' effectiveness in achieving this goal.

In July 2001, the Board, the OCC, FDIC, and OTS issued an advance notice of proposed rulemaking (ANPR) (66 FR 37602, July 19, 2001). The notice identifies key issues in addition to requesting comment generally on potential revisions to the regulation. The Board is also reviewing the regulation in accordance with requirements of section 610(c) of the Regulatory Flexibility Act of 1994.

The first issue presented in the ANPR is whether any change to the regulation is necessary and warranted, in light of the burden that change would entail. Other issues include: the effectiveness of the evaluation methods set forth in the regulations; the effectiveness of the requirement that large financial institutions collect and report data on small business, small farm, and community development lending; and whether the regulations have provided a reasonable and sufficient standard for designating the communities within which a financial institution's activities will be evaluated during a CRA examination.

It is not anticipated that any rule proposed for public comment would have a significant economic impact on a substantial number of small entities subject to the Board's regulation. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	07/19/01	66 FR 37602
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Ryan, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC87

3890. REGULATION: DD — TRUTH IN SAVINGS ACT (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: Regulation DD, which implements the Truth in Savings Act, requires that depository institutions uniformly disclose to customers information about the terms and conditions on which interest is paid and fees are assessed on deposit accounts.

The Board has targeted Regulation DD for review to update it and to comply with provisions of section 610(c) of the Regulatory Flexibility Act of 1994. The review is expected to commence with publication of an advance notice of proposed rulemaking in 2002 and be completed in the same year.

Timetable:

Action	Date	FR Cite
Board will consider requesting comment by	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jane Aherns, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC86

Federal Reserve System (FRS) — Final Rule Stage

3891. REGULATION: B — EQUAL CREDIT OPPORTUNITY (DOCKET NUMBER: R-1008) (SECTION 610 REVIEW)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1691

CFR Citation: 12 CFR 202

Legal Deadline: None

Abstract: In 1998, the Board targeted Regulation B, which implements the Equal Credit Opportunity Act (ECOA), for a review to update the regulation. The ECOA makes it unlawful for creditors to discriminate against an applicant, in any aspect of a credit transaction, on the basis of race, color, religion, national origin, gender, marital status, age, and other specified bases. In March 1998, the Board issued for public comment an advance notice of proposed rulemaking for Regulation B that identified specific issues, in addition to requesting general comment on revisions to the regulation (63 FR 12326, March 12, 1998).

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In August 1999, following review of the public comments on the advance notice, the Board issued for public comment a proposed rule amending Regulation B (64 FR 44582, August 16, 1999). Major revisions in the proposed rule include: removing the general prohibition against obtaining information about applicant characteristics such as national origin or gender, although such information still generally may not be considered in extending credit; adding a disclosure requirement for creditors that voluntarily collect data on applicant characteristics; requiring creditors to retain certain records for preapproved credit solicitations; and extending the record retention period for most business credit applications.

Based on the regulatory flexibility analysis, it is not expected that the proposal will have a significant impact on small entities. Although there would be a new disclosure requirement for creditors that voluntarily request information about applicant characteristics, a model form is proposed to ease compliance. Also, there is a new requirement to retain certain records for preapproved credit solicitations. For business reasons, many institutions already retain some of the preapproved credit solicitation information being sought. In addition, compliance burdens should be minimized by the fact that creditors may use a variety of methods, such as electronic storage, to retain records. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment on advance notice	03/12/98	63 FR 12326
Board requested comment on proposed rule	08/16/99	64 FR 44582
Further Board action by	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Natalie E. Taylor, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC54

3892. REGULATION: B — EQUAL CREDIT OPPORTUNITY; AND REGULATION: Z — TRUTH IN LENDING (DOCKET NUMBERS: R-1040 AND R-1043)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1601 et seq; 12 USC 4301 et seq

CFR Citation: 12 CFR 202; 12 CFR 213; 12 CFR 226; 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules to permit the electronic delivery of Regulation B and Regulation Z disclosures, if the consumer agrees (63 FR 14548, March 25, 1998, and 64 FR 46988, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposals governing electronic disclosures. Some provisions in the Board's proposals, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued interim final rules on the electronic delivery of disclosures (66 FR 17329, March 30, 2001, and 66 FR 17779, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rules, consistent with the requirements of the E-Sign Act, creditors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for certain disclosures. The interim final rules also establish uniform requirements for the timing and delivery of electronic disclosures. The March 2001 rulemakings were published as interim final rules to allow interested persons to present new information or views not considered in previous rulemakings. The rules are not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rules	03/25/98	63 FR 14548
Board issued revised proposed rules	09/14/99	64 FR 46988
Board issued interim final rule (Regulation Z)	03/30/01	66 FR 17329
Board issued interim final rule (Regulation B)	04/04/01	66 FR 17779
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Natalie E. Taylor, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC46

3893. REGULATION: C — HOME MORTGAGE DISCLOSURE (DOCKET NUMBERS: R-1001 AND R-1120)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 2801

CFR Citation: 12 CFR 203

Legal Deadline: None

Abstract: In 1998, Regulation C, which implements the Home Mortgage Disclosure Act (HMDA) was targeted for review to update the regulation. HMDA requires most mortgage lenders located in metropolitan areas to report annually to Federal agencies and disclose to the public information about their home purchase and home improvement lending activities. In March 1998, the Board issued an advance notice of proposed rulemaking, and in December 2000 issued for public comment a proposed rule amending Regulation C (65 FR 78656, December 15, 2000).

In January 2002, following review of the public comments, the Board approved a final rule amending Regulation C (67 FR 7221, February 15, 2002). Among other things, the amendments, which are effective January 1, 2003, do the following: (1) revise definitions of certain reportable loans and the definition of application

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to include "preapprovals" as defined in the regulation; (2) require lenders to report loans with APRs that exceed the yield on a Treasury security of comparable maturity, if the rate spread above the Treasury rate is 3 percentage points for first lien loans and 5 percentage points for subordinate lien loans—lenders must report the rate spread above the appropriate Treasury security; (3) report whether a loan is subject to HOEPA and whether a loan is for manufactured housing; and (4) expand the coverage of nondepository lenders.

The final rule would affect all institutions currently within the scope of the regulation, including covered small institutions. No newly covered institution would be a small mortgage lender. It is not anticipated that the final rule would have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

At the time of adoption of the final rule, the Board requested comment on three additional issues: (1) whether the rate spreads of three and four percent are appropriate; (2) whether lien status should be reported; and (3) whether lenders should be required to ask about race and national origin, for example, in connection with telephone applications (67 FR 7251, February 15, 2002). Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment on advance notice	03/12/98	63 FR 12329
Board requested comment on proposed rule	12/15/00	65 FR 78656
Board adopted proposals	02/15/02	67 FR 7221
Board requested comment	02/15/02	67 FR 7251
Further Board action by	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kathleen Ryan, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC51

3894. REGULATION: E — ELECTRONIC FUND TRANSFERS (DOCKET NUMBERS: R-0919 AND R-1041)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1693 et seq

CFR Citation: 12 CFR 205

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment an interim final rule and proposed rules under Regulation E to permit the electronic delivery of disclosures, if the consumer agrees (Docket Number: R-1002; 63 FR 14528, March 25, 1998 (interim rule), and Docket Number: R-1041; 64 FR 49699, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally provides that records and signatures may not be denied legal effect solely because they are in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with the Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17786, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, financial institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The March 1998 interim rule was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board is expected to take further action.

A May 1996 Regulation E proposal to permit financial institutions to provide disclosures electronically also included proposed amendments imposing modified requirements on stored-value products in systems that track individual transactions, cards, or consumers and providing an exemption for cards on which a maximum value of $100 can be stored (Docket Number: R-0919; 61 FR 19696, May 2, 1996); the latter proposal remains pending.

Timetable:

Action	Date	FR Cite
Board issued proposed rule on coverage of stored-value products	05/02/96	61 FR 19696
Board issued interim rule permitting electronic delivery of disclosures	03/25/98	63 FR 14528
Board issued proposed rule imposing additional requirements re: electronic delivery of disclosures	09/14/99	64 FR 49699
Board issued interim final rules	04/04/01	66 FR 17786
Board lifted mandatory compliance date of interim final rule	08/08/01	66 FR 41439
Further Board action by	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John C. Wood, Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC06

3895. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R-1064)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 335; 12 USC 1835a

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: In March 2000, the Board approved an interim rule with request

for public comment amending Regulation H to implement section 121 of the Gramm-Leach-Bliley Act for state member banks (65 FR 14810, March 20, 2000). Section 121 in part authorizes state member banks to control, or hold an interest in, financial subsidiaries so as to conduct certain activities that are financial in nature or incidental to a financial activity. In August 2001, following review of the public comments, the Board adopted the final rule substantially as proposed (66 FR 42929, August 16, 2001).

The Board will also consider issuing for public comment a proposed rule in place of an existing Miscellaneous Interpretation (12 CFR 250.141) relating to member bank purchases of stock in operations subsidiaries to update its provisions and conform to section 121. It is not anticipated that the proposal will have a significant economic impact on a substantial number of small entities subject to the Board's regulation.

Timetable:

Action	Date	FR Cite
Board requested comment on interim rule	03/20/00	65 FR 14810
Board adopted interim rule	08/16/01	66 FR 42929
Board will consider requesting comment on replacement rule for Miscellaneous Interpretation by	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael J. O'Rourke, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3288

RIN: 7100–AC69

3896. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (DOCKET NUMBER: R-1099)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1835a

CFR Citation: 12 CFR 208

Legal Deadline: None

Abstract: In April 2001, the Board, along with the other banking agencies, issued for public comment a proposed rule that would amend uniform regulations implementing section 109 of the Riegle-Neal Interstate Banking and Branching Efficiency Act of 1994 (Interstate Act) to effectuate the amendment of section 109 contained in section 106 of the Gramm-Leach-Bliley Act (66 FR 18411, April 9, 2001). Section 109 prohibits a bank from establishing or acquiring a branch or branches outside of its home state for the purpose of deposit production. Additionally, section 109 contains guidelines for determining whether a bank is reasonably helping to meet the credit needs of communities served by an out-of-state branch or branches. Section 106 expanded the coverage of section 109 of the Interstate Act to include any branch of a bank controlled by an out-of-state bank holding company. The proposed rule amends the regulatory deposit production prohibition to include any bank or branch controlled by an out-of-state bank holding company, including a bank consisting only of a main office.

It is not anticipated that the rule will have a significant economic impact on a substantial number of small entities subject to the regulation. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	04/09/01	66 FR 18411
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael J. O'Rourke, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3288

RIN: 7100–AC84

3897. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-0930)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 36; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1823(j); 12 USC 1828(o); 12 USC 1831(o); 12 USC 1831p-1; 12 USC 3105; ...

CFR Citation: 12 CFR 208 app A

Legal Deadline: None

Abstract: In August 1996, the Board issued for public comment a proposal to revise the risk-based capital treatment for certain collateralized transactions (61 FR 42565, August 16, 1996). Under the Board's existing risk-based capital treatment, the portion of a transaction that is supported by qualifying collateral (that is, cash or OECD government securities) is risk-weighted at 20 percent. Transactions that are fully supported by collateral with a positive margin may be eligible for a zero percent risk weight. Generally, the proposal would permit a portion of a transaction that is fully supported with a positive margin of collateral to be eligible for a zero percent risk weight. The portion that is to be continuously collateralized must be identified by the parties.

This proposal was developed on an interagency basis and, if adopted, would eliminate one of the substantive differences among the agencies with regard to the risk-based capital treatment for collateralized transactions. It would implement provisions in the Riegle Community Development and Regulatory Improvement Act of 1994, which requires the agencies to make uniform regulations and guidelines implementing common supervisory policies. The effect of the proposal would be to allow institutions to hold less capital for certain collateralized transactions. It is not expected to have a significant economic impact on a substantial number of small entities.

Following review of the public comments and development of an interagency final rule, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	08/16/96	61 FR 42565
Further Board action by	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Connolly, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-3621

RIN: 7100–AC13

3898. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1087)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 1817(j)(13); 12 USC 1818; 12 USC 1818(o); 12 USC 1831i; 12 USC 1831p-1; 12 USC 1843(c)(8); ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In December 2000, the Board issued an interim rule, with request for public comment, amending Regulations H and Y to effectively reduce the capital requirement for certain securities borrowing transactions (65 FR 75856, December 5, 2000). The proposed amendments would recognize the historically low risk of these transactions and bring the capital requirements for U.S. banking organizations into better alignment with the capital requirements of other U.S. and non-U.S. regulators of financial institutions. The proposed amendments would have little or no effect on small banking organizations subject to the Board's regulation, as securities borrowing activities are concentrated in a relatively small number of very large banking organizations. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/05/00	65 FR 75856
Further Board action by	10/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Adkins, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-5259

RIN: 7100–AC75

3899. REGULATION: M — CONSUMER LEASING (DOCKET NUMBER: R-1042)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1667

CFR Citation: 12 CFR 213

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules under Regulation M, which implements the Consumer Leasing Act, to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14538, March 25, 1998 and 64 FR 49713, September 14, 1999). The Board also issued similar proposed rules under other consumer financial services regulations administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Some provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17322, March 30, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, lessors generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14538
Board issued revised proposed rule	09/14/99	64 FR 49713
Board issued interim final rule	03/30/01	66 FR 17322
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC53

3900. REGULATION: V — FAIR CREDIT REPORTING (DOCKET NUMBER: R-1082)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1681 et seq

CFR Citation: 12 CFR 222

Legal Deadline: None

Abstract: In 1996, the Congress amended the Fair Credit Reporting Act (FCRA) as part of the Consumer Credit Reporting Reform Act. The amendments, among other things, prohibited the federal regulatory agencies from issuing implementing regulations. In November 1999, the Congress once again amended the FCRA as part of the Gramm-Leach-Bliley Act. The amendments lifted the prohibition and directed the Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision to issue implementing regulations jointly.

In October 2000, the agencies issued proposed regulations for public comment (65 FR 63120, October 20, 2000). The proposal is not expected to have a significant economic impact on a substantial number of small entities. Following review of the public comments, the agencies will take further action.

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Timetable:

Action	Date	FR Cite
Board requested comment	10/20/00	65 FR 63120
Further Board action by	09/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Stein, Senior Attorney, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-3667

RIN: 7100–AC68

3901. REGULATION: W — TRANSACTIONS BETWEEN BANKS AND THEIR AFFILIATES (DOCKET NUMBER: R-1103)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 371c; 12 USC 371c-1

CFR Citation: 12 CFR 223

Legal Deadline: None

Abstract: In May 2001, in response to passage of the Gramm-Leach-Bliley Act, the Board issued for public comment a new regulation (Regulation W) to implement sections 23A and 23B of the Federal Reserve Act (66 FR 24186, May 11, 2001). Sections 23A and 23B regulate transactions between insured depository institutions and their affiliates. The proposed regulation codifies existing interpretations and asks for comment on new interpretations and exemptions. The proposal also requests comment on the treatment of derivatives and intra-day credit exposures between insured depository institutions and their affiliates. The Board has requested comment on the likely burden the rule will impose on small institutions. Following review of the public comments, the Board is expected to take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	05/11/01	66 FR 24186
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Pamela G. Nardolilli, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3289

RIN: 7100–AC63

3902. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1091)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86

Legal Deadline: None

Abstract: In January 2001, the Board issued for public comment a proposed rule amending Regulation Y that would define real estate brokerage and real estate management activities as financial in nature or incidental to a financial activity and therefore permissible for financial holding companies under the Board's Regulation Y (66 FR 307, January 3, 2001). The proposal would facilitate the creation of diversified financial companies that can offer "one-stop shopping" to consumers contemplating the purchase or management of real estate. The proposal is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 307
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Mark E. Van Der Weide, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2263

RIN: 7100–AC79

3903. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1094)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843

CFR Citation: 12 CFR 225.86(e)

Legal Deadline: None

Abstract: In December 2000, the Board, jointly with the Department of the Treasury, issued interim rules with request for public comment that implement section 4(k)(5) of the Bank Holding Company Act and section 5136A(b)(3) of the Revised Statutes, which were added by the Gramm-Leach-Bliley Act (66 FR 257, January 3, 2001). The interim rules specify three general types of activities to be financial in nature or incidental to a financial activity, and create a mechanism by which financial holding companies, financial subsidiaries of national banks, or others may request that the Board or the Secretary of the Treasury, respectively, define particular activities within one of the three categories. Such activities would therefore be permissible for financial holding companies and financial subsidiaries of national banks. The rules are not expected to have a significant economic impact on a substantial number of small entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	01/03/01	66 FR 257
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Andrew S. Baer, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2246

RIN: 7100–AC81

3904. REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1092)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1843(k)

CFR Citation: 12 CFR 225.28; 12 CFR 225.89

Legal Deadline: None

Abstract: In December 2000, the Board issued for public comment a proposed rule that would allow all bank holding companies to conduct a greater amount of nonfinancial data processing than

previously authorized (65 FR 80384, December 21, 2000). The proposed rule also would allow financial holding companies, as a complementary activity, to own companies engaged in certain data processing-related activities, such as data storage and Internet and portal hosting. The Board anticipates that the proposal would allow bank holding companies to provide a wider range of financial products and services to customers and would not have a significant economic impact on a substantial number of small entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board requested comment	12/21/00	65 FR 80384
Further Board action by	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC82

3905. REGULATION: DD — TRUTH IN SAVINGS (DOCKET NUMBER: R-1044)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4301 et seq

CFR Citation: 12 CFR 230

Legal Deadline: None

Abstract: In March 1998 and September 1999, the Board issued for public comment proposed rules and an interim rule under Regulation DD, which implements the Truth in Savings Act (TISA), to permit the electronic delivery of disclosures, if the consumer agrees (63 FR 14533, March 25, 1998, and 64 FR 49740, September 14, 1999). The interim rule permits the electronic delivery of TISA disclosures provided on periodic statements. The Board also issued similar proposed rules under other consumer financial services laws administered by the Board.

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), which became effective October 1, 2000, generally governs the validity of records and signatures in electronic form. The E-Sign Act incorporated some elements of the Board's regulatory proposal governing electronic disclosures. Certain provisions in the Board's proposal, however, were modified or preempted by the Act, while other provisions were not addressed by the E-Sign Act but were consistent with that Act and could be issued as final rules.

In March 2001, the Board issued an interim final rule on the electronic delivery of disclosures (66 FR 17795, April 4, 2001). The scheduled mandatory compliance date was later lifted (66 FR 41439, August 8, 2001). Under the interim final rule, consistent with the requirements of the E-Sign Act, depository institutions generally must obtain consumers' affirmative consent to provide disclosures electronically. There are exceptions for disclosures not deemed to relate to "transactions," such as disclosures in advertising. The interim final rule also establishes uniform requirements for the timing and delivery of electronic disclosures. The 1999 interim rule permitting electronic delivery of Regulation DD disclosures on periodic statements was withdrawn under the interim final rule.

The March 2001 rulemaking was published as an interim final rule to allow interested persons to present new information or views not considered in previous rulemakings. The rule is not expected to have a significant economic impact on a substantial number of small business entities. Following review of the public comments, the Board will take further action.

Timetable:

Action	Date	FR Cite
Board issued proposed rule	03/25/98	63 FR 14533
Board issued revised proposed rule and interim rule	09/14/99	64 FR 49740
Board issued interim final rule	04/04/01	66 FR 17795
Board lifted mandatory compliance date	08/08/01	66 FR 41439
Further Board action by	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC34

3906. MISC. INTERPRETATIONS: APPLICATION OF SECTIONS 23A AND 23B OF THE FEDERAL RESERVE ACT TO DERIVATIVE TRANSACTIONS WITH AFFILIATES AND INTRADAY EXTENSIONS OF CREDIT TO AFFILIATES (DOCKET NUMBER: R-1104)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 371c(f); 12 USC 371c-1(e)

CFR Citation: 12 CFR 250.247

Legal Deadline: None

Abstract: The Gramm-Leach-Bliley Act (GLB Act) required the Board to adopt, by May 12, 2001, final rules under section 23A to address credit exposures arising out of derivative transactions between insured depository institutions and their affiliates and intraday extensions of credit by insured depository institutions to their affiliates as covered transactions. In May 2001, the Board adopted interim final rules pursuant to the amendments to section 23A contained in the GLB Act and requested public comment on the rules (66 FR 24229, May 11, 2001).

The interim rule requires that an institution establish and maintain policies and procedures reasonably designed to manage the credit exposure arising from the institution's derivative transactions with affiliates and clarifies that institution-affiliate derivative transactions are subject to the market terms requirement of section 23B. The policies and procedures must at a minimum provide for monitoring and controlling the credit exposure arising from the institution's derivative transactions with each affiliate and all affiliates in the aggregate, and ensure that the institution's derivative transactions with affiliates comply with section 23B. The intraday credit rule also requires insured depository institutions to have policies and procedures in place and clarifies that the transactions are subject to section 23B.

Although the proposal is not expected to have a significant economic impact on small institutions, the Board has specifically requested comment on the likely burden the rule will impose. Following review of the public comments, the Board will take further

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action on this matter in connection with its review of the proposed Regulation W (Docket Number: R-1103; RIN 7100-AC63).

Timetable:

Action	Date	FR Cite
Board requested comment	05/11/01	66 FR 24229
Further Board action by	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mark E. Van Der Weide, Counsel, Federal Reserve System, Legal Division
Phone: 202 452-2263

RIN: 7100–AC85

Federal Reserve System (FRS) — Completed Actions

3907. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1085)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 1817(j)(13); 12 USC 1818; 12 USC 1818(o); 12 USC 1831i; 12 USC 1831p-1; 12 USC 1843(c)(8); ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In December 2000, the Board issued for public comment proposed amendments to the Board's regulatory capital guidelines for banks and bank holding companies that would apply a 20 percent risk weight to claims on, and claims guaranteed by, qualifying securities firms (65 FR 76180, December 6, 2000). The proposed rule is consistent with an amendment to the Basel Accord adopted by the Basel Committee on Banking Supervision in April 1998. It would reduce the risk weight from 100 percent to 20 percent applied to claims on, and claims guaranteed by, certain securities firms incorporated in countries that are members of the Organization for Economic Cooperation and Development, subject to certain prudential requirements. It is not anticipated that the proposal will have a significant economic impact on a substantial number of small institutions.

In February 2002, following review of the public comments, the Board adopted the rule with revisions (67 FR 16971, April 9, 2002). The final rule also gives a 20 percent risk weight to certain collateralized claims (i.e., repurchase/reverse repurchase agreements and securities borrowing/lending transactions) on qualifying securities firms if the claims satisfy designated prudential criteria.

Timetable:

Action	Date	FR Cite
Board requested public comment	12/06/00	65 FR 76180
Board adopted proposal	04/09/02	67 FR 16971

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John Connolly, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-3621

RIN: 7100–AC76

3908. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1055)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 36; 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1817(j)(13); 12 USC 1818; 12 USC 1823(j); 12 USC 1828(o); 12 USC 1831i; ...

CFR Citation: 12 CFR 208 app A; 12 CFR 225 app A

Legal Deadline: None

Abstract: In November 1997, the Board, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the Office of Thrift Supervision ("the agencies") issued for public comment proposals to use credit ratings from nationally recognized statistical rating organizations to determine the capital treatment for recourse obligations, direct credit substitutes, and senior asset-backed securities (62 FR 59944, November 5, 1997). In February 2000, based on the public comments, the Board and the other agencies issued for further comment a proposal to clarify and revise the regulatory capital treatment of securitized transactions (65 FR 12320, March 8, 2000). The proposal would treat recourse obligations and direct credit substitutes more consistently than the agencies' current risk-based capital standards. It is not expected that the proposals will have a significant economic impact on small institutions.

In November 2001, following review of the public comments, the Board and the other agencies adopted the proposed treatment for recourse and direct credit substitutes substantially as proposed in March 2000, except that the managed asset capital charge was not included in the final rule (66 FR 59614, November 29, 2001). Thus, banks and bank holding companies will be able to use the external credit ratings from nationally recognized statistical rating organizations to determine the capital treatment for recourse obligations, direct credit substitutes, and asset- and mortgage-backed securities. The Board also adopted final amendments to Regulations H and Y to revise its risk-based and leverage capital guidelines to address the treatment of residual interests for all state member banks and bank holding companies (Docket Number: R-1080; RIN 7100-AC77). The final rule combined the capital treatment for residual interests into a single final rule on the Capital Treatment of Recourse,

FRS — Completed Actions

Direct Credit Substitutes and Residual Interests in Asset Securitizations.

Timetable:

Action	Date	FR Cite
Board requested comment	11/05/97	62 FR 59944
Board requested additional comment	03/08/00	65 FR 12320
Board adopted proposals	11/29/01	66 FR 59614

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas R. Boemio, Senior Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-2982

RIN: 7100–AB77

3909. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1097)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1844(b); 12 USC 329; 12 USC 1843(k)(7); 12 USC 3906 to 3909

CFR Citation: 12 CFR 225

Legal Deadline: None

Abstract: In January 2002, following review of the public comments, the Board, jointly with the Comptroller of the Currency and the Federal Deposit Insurance Corporation, adopted a final rule governing the regulatory capital treatment of equity investments in nonfinancial companies. The amendments apply symmetrically to bank holding companies and banks, and apply to equity investments in nonfinancial companies made under the merchant banking authority of the Gramm-Leach-Bliley Act, section 4(c)(6) or 4(c)(7) of the Bank Holding Company Act, section 211.8(c)(3) of the Board's Regulation K, section 302(b) of the Small Business Investment Act of 1958, or section 24 of the Federal Deposit Insurance Act (other than section 24(f)) (67 FR 3784, January 25, 2002). The final rule applies to a series of marginal capital charges on covered equity investments that increase with the level of a banking organization's overall exposure to equity investments relative to the organization's Tier 1 capital. The new marginal charges do not apply to covered investments made prior to March 13, 2000. The new charges also do not apply to investments made in or through small business investment companies to the extent such investments, in the aggregate, represent less than 15 percent of the banking organization's Tier 1 capital.

The final rule is substantially similar to the proposal issued in February 2001 (66 FR 10212, February 14, 2001). For the reasons discussed in the final rule, the Board does not believe the final rule will have a significant economic impact on small entities.

Timetable:

Action	Date	FR Cite
Board requested comment on proposed rules	03/28/00	65 FR 16460
Board requested comment on new capital proposal	02/14/01	66 FR 10212
Board adopted proposal	01/25/02	67 FR 3784

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kieran Fallon, Senior Counsel, Federal Reserve System, Legal Division
Phone: 202 452-5270

RIN: 7100–AC65

3910. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1080)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92a; 12 USC 93a; 12 USC 248(a); 12 USC 248(c); 15 USC 78b; 15 USC 781(b); 15 USC 781(g); 15 USC 781(i); 31 USC 5318; 42 USC 4012a; 42 USC 4104a; ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In September 2000, the Board issued for public comment proposed amendments to Regulations H and Y to amend the Tier 1 leverage and risk-based capital guidelines for residual interests for all state member banks and bank holding companies (65 FR 57993, September 27, 2000). The proposal would better align the capital requirements with the risks associated with such assets. It is not expected that the amendments will have a significant economic impact on a substantial number of small institutions.

In November 2001, following review of the public comments, the Board adopted the proposed amendments to its risk-based and leverage capital guidelines to address the treatment of residual interests for all state member banks and bank holding companies (66 FR 59614, November 29, 2001). The final rule combined the capital treatment for residual interests into a single final rule on the Capital Treatment of Recourse, Direct Credit Substitutes and Residual Interests in Asset Securitizations (Docket Number: R-1055; RIN 7100-AB77). The amendments were adopted substantially as proposed, except that the Tier 1 concentration limit in the final rule is imposed on a subset of residual interests. The final rule also limits the inclusion of interest-only strips that serve in a credit-enhancing capacity, whether retained or purchased. Any amounts of such credit-enhancing interest-only strips that exceed the 25 percent of the Tier 1 capital limitation must be deducted from the bank or bank holding company's Tier 1 capital.

Timetable:

Action	Date	FR Cite
Board requested comment	09/27/00	65 FR 57993
Board adopted proposal	11/29/01	66 FR 59614

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Arleen Lustig, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-2987

RIN: 7100–AC77

3911. REGULATION: H — MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM; AND REGULATION: Y — BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (DOCKET NUMBER: R-1084)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 24; 12 USC 36; 12 USC 92(a); 12 USC 93(a); 12 USC 248(a); 12 USC 248(c); 12 USC 321 to 338a; 12 USC 371d; 12 USC 461; 12 USC 481 to 486; 12 USC 601; 12 USC 611; 12 USC 1814; 12 USC 1816; 12 USC 1818; ...

CFR Citation: 12 CFR 208; 12 CFR 225

Legal Deadline: None

Abstract: In November 2000, the Board issued for public comment an advance notice of proposed rulemaking on the possible development of a simplified capital framework for non-complex banking organizations (65 FR 66193, November 3, 2000). The options outlined in the proposal include a simplified risk-based framework, a leverage ratio-only approach, or a modified leverage ratio approach. Such a framework could relieve the regulatory burden associated with the existing capital rules for many non-complex domestic banking institutions. The main objective of this proposal was to obtain preliminary views from the industry and the public regarding such a framework. Further Board action on this proposal is not expected.

Timetable:

Action	Date	FR Cite
Board requested comment	11/03/00	65 FR 66193
Further Board action not expected	02/28/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: David Adkins, Supervisory Financial Analyst, Federal Reserve System, Division of Banking Supervision and Regulation
Phone: 202 452-5259

RIN: 7100–AC80

3912. REGULATION: K — INTERNATIONAL BANKING OPERATIONS (DOCKET NUMBER: R-0994)

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 221 et seq; 12 USC 248(i); 12 USC 248(k); 12 USC 1818; 12 USC 1835a; 12 USC 1841 et seq; 12 USC 3101 et seq; 12 USC 3109 et seq

CFR Citation: 12 CFR 211

Legal Deadline: None

Abstract: In December 1997, consistent with section 303 of the Riegle Community Development and Regulatory Improvement Act of 1994, the International Banking Act of 1978, and section 2222 of the Economic Growth and Regulatory Paperwork Reduction Act of 1996, the Board reviewed and proposed for public comment a number of changes to Regulation K, which governs international banking operations (62 FR 68424, December 31, 1997). In October 2001, following review of the public comments, the Board adopted final revisions to Regulation K (66 FR 54345, October 26, 2001). In acting on the proposals, the Board took into account changes to the statutory framework governing banks and bank holding companies enacted in 1999 in the Gramm-Leach-Bliley Act (GLB Act). The final rule is not expected to have a significant economic impact on a substantial number of small entities.

Subpart A of Regulation K governs the foreign investments and activities of member banks, bank holding companies and Edge corporations. As adopted, the final rule streamlined foreign branching procedures and expanded the range of permissible activities for branches. The final rule also adopted, in part, the proposed liberalization of equity underwriting and dealing operations, and the general consent authority for bank holding companies was substantially increased. In light of enactment of the GLB Act, which grants financial holding companies merchant banking authority, the final rule did not include significant expansion of the ability to make venture capital investments outside of the United States under Regulation K.

Subpart B of Regulation K governs U.S. activities of foreign banking organizations. The final rule adopted the proposals to streamline certain application procedures applicable to foreign banks seeking to expand their operations in the United States and to implement interstate banking legislation. The Board adopted, in part, the proposed changes to the provisions regarding the qualifications of foreign banking organizations for certain exemptions in the Bank Holding Company Act. The Board also amended Regulation K to implement provisions of the GLB Act regarding representative offices and upgrading interstate agencies to branches. The final rule also incorporates a number of technical and clarifying amendments to Subparts A and B.

Subpart C governs export trading companies. The amendments to Subpart C streamlining the notice process for investment in export trading companies were adopted as proposed. The Board also proposed for public comment technical changes to Subpart D, International Lending Supervision (Docket Number: R-1114; 66 FR 54399, October 26, 2001)

Timetable:

Action	Date	FR Cite
Board requested comment	12/31/97	62 FR 68424
Board adopted proposals	10/26/01	66 FR 54346

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Kathleen M. O'Day, Associate General Counsel, Federal Reserve System, Legal Division
Phone: 202 452-3786

RIN: 7100–AC47

3913. REGULATION: Z — TRUTH IN LENDING (DOCKET NUMBER: R-1090)

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 1601 et seq

CFR Citation: 12 CFR 226

Legal Deadline: None

Abstract: In December 2000, the Board issued for public comment proposed amendments to the provisions of Regulation Z that implement the Home Ownership and Equity Protection Act (HOEPA) (65 FR 81438, December 26, 2000). HOEPA was enacted in response to evidence of abusive lending practices in the home-equity lending market. In December 2001, following review of the public comments, the Board adopted final amendments that are expected to benefit the public by furthering HOEPA's protections against abusive lending practices (66 FR 65604, December 20, 2001). The amendments (1) broaden the scope of mortgage loans subject to HOEPA; (2) prohibit certain acts and practices in connection with home-secured loans, including rules to restrict creditors from engaging in repeated refinancings of their own HOEPA loans over a short period of time; (3) strengthen HOEPA's prohibition against extending credit without regard to consumers' repayment ability; and (4) enhance disclosures for HOEPA-covered loans that consumers receive before closing. Based on available data at the time the amendments were adopted, the Board was unable to determine whether the final rule will have a significant impact on a substantial number of small entities.

Timetable:

Action	Date	FR Cite
Board requested comment	12/26/00	65 FR 81438
Board adopted proposal	12/20/01	66 FR 65604

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jane Ahrens, Senior Counsel, Federal Reserve System, Division of Consumer and Community Affairs
Phone: 202 452-2412

RIN: 7100–AC83

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Federal Trade Commission

Semiannual Regulatory Agenda

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FEDERAL TRADE COMMISSION (FTC)

FEDERAL TRADE COMMISSION

16 CFR Ch. I

Semiannual Regulatory Agenda

AGENCY: Federal Trade Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The following agenda of Commission proceedings is published in accordance with section 22(d)(1) of the Federal Trade Commission Act, 15 U.S.C. 57b-3(d)(1), and the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, title II of Pub. L. 104-121, 110 Stat. 847. The Commission's agenda follows guidelines and procedures issued February 12, 2002, by the Office of Management and Budget in accordance with the provisions of Executive Order No. 12866, "Regulatory Planning and Review" of September 30, 1993. 58 FR 51735 (Oct. 4, 1993).

The Commission has responded to the optional information requirement to identify rulemakings that are likely to have some impact on small entities but are not subject to the requirements of the Regulatory Flexibility Act (RFA). The current rulemakings that are likely to have some impact on small entities include: (1) Smokeless Tobacco Rules, 16 CFR part 307; (2) the Pay-Per-Call, 16 CFR part 308; (3) the Children's Online Privacy Protection Rule, 16 CFR part 312; (4) the rulemaking pursuant to title V section 501(b) of the Gramm-Leach-Bliley Act: Privacy of Consumer Information — Security, to establish security standards to safeguard customer information to be codified in 16 CFR part 314; (5) the Franchise and Business Opportunities Rule, 16 CFR part 436; (6) the Funeral Rule, 16 CFR part 453; (7) the Trade Regulation Rule on Ophthalmic Practice Rules, 16 CFR part 456; and (8) the Rule on Labeling and Advertising of Home Insulation, 16 CFR part 460.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13132, "Federalism" of August 4, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission believes that none of the rules in this Agenda has "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and the responsibilities among the various levels of government" within the meaning of E.O. 13132. The Commission continues to work closely with the States and other governmental units in its rulemaking process, which explicitly considers the effect of the agency's rules on these governmental entities.

In addition, the agency has responded to the optional information requirement that corresponds to the requirements of Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution or Use" of May 18, 2001. 66 FR 28355 (May 22, 2001). The Commission believes that none of the rules in this Agenda meets this Executive Order's criteria requiring preparation of a Statement of Energy Effects.

The agency also is conducting reviews of the Pay-Per-Call Rule as provided in the Rule and of the Telemarketing Sales Rule as required by the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101-6108. Most of the other reviews listed in the following agenda are being conducted as part of the Commission's plan to review and seek information about all of its regulations and guides, including their costs and benefits, and regulatory and economic impact every ten years. These reviews incorporate and expand upon the review required by the RFA and regulatory reform initiatives directing agencies to conduct a review of all regulations and eliminate or revise those that are outdated or otherwise in need of reform.

Except for notice of completed actions, the information in this agenda represents the judgment of Commission staff, based upon information now available. Each projected date of action reflects an assessment by the FTC staff of the likelihood that the specified event will occur during the coming year. No final determination by the staff or the Commission respecting the need for, or the substance of, a trade regulation rule or any other procedural option should be inferred from the notation of projected events in this agenda. In most instances, the dates of future events are listed by month, not by a specific day. The acquisition of new information, changes of circumstances, or changes in the law may alter this information.

FOR FURTHER INFORMATION CONTACT: For information about specific regulatory actions listed in the Agenda, contact the contact person listed for each particular proceeding. Comments or inquiries of a general nature about the Agenda should be directed to Sandra M. Vidas, Attorney, telephone: (202) 326-2456; e-mail: svidas@ftc.gov; or G. Richard Gold, Attorney, telephone: (202) 326-3355; e-mail: rgold@ftc.gov, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580.

By direction of the Commission.

Donald S. Clark,

Secretary.

Federal Trade Commission—Prerule Stage

Sequence Number	Title	Regulation Identification Number
3914	Regulatory Review	3084-AA47
3915	Regulations Under the Comprehensive Smokeless Tobacco Health Education Act of 1986	3084-AA48
3916	Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation	3084-AA60
3917	Trade Regulation Rule on Funeral Industry Practices	3084-AA82

FTC

Federal Trade Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3918	Trade Regulation Rule on Franchising and Business Opportunity Ventures	3084-AA63
3919	Trade Regulation Rule Pursuant to the Telephone Disclosure and Dispute Resolution Act of 1992	3084-AA78
3920	Telemarketing Sales Rule	3084-AA86
3921	Privacy of Consumer Information—Security	3084-AA87

Federal Trade Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3922	Trade Regulation Rule on Ophthalmic Practice Rules	3084-AA80

Federal Trade Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3923	Premerger Notification Rules and Report Form	3084-AA23
3924	Amended Federal Deposit Insurance Corporation Improvement Act	3084-AA44
3925	Trade Regulation Rule Concerning Power Output Claims for Amplifiers Utilized in Home Entertainment Products	3084-AA81
3926	Children's Online Privacy Protection Rule	3084-AA88

Federal Trade Commission (FTC) — Prerule Stage

3914. REGULATORY REVIEW

Priority: Other Significant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 1 et seq

Legal Deadline: None

Abstract: The Commission is continuing its review of current rules and guides to identify any that should be modified or rescinded. The Commission is currently devoting significant resources to both rulemakings required by statute and completing rule and guide reviews previously announced. The Commission will continue to consider ways to streamline and improve the review program. On March 4, 2002, the Commission published a tentative timetable for its regulatory review program under which all of the Commission's rules and guides are reviewed over a ten year period, and announced that it will review one rule and one guide during 2002. 67 FR 9630 (Mar. 4, 2002). No determination about whether to modify or rescind a rule, guide or interpretation or any other procedural option should be inferred from the Commission's decision to publish a request for comments. In certain instances, the reviews may also address other specific matters or issues, such as proposed amendments. Finally, the Commission may modify the rule review timetable as circumstances warrant.

Timetable:

Action	Date	FR Cite
Notice of Rules and Guides to Review in 2000	01/19/00	65 FR 2912
Notice of Rules and Guides to Review in 2002	03/04/02	67 FR 9630
Notice of Rules and Guides to Review in 2003	01/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Neil Blickman, Attorney, Federal Trade Commission, Division of Enforcement, Bureau of Consumer Protection, Washington, DC 20580
Phone: 202 326-3038
Email: nblickman@ftc.gov

RIN: 3084–AA47

3915. REGULATIONS UNDER THE COMPREHENSIVE SMOKELESS TOBACCO HEALTH EDUCATION ACT OF 1986

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 4401

CFR Citation: 16 CFR 307

Legal Deadline: None

Abstract: The Comprehensive Smokeless Tobacco Health Education Act of 1986 requires health warnings on all packages and advertising for smokeless tobacco. The Act directs the Commission to issue implementing Rules governing the format and display of the warnings. On November 4, 1986, the Commission issued its Rules setting out the provisions for the size, color, typeface, and rotation of the statutory warnings. In FY 2000, the Commission undertook a periodic review of the Rules. The purpose of the review was to determine whether the Rules continue to effectively meet the goals

of the Act and to seek information concerning the Rules or economic impact of the Rules in order to decide whether it should be amended. Staff plans to forward its recommendations to the Commission shortly.

Timetable:

Action	Date	FR Cite
Recommendation to the Commission Regarding ANPRM (Regulatory Review)	01/27/00	
ANPRM (Regulatory Review)	03/07/00	65 FR 11944
Comment Period End (Regulatory Review)	04/24/00	
Comment Period Extended (Regulatory Review)	05/08/00	65 FR 26534
Extended Comment Period End (Regulatory Review)	07/21/00	
Reopening and Extension of Comment Period	10/13/00	65 FR 60899
Extended Comment Period End	10/16/00	
Recommendation to Commission (Regulatory Review)	07/00/02	
Commission Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Rosemary Rosso, Attorney, Federal Trade Commission, Division of Advertising Practices, Bureau of Consumer Protection, Washington, DC 20580
Phone: 202 326-2174
Email: rrosso@ftc.gov

RIN: 3084–AA48

3916. TRADE REGULATION RULE CONCERNING THE LABELING AND ADVERTISING OF HOME INSULATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 et seq

CFR Citation: 16 CFR 460

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule Concerning the Labeling and Advertising of Home Insulation (Rule) became effective on September 29, 1980. The Rule is designed to assist consumers in evaluating and comparing the thermal performance characteristics of competing home insulation products. Specifically, the Rule requires manufacturers of home insulation products to provide information about the product's degree of resistance to the flow of heat (R-Value). The Rule also establishes uniform standards for testing, information disclosure, and substantiation of product performance claims. As part of its systematic review of all Commission rules and guides, the Commission requested comments on, among other things, the economic impact of, and the continuing need for this Rule, possible conflicts between the Rule and State, local and other Federal laws, and the effect on the Rule of any technological, economic, or other industry changes. The Commission is considering the comments received in two parts. In part I, the Commission reviewed comments that addressed the current benefits, burdens, and need for the Rule, and determined to retain the Rule. The Commission also adopted nonsubstantive amendments that: (1) allow the optional use of the additional R-Value test procedure; and (2) require use in the future of revised, current versions of other test procedures cited in the Rule. In part II, the Commission is considering the comments recommending that the Commission adopt substantive revisions to the Rule. In response to the comments received, the Commission issued an advance notice of proposed rulemaking (ANPRM) seeking comment on whether it should initiate a rulemaking proceeding to amend the Rule. In the ANPRM, the Commission proposed amendments to recognize technological advances in R-Value testing and specimen preparation procedures, and to clarify and streamline the Rule's requirements. The comment period on the ANPRM ended on November 15, 1999. Based on the ANPRM record, the Commission will determine whether to initiate a rulemaking proceeding.

Timetable:

Action	Date	FR Cite
Request for Comments	04/06/95	60 FR 17492
Commission Action/Part I	03/28/96	61 FR 13659
Commission Action/ANPRM	09/01/99	64 FR 48023
Comment Period End	11/15/99	
Recommendation to Commission	07/00/02	
Commission Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA60

3917. TRADE REGULATION RULE ON FUNERAL INDUSTRY PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 45; 15 USC 46(g); 15 USC 57(a)

CFR Citation: 16 CFR 453

Legal Deadline: None

Abstract: The Funeral Industry Practices Rule (Funeral Rule or Rule), which became effective in 1984, requires sellers of funeral goods and services to give price lists to consumers who visit a funeral home, and to disclose price and other information to callers who request it over the telephone. The Rule enables consumers to select and purchase only the goods and services they want, and requires funeral providers to seek authority before performing some services such as embalming. The Rule also requires funeral providers to make disclosures regarding any required purchases and prohibits misrepresentations regarding requirements and other aspects of funeral goods and services. In its 1994 review of the Rule, the Commission determined to retain the Rule and amended it to prohibit funeral providers from charging a "casket handling fee" in addition to any non-declinable basic-services fee and deleted certain affirmative telephone disclosure requirements. The Commission responded to requests to address emerging issues in the funeral industry by beginning a review of the Rule in 1998. The Commission previously had scheduled a review of the Rule in 1999, under its ten-year schedule for reviewing all Commission rules and guides. The Commission published a notice soliciting public comment in May 1999. In response to requests of industry members and consumer groups, the Commission extended the comment period.

Commission staff conducted a public workshop conference on November 18, 1999, to discuss and explore openly issues raised in written comments. Staff is evaluating the comments and preparing a recommendation to the Commission.

Timetable:

Action	Date	FR Cite
Recommendation to Commission Regarding Initial Notice for Comment	04/17/99	
Initial Notice for Public Comment	05/05/99	64 FR 24249
Close of Comment Period (Extended)	08/11/99	64 FR 35965
Public Workshop	11/18/99	64 FR 56717
Recommendation to Commission	11/00/02	
Commission Action	03/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA82

Federal Trade Commission (FTC) — Proposed Rule Stage

3918. TRADE REGULATION RULE ON FRANCHISING AND BUSINESS OPPORTUNITY VENTURES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 41 to 58

CFR Citation: 16 CFR 436

Legal Deadline: None

Abstract: The Federal Trade Commission's Trade Regulation Rule on Franchising and Business Opportunity Ventures (Franchise Rule) became effective on October 21, 1979. The Rule is designed to reduce deceptive and unfair practices in the sale of franchises and business opportunities by requiring the pre-sale disclosure of material information about the franchise. For example, the Rule requires franchisors to disclose their business background and litigation history, as well as the number of failed and terminated franchise units. The Rule also requires the disclosure of material terms of the franchise relationship, such as recurring fees and termination and renewal rights. The Rule further requires the franchisor to provide an audited financial statement for the past three fiscal years. Finally, the Rule requires any franchisor who makes earnings representations to provide the prospective franchisee with an earnings claims document that substantiates those claims. On February 28, 1997, the Commission published an advance notice of proposed rulemaking (ANPRM) contemplating amendments that would address any new technologies and market practices and at the same time, reduce any unnecessary regulatory burden. Specifically, the Commission requested comments on whether to revise the Rule to more closely align Federal and State disclosure requirements governing franchise sales, and to address changes in the marketing of franchises, such as the sale of franchises internationally and through the Internet. Six public workshops were held in five cities during 1997 to promote discussions about the issues; allow the public to make statements on the record; and assist Commission staff in drafting a proposed amended Rule. The Commission extended the comment period to December 31, 1997. On October 22, 1999, the Commission published a notice of proposed rulemaking (NPRM) with a text of the revised Rule. Comments were accepted until December 21, 1999, and rebuttal comments were accepted until January 31, 2000. Commission staff is now preparing a staff report.

Timetable:

Action	Date	FR Cite
ANPRM	02/28/97	62 FR 9115
Comment Period End	12/31/97	62 FR 28822
Recommendation to Commission	03/26/99	
NPRM	10/22/99	64 FR 57293
NPRM Comment Period End	12/21/99	
NPRM Rebuttal Comment Period End	01/31/00	
Staff Report	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: State

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RIN: 3084–AA63

3919. TRADE REGULATION RULE PURSUANT TO THE TELEPHONE DISCLOSURE AND DISPUTE RESOLUTION ACT OF 1992

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 5701 et seq; 15 USC 5714(1)

CFR Citation: 16 CFR 308

Legal Deadline: None

Abstract: Congress enacted the Telephone Disclosure and Dispute Resolution Act of 1992 (TDDRA) to curtail certain unfair and deceptive practices perpetrated by some pay-per-call businesses, and to encourage the growth of the legitimate pay-per-call industry. TDDRA mandated that the FTC promulgate a rule to curb these practices; the Pay-Per-Call or 900-Number Rule (Rule) became effective on November 1, 1993. TDDRA granted the Commission limited jurisdiction over common carriers for purposes of the Rule. The Rule requires that advertisements for 900-numbers contain certain disclosures; requires that anyone who calls a 900-number service be given the opportunity to hang up at the conclusion of the preamble without incurring any charge for the call; and establishes procedures for resolving billing disputes for 900-number calls and other telephone-billed purchases. The Rule itself required the Commission to initiate a review of the Rule prior to November 1997. As part

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of this review, the Commission published a notice in the Federal Register on March 12, 1997, requesting comments on, among other things, the economic impact of and the continuing need for the Rule, and the effect on the Rule of any technological or industry changes. The Commission also sought comments, pursuant to authority granted under the Telecommunications Act of 1996, on whether to expand the Rule to govern other similar audio information and entertainment services. Staff held a workshop on June 19-20, 1997, during which members of the industry discussed issues raised in the comments, including billing and collection issues and possible ways to expand the definition of "pay-per-call services." Many commenters reported that the Rule has been successful in reducing the abuses that led to the passage of TDDRA. Despite the success of the Rule in correcting the abuses in the 900-number industry, complaints about other types of audiotext services (accessed via dialing patterns other than 900 numbers) are being reported. The majority of complaints now involve 800 numbers, international numbers, or other dialing patterns that do not use the 900-number prefix. Many consumer and law enforcement agencies also have been receiving complaints from consumers who have discovered unexplained charges (in some cases, recurring charges) on their telephone bills for services that were never authorized, ordered, received, or used, a practice known as "cramming." On October 30, 1998, the Commission published an NPRM that would expand the definition of "pay-per-call" services beyond 900 numbers and that would implement measures to combat telephone bill cramming. The proposed revisions would: (1) require the express authorization of the person to be billed for the purchase of any "telephone-billed purchases" that cannot be blocked by 900-number blocking; (2) prohibit vendors from billing consumers for monthly or other recurring charges for pay-per-call services unless the vendor had entered into a "presubscription agreement" with the person to be billed and had sent the consumer a written copy of the agreement; and (3) give consumers legal recourse to dispute unauthorized charges crammed on phone bills and have those charges removed. The comment period was extended to March 10, 1999, and the workshop-conference was held on May 20-21, 1999. At the workshop, participants discussed issues raised by the comments, such as the meaning of "express authorization" and the requirements for a presubscription agreement. Staff plans to forward a recommendation to the Commission this year.

Timetable:

Action	Date	FR Cite
Request for Comments	03/12/97	62 FR 11749
Comment Period End	05/12/97	
Public Workshop	06/19/97	
Public Workshop	06/20/97	
Recommendation to Commission	09/08/98	
NPRM	10/30/98	63 FR 58523
Comment Period Extended	01/04/99	64 FR 61
Comment Period End	01/08/99	
Public Workshop-Conference	02/25/99	
Extended Comment Period End	03/10/99	
Public Workshop-Conference Date Rescheduled	05/20/99	
Recommendation to Commission	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA78

3920. TELEMARKETING SALES RULE

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 6101 to 6108

CFR Citation: 16 CFR 310

Legal Deadline: Other, Statutory, December 31, 2000, Begin Rule Review and Report to Congress.

Abstract: In 1995, the Commission issued the Telemarketing Sales Rule (TSR or Rule), 16 CFR part 310, under the Telemarketing and Consumer Fraud and Abuse Prevention Act, 15 USC 6101-6108. TSR requires telemarketers to disclose information; prohibits misrepresentations; limits the times telemarketers may call consumers; prohibits calls to a consumer who has asked not to be called again; and sets payment restrictions for the sale of certain goods and services.

As required by the 1995 Act, the Commission is reviewing TSR to evaluate the Rule's operation and report to Congress. The Commission has issued a request for public comment on the Rule, its overall costs, benefits and its regulatory and economic impact since its adoption in 1995. The Commission also held a public forum on January 11, 2000, addressing the operation of the Rule's "do-not-call" provision. Another public forum to discuss other provisions of TSR was held on July 27-28, 2000. Public forums provide the Commission staff and interested parties an opportunity to discuss these issues and any other topics that emerge from the public comments.

On October 25, 2001, President Bush signed the USA Patriot Act, P.L. 107-56, into law, with provisions that have significant impact on TSR. Section 1101 of the 2001 Act amends the Telemarketing Act to extend the coverage of TSR to charitable fund raising conducted by for-profit telemarketers for or on behalf of charitable organizations.

On January 22, 2002, the Commission announced its proposal to amend the Rule and to publish a notice of proposed rulemaking (NPRM). Among other things, the proposed Rule would establish a centralized national "do not call" registry, would prohibit telemarketers from receiving or sharing a consumer's billing information with anyone else, and would prohibit telemarketers from blocking "Caller ID" information. In addition, as mandated by the USA Patriot Act, the Commission's proposal adds certain disclosures and other requirements applicable to for-profit telemarketers who solicit charitable donations.

Staff intends to hold a three-day public workshop on June 5-7, 2002, to discuss these and other proposed changes to the Rule. Staff plans to complete its review and forward its recommendation to the Commission by fall 2002.

Timetable:

Action	Date	FR Cite
Announcement of Public Forum re: "Do-Not-Call" Provision	11/24/99	64 FR 66124
Public Forum re "Do-Not-Call" Provision	01/11/00	
Request for Comments	02/28/00	65 FR 10428
Comment Period End	04/27/00	
Extension of Comment Period	05/05/00	65 FR 26161
Extended Comment Period End	05/30/00	
Public Forum	07/27/00	
Public Forum	07/28/00	
USA Patriot Act Enacted	10/25/01	
NPRM	01/30/02	67 FR 4492
Comment Period End	03/29/02	
Extension of Comment Period	04/03/02	67 FR 15767
Extended Comment Period End	04/15/02	
Public Forum	06/05/02	
Public Forum	06/06/02	
Public Forum	06/07/02	
Recommendation to Commission	08/00/02	
Commission Action	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA86

3921. PRIVACY OF CONSUMER INFORMATION—SECURITY

Priority: Other Significant

Legal Authority: PL 106-102, sec 501(b)

CFR Citation: 16 CFR 314

Legal Deadline: None

Abstract: On November 12, 1999, the Gramm-Leach-Bliley Act (G-L-B) was enacted. The Act repealed the key provision of the Glass-Steagall Act, that among other things, required the separation of banking, insurance, and securities institutions. Subtitle A (Disclosure of Nonpublic Person Information) of title V (Privacy) limits the ability of the newly authorized financial institutions to disclose nonpublic personal information about consumers to nonaffiliated third parties, and requires them to disclose to consumers their privacy policies and practices respecting information shared with both affiliates and nonaffiliated third parties. The Commission issued the statutorily mandated Rule on the Privacy of Consumer Financial Information (Privacy Rule), 16 CFR part 313, on May 12, 2000. The Privacy Rule took effect on November 13, 2000, and full compliance was required on or before July 1, 2001.

In addition to the Privacy Rule, section 501 of subtitle A requires the agencies to establish appropriate standards for financial institutions to safeguard nonpublic personal information. In particular, section 501(b) of the Act requires the Commission to "establish appropriate standards for the financial institutions [subject to its jurisdiction] relating to administrative, technical, and physical safeguards." Section 501(b) sets out the objectives of these standards: (1) to insure the security and confidentiality of customer records and information; (2) to protect against any anticipated threats or hazards to the security or integrity of such records; and (3) to protect against unauthorized access to or use of such records of information which could result in substantial harm or inconvenience to any customer. On September 7, 2000, the Commission issued an advance notice of proposed rulemaking (ANPRM) and a request for comments reopening its Safeguards Rule (to be codified at part 314). On August 7, 2001, the Commission published an NPRM. This comment period ended on October 9, 2001. Staff plans to forward its recommendation to the Commission during spring 2002.

Timetable:

Action	Date	FR Cite
ANPRM and Request for Comments	09/07/00	65 FR 54186
Extension of Comment Period	10/06/00	65 FR 59766
Comment Period End	10/10/00	
Extended Comment Period End	10/24/00	
Commission Action	07/30/01	
NPRM	08/07/01	66 FR 41162
NPRM Comment Period End	10/09/01	
Recommendation to Commission	05/00/02	
Commission Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3084–AA87

Federal Trade Commission (FTC) — Long-Term Actions

3922. TRADE REGULATION RULE ON OPHTHALMIC PRACTICE RULES

Priority: Substantive, Nonsignificant

CFR Citation: 16 CFR 456

Timetable:

Action	Date	FR Cite
Request for Comments	04/03/97	62 FR 15865
Notice of Comment Period Extension	05/29/97	62 FR 29088
Comment Period End	09/02/97	
Recommendation to Commission	04/00/03	

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FTC — Long-Term Actions

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
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Federal Trade Commission (FTC) — Completed Actions

3923. PREMERGER NOTIFICATION RULES AND REPORT FORM

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 18a Clayton Act
CFR Citation: 16 CFR 801 to 803
Legal Deadline: None

Abstract: The Premerger Notification Rules (Rules) and the Antitrust Improvements Act Notification and Report Form (HSR Form) were adopted pursuant to Section 7A of the Clayton Act. Section 7A requires firms of a certain size contemplating mergers or acquisitions of a specified size to file notification with the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and to wait a designated period before consummating the transaction. It also requires the FTC, with the concurrence of the Assistant Attorney General for Antitrust, to promulgate rules requiring that notification be in a form and contain information necessary to enable the FTC and DOJ to determine whether the proposed acquisition may, if consummated, violate the antitrust laws. These Rules are continually reviewed in order to improve the program's effectiveness and reduce the paperwork burden on the business community. The Commission proposed modifications to the HSR Form on June 14, 1994. 59 FR 30545.

The Commission has issued Interim Rules based on comments received in response to this Notice, as well as on some changes in HSR reporting requirements necessitated by the recent amendments to Section 7(A) of the Clayton Act. The President signed the statutory amendments into law on December 21, 2000. Both the statutory amendments and the interim rules became effective on February 1, 2001. The Commission also published a notice of proposed rulemaking (NPRM) updating examples in several rules and revising others. The comment period for the interim rules and the NPRM ended on March 19, 2001. These rules became effective on April 17, 2002. 67 FR 11898 (Mar. 18, 2002). The Commission recently also issued final rule 802.21. This rule became effective on March 18, 2002, and will be applied retroactively to February 2, 2002. 67 FR 11904 (Mar. 18, 2002). In addition, changes requiring the use of the North American Industrial Classification System (NAICS) to replace the Standard Industrial Classification (SIC) codes in completing items 5-8 on the HSR Form were made effective July 1, 2001. In the future, staff expects to propose additional rule changes as appropriate.

Timetable:

Action	Date	FR Cite
NPRM (Rule Changes)	02/01/01	66 FR 8722
Interim Rule I (Statutory Changes)	02/01/01	66 FR 8679
Interim Rule II (Rules of Practice)	02/01/01	66 FR 8720
Comment Period End (Interim and Proposed Rules)	03/19/01	
NPRM (Change from SIC to NAICS)	05/09/01	66 FR 23561
Effective Date (Change from SIC to NAICS)	07/01/01	
Final Rule Parts 801 and 802	03/18/02	67 FR 11898
Final Rule 802.21	03/18/02	67 FR 11904
Correction to Final Rule 802.51	03/26/02	67 FR 13716

Regulatory Flexibility Analysis Required: No
Government Levels Affected: None
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RIN: 3084–AA23

3924. AMENDED FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT

Priority: Substantive, Nonsignificant
Legal Authority: 12 USC 1811 et seq
CFR Citation: Not Yet Determined
Legal Deadline: None

Abstract: The Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) assigns to the FTC responsibilities for certain non-federally insured depository institutions (DIs) and private deposit insurers of such DIs. The FTC is required to prescribe, by regulation or order, the manner and content of certain disclosures required of DIs that lack Federal deposit insurance. The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1993, containing the Commission's appropriation for fiscal year 1993, provided that none of the funds were available for expenses authorized by section 151 of the FDICIA. Legislation containing the Commission's appropriation for fiscal years 1994 to 2002 contains the same provision. Thus, the Commission implementation of FDICIA is on hold. Pursuant to the February 12, 2002 OMB Memorandum, the Commission has determined to withdraw this rulemaking.

Timetable:

Action	Date	FR Cite
Withdrawn	03/15/02	

Regulatory Flexibility Analysis Required: No
Government Levels Affected: State
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RIN: 3084–AA44

3925. TRADE REGULATION RULE CONCERNING POWER OUTPUT CLAIMS FOR AMPLIFIERS UTILIZED IN HOME ENTERTAINMENT PRODUCTS

Priority: Substantive, Nonsignificant
Legal Authority: 15 USC 41 et seq
CFR Citation: 16 CFR 432

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Legal Deadline: None

Abstract: The Trade Regulation Rule Concerning Power Output Claims for Amplifiers Utilized in Home Entertainment Products (Amplifier Rule or Rule) was promulgated in 1974 to assist consumers in purchasing power amplification equipment for home entertainment purposes by standardizing the measurement and disclosure of various performance characteristics of the equipment. The Amplifier Rule establishes uniform test standards and disclosures so that consumers can make more meaningful comparisons of performance attributes. The Rule makes it an unfair or deceptive act or practice for manufacturers and sellers of sound power amplification equipment for home entertainment purposes to fail to disclose certain performance information in connection with direct or indirect representations of power output, power band, frequency or distortion characteristics. The Rule also sets out standard test conditions for performing the measurements that support the required performance disclosures. Further, the Rule prohibits representations of performance characteristics if they are not obtainable when the equipment is operated by the consumer in the usual and ordinary manner without the use of extraneous aids.

To determine whether changes in technology that occurred since the Rule was issued necessitated any Rule revisions, the Commission requested comments on the Rule. Among other things, the Commission asked about the economic impact of, and the continuing need for, this Rule; and any possible conflict between the Rule and State, local and other Federal laws. Based upon the regulatory review, the Commission determined that the Rule applies to self-powered speakers for use with home computers and home sound systems but that the Rule should not be extended to automobile sound systems. The Commission also determined to issue an ANPRM seeking comment on whether it should amend the Rule. Based on the ANPRM record, the Commission issued an NPRM to seek public comment on whether the Commission should amend the Rule to reduce the preconditioning power output requirement from one-third of rated power to a lower figure; exempt sellers who make power output claims in media advertising from the requirement to disclose total rated harmonic distortion and the associated power bandwidth and impedance ratings; and clarify the manner in which the Rule's testing procedures apply to self-powered subwoofer-satellite combination speaker systems. Based on the NPRM record, the Commission amended the Rule as proposed in the NPRM. At the same time, the Commission issued a supplemental notice of proposed rulemaking (SNPRM) to seek public comment on proposed testing procedures for "home theater" receivers with five or more channels. The comment period for the SNPRM ended on March 30, 2001. On January 15, 2002, the Commission announced its decision to keep the rulemaking record open but to defer action on the proposed supplemental rule to allow an industry working group time to establish a voluntary consensus standard of measuring the power output of multichannel receivers and amplifiers. The Commission has determined to withdraw this item from the Unified Agenda because the Commission does not anticipate any further action in this supplemental rulemaking proceeding in the near future.

Timetable:

Action	Date	FR Cite
Request for Comments	04/07/97	62 FR 16500
Comment Period End	06/06/97	
ANPRM	07/09/98	63 FR 37238
Final Rule (Nonsubstantive Technical Changes)	07/09/98	63 FR 37234
Comment Period End	09/08/98	
NPRM	07/19/99	64 FR 38610
Comment Period End	10/15/99	64 FR 51087
SNPRM	12/22/00	65 FR 80798
Commission Action (Final Rule)	12/22/00	65 FR 81232
Comment Period End	02/23/01	
Reopen Comment Period	03/01/01	66 FR 12915
Comment Period End	03/30/01	
Recommendation to Commission	11/06/01	
Notice Deferring Rulemaking	01/15/02	67 FR 1915
Withdrawn	03/15/02	

Regulatory Flexibility Analysis Required: No
Small Entities Affected: No
Government Levels Affected: None
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3926. CHILDREN'S ONLINE PRIVACY PROTECTION RULE

Priority: Other Significant
Legal Authority: 15 USC 6501 et seq
CFR Citation: 16 CFR 312
Legal Deadline: None

Abstract: As part of the effort to protect children's online privacy, Congress enacted the Children's Online Privacy Act of 1998, 15 USC 6501 et seq. (COPPA), to prohibit unfair or deceptive acts or practices in connection with the collection, use, or disclosure of personally identifiable information from children on the Internet. On October 20, 1999, the Commission issued its final Rule implementing COPPA, which became effective on April 21, 2000. See 16 CFR part 312. The Rule imposes certain requirements on operators of websites or online services directed to children under thirteen years of age, or other websites or online services that have actual knowledge that they have collected information from a child under thirteen years of age. Among other things, the Rule requires that website operators obtain verifiable parental consent prior to collecting, using, or disclosing personal information from children under thirteen years of age.

The Rule provides that, "[a]ny method to obtain verifiable parental consent must be reasonably calculated, in light of available technology, to ensure that the person providing consent is the child's parent." 16 CFR 312.5(b)(1). In order to allow time for reliable electronic methods of verification to become widely available and affordable, the Rule sets forth a sliding scale approach for obtaining verifiable parental consent, which depends upon the uses for which the personal information is collected. The sliding scale was set to expire on April 21, 2002, at which time website operators must obtain verifiable parental consent using the more reliable methods set out by the Rule for all uses of personal information. 16 CFR 312.5(b)(2).

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At the time it issued the final rule during 1999, the Commission anticipated that the sliding scale was necessary only in the short term because the more reliable methods of obtaining verifiable parental consent would soon be widely available and affordable. Thereafter, however, it appeared that the expected progress in available technology had not occurred. Therefore, during October 2001, the Commission proposed to amend the Rule to extend the sliding scale mechanism for an additional two years to April 21, 2004 and requested comment on the proposed extension and several questions concerning the current and anticipated availability and affordability of secure electronic mechanisms or infomediary services for obtaining parental consent. (See 66 FR 54963.) Twenty-one comments were received in response to the NPRM. On April 17, 2002, the Commission issued a final rule amending COPPA. The amendment extends until April 21, 2005, a sliding scale approach, including the use of an e-mail message from the parent, coupled with additional steps, to obtain verifiable parental consent to collect personal information from children for internal use by the website operator.

Timetable:

Action	Date	FR Cite
NPRM	10/31/01	66 FR 54963
NPRM Comment Period End	11/30/01	
Final Rule	04/17/02	67 FR 18818

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: None

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Part LVII

National Credit Union Administration

Semiannual Regulatory Agenda

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NATIONAL CREDIT UNION ADMINISTRATION (NCUA)

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Ch. VII

Semiannual Regulatory Agenda

AGENCY: National Credit Union Administration (NCUA).

ACTION: Semiannual regulatory agenda.

SUMMARY: Pursuant to its ongoing policy of reviewing regulations, NCUA is publishing a list of current and projected rulemakings, reviews of existing regulations, and completed actions as of February 15, 2002, to be included in the Unified Agenda of Federal Regulatory and Deregulatory Actions.

DATES: This information is current as of February 15, 2002.

ADDRESSES: National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

FOR FURTHER INFORMATION CONTACT: For each regulation listed, the person(s) named in the listing, at the above address, unless otherwise noted, or listed telephone number.

SUPPLEMENTARY INFORMATION: The purpose of this agenda is to enable credit unions and the public to follow regulatory development and review at NCUA, and participate in that process more effectively. Entries for the agenda appear in one of five possible categories: prerule stage; proposed rule stage; final rule stage; long-term actions; or completed actions.

The agenda is published pursuant to NCUA Interpretive Ruling and Policy Statement Number 87-2, "Developing and Reviewing Government Regulations," 54 FR 35231, (September 18, 1987), which sets out NCUA's policy and procedures for developing and reviewing its regulations. NCUA's policy is to ensure that its regulations impose only minimum required burdens on credit unions, consumers, and the public; are appropriate for the size of the financial institutions it regulates; are issued only after full public participation; and are clear and understandable. Further, NCUA undertakes to review all regulations every three years to clarify and simplify existing regulations and eliminate redundant and unnecessary provisions.

Executive Order 12866, signed by President Clinton on September 30, 1993, requires independent executive agencies such as NCUA to publish a regulatory agenda.

Approved by the NCUA Board on March 13, 2002.

Becky Baker,
Secretary of the Board.

National Credit Union Administration—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3927	Corporate Credit Unions	3133-AC28
3928	Requirements for Insurance	3133-AC33
3929	Credit Practices	3133-AC34
3930	Investment and Deposit Activities	3133-AC49
3931	Consumer Protections for Federally Insured Credit Unions' Sale of Nondeposit Investments	3133-AC56
3932	Nondiscrimination in Federally Assisted Programs	3133-AC59
3933	Prompt Corrective Action	3133-AC60
3934	Share Insurance and Appendix	3133-AC65
3935	Advertising	3133-AC67

National Credit Union Administration—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3936	OMB Control Numbers	3133-AC52
3937	Truth in Savings	3133-AC57
3938	Federal Credit Union Chartering, Field of Membership Modification and Conversions	3133-AC63
3939	Organization and Operations of Federal Credit Unions — Benefits for Employees of Federal Credit Unions	3133-AC64
3940	Federal Credit Union Chartering, Field of Membership Modifications, and Conversions	3133-AC66

National Credit Union Administration—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3941	Eligible Obligations — Conflict of Interest Provision	3133-AC51
3942	Bank Secrecy Act Compliance Programs and Procedures	3133-AC62

NCUA

National Credit Union Administration—Completed Actions

Sequence Number	Title	Regulation Identification Number
3943	Regulatory Flexibility and Exemption Program	3133-AC38
3944	Requirements for Insurance	3133-AC46
3945	Definitions and Technical Amendments	3133-AC53
3946	Reimbursement, Insurance, and Indemnification of Officials and Employees	3133-AC54
3947	Loan Interest Rates	3133-AC61

National Credit Union Administration (NCUA) — Proposed Rule Stage

3927. CORPORATE CREDIT UNIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 12 USC 1762; 12 USC 1766(a); 12 USC 1781; 12 USC 1789

CFR Citation: 12 CFR 704

Legal Deadline: None

Abstract: NCUA requested public comment on revisions to the rule governing corporate credit unions. As part of its regulatory review process, NCUA has identified provisions for further clarification or revision. Comments on these issues will assist NCUA in its regulatory review process.

Timetable:

Action	Date	FR Cite
ANPRM	07/28/99	64 FR 40787
ANPRM Comment Period End	11/26/99	
Second ANPRM	11/22/00	65 FR 70319
Second ANPRM Comment Period End	02/20/01	
NPRM	09/21/01	66 FR 48742
NPRM Comment Period End	12/20/01	
Second NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Email: maryr@ncua.gov

RIN: 3133–AC28

3928. REQUIREMENTS FOR INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1756 to 1757; 12 USC 1757A; 12 USC 1766; 12 USC 1785; 12 USC 1781

CFR Citation: 12 CFR 741

Legal Deadline: None

Abstract: NCUA solicited public comment on whether NCUA should adopt a regulation that would restrict the insurance coverage for state-chartered credit unions that open branches outside the United States.

Timetable:

Action	Date	FR Cite
ANPRM	09/14/00	65 FR 55464
ANPRM Comment Period End	11/13/00	
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC33

3929. CREDIT PRACTICES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 57a; 15 USC 1681b

CFR Citation: 12 CFR 706

Legal Deadline: None

Abstract: NCUA issued a proposed regulation under the Fair Credit Reporting Act that addresses the sharing of opt-out information between Federal credit unions and their affiliates. NCUA intends to issue a second proposal for comment.

Timetable:

Action	Date	FR Cite
NPRM	10/26/00	65 FR 64168
NPRM Comment Period End	12/26/00	
Second NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Chrisanthy J. Loizos, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6567
Fax: 703 518-6569
Email: cloizos@ncua.gov

RIN: 3133–AC34

3930. INVESTMENT AND DEPOSIT ACTIVITIES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757(7); 12 USC 1757(8); 12 USC 1757(15)

CFR Citation: 12 CFR 703

Legal Deadline: None

Abstract: The advanced notice of proposed rulemaking solicited comments on how to update and clarify NCUA's investment and deposit activities rules.

Timetable:

Action	Date	FR Cite
ANPRM	10/26/01	66 FR 54168

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NCUA — Proposed Rule Stage

Action	Date	FR Cite
ANPRM Comment Period End	01/24/02	
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC49

3931. CONSUMER PROTECTIONS FOR FEDERALLY INSURED CREDIT UNIONS' SALE OF NONDEPOSIT INVESTMENTS

Priority: Substantive, Nonsignificant

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: NCUA is proposing regulations to ensure that the sale to members of all nondeposit investments through various types of arrangements is done in a safe and sound manner.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Email: maryr@ncua.gov

RIN: 3133–AC56

3932. NONDISCRIMINATION IN FEDERALLY ASSISTED PROGRAMS

Priority: Substantive, Nonsignificant

Unfunded Mandates: Undetermined

Legal Authority: 42 USC 2000d et seq; 29 USC 793; 42 USC 6101 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The purpose of this rule is to implement Federal statutes that prohibit credit unions that receive Federal financial assistance from discrimination on certain bases.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul M. Peterson, Staff Attorney, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6555
Fax: 703 518-6569
Email: ppeterson@ncua.gov

RIN: 3133–AC59

3933. • PROMPT CORRECTIVE ACTION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1790d

CFR Citation: 12 CFR 702

Legal Deadline: None

Abstract: Revisions to NCUA system of minimum capital standards for federally insured credit unions, and corresponding remedies to restore net worth.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	11/00/02	
Final Action Effective	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Steven W. Widerman, Trial Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6557
Email: widerman@ncua.gov

RIN: 3133–AC60

3934. • SHARE INSURANCE AND APPENDIX

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1757; 12 USC 1765 to 1766; 12 USC 1781 to 1782; 12 USC 1787; ...

CFR Citation: 12 CFR 745

Legal Deadline: None

Abstract: Update NCUA's share insurance rules to bring them into closer parity with the Federal Deposit Insurance Corporation's deposit insurance rules.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC65

3935. • ADVERTISING

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766; 12 USC 1781; 12 USC 1789; 12 USC 4311

CFR Citation: 12 CFR 740

Legal Deadline: None

Abstract: Revise to address electronic advertising and transactions and to improve clarity.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
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Email: dsalva@ncua.gov

RIN: 3133–AC67

National Credit Union Administration (NCUA) — Final Rule Stage

3936. OMB CONTROL NUMBERS

Priority: Info./Admin./Other

Legal Authority: 12 USC 1766(a); 5 USC 3507(f)

CFR Citation: 12 CFR 795

Legal Deadline: None

Abstract: NCUA plans to update the display table that lists the current OMB control numbers and the 12 CFR part or section where each number is described or identified.

Timetable:

Action	Date	FR Cite
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: rmetz@ncua.gov

RIN: 3133–AC52

3937. TRUTH IN SAVINGS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 4311

CFR Citation: 12 CFR 707

Legal Deadline: Other, Statutory, November 6, 2001, Interim Final Rule. Mandated by Truth in Savings Act.

Abstract: NCUA amended its Truth in Savings rule in compliance with the Truth in Savings Act which requires NCUA to amend its rule in conformity with changes made by the Federal Reserve Board to its Regulation DD.

Timetable:

Action	Date	FR Cite
Interim Final Rule	09/19/01	66 FR 48206
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
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RIN: 3133–AC57

3938. • FEDERAL CREDIT UNION CHARTERING, FIELD OF MEMBERSHIP MODIFICATION AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a-b; 12 USC 1766 to 1767; ...

CFR Citation: 12 CFR 701.1

Legal Deadline: None

Abstract: The NCUA Board amended its chartering and field of membership manual to make two changes to ease the burden on applicants for community charters, expansions or conversions. First, applicants need not submit documentation to establish a community area that is the same as one the NCUA has previously determined to be a well-defined local community, neighborhood or rural district. Second, the NCUA Board deleted the category of common characteristics and background of residents from the examples of acceptable documentation because it has proven to generate documentation of limited relevance.

Timetable:

Action	Date	FR Cite
Interim Final Rule	03/20/01	66 FR 15619
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC63

3939. • ORGANIZATION AND OPERATIONS OF FEDERAL CREDIT UNIONS — BENEFITS FOR EMPLOYEES OF FEDERAL CREDIT UNIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a-b; 12 USC 1766 to 1767; ...

CFR Citation: 12 CFR 701.19

Legal Deadline: None

Abstract: Clarify the scope of the rule permitting Federal credit unions to provide their employees with reasonable retirement and employee benefits.

Timetable:

Action	Date	FR Cite
NPRM	12/20/01	66 FR 65662
NPRM Comment Period End	02/19/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank S. Kressman, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6558
Fax: 703 518-6569
Email: fkressman@ncua.gov

RIN: 3133–AC64

3940. • FEDERAL CREDIT UNION CHARTERING, FIELD OF MEMBERSHIP MODIFICATIONS, AND CONVERSIONS

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1756; 12 USC 1757; 12 USC 1759; 12 USC 1761a-b; ...

CFR Citation: 12 CFR 701.1

Legal Deadline: None

Abstract: An existing community charter need not document in writing how it plans on serving the entire community. The NCUA Board updated the definition of an investment area because of the release of the new census data and updated Community Development Financial Institution Fund standards.

Timetable:

Action	Date	FR Cite
Interim Final Rule	12/20/01	66 FR 65625
Interim Final Rule Effective	12/20/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

NCUA — Final Rule Stage

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC66

National Credit Union Administration (NCUA) — Long-Term Actions

3941. ELIGIBLE OBLIGATIONS — CONFLICT OF INTEREST PROVISION

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a

CFR Citation: 12 CFR 701.23

Legal Deadline: None

Abstract: Section 701.23 sets forth the requirements for purchasing, selling, and pledging eligible obligations (loans) by Federal credit unions. NCUA plans to propose a conflict of interest provision for this section, similar to section 701.21(c)(8)(i) of the lending rule.

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: rmetz@ncua.gov

RIN: 3133–AC51

3942. • BANK SECRECY ACT COMPLIANCE PROGRAMS AND PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1766(a); 12 USC 1786(q); 31 USC 5311; 31 USC 5318

CFR Citation: 12 CFR 748.2

Legal Deadline: None

Abstract: The rule will be amended to clarify and cross-reference any changes to credit unions' responsibilities for Bank Secrecy Act compliance resulting from passage of the U.S.A. Patriot's Act, P. L. 107-56, October 26, 2001.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: John K. Ianno, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Fax: 703 518-6569
Email: johni@ncua.gov

RIN: 3133–AC62

National Credit Union Administration (NCUA) — Completed Actions

3943. REGULATORY FLEXIBILITY AND EXEMPTION PROGRAM

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757; 12 USC 1756; 12 USC 1766

CFR Citation: 12 CFR 742

Legal Deadline: None

Abstract: This final rule permits credit unions with advanced levels of net worth and consistently strong supervisory examination ratings to be exempt, in whole or in part, from certain NCUA regulations. Also, the Board issued a final amendment to the appraisal regulation to increase the dollar threshold from $100,000 to $250,000 for which an appraisal is required. This final rule and final amendment will reduce regulatory burden.

Timetable:

Action	Date	FR Cite
ANPRM	03/22/00	65 FR 15275
ANPRM Comment Period End	05/22/00	
NPRM	03/15/01	66 FR 15055
NPRM Comment Period End	05/14/01	
Final Action	11/23/01	66 FR 58656
Final Rule Effective	03/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael J. McKenna, Senior Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6562
Email: mmckenna@ncua.gov

RIN: 3133–AC38

3944. REQUIREMENTS FOR INSURANCE

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1757; 12 USC 1766; 12 USC 1781 to 1790

CFR Citation: 12 CFR 741

Legal Deadline: None

Abstract: Currently, only credit unions with over $50,000,000 in assets file quarterly call reports. NCUA is considering moving to a risk-based, flexible schedule examination program. This proposal requested comments on whether, as a condition of implementation of that program, all credit unions should file quarterly call reports.

NCUA — Completed Actions

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40642
NPRM Comment Period End	11/01/01	
Final Action	03/19/02	67 FR 12459

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Mary F. Rupp, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Email: maryr@ncua.gov

RIN: 3133–AC46

3945. DEFINITIONS AND TECHNICAL AMENDMENTS

Priority: Info./Admin./Other

Legal Authority: 12 USC 1752; 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761; 12 USC 1766 to 1767; ...

CFR Citation: 12 CFR 700; 12 CFR 701; 12 CFR 712; 12 CFR 723; 12 CFR 725; ...

Legal Deadline: None

Abstract: NCUA amended various rules to make technical corrections and revise certain definitions.

Timetable:

Action	Date	FR Cite
NPRM	06/21/01	66 FR 33211
NPRM Comment Period End	08/20/01	
Final Action	12/20/01	66 FR 65622
Final Action Effective	01/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
Phone: 703 518-6540
Fax: 703 518-6569
Email: rmetz@ncua.gov

RIN: 3133–AC53

3946. REIMBURSEMENT, INSURANCE, AND INDEMNIFICATION OF OFFICIALS AND EMPLOYEES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1761a-b; 12 USC 1766 to 1767; 12 USC 1782; ...

CFR Citation: 12 CFR 701.33

Legal Deadline: None

Abstract: Revised regulation to clarify, streamline and update recent interpretations.

Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40641
NPRM Comment Period End	10/03/01	
Final Action	12/20/01	66 FR 65628
Final Action Effective	01/22/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Dianne M. Salva, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314-3428
Phone: 703 518-6540
Fax: 703 518-6569
Email: dsalva@ncua.gov

RIN: 3133–AC54

3947. • LOAN INTEREST RATES

Priority: Substantive, Nonsignificant

Legal Authority: 12 USC 1752(5); 12 USC 1755 to 1757; 12 USC 1759; 12 USC 1761a; 12 USC 1766 to 1767; ...

CFR Citation: None

Legal Deadline: None

Abstract: The NCUA Board continued the 18 percent Federal credit union loan rate ceiling for the period March 8, 2002, through September 8, 2003.

Timetable:

Action	Date	FR Cite
Final Action	02/15/02	67 FR 7057
Final Action Effective	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Regina M. Metz, Staff Attorney, Office of General Counsel, National Credit Union Administration, 1775 Duke Street, Alexandria, VA 22314
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Email: rmetz@ncua.gov

RIN: 3133–AC61

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National Indian Gaming Commission

Semiannual Regulatory Agenda

VOL 67 ISS 92 MY 13 2002 UMI

NATIONAL INDIAN GAMING COMMISSION (NIGC)

NATIONAL INDIAN GAMING COMMISSION

25 CFR Ch. III

Semiannual Regulatory Agenda

AGENCY: National Indian Gaming Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The National Indian Gaming Commission today is publishing an agenda of its open and anticipated rulemaking actions. The agenda is a general announcement to the public intended to provide notice of rulemaking actions in which the public may wish to participate. In the future, the Commission intends to issue Notices of Proposed Rulemaking, Advance Notices of Proposed Rulemaking, or Final Rules for the following: rules concerning technical amendments to the Minimum Internal Control Standards; rules establishing a process for the assessment, notification, and collection of debts owed the NIGC; rules revising tribal background investigation submission requirements and timing; rules concerning the classification, review, and approval of games and devices used in tribal gaming; rules concerning environment, public health and safety; rules concerning hearings and appeals procedures; rules concerning enforcement; rules concerning definitions; rules revising the scope and review of management contracts; rules concerning net gaming revenue; rules concerning administrative fees; rules revising Freedom of Information Act procedures; rules revising Privacy Act procedures; rules concerning gaming facility licensing standards; rules concerning practice before the Commission; and rules implementing the National Environmental Policy Act (NEPA). The Commission invites questions and public comment on individual agenda items.

FOR FURTHER INFORMATION CONTACT: Cynthia Shaw Omberg, National Indian Gaming Commission, 1441 L Street NW., 9th Floor, Washington, DC 20005, (202) 632-7003 (not a toll-free number).

SUPPLEMENTARY INFORMATION: In accordance with Executive Order 12866 "Regulatory Planning and Review" and the Regulatory Flexibility Act, 5 U.S.C. 605, executive agencies are required to publish semiannual regulatory agendas in the **Federal Register** in April and October of each year.

The regulations being considered by the Commission are not "significant" rules within the meaning of Executive Order 12866, and no Regulatory Impact Analysis is required. The Commission also has determined, under the Regulatory Flexibility Act, that most of the regulations under consideration will not have a significant economic impact on a substantial number of small entities. For these regulations, no Regulatory Flexibility Analysis is required. The Commission has not yet determined whether the rules implementing the National Environmental Policy Act, the Privacy Act, or gaming facility licensing require a Regulatory Flexibility Analysis. Finally, most of the Commission's proposed rules are not considered major under 5 U.S.C. 801, enacted by Public Law 104-121, and therefore, are not subject to section 801's 60-day deferral requirement. The Commission has not yet determined whether the technical amendments to the Minimum Internal Control Standards or the Privacy Act procedures are a major rule.

Montie R. Deer,

Chairman, National Indian Gaming Commission.

National Indian Gaming Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3948	Definitions	3141-AA10
3949	Tribal Background Investigation Submission Requirements and Timing	3141-AA15

National Indian Gaming Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3950	Game Classification	3141-AA12
3951	Environment and Public Health and Safety	3141-AA17
3952	Technical Amendments to the Minimum Internal Control Standards	3141-AA24
3953	Debt Collection	3141-AA25

National Indian Gaming Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3954	Practice Before the Commission	3141-AA07
3955	Hearings and Appeals Procedure	3141-AA08
3956	Enforcement	3141-AA09
3957	Management Contracts	3141-AA13

NIGC

National Indian Gaming Commission—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
3958	Net Gaming Revenue	3141-AA14
3959	Administrative Fees	3141-AA16
3960	Freedom of Information Act Procedures (Amendments)	3141-AA21
3961	Gaming Facility Licensing Standards	3141-AA23
3962	National Environmental Policy Act (NEPA) Implementing Regulations	3141-AA26

National Indian Gaming Commission (NIGC) — Proposed Rule Stage

3948. DEFINITIONS

Priority: Other Significant

Legal Authority: 25 USC 2701 et seq.

CFR Citation: 25 CFR 502

Legal Deadline: None

Abstract: The rule will revise the definitions of "electronic, computer or other technological aid," "electronic and electromechanical facsimile," and "games similar to bingo," set forth at 25 CFR 502.7 to 502.9.

Timetable:

Action	Date	FR Cite
NPRM	06/22/01	66 FR 33494
NPRM Comment Period End	08/21/01	
Second NPRM	03/20/02	67 FR 13296
Second NPRM Comment Period End	04/22/02	
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA10

3949. TRIBAL BACKGROUND INVESTIGATION SUBMISSION REQUIREMENTS AND TIMING

Priority: Other Significant

Legal Authority: 25 USC 2706(b)(3)

CFR Citation: 25 CFR 556; 25 CFR 558

Legal Deadline: None

Abstract: This rule revises timing and submission requirements.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
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RIN: 3141–AA15

National Indian Gaming Commission (NIGC) — Final Rule Stage

3950. GAME CLASSIFICATION

Priority: Other Significant

Legal Authority: 25 USC 2702; 25 USC 2703; 25 USC 2705; 25 USC 2706; 25 USC 2710; 25 USC 2713

CFR Citation: 25 CFR 504

Legal Deadline: None

Abstract: This rule will establish processes for the classification, review, and approval of games and devices used in tribal gaming.

Timetable:

Action	Date	FR Cite
NPRM	11/10/99	64 FR 61234
NPRM Comment Period End	02/24/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: State, Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA12

3951. ENVIRONMENT AND PUBLIC HEALTH AND SAFETY

Priority: Other Significant

Unfunded Mandates: Undetermined

Legal Authority: 25 USC 2710(b)(2)(E)

CFR Citation: 25 CFR 573

Legal Deadline: None

Abstract: It is necessary for the National Indian Gaming Commission to promulgate regulations, which ensure that tribal gaming facilities are constructed and maintained in a manner that protects the environment and the public health and safety.

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NIGC — Final Rule Stage

Timetable:

Action	Date	FR Cite
ANPRM	04/27/99	64 FR 22588
ANPRM Comment Period End	06/28/99	
NPRM	07/24/00	65 FR 45558
NPRM Comment Period End	01/19/01	
Second NPRM	10/02/01	66 FR 50127
Second NPRM Comment Period End	12/29/01	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Christine Nagle, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
Fax: 202 632-7066
Email: christine__nagle@nigc.doi.gov

RIN: 3141–AA17

3952. TECHNICAL AMENDMENTS TO THE MINIMUM INTERNAL CONTROL STANDARDS

Priority: Other Significant. Major status under 5 USC 801 is undetermined.

Legal Authority: 25 USC 2702; 25 USC 2706(b)(10)

CFR Citation: 25 CFR 542

Legal Deadline: None

Abstract: The National Indian Gaming Commission anticipates that there will be a need to make technical changes to the minimum internal control standards in response to changes in technology and the gaming industry. Because these standards are established by Federal regulation, it is necessary to make the changes to the current standards, which should result in better internal control standards with minimal anticipated costs.

Timetable:

Action	Date	FR Cite
ANPRM	11/27/00	65 FR 70673
ANPRM Comment Period End	03/30/01	66 FR 12916
NPRM	12/26/01	66 FR 66500
NPRM Comment Period End	03/04/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman, Deputy General Counsel, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA24

3953. DEBT COLLECTION

Priority: Other Significant

Legal Authority: 31 USC 3716; 25 USC 2713(a)(1)

CFR Citation: 25 CFR 580

Legal Deadline: None

Abstract: This regulation will establish a process for the assessment, notification, and collection of debts owed the National Indian Gaming Commission.

Timetable:

Action	Date	FR Cite
Interim Final Rule	11/20/01	66 FR 58056
Interim Final Rule Comment Period End	01/04/02	
Interim Final Rule Comment Period Reopened	01/08/02	
Interim Final Rule Comment Period End	01/14/02	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Tribal

Agency Contact: Cynthia S. Omberg, Attorney, National Indian Gaming Commission, Suite 9100, 1441 L Street NW., Washington, DC 20005
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Email: cynthia__omberg@nigc.doi.gov

RIN: 3141–AA25

National Indian Gaming Commission (NIGC) — Long-Term Actions

3954. PRACTICE BEFORE THE COMMISSION

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: William F. Grant
Phone: 202 632-7003
Fax: 202 632-7066
Email: william__grant@nigc.doi.gov

RIN: 3141–AA07

3955. HEARINGS AND APPEALS PROCEDURE

Priority: Other Significant

CFR Citation: 25 CFR 522 to 524; 25 CFR 533; 25 CFR 535; 25 CFR 539; 25 CFR 573; 25 CFR 575; 25 CFR 577

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA08

3956. ENFORCEMENT

Priority: Other Significant

CFR Citation: 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA09

NIGC — Long-Term Actions

3957. MANAGEMENT CONTRACTS

Priority: Other Significant

CFR Citation: 25 CFR 531; 25 CFR 533; 25 CFR 536

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA13

3958. NET GAMING REVENUE

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 571; 25 CFR 573

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA14

3959. ADMINISTRATIVE FEES

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 514

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA16

3960. FREEDOM OF INFORMATION ACT PROCEDURES (AMENDMENTS)

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 517.3; 25 CFR 517.6; 25 CFR 517.8

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Gregory Smith
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RIN: 3141–AA21

3961. GAMING FACILITY LICENSING STANDARDS

Priority: Substantive, Nonsignificant

CFR Citation: 25 CFR 522.4(b)(6); 25 CFR 522.6(b)

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Penny J. Coleman
Phone: 202 632-7003
Fax: 202 632-7066

RIN: 3141–AA23

3962. NATIONAL ENVIRONMENTAL POLICY ACT (NEPA) IMPLEMENTING REGULATIONS

Priority: Substantive, Nonsignificant

CFR Citation: Not Yet Determined

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Tribal

Agency Contact: Danna R. Jackson
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RIN: 3141–AA26

[FR Doc. 02–7702 Filed 05–10–02; 8:45 am]
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Part LIX

Nuclear Regulatory Commission

Semiannual Regulatory Agenda

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NUCLEAR REGULATORY COMMISSION (NRC)

NUCLEAR REGULATORY COMMISSION

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Unified Agenda of Federal Regulatory and Deregulatory Actions

AGENCY: Nuclear Regulatory Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) is publishing its semiannual regulatory agenda in accordance with Public Law 96-354, "The Regulatory Flexibility Act," and Executive Order 12866, "Regulatory Planning and Review." The agenda is a compilation of all rules on which the NRC has recently completed action or has proposed or is considering action. This issuance updates any action occurring on rules since publication of the last semiannual agenda on December 3, 2001 (66 FR 62730).

ADDRESSES: Comments on any rule in the agenda may be sent to the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, Attention: Rulemakings and Adjudications Staff. Comments may also be hand delivered to the One White Flint North Building, 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Comments received on rules for which the comment period has closed will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closure dates specified in the agenda.

The agenda and any comments received on any rule listed in the agenda are available for public inspection and copying for a fee at the Nuclear Regulatory Commission's Public Document Room, One White Flint North, 11555 Rockville Pike, Room O-1F21, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: For further information concerning NRC rulemaking procedures or the status of any rule listed in this agenda, contact Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, telephone 301-415-7163 (e-mail: mtl@nrc.gov). Persons outside the Washington, DC, metropolitan area may call, toll-free: 1-800-368-5642. For further information on the substantive content of any rule listed in the agenda, contact the individual listed under the heading "Agency Contact" for that rule.

SUPPLEMENTARY INFORMATION: The information contained in this semiannual publication is updated to reflect any action that has occurred on rules since publication of the last NRC semiannual agenda on December 3, 2001 (66 FR 62730). Within each group, the rules are ordered according to the Regulation Identifier Number (RIN).

The information in this agenda has been updated through March 15, 2002. The date for the next scheduled action under the heading "Timetable" is the date the rule is scheduled to be published in the **Federal Register**. The date is considered tentative and is not binding on the Commission or its staff. The agenda is intended to provide the public early notice and opportunity to participate in the NRC rulemaking process. However, the NRC may consider or act on any rulemaking even though it is not included in the agenda.

The NRC agenda lists all open rulemaking actions. Five rules affect small entities, one of which may potentially have a "significant economic impact on a substantial number of small entities" as defined in the Regulatory Flexibility Act.

Dated at Rockville, Maryland, this 15th day of March 2002.

For the Nuclear Regulatory Commission.

Michael T. Lesar,

Chief, Rules and Directives Branch, Division of Administrative Services Office of Administration.

Nuclear Regulatory Commission—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
3963	Fitness for Duty Programs	3150-AF12
3964	Lessons Learned From Design Certification	3150-AG24
3965	Performance-Based, Risk-Informed Fire Protection	3150-AG48
3966	Transfers of Source Material From Licensees to Exempt Persons	3150-AG64
3967	Compatibility with IAEA Transportation Safety Standards	3150-AG71
3968	List of Approved Spent Fuel Storage Casks: Standardized Advanced NUHOMS-24PT1 Addition	3150-AG74
3969	Standards for Combustible Gas Control System in Light-Water-Cooled Power Reactors	3150-AG76
3970	Submission of Financial Information for Applications to Renew or Extend the Term of an Operating License for Power Reactors	3150-AG84
3971	Financial Assurance Amendments for Materials Licenses	3150-AG85
3972	Incorporation by Reference of ASME BPV and OM Code Cases	3150-AG86
3973	Conforming Requirements of Event Notification	3150-AG90
3974	Specification of a Probability for Unlikely Features, Events and Processes	3150-AG91
3975	Geological and Seismological Characteristics of Spent Fuel Storage Systems	3150-AG93
3976	Revision of Fee Schedules; Fee Recovery, FY 2002	3150-AG95
3977	Revision to Salary Offset Procedures	3150-AG96
3978	Changes to Emergency Action Plan - Appendix E	3150-AH00

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Nuclear Regulatory Commission—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
3979	Submission of Documents Electronically; Minor Corrections	3150-AF61
3980	Changes to Adjudicatory Process	3150-AG49
3981	Decommissioning Trust Provisions	3150-AG52
3982	Releasing Part of a Power Reactor Site or Facility for Unrestricted Use Before the NRC Approves the License Termination Plan	3150-AG56
3983	Industry Codes and Standards	3150-AG61
3984	Nondiscrimination on the Basis of Race, Color, National Origin; Basis of Handicap; Basis of Age in Programs or Activities Receiving Federal Financial Assistance	3150-AG65
3985	Material Control and Accounting	3150-AG69
3986	Debt Collection Procedures	3150-AG80

Nuclear Regulatory Commission—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
3987	Update Fuel Performance Considerations and Other Fuel Cycle Issues	3150-AA31
3988	Availability of Official Records	3150-AC07
3989	Disposal by Release Into Sanitary Sewerage	3150-AE90
3990	Advance Notification to Native American Tribes of Transportation of Certain Types of Nuclear Waste	3150-AG41
3991	Risk-Informing Special Treatment Requirements	3150-AG42
3992	Integrated Rulemaking for Decommissioning Nuclear Power Reactors	3150-AG47
3993	Re-evaluation of Power Reactor Physical Protection Regulations and Position on a Definition of Radiological Sabotage	3150-AG63
3994	Notification Requirement	3150-AG81
3995	Entombment Options for Power Reactors	3150-AG89
3996	Modifications to Pressure-Temperature Limits	3150-AG98
3997	Nuclear Power Plant Worker Fatigue	3150-AG99

Nuclear Regulatory Commission—Completed Actions

Sequence Number	Title	Regulation Identification Number
3998	Medical Uses of Byproduct Material	3150-AF74
3999	Disposal of High-Level Radioactive Waste in a Proposed Geologic Repository at Yucca Mountain, Nevada	3150-AG04
4000	Geological and Seismological Characteristics of Spent Fuel Storage Systems	3150-AG16
4001	Revision of the Skin Dose Limit	3150-AG25
4002	Reduction in the Scope of Random Fitness-for-Duty Testing Requirements for Nuclear Power Reactor Licensees	3150-AG62
4003	Organization Change and Transfer of Function	3150-AG79
4004	List of Approved Spent Fuel Storage Casks: FuelSolutions Cask System Revision (Amendment No. 2)	3150-AG87
4005	List of Approved Spent Fuel Storage Casks: Transnuclear West, Inc., Standardized NUHOMS Revision (Amendment No. 4)	3150-AG88
4006	Minor Errors in Regulatory Text; Correction	3150-AG92
4007	List of Approved Spent Fuel Storage Casks: NAC International Multi-Purpose Canister (NAC-MPC) Revision (Amendment No. 2)	3150-AG94
4008	List of Approved Spent Fuel Storage Casks: HI-STORM 100 Revision (Amendment No. 1)	3150-AG97

3963. FITNESS FOR DUTY PROGRAMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The final rule will amend the Commission's regulations to ensure compatibility with the Department of Health and Human Services guidelines, reduce unnecessary regulatory burden in some areas, clarify the Commission's original intent of the rule, and improve overall program effectiveness and efficiency. These revised requirements will reduce the industrywide annual cost for all licensees to comply with part 26 by approximately $15 million. The rulemaking will address the Regulatory Review Group items on audit frequency and annual submittal of data. The rulemaking will also address the petition for rulemaking submitted by the Virginia Electric and Power Company (VEPCO) (PRM-26-1). In addition, this rulemaking subsumes a previously separate rulemaking, "Reduction in the Scope of Random Fitness-For-Duty Testing Requirements for Nuclear Power Reactor Licensees" (Part 26)(RIN AG62). Because of the subsumption of this rulemaking and other issues raised in response to the earlier proposed rule, a new proposed rule will be published.

Timetable:

Action	Date	FR Cite
NPRM	05/09/96	61 FR 21105
NPRM Comment Period End	08/07/96	
Second NPRM	10/00/02	
Final Rule	10/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Garmon West Jr., Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-1044
Email: fitnessforduty@nrc.gov

Vonna L. Ordaz, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-2147
Email: vld@nrc.gov

Related RIN: Merged With 3150-AG62

RIN: 3150–AF12

3964. LESSONS LEARNED FROM DESIGN CERTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 52

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by revising the regulatory infrastructure to prepare for future applications. The proposed rule would involve changes to licensing procedures and would require combined license applicants and holders to create, maintain, update, and use a Probabilistic Risk Assessment for the life of the facility. The proposed rule subsumed the rulemaking, "Standardized Plant Designs, Early Review of Sites Suitability Issues; Clarifying Amendments" (RIN 3150-AE25), that would remove redundant appendices M, N, O, and Q from part 50. These appendices are being removed because they became obsolete when part 52 was created. The part 52 rulemaking plan (SECY-98-282) was approved by the Commission on January 14, 1999.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Action	01/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jerry N. Wilson, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3145
Email: jnw@nrc.gov

Related RIN: Merged With 3150-AE25

RIN: 3150–AG24

3965. PERFORMANCE-BASED, RISK-INFORMED FIRE PROTECTION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would address the Commission's direction provided in the staff requirements memorandum dated April 1, 1999, to develop a performance-based, risk-informed alternative to the NRC's existing reactor fire protection requirements through the adoption of an industry consensus standard: NFPA 805, "Performance-Based Standard for Fire Protection for Light Water Reactor Electric Generating Plants." The rulemaking plan had been on hold until fall 2001, at which time the Nuclear Energy Institute endorsed the rulemaking effort. The schedule was reinitiated through an EDO memorandum to the Commission dated October 9, 2001. Draft rule language was posted for public comment on the NRC Rulemaking Forum website on December 20, 2001.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Leon E. Whitney, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3081
Email: lew1@nrc.gov

RIN: 3150–AG48

3966. TRANSFERS OF SOURCE MATERIAL FROM LICENSEES TO EXEMPT PERSONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 40

Legal Deadline: None

Abstract: The proposed rule would require NRC approval for transfers from licensees of unimportant quantities of source material (less than 0.05 percent by weight) to persons exempt from licensing requirements. The objective of this proposed action is to ensure that the regulations regarding transfers of materials containing low concentrations of source material are adequate to protect public health and safety.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Clark Prichard, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-6203
Email: cwp@nrc.gov

RIN: 3150–AG64

3967. COMPATIBILITY WITH IAEA TRANSPORTATION SAFETY STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71

Legal Deadline: None.

Abstract: The proposed rule would amend the Commission's regulations on packaging and transporting radioactive material to make them compatible with the International Atomic Energy Agency (IAEA) standards and to codify other applicable requirements. These changes would be compatible with TS-R-1, the latest revision of the IAEA transportation standards. This rulemaking would also address the unintended economic impact of NRC's emergency final rule entitled "Fissile Material Shipments and Exemptions" (February 10, 1997; 62 FR 5907) and a petition for rulemaking submitted by International Energy Consultants, Inc. (PRM-71-12)(February 19, 1998; 63 FR 8362). This proposed rule is closely related to a corresponding Department of Transportation proposed rule to amend transportation regulations.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Naiem S. Tanious, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-6103
Email: nst@nrc.gov

RIN: 3150–AG71

3968. LIST OF APPROVED SPENT FUEL STORAGE CASKS: STANDARDIZED ADVANCED NUHOMS-24PT1 ADDITION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by adding the Standardized Advanced NUHOMS Storage System cask design to the list of approved spent fuel storage casks. The proposed rule would add a cask system that has improved shielding and the ability to withstand a higher seismic response spectra than the Standardized NUHOMS Storage System which is already on the list of approved casks.

Timetable:

Action	Date	FR Cite
NPRM	02/11/02	67 FR 6203
NPRM Comment Period End	04/29/02	
Final Rule	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-6219
Email: jmm2@nrc.gov

RIN: 3150–AG74

3969. STANDARDS FOR COMBUSTIBLE GAS CONTROL SYSTEM IN LIGHT-WATER-COOLED POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to improve safety by better focusing on the risk-significant challenges from combustible gases; ensure combustible gas control during all risk-significant events; and eliminate those aspects of current requirements that provide no safety benefit. A staff requirement memorandum dated January 19, 2001, directed the staff to proceed expeditiously with rulemakings on the risk-informed alternative of section 50.44, including completion of outstanding technical work (e.g., development of combustible gas source terms) and necessary regulatory analyses. Also, this rulemaking addresses the petition for rulemaking submitted by Bob Christie (PRM-50-68), and partially addresses the petition for rulemaking submitted by the Nuclear Energy Institute (PRM-50-71). Draft rule language was posted for public comment on the NRC Ruleforum website on November 14, 2001.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Anthony W. Markley, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3165
Email: awm@nrc.gov

RIN: 3150–AG76

3970. SUBMISSION OF FINANCIAL INFORMATION FOR APPLICATIONS TO RENEW OR EXTEND THE TERM OF AN OPERATING LICENSE FOR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to remove the requirement that non-electric utility power reactor licensees submit financial qualifications information as part of the license renewal process. The proposed rule would recognize the need for a reduced level of regulatory burden for licensees falling in this category because the NRC

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has alternative means to ensure that these licensees are financially viable to operate their facilities and maintain public health and safety. Non-power reactor licensees would continue to submit the financial qualifications information as part of the license renewal process and are not affected by this proposed rule change.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	
Final Rule	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: George J. Mencinsky, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3093
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RIN: 3150–AG84

3971. FINANCIAL ASSURANCE AMENDMENTS FOR MATERIALS LICENSES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 30; 10 CFR 40; 10 CFR 70

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's financial assurance regulations for materials licenses. The amendment would maintain adequate assurance of decommissioning funding.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	
Final Rule	08/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

Agency Contact: Clark Prichard, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG85

3972. INCORPORATION BY REFERENCE OF ASME BPV AND OM CODE CASES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to incorporate by reference the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (BPV) Code Cases and Operation and Maintenance (OM) Code Cases pertaining to inservice inspection, operational maintenance, and design, fabrication, and materials which the NRC has reviewed and found to be acceptable for use. New editions of the ASME BPV and OM Codes are issued every three years and addenda to the editions are issued annually. It has been the Commission's policy to update 10 CFR 50.55a to incorporate by reference the ASME Code editions and addenda. The ASME publishes code cases for Section III and Section XI quarterly, and code cases for the OM Code annually. Code cases are generally alternatives to the requirements of the ASME BPV Code and the OM Code. It has been the NRC staff's practice to review these code cases and find them either acceptable, conditionally acceptable, or unacceptable for use by NRC licensees. These code cases are then listed in periodically revised regulatory guides (RGs), together with information on their acceptability. Footnote 6 to 10 CFR 50.55a refers to the RGs listing code cases determined by the NRC staff to be "suitable for use." No specific data or revision of the RGs is indicated in Footnote 6 to 10 CFR 50.55a. In the past, these RGs have not been approved by the Office of the Federal Register for incorporation by reference in the Code of Federal Regulations. To address this matter, the staff is proposing that the use of ASME Code Cases be approved through a rulemaking incorporating by reference the applicable RGs. Thus, NRC-approved code cases would be accorded the same legal status as the corresponding requirements in the ASME BPV Code and OM Code which are already incorporated by reference in the NRC's regulations.

Timetable:

Action	Date	FR Cite
NPRM	03/19/02	67 FR 12488
NPRM Comment Period End	06/03/02	
Final Action	05/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG86

3973. • CONFORMING REQUIREMENTS OF EVENT NOTIFICATION

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72; 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations dealing with event notification reporting to conform them with the current Nuclear Regulatory Commission reporting requirements in 10 CFR 50.72 and 50.73. This rule would improve NRC's efficiency and effectiveness, while maintaining public confidence through the timely communication of information on recently occurring, or ongoing, events to eliminate the unnecessary reporting burden associated with reporting events of little or no safety significance, and to base revised reporting requirements on importance to risk, so that the reporting times will be consistent with the time that information is needed for appropriate NRC action.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

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RIN: 3150–AG90

3974. • SPECIFICATION OF A PROBABILITY FOR UNLIKELY FEATURES, EVENTS AND PROCESSES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 63

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations governing the disposal of high-level radioactive wastes in a potential geologic repository at Yucca Mountain, Nevada, to define the term "unlikely" in quantitative terms. That is, it would be defined as a range of numerical values for use in determining whether a feature, event, or process (FEP) or sequence of events and processes should be excluded from certain required assessments. The NRC is proposing this amendment to clarify how it plans to implement two of the final environmental standards for Yucca Mountain issued by the US Environmental Protection Agency (EPA). Specifically, EPA's final standards require the exclusion of "unlikely" FEPs, or sequences of events and processes, from the required assessments for the human intrusion and ground-water protection standards. In accordance with the Energy Policy Act of 1992, the NRC has adopted EPA's final standards in its recently published technical requirements for a potential geologic repository at Yucca Mountain.

Timetable:

Action	Date	FR Cite
NPRM	01/25/02	67 FR 3628
NPRM Comment Period End	04/10/02	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG91

3975. • GEOLOGICAL AND SEISMOLOGICAL CHARACTERISTICS OF SPENT FUEL STORAGE SYSTEMS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning geological and seismological criteria to require the use of a risk-informed, performance-based regulatory approach. This revision would use a methodology that is consistent with the approach taken in 10 CFR parts 50 and 100. The proposed rule would also clarify the need for a general licensee to design cask storage pads and areas to adequately support both static and dynamic loads of the stored casks.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Related RIN: Duplicate of 3150-AG16

RIN: 3150–AG93

3976. • REVISION OF FEE SCHEDULES; FEE RECOVERY, FY 2002

Priority: Economically Significant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 170; 10 CFR 171

Legal Deadline: Other, Statutory, September 30, 2002, Omnibus Budget Reconciliation Act of 1990, as amended.

Abstract: The proposed rule would amend the licensing, inspection, and annual fees charged to NRC licensees and applicants for an NRC license. The rulemaking is necessary to recover, through the assessment of fees, approximately 96 percent of the NRC's budget authority for Fiscal Year 2002, less the amounts appropriated from the Nuclear Waste Fund and General Fund as required by the Omnibus Budget Reconciliation Act (OBRA) of 1990, as amended.

The FY 2001 Energy and Water Development Appropriations Act amended OBRA-90 to decrease the NRC's fee recovery amount by two percent per year beginning in FY 2001 until the fee recovery amount is 90 percent for FY 2005. The purpose of this amendment is to address the fairness and equity concerns related to charging NRC license holders for agency expenses that do not provide a direct benefit to the licensee. The dollar amount to be recovered for FY 2002 is approximately $479.5 million. OBRA-90, as amended, requires that the fees for FY 2002 be collected by September 30, 2002.

Timetable:

Action	Date	FR Cite
NPRM	03/27/02	67 FR 14818
NPRM Comment Period End	04/26/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: State, Local

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RIN: 3150–AG95

3977. • REVISION TO SALARY OFFSET PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 16

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Legal Deadline: None

Abstract: The proposed rule would amend the salary offset procedures to conform to the Debt Collection Improvement Act of 1996 (DCIA) and the Federal Claims Collection Standards (FCCS). These regulations would provide procedures for the collection by administrative offset of a Federal employee's salary without his or her consent to satisfy certain debts owed the Government. The NRC is required by the FCCS (31 CFR chapter IX, parts 900-904) to issue debt collection procedures that will conform with the DCIA and the FCCS.

Timetable:

Action	Date	FR Cite
NPRM	04/24/02	67 FR 20059
NPRM Comment Period End	07/08/02	
Final Rule	03/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

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RIN: 3150–AG96

3978. • CHANGES TO EMERGENCY ACTION PLAN - APPENDIX E

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would resolve an ambiguity in the Commission's regulations regarding NRC approval of nuclear power plant licensee-initiated changes to emergency action levels (EALs). The proposed rule would allow licensees to make minor changes in EALs without prior NRC approval.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	
Final Rule	07/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AH00

Nuclear Regulatory Commission (NRC) — Final Rule Stage

3979. SUBMISSION OF DOCUMENTS ELECTRONICALLY; MINOR CORRECTIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2; 10 CFR 61; 10 CFR 62; 10 CFR 70; 10 CFR 71; 10 CFR 72; 10 CFR 73; 10 CFR 32; 10 CFR 34; 10 CFR 40; 10 CFR 50; 10 CFR 51; 10 CFR 52; 10 CFR 55; 10 CFR 60; 10 CFR 4; 10 CFR 9; 10 CFR 21; 10 CFR 20; 10 CFR 15; 10 CFR 19; 10 CFR 25; 10 CFR 30; 10 CFR 26; 10 CFR 31; 10 CFR 74; 10 CFR 75; 10 CFR 76; 10 CFR 81; 10 CFR 95; 10 CFR 110; 10 CFR 140; 10 CFR 150

Legal Deadline: None

Abstract: The direct final rule will permit voluntary electronic submission of documents and provide procedures for submitting documents electronically. Amending the regulations to permit electronic submission will facilitate the electronic capture of externally generated documents into the Agency-wide Documents Access and Management System (ADAMS). The rulemaking will address and improve the document control and records management issues that are of concern to the NRC, its applicants, licensees, and members of the public by improving the process of communication, dissemination, and storage of records. In addition, the rulemaking will incorporate minor corrections to the current regulations regarding the submission of documents to the NRC, for example, organizational, name, and phone number changes. This rulemaking is consistent with existing legislative and regulatory initiatives, such as the Paperwork Reduction Act of 1995, Office of Management and Budget Circular A-130 (Revised February 8, 1996), and the Government Paperwork Reduction Elimination Act of 1998, to reduce the information collection burden on the public and to make information more readily accessible to the public.

Timetable:

Action	Date	FR Cite
Direct Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

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RIN: 3150–AF61

3980. CHANGES TO ADJUDICATORY PROCESS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 1; 10 CFR 2; 10 CFR 50; 10 CFR 51; 10 CFR 52; 10 CFR 54; 10 CFR 60; 10 CFR 70; 10 CFR 73; 10 CFR 75; 10 CFR 76; 10 CFR 110

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning its rules of practice to make the agency's hearing process more efficient and effective. The proposed amendments would fashion hearing procedures that are tailored to the different types of licensing and regulatory activities the NRC conducts

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and would better focus and use the limited resources available to involved parties.

Timetable:

Action	Date	FR Cite
NPRM	04/16/01	66 FR 19610
NPRM Comment Period End	09/14/01	66 FR 27045
Final Rule	05/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG49

3981. DECOMMISSIONING TRUST PROVISIONS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to ensure that decommissioning trust agreements are in a form acceptable to the NRC to increase assurance that decommissioning funds will be available for their intended purpose, especially in light of economic deregulation and restructuring of the electric utility industry. Based on past experience with the NRC approval of the transfer of the operating licenses of the Three Mile Island Unit 1 and Pilgrim Nuclear Power Stations, the staff believes that this rulemaking would expedite similar transfers in the future. The staff also intends to develop guidance by revising Regulatory Guide 1.159, "Assuring the Availability of Funds for Decommissioning Nuclear Reactors," that will specify more fully the provisions of the decommissioning trust agreements.

Timetable:

Action	Date	FR Cite
NPRM	05/30/01	66 FR 29244
NPRM Comment Period End	08/13/01	
Final Rule	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG52

3982. RELEASING PART OF A POWER REACTOR SITE OR FACILITY FOR UNRESTRICTED USE BEFORE THE NRC APPROVES THE LICENSE TERMINATION PLAN

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2; 10 CFR 20; 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by adding a new section that would identify the criteria and regulatory framework that a licensee would use to request NRC approval for a partial site release. The rulemaking would provide additional assurance that residual radioactivity would meet the radiological criteria for license termination, even if parts of the site were released before a licensee submits its license termination plans. The rulemaking would clarify that the radiological criteria for unrestricted use apply to a partial site release. The rulemaking would not provide for a partial site release under restricted conditions. Also, the rulemaking would provide for a Subpart 2 hearing if a license amendment involving a partial site release is challenged.

The rulemaking would fill a gap identified during the NRC's consideration of a technical specification amendment request for the Oyster Creek Nuclear Generating Station to remove a restriction on the sale or lease of property within the exclusion area. During the Oyster Creek review, the NRC staff concluded that it is possible for a reactor licensee to sell land that would reduce the size of its site before the license termination criteria would specifically apply to the release of the property. If the sale does not involve the transfer of licensed material, it would not require NRC approval under current regulations. Currently, the NRC must consider changes to the site boundary of a reactor site on a case-by-case basis to ensure adequate protection of the public and the environment. Because several reactor licensees have expressed interest in selling parts of the sites before they receive approval of their license termination plans, the NRC staff believes the issues should be resolved generically by rulemaking.

Timetable:

Action	Date	FR Cite
NPRM	09/04/01	66 FR 46230
NPRM Comment Period End	11/19/01	
Final Rule	08/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG56

3983. INDUSTRY CODES AND STANDARDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to incorporate by reference the following: (1) the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Division 1 rules of Section III, "Rules for Construction of Nuclear Power Plant Components," of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME B&PV Code); (2) the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of Division 1 rules of Section XI, "Rules for Inservice Inspection of Nuclear Power Plant Components," of the ASME B&PV Code; and (3) the 1997 Addenda, 1998 Edition, 1999 Addenda, and 2000 Addenda of the ASME Code for Operation and Maintenance of Nuclear Power Plants.

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Timetable:

Action	Date	FR Cite
NPRM	08/03/01	66 FR 40626
NPRM Comment Period End	10/17/01	
Final Rule	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG61

3984. NONDISCRIMINATION ON THE BASIS OF RACE, COLOR, NATIONAL ORIGIN; BASIS OF HANDICAP; BASIS OF AGE IN PROGRAMS OR ACTIVITIES RECEIVING FEDERAL FINANCIAL ASSISTANCE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 4

Legal Deadline: None

Abstract: The rule would incorporate the Civil Rights Restoration Act's definitions of "program or activity" and "program" into Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1972, and the Age Discrimination Act of 1975, and would promote consistent and adequate enforcement of these statutes.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76460
NPRM Comment Period End	01/05/01	
Final Action	08/00/02	
Final Action Effective	09/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG65

3985. MATERIAL CONTROL AND ACCOUNTING

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 51; 10 CFR 61; 10 CFR 70; 10 CFR 72; 10 CFR 73; 10 CFR 74; 10 CFR 75; 10 CFR 76; 10 CFR 150

Legal Deadline: None

Abstract: The proposed rule would amend the reporting requirements for submitting Material Balance Reports and Inventory Composition Reports to provide more flexibility and to reduce the reporting frequency for most licensees. The proposed amendments would also revise the categorical exclusion for approving safeguards plans, relocate the remaining material control and accounting requirements in parts 70 through 74, make the material control and accounting requirements for Category II facilities more risk informed, and make other miscellaneous changes.

Timetable:

Action	Date	FR Cite
NPRM	05/30/01	66 FR 29251
NPRM Comment Period End	08/13/01	
Final Rule	12/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG69

3986. DEBT COLLECTION PROCEDURES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 15

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations concerning the procedures that the NRC uses to collect debts that are owed to it. The proposed amendment would conform NRC regulations to the amended procedures presented in the Federal Claims Collection Standards issued by the Department of the Treasury and the Department of Justice, and the legislative changes enacted in the Debt Collection Improvement Act of 1996.

Timetable:

Action	Date	FR Cite
NPRM	10/05/01	66 FR 50860
NPRM Comment Period End	12/19/01	
Final Rule	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Organizations

Government Levels Affected: None

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RIN: 3150–AG80

Nuclear Regulatory Commission (NRC) — Long-Term Actions

3987. UPDATE FUEL PERFORMANCE CONSIDERATIONS AND OTHER FUEL CYCLE ISSUES

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2011; 42 USC 2201; 42 USC 4321; 42 USC 5841; 42 USC 5842

CFR Citation: 10 CFR 51

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by addressing uranium fuel cycle environmental data (Table S-3) and the environmental effects of transportation of fuel and waste data (Table S-4). In section 51.51, the environmental data would be re-estimated and reflect changes in the structure and activities of the fuel cycle and the availability of better data. Estimates of releases of Radon-222 and Technetium-99 would be added to Table S-3. The addition of a specific value for Radon-222 would address the outstanding portion of petition for rulemaking PRM-51-1, submitted by the New England Coalition on Nuclear Pollution. To provide immediate relief to the petitioner's request, the Commission published a final rule on March 14, 1997 (42 FR 13803), that removed the original value for Radon-222 from Table S-3 so that it then became subject to case-specific litigation. It was anticipated that the Commission would add a specific value for Radon-222, but action has been deferred until a general updating of Table S-3 is undertaken. For section 51.52, the environmental impact estimates would be re-estimated to reflect the use of more highly enriched fuel and discharge of more highly irradiated fuel from a reactor; longer onsite storage; and changes in transportation modes, transport to retrievable storage sites and a permanent repository rather than reprocessing facilities, packaging technology, and regulatory standards. The re-estimates would incorporate current research information and computer codes.

This rulemaking would result in current and more accurate estimates of the environmental impact of licensing a new plant, and would eliminate the requirement to review the contribution to environmental impacts from Radon-222 and Technetium-99 in individual plant reviews. This rule is being reissued as a proposed rule and would update the initial rulemaking effort to address newly emerging issues and research.

Timetable:

Action	Date	FR Cite
NPRM	03/04/81	46 FR 15154
NPRM Comment Period End	05/04/81	
Second NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AA31

3988. AVAILABILITY OF OFFICIAL RECORDS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 2

Legal Deadline: None

Abstract: The proposed amendment would conform the Commission's regulations pertaining to the availability of official records to existing case law and agency practice. The amendment would address the circumstances under which proprietary, personal privacy or other confidential information submitted to the NRC by applicants, licensees, or others may be returned upon request. The rule would reaffirm that 10 CFR 2.790(c) provides submitters of information a qualified right to have their information returned upon request. This amendment would inform the public of four additional circumstances where information would not be returned to the applicant, that is, (1) when submitted to an advisory committee governed by the Federal Advisory Committee Act; (2) when captured by a Freedom of Information Act request; (3) when publicly relied upon or revealed by the Commission in an open Commission meeting under the Government in the Sunshine Act; and (4) when obtained during the course of an investigation conducted by the NRC Office of Investigations. The proposed amendment would also clarify requirements on submittals to the NRC for identification of confidential information sought to be withheld from public disclosure. Further, the proposed amendment would address the NRC's procedures for handling copyrighted information, including reproduction and distribution according to normal agency practice.

Timetable:

Action	Date	FR Cite
NPRM	12/23/92	57 FR 61013
NPRM Comment Period End	03/08/93	
NPRM	10/17/01	66 FR 52721
NPRM Comment Period End	12/31/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AC07

3989. DISPOSAL BY RELEASE INTO SANITARY SEWERAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking requested public comment, information, and recommendations on contemplated amendments to the Commission's regulations governing the release of radionuclides from licensed nuclear facilities into sanitary sewer systems. The Commission believes that by incorporating current sewer treatment technologies the contemplated rulemaking would improve the control of radioactive materials released to sanitary sewer systems by licensed nuclear facilities. The NRC and the Environmental Protection Agency are conducting a joint survey of sewage treatment plants to evaluate the extent of reconcentration due to release of radioactive material into sewage systems. The need for and the extent of a rulemaking will be evaluated pending the result of the survey and

the associated dose assessment. This rulemaking would also address a petition for rulemaking (PRM-20-22) submitted by the Northeast Ohio Sewer District.

Timetable:

Action	Date	FR Cite
ANPRM	02/25/94	59 FR 9146
ANPRM Comment Period End	05/26/94	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AE90

3990. ADVANCE NOTIFICATION TO NATIVE AMERICAN TRIBES OF TRANSPORTATION OF CERTAIN TYPES OF NUCLEAR WASTE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 71; 10 CFR 73

Legal Deadline: None

Abstract: The NRC has issued an advance notice of proposed rulemaking (ANPRM) to invite early input from affected parties and the public on the issues associated with the advance notification of Indian tribes of spent fuel shipments. The Department of Energy (DOE) has indicated that it intends to comply with NRC's physical protection requirements for shipments under the Nuclear Waste Policy Act; however, its current practices conflict with NRC regulations. For example, DOE already has asked for and will continue to ask for exemptions from the shipment itinerary information requirements of foreign research reactor fuel. DOE, as a courtesy, provides Indian tribes with notification of spent fuel shipments. NRC's current regulations do not address notification of Indian tribes. DOE has also developed a satellite tracking system to monitor the status of spent fuel shipments at all times. Distribution of this information to parties other than governors' designees is not compatible with NRC regulations. A rulemaking plan was approved by the Commission on February 2, 2001.

Timetable:

Action	Date	FR Cite
ANPRM	12/21/99	64 FR 71331
ANPRM Comment Period End	07/05/00	65 FR 18010
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG41

3991. RISK-INFORMING SPECIAL TREATMENT REQUIREMENTS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 21; 10 CFR 50; 10 CFR 54; 10 CFR 100

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking (ANPRM) invited comments, advice, and recommendations from interested parties on the contemplated rulemaking that would provide an alternative, risk-informed approach for special treatment requirements in the current regulations. Special treatment requirements are requirements imposed on structures, systems, and components (SSCs) that provide additional confidence that these SSCs are capable of meeting design basis functional requirements. The contemplated risk-informed approach would categorize SSCs and vary the associated regulatory treatment based on the SSC's safety significance. This action is a result of the Commission's continuing efforts to risk-inform its regulations. The staff plans to provide the Commission with a proposed rule package in June 2002.

Timetable:

Action	Date	FR Cite
ANPRM	03/03/00	65 FR 11488
ANPRM Comment Period End	05/17/00	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 3150–AG42

3992. INTEGRATED RULEMAKING FOR DECOMMISSIONING NUCLEAR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: A staff requirements memorandum dated June 23, 1999, directed the NRC staff to consider an integrated, risk-informed decommissioning rule rather than individual rulemakings to address emergency preparedness, insurance, safeguards, operator staffing, and backfit for nuclear power plants that are being decommissioned. SECY-99-168 dated June 30, 1999, recommended that the integrated approach be approved and outlined staff plans for pursuing such a rulemaking. Accordingly, the staff has subsumed previous rulemaking activities in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit into one integrated rulemaking effort. This rulemaking would apply to licensees who certified, pursuant to 10 CFR 50.82(a), that they have permanently ceased facility operation(s) and have permanently removed fuel from the reactor vessel. The Commission approved this approach in an SRM dated December 21, 1999. This rulemaking would also address a petition for rulemaking submitted by the North Carolina Public Utility Commission (PRM-50-57).

In SECY-00-145, dated June 28, 2000, the NRC staff recommended a decommissioning rulemaking plan in the areas of emergency planning, insurance, safeguards, operator staffing, and backfit (the integrated decommissioning rulemaking plan). The rulemaking plan relied on a draft decommissioning risk study as a basis for its recommendations. The Commission returned the rulemaking plan to the staff for rework in September 2000, based on changes to the decommissioning risk study findings. The decommissioning risk study, NUREG-1738, was issued in January 2001. After assessing the findings in the risk study, the staff presented a policy options paper to the Commission, SECY-01-0100, dated June 4, 2001, that provided options and made recommendations on issues to be addressed in the integrated rulemaking. Following the terrorist events of September 11, 2001, the NRC staff recommended and the Commission approved the withdrawal of SECY-01-0101 because of the likely changes in the staff's position on decommissioning plant safeguards. The decommissioning policy position will be revisited when a broad-scope NRC safeguards policy is developed in response to potential terrorist acts at nuclear facilities. The schedule for the integrated rulemaking cannot be determined at this time.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: William Huffman, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-1141
Email: wch@nrc.gov

RIN: 3150–AG47

3993. RE-EVALUATION OF POWER REACTOR PHYSICAL PROTECTION REGULATIONS AND POSITION ON A DEFINITION OF RADIOLOGICAL SABOTAGE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 73

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to require power reactor licensees to conduct drills and exercises to evaluate their protective strategy against a simulated design basis threat (DBT) of radiological sabotage. The proposed rulemaking would also include risk insights, supporting guidance documents and be more performance based. Following the events of September 11, 2001, the staff recommended and the Commission approved the withdrawal of SECY-01-0101, "Proposed Rule Changes to 10 CFR 73.55," which contained the staff's recommendations in the subject rulemaking. This withdrawal was requested to allow the staff to incorporate its post-September 11, 2001, considerations in a revised recommended rule revision, then later resubmit 10 CFR 73.55 to the Commission for its consideration.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Richard P. Rosano, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-3282
Email: rpr@nrc.gov

RIN: 3150–AG63

3994. NOTIFICATION REQUIREMENT

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2111; 42 USC 2201; 42 USC 2232; 42 USC 2233; 42 USC 5841

CFR Citation: 10 CFR 35

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations by requiring a licensee to notify the NRC and an identified exposed individual after the licensee becomes aware that the individual received or is estimated to have received a dose exceeding 50mSv (5 rem) from a released patient who had been administered radioactive material.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses, Governmental Jurisdictions, Organizations

Government Levels Affected: None

Agency Contact: Betty Ann Torres, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-0191
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RIN: 3150–AG81

3995. • ENTOMBMENT OPTIONS FOR POWER REACTORS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20; 10 CFR 50

Legal Deadline: None

Abstract: The advance notice of proposed rulemaking was published to request public comment, information, and recommendations on contemplated amendments to the Commission's regulations that would clarify the use of entombment for power reactors. The amendments would establish dose criteria for license termination that includes a provision that permits license termination under restricted and unrestricted release conditions.

Timetable:

Action	Date	FR Cite
ANPRM	10/16/01	66 FR 52551
ANPRM Comment Period End	12/31/01	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Frank Cardile, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG89

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NRC — Long-Term Actions

3996. • MODIFICATIONS TO PRESSURE-TEMPERATURE LIMITS

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 50

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to eliminate those requirements for pressure-temperature limits that are related to the metal temperature of the reactor pressure vessel closure head flange and vessel flange areas. The proposed rule would amend footnotes 2 and 6 to table 1 of appendix G, and simplify restructuring of the table. Also, this rulemaking would address the petition for rulemaking submitted by Westinghouse Electric Company (PRM-50-69).

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Allen L. Hiser Jr., Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555
Phone: 301 415-1034
Email: alh1@nrc.gov

RIN: 3150–AG98

3997. • NUCLEAR POWER PLANT WORKER FATIGUE

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 26

Legal Deadline: None

Abstract: The proposed rule would amend the Commission's regulations to establish thresholds for the control of working hours to ensure that working hours in excess of the thresholds are controlled through a risk-informed deviation process. This rule would provide significantly greater assurance that worker fatigue does not adversely affect the operational safety of nuclear power plants. This rulemaking would also address a petition for rulemaking submitted by Barry Quigley (PRM-26-02).

Timetable:

Action	Date	FR Cite
NPRM	To Be	Determined

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: David Desaulniers, Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555-0001
Phone: 301 415-1043
Email: drd@nrc.gov

RIN: 3150–AG99

Nuclear Regulatory Commission (NRC) — Completed Actions

3998. MEDICAL USES OF BYPRODUCT MATERIAL

Priority: Other Significant

CFR Citation: 10 CFR 35

Completed:

Reason	Date	FR Cite
Final Action	04/24/02	67 FR 20250
Final Action Effective	10/24/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Thomas Young
Phone: 301 415-5795
Email: tfy@nrc.gov

RIN: 3150–AF74

3999. DISPOSAL OF HIGH-LEVEL RADIOACTIVE WASTE IN A PROPOSED GEOLOGIC REPOSITORY AT YUCCA MOUNTAIN, NEVADA

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 2; 10 CFR 19; 10 CFR 20; 10 CFR 21; 10 CFR 30; 10 CFR 40; 10 CFR 51; 10 CFR 60; 10 CFR 61; 10 CFR 63; 10 CFR 70; 10 CFR 72; 10 CFR 73; 10 CFR 75

Completed:

Reason	Date	FR Cite
Final Rule	11/02/01	66 FR 55732
Final Rule Effective	12/03/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Tim McCartin
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Clark Prichard
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Email: cwp@nrc.gov

RIN: 3150–AG04

4000. GEOLOGICAL AND SEISMOLOGICAL CHARACTERISTICS OF SPENT FUEL STORAGE SYSTEMS

Timetable:

Action	Date	FR Cite
Duplicate of RIN 3150-AG98	03/01/02	

RIN: 3150–AG16

4001. REVISION OF THE SKIN DOSE LIMIT

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 20

Completed:

Reason	Date	FR Cite
Final Action	04/05/02	67 FR 16298
Final Action Effective	06/04/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Alan K. Rocklein
Phone: 301 415-3883
Email: akr@nrc.gov

RIN: 3150–AG25

4002. REDUCTION IN THE SCOPE OF RANDOM FITNESS-FOR-DUTY TESTING REQUIREMENTS FOR NUCLEAR POWER REACTOR LICENSEES

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 26

NRC — Completed Actions

Completed:

Reason	Date	FR Cite
Merged With RIN 3150-AF12	12/31/01	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Garmon West
Phone: 301 415-1044
Email: fitnessforduty@nrc.gov

Vonna L. Ordaz
Phone: 301 415-2147
Email: vld@nrc.gov

Related RIN: Merged With 3150-AF12

RIN: 3150–AG62

4003. ORGANIZATION CHANGE AND TRANSFER OF FUNCTION

Priority: Substantive, Nonsignificant

CFR Citation: 10 CFR 1; 10 CFR 34; 10 CFR 73

Completed:

Reason	Date	FR Cite
Final Rule	01/25/02	67 FR 3584
Final Rule Effective	01/25/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Carrie Brown
Phone: 301 415-8092
Email: cxb@nrc.gov

RIN: 3150–AG79

4004. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: FUELSOLUTIONS CASK SYSTEM REVISION (AMENDMENT NO. 2)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule amends the Commission's regulations to revise Certificate of Compliance (CoC) No. 1026 for the BFS FuelSolutions Spent Fuel Management System. This amendment changes Technical Specifications (TS) which required that if the W74 canister was required to be removed from its storage cask, then the canister must be returned to the spent fuel pool. In lieu of returning the W74 canister to the spent fuel pool, the W74 canister is now placed in the transfer cask until the affected storage cask is repaired or replaced. Additional minor editorial corrections were made. Specific changes were made to TS Tables 2.1-3 and 2.1-4; TS 3.3.2; 3.3.3; and the bases for TS 3.3.2 and 3.3.3. No changes were made to the conditions of the CoC.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/14/01	66 FR 56982
Direct Final Rule Effective	01/28/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Merri Horn, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG87

4005. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: TRANSNUCLEAR WEST, INC., STANDARDIZED NUHOMS REVISION (AMENDMENT NO. 4)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The direct final rule amends the Commission's regulations to revise Certificate of Compliance (CoC) No. 1004 for the Transnuclear West Inc., Standardized NUHOMS-24P, -52B, and -61BT dry storage system. This amendment relaxes certain requirements when only low burnup fuel is present. Specific changes were made to Technical Specifications (TS) 1.2.1 and 1.2.15. In addition, changes were made to Tables 1-1a and 1-1b of TS 1.2.1 to correct an administrative error. No changes were made to the conditions of the CoC.

Timetable:

Action	Date	FR Cite
Direct Final Rule	11/29/01	66 FR 59531
Direct Final Rule Effective	02/12/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Merri Horn, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-8126
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RIN: 3150–AG88

4006. • MINOR ERRORS IN REGULATORY TEXT; CORRECTION

Priority: Info./Admin./Other

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 20; 10 CFR 30; 10 CFR 32; 10 CFR 34; 10 CFR 40; 10 CFR 50; 10 CFR 51

Legal Deadline: None

Abstract: The final rule makes a number of minor corrections to the NRC's regulations. This rule is necessary to correct omissions, typographical errors, and erroneous citations and references that appear in the NRC's regulations.

Timetable:

Action	Date	FR Cite
Final Rule	12/14/01	66 FR 64737
Final Rule Effective	12/14/01	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Michael T. Lesar, Nuclear Regulatory Commission, Office of Administration, Washington, DC 20555-0001
Phone: 301 415-7163
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RIN: 3150–AG92

4007. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: NAC INTERNATIONAL MULTI-PURPOSE CANISTER (NAC-MPC) REVISION (AMENDMENT NO. 2)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2202; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: The final rule amends the Commission's regulations by revising the Certificate of Compliance (CoC) No.

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1025 for the NAC International Multi-Purpose Canister dry storage system. This rule allows for modification of the MPC system components to include increased length of the fuel basket and canister, transfer cask, and vertical concrete cask; a redesigned fuel basket to accommodate 26 fuel assemblies with an alternate, 24-fuel assembly configuration; and increased transfer cask radial shielding. The CoC is revised to include reference to a new type of fuel; Technical Specifications (TS) are revised to include new fuel type specifications and operational limits and to incorporate a revised format for the TS.

Timetable:

Action	Date	FR Cite
Direct Final Rule	03/15/02	67 FR 11566
Direct Final Rule Effective	05/29/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Roger W. Broseus, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
Phone: 301 415-7608
Email: rwb@nrc.gov

RIN: 3150–AG94

4008. • LIST OF APPROVED SPENT FUEL STORAGE CASKS: HI-STORM 100 REVISION (AMENDMENT NO. 1)

Priority: Substantive, Nonsignificant

Legal Authority: 42 USC 2201; 42 USC 5841

CFR Citation: 10 CFR 72

Legal Deadline: None

Abstract: This direct final rule amends the Commission's regulations by revising the Certificate of Compliance (CoC) for the Holtec HI-STORM 100 dry storage system. Amendment No. 1 modifies the present cask system design, under a general license, to: (1) add four new multipurpose canisters - three for pressurized water reactor fuel and one for boiling water reactor fuel; (2) add new damaged fuel containers; (3) add the HI-STORM 100S overpack and the 100A and 100SA high-seismic anchored overpacks; (4) allow the storage of high-burnup fuel; (5) use revised thermal analysis tools that include natural convection heat transfer, revise the helium backfill requirements to allow a helium density measurement to be used, allow a helium drying system rather than the existing vacuum drying system, and require soluble boron during canister loading for certain higher enriched fuels; (6) delete the Technical Specification training requirements and relocate these requirements to the main body of CoC 1014; and (7) allow the storage of selected nonfuel hardware. In addition, Conditions 1.a, 1.b, 2, 3, 5, 9, and 10 of the CoC, sections 3.0 and 5.0 of appendix A, and sections 1.0, 2.0, and 3.0 of appendix B to the CoC is revised to reflect the changes.

Timetable:

Action	Date	FR Cite
Direct Final Rule	03/27/02	67 FR 14627
Direct Final Rule Effective	06/10/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Jayne M. McCausland, Nuclear Regulatory Commission, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555-0001
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RIN: 3150–AG97

[FR Doc. 02–7703 Filed 05–10–02; 8:45 am]
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Part LX

Securities and Exchange Commission

Semiannual Regulatory Agenda

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SECURITIES AND EXCHANGE COMMISSION (SEC)

SECURITIES AND EXCHANGE COMMISSION

17 CFR Ch. II

[Release Nos. 33-8074, 34-45627, 35-27508, 39-2397, IC-25494, IA-2024, File No. S7-05-02]

Regulatory Flexibility Agenda

AGENCY: Securities and Exchange Commission.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Securities and Exchange Commission is publishing an agenda of its rulemaking actions, pursuant to the Regulatory Flexibility Act. Information in the agenda was accurate on March 22, 2002, the date on which the Commission's staff completed compilation of the data. To the extent possible, rulemaking actions by the Commission since that date have been reflected in the agenda. The Commission invites questions and public comment on the agenda and on the individual agenda entries. The Commission provides notice under section 610 of the Regulatory Flexibility Act.

DATES: Public comments are due by June 28, 2002.

ADDRESSES: Persons wishing to submit written comments should file three copies of their comments with Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549-0609. All submissions should refer to File No. S7-05-02 and will be available for public inspection and copying at the Commission's Public Reference Room, Room 1026, at the same address. Interested persons may also submit comments electronically at the following e-mail address: rule-comments@sec.gov. We will post electronically submitted comment letters on the Commission's web site www.sec.gov.

FOR FURTHER INFORMATION CONTACT: David R. Fredrickson or Constancio B. Cater, Office of the General Counsel, 202-942-0890.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (RFA) (Pub. L. No. 96-354, 94 Stat. 1164) (September 19, 1980) requires each Federal agency, during April and October of each year, to publish in the **Federal Register** an agenda identifying rules which the agency expects to propose or adopt that are likely to have a significant economic impact on a substantial number of small entities (5 U.S.C. 602(a)). The RFA specifically provides that publication of the agenda does not preclude an agency from considering or acting on any matter not included in the agenda and that an agency is not required to consider or act on any matter that is included in the agenda (5 U.S.C. 602(d)). The agenda includes new entries, entries carried over from previous publications, and rulemaking actions that have been completed (or withdrawn) since publication of the last agenda.

The following abbreviations for the acts administered by the Commission are used in the agenda:

"Securities Act" - Securities Act of 1933

"Exchange Act" - Securities Exchange Act of 1934

"PUHCA" - Public Utility Holding Company Act of 1935

"Investment Company Act" - Investment Company Act of 1940

"Investment Advisers Act" - Investment Advisers Act of 1940

The Commission's regulatory flexibility agenda is set forth below. The Commission invites public comment on the agenda and on the individual agenda entries.

Dated: March 22, 2002.
By the Commission.
Margaret H. McFarland,
Deputy Secretary.

DIVISION OF CORPORATION FINANCE—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4009	Industry Guide 3—Statistical Disclosure by Bank Holding Companies	3235-AI10
4010	Asset-Backed Securities Disclosure	3235-AF74
4011	Streamlining Rule 144	3235-AH13
4012	Accelerating Periodic Report Disclosure and Requiring Disclosure on Company Websites	3235-AI33
4013	Form 8-K Disclosure of Certain Management Transactions	3235-AI43
4014	Discussion in Management's Discussion and Analysis of the Application of Critical Accounting Policies	3235-AI44
4015	Mandated EDGAR Filing for Forms 3, 4, 5, and 144	3235-AI26
4016	Revision of Multijurisdictional Disclosure System	3235-AH99
4017	Updating the Regulation A Offering Circular	3235-AH87
4018	Financial Reporting and Blank Check Companies	3235-AH88
4019	Lock-Up Agreements	3235-AI09
4020	Securities Act Communications Reform	3235-AI11
4021	Additional Form 8-K Disclosure Requirements and Acceleration of Filing Date	3235-AI47

DIVISION OF CORPORATION FINANCE—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4022	Addressing Abuses of Form S-8 by Companies Using Consultants To Raise Capital	3235-AG94
4023	Mandated EDGAR Filing for Foreign Issuers	3235-AI08

SEC

DIVISION OF CORPORATION FINANCE—Final Rule Stage (Continued)

Sequence Number	Title	Regulation Identification Number
4024	Defining "Qualified Purchasers"	3235-AI25

DIVISION OF CORPORATION FINANCE—Completed Actions

Sequence Number	Title	Regulation Identification Number
4025	Disclosure of Equity Compensation Plan Information	3235-AI01
4026	Amendment to Definition of "Equity Security"	3235-AI40
4027	Revisions to Rules Governing Options Disclosure Document	3235-AH31
4028	Requirements for Arthur Andersen LLP Auditing Clients	3235-AI46

DIVISION OF INVESTMENT MANAGEMENT—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4029	Actively Managed Exchange Traded Funds	3235-AI35

DIVISION OF INVESTMENT MANAGEMENT—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4030	Books and Records To Be Maintained by Investment Advisers	3235-AH24
4031	Custody or Possession of Funds or Securities of Clients	3235-AH26
4032	Principal Transactions With Investment Advisory Clients	3235-AH34
4033	Exemption for Certain Investment Advisers Operating Through the Internet	3235-AI15
4034	Certain Thrift Institutions Deemed Not To Be Investment Advisers	3235-AI16
4035	Transactions of Investment Companies with Portfolio and Subadvisory Affiliates	3235-AI28
4036	Exemption From Registration for Certain Commodity Pool Operators	3235-AI29
4037	Shareholder Report and Financial Statement Revisions	3235-AG64
4038	Proposed Amendments in Investment Company Advertising Rules	3235-AH19
4039	Exemption for Investments in Money Market Funds	3235-AI30
4040	Exemption From Shareholder Approval for Certain Subadvisory Contacts	3235-AH80
4041	Amendments to Form N-SAR, Semiannual Report of Registered Investment Companies	3235-AF93
4042	Amendments to the Cash Solicitation Rule	3235-AH33
4043	Rulemaking for EDGAR System	3235-AI18
4044	Disclosure of Costs and Expenses for Variable Annuities	3235-AI39
4045	Investment in Money Market Funds	3235-AI45
4046	Regional Transmission Organizations and Independent Transmission Companies	3235-AI27

DIVISION OF INVESTMENT MANAGEMENT—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4047	Certain Broker-Dealers Not Deemed To Be Investment Advisers	3235-AH78
4048	Amendments to Form ADV	3235-AI17
4049	Custody of Investment Company Assets With a Securities Depository	3235-AG71
4050	Exemption for the Acquisition of Securities During the Existence of an Underwriting or Selling Syndicate	3235-AH57
4051	Mergers of Certain Affiliated Investment Companies	3235-AH81
4052	PUHCA: Exemption for Certain Acquisitions of Foreign Utility Companies; Subsidiaries Authorized To Perform Services or Construction or To Sell Goods	3235-AF78

SEC

DIVISION OF INVESTMENT MANAGEMENT—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4053	Political Contributions by Certain Investment Advisers	3235-AH72
4054	Exemption From Section 101(c)(1) of the Electronic Signatures in Global and National Commerce Act for Registered Investment Companies	3235-AH93
4055	Insurance Products: Equity Index Insurance Products Concept Release	3235-AH23

DIVISION OF INVESTMENT MANAGEMENT—Completed Actions

Sequence Number	Title	Regulation Identification Number
4056	Insurance Products: New Form N-6 for Registration of Separate Accounts Offering Variable Life Insurance Contracts	3235-AG37

DIVISION OF MARKET REGULATION—Prerule Stage

Sequence Number	Title	Regulation Identification Number
4057	Amendments to the Penny Stock Rules in Light of the Electronic Signatures in Global and National Commerce Act	3235-AI02

DIVISION OF MARKET REGULATION—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4058	Risk Assessment Recordkeeping and Reporting Requirement	3235-AH06
4059	Exemption of Certain Foreign Brokers and Dealers	3235-AH17
4060	Purchases of Certain Equity Securities by the Issuers and Others	3235-AH37
4061	Exemption From Exchange Act Section 11(d)(1) for Securities of Foreign Issuers Sold on an Installment Basis	3235-AH58
4062	Concept Release: Short Sales	3235-AH84

DIVISION OF MARKET REGULATION—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4063	Amendments to Rules 15c3-3, 17a-3, 17a-4, 17a-5, 17a-7, 17a-11, and 17a-13 To Recognize Security Futures Products	3235-AI32
4064	Tender and Reorganization Agents	3235-AH53
4065	Net Capital Requirements for Brokers or Dealers—Definition of the Term Nationally Recognized Statistical Rating Organization	3235-AH28
4066	Publication or Submission of Quotations Without Specified Information	3235-AH40
4067	Processing Requirements for Cancelled Securities Certificates	3235-AH54
4068	Definition of Terms in and Specific Exemptions for Banks, Savings Associations, and Savings Banks Under Sections 3(a)(4) and 3(a)(5) of the Securities and Exchange Act of 1934	3235-AI19

DIVISION OF MARKET REGULATION—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4069	Market Risk Haircuts for Instruments Subject to Interest Rate Risk	3235-AG18
4070	Net Capital Rule: Customer Protection Rule	3235-AH05
4071	Possible Amendment of Form BD	3235-AI42

SEC

DIVISION OF MARKET REGULATION—Long-Term Actions (Continued)

Sequence Number	Title	Regulation Identification Number
4072	Proposed Amendments to Transfer Agent Rules	3235-AG24
4073	Untimely Announcement of Record Dates	3235-AH38
4074	Customer Margin Rules Relating to Security Futures Products	3235-AI22
4075	Request for Comments on the Effects of Decimal Trading in Sub-Pennies	3235-AI23
4076	Cash Settlement and Regulatory Halt Requirements for Security Future Products	3235-AI24

DIVISION OF MARKET REGULATION—Completed Actions

Sequence Number	Title	Regulation Identification Number
4077	Amendments to Rule 31-1, Securities Exempt From Transaction Fees	3235-AI36
4078	Exemption of Transaction in Certain Options and Futures on Security Indexes From Section 31 of the Exchange Act	3235-AI38

OFFICES AND OTHER PROGRAMS—Proposed Rule Stage

Sequence Number	Title	Regulation Identification Number
4079	Proposal to Amendment Disclosure Requirements Related to Derivative Financial Instruments and Derivative Commodity Instruments	3235-AH98

OFFICES AND OTHER PROGRAMS—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4080	Supplemental Financial Information	3235-AH86

OFFICES AND OTHER PROGRAMS—Long-Term Actions

Sequence Number	Title	Regulation Identification Number
4081	International Accounting Standards	3235-AH65
4082	Public Accountability Board	3235-AI41

OFFICES AND OTHER PROGRAMS—Discontinued Entries

Regulation Identification Number	Title	Date Withdrawn	Comments
3235-AH97	Management Reports on Internal Controls	03/05/2002	Withdrawn

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Securities and Exchange Commission (SEC)
Division of Corporation Finance

Proposed Rule Stage

4009. INDUSTRY GUIDE 3—STATISTICAL DISCLOSURE BY BANK HOLDING COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq; 5 USC 78a et seq

CFR Citation: 17 CFR 229; 17 CFR 231; 17 CFR 241

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Securities Act Industry Guide 3 and Exchange Act Industry Guide 3, Statistical Disclosure by Banking Holding Companies, to update them and apply them more broadly to registrants engaging in lending, investing, or deposit-taking activities, in addition to banks and bank holding companies. The revisions also would likely take into account changes in financial reporting rules and the increasingly diverse lending and investing activities that expose registrants to credit risk.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Carol Stacey, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2960

RIN: 3235–AI10

4010. ASSET-BACKED SECURITIES DISCLOSURE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 78o; 15 USC 78w; 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s; 15 USC 78l; 15 USC 78m; 15 USC 78n

CFR Citation: 17 CFR 229; 17 CFR 230; 17 CFR 239; 17 CFR 240; 17 CFR 249

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission amendments to revise rules and forms, which would specify disclosure requirements for asset-backed securities transactions.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AF74

4011. STREAMLINING RULE 144

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.144

Legal Deadline: None

Abstract: The Commission proposed revisions to Rule 144, Rule 145, and Form 144 to make the rules and form easier to understand and apply. The Division is considering recommending that the Commission repropose amendments that would, among other things, add a bright line test to the Rule 144 definition of affiliate, increase the Form 144 filing thresholds, and codify certain interpretive positions.

Timetable:

Action	Date	FR Cite
NPRM	02/20/97	62 FR 9246
NPRM Comment Period End	04/29/97	
Second NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Raymond A. Be, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AH13

4012. • ACCELERATING PERIODIC REPORT DISCLOSURE AND REQUIRING DISCLOSURE ON COMPANY WEBSITES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 229.101(e); 17 CFR 240.12b-2; 17 CFR 240.13a-10; 17 CFR 240.15d-10; 17 CFR 249.308a; 17 CFR 249.310

Legal Deadline: None

Abstract: The Commission proposed amendments to revise rules and forms that would accelerate the filing by some companies of their quarterly and annual Exchange Act reports and add a requirement that these companies post their Forms 10-K, 10-Q, and 8-K reports on their Internet websites, if they have one, as soon as reasonably practicable after they file or furnish their reports with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19896
NPRM Comment Period End	05/23/02	
Final Action	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI33

4013. • FORM 8-K DISCLOSURE OF CERTAIN MANAGEMENT TRANSACTIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230.144; 17 CFR 239.12; 17 CFR 239.13; 17 CFR 239.16b; 17 CFR 249.308

Legal Deadline: None

Abstract: The Commission has proposed amendments that would require some public companies to file current reports describing: Directors' and executive officers' transactions in company equity securities, directors' and executive officers' arrangements for the purchase and sale of company equity securities, and loans of money to a director or executive officer made or guaranteed by the company or an affiliate of the company.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19914
NPRM Comment Period End	06/24/02	
Final Action	08/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Anne M. Krauskopf, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI43

4014. • DISCUSSION IN MANAGEMENT'S DISCUSSION AND ANALYSIS OF THE APPLICATION OF CRITICAL ACCOUNTING POLICIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 228.303; 17 CFR 229.303

Legal Deadline: None

Abstract: The Division is considering whether to recommend to the Commission to require a company to discuss the application of critical accounting policies that require subjective or complex accounting estimates, as well as the assumptions and methodology underlying them and their effect on the company's financial statements. The new disclosure would be included in the MD&A section of a company's annual registration statements and proxy and information statements with quarterly updates.

Timetable:

Action	Date	FR Cite
NPRM	04/00/02	

Regulatory Flexibility Analysis Required: Yes

SEC—Division of Corporation Finance

Proposed Rule Stage

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Anita Klein, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2980
Fax: 202 942-9525

RIN: 3235–AI44

4015. MANDATED EDGAR FILING FOR FORMS 3, 4, 5, AND 144

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq.; 15 USC 79a et seq.; 15 USC 80a-1 et seq.

CFR Citation: 17 CFR 230; 17 CFR 232; 17 CFR 239

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments that would require persons to file electronically on EDGAR their Forms 3, 4, 5, and 144. This would make the information more readily available to the investing public.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Mark W. Green, Senior Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942-1940
Fax: 202 942-9624

RIN: 3235–AI26

4016. REVISION OF MULTIJURISDICTIONAL DISCLOSURE SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 78aaa et seq

CFR Citation: 17 CFR 230; 17 CFR 239; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose revisions to the Multijurisidictional Disclosure System for Canadian registrants that would integrate them into the Commission's foreign issuer disclosure system in a manner more consistent with all other foreign registrants. The proposals would limit the scope of the MJDS, including the number of companies eligible to use the system and the circumstances under which they may use it, while preserving MJDS filer's ability to make offerings in the United States using Canadian offering documents and without review by Commission staff.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: Mary Cascio, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2990
Fax: 202 942-9624

RIN: 3235–AH99

4017. UPDATING THE REGULATION A OFFERING CIRCULAR

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 239.0

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to the Model A offering circular in the Regulation A offering statement.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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SEC—Division of Corporation Finance — **Proposed Rule Stage**

Agency Contact: Richard K. Wulff, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2950
Fax: 202 942-9516

RIN: 3235–AH87

4018. FINANCIAL REPORTING AND BLANK CHECK COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq

CFR Citation: 17 CFR 249.308

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Form 8-K that would remove the grace period for filing financial statements in a blank check company merger.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Richard K. Wulff, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2950
Fax: 202 942-9516

RIN: 3235–AH88

4019. LOCK-UP AGREEMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 230; 17 CFR 240

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose a new rule under the Securities Act to clarify how to register securities that acquiring companies issue to certain target security holders who enter into lock-up agreements in connection with acquisition transactions. The Divsion also would consider recommending corresponding exemptions from certain Exchange Act rules to allow for the execution of lock-up agreements without violation of the applicable rules.

Timetable:

Action	Date	FR Cite
NPRM	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Pamela Carmody, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2920

RIN: 3235–AI09

4020. SECURITIES ACT COMMUNICATIONS REFORM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 5 USC 77a et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose modifications to the Securities Act restrictions on communications by issuers and underwriters around the time of an offering. The Division is focusing on the section 5 restrictions on pre-filing offers and free writing and the Securities Act rules that permit limited types of communication during those periods. The Division is also considering whether changes would be appropriate to the limitations on communications in certain exempt offerings. Finally, the Division is examining the requirements for delivery of final prospectuses.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Anita Klein, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2980

RIN: 3235–AI11

4021. • ADDITIONAL FORM 8-K DISCLOSURE REQUIREMENTS AND ACCELERATION OF FILING DATE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78 et seq

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Corporation Finance is considering whether to recommend to the Commission amendments to shorten the filing deadline for Form 8-K to 2 business days after the occurrence of an event triggering the form's disclosure requirements. The Division is also considering the addition of other significant events that would require a company to make a Form 8-K filing.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Raymond A. Be, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI47

Securities and Exchange Commission (SEC)
Division of Corporation Finance — **Final Rule Stage**

4022. ADDRESSING ABUSES OF FORM S-8 BY COMPANIES USING CONSULTANTS TO RAISE CAPITAL

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 78w; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s; 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78o

CFR Citation: 17 CFR 239.16b; 17 CFR 228.402; 17 CFR 229.402; 17 CFR 230.101; 17 CFR 230.405; 17 CFR 239.13

Legal Deadline: None

Abstract: The Commission proposed additional amendments to Form S-8 to further deter the misuse of that form. The proposals would add a timeliness requirement for filings under the Exchange Act in order to use the form. In addition, a company formed by merger of a non-public company into an Exchange Act reporting company with only nominal assets at the time of merger would have to wait until it had filed an Exchange Act annual report containing audited financial statements reflecting the merger before it could use Form S-8. The Commission also extended the comment period on the proposal to require disclosure in Part II of Form S-8 of the names of consultants who will receive securities, the number of securities to be issued to each of them, and the specific services that each will provide.

Timetable:

Action	Date	FR Cite
NPRM	02/25/98	63 FR 9648
NPRM Comment Period End	04/27/98	
Final Rule	03/08/99	64 FR 11103
Second NPRM	03/08/99	64 FR 11118
Final Rule Effective	04/07/99	
Second NPRM Comment Period End	05/07/99	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Anne M. Krauskopf, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AG94

4023. MANDATED EDGAR FILING FOR FOREIGN ISSUERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 232

Legal Deadline: None

Abstract: The Commission proposed amendments that would require foreign issuers to file electronically on EDGAR their Securities Act and Exchange Act registration statements and their Exchange Act reports and other documents. Thus far, foreign issuers have only voluntarily filed their securities documents on EDGAR. By extending mandated EDGAR filing rules to foreign issuers, the Commission hopes to achieve the same efficiencies in information dissemination sought when the Commission adopted the mandated EDGAR filing regime for domestic issuers in 1993.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50744
NPRM Comment Period End	12/03/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Elliot Staffin, Securities and Exchange Commission, Division of Corporation Finance
Phone: 202 942-2990

RIN: 3235–AI08

4024. DEFINING "QUALIFIED PURCHASERS"

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 U.S.C. 78r

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission has proposed amendments to Rule 146 to provide a definition of "qualified purchaser" to fully implement the "covered securities" portion of section 18 of the Securities Act of 1933.

Timetable:

Action	Date	FR Cite
NPRM	12/27/01	66 FR 66839
NPRM Comment Period End	02/25/02	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Marva Simpson, Special Counsel, Securities and Exchange Commission, Washington, DC 20549
Phone: 202 942-2950
Fax: 202 942-9516

RIN: 3235–AI25

Securities and Exchange Commission (SEC)
Division of Corporation Finance — **Completed Actions**

4025. DISCLOSURE OF EQUITY COMPENSATION PLAN INFORMATION

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 240.14a-101; 17 CFR 229.202; 17 CFR 228.202

Legal Deadline: None

Abstract: The Commission has adopted amendments to Regulations S-K and S-B, Regulations 14A and 14C, and Forms 10K and 10KSB that require annual disclosure of the total number of securities authorized for issuance under a registrant's employee stock plans, whether or not approved by shareholders, and certain related information.

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SEC—Division of Corporation Finance — **Completed Actions**

Timetable:

Action	Date	FR Cite
NPRM	02/01/01	66 FR 8732
NPRM Comment Period End	04/02/01	
Final Action	01/02/02	67 FR 232
Final Action Effective	02/01/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Mark Borges, Office of Rulemaking, Division of Corporation Finance, Securities and Exchange Commission
Phone: 202 942-2900

RIN: 3235–AI01

4026. • AMENDMENT TO DEFINITION OF "EQUITY SECURITY"

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq

CFR Citation: 17 CFR 240.3a-11

Legal Deadline: None

Abstract: The Commission amended the definition of "Equity Security" in Exchange Act Rule 3a11-1 and Securities Act Rule 405 to conform them to the statutory definition as amended by the Commodity Futures Modernization Act of 2000.

Timetable:

Action	Date	FR Cite
Final Action	04/23/02	67 FR 19671
Comment Period End	05/23/02	
Final Action Effective	06/07/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: N. Sean Harrison, Special Counsel, Securities and Exchange Commission, Division of Corporation Finance, 450 Fifth Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AH31

4027. REVISIONS TO RULES GOVERNING OPTIONS DISCLOSURE DOCUMENT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.135b

Legal Deadline: None

Abstract: The Commission adopted amendments to provide that an options disclosure document prepared in accordance with Rule 9b-1 under the Exchange Act is not a prospectus and accordingly will not be subject to civil liability under section 12(a)(2) of the Securities Act.

Timetable:

Action	Date	FR Cite
NPRM	07/01/98	63 FR 36136
NPRM Comment Period End	07/31/98	
Final Action	01/02/02	67 FR 228
Final Action Effective	02/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Raymond A. Be, Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AH40

4028. • REQUIREMENTS FOR ARTHUR ANDERSEN LLP AUDITING CLIENTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77b; 15 USC 77d; 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s; 15 USC 77z-3; 15 USC 78c; 15 USC 78d; 15 USC 78j; 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78o; 15 USC 78w; 15 USC 78mm; 15 USC 77ddd; 15 USC 77eee; 15 USC 77ggg; 15 USC 77hhh; 15 USC 77jjj; 15 USC 77nnn; 15 USC 77sss

CFR Citation: 17 CFR 210.2-02; 17 CFR 210.3-01; 17 CFR 228.304T; 17 CFR 228.310; 17 CFR 228.601T; 17 CFR 229.304T; 17 CFR 229.601T; 17 CFR 230.401a; 17 CFR 230.427T; 17 CFR 230.428; 17 CFR 230.437a; 17 CFR 240.12b-37; 17 CFR 249.220f; 17 CFR 260.19a-1

Legal Deadline: None

Abstract: The Securities and Exchange Commission (the "Commission") is modifying the requirements for including audited financial statements in registration statements under the Securities Act of 1933 and filings required by the Trust Indenture Act of 1939 by registrants that are unable to or elect not to have Andersen issue a manually signed audit report, if the audit report was not issued on or before March 14, 2002. In addition, Companies to whom Andersen issues a manually signed audit report after March 14, 2003 must file a letter as an exhibit to their filings stating they have received certain representations from Andersen concerning audit quality controls.

Timetable:

Action	Date	FR Cite
Final Action Effective	03/18/02	
Final Action	03/22/02	67 FR 13518

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Jeffrey Minton, Division of Corporation Finance, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-2910

RIN: 3235–AI46

Securities and Exchange Commission (SEC)
Division of Investment Management — **Prerule Stage**

4029. • ACTIVELY MANAGED EXCHANGE TRADED FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a

CFR Citation: 17 CFR 270

Legal Deadline: None

Abstract: The Commission issued a release seeking public comment on various issues relating to the concept of actively managed exchange-traded funds. The concept release was designed to help inform the Commission's consideration of any proposals for actively managed exchange-traded funds.

Timetable:

Action	Date	FR Cite
ANPRM	11/15/01	66 FR 57614
ANPRM Comment Period End	11/14/02	
Next Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Michael Whitney Mundt, Senior Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0564

RIN: 3235–AI35

Securities and Exchange Commission (SEC)
Division of Investment Management — **Proposed Rule Stage**

4030. BOOKS AND RECORDS TO BE MAINTAINED BY INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4; 15 USC 80b-6(4); 15 USC 80b-11(a)

CFR Citation: 17 CFR 275.204-2

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission update the books and records requirements for investment advisers.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Don L. Evans, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH24

4031. CUSTODY OR POSSESSION OF FUNDS OR SECURITIES OF CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-6; 15 USC 80b-4; 15 USC 80b-11

CFR Citation: 17 CFR 275.206(4)-2

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending a proposal to the Commission to revise the custody rule under the Investment Advisers Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Vivian Liu, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH26

4032. PRINCIPAL TRANSACTIONS WITH INVESTMENT ADVISORY CLIENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-6a

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering recommending that the Commission revise the conditions under which investment advisers may enter into principal transactions with their clients.

Timetable:

Action	Date	FR Cite
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH34

4033. EXEMPTION FOR CERTAIN INVESTMENT ADVISERS OPERATING THROUGH THE INTERNET

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-3a(c)

CFR Citation: 17 CFR 275.203A-2

Legal Deadline: None

Abstract: The Commission proposed new rule 203A-2(f), which would permit certain investment advisers operating through the Internet to register with the Commission.

Timetable:

Action	Date	FR Cite
NPRM	04/19/02	67 FR 19500
NPRM Comment Period End	06/06/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Marilyn Barker, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AI15

4034. CERTAIN THRIFT INSTITUTIONS DEEMED NOT TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-2(a)(11)(F)

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering recommending a proposal to the Commission to except from the definition of investment adviser thrift institutions providing investment advice to certain clients.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AI16

4035. TRANSACTIONS OF INVESTMENT COMPANIES WITH PORTFOLIO AND SUBADVISORY AFFILIATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-10(f); 15 USC 80-17(b); 15 USC 80a-17(d); 15 USC 80a-30(a); 15 USC 80a 37(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering whether to recommend that the Commission propose new rules and rule amendments to expand the circumstances under which a registered investment company may engage in transactions and joint enterprises with certain affiliated persons and affiliated persons of affiliated persons of the investment company.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: William C. Middlebrooks, Jr., Attorney, Office of Regulatory Policy, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549-0506
Phone: 202 942-0690

RIN: 3235–AI28

4036. EXEMPTION FROM REGISTRATION FOR CERTAIN COMMODITY POOL OPERATORS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-6a

CFR Citation: 17 CFR 275.203(b)(6)-1 (New)

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending that the Commission propose a rule exempting certain commodity pool operators from investment adviser registration and addressing issues related to the Commodity Futures Modernization Act amendments to the Investment Adviser Act.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Daniel Seth Kahl, Attorney, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AI29

4037. SHAREHOLDER REPORT AND FINANCIAL STATEMENT REVISIONS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77j; 15 USC 80a-29

CFR Citation: 17 CFR 210; 17 CFR 270.30d-1

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose revisions to improve investment company shareholder reports, including enhancing disclosure of fee information and revising the portfolio holdings disclosure requirements.

Timetable:

Action	Date	FR Cite
NPRM	08/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Peter Hong, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AG64

4038. PROPOSED AMENDMENTS IN INVESTMENT COMPANY ADVERTISING RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 80a-8; 15 USC 80a-22; 15 USC 80a-24(g); 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 230.482; 17 CFR 230.134

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission propose to amend Rule 482, to permit advertisements that are not subject to restrictions limiting the content to information "the substance of which" is in a fund's prospectus. The Division is also considering whether to recommend that the Commission propose to amend Rule 134 to rescind provisions of Rule 134 that apply only to investment companies.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: David Schwartz, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AH19

4039. EXEMPTION FOR INVESTMENTS IN MONEY MARKET FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a-12(d)(1)(j)

CFR Citation: 17 CFR 12d1-1

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering recommending to the Commission a new rule to allow investment companies to acquire securities for the investment companies regulated as money market funds, in excess of limits on those investments under the Investment Company Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Penelope W. Saltzman, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission, 450 Fifth Street NW, Washington, DC 20549-0506
Phone: 202 942-0690

RIN: 3235–AI30

4040. EXEMPTION FROM SHAREHOLDER APPROVAL FOR CERTAIN SUBADVISORY CONTACTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Division of Investment Management is considering recommending to the Commission a proposal of a new rule to allow certain types of funds or their investment advisers to enter into subadvisory agreements for investment management services without obtaining shareholder approval.

Timetable:

Action	Date	FR Cite
NPRM	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Adam B. Glazer, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AH80

4041. AMENDMENTS TO FORM N-SAR, SEMIANNUAL REPORT OF REGISTERED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 249.330; 17 CFR 274.101

Legal Deadline: None

Abstract: The Division of Investment Management is considering whether to recommend that the Commission amend Form N-SAR, the semiannual report for registered investment companies, to update the items of the form.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Carolyn A. Miller, Office of Financial Analysis, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0510

RIN: 3235–AF93

4042. AMENDMENTS TO THE CASH SOLICITATION RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4; 15 USC 80b-6; 15 USC 80-11(a)

CFR Citation: 17 CFR 275.206(4)-3

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering whether to recommend revisions to the cash solicitation rule.

Timetable:

Action	Date	FR Cite
NPRM	01/00/03	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH33

4043. RULEMAKING FOR EDGAR SYSTEM

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77f; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 78c; 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78o(d); 15 USC 78w(a); 15 USC 78ll; 15 USC 77sss; 15 USC 79c; 15 USC 79e; 15 USC 79f; 15 USC 79g; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79q; 15 USC 79t; 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-30; 15 USC 80a-37

CFR Citation: 17 CFR 232.101 to 601

Legal Deadline: None

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SEC—Division of Investment Management — **Proposed Rule Stage**

Abstract: In connection with the ongoing modernization of the Electronic Data Gathering, Analysis, and Retrieval (EDGAR) system, the staff is considering recommending that the Commission propose amendments to existing rules and forms to make technical and clarifying corrections and to expand the categories of mandatory electronic filings to include investment company exemptive applications and certain other investment company filings.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Shaswat K. Das, Senior Counsel, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0650

RIN: 3235–AI18

4044. • DISCLOSURE OF COSTS AND EXPENSES FOR VARIABLE ANNUITIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77e; 15 USC 77g; 15 USC 77h; 15 USC 77j; 15 USC 77s(a); 15 USC 80a-8; 15 USC 80a-24; 15 USC 80a-29; 15 USC 80A-37

CFR Citation: 17 CFR 239.17b; 17 CFR 274.11c

Legal Deadline: None

Abstract: The Commission proposed revisions of Form N-4, the registration form for insurance company separate accounts that are registered as unit investment trusts and that offer variable annuity contracts. The proposed amendments would revise the format of the fee table of Form N-4 to require disclosure of the range of expenses for all of the mutual funds offered through the separate account.

Timetable:

Action	Date	FR Cite
NPRM	04/23/02	67 FR 19886
NPRM Comment Period End	06/14/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Katy Mobedshahi, Division of Investment Management, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0721

RIN: 3235–AI39

4045. • INVESTMENT IN MONEY MARKET FUNDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-6(c); 15 USC 80a 37(a)

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering whether to recommend that the Commission propose a new rule that would permit a company to treat money market fund shares as cash items for purposes of determining whether the company is an investment company under the Investment Company Act of 1940.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Sarah B. Ackerson, Senior Special Counsel, Securities and Exchange Commission, 450 5th Street NW, Washington, DC 20549-0506
Phone: 202 942-4780

RIN: 3235–AI45

4046. REGIONAL TRANSMISSION ORGANIZATIONS AND INDEPENDENT TRANSMISSION COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79c

CFR Citation: 17 CFR 250.18; 17 CFR 250.40; 17 CFR 250.44; 17 CFR 250.6

Legal Deadline: None

Abstract: The staff of the Division of Investment Management is considering recommending a proposal to the Commission to deem an "independent transmission company" as defined by the rule not to be a "subsidiary," "company" or "affiliate" of a registered holding company. The rule is intended to facilitate the Federal Energy Regulatory Commission's Order No. 2000, Regional Transmission Organizations.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Victoria J. Adraktas, Office of Public Utility Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0545

RIN: 3235–AI27

Securities and Exchange Commission (SEC)
Division of Investment Management — **Final Rule Stage**

4047. CERTAIN BROKER-DEALERS NOT DEEMED TO BE INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-2(a)(11)(F)

CFR Citation: 17 CFR 275.202(a)(11)-1

Legal Deadline: None

Abstract: The Commission has proposed new Rule 202(a)(11)-1, which would exempt from the definition of investment adviser those broker-dealers offering nondiscretionary, full-service brokerage programs so long as the investment advice provided is solely incidental to the brokerage services and other conditions are satisfied.

Timetable:

Action	Date	FR Cite
NPRM	11/10/99	64 FR 61226
NPRM Comment Period End	01/14/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: State

Federalism: This action may have federalism implications as defined in EO 13132.

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH78

4048. AMENDMENTS TO FORM ADV

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80b-4, 80b-6(4), 80bll(a), 80b-3(c)(1); 15 USC 77s(a); 15 USC 78(a), 78bbb(e)(2); 15 USC 77sss(a); 15 USC 78(s)-37(a)

CFR Citation: 17 CFR 275.204-2; 17 CFR 275.204-3; 17 CFR 275.206(4)-4; 17 CFR 279.1

Legal Deadline: None

Abstract: In 2000, the Commission proposed amendments to Form ADV and related rules to create an electronic filing system for investment advisers and to improve the quality of information that advisers must provide to clients and prospective clients. The proposed amendments to Form ADV and the final amendments to Part 1 of Form ADV were published under RIN 3235-AD21. The Commission deferred adoption of the final amendments to Part 2 of Form ADV, however. Final action on amendments to Part 2 of the Form ADV (and related rules), if approved by the Commission, will be published under the new RIN.

Timetable:

Action	Date	FR Cite
NPRM	04/05/00	65 FR 20524
NPRM Comment Period End	06/13/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Marticha L. Cary, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission, Room 5013, 450 5th Street NW, Washington, DC 20549
Phone: 202 942-0719
Email: iarules@sec.gov

RIN: 3235–AI17

4049. CUSTODY OF INVESTMENT COMPANY ASSETS WITH A SECURITIES DEPOSITORY

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-17(f); 15 USC 80a-06(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17f-4

Legal Deadline: None

Abstract: The Commission proposed amendments to rule 17f-4, the rule that governs investment companies' use of securities. The amendments would, among other things, update and simplify the rule's compliance requirements to reflect changes in commercial law, expand the types of entities that may be used as securities depositories, and permit investment company officers to authorize custody arrangements.

Timetable:

Action	Date	FR Cite
NPRM	11/21/01	66 FR 58412
NPRM Comment Period End	01/31/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Hugh P. Lutz, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AG71

4050. EXEMPTION FOR THE ACQUISITION OF SECURITIES DURING THE EXISTENCE OF AN UNDERWRITING OR SELLING SYNDICATE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-10(f); 15 USC 80a-30(a); 15 USC 80a-37(a); 15 USC 80a-6(c)

CFR Citation: 17 CFR 270.10f-3

Legal Deadline: None

Abstract: The Commission proposed amendments to rule 10f-3 under the Investment Company Act (i) to permit investment companies to purchase Government securities during the existence of an underwriting or selling syndicate in which an affiliate is participating and (ii) for purposes of calculating the rule's percentage limit, to require aggregation of the purchase made by an investment company in reliance on the rule with purchases by any other investment company advised by the investment company's investment adviser and any other account over which the adviser exercises control.

Timetable:

Action	Date	FR Cite
NPRM	12/06/00	65 FR 76189
NPRM Comment Period End	02/15/01	
Final Action	05/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Hester M. Peirce, Office of Regulatory Policy, Division of

Investment Management, Securities and Exchange Commission
Phone: 202 942-0690

RIN: 3235–AH57

4051. MERGERS OF CERTAIN AFFILIATED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 80a-17(a); 15 USC 80a-6(c); 15 USC 80a-37(a)

CFR Citation: 17 CFR 270.17a-8

Legal Deadline: None

Abstract: The Commission proposed amendments to rule 17a-8 under the Investment Company Act, which exempts from the prohibitions of section 17(a) mergers and other combinations of certain affiliated investment companies. The amendments would expand the rule to make it available in a broader range of circumstances and would alter the conditions required for reliance on the rule.

Timetable:

Action	Date	FR Cite
NPRM	11/15/01	66 FR 57602
NPRM Comment Period End	01/18/02	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert S. Kim, Office of Regulatory Policy, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-7961

RIN: 3235–AH81

4052. PUHCA: EXEMPTION FOR CERTAIN ACQUISITIONS OF FOREIGN UTILITY COMPANIES; SUBSIDIARIES AUTHORIZED TO PERFORM SERVICES OR CONSTRUCTION OR TO SELL GOODS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 79e; 15 USC 79f(b); 15 USC 79i(c)(3); 15 USC 79t; 15 USC 79z-5a; 15 USC 79z-5b; 15 USC 79; 15 USC 79j; 15 USC 79l; 15 USC 79m; 15 USC 79n; 15 USC 79o

CFR Citation: 17 CFR 250.55 (New); 17 CFR 250.87 (Revision); 17 CFR 259.5s (Revision); 17 CFR 259.207 (Revision)

Legal Deadline: None

Abstract: Proposed rule 55 is intended to provide a safe harbor for those acquisitions of one or more foreign utility companies by a registered holding company that meet specified criteria. Proposed rule 56, previously considered in RIN 3235-AF79, clarifies that a subsidiary of a registered holding company that is engaged exclusively in the business of owning an interest in one or more foreign utility companies will be deemed a foreign utility company. The proposed amendment to rule 87 would require registered holding companies to obtain Commission approval of intrasystem agreements involving foreign utility companies and exempt wholesale generators.

Timetable:

Action	Date	FR Cite
NPRM	03/15/93	58 FR 13719
NPRM Comment Period End	04/14/93	
Second NPRM	02/07/01	66 FR 9247
Second NPRM Comment Period End	04/09/01	
Next Action	02/00/03	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Additional Information: Related to RIN 3235-AF79

Agency Contact: Alberto Zapata, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0545

RIN: 3235–AF78

Securities and Exchange Commission (SEC)
Division of Investment Management

Long-Term Actions

4053. POLITICAL CONTRIBUTIONS BY CERTAIN INVESTMENT ADVISERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 206(4); 15 USC 211(a); 15 USC 204

CFR Citation: 17 CFR 275

Legal Deadline: None

Abstract: The Commission has proposed new Rule 206(4)-5, which would prohibit an investment adviser from providing advisory services for compensation to a Government client for 2 years after the adviser or any of its partners, executive officers, or solicitors makes a contribution to certain elected officials or candidates. The Commission also has proposed rule amendments that would require a registered adviser that has Government clients to maintain certain records of the political contributions made by the adviser or any of its partners, executive officers, or solicitors.

Timetable:

Action	Date	FR Cite
NPRM	08/10/99	64 FR 43556
NPRM Comment Period End	11/01/99	
Final Action	10/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Jennifer L. Sawin, Office of Investment Adviser Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0719

RIN: 3235–AH72

4054. EXEMPTION FROM SECTION 101(C)(1) OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT FOR REGISTERED INVESTMENT COMPANIES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77s(a)

CFR Citation: 17 CFR 230.160; 17 CFR 231; 17 CFR 271

Legal Deadline: Other, Statutory, July 28, 2000, section 104(d)(2) of the Electronic Signatures Act in Global and National Commerce Act (PL 106-229).

Abstract: The Commission adopted interim final rule 160 under the Securities Act of 1933 to exempt from the consumer consent requirements of the Electronic Signatures in Global and National Commerce Act prospectuses of registered investment companies that are used for the sole purpose of permitting supplemental sales literature to be provided to prospective investors. Parts 231 and 271 of title 17 were amended by adding Release Nos. 33-7877 and IC-24582 to the list of interpretative releases.

Timetable:

Action	Date	FR Cite
Interim Final Rule	08/02/00	65 FR 47281
Interim Final Rule Comment Period End	09/01/00	
Interim Final Rule Effective	10/01/00	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Paul Cellupica, Office of Disclosure Regulation, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0721

RIN: 3235–AH93

4055. INSURANCE PRODUCTS: EQUITY INDEX INSURANCE PRODUCTS CONCEPT RELEASE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq

CFR Citation: 17 CFR 230.151

Legal Deadline: None

Abstract: The Commission issued a release requesting public comment on the structure of equity index insurance products, the manner in which they are marketed, and any other matters the Commission should consider in addressing Federal securities law issues raised by equity index insurance products.

Timetable:

Action	Date	FR Cite
ANPRM	08/27/97	62 FR 45359
ANPRM Comment Period End	11/20/97	
NPRM	11/21/97	62 FR 62273
NPRM Comment Period End	01/05/98	
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: Businesses

Government Levels Affected: Undetermined

Agency Contact: William Kotapish, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0670

RIN: 3235–AH23

Securities and Exchange Commission (SEC)
Division of Investment Management

Completed Actions

4056. INSURANCE PRODUCTS: NEW FORM N-6 FOR REGISTRATION OF SEPARATE ACCOUNTS OFFERING VARIABLE LIFE INSURANCE CONTRACTS

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 77a et seq; 15 USC 80a-1 et seq; 15 USC 77g; 15 USC 77j; 15 USC 77s; 15 USC 80a-8; 15 USC 80a-29; 15 USC 80a-37

CFR Citation: 17 CFR 230.134b (Revision); 17 CFR 230.430 (Revision); 17 CFR 230.430A (Revision); 17 CFR 230.495 (Revision); 17 CFR 230.496 (Revision); 17 CFR 230.497 (Revision); 17 CFR 239.17c (New); 17 CFR 270.8b-11 (Revision); 17 CFR 270.8b-12 (Revision); 17 CFR 274.11d (New); 17 CFR 274.12 (Revision)

Legal Deadline: None

Abstract: The Commission adopted a new Form N-6 to be used for separate accounts offering variable life insurance contracts to register under both the Investment Company Act and the Securities Act. The Commission also amended Form N-1A, the registration form for mutual funds, to require a fee table for mutual funds that offer their shares as investment options for variable life insurance and variable annuity contracts.

Timetable:

Action	Date	FR Cite
NPRM	03/23/98	63 FR 13988
NPRM Comment Period End	07/01/98	
Final Action	04/23/02	67 FR 19848
Comment Period End for Paperwork Reduction Act Purposes	06/01/02	
Final Action Effective	06/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Paul G. Cellupica, Division of Investment Management, Securities and Exchange Commission
Phone: 202 942-0554

RIN: 3235–AG37

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Securities and Exchange Commission (SEC)
Division of Market Regulation

Prerule Stage

4057. AMENDMENTS TO THE PENNY STOCK RULES IN LIGHT OF THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c(h); 15 USC 78o(g)

CFR Citation: 17 CFR 240.15g-2(c); 17 CFR 240.15g-9(e)

Legal Deadline: None

Abstract: The Division is considering recommending to the Commission proposed rules 15g-2(c) and 15(g)-9(e) under the Exchange Act that would provide that if a broker-dealer accepts a customer's electronic signature instead of a manual signature, the broker-dealer must wait at least 2 business days after receiving the electronically signed document to effect a penny stock transaction for its customer. In addition, a broker-dealer accepting an electronically transmitted penny stock agreement would be required to wait at least 2 business days after receiving the agreement to execute a penny stock transaction for a customer. The Division is also considering whether to amend the definition of "penny stock" in rule 3a51-1 in light of the NASDAQ application to become a national securities exchange.

Timetable:

Action	Date	FR Cite
ANPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Norman Reed, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-7901

RIN: 3235–AI02

Securities and Exchange Commission (SEC)
Division of Market Regulation

Proposed Rule Stage

4058. RISK ASSESSMENT RECORDKEEPING AND REPORTING REQUIREMENT

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a(h)

CFR Citation: 17 CFR 240.17h-1T; 17 CFR 240.17h-2T

Legal Deadline: None

Abstract: The Risk Assessment Recordkeeping and Reporting Requirements, which became effective September 30, 1992, following notice and comment, were adopted as temporary rules pursuant to the Market Reform Act of 1990. These rules contain recordkeeping and reporting requirements with regard to material associated persons of broker-dealers. The Division plans to recommend that the Commission propose final rules replacing the temporary rules.

Timetable:

Action	Date	FR Cite
NPRM	09/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942-4886
Fax: 202 942-9553
Email: mcgowant@sec.gov

RIN: 3235–AH06

4059. EXEMPTION OF CERTAIN FOREIGN BROKERS AND DEALERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c; 15 USC 78j; 15 USC 78o; 15 USC 78q; 15 USC 78u

CFR Citation: 17 CFR 240.15a-6

Legal Deadline: None

Abstract: Exchange Act Rule 15a-6, which was adopted to exempt conditionally foreign broker-dealers from registration in response to the internationalization of the securities markets, is premised in large part on the willingness of U.S. broker-dealers to take responsibility for resulting trades. The Division is considering whether to recommend revising the rule.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Kenneth M. Rosen, Office of the Chief Counsel, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942-0096
Fax: 202 942-9645
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RIN: 3235–AH17

4060. PURCHASES OF CERTAIN EQUITY SECURITIES BY THE ISSUERS AND OTHERS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78i(a)(6); 15 USC 78j(b); 15 USC 78m(e); 15 USC 78o(c); 15 USC 78w(a)

CFR Citation: 17 CFR 240.10b-18

Legal Deadline: None

Abstract: The Division is considering whether to recommend a proposal to simplify and update Rule 10b-18's provisions in light of market developments since the Rule's adoption. Rule 10b-18 provides a safe harbor from liability under the anti-manipulation provisions of sections 9(a)(2) and 10(b) of the Exchange Act, and Rule 10b-5 thereunder, for issuer purchases of its common stock made in compliance with Rule 10b-18's manner, timing, price, and volume conditions.

Timetable:

Action	Date	FR Cite
NPRM	06/00/02	

Regulatory Flexibility Analysis Required: No

SEC—Division of Market Regulation

Proposed Rule Stage

Government Levels Affected: None

Agency Contact: Joan Collopy, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942-0772
Fax: 202 942-9695
Email: collopyj@sec.gov

RIN: 3235–AH37

4061. EXEMPTION FROM EXCHANGE ACT SECTION 11(D)(1) FOR SECURITIES OF FOREIGN ISSUERS SOLD ON AN INSTALLMENT BASIS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78a et seq; 15 USC 78c; 15 USC 78k; 15 USC 78w; 15 USC 78jj

CFR Citation: 17 CFR 240.11d1-3

Legal Deadline: None

Abstract: The Division is considering whether to recommend a proposal that would set forth a uniform set of conditions that, if met, would provide an automatic exemption from section 11(d)(1) of the Securities Exchange Act for international offerings of foreign issuers done on an installment basis.

Timetable:

Action	Date	FR Cite
NPRM	02/00/03	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

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RIN: 3235–AH58

4062. CONCEPT RELEASE: SHORT SALES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78j(a); 15 USC 78w

CFR Citation: 17 CFR 240.10a-1

Legal Deadline: None

Abstract: As part of its comprehensive review of Exchange Act Rule 10a-1, the short sale rule, the Commission published a concept release soliciting public comment on, among other things: Lifting the limits on short sales of exchange listed securities under advancing market conditions; providing an exception for actively traded securities; focusing short sale restrictions on certain market events and trading strategies; removing short sale restrictions on hedging transactions; revising short sale regulation in response to certain market developments; revising the definition of "short sale"; extending short sale regulation to non-exchange listed securities; and eliminating short sale regulation altogether.

Timetable:

Action	Date	FR Cite
ANPRM	10/28/99	64 FR 57996
ANPRM Comment Period End	12/28/99	
NPRM	07/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH84

Securities and Exchange Commission (SEC)
Division of Market Regulation

Final Rule Stage

4063. AMENDMENTS TO RULES 15C3-3, 17A-3, 17A-4, 17A-5, 17A-7, 17A-11, AND 17A-13 TO RECOGNIZE SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78(c)(b), 78(c)(3), 78q(a), 78w(a)

CFR Citation: 17 CFR 240.15c3-3; 17 CFR 240.17a-3 - 240.17a-5; 17 CFR 240.17a-7; 17 CFR 240.17a-11; 17 CFR 240.17a-13

Legal Deadline: None

Abstract: These amendments are designed to eliminate duplicative or conflicting regulations applicable to firms that are fully registered with the CFTC as a FCM and fully registered with the SEC as a broker-dealer relating to the treatment of customer funds, securities of property, maintenance of books and records, financial reporting or other financial responsibility rules involving security futures products ("SFP"), as directed by the Commodity Futures Modernization Act of 2000. The amendments are also designed to eliminate certain conflicting or duplicative recordkeeping, reporting, telegraphic notice, and quarterly count requirements involving SFPs for firms that are "notice" registered with the SEC under the section 15(b)(11)(A) of the Exchange Act. These amendments are being developed in consultation with the CFTC.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50786
NPRM Comment Period End	11/05/01	
Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Bonnie Lynn Gauch, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-0756

RIN: 3235–AI32

4064. TENDER AND REORGANIZATION AGENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78k-1(a)(1)(B); 15 USC 78n(d)(4); 15

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USC 78o(c)(3); 15 USC 78o(c)(6); 15 USC 78q-1(a); 15 USC 78q-1(d)(1); 15 USC 78w(a)

CFR Citation: 17 CFR 240.17Ad-14

Legal Deadline: None

Abstract: The Commission proposed amendments to Rule 17Ad-14 under the Securities Exchange Act of 1934. The amendments would require the establishment of book-entry accounts in connection with reorganization events and would provide securities depositories with three business days after the expiration of a tender offer, exchange offer, or reorganization event in which to deliver physical securities certificates to the agents.

Timetable:

Action	Date	FR Cite
NPRM	09/04/98	63 FR 47209
NPRM Comment Period End	11/03/98	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Agency Contact: Michael Rae, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH53

4065. NET CAPITAL REQUIREMENTS FOR BROKERS OR DEALERS—DEFINITION OF THE TERM NATIONALLY RECOGNIZED STATISTICAL RATING ORGANIZATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78c; 15 USC 78o; 15 USC 78q; 15 USC 78w

CFR Citation: 17 CFR 240.15c3-1

Legal Deadline: None

Abstract: The Commission issued a release proposing amendments to the net capital rule that would define the term Nationally Recognized Statistical Rating Organization (NRSRO) for purposes of the net capital rule and set forth the process for applying for NRSRO designation.

Timetable:

Action	Date	FR Cite
NPRM	12/30/97	62 FR 68018
NPRM Comment Period End	03/02/98	
Final Action	10/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Additional Information: This proposal was based in part on comments received in response to a concept release (RIN 3235-AG41; 59 FR 46314), which is now combined in this rulemaking.

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH28

4066. PUBLICATION OR SUBMISSION OF QUOTATIONS WITHOUT SPECIFIED INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78b; 15 USC 78c; 15 USC 78j(b); 15 USC 78o(q); 15 USC 78q(a); 15 USC 78w(a)

CFR Citation: 17 CFR 240.15c2-11

Legal Deadline: None

Abstract: As part of its efforts to respond to fraud and manipulation in the microcap securities market, the Commission is considering final amendments to Rule 15c2-11. These amendments would limit the Rule's piggyback provision and increase public availability of issuer information. The amendments would modestly expand the information review requirements for non-reporting issuers and the documentation required for significant relationships between the broker-dealer and the issuer of the security to be quoted. Finally the amendments would exclude from the rule securities of larger, more liquid issuers.

Timetable:

Action	Date	FR Cite
NPRM	02/25/98	63 FR 9661
NPRM Comment Period End	04/27/98	
Second NPRM	03/08/99	64 FR 11124
Second NPRM Comment Period End	04/07/99	
Second NPRM Comment Period Extended to	04/14/99	64 FR 18393
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas D. Eidt, Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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Email: eidtt@sec.gov

RIN: 3235–AH40

4067. PROCESSING REQUIREMENTS FOR CANCELLED SECURITIES CERTIFICATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78q-1

CFR Citation: 17 CFR 240.17Ad-19

Legal Deadline: None

Abstract: The Commission proposed Rule 17Ad-19 to establish regulations for the destruction of cancelled securities certificates and to require each transfer agent to establish written procedures for the storage and destruction of cancelled securities certificates.

Timetable:

Action	Date	FR Cite
NPRM	10/06/00	65 FR 59766
NPRM Comment Period End	12/05/00	
Final Action	06/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas C. Etter Jr., Office of Risk Management and Control, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH54

4068. DEFINITION OF TERMS IN AND SPECIFIC EXEMPTIONS FOR BANKS, SAVINGS ASSOCIATIONS, AND SAVINGS BANKS UNDER SECTIONS 3(A)(4) AND 3(A)(5) OF THE SECURITIES AND EXCHANGE ACT OF 1934

Priority: Substantive, Nonsignificant

Legal Authority: PL 106-102

CFR Citation: 17 CFR 240.3a4-2; 17 CFR 240.3a4-3; 17 CFR 240.3a-51; 17 CFR 240.3b-17; 17 CFR 240.3b-18; 17 CFR 200.30-3; 17 CFR 240.3a4-4 - 3a4.6; 17 CFR 240.15a-7 - 15a-9; ...

Legal Deadline: Other, Statutory, May 12, 2001, Title II of the Gramm-Leach-Bliley Act required banks to shift certain securities activities to registered broker-dealers by May 12, 2001.

Abstract: The Commission issued guidance to the meaning of terms added to the Securities Exchange Act of 1934 by the Gramm-Leach-Bliley Act of 1999. The Commission extended the implementation date for the guidance until May 12, 2002.

Timetable:

Action	Date	FR Cite
Interim Final Rule	05/18/01	66 FR 27760
Interim Final Rule Comment Period End	07/17/01	
Interim Final Rule Extended	07/24/01	66 FR 38370
Comment Period Extended	07/24/01	66 FR 38370
Comment Period End	09/04/01	
Next Action	05/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Lourdes Gonzalez, Assistant Chief Counsel, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AI19

Securities and Exchange Commission (SEC)
Division of Market Regulation

Long-Term Actions

4069. MARKET RISK HAIRCUTS FOR INSTRUMENTS SUBJECT TO INTEREST RATE RISK

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o(c)(3); 15 USC 78q; 15 USC 78w

CFR Citation: 17 CFR 240.15c3-1

Legal Deadline: None

Abstract: As part of its comprehensive review of Exchange Act Rule 15c3-1, the net capital rule, the Commission proposed for comment an amendment to the net capital rule that would revise the percentage deductions from net worth, or haircuts, applicable to interest rate products when calculating net capital. Under the proposal, haircuts on Government securities, investment grade corporate securities, certain mortgage-backed securities, interest rate swaps, and other interest rate-related derivative instruments would be determined by treating these instruments as part of a single portfolio.

Timetable:

Action	Date	FR Cite
ANPRM	05/10/93	58 FR 27486
ANPRM Comment Period End	12/12/93	
NPRM	12/30/97	62 FR 67996
Extension of Comment Period to	03/06/98	63 FR 11173
NPRM Comment Period End	03/30/98	
Interim Final Rule	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AG18

4070. NET CAPITAL RULE: CUSTOMER PROTECTION RULE

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78h; 15 USC 78g

CFR Citation: 12 CFR 220; 17 CFR 240.3a12-11; 17 CFR 240.15c2-5; 17 CFR 240.15c3-1; 17 CFR 240.15c3-3

Legal Deadline: None

Abstract: The Division is considering recommending that the Commission propose amendments to Rules 3a12-11, 15c2-5, 15c3-1, and 15c3-3 under the Exchange Act reflecting changes to section 8 of the Act and to Regulation T under the Act.

Timetable:

Action	Date	FR Cite
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: Thomas K. McGowan, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AH05

4071. • POSSIBLE AMENDMENT OF FORM BD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78o; 15 USC 78w

CFR Citation: None

Legal Deadline: None

Abstract: The staff is considering recommending that the Commission propose amendments to Form BD, the Uniform Application for Broker-Dealer

Registration, in light of statutory, regulatory and technological developments since the form was last amended in July 1999.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Federalism: Undetermined

Agency Contact: Brice D. Prince, Special Counsel, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AI42

4072. PROPOSED AMENDMENTS TO TRANSFER AGENT RULES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77c; 15 USC 77d; 15 USC 77g; 15 USC 77j; 15 USC 77s; 15 USC 77eee; 15 USC 77ggg; 15 USC 77nnn; 15 USC 77sss; 15 USC 77ttt; 15 USC 78c; 15 USC 78d; 15 USC 78i; 15 USC 78j; 15 USC 78l; 15 USC 78m; 15 USC 78n; 15 USC 78o; 15 USC 78p; 15 USC 78q; 15 USC 78s; 15 USC 78w; 15 USC 78x; 15 USC 78ll(d); 15 USC 79q; 15 USC 79t; 15 USC 80a-20; 15 USC 80a-23; 15 USC 80a-29; 15 USC 80a-37; 15 USC 80b-3; 15 USC 80b-4; 15 USC 80b-11

CFR Citation: 17 CFR 240.17Ad-2(a); 17 CFR 240.17Ad-2(c); 17 CFR 240.17Ad-2(e)(1); 17 CFR 240.17Ad-2(e)(2); 17 CFR 240.17Ad-10; 17 CFR 240.17Ad-12

Legal Deadline: None

Abstract: The Commission has proposed amendments to certain transfer agent rules regarding turnaround time, recordkeeping, and safekeeping of funds. The proposed amendments to the transfer agent rules are designed to minimize disruptions, particularly in the National Clearance and Settlement System for securities, that may be caused by poor turnaround performance, substandard or inaccurate recordkeeping practices, and inadequate safekeeping procedures.

Timetable:

Action	Date	FR Cite
NPRM	12/08/94	59 FR 63662
NPRM Comment Period End	02/06/95	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: None

Agency Contact: Jerry Carpenter, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AG24

4073. UNTIMELY ANNOUNCEMENT OF RECORD DATES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78j; 15 USC 78w

CFR Citation: 17 CFR 240.10b-17

Legal Deadline: None

Abstract: Pursuant to a petition of the NASD, the staff is considering recommending that the Commission consider amending Exchange Act Rule 10b-17 to clarify that it applies to distributions made to holders of direct participation program interests.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Yes

Small Entities Affected: Businesses

Government Levels Affected: None

Federalism: Undetermined

Agency Contact: James A. Brigagliano, Assistant Director, Office of Risk Management, Division of Market Regulation, Securities and Exchange Commission
Phone: 202 942-0772

RIN: 3235–AH38

4074. CUSTOMER MARGIN RULES RELATING TO SECURITY FUTURES PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78g(c)

CFR Citation: 17 CFR 242.400 - 242.404

Legal Deadline: None

Abstract: Proposed rules 400 through 404 will establish initial and maintenance customer margin requirements imposed by brokers, dealers, and members of national security exchanges for security futures products.

Timetable:

Action	Date	FR Cite
NPRM	10/04/01	66 FR 50720
NPRM Comment Period End	11/05/01	
Comment Period Extended to 12/05/2001	11/02/01	66 FR 55608
Next Action Undetermined		

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Lisa N. Jones, Securities and Exchange Commission, Division of Market Regulation, Washington, DC
Phone: 202 942-0063

Jennifer Colihan, Securities and Exchange Commission, Division of Market Regulation, Washington, DC
Phone: 202 942-0735

RIN: 3235–AI22

4075. REQUEST FOR COMMENTS ON THE EFFECTS OF DECIMAL TRADING IN SUB-PENNIES

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: Not Yet Determined

CFR Citation: Not Yet Determined

Legal Deadline: None

Abstract: The Commission published a Concept Release soliciting public comment on the impact on fair and orderly markets and investor protection of trading and potentially quoting securities in an increment of less than a penny. In particular, the Commission sought comment on the effects of subpenny prices on market transparency and the operation and effectiveness of Commission and SRO rules that are dependent on trading or quoting price differentials.

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Gregory J. Dumark, Division of Market Regulation, Securities and Exchange Commission
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RIN: 3235–AI23

4076. CASH SETTLEMENT AND REGULATORY HALT REQUIREMENTS FOR SECURITY FUTURE PRODUCTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 78f; 15 USC 78o-3; 15 USC 78s; 15 USC 78w; 15 USC 78mm

CFR Citation: 17 CFR 240.6h-1

Legal Deadline: None

Abstract: Proposed Rule 6h-1 would require national securities exchange and national securities associations trading securities futures product to establish (1) settlement prices for each cash-settled security futures product that fairly reflects the opening price of the underlying security or securities, and (2) a halt in trading in any security futures product when a regulatory halt is instituted by the national securities exchange or national securities association listing the security or securities underlying the security futures product.

Timetable:

Action	Date	FR Cite
NPRM	08/30/01	66 FR 45904
NPRM Comment Period End	10/01/01	
Final Action	To Be Determined	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

Agency Contact: Terri Lee Evans, Securities and Exchange Commission, Division of Market Regulation
Phone: 202 942-4162

RIN: 3235–AI24

Securities and Exchange Commission (SEC)
Division of Market Regulation
Completed Actions

4077. • AMENDMENTS TO RULE 31-1, SECURITIES EXEMPT FROM TRANSACTION FEES

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78w; 15 USC 78ee

CFR Citation: 17 CFR 240.31-1

Legal Deadline: Final, Statutory, Fee Relief Act.

Abstract: The SEC rescinded subparagraph (b) of rule 31-1 under the Securities Exchange Act of 1934. Prior to the enactment of H.R. 1088, the Investor and Capital Markets Fee Relief Act ("Fee Relief Act"), subparagraph (b) ensured that over-the-counter ("OTC") transactions in OTC securities that were subject to unlisted trading privileges were not subject to dual charges under both sections 31(c) and (d) of the Exchange Act. The Fee Relief Act combined former sections 31(c) and (d), making the exemption provided in subparagraph (b) unnecessary.

Timetable:

Action	Date	FR Cite
Final Action Effective	01/16/02	
Final Action	01/23/02	67 FR 3057

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Yvonne Fraticelli, Special Counsel, Securities and Exchange Commission, Room 10518, Mail Stop 1001, SEC, 450 5th Street NW, Washington, DC 20549
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RIN: 3235–AI36

4078. • EXEMPTION OF TRANSACTION IN CERTAIN OPTIONS AND FUTURES ON SECURITY INDEXES FROM SECTION 31 OF THE EXCHANGE ACT

Priority: Substantive, Nonsignificant

Legal Authority: 15 USC 78ee

CFR Citation: 17 CFR 240.31-1

Legal Deadline: Final, Statutory, Fee Relief Act.

Abstract: These amendments to rule 31-1 exempt transactions in options and futures on narrow-based security indexes from the fee and assessment requirements of section 31 of the Exchange Act.

Timetable:

Action	Date	FR Cite
Final Action	01/31/02	67 FR 5199
Final Action Effective	02/01/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: Michael Gaw, Special Counsel, Securities and Exchange Commission, Division of Market Regulation
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RIN: 3235–AI38

Securities and Exchange Commission (SEC)
Offices and Other Programs

Proposed Rule Stage

4079. PROPOSAL TO AMENDMENT DISCLOSURE REQUIREMENTS RELATED TO DERIVATIVE FINANCIAL INSTRUMENTS AND DERIVATIVE COMMODITY INSTRUMENTS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 210; 17 CFR 228; 17 CFR 229

Legal Deadline: None

Abstract: The Office of the Chief Accountant is considering recommending that the Commission publish a release proposing amendments that would conform the Commission's disclosure requirements with Financial Accounting Standards No.133.

Timetable:

Action	Date	FR Cite
NPRM	12/00/02	

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Jenifer Minke-Girard, Assistant Chief Accountant, Securities and Exchange Commission
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RIN: 3235–AH98

Securities and Exchange Commission (SEC)
Offices and Other Programs

Final Rule Stage

4080. SUPPLEMENTAL FINANCIAL INFORMATION

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 210; 17 CFR 229

Legal Deadline: None

Abstract: The Commission has proposed amendments to reposition within its regulation the requirement for certain registrants to disclose changes in their valuation and loss accrual accounts and to clarify the type of information to be disclosed. The Commission also has proposed amendments to its rules to require disclosure of information concerning tangible and intangible assets and related accumulated depreciation, depletion, and amortization.

Timetable:

Action	Date	FR Cite
NPRM	01/31/00	65 FR 4585
NPRM Comment Period End	04/17/00	
Final Action	12/00/02	

Regulatory Flexibility Analysis Required: No

Government Levels Affected: None

Agency Contact: John W. Albert, Associate Chief Accountant, Securities and Exchange Commission
Phone: 202 942-4400
Fax: 202 942-9656

RIN: 3235–AH86

Securities and Exchange Commission (SEC)
Offices and Other Programs

Long-Term Actions

4081. INTERNATIONAL ACCOUNTING STANDARDS

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq

CFR Citation: 17 CFR 210; 17 CFR 249.220f

Legal Deadline: None

Abstract: The Commission is reviewing comments received in response to a concept release on whether the Commission should recognize accounting standards promulgated by the International Accounting Standards Committee for purposes of cross-border offerings and listings by foreign companies. The staff is considering drafting appropriate rule proposals and recommendations to the Commission.

Timetable:

Action	Date	FR Cite
ANPRM	02/23/00	65 FR 8896
ANPRM Comment Period End	05/23/00	
NPRM	To Be Determined	

Regulatory Flexibility Analysis Required: Undetermined

Small Entities Affected: No

Government Levels Affected: Undetermined

Agency Contact: Susan Koski-Grafer, Securities and Exchange Commission
Phone: 202 942-4400

RIN: 3235–AH65

4082. • PUBLIC ACCOUNTABILITY BOARD

Priority: Substantive, Nonsignificant. Major status under 5 USC 801 is undetermined.

Legal Authority: 15 USC 77a et seq; 15 USC 78a et seq; 15 USC 79a et seq; 15 USC 80a-1 et seq

CFR Citation: 17 CFR 210

Legal Deadline: None

Abstract: The Office of the Chief Accountant is considering recommending that the Commission publish a release proposing that independent accountants be members of a private-sector, independent body that can direct periodic reviews of accounting firms' quality controls for accounting and auditing practices, and discipline auditors for incompetent or unethical conduct.

SEC—Offices and Other Programs

Long-Term Actions

Timetable: Next Action Undetermined

Regulatory Flexibility Analysis Required: Undetermined

Government Levels Affected: Undetermined

Agency Contact: Robert Edward Burns, Chief Counsel, Securities and Exchange Commission, 1103, Office of the Chief Accountant, 450 5th Street NW, Washington, DC 20549
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RIN: 3235–AI41

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Part LXI

Surface Transportation Board

Semiannual Regulatory Agenda

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SURFACE TRANSPORTATION BOARD (STB)

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

49 CFR Ch. X

[STB Ex Parte No. 536 (Sub-No. 12)]

Semiannual Regulatory Agenda

AGENCY: Surface Transportation Board.

ACTION: Semiannual regulatory agenda.

SUMMARY: The Surface Transportation Board (Board or STB), in accordance with the requirements of the Regulatory Flexibility Act, is publishing a semiannual agenda of: (1) current and projected rulemakings; and (2) existing regulations being reviewed to determine whether to propose modifications through rulemaking. Listed below are the regulatory actions to be developed or reviewed during the next 12 months. Following each rule identified is a brief description of the rule, including its purpose and legal basis.

FOR FURTHER INFORMATION CONTACT: A contact person is identified for each of the rules listed below.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), sets forth a number of requirements for agency rulemaking. Among other things, the RFA requires that, during the months of April and October of each year, each agency shall publish in the **Federal Register** a regulatory flexibility agenda, which shall contain:

(1) A brief description of the subject area of any rule which the agency expects to propose or promulgate which is likely to have a significant economic impact on a substantial number of small entities;

(2) A summary of the nature of any such rule under consideration for each subject area listed in the agenda pursuant to paragraph (1), the objectives and legal basis for the issuance of the rule, and an approximate schedule for completing action on any rule for which the agency has issued a general notice of proposed rulemaking; and

(3) The name and telephone number of an agency official knowledgeable concerning the items listed in paragraph (1).

Accordingly, a list of proceedings appears below containing information about subject areas in which the Board is currently conducting rulemaking proceedings or may institute such proceedings in the near future. It also contains information about existing regulations being reviewed to determine whether to propose modifications through rulemaking.

The agenda represents the Board's best estimate of rules that will be considered over the next 12 months. However, section 602(d) of the RFA, 5 U.S.C. 602(d), provides: "Nothing in [section 602] precludes an agency from considering or acting on any matter not included in a regulatory flexibility agenda or requires an agency to consider or act on any matter listed in such agenda."

The Board is publishing its Spring 2002 regulatory flexibility agenda as part of the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Unified Agenda is coordinated by the Office of Management and Budget (OMB), pursuant to Executive Order 12866. The Board is participating in the program voluntarily to assist OMB.

Decided: March 13, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,
Secretary.

Surface Transportation Board—Final Rule Stage

Sequence Number	Title	Regulation Identification Number
4083	Arbitration—Various Matters Relating to its Use as an Effective Means of Resolving Disputes That are Subject to the Board's Jurisdiction, STB Ex Parte No. 586	2140-AA60

Surface Transportation Board—Completed Actions

Sequence Number	Title	Regulation Identification Number
4084	Procedures for Surface Transportation Board Consideration of Safety Integration Plans in Cases Involving Railroad Consolidations, Mergers, and Control, STB Ex Parte No. 574	2140-AA50
4085	Modification of the Carload Waybill Sample Reporting Procedures, STB Ex Parte No. 385 (Sub-No. 5)	2140-AA57
4086	Consolidated Railroad Reporting, STB Ex Parte No. 634	2140-AA58
4087	Electronic Access to Case Filings, STB Ex Parte No. 576	2140-AA59

Surface Transportation Board (STB) — Final Rule Stage

4083. • ARBITRATION—VARIOUS MATTERS RELATING TO ITS USE AS AN EFFECTIVE MEANS OF RESOLVING DISPUTES THAT ARE SUBJECT TO THE BOARD'S JURISDICTION, STB EX PARTE NO. 586

Priority: Info./Admin./Other

Legal Authority: 49 USC 721(a)

CFR Citation: 49 CFR 1111; 49 CFR 1109.3

Legal Deadline: None

Abstract: The Surface Transportation Board is seeking to increase utilization of its existing procedures for voluntary arbitration of matters subject to the agency's jurisdiction, by adding to its rules a requirement that a party filing a formal complaint include a statement that it first considered arbitration.

Timetable:

Action	Date	FR Cite
NPRM	09/24/01	66 FR 48853
NPRM Comment Period End	01/03/02	
Final Action	05/00/02	
Final Action Effective	07/00/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2140–AA60

Surface Transportation Board (STB) — Completed Actions

4084. PROCEDURES FOR SURFACE TRANSPORTATION BOARD CONSIDERATION OF SAFETY INTEGRATION PLANS IN CASES INVOLVING RAILROAD CONSOLIDATIONS, MERGERS, AND CONTROL, STB EX PARTE NO. 574

Priority: Substantive, Nonsignificant

Legal Authority: 5 USC 553; 5 USC 559; 49 USC 721; 49 USC 10901; 49 USC 10902; 49 USC 11323; 49 USC 11324; 49 USC 11325; 42 USC 4332

CFR Citation: 49 CFR 244; 49 CFR 1106

Legal Deadline: None

Abstract: The Surface Transportation Board and the Federal Railroad Administration (FRA) have adopted complementary regulations establishing procedures for the development and implementation of safety integration plans (SIPs) by railroads proposing to engage in certain merger, consolidation, or acquisition of control transactions with another railroad. Under the rules, railroads seeking to consummate a Board-covered transaction would be required to file a written document with the FRA and the Board explaining how each step in implementing a contemplated transaction would be performed safely.

Timetable:

Action	Date	FR Cite
ANPRM	12/04/97	62 FR 64193
ANPRM Comment Period End	02/19/98	
NPRM	12/31/98	63 FR 72225
NPRM Comment Period End	03/01/99	
Final Action	03/08/02	67 FR 11582
Final Action Effective	04/14/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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Related RIN: Related To 2130-AB24

RIN: 2140–AA50

4085. MODIFICATION OF THE CARLOAD WAYBILL SAMPLE REPORTING PROCEDURES, STB EX PARTE NO. 385 (SUB-NO. 5)

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 721; 49 USC 10707; 49 USC 11144; 49 USC 11145

CFR Citation: 49 CFR 1244

Legal Deadline: None

Abstract: The Surface Transportation Board modified its regulations to require all railroads operating in the United States to include in the Carload Waybill Sample international rail traffic moving from or through the United States and to report such traffic in the Waybill Sample as if the traffic had terminated at the United States border. The intent of this proposal is to ensure that the Waybill Sample reflects a representative sample of all railroad traffic moving on the U.S. rail system.

Timetable:

Action	Date	FR Cite
NPRM	09/08/00	65 FR 54471
NPRM Comment Period End	10/12/00	
Final Action	10/24/01	66 FR 53934
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2140–AA57

4086. CONSOLIDATED RAILROAD REPORTING, STB EX PARTE NO. 634

Priority: Substantive, Nonsignificant

Legal Authority: 49 USC 721(b); 49 USC 10704(a)(3)

CFR Citation: 49 CFR 1201; 49 CFR 1241 to 1248

Legal Deadline: None

Abstract: The Surface Transportation Board adopted regulations requiring consolidated reports for each group of railroads (or railroad related affiliates) that operate as a single, integrated United States rail system, whose

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cumulative operating revenues meet the Class I threshold.

Timetable:

Action	Date	FR Cite
NPRM	09/25/00	65 FR 57650
NPRM Comment Period End	10/25/00	
Final Action	11/07/01	66 FR 56245
Final Action Effective	01/01/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2140–AA58

4087. • ELECTRONIC ACCESS TO CASE FILINGS, STB EX PARTE NO. 576

Priority: Info./Admin./Other

Legal Authority: 49 USC 721

CFR Citation: 49 CFR 1104

Legal Deadline: None

Abstract: The Surface Transportation Board amended its rules governing how documents are filed in agency proceedings to facilitate the scanning of those documents for publication on the Board's internet website.

Timetable:

Action	Date	FR Cite
Final Action	02/06/02	67 FR 5513
Final Action Effective	03/08/02	

Regulatory Flexibility Analysis Required: No

Small Entities Affected: No

Government Levels Affected: None

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RIN: 2140–AA59

[FR Doc. 02–7704 Filed 05–10–02; 8:45 am]
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A. INDEX TO ENTRIES THAT AGENCIES HAVE DESIGNATED FOR SECTION 610 REVIEW

Section 610(a) of the Regulatory Flexibility Act (5 U.S.C. 601) requires each agency to have a plan for the periodic review of its rules that have significant economic impact on a substantial number of small entities. Each agency must publish annually in the **Federal Register** a list of the rules that it plans to review in the next year. Some agencies use the Unified Agenda to fulfill this requirement. Those agencies indicate such entries by appending "(Section 610 Review)" to the titles. Some agencies have also indicated completions of section 610 reviews or rulemaking actions resulting from completed section 610 reviews.

The following index lists the regulatory actions for which agencies included this designation. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

Seq. No.	Title
	USDA
77	Bees, Beekeeping Byproducts, and Beekeeping Equipment **(Section 610 Review)**
78	Veterinary Diagnostic User Fees—5-Year Plan for Fees **(Section 610 Review)**
84	Animal Welfare; Inspection, Licensing, and Procurement of Animals **(Section 610 Review)**
97	Brucellosis in Sheep, Goats, and Horses; Payment of Indemnity **(Section 610 Review)**
99	Importation of Certain Embryos and Animal Semen **(Section 610 Review)**
100	Plant Pest Regulations; Update of Current Provisions **(Section 610 Review)**
104	Exportation of Livestock **(Section 610 Review)**
105	Nursery Stock Regulations **(Section 610 Review)**
112	Black Stem Rust; Identification Requirements and Addition of Rust-Resistant Varieties **(Completion of a Section 610 Review)**
190	Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used **(Section 610 Review)**
201	Elimination of Chilling Time and Temperature Requirements for Ready-To-Cook Poultry **(Section 610 Review)**
	ED
649	Reauthorization of Title I of the Elementary and Secondary Education Act of 1965 **(Section 610 Review)**
	HHS
773	Investigational Use New Animal Drug Regulations **(Section 610 Review)**
866	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**
	DOJ
1350	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**
1351	Nondiscrimination on the Basis of Disability in State and Local Government Services **(Section 610 Review)**
1440	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**
	DOL
1571	Bonding Rules Under the Employee Retirement Income Security Act of 1974 **(Section 610 Review)**
1572	Requests for Enforcement Pursuant to Section 502(b)(2) **(Section 610 Review)**
1573	Civil Penalties Under ERISA Section 502(c)(2) **(Section 610 Review)**
1574	Procedures for the Assessment of Civil Penalties Under ERISA Section 502(c)(2) **(Section 610 Review)**
1616	Occupational Exposure to Ethylene Oxide **(Section 610 Review)**
1619	Grain Handling Facilities **(Section 610 Review)**
1622	Excavations **(Section 610 Review)**
1623	Presence Sensing Device Initiation of Mechanical Power Presses **(Section 610 Review)**
	DOT
1867	Certification Procedures for Products and Parts **(Section 610 Review)**
1959	Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**
1961	Transportation of Household Goods; Consumer Protection Regulations **(Rulemaking Resulting From a Section 610 Review)**
	FDIC
3829	Contractor Conflict of Interest **(Section 610 Review)**
3841	Community Reinvestment Act Regulations **(Section 610 Review)**
	FRS
3886	Regulation: H — Membership of State Banking Institutions in the Federal Reserve System; and Regulation: Y — Bank Holding Companies and Change in Bank Control, Capital Appendices **(Section 610 Review)**
3889	Regulation: BB — Community Reinvestment (Docket Number: R-1112) **(Section 610 Review)**

Seq. No.	Title
3890	Regulation: DD — Truth in Savings Act **(Section 610 Review)**
3891	Regulation: B — Equal Credit Opportunity (Docket Number: R-1008) **(Section 610 Review)**

B. INDEX TO ENTRIES FOR WHICH A REGULATORY FLEXIBILITY ANALYSIS IS REQUIRED

The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda.

The following index lists the regulatory actions in this publication for which agencies believe that the Act may require a Regulatory Flexibility Analysis because the rule is likely to have such effects on small businesses, small governmental jurisdictions, or small organizations. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

Small Businesses

Seq. No.	Title
	USDA
4	Discontinue the Official Grading of Imported Beef, Lamb, Veal, and Calf Carcasses Under the Authority of the Agricultural Marketing Act of 1946
8	Livestock Mandatory Reporting Program—Lamb Amendment (LS-01-08)
11	Establishing a Lamb Promotion, Research, and Information Order (LS-01-12)
18	Fresh Russet Potato Diversion Program, 2000 Crop (FV-01-80-01)
110	Mexican Hass Avocado Import Program
114	National Flood Insurance Regulations
122	Guaranteed Single-Family Housing
154	Special Supplemental Nutrition Program for Women, Infants, and Children (WIC): Revisions in the WIC Food Packages
190	Standards and Labeling Requirements for Mechanically Separated (Species) and Products in Which It Is Used **(Section 610 Review)**
192	Ante-Mortem and Post-Mortem Inspection of Livestock and Poultry
193	Requirements for Disposition and Disposal of Inspected Raw Meat and Poultry Products
195	Egg and Egg Products Inspection Regulations
203	Performance Standards for Ready-To-Eat Meat and Poultry Products
213	Nutrition Labeling of Ground or Chopped Meat and Poultry Products and Single-Ingredient Products
216	Emergency Regulations To Prevent Meat Food and Meat Products That May Contain the BSE Agent From Entering Commerce
255	Affirmative Fair Housing Marketing Plan
256	Business and Industry Guaranteed Loan Program—Financing Cooperative Stock
	DOC
311	Chemical Weapons Convention Regulations
344	Administration of State Log Exports Ban
364	Amendment 4 to the Fishery Management Plan for the Reef Fish Fishery of Puerto Rico and the U.S. Virgin Islands
366	Establish Central Registry for Limited Access System Permits
367	Regulatory Amendment To Require Mandatory Observer Coverage in the At-Sea Processing Sector of the Whiting Fishery
368	Adjustment of Management Program: Bottomfish Fisheries in the Hawaiian Islands
371	Fishery Management Plan for Calico Scallop Fishery in the South Atlantic Region (FMP)
373	Regulatory Amendment To Reinstate 6000 Pound Trip Limit of Halibut in Area Northeast of the Bering Sea
374	Fishery Management Plan Amendment To Revise Community Development Quota Regulations
376	Enhanced Measures To Mitigate Seabird Bycatch in the Alaska Longline Fisheries
380	Implementation of Western Pacific Coral Reef Ecosystem Fishery Management Plan (FMP)
381	Amendment 7 to the Fishery Management Plan for the Bottomfish Fisheries of the Western Pacific Region
383	Amendment 18 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico
392	Fishery Management Plan (FMP) for Sargassum Habitat of the South Atlantic
395	Amendment 11 to Fishery Management Plan for Shrimp Fishery of Gulf of Mexico (FMP)
396	Amendments to FMPs for Gulf of Mexico Reef Fish and Gulf of Mexico and South Atlantic Coastal Migratory Pelagic Resources To Limit Entry Into Gulf of Mexico Recreational-for-Hire Fisheries
397	Fishery Management Plan for the Dolphin and Wahoo Fishery of the Atlantic, Caribbean, and Gulf of Mexico (FMP)
401	Regulatory Amendment Under the Fishery Management Plan for Gulf of Mexico Reef Fish (FMP) To Establish a Red Snapper Stock Rebuilding Plan and To Set Red Snapper Overfishing Targets and Thresholds
406	American Lobster Fishery; Revisions to Lobster Trap Limits, Conservation Equivalency in New Hampshire Waters, and Clarification of Lobster Management Boundaries per Addendum 1
407	Fishing Capacity Reduction Program for the Crab Species Covered by the Fishery Management Plan for the Bering Sea/Aleutian Islands King and Tanner Crabs
410	Amendment 5 to the Fishery Management Plan for the Shrimp Fishery of the South Atlantic Region
424	Revise Community Development Quota Program Administration and Allocation Regulations

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Small Businesses—Cont.

Seq. No.	Title
430	Amendment 10 to the Coastal Pelagic Species Fishery Management Plan
441	Regulatory Amendment To Allocate Pacific Halibut to the Charter Boat Fleet
442	Adjustment of the Management Program for Precious Corals Fisheries in the Western Pacific
444	Amendment 54 to FMP for Groundfish Fishery of Bering Sea and Aleutian Islands Area and Amendment 54 to FMP for Groundfish of Gulf of Alaska
448	Atlantic Highly Migratory Species Fisheries; Management of the Atlantic Blue Marlin and White Marlin Recreational Fisheries
452	Regulatory Amendment to Modify the Management Program for the Western Pacific Pelagic Fisheries to Mitigate the Take of Seabirds
454	American Lobster; Modify Management Measures, Historical Participation
469	Atlantic Large Whale 2002 Seasonal Area Management (SAM) Program
474	Sea Turtle Conservation Regulations; Shrimp Fishery
486	Pacific Offshore Cetacean Take Reduction Plan
490	Fishery Management Plan for Tilefish
493	Regulatory Amendment To Prohibit Vessels Over 50 Feet From Fishing for Pelagic Management Unit Species Within 50 Nautical Miles of American Samoa
497	Revisions to Recordkeeping and Reporting Requirements for 2001
504	Specifications for the Summer Flounder, Scup, and Black Sea Bass Fisheries for Fishing Year 2002
505	Specifications for the Atlantic Mackerel, Squid, and Butterfish Fisheries for Fishing Year 2002
506	Specifications for the Atlantic Surf Clam and Ocean Quahog Fisheries for Fishing Year 2002
508	Implementation of the Shark Finning Prohibition Act
514	Annual Specifications for the Atlantic Herring Fishery for Fishing Year 2002
523	Rule for Gear Modifications to the Atlantic Large Whale Take Reduction Plan
524	Endangered and Threatened Species; Take of Four Threatened Evolutionarily Significant Units of West Coast Salmon
525	Taking of Marine Mammals Incidental to Commercial Fishing Operations; Atlantic Large Whale Take Reduction Plan Regulations
527	Florida Keys National Marine Sanctuary; Tortugas Ecological Reserve
529	Mandatory Reimbursement Rules for Relocation of Federal Spectrum
531	Changes in Rules of Practice for Patent Interferences and Related Proceedings
	DOD
565	Implementation of the Wildfire Suppression Aircraft Transfer Act of 1996
584	Department of Defense Pilot Mentor-Protege Program (DFARS Case 2001-D006)
586	Applicability of Competition Requirements to Purchases From a Required Source (DFARS Case 2002-D003)
590	Incremental Funding, Fixed-Price Contracts (DAR Case 90-037)
593	Acquisition of Commercial Items (DFARS Case 95-D712)
596	Domestic Source Restrictions—Ball and Roller Bearings and Vessel Propellers (DFARS Case 2000-D301)
	DOE
656	Alternative Fueled Vehicle Acquisition Requirements for Private and Local Government Fleets
	HHS
719	Modifications to Standards for Privacy of Individually Identifiable Health Information
722	Seclusion and Restraint for Non-Medical Residential Facilities
732	Requirements for Submission of In Vivo Bioequivalence Data
733	Over-the-Counter (OTC) Drug Review
740	Current Good Manufacturing Practice in Manufacturing, Packing, or Holding Dietary Ingredients and Dietary Supplements
744	Control of Salmonella Enteritidis in Shell Eggs During Production and Retail
749	Chronic Wasting Disease: Control of Food Products and Cosmetics Derived From Exposed Animal Populations
751	Bar Code Label Requirements for Human Drug Products
756	Labeling for Human Prescription Drugs; Revised Format
761	Food Labeling: Trans Fatty Acids in Nutrition Labeling, Nutrient Content Claims, and Health Claims
762	CGMPs for Blood and Blood Components: Notification of Consignees and Transfusion Recipients Receiving Blood and Blood Components at Increased Risk of Transmitting HCV (Lookback)
765	Marking Requirements for and Prohibitions on the Reimportation of Imported Food Products That Have Been Refused Admission into the United States
769	Postmarket Surveillance
775	Current Good Tissue Practice for Manufacturers of Human Cells, Tissues, and Cellular and Tissue-Based Products (HCT/Ps)
776	Premarket Notice Concerning Bioengineered Foods
781	Additional Criteria and Procedures for Classifying Over-the-Counter Drugs as Generally Recognized as Safe and Effective and Not Misbranded
808	National Standard for Identifiers of Health Plans (CMS-1212-P)
810	End-Stage Renal Disease Bad Debt Payment (CMS-1126-P)
817	Modifications to Medicare Managed Care Rules (CMS-4041-P)
820	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2003 Payment Rates (CMS-1206-P)
821	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2003 (CMS-1202-P)
822	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2003 (CMS-1204-P)
824	Hospital Inpatient Prospective Payment System for FY 2003 (CMS-1203-P)
829	Health Insurance Reform: National Standard for Identifiers of Health Plans (CMS-1212-F)

Small Businesses—Cont.

Seq. No.	Title
833	Changes to the Hospital Outpatient Prospective Payment System and Calendar Year 2004 Payment Rates (CMS-1471-P)
834	Security Standards (CMS-0049-F)
835	National Standard Employer Identifier (CMS-0047-F)
841	Hospital Conditions of Participation: Quality Assessment and Performance Improvements (CMS-3050-F)
844	Prospective Payment System for Long-Term Care Hospitals for FY 2003 (CMS-1177-P)
864	Revision of Medicare/Medicaid Hospital Conditions of Participation (CMS-3745-F)
866	End Stage Renal Disease (ESRD) Conditions for Coverage (CMS-3818-P) **(Section 610 Review)**
870	Health Insurance Reform: Standard Unique Health Care Provider Identifier (CMS-0045-F)
871	Medical Child Support and Health Insurance Coverage of Dependent Children (CMS-2081-P)
877	Supplier Standards for Home Oxygen, Therapeutic Shoes, Home Nutrition Therapy, and Consignment Closets (CMS-6010-P)
882	Modifications to Managed Care Rules Based on Payment Provisions in BIPA and Technical Corrections (CMS-4040-F)
908	Changes to the Hospital Inpatient Prospective Payment System and FY 2004 Rates (CMS-1470-P)
909	Prospective Payment System and Consolidated Billing for Skilled Nursing Facilities—Update for FY 2004 (CMS-1469-P)
912	Home Health Prospective Payment System Rate Update for FY 2004 (CMS-1473-NC)
914	Revisions to Payment Policies Under the Physician Fee Schedule for Calendar Year 2004 (CMS-1476-P)
925	Correction of Certain Calendar Year 2003 Payment Rates Under the Hospital Outpatient Prospective Payment System and the Pro Rata Reduction on Transitional Pass-Through Payment (CMS-1159-F4)
936	Grants for State and Community Programs on Aging, Training, Research, and Discretionary Programs; Vulnerable Elder Rights; and Grants to Indians and Native Hawaiians
	DOI
1099	Migratory Bird Hunting; Proposed 2002-2003 Migratory Game Bird Hunting Regulations (Preliminary) With Requirements for Indian Tribal Proposals
1119	Reclassification of the Vicuna From Endangered to Threatened With a Special Rule
1205	Migratory Bird Hunting; Proposed 2001-2002 Migratory Game Bird Hunting Regulations (Preliminary) With Requests for Indian Tribal Proposals
1252	Late and Overpayment Interest
1253	Takes vs. Entitlements Reporting
1254	Accounting Relief for Marginal Properties
1255	Prepayment of Royalties
1278	Deep Water Royalty Relief for Outer Continental Shelf Oil and Gas Leases Issued After 2000
1305	Mining Claims Under the General Mining Laws; Surface Management
1312	Wilderness Management
	DOJ
1350	Nondiscrimination on the Basis of Disability in Public Accommodations and Commercial Facilities **(Section 610 Review)**
1366	Electronic Prescriptions for Controlled Substances
1390	Implementation of Sections 104 and 109 of the Communications Assistance for Law Enforcement Act
1440	Reduction of the Number of Acceptable Documents and Other Changes to Employment Verification Requirements **(Section 610 Review)**
1508	Manifest Requirements and Imposition of Fines Under Section 231 of the Act
1529	Foreign Agents Registration Act; Regulations Revised and Clarified To Reflect Changes in the Law
1544	Bulletproof Vest Partnership Grant Acts of 1998 and 2000
	DOL
1549	Defining and Delimiting the Term "Any Employee Employed in a Bona Fide Executive, Administrative, or Professional Capacity" (ESA/W-H)
1576	Rulemaking Relating to Notice Requirements for Continuation of Health Care Coverage
1587	Requirement To Furnish Plan Documents Upon Request by the Secretary of Labor
1588	Civil Penalty for Failure To Furnish Certain Plan Documents
1589	Electronic Disclosure of Employee Benefit Plan Information
1594	Belt Entry Use as Intake Aircourse To Ventilate Working Sections
1595	Independent Laboratory Testing
1596	Improving and Eliminating Regulations
1597	Verification of Underground Coal Mine Operators' Dust Control Plans and Compliance Sampling for Respirable Dust
1598	Mine Rescue Teams
1599	Hazard Communication
1601	Requirements for Approval of Flame-Resistant Conveyor Belts
1602	Determination of Concentration of Respirable Coal Mine Dust
1603	Electric Motor-Driven Mine Equipment and Accessories and High-Voltage Longwall Equipment Standards for Underground Coal Mines
1604	Diesel Particulate Exposure of Underground Metal and Nonmetal Miners
1618	Occupational Exposure to Crystalline Silica
1628	Injury and Illness Prevention
1629	Occupational Exposure to Tuberculosis
	DOT
1682	Computer Reservations System Regulations Comprehensive Review
1705	Participation by Disadvantaged Business Enterprises in Department of Transportation Programs
1713	Policy Statement on Airline Preemption
1717	Domestic Passenger Manifest Information
1771	Tank Level or Pressure Monitoring Devices (USCG-2001-9046)
1810	Retrofit of Improved Seats in Air Carrier Transport Category Airplanes

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1813	Flight Crewmember Duty Period Limitations, Flight Time Limitations, and Rest Requirements
1859	Screening of Checked Baggage on Flights Within the United States
1900	Revised Standards for Cargo or Baggage Compartments in Transport Category Airplanes
1952	Safety Performance History of New Drivers
1959	Hours of Service of Drivers; Driver Rest and Sleep for Safe Operations **(Rulemaking Resulting From a Section 610 Review)**
2007	Certification Requirements of Multistage Vehicles
2013	Definition of Community Transportation Vehicles
2052	Light Truck Average Fuel Economy Standard, Model Years 2005-2010
2078	Registered Importers of Vehicles Not Originally Manufactured To Conform With the Federal Motor Vehicle Safety Standards
2110	Review: Rear Impact Guards for Truck Trailers
2127	Whistle Bans at Highway-Rail Grade Crossings
2128	Standards for Development and Use of Processor-Based Signal and Train Control Systems
2129	Small Railroads; Policy Statement on Enforcement Program
2136	Blue Signal and Related Protections
2139	Minimum Standards for Temperature in the Locomotive Cab
2142	Freight Car Safety Standards: Maintenance-of-Way Equipment
2143	Locomotive Cab Working Conditions
2194	Applicability of the Hazardous Materials Regulations to Loading, Unloading, and Storage
	TREAS
2477	Information Reporting for Qualified Tuition and Related Expenses; Magnetic Media Filing Requirements for Information Returns
2498	Income Tax—Reciprocal Exemptions for Certain Transportation Income
2527	Information Reporting for Payments of Interest on Education Loans
2631	Allocation of Loss on Disposition of Personal Property
2651	Mutual Savings Associations, Mutual Holding Company Reorganizations, and Conversions
	ATBCB
2781	Americans with Disabilities Act (ADA) Accessibility Guidelines for Buildings and Facilities: Recreation Facilities
	EPA
2850	NESHAP: Lime Manufacturing
2892	Control of Emissions from Spark Ignition Marine Vessels and Highway Motorcycles
2900	Control of Emissions of Air Pollution from Nonroad Diesel Engines and Fuel
2915	Phase I Federal Implementation Plans (FIPs) To Reduce the Regional Transport of Ozone in the Eastern United States
2933	Emissions from Nonroad Spark-Ignition Engines and Standards for Recreational Spark-Ignition Engines
2975	NESHAP: Reinforced Plastic Composites Production
3080	Lead-Based Paint Activities; Training and Certification for Renovation and Remodeling
3096	Standards for the Management of Coal Combustion Wastes: Non-Power Producers and Minefilling
3139	Effluent Guidelines and Standards for the Construction and Development Industry
3140	Effluent Guidelines and Standards for the Aquatic Animal Production Industry
3151	Effluent Guidelines and Standards for the Metal Products and Machinery Category, Phases 1 and 2
3153	National Pollutant Discharge Elimination System Permit Regulation and Effluent Limitations Guidelines Standards for Concentrated Animal Feeding Operations (CAFOs)
3185	National Primary Drinking Water Regulations: Long-Term 2 Enhanced Surface Water Treatment Rule
3187	National Primary Drinking Water Regulations: Groundwater Rule
3191	National Primary Drinking Water Regulations: Radon
	FEMA
3216	Governmentwide Debarment and Suspension (Nonprocurement)
	GSA
3227	Enforcement of Nondiscrimination on the Basis of Handicap in Federally Assisted Programs
	SBA
3462	Size Standards: Subcontracting Size Standards
3467	Small Business Size Standards; Testing Laboratories
3469	Small Business Size Standards; Information Technology Value Added Resellers
3474	Small Business Size Standards; Forest Fire Suppression and Fuels Management Services
3475	New Markets Venture Capital Program; Amendments
3476	Small Business Size Regulations: Rules of Procedure Governing Cases Before the Office of Hearings and Appeals
3478	Small Business Size Standards; Travel Agencies
3482	Size Standards: Inflation Adjustment
3484	HUBZone Empowerment Contracting Program
3487	Small Business Size Regulation; Petroleum Refineries
	FAR
3578	FAR Case 2001-016, E.O. 13202, Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects
3580	FAR Case 89-093, Implementation of the Anti-Lobbying Statute
3581	FAR Case 91-078, Small Business Subcontracting Reporting
3583	FAR Case 95-013, Government Property
3585	FAR Case 97-304, Electronic Commerce in Federal Procurement
3587	FAR Case 2000-302, Veterans Entrepreneurship and Small Business Development Act of 1999
3605	FAR Case 99-017, JWOD Subcontract Preference Under Service Contracts

Small Businesses—Cont.

Seq. No.	Title
3613	FAR Case 2000-609, Contractor Personnel in the Procurement of Information Technology Services
	FCC
3677	Cable Television Rate Regulation
3678	Cable Television Rate Regulation: Cost of Service
3679	Customer Service Standards
3680	Cable Home Wiring
3681	Closed Captioning
3682	Cable Act Reform
3683	Competitive Availability of Navigation Devices
3684	Pole Attachment Provisions
3686	Horizontal Ownership Limits
3687	Application of Network Nonduplication, Syndicated Exclusivity, and Sports Blackout Rules to Satellite Retransmission - SHVIA
3688	Retransmission Consent Issues - SHVIA
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The Regulatory Flexibility Act (5 U.S.C. 601) requires that agencies publish regulatory agendas identifying those rules that may have a significant economic impact on a substantial number of small entities. Agencies meet that requirement by including the information in their submissions for the Unified Agenda. Some agencies have chosen to identify additional regulatory actions that may have some impact on small entities even though a Regulatory Flexibility Analysis may not be required.

The following index lists the regulatory actions in this publication for which agencies have chosen to indicate that some impact on small entities is likely even though a Regulatory Flexibility Analysis may not be required. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

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Executive Order 12866 entitled "Regulatory Planning and Review" (October 4, 1993; 58 FR 51735) and the Unfunded Mandates Reform Act of 1995 (P.L. 104-4) direct agencies to assess the effects of Federal regulations on State, local, and tribal governments. In keeping with these efforts, agencies include in their submissions for the Unified Agenda information on whether their regulatory actions have an effect on various levels of government. See also Index E for entries that may have "federalism implications" as defined in Executive Order 13132 entitled "Federalism" (August 4, 1999, 64 FR 43255).

The following index lists the regulatory actions in this publication that agencies believe may have effects on State, local, tribal, or Federal levels of government. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

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E. INDEX TO ENTRIES THAT MAY HAVE FEDERALISM IMPLICATIONS

Executive Order 13132 entitled "Federalism" (August 4, 1999, 64 FR 43255) directs agencies to have an accountable process to ensure meaningful and timely input by State and local officials in the development of regulatory policies that have "federalism implications." This term refers to actions "that have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." As part of this effort, agencies other than independent regulatory agencies, include in their submissions for the Unified Agenda information on whether their regulatory actions have federalism implications

The following index lists the regulatory actions in this publication that agencies believe may have federalism implications. The Sequence Number (Seq. No.) of the entry identifies the location of the entry in this edition. For further information, see the Regulatory Information Service Center's Introduction to the Unified Agenda in part II of this issue.

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 989

[Docket No. FV02–989–2 FIR]

Raisins Produced From Grapes Grown in California; Reduction in Production Cap for 2002 Diversion Program

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (USDA) is adopting, as a final rule, without change, an interim final rule reducing the production cap for the 2002 diversion program (RDP) for Natural (sun-dried) Seedless (NS) raisins from 2.75 to 2.0 tons per acre. The cap is specified under the Federal marketing order for California raisins (order). The order regulates the handling of raisins produced from grapes grown in California and is administered locally by the Raisin Administrative Committee (RAC). Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2002 RDP brings the figure in line with 2001 crop yields.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Maureen T. Pello, Senior Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; *telephone:* (559) 487–5901, Fax: (559) 487–5906; or George Kelhart, Technical Advisor, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938.

Small businesses may request information on complying with this regulation by contacting Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Programs, AMS, USDA, 1400 Independence Avenue SW, STOP 0237, Washington, DC 20250–0237; *telephone:* (202) 720–2491, *Fax:* (202) 720–8938, or e-mail: *Jay.Guerber@usda.gov.*

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR part 989), both as amended, regulating the handling of raisins produced from grapes grown in California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

USDA is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule is not intended to have retroactive effect. This rule will not preempt any State or local laws, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with USDA a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing USDA would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review USDA's ruling on the petition, provided an action is filed not later than 20 days after the date of the entry of the ruling.

This rule continues to reduce the production cap for the 2002 RDP for NS raisins from 2.75 to 2.0 tons per acre. The cap is specified in the order. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The production cap limits the yield per acre that a producer can claim in a RDP. Reducing the cap for the 2002 RDP brings the figure in line with 2001 crop yields. This action was recommended by the RAC at a meeting on November 13, 2001.

Volume Regulation Provisions

The order provides authority for volume regulation designed to promote orderly marketing conditions, stabilize prices and supplies, and improve producer returns. When volume regulation is in effect, a certain percentage of the California raisin crop may be sold by handlers to any market (free tonnage) while the remaining percentage must be held by handlers in a reserve pool (reserve) for the account of the RAC. Reserve raisins are disposed of through various programs authorized under the order. For example, reserve raisins may be sold by the RAC to handlers for free use or to replace part of the free tonnage they exported; carried over as a hedge against a short crop the following year; or may be disposed of in other outlets not competitive with those for free tonnage raisins, such as government purchase, distilleries, or animal feed. Net proceeds from sales of reserve raisins are ultimately distributed to producers.

Raisin Diversion Program

The RDP is another program concerning reserve raisins authorized under the order and may be used as a means for controlling overproduction Authority for the program is provided in § 989.56 of the order, and additional procedures are specified in § 989.156 of the order's administrative rules and regulations.

Pursuant to these sections, the RAC must meet by November 30 each crop year to review raisin data, including information on production, supplies, market demand, and inventories. If the RAC determines that the available supply of raisins, including those in the reserve pool, exceeds projected market

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needs, it can decide to implement a diversion program, and announce the amount of tonnage eligible for diversion during the subsequent crop year. Producers who wish to participate in the RDP must submit an application to the RAC. Such producers curtail their production by vine removal or some other means established by the RAC and receive a certificate from the RAC which represents the quantity of raisins diverted. Producers sell these certificates to handlers who pay producers for the free tonnage applicable to the diversion certificate minus the established harvest cost for the diverted tonnage. Handlers redeem the certificates by presenting them to the RAC and paying an amount equal to the established harvest cost plus payment for receiving, storing, fumigating, handling, and inspecting the tonnage represented on the certificate. The RAC then gives the handler raisins from the prior year's reserve pool in an amount equal to the tonnage represented on the diversion certificate. The new crop year's volume regulation percentages are applied to the diversion tonnage acquired by the handler (as if the handler had bought raisins directly from a producer).

Production Cap

Section 989.56(a) of the order specifies a production cap of 2.75 tons per acre for any production unit of a producer approved for participation in a RDP. The RAC may recommend, subject to approval by USDA, reducing the 2.75 tons per acre production cap. The production cap limits the yield that a producer can claim. Producers who historically produce yields above the production cap can choose to produce a crop rather than participate in the diversion program. No producer is required to participate in a RDP.

Pursuant to § 989.156, producers who wish to participate in a program must submit an application to the RAC by December 20. Producers must specify, among other things, the raisin production and the acreage covered by the application. RAC staff verifies producers' production claims using handler acquisition reports and other available information. However, a producer could misrepresent production by claiming that some raisins produced on one ranch were produced on another, and use an inflated yield on the RDP application. Thus, the production cap limits the amount of raisins for which a producer participating in a RDP may be credited, and protects the program from overstated yields.

RAC Recommendation

The RAC met on November 13, 2001, and recommended reducing the production cap from 2.75 to 2.0 tons per acre. With 2001 raisin-type variety grape production down by 31 percent, according to the California Agricultural Statistics Service, the RAC recommended reducing the production cap by about 30 percent to reflect 2001 crop yields. Paragraph (t) in § 989.156 of the order's rules and regulations was revised accordingly.

On November 28, 2001, the RAC met and reviewed data relating to the quantity of reserve raisins and anticipated market needs. With a 2001–02 NS crop estimated at 359,341 tons, and a computed trade demand (comparable to market needs) of 235,850 tons, the RAC projects a reserve pool of 123,491 tons of NS raisins. With such a large anticipated reserve, the RAC announced that 45,182 tons of NS raisins would be eligible for diversion under the 2002 RDP. The RAC increased this amount to 54,086 tons at a meeting on January 11, 2002. Of the 54,086 tons, 49,086 tons were made available to approved producers who submitted applications to the RAC by December 20, 2001, with producers who plan to remove vines receiving priority over those who plan to curtail (abort) production through spur pruning or other means. Section 989.156(d) requires the RAC to give priority to applicants who agree to remove vines. Another 5,000 tons will be made available to approved producers who submit applications to the RAC from December 21, 2001, through May 1, 2002, and plan to remove vines. Authority for this additional opportunity for vine removal is provided in § 989.156(s).

Final Regulatory Flexibility Analysis

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. Accordingly, AMS has prepared this final regulatory flexibility analysis.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of California raisins who are subject to regulation under the order and approximately 4,500 raisin producers in the regulated area. Small agricultural firms are defined by the Small Business Administration (13 CFR 121.201) as those having annual receipts of less that $5,000,000, and small agricultural producers are defined as those having annual receipts of less than $750,000. Thirteen of the 20 handlers subject to regulation have annual sales estimated to be at least $5,000,000, and the remaining 7 handlers have sales less than $5,000,000. No more than 7 handlers, and a majority of producers, of California raisins may be classified as small entities.

This rule continues to revise § 989.156(t) of the order's rules and regulations regarding the RDP. Under a RDP, producers receive certificates from the RAC for curtailing their production to reduce burdensome supplies. The certificates represent diverted tonnage. Producers sell the certificates to handlers who, in turn, redeem the certificates with the RAC for raisins from the prior year's reserve pool. The order specifies a production cap limiting the yield per acre that a producer can claim in a RDP. This rule continues to reduce the cap from 2.75 to 2.0 tons per acre to accurately reflect 2001 crop yields. Authority for this action is provided in § 989.56(a) of the order.

Regarding the impact of this action on affected entities, producers who participate in the 2002 RDP will have the opportunity to earn some income for not harvesting a 2002–03 crop. Producers will sell the certificates to handlers next fall and be paid for the free tonnage applicable to the diversion certificate minus the harvest cost for the diverted tonnage. Applicable harvest costs for the 2002 RDP were established by the RAC at $340 per ton.

Reducing the production cap will have little impact on raisin handlers. Handlers will pay producers for the free tonnage applicable to the diversion certificate minus the $340 per ton harvest cost. Handlers will redeem the certificates for 2001–02 crop NS reserve raisins and pay the RAC the $340 per ton harvest cost plus payment for bins ($20 per ton) and for receiving, storing, fumigating, handling (currently totaling $46 per ton), and inspecting (currently $9.00 per ton) the tonnage represented on the certificate. Reducing the production cap will have little impact on handler payments for reserve raisins under the 2001 RDP.

Alternatives to the recommended action include leaving the production cap at 2.75 tons per acre or reducing it to another figure besides 2.0 tons per acre. However, the majority of RAC members believe that a cap of 2.0 tons per acre more accurately reflects 2001 yields.

There was some discussion at the RAC's meeting that the 2.0-ton per acre production cap was too low and would discriminate against producers with high yields. In recent years, cultural practices have evolved to where some producers' yield per acre is reportedly as high as 4 tons. However, as previously stated, the program is voluntary and producers whose vines can produce 4 tons per acre have the option to produce a raisin crop rather than apply for the RDP and be subject to the production cap.

This rule imposes no additional reporting or recordkeeping requirements on either small or large raisin handlers. In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. · Chapter 35), the information collection requirement referred to in this rule (*i.e.*, the application) has been approved by the Office of Management and Budget (OMB) under OMB Control No. 0581–0178. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies. Finally, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

Further, the RAC's meeting on November 13, 2001, the RAC's Administrative Issues Subcommittee meeting on that same day but prior to the RAC meeting where this action was deliberated, and the RAC's meeting on November 28, 2001, where a diversion program was announced, were all public meetings widely publicized throughout the raisin industry. All interested persons were invited to attend the meetings and participate in the industry's deliberations. An interim final rule concerning this action was published in the **Federal Register** on March 15, 2002 (67 FR 11555). Copies of the rule were mailed by RAC staff to all RAC members and alternates, the Raisin Bargaining Association, handlers and dehydrators. In addition, the rule was made available through the Internet by the Office of the Federal Register and USDA. That rule provided for a 15-day comment period which ended April 1, 2002. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant material presented, including the information and recommendation submitted by the RAC and other available information, it is hereby found that finalizing this interim final rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

Accordingly, the interim final rule amending 7 CFR part 989 which was published at 67 FR 11555 on March 15, 2002, is adopted as a final rule without change.

Dated: May 8, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–11949 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 360

RIN 3064–AB92

Payment of Post-Insolvency Interest in Receiverships With Surplus Funds

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation has adopted a final rule regarding the payment of post-insolvency interest in insured depository institution receiverships with surplus funds. The final rule establishes a single uniform interest rate, calculation method, and payment priority for post-insolvency interest. The final rule provides that where funds remain after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act; paid at the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter; adjusted each quarter after the receivership is established; and based on a simple interest method of calculation.

EFFECTIVE DATE: June 13, 2002.

FOR FURTHER INFORMATION CONTACT: Thomas Bolt, (202) 736–0168; or Rodney Ray, (202) 898–3556.

SUPPLEMENTARY INFORMATION:

I. Background

In December 2000, Congress granted the FDIC express rulemaking authority regarding the payment of post-insolvency interest in receiverships with surplus funds. The American Homeownership and Economic Opportunity Act of 2000 added new subparagraph (C) to section 11(d)(10) of the FDI Act, which reads as follows:

(C) RULEMAKING AUTHORITY OF CORPORATION. The Corporation may prescribe such rules, including definitions of terms, as it deems appropriate to establish a single uniform interest rate for or to make payment of post-insolvency interest to creditors holding proven claims against the receivership estates of insured Federal or State depository institutions following satisfaction by the receiver of the principal amount of all creditor claims.

By virtue of this rulemaking authority, the final rule regarding post-insolvency interest will preempt any inconsistent state law by providing a single uniform interest rate and priority of distribution for post-insolvency interest in receiverships established after the rule becomes effective. *See City of New York* v. *FCC*, 486 U.S. 57, 63 (1988) (regulation promulgated by federal agency acting within the scope of its congressionally delegated authority may preempt state law). The final rule will apply to receiverships established after the effective date of the rule. Historically, relatively few receiverships have generated sufficient recoveries to enable post-insolvency interest to be paid. Consequently, the final rule will probably apply to only a small number of receiverships in the future.

II. Notice of proposed rulemaking

On December 18, 2001 the FDIC caused to be published in the **Federal Register** a notice of proposed rulemaking regarding the payment of post-insolvency interest in receiverships with surplus funds. See 66 FR 65144 (December 18, 2001). The notice of proposed rulemaking discussed the features of a proposed rule and solicited comments from the public for a period of 60 days. The comment period expired on February 19, 2001. The FDIC received one comment from the Co-operative Central Bank, which insures deposits that exceed FDIC deposit insurance limits in 75 co-operative

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banks in Massachusetts. The comment described the proposed rule as "a fair and balanced approach to resolving the difficult issue of payment of post-insolvency interest in receiverships with surplus funds. It is entirely consistent with the public policy set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, the national depositor preference statute, and is in the public interest. By providing uniform interest rate and depositor priority for distributions of post-insolvency interest, the Proposed Regulation appropriately allocates post-insolvency interest more equitably than at present."

III. Final rule

The final rule is essentially identical to the proposed rule. The final rule provides that after the satisfaction of the principal amount of all creditor claims, post-insolvency interest will be paid in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act. This is consistent with how the principal amounts of creditor claims are paid and would be consistent with Congress's intent that deposit liabilities be preferred over other liabilities.

The final rule further provides for the post-insolvency interest rate for all FDIC-administered receiverships to be based on the coupon equivalent yield of the average discount rate set on the 3-month Treasury bill. The 3-month Treasury bill is widely recognized as a performance benchmark for cash investment management and its yield has historically tracked to some degree changes in the rate of inflation. The post-insolvency interest rate will be adjusted quarterly in order to mitigate interest-rate risk due to changes in economic conditions during the life of the receivership. Post-insolvency interest distributions will be calculated using a simple interest method, which should provide a reasonable amount of interest to compensate receivership creditors for the time value of money owed from the time the receivership is established until dividend payments are received.

The final rule contains a revision to paragraph (c)(3) of the proposed rule to clarify that post-insolvency interest will be calculated, not "distributed," on proven claims from the date the receivership is established. Revised paragraph (c)(3) also provides that post-insolvency interest on a contingent claim will be calculated from the date that the claim becomes proven. A contingent claim is a claim that has not accrued as of the date of the appointment of the receiver, but is dependent on some future event. A contingent claim may become proven if the event triggering payment occurs in time for the claim to be paid by the receiver. In such case, post-insolvency interest will be calculated from the date the claim becomes proven, not from the date the receivership is established.

IV. Paperwork Reduction Act

The proposed rule will not involve any collection of information under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.). Consequently, no information has been submitted to the Office of Management and Budget for review.

V. Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) the FDIC has certified that the final rule will not have a significant economic impact on a substantial number of small entities. The final rule will only apply to FDIC-administered receiverships established after the effective date of the rule, and it does not impose new reporting, recordkeeping or other compliance requirements on receivership creditors. The final rule continues the FDIC's existing practice of making post-insolvency interest distributions to creditors holding proven claims in surplus receiverships prior to making distributions to equityholders, based on their equity interests, in a failed insured depository institution. In addition, the final rule will provide interested parties, including small entities, with greater certainty in future FDIC-administered receiverships by establishing a single uniform interest rate and method for making post-insolvency interest distributions. Accordingly, the Act's requirements relating to an initial regulatory flexibility analysis are not applicable.

VI. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105–277, 112 Stat. 2681).

VII. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Pub. L. 104–121) provides generally for agencies to report rules to Congress for review. The reporting requirement is triggered when the FDIC issues a final rule as defined by the Administrative Procedure Act (APA) at 5 U.S.C. 551. Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by SBREFA. The Office of Management and Budget has determined that this final rule does not constitute a "major rule" as defined by SBREFA.

List of Subjects in 12 CFR Part 360

Banks, banking, Savings associations.

For the reasons set forth in the preamble, the FDIC Board of Directors amends 12 CFR part 360 as follows:

PART 360—RESOLUTION AND RECEIVERSHIP RULES

1. The authority for part 360 is revised to read as follows:

Authority: 12 U.S.C. 1821(d)(1), 1821(d)(10)(C), 1821(d)(11), 1821(e)(1), 1821(e)(8)(D)(i), 1823(c)(4), 1823(e)(2); Sec. 401(h), Pub.L. 101–73, 103 Stat. 357.

2. Section 360.7 is added to part 360 to read as follows:

§ 360.7 Post-insolvency interest.

(a) *Purpose and scope.* This section establishes rules governing the calculation and distribution of post-insolvency interest to creditors with proven claims in all FDIC-administered receiverships established after June 13, 2002.

(b) *Definitions.* (1) *Equityholder.* The owner of an equity interest in a failed depository institution, whether such ownership is represented by stock, membership in a mutual association, or otherwise.

(2) *Post-insolvency interest.* Interest calculated from the date the receivership is established on proven creditor claims in receiverships with surplus funds.

(3) *Post-insolvency interest rate.* For any calendar quarter, the coupon equivalent yield of the average discount rate set on the three-month Treasury bill at the last auction held by the United States Treasury Department during the preceding calendar quarter, and adjusted each quarter thereafter.

(4) *Principal amount.* The proven claim amount and any interest accrued thereon as of the date the receivership is established.

(5) *Proven claim.* A claim that is allowed by a receiver or upon which a final non-appealable judgment has been entered in favor of a claimant against a receivership by a court with jurisdiction to adjudicate the claim.

(c) *Post-insolvency interest distributions.* (1) Post-insolvency interest shall only be distributed following satisfaction by the receiver of the principal amount of all creditor claims.

(2) The receiver shall distribute post-insolvency interest at the post-insolvency interest rate prior to making any distribution to equityholders. Post-insolvency interest distributions shall be made in the order of priority set forth in section 11(d)(11)(A) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(d)(11)(A).

(3) Post-insolvency interest distributions shall be made at such time as the receiver determines that such distributions are appropriate and only to the extent of funds available in the receivership estate. Post-insolvency interest shall be calculated on the outstanding balance of a proven claim, as reduced from time to time by any interim dividend distributions, from the date the receivership is established until the principal amount of a proven claim has been fully distributed but not thereafter. Post-insolvency interest shall be calculated on a contingent claim from the date such claim becomes proven.

(4) Post-insolvency interest shall be determined using a simple interest method of calculation.

Federal Deposit Insurance Corporation.

By order of the Board of Directors.

Dated at Washington, DC, this 7th day of May, 2002.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–11947 Filed 5–13–02; 8:45 am]

BILLING CODE 6714–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1

[Docket No. 98N–0583]

Exports; Notification and Recordkeeping Requirements; Stay

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; stay.

SUMMARY: The Food and Drug Administration (FDA) is staying the final rule on notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. This action is in response to four requests for a stay because certain parties would not be able to comply with the effective date of March 19, 2002.

DATES: Effective May 14, 2002; 21 CFR 1.101 is stayed until June 19, 2002.

FOR FURTHER INFORMATION CONTACT: Philip L. Chao, Office of Policy, Planning, and Legislation (HF–23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–0587.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of December 19, 2001 (66 FR 65429), FDA (we) published a final rule entitled "Exports: Notification and Recordkeeping Requirements." The final rule established the export notification and recordkeeping requirements for persons exporting human drugs, animal drugs, biological products, devices, food, and cosmetics that may not be marketed or sold in the United States. The final rule implements certain statutory changes made by the FDA Export Reform and Enhancement Act and will be codified at § 1.101 (21 CFR 1.101).

The final rule was to become effective on March 19, 2002. On March 1, 2002, and later on March 8, 11, and 12, 2002, we received three petitions for stay of administrative action and one letter requesting that we stay the final rule's effective date by 6 months. In general, the petitions and letter stated that certain parties would be unable to comply by the original March 19, 2002, effective date and that some parties were confused as to the final rule's applicability to certain products.

On March 18, 2002, we notified the parties that the agency intended to grant the petitions and the letter's request, in part, by extending the final rule's effective date by 3 months, and that the agency would publish a document in the **Federal Register** staying the rule under 21 CFR 10.35(e). This stay should allow the parties and other affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States. The new effectiveness for § 1.101 is June 19, 2002.

To the extent that 5 U.S.C. 553 applies to this action, it is exempt from notice and comment because it constitutes a rule of procedure under 5 U.S.C. 553(b)(3)(A). Alternatively, the agency's implementation of this action without opportunity for public comment, effective immediately upon publication today in the **Federal Register**, is based on the good cause exceptions in 5 U.S.C. 553(b)(3)(B) and (d)(3). Seeking public comment is impracticable, unnecessary, and contrary to the public interest. The agency is staying § 1.101 until June 19, 2002, because the agency has determined that it is appropriate to allow affected industry members more time to understand and to establish programs and policies for complying with the regulatory requirements that apply to exported products that may not be marketed or sold in the United States.

This action pertains solely to the requirements of the final rule. Affected industry members must continue to comply with the statutory requirements for exports under section 801(e) and 802 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 381 and 321).

Dated: May 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11935 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 522

Implantation or Injectable Dosage Form New Animal Drugs; Lincomycin

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of an abbreviated new animal drug application (ANADA) filed by Alpharma, Inc. The ANADA provides for use of an injectable lincomycin solution for the treatment of infectious arthritis and mycoplasma pneumonia in swine.

DATES: This rule is effective May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Lonnie W. Luther, Center for Veterinary Medicine (HFV–101), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–0209, e-mail: *lluther@cvm.fda.gov.*

SUPPLEMENTARY INFORMATION: Alpharma, Inc., One Executive Dr., P.O. Box 1399, Fort Lee, NJ 07024, filed ANADA 200–274 that provides for the use of Lincomycin (lincomycin HCl) Injectable 30% by intramuscular injection for the treatment of infectious arthritis and mycoplasma pneumonia in swine. Alpharma's Lincomycin Injectable 30%

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is approved as a generic copy of Pharmacia & Upjohn Co.'s LINCOMIX 300, approved under NADA 34–025. The application is approved as of February 1, 2002, and the regulations are amended in 21 CFR 522.1260 to reflect the approval. The basis of approval is discussed in the freedom of information summary. Section 522.1260 is also being amended to reflect a current format.

In accordance with the freedom of information provisions of 21 CFR part 20 and 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.33(a)(1) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

This rule does not meet the definition of "rule" in 5 U.S.C. 804(3)(A) because it is a rule of "particular applicability." Therefore, it is not subject to the congressional review requirements in 5 U.S.C. 801–808.

List of Subjects in 21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 522 is amended as follows:

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: 21 U.S.C. 360b.

2. Section 522.1260 is amended by revising the section heading and paragraphs (a), (b), (e)(1)(i), (e)(1)(iii), (e)(2)(i), and (e)(2)(iii) to read as follows:

§ 522.1260 Lincomycin.

(a) *Specifications.* Each milliliter of solution contains lincomycin hydrochloride monohydrate equivalent to 25, 50, 100, or 300 milligrams (mg) of lincomycin.

(b) *Sponsors.* See sponsors in § 510.600(c) of this chapter for uses as in paragraph (e) of this section.

(1) No. 000009 for uses as in paragraph (e) of this section.

(2) No. 046573 for use as in paragraph (e)(2) of this section.

* * * * *≤

(e) * * *

(1) * * *

(i) *Amount.* 5 mg per pound (/lb) of body weight twice daily or 10 mg/lb body weight once daily by intramuscular injection; 5 to 10 mg/lb body weight one or two times daily by slow intravenous injection.

* * * * *≤

(iii) *Limitations.* Federal law restricts this drug to use by or on the order of a licensed veterinarian.

(2) * * *

(i) *Amount.* 5 mg/lb body weight once daily by intramuscular injection for 3 to 7 days.

* * * * *≤

(iii) *Limitations.* Do not treat within 48 hours of slaughter.

Dated: April 26, 2002.

Stephen F. Sundlof,

Director, Center for Veterinary Medicine.

[FR Doc. 02–11933 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8994]

RIN 1545–AU76

Electing Small Business Trust

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations relating to the qualification and treatment of electing small business trusts (ESBTs). The final regulations interpret the rules added to the Internal Revenue Code (Code) by section 1302 of the Small Business Job Protection Act of 1996, section 1601 of the Taxpayer Relief Act of 1997, and section 316 of the Community Renewal Tax Relief Act of 2000. In addition, the final regulations provide that an ESBT, or a trust described in section 401(a) of the Code or section 501(c)(3) of the Code and exempt from taxation under section 501(a) of the Code, is not treated as a deferral entity for purposes of § 1.444–2T. The final regulations affect S corporations and certain trusts that own S corporation stock.

DATES: *Effective Date:* These regulations are effective May 14, 2002.

Dates of Applicability: The regulations regarding ESBTs under § 1.641(c)–1(d) through (k), (l) *Examples 2–5*, § 1.1361–1(h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), (j)(12), and (m), § 1.1362–6(b)(2)(iv), § 1.1377–1(a)(2)(iii) and (c) *Example 3* apply for taxable years beginning on and after May 14, 2002. The regulations regarding taxation of ESBTs under § 1.641(c)–1(a), (b), (c), and (l) *Example 1* are applicable for taxable years of ESBTs that end on and after December 29, 2000. The regulations under § 1.444–4 are applicable to taxable years beginning on or after December 29, 2000.

FOR FURTHER INFORMATION CONTACT: Concerning the final regulations, Bradford Poston or James A. Quinn, (202) 622–3060; specifically concerning § 1.444–4, Michael F. Schmit, (202) 622–4960 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information in these final regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) and assigned control number 1545–1591.

The collections of information in these final regulations are in § 1.1361–1(j)(12), § 1.1361–1(m), and § 1.444–4(c). The information required by § 1.1361–1(j)(12) and § 1.1361–1(m) is needed to allow trusts to elect to be ESBTs and to allow for the conversion of a qualified subchapter S trust (QSST) to an ESBT and the conversion of an ESBT to a QSST. The likely respondents are trusts.

The information required by § 1.444–4(c) is needed to allow certain S corporations to reinstate their previous taxable year that was terminated under § 1.444–2T. The likely respondents are businesses and other for-profit institutions.

Comments on the collections of information should be sent to the Office of Management and Budget, Attn.: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503 with copies to the Internal Revenue Service, Attn.: IRS Reports Clearance Officer, W:CAR:MP:FP:S, Washington, DC 20224. Comments on the collection of information should be received by July 15, 2002. Comments are specifically requested concerning:

Whether the collections of information are necessary for the proper performance of the functions of the Internal Revenue Service, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the collections of information;

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs of operation, maintenance, and purchase of service to provide information.

The burden contained in § 1.444–4 is reflected in the burden of Form 8716.

Estimated total annual reporting burden: 7,500 hours.

Estimated annual burden per respondent: 1 hour.

Estimated number of respondents: 7,500.

Estimated annual frequency of responses: On occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

On December 29, 2000, proposed regulations (REG–251701–96) were published in the **Federal Register** (65 FR 82963) containing proposed amendments to the Income Tax Regulations (26 CFR part 1) relating to S corporations and electing small business trusts (ESBTs). Section 1302 of the Small Business Job Protection Act of 1996, Public Law 104–188 (110 Stat. 1755) (August 20, 1996) (the 1996 Act), amended sections 641 and 1361 of the Code to permit an ESBT to be an S corporation shareholder. Further amendments were made to section 1361(e) by the Taxpayer Relief Act of 1997, Public Law 105–34 (111 Stat. 1601(c)(1)) (August 5, 1997), and the Community Renewal Tax Relief Act of 2000, Public Law 106–554 (114 Stat. 2763) (December 21, 2000). Prior section 641(d) was redesignated as section 641(c) by the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105–206 (112 Stat. 6007(f)(2)) (July 22, 1998).

On December 29, 2000, proposed and temporary regulations were also published in the **Federal Register** (65 FR 82963) and (65 FR 82926) containing amendments to the Income Tax Regulations (26 CFR part 1) relating to the election of a taxable year other than the required taxable year.

A public hearing was held on the proposed and temporary regulations on April 25, 2001. Written comments were received on the proposed and temporary regulations. The proposed regulations, with certain changes in response to the comments, are adopted as final regulations, and the temporary regulations are removed.

Summary of Comments and Explanation of Revisions

Beneficiaries and Potential Current Beneficiaries

For a trust to qualify as an electing small business trust (ESBT) and as a shareholder in a subchapter S corporation, only certain types of persons are permitted to be beneficiaries of the trust. Once a trust makes the ESBT election, each potential current beneficiary (PCB) of the trust is treated as a shareholder of the S corporation. Thus, the identity of the beneficiaries affects whether a trust can be an ESBT, while the identity and number of PCBs affect whether the corporation can be a S corporation. It is possible under certain circumstances for a person to be a PCB, as that term is defined in section 1361(e)(2) and the proposed regulations, without being a beneficiary, as that term is defined in the proposed regulations. For example, a person who may receive a distribution from an ESBT under a currently exercisable power of appointment is a PCB but is not treated as a beneficiary until the power is actually exercised.

Some commentators expressed concerns about the possible adverse effects of the definition of PCBs, especially in situations involving potential recipients of a currently exercisable power of appointment. Some commentators suggested that a person should have to meet the definition of a beneficiary before the person could be considered a PCB. Commentators also suggested that a person who may receive a distribution under a currently exercisable power of appointment should not be treated as a PCB until exercise of the power. Several commentators suggested that a temporary waiver or release of a broad power of appointment should be sufficient to limit the number of PCBs during a period of time.

The final regulations do not change the basic definition of PCBs. While there is no statutory definition of beneficiary in section 1361(e), there is a statutory definition of PCB. Under section 1361(e)(2), a PCB is, "with respect to any period, any person who at any time during such period is entitled to, or, at the discretion of any person, may receive, a distribution from the principal or income of the trust." The IRS and the Treasury Department believe that it would be inconsistent with this statutory definition not to treat a person as a PCB until an actual distribution is made to that person pursuant to the exercise of a power of appointment. The final regulations provide that an attempt to temporarily waive, release, or limit a power of appointment would not be effective to limit the PCBs because of uncertainty as to the effectiveness of a temporary waiver, release, or limitation on the power of appointment under state law and the potential to manipulate a temporary waiver, release, or limitation on a power of appointment to avoid the S corporation shareholder limitation rules. However, a permanent release of a power of appointment that is effective under local law may reduce the number of PCBs of an ESBT.

Another commentator suggested that the separate share provisions of section 663(c) should apply so that beneficiaries or PCBs of the share holding the assets other than the S corporation stock would not be counted as beneficiaries or PCBs of the S portion. There is no authority to ignore beneficiaries and PCBs of a portion of a trust holding assets other than S corporation stock. The statutory definitions of an ESBT and of a PCB look to all the persons who are beneficiaries or PCBs of the trust, not just the S portion. In addition, the separate share provisions of section 663(c) are not applicable because they generally apply only for purposes of allocating distributable net income under sections 661 and 662.

Two commentators requested guidance on what period of time is considered in determining who are PCBs in light of the statutory definition. They suggested that *period* means any moment in time. Thus, if an event occurs during a taxable year that changes who the PCBs are, the PCBs before and after the event would not be counted cumulatively for purposes of the 75-shareholder limit. The shareholder limitation in section 1361(b)(1)(A) means that an S corporation may not have more than 75 shareholders at any particular time

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during the taxable year. See Rev. Rul. 78–390 (1978–2 C.B. 220). The final regulations clarify that a person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of the trust. The final regulations also provide that a person who, after the exercise of a power of appointment, receives only a future interest in the trust is not a PCB.

One commentator was concerned about the statement in the proposed regulations that if a person holds a general lifetime power of appointment, the corporation will exceed the 75-shareholder limit and thus the corporation's S election will terminate. The commentator pointed out that a beneficiary's power to withdraw assets from a trust is considered a general power of appointment but the beneficiary is the only one who can receive those assets. The final regulations clarify that the potential recipients of current distributions pursuant to an exercise of the power are considered, not whether the power is a general or special power of appointment.

The proposed regulations provide that a person with a future beneficial interest is not a beneficiary of an ESBT if that interest is so remote as to be negligible. This provision permitted trusts to qualify as ESBTs even though there was a remote possibility that all the named beneficiaries would die and the trust assets would escheat to the state, an impermissible beneficiary of an ESBT. The Community Renewal Tax Relief Act of 2000 eliminated this potential problem by changing the statutory definition of permissible beneficiaries to include an organization described in section 170(c)(1) that holds a contingent interest in the trust and is not a PCB. The final regulations, therefore, remove the provision regarding remote beneficiaries and the accompanying example.

Interests in Trust Acquired by Purchase

Two commentators requested clarification on whether a trust is eligible to be an ESBT if it acquires property in a part-gift, part-sale transaction, such as a gift of encumbered property or a net gift, in which the donor transfers property to a trust provided the trust pays the resulting gift tax. Section 1361(e)(1)(A)(ii) provides that a trust is eligible to be an ESBT only if "no interest in the trust was acquired by purchase." Section 1361(e)(1)(C) defines *purchase* as "any acquisition if the basis of the property acquired is determined under section 1012." The proposed regulations provide that if any portion of a beneficiary's basis in the beneficiary's interest is determined under section 1012, the beneficiary's interest was acquired by purchase. The final regulations clarify that the prohibition on purchases applies to purchases of a beneficiary's interest in the trust, not to purchases of property by the trust. A net gift of a beneficial interest in a trust, where the donee pays the gift tax, would be treated as a purchase of a beneficial interest under these rules, while a net gift to the trust itself, where the trustee of the trust pays the gift tax, would not.

Grantor Trusts

Most commentators praised the position in the proposed regulations that a trust, all or a portion of which is treated as owned by an individual (deemed owner) under subpart E, part I, subchapter J, chapter 1 of the Code (grantor trust), may elect to be an ESBT. One commentator, however, suggested that grantor trusts should not be permitted to make ESBT elections. The final regulations continue to provide that a grantor trust may elect to be an ESBT.

The proposed regulations provide that if a grantor trust makes an ESBT election, the trust consists of a grantor portion, an S portion, and a non-S portion. The items of income, deduction, and credit attributable to the grantor portion are taxed to the deemed owner of that portion. The S portion is taxed under the special rules of section 641(c), while the non-S portion is subject to the normal trust taxation rules of subparts A through D of subchapter J.

Commentators made several suggestions regarding the taxation of a grantor trust that elects to be an ESBT. Some suggested that the taxation rules of section 641(c) should override the grantor trust rules of section 671, and thus all tax items attributable to the trust's shares in the S corporation should be taxed to the trust, not the deemed owner. Some suggested the grantor trust rules should not apply to any tax items of a trust that makes an ESBT election. According to these commentators, this approach would eliminate administrative complexity in determining what portion of the trust is treated as owned by the deemed owner. Others suggested that the trustee should be permitted to elect to have all items attributable to the S corporation taxed to the trust, not to the deemed owner. Others suggested that none of the S items should be taxed to the deemed owner but that ESBTs should be subject to additional reporting requirements to ensure the collection of the proper tax. Another suggested that the deemed owner should be taxed on the items from an ESBT only if the deemed owner is treated as owning the entire trust, not just a portion of the trust. Other commentators agreed with the taxation regime set forth in the proposed regulations.

The IRS and the Treasury Department believe that the qualification and taxation of ESBTs are two separate issues and that the proposed regulations take the correct position regarding the taxation of grantor trusts that make ESBT elections. Section 1361(e)(1) expands the permissible shareholders of an S corporation to include trusts that meet the definition of an ESBT. Grantor trusts are not excluded from the definition of an ESBT and, therefore, are permitted to make ESBT elections. Making an ESBT election, however, does not alter the long established treatment of tax items attributable to the portion of a trust treated as owned by the grantor or another. Section 671 requires that items of income, deduction, and credit attributable to the portion of the trust treated as owned by a grantor or another must be taken into account by that deemed owner. Only remaining items of the trust are subject to the provisions of subparts A through D of subchapter J. The special taxation rules for ESBTs are contained in subpart A and, therefore, only apply to any portion of the trust that is not treated as owned by the grantor or another under subpart E.

As pointed out by one of the commentators, the issue of determining what portion, if any, of a trust is treated as owned by the grantor or another has existed for years in a much broader context than in the application of the ESBT rules. The special taxation rules of section 641(c) would apply only to S items, while normal trust taxation rules clearly apply to non-S items. As a result, taxing all the S items to the trust would not eliminate the need to determine what portion of the trust is a grantor trust and the resulting administrative difficulties with respect to the non-S tax items of the trust.

Some commentators requested clarification of the effect of an ESBT election by a grantor trust. One commentator suggested that if a wholly-owned grantor trust makes an ESBT election, only the deemed owner should be treated as the shareholder of the S corporation. Another commentator made a similar suggestion where the grantor has retained the power to amend or revoke the trust or to make gifts from the trust. The IRS and the Treasury Department believe that the definitional and qualification requirements of section 1361(e) apply to any trust that makes an ESBT election irrespective of whether it is a grantor trust. Therefore, the final regulations continue to provide that the deemed owner is treated as a PCB along with others who meet the definition of a PCB.

Charitable Contributions

The proposed regulations provide that if an otherwise allowable deduction of the S portion is attributable to a charitable contribution paid by the S corporation, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument and will be deductible if the other requirements of section 642(c)(1) are met. Several commentators requested clarification concerning the other requirements of section 642(c)(1), the application of the limitations under section 681, and the election to treat charitable payments made after the close of a taxable year as made during the taxable year. One commentator suggested that the S portion should be entitled to a deduction for its share of any charitable contribution made by the S corporation because it is a separately stated item under section 1366 that the S portion takes into account under section 641(c)(2)(C)(i).

Section 641(c)(2)(C) specifies the items of income, loss, deduction, or credit that the S portion is required to take into account in determining its tax. These items include items required to be taken into account under section 1366, that is, the trust's pro rata share of the S corporation's items passed through to it as a shareholder. Both section 641(c)(2)(C) and section 1366(a) reference items that must be taken into account but do not themselves provide the authority to include in income, deduct from income, or claim a credit with respect to those items. That authority comes from other Code sections. A charitable contribution made by an S corporation is required to be a separately stated item under section 1366 because whether the item is deductible depends on the identity of the shareholder and the provisions of the Code applicable to charitable contributions made by that type of shareholder. Thus, for an individual shareholder, the contribution is deductible only in accordance with the provisions of section 170, while for a trust or estate, the contribution is deductible only in accordance with the provisions of section 642(c).

The final regulations continue to provide that the S portion's share of a charitable contribution made by the S corporation is deductible only if it meets the requirements of section 642(c)(1). The final regulations clarify how those requirements apply to such a contribution. If a contribution is paid from the S corporation's gross income, the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument. The limitations of section 681, regarding unrelated business income, apply to determine whether the contribution is deductible by the S portion. The final regulations also clarify that the charitable contribution is deductible by the S portion, if at all, only in the year that it is an item required to be taken into account by the trust under section 1366. The trustee may not make the election to treat a contribution made by the S corporation after the close of the taxable year as made during the taxable year. This election is available only for charitable payments actually made by the trust, not for the trust's share of contributions made by another entity.

One commentator suggested that if the trust contributes S corporation stock to a charitable organization, the S portion should be entitled to a charitable deduction with respect to the contribution. Deductions available to the S portion are limited by section 641(c)(2)(C) to S corporation items required to be taken into account under section 1366 and the S portion's share of state and local income taxes and administrative expenses. Charitable contributions by the trust are not items included in the list of items that may be taken into account by the S portion under section 641(c)(2)(C).

Therefore, the final regulations do not change the rule that no deduction is available to either the S portion or the non-S portion with respect to a contribution of S corporation stock to charity.

Interest Paid on Loans To Acquire S Corporation Stock

The proposed regulations provide that interest expense incurred by the trust to purchase S corporation stock is allocated to the S portion but is not an administrative expense. Therefore, the interest is not an allowable deduction of the S portion under section 641(c)(2)(C)(iii). Several commentators suggested that the interest should be deductible. Some thought the interest should be allocated to the non-S portion and deducted under the investment interest limitations of section 163(d). Others thought the interest should be allocated to the S portion but should be considered a deductible administrative expense. One commentator suggested that if the shareholders are required to buy the stock of a departing shareholder pursuant to the terms of a stock purchase agreement, any interest expense incurred as a result of financing the stock purchase with a loan should be deductible when paid by an ESBT. Another commentator suggested that if interest paid on a loan to acquire S corporation stock is not deductible, it should be added to the basis of the acquired stock.

Because the purchase of S corporation stock increases the S portion, rather than the non-S portion, of the trust, interest expenses incurred in the purchase should be allocated to the S portion. These interest expenses would be deductible by the S portion only if they are "administrative expenses" under section 641(c)(2)(C)(iii). The IRS and the Treasury Department believe that, for purposes of section 641(c)(2)(C)(iii), "administrative expenses" include the traditional expenses necessary for the management and preservation of trust assets, but do not include expenses incurred to acquire additional assets. The final regulations, therefore, continue to provide that, in all cases, interest incurred to purchase S corporation stock is a nondeductible expense allocable to the S portion. Because there is no authority to permit nondeductible interest expenses to increase the basis of assets, the final regulations do not adopt this suggestion.

Tax Credit Carryovers

Section 641(c)(4) and the proposed regulations provide that if a trust is no longer an ESBT, any loss carryover or excess deductions of the S portion that are referred to in section 642(h) are taken into account by the entire trust or by the beneficiaries if the entire trust terminates. One commentator suggested that any tax credit carryovers of the S portion should receive similar treatment. Section 641(c)(4) permits the entire trust to take into account only those items specified in section 642(h), which does not include tax credit carryovers. The S portion's tax credit carryovers and any other items not listed in section 642(h) are forfeited once the trust is no longer an ESBT, just as they are upon the termination of a trust or estate. The final regulations, therefore, do not adopt the commentator's suggestion.

Distributions From the ESBT

One commentator suggested that the tax treatment of distributions to

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beneficiaries in the proposed regulations is inconsistent with section 641(c)(1)(A), which provides that the portion of an ESBT consisting of the S corporation stock is treated as a separate trust. The proposed regulations provide that distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are, to the extent of the distributable net income of the non-S portion, deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. The commentator recommended that, because the S portion and the non-S portion are treated as separate trusts, the source of the distribution should determine its tax treatment.

The final regulations do not adopt the commentator's suggestion because section 641(c)(3) provides that section 641(c) does not affect the taxation of any distribution from the trust except for the exclusion of the S portion items from the distributable net income of the entire trust. Thus, the rules otherwise applicable to trust distributions apply to ESBTs.

ESBT Election

The proposed regulations provide that the ESBT election is filed with the service center where the trust files its income tax returns. The election to be a qualified subchapter S trust (QSST) is filed with the service center where the S corporation files its income tax returns. The preamble to the proposed regulations requested comments on whether the rules for filing the QSST election should be changed so the election is filed with the service center where the trust files its returns. One commentator suggested there should be consistent filing locations for QSST elections, ESBT elections, and conversions from QSST to ESBT or ESBT to QSST. The commentator, therefore, suggested that all these documents be filed with the service center(s) where the trust and the S corporation file their returns.

The final regulations provide that the ESBT election and the election to convert from an ESBT to a QSST or from a QSST to an ESBT are all filed with the service center where the S corporation files its income tax returns. Thus, the rule in the final regulations will establish a consistent filing location for QSST and ESBT elections and conversions.

One commentator suggested that grantor trusts should be permitted to make protective ESBT elections in light of the uncertain status of some trusts that may be grantor trusts under section 674. The IRS and the Treasury Department continue to believe that a conditional ESBT election that only becomes effective in the event the trust is not a wholly-owned grantor trust should not be available. A conditional ESBT election should not be allowed because the ESBT election must have a fixed effective date. If, in the absence of a conditional ESBT election, the trust is an ineligible shareholder, relief under section 1362(f) may be available for an S corporation. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

Expedited Section 1362(f) Relief

In several contexts, commentators requested some form of expedited relief if an S corporation's election is inadvertently ineffective or is inadvertently terminated. In all these situations, the S corporation may seek relief under section 1362(f). The facts and circumstances of a particular situation are considered in determining whether relief is available, and the procedures for obtaining this relief are well established.

Effect Under Section 1377 of Change in Status of a Trust

A commentator suggested that a trust's conversion to an ESBT should result in a complete termination of the trust's interest in the S corporation for purposes of section 1377(a)(2) because the incidence of taxation with respect to S corporation items will change as a result of the ESBT election. The proposed regulations provide that the election would result in a termination only if, prior to the election, the trust was described in section 1361(c)(2)(A)(ii) or (iii). The commentator also recommended that the regulations address the conversion from an ESBT to another type of trust and the availability of an election under § 1.1368–1(g) to treat the S corporation's taxable year as two separate years in the case of a qualifying disposition.

The final regulations do not adopt the suggestion that all conversions of a trust to an ESBT should be treated as a complete termination of the trust's interest in the S corporation for purposes of section 1377(a)(2). The final regulations expand on the rule in the proposed regulations to cover all types of conversions. Under this rule, conversion of a trust to an ESBT or a QSST does not result in the prior trust terminating its entire interest in the S corporation, unless the prior trust was described in section 1361(c)(2)(A)(ii) or (iii). When a trust described in section 1361(c)(2)(A)(ii) or (iii) converts to an ESBT or a QSST, the shareholders of the S corporation under section 1361(c)(2)(B) change from the estate of the deemed owner or testator to the PCBs of the ESBT, or the current income beneficiary of the QSST. When a trust changes from a wholly-owned grantor trust or QSST to an ESBT or from an ESBT to a QSST, the individuals who are shareholders of the S corporation under section 1361(c)(2)(B) remain the same. The election to terminate the taxable year provided in section 1377(a)(2) applies to the termination of a *shareholder's* interest in the S corporation.

Accordingly, it is appropriate to treat the conversion of a trust described in section 1361(c)(2)(A)(ii) or (iii) to an ESBT or QSST as a termination of the prior trust's interest in the S corporation, but not to treat other conversions to an ESBT or QSST as terminations. The election under § 1.1368–1(g) is also not available because the conversion of the trust is not a qualifying disposition.

Section 444 Elections

One commentator suggested that the final regulations permit an S corporation to retroactively reinstate a section 444 election that it had treated as terminated by operation of § 1.444–2T(a) (prior to the issuance of the temporary regulations) as a result of an ESBT or certain tax-exempt trusts becoming a shareholder of the corporation under the auspices of the 1996 Act. The commentator believes that failure to provide such relief would result in inequitable treatment of such S corporations because, under the rules of section 444, once their elections are terminated, they are precluded from again making a section 444 election.

The IRS and the Treasury Department believe that it is appropriate to allow S corporations under these circumstances to request that the IRS disregard the termination and permit the S corporation to continue to use the same fiscal year that it used previously under section 444. However, for reasons of administrative convenience, and in order to reduce the burden on taxpayers of having to file amended returns and make retroactive payments under section 7519, the prior termination will be disregarded only at the S corporation's request, and on a prospective basis.

The final regulations provide a procedure for such requests. To illustrate the procedure, assume that, prior to 1997, an S corporation had made a section 444 election to use a taxable year ending on September 30th. On January 1, 1997, an ESBT acquired a shareholder interest in the S corporation. The S corporation treated its 444 election as terminated under § 1.444–2T(a) as a result of the ESBT's shareholder interest. The S corporation changed to its required taxable year for the short period beginning October 1, 1996, and ending December 31, 1996, and filed Form 1120S, "U.S. Income Tax Return for an S Corporation," on the basis of a calendar year for all subsequent taxable years.

Under the final regulations, the S corporation may request that the IRS disregard the prior termination by filing Form 8716, "Election to Have a Tax Year Other Than a Required Tax Year," with the appropriate Service Center by October 15, 2002, and by designating on the form "CONTINUATION OF SECTION 444 ELECTION UNDER § 1.444–4." The Form 8716 must indicate that under the S corporation's prior section 444 election, it used a taxable year ending September 30th. The request will be effective for the taxable year beginning January 1, 2002. No amended returns, no retroactive payments under section 7519, and no returns under § 1.7519–2T(a) for previous years in which the S corporation used its required year are required as a result of the request. Moreover, the S corporation need not make a required payment under section 7519 for its taxable year ending September 30, 2002; its first required payment for the taxable year beginning October 1, 2002, is due on May 15, 2003. The S corporation will be required to file a return under § 1.7519–2T for each taxable year beginning on or after January 1, 2002.

Effective Dates

The portion of the regulations involving the taxation of the grantor, S, and non-S portions of an ESBT was proposed to be applicable for taxable years of ESBTs that end on or after December 29, 2000, the date that the proposed regulations were published in the **Federal Register**. The remainder of the regulations involving ESBTs was proposed to be applicable on or after the date that final regulations are published in the **Federal Register**. Several commentators expressed concerns about the proposed applicability with regard to the taxation of the grantor portion of an ESBT. One commentator suggested that the proposed effective date discriminated against trusts with a situs in Guam. Others suggested that the rules regarding taxation of the grantor portion should not be applicable before the date the final regulations are published. One commentator suggested that these rules should only apply either to trusts created after the final regulations are published or after a substantial transition period.

The IRS and the Treasury Department believe that the applicable date for the rules concerning the taxation of an ESBT with a grantor portion is reasonable and appropriate. These rules do not discriminate against trusts with a particular situs because they apply to all trusts wherever situated. In the case of a grantor trust that made an ESBT election, the tax treatment of the grantor portion set forth in the proposed regulations may be different from the tax treatment that the trust and the grantor had thought was available. The proposed regulations, however, were published before the end of the 2000 taxable year and before income from that taxable year was required to be included on any person's income tax return. Thus, prior to the filing of income tax returns for 2000, it was known that the income from the grantor portion of the trust was to be taken into account by the deemed owner, not by the trust. In some situations, the trust, rather than the deemed owner, may have made estimated tax payments. Recognizing that the payment of estimated tax by the trust might subject the deemed owner to a penalty for underpayment of estimated taxes, the IRS and the Treasury Department provided relief by issuing Notice 2001–25 (2001–13 I.R.B. 941). That Notice provides procedures for a trust to elect to have its estimated tax payments credited to the account of the deemed owner and provides that, for purposes of calculating any underpayment of estimated tax, income attributable to the S corporation was to be taken into account on the last day of the deemed owner's 2000 taxable year.

Some commentators were concerned that existing ESBTs with currently exercisable, broad powers of appointments have resulted in S corporations exceeding the shareholder limit and have caused the termination of the S corporations' elections. The regulations regarding the definition of PCBs are applicable only for taxable years of ESBTs that begin on or after May 14, 2002. Therefore, persons who may receive a distribution from an ESBT pursuant to a currently exercisable power of appointment will not be considered PCBs of the ESBT until the first day of the ESBT's first taxable year that begins on or after May 14, 2002, and the S corporation's election will not terminate before that date. In addition, under section 1361(e)(2) if the trust disposes of all its stock in the S corporation within 60 days after that date, the persons, who would first meet the definition of PCBs on that date, will not be PCBs and the S corporation's status will not be affected.

One commentator was concerned by the applicability date of the regulations involving the deductibility of state and local income taxes and administrative expenses. Section 641(c)(2)(C)(iii) provides that the S portion may take into account its allocable share of state and local income taxes and administrative expenses, but only to the extent provided in the regulations. The commentator noted that before final regulations are issued there is no authority for an ESBT to deduct any of these items. Therefore, the commentator requested that trusts be allowed to rely on the regulatory provisions regarding these items for taxable years beginning after December 31, 1996. The effective date provisions have been modified based on this suggestion.

Additional Provisions

The final regulations clarify that the basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately.

Effect on Other Documents

The following documents are superseded for taxable years of ESBTs beginning on and after May 14, 2002.

Notice 97–12 (1997–1 C.B. 385)
Notice 97–49 (1997–2 C.B. 304)
Rev. Proc. 98–23 (1998–1 C.B. 662)

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collections of information in the regulations will not have a significant economic impact on a substantial number of small entities. This certification is based upon the fact that (1) the estimated average burden per trust in complying with the collections of information in § 1.1361–1(m) is 1 hour, and (2) the requirement for S corporations to comply with § 1.444–4(c) will affect very few taxpayers and the associated burden is minimal. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C.

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chapter 6) is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on the regulations' impact on small business.

Drafting Information

The principal authors of these regulations are Bradford Poston and James A. Quinn of the Office of Associate Chief Counsel (Passthroughs and Special Industries), IRS. However, other personnel from the IRS and the Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805. * * *

Section 1.444–4 is also issued under 26 U.S.C. 444(g). * * *

Par. 2. Section 1.444–4 is added to read as follows:

§ 1.444–4 Tiered structure.

(a) *Electing small business trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is treated as an electing small business trust under section 1361(e). An S corporation with an electing small business trust as a shareholder may make an election under section 444. This paragraph is applicable to taxable years beginning on and after December 29, 2000; however, taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1996.

(b) *Certain tax-exempt trusts.* For purposes of § 1.444–2T, solely with respect to an S corporation shareholder, the term *deferral entity* does not include a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a). An S corporation with a trust as a shareholder that is described in section 401(a) or section 501(c)(3), and is exempt from taxation under section 501(a) may make an election under section 444. This paragraph is applicable to taxable years beginning on and after December 29, 2000; however taxpayers may voluntarily apply it to taxable years of S corporations beginning after December 31, 1997.

(c) *Certain terminations disregarded—*(1) *In general.* An S corporation that is described in this paragraph (c)(1) may request that a termination of its election under section 444 be disregarded, and that the S corporation be permitted to resume use of the year it previously elected under section 444, by following the procedures of paragraph (c)(2) of this section. An S corporation is described in this paragraph if the S corporation is otherwise qualified to make a section 444 election, and its previous election was terminated under § 1.444–2T(a) solely because—

(i) In the case of a taxable year beginning after December 31, 1996, a trust that is treated as an electing small business trust became a shareholder of such S corporation; or

(ii) In the case of a taxable year beginning after December 31, 1997, a trust that is described in section 401(a) or 501(c)(3), and is exempt from taxation under section 501(a) became a shareholder of such S corporation.

(2) *Procedure—*(i) *In general.* An S corporation described in paragraph (c)(1) of this section that wishes to make the request described in paragraph (c)(1) of this section must do so by filing Form 8716, "Election To Have a Tax Year Other Than a Required Tax Year," and typing or printing legibly at the top of such form—"CONTINUATION OF SECTION 444 ELECTION UNDER § 1.444–4." In order to assist the Internal Revenue Service in updating the S corporation's account, on Line 5 the Box "Changing to" should be checked. Additionally, the election month indicated must be the last month of the S corporation's previously elected section 444 election year, and the effective year indicated must end in 2002.

(ii) *Time and place for filing Form 8716.* Such form must be filed on or before October 15, 2002, with the service center where the S corporation's returns of tax (Forms 1120S) are filed. In addition, a copy of the Form 8716 should be attached to the S corporation's short period Federal income tax return for the first election year beginning on or after January 1, 2002.

(3) *Effect of request—*(i) *Taxable years beginning on or after January 1, 2002.* An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will be permitted to resume use of the year it previously elected under section 444, commencing with its first taxable year beginning on or after January 1, 2002. Such S corporation will be required to file a return under § 1.7519–2T for each taxable year beginning on or after January 1, 2002. No payment under section 7519 will be due with respect to the first taxable year beginning on or after January 1, 2002. However, a required payment will be due on or before May 15, 2003, with respect to such S corporation's second continued section 444 election year that begins in calendar year 2002.

(ii) *Taxable years beginning prior to January 1, 2002.* An S corporation described in paragraph (c)(1) of this section that requests, in accordance with this paragraph, that a termination of its election under section 444 be disregarded will not be required to amend any prior Federal income tax returns, make any required payments under section 7519, or file any returns under § 1.7519–2T, with respect to taxable years beginning on or after the date the termination of its section 444 election was effective and prior to January 1, 2002.

(iii) *Section 7519: required payments and returns.* The Internal Revenue Service waives any requirement for an S corporation described in paragraph (c)(1) of this section to file the federal tax returns and make any required payments under section 7519 for years prior to the taxable year of continuation as described in paragraph (c)(3)(i) of this section, if for such years the S corporation filed its federal income tax returns on the basis of its required taxable year.

§ 1.444–4T [Removed]

Par. 3. Section 1.444–4T is removed.

Par. 4. Sections 1.641(c)–0 and 1.641(c)–1 are added to read as follows:

§ 1.641(c)–0 Table of contents.

This section lists the major captions contained in § 1.641(c)–1.

§ 1.641(c)–1 Electing small business trust.

(a) In general.
(b) Definitions.
(1) Grantor portion.
(2) S portion.
(3) Non-S portion.
(c) Taxation of grantor portion.
(d) Taxation of S portion.
(1) In general.
(2) Section 1366 amounts.
(3) Gains and losses on disposition of S stock.
(4) State and local income taxes and administrative expenses.
(e) Tax rates and exemption of S portion.
(1) Income tax rate.
(2) Alternative minimum tax exemption.
(f) Adjustments to basis of stock in the S portion under section 1367.
(g) Taxation of non-S portion.
(1) In general.
(2) Dividend income under section 1368(c)(2).
(3) Interest on installment obligations.
(4) Charitable deduction.
(h) Allocation of state and local income taxes and administration expenses.
(i) Treatment of distributions from the trust.
(j) Termination or revocation of ESBT election.
(k) Effective date.
(l) Examples.

§ 1.641(c)–1 Electing small business trust.

(a) *In general.* An electing small business trust (ESBT) within the meaning of section 1361(e) is treated as two separate trusts for purposes of chapter 1 of the Internal Revenue Code. The portion of an ESBT that consists of stock in one or more S corporations is treated as one trust. The portion of an ESBT that consists of all the other assets in the trust is treated as a separate trust. The grantor or another person may be treated as the owner of all or a portion of either or both such trusts under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code. The ESBT is treated as a single trust for administrative purposes, such as having one taxpayer identification number and filing one tax return. *See* § 1.1361–1(m).

(b) *Definitions—*(1) *Grantor portion.* The grantor portion of an ESBT is the portion of the trust that is treated as owned by the grantor or another person under subpart E.

(2) *S portion.* The S portion of an ESBT is the portion of the trust that consists of S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(3) *Non-S portion.* The non-S portion of an ESBT is the portion of the trust that consists of all assets other than S corporation stock and that is not treated as owned by the grantor or another person under subpart E.

(c) *Taxation of grantor portion.* The grantor or another person who is treated as the owner of a portion of the ESBT includes in computing taxable income items of income, deductions, and credits against tax attributable to that portion of the ESBT under section 671.

(d) *Taxation of S portion—*(1) *In general.* The taxable income of the S portion is determined by taking into account only the items of income, loss, deduction, or credit specified in paragraphs (d)(2), (3), and (4) of this section, to the extent not attributable to the grantor portion.

(2) *Section 1366 amounts—*(i) *In general.* The S portion takes into account the items of income, loss, deduction, or credit that are taken into account by an S corporation shareholder pursuant to section 1366 and the regulations thereunder. Rules otherwise applicable to trusts apply in determining the extent to which any loss, deduction, or credit may be taken into account in determining the taxable income of the S portion. *See* § 1.1361–1(m)(3)(iv) for allocation of those items in the taxable year of the S corporation in which the trust is an ESBT for part of the year and an eligible shareholder under section 1361(a)(2)(A)(i) through (iv) for the rest of the year.

(ii) *Special rule for charitable contributions.* If a deduction described in paragraph (d)(2)(i) of this section is attributable to an amount of the S corporation's gross income that is paid by the S corporation for a charitable purpose specified in section 170(c) (without regard to section 170(c)(2)(A)), the contribution will be deemed to be paid by the S portion pursuant to the terms of the trust's governing instrument within the meaning of section 642(c)(1). The limitations of section 681, regarding unrelated business income, apply in determining whether the contribution is deductible in computing the taxable income of the S portion.

(iii) *Multiple S corporations.* If an ESBT owns stock in more than one S corporation, items of income, loss, deduction, or credit from all the S corporations are aggregated for purposes of determining the S portion's taxable income.

(3) *Gains and losses on disposition of S stock—*(i) *In general.* The S portion takes into account any gain or loss from the disposition of S corporation stock. No deduction is allowed under section 1211(b)(1) and (2) for capital losses that exceed capital gains.

(ii) *Installment method.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the income recognized under this method is taken into account by the S portion. See paragraph (g)(3) of this section for the treatment of interest on the installment obligation. See § 1.1361–1(m)(5)(ii) regarding treatment of a trust as an ESBT upon the sale of all S corporation stock using the installment method.

(iii) *Distributions in excess of basis.* Gain recognized under section 1368(b)(2) from distributions in excess of the ESBT's basis in its S corporation stock is taken into account by the S portion.

(4) *State and local income taxes and administrative expenses—*(i) *In general.* State and local income taxes and administrative expenses directly related to the S portion and those allocated to that portion in accordance with paragraph (h) are taken into account by the S portion.

(ii) *Special rule for certain interest.* Interest paid by the trust on money borrowed by the trust to purchase stock in an S corporation is allocated to the S portion but is not a deductible administrative expense for purposes of determining the taxable income of the S portion.

(e) *Tax rates and exemption of S portion—*(1) *Income tax rate.* Except for capital gains, the highest marginal trust rate provided in section 1(e) is applied to the taxable income of the S portion. See section 1(h) for the rates that apply to the S portion's net capital gain.

(2) *Alternative minimum tax exemption.* The exemption amount of the S portion under section 55(d) is zero.

(f) *Adjustments to basis of stock in the S portion under section 1367.* The basis of S corporation stock in the S portion must be adjusted in accordance with section 1367 and the regulations thereunder. If the ESBT owns stock in more than one S corporation, the adjustments to the basis in the S corporation stock of each S corporation must be determined separately with respect to each S corporation. Accordingly, items of income, loss, deduction, or credit of an S corporation that are taken into account by the ESBT under section 1366 can only result in an adjustment to the basis of the stock of that S corporation and cannot affect the basis in the stock of the other S corporations held by the ESBT.

(g) *Taxation of non-S portion—*(1) *In general.* The taxable income of the non-S portion is determined by taking into account all items of income, deduction, and credit to the extent not taken into account by either the grantor portion or the S portion. The items attributable to the non-S portion are taxed under subparts A through D of part I, subchapter J, chapter 1 of the Internal Revenue Code. The non-S portion may consist of more than one share pursuant to section 663(c).

(2) *Dividend income under section 1368(c)(2).* Any dividend income within the meaning of section 1368(c)(2) is includible in the gross income of the non-S portion.

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(3) *Interest on installment obligations.* If income from the sale or disposition of stock in an S corporation is reported by the trust on the installment method, the interest on the installment obligation is includible in the gross income of the non-S portion. See paragraph (d)(3)(ii) of this section for the treatment of income from such a sale or disposition.

(4) *Charitable deduction.* For purposes of applying section 642(c)(1) to payments made by the trust for a charitable purpose, the amount of gross income of the trust is limited to the gross income of the non-S portion. See paragraph (d)(2)(ii) of this section for special rules concerning charitable contributions paid by the S corporation that are deemed to be paid by the S portion.

(h) *Allocation of state and local income taxes and administration expenses.* Whenever state and local income taxes or administration expenses relate to more than one portion of an ESBT, they must be allocated between or among the portions to which they relate. These items may be allocated in any manner that is reasonable in light of all the circumstances, including the terms of the governing instrument, applicable local law, and the practice of the trustee with respect to the trust if it is reasonable and consistent. The taxes and expenses apportioned to each portion of the ESBT are taken into account by that portion.

(i) *Treatment of distributions from the trust.* Distributions to beneficiaries from the S portion or the non-S portion, including distributions of the S corporation stock, are deductible under section 651 or 661 in determining the taxable income of the non-S portion, and are includible in the gross income of the beneficiaries under section 652 or 662. However, the amount of the deduction or inclusion cannot exceed the amount of the distributable net income of the non-S portion. Items of income, loss, deduction, or credit taken into account by the grantor portion or the S portion are excluded for purposes of determining the distributable net income of the non-S portion of the trust.

(j) *Termination or revocation of ESBT election.* If the ESBT election of the trust terminates pursuant to § 1.1361–1(m)(5) or the ESBT election is revoked pursuant to § 1.1361–1(m)(6), the rules contained in this section are thereafter not applicable to the trust. If, upon termination or revocation, the S portion has a net operating loss under section 172; a capital loss carryover under section 1212; or deductions in excess of gross income; then any such loss, carryover, or excess deductions shall be allowed as a deduction, in accordance with the regulations under section 642(h), to the trust, or to the beneficiaries succeeding to the property of the trust if the entire trust terminates.

(k) *Effective date.* This section generally is applicable for taxable years of ESBTs beginning on and after May 14, 2002. However, paragraphs (a), (b), (c), and (l) *Example 1* of this section are applicable for taxable years of ESBTs that end on and after December 29, 2000. ESBTs may apply paragraphs (d)(4) and (h) of this section for taxable years of ESBTs beginning after December 31, 1996.

(l) *Examples.* The following examples illustrate the rules of this section:

Example 1. Comprehensive example. (i) Trust has a valid ESBT election in effect. Under section 678, *B* is treated as the owner of a portion of Trust consisting of a 10% undivided fractional interest in Trust. No other person is treated as the owner of any other portion of Trust under subpart E. Trust owns stock in *X*, an S corporation, and in *Y*, a C corporation. During 2000, Trust receives a distribution from *X* of $5,100, of which $5,000 is applied against Trust's adjusted basis in the *X* stock in accordance with section 1368(c)(1), and $100 is a dividend under section 1368(c)(2). Trust makes no distributions to its beneficiaries during the year.

(ii) For 2000, Trust has the following items of income and deduction:

Ordinary income attributable to *X* under section 1366	$5,000
Dividend income from *Y*	$900
Dividend from *X* representing C corporation earnings and profits	$100
Total trust income	$6,000
Charitable contributions attributable to *X* under section 1366	$300
Trustee fees	$200
State and local income taxes	$100

(iii) Trust's items of income and deduction are divided into a grantor portion, an S portion, and a non-S portion for purposes of determining the taxation of those items. Income is allocated to each portion as follows:

B must take into account the items of income attributable to the grantor portion, that is, 10% of each item, as follows:

Ordinary income from *X*	$500
Dividend income from *Y*	$90
Dividend income from *X*	$10
Total grantor portion income	$600

The total income of the S portion is $4,500, determined as follows:

Ordinary income from *X*	$5,000
Less: Grantor portion	($500)
Total S portion income	$4,500

The total income of the non-S portion is $900 determined as follows:

Dividend income from *Y* (less grantor portion)	$810
Dividend income from *X* (less grantor portion)	$90
Total non-S portion income	$900

(iv) The administrative expenses and the state and local income taxes relate to all three portions and under state law would be allocated ratably to the $6,000 of trust income. Thus, these items would be allocated 10% (600/6000) to the grantor portion, 75% (4500/6000) to the S portion and 15% (900/6000) to the non-S portion.

(v) *B* must take into account the following deductions attributable to the grantor portion of the trust:

Charitable contributions from *X*	$30
Trustee fees	$20
State and local income taxes	$10

(vi) The taxable income of the S portion is $4,005, determined as follows:

Ordinary income from *X*	$4,500
Less: Charitable contributions from *X* (less grantor portion)	($270)
75% of trustee fees	($150)
75% of state and local income taxes	($75)
Taxable income of S portion	$4,005

(vii) The taxable income of the non-S portion is $755, determined as follows:

Dividend income from *Y*	$810
Dividend income from *X*	$90
Total non-S portion income	$900
Less: 15% of trustee fees	($30)
15% state and local income taxes	($15)
Personal exemption	($100)
Taxable income of non-S portion	$755

Example 2. Sale of S stock. Trust has a valid ESBT election in effect and owns stock in *X*, an S corporation. No person is treated as the owner of any portion of Trust under subpart E. In 2003, Trust sells all of its stock in *X* to a person who is unrelated to Trust and its beneficiaries and realizes a capital gain of $5,000. This gain is taken into account by the S portion and is taxed using the appropriate capital gain rate found in section 1(h).

Example 3. (i) Sale of S stock for an installment note. Assume the same facts as in *Example 2*, except that Trust sells its stock in *X* for a $400,000 installment note payable with stated interest over ten years. After the sale, Trust does not own any S corporation stock.

(ii) *Loss on installment sale.* Assume Trust's basis in its *X* stock was $500,000. Therefore, Trust sustains a capital loss of $100,000 on the sale. Upon the sale, the S portion terminates and the excess loss, after being netted against the other items taken into account by the S portion, is made available to the entire trust as provided in section 641(c)(4).

(iii) *Gain on installment sale.* Assume Trust's basis in its *X* stock was $300,000 and that the $100,000 gain will be recognized under the installment method of section 453. Interest income will be recognized annually as part of the installment payments. The portion of the $100,000 gain recognized annually is taken into account by the S portion. However, the annual interest income is includible in the gross income of the non-S portion.

Example 4. Charitable lead annuity trust. Trust is a charitable lead annuity trust which is not treated as owned by the grantor or another person under subpart E. Trust acquires stock in *X*, an S corporation, and elects to be an ESBT. During the taxable year, pursuant to its terms, Trust pays $10,000 to a charitable organization described in section 170(c)(2). The non-S portion of Trust receives an income tax deduction for the charitable contribution under section 642(c) only to the extent the amount is paid out of the gross income of the non-S portion. To the extent the amount is paid from the S portion by distributing S corporation stock, no charitable deduction is available to the S portion.

Example 5. ESBT distributions. (i) As of January 1, 2002, Trust owns stock in *X*, a C corporation. No portion of Trust is treated as owned by the grantor or another person under subpart E. *X* elects to be an S corporation effective January 1, 2003, and Trust elects to be an ESBT effective January 1, 2003. On February 1, 2003, *X* makes an $8,000 distribution to Trust, of which $3,000 is treated as a dividend from accumulated earnings and profits under section 1368(c)(2) and the remainder is applied against Trust's basis in the *X* stock under section 1368(b). The trustee of Trust makes a distribution of $4,000 to Beneficiary during 2003. For 2003, Trust's share of *X*'s section 1366 items is $5,000 of ordinary income. For the year, Trust has no other income and no expenses or state or local taxes.

(ii) For 2003, Trust has $5,000 of taxable income in the S portion. This income is taxed to Trust at the maximum rate provided in section 1(e). Trust also has $3,000 of distributable net income (DNI) in the non-S portion. The non-S portion of Trust receives a distribution deduction under section 661(a) of $3,000, which represents the amount distributed to Beneficiary during the year ($4,000), not to exceed the amount of DNI ($3,000). Beneficiary must include this amount in gross income under section 662(a). As a result, the non-S portion has no taxable income.

Par. 5. Section 1.1361–0 is amended by adding entries for § 1.1361–1(j)(12) and (m) to read as follows:

§ 1.1361–0 Table of contents.

* * * * *

§ 1.1361–1 S corporation defined.

* * * * *

(j) * * *

(12) Converting a QSST to an ESBT.

* * * * *

(m) Electing small business trust (ESBT).

(1) Definition.

(2) ESBT election.

(3) Effect of ESBT election.

(4) Potential current beneficiaries.

(5) ESBT terminations.

(6) Revocation of ESBT election.

(7) Converting an ESBT to a QSST.

(8) Examples.

(9) Effective date.

* * * * *

Par. 6. Section 1.1361–1 is amended by:

1. Adding paragraphs (h)(1)(vi) and (h)(3)(i)(F).

2. Adding a sentence to the beginning of paragraph (h)(3)(ii) introductory text.

3. Adding paragraph (j)(12).

4. Adding a sentence to the end of paragraph (k)(2)(i).

5. Adding paragraph (m).

The additions read as follows:

§ 1.1361–1 S corporation defined.

* * * * *

(h) * * *

(1) * * *

(vi) *Electing small business trusts.* An electing small business trust (ESBT) under section 1361(e). See paragraph (m) of this section for rules concerning ESBTs including the manner of making the election to be an ESBT under section 1361(e)(3).

* * * * *

(3) * * *

(i) * * *

(F) If S corporation stock is held by an ESBT, each potential current beneficiary is treated as a shareholder. However, if for any period there is no potential current beneficiary of the ESBT, the ESBT is treated as the shareholder during such period. See paragraph (m)(4) of this section for the definition of potential current beneficiary.

* * * * *

(ii) * * * *See* § 1.641(c)–1 for the rules for the taxation of an ESBT. * * *

* * * * *

(j) * * *

(12) *Converting a QSST to an ESBT.* For a trust that seeks to convert from a QSST to an ESBT, the consent of the Commissioner is hereby granted to revoke the QSST election as of the effective date of the ESBT election, if all the following requirements are met:

(i) The trust meets all of the requirements to be an ESBT under paragraph (m)(1) of this section except for the requirement under paragraph (m)(1)(iv)(A) of this section that the trust not have a QSST election in effect.

(ii) The trustee and the current income beneficiary of the trust sign the ESBT election. The ESBT election must be filed with the service center where the S corporation files its income tax return. This ESBT election must state at the top of the document "ATTENTION ENTITY CONTROL—CONVERSION OF A QSST TO AN ESBT PURSUANT TO SECTION 1.1361–1(j)" and include all information otherwise required for an ESBT election under paragraph (m)(2) of this section. A separate election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from an ESBT to a QSST within the 36-month period preceding the effective date of the new ESBT election.

(iv) The date on which the ESBT election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(k) * * *

(2) * * *

(i) * * * Paragraphs (h)(1)(vi), (h)(3)(i)(F), (h)(3)(ii), and (j)(12) of this section are applicable for taxable years beginning on and after May 14, 2002.

* * * * *

(m) *Electing small business trust (ESBT)*—(1) *Definition*—(i) *General rule.* An electing small business trust (ESBT) means any trust if it meets the following requirements: the trust does not have as a beneficiary any person other than an individual, an estate, an organization described in section 170(c)(2) through (5), or an organization described in section 170(c)(1) that holds a contingent interest in such trust and is not a potential current beneficiary; no interest in the trust has been acquired by purchase; and the trustee of the trust makes a timely ESBT election for the trust.

(ii) *Qualified beneficiaries*—(A) *In general.* For purposes of this section, a beneficiary includes a person who has a present, remainder, or reversionary interest in the trust.

(B) *Distributee trusts.* A distributee trust is the beneficiary of the ESBT only if the distributee trust is an organization described in section 170(c)(2) or (3). In all other situations, any person who has a beneficial interest in a distributee trust

is a beneficiary of the ESBT. A distributee trust is a trust that receives or may receive a distribution from an ESBT, whether the rights to receive the distribution are fixed or contingent, or immediate or deferred.

(C) *Powers of appointment.* A person in whose favor a power of appointment could be exercised is not a beneficiary of an ESBT until the holder of the power of appointment actually exercises the power in favor of such person.

(D) *Nonresident aliens.* A nonresident alien as defined in section 7701(b)(1)(B) is an eligible beneficiary of an ESBT. However, see paragraph (m)(4)(i) and (m)(5)(iii) of this section if the nonresident alien is a potential current beneficiary of the ESBT (which would result in an ineligible shareholder and termination of the S corporation election).

(iii) *Interests acquired by purchase.* A trust does not qualify as an ESBT if any interest in the trust has been acquired by purchase. Generally, if a person acquires an interest in the trust and thereby becomes a beneficiary of the trust as defined in paragraph (m)(1)(ii)(A), and any portion of the basis in the acquired interest in the trust is determined under section 1012, such interest has been acquired by purchase. This includes a net gift of a beneficial interest in the trust, in which the person acquiring the beneficial interest pays the gift tax. The trust itself may acquire S corporation stock or other property by purchase or in a part-gift, part-sale transaction.

(iv) *Ineligible trusts.* An ESBT does not include—

(A) Any qualified subchapter S trust (as defined in section 1361(d)(3)) if an election under section 1361(d)(2) applies with respect to any corporation the stock of which is held by the trust;

(B) Any trust exempt from tax or not subject to tax under subtitle A; or

(C) Any charitable remainder annuity trust or charitable remainder unitrust (as defined in section 664(d)).

(2) *ESBT election*—(i) *In general.* The trustee of the trust must make the ESBT election by signing and filing, with the service center where the S corporation files its income tax return, a statement that meets the requirements of paragraph (m)(2)(ii) of this section. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must sign the election statement. If any one of several trustees can legally bind the trust, only one trustee needs to sign the election statement. Generally, only one ESBT election is made for the trust, regardless of the number of S corporations whose stock is held by the ESBT. However, if the ESBT holds stock in multiple S corporations that file in different service centers, the ESBT election must be filed with all the relevant service centers where the corporations file their income tax returns. This requirement applies only at the time of the initial ESBT election; if the ESBT later acquires stock in an S corporation which files its income tax return at a different service center, a new ESBT election is not required.

(ii) *Election statement.* The election statement must include—

(A) The name, address, and taxpayer identification number of the trust, the potential current beneficiaries, and the S corporations in which the trust currently owns stock;

(B) An identification of the election as an ESBT election made under section 1361(e)(3);

(C) The first date on which the trust owned stock in each S corporation;

(D) The date on which the election is to become effective (not earlier than 15 days and two months before the date on which the election is filed); and

(E) Representations signed by the trustee stating that—

(*1*) The trust meets the definitional requirements of section 1361(e)(1); and

(*2*) All potential current beneficiaries of the trust meet the shareholder requirements of section 1361(b)(1).

(iii) *Due date for ESBT election.* The ESBT election must be filed within the time requirements prescribed in paragraph (j)(6)(iii) of this section for filing a qualified subchapter S trust (QSST) election.

(iv) *Election by a trust described in section 1361(c)(2)(A)(ii) or (iii).* A trust that is a qualified S corporation shareholder under section 1361(c)(2)(A)(ii) or (iii) may elect ESBT treatment at any time during the 2-year period described in those sections or the 16-day-and-2-month period beginning on the date after the end of the 2-year period. If the trust makes an ineffective ESBT election, the trust will continue nevertheless to qualify as an eligible S corporation shareholder for the remainder of the period described in section 1361(c)(2)(A)(ii) or (iii).

(v) *No protective election.* A trust cannot make a conditional ESBT election that would be effective only in the event the trust fails to meet the requirements for an eligible trust described in section 1361(c)(2)(A)(i) through (iv). If a trust attempts to make such a conditional ESBT election and it fails to qualify as an eligible S corporation shareholder under section 1361(c)(2)(A)(i) through (iv), the S corporation election will be ineffective or will terminate because the corporation will have an ineligible shareholder. Relief may be available under section 1362(f) for an inadvertent ineffective S corporation election or an inadvertent S corporation election termination. In addition, a trust that qualifies as an ESBT may make an ESBT election notwithstanding that the trust is a wholly-owned grantor trust.

(3) *Effect of ESBT election*—(i) *General rule.* If a trust makes a valid ESBT election, the trust will be treated as an ESBT for purposes of chapter 1 of the Internal Revenue Code as of the effective date of the ESBT election.

(ii) *Employer Identification Number.* An ESBT has only one employer identification number (EIN). If an existing trust makes an ESBT election, the trust continues to use the EIN it currently uses.

(iii) *Taxable year.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the ESBT election does not cause the trust's taxable year to close. The termination of the ESBT election (including a termination caused by a conversion of the ESBT to a QSST) other than on the last day of the trust's taxable year also does not cause the trust's taxable year to close. In either case, the trust files one tax return for the taxable year.

(iv) *Allocation of S corporation items.* If, during the taxable year of an S corporation, a trust is an ESBT for part of the year and an eligible shareholder under section 1361(c)(2)(A)(i) through (iv) for the rest of the year, the S corporation items are allocated between the two types of trusts under section 1377(a). See § 1.1377–1(a)(2)(iii).

(v) *Estimated taxes.* If an ESBT election is effective on a day other than the first day of the trust's taxable year, the trust is considered one trust for purposes of estimated taxes under section 6654.

(4) *Potential current beneficiaries*—(i) *In general.* For purposes of determining whether a corporation is a small business corporation within the meaning of section 1361(b)(1), each potential current beneficiary of an ESBT generally is treated as a shareholder of the corporation. Subject to the provisions of this paragraph (m)(4), a potential current beneficiary generally is, with respect to any period, any person who at any time during such period is entitled to, or in the discretion of any person may receive, a distribution from the principal or income of the trust. A person is treated as a shareholder of the S corporation at any moment in time when that person is entitled to, or in the discretion of any person may, receive a distribution of principal or income of the trust. No person is treated as a potential current beneficiary solely because that person holds any future interest in the trust.

(ii) *Grantor trusts.* If all or a portion of an ESBT is treated as owned by a person under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code, such owner is a potential current beneficiary in addition to persons described in paragraph (m)(4)(i) of this section.

(iii) *Special rule for dispositions of stock.* Notwithstanding the provisions of paragraph (m)(4)(i) of this section, if a trust disposes of all of its S corporation stock, any person who first met the definition of a potential current beneficiary during the 60-day period ending on the date of such disposition is not a potential current beneficiary and thus is not a shareholder of that corporation.

(iv) *Distributee trusts*—(A) *In general.* This paragraph (m)(4)(iv) contains the rules for determining who are the potential current beneficiaries of an ESBT if a distributee trust becomes entitled to, or at the discretion of any person, may receive a distribution from principal or income of an ESBT. A distributee trust does not include a trust that is not currently in existence. For this purpose, a trust is not currently in existence if the trust has no assets and no items of income, loss, deduction, or credit. Thus, if a trust instrument provides for a trust to be funded at some future time, the future trust is not currently a distributee trust.

(B) If the distributee trust is not a trust described in section 1361(c)(2)(A), then the distributee trust is the potential current beneficiary of the ESBT and the corporation's S corporation election terminates.

(C) If the distributee trust is a trust described in section 1361(c)(2)(A), the persons who would be its potential current beneficiaries (as defined in paragraphs (m)(4)(i) and (ii) of this section) if the distributee trust were an ESBT are treated as the potential current beneficiaries of the ESBT. Notwithstanding the preceding sentence, however, if the distributee trust is a trust described in section 1361(c)(2)(A)(ii) or (iii), the estate described in section 1361(c)(2)(B) (ii) or (iii) is treated as the potential current beneficiary of the ESBT for the 2-year period during which such trust would be permitted as a shareholder.

(D) For the purposes of paragraph (m)(4)(iv)(C) of this section, a trust will be deemed to be described in section 1361(c)(2)(A) if such trust would qualify for a QSST election under section 1361(d) or an ESBT election under section 1361(e) if it owned S corporation stock.

(v) *Contingent distributions.* A person who is entitled to receive a distribution only after a specified time or upon the occurrence of a specified event (such as the death of the holder of a power of appointment) is not a potential current beneficiary until such time or the occurrence of such event.

(vi) *Currently exercisable powers of appointment*—(A) *In general.* A person to whom a distribution is or may be made during a period pursuant to a power of appointment is a potential current beneficiary. Thus, if any person has a lifetime power of appointment that would permit distributions from the trust to be made to more than 75 persons, the corporation's S corporation election will terminate because the number of potential current beneficiaries will exceed the 75-shareholder limit of section 1361(b)(1)(A). Also, the S corporation election will terminate if the currently exercisable power of appointment allows distributions to be made to an ineligible shareholder as defined in section 1361(b)(1)(B) and (C).

(B) *Waiver or release.* If the holder of a power of appointment permanently releases the power in a manner that is valid under applicable local law, the persons that would be potential current beneficiaries solely because of the power will not be potential current beneficiaries after the effective date of the release. An attempt to temporarily waive, release, or limit a currently exercisable power of appointment will be ignored in determining who are potential current beneficiaries of the trust.

(vii) *Number of shareholders.* Each potential current beneficiary of the ESBT, as defined in paragraphs (m)(4)(i) through (vi) of this section, is counted as a shareholder of any S corporation whose stock is owned by the ESBT. During any period in which the ESBT has no potential current beneficiaries, the ESBT is counted as the shareholder. A person is counted as only one shareholder of an S corporation even though that person may be treated as a shareholder of the S corporation by direct ownership and through one or more eligible trusts described in section 1361(c)(2)(A). Thus, for example, if a person owns stock in an S corporation and is a potential current beneficiary of an ESBT that owns stock in the same S corporation, that person is counted as one shareholder of the S corporation. Similarly, if a husband owns stock in an S corporation and his wife is a potential current beneficiary of an ESBT that owns stock in the same S corporation, the husband and wife will be counted as one shareholder of the S corporation.

(viii) *Miscellaneous.* Payments made by an ESBT to a third party on behalf of a beneficiary are considered to be payments made directly to the beneficiary. The right of a beneficiary to assign the beneficiary's interest to a third party does not result in the third party being a potential current beneficiary until that interest is actually assigned.

(5) *ESBT terminations*—(i) *Ceasing to meet ESBT requirements.* A trust ceases to be an ESBT on the first day the trust fails to meet the definition of an ESBT under section 1361(e). The last day the trust is treated as an ESBT is the day before the date on which the trust fails to meet the definition of an ESBT.

(ii) *Disposition of S stock.* In general, a trust ceases to be an ESBT on the first day following the day the trust disposes of all S corporation stock. However, if the trust is using the installment method to report income from the sale or disposition of its stock in an S corporation, the trust ceases to be an ESBT on the day following the earlier of the day the last installment payment is received by the trust or the day the trust disposes of the installment obligation.

(iii) *Potential current beneficiaries that are ineligible shareholders.* If a potential current beneficiary of an ESBT is not an eligible shareholder of a small business corporation within the meaning of section 1361(b)(1), the S corporation election terminates. For example, the S corporation election will terminate if a nonresident alien becomes a potential current beneficiary of an ESBT. Such a potential current beneficiary is treated as an ineligible shareholder beginning on the day such person becomes a potential current beneficiary, and the S corporation election terminates on that date. However, *see* the special rule of paragraph (m)(4)(iii) of this section. If the S corporation election terminates, relief may be available under section 1362(f).

(6) *Revocation of ESBT election.* An ESBT election may be revoked only with the consent of the Commissioner. The application for consent to revoke the election must be submitted to the Internal Revenue Service in the form of a letter ruling request under the appropriate revenue procedure.

(7) *Converting an ESBT to a QSST.* For a trust that seeks to convert from an ESBT to a QSST, the consent of the Commissioner is hereby granted to revoke the ESBT election as of the effective date of the QSST election, if all the following requirements are met:

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(i) The trust meets all of the requirements to be a QSST under section 1361(d).

(ii) The trustee and the current income beneficiary of the trust sign the QSST election. The QSST election must be filed with the service center where the S corporation files its income tax return. This QSST election must state at the top of the document ATTENTION ENTITY CONTROL—CONVERSION OF AN ESBT TO A QSST PURSUANT TO SECTION 1.1361–1(m)" and include all information otherwise required for a QSST election under § 1.1361–1(j)(6). A separate QSST election must be made with respect to the stock of each S corporation held by the trust.

(iii) The trust has not converted from a QSST to an ESBT within the 36-month period preceding the effective date of the new QSST election.

(iv) The date on which the QSST election is to be effective cannot be more than 15 days and two months prior to the date on which the election is filed and cannot be more than 12 months after the date on which the election is filed. If an election specifies an effective date more than 15 days and two months prior to the date on which the election is filed, it will be effective on the day that is 15 days and two months prior to the date on which it is filed. If an election specifies an effective date more than 12 months after the date on which the election is filed, it will be effective on the day that is 12 months after the date it is filed.

(8) *Examples.* The provisions of this paragraph (m) are illustrated by the following examples in which it is assumed, unless otherwise specified, that all noncorporate persons are citizens or residents of the United States:

Example 1. (i) *ESBT election with section 663(c) separate shares.* On January 1, 2003, *M* contributes S corporation stock to Trust for the benefit of *M*'s three children *A*, *B*, and *C*. Pursuant to section 663(c), each of Trust's separate shares for *A*, *B*, and *C* will be treated as separate trusts for purposes of determining the amount of distributable net income (DNI) in the application of sections 661 and 662. On January 15, 2003, the trustee of Trust files a valid ESBT election for Trust effective January 1, 2003. Trust will be treated as a single ESBT and will have a single S portion taxable under section 641(c).

(ii) *ESBT acquires stock of an additional S corporation.* On February 15, 2003, Trust acquires stock of an additional S corporation. Because Trust is already an ESBT, Trust does not need to make an additional ESBT election.

(iii) *Section 663(c) shares of ESBT convert to separate QSSTs.* Effective January 1, 2004, *A*, *B*, *C*, and Trust's trustee elect to convert each separate share of Trust into a separate QSST pursuant to paragraph (m)(7) of this section. For each separate share, they file a separate election for each S corporation whose stock is held by Trust. Each separate share will be treated as a separate QSST.

Example 2. (i) *Invalid potential current beneficiary.* Effective January 1, 2003, Trust makes a valid ESBT election. On January 1, 2004, *A*, a nonresident alien, becomes a potential current beneficiary of Trust. Trust does not dispose of all of its S corporation stock within 60 days after January 1, 2004. As of January 1, 2004, *A* is a potential current beneficiary of Trust and therefore is treated as a shareholder of the S corporation. Because *A* is not an eligible shareholder of an S corporation under section 1361(b)(1), the S corporation election of any corporation in which Trust holds stock terminates effective January 1, 2004. Relief may be available under section 1362(f).

(ii) *Invalid potential current beneficiary and disposition of S stock.* Assume the same facts as in *Example 2* (i) except that within 60 days after January 1, 2004, trustee of Trust disposes of all Trust's S corporation stock. *A* is not considered a potential current beneficiary of Trust and therefore is not treated as a shareholder of any S corporation in which Trust previously held stock.

Example 3. Subpart E trust. *M* transfers stock in *X*, an S corporation, and other assets to Trust for the benefit of *B* and *B*'s siblings. *M* retains no powers or interest in Trust. Under section 678(a), *B* is treated as the owner of a portion of Trust that includes a portion of the *X* stock. No beneficiary has acquired any portion of his or her interest in Trust by purchase, and Trust is not an ineligible trust under paragraph (m)(1)(iv) of this section. Trust is eligible to make an ESBT election.

Example 4. Subpart E trust continuing after grantor's death. On January 1, 2003, M transfers stock in *X*, an S corporation, and other assets to Trust. Under the terms of Trust, the trustee of Trust has complete discretion to distribute the income or principal to *M* during *M*'s lifetime and to *M*'s children upon *M*'s death. During *M*'s life, *M* is treated as the owner of Trust under section 677. The trustee of Trust makes a valid election to treat Trust as an ESBT effective January 1, 2003. On March 28, 2004, M dies. Under applicable local law, Trust does not terminate on *M*'s death. Trust continues to be an ESBT after *M*'s death, and no additional ESBT election needs to be filed for Trust after *M*'s death.

Example 5. Potential current beneficiaries and distributee trust holding S corporation stock. Trust-1 has a valid ESBT election in effect. The trustee of Trust-1 has the power to make distributions to *A* directly or to any trust created for the benefit of *A*. On January 1, 2003, *M* creates Trust-2 for the benefit of *A*. Also on January 1, 2003, the trustee of Trust-1 distributes some *S* corporation stock to Trust-2. *A*, as the current income beneficiary of Trust-2, makes a timely and effective election to treat Trust-2 as a QSST. Because Trust-2 is a valid S corporation shareholder, the distribution to Trust-2 does not terminate the ESBT election of Trust-1. Trust-2 itself will not be counted toward the 75-shareholder limit of section 1361(b)(1)(A). Additionally, because *A* is already counted as an S corporation shareholder because of *A*'s status as a potential current income beneficiary of Trust-1, *A* is not counted again by reason of *A*'s status as the deemed owner of Trust-2.

Example 6. Potential current beneficiaries and distributee trust not holding S corporation stock. (i) *Distributee trust that would itself qualify as an ESBT.* Trust-1 holds stock in *X*, an S corporation, and has a valid ESBT election in effect. Under the terms of Trust-1, the trustee has discretion to make distributions to *A*, *B*, and Trust-2, a trust for the benefit of *C*, *D*, and *E*. Trust-2 would qualify to be an ESBT, but it owns no S corporation stock and has made no ESBT election. Under paragraph (m)(4)(iv) of this section, Trust-2's potential current beneficiaries are treated as the potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Thus, *A*, *B*, *C*, *D*, and *E* are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1). Trust-2 itself will not be counted as a shareholder of Trust-1 for purposes of section 1361(b)(1).

(ii) *Distributee trust that would not qualify as an ESBT or a QSST.* Assume the same facts as in paragraph (i) of this *Example 6* except that *D* is a nonresident alien. Trust-2 would not be eligible to make an ESBT or QSST election if it owned S corporation stock and therefore Trust-2 is a potential current beneficiary of Trust-1. Since Trust-2 is not an eligible shareholder, *X*'s S corporation election terminates.

(iii) *Distributee trust that is a section 1361(c)(2)(A)(ii) trust.* Assume the same facts as in paragraph (i) of this *Example 6* except that Trust-2 is a trust treated as owned by *A* under section 676 because *A* has the power to revoke Trust-2 at any time prior to *A*'s death. On January 1, 2003, *A* dies. Because Trust-2 is a trust described in section 1361(c)(2)(A)(ii) during the 2-year period beginning on the day of *A*'s death, under paragraph (m)(4)(iv)(C) of this section, Trust-2's only potential current beneficiary is the person listed in section 1361(c)(2)(B)(ii), *A*'s estate. Thus, *B* and *A*'s estate are potential current beneficiaries of Trust-1 and are counted as shareholders for purposes of section 1361(b)(1).

Example 7. Potential current beneficiaries and powers of appointment. *M* creates Trust for the benefit of *A*. *A* also has a currently exercisable power to appoint income or principal to anyone except *A*, *A*'s creditors, *A*'s estate, and the creditors of *A*'s estate. The potential current beneficiaries of Trust will be *A* and all other persons except for *A*'s creditors, *A*'s estate, and the creditors of *A*'s estate. This number will exceed the 75-shareholder limit of section 1361(b)(1)(A). If Trust holds S corporation stock, the corporation's S election will terminate.

(9) *Effective date.* This paragraph (m) is applicable for taxable years of ESBTs beginning on and after May 14, 2002.

Par. 7. Section 1.1362–6 is amended by revising paragraph (b)(2)(iv) to read as follows:

§ 1.1362–6 Election and consents.

* * * * *

(b) * * *

(2) * * *

(iv) *Trusts.* In the case of a trust described in section 1361(c)(2)(A) (including a trust treated under section 1361(d)(1)(A) as a trust described in section 1361(c)(2)(A)(i) and excepting an electing small business trust described in section 1361(c)(2)(A)(v) (ESBT)), only the person treated as the shareholder for purposes of section 1361(b)(1) must consent to the election. When stock of the corporation is held by a trust, both husband and wife must consent to any election if the husband and wife have a community interest in the trust property. See paragraph (b)(2)(i) of this section for rules concerning community interests in S corporation stock. In the case of an ESBT, the trustee and the owner of any portion of the trust that consists of the stock in one or more S corporations under subpart E, part I, subchapter J, chapter 1 of the Internal Revenue Code must consent to the S corporation election. If there is more than one trustee, the trustee or trustees with authority to legally bind the trust must consent to the S corporation election.

* * * * *

Par. 8. Section 1.1362–7 is amended by:

1. Revising the section heading.

2. Adding a sentence to the end of paragraph (a).

The revision and addition read as follows:

§ 1.1362–7 Effective dates.

(a) * * * Section 1.1362–6(b)(2)(iv) is applicable for taxable years beginning on and after May 14, 2002.

* * * * *

Par. 9. Section 1.1377–0 is amended by adding an entry for § 1.1377–1(a)(2)(iii) to read as follows:

§ 1.1377–0 Table of contents.

* * * * *

§ 1.1377–1 Pro rata share.

(a) * * *

(2) * * *

(iii) Shareholder trust conversions.

* * * * *

Par. 10. Section 1.1377–1 is amended by:

1. Adding paragraph (a)(2)(iii).

2. Adding *Example 3* to paragraph (c).

The additions read as follows:

§ 1.1377–1 Pro rata share.

(a) * * *

(2) * * *

(iii) Shareholder trust conversions. If, during the taxable year of an S corporation, a trust that is an eligible shareholder of the S corporation converts from a trust described in section 1361(c)(2)(A)(i), (ii), (iii), or (v) for the first part of the year to a trust described in a different subpart of section 1361(c)(2)(A)(i), (ii), or (v) for the remainder of the year, the trust's share of the S corporation items is allocated between the two types of trusts. The first day that a qualified subchapter S trust (QSST) or an electing small business trust (ESBT) is treated as an S corporation shareholder is the effective date of the QSST or ESBT election. Upon the conversion, the trust is not treated as terminating its entire interest in the S corporation for purposes of paragraph (b) of this section, unless the trust was a trust described in section 1361(c)(2)(A)(ii) or (iii) before the conversion.

* * * * *

(c) * * *

Example 3. Effect of conversion of a qualified subchapter S trust (QSST) to an electing small business trust (ESBT). (i) *On January 1, 2003, Trust receives stock of S corporation. Trust's current income beneficiary makes a timely QSST election under section 1361(d)(2), effective January 1, 2003. Subsequently, the trustee and current income beneficiary of Trust elect, pursuant to § 1.1361–1(j)(12), to terminate the QSST election and convert to an ESBT, effective July 1, 2004. The taxable year of S corporation is the calendar year. In 2004, Trust's pro rata share of S corporation's nonseparately computed income is $100,000.* (ii) For purposes of computing the income allocable to the QSST and to the ESBT, Trust is treated as a QSST through June 30, 2004, and Trust is treated as an ESBT beginning July 1, 2004. Pursuant to section 1377(a)(1), the pro rata share of S corporation income allocated to the QSST is $49,727 ($100,000 x 182 days/366 days), and the pro rata share of S corporation income allocated to the ESBT is $50,273 ($100,000 x 184 days/366 days).

Par. 11. Section 1.1377–3 is revised to read as follows:

§ 1.1377–3 Effective dates.

Section 1.1377–1 and 1.1377–2 apply to taxable years of an S corporation beginning after December 31, 1996, except that § 1.1377–1(a)(2)(iii), and (c) *Example 3* are applicable for taxable years beginning on and after May 14, 2002.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 13. In § 602.101, paragraph (b) is amended by adding an entry for 1.444–4 and revising the entry for 1.1361–1 in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
1.444–4	1545–1591
1.1361–1	1545–0731 1545–1591

Approved: May 3, 2002.

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Pamela Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–11791 Filed 5–13–02; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

Departmental Offices; Disclosure of Records; Freedom of Information Act and Privacy Act of 1974; Implementation

AGENCY: Department of the Treasury.

ACTION: Final rule.

SUMMARY: The Department of the Treasury is amending its regulations concerning the Freedom of Information Act (FOIA), and the Privacy Act, (Privacy Act), by revising regulations to specify new addresses for the Bureau of the Public Debt. We are also identifying a new official responsible for administrative appeals of initial determinations.

EFFECTIVE DATE: May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Edward C. Gronseth, Deputy Chief Counsel, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692, *Edward.Gronseth@bpd.treas.gov* or Elizabeth S. Gracia, Senior Attorney, Office of the Chief Counsel, Bureau of the Public Debt, at (304) 480–8692, *Lisa.Gracia@bpd.treas.gov*.

SUPPLEMENTARY INFORMATION: The Bureau of the Public Debt has decided to move its FOIA and Privacy Act program responsibilities to Parkersburg, West Virginia. We are providing the proper addresses where the public may

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send the following: (a) Initial FOIA requests, (b) Privacy Act requests for notification, access to records, accountings of disclosure, and amendment of records, (c) FOIA and Privacy Act administrative appeals of initial determinations, and (d) service of process.

Also, we have identified the new official responsible for reviewing FOIA administrative appeals of initial determinations to deny records and for making appellate decisions on initial determinations refusing amendment of records under the Privacy Act. The existing regulations name the "Commissioner of the Public Debt" as the reviewing official. We have determined that the reviewing official should be changed to the "Executive Director, Administrative Resource Center, Bureau of the Public Debt."

These regulations are being published as a final rule because the amendment does not impose any requirements on any member of the public. This amendment is the most efficient means for us to implement internal requirements for complying with FOIA and the Privacy Act. Pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary. We find good cause for making this rule effective on the date of publication in the **Federal Register**.

In accordance with Executive Order 12866, it has been determined that this final rule is not a "significant regulatory action" and, therefore, does not require a Regulatory Impact Analysis.

Because no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply.

List of Subjects in 31 CFR Part 1

Freedom of Information, Privacy.

Part 1 of Title 31 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552, as amended. Subpart C also issued under 5 U.S.C. 552a.

PART 1—[AMENDED]

Subpart A—Freedom of Information Act

2. Amend 31 CFR part 1, subpart A, Appendix I-Bureau of the Public Debt to revise paragraphs 3, 4, and 5 to read as follows:

Appendix I-Bureau of the Public Debt

* * * * *

3. *Requests for records.* Initial determinations under 31 CFR 1.5(h) whether to grant requests for records will be made by the Disclosure Officer of the Bureau of the Public Debt. Requests may be sent to: Freedom of Information Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. *Administrative appeal of initial determination to deny records.* Appellate determinations under 31 CFR 1.5(i) with respect to records of the Bureau of the Public Debt will be made by the Executive Director, Administrative Resource Center, Bureau of the Public Debt. Appeals may be sent to: Freedom of Information Act Appeal, Executive Director, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

5. *Delivery of process.* Service of process will be received by the Chief Counsel, Bureau of the Public Debt, or the delegate of such officer, and shall be delivered to the following location: Chief Counsel's Office, Bureau of the Public Debt, 200 Third Street, Room G–15, Parkersburg, WV 26106–1328.

* * * * *

Subpart C—Privacy Act

3. Amend 31 CFR part 1, Subpart C, APPENDIX I–BUREAU OF THE PUBLIC DEBT, paragraph 2, by revising the last sentence to read as follows:

2.* * *Requests for information and specific guidance on where to send requests for records may be mailed or delivered personally to: Privacy Act Request, Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312.

4. Amend 31 CFR part 1, subpart C, APPENDIX I–BUREAU OF THE PUBLIC DEBT, paragraph 3, by removing in the last sentence, "Information Officer, Bureau of the Public Debt, Department of the Treasury, 999 E Street NW., Room 553, Washington, DC 20239." and adding in its place "Disclosure Officer, Administrative Resource Center, Bureau of the Public Debt, Department of the Treasury, 200 Third Street, Room 211, Parkersburg, WV 26101–5312."

5. Amend 31 CFR part 1, subpart C, APPENDIX I—BUREAU OF THE PUBLIC DEBT, paragraph 4 as follows:

a. Remove "Commissioner of the Public Debt" and add in its place "Executive Director, Administrative Resource Center, Bureau of the Public Debt;"

b. Remove "999 E Street NW., Room 503, Washington, DC 20239." and add in its place "200 Third Street, Room G–15, Parkersburg, WV 26106–1328."

6. Amend 31 CFR part 1, subpart C, APPENDIX I—BUREAU OF THE PUBLIC DEBT, paragraph 6, by removing "999 E Street NW., Room 503, Washington, DC 20239." and adding in its place "200 Third Street, Room G–15, Parkersburg, WV 26106–1328."

Dated: April 15, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–11885 Filed 5–13–02; 8:45 am]

BILLING CODE 4810–39–P

DEPARTMENT OF THE TREASURY

31 CFR Part 1

[Docket No. 02–06]

RIN 1557–AB83

Office of the Comptroller of the Currency; Privacy Act of 1974; Implementation

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Final rule; technical amendment.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, as amended, the Office of the Comptroller of the Currency (OCC) and the Department of the Treasury (Department) issue a final rule to exempt five OCC systems of records from certain provisions of the Privacy Act. The OCC and the Department also issue a technical amendment made necessary by the renumbering and renaming of one revised system of records that previously had been exempted from certain provisions of the Privacy Act.

EFFECTIVE DATE: May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Hansen, Assistant Director, or Ellen S. Warwick, Special Counsel, Administrative & Internal Law Division, (202) 874–4460.

SUPPLEMENTARY INFORMATION: On October 26, 2001, the OCC, with the concurrence of the Department, published a notice of proposed rulemaking to exempt five systems of records from certain provisions of the Privacy Act of 1974, as amended (66 FR 54175–54178, October 26, 2001). This notice of proposed rulemaking was published in the same **Federal Register** in which the OCC published notices of five new Privacy Act systems of records (66 FR 54327–54333) and proposed alterations to six Privacy Act systems of records (66 FR 54333–54340). The notice of proposed rulemaking reflected

that three of the new systems of records would be exempted from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), 552a(k)(2), or both. These systems were: (1) Treasury/Comptroller .100-Enforcement Action Report System; (2) Treasury/Comptroller .120-Bank Fraud Information System; and (3) Treasury Comptroller .220-Section 914 Tracking System. This notice also reflected that two of the five altered systems of records would also be exempted from provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2), 552a(k)(2), or both. These systems were: (1) Treasury/Comptroller .016-Litigation Information System, to be renumbered Treasury/Comptroller .510; and (2) Treasury/Comptroller .004-Consumer Complaint Inquiry and Information System, to be renumbered Treasury/Comptroller .600.

The proposed rule requested that public comments be sent to the Office of the Comptroller of the Currency, Public Information Room, 250 E Street, SW., Washington, DC 20219, no later than November 26, 2001.

The OCC did not receive comments on the proposed rule. Accordingly, the OCC and the Department are hereby giving notice that the following systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(j)(2): (1) Treasury/Comptroller .120-Bank Fraud Information System; and (2) Treasury/Comptroller .510-Litigation Information System. The provisions of the Privacy Act from which exemption is claimed for these systems pursuant to 5 U.S.C. 552a(j)(2) are: 5 U.S.C. 552a(c)(3) and (4); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(1), (2), and (3); 5 U.S.C. 552a(e)(4)(G), (H), and (I); 5 U.S.C. 552a(f); and 5 U.S.C. 552a(g).

Additionally, the following systems of records are exempt from certain provisions of the Privacy Act pursuant to 5 U.S.C. 552a(k)(2): (1) Treasury/Comptroller .100-Enforcement Action Report System; (2) Treasury/Comptroller .120-Bank Fraud Information System; (3) Treasury/Comptroller .220-Section 914 Tracking System; (4) Treasury/Comptroller .510-Litigation Information System; and (5) Treasury/Comptroller .600-Consumer Complaint Inquiry and Information System. The provisions of the Privacy Act from which exemption is claimed for these five systems pursuant to 5 U.S.C. 552a(k)(2) are: 5 U.S.C. 552a(c)(3); 5 U.S.C. 552a(d)(1), (2), (3), and (4); 5 U.S.C. 552a(e)(4)(G), (H), and (I); and 5 U.S.C. 552a(f).

Finally, a technical amendment to the Department's regulation is issued. This amendment relates to a former system of records, *i.e.*, Treasury/Comptroller .013-Enforcement and Compliance Information System, for which notice of proposed revisions, including the renumbering and renaming of the system, was provided on October 26, 2001 (66 FR 54333–54340). The technical amendment removes the former number and name of this revised system from the Department's regulation and replaces it with the system's revised number and name, Treasury/Comptroller .110–Reports of Suspicious Activities.

This rule takes effect immediately upon publication in the **Federal Register**. The rule imposes no new requirements on national banks or any member of the public [1] but rather is one means by which the OCC and the Department comply with the Privacy Act. The OCC and the Department find that an immediate effective date will not result in any burden or inconvenience to national banks or members of the public, who have already had adequate notice of the changes contained in the rule.

Accordingly, the OCC and the Department find good cause to conclude that delaying the effective date of this rule is unnecessary. *See* 5 U.S.C. 553 (Administrative Procedure Act delayed effective date provision).

Regulatory Flexibility Act

Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b) (RFA), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if the OCC and the Department certify that the rule will not have a significant economic impact on a substantial number of small entities and publish their certification and a short, explanatory statement in the **Federal Register** along with the rule.

Pursuant to section 605(b) of the RFA, the OCC and the Department hereby certify that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule affects only internal agency administration and imposes no duties, obligations, or costs on entities of any size. Accordingly, a regulatory flexibility analysis is not needed.

Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1532 (Unfunded Mandates Act), requires that the agency prepare a budgetary impact statement before promulgating any rule likely to result in a Federal mandate that may result in the expenditure by State, local, and tribal governments, in the aggregate, or by the private sector, of $100 million or more in any one year. If a budgetary impact statement is required, section 205 of the Unfunded Mandates Act also requires the agency to identify and consider a reasonable number of regulatory alternatives before promulgating the rule. The OCC and the Department have determined that this final rule will not result in expenditures by State, local, and tribal governments, or by the private sector, of $100 million or more in any one year. Accordingly, the OCC and the Department have not prepared a budgetary impact statement or specifically addressed the regulatory alternatives considered. As noted above, the final rule adds no new requirements.

Executive Order 12866

The OCC and the Department have determined that this final rule is not a significant regulatory action under Executive Order 12866.

List of Subjects

Privacy.

Part 1, subpart C of Title 31 of the Code of Federal Regulations is amended as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301 and 31 U.S.C. 321. Subpart A also issued under 5 U.S.C. 552 as amended. Subpart C also issued under 5 U.S.C. 552a.

2. Section 1.36 of Subpart C is amended as follows:

(a) Paragraph (c)(1)(iii) is amended by removing "CC .013 Enforcement and Compliance Information System" from the table.

(b) Paragraph (c)(1)(iii) is amended by adding "CC .110 Reports of Suspicious Activities," "CC .120 Bank Fraud Information System," and "CC .510 Litigation Information System" to the table in numerical order.

(c) Paragraph (g)(1)(iii) is amended by removing "CC .013 Enforcement and Compliance Information System" from the table.

(d) Paragraph (g)(1)(iii) is amended by adding "CC .100 Enforcement Action Report System," "CC .110 Reports of Suspicious Activities," "CC .120 Bank Fraud Information System," "CC .220 Section 914 Tracking System," "CC .510 Litigation Information System," and "CC .600 Consumer Complaint Inquiry

[1] For this reason, the delayed effective date provision of the Riegle Community Development and Regulatory Improvement Act of 1994, 12 U.S.C. 4802, does not apply.

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and Information System" to the table in numerical order.

The additions to § 1.36 read as follows:

§ 1.36 Systems exempt in whole or in part from provisions of 5 U.S.C. 552a and this part.

* * * * *

(c) * * *
(1) * * *
(iii) * * *

Number	System name
CC .110	Reports of Suspicious Activities.
CC. 120	Bank Fraud Information System.
CC .510	Litigation Information System.
. .	. . . .

(g) * * *
(1) * * *
(iii) * * *

Number	System name
. .	. . . .
CC. 100	Enforcement Action Report System.
CC. 110	Reports of Suspicious Activities.
CC .120	Bank Fraud Information System.
CC .220	Section 914 Tracking System.
CC .510	Litigation Information System.
CC .600	Consumer Complaint and Inquiry Information System.
. .	. . . .

Dated: April 22, 2002.

W. Earl Wright, Jr.,

Chief Management and Administrative Programs Officer.

[FR Doc. 02–11886 Filed 5–13–02; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF DEFENSE

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900–AL02

Increased Allowances for the Educational Assistance Test Program

AGENCIES: Department of Defense and Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The law provides that rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program shall be adjusted annually by the Secretary of Defense based upon the average actual cost of attendance at public institutions of higher education in the twelve-month period since the rates were last adjusted. After consultation with the Department of Education, the Department of Defense has concluded that the rates for the 2001–02 academic year should be increased by 4.7% over the rates payable for the 2000–01 academic year. The regulations dealing with these rates are amended accordingly.

DATES: Effective Date: May 14, 2002.

Applicability Date: The changes in rates are applied retroactively to October 1, 2001, to conform to statutory requirements.

FOR FURTHER INFORMATION CONTACT: William G. Susling, Jr., Assistant Director for Policy and Program Development, Education Service (225), Veterans Benefits Administration, 202–273–7187.

SUPPLEMENTARY INFORMATION: The law (10 U.S.C. 2145) provides that the Secretary of Defense shall adjust the amount of educational assistance which may be provided in any academic year under the Educational Assistance Test Program, and the amount of subsistence allowance authorized under that program. The adjustment is to be based upon the twelve-month increase in the average actual cost of attendance at public institutions of higher education. As required by law, the Department of Defense has consulted with the Department of Education. The Department of Defense has concluded that these costs increased by 4.7% in the 2000–01 academic year. Accordingly, this final rule changes 38 CFR 21.5820 and 21.5822 to reflect a 4.7% increase in the rates payable in the 2001–02 academic year, including changes in § 21.5820 to remove unnecessary provisions that were previously needed to compensate for rounding. Other nonsubstantive changes are made for the purpose of clarification.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553 there is good cause for finding that notice and public procedure are impractical, unnecessary, and contrary to the public interest and there is good cause for dispensing with a 30-day delay of the effective date. The rates of subsistence allowance and educational assistance payable under the Educational Assistance Test Program are determined based on a statutory formula and, in essence, the calculation of rates merely constitutes a non-discretionary ministerial act. The other changes made by this document are merely nonsubstantive changes for the purpose of clarification.

Paperwork Reduction Act

This document contains no provisions constituting a collection of information under the Paperwork Reduction Act (44 U.S.C. 3501–3520).

Regulatory Flexibility Act

The Secretary of Veterans Affairs and the Secretary of Defense hereby certify that these amended regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C 601–612. This final rule directly affects only individuals. Pursuant to 5 U.S.C. 605(b), this final rule, therefore, is exempt from the initial and final regulatory flexibility analyses requirements of sections 603 and 604.

Unfunded Mandates

The Unfunded Mandates Reform Act requires, at 2 U.S.C. 1532, that agencies prepare an assessment of anticipated costs and benefits before developing any rule that may result in an expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any given year. This rule would have no consequential effect on State, local, or tribal governments.

Catalog of Federal Domestic Assistance Number

There is no Catalog of Federal Domestic Assistance number for the program affected by the regulations.

List of Subjects in 38 CFR Part 21

Administrative practice and procedure, Armed forces, Civil rights, Claims, Colleges and universities, Conflict of interests, Defense Department, Education, Employment, Grant programs-education, Grant programs-veterans, Health programs, Loan programs-education, Loan programs-veterans, Manpower training programs, Reporting and recordkeeping requirements, Schools, Travel and transportation expenses, Veterans, Vocational education, Vocational rehabilitation.

Approved: February 21, 2002.

Anthony J. Principi,

Secretary of Veterans Affairs.

Approved: May 2, 2002.

John A. Van Alstyne,

Lieutenant General, USA, Deputy Assistant Secretary, (Military Personnel Policy) Department of Defense.

For the reasons set out above, 38 CFR part 21 (subpart H) is amended as set forth below.

PART 21—VOCATIONAL REHABILITATION AND EDUCATION

Subpart H—Educational Assistance Test Program

1. The authority citation for part 21, subpart H, continues to read as follows:

Authority: 10 U.S.C. ch. 107; 38 U.S.C. 501(a), 3695, 5101, 5113, 5303A; 42 U.S.C. 2000; sec. 901, Pub. L. 96–342, 94 Stat. 1111–1114, unless otherwise noted.

2. Section 21.5820 is amended by:

a. In paragraph (b)(1), removing "2000–01" and adding, in its place, "2001–02"; and by removing "$3,524" and adding, in its place, "$3,690";

b. In paragraph (b)(2)(ii), removing "2000–01" and adding, in its place, "2001–02";

c. In paragraph (b)(2)(ii)(A), removing "$391.56" and adding, in its place, "$410.00", and by removing "$195.78" and adding, in its place, "$205.00";

d. In paragraph (b)(2)(ii)(B), removing "$13.05" and adding, in its place, "$13.67", and by removing "$6.53" and adding, in its place "$6.83";

e. In paragraph (b)(3)(ii) introductory text, removing "2000–01" and adding, in its place, "2001–02";

f. In paragraph (b)(3)(ii)(A), removing "$391.56" and adding, in its place, "$410.00"; and by removing "$195.78" and adding, in its place, "$205.00";

g. In paragraph (b)(3)(ii)(B), removing "$13.05" and adding, in its place, "$13.67", and by removing "$6.53", and adding, in its place, "$6.83"; and

h. Revising paragraphs (b)(2)(ii)(C) and (b)(3)(ii)(C).

The revisions read as follows:

§ 21.5820 Educational assistance.

* * * * *

(b) * * *
(2) * * *
(ii) * * *

(C) Adding the two results.

* * * * *

(3) * * *
(ii) * * *

(C) Adding the two results; and

* * * * *

§ 21.5822 [Amended]

3. Section 21.5822 is amended by:

a. In paragraph (b)(1)(i), removing "$878" and adding, in its place, "$919"; and by removing "2000–01" and adding, in its place, "2001–02";

b. In paragraph (b)(1)(ii), removing "$439" and adding, in its place, "$459.50"; and by removing "2000–01" and adding, in its place, "2001–02";

c. In paragraph (b)(2)(i), removing "2000–01" and adding, in its place, "2001–02"; and by removing "$878" and adding, in its place, "$919"; and

d. In paragraph (b)(2)(ii), removing "2000–01" and adding, in its place, "2001–02"; and by removing "$439" and adding, in its place, "$459.50".

[FR Doc. 02–11989 Filed 5–13–02; 8:45 am]

BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 260–0339a; FRL–7174–5]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is taking direct final action to approve revisions to the Tehama County Air Pollution Control District (TCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from industrial, institutional, and commercial boilers, steam generators, process heaters, and stationary gas turbines. We are approving local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: This rule is effective on July 15, 2002, without further notice, unless EPA receives adverse comments by June 13, 2002. If we receive adverse comments, we will publish a timely withdrawal in the **Federal Register** to notify the public that this rule will not take effect.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

Environmental Protection Agency, Air Docket (6102), Ariel Rios Building, 1200 Pennsylvania Avenue, NW, Washington DC 20460.

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95814.

Tehama County Air pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96008–0038.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (AIR–4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to EPA.

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I. The State's Submittal

A. What Rules Did the State Submit?

Table 1 lists the rules we are approving with the dates that they were adopted by the local air agency and submitted by the California Air Resources Board (CARB).

TABLE 1.—SUBMITTED RULES

Local agency	Rule #	Rule Title	Adopted	Submitted
TCAPCD	4:31	Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.	01/29/02	02/08/02

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TABLE 1.—SUBMITTED RULES—Continued

Local agency	Rule #	Rule Title	Adopted	Submitted
TCAPCD	4:37	Stationary Gas Turbines	01/29/02	02/08/02

On March 8, 2002, these rule submittals were found to meet the completeness criteria in 40 CFR part 51, Appendix V, which must be met before formal EPA review.

B. Are There Other Versions of These Rules?

On September 19, 2000 (65 FR 56486), EPA finalized limited approval and limited disapproval of a previous version of these rules. TCAPCD adopted the revisions of these rules on January 29, 2002, and CARB submitted them to us on February 8, 2002. We are acting on the revised version of these rules.

C. What Is the Purpose of the Submitted Rules?

Rule 4:31 establishes nitrogen oxide (NO_X) and carbon monoxide (CO) emission limits for industrial, institutional, and commercial boilers, steam generators, and process heaters. Rule 4:37 establishes nitrogen oxide (NO_X) emission limits for the operation of gas and liquid fueled turbines of greater than 0.3 megawatt (MW) output.

On September 19, 2000, the EPA published a limited approval and limited disapproval of a previous version of rules 4:31 and 4:37, because the rules improved the State Implementation Plan (SIP) overall but some rules provisions conflicted with section 110 and part D of the Clean Air Act. Those provisions included the following:

Rule 4:31 and 4:37 contained unapprovable Air Pollution Control Officer (APCO) discretion which allowed exemption of units from reasonably available control technology (RACT) due to lack of technical or economic feasibility.

Rule 4:31 contained unapprovable APCO discretion to demonstrate compliance with RACT.

The January 29, 2002 revision to rules 4:31 and 4:37 correct the above deficiencies. The TSDs have more information about these rules.

II. EPA's Evaluation and Action

A. How Is EPA Evaluating These Rules?

Generally, SIP rules must be enforceable (see section 110(a) of the Act), must require Reasonably Available Control Technology (RACT) for major sources in nonattainment areas (*See* Sections 182(a)(2)(A) and 182(f)), and must not relax existing requirements (*See* Sections 110(l) and 193). The TCAPCD is an ozone attainment area, so RACT requirements do not apply to these rules.

Guidance and policy documents that we used to help evaluate the rules include the following:

1. *Issue Relating to VOC Regulation, Cut points, Deficiencies, and Deviations* (the "Blue Book"), U.S. EPA, May 25, 1988.

2. *State Implementation Plans; Nitrogen Oxides Supplement to the General Preamble for the Implementation of Title I of the Clean Air Act Amendment of 1990* (the "NO_X Supplement to the General Preamble"), U.S. EPA, 57 FR 55620, Nov. 25, 1992.

3. *State Implementation Plans for National Primary and Secondary Ambient Air Quality Standards*, section 110 of the Clean Air Act (CAA), and Plan Requirements for Nonattainment Areas, Title I, Part D of the CAA.

4. *Requirement for Preparation, Adoption, and Submittal of Implementation Plans*, U.S. EPA, 40 CFR part 51.

5. *California Clean Air Act Guidance, Determination of Reasonably Available Control Technology and Best Available Retrofit Control Technology for Institutional, Industrial and Commercial Boilers, Steam Generators and Process Heaters, California Air Resources Board/CAPCOA, July 18, 1991.*

6. *Cost-Effective Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT), U.S. EPA Office of Air Quality Planning and Standards, March 16, 1994.*

7. *Nitrogen Oxides (NO_X) Reasonably Available Control Technology (RACT) for the Repowering of Utility Boilers, U.S. EPA Office of Air Quality Planning and Standards, March 9, 1994.*

8. *State Implementation Plan: Policy Regarding Excess Emission During Malfunctions, Startup, and Shutdown, U.S. EPA, Office of Air Quality Planning and Standards, September 20, 1999.*

B. Do the Rules Meet the Evaluation Criteria?

We believe these rules are consistent with the relevant policy and guidance regarding enforceability and SIP relaxations. The TSDs have more information on our evaluation.

C. EPA Recommendations To Further Improve the Rules.

None.

D. Public Comment and Final Action

As authorized in section 110(k)(3) of the Act, EPA is fully approving the submitted rules because we believe they fulfill all relevant requirements. We do not think anyone will object to this approval, so we are finalizing it without proposing it in advance. However, in the Proposed Rules section of this **Federal Register**, we are simultaneously proposing approval of the same submitted rules. If we receive adverse comments by June 13, 2002, we will publish a timely withdrawal in the **Federal Register** to notify the public that the direct final approval will not take effect and we will address the comments in a subsequent final action based on the proposal. If we do not receive timely adverse comments, the direct final approval will be effective without further notice on July 15, 2002. This will incorporate these rules into the federally enforceable SIP.

On September 19, 2000, EPA also finalized a limited approval and limited disapproval of TCAPCD rule 4:34, Stationary piston Engines, for reasons similar to our action on rules 4:31 and 4:37. TCAPCD adopted revisions to rule 4:34 on January 29, 2002. Unfortunately, these revisions relaxed, rather than improved on the previous version of the rule. On March 27, 2002, the state withdrew revisions to TCAPCD rule 4:34. However, because Tehama is in attainment with the ozone NAAQS, sanctions under CAA section 179 and federal implementation plan (FIP) requirements do not apply. We are clarifying, therefore, that the version of rule 4:34 approved into the SIP on September 19, 2000 remains federally enforceable, and there are no sanction or FIP implications if this is not revised.

Please note that if EPA receives adverse comment on an amendment, paragraph, or section of the rules and if that provision may be severed from the remainder of the ruled, EPA may adopt as final those provisions of the rules that are not the subject of an adverse comment.

III. Background Information

A. Why Were These Rules Submitted?

NO_X helps produce ground-level ozone, smog and particulate matter, which harm human health and the environment. Section 110(a) of the CAA requires states to submit regulations that control NO_X emissions. Table 2 lists some of the national milestones leading to the submittal of these local agency NO_X rules.

TABLE 2.—OZONE NONATTAINMENT MILESTONES

Date	Event
March 3, 1978	EPA promulgated a list of ozone nonattainment areas under the Clean Air Act as amended in 1977. 43 FR 8964; 40 CFR 81.305.
May 26, 1988	EPA notified Governors that parts of their SIPs were inadequate to attain and maintain the ozone standard and requested that they correct the deficiencies (EPA's SIP-Call). See section 110(a)(2)(H) of the pre-amended Act.
November 15, 1990	Clean Air Act Amendments of 1990 were enacted. Pub. L. 101-549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q.
May 15, 1991	Section 182(a)(2)(A) requires that ozone nonattainment areas correct deficient RACT rules by this date.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that these rules will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because these rules approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, these rules do not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

These rules also do not have tribal implications because they will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. These rules also are not subject to Executive Order 13045, "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because they are not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. These rules do not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing these rules and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of these rules in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2002. Filing a petition for reconsideration by the Administrator of these final rules do not affect the finality of these rules for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rules or action. This action may not be challenged later in proceedings to enforce its requirements. (*See* Section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Dated: April 5, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

2. Section 52.220 is amended by adding paragraphs (c)(295) to read as follows:

§ 52.220 Identification of plan.

* * * * *

(c) * * *

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(295) New and amended regulations for the following APCD were submitted on February 8, 2002, by the Governor's designee.

(i) Incorporation by reference.

(A) Tehama County Air Pollution Control District.

(*1*) Rules 4:31 and 4:37 adopted on January 29, 2002.

* * * * *

[FR Doc. 02–11823 Filed 5–13–02; 8:45 am]
BILLING CODE 6560–50–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 660

[Docket No. 000622191–2104–02; I.D. 041700D]

RIN 0648–AO35

Fisheries Off West Coast States and in the Western Pacific; Pelagic Fisheries; Measures to Reduce the Incidental Catch of Seabirds in the Hawaii Pelagic Longline Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; seabird mitigation measures.

SUMMARY: NMFS issues a final rule under the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FMP) that requires owners and operators of all vessels registered for use under a Hawaii longline limited access permit and operating with longline gear north of 23° N. lat. to employ a line-setting machine with weighted branch lines or use basket-style longline gear, and to use thawed blue-dyed bait and strategic offal discards during setting and hauling of longlines. This final rule also requires that the owners and operators of these vessels follow certain seabird handling techniques and annually complete a protected species educational workshop conducted by NMFS. This final rule follows an emergency interim rule published on June 12, 2001, and is being implemented to permanently codify the terms and conditions contained in a biological opinion (BiOp) issued on November 28, 2000, by the U.S. Fish and Wildlife Service (USFWS) and intended to afford protection to the endangered short-tailed albatross. This final rule also implements management measures that were recommended by the Western Pacific Fishery Management Council (Council) and published in a proposed rule on July 5, 2000. These measures were designed to minimize interactions between seabirds and the Hawaii-based longline fishery.

DATES: This final rule is effective June 13, 2002, except for amendments to §§ 660.35(b)(4)(i), 660.35(b)(6), and 660.35(b)(8), which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA). When OMB approval is received, the effective date will be announced in the **Federal Register**.

ADDRESSES: Copies of a final environmental impact statement for the Fishery Management Plan for the Pelagic Fisheries of the Western Pacific Region (FEIS) are available from Dr. Charles Karnella, Administrator, NMFS, Pacific Islands Area Office (PIAO), 1601 Kapiolani Blvd., Suite 1110, Honolulu, HI 96814. Copies of an environmental assessment (EA), regulatory impact review and final regulatory flexibility analysis (FRFA) prepared for this action may be obtained from Ms. Kitty Simonds, Executive Director, Western Pacific Fishery Management Council, Suite 1400, 1164 Bishop Street, Honolulu, HI 96813. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this rule to NMFS, PIAO and to OMB at the Office of Information and Regulatory Affairs, OMB, 725 17th St., NW, Washington, DC 20503 (Attn: NOAA Desk Officer).

FOR FURTHER INFORMATION CONTACT: Alvin Katekaru, PIAO, 808–973–2937.

SUPPLEMENTARY INFORMATION: As discussed in the proposed rule, published at 65 FR 41424, July 5, 2000, Hawaii-based pelagic longline vessels are known to interact in a sometimes fatal manner with black-footed (*Phoebastria nigripes*) and Laysan (*P. immutabilis*) albatrosses. These seabirds follow the longline vessels, dive on the baited longline hooks, and may become hooked and subsequently drowned. Although no fishery interactions with the endangered short-tailed albatrosses (*P. albatrus*) have been recorded to date, following the publication of the proposed rule, the USFWS prepared a BiOp for the fishery under section 7 of the Endangered Species Act (ESA) for this species. That BiOp concluded that the Hawaii-based longline fishery was not likely to jeopardize the continued existence of the short-tailed albatross. However, it estimated that the fishery would take 15 short-tailed albatrosses during the 7–year period addressed in the consultation. (For the purposes of this BiOp, the USFWS considered a "take" to include not only injury or mortality to a short-tailed albatross caused by longline gear, but also any short-tailed albatross striking at baited hooks or mainline gear during longline setting or haulback.)

Based on this assessment, the USFWS BiOp requires NMFS to implement several measures applicable to the owners and operators of vessels registered for use under Hawaii limited access longline permits (Hawaii-based vessels). When making deep sets north of 23° N. lat., these vessels must employ a line-setting machine with at least 45 grams of weight attached within 1 meter of each hook. In addition, all Hawaii-based vessels operating north of 23° N. lat. must use thawed blue-dyed bait and strategic offal discards to distract birds during the setting and hauling of longline gear. Regardless of the area fished, all Hawaii-based vessel operators must follow certain handling techniques to ensure that any short-tailed albatross brought onboard alive is handled and released in a manner that maximizes the probability of its long-term survival (dead short-tailed albatrosses are to be frozen and their carcasses submitted to NMFS upon return to port). Finally, the USFWS BiOp requires that Hawaii-based vessel operators annually complete a protected species educational workshop conducted by NMFS. Although shallow "swordfish-style" setting is currently prohibited by an emergency rule implemented to protect sea turtles (see below), the USFWS BiOp requires that vessel operators making shallow sets north of 23° N. lat. begin setting the longline at least 1 hour after local sunset and complete the setting process by local sunrise, using only the minimum vessel lights necessary. This requirement is not included in this final rule because the prohibition on "swordfish style" shallow set fishing is being undertaken under separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion issued by NMFS regarding sea turtles. On October 18, 2001, the USFWS amended the USFWS BiOp to allow basket-style longline gear to be set without a line-setting machine or weighted branch lines as data show that this gear has a rapid sink rate that results in few, if any, seabird interactions.

The USFWS BiOp's terms and conditions were implemented by NMFS on June 12, 2001, through an emergency interim rule, which also included sea turtle mitigation measures (FR 66 31561). Public comments were solicited at that time; however, none were received. On December 10, 2001, NMFS extended that emergency interim rule

for another 180 days, through June 8, 2002 (FR 66 63630).

Under the Council's recommended seabird mitigation measures (as described in the July 5, 2000, proposed rule), both vessel owners and vessel operators would have been required to attend annually a protected species workshop conducted by NMFS. In addition, the proposed rule would have required that all seabirds (not just short-tailed albatrosses) be handled and released in a manner that maximizes the probability of their long-term survival. As these two components of the Council's recommendation are more conservative than those in the USFWS BiOp, this final rule combines the terms and conditions of the USFWS BiOp (as previously implemented by the June 12, 2001, emergency interim rule), with the Council's recommendation on seabird handling and workshop attendance requirements. Additional background information on this fishery's interactions with seabirds may be found in the preamble to the proposed rule and is not presented here.

Comments and Responses

Comments on the Council's proposed rule were received from seven individuals.

Comment 1: The rule should not allow vessel operators to decide what mitigation techniques to use (pick list) but should mandate the use of specific techniques.

Response: This final rule does not allow vessel operators to choose mitigation techniques from a pick list. They are required to employ three non-discretionary techniques (blue dyed bait, strategic offal discards, and either basket-style longline gear or a line shooter with weighted branch lines) when fishing north of 23° N. lat. However, vessel operators may choose to use additional mitigation techniques.

Comment 2: NMFS should only require mitigation measures that are scientifically proven.

Response: The seabird mitigation methods in this final rule were studied for their effectiveness in reducing longline gear interactions with seabirds. Both NMFS and a private contractor tested the effectiveness of blue-dyed bait, strategic offal discards, and night setting. Data collected by NMFS observers between 1994–1998 were used to analyze the effectiveness of using a line-setting machine with weighted branch lines. These techniques were found to individually reduce seabird interactions from 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range.

Comment 3: NMFS should require fishermen to attach weights of at least 60 grams one meter from each hook on the branch line, because NMFS scientists used 60 grams of weight to achieve a 92–percent reduction in seabird catch.

Response: Although NMFS scientists tested 60 grams of weight, other scientists investigating seabird mitigation techniques have demonstrated that there are diminishing returns to the sink rates of baited hooks with the addition of weights greater than 40 grams. There are safety concerns associated with heavily weighted hooks because they increase the tension on the line. During longline haulback operations the heavily weighted hooks on the tense line can ricochet back onto vessel crew members and cause serious injury or death. Considering that many vessel operators are currently able to safely weight their gear with 45 grams, and that the sink rate would not significantly increase with the addition of more weight, NMFS believes it is unnecessary and potentially dangerous to require fishermen to use 60 grams of weight.

Comment 4: Strategic offal discharge should not be included as a seabird mitigation method because it attracts birds to the vessels and is unenforceable. The rule should also prohibit the discharge of spent bait with hooks, including fish heads with embedded hooks.

Response: NMFS recognizes that there is not universal agreement on the effectiveness of strategically discarding offal to deter seabirds from interacting with longline gear. However, studies of Hawaii-based vessels targeting swordfish have demonstrated that discharging offal strategically decreases the number of seabird interactions by an average of 53 percent and reduces seabird moralities by as much as 86 percent, when compared with holding all offal onboard during longline operations. NMFS agrees that offal containing hooks should not be discarded and this rule requires the removal of hooks from fish parts, offal, and spent bait prior to its discharge.

Comment 5: Until a study has been completed, NMFS should not advocate the use of blue-dyed bait in combination with strategic offal discharge.

Response: Although specific research on the interactive effects of blue-dyed bait used in combination with strategic offal discharge has not been conducted, there is no information to suggest that their combined use will be any less effective than the use of either method alone.

Comment 6: The rule should apply to Hawaii longline vessels fishing north of 23° N. lat., not only to those north of 25° N. lat.

Response: As required by the USFWS BiOp, as supported by the data on incidental catch of seabirds in the longline fishery, this final rule applies to all Hawaii-based longline vessels fishing north of 23° N. lat.

Comment 7: Longline fishing should be prohibited north of 23° N. lat. within 200 nautical miles (nm) off the NWHI during the first 3 months of the nesting season.

Response: Although not tested simultaneously, the mitigation techniques contained in this rule are each anticipated to reduce seabird interactions by a minimum of 40 to 97 percent, with their combined effectiveness anticipated to be at the high end of this range. Closure of the area suggested would not be expected to further decrease interactions significantly.

Comment 8: Educating owners and operators through the protected species workshops should be mandatory and NMFS should not have the option of waiving this requirement. The workshop requirement should also be extended to crew members and fisheries observers.

Response: Both vessel owners and operators are required to complete annual protected species workshops. However, NMFS needs the flexibility to waive the requirement for protected species workshop attendance in certain circumstances if the waiver is needed for good and justifiable reasons. For example, if the permit holder (longline vessel owner) is a corporation, NMFS should be able to waive the workshop requirement with respect to each of its shareholders with the exception of a representative or designee of the corporation. Although crew members are not required to take the workshop due to the numbers involved and scheduling difficulties, NMFS encourages their attendance on a voluntary basis. The NMFS observer training program ensures that all fishery observers receive adequate training in protected species issues.

Comment 9: NMFS should prohibit the use of lightsticks in the Hawaii longline fishery to protect seabirds.

Response: The emergency interim rule (June 12, 2001) prohibits the possession and use of lightsticks north of the equator, but for the conservation of sea turtles. NMFS observer data do not show that lightsticks are a significant factor in the incidental catch of seabirds in the Hawaii-based longline fishery. However, this prohibition is part of a

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separate rulemaking to make this measure permanent in compliance with a March 29, 2001, biological opinion on sea turtles issued by NMFS.

Comment 10: The rule should differentiate between the swordfish and tuna longline sectors in adopting mandatory seabird mitigation methods.

Response: The USFWS BiOp contains different requirements for the two sectors (shallow, nighttime setting swordfish vessels vs. deep daytime setting tuna vessels); however, a June 12, 2001, emergency rule prohibited all shallow setting north of the equator in order to conserve sea turtles. That prohibition is expected to be made permanent because it is one of the mandatory terms and conditions of a March 29, 2001, biological opinion on sea turtles issued by NMFS. Since the shallow-set fishery for swordfish is no longer allowed to operate, there is no need to promulgate regulations to control that fishery.

Comment 11: Standards for maximum lighting brightness should be established for the night setting mitigation method, with all other types of lighting illegal while night setting.

Response: NMFS is not implementing a night setting requirement at this time because shallow, nightime setting is not expected to resume north of the equator (see response to comment 10).

Comment 12: If longline operators miscalculate sunrise and sunset times, the night setting method would be ineffective.

Response: NMFS is not implementing a night setting requirement at this time (see response to comment 10).

Comment 13: The rule should specifically delineate how enforcement shall occur and include provisions for monitoring the effectiveness of the mitigation methods.

Response: The U.S. Coast Guard (USCG) has indicated that it will enforce the use of seabird mitigation methods by conducting dockside inspections and aerial surveillance of fishing vessels at sea. At dockside and at sea, longline vessels will be checked for required equipment and vessel operators will be asked how and when they intend to employ seabird mitigation methods. Aerial surveillance will be used to observe the fishing process and determine whether line setting machines are being used when making deep sets north of 23° N. lat. To monitor and enforce attendance at the protected species workshops, each workshop participant will be given a completion certificate with their name and photograph, and each vessel's operator and owner must both maintain valid certificates in order to continue fishing.

Comment 14: The appropriate goal for seabird bycatch measures is the elimination of such bycatch entirely.

Response: At this time there is no single seabird interaction mitigation measure, or combination of measures, that would eliminate all seabird interactions with this fishery. However, NMFS intends to continue to research and develop seabird mitigation measures to reduce interactions with seabirds to the maximum extent practicable, as called for in the United Nations Food and Agricultural Organization's International Plan of Action for Reducing the Incidental Catch of Seabirds in Longline Fisheries.

Comment 15: The rule should include incentives for longline fishermen to participate in research and development programs to evaluate the effectiveness of seabird mitigation measures. There should be a requirement for monitoring mitigation measures on board Hawaii-based longline vessels and there should be research of more effective measures.

Response: Hawaii longline fishery participants have already voluntarily participated in seabird mitigation studies such as the testing of blue-dyed bait, strategic offal discards, and an underwater line-setting chute. In addition, nothing in this final rule prevents vessel operators from experimenting with new methods to reduce interactions with seabirds. The effectiveness of the mitigation measures required by this final rule will be evaluated primarily using data collected by NMFS observers, supplemented with data from the fishery logbooks.

Comment 16: NMFS should require automated, computer-monitored, NMFS-approved vessel monitoring systems (VMS) to be installed on all longline vessels.

Response: Existing NMFS regulations at 50 CFR 660.25 require all Hawaii-based longline fishing vessels to carry automated, computer-monitored VMS.

Comment 17: NMFS should expand the Hawaii longline fishery observer program to reduce the uncertainty regarding the rate of interactions with seabirds and the effectiveness of seabird mitigation methods. Observer coverage should be increased to at least 20 or 25 percent throughout the fishery. Observers should be trained in seabird identification and be required to record all seabird mortality data, mitigation measures employed, and the effectiveness of such measures.

Response: Over the past 15 months, NMFS has increased observer coverage in the Hawaii-based longline fishery to over 20 percent. Observers are currently trained in seabird identification, record seabird mitigation methods employed on each observed vessel, and note bird abundance while the vessel is setting or hauling its gear.

Comment 18: Operators of longline vessels not carrying observers should record accurate information on the number of birds caught on each set, along with information on the numbers of hooks set, locality of set, time, and date of set. Any dead seabird should be brought aboard the vessel, frozen, and brought to port for identification and study.

Response: As longline vessel operators are already required to record seabird interaction information on NMFS daily longline logbooks, no change is required to meet this request. The collection and further study of dead seabird specimens would contribute to the understanding of how longline fishing operations impact seabird populations. However, because the Migratory Bird Treaty Act limits the importation and transportation of live or dead birds or bird parts without a permit or an exemption from the Act, Hawaii-based fishermen will not be required to bring back to port all dead seabirds brought aboard their vessels. This final rule does require that fishermen retain and bring back any dead short-tailed albatross, an endangered species, brought aboard the vessel. This action is authorized under the Endangered Species Act.

Classification

This final rule has been determined to be not significant for purposes of Executive Order 12866. On March 30, 2001, NMFS issued an FEIS that analyzes the environmental impacts of U.S. pelagic fisheries in the western Pacific region. That analysis includes the Hawaii-based pelagic longline fishery and was filed with the Environmental Protection Agency; a notice of availability was published on April 6, 2001 (66 FR 18243). In February 2002, the Council prepared an EA on the specific seabird mitigation measures in this rule. That analysis is available from the Council (see **ADDRESSES**).

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall a person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA, unless that collection of information displays a currently valid OMB control number.

This final rule contains a collection-of-information requirement subject to review and approval by OMB under the Paperwork Reduction Act. This requirement has been submitted to OMB for approval. Public reporting burden for this collection of information is estimated at 60 minutes for at-sea notification by a longline vessel operator of a take of a short-tailed albatross, 60 minutes to complete a short-tailed albatross recovery data form, and 30 minutes to complete a specimen tag for a short-tailed albatross. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Public comment is sought regarding: whether this proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; the accuracy of the burden estimate; ways to enhance the quality, utility, and clarity of the information to be collected; and ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology. Send comments on the reporting burden estimate or any other aspect of the collection-of-information requirements in this final rule to NMFS and OMB (see **ADDRESSES**).

An FRFA that describes the impact this final rule is likely to have on small entities was prepared and is also available from the Council (see **ADDRESSES**). A summary of the FRFA follows.

The need for and objectives of this final rule are stated in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of this document and are not repeated here. No comments on the initial regulatory flexibility analysis or the economic effects of this action were received. This final rule will not duplicate, overlap, or conflict with any other Federal rules. This action is taken under authority of the Magnuson-Stevens Fishery Conservation and Management Act and regulations at 50 CFR part 660.

All Hawaii-based longline vessels affected by this final rule are considered to be small entities under guidelines issued by the Small Business Administration because they are independently owned and operated, and have annual receipts not in excess of $3.5 million. Based on the information provided in the FRFA, this final rule will affect all 164 holders of Hawaii limited access longline permits. Most severely impacted will be the owners and operators of those vessels fishing north of 23° N. lat. During the time period which was the focus of the USFWS BiOp (1994–1998), an average of 96 vessels made at least one set north of 23° N. lat. each year. The distribution of these vessels by set type (deep versus shallow) is difficult to determine, as the majority made at least one set of each type. On average there were approximately 830 deep sets, and 4,100 shallow sets made annually north of 23° N. lat. between 1994 and 1998. The costs associated with this final rule can be categorized as direct (increased fixed or variable costs) or indirect (revenue changes). Because mitigation techniques vary by target, economic impacts follow this same pattern. Compared to the historic baseline (1994–1999, the period examined in the USFWS BiOp), the revenue impact to those vessels utilizing shallow sets north of 23° N. lat. (swordfish and mixed target vessels), is expected to be a gain of $335 per swordfish set (a 9 percent increase as compared to the 1998 fleet wide average of $3,724 per set) due to increased catch rates, but a loss of $598 per mixed target set (16 percent decrease) due to decreases in catch rates. The actual impact on these vessel owners and operators is uncertain, as the current emergency rule to protect sea turtles prohibits these vessels from utilizing shallow sets north of the equator. The anticipated revenue impact to vessels utilizing deep sets north of 23° N. lat. (vessels targeting tuna and the only fishery currently allowed in this area) is expected to be a gain of $432 per set (12 percent increase). Direct costs for these vessels include $2,700 annually for the amortized purchase price and maintenance of a line setting machine with weighted branch lines. In addition, this rule is anticipated to increase annual direct costs to operators of all vessels fishing north of 23° N. lat. by up to $500 for blue dye, and $400 for containers in which to store offal between sets. The actual net revenue increase/decrease in this fishery cannot be predicted, because of the added constraints to the fishery compared to the baseline period. The impacts of other aspects of this final rule (seabird handling procedures and annual attendance at a protected species workshop) have not been quantified but are expected to be minimal. Four alternatives to this final rule were considered and rejected. The first alternative would have required vessel operators to use at least two of six specified mitigation techniques (pick list) when fishing north of 25° N. lat. The second alternative would have also required the use of two techniques when fishing north of 25° N. lat., but would have left the decision of which two up to the Council. The third alternative would have prohibited longline fishing north of 23° N. lat. within the waters of the exclusive economic zone around Hawaii, while the fourth alternative was the no-action alternative. Based on the non-discretionary nature of the terms and conditions of the USFWS BiOp, these alternatives were all rejected on the basis that they do not meet the legal requirements of the Endangered Species Act. The amendment of the USFWS BiOp to allow the use of basket-style longline gear is intended to provide mitigation from the negative economic impacts of this final rule as one or more vessels that currently utilize this gear to make deep sets will not be required to refit their vessels to accommodate line shooters.

Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996 states that for each rule or group of related rules for which the agency is required to prepare an FRFA, the agency shall publish one or more guides to assist small entities in complying with the rule, and shall designate such publications as "small entity compliance guides". The agency shall explain the actions a small entity is required to take to comply with a rule or group of rules. As a part of this rule making process, a small entity compliance guide (compliance guide) was prepared. Copies of this final rule and the compliance guide will be sent to all holders of Hawaii limited access longline permits. The compliance guide will be available at the following web site: *http://swr.nmfs.noaa.gov/piao/index.htm*. Copies can also be obtained from the PIAO (see **ADDRESSES**).

As previously discussed, on November 28, 2000, the USFWS completed a formal Endangered Species Act section 7 consultation on this fishery. This consultation was amended on October 18, 2001, to allow the use of basket-style gear as an alternative to a line-setting machine with weighted branch lines. The formal consultation concluded that this fishery is not likely to jeopardize the continued existence of the short-tailed albatross. This final rule implements the mandatory terms and conditions of the USFWS BiOp that resulted from that consultation.

List of Subjects in 50 CFR Part 660

Administrative practice and procedure, American Samoa, Fisheries, Fishing, Guam, Hawaiian Natives, Indians, Northern Mariana Islands, and Reporting and recordkeeping requirements.

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Dated: May 8, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 660 is amended as follows:

PART 660—FISHERIES OFF WEST COAST STATES AND IN THE WESTERN PACIFIC

1. The authority citation of part 660 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 660.12, the definition for "Basket-style longline gear" is added to read as follows:

§ 660.12 Definitions.

* * * * *≤

Basket-style longline gear means a type of longline gear that is divided into units called "baskets" each consisting of a segment of main line to which 10 or more branch lines with hooks are spliced. The mainline and all branch lines are made of multiple braided strands of cotton, nylon, or other synthetic fibers impregnated with tar or other heavy coatings that cause the lines to sink rapidly in seawater.

* * * * *≤

3. In § 660.22, paragraphs (z) through (dd) are revised and new paragraphs (ee) and (ii) are added to read as follows:

§ 660.22 Prohibitions.

* * * * *≤

(z) Fail to use a line setting machine or line shooter, with weighted branch lines, to set the main longline when operating a vessel that is registered for use under a Hawaii longline limited access permit and equipped with monofilament main longline, when making deep sets north of 23° N. lat., in violation of § 660.35 (a)(1) and (a)(2).

(aa) Fail to employ basket-style longline gear such that the mainline is deployed slack when operating a vessel registered for use under a Hawaii longline limited access north of 23° N. lat., in violation of § 660.35 (a)(3).

(bb) Fail to maintain and use blue dye to prepare thawed bait when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(4), (a)(5), and (a)(6).

(cc) Fail to retain, handle, and discharge fish, fish parts, and spent bait, strategically when operating a vessel registered for use under a Hawaii longline limited access permit that is fishing north of 23° N. lat., in violation of § 660.35 (a)(7) through (a)(9).

(dd) Fail to handle short-tailed albatrosses that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (b).

(ee) Fail to handle seabirds other than short-tailed albatross that are caught by pelagic longline gear in a manner that maximizes the probability of their long-term survival, in violation of § 660.35 (c).

(ff) Own a longline vessel registered for use under a Hawaii longline limited access permit that is engaged in longline fishing for Pacific pelagic management unit species, without a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (a).

(gg) Fish for Pacific pelagic management unit species on a vessel registered for use under a Hawaii limited access longline permit without having onboard a valid protected species workshop certificate issued by NMFS or a legible copy thereof in violation of § 660.36 (d).

(hh) Fail to carry line clippers meeting the minimum design standards as specified in § 660.32(a)(1), and a dip net as required under § 660.32(a)(2), on board a vessel registered for use under a Hawaii longline limited access permit.

(ii) Fail to comply with the sea turtle handling, resuscitation, and release requirements specified in § 660.32(b) through (d), when operating a vessel registered for use under a Hawaii longline limited access permit.

* * * * *≤

Figure 3 to Part 660 [Removed]

4. Figure 3 to Part 660 is removed.

5. Section 660.35 is added to read as follows:

§ 660.35 Pelagic longline seabird mitigation measures.

(a) *Seabird mitigation techniques.* Owners and operators of vessels registered for use under a Hawaii longline limited access permit must ensure that the following actions are taken when fishing north of 23° N. lat.:

(1) Employ a line setting machine or line shooter to set the main longline when making deep sets using monofilament main longline;

(2) Attach a weight of at least 45 g to each branch line within 1 m of the hook when making deep sets using monofilament main longline;

(3) When using basket-style longline gear, ensure that the main longline is deployed slack to maximize its sink rate;

(4) Use completely thawed bait that has been dyed blue to an intensity level specified by a color quality control card issued by NMFS;

(5) Maintain a minimum of two cans (each sold as 0.45 kg or 1 lb size) containing blue dye on board the vessel;

(6) Discharge fish, fish parts (offal), or spent bait while setting or hauling longline gear, on the opposite side of the vessel from where the longline gear is being set or hauled;

(7) Retain sufficient quantities of fish, fish parts, or spent bait, between the setting of longline gear for the purpose of strategically discharging it in accordance with paragraph (a)(6) of this section;

(8) Remove all hooks from fish, fish parts, or spent bait prior to its discharge in accordance with paragraph (a)(6) of this section; and

(9) Remove the bill and liver of any swordfish that is caught, sever its head from the trunk and cut it in half vertically, and periodically discharge the butchered heads and livers in accordance with paragraph (a)(6) of this section.

(b) *Short-tailed albatross handling techniques.* If a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit, owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the bird on board the vessel using a dip net;

(2) Cover the bird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the bird;

(4) Determine if the bird is alive or dead.

(i) If dead, freeze the bird immediately with an identification tag attached directly to the specimen listing the species, location and date of mortality, and band number if the bird has a leg band. Attach a duplicate identification tag to the bag or container holding the bird. Any leg bands present must remain on the bird. Contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop, inform them that you have a dead short-tailed albatross on board, and submit the bird to NMFS within 72 hours following completion of the fishing trip.

(ii) If alive, handle the bird in accordance with paragraphs (b)(5) through (b)(10) of this section.

(5) Place the bird in a safe enclosed place;

(6) Immediately contact NMFS, the Coast Guard, or the U.S. Fish and Wildlife Service at the numbers listed on the Short-tailed Albatross Handling Placard distributed at the NMFS protected species workshop and request veterinary guidance;

(7) Follow the veterinary guidance regarding the handling and release of the bird.

(8) Complete the short-tailed albatross recovery data form issued by NMFS.

(9) If the bird is externally hooked and no veterinary guidance is received within 24–48 hours, handle the bird in accordance with paragraphs (c)(4) and (c)(5) of this section, and release the bird only if it meets the following criteria:

(i) Able to hold its head erect and respond to noise and motion stimuli;

(ii) Able to breathe without noise;

(iii) Capable of flapping and retracting both wings to normal folded position on its back;

(iv) Able to stand on both feet with toes pointed forward; and

(v) Feathers are dry.

(10) If released under paragraph (a)(8) of this section or under the guidance of a veterinarian, all released birds must be placed on the sea surface.

(11) If the hook has been ingested or is inaccessible, keep the bird in a safe, enclosed place and submit it to NMFS immediately upon the vessel's return to port. Do not give the bird food or water.

(12) Complete the short-tailed albatross recovery data form issued by NMFS.

(c) *Non-short-tailed albatross seabird handling techniques.* If a seabird other than a short-tailed albatross is hooked or entangled by a vessel registered for use under a Hawaii longline limited access permit owners and operators must ensure that the following actions are taken:

(1) Stop the vessel to reduce the tension on the line and bring the seabird on board the vessel using a dip net;

(2) Cover the seabird with a towel to protect its feathers from oils or damage while being handled;

(3) Remove any entangled lines from the seabird;

(4) Remove any external hooks by cutting the line as close as possible to the hook, pushing the hook barb out point first, cutting off the hook barb using bolt cutters, and then removing the hook shank;

(5) Cut the fishing line as close as possible to ingested or inaccessible hooks;

(6) Leave the bird in a safe enclosed space to recover until its feathers are dry; and

(7) After recovered, release seabirds by placing them on the sea surface.

5. Section 660.36 is added to read as follows:

§ 660.36 Protected species workshop.

(a) Each year both the owner and the operator of a vessel registered for use under a Hawaii longline limited access permit must attend and be certified for completion of a workshop conducted by NMFS on mitigation, handling, and release techniques for turtles and seabirds and other protected species.

(b) A protected species workshop certificate will be issued by NMFS annually to any person who has completed the workshop.

(c) An owner of a vessel registered for use under a Hawaii longline limited access permit must maintain and have on file a valid protected species workshop certificate issued by NMFS in order to maintain or renew their vessel registration.

(d) An operator of a vessel registered for use under a Hawaii longline limited access permit and engaged in longline fishing, must have on board the vessel a valid protected species workshop certificate issued by NMFS or a legible copy thereof.

[FR Doc. 02–12030 Filed 5–13–02; 8:45 am]

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Proposed Rules

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS Order No. 2180A–01]

RIN 1115–AG47

Establishment of a $3 Immigration User Fee for Certain Commercial Vessel Passengers Previously Exempt

AGENCY: Immigration and Naturalization Service, Department of Justice.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: On April 3, 2002, at 67 FR 15753, the Immigration and Naturalization Service (Service) published a proposed rule in the **Federal Register** proposing to require certain commercial vessel operators and/or their ticketing agents to charge a $3 user fee from every commercial vessel passenger whose journey originated in the U.S., Canada, Mexico, a territory or possession of the United States, or an adjacent island except those exempted under section 286(e) of the Immigration and Nationality Act (Act) or 8 CFR part 286. The original comment period for the proposed rule closed on May 3, 2002. To ensure that the public has ample opportunity to fully review and comment on the proposed rule, this document reopens the comment period to May 28, 2002.

DATES: Written comments must be submitted on or before May 28, 2002.

ADDRESSES: Please submit written comments to the Director, Regulations and Forms Services Division, Immigration and Naturalization Service, 425 I Street, NW., Room 4034, Washington, DC 20536. To ensure proper handling, please reference INS No. 2180A–01 on your correspondence. You may also submit comments to the Service electronically at *insregs@usdoj.gov*. When submitting comments electronically please include INS No. 2180A–01 in the subject box. Comments are available for public inspection at the above address by calling (202) 514–3048 to arrange for an appointment.

FOR FURTHER INFORMATION CONTACT: Georgia Mayers, Chief of Cash Management, Office of Finance, Immigration and Naturalization, 425 I Street, NW., Washington, DC 20536, 202–305–1200.

SUPPLEMENTARY INFORMATION:

Where can the public view the April 3, 2002, proposed rule?

The April 3, 2002, proposed rule can be viewed on the Government Printing Office Web site at: *http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002—register&docid=02–8011-filed*

Dated: May 9, 2002.

James W. Ziglar,

Commissioner, Immigration, and Naturalization Service.

[FR Doc. 02–12045 Filed 5–9–02; 3:51 pm]

BILLING CODE 4410–10–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM206; Special Conditions No. 25–02–06]

Special Conditions: Fairchild Dornier GmbH, Model 728–100; Operation Without Normal Electrical Power

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This action proposes special conditions for the Fairchild Dornier GmbH Model 728–100 airplane. This airplane will have a novel or unusual design feature when compared to the state of technology envisioned in the airworthiness standards for transport category airplanes. The airplane design will include an electronic flight control system. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for this design feature. These special conditions, in part, contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards. Additional special conditions may also be defined.

DATES: Comments must be received on or before June 28, 2002.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–113), Docket No. NM206, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at the above address. All comments must be marked: *Docket No. NM206*. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Tom Groves, FAA, International Branch, ANM–116, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–1503; facsimile (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. We ask that you send us two copies of written comments.

We will file in the docket all comments we receive, as well as a report summarizing each substantive public contact with FAA personnel concerning these proposed special conditions. The docket is available for public inspection before and after the comment closing date. If you wish to review the docket in person, go to the address in the **ADDRESSES** section of this action between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays. We will consider all comments we receive on or before the closing date for comments. We will consider comments filed late if it is possible to do so without incurring expense or delay. We may change the proposed special conditions in light of the comments we receive.

If you want the FAA to acknowledge receipt of your comments on this proposal, include with your comments a pre-addressed, stamped postcard on which the docket number appears. We will stamp the date on the postcard and mail it back to you.

Background

On May 5, 1998, Fairchild Dornier GmbH applied for a type certificate for their new Model 728–100 airplane. The Model 728–100 is a 70–85 passenger twin-engine regional jet with a maximum takeoff weight of 77,600 pounds.

Type Certification Basis

Under the provisions of 14 CFR 21.17, Fairchild Dornier GmbH must show that the Model 728–100 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–96. Fairchild Dornier GmbH has also applied to extend the certification basis to include Amendments 25–97, 25–98, and 25–104.

If the Administrator finds that the applicable airworthiness regulations (*i.e.*, 14 CFR part 25) do not contain adequate or appropriate safety standards for the Model 728–100 airplane because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16.

In addition to the applicable airworthiness regulations and special conditions, the Model 728–100 airplane must comply with the fuel vent and exhaust emission requirements of 14 CFR part 34 and the noise certification requirements of 14 CFR part 36, and the FAA must issue a finding of regulatory adequacy pursuant to Section 611 of Public Law 92–574, the "Noise Control Act of 1972."

Special conditions, as defined in § 11.19, are issued in accordance with § 11.38 and become part of the type certification basis in accordance with § 21.17(a)(2).

Special conditions are initially applicable to the model for which they are issued. Should the type certificate for that model be amended later to include any other model that incorporates the same novel or unusual design feature, the special conditions would also apply to the other model under the provisions of § 21.101(a)(1).

Novel or Unusual Design Features

As noted earlier, the Fairchild Dornier GmbH Model 728–100 airplane will include an electronic flight control system. The current airworthiness standards of part 25 do not contain adequate or appropriate standards for the protection of this equipment from the adverse effects of operations without normal electrical power. Accordingly, this system is considered to be a novel or unusual design feature. Since the loss of all electrical power may be catastrophic to the airplane, special conditions are proposed to retain the level of safety envisioned by § 25.1351(d).

Discussion

The Fairchild Dornier GmbH Model 728–100 airplane will require a continuous source of electrical power for the electronic flight control system. Section 25.1351(d), "Operation without normal electrical power," requires safe operation in visual flight rule (VFR) conditions for a period of not less than five minutes with inoperative normal power. This rule was structured around a traditional design utilizing mechanical connections between the flight control surfaces and the pilot controls. The Fairchild Dornier GmbH Model 728 will utilize an electronic flight control system. With an electronic flight control system, there is no mechanical linkage between the pilot controls and the flight control surfaces. Pilot control inputs are converted to electrical signals which are processed and then transmitted via wires to the control surface actuators. At the control surface actuators the electrical signals are converted to an actuator command, which moves the control surface. Uninterrupted electrical power is necessary to ensure the electronic flight control system function.

Service experience has shown that the loss of all electrical power generated by the airplane's engine generators or auxiliary power unit (APU) is not extremely improbable. Thus, it must be demonstrated that the airplane can continue safe flight and landing after total loss of the normal electrical power with only the use of its emergency electrical power systems. These emergency electrical power systems must be able to power loads that are essential for continued safe flight and landing. The emergency electrical power system must be designed to supply:

1. Electrical power required for immediate safety, without the need for crew action, following the loss of the normal engine generator electrical power system (which includes APU power).
2. Electrical power required for continued safe flight and landing.
3. Electrical power required to restart the engines.

For compliance purposes, a test of the loss of normal engine generator power must be conducted to demonstrate that when the failure condition occurs during night instrument meteorological conditions (IMC), at the most critical phase of the flight relative to the electrical power system design and distribution of equipment loads on the system, the following conditions are met:

1 Engine restart capability is provided.

2. Capability for continued operation in IMC is provided.

3. The airplane is demonstrated to be capable of continued safe flight and landing. The length of time must be computed based on the maximum diversion time capability for which the airplane is being certified. Consideration for speed reductions resulting from the associated failure must be made.

4. The availability of APU operation should not be considered in establishing emergency power system adequacy.

Applicability

As discussed above, these special conditions are applicable to the Fairchild Dornier GmbH Model 728–100. Should Fairchild Dornier GmbH apply at a later date for a change to the type certificate to include another model incorporating the same novel or unusual design feature, these special conditions would apply to that model as well under the provisions of section 21.101(a)(1). Fairchild Dornier has submitted applications for certification of both increased and reduced passenger capacity derivatives of the Model 728–100 airplane. These derivative models are designated the Model 928–100 airplane and the Model 528–100 airplane, respectively. As currently proposed, these derivative models share the same design feature of an electronic flight control system as the Model 728–100 airplane, and it is anticipated that they will be included in the applicability of these proposed special conditions.

Conclusion

This action affects only certain novel or unusual design features on Fairchild Dornier GmbH Model 728–100 airplanes. It is not a rule of general applicability, and it affects only the applicant who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701, 44702, 44704.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the

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following special conditions as part of the type certification basis for Fairchild Dornier GmbH Model 728–100 airplanes.

Operation Without Normal Electrical Power. In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with inoperative normal engine and APU generator electrical power (in other words, without electrical power from any source except for the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

Issued in Renton, Washington, on April 23, 2002.

Ali Bahrami,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12023 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 872

[Docket No. 02N–0114]

Dental Devices; Reclassification of Root-Form Endosseous Dental Implants and Endosseous Dental Implant Abutments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to reclassify from class III to class II root-form endosseous dental implants intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. FDA is also proposing to reclassify endosseous dental implant abutments, which are separate components that are attached to the implant and intended to aid in prosthetic rehabilitation from class III to class II. This reclassification is being proposed on the Secretary of Health and Human Services (the Secretary's) own initiative based on new information. The agency is taking this action under the Federal Food, Drug, and Cosmetic Act (the act), as amended by the Medical Device Amendments of 1976 (the 1976 amendments), the Safe Medical Devices Act of 1990 (the SMDA), and the Food and Drug Administration Modernization Act of 1997 (FDAMA). Elsewhere in this issue of the **Federal Register**, FDA is publishing a notice of availability of a draft guidance document that would serve as the special control if this proposal becomes final.

DATES: Submit written or electronic comments by August 12, 2002. See section XIII of this document for the proposed effective date of a final rule based on this document.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–827–8879.

SUPPLEMENTARY INFORMATION:

I. Background (Regulatory Authorities)

The act (21 U.S.C. 301 *et seq.*), as amended by the 1976 amendments (Public Law 94–295), the SMDA (Public Law 101–629) and FDAMA (Public Law 105–115), established a comprehensive system for the regulation of medical devices intended for human use. Section 513 of the act (21 U.S.C. 360c) established three categories (classes) of devices, depending on the regulatory controls needed to provide reasonable assurance of their safety and effectiveness. The three categories of devices are class I (general controls), class II (special controls), and class III (premarket approval).

Under section 513 of the act, devices that were in commercial distribution before May 28, 1976 (the date of enactment of the 1976 amendments), generally referred to as preamendments devices, are classified after FDA has: (1) Received a recommendation from a device classification panel (an FDA advisory committee); (2) published the panel's recommendation for comment, along with a proposed regulation classifying the device; and (3) published a final regulation classifying the device. FDA has classified most preamendments devices under these procedures.

Devices that were not in commercial distribution prior to May 28, 1976, generally referred to as postamendments devices, are classified automatically by statute (section 513(f) of the act) into class III without any FDA rulemaking process. Those devices remain in class III and require premarket approval, unless and until: (1) The device is reclassified into class I or II; (2) FDA issues an order classifying the device into class I or II in accordance with new section 513(f)(2) of the act, as amended by FDAMA; or (3) FDA issues an order finding the device to be substantially equivalent, under section 513(i) of the act, to a predicate device that does not require premarket approval. The agency determines whether new devices are substantially equivalent to previously offered devices by means of premarket notification procedures in section 510(k) of the act (21 U.S.C. 360(k)) and 21 CFR part 807 of the regulations.

A preamendments device that has been classified into class III may be marketed, by means of premarket notification procedures, without submission of a premarket approval application (PMA) until FDA issues a final regulation under section 515(b) of the act (21 U.S.C. 360e(b)) requiring premarket approval.

Reclassification of classified preamendments devices is governed by section 513(e) of the act. This section provides that FDA may, by rulemaking, reclassify a device (in a proceeding that parallels the initial classification proceeding) based upon "new information." The reclassification can be initiated by FDA or by the petition of an interested person. The term "new information," as used in section 513(e) of the act, includes information developed as a result of a reevaluation of the data before the agency when the device was originally classified, as well as information not presented, not available, or not developed at that time. (See, e.g., *Holland Rantos* v. *United States Department of Health, Education, and Welfare*, 587 F.2d at 1173, 1174 n.1 (D.C. Cir. 1978); *Upjohn* v. *Finch*, 422 F.2d 944 (6th Cir. 1970); *Bell* v. *Goddard*, 366 F.2d 177 (7th Cir. 1966).)

Reevaluation of the data previously before the agency is an appropriate basis for subsequent regulatory action where the reevaluation is made in light of newly available regulatory authority (see *Bell* v. *Goddard*, supra, 366 F.2d at 181; *Ethicon , Inc.* v. *FDA*, 762 F. Supp. 382, 389-91 (D.D.C. 1991)), or in light of changes in "medical science." (See *Upjohn* v. *Finch*, supra, 422 F.2d at 951.) Regardless of whether data before the agency are past or new data, the "new information" to support reclassification under section 513(e) of the act must be "valid scientific evidence," as defined in section 513(a)(3) of the act and 21 CFR 860.7(c)(2). (*See, e.g., General Medical Co.* v. *FDA*, 770 F.2d 214 (D.C. Cir. 1985); *Contact Lens Assoc.* v. *FDA*, 766 F.2d 592 (D.C. Cir.), cert. denied, 474 U.S. 1062 (1985)). FDA relies upon "valid scientific evidence" in the classification process to determine the level of regulation for devices. For the purpose of reclassification, the valid scientific evidence upon which the agency relies must be publicly available. Publicly available information excludes trade secret and/or confidential commercial information, e.g., nonpublic information in a pending PMA. (*See* section 520c of the act (21 U.S.C. 360j(c).)

II. Regulatory History of the Device

In the **Federal Register** of August 12, 1987 (52 FR30082), FDA issued a final rule classifying endosseous implants into class III (21 CFR 872.3640). The preamble to the proposal to classify the device (45 FR 85962, December 30, 1980) included the recommendation of the Dental Devices Panel (the Panel) regarding the classification of the device. The Panel's recommendation included a summary of the reasons the device should be subject to premarket approval and identified certain risks to health presented by the device. The Panel also recommended under section 513(c)(2)(A) of the act that a high priority for the application of section 515 of the act be assigned to the endosseous dental implant.

In the **Federal Register** of January 6, 1989 (54 FR 550 at 551), FDA issued a notice of intent to initiate proceedings to require premarket approval of 31 preamendments class III devices assigned a high priority by FDA for application of premarket approval requirements. Among other things, the notice described the factors FDA takes into account in establishing priorities for initiating proceedings under section 515(b) of the act for issuing final rules requiring that preamendments class III devices have approved PMAs or declared completed product development protocols (PDP)s. Using those factors, FDA declared that the endosseous implant, identified in 21 CFR 872.3640, had a high priority for initiating a proceeding to require premarket approval. Accordingly, FDA began a rulemaking proceeding to require that endosseous implants have an approved PMA or a PDP that has been declared completed.

In the **Federal Register** of December 7, 1989 (54 FR 50592), FDA issued a proposed rule to require the filing of a PMA or a notice of completion of a PDP for the endosseous implant. In accordance with section 515(b)(2)(A) of the act, the agency summarized its proposed findings with respect to the degree of risk of illness or injury designed to be eliminated or reduced by requiring the device to meet premarket approval requirements, and the benefits to the public from the use of the device. The proposal also provided an opportunity for interested persons to comment on the proposed rule and to request a change in the classification of the device based on new information relevant to its classification. The period for requesting a change in the classification of the device closed on December 22, 1989. The period for commenting on the proposed rule closed on February 5, 1990.

On December 12, 1989, FDA received a petition from the Dental Implant Manufacturers of America (DIMA) requesting a change in the classification of the root-form (*i.e.*, screw, basket, solid and hollow cylinder types) and blade-form endosseous dental implants from class III to class II. The petition was limited to one-stage endosseous implants and the first stage component of the two-stage implant system. The petition's request included implants composed of commercially pure titanium, titanium alloy (Ti–6Al–4V), ceramic single crystal aluminum oxide, and ceramic, polycrystalline alumina. After a number of exchanges between FDA and DIMA to resolve several deficiencies, FDA referred the petition to the Panel for its recommendation on the requested change in classification. The Panel met on October 24, 1991, and voted to deny DIMA's petition (Ref. 1).

Based on information provided by FDA for the October 24, 1991 meeting, the Panel did recommend that screw-type root-form endosseous dental implants be reclassified to class II. The Panel stated that special controls would not be adequate to control some of the risks for other types of endosseous dental implants and recommended that all nonscrew-types remain in class III. In the years following this recommendation, additional clinical data have been reviewed by FDA and the agency believes all root-form endosseous dental implants can be reclassified.

In accordance with section 513(e) of the act and 21 CFR 860.130(b)(2), based on new information with respect to the device, FDA, on its own initiative, is proposing to reclassify the root-form endosseous dental implant from class III to class II when intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. FDA is further proposing to reclassify endosseous dental implant abutments from class III to class II. Endosseous dental implants, other than root-form, remain in class III and will require the filing of a PMA or PDP at a future date.

The Panel met again on November 4, 1997, with a continuation of the meeting on January 13, 1998. Based on new, publicly available information provided by FDA, the Panel recommended that all root-form endosseous dental implants and endosseous dental implant abutments be reclassified from class III to class II. The Panel believed that class II with special controls would provide reasonable assurance of safety and effectiveness.

III. Device Description

An endosseous dental implant is a device made of titanium or titanium alloy and is uncoated, or coated with titanium or hydroxyapatite, intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. Endosseous dental implants are used to attach either removable or fixed prostheses (crowns, bridges, partial removable dentures, or complete removable dentures) and are inserted into either the maxillary or mandibular alveolar ridge.

Endosseous dental implants can be defined as a one-stage or two-stage implant system. These may be loaded after a period of healing or, in some patients for some indications, they may be loaded immediately. Endosseous dental implants can be further generically grouped into four geometrically distinct types: Basket, screw, solid cylinder, and hollow cylinder. These four groups are known as "root-form" implants. Several other geometrical types of implants have been marketed that do not fall within the description of one of these four types and those types are not root-form implants. FDA is proposing to change the classification of only the root-form types.

Endosseous dental implant abutments are premanufactured prosthetic components directly connected to the endosseous implant and are used as an aid for prosthetic rehabilitation.

IV. Proposed Reclassification

Although the Secretary is proposing reclassification on his own initiative, the agency provided new information to the Panel and asked for its recommendation regarding the reclassification of the devices. In a public meeting on January 13, 1998, the Panel unanimously recommended that the root-form endosseous dental implant

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be reclassified from class III to class II. The Panel believed that class II with a special control guidance document, which includes references to relevant voluntary consensus standards and gives guidance on labeling, would provide reasonable assurance of safety and effectiveness.

The Panel also recommended that endosseous implant abutments be reclassified from class III to class II. They recommended a separate classification from the root-form endosseous implants because the abutments are not considered implants. The Panel believed that class II with a special control guidance document that references relevant voluntary consensus standards would provide reasonable assurance of the safety and effectiveness of the device.

V. Risks to Health

When endosseous dental implants were classified into class III (52 FR 30082, August 12, 1987), the Panel and FDA identified several risks associated with endosseous dental implants for prosthetic attachment, including local soft tissue degeneration, hyperplasia, progressive bone resorption, exfoliation, local and systemic infection (including long term bacterial infection), damage to existing dentition, implant mobility, implant integrity, infectious endocarditis, paresthesia, perforation of the maxillary sinus, and perforation of the labial and lingual alveolar plates. Although the existence of the risks was well documented in numerous books and articles, the rate of occurrence was poorly documented.

Although abutment integrity was not discussed as a specific risk at the 1987 Panel meeting, FDA believes that this risk is a component of implant integrity and, therefore, we have included abutment integrity as a risk associated with endosseous dental implant abutments.

Since the classification of the device, additional data and information became available. Based on a review of the new data and information, the Panel, during an open public meeting on October 24, 1991, identified certain risks (parasthesia, perforation of the maxillary sinus, perforation of the labial and lingual alveolar plates, infectious endocarditis and implant integrity), which had only been addressed for screw type implants by clinical studies. Therefore, they believed that special controls would not adequately address these concerns for all implants. They recommended only the screw type be reclassified into class II (Ref. 1).

At the same meeting, the Panel concluded that the remaining risks of local soft tissue degeneration, hyperplasia, progressive bone resorption, exfoliation, local and systemic infection (including long-term bacterial infection), damage to existing dentition, and implant mobility had been addressed by clinical studies for all types of dental implants.

Although in 1991 the Panel stated that special controls could not adequately address the concern of implant integrity, they also stated that chemical and physical characterization and mechanical testing could partially control this risk with respect to fracture.

When the Panel considered new information, at the November 4, 1997, and January 13, 1998, meetings, they concluded that several published clinical and animal studies (Refs. 4, 5, 6, 7, 8, and 9) showed that the occurrence and incidence of the risks discussed at the 1991 Panel meeting are now well known and are found to be low for all root-form devices and dental implant abutment devices (Refs. 2 and 3).

On the basis of the new clinical studies and the Panel's two recommendations, FDA now believes that the root-form endosseous dental implants and endosseous dental implant abutments do not present a potential unreasonable risk to public health, and that special controls would provide reasonable assurance of the safety and effectiveness of the devices.

VI. Summary of Reasons for Reclassification

After considering the new information and the Panel's recommendations, FDA believes that general controls are not sufficient to provide reasonable assurance of the safety and effectiveness of the device. FDA believes that the endosseous dental implants and endosseous dental implant abutments should be reclassified into class II because special controls, in addition to general controls, would provide reasonable assurance of the safety and effectiveness of the devices, and there is now sufficient information to establish special controls to provide such assurance.

VII. Summary of Data Upon Which the Recommendation is Based

In addition to the potential risks to health of endosseous dental implants and endosseous dental implant abutments described in section V of this document, there is reasonable knowledge of the benefits of the device (Refs. 10 and 11). The devices provide increased chewing function and better appearance, resulting in an improved quality of patient life. Based on the available information, FDA believes the special control discussed in section VIII of this document is capable of providing reasonable assurance of the safety and effectiveness of the devices with regard to the identified risks to health of the device.

VIII. Special Controls

In addition to general controls, FDA believes that the guidance document entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA" is an adequate special control to address the potential risks to health described for the root-form endosseous dental implants and endosseous dental implant abutments.

The guidance document would indicate when clinical data are appropriate and what engineering testing is needed. It will reference voluntary consensus standards that are relevant for these devices. It also will provide device specific labeling guidance. FDA believes that adherence to the guidance document would control implant and abutment fracture by providing guidance and reference to methodologies for chemical and physical characterization and mechanical testing.

To receive a copy of "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA" via fax machine, call CDRH Facts-on-Demand system at 800–899–0381, or 301–827–0111 from a touch-tone telephone. Press 1 to access the system. At the second voice prompt, press 2, and then enter the document number (1389) followed by the pound sign (#). Then follow the remaining voice prompts to complete your request. The draft guidance is also available on the Internet and may be accessed at *http://www.fda.gov/cdrh* and at *http://www.fda.gov/ohrms/dockets/defaults.htm*.

IX. FDA's Tentative Findings

FDA believes the root-form endosseous dental implants and endosseous dental implant abutments should be classified into class II because special controls, in addition to general controls, provide reasonable assurance of the safety and effectiveness of the device, and there is sufficient information to establish special controls to provide such assurance.

X. Environmental Impact

The agency has determined under 21 CFR 25.34(b) that this proposed reclassification action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

XI. Analysis of Impacts

FDA has examined the impacts of the proposed rule under Executive Order 12866 and the Regulatory Flexibility Act (5 U.S.C. 601–612) (as amended by subtitle D of the Small Business Regulatory Fairness Act of 1996 (Public Law 104–121)), and the Unfunded Mandates Reform Act of 1995 (Public Law 104–4). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and equity). The agency believes that this proposed rule is consistent with the regulatory philosophy and principles identified in the Executive order. In addition, the proposed rule is not a significant regulatory action as defined by the Executive order and so is not subject to review under the Executive order.

The Regulatory Flexibility Act requires agencies to analyze regulatory options that would minimize any significant impact of a rule on small entities. Reclassification of these devices from class III to class II will relieve all manufacturers of these devices of the cost of complying with premarket approval requirements in section 515 of the act. Because reclassification will reduce regulatory cost with respect to these devices, it will impose no significant economic impact on any small entities, and it may permit small potential competitors to enter the marketplace by lowering their costs. The agency therefore certifies that this reclassification action, as issued, if finalized, will not have a significant economic impact on a substantial number of small entities. In addition, this reclassification action will not impose costs of $100 million or more on either the private sector or State, local, and tribal governments in the aggregate, and therefore a summary statement or analysis under section 202(a) of the Unfunded Mandates Reform Act of 1995 is not required.

XII. Paperwork Reduction Act of 1995

FDA tentatively concludes that this proposed rule contains no information that is subject to review by the Office of Management and Budget under the Paperwork Reduction Act of 1995. The special controls do not require the respondent to submit additional information.

XIII. Submission of Comments and Proposed Dates

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic comments regarding this proposal by August 12, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA proposes that any final regulation based on this proposal become effective 30 days after its date of publication in the **Federal Register**.

XIV. References

The following references have been placed on display in the Dockets Management Branch (see **ADDRESSES**) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Transcript of the Dental Products Panel Meeting, October 24, 1991.
2. Transcript of the Dental Products Panel Meeting, November 4, 1997.
3. Transcript of the Dental Products Panel Meeting, January 13, 1998.
4. Buser, D., et al., "Influence of Surface Characteristics on Bone Integration of Titanium Implants. A Histomorphometric Study in Miniature Pigs," *Journal of Biomedical Materials Research*, vol. 25, pp. 889–902, 1991.
5. Carr, A. B., et al., "Reverse Torque Failure of Screw-shaped Implants in Baboons: Baseline Data for Abutment Torque Application," *International Journal of Oral and Maxillofacial Implants*, vol. 10, pp. 167–174, 1995.
6. Adell, R., *et al.*, "A Long-term Follow-up Study of Osseointegrated Implants in the Treatment of Totally Edentulous Jaws," *International Journal of Oral and Maxillofacial Implants*, vol. 5, pp. 347–359, 1990.
7. O'Roark, W. L., "Research Report: Improving Implant Survival Rates by Using a New Method of at Risk Analysis," *International Journal of Oral Implantology*, vol. 8, No. 1, pp. 31–57, 1991.
8. Buser, D., *et al.*, "Long Term Evaluation of Nonsubmerged ITI Implants. Part 1: 8-year Life Table Analysis of a Prospective Multi-center Study With 2359 Implants," *Clinical Oral Implants Research*, vol. 8, pp. 161–172, 1997.
9. Block, M. S., J. N. Kent, "Cylindrical HA-coated Implants—8-year Observations," *Compendium of Continuing Education Dentistry*, Supplement 15, pp. 526–532, 1993.
10. Proceedings of the 1996 World Workshop in Perisontics, *Annals of Periodontology*, vol. 1, No. 1, pp. 707–820, 1996.
11. Misch, C. E., *Contemporary Implant Dentistry*, St. Louis, MO: Mosby, pp. 89–118, 1999.

List of Subjects in 21 CFR Part 872

Medical devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 872 be amended as follows:

PART 872—DENTAL DEVICES

1. The authority citation for 21 CFR part 872 continues to read as follows:

Authority: 21 U.S.C. 351, 360, 360c, 360e, 360j, 371.

2. Section 872.3630 is added to subpart D to read as follows:

§ 872.3630 Endosseous dental implant abutment.

(a) *Identification.* An endosseous dental implant abutment is a premanufactured prosthetic component directly connected to the endosseous dental implant and is intended for use as an aid for prosthetic rehabilitation.

(b) *Classification.* Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Final Guidance for Industry and FDA."

3. Section 872.3640 is revised in subpart D to read as follows:

§ 872.3640 Endosseous dental implant.

(a) *Identification.* An endosseous dental implant is a device made of a material such as titanium or titanium alloy intended to be surgically placed in the bone of the upper or lower jaw arches to provide support for prosthetic devices, such as artificial teeth, in order to restore a patient's chewing function.

(b) *Classification.* (1) Class II (special controls). The special control for this device is the FDA guidance document entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Final Guidance for Industry and FDA."

(2) Class III for endosseous dental implants other than the root-form.

(c) *Date PMA or notice of completion of a PDP is required.* No effective date has been established for the requirement for premarket approval for the devices described in paragraph (b)(2) of this section. See § 872.3 for the effective dates of requirement for premarket approval.

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Dated: April 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–12041 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD09–02–010]

RIN 2115–AA97

Safety Zone; Racine Harbor Fest 2002, Racine, WI

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone outside Racine Harbor south of Reef Point Marina Racine, Wisconsin for the Racine Harbor Fest 2002 fireworks celebration. This action is necessary to ensure the safety of life and property in the immediate vicinity of the fireworks launch platform during this event. This action is intended to restrict vessel traffic south of Racine Harbor.

DATES: Comments and related material must reach the Coast Guard on or before May 24, 2002. The proposed rule would be effective from 9:20 p.m. on June 15, 2002 through 9:55 p.m. on June 16, 2002.

ADDRESSES: You may mail comments and related material to the Commanding Officer, U.S. Coast Guard Marine Safety Office Milwaukee, 2420 South Lincoln Memorial Drive, Milwaukee, Wisconsin 53207. Marine Safety Office Milwaukee maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket and will be available for inspection or copying at Marine Safety Office Milwaukee between 7 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LCDR Timothy Sickler, Chief of Port Operations, at (414) 747–7155.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [CGD09–02–010], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office Milwaukee at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed safety zone is necessary to safeguard the public from the hazards associated with storing, preparation and launching of the Harbor Fest fireworks display south of Racine Harbor, Racine, Wisconsin. Based on recent accidents that have occurred in other Captain of the Port Zones, and the explosive hazard associated with these events, the Captain of the Port has determined that fireworks launches in close proximity to watercraft pose a significant risk to safety and property.

The combination of large numbers of inexperienced recreational boaters, congested waterways, darkness punctuated by bright flashes of light, alcohol use, and debris falling in to the water could easily result in serious injuries or fatalities.

Establishing safety zones by notice and comment rulemaking gives the public an opportunity to comment on the proposed zones and provides better notice than promulgating temporary final rules.

Discussion of Proposed Rule

The Coast Guard is proposing a safety zone south of Racine Harbor, Racine, Wisconsin. The Coast Guard would notify the public of the safety zone, in advance, by way of Ninth Coast Guard District Local Notice to Mariners, marine information broadcasts, and for those who request it from Marine Safety Office Milwaukee, by facsimile (fax).

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

We expect the economic impact of this proposed rule to be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary. This determination is based on the minimal time that vessels would be restricted from the zone.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

This proposed rule would affect the following entities, some of which might be small entities: the owners or operators of commercial vessels intending to transit, moor or anchor in a portion of the activated safety zone.

This safety zone would not have a significant economic impact on a substantial number of small entities for the following reasons: this rule would be in effect for only fifty minutes on the day of the event. Vessel traffic could safely pass outside of the proposed safety zone during the event. Although the safety zone for the event would encompass the entire navigation channel, traffic would be allowed to pass through the safety zone with permission of the Captain of the Port Milwaukee, or his designated on scene Patrol Commander.

If you think your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (*see* **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Marine Safety Office Milwaukee (*see* **ADDRESSES**).

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

We have analyzed this proposed rule under Executive Order 13132, Federalism, and have determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This proposed rule would not impose an unfunded mandate.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that, under figure 2–1, paragraph 34(g) of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9:20 p.m. on June 15, 2002 through 9:55 p.m. on June 16, 2002 a new temporary § 165.T09–003 is added to read as follows:

§ 165.T09–003 Safety Zone; Waters south of Racine Harbor, Racine, Wisconsin.

(a) *Location.* The following area is a safety zone: all waters and adjacent shoreline bounded by the arc of a circle with a 140-foot radius with its center in approximate position 42°43.44′ N, 087°46.41′ W, located south of Racine Harbor.

(b) *Enforcement period.* This safety zone will be enforced on June 15 and 16, 2002 from 9:20 p.m. to 9:55 p.m. (local time). The Coast Guard Captain of the Port Milwaukee or the on scene Patrol Commander may terminate this event at anytime.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is subject to the following requirements:

(1) This safety zone is closed to all marine traffic, except as may be permitted by the Captain of the Port or his duly appointed representative.

(2) The "duly appointed representative" of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Milwaukee, Wisconsin to act on his behalf. The representative of the Captain of the Port will be aboard either a Coast Guard or Coast Guard Auxiliary vessel.

(3) Vessel operators desiring to enter or operate within the Safety Zone shall contact the Captain of the Port or his representative to obtain permission to do so. Vessel operators given permission to enter or operate in the Safety Zone shall comply with all directions given to them by the Captain of the Port or his representative.

(4) The Captain of the Port may be contacted by telephone via the Command Duty Officer at (414) 747–7155 during working hours. Vessels assisting in the enforcement of the Safety Zone may be contacted on VHF–FM channels 16 or 21A. Vessel operators may determine the restrictions in effect for the safety zone by coming alongside a vessel patrolling the perimeter of the Safety Zone.

(5) Coast Guard Group Milwaukee will issue a Marine Safety Information Broadcast Notice to Mariners to notify the maritime community of the Safety Zone and restriction imposed.

Dated: May 6, 2002.

M.R. DeVries,

Commander, U.S. Coast Guard, Captain of the Port Milwaukee.

[FR Doc. 02–12027 Filed 5–13–02; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 260–0339b; FRL–7174–6]

Revisions to the California State Implementation Plan, Tehama County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to the Tehama County Air Pollution Control District (TCAPCD) portion of the California State Implementation Plan (SIP). These revisions concern Oxides of Nitrogen (NO_X) emissions from industrial, institutional, and commercial boilers, steam generators, process heaters, and stationary gas turbines. We are proposing to approve local rules that regulate these emission sources under the Clean Air Act as amended in 1990 (CAA or the Act).

DATES: Any comments on this proposal must arrive by June 13, 2002.

ADDRESSES: Mail comments to Andy Steckel, Rulemaking Office Chief (AIR–4), U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105–3901.

You can inspect copies of the submitted SIP revisions and EPA's technical support documents (TSDs) at our Region IX office during normal business hours. You may also see copies of the submitted SIP revisions at the following locations:

California Air Resources Board, Stationary Source Division, Rule Evaluation Section, 1001 "I" Street, Sacramento, CA 95812

Tehama County Air pollution Control District, P.O. Box 38 (1750 Walnut St.), Red Bluff, CA 96008–0038.

FOR FURTHER INFORMATION CONTACT: Charnjit Bhullar, Rulemaking Office (Air-4), U.S. Environmental Protection Agency, Region IX, (415) 972–3960.

SUPPLEMENTARY INFORMATION: This proposal addresses local rules, TCAPCD 4:31 and 4:37. In the Rules and Regulations section of this **Federal Register**, we are approving these local rules in a direct final action without prior proposal because we believe this SIP revision is not controversial. If we receive adverse comments on the direct final rule, however, we will publish a timely withdrawal of the direct final rule and address the comments in subsequent action based on this proposed rule. Anyone interested in commenting should do so at this time, we do not plan to open a second comment period. If we do not receive adverse comments on the direct final rule, no further activity is planned. For further information, please see the direct final action.

Dated: April 5, 2002.

Keith Takata,

Acting Regional Administrator, Region IX.

[FR Doc. 02–11824 Filed 5–13–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on a Petition To Delist the Lost River Sucker and Shortnose Sucker

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of 90-day petition finding.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), announce a 90-day finding for a petition to remove the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*), throughout their ranges, from the Federal list of threatened and endangered species, pursuant to the Endangered Species Act of 1973, as amended (Act). We find that the petition and additional information available in our files did not present substantial scientific or commercial information indicating that delisting of the Lost River and shortnose suckers may be warranted. We will not be initiating a further status review in response to the petition to delist.

DATES: The finding announced in this document was made on May 10, 2002.

ADDRESSES: Data, information, written comments and materials, or questions concerning this petition and finding should be submitted to the Project Leader, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service, 6610 Washburn Way, Klamath Falls, Oregon 97603. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Steve A. Lewis, at the above address, or telephone 541/885–8481.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act of 1973, as amended (Act) (16 U.S.C. 1531 *et seq.*), requires that we make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. This finding is to be based on all information available to us at the time the finding is made. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If we find substantial information present, we are required to promptly commence a review of the status of the species, if one has not already been initiated (50 CFR 424.14).

The petition to delist the Lost River sucker (*Deltistes luxatus*) and shortnose sucker (*Chasmistes brevirostris*), dated September 12, 2001, was submitted by Richard A. Gierak, representing Interactive Citizens United. This petition also requested the removal of the southern Oregon/Northern California coast coho salmon (*Oncorhynchus kisutch*) from the Federal list of threatened and endangered species. This species is under the jurisdiction of the National Marine Fisheries Service and will be addressed by them in a separate finding. The petition was received by the Department of the Interior, Office of the Executive Secretariat on September 26, 2001. This petition finding also responds to three other petitions to delist the Lost River and shortnose suckers, which were received from Leo Bergeron, James L. Buchal, and Naomi Fletcher after Mr. Gierak's petition was submitted. As explained in our 1996 Petition Management Guidance, subsequent petitions are treated separately only when they are greater in scope or broaden the area of review of the first petition. The three subsequent petitions to delist the Lost River and shortnose suckers were considered equivalent to Mr Gierak's petition. Therefore, we treated these three petitions as comments on the first petition received.

The petition requests the delisting of the Lost River sucker and shortnose sucker. The petition's supporting documentation consists of four pages and "Figures 2 & 3" from testimony by David A. Vogel before the U.S. House Committee on Resources (Vogel 2001), five bibliographic references, and eight footnotes. Three of the five bibliographic references are cited in the excerpted section of the testimony

(Buettner 1999, Markle *et al.* 1999, 53 FR 27130). The footnotes support the information in Figure 2 of the petition. All of the references have been reviewed in this decision. Two of the petitioner's bibliographic references (Buettner 1999 and Markle *et al.* 1999) are abstracts from a 1999 conference and are superseded by more recent reports by the principal authors (United States Bureau of Reclamation (USBR) 2001, Desjardins and Markle 2000). Four of the eight footnotes provide quotations from Professor Carl Bond of Oregon State University confirming the low population numbers of suckers in the 1950s through the 1970s, while the remainder either replicate previous citations (53 FR 27130, USBR 2001), qualify a methodology (Fortune 1986, citation unspecified in the petition), or reference a sucker working group meeting in 1987. The information in the testimony was previously available to the Service and was considered in a 2001 status review of the Lost River and shortnose suckers.

Discussion

The Lost River sucker and shortnose sucker are two fishes that naturally occur only in the Klamath Basin of southern Oregon and northern California. They are long-lived species, reaching ages of over 30 years. Both species reside primarily in lake habitats and spawn in tributary streams, or at springs within Upper Klamath Lake itself. Historically, the two species made large spawning migrations up the rivers of the Upper Klamath Basin. The two species were federally listed as endangered in 1988 (53 FR 27130). At the time of listing, recognized threats to the species included: (1) Drastically reduced adult populations and lack of significant recruitment; (2) over-harvesting by sport and commercial fishing; (3) potential competition with introduced exotic fishes; (4) lack of regulatory protection from Federal actions that might adversely affect or jeopardize the species; (5) hybridization with the other two sucker species native to the Klamath Basin; and (6) large summer die-offs caused by declines in water quality.

The petitioners assert, through reference to statements made in the testimony of David A. Vogel, that delisting of the Lost River and shortnose suckers should occur because: (1) The estimates of the sucker populations in the 1980s were in error and did not, in fact, demonstrate a precipitous decline (i.e., the populations were much larger than assumed), or (2) the estimates of the sucker populations in the 1980s were reasonably accurate, and the suckers have demonstrated an enormous boom in the period since listing and no longer exhibit "endangered" status.

In 2001, the Service conducted a status review of the Lost River and shortnose suckers. This 2001 status review drew from all information provided in published and unpublished reports on the biology, distribution, and status of the listed sucker species in the Klamath region and the ecosystem on which they depend. The 2001 status review included additional information and we also considered this information as we reviewed the petition.

With regard to Mr. Vogel's first and second statements, concerning sucker population estimates, the early population estimates were based on the available, though limited, sampling data and from creel surveys for the sport and subsistence fishery for suckers, which declined precipitously in the 1980s and caused the Oregon Department of Fish and Wildlife to terminate the fishery in 1987, just prior to the federal listing.

Comparisons between current estimates and those made during the fishery, prior to its termination in 1987, are not informative due to extreme differences in methodology. Population estimates made since listing, while numerically higher than earlier estimates, show no overall trend for increasing populations within the last decade.

The endangered status of the suckers is based on continuing threats to the populations. The 2001 status review identifies continuing threats to the two species which warrant maintaining their listing as endangered under the Endangered Species Act, including but not limited to habitat loss, degradation of water quality, periodic fish die-offs, and entrainment into water diversions.

Finding

We have reviewed the petition and its supporting documentation, as well as other available information, published and unpublished studies and reports, and agency files. On the basis of the best scientific and commercial information available, we find that no substantial information has been presented or found that would indicate that delisting of the Lost River sucker or shortnose sucker may be warranted.

Information Solicited

When we find that there is not substantial information indicating that the petitioned action may be warranted, initiation of a status review is not required by the Act. However, we continually assess the status of species listed as threatened or endangered. To ensure that our information is complete, and based on the best available scientific and commercial data, we are soliciting information for both sucker species.

References Cited

Buettner, M. 1999. Status of Lost River and shortnose suckers. U.S. Bureau of Reclamation. Abstract of presentation at the 1999 Klamath Basin Watershed Restoration and Research Conference. 1 p.

Desjardins, M. and D. Markle. 2000. Distribution and biology of suckers in Lower Klamath reservoirs. 1999 final report submitted to PacifiCorps, Portland, Oregon. 75 pp.

Markle, D., L. Grober-Dunsmoor, B. Hayes, and J. Kelly. 1999. Comparisons of habitats and fish communities between Upper Klamath Lake and Lower Klamath Reservoirs. Abstract of presentation at the 1999 Klamath Basin Watershed Restoration and Research Conference. 1 p.

U.S. Bureau of Reclamation. 2001. Biological assessment of Klamath Project's continuing operations on the endangered Lost River sucker and shortnose sucker. Klamath Falls, Oregon. 112 pp.

U.S. Fish and Wildlife Service ("Service") 2001, Biological/conference opinion regarding the effects of operation of the Bureau of Reclamation's Klamath Project on the endangered Lost River sucker (*Deltistes luxatus*), endangered shortnose sucker (*Chasmistes brevirostris*), threatened bald eagle (*Haliaeetus leucocephalus*) and proposed critical habitat for the Lost River and shortnose suckers. Klamath Falls, Oregon. 188 pp.

Vogel, D. 2001. Testimony of David A. Vogel before the House Committee on Resources oversight field hearing on water management and endangered species issues in the Klamath Basin; June 16, 2001. 7 pp.

Author

The primary author of this document is Stewart Reid, fishery biologist, Klamath Falls Fish and Wildlife Office, U.S. Fish and Wildlife Service (see **ADDRESSES** section).

Authority: The authority for this action is the Endangered Species Act of 1973 as amended (16 U.S.C. 1531 *et seq.*).

Dated: May 10, 2002.

Steve Williams,

Director, U.S. Fish and Wildlife Service.

[FR Doc. 02–12123 Filed 5–13–02; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[I.D. 050602B]

RIN 0648–AP79

Fisheries of the Exclusive Economic Zone Off Alaska; Prohibition of Non-pelagic Trawl Gear in Cook Inlet in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Availability (NOA); request for comments.

SUMMARY: The North Pacific Fishery Management Council (Council) has submitted Amendment 60 to the Fishery Management Plan for Groundfish of the Gulf of Alaska Area (FMP). This amendment would prohibit the use of non-pelagic trawl gear in Cook Inlet.

DATES: Comments on Amendment 60 must be received by July 15, 2002.

ADDRESSES: Comments on the FMP amendment may be mailed to Sue Salveson, Assistant Regional Administrator, Sustainable Fisheries Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802–1668, Attn: Lori Gravel-Durall. Hand delivery or courier delivery of comments may be sent to the Federal Building, 709 West 9th St., Room 453, Juneau, AK, 99801. Copies of Amendment 60 to the FMP and the Environmental Assessment/Regulatory Impact Review/Initial Regulatory Flexibility Analysis (EA/RIR/IRFA) prepared for this action by the Council and NMFS are available from NMFS at the above address, or by calling the Alaska Region, NMFS, at (907) 586–7228.

FOR FURTHER INFORMATION CONTACT: Glenn Merrill, (907) 586–7228, *glenn.merrill@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) requires that each regional fishery management council submit any FMP or FMP amendment it prepares to NMFS for review and approval, disapproval, or partial approval. The Magnuson-Stevens Act also requires that NMFS, upon receiving an FMP or amendment, immediately publish a notification in the **Federal Register** that the FMP or amendment is available for public review and comment.

Amendment 60 was adopted by the Council in September 2000. If approved by NMFS, this amendment would prohibit the use of non-pelagic trawl gear in Cook Inlet north of a line from Cape Douglas (58°51.10′ N. lat.) to Point Adam (59°15.27′ N. lat.). Amendment 60 is necessary to comply with the Magnuson-Stevens Act mandate that regional councils must take measures to reduce bycatch in the nation's fisheries.

Public comments are being solicited on the amendment through the end of the comment period stated in this NOA. A proposed rule that would implement the amendment may be published in the **Federal Register** for public comment following NMFS' evaluation under the Magnuson-Stevens Act procedures. Public comments on the proposed rule must be received by the end of the comment period on the amendment to be considered in the approval/disapproval decision on the amendment. All comments received by the end of the comment period on the amendment, whether specifically directed to the amendment or the proposed rule, will be considered in the approval/disapproval decision; comments received after that date will not be considered in the approval/disapproval decision on the amendment.

Dated: May 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12033 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

Notices

Federal Register
Vol. 67, No. 93
Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Authorization of Livestock Grazing Activities on the Sacramento Grazing Allotment, Sacramento Ranger District, Lincoln National Forest, Otero County, NM

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to authorize livestock grazing activities on the Sacramento Grazing Allotment. The project area encompasses over 111,000 acres of National Forest lands on the Sacramento Ranger District of the Lincoln National Forest. The Sacramento Grazing Allotment comprises approximately 25% of the ranger district.

The project has generated controversy on three main points; effects to threatened and endangered animal and plant species, concern for degraded riparian areas, and forage competition between wildlife and livestock.

The Notice of Intent to prepare an environmental impact statement was first published in the **Federal Register** on Friday, May 5, 1999 (Volume 64, Number 86, pages 24132–24134). The Notice announced that a draft environmental impact statement would be available for review in July 1999, and a final environmental impact statement would be available for review in September 1999. A Revised Notice of Intent was published in the **Federal Register** on March 8, 2000 (Volume 65, Number 46, page 12202). The revised notice announced that a draft environmental impact statement was now expected to be available for public review in July 2000 and a final environmental impact statement should be available for review by October 2000. This notice revises the expected date of availability for public review of a draft environmental impact statement to June 2002, a final environmental impact statement should be available for review in October 2002.

FOR FURTHER INFORMATION CONTACT: Rick Newmon or Mark Cadwallader, Lincoln National Forest, Sacramento Ranger District, P.O. Box 288, Cloudcroft, New Mexico, 88317, (505) 682–2551.

Authority: 16 U.S.C. 472, 551.

Dated: May 7, 2002.

Gerald M. Hawkes,

Acting Forest Supervisor, Lincoln National Forest.

[FR Doc. 02–11966 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwestern Region; Arizona, New Mexico, West Texas, and West Oklahoma New Mexico Collaborative Forest Restoration Program Technical Advisory Panel

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The New Mexico Collaborative Forest Restoration Program Technical Advisory Panel will meet in Albuquerque, New Mexico, June 24–28, 2002. The purpose of the meeting is to provide recommendations to the Regional Forester, USDA Forest Service Southwestern Region, on which forest restoration grant proposals submitted in response to the Collaborative Forest Restoration Program Request For Proposals best meet the objectives of the Community Forest Restoration Act (Title VI, Pub. L. No. 106–393). The 12 to 15 member panel shall be composed of a Natural Resources Official from the State of New Mexico, two representatives from federal land management agencies, at least one tribal or pueblo representative, at least two independent scientists with experience in forest ecosystem restoration, and equal representation from: conservation interests; local communities; and commodity interests.

DATES: The meeting will be held June 24–28, 2002, beginning at 10 am on Monday, June 24 and ending at approximately 4 pm on Friday, June 28.

ADDRESSES: The meeting will be held at the Wyndham Garden Hotel, 6000 Pan American Freeway NE, Albuquerque, NM 87109.

FOR FURTHER INFORMATION CONTACT: Walter Dunn, at (505) 842–3425, or Angela Sandoval, at (505) 842–3289, Cooperative and International Forestry Staff, USDA Forest Service, 333 Broadway SE, Albuquerque, NM 87102.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. Items to be covered on the agenda include: (1) Review of the requirements of the Federal Advisory Committee Act; (2) review of the bylaws for the panel and the consensus process; (3) project proposal evaluations; and (4) public comment. Council discussion is limited to Panel members and Forest Service staff. Project proponents may provide calcification in response to questions from Panel members during Panel discussions. Issues may be brought to the attention of the panel by submitting written statements to Walter Dunn at the address stated above. Written statements may also be submitted to the panel staff before or after the meeting. Public input sessions will be provided during the meeting. Individuals who submit written statements to Walter Dunn or the panel staff may address the panel during those sessions.

Dated: May 8, 2002.

Lucia M. Turner,

Deputy Regional Forester.

[FR Doc. 02–11965 Filed 5–13–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Malcolm Baldrige National Quality Award Board of Overseers

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that there will be a meeting of the Board of Overseers of the Malcolm Baldrige National Quality Award on June 6, 2002. The

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Board of Overseers is composed of eleven members prominent in the field of quality management and appointed by the Secretary of Commerce, assembled to advise the Secretary of Commerce on the conduct of the Baldrige Award. The purpose of this meeting is to discuss and review information received from the National Institute of Standards and Technology with the members of the Judges Panel of the Malcolm Baldrige National Quality Award. The agenda will include: Discussions on Changes to Include Ethics and Governance, Overseers and Judges Proposed Marketing Plan and Baldrige National Quality Program Hoshins for 2002 and 2003; a Program Update; and Issues from June 5 Judges' Meeting. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Virginia Davis no later than Monday, June 3, 2002, and she will provide you with instructions for admittance. Ms. Davis' e-mail address is *virginia.davis@nist.gov* and her phone number is 301/975–2361.

DATES: The meeting will convene June 6, 2002 at 8:30 a.m. and adjourn at 3 p.m. on June 6, 2002.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Administration Building Tenth Floor Conference Room, Gaithersburg, Maryland 20899. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12038 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Judges Panel of the Malcolm Baldrige National Quality Award

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Judges Panel of the Malcolm Baldrige National Quality Award will meet Wednesday, June 5, 2002. The Judges Panel is composed of nine members prominent in the field of quality management and appointed by the Secretary of Commerce. The purpose of this meeting is to Review the 2002 Baldrige Award Cycle; Discussion of Senior Examiner Training for Site Visits and Final Judging Interaction; Judges' Survey of Applicants; and Judging Process Improvement. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 5, 2002 at 11 a.m. and adjourn at 4:30 p.m. on June 5, 2002. The entire meeting will be closed.

ADDRESSES: The meeting will be held at the National Institute of Standards and Technology, Building 222, Red Training Room, Gaithersburg, Maryland 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Harry Hertz, Director, National Quality Program, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975–2361.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 11, 2002, that the meeting of the Judges Panel will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended by section 5(c) of the Government in the Sunshine Act, Public Law 94–409. The meeting, which involves examination of Award applicant data from U.S. companies and a discussion of this data as compared to the Award criteria in order to recommend Award recipients, may be closed to the public in accordance with Section 552b(c)(4) of Title 5, United States Code, because the meetings are likely to disclose trade secrets and commercial or financial information obtained from a person which is privileged or confidential.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12040 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the Visiting Committee on Advanced Technology, National Institute of Standards and Technology (NIST), will meet Tuesday, June 4, 2002, from 8:25 a.m. to 5:15 p.m. and Wednesday, June 5, 2002, from 8:15 a.m. to Noon. The Visiting Committee on Advanced Technology is composed of twelve members appointed by the Director of NIST; who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, framework of applicable national policies as set forth by the President and the Congress. The agenda will include a NIST Update, an Update on Safety, NIST 2010 Developments, Report from a Strategic Focus Group, Selection Process for Strategic Focus Areas and Presentation on Proposed NIST Budget Metrics. Discussions scheduled to begin at 4:15 p.m. and to end at 5:15 p.m. on June 4, 2002, and to begin at 8:15 a.m. and to end at Noon on June 5, 2002, on staffing of management positions at NIST, the NIST budget, including funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program, and feedback sessions will be closed. All visitors to the National Institute of Standards and Technology site will have to pre-register to be admitted. Please submit your name, time of arrival, e-mail address and phone number to Carolyn Stull no later than Thursday, May 30, 2002, and she will provide you with instructions for admittance. Ms. Stull's e-mail address is *carolyn.stull@nist.gov* and her phone number is 301/975–5607.

DATES: The meeting will convene June 4, 2002 at 8:25 a.m. and will adjourn at Noon on June 5, 2002.

ADDRESSES: The meeting will be held in the Employees Lounge, Administration Building, at NIST, Gaithersburg, Maryland. Please note admittance instructions under **SUMMARY** paragraph.

FOR FURTHER INFORMATION CONTACT: Carolyn J. Stull, Visiting Committee on Advanced Technology, National Institute of Standards and Technology, Gaithersburg, Maryland 20899–1004, telephone number (301) 975–5607.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 16, 2002, that portions of the meeting of the Visiting Committee on Advanced Technology which involve discussion of proposed funding levels of the Advanced Technology Program and the Manufacturing Extension Partnership Program may be closed in accordance with 5 U.S.C. 552b(c)(9)(B), because those portions of the meetings will divulge matters the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency actions; and that portions of meetings which involve discussion of the staffing issues of management and other positions at NIST may be closed in accordance with 5 U.S.C. 552b(c)(6), because divulging information discussed in those portions of the meetings is likely to reveal information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Dated: May 6, 2002.

Karen H. Brown,

Deputy Director.

[FR Doc. 02–12039 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[Docket No. 960223046–2083–07; I.D. 032002A]

RIN 0648–ZA09

Financial Assistance for Research and Development Projects to Strengthen and Develop the U.S. Fishing Industry

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of solicitation for applications.

SUMMARY: NMFS (hereinafter "we" or "us") issues this document to describe how to apply for funding under the Saltonstall-Kennedy (S-K) Grant Program and how we will determine whether to fund a proposal.

Under the S-K Program, we provide financial assistance for research and development projects that address various aspects of U.S. fisheries (commercial or recreational), including, but not limited to, harvesting, processing, marketing, and associated infrastructures.

DATES: We must receive your application by the close of business July 15, 2002 in one of the offices listed in section *I.H. Application Addresses* of this document. You must submit one signed original and nine signed copies of the completed application (including supporting information). We will not accept facsimile applications.

ADDRESSES: You can get an application package from, and send your completed application(s) to, the NMFS Regional Administrator located at any of the offices listed in section I.H. of this document. You may also get the application package from the S-K Home Page (*see* section I.I.). However, we cannot accept completed applications electronically.

FOR FURTHER INFORMATION CONTACT: Alicia L. Jarboe, S-K Program Manager, (301) 713–2358.

SUPPLEMENTARY INFORMATION:

I. Introduction

We are soliciting applications for Federal assistance under the Saltonstall-Kennedy Act (S-K Act), as amended (15 U.S.C. 713c–3). This document describes how you can apply for funding under the S-K Grant Program, and how we will determine which applications we will fund. We will set aside $5 million of the expected $10.3 million available to fund projects under a new priority under section II.A., Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon. We will use the remaining estimated $5.3 million to fund the other priorities under sections II.B.-F.

A. Background

The S-K Act established a fund (known as the S-K fund) that the Secretary of Commerce uses to provide grants or cooperative agreements for fisheries research and development projects addressed to any aspect of U.S. fisheries, including, but not limited to, harvesting, processing, marketing, and associated infrastructures. U.S. fisheries include any fishery, commercial or recreational, that is, or may be, engaged in by citizens or nationals of the United States, or citizens of the Northern Mariana Islands (NMI), the Republic of the Marshall Islands, Republic of Palau, and the Federated States of Micronesia.

The objectives of the S-K Grant Program, and, therefore, the funding priorities, have changed since the program began in 1980. The program has evolved as fishery management laws and policies, and research needs, have evolved in response to changing circumstances.

The original focus of the program was to develop underutilized fisheries within the U.S. Exclusive Economic Zone (EEZ, i.e., 3–200 miles (5.6–370.4 kilometers) off the coast). This focus was driven in part by the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act). The Magnuson-Stevens Act, originally passed in 1976, directed us to give the domestic fishing industry priority access to the fishery resources in the EEZ. In 1980, the American Fisheries Promotion Act (AFPA) amended the S-K Act to stimulate commercial and recreational fishing efforts in underutilized fisheries. The competitive S-K Program initiated as a result of the AFPA included fisheries development and marketing as funding priorities.

In the following years, the efforts to Americanize the fisheries were successful to the point that most nontraditional species were fully developed and some traditional fisheries became overfished. Therefore, we changed the emphasis of the S-K Program to address conservation and management issues and aquaculture.

In 1996, the Sustainable Fisheries Act (SFA) (Pub. L. 104–297), was enacted. The SFA amended the Magnuson-Stevens Act and supported further adjustment to the S-K Program to address the current condition of fisheries.

The Magnuson-Stevens Act, as amended by the SFA, requires us to undertake efforts to prevent overfishing, rebuild overfished fisheries, insure conservation, protect essential fish habitat (EFH), and realize the full potential of U.S. fishery resources. It further requires that we take into account the importance of fishery resources to fishing communities; provide for the sustained participation of such communities; and, to the extent possible, minimize the adverse economic impacts of conservation and management measures on such communities. The Magnuson-Stevens Act defines a "fishing community" as "a community which is substantially dependent on or substantially engaged in the harvest or processing of fishery resources to meet social and economic needs, and includes fishing vessel

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owners, operators, and crew and United States fish processors that are based in such community." (16 U.S.C. 1802 (16)). We have refocused the S-K Program to address the needs of fishing communities as defined by the Magnuson-Stevens Act.

The NOAA Strategic Plan, updated in 1998, has also shaped the S-K Program. The Strategic Plan has three goals under its Environmental Stewardship Mission: Build Sustainable Fisheries (BSF), Recover Protected Species, and Sustain Healthy Coasts. The fisheries research and development mission of the S-K Program directly relates to the BSF goal. There are three BSF objectives in the Strategic Plan:

1. Eliminate and prevent overfishing and excess harvesting capacity.
2. Attain economic sustainability in fishing communities.
3. Develop environmentally and economically sound marine aquaculture.

For the FY 2002 S-K Grant Program announced in this document, we have attempted to address the most important needs of fishing communities in terms of the preceding BSF objectives. This goal is reflected in the funding priorities listed in section II of this document. Successful applications will be those aimed at helping fishing communities to resolve issues that affect their ability to fish; make full use of currently managed species or explore the potential for development of new sustainable managed fisheries; develop environmentally sound aquaculture; and address the socioeconomic impacts of overfishing and excess harvesting capacity.

The S-K Program is open to applicants from a variety of sectors, including industry, academia, and state and local governments. We encourage applications that involve collaboration between industry and the other sectors listed.

B. Changes from the Last Solicitation Notice

We have made several changes in this document from the last S-K Grant Program solicitation notice published on March 7, 2001 (66 FR 13701). Therefore, we encourage you to read the entire document before preparing your application.

The scope of the program for FY 2002 is not limited to species under Federal jurisdiction (whether under Fishery Management Plans (FMPs) or not), but includes state managed fisheries as well.

We have added a new priority under section II.A., Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon. Maine's Atlantic salmon aquaculture industry is the top producer of cultured salmon in the United States and provides 2,500 jobs, generates $140 million in personal income, and serves as an increasingly important source of food protein to U.S. consumers.

Atlantic salmon in the eight Maine rivers were listed as endangered under the Endangered Species Act (ESA) (16 U.S.C. 1531–1544) in November 2000. Interbreeding with and competition from escaped farm-raised salmon from Maine's aquaculture industry may threaten the wild salmon population in the Gulf of Maine. The continuation of the Atlantic salmon aquaculture industry depends on eliminating the threats the industry poses to the endangered wild Atlantic salmon.

We will use $5 million of the expected $10.3 million available to fund only projects under this priority. The remaining $5.3 million will be allocated, in no predetermined amounts, among the other priority areas, including the additional priorities mentioned below.

Another new priority is Fishing Capacity Reduction under the Magnuson Stevens Act Sections 312(b)-(e). This replaces the priority Planning for Fishing Community Transition in our FY 2001 program.

We have also added a priority entitled, Fisheries Socioeconomics.

The Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements published in the **Federal Register** October 1, 2001 (66 FR 49917), are applicable to this solicitation. Therefore, this solicitation does not include a discussion of the individual requirements.

C. Funding

We expect to have approximately $10.3 million available for grant awards for Fiscal Year (FY) 2002, which began on October 1, 2001. However, we cannot guarantee that sufficient funds will be available to make awards for all proposals deserving of funding.In order to be funded under the S-K Grant Program, applications must propose activities that: address one of the funding priorities listed in section II of this document; are expected to produce a direct benefit (e.g., tool, information, service, or technology) to the fishing community (as defined in section I.A. of this document); and can be accomplished within 18 months. Acceptable research and development activities include applied research, demonstration projects, pilot or field testing, or business plan development. However, we will not fund projects that primarily involve infrastructure construction, port and harbor development, or start-up or operational costs for private business ventures. Furthermore, if your proposed project primarily involves data collection, we will only consider it if it is directed to a specific problem or need and has a fixed duration. We will not consider data collection programs of a continuing nature.

D. Eligibility

You are eligible to apply for a grant or a cooperative agreement under the S-K Grant Program if:

1. You are a citizen or national of the United States;
2. You are a citizen of the NMI, being an individual who qualifies as such under section 8 of the Schedule on Transitional Matters attached to the constitution of the NMI;
3. You are a citizen of the Republic of the Marshall Islands, Republic of Palau, or the Federated States of Micronesia; or
4. You represent an entity that is a corporation, partnership, association, or other non-Federal entity, non-profit or otherwise (including Indian tribes), if such entity is a citizen of the United States or NMI, within the meaning of section 2 of the Shipping Act, 1916, as amended (46 U.S.C. app. 802).

We support cultural and gender diversity in our programs and encourage women and minority individuals and groups to submit applications. Furthermore, we recognize the interest of the Secretaries of Commerce and Interior in defining appropriate fisheries policies and programs that meet the needs of the U.S. insular areas, so we also encourage applications from individuals, government entities, and businesses in U.S. insular areas.

We are strongly committed to broadening the participation of Minority Serving Institutions (MSIs), which include Historically Black Colleges and Universities, Hispanic Serving Institutions, and Tribal Colleges and Universities, in all of our programs, including S-K. Therefore, we encourage all applicants to include meaningful participation of MSIs.

We encourage applications from members of the fishing community, and applications that involve fishing community cooperation and participation. We will consider the extent of fishing community involvement when evaluating the potential benefit of funding a proposal.

You are not eligible to submit an application under this program if you are an employee of any Federal agency, a Fishery Management Council (Council), or an employee of a Council. However, Council members who are not Federal employees can submit an application to the S-K Program.

Our employees (whether full-time, part-time, or intermittent) are not allowed to help you prepare your application, except that S-K Program staff may provide you with information on program goals, funding priorities, application procedures, and completion of application forms. Since this is a competitive program, NMFS and NOAA employees will not help with conceptualizing, developing, or structuring proposals, or write letters of support for a proposal.

E. Duration and Terms of Funding

We will award grants or cooperative agreements for a maximum period of 18 months. We award cooperative agreements in those situations where we anticipate having substantial involvement in the project. "Substantial involvement" means we will share responsibility for management, control, direction, or performance of the project with you, the recipient of the award.

We do not fund multi-year projects under the S-K Program. If we select your application for funding and you wish to continue work on the project beyond the funding period, you must submit another proposal to the competitive process for consideration, and you will not receive preferential treatment.

Even though we are publishing this announcement, we are not required to award any specific grant or cooperative agreement, nor are we required to obligate any part or the entire amount of funds available.

F. Cost Sharing

We are requiring cost sharing in order to leverage the limited funds available for this program and to encourage partnerships among government, industry, and academia to address the needs of fishing communities. You must provide a minimum cost share of 10 percent of total (Federal and non-Federal combined) project costs, but your cost share must not exceed 50 percent of total costs.

You may find this formula useful:

1. Total Project Cost (Federal and non-Federal cost share combined) x .9 = Maximum Federal Share.
2. Total Cost - Federal share = Applicant Share.

For example, if the proposed total budget for your project is $100,000, the maximum Federal funding you can apply for is $90,000 ($100,000 x .9). Your cost share in this case would be $10,000 ($100,000 - $90,000).

For a total project cost of $100,000, you must contribute at least $10,000, but no more than $50,000 (10–50 percent of total project cost). Accordingly, the Federal share you apply for would range from $50,000 to $90,000. If your application does not comply with these cost share requirements, we will return it to you and will not consider it for funding.

The funds you provide as cost sharing may include funds from private sources or from state or local governments, or the value of in-kind contributions. You may not use Federal funds to meet the cost sharing requirement except as provided by Federal statute. In-kind contributions are non-cash contributions provided to you by non-Federal third parties. In-kind contributions may include, but are not limited to, personal services volunteered to perform tasks in the project, and permission to use, at no cost, real or personal property owned by others.

We will determine the appropriateness of all cost sharing proposals, including the valuation of in-kind contributions, on the basis of guidance provided in 15 CFR parts 14 and 24. In general, the value of in-kind services or property you use to fulfill your cost share will be the fair market value of the services or property. Thus, the value is equivalent to the cost for you to obtain such services or property if they had not been donated. You must document the in-kind services or property you will use to fulfill your cost share.

If we decide to fund your application, we will require you to account for the total amount of cost share included in the award document. (See 66 FR 49918, October 1, 2001, for additional information on cost sharing).

G. Catalog of Federal Domestic Assistance (CFDA)

The S-K Grant Program is listed in the CFDA under 11.427, Fisheries Development and Utilization Research and Development Grants and Cooperative Agreements Program.

H. Application Addresses

Northeast Region, NMFS, One Blackburn Drive, Gloucester, MA 01930; (978) 281–9267.

Southeast Region, NMFS, 9721 Executive Center Drive, North, St. Petersburg, FL 33702–2432, (727) 570–5324.

Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802–4213, (562) 980–4033.

Pacific Islands Area Office, NMFS, 1601 Kapiolani Boulevard, Suite 1110, Honolulu, HI 96814–4700, (808) 973–2937.

Northwest Region, NMFS, 7600 Sand Point Way, N.E., BIN C15700, Building 1, Seattle, WA 98115, (206) 526–6115.

Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 or Federal Building, 709 West 9th Street, 4th Floor, Juneau, AK 99801–1668, (907) 586–7224.

I. Electronic Access Addresses

This solicitation and the application package are available on the NMFS S-K Home Page at: www.nmfs.noaa.gov/sfweb/skhome.html.

A copy of the Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements (66 FR 49917) is also available on the S-K Home Page.

The CFDA is available at: www:cfda.gov/.

The 1998 updated Executive Summary of the NOAA Strategic Plan is available at: www.strategic.noaa.gov/ and the Magnuson-Stevens Act is available at: www.nmfs.noaa.gov/sfa/magact/.

A list of institutions considered to be MSIs is available at: www.ed.gov/offices/OCR/minorityinst.html.

The Buyback Framework regulations pertaining to Priority B (50 CFR 600.1000 *et seq.*) are available at: www.access.gpo.gov/nara/cfr/waisidx—01/50cfr600—01.html.

Federal Business Opportunities (replacement for the Commerce Business Daily) is available at: *www.fedbizopps.gov.*

II. Funding Priorities

Your proposal must address one of the six priorities listed here.

If we do not receive proposals that adequately respond to the priorities listed, we may use S-K funds to carry out a national program of research and development addressed to aspects of U.S. fisheries pursuant to section 713c–3(d) of the S-K Act, as amended.

The priorities are not listed in any particular order and each is of equal importance, although the funds are partitioned between priority A and the remaining priorities. We will set aside $5 million to fund projects under Priority A. The remaining estimated $5.3 million may be used to fund projects under Priorities B through F. There is no similar predetermined allocation for portions of the $5.3 million among Priorities B through F.

If we do not receive sufficient fundable applications to use the entire $5 million reserved for Priority A, we will carry the remainder over to address the Atlantic salmon aquaculture priority in our FY 2003 competition.

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A. Atlantic Salmon Aquaculture Development Considering the Endangered Species Status of Atlantic Salmon

Promote the continued development of the Atlantic salmon aquaculture industry, by minimizing the potential for negative impacts on wild Atlantic salmon, which is listed as endangered under the ESA. Acceptable activities include the development and testing of:

More secure cages to reduce farmed fish escapement;

Brood stock strains that grow more quickly, better resist disease, or pose less genetic threat to North Atlantic wild salmon stocks;

Improved marks or tags to trace potential escapes of farmed fish;

Vaccines or other methods to prevent the spread of disease between farmed fish and wild fish; and

Improved methods to monitor sea cage integrity and farmed fish disease.

Note, if your application addresses Priority A you should submit it to the NMFS Northeast Region, regardless of your location (see I.H., Application Addresses).

B. Fishing Capacity Reduction under the Magnuson-Stevens Act Sections 312(b)-(e)

Promote the reduction of excess harvesting capacity in appropriate fisheries by analyses and evaluations that prepare the proponents of buybacks financed by NMFS loans under Title XI of the Merchant Marine Act to consider, plan for, organize, justify, support, and effect financed buybacks. (See 50 CFR part 600.1000, *et seq.* for framework rules governing buybacks; see section I.I. for electronic address of rules.) Acceptable activities include, but are not limited to:

1. Analyzing cost/benefit to determine a fishery's potential for financed buyback, including:

a. Establishing the type of financed buyback (i.e., permit only or permit and vessel buyback) that reduces the maximum capacity at the least cost in the least amount of time;

b. Knowledgeably estimating various capacity ranges in a fishery that could be bought back at various cost ranges;

c. Evaluating harvesters' pre-buyback cost-income, how various buyback capacity/cost ranges could change post-buyback cost-income, the prospective ability of post-buyback harvesters to pay the estimated fees to service the buyback loan, and the benefits to them of doing so; and

d. Assuming the fishery's FMP already prohibits new entrants to the fishery, establishing the scope and possible content of appropriate FMP amendments that might first be required to effectively and permanently resolve latent capacity in that fishery prior to buyback, and to prevent post-buyback vessel upgrading or other circumstances from replacing the capacity that a buyback removes.

2. Evaluating detailed means and methods for industry buyback proponents in the fishery to efficiently and effectively:

a. Survey potential referendum voters (each permit holder in the buyback fishery) to establish the prospective degree of interest in, and support for, a financed buyback in that fishery, and

b. Prepare a successful financed buyback application and business plan (see 50 CFR 600.1003).

In addition to the above, responsible proponents of financed buybacks in individual fisheries may also submit proposals to prepare actual financed buyback applications and business plans for that fishery.

Note, depending on the type of activity you propose, you may be required to obtain approval under the Paperwork Reduction Act (PRA) for surveys, etc., related to this priority. You should consider this when preparing your application and estimated time lines.

C. Conservation Engineering

Reduce or eliminate adverse interactions between fishing operations and nontargeted, protected, or prohibited species, including the inadvertent take, capture, or destruction of such species. These include juvenile or sublegal-sized fish and shellfish, females of certain crabs, fish listed under the ESA, marine turtles, seabirds, or marine mammals.

Improve the survivability of fish discarded or intentionally released and of protected species released in fishing operations.

Reduce or eliminate impacts of fishing activity on EFH that adversely affect the sustainability of the fishery.

D. Optimum Utilization of Harvested Resources under Federal or State Management

Reduce or eliminate factors such as diseases, human health hazards, and quality problems that limit the utilization of fish and their products in the United States and abroad.

Increase public knowledge of the safe handling and use of fish and their products.

Develop usable products from economic discards (defined in the Magnuson-Stevens Act as "fish which are the target of a fishery, but which are not retained because they are of an undesirable size, sex, or quality, or for other economic reasons"), underutilized species, and byproducts of processing.

Facilitate industry cooperation and outreach to promote and enhance marketability of regional U.S. fishery products.

Collect data on population dynamics, life histories, etc., of fish not currently under Federal FMPs, for the Councils to determine the feasibility of a new federally managed fishery that could provide additional fishing opportunity.

E. Marine Aquaculture

Advance the implementation of marine aquaculture by addressing technical aspects such as systems engineering, environmental compatibility, and culture technology.

Reduce or eliminate legal and social barriers to aquaculture development, e.g., legal constraints, use conflicts, exclusionary mapping, and appropriate institutional roles.

Address environmental issues for marine aquaculture, e.g., measure and reduce water quality and benthic community impacts; evaluate and reduce negative interactions between aquaculture and wild stocks, protected resources, and EFH; develop best management practices with scientific analysis and assessment of risk. Note, proposals pertaining to Atlantic salmon aquaculture should be submitted under Priority A.

Develop effective enhancement strategies for marine and anadromous species to help in the recovery of wild stocks.

F. Fisheries Socioeconomics

Improve the understanding of the socioeconomic aspects of fisheries to increase the knowledge base for making decisions that affect commercial, recreational, and subsistence fishing. Examples could include, but are not limited to, ethnographic baseline data on specific fishing communities; cost-income data; analyses of the socioeconomic impacts of specific management measures in certain fisheries; analyses of factors influencing demand for recreational fishing trips by anglers; and, market analyses to determine factors that influence demand and supply of specific seafood products, including imports.

Such initiatives must be discrete projects that can be carried out within an 18–month maximum project period. Studies must not duplicate or overlap any other ongoing socioeconomic data collection and analyses programs. We encourage projects that are industry-sponsored but involve the academic community or management agencies.

Note, depending on the type of activity you propose, you may be required to obtain approval under the PRA for surveys, etc., related to this priority. You should consider this when preparing your application and estimated time lines.

III. How to Apply

You must follow the instructions in this document in order to apply for a grant or cooperative agreement under the S-K Program. Your application must be complete and must follow the format described here. Your application should not be bound in any manner and must be printed on one side only. You must submit one signed original and nine signed copies of your application.

A. Cover Sheet

You must use Office of Management and Budget (OMB) Standard Form 424 and 424B (4–92) as the cover sheet for each project. (In order to complete item 16 of Standard Form 424, see section V.A.3. of this document.)

B. Project Summary

You must complete NOAA Form 88–204 (10–01), Project Summary, for each project. You must list on the Project Summary form the specific priority to which the application responds (see section II. of this document).

C. Project Budget

You must submit a budget for each project, using NOAA Form 88–205 (10–01), Project Budget and associated instructions. You must provide detailed cost estimates showing total project costs. Indicate the breakdown of costs between Federal and non-Federal shares, divided into cash and in-kind contributions. To support the budget, describe briefly the basis for estimating the value of the cost sharing derived from in-kind contributions. Specify estimates of the direct costs in the categories listed on the Project Budget form.

You may also include in the budget an amount for indirect costs if you have an established indirect cost rate with the Federal government. For this solicitation, the total dollar amount of the indirect costs you propose in your application must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award, or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

Furthermore, the Federal share of the indirect costs you propose must not exceed 25 percent of the total proposed direct costs. If your application requests more than 25 percent of the total costs as Federal funds to cover indirect costs, the application will be returned to you and will not be considered for funding.

If you have an approved indirect cost rate above 25 percent of the total proposed direct cost, you may use the amount above the 25–percent level up to the 100–percent level as part of the non-Federal share. You must include a copy of the current, approved, negotiated indirect cost agreement with the Federal government with your application. (See 66 FR 49919, October 1, 2001, for further information on indirect costs.)

We will not consider fees or profits as allowable costs in your application.

The total costs of a project consist of all allowable costs you incur, including the value of in-kind contributions, in accomplishing project objectives during the life of the project. A project begins on the effective date of an award agreement between you and an authorized representative of the U.S. Government and ends on the date specified in the award. Accordingly, we cannot reimburse you for time that you expend or costs that you incur in developing a project or preparing the application, or in any discussions or negotiations you may have with us prior to the award. We will not accept such expenditures as part of your cost share.

D. Narrative Project Description

You must provide a narrative description of your project that may be up to 15 pages long. The narrative should demonstrate your knowledge of the need for the project, and show how your proposal builds upon any past and current work in the subject area, as well as relevant work in related fields. You should not assume that we already know the relative merits of the project you describe. You must describe your project as follows:

1. Project goals and objectives. Identify the specific priority listed in section II to which the proposed project responds. Identify the problem/opportunity you intend to address and describe its significance to the fishing community. State what you expect the project to accomplish.

If you are applying to continue a project we previously funded under the S-K Program, describe in detail your progress to date and explain why you need additional funding. We will consider this information in evaluating your current application.

2. Project impacts. Describe the anticipated impacts of the project on the fishing community in terms of reduced bycatch, increased product yield, or other measurable benefits. Describe how you will make the results of the project available to the public.

3. Evaluation of project. Specify the criteria and procedures that you will use to evaluate the relative success or failure of a project in achieving its objectives.

4. Need for government financial assistance. Explain why you need government financial assistance for the proposed work. List all other sources of funding you have or are seeking for the project.

5. Federal, state, and local government activities and permits. List any existing Federal, state, or local government programs or activities that this project would affect, including activities requiring: certification under state Coastal Zone Management Plans; section 404 or section 10 permits issued by the Corps of Engineers; experimental fishing or other permits under FMPs; environmental impact statements to meet the requirements of the National Environmental Policy Act; scientific permits under the ESA and/or the Marine Mammal Protection Act; or Magnuson-Stevens Act EFH consultation if the project may adversely affect areas identified as EFH. Describe the relationship between the project and these FMPs or activities, and list names and addresses of persons providing this information. You can get information on these activities from the NMFS Regions (see Section I.H., Application Addresses). If we select your project for funding, you are responsible for complying with all applicable requirements.

6. Project statement of work. The statement of work is an action plan of activities you will conduct during the period of the project. You must prepare a detailed narrative, fully describing the work you will perform to achieve the project goals and objectives. The narrative should respond to the following questions:

(a) What is the project design? What specific work, activities, procedures, statistical design, or analytical methods will you undertake?

(b) Who will be responsible for carrying out the various activities? (Highlight work that will be subcontracted and provisions for competitive subcontracting.)

(c) What are the major products and how will project results be disseminated? Describe products of the project, such as a manual, video, technique, or piece of equipment. Indicate how project results will be disseminated to potential users.

(d) What are the project milestones? List milestones, describing the specific

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activities and associated time lines to conduct the scope of work. Describe the time lines in increments (e.g., month 1, month 2), rather than by specific dates. Identify the individual(s) responsible for the various specific activities.

This information is critical for us to conduct a thorough review of your application, so we encourage you to provide sufficient detail.

7. Participation by persons or groups other than the applicant. Describe how government and non-government entities, particularly members of fishing communities, will participate in the project, and the nature of their participation. We will consider the degree of participation by members of the fishing community in determining which applications to fund.

8. Project management. Describe how the project will be organized and managed. Identify the principal investigator and other participants in the project. If you do not identify the principal investigator, we will return your application without further consideration. Include copies of any agreements between you and the participants describing the specific tasks to be performed. Provide a statement no more than two pages long of the qualifications and experience (e.g., resume or curriculum vitae) of the principal investigator(s) and any consultants and/or subcontractors, and indicate their level of involvement in the project. If any portion of the project will be conducted through consultants and/or subcontracts, you must follow procurement guidance in 15 CFR part 24, "Grants and Cooperative Agreements to State and Local Governments," and 15 CFR part 14, "Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, Other Non-Profit, and Commercial Organizations." If you select a consultant and/or a subcontractor prior to submitting an application, indicate the process that you used for selection.

E. Supporting Documentation

You should include any relevant documents and additional information (i.e., maps, background documents) that will help us to understand the project and the problem/opportunity you seek to address.

IV. Screening, Evaluation, and Selection Procedures

A. Initial Screening of Applications

When we receive applications at any of the NMFS Regional Offices, we will first screen them to ensure that they were received by the deadline date (see DATES); include OMB form 424 signed and dated by an authorized representative (see section III. A. of this document); were submitted by an eligible applicant (see section I.D. of this document); provide for at least a 10–percent cost share but not more than 50 percent (see section I.F. of this document); involve an eligible activity (see section I.C. of this document); address one of the funding priorities for species under Federal or State jurisdiction (see section II.A.-F. of this document); include a budget and a statement of work including milestones (see sections III.C. and III.D.6 of this document); and identify the principal investigator (see section III D.8. of this document). Note, if we find, at any point in the process, that your application does not fully conform to these requirements and the deadline for submission has passed, we will return it to you without further consideration.

We do not have to screen applications before the submission deadline, nor do we have to give you an opportunity to correct

any deficiencies that cause your application to be rejected.

B. Evaluation of Proposed Projects

1. Technical Evaluation

After the initial screening, we will solicit individual evaluations of each project application from three or more appropriate private and public sector experts to determine the technical merit. No consensus recommendations will be made. Reviewers will be required to certify that they do not have a conflict of interest concerning the application(s) they are reviewing. They will assign scores ranging from a minimum of 60 (poor) to a maximum of 100 (excellent) to applications based on the following criteria, with weights shown in parentheses:

a. Soundness of project design/conceptual approach. Applications will be evaluated on the conceptual approach; the likelihood of project results in the time frame specified in the application; whether there is sufficient information to evaluate the project technically; and, if so, the strengths and/or weaknesses of the technical design relative to securing productive results. (50 percent)

b. Project management and experience and qualifications of personnel. The organization and management of the project will be evaluated. The project's principal investigator and other personnel, including consultants and contractors participating in the project, will be evaluated in terms of relevant experience and qualifications. Applications that include consultants and contractors will be reviewed to determine if your involvement, as the primary applicant, is necessary to the conduct of the project and the accomplishment of its objectives. (25 percent)

c. Project evaluation. The methods you propose to monitor and evaluate the success or failure of the project in terms of meeting its original objectives will be examined for potential effectiveness. (10 percent)

d. Project costs. The justification and allocation of the budget in terms of the work to be performed will be evaluated. Unreasonably high or low project costs will be taken into account. (15 percent)

Following the technical review, we will determine the weighted score for each individual review and average the individual technical review scores to determine the final technical score for each application. Then, we will rank applications in descending order by their final technical scores and determine a "cutoff" score that is based on the amount of funds available for grants. We will eliminate from further consideration those applications that scored below the cutoff.

2. Constituent Panel(s)

For those applications at or above the cutoff technical evaluation score, we will solicit individual comments and evaluations from a panel or panels of three or more representatives selected by the Assistant Administrator for Fisheries (AA), NOAA. Regardless of the total number of panels convened, we will convene a separate panel for projects addressing Priority A dealing with Atlantic salmon aquaculture. Panel members will be chosen from the fishing industry, state government, non-government organizations, and others, as appropriate. We will provide panelists with a summary of the technical evaluations, and, for applications to continue a previously funded project, information on progress on the funded work to date.

Each panelist will evaluate the applications in terms of the significance of the problem or opportunity being addressed, the degree to which the project involves collaboration with fishing community members and other appropriate collaborators, proposed means to disseminate project results, and the merits of funding each project. Each panelist will provide a rating from 0–4 (poor to excellent) for each project, and provide comments if they wish. Panelists will not reach consensus on recommendations or scores. Panel members will be required to certify that they do not have a conflict of interest and that they will maintain confidentiality of the panel deliberations.

Following the Constituent Panel meeting, we will average the individual ratings for each project. We will then develop a ranking of projects based on the individual ranks within each of the priority areas. Final rankings will consider projects addressing Priority A separately from projects addressing priorities B through F.

C. Selection Procedures and Project Funding

After projects have been evaluated and ranked, we will use this information, along with input from the NMFS Regional Administrators (RAs) and Office Directors (ODs), to develop recommendations for project funding. RAs/ODs will prepare a written justification for any recommendations for funding that fall outside the ranking order, or for any cost adjustments.

The AA will review the funding recommendations and comments of the RAs/ODs and determine the projects to be funded. The AA will make two sets of final funding decisions: one for proposals addressing priority A and a second set for those addressing Priorities B through F. In making the final selections, the AA may consider costs, geographical distribution, and duplication with other federally funded projects. Awards are not necessarily made to the highest ranked applications.

We will notify you in writing whether your application is selected or not. Furthermore, if your application is not selected, we will return it to you. Successful applications will be incorporated into the award document.

The exact amount of funds, the scope of work, and terms and conditions of a successful award will be determined in preaward negotiations between you and NOAA/NMFS representatives. The funding instrument (grant or cooperative agreement) will be determined by NOAA Grants. You should not initiate your project in expectation of Federal funding until you receive a grant award document signed by an authorized NOAA official.

V. Administrative Requirements

A. Your Obligations as an Applicant

The Commerce Pre-Award Notification Requirements for Grants and Cooperative Agreements published in the **Federal Register**, October 1, 2001 (66 FR 49917), are applicable to this solicitation. However, please note that Commerce will not implement the requirements of Executive Order 13202 (66 FR 49921), pursuant to guidance issued by the OMB in light of a court opinion which found that the Executive Order was not legally authorized. *See Building and Construction Trades Department* v. *Allbaugh*, 172 F. Supp. 2d 138 (D.D.C. 2001). This decision is currently on appeal. When the case has been finally resolved, Commerce will provide further information on implementation of Executive Order 13202.

In addition, you must:

1. Meet all application requirements and provide all information necessary for the evaluation of the proposal(s), including one signed original and nine signed copies of the application.

2. Be available to respond to questions during the review and evaluation of the proposal(s).

3. Complete Item 16 on Standard Form 424 (4–92) regarding clearance by the State Point Of Contact (SPOC) established as a result of Executive Order 12372. You can get the list of SPOCs from any of the NMFS offices listed in this document or from the S-K Home Page (see section I.I. of this document). It is also included in the CFDA. You must contact the SPOC, if your state has one, to see if applications to the S-K Program are subject to review. If SPOC clearance is required, you are responsible for getting that clearance in time to submit your application to the S-K Program by the deadline (*see* **DATES**).

4. Complete Standard Form 424B (4–92), "Assurances--Non-construction Programs."

B. Your Obligations as a Successful Applicant (Recipient)

If you are awarded a grant or cooperative agreement for a project, you must:

1. Manage the day-to-day operations of the project, be responsible for the performance of all activities for which funds are granted, and be responsible for the satisfaction of all administrative and managerial conditions imposed by the award.

2. Keep records sufficient to document any costs incurred under the award, and submit financial status reports (SF 269) to NOAA's Grants Management Division in accordance with the award conditions.

3. Submit semiannual project status reports on the use of funds and progress of the project to us within 30 days after the end of each 6–month period. You will submit these reports to the individual identified as the NMFS Program Officer in the funding agreement.

4. Submit a final report within 90 days after completion of each project to the NMFS Program Officer. The final report must describe the project and include an evaluation of the work you performed and the results and benefits in sufficient detail to enable us to assess the success of the completed project.

We are committed to using available technology to achieve the timely and wide distribution of final reports to those who would benefit from this information. Therefore, you are required to submit final reports in electronic format, in accordance with the award terms and conditions, for publication on the S-K Home Page. You may charge the costs associated with preparing and transmitting your final reports in electronic format to the grant award. We will consider requests for exemption from the electronic submission requirement on a case-by-case basis.

We will provide you with OMB-approved formats for the semiannual and final reports.

5. In addition to the final report in section V.B.4. of this document, we request that you submit any publications printed with grant funds (such as manuals, surveys, etc.) to the NMFS Program Officer for dissemination to the public. Submit either three hard copies or an electronic version of any such publications.

We reserve the right to conduct a post-closeout evaluation of project results in terms of demonstrated benefit to fishing communities, as indicated by awareness of the work conducted, state of knowledge advanced, adoption of techniques or methods developed, implementation of plans prepared, etc. Evaluation may be conducted by appropriate individuals within or outside NOAA. If this process requires any additional information from you, we will first obtain the proper clearances under the PRA.

Classification

Prior notice and an opportunity for public comments are not required by the Administrative Procedure Act (5 U.S.C. 553(a)(2))or any other law for this notice concerning grants, benefits, and contracts.

Furthermore, because a notice is not a regulation, a regulatory flexibility analysis is not required by the Regulatory Flexibility Act or any other law, and none has been prepared.

This action has been determined to be not significant for purposes of Executive Order 12866.

Applications under this program are subject to Executive Order 12372, "Intergovernmental Review of Federal Programs."

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This document contains collection-of-information requirements subject to the PRA. The use of Standard Forms 424, 424B, and SF-LLL (Disclosure of Lobbying Activities) have been approved by the Office of Management and Budget (OMB) under the respective control numbers 0348–0043, 0348–0040, and 0348–0046. NOAA-specific requirements have been approved under OMB control number 0648–0135. These requirements and their estimated response times are 1 hour for a project summary, 1 hour for a budget form, 2.5 hours for a semiannual report, and 13 hours for a final report. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Alicia Jarboe, F/SF2, Room 13112, 1315 East West Highway, Silver Spring, MD 20910–3282.

Notwithstanding any other provision of law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with, a collection of information subject to the requirements of the PRA unless that collection of information displays a currently valid OMB control number.

A solicitation for applications can also be obtained through "FedBizOpps."

Dated: May 8, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service

[FR Doc. 02–12029 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050802E]

North Pacific Fishery Management Council; Council Chairmen's Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Annual meeting of Regional Fishery Management Council and NMFS representatives.

SUMMARY: Representatives of the eight Regional Fishery Management Councils will meet with representatives of NMFS in Sitka, AK.

DATES: The meetings will be held on Tuesday, May 28, 2002 through Friday, May 31, 2002.

ADDRESSES: The meetings will be held at the Harrigan Centennial Hall, 330 Harbor Drive, Sitka, AK.

Council address: North Pacific Fishery Management Council, 605 W. 4th Ave., Suite 306, Anchorage, AK 99501–2252.

FOR FURTHER INFORMATION CONTACT: Gail Bendixen, NPFMC, Phone: 907–271–2809.

SUPPLEMENTARY INFORMATION: On Tuesday, May 28, Council representatives and NMFS representatives will meet separately to prepare for the joint meetings Wednesday and Thursday, May 29-30. Council representatives will meet again on Friday morning, May 31, to finalize any recommendations resulting from the joint meetings.

The tentative agenda includes the following subjects for discussion:

1. Reauthorization of the Magnuson-Stevens Fishery Conservation and Management Act and other legislative initiatives.
2. Procedure and schedules for approval of Council statements of operating policies and procedures.
3. Discussion of Marine Protected Area initiative.
4. The ability of NMFS to meet mission requirements.
5. Discussion of education and public outreach campaign.
6. International trade negotiations, capacity reduction assessments, and general litigation influences.
7. Reports:

(a) NMFS reports on cooperative research funds and electronic logbook program.

(b) U.S. Coast Guard report on fisheries enforcement and rescue activities.

(c) Update on the 2002 annual Status of Stocks report to Congress and discussion of process and format for future reports.

(d) Status of the Coral Reef Task Force and funding issues.

(e) Status report on electronic rulemaking initiative.

(f) Status report on Essential Fish Habitat lawsuit and development of environmental impact statements.

Although non-emergency issues not contained in this agenda may come before this group for discussion, those issues may not be the subject of formal action during this meeting. Action will be restricted to those issues specifically identified in this notice and any issues arising after publication of this notice that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the Council's intent to take final action to address the emergency.

Special Accommodations

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Gail Bendixen at 907–271–2809 at least 7 working days prior to the meeting date.

Dated: May 8, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12031 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102D]

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's (Council) Coastal Pelagic Species Management Team (CPSMT) will hold a work session, which is open to the public.

DATES: The CPSMT will meet Wednesday, May 29, 2002, from 8 a.m. until business for the day is completed.

ADDRESSES: The work session will be held in the large conference room (D–203) at NMFS Southwest Fisheries Science Center, 8604 La Jolla Shores Drive, La Jolla, CA 92037; (858) 546–7000.

Council address: Council address: Pacific Fishery Management Council, 7700 NE Ambassador Place, Suite 200, Portland, OR 97220–1384.

FOR FURTHER INFORMATION CONTACT: Dan Waldeck, Pacific Fishery Management Council; (503) 326–6352.

SUPPLEMENTARY INFORMATION: The primary purpose of the work session is to review the current Pacific mackerel stock assessment and develop harvest guideline and seasonal structure recommendations for the 2002–2003 fishery. The 2002 CPS stock assessment and fishery evaluation (SAFE) document might also be discussed.

Although nonemergency issues not contained in the CPSMT meeting agenda may come before the CPSMT for discussion, those issues may not be the subject of formal CPSMT action during this meeting. CPSMT action will be restricted to those issues specifically listed in this document and any issues arising after publication of this document that require emergency action under section 305(c) of the Magnuson-Stevens Fishery Conservation and Management Act, provided the public has been notified of the CPSMT's intent to take final action to address the emergency.

Special Accommodations

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Carolyn Porter at (503) 326–6352 at least 5 days prior to the meeting date.

Dated: May 8, 2002.

Richard W. Surdi,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12032 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Area the Public Is Requested to Temporarily Avoid During Coral Reef Restoration Activities in the Florida Keys National Marine Sanctuary (FKNMS)

AGENCY: National Marine Sanctuaries Program (NMSP), Office of Ocean and Coastal Resources Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Department of Commerce (DOC).

ACTION: Notice of Area to be Temporarily Avoided.

SUMMARY: NOAA requests that users of the Florida Keys National Marine Sanctuary (FKNMS) avoid, from May 15, 2002 through June 28, 2002, an area of approximately 0.58 acres marked by construction buoys in the vicinity of 25°0.67′ N, 80°22.37′ W, which is at "Molasses Reef," and is located 6 nautical miles (11.1 km) off the southeastern portion of Key Largo, Florida. During this time, NOAA and authorized contractors will be conducting physical restoration activities of a coral reef where the M/V Wellwood grounded in August 1984. The public is requested to avoid the area during this period due to the presence of heavy construction materials and equipment (*e.g.*, barges and cranes), moorings, surface air supply hoses of divers and increased localized boat traffic. The intent of this notice is to ensure the timely and successful completion of the restoration and the protection of life and property during these complex activities.

DATES: The public is requested to avoid the area from May 15, 2002 through June 28, 2002. If less or more time is needed, NOAA will so inform the public. Public notice of this request also will be provided through local news media, a Notice to Mariners, and posting of placards or bulletin boards in public areas in Key Largo.

FOR FURTHER INFORMATION CONTACT: Harriet Sopher, Program Manager, Resource Protection Team, National Marine Sanctuaries Program, National Oceanic and Atmospheric Administration, 1305 East West Highway, SSMC4, 11th Floor, Silver Spring, Maryland, 20910. Telephone number: 301–713–3125, ext. 109.

SUPPLEMENTARY INFORMATION:

Background

On August 4, 1984, the M/V Wellwood, a 122-meter Cypriot-registered freighter, ran aground on the upper forereef of Molasses Reef within the FKNMS. The grounding site is a bank reef located 6 nautical miles (11.1 km) off the southeast portion of Key Largo, Florida (entered at approximately 25°0.67′ N, 80°22.37′ W). The impact of the grounding and the shifting of the vessel created large scars on the Molasses Reef forereef. Significant injuries were inflicted to the coral reef colonies, substrate, and other resident marine organisms such as sponges and sea fans. The unconsolidated coral rubble and ship debris have been removed. Storm events, including Hurricane Georges in the autumn of 1998, have caused additional damage to the grounding site.

Section 312 of the National Marine Sanctuaries Act (NMSA; 16 U.S.C. 1443) authorizes NOAA to pursue claims for response costs and damages when sanctuary resources are destroyed, lost or injured. Funds recovered under section 312 are used to restore, replace or acquire equivalent sanctuary resources. As part of the restoration process at the site of the M/V Wellwood grounding, NOAA and its authorized contractor will be placing reef modules and tremie concrete to rebuild the physical structure of the damaged coral reef. This activity will occur from April 15, 2002 through June 28, 2002.

Because divers, moorings, heavy construction materials and equipment (*e.g.*, barges and cranes) and increased localized boat traffic will be present during the restoration activity, NOAA requests the public to avoid an area of approximately 0.58 acres where the restoration activity will occur. Five to seven, recreational mooring buoys will be removed from the work area and the nearby vicinity. The work area will be marked by construction buoys. The buoys will be set about 30 feet beyond the barge tie down locations, and create an area approximately 200 feet by 150 feet, with the longer axis oriented in a NE–SW direction, around the grounding site (25°0.67′ N, 80°22.37′ W).

The intent is to provide an area for the conduct of these important restoration activities; protect the life and property of construction crews and Sanctuary users while heavy construction materials and equipment (*e.g.*, barges and cranes) are in the area; protect moorings which will be used at the site to stabilize the barges; protect the surface air supply hoses of the divers and SCUBA crew who will be conducting the restoration activities; and ensure timely and successful completion of the restoration. The area that the public is requested to avoid is the minimum area necessary to moor the barges and includes buffer zones to moor support vessels and provide an extra margin for public safety during the restoration activities. The time period for which the public is requested to avoid the restoration site is the expected time necessary to complete the construction activities. If less or more time is needed, NOAA will so notify the public.

During the spring of 2002, one-on-one contact was made with local dive operators, a public meeting was held to explain the restoration project and make the public aware of the area it would be requested to temporarily avoid. Additionally, NOAA issued press releases to the local newspapers and radio stations which have covered the restoration planning process and which have provided notice of NOAA's request for the public to avoid the restoration area.

Locations and Boundaries of the Area the Public Is Requested to Avoid

The area which the public is requested to avoid is located approximately 6 nautical miles offshore the southeast portion of Key Largo, Florida (centered near 25°0.67′ N, 80°22.37′ W). The total area is approximately 0.58 acres. The boundary of this area will be marked by construction buoys.

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The area is bounded by the following coordinates:

Latitude and Longitude

A: 25°00'37.96364" N 80°22'14.60425" W
B: 25°00'31.20173" N 80°22'22.54159" W
C: 25°00'45.20646" N 80°22'22.54159" W
D: 25°00'38.44445" N 80°22'29.96212" W

Dated: May 8, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–12004 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–NK–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050302A]

Endangered Species; Permit No. 1351

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of permit.

SUMMARY: Notice is hereby given that Dr. Frank A. Chapman, Department of Fisheries and Aquatic Sciences, University of Florida, University of Florida, 7922 N.W. 71 St., Gainesville, Florida 32653, has been issued a permit to take Shortnose Sturgeon (*Acipenser brevirostrum*) for purposes of scientific research and enhancement.

ADDRESSES: The permit and related documents are available for review upon written request or by appointment in the following office(s):

Permits, Conservation and Education Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Room 13705, Silver Spring, MD 20910; phone (301)713–2289; fax (301)713–0376.

FOR FURTHER INFORMATION CONTACT: Lillian Becker, (301)713–2289).

SUPPLEMENTARY INFORMATION: On September 17, 2001, notice was published in the **Federal Register** (66 FR 48031) that a request for a scientific research/enhancement permit to take shortnose sturgeon had been submitted by the above-named individual. The requested permit has been issued under the authority of the Endangered Species Act of 1973, as amended (ESA; 16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered and threatened species (50 CFR parts 222-226).

The Holder was issued a four year permit [#1351] to identify the physical, chemical, and biological parameters necessary for optimal survival and growth of shortnose sturgeon. The research activities proposed in this investigation address the goals and objectives of the shortnose sturgeon recovery plan.

Issuance of this permit, as required by the ESA, was based on a finding that such permit (1) was applied for in good faith, (2) will not operate to the disadvantage of the endangered species which is the subject of this permit, and (3) is consistent with the purposes and policies set forth in section 2 of the ESA.

Dated: May 8, 2002.

Eugene T. Nitta,

Acting Chief, Permits, Conservation and Education Division, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 02–12034 Filed 5–13–02; 8:45 am]

BILLING CODE 3510–22–S

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 02–2]

In the Matter of DAISY MANUFACTURING COMPANY Inc.; d/b/a/ Daisy Outdoor Products, 400 West Stribling Drive, Rogers, Arkansas 72756; Prehearing Conference

AGENCY: Consumer Product Safety Commission.

ACTION: Notice of first prehearing conference.

DATES: This notice announces a prehearing conference to be held in the matter of Daisy Manufacturing Company, Inc. on June 7, 2002 at 10 a.m.

ADDRESSES: The prehearing conference will be in hearing room 420 of the East-West Towers Building, 4330 East-West Highway, Bethesda, Maryland 20814.

FOR FURTHER INFORMATION CONTACT: Todd A. Stevenson, Secretary, U.S. Consumer Product Safety Commission, Washington, DC; telephone (301) 504–0800; telefax (301) 504–0127.

SUPPLEMENTARY INFORMATION: This public notice is issued pursuant to 16 CFR 1025.21(b) of the U.S. Consumer Product Safety Commission's Rules of Practice for Adjudicative Proceedings to inform the public that a prehearing conference will be held in administrative proceeding under section 15 of the Consumer Product Safety Act ("CPSA"), 15 U.S.C. 2064 and section 15 of the Federal Hazardous Substances Act ("FHSA"), 15 U.S.C. 1274, captioned CPSC Docket No. 02–2, In the Matter of DAISY MANUFACTURING COMPANY, Inc. doing business as Daisy Outdoor Products. The Presiding Officer in the proceeding is United States Administrative Law Judge William B. Moran. The Presiding Officer has determined that, for good and sufficient cause, the time period for holding the first prehearing conference had to be extended to the date announced above, which date is beyond the fifty (50) day period referenced in 16 CFR 1025.21(a).

The public is referred to the Code of Regulations citation listed above for identification of the issues to be raised at the conference and is advised that the date, time and place of the hearing also will be established at the conference.

Substantively, the issues being litigated in this proceeding are described by the Presiding Officer to include: Whether certain identified models of the Daisy Powerline Airgun, designed to shoot BBs or pellets, contain defects which create a substantial product hazard defect in that, allegedly, BBs can become lodged within a "virtual magazine," or fail to feet into the firing chamber, with the consequences that one may fire or shake the gun without receiving any visual or audible indication that is still loaded. Consequently, the complaint asserts that these alleged problems can lead consumers to erroneously believe that the gun is empty and that such phenomena means that the gun is "defective" within the meaning of section 15 of the CPSA, 15 U.S.C. 2064 and section 15 of the FHSA, 15 U.S.C. 1274. The Complaint further alleges that the gun's design, by making it difficult to determine when looking into the loading port whether a BB is present, constitutes a "defect" under the CPSA and the FHSA and presents a "substantial product hazard," creating a substantial risk of injury to consumers, within the meaning of section 15(a)(2), of the CPSA, 15 U.S.C. 2064(a)(12), and presents a substantial risk of injury of children under section 15(c)(1) and (c)(2) of the FHSA, 15 U.S.C. 1274(c)(1) and (c)(2). The public should be mindful that these are allegations only and the CPSC bears the burden of proof in establishing any violations. Should these allegations be proven, Complaint Counsel for the Office of Compliance of the U.S. Consumer Product Safety Commission seeks a finding that these products present a substantial product hazard and present a substantial risk of injury to children and that public notification of such hazard and risk of injury be made pursuant to section 15(c) of the CPSA and that other appropriate relief be directed, as set forth in the Complaint.

Dated: May 9, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–12044 Filed 5–13–02; 8:45 am]

BILLING CODE 6355–01–M

CONSUMER PRODUCT SAFETY COMMISSION

Sunshine Act; Meeting

Federal Register Citation of Previous Announcement: Vol. 67, No. 89, Wednesday, May 8, 2002, page 30879

Previously Announced Time and Date of Meeting: 10 a.m., Wednesday, May 15, 2002.

Changes in Meeting: The Prehearing Conference, In the Matter of DAISY MANUFACTURING COMPANY Inc., will not be held on Wednesday, May 15, 2002. The Prehearing Conference has been rescheduled for Friday, June 7, 2002 at 10 a.m.

For a recorded message containing the latest agenda information, call (301) 504–0709.

Contact Person for Additional Information: Todd A. Stevenson, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504–0800.

Dated: May 9, 2002.

Todd A. Stevenson,

Secretary.

[FR Doc. 02–12043 Filed 5–9–02; 3:15 am]

BILLING CODE 6355–01–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Notice

The Board of Directors of the Corporation for National and Community Service gives notice of the following meeting:

DATE AND TIME: Tuesday, May 21, 2002, 9:30 a.m.–12:30 p.m.

PLACE: John F. Kennedy School of Government, 79 John F. Kennedy Street (Harvard Square), Cambridge, MA 02183.

STATUS: Open.

MATTERS TO BE CONSIDERED:

I. Chair's Opening Remarks.
II. Consideration of Prior Meeting's Minutes.
III. Legislative and future management actions related to the Administration's 'Principles and Reforms for a Citizen Service Act: Fostering a Culture of Service, Citizenship, and Responsibility'.
IV. Social Capital and Civic Engagement.
V. Learn and Serve presentation.
VI. MA Service Alliance.
VII. National Ten Point Leadership Foundation.

ACCOMMODATIONS: Anyone who needs an interpreter or other accommodation should notify the Corporation's contact person.

CONTACT PERSON FOR FURTHER INFORMATION: Ms. Michele Tennery, Senior Associate, Corporation for National and Community Service, 8th Floor, Room 8513, 1201 New York Avenue NW., Washington, DC 20525. Phone (202) 606–5000 ext. 125. Fax (202) 565–2784 TDD: (202) 565–2799. E-mail: *MTennery@cns.gov.*

Dated: May 10, 2002.

Frank R. Trinity,

General Counsel, Corporation for National and Community Service.

[FR Doc. 02–12095 Filed 5–10–02; 11:30 am]

BILLING CODE 6050–$$–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 7, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 15, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: April 23, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Elementary and Secondary Education

Type of Review: New.

Title: Early Reading First Program **Federal Register** Notice Inviting Applications, and Application Packet.

Abstract: The Early Reading First program will provide grants to eligible local educational agencies (LEAs) and public and private organizations located in those LEAs to transform early childhood education programs into centers of excellence to help young at-risk children achieve the language, cognitive, and early reading skills they

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need to succeed when they enter kindergarten.

Additional Information: The Department expects to receive a large number of applications, and wishes to ensure that the funded applications are of the highest quality, and plans to use a two-phase application process (with a Pre-Application and Full Application). This two-phase application process will put less burden on the majority of applicants by requiring only a short concept paper from them, and will also have the benefit of providing helpful comments from peer reviewers to strengthen proposals from applicants invited to submit Full Applications. It would be difficult without emergency paperwork clearance for the Department to award these grants by December 2002. Based upon the unexpected delay and the public harm that might otherwise occur with delaying grant awards, the Department is requesting approval by May 7, 2002.

Frequency: Annually.

Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 900.

Burden Hours: 12,000.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov*, by selecting "Browse Pending Collections" and clicking on link number. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian.reese@ed.gov*. Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at her internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11960 Filed 5–13–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Submission for OMB Review; Comment Request

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer invites comments on the submission for OMB review as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before June 13, 2002.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer, Department of Education, Office of Management and Budget, 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Karen_F._Lee@omb.eop.gov*.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, *e.g.* new, revision, extension, existing or reinstatement; (2) title; (3) summary of the collection; (4) description of the need for, and proposed use of, the information; (5) respondents and frequency of collection; and (6) reporting and/or recordkeeping burden. OMB invites public comment.

Dated: May 8, 2002.

John D. Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: New.

Title: Integrated Postsecondary Education Data System (IPEDS), Minimum Data Set (MDS).

Frequency: One time.

Affected Public: Businesses or other for-profit; Not-for-profit institutions.

Reporting and Recordkeeping Hour Burden:

Responses: 9,924.

Burden Hours: 2,232.

Abstract: IPEDS is a system of surveys designed to collect basic data from postsecondary institutions in the United States. To date, the main focus of IPEDS has been Title IV institutions, but institutions that do not participate in these federal student financial aid programs are becoming an increasingly important source of educational opportunity in the country. However, the scope and nature of this group of non-Title IV institutions is not well known. In order to arrive at a statistical estimate of the number of non-Title IV institutions nationwide, IPEDS proposes to conduct an area search to identify these institutions, and to collect a Minimum Data Set of items from them. These data will be made publicly available through a prototype Web-based data access system.

Requests for copies of the submission for OMB review; comment request may be accessed from *http://edicsweb.ed.gov*, by selecting the "Browse Pending Collections" link and by clicking on link number 1959. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov*. Requests may also be electronically mailed to the Internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (202) 708–5359 or via her Internet address *Kathy.Axt@ed.gov*. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–11932 Filed 5–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–264]

Application to Export Electric Energy; ENMAX Energy Marketing Inc.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: ENMAX Energy Marketing Inc. (ENMAX) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 29, 2002.

ADDRESS: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Steven Mintz (Program Office) 202–586–9506 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 19, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from ENMAX to transmit electric energy from the United States to Canada. ENMAX is an Alberta corporation having its principal place of business at Calgary, Alberta, Canada. ENMAX is a power marketer and is a wholly-owned subsidiary of ENMAX Energy Corporation, which in turn is a wholly-owned subsidiary of ENMAX Corporation. ENMAX currently participates in the wholesale trading of energy within Canada. ENMAX does not own or control any electric power generation or transmission facilities and does not have a franchised service area. Further, ENMAX requests that consideration of the application be expedited so that it may participate in the Alberta market that has recently experienced some supply uncertainty and price volatility.

ENMAX proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by ENMAX, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

ENMAX has requested expedited processing of its application so that electric power exports requested herein may help mitigate some supply uncertainties and price volatilities occurring in the Alberta market. Accordingly, DOE has set a 15-day comment period for this proceeding.

Procedureal Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the ENMAX application to export electric energy to Canada should be clearly marked with Docket EA–264. Additional copies are to be filed directly with Darin L. Lowther, Manager, Regulatory Affairs, ENMAX Energy Marketing Inc., 2808 Spiller Road, SE., Calgary, Alberta, Canada, T2G 4H3, AND Jerry L. Pfeffer, Energy Industry Advisor, Skadden, Arps, Slate, Meagher & Flom, LLP, 1440 New York Avenue, NW., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home Page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on May 8, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–11931 Filed 5–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Docket No. EA–265]

Application to Export Electric Energy; Ontario Energy Trading International Corp.

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of application.

SUMMARY: Ontario Energy Trading International Corp. (Ontario Energy) has applied for authority to transmit electric energy from the United States to Canada pursuant to section 202(e) of the Federal Power Act.

DATES: Comments, protests or requests to intervene must be submitted on or before May 29, 2002.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Power Import/Export (FE–27), Office of Fossil Energy, U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585–0350 (FAX 202–287–5736).

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael Skinker (Program Attorney) 202–586–2793.

SUPPLEMENTARY INFORMATION: Exports of electricity from the United States to a foreign country are regulated and require authorization under section 202(e) of the Federal Power Act (FPA) (16 U.S.C. 824a(e)).

On April 26, 2002, the Office of Fossil Energy (FE) of the Department of Energy (DOE) received an application from Ontario Energy to transmit electric energy from the United States to Canada. Ontario Energy is a Delaware corporation having its principal place of business at Toronto, Ontario, Canada. Ontario Energy is in the business of marketing electricity in the United States and Canada and periodically exports electricity to which it has title into Canada for sales to Canadian utilities, power marketers and end-use customers. Ontario Energy has no franchised service territory in the United States.

Ontario Energy is an indirect, wholly-owned subsidiary of Ontario Power Generation Inc., (OPG) a Canadian corporation headquartered in Toronto.

Ontario, Canada. Ontario Energy's direct parent is Ontario Energy Trading, Inc., a Delaware corporation, which in turn is owned by Ontario Power Generation Energy Trading, Inc., an Ontario corporation. OPG, through various subsidiary corporations, owns and operates power plants and related generation assets. OPG does not own transmission or distribution assets. OPG's generation assets previously were owned by Ontario Hydro, the former government-owned utility providing generation, transmission and certain distribution services in Ontario.

Ontario Energy proposes to arrange for the delivery of electric energy to Canada over the existing international transmission facilities owned by Basin Electric Power Cooperative, Bonneville Power Administration, Citizen Utilities, Eastern Maine Electric Cooperative, International Transmission Company, Joint Owners of the Highgate Project, Long Sault, Inc., Maine Electric Power Company, Maine Public Service Company, Minnesota Power Inc., Minnkota Power Cooperative, New York Power Authority, Niagara Mohawk Power Corporation, Northern States Power, and Vermont Electric Transmission Company. The construction, operation, maintenance, and connection of each of the international transmission facilities to be utilized by Engage America, as more fully described in the application, has previously been authorized by a Presidential permit issued pursuant to Executive Order 10485, as amended.

The applicant anticipates that the electric power market in the Province of Ontario will be opened to competition on May 1, 2002. Ontario Energy has requested expedited processing of its application so that it may participate in this competitive market during the summer peak period. Accordingly, DOE has set a 15-day comment period for this proceeding.

Procedural Matters: Any person desiring to become a party to this proceeding or to be heard by filing comments or protests to this application should file a petition to intervene, comment or protest at the address provided above in accordance with §§ 385.211 or 385.214 of the FERC's Rules of Practice and Procedures (18 CFR 385.211, 385.214). Fifteen copies of each petition and protest should be filed with DOE on or before the date listed above.

Comments on the Ontario Energy application to export electric energy to Canada should be clearly marked with Docket EA–265. Additional copies are to be filed directly with Joel Singer, Vice President, Regulatory Affairs, Ontario Power Generation Inc., 700 University Avenue, Toronto, Ontario M5G 1X6 Canada AND Jerry Pfeiffer, Energy Industries Advisor, Victor A. Contract, Skadden, Arps, Slate, Meagher & Flom LLP, 1440 New York Avenue, N.W., Washington, DC 20005–2111.

A final decision will be made on this application after the environmental impacts have been evaluated pursuant to the National Environmental Policy Act of 1969, and a determination is made by the DOE that the proposed action will not adversely impact on the reliability of the U.S. electric power supply system.

Copies of this application will be made available, upon request, for public inspection and copying at the address provided above or by accessing the Fossil Energy Home Page at *http://www.fe.de.gov*. Upon reaching the Fossil Energy Home page, select "Electricity Regulation," and then "Pending Procedures" from the options menus.

Issued in Washington, DC, on May 8, 2002.

Anthony J. Como,

Deputy Director, Electric Power Regulation, Office of Coal & Power Import/Export, Office of Coal & Power Systems, Office of Fossil Energy.

[FR Doc. 02–11930 Filed 5–13–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RM96–1–019, RP02–336–000, RP02–324–000, RP02–234–000, RP02–325–000, RP02–323–000, RP02–326–000, RP02–328–000]

Standards for Business Practices of Interstate Natural Gas Pipelines; et al.; Notice of Compliance Filing

May 8, 2002.

Chandeleur Pipe Line Company
Clear Creek Storage Company, L.L.C.
Discovery Gas Transmission LLC
Overthrust Pipeline Company
Paiute Pipeline Company
Questar Pipeline Company
TransColorado Gas Transmission Company

Take notice that the above-referenced pipelines made filings in compliance with Docket No. RM96–1–019, Order No. 587–N.[1] These revised tariff sheets to be effective July 1, 2002, implements Commission regulation 284.12(c)(1)(ii)(B) that requires that pipelines permit releasing shippers, as a condition of a capacity release, to recall released capacity and renominate such recalled capacity at each nomination opportunity. The filings implement the first phase of compliance with Order No. 587–N by implementing recalls of scheduled capacity for the Timely and Evening Nomination Cycles and for recalls of unscheduled capacity at any of the four nomination cycles.

Any person desiring to become a party in a proceeding must file a separate motion to intervene or protest in each docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11994 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

[1] Standards For Business Practices Of Interstate Natural Gas Pipelines, Order No. 587–N, 67 FR 11906 (March 18, 2002), FERC Stats. & Regs. Regulations Preambles ¶ 31,125 (March 11, 2002).

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1685–000]

Cinergy Energy Services, Inc.; Notice of Filing

May 8, 2002.

Take notice that on May 1, 2002, Cinergy Services, Inc. (Cinergy) on behalf of the Cincinnati Gas and Electric Company tendered for filing a Wholesale Market-Based Service Agreement under its Wholesale Market-Based Power Sales Standard Tariff, No. 9–MB (the Tariff) entered into with EnergyUSA-TPC Corp.

Cinergy and EnergyUSA–TPC Corp. are requesting an effective date of May 1, 2002.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11993 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–163–002]

Florida Gas Transmission Company; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 19, 2002, Florida Gas Transmission Company (FGT) tendered for filing additional documentation and support for the proposed fuel retention percentages as directed by Commission letter order issued March 28, 2002, (March 28 Order) in this proceeding. By filing this response, FGT is not agreeing that its lost and unaccounted-for gas percentages, or the variations in these percentages from period to period, are in any way abnormal or unreasonable, as suggested by the wording in the March 28 Order. FGT is filing concurrently herewith a Request for Clarification and/or Rehearing of the Commission's March 28 Order on this point.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. As directed in the March 28, 2002 order, all such protests must be filed on or before May 19, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12000 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–340–006]

Gulf South Pipeline Company, LP; Notice of Compliance Filing

May 8, 2002.

Take notice that on May 3, 2002, Gulf South Pipeline Company, LP (Gulf South) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet, to become effective May 1, 2002.

Substitute First Revised Sheet No. 3614

Gulf South filed the above referenced tariff sheet to comply with the Commission Order issued April 23, 2002.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11997 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP96–272–037]

Northern Natural Gas Company; Notice of Negotiated Rates

May 8, 2002.

Take notice that on May 3, 2002 Northern Natural Gas Company (Northern) tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets proposed to be effective on May 4, 2002:

Twenty-Fourth Revised Sheet No. 66
Fifteenth Revised Sheet No. 66A

Northern states that the above sheets are being filed to implement a specific negotiated rate transaction with Dynegy Marketing and Trade in accordance with the Commission's Policy Statement on Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines and to delete terminated transactions.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's rules and regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11996 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–334–000]

Northern Natural Gas Company; Notice of Proposed Changes in FERC Gas Tariff

May 8, 2002.

Take notice that Northern Natural Gas Company (Northern) on May 1, 2002 tendered for filing to become part of Northern's FERC Gas Tariff, Fifth Revised Volume No. 1 the following tariff sheets to be effective June 1, 2002:

Fifth Revised Volume No. 1

Sixteenth Revised Sheet No. 54
Third Revised Sheet No. 54A
Fourteenth Revised Sheet No. 61
Fourteenth Revised Sheet No. 62
Fourteenth Revised Sheet No. 63
Fourteenth Revised Sheet No. 64
Third Revised Sheet No. 300A
Sixth Revised Sheet No. 301

The revised tariff sheets are being filed in accordance with Section 53 of Northern's Tariff. This filing establishes the fuel and unaccounted for percentages to be in effect June 1, 2002, based on actual data for the 12 month period ended March 31, 2002.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Sections 385.214 or 385.211 of the Commission's Rules and Regulations. All such motions or protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11992 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER02–1258–001]

Rainy River Energy Corporation-Taconite Harbor; Notice of Filing

May 8, 2002.

Take notice that on May 1, 2002, Rainy River Energy Corporation-Taconite Harbor (RR–TH) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Service Agreement No. 1 under RR–TH rate Schedule No. 1 between Rainy River Energy Corporation and RR–TH.

Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Comment Date: May 22, 2002.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–11992 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–482–003]

Reliant Energy Gas Transmission Company; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 29, 2002, Reliant Energy Gas Transmission Company (REGT) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, tariff sheets to comply with the policy directives of the Commission's March 29, 2002 "Order on Order No. 637 Settlement." The March 29 Order resolved REGT's Order No. 637 proceeding, Docket No. RP00–482–000, and two related proceedings, Docket Nos. RP01–12–000 and RP01–317–000.

REGT states that the purpose of this filing is to comply with the Commission's March 29 2002 Order in Docket Nos. RP00–482–000, RP01–12–000 and RP01–317–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's rules and regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11998 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP00–483–001]

Sabine Pipe Line LLC; Notice of Compliance Filing

May 8, 2002.

Take notice that on May 3, 2002, Sabine Pipe Line LLC (Sabine) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets with an effective date of June 3, 2002:

First Revised Sheet No. 101 *
Original Sheet No. 101A *
First Revised Sheet No. 207
Original Sheet No. 207A
First Revised Sheet No. 208
Original Sheet No. 208A
First Revised Sheet No. 209 *
Original Sheet No 209A *
First Revised Sheet No. 210 *
First Revised Sheet No. 229
Original Sheet No. 229A
First Revised Sheet No. 233
Original Sheet No. 233A
First Revised Sheet No. 234 *
Original Sheet No. 234A
First Revised Sheet No. 237 *
First Revised Sheet No. 248A *
First Revised Sheet No. 249
Second Revised Sheet No. 252 *
Second Revised Sheet No. 253 *
Second Revised Sheet No. 254 *
Original Sheet No. 254A *
First Revised Sheet No. 266 *
Original Sheet No. 266A *
Second Revised Sheet No. 267 *
First Revised Sheet No. 267A *
First Revised Sheet No. 270 *
First Revised Sheet No. 470 *

Sabine states that the tariff sheets are being filed to comply with the Commission's April 3, 2002 order (April 3 Order) on Sabine's compliance with Order No. 637 in Docket Nos. RP00–483–000 and RP00–603–000. The tariff sheets incorporate all of the pro forma provisions approved by the April 3 Order and proposed changes to certain provisions as directed by the April 3 Order. Tariff sheets containing proposed changes are marked with an asterisk.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed in accordance with Section 154.210 of the Commission's Regulations. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11999 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP02–171–002]

Transcontinental Gas Pipeline Corporation; Notice of Compliance Filing

May 8, 2002.

Take notice that on April 26, 2002, Transcontinental Gas Pipeline Corporation (Transco) tendered for filing additional documentation and support for the proposed fuel retention percentages as directed by Commission letter order issued March 27, 2002, in this proceeding.

Transco states that copies of the filing are being served to all parties in the referenced proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before May 15, 2002. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance). Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. See, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12001 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–66–000, et al.]

Central Illinois Light Company, et al.; Electric Rate and Corporate Regulation Filings

May 7, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Central Illinois Light Company; Central Illinois Generation, Inc.

[Docket No. EC02–66–000; Docket No. EL02–85–000]

Take notice that on April 29, 2002 Central Illinois Light Company (CILCO), 300 Liberty Street, Peoria, IL 61602, and its subsidiary, Central Illinois Generation, Inc. (CIGI), 17751 North CILCO Road, Canton, IL 61520, filed with the Federal Energy Regulatory Commission (Commission) an application pursuant to Section 203 of the Federal Power Act for authorization to transfer jurisdictional assets. In connection with CILCO's transfer to CIGI of the Edwards, Duck Creek, and Sterling generation facilities with a net generating capacity of 1,136 MW, CILCO will transfer jurisdictional transmission assets associated with the generation facilities. This disposition will be accomplished by a contribution of assets. In addition, CIGI requests waiver of the Commission's Standards of Conduct and OASIS requirements in Order Nos. 888 and 889.

Comment Date: May 20, 2002.

2. Western Area Power Administration, Pacific Gas and Electric Company and Trans-Elect, Inc.

[Docket No. ER02–1672–000]

Take notice that on April 30, 2002, Western Area Power Administration, Pacific Gas and Electric Company and Trans-Elect, Inc. (Project Participants) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 205 of the Federal Power Act and Section

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35.13 of the Commission's Rules and Regulations, the Path 15 Upgrade Project Participant's Letter Agreement. This Letter Agreement is an essential ingredient in the Path 15 Upgrades Project. It identifies the parties' obligations, expected rate methodologies and a blueprint for continued progress. The Project Participants state that it has served copies of this filing upon the California Public Utilities Commission and the California Independent System Operator Corporation.

Comment Date: May 21, 2002.

3. Kansas Gas and Electric Company

[Docket No. ES02–21–002]

Take notice that on April 29, 2002, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

4. Kansas Gas and Electric Company

[Docket No. ES02–22–002]

Take notice that on April 29, 2002, Kansas Gas and Electric Company submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

5. Western Resources, Inc.

[Docket No. ES02–23–002]

Take notice that on April 29, 2002, Western Resources, Inc. submitted an amendment to its original application in this proceeding, pursuant to section 204 of the Federal Power Act. The amendment modifies the application by replacing Exhibits C, D, and E containing financial information as of, or for the period ended, December 31, 2001.

Comment Date: May 21, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11948 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. EC02–67–000, et al.]

Virginia Electric and Power Company et al.; Electric Rate and Corporate Regulation Filings

May 8, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Virginia Electric And Power Company and Dominion Energy Marketing, Inc.

[Docket No. EC02–67–000]

Take notice that on May 1, 2002, Virginia Electric and Power Company (Dominion Virginia Power) and Dominion Energy Marketing, Inc. (Dominion Marketing), (collectively, the Applicants) submitted a joint application under Section 203 of Federal Power Act to request authorization and approval for Dominion Virginia Power to transfer by assignment to Dominion Marketing obligation and rights in a Power Sales Agreement with United Illuminating Company (United Illuminating). The Applicants request approval of the assignment within 60 days from the date of this filing.

The Applicants state that copies of this joint application have been served upon United Illuminating and the state regulatory commissions of Connecticut and Virginia.

Comment Date: May 28, 2002.

2. Southern Company Services, Inc.

[Docket No. ER96–780–005]

Take notice that on April 30, 2002, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, Savannah Electric and Power Company, and Southern Power Company (collectively referred to as the Southern Operating Companies), submitted an updated generation dominance analysis in connection with the Southern Operating Companies' market-based rate authority.

Comment Date: May 21, 2002.

3. Arizona Public Service Company

[Docket No. ER99–3288–006]

Take notice that on April 30, 2002, Arizona Public Service Company (APS) tendered for filing with the Federal Energy Regulatory Commission (Commission), an informational report on the first quarter for 2002 refund payments to eligible wholesale customers under the Company's Fuel Adjustment Clause.

Comment Date: May 21, 2002.

4. ISO New England Inc.

[Docket No. ER01–316–006]

Take notice that on April 30, 2002, ISO New England Inc. filed its Index of Customers for the first quarter of 2002 for its Tariff for Transmission Dispatch and Power Administration Services in compliance with Order No. 614.

Comment Date: May 21, 2002.

5. New York Independent System Operator, Inc.; Morgan Stanley Capital Group, Inc. v. New York Independent System Operator, Inc.

[Docket Nos. ER01–3009–007 and ER01–3153–007; Docket No. EL00–90–007]

Take notice that on May 1, 2002, the New York Independent System Operator, Inc. (NYISO) filed revisions to its Market Administration and Control Area Services Tariff in order to change the collateral requirement applicable bids of non-physical (*i.e.* virtual) generation and load into the Day-Ahead Market that are settled in the Real-Time Market (Virtual Transactions), pursuant to the Commission's order issued on March 14, 2002, in the above-captioned dockets. The NYISO has requested an effective date of May 1, 2002, for the filing.

The NYISO has served a copy of this filing upon parties on the official service lists maintained by the Commission for the above-captioned dockets.

Comment Date: May 22, 2002.

6. Rainy River Energy Corporation-Taconite Harbor

[Docket No. ER02–1258–001]

Take notice that on May 1, 2002, Rainy River Energy Corporation-Taconite Harbor (RR–TH) tendered for filing with the Federal Energy Regulatory Commission (Commission), FERC Service Agreement No. 1 under RR–TH rate Schedule No. 1 between Rainy River Energy Corporation and RR–TH.

Comment Date: May 22, 2002.

7. Midwest Independent Transmission System Operator, Inc.

[Docket No. ER02–1289–001]

Take notice that on April 30, 2002, the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) and the Midwest ISO Transmission Owners jointly submitted for filing a substitute page of the Midwest ISO Agreement regarding the implementation of the revenue distribution for revenues from the Regional Through and Out Rate (RTOR) surcharge (RTOR Adder) to Michigan Electric Transmission Company, LLC once it becomes a transmission owner in the Midwest ISO. The substitute page states the percentages for revenue distribution without rounding to the next full percentage point.

The Midwest ISO seeks waiver of the Commission's regulations, 18 CFR 385.2010 (2001), with respect to service on all parties on the official service list in this proceeding. The Midwest ISO has electronically served a copy of this filing, with attachments, upon all Midwest ISO Members, Member representatives of Transmission Owners and Non-Transmission Owners, the Midwest ISO Advisory Committee participants, Policy Subcommittee participants, as well as all state commissions within the region. In addition, the filing has been electronically posted on the Midwest ISO's website at www.midwestiso.org under the heading "Filings to FERC" for other interested parties in this matter. The Midwest ISO will provide hard copies to any interested parties upon request.

Comment Date: May 21, 2002.

8. Pacific Gas and Electric Company

[Docket No. ER02–1339–001]

Take notice that on May 1, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing an amendment to its proposed changes in rates for Sacramento Municipal Utility District (SMUD), to be effective July 1, 2001, developed using a rate adjustment mechanism previously agreed by PG&E and SMUD for First Revised PG&E Rate Schedule FERC Nos. 88, 91, and 136.

Copies of this filing have been served upon SMUD, the California Independent System Operator Corporation, and the California Public Utilities Commission.

Comment Date: May 22, 2002.

9. Cleco Power LLC

[Docket No. ER02–1640–001]

Take notice that on May 1, 2002, Cleco Power LLC amended the Interconnection and Operating Agreement between Cleco Power LLC, Cleco Midstream Resources LLC, and Columbian Chemicals Company related to a new cogeneration facility to be constructed at Columbian's plant site in St. Mary Parish, Louisiana that was filed on April 25, 2002. The Amendment provides a substitute Appendix C to replace an incorrectly formatted one-line diagram included in the original filing.

Comment Date: May 22, 2002.

10. Tampa Electric Company

[Docket No. ER02–1673–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated caps on energy charges for emergency assistance service under its interchange service contract with Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company, as represented by agent Southern Company Services, Inc. (collectively, Southern Companies).

Tampa Electric requests that the revised rate schedule sheets be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon Southern Companies and the Florida Public Service Commission.

Comment Date: May 21, 2002.

11. Tampa Electric Company

[Docket No. ER02–1674–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated transmission service rates under its agreements to provide qualifying facility transmission service for Cargill Fertilizer, Inc. (Cargill) and Auburndale Power Partners, Limited Partnership (Auburndale).

Tampa Electric proposes that the revised sheets containing the updated transmission service rates be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Copies of the filing have been served on Cargill, Auburndale, and the Florida Public Service Commission.

Comment Date: May 21, 2002.

12. American Transmission Systems, Inc.

[Docket No. ER02–1675–000]

Take notice that American Transmission Systems, Inc. (ATSI) on April 30, 2002 tendered for filing four related Interconnection Agreements between it and various NRG generating companies. The agreements govern the interconnection to the ATSI transmission system of four generating plants that are to be sold to the NRG companies following approval of the Commission. The proposed effective date of the agreements is to coincide with the closing date of the facility sale. Copies of the filing were served upon the NRG companies who are parties to the agreements.

Comment Date: May 21, 2002.

13. Southern California Edison Company

[Docket No. ER02–1676–000]

Take notice that on April 30,2002, Southern California Edison Company (SCE) tendered for filing a Letter Agreement between SCE and Cabazon Wind Partners, LLC (Cabazon).

The Letter Agreement specifies the terms and conditions under which SCE will begin engineering, design, and procurement of materials and equipment for a new 450-foot 115 kV line tap from the existing Garnet-Banning-Maraschino-Windpark 115 kV line to Cabazon's generating facility and a mini remote terminal unit in the facility. Also, SCE will prepare specifications and provide engineering and construction review for a new substation.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Cabazon.

Comment Date: May 21, 2002.

14. Exelon Generation Company, LLC

[Docket No. ER02–1677–000]

Take notice that on April 30, 2002 Exelon Generation Company, LLC, tendered for filing a transaction agreement under its market-based rate wholesale power sales tariff under which it will make sales of energy and capacity to Aquila Merchant Services.

Comment Date: May 21, 2002.

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15. Tampa Electric Company

[Docket No. ER02–1678–000]

Take notice that on April 30, 2002, Tampa Electric Company (Tampa Electric) tendered for filing revised rate schedule sheets containing updated rates for emergency interchange service and scheduled/short-term firm interchange service under its interchange contracts with each of 17 other utilities.

Tampa Electric requests that the revised rate schedule sheets containing the updated rates for interchange service be made effective on May 1, 2002, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that a copy of the filing has been served upon each of the parties to the affected interchange contracts with Tampa Electric, as well as the Florida and Georgia Public Service Commissions.

Comment Date: May 21, 2002.

16. Rochester Gas and Electric Corporation

[Docket No. ER02–1679–000]

Take notice that on April 30, 2002, Rochester Gas and Electric Corporation (RG&E) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Notice of Cancellation of FERC Rate Schedule No. 13 pursuant to Section 35.15 of the Commission's Rules, 18 CFR 35.15.

RG&E requests an effective date of July 1, 2002.

RG&E served copies of the filing on New York State Electric & Gas Corporation and the New York State Public Service Commission.

Comment Date: May 21, 2002.

17. NRG Northern Ohio Generating LLC

[Docket No. ER02–1680–000]

Take notice that on April 30, 2002, NRG Northern Ohio Generating LLC (NRG Northern Ohio) filed with the Federal Energy Regulatory Commission (Commission) pursuant to 18 CFR 35.13 an unexecuted Transition Power Purchase Agreement with FirstEnergy Solutions Corp., as Service Agreement No. 1 to NRG Northern Ohio's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 21, 2002.

18. MidAmerican Energy Company

[Docket No. ER02–1681–000]

Take notice that on April 30, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), the Capacity and Energy Confirmation Agreement (Agreement) between MidAmerican and Alliant Energy Corporate Services as agent for Wisconsin Power and Light Company, IES Utilities, and Interstate Power Company (collectively, Alliant). MidAmerican filed the Agreement as Service Agreement No. 5 under MidAmerican's FERC Electric Tariff original Volume No. 5.

MidAmerican requests an effective date of March 1, 2002.

Comment Date: May 21, 2002.

19. MidAmerican Energy Company

[Docket No. ER02–1682–000]

Take notice that on April 30, 2002, MidAmerican Energy Company (MidAmerican) tendered for filing with the Federal Energy Regulatory Commission (Commission), a Master Power Purchase and Sale Agreement (Agreement) between MidAmerican and Aquila Energy Marketing Corporation. MidAmerican filed the Agreement as Service Agreement No. 51 under MidAmerican's FERC Electric Tariff original Volume No. 5.

MidAmerican requests an effective date of November 1, 2001.

Comment Date: May 21, 2002.

20. New York State Electric & Gas Corporation

[Docket No. ER02–1683–000]

Take notice that on April 30, 2002, New York State Electric & Gas Corporation (NYSEG) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to Section 35.15 of the Commission's Rules, 18 CFR 35.15, a Notice of Cancellation of FERC Rate Schedule No. 54.

NYSEG requests that the filing be made effective July 1, 2002.

NYSEG served copies of the filing on Rochester Gas & Electric Corporation, the customer previously receiving service under FERC Electric Rate Schedule No. 54, and the New York State Public Service Commission.

Comment Date: May 21, 2002.

21. American Electric Power Service Corporation

[Docket No. ER02–1684–000]

Take notice that on May 1, 2002, American Electric Power Service Corporation (AEPSC) tendered for filing with the Federal Energy Regulatory Commission (Commission), Firm and Non-Firm Point-to-Point Transmission (PTP) Service Agreements for RWE Trading Americas Inc., Select Energy, Inc. and UBS AG, London Branch, and a revised Network Integration Service Agreement for American Municipal Power—Ohio, Inc. These agreements are pursuant to the AEP Companies' Open Access Transmission Service Tariff that has been designated as the Operating Companies of the American Electric Power System FERC Electric Tariff Second Revised Volume No. 6.

AEPSC requests that the Service Agreements be made effective on April 1, 2002.

A copy has been served upon the Parties and the state utility regulatory commissions of Arkansas, Indiana, Kentucky, Louisiana, Michigan, Ohio, Oklahoma, Tennessee, Texas, Virginia and West Virginia.

Comment Date: May 22, 2002.

22. Deseret Generation & Transmission Co-operative, Inc.

[Docket No. ER02–1686–000]

Take notice that on April 30, 2002, Deseret Generation & Transmission Co-operative, Inc. (Deseret) submitted for filing corrections to two service agreements under its FERC Electric Tariff, Original Volume No. 3. A copy of this filing has been served on the buyer under each service agreement and counsel to the WSPP.

Comment Date: May 21, 2002.

23. San Diego Gas & Electric Company

[Docket No. ER02–1687–000]

Take notice that on May 1, 2002, San Diego Gas & Electric (SDG&E) tendered for filing its limited section 205 Application for Approval of Increase to its Supplemental Surcharge Transmission Rate. Through this filing, SDG&E seeks to recover costs related to certain additional energy infrastructure security and reliability measures being implemented by SDG&E. SDG&E states in its application that it is adopting these security and reliability measures in response to recent terrorist activities and threats experienced by our country, and that its activities are consistent with the Commission's Statement of Policy on September 14, 2001, in docket PL01–6–000.

SDG&E requests an effective date of July 1, 2002 for its proposed increase to the Supplemental Surcharge Rate. The Supplemental Surcharge Rate was established by the Commission in docket ER01–3074–000 to enable SDG&E to recover the cost of certain transmission upgrades that provided increased reliability to the grid and relieved existing constraints on SDG&E's transmission system. SDG&E's current proposed increase to this rate will be passed on to California Independent System Operator (ISO) high voltage service and other Participating Transmission Owners based upon the Transmission Access Charges as described in Amendment 27 and 34 of the ISO Tariff. That is, on July 1, 2002, the ISO will incorporate the additional costs in its High Voltage Wheeling Access Charge and its Transition Charges, which charges or credits each Participating Transmission Owner High Voltage Transmission revenues.

Copies of this filing were served upon the Public Utilities Commission of the State of California, the California Independent System Operator, and other interested parties.

Comment Date: May 22, 2002.

24. Central Illinois Generation, Inc.

[Docket No. ER02–1688–000]

Take notice that on May 1, 2002, Central Illinois Generation, Inc. (CIGI), 17751 North CILCO Road, Canton, IL 61520, tendered for filing a proposed Market Rate Power Sales and Resale Transmission Tariff. CIGI files this tariff so that it may engage in the sale at wholesale of electric energy at market-based rates. CIGI also tendered for filing a Power Supply Agreement and an Interconnection Agreement with Central Illinois Light Company.

Comment Date: May 22, 2002.

25. Dearborn Industrial Generation, LLC

[Docket No. ER02–1689–000]

Take notice that on May 1, 2002, Dearborn Industrial Generation, LLC (DIG) tendered for filing, pursuant to Rule 205, 18 CFR 385.205, petition for an order accepting a revised tariff sheet under its FERC Electric Tariff Original Volume No. 2 to be effective at the earliest possible time, but no later than July 1, 2002.

DIG intends to make sales of ancillary services at market-based rates, in addition to engaging in electric power and energy purchases and sales at market-based rates, which were authorized by FERC on February 27, 2001.

Comment Date: May 22, 2002.

26. Carolina Power & Light Company

[Docket No. ER02–1690–000]

Take notice that on May 1, 2002, Carolina Power & Light Company (CP&L) tendered for filing an executed Service Agreement between CP&L and the following eligible buyer, PG&E Energy Trading-Power, L.P. Service to this eligible buyer will be in accordance with the terms and conditions of CP&L's Market-Based Rates Tariff, FERC Electric Tariff No. 5.

CP&L requests an effective date of April 10, 2002 for this Service Agreement. Copies of the filing were served upon the North Carolina Utilities Commission and the South Carolina Public Service Commission.

Comment Date: May 22, 2002.

27. Cinergy Services, Inc.

[Docket No. ER02–1691–000]

Take notice that on May 1, 2002, Cinergy Services, Inc. (Cinergy) tendered for filing a Notice of Name Change from Minnesota Power to Split Rock Energy LLC. Cinergy respectfully requests waiver of notice to permit the Notice of Name Change to be made effective as of the date of the Notice of Name Change.

A copy of the filing was served upon Split Rock Energy LLC.

Comment Date: May 22, 2002.

28. Florida Power & Light Company

[Docket No. ER02–1692–000]

Take notice that on May 1, 2002 Florida Power & Light Company (FPL) tendered for filing proposed service agreements with NRG Power Marketing Inc., for Firm transmission service and Non-firm transmission service under FPL's Open Access Transmission Tariff.

FPL requests that the proposed service agreements become effective on May 1, 2002.

FPL states that this filing is in accordance with Section 35 of the Commission's regulations.

Comment Date: May 22, 2002.

29. Ameren Services Company

[Docket No. ER02–1693–000]

Take notice that on May 1, 2002, Ameren Services Company (Ameren Services) tendered for filing an unexecuted Network Operating Agreement and an unexecuted Service Agreement for Network Integration Transmission Service between Ameren Services and EnerStar Power Corporation d/b/a Edgar Electric Cooperative Association (EnerStar). Ameren Services asserts that the purpose of the Agreements is to permit Ameren Services to provide transmission service to EnerStar pursuant to Ameren's Open Access Tariff.

Comment Date: May 22, 2002.

30. UNITIL Power Corp.

[Docket No. ER02–1694–000]

Take notice that on May 1, 2002, UNITIL Power Corp. tendered for filing pursuant to Schedule II Section H of Supplement No. 1 to Rate Schedule FERC Number 1, the UNITIL System Agreement, the following material:

1. Statement of all sales and billing transactions for the period January 1, 2001 through December 31, 2001 along with the actual costs incurred by UNITIL Power Corp. by FERC account.

2. UNITIL Power Corp. rates billed from January 1, 2001 to December 31, 2001 and supporting rate development.

Comment Date: May 22, 2002.

31. Cabazon Wind Partners, LLC

[Docket No. ER02–1695–000]

Take notice that on May 1, 2002, Cabazon Wind Partners, LLC (Cabazon) applied to the Commission for acceptance of Cabazon's Electric Tariff FERC No. 1; the granting of certain blanket approvals, including the authority to sell electric energy and capacity at market-based rates; and the waiver of certain Commission regulations. Cabazon also submitted a long-term power purchase agreement between Cabazon and the California Department of Water Resources for acceptance as a service agreement under the market-based rate tariff.

Comment Date: May 22, 2002.

32. Rainy River Energy Corporation—Taconite Harbor

[Docket No. ER02–1696–000]

Take notice that on May 1, 2002, Rainy River Energy Corporation—Taconite Harbor (RRTH) tendered for filing a notice of cancellation of its FERC Electric Rate Schedule No. 1 under which it is authorized to transact at market-based rates. The rate schedule is being cancelled because RRTH is being merged into its ultimate parent, Minnesota Power, at which time RRTH's corporate existence will cease. RRTH requests that its notice of cancellation be accepted effective on or about May 1, 2002.

Comment Date: May 22, 2002.

33. ISO New England Inc.

[Docket No. ER02–1697–000]

Take notice that on May 1, 2002, ISO New England Inc. submitted as a Section 205 filing in the above docket revisions to Market Rule 11, with a requested effective date of three days following a Commission order accepting the proposed revisions.

Comment Date: May 22, 2002.

34. NRG Energy Center Dover LLC

[Docket No. ER02–1698–000]

On May 1, 2002, NRG Energy Center Dover LLC (NRG Dover) filed with the Federal Energy Regulatory Commission an Electricity Tolling Agreement dated June 1, 2001 with NRG Power Marketing, Inc., as Service Agreement No. 1 to NRG Dover's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 22, 2002.

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35. Avista Corporation

[Docket No. ER02–1699–000]

Take notice that Avista Corporation (Avista) on May 1, 2002, tendered for filing with the Federal Energy Regulatory Commission pursuant to 18 CFR 35.13 a Second Revised Service Agreement No. 45, which is an Agreement for Firm and Non-Firm Point-to-Point Transmission Service Under Avista Corporation's Open Access Transmission Tariff—FERC Electric Tariff Volume No. 8 between Avista and Avista Energy, Inc. (Service Agreement).

The revisions to the Second Revised Service Agreement No. 45 herein consist of one change to Attachment A to the Service Agreement—the Agreement for Firm Point-to-Point Service between Plummer Forest Products, Inc. (Plummer) and Avista. The sole change is found in the first sentence of Section 3.2 and consists of extending the termination date from April 30, 2002 to termination upon sixty days advance written notice by either party.

Avista respectfully requests that the Commission accept the Second Revised Service Agreement No. 45 for filing and grant all waivers necessary to allow the Second Revised Service Agreement No. 45 to become effective May 1, 2002. Plummer is the sole customer affected by this Service Agreement and the waiver, if granted, will not affect any other rate or charge to any other customer.

Copies of the filing were served upon Avista Energy, Inc. and Plummer Forest Products, Inc., the parties to the Service Agreement.

Comment Date: May 22, 2002.

36. NEO California Power LLC

[Docket No. ER02–1700–000]

On May 1, 2002, NEO California Power LLC (NEO California) filed with the Federal Energy Regulatory Commission an Electricity Tolling Agreement dated June 1, 2001 with NRG Power Marketing, Inc., as Service Agreement No. 1 to NEO California's FERC Electric Tariff, Original Volume No. 1.

Comment Date: May 22, 2002.

37. PacifiCorp

[Docket No. ER02–1701–000]

Take notice that PacifiCorp on May 1, 2002, tendered for filing in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Notice of Filing, and Mutual Netting/Settlement Agreements with Pinnacle West Capital Corporation and PPL EnergyPlus LLC.

Copies of this filing were supplied to the Washington Utilities and Transportation Commission and the Public Utility Commission of Oregon.

Comment Date: May 22, 2002.

38. New England Power Pool

[Docket No. ER02–1702–000]

Take notice that on May 1, 2002, New England Power Pool (NEPOOL) tendered for filing with the Federal Energy Regulatory Commission (Commission), pursuant to section 203 of the Federal Power Act requesting acceptance of Amendment No. 3 to the Interim Independent System Operator Agreement (ISO Agreement) dated as of July 1, 1997 between ISO New England Inc. (ISO) and the NEPOOL Participants. The Amendment extends the term of the ISO Agreement by nine months, to March 31, 2003, with a further nine-month extension if the specific conditions identified in the ISO Agreement, as modified by the Amendment, are satisfied.

NEPOOL has requested that the Commission issue an order approving the Amendment on or before June 30, 2002.

The NEPOOL Participants Committee states that copies of these materials were sent to the New England state governors and regulatory commissions and the Participants in the New England Power Pool.

Comment Date: May 22, 2002.

39. Ameren Energy, Inc, Ameren Energy Generating Company, Union Electric Company dba AmerenUE

[Docket No. ER02–1703–000]

Take notice that on May 1, 2002, Ameren Energy, Inc. (Ameren Energy), on behalf of Union Electric Company d/b/a AmerenUE and Ameren Energy Generating Company (collectively, the Ameren Parties), pursuant to section 205 of the Federal Power Act, 16 U.S.C. 824d, and the market rate authority granted to the Ameren Parties, submitted for filing umbrella power sales service agreements under the Ameren Parties' market rate authorizations entered into with El Paso Merchant Energy, L.P. Ameren Energy seeks Commission acceptance of there service agreements effective April 15, 2002.

Copies of this filing were served on the public utilities commissions of Illinois and Missouri and the counterparty.

Comment Date: May 22, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–11991 Filed 5–13–02; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7210–8]

Office of Environmental Information Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and Draft Data Standard for Exchange of Tribal Identifier Information

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of information availability and request for comments.

SUMMARY: Notice of availability is hereby given for a 45-day public comment period on two draft data standards: Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and Draft Data Standard for Exchange of Tribal Identifier Information. These draft standards each consist of a list of data elements, definitions for these elements, notes,and explanatory preamble language. The draft standards were developed by the partnership efforts of States, Tribes, and U.S. Environmental Protection Agency participating in the Environmental Data Standards Council (EDSC). The EDSC convened Action Teams consisting of representatives from EPA, States and Tribes to develop these core sets of data elements to facilitate the sharing of information regarding reporting water quality results for chemical and microbiological analytes and the exchange of tribal identifiers information. The EPA and the EDSC invite comment on these standards from States, EPA, Tribes, database managers in the public and private sectors, and the general public with interest in development and use of data for reporting water quality results for chemical and microbiological analytes or the exchange of Tribal identifiers information.

DATES: Comments must be submitted on or before June 28, 2002.

ADDRESSES: The record for these standards has been established under docket number W–02–02, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M St SW., Washington, DC 20460. For access to docket materials, please call (202) 260–3027 to schedule an appointment.

Electronic Access: You may view and download the draft data standards and related explanatory material at the EDSC website at: *http://www.epa.gov/edsc/* in the area of the site marked "Data Standards." The draft data standards can also be viewed and downloaded at the EPA Environmental Data Registry (EDR) at *http://www.epa.gov/edr/* in the area of the site marked "Data Standards". Or for those with password access, at the WISER portion of the State/EPA website at: *http://www.ecos.org/wiser.*

Please send an original and 3 copies of your comments and enclosures (including references) to the W–02–02. Comment Clerk, Water Docket (MC4101), USEPA, 1200 Pennsylvania Ave., NW., Washington, DC 20460. Comments must be received or post-marked by midnight June 28, 2002. Hand deliveries should be delivered to: EPA's Water Docket at 401 M. St., SW., Room EB57, Washington, DC 20460.

Commenters who want EPA to acknowledge receipt of their comments should enclose a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted. Comments may also be submitted electronically to *ow-docket@epa.gov.* Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–02–02. Electronic comments on this notice may be filed online at many Federal Depository Libraries.

FOR FURTHER INFORMATION CONTACT: Linda Spencer, Office of Environmental Information, Office of Information Collection, MC–2822T, U.S. Environmental Protection Agency, 1200 Pennsylvania Avenue, NW., Washington DC 20460; Telephone (202) 566–1651.

SUPPLEMENTARY INFORMATION:

I. Environmental Data Standards Council (EDSC) Background

Data sharing has become an increasingly important aspect of sound environmental management. States, Tribes, and EPA together face the critical challenge of sharing information among themselves and with their respective stakeholders and public. Fundamental to the seamless exchange of data are data standards. Data standards help improve the ability of partners (internal and external) to exchange data efficiently and accurately, and also assist secondary users of data to understand, interpret, and use data appropriately. Recognition of the need for EPA, States and Tribes to develop and agree upon data standards for environmental information sharing has lead to the creation of the EDSC. Data standards are documented agreements on formats and definitions of data elements. Standards are developed only when there is an environmental management business reason.

The EDSC's mission is to promote the efficient sharing of environmental information between EPA, States, Tribes, and other parties through the development of data standards. The EDSC identified reporting water quality results of chemical and microbiological analytes and exchange of tribal identifiers information as information areas for which having standards will create value to all interested parties. An Action Team deliberation process bringing together State, EPA, and Tribal parties began in August 2001 for the Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and June 2000 for the Draft Data Standard for Exchange of Tribal Identifiers Information. Both draft standards were delivered to the EDSC for consideration in March 2002 and approved for initiation of this 45-day public comment period.

After the comment period announced in this Notice, the EDSC and its Action Teams will review comments received and make appropriate modifications. The EDSC will then consider approval of these data standards as appropriate. EDSC approval does not bind an individual agency to using a standard. It will be up to the individual or programs to determine if, when, and how it might use a standard developed under the auspices of the EDSC. It will be the intent of EPA to adopt and implement the consistent use of EDSC-approved standards in its information systems and programs.

II. Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes

Background

The EDSC is proposing to adopt the core set of data elements prepared by the National Water Quality Monitoring Council and adopted in May 2001 by the Advisory Committee on Water Information (ACWI), a Federal advisory committee to the Cooperative Water Program of the Department of Interior's U.S. Geological Survey. The data elements were adopted to facilitate the sharing of chemical and microbiological water quality data and promote efficiency in the monitoring of water resource quality programs. Water quality monitoring is an increasingly important element of water quality management activities. It provides information for an accurate understanding of the conditions of waters and the trends in observed water quality. Water quality must be understood in order that valid and effective restoration and protection programs can be designed for water bodies that vary significantly in their vulnerability and pollution stress. Because of the cost of its collection, water quality data must be viewed as a resource worthy of careful management both to preserve it for future analyses by the agency that collects it and to share it among local, State, and Federal agencies; and the private sector involved in resource management activities.

The Advisory Committee on Water Information's "core set" of data elements were intended to allow sharing and interpretation of sample test results among future secondary data users, regardless of data source, database management system, or the data's original intended use. The list ACWI adopted was not intended to suggest that additional data elements would not need to be retained in a data originator's database, or in other databases where it might be considered essential to the use of these data. The proposed standard is intended to adapt the ACWI data elements and serve as the initial basis for data exchange with EPA's Storage and Retrieval database (STORET) and, with approval of the EDSC, EPA has

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added data formats and field lengths for this purpose.

Both the EDSC and the ACWI are considering elements to record data of higher levels of biological and habitat data. This data reflects a growing appreciation that water quality in streams, lakes, and estuaries can be described by the life they support. When the list of data elements is complete, the EDSC intends to consider adding these elements to the groups subject to today's notice.

The proposed data standards emphasize metadata that describe common terminology and definitions for documenting key water quality data measurements from water quality monitoring. The EDSC believes that by adopting this core set of data elements, agencies collecting water quality data will be spared the task of creating their own systems for organizing metadata and associated metadata element definitions. When implemented, a standard set of data elements will enable data users to reconcile diverse metadata systems as they draw on multiple data sets to carry out their studies or analyses. The EDSC believes that the use of standard data elements holds the prospect of reducing costly duplicate monitoring efforts. These data elements are proposed as guidelines to define a measure of good practice within the water quality monitoring community. They will encourage greater data consistency, allow the quality of data to be determined by future users, and simplify the process for entering these metadata elements. It is not required that all the proposed data elements be used. Metadata selected must fit the data they describe. Ground water sampling data, for instance, is described by several metadata elements that are unrelated to surface water sampling data. Therefore, the EDSC is not requiring inclusion of all proposed elements in order for data to be entered in a federally maintained database. The EDSC's advocacy of these data elements is not intended to discourage the use of existing water quality data solely because it does not meet these guidelines.

The core set of data elements for reporting water quality results of chemical and microbiological analytes addresses wells, surface water stations, and precipitation measurements. This list is intended to standardize the preservation of data and to facilitate its sharing by standardizing definitions and by defining the list of data, metadata and their descriptive definitions. A data element is the name of a set of information with the same attribute. A data element may be a data field in a database such as a laboratory name, analyte, or the latitude of the sampling station. Examples of metadata elements include such things as sampling/laboratory procedures and quality controls.

The list of data elements is not specific to any particular database, but is intended to be used voluntarily by agencies, organizations and individuals to guide their reporting, storage, and sharing of water quality data. This list is intended primarily to guide the collection of ambient water quality data, but many of the allowable sample location and sample type descriptions are versatile enough to be useful in collecting these data in other settings.

The list of data and metadata elements is divided into categories that describe who collected and analyzed the sample, what was analyzed, why the sample was undertaken, when the sample was collected and analyzed, where the sampling occurred, and how the analysis was done. The list is intended to describe the breadth of information needed to ensure the continuing utility of the information both within an organization and between organizations as information is stored and shared, but without being an exhaustive list of every possible data element that could or should be reported. The EDSC has included the core set of data elements on the essential data needed across programs, recognizing that if more extensive data from a particular monitoring program were collected, it could be made available as well.

III. Draft Data Standard for Exchange of Tribal Identifier Information

The EDSC chartered the Tribal Identifier Action Team to identify and define the major areas of tribal identification information and to develop a data standard that could be used for the exchange of tribal identification data among environmental agencies and other entities. The purpose of the standard is to provide a common vocabulary or lexicon and to encourage tribal entity identification uniformity across information systems, so that information about functionally similar activities and/or instruments can be shared. The Standard is an adoption of The Bureau of Indian Affairs criteria for tribal entity identification (federally recognized tribes). The "Draft Data Standard for Exchange of Tribal Identifier Information" is not intended to constrain what information an agency chooses to collect, nor does it constitute a reporting requirement. The Standard defines a uniform way to organize and exchange key information if agencies choose to exchange that information.

The "Draft Data Standard for Exchange of Tribal Identifier Information" consists of two data elements—tribal names and tribal codes. Permissible values for tribal names are based on federally recognized tribes from the Bureau of Indian Affairs (BIA) "Long Names List". Permissible values for tribal codes are based on those used in BIA's Trust Asset and Accounting Management System (TAAMS), which are used to represent tribal names. Efforts to identify a single authoritative source for state recognized tribes were unsuccessful, and investigations regarding such tribes found that the recognition criteria that states use vary significantly. Therefore the Tribal Action Group chose not to include state recognized tribes as part of this standard at this time.

IV. Future Revisions

EDSC standards will be periodically reviewed and revised as recommended by the EDSC or the stewards of the respective data standards: (1) ACWI for the Draft Data Standard for Reporting Water Quality Results for Chemical and Microbiological Analytes and (2) BIA for Draft Data Standard for Exchange of Tribal Identifier Information. The most current standards will be posted at *www.edsc.org* and *www.epa.gov/edr*.

V. Review of Draft Standards To Date

These draft standards have received significant input through the representatives from EPA program, States, and Tribal organizations serving on the development Action Teams. In addition, the preliminary versions of the draft standards have been reviewed by State and EPA programs managers during the first quarter of 2002. EDSC members have also reviewed and recommended these draft standards for this public comment process.

Dated: April 24, 2002.

Mark Luttner,

Director, Office of Information Collection, Office of Environmental Information.

[FR Doc. 02–11827 Filed 5–13–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 02–1069]

Ninth Meeting of the Advisory Committee for the 2003 World Radiocommunication Conference (WRC–03 Advisory Committee)

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act, this notice advises interested persons that the next meeting of the WRC–03 Advisory Committee will be held on June 4, 2002, at the Federal Communications Commission. The purpose of the meeting is to continue preparations for the 2003 World Radiocommunication Conference. The Advisory Committee will consider any preliminary views and/or proposals introduced by the Advisory Committee's Informal Working Groups.

DATES: June 4, 2002; 2 pm–4 pm.

ADDRESSES: Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alexander Roytblat, FCC International Bureau, Strategic Analysis and Negotiations Division, at (202) 418–7501.

SUPPLEMENTARY INFORMATION: The Federal Communications Commission (FCC) established the WRC–03 Advisory Committee to provide advice, technical support and recommendations relating to the preparation of United States proposals and positions for the 2003 World Radiocommunication Conference (WRC–03). In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, this notice advises interested persons of the ninth meeting of the WRC–03 Advisory Committee. The WRC–03 Advisory Committee has an open membership. All interested parties are invited to participate in the Advisory Committee and to attend its meetings. The proposed agenda for the ninth meeting is as follows:

Agenda

Ninth Meeting of the WRC–03 Advisory Committee

Federal Communications Commission, 445 12th Street, SW., Room TW–C305, Washington, DC 20554

June 4, 2002; 2 pm–4 pm.

1. Opening Remarks
2. Approval of Agenda
3. Approval of the Minutes of the Eighth Meeting
4. Reports from regional WRC–03 Preparatory Meetings
5. NTIA Draft Preliminary Views and Proposals
6. IWG Reports and Documents relating to:
   a. Consensus Views and Issue Papers
   b. Draft Proposals
7. Future Meetings
8. Other Business

Federal Communications Commission.

Don Abelson,

Chief, International Bureau.

[FR Doc. 02–11981 Filed 5–13–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1407–DR]

Kentucky; Amendment No. 3 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the Commonwealth of Kentucky, (FEMA–1407–DR), dated April 4, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the Commonwealth of Kentucky is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of April 4, 2002:

Estill and Wolfe Counties for Public Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11958 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1409–DR]

Maryland; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maryland (FEMA–1409–DR), dated May 1, 2002, and related determinations.

EFFECTIVE DATE: May 1, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 1, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (the Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Maryland, resulting from a tornado on April 28, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Maryland.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance and Hazard Mitigation are later requested and warranted, Federal funds provided under these programs will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a),

Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Thomas P. Davies of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maryland to have been affected adversely by this declared major disaster:

Calvert, Charles, and Dorchester Counties for Individual Assistance.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11953 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1409–DR]

Maryland; Amendment No. 1 to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster declaration for the State of Maryland, (FEMA–1409–DR), dated May 1, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery and Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: The notice of a major disaster declaration for the State of Maryland is hereby amended to include Public Assistance and Hazard Mitigation in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 1, 2002:

Calvert, Charles, and Dorchester Counties for Public Assistance (already designated for Individual Assistance).

All counties in the State of Maryland are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11959 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1413–DR]

Michigan; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Michigan (FEMA–1413-DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Michigan, resulting from flooding on April 15, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Michigan.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint James Roche of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Michigan to have been affected adversely by this declared major disaster:

Baraga, Gogebic, Houghton, Marquette, and Ontonagon for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11957 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1412–DR]

Missouri; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Missouri (FEMA–1412–DR), dated May 6, 2002, and related determinations.

EFFECTIVE DATE: May 6, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), as follows:

I have determined that the damage in certain areas of the State of Missouri, resulting from severe storms and tornadoes on April 24–28, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of Missouri.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance and Hazard Mitigation will be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Carlos Mitchell of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Missouri to have been affected adversely by this declared major disaster:

Bollinger, Butler, Carter, Howell, and Madison Counties for Public Assistance.

All counties within the State of Missouri are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11956 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1411–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the Commonwealth of Virginia (FEMA–1411–DR), on May 5, 2002, and related determinations.

EFFECTIVE DATE: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, documenting the President's May 5, 2002, declaration of a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms, tornadoes, and flooding on April 28, 2002 and continuing through May 3, 2002, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Louis H. Botta of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the Commonwealth of Virginia to have been affected adversely by this declared major disaster:

Buchanan and Tazewell Counties for Individual Assistance.

All counties within the Commonwealth of Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11955 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA–1410–DR]

West Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of West Virginia (FEMA–1410–DR), on May 5, 2002, and related determinations.

EFFECTIVE DATE: May 5, 2002.

FOR FURTHER INFORMATION CONTACT: Madge Dale, Readiness, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2705 or *madge.dale@fema.gov*.

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SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated May 6, 2002, documenting the President's May 5, 2002, declaration of a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act), follows:

I have determined that the damage in certain areas of the State of West Virginia, resulting from severe storms, flooding, and landslides on May 2, 2002, and continuing, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. 5121–5206 (Stafford Act). I, therefore, declare that such a major disaster exists in the State of West Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas and Hazard Mitigation throughout the State, and any other forms of assistance under the Stafford Act you may deem appropriate. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Hazard Mitigation and the Individual and Family Grant program will be limited to 75 percent of the total eligible costs. If Public Assistance is later requested and warranted, Federal funds provided under that program will also be limited to 75 percent of the total eligible costs.

Further, you are authorized to make changes to this declaration to the extent allowable under the Stafford Act.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Justo Hernandez of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of West Virginia to have been affected adversely by this declared major disaster:

McDowell, Mercer, Mingo and Wyoming Counties for Individual Assistance.

All counties within the State of West Virginia are eligible to apply for assistance under the Hazard Mitigation Grant Program.

(The following Catalog of Federal Domestic Assistance Numbers (CFDA) are to be used for reporting and drawing funds: 83.537, Community Disaster Loans; 83.538, Cora Brown Fund Program; 83.539, Crisis Counseling; 83.540, Disaster Legal Services Program; 83.541, Disaster Unemployment Assistance (DUA); 83.542, Fire Suppression Assistance; 83.543, Individual and Family Grant (IFG) Program; 83.544, Public Assistance Grants; 83.545, Disaster Housing Program; 83.548, Hazard Mitigation Grant Program)

Joe M. Allbaugh,

Director.

[FR Doc. 02–11954 Filed 5–13–02; 8:45 am]

BILLING CODE 6718–02–P

FEDERAL RESERVE SYSTEM

Change in Bank Control Notices; Acquisition of Shares of Bank or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. The notices also will be available for inspection at the office of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than May 29, 2002.

A. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. Mark W. Whitaker, Wichita, Kansas, and Deanna Kay Melchert, Edmond, Oklahoma; to acquire voting shares of Citizens Financial Corporation, Liberal, Kansas, and thereby indirectly acquire voting shares of Citizens State Bank, Liberal, Kansas.

Board of Governors of the Federal Reserve System, May 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12019 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR Part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The application also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 7, 2002.

A. Federal Reserve Bank of Chicago (Phillip Jackson, Applications Officer) 230 South LaSalle Street, Chicago, Illinois 60690–1414:

1. Franklin Bancorp, Inc., Southfield, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of Franklin Bank, National Association, Southfield, Michigan.

Board of Governors of the Federal Reserve System, May 8, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12005 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

FEDERAL RESERVE SYSTEM

Notice of Proposals to Engage in Permissible Nonbanking Activities or to Acquire Companies that are Engaged in Permissible Nonbanking Activities

The companies listed in this notice have given notice under section 4 of the Bank Holding Company Act (12 U.S.C. 1843) (BHC Act) and Regulation Y (12 CFR Part 225) to engage *de novo*, or to acquire or control voting securities or assets of a company, including the companies listed below, that engages

either directly or through a subsidiary or other company, in a nonbanking activity that is listed in § 225.28 of Regulation Y (12 CFR 225.28) or that the Board has determined by Order to be closely related to banking and permissible for bank holding companies. Unless otherwise noted, these activities will be conducted throughout the United States.

Each notice is available for inspection at the Federal Reserve Bank indicated. The notice also will be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether the proposal complies with the standards of section 4 of the BHC Act. Additional information on all bank holding companies may be obtained from the National Information Center website at www.ffiec.gov/nic/.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than May 29, 2002.

A. Federal Reserve Bank of Richmond (A. Linwood Gill, III, Vice President) 701 East Byrd Street, Richmond, Virginia 23261–4528:

1. First Mariner Bancorp, Baltimore, Maryland; to engage *de novo* through its subsidiary, Finance Maryland, LLC, Baltimore, Maryland, in lending and credit-related insurance activities, pursuant to §§ 225.28(b)(1) and (b)(11)(i) of Regulation Y.

B. Federal Reserve Bank of Kansas City (Susan Zubradt, Assistant Vice President) 925 Grand Avenue, Kansas City, Missouri 64198–0001:

1. First Community Bancshares, Inc., Overland Park, Kansas; to engage *de novo* in management consulting and financial advisory activities, pursuant to §§ 225.28(b)(6)(iii) and (b)(9)(i)(A) of Regulation Y.

Board of Governors of the Federal Reserve System, May 9, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc.02–12018 Filed 5–13–02; 8:45 am]

BILLING CODE 6210–01–S

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

Sunshine Act Meeting

AGENCY HOLDING THE MEETING: Board of Governors of the Federal Reserve System.

TIME AND DATE: 11 a.m., Monday, May 20, 2002.

PLACE: Marriner S. Eccles Federal Reserve Board Building, 20th and C Streets, NW, Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

FOR MORE INFORMATION PLEASE CONTACT: Michelle A. Smith, Assistant to the Board; 202–452–2955.

SUPPLEMENTARY INFORMATION: You may call 202–452–3206 beginning at approximately 5 p.m. two business days before the meeting for a recorded announcement of bank and bank holding company applications scheduled for the meeting; or you may contact the Board's Web site at *http://www.federalreserve.gov* for an electronic announcement that not only lists applications, but also indicates procedural and other information about the meeting.

Dated: May 10, 2002.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. 02–12184 Filed 5–10–01; 3:58 pm]

BILLING CODE 6210–01–P

HARRY S. TRUMAN SCHOLARSHIP FOUNDATION

Sunshine Act Meeting

Trustees Meeting

United States Capitol Building, Room HC–6, June 17, 2002, 4:00–4:30 p.m.

1. Call to Order.
2. Approval of the Minutes of the 2001 Annual Meeting.
3. Election of Foundation President.
4. New Business.

Adjournment.

Dated: May 10, 2002.

Louis H. Blair,

Executive Secretary.

[FR Doc. 02–12139 Filed 5–10–02; 12:59 pm]

BILLING CODE 6820–AD–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–05]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

SUMMARY: The Administration on Aging announces that under this program announcement for National Legal Assistance and Elder Rights Projects it will hold a competition for grant awards for three (3) to five (5) projects. The federal share of project costs is expected to range from $150,000 to $250,000 per year for a project period of up to three years.

Purpose of grant awards: The purpose of these projects is to enhance the leadership capacity of state and area agencies on aging to support elder rights activities and to improve the quality and accessibility of the legal assistance provided to older persons.

Eligibility for grant awards and other requirements: Under section 420(c) of the Act as amended in 2000, applicants must be national nonprofit organizations experienced in providing support and technical assistance on a nationwide basis to states, area agencies on aging, legal assistance providers, ombudsmen, elder abuse prevention programs, and other organizations interested in the legal rights of older individuals.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is June 28, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office for Community-Based Services, 330 Independence Ave., SW., Washington, DC 20201, by calling 202/619–2575, or online at *www.aoa.gov/egrants/.* Applications must be mailed or hand-delivered to the Office of Grants Management at the same address, or submitted online at www.aoa.gov/egrants/.

Dated: May 8, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–11937 Filed 5–13–02; 8:45 am]

BILLING CODE 4954–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

[Program Announcement No. AoA–02–06]

Fiscal Year 2002 Program Announcement; Availability of Funds and Notice Regarding Applications

AGENCY: Administration on Aging, HHS.

ACTION: Announcement of availability of funds and request for applications.

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SUMMARY: The Administration on Aging announces that under the Statewide Legal Hotlines Program it will hold a competition to fund grant awards for seven to eight (7–8) projects at a federal share of approximately $100,000 to $175,000 per year for a project period of up to three (3) years.

Purpose of grant awards: The purpose of these projects is to establish, or expand or improve, Statewide Legal Hotlines aimed at advancing the quality and accessibility of the legal assistance provided to older persons.

Eligibility for grant awards and other requirements: Eligibility for grant awards is limited to public and/or non-profit agencies, faith-based and community-based organizations experienced in providing legal assistance to older persons.

Grantees are required to provide a 25% non-federal match.

DATES: The deadline date for the submission of applications is August 5, 2002.

ADDRESSES: Application kits are available by writing to the U.S. Department of Health and Human Services, Administration on Aging, Office of Consumer Choice and Protection, 330 Independence Ave., SW., Washington, DC 20201, by calling 202/619–1058 or online at: *www.aoa.gov/egrants.*

Applications must be mailed or hand-delivered to the Office of Grants Management at the same address. Instructions for electronic mailing of grant applications are available at *http://www.aoa.gov/egrants.*

Dated: May 8, 2002.

Josefina G. Carbonell,

Assistant Secretary for Aging.

[FR Doc. 02–12003 Filed 5–13–02; 8:45 am]

BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect Meeting: Cancelled

Name: National Task Force on Fetal Alcohol Syndrome and Fetal Alcohol Effect (NTFFASFAE) meeting-Cancelled.

Times and Dates: 8:30 a.m.–4:30 p.m., May 16, 2002, 8:30 a.m.–3 p.m., May 17, 2002.

Place: Doubletree Hotel Atlanta Buckhead, 3340 Peachtree Road, NE, Atlanta, Georgia 30326, telephone 404/231–1234, fax 404/231–5236.

Status: Meeting Cancelled. Published in the **Federal Register:** April 18, 2002, Volume 67, Number 75, Page 19190.

Contact Person for More Information: R. Louise Floyd, DSN, RN, Designated Federal Official, National Center on Birth Defects and Developmental Disabilities, CDC, 4700 Buford Highway, NE, (F–49), Atlanta, Georgia 30333, telephone 770/488–7372, fax 770/488–7361.

The Director, Management Analysis and Services Office, has been delegated the authority to sign **Federal Register** notices pertaining to announcements of meetings and other committee management activities for both the CDC and ATSDR.

Dated: May 8, 2002.

Alvin Hall,

Acting Director, Management Analysis and Services Office, Centers for Disease Control and Prevention.

[FR Doc. 02–11967 Filed 5–13–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0589]

Agency Information Collection Activities: Proposed Collection; Comment Request; Extralabel Drug Use in Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995 (the PRA).

DATES: Submit written comments on the collection of information by June 13, 2002.

ADDRESSES: Submit written comments on the collection of information to Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attention: Stuart Shapiro, Desk Officer for FDA.

FOR FURTHER INFORMATION CONTACT: Denver Presley, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1472.

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, FDA has submitted the following proposed collection of information to OMB for review and clearance:

Extralabel Drug Use in Animals—21 CFR Part 530 (OMB Control Number 0910–0325)—Extension

The Animal Medicinal Drug Use Clarification Act of 1994 (AMDUCA), (Public Law 103–396), amended the Federal Food, Drug, and Cosmetic Act to permit licensed veterinarians to prescribe extralabel use in animals of approved human and animal drugs. Regulations implementing provisions of AMDUCA are codified under part 530 (21 CFR part 530). A new provision under these regulations in § 530.22(b), permits FDA to establish a safe level for extralabel use in animals of an approved human or animal drug when the agency determines there is reasonable probability that this use may present a risk to the public health. The extralabel use in animals of an approved human or animal drug that results in residues exceeding a safe level is considered an unsafe use of a drug. In conjunction with the establishment of a safe level, the new provision permits FDA to request development of an acceptable residue detection method for an analysis of residues above any safe level established under part 530. The sponsor may be willing to provide the methodology in some cases, while in others, FDA, the sponsor and perhaps a third party, (e.g., a State agency or a professional association), may negotiate a cooperative arrangement to develop the methodology. If no acceptable analytical method is developed, the agency would be permitted to prohibit extralabel use of the drug.

In the **Federal Register** of January 28, 2002 (67 FR 3903), the agency requested comments on the collection of information. In response, FDA received one comment. The comment asked whether the proposed collection of information was necessary for the proper performance of FDA functions including whether the information would have practical utility. As detailed, FDA under this regulation is permitted to request development of an acceptable residue detection method for human or animal drugs used in an extralabel manner that could result in unsafe residues in edible products of the treated animal. If no acceptable analytical method is developed, FDA is permitted to prohibit extralabel use of the drug. Thus, this collection of information is necessary to permit licensed veterinarians to prescribe extralabel use of certain drugs.

The respondents may be sponsors of new animal drug(s), State or Federal Government, or individuals. FDA estimates the burden of this collection of information as follows:

TABLE 1.—ESTIMATED ANNUAL REPORTING BURDEN[1]

21 CFR Section	No. of Respondents	Annual Frequency per Response	Total Annual Responses	Hours per Response	Total Hours
530.22(b)	2	1	2	4,160	8,320

[1]There are no capital costs or operating and maintenance costs associated with this collection of information.

The Center for Veterinary Medicine (CVM) has not found circumstances to require the establishment of a safe level and subsequent development of an analytical methodology. However, CVM believes there will be instances when an analytical methodology will be required.

Dated: May 3, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11934 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01P–0061]

Determination That IFEX (Ifosfamide for Injection), 1-Gram and 3-Gram Vials, Was Not Withdrawn From Sale for Reasons of Safety or Effectiveness

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its determination that IFEX (ifosfamide for injection), 1 gram (g) and 3 g, was not withdrawn from sale for reasons of safety or effectiveness. This determination will allow FDA to approve abbreviated new drug applications (ANDAs) for ifosfamide.

FOR FURTHER INFORMATION CONTACT: Mitchell Weitzman, Center for Drug Evaluation and Research (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5670.

SUPPLEMENTARY INFORMATION: In 1984, Congress enacted the Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) (the 1984 amendments), which authorized the approval of duplicate versions of drug products approved under an ANDA procedure. ANDA sponsors must, with certain exceptions, show that the drug for which they are seeking approval contains the same active ingredient in the same strength and dosage form as the "listed drug," which is a version of the drug that was previously approved. Sponsors of ANDAs do not have to repeat the extensive clinical testing otherwise necessary to gain approval of a new drug application (NDA). The only clinical data required in an ANDA are data to show that the drug that is the subject of the ANDA is bioequivalent to the listed drug.

The 1984 amendments include what is now section 505(j)(7) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(j)(7)), which requires FDA to publish a list of all approved drugs. FDA publishes this list as part of the "Approved Drug Products with Therapeutic Equivalence Evaluations," which is generally known as the "Orange Book." Under FDA's regulations, drugs are withdrawn from the list if the agency withdraws or suspends approval of the drug's NDA or ANDA for reasons of safety or effectiveness or if FDA determines that the listed drug was withdrawn from sale for reasons of safety or effectiveness (21 CFR 314.162).

Under § 314.161(a)(1) (21 CFR 314.161(a)(1)), the agency must determine whether a listed drug was withdrawn from sale for reasons of safety or effectiveness before an ANDA that refers to that listed drug may be approved. FDA may not approve an ANDA that does not refer to a listed drug.

IFEX is the subject of NDA 19–763, held by Bristol-Myers Squibb Co. (BMS). FDA approved NDA 19–763 on December 30, 1988. Used in combination with other approved antineoplastic agents, IFEX is indicated for third line chemotherapy of germ cell testicular cancer. In the IFEX clinical studies, it was observed that urotoxic side effects, especially hemorrhagic cystitis, were frequently associated with the administration of IFEX. The approved labeling for IFEX stated that IFEX "should ordinarily be used in combination with a prophylactic agent for hemorrhagic cystitis, such as mesna." FDA separately approved BMS's NDA for MESNEX (mesna) Injection on December 30, 1988. BMS never marketed IFEX alone; instead, it elected to market IFEX exclusively in a combination package with MESNEX.

IFEX as a single agent is currently listed in the "Discontinued Drug Product List" section of the Orange Book. IFEX is also listed as part of a copackaged kit with MESNEX in the Orange Book's prescription drug product list. The relocation of IFEX as a single agent to the "Discontinued Drug Product List" coincided with a labeling modification on October 10, 1992, to reflect changes in storage conditions for IFEX and an approval of copackaging with MESNEX.

On January 31, 2001, Tom Stothoff submitted a citizen petition (Docket No. 01P–0061/CP1) to FDA under 21 CFR 10.30, requesting that the agency determine whether IFEX (as a single agent) was withdrawn from sale for reasons of safety or effectiveness. The petitioner seeks this determination in preparation for filing an ANDA for Ifosfamide for Injection, U.S.P.

On March 9, 2001, BMS filed a comment to the citizen petition requesting that FDA find that IFEX has not been withdrawn from sale and is not separately marketed by BMS for reasons of safety or effectiveness. With respect to safety and effectiveness, BMS argued that regardless of whether IFEX was withdrawn, FDA should deny the petitioner permission to file an ANDA for ifosfamide as a single agent because, as stated in the label, ifosfamide can only be administered safely in conjunction with a uroprotective agent such as mesna. BMS cited both the medical literature and the potential for urotoxic reactions if ifosfamide is used alone in support of this claim.

BMS contends that it has never withdrawn or ceased to market IFEX because it has marketed IFEX in a combination package with MESNEX since the time of their approval. However, IFEX was approved under its own NDA as a single agent. In previous instances (see, e.g., 61 FR 25497, May 21, 1996) (addressing a relisting request for glyburide tablets), FDA has concluded that never marketing an approved product is equivalent to withdrawing the drug from sale.

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Therefore, even though BMS has never marketed IFEX alone, it is appropriate to categorize IFEX (as a single agent) as having been withdrawn from sale. Once a listed drug has been withdrawn from sale, FDA must make a determination that the withdrawal from sale was not for reasons of safety or effectiveness before it can approve any ANDAs referencing the listed drug.

The agency has determined that IFEX as a single agent has not been withdrawn for reasons of safety or effectiveness. FDA agrees with BMS that ifosfamide should be used with a uroprotective agent like mesna. However, that does not preclude the safe use of ifosfamide as a single agent with MESNEX or a generic version of mesna. FDA approved two ANDAs for mesna in April 2001. The FDA has no requirement that coadministered products must also be copackaged. There are many drugs whose labeling identifies them for use in combination with other drugs with which they are not copackaged, including Taxol and Taxotere. Neither the petitioner nor BMS identified any data suggesting that marketing IFEX alone would compromise patients' safety. Moreover, the relevant literature and adverse event reports do not bear out BMS's claim that marketing IFEX as a single agent would be unsafe. In the absence of data suggesting a safety risk, and because IFEX was approved as a single agent, we conclude that FDA may approve ANDAs referencing IFEX alone.

After considering the citizen petition and the comments thereon and reviewing its records, FDA determines that, for the reasons outlined previously in this document, IFEX as a single agent was not withdrawn for reasons of safety or effectiveness. Accordingly, the agency will continue to list IFEX in the "Discontinued Drug Product List" section of the Orange Book. The "Discontinued Drug Product List" delineates, among other items, drug products that have been discontinued from marketing for reasons other than safety or effectiveness. ANDAs that refer to IFEX, 1-g and 3-g vials, may be approved by the agency.

Dated: May 6, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–11971 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02D–0113]

Medical Devices; Draft Guidance for Industry and FDA on Class II Special Controls: Root-Form Endosseous Dental Implants and Abutments; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of the draft guidance entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA." This draft guidance document was developed as a special control guidance to support the reclassification of the root-form endosseous dental implant device from class III to class II and the reclassification of the endosseous dental implant abutment device from class III to class II. Elsewhere in this issue of the **Federal Register**, FDA is issuing a proposed rule to reclassify these device types. This guidance is neither final nor is it in effect at this time.

DATES: Submit written or electronic comments on the draft guidance by August 12, 2002.

ADDRESSES: Submit written requests for single copies on a 3.5" diskette of the draft guidance document entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA" to the Division of Small Manufacturers, International, and Consumer Assistance (HFZ–220), Center for Devices and Radiological Health, Food and Drug Administration, 1350 Piccard Dr., Rockville, MD 20850. Send two self-addressed adhesive labels to assist that office in processing your request, or fax your request to 301–443–8818. Submit written comments on the draft guidance to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to *http://www.fda.gov/dockets/ecomments*. See the **SUPPLEMENTARY INFORMATION** section for electronic access to the guidance document.

FOR FURTHER INFORMATION CONTACT: Angela E. Blackwell, Center for Devices and Radiological Health (HFZ–480), Food and Drug Administration, 9200 Corporate Blvd., Rockville, MD 20850, 301–443–8879.

SUPPLEMENTARY INFORMATION:

I. Background

This draft guidance document describes a means by which the root-form endosseous dental implant device and the endosseous dental implant abutment device may comply with the requirement of special controls for class II devices. A root-form endosseous dental implant device is intended to be surgically placed in the bone of the upper or lower arches to provide support for prosthetic devices, such as artificial teeth, in order to restore the patient's chewing function. An endosseous dental implant abutment device is a separate component that is attached to the implant and is intended to aid in prosthetic rehabilitation.

II. Significance of Guidance

This draft guidance is being issued consistent with FDA's good guidance practices regulation (21 CFR 10.115). The draft guidance, when finalized, will represent the agency's current thinking on root-form endosseous dental implant and endosseous dental implant abutment devices. It does not create or confer any rights for or on any person and does not operate to bind FDA or the public. An alternative approach may be used if such approach satisfies the requirements of the applicable statutes and regulations.

III. Electronic Access

In order to receive the draft guidance entitled "Class II Special Controls Guidance Document: Root-form Endosseous Dental Implants and Abutments; Draft Guidance for Industry and FDA" via your fax machine, call the CDRH Facts-On-Demand system at 800–899–0381 or 301–827–0111 from a touch-tone telephone. Press 1 to enter the system. At the second voice prompt press 1 to order a document. Enter the document number (1389) followed by the pound sign (#). Follow the remaining voice prompts to complete your request.

Persons interested in obtaining a copy of the draft guidance may also do so using the Internet. CDRH maintains an entry on the Internet for easy access to information including text, graphics, and files that may be downloaded to a personal computer with Internet access. Updated on a regular basis, the CDRH home page includes the civil money penalty guidance documents package, device safety alerts, **Federal Register** reprints, information on premarket submissions (including lists of approved applications and manufacturers' addresses), small manufacturers' assistance, information on video conferencing and electronic submissions, Mammography Matters, and other device-oriented information. The CDRH home page may be accessed at *http://www.fda.gov/cdrh*. Guidance documents are also available at *http://www.fda.gov/ohrms/dockets/default.htm*.

IV. Comments

Interested persons may submit to the Dockets Management Branch (*see* **ADDRESSES**) written or electronic comments on the draft guidance by August 12, 2002. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The draft guidance and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 23, 2002.

Linda S. Kahan,

Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 02–12042 Filed 5–13–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

Submission for OMB Review; Comment Request; Evaluation of the NCI State of the Science Web Site

SUMMARY: Under the provisions of section 3507(a)(1)(D) of the Paperwork Reduction Act of 1995, the National Cancer Institute (NCI), the National Institutes of Health (NIH) has submitted to the Office of Management and Budget (OMB) a request to review and approve the information collection listed below. This proposed information collection was previously published in the **Federal Register** on June 12, 2001 pages 31678 and 31679, Volume 66, No. 113 and allowed 60 days for public comment. No public comments were received. The purpose of this notice is to allow an additional 30 days fro public comment. The National Institutes of Health may not conduct or sponsor, and the respondent is not required to respond to, an information collection that has been extended, revised, or implemented on or after October 1, 1995, unless it displays a currently valid OMB control number.

Proposed Collection

Title: Web-Survey of the State of the Science Web Site.

Type of Information Collection Request: New.

Need and Use of Information Collection: The NCI seeks to evaluate its State-of-the-Science (SOTS) meetings project that offers audio-visual presentations of SOTS meetings via the Internet. The SOTS disseminates, with expediency and immediacy, the most recent oncology research results to a potentially vast audience of researchers. The proposed data collection will pro6vide feedback to NCI on the value of the Web site to those who NCI deem as the Web site's target population (*i.e.*, clinical oncology researchers unable to attend SOTs meetings in person because of cost or time limitations). The first tier of respondents will consist of researchers who have attended any one of the three most recent State of the Science meetings. The tier-one survey participants will be asked to provide the names, emails, and any other contact information for five colleagues who are clinical research oncologists. The oncologists will be asked only once to provide the names and contact information for colleagues. The second tier of respondents will consist of the clinical oncology researchers nominated by the first tier respondents. It is the second tier respondents who will be asked to go to the Web site and complete the Web survey. They are asked to do this only once. Other tier two respondents will be oncology fellows whose current and full contact information is available in a national register of oncology fellows, Reports generated by the study will allow NCI to determine the success of the SOTS Web site (in terms of clarity of content, ease of navigation, and usefulness and information), and indirectly, the potential wider use and applications of Internet-based programs to improve the overall cancer clinical trails systems at NCI.

Frequency of Response: One time.

Affected Public: Individuals, researchers.

Type of respondents	Estimated number of respondents	Estimated number of responses per respondent	Average burden hours per response	Estimated total annual burden hours requested
Tier One Clinical Oncology Researchers	220	1	0.0835	18.37
Tier Two Clinical Oncology Researchers	400	1	0.75	300
Total				318.37

There are no Capital Costs, Operating Costs and/or Maintenance Costs to report.

Request for Comments

Written comments and/or suggestions from the public and affected agencies should address one or more of the following points: (1) Whether the proposed collection of information is necessary for the proper performance of the function of the agency, including whether the information will have practical utility; (2) the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used; (3) the quality, utility, and clarity of the information to be collected; and (4) ways to minimize the burden of the collection of information on those who are to responded, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

Direct Comments to OMB

Written comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Regulatory Affairs, New Executive Office Building, Room 10235, Washington, DC 20503, Attention: Desk

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Officer for NIH. To request more information on the proposed project or to obtain a copy of the data collection plans and instruments, contact: Bryce Reeve, Ph.D., National Cancer Institute, Executive Plaza North, Room 4026, 6130 Executive Boulevard, Rockville, MD 20852, non-toll free telephone (301) 594–6574, or email: *reeveb@mail.nin.gov*, or *br117c@nih.gov*

Comments Due Date

Comments regarding this information collection are best assured of having their full effect if received within 30 days of the date of this publication.

Dated: May 7, 2002.

Reesa Nichols,

OMB Clearance Liaison.

[FR Doc. 03–11964 Filed 5–13–02; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance. The Ordinance regulates the control, possession and sale of liquor on the Augustine Band of Cahuilla Mission Indians trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on April 18, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance, Resolution No. 01.03–A, was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001. The Augustine Band of Cahuillla Mission Indians, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenue to combat alcohol abuse and its debilitating effects among individuals and family members within the Augustine Indian Reservation.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. 01.03–A, the Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance was duly adopted by the Augustine Band of Cahuilla Mission Indians Tribal Council, governing body of the Augustine Indian Reservation, on April 18, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Augustine Band of Cahuilla Mission Indians Liquor Control Ordinance, Resolution No. 01.03–A, reads as follows:

Title VIII—The Licensing and Regulation of Liquor

Chapter I—Declaration of Public Policy and Purpose

Section 1. The introduction, possession, and sale of liquor on the lands of the Augustine Band of Cahuilla Mission Indians of the Augustine Indian Reservation is a matter of special concern to the tribal government of the Augustine Band.

Section 2. Federal law (18 U.S.C. §§ 1154, 1161) currently prohibits the introduction of liquor into Indian Country except as provided therein and in accordance with State law as interpreted by the Supreme Court in Rice v. Rehner, 463 U.S. 713 (1983), and expressly delegates to each tribe the decision regarding when and to what extent the introduction, possession and sale of liquor shall be permitted.

Section 3. It is in the best interest of the Band to enact a tribal code governing the introduction, possession and sale of liquor on the Augustine Indian Reservation, and which also provides for exclusive purchase, distribution, and sale of liquor on tribal lands within the exterior boundaries of the Reservation. Further, the Band has determined that said purchase, distribution and sale shall take place only at tribally-owned enterprises and/or at tribally-licensed establishments operating on land leased from or otherwise owned by the Band as a whole.

Section 4. The Tribal Council further finds that violations of this Title would damage the Band in an amount of five hundred dollars ($500) per violation because of the costs of enforcement, investigation, adjudication and disposition of such violations, and that to defray the costs of enforcing this Title the Band will impose a tax on the sale of liquor on the reservation. Based upon the foregoing findings and determinations, the Tribal Council hereby ordains as follows.

Chapter II—Definitions

As used in this title, the following words shall have the following meanings unless the context clearly requires otherwise.

Section 1. *Alcohol.* That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including dilutions and mixtures of this substance.

Section 2. *Alcoholic Beverage.* Identical in meaning to the term liquor as defined in Chapter II, subsection 6 of this Ordinance.

Section 3. *Bar.* Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 4. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than 4 percent of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than 4 percent of alcohol by weight shall be referred to as "strong beer."

Section 5. *Tribal Council.* The governing body of the Augustine Band of Cahuilla Mission Indians.

Section 6. *Liquor.* The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spiritous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spiritous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than 1 percent of alcohol by weight shall be conclusively deemed to be intoxicating.

Section 7. *Liquor Store.* Any store at which liquor is sold and, for the purpose of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 8. *Malt Liquor.* All beer, strong beer, ale, stout, and porter.

Section 9. *Package.* Any container or receptacle used for holding liquor.

Section 10. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 11. *Sale and Sell.* Any exchange, barter, and traffic; including the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor or of wine by any person to any person.

Section 12. *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding 17 percent of alcohol by weight.

Section 13. *Tribal Land.* All land within the exterior boundaries of the Augustine Indian Reservation that is held in trust by the United States for the Augustine Band of Cahuilla Mission Indians and for individual allottees.

Section 14. *Tribal Gaming Commission.* The gaming regulatory body established under the Gaming Code that has been approved by the Chairperson of the National Indian Gaming Commission.

Section 15. *Wine.* Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, applies, etc.), or fruit juice and containing not more than 17 percent of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel, and angelica, not exceeding 17 percent of alcohol by weight.

Chapter III—Powers of Enforcement

Section 1. In addition to the powers and duties provided for in other Augustine Codes, the Tribal Council, in furtherance of this Title, shall have the powers and duties to:

(a) Publish and enforce rules and regulations adopted by the Tribal Council governing the sale, manufacture, and distribution of alcoholic beverages in public places on the Augustine Indian Reservation;

(b) Employ managers, accountants, security personnel, inspectors, and such other persons as shall be reasonably necessary to allow the Tribal Council to perform its functions. Such employees shall be tribal employees;

(c) Issue licenses permitting the sale, manufacture and/or distribution of liquor in public places on the Augustine Indian Reservation;

(d) Hold hearings on violations of this Title or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Title as necessary;

(f) Determine and seek damages for violation of this Title;

(g) Make such reports as may be required by the Tribal Council;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and keep accurate records, books and accounts; and

(i) Exercise such other powers as may be delegated from time to time by the Tribal Council.

Section 2. *Limitation on Powers.* In the exercise of its powers and duties under this Title, the Tribal Council and its individual members and staff shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer, or distributor or from any licensee;

(b) Waive the sovereign immunity of the Augustine Band of Cahuilla Mission Indians from suit without a majority vote of the Tribal Council.

Section 3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant thereto.

Chapter IV—Sale of Liquor

Section 1. *Licenses Required.* No sales of alcoholic beverages shall be made on or within public places within the exterior boundaries of the Augustine Indian Reservation, except at a tribally-licensed or tribally-owned business operated on tribal land within the exterior boundaries of the reservation.

Section 2. *Sales for Cash.* All liquor sales within the reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks or debit cards or credit cards issued by any financial institution.

Section 3. *Sale for Personal Consumption.* All sales shall be for the personal use and consumption by the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one. Resale of any alcoholic beverage purchased within the exterior boundaries of the reservation is prohibited. Any person who is not licensed pursuant to this Title who purchases an alcoholic beverage within the boundaries of the reservation and resells it, whether in the original container or not, shall be guilty of a violation of this Title and shall be subjected to exclusion from tribal lands or liability for money damages of up to $500, as determined by the Tribal Council after notice and an opportunity to be heard.

Chapter V—Licensing

Section 1. *Procedure.* In order to control the proliferation of establishments on the reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor within the exterior boundaries of the Augustine Indian Reservation must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the reservation for which no money is requested or paid.

Section 2. *State Licensing.* No person shall be allowed or permitted to sell or provide liquor on the Augustine Indian Reservation if he/she does not also have a license from the State of California to sell or provide such liquor. If such license from the State is revoked or suspended, the tribal license shall automatically be revoked or suspended as well.

Section 3. *Application.* Any person applying for a license to sell or provide liquor on the Augustine Indian Reservation shall complete and submit an application provided for this purpose by the Tribal Council and pay such application fee as may be set from time-to-time by the Tribal Council for this purpose. An incomplete application will not be considered.

Section 4. *Issuance of License.* The Tribal Council may issue a license if it believes that the issuance of such a license would be in the best interest of the Augustine Band, the residents of the Augustine Indian Reservation and the surrounding community. Licensure is a privilege, not a right, and the decision

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to issue any license rests in the sole discretion of the Tribal Council.

Section 5. *Period of License.* Each license may be issued for a period of not to exceed 2 years from the date of issuance.

Section 6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Title and has maintained its licensure with the State of California; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the citizens of the Augustine Band.

Section 7. *Revocation of License.* The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and to demonstrate why the license should not be suspended or revoked.

Section 8. *Transferability of Licenses.* Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Chapter VI—Taxes

Section 1. *Sales Tax.* There is hereby levied and shall be collected a tax on each retail sale of alcoholic beverages on the reservation in the amount of 1 percent of the retail sales price. The tax imposed by this section shall apply to all retail sales of liquor on the reservation and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 2. *Payment of Taxes to the Tribe.* All taxes from the sale of alcoholic beverages on the Augustine Indian Reservation shall be paid over to the General Treasury of the Augustine Band and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental and social services, including operation of the Tribal Council and administration of this Title.

Section 3. *Taxes Due.* All taxes upon the sale of alcoholic beverages on the reservation are due on the first day of the month following the end of the calendar quarter for which the taxes are due. Past due taxes shall accrue interest at 18 percent per annum.

Section 4. *Reports.* Along with payment of the taxes imposed herein, the taxpayer shall submit an accounting for the quarter of all income from the sale or distribution of said beverages as well as for the taxes collected.

Section 5. *Audit.* As a condition of obtaining a license, the licensee must agree to the review or audit of its books and records relating to the sale of alcoholic beverages on the reservation. Said review or audit may be done periodically by the Tribal Council through its agents or employees whenever in the discretion of the Tribal Council such a review or audit is necessary to verify the accuracy of reports.

Chapter VII—Rules, Regulations and Enforcement

Section 1. In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish *prima facie* intent or purpose of unlawfully keeping liquor for sale, selling liquor, or distributing liquor in violation of this title.

Section 2. Any person who shall sell or offer for sale or distribute or transport in any manner any liquor in violation of this Title, or who shall operate or shall have liquor in his/her possession without a permit, shall be guilty of a violation of this Title subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Title shall apply to the possession or transportation of any quantity of liquor by citizens of the Augustine Band for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Augustine Indian Reservation shall be governed solely by the laws of the State of California.

Section 3. Any person within the boundaries of the Augustine Indian Reservation who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Title.

Section 4. Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Title.

Section 5. No person under the age of 21 years shall consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Title for each and every drink so consumed.

Section 6. Any person who, in a public place, shall sell or provide any liquor to any person under the age of 21 years shall be guilty of a violation of this Title for each such sale or drink provided.

Section 7. Any person guilty of a violation of this Title shall be liable to pay the Augustine Band up to five hundred dollars ($500) per violation as civil damages to defray the tribe's cost of enforcement of this Title. The amount of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice and an opportunity to respond to such allegations.

Section 8. Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of 27, the prospective purchaser shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Driver's license of any state or identification card issued by any State Department of Motor Vehicles;

(2) United States Active Duty Military;

(3) Passport; and

(4) Gaming license or work permit issued by the Tribal Council, if said license or permit contains the bearer's correct age, signature and photograph.

Chapter VIII—Abatement

Section 1. Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 2. The Chairperson of the Tribal Council or, if he/she fails or refuses to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Band to abate and perpetually enjoin any nuisance declared under this Title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions, and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure, or place closed for a period of one year or until the owner, lessee, tenant, or occupant thereof shall give bond of sufficient sum of not less than twenty five thousand dollars ($25,000), payable to the Band and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished, or otherwise disposed of thereof in violation of the provision of this title of any other applicable tribal law, and that he/she will pay all fines, costs and damages assessed against him/her for any violation of this title or other tribal liquor laws. If any conditions of the bond are violated, the whole amount may be recovered for the use of the Band.

Section 3. In all cases where any person has been found responsible for a violation of this Title relating to manufacture, importation, transportation, possession, distribution, and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Title shall be *prima facie* evidence that the room, house, building, vehicle, structure, or place against which such action is brought is a public nuisance.

Chapter IX—Profits

Section 1. The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on the Augustine Indian Reservation, and from proceedings involving violations of this Title, shall be distributed as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Title; and

(b) Second, the remainder shall be turned over to the General Fund of the Augustine Band and expended by the Tribal Council for governmental services and programs on the Augustine Indian Reservation.

Chapter X—Severability and Effective Date

Section 1. If any provision or application of this Title is determined by judicial review to be invalid, such adjudication shall not be held to render ineffectual the remaining portions of this title, or to render such provisions inapplicable to other persons or circumstances.

Section 2. This Ordinance shall be effective on such date as the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 3. Any and all prior enactments of the Augustine Band that are inconsistent with the provisions of this Ordinance are hereby rescinded and repealed.

Section 4. All acts and transactions under this Ordinance shall be in conformity with the laws of the State of California as that term is used in 18 U.S.C. § 1154, but only to the extent required by the laws of the United States.

Chapter XI—Amendment

This Ordinance may only be amended by a majority vote of members of the Tribal Council of the Augustine Band attending a duly-noticed meeting at which a quorum is present.

Chapter XII—Certification

This Title was passed and amended at duly held and convened meetings of the Tribal Council on March 13, 2001 and April 18, 2001, as attested to and certified by MaryAnn Martin, Chairperson of the Tribal Council of the Augustine Band.

[FR Doc. 02–12012 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Santa Rosa Rancheria Liquor Control Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Santa Rosa Rancheria Liquor Control Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Santa Rosa Rancheria trust lands, to be in conformity with the laws of the State of California, where applicable and necessary. Although the Ordinance was adopted on July 13, 2001, it does not become effective until published in the **Federal Register**, because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW, MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transactions in Indian country. The Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001–32, was duly adopted by the Tribal Council of the Santa Rosa Rancheria on July 13, 2001. The Santa Rosa Rancheria, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Santa Rosa Rancheria.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution 2001–32, the Santa Rosa Rancheria Liquor Control Ordinance was duly adopted by the Santa Rosa Tribal Council on July 13, 2001.

Dated: April 30, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

The Santa Rosa Rancheria Liquor Control Ordinance, Resolution No. 2001–32, reads as follows:

The Santa Rosa Rancheria Liquor Control Ordinance

Article I—Declaration of Public Policy and Purpose

Section 1.1. The distribution, possession, consumption and sale of liquor on the lands of the Santa Rosa (Tachi) Rancheria is a matter of special concern to the Santa Rosa Indian Community.

Section 1.2. Federal law, as codified at 18 U.S.C. 1154, 1161, currently prohibits the introduction of liquor into Indian country, except in accordance with State Law and the duly enacted law of the Tribe. By adoption of this Ordinance, it is the intention of the Tribal Council to establish tribal law regulating the sale, distribution and consumption of liquor and to ensure that such activity conforms with all applicable provisions of the laws of the State of California.

Section 1.3. The General Council, as the governing body of the Tribe pursuant to the Constitution, has the authority (i) pursuant to Article VI, Section 1.F of the Constitution to administer Community assets and to manage all economic affairs and enterprises of the Community; and (ii) pursuant to Article VI, Section 1.K, to delegate any of its authorities or responsibilities to the Tribal Council; furthermore, the General Council has the inherent right to enact ordinances to safeguard and provide for the health, safety and welfare of the Santa Rosa Rancheria and the Santa Rosa Indian Community. Accordingly, the General Council has determined that it is in the best interest of the Tribe to enact a tribal ordinance governing the distribution, possession, consumption and sale of liquor within the exterior boundaries of the Santa Rosa Rancheria. By General Council Resolution No. 2000–31, the General Council has (i) approved the sale and distribution of liquor on the Santa Rosa Rancheria; and (ii) delegated

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to the Tribal Council the authority to enact an ordinance providing for Tribal regulation of such sale and distribution of liquor.

Section 1.4. Through its delegated authority, the Tribal Council has determined that the purchase, distribution and sale of Liquor shall take place only at duly licensed (i) tribally owned enterprises; (ii) tribally-licensed establishments; and (iii) tribally-sanctioned Special Events, all as operating on Tribal Lands.

Section 1.5. The Tribal Council has determined that any sale or other commercial distribution of Liquor on the Santa Rosa Rancheria, other than sales and distribution in strict compliance with this Ordinance, is detrimental to the health, safety and welfare of the members of the Tribe and is therefore prohibited.

Section 1.6. Based upon the foregoing findings and determinations, the Tribal Council hereby enacts this Santa Rosa Rancheria Liquor Control Ordinance (this Ordinance) as follows.

Article II—Definitions

As used in this Ordinance, the following words shall have the following meanings, unless the context clearly requires otherwise.

Section 2.1. *Alcohol.*

That substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation, or distillation of grain, starch, molasses or sugar, or other substances including dilutions and mixtures of this substance.

Section 2.2. *Alcoholic Beverage.* Identical in meaning to the term liquor as defined herein.

Section 2.3. *Bar.* Any establishment with special space and accommodations for sale by the glass and for consumption on the premises, of liquor, as herein defined.

Section 2.4. *Beer.* Any beverage obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than four percent (4%) of alcohol by volume. For the purpose of this title, any such beverage, including ale, stout, and porter, containing more than four percent (4%) of alcohol by weight shall be referred to as strong beer.

Section 2.5. *Gaming Compact.* The federally approved Tribal-State Compact, dated September 10, 1999, between the State of California and the Tribe.

Section 2.6. *Liquor.* The four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented spirituous, vinous, or malt liquor or combinations thereof, and mixed liquor, or a part of which is fermented, spirituous, vinous, or malt liquor, or otherwise intoxicating; and every other liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substances that contains more than one percent (1 %) of alcohol by weight, shall be conclusively deemed to be intoxicating.

Section 2.7. *Liquor Store.* Any store at which liquor is sold and, for the purposes of this Ordinance, including any store only a portion of which is devoted to the sale of liquor or beer.

Section 2.8. *Licensed Wholesaler.* A wholesale seller of liquor that is duly licensed by the Tribe and the State.

Section 2.9. *Malt Liquor.* Beer, strong beer, ale, stout and porter.

Section 2.10. *Package.* Any container or receptacle used for holding liquor.

Section 2.11. *Public Place.* Includes gaming facilities and commercial or community facilities of every nature which are open to and/or are generally used by the public and to which the public is permitted to have unrestricted access; public conveyances of all kinds and character; and all other places of like or similar nature to which the general public has unrestricted access, and which generally are used by the public.

Section 2.12. *Sale and Sell.* Any exchange, barter, and traffic; and also includes the selling of or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatsoever commonly used to describe malt or brewed liquor, or of wine, by any person to any person.

Section 2.13. *Special Event.* Any social, charitable or for-profit discreet activity or event conducted by the Tribal Councilor and any tribal enterprise on tribal lands at which liquor is sold or proposed to be sold.

Section 2.14. *Spirits.* Any beverage, which contains alcohol obtained by distillation, including wines exceeding seventeen percent (17%) of alcohol by weight.

Section 2.15. *State law.* The duly enacted applicable laws and regulations of the State of California, specifically, Division 9—Alcoholic Beverages, as set forth at California Business and Professions Code Division 9, Sections 23000 through 25762, as amended from time to time, and all applicable provisions of the compact.

Section 2.16. *Tribal Council.* The Business Committee of the Tribe as elected by the General Council in accordance with the Articles of Community Organization of the Santa Rosa Indian Community, Santa Rosa Rancheria (the Constitution).

Section 2.17. *Tribe.* The Santa Rosa Indian Community Santa Rosa (Tachi) Rancheria, located in Kings County, California.

Section 2.18. *Tribal Enterprise.* Any business entity, operation or enterprise owned, in whole or in part, by the Tribe.

Section 2.19. *Tribal Land.* All land within the exterior boundaries of the Santa Rosa Rancheria that is held in trust by the United States for the benefit of the Tribe.

Section 2.20. *Wine.* Any alcoholic beverage obtained by fermentation of any fruits (grapes, berries, apples, etc.), or fruit juice and containing not more than seventeen percent (17%) of alcohol by weight, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding seventeen percent (17%) of alcohol by weight.

Article III—Enforcement

Section 3.1. *Tribal Council Powers.* The Tribal Council, in furtherance of this Ordinance, shall have the power and duty to:

(a) Publish and enforce such rules and regulations governing the purchase, sale, consumption and distribution of alcoholic beverages in public places on the Santa Rosa Rancheria as the Tribal Council deems necessary.

(b) Employ managers, accountants, security personnel, inspectors and such other persons as shall be reasonably necessary to allow the Tribal Council to exercise its authority as set forth in this Ordinance.

(c) Issues licenses permitting the sale and/or distribution of liquor on the Santa Rosa Rancheria.

(d) Hold hearings on violations of this Ordinance or for the issuance or revocation of licenses hereunder;

(e) Bring suit in the appropriate court to enforce this Ordinance as necessary;

(f) Determine and seek damages for violation of this Ordinance;

(g) Publish notices and make such reports to the General Council as may be appropriate;

(h) Collect sales taxes and fees levied or set by the Tribal Council on liquor sales and the issuance of liquor licenses, and to keep accurate records, books and accounts;

(i) Take or facilitate all action necessary to follow or implement applicable provisions of State law as required;

(j) Cooperate with appropriate State of California authorities for purposes of prosecution of any violation of any criminal law of the State of California; and

(k) Exercise such other powers as may be delegated from time to time by the General Council.

Section 3.2. *Limitation on Powers.* In the exercise of its powers and duties under this Ordinance, the Tribal Council and its individual members, employees and agents shall not:

(a) Accept any gratuity, compensation or other thing of value from any liquor wholesaler, retailer or distributor, or from any licensee; or

(b) Waive the immunity of the Tribe from suit except by express resolution of the Tribal Council, such waiver being subject to the following limitations: The waiver must be transaction specific, limited as to duration and beneficiary, include a provision that limits recourse only to specified assets or revenues of the Tribe or a Tribal entity, and specifies the process and venue for dispute resolution, including applicable law.

Section 3.3. *Inspection Rights.* The public places on or within which liquor is sold or distributed shall be open for inspection by the Tribal Council or its designees at all reasonable times for the purposes of ascertaining compliance with this Ordinance and other regulations promulgated pursuant hereto.

Article IV—Liquor Sales

Section 4.1. *License Required.* No distribution or sales of Liquor shall be made on or within public places within the exterior boundaries of the Santa Rosa Rancheria, except at a duly licensed and authorized special event, tribal enterprise, bar, liquor store located on tribal lands.

Section 4.2. *Sales for Cash.* All liquor sales within the Reservation boundaries shall be on a cash only basis and no credit shall be extended to any person, organization or entity, except that this provision does not prevent the payment for purchases with the use of cashiers or personal checks, payroll checks, debit credit cards or credit cards issued by any financial institution.

Section 4.3. *Sale for Personal Consumption.* Except for sales by licensed wholesalers, all sales shall be for the personal use and consumption of the purchaser or members of the purchaser's household, including guests, who are over the age of twenty-one (21). Resale of any alcoholic beverage purchased within the exterior boundaries of the Reservation is prohibited. Any person who is not licensed pursuant to this Ordinance who purchases an alcoholic beverage within the boundaries of the Reservation and re-sells it whether in the original container or not, shall be guilty of a violation of this Ordinance and shall be subjected to exclusion from tribal lands or liability for money damages of up to five hundred dollars ($500), as determined by the Tribal Gaming Commission after notice and an opportunity to be heard.

Section 4.4. *Compliance Required.* All distribution, sale and consumption of liquor on tribal lands shall be in compliance with this Ordinance including all applicable provisions of State Law.

Article V—Licensing

Section 5.1. *Licensing Procedures.* In order to control the proliferation of establishments on the Reservation that sell or provide liquor by the bottle or by the drink, all persons or entities that desire to sell liquor, whether wholesale or retail, within the exterior boundaries of the Santa Rosa Rancheria must apply to the Tribal Council for a license to sell or provide liquor; provided, however, that no license is necessary to provide liquor within a private single-family residence on the Reservation for which no money is requested or paid.

Section 5.2. *State Licensing.* In the event dual Tribal and State licenses are required by State Law, no person shall be allowed or permitted to sell or provide liquor on the Santa Rosa Rancheria unless such person is also licensed by the State of California, as required, to sell or provide such liquor. If any such license from the State is revoked or suspended, any applicable Tribal license shall automatically be revoked or suspended.

Section 5.3. *Application.* Any person applying for a license to sell or provide liquor on the Santa Rosa Rancheria shall complete and submit an application provided for this purpose by the Tribal Council and pay such application fee as may be set from time-to-time by the Tribal Council for this purpose. An incomplete application will not be considered. The Tribal Council shall establish licensing procedures and application forms for wholesalers, retailers and special events.

Section 5.4. *Issuance of License.* The Tribal Council may issue a license if it believes that such issuance is in the best interest of the Tribe, the residents of the Santa Rosa Rancheria and the surrounding community. Licensure is a privilege, not a right, and the decision to issue any license rests in the sole discretion of the Tribal Council.

Section 5.5. *Period of License.* Each license may be issued for a period not to exceed two (2) years from the date of issuance.

Section 5.6. *Renewal of License.* A licensee may renew its license if it has complied in full with this Ordinance and has maintained its licensure with the State of California, as required; however, the Tribal Council may refuse to renew a license if it finds that doing so would not be in the best interests of the health and safety of the members of the Tribe and the other residents of the Santa Rosa Rancheria.

Section 5.7. *Revocation of License.* The Tribal Council may revoke a license for reasonable cause upon notice and hearing at which the licensee shall be given an opportunity to respond to any charges against it and, to demonstrate why the license should not be suspended or revoked.

Section 5.8. *Transferability of Licenses.* Licenses issued by the Tribal Council shall not be transferable and may only be utilized by the person or entity in whose name it was issued.

Article VI—Taxes

Section 6.1. *Sales Tax.* The Tribal Council shall have the authority to impose a sales tax on all wholesale and retail liquor sales that take place on Tribal Lands. Such tax may be implemented by duly enacted resolution of the Tribal Council, as supplemented by regulations adopted pursuant to this Ordinance. Any tax imposed by authority of this Section shall apply to all retail and wholesale sales of liquor on Tribal Lands, and to the extent permitted by law shall preempt any tax imposed on such liquor sales by the State of California.

Section 6.2. *Payment of Taxes to the Tribe.* All taxes imposed pursuant to this Article VI shall be paid over to the General Treasury of the Tribe and be subject to the distribution by the Tribal Council in accordance with its usual appropriation procedures for essential governmental functions and social services, including administration of this Ordinance.

Article VII—Rules, Regulations and Enforcement

Section 7.1. *Evidence.* In any proceeding under this title, proof of one unlawful sale or distribution of liquor shall suffice to establish prima facie intent or purpose of unlawfully keeping liquor for sale, selling liquor or distributing liquor in violation of this Ordinance.

Section 7.2. *Civil Violations.* Any person who shall sell or offer for sale or distribute or transport in any manner

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any liquor in violation of this Ordinance, or who shall have liquor in his/her possession for distribution or resale without a permit, shall be guilty of a violation of this Ordinance subjecting him/her to civil damages assessed by the Tribal Council. Nothing in this Ordinance shall apply to the possession or transportation of any quantity of liquor by members of the Tribe or other persons located on Tribal lands for their personal or other noncommercial use, and the possession, transportation, sale, consumption or other disposition of liquor outside public places on the Santa Rosa Rancheria shall be governed solely by the laws of the State of California.

Section 7.3. *Illegal Purchases.* Any person within the boundaries of the Santa Rosa Rancheria who, in a public place, buys liquor from any person other than at a properly licensed facility shall be guilty of a violation of this Ordinance.

Section 7.4. *Sale to Intoxicated Person.* Any person who sells liquor to a person apparently under the influence of liquor shall be guilty of a violation of this Ordinance.

Section 7.5. *Providing Liquor to Underage Person.* No person under the age of twenty-one (21) years shall serve, consume, acquire or have in his/her possession any alcoholic beverages. Any person violating this section in a public place shall be guilty of a separate violation of this Ordinance for each and every drink so consumed.

Section 7.6. *Selling Liquor to Underage Person.* Any person who, in a public place, shall sell or provide any liquor to any person under the age of twenty-one (21) years shall be guilty of a violation of this Ordinance for each such sale or drink provided.

Section 7.7. *Civil Penalty.* Any person guilty of a violation of this Ordinance shall be liable to pay the Tribe the amount of two hundred fifty dollars ($250) per violation as civil damages to defray the Tribe's cost of enforcement of this Ordinance. The payment of such damages in each case shall be determined by the Tribal Council based upon a preponderance of the evidence available to the Tribal Council after the person alleged to have violated this Ordinance has been given notice, hearing and an opportunity to respond to such allegations.

Section 7.8. *Identification Requirement.* Whenever it reasonably appears to a licensed purveyor of liquor that a person seeking to purchase liquor is under the age of twenty-seven (27), the prospective purchaser shall be required to present any one of the following officially-issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Drivers license of any state or identification card issued by any state Department of Motor Vehicles;

(2) United States Uniformed Services identification documents;

(3) Passport; or

(4) Gaming license or work permit issued by the Tribal Gaming Commission, if said license or permit contains the bearer's correct age, signature and photograph.

Article VIII—Abatement

Section 8.1. *Public Nuisance Established.* Any public place where liquor is sold, manufactured, bartered, exchanged, given away, furnished, or otherwise disposed of in violation of the provisions of this Ordinance, and all property kept in and used in maintaining such place, is hereby declared to be a public nuisance.

Section 8.2. *Abatement of Nuisance.* The Tribal Chairperson, upon authorization by a majority of the Tribal Council or, if he/she fails to do so, a majority of the Tribal Council acting at a duly-called meeting at which a quorum is present, shall institute and maintain an action in a court of competent jurisdiction in the name of the Tribe to abate and perpetually enjoin any nuisance declared under this title. Upon establishment that probable cause exists to find that a nuisance exists, restraining orders, temporary injunctions and permanent injunctions may be granted in the cause as in other injunction proceedings, and upon final judgment against the defendant the court may also order the room, structure or place closed for a period of one (1) year or until the owner, lessee, tenant or occupant thereof shall give bond of sufficient sum of not less than five thousand dollars ($5,000) payable to the Tribe and conditioned that liquor will not be thereafter manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereof in violation of the provision of this title or of any other applicable tribal law, and that s/he will pay all fines, costs and damages assessed against him/her for any violation of this title or other Tribal liquor laws. If any conditions of the bond should be violated, the whole amount may be recovered for the use of the Tribe.

Section 8.3. *Evidence.* In all cases where any person has been found responsible for a violation of this Ordinance relating to manufacture, importation, transportation, possession, distribution and sale of liquor, an action may be brought to abate as a public nuisance the use of any real estate or other property involved in the violation of this Ordinance, and proof of violation of this Ordinance shall be prima facie evidence that the room, house, building, vehicle, structure, or place against which such action is brought, is a public nuisance.

Article IX—Use of Proceeds

Section 9.1. *Application of Proceeds.* The gross proceeds collected by the Tribal Council from all licensing of the sale of alcoholic beverages on Tribal Lands and from fines imposed as a result of violations of this Ordinance, shall be applied as follows:

(a) First, for the payment of all necessary personnel, administrative costs, and legal fees incurred in the enforcement of this Ordinance; and

(b) Second, the remainder shall be turned over to the General Fund of the Tribe and expended by the Tribal Council for governmental services and programs on tribal lands.

Article X—Miscellaneous Provisions

Section 10.1. *Severability and Savings Clause.* If any provision or application of this Ordinance is determined by judicial review to be invalid, such provision shall be deemed ineffective and void, but shall not render ineffectual the remaining portions of this Ordinance, which shall remain in full force and effect.

Section 10.2. *Effective Date.* This Ordinance shall be effective as of the date on which the Secretary of the Interior certifies this Ordinance and publishes the same in the **Federal Register**.

Section 10.3. *Repeal of Prior Acts.* Any and all-prior resolutions, laws, regulations or ordinances pertaining to the subject matter set forth in this Ordinance are hereby rescinded and repealed in their entirety.

Section 10.4. *Conformance with State Law.* All acts and transactions under this Ordinance shall be in conformity with the Compact and the laws of the State of California as that term is used in 18 U.S.C. Sec. 1154, but only to the extent required by the laws of the United States.

Article XI—Amendments

This Ordinance may be amended only pursuant to a duly enacted Resolution of the Tribal Council, with certification by the Secretary of the Interior and publication in the **Federal Register**, if required.

[FR Doc. 02–12011 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinance

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This notice publishes the Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinance. The Ordinance regulates the control, possession, and sale of liquor on the Ysleta del Sur Pueblo trust lands, to be conformity with the laws of the State of Texas, where applicable and necessary. Although the Ordinance was adopted on March 19, 2002, it does not become effective until published in the **Federal Register** because the failure to comply with the ordinance may result in criminal charges.

DATES: This Ordinance is effective on May 14, 2002.

FOR FURTHER INFORMATION CONTACT: Kaye Armstrong, Office of Tribal Services, 1849 C Street, NW., MS 4631–MIB, Washington, DC 20240–4001; telephone (202) 208–4400.

SUPPLEMENTARY INFORMATION: Pursuant to the Act of August 15, 1953, Public Law 83–277, 67 Stat. 586, 18 U.S.C. 1161, as interpreted by the Supreme Court in *Rice* v. *Rehner*, 463 U.S. 713 (1983), the Secretary of the Interior shall certify and publish in the **Federal Register** notice of adopted liquor ordinances for the purpose of regulating liquor transaction in Indian country. The Ysleta del Sur Pueblo Liquor Ordinance No. 004–02, as authorized by Resolution No. TC–33–02, was duly adopted by the Ysleta del Sur Pueblo Tribal Council on March 19, 2002. The Ysleta del Sur Pueblo, in furtherance of its economic and social goals, has taken positive steps to regulate retail sales of alcohol and use revenues to combat alcohol abuse and its debilitating effects among individuals and family members within the Ysleta del Sur Pueblo.

This notice is published in accordance with the authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Departmental Manual 8.1.

I certify that by Resolution No. TC–33–02, the Ysleta de Sur Pueblo of the Tigua Tribe Liquor Ordinance No. 004–02, was duly adopted by the Ysleta del Sur Pueblo Tribal Council on March 19, 2002.

Dated: May 3, 2002.

Neal A. McCaleb,

Assistant Secretary, Indian Affairs.

The Ysleta del Sur Pueblo of the Tigua Tribe Liquor Ordinace No. 004–02 reads as follows:

Tribal Ordinance No. 004–02; Adopting Article 64 of the Tigua Tribe's Code of Laws Entitled: Sale of Alcoholic Beverages

Pursuant to the authority vested in the Tribal Council as the duly constituted traditional governing body of the Ysleta del Sur Pueblo, a federally recognized Indian tribe exercising all inherent governmental powers, fiscal authority and tribal sovereignty as recognized in the Ysleta del Sur Pueblo Restoration Act (Public Law 100–89 as codified in 25 U.S.C. 1300g) and its lawful authority to provide for health, safety, morals, welfare, tribal economic development and self-sufficiency of the Ysleta del Sur Pueblo, the Tribal Council hereby enacts this Ordinance for the purpose of regulating the sale of alcoholic beverages. Therefore, be it resolved and ordained by the Tribal Council of the Ysleta del Sur Pueblo:

That the following Article entitled Sale of Alcoholic Beverages, which by reference, is incorporated herein as if set forth at length, is hereby adopted as Article 64 of the Tigua Tribe's Code of Laws.

Article 64: Sale of Alcoholic Beverages

Section 1—Conformity with State Law. The Pueblo, acting through the Tribal Council, may sell alcohol and alcoholic beverages on the Pueblo's reservation for on premises consumption only. Except as otherwise provided herein, the sale and consumption of alcoholic beverages on the Pueblo's reservation and its lands shall be in conformance with the laws of the State of Texas. Nothing contained herein shall be construed as a grant of jurisdiction to the State of Texas or a waiver of any of the Pueblo's sovereignty or immunity from suit.

Section 2—Fees. Any and all fees, charges, or income resulting from the sale of alcoholic beverages shall be due and payable to the Ysleta del Sur Pueblo rather than the State of Texas.

Section 3—Enforcement. The Pueblo shall be solely responsible for the enforcement and administration of this Ordinance. The Tigua Tobacco and Alcohol Commission shall issue and enforce such regulations as are reasonably necessary to carry out the purposes of this Article.

Section 4—Tigua Alcohol and Tobacco Commission.

4.01. There is hereby created the Tigua Tobacco and Alcohol Commission comprised of a Commissioner and two (2) members. The Commissioner and the members of the Commission shall be tribal members. No person shall be appointed to the Tigua Tobacco and Alcohol Commission unless the Tribal Council is satisfied that he or she has no ownership interest in any company or enterprise which contracts with the Pueblo for the sale of alcohol or tobacco, or any activity which may have interests in conflict with the Pueblo's sale of alcohol or tobacco.

4.02. The Commissioner and the members of the Commission shall serve at the pleasure of the Tribal Council and may be removed at any time by majority vote of the Tribal Council.

4.03. The Commissioner and members, and any employees of the Commission, shall be reasonably compensated, as determined by the Tribal Council.

Section 5—Prohibition. No individual, entity, or organization shall be permitted to sell or dispense alcoholic beverages from or on the Pueblo's reservation or its lands other than the Pueblo acting by and through the Tribal Council.

[FR Doc. 02–12013 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–4J–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

DEPARTMENT OF AGRICULTURE

Forest Service

[WO–310–1310–02–PB–24 1A]

Extension of Approved Information Collection; OMB Approval No. 1004–0162

AGENCY: Bureau of Land Management, Interior and Forest Service, Agriculture.

ACTION: Notice and request for comments.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, the Bureau of Land Management (BLM) requests the Office of Management and Budget (OMB) to extend an existing approval to collect information from entities who conduct geophysical operations on public lands.

DATES: You must submit your comments to BLM at he address below on or before July 15, 2002. BLM will not necessarily consider any comments received after the above date.

ADDRESSES: You may mail comments to: Bureau of Land Management, (WO–

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630), Eastern States Office, 7450 Boston Blvd., Springfield, Virginia 22153.

You may send comments via Internet to: *WOComment@blm.gov*. Please include (ATTN: 1004–0162) and your name and address with your comments.

You may deliver comments to the Bureau of Land Management, Administrative Record, Room 401, 1620 L Street, NW., Washington, DC.

Comments will be available for public review at the L Street address during regular business hours (7:45 a.m. to 4:15 p.m.) Monday through Friday.

FOR FURTHER INFORMATION CONTACT: You may contact Barbara Gamble, Fluid Minerals Group, at (202) 452–0338 (Commercial or FTS). Persons who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) on 1–800–877–8330, 24 hours a day, seven days a week, to contact Ms. Gamble.

SUPPLEMENTARY INFORMATION: 5 CFR 1320.12(a), requires that we provide a 60-day notice in the **Federal Register** concerning a collection of information to solicit comments on:

(a) Whether the collection of information is necessary for the proper functioning of the agency, including whether the information will have practical utility;

(b) The accuracy of our estimates of the information collection burden, including the validity of the methodology and assumptions we use;

(c) Ways to enhance the quality, utility, and clarity of the information collected; and

(d) Ways to minimize the information collection burden on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology.

The Mineral Leasing Act of 1920 (MLA) (30 U.S.C. 181 *et seq.*), gives the Secretary of the Interior responsibility for oil and gas leasing on approximately 570 million acres of Federal mineral estate. The MLA authorizes the Forest Service (FS) to permit oil and gas companies, lessees, exploration companies, and independent exploration operators to conduct geophysical exploration on or off leases on National Forest System (NFS) lands. The Act of August 7, 1947 (Mineral Leasing Act of Acquired Lands), authorizes the Secretary of the Interior to lease lands acquired by the United States (30 U.S.C. 341–359); and the Federal Onshore Oil and Gas Leasing Reform Act of December 22, 1987, authorizes the Secretary of the Interior to lease NFS lands with FS consent. On NFS lands, the Secretary of Agriculture is authorized to regulate all surface-disturbing activities which take place on a lease.

43 CFR Group, 3150 establishes procedures for BLM to issue authorizations to conduct oil and gas geophysical exploration operations on public lands. 36 CFR part 228 subpart E, and 36 CFR part 251 subpart A and subpart B establish procedures for the FS to authorize geophysical operations on FS lands.

The BLM and FS need the information requested on the Notice of Intent to process applications for geophysical exploration operations on public lands and to manage environmental compliance requirements in accordance with the laws, regulations, and land use plans. The BLM and FS use the information to determine if operators will conduct geophysical operations in a manner consistent with the regulations, local land use plans, and stipulations. The BLM and FS need the information requested on the Notice of Completion to determine whether rehabilitation of the lands is satisfactory or whether additional rehabilitation is necessary. You may submit the forms in person or by mail. We need the company name, address, and telephone number to identify the person/entity conducting operations. BLM will assign a Case File Number to track each specific operation. We require the legal land description to determine the location of the involved public lands. Additional information that we request includes the type and size of the proposed activity, location of the proposed operation, equipment you plan to use, operating procedures, and timing of the operation.

Applicants must submit these forms to allow BLM and FS to determine who is conducting geophysical operations on public lands. An interagency BLM/FS team revised the respective forms to streamline and improve the process for both the Federal Government and its customers. Combining the BLM and FS individual forms into a single BLM/FS form will ensure consistent management of the geophysical operations on public lands and will better serve the public.

Old forms	New forms
(1) Terms and Conditions for Notice of Intent to Conduct Geophysical Exploration, BLM Standard Form 3150–4a.	(1) Notice of intent and Request for Authorization to Conduct Geophysical Exploration Operations (NOI/RFA), BLM Standard Form 3110–4/FS Standard Form 2800–16.
(2) Application for Prospecting Permit, FS Standard Form 2800–14 ..... (3) Geophysical Prospecting Permit, FS Standard Form 2800–15 ..... (4) Notice of Completion of Oil and Gas Exploration Operations, BLM Standard Form 3150–5.	(2) Notice of Completion of Geophysical Exploration Operations, BLM Standard Form 3110–5/FS Standard Form 2800–16a.

Based on past and recent experience administering onshore oil and gas geophysical exploration operations, BLM estimates the public reporting burden for completing the Notice of Intent is one hour, and for completing the Notice of Completion is 20 minutes. The information we require is clearly outlined on the forms and in the terms and conditions. The information is already maintained by the respondents for their own record keeping purposes and they will need only to transfer or attach it to the forms. BLM estimates that it receives approximately 600 Notices of Intent and 600 Notices of Completion annually, with a total annual burden of 800 hours. Respondents vary from small businesses to major corporations.

The FS estimates the reporting burden is approximately one hour to complete a Notice of Intent which includes the time to gather the information on the project and complete the form. The FS estimates that it receives approximately 25 Notices of Intent and 25 Notices of Completion annually, with a total annual burden of 31 hours. Respondents include individual lessees, small and large companies, and independent exploration operators. After combining the annual burden of the BLM and FS, the total estimated annual burden is 831 hours.

Any member of the public may request and obtain, without charge, a copy of the BLM Form 3110–4/FS Form 2800–16 or BLM Form 3110–5/FS Form 2800–16a by contacting the person identified under **FOR FURTHER INFORMATION CONTACT.**

BLM will summarize all responses to this notice and include them in the request for OMB approval. All comments will become a matter of public record.

Dated: April 9, 2002.

Michael H. Schwartz,

Bureau of Land Management, Information Collection Clearance Officer.

Dated: April 18, 2002.

Larry O. Gadt,

Director, Minerals ond Geology Management, USDA, Forest Service.

[FR Doc. 02–12014 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–84–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AK–0293–02–1310–PB]

National Petroleum Reserve—Alaska Research and Monitoring Advisory Team Public Meeting

AGENCY: Bureau of Land Management (BLM), Northern Field Office, Interior.

ACTION: Notice of the meeting location and time for the National Petroleum Reserve—Alaska Research and Monitoring Advisory Team.

SUMMARY: The National Petroleum Reserve—Alaska Research and Monitoring Advisory Team (NPR–A RMT) will meet May 29, 2002, from 9 a.m. to 4 p.m. to discuss research and monitoring needs in the NPR–A and to recommend priority projects for funding by BLM. The meeting, which is open to the public, will be held at the BLM Northern Field Office, located at 1150 University Avenue in Fairbanks, Alaska. Public comments will be taken from 1 p.m. to 1:30 p.m.

ADDRESSES: Inquiries or comments should be sent to Public Affairs, BLM Northern Field Office, 1150 University Avenue, Fairbanks, AK 99709–3844.

FOR FURTHER INFORMATION CONTACT: Herb Brownell, (907) 474–2333 or 1–800–437–7021, x2333, or e-mail *Herb_Brownell@ak.blm.gov.*

SUPPLEMENTARY INFORMATION: The RMT's members represent BLM, the Minerals Management Service, U.S. Department of Energy, U.S. Fish and Wildlife Service, U.S. Geological Survey—Biological Resources Division, the North Slope Borough, the oil and gas industry, environmental/resource conservation organizations, natural resource managers and academics, and the public at large. The RMT advises BLM in assessing the effectiveness and appropriateness of mitigative stipulations established in the 1998 Record of Decision for the Northeast NPR–A Integrated Activity Plan/ Environmental Impact Statement. More generally, the RMT assesses NPR–A research and monitoring needs, develops and recommends research priorities, and works toward applying improved technology and operating practices to oil exploration and possible development in NPR–A.

The RMT meets in accordance with the Federal Land Policy and Management Act and the Federal Advisory Committee Act of 1972.

Dated: April 4, 2002.

Robert W. Schneider,

Field Manager.

[FR Doc. 02–12016 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–JA–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[Docket No. MT–924–02–1430–FM–003E]

Notice of Intent to Amend the West HiLine Resource Management Plan; Chouteau County, MT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent.

SUMMARY: Notice is hereby given that the Bureau of Land Management (BLM) is proposing to amend the West HiLine Resource Management Plan. The BLM proposes exchanging 2.04 acres of Federal surface estate in Chouteau County for private land within the Crow Indian Reservation in Big Horn and Yellowstone Counties as a part of Phase 4a of the Crow Boundary Settlement Act Land Exchange. The Federal land is legally described as:

Chouteau County

T28N, R9E, PMM.

Sec. 18: Lot 1, containing 2.04 acres, more or less

Disposal of the Federal land described above was not analyzed in the West HiLine Resource Management Plan (RMP) and associated Environmental Impact Statement. Disposal of the Federal land requires: (1) That the specific tracts be identified in the land use plan together with the criteria to be met for exchange ,and (2) a discussion of how the exchange criteria have been satisfied. The discussion of how these requirements are being met will be part of the Environmental Assessment prepared to analyze the effects of disposal, as well as the plan amendment itself.

DATES: Comments and recommendations on this notice to amend the West HiLine RMP should be received on or before June 13, 2002.

ADDRESSES: Comments should be sent to David L. Mari, Field Manager, Lewistown Field Office, P.O. Box 1160, Lewistown, Montana 59457–1160.

FOR FURTHER INFORMATION CONTACT: Loretta Park, Realty Specialist, 406/538–1910.

Dated: February 20, 2002.

M. James Feist,

Acting Field Manager.

[FR Doc. 02–12017 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–DN–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–921–1430–ET; WYW 152450]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw approximately 521.83 acres of public land from surface entry and mining, and 208.03 acres of Federal reserved mineral interests underlying private surface estate from mining to protect important scenic, open space, and recreational resource values of the Beck Lake area in Park County. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATES: Comments and requests for a public meeting must be received by August 12, 2002.

ADDRESSES: Comments and requests should be sent to the BLM Wyoming State Director, P.O. Box 1828, Cheyenne, Wyoming 82003–1828.

FOR FURTHER INFORMATION CONTACT: Mike Blymyer, BLM Cody Field Office Manager, 1002 Blackburn, P.O. Box 518, Cody, Wyoming 82414, 307–578–5900, or Janet Booth, BLM Wyoming State Office, 307–775–6124.

SUPPLEMENTARY INFORMATION: On August 27, 2001, a petition/application was approved allowing the BLM to file an application to withdraw the following described public land and Federal reserved mineral interests from settlement, sale, location, or entry under the general land laws, including the mining laws, except for disposal under the Recreation and Public Purposes Act of 1926, as amended, subject to valid existing rights:

Sixth Principal Meridian

T. 52 N., R. 101 W.,

Sec. 6, lots 2 through 4, inclusive;

Sec. 7, lots 2 and 3, W½NE¼, SE¼NE¼, and E½NW¼.

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T. 52 N., R. 102 W.,
Sec. 1, SE¼SE¼, S½NE¼SE¼;
Sec. 12, E½NE¼.

The area described contains approximately 521.83 acres of public surface and Federal minerals in Park County.

T. 52 N., R. 101 W.,
Sec. 6, lot 1.
T. 52 N., R. 102 W.,
Sec. 1, lots 3, 4, 5, 7, N½NE¼SE¼;
Sec. 12, lot 1.

The area described contains approximately 208.03 acres of Federal reserved minerals underlying private surface in Park County.

The purpose of the proposed withdrawal is to protect important scenic, open space, and recreational resource values pending further study and development of appropriate, and possibly longer-term, actions.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the BLM.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the BLM Wyoming State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. Licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature which will not significantly impact the values to be protected by the withdrawal may be allowed with the approval of an authorized officer of the BLM during the segregative period.

Dated: September 14, 2001.

Alan L. Kesterke,

Associate State Director.

Editorial Note: This document was received at the Office of the Federal Register on May 9, 2002.

[FR Doc. 02–12015 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–22–P

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Outer Continental Shelf (OCS) Policy Committee of the Minerals Management Advisory Board; Notice and Agenda for Meeting

AGENCY: Minerals Management Service (MMS), Interior.

ACTION: Notice of meeting.

SUMMARY: The OCS Policy Committee of the Minerals Management Advisory Board will meet at the Days Hotel and Conference Center in Herndon, Virginia.

DATES: Tuesday, May 21, 2002, from 8:30 a.m. to 5 p.m. and Wednesday, May 22, 2002, from 8:30 a.m. to 5 p.m.

ADDRESSES: The Days Hotel and Conference Center, 2200 Centreville Road, Herndon, Virginia 20170, telephone (703) 471–6700.

FOR FURTHER INFORMATION CONTACT: Ms. Jeryne Bryant at Minerals Management Service, 381 Elden Street, Mail Stop 4001, Herndon, Virginia 20170–4187. She can be reached by telephone at (703) 787–1211 or by electronic mail at *jeryne.bryant@mms.gov*.

SUPPLEMENTARY INFORMATION: The OCS Policy Committee represents the collective viewpoint of coastal states, environmental interests, industry and other parties involved with the OCS Program. It provides policy advice to the Secretary of the Interior through the Director of MMS on all aspects of leasing, exploration, development, and protection of OCS resources.

The agenda for May 21st will cover the following principal subjects:

Department's Strategic Plan. This presentation will provide an overview of the Department's new strategic plan, and provide insight into the process MMS is undertaking to develop a strategic plan that aligns with the Department's strategic direction.

Education and Outreach Subcommittee Report. This presentation will provide an update on the Subcommittee's charge and activities since inception in October 2001.

Ocean Commission. This presentation will provide an update on activities of the U.S. Commission on Ocean Policy since the October 2001 meeting.

OCS Scientific Committee Update. This presentation will provide an update on the activities of the Scientific Committee. It will also highlight the activities that are related to mercury, energy issues/concerns, ocean issues, hard mineral activities, and any other topics that are relevant to both Committees.

Hard Minerals Subcommittee Update. This presentation will provide an update on subcommittee activities and other pertinent hard minerals information.

Biological Monitoring Program on Beach Nourishment Operations. This presentation will address the $8 million multi-year monitoring study recently completed by the U.S. Army Corps of Engineers.

Geographical Information System. This presentation will address how the State of Alabama uses the geographical information system for sand and gravel resources and oil and gas resources.

Futuristic Energy Production Schemes in the OCS. This presentation will address the possible use of OCS facilities for hydrogen production and alternative energy schemes.

Congressional/Legislative Update. This presentation will provide an update on current congressional issues related to the OCS program.

Moving Toward a National Ocean Observing System: Results of the Integrated Sustained Ocean Observing System (ISOOS) Workshop. This presentation will address the potential for establishing a National Ocean Observing System. Results of the March 2002, ISOOS Workshop, hosted by Ocean.US of the National Oceanographic Partnership Program, will be presented and discussed.

Recent Bankruptcies and the Potential Impact on MMS. This presentation will address how recent events could potentially impact OCS activities.

The agenda for May 22nd will cover the following principal subjects: Change in the Natural Gas Drilling Outlook. This presentation will address natural gas supply/demand.

Floating Production Storage and Offloading Systems Record of Decision—Next Steps. This presentation will address the record of decision, the environmental impact statement, industry approaches, and the Coast Guard's regulatory approach.

Eastern Gulf of Mexico Sales. This presentation will address Lease Sales 181 and 189.

State Issues. This presentation will address several different issues affecting states, which may include concerns regarding drilling and tourism, beach nourishment, and pipelines.

Mercury in Drilling Muds. This presentation will address the studies regarding environmental research related to mercury in drilling muds, industry drilling operations and the regulatory framework for permitting these discharges on the OCS.

MMS Regional Updates. The Regional Directors will highlight activities off the California and Alaska coasts and in the Gulf of Mexico.

The meeting is open to the public. Approximately 100 visitors can be accommodated on a first-come-first-served basis.

Upon request, interested parties may make oral or written presentations to the OCS Policy Committee. Such requests should be made no later than May 13, 2002, to Jeryne Bryant. Requests to make oral statements should be accompanied by a summary of the statement to be made. Please see **FOR FURTHER INFORMATION CONTACT** section for address and telephone number.

Minutes of the OCS Policy Committee meeting will be available for public inspection and copying at MMS in Herndon.

Authority: Federal Advisory Committee Act, Public Law 92–463, 5 U.S.C. Appendix 1, and the Office of Management and Budget's Circular No. A–63, Revised.

Dated: May 9, 2002.

Michael Hunt,

Acting Associate Director for Offshore Minerals Management.

[FR Doc. 02–12035 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–MR–P

DEPARTMENT OF THE INTERIOR

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before April 13, 2002. Pursuant to section 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded by United States Postal Service, to the National Register, National Park Service, 1849 C St. NW., NC400, Washington, DC 20240; by all other carriers, National Register of Historic Places, National Park Service, 800 N. Capitol St. NW., Suite 400, Washington DC 20002; or by fax, 202–343–1836. Written or faxed comments should be submitted by May 29, 2002.

Carol D. Shull,

Keeper of the National Register of Historic Places.

Alaska

Anchorage Borough—Census Area
Mt. Alyeska Roundhouse, Approx. 2 mil W of Alyeska, Girdwood, 02000562
Fairbanks North Star Borough—Census Area
City Hall, Old, 410 Cushman St., Fairbanks, 02000561

Georgia

DeKalb County
Winnona Park Historic District, Roughly bounded by E. College Ave., Avery St., S. Columbia Dr., and Mimosa Dr., Decatur, 02000565
Dodge County
Eastman Bus Station, 305 College St., Eastman, 02000566
Jackson County
Oak Avenue Historic District, S of Jct. of Oak Ave. and the Southern RR, Jefferson, 02000564
Paradise Cemetery, E of Southern RR bet. Lawrenceville St. and Mahaffey Circle, Jefferson, 02000563

Montana

Flathead County
Swan River Community Hall, 115 Swan River Rd., Swan River, 02000567

North Carolina

Sampson County
Clinton Commercial Historic District, Roughly bounded bu Vance, Elizabeth, Wall, and Sampson Sts., Clinton, 02000568

South Carolina

Berkeley County
Cooper River Historic District, (Cooper River MPS), Along the East and West Branches of the Cooper River, Moncks Corner, 02000571
Charleston County
Murray, Andrew B., Vocational School, 3 Chisolm St., Charleston, 02000569
Remley Point Cemetery, 0.2 mi. NE of jct. of Third and Fourth Ave., Mount Pleasant, 02000570

South Dakota

Clark County
Security State Bank, Garfeild St., Willow Lake, 02000577
Hutchinson County
South Dakota Dept of Trans. Bridge No. 34–202–072, (Historic Bridges in South Dakota MPS), 424th Ave., Parkston, 02000581
South Dakota Dept. of Trans. Bridge No. 34–120–194, (Historic Bridges in South Dakota MPS), Local Rd. over S. Fork Lonetree Cr., Tripp, 02000579
South Dakota Dept. of Trans. Bridge No. 34–140–046, (Historic Bridges in South Dakota MPS), 418th Ave., Milltown, 02000583
Kingsbury County
Bank of the Iroquois Building, Jct. of Washita and Quapaw Sts., Iroquois, 02000576
Central Dakota Flouring Mill Grain Elevator, 202 E. Elm St., Arlington, 02000573
Hetland School, (Schools in South Dakota MPS) Park St., Hetland, 02000572
Lake Preston Tourist Park Historic District, Jct. of US 14 and S. Park Ave., Lake Preston, 02000574
Stordahl, Olaf, Barn, 45210 199th St., Arlington, 02000575
Lincoln County
Canton Lutheran Church, 124 E. Second St., Canton, 02000582
South Dakota Dept of Trans. Bridge No. 42–200–125, (Historic Bridges in South Dakota MPS) Three Mile Rd., Canton, 02000580
Yankton County
Yankton High School Historic District, (Schools in South Dakota MPS) 613 Walnut St., Yankton, 02000578

Tennessee

De Kalb County
Alexandria Cemeteries Historic District, (Rural African-American Churches in Tennessee MPS) Cemetery St., Alexandria, 02000584

Virginia

Botetourt County
Breckinridge Mill Complex (Boundary Increase), 7850 Breckinridge Mill Rd., Fincastle, 02000588
Essex County
Monte Verde, 405 Monte Verde Rd., Center Cross, 02000586
Fauquier County
Green Pastures, 2337 Zulla Rd., Middleburg, 02000596
Morven, 3918 Leeds Manor Rd., Markham, 02000597
Oaks, The, 8457 Oaks Rd., Warrenton, 02000585
Galax Independent city
Galax Commericial Historic District, Roughly Main, Center, Grayson, Carroll and Oldtown Sts., Galax, 02000593
Henry County
Grassdale Farm, 187 Spencer Penn Rd., Spencer, 02000587
Madison County
Locust Hill, Jct. of US 15, VA 634, and VA 614, Locust Dale, 02000590
Radford Independent city
Arnheim, 40 Dalton Dr., Radford, 02000589
Richmond Independent city
Battery Court Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly Dupont C., Edgewood, Fendall, Greenwood, Griffin, Montrose, Moss Side, Noble, North, Edgehill, Graham., Richmond (Independent City), 02000594

Brookland Park Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly Griffin, Fendall, Hanes, Garland, North, Barton, Lamb, Cliff Aves., Norwood, Hooper, Essex, Brookland Park., Richmond (Independent City). 02000591

Town of Barton Heights Historic District, (Streetcar Suburbs in Northside Richmond MPS) Roughly arton, Fendall, Greenwood, Lamb, Miller, Monterio, North, Rose, Dove, Home, Minor, Poe, Wellford, Wickham., Richmond (Independent City). 02000592

Surry County

Rogers' Store, Jct. of VA 615 and VA 612, Surry. 02000595

Wisconsin

Dane County

University of Wisconsin Dairy Barn, 1915 Linden Dr., Madison, 02000600

La Crosse County

Losey Memorial Arch, 1407 La Crosse St., La Crosse, 02000598

Waupaca County

Lake Street Historic District, Roughly bounded S. Washington St., E. Badger St., Fifth St., and Tioga St. Waupaca, 02000599

[FR Doc. 02–12037 Filed 5–13–02; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–471]

Certain Data Storage Systems and Components Thereof; Notice of Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on April 11, 2002, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of EMC Corporation of Hopkinton, Massachusetts. Letters supplementing the complaint were filed on April 12 and 15, and May 6, 2002. The complaint as supplemented alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain data storage systems and components thereof by reason of infringement of claims 1–4 and 6–17 of U.S. Letters Patent 5,742,792, claims 1–4 and 9–13 of U.S. Letters Patent 5,544,347, claims 1, 2, 8, 9, 15, 21, and 22 of U.S. Letters Patent 6,092,066, claims 1–10 of U.S. Letters Patent 6,101,497, claims 5–8 of U.S. Letters Patent 6,108,748, and claims 1–4, 9, 11–13, 15, 17, 19, 21–23, 26, 28–30, 33–36, 42–44, 51–53, 60, 61, 65, 68, 69, 73, 76, 77, and 81 of U.S. Letters Patent 5,909,692. The complaint further alleges that an industry in the United States exists as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after the investigation, issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20436, telephone 202–205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000. General information concerning the Commission may also be obtained by accessing its internet server at *http://www.usitc.gov*. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

FOR FURTHER INFORMATION CONTACT: Karin J. Norton, Esq., or Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2606 and 202–205–2571, respectively.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.10 of the Commission's Rules of Practice and Procedure, 19 CFR 210.10 (2001).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on May 8, 2002, *Ordered that*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain data storage systems or components thereof by reason of infringement of claim 1–4, 6–16, or 17 of U.S. Letters Patent 5,742,792, claim 1–4, 9–12, or 13 of U.S. Letters Patent 5,544,347, claim 1, 2, 8, 9, 15, 21, or 22 of U.S. Letters Patent 6,092,066, claim 1–9 or 10 of U.S. Letters Patent 6,101,497, claim 5, 6, 7, or 8 of U.S. Letters Patent 6,108,748, and claim 1–4, 9, 11–13, 15, 17, 19, 21–23, 26, 28–30, 33–36, 42–44, 51–53, 60, 61, 65, 68, 69, 73, 76, 77, or 81 of U.S. Letters Patent 5,909,692, and whether an industry in the United States exists as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—EMC Corporation, 171 South Street, Hopkinton, MA 01748–9103.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Hitachi, Ltd., 6, Kanda-Surugadai 4-chome, Chiyoda-ku, Tokyo, 101–8010, Japan; Hitachi Data Systems Corporation, 750 Central Expressway, Santa Clara, CA 95050–2627.

(c) Karin J. Norton, Esq., and Thomas S. Fusco, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Suite 401, Washington, DC 20436, who shall be the Commission investigative attorneys, party to this investigation; and

(3) For the investigation so instituted, the Honorable Paul J. Luckern is designated as the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.13 of the Commission's rules of practice and procedure, 19 CFR 210.13. Pursuant to 19 CFR §§ 201.16(d) and 210.13(a), such responses will be considered by the Commission if received no later than 20 days after the date of service by the Commission of the complaint and the notice of investigation. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and to authorize the administrative law judge and the Commission, without further notice to that respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against that respondent.

By order of the Commission.

Issued: May 9, 2002.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–11970 Filed 5–13–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; Tribal Resources Grant Program Hiring Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5612 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information; including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses. *The estimated amount of time required for the average respondent to respond:* The estimated amount of time required to respond is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 37.5 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, United States Department of Justice.

[FR Doc. 02–11986 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: new collection; Tribal Hiring Renewal Grant Program Application.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5610 on February 6, 2002, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including

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whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New collection.

(2) *Title of the Form/Collection:* Tribal Hiring Renewal Grant Program Application.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* Federally Recognized Tribal Government. *Other:* None. *Abstract:* The information collected will be used by the COPS Office to determine whether Federally Recognized Tribal Governments are eligible for two-year grants to renew previously funded COPS hiring grants. The program is specifically targeted to meet the most serious needs of law enforcement in Indian communities. The grants are meant to enhance law enforcement capabilities by renewing grant officer positions for an additional two-years of funding.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 15 responses one for each respondent. *The estimated amount of time required for the average respondent to respond:* The estimated time required for the average respondent to respond is 2.5 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are an estimated 37.5 annual burden hours associated with this collection.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–11987 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-day notice of information collection under review: Reinstatement, with change, of a previously approved collection for which approval has expired; Universal Hiring Program (UHP) and COPS in Schools (CIS) Grant Applications.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 66, Number 208, page 54286 on October 26, 2001, allowing for a 60 day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 13, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to The Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, *e.g.*, permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* Reinstatement, with change, of a previously approved collection instrument.

(2) *Title of the Form/Collection:* Universal Hiring Program and COPS in Schools Grant Applications.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection: Form Number:* none, Office of Community Oriented Policing Services, Department of Justice.

(4) *Affected public who will be asked or required to respond, as well as a brief abstract: Primary:* State, Local or Tribal Government. *Other:* none. *Abstract:* The application will be used by state, local and tribal law enforcement agencies to apply for Federal funding which will be used to increase the number of sworn law enforcement positions in their agencies. These grants are meant to enhance law enforcement infrastructures and community policing efforts in both local communities (Universal Hiring Program) and local schools (COPS in Schools).

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There are an estimated 2,000 respondents for UHP, and 1,500 for the CIS program. *The amount of estimated time required for the average respondent to respond is:* 9 hours per response.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are 18,000 burden hours annually for UHP and 13,500 for CIS, for a total of 31,500 hours.

If additional information is required contact: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street NW., Washington, DC 20530.

Dated: May 8, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–11988 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF JUSTICE

Department of Justice Information Quality Guidelines for Information Disseminated to the Public

AGENCY: Justice Management Division.

ACTION: Notice of availability of draft guidelines.

SUMMARY: The Department of Justice, in accordance with Section 515 of the Treasury and General Government Appropriations Act for FY 2001 (Pub. L. 106–554) and the Office of Management and Budget Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies published in the **Federal Register** on September 28, 2001 (66 FR 49718) and on January 3, 2002 (67 FR 369) (and reprinted in their entirety on February 22, 2002, 67 FR 8452), has posted its draft Information Quality Guidelines for Information Disseminated to the Public on the DOJ Web site, *www.usdoj.gov/02organizations/infoqualityguidance.htm*. These guidelines explain how DOJ will ensure and maximize the quality, objectivity, utility, and integrity of information disseminated by DOJ. The draft guidance also details the administrative mechanisms that will allow affected persons to seek and obtain appropriate correction of information maintained and disseminated by DOJ that does not comply with agency or OMB guidelines.

DATES: Comments on the draft guidance should be received by June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Nelson, (202) 307–1825.

Dated: May 8, 2002.

Robert F. Diegelman,

Acting Assistant Attorney General for Administration.

Vance Hitch,

Chief Information Officer.

[FR Doc. 02–11972 Filed 5–13–02; 8:45 am]

BILLING CODE 4410–AR–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request

May 6, 2002.

The Department of Labor (DOL) has submitted the following public information collection requests (ICRs) to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). A copy of each individual ICR, with applicable supporting documentation, may be obtained by calling the Department of Labor. To obtain documentation contact Marlene Howze at (202) 693–4158 or e-mail *Howze-Marlene@dol.gov*.

Comments should be sent to Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for BLS, Office of Management and Budget, Room 10235, Washington, DC 20503 (202) 395–7316, within 30 days from the date of this publication in the **Federal Register**.

The OMB is particularly interested in comments which:

* Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

* Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

* Enhance the quality, utility, and clarity of the information to be collected; and minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Type of Review: Revision of a currently approved collection

Agency: Bureau of Labor Statistics (BLS)

Title: Consumer Price Index Commodities and Services Survey

OMB Number: 1220–0039

Affected Public: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government

Estimated Time Per Response and Total Burden Hours:

Form	Total respondents	Frequency	Total annual responses	Minutes per response (average)	Estiamted total burden (hours)
BLS 3400	14,178	Annual	14,178	4	993
BLS 3400A,2	19,105	Annual	19,105	29.76	9,486
BLS 3400B	19,105	Annual	19,105	25.50	8,124
BLS 3400C	1,375	Annual	1,375	6	138
BLS 3401	39,415	Monthly/Bimonthly	343,699	13.8	79,051
Totals	[1] 58,520		[2] 362,804	[3] 15	97,792

[1] The total number of respondents, 58,520, does not reflect the sum of the number of respondents for the five listed forms because the first form only applies to all of our activities that involve initiation, while the second and third forms involves all initiations plus item rotation. The fourth form is only used in a subset of outlets being initiated. The fifth form is used only for the regular pricing of sampled outlets. Thus the total individual respondents impacted by the five forms are 30,415 plus 19,105 = 58,520 respondents.

[2] The annual responses does not reflect the sum of all of the listed responses because, as noted in footnote 1, some forms are used at the same respondent when they are initiated or are part of item rotation. Thus the total annual responses associated with the five forms are 343,699 + 19,105 = 362,804.

[3] The sum of minutes represents a weighted average of the minutes per respondent, using annual responses as a weight.

Total Annualized Capital/Startup Costs: **$0**

Total Annual Costs (operating/maintaining systems or purchasing services): **$0**

Description: Section 2 of Title 29, Chapter 1, Subchapter 1, United States Code Annotated directs the Bureau of Labor Statistics (BLS), under the direction of the Secretary of Labor, to collect, collate, and report full and complete statistics of the conditions of labor and the products and distribution of the products of the same. The Consumer Price Index (CPI) is the only

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index compiled by the U.S. Government that is designed to measure changes in the purchasing power of the urban consumer's dollar. The collection of prices directly from retail establishments is essential for the timely and accurate calculation of the commodities and services component of the CPI. Respondents include retail establishments throughout the country. If the information were not collected, the consequences to both the Federal and private sectors would be far-reaching and would have serious repercussions on Federal government policy and institutions.

Ira L. Mills,
DOL Clearance Officer.
[FR Doc. 02–11983 Filed 5–13–02; 8:45 am]
BILLING CODE 4510–24–M

DEPARTMENT OF LABOR

Employment and Training Administration

Proposed Collection; Comment Request

ACTION: Notice.

SUMMARY: The Department of Labor, as part of its continuing effort to reduce paperwork and respondent burden, conducts a preclearance consultation program to provide the general public and Federal agencies with an opportunity to comment on proposed and/or continuing collections of information in accordance with the Paperwork Reduction Act of 1995 (PRA95) (44 U.S.C. 3506(c)(2)(A)). This program helps to ensure that requested data can be provided in the desired format, reporting burden (time and financial resources) is minimized, collection instruments are clearly understood, and the impact of collection requirements on respondents can be properly assessed. Currently, the Employment and Training Administration (ETA) is soliciting comments concerning the proposed extension of the TPS program. Note that the name of this program was changed from Revenue Quality Control to the Tax Performance System (TPS). A copy of the proposed information collection request can be obtained by contacting the employee listed below in the contact section of this notice.

DATES: Written comments must be submitted to the office listed in the address below on or before July 15, 2002.

ADDRESSES: Rett Hensley, Office of Workforce Security, Employment and Training Administration, Department of Labor, Room S 4522, 200 Constitution Ave., NW., Washington, DC 20210; 202 693–3203 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

Since 1987, all states except the Virgin Islands have been required by regulation at 20 CFR part 602 to operate a program to assess their UI tax and benefit programs. TPS developed new measures for tax performance to replace those previously gathered under the Quality Appraisal (QA) system. TPS is designed to assess the major internal UI tax functions by utilizing several methodologies: Computed Measures which are indicators of timeliness and completeness based on data automatically generated via the existing ETA 581 (Office of Management and Budget (OMB) approval number 1205–0178, expiring 8/2002) automated report; and Program Reviews which assess accuracy through a two-fold examination: (a) "Systems Reviews" examine tax systems for the existence of internal controls; (b) small samples of those systems' transactions are then examined to verify the effectiveness of controls.

II. Review Focus

The Department of Labor is particularly interested in comments which:

- Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;
- Enhance the quality, utility, and clarity of the information to be collected; and
- Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

III. Current Actions

This is a request for OMB approval under the Paperwork Reduction Act of 1995 (44 U.S.C. 3506(c)(2)(A)) for continuing an existing collection of information previously approved and assigned OMB Control No. 1205–0332.

Agency: Employment and Training Administration, Department of Labor.
Title: Tax Performance System.
OMB Number: 1205–0332.
Affected Public: State government.
Total Respondents: 52.
Frequency: Annually.
Total Responses: 52.
Average time per response: 1750 hours.
Estimated Total Burden Hours: 91,000.

Comments submitted in response to this notice will be summarized and/or included in the request for OMB approval of the extension of the information collection request; they will also become a matter of public record.

Dated: May 8, 2002.

Grace A. Kilbane,
Administrator, Office of Workforce Security.
[FR Doc. 02–11982 Filed 5–13–02; 8:45 am]
BILLING CODE 4510–30–P

NATIONAL CREDIT UNION ADMINISTRATION

Sunshine Act Meeting

TIME AND DATE: 10 a.m., Thursday, May 16, 2002.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, VA 22314–3428.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Requests from four (4) Federal Credit Unions to Convert to Community Charters.
2. *Proposed Rule:* Amendments to Part 702 of NCUA's Rules and Regulations, Prompt Corrective Action.
3. *Final Interpretive Ruling and Policy Statement:* Allowance For Loan and Lease Losses Methodologies and Documentation for Federally Insured Credit Unions.

FOR FURTHER INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone: 703–518–6304.

Becky Baker,
Secretary of the Board.
[FR Doc. 02–12072 Filed 5–9–02; 4:28 pm]
BILLING CODE 7535–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Leadership Initiatives Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Leadership Initiatives Advisory Panel, AccessAbility Section, will be held by teleconference from 1 p.m.–2:30 p.m. on Tuesday, June 4, 2002 in Room 528 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendations on financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency. In accordance with the determination of the Chairman of May 2, 2002, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Kathy Plowitz-Worden, Panel Coordinator, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5691.

Dated: May 8, 2002.

Kathy Plowitz-Worden,
Panel Coordinator, Panel Operations, National Endowment for the Arts.
[FR Doc. 02–11941 Filed 5–13–02; 8:45 am]
BILLING CODE 7537–01–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairman of the National Endowment for the Arts as to Certain Advisory Committees: Public Disclosure of Information and Activities

The National Endowment for the Arts utilizes advice and recommendations of advisory committees in carrying out many of its functions and activities.

The Federal Advisory Committee Act, as amended (Public Law 92–463), governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise and assist the Federal Government. Section 10 of the act specifies that department and agency heads shall make adequate provisions for participation by the public in the activities of advisory committees, except to the extent a determination is made in writing by the department or agency head that a portion of an advisory committee meeting may be closed to the public in accordance with subsection (c) of section 552b of title 5, United States Code.

It is the policy of the National Endowment for the Arts to make the fullest possible disclosure of records to the public, limited only by obligations of confidentiality and administrative necessity. Consistent with this policy, meetings of the following Endowment advisory committees will be open to the public except for portions dealing with the review, discussion, evaluation, and/or ranking of grant applications: Combined Arts, Fellowships, Leadership Initiatives, Partnership, Special Projects, and the Federal Advisory Committee on International Exhibitions.

The portions of the meetings involving the review, discussion, evaluation and ranking of grant applications may be closed to the public for the following reasons:

Information and data are furnished to the Endowment by grant applicants with the expectation that such information will be treated on a confidential basis and not necessarily disclosed to the public until such time as a final funding decision has been rendered. This information may include such matters as details relating to the type of design or work to be performed, adequacy of the applicant's facilities, competence of the applicant's staff, proposed budget, personal biographical data, and other material which would not otherwise be disclosed. If the process were not to continue on a confidential basis, grant applicants would not supply sufficiently detailed information so essential for complete and effective review of their proposals.

Further, public discussion of the merits of proposals not recommended for funding could subject unsuccessful grant applicants to negative speculation about the quality of the applicants' work. Additionally, premature public disclosure might adversely influence or prejudice the decisions of other funding sources in connection with their review of similar proposals.

Endowment consultant-experts are chosen from among persons recognized for their expertise in the arts. These experts review and evaluate applications for financial assistance submitted to the Endowment by their peers and colleagues in the respective cultural fields. As a result, public participation in panel meetings involving application review, during which negative criticisms of an applicant's work are expressed, undoubtedly would affect a consultant-expert's willingness to express his or her full and frank opinion regarding the merits of the proposed project or activity. Accordingly, the Endowment's capacity effectively to carry out its statutory mandate and maintain the highest possible standards of quality with respect to funding recommendations would be seriously impaired by its inability to conduct the application review process in a confidential atmosphere conducive to the candid and honest exchange of ideas. Thus, such public participation would be likely to significantly frustrate the implementation of proposed agency actions, i.e., proposed funding decisions.

Consequently, in the interest of meeting our obligations of confidentiality in reference to matters submitted as part of grant applications, and in order to encourage and ensure, for the benefit of the Government's review and evaluation process, candid and uninhibited expression of views concerning the merits of grant applications and contract proposals:

It is hereby determined in accordance with the provisions of section 10(d) of the Act that the disclosure of information regarding the review, discussion, and evaluation of grant applications and contract proposals, as outlined herein is likely to disclose:

(1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential;

(2) Information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; and

(3) Information the premature disclosure of which would be likely to significantly frustrate implementation of proposed agency action.

Therefore, in light of the above, I have determined that the above referenced meetings or portions thereof, devoted to review, discussion, evaluation, and/or ranking of grant applications, and contract proposals may be closed to the public in accordance with subsection (c)(4)(6), and 9(B) of section 552b of title 5, United States Code.

The staff of each committee shall prepare a summary of any meeting or portion not open to the public within three (3) business days following the conclusion of the meeting of the National Council on the Arts considering applications recommended by such committees. The summaries shall be consistent with the considerations that justified the closing of the meetings.

All other portions of the meetings of these advisory committees shall be open to the public unless the Chairperson of the National Endowment for the Arts or a designee determines otherwise in accordance with section 10(d) of the Act.

The Panel Coordinator shall be responsible for publication in the **Federal Register** or, as appropriate, in

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local media, of a notice of all advisory committee meetings. Such notice shall be published in advance of the meetings and contain:

(1) Name of the committee and its purposes:

(2) Date and time of the meeting, and, if the meeting is open to the public, its location and agenda; and

(3) A statement that the meeting is open to the public, or, if the meeting or any portion thereof is not to be open to the public, a statement to that effect.

The Panel Coordinator is designated as the person from whom rosters of lists of committee members may be obtained and from whom minutes of open meetings or open portions thereof may be requested.

Guidelines

Any interested person may attend meetings of advisory committees that are open to the public.

Members of the public attending a meeting will be permitted to participate in the committee's discussion at the discretion of the chairperson of the committee, if the chairperson is a full-time Federal employee; if the chairperson is not a full-time Federal employee then public participation will be permitted at the chairperson's discretion with the approval of the full-time Federal employee in attendance at the meeting in compliance with the order.

Dated: May 2, 2002.

Eileen B. Mason,

Acting Chairman, National Endowment for the Arts.

[FR Doc. 02–11940 Filed 5–13–02; 8:45 am]

BILLING CODE 7537–01–P

NATIONAL FOUNDATION FOR THE ARTS AND THE HUMANITIES

National Endowment for the Arts; Determination of the Chairperson of the National Endowment for the Arts Regarding Potential Closure of Portions of Meetings of the National Council on the Arts

Section 6(f) of the National Foundation on the Arts and the Humanities Act of 1965, as amended (20 U.S.C. 951 *et seq.*) authorizes the National Council on the Arts to review applications for assistance to the National Endowment for the Arts and make recommendations to the Chairperson.

The Federal Advisory Committee Act (FACA), as amended (Pubic Law 92–463) governs the formation, use, conduct, management, and accessibility to the public of committees formed to advise the Federal Government. Section 10 of that Act directs meetings of advisory committees to be open to the public, except where the head of the agency to which the advisory committee reports determines in writing that a portion of a meeting may be closed to the public consistent with subsection(c) of section 552b of Title 5, United States Code (the Government in the Sunshine Act.)

It is the policy of the National Endowment for the Arts that meetings of the National Council on the Arts be conducted in open session, including those parts during which applications are reviewed. However, in recognition that the Endowment receives as part of some grant applications non-public proprietary or financial information, I have determined to reserve the right to close limited portions of Council application reviews at which such protected information is specifically discussed. The purpose of closure is to protect the confidentiality of protected information. Closure for this purpose is authorized by subsection (c)(4) of section 552b of Title 5 United States code.

Additionally, at one of its meetings, the Council will consider prospective nominees for the National Medal of Arts award in order to advise the President of the United States in his final selection of National Medal of Arts recipients. During this session information of a personal nature may be discussed. Disclosure of this information about individuals who are unaware that they are under consideration for the award would constitute a clearly unwarranted invasion of personal privacy. Moreover, the premature disclosure of this information would significantly frustrate the nomination and selection of National Medal of Arts recipients.

Therefore, in light of the above, I have determined that the above referenced portion of the July 2002 Council meeting, devoted to consideration of prospective nominees for the National Medal of Arts award, may be closed to the public. Closure for these purposes is authorized by subsections (c)(6) and (9)(B) of section 552b of Title 5, United States Code. A record shall be maintained of any closed portion of the Council meeting. Further, in accordance with the FACA, a notice of any intent to close any portion of the Council meeting will be published in the **Federal Register**.

Dated: May 2, 2002.

Eileen B. Mason,

Acting Chairman, National Endowment for the Arts.

[FR Doc. 02–11939 Filed 5–13–02; 8:45 am]

BILLING CODE 7537–01–P

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–285]

Omaha Public Power District; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power District (OPPD/the licensee), for operation of the Fort Calhoun Station, Unit 1 (FCS) located in Washington County, Nebraska.

The proposed amendment will revise the maximum allowable value of the reactor protective system (RPS) variable high power trip (VHPT) setpoint from 107.0% to 109.0%. Specifically, Technical Specification (TS) Table 1–1, "RPS Limiting Safety System Settings," in the Trip Setpoints column for Trip Number 1 [High Power Level (A) 4-Pump Operation] will be revised from 107.0% to 109.0%. In addition, TS Section 1.3(1), "Basis," describing the high power trip initiation, will be revised from 107.0% to 109.0%.

On March 27, 2002, OPPD requested an amendment to change the high power trip setpoint. OPPD informed the NRC that the revised setpoint for the high power trip needed to be approved prior to exceeding 95% rated power to avoid a potential plant trip due to a hot leg flow streaming anomaly. OPPD requested that the amendment be approved by May 31, 2002, to provide them sufficient time to implement the change. FCS began its Spring refueling outage on May 3, 2002. The outage is scheduled to be completed and power operation is scheduled to resume on May 31, 2002. FCS is currently scheduled to exceed 95% power on June 5, 2002. On May 2, 2002, OPPD was notified by the NRC that the NRC had missed the deadline for publication of the no significant hazards consideration notice in the April 30, 2002, **Federal Register**. Publication in the **Federal Register** was needed by April 30, 2002, to allow the NRC to issue the amendment by May 31, 2002. The NRC informed OPPD that the **Federal Register** Notice would be issued on May 14, 2002. Therefore, the comment period will not end until June 13, 2002, and the amendment cannot be issued until June 14, 2002. After reviewing the options available for issuing the amendment by May 31, 2002, OPPD concluded that the amendment request needed to be processed on an exigent basis.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not result in a high power trip setpoint that will cause the analysis value of 112.0% to be exceeded. There is no change in the analysis value of 112.0% for the high power trip setpoint used in the evaluation of the transients and accidents. All of the evaluated transients and accidents currently show acceptable results and will not be affected by this change. Changing the high power trip setpoint will not affect the probability of an accident, since that circuit is not a transient or accident initiator. The change to the setpoint will not change the failure possibilities for this circuit. The effect of the proposed change is the reduction in the probability of an undesired safety system challenge initiated by an erroneous high power trip during a flow streaming event.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the RPS high power trip setpoint does not provide the possibility of the creation of a new or different type of accident. Changing the setpoint does not change the method of operation of the high power trip circuit or its expected response once the setpoint is reached. The trip will occur within previously analyzed limits.

The proposed change does not involve a significant reduction in a margin of safety.

The proposed setpoint change does not constitute a significant reduction in the margin of safety due to the fact that the transient and accident analyses contained in the Updated Safety Analysis Report have been evaluated using an analysis trip setpoint of 112.0% with the event initiated from the appropriate power level and have been shown to produce acceptable results.

The acceptance criteria used in the analysis have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 14 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 14-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 14-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D59, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Documents may be examined, and/or copied for a fee, at the NRC's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By June 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, and available electronically on the Internet at the NRC Web site *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended

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petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemakings and Adjudications Staff, or may be delivered to the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated March 27, 2002, as supplemented by letter dated May 9, 2002, which is available for public inspection at the Commission's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible electronically from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC web site *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who encounter problems in accessing the documents located in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 9th day of May 2002.

For the Nuclear Regulatory Commission.

Alan Wang,

Project Manager, Section 2, Project Directorate IV, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11990 Filed 5–13–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Sunshine Act Meeting.

AGENCY Nuclear Regulatory Commission.

DATES: Weeks of May 13, 20, 27, June 3, 10, 17, 2002.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of May 13, 2002

Thursday, May 16, 2002

9:25 a.m.
Affirmation Session (Public Meeting) (if needed)

9:30 a.m.
Meeting with World Association of Nuclear Operators (WANO) (Public Meeting)
This meeting will be webcast live at the Web address *www.nrc.gov*.

11 a.m.
Discussion of Security Issues (Closed—Ex.1)

2 p.m.
Discussion of Intragovernmental Issues (Closed—Ex. 9)

Week of May 20, 2002—Tentative

There are no meetings scheduled for the Week of May 20, 2002.

Week of May 27, 2002—Tentative

Tuesday, May 28, 2002

9:30 a.m.
Discussion of Security Issues (Closed—Ex. 1)

Wednesday, May 29, 2002

9:25 a.m.
Affirmative Session (Public Meeting), (if needed)

9:30 a.m.
Briefing on the Status of New Reactor Licensing Activities (Public Meeting) (Contact: Joseph Williams, 301–415–1470)
This meeting will be webcast live at the Web address *www.nrc.gov*.

Week of June 3, 2002—Tentative

Thursday, June 6, 2002

2 p.m.
Briefing on Strategic Workforce Planning and Human Capital Initiatives (Closed—Ex. 2)

Week of June 10, 2002—Tentative

There are no meetings scheduled for the Week of June 10, 2002.

Week of June 17, 2002—Tentative

There are no meetings scheduled for the Week of June 17, 2002.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 415—1292. Contact person for more information: David Louis Gamberoni (301) 415–1651.

ADDITIONAL INFORMATION: By a vote of 5–0 on May 6 and 7, the Commission determined pursuant to U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that "Discussion of Security Issues (Closed—Ex.1)" be held on May 16, and on less than one week's notice to the public.

The NRC Commission Meeting Schedule can be found on the Internet at: *www.nrc.gov/what-we-do/policy-making/schedule.html*.

This notice is distributed by mail to several hundred subscribers; if you no longer wish to receive it, or would like to be added to the distribution, please contact the Office of the Secretary, Washington, DC 20555 (301–415–1969). In addition, distribution of this meeting notice over the Internet system is available. If you are interested in receiving this Commission meeting schedule electronically, please send an electronic message to *dkw@nrc.gov*.

Dated: May 9, 2002.

David Louis Gamberoni,

Technical Coordinotor, Office of the Secretary.

[FR Doc. 02–12118 Filed 5–10–02; 12:09 pm]

BILLING CODE 7590–01–M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice; Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from April 19, 2002 through May 2, 2002. The last biweekly notice was published on April 30, 2002 (67 FR 21283).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room 6D22, Two White Flint North, 11545 Rockville Pike, Rockville, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC's Public Document Room (PDR), located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By June 13, 2002, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714, which is available at the NRC's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/doc-collections/cfr/*. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first

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prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Attention: Rulemaking and Adjudications Staff, or may be delivered to the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland, by the above date. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's PDR, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC PDR Reference staff at 1–800–397–4209, 304–415–4737 or by e-mail to *pdr@nrc.gov*.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Legal Department (PB05E), Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–369 and 50–370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lisa F. Vaughn, Duke Energy Corporation, 422 South Church Street, Charlotte, North Carolina 28201–1006.

NRC Section Chief: John A. Nakoski.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of amendment request: April 16, 2002.

Description of amendment request: The proposed amendments would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is

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less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 16, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Anne W. Cottington, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20005.

NRC Section Chief: John A. Nakoski.

Entergy Nuclear Operations, Docket No. 50–247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: March 28, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) Section 3.7, "Auxiliary Electrical Systems," and Section 4.6, "Emergency Power System Periodic Tests," to relocate the requirements for the gas turbine generators to the Updated Final Safety Analysis Report and the plans, programs and procedures that document and control the credited functions of these systems, structures, and components. The proposed amendment would also delete TS 3.7.B.2.b to remove the option that allows power operation for up to 72 hours with a gas turbine as the only available 13.8 kilovolt power source.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

The Gas Turbine Generators only provide a Licensing Basis Event mitigating function. There is no previously evaluated accident or event that is initiated by the Gas Turbine Generators or the associated fuel storage system. The ability of the Gas Turbine Generators to provide power, as a backup to the Emergency Diesel Generators, is not affected by the location of the description of their licensing basis.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

There is no physical change to the plant. The currently existing gas turbine generators and associated fuel oil storage facilities will still be used. The only change is to relocate the limiting conditions for operations, surveillance requirements and associated bases from the Technical Specifications to other licensee controlled documents.

Therefore, the proposed change does not create a new accident initiator or precursor, or create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The deletion of the limiting conditions for operation and surveillance requirements for the gas turbine generators from the Technical Specifications does not alter the method of operation, the design requirements or the current licensing basis that the gas turbine generators be able to power all the loads required by 10 CFR Part 50, Appendix R to place the plant into a safe shutdown condition following a fire and maintain safe shutdown for three days. It also does not remove the licensing basis requirement of 10 CFR Part 50, Section 50.63, that the unit must have the capacity to withstand and recover from a station blackout. The current licensing basis will continue to credit the gas turbine generators as the alternate ac (AAC) power source in the event of a station blackout unless modified under the control of 10 CFR Part 50, Section 50.59.

Therefore, operation of the facility in accordance with the proposed amendment would not involve a significant reduction in [a] margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: April 11, 2002.

Description of amendment request: The proposed amendment would revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation (LCO), following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The U.S. Nuclear Regulatory Commission (NRC) staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 11, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in [a] Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in [a] margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on [a] margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. John Fulton, Assistant General Counsel, Entergy Nuclear Operations, Inc., 440 Hamilton Avenue, White Plains, NY 10601.

NRC Section Chief: Richard J. Laufer.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos.1 and 2, Will County, Illinois

Date of amendment request: March 8, 2002.

Description of amendment request: The proposed amendment is consistent with Technical Specifications Task Force (TSTF) Standard Technical Specification (TS) Change Traveler TSTF–360, Revision 1 and TSTF–204, Revision 3 and proposes to revise TS 3.8.4, "DC Sources—Operating," TS 3.8.5, "DC Sources—Shutdown," TS 3.8.6, "Battery Cell Parameters," and TS 3.8.8, "Inverters—Shutdown." The changes associated with TSTF–360, Revision 1, add new Required Actions and extend the Completion Times in TS 3.8.4 and TS 3.8.5 and also include the relocation to a licensee-controlled program of a number of Surveillance Requirements (SRs) in TS 3.8.4 and TS 3.8.6. The changes associated with TSTF–204, Revision 3, revise TS 3.8.5 and TS 3.8.8 to change requirements for DC electrical power subsystem and inverters.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards

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consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes revise TS 3.8.4, "DC Sources—Operating," TS 3.8.5, "DC Sources—Shutdown," TS 3.8.6, "Battery Cell Parameters," and TS 3.8.8, "Inverters—Shutdown."

TS 3.8.4, TS 3.8.5, and TS 3.8.6 have been revised to 1) add new Required Actions and extend the Completion Time for an inoperable battery charger, 2) provide alternate battery charger testing criteria for TS 3.8.4 and TS 3.8.5, 3) relocate to a licensee-controlled program a number of Surveillance Requirements (SRs) in TS 3.8.4 that perform preventive maintenance on the safety-related batteries, 4) relocate TS Table 3.8.6–1, "Battery Cell Parameters Requirements," to a licensee-controlled program, 5) add to TS 3.8.6 specific Required Actions associated with out-of-limits conditions for battery cell float voltage, float current, electrolyte level, and electrolyte temperature, and 6) add a new administrative TS program for the maintenance and monitoring of station batteries based on the recommendations of Institute of Electrical and Electronics Engineers (IEEE) Standard 450–1995, "IEEE Recommended Practice for Maintenance, Testing, and Replacement of Vented Lead-Acid Batteries for Stationary Applications." In addition, TS 3.8.5 and TS 3.8.8 have been revised to require only one DC electrical power subsystem and two inverters, respectively, during shutdown conditions.

The DC Sources, Battery Cell Parameters, and Inverters are not initiators of any accident sequence analyzed in the Byron/Braidwood Stations' Updated Final Safety Analysis Report (UFSAR). As such, the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The initial conditions of Design Basis Accident (DBA) and transient analyses in the Byron/Braidwood Stations' UFSAR assume Engineered Safety Feature (ESF) systems are operable. The AC and DC electrical power distribution systems are designed to provide sufficient capacity, capability, redundancy, and reliability to ensure the availability of necessary power to ESF systems so that the fuel, Reactor Coolant System, and containment design limits are not exceeded. The operability of the AC and DC electrical power distribution systems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. Therefore, the proposed changes do not involve a significant increase in the consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes do not involve any physical alteration of the units. No new equipment is being introduced, and installed equipment is not being operated in a new or different manner. There are no setpoints at which protective or mitigative actions are initiated that are affected by the proposed changes. The operability of the AC and DC electrical power distribution systems in accordance with the proposed TS is consistent with the initial assumptions of the accident analyses and is based upon meeting the design basis of the plant. These proposed changes will not alter the manner in which equipment operation is initiated, nor will the function demands on credited equipment be changed. No alteration in the procedures, which ensure the unit remains within analyzed limits, is proposed, and no change is being made to procedures relied upon to respond to an off-normal event. As such, no new failure modes are being introduced. The proposed changes do not alter assumptions made in the safety analyses.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed changes will not adversely affect operation of plant equipment. These changes will not result in a change to the setpoints at which protective actions are initiated. Sufficient DC capacity to support operation of mitigation equipment is ensured. The changes associated with the new administrative TS program will ensure that the station batteries are maintained in a highly reliable manner. The equipment fed by the AC and DC electrical power distribution systems will continue to provide adequate power to safety-related loads in accordance with analyses assumptions.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Exelon Generation Company, LLC, and PSEG Nuclear LLC, Dockets Nos. 50–277 and 50–278, Peach Bottom Atomic Power Station Units 2 and 3, York County, Pennsylvania

Date of application for amendments: March 19, 2002.

Description of amendment request: The proposed amendment would allow plant operation to continue if the temperature of the Normal Heat Sink (NHS) exceeds the Technical Specification (TS) limit of 90 °F provided the water temperature, averaged over the previous 24-hour period, is at or below 90 °F. The proposed operational flexibility would only apply if the NHS temperature is between 90 °F and 92 °F. The current action time requirements would still apply if the NHS temperature exceeds 92 °F, or if the 24-hour averaged value exceeds 90 °F. The current TS Limiting Condition for Operation (LCO) limit of 90 °F would not be changed. In addition, an administrative change would remove references to a temporary TS change which had expired on May 31, 2000. The Bases for the associated TS would also be modified.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24 hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. This increase in NHS temperature will not affect the normal operation of the plant to the extent that it would make any accident more likely to occur. In addition, there exists adequate margin in the safety systems and safety-related heat exchangers to assure the design safety functions are met at the higher temperature.

The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid.

Thus, the proposed changes will have no adverse effect on plant operation, or the availability or operation of any accident mitigation equipment. The plant response to the design-basis accidents will not change. In addition, the proposed changes can not cause an accident. Therefore, there will be no increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24-hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. This will not alter the plant configuration (no new or different type of equipment will be installed) or require any new or unusual operator actions. The proposed changes will not alter the way any structure, system, or component functions and will not significantly alter the manner in which the plant is operated. There will be no adverse effect on plant operation or accident mitigation equipment. The proposed changes do not introduce any new failure modes. Also, the response of the plant and the operators following a design-basis accident is unaffected by the changes. In addition, the NHS is not an accident initiator and the design-basis heat removal capability of the affected safety-related components is maintained at the increased NHS temperature limit. The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any previously analyzed.

3. Will operation of the facility in accordance with this proposed change involve a significant reduction in a margin of safety?

The proposed changes will allow plant operation to continue if the temperature of the NHS exceeds the TS limit of 90 °F provided that: (1) The water temperature, averaged over the previous 24-hour period, is at or below 90 °F, and (2) the NHS temperature is less than or equal to 92 °F. The licensee performed an evaluation of the safety systems to ensure their safety functions can be met with a NHS water temperature of 92 °F. The higher NHS temperature represents a slight reduction in the margins of safety in terms of these systems' abilities to remove accident heat loads. As part of its evaluation, however, the licensee verified that these safety systems will still be able to perform their design-basis functions.

The proposed administrative change to remove an expired, temporary license amendment removes information which is no longer valid.

The proposed changes will have no adverse effect on plant operation or equipment important to safety. The plant response to the design-basis accidents will not change and the accident mitigation equipment will continue to function as assumed in the design-basis accident analysis. Therefore, there will be no significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for Licensee: Mr. Edward Cullen, Vice President and General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: James W. Clifford.

Exelon Generation Company, LLC, Docket Nos. 50–254, Quad Cities Nuclear Power Station, Unit 1, Rock Island County, Illinois

Date of amendment request: April 8, 2002.

Description of amendment request: The amendment would revise the safety limit minimum critical power ratio for two-loop and single-loop operation.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The probability of an evaluated accident is derived from the probabilities of the individual precursors to that accident. The consequences of an evaluated accident are determined by the operability of plant systems designed to mitigate those consequences. Limits have been established consistent with NRC approved methods to ensure that fuel performance during normal, transient, and accident conditions is acceptable. The proposed change conservatively establishes the safety limit for the minimum critical power ratio (SLMCPR) for Quad Cities Nuclear Power Station (QCNPS), Unit 1 such that the fuel is protected during normal operation and during any plant transients or anticipated operational occurrences.

Changing the SLMCPR does not increase the probability of an evaluated accident. The change does not require any physical plant modifications, physically affect any plant components, or entail changes in plant operation. Therefore, no individual precursors of an accident are affected.

The proposed change revised the SLMCPR to protect the fuel during normal operation as well as during any transients or anticipated operational occurrences. Operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9 percent of the fuel rods do not experience transition boiling during normal operation and anticipated operational occurrences) is met. Since the operability of plant systems designed to mitigate any consequences of accidents has not changed, the consequences of an accident previously evaluated are not expected to increase.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Creation of the possibility of a new or different kind of accident would require the creation of one or more new precursors of that accident. New accident precursors may be created by modifications of the plant configuration, including changes in allowable modes of operation. The proposed change does not involve any modifications of the plant configuration or allowable modes of operation. The proposed change to the SLMCPR assures that safety criteria are maintained for QCNPS, Unit 1.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

Does the proposed change involve a significant reduction in a margin of safety?

The value of the proposed SLMCPR provides a margin of safety by ensuring that no more than 0.1 percent of the rods are expected to be in boiling transition if the MCPR limit is not violated. The proposed change will ensure the appropriate level of fuel protection. Additionally, operational limits will be established based on the proposed SLMCPR to ensure that the SLMCPR is not violated during all modes of operation. This will ensure that the fuel design safety criteria (i.e., that at least 99.9 percent of the fuel rods do not experience transition boiling during normal operation as well as anticipated operational occurrences) are met.

Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the requested amendments involve no significant hazards consideration.

Attorney for licensee: Mr. Edward J. Cullen, Vice President, General Counsel, Exelon Generation Company, LLC, 300 Exelon Way, Kennett Square, PA 19348.

NRC Section Chief: Anthony J. Mendiola.

Florida Power Corporation, et al., Docket No. 50–302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of amendment request: April 18, 2002.

Description of amendment request: The proposed amendment would revise

Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period would be extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement would be added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

The NRC staff issued a notice of opportunity for comment in the **Federal Register** on June 14, 2001 (66 FR 32400), on possible amendments concerning missed surveillances, including a model safety evaluation and model no significant hazards consideration (NSHC) determination, using the consolidated line item improvement process. The NRC staff subsequently issued a notice of availability of the models for referencing in license amendment applications in the **Federal Register** on September 28, 2001 (66 FR 49714). The licensee affirmed the applicability of the following NSHC determination in its application dated April 18, 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), an analysis of the issue of no significant hazards consideration is presented below:

Criterion 1—The Proposed Change Does Not Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed change relaxes the time allowed to perform a missed surveillance. The time between surveillances is not an initiator of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment being tested is still required to be operable and capable of performing the accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected. Any reduction in confidence that a standby system might fail to perform its safety function due to a missed surveillance is small and would not, in the absence of other unrelated failures, lead to an increase in consequences beyond those estimated by existing analyses. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Criterion 2—The Proposed Change Does Not Create the Possibility of a New or Different Kind of Accident From Any Previously Evaluated

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing normal plant operation. A missed surveillance will not, in and of itself, introduce new failure modes or effects and any increased chance that a standby system might fail to perform its safety function due to a missed surveillance would not, in the absence of other unrelated failures, lead to an accident beyond those previously evaluated. The addition of a requirement to assess and manage the risk introduced by the missed surveillance will further minimize possible concerns. Thus, this change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Criterion 3—The Proposed Change Does Not Involve a Significant Reduction in the Margin of Safety

The extended time allowed to perform a missed surveillance does not result in a significant reduction in the margin of safety. As supported by the historical data, the likely outcome of any surveillance is verification that the LCO [Limiting Condition for Operation] is met. Failure to perform a surveillance within the prescribed frequency does not cause equipment to become inoperable. The only effect of the additional time allowed to perform a missed surveillance on the margin of safety is the extension of the time until inoperable equipment is discovered to be inoperable by the missed surveillance. However, given the rare occurrence of inoperable equipment, and the rare occurrence of a missed surveillance, a missed surveillance on inoperable equipment would be very unlikely. This must be balanced against the real risk of manipulating the plant equipment or condition to perform the missed surveillance. In addition, parallel trains and alternate equipment are typically available to perform the safety function of the equipment not tested. Thus, there is confidence that the equipment can perform its assumed safety function.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based upon the reasoning presented above and the previous discussion of the amendment request, the requested change does not involve a significant hazards consideration.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: R. Alexander Glenn, Associate General Counsel (MAC–BT15A), Florida Power Corporation, P.O. Box 14042, St. Petersburg, Florida 33733–4042.

NRC Acting Section Chief: Thomas Koshy.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment requests: April 11, 2002.

Description of amendment requests: The proposed amendments would revise the Surveillance Requirements for containment leakage rate testing in Technical Specification (TS) 4.6.1.2 to allow a one-time extension of the interval between integrated leakage rate tests (ILRTs) from 10 to 15 years.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated?

Response: No.

Probability of Occurrence of an Accident Previously Evaluated—

The proposed change to extend the ILRT interval from 10 to 15 years does not affect any accident initiators or precursors. The containment liner function is purely mitigative. There is no design basis accident that is initiated by a failure of the containment leakage mitigation function. The extension of the ILRT will not create any adverse interactions with other systems that could result in initiation of a design basis accident. Therefore, the probability of occurrence of an accident previously evaluated is not significantly increased.

Consequences of an Accident Previously Evaluated—

The potential consequences of the proposed change have been quantified by analyzing the changes in risk that would result from extending the ILRT interval from 10 to 15 years. The increase in risk in terms of person rem per year within 50 miles resulting from design basis accidents was estimated to be of a magnitude that NUREG–1493 indicates is imperceptible. I&M has also analyzed the increase in risk in terms of the frequency of large early releases from accidents. The increase in the large early release frequency resulting from the proposed extension was determined to be within the guidelines published in Regulatory Guide 1.174. Additionally, the proposed change maintains defense in depth by preserving a reasonable balance among prevention of core damage, prevention of containment failure, and consequence mitigation. I&M has determined that the increase in conditional containment failure probability from reducing the ILRT frequency from 1 test per 10 years to 1 test per 15 years would be small. Continued containment integrity is also assured by the history of successful ILRTs, and the established programs for local leakage rate testing and inservice inspections which are unaffected by the proposed change. Therefore, the consequences of an accident previously analyzed are not significantly increased.

In summary, the probability of occurrence and the consequences of an accident previously evaluated are not significantly increased.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change to extend the ILRT interval from 10 to 15 years does not create any new or different accident initiators or precursors. The length of the ILRT interval does not affect the manner in which any accident begins. The proposed change does not create any new failure modes for the containment and does not affect the interaction between the containment and any other system. Thus, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The risk-based margins of safety associated with the containment ILRT are those associated with the estimated person-rem per year, the large early release frequency, and the conditional containment failure probability. I&M has quantified the potential effect of the proposed change on these parameters and determined that the effect is not significant. The non-risk-based margins of safety associated with the containment ILRT are those involved with its structural integrity and leak tightness. The proposed change to extend the ILRT interval from 10 to 15 years does not adversely affect either of these attributes. The proposed change only affects the frequency at which these attributes are verified. Therefore, the proposed changes do not involve a significant reduction in margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.

NRC Section Chief: L. Raghavan.

North Atlantic Energy Service Corporation, Docket No. 50–443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: March 22, 2002.

Description of amendment request: The proposed amendments change Seabrook Station Technical Specification (TS) 3/4.9.13, Spent Fuel Assembly Storage, and associated TS Figures and Index. The licensee will also revise the Bases to reflect the license amendment. The proposed changes reflect a revised criticality safety analysis supporting a two-zone spent fuel pool, consisting of BORAFLEX® and Boral® fuel assembly storage racks.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not adversely affect accident initiators or precursors nor alter the design assumptions, conditions, and configuration of the facility. In addition, the proposed changes do not affect the manner in which the plant responds in normal operation, transient, or accident conditions. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel.

The proposed changes do not affect the source term, containment isolation or radiological release assumptions used in evaluating the radiological consequences of an accident previously evaluated in the Seabrook Station Updated Final Safety Analysis Report (UFSAR). Furthermore, the proposed changes do not increase the types and amounts of radioactive effluent that may be released offsite, nor significantly increase individual or cumulative occupational/public radiation exposures. Therefore, the proposed changes do not involve a significant increase in the probability or consequence of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not change the operation or the design basis of any plant system or component during normal or accident conditions. The proposed changes do not include any physical changes to the plant. In addition, the proposed changes do not change the function or operation of plant equipment or introduce any new failure mechanisms. The plant equipment will continue to respond per the design and analyses and there will not be a malfunction of a new or different type introduced by the proposed changes. The proposed changes do not modify the facility nor do they affect the plant's response to normal, transient, or accident conditions. The changes do not introduce a new mode of plant operation. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel. The plant's design and design basis are not revised and the current safety analyses remains in effect. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in the margin of safety.

The proposed changes to TS Index, TS 3/4.9.13, TS Figure 3.9–1, and TS Figure 3.9–2 do not adversely affect the safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as specified in the Technical Specifications nor is the plant design revised by the proposed changes. The safety margins established through Limiting Conditions for Operation, Limiting Safety System Settings, and Safety Limits as specified in the Technical Specifications are not revised nor is the plant design or its method of operation revised by the proposed changes. The changes reflect the design capability of the BORAL® storage racks to safely store spent fuel. Administrative control measures (e.g., procedures) will continue to be in place to ensure the safe placement of fuel assemblies within the spent fuel pool so as to remain less than or equal to 0.95 K_{eff} as required by TS 5.6.1.1 for spent fuel storage. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: William J. Quinlan, Esq., Assistant General Counsel, Northeast Utilities Service Company, P.O. Box 270, Hartford, CT 06141–0270.

NRC Section Chief: James W. Clifford.

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Nuclear Management Company, LLC, Docket No. 50–263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: December 21, 2001.

Description of amendment request: The proposed amendment would revise the Containment Systems Section of the Technical Specification (TS) to clarify existing requirements, make wording improvements, revise existing limiting condition for operations (LCO) and surveillance requirements (SR), and add an additional TS LCO to the Monticello TS.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee, Nuclear Management Company, LLC (NMC) has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes do not introduce new equipment or new equipment operating modes, nor do the proposed changes alter existing system relationships. Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, adding a time limit in which to restore oxygen concentration in the containment to within limits, and clarifying specific use and actions for Primary Containment Isolation Valves, are not initiators of any accident previously evaluated. Consequently, the probability of an accident previously evaluated is not significantly increased. The equipment referenced in the proposed changes is still required to be operable and capable of performing its accident mitigation functions assumed in the accident analysis. As a result, the consequences of any accident previously evaluated are not significantly affected.

Therefore, the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

The proposed changes do not involve physical alterations of the plant, no new or different type of equipment will be installed. Nor, are there significant changes in the methods governing normal plant operation. Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, restructuring the TS to provide clear Action Statements where needed; adding a time limit in which to restore oxygen concentration in the containment to within limits; and clarifying specific use and actions for Primary Containment Isolation Valves will not lead to an accident beyond those previously evaluated.

Therefore, the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed amendment will not involve a significant reduction in the margin of safety.

Providing additional time to correct a situation in which suppression pool water level may be outside the established limits, deleting an unnecessary TS regarding suppression pool water level instrumentation, restructuring the TS to provide clear Action Statements where needed; adding a time limit in which to restore oxygen concentration in the containment to within limits; and clarifying specific use and actions for Primary Containment Isolation Valves does not result in a significant reduction in the margin of safety. Allowing up to 2 hours to restore level, is acceptable because the suppression pool water level does not change rapidly during normal operation, and during operations that do create changes to the suppression pool water level, the level of the pool is closely monitored. The changes that provide specific LCO action statements for allowed time to place the reactor in a condition in which the LCO is no longer applicable are acceptable based on industry practices and engineering judgements. Adding an additional LCO which places a specified time limit on oxygen concentration greater than or equal to 4% by volume is acceptable because it provides a TS requirement which limits additional oxygen in the containment. Providing a revision to the LCO for inoperable primary containment isolation valves is acceptable because it clarifies what is specifically required for this method of isolation, and changing the interval at which deactivated and isolated valves must be recorded from daily to monthly is acceptable because the devices are operated under administrative controls and the probability of their misalignment is low. Relocating TS requirements is acceptable because it places the requirement for limiting the use of the purge and vent valves in a more appropriate TS and rewording the LCO is acceptable because it provides clarification for use of the purge and vent valves.

Therefore, these proposed changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jay E. Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Nuclear Management Company, LLC, Docket Nos. 50–266 and 50–301, Point Beach Nuclear Plant, Units 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of amendment request: March 20, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 3.7.8, "Service Water (SW) System," which is applicable in Modes 1, 2, and 3, to allow the SW system to be operable with five operable SW pumps, provided one Unit is in Mode 5 or Mode 6, or defueled, and the SW system is capable of providing required cooling water flow to required equipment. The proposed amendment would change the existing TS requirement which now requires that both units be in Mode 5 (cold shutdown) within 36 hours if five of the total of six SW pumps are operable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration which is presented below:

1. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant increase in the probability or consequences of any accident previously evaluated.

The SW System is primarily a support system for systems required to be operable for accident mitigation. Failures within the SW System are not an initiating condition for any analyzed accident.

The SW System removes the required heat from the containment fan coolers and residual heat removal heat exchangers ensuring containment pressure and temperature profiles following an accident are as evaluated in the [Final Safety Analysis Report] FSAR. This in turn ensures that environmental qualification of equipment inside containment is maintained and thus function as required post-accident. Single Unit operation with five operable SW pumps will continue to be capable of supplying the required cooling water flow to systems required for accident mitigation.

Therefore, the consequences of an accident previously evaluated will not be significantly increased as a result of the proposed change.

2. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a new or different kind of accident from any accident previously evaluated.

The possibility for a new or different type of accident from any accident previously evaluated is not created as a result of this amendment. The evaluation of the effects of the proposed changes indicate that the SW System will be able to perform all of its design basis functions within the design limits of the system. These changes do not introduce any new or different normal operation or accident initiators. Therefore, operation of the SW System as proposed will not create any new failure mechanisms.

Equipment important to safety will continue to operate as designed. The changes do not result in any event previously deemed incredible being made credible. The changes do not result in more adverse conditions or result in any increase in the challenges to safety systems. Therefore, operation of the Point Beach Nuclear Plant in accordance with the proposed amendment will not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Operation of the Point Beach Nuclear Plant in accordance with the proposed amendments does not result in a significant reduction in a margin of safety.

The SW System functions to mitigate the effects of accidents. There are no new or significant changes to the initial conditions contributing to accident severity or consequences. The proposed amendment will not otherwise affect the plant protective boundaries, will not cause a release of fission products to the public, nor will it degrade the performance of any other SSCs [structure, system and components] important to safety. Therefore, reducing the required number of operable SW pumps from six to five with one Unit in Mode 5 or 6, or defueled, while maintaining the capability of required flow to required equipment, will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John H. O'Neill, Jr., Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: March 27, 2002.

Description of amendment request: The proposed amendment would revise Technical Specification (TS) 1.3.1, "Limiting Safety Systems Settings, Reactor Protective System," to change the high power trip setpoint from 107.0% to 109.0%. This complies with the regulatory requirements in 10 CFR part 50 Appendix A, Criterion 10 and 20 by continuing to protect the fuel from exceeding the design basis limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The change does not result in a high power trip setpoint that will cause the analysis value of 112.0% to be exceeded. There is no change in the analysis value of 112.0% for the high power trip setpoint used in the evaluation of the transients and accidents. All of the evaluated transients and accidents currently show acceptable results and will not be affected by this change. Changing the high power trip setpoint will not affect the probability of an accident, since that circuit is not a transient or accident initiator. The change to the setpoint will not change the failure possibilities for this circuit. The effect of the proposed change is the reduction in the probability of an undesired safety system challenge initiated by an erroneous high power trip during a flow streaming event.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The change to the RPS [reactor power system] high power trip setpoint does not provide the possibility of the creation of a new or different type of accident. Changing the setpoint does not change the method of operation of the high power trip circuit or its expected response once the setpoint is reached. The trip will occur within previously analyzed limits.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed setpoint change does not constitute a significant reduction in the margin of safety due to the fact that the transient and accident analyses contained in the Updated Safety Analysis Report have been evaluated using an analysis trip setpoint of 112.0% with the event initiated from the appropriate power level and have been shown to produce acceptable results.

The acceptance criteria used in the analysis have been developed for the purpose of use in design basis accident analyses such that meeting these limits demonstrates adequate protection of public health and safety. An acceptable margin of safety is inherent in these licensing limits. Therefore, the proposed changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, DC 20005–3502.

NRC Section Chief: Stephen Dembek.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: March 29, 2002.

Description of amendment request: The proposed amendment would modify the Technical Specifications to allow the use of the pressure-temperature curves approved in Amendment No. 131 for an additional cycle.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The staff's evaluation of the licensee's analysis is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment to revise the technical specifications to extend the use of the pressure-temperature (P–T) limits does not affect the operation or configuration of any plant equipment. Thus, no new accident initiators are created by this change. The proposed change extends the use of the P–T limits for an additional cycle. The P–T limits are based on the projected reactor vessel neutron fluence at 32 effective full power years (EFPY) of operation. At the end of cycle 10, Hope Creek Generating Station (HCGS) was at approximately 12.2 EFPY of operation (38.1% of the 32 EFPY). At the end of cycle 12 there will remain sufficient margin to ensure that the current 32 EFPY fluence projections will not be exceeded. This ensures that the basis for proposed applicability of the current P–T limits is conservative for use until the end of cycle 12 ensuring that the reactor vessel integrity is protected under all operating conditions. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment revises the technical specifications to extend the use of the pressure-temperature (P–T) limits. It does not change the design function or operation of any systems, structures, or components. Plant operation will not be affected by the proposed amendments and no new failure mechanisms, malfunctions or accident initiators will be created. The current P–T limits will remain valid and conservative during the proposed extension period. The proposed change, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

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3. Does the proposed change involve a significant reduction in a margin of safety?

The proposed change extends the use of the current P–T limits for an additional cycle of operation. The P–T limits are based on the projected reactor vessel neutron fluence at 32 EFPY of operation. At the end of cycle 10 in April 2000, HCGS was at approximately 12.2 EFPY of operation (38.1% of the 32 EFPY). At the end of cycle 12, HCGS will have obtained less than 50% of the 32 EFPY operating time which provides significant margin to ensure that the current 32 EFPY fluence projection will not be exceeded. The current margin of safety for plant operations is established by the P–T curves analyzed at 32 EFPY. Because the proposed change will not exceed this fluence, the current margin of safety is maintained. The proposed change, therefore, does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

PSEG Nuclear LLC, Docket No. 50–354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: April 3, 2002.

Description of amendment request: The proposed amendment would relocate parts of Technical Specification (TS) 3/4.4.4, "Reactor Coolant System—Chemistry," from the TS to the Updated Final Safety Analysis Report (UFSAR).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Does the proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change is administrative in nature and does not involve the modification of any plant equipment or affect basic plant operation. Conductivity, chloride, and pH limits are not assumed to be an initiator of any analyzed event, nor are these limits assumed in the mitigation of consequences of accidents.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Does the proposed change create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed change does not involve the modification of any plant equipment and does not change the method by which any safety-related system performs its function. The current safety analysis assumptions are not altered as a result of this change.

Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed change represents the relocation of current TS requirements to the UFSAR based on regulatory guidance and previously approved changes for other stations. The proposed change is administrative in nature, does not negate any existing requirement, and does not adversely affect existing plant safety margins or the reliability of the equipment assumed to operate in the safety analysis. Margins of safety are unaffected by requirements that are retained but relocated from the TS to the UFSAR.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Jeffrie J. Keenan, Esquire, Nuclear Business Unit—N21, P.O. Box 236, Hancocks Bridge, NJ 08038.

NRC Section Chief: James W. Clifford.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 25, 2002, as supplemented by the letter dated April 23, 2002.

Brief description of amendments: The proposed change would revise the current Technical Specification (TS) 3.7.3 to adopt the version of the same TS in NUREG–1431, "Standard Technical Specifications for Westinghouse Plants," Revision 2, to add, among other things, operability requirements for Feedwater Control Valves (FCV) and Associated Bypass Valves, and would allow for the extended out-of-service time for one or more Feedwater Isolation valves (FIVs). In addition, a footnote, which allowed a one-time extension for Condition A Completion Time, is being deleted because it is no longer applicable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed change extends the Completion Time for one or more Feedwater Isolation Valves (FIVs) inoperable from 4 hours to 72 hours. Extending the Completion Time is not an accident initiator and thus does not change the probability that an accident will occur. However, it could potentially affect the consequences of an accident if an accident occurred during the extended unavailability of the inoperable FIV. The increase in time that the FIV is unavailable is small and the probability of an event occurring during this time period, which would require isolation of the Main Feedwater flow paths, is low. Moreover, the redundancy provided by the Feedwater Control Valves, which have [the] same actuation signals and closure time requirements as the FIVs, provides adequate assurance that automatic feedwater isolation will occur if called upon.

The deletion of the footnote, which is no longer applicable, is an administrative change and does not affect the probability or consequences of an accident previously evaluated.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Closure of the FIVs is required to mitigate the consequences of a Main Steam Line Break and Main Feedwater Line Break accidents. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The deletion of the footnote, which is no longer applicable, is an administrative change and does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed changes do not change any Technical Specification Limit or accident analysis assumption. Therefore they do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somervell County, Texas

Date of amendment request: March 27, 2002.

Brief description of amendments: The proposed change would revise Technical Specification (TS) 5.3.1 to require that each member of the unit staff, with the exception of Licensed Reactor Operators (RO) and Licensed Senior Reactor Operators (SRO), shall meet or exceed the minimum qualifications of Regulatory Guide 1.8, Revision 2, 1987. Also, a new TS 5.3.2 would be added to require that the Licensed RO and Licensed SRO shall meet or exceed the minimum qualifications of Regulatory Guide 1.8, Revision 3, May 2000 and the current TS 5.3.2 would be renumbered to TS 5.3.3.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and licensed operator training program. These changes conform to the current requirements of 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

Although licensed operator qualifications and training may have an indirect impact on accidents previously evaluated, the NRC [Nuclear Regulatory Commission] considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55 rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and is based on a systems approach to training. TXU Energy's [TXU Generation Company LP] licensed operator training program is accredited by INPO [Institute of Nuclear Power Operations] and is based on a systematic approach to training.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements for licensed operator qualifications and [the] licensed operator training program, and to conform to the revised 10 CFR [Part] 55. The TS requirements for all other unit staff qualifications remain unchanged.

As noted above, although licensed operator qualifications and training may have an indirect impact on the possibility of a new or different kind of accident from any accident previously evaluated, the NRC considered this impact during the rulemaking process, and by promulgation of the revised rule, concluded that this impact remains acceptable as long as the licensed operator training program is certified to be accredited and based on a systems approach to training. As previously noted, TXU Energy's licensed operator training program is accredited by INPO and is based on a systems approach to training.

Additionally, the proposed TS change does not affect plant design, hardware, system operation, or procedures. Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Does the proposed change involve a significant reduction in a margin of safety?

Response: No.

The proposed TS change is an administrative change to clarify the current requirements applicable to licensed operator qualifications and licensed operator training program. This change is consistent with the requirements of 10 CFR [Part] 55. The TS qualification requirements for all other unit staff remain unchanged.

Licensed operator qualifications and training can have an indirect impact on a margin of safety. However, the NRC considered this impact during the rulemaking process, and by promulgation of the revised 10 CFR [Part] 55, determined that this impact remains acceptable when licensees maintain a licensed operator training program that is accredited and based on a systems approach to training. As noted previously, TXU Energy's licensed operator training program is accredited by INPO and is based on a systems approach to training.

The NRC has concluded, as stated in NUREG–1262, "Answers to Questions at Public Meetings Regarding Implementation of Title 10, Code of Federal Regulations, Part 55 on Operators' Licenses," that the standards and guidelines applied by INPO in their training accreditation program are equivalent to those put forth or endorsed by the NRC. As a result, maintaining an INPO-accredited, systems approach-based licensed operator training program is equivalent to maintaining [an] NRC-approved licensed operator training program which conform[s] with applicable NRC Regulatory Guides or NRC-endorsed industry standards. The margin of safety is maintained by virtue of maintaining an INPO-accredited licensed operator training program.

In addition, the NRC has recently published NRC Regulatory Issue Summary 2001–01, "Eligibility of Operator License Applicants," dated January 18, 2001, "* * * to familiarize addressees with the NRC's current guidelines for the qualification and training of reactor operator (RO) and senior operator (SO) license applicants." This document again acknowledges that the INPO National Academy for Nuclear Training (NANT) guidelines for education and experience, outline acceptable methods for implementing the NRC's regulations in this area.

Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

TXU Generation Company LP, Docket Nos. 50–445 and 50–446, Comanche Peak Steam Electric Station, Units 1 and 2, Somerville County, Texas

Date of amendment request: April 1, 2002.

Brief description of amendments: This proposed amendment would include topical report ERX–2001–005, "ZIRLO™ Cladding and Boron Coating Models for TXU Electric's Loss of Coolant Accident Analysis Methodologies," in the list of approved methodologies for use in generating the Core Operating Limits Report in Technical Specification (TS) 5.6.5, "Core Operating Limits Report (COLR)." In addition, the proposed change would include ZIRLO™ clad in the description of the fuel assemblies in TS 4.2.1, "Fuel Assemblies."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Do the proposed changes involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No.

Administrative changes to the Technical Specifications that do not affect the accident analyses cannot change the probability of an accident previously evaluated, nor will it increase radiological consequences predicted by the analyses of record. Controlling the use of fuel assemblies within limitations previously approved by the NRC [U.S. Nuclear Regulatory Commission] constrains fuel performance to within limits bounded by

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existing design basis accident and transient analyses.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Do the proposed changes create the possibility of a new or different kind of accident from any accident previously evaluated?

Response: No.

Use of ZIRLO™ clad fuel assemblies in accordance with NRC approved methodologies and of a design approved by the NRC ensures that their effect on core performance remains within existing design limits. Use of fuel assemblies whose design has been previously approved by the NRC is consistent with current plant design bases, does not adversely affect any fission product barrier, and does not alter the safety function of safety significant systems, structures and components or their roles in accident prevention or mitigation. Currently licensed design basis accident and transient analyses of record remain valid.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. Do the proposed changes involve a significant reduction in a margin of safety?

Response: No.

The proposed change does not alter the manner in which Safety Limits, Limiting Safety System Setpoints, or Limiting Conditions for Operation are determined. This proposed change to TSs 4.2 and 5.6.5 is bounded by existing limits on reactor operation. It leaves current limitations for use of fuel assemblies in place, conforms to plant design bases, is consistent with the safety analyses as accepted in the topical report, and limits actual plant operation within analyzed and NRC approved boundaries.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: George L. Edgar, Esq., Morgan, Lewis and Bockius, 1800 M Street, NW., Washington, DC 20036.

NRC Section Chief: Robert A. Gramm.

Union Electric Company, Docket No. 50–483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application request: February 15 and November 7, 2001, and March 1, 2002.

Description of amendment request: The proposed amendment would revise paragraph d.1.j (2) in Technical Specification (TS) 5.5.9, "Steam Generator (SG) Tube Surveillance Program." The revision would (1) delete the requirement that all SG tubes containing an Electrosleeve, a Framatome proprietary process, be removed from service within two operating cycles following installation of the first Electrosleeve; (2) add the requirement that Electrosleeves will not be installed in the outermost periphery tubes of the SG bundles where potentially locked tubes would cause high axial loads; (3) revise the references describing electrosleeving; and (4) add the requirement that all sleeves with detected inside diameter (ID) flaw indications will be removed from service upon detection. The requirement to remove SG tubes containing electrosleeves in two operating cycles was incorporated in TS 5.5.9 in Amendment No. 132 issued May 21, 1999. The first Electrosleeve tube was installed in the fall of 1999 and the two-cycle allowance will expire in the fall of 2002.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change would remove the restriction that requires all steam generator tubes repaired with Electrosleeves to be removed from service at the end of two operating cycles following installation of the first Electrosleeve. This would allow all steam generator tubes repaired with Electrosleeves to remain in service. Reference 2 [licensee's letter dated October 27, 1998] concluded that there was no significant increase in the probability or consequences of an accident previously evaluated when using the Electrosleeve repair method. The two operating cycle restriction was invoked because the NRC staff concluded that the UT [ultrasonic] methods used to perform NDE [nondestructive examination] for inservice inspections of the Electrosleeved tubes could not reliably depth size stress corrosion cracks to ensure that structural limits are maintained.

Revision 4 to topical report BAW–10219P [nonproprietary version is attached to the application] has addressed the concerns that resulted in the restriction of two operating cycles and consequently, the probability of an accident previously evaluated is not significantly increased. As a result, the consequences of any accident previously evaluated are not affected.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change does not involve a physical alteration of the plant (no new or different type of equipment will be installed) or a change in the methods governing plant operation. Reference 2 concluded that the use of the Electrosleeve repair method did not create the possibility of a new or different kind of accident from any accident previously evaluated when using this method to repair steam generator tubes. This proposed change removes the two operating cycle limit for the Electrosleeved tubes based on the evaluations and justifications of the NDE techniques used to perform inservice examinations of the Electrosleeved steam generator tubes provided in Revision 4 of the topical report.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in a margin of safety.

The proposed change does not affect the acceptance criteria for an analyzed event. The margin of safety presently provided by the structural integrity of the steam generator tubes remains unchanged. Reference 2 concluded that the use of the Electrosleeve repair method did not involve a significant reduction in a margin of safety when using this method to repair steam generator tubes. The proposed change removes the two operating cycle limit based on the evaluations and justifications presented in Revision 4 of the topical report.

Therefore, the proposed change does not involve a reduction in a margin of safety.

The reference to "Reference 2" in the criteria above is a reference to the licensee's letter dated October 27, 1998, and the no significant hazards consideration (NHSC) in that letter, which was published in the **Federal Register** (63 FR 66604) on December 2, 1998. This NHSC is applicable to the current application letters because it applies to the use of Electrosleeved steam generator tubes, the subject of the current application letters.

The NRC staff published an earlier Notice of Consideration for the application dated February 15, 2001, in the **Federal Register** on March 21, 2001 (66 FR 15931).

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: John O'Neill, Esq., Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Section Chief: Stephen Dembek.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: February 26, 2002.

Description of amendment request: Revise the definition of Operable in Technical Specification (TS) 1.0.K with respect to support system requirements for AC power sources. Conforming changes are made to specific support system TSs in Sections 3/4.5, "Core and Containment Cooling Systems," 3/4.7, "Station Containment Systems," and 3/4.10, "Auxiliary Electrical Power Systems," and associated Bases.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The revised definition of "Operable" redefines the AC power source requirements to allow either normal or emergency power available for equipment requiring AC power to be considered operable and provides conforming changes to specific supported system Technical Specifications. None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. The proposed change does not affect the ability of the AC power sources to perform their required safety functions nor does the proposed change affect the ability of the systems requiring AC power to perform their respective safety functions. As a result, the ability of these systems to mitigate accident consequences is unchanged. As such, these changes do not impact initiators of analyzed events, nor the analyzed mitigation of design basis accident or transient events.

More stringent requirements for the inoperable AC power source action provisions that ensure availability of all TS required systems, subsystems, trains, components, and devices and the purely administrative changes do not affect the initiation of any event, nor do they negatively impact the mitigation of any event.

The elimination of some explicit requirements to verify the operability of remaining equipment (i.e., to verify which TS action is required to be entered and taken) does not affect the initiation of any event, nor does it negatively impact the mitigation of any event.

Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not involve any physical modification to the plant, change in Technical Specification setpoints, change in plant design basis, or a change in the manner in which the plant is operated. No new or different type of equipment will be installed. No safety-related equipment or safety functions are altered as a result of these changes. In addition, there are no changes in methods governing normal plant operation. No new accident modes are created since plant operation is unchanged. None of the proposed changes affects any parameters or conditions that could contribute to the initiation of any accident. The changes do not introduce any new accident or malfunction mechanism that could create a new or different kind of accident, thus, no new failure mode is created. Therefore, the proposed changes will not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes will not involve a significant reduction in a margin of safety.

The manner in which plant systems relied upon in the safety analyses to provide plant protection is not changed. Plant safety margins continue to be maintained through the limitations established in the Technical Specifications Limiting Conditions for Operation and Actions. These changes do not impact plant equipment design or operation, and there are no changes being made to safety limits or safety system settings that would adversely affect the ability of the plant to respond as assumed in the accident analyses as a result of the proposed changes. Since the changes have no effect on any safety analysis assumptions or initial conditions, the margins of safety in the safety analyses are maintained.

In addition, administrative changes that do not change technical requirements or meaning, and the imposition of more stringent requirements to ensure operability, have no negative impact on margins of safety.

Therefore, this change does not involve a significant reduction in a margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Vermont Yankee Nuclear Power Corporation, Docket No. 50–271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: March 19, 2002.

Description of amendment request: The proposed Technical Specification changes involve the removal of the existing scram function and Group 1 isolation valve closure functions of the Main Steam Line Radiation Monitors (MSLRM). An explicit requirement for periodic functional test and calibration of the MSLRM is added to maintain operability of the mechanical vacuum pump trip function.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The scram and Group 1 isolation functions of the MSLRMs do not serve as initiators for any of the accidents evaluated in the Updated Final Safety Analysis Report (UFSAR). The MSLRM scram function is not credited in the UFSAR, and the Group 1 isolation trip function of the MSLRMs was only assumed in one design-basis event which was the control rod drop accident. Because these functions are not initiators of accidents, their removal does not increase the probability of occurrence of previously evaluated accidents.

There is no accident analysis that relies on the high radiation scram of the reactor protection system and its removal has no impact on the consequences of accidents previously evaluated. The results of the control rod drop accident analysis remain within approved guidelines.

Therefore, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility for a new or different kind of accident from any previously evaluated.

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The proposed changes to the plant involve limited changes to protective circuitry, but do not involve any plant hardware changes that could introduce any new failure modes. The changes will not affect non-MSLRM scram and isolation functions. In addition, the MSLRMs will remain active for other trip/isolation functions, and these monitors will still alarm in the control room to alert operators to off-normal conditions. The reconstituted design-basis control rod drop accident analysis does not rely upon the trip functions that are being eliminated.

Therefore, the removal of the Group 1 isolation valve closure and scram functions of the MSLRMs does not create the possibility of a new or different kind of accident than those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change involves the elimination of the scram and Group I isolation signal from the MSLRMs. Operation under the proposed change will not change any plant operation parameters, nor any protective system setpoints other than removal of these functions. The effects of the control rod drop accident without the MSLRM scram and isolation signal results in doses which remain well within 10 CFR Part 100, "Reactor Site Criteria," limits. The proposed changes will reduce the chances of unnecessary plant trips occurring as a result of an inadvertent MSLRM scram or Group 1 isolation.

Therefore, this change does not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Attorney for licensee: Mr. David R. Lewis, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037–1128.

NRC Section Chief: James W. Clifford.

Virginia Electric and Power Company, Docket Nos. 50–338 and 50–339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendments request: March 28, 2002.

Description of amendments request: This requested amendment would permit Virginia Electric and Power Company (VEPCO) to replace the existing Westinghouse fuel with Framatome ANP Advanced Mark-BW fuel at North Anna Power Station, Units 1 and 2. The accompanying requested exemptions from 10 CFR 50.44 and 10 CFR 50.46 will be processed separately.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The probability of occurrence or the consequences of an accident previously evaluated is not significantly increased. The Advanced Mark-BW fuel is very similar in design to the Westinghouse fuel that is being replaced in the core. The reload core designs for North Anna cycle will meet all applicable design criteria. [VEPCO] will use the NRC-approved standard reload design models and methods to demonstrate that all applicable design criteria and all pertinent licensing basis criteria will be met. Evaluations will be performed as part of the cycle specific reload safety analysis to confirm that the existing safety analyses remain applicable for operation of the Framatome Advanced Mark-BW fuel.

Operation of the Advanced Mark-BW fuel will not result in a measurable impact on normal operating plant releases, and will not increase the predicted radiological consequences of accidents postulated in the UFSAR [Updated Final Safety Analysis Report]. Therefore, neither the probability of occurrence nor the consequences of any accident previously evaluated is significantly increased.

2. The possibility for a new or different type of accident from any accident previously evaluated is not created. The Framatome Advanced Mark-BW fuel is very similar in design (both mechanical and composition of materials) to the resident Westinghouse fuel. The North Anna core in which the fuel operates will be designed to meet all applicable design criteria and ensure that all pertinent licensing basis criteria are met. Demonstrated adherence to these standards and criteria precludes new challenges to components and systems that could introduce a new type of accident. North Anna safety analyses have demonstrated in Section 6.0 of [the March 28, 2002 submittal] that the use of Advanced Mark-BW fuel is acceptable. All design and performance criteria will continue to be met and no new single failure mechanisms will be created. The use of the Advanced Mark-BW fuel does not involve any alteration to plant equipment or procedures which would introduce any new or unique operational modes or accident precursors. Therefore, the possibility for a new or different kind of accident from any accident previously evaluated is not created.

3. The margin of safety is not significantly reduced. The operation of Advanced Mark-BW fuel does not change the performance requirements on any system or component such that any design criteria will be exceeded. The normal limits on core operation defined in the North Anna Technical Specifications will remain applicable for the use of Advanced Mark-BW fuel. The reload core designs for the cycles in which the Advanced Mark-BW fuel will operate will specifically evaluate any pertinent differences between the Advanced Mark-BW fuel product and the current Westinghouse fuel product, including both the mechanical design differences and the past irradiation history. The use of Advanced Mark-BW fuel will be specifically evaluated during the reload design process using [VEPCO's] reload design models and methods approved by the NRC. North Anna safety analyses have demonstrated in Section 6.0 of [the March 28, 2002 submittal] that the use of Advanced Mark-BW fuel is acceptable. Therefore, the margin of safety as defined in the Bases to the North Anna Units 1 and 2 Technical Specifications is not significantly reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Attorney for licensee: Ms. Lillian M. Cuoco, Esq., Senior Nuclear Counsel, Dominion Nuclear Connecticut, Inc., Millstone Power Station, Building 475, 5th Floor, Rope Ferry Road, Rt. 156, Waterford, Connecticut 06385.

NRC Section Chief: John A. Nakoski.

Notice of Issuance of Amendments To Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, located at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management Systems (ADAMS) Public Electronic Reading Room on the internet at the NRC web site, *http://www.nrc.gov/reading-rm/adams.html*. If you do not have access to ADAMS or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1–800–397–4209, 301–415–4737 or by email to *pdr@nrc.gov*.

Calvert Cliffs Nuclear Power Plant, Inc., Docket No. 50–317, Calvert Cliffs Nuclear Power Plant, Unit No. 1, Calvert County, Maryland

Date of application for amendment: January 31, 2002, as supplemented on March 27, 2002.

Brief description of amendments: The amendment allows a one-time 5-year extension, for a total of 15 years, for the performance of the next Unit 1 integrated leak rate test (ILRT). The amendment also exempts Unit 1 from the requirement to perform a post-modification containment ILRT associated with the steam generator replacement.

Date of issuance: May 1, 2002.

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 252.

Renewed Facility Operating License No. DPR–53: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7413). The March 27, 2002, supplemental letter provided clarifying information that did not change the scope of the original notice or the initial proposed no significant hazards consideration. The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 1, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: May 25, 2001, as supplemented by letter dated January 24, 2002.

Brief description of amendments: The amendments eliminated response time testing requirements for selected sensors and specified instrumentation loops for the Engineered Safety Features and the Reactor Trip System.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be impl
emented within 30 days from the date of issuance.

Amendment Nos.: 197, 190.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64290). The supplement dated January 24, 2002, provided clarifying information that did not change the scope of the May 25, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, et al., Docket Nos. 50–413 and 50–414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 20, 2001, as supplemented by letters dated February 14, and March 26, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to incorporate NRC-approved Technical Specification Task Force (TSTF) Traveler TSTF–51, "Revise containment requirements during handling irradiated fuel and core alterations," Revision 2. The amendments selectively adopted the Alternate Source Term specifically for a fuel handling accident and a weir gate drop accident at Catawba Nuclear Station, Units 1 and 2.

Date of issuance: April 23, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 198/191.

Facility Operating License Nos. NPF–35 and NPF–52: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7415). The supplements dated February 14, and March 26, 2002, provided clarifying information that did not change the scope of the December 20, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 28, 2000, as supplemented by letters dated February 15, April 26, June 26, and October 31, 2001, and March 4, 2002.

Brief description of amendments: The amendments revised the Technical Specifications related to controls to ensure acceptable margins of subcriticality in the spent fuel pools to account for Boraflex degradation.

Date of Issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 90 days from the date of issuance.

Amendment Nos.: 323, 323, 324.

Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 7, 2001 (66 FR 9382). The supplements dated February 15, April 26, June 26, and October 31, 2001, and March 4, 2002, provided clarifying information that did not change the scope of the December 28, 2000, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Duke Energy Corporation, Docket Nos. 50–269, 50–270, and 50–287, Oconee Nuclear Station, Units 1, 2, and 3, Oconee County, South Carolina

Date of application of amendments: December 20, 2001.

Brief description of amendments: The amendments revise the Technical Specifications (TS) to eliminate the use of the term "unreviewed safety question," and replace the word "involve" with the word "require" as it applies to changes made to the updated Final Safety Analysis Report and the TS Bases.

Date of Issuance: April 22, 2002.
Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.
Amendment Nos.: 324, 325.
Renewed Facility Operating License Nos. DPR–38, DPR–47, and DPR–55: Amendments revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2923). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.
No significant hazards consideration comments received: No.

Energy Northwest, Docket No. 50–397, Columbia Generating Station, Benton County, Washington

Date of application for amendment: March 22, 2002, as supplemented by letter dated March 28, 2002.
Brief description of amendment: The amendment modifies Technical Specification Surveillance Requirement (SR) 3.6.1.3.6 to add a footnote specifying that the isolation time of each main steam isolation valve (MSIV) include circuit response time and valve motion time until the next outage greater than 72 hours.
Date of issuance: April 25, 2002.
Effective date: April 25, 2002.
Amendment No.: 175.
Facility Operating License No. NPF–21: The amendment revised the Technical Specifications.
Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 16767 dated April 8, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 8, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Washington and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 25, 2002.
Attorney for licensee: Thomas C. Poindexter, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.
NRC Section Chief: Stephen Dembek.

Entergy Nuclear Operations, Inc., Docket No. 50–286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: September 7, 2001 as revised December 17, 2001.
Brief description of amendment: The amendment revised the Post Accident Monitoring Instrumentation Technical Specifications to ensure that licensee commitments to Regulatory Guide 1.97 are properly reflected.
Date of issuance: April 25, 2002.
Effective date: As of the date of issuance to be implemented within 30 days.
Amendment No.: 211.
Facility Operating License No. DPR–64: Amendment revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** February 5, 2002 (67 FR 5328). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2002.
No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. STN 50–454 and STN 50–455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois Docket Nos. STN 50–456 and STN 50–457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: September 21, 2001, as supplemented by letter dated January 31, 2002.
Brief description of amendments: The amendments revise the reactor core safety limit for peak fuel centerline temperature from less than or equal to 4700 °F (i.e., the current technical specifications limit) to the design-basis fuel centerline melt temperature of less than 5080 °F, for unirradiated fuel, decreasing by 58 °F per 10,000 Megawatt-Days per MetricTonne Uranium (MWD/MTU) burnup. Additionally, the licensee is allowed to irradiate four ZIRLO clad rods to 69,000 MWD/MTU that are currently in Byron Unit 2 reactor. The staff denied a portion of the amendment request regarding extending burnup limit up to 75,000 MWD/MTU for future lead test assembly (LTA) campaigns. A separate Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing has been published in the **Federal Register**.
Date of issuance: April 19, 2002.
Effective date: As of the date of issuance and shall be implemented within 30 days.
Amendment Nos.: 127 and 122.
Facility Operating License Nos. NPF–37, NPF–66, NPF–72 and NPF–77: The amendments revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** November 28, 2001 (66 FR 59505). The supplemental letter dated January 31, 2002, contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.
The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2002.
No significant hazards consideration comments received: No.

Exelon Generation Company, LLC, Docket Nos. 50–254 and 50–265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of application for amendments: November 30, 2001.
Brief description of amendments: The amendments revise Surveillance Requirement (SR) 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less," to, "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."
Date of issuance: April 19, 2002.
Effective date: As of the date of issuance and shall be implemented within 30 days.
Amendment Nos.: 205 and 201.
Facility Operating License Nos. DPR–29 and DPR–30: The amendments revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7417). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 19, 2002.
No significant hazards consideration comments received: No.

Florida Power and Light Company, et al., Docket Nos. 50–335 and 50–389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 25, 2002.
Brief description of amendments: These amendments revised the Technical Specifications requirement for pressure testing diesel fuel oil system piping. The elevated pressure test will be replaced by a test at normal system operating conditions in accordance with the inservice inspection program.
Date of Issuance: April 23, 2002.
Effective Date: As of the date of issuance and shall be implemented within 60 days of issuance.
Amendment Nos.: 181 and 124.
Facility Operating License Nos. DPR–67 and NPF–16: Amendments revised the Technical Specifications.
Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7419). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.
No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket No. 50–315, Donald C. Cook Nuclear Plant, Unit 1, Berrien County, Michigan

Date of application for amendment: November 16, 2001, as supplemented March 12, 2002.
Brief description of amendment: The amendment revises TS Table 3.3–4, "Engineered Safety Feature Actuation System Instrumentation Trip Setpoints." The changes are required as part of a planned design change to replace the existing 4kV offsite power transformers, loss of voltage relays, and degraded voltage relays with components of an improved design to increase the reliability of offsite power for safety-related equipment.
Date of issuance: April 19, 2002.
Effective date: As of the date of issuance and shall be implemented within 60 days.
Amendment No.: 268.
Facility Operating License No. DPR–58: Amendment revises the Technical Specifications.
Date of initial notice in ***Federal Register:*** December 12, 2001, (66 FR 64298). The supplemental letter contained clarifying information and did not change the initial no significant hazards consideration determination and did not expand the scope of the original **Federal Register** notice.
The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 19, 2002.
No significant hazards consideration comments received: No.

Indiana Michigan Power Company, Docket Nos. 50–315 and 50–316, Donald C. Cook Nuclear Plant, Units 1 and 2, Berrien County, Michigan

Date of amendment request: April 9, 2002, as supplemented April 25, 2002.
Description of amendment request: The amendment revises Technical Specification Surveillance Requirement 4.8.2.3.c.1 for the Train AB and CD batteries. The amendment modifies the requirement to verify that the Train AB and CD battery cells, cell plates, and racks show no visual indication of physical damage or abnormal deterioration. The amendment allows batteries exhibiting damage or deterioration to be determined operable by an evaluation. The amendment is consistent with an NRC-approved change to the Standard Technical Specifications for Westinghouse plants (NUREG 1431, Revision 1), as documented in Technical Specification Task Force Standard Technical Specification Change Traveler-38, "Revise visual surveillance of batteries to specify inspection is for performance degradation."
Date of issuance: April 26, 2002.
Effective date: As of the date of issuance, to be implemented immediately.
Amendment No.: 249.
Facility Operating License No. DPR–74: Amendment revise the technical specifications. Public comments requested as to proposed no significant hazards consideration (NSHC): Yes. April 25, 2002 (67 FR 20552).
The Commission's related evaluation of the amendment, finding of emergency circumstances, state consultation, and final NSHC determination are contained in a safety evaluation dated April 26, 2002.
Attorney for licensee: David W. Jenkins, Esq., 500 Circle Drive, Buchanan, MI 49107.
NRC Section Chief: L. Raghavan.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: April 1, 2002, as supplemented by letters dated April 10 and April 15, 2002.
Brief description of amendment: This amendment adds an exception to the technical specifications to perform the surveillance test of Table 3–2, Item 20 (Recirculation Actuation Logic Channel Functional Test) under administrative controls while components in excess of those allowed by Conditions a, b, d, and e of TS 2.3(2) are maintained operable by dedicated operator action and are required to be returned to operable status within one hour. This exception will apply only to the remainder of Cycle 20 and the entirety of Cycle 21.
Date of issuance: April 19, 2002.
Effective date: April 19, 2002, to be implemented within 30 days from the date of issuance.
Amendment No.: 206.
Facility Operating License No. DPR–40: Amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: Yes (67 FR 16130 dated April 4, 2002). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by May 6, 2002, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment. The Commission's related evaluation of the amendment, finding of exigent circumstances, consultation with the State of Nebraska and final determination of no significant hazards consideration are contained in a Safety Evaluation dated April 19, 2002.
Attorney for licensee: James R. Curtiss, Esq., Winston & Strawn, 1400 L Street, NW., Washington, DC 20005–3502.
NRC Section Chief: Stephen Dembek.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: December 14, 2001, as supplemented by letter dated February 13, 2002.
Brief description of amendment: The amendment deletes technical specification (TS) Figures 2–1A (Reactor Coolant System (RCS)—Temperature Limits for Heatup) and 2–1B (RCS Pressure—Temperature Limits for Cooldown) and replaces them with a single Figure 2–1. Additionally, the amendment changes the lowest service temperature from 182 ° F to 164 ° F to be in compliance with Reference 4, American Society of Mechanical Engineers (ASME) Section III, NB–2332 and the basis for the minimum boltup temperature to be in compliance with Reference 5, ASME Section XI, Appendix G. The Bases for TS 2.1 is being updated to reflect the use of ASME Code Case N–640 and the Westinghouse Electric Company/ Combustion Engineering (W/CE) pressure temperature (P–T) limit curve methodology as applicable. Finally, based on the replacement of Figures 2–1A and 2–1B with a single Figure 2–1, the following TS are changed: 2.1.1(8), 2.1.2(1), 2.1.2(2), 2.1.2(6), 2.1.2(6)(a), 2.1.2(6)(c), 2.1.2(6)(d), and 2.1.6(4) as they reference the deleted curves.
Date of issuance: April 22, 2002.

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Effective date: April 22, 2002, to be implemented within 30 days from the date of issuance.

Amendment No.: 207.

Facility Operating License No. DPR–40. Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 22, 2002 (67 FR 2928). The February 13, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Omaha Public Power District, Docket No. 50–285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: November 21, 2001, as supplemented by letter dated February 13, 2002.

Brief description of amendment: The amendment reformats and revises Technical Specifications (TSs) 2.15(5) and (6), "Instrumentation and Control Systems." The new TSs clarify the scope of the alternate shutdown panels (ASPs). The change resulted from a corrective action needed to address the regulatory requirements for the ASPs and the associated auxiliary feedwater panel, as documented in Licensee Event Report 97–002, Revision 0, dated May 14, 1997.

Date of issuance: April 25, 2002.

Effective date: April 25, 2002, to be implemented within 60 days from the date of issuance.

Amendment No.: 208.

Facility Operating License No. DPR–40: Amendment revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** December 26, 2001 (66 FR 66470). The February 13, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 25, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: November 16, 2001.

Brief description of amendments: The amendments revised Technical Specification Section 5.5.16, "Containment Leakage Rate Testing Program," to allow a one-time extension of the 10 CFR Part 50, Appendix J, Type A integrated leak rate test interval from the required 10 years to a test interval of 15 years.

Date of issuance: April 22, 2002.

Effective date: April 22, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–150; Unit 2–150.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** January 8, 2002 (67 FR 930). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Pacific Gas and Electric Company, Docket Nos. 50–275 and 50–323, Diablo Canyon Nuclear Power Plant, Unit Nos. 1 and 2, San Luis Obispo County, California

Date of application for amendments: September 13, 2001, and supplemental letter dated March 14, 2002.

Brief description of amendments: The amendments revise TS Section 5.5.9, "Steam Generator Tube Surveillance Program," to allow the extension of the steam generator tube W star (W*) alternate repair criteria (ARC) through Cycles 12 and 13. This extension will allow the licensee additional time to validate the W* leak rate model through performance of additional in-situ pressure testing of W* indications.

Date of issuance: April 29, 2002.

Effective date: April 29, 2002, to be implemented within 30 days from the date of issuance.

Amendment Nos.: Unit 1–151; Unit 2–151.

Facility Operating License Nos. DPR–80 and DPR–82: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55021). The March 14, 2002, supplemental letter provided additional clarifying information, did not expand the scope of the application as originally noticed, and did not change the original proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 29, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: February 13, 2002.

Brief description of amendments: The amendments revise the Technical Specification Surveillance Requirement 3.0.3 to extend the delay period, before entering a Limiting Condition for Operation, following a missed surveillance. The delay period is extended from the current limit of "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is less" to "* * * up to 24 hours or up to the limit of the specified Frequency, whichever is greater." In addition, the following requirement is added to SR 3.0.3: "A risk evaluation shall be performed for any Surveillance delayed greater than 24 hours and the risk impact shall be managed."

Date of issuance: April 23, 2002.

Effective date: April 23, 2002, to be implemented within 60 days of issuance.

Amendment Nos.: Unit 2–186; Unit 3–177.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** March 19, 2002 (67 FR 12605). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 23, 2002.

No significant hazards consideration comments received: No.

Southern California Edison Company, et al., Docket Nos. 50–361 and 50–362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: March 21, 2001, as supplemented by letters dated October 24, 2001 and March 14, 2002.

Brief description of amendments: The amendments revise TS 5.5.2.12, "Ventilation Filter Testing Program." Specifically, the reference to the American Society of Mechanical Engineers (ASME) Code N510–1989 was changed to the American National Standards Institute Standard N510–1975. This change was requested to

ensure the clarity of the methodology used to test the Control Room Emergency Air Cleanup System and Post-Accident Cleanup Filter System High Efficiency Particulate Air (HEPA) filters. Although the test methodology is slightly different than that in N510–1989, the acceptance criteria are the same. Also, in Subsection 5.5.2.12.d the references to Regulatory Guide (RG) 1.52, Revision 2, and ASME N510–1989 were deleted. This section is concerned with pressure drop testing across HEPA filters.

Date of issuance: April 30, 2002.

Effective date: April 30, 2002, to be implemented within 30 days of issuance.

Amendment Nos.: Unit 2—187; Unit 3—178.

Facility Operating License Nos. NPF–10 and NPF–15: The amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** February 19, 2002 (67 FR 7421). The March 14, 2002, supplemental letter provided additional information that clarified the application, did not expand the scope of the application as originally noticed, and did not change the staff's original no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 30, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Docket Nos. 50–348 and 50–364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: June 5, 2001.

Brief Description of amendments: The amendments revise Technical Specifications (TS) Surveillance Requirement 3.4.14.1 to clarify the frequency of performance with regard to Reactor Coolant System Pressure Isolation Valves in the Residual Heat Removal System flow path. Also, related TS Bases and editorial changes are part of this TS change.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 155/147.

Facility Operating License Nos. NPF–2 and NPF–8: Amendments revise the Technical Specifications.

Date of initial notice in ***Federal Register:*** October 31, 2001 (66 FR 55025). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50–321 and 50–366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of application for amendments: September 19, 2001, as supplemented by letter dated March 11, 2002.

Brief description of amendments: The amendments revised the Technical Specifications to state that a representative sample of reactor instrumentation excess flow check valves (EFCVs) will be tested every 18 months such that each EFCV will be tested at least once every 10 years. Prior to issuance of these amendments; the EFCVs were required to be tested every 18 months.

Date of issuance: April 11, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days from the date of issuance.

Amendment Nos.: 230/171.

Facility Operating License Nos. DPR–57 and NPF–5: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 4, 2001 (66 FR 57125). The supplement dated March 11, 2002, provided clarifying information that did not change the scope of the September 19, 2001, application nor the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 11, 2002.

No significant hazards consideration comments received: No.

Southern Nuclear Operating Company, Inc., et al., Docket Nos. 50–424 and 50–425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: June 27, 2001; as supplemented by letter dated January 23, 2002.

Brief description of amendments: The amendments revise the frequency for Surveillance Requirement (SR) 3.8.1.13 from once every 18 months (with a maximum of 22.5 months including the 25% grace period of SR 3.0.2) to once every 24 months (for a maximum of 30 months including the 25% grace period of SR 3.0.2). The change allows this SR to be performed following the diesel generator inspection/maintenance, which is performed at a 24-month interval in accordance with the manufacturer's recommendations.

Date of issuance: April 22, 2002.

Effective date: As of the date of issuance and shall be implemented within 30 days of issuance.

Amendment Nos.: 126, 104.

Facility Operating License Nos. NPF–68 and NPF–81: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** July 25, 2001 (66 FR 38767). The supplement dated January 23, 2002, provided clarifying information and reduced the scope of the June 27, 2001, application, but did not change the initial proposed no significant hazards consideration determination for this approval.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated April 22, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–260 and 50–296, Browns Ferry Nuclear Plant, Units 2 and 3, Limestone County, Alabama

Date of application for amendments: August 17, 2001 (TS–366).

Brief description of amendments: The amendments removed the low-scram pilot air header pressure switches.

Date of issuance: April 8, 2002.

Effective date: As of date of issuance, to be implemented within 120 days following completion of the Unit 2 Cycle 12 refueling outage scheduled for the spring 2003, and the Unit 3 Cycle 10 refueling outage scheduled for the spring 2002.

Amendment Nos.: 276 and 235.

Facility Operating License Nos. DPR–52 and DPR–68: Amendments revised the Technical Specifications.

Date of initial notice in ***Federal Register:*** November 14, 2001 (66 FR 57126). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 8, 2002.

No significant hazards consideration comments received: No.

Tennessee Valley Authority, Docket Nos. 50–327 and 50–328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendment: November 15, 2001, as supplemented March 11, 2002.

Brief description of amendment: The amendment revised the Technical Specifications (TSs) and the facility operating licenses (FOLs) to reflect an increase in the authorized maximum steady-state core power levels at the

Sequoyah Nuclear Plant, Units 1 and 2, from 3411 megawatts thermal (MWt) to 3455 MWt, an increase of approximately 1.3 percent.

Date of issuance: April 30, 2002.

Effective date: As of the date of issuance and shall be implemented within 45 days for Unit 1 and 120 days for Region 2.

Amendment Nos.: 275 and 264.

Facility Operating License No. DPR–79: Amendment revises the TSs and FOLs.

Date of initial notice in ***Federal Register:*** December 12, 2001 (66 FR 64303). The supplemental letter provided clarifying information that was within the scope of the initial notice and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated April 30, 2002.

No significant hazards consideration comments received: No.

Dated at Rockville, Maryland, this 7th day of May 2002.

For the Nuclear Regulatory Commission.

John A. Zwolinski,

Director, Division of Licensing Project Management, Office of Nuclear Reactor Regulation.

[FR Doc. 02–11871 Filed 5–13–02; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45898; File No. SR–Amex–2001–47]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment Nos. 1 and 2 Thereto and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 by the American Stock Exchange LLC Relating to Issuer Listing Standards and Procedures

May 8, 2002.

I. Introduction

On July 16, 2001, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend the Amex's issuer listing standards and procedures. On January 10, 2002, the Amex filed Amendment No. 1 to the proposed rule change,[3] and on February 14, 2002, filed Amendment No. 2 to the proposed rule change.[4] The proposed rule change, as amended by Amendment Nos. 1 and 2, was published in the **Federal Register** on February 22, 2002.[5] The Commission received two comment letters on the proposal.[6] On May 2, 2002, the Amex submitted Amendment No. 3 to the proposed rule change.[7] This Order approves the proposed rule change, as amended. In addition, the Commission is publishing notice to solicit comment on and is simultaneously approving, on an accelerated basis, Amendment No. 3 to the proposal.

II. Description of the Proposal

The Exchange is proposing to amend the Amex *Company Guide* to adopt (i) new listing standards relating to the authority of the Amex Committee on Securities in respect of its review of initial listings; (ii) new procedures that would impose definitive time limits with respect to how long a non-compliant company can retain its listing; (iii) substantive revisions to the initial and continued listing standards; and (iv) changes to the appeal procedures applicable to staff denials of initial listing applications and staff delisting determinations.[8]

The Exchange represents that it has also augmented its management reporting system to alert senior Exchange management to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. The management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards.

A. Initial Listing Approval Process

With regard to its initial listing standards, the Exchange is proposing the following:

(1) Replace all references to listing "guidelines" with references to listing "standards." [9]

(2) Revise and clarify the authority of Listing Qualifications Department management to approve a company for initial listing, to provide that it may approve a company under the following circumstances:[10]

- The company satisfies new "Initial Listing Standard 1" (existing "Regular Listing Guidelines").
- The company satisfies new "Initial Listing Standard 2" (existing "Alternate Listing Guidelines").
- The company satisfies new "Initial Listing Standard 3" (new "Market Capitalization" standard).[11]

(3) Adopt new quantitative alternative minimum listing standards limiting the authority of Amex Committee on Securities ("Committee") panels with respect to the review of initial listings determinations, such that a Committee panel would be able to approve a company that did not satisfy one of the regular initial listing standards only if (a) the company satisfies new alternative quantitative listing standards; (b) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (c) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards. Committee panels would not have the authority to approve companies below the "floor" established by the new alternative quantitative listing standards specified in section 1203(c).

B. Continued Listing Process

The Exchange is proposing to adopt revised procedures that would impose definitive time limits with respect to how long a company that has fallen below the continued listing standards can remain listed pending corrective action. Under the new procedures, a company that falls out of compliance with the continued listing standards will be given an opportunity to submit a business plan to the Listing Qualifications Department detailing the action it proposes to take to bring it into compliance with continued listing standards within 18 months. If the Listing Qualification Department management determines that the company has made a reasonable demonstration of an ability to regain compliance within 18 months, the plan will be accepted. The company would be able to continue its listing for up to 18 months if it issues a press release indicating that it is not in compliance with the continued listing standard and that it has been granted an 18-month extension.

The Listing Qualifications Department will closely monitor the company's compliance with the plan during the 18-month plan period, and the company will be subject to delisting if it does not show progress consistent with its business plan, if further deterioration occurs, or based on public interest concerns. If, prior to the end of the 18-month plan period, the company is able to demonstrate compliance with the continued listing standards (or that it is able to qualify under an original listing standard) for a period of two consecutive quarters, the Exchange will deem the 18-month plan period over. At the conclusion of the 18-month plan period, the staff will initiate delisting proceedings if the company has not regained compliance with the continued listing standards.

If the company, within twelve months of the end of the 18-month plan period (including any early termination of the 18-month plan period), is again determined to be below continued listing standards, the Exchange will examine the relationship between the two incidents of falling below continued listing standards and re-evaluate the company's method of financial recovery from the first incident. It will then take appropriate action, which, depending upon the circumstances, may include immediately initiating delisting procedures.[12] All staff delisting proceedings can be appealed to a Committee panel; however, the Committee panel will not have the authority to continue the company's listing unless it determines that the company has regained compliance with the continued listing standards.

C. Other Changes

With respect to continued listing, the Amex is proposing to revise section 1003(a)(iii) of the *Company Guide* to provide that a company will continue to qualify for listing, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, if it has stockholders' equity of at least $6 million. Currently, a company that has sustained such losses is subject to delisting regardless of its stockholders' equity. The Amex believes that this change is appropriate, in that a company which is able to maintain significant shareholders' equity should be able to continue its listing notwithstanding five or more years of losses. The Amex notes that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

In addition, the Amex is proposing to modify the market value of public float continued listing standard contained in section 1003(b)(i)(C) of the *Company Guide*, to provide that a company will not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than $1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below $1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

D. Appeal Procedures

The proposed changes make adjustments to the procedures applicable to the review of initial listing determinations and revise the procedures applicable to the review of delisting determinations to conform them to initial listing procedures. The proposal provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.

A panel decision will be dispositive with respect to both listing and delisting decisions. In the case of an appeal of an initial listing denial, this means that if the panel determines to "reverse" the staff determination, the issuer's securities will be approved for listing and listed at the convenience of the issuer. In the case of an appeal of a delisting determination, the delisting action will be stayed pending the outcome of the panel's review. Following a panel determination to delist, trading in the company's securities will be suspended. If the company does not appeal the panel's decision to the full Committee, its securities will be delisted following the expiration of the appeal period, in accordance with section 12 of the Act [13] and the rules promulgated thereunder. If the company does appeal to the full Committee, the suspension will continue until there is a final decision (either by the full Committee or the Board based on its "call for review"), in which case the securities will be either delisted or the suspension will be lifted, depending on the outcome.

With respect to an initial listing application in which the company appeals an adverse panel decision to the full Committee, if the Committee "reverses" the panel decision and approves the listing, in order to avoid potential market disruptions and investor confusion, the securities will not begin trading unless and until the

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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 9, 2002 ("Amendment No. 1"). Amendment No. 1 supercedes and replaces the original Exchange Act Rule 19b–4 filing in its entirety.

[4] *See* letter from Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, to Florence Harmon, Senior Special Counsel, Division, Commission dated February 13, 2002 ("Amendment No. 2"). In Amendment No. 2, the Exchange corrected various typographical errors, elaborated on the augmentation of its management reporting system, clarified the procedures by which an issuer would be considered under the Alternative Listing Standards, and added rule language that had been inadvertently omitted.

[5] *See* Securities Exchange Act Release No. 45451 (February 14, 2002), 67 FR 8326.

[6] The comment letters are more fully discussed below in Section III. *See* Letter from Robert M. Lam, Chairman, Pennsylvania Securities Commission, to Jonathan G. Katz, Secretary, Commission, dated March 28, 2002 (PA Letter); and Letter from Edward S. Knight, Executive Vice President and General Counsel, Nasdaq, to Jonathan Katz, Secretary, Commission, dated March 27, 2002 (Nasdaq Letter).

[7] *See* letter from Michael J. Ryan, Jr., Executive Vice President and General Counsel, Amex, to Nancy Sanow, Assistant Director, Division, Commission, dated May 1, 2002. In Amendment No. 3, the Exchange withdrew proposed section 101(d) of the Amex *Company Guide* and designated proposed section 101(e) of the Amex Company Guide as section 101(d).

[8] *See generally, Securities Regulation: Improvements Needed in the Amex Listing Program* (GAO–02–18, November 27, 2001).

[9] This change would also apply to references to current continued listing guidelines.

[10] The Amex had originally also proposed a new "currently listed securities" standard, by which securities that are currently listed on either the New York Stock Exchange, Inc. or Nasdaq National Market would qualify for initial listing if such securities satisfy the standards with respect to continued listing set forth in Part 10 of the *Company Guide*. In Amendment No. 3, however, the Amex withdrew the "currently listed securities" standard. *See* Section III, *infra*.

[11] Under the "market capitalization" standard, a company would be eligible for initial listing if it meets the following standards: (1) Shareholders' equity of $4 million; (2) total value of market capitalization of $50 million; (3) market value of public float of $15 million; and (4) a minimum public float of 500,000 and 800 public shareholders; or a minimum public distribution of 1,000,000 shares together with a minimum of 400 public shareholders; or a minimum of 500,000 shares publicly held, a minimum of 400 public shareholders, and daily trading volume of 2,000 shares or more for the six months preceding the date of application.

[12] The Exchange represents that it does not view the one-year probation period as an extension of the 18-month plan period. Telephone discussion between Claudia Crowley, Assistant General Counsel-Listing Qualifications, Amex, and Florence E. Harmon, Senior Special Counsel, Division, Commission (February 14, 2002). The Commission agrees and emphasizes in particular that companies listed pursuant to the new alternative listing standards in section 1203(c) of the *Company Guide* should not view the one-year probation period as an opportunity to gain additional time to achieve compliance. Absent extraordinary circumstances, the Commission expects the Exchange to suspend and institute delisting proceedings for the security of any section 1203(c) company that falls below the section 1203(c) criteria during the one-year probation period.

[13] 15 U.S.C. 78*l*.

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Board has declined to call such decision for review.

While issuers will be able to request either an oral or written hearing at the panel level, appeals to the full Committee will be based on the written record only unless the Committee determines, in its sole discretion, to hold a hearing. All decisions of the full Committee will also be subject to a discretionary "call for review" by the Amex Board of Governors. If the Board's decision provides that the issuer's security or securities should be delisted, the Exchange will suspend trading in such security or securities as soon as practicable, if it has not already done so pursuant to section 1204(d), and an application will be submitted by the Exchange staff to the Commission to strike the security or securities from listing and registration in accordance with section 12 of the Act [14] and the rules promulgated thereunder. In the event that the Board was to "reverse" a full Committee decision, the issuer's listing status would be adjusted accordingly.

Additionally, in order to recoup the costs associated with processing and conducting hearings in connection with issuer requests for review, the Amex will continue to charge a fee of $2,500 for an oral hearing and $1,500 for a written review. Thus, an issuer requesting an oral hearing before a panel will be assessed a fee of $2,500, while an issuer requesting a written review by a panel will be assessed a fee of $1,500. Should the issuer appeal the panel's decision to the full Committee, it will be assessed an additional fee of $2,500. Issuers will not be charged fees in connection with a "call for review" by the Board of Governors.

III. Comments and Response

A. Comment Letters

The Commission received two comment letters regarding the proposal.[15] Both commenters generally believed that the "currently listed securities" standard proposed in section 101(d) of the *Company Guide* is contrary to section 18 of the Securities Act of 1933 ("Securities Act").[16] The commenters expressed the concern that the "currently listed securities" standards would allow a company listed on either Nasdaq's National Market or the New York Stock Exchange to be approved for listing on Amex based solely upon that company's compliance with Amex's lower continued listing standards (rather than Amex's higher initial listing standards).

B. Amex Response

In Amendment No. 3, the Amex withdrew proposed section 101(d) of the *Company Guide* ("currently listed securities" standard) and designated proposed section 101(e) of the *Company Guide* as section 101(d).[17] Notwithstanding the amendment, the Amex stated that it continues to believe strongly that their originally proposed changes to section 101(d) are fully consistent with section 18 of the Securities Act.[18] The Amex represented that the provision would have provided a narrow and limited window for the securities of issuers currently listed on a marketplace that has been afforded the section 18 "blue-sky" exemption to transfer to another section 18 marketplace. These issuers must have previously satisfied the initial listing standards of such marketplace and must have been in compliance with applicable Amex initial listing standards at the time of initial listing. The Amex maintained that the ultimate beneficiaries of the proposed "currently listed securities" standard would have been the shareholders of the issues in question.

IV. Discussion

The Commission has reviewed the Amex's proposed rule change and finds, for the reasons set forth below, that the proposal, as amended, is consistent with the requirements of section 6 of the Act [19] and the rules and regulations promulgated thereunder applicable to a national securities exchange. Specifically, the Commission believes the proposal is consistent with section 6(b)(5) of the Act,[20] because it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

At the outset, the Commission believes that the adoption of firm quantitative standards enhances the transparency of the Amex's listing program and provides clarity to investors. Investors are likely to assume that the companies listed on Amex meet the Exchange's listing standards, and the proposed amendments recognize that practicality. The *Company Guide* provides that the Amex staff may approve a company for initial listing if the company satisfies clearly delineated standards. The Amex Committee on Securities ("Committee") would be able to approve a company that did not satisfy one of the regular initial listing standards only if (i) the company satisfies new alternative quantitative listing standards; (ii) a Committee panel makes an affirmative finding that there are mitigating factors that warrant listing pursuant to the alternative standards; and (iii) the company issues a press release disclosing the fact that it had been approved pursuant to the alternative listing standards.[21] The Commission notes that Committee panels would not have authority to approve companies below the "floor" established by the new alternative quantitative listing standards.

With respect to continued listing, the Commission believes that the revision to section 1003(a)(iii), to provide that a company will continue to qualify for listing if it has stockholders' equity of at least $6 million, even if it has sustained losses from continuing operations and/or net losses in its five most recent fiscal years, is reasonable. In its experience, the Amex has noted that many development and research-oriented companies often take a number of years to reach profitability. Although not all these companies become profitable, the Amex believes that the ability to raise capital, as evidenced by significant shareholders' equity, is often an indication of a company's strength.

The Commission similarly believes that the revision to section 1003(b)(i)(C), to modify the market value of public float continued listing standard, is reasonable. The Amex is proposing that a company not be considered below continued listing standards unless the aggregate market value of its shares publicly held is less than $1 million for more than ninety consecutive days. Currently, a literal reading of the provision would result in a listed company technically falling below the requirement if the market value of its public float fell below $1 million for even one day. In view of the volatility of the markets, the Amex believes it is appropriate to evaluate this listing standard over a period of time.

The Commission also believes that the modifications to the Exchange's continued listing program and appeal procedures under Parts 10 and 12 of the Amex *Company Guide* strike a permissible balance between the Exchange's obligation to protect investors and their confidence in the market, with its parallel obligation to perfect the mechanism of a free and open market. The measures by which a company may return to compliance with continued listing standards are explicitly delineated, providing greater transparency to the 18-month plan process and sustaining investor confidence in the integrity of the markets. The Commission believes that the proposed changes to the appeals process are reasonable and afford adequate due process to issuers while at the same time bringing increased efficiency to the listing and delisting processes.[22] Among other things, the process provides issuers with the right to appeal a staff determination to deny initial or continued listing to a panel of at least three members of the Committee. The issuer has the right to appeal an adverse panel's decision to the full Committee.[23] All decisions of the full Committee will also be subject to a discretionary "call for review" by the Amex Board of Governors.[24]

Finally, the Commission believes that changes to the Amex management reporting process will help to protect investors and the public interest. The Amex represents that it has augmented its management reporting system to ensure that senior Exchange management is regularly alerted to any developing trends emerging from the listing qualifications process, with respect to outstanding listing applications, recently approved companies, and companies failing to meet or in jeopardy of failing to meet the continued listing standards. In addition, Amex states that the management review will also encompass the continued status of companies approved pursuant to the proposed alternative standards as compared to those approved pursuant to the regular standards. The Amex believes that this comparison will enable the staff to provide feedback to the Committee and the Board of Governors as to the effectiveness of the Amex listing standards.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register**. In Amendment No. 3, the Exchange withdrew proposed section 101(d), the "currently listed securities" standard, and designated proposed section 101(e) as section 101(d). As the changes to the proposal set forth in Amendment No. 3 are directly responsive to the concerns raised by the commenters, the Commission finds that, consistent with section 19(b)(2) of the Act,[25] good cause exists for approving Amendment No. 3 on an accelerated basis. The Commission notes that granting accelerated approval to Amendment No. 3 will allow the Amex to implement its issuer listing standards and procedures as soon as possible.

V. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning Amendment No. 3, including whether Amendment No. 3 is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–2001–47 and should be submitted by June 4, 2002.

VI. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[26] that the proposed rule change (SR–Amex–2001–47), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[27]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12010 Filed 5–13–02; 8:45 am]

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[14] *Id.*

[15] *See* PA Letter, Nasdaq Letter, *supra* at note 6.

[16] 15 U.S.C. 77r.

[17] *See* Amendment No. 3, *supra* at note 7.

[18] 15 U.S.C. 77r.

[19] 15 U.S.C. 78f.

[20] 15 U.S.C. 78f(b)(5).

[21] Amex *Company Guide*, Section 1203(c).

[22] For example, the Committee will now follow the same review process for both listing and delisting determinations, rather than different processes for each. In addition, the Amex notes the the Committee, which has extensive experience and expertise in evaluating listing issues, will be given greater responsibility with respect to listing determinations, while the Board, through its "call for review" rights, will retain ultimate oversight of the listing and delisting process as well as of listing matters in general.

[23] Amex *Company Guide*, Sections 1203 and 1204.

[24] Amex *Company Guide*, Section 1206.

[25] 15 U.S.C. 78s(b)(2).

[26] *Id.*

[27] 17 CFR 200.30–2(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45892; File No. SR–CHX–2002–08]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Thereto by the Chicago Stock Exchange, Inc. Amending the Specialist Fee Schedule for Certain Nasdaq National Market Securities and Certain Tape B Issues

May 7, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 26, 2002, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[3] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend its membership dues and fees schedule ("Schedule") to provide for wider application of a recently-enacted specialist fee exemption [4] in the case of certain modestly traded Nasdaq National Market ("NNM") securities and certain modestly traded Tape B securities, securities listed for trading on the American Stock Exchange, Inc ("Amex"). The text of the proposed rule change is available at the principal offices of the CHX and at the Commission.

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] The proposal was originally filed on March 29, 2002. On April 26, 2002, the CHX amended the proposal. See Letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission (April 25, 2002) ("Amendment No. 1").

[4] See Securities Exchange Act Release No. 45661 (March 27, 2002), 67 FR 16481 (April 5, 2002).

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of, and the basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CHX has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to amend the Schedule to provide wider application of a recently-enacted specialist fee exemption in the case of certain modestly traded NNM securities and certain modestly traded Tape B securities. Specifically, the proposed changes to the Schedule would modify the definition of "Exemption Eligible Securities," [5] which are exempt from otherwise applicable CHX fixed fees, assignment fees, and application fees.

As set forth in the Exchange's recently-enacted specialist fee exemption, the Exchange believes that the fee exemption constitutes an appropriate means of ensuring that the Exchange continues to trade an appropriate number of modestly traded securities. For a variety of reasons, some specialists have deregistered from certain issues formerly assigned to such specialists for trading on the CHX pursuant to unlisted trading privileges. At the same time, CHX floor brokers continue to receive orders for many of these "dropped" issues; such floor brokers view continued CHX trading of a wide variety of issues to be critical to their customers and an important part of the Exchange's overall strategic plan. Accordingly, the CHX has devised the proposed fee exemption, which the CHX believes will provide sufficient economic incentive for specialists to continue trading a wide array of issues.

Following one month's review and analysis of the effect of the recently-enacted fee exemption, the Exchange has determined that it is appropriate to expand the definition of "Exemption Eligible Securities" to include NNM securities with average daily volume of up to 1000 trades in the Nasdaq marketplace, as well as Tape B issues with average daily volume of up to 400 trades in the national market system.

The Exchange anticipates that by expanding the scope of issues to which the exemption applies, the Exchange will provide the intended incentive for firms to continue trading issues that might otherwise be "dropped" from trading at the CHX.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b) of the Act,[6] generally, and Section 6(b)(4) of the Act [7] in that it is designed to provide for the equitable allocation of reasonable dues, fees, and other charges among Exchange members.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CHX does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective on filing pursuant to Section 19(b)(3)(A) of the Act [8] and Rule 19b–4(f)(2) thereunder,[9] as establishing or changing a due, fee, or other charge paid solely by members of the CHX. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[10]

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR-CHX–2002–08 and should be submitted by June 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

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[5] Under the proposed rule change to the Schedule, "Exemption Eligible Security" would include either of the following categories of issues:

(a) any NNM security, which averages fewer than 1000 trades per day that are reported to the consolidated tape on an average daily basis during the applicable three-month measuring period. In the case of an NNM security assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of an NNM security that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any NNM security that has had trades reported to the consolidated tape for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

(b) any Tape B issue, which averages fewer than 400 trades per day in the national market system on an average daily basis during the applicable three-month measuring period. In the case of a Tape B issue assigned to a CHX specialist, the CHX shall make a semi-annual determination based on the most recent available data for the three-month period preceding the determination date. In the case of a Tape B issue that is not currently assigned to a CHX specialist, the CHX shall make its determination based on the most recent available data for the three-month period preceding the date on which a specialist submits an application for assignment of the security. Any Tape B issue that has been traded in the national market system for less than three months (or for which three months' data is unavailable) is expressly excluded from this definition.

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(4).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b-4(f)(2).

[10] See Section 19(b)(3)(C) of the Act, 15 U.S.C. 78s(b)(3)(C).

[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45881; File No. SR–MSRB–2002–05]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Municipal Securities Rulemaking Board Relating to Electronic Mail Contacts

May 6, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (the "Act"),[1] notice is hereby given that on April 30, 2002, the Municipal Securities Rulemaking Board ("Board" or "MSRB") filed with the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change (File No. SR–MSRB–2002–05). The proposed rule change is described in Items I, II, and III below, which Items have been prepared by the Board. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Board is filing herewith a proposed rule change relating to electronic mail representatives. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rule G–40. Electronic Mail Contacts

(a) Each broker, dealer or municipal securities dealer shall appoint an Electronic Mail Contact to serve as the official contact person for purposes of electronic mail communication between the broker, dealer or municipal securities dealer and the MSRB. Each Electronic Mail Contact shall be a registered municipal securities principal of the broker, dealer or municipal securities dealer.

(b)(i) Upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number, each broker, dealer or municipal securities dealer shall submit to the MSRB by mail a completed Form G–40 setting forth, in the prescribed format, the following information:

(A) The name of the broker, dealer or municipal securities dealer, and the date.

(B) The MSRB Registration Number of the broker, dealer or municipal securities dealer.

(C) The name of the Electronic Mail Contact, and his/her electronic mail address, telephone number and Individual Central Registration Depository (CRD) Number.

(A) The name, title, signature and telephone number of the person who prepared the form.

(ii) A broker, dealer or municipal securities dealer may change the name of its Electronic Mail Contact or other information previously provided by electronically submitting to the MSRB an amended Form G–40.

(c) Each broker, dealer or municipal securities dealer shall update information on its Electronic Mail Contact periodically as requested and prescribed by the MSRB and shall submit such information electronically to the MSRB.

Rule G–8. Books and Records To Be Made by Brokers, Dealers and Municipal Securities Dealers

(a) Description of Books and Records to be Made. Except as otherwise specifically indicated in this rule, every broker, dealer and municipal securities dealer shall make and keep current the following books and records, to the extent applicable to the business of such broker, dealer or municipal securities dealer:

(i)–(xxi) No change.

(xxii) Records Concerning Electronic Mail Contacts. Records reflecting copies of Form G–40 and any amended forms, as required by Rule G–40.

(b)–(e) No change.

(f) Compliance with Rule 17a–3. Brokers, dealers and municipal securities dealers other than bank dealers which are in compliance with rule 17a–3 of the Commission will be deemed to be in compliance with the requirements of the rule, provided that the information required by subparagraph (a)(iv)(D) of this rule as it relates to uncompleted transactions involving customers; paragraph (a)(viii); and paragraphs (a)(ix) through (a)[(xxi)] *(xxii)* shall in any event be maintained.

(g) No change.

Rule G–9. Preservation of Records

(a) No change.

(b) Records to be Preserved for Three Years. Every broker, dealer and municipal securities dealer shall preserve the following records for a period of not less that three years:

(i)–(xiii) No change.

(xiv) the records to be maintained pursuant to rule G–8(a)(xx); [and]

(xv) the records to be maintained pursuant to rule G–8(a)(xxi)[.] *;and*

(xvi) *the records to be maintained pursuant to rule G–8(a)(xxii).*

(c)–(g) No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

In its filing with the Commission, the MSRB included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The texts of these statements may be examined at the places specified in Item IV below. The MSRB has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The events of September 11th, as well as the weeks that followed, emphasized the importance of, and need for, a formalized business continuity plan that includes an efficient and reliable means of official communication between regulators and the industry. Establishing a reliable method for electronic communication is needed to allow the MSRB to efficiently alert dealers to official communications, including time-sensitive developments, rule changes, notices, etc., and will facilitate dealers' internal distribution of such information. In addition, the MSRB has discontinued publication of *MSRB Reports*. MSRB notices now will be available exclusively on its Web site at *www.msrb.org*. To ensure that such notices and other MSRB communications continue to reach each broker, dealer and municipal securities dealer, the MSRB has adopted the proposed rule change to add new Rule G–40, on electronic mail contacts.

Paragraph (a) of Rule G–40 requires that each dealer appoint an "Electronic Mail Contact" to serve as its official contact person for purposes of communicating with the MSRB, and that such person be a registered municipal securities principal of the dealer. Paragraph (b) requires that each dealer, upon completion of its Rule A–12 submissions and assignment of an MSRB Registration Number,[2] submit by

[1] 15 U.S.C. 78s(b)(1).

[2] Rule A–12, on initial fee, requires each dealer, prior to effecting any transaction in or inducing or attempting to induce the purchase or sale of any municipal security, to pay to the MSRB an initial fee of $100, accompanied by a written statement setting forth the dealer's name, address and SEC registration number.

Upon Commission approval of the proposed rule change, the MSRB will contact its current list of dealers (since these dealers will have previously satisfied their Rule A–12 submissions) to obtain completed Forms G–40. Thereafter, any new dealer will be required to send its initial Form G–40 by

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mail to the MSRB a completed Form G–40 setting forth the dealer's name, date, MSRB Registration Number, name of its E-mail Contact and his/her e-mail address, telephone number and Individual Central Registration Depository (CRD) Number, and the name, title, signature and telephone number of the person who prepared the Form G–40.[3] Paragraph (b) also provides that the dealer may change its E-mail Contact or other information previously submitted by sending an amended Form G–40 to the MSRB by e-mail. Paragraph (c) requires each dealer to update information on its E-mail Contact as periodically requested and prescribed by the MSRB and to submit such information to the MSRB by e-mail.

The proposed rule change also amends Rule G–8, on books and records, to require that dealers maintain records reflecting copies of Form G–40 and any amended forms, as required by Rule G–40. The proposed rule change amends Rule G–9, on preservation of records, to require that dealers retain these records for a period of three years.

(b) The MSRB has adopted the proposed rule change pursuant to Section 15B(b)(2)(I) of the Exchange Act, which authorizes the MSRB to adopt rules that provide for the operation and administration of the MSRB.

B. Self-Regulatory Organization's Statement on Burden on Competition

The MSRB does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act since it would apply equally to all brokers, dealers and municipal securities dealers.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing including whether the proposed rule is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the Board's offices. All submissions should refer to File No. SR–MSRB–2002–05 and should be submitted by June 4, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11951 Filed 5–13–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45882; File No. SR–MSRB–2002–03]

Self-Regulatory Organizations; Municipal Securities Rulemaking Board; Order Granting Approval of Proposed Rule Change Relating to Professional Qualifications of Municipal Fund Securities Limited Principals

May 6, 2002.

On March 21, 2002, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Exchange Act")[1] and Rule 19b–4 thereunder,[2] the Municipal Securities Rulemaking Board ("MSRB") filed with the Securities and Exchange Commission ("Commission") the proposed rule change relating to professional qualifications of municipal fund securities limited principals.

The Commission published the proposed rule change for comment in the **Federal Register** on March 26, 2002.[3] The Commission received two comment letters relating to the forgoing proposed rule change. This order approves the proposal.

I. Description of the Proposed Rule Change

The MSRB proposed rule change consists of an amendment to Rule G–3, on professional qualifications, to address a new category of principals that serve permanently as municipal fund securities limited principals. Under MSRB Rule G–3, which governs professional qualifications, a broker, dealer or municipal securities dealer ("dealer") must have at least one municipal securities principal (and in some cases two municipal securities principals), even if the dealer's only municipal securities transactions are sales of municipal fund securities.[4] In July 2001, MSRB amended Rule G–3 to provide a temporary alternative method for qualification of principals in connection with municipal fund securities.[5] The amended rule provided relief to small dealers seeking to enter the market for municipal fund securities from Rule G–3's requirement to immediately obtain a municipal securities principal. Under the temporary provision, until July 31, 2002, if a dealer's municipal securities activities are limited exclusively to municipal fund securities and the dealer has fewer than eleven associated persons engaged in such activities, the dealer may fulfill its obligation to have a municipal securities principal by designating a general securities or investment company/variable contracts limited principal to act as a limited principal.[6] During this period, any designated limited principal has all of the powers and responsibilities of a municipal securities principal under MSRB rules with respect to transactions in municipal fund securities. Under the current transition provision, on and after August 1, 2002, dealers effecting transactions in municipal fund securities are required to comply with the same municipal securities principal requirements applicable to all other dealers effecting transactions in municipal securities.

The MSRB acknowledges that many dealers that wish to participate in the market for municipal fund securities do not currently, and do not plan to, engage in any municipal securities activities other than with respect to municipal fund securities. Since these dealers will not participate in the market for municipal debt securities and the features of municipal fund securities differ significantly from those of debt securities, the MSRB believes that no investor protection purpose is served by requiring principals responsible for supervision of such firms' municipal fund securities activities to demonstrate their understanding of the application of MSRB rules other than with respect to municipal fund securities.

To qualify as a municipal fund securities limited principal would be by means of an examination consisting of questions on the broad range of MSRB-specific topics that are relevant to municipal fund securities activities.[7] The examination would require that the individual taking it have previously or concurrently taken and passed the general securities principal qualification examination (Series 24) or investment company and annuity principal qualification examination (Series 26) administered by the National Association of Securities Dealers, Inc. ("NASD"). The qualification examination for municipal fund securities limited principals is scheduled to become available on October 1, 2002. MSRB staff is currently in the process of developing the qualification examination and will file the study outline and specifications with the Commission under separate cover.

An individual qualified as a municipal fund securities limited principal would be permitted to supervise only the municipal fund securities activities of the dealer and would have no authority to supervise the activities of the dealer with respect to any other type of municipal securities. However, an individual qualified as a municipal securities principal (Series 53) would continue to be qualified to supervise all municipal securities activities of the dealer, including activities relating to municipal fund securities.[8] Thus, an individual wishing to supervise municipal fund securities activities could qualify to do so either by becoming: (i) a municipal securities principal through the municipal securities principal qualification examination (Series 53) or (ii) a municipal fund securities limited principal through this new qualification examination if the individual is already or concurrently becomes a general securities principal or investment company/variable contracts limited principal.

If a dealer's municipal securities activities are limited to municipal fund securities, the proposed rule change also would count all municipal fund securities limited principals toward the numerical requirement for principals regardless of the number of associated persons engaging in such activities. Thus, any dealer that does not engage in any municipal securities activities other than with respect to municipal fund securities could fully discharge its obligation with respect to municipal securities principals with individuals qualified as municipal fund securities limited principals.

Further, existing rule language indirectly permits investment company/variable contracts limited representatives (Series 6) to take the Series 53 examination to become qualified as municipal securities principals.[9] Although this was appropriate when there was no other provision under Rule G–3 for qualifying a principal to supervise municipal fund securities activities, the proposed rule change discontinues this method of qualification on October 1, 2002 when the new municipal fund securities limited principal qualification examination becomes available.[10] An investment company/variable contracts limited representative would be able to qualify as a municipal fund securities limited principal by taking both the Series 26 examination and the new municipal fund securities limited principal examination.

In addition, the proposed rule change extends the existing temporary provision permitting general securities principals and investment company/variable contracts limited principals to supervise municipal fund securities activities from July 31, 2002 to December 31, 2002 in order to provide dealers with an adequate opportunity to prepare potential candidates for the new examination. During the extended transition period, the numerical requirement with respect to principals would be simplified so that all dealers, not just those with fewer than eleven associated persons engaged in municipal fund securities activities, could fully meet their principal requirements with principals acting in the temporary capacity permitted under the transition provisions. This rule change makes clear that, beginning on January 1, 2003, all municipal fund securities limited principals (including general securities principals and investment company/variable contracts limited principals supervising municipal fund securities activities under the temporary transition period who wish to continue such supervisory activities after December 31, 2002) must be qualified by taking the new qualification examination.

Finally, the MSRB rule change provides the NASD or any other appropriate regulatory agency the power to waive qualification requirements with respect to municipal fund

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mail when the dealer completes its Rule A–12 submissions, as noted above.

[3] The MSRB will assign passwords in order to limit access to each dealer's Form G–40 and to maintain the integrity of the information contained therein. Therefore, each dealer will be required to submit its initial Form G–40 by mail. The MSRB will then issue a password to the designated E-mail Contact that will be used to electronically submit to the MSRB any required updates and amendments to the form.

[4] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–45652 (April 3, 2002), 67 FR 15844.

[4] A municipal fund security is defined in MSRB's Rule D–12 as a municipal security issued by an issuer that, but for section 2(b) of the Investment Company Act of 1940 (the "Investment Company Act"), would constitute an investment company within the meaning of the Investment Company Act. Section 2(b) exempts states and political subdivisions, and agencies, authorities, and instrumentalities thereof, from the Investment Company Act.

[5] *See* SR–MSRB 2001–05; Release No. 34–44584 (July 23, 2001), 66 FR 39541 (July 31, 2001).

[6] Dealers that have 11 or more associated persons engaged in municipal fund securities activities may also designate a general securities or investment company/variable contracts limited principal to act as a limited principal. If a dealer is required to have two municipal securities principals under Rule G–3(b)(iii), then it may count one such limited principal toward this numerical requirement but must still have one municipal securities principal qualified other than by reason of being a general securities or investment company/variable contracts limited principal. If any dealer having 11 or more associated persons engaged in municipal fund securities activities is permitted to have only one municipal securities principal by virtue of Rule G–3(b)(iii)(A), the numerical requirement may not be satisfied by designation of a limited principal.

[7] Since the qualification examination would be tailored specifically to the application of MSRB rules to municipal fund securities, rather than to all types of municipal securities, the MSRB expects that this examination would not be as lengthy as the existing qualification examination for municipal securities principals (Series 53).

[8] The question bank for the Series 53 examination includes questions relating to municipal fund securities. Individuals taking the Series 53 examination must therefore become familiar with the application of MSRB rules to municipal fund securities.

[9] Rule G–3 permits an investment company/variable contracts representative to act as a municipal securities representative solely with respect to municipal fund securities.

[10] Qualification of an investment company/variable contracts limited representative as a full municipal securities principal allows that individual to supervise any municipal securities activities, including debt securities. The MSRB is concerned that an individual who is solely qualified as an investment company/variable contracts limited representative prior to becoming a municipal securities principal may not have an adequate understanding of municipal debt securities to provide effective supervision under all circumstances.

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securities limited principals, as with all other qualification categories. Under Rule G–3(g)(i), such waivers are to be granted solely in extraordinary cases.

II. Summary of Comments

The Commission received two comment letters on the proposal.[11] Of the two comment letters, one expresses support and the other opposes the creation of a municipal fund securities limited principal.

In favor of the MSRB proposal, the ICI letter states that the new classification of limited principals will provide "needed relief" to firms whose sole securities business consists of municipal fund securities.[12] ICI referenced its recommendation submitted in prior letter, commenting on the MSRB's July 2001 notice, that the MSRB provide temporary and extended relief until the MSRB administers its new municipal fund securities limited principal examination.[13] Because their concern is addressed in the proposed rule change, the ICI extends its support to the MSRB.

The comment letter sent by Federated opposes the MSRB's establishment of the new permanent category of municipal fund securities limited principals by stating that it creates "unnecessary and inappropriate burdens".[14] Federated asserts that the existing requirements already assure the proper supervision for municipal fund securities, because there is "virtually no substantive distinction between municipal fund securities and mutual funds". The imposition of new MSRB regulation burdens member firms with unnecessary registration requirements, additional costs and administrative encumbrances without adding investor protections.[15] As an alternative, the Federated letter supports supervision of the municipal fund securities under the current registration and continuing education scheme of the NASD. To the extent it is necessary, the letter requests that the MSRB work with the NASD to incorporate changes to the NASD's educational scheme that address municipal fund securities. Additionally, the Federated letter urges the MSRB to extend its current pilot to permit NASD mutual fund principals to supervise sales of municipals fund securities.[16]

The MSRB believes that the proposed rule change would in fact decrease dealers' regulatory burden. Without the amendment, dealers would be required to use fully qualified municipal securities principals to meet their Rule G–3 principal requirement.[17] As stated above, the creation of the municipal fund securities limited principal category provides dealers with an alternative means of meeting this requirement. For dealers that do not otherwise engage in municipal securities activities, allowing their general securities principals or investment company principals to take a shorter, more focused examination than the Series 53 exam in order to qualify as a municipal fund securities principal should be less burdensome. The further reduction in regulatory burden that these commentators most likely desire—*i.e.*, no MSRB qualification requirements—is inappropriate since activities regulated by MSRB rules require ultimate supervision by someone who knows these rules.

III. Discussion

The MSRB believes that the proposed rule change is consistent with section 15B(b)(2)(A) of the Exchange Act, which provides that it is the MSRB's responsibility to propose and adopt rules which require that no municipal securities broker or municipal securities dealer shall effect any transaction in municipal securities unless, "such municipal securities broker or municipal securities dealer and every natural person associated with such municipal securities broker or municipal securities dealer meets such standards of training, experience, competence, and such other qualifications as the Board finds necessary or appropriate in the public interest or for the protection of investors."[18]

Section 15B(b)(2)(A) of the Exchange Act also provides that the MSRB may appropriately classify municipal securities brokers and municipal securities dealers and their associated personnel and require persons in any such class to pass tests prescribed by the MSRB.

The Commission must approve a proposed MSRB rule change if the Commission finds that the proposal is consistent with the requirements set forth under the Exchange Act, the rule and regulations thereunder, which govern the MSRB.[19] The language of section 15B(b)(2)(C) of the Exchange Act requires that the MSRB's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principals of trade, to foster cooperation and coordination with persons engaged in regulating, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market in municipal securities, and, in general, to protect investors and the public interest.[20]

After careful review, the Commission finds that the MSRB's proposed rule change consisting of an amendment to Rule G–3, on professional qualifications, which relates to municipal fund securities limited principals, meets the statutory standard. The Commission believes that this proposed rule change is consistent with the requirements of the Exchange Act, and the rules and regulations thereunder. In addition, the Commission finds that the proposed rule is consistent with the requirements of section 15B(b)(2)(C) of the Exchange Act, set forth above.

IV. Conclusion

IT IS THEREFORE ORDERED, pursuant to Section 19(b)(2) of the Exchange Act,[21] that the proposed rule change (File No. SR–MSRB–2002–03) be and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–11952 Filed 5–13–02; 8:45 am]

BILLING CODE 8010–01–P

[11] *See* letter from John K. Forst, Law Offices of Dechert Price & Rhoads, to Jonathan G. Katz, Secretary, Commission, dated April 30, 2002 (*enclosing* letter from James F. Getz, President, Federated Securities Corp. ("Federated"), to Mr. Jonathan G. Katz, Secretary, Commission); letter from Tamara K. Reed, Associate Counsel, Investment Company Institute ("ICI"), to Mr. Jonathan G. Katz, Secretary, Commission, dated April 25, 2002.

[12] *See* ICI letter, note 11, *supra.*

[13] *Id.* (*citing* letter from Tamara K. Reed, Associate Counsel, ICI, to Ernesto A. Lanza, Esquire, MSRB, dated January 15, 2002.)

[14] *See* Federated letter, note 11, *supra.*

[15] *Id.*

[16] *Id.*

[17] Dealers selling mutual fund IRA accounts and muniicipal bond mutual funds are not required to comply with MSRB rules because these securities are not municipal securities and are instead subject to regulation under other regulatory schemes. In contrast, municipal fund securities are municipal securities and therefore are subject to MSRB rules and exempt from most other provisions of federal securities laws (such as the Securities Act of 1933 and the Investment Company Act).

[18] 15 U.S.C. 78o–4(b)(2)(A).

[19] Additionally, in approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

[20] 15 U.S.C. 78o–4(b)(2)(C).

[21] 15 U.S.C. 78s(b)(2).

[22] 17 CFR 200.30–3(a)(12).

TENNESSEE VALLEY AUTHORITY

Sunshine Act Meeting Notice

AGENCY HOLDING THE MEETING: Tennessee Valley Authority (Meeting No. 1539).

TIME AND DATE: 9 a.m. (CDT), May 16, 2002.

PLACE: Huntsville Marriott, 5 Tranquility Base, Huntsville, Alabama.

STATUS: Open.

Agenda

Approval of minutes of meeting held on March 26, 2002.

New Business

B—Purchase Awards

B1. Supplement to contract with EMC Corporation for disk array storage device hardware, software, and maintenance.

B2. Contracts with Great Southern Wood Preserving, Inc., Landstar, and Kaplan Trucking for purchase of truckload transportation services for TVA operations.

C—Energy

C1. Extended operation of Browns Ferry Nuclear Plant and recovery of Unit 1.

C2. Contracts with Flowserve Corporation and Tencarva Machinery Company, Inc., for pump repair parts and repair services at any TVA fossil plant.

C3. Contract with Trans-Ash, Inc., for offsite fly ash utilization at Johnsonville Fossil Plant.

C4. Term coal contract with The American Coal Sales Company for coal supply to Johnsonville Fossil Plant.

C5. Contract with United Conveyor Corporation to design and furnish mechanical ash-handling systems for any TVA fossil plant

C6. Supplement to Contract No. 2889 with LaRoche Industries, Inc., to engineer and design ammonia storage and supply facilities and to supply ammonia for the nitrogen oxide reduction programs for any TVA fossil plant.

E—Real Property Transactions

E1. Sale of a noncommercial, nonexclusive permanent easement to John Jansheski for construction and maintenance of recreational water-use facilities affecting approximately 0.27 acre of Tellico Reservoir shoreline in Loudon County, Tennessee (Tract No. XTELR–228RE).

E2. Abandonment of certain easement rights and modificatioin of a restrictive covenant to allow Windel and Kermit Lester to develop their land for residential purposes affecting approximately 1.1 acres of land on South Holston Reservoir (a portion of Tract Nos. SH–584F and SH–585F) in Washington County, Virginia.

E3. Grant of a permanent easement, without charge, except for payment of TVA's administrative costs, to the Fort Loudoun Electric Cooperative, for an electrical transmission line and substation affecting approximately 3.3 acres of land on Tellico Reservoir in Monroe County, Tennessee (Tract No. XTTELR–40SS).

E4. Modification of a restrictive covenant, at the request of the Tennessee Wildlife Resources Agency, without charge, except for payment of TVA's administrative costs, affecting approximately 0.30 acre of former TVA land on Fort Patrick Henry Reservoir (portion of Tract No. XTFHR–2) in Sullivan County, Tennessee.

E5. Grant of a 30-year term public recreation easement, with a conditional option for renewals, without charge, except for payment of TVA's administrative costs, to the city of Loudon, Tennessee, affecting approximately 11 acres of land on Watts Bar Reservoir in Loudon County, Tennessee (Tract No. XTWBR–143RE).

E6. Grant of a 30-year term public recreation easement, with a conditional option for renewals, without charge, except for payment of TVA's administrative costs, to the town of Murphy, North Carolina, affecting approximately 22.5 acres of land on Hiwassee Reservoir in Cherokee County, North Carolina (Tract No. XTFBR–30RE).

E7. Grant of a permanent easement to the State of Tennessee Department of Transportation for highway and drainage system improvement purposes, without charge, except for payment of TVA's administrative costs, affecting approximately 1.2 acres of TVA land on Chickamauga Reservoir in Hamilton County, Tennessee (Tract No. XTCR–200H).

E8. Grant of permanent and temporary construction easements, without charge, except for payment of TVA's administrative costs, to the State of Tennessee Department of Transportation for highway and bridge improvement purposes affecting approximately 2.2 acres of land on the Saltillo Generation Plant site in Hardin County, Tennessee (Tract No. XSAGP–1H).

F—Other

F1. Approval to file condemnation cases to acquire transmission line easements and rights-of-way affecting Tract Nos. (CPGSSC–7 and CPGSSC–9, Center-Point Swamp Creek, Whitfield County, Georgia; and Tract No. MNHS–2, Madison-North Huntsville Transmission Line, Madison County, Alabama.

Information Items

1. Restatement and documentation of delegation of approval authorities to the President and Chief Operating Officer, or that officer's designated representative, for power purchase or sale agreements of up to two years in duration; for the purchase or resale of transmission service associated with such purchases or sales of power; and enabling, master, or service agreements associated with the aforementioned types of transactions.

2. Approval of a deed modification affecting approximately 37.6 acres of former TVA land on Guntersville Reservoir in Marshall County, Alabama (Tract No. XGR–13).

3. Approval of the filing of condemnation cases to acquire transmission line easements and rights-of-way affecting Tract No. BWAC–58, Pleasant View-Ashland City Loop Into Ashland City; Tract Nos. CLWC–9 and CLWC–11, Maryland-Crossville Tap to West Crossville; Tract Nos. HCVB–36, HCVB–62A, and HCVB–63, Hanceville-Bremen; and Tract No. RSCP–133, Rock Springs-Center Point; and Tract No. SEM–34, Sturgis-Eupora Tap to Maben Transmission Line.

4. Approval of the filing of condemnation cases to acquire transmission line easements, rights-of-way, and right to enter effecting Tract No. CHMDMW–33, Cordova-Holly Springs Tap to Miller Substation Tap to DeSoto Road Substation Tap to Mineral Wells; Tract No. CPGSSC–12, Center Point-Swamp Creek; Tract Nos. 2PMNS–1000TE, 2PMNS–1001TE, 2PMNS–1002TE, Pickwick-Memphis Second Circuit Tap to North Selmer; and Tract No. WPSVT–1000TE, Wartrace Primary-Shelbyville Tap to Deason Transmission Line.

5. Approval of amendments to the provisions of the TVA Savings and Deferral Retirement 401(k) Plan.

6. Approval of the 2002 edition of the Transmission Service Guidelines and the rates for transmission service and ancillary services.

7. Approval of an agreement amending TVA's power contract with the Knoxville Utilities Board.

8. Approval of a three-year power purchase contract with Calpine Energy Services, L.P., and delegation of authority to the President and Chief Operating Officer, or a designated representative, to negotiate and execute a written definitive agreement for the transaction.

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9. Concurrence in the issuance of up to $1 billion in TVA Power Bonds.

For more information: Please call TVA Media Relations at (865) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 898–2999. People who plan to attend the meeting and have special needs should call (865) 632–6000. Anyone who wishes to comment on any of the agenda in writing may send their comments to: TVA Board of Directors, Board Agenda Comments, 400 West Summit Hill Drive, Knoxville, Tennessee 37902.

Dated: May 9, 2002.

Maureen H. Dunn,

General Counsel and Secretory.

[FR Doc. 02–12170 Filed 5–10–02; 2:58 pm]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[USCG–2002–12224]

Navigation Safety Advisory Council

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Navigation Safety Advisory Council (NAVSAC) will meet to discuss various issues relating to the safety of navigation. The meetings are open to the public.

DATES: NAVSAC will meet on Thursday and Friday, June 6 and 7, 2002, from 8:30 a.m. to 5 p.m., and on Saturday, June 8, 2002, from 8 a.m. to 12 noon. The meeting may close early if all business is finished. Written material and requests to make oral presentations should reach the Coast Guard on or before May 31, 2002. Requests to have material distributed to each member of the Council prior to the meeting should reach the Executive Director of NAVSAC along with 25 copies of the material on or before May 24, 2002.

ADDRESSES: NAVSAC will meet at The Eastland Park Hotel, 157 High Street, Portland, ME 04101. Send written material and requests to make oral presentations to Margie G. Hegy, Commandant (G–MW), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001. This notice is available on the Internet at *http://dms.dot.gov.*

FOR FURTHER INFORMATION CONTACT: Margie G. Hegy, Executive Director of NAVSAC, telephone 202–267–0415, fax 202–267–4700.

SUPPLEMENTARY INFORMATION: Notice of this meeting is given under the Federal Advisory Committee Act, 5 U.S.C. App. 2.

Agenda of Meeting

The agenda includes the following:

(1) Maritime security update and member information exchange.

(2) Update on the Marine Transportation System (MTS) Initiative.

(3) Overview/Update on Navigation Technology.

(4) Towing Industry input to NAVSAC's Position on Barge Lighting.

(5) Status report on ballast water issues.

(6) Acceleration of Automatic Identification System (AIS) Implementation.

Procedural

All meetings are open to the public. Please note that the meeting may close early if all business is finished. At the Chair's discretion, members of the public may make oral presentations during the meetings. If you would like to make an oral presentation, please notify the Executive Director no later than May 31, 2002. Written material for distribution at a meeting should reach the Coast Guard no later than May 31, 2002. If you would like a copy of your material distributed to each member of the Council in advance of the meeting, please submit 25 copies to the Executive Director no later than May 24, 2002.

Information on Services for Individuals With Disabilities

For information on facilities or services for individuals with disabilities or to request special assistance at the meetings, contact the Executive Director as soon as possible.

Dated: May 2, 2002.

Jeffrey P. High,

Director of Waterways Management.

[FR Doc. 02–12026 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–15–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Agency Information Collection Activities: Submission for OMB Emergency Review; Environmental Streamlining Survey

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Emergency notice.

SUMMARY: The FHWA has submitted the following request for emergency processing of a public information collection to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995. The collection involves surveying transportation and resource agencies involved in environmental streamlining in order to measure their performance. The information that is collected will be used to provide benchmarks for the agencies themselves and to focus on areas where process improvements can be made.

DATES: Please submit comments by May 24, 2002.

Comments: You may send comments to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 Seventeenth Street, NW., Washington, DC 20503, Attention: DOT Desk Officer.

FOR FURTHER INFORMATION CONTACT: Mr. Kreig Larson, 202–366–2056, Planning and Environment, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:00 a.m. to 4:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Type of Request: New.

Title: Environmental Streamlining: Measuring the Performance of Stakeholders in the Transportation Project Development Process.

Background: The U.S. Department of Transportation (DOT), FHWA, has contracted with the Gallup Organization to conduct a survey of professionals associated with transportation and resource agencies in order to gather their views on the workings of the environmental review process for transportation projects and how the process can be streamlined.

The purpose of the survey is to: (1) Collect the perceptions of agency professionals involved in conducting the decisionmaking processes mandated by the National Environmental Policy Act (NEPA) and other resource protection laws in order to develop benchmark performance measures; and (2) identify where the performance of the process might be improved by the application of techniques for streamlining.

The survey is an essential aspect of one of the goals of the U.S. DOT's Strategic Plan, which is to "Improve environmental decisionmaking processes in order to expedite surface transportation projects * * *" The FHWA Administrator has designated Environmental Stewardship and Streamlining as one of the agency's "Vital Few" initiatives, meaning it is a goal to which the FHWA will focus its activities and efforts to meet the mandate of Sec. 1309 (Environmental Streamlining) of the Transportation Equity Act for the 21st Century.

The FHWA has requested the emergency OMB approval by May 24, 2002, in order to respond promptly to the needs of Congress, and our partners, in addressing improvements to the environmental review process for transportation projects.

Respondents: Approximately 800 professionals/officials from state and local transportation and natural resource agencies.

Frequency: This is a one-time survey.

Estimated Burdens: Approximately 15 minutes average per respondent; the total estimated annual burden is 200 hours.

Authority: The Paperwork Reduction Act of 1995; 44 U.S.C. Chapter 35, as amended; and 49 CFR 1.48.

Issued on: May 10, 2002.

James R. Kabel,

Chief, Management Programs and Analysis Division.

[FR Doc. 02–12119 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Chisago County, Minnesota and Polk County, Wisconsin

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed transportation improvements in the Trunk Highway (TH) 8 corridor between Interstate 35 (I–35) to the west in Chisago County, Minnesota and the TH 8/Highway 35 intersection to the east in Polk County, Wisconsin.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Stan Thompson, Project Manager, Minnesota Department of Transportation—Metro Division, Waters Edge Building, 1500 West County Road B–2, Roseville, Minnesota 55113, Telephone (651) 582–1307; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation (Mn/DOT) and the Wisconsin Department of Transportation (Wis/DOT), will prepare an EIS on a proposal to provide safety, operational and capacity improvements to the TH 8 Corridor from I–35 to the west in Chisago County, Minnesota to the intersection of TH 8/Highway 35 to the east in Polk County, Wisconsin.

The proposed improvements could include capacity expansion on sections of TH 8, upgrading existing roadway systems in the Corridor, providing geometic/traffic control and access improvements along TH 8, and providing new roadway facilities including some alternatives that utilize the TH 243 bridge crossing over the St. Croix River.

The EIS will evaluate the social, economic, transportation and environmental impacts of alternatives, including: (1) No-Build (2) Improvements within the existing TH 8 Alignment (3) Improvements on a new location.

The "Trunk Highway 8 Scoping Document/Draft Scoping Decision Document" will be published in the Summer 2002. A press release will be published to inform the public of the document's availability. Copies of the scoping document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are know to have an interest in the proposed action. The TH 8 Task Force made up of local agencies and citizens and a Technical Advisory Committee made up of Federal, State, and local officials has been established and has provided input in the development and refinement of alternatives and impact evaluation activities.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program).

Issued on: May 7, 2002.

Stanley M. Graczyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–11944 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Maricopa County, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent; correction.

SUMMARY: The FHWA published a notice of intent in the **Federal Register** of February 4, 2002 concerning an environmental impact statement (EIS) to be prepared for a proposed highway project within Maricopa County, Arizona. The contact information has changed, as well as the original project limits.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, One Arizona Center, Suite 410, 400 East Van Buren Street, Phoenix, AZ 85004–2285, Telephone (602) 379–3646.

Corrections

In the **Federal Register** of February 4, 2002, in FR Doc. 02–2565, Filed 2–1–02, 8:45 am, on page 5143, in the first column, correct the **FOR FURTHER INFORMATION CONTACT** caption to read:

FOR FURTHER INFORMATION CONTACT: Kenneth H. Davis, District Engineer, Federal Highway Administration, One Arizona Center, Suite 410, 400 East Van Buren Street, Phoenix, AZ 85004–2285, Telephone (602) 379–3646.

In the same document, on page 5143, in the first column, after the first sentence of the **SUPPLEMENTARY INFORMATION** section, add the following information: Project limits also include: (1) I–10 from Buckeye Road north to the south ramps of the I–10/SR 51/202L Traffic Interchange; (2) I–17 from 16th Street west to 7th Street; (3) I–10 from

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Baseline Road south to the north ramps of the I–10/202L Traffic Interchange.

Dated: May 8, 2002.

Kenneth H. Davis,

District Engineer, Phoenix.

[FR Doc. 02–11968 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Stearns County, MN

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement (EIS) will be prepared for proposed highway improvements to Trunk Highway (TH) 23 in Paynesville, Stearns County, Minnesota.

FOR FURTHER INFORMATION CONTACT: Cheryl Martin, Federal Highway Administration, Galtier Plaza, 380 Jackson Street, Suite 500, St. Paul, Minnesota 55101, Telephone (651) 291–6120; or Lowell Flaten, Pre-Design Engineer, Minnesota Department of Transportation—District 8, P.O. Box 768, 2505 Transportation Road, Willmar, Minnesota 56201. Telephone (320) 214–3698; (651) 296–9930 TTY.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Minnesota Department of Transportation, will prepare an EIS on a proposal to improve TH 23 from the western Stearns County line, to approximately 1.0 mile (1.6 kilometers) east of the crossing of the North Fork of the Crow River, in Stearns County, Minnesota, a distance of approximately 4.4 miles (7.0 kilometers).

The proposed action is being considered to address future transportation demand, safety problems, access management, interregional trade corridor status, and pavement condition. Alternatives under consideration include (1) No-Build (2) three variations of "Build" alternatives involving reconstruction and/or realignment and new construction of TH 23 (3) "Build" alternative involving improvements along the existing alignment of TH 23.

The "Trunk Highway 23 Scoping Document/Draft Scoping Decision Document" will be published in the Summer 2002. A press release will be published to inform the public of the document's availability. Copies of the Scoping Document will be distributed to agencies, interested persons and libraries for review to aid in identifying issues and analyses to be contained in the EIS. A thirty-day comment period for review of the document will be provided to afford an opportunity for all interested persons, agencies and groups to comment on the proposed action. A public scoping meeting will also be held during the comment period. Public notice will be given for the time and place of the meeting.

A Draft EIS will be prepared based on the outcome of the scoping process. The Draft EIS will be available for agency and public review and comment. In addition, a public hearing will be held following completion of the Draft EIS. Public Notice will be given for the time and place of the public hearing on the Draft EIS.

Coordination has been initiated and will continue with appropriate Federal, State and local agencies and private organizations and citizens who have previously expressed or are known to have an interest in the proposed action. To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

Issued on: May 7, 2002.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Stanley M. Graczzyk,

Project Development Engineer, Federal Highway Administration, St. Paul, Minnesota.

[FR Doc. 02–11943 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Uniform Relocation Assistance and Real Property Acquisition Policies Act Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The Federal Highway Administration, as "Lead Federal Agency" for the Uniform Relocation Assistance and Real Property Action Policies Act (Uniform Act), will hold a series of listening sessions in Los Angeles, California; Washington, District of Columbia; Philadelphia, Pennsylvania; and Fort Worth, Texas.

The purpose of the listening sessions is to solicit comments on the need to update provisions of the Uniform Act and its implementing regulations 49 CFR Part 24. The Uniform Act provides for uniform and equitable treatment of persons displaced from their homes, business, or farms by Federal and federally assisted programs and establishes uniform and equitable land acquisition policies for Federal and federally assisted programs. The agenda for the listening sessions may be examined on the FHWA web site at the following address *http://www.fhwa.dot.gov/realestate/ua.htm.*

DATES: The Uniform Act listening sessions are scheduled from 10 am to 2 pm as follows:

June 14, 2002—Fort Worth, Texas
June 25, 2002—Los Angeles, California
June 27, 2002—Washington, District of Columbia
July 9, 2002—Philadelphia, Pennsylvania

ADDRESSES: For the June 14, 2002, session: 819 Taylor Street, Room 1A03, Fort Worth, TX 76102.

For the June 25, 2002, session: 300 North Los Angeles Street, Room 8529, Los Angeles, CA 90012.

For the June 27, 2002, session: U.S. Department of Transportation, 400 7th Street, SW., Room 3200, Washington, DC 20590.

For the July 9, 2002, session: The Wanamaker Building, 100 Penn Square East, Room 818, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Persons needing further information should contact FHWA Office of Real Estate Services representatives Reginald Bessmer (202) 366–2037 or Ronald Fannin (202) 366–2042 or by FAX at (202) 366–3713, U.S. Department of Transportation, Federal Highway Administration, 400 Seventh Street, SW, Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's Electronic Bulletin Board Service at (202) 512–1661. Internet users may reach the Office of the Federal Register's home page at *http://www.nara.gov/fedreg* and at the Government Printing Office's web page at *http://www.access.gpo.gov/nara.*

Authority: Pub. L. 91–646 as amended, 23 U.S.C. 315, 49 CFR 1.48.

Susan B. Lauffer,

Director, Office of Real Estate Services.

[FR Doc. 02–11925 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–22–P

DEPARTMENT OF TRANSPORTATION

Federal Motor Carrier Safety Administration

[Docket No. FMCSA–2002–12162]

Commercial Driver's License Standards; Exemption Application From Joest Racing USA, Inc.

AGENCY: Federal Motor Carrier Safety Administration (FMCSA), DOT.

ACTION: Notice of application for exemption; request for comments.

SUMMARY: The FMCSA has received an application from Joest Racing USA, Inc. (petitioner), a private carrier based in Tucker, GA, for an exemption from the commercial driver's licensing (CDL) requirements. Petitioner states an exemption is necessary to enable four drivers it employs to engage in interstate commerce transporting private property, comprised of race cars and related parts. Petitioner points out that its drivers are citizens and residents of Germany who would only enter the United States on average three times a year, for up to three months per trip. In support of its application, petitioner asserts that granting the exemption would have no impact on public safety because the drivers involved presently hold valid Germany-issued CDLs. In addition, petitioner states the comprehensive training and testing, that drivers holding German CDLs must undergo, ensures a greater level of safety. FMCSA invites interested parties to submit comments on the merits of the application, including whether FMCSA should grant or deny it.

DATES: Comments must be submitted by June 13, 2002.

ADDRESSES: You may submit your comments to the Docket Clerk, Docket No. FMCSA–2002–12162, U.S. Department of Transportation, Dockets Management System (DMS), Room PL–401 (Plaza Level), 400 Seventh Street, SW., Washington, DC 20590. Please note that due to delays in the delivery of U.S. mail, we recommend sending your comments by fax at (202) 493–2251, via the Internet using the DMS Web site at *http://dmses.dot.gov/submit,* or by professional delivery service. If you would like the DMS to acknowledge receipt of your comments, you must include a self-addressed, stamped postcard, or you may print the acknowledgment page that appears after you submit comments electronically. The DMS is open for examination and copying, at the above address, from 9 a.m. to 5 p.m. e.t., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Ms. Teresa Doggett, (202) 366–2990, Office of Bus and Truck Standards and Operations (MC–PSD); or Mr. Charles Medalen, (202) 366–0834, Office of the Chief Counsel (MC–CC), Federal Motor Carrier Safety Administration, DOT, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access and Filing

All comments and related documents in the docket are also available for inspection and copying through the DMS Web site at *http://dms.dot.gov.*

Background

Section 4007 of the Transportation Equity Act for the 21st Century (TEA–21) (Public Law 105–178, 112 Stat. 107, now codified at 49 U.S.C. 31315 and 31316), requires FMCSA to publish a notice in the **Federal Register** for each exemption requested explaining that the request has been filed, provide the public with an opportunity to inspect the safety analysis and any other relevant information known to the agency, and provide an opportunity to comment on the request. Prior to granting a request for an exemption, the agency must publish a notice in the **Federal Register** identifying the person or class of persons who will receive the exemption, the provisions from which the person will be exempt, the effective period, and all terms and conditions of the exemption. The terms and conditions established by FMCSA must ensure that the exemption will likely achieve a level of safety that is equivalent to, or greater than, the level that would be achieved by complying with the regulation.

On December 8, 1998, FMCSA published an interim final rule implementing section 4007 of TEA–21 (63 FR 67600). The regulations at 49 CFR part 381 establish the procedures to be followed to request waivers and to apply for exemptions from the FMCSRs, and the provisions used to process them.

Exemption Request

Joest Racing USA, Inc., a private motor carrier of property as defined by 49 CFR 390.5, filed an application for an exemption from the commercial driver's licensing rules in 49 CFR part 383, that would allow drivers—Peter Ungar, Michael Schlemmer, Udo Wilhelm, and Hubert Neumann—to operate two commercial motor vehicles (CMVs) within the United States. According to its application, Joest has no employees in the United States; for economic reasons, its German CMV drivers double as race car mechanics; the value of its race cars is over $1 million each; it requires CMV drivers that are professionally trained in Germany in the loading and bracing of racing cars and parts; and to employ U.S. commercial drivers and train them would require considerable time and expense. A copy of the application for exemption is in the docket.

FMCSA is responsible for the administration and enforcement of the Federal Motor Carrier Safety Regulations (FMCSRs), including the commercial driver's license requirements. Section 383.23(a)(2) states that no person shall operate a CMV unless such person possesses a CDL issued by his or her jurisdiction of domicile. There is an exception to this rule which states that CMV drivers domiciled in other jurisdictions that do not test drivers and issue licenses in accordance with Federal regulations must obtain a nonresident CDL from a State which does comply with the Federal testing and licensing standards.

Joest Racing USA, Inc. seeks an exemption because the drivers it employs are citizens and residents of Germany. These drivers are not able to obtain nonresidential CDLs in the United States because the States generally do not issue nonresidential CDLs to foreign drivers. The drivers hold valid CDLs issued by German authorities that meet license testing and driver qualification standards, including medical examinations, which are comparable with U.S. standards, and they have behind the wheel experience operating Joest's special type of CMV. Joest has two CMVs which are used to transport its private property (*i.e.*, race cars and related equipment) around the United States to participate in the "American Le Mans Series" racing circuit. The four drivers are only in the United States during certain periods.

Joest Racing USA, Inc. does not anticipate any adverse safety impacts from this exemption due to the fact that the German CDLs and German

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authorities adhere to very strict testing procedures.

There will always be two qualified drivers in each motor vehicle. The drivers employed by Joest Racing USA, Inc. are fully qualified CMV operators with valid German CDLs. The company ensures that the qualifications are maintained and all current German laws are followed. Due to strict regulations in Germany for drivers holding German CDLs, Joest Racing USA, Inc. believes there will be a greater level of safety than by using United States drivers unfamiliar with its special type of truck/trailer.

Drivers applying to obtain a German CDL must take both a knowledge test and skills test before a license to operate CMVs is issued. Prior to taking the tests, drivers must complete approximately 40 hours of driving lessons. The required driving lessons are generally considered by licensing experts to be among the most difficult in the world. Therefore, the process for obtaining a CDL in Germany is considered to be comparable to, or as effective as the requirements of Part 383 of the Federal requirements and adequately assess the driver's ability to operate CMVs in the United States.

Once a driver is granted a German CDL he is allowed to drive any CMV currently allowed on German roads. There are no limits to types or weights of vehicles that may be operated by the drivers. The drivers affected by the exemption will be operating tractor-trailer units. The drivers expect to operate CMVs through the States of Alabama, Arkansas, Arizona, California, Colorado, Florida, Georgia, Iowa, Idaho, Illinois, Indiana, Kansas, Kentucky, Louisiana, Missouri, Mississippi, Nebraska, New Mexico, Nevada, New York, Ohio, Oklahoma, Pennsylvania, Tennessee, Texas, Utah, and Wyoming.

Request for Comments

In accordance with 49 U.S.C. 31315(b)(4) and 31136(e), FMCSA is requesting public comment from all interested persons on this exemption application. All comments received before the close of business on the comment closing date will be considered and will be available for examination in the docket at the location listed under the address section of this notice. Comments received after the comment closing date will be filed in the public docket and will be considered to the extent practicable, but FMCSA may make its decision at any time after the close of the comment period. In addition to late comments, FMCSA will also continue to file, in the public docket, relevant information that becomes available after the comment closing date. Interested persons should continue to examine the public docket for new material.

Authority: 49 U.S.C. 31136 and 31315; and 49 CFR 1.73.

Issued on: May 3, 2002.

Julie Anna Cirillo,

Assistant Administrator and Chief Safety Officer.

[FR Doc. 02–12036 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–EX–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12264]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Freedom*.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12264. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Freedom. Owner:* Roderick Nassif.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* "Size: 52.5; Gross: 28 Tons * * * Capacity: 12 guests".

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "Pleasure charters on the Great Lakes, Intra-Coastal waterway, Florida Keys, and near shore."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1993. *Place of construction:* Queenlands, Australia.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The impact will be minimal. The charter business will be operated out of Detroit, MI. This will be a specialty charter business. There are no other boats like this operating out of downtown Detroit. There are a few larger boats but none this size."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "There will be little effect on U.S. shipyards because there are few building boats in this size out of steel."

Dated: May 8, 2002.

By Order of the Maritime Administrator.

Murray A. Bloom,

Acting Secretary, Maritime Administration.

[FR Doc. 02–12025 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Maritime Administration

[Docket Number: MARAD–2002–12293]

Requested Administrative Waiver of the Coastwise Trade Laws

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Invitation for public comments on a requested administrative waiver of the Coastwise Trade Laws for the vessel *Wolf Den*.

SUMMARY: As authorized by Pub. L. 105–383, the Secretary of Transportation, as represented by the Maritime Administration (MARAD), is authorized to grant waivers of the U.S.-build requirement of the coastwise laws under certain circumstances. A request for such a waiver has been received by MARAD. The vessel, and a description of the proposed service, is listed below. Interested parties may comment on the effect this action may have on U.S. vessel builders or businesses in the U.S. that use U.S.-flag vessels. If MARAD determines that in accordance with Pub. L. 105–383 and MARAD's regulations at 46 CFR part 388 (65 FR 6905, February 11, 2000) that the issuance of the waiver will have an unduly adverse effect on a U.S.-vessel builder or a business that uses U.S.-flag vessels, a waiver will not be granted.

DATES: Submit comments on or before June 13, 2002.

ADDRESSES: Comments should refer to docket number MARAD–2002–12293. Written comments may be submitted by hand or by mail to the Docket Clerk, U.S. DOT Dockets, Room PL–401, Department of Transportation, 400 7th St., SW., Washington, DC 20590–0001. You may also send comments electronically via the Internet at *http://dmses.dot.gov/submit/*. All comments will become part of this docket and will be available for inspection and copying at the above address between 10 a.m. and 5 p.m., E.T., Monday through Friday, except Federal holidays. An electronic version of this document and all documents entered into this docket is available on the World Wide Web at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: Kathleen Dunn, U.S. Department of Transportation, Maritime Administration, MAR–832 Room 7201, 400 Seventh Street, SW., Washington, DC 20590. Telephone 202–366–2307.

SUPPLEMENTARY INFORMATION: Title V of Pub. L. 105–383 provides authority to the Secretary of Transportation to administratively waive the U.S.-build requirements of the Jones Act, and other statutes, for small commercial passenger vessels (no more than 12 passengers). This authority has been delegated to the Maritime Administration per 49 CFR 1.66, Delegations to the Maritime Administrator, as amended. By this notice, MARAD is publishing information on a vessel for which a request for a U.S.-build waiver has been received, and for which MARAD requests comments from interested parties. Comments should refer to the docket number of this notice and the vessel name in order for MARAD to properly consider the comments. Comments should also state the commenter's interest in the waiver application, and address the waiver criteria given in § 388.4 of MARAD'S regulations at 46 CFR part 388.

Vessel Proposed for Waiver of the U.S.-Build Requirement

(1) Name of vessel and owner for which waiver is requested. *Name of vessel: Wolf Den. Owner:* Donnie Tillery.

(2) Size, capacity and tonnage of vessel. *According to the applicant:* 29′9″ Long 10′9″ Beam.

(3) Intended use for vessel, including geographic region of intended operation and trade. *According to the applicant:* "6 Passengers charter Sport fishing operating on the Gulf of Mexico from Perdido Pass Al, south 150 miles, west 150 miles and east 150 miles."

(4) Date and Place of construction and (if applicable) rebuilding. *Date of construction:* 1986. *Place of construction:* Not Available.

(5) A statement on the impact this waiver will have on other commercial passenger vessel operators. *According to the applicant:* "The Alabama gulf Coast area (Gulf Shores, Orange Beach) is fast growing into one of the gulf Coast best and most popular sport fishing and vacation spots. As a result, there is a demand for additional sport fishing vessels. Therefore a waiver would not have any effect on present operators. I have a 6 passenger boat operating in the same area. I wouldn't want another if it impacted the present boat."

(6) A statement on the impact this waiver will have on U.S. shipyards. *According to the applicant:* "The waiver would not have any adverse impact on US Shipyards. It would add to our small boat yard because the vessel would be drydocked at least once a year."

Dated: May 9, 2002.

By Order of the Maritime Administrator.

Joel C. Richard,

Secretary, Maritime Administration.

[FR Doc. 02–12024 Filed 5–13–02; 8:45 am]

BILLING CODE 4910–81–P

DEPARTMENT OF TRANSPORTATION

Surface Transportation Board

[STB Finance Docket No. 34194 (Sub-No. 1)]

The Burlington Northern and Santa Fe Railway Company—Trackage Rights; Exemption—Union Pacific Railroad Company

AGENCY: Surface Transportation Board.

ACTION: Petition for exemption.

SUMMARY: The Board, under 49 U.S.C. 10502, exempts the trackage rights described in STB Finance Docket No. 34194[1] to permit the trackage rights arrangement to extend only until August 30, 2002.

DATES: This exemption is effective on June 13, 2002. Petitions to stay must be filed by May 24, 2002. Petitions to reopen must be filed by June 3, 2002.

ADDRESSES: An original and 10 copies of all pleadings referring to STB Finance Docket No. 34194 (Sub-No. 1) must be filed with the Surface Transportation Board, Case Control Unit, 1925 K Street, NW., Washington, DC 20423–0001. In addition, a copy of all pleadings must be served on petitioner's representative Michael E. Roper, The Burlington Northern and Santa Fe Railway Company, 2500 Lou Menk Drive, P.O. Box 961039, Fort Worth, TX 76161–0039.

FOR FURTHER INFORMATION CONTACT: Beryl Gordon, (202) 565–1600. [TDD for the hearing impaired: 1–800–877–8339.]

SUPPLEMENTARY INFORMATION: Additional information is contained in

[1] On April 8, 2002, BNSF filed a notice of exemption under the Board's class exemption procedures at 49 CFR 1180.2(d)(7). The notice covered the trackage rights agreement by UP to grant temporary overhead trackage rights to BNSF between UP milepost 2.3 in Omaha, NE, and UP milepost 76.0 in Sioux City, IA, a distance of 73.7 miles. *See The Burlington Northern and Santa Fe Railway Company—Trackage Rights Exemption—Union Pacific Railroad Company*, STB Finance Docket No. 34194 (STB served May 1, 2002). Trackage rights operations under the exemption were scheduled to be consummated on or after April 15, 2002.

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the Board's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dā 2 Dā Legal, Suite 405, 1925 K Street, NW, Washington, DC 20006. Telephone: (202) 293–7776. [Assistance for the hearing impaired is available through TDD Services 1–800–877–8339.]

Board decisions and notices are available on our Web site at *www.stb.dot.gov*.

Decided: May 8, 2002.

By the Board, Chairman Morgan and Vice Chairman Burkes.

Vernon A. Williams,

Secretary.

[FR Doc. 02–12028 Filed 5–13–02; 8:45 am]

BILLING CODE 4915–00–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–25]

Duty-Free Treatment of Articles Imported in Connection with the Volvo Ocean Race

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of designation of international athletic event for purposes of preferential tariff provision.

SUMMARY: This notice advises the public of the designation of the Volvo Ocean Race, a round-the-world international sailing competition, as a qualifying international athletic event under subheading 9817.60.00, Harmonized Tariff Schedule of the United States (HTSUS).

EFFECTIVE DATE: Effective for merchandise entered or withdrawn from warehouse for consumption on or after March 1, 2002.

FOR FURTHER INFORMATION CONTACT: Craig A. Walker, Office of Regulations & Rulings (202–927–1116).

SUPPLEMENTARY INFORMATION:

Background

Section 1456 of the Tariff Suspension and Trade Act of 2000 (the "Act") (Public Law 106–476, 114 Stat. 2101) promulgated the duty-free treatment provided under subheading 9817.60.00, HTSUS, for certain articles brought into the U.S. for certain international athletic events. Subheading 9817.60.00, HTSUS, which implements section 1456(a) of the Act, states:

Any of the following articles not intended for sale or distribution to the public: personal effects of aliens who are participants in, officials of, or accredited members of delegations to, an international athletic event held in the United States, such as the Olympics and Paralympics, the Goodwill Games, the Special Olympics World Games, the World Cup Soccer Games, or any similar international athletic event as the Secretary of the Treasury may determine, and of persons who are immediate family members of or servants to any of the foregoing persons; equipment and materials imported in connection with any such foregoing event by or on behalf of the foregoing persons or the organizing committee of such an event, articles to be used in exhibitions depicting the culture of a country participating in such an event; and, if consistent with the foregoing, such other articles as the Secretary of the Treasury may allow.

Section 1456(b) of the Act, as implemented in Note 6 of Subchapter XII, HTSUS, provides that "[a]ny article exempt from duty under heading 9817.60.00 shall be free of taxes and fees that may otherwise be applicable, but shall not be free or otherwise exempt or excluded from routine or other inspections as may be required by the Customs Service."

The Volvo Ocean Race (formerly known as the Whitbread Round the World Race) is a premier international sailing competition that takes place every four years and touches five continents and nine countries around the world. The current race, with seven teams participating, began in Southampton England on September 23, 2001, and is expected to take approximately nine months from start to finish. The fifth and sixth stopovers during the race are Miami, Florida, and Baltimore/Annapolis, Maryland.

Counsel for the Volvo Ocean Race has requested that the event be designated as a qualifying international athletic event for purposes of subheading 9817.60.00, HTSUS.

Determination

Section 1456 of the Tariff Suspension and Trade Act of 2000 provides that the Secretary of Treasury may determine that international athletic events not explicitly mentioned in the statute qualify as similar to those mentioned for purposes of the duty-free treatment provided for in subheading 9817.60.00, HTSUS.

It is determined that the Volvo Ocean Race qualifies as a similar international athletic event in accordance with section 1456 of the Tariff Suspension and Trade Act of 2000. Therefore, articles meeting the conditions and requirements set forth in subheading 9817.60.00, HTSUS, imported in connection with the Volvo Ocean Race, will be entitled to duty-free treatment.

Robert C. Bonner,

Commissioner of Customs.

Approved: May 8, 2002.

Gordana Earp,

Acting Deputy Assistant Secretary of the Treasury.

[FR Doc. 02–11945 Filed 5–13–02; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 02–26]

Tuna Fish—Tariff-Rate Quota

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Announcement of the quota quantity for tuna for Calendar Year 2002.

The tariff-rate quota for Calendar Year 2002, on tuna classifiable under subheading 1604.14.20, Harmonized Tariff Schedule of the United States (HTSUS).

SUMMARY: Each year the tariff-rate quota for tuna fish described in subheading 1604.14.20, HTSUS, is based on the United States canned tuna production for the preceding calendar year. This document sets forth the quota for calendar year 2002.

EFFECTIVE DATES: The 2002 tariff-rate quota is applicable to tuna fish entered, or withdrawn from warehouse, for consumption during the period January 1, through December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Connie Chancey, Chief, Quota Branch, Textile Enforcement and Operations Division, Trade Programs, Office of Field Operations, U.S. Customs Service, Washington, DC 20229, (202) 927–5399.

Background: It has now been determined that 18,119,908 kilograms of tuna may be entered for consumption or withdrawn from warehouse for consumption during the Calendar Year 2002, at the rate of 6 percent ad valorem under subheading 1604.14.20, HTSUS. Any such tuna which is entered, or withdrawn from warehouse, for consumption during the current calendar year in excess of this quota will be dutiable at the rate of 12.5 percent ad valorem under subheading 1604.14.30 HTSUS.

Dated: May 2, 2002.

Robert C. Bonner,

Commissioner.

[FR Doc. 02–11946 Filed 5–13–02; 8:45 am]

BILLING CODE 4820–02–P

Corrections

Federal Register

Vol. 67, No. 93

Tuesday, May 14, 2002

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Application Concerning Asporogenic B. ANTHRACIS Expression System

Correction

In notice document 02–11067 beginning on page 22412 in the issue of Friday, May 3, 2002 make the following correction:

On page 22413, in the first column, under "**ADDRESSES:**" in the fifth line, "21705–5012" should read "21702–5012".

[FR Doc. C2–11067 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability of Non-Exclusive, Exclusive License or Partially Exclusive Licensing of U.S. Patent Application Concerning Load Securing and Release System

Correction

In notice document 02–11073 appearing on page 22413 in the issue of Friday, May 3, 2002 make the following correction:

On page 22413, in the third column, under "**FOR FURTHER INFORMATION CONTACT:**", in the fifth line, in the phone number "(508) 233–4298–4298" delete the duplicate "–4298".

[FR Doc. C2–11073 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Department of the Army

Availability for Non-Exclusive, Exclusive, or Partially Exclusive Licensing of U.S. Patent Concerning Low-Backscatter Aperture Structure

Correction

In notice document 02–11070 beginning on page 22413 in the issue of Friday, May 3, 2002 make the following corrections:

1. On page 22414, in the first column, under "**ADDRESSES:**", in the sixth line, " 21705–5012" should read "21702–5012".

2. On the same page, in the same column, under " **SUPPLEMENTARY INFORMATION:**", in the fourth line, after the word "system" insert the word "can".

[FR Doc. C2–11070 Filed 5–13–02; 8:45 am]

BILLING CODE 1505–01–D

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Federal Register

Tuesday,
May 14, 2002

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Proposed Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Northwestern Hawaiian Islands, HI; Proposed Rule

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AH09

Endangered and Threatened Wildlife and Plants; Proposed Determinations of Prudency and Proposed Designations of Critical Habitat for Plant Species From the Northwestern Hawaiian Islands, HI

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule and notice of determinations of whether designation of critical habitat is prudent.

SUMMARY: We, the U.S. Fish and Wildlife Service (Service), propose critical habitat for five (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*) of the six plant species known historically from the Northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll) that are listed under the Endangered Species Act of 1973, as amended. Critical habitat is not proposed for *Cenchrus agrimonioides* var. *laysanensis* as it has not been seen in the wild for over twenty years and no viable genetic material of this variety is known to exist.

We propose critical habitat designations for five species on three islands (Nihoa, Necker, and Laysan) totaling approximately 498 hectares (ha) (1,232 acres (ac)). If this proposal is made final, section 7 of the Act requires Federal agencies to ensure that actions they carry out, fund, or authorize do not destroy or adversely modify critical habitat to the extent that the action appreciably diminishes the value of the critical habitat for the conservation of the species. Section 4 of the Act requires us to consider economic and other relevant impacts of specifying any particular area as critical habitat.

We solicit data and comments from the public on all aspects of this proposal, including data on the economic and other impacts of the proposed designations. We may revise this proposal to incorporate or address new information received during the comment period.

DATES: We will accept comments until July 15, 2002. Public hearing requests must be received by June 28, 2002.

ADDRESSES: If you wish to comment, you may submit your comments and materials concerning this proposal by any one of the following methods:

(1) You may submit written comments and information to the Field Supervisor, U.S. Fish and Wildlife Service, Pacific Islands Office, 300 Ala Moana Blvd., P.O. Box 50088, Honolulu, HI 96850–0001.

(2) You may hand-deliver written comments to our Pacific Islands Office at 300 Ala Moana Blvd., Room 3–122, Honolulu, HI 96850.

You may view comments and materials received, as well as supporting documentation used in the preparation of this proposed rule by appointment, during normal business hours at the Pacific Islands Office.

FOR FURTHER INFORMATION CONTACT: Paul Henson, Field Supervisor, Pacific Islands Office (*see* **ADDRESSES** section) (telephone: 808/541–3441; facsimile: 808/541–3470).

SUPPLEMENTARY INFORMATION:

Background

In the Lists of Endangered and Threatened Plants (50 CFR 17.12), there are six plant species that, at the time of listing, were reported from the Northwestern Hawaiian Islands (Nihoa Island, Necker Island, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan Island, Lisianski Island, Pearl and Hermes Atoll, Midway Atoll, and Kure Atoll) (Table 1). *Amaranthus brownii, Cenchrus agrimonioides* var. *laysanensis, Mariscus pennatiformis* ssp. *bryanii, Pritchardia remota,* and *Schiedea verticillata* are endemic to the Northwestern Hawaiian Islands, while *Sesbania tomentosa* is reported from one or more other islands, as well as the Northwestern Hawaiian Islands.

In previously published proposals we proposed that critical habitat was prudent for *Cenchrus agrimonioides, Mariscus pennatiformis,* and *Sesbania tomentosa*. No change is made to these prudency determinations in this proposal and they are hereby incorporated in this proposal (65 FR 66808, 65 FR 79192, 67 FR 3940, 67 FR 9806).

In this proposal, we propose that critical habitat designation is prudent for *Amaranthus brownii, Pritchardia remota,* and *Schiedea verticillata* for which proposed prudency determinations have not been made previously, because the potential benefits of designating critical habitat essential for the conservation of these species outweigh the risks that may result from human activity because of critical habitat designation.

TABLE 1.—SUMMARY OF ISLAND DISTRIBUTION OF SIX SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Island Distribution						
	Kauai	Oahu	Molokai	Lanai	Maui	Hawaii	NW Hawaiian Islands, Kahoolawe, Niihau
Amaranthus brownii (no common name)							Nihoa (C)
Cenchrus agrimonioides var. *laysanensis* (kamanomano)							Kure (H), Laysan (H), Midway ((H)
Mariscus pennatiformis (no common name)	H	H			C	R	Laysan (C)
Pritchardia remota (loulu)							Nihoa (C), Laysan (R)
Schiedea verticillata (no common name)							Nihoa (C)
Sesbania tomentosa (ohai)	C	C	C	H	C	C	Niihau (H), Kahoolawe (C), Necker (C), Nihoa (C)

KEY:
C (Current)—population last observed within the past 30 years.
H (Historical)—population not seen for more than 30 years.
R (Reported)—reported from undocumented observations.
NW Hawaiian Islands includes Kure Atoll, Midway Atoll, and Laysan, Necker, Nihoa island.

In this proposal, we propose designation of critical habitat for five (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*) of the six species reported from the Northwestern Hawaiian Islands. Critical habitat is not proposed for *Cenchrus agrimonioides* in the Northwestern Hawaiian Islands, because *C. agrimonioides* var. *laysanensis* has not been seen in the wild for over twenty years and no viable genetic material of this variety is known to exist.

Critical habitat is proposed for designation on the islands of Nihoa, Necker, and Laysan. The land area for these three islands totals approximately 498 ha (1,232 ac).

The Northwestern Hawaiian Islands

The NWHI are a chain of islands that extend along a linear path approximately 1,600 kilometers (km) (1,000 miles (mi)) northwest from Nihoa Island to Kure Atoll (Figure 1). They are remnants of once larger islands that have slowly eroded and subsided, which today exist as small land masses or coral atolls that cover the remnants of the volcanic islands (Department of Geography 1998; U.S. Fish and Wildlife Service (USFWS) 1998).

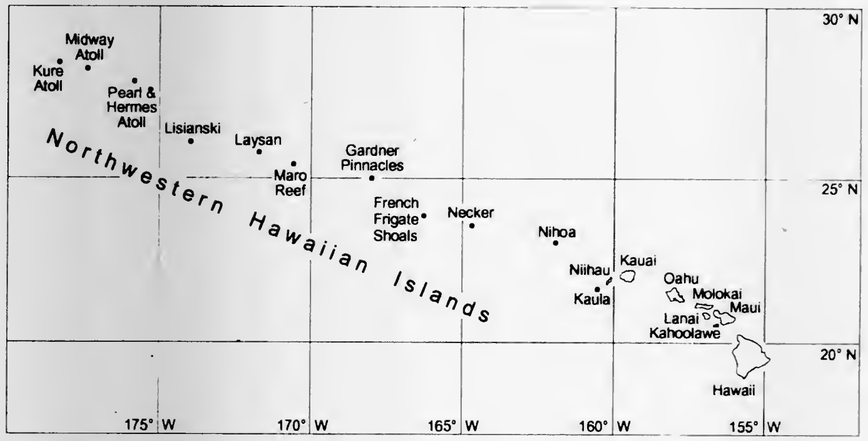


Figure 1. Northwestern Hawaiian Islands

Nihoa rises approximately 274 meters (m) (900 feet (ft)) above sea level and has an area of approximately 69 ha (171 ac). Its steep topography and crater shape reveal its volcanic origin. Necker Island, less than 92 m (300 ft) in elevation and 19 ha (46 ac) in area, consists of thin-layered weathered lava flows. La Perouse Pinnacles at French Frigate Shoals and Gardner Pinnacles are the last exposed volcanic remnants in the archipelago. French Frigate Shoals is a crescent shaped atoll nearly 29 km (18 mi) across. More than a dozen small sandy islands dot the fringes of this atoll. Maro Reef is a largely submerged area marked by breakers and a few pieces of coral that intermittently protrude above the waterline. Laysan Island is nearly 5.18 square kilometer (sq km) (2 square miles (sq mi)) in size and is fringed by a reef. An 81 ha (200 ac) hypersaline lagoon is located in the center of the island. Lisianski Island is 147 ha (364 ac) in size, but is bounded to the north by an extensive reef system. A central lagoon once found on this island has filled with sand. Pearl and Hermes Reef, an inundated atoll, includes nearly 40,469 ha (100,000 ac) of submerged reef and seven small sandy islets totaling less than 34 ha (85 ac). Midway Atoll is approximately 8 km (5 mi) in diameter and includes three islands: Sand, Eastern, and Spit. Both Sand and Eastern islands are highly altered by man. Kure Atoll is the northernmost exposed land in the Hawaiian archipelago. Two islands, Green and Sand, are found on the southern edge of the atoll and are included in the Hawaii State Seabird Sanctuary System. Green Island was altered considerably in the past and today suffers from enormous alien species problems (Elizabeth Flint, USFWS, pers. comm., 2000; USFWS 1986).

One listed plant species was known from Kure Atoll (*Cenchrus agrimonioides* var. *laysanensis*), three were known from Laysan (*Cenchrus agrimonioides* var. *laysanensis, Mariscus pennatiformis* and *Pritchardia remota*), one from Midway (*Cenchrus agrimonioides* var. *laysanensis*), four from Nihoa (*Amaranthus brownii, Pritchardia remota, Schiedea verticillata* and *Sesbania tomentosa*) and one from Necker (*Sesbania tomentosa*) (Table 1).

Nihoa (209 km (140 mi) from Niihau) and Necker (an additional 290 km (180 mi) beyond Nihoa) are closest to the main Hawaiian Islands. Both are small, residual fragments of volcanoes that formed 7.2 and 10.3 million years ago respectively (USFWS 1986). Although both of these islands were uninhabited at the time of their modern discovery in

the late eighteenth century, there is an extensive heiau (indigenous place of worship, shrine) complex on Necker, and agricultural terraces and other Hawaiian archaeological features can be found on Nihoa (Cleghorn 1984, Department of Geography 1998, USFWS 1986).

In 1892, a guano mining business began operation on Laysan and flourished until the last load was shipped in 1904. During this time, rabbits were introduced to Laysan for a rabbit canning industry, and allowed to reproduce and roam freely (Morin and Conant 1998, Tomich 1986). This, too, failed as a profitable business and no attempt was made to control the number of rabbits on the island. The rabbits were finally eradicated from the island in the early 1920s, though not before the vegetation had been thoroughly devastated. Since then, the vegetation of Laysan has recovered to a remarkable degree, though some species, like the native palms (*Pritchardia* sp.), are no longer found on the island (Tomich 1986; E. Flint, pers. comm., 2000).

Kure Atoll was discovered and named in 1827 by the captain of a Russian vessel. Between 1876 and 1936 Australian Copra & Guano Ltd. mined guano from Green Island and Sand Island, the two islands that make up Kure Atoll. Military bases were built on the islands during World War II and a Loran C station with two 158 m (518 ft) high masts was operated until 1998. The towers are no longer on the islands. The airstrip built on Green Island is no longer usable and landing is only possible by boat (USFWS 1998a).

Midway Atoll was discovered and named Middlebrook Islands in 1859 by Captain Nick Brooks. The atoll was taken into possession by the United States in 1867 and in 1903 President Theodore Roosevelt placed the atoll under the control of the Navy. In 1935 Pan American World Airways set up an airbase for the weekly Trans-Pacific Flying Clipper Seaplane service. In 1941, the Japanese attacked Midway Atoll on their return from the attack on Pearl Harbor, but in 1942 the United States ambushed and defeated the Japanese Fleet north of the atoll, turning the tide of World War II in the Pacific. In 1988, the atoll was added to the National Wildlife Refuge system and in 1996 the jurisdiction of Midway Atoll was transferred from the U.S. Navy to the Department of Interior (USFWS 2000). Despite this evidence of earlier human use, these islands continue to support an assemblage of endemic plants and animals not found elsewhere in the archipelago (Department of Geography 1998).

Hawaiian Islands National Wildlife Refuge

The reefs and islets of the Northwestern Hawaiian chain from Nihoa Island through Pearl and Hermes Atoll are protected as the Hawaiian Islands National Wildlife Refuge (HINWR). The HINWR was established in 1909 to protect the large colonies of seabirds, which were being slaughtered for the millinery trade, as well as a variety of other marine organisms, including sea turtles and the critically endangered Hawaiian monk seal (*Monachus schauinslandi*), and to put a halt to the unregulated commercial exploitation of wildlife resources (Executive Order 1019). Within its boundaries are eight islands and atolls: Nihoa, Necker, French Frigate Shoals, Gardner Pinnacles, Maro Reef, Laysan, Lisianski, and Pearl and Hermes Atoll. There is no general public or recreational use allowed at HINWR. Access is strictly regulated through a permit system because of the sensitivity of the organisms, like the Hawaiian monk seal, on these islands to human disturbance and the high risk of importation of alien plant and invertebrate species. In addition, strict quarantine procedures are in effect for those accessing the refuge. Other than the refuge staff, only individuals conducting scientific research or undertaking natural history film recording have been granted official permission to visit the HINWR (E. Flint, pers. comm., 2000).

Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve

On December 4, 2000, President Clinton issued an Executive Order establishing the 33,993,594 ha (84 million ac) Northwestern Hawaiian Islands Coral Reef Ecosystem Reserve that includes the marine waters and submerged lands of the NWHI, extending approximately 2,222 km (1,200 nautical mi) long and 185 km (100 nautical mi) wide. The Reserve is adjacent to the State of Hawaii waters and submerged lands and the Midway Atoll National Wildlife Refuge, and includes the HINWR outside of state waters.

Discussion of the Plant Taxa

Species Endemic to the Northwestern Hawaiian Islands

Amaranthus brownii (no common name)

Amaranthus brownii, a member of the amaranth family (Amaranthaceae), is an herb with leafy upright or ascending stems, 30 to 90 centimeters (cm) (1 to 3 feet (ft)) long. The slightly hairy, alternate leaves are long and narrow, 4 to 7 cm (1.6 to 2.8 inches (in)) long, 1.5 to 4 millimeter (mm) (0.06 to 0.16 in) wide, and more or less folded in half lengthwise. Flowers are either male or female, and both sexes are found on the same plant. This species can be distinguished from other Hawaiian members of the genus by its spineless leaf axils, its linear leaves, and its fruit which does not split open when mature (Wagner *et al.* 1999).

Amaranthus brownii is an herbaceous annual with a growing season that extends from December to June or July. Conant (1985) reported finding plants in an early stage of flowering in February and collecting seed from dead plants during June. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. The means of pollination are unknown (USFWS 1998d).

Amaranthus brownii is the rarest native plant on the island of Nihoa (Conant 1985). When it was first collected in 1923, it was "most common on the ridge leading to Miller's Peak, but abundant also on the ridges to the east" (Herbst 1977). In 1983, the two known groupings of colonies were separated by a distance of 0.4 km (0.25 mi) and contained approximately 35 plants: 1 colony of about 23 plants near Miller's Peak and about a dozen plants in 3 small colonies in Middle Valley. No plants have been seen at either location since 1983, even though Service staff have surveyed for them annually (USFWS 1998d). In order to get an accurate population count and collect seeds or cuttings to establish *ex situ* populations, it will be necessary to conduct winter surveys. However, none of the surveys since 1983 have been done during the winter, when these annuals are easiest to find and identify. Access to the island is limited particularly during the winter due to difficult and dangerous landing conditions. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply (Cindy Rehkemper, USFWS, pers. comm., 2001).

Amaranthus brownii typically grows in shallow soil on rocky outcrops. It is found in fully exposed locations at elevations between 30 and 242 m (100 and 800 ft). Associated native plant taxa include *Schiedea verticillata* (no common name (NCN)), *Chenopodium oahuense* (aheahea), *Ipomoea pes-caprae* ssp. *brasiliensis* (pohuehue), *Ipomoea indica* (koali awa), *Scaevola sericea* (naupaka), *Sida fallax* (ilima), *Solanum nelsonii* (akia), *Sicyos pachycarpus* (kupala), *Eragrostis variabilis* (kawelu), and *Panicum torridum* (kakonakona) (Hawaii Natural Heritage Program (HINHP) Database 2000).

The threats to *Amaranthus brownii* on Nihoa are competition with the alien plant *Portulaca oleracea* (pigweed); changes in the substrate; fire; introduction of rats; human disturbances; a risk of extinction from naturally occurring events (such as hurricanes); and reduced reproductive vigor due to the small number of extant individuals (USFWS 1998d).

Pritchardia remota (loulu)

Pritchardia remota, a member of the palm family (Arecaceae), is a tree 4 to 5 m (13 to 16 ft) tall with a ringed, wavy trunk about 15 cm (5.9 in) in diameter. The rather ruffled, fan-shaped leaves are about 80 cm (31 in) in diameter and are somewhat waxy to pale green with a few tiny scales on the lower surface. The flowering stalks, up to 30 cm (12 in) long, are branched and have flowers arranged spirally along the hairless stalks. It is the only species of *Pritchardia* on the island of Nihoa and can be distinguished from other species of the genus in Hawaii by its wavy leaves; its short, hairless inflorescences; and its small, globose (spherical/round) fruits (Read and Hodel 1999, 61 FR 43178).

Pritchardia remota is a long-lived perennial, and populations have remained stable for several years. Conant (1985) reported finding plants with fruit and flowers in the spring and summer. Phenology may vary somewhat from year to year, depending on rainfall and climatic factors. The means of pollination are unknown.

Pritchardia remota was historically known from Nihoa and Laysan islands. Currently, *Pritchardia remota* is known from four colonies presently extant along 0.2 km (0.1 mi) of the length of each of two valleys which are about 0.6 km (0.4 mi) apart on opposite sides of the island of Nihoa. Including seedlings, more than 680 plants are found in West Palm Valley and more than 392 plants in East Palm Valley (HINHP Database 2000). A few trees also grow at the bases of basaltic cliffs on the steep outer slopes of each of the two valleys (HINHP Database 2000). Plants grow from 15 to 151 m (50 to 500 ft) in elevation.

Pritchardia remota is unusual among Hawaiian members of the genus in that it occurs in the relatively dry climate found on Nihoa. However, its distribution on Nihoa may be related to water availability since many plants are found in valleys and near freshwater seeps by cliffs (USFWS 1998d). Within the *Pritchardia remota* coastal forest community, *Pritchardia remota* assumes complete dominance with a closed canopy and thick layers of fallen fronds in the understory (Gagne and Cuddihy 1999). Native plants growing nearby include *Chenopodium oahuense*, *Sesbania tomentosa* (ohai), *Solanum nelsonii*, and *Sida fallax* (USFWS 1998d).

The threats to *Pritchardia remota* on the island of Nihoa are competition with alien plants, seed predation by rodents, possibly alien insects, fire, human disturbances, a risk of extinction from naturally occurring events (such as landslides), and reduced reproductive vigor due to the small number of extant individuals (USFWS 1998d).

Schiedea verticillata (no common name)

Schiedea verticillata, a member of the pink family (Caryophyllaceae), is a perennial herb which dies back to an enlarged root during dry seasons. The stems, which can reach 0.4 to 0.6 m (1.3 to 2 ft) in length, are upright or sometimes pendent (drooping). The stalkless leaves are fleshy, broad, and pale green; usually arranged in threes; and measure 9 to 15 cm (3.5 to 5.9 in) long and 7 to 9 cm (2.8 to 3.5 in) wide. Flowers are arranged in open, branched clusters, usually 17 to 25 cm (6.7 to 9.8 in) long. This species, the only member of its genus to grow in the Northwestern Hawaiian Islands, is distinguished from other species of the genus by its exceptionally large sepals and, usually, three leaves per node (Wagner *et al.* 1999). Dr. Steve Weller of the University of California at Irvine, found that *Schiedea verticillata* produces more seeds and more nectar than any other species in its genus. It also has the highest degree of genetic diversity between individuals of any species in the genus (USFWS 1998d).

Schiedea verticillata is a short-lived perennial. Conant's data (1985) indicated that the reproductive cycle may not be seasonal, since many life stages were found simultaneously throughout the year. Her observations also indicate that the individual plants flower, set, and disperse seed in a relatively short period of time. The means of pollination are unknown (USFWS 1998d).

All but one historically known colony of *Schiedea verticillata* are known to be extant on Nihoa. Colony locations and levels appear to have shifted somewhat, but total numbers have remained relatively stable for several years. Seven populations, containing a total of 497, individuals were counted between 1980 and 1983 (HINHP Database 2000). In 1992, Service staff counted only 170 to 190 plants in six populations (USFWS 1998d). However, in 1996, Rowland counted a total of 359 plants in 10 populations (USFWS 1998d). These were distributed primarily on the western half of the island, although a population of 13 plants was seen on the east spur of the island near Tunnel Cave. Two previously unobserved populations containing 2 and 99 plants, respectively, were seen on the north cliffs above Miller's Valley. Other locations included a population of 24 plants at Dog's Head; 37 plants at Devil's Slide; 10 plants near Miller's Peak; a previously unknown population of 62 plants on the ridge separating West and West Palm valleys; 80 plants near lower West valley; 28 individuals near Pinnacle Peak; and a small colony of 4 plants northeast of Pinnacle Peak (USFWS 1998d).

Schiedea verticillata typically grows in rocky scree, soil pockets, and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest at elevations between 30 and 242 m (100 and 800 ft). Associated taxa include *Tribulus cistoides* (nohu), *Eragrostis variabilis*, *Rumex albescens* (huahuako), and lichens on surrounding rock (HINHP Database 2000).

The threats to *Schiedea verticillata* on the island of Nihoa are competition with alien plant species, possible herbivory by alien insect species, predation by rodents, human disturbances, a risk of extinction from naturally occurring events (such as rockslides), and reduced reproductive vigor due to the small number of individuals (Conant 1985, USFWS 1998d).

Multi-Island Species

Cenchrus agrimonioides (kamanomano)

Cenchrus agrimonioides, a short-lived perennial member of the grass family (Poaceae), is a grass with leaf blades which are flat or folded and have a prominent midrib. The two varieties, *Cenchrus agrimonioides* var. *laysanensis* and *Cenchrus agrimonioides* var. *agrimonioides*, differ from each other in that var. *agrimonioides* has smaller burs, shorter stems, and narrower leaves. *Cenchrus agrimonioides* var. *agrimonioides* is known only from the main Hawaiian Islands while *Cenchrus agrimonioides* var. *laysanensis* is known only from (endemic to) the NWHI. This species is distinguished from others in the genus by the cylindrical to lance-shaped bur and the arrangement and position of the bristles (O'Connor 1999).

Little is known about the life history of this plant. Reproductive cycles,

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longevity, specific environmental requirements, and limiting factors are generally unknown; however, this species has been observed to produce fruit year round (USFWS 1999).

Historically, *Cenchrus agrimonioides* var. *agrimonioides* was known from Oahu, Lanai, and the south slope of Haleakala and Ulupalakua on Maui; there is also an undocumented report from Hawaii Island (61 FR 53108). Currently, *Cenchrus agrimonioides* var. *agrimonioides* is known from Oahu and Maui (65 FR 79192). Historically, *Cenchrus agrimonioides* var. *laysanensis* was known from Laysan, Kure, and Midway in the Northwestern Hawaiian Islands but has not been seen there since about 1980 (HINHP Database 2000; O'Connor 1999). Morin and Conant (1998) reported that *Cenchrus agrimonioides* var. *laysanensis* disappeared from Laysan before 1923, from Midway Atoll sometime shortly after 1902, and was last seen on Green Island, Kure Atoll in about 1980. The last comprehensive botanical surveys of all of these islands were conducted in the 1980s. No viable genetic material of this variety is known to exist. Because this variety has not been seen in the wild for over 20 years and no viable genetic material is known to exist, critical habitat is not proposed at this time.

Cenchrus agrimonioides var. *laysanensis* was historically found on coastal sandy substrate in *Scaevola-Eragrostis variabilis* scrub at an elevation of 5 m (16 ft).

This species was threatened by competition with various alien plant species, seed predation by rats and mice, and, potentially, alien insects, and fire.

Mariscus pennatiformis (no common name)

Mariscus pennatiformis, a member of the sedge family (Cyperaceae), is a perennial plant with a woody root system covered with brown scales. The stout, smooth, three-angled stems are between 0.4 and 1.2 m (1.3 and 4 ft) long, slightly concave, and 3 to 7 mm (0.1 to 0.3 in) in diameter in the lower part. The three to five linear, somewhat leathery leaves are 8 to 17 mm (0.3 to 0.7 in) wide and at least as long as the stem. This species differs from other members of the genus by its three-sided, slightly concave, smooth stems; the length and number of spikelets (elongated flower-clusters); the leaf width; and the length and diameter of stems. The two subspecies are distinguished primarily by larger and more numerous spikelets, larger achenes (dry, one-seeded fruits), and more overlapping and yellower glumes (scaly bracts of spikelets) in ssp. *pennatiformis* as compared with ssp. *bryanii* (Koyama 1999). *Mariscus pennatiformis* ssp. *bryanii* is the only subspecies found in the Northwestern Hawaiian Islands.

Individuals of *Mariscus pennatiformis* ssp. *bryanii* on Laysan Island were closely monitored for 10 years, but flowering was never observed until the continuous flowering of one individual from November 1994 to December 1995 (USFWS 1999). This flowering event coincided with record high rainfall on Laysan (USFWS 1999). Little else is known about the life history of this plant (USFWS 1999).

Historically, *Mariscus pennatiformis* was found on Kauai, Oahu, and Hawaii. Currently, *Mariscus pennatiformis* ssp. *pennatiformis* is found on Maui while *Mariscus pennatiformis* ssp. *bryanii* is known only from Laysan Island. This subspecies was found until recently on the southeast end of the central lagoon and the west and northeast sides of the island on sandy substrate at an elevation of 5 m (16 ft) (HINHP Database 2000, Koyama 1999). The population has fluctuated from as many as 200 to as few as 1 individual over the past 10 years. Currently, a single population of about 200 individuals of *Mariscus pennatiformis* ssp. *bryanii* remains on the southeast end of the lagoon (USFWS 1999).

Mariscus pennatiformis ssp. *bryanii* is found on coastal sandy substrate at an elevation of 5 m (16 ft). Associated species include *Cyperus laevigatus* (makaloa), *Eragrostis variabilis*, and *Ipomoea* sp. (HINHP Database 2000, Koyama 1999).

The threats to *Mariscus pennatiformis* ssp. *bryanii* on the island of Laysan are seed predation by the endangered Laysan finch (*Telespiza cantans*) and destruction of the remaining individuals during burrowing activities of nesting seabirds. The native plant *Ipomoea pes-caprae* (beach morning glory), is another possible threat since it periodically grows over the *Mariscus* individuals (USFWS 1999). In addition, native *Sicyos* spp. vines, *Eragrostis variabilis*, and *Boerhavia repens* (alena) appear to have impeded natural dispersal of *Mariscus pennatiformis* ssp. *bryanii* to other suitable locations (Schultz 2000).

Sesbania tomentosa (ohai)

Sesbania tomentosa, a member of the legume family (Fabaceae), is typically a sprawling short-lived perennial shrub but may also be a small tree. Each compound leaf consists of 18 to 38 oblong to elliptic leaflets that are usually sparsely to densely covered with silky hairs. The flowers are salmon color tinged with yellow, orange-red, scarlet, or rarely, pure yellow coloration. *Sesbania tomentosa* is the only endemic Hawaiian species in the genus, differing from the naturalized *Sesbania sesban* by the color of the flowers, the longer petals and calyx, and the number of seeds per pod (Geesink *et al.* 1999).

The pollination biology of *Sesbania tomentosa* is being studied by David Hopper, a graduate student in the Department of Zoology at the University of Hawaii at Manoa. His preliminary findings suggest that although many insects visit *Sesbania* flowers, the majority of successful pollination is accomplished by native bees of the genus *Hylaeus* and that populations at Kaena Point on Oahu are probably pollinator limited. Flowering at Kaena Point is highest during the winter-spring rains, and gradually declines throughout the rest of the year (USFWS 1999). Other aspects of this plant's life history are unknown.

Currently, *Sesbania tomentosa* occurs on at least six of the eight main Hawaiian Islands (Kauai, Oahu, Molokai, Kahoolawe, Maui, and Hawaii) and in the Northwestern Hawaiian Islands (Nihoa and Necker). Although once found on Niihau and Lanai, it is no longer extant on these islands (59 FR 56333, Geographic Decision Systems International (GDSI) 2000, USFWS 1999, HINHP Database 2000). On Nihoa this species has been described as relatively common in some areas, with one population consisting of several thousand individual plants known (USFWS 1999). On Necker Island, *Sesbania tomentosa* is known to occur from 45 m (150 ft) elevation to the 84 m (276 ft) summit, growing on the tops of all hills of the main island. A few individuals are found on the Northwest Cape, as well (USFWS 1999).

Sesbania tomentosa is found in shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland (HINHP Database 2000, Geesink *et al.* 1999). Associated plant species include *Sida fallax*, *Scaevola sericea*, *Solanum nelsonii*, and *Pritchardia remota* (HINHP Database 2000).

The primary threats to *Sesbania tomentosa* on the islands of Nihoa and Necker are competition with various alien plant species; lack of adequate pollination; seed predation by rats and mice and, potentially, alien insects; and fire (USFWS 1999).

Previous Federal Action

Federal action on these plants began as a result of Section 12 of the Act, which directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct in the United States. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. In that document *Pritchardia remota* and *Sesbania tomentosa* (as *S. hobdyi* and *S. tomentosa* var. *tomentosa*) were considered endangered. On July 1, 1975, we published a notice in the **Federal Register** (40 FR 27823) of our acceptance of the Smithsonian report as a petition within the context of Section 4(c)(2) (now Section 4(b)(3)) of the Act, and giving notice of our intention to review the status of the plant taxa named therein. As a result of that review, on June 16, 1976, we published a proposed rule in the **Federal Register** (41 FR 24523) to determine endangered status pursuant to Section 4 of the Act for approximately 1,700 vascular plant taxa, including *Amaranthus brownii*, *Cenchrus agrimonioides* var. *laysanensis*, and *Sesbania tomentosa*. The list of 1,700 plant taxa was assembled on the basis of comments and data received by the Smithsonian Institution and the Service in response to House Document No. 94–51 and the July 1, 1975, **Federal Register** publication.

General comments received in response to the 1976 proposal are summarized in an April 26, 1978, **Federal Register** publication (43 FR 17909). In 1978, amendments to the Act required that all proposals over 2 years old be withdrawn. A 1-year grace period was given to proposals already over 2 years old. On December 10, 1979, we published a notice in the **Federal Register** (44 FR 70796) withdrawing the portion of the June 16, 1976, proposal that had not been made final, along with four other proposals that had expired. The Service published updated notices of review for plants on December 15, 1980 (45 FR 82479), September 27, 1985 (50 FR 39525), February 21, 1990 (55 FR 6183), and September 30, 1993 (58 FR 51144). A summary of the status categories for *Amaranthus brownii*, *Cenchrus agrimonioides*, *Mariscus pennatiformis*, *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa* in the 1980 to 1993 notices of review can be found in Table 2(a). We listed these six species as endangered between 1994 and 1996. A summary of the listing actions can be found in Table 2(b).

TABLE 2(a).—SUMMARY OF CANDIDACY STATUS FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Federal Register Notice of Review			
	1980	1985	1990	1993
Amaranthus brownii	C1	C1	C1	
Cenchrus agrimonioides var. *laysanensis*	C1*	C1*	C1*	C2*
Mariscus pennatiformis	C1	C1		
Pritchardia remota	C1	C1	C1	
Schiedea verticillata	C1	C1	C1	
Sesbania tomentosa	C1*	C1*	C1	

Key:
C1: Taxa for which the Service has on file enough sufficient information on biological vulnerability and threat(s) to support proposals to list them as endangered or threatened species.
C1*: Taxa of known vulnerable status in the recent past that may already have become extinct.
C2*: Taxa for which information now in the possession of the Service indicates that proposing to list as endangered or threatened is possibly appropriate, but for which sufficient data on biological vulnerability and threat are not currently available to support proposed rules. Continued existence of these species is in doubt.

Federal Register Notices of Review:
1980: 45 FR 82479
1985: 50 FR 39525
1990: 55 FR 6183
1993: 58 FR 51144

TABLE 2(b).—SUMMARY OF LISTING ACTIONS FOR SIX PLANT SPECIES FROM THE NORTHWESTERN HAWAIIAN ISLANDS

Species	Federal status	Proposed Rule		Final Rule	
		Date	Federal Register	Date	Federal Register
Amaranthus brownii	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Cenchrus agrimonioides	E	10/2/95	60 FR 51417	10/10/96	61 FR 53108
Mariscus pennatiformis	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333
Pritchardia remota	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Schiedea verticillata	E	03/24/93	58 FR 15828	08/21/96	61 FR 43178
Sesbania tomentosa	E	09/14/93	58 FR 48012	11/10/94	59 FR 56333

Key: E = Endangered.

Critical Habitat

Section 4(a)(3) of the Act, as amended, and implementing regulations (50 CFR 424.12) require that, to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time the species is determined to be endangered or threatened. Our regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of threat to the species, or (2) such designation of critical habitat would not be beneficial to the species. At the time each plant was listed, we determined that designation of critical habitat was not prudent because it would not benefit the plant and/or would increase the degree of threat to the species.

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The not prudent determinations for these species, along with others, were challenged in *Conservation Council for Hawaii v. Babbitt*. 2 F. Supp. 2d 1280 (D. Haw. 1998). On March 9, 1998, the United States District Court for the District of Hawaii directed us to review the prudency determinations for 245 listed plant species in Hawaii, including *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa*. Among other things, the Court held that in most cases we did not sufficiently demonstrate that the species are threatened by human activity or that such threats would increase with the designation of critical habitat. The Court also held that we failed to balance any risks of designating critical habitat against any benefits (*id.* at 1283–1285).

Regarding our determination that designating critical habitat would have no additional benefits to the species above and beyond those already provided through the section 7 consultation requirement of the Act, the Court ruled that we failed to consider the specific effect of the consultation requirement on each species (*id.* at 1286–88). In addition, the Court stated that we did not consider benefits outside of the consultation requirements. In the Court's view, these potential benefits include substantive and procedural protections. The Court held that, substantively, designation establishes a "uniform protection plan" prior to consultation and indicates where compliance with section 7 of the Act is required. Procedurally, the Court stated that the designation of critical habitat educates the public and State and local governments and affords them an opportunity to participate in the designation (*id.* at 1288). The Court also stated that private lands may not be excluded from critical habitat designation even though section 7 requirements apply only to Federal agencies. In addition to the potential benefit of informing the public and State and local governments of the listing and of the areas that are essential to the species' conservation, the Court found that there may be Federal activity on the private property in the future, even though no such activity may be occurring there at the present (*id.* at 1285–88).

On August 10, 1998, the Court ordered us to publish proposed critical habitat designations or non-designations for at least 100 species by November 30, 2000, and to publish proposed designations or non-designations for the remaining 145 species by April 30, 2002 (24 F. Supp. 2d 1074).

On November 30, 1998, we published a notice in the **Federal Register** requesting public comments on our reevaluation of whether designation of critical habitat is prudent for the 245 Hawaiian plants at issue (63 FR 65805). The comment period closed on March 1, 1999, and was reopened from March 24, 1999, to May 24, 1999 (64 FR 14209). We received over 100 responses from individuals, non-profit organizations, county governments, the State of Hawaii's Division of Forestry and Wildlife, and Federal agencies (U.S. Department of Defense—Army, Navy, Air Force). Only a few responses offered information on the status of individual plant species or on current management actions for one or more of the 245 Hawaiian plants. While some of the respondents expressed support for the designation of critical habitat for 245 Hawaiian plants, more than 80 percent opposed the designation of critical habitat for these plants. In general, these respondents opposed designation because they believed it will cause economic hardship, chill cooperative projects, polarize relationships with hunters, or potentially increase trespass or vandalism on private lands. In addition, commenters also cited a lack of information on the biological and ecological needs of these plants which, they suggested, may lead to designation based on guesswork. The respondents who supported the designation of critical habitat cited that designation will provide a uniform protection plan for the Hawaiian Islands; promote funding for management of these plants; educate the public and State government; and protect partnerships with landowners and build trust.

To comply with the Court's order, we are publishing seven rules that will include proposed determinations of whether critical habitat is prudent, along with proposed designations if appropriate. Each rule, arranged by island or island group (Kauai and Niihau; Maui and Kahoolawe; Lanai; Molokai; Northwestern Hawaiian Islands; Hawaii; Oahu), has or will contain the prudency determination (or incorporate the prudency determination when it has been published in a prior proposal) and, when appropriate, proposed designations of critical habitat for each plant species known to occur from that island or group of islands. The proposed rules for Kauai and Niihau, Maui and Kahoolawe, Lanai, and Molokai have already been published. On November 7, 2000, we published the first of the court-ordered prudency determinations and proposed critical habitat designations for Kauai and Niihau plants (65 FR 66808). The prudency determinations and proposed critical habitat designations for Maui and Kahoolawe plants were published on December 18, 2000 (65 FR 79192), for Lanai plants on December 27, 2000 (65 FR 82086), and for Molokai plants on December 29, 2000 (65 FR 83158). All of these proposed rules were sent to the **Federal Register** by or on November 30, 2000, as required by the Court's order. Revised proposals for the islands of Kauai and Niihau, Lanai, Maui and Kahoolawe, and Molokai have also been published, consistent with a court ordered stipulation dated October 5, 2001, extending the deadlines for the rulemakings to allow us to prepare revised proposals taking into account information received during the public comment periods. In earlier proposals we determined that critical habitat was prudent for three species (*Cenchrus agrimonioides* (65 FR 79192), *Mariscus pennatiformis* (65 FR 79192), and *Sesbania tomentosa* (65 FR 66808) that are reported from the Northwestern Hawaiian Islands. This prudency determination and proposed rule designating critical habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa,* from the NWHI responds to the court order in *Conservation Council for Hawaii v. Babbitt.*

Critical Habitat

Critical habitat is defined in section 3 of the Act as—(i) the specific areas within the geographical area occupied by a species, at the time it is listed in accordance with the Act, on which are found those physical or biological features (I) essential to the conservation of the species and (II) that may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by a species at the time it is listed, upon a determination that such areas are essential for the conservation of the species. "Conservation" means the use of all methods and procedures that are necessary to bring an endangered or threatened species to the point at which listing under the Act is no longer necessary.

Critical habitat receives protection under section 7 of the Act through the prohibition against destruction or adverse modification of critical habitat with regard to actions carried out, funded, or authorized by a Federal agency. Section 7 also requires conferences on Federal actions that are likely to result in the destruction or adverse modification of proposed critical habitat. Destruction or adverse modification is direct or indirect alteration that appreciably diminishes the value of critical habitat for the conservation of a listed species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. Aside from the added protection that may be provided under section 7, the Act does not provide other forms of regulatory protection to lands designated as critical habitat. Because consultation under section 7 of the Act does not apply to activities on private or other non-Federal lands that do not involve a Federal nexus, critical habitat designation would not afford any additional regulatory protections under the Act against such activities.

Critical habitat also provides non-regulatory benefits to the species by informing the public and private sectors of areas that are important for species recovery and where conservation actions would be most effective. Designation of critical habitat can help focus conservation activities for a listed species by identifying areas that contain the physical and biological features that are essential for the conservation of that species, and can alert the public, as well as land-managing agencies to the importance of those areas. Critical habitat also identifies areas that may require special management considerations or protection, and may help provide protection to areas where significant threats to the species have been identified to help to avoid accidental damage to such areas.

In order to be included in a critical habitat designation, the habitat must first be "essential to the conservation of the species." Critical habitat designations identify, to the extent known using the best scientific and commercial data available, habitat areas that provide essential life cycle needs of the species (i.e., areas on which are found the primary constituent elements, as defined at 50 CFR 424.12(b)). Section 3(5)(C) of the Act states that not all areas that can be occupied by a species should be designated as critical habitat unless the Secretary determines that all such areas are essential to the conservation of the species. Our regulations (50 CFR 424.12(e)) also state that, "The Secretary shall designate as critical habitat areas outside the geographic area presently occupied by the species only when a designation limited to its present range would be inadequate to ensure the conservation of the species."

Section 4(b)(2) of the Act requires that we take into consideration the economic impact, and any other relevant impact, of specifying any particular areas as critical habitat. We may exclude areas from critical habitat designation when the benefits of exclusion outweigh the benefits of including the areas within critical habitat, provided the exclusion will not result in extinction of the species.

Our Policy on Information Standards Under the Endangered Species Act, published on July 1, 1994 (59 FR 34271), provides criteria, establishes procedures, and provides guidance to ensure that decisions made by the Service represent the best scientific and commercial data available. It requires that our biologists, to the extent consistent with the Act and with the use of the best scientific and commercial data available, use primary and original sources of information as the basis for recommendations to designate critical habitat. When determining which areas are critical habitat, a primary source of information should be the listing rule for the species. Additional information may be obtained from a recovery plan, articles in peer-reviewed journals, conservation plans developed by States and counties, scientific status surveys and studies, and biological assessments or other unpublished materials.

Section 4 requires that we designate critical habitat based on what we know at the time of the designation. Habitat is often dynamic, however, and populations may move from one area to another over time. Furthermore, we recognize that designation of critical habitat may not include all of the habitat areas that may eventually be determined to be necessary for the recovery of the species. For these reasons, critical habitat designations do not signal that habitat outside the designation is unimportant or may not be required for recovery. Habitat areas outside the critical habitat designation will continue to be subject to conservation actions that may be implemented under section 7(a)(1) of the Act and to the regulatory protections afforded by the section 7(a)(2) jeopardy standard, and the section 9 take prohibition, as determined on the basis of the best available information at the time of the action. It is possible that federally funded or assisted projects affecting listed species outside their designated critical habitat areas could jeopardize those species. Similarly, critical habitat designations made on the basis of the best available information at the time of designation will not control the direction and substance of future recovery plans, habitat conservation plans, or other species conservation planning and recovery efforts if new information available to these planning efforts calls for a different outcome.

A. Prudency Redeterminations

As previously stated, designation of critical habitat is not prudent when one or both of the following situations exist: (i) the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species; or (ii) such designation of critical habitat would not be beneficial to the species (50 CFR 424.12(a)(1)).

To determine whether critical habitat would be prudent for *Amaranthus brownii, Pritchardio remota,* and *Schiedea verticillata,* we analyzed the potential threats and benefits for each species in accordance with the court's order. Due to low numbers of individuals and populations and their inherent immobility, the three plants may be vulnerable to unrestricted collection, vandalism, or disturbance, though this is unlikely given their inaccessibility. Recently we received information on the commercial trade in palms conducted through the internet (Grant Canterbury, USFWS, *in litt.* 2000). Several nurseries advertise and sell seedlings and young plants, including 13 species of Hawaiian *Pritchardia*. Seven of these species are federally protected, including *Pritchardia remota*. While we have determined that designation of critical habitat is not prudent for other species of *Pritchardia* because the benefits of designating critical habitat do not outweigh the potential increased threats from vandalism or collection (65 FR 66808, 65 FR 83158), we do not believe this species is threatened by these same activities because of its inaccessibility. Nihoa is more than 273 km (170 mi) from Lihue, Kauai, and more than 1,600 km (1,000 mi) from Midway. It is a part of the HINWR and a permit is required for access to the island. Access to the island is further limited due to difficult and dangerous landing conditions. There is only a 30 percent chance of a safe landing on the rocky coast, needing a soft bottomed boat (such as a Zodiac), small waves, and good timing. Passengers must be dropped off and the boat sent back out to sea (there are no mooring docks or beaches), returning to pick up the passengers, if conditions allow. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply (Cindy Rehkemper, USFWS, pers. comm., 2001).

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We examined the evidence available for *Amaranthus brownii* and *Schiedea verticillata* and have not, at this time, found specific evidence of taking, vandalism, collection or trade of these taxa or of similar species. Consequently, while we remain concerned that these activities could potentially threaten *Amaranthus brownii, Pritchardia remota*, and *Schiedea verticillata* in the future, consistent with applicable regulations (50 CFR 424.12(a)(1)(i)) and the Court's discussion of these regulations, we do not find that these three species are currently threatened by taking or other human activity, which threats would be exacerbated by the designation of critical habitat.

In the absence of finding that critical habitat would increase threats to a species, if there are any benefits to critical habitat designation, then a prudent finding is warranted. The potential benefits include: (1) Triggering section 7 consultation in new areas where it would not otherwise occur because, for example, it is or has become unoccupied or the occupancy is in question; (2) focusing conservation activities on the most essential areas; (3) providing educational benefits to State or county governments or private entities; and (4) preventing people from causing inadvertent harm to the species.

In the case of *Amaranthus brownii, Pritchardia remota*, and *Schiedea verticillata*, there would be some benefits to critical habitat. The primary regulatory effect of critical habitat is the section 7 requirement that Federal agencies refrain from taking any action that destroys or adversely affects critical habitat. All of these species are reported on Federal lands within national wildlife refuges where most actions would be subject to section 7. Critical habitat designation for habitat currently occupied by these species would usually be unlikely to change the section 7 consultation outcome, because an action that destroys or adversely modifies such critical habitat would also be likely to result in jeopardy to the species. However, there also may be some educational or informational benefits to the designation of critical habitat. Education benefits include the notification of land managers, and the general public of the importance of protecting the habitat of these species and dissemination of information regarding their essential habitat requirements.

Therefore, we propose that designation of critical habitat is prudent for *Amaranthus brownii, Pritchardia remota*, and *Schiedea verticillata*.

B. Primary Constituent Elements

In accordance with section 4(b)(2) of the Act and regulations at 50 CFR 424.12, in determining which areas to propose as critical habitat, we are required to base critical habitat determinations on the best scientific and commercial data available and to consider those physical and biological features that are essential to the conservation of the species and that may require special management considerations or protection. Such requirements include, but are not limited to, space for individual and population growth, and for normal behavior; food, water, air, light, minerals, or other nutritional or physiological requirements; cover or shelter; sites for breeding, reproduction, or rearing of offspring, germination, or seed dispersal; and, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

We are proposing to define the primary constituent elements on the basis of general habitat features of the areas in which the plant species are reported from, such as the type of plant community, associated native plant species, locale information (*e.g.*, steep rocky cliffs, talus slopes, stream banks), and elevation. These habitat features provide the ecological components required by the plants. The type of plant community and associated native plant species provide information on specific microclimatic conditions, retention and availability of water in the soil, soil microorganism community, and nutrient cycling and availability. The locale provides information on soil type, elevation, rainfall regime, and temperature. Elevation provides information on daily and seasonal temperature and sun intensity.

On Nihoa Island, the currently known primary constituent elements of critical habitat for *Amaranthus brownii* are habitat components that provide: (1) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Schiedea verticillata, Chenopodium oahuense, Ipomoea pes-caprae* ssp. *brasiliensis, Ipomoea indica, Scaevola sericea, Sida fallax, Solanum nelsonii, Sicyos pachycarpus, Eragrostis variabilis*, or *Panicum torridum*; and (2) elevations between 30 and 242 m (100 and 800 ft).

On Laysan and Nihoa islands, the currently known primary constituent elements of critical habitat for *Pritchardia remota* are habitat components that provide: (1) Coastal forest community containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Solanum nelsonii*, or *Sida fallax*; and (2) from 15 to 151 m (50 to 500 ft) in elevation.

On Nihoa Island, the currently known primary constituent elements of critical habitat for *Schiedea verticillata* are habitat components that provide: (1) Rocky scree, soil pockets and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Tribulus cistoides, Eragrostis variabilis, Rumex albescens*, or lichens; and (2) elevations between 30 and 242 m (100 and 800 ft).

On Laysan Island, the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* are habitat components that provide: (1) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis*, or *Ipomoea* sp.; and (2) elevation of 5 m (16 ft).

On Nihoa and Necker islands, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* are habitat components that provide: (1) shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland and containing one or more of the following associated native plant species: *Sida fallax, Scaevola sericea, Solanum nelsonii*, or *Pritchardia remota*; and (2) elevations between sea level and 84 m (0 and 276 ft).

C. Methods

As required by the Act and regulations (section 4(b)(2) and 50 CFR 424.12) we used the best scientific information available to determine areas that contain those physical and biological features that are essential for the conservation of the five plant species. This information included site-specific species information from the Hawaii Natural Heritage Program (HINHP) and our rare plant database, biological surveys and reports, our recovery plans for these five species, discussions with botanical experts, and recommendations (see below) from the Hawaii and Pacific Plant Recovery Coordinating Committee (HPPRCC) (HINHP 2000; HPPRCC 1998; USFWS 1998d, 1999).

In 1994, the HPPRCC initiated an effort to identify and map habitat it believed to be important for the recovery of 282 endangered and threatened plant species. The HPPRCC identified these areas on most of the islands in the Hawaiian chain, and in 1999 we published them in our *Recovery Plan for the Multi-Island Plants* (USFWS 1999). The HPPRCC expects there will be subsequent efforts to further refine the locations of important habitat areas and that new survey information or research findings may also lead to additional refinements (HPPRCC 1998).

Because the HPPRCC identified essential habitat areas for all listed, proposed, and candidate plant species and evaluated species of concern to determine if essential habitat areas would provide for their habitat needs as well, the HPPRCC's mapping of habitat is distinct from the regulatory designation of critical habitat as defined by the Act. More data has been collected since the recommendations made by the HPPRCC in 1998. Much of the area that was identified by the HPPRCC as inadequately surveyed has now been surveyed in some way. New location data for many species has been gathered. Also, the HPPRCC identified areas as essential based on species clusters (areas that included listed species, as well as candidate species, and species of concern) while we have only delineated areas that are essential for the conservation of the five listed species at issue. As a result, the proposed critical habitat designations in this proposed rule include habitat that was not identified as essential habitat in the 1998 recommendations.

We considered several criteria in the selection and proposal of specific boundaries for critical habitat units for these five species. These criteria, which follow the recommendations in the approved recovery plans, include expansion of existing wild populations and reestablishment of wild populations within historic range of each species (USFWS 1998d, 1999). The long-term probability of the conservation of these species is dependent upon the protection of existing population sites and suitable unoccupied habitat within historic range.

For these five plant species from the Northwestern Hawaiian Islands, currently and historically occupied habitat was examined. Critical habitat is not proposed for *Cenchrus agrimonioides* var. *laysanensis* on the Northwestern Hawaiian Islands for the following reasons. *Cenchrus agrimonioides* var. *laysanensis* is historically known from Laysan, Midway, and Kure Atoll. This plant has not been reported on Laysan and Midway for over 70 and 100 years, respectively. A permanent year-round camp on Laysan, staffed by paid employees and volunteers, conducts periodic monitoring of both native and non-native plant species, and *Cenchrus agrimonioides* var. *laysanensis* has not been seen during these monitoring efforts (Morin and Conant 1998). On Midway, *Cenchrus agrimonioides* var. *laysanensis* was not seen during the most recent botanical surveys of 1995 and 1999 (Chris Swenson, USFWS, pers. comm. 2002). *Cenchrus agrimonioides* var. *laysanensis* has not been seen on Kure Atoll for over 20 years though the State DOFAW conducts annual seabird surveys and a botanical survey was conducted there as recently as 2001 (DOFAW, 2001). In addition, no viable genetic material of this plant is know to exist. The rediscovery of currently unknown individual plants on these three islands and atolls is believed to be extremely unlikely. On the other hand, critical habitat is proposed for *Amaranthus brownii*, a plant that has not been seen since the early 1980s, on Nihoa because it is believed that there is a strong likelihood that this Nihoa endemic is still extant on the island. None of the surveys on Nihoa in the last twenty years have been conducted during the winter when *Amaranthus brownii*, an annual, is most easily located and identified. Winter surveys on the Nihoa have not been conducted because access to the island is particularly limited during this season due to difficult and dangerous landing conditions.

Critical habitat boundaries were delineated to include the entire island on which the species are found or were historically found, for mapping convenience. Within the critical habitat boundaries, adverse modification could occur only if the primary constituent elements are affected. Therefore, not all activities within critical habitat would trigger an adverse modification conclusion. In addition, existing man-made features and structures within boundaries of the mapped unit, such as buildings, roads, aqueducts, telecommunications equipment, radars, telemetry antennas, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, and other rural residential landscaped areas do not contain one or more of the primary constituent elements and would be excluded under the terms of this proposed regulation. Federal actions limited to those areas would not trigger a section 7 consultation unless they affect the species or primary constituent elements in adjacent critical habitat.

All currently or historically occupied sites containing one or more of the primary constituent elements considered essential to the conservation of the five plant species were examined to determine if additional special management considerations or protection are required above those currently provided. We reviewed all available management information on these plants at these sites including published and unpublished reports, surveys, and plans; internal letters, memos, trip reports; and, section 7 consultations. Additionally, we considered current management for these plants on national wildlife refuge lands.

For the five species for which designation of critical habitat is prudent, we know of no areas in the HINWR at this time that do not require special management or protection.

Administration

In summary, the proposed critical habitat areas described below constitute our best assessment of the physical and biological features needed for the conservation of the five plant species (*Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa*) and the special management needs of the species, and are based on the best scientific and commercial information available and described above. We put forward this proposal acknowledging that we may have incomplete information regarding many of the primary biological and physical requirements for these species. However, both the Act and the relevant court order require us to proceed with designation at this time based on the best information available. As new information accrues, we may reevaluate which areas warrant critical habitat designation. We anticipate that comments received through the public review process and from any public hearings, if requested, will provide us with additional information to use in our decision making process and in assessing the potential impacts of designating critical habitat for one or more of these species.

Proposed critical habitat includes habitat for five species on the islands of Nihoa, Necker, and Laysan. Lands proposed are under Federal ownership and managed by the Department of the Interior (the Service). The entire islands of Nihoa, Necker, and Laysan are proposed as critical habitat. A brief description of each island is presented below.

Descriptions of Critical Habitat in the Northwestern Hawaiian Islands

Key for Nihoa, Necker, and Laysan.
‡ Not all suitable habitat is proposed to be designated, only those areas essential to the conservation of the species.

1. This unit is needed to meet the recovery plan objectives of 8 to 10 viable populations (self perpetuating and sustaining for at least 5 years) with 100 to 500 mature, reproducing individuals per species throughout its historical range as specified in the recovery plans.
2. Island endemic.
3. Multi-island species with current locations on other islands.
4. Multi-island species with no current locations on other islands.
5. Current locations do not necessarily represent viable populations with the required number of mature individuals.
6. Several current locations may be affected by one naturally occurring, catastrophic event.
7. Species with variable habitat requirements, usually over wide areas. Wide ranging species require more space per individual over more land area to provide needed primary constituent elements to maintain healthy population size.
8. Not all currently occupied habitat was determined to be essential to the recovery of the species.
9. Life history, long-lived perennial-100 mature, reproducing individuals per population.
10. Life history, short-lived perennial-300 mature, reproducing individuals per population.
11. Life history, annual-500 mature, reproducing individuals per population.
12. Narrow endemic, the species probably never naturally occurred in more than a single or a few populations.
13. Species has extremely restricted, specific habitat requirements.
14. Hybridization is possible so distinct populations of related species should not overlap, requiring more land area.

Nihoa

The proposed unit Nihoa provides occupied habitat for three species: *Pritchardia remota*, *Schiedea verticillata*, and *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for their conservation on Nihoa and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Pritchardia remota*, or 300 mature individuals per population for *Schiedea verticillata*, and *Sesbania tomentosa* throughout their known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Nihoa below). This unit also provides unoccupied habitat for one species: *Amaranthus brownii*. Designation of this unit is essential to the conservation of this species because it contains the physical and biological features that are considered essential for its conservation on Nihoa, and provides habitat to support one or more additional populations necessary to meet the recovery objectives for this species of 8 to 10 populations and 500 mature individuals per population for *Amaranthus brownii*, throughout its known historical range considered by the recovery plans to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Nihoa below). *Amaranthus brownii* has not been seen in the wild since 1983. Service staff have surveyed for this species annually, though never in the winter season when it is most likely to be seen. Access to the island is limited, particularly during the winter due to difficult and dangerous landing conditions. Sea conditions are apt to change without warning, stranding any visitors on this inhospitable island that has no fresh water and no regular food supply. There is a high likelihood that the plants exist but are not detectable during the dry season and that there is a seed bank present on the island.

Nihoa has an area of approximately 69 ha (171 ac). Nihoa is owned solely by the Federal government.

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Table for Nihoa

Notes	*Not enough suitable habitat for 8 to 10 populations at this time. **Historical on Nihoa. ***Shallow soil on rocky outcrops.	*Species is wide ranging.‡ **Valleys and near freshwater seeps by cliffs.	* Rocky scree, soil pockets and cracks on coastal cliff faces.	*Species is wide ranging.‡
14. Hybridization is possible.				
13. Restricted habitat requirements.	X***	X**	X*	
12. Narrow endemic.	X	X	X	
11. Annual–500/pop.	X			
10. Short-lived perennial–300/pop.			X	X
9. Long-lived perennial–100/pop.		X		
8. Not all occupied habitat needed.				
7. Species with variable habitats.				
6. Several occ. vulnerable to		X	X	X
5. Non-viable populations.	X	X	X	X
4. Multi-island/no current other islands.				
3. Multi-island/current other islands.		X		X
2. Island endemic.	X**		X	
1. 8–10 pop. guidelines.	X*	X*	X	X*
Species	Amaranthus brownii	Pritchardia remota	Schiedea verticillata	Sesbania tomentosa

Necker

The proposed unit Necker provides occupied habitat for one species, *Sesbania tomentosa*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation

on Necker and provides habitat to support one or more of the 8 to10 populations and 300 mature individuals per population for *Sesbania tomentosa*, throughout its known historical range considered by the recovery plan to be necessary for the conservation of this species (see the discussion of conservation requirements in Section D) (see Table Necker below).

Necker has an area of approximately 18 ha (46 ac). Necker is owned solely by the Federal government.

Table for Necker

Species	Notes
Amaranthus brownii	*Not enough suitable habitat for 8 to 10 populations at this time. ** Historical on Nihoa. ***Shallow soil on rocky outcrops.
1. 8–10 pop. guidelines.	X*
2. Island endemic.	X**
3. Multi-island/current other islands.	
4. Multi-island/no current other islands.	
5. Non-viable populations.	X
6. Several occ. vulnerable to	
7. Species with variable habitats.	
8. Not all occupied habitat needed.	
9. Long-lived perennial–100/pop.	
10. Short-lived perennial–300/pop.	
11. Annual–500/pop.	X
12. Narrow endemic.	X
13. Restricted habitat requirements.	X***
14. Hybridization is possible.	

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Laysan

The proposed unit Laysan provides occupied habitat for two species: *Mariscus pennatiformis* ssp. *bryanii* and *Pritchardia remota*. It is proposed for designation because it contains the physical and biological features that are considered essential for its conservation on Laysan and provides habitat to support one or more of the 8 to 10 populations for each species and 100 mature individuals per population for *Pritchardia remota*, or 300 mature individuals per population for *Mariscus pennatiformis* ssp. *bryanii* throughout their known historical range considered by the recovery plan to be necessary for the conservation of each species (see the discussion of conservation requirements in Section D) (see Table Laysan below).

Laysan has an area of approximately 411 ha (1,015 ac). Laysan is owned solely by the Federal government.

Table for Laysan

Species	*Mariscus pennatiformis*	*Pritchardia remota*
1. 8–10 pop. guidelines.	X*	X*
2. Island endemic.		
3. Multi-island/current other islands.	X* *	X
4. Multi-island/no current other islands.		
5. Non-viable populations.	X	X
6. Several occ. vulnerable to	X	X
7. Species with variable habitats.		
8. Not all occupied habitat needed.		
9. Long-lived perennial–100/pop.		X
10. Short-lived perennial–300/pop.	X	
11. Annual–500/pop.		
12. Narrow endemic.		X
13. Restricted habitat requirements.		X**
14. Hybridization is possible.		

Notes

*Not enough suitable habitat for 8 to 10 populations at this time.
**Subspecies bryanii only known from Laysan.

*Species is wide ranging.‡
** Valleys and near freshwater seeps by cliffs.

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Effects of Critical Habitat Designation

Section 7 Consultation

Section 7(a)(2) of the Act requires Federal agencies to ensure that actions they fund, authorize, or carry out do not jeopardize the continued existence of a listed species or destroy or adversely modify its critical habitat. Destruction or adverse modification of critical habitat occurs when a Federal action directly or indirectly alters critical habitat to the extent it appreciably diminishes the value of critical habitat for the conservation of the species. Such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical (50 CFR 402.02). Individuals, organizations, States, local governments, and other non-Federal entities are affected by the designation of critical habitat only if their actions occur on Federal lands, require a Federal permit, license, or other authorization, or involve Federal funding.

Section 7(a) of the Act means that Federal agencies must evaluate their actions with respect to any proposed or designated critical habitat. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. If a Federal action may affect critical habitat, the responsible Federal agency must enter into consultation with us. If, at the conclusion of consultation, we issue a biological opinion concluding that the project is likely to result in the destruction or adverse modification of critical habitat, we also provide reasonable and prudent alternatives to the project, if any are identifiable. Reasonable and prudent alternatives are defined at 50 CFR 402.02 as alternative actions identified during consultation that can be implemented in a manner consistent with the intended purpose of the action, that are consistent with the scope of the Federal agency's legal authority and jurisdiction, that are economically and technologically feasible, and that the Director believes would avoid destruction or adverse modification of critical habitat.

Section 7(a)(4) requires Federal agencies to confer with us on any action that is likely to result in destruction or adverse modification of proposed critical habitat. Conference reports provide conservation recommendations to assist the agency in eliminating conflicts that may be caused by the proposed action. The conservation recommendations in a conference report are advisory. We may issue a formal conference report if requested by a Federal agency. Formal conference reports on proposed critical habitat contain a biological opinion that is prepared according to 50 CFR 402.14, as if critical habitat were designated. We may adopt the formal conference report as a biological opinion when the critical habitat is designated, if no significant new information or changes in the action alter the content of the opinion. *See* 50 CFR 402.10(d).

Regulations at 50 CFR 402.16 require Federal agencies to reinitiate consultation on previously reviewed actions under certain circumstances, including instances where critical habitat is subsequently designated and the Federal agency has retained discretionary involvement or control or is authorized by law. Consequently, some Federal agencies may request reinitiation of consultation or conferencing with us on actions for which formal consultation has been completed if those actions may affect designated critical habitat or adversely modify or destroy proposed critical habitat.

Activities on lands being proposed as critical habitat for these five species or activities that may indirectly affect such lands and that are conducted by a Federal agency, funded by a Federal agency or require a permit from a Federal agency will be subject to the section 7 consultation process. Federal actions not affecting critical habitat will not require section 7 consultation.

Section 4(b)(8) of the Act requires us to briefly describe and evaluate in any proposed or final regulation that designates critical habitat those activities involving a Federal action that may adversely modify such habitat or that may be affected by such designation. We note that such activities may also jeopardize the continued existence of the species. Activities that, when carried out, funded, or authorized by a Federal agency, may directly or indirectly destroy or adversely modify critical habitat include, but are not limited to:

(1) Activities that appreciably degrade or destroy habitat defined in the discussion of primary constituent elements including but not limited to: clearing or cutting of native live trees and shrubs, whether by burning or mechanical, chemical, or other means (*e.g.*, woodcutting or herbicide application); introducing or enabling the spread of non-native species; and taking actions that pose a risk of fire;

(2) Construction activities by the U.S. Department of Interior (U.S. Fish and Wildlife Service);

(3) Research activities funded by the U.S. Department of Interior (U.S. Fish and Wildlife Service) or National Oceanic and Atmospheric Administration (National Marine Sanctuaries Program, National Marine Fisheries Service); and

(4) Activities not mentioned above funded or authorized by the Department of Interior (U.S. Geological Survey, National Park Service), Department of Commerce (National Oceanic and Atmospheric Administration), Western Pacific Regional Fisheries Council, or any other Federal agency.

If you have questions regarding whether specific activities will constitute adverse modification of critical habitat, contact the Field Supervisor, Pacific Islands Office (see **ADDRESSES** section). Requests for copies of the regulations on listed wildlife and plants and inquiries about prohibitions and permits may be addressed to the U.S. Fish and Wildlife Service, Division of Endangered Species, 911 N.E. 11th Avenue, Portland, OR 97232 (telephone 503/231–2063; facsimile 503/231–6243).

Economic and Other Relevant Impacts Analysis

Section 4(b)(2) of the Act requires us to designate critical habitat on the basis of the best scientific and commercial information available and to consider the economic and other relevant impacts of designating a particular area as critical habitat. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as critical habitat. We cannot exclude such areas from critical habitat when such exclusion will result in the extinction of the species concerned. We will conduct an analysis of the economic impacts of designating these areas as critical habitat prior to a final determination. When completed, we will announce the availability of the draft economic analysis with a notice in the **Federal Register**, and we will open a public comment period on the draft economic analysis and proposed rule at that time.

We will utilize the final economic analysis, and take into consideration all comments, and information regarding economic or other impacts submitted during the public comment period and any public hearings, if requested, to make final critical habitat designations. We may exclude areas from critical habitat upon a determination that the benefits of such exclusions outweigh the benefits of specifying such areas as part of critical habitat; however, we cannot exclude areas from critical habitat when such exclusion will result in the extinction of the species.

Public Comments Solicited

It is our intent that any final action resulting from this proposal be as accurate and as effective as possible. Therefore, we solicit comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule.

We invite comments from the public that provide information on whether lands within proposed critical habitat are currently being managed to address conservation needs of these listed plants. As stated earlier in this proposed rule, if we receive information that any of the areas proposed as critical habitat are adequately managed, we may delete such areas from the final rule, because they would not meet the definition in section 3(5)(A)(i) of the Act.

We are soliciting comments in this proposed rule on whether current land management plans or practices applied within the areas proposed as critical habitat adequately address the threats to these listed species.

In addition, we are seeking comments on the following:

(1) The reasons why critical habitat for any of these species is prudent or not prudent as provided by section 4 of the Act and 50 CFR 424.12(a)(1), including whether the benefits of designation would outweigh any threats to these species due to designation;

(2) The reasons why any particular area should or should not be designated as critical habitat for any of these species, as critical habitat is defined by section 3 of the Act (16 U.S.C. 1532 (5));

(3) Specific information on the amount and distribution of habitat for *Amaranthus brownii, Cenchrus agrimonioides, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa;* and what habitat is essential to the conservation of the species and why;

(4) Land use practices and current or planned activities in the subject areas and their possible impacts on proposed critical habitat;

(5) Any economic or other impacts resulting from the proposed designations of critical habitat, including any impacts on small entities or families; and

(6) Economic and other potential values associated with designating critical habitat for the above plant species such as those derived from non-consumptive uses (*e.g.*, hiking, camping, and birding).

If you wish to comment, you may submit your comments and materials concerning this proposal by any one of several methods (*see* **ADDRESSES**). Our practice is to make comments, including names and home addresses of respondents, available for public review during regular business hours. Individual respondents may request that we withhold their home address, which we will honor to the extent allowable by law. There also may be circumstances in which we would withhold a respondent's identity, as allowable by law. If you wish us to withhold your name and/or address, you must state this request prominently at the beginning of your comment. However, we will not consider anonymous comments. To the extent consistent with applicable law, we will make all submissions from organizations or businesses, and from individuals identifying themselves as representatives or officials of organizations or businesses, available for public inspection in their entirety. Comments and materials received will be available for public inspection, by appointment, during normal business hours at our Pacific Islands Office.

Peer Review

In accordance with our policy published on July 1, 1994 (59 FR 34270), we will seek the expert opinions of at least three appropriate and independent specialists regarding this proposed rule. The purpose of such review is to ensure listing and critical habitat decisions are based on scientifically sound data, assumptions, and analyses. We will send copies of this proposed rule to these peer reviewers immediately following publication in the **Federal Register**. We will invite the peer reviewers to comment, during the public comment period, on the specific assumptions and conclusions regarding the proposed designations of critical habitat.

We will consider all comments and data received during the 60-day comment period on this proposed rule during preparation of a final rulemaking. Accordingly, the final decision may differ from this proposal.

Clarity of the Rule

Executive Order 12866 requires each agency to write regulations and notices that are easy to understand. We invite your comments on how to make this proposed rule easier to understand including answers to questions such as the following: (1) Are the requirements in the proposed rule clearly stated? (2) Does the proposed rule contain technical language or jargon that interferes with the clarity? (3) Does the format of the proposed rule (grouping and order of sections, use of headings, paragraphing, etc.) aid or reduce its clarity? (4) Is the description of the proposed rule in the "Supplementary Information" section of the preamble helpful in understanding the document? (5) What else could we do to make the proposed rule easier to understand?

Send a copy of any comments that concern how we could make this notice easier to understand to: Office of Regulatory Affairs, Department of the Interior, Room 7229, 1849 C Street, NW, Washington, DC 20240.

Taxonomic Changes

At the time we listed *Mariscus pennatiformis* we followed the taxonomic treatments in Wagner *et al.* (1990), the widely used and accepted *Manual of the Flowering Plants of Hawaii*. Subsequent to the final listing we became aware of new taxonomic treatments for this species. Due to the court-ordered deadlines we are required to publish this proposal to designate critical habitat on the Northwestern Hawaiian Islands before we can prepare and publish a notice of taxonomic changes for this species. We plan to publish a taxonomic change notice for this species after we have published the final critical habitat designations on the Northwestern Hawaiian Islands. At that time we will evaluate the critical habitat designations on the Northwestern Hawaiian Islands for this species in light of any changes that may result from taxonomic changes in each species current and historical range and primary constituent elements.

Required Determinations

Regulatory Planning and Review

In accordance with Executive Order 12866, this document is a significant rule and was reviewed by the Office of Management and Budget (OMB) in accordance with the four criteria discussed below. We are preparing a draft analysis of this proposed action, which will be available for public comment, to determine the economic consequences of designating the specific areas as critical habitat. The availability of the draft economic analysis will be announced in the **Federal Register** so that it is available for public review and comments.

a. While we will prepare an economic analysis to assist us in considering whether areas should be excluded pursuant to section 4 of the Act, we do not believe this rule will have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or

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safety, or state or local governments or communities. Therefore, we do not believe a cost benefit and economic analysis pursuant to Executive Order 12866 is required.

Under the Act, critical habitat may not be adversely modified by a Federal agency action; critical habitat does not impose any restrictions on non-Federal persons unless they are conducting activities funded or otherwise sponsored, authorized, or permitted by a Federal agency.

Section 7 requires Federal agencies to ensure that they do not jeopardize the continued existence of these species. Based upon our experience with these species and their needs, we conclude that most Federal or Federally-authorized actions that could potentially cause an adverse modification of the proposed critical habitat would currently be considered as "jeopardy" under the Act in areas occupied by the species. Designation of critical habitat in areas that are not known to be occupied by any of these five species also is highly unlikely to have a significant economic affect because all of the lands proposed as critical habitat are federally owned and managed as part of the Service's national wildlife refuge system. Economic uses on a national wildlife refuge are limited by the National Wildlife Refuge System Administration Act, 16 U.S.C. 668dd, to activities that are compatible with the purposes of the refuge. We are not aware of any commercial activities occurring on the refuge. Taken with the remove location and inaccessibility of these islands, we believe there will be a few economic impacts resulting from this designation. In addition, each of the 3 units contains occupied habitat for one or more species.

b. We do not believe this rule would create inconsistencies with other agencies' actions. As discussed above, Federal agencies have been required to ensure that their actions not jeopardize the continued existence of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa* since their listing between 1994 and 1996. For the reasons discussed above, the prohibition against adverse modification of critical habitat would not be expected to impose any significant additional restrictions to those that currently exist in the proposed critical habitat on currently occupied lands. However, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation through our economic analysis.

c. We do not believe this proposed rule, if made final, would materially affect entitlements, grants, user fees, loan programs, or the rights and obligations of their recipients. Federal agencies are currently required to ensure that their activities do not jeopardize the continued existence of a listed species, and, as discussed above, we do not anticipate that the adverse modification prohibition, resulting from critical habitat designation, will have any significant incremental effects in areas of occupied habitat. However, in those limited cases where activities occur on designated critical habitat where one or more of these five plant species are not found at the time of the action, section 7 consultation may be necessary for actions funded, authorized, or carried out by Federal agencies. Designation of critical habitat in areas that are not known to be occupied by any of these five species will also not likely result in a significant increased regulatory burden because the Service already reviews proposed projects on refuge lands to ensure compatibility with refuge purposes. We will evaluate any additional impacts as part of an economic analysis.

d. OMB has determined that this rule may raise novel legal or policy issues, and as a result, this rule has undergone OMB review.

Regulatory Flexibility Act (5 U.S.C. 601 et seq.)

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*, as amended by the Small Business Regulatory Enforcement Act (SBREFA) of 1996), whenever an agency is required to publish a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effects of the rule on small entities (i.e., small businesses, small organizations, and small government jurisdictions). However, no regulatory flexibility analysis is required if the head of the agency certifies the rule will not have a significant economic impact on a substantial number of small entities. SBREFA amended the Regulatory Flexibility Act (RFA) to require Federal agencies to provide a statement of the factual basis for certifying that rule will not have a significant economic effect on a substantial number of small entities. SBREFA also amended the RFA to require a certification statement. In today's rule, we are certifying that the rule will not have a significant effect on a substantial number of small entities. The following discussion explains our rationale.

According to the Small Business Administration, small entities include small organizations, such as independent non-profit organizations, and small governmental jurisdictions, including school boards and city and town governments that serve fewer than 50,000 residents, as well as small businesses. Small businesses include manufacturing and mining concerns with fewer than 500 employees, wholesale trade entities with fewer than 100 employees, retail and service businesses with less than $5 million in annual sales, general and heavy construction businesses with less than $27.5 million in annual business, special trade contractors doing less than $11.5 million in annual business, and agricultural businesses with annual sales less than $750,000. To determine if potential economic impacts to these small entities are significant, we consider the types of activities that might trigger regulatory impacts under this rule as well as the types of project modifications that may result. In general, the term significant economic impact is meant to apply to a typical small business firm's business operations.

To determine if the rule would affect a substantial number of small entities, we consider the number of small entities affected within particular types of economic activities (*e.g.*, housing development, grazing, oil and gas production, timber harvesting, etc.). We apply the "substantial number" test individually to each industry to determine if certification is appropriate. In estimating the numbers of small entities potentially affected, we also consider whether their activities have any Federal involvement; some kinds of activities are unlikely to have any Federal involvement and so will not be affected by critical habitat designation.

Designation of critical habitat only affects activities conducted, funded, or permitted by Federal agencies; non-Federal activities are not affected by the designation. In areas where the species is present, Federal agencies are already required to consult with us under section 7 of the Act on activities that they fund, permit, or implement that may affect *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa*. If these critical habitat designations are finalized, Federal agencies must also consult with us if their activities may affect designated critical habitat. However, in areas where the species is present, we do not believe this will result in any additional regulatory burden on Federal agencies or their applicants because consultation would already be required due to the presence of the listed species, and the duty to avoid adverse modification of critical habitat would not trigger additional regulatory impacts beyond the duty to avoid jeopardizing the species.

Even if the duty to avoid adverse modification does not trigger additional regulatory impacts in areas where the species is present, designation of critical habitat could result in an additional economic burden on small entities due to the requirement to reinitiate consultation for ongoing Federal activities. However, since these five plant species were listed (between 1994 and 1996), there have been no formal or informal consultations conducted involving these five plant species in NWHI. The NWR system is not a small entity. Therefore, the requirement to reinitiate consultations for ongoing projects will not affect a substantial number of small entities on any of the Northwestern Hawaiian Islands.

In areas where the species is clearly not present, designation of critical habitat could trigger additional review of Federal activities under section 7 of the Act, that would otherwise not be required. However, only one of the three units (Nihoa) being proposed for designation includes habitat for a species that is not verified to occur there (*Amaranthus brownii*), and three of the species are known to occur there. In addition, while activities within the HINWR may occur within the proposed critical habitat areas for these five plants and therefore have Federal involvement, most of the activities involve natural resources management that is beneficial to the six plants, and therefore would require only informal consultation or reinitiation of already completed consultations for on-going projects. As mentioned above, we have not conducted formal or informal consultations under section 7 involving any of the species. As result, we can not easily identify future consultations that may be due to the listings of the species or the increment of additional consultations that may be required by this critical habitat designation. Therefore, for the purposes of this review and certification under the Regulatory Flexibility Act, we are assuming that any future consultations in the area proposed as critical habitat will be due to the critical habitat designations.

In the NWHI, all of the designations are on Federal land. All of the land within the critical habitat units will have limited suitability for development, land uses, and activities because of remote locations and lack of access. Also, all of this land is within a National Wildlife Refuge (NWR) where Federal laws and/or policies severely limit development and most activities. We are not aware of any commercial activities occurring on these islands. Therefore, we conclude that the proposed rule would not affect a substantial number of small entities.

Even where the requirements of section 7 might apply due to critical habitat designation, based on our experience with section 7 consultations for all listed species, virtually all projects-including those that, in their initial proposed form, would result in jeopardy or adverse modification determinations under section 7 consultations-can be implemented successfully with, at most, the adoption of reasonable and prudent alternatives. These measures must be economically feasible and within the scope of authority of the Federal agency involved in the consultation.

As required under section 4(b)(2) of the Act, we will conduct an analysis of the potential economic impacts of this proposed critical habitat designation, and will make that analysis available for public review and comment before finalizing these designations. In the absence of this economic analysis, we believe that the designations would have modest economic impacts because all of the land within the critical habitat units has limited suitability for development, land uses, and activities because of remote locations and lack of access. In addition; these lands are within a National Wildlife Refuge where Federal laws and/or policies severely limit development and activities. The proposed critical habitat designations are expected to cause little or no increase in the number of section 7 consultations; few, if any, increases in costs associated with consultations; and few, if any delays in, or modifications to planned projects, land uses and activities.

In summary, we have considered whether this proposed rule would result in a significant economic effect on a substantial number of small entitites. It would not affect a substantial number of small entities. None of the lands proposed as critical habitat are on state or private lands. All of the land proposed as critical habitat are Federal lands within the National Wildlife Refuge system. The most likely future section 7 consultation resulting from this rule would be for intra-Service consultations on natural resource management activities, species-specific surveys and research projects. These consultations would not likely affect a substantial number of small entities because the managing agency, the Service, is not a small entity. Therefore we are certifying that the proposed designation of critical habitat for the following species: *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata*, and *Sesbania tomentosa* will not have a significant economic impact on a substantial number of small entities, and an initial regulatory flexibility analysis is not required. However, should the economic analysis of this rule indicate otherwise, or should landownership change in the NWHI, we will revisit this determination.

Executive Order 13211

On May 18, 2001, the President issued Executive Order 13211, on regulations that significantly affect energy supply, distribution, and use. Executive Order 13211 requires agencies to prepare Statements of Energy Effects when undertaking certain actions. Although this rule is a significant regulatory action under Executive Order 12866, it is not expected to significantly affect energy supplies, distribution, or use. Therefore, this action is not a significant energy action and no Statement of Energy Effects is required.

Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.)

In accordance with the Unfunded Mandates Reform Act (2 U.S.C. 1501 et seq.):

a. We believe this rule, as proposed, will not "significantly or uniquely" affect small governments. A Small Government Agency Plan is not required. Small governments will not be affected unless they propose an action requiring Federal funds, permits or other authorizations. Any such activities will require that the Federal agency ensure that the action will not adversely modify or destroy designated critical habitat. However, as discussed above, these actions are currently subject to equivalent restrictions through the listing protections of the species, and no further restrictions are anticipated to result from critical habitat designation of occupied areas. In our economic analysis, we will evaluate any impact of designating areas where section 7 consultations would not have occurred but for the critical habitat designation.

b. This rule, as proposed, will not produce a Federal mandate on State or local governments or the private sector of $100 million or greater in any year, that is, it is not a "significant regulatory action" under the Unfunded Mandates Reform Act. The designation of critical

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habitat imposes no obligations on State or local governments.

Takings

In accordance with Executive Order 12630 ("Government Actions and Interference with Constitutionally Protected Private Property Rights"), we have analyzed the potential takings implications of designating critical habitat for the five species on three islands or atolls (Nihoa, Necker, and Laysan) within the Northwestern Hawaiian Islands. The takings implications assessment concludes that this proposed rule does not pose significant takings implications. Once the economic analysis is completed for this proposed rule, we will review and revise this preliminary assessment as warranted.

Federalism

In accordance with Executive Order 13132, the rule does not have significant Federalism effects. A Federalism assessment is not required. In keeping with Department of Interior policy, we requested information from appropriate State agencies in Hawaii. The designation of critical habitat in areas currently occupied by these species imposes no additional restrictions to those currently in place and, therefore, has little incremental impact on State and local governments and their activities. The designations may have some benefit to these governments in that the areas essential to the conservation of these species are more clearly defined, and the primary constituent elements of the habitat necessary to the survival of the species are specifically identified. While this definition and identification does not alter where and what federally sponsored activities may occur, it may assist these local governments in long range planning rather than waiting for case-by-case section 7 consultations to occur.

Civil Justice Reform

In accordance with Executive Order 12988, the Office of the Solicitor has determined that this rule does not unduly burden the judicial system and does meet the requirements of sections 3(a) and 3(b)(2) of the Order. We are proposing to designate critical habitat in accordance with the provisions of the Endangered Species Act. The rule uses standard property descriptions and identifies the primary constituent elements within the designated areas to assist the public in understanding the habitat needs of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa.*

Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.)

This rule does not contain any information collection requirements for which Office of Management and Budget (OMB) approval under the Paperwork Reduction Act is required. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid OMB control number.

National Environmental Policy Act

We have determined we do not need to prepare an Environmental Assessment and/or an Environmental Impact Statement as defined by the National Environmental Policy Act of 1969 in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act, as amended. We published a notice outlining our reason for this determination in the **Federal Register** on October 25, 1983 (48 FR 49244). This proposed determination does not constitute a major Federal action significantly affecting the quality of the human environment.

Government-to-Government Relationship With Tribes

In accordance with the President's memorandum of April 29, 1994, "Government-to-Government Relations with Native American Tribal Governments" (59 FR 22951), Executive Order 13175 and 512 DM 2, we readily acknowledge our responsibility to communicate meaningfully with recognized Federal Tribes on a government-to-government basis. We have determined that there are no Tribal lands essential for the conservation of *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* because Tribal lands do not occur on the three islands or atolls (Nihoa, Necker, and Laysan) within the Northwestern Hawaiian Islands. Therefore, designation of critical habitat for these five species has not been proposed on Tribal lands.

References Cited

A complete list of all references cited in this proposed rule is available upon request from the Pacific Islands Office (*see* **ADDRESSES** section).

Authors

The primary authors of this notice are Christa Russell, Michelle Stephens, Marigold Zoll, and Gregory Koob (*see* **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, we propose to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. In § 17.12(h) revise the entries for *Amaranthus brownii, Mariscus pennatiformis, Pritchardia remota, Schiedea verticillata,* and *Sesbania tomentosa* under "FLOWERING PLANTS" to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
FLOWERING PLANTS							
.	.	.	.	.	.	.	.
Amaranthus brownii	None	U.S.A. (HI)	Amaranthaceae	E	587	17.96(a)	NA
.	.	.	.	.	.	.	.
Mariscus pennatiformis.	None	U.S.A. (HI)	Cyperaceae	E	559	17.96(a)	NA

Species		Historic range	Family name	Status	When listed	Critical habitat	Special rules
Scientific name	Common name						
.	.	.	.	.	.	.	.
Pritchardia remota ..	Loulu	U.S.A. (HI)	Arecaceae	E	587	17.96(a)	NA
.	.	.	.	.	.	.	.
Schiedea verticilla ..	None	U.S.A. (HI)	Caryophyllaceae	E	587	17.96(a)	NA
.	.	.	.	.	.	.	.
Sesbania tomentosa	Ohai	U.S.A. (HI)	Fabaceae	E	559	17.96(a)	NA
.	.	.	.	.	.	.	.

3. Section 17.96, as proposed to be amended at 65 FR 66865 (November 7, 2000), 65 FR 79192 (December 18, 2000), 65 FR 82086 (December 27, 2000), 65 FR 83193 (December 29, 2000), 67 FR 4072 (January 28, 2002), 67 FR 9806 (March 4, 2002), 67 FR 15856 (April 3, 2002), and 67 FR 16492 (April 5, 2002) is proposed to be further amended as follows:

a. Add paragraph (a)(1)(i)(G) (paragraph (a)(1)(i) introductory text is republished); and

b. Amend paragraph (a)(1)(ii)(A) by adding the entries set forth below.

§ 17.96 Critical habitat—plants.

(a) * * *

(1) * * *

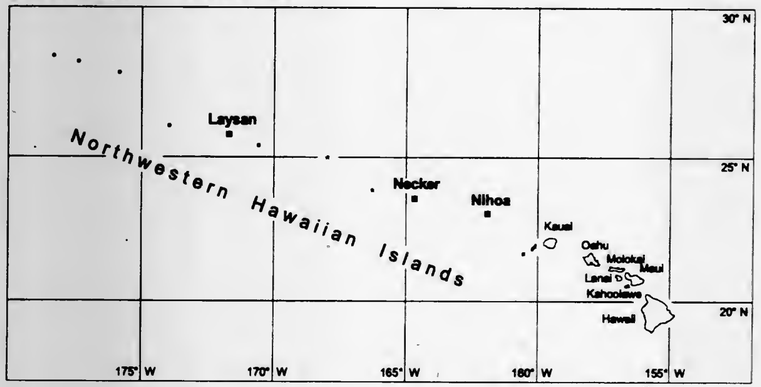
(i) *Maps and critical habitat unit descriptions.* The following sections contain the legal descriptions of the critical habitat units designated for each of the Hawaiian Islands. Existing manmade features and structures within the boundaries of the mapped unit, such as buildings, roads, aqueducts, railroads, telecommunications equipment, telemetry antennas, radars, missile launch sites, arboreta and gardens, heiau (indigenous places of worship or shrines), airports, other paved areas, lawns, and other rural residential landscaped areas do not contain one or more of the primary constituent elements described for each species in paragraphs (a)(1)(ii)(A) and (a)(1)(ii)(B) of this section and are not included in the critical habitat designation.

* * * * *

(G) *Northwestern Hawaiian Islands.* Critical habitat areas are described below. Coordinates are in WGS84 datum. The following map shows the general locations of the five critical habitat units designated for the islands of Laysan, Nihoa, and Necker.

(*1*) **Note:** Map 1—Index map follows:

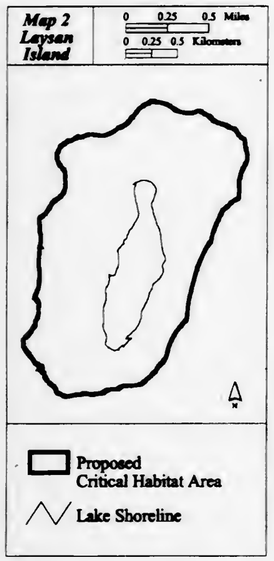
Map 1 - General Locations of Units for Five Species of Plants Islands of Laysan, Necker, and Nihoa



(*2*) Critical Habitat Nihoa Island—entire island (approximately 69 ha; 171 ac).

(*i*) Nihoa Island is located between 23°3′ N. and 23°4′ N. and between 161°54′ W. and 161°56′ W.

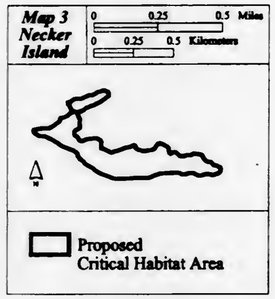
(*ii*) **Note:** Map 2 follows:



(*3*) Critical Habitat Necker Island—entire island (approximately 18 ha; 46 ac).

(*i*) Necker Island is located between 23°34′ N. and 23°35′ N. and between 164°41′ W. and 164°43′ W.

(*ii*) **Note:** Map 3 follows:



(*4*) Critical Habitat Laysan Island—entire island (approximately 411 ha; 1,015 ac).

(*i*) Laysan Island is located between 25°45′ N. and 25°47′ N. and between 171°43′ W. and 171°45′ W.

(*ii*) **Note:** Map 4 follows:

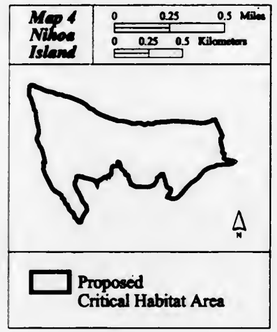


TABLE (a)(1)(i)(G).—PROTECTED SPECIES IN THE NORTHWESTERN HAWAIIAN ISLANDS (NWHI)

Island	Species
Laysan	*Mariscus pennatiformis, Pritchardia remota.*
Necker	*Sesbania tomentosa.*
Nihoa	*Amaranthus brownii, Pritchardia remota, Schiedea verticillata, Sesbania tomentosa.*

(ii) *Hawaiian plants*—constituent elements.

(A) Flowering plants.

Family Amaranthaceae: *Amaranthus brownii* (no common name).

Nihoa Island. Nihoa Island, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Amaranthus brownii.* On this island the currently known primary constituent elements of critical habitat for *Amaranthus brownii* are habitat components that provide:

(*1*) Shallow soil in fully exposed locations on rocky outcrops and containing one or more of the following associated native plant species: *Schiedea verticillata, Chenopodium oahuense, Ipomoea pes-caprae* ssp. *brasiliensis, Ipomoea indica, Scaevola sericea, Sida fallax, Solanum nelsonii, Sicyos pachycarpus, Eragrostis variabilis,* or *Panicum torridum;* and

(*2*) Elevations between 30 and 242 m (100 and 800 ft).

Family Arecaceae: *Pritchardia remota* (loulu).

Laysan and Nihoa Islands. Laysan and Nihoa islands, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Pritchardia remota.* On these islands the currently known primary constituent elements of critical habitat for *Pritchardia remota* are habitat components that provide:

(*1*) *Pritchardia remota* coastal forest community containing one or more of the following associated native plant species: *Chenopodium oahuense, Sesbania tomentosa, Solanum nelsonii,* or *Sida fallax;* and

(*2*) From 15 to 151 m (50 to 500 ft) in elevation.

Family Caryophyllaceae: *Schiedea verticillata* (no common name).

Nihoa Island. Nihoa Island, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Schiedea verticillata.* On this island the currently known primary constituent elements of critical habitat for *Schiedea verticillata* are habitat components that provide:

(*1*) Rocky scree, soil pockets and cracks on coastal cliff faces and in *Pritchardia remota* coastal mesic forest and containing one or more of the following associated native plant species: *Tribulus cistoides, Eragrostis variabilis, Rumex albescens,* or *lichens;* and

(*2*) Elevations between 30 and 242 m (100 and 800 ft).

Family Cyperaceae: *Mariscus pennatiformis* (no common name).

Laysan Island. Laysan Island, identified in the legal description in paragraph (a)(1)(i)(G) of this section constitutes critical habitat for *Mariscus pennatiformis.* On this island the currently known primary constituent elements of critical habitat for *Mariscus pennatiformis* are habitat components that provide:

(*1*) Coastal sandy substrate containing one or more of the following associated native plant species: *Cyperus laevigatus, Eragrostis variabilis,* or *Ipomoea* sp.; and

(*2*) Elevation of 5 m (16 ft).

Family Fabaceae: *Sesbania tomentosa* (ohai).

Nihoa and Necker Islands. Nihoa and Necker islands, identified in the legal descriptions in paragraph (a)(1)(i)(G) of this section constitute critical habitat for *Sesbania tomentosa.* On these islands, the currently known primary constituent elements of critical habitat for *Sesbania tomentosa* are habitat components that provide:

(*1*) Shallow soil on sandy beaches and dunes in *Chenopodium oahuense* coastal dry shrubland and containing one or more of the following associated native plant species: *Sida fallax, Scaevola sericea, Solanum nelsonii,* or *Pritchardia remota;* and

(*2*) Elevations between sea level and 84 m (0 and 276 ft).

Dated: April 30, 2002.

Craig Manson,

Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 02–11225 Filed 5–13–02; 8:45 am]

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Federal Register

Tuesday,
May 14, 2002

Part III

Environmental Protection Agency

40 CFR Part 63
National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands; Proposed Rule

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[FRL–7207–8]

RIN 2060–A174

National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This action proposes national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands. We have identified engine test cells/stands as major sources of hazardous air pollutants (HAP) such as toluene, benzene, mixed xylenes, and 1,3-butadiene. These proposed NESHAP will implement section 112(d) of the Clean Air Act (CAA) which requires all major sources of HAP to meet emission standards reflecting the application of the maximum achievable control technology (MACT). These proposed standards will protect public health by reducing exposure to air pollution.

DATES: *Comments.* Submit comments on or before July 15, 2002.

Public Hearing. If anyone contacts us requesting to speak at a public hearing by June 3, 2002, we will hold a public hearing on June 13, 2002.

ADDRESSES: *Comments.* By U.S. Postal Service, send comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–29, U.S. EPA, 1200 Pennsylvania Avenue, NW, Washington, DC 20460. In person or by courier, deliver comments (in duplicate if possible) to: Air and Radiation Docket and Information Center (6102), Attention Docket Number A–98–29, U.S. EPA, 401 M Street, SW, Washington, DC 20460. We request that a separate copy also be sent to the contact person listed below (*see* **FOR FURTHER INFORMATION CONTACT**).

Public Hearing. If a public hearing is held, it will be held at 10 a.m. in our Office of Administration Auditorium, Research Triangle Park, North Carolina, or at an alternate site nearby.

Docket. Docket No. A–98–29 contains supporting information used in developing the standards. The docket is located at the U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460 in room M–1500, Waterside Mall (ground floor), and may be inspected from 8:30 a.m. to 5:30 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Jaime Pagan, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711; telephone number (919) 541–5340; facsimile number (919) 541–0942; electronic mail (e-mail) address "pagan.jaime@epa.gov."

SUPPLEMENTARY INFORMATION:

Comments. Comments and data may be submitted by e-mail to: *a-and-r-docket@epa.gov.* Electronic comments must be submitted as an ASCII file to avoid the use of special characters and encryption problems or on disks in WordPerfect® version 5.1, 6.1, or 8 file format. All comments and data submitted in electronic form must note the docket number: A–98–29. No confidential business information (CBI) should be submitted by e-mail. Electronic comments may be filed online at many Federal Depository Libraries.

Commenters wishing to submit proprietary information for consideration must clearly distinguish such information from other comments and clearly label it as CBI. Send submissions containing such proprietary information directly to the following address, and not to the public docket, to ensure that proprietary information is not inadvertently placed in the docket: Attention: Mr. Jaime Pagan, c/o OAQPS Document Control Officer, U.S. EPA, 411 W. Chapel Hill Street, Room 740B, Durham NC 27701. We will disclose information identified as CBI only to the extent allowed by the procedures set forth in 40 CFR part 2. If no claim of confidentiality accompanies a submission when we receive it, the information may be made available to the public without further notice to the commenter.

Public Hearing. Persons interested in presenting oral testimony or inquiring as to whether a hearing is to be held should contact Mrs. Kelly Hayes, Combustion Group, Emission Standards Division (MD–13), U.S. EPA, Research Triangle Park, North Carolina 27711, (919) 541–5578 at least 2 days in advance of the potential date of the public hearing. Persons interested in attending the public hearing should also call Mrs. Kelly Hayes to verify the time, date, and location of the hearing. The public hearing will provide interested parties the opportunity to present data, views, or arguments concerning these proposed emission standards.

Docket. The docket is an organized and complete file of all the information we considered in the development of this proposed rule. The docket is a dynamic file because material is added throughout the rulemaking process. The docketing system is intended to allow members of the public and industries involved to readily identify and locate documents so that they can effectively participate in the rulemaking process. Along with the proposed and promulgated standards and their preambles, the contents of the docket (except for interagency review materials) will serve as the record in the case of judicial review. (See section 307(d)(7)(A) of the CAA.) Materials related to this proposed rule are available for review in the docket or copies may be mailed on request from the Air Docket by calling (202) 260–7548. A reasonable fee may be charged for copying docket materials.

World Wide Web (WWW). In addition to being available in the docket, an electronic copy of this proposed rule will also be available on the WWW through the Technology Transfer Network (TTN). Following signature, a copy of the proposed rule will be posted on the TTN's policy and guidance page for newly proposed or promulgated rules at *http://www.epa.gov/ttn/oarpg.* The TTN provides information and technology exchange in various areas of air pollution control. If more information regarding the TTN is needed, call the TTN HELP line at (919) 541–5384.

A list of combustion related rules is available on the Combustion Group Website on the TTN at *http://www.epa.gov/ttn/uatw/combust/list.html.* You may obtain background information, technical documents, and a docket index on these combustion related rules.

Regulated Entities. Subcategories and entities potentially regulated by this action include those listed in Table 1 of this preamble. In general, engine test cells/stands are covered under the Standard Industrial Classification (SIC) and North American Industrial Classification System (NAICS) codes listed in Table 1 of this preamble. However, cells/stands classified under other SIC or NAICS codes may be subject to the proposed standards if they meet the applicability criteria. Not all cells/stands classified under the SIC and NAICS codes in Table 1 of this preamble will be subject to the proposed standards because some of the classifications cover products outside the scope of the proposed NESHAP for engine test cells/stands.

TABLE 1.—SUBCATEGORIES POTENTIALLY REGULATED BY THIS STANDARD

Test cells/stands used for testing	SIC codes	NAICS codes	Examples of regulated entities
Internal Combustion Engines with rated power of 25 horsepower (hp) (19 kilowatts (kW)) or more.	3531, 3519, 3523, 3559, 3599, 3621, 3711, 3714, 4226, 4512, 5541, 7538, 7539, 8299, 8711, 8731, 8734, 8741.	333120, 333618, 333111, 333319, 335312, 336111, 336120, 336112, 336992, 336312, 336350, 481111, 811111, 811118, 611692, 54171, 541380.	Test cells/stands used for testing internal combustion engines with rated power of 25 hp (19 kW) or more.
Internal Combustion Engines with rated power of less than 25 hp (19 kW).	3519, 3621, 3524, 8734	333618, 336399, 335312, 332212, 333112, 541380.	Test cells/stands used for testing internal combustion engines with rated power of less than 25 hp (19 kW).
Combustion Turbine Engines	3511, 3566, 3721, 3724, 4512, 4581, 7699, 9661.	333611, 333612, 336411, 336412, 481111, 488190, 811310, 811411, 92711.	Test cells/stands used for testing combustion turbine engines.
Rocket Engines	3724, 3761, 3764, 9661, 9711	336412, 336414, 336415, 54171, 92711, 92811.	Test cells/stands used for testing rocket engines.

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be regulated by this action. To determine whether your engine test cell/stand is regulated by this action, you should examine the applicability criteria in § 63.9285 of the proposed rule. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed in the preceding **FOR FURTHER INFORMATION CONTACT** section.

Outline. The information presented in this preamble is organized as follows:

I. Background
A. What is the source of authority for development of NESHAP?
B. What criteria did we use in the development of NESHAP?
C. What are the health effects associated with HAP from engine test cells/stands?
II. Summary of the Proposed Rule
A. Am I subject to this proposed rule?
B. What source categories and subcategories are affected by this proposed rule?
C. What are the primary sources of HAP emissions and what are the emissions?
D. What are the emission limitations?
E. What are the initial compliance requirements?
F. What are the continuous compliance provisions?
G. What monitoring and testing methods are available to measure low concentrations of CO?
H. What are the notification, recordkeeping and reporting requirements?
III. Rationale for Selecting the Proposed Standards
A. How did we select the source category and any subcategories?
B. What about engine test cells/stands located at area sources?
C. What is the affected source?
D. How did we determine the basis and level of the proposed emission limitations?
E. How did we select the format of the standard?
F. How did we select the initial compliance requirements?
G. How did we select the continuous compliance requirements?
H. How did we select the monitoring and testing methods?
I. How did we select the notification, recordkeeping and reporting requirements?
IV. Summary of Environmental, Energy and Economic Impacts
A. What are the air quality impacts?
B. What are the cost impacts?
C. What are the economic impacts?
D. What are the non-air health, environmental and energy impacts?
V. Solicitation of Comments and Public Participation
VI. Administrative Requirements
A. Executive Order 12866, Regulatory Planning and Review
B. Executive Order 13132, Federalism
C. Executive Order 13175, Consultation and Coordination with Indian Tribal Governments
D. Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks
E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use
F. Unfunded Mandates Reform Act of 1995
G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 *et seq.*
H. Paperwork Reduction Act
I. National Technology Transfer and Advancement Act of 1995

I. Background

A. What Is the Source of Authority for Development of NESHAP?

Section 112 of the CAA requires us to list categories and subcategories of major sources and area sources of HAP and to establish NESHAP for the listed source categories and subcategories. Engine test facilities were listed as a source category under the fuel combustion industry group, and rocket engine test firing was listed as a source category under the miscellaneous processes industry group in the **Federal Register** on July 16, 1992 (57 FR 31576). Today, we are combining these two source categories for regulatory purposes under the fuel combustion industry group and renaming the source category as engine test cells/stands. The next revision to the source category list under section 112 which is published in the **Federal Register** will reflect this change. Major sources of HAP are those that have the potential to emit greater than 10 tons/yr of any one HAP or 25 tons/yr of any combination of HAP.

B. What Criteria Did We Use in the Development of NESHAP?

Section 112 of the CAA requires that we establish NESHAP for the control of HAP from both new and existing major sources. The CAA requires the NESHAP to reflect the maximum degree of reduction in emissions of HAP that is achievable. This level of control is commonly referred to as the MACT.

The MACT floor is the minimum control level allowed for NESHAP and is defined under section 112(d)(3) of the CAA. In essence, the MACT floor ensures that the standard is set at a level that assures that all major sources achieve the level of control at least as stringent as that already achieved by the better controlled and lower-emitting sources in each source category or

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subcategory. For new sources, the MACT standards cannot be less stringent than the emission control that is achieved in practice by the best controlled similar source. The MACT standards for existing sources can be less stringent than standards for new sources, but they cannot be less stringent than the average emission limitation achieved by the best performing 12 percent of existing sources in the category or subcategory (or the best performing 5 sources for categories or subcategories with fewer than 30 sources).

In developing MACT, we also consider control options that are more stringent than the floor. We may establish standards more stringent than the floor based on the consideration of cost of achieving the emissions reductions, any non-air quality health and environmental impacts, and energy requirements.

C. What Are the Health Effects Associated With HAP From Engine Test Cells/Stands?

Emission data collected during development of the proposed NESHAP show that several HAP are emitted from engine test cells/stands. These HAP emissions are formed during combustion or result from HAP compounds contained in the fuel burned. Numerous HAP are emitted from combustion in engine test cells/stands; examples include toluene, benzene, mixed xylenes, and 1,3-butadiene.

The health effect of primary concern for toluene is dysfunction of the central nervous system (CNS). Toluene vapor also causes narcosis. Controlled exposure of human subjects produced mild fatigue, weakness, confusion, lacrimation, and paresthesia; at higher exposure levels there were also euphoria, headache, dizziness, dilated pupils, and nausea. After effects included nervousness, muscular fatigue, and insomnia persisting for several days. Acute exposure may cause irritation of the eyes, respiratory tract, and skin. It may also cause fatigue, weakness, confusion, headache, and drowsiness. Very high concentrations may cause unconsciousness and death.

Benzene is a known human carcinogen. The health effects of benzene include nerve inflammation, CNS depression, and cardiac sensitization. Chronic exposure to benzene can cause fatigue, nervousness, irritability, blurred vision, and labored breathing and has produced anorexia and irreversible injury to the blood-forming organs; effects include aplastic anemia and leukemia. Acute exposure can cause dizziness, euphoria, giddiness, headache, nausea, staggering gait, weakness, drowsiness, respiratory irritation, pulmonary edema, pneumonia, gastrointestinal irritation, convulsions, and paralysis. Benzene can also cause irritation to the skin, eyes, and mucous membranes.

Acute inhalation exposure to mixed xylenes in humans results in irritation of the nose and throat, gastrointestinal effects such as nausea, vomiting, and gastric irritation, mild transient eye irritation, and neurological effects. Chronic inhalation exposure of humans to mixed xylenes results primarily in CNS effects, such as headache, dizziness, fatigue, tremors and incoordination. Other effects noted include labored breathing and impaired pulmonary function, increased heart palpitation, severe chest pain and an abnormal electrocardiogram, and possible effects on blood and kidneys.

Acute exposure to 1,3-butadiene by inhalation in humans results in irritation of the eyes, nasal passages, throat, and lungs, and causes neurological effects such as blurred vision, fatigue, headache, and vertigo. Epidemiological studies have reported a possible association between 1,3-butadiene exposure and cardiovascular diseases. The Department of Health and Human Services has determined that 1,3-butadiene may reasonably be anticipated to be a carcinogen. This is based on animal studies that found increases in a variety of tumor types from exposure to 1,3-butadiene. Studies on workers are inconclusive because the workers were exposed to other chemicals in addition to 1,3-butadiene.

II. Summary of the Proposed Rule

A. Am I Subject to This Proposed Rule?

This proposed rule applies to you if you own or operate an engine test cell/stand which is located at a major source of HAP emissions. An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines. A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

Each new or reconstructed engine test cell/stand used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more which is located at a major source of HAP emissions must comply with the requirements in this proposed rule. New or reconstructed test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) are not required to comply with the emission limitation in this proposed rule, but are required to submit an Initial Notification upon startup of the test cells/stands.

New or reconstructed test cells/stands used for testing combustion turbine engines or new or reconstructed test cells/stands used for testing rocket engines are not required to comply with the emission limitation or the recordkeeping or reporting requirements in this proposed rule.

Existing engine test cells/stands that are located at major sources of HAP emissions are not required to comply with the emission limitation or the recordkeeping or reporting requirements in this proposed rule.

This proposed rule also does not apply to engine test cells/stands that are located at area sources of HAP emissions. An area source is any source that is not a major source of HAP emissions.

B. What Source Categories and Subcategories Are Affected by This Proposed Rule?

This proposed rule covers four subcategories of engine test cells/stands located at major source facilities: (1) Cells/stands used for testing internal combustion engines with rated power of 25 hp (19 kW) or more, (2) cells/stands used for testing internal combustion engines with rated power of less than 25 hp, (3) cells/stands used for testing combustion turbine engines, and (4) cells/stands used for testing rocket engines. The rated power criteria for distinguishing between the two internal combustion engine subcategories is based on the largest engine (in terms of rated power) that is tested in the test cell/stand.

C. What Are the Primary Sources of HAP Emissions and What Are the Emissions?

The sources of emissions are the exhaust gases from combustion of fuels in the engines being tested in the test cells/stands. Some of the HAP present in the exhaust gases from engine test cells/stands are toluene, benzene, mixed xylenes, and 1,3-butadiene.

D. What Are the Emission Limitations?

As the owner or operator of a new or reconstructed test cell/stand used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions, you must comply with one of the following two emission limitations by [3 YEARS FROM PUBLICATION OF THE FINAL RULE IN THE **Federal Register**] (or upon startup if you start up your engine test cell/stand after [3 YEARS FROM PUBLICATION OF THE FINAL RULE IN THE **Federal Register**]: (1) Reduce CO emissions in the exhaust from the new or reconstructed engine test cell/stand to 5 parts per million by volume dry basis (ppmvd) or less, at 15 percent oxygen (O_2) content; or (2) reduce CO emissions in the exhaust from the new or reconstructed engine test cell/stand by 99.9 percent or more. Existing test cells/stands used in whole or in part for testing internal combustion engines with rated power of 25 hp (19 kW) or more and located at a major source of HAP emissions are not required to comply with the emission limitations.

Finally, as mentioned earlier, new or reconstructed test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), new or reconstructed test cells/stands used for testing combustion turbine engines, and new or reconstructed test cells/stands used for testing rocket engines are not required to comply with either emission limitation. In addition, neither existing test cells/stands located at major sources of HAP emissions nor new, reconstructed, or existing test cells/stands located at area sources of HAP emissions are required to comply with the emission limitations.

E. What Are the Initial Compliance Requirements?

Your initial compliance requirements are different depending on whether you demonstrate compliance with the outlet CO concentration emission limitation or the percent CO reduction emission limitation. If you choose to comply with the outlet CO concentration emission limitation, you must install a CEMS to measure CO and O_2 at the outlet of the test cell/stand or emission control device. To demonstrate initial compliance, you must conduct an initial performance evaluation using Performance Specifications (PS) 3 and PS4A of 40 CFR part 60, appendix B. This initial performance evaluation demonstrates that your CEMS is working properly. You must demonstrate that the outlet concentration of CO emissions from the test cell/stand or emission control device is 5 ppmvd or less, corrected to 15 percent O_2 content, using the first 4-hour rolling average after a successful performance evaluation.

If you comply with the percent reduction emission limitation, you must install two CEMS to measure CO and O_2 simultaneously at the inlet and outlet of the emission control device. You must conduct an initial performance evaluation using PS3 and PS4A of 40 CFR part 60, appendix B. The initial performance evaluation demonstrates that your CEMS are working properly. You must demonstrate that the reduction in CO emissions is at least 99.9 percent using the first 4-hour rolling average after a successful performance evaluation. Your inlet and outlet measurements must be on a dry basis and corrected to 15 percent O_2 content.

F. What Are the Continuous Compliance Provisions?

Several general continuous compliance requirements apply to engine test cells/stands required to comply with the applicable emission limitation. You are required to comply with the applicable emission limitation at all times, including startup, shutdown, and malfunction of your engine test cell/stand. You must operate and maintain your air pollution control equipment and monitoring equipment according to good air pollution control practices at all times, including startup, shutdown, and malfunction. You must conduct monitoring at all times that the engine test cell/stand is in operation except during periods of malfunction of the monitoring equipment or necessary repairs and quality assurance or control activities, such as calibration drift checks.

To demonstrate continuous compliance with the outlet CO concentration emission limitation, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO and O_2 concentrations at the outlet of the test cell/stand or emission control device and calculate the CO emission concentration for each hour. Then, the hourly CO emission concentrations for each hour of the 4-hour compliance period are averaged together. The outlet CO emission concentration must be 5 ppmvd or less, corrected to 15 percent O_2 content, based on the 4-hour rolling average, averaged every hour.

To demonstrate continuous compliance with the percent reduction emission limitation, you must calibrate and operate your CEMS according to the requirements in 40 CFR 63.8. You must continuously monitor and record the CO and O_2 concentration before and after the emission control device and calculate the percent reduction in CO emissions hourly. The reduction in CO emissions must be 99.9 percent or more, based on a rolling 4-hour average, averaged every hour.

For both emission limitations, you must also follow Procedure 1 of 40 CFR part 60, appendix F, to verify that the CEMS is working properly over time.

G. What Monitoring and Testing Methods Are Available to Measure Low Concentrations of CO?

Continuous emission monitoring systems are available which can measure CO emissions accurately at the low concentrations found in the exhaust stream of an engine test cell/stand following an emission control device. Our performance specification for CO CEMS (PS4A) of 40 CFR part 60, appendix A, however, has not been updated recently and does not reflect the performance capabilities of newer systems. We are currently undertaking a review of PS4A of 40 CFR part 60, appendix A for CO CEMS and, in conjunction with this effort, we solicit comments on the performance capabilities of CO CEMS and their ability to measure accurately the low concentrations of CO experienced in the exhaust of an engine test cell/stand following an emission control device.

H. What Are the Notification, Recordkeeping and Reporting Requirements?

You must submit all of the applicable notifications as listed in the NESHAP General Provisions (40 CFR part 63, subpart A), including an initial notification, notification of performance evaluation, and a notification of compliance status for each engine test cell/stand required to comply with the emission limitations.

You must submit an initial notification for each new or reconstructed test cell/stand located at a major source of HAP emissions used for testing internal combustion engines with a rated power of less than 25 hp (19 kW).

You must record all of the data necessary to determine if you are in compliance with the applicable emission limitation. Your records must be in a form suitable and readily available for review. You must also keep each record for 5 years following the date of each occurrence, measurement, maintenance, report, or record. Records must remain on site for at least 2 years and then can be maintained off site for the remaining 3 years.

You must submit a compliance report semiannually for each engine test cell/stand required to comply with the applicable emission limitation. This report must contain the company name and address, a statement by a responsible official that the report is accurate, a statement of compliance, or documentation of any deviation from

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the requirements of this proposed rule during the reporting period.

III. Rationale for Selecting the Proposed Standards

A. How Did We Select the Source Category and Any Subcategories?

Engine test cells/stands can be major sources of HAP emissions and, as a result, we listed them as a major source category for regulatory development under section 112 of the CAA. Section 112 of the CAA allows us to establish subcategories within a source category for the purpose of regulation. Consequently, we evaluated several criteria associated with engine test cells/stands which might serve as potential subcategories.

We identified four subcategories of engine test cells/stands located at major source facilities: (1) Test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, (2) test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), (3) test cells/stands used for testing combustion turbine engines, and (4) test cells/stands used for testing rocket engines.

Internal combustion engines, which can be classified as reciprocating or rotary, convert thermal energy into mechanical energy. In an internal combustion engine, a combustible fuel-air mixture is intermittently ignited and combusted in a confined space. The force exerted by the expanding gases from this combustion is used to turn a shaft and provide mechanical power.

An internal combustion engine intakes a mixture of fuel and air, the mixture is ignited and combusted, and the combustion gases are exhausted from the engine. This cycle of intake, ignition/combustion, and exhaust is repeated over and over.

The cyclical nature of the combustion process in an internal combustion engine is quite different from the combustion processes in combustion turbine and rocket engines, where the combustion process is more continuous in nature. Therefore, test cells/stands used for testing internal combustion engines are considered a separate subcategory.

Internal combustion engines are used for a wide range of applications, including motor vehicles (automobiles and motorcycles), marine, heavy-duty diesel (trucks and buses), locomotive, and a wide variety of nonroad equipment (agriculture, construction, general industrial, lawn and garden, utility, material handling, electric power generation, and along gas and oil pipelines). Internal combustion engines range in size from a rated power of less than one hp to more than 15,000 hp.

Engines with a rated power of less than 25 hp (19 kW) generally include those used in handheld equipment (chainsaws, string trimmers, and blowers) and lawn and garden equipment. Engines with a rated power of 25 hp (19 kW) or more, on the other hand, generally include those used in automobiles, trucks, motorcycles, all-terrain vehicles, forklifts, generators, compressors, snowmobiles, airport ground-service equipment, marine engines, heavy-duty construction equipment, electric power generation, etc. While not perfect, a rated power of 25 hp (19 kW) generally serves to distinguish between smaller internal combustion engines, which tend to be used in handheld equipment, and larger internal combustion engines, which tend to be used in non-handheld equipment. In addition, internal combustion engines with a rated power of less than 25 hp (19 kW) generally use gasoline as the primary fuel, whereas larger internal combustion engines can use a wide variety of fuels such as gasoline, diesel fuel, natural gas, liquified petroleum gas, sewage (digester) gas, or landfill gases.

These factors suggest that internal combustion engines with a rated power of 25 hp (19 kW) or more should be considered a separate subcategory from internal combustion engines with a rated power of less than 25 hp (19 kW). Indeed, the advance notice of rulemaking for Nonroad Engines and Highway Motorcycles (65 FR 76796, December 7, 2000) and the Nonroad Handheld Spark-Ignition Engines rulemaking (65 FR 24267, April 25, 2000), used a rated power criteria of 25 hp (19 kW) to distinguish between larger engines and smaller engines. Thus, a rated power of 25 hp (19 kW) provides an effective way of dividing internal combustion engines into two subcategories which recognizes the significant differences between larger and smaller engines.

Consequently, test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more and test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) are considered two separate subcategories of test cells/stands used for testing internal combustion engines.

In addition to these two subcategories of engine test cells/stands, we identified test cells/stands used for testing combustion turbine engines as a third subcategory. Combustion turbine engines are fuel-fired devices in which a continuous stream of hot combustion gases passes through and turns a turbine rotor that produces shaft power. Depending on whether or not the heat can be utilized, the hot exhaust gases are either emitted directly to the atmosphere or passed through a heat recovery device which extracts excess heat from the exhaust gases. Applications for these types of engines include aircraft (including turbines, turboprops, turbofans, turbojets, and propfans), other military applications (tanks and ships), auxiliary power units, power and electric generation, pumping gas or other fluids (e.g., pipelines), and pneumatic machinery.

In general, combustion turbine engines have much higher power ratings (e.g., in the range of 500 hp to 240,000 hp or 373 kW to 178,968 kW) and require much larger volumes of air to operate than internal combustion engines. As a result, the volumes of exhaust from test cells/stands used for testing combustion turbine engines are substantially greater than those from test cells/stands used for testing internal combustion engines. A typical jet engine combustion turbine, for example, with a rated power of 4,600 hp (3,500 kW) requires air flows of approximately 125,000 dry standard cubic feet per minute (dscfm), and a large power generation combustion turbine engine with a rated power of 200,000 hp (150 megawatts (MW)) can require air flows of as much as 2 million dscfm, compared to a typical airflow of 500 dscfm for an automobile engine. Also, most combustion turbine engines burn natural gas or jet fuel, while, as mentioned above, the larger internal combustion engines can burn a wide variety of fuels, and the smaller internal combustion engines generally burn gasoline. In addition, separate test cells/stands are used for testing internal combustion engines and combustion turbine engines. Consequently, test cells/stands used for testing combustion turbine engines are considered a separate subcategory.

Lastly, we identified test cells/stands used for testing rocket engines as a fourth subcategory. Rocket engines are used to launch or propel rockets and missiles through the air or into space. The working fluid expelled from a rocket-propelled vehicle is usually a hot, burning gas resulting from the combustion of chemical propellants. The hot reaction-product gases are ejected at a high velocity to impart momentum to the rocket vehicle system. Propellants are of several different types, classified according to their chemical and physical properties and the rocket engine type. Liquid propellants are either expelled from the tanks by high pressure gases or are fed by pumps into a thrust chamber, where they react or burn. Solid propellants look like masses of soft plastic and burn smoothly on the exposed surfaces when ignited.

Not only are the fuels used in rocket engines quite different from other engine subcategories, but the volumetric energy release associated with these fuels are orders of magnitude higher than those used in either combustion turbine engines or internal combustion engines. This produces much greater temperatures and pressures in the combustion chambers and releases a much greater volume of exhaust. Consequently, test cells/stands used for testing rocket engines are considered a separate subcategory.

B. What About Engine Test Cells/Stands Located at Area Sources?

This proposed rule does not apply to engine test cells/stands located at area sources of HAP emissions. In developing our Urban Air Toxics Strategy (64 FR 38705, July 19, 1999), we identified area sources we believe warrant regulation to protect the environment and the public health and to satisfy the statutory requirements in section 112 of the CAA pertaining to area sources. Engine test cells/stands located at area sources were not included on that list and as a result, this proposed rule does not apply to engine test cells/stands located at area sources.

C. What Is the Affected Source?

This proposed rule applies to each affected source, which is defined as any existing, new, or reconstructed engine test cell/stand used for testing uninstalled stationary or uninstalled mobile (motive) engines that is located at a major source of HAP emissions.

D. How Did We Determine the Basis and Level of the Proposed Emission Limitations?

To determine the basis and level of the proposed emission limitations, we relied primarily on two sources: a MACT database and HAP emissions test reports. The MACT database is a summary of the information collected through an information collection request (ICR) for engine test cells/stands located at major and synthetic minor sources of HAP emissions. The HAP emissions test reports were collected from engine test facilities.

As established in section 112 of the CAA, MACT standards must be no less stringent than the MACT floor, which for existing sources is the average emission limitation achieved by the best performing 12 percent of existing sources. For new sources, the MACT floor is defined as the emission control that is achieved in practice by the best controlled similar source.

1. Test Cells/Stands Used for Testing Internal Combustion Engines of 25 hp (19 kW) or More

To determine MACT for test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, we used data from the MACT database. The database contains information on approximately 1,093 test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more from major source and synthetic minor facilities. Since this number includes 1,055 test cells/stands from major source facilities and we estimate the total number of test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities to be about 1,995, we estimate that the MACT database represents approximately 52 percent of test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control methods to reduce HAP emissions. First, we examined the use of control technology. Oxidation emission control devices, such as thermal and catalytic oxidizers, have been shown to reduce HAP emissions from test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more. These oxidation emission control devices have been installed to reduce CO emissions, but they also serve to reduce HAP emissions. Only 5 percent of existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, however, are equipped with oxidation emission control devices.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations or permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to "good operating practices" or "work practice standards" in the MACT database and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations or permits, or good operating practices might identify a MACT floor, we also considered whether other alternatives, such as the use of a specific fuel which might result in lower HAP emissions (e.g., switching from diesel fuel to gasoline) might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment. This may be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a new diesel engine design by burning gasoline in the engine, for example, nor could one test the performance and durability of a new gasoline engine design by burning diesel fuel in the engine. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for engine testing; indeed, such an alternative would defeat the very purpose of engine testing. For this reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine test cells/stands.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major sources is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing internal

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combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, we evaluated one regulatory option more stringent than the MACT floor. This regulatory option was the use of oxidation emission control devices. We also reconsidered the alternatives mentioned above, such as reviewing State permits and regulations, good operating practices and work practice standards, and using different fuels (also referred to as fuel switching). Again, we concluded that they are not viable options for MACT.

We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced associated with the use of oxidation emission control devices. Those analyses are shown in a memorandum in Docket A–98–29, titled "Control Costs." In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result.

We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor.
Consequently, we concluded that MACT for existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities, we examined the MACT database and the emission test reports. As mentioned earlier, about 5 percent of existing test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more currently use oxidation emission control devices.

We also considered whether the alternatives mentioned above, such as reviewing State permits and regulations, good operating practices and work practice standards, and using different fuels, which we considered to identify a MACT floor for existing test cells/stands, might identify a MACT floor for new engine test cells/stands. However, we concluded that just as none of those alternatives could be used to identify a MACT floor for existing engine test cells/stands, neither could they be used to identify a MACT floor for new engine test cells/stands.

Therefore, we concluded that the HAP emission limitation associated with the use of oxidation emission control devices is the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more located at major source facilities.

To determine MACT for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more, we considered options more stringent than the MACT floor, such as good operating practices and work practice standards, fuel switching, and the review of State permits and regulations to determine if other methods of control were being used. We are unaware of any option, including the alternatives just mentioned, which could reduce HAP emissions from a test cell/stand used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more beyond that obtained through the use of an oxidation emission control device.

Consequently, we concluded that MACT for new sources is the MACT floor. As a result, MACT for new test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more is the HAP emission level associated with the use of oxidation emission control devices.

After establishing this basis for MACT, we determined the achievable emission limitation based on the data available from HAP emission test reports of the performance of oxidation emission control devices operating on engine test cells/stands. We examined the emission control efficiencies achieved by oxidation emission control devices and concluded that CO emission reductions are a good surrogate for HAP emissions reductions. In addition, we concluded that oxidation emission control devices can reduce CO emissions to 5 ppmvd or less, corrected to 15 percent O_2 content, while achieving a CO reduction efficiency of 99.9 percent or more. Thus, we are proposing the following MACT emission limitation for test cells/stands used for testing internal combustion engines with a rated power of 25 hp (19 kW) or more: an outlet CO emissions concentration of 5 ppmvd or less, corrected to 15 percent O_2 content; or a reduction in CO emissions of 99.9 percent or more.

2. Test Cells/Stands Used for Testing Internal Combustion Engines of Less Than 25 hp (19 kW)

To determine MACT for test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), we used data from the MACT database. The database contains information on 307 test cells/stands used exclusively for testing internal combustion engines with a rated power of less than 25 hp (19 kW) from major source and synthetic minor source facilities. Since this number includes 219 test cells/stands from major source facilities, and we estimate the number of test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities to be about 403, we estimate this database represents about 54 percent of test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various control methods to reduce HAP emissions. First, we examined the use of control technology. No existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities are equipped with emission control technologies.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations and permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to "good operating practices" or "work practice standards" in the MACT database, and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations and permits, or good operating practices might identify a MACT floor, we also considered whether other alternatives, such as the use of a specific fuel which might result in lower HAP emissions (e.g., switching from diesel fuel to gasoline) might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment, which could be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a new diesel engine design by burning gasoline in the engine, for example, nor could one test the performance and durability of a new gasoline engine design by burning diesel fuel in the engine. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for engine testing; indeed, such an alternative would defeat the very purpose of engine testing. For that reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine test cells/stands.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities, we evaluated regulatory options more stringent than the MACT floor. We considered the use of oxidation emission control devices as an emission control technology which could serve as the basis for MACT for existing sources. We also reconsidered alternatives, such as good operating practices and work practice standards, fuel switching, and the review of State permits and regulations, and again concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for this regulatory option. Those analyses are shown in a memorandum in Docket A–98–29, titled "Control Costs." In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result.

We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor.
Consequently, we concluded that MACT for existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies, such as oxidation emission control systems, might identify a MACT floor, we also considered whether any of the alternatives outlined above (e.g., good operating practices and work practice standards, fuel switching, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), might identify a MACT floor for new engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW). Again, we concluded that none of the alternatives could be used to identify a MACT floor for existing engine test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW).

Therefore, we concluded that the MACT floor for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

To determine MACT for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW), we evaluated regulatory options more stringent than the MACT floor. We considered the use of oxidation emission control devices as an emission control technology which could serve as the basis for MACT for new sources. We also reconsidered the alternatives mentioned above (*e.g.*, good operating practices and work practice standards, fuel switching, and the review of State permits and regulations), which we considered for identifying a MACT floor, but for the reasons also discussed above, we concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced associated with the option of adding oxidation emission control devices. In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with adding an oxidation emission control device were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for new sources is the MACT floor.
Consequently, we concluded that MACT for new test cells/stands used for testing internal combustion engines with a rated power of less than 25 hp (19 kW) located at major source facilities is no reduction in HAP emissions.

3. Test Cells/Stands Used for Testing Combustion Turbine Engines

To determine MACT for test cells/stands used for testing combustion turbine engines, we used data from the MACT database. The database contains information on 287 test cells/stands used for testing combustion turbine engines from major source and synthetic minor source facilities. Since this number includes 252 test cells/stands from major source facilities, and we estimate the number of test cells/stands used for testing combustion turbine engines located at major source facilities to be about 328, we estimate this database represents about 77 percent of

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test cells/stands used for testing combustion turbine engines located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing combustion turbine engines located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control methods to reduce HAP emissions. First, we examined the use of control technology. No existing test cells/stands used for testing combustion turbine engines located at major source facilities are equipped with emission control technologies.

In addition to considering whether the use of add-on emission control technologies, such as oxidation emission control systems, might identify a MACT floor, we also considered whether any of the alternatives mentioned above (e.g. good operating practices and work practice standards, fuel switching, and the review of State permits and regulations) might identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines. We were unable to find any good operating practices or work practice standards that result in HAP reductions. Similarly, fuel switching is not a viable alternative since the engine performance and durability being measured to simulate actual in-use conditions can be affected by the type of fuel used. Finally, as we mentioned before, our review of State permits and regulations did not identify any emission control strategies for that type of source. Thus, we conclude again that none of those alternatives could be used to help us identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing combustion turbine engines located at major source facilities, we evaluated regulatory options more stringent than the MACT floor. The only control technology currently proven to reduce HAP emissions from combustion turbine engines is an oxidation catalyst emission control device, such as a CO oxidation catalyst. These control devices are used to reduce CO emissions and are currently installed on several stationary combustion turbine engines. As a result, we concluded they could be used on test cells/stands used for testing combustion turbine engines.

We also reconsidered the same alternatives that we looked at for identifying a MACT floor (*e.g.*, fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), and again concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for the use of an oxidation catalyst emission control device. Those analyses are shown in a memorandum in Docket A–98–29, titled "Control Costs." In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that the costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, we concluded that MACT for existing test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing combustion turbine engines located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing combustion turbine engines currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies might identify a MACT floor, we also considered whether any of the alternatives outlined above (*e.g.*, fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing combustion turbine engines, might identify a MACT floor for new engine test cells/stands used for testing combustion turbine engines. We were unable to find any good operating practices or work practice standards that result in HAP reductions. Similarly, fuel switching is not a viable alternative since the engine performance and durability being measured to simulate actual in-use conditions can be affected by the type of fuel used. Finally, as we mentioned before, our review of State permits and regulations did not identify any emission control strategies for that type of source. Thus, we have concluded that none of those alternatives could be used to identify a MACT floor for new engine test cells/stands used for testing combustion turbine engines.

Therefore, we concluded that the MACT floor for new test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for new test cells/stands used for testing combustion turbine engines, we evaluated regulatory options more stringent than the MACT floor. We again considered the use of an oxidation catalyst emission control device as an emission control technology which could serve as the basis for MACT for new sources. We also reconsidered the alternatives mentioned above (*e.g.*, fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered for identifying a MACT floor, but for the same reasons, we concluded they are not viable options for MACT. We considered the costs, the reduction in HAP emissions, and the incremental cost per ton of HAP reduced for this regulatory option. Those analyses are shown in a memorandum in Docket A–98–29, titled "Control Costs." In addition, we considered the non-air quality health and environmental impacts and energy requirements associated with this regulatory option, such as potential water pollution and solid waste disposal impacts and the increased energy consumption. Although we considered the non-air quality health and environmental impacts and energy requirements negligible, we concluded that costs associated with this regulatory option were unreasonable in light of the small reductions in HAP emissions that would result. We were unable to identify any other feasible regulatory options. Thus, we concluded that MACT for new sources is the MACT floor. Consequently, we concluded that MACT for new test cells/stands used for testing combustion turbine engines located at major source facilities is no reduction in HAP emissions.

4. Test Cells/Stands Used for Testing Rocket Engines

To determine MACT for test cells/stands used for testing rocket engines, we used data from the MACT database. The database contains information on 99 test cells/stands used for testing rocket engines from major source and synthetic minor source facilities. Since this number includes 75 test cells/stands from major source facilities and we estimate the number of test cells/stands used for testing rocket engines located at major source facilities to be about 100, we estimate this database represents about 75 percent of test cells/stands used for testing rocket engines located at major source facilities in the United States. We consider the information contained in the MACT database to be representative of all test cells/stands used for testing rocket engines located at major source facilities.

Existing Sources. We examined the MACT database for information on the use of various emission control systems. First, we examined the use of control technology. No existing test cells/stands used for testing rocket engines located at major source facilities are equipped with emission control technologies.

Another approach we considered to identify a MACT floor was to review State regulations and permits. We could find no State regulations which limit HAP emissions from engine test cells/stands. Similarly, we found no State permits which limit HAP emissions from engine test cells/stands. Therefore, we concluded that State regulations and permits could not be used to identify a MACT floor.

We also considered whether the use of good operating practices and work practice standards might identify a MACT floor. There are no references, however, to "good operating practices" or "work practice standards" in the MACT database, and a review of the general operation of engine test cells/stands failed to identify any good operating practices which might reduce HAP emissions. As a result, we concluded that neither good operating practices nor work practice standards can be used to identify a MACT floor for engine test cells/stands.

In addition to considering whether the use of add-on emission control technologies, State regulations and permits, and good operating practices might identify a MACT floor, we also considered whether other alternatives such as the use of a specific fuel which might result in lower HAP emissions might identify a MACT floor. The purpose of engine testing, however, is to simulate the operation of a specific type of engine in a certain environment, which could be to confirm that the engine was assembled correctly and will function as intended. In other cases, engine testing may be conducted to measure or test the durability or performance of an engine, a new component within an engine, or a new engine design, all within the context of research and development.

The fuel burned in the engine during the test is an integral part of the test itself. One could not test the performance and durability of a rocket engine design by burning a fuel other than the one it is designed to use. Use of a specific fuel to reduce HAP emissions, therefore, is not a viable emission control alternative for rocket engine testing; indeed, such an alternative would defeat the very purpose of the testing. For that reason, we concluded that use of a specific fuel cannot be used to identify a MACT floor for engine cells/stands used for testing rocket engines.

Consequently, the average of the best performing 12 percent of existing sources is no reduction in HAP emissions. As a result, we concluded that the MACT floor for existing test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

To determine MACT for existing test cells/stands used for testing rocket engines located at major source facilities, we attempted to identify regulatory options more stringent than the MACT floor. We are unaware of any emission control technology which could be used to reduce HAP emissions from a test cell/stand used for testing rocket engines.

We also reconsidered the alternatives mentioned above, which we considered for identifying a MACT floor (*e.g.*, fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), but for the reasons also discussed above, we concluded they are not viable options for MACT. We were unable to identify any feasible regulatory options.

A number of characteristics of the exhaust from rocket engine testing (extremely high temperatures, extremely high volumetric flow rates, and very short test durations) and the infrequent timing of testing raise a number of unique problems that must be resolved for an emission control device to be considered a viable option for reducing HAP emissions from test cells/stands used for testing rocket engines. Consequently, we could identify no candidate MACT technologies for analysis. Without a viable emission control device, we are unable to estimate the potential costs associated with its use. Similarly, we are unable to estimate the potential reduction in HAP emissions which might result from the use of such a device.

Thus, we concluded that MACT for existing sources is the MACT floor. Consequently, MACT for existing test cells/stands used for testing rocket engines is no reduction in HAP emissions.

New Sources. To identify the MACT floor for new test cells/stands used for testing rocket engines located at major source facilities, we also examined the MACT database. As mentioned earlier, no existing test cells/stands used for testing rocket engines currently use emission control devices.

In addition to considering whether the use of add-on emission control technologies might identify a MACT floor, we also considered whether any of the alternatives outlined above (*e.g.*, fuel switching, good operating practices and work practice standards, and the review of State permits and regulations), which we considered to identify a MACT floor for existing engine test cells/stands used for testing rocket engines, might identify a MACT floor for new engine test cells/stands used for testing rocket engines. Again, we concluded that none of these alternatives could be used to identify a MACT floor for new engine test cells/stands used for testing rocket engines.

Therefore, we concluded that the MACT floor for new test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

We also considered regulatory options more stringent than the MACT floor. As explained in the previous paragraphs, we were unable to identify any emission control technology which could be used to reduce HAP emissions from a test cell/stand used for testing rocket engines. Thus, we concluded that MACT for new sources is the MACT floor, and we concluded that MACT for new test cells/stands used for testing rocket engines located at major source facilities is no reduction in HAP emissions.

E. How Did We Select the Format of the Standard?

The HAP emissions test reports which serve as the basis for the MACT emission limitations did not measure specific HAP, such as toluene, benzene, mixed xylenes, or 1,3-butadiene, etc. They measured CO emissions and, in most cases, they also measured total hydrocarbon (THC) emissions. In one case, emissions of non-methane organics (NMO) were also measured.

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The HAP emitted from engine test cells/stands are hydrocarbons, as well as organics. As a result, if HAP emissions decrease, emissions of THC and NMO will decrease as well. Consequently, the measurements of THC or NMO emissions serve as surrogate measurements of HAP emissions, and we assessed the HAP emissions reduction performance of the oxidation emission control devices in terms of reductions in THC or NMO emissions.

In addition, the data from these HAP emissions test reports also demonstrate a direct relationship between emissions of CO and THC or NMO. If emissions of THC or NMO are reduced, CO emissions are also reduced. As a result, we concluded that CO emissions could also serve as a surrogate for HAP emissions, and we also assessed the HAP emissions reduction performance of the oxidation emission control devices in terms of reductions in CO emissions.

We considered three alternatives in terms of the format for the MACT emission limitations. We could have proposed the emission limitation in terms of THC, NMO, or CO emissions; however, there was only one emission test report available which measured NMO emissions, so we rejected the alternative of an emission limitation in terms of NMO emissions in favor of an emission limitation in terms of either THC or CO emissions.

As outlined earlier, we are proposing a MACT emission limitation in terms of CO emissions. We could have proposed an emission limitation in terms of THC emissions, but chose CO emissions primarily because the costs for CO CEMS are somewhat less than those for THC CEMS. However, since these costs are within the same range, some may prefer a MACT emission limitation in terms of THC, or they may prefer a choice of either the THC or CO emission limitation.

As a result, we specifically request public comment in this area. If we were to adopt a THC MACT emission limitation in place of the proposed CO emission limitation, or if we were to adopt a THC emission limitation in addition to the proposed CO emission limitation and allow affected sources to comply with either the THC or the CO emission limitation, based on the HAP emissions test reports mentioned above, we anticipate that the corresponding THC MACT emission limitation would be: An outlet THC concentration of 3 ppmvd or less, expressed as methane and corrected to 15 percent O_2; or a reduction in THC emissions of 99.7 percent.

We recognize that this proposal will be of limited significance because it would require emission reductions from new major sources for only one of the four subcategories identified and that, standing alone, these new sources will likely have low HAP emissions. We nonetheless believe promulgation of standards for this source category is compelled by the Act. Section 112(a) defines "major source" as "any stationary source or group of stationary sources located within a contiguous area and under common control, that emits or has the potential to emit considering controls, in the aggregate, 10 tons per year or more of any hazardous air pollutant or 25 tons per year or more of any combination of hazardous air pollutants." Thus, sources are considered part of a major source when they are collocated with other sources at facilities that in combination have the potential to emit over the major source thresholds. Because the statute is clear that such collocated sources must be considered major, we believe it is also clear in the statute that we must list categories that include such sources and promulgate standards for those categories pursuant to section 112(d).

In the interest of providing as much compliance flexibility as possible to these sources, we request comments on the possibility of averaging emissions across processes throughout the entire major source and allowing reductions from emission points covered by other MACT standards, within the facility, to be counted towards the emission limitations proposed in this action. Comments should include ideas on how such averaging scheme would work and be implemented. This type of provision, if implemented, could allow flexibility for the affected facility to determine an effective emission control strategy while, at the same time, achieving the emission reductions intended by this proposal.

F. How Did We Select the Initial Compliance Requirements?

We are proposing the use of CO and O_2 CEMS to demonstrate compliance with the applicable emission limitation. These CEMS are available at reasonable costs and are in widespread use in numerous applications and numerous industries.

For sources complying with either the outlet CO concentration emission limitation or the CO percent reduction emission limitation, an initial performance evaluation of the CEMS is required. This performance evaluation will certify the performance of the CO and O_2 CEMS. The first 4-hour period following this performance evaluation of the CEMS will be used to determine initial compliance with either emission limitation.

G. How Did We Select the Continuous Compliance Requirements?

As mentioned above, we are proposing the use of CEMS to demonstrate compliance with the applicable emission limitation. If you must comply with the outlet CO concentration emission limitation or the CO percent reduction emission limitation, continuous compliance with the limitation is required at all times. We are proposing the use of Procedure 1 in 40 CFR part 60, appendix F, to ensure that the performance of the CEMS does not deteriorate over time.

We consider the use of CEMS the best means of ensuring continuous compliance with the emission limitation, and alternatives to CEMS are considered only if we consider the use of a CEMS technically or economically infeasible. For sources complying with either of the emission limitations, we believe requiring a CEMS is feasible because the costs of CO and O_2 CEMS are reasonable.

H. How Did We Select the Monitoring and Testing Methods?

Continuous emission monitoring systems are available which can measure CO emissions at the low concentrations found in the exhaust from an oxidation emission control device operating on an engine test cell/stand. Performance Specification 4A for CO CEMS has not been updated recently and does not reflect the performance capabilities of these CEMS.

As a result, we solicit comments on the performance capabilities of state-of-the-art CO CEMS and their ability to accurately measure the low concentrations of CO experienced in the exhaust of an engine test cell/stand. We also solicit comments with specific recommendations on the changes we should make to our performance specification for CO CEMS (PS4A) to ensure the installation and use of CEMS which can be used to determine compliance of engine test cells/stands with the proposed emission limitation. In addition, we solicit comments on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting the recommended changes to our performance specifications for CO CEMS.

Today's proposal specifies the use of Method 3A or 3B of 40 CFR part 60, appendix A, as the reference method to certify the performance of O_2 CEMS and the use of Method 10 of 40 CFR part 60, appendix A, as the reference method to certify the performance of the CO CEMS. Method 10 is capable of measuring CO concentrations as low as those experienced in the exhaust of an oxidation emission control device operating on an engine test cell/stand. However, the performance criteria in addenda A of Method 10 have not been revised recently and are not suitable for certifying the performance of a CO CEMS at these CO concentrations. Specifically, we believe the range and minimum detectable sensitivity should be changed to reflect target concentrations as low as 1 ppmvd CO in some cases.

As a result, we solicit comments with specific recommendations on the changes we should make to Method 10 and the performance criteria in addenda A, as they are related to the low CO levels emitted by some engine test cells/stands. If you recommend changes to Method 10 or the performance criteria, we also solicit comments on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting those changes, while also meeting the remaining addenda A performance criteria.

I. How Did We Select the Notification, Recordkeeping and Reporting Requirements?

The proposed notification, recordkeeping, and reporting requirements are based on the NESHAP General Provisions of 40 CFR part 63.

IV. Summary of Environmental, Energy and Economic Impacts

A. What Are the Air Quality Impacts?

This proposed rule will reduce HAP emissions in the 5th year following promulgation by an estimated 135 tons (148.5 megagrams).

B. What Are the Cost Impacts?

The total annualized cost of this proposed rule in the 5th year following promulgation is estimated to be about $7.4 million. This cost includes recordkeeping and reporting costs, CEMS costs, emission control device costs, and operating, maintenance, and annualized capital investment costs for emission control devices and CEMS.

C. What Are the Economic Impacts?

This proposed rule is not expected to affect any of the existing engine test cells/stands located at major source facilities which test internal combustion engines, combustion turbine engines, or rocket engines.

We estimate that 148 new engine test cells/stands will be constructed in the next 5 years at engine research and development or production facilities which are major sources of HAP emissions. These new engine test cells/stands will be required to comply with the proposed rule.

We anticipate that 84 of these new engine test cells/stands will be built at auto, tractor, and diesel engine manufacturing facilities, and that 64 of these new engine test cells/stands will be built at military facilities.

The auto, tractor, and diesel engine manufacturing firms that are expected to construct new engine test cells/stands are large multi-national firms; thus, the cost of compliance is insignificant in comparison to firm revenues. The total sales for the potentially affected firms range from $6.5 billion to more than $184 billion. Thus, the impact on affected firms ranges from 0.0007 to 0.015 percent of corporate revenues. Likewise, the cost of compliance for military facilities that may be affected is insignificant when compared to selected facilities expenditures. The compliance costs account for 0.07 percent of facility expenditures on average, and 0.001 percent of the 2001 budget for U.S. defense. Therefore, the economic impacts associated with this proposed rule are considered negligible.

D. What Are the Non-Air Health, Environmental and Energy Impacts?

We do not expect any significant wastewater, solid waste, or energy impacts resulting from this proposed rule. Energy impacts associated with this proposed rule would be due to additional energy consumption that would be required by installing and operating control equipment. The only energy requirement for the operation of the control technologies is a very small increase in fuel consumption resulting from back pressure caused by the emission control system.

V. Solicitation of Comments and Public Participation

We are requesting comments on this proposed rule. We request comments on all aspects of this proposed rule, such as the proposed emission limitation, recordkeeping and monitoring requirements, as well as aspects you may feel have not been addressed.

We also request comments on the performance capabilities of state-of-the-art CO CEMS and their ability to measure the low concentrations of CO in the exhaust of engine test cells/stands.

We also request comments with recommendations on changes commenters believe we should make to our performance specifications for CO CEMS (PS4A) of 40 CFR part 60, appendix B, to Method 10 of 40 CFR part 60, appendix A, and the performance criteria in addenda A to Method 10 that will allow the measurement of low CO concentrations emitted by some engine test cells/stands. In addition, we request comments from these commenters on the availability of instruments that can be used to measure the low CO concentrations emitted by some engine test cells/stands, and that are capable of meeting the changes they recommend to our performance specification for CO CEMS (PS4A) of 40 CFR part 60, appendix B, Method 10 of 40 CFR part 60, appendix A, and addendum A to Method 10.

We also solicit comments on whether we should adopt a MACT emission limitation in terms of THC emissions rather than CO emissions. In addition, we solicit comments on whether we should adopt both THC and CO MACT emission limitations and allow affected sources to comply with either the THC or the CO MACT emission limitation.

We request any HAP emissions test data available from engine test cells/stands equipped with an oxidation emission control device or other equivalent emission control system; however, if you submit HAP emissions test data, please submit the full and complete emission test report with these data. Include the sections describing the specific type of engine and its operation during the test, discussion of the test methods employed and the Quality Assurance/Quality Control procedures followed, the raw data sheets, and all related calculations. The emissions data submitted without this information is not useful.

Finally, in the interest of providing as much compliance flexibility as possible to major sources, we request comments on the possibility of averaging emissions across processes throughout the entire major source and allowing reductions from emission points covered by other MACT standards, within the facility, to be counted towards the emission limitations proposed in this action. Comments should include ideas on how such averaging scheme would work and be implemented. This type of provision, if promulgated, could allow flexibility for the affected facility to determine an effective emission control strategy while, at the same time, achieving the emission reductions intended by this proposal.

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VI. Administrative Requirements

A. Executive Order 12866, Regulatory Planning and Review

Under Executive Order 12866 (58 FR 51735, October 4, 1993), we must determine whether a regulatory action is "significant" and, therefore, subject to review by the Office of Management and Budget (OMB) and the requirements of the Executive Order. The Executive Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligation of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, we have determined that this rule is not a "significant regulatory action" because it does not have an annual effect on the economy of over $100 million. As such, this action was not submitted to OMB for review.

B. Executive Order 13132, Federalism

Executive Order 13132, entitled "Federalism" (64 FR 43255, August 10, 1999), requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government."

This proposed rule does not have federalism implications. It will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132.

We are required by section 112 of the CAA to establish the standards in this proposed rule. This proposed rule primarily affects private industry and does not impose significant economic costs on State or local governments. This proposed rule does not include an express provision preempting State or local regulations. Thus, the requirements of section 6 of the Executive Order do not apply to this proposed rule.

In the spirit of Executive Order 13132, and consistent with EPA policy to promote communications between EPA and State and local governments, EPA specifically solicits comment on this proposed rule from State and local officials.

C. Executive Order 13175, Consultation and Coordination With Indian Tribal Governments

Executive Order 13175, entitled "Consultation and Coordination with Indian Tribal Governments" (65 FR 67249, November 6, 2000), requires EPA to develop an accountable process to ensure "meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications" is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal government and the Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes."

This proposed rule does not have tribal implications. It will not have substantial direct effects on tribal governments, on the relationship between the Federal government and Indian tribes, or on the distribution of power and responsibilities between the Federal government and Indian tribes, as specified in Executive Order 13175. We know of one company that reported operating engine test cells/stands that are owned by an Indian tribal government. However, these test cells/stands are used for testing rocket engines. Although test cells/stands used for testing rocket engines are covered by the proposed rule, test cells/stands used for testing rocket engines are not required to meet any emission limitation, reporting, or recordkeeping requirements. Thus, Executive Order 13175 does not apply to this proposed rule.

D. Executive Order 13045, Protection of Children From Environmental Health Risks and Safety Risks

Executive Order 13045 (62 FR 19885, April 23, 1997) applies to any rule that: (1) Is determined to be "economically significant" as defined under Executive Order 12866, and (2) concerns an environmental health or safety risk that we have reason to believe may have a disproportionate effect on children. If the regulatory action meets both criteria, we must evaluate the environmental health or safety effects of the planned rule on children, and explain why the planned regulation is preferable to other potentially effective and reasonably feasible alternatives.

We interpret Executive Order 13045 as applying only to those regulatory actions that are based on health or safety risks, such that the analysis required under section 5–501 of the Executive Order has the potential to influence the regulation. This proposed rule is not subject to Executive Order 13045 because it is based on technology performance and not on health or safety risks.

E. Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use

This proposed rule is not subject to Executive Order 13211, (66 FR 28355, May 22, 2001) because it is not a significant regulatory action under Executive Order 12866.

F. Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA), Public Law 104–4, establishes requirements for Federal agencies to assess the effects of their regulatory actions on State, local, and tribal governments and the private sector. Under section 202 of the UMRA, we generally must prepare a written statement, including a cost-benefit analysis, for proposed and final rules with "Federal mandates" that may result in expenditures to State, local, and tribal governments, in the aggregate, or to the private sector, of $100 million or more in any 1 year. Before promulgating a rule for which a written statement is needed, section 205 of the UMRA generally requires us to identify and consider a reasonable number of regulatory alternatives and adopt the least costly, most cost-effective or least burdensome alternative that achieves the objectives of the rule. The provisions of section 205 do not apply when they are inconsistent with applicable law. Moreover, section 205 allows us to adopt an alternative other than the least costly, most cost-effective or least burdensome alternative if the Administrator publishes with the final rule an explanation why that alternative was not adopted. Before we establish any regulatory requirements that may significantly or uniquely affect small governments, including tribal governments, we must develop a small government agency plan under section 203 of the UMRA. The plan must provide for notifying potentially affected small governments, enabling officials of affected small governments to have meaningful and timely input in the development of regulatory proposals with significant Federal intergovernmental mandates, and informing, educating, and advising small governments on compliance with the regulatory requirements.

We have determined that this proposed rule does not contain a Federal mandate that may result in expenditures of $100 million or more for State, local, and tribal governments, in the aggregate, or the private sector in any 1 year. Accordingly, today's proposed rule is not subject to the requirements of sections 202 and 205 of the UMRA.

In addition, we have determined that this proposed rule contains no regulatory requirements that might significantly or uniquely affect small governments. Therefore, today's proposed rule is not subject to the requirements of section 203 of the UMRA.

G. Regulatory Flexibility Act (RFA), as Amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), 5 U.S.C. 601 et seq.

The RFA generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements under the Administrative Procedures Act or any other statute unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small organizations, and small governmental jurisdictions.

For purposes of assessing the impacts of today's proposed rule on small entities, small entity is defined as: (1) A small business whose parent company has either fewer than 500 employees if the business is involved in testing marine engines, or fewer than 1,000 employees if the business is involved in the testing of other types of engines; (2) a small governmental jurisdiction that is a government of a city, county, town, school district or special district with a population of less than 50,000; and (3) a small organization that is any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.

The requirements of this proposed rule apply only to major sources, which are defined as facilities that emit more than 10 tons per year of any one HAP, or more than 25 tons per year of a combination of HAP. According to our analyses, none of the identified major sources met the definition of a small business stated above. Therefore, this proposed rule will not impose any requirements on small entities. Pursuant to the provisions of 5 U.S.C. 605(b), we hereby certify that the proposed NESHAP, if promulgated, will not have a significant economic impact on a substantial number of small entities.

In 1998, we sent information collection requests (ICR) to over 100 companies representing over 300 individual facilities. The ICR requested information on HAP emissions from engine test cells/stands and on the number of employees of the parent company. Using that information, we determined that there are no major sources that are also small businesses.

In addition to the analyses of ICR data, we held several meetings with companies that operate engine testing facilities to inform them of the progress and development of the proposed rule. We also held a meeting on April 11, 2001 with the National Marine Manufacturers Association (NMMA), which represents the small businesses that had previously expressed concerns about the possible impacts of this proposed rule. That meeting helped clarify to NMMA and its member companies what type of facilities might be subject to this proposed rule. The meeting was followed up with phone conversations with NMMA and some of its member companies in order to obtain more information and to determine if any of the small entities emitted enough HAP to be considered a major source. Again, we concluded after the outreach activities that none of the small marine engine manufacturing businesses represented by NMMA would be subject to this proposed rule since they do not emit enough HAP to be considered major sources.

Although this proposed rule is not expected to regulate small entities, we have tried to reduce the impact of this proposed rule on all sources. In this proposed rule, we are applying the minimum level of control and the minimum level of monitoring, recordkeeping, and reporting to affected sources allowed by the CAA. We continue to be interested in the potential impacts of the proposed rule on small entities and welcome comments on issues related to such impacts.

H. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request (ICR) document has been prepared (ICR No. 1967.01) and a copy may be obtained from Susan Auby by mail at the Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Avenue NW, Washington, DC 20460, by e-mail at *auby.susan@epa.gov*, or by calling (202) 566–1672. A copy may also be downloaded off the Internet at *http://www.epa.gov/icr*.

The information requirements are based on notification, recordkeeping, and reporting requirements in the NESHAP General Provisions (40 CFR part 63, subpart A), which are mandatory for all operators subject to national emission standards. These recordkeeping and reporting requirements are specifically authorized by section 114 of the CAA (42 U.S.C. 7414). All information submitted to EPA pursuant to the recordkeeping and reporting requirements for which a claim of confidentiality is made is safeguarded according to Agency policies set forth in 40 CFR part 2, subpart B.

The proposed rule requires maintenance inspections of the control devices but does not require any notifications or reports beyond those required by the General Provisions. The recordkeeping requirements involve only the specific information needed to determine compliance.

The annual monitoring, reporting, and recordkeeping burden for this collection (averaged over the first 5 years after the effective date of the standards) is estimated to be 9,600 labor hours per year at a total annual cost of $440,800. This estimate includes a one-time (initial) CEMS performance evaluation, annualized capital monitoring equipment costs, semiannual compliance reports, maintenance inspections, notifications, and recordkeeping. Total annual costs associated with the new source control and monitoring requirements over the period of the ICR are estimated at $7.4 million.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, or disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; develop, acquire, install, and utilize technology and systems for the purposes of

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collecting, validating, and verifying information, processing and maintaining information, and disclosing and providing information; adjust the existing ways to comply with any previously applicable instructions and requirements; train personnel to be able to respond to a collection of information; search data sources; complete and review the collection of information; and transmit or otherwise disclose the information.

An Agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. The OMB control numbers for our regulations are listed in 40 CFR part 9 and 48 CFR chapter 15.

Comments are requested on the Agency's need for this information, the accuracy of the provided burden estimates, and any suggested methods for minimizing respondent burden, including through the use of automated collection techniques. Send comments on the ICR to the Director, Collection Strategies Division, U.S. Environmental Protection Agency (2822), 1200 Pennsylvania Ave., NW, Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th St., NW, Washington, DC 20503, marked "Attention: Desk Officer for EPA." Include the ICR number in any correspondence.

Since OMB is required to make a decision concerning the ICR between 30 and 60 days after May 14, 2002, a comment to OMB is best assured of having its full effect if OMB receives it by June 13, 2002. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

I. National Technology Transfer and Advancement Act of 1995

Section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) of 1995 (Pub. L. 104–113; 15 U.S.C. 272 note) directs EPA to use voluntary consensus standards in their regulatory and procurement activities unless to do so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g., materials specifications, test methods, sampling procedures, business practices) developed or adopted by one or more voluntary consensus bodies. The NTTAA directs EPA to provide Congress, through annual reports to OMB, with explanations when an agency does not use available and applicable voluntary consensus standards.

This proposed rulemaking involves technical standards. We propose to use EPA Methods 3A, 3B, 10, 10B of 40 CFR part 60, appendix A, and PS3 and PS4A of 40 CFR part 60, appendix B. Consistent with the NTTAA, we searched for voluntary consensus standards which could be used in lieu of these methods/performance specifications. No applicable voluntary consensus standards were identified for EPA Method 10B and PS3 and PS4A.

One voluntary consensus standard was identified as an acceptable alternative to EPA Methods 3A and 10. The voluntary consensus standard ASTM D6522–00, "Standard Test Method for the Determination of Nitrogen Oxides, Carbon Monoxide, and Oxygen Concentrations in Emissions from Natural Gas-Fired Reciprocating Engines, Combustion Turbines, Boilers and Process Heaters Using Portable Analyzers" is an acceptable alternative to EPA Methods 3A and 10 for identifying oxygen and carbon monoxide concentrations, respectively, for this proposed rule when the fuel used during testing is natural gas.

Our search for emissions measurement procedures identified seven other voluntary consensus standards. Six of these seven standards identified for measuring emissions of the HAP or surrogates subject to emission standards in the proposed rule, however, were impractical alternatives to EPA test methods/performance specifications for the purposes of this proposed rule. Therefore, for the reason discussed below, we do not intend to adopt these voluntary consensus standards.

The standard, ASTM D3162 (1994) "Standard Test Method for Carbon Monoxide in the Atmosphere (Continuous Measurement by Nondispersive Infrared (NDIR) Spectrometry)," is impractical as an alternative to EPA Method 10 in this proposed rulemaking because this ASTM standard, which is stated to be applicable in the range of 0.5–100 ppm CO, does not cover the range of EPA Method 10 (20–1000 ppm CO) at the upper end (but states that it has a lower limit of sensitivity). Also, ASTM D3162 does not provide a procedure to remove carbon dioxide interference. Therefore, this ASTM standard is not appropriate for combustion sources. In terms of NDIR instrument performance specifications, ASTM D3162 has much higher maximum allowable rise and fall times (5 minutes) than EPA Method 10 (which has 30 seconds).

The following five voluntary consensus standards are impractical alternatives to EPA test methods for the purposes of this proposed rule because they are too general, too broad, or not sufficiently detailed to assure compliance with EPA regulatory requirements: ASTM D3154–91 (1995), "Standard Method for Average Velocity in a Duct (Pitot Tube Method)," for EPA Method 3B; ASTM D5835–95, "Standard Practice for Sampling Stationary Source Emissions, for Automated Determination of Gas Concentration," for EPA Methods 3A and 10; ISO 10396:1993, "Stationary Source Emissions: Sampling for the Automated Determination of Gas Concentrations," for EPA Methods 3A and 10; CAN/CSA Z223.2–M86(1986), "Method for the Continuous Measurement of Oxygen, Carbon Dioxide, Carbon Monoxide, Sulphur Dioxide, and Oxides of Nitrogen in Enclosed Combustion Flue Gas Streams," for EPA Methods 3A and 10; and CAN/CSA Z223.21–M1978, "Method for the Measurement of Carbon Monoxide: 3—Method of Analysis by Non-Dispersive Infrared Spectrometry," for EPA Method 10.

The seventh voluntary consensus standard identified in this search for EPA Methods 3A and 10, ISO/DIS 12039, "Stationary Source Emissions—Determination of Carbon Monoxide, Carbon Dioxide, and Oxygen—Automated Methods," was not available at the time the review was conducted for the purposes of this proposed rulemaking because the method was under development by a voluntary consensus body. While we are not proposing to include this voluntary consensus standard in today's proposal, we will consider it when this voluntary consensus standard is final.

We invite comment on the compliance demonstration requirements included in the proposed rule and specifically solicit comment on potentially applicable voluntary consensus standards. Commenters should explain, however, why this proposed rule should adopt these voluntary consensus standards in lieu of or in addition to EPA's methods or performance specifications. Emission test methods and performance specifications submitted for evaluation should be accompanied with a basis for the recommendation, including method validation data and the procedure used to validate the candidate method (if a method other than Method 301, 40 CFR part 63, appendix A, was used).

Sections 63.9310 and 63.9325 to subpart PPPPP lists the testing methods/performance specifications included in the proposed rule. Under § 63.8 of subpart A of the General Provisions, a source may apply to EPA for permission to use alternative monitoring in place of any of the EPA testing methods.

List of Subjects in 40 CFR Part 63

Environmental protection, Administrative practice and procedure, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: May 1, 2002.

Christine Todd Whitman,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63 of the Code of the Federal Regulations is proposed to be amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, *et seq.*

2. Part 63 is amended by adding subpart PPPPP to read as follows:

Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

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Subpart PPPPP—National Emission Standards for Hazardous Air Pollutants: Engine Test Cells/Stands

What This Subpart Covers

§ 63.9280 What is the purpose of this subpart PPPPP?

Subpart PPPPP establishes national emission standards for hazardous air pollutants (NESHAP) for engine test cells/stands located at major sources of hazardous air pollutants (HAP) emissions. This subpart also establishes requirements to demonstrate initial and continuous compliance with the emission limitations contained in this NESHAP.

§ 63.9285 Am I subject to this subpart?

You are subject to this subpart if you own or operate an engine test cell/stand that is located at a major source of HAP emissions.

(a) An engine test cell/stand is any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

(b) A major source of HAP emissions is a plant site that emits or has the potential to emit any single HAP at a rate of 10 tons (9.07 megagrams) or more per year or any combination of HAP at a rate of 25 tons (22.68 megagrams) or more per year.

§ 63.9290 What parts of my plant does this subpart cover?

This subpart applies to each affected source.

(a) *Affected source.* An affected source is any existing, new, or reconstructed engine test cell/stand that is located at a major source of HAP emissions.

(1) *Existing engine test cell/stand.* An engine test cell/stand is existing if you commenced construction or reconstruction of the engine test cell/stand on or before May 14, 2002. A change in ownership of an existing engine test cell/stand does not make that engine test cell/stand a new or reconstructed engine test cell/stand.

(2) *New engine test cell/stand.* An engine test cell/stand is new if you commenced construction of the engine test cell/stand after May 14, 2002.

(3) *Reconstructed engine test cell/stand.* An engine test cell/stand is reconstructed if you meet the definition of reconstruction in § 63.2 and reconstruction is commenced after May 14, 2002.

(b) Existing engine test cells/stands do not have to meet the requirements of this subpart and of subpart A of this part.

(c) A new or reconstructed engine test cell/stand located at a major source which is used exclusively for testing internal combustion engines with a rated power of less than 25 horsepower (hp) (19 kilowatts (kW)) does not have to meet the requirements of this subpart and of subpart A of this part except for the initial notification requirements of § 63.9345(b).

(d) A new or reconstructed engine test cell/stand located at a major source which is used exclusively for testing combustion turbine engines or which is used exclusively for testing rocket engines does not have to meet the requirements of this subpart and of subpart A of this part.

§ 63.9295 When do I have to comply with this subpart?

(a) *Affected sources.*

(1) If you start up your new or reconstructed engine test cell/stand before [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must comply with the emission limitation in this subpart no later than [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**].

(2) If you start up your new or reconstructed engine test cell/stand on or after [DATE THE FINAL RULE IS PUBLISHED IN THE **Federal Register**], you must comply with the emission limitation in this subpart upon startup.

(b) *Area sources that become major sources.* If your new or reconstructed engine test cell/stand is located at an area source that increases its emissions or its potential to emit such that it becomes a major source of HAP, your new or reconstructed engine test cell/stand must be in compliance with this

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subpart when the area source becomes a major source.

(c) You must meet the notification requirements in § 63.9345 according to the schedule in § 63.9345 and in subpart A of this part.

Emission Limitations

§ 63.9300 What emission limitation must I meet?

For each new or reconstructed test cell/stand which is used in whole or in part for testing internal combustion engines with a rated power of 25 hp (19 kW) or more and which is located at a major source, you must comply with one of the two emission limitations in Table 1 of this subpart.

General Compliance Requirements

§ 63.9305 What are my general requirements for complying with this subpart?

(a) You must be in compliance with the emission limitation which applies to you at all times, including startup, shutdown, or malfunction of your engine test cell/stand.

(b) If you must comply with an emission limitation, you must operate and maintain your engine test cell/stand, air pollution control equipment, and monitoring equipment in a manner consistent with good air pollution control practices for minimizing emissions at all times.

Testing and Initial Compliance Requirements

§ 63.9310 By what date must I conduct the initial compliance demonstrations?

You must conduct the initial compliance demonstrations that apply to you in Table 2 of this subpart within 180 calendar days after the compliance date that is specified for your engine test cell/stand in § 63.9295 and according to the provisions in § 63.7(a)(2).

§ 63.9320 What procedures must I use?

(a) You must conduct each initial compliance demonstration that applies to you in Table 2 of this subpart.

(b) You must conduct a performance evaluation of each continuous emissions monitor system (CEMS) according to the requirements in § 63.8 and according to the applicable Performance Specification (PS) of 40 CFR part 60, appendix B (PS3 or PS4A).

(c) If you chose to comply with the carbon monoxide (CO) concentration emission limitation, the initial demonstration of compliance consists of the first 4-hour rolling average CO concentration recorded after completion of the CEMS performance evaluation. You must correct the CO concentration at the outlet of the engine test cell/stand or the emission control device to a dry basis and to 15 percent oxygen (O_2) content according to Equation 1 of this section:

$$C_c = C_{unc}\left(\frac{5.9}{(20.9 - \%O_{2d})}\right) \qquad \text{(Eq. 1)}$$

Where:

C_c = concentration of CO, corrected to 15 percent oxygen, parts per million by volume, dry basis (ppmvd)

C_{unc} = total uncorrected concentration of CO, ppmvd

$\%O_{2d}$ = concentration of oxygen measured in gas stream, dry basis, percent by volume.

(d) If you chose to comply with the CO percent reduction emission limitation, the initial demonstration of compliance consists of the first 4-hour rolling average percent reduction in CO recorded after completion of the performance evaluation of the CEMS. You must complete the actions described in paragraphs (d)(1) through (2) of this section.

(1) Correct the CO concentrations at the inlet and outlet of the emission control device to a dry basis and to 15 percent O_2 content using Equation 1 of this section.

(2) Calculate the percent reduction in CO using this Equation 2:

$$R = \frac{C_i - C_o}{C_i} \times 100 \qquad \text{(Eq. 2)}$$

Where:

R = percent reduction in CO

C_i = corrected CO concentration at inlet of the emission control device

C_o = corrected CO concentration at the outlet of the emission control device.

§ 63.9325 What are my monitor installation, operation, and maintenance requirements?

(a) To comply with the CO concentration emission limitation, you must install, operate, and maintain a CEMS to monitor CO and O_2 at the outlet of the exhaust system of the engine test cell/stand or at the outlet of the emission control device.

(b) To comply with the CO percent reduction emission limitation, you must install, operate, and maintain a CEMS to monitor CO and O_2 at both the inlet and the outlet of the emission control device.

(c) To comply with either emission limitation, the CEMS must be installed and operated according to the requirements described in paragraphs (c)(1) through (4) of this section.

(1) You must install, operate, and maintain each CEMS according to the applicable PS of 40 CFR part 60, appendix B (PS3 or PS4A).

(2) You must conduct a performance evaluation of each CEMS according to the requirements in § 63.8 and according to PS3 of 40 CFR part 60, appendix B, using Method 3A or 3B of 40 CFR part 60, appendix A, for the O_2 CEMS; and according to PS4A of 40 CFR part 60, appendix B, using Method 10 or 10B of 40 CFR part 60, appendix A, for the CO CEMS. If the fuel used in the engines being tested is natural gas, you may use ASTM D 6522–00, "Standard Test Method for Determination of Nitrogen Oxides, Carbon Monoxide and Oxygen Concentration in Emissions from Natural Gas Fired Reciprocating Engines, Combustion Turbines, Boilers, and Process Heaters Using Portable Analyzers."

(3) As specified in § 63.8(c)(4)(ii), each CEMS must complete a minimum of one cycle of operation (sampling, analyzing, and data recording) for each successive 15-minute period. You must have at least two data points, each representing a different 15-minute period within the same hour, to have a valid hour of data.

(4) All CEMS data must be reduced as specified in § 63.8(g)(2) and recorded as CO concentration in ppmvd, corrected to 15 percent O_2 content.

(d) If you have CEMS that are subject to paragraph (a) or (b) of this section, you must properly maintain and operate the monitors continuously according to the requirements described in paragraphs (d)(1) and (2) of this section.

(1) *Proper maintenance.* You must maintain the monitoring equipment at all times that the engine test cell/stand is operating, including but not limited to, maintaining necessary parts for routine repairs of the monitoring equipment.

(2) *Continued operation.* You must operate your CEMS according to paragraphs (d)(2) (i) and (ii) of this section.

(i) You must conduct all monitoring in continuous operation at all times that the engine test cell/stand is operating, except for, as applicable, monitoring malfunctions, associated repairs, and required quality assurance or control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments). Quality assurance or control activities must be performed according to Procedure 1 of 40 CFR part 60, appendix F.

(ii) Data recorded during monitoring malfunctions, associated repairs, out-of-control periods, and required quality assurance or control activities must not be used for purposes of calculating data averages. You must use all of the data collected from all other periods in assessing compliance. A monitoring malfunction is any sudden, infrequent, not reasonably preventable failure of the monitoring equipment to provide valid data. Monitoring failures that are caused in part by poor maintenance or careless operation are not malfunctions. Any period for which the monitoring system is out-of-control and data are not available for required calculations constitutes a deviation from the monitoring requirements.

§ 63.9330 How do I demonstrate initial compliance with the applicable emission limitation?

(a) You must demonstrate initial compliance with the emission limitation that applies to you according to Table 3 of this subpart.

(b) You must submit the Notification of Compliance Status containing results of the initial compliance demonstration according to the requirements in § 63.9345(f).

Continuous Compliance Requirements

§ 63.9335 How do I monitor and collect data to demonstrate continuous compliance?

(a) Except for monitor malfunctions, associated repairs, and required quality assurance or quality control activities (including, as applicable, calibration drift checks and required zero and high-level adjustments of the monitoring system), you must conduct all monitoring in continuous operation at all times the engine test cell/stand is operating.

(b) Do not use data recorded during monitor malfunctions, associated repairs, and required quality assurance or quality control activities for meeting the requirements of this subpart, including data averages and calculations. You must use all the data collected during all other periods in assessing the performance of the emission control device or in assessing emissions from the new or reconstructed engine test cell/stand.

§ 63.9340 How do I demonstrate continuous compliance with the applicable emission limitation?

(a) You must demonstrate continuous compliance with the emission limitation in Table 1 of this subpart that applies to you according to methods specified in Table 4 of this subpart.

(b) You must report each instance in which you did not meet the emission limitation which applies to you. You must also report each instance in which you did not meet the requirements in Table 6 of this subpart which apply to you. These instances are deviations from the emission limitations in this subpart and must be reported according to the requirements in § 63.9350.

(c) Deviations from the applicable emission limitation that occur during a period of malfunction of the control equipment as defined by § 63.9375 are not violations.

Notifications, Reports, and Records

§ 63.9345 What notifications must I submit and when?

(a) You must submit all of the notifications in §§ 63.8(e), (f)(4) and (6) and 63.9(b), (g)(1) and (2), and (h) that apply to you by the dates specified.

(b) If you own or operate a new or reconstructed test cell/stand used for testing internal combustion engines, you are required to submit an Initial Notification as specified in paragraphs (b)(1) through (3) of this section.

(1) As specified in § 63.9(b)(2), if you start up your new or reconstructed engine test cell/stand before [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER].

(2) As specified in § 63.9(b), if you start up your new or reconstructed engine test cell/stand on or after [DATE THE FINAL RULE IS PUBLISHED IN THE FEDERAL REGISTER], you must submit an Initial Notification not later than 120 calendar days after you become subject to this subpart.

(3) If you are required to submit an Initial Notification but are otherwise not affected by the requirements of this subpart, in accordance with § 63.9290(c), your notification should include the information in § 63.9(b)(2)(i) through (v) and a statement that your new or reconstructed engine test cell/stand has no additional requirements, explaining the basis of the exclusion (for example, that the test cell/stand is used exclusively for testing internal combustion engines with a rated power of less than 25 hp (19kW)).

(c) If you are required to comply with an emission limitation in Table 1 of this subpart, you must submit a Notification of Compliance Status according to § 63.9(h)(2)(ii). For each initial compliance demonstration with an emission limitation, you must submit the Notification of Compliance Status before the close of business on the 30th calendar day following the completion of the initial compliance demonstration.

(d) You must submit a notification of performance evaluation of your CEMS at least 60 calendar days before the performance evaluation is scheduled to begin as required in § 63.8(e)(2).

§ 63.9350 What reports must I submit and when?

(a) If you own or operate a new or reconstructed engine test cell/stand which must meet an emission limitation, you must submit a semiannual compliance report according to Table 5 of this subpart by the applicable dates specified in paragraphs (a)(1) through (5) of this section, unless the Administrator has approved a different schedule.

(1) The first semiannual compliance report must cover the period beginning on the compliance date specified in § 63.9295 and ending on June 30 or December 31, whichever date is the first date following the end of the first calendar half after the compliance date specified in § 63.9295.

(2) The first semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date follows the end of the first calendar half after the compliance date that is specified in § 63.9295.

(3) Each subsequent semiannual compliance report must cover the semiannual reporting period from January 1 through June 30 or the semiannual reporting period from July 1 through December 31.

(4) Each subsequent semiannual compliance report must be postmarked or delivered no later than July 31 or January 31, whichever date is the first date following the end of the semiannual reporting period.

(5) For each new or reconstructed engine test cell/stand that is subject to permitting regulations pursuant to 40 CFR part 70 or part 71, and if the permitting authority has established the date for submitting semiannual reports pursuant to 40 CFR 70.6(a)(3)(iii)(A) or 40 CFR 71.6(a)(3)(iii)(A), you may submit the first and subsequent compliance reports according to the dates the permitting authority has established instead of according to the dates in paragraphs (a)(1) through (4) of this section.

(b) If there is no deviation from the applicable emission limitation and the CEMS was not out-of-control, according to § 63.8(c)(7), the semiannual compliance report must contain the information described in paragraphs (b)(1) through (4) of this section.

(1) Company name and address.

(2) Statement by a responsible official, with that official's name, title, and signature, certifying the truth, accuracy, and completeness of the content of the report.

(3) Date of report and beginning and ending dates of the reporting period.

(4) A statement that no deviation from the applicable emission limitation occurred during the reporting period and that no CEMS was out-of-control, according to § 63.8(c)(7).

(c) For each deviation from an emission limitation, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (c)(1) through (4) of this section.

(1) The date and time that each deviation started and stopped.

(2) The total operating time of each new or reconstructed engine test cell/stand during the reporting period.

(3) A summary of the total duration of the deviation during the reporting period (recorded in 4-hour periods), and the total duration as a percent of the total operating time during that reporting period.

(4) A breakdown of the total duration of the deviations during the reporting period into those that are due to control equipment problems, process problems, other known causes, and other unknown causes.

(d) For each CEMS deviation, the semiannual compliance report must include the information in paragraphs (b)(1) through (3) of this section and the information included in paragraphs (d)(1) through (7) of this section.

(1) The date and time that each CEMS was inoperative except for zero (low-level) and high-level checks.

(2) The date and time that each CEMS was out-of-control, including the information in § 63.8(c)(8).

(3) A summary of the total duration of CEMS downtime during the reporting period (reported in 4-hour periods), and the total duration of CEMS downtime as a percent of the total engine test cell/stand operating time during that reporting period.

(4) A breakdown of the total duration of CEMS downtime during the reporting period into periods that are due to monitoring equipment malfunctions, non-monitoring equipment malfunctions, quality assurance/quality control calibrations, other known causes and other unknown causes.

(5) The monitoring equipment manufacturer(s) and model number(s) of each monitor.

(6) The date of the latest CEMS certification or audit.

(7) A description of any changes in CEMS or controls since the last reporting period.

§ 63.9355 What records must I keep?

(a) You must keep the records as described in paragraphs (a)(1) through (4) of this section.

(1) A copy of each notification and report that you submitted to comply with this subpart, including all documentation supporting any Initial Notification or Notification of Compliance Status that you submitted, as required in § 63.10(b)(2)(xiv).

(2) Records of performance evaluations as required in § 63.10(b)(2)(viii).

(3) Records of the occurrence and duration of each malfunction of the air pollution control equipment, if applicable, as required in § 63.10(b)(2)(ii).

(4) Records of all maintenance on the air pollution control equipment, if applicable, as required in § 63.10(b)(iii).

(b) For each CEMS, you must keep the records as described in paragraphs (b)(1) through (3) of this section.

(1) Records described in § 63.10(b)(2)(vi) through (xi).

(2) Previous (i.e., superceded) versions of the performance evaluation plan as required in § 63.8(d)(3).

(3) Request for alternatives to the relative accuracy test for CEMS as required in § 63.8(f)(6)(i), if applicable.

(c) You must keep the records required in Table 4 of this subpart to show continuous compliance with each emission limitation that applies to you.

§ 63.9360 In what form and how long must I keep my records?

(a) You must maintain all applicable records in such a manner that they can be readily accessed and are suitable for inspection according to § 63.10(b)(1).

(b) As specified in § 63.10(b)(1), you must keep each record for 5 years following the date of each occurrence, measurement, maintenance, corrective action, report, or record.

(c) You must retain your records of the most recent 2 years on site, or your records must be accessible on site. Your records of the remaining 3 years may be retained off site.

Other Requirements and Information

§ 63.9365 What parts of the General Provisions apply to me?

Table 6 of this subpart shows which parts of the General Provisions in §§ 63.1 through 63.13 apply to you.

§ 63.9370 Who implements and enforces this subpart?

(a) This subpart can be implemented and enforced by us, the U.S. EPA, or a delegated authority such as your State, local, or tribal agency. If the U.S. EPA Administrator has delegated authority to your State, local, or tribal agency, then that agency, in addition to the U.S. EPA, has the authority to implement and enforce this subpart. You should contact your U.S. EPA Regional Office to find out if implementation and enforcement of this subpart is delegated to your State, local, or tribal agency.

(b) In delegating implementation and enforcement authority of this subpart to a State, local, or tribal agency under section 40 CFR part 63, subpart E, the authorities contained in paragraph (c) of this section are retained by the Administrator of U.S. EPA and are not transferred to the State, local, or tribal agency.

(c) The authorities that cannot be delegated to State, local, or tribal agencies are as follows.

(1) Approval of alternatives to the emission limitations in § 63.9300 under § 63.6(g).

(2) Approval of major changes to test methods under § 63.7(e)(2)(ii) and (f) and as defined in § 63.90.

(3) Approval of major changes to monitoring under § 63.8(f) and as defined in § 63.90.

(4) Approval of major changes to recordkeeping and reporting under § 63.10(f) and as defined in § 63.90.

§ 63.9375 What definitions apply to this subpart?

Terms used in this subpart are defined in the Clean Air Act (CAA); in 40 CFR 63.2, the General Provisions of this part; and in this section:

CAA means the Clean Air Act (42 U.S.C. 7401 *et seq.*, as amended by Public Law 101–549, 104 Statute 2399).

Area source means any stationary source of HAP that is not a major source as defined in this subpart.

Combustion turbine engine means a device in which air is compressed in a compressor, enters a combustion chamber, and is compressed further by the combustion of fuel injected into the combustion chamber. The hot compressed combustion gases then expand over a series of curved vanes or blades arranged on a central spindle which rotates.

Deviation means any instance in which an affected source subject to this subpart, or an owner or operator of such a source:

(1) Fails to meet any requirement or obligation established by this subpart, including but not limited to any emission limitation;

(2) Fails to meet any term or condition that is adopted to implement an applicable requirement in this subpart and that is included in the operating permit for any affected source required to obtain such a permit; or

(3) Fails to meet any emission limitation in this subpart during malfunction, regardless or whether or not such failure is permitted by this subpart.

Engine means any internal combustion engine, any combustion turbine engine, or any rocket engine.

Engine test cell/stand means any apparatus used for testing uninstalled stationary or uninstalled mobile (motive) engines.

Hazardous air pollutants (HAP) means any air pollutant listed in or pursuant to section 112(b) of the CAA.

Internal combustion engine means a device in which air enters a combustion chamber, is mixed with fuel, compressed in the chamber, and combusted. Fuel may enter the combustion chamber with the air or be injected into the combustion chamber. Expansion of the hot combustion gases in the chamber rotates a shaft, either through a reciprocating or rotary action. For purposes of this subpart, this definition does not include combustion turbine engines.

Major source, as used in this subpart, shall have the same meaning as in § 63.2.

Malfunction means any sudden, infrequent, and not reasonably preventable failure of air pollution control equipment, process equipment, or a process to operate in a normal or usual manner. Failures that are caused in part by poor maintenance or careless operation are not malfunctions.

Rated power means the maximum power output of an engine in use.

Potential to emit means the maximum capacity of a stationary source to emit a pollutant under its physical and operational design. Any physical or operational limitation on the capacity of the stationary source to emit a pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation or the effect it would have on emissions is federally enforceable.

Responsible official means responsible official as defined by 40 CFR 70.2.

Rocket engine means a device consisting of a combustion chamber in which materials referred to as propellants, which provide both the fuel and the oxygen for combustion, are burned. Combustion gases escape through a nozzle, providing thrust.

Tables to Subpart PPPPP of Part 63

TABLE 1 TO SUBPART PPPPP OF PART 63.—EMISSION LIMITATIONS

[As stated in § 63.9300, you must comply with the following emission limitations]

For each new or reconstructed engine test cell/stand located at a major source which is used in whole or in part for testing * * *	You must meet one of the following emission limitations:
1. Internal combustion engines with a rated power of 25 hp (19 kW) or more.	a. Limit the concentration of CO to 5 ppmvd or less (corrected to 15 percent O_2 content); OR b. Achieve a reduction in CO of 99.9 percent or more between the inlet and outlet concentrations of CO (corrected to 15 percent O_2 content) of the emission control device.

TABLE 2 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR INITIAL COMPLIANCE DEMONSTRATIONS

[As stated in § 63.9310, you must comply with the following emission limitations]

For each engine test cell/stand complying with * * *	You must * * *	Using * * *	According to the following requirements***
1. The CO concentration emissions limitation.	Demonstrate CO emissions are 5 ppmvd or less.	A CEMS for CO and O_2 at the outlet of the engine test cell/stand or emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9325(c). The demonstration consists of the first 4-hour rolling average of measurements. The CO concentration must be corrected to 15 percent O_2content, dry basis using Equation 1 of § 63.9320.
2. The CO percent reduction emission limitation.	Demonstrate a reduction in CO of 99.9 percent or more.	A CEMS for CO and O_2 at both the inlet and outlet of the emission control device.	This demonstration is conducted immediately following a successful performance evaluation of the CEMS as required in § 63.9325(c). The demonstration consists of the first 4-hour rolling average of measurements. The inlet and outlet CO concentrations must be corrected to 15 percent O_2 content using Equation 1 of § 63.9320. The reduction in CO is calculated using Equation 2 of § 63.9320.

TABLE 3 TO SUBPART PPPPP OF PART 63.—INITIAL COMPLIANCE WITH EMISSION LIMITATIONS

[As stated in § 63.9330, you must comply with the following emission limitations]

For the * * *	You have demonstrated initial compliance if * * *
1. CO concentration emission limitation.	The first 4-hour rolling average CO concentration is 5 ppmvd or less, corrected to 15 percent O_2 content.
2. CO percent reduction emission limitation.	The first 4-hour rolling average reduction in CO is 99.9 percent or more, dry basis, corrected to 15 percent O_2 content.

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TABLE 4 TO SUBPART PPPPP OF PART 63.—CONTINUOUS COMPLIANCE WITH EMISSION LIMITATIONS

[As stated in § 63.9340, you must comply with the following emission limitations]

For the * * *y*	You must demonstrate continuous compliance by * * *
1. CO concentration emission limitation.	a. Collecting the CEMS data according to § 63.9325(a), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, according to § 63.9320; and b. Demonstrating CO emissions are 5 ppmvd or less over each 4-hour rolling averaging period.
2. CO percent reduction emission limitation.	a. Collecting the CEMS data according to § 63.9325(b), reducing the measurements to 1-hour averages, correcting them to 15 percent O_2 content, dry basis, calculating the CO percent reduction according to § 63.9320; and b. Demonstrating a reduction in CO of 99.9 percent or more over each 4-hour rolling averaging period.

TABLE 5 TO SUBPART PPPPP OF PART 63.—REQUIREMENTS FOR REPORTS

[As stated in § 63.9350, you must comply with the following emission limitations]

If you own or operate an engine test cell/stand which must comply with emission limitations, you must submit a * * *	The report must contain * * *	You must submit the report * * *
1. Compliance report	a. If there are no deviations from the emission limitations that apply to you, a statement that there were no deviations from the emission limitations during the reporting period; or	i. Semi-annually, according to the requirements in § 63.9350.
	b. If there were no periods during which the CEMS was out-of-control as specified in § 63.8(c)(7), a statement that there were no periods during which the the CEMS was out-of-control during the reporting period; or	i. Semi-annually, according to the requirements in § 63.9350.
	c. If you have a deviation from any emission limitation during the reporting period, the report must contain the information in § 63.9350(c); or	i. Semi-annually, according to the requirements in § 63.9350.
	d. If there were periods during which the CEMS was out-of-control, as specified in § 63.8(c)(7), the report must contain the information in § 63.9350(d).	i. Semi-annually, according to the requirements in § 63.9350.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.1(a)(1)	Applicability	General applicability of the General Provisions.	Yes. Additional terms defined in § 63.9375.
§ 63.1(a)(2)–(4)	Applicability	Applicability of source categories	Yes.
§ 63.1(a)(5)	[Reserved].		
§ 63.1(a)(6)–(7)	Applicability	Contact for source category information; extension of compliance through early reduction.	Yes.
§ 63.1(a)(8)	Applicability	Establishment of State rules or programs	No.
§ 63.1(a)(9)	[Reserved].		
§ 63.1(a)(10)–(14)	Applicability	Explanation of time periods, postmark deadlines.	Yes.
§ 63.1(b)(1)	Applicability	Initial applicability	Yes. Subpart PPPPP clarifies applicability at § 63.9285.
§ 63.1(b)(2)	Applicability	Title V operating permit—reference to part 70.	Yes. All major affected sources are required to obtain a title V permit.
§ 63.1(b)(3)	Applicability	Record of applicability determination	Yes.
§ 63.1(c)(1)	Applicability	Applicability after standards are set	Yes. Subpart PPPPP clarifies the applicability of each paragraph of subpart A to sources subject to subpart PPPPP.
§ 63.1(c)(2)	Applicability	Title V permit requirement for area sources	No. Area sources are not subject to subpart PPPPP.
§ 63.1(c)(3)	[Reserved].		
§ 63.1(c)(4)	Applicability	Extension of compliance for existing sources.	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.1(c)(5)	Applicability	Notification requirements for an area source becoming a major source.	Yes.
§ 63.1(d)	[Reserved].		
§ 63.1(e)	Applicability	Applicability of permit program before a relevant standard has been set.	Yes.
§ 63.2	Definitions	Definitions for part 63 standards	Yes. Additional definitions are specified in § 63.9375.
§ 63.3	Units and Abbreviations	Units and abbreviations for part 63 standards.	Yes.
§ 63.4	Prohibited Activities	Prohibited activities; compliance date; circumvention, severability.	Yes.
§ 63.5(a)	Construction/Reconstruction	Construction and reconstruction—applicability.	Yes.
§ 63.5(b)(1)	Construction/Reconstruction	Requirements upon construction or reconstruction.	Yes.
§ 63.5(b)(2)	[Reserved].		
§ 63.5(b)(3)	Construction/Reconstruction	Approval of construction	Yes.
§ 63.5(b)(4)	Construction/Reconstruction	Notification of construction	Yes.
§ 63.5(b)(5)	Construction/Reconstruction	Compliance	Yes.
§ 63.5(b)(6)	Construction/Reconstruction	Addition of equipment	Yes.
§ 63.5(c)	[Reserved].		
§ 63.5(d)	Construction/Reconstruction	Application for construction reconstruction	Yes.
§ 63.5(e)	Construction/Reconstruction	Approval of construction or reconstruction	Yes.
§ 63.5(f)	Construction/Reconstruction	Approval of construction or reconstruction based on prior State review.	Yes.
§ 63.6(a)	Applicability	Applicability of standards and monitoring requirements.	Yes.
§ 63.6(b)(1)–(2)	Compliance dates for new and reconstructed sources.	Standards apply at effective date; 3 years after effective date; upon startup; 10 years after construction or reconstruction commences for CAA section 112(f).	Yes.
§ 63.6(b)(3)	Compliance dates for new and reconstructed sources.		No.
§ 63.6(b)(4)	Compliance dates for new and reconstructed sources.	Compliance dates for sources also subject to CAA section 112(f) standards.	Yes.
§ 63.6(b)(5)	Compliance dates for new and reconstructed sources.	Notification	Yes.
§ 63.6(b)(6)	[Reserved].		
§ 63.6(b)(7)	Compliance dates for new and reconstructed sources.	Compliance dates for new and reconstructed area sources that become major.	Yes.
§ 63.6(c)(1)–(2)	Compliance dates for existing sources.	Effective date establishes compliance date	No. Existing sources are not covered by the substantive control requirements of subpart PPPPP.
§ 63.6(c)(3)–(4)	[Reserved].		
§ 63.6(c)(5)	Compliance dates for existing sources.	Compliance dates for existing area sources that become major.	Yes. If the area source becomes a major source by addition or reconstruction, the added or reconstructed portion will be subject to subpart PPPPP.
§ 63.6(d)	[Reserved].		
§ 63.6(e)(1)–(2)	Operation and maintenance requirements.	Operation and maintenance	Yes; except that you are not required to have a startup, shutdown, and malfunction plan (SSMP).
§ 63.6(e)(3)	SSMP	(1) Requirement for startup, shutdown, or malfunction and SSMP. (2) Content of SSMP.	No. Subpart PPPPP does not require a SSMP.
§ 63.6(f)(1)	Compliance except during startup, shutdown, or malfunction.		No. You must comply with emission standards at all times, including startup, shutdown, and malfunction.
§ 63.6(f) (2)–(3)	Methods for Determining Compliance.	Compliance based on performance test, operation and maintenance plans, records, inspection.	Yes.
§ 63.6(g) (1)–(3)	Alternative Standard	Procedures for getting an alternative standard.	Yes.
§ 63.6(h)	Opacity/Visible Emission (VE) Standards.	Requirements for opacity/VE Standards	No. Subpart PPPPP does not establish opacity/VE standards and does not require continuous opacity monitoring systems (COMS).

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TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.6(i) (1)–(14)	Compliance Extension	Procedures and criteria for Administrator to grant compliance extension.	No. Compliance extension provisions apply to existing sources, which do not have emission limitations in subpart PPPPP.
§ 63.6(j)	Presidential Compliance Exemption.	President may exempt source category from requirement to comply with rule.	Yes.
§ 63.7(a) (1)–(2)	Performance Test Dates	Dates for conducting initial performance testing and other compliance demonstrations; must conduct within 180 days after first subject to rule.	No. Subpart PPPPP does not require performance testing.
§ 63.7(a)(3)	Section 114 Authority	Administrator may require a performance test under CAA section 114 at any time.	Yes.
§ 63.7(b)(1)	Notification of Performance Test.		No.
§ 63.7(b)(2)	Notification No. of Rescheduling.		No.
§ 63.7(c)	Quality Assurance/Test Plan		No.
§ 63.7(d)	Testing Facilities		No.
§ 63.7(e)(1)	Conditions FOR Conducting Performance Tests.		No.
§ 63.7(e)(2)	Conditions for Conducting Performance Tests.		No.
§ 63.7(e)(3)	Test Run Duration		No.
§ 63.7(e)(4)	Other Performance Testing	Administrator may require other testing under CAA section 114.	Yes.
§ 63.7(f)	Alternative Test Method		No.
§ 63.7(g)	Performance No. Test Data Analysis.		No.
§ 63.7(h)	Waiver of Tests		No.
§ 63.8(a)(1)	Applicability of Monitoring Requirements.	Subject to all monitoring requirements in standard.	Yes. Subpart PPPPP contains specific requirements for monitoring at § 63.9325.
§ 63.8(a)(2)	Performance Specifications.	Performance Specifications in appendix B of 40 CRF part 60 apply.	Yes.
§ 63.8(a)(3)	[Reserved].		
§ 63.8(a)(4)	Monitoring with Flares		No. Subpart PPPPP does not have monitoring requirements for flares.
§ 63.8(b)(1)	Monitoring	Must conduct monitoring according to standard unless Administrator approves alternative.	Yes.
§ 63.8(b) (2)–(3)	Multiple Effluents and Multiple Monitoring Systems.	(1) Specific requirements for installing monitoring systems. (2) Must install on each effluent before it is combined and before it is released to the atmosphere unless Administrator approves otherwise. (3) If more than one monitoring system on an emission point, must report all monitoring system results, unless one monitoring system is a backup.	Yes.
§ 63.8(c)(1)	Monitoring System Operation and Maintenance.	Maintain monitoring system in a manner consistent with good air pollution control practices.	Yes.
§ 63.8(c)(1)(i)	Routine and Predictable Startup, Shutdown, or Malfunction.		No.
§ 63.8(c)(1)(ii)	Startup, Shutdown, or Malfunction not in SSMP.		No.
§ 63.8(c)(1)(iii)	Compliance with Operation and Maintenance Requirements.	(1) Determination by Administrator whether source is complying with operation and maintenance requirements. (2) Review of source operation and maintenance procedures, records, manufacturer's instructions, recommendations and inspection.	Yes.
63.8(c) (2)–(3)	Monitoring System Installation.	(1) Must install to get representative emission of parameter measurements. (2) Must verify operational status before or at performance test.	Yes.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
§ 63.8(c)(4)	Continuous Monitoring System (CMS) requirements.		No. Follow specific Requirements in § 63.9335(a) and (b).
§ 63.8(c)(5)	COMS Minimum Procedures		No.
§ 63.8(c) (6)–(8)	CMS Requirements	(1) Zero and high level calibration check requirements. (2) Out-of-control periods.	Yes; except that subpart PPPPP does not require COMS.
§ 63.8(d)	CMS Quality Control	(1) Requirements for CMS quality control, including calibration, etc. (2) Must keep quality control plan on record for 5 years; keep old versions for 5 years after revisions.	Yes.
§ 63.8(e)	CMS Performance Evaluation.	Notification, performance evaluation test plan, reports.	Yes; except for § 63.8(e)(5)(ii), which applies to COMS.
§ 63.8(f) (1)–(5)	Alternative Monitoring Method.	Procedures for Administrator to approve alternative monitoring.	Yes.
§ 63.8(f)(6)	Alternative to Relative Accuracy Test.	Procedures for Administrator to approve alternative relative accuracy tests for CEMS.	Yes.
§ 63.8(g)	Data Reduction	(1) COMS 6-minute averages calculated over at least 36 evenly spaced data points. (2) CEMS 1-hour averages computed over at least 4 equally spaced data points.	Yes; except that provisions for COMS are not applicable Averaging periods for demonstrating compliance are specified at § 63.9340
§ 63.8(g)(5)	Data Reduction	Data that cannot be used in computing averages for CEMS and COMS.	No. Specific language is located at § 63.9335(a).
§ 63.9(a)	Notification Requirements	Applicability and state delegation	Yes.
§ 63.9(b)(1)–(5)	Initial Notifications	(1) Submit notification 120 days after effective date;. (2) Notification of intent to construct/reconstruct; Notification of commencement of construct/reconstruct; Notification of start-up;. (3) Contents of each.	Yes.
§ 63.9(c)	Request for Compliance Extension.		No.
§ 63.9(d)	Notification of Special Compliance Requirements for New Source.	For sources that commence construction between proposal and promulgation and want to comply 3 years after effective date.	Yes.
§ 63.9(e)	Notification of Performance Test.		No.
§ 63.9(f)	Notification of Opacity/VE Test.		No.
§ 63.9(g)(1)	Additional Notifications When Using CMS.	Notification of performance evaluation	Yes.
§ 63.9(g)(2)	Additional Notifications When Using CMS.		No.
§ 63.9(g)(3)	Additional Notifications When Using CMS.	Notification that exceeded criterion for relative accuracy.	Yes. If alternative is in use.
§ 63.9(h)(1)–(6)	Notification of Compliance Status.	(1) Contents (2) Due 60 days after end of performance test or other compliance demonstration, except for opacity/VE, which are due after 30 days. (3) When to submit to Federal vs. State authority.	Yes.
§ 63.9(i)	Adjustment of Submittal Deadlines.	Procedures for Administrator to approve change in when notifications must be submitted.	Yes.
§ 63.9(j)	Change in Previous Information.	Must submit within 15 days after the change	Yes.
§ 63.10(a)	Recordkeeping/Reporting	(1) Applies to all, unless compliance extension. (2) When to submit to Federal vs. State authority. (3) Procedures for owners of more than one source.	Yes.
§ 63.10(b)(1)	Recordkeeping/Reporting	(1) General requirements (2) Keep all records readily available.	Yes.

TABLE 6 TO SUBPART PPPPP OF PART 63.—APPLICABILITY OF GENERAL PROVISIONS TO SUBPART PPPPP OF PART 63—Continued

[As stated in § 63.9365, you must comply with the following emission limitations]

Citation	Subject	Brief description	Applies to subpart PPPPP of part 63
		(3) Keep for 5 years.	
§ 63.10(b)(2)(i)–(v) ..	Records related to Startup, Shutdown, or Malfunction.	.....	No.
§ 63.10(b)(2)(vi)–(xi)	CMS Records	Malfunctions, inoperative, out-of-control	Yes.
§ 63.10(b)(2)(xii)	Records	Records when under waiver	Yes.
§ 63.10(b)(2)(xiii)	Records	Records when using alternative to relative accuracy test.	Yes.
§ 63.10(b)(2)(xiv)	Records	All documentation supporting initial notification and notification of compliance status.	Yes.
§ 63.10(b)(3)	Records	Applicability Determinations	Yes.
§ 63.10(c)(1)–(6), (9)–(15).	Records	Additional records for CEMS	Yes.
§ 63.10(c) (7)–(8)	Records	Records of excess emissions and parameter monitoring exceedances for CMS..	No. Specific language is located at § 63.9355.
§ 63.10(d)(1)	General Reporting Requirements.	Requirement to report	Yes.
§ 63.10(d)(2)	Report of Performance Test Results.	When to submit to Federal or State authority.	Yes.
§ 63.10(d)(3)	Reporting Opacity or VE Observations.	.....	No.
§ 63.10(d)(4)	Progress Reports	.....	No.
§ 63.10(d)(5)	Startup, Shutdown, or Malfunction Reports.	.....	No.
§ 63.10(e)(1) and (2)(i).	Additional CMS Reports	Additional CMS reports	Yes.
§ 63.10(e)(2)(ii)	Additional CMS Reports	.....	No.
§ 63.10(e)(3)	Additional CMS Reports	Excess emissions and parameter exceedances report.	No. Specific language is located in § 63.9350.
§ 63.10(e)(4)	Additional CMS Reports		No.
§ 63.10(f)	Waiver for Recordkeeping/Reporting.	Procedures for Administrator to waive	Yes.
§ 63.11	Control Device Requirements.		No.
§ 63.12	State Authority and Delegations.	State authority to enforce standards	Yes.
§ 63.13	Addresses of State Air Pollution Control Offices and EPA Regional Offices.	Addresses where reports, notifications, and requests are send.	Yes.
§ 63.14	Incorporation by reference ...	Test methods incorporated by reference	Yes.
§ 63.15	Availability of information and confidentiality.	Public and confidential information	Yes.

[FR Doc. 02–11296 Filed 5–13–02; 8:45 am]

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Federal Register

Tuesday,
May 14, 2002

Part IV

National Archives and Records Administration

36 CFR Part 1230

Micrographic Records Management; Republication; Rule

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Federal Register Format Changes

EDITOR'S NOTE: The Office of the Federal Register is republishing the following document in a special format to illustrate proposed changes to the appearance of the printed and PDF pages of the daily Federal Register. This experimental format uses a two-column layout, sans serif fonts, larger and bolder headings in the preamble and tables, bullets in the Summary, more space between lines of regulatory text, and makes other changes to the appearance of text and tables. The format changes are intended to improve the readability and public understanding of Federal regulations and notices without increasing white space that would affect printing costs charged to agencies. The proposed format would result in no change or a slight decrease in the number of pages printed. The format changes shown below do not affect the legal status of the final rule issued by the National Archives and Records Administration.

We invite agencies and members of the public to comment on the proposed format by email at: fedreg.legal@nara.gov, or by U.S. mail at: National Archives and Records Administration, Office of the Federal Register (NF), Federal Register Format Changes, 700 Pennsylvania Ave., NW, Washington, DC 20408-0001. For more information the proposed format, go to the Federal Register web site at: http://www.nara.gov/fedreg/plainlan.html#top.

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1230

RIN 3095-AB06

Micrographic Records Management

AGENCY: National Archives and Records Administration (NARA).

ACTION: Final rule.

SUMMARY: NARA is revising its Micrographic Records Management regulations to:

- Update the editions of standards incorporated by reference to the most current edition; and
- Rewrite the regulations in plain language format.

This final rule will affect Federal agencies.

DATES: This rule is effective June 10, 2002. The incorporation by reference of certain publications listed in this rule is approved by the Director of the Federal Register as of June 10, 2002.

FOR FURTHER INFORMATION CONTACT: Kim Richardson at telephone number 301-713-7360, ext. 240, or fax number 301-713-7270.

SUPPLEMENTARY INFORMATION: NARA published a proposed rule on September 11, 2001, at 66 FR 47125, for a 60-day public comment period. We received comments from 2 Federal agencies, 1 records management professional organization, and 2 members from the public. Following is a summary of the comments and a discussion of the changes that we made to the proposed rule.

Terminology (§§ 1230.4 and 1230.7(f))

ARMA International (ARMA) recommended replacing the term "records schedule" with "records retention schedule" in § 1230.7(f) and defining the suggested term in § 1230.4, Definitions. We did not adopt this comment because "records schedule" is a standard records management term that is used throughout NARA regulations. The term does not need to be included in Part 1230 because it is already defined in 36 CFR 1220.14, which applies to the entire Subchapter B.

Discontinuing Filming Temporary Records (§ 1230.10)

A Federal agency asked if NARA would require agencies to request approval before discontinuing filming temporary records when the records, regardless of format, would be kept for the same period of time. Agencies are not required to request approval to film temporary records (§ 1230.10(b)) and the same is true for discontinuing microfilming temporary records. The principle, which has been in place for many years now, is that the nature and use of temporary records is not changed when the original paper is copied to microform.

Filming Requirements (§ 1230.14)

A Federal agency pointed out that § 1230.14 no longer includes the phrase "when the original paper records will be destroyed or otherwise disposed of," though § 1230.22 still makes that distinction. We did not intend to change § 1230.14(a) when we reformatted the paragraph in plain language, and have added the phrase in this final rule. We also modified § 1230.14(a)(2) for clarity.

Using Dry Silver Film for Permanent Records (§ 1230.14)

A member from the public recommended that we consider revising the section to permit the use of dry silver film for filming permanent records. We did not adopt this change because for long-term retention, the dry-silver film is much riskier than the traditional silver-gelatin film.

- Dry silver film that meets the ISO standard has a life expectancy rating of only 100 years, while wet-processed silver-gelatin film with a polyester base has a higher life expectancy rating of 500 years.
- Dry silver film is never "fixed" meaning, it will remain potentially developable for an indefinite period of time. Fixing is the process of removing the light sensitive silver salts. This means if the film is ever exposed to high temperatures (e. g., 120 degrees Fahrenheit to 130 degrees Fahrenheit) such as with an air conditioner failure, the film will "develop" and turn completely black, causing a catastrophic loss of all the information on the film.

Quality Standards (§ 1230.14(d))

ARMA and a member from the public suggested adding a clause to the second sentence so that it will read as follows: "Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991." We accept this comment and have incorporated the suggested clause.

Film and Image Requirements for Temporary Records (§ 1230.16(a))

ARMA recommended use of the ARMA glossary to define temporary records in this section. We did not adopt this comment. Section 1230.16(a) does not define "temporary records" but pertains to film and image requirements. We require that temporary records retained for 100 years or longer meet the same image requirements as permanent records. This is not a new requirement. It already exists in the current regulation.

Inspection Period (§ 1230.22(b))

ARMA suggested changing the inspection period from every 2 years to every 5 years because they believe the longer inspection period is sufficient under appropriate storage conditions and would be less costly. No Federal agency has objected to the 2-year inspection requirement that NARA selected.

We partially accept this comment. We believe that it is important to conduct an initial inspection when the microfilm is 2 years old to identify any problems that did not appear when the film was processed and to ensure that it is stored in the proper environment. Acetate-based microfilm stock, which was used prior to 1990, is more susceptible to deterioration than the polyester-based microfilm used today. Therefore, we are retaining the requirement for inspection every 2 years for microfilms produced before 1990. Unless there is a catastrophic event (e.g., extended failure of environmental controls), microfilms produced during or after 1990 must be inspected on a 5-year cycle after the initial 2-year inspection.

Percentage of Inspection Sampling (§ 1230.22(a))

ARMA commented that § 1230.22(a) does not indicate the percentage of inspection sampling that is required. They questioned whether inspection is to cover 100 percent of all rolls of film or a lesser sampling. They recommended a sampling of approximately 10 percent because it would provide a reliable inspection and help reduce costs incurred with the inspection process. They also recommended adding a separate section to address

microfilm inspection procedures. We did not adopt these comments. There is no need for a change in language, since we believe that what ARMA is concerned about is adequately covered in ANSI/AIIM MS45–1990. That standard addresses both the proper sampling procedures (1/1000th of the group or 100 microforms, whichever is greater, or the whole group if less than 100 microforms) and the proper inspection procedures. No additional language is, therefore, required.

This final rule is not a significant regulatory action for the purposes of Executive Order 12866 and has not been reviewed by the Office of Management and Budget. As required by the Regulatory Flexibility Act, I certify that this rule will not have a significant impact on a substantial number of small entities. This rule does not have any federalism implications.

List of Subjects in 36 CFR Part 1230

Archives and records, Incorporation by reference.

■ For the reasons set forth in the preamble, NARA revises part 1230 of title 36, Code of Federal Regulations, to read as follows:

PART 1230—MICROGRAPHIC RECORDS MANAGEMENT

Subpart A—General

Sec.

1230.1 What does this part cover?
1230.2 What is the authority for this part?
1230.3 Publications incorporated by reference.
1230.4 Definitions.

Subpart B—Program Requirements

1230.7 What must agencies do to manage microform records?

Subpart C—Microfilming Standards

1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?
1230.12 What are the steps to be followed in filming records?
1230.14 What are the filming requirements for permanent and unscheduled records?
1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

Subpart D—Storage, Use and Disposition Standards of Microform Records

1230.20 How should microform records be stored?
1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?
1230.24 What are NARA inspection requirements for temporary microform records?
1230.26 What are the use restrictions for permanent and unscheduled microform records?
1230.28 What must agencies do to send permanent microform records to a records storage facility?
1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

Subpart E—Centralized Micrographic Services

1230.50 What micrographic services are available from NARA?

Authority: 44 U.S.C. 2907, 3302 and 3312.

Subpart A—General

§ 1230.1 What does this part cover?

This part covers the standards and procedures for using micrographic technology to create, use, store, inspect, retrieve, preserve, and dispose of Federal records.§ 1230.2 What is the authority for this part?

44 U.S.C. chapters 29 and 33, authorize the Archivist of the United States to:

(a) Establish standards for copying records by photographic and microphotographic means;

(b) Establish standards for the creation, storage, use, and disposition of microform records in Federal agencies; and

(c) Provide centralized microfilming services for Federal agencies.

§ 1230.3 Publications incorporated by reference.

(a) *General.* The following publications are hereby incorporated by reference into Part 1230. They are available from the issuing organizations at the addresses listed in this section. They may also be examined at the Office of the Federal Register, 800 North Capitol Street NW, suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. These materials are incorporated as they exist on the date of approval, and a notice of any change in these materials will be published in the **Federal Register.**

(b) *American National Standards Institute (ANSI) and International (ISO) standards.* ANSI standards cited in this part are available from the American National Standards Institute, 25 West 43rd St., 4th Floor, New York, NY 10036. The standards can be ordered on line at http://webstore.ansi.org/ansidocstore/default.asp.

ISO 10602:1995(E), February 1, 1995, Second edition, Photography–Processed silver-gelatin type black-and-white film–Specifications for stability.

ANSI/PIMA IT9.2–1998, April 15, 1998, American National Standard for Imaging Materials—Photographic Processed Films, Plates, and Papers—Filing Enclosures and Storage Containers.

ANSI/ISO 5.2-1991, ANSI/NAPM IT2.19–1994, February 20, 1995, American National Standard for Photography—Density Measurements—Part 2: Geometric Conditions for Transmission Density.

ANSI/ISO 5-3-1995, ANSI/NAPM IT2.18–1996, March 8, 1996, American National Standard for Photography—Density Measurements—Part 3: Spectral Conditions.

ISO 18911: 2000(E), First edition, November 1, 2000, Imaging materials–Processed safety photographic films—Storage practices.

(c) *Association of Information and Image Management (AIIM) Standards.* You may obtain the following standards from the Association of Information and Image Management, 1100 Wayne Avenue, suite 1100, Silver Spring, MD 20910. The standards can be ordered on line at http://www.aiim.org/.

ANSI/AIIM MS1–1996, August 8, 1996, Standard Recommended Practice for Alphanumeric Computer-Output Microforms—Operational Practices for Inspection and Quality Control.

ANSI/AIIM MS5–1992, December 21, 1992, Standard for Information and Image Management–Microfiche.

ANSI/AIIM MS14–1996, August 8, 1996, Standard Recommended Practice–Specifications for 16mm and 35mm Roll Microfilm.

ANSI/AIIM MS19–1993, August 18, 1993, Standard Recommended Practice–Identification of Microforms.

ANSI/AIIM MS23–1998, June 2, 1998, Standard Recommended Practice–Production, Inspection, and Quality Assurance of First-Generation, Silver Microforms of Documents.

ANSI/AIIM MS32–1996, February 16, 1996, Standard Recommended Practice–Microrecording of Engineering Source Documents on 35mm Microfilm.

ANSI/AIIM MS41–1996, July 16, 1996, Dimensions of Unitized Microfilm Carriers and Apertures (Aperture, Camera, Copy and Image Cards).

ANSI/AIIM MS43–1998, June 2, 1998, Standard Recommended Practice–Operational Procedures–Inspection and Quality Control of Duplicate Microforms of Documents and From COM.

ANSI/AIIM MS45–1990, January 22, 1990, Recommended Practice for Inspection of Stored Silver-Gelatin Microforms for Evidence of Deterioration.

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ANSI/ISO 3334–1991, ANSI/AIIM MS51–1991, May 10, 1991, Micrographics—ISO Resolution Test Chart No. 2—Description and Use.

§ 1230.4 Definitions.

The following definitions apply to this part:

Archival microfilm. A photographic film that meets the standards described in § 1230.14 and that is suitable for the preservation of permanent records when stored in accordance with § 1230.20(a). Such film must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

Background density. The opacity of the area of the microform not containing information.

Computer-assisted retrieval (CAR) system. A records storage and retrieval system, normally microfilm-based, that uses a computer for indexing, automatic markings such as blips or bar codes for identification, and automatic devices for reading those markings and, in some applications, for transporting the film for viewing.

Computer Output Microfilm (COM). Microfilm containing data converted and recorded from a computer.

Facility. An area used exclusively to make or copy microforms.

Microfilm. (1) Raw (unexposed and unprocessed) fine-grain, high resolution photographic film with characteristics that make it suitable for use in micrographics;

(2) The process of recording microimages on film; or

(3) A fine-grain, high resolution photographic film containing microimages.

Microform. Any form containing microimages.

Microimage. A document such as a page of text or a drawing that is too small to be read without magnification.

Permanent record. Permanent record has the meaning specified in § 1220.14 of this chapter.

Records storage facility. Records storage facility has the meaning specified in § 1220.14 of this chapter.

Temporary record. Temporary record has the meaning specified in § 1220.14 of this chapter.

Unscheduled record. Unscheduled record has the meaning specified in § 1220.14 of this chapter.

Use or work copies. Duplicates of original film made to be used for reference or for duplication on a recurring or large-scale basis. These are not preservation master copies, which must be stored unused as specified in § 1230.20.

Subpart B—Program Requirements

§ 1230.7 What must agencies do to manage microform records?

Federal agencies must manage microform records by taking the following actions:

(a) Assign responsibility for an agencywide program for managing microform records and notify the National Archives and Records Administration (NWM), 8601 Adelphi Rd., College Park, MD 20740-6001 of the name and title of the person assigned the responsibility.

(b) Manage the microform records as part of other records and information resources management programs of the agency.

(c) Include microform records management objectives, responsibilities, and authorities in pertinent agency directives and disseminate them to appropriate officials.

(d) Address records management issues, including disposition, before approving new microform records systems or enhancements to existing systems.

(e) Train the managers and users of microform records.

(f) Develop records schedules covering microform records and finding aids, secure NARA approval, and apply the disposition instructions.

(g) Schedule computerized indexes associated with microform records, such as in a computer-assisted retrieval (CAR) system, in accordance with part 1234 of this chapter.

(h) Review practices used to create and manage microform records periodically to ensure compliance with NARA standards in this part.

Subpart C—Microfilming Standards

§ 1230.10 Do agencies need to request NARA approval for the disposition of all microform and source records?

(a) *Permanent or unscheduled records.* Agencies must schedule both source documents (originals) and microforms. NARA must approve the schedule, Standard Form (SF) 115, Request for Records Disposition Authority, in accordance with part 1228 of this chapter before any records, including source documents, can be destroyed. NARA will not approve the destruction of original records that have intrinsic value, or security classified or otherwise restricted original records that are scheduled as permanent, or original records that are scheduled as permanent and that have other characteristics that would limit the usefulness of microform copies for public reference.

(1) Agencies that comply with the standards in § 1230.14 must include on the SF 115 the following certification: "This certifies that the records described on this form were (or will be) microfilmed in accordance with the standards set forth in 36 CFR part 1230."

(2) Agencies using microfilming methods, materials, and procedures that do not meet the standards in § 1230.14(a) must include on the SF 115 a description of the system and standards used.

(3) When an agency intends to retain the silver original microforms of permanent records and destroy the original records, the agency must certify in writing on the SF 115 that the microform will be stored in compliance with the standards of § 1230.20 and inspected as required by § 1230.22.

(b) *Temporary records.* Agencies do not need to obtain additional NARA approval when destroying scheduled temporary records that have been microfilmed. The same approved retention period for temporary records is applied to microform copies of these records. The original records can be destroyed once microfilm is verified, unless legal requirements prevent their early destruction.

§ 1230.12 What are the steps to be followed in filming records?

(a) Ensure that the microforms contain all information shown on the originals and that they can be used for the purposes the original records served.

(b) Arrange, describe, and index the filmed records to permit retrieval of any particular document or component of the records. Title each microform roll or fiche with a titling target or header. For fiche, place the titling information in frame 1 if the information will not fit on the header. At a minimum, titling information must include:

(1) The title of the records;

(2) The number or identifier for each unit of film;

(3) The security classification, if any; and

(4) The name of the agency and organization the inclusive dates, names, or other data identifying the records to be included on a unit of film.

(c) Add an identification target showing the date of filming. When necessary to give the film copy legal standing, the target must also identify the person who authorized the microfilming. See ANSI/AIIM MS19–1993 for standards for identification targets.

(d) The following formats are mandatory standards for microforms:

(1) *Roll film.* **(i)***Source documents.* The formats described in ANSI/AIIM MS14–1996 must be used for microfilming source documents on 16mm and 35mm roll film. A reduction ratio no greater than 1:24 is recommended for typewritten or correspondence types of documents. See ANSI/AIIM MS23–1998 for the appropriate reduction ratio and format for meeting the image quality requirements. When microfilming on 35mm film for aperture card applications, the format dimensions in ANSI/AIIM MS32–1996, Table 1 are mandatory, and the aperture card format "D Aperture" shown in ANSI/AIIM MS41–1996, Figure 1, must be used. The components of the aperture card, including the paper and adhesive, must conform to the

requirements of ANSI/PIMA IT9.2–1998. The 35mm film used in the aperture card application must conform to film designated as LE 500 in ANSI/NAPM IT9.1–1996.

(ii) *COM.* Computer output microfilm (COM) generated images must be the simplex mode described in ANSI/AIIM MS14–1996 at an effective ratio of 1:24 or 1:48 depending upon the application.

(2) *Microfiche.* For microfilming source documents or computer generated information (COM) on microfiche, the formats and reduction ratios prescribed in ANSI/AIIM MS5–1992 (R1998) must be used as specified for the size and quality of the documents being filmed. See ANSI/AIIM MS23–1998 for determining the appropriate reduction ratio and format for meeting the image quality requirements.

(e) *Index placement.* **(1)***Source documents.* When filming original (source) documents, place indexes, registers, or other finding aids, if microfilmed, either in the first frames of the first roll of film or in the last frames of the last roll of film of a series. For microfiche, place them in the last frames of the last microfiche or microfilm jacket of a series.

(2) *COM.* Place indexes on computer-generated microforms following the data on a roll of film or in the last frames of a single microfiche, or the last frames of the last fiche in a series. Other index locations may be used only if dictated by special system constraints.

§ 1230.14 What are the filming requirements for permanent and unscheduled records?

(a) *General requirements.* **(1)** Apply the standards in this section for microfilming of:

(i) Permanent paper records where the original paper record will be destroyed or otherwise disposed of;

(ii) Unscheduled paper records where the original paper record will be destroyed or otherwise disposed of; and

(iii) Permanent and unscheduled original microform records (no paper originals) produced by automation, such as computer output microfilm (COM).

(2) Do not destroy permanent or unscheduled paper records after microfilming without authorization from NARA on a SF 115 (see § 1230.10(a)).

(b) *Film stock standards.* Polyester-based silver gelatin type film that conforms to ANSI/NAPM IT9.1—1996 for LE 500 film must be used in all applications.

(c) *Processing standards.* Microforms must be processed so that the residual thiosulfate ion concentration will not exceed 0.014 grams per square meter in accordance with ANSI/NAPM IT9.1–1996. Follow processing procedures in ANSI/AIIM MS1–1996 and MS23–1998.

(d) *Quality standards.* **(1)** *Resolution.* **(i)** *Source documents.* Determine minimum resolution on microforms of source documents using the method in the Quality Index Method for determining resolution and anticipated losses when duplicating, as described in ANSI/AIIM MS23–1998 and MS43–1998. Perform resolution tests using a ISO 3334-1991 Resolution Test Chart or a commercially available certifiable target manufactured to comply with this standard, and read the patterns following the instructions of ISO 3334–1991. Use the smallest character used to display information to determine the height used in the Quality Index formula. A Quality Index of five is required at the third generation level.

(ii) *COM.* Computer output microforms (COM) must meet the requirements of ANSI/AIIM MS1–1996.

(2) *Background density of images.* The background ISO standard visual diffuse transmission density on microforms must be appropriate to the type of documents being filmed. The procedure for density measurement is described in ANSI/AIIM MS23–1998. The densitometer must meet with ANSI/NAPM IT2.18–1996, for spectral conditions and ANSI/NAPM IT2.19–1994, for geometric conditions for transmission density.

(i) Recommended visual diffuse transmission background densities for images of documents are as follows:

Classification	Description of document	Background density
Group 1	High-quality, high contrast printed book, periodicals, and black typing.	1.3–1.5
Group 2	Fine-line originals, black opaque pencil writing, and documents with small high contrast printing.	1.15–1.4
Group 3	Pencil and ink drawings, faded printing, and very small printing, such as footnotes at the bottom of a printed page.	1.0–1.2
Group 4	Low-contrast manuscripts and drawing, graph paper with pale, fine-colored lines; letters typed with a worn ribbon; and poorly printed, faint documents.	0.8–1.0
Group 5	Poor-contrast documents (special exception).	0.7–0.85

(ii) Recommended visual diffuse transmission densities for computer generated images are as follows:

Film Type	Process	Density Measurement Method	Min. Dmax[1]	Max. Dmin[1]	Minimum Density Difference
Silver gelatin	Conventional	Printing or diffuse	0.75	0.15	0.60
Silver gelatin	Full reversal	Printing	1.50	0.20	1.30

[1]Character or line density, measured with a microdensitometer or by comparing the film under a microscope with an image of a known density.

(3) *Base plus fog density of films.* The base plus fog density of unexposed, processed films must not exceed 0.10. When a tinted base film is used, the density will be increased. The difference must be added to the values given in the tables in paragraph (d)(2) of this section.

(4) *Line or stroke width.* Due to optical limitations in most photographic systems, film images of thin lines appearing in the original document will tend to fill in as a function of their width and density. Therefore, as the reduction ratio of a given system is increased, reduce the background density as needed to ensure that the copies will be legible.

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§ 1230.16 What are the film and image requirements for temporary records, duplicates, and user copies?

(a) *Temporary records with a retention period over 99 years.* Follow the film and image requirements in § 1230.14.

(b) *Temporary records to be kept for less than 100 years.* NARA does not require the use of specific standards. Select a film stock that meets agency needs and ensures the preservation of the microforms for their full retention period. Consult appropriate ANSI standards, available as noted in § 1230.3, or manufacturer's instructions for processing microfilm of these temporary records. Follow the manufacturer's recommendations for production and maintenance of temporary microfilm to ensure that the image is accessible and usable for the entire retention period.

Subpart D—Storage, Use and Disposition Standards for Microform Records

§ 1230.20 How should microform records be stored?

(a) *Permanent and unscheduled records.* Store permanent and unscheduled microform records under the extended term storage conditions specified in ISO 18911:2000 and ANSI/PIMA IT9.2–1998, except that the relative humidity of the storage area must be a constant 35 percent RH, plus or minus 5 percent. Do not store non-silver copies of microforms in the same storage area as silver gelatin originals or duplicate copies.

(b) *Temporary records.* Store temporary microform records under conditions that will ensure their preservation for their full retention period. Agencies may consult Life Expectance (LE) guidelines in ANSI/AIIM standards (see § 1230.3 for availability) for measures that can be used to meet retention requirements.

§ 1230.22 What are NARA inspection requirements for permanent and unscheduled microform records?

(a) Agencies must inspect, or arrange to pay a contractor or NARA to inspect the following categories of microform records stored at the agency, at a commercial records storage facility, or at a NARA records center following the inspection requirements in paragraph (b) of this section:

(1) Master films of permanent records microfilmed in order to dispose of the original records;

(2) Master films of permanent records originally created on microfilm;

(3) Other master films scheduled for transfer to the National Archives; and

(4) Master films of unscheduled records.

(b) The films listed in paragraph (a) of this section must be inspected initially in accordance with ANSI/AIIM MS45—1990. All films must be inspected when they are 2 years old. After the initial 2-year inspection, unless there is a catastrophic event, the films must be inspected as follows until legal custody is transferred to the National Archives and Records Administration:

(1) For microfilm that is/was produced after 1990, inspect the microfilm every 5 years.

(2) For microfilm that was produced prior to 1990, inspect the microfilm every 2 years.

(c) To facilitate inspection, the agency must maintain an inventory of microfilm listing each microform series/publication by production date, producer, processor, format, and results of previous inspections.

(d) The elements of the inspection shall consist of:

(1) An inspection for aging blemishes following ANSI/AIIM MS45–1990;

(2) A rereading of resolution targets;

(3) A remeasurement of density; and

(4) A certification of the environmental conditions under which the microforms are stored, as specified in § 1230.20(a).

(e) The agency must prepare an inspection report, and send a copy to NARA in accordance with § 1230.28(b). The inspection report must contain:

(1) A summary of the inspection findings, including:

(i) A list of batches by year that includes the identification numbers of microfilm rolls and microfiche in each batch;

(ii) The quantity of microforms inspected;

(iii) An assessment of the overall condition of the microforms;

(iv) A summary of any defects discovered, e.g., redox blemishes or base deformation; and

(v) A summary of corrective action taken.

(2) A detailed inspection log created during the inspection that contains the following information:

(i) A complete description of all records inspected (title; roll or fiche number or other unique identifier for each unit of film inspected; security classification, if any; and inclusive dates, names, or other data identifying the records on the unit of film);

(ii) The date of inspection;

(iii) The elements of inspection (see paragraph (a)(4) of this section);

(iv) Any defects uncovered; and

(v) The corrective action taken.

(f) If an inspection shows that a master microform is deteriorating, the agency must make a silver duplicate in accordance with § 1230.14 to replace the deteriorating master. The duplicate film will be subject to the inspection requirements (see § 1230.22) before transfer to a record center or to the National Archives.

(g) Inspection must be performed in an environmentally controlled area in accordance with ANSI/AIIM MS45–1990.

§ 1230.24 What are NARA inspection requirements for temporary microform records?

NARA recommends, but does not require, that agencies use the inspection by sampling procedures described in § 1230.22(a) and (b).

§ 1230.26 What are the use restrictions for permanent and unscheduled microform records?

(a) Do not use the silver gelatin original microform or duplicate silver gelatin microform of permanent or unscheduled records created in accordance with § 1230.14 of this part (archival microform) for reference purposes. Agencies must ensure that the archival microform remains clean and undamaged during the process of making a duplicating master.

(b) Use duplicates for:

(1) Reference;

(2) Further duplication on a recurring basis;

(3) Large-scale duplication; and

(4) Distribution of records on microform.

(c) Agencies retaining the original record in accordance with an approved records disposition schedule may apply agency standards for the use of microform records.

§ 1230.28 What must agencies do to send permanent microform records to a records storage facility?

(a) Follow the procedures in part 1228, subpart I, of this chapter and the additional requirements in this section.

(b) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

(c) Include the following information on the transmittal (SF 135 for NARA records centers), or in an attachment to the transmittal. For records sent to an agency records center or commercial records storage facility, submit this information to NARA as part of the documentation required by § 1228.154(c)(2) of this chapter:

(1) Name of the agency and program component;

(2) The title of the records and the media/format used;

(3) The number or identifier for each unit of film;

(4) The security classification, if any;

(5) The inclusive dates, names, or other data identifying the records to be included on a unit of film;

(6) Finding aids that are not contained in the microform; and

(7) The inspection log forms and inspection reports required by § 1230.22(a)-(5) and (6).

(d) Agencies may transfer permanent microform records to a records storage facility meeting the storage requirements in § 1230.20(a) (see § 1228.152(e)(3) of this chapter for NARA centers) only after the first inspection or with certification that the microforms will be inspected by the agency, an agency contractor, or a NARA records center (on a reimbursable basis) when the microforms become 2 years old.

§ 1230.30 How do agencies transfer permanent microform records to the legal custody of the National Archives?

(a) Follow the procedures in part 1228, subpart L, of this chapter and the additional requirements in this section.

(b) Originate the transfer by submitting an SF 258, Agreement to Transfer Records to the National Archives of the United States, unless otherwise instructed by NARA.

(c) If the records are not in a NARA records center, submit the information specified in § 1230.28(c).

(d) Transfer the silver gelatin original (or duplicate silver gelatin microform created in accordance with § 1230.14) plus one microform copy.

(e) Ensure that the inspection of the microform is up-to-date. If the microform records were recently produced, please note that NARA will not accession permanent microform records until the first inspection (when the microforms are 2 years old) has been performed.

(f) Package non-silver copies separately from the silver gelatin original or silver duplicate microform copy and clearly label them as non-silver copies.

Subpart E—Centralized Micrographic Services

§ 1230.50 What micrographic services are available from NARA?

Some NARA records centers provide reimbursable microfilming services, including preparing, indexing, and filming of records, inspection of film, and labeling of film containers. Agencies desiring microfilming services from NARA should contact the Office of Regional Records Services (NR), 8601 Adelphi Rd., College Park, MD 20740-6001, or the director of the NARA records center serving the agency's records (see § 1228.150(a) of this chapter). The fees for microfilming services will appear in NARA bulletins, which are available on NARA's web site at http://www.nara.gov/records/policy/bulletin.html or from the Modern Records Programs (NWM), 8601 Adelphi Road, College Park, MD 20740-6001.

Dated: April 23, 2002.

John W. Carlin,
Archivist of the United States.

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Federal Register

Tuesday,
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Part V

The President

Proclamation 7557—Mother's Day, 2002

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Tuesday, May 14, 2002

Presidential Documents

Title 3—

The President

Proclamation 7557 of May 9, 2002

Mother's Day, 2002

By the President of the United States of America

A Proclamation

Mothers are central to the success of the American family. Their love, dedication, and wisdom touch countless lives every day in every community throughout our land. And their love and guidance of children help to develop healthy and spiritually sound families.

President John Quincy Adams once said, "All that I am my mother made me." President Abraham Lincoln believed, "All that I am or hope to be I owe to my angel mother. I remember my mother's prayers and they have always followed me. They have clung to me all my life." These statements are just as true for the millions of Americans who credit their mothers for helping to successfully shape their lives.

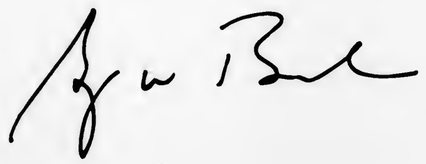
Millions of American mothers are at work in communities across the United States, improving the lives of their families and their neighbors through countless acts of thoughtful kindness. They energize, inspire, and effect change in homes, schools, governments, and businesses throughout our country. By their example, mothers teach their children that serving others is the greatest gift they can give.

Nearly 100 years ago, Anna Jarvis of Philadelphia helped establish the first official Mother's Day observance. Her campaign to organize such a holiday began as a remembrance of her late mother, who, in the aftermath of the Civil War, had tried to establish "Mother's Friendship Days" as a way to bring unity and reconciliation to our Nation. In 1910, West Virginia became the first State officially to observe Mother's Day. The idea caught on quickly; for just over a year later, nearly every State in the Union had officially recognized the day. In 1914, President Woodrow Wilson issued the first Mother's Day proclamation, stating that the observance serves as a "public expression of our love and reverence for the mothers of our country."

On this special day and throughout the year, our mothers deserve our greatest respect and deepest appreciation for their love and sacrifice. I especially commend foster mothers for answering my call to service, volunteering their time and their hearts to aid children in need of a mother's love. To honor mothers, the Congress, by a joint resolution approved May 8, 1914, as amended (38 Stat. 770), has designated the second Sunday in May as "Mother's Day" and has requested the President to call for its appropriate observance, which, as the son of a fabulous mother, I am pleased and honored to do again this year.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 12, 2002, as Mother's Day. I encourage all Americans to express their love, respect, and gratitude to mothers everywhere for their remarkable contributions to their children, families, communities, and our Nation.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



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Title 3—

The President

Proclamation 7558 of May 10, 2002

Peace Officers Memorial Day and Police Week, 2002

By the President of the United States of America

A Proclamation

In the face of the terrorist attacks of September 11, 2001, our Nation witnessed the remarkable heroism of America's peace officers as they selflessly aided those in need. As the World Trade Center towers burned, dedicated officers rushed into the severely damaged buildings to rescue the injured. Seventy-two peace officers died that day, trying to save others. These supreme sacrifices remind us of the remarkable commitment that our Nation's peace officers have made to preserve our safety and our country's well-being.

In all, 230 law enforcement officers gave their lives in the line of duty last year. The name of each fallen officer has a place of honor on the National Law Enforcement Officers Memorial wall in Washington, D.C. This monument ensures that the valor of the more than 15,000 law enforcement officers lost since 1794 will never be forgotten.

Peace Officers Memorial Day and Police Week pay tribute to the local, State, and Federal law enforcement officers who serve and protect us with courage and dedication. These observances also remind us of the ongoing need to be vigilant against all forms of crime, especially to acts of extreme violence and terrorism.

Effective law enforcement is a crucial element to maintaining our quality of life; and we must continue to ensure that our police have the financial, technical, and civil support necessary to carry out their responsibilities. The more than 740,000 sworn law enforcement officers who are our first responders play a critical role in our Nation's safety and security.

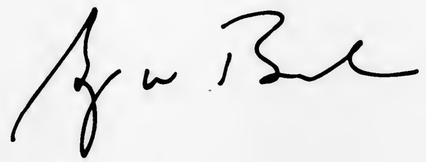
Every American should also play a role in making our communities safer. Programs operated through the Citizen Corps, including Neighborhood Watch, Volunteers in Police Service, and the Terrorism Information and Prevention System, offer citizens the opportunity to take a stand against crime. As we observe Peace Officers Memorial Day and Police Week, I encourage all Americans to learn more about ways to fight crime in their communities and to honor the brave individuals who protect our lives and property.

By a joint resolution approved October 1, 1962, as amended, (76 Stat. 676), the Congress has authorized and requested the President to designate May 15 of each year as "Peace Officers Memorial Day" and the week in which it falls as "Police Week," and, by Public Law 103–322, as amended, (36 U.S.C. 136), has directed that the flag be flown at half-staff on Peace Officers Memorial Day.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim May 15, 2002, as Peace Officers Memorial Day and May 12 through May 18, 2002, as Police Week. I call on Americans to observe these events with appropriate ceremonies and activities. I also call on Governors of the United States and the Commonwealth of Puerto Rico, as well as appropriate officials of all units of government, to direct that the flag be flown at half-staff on Peace Officers Memorial Day. I further encourage all Americans to display the flag at half-staff from their homes on that day.

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IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–12297
Filed 5–14–02; 8:45 am]
Billing code 3195–01–P

Presidential Documents

Proclamation 7559 of May 10, 2002

National Defense Transportation Day and National Transportation Week, 2002

By the President of the United States of America

A Proclamation

The importance of America's transportation system became evident to all Americans on September 11, 2001. Airliners were diverted, airports closed, and travelers were stranded for days as transportation systems across the country were disrupted. In the aftermath of September 11, the men and women in the transportation industry have helped restore function and trust to a system that was traumatized. Today, Americans and America's goods and services are being more safely moved to their destinations, as our communities continue the process of important restructuring.

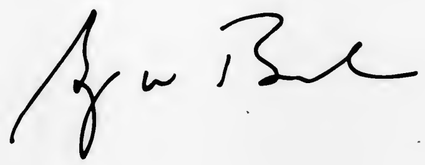
We have helped secure our transportation system with the passage of the Aviation and Transportation Security Act, which greatly enhanced the protections for America's passengers and goods. And we are determined to ensure that Americans have the transportation system and mobility that is necessary for a vibrant economy and meaningful quality of life.

We live in a time of unprecedented travel, when goods and services, regardless of origin, can be available in a short amount of time. Thanks to imagination, innovation, and investment in transportation, we can safely commute to work, receive overnight mail, buy fresh fruit and vegetables, and travel with relative ease to destinations around the world. We also continue to make progress in developing a transportation system that offers choices and protects the environment through cleaner, more fuel-efficient vehicles and new, environmentally sound infrastructure.

To recognize Americans who work in transportation and who contribute to our Nation's prosperity, defense, and progress, the United States Congress, by joint resolution approved May 16, 1957, as amended, (36 U.S.C. 120), has designated the third Friday in May of each year as "National Defense Transportation Day," and, by joint resolution approved May 14, 1962, as amended, (36 U.S.C. 133), declared that the week during which that Friday falls be designated as "National Transportation Week."

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, do hereby proclaim Friday, May 17, 2002, as National Defense Transportation Day and May 12 through May 18, 2002, as National Transportation Week. I encourage all Americans to recognize how our modern transportation system has enhanced our economy and contributed to our freedom.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02-12298
Filed 5-14-02; 8:45 am]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 67, No. 94
Wednesday, May 15, 2002

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 01-080-2]

Oriental Fruit Fly; Removal of Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Oriental fruit fly regulations by removing portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas and by removing restrictions on the interstate movement of regulated articles from those areas. This action is necessary to relieve restrictions that are no longer needed to prevent the spread of the Oriental fruit fly into noninfested areas of the United States. We have determined that the Oriental fruit fly has been eradicated from these portions of San Bernardino and San Diego Counties, CA, and that the quarantine and restrictions are no longer necessary. These portions of San Bernardino and San Diego Counties, CA, were the last remaining areas in California quarantined for the Oriental fruit fly. Therefore, as a result of this action, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

DATES: This interim rule is effective May 15, 2002. We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01-080-2, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737-1238. Please state that your comment refers to Docket No. 01-080-2. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01-080-2" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690-2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Knight, PPQ, APHIS, 4700 River Road Unit 134, Riverdale, MD 20737-1231; (301) 734-8039.

SUPPLEMENTARY INFORMATION:

Background

The Oriental fruit fly, *Bactrocera dorsalis* (Hendel), is a destructive pest of citrus and other types of fruits, nuts, and vegetables. The short life cycle of the Oriental fruit fly allows rapid development of serious outbreaks that can cause severe economic losses. Heavy infestations can cause complete loss of crops.

The Oriental fruit fly regulations, contained in 7 CFR 301.93 through 301.93-10 (referred to below as the regulations), restrict the interstate movement of regulated articles from quarantined areas to prevent the spread of the Oriental fruit fly to noninfested areas of the United States. The regulations also designate soil and a large number of fruits, nuts, vegetables, and berries as regulated articles.

In an interim rule effective on August 29, 2001, and published in the **Federal Register** on September 5, 2001 (66 FR 46365-46366, Docket No. 01-080-1), we quarantined a portion of San Bernardino County, CA, and restricted the interstate movement of regulated articles from the quarantined area.

Subsequently, in an interim rule effective on October 26, 2001, and published in the **Federal Register** on November 1, 2001 (66 FR 55067-55068, Docket No. 01-102-1), we quarantined a portion of San Diego County, CA, and restricted the interstate movement of regulated articles from that quarantined area.

Based on trapping surveys conducted by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service, we have determined that the Oriental fruit fly has been eradicated from the quarantined portions of these two counties. The last finding of Oriental fruit fly in the San Bernardino County quarantined area was October 17, 2001, while the last such finding in the San Diego County quarantined area was September 25, 2001.

Since then, no evidence of Oriental fruit fly infestation has been found in these areas. Based on our experience, we have determined that sufficient time has passed without finding additional flies or other evidence of infestation to conclude that the Oriental fruit fly no longer exists in San Bernardino County or San Diego County, CA. Therefore, we are removing both counties from the list of quarantined areas in § 301.93-3(c). With the removal of San Bernardino and San Diego Counties, CA, from that list, there are no longer any areas in the continental United States quarantined for the Oriental fruit fly.

Immediate Action

Immediate action is warranted to relieve restrictions that are no longer necessary. Portions of San Bernardino and San Diego Counties, CA, were quarantined due to the possibility that the Oriental fruit fly could be spread from those areas to noninfested areas of the United States. Since we have concluded that the Oriental fruit fly no longer exists in those counties, immediate action is necessary to remove the quarantines on San Bernardino and San Diego Counties, CA, and to relieve the restrictions on the interstate movement of regulated articles from those areas. Under these circumstances, the Administrator has determined that prior notice and opportunity for public comment are contrary to the public

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interest and that there is good cause under 5 U.S.C. 553 for making this action effective less than 30 days after publication in the **Federal Register**.

We will consider comments we receive during the comment period for this interim rule (see **DATES** above). After the comment period closes, we will publish another document in the **Federal Register**. The document will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This action amends the Oriental fruit fly regulations by removing portions of San Bernardino and San Diego Counties, CA, from the list of quarantined areas.

County records indicate that within the quarantined portion of San Bernardino County, CA, there are 10 to 15 small growers who could be affected by the lifting of the quarantine in this interim rule. There is no commercial agricultural acreage nor any flea markets or certified farmers' markets within the area. The number of nurseries and fruit and produce dealers located within the area is presently unknown.

We expect that the effect of this interim rule on the small entities referred to above will be minimal. Small entities located within the quarantined area that sell regulated articles do so primarily for local intrastate, not interstate, movement, so the effect, if any, of this rule on these entities appears likely to be minimal. In addition, the effect on any small entities that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these small entities, in most cases, to move regulated articles interstate with very little additional cost. Thus, just as the previous interim rule establishing the quarantined area in San Bernardino, CA, had little effect on the small growers in the area, the lifting of the quarantine in the current interim rule will also have little effect.

Within the quarantined area of San Diego County, CA, the State of California has identified 101 markets/produce vendors, 3 farmers' markets, 20 nurseries, and 2 growers. No data are available on how many of these entities are small.

The effect on any entities, large or small, that may move regulated articles interstate has been minimized during the quarantine period by the availability of various treatments that allow these entities, in most cases, to move regulated articles interstate with very little additional cost. For many businesses, no additional costs have been incurred. As far as we can determine, no entities have gone out of business due to the quarantine. It is, therefore, highly unlikely that the lifting of the quarantine in San Diego County, CA, will have a significant economic effect on any entities, large or small, in that area.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V:)

Executive Order 12988

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 166, 7711, 7712, 7714, 7731, 7735, 7751, 7752, 7753, and 7754; 7 CFR 2.22, 2.80, and 371.3.

Section 301.75–15 also issued under Sec. 204, Title II, Pub. L. 106–113, 113 Stat. 1501A-293; sections 301.75–15 and 301.75–16 also issued under Sec. 203, Title II, Pub. L. 106–224, 114 Stat. 400 (7 U.S.C. 1421 note).

2. In § 301.93–3, paragraph (c) is revised to read as follows:

§ 301.93–3 Quarantined areas.

* * * * *

(c) The areas described below are designated as quarantined areas: There are no areas in the continental United States quarantined for the Oriental fruit fly.

Done in Washington, DC, this 9th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12136 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 01–122–2]

Change in Disease Status of Slovakia and Slovenia Because of BSE

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Affirmation of interim rule as final rule.

SUMMARY: We are adopting as a final rule, without change, an interim rule that amended the regulations by adding Slovakia and Slovenia to the list of regions where bovine spongiform encephalopathy exists because the disease has been detected in native-born animals in those regions. Slovakia and Slovenia had already been listed among the regions that present an undue risk of introducing bovine spongiform encephalopathy into the United States, so the effect of the interim rule was a continued restriction on the importation of ruminants that have been in Slovakia or Slovenia and meat, meat products, and certain other products of ruminants that have been in either of those regions. The interim rule was necessary in order to update the disease status of Slovakia and Slovenia regarding bovine spongiform encephalopathy.

EFFECTIVE DATE: The interim rule became effective on February 1, 2002.

FOR FURTHER INFORMATION CONTACT: Dr. Gary Colgrove, Chief Staff Veterinarian, Sanitary Issues Management Staff, National Center for Import and Export, VS, APHIS, 4700 River Road Unit 38, Riverdale, MD 20737–1231; (301) 734–4356.

SUPPLEMENTARY INFORMATION:

Background

In an interim rule effective and published in the **Federal Register** on February 1, 2002 (67 FR 4877–4878, Docket No. 01–122–1), we amended the regulations in 9 CFR part 94 by adding Slovakia and Slovenia to the list of regions where bovine spongiform encephalopathy (BSE) exists. Slovakia and Slovenia had previously been listed in § 94.18(a)(2) as regions that present an undue risk of introducing BSE into the United States. However, due to the detection of BSE in native-born animals in those regions, the interim rule was necessary to update the disease status of Slovakia and Slovenia regarding BSE.

Comments on the interim rule were required to be received on or before April 2, 2002. We did not receive any comments. Therefore, for the reasons given in the interim rule, we are adopting the interim rule as a final rule.

This action also affirms the information contained in the interim rule concerning Executive Order 12866 and the Regulatory Flexibility Act, Executive Order 12988, and the Paperwork Reduction Act.

Further, for this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

Accordingly, we are adopting as a final rule, without change, the interim rule that amended 9 CFR part 94 that was published at 67 FR 4877–4878 on February 1, 2002.

Authority: 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

Done in Washington, DC, this 9th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12137 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 366

RIN 3064–AC29

Minimum Standards of Integrity and Fitness for an FDIC Contractor

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Interim final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is issuing a rule entitled, "Minimum Standards of Integrity and Fitness for an FDIC Contractor". This rule replaces the March 11, 1996, interim final rule entitled, "Contractor Conflicts of Interest". This rule establishes standards for independent contractors governing contracting prohibitions, conflicts of interest, ethical responsibilities, confidential information, and reportable information. It is also consistent with the goals and purposes of titles 18 and 41 of the United States Code. This rule is in addition to, and not in lieu of, any other statute or rule which may apply to the conduct of persons performing services pursuant to a contract.

DATES: This rule becomes effective May 15, 2002. We must receive your written comments on or before July 15, 2002.

ADDRESSES: Address your written comments to Robert E. Feldman, Executive Secretary, Attention: comments/OES, and:

1. Mail to Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429;
2. Hand-deliver to the guard station located at the rear of the 17th Street Building on F Street, between 8:30 a.m. and 5:00 p.m. on business days;
3. Fax to (202) 898–3838;
4. E-mail to: *comments@FDIC.gov <mailto:comments@fdic.gov>*; or
5. Post on the FDIC internet site at *http://www.fdic.gov/regulations/laws/Federal/propose.html*.

Comments are available for inspection and photocopying at the FDIC Public Information Center, Room 100, 801 17th Street, NW., Washington, DC, between 9:00 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Martin A. Blumenthal, Counsel, (202) 736–0359, or Peter M. Somerville, Counsel, (202) 736–0110, Legal Division; or Donald L. Rosholf, Senior Ethics Program Specialist, Office of the Executive Secretary, (202) 898–7287, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

I. Introduction
  A. Overview
  B. Authority
  C. Background
II. Comparison of this rule to the March 11, 1996, interim final rule
  A. General changes
  B. Definitional changes
  C. Prohibition from performing services on our behalf
  D. Contractor responsibilities and requirements
  E. Contractor's expectations, rights, and obligations
III. Matters of Regulatory Procedure
  A. Regulatory Flexibility Act
  B. Paperwork Reduction Act
  C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families
  D. Congressional Review Act

I. Introduction

A. Overview

This rule sets forth integrity and fitness provisions for FDIC contractors in three areas. The first area regards those persons from whom the FDIC is prohibited from entering into a contract. The second area identifies integrity and fitness responsibilities for independent contractors. These include conflicts of interest, minimum standards of ethical responsibility, confidential information, and information that contractors must disclose to the FDIC. The last area regards a contractor's expectations, rights and obligations. These include what advice and determinations the FDIC will provide a contractor, reconsiderations and reviews of those determinations, and the possible consequences a person may face for violating the provisions of this rule.

This rule and **SUPPLEMENTARY INFORMATION** section are drafted in plain language. The word "person" refers to an individual, corporation, partnership, or other entity with a legally independent existence. The terms "I", "me", "my", "mine", "you", and "yourself" refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on behalf of the FDIC. The terms "we", "our", and "us" refer to the FDIC, except when the FDIC operates an insured depository institution such as a bridge bank or conservatorship. The phrase "insured depository institution" refers to any bank or savings association whose deposits are insured by the FDIC.

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B. Authority

The statutory authorities for adopting this rule are sections 12(f)(3) and (4) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1822(f)(3) and (4), and our general rulemaking authority found at 12 U.S.C. 1819 (Tenth). Section 19 of the Resolution Trust Corporation Completion Act (RTCCA), Pub. L. 103–204, 107 Stat. 2369 (1993), required the addition of section 12(f) to the FDI Act.

We may establish other integrity and fitness policies where we determine such policies are required by law or appropriate to maintain the integrity of our programs. Any such policies may be independent of, in conjunction with, or in addition to the restrictions set forth in this rule.

We may also, temporarily or permanently, suspend this rule or exempt a person from compliance with any part of this rule for good cause shown, in order to protect our interests or to provide an orderly transfer of services to another person.

C. Background

The contractor integrity and fitness rules, based on statutory requirements, are regulatory tools the FDIC uses to assure that certain of its contractors meet minimum standards of competence, experience, integrity and fitness. *See* 501(a), FHLB Act Sec. 21A(p)(6). This statute was enacted to ensure that no person who contributed to the failure of an insured depository institution could contract with the FDIC without disclosure and considerable scrutiny. The Oversight Board of the Resolution Trust Corporation (RTC) issued the original proposed rule on November 28, 1989. From that original rule, related FDIC rules, and many years of RTC and FDIC experience, we propose this rule.

On June 24, 1994, we published a proposed rule applicable to independent contractors (59 FR 32661–32668), as required by 12 U.S.C. 1822(f)(3). That rulemaking proposed standards governing conflicts of interest, ethical responsibilities, and use of confidential information. It also proposed procedures for ensuring that independent contractors meet minimum standards for competence, experience, integrity, and fitness. We received six comment letters. After careful consideration of each comment and numerous changes that the Office of Government Ethics (OGE) requested, we made appropriate modifications to the proposal resulting in the reorganization and modification of some provisions.

On March 11, 1996, we adopted an interim final rule entitled, "Contractor Conflicts of Interest", (61 FR 9590), with the concurrence of OGE. We determined that an interim final rule was appropriate in order to allow interested parties to comment on the rule while providing prompt implementation of the rule to satisfy concerns relating to the merger of the RTC into the FDIC. We received only one comment on the interim final rule and it was non-substantive. We have gained significant experience regarding requests for (1) waivers of disqualifying conditions and conflicts of interest, and (2) reconsiderations of our determinations since the interim final rule was issued.

We now publish this rule entitled, "Minimum Standards of Integrity and Fitness for an FDIC Contractor", to allow for public comment. We believe that public comment is appropriate given the length of time that has transpired since the March 11, 1996, interim final rule was published and the changes we are making now. The provisions of this rule are similar to the interim final rule, except as addressed in section II below. In general, those changes relieve restrictions on contractors. Therefore, although we request comments on all aspects of this rule, we will publish the rule as an interim final rule, having found good cause for making it effective immediately. The March 11, 1996, interim final rule is replaced with this rule. 5 U.S.C. 533(b)(3)(B) and 533(d)(1) and (3).

II. Comparison of This Rule to the March 11, 1996, Interim Final Rule

A. General Changes

This rule is published in accordance with plain language guidelines. It does not include the internal agency procedures that were incorporated in the March 11, 1996, interim final rule. Instead, it provides for the Board of Directors to delegate to the Chairman, or his designee, the authority to grant waivers and implement procedures for this rule. Examples are added at §§ 366.4(b), 366.6(c), 366.10(b), 366.11(b), 366.12(e) and 366.13(b) for clarity and guidance.

The title of this rule is changed from "Contractor Conflicts of Interest" to "Minimum Standards of Integrity and Fitness for an FDIC Contractor" to better describe its provisions.

The waiver and reconsideration provisions established in the March 11, 1996, interim final rule set forth internal agency processes and procedures, some of which do not meet the needs or satisfy the requirements of our diverse activities. For example, a conflict of interest consideration is different for a service contractor when it expresses an interest in purchasing an asset from us than when it competes to provide us with asset services. A service contractor is an independent contractor that provides services other than goods, including, but not limited to, legal services, asset disposition or management services, or management and consulting services. Furthermore, the universe of persons subject to the provisions of this rule represents a wide variety of professions and organizational structures, which we must take into consideration in making our integrity and fitness determinations. For example, the threshold of what constitutes a conflict of interest for legal services is not necessarily the same as that for non-legal services. Conflicts of interest for legal matters involve representational and non-representational issues. For these reasons, we will continue to issue separate and complementary internal policies and procedures, consistent with this rule, for our different program areas as may be necessary.

We interpret the language of section 1822(f) to distinguish between two different types of service contracts. The first type is incidental or housekeeping service contracts. The phrase "incidental or housekeeping" refers to services or activities relating to our day-to-day routine corporate operations. Examples of incidental or housekeeping service contracts would include, but would not be limited to, (1) food service contracts for employee cafeteria services, (2) contracts for janitorial or cleaning services, (3) contracts for mail delivery services, and (4) contracts providing employee benefits. Such incidental or housekeeping service contracts do not arrange for contract workers (rather than FDIC employees) to perform services for or on our behalf a FDIC function or activity required of the FDIC by statute (described below). Incidental and housekeeping service contracts are not covered by the statutory minimum standards of fitness and integrity set forth at 12 U.S.C. 1822(f)(4)(E), nor are they covered by this rule. We reserve our discretion and flexibility to determine an appropriate standard of integrity and fitness where a contract worker would provide incidental or housekeeping services for or to us. We may impose fitness and integrity requirements up to and including the statutory standards upon such contract workers.

The second type of service contract provides for contract workers (rather than FDIC employees) to perform FDIC functions and/or activities for or on our behalf. The FDIC functions and/or activities performed for or on our behalf relate to any of our responsibilities that are required by statute such as regulating banks, providing deposit insurance, examining banks, conducting receivership activities, and conducting liquidation activities. These types of service contracts would include, but would not be limited to, contracts to service, manage or sell receivership or corporate assets. The minimum standards of integrity and fitness as set forth in section 12 U.S.C. 1822(f)(4)(E) apply to these contracts. These contracts are covered by this rule.

Previously, since the rule was first proposed in June 1994, we chose to voluntarily apply the provisions of the rule to all service contracts, including corporate contracts for incidental or housekeeping services. This rule differs from the March 11, 1996, interim final rule in that we have decided to limit the scope as stated above.

After careful review of the FDI Act, we propose to establish a provision for us to grant waivers at our discretion regarding the prohibition to perform contractual services on our behalf to persons other than individuals at § 366.7. We believe this change is consistent with the FDI Act, which mandates that we establish procedures to ensure that any individual who is performing, directly or indirectly, any function or service on our behalf meets minimum standards of integrity and fitness. Because the statutory language refers only to individuals, and not other entities, we believe this approach is appropriate.

In addition, we removed the reference to an obsolete interim supplemental financial disclosure rule entitled, "Supplemental Financial Disclosure Requirements for Employees of the Federal Deposit Insurance Corporation", 61 FR 50947–48 (September 30, 1996). This supplemental financial disclosure rule was codified at 5 CFR part 3202 and referenced in the interim final rule at § 366.1(c)(1)(ii).

There are several provisions in the March 11, 1996, interim final rule that are repetitive. For example, the provisions for reconsidering our decisions are found at §§ 366.4(d) and 366.5(e). The contractor's 10-day and immediate notification requirements are found at §§ 366.4(b)(2) and (c), 366.5(c)(1)(ii) and (d), and 366.6(b)(2). The remedies for the contractor's failure to comply with the rule and the contractor's liability requirements are found at §§ 366.4(c)(2), 366.5(d)(2), 366.6(c), 366.8(b), and 366.9. We eliminate this repetitiveness to make this rule more concise. The reconsideration provisions in this rule are consolidated at § 366.16. The notification requirements are consolidated at § 366.14(c) of this rule. Our remedies for the contractor's failure to comply with the rule and contractor's liability requirements are consolidated at § 366.17.

In addition, there are several provisions in the March 11, 1996, interim final rule that make distinctions with respect to their applicability prior to contract award, after contract award, and during the term of a contract. These are found at §§ 366.4(b) and (c), 366.5(c) and (d), and 366.7(a). We make no such distinctions in this rule at § 366.15(b). There are also separate provisions for a person's initial and subsequent submissions of information at §§ 366.6(a) and (b) of the interim final rule. No such distinction between these provisions is made in this rule at § 366.14. We eliminate these distinctions found in the interim final rule to make this rule more concise. This rule applies equally to prior to contract award, after contract award, and during the term of a contract.

B. Definitional Changes

The terms "affiliated business entity", "company", and "management official" found at §§ 366.2(a), (b), and (i), respectively, in the March 11, 1996, interim final rule do not appear in this rule. Other terms that we defined in the interim final rule are used in this rule without a formal definition. We rely, instead, on the common meaning of the terms as used in the contracting environment. For example, reference to "contractor", "offer", and "subcontractor" found at §§ 366.2(d), (j) and (n), respectively, in the interim final rule are not defined in this rule. The question-and-answer format is used in this rule to describe the terms "pattern or practice of defalcation" and "substantial loss" that were defined in the interim final rule at §§ 366.2(k) and (o), respectively.

1. The following is a discussion of the changes to three terms:

Conflict of Interest. The definition of a conflict of interest at § 366.2(c) of the March 11, 1996, interim final rule includes four provisions. We now believe that the suspension and exclusion provision at § 366.2(c)(3) of the interim final rule does not constitute a conflict of interest, and it is not included in this rule. According to the March 11, 1996, interim final rule, a previously suspended or excluded person is permanently restricted from performing services on our behalf, unless we grant a waiver. This requires us to consider waivers for any previously suspended or excluded person even when the person is no longer debarred from contracting with us or any other federal agency. This waiver requirement is an unnecessary burden for us and the previously suspended or excluded person. Moreover, it does not provide us with any additional safeguards. We believe a previously suspended or excluded person should be eligible to contract with us to the same extent they are eligible to contract with other Federal agencies, unless § 366.3 of this rule prohibits them from doing so. This is consistent with federal debarment restrictions that are usually temporary or limited in time.

Section 366.10 of this rule incorporates the other three provisions of the original definition of the term "conflict of interest" in § 366.2(c) of the March 11, 1996, interim final rule. Section 366.2(c)(4) of the interim final rule, regarding an unfair competitive advantage, applied primarily to asset purchaser situations. Section 366.10(a)(3) of this rule is included to make this application clearer. Section 366.10(a)(4) of this rule is added to cover any other situation which could cause us to question the integrity of the services a contractor provided, is providing or offers to provide us.

Pattern or practice of defalcation. Section 366.4 of this rule explains pattern or practice of defalcation. Pattern or practice of defalcation in this rule does not include the foreclosure provision found in § 366.2(k)(2) of the March 11, 1996, interim final rule. That foreclosure provision states, "A loan or advance from an insured depository institution where there has been a failure to comply with the terms to such an extent that the collateral securing the loan or advance was foreclosed upon, resulting in a loss in excess of $50,000 to the insured depository institution." This concept is incorporated, in part, in the term substantial loss at § 366.5. It does not apply to foreclosures at open institutions in this rule as it did in the interim final rule. Examples are added for clarity and guidance.

Substantial loss. Section 366.5 of this rule explains what it means to cause a substantial loss to a federal deposit insurance fund. It does not include the provision for obligations that have ever been delinquent found in § 366.2(o)(1) of the March 11, 1996, interim final rule. We believe 12 U.S.C. 1822(f)(4)(E)(iv) prohibits us from contracting with a contractor who is currently delinquent for ninety (90) days or more with us, because there is a perceived result of a loss to the fund. However, we do not believe it prohibits

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us from contracting with a contractor who may have had a delinquent obligation to us that is now current.

2. This rule describes the term "person" more clearly. Section 366.2(l) of the March 11, 1996, interim final rule defines the term "person" to mean an individual or company. The word "person" used in this rule includes an individual, corporation, partnership, or other legally independent entity. We believe meaning of the word "person" in this rule is not a change from the meaning of the term used in the interim final rule.

C. Prohibition From Performing Services on Our Behalf

12 U.S.C. 1822(f)(4)(E) requires us to prohibit any person who is a convicted felon; who a federal banking agency removes or prohibits from participating in the affairs of any insured depository institution pursuant to any final enforcement action; who demonstrates a pattern or practice of defalcation regarding obligations to insured depository institutions; or who causes a substantial loss to federal deposit insurance funds from performing any service on our behalf. Section 366.3 of this rule sets forth the same provisions as those in § 366.4 of the March 11, 1996, interim final rule with the exception of their applicability to any person that owns or controls you, and any entity you own or control. We added to this rule the provision for the applicability of the prohibitions to any person that owns or controls you and any entity you own or control so that a prohibited contractor could not circumvent the prohibition by contracting through a non-prohibited entity. This rule makes no distinction with respect to those prohibitions that arise prior to award and those that arise or are discovered after contract award. We do not believe this distinction is necessary because the prohibitions are applicable, regardless of when they arise.

Section 366.6 of this rule explains ownership or control, which is unchanged from § 366.2(e) of the March 11, 1996, interim final rule. Examples are added for clarity and guidance.

Section 366.7 of this rule is a new provision that permits us to grant a waiver of the prohibitions found in § 366.3 to an entity other than an individual. This new provision is based upon our conclusion that the statutory requirement found at section 12 U.S.C. 1822(f)(4)(E) limits individuals from contracting with us when the prohibitions found in § 366.3 are shown to exist. The application of the prohibition to all persons requires us to include a waiver provision for entities other than individuals for good cause shown.

Because this rule includes waiver provisions and allows the FDIC to establish policies independent of, in conjunction with, or in addition to the restrictions set forth in this rule, section 366.8 is included to delegate authority from the Board of Directors to the Chairman, or his designee, to issue waivers and implement procedures. This provides the FDIC the ability to specify the appropriate officials who will administer the provisions of the rule that were incorporated in section 366.3 of the March 11, 1996, interim final rule.

D. Contractor Responsibilities and Requirements

12 U.S.C. 1822(f)(3) requires us to prescribe regulations applicable to independent contractors governing conflicts of interest, ethical responsibilities, and use of confidential information. Sections 366.10 through 366.14 of this rule set forth the provisions for this requirement.

Section 366.10 explains when you have a conflict of interest. It incorporates provisions of §§ 366.2(c) and 366.5 of the March 11, 1996, interim final rule. As discussed in II B.1 in this Supplementary Information section, the conflict of interest provision changes include (1) the removal of a suspended or excluded contractor as a conflict of interest, and (2) the addition of the provision to cover other situations which could cause us to question the integrity of the services a contractor provided, is providing or offers to provide. Examples are added for clarity and guidance.

Section 366.11 sets forth the provision for us to grant waivers of a conflict of interest, and it is similar to § 366.5(b) of the March 11, 1996, interim final rule. However, no distinction is made between conflicts that arise prior to award and those that are discovered after award. Examples are added for clarity and guidance.

Section 366.12 sets forth our minimum standards for your ethical responsibility. Section 366.12(a) is added to ensure that you and your employees are fair and objective. Section 366.12(b) replaces the verification provisions in §§ 366.6(a)(3) and (b)(1) of the March 11, 1996, interim final rule. Section 366.12(c) was added at the request of the Office of Inspector General to ensure that you are held to the same standard for reporting waste, fraud and abuse as any FDIC employee when conducting FDIC business. Section 366.12(d) incorporates the provisions of § 366.7(a) of the interim final rule. Examples are added for clarity and guidance.

Section 366.13 sets forth your obligation to maintain confidential information, and it is consistent with § 366.8 of the March 11, 1996, interim final rule. The consequences for failure to comply with the provisions found at § 366.8(b) of the interim final rule are incorporated in § 366.17 of this rule. Examples of inappropriate use of confidential information are added for clarity and guidance.

Section 366.14 requires you to provide information to us, and it is similar to § 366.6(a) and (b) of the March 11, 1996, interim final rule. However, in this rule we do not make a distinction between information required prior to award and subsequent to award. In addition, we reduce the period of time from the preceding ten (10) years to the preceding five (5) years regarding the information about defaults that a contractor must report, consistent with section 12 U.S.C. 1822(f)(4)(C)(i).

E. Contractor's Expectations, Rights, and Obligations

Section 366.15 of this rule identifies what we will provide you with respect to advice and determinations. It simplifies the determination, corrective actions and waiver provisions found at §§ 366.4(c)(1), and 366.5(c) and (d) of the March 11, 1996, interim final rule.

Section 366.16 of this rule sets forth our requirements for reconsideration or review of our determinations. It includes the reconsideration and review provisions found at §§ 366.4(d), 366.5(e) and 366.5(c)(2) of the March 11, 1996, interim final rule.

Section 366.17 sets forth the sanctions you may be subject to if you do not comply with this rule. It consolidates the remedies and the contractor's liability provisions found at §§ 366.4(c)(2) and (3), 366.5(d)(2) and (3), 366.7(d), 366.8(b) and 366.9 of the March 11, 1996, interim final rule in one section.

III. Matters of Regulatory Procedure

A. Regulatory Flexibility Act

The Board of Directors certifies that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 605 (b)). This rulemaking will replace the interim final rule published on March 11, 1996. This rule imposes no new burden other than the minimal time required to read new descriptions of unique terms used in the rule. As discussed further in the Paperwork Reduction Act section below, we are reducing the amount of information we currently require from contractors.

We are also taking this opportunity to engage in a periodic review of this rule consistent with our responsibilities under the Regulatory Flexibility Act (5 U.S.C. 610). The purpose of this review is to determine how we may minimize any significant economic impact of the rule on a substantial number of small entities consistent with the objectives of the law that requires us to have this rule. Your comments on how we may reduce burden on small contractors are welcome.

B. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), we may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget (OMB) control number. The collections of information contained in this rule were submitted to OMB for review.

Written comments on the collection of information should be sent to the FDIC desk officer: Office of Management and Budget, Office of Information and Regulatory Affairs, Attn: Alexander T. Hunt, New Executive Office Building, Room 3208, Washington, DC 20503.

Copies of comments should also be sent to: Federal Deposit Insurance Corporation, Office of the Executive Secretary, Attn: Thomas E. Nixon, 550 17th Street, NW., Washington, DC 20429, (202) 898–8766.

Comments may be hand-delivered to the guard station at the rear of the 17th Street building (located on F Street) on business days between 8:30 a.m. and 5:00 p.m. [Fax number (202) 898–3838; Internet address: *COMMENTS@FDIC.GOV*]. For further information on the Paperwork Reduction Act aspect of this rule, contact Thomas E. Nixon at the above address.

Comment is solicited on:

1. Whether the collections of information are necessary for the proper performance of our functions, including whether the information will have practical utility;

2. The accuracy of our estimates of burden of the proposed collections of information, including the validity of the methodology and assumptions used;

3. The quality, utility, and clarity of the information to be collected;

4. Ways to minimize the burden of the information collections on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, for example, permitting electronic submission of responses; and

5. Estimates of capital or start-up costs and costs of operation, maintenance, and purchases of services to provide information.

Title of the collection: This rule will modify an information collection previously approved by OMB titled "Acquisition Services Information Requirements" under control number 3064–0072.

Summary of the collection: Generally, the collection includes the submission of information on FDIC forms by contractors who wish to do business with us or are currently under contract with us.

Need and Use of the information: We use the information to ensure compliance with our contractor integrity and fitness regulation and to make contracting decisions.

Respondents: FDIC contractors and potential FDIC contractors.

Changes to the collection: This rule changes the definitions of terms used on OMB approved contracting forms (for example, the Integrity and Fitness Representations, the Contractor Application, and Background Investigation Questionnaire). The definition of "substantial loss" will no longer include loans that were formerly delinquent but which are now current or satisfied. "Pattern or practice of defalcation" deletes a concept regarding the foreclosure of collateral which has been and continues to be encompassed in the concept of "substantial loss." "Conflict of interest" will no longer include a prior suspension or exclusion from federal government contracting or certain terminations of our contracts. In addition, the time period for which contractors must disclose defaults on material obligations is shortened from 10 to 5 years.

Burden estimates: On September 12, 2001, OMB approved this collection for 12,546 responses with a total burden of 6,285 hours. The collection included nine forms with the estimated response time for each form varying between .05 hours to 1.0 hour. This rulemaking affects three of the nine forms. The estimated burdens for these three forms:

1. "Integrity and Fitness Representations", FDIC 3700/12. 2,312 responses x 20 minutes per response, or 771 hours annual burden.

2. "Contractor Application", FDIC 3700/13. 631 responses x 35 minutes per response, or 368 hours annual burden.

3. "Background Investigation Questionnaire", FDIC 1600/04. 2,330 responses x 20 minutes per response, or 776 hours annual burden.

Title of the collection: This rule will also modify the information collection previously approved by OMB titled "Forms Relating to FDIC Outside Counsel Services" under control number 3064–0122.

Summary of the collection: Generally, the collection includes the submission of information on forms by legal contractors who wish to do business with us or are currently under contract with us.

Need and Use of the information: We use the information to ensure compliance with our contractor integrity and fitness regulation, to make contracting decisions, and to control payments.

Respondents: Law firms and legal support service providers that contract with us or seek to do so.

Changes to the collection: The currently approved information collection includes 13 forms. This rulemaking affects one of the 13 forms, FDIC 5200/01, the title of which has been changed from "Representations and Certifications Qualifications of Applicants: Law Firms and Sole Practitioners" to "Representations and Certifications for Legal Contractors", reflecting that the respondent base has been expanded to include all legal support service providers. This rule also changes the definitions of certain terms. The definition of "substantial loss" will no longer include loans that were formerly delinquent but which are now current or satisfied. "Pattern or practice of defalcation" deletes a concept regarding the foreclosure of collateral which has been and continues to be encompassed in the concept of "substantial loss." "Conflict of interest" will no longer include a prior suspension or exclusion from federal government contracting or certain terminations of our contracts. In addition, the time period for which contractors must disclose defaults on material obligations is shortened from 10 to 5 years.

Burden estimates: On October 10, 2000, OMB approved this collection for a total burden of 2,028 hours based on 2,783 responses on 13 forms with the estimated response time for each form varying between .5 hour to 1.25 hours. This rulemaking affects one of the 13 forms, now titled "Representations and Certifications for Legal Contractors", FDIC 5200/01. The new burden estimate for FDIC 5200/01 is 500 responses x 1 hour, or 500 hours annual burden.

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C. The Treasury and General Government Appropriations Act, 1999—Assessment of Federal Regulations and Policies on Families

We have determined that this rule will not affect family well-being within the meaning of section 654 of the Treasury and Government Appropriations Act, 1999, Pub. L. 105–277, 112 Stat. 2681 (1998).

D. Congressional Review Act

OMB has determined that this rule is not a "major rule" within the meaning of the Congressional Review Act (5 U.S.C. 801 *et seq.*). The FDIC will file appropriate reports with Congress and the General Accounting Office so that this final rule can be reviewed.

List of Subjects in 12 CFR Part 366

Contractor conflicts of interest, Government contracts, Reporting and recordkeeping requirement.

For the reasons set forth in the preamble, we hereby revise part 366 of chapter III of title 12 of the Code of Federal Regulations to read as follows:

PART 366—MINIMUM STANDARDS OF INTEGRITY AND FITNESS FOR AN FDIC CONTRACTOR

Sec.

366.0 Definitions.
366.1 What is the purpose of this part?
366.2 What is the scope of this part?
366.3 Who cannot perform contractual services for the FDIC?
366.4 When is there a pattern or practice of defalcation?
366.5 What causes a substantial loss to a federal deposit insurance fund?
366.6 How is my ownership or control determined?
366.7 Will the FDIC waive the prohibitions under § 366.3?
366.8 Who can grant a waiver of a prohibition or conflict of interest?
366.9 What other requirements could prevent me from performing contractual services for the FDIC?
366.10 When would I have a conflict of interest?
366.11 Will the FDIC waive a conflict of interest?
366.12 What are the FDIC's minimum standards of ethical responsibility?
366.13 What is my obligation regarding confidential information?
366.14 What information must I provide the FDIC?
366.15 What advice or determinations will the FDIC provide me on the applicability of this part?
366.16 When may I seek a reconsideration or review of an FDIC determination?
366.17 What are the possible consequences for violating this part?

Authority: 12 U.S.C. 1819(Tenth), 1822(f)(3) and (4); Sec. 19 of Pub. L. 103–204, 107 Stat. 2369.

§ 366.0 Definitions.

As used in this part:

(a) The word *person* refers to an individual, corporation, partnership, or other entity with a legally independent existence.

(b) The terms *we*, *our*, and *us* refer to the Federal Deposit Insurance Corporation (FDIC), except when acting as conservator or operator of a bridge bank.

(c) The terms *I*, *me*, *my*, *mine*, *you*, and *yourself* refer to a person who submits an offer to perform or performs, directly or indirectly, contractual services or functions on our behalf.

(d) The phrase *insured depository institution* refers to any bank or savings association whose deposits are insured by the FDIC.

§ 366.1 What is the purpose of this part?

This part establishes the minimum standards of integrity and fitness that contractors, subcontractors, and employees of contractors and subcontractors must meet if they perform any service or function on our behalf. This part includes regulations governing conflicts of interest, ethical responsibility, and use of confidential information in accordance with 12 U.S.C. 1822(f)(3) and the prohibitions and the submission of information in accordance with 12 U.S.C. 1822(f)(4).

§ 366.2 What is the scope of this part?

(a) This part applies to a person who submits an offer to perform or performs, directly or indirectly, a contractual service or function on our behalf.

(b) This part does not apply to:

(1) An FDIC employee for the purposes of title 18, United States Code; or

(2) The FDIC when we operate an insured depository institution such as a bridge bank or conservatorship.

§ 366.3 Who cannot perform contractual services for the FDIC?

We will not enter into a contract with you to perform a service or function on our behalf, if you or any person that owns or controls you, or any entity you own or control:

(a) Has a felony conviction;

(b) Was removed from or is prohibited from participating in the affairs of an insured depository institution as a result of a federal banking agency final enforcement action;

(c) Has a pattern or practice of defalcation; or

(d) Is responsible for a substantial loss to a federal deposit insurance fund.

§ 366.4 When is there a pattern or practice of defalcation?

(a) You have a pattern or practice of defalcation under § 366.3(c) when you, any person that owns or controls you, or any entity you own or control has a legal responsibility for the payment on at least two obligations that are:

(1) To one or more insured depository institutions;

(2) More than 90 days delinquent in the payment of principal, interest, or a combination thereof; and

(3) More than $50,000 each.

(b) The following are examples of when you have or do not have a pattern or practice of defalcation. These examples are not inclusive.

(1) You have five loans at insured depository institutions. Three of them are 90 days past due. Two of the three loans have outstanding balances of more than $50,000 each. You have a pattern or practice of defalcation.

(2) You have five loans at insured depository institutions. Two of them are 90 days past due. One of the two is with ABC Bank for $170,000. The other one is with XYZ bank for $60,000. You have a pattern or practice of defalcation.

(3) You have five loans at insured depository institutions. Three of them are 90 days past due. One of the three has an outstanding balance of more than $50,000. The other two have outstanding balances of less than $50,000. You do not have a pattern or practice of defalcation.

(4) You have five loans at insured depository institutions. Three of them have outstanding balances of more than $50,000. Two of those three were 90 days past due but are now current. You do not have a pattern or practice of defalcation.

§ 366.5 What causes a substantial loss to a federal deposit insurance fund?

You cause a substantial loss to a federal deposit insurance fund under § 366.3(d) when you, or any person that owns or controls you, or any entity you own or control has:

(a) An obligation to us that is delinquent for 90 days or more and on which there is an outstanding balance of principal, interest, or a combination thereof of more than $50,000;

(b) An unpaid final judgment in our favor that is in excess of $50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding;

(c) A deficiency balance following foreclosure of collateral on an obligation owed to us that is in excess of $50,000, regardless of whether it becomes discharged in whole or in part in a bankruptcy proceeding; or

(d) A loss to us that is in excess of $50,000 that we report on IRS Form 1099–C, Information Reporting for Discharge of Indebtedness.

§ 366.6 How is my ownership or control determined?

(a) Your ownership or control is determined on a case-by-case basis. Your ownership or control depends on the specific facts of your situation and the particular industry and legal entity involved. You must provide documentation to us to use in determining your ownership or control.

(b) The interest of a spouse or other family member in the same organization is imputed to you in determining your ownership or control.

(c) The following are examples of when your ownership or control may or may not exist. These examples are not inclusive.

(1) You have control if you are the president or chief executive officer of an organization.

(2) You have ownership or control if you are a partner in a small law firm. You might not have ownership or control if you are a partner in a large national law firm.

(3) You have control if you are a general partner of a limited partnership. You have ownership or control if you have a limited partnership interest of 25 percent or more.

(4) You have ownership or control if you have the:

(i) Power to vote, directly or indirectly, 25% or more interest of any class of voting stock of a company;

(ii) Ability to direct in any manner the election of a majority of a company's directors or trustees; or

(iii) Ability to exercise a controlling influence over the company's management and policies.

§ 366.7 Will the FDIC waive the prohibitions under § 366.3?

We may waive the prohibitions for entities other than individuals for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors. The statute does not allow us to waive the prohibitions for individuals.

§ 366.8 Who can grant a waiver of a prohibition or conflict of interest?

The FDIC's Board of Directors delegates to the Chairman, or his designee, authority to issue waivers and implement procedures for part 366.

§ 366.9 What other requirements could prevent me from performing contractual services for the FDIC?

You must avoid a conflict of interest, be ethically responsible, and maintain confidential information as described in §§ 366.10 through 366.13. You must also provide us with the information we require in § 366.14. Failure to meet these requirements may prevent you from contracting with us.

§ 366.10 When would I have a conflict of interest?

(a) You have a conflict of interest when you, any person that owns or controls you, or any entity you own or control:

(1) Has a personal, business, or financial interest or relationship that relates to the services you perform under the contract;

(2) Is a party to litigation against us, or represents a party that is;

(3) Submits an offer to acquire an asset from us for which services were performed during the past three years, unless the contract allows for the acquisition; or

(4) Engages in an activity that would cause us to question the integrity of the service you provided, are providing or offer to provide us, or impairs your independence.

(b) The following are examples of a conflict of interest. These examples are not inclusive.

(1) You submit an offer to perform property management services for us and you own or manage a competing property.

(2) You audit a business under a contract with us and you or a partner in your firm has an ownership interest in that business.

(3) You perform loan services on a pool of loans we are selling, and you submit a bid to purchase one or more of the loans in the pool.

(4) You audit your own work or provide nonaudit services that are significant or material to the subject matter of the audit.

§ 366.11 Will the FDIC waive a conflict of interest?

(a) We may waive a conflict of interest for good cause shown at our discretion when our need to contract for your services outweighs all relevant factors.

(b) The following are examples of when we may grant you a waiver for a conflict of interest. These examples are not inclusive.

(1) We may grant a waiver to an outside counsel who has a representational conflict. We will weigh all relevant facts and circumstances in making our determination.

(2) We may grant a waiver to allow a contractor to acquire an asset from us who is providing or has provided services on that asset. We will consider whether granting the waiver will adversely affect the fairness of the sale, the type of services provided, and other facts and circumstances relevant to the sale in making our determination.

§ 366.12 What are the FDIC's minimum standards of ethical responsibility?

(a) You and any person who performs services for us must not provide preferential treatment to any person in your dealings with the public on our behalf.

(b) You must ensure that any person you employ to perform services for us is informed about their responsibilities under this part.

(c) You must disclose to us waste, fraud, abuse or corruption.

(d) You and any person who performs contract services to us must not:

(1) Accept or solicit for yourself or others any favor, gift, or other item of monetary value from any person who you reasonably believe is seeking an official action from you on our behalf, or has an interest that the performance or nonperformance of your duties to us may substantially affect;

(2) Use or allow the use of our property, except as specified in the contract;

(3) Make an unauthorized promise or commitment on our behalf; or

(4) Provide impermissible gifts or entertainment to an FDIC employee.

(e) The following are examples of when you are engaging in unethical behavior. These examples are not inclusive.

(1) Using government resources, including our Internet connection, to conduct any business that is unrelated to the performance of your contract with us.

(2) Submitting false invoices or claims, or making misleading or false statements.

(3) Committing us to forgive or restructure a debt or portion of a debt, unless we provide you with written authority to do so.

§ 366.13 What is my obligation regarding confidential information?

(a) Neither you nor any person who performs services on your behalf may use or disclose information obtained from us or a third party in connection with an FDIC contract, unless:

(1) The contract allows or we authorize the use or disclosure;

(2) The information is generally available to the general public; or

(3) We make the information available to the general public.

(b) The following are examples of when your use of confidential information is inappropriate. These examples are not inclusive.

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(1) Disclosing information about an asset, such as internal asset valuations, appraisals or environmental reports, except as part of authorized due diligence materials, to a prospective asset purchaser.

(2) Disclosing a borrower's or guarantor's personal or financial information, such as a financial statement to an unauthorized party.

§ 366.14 What information must I provide the FDIC?

You must:

(a) Certify in writing that you can perform services for us under § 366.3 and have no conflict of interest under § 366.10(a).

(b) Submit a list and description of any instance during the preceding five years in which you, any person that owns or controls you, or any entity you own or control, defaulted on a material obligation to an insured depository institution. A default on a material obligation occurs when a loan or advance with an outstanding balance of more than $50,000 is or was delinquent for 90 days or more.

(c) Notify us within 10 business days after you become aware that you, or any person you employ to perform services for us, are not in compliance with this part. Your notice must include a detailed description of the facts of the situation and how you intend to resolve the matter.

(d) Agree in writing that you will employ only persons who meet the requirements of this part to perform services on our behalf.

(e) Comply with any request from us for information.

(f) Retain any information you rely upon regarding the provisions of this part for a period of three years following termination or expiration and final payment of the related contract for services.

§ 366.15 What advice or determinations will the FDIC provide me on the applicability of this part?

(a) We are available to you for consultation on those determinations you are responsible for making under this part, including those with respect to any person you employ or engage to perform services for us.

(b) We will determine if this part prohibits you from performing services for us prior to contract award, after contract award, and during the performance of a contract.

(c) We may determine what corrective action you must take.

(d) We may grant you a waiver for good cause shown where provided for under this part.

§ 366.16 When may I seek a reconsideration or review of an FDIC determination?

(a) You may seek reconsideration or review of our initial determination by sending a written request to the individual who issued you the initial decision.

(b) You must provide new information or explain a change in circumstances for our reconsideration of an initial decision. The individual who issued you the initial decision may either make a new determination or refer your request to a higher authority for review.

(c) You must provide an explanation of how you perceive that we misapplied this part that sets forth the legal or factual errors for our review of an initial decision.

§ 366.17 What are the possible consequences for violating this part?

Depending on the circumstances, violations of this part may result in rescission or termination of a contract, as well as administrative, civil, or criminal sanctions.

By order of the Board of Directors.

Dated in Washington, DC, this 7th day of May, 2002.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. 02–12020 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–SW–39–AD; Amendment 39–12751; AD 2002–10–05]

RIN 2120–AA64

Airworthiness Directives; MD Helicopters Inc. Model MD–900 Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to MD Helicopters Inc. Model MD–900 helicopters, that currently requires inspecting the main rotor upper hub (hub) assembly drive plate attachment flange (flange), determining the torque of each flange nut (nut), and if a crack is found, before further flight, replacing the hub assembly. In addition to the current requirements, this action requires visually inspecting the outer surface of the flange at specified intervals, removing the drive plate and visually inspecting the flange for a crack at specified intervals, and replacing any unairworthy hub assembly. This amendment is prompted by reports that cracks starting at the drive plate attachment holes were found in the hub. The actions specified by this AD are intended to detect a crack in the flange and to prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective June 19, 2002.

The incorporation by reference of certain publications listed in the regulations was approved previously by the Director of the Federal Register as of May 1, 2001 (66 FR 19383, April 16, 2001).

ADDRESSES: The service information referenced in this AD may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax (480) 891–6782, or on the Web at *www.mdhelicopters.com*. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jon Mowery, Aviation Safety Engineer, FAA, Los Angeles Aircraft Certification Office, Airframe Branch, 3960 Paramount Blvd., Lakewood, California 90712, telephone (562) 627–5322, fax (562) 627–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 by superseding AD 2001–07–09, Amendment 39–12175 (66 FR 19383, April 16, 2001), for MD Helicopters Inc. Model MD–900 helicopters, was published in the **Federal Register** on December 17, 2001 (66 FR 64931). That action proposed to require inspecting the flange, determining the torque of each nut, and if a crack is found, before further flight, replacing the hub assembly. That action also proposed to require visually inspecting the outer surface of the flange at specified intervals, removing the drive plate and visually inspecting the flange for a crack at specified intervals, and replacing any unairworthy hub assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of

the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed with the exception of minor editorial changes. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates 28 helicopters of U.S. registry will be affected by this AD. It will take approximately:

- 1 work hour per helicopter to verify the torque,
- 3 work hours per helicopter to perform the inspection,
- 10 work hours per helicopter to replace the hub assembly,
- 1 work hour for a 100-hour TIS inspection, and
- 3 work hours for a 300-hour TIS inspection.

The average labor rate is $60 per work hour. Required parts to replace the hub assembly, if necessary, will cost approximately $21,610 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $159,770 for the first year, assuming 5 hub assembly replacements and assuming each helicopter has 6 torque verifications, 6 inspections, two 100-hour inspections, and one 300-hour inspection.

The regulations adopted herein will not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this final rule does not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–12175 (66 FR 19383, April 16, 2001), and by adding a new airworthiness directive (AD), Amendment 39–12751, to read as follows:

2002–10–05 MD Helicopters, Inc.: Amendment 39–12751. Docket No. 2001–SW–39–AD. Supersedes AD 2001–07–09, Amendment 39–12175, Docket No. 2000–SW–15–AD.

Applicability: Model MD–900 helicopters, with main rotor upper hub (hub) assembly, part number (P/N) 900R2101006–105 or P/N 900R2101006–107, installed, certificated in any category.

Note 1: This AD applies to each helicopter identified in the preceding applicability provision, regardless of whether it has been otherwise modified, altered, or repaired in the area subject to the requirements of this AD. For helicopters that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (e) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the hub assembly, loss of drive to the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) For the hub assembly, P/N 900R2101006–107:

(1) Within 6 hours time-in-service (TIS), visually inspect the hub assembly drive plate attach flange (flange) for a crack and determine the torque of each flange attach nut (nut) in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of MD Helicopter Inc. Service Bulletin SB900–072, dated December 10, 1999 (SB). If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(2) Within 25 hours TIS, accomplish Part II, of the Accomplishment Instructions, paragraph 2.B., steps (1) through (6), (8), and (9) of the SB. If a crack is found, before further flight, remove and replace the hub assembly with an airworthy hub assembly.

(b) For the hub assembly, P/N 900R2101006–105:

(1) Within 6 hours TIS, visually inspect the flange for a crack and determine the torque of each nut in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7) of the SB.

Note 2: The SB effectivity does not include hub assembly, P/N 900R2101006–105; however, certain provisions of this AD do apply to this P/N.

(2) If any nut has less than 180 inch pounds (20.34 Nm) of torque, before further flight, remove the drive plate and fretting buffer and inspect the flange in accordance with the procedures in paragraph (b)(3) of this AD. If a crack is detected, before further flight, remove and replace the hub assembly with an airworthy hub assembly. Reassemble in accordance with the procedures in paragraph (b)(3) of this AD.

(3) Within 25 hours TIS, remove the main rotor drive plate assembly and anti-fretting ring and visually inspect the hub assembly as follows:

(i) If present, remove sealant from the drive plate attachment to the hub assembly.

(ii) Mark the main rotor hub holes to correspond with the drive plate hole numbers (see Figure 1 of this AD).

(iii) Remove the main rotor drive plate (drive plate) assembly and anti-fretting ring (fretting buffer).

(iv) Inspect drive plate to hub assembly mating surfaces and the fretting buffer for fretting.

(v) Using paint stripper (Consumable Item List C313 or equivalent) and cleaning solvent (C420 or equivalent), remove the paint from the upper mating surface of the hub assembly to enable an accurate visual inspection of each drive plate attachment bolt hole (bolt hole) area for cracking (Figure 1). Ensure the paint stripper and solvent DO NOT contaminate the upper bearing and upper grease seal areas.

(vi) Using a 10x or higher magnifying glass and light, inspect the mating surface area and the area around and inside the 10 bolt holes of the hub assembly for a crack. If a crack is found, before further flight, replace the hub assembly with an airworthy hub assembly.

(vii) If no crack is found, remove fretting debris from the mating surfaces of the hub assembly and the drive plate assembly, reassemble, fillet seal (C211 or equivalent) the surface of the drive plate to fretting buffer to hub assembly mating lines, and seal all exposed unpainted upper surfaces of the hub assembly.

(viii) Reinstall the main rotor drive plate using 10 new sets of replacement attachment hardware. Torque the nuts to 160 inch pounds above locknut locking/run-on torque in the sequence shown (Figure 1). Record in the rotorcraft logbook, or equivalent record, the locknut locking/run-on torque for each nut.

(ix) After the next flight, verify that the torque on each of the 10 nuts is at least 160 inch-pounds above the locknut locking/run-on torque (minimum torque). Re-torque as required without loosening nuts.

(x) Thereafter, at intervals of at least 4 hours TIS, not to exceed 6 hours TIS, verify

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that the torque of each of the 10 nuts is at least the minimum torque. Re-torque as required without loosening nuts. This torque verification is no longer required after the torque on each of the 10 nuts has stabilized at a torque value of 160 or more inch-pounds for each nut during two successive torque verifications.

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1. MAIN ROTOR DRIVE PLATE ATTACHMENT HARDWARE TORQUE SEQUENCE.
2. NUMBERING MAY START AT ANY HOLE.
3. TORQUE NUTS TO 1/2 TOTAL TORQUE, THEN FULL TORQUE.

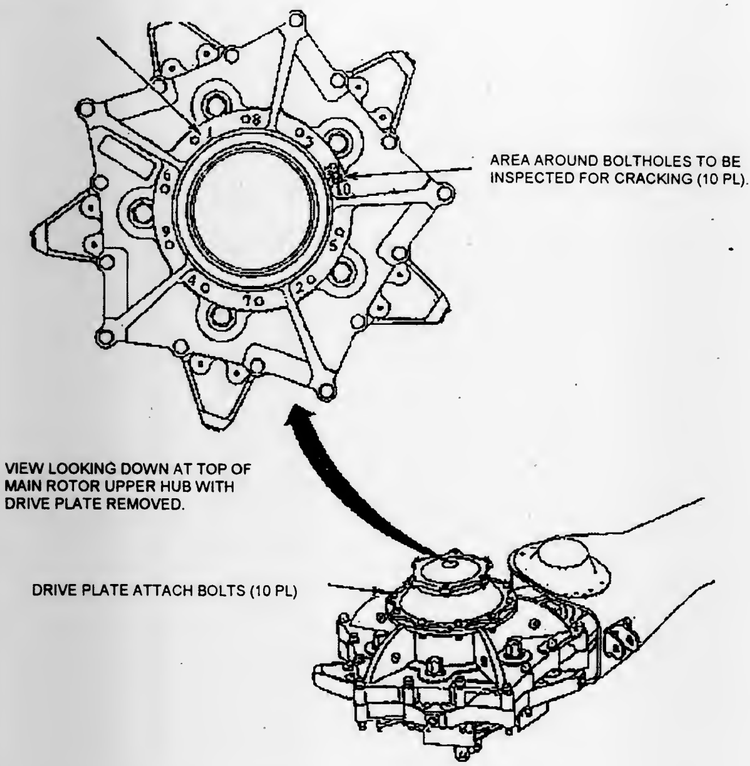


Figure 1. Main Rotor Upper Hub Assembly Inspection

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(c) Within 100 hours TIS and thereafter at intervals not to exceed 100 hours TIS, visually inspect the outer surface of the flange for a crack using a light and a 10x or higher magnifying glass. If a crack is detected, replace the unairworthy hub assembly with an airworthy hub assembly before further flight.

(d) At intervals not to exceed 300 hours TIS, remove the drive plate and visually inspect the flange for a crack using a light and a 10x or higher magnifying glass. If a crack is detected, replace the unairworthy hub assembly with an airworthy hub assembly before further flight.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (LAACO), FAA. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, LAACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the LAACO.

(f) If any nut torque is below minimum torque and no hub assembly crack is found before disassembly inspection, after re-torque in accordance with the applicable maintenance manual, a special flight permit for one flight below 100 knots indicated airspeed may be issued in accordance with 14 CFR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspections and replacement, if necessary, shall be done in accordance with the Accomplishment Instructions, Part I, paragraph 2.A., steps (1) through (7); and Part II, paragraph 2.B., steps (1) through (6), (8), and (9), of MD Helicopter Inc. Service Bulletin SB900–072, dated December 10, 1999. The incorporation by reference of that document was previously approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 1, 2001 (66 FR 19383, April 16, 2001). Copies may be obtained from MD Helicopters Inc., Attn: Customer Support Division, 4555 E. McDowell Rd., Mail Stop M615–GO48, Mesa, Arizona 85215–9734, telephone 1–800–388–3378, fax (480) 891–6782, or on the web at www.mdhelicopters.com. Copies may be inspected at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective on June 19, 2002.

Issued in Fort Worth, Texas, on May 2, 2002.

David A. Downey,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 02–12051 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 900

RIN 1076–AE30

Contracts Under the Indian Self-Determination and Education Assistance Act; Change of Address for the Office of Hearings and Appeals

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule; change of address.

SUMMARY: The Bureau of Indian Affairs is revising its regulations governing contracts under the Indian Self-Determination and Education Assistance Act to reflect a change of address for the Department of Interior's Office of Hearing and Appeals (OHA).

DATES: This rule is effective May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Mitchell Chouteau, Program Analyst, Office of Administration, Bureau of Indian Affairs, Department of the Interior, 1849 C Street, NW, MS 4656 MIB, Washington, DC 20240, telephone 202–208–2675.

SUPPLEMENTARY INFORMATION:

I. Background

Regulations promulgated by the Department of the Interior to govern the administration of contracts under the Indian Self-Determination and Education Assistance Act reference an address for the Office of Hearings and Appeals (OHA). Since February 2002, this Office has moved to a new address within the same city of Arlington, Virginia. This action references the new street address.

II. Procedural Requirements

A. Determination To Issue Final Rule Effective in Less than 30 Days

BIA has determined that the public notice and comment provisions of the Administrative Procedure Act, 5 U.S.C. 553(b), do not apply to this rulemaking. The changes being made relate solely to matters of agency organization, procedure and practice. They therefore satisfy the exemption from notice and comment in 5 U.S.C. 553(b)(A).

B. Review Under Procedural Statutes and Executive Orders

BIA has reviewed this rule under the following statutes and Executive Orders governing rulemaking procedures: the Unfunded Mandates Reform Act of 1995, 2 U.S.C. 1501 *et seq.*; the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*; the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 *et seq.*; the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*; Executive Order 12630 (Takings); Executive Order 12866 (Regulatory Planning and Review); Executive Order 12988 (Civil Justice Reform); Executive Order 13132 (Federalism); Executive Order 13175 (Tribal Consultation); and Executive Order 13211 (Energy Impacts). BIA has determined that this rule does not trigger any of the procedural requirements of those statutes and Executive Orders, since this rule merely changes the street address for OHA.

List of Subjects in 25 CFR Part 900

Administrative practice and procedure, Buildings and facilities, Claims, Government contracts, Government property management, Grant programs—Indians, Health care, Indians, Indians—business and finance.

For the reasons stated in the preamble, BIA amends its regulations in 25 CFR part 900 as follows:

PART 900—[AMENDED]

1. The authority citation for part 900 continues to read as follows:

Authority: 25 U.S.C. 450f *et seq.*

2. In part 900 revise "4015 Wilson Boulevard" to read "801 North Quincy Street" everywhere it appears.

Dated: May 3, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–12080 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8995]

RIN 1545–AY31

Mid-Contract Change in Taxpayer

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations concerning a mid-contract change in taxpayer of a contract accounted for under a long-term contract method of accounting. A taxpayer that is a party to such a contract will be affected by these regulations.

DATES: *Effective Date:* These regulations are effective May 15, 2002.

Applicability Date: These regulations apply to transactions on or after May 15, 2002.

FOR FURTHER INFORMATION CONTACT: John Aramburu at (202) 622–4960 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in these final regulations has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)) under control number 1545–1732.

The collection of information in these final regulations is in § 1.460–6(g)(3)(ii)(D). This information is required to enable taxpayers to make look-back computations when the income from a long-term contract has been previously reported by another taxpayer.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number.

The estimated average annual disclosure burden per respondent is 2 hours.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be sent to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, W:CAR:MP:FP, Washington, DC 20224, and to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to a collection of information must be retained as long as their contents might become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

Section 460 generally requires that long-term contracts be accounted for under the percentage-of-completion method (PCM), under which a taxpayer must recognize income according to the estimated percentage of the contract that is completed during each taxable year and make a look-back computation of interest to compensate the government (or the taxpayer) for any underestimation (or overestimation) of income from the contract. However, home construction contracts and certain contracts of smaller construction contractors are exempt from these requirements. Moreover, residential builders are entitled to use the 70/30 percentage-of-completion/capitalized cost method (PCCM), and certain shipbuilders are entitled to use the 40/60 PCCM. A long-term contract or a portion of a long-term contract that is exempt from the PCM may be accounted for under any permissible method, including the completed contract method (CCM), under which a taxpayer does not report income until a contract is complete, even though progress payments are received in years prior to completion.

This document contains amendments to 26 CFR part 1. On February 16, 2001, a notice of proposed rulemaking (REG–105946–00) relating to a mid-contract change in taxpayer of a contract accounted for under a long-term contract method of accounting was published in the **Federal Register** (66 FR 10643). Written comments were received from the public in response to the notice of proposed rulemaking. No public hearing was requested or held. After consideration of all comments, the proposed regulations are adopted as amended by this Treasury decision.

Explanation and Summary of Comments

The proposed regulations divide the rules regarding a mid-contract change in taxpayer of a contract accounted for under a long-term contract method of accounting into two categories—constructive completion transactions and step-in-the-shoes transactions. Generally, a constructive completion transaction results in the taxpayer originally accounting for the long-term contract (old taxpayer) recognizing income from the contract based on a contract price that takes into account any amounts realized from the transaction or paid by the old taxpayer to the taxpayer subsequently accounting for the long-term contract (new taxpayer) that are allocable to the contract. Similarly, the new taxpayer in a constructive completion transaction is treated as though it entered into a new contract as of the date of the transaction, with the contract price taking into account the purchase price and any amount paid by the old taxpayer that is allocable to the contract. In the case of a step-in-the-shoes transaction, the old taxpayer's obligation to account for the contract terminates on the date of the transaction and is assumed by the new taxpayer. The new taxpayer must assume the old taxpayer's methods of accounting for the contract, with both the contract price and allocable contract costs based on amounts taken into account by both parties.

Commentators raised concerns regarding the general application of step-in-the-shoes treatment to contracts of S corporations accounted for using the CCM. For example, these commentators were concerned with the potential for income shifting that can occur when the stock of an S corporation that is accounting for a long-term contract using the CCM is sold to a party with a lower marginal tax rate or to a tax indifferent shareholder. Similarly, income from a CCM contract could be shifted to a party with a lower tax rate or a tax indifferent party by making an S election or transferring the contract in a section 351 transaction, followed by an S election and a sale of stock. To prevent such a shifting of income, these commentators generally recommend that the transferor be required to apply the PCM to CCM contracts in progress as of the transaction date.

While these commentators' concerns and recommendations relate solely to CCM contracts, the potential for such income shifting also exists with PCM contracts due to the fact that recognition of income under both the PCM and the CCM does not correspond to the receipt of progress payments. In addition, many of the commentators' concerns are not unique to the section 460 regulations as similar opportunities are presented whenever an S corporation or an electing S corporation has assets with built-in gain or loss. Moreover, adoption of the commentators' recommendation would trigger tax as of the transaction date and thus would be inconsistent with the policy of providing for tax-free reorganizations of going concerns. Thus, the commentators' proposals for

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addressing this potential abuse were not adopted. However, as in the proposed regulations, the final regulations contain an anti-abuse rule that is designed to prevent such income shifting.

Commentators suggested that for purposes of the section 1374 built-in gain rules applicable to S corporation elections, long-term contracts should be valued at the amount of income reportable under the PCM on the date of the election. The section 1374 regulations currently measure recognized built-in gain attributable to a long-term contract accounted for using the CCM based on the amount of income reportable under the PCM on the date of the election. See § 1.1374–4(g). These final regulations, however, do not provide a specific rule to determine the value of a long-term contract because the fair market value of a long-term contract reflects a variety of factors, including the amount earned by the old taxpayer as compared to the progress payments received and retained by the old taxpayer, and the new taxpayer's estimates of future revenues and costs.

One commentator pointed out that while the preamble indicates the treatment of partnership transactions (i.e., transactions described in sections 721 and 731, and transfers of partnership interests) have been reserved, the proposed regulations, by default, place these transactions in the taxable, constructive completion category. This commentator suggested that the regulations reserve the treatment of partnership transactions and provide only that taxpayers use reasonable methods.

The final regulations provide that a contribution to a partnership in a transaction described in section 721(a), a transfer of a partnership interest, and a distribution by a partnership to which section 731 applies (other than a distribution of a contract accounted for using a long-term contract method of accounting) are step-in-the-shoes transactions. The final regulations, however, reserve on the special rules that will apply to such transfers. As described in Notice 2002–37 (2002–23 I.R.B.), the IRS and Treasury Department intend to publish regulations that will set forth the special rules that will apply to such partnership transactions in a separate project. These regulations will be effective for contributions of long-term contracts to partnerships and transfers of interests in partnerships that are engaged in long-term contracts on or after May 15, 2002.

One commentator objected to the required use of the simplified marginal impact method of computing look back interest in the case of a step-in-the-shoes transaction. In response to this comment, the final regulations give taxpayers the option of using this method without requiring it, except in those cases in which the existing regulations require its use. See § 1.460–6(d)(4).

Questions have arisen as to whether the implementation of these rules requires a taxpayer to request a change in method of accounting by filing a Form 3115, "Application for Change in Accounting Method." In response to these questions, the final regulations clarify that the application of these rules to a transaction occurring after the effective date is not a change in method of accounting and, therefore, does not require the filing of Form 3115.

In addition to changes made in response to the comments and questions described above, the final regulations clarify the application of the step-in-the-shoes rules to certain transfers of contracts that result in the old taxpayer recognizing income with respect to the contract. Specifically, the final regulations explain how the old taxpayer calculates the gain realized with respect to the contract in these transactions, clarify the operation of the basis adjustment rule in certain cases of successive transfers of a contract, and provide that the contract price of a new taxpayer should be reduced to the extent that the old taxpayer recognizes income with respect to the contract in connection with these transactions. The final regulations also clarify that a taxpayer is not entitled to a loss in the amount of its basis in the contract (including the uncompleted property, if applicable) where that basis is determined under section 362 or 334. In addition, to the extent the basis of the contract (including the uncompleted property, if applicable) reflects the old taxpayer's recognition of income attributable to the contract in the step-in-the-shoes transaction, such income recognition reduces the total contract price. Accordingly, the new taxpayer recovers this additional basis over the time that it performs the contract. To the extent the basis of the contract (including the uncompleted property, if applicable) reflects costs incurred by the old taxpayer that have not yet been deducted (i.e., in the case of a CCM contract), such costs will give rise to a deduction upon completion of the contract. Therefore, disallowing the new taxpayer a loss for its basis in the contract (including the uncompleted property, if applicable) is necessary to prevent the new taxpayer from benefitting twice from the same item. Finally, the final regulations include new examples to illustrate these rules.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that the collection of information in this Treasury decision will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the relevant information is already maintained by taxpayers. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Code, the proposed regulations preceding these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is John Aramburu, Office of Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

26 CFR Part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 1 is amended as follows:

PART 1—INCOME TAXES

1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

2. In § 1.358–1, a sentence is added at the end of paragraph (a) to read as follows:

§ 1.358–1 Basis to distributees.

(a) * * * See § 1.460–4(k)(3)(iv)(A) for rules relating to stock basis adjustments required where a contract accounted for using a long-term contract method of accounting is transferred in a transaction described in section 351 or a reorganization described in section 368(a)(1)(D) with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met.

* * * * *

3. In § 1.334–1, a sentence is added at the end of paragraph (b) to read as follows:

§ 1.334–1 Basis of property received in liquidations.

* * * * *

(b) * * * See § 1.460–4(k)(3)(iv)(B)(*2*) for rules relating to adjustments to the basis of certain contracts accounted for using a long-term contract method of accounting that are acquired in certain liquidations described in section 332.

* * * * *

4. In § 1.362–1, a sentence is added at the end of paragraph (a) to read as follows:

§ 1.362–1 Basis to corporations.

(a) * * * See § 1.460–4(k)(3)(iv)(B)(*2*) for rules relating to adjustments to the basis of certain contracts accounted for using a long-term contract method of accounting that are acquired in certain transfers described in section 351 and certain reorganizations described in section 368(a).

* * * * *

5. In § 1.381(c)(4)–1, a sentence is added at the end of paragraph (a)(2) to read as follows:

§ 1.381(c)(4)–1 Method of accounting.

(a) * * *

(2) * * * See § 1.460–4(k) for rules relating to transfers of contracts accounted for using a long-term contract method of accounting in a transaction to which section 381 applies.

* * * * *

6. Section 1.460–0 is amended by:

1. Revising the entry for paragraph (k) of § 1.460–4.

2. Adding entries for paragraphs (k)(1) through (k)(6) of § 1.460–4.

3. Adding entries for paragraphs (g) through (g)(4) of § 1.460–6.

§ 1.460–0 Outline of regulations under section 460.

* * * * *

§ 1.460–4 Methods of accounting for long-term contracts.

* * * * *

(k) Mid-contract change in taxpayer.

(1) In general.

(2) Constructive completion transactions.

(i) Scope.

(ii) Old taxpayer.

(iii) New taxpayer.

(iv) Special rules relating to distributions of certain contracts by a partnership. [Reserved.]

(3) Step-in-the-shoes transactions.

(i) Scope.

(ii) Old taxpayer.

(A) In general.

(B) Gain realized on the transaction.

(iii) New taxpayer.

(A) Method of accounting.

(B) Contract price.

(C) Contract costs.

(iv) Special rules related to certain corporate transactions.

(A) Old taxpayer—basis adjustment.

(*1*) In general.

(*2*) Basis adjustment in excess of stock basis.

(*3*) Subsequent dispositions of certain contracts.

(B) New taxpayer.

(*1*) Contract price adjustment.

(*2*) Basis in contract.

(v) Special rules related to certain partnership transactions. [Reserved.]

(4) Anti-abuse rule.

(5) Examples.

(6) Effective date.

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§ 1.460–6 Look-back method.

* * * * *

(g) Mid-contract change in taxpayer.

(1) In general.

(2) Constructive completion transactions.

(3) Step-in-the-shoes transactions.

(i) General rules.

(ii) Application of look-back method to pre-transaction period.

(A) Contract Price

(B) Method.

(C) Interest accrual period.

(D) Information old taxpayer must provide.

(iii) Application of look-back method to post-transaction years.

(iv) S corporation elections.

(4) Effective date.

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7. Section 1.460–4 is amended by:

1. Adding a sentence at the end of paragraph (a).

2. Adding paragraph (k).

The additions read as follows:

§ 1.460–4 Methods of accounting for long-term contracts.

(a) * * * Finally, paragraph (k) of this section provides rules relating to a mid-contract change in taxpayer of a contract accounted for using a long-term contract method of accounting.

* * * * *

(k) *Mid-contract change in taxpayer*—(1) *In general.* The rules in this paragraph (k) apply if prior to the completion of a long-term contract accounted for using a long-term contract method by a taxpayer (old taxpayer), there is a transaction that makes another taxpayer (new taxpayer) responsible for accounting for income from the same contract. For purposes of this paragraph (k) and § 1.460–6(g), an old taxpayer also includes any old taxpayer(s) (e.g., predecessors) of the old taxpayer. In addition, a change in status from taxable to tax exempt or from domestic to foreign, or vice versa, will be considered a change in taxpayer. Finally, a contract will be treated as the same contract if the terms of the contract are not substantially changed in connection with the transaction, whether or not the customer agrees to release the old taxpayer from any or all of its obligations under the contract. The rules governing constructive completion transactions are provided in paragraph (k)(2) of this section, while the rules governing step-in-the-shoes transactions are provided in paragraph (k)(3) of this section. Special rules related to the treatment of certain partnership transactions are reserved under paragraphs (k)(2)(iv) and (k)(3)(v) of this section. For application of the look-back method to mid-contract changes in taxpayers for contracts accounted for using the PCM, see § 1.460–6(g).

(2) *Constructive completion transactions*—(i) *Scope.* The constructive completion rules in this paragraph (k)(2) apply to transactions (constructive completion transactions) that result in a change in the taxpayer responsible for reporting income from a contract and that are not described in paragraph (k)(3)(i) of this section. Constructive completion transactions generally include, for example, taxable sales under section 1001 and deemed asset sales under section 338.

(ii) *Old taxpayer.* The old taxpayer is treated as completing the contract on the date of the transaction. The total contract price (or, gross contract price in the case of a long-term contract accounted for under the CCM) for the old taxpayer is the sum of any amounts realized from the transaction that are allocable to the contract and any amounts the old taxpayer has received or reasonably expects to receive under the contract. Total contract price (or gross contract price) is reduced by any amount paid by the old taxpayer to the new taxpayer, and by any transaction costs, that are allocable to the contract. Thus, the old taxpayer's allocable contract costs determined under paragraph (b)(5) of this section do not include any consideration paid, or costs incurred, as a result of the transaction that are allocable to the contract. In the case of a transaction subject to section

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338 or 1060, the amount realized from the transaction allocable to the contract is determined by using the residual method under §§ 1.338–6 and 1.338–7.

(iii) *New taxpayer.* The new taxpayer is treated as entering into a new contract on the date of the transaction. The new taxpayer must evaluate whether the new contract should be classified as a long-term contract within the meaning of § 1.460–1(b) and account for the contract under a permissible method of accounting. For a new taxpayer who accounts for a contract using the PCM, the total contract price is any amount the new taxpayer reasonably expects to receive under the contract consistent with paragraph (b)(4) of this section. Total contract price is reduced by the amount of any consideration paid by the new taxpayer as a result of the transaction, and by any transaction costs, that are allocable to the contract and is increased by the amount of any consideration received by the new taxpayer as a result of the transaction that is allocable to the contract. Similarly, the gross contract price for a contract accounted for using the CCM is all amounts the new taxpayer is entitled by law or contract to receive consistent with paragraph (d)(3) of this section, adjusted for any consideration paid (or received) by the new taxpayer as a result of the transaction, and for any transaction costs, that are allocable to the contract. Thus, the new taxpayer's allocable contract costs determined under paragraph (b)(5) of this section do not include any consideration paid, or costs incurred, as a result of the transaction that are allocable to the contract. In the case of a transaction subject to sections 338 or 1060, the amount of consideration paid that is allocable to the contract is determined by using the residual method under §§ 1.338–6 and 1.338–7.

(iv) *Special rules relating to distributions of certain contracts by a partnership.* [Reserved]

(3) *Step-in-the-shoes transactions*—(i) *Scope.* The step-in-the-shoes rules in this paragraph (k)(3) apply to the following transactions that result in a change in the taxpayer responsible for reporting income from a contract accounted for using a long-term contract method of accounting (step-in-the-shoes transactions)—

(A) Transfers to which section 361 applies if the transfer is in connection with a reorganization described in section 368(a)(1)(A), (C) or (F);

(B) Transfers to which section 361 applies if the transfer is in connection with a reorganization described in section 368(a)(1)(D) or (G), provided the requirements of section 354(b)(1)(A) and (B) are met;

(C) Distributions to which section 332 applies, provided the contract is transferred to an 80-percent distributee;

(D) Transfers described in section 351;

(E) Transfers to which section 361 applies if the transfer is in connection with a reorganization described in section 368(a)(1)(D) with respect to which the requirements of section 355 (or so much of section 356 as relates to section 355) are met;

(F) Transfers (e.g., sales) of S corporation stock;

(G) Conversion to or from an S corporation;

(H) Members joining or leaving a consolidated group;

(I) Contributions to which section 721(a) applies;

(J) Transfers of partnership interests;

(K) Distributions to which section 731 applies (other than the distribution of the contract); and

(L) Any other transaction designated in the Internal Revenue Bulletin by the Internal Revenue Service. See § 601.601(d)(2)(ii) of this chapter.

(ii) *Old taxpayer*—(A) *In general.* The new taxpayer will "step into the shoes" of the old taxpayer with respect to the contract. Thus, the old taxpayer's obligation to account for the contract terminates on the date of the transaction and is assumed by the new taxpayer, as set forth in paragraph (k)(3)(iii) of this section. As a result, an old taxpayer using the PCM is required to recognize income from the contract based on the cumulative allocable contract costs incurred as of the date of the transaction. Similarly, an old taxpayer using the CCM is not required to recognize any revenue and may not deduct allocable contract costs incurred with respect to the contract.

(B) *Gain realized on the transaction.* The amount of gain the old taxpayer realizes on the transfer of a contract in a step-in-the-shoes transaction must be determined after application of paragraph (k)(3)(ii)(A) of this section using the rules of paragraph (k)(2) of this section that apply to constructive completion transactions. (The amount of gain realized on a transfer of a contract is relevant, for example, in determining the amount of gain recognized with respect to the contract in a section 351 transaction in which the old taxpayer receives from the new taxpayer money or property other than stock of the transferee.)

(iii) *New taxpayer*—(A) *Method of accounting.* Beginning on the date of the transaction, the new taxpayer must account for the long-term contract by using the same method of accounting used by the old taxpayer prior to the transaction. The same method of accounting must be used for such contract regardless of whether the old taxpayer's method is the new taxpayer's principal method of accounting under § 1.381(c)(4)–1(b)(3) or whether the new taxpayer is otherwise eligible to use the old taxpayer's method. Thus, if the old taxpayer uses the PCM to account for the contract, the new taxpayer steps into the shoes of the old taxpayer with respect to its completion factor and percentage of completion methods (such as the 10-percent method), even if the new taxpayer has not elected such methods for similarly classified contracts. Similarly, if the old taxpayer uses the CCM, the new taxpayer steps into the shoes of the old taxpayer with respect to the CCM, even if the new taxpayer is not otherwise eligible to use the CCM. However, the new taxpayer is not necessarily bound by the old taxpayer's method for similarly classified contracts entered into by the new taxpayer subsequent to the transaction and must apply general tax principles, including section 381, to determine the appropriate method to account for these subsequent contracts. To the extent that general tax principles allow the taxpayer to account for similarly classified contracts using a method other than the old taxpayer's method, the taxpayer is not required to obtain the consent of the Commissioner to begin using such other method.

(B) *Contract price.* In the case of a long-term contract that has been accounted for under PCM, the total contract price for the new taxpayer is the sum of any amounts the old taxpayer or the new taxpayer has received or reasonably expects to receive under the contract consistent with paragraph (b)(4) of this section. Similarly, the gross contract price in the case of a long-term contract accounted for under the CCM includes all amounts the old taxpayer or the new taxpayer is entitled by law or by contract to receive consistent with paragraph (d)(3) of this section.

(C) *Contract costs.* Total allocable contract costs for the new taxpayer are the allocable contract costs as defined under paragraph (b)(5) of this section incurred by either the old taxpayer prior to, or the new taxpayer after, the transaction. Thus, any payments between the old taxpayer and the new taxpayer with respect to the contract in connection with the transaction are not treated as allocable contract costs.

(iv) *Special rules related to certain corporate transactions*—(A) *Old taxpayer—basis adjustment—(1) In general.* Except as provided in paragraph (k)(3)(iv)(A)(*2*) of this section, in the case of a transaction described in paragraph (k)(3)(i)(D) or (E) of this section, the old taxpayer must adjust its basis in the stock of the new taxpayer by—

(*i*) Increasing such basis by the amount of gross receipts the old taxpayer has recognized under the contract; and

(*ii*) Reducing such basis by the amount of gross receipts the old taxpayer has received or reasonably expects to receive under the contract.

(*2*) *Basis adjustment in excess of stock basis.* If the old and new taxpayer do not join in the filing of a consolidated Federal income tax return, the old taxpayer may not adjust its basis in the stock of the new taxpayer under paragraph (k)(3)(iv)(A)(*1*) of this section below zero and the old taxpayer must recognize ordinary income to the extent the basis in the stock of the new taxpayer otherwise would be adjusted below zero. If the old and new taxpayer join in the filing of a consolidated Federal income tax return, the old taxpayer must create an (or increase an existing) excess loss account to the extent the basis in the stock of the new taxpayer otherwise would be adjusted below zero under paragraph (k)(3)(iv)(A)(*1*) of this section. See §§ 1.1502–19 and 1.1502–32(a)(3)(ii).

(*3*) *Subsequent dispositions of certain contracts.* If the old taxpayer disposes of a contract in a transaction described in paragraph (k)(3)(i)(D) or (E) of this section that the old taxpayer acquired in a transaction described in paragraph (k)(3)(i)(D) or (E) of this section, the basis adjustment rule of this paragraph (k)(3)(iv)(A) is applied by treating the old taxpayer as having recognized the amount of gross receipts recognized by the previous old taxpayer under the contract and any amount recognized by the previous old taxpayer with respect to the contract in connection with the transaction in which the old taxpayer acquired the contract. In addition, the old taxpayer is treated as having received or as reasonably expecting to receive under the contract any amount the previous old taxpayer received or reasonably expects to receive under the contract. Similar principles will apply in the case of multiple successive transfers described in paragraph (k)(3)(i)(D) or (E) of this section involving the contract.

(B) *New Taxpayer*—(1) *Contract price adjustment.* Generally, payments between the old taxpayer and the new taxpayer with respect to the contract in connection with the transaction do not affect the contract price. Notwithstanding the preceding sentence and paragraph (k)(3)(iii)(B) of this section, however, in the case of transactions described in paragraph (k)(3)(i)(B), (D) or (E) of this section, the total contract price (or gross contract price) must be reduced to the extent of any amount recognized by the old taxpayer with respect to the contract in connection with the transaction (e.g., any amount recognized under section 351(b) or 357 that is attributable to the contract and any income recognized by the old taxpayer pursuant to the basis adjustment rule of paragraph (k)(3)(iv)(A)).

(*2*) *Basis in Contract.* The new taxpayer's basis in a contract (including the uncompleted property, if applicable) acquired in a transaction described in paragraphs (k)(3)(i)(A) through (E) of this section will be computed under section 362 or section 334, as applicable. Upon a new taxpayer's completion (actual or constructive) of a CCM or a PCM contract acquired in a transaction described in paragraphs (k)(3)(i)(A) through (E) of this section, the new taxpayer's basis in the contract (including the uncompleted property, if applicable) is reduced to zero. The new taxpayer is not entitled to a deduction or loss in connection with any basis reduction pursuant to this paragraph (k)(3)(iv)(B)(*2*).

(v) *Special rules related to certain partnership transactions.* [Reserved]

(4) *Anti-abuse rule.* Notwithstanding this paragraph (k), in the case of a transaction entered into with a principal purpose of shifting the tax consequences associated with a long-term contract in a manner that substantially reduces the aggregate U.S. Federal income tax liability of the parties with respect to that contract, the Commissioner may allocate to the old (or new) taxpayer the income from that contract properly allocable to the old (or new) taxpayer. For example, the Commissioner may reallocate income from a long-term contract in a transaction in which a contract accounted for using the CCM, or using the PCM where the old taxpayer has received advance payments in excess of its contribution to the contract, is transferred to a tax indifferent party (e.g., a foreign person not subject to U.S. Federal income tax).

(5) *Examples.* The following examples illustrate the rules of this paragraph (k).

For purposes of these examples, it is assumed that the contract is a long-term construction contract accounted for using the PCM prior to the transaction unless stated otherwise and the contract is not transferred with a principal purpose of shifting the tax consequences associated with a long-term contract in a manner that substantially reduces the aggregate U.S. Federal income tax liability of the parties with respect to that contract. The examples are as follows:

Example 1. Constructive completion—PCM—(i) *Facts.* In Year 1, X enters into a contract. The total contract price is $1,000,000 and the estimated total allocable contract costs are $800,000. In Year 1, X incurs costs of $200,000. In Year 2, X incurs additional costs of $400,000 before selling the contract as part of a taxable sale of its business in Year 2 to Y, an unrelated party. At the time of sale, X has received $650,000 in progress payments under the contract. The consideration allocable to the contract under section 1060 is $150,000. Pursuant to the sale, the new taxpayer Y immediately assumes X's contract obligations and rights. Y is required to account for the contract using the PCM. In Year 2, Y incurs additional allocable contract costs of $50,000. Y correctly estimates at the end of Year 2 that it will have to incur an additional $75,000 of allocable contract costs in Year 3 to complete the contract.

(ii) *Old taxpayer.* For Year 1, X reports receipts of $250,000 (the completion factor multiplied by total contract price ($200,000/$800,000 x $1,000,000)) and costs of $200,000, for a profit of $50,000. X is treated as completing the contract in Year 2 because it sold the contract. For purposes of applying the PCM in Year 2, the total contract price is $800,000 (the sum of the amounts received under the contract and the amount realized in the sale ($650,000 + $150,000)) and the total allocable contract costs are $600,000 (the sum of the costs incurred in Year 1 and Year 2 ($200,000 + $400,000)). Thus, in Year 2, X reports receipts of $550,000 (total contract price minus receipts already reported ($800,000 − $250,000)) and costs incurred in year 2 of $400,000, for a profit of $150,000.

(iii) *New taxpayer.* Y is treated as entering into a new contract in Year 2. The total contract price is $200,000 (the amount remaining to be paid under the terms of the contract less the consideration paid allocable to the contract ($1,000,000 − $650,000 − $150,000)). The estimated total allocable contract costs at the end of Year 2 are $125,000 (the allocable contract costs that Y reasonably expects to incur to complete the contract ($50,000 + $75,000)). In Year 2, Y reports receipts of $80,000 (the completion factor multiplied by the total contract price [($50,000/$125,000) x $200,000] and costs of $50,000 (the costs incurred after the purchase), for a profit of $30,000. For Year 3, Y reports receipts of $120,000 (total contract price minus receipts already reported ($200,000 − $80,000)) and costs of $75,000, for a profit of $45,000.

Example 2. Constructive completion—CCM—(i) *Facts.* The facts are the same as in Example 1, except that X and Y properly account for the contract under the CCM.

(ii) *Old taxpayer.* X does not report any income or costs from the contract in Year 1. In Year 2, the contract is deemed complete for X, and X reports its gross contract price of $800,000 (the sum of the amounts received under the contract and the amount realized in the sale

($650,000 + $150,000)) and its total allocable contract costs of $600,000 (the sum of the costs incurred in Year 1 and Year 2 ($200,000 + $400,000)) in that year, for a profit of $200,000.

(iii) *New taxpayer.* Y is treated as entering into a new contract in Year 2. Under the CCM, Y reports no gross receipts or costs in Year 2. Y reports its gross contract price of $200,000 (the amount remaining to be paid under the terms of the contract less the consideration paid allocable to the contract ($1,000,000 − $650,000 − $150,000)) and its total allocable contract costs of $125,000 (the allocable contract costs that Y incurred to complete the contract ($50,000 + $75,000)) in Year 3, the completion year, for a profit of $75,000.

Example 3. Step-in-the-shoes—PCM—(i) *Facts.* The facts are the same as in Example 1, except that X transfers the contract (including the uncompleted property) to Y in exchange for stock of Y in a transaction that qualifies as a statutory merger described in section 368(a)(1)(A) and does not result in gain or loss to X under section 361(a).

(ii) *Old taxpayer.* For Year 1, X reports receipts of $250,000 (the completion factor multiplied by total contract price ($200,000/$800,000 x $1,000,000)) and costs of $200,000, for a profit of $50,000. Because the mid-contract change in taxpayer results from a transaction described in paragraph (k)(3)(i) of this section, X is not treated as completing the contract in Year 2. In Year 2, X reports receipts of $500,000 (the completion factor multiplied by the total contract price and minus the Year 1 gross receipts [($600,000/$800,000 × $1,000,000)−$250,000]) and costs of $400,000, for a profit of $100,000.

(iii) *New taxpayer.* Because the mid-contract change in taxpayer results from a step-in-the-shoes transaction, Y must account for the contract using the same methods of accounting used by X prior to the transaction. Total contract price is the sum of any amounts that X and Y have received or reasonably expect to receive under the contract, and total allocable contract costs are the allocable contract costs of X and Y. Thus, the estimated total allocable contract costs at the end of Year 2 are $725,000 (the cumulative allocable contract costs of X and the estimated total allocable contract costs of Y ($200,000 + $400,000 + $50,000 + $75,000)). In Year 2, Y reports receipts of $146,552 (the completion factor multiplied by the total contract price minus receipts reported by the old taxpayer [($650,000/$725,000) × $1,000,000]−$750,000) and costs of $50,000, for a profit of $96,552. For Year 3, Y reports receipts of $103,448 (the total contract price minus prior year receipts ($1,000,000−$896,552)) and costs of $75,000, for a profit of $28,448.

Example 4. Step-in-the-shoes—CCM—(i) *Facts.* The facts are the same as in *Example 3*, except that X properly accounts for the contract under the CCM.

(ii) *Old taxpayer.* X reports no income or costs from the contract in Years 1, 2 or 3.

(iii) *New taxpayer.* Because the mid-contract change in taxpayer results from a step-in-the-shoes transaction, Y must account for the contract using the same method of accounting used by X prior to the transaction. Thus, in Year 3, the completion year, Y reports receipts of $1,000,000 and total contract costs of $725,000, for a profit of $275,000.

Example 5. Step in the shoes—PCM—basis adjustment.

The facts are the same as in Example 3, except that X transfers the contract (including the uncompleted property) with a basis of $0 and $125,000 of cash to a new corporation, Z, in exchange for all of the stock of Z in a section 351 transaction. Thus, under section 358(a), X's basis in the Z stock is $125,000. Pursuant to paragraph (k)(3)(iv)(A)(*1*) of this section, X must increase its basis in the Z stock by the amount of gross receipts X recognized under the contract, $750,000 ($250,000 receipts in Year 1 + $500,000 receipts in Year 2), and reduce its basis by the amount of gross receipts X received under the contract, the $650,000 in progress payments. Accordingly, X's basis in the Z stock is $225,000. All other results are the same.

Example 6. Step in the shoes—CCM—basis adjustment—(i) *Facts.* The facts are the same as in *Example 4*, except that X receives progress payments of $800,000 (rather than $650,000) and transfers the contract (including the uncompleted property) with a basis of $600,000 and $125,000 of cash to a new corporation, Z, in exchange for all of the stock of Z in a section 351 transaction. X and Z do not join in filing a consolidated Federal income tax return.

(ii) *Old taxpayer.* X reports no income or costs under the contract in Years 1, 2, or 3. Under section 358(a), X's basis in Z is $725,000. Pursuant to paragraph (k)(3)(iv)(A)(*1*), X must reduce its basis in the stock of Z by $800,000, the progress payments received by X. However, X may not reduce its basis in the Z stock below zero pursuant paragraph (k)(3)(iv)(A)(*2*) of this section. Accordingly, X's basis in the Z stock is reduced by $725,000 to zero and X must recognize ordinary income of $75,000.

(iii) *New taxpayer.* Upon completion of the contract in Year 3, Z reports gross receipts of $925,000 ($1,000,000 original contract price—$75,000 income recognized by the old taxpayer pursuant to the basis adjustment rule of paragraph (k)(3)(iv)(A)) and total contract costs of $725,000, for a profit of $200,000.

Example 7. Step in the shoes—PCM—gain recognized in transaction—(i) *Facts.* The facts are the same as in *Example 3*, except that X transfers the contract (including the uncompleted property) with a basis of $0 and an unrelated capital asset with a value of $100,000 and a basis of $0 to a new corporation, Z, in exchange for stock of Z with a value of $200,000 and $50,000 of cash in a section 351 transaction.

(ii) *Old taxpayer.* For year 1, X reports receipts of $250,000 ($200,000/$800,000 × $1,000,000) and costs of $200,000, for a profit of $50,000. X is not treated as completing the contract in Year 2. In Year 2, X reports receipts of $500,000 ([$600,000/$800,000 × $1,000,000 = $750,000 cumulative gross receipts)—$250,000 prior year cumulative gross receipts) and costs of $400,000, for a profit of $100,000. Under paragraph (k)(3)(ii)(B) of this section, X determines that the gain realized on the transfer of the contract to Z under the constructive completion rules of paragraph (k)(2)(ii) of this section is $50,000 (total contract price of $800,000 ($150,000 value allocable to the contract + $650,000 progress payments)—$750,000 previously recognized cumulative gross receipts—$0 costs incurred but not recognized). The gain realized on the transfer of the unrelated capital asset to Z is $100,000. The amount of gain X must recognize due to the receipt of $50,000 cash in the exchange is $50,000, of which $30,000 is allocated to the contract ($150,000 value of contract/$250,000 total value of property transferred to Z × $50,000) and is treated as ordinary income, and $20,000 is allocated to the unrelated capital asset ($100,000 value of capital asset/$250,000 total value of property transferred to Z × $50,000). Under section 358(a), X's basis in the Z stock is $0. However, pursuant to paragraph (k)(3)(iv)(A)(*1*) of this section, X must increase its basis in the Z stock by $750,000, the amount of gross receipts recognized under the contract, and must reduce its basis in the Z stock by $650,000, the amount of gross receipts X received under the contract. Therefore, X's basis in the Z stock is $100,000.

(iii) *New taxpayer.* Z must account for the contract using the same PCM method used by X prior to the transaction. Pursuant to paragraph (k)(3)(iv)(B)(1) of this section, the total contract price is $970,000 ($1,000,000 amount X and Z have received or reasonably expect to receive under the contract—$30,000 income recognized by X with respect to the contract as a result of the receipt of $50,000 cash in the transaction). In Year 2, Z reports gross receipts of $119,655 ($650,000/$725,000 × $970,000 = $869,655 current year cumulative gross receipts—$750,000 cumulative gross receipts reported by the old taxpayer) and costs of $50,000, for a profit of $69,655. In Year 3, Z reports gross receipts of $100,345 ($970,000−$869,655) and costs of $75,000, for a profit of $25,345.

Example 8. Step in the shoes—CCM—gain recognized in transaction—(i) *Facts.* The facts are the same as in *Example 4*, except that X transfers the contract (including the uncompleted property) with a basis of $600,000 and an unrelated capital asset with a value of $125,000 and a basis of $0 to a new corporation, Z, in exchange for all the stock of Z with a value of $175,000 and $100,000 of cash in a section 351 transaction. X and Z do not join in filing a consolidated Federal income tax return.

(ii) *Old taxpayer.* X reports no income or costs under the contract in Years 1, 2, or 3. Under paragraph (k)(3)(ii)(B), X determines that the gain realized on the transfer of the contract to Z under the constructive completion rules of paragraph (k)(2)(ii) of this section is $200,000 ($800,000 total contract price ($150,000 value allocable to the contract + $650,000 progress payments)—$600,000 costs incurred but not recognized). The gain realized on the transfer of the unrelated capital asset to Z is $125,000. The amount of gain X must recognize due to the receipt of $100,000 of cash in the exchange is $100,000, of which $54,545 is allocated to the contract ($150,000 value of the contract/$275,000 total value of property transferred to Z × $100,000) and is treated as ordinary income, and $45,455 is allocated to the unrelated capital asset ($125,000 value of capital asset/$275,000 total value of property transferred to Z × $100,000). Under section 358(a), X's basis in the Z stock is $600,000 ($600,000 basis in the contract and unrelated capital asset transferred—$100,000 cash received + $100,000 gain recognized). Pursuant to paragraph (k)(3)(iv)(A)(*1*) of this section, X must reduce its basis in the stock of Z by $650,000, the progress payments received under the contract. However, X may not reduce its basis in the Z stock below zero pursuant to paragraph (k)(3)(iv)(A)(*2*) of this section. Accordingly, X's basis in the Z stock is reduced by $600,000 to zero and X must recognize income of $50,000.

(iii) *New taxpayer.* Z must account for the contract using the same CCM used by X prior to the transaction. Pursuant to paragraph (k)(3)(iv)(B)(1) of this section, the total contract price is $895,455 ($1,000,000 original contract price—$54,545 income recognized by old taxpayer with respect to the contract as a result of the receipt of cash in the transaction—$50,000 income recognized by the old taxpayer pursuant to the basis adjustment rule of paragraph (k)(3)(iv)(A)). Accordingly, upon completion of the contract in Year 3, Z reports gross receipts of $895,455 and total contract costs of $725,000, for a profit of $170,455.

(6) *Effective date.* This paragraph (k) is applicable for transactions on or after May 15, 2002. Application of the rules of this paragraph (k) to a transaction that occurs on or after May 15, 2002 is not a change in method of accounting.

8. In § 1.460–6, paragraph (g) is revised to read as follows:

§ 1.460–6 Look-back method.

* * * * *

(g) *Mid-contract change in taxpayer—*(1) *In general.* The rules in this paragraph (g) apply if, as described in § 1.460–4(k), prior to the completion of a long-term contract accounted for using the PCM or the PCCM by a taxpayer (old taxpayer), there is a transaction that makes another taxpayer (new taxpayer) responsible for accounting for income from the same contract. The rules governing constructive completion transactions are provided in paragraph (g)(2) of this section, while the rules governing step-in-the-shoes transactions are provided in paragraph (g)(3) of this section. For purposes of this paragraph, pre-transaction years are all taxable years of the old taxpayer in which the old taxpayer accounted for (or should have accounted for) gross receipts from the contract, and post-transaction years are all taxable years of the new taxpayer in which the new taxpayer accounted for (or should have accounted for) gross receipts from the contract.

(2) *Constructive completion transactions.* In the case of a transaction described in § 1.460–4(k)(2)(i) (constructive completion transaction), the look-back method is applied by the old taxpayer with respect to pre-transaction years upon the date of the transaction and, if the new taxpayer uses the PCM or the PCCM to account for the contract, by the new taxpayer with respect to post-transaction years upon completion of the contract. The contract price and allocable contract costs to be taken into account by the old taxpayer or the new taxpayer in applying the look-back method are described in § 1.460–4(k)(2).

(3) *Step-in-the-shoes transactions—*(i) *General rules.* In the case of a transaction described in § 1.460–4(k)(3)(i) (step-in-the-shoes transaction), the look-back method is not applied at the time of the transaction, but is instead applied for the first time when the contract is completed by the new taxpayer. Upon completion of the contract, the look-back method is applied by the new taxpayer with respect to both pre-transaction years and post-transaction years, taking into account all amounts reasonably expected to be received by either the old or new taxpayer and all allocable contract costs incurred during both periods as described in § 1.460–4(k)(3). The new taxpayer is liable for filing the Form 8697 and for interest computed on hypothetical underpayments of tax, and is entitled to receive interest with respect to hypothetical overpayments of tax, for both pre- and post-transaction years. The old taxpayer will be secondarily liable for any interest required to be paid with respect to pre-transaction years reduced by any interest on pre-transaction overpayments.

(ii) *Application of look-back method to pre-transaction period—*(A) *Contract price.* The actual contract price for pre-transaction taxable years must be determined by the new taxpayer without regard to any contract price adjustment described in paragraph (k)(3)(iv)(B)(1) of this section.

(B) *Method.* The new taxpayer may apply the look-back method to each pre-transaction taxable year that is a redetermination year using the simplified marginal impact method described in paragraph (d) of this section (regardless of whether or not the old taxpayer would have actually used that method and without regard to the tax liability ceiling). But see paragraph (d)(4) of this section, which requires use of the simplified marginal impact method by certain pass-through entities.

(C) *Interest accrual period.* With respect to any hypothetical underpayment or overpayment of tax for a pre-transaction taxable year, interest accrues from the due date of the old taxpayer's tax return (not including extensions) for the taxable year of the underpayment or overpayment until the due date of the new taxpayer's return (not including extensions) for the completion year or the year of a post-completion adjustment, whichever is applicable.

(D) *Information old taxpayer must provide.* In order to help the new taxpayer to apply the look-back method with respect to pre-transaction taxable years, any old taxpayer that accounted for income from a long-term contract under the PCM or PCCM for either regular or alternative minimum tax purposes is required to provide the information described in this paragraph to the new taxpayer by the due date (not including extensions) of the old taxpayer's income tax return for the first taxable year ending on or after a step-in-the-shoes transaction described in § 1.460–4(k)(3)(i). The required information is as follows—

(*1*) The portion of the contract reported by the old taxpayer under PCM for regular and alternative minimum tax purposes (i.e., whether the old taxpayer used PCM, the 40/60 PCCM method, or the 70/30 PCCM method);

(*2*) Any submethods used in the application of PCM (e.g., the simplified cost-to-cost method or the 10-percent method);

(*3*) The amount of total contract price reported by year;

(*4*) The numerator and the denominator of the completion factor by year;

(*5*) The due date (not including extensions) of the old taxpayer's income tax returns for each taxable year in which income was required to be reported;

(*6*) Whether the old taxpayer was a corporate or a noncorporate taxpayer by year; and

(*7*) Any other information required by the Commissioner by administrative pronouncement.

(iii) *Application of look-back method to post-transaction years.* With respect to post-transaction taxable years, the new taxpayer must use the same look-back method it uses for other contracts (i.e., the simplified marginal impact method or the actual method) to determine the amount of any hypothetical overpayment or underpayment of tax and the time period for computing interest on these amounts.

(iv) *S corporation elections.* Following the conversion of a C corporation into an S corporation, the look-back method is applied at the entity level with

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respect to contracts entered into prior to the conversion, notwithstanding section 460(b)(4)(B)(i).

(4) *Effective date.* This paragraph (g) is applicable for transactions on or after May 15, 2002.

§ 1.1362–2 [Amended]

9. In § 1.1362–2, paragraph (c)(6) Example 2, first sentence is amended by removing the language "§ 1.451–3(b)" and adding "§ 1.460–1(b)(1)" in its place, and removing the language "§ 1.451–3(c)(1)" and adding "§ 1.460–4(b)" in its place.

§ 1.1374–4 [Amended]

10. In § 1.1374–4, paragraph (g), first sentence is amended by removing the language "§ 1.451–3(d)" and adding "§ 1.460–4(d)" in its place, and removing the language "§ 1.451–3(c)" and adding "§ 1.460–4(b)" in its place.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

11. The authority section for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

12. In § 602.101, paragraph (b) is amended by revising the entry for 1.460–6 to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
. . . . .	
1.460–6	1545–1031; 1545–1572; 1545–1732
. . . . .	

Robert E. Wenzel,

Deputy Commissioner of Internal Revenue.

Approved: May 2, 2002.

Pamela F. Olson,

Acting Assistant Secretary of the Treasury.

[FR Doc. 02–11792 Filed 5–14–02; 8:45 am]

BILLING CODE 4830–01–P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 4022 and 4044

Benefits Payable in Terminated Single-Employer Plans; Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing and Paying Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulations on Benefits Payable in Terminated Single-Employer Plans and Allocation of Assets in Single-Employer Plans prescribe interest assumptions for valuing and paying benefits under terminating single-employer plans. This final rule amends the regulations to adopt interest assumptions for plans with valuation dates in June 2002. Interest assumptions are also published on the PBGC's Web site (*http://www.pbgc.gov*).

EFFECTIVE DATE: June 1, 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION: The PBGC's regulations prescribe actuarial assumptions—including interest assumptions—for valuing and paying plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974. The interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Three sets of interest assumptions are prescribed: (1) A set for the valuation of benefits for allocation purposes under section 4044 (found in appendix B to part 4044), (2) a set for the PBGC to use to determine whether a benefit is payable as a lump sum and to determine lump-sum amounts to be paid by the PBGC (found in appendix B to Part 4022), and (3) a set for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology (found in Appendix C to Part 4022).

Accordingly, this amendment (1) adds to appendix B to part 4044 the interest assumptions for valuing benefits for allocation purposes in plans with valuation dates during June 2002, (2) adds to appendix B to Part 4022 the interest assumptions for the PBGC to use for its own lump-sum payments in plans with valuation dates during June 2002, and (3) adds to Appendix C to Part 4022 the interest assumptions for private-sector pension practitioners to refer to if they wish to use lump-sum interest rates determined using the PBGC's historical methodology for valuation dates during June 2002.

For valuation of benefits for allocation purposes, the interest assumptions that the PBGC will use (set forth in appendix B to part 4044) will be 5.70 percent for the first 25 years following the valuation date and 4.25 percent thereafter. These interest assumptions represent a decrease (from those in effect for May 2002) of 0.20 percent for the first 25 years following the valuation date and are otherwise unchanged.

The interest assumptions that the PBGC will use for its own lump-sum payments (set forth in appendix B to part 4022) will be 4.50 percent for the period during which a benefit is in pay status and 4.00 percent during any years preceding the benefit's placement in pay status. These interest assumptions represent a decrease (from those in effect for May 2002) of 0.25 percent for the period during which a benefit is in pay status and are otherwise unchanged.

For private-sector payments, the interest assumptions (set forth in Appendix C to part 4022) will be the same as those used by the PBGC for determining and paying lump sums (set forth in appendix B to part 4022).

The PBGC has determined that notice and public comment on this amendment are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest assumptions promptly so that the assumptions can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation and payment of benefits in plans with valuation dates during June 2002, the PBGC finds that good cause exists for making the assumptions set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 4022

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 4044

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, 29 CFR parts 4022 and 4044 are amended as follows:

PART 4022—BENEFITS PAYABLE IN TERMINATED SINGLE-EMPLOYER PLANS

1. The authority citation for part 4022 continues to read as follows:

Authority: 29 U.S.C. 1302, 1322, 1322b, 1341(c)(3)(D), and 1344.

2. In appendix B to part 4022, Rate Set 104, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4022—Lump Sum Interest Rates For PBGC Payments

* * * * *

Rate set	For plans with a valuation date: On or after	Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
. . . . .								
104	6–1–02	7–1–02	4.50	4.00	4.00	4.00	7	8

3. In appendix C to part 4022, Rate Set 104, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix C to Part 4022—Lump Sum Interest Rates For Private-Sector Payments

* * * * *

Rate set	For plans with a valuation date: On or after	Before	Immediate annuity rate (percent)	Deferred annuities (percent): i_1	i_2	i_3	n_1	n_2
. . . . .								
104	6–1–02	7–1–02	4.50	4.00	4.00	4.00	7	8

PART 4044—ALLOCATION OF ASSETS IN SINGLE-EMPLOYER PLANS

4. The authority citation for part 4044 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

5. In appendix B to part 4044, a new entry, as set forth below, is added to the table. (The introductory text of the table is omitted.)

Appendix B to Part 4044—Interest Rates Used to Value Benefits

* * * * *

For valuation dates occurring in the month—	The values of it are: i_1	for t =	i_2	for t =	i_3	for t =
. . . . .						
June 2002	.0570	1–25	.0425	>25	N/A	N/A

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Issued in Washington, DC, on this 10th day of May 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–12158 Filed 5–14–02; 8:45 am]

BILLING CODE 7708–01–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD01–02–058]

RIN 2115–AA97

Safety Zone; Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a temporary safety zone for the Chelsea River to aid completion of the McArdle Bridge repairs in East Boston, MA. The safety zone will temporarily close all waters 100-yards upstream and downstream of the McArdle Bridge. The safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to facilitate repair efforts and protect the maritime public from the hazards posed.

DATES: This rule is effective from May 13 until July 13, 2002.

ADDRESSES: Documents indicated in this preamble are available for inspection or copying at Marine Safety Office Boston, 455 Commercial Street, Boston, MA between the hours of 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: LT David M. Sherry, Marine Safety Office Boston, Waterways Safety and Response Division, at (617) 223–3000.

SUPPLEMENTARY INFORMATION:

Regulatory Information

Pursuant to 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this rule. Good cause exists for not publishing an NPRM and for making this regulation effective in less than 30 days after **Federal Register** publication. Information about this event was not provided to the Coast Guard until April 25, 2002, making it impossible to draft or publish an NPRM or a final rule 30 days in advance of its effective date.

The McArdle Bridge repairs were determined necessary as a result of recent inspections by the Massachusetts Highway Department, during which steel grating and support failures on the McArdle Bridge were discovered. Waterway closures in the vicinity of and beneath the bridge are needed because repair equipment and portions of the bridge deck will be extending over the waterway, and hotwork (welding and grinding) which will shoot sparks over the waterway in the vicinity of the bridge will be conducted. Delaying this work for sufficient time to conduct a public notice rulemaking and advanced publication would be contrary to the public interest for the reasons outlined below.

The marine industry representatives who operate on the Chelsea and Fore Rivers have stated that it is in their best interest for this work to be completed during the prescribed time period. Work is already scheduled on the Weymouth Fore River Bridge from June to August 2002, during which time the waterway underneath the Weymouth Fore River Bridge will also be periodically closed. It is in the best interest of the public and industry that these two channel closures not have a significant overlap. With the closures scheduled in this rule (Chelsea River), there will be minimal overlap between the two projects (1 week total). These two rivers receive 100 percent of the petroleum for commercial sale in the Captain of the Port (COTP) Boston, MA zone, and the majority of the petroleum for all of New England. To have a significant overlap in the lengthy closures of both of these waterways would make planning petroleum vessel arrivals and departures around the closures extremely difficult, placing unmanageable burdens on the marine industry in both rivers, and as a result negatively impacting the supply of petroleum for the entire region. Thus, due to the already scheduled Weymouth Fore River safety zones and waterway restrictions, the next available time period to schedule the McArdle Bridge repairs would be fall or winter of 2002.

Delaying the Chelsea River safety zones until the fall or winter of 2002 will introduce different problems with respect to the bridge repairs, and place more burdens on the petroleum industry in the Chelsea River, than would conducting this work in the Spring as proposed. The industry receives more vessels during the fall and winter months than any other time due to the demand for home heating oil. Potential delays in petroleum-laden vessels during the critical fall and winter months could negatively impact local oil prices and consumers. In addition, significant delays in the actual McArdle Bridge repair work could result from cold weather during this time of year.

Further delaying this work also places the future operability of the bridge for waterway and roadway use at risk. Further delay in the structural steel work again places at risk the ability of the marine terminals on the Chelsea River to continue to receive vessels. Also, the Massachusetts Highway Department will need to restrict road traffic over the bridge to a certain tonnage if the work is not done soon. If the work is delayed further, road traffic may be completely restricted from the bridge, causing unmanageable traffic situations in Chelsea and East Boston. Thus, it is in the best interest of maintaining safe marine commerce, avoiding significant road traffic problems, and ensuring the work is completed as safely and quickly as practicable, that these closures come into effect on May 13, 2002.

This temporary safety zone is only for evening periods and should have a minimal impact on vessel transits due to the fact that the zone will be in effect only during night time when recreational boaters do not typically use the waterway, night time commercial traffic is already limited by the constraints of the regulations governing the Chelsea Street Bridge under 33 CFR 165.120, and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will place the least burden on their operations.

Discussion of Rule

This regulation establishes a safety zone on all waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge. The safety zone is in effect from May 13 until July 13, 2002, and will be enforced from sunset until sunrise each day during this period. This safety zone prohibits entry into or movement within this portion of the Chelsea River and is needed to provide the Middlesex Corporation sufficient time to safely complete the necessary repairs, painting, steel support, and grating work. The work is needed to ensure the continued safe operability of the McArdle Bridge. The Captain of the Port does anticipate minimal negative impact on vessel traffic due to this repair work. Public notifications will be made prior to the effective period via local notice to mariners and marine information broadcasts.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

The Coast Guard expects the economic impact of this rule to be minimal enough that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Although this rule prevents traffic from transiting a portion of the Chelsea River during the prescribed periods, the effect of this rule will not be significant for several reasons: the channel will be closed during night time when recreational boaters do not typically use the waterway; many of the commercial vessels are already limited by size to daylight only transits due to the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; and the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), the Coast Guard considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect the following entities, some of which may be small entities: the owners or operators of vessels intending to transit a portion of the Chelsea River from May 13 until July 13, 2002, during sunset to sunrise each day of this period. This safety zone will not have a significant economic impact on a substantial number of small entities for the following reasons: the bridge will be closed during night time when recreational boaters do not typically use the waterway; most night time commercial traffic is already limited by the constraints of the regulations governing the Chelsea Street Bridge under 33 CFR 165.120; the commercial users of the Chelsea River have stated that restricting night time use of the waterway during this time of the year will not burden their operations; and the Coast Guard will issue maritime advisories widely available to users of Boston Harbor and the Chelsea River, before the effective period, via marine information broadcasts.

Assistance for Small Entities

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

Federalism

The Coast Guard analyzed this rule under Executive Order 13132, Federalism, and has determined that this rule does not have implications for federalism under that Order.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) governs the issuance of Federal regulations that require unfunded mandates. An unfunded mandate is a regulation that requires a State, local, or tribal government or the private sector to incur direct costs without the Federal Government's having first provided the funds to pay those costs. This rule would not impose an unfunded mandate.

Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

The Coast Guard analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not pose an environmental risk to health or risk to safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under figure 2–1, (34)(g), of Commandant Instruction M16475.lC, this rule is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES.**

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations that Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that Order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

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Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From May 13 until July 13, 2002 add temporary § 165.T01–058 to read as follows:

§ 165.T01–058 Safety Zone: Chelsea River Safety Zone for McArdle Bridge Repairs, Chelsea River, East Boston, Massachusetts.

(a) *Location.* The following area is a safety zone: All waters of the Chelsea River 100-yards upstream and downstream of the McArdle Bridge, East Boston, MA.

(b) *Effective Date.* This section is effective from May 13 until July 13, 2002, and will be enforced from sunset until sunrise each day during this period.

(c) *Regulations.*

(1) In accordance with the general regulations in § 165.23 of this part, entry into or movement within this zone is prohibited unless authorized by the Captain of the Port Boston.

(2) All vessel operators shall comply with the instructions of the Captain of the Port (COTP) or the designated on-scene U.S. Coast Guard patrol personnel. On-scene Coast Guard patrol personnel include commissioned, warrant, and petty officers of the Coast Guard on board Coast Guard, Coast Guard Auxiliary, local, state, and federal law enforcement vessels.

Dated: May 6, 2002.

B.M. Salerno,

Captain, U. S. Coast Guard, Captain of the Port, Boston, Massachusetts.

[FR Doc. 02–12121 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–15–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL214–1a; FRL–7164–4]

Approval and Promulgation of Implementation Plans; Illinois Emission Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: EPA is approving revisions to Illinois rules for emission reporting. Illinois requested these revisions on November 6, 2001. The revisions address two purposes. First, these revisions restructure previously approved regulations, eliminating a category with intermediate reporting requirements and thus requiring further reporting by a modest number of sources. Second, these revisions add requirements for reporting emissions of hazardous air pollutants by sources in the Chicago area volatile organic compound emissions trading program. This information on hazardous air pollutant emissions will help Illinois assess whether its emission trading program has adverse effects on the magnitude and distribution of hazardous air pollutant emissions. EPA concludes that the revised regulations continue to satisfy emissions reporting requirements and provide for reporting of emissions information needed to assess the impact of the emissions trading program on the distribution and overall magnitude of hazardous air pollutant emissions.

DATES: This rule is effective on July 15, 2002, unless EPA receives written adverse comments by June 14, 2002. If the effective date is delayed, timely notice will be published in the **Federal Register**.

ADDRESSES: Send comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604. Copies of the State's submittal are available for inspection at the following address: (We recommend that you telephone John Summerhays at (312) 886–6067, before visiting the Region 5 Office.) U.S. Environmental Protection Agency, Region 5, Air and Radiation Division (AR–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, Regulation Development Section, Air Programs Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604–3590. (312) 886–6067.

SUPPLEMENTARY INFORMATION: This document is organized according to the following table of contents:

I. What changes did Illinois make?
II. What is EPA's view of these changes?
III. EPA Action.
IV. Administrative Requirements.

I. What Changes Did Illinois Make?

On November 6, 2001, Illinois submitted revised rules for emission reporting. These changes amend rules that USEPA approved on September 9, 1993, at 58 FR 47379. These rules include two types of revisions. The first type of revision is a restructuring and simplification of the requirements for annual emission reporting. The second type of revision affects ozone season emission reporting for sources subject to the Illinois trading program, most notably adding requirements for reporting emissions of hazardous air pollutants (HAPs).

The restructuring and simplification of the rule has a modest substantive effect on requirements for annual emission reporting. The first change affects the categories of emission reports, eliminating an intermediate reporting category and subjecting the small number of sources in this category to greater reporting requirements. Specifically, the previously approved rules had three categories of reporting, known as (1) the long report, (2) the medium report, and (3) the short report. These reports were to be submitted respectively by (1) sources permitted to emit a total emissions (summed across all regulated pollutants, such as particulate matter and nitrogen oxides) of at least 25 tons per year, (2) ozone nonattainment area sources not included in the first category that nevertheless had potential emissions of more than 25 tons per year of volatile organic compounds (VOC), nitrogen oxides (NO_X), or both, and (3) smaller sources required to have a state operating permit. Under the revised rules, the first two of these categories must submit the long report. The long report requires reporting for all pollutants rather than just for VOC or NO_X, so the rule revision requires slight additional reporting for a small number of sources of VOC and NO_X.

Illinois also made several other less significant changes to annual emissions reporting requirements. The list of required information, previously specified in standard forms, is now specified in the rule. Illinois has exempted operations defined as insignificant activities from emission reporting requirements. Illinois has consolidated its definitions into one rule and deleted obsolete rules concerning initial reporting schedules.

The second major element of Illinois' revised emission reporting rule concerns reporting of ozone season emissions by sources subject to the Illinois trading program. "Ozone season" is defined here as May to September, which is the seasonal allotment period for the trading program. This portion of the emission reporting rule is very similar to the corresponding portion of Part 205 of Title 35 of the Illinois Administrative Code, which codifies what Illinois calls the Emissions Reduction Market System. Both rules set deadlines by which sources in that program must report VOC emissions during the ozone season as well as information on how emissions were determined. The emission reporting rule reiterates,

sometimes with somewhat greater specificity, all of the emission reporting requirements given in the emission trading rules. These emission data satisfy a critical need of the trading program, allowing Illinois to assess whether each company has complied with the requirement to emit no more than the tonnage value of the allowances the company holds.

More significantly, the emission reporting rule establishes new requirements for sources in the Illinois trading program to report emissions of HAPs. This information is intended to address a public concern about the trading program, that the flexibility offered by the trading program may result in an inequitable geographic distribution of the reductions of VOC emissions and the hazardous components of these VOC emissions. This information is to allow Illinois to analyze any impacts of the trading program on HAP emissions.

The emission reporting rule requires sources subject to the trading program to report ozone season emissions of HAPs meeting any of three criteria: (1) HAPs that are regulated by a national emission standard (typically a maximum achievable control technology standard), (2) HAPs emitted in sufficient quantity to make the source a major source, and (3) HAPs reported to the federal Toxic Release Inventory. (Sources are exempt from reporting if they certify that information already reported to the Toxic Release Inventory suffices to indicate ozone season HAP emissions.) All sources subject to the trading program, including sources meeting none of the three criteria for HAP reporting, must answer questions that address whether the trading program might have affected HAPs emissions. Illinois is then authorized to request further information on HAP emissions when needed.

II. What Is EPA's View of These Changes?

Clean Air Act section 182(a)(3)(b) requires states with ozone nonattainment areas to require VOC and NO_X sources in such areas to report emissions of these pollutants. In July 1992, EPA established guidance on this requirement.

Illinois submitted its previous version of annual emission reporting rules on October 12, 1992, and June 2, 1993. EPA approved those rules on September 9, 1993, at 58 FR 47379. The more recent rules make the state's requirements for annual emission reporting slightly more stringent by requiring a modest amount of additional information from a small number of sources. EPA concludes that Illinois continues to satisfy the requirements for emission reporting.

EPA's criteria for evaluating the rules on ozone season emission reporting are based on criteria for emission trading programs. In January 2001, EPA published an extensive guidance document on economic incentive programs such as trading programs. An important element of this guidance required states to address public concerns about the potential impacts of trading programs on the distribution and magnitude of HAP emissions. Illinois convened a workgroup of industry and environmental group representatives to seek consensus on the HAP emission reporting needed to evaluate whether the feared impacts in fact occur. The trading program and Illinois' efforts to address citizen concerns are described more extensively in EPA's rulemaking on the Illinois trading program, published on October 15, 2001, at 66 FR 52343. EPA concludes that Illinois' revised emission reporting rule provides an appropriate set of information on potential impacts of the trading program on HAPs emissions, allowing Illinois to provide analyses and public information to satisfy relevant portions of the criteria for emission trading programs.

III. EPA Action

EPA is approving the revisions to Illinois' rules for emissions reporting that Illinois submitted on November 6, 2001. These revisions repeal several previously approved rules, amend several other previously approved rules, add four new rules, and retain unchanged only one previously approved rule. EPA is publishing this action without prior proposal because EPA views these as noncontroversial revisions and anticipates no adverse comments. However, in a separate document in this **Federal Register** publication, the EPA is proposing the action taken in this final rule. This final rule will be effective on July 15, 2002, unless, by June 14, 2002, EPA receives adverse written comments.

If the EPA receives such comments, EPA will withdraw this final action before the effective date by publishing a subsequent notice in the **Federal Register**. All public comments received will be addressed in a subsequent final rule based on the associated proposed rule. The EPA does not intend to provide a second comment period on this action. Any parties interested in commenting on this action should do so at this time. If no such comments are received, the public is advised that this action will be effective on July 15, 2002.

IV. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely approves state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule approves pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104–4).

This rule also does not have tribal implications because it will not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000). This action also does not have Federalism implications because it does not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999). This action merely approves a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This rule also is not subject to Executive Order 13045 "Protection of Children from Environmental Health Risks and Safety Risks" (62 FR 19885, April 23, 1997), because it is not economically significant.

In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority

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to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 15, 2002. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Reporting and recordkeeping requirements, Volatile organic compounds.

Dated: March 19, 2002.

Gary Gulezian,

Acting Regional Administrator, Region 5.

For the reasons set out in the preamble, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart O—Illinois

2. Section 52.720 is amended by adding paragraph (c)(166) to read as follows:

§ 52.720 Identification of plan.

* * * * *

(c) * * *

(166) On November 6, 2001, the State of Illinois submitted revisions to its emission reporting rules, restructuring these rules and adding hazardous air pollutant emission reporting for sources in Illinois' Emission Reduction Market System.

(i) Incorporation by reference.

(A) Revised rules of 35 Ill. Admin. Code Part 254, including new or amended sections 254.101, 254.102, 254.103. 254.120, 254.132, 254.134, 254.135, 254.136, 254.137, 254.138, 254.203, 254.204, 254.303, 254.306, and 254.501, effective July 17, 2001, retention of section 254.133, and the repeal of other previously approved sections of 35 Ill. Admin. Code 254. Amended or adopted at 25 Ill. Reg. 9856. Effective July 17, 2001.

[FR Doc. 02–12006 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–2002–0031; FRL–6835–5]

Silica, Amorphous, Fumed (Crystalline Free); Exemption from the Requirement of a Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This regulation establishes an exemption from the requirement of a tolerance for residues of silica, amorphous, fumed (crystalline free) (CAS Reg. No. 112945–52–5) also known as silicon dioxide fumed amorphous when used as an inert ingredient when applied to animals. Cabot Corporation submitted a petition to EPA under the Federal Food, Drug, and Cosmetic Act (FFDCA), as amended by the Food Quality Protection Act (FQPA) of 1996, requesting an exemption from the requirement of a tolerance. This regulation eliminates the need to establish a maximum permissible level for residues of silica, amorphous, fumed (crystalline free). By law, EPA is required to reassess 66% or about 6,400 of the tolerances in existence on August 2, 1996, by August 2002. Upon publication of this final rule, one tolerance reassesment for the existing tolerance exemption in 40 CFR 180.1001(c) for silicon dioxide fumed amorphous will be counted toward the August 2002 review deadline of FFDCA section 408(q), as amended by FQPA in 1996.

DATES: This regulation is effective May 15, 2002. Objections and requests for hearings, identified by docket control number OPP–2002–0031, must be received on or before July 15, 2002.

ADDRESSES: Written objections and hearing requests may be submitted by mail, in person, or by courier. Please follow the detailed instructions for each method as provided in Unit VIII. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, your objections and hearing requests must identify docket control number OPP–2002–0031 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: By mail: Treva Alston, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8373; e-mail address: Treva.Alston@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

You may be affected by this action if you are an agricultural producer, food manufacturer, or pesticide manufacturer. Potentially affected categories and entities may include, but are not limited to:

Categories	NAICS codes	Examples of potentially affected entities
Industry	111 112 311 32532	Crop production Animal production Food manufacturing Pesticide manufacturing

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in the table could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether or not this action might apply to certain entities. If you have questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**"—Environmental Documents. You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. A frequently updated electronic version of 40 CFR part 180 is available at http://www.access.gpo.gov/nara/cfr/cfrhtml_00/Title_40/40cfr180_00.html, a beta site currently under development.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0031. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. Background and Statutory Findings

In the **Federal Register** of June 30, 2000 (65 FR 40637) (FRL–6592–6), EPA issued a notice pursuant to section 408 of the FFDCA, 21 U.S.C. 346a, as amended by the FQPA Public Law 104–170), announcing the filing of a pesticide petition (PP 0E6109) by Cabot Corporation, Route 36W., Tuscola, IL 61953. This notice included a summary of the petition prepared by the petitioner. There were no comments received in response to the notice of filing.

The petition requested that 40 CFR 180.1001(e) be amended by establishing an exemption from the requirement of a tolerance for residues of silica, amorphous, fumed (crystalline free).

Section 408(b)(2)(A)(i) of the FFDCA allows EPA to establish an exemption from the requirement for a tolerance (the legal limit for a pesticide chemical residue in or on a food) only if EPA determines that the tolerance is "safe." Section 408(b)(2)(A)(ii) defines "safe" to mean that "there is a reasonable certainty that no harm will result from aggregate exposure to the pesticide chemical residue, including all anticipated dietary exposures and all other exposures for which there is reliable information." This includes exposure through drinking water and in residential settings, but does not include occupational exposure. Section 408(b)(2)(C) requires EPA to give special consideration to exposure of infants and children to the pesticide chemical residue in establishing a tolerance and to "ensure that there is a reasonable certainty that no harm will result to infants and children from aggregate exposure to the pesticide chemical residue...."

EPA performs a number of analyses to determine the risks from aggregate exposure to pesticide residues. First, EPA determines the toxicity of pesticides. Second, EPA examines exposure to the pesticide through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings.

III. Inert Ingredient Definition

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): Solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene ploymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active. Generally, EPA has exempted inert ingredients from the requirement of a tolerance based on the low toxicity of the individual inert ingredients.

IV. Toxicological Profile

Consistent with section 408(b)(2)(D) of FFDCA, EPA has reviewed the available scientific data and other relevant information in support of this action and considered its validity, completeness and reliability and the relationship of this information to human risk. EPA has also considered available information concerning the variability of the sensitivities of major identifiable subgroups of consumers, including infants and children. Silica, amorphous, fumed (crystalline free) is composed of oxygen and silicon, the most abundant and second-most abundant elements in the earth's crust, respectively. Silicon almost always occurs in combination with oxygen, and a number of naturally-occurring minerals (such as quartz) are pure, or nearly pure, silicon dioxide. Silica can be divided into two types: crystalline and amorphous. The major toxicological hazard of crystalline silica is through the inhalation route of exposure. Silicosis and/or cancer can result from long-term inhalation of the crystalline form (such as crystalline quartz). However, exposure to amorphous forms of silica is not associated with silicosis or cancer. In fact, IARC (International Agency for Research on Cancer) has classified crystalline forms of silica when inhaled from occupational exposures as Group I, carcinogenic to humans. The IARC has classified amorphous forms of silica as Group 3, not classifiable as to its carcinogenicity to humans. Silica, amorphous, fumed (crystalline free) is a manufactured product. Chemically and physically it is similar to diatomateous earth.

The petitioner submitted to the Agency four acute toxicity studies (acute oral LD_{50} in the rat, acute inhalation LC_{50} in the rat, primary eye irritation in the rabbit, and primary dermal irritation in the rabbit); and four mutagenicity studies *salmonella typhimurium/mammalian* microsome mutagenicity assay (Ames), an *in vitro* unscheduled DNA synthesis (UDS) assay in rat primary heptatocytes, an *in vitro* chromosomal aberation assay in Chinese hamster ovary (CHO) Cells; and an *in vitro* CHO/HGPRT assay). There was also an evaluation of oral toxicity of fumed silica which is a metabolism and pharmacokinetics study. The results of these studies are listed below:

1. *Acute toxicity studies.* No mortalities were observed for the oral and inhalation studies. For the primary eye irritation study, there was no corneal opacity or iridial irritation in

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any of the eyes. For the dermal study, there was no dermal irritation at 72 hours. For the acute toxicity study, the oral LD_{50} is >5,000 milligrams/kilograms (mg/kg). For the acute inhalation study, the LC_{50} is >2.08 mg/L. All studies are toxicity category IV.

2. *Mutagenic studies.* In all four studies there was no indication of any mutagenic activity associated with exposure to silica, amorphous, fumed (crystalline free).

3. *Oral toxicity of fumed silica.* There were no mortalities or clinical signs. There was no significant difference between the test group and the control group with respect to silica concentration in the carcass.

V. Aggregate Exposures

In examining aggregate exposure, FFDCA section 408 directs EPA to consider available information concerning exposures from the pesticide residue in food and all other non-occupational exposures, including drinking water from ground water or surface water and exposure through pesticide use in gardens, lawns, or buildings (residential and other indoor uses).

EPA establishes exemptions from the requirement of a tolerance only in those cases where it can be clearly demonstrated that the risks from aggregate exposure to pesticide chemical residues under reasonably foreseeable circumstances will pose no appreciable risks to human health. In order to determine the risks from aggregate exposure to pesticide inert ingredients, the Agency considers the toxicity of the inert in conjunction with possible exposure to residues of the inert ingredient through food, drinking water, and through other exposures that occur as a result of pesticide use in residential settings. If EPA is able to determine that a finite tolerance is not necessary to ensure that there is a reasonable certainty that no harm will result from aggregate exposure to the inert ingredient, an exemption from the requirement of a tolerance may be established.

A. Dietary Exposure

Silica, amorphous, fumed (crystalline free) is composed of oxygen and silicon, which are the most abundant and second-most abundant elements in the earth's crust respectively. Silicon almost always occurs in combination with oxygen, and there are a number of naturally-occurring forms. For this reason, EPA has considered that silica, amorphous, fumed (crystalline free) could be present in all raw and processed agricultural commodities and drinking water, and that non-occupational non-dietary exposure is possible.

1. *Food.* Forms of silicon dioxide are considered to be inert when ingested. There are currently FDA clearances for the use of silicon dioxide as a food additive for direct addition to food for human consumption (21 CFR 172.480) at levels up to 2% by weight. It is also used as an excipient in pharmaceuticals and in cosmetics. EPA will regulate silica, amorphous, fumed (crystalline free) only as an inert in pesticide formulations. The amount of silica, amorphous, fumed (crystalline free) that can be applied to food as a result of their use in pesticide formulations would not significantly increase the amount of silica, amorphous, fumed (crystalline free) in the food supply above those amounts permitted by FDA. Given the very low toxicity of silica, amorphous, fumed (crystalline free), there are no concerns for increased exposure.

2. *Drinking water exposure.* With various forms of silicon dioxide being abundant in nature, increased drinking water exposure from the use of silica, amorphous, fumed (crystalline free) in pesticide formulations would not be expected.

B. Other Non-Occupational Exposure

It is highly likely that silica, amorphous, fumed (crystalline free) can be used in and around the home. Given its high molecular weight (645,000 daltons), it is unlikely that it could be absorbed through the skin in sufficient amounts to cause toxicity in a residential setting. Given the nature of silica, amorphous, fumed (crystalline free) and its anticipated uses, the Agency has examined residential inhalation exposures using a screening approach. There are no concerns for inhalation exposures typical of those found in a residential scenario.

VI. Cumulative Effects

Section 408(b)(2)(D)(v) of FFDCA requires that, when considering whether to establish, modify or revoke a tolerance or tolerance exemption, the Agency considers "available information" concerning the cumulative effects of a particular chemical's residues and "other substances that have a common mechanism of toxicity." Silica, amorphous, fumed (crystalline free) has demonstrated a lack of toxicity, and thus is unlikely to share a common mechanism of toxicity with any other substances.

VII. Children's Safety Factor

FFDCA section 408 provides that EPA shall apply an additional tenfold margin of safety for infants and children in the case of threshold effects to account for prenatal and postnatal toxicity and the completeness of the data base unless EPA concludes that a different margin of safety will be safe for infants and children. Due to the expected low toxicity of silica, amorphous, fumed (crystalline free), EPA has not used a safety factor analysis to assess the risk. For the same reasons the additional tenfold safety factor is unnecessary.

VIII. Determination of Safety for U.S. Population

Silica, amorphous, fumed (crystalline free) has a demonstrated lack of toxicity. The acute toxicity studies are toxicity category IV. The mutagenicity studies are negative. Silica, amorphous, fumed (crystalline free) is not classifiable, as to its carcinogenicity however, given its amorphous nature, it is not expected to pose a carcinogenic risk. Silicas are considered to be inert when ingested, and due to the high molecular weight it is unlikely to be absorbed through the skin. There should be no concerns for human health, whether the exposure is acute, subchronic, or chronic by any route. Thus, based on the very low toxicity of silica, amorphous, fumed (crystalline free), the Agency has determined that there is a reasonable certainty of no harm to the U.S. population, including infants and children, from aggregate exposure to residues of silica, amorphous, fumed (crystalline free) and that a tolerance is not necessary.

IX. Other Considerations

A. Endocrine Disruptors

There is no available evidence that silica, amorphous, fumed (crystalline free) is an endocrine disruptor.

B. Analytical Method(s)

An analytical method is not required for enforcement purposes since the Agency is establishing an exemption from the requirement of a tolerance without any numerical limitation.

C. Existing Exemptions

There is an existing exemption from the requirement of a tolerance under 40 CFR 180.1001(c) for use as flow control, anticaking, and carrier agent.

D. International Tolerances

The Agency is not aware of any country requiring a tolerance for silica, amorphous, fumed (crystalline free) nor have any CODEX Maximum Residue Levels (MRLs) been established for any food crops at this time.

X. Conclusions

Based on the information in this preamble, EPA concludes that there is a reasonable certainty of no harm from aggregate exposure to residues of silica, amorphous, fumed (crystalline free). Accordingly, EPA finds that exempting silica, amorphous, fumed (crystalline free) from the requirement of a tolerance will be safe.

XI. Objections and Hearing Requests

Under section 408(g) of the FFDCA, as amended by the FQPA, any person may file an objection to any aspect of this regulation and may also request a hearing on those objections. EPA procedural regulations which govern the submission of objections and requests for hearings appear in 40 CFR part 178. Although the procedures in those regulations require some modification to reflect the amendments made to the FFDCA by the FQPA of 1996, EPA will continue to use those procedures, with appropriate adjustments, until the necessary modifications can be made. The new section 408(g) provides essentially the same process for persons to "object" to a regulation for an exemption from the requirement of a tolerance issued by EPA under new section 408(d), as was provided in the old FFDCA sections 408 and 409. However, the period for filing objections is now 60 days, rather than 30 days.

A. What Do I Need to Do to File an Objection or Request a Hearing?

You must file your objection or request a hearing on this regulation in accordance with the instructions provided in this unit and in 40 CFR part 178. To ensure proper receipt by EPA, you must identify docket control number OPP–2002–0031 in the subject line on the first page of your submission. All requests must be in writing, and must be mailed or delivered to the Hearing Clerk on or before July 15, 2002.

1. *Filing the request.* Your objection must specify the specific provisions in the regulation that you object to, and the grounds for the objections (40 CFR 178.25). If a hearing is requested, the objections must include a statement of the factual issues(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). Information submitted in connection with an objection or hearing request may be claimed confidential by marking any part or all of that information as CBI. Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the information that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

Mail your written request to: Office of the Hearing Clerk (1900), Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. You may also deliver your request to the Office of the Hearing Clerk in Rm. C400, Waterside Mall, 401 M St., SW., Washington, DC 20460. The Office of the Hearing Clerk is open from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Office of the Hearing Clerk is (202) 260–4865.

2. *Tolerance fee payment.* If you file an objection or request a hearing, you must also pay the fee prescribed by 40 CFR 180.33(i) or request a waiver of that fee pursuant to 40 CFR 180.33(m). You must mail the fee to: EPA Headquarters Accounting Operations Branch, Office of Pesticide Programs, P.O. Box 360277M, Pittsburgh, PA 15251. Please identify the fee submission by labeling it "Tolerance Petition Fees."

EPA is authorized to waive any fee requirement "when in the judgement of the Administrator such a waiver or refund is equitable and not contrary to the purpose of this subsection." For additional information regarding the waiver of these fees, you may contact James Tompkins by phone at (703) 305–5697, by e-mail at tompkins.jim@epa.gov, or by mailing a request for information to Mr. Tompkins at Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

If you would like to request a waiver of the tolerance objection fees, you must mail your request for such a waiver to: James Hollins, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460.

3. *Copies for the Docket.* In addition to filing an objection or hearing request with the Hearing Clerk as described in Unit VIII.A., you should also send a copy of your request to the PIRIB for its inclusion in the official record that is described in Unit I.B.2. Mail your copies, identified by docket control number OPP–2002–0031, to: Public Information and Records Integrity Branch, Information Resources and Services Division (7502C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460. In person or by courier, bring a copy to the location of the PIRIB described in Unit I.B.2. You may also send an electronic copy of your request via e-mail to: opp-docket@epa.gov. Please use an ASCII file format and avoid the use of special characters and any form of encryption. Copies of electronic objections and hearing requests will also be accepted on disks in WordPerfect 6.1/8.0 or ASCII file format. Do not include any CBI in your electronic copy. You may also submit an electronic copy of your request at many Federal Depository Libraries.

B. When Will the Agency Grant a Request for a Hearing?

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issues(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

XII. Regulatory Assessment Requirements

This final rule establishes an exemption from the tolerance requirement under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled *Regulatory Planning and Review* (58 FR 51735, October 4, 1993). Because this rule has been exempted from review under Executive Order 12866 due to its lack of significance, this rule is not subject to Executive Order 13211, *Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use* (66 FR 28355, May 22, 2001). This final rule does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA), 44 U.S.C. 3501 *et seq.*, or impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) (Public Law 104–4). Nor does it require any special considerations under Executive Order 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations* (59 FR 7629, February 16, 1994); or OMB review or any Agency

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action under Executive Order 13045, entitled *Protection of Children from Environmental Health Risks and Safety Risks* (62 FR 19885, April 23, 1997). This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act of 1995 (NTTAA), Public Law 104–113, section 12(d) (15 U.S.C. 272 note). Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the exemption in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*) do not apply. In addition, the Agency has determined that this action will not have a substantial direct effect on States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132, entitled *Federalism* (64 FR 43255, August 10, 1999). Executive Order 13132 requires EPA to develop an accountable process to ensure "meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications." "Policies that have federalism implications" is defined in the Executive Order to include regulations that have "substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government." This final rule directly regulates growers, food processors, food handlers and food retailers, not States. This action does not alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). For these same reasons, the Agency has determined that this rule does not have any "tribal implications" as described in Executive Order 13175, entitled *Consultation and Coordination with Indian Tribal Governments* (65 FR 67249, November 6, 2000). Executive Order 13175, requires EPA to develop an accountable process to ensure"meaningful and timely input by tribal officials in the development of regulatory policies that have tribal implications." "Policies that have tribal implications " is defined in the Executive Order to include regulations that have "substantial direct effects on one or more Indian tribes, on the relationship between the Federal Government and the Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes." This rule will not have substantial direct effects on tribal governments, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified in Executive Order 13175. Thus, Executive Order 13175 does not apply to this rule.

XIII. Submission to Congress and the Comptroller General

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of this final rule in the **Federal Register**. This final rule is not a "major rule " as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: April 22, 2002.

Debra Edwards,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346(a) and 374.

2. In § 180.1001 the table in paragraph (e) is amended by adding alphabetically the following inert ingredient to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e)* * *

Inert ingredients	Limits	Uses
* * *	* *	*
Silica, amorphous, fumed (crystalline free) (CAS Reg.No. 112945–52–5)	.....	Anti-caking agent, antis-ettling agent, flow control agent, carrier agent
* * *	* *	*

[FR Doc. 02–11743 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–S

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1037, MM Docket No. 01–165, RM–9768]

Digital Television Broadcast Service; Clarksburg, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Davis Television Clarksburg, LLC, licensee of station WVFX(TV), Clarksburg, West Virginia, substitutes DTV channel 10 for DTV channel 28 at Clarksburg. *See* 66 FR 40958, August 6, 2001. DTV channel 10 can be allotted to Clarksburg in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 39–18–02 N. and 80–20–37 W. with a power of 30, HAAT of 260 meters and with a DTV service population of 598 thousand. Since the community of Clarksburg is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–165, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia, is amended by removing DTV channel 28 and adding DTV channel 10 at Clarksburg.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11979 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1038, MM Docket No. 01–56, RM–10033]

Digital Television Broadcast Service; Huntington, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of SJL License Subsidiary, LLC, licensee of station WOWK–TV, substitutes DTV channel 47 for DTV channel 54 at Huntington, West Virginia. *See* 66 FR 12751, February 28, 2001. DTV channel 47 can be allotted to Huntington, West Virginia, in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 38–30–21 N. and 82–12–33 W. with a power of 895, HAAT of 396 meters and with a DTV service population of 1063 thousand. Since the community of Huntington is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–56, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under West Virginia, is amended by removing DTV channel 54 and adding DTV channel 47 at Huntington.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11978 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1039, MM Docket No. 01–207, RM–10206]

Digital Television Broadcast Service; Alexandria, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KSAX–TV, Inc., licensee of station KSAX(TV), substitutes DTV channel 36 for DTV channel 14 at Alexandria, Minnesota. *See* 66 FR 47904, September 14, 2001. DTV channel 36 can be allotted to Alexandria, Minnesota, in compliance with the principle community coverage requirements of § 73.625(a) at reference coordinates 45–41–59 N. and 95–10–35 W. with a power of 1000, HAAT of 340 meters and with a DTV service population of 414 thousand. Since the community of Alexandria is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–207, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Minnesota, is amended by removing DTV channel 14 and adding DTV channel 36 at Alexandria.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11977 Filed 5–14–02; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1040, MM Docket No. 01–167, RM–10180]

Digital Television Broadcast Service; Calais, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Maine Public Broadcasting Corporation, licensee of noncommercial station WMED–TV, substitutes DTV channel *10 for DTV channel *15 at Calais, Maine. *See* 66 FR 40959, August 6, 2001. DTV channel *10 can be allotted to Calais, Maine, in compliance with the principal community coverage requirements of § 73.625(a) at reference coordinates 45–01–45 N. and 67–19–26 W. with a power of 3.5, HAAT of 133 meters and with a DTV service population of 30 thousand. Since the community of Calais is located within 400 kilometers of the U.S.-Canadian border, concurrence from the Canadian government has been obtained for this allotment.

With this action, this proceeding is terminated.

DATES: Effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 01–167, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under Maine, is amended by removing DTV channel *15 and adding DTV channel *10 at Calais.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11976 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1041, MM Docket No. 02–27, RM–10367]

Digital Television Broadcast Service; Springfield, IL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of West Central Illinois Educational Telecommunications Corporation, an applicant for a new television station to operate on channel *65 at Springfield, substitutes DTV channel *36 for channel *65 at Springfield. *See* 67 FR 9428, March 1, 2002. DTV channel *36 can be allotted to Springfield, Illinois, in compliance with the principal community coverage requirements of § 73.625(a) at reference coordinates 39–36–50 N. and 89–38–58 W. with a power of 100, HAAT of 156 meters and with a DTV service population of 448 thousand.

With this action, this proceeding is terminated.

DATES: Effective June 24, 2002.

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 02–27, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

Part 73 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under Illinois, is amended by removing TV channel *65+ at Springfield.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under Illinois, is amended by adding DTV channel *36 at Springfield.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11973 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 223

[Docket No. 020426096–2119–02; I.D. 042402D]

RIN 0648–AP99

Sea Turtle Conservation; Restrictions Applicable to Shrimp Trawl Activities; Leatherback Conservation Zone

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary area gear restriction.

SUMMARY: NMFS is extending (for a 2–week period) the previous closure of all inshore waters and offshore waters 10 nautical miles (nm) (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. (approximately Tybee Island, GA) and 34° N. lat. (approximately Wilmington Beach, NC) within the Leatherback Conservation Zone, to fishing by shrimp trawlers required to have a turtle excluder device (TED) installed in each net that is rigged for fishing, unless the TED has an escape opening large enough to exclude leatherback turtles, as specified in the regulations. This action is necessary to reduce mortality of endangered leatherback sea turtles incidentally captured in shrimp trawls.

DATES: This action is effective from May 10, 2002 through 11:59 p.m. (local time) on May 24, 2002.

ADDRESSES: Comments on this action should be addressed to the Chief, Endangered Species Division, Office of Protected Resources, NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments may also be sent via fax to 301–713–0376. Comments will not be accepted if submitted via e-mail or the Internet.

FOR FURTHER INFORMATION CONTACT: David Bernhart (ph. 727–570–5312, fax 727–570–5517, e-mail *David.Bernhart@noaa.gov*); or Barbara Schroeder (ph. 301–713–1401, fax 301–713–0376, e-mail *Barbara.Schroeder@noaa.gov*).

For assistance in modifying TED escape openings to exclude leatherback sea turtles, fishermen may contact gear specialists at the NMFS, Pascagoula, MS laboratory by phone 228–76—4591 or fax 228–769–8699.

SUPPLEMENTARY INFORMATION:

Prohibitions on taking sea turtles are governed by regulations implementing the Endangered Species Act at 50 CFR parts 222 and 223. The incidental take of turtles during shrimp fishing in the Atlantic Ocean off the coast of the southeastern United States and in the Gulf of Mexico is excepted from the taking prohibition pursuant to sea turtle conservation regulations at 50 CFR 223.206, which include a requirement that shrimp trawlers have a NMFS-approved TED installed in each net rigged for fishing. The use of TEDs significantly reduces mortality of loggerhead, green, Kemp's ridley, and hawksbill sea turtles. Because leatherback turtles are larger than the escape openings of most NMFS-approved TEDs, use of these TEDs is not an effective means of protecting leatherback turtles.

Through a final rule (60 FR 47713, September 14, 1995), NMFS established regulations to provide protection for leatherback turtles when they occur in locally high densities during their annual, spring northward migration along the Atlantic seaboard. Within the Leatherback Conservation Zone, NMFS may close an area for 2 weeks when leatherback sightings exceed 10 animals per 50 nm (92.6 km) during repeated aerial surveys pursuant to § 223.206(d)(2)(iv)(A) through (C).

A temporary rule requiring the closure of zones 32 and 33 to trawling became effective on April 26, 2002, in response to aerial surveys documenting large concentrations of leatherback turtles in those zones. The expiration for that temporary restriction is May 10, 2002, at 11:59 PM. Recent flights, conducted on May 7, 2002, have shown the need to extend the rule by another 14 days in response to continuing large concentrations of leatherback turtles in zones 32 and 33. A total of 190 leatherback turtle sightings were made in the zones, with 94 sighted when flying the transect in a southerly direction, and 96 sighted when flying the replicate survey in a northerly direction. Some of the largest concentrations included 59 leatherback turtles sighted in approximately 70 miles between Cape Island and Edisto Island, and 18 sighted in approximately 17.75 (28.57 km) miles near the North Carolina border. The sighting frequencies in the follow-up survey exceeds the regulatory standard of greater than 10 animals within a 50-nm (92.6 km) length of survey trackline.

The Assistant Administrator for Fisheries, NOAA (AA), is closing all inshore waters and offshore waters 10 nm (18.5 km) seaward of the COLREGS demarcation line, bounded by 32° N. lat. and 34° N. lat., within the Leatherback Conservation Zone to fishing by shrimp trawlers required to have a TED installed in each net that is rigged for fishing, unless the TED installed has an escape opening large enough to exclude leatherback turtles, meeting the specifications at 50 CFR 223.207(a)(7)(ii)(B)(1) or (2) and at § 223.207(c)(1)(iv)(B). These regulations specify modifications that can be made to either single-grid hard TEDs or Parker soft TEDs to allow leatherbacks to escape.

The regulations at 50 CFR 223.206(d)(2)(iv) also state that fishermen operating in the closed area with TEDs modified to exclude leatherback turtles must notify the NMFS Southeast Regional Administrator of their intention to fish in the closed area. This aspect of the regulations does not have a current Office of Management and Budget control number, issued pursuant to the Paperwork Reduction Act. Consequently, fishermen are not required to notify the Regional Administrator prior to fishing in the closed area, but they must still meet the gear requirements.

Classification

This action has been determined to be not significant for purposes of Executive Order 12866.

The AA is taking this action in accordance with the requirements of 50 CFR 223.206(d)(2)(iv) to provide protection for endangered leatherback sea turtles from incidental capture and drowning in shrimp trawls. Leatherback sea turtles are occurring in high concentrations in coastal waters in shrimp fishery statistical zones 32 and 33. This action allows shrimp fishing to continue in the affected area so long as fishermen make the required gear modifications.

Pursuant to 5 U.S.C. 553(b)(B), the AA finds that there is good cause to waive prior notice and opportunity to comment on this action. As a sizeable concentration of leatherback turtles has been observed in an area fished by shrimp trawlers, it is extremely likely that interactions will occur. It would be impracticable to provide prior notice and opportunity for comment because providing notice and comment would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback.

Pursuant to 5 U.S.C. 553(d)(3), the AA finds that there is good cause not to delay the effective date of this action for 30 days. Such delay would prevent the agency from implementing the necessary action in a timely manner to protect the endangered leatherback. Accordingly, the AA is making this temporary rule effective May 10, 2002 through May 24, 2002. This closure has been announced on the NOAA weather channel, in newspapers, and other media. Shrimp trawlers may also call (727)570–5312 for updated area closure information.

As prior notice and an opportunity for public comment are not required to be provided for this notification by 5 U.S.C. 553, or by any other law, the analytical requirements of 5 U.S.C. 601 *et seq.*, are inapplicable.

The AA prepared an Environmental Assessment (EA) for the final rule requiring TED use in shrimp trawls and the regulatory framework for the Leatherback Conservation Zone (60 FR 47713, September 14, 1995). Copies of the EA are available (see **ADDRESSES**).

Dated: May 10, 2002.

William T. Hogarth,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12140 Filed 5–10–02; 3:10 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 050802A]

Fisheries of the Exclusive Economic Zone Off Alaska; Northern Rockfish in the Bering Sea Subarea of the Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of northern rockfish in the Bering Sea subarea of the Bering Sea and Aleutian Islands management area (BSAI). NMFS is requiring that catch of northern rockfish in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the amount of the 2002 total allowable catch (TAC) of northern rockfish in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 11, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The amount of the 2002 TAC of northern rockfish in the Bering Sea subarea of the BSAI was established as 16 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the amount of the 2002 TAC for northern rockfish in the Bering Sea subarea of the BSAI has been achieved. Therefore, NMFS is requiring that further catches of northern rockfish in the Bering Sea subarea of the BSAI be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds the need to immediately implement this action because the amount of the 2002 TAC for northern rockfish in the Bering Sea subarea of the BSAI has been achieved constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion because the amount of the 2002 TAC for northern rockfish in the Bering Sea subarea of the BSAI has been achieved constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 8, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12143 Filed 5–10–02; 3:10 pm]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304-1304-01; I.D. 051002A]

Fisheries of the Exclusive Economic Zone Off Alaska; Yellowfin Sole by Vessels Using Trawl Gear in Bering Sea and Aleutian Islands Management Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing directed fishing for yellowfin sole by vessels using trawl gear in the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the second seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the yellowfin sole fishery category.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), May 11, 2002, until 1200 hrs, A.l.t., May 21, 2002.

FOR FURTHER INFORMATION CONTACT: Andrew Smoker, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the BSAI exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The second seasonal apportionment of the 2002 halibut bycatch allowance specified for the BSAI trawl yellowfin sole fishery category, which is defined at § 679.21(e)(3)(iv)(B)(1), is 195 metric tons (67 FR 956, January 8, 2002).

In accordance with § 679.21(e)(7)(v), the Administrator, Alaska Region, NMFS (Regional Administrator), has determined that the second seasonal apportionment of the 2002 halibut bycatch allowance specified for the yellowfin sole fishery in the BSAI has been caught. Consequently, the Regional Administrator is closing directed fishing for yellowfin sole by vessels using trawl gear in the BSAI.

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds that the need to immediately implement this action to avoid exceeding the second seasonal apportionment of the halibut bycatch allowance for yellowfin sole fishery category constitutes good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B) and 50 CFR 679.20(b)(3)(iii)(A), as such procedures would be unnecessary and contrary to the public interest. Similarly, the need to implement these measures in a timely fashion to avoid exceeding the second seasonal apportionment of the halibut bycatch allowance for yellowfin sole fishery category constitutes good cause to find that the effective date of this action cannot be delayed for 30 days. Accordingly, under 5 U.S.C. 553(d), a delay in the effective date is hereby waived.

This action is required by 50 CFR 679.21 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: May 10, 2002.

John H. Dunnigan,

Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12142 Filed 5–10–02; 3:42 pm]

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Proposed Rules

Federal Register
Vol. 67, No. 94
Wednesday, May 15, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 318

[Docket No. 01–042–1]

Interstate Movement of Gardenia From Hawaii

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Hawaiian fruits and vegetables regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols or treatment with irradiation can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action would provide for the interstate movement of gardenia from Hawaii while continuing to prevent the spread of plant pests within the United States.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 01–042–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 01–042–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 01–042–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Donna L. West, Import Specialist, Phytosanitary Issues Management, Import and Interstate Services, PPQ, APHIS, 4700 River Road Unit 140, Riverdale, MD 20737–1231; (301) 734–6766.

SUPPLEMENTARY INFORMATION:

Background

The regulations in "Subpart—Hawaiian Fruits and Vegetables" (7 CFR 318.13 through 318.13–17, referred to below as the regulations) govern, among other things, the interstate movement of fruits, vegetables, and other products, including cut flowers, from Hawaii. Regulation is necessary to prevent the spread of plant pests that exist in Hawaii.

The regulations in § 318.13–3(b)(1) currently provide that cut flowers (except cut blooms of gardenia, mauna loa, and jade vine, and leis thereof) may be moved interstate under certain conditions and if accompanied by a limited permit. The movement of cut blooms of gardenia is currently prohibited due to gardenia's status as a host of green scale (*Coccus viridus*), also known as green coffee scale.

The green scale feeds along the main vein of the leaf and near the tips of green shoots. Damage due to the feeding of an individual scale is small. However, when large populations are present, yellowing, defoliation, reduction in fruit set, and loss in plant vigor occur. In addition, green scale excrete honeydew. This sweet and watery excretion is fed on by bees, wasps, ants, and other insects. The honeydew serves as a medium on which a sooty fungus grows, called sooty mold. Sooty mold blackens the leaf and decreases photosynthesis.

In this document, we are proposing to amend the regulations to provide for the interstate movement of gardenia from Hawaii. Cut blooms of gardenia from Hawaii would be eligible for movement to other parts of the United States if they were treated with irradiation in Hawaii or grown in accordance with certain prescribed conditions. Each of these options is explained below.

Irradiation Protocol for Cut Blooms of Gardenia

Section 318.13–4f provides instructions for the irradiation treatment of fruits and vegetables from Hawaii. Research conducted by the University of Hawaii and reviewed by the U.S. Department of Agriculture's (USDA's) Agricultural Research Service has demonstrated that the irradiation treatment described in that section is an effective treatment for green scale on gardenias, so we are proposing to add cut blooms of gardenia to the list in 318.13–4f(a) of regulated articles for which irradiation is an approved treatment. We would also make some minor changes throughout the section, such as replacing references to "fruits and vegetables" with references to "regulated articles," to ensure that the section's provisions apply to gardenias. A description of the provisions of § 318.13–4f as they currently stand is set forth below. Our specific proposed changes are discussed after that description.

Currently, paragraph (b) of § 318.13–4f provides that:

1. Irradiation treatment must be carried out at an approved facility only in Hawaii or in non-fruit-fly-supporting areas of the mainland United States (i.e., States other than Alabama, Arizona, California, Florida, Georgia, Kentucky, Louisiana, Mississippi, Nevada, New Mexico, North Carolina, South Carolina, Tennessee, Texas, or Virginia). With one limited exception, prior to treatment, the fruits and vegetables cannot move into or through these non-fruit-fly-supporting States;

2. The irradiation treatment facility and treatment protocol must be approved by the Animal and Plant Health Inspection Service (APHIS);

3. In order to be approved, a facility must be capable of administering a minimum absorbed ionizing radiation dose of 250 Gray (25 krad), be constructed so as to provide physically separate locations for treated and untreated fruits and vegetables, complete a compliance agreement with APHIS, and be certified by Plant Protection and Quarantine, APHIS, for initial use and annually for subsequent use;

4. Irradiation treatment must be monitored by an inspector, who may be either an APHIS employee or a designated State plant regulatory official;

5. If treated in Hawaii, the fruits and vegetables must be packaged in cartons that have no openings that will allow the entry of fruit flies. The cartons must be sealed with seals that will visually indicate if the cartons have been opened. Then, the pallet-load of cartons must be wrapped, before leaving the irradiation facility, in one of the following ways: (1) With polyethylene sheet wrap; (2) with net wrapping; or (3) with strapping so that each carton on an outside row of the pallet-load is constrained by a metal or plastic strap. In addition, pallet-loads must be labeled with treatment lot numbers, packing and treatment facility identification and location, and dates of packing and treatment;

6. If moving to the mainland for treatment, the untreated fruits and vegetables must be shipped in shipping containers sealed prior to interstate movement with seals that will visually indicate if the shipping containers have been opened;

7. The fruits and vegetables must receive a minimum absorbed ionizing radiation dose of 250 Gray (25 krad);

8. Dosimetry systems in the irradiation facility must map, control, and record the absorbed dose;

9. The absorbed dose must be measured by a dosimeter that can accurately measure an absorbed dose of 250 Gray (25 krad);

10. The number and placement of dosimeters must be in accordance with American Society for Testing and Materials standards;

11. An inspector will issue a certificate for the interstate movement of fruits and vegetables treated and handled in Hawaii in accordance with the regulations at § 318.13–4f. An inspector will issue a limited permit for the interstate movement of untreated fruits and vegetables from Hawaii for irradiation treatment on the mainland United States; and

12. The irradiation facility must keep records or invoices for each treated lot for a period that exceeds the shelf life of the irradiated food product by 1 year and must make those records available to an inspector for inspection.

Paragraphs (c) and (d) of § 318.37–4f set forth procedures for applying for approval and inspection of a treatment facility, and procedures for denial and withdrawal of approval.

Paragraph (e) of § 318.13–4f further provides that the USDA and its inspectors are not responsible for any loss or damage resulting from any treatment prescribed or supervised.

The one substantive change we would make to the provisions described above is with regard to the location of treatment. As described in item 1 above, the irradiation treatment may be carried out in Hawaii or in a non-fruit-fly-supporting area of the mainland United States. Because green scale can survive in those non-fruit-fly supporting areas, we would require that cut blooms of gardenia be treated only in Hawaii. To put this restriction in place, we would make two changes to the regulations. First, we would amend the first sentence of § 318.13–4f(b)(1) to read. "The irradiation treatment must be carried out at an approved facility in Hawaii or, if authorized by a limited permit issued under paragraph (b)(7)(ii) of this section, on the mainland United States." Second, we would amend the provisions in § 318.13–4f(b)(7)(ii) regarding limited permits to state that cut blooms of gardenia may be treated only in Hawaii and are not eligible for a limited permit for movement to the mainland United States for treatment. A limited permit is already required under § 318.13–4f(b)(7)(ii) for the movement of untreated fruits and vegetables to the mainland for treatment, so these proposed change would have no effect on the current requirements governing the movement of fruits and vegetables.

As noted previously, it would be necessary to change the references to "fruits and vegetables" that appear in several places to "regulated articles" to include cut blooms of gardenias within the scope of the regulations. In addition, our proposed addition of provisions for the interstate movement of cut blooms of gardenias would make several other changes necessary. Specifically, we would:

- Change the title of the subpart from "Subpart Hawaiian Fruits and Vegetables" to "Subpart—Hawaiian Fruits, Vegetables, and Flowers."
- Add an entry for cut blooms of gardenias to the list in § 318.13–2(b) of regulated articles that are eligible for interstate movement from Hawaii.
- Modify the prohibition in § 318.13–3(b)(1) on the movement of cut blooms of gardenia to limit that prohibition to cut blooms that have not been treated with irradiation or grown under the conditions described in this document.
- Amend § 318.13–4f(e) to include green scale along with the Trifly complex (i.e., Mediterranean fruit fly, melon fruit fly, and Oriental fruit fly) as a pest against which irradiation is approved as a treatment to assure quarantine security.

Systems Approach

As an alternative to the irradiation treatment described above, cut blooms of gardenia would also be eligible for interstate movement from Hawaii if the gardenias were grown and shipped under the following conditions:

1. The grower's production area would have to be inspected annually by an inspector and found free of green scale. If green scale is found during an inspection, a 2-month ban would be placed on the interstate movement of cut blooms of gardenia from that production area unless the grower chose to have the blooms treated with irradiation in accordance with § 318.13–4f. Near the end of the 2-month period, an inspector would reinspect the grower's production area to determine whether green scale is present. If reinspection determines that the production area is free of green scale, shipping could resume. If reinspection determines that the production area still has green scale, another 2-month ban on shipping would be placed on the movement of gardenia from that production area. The grower, at this point, would again have the option of treating the blooms with irradiation, rather than waiting 2 months for reinspection.

2. The gardenia production area would have to be surrounded by a buffer area extending 20 feet from the edge of the production area. Within the buffer area, the growing of gardenias and other green scale host plants would be prohibited. The following 18 green scale hosts would be specified as prohibited in the buffer area: Ixora, ginger (*Alpina purpurata*), plumeria, coffee, rambutan, lichee, guava, citrus, anthurium, avocado, banana, cocoa, macadamia, celery, *Pluto indicia* (a weed introduced into Hawaii), mango, orchids, and annona.

3. An inspector would have to visually inspect the cut blooms of gardenias in each shipment prior to their interstate movement from Hawaii. If the inspector does not detect green scale in the shipment, the inspector would issue a certificate in accordance with § 318.13–4(a), which would allow the shipment to move interstate without further restrictions. If the inspector finds green scale in a shipment, that shipment would have to be treated with irradiation in accordance with § 318.13–4f to be eligible for interstate movement from Hawaii.

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These proposed growing and shipping conditions would provide gardenia producers with an opportunity to move pest-free cut blooms of gardenia interstate without treatment while at the same time making irradiation treatment available as an option should green scale be detected in their production areas or on cut blooms offered for interstate movement.

In addition to the changes discussed above, we are also making several nonsubstantive changes to correct editorial errors in the regulations.

Executive Order 12866 and Regulatory Flexibility Act

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In this document, we are proposing to amend the regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols or treatment with irradiation can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action would provide for the interstate movement of gardenias from Hawaii while continuing to prevent the spread of plant pests within the United States.

Under this proposed rule, gardenia growers in Hawaii who wish to move cut blooms of gardenia interstate from Hawaii would be able to do so if the gardenias were produced in a growing area determined by APHIS to be free of green scale and the cut blooms were inspected prior to interstate movement. Alternatively, cut blooms of gardenia could be moved interstate from Hawaii if the blooms were treated with irradiation prior to movement.

Gardenia Producers

According to the USDA's Pacific Basin Agricultural Research Center in Hawaii, the total planted area of gardenias in Hawaii is 26.6 acres. Of the 26.6 acres of gardenias, only 3.6 acres belong to commercial farms: 2 acres in Kona, on the island of Hawaii; 1.1 acres in the Manoa Valley (Oahu), and 0.5 acres in Waipahu (Oahu). The remaining 23 acres of planted gardenias in Hawaii are owned by approximately 100 growers, each having an average of 20 to 25 bushes or about 10,000 square feet of production area. These gardenias are grown in "backyard" type production conditions.

The largest commercial gardenia production area in Hawaii consists of 2 acres of planted gardenia bushes that produce about 69,200 flowers per year, with annual gross receipts from sales of just under $13,000. While sales figures are not available for the two smaller commercial producers, we presume that their annual sales are less than those of the largest producer.

According to Small Business Administration (SBA) size standards, an entity involved in floriculture production (NAICS code 111422) is considered a small entity if it has annual sales of less that $750,000. Under this definition, all commercial gardenia growers in Hawaii would be considered small entities.

Irradiation Facility

The proposed irradiation treatment of gardenias would take place prior to their shipment to the mainland United States at an irradiation facility on the island of Hawaii. This facility began its commercial operation in August 2000 and is currently approved by APHIS for the irradiation of fruits and vegetables under § 318.13–4f of the regulations.

The irradiation facility can be classified under NAICS code 115114, "Postharvest Crop Activities (except Cotton Ginning)." According to SBA standards, an entity in that classification is considered a small entity if its annual sales are less than $6 million. Applying this definition, the facility would be considered a small entity.

Impact on Small Entities

Under the Regulatory Flexibility Act, agencies are required to specifically consider the economic effects of their rules on small entities. The entities most likely to be affected by this proposed rule are the commercial producers of gardenias and the irradiation treatment facility discussed previously in this analysis; the producers and treatment facility are all considered to be small entities.

We expect that commercial gardenia producers would benefit from the ability to move their products interstate to markets in the continental United States while incurring the costs associated with establishing and maintaining a green-scale-free growing area and/or treating the cut blooms with irradiation. While we cannot estimate the amount of additional sales that might be enjoyed by commercial gardenia producers as a result of this proposed rule, we do not expect that amount would be substantial, given the limited scale of commercial gardenia production in Hawaii. The costs associated with the proposed production area requirements are likely to be negligible and limited to the maintenance of a 20-foot host-plant-free buffer zone around the production area, as the required inspections will be provided free of charge. The costs for irradiating fruit currently ranges from $0.22 to $0.33; how those costs would translate to the cost of irradiating cut blooms of gardenias is unknown, given the differing weight-volume ratios of fruit and cut flowers. In order for the treatment to be cost effective, treatment costs would have to be only a small percentage of the producer price for the cut blooms, which, according to the Pacific Basin Agricultural Research Center, range from $3.50 per 10 units for heads to $9.80 per 10 units for fancy extra-long (12 inches and above) stems.

We also expect that the irradiation facility used for treating cut blooms of gardenias would benefit from this proposed rule. However, in the absence of data regarding the number of gardenia producers that would use the facility, the volume of business those producers would bring, and the prices that the facility would charge for irradiating cut blooms, we cannot estimate the size of those benefits. Nonetheless, we expect that the amount of additional revenue that could result from this proposed rule would be small, given the limited scale of commercial gardenia production in Hawaii.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please state that your comments refer to Docket No. 01–042–1. Please send a copy of your comments to: (1) Docket No. 01–042–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

We are proposing to amend the Hawaiian fruits and vegetables regulations to provide for the movement of cut blooms of gardenia from Hawaii. We have determined that specific growing and inspection protocols or treatment with irradiation can effectively mitigate the plant pest risks associated with gardenia grown in Hawaii. This action would provide for the interstate movement of gardenia from Hawaii while continuing to prevent the spread of plant pests within the United States.

We are soliciting comments from the public (as well as affected agencies) concerning our proposed information collection and recordkeeping requirements. These comments will help us:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agency's functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

Estimate of burden: Public reporting burden for this collection of information is estimated to average 0.425 hours per response.

Respondents: Gardenia producers, irradiation facility personnel, and State plant regulatory officials.

Estimated annual number of respondents: 13.

Estimated annual number of responses per respondent: 6.1538.

Estimated annual number of responses: 80.

Estimated total annual burden on respondents: 34 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

Copies of this information collection can be obtained from Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

List of Subjects in 7 CFR part 318

Cotton, Cottonseeds, Fruits, Guam, Hawaii, Plant diseases and pests, Puerto Rico, Quarantine, Transportation, Vegetables, Virgin Islands.

Accordingly, we propose to amend 7 CFR part 318 as follows:

PART 318—HAWAIIAN AND TERRITORIAL QUARANTINE NOTICES

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 7711, 7712, 7714, 7731, 7754, and 7756; 7 CFR 2.22, 2.80, and 371.3.

Subpart Hawaiian Fruits, Vegetables, and Flowers

2. The heading for the subpart would be revised to read as set forth above.

§ 318.13–1 [Amended]

3. In § 318.13–1, in the definition of *fruits and vegetables*, the word "mellons" would be corrected to read "melons".

§ 318.13–2 [Amended]

4. In § 318.13–2, paragraph (b) would be amended as follows:

a. In the introductory text, by removing the words "fruits and vegetables" and adding the word "articles" in their place.

b. In the list of regulated articles, by adding, in alphabetical order, an entry for "Gardenia (cut blooms)".

c. At the end of the section, in the sentence following the list, by removing the words "and vegetables" and adding the words ", vegetables, or other products" in their place and by removing the words "fruits or vegetables" and adding the words "articles" in their place.

§ 318.13–3 [Amended]

5. In § 318.13–3, paragraph (b)(1) would be amended by removing the words "gardenia, mauna loa," and adding the words "mauna loa" in their place and by adding the words ", and except any cut blooms of gardenia not treated in accordance with § 318.13–4f or grown in accordance with § 318.13–4j" after the word "thereof".

§ 318.13–4 [Amended]

6. Section 318.13–4 would be amended as follows:

a. In paragraph (a), by removing the words "Fruits and vegetables" and adding "Regulated articles" in their place.

b. In paragraph (c)(2), by removing the words "fruits and vegetables" and adding the words "fruits, vegetables, or other products" in their place.

7. Section 318.13–4f would be amended as follows:

a. By revising the section heading.

b. In paragraph (a), by removing the words "fruits and vegetables" and adding the words "regulated articles" in their place and by adding the words "gardenia (cut blooms)," after the word "carambola,".

c. In paragraph (b), the introductory text, by removing the words "Fruits and vegetables" and adding the words "Regulated articles" in their place.

d. In paragraph (b)(1) by revising the first sentence.

e. In paragraph (b)(2)(i) by removing the words "fruits and vegetables" and adding the word "articles" in their place.

f. In paragraph (b)(2)(ii), in the first sentence, by removing the words "fruits and vegetables" both times they occur and adding the word "articles" in their place and, in the second sentence, by removing the word "six" and adding the numeral "6" in its place.

g. In paragraph (b)(3) by removing the words "inspectional visits to" and adding the words "inspections of" in their place.

h. In paragraph (b)(5), by removing the word "fruits and vegetables" and adding the word "articles" in their place.

i. In paragraph (b)(7)(i), by removing the words "fruits and vegetables" and adding the words "regulated articles" in their place.

j. In paragraph (b)(7)(ii), by adding a new sentence at the end of the paragraph to read as follows.

k. In paragraph (e), by adding the words "and green scale" after the words "Trifly complex" and by removing the words "fruits and vegetables" and adding the word "articles" in their place.

The revisions and addition read as follows:

§ 318.13–4f Administrative instructions prescribing methods for irradiation treatment of certain regulated articles from Hawaii.

* * * * *

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(b) * * *

(1) * * * The irradiation treatment must be carried out at an approved facility in Hawaii or, if authorized by a limited permit issued under paragraph (b)(7)(ii) of this section, on the mainland United States. * * *

* * * * * *

(7) * * *

(ii) * * * Cut blooms of gardenia may be treated only in Hawaii and are not eligible for a limited permit for movement to the mainland United States for treatment.

* * * * * *

8. A new 318.13–4j would be added to read as follows:

§ 318.13–4j Administrative instructions governing the interstate movement of cut blooms of gardenia from Hawaii.

Cut blooms of gardenia may be moved interstate from Hawaii if treated with irradiation in accordance with § 318.13–4f of this subpart or if grown and inspected in accordance with the provisions of this section.

(a) The grower's production area must be inspected annually by an inspector and found free of green scale. If green scale is found during an inspection, a 2-month ban will be placed on the interstate movement of cut blooms of gardenia from that production area unless the grower elects to treat the blooms with irradiation in accordance with § 318.13–4f. Near the end of the 2 months, an inspector will reinspect the grower's production area to determine whether green scale is present. If reinspection determines that the production area is free of green scale, shipping may resume. If reinspection determines that green scale is still present in the production area, another 2-month ban on shipping will be placed on the interstate movement of gardenia from that production area unless the grower again elects to treat the blooms with irradiation in accordance with § 318.13–4f. Absent irradiation, each ban will be followed by reinspection in the manner specified, and the production area must be found free of green scale prior to interstate movement.

(b) The grower must establish a buffer area surrounding gardenia production areas. The buffer area must extend 20 feet from the edge of the production area. Within the buffer area, the growing of gardenias and the following green scale host plants is prohibited: Ixora, ginger (*Alpina purpurata*), plumeria, coffee, rambutan, litchi, guava, citrus, anthurium, avocado, banana, cocoa, macadamia, celery, *Pluto indicia* (a weed introduced into Hawaii), mango, orchids, and annona.

(c) An inspector must visually inspect the cut blooms of gardenias in each shipment prior to interstate movement from Hawaii to the mainland United States. If the inspector does not detect green scale in the shipment, the inspector would issue a certificate for the shipment in accordance with § 318.13–4(a). If the inspector finds green scale in a shipment, that shipment must be treated with irradiation in accordance with § 318.13–4f to be eligible for interstate movement from Hawaii.

Done in Washington, DC, this 9th day of May 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12135 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 112 and 113

[Docket No. 93–129–1]

Viruses, Serums, Toxins, and Analogous Products; Equine Influenza Vaccine, Killed Virus

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the Virus-Serum-Toxin Act regulations concerning Standard Requirements for veterinary biologics by adding a Standard Requirement for Equine Influenza Vaccine, Killed Virus. This proposed rule would require that such vaccines be shown to protect vaccinates for at least 60 days based on a vaccination-challenge study conducted in horses. In addition, we would establish a serum hemagglutination inhibition test in guinea pigs as the serial release potency test for the vaccine; establish procedures for adding and removing strains of virus based on evidence of changes in the antigenic character of the equine influenza viruses in current circulation; and add labeling requirements to the regulations. The effect of these proposed changes would be to standardize purity, safety, potency, and efficacy requirements for equine influenza vaccine to ensure that such products will provide a minimum level of protection to vaccinated horses.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 93–129–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 93–129–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 93–129–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: Dr. Albert P. Morgan, Chief of Operational Support, Center for Veterinary Biologics, Licensing and Policy Development, APHIS, USDA, 4700 River Road Unit 148, Riverdale, MD 20737–1231; (301) 734–8245.

SUPPLEMENTARY INFORMATION:

Background

The Virus-Serum-Toxin Act regulations in 9 CFR part 113 (referred to below as the regulations) prescribe Standard Requirements for the preparation and testing of veterinary biological products. A Standard Requirement consists of test methods, procedures, and criteria that define the standards of purity, safety, potency, and efficacy for a given type of veterinary biological product. When a Standard Requirement for a product type does not exist, test methods, procedures, and criteria for evaluating the purity, safety, potency, and efficacy are provided in an Outline of Production for the product filed with the Animal and Plant Health Inspection Service (APHIS). Once uniform standards for a type of product are established, they are codified in the regulations as a Standard Requirement.

Because there is no Standard Requirement in 9 CFR part 113 for Equine Influenza Vaccine, each manufacturer of these products has devised its own procedures, which are a part of the Outline of Production, to meet the requirements of the Virus-Serum-Toxin Act that all veterinary biological products be pure, safe, potent, and efficacious. Although several equine influenza vaccines have been licensed, the lack of standardized procedures for updating such products to compensate for the short-lived antibody response in horses and the natural antigenic shift and drift that is characteristic of the influenza virus, has resulted in horse owners having to revaccinate their animals every 3 to 4 months in order to ensure protection. Therefore, we are proposing to add a new § 113.217 to the standards that would require uniform criteria, test methods, and procedures that would provide vaccine manufacturers a method by which to update their products to compensate for the natural evolution of the virus and ensure that equine influenza vaccines remain pure, safe, potent, and efficacious.

In the proposed Standard Requirement, equine influenza vaccine would be evaluated for immunogenicity by vaccinating susceptible horses at the minimum age recommended on the label and challenging those horses at least 60 days after the last vaccine dose using a relevant equine influenza challenge virus provided by or acceptable to APHIS. Protection would have to be demonstrated for at least one component strain of each equine influenza virus subtype present in the vaccine, and would be based on the demonstration of a statistically significant difference in the characteristic clinical signs of equine influenza virus infection in vaccinated horses as compared to non-vaccinated control horses. In addition, once host animal protection against challenge has been demonstrated for any strain of a particular equine influenza virus subtype, protection may be claimed for other strains of the same subtype contained in the same product by using hemagglutination titers to demonstrate an acceptable dose-response relationship between the challenge and non-challenge strain(s) in horses or guinea pigs. Hemagglutination inhibition titers (HI titers) could serve as a basis for adding or substituting strains of a particular subtype as long as at least one strain of each subtype present in the vaccine has been evaluated in a host animal challenge-protection study.

The proposed serial release potency test for equine influenza vaccine is a serum hemagglutination inhibition test performed in guinea pigs; other tests could be used if they were found by APHIS to be acceptable. We are proposing HI titers in guinea pigs as a serial release potency test based on our experience with such tests that indicates manufacturers should be able to develop the dose-response data and mean relative potency value needed to establish the required correlation between guinea pig titers and HI titers in horses.

In addition, we are proposing to add a new paragraph to the regulations in § 112.7 to require equine influenza vaccine labeling to list the subtype(s) and strain(s) of the virus used in the product.

This proposed Standard Requirement was developed with the cooperation of licensees, researchers, and scientists at APHIS' Center for Veterinary Biologics-Laboratory. The proposed Standard Requirement would establish uniform immunogenicity and potency criteria for equine influenza vaccine and improve the protection such vaccine provides.

Immunogenicity

We are proposing that equine influenza vaccine be evaluated for immunogenicity in horses. For at least one strain of each subtype of equine influenza virus contained in the vaccine, 15 equine influenza susceptible horses (10 vaccinates and 5 controls) of the minimum age recommended on the label would be vaccinated with equine influenza vaccine made with virus at the highest passage from Master Seed and at the minimum preinactivation titer provided in the filed Outline of Production.

Duration of Immunity

This proposed rule would also require equine influenza vaccine to protect horses against the characteristic signs of equine influenza for a minimum of 60 days. To demonstrate protection and duration of immunity, horses used in the immunogenicity study would be challenged not less than 60 days after vaccination with a representative strain of each equine influenza virus subtype present in the vaccine.

Potency

Under this proposed rule, the potency of each serial would have to be evaluated for potency in guinea pigs. Each strain of each subtype of equine influenza virus contained in the vaccine would be evaluated for potency using guinea pigs as test animals.

Safety

For safety, we are proposing that the guinea pigs used in the potency test be observed each day during the post-vaccination observation period for unfavorable reactions attributable to the vaccine.

Currently Licensed Vaccines

Veterinary biologics manufacturers that produce equine influenza vaccine under present standards described in their filed Outlines of Production would be allowed 2 years after the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of equine influenza vaccine using the standard described in their filed Outlines of Production, provided that such serials of product are shown to be effective and the labels for such products specify the demonstrated duration of immunity.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant for purposes of Executive Order 12866, and, therefore, has not been reviewed by the Office of Management and Budget.

We are proposing to amend the Virus-Serum-Toxin Act regulations in 9 CFR part 113 by adding a new Standard Requirement for Equine Influenza Vaccine, Killed Virus. This proposed rule would require equine influenza vaccines to protect against clinical signs of equine influenza virus infection for at least 60 days based on challenge protection studies performed in horses. In addition, this proposed rule would allow claims for protection to be made for other strains of the equine influenza virus of the same subtype contained in the same product provided that the manufacturer demonstrates an acceptable dose-response relationship between the challenge and non-challenge strain(s) in host animals or guinea pigs. This proposed Standard Requirement would affect all licensed manufacturers of veterinary biologics producing any new equine influenza vaccine by requiring manufacturers of equine influenza vaccine to incur the expense associated with demonstrating protection of horses against the characteristic signs of equine influenza for at least 60 days.

Currently, only 8 of the approximately 135 licensed veterinary biologics manufacturers produce equine influenza vaccine and would be affected by this proposal. According to the standards of the Small Business Administration,

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most veterinary biologics establishments would be classified as small entities.

Veterinary biologics manufacturers that produce equine influenza vaccine that does not meet this proposed standard would be allowed 2 years from the effective date of the final rule to come into compliance. In the interim, we would allow such manufacturers to continue to release serials of equine influenza vaccine using the current standard described in their filed Outlines of Production.

We do not have an alternative option to this proposed rule in light of the ever-changing antigenic profile of the equine influenza virus, which has created a demand for equine influenza vaccine that provides better protection than the currently available products. This proposed rule, if adopted, would aid firms manufacturing equine influenza vaccines. The proposal contains a Standard Requirement for immunogenicity testing that would provide uniformity among firms instead of each firm having to meet APHIS' requirements by methods of its own design. This would reduce a firm's cost of research and development needed to design a method to test immunogenicity. In addition, once host animal protection has been demonstrated for any strain of a particular equine influenza virus subtype, non-host animal methods may be used to claim protection for other strains of the same subtype.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program is listed in the category of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (*See* 7 CFR part 3015, subpart V.).

Executive Order 12988

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. It is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies unless they present an irreconcilable conflict with this rule. The Virus-Serum-Toxin Act does not provide administrative procedures which must be exhausted prior to a judicial challenge to the provisions of this rule.

Paperwork Reduction Act

This proposed rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects

9 CFR Part 112

Animal biologics, Exports, Imports, Labeling, Packaging and containers, Reporting and recordkeeping requirements.

9 CFR Part 113

Animal biologics, Exports, Imports, Reporting and recordkeeping requirements.

Accordingly, we propose to amend 9 CFR parts 112 and 113 as follows:

PART 112—PACKAGING AND LABELING

1. The authority citation for part 112 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

2. Section 112.7 would be amended by adding new paragraph (n) to read as follows:

§ 112.7 Special additional requirements.

* * * * *

(n) In the case of biological products containing equine influenza virus, all labels shall specify the subtype(s) and strain(s) of the virus used in the product and the revaccination recommendation as determined from the results of duration of immunity studies acceptable to the Animal and Plant Health Inspection Service.

PART 113—STANDARD REQUIREMENTS

3. The authority citation for part 113 would continue to read as follows:

Authority: 21 U.S.C. 151–159; 7 CFR 2.22, 2.80, and 371.4.

4. Section 113.217 would be added to read as set forth below.

§ 113.217 Equine Influenza Vaccine, Killed Virus.

Equine Influenza Vaccine, Killed Virus, shall be prepared from virus-bearing cell culture fluids or embryonated chicken eggs. Only Master Seed that has been established as pure, safe, and immunogenic may be used for vaccine production. All serials of vaccine shall be prepared from the first through the fifth passage from the Master Seed. Firms currently producing equine influenza vaccine that does not satisfy this requirement have until [*Insert date 2 years from effective date of final rule*] to comply with this requirement unless granted an extension by the Administrator based on a showing by the firm seeking the extension that they have made a good faith effort with due diligence to achieve compliance.

(a) The Master Seed shall meet the applicable general requirements prescribed in § 113.200.

(b) The immunogenicity of vaccine prepared from the Master Seed in accordance with the Outline of Production must be established by the method prescribed in this paragraph or other method acceptable to the Animal and Plant Health Inspection Service (APHIS). The vaccine used for this test must be at the highest passage from the Master Seed and at the minimum preinactivation titer provided in the Outline of Production. The test must establish that the vaccine when used as recommended on the label is capable of inducing an immune response that protects horses for at least 60 days following completion of the immunization regimen specified on the labeling.

(1) For at least one strain of each subtype of equine influenza virus contained in the vaccine, at least 15 susceptible horses of the minimum age recommended on the label shall be used as test animals. Horses are considered susceptible if the HI titer of individual serum samples taken from each animal is less than 1:10 using a constant virus, decreasing serum HI assay against 4 HA units of each strain of virus tested. The virus (antigen) may not be treated prior to the assay.

(2) At least 10 horses shall be vaccinated in accordance with the label recommendation, and at least 5 additional horses shall be held as unvaccinated controls. To demonstrate continued susceptibility, vaccinates must be negative for an anamnestic serologic response at 7 days after the first vaccination.

(3) Not less than 60 days after completion of the immunization regimen, the immunity of each of the vaccinates and the controls shall be challenged. At least 10 vaccinates and 5 controls must be challenged with a representative strain of each equine influenza virus subtype present in the vaccine in a manner acceptable to APHIS, and observed each day for 7 days for clinical signs of disease. Test animals must be bled immediately prior to challenge, and serum samples obtained for testing. If the controls are not seronegative at the time of challenge, the test is inconclusive and may be repeated.

(4) If a statistically significant ($p<0.05$) difference in clinical signs and temperature cannot be demonstrated between the vaccinates and controls using a scoring system acceptable to APHIS, the Master Seed is unsatisfactory.

(5) If the Master Seed immunogenicity test is satisfactory, other strains of equine influenza virus of the same subtype(s) may be added to the vaccine at any time by demonstrating that the added strain(s) elicits a serum HI titer either in horses or in guinea pigs that is equal to or greater than the titer elicited by the strain of the virus used in the challenge study. *Provided,* That:

(i) For each virus subtype claimed on the label for the product, the vaccine will at all times contain at least one strain of equine influenza virus whose immunogenicity has been determined in a host animal vaccination-challenge study.

(ii) Guinea pig HI titers may be used only if a satisfactory dose-response relationship correlated to host animal protection and a mean relative potency value of the vaccine in guinea pigs based on a minimum of 3 replicate tests conducted at the time of the efficacy study has been established or can be shown.

(c) *Test requirements for release.* Each serial must meet the applicable general requirements prescribed in § 113.200 and the special requirements for safety and potency provided in this section. Any serial or subserial found unsatisfactory by a prescribed test shall not be released.

(1) *Safety test.* The vaccinates used in the potency test in paragraph (c)(2) of this section shall be observed each day during the post vaccination observation period. If unfavorable reactions occur which are attributable to the vaccine, the serial is unsatisfactory. If unfavorable reactions occur that are not attributable to the vaccine, the test is inconclusive and may be repeated: *Provided,* That, if the test is not repeated, the serial is unsatisfactory.

(2) *Potency test.* Bulk or final container samples of completed product from each serial shall be tested for potency as provided in this paragraph. For each fraction of each subtype contained in the product—subtype A1 or subtype A2—the serological interpretations required in this test shall be made independently.

(i) At least 12 guinea pigs, each weighing between 300 and 500 grams, shall be used as test animals.

(ii) A dose of product equivalent to one-half the recommended horse dose shall be administered by the recommended horse route to at least 10 animals. A second dose shall be administered by the same route 14 to 21 days later. At least two animals shall be held as unvaccinated controls.

(iii) Fourteen to 21 days after the second vaccination, the animals shall be bled and serum samples obtained. The samples from each animal shall be tested in an HI assay consistent with that described in the following paragraph or by an alternative method acceptable to APHIS.

(iv) The serum samples shall be treated with kaolin and chicken red blood cells prior to initiation of the assay. A constant-virus, decreasing-serum HI assay against four hemagglutination units of each virus fraction shall be employed. The antigens may not be treated prior to performance of the assay.

(v) *Test interpretation.* If the controls for a given test fraction have not remained seronegative at the lowest test dilution (1:10), the test is inconclusive and may be repeated. If the geometric mean titer (GMT) of vaccinates in a valid test is less than the guinea pig GMT correlated with protection of horses against the applicable virus subtype, the serial is unsatisfactory unless the test is repeated. If the second test meets the requirements for validity and the GMT of vaccinates from both tests is less than the guinea pig GMT correlated with protection of horses for that subtype, then the serial is unsatisfactory without further testing.

(d) If more than 60 days' duration of immunity is to be claimed for any fraction, it may be shown by vaccinating at least 10 horses as recommended on the label and demonstrating an HI titer that is equal to or greater than the titer achieved in the Master Seed immunogenicity study for the period of time claimed. Labels must specify revaccination every 60 days if longer duration of immunity is not shown. Although not required, horses used to establish the duration of immunity beyond the required minimum of 60 days may also be challenged.

Done in Washington, DC, this 9th day of May, 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12134 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002–NM–48–AD]

RIN 2120–AA64

Airworthiness Directives; BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. This proposal would require replacement of the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G" in engine zones 412, 422, 432, and 442. This action is necessary to prevent failure of the engine fire detection and suppression systems to operate properly in the event of a fire due to failure of non-fireproof terminal blocks, which could result in an undetected and uncontrollable fire in an engine. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by June 14, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov.* Comments sent via fax or the Internet must contain "Docket No. 2002–NM–48–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate,

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1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2002–NM–48–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2002–NM–48–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, notified the FAA that an unsafe condition may exist on all BAE Systems (Operations) Limited Model BAe 146 and Avro 146–RJ series airplanes. The CAA advises that an investigation into the use of "Low Temp" terminal blocks "G" in engine zones 412, 422, 432, and 442, has revealed that those blocks are made of a non-fireproof material and do not meet the fireproof requirements of these engine zones. The CAA advises that, in the event of a fire in the engine, the existing "Low Temp" terminal blocks "G" could melt, which could prevent electricity from reaching the fire detection and suppression systems. This condition, if not corrected, could result in failure of the engine fire detection and suppression systems to operate properly in the event of a fire, and consequent undetected and uncontrollable fire in an engine.

Explanation of Relevant Service Information

BAE Systems (Operations) Limited has issued Service Bulletin SB.71–077–01693A, dated October 10, 2001, which describes procedures for replacing the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G" in engine zones 412, 422, 432, and 442. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition. The CAA classified this service bulletin as mandatory and issued British airworthiness directive 005–10–2001 in order to assure the continued airworthiness of these airplanes in the United Kingdom.

FAA's Conclusions

These airplane models are manufactured in the United Kingdom and are type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations (14 CFR 21.29) and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of these type designs that are certificated for operation in the United States.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type designs registered in the United States, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously.

Cost Impact

The FAA estimates that 55 Model BAe 146 and Avro 146–RJ series airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane (1 hour per engine, 4 engines per airplane) to accomplish the proposed actions, and that the average labor rate is $60 per work hour. The cost for required parts would be negligible. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $13,200, or $240 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

BAE Systems (Operations) Limited: Docket 2002—NM–48—AD.

Applicability: All Model BAe 146 and Avro 146—RJ series airplanes, certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (c) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the engine fire detection and suppression systems to operate properly in the event of a fire, which could result in an undetected and uncontrollable fire in an engine, accomplish the following:

Replacement

(a) Within 21 months after the effective date of this AD, replace the existing "Low Temp" terminal blocks "G" with new, fireproof ceramic terminal blocks "G," part number S3409–872, in engine zones 412, 422, 432, and 442; per BAE Systems (Operations) Limited Service Bulletin SB.71–077–01693A, dated October 10, 2001.

Spares

(b) As of the effective date of this AD, no person shall install a "Low Temp" terminal block "G," part number S3402–010, on any airplane.

Alternative Methods of Compliance

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, International Branch, ANM–116, Transport Airplane Directorate, FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, International Branch, ANM–116.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the International Branch, ANM–116.

Special Flight Permits

(d) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 3: The subject of this AD is addressed in British airworthiness directive 005–10–2001.

Issued in Renton, Washington, on May 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12071 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2001–NM–357–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model MD–11 and –11F airplanes. This proposal would require modifying the overhead instrument lighting by relocating the dimmer control unit and revising the wire routing. This action is necessary to prevent overheating and internal component failure of the dimmer control unit of the overhead instrument lighting, which could result in smoke and/or fire in the flight compartment. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2001–NM–357–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2001–NM–357–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Technical Information: Natalie Phan-Tran, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5343; fax (562) 627–5210.

Other Information: Sandi Carli, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1120, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: *sandi.carli@faa.gov*. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address

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specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket 2001–NM–357–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket 2001–NM–357–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received reports of one instance of smoke in the flight compartment and several instances of an acrid odor on a Model MD–11 airplane. Investigation revealed the dimmer control unit of the overhead instrument lighting as the source of the smoke and odor. Limited heat dissipation in the overhead installation area may have contributed to the overheating and internal component failure of the dimmer control unit of the overhead instrument lighting. This condition, if not corrected, could result in smoke and/or fire in the flight compartment.

Explanation of Relevant Service Information

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001. The alert service bulletin describes procedures for relocating the dimmer control unit of the overhead instrument lighting, and revising the wire routing of the dimmer control unit. Accomplishment of the actions specified in the alert service bulletin is intended to adequately address the identified unsafe condition.

Related Rulemaking

Alert Service Bulletin MD11–33A071 identifies McDonnell Douglas Service Bulletin MD11–33–045 as a related service bulletin. The FAA has issued AD 98–24–02, amendment 39–10889 (63 FR 63402, November 13, 1998), which requires a design change to the dimmer control unit in accordance with Service Bulletin MD11–33–045. Affected operators may accomplish the actions of either AD first.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in Alert Service Bulletin MD11–33A071.

Cost Impact

There are approximately 195 airplanes of the affected design in the worldwide fleet. The FAA estimates that 74 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 4 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $60 per work hour. Required parts would cost approximately $101 per airplane. Based on these figures, the cost impact of the proposed AD on U.S. operators is estimated to be $25,234, or $341 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 2001–NM–357–AD.

Applicability: Model MD–11 and –11F airplanes, certificated in any category, as listed in McDonnell Service Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (b) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating and internal component failure of the dimmer control unit of the overhead instrument lighting, which could result in smoke and/or fire in the flight compartment, accomplish the following:

Modification

(a) Within 18 months after the effective date of this AD: Modify the overhead instrument lighting by relocating the dimmer control unit and revising the wire routing, in accordance with McDonnell Douglas Alert Service Bulletin MD11–33A071, Revision 01, dated September 24, 2001.

Alternative Methods of Compliance

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Special Flight Permits

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12070 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–406–AD]

RIN 2120–AA64

Airworthiness Directives; McDonnell Douglas Model MD–11 and –11F Airplanes Equipped With Collins LRA–900 Radio Altimeters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters. That AD currently requires a revision to the Airplane Flight Manual to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of certain Collins LRA–900 radio altimeters with Collins LRA–700 radio altimeters. This action would require a one-time inspection to determine whether a Collins LRA–900 radio altimeter receiver/transmitter with a certain part number is installed. This action would also require modification of such a radio altimeter. This proposal is prompted by reports indicating that a fault in Collins LRA–900 radio altimeters having a certain part number could result in an incorrect and unbounded output of radio altitude to other airplanes. The actions specified by the proposed AD are intended to prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing.

DATES: Comments must be received by July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–406–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–406–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Aircraft Group, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1–L5A (D800–0024). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California.

FOR FURTHER INFORMATION CONTACT: Brett Portwood, Aerospace Engineer, Systems and Equipment Branch, ANM–130L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712–4137; telephone (562) 627–5350; fax (562) 627–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (*e.g.*, reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–406–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate,

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ANM–114, Attention: Rules Docket No. 2000–NM–406–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

On November 25, 1998, the FAA issued AD 98–24–51, amendment 39–10929 (63 FR 66422, December 2, 1998), applicable to McDonnell Douglas Model MD–11 series airplanes equipped with Collins LRA–900 radio altimeters having certain part numbers. The AD requires a revision to the Airplane Flight Manual to prohibit autopilot coupled autoland operations in certain conditions; or, for certain airplanes, replacement of Collins LRA–900 radio altimeters having certain part numbers with Collins LRA–700 radio altimeters. That action was prompted by a report that a fault in those radio altimeters could result in an incorrect and unbounded output of radio altitude to other airplane systems. The requirements of that AD are intended to prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing.

Actions Since Issuance of Previous AD

When AD 98–24–51 was issued, it was considered to be interim action until final action was identified, at which time the FAA might consider further rulemaking. Since the issuance of that AD, Rockwell Avionics/ Collins, the manufacturer of the LRA–900 radio altimeter transmitter/receiver, has developed a modification that will enable the radio altimeter to process negative altitude correctly. As discussed below, the manufacturer has issued a service bulletin which describes that modification.

Explanation of Relevant Service Information

The existing AD, AD 98–24–51, is applicable to Model MD–11 series airplanes, equipped with Collins LRA–900 radio altimeters, having part number 822–0334–002, 822–0334–020, or 822–0334–220." However, Collins LRA–900 radio altimeters having part number 822–0334–002 or 822–0334–020 have not been approved for installation on Model MD–11 or "11F airplanes. Therefore, the proposed AD is applicable only to those MD–11 or "11F airplanes which are equipped with Collins LRA–900 radio altimeters having part number 822–0334–220.

The FAA has reviewed and approved McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999, which describes procedures for determining whether or not Collins LRA–900 radio altimeter receiver/ transmitters having part number 822–0334–220 are installed, modifying such receiver/transmitters by installing software which handles negative altitude correctly, and re-identifying the receiver/transmitter as having part number 822–0334–221.

The service bulletin refers to Rockwell Avionics/ Collins Service Bulletin LRA–900–34–D, Revision 1, dated May 26, 1999, as an additional source of service information.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 98–24–51 to require a one-time inspection to determine whether a Collins LRA–900 radio altimeter receiver/transmitter having part number 822–0334–220 is installed. If it is, the proposed AD would require that the radio altimeter receiver/ transmitter be modified by installing software which handles negative altitude correctly, and re-identifying the receiver/transmitter as having part number 822–0334–221. The actions would be required to be accomplished in accordance with the service bulletin described previously.

Explanation of Change to Applicability

The FAA has revised the applicability of the existing AD to identify model designations as published in the most recent type certificate data sheet for the affected models. The existing AD specifies the applicability as McDonnell Douglas Model MD–11 series airplanes equipped with certain Collins LRA–900 radio altimeters. The proposed AD specifies the applicability as McDonnell Douglas Model MD–11 and –11F airplanes equipped with certain Rockwell Collins LRA–900 radio altimeters."

Cost Impact

There are approximately 195 Model MD–11 and –11F airplanes of the affected design in the worldwide fleet. The FAA estimates that 64 airplanes of U.S. registry would be affected by this proposed AD.

The actions that are currently required by AD 98–24–51 take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the currently required actions on U.S. operators is estimated to be $3,840, or $60 per airplane.

The new actions that are proposed in this AD action would also take approximately 1 work hour per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of the proposed requirements of this AD on U.S. operators is estimated to be $3,840, or $60 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–10929 (63 FR 66422, December 2, 1998), and by adding a new airworthiness directive (AD), to read as follows:

McDonnell Douglas: Docket 2000–NM–406–AD. Supersedes AD 98–24–51, Amendment 39–10929.

Applicability: Model MD–11 and –11F airplanes equipped with certain Rockwell Collins LRA–900 radio altimeters; certificated in any category.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent an undetected anomalous radio altitude signal that is passed along to the flare control law of the flight control computer, which could cause the airplane to flare too high or too low during landing, and consequently result in a hard landing, accomplish the following:

Restatement of Certain Requirements of AD 98–24–51

(a) Within 24 hours after December 7, 1998 (the effective date of AD 98–24–51, amendment 39–10929): accomplish either paragraph (a)(1) or (a)(2) of this AD:

(1) Revise the Limitations Section of the FAA-approved Airplane Flight Manual to include the following statement:

"Autopilot coupled autoland operations below 100 feet above ground level (AGL) are prohibited."

(2) For airplanes on which the LRA–700 radio altimeter installation has been approved in accordance with Type Certificate or Supplemental Type Certificate procedures: Replace both Collins LRA–900 radio altimeters having part number (P/N) 822–0334–220, with Collins LRA–700 radio altimeters having P/N 622–4542–221.

New Requirements of This AD

(b) Within 90 days after the effective date of this AD: Perform a visual inspection to determine the P/N of the radio altimeter receiver/transmitters, in accordance with McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999.

(1) If the airplane is equipped with Collins LRA–900 radio altimeter receiver/ transmitters having P/N 822–0334–220: Prior to further flight, modify the radio altimeter receiver/transmitter in accordance with McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999.

(2) If the airplane is not equipped with Collins LRA–900 radio altimeter receiver/ transmitters having P/N 822–0334–220: No further action required.

Note 2: Upon completion of the actions required by paragraph (b) of this AD, the revised limitations in the AFM, as required by paragraph (a)(1) of this AD, may be removed.

Note 3: McDonnell Douglas Service Bulletin MD11–34–091, dated August 19, 1999, refers to Rockwell Avionics/Collins Service Bulletin LRA–900–34–D, Revision 1, dated May 26, 1999, as an additional source of service information.

(c) As of the effective date of this AD, no person shall install on any airplane a Collins LRA–900 radio altimeter having P/N 822–0334–220.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

Note 5: Alternative methods of compliance, approved previously in accordance with AD 98–24–51, amendment 39–10929, are approved as alternative methods of compliance with this AD.

Special Flight Permits

(e) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12069 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–402–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 757–200 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 757–200 series airplanes with stowage bins installed forward of door 2 at Station 680. This proposal would require a one-time inspection to determine if a certain intercostal is installed for support of the overhead stowage bin(s) at Station 680, and follow-on actions, if necessary. This action is necessary to prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency. This action is intended to address the identified unsafe condition.

DATES: Comments must be received by July 1, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–402–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–402–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

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FOR FURTHER INFORMATION CONTACT: *Technical Information:* John Piccola, Aerospace Engineer, Airframe Branch, ANM–120S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–1509; fax (425) 227–1181.

Other Information: Judy Golder, Airworthiness Directive Technical Editor/Writer; telephone (425) 227–1119, fax (425) 227–1232. Questions or comments may also be sent via the Internet using the following address: judy.golder@faa.gov. Questions or comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–402–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–402–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The FAA has received a report that the airplane manufacturer's review of the support structure on Boeing Model 757–200 series airplanes in passenger-carrying configuration revealed inadequate support structure for the overhead stowage bin(s) at Station 680. Due to this inadequate support structure, the attachment fitting for the overhead stowage bin does not have an adequate load path. Under certain conditions (i.e., 9G forward acceleration with the overhead stowage bin at maximum weight), the stowage bin attachment fitting at Station 680 could fail. This condition, if not corrected, could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency.

Explanation of Relevant Service Information

The FAA has reviewed and approved Boeing Service Bulletin 757–25–0194, dated February 11, 1999, which describes procedures for a one-time visual inspection to determine if an intercostal is installed between stringers 8 and 9 at Station 680 on the left and right sides of the airplane. That intercostal would provide the support for the overhead stowage bin(s). As follow-on actions if no intercostal is installed, the service bulletin specifies a visual inspection for cracking or damage of stringer 8 and the tie rod mounting assembly, and installation of a new intercostal between stringers 8 and 9. If any cracking or damage is found during the visual inspection, the service bulletin specifies to contact the airplane manufacturer for repair instructions. Accomplishment of the actions specified in the service bulletin is intended to adequately address the identified unsafe condition.

Explanation of Requirements of Proposed Rule

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require accomplishment of the actions specified in the service bulletin described previously, except as discussed below.

Differences Between Proposed AD and Service Bulletin

Operators should note the following differences between this proposed AD and the service bulletin:

- Though the service bulletin specifies that the manufacturer may be contacted for disposition of certain repair conditions, this proposal would require the repair of those conditions to be accomplished per a method approved by the FAA, or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle Aircraft Certification Office, to make such findings.
- The service bulletin recommends that the actions therein be done "at the next scheduled maintenance time when personnel and material are available." However, the FAA finds that such a compliance time may not ensure that the proposed actions are accomplished in a timely manner. Therefore, this proposed AD would require that the proposed actions be done within 24 months after the effective date of the AD.
- The service bulletin specifies a visual inspection for cracking or damage of stringer 8 and the tie rod mounting assembly, if no intercostal is installed between stringers 8 and 9 at Station 680. The FAA has determined that the procedures for this inspection constitute a "detailed inspection." Therefore, the proposed AD identifies the inspection for cracking or damage as a "detailed inspection" and Note 3 of this proposed AD defines such an inspection.

Cost Impact

There are approximately 403 airplanes of the affected design in the worldwide fleet. The FAA estimates that 219 airplanes of U.S. registry would be affected by this proposed AD.

The proposed inspection would take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Based on these figures, the cost impact of the inspection proposed by this AD on U.S. operators is estimated to be up to $26,280, or $120 per airplane.

The cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this proposed AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Should an operator be required to do the proposed installation, it would take up to 2 work hours per airplane (1 work hour per side of the airplane), at the average labor rate of $60 per work hour. Required parts would cost approximately $1,310 per airplane. Based on these figures, the cost impact of the installation proposed by this AD is estimated to be $1,430 per airplane.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 2000–NM–402–AD.

Applicability: Model 757–200 series airplanes, certificated in any category, as listed in Boeing Service Bulletin 757–25–0194, dated February 11, 1999, and having stowage bins installed forward of door 2 at Station 680.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (d) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the stowage bin attachment fitting at Station 680, which could result in the overhead stowage bin falling onto the passenger seats below and injuring passengers or impeding the evacuation of passengers in an emergency, accomplish the following:

One-Time Inspection

(a) Within 24 months after the effective date of this AD, do a one-time general visual inspection to determine if an intercostal is installed between stringers 8 and 9 for support of the overhead stowage bin at Station 680, on the left and right sides of the airplane, as applicable, according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999. If an intercostal is installed on each side that has an overhead stowage bin at Station 680, no further action is necessary.

Note 2: For the purposes of this AD, a general visual inspection is defined as: "A visual examination of an interior or exterior area, installation, or assembly to detect obvious damage, failure, or irregularity. This level of inspection is made under normally available lighting conditions such as daylight, hangar lighting, flashlight, or droplight, and may require removal or opening of access panels or doors. Stands, ladders, or platforms may be required to gain proximity to the area being checked."

Follow-On Actions

(b) For each side of the airplane that has an overhead stowage bin at Station 680 but no intercostal installed: Before further flight after the inspection required by paragraph (a) of this AD, do a one-time detailed inspection for cracking or damage of stringer 8 and the tie rod mounting assembly, and install a new intercostal between stringers 8 and 9, according to Boeing Service Bulletin 757–25–0194, dated February 11, 1999.

Note 3: For the purposes of this AD, a detailed inspection is defined as: "An intensive visual examination of a specific structural area, system, installation, or assembly to detect damage, failure, or irregularity. Available lighting is normally supplemented with a direct source of good lighting at intensity deemed appropriate by the inspector. Inspection aids such as mirror, magnifying lenses, etc., may be used. Surface cleaning and elaborate access procedures may be required."

Repair of Cracking or Damage

(c) If any cracking or damage is found during the detailed inspection required by paragraph (b) of this AD: Before further flight, and before installation of the intercostal, repair per a method approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA; or per data meeting the type certification basis of the airplane approved by a Boeing Company Designated Engineering Representative who has been authorized by the Manager, Seattle ACO, to make such findings. For a repair method to be approved, the approval must specifically reference this AD.

Alternative Methods of Compliance

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

Special Flight Permits

(e) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on May 8, 2002.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12068 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2000–NM–66–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model EMB–120 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

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ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, that would have superseded an existing AD that currently requires repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. A supplemental NPRM was issued to require modification of the secondary flight idle stop system (SFISS), which would terminate the repetitive actions. This supplemental NPRM would remove one airplane from the applicability; and would add new inspections and corrective actions if necessary. The actions specified by this proposed AD are intended to prevent inadvertent or intentional operation with the power levers below the flight idle stop during flight for airplanes that are not certificated for in-flight operation, which could result in engine overspeed and consequent loss of controllability of the airplane.

DATES: Comments must be received by June 10, 2002.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. Comments may be submitted via fax to (425) 227–1232. Comments may also be sent via the Internet using the following address: *9-anm-nprmcomment@faa.gov*. Comments sent via fax or the Internet must contain "Docket No. 2000–NM–66–AD" in the subject line and need not be submitted in triplicate. Comments sent via the Internet as attached electronic files must be formatted in Microsoft Word 97 for Windows or ASCII text.

The service information referenced in the proposed rule may be obtained from Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343—CEP 12.225, Sao Jose dos Campos—SP, Brazil. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia.

FOR FURTHER INFORMATION CONTACT: Scott A. Geddie, Aerospace Engineer, Propulsion Branch, ACE–117A, FAA, Atlanta Aircraft Certification Office, One Crown Center, 1895 Phoenix Boulevard, suite 450, Atlanta, Georgia 30349; telephone (770) 703–6068; fax (770) 703–6097.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this action may be changed in light of the comments received.

Submit comments using the following format:

- Organize comments issue-by-issue. For example, discuss a request to change the compliance time and a request to change the service bulletin reference as two separate issues.
- For each issue, state what specific change to the proposed AD is being requested.
- Include justification (e.g., reasons or data) for each request.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this action must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 2000–NM–66–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–114, Attention: Rules Docket No. 2000–NM–66–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to add an airworthiness directive (AD), applicable to certain EMBRAER Model EMB–120 series airplanes, was published as a first supplemental notice of proposed rulemaking (NPRM) in the **Federal Register** on January 16, 2001 (66 FR 3511). That first supplemental NPRM proposed to supersede AD 92–16–51, amendment 39–8355 (57 FR 40838, September 8, 1992), which is applicable to all EMBRAER Model EMB–120 series airplanes. It would have continued to require repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and repetitive functional tests to determine if the backup flight idle stop system is operative. It also would have required modification of the secondary flight idle stop system (SFISS), which would terminate the requirements for the repetitive actions. That first supplemental NPRM was prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by that supplemental NPRM are intended to prevent an inoperative backup flight idle stop system.

Actions Since Issuance of Previous Proposal

EMBRAER has issued the following three revised service bulletins. The major changes in these revisions are described below:

Service Bulletin 120–76–0015, Change No. 06, dated October 3, 2000, adds Part III to the Accomplishment Instructions to revise the SFISS modification procedures by including a new inspection. These procedures specify inspecting the attachment of the power control cable end at the bellcrank in the left and right nacelles using a mirror, and verifying the type of bolt used. If a countersunk-head bolt is found, no further action is required. If a hex-head bolt is found, corrective actions include inspecting the existing hole in the bellcrank and replacing the bolt with a new bolt.

Service Bulletin 120–76–0018, Change No. 04, dated March 30, 2001, corrects the number of work hours required to accomplish the procedures specified in Part I and Part II of the Accomplishment Instructions.

Service Bulletin 120–76–0022, Change No. 01, dated October 9, 2000, adds Part IV to the Accomplishment Instructions to include procedures for verifying that the correct countersunk-head bolt was used to attach the power control cable to the bellcrank, and provide additional clarification and corrections. Change No. 02, dated February 8, 2001, of the service bulletin includes only editorial changes to Figure 6 of the service bulletin.

Comments

Due consideration has been given to the one comment received in response to the first supplemental NPRM:

Request To Extend 18-Month Compliance Time

The commenter requests that the 18-month compliance time in paragraph (d) of the supplemental NPRM be extended significantly because of two factors. First, the proposed action adds considerable cost to airline operations, especially when considered along with other FAA requirements currently being implemented (e.g., modifications to the cargo compartment and flight data recorder). Second, the proposed action alleviates the safety concern with the flight idle stop system.

The FAA does not concur with the commenter's request to extend the compliance time. We point out that recent service experience indicates that the SFISS has proved to be vulnerable to certain maintenance failures and has inherent design aspects that reduce the reliability of the system. Based on this information, we have determined that the increased reliability of the system is essential to the continued airworthiness of Model EMB–120 series airplanes. In developing an appropriate compliance time for this action, we considered the compliance time specified in the Brazilian airworthiness directive (18 months), the safety implications, parts availability, and normal maintenance schedules for timely accomplishment of the modification. In consideration of these items, we have determined that 18 months or 4,000 flight hours, whichever occurs earlier, represents an appropriate interval of time allowable wherein SFISS modifications can be accomplished during scheduled maintenance intervals for the majority of affected operators, and an acceptable level of safety can be maintained. No change to this second supplemental NPRM is necessary in this regard.

Clarifications Since Issuance of the First Supplemental NPRM

Operators should note the following clarifications made to this supplemental NPRM:

- The unsafe condition of the first supplemental NPRM only states that the actions specified by this proposed AD are intended "to prevent an inoperative backup flight idle stop system." However, this second supplemental NPRM further clarifies and describes the unsafe condition.
- The applicability of the first supplemental NPRM specifies serial numbers 120004 through 120354 inclusive for Model EMB–120 series airplanes. However, because the applicability of the Brazilian airworthiness directive does not include serial number 120005, the applicability of this second supplemental NPRM also does not include serial number 120005.
- The compliance time in paragraph (d)(3) of this second supplemental NPRM has been clarified. Although paragraph (d)(3) of the first supplemental NPRM specifies "400 flight hours," this second supplemental NPRM specifies "4,000 flight hours." The FAA points out that it was our intent to specify the same compliance time for modifying the SFISS in paragraphs (d)(1) through (d)(4) in the first supplemental NPRM. We also point out that this second supplemental NPRM includes only paragraphs (d)(1), (d)(2), and (d)(3).

Requirements of This Supplemental NPRM

This supplemental NPRM would retain the actions required by AD 92–16–51: repetitive visual checks or inspections to verify that the flight idle stop system circuit breakers are closed, and functional tests to determine if the backup flight idle stop system is operative. This supplemental NPRM also would require modification of the secondary flight idle stop system (SFISS), which would terminate the repetitive actions. In addition, this supplemental NPRM would remove one airplane from the applicability; and would add new inspections and corrective actions if necessary.

Differences Between Second Supplemental NPRM and Certain Service Bulletins

Operators should note that, although the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0015, Change No. 06; and Service Bulletin 120–76–0018, Change No. 04; specify that the manufacturer may be contacted for disposition of certain repair conditions, this second supplemental NPRM would require the repair of those conditions per a method approved by either the FAA or the Departmento de Aviacao Civil (DAC), the airworthiness authority of Brazil, (or its delegated agent). In light of the type of repair that would be required to address the identified unsafe condition, and in consonance with existing bilateral airworthiness agreements, the FAA has determined that, for this second supplemental NPRM, a repair approved by either the FAA or the DAC would be acceptable for compliance with this proposed AD.

Operators also should note that Figure 10 of previously referenced Service Bulletin 120–76–0015 specifies contacting the manufacturer if the existing hole in the bellcrank is not a countersunk hole. However, this second supplemental NPRM would require operators to contact the FAA in that case.

Conclusion

The FAA has revised this second supplemental NPRM to specify new requirements based on new revisions to the previously referenced service bulletins. Since these changes expand the scope of the first supplemental NPRM, the FAA has determined that it is necessary to reopen the comment period to provide additional opportunity for public comment.

Cost Impact

The FAA estimates that 230 EMBRAER Model EMB–120 series airplanes of U.S. registry would be affected by this second supplemental NPRM.

The actions that are currently required by AD 92–16–51 take approximately 5 work hours per airplane to accomplish, at an average labor rate of $60 per work hour. Based on these figures, the cost impact of that AD on U.S. operators is estimated to be $69,000, or $300 per airplane, per inspection cycle.

The approximate cost, at an average labor rate of $60 per work hour, for the modifications proposed by this AD are listed in the following table:

ESTIMATED COSTS

Service bulletin	Work hours	Parts cost	Cost per airplane
120–76–0015:			
Part I	5	$4,376	$4,676
Part II	3	14,331	14,511
Part III	1	53	113
120–76–0018:			
Part I	130	22,218	30,018
Part II	1	(average cost varies with configuration).	(average cost varies with configuration)
120–76–0022:			
Part I	3	14,456	14,636
Part II	3	2,465	2,645
Part III	3	14,525	14,705
Part IV	1	53	113

Therefore, based on the figures included in the table above, the cost impact of the modification proposed by this AD on U.S. operators is estimated to range from $113 to $30,018 per airplane.

The cost impact figures discussed above are based on assumptions that no operator has yet accomplished any of the current or proposed requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted. The cost impact figures discussed in AD rulemaking actions represent only the time necessary to perform the specific actions actually required by the AD. These figures typically do not include incidental costs, such as the time required to gain access and close up, planning time, or time necessitated by other administrative actions.

Regulatory Impact

The regulations proposed herein would not have a substantial direct effect on the States, on the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, it is determined that this proposal would not have federalism implications under Executive Order 13132.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8355 (57 FR 40838, September 8, 1992), and by adding a new airworthiness directive (AD) to read as follows:

Empresa Brasileira de Aeronautica S.A. (EMBRAER): Docket 2000–NM–66–AD. Supersedes AD 92–16–51, Amendment 39–8355.

Applicability: Model EMB–120 series airplanes, certificated in any category; serial number 120004, and serial numbers 120006 through 120354 inclusive.

Note 1: This AD applies to each airplane identified in the preceding applicability provision, regardless of whether it has been modified, altered, or repaired in the area subject to the requirements of this AD. For airplanes that have been modified, altered, or repaired so that the performance of the requirements of this AD is affected, the owner/operator must request approval for an alternative method of compliance in accordance with paragraph (f)(1) of this AD. The request should include an assessment of the effect of the modification, alteration, or repair on the unsafe condition addressed by this AD; and, if the unsafe condition has not been eliminated, the request should include specific proposed actions to address it.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent or intentional operation with the power levers below the flight idle stop during flight for airplanes that are not certificated for in-flight operation, which could result in engine overspeed and consequent loss of controllability of the airplane; accomplish the following:

Restatement of Certain Requirements of AD 92–16–51

Checks/Inspections

(a) For all airplanes: Within 5 days after September 23, 1992 (the effective date of AD 92–16–51, amendment 39–8355), and thereafter prior to the first flight of each day until the requirements of paragraph (d) of this AD have been accomplished, accomplish paragraph (a)(1) or (a)(2) of this AD, as applicable:

(1) For airplanes on which an inspection window has been installed on the left lateral console panel that permits visibility of the flight idle stop solenoid circuit breakers: Using an appropriate light source, perform a visual check to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

Note 2: This check may be performed by a flight crew member.

Note 3: Instructions for installation of an inspection window can be found in EMBRAER Information Bulletin 120–076–0003, dated November 19, 1991; or EMBRAER Service Bulletin 120–076–0014, dated July 29, 1992.

(2) For airplanes on which an inspection window has not been installed on the left lateral console panel: Perform a visual inspection to verify that both "FLT IDLE STOP SOL" circuit breakers CB0582 and CB0583 for engine 1 and engine 2 are closed.

(b) As a result of the check or inspection performed in accordance with paragraph (a) of this AD: If circuit breakers CB0582 and CB0583 are not closed, prior to further flight, reset them and perform the functional test specified in paragraph (c) of this AD.

Functional Test

(c) Within 5 days after September 23, 1992, and thereafter at intervals not to exceed 75 hours time-in-service, or immediately following any maintenance action where the power levers are moved with the airplane on jacks, until the requirements of paragraph (d) of this AD have been accomplished, conduct a functional test of the backup flight idle stop system for engine 1 and engine 2 by performing the following steps:

(1) Move both power levers to the "MAX" position.

(2) Turn the aircraft power select switch on.

(3) Open both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286 to simulate in-flight conditions with weight-off-wheels. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine cannot be moved below the flight idle position, even though the flight idle gate trigger on each power lever is raised.

(4) If the power lever can be moved below the flight idle position, prior to further flight, restore the backup flight idle stop system to the configuration specified in EMBRAER 120–076–0009, Change No. 4, dated November 1, 1990; and perform a functional test.

Note 4: If the power lever can be moved below flight idle, this indicates that the backup flight idle stop system is inoperative.

(5) Move both power levers to the "MAX" position.

(6) Close both "AIR/GROUND SYSTEM" circuit breakers CB0283 and CB0286. Wait for at least 15 seconds, then move both power levers back toward the propeller reverse position with the flight idle gate triggers raised. Verify that the power lever for each engine can be moved below the flight idle position.

(7) If either or both power levers cannot be moved below the flight idle position, prior to further flight, inspect the backup flight idle stop system and the flight idle gate system, and accomplish either paragraph (c)(7)(i) or (c)(7)(ii) of this AD, as applicable:

(i) If the backup flight idle stop system is failing to disengage with weight-on-wheels, prior to further flight, restore the system to the configuration specified in EMBRAER Service Bulletin 120–076–0009, Change No. 4, dated November 1, 1990.

(ii) If the flight idle gate system is failing to open even though the trigger is raised, prior to further flight, repair in accordance with the EMBRAER Model EMB–120 maintenance manual.

(8) Turn the power select switch off. The functional test is completed.

New Requirements of This AD

Terminating Action

(d) Within 18 months or 4,000 flight hours after the effective date of this AD, whichever occurs earlier, modify the secondary flight idle stop system (SFISS), as required by paragraph (d)(1), (d)(2), or (d)(3) of this AD; as applicable. Accomplishment of the modification constitutes terminating action for the requirements of this AD.

(1) For airplanes having serial number 120004, and serial numbers 120006 through 120067 inclusive, and 120069 through 120344 inclusive; as listed in EMBRAER Service Bulletin 120–76–0018, Change No. 04, dated March 30, 2001: Accomplish the actions required by either paragraph (d)(1)(i) or (d)(1)(ii) of this AD, as applicable.

(i) If the actions specified by EMBRAER Service Bulletin 120–76–0018, Change No. 01, dated September 9, 1999; or Change No. 02, dated November 22, 1999; HAVE NOT been accomplished: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0018, Change No. 03, dated May 26, 2000; or Change No. 04; or

(ii) If the actions specified by EMBRAER Service Bulletin 120–76–0018, Change No. 01; or Change No. 02; HAVE been accomplished: Perform additional inspections per Part II of the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0018, Change No. 04.

(2) For the airplane having serial number 120068: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0015, Change No. 06, dated October 3, 2000.

(3) For airplanes having serial numbers 120345 through 120354 inclusive: Modify the SFISS per the Accomplishment Instructions of EMBRAER Service Bulletin 120–76–0022, Change No. 01, dated October 9, 2000; or Change No. 02, dated February 8, 2001.

Note 5: This AD references the following service information for applicability, inspection, and modification information: EMBRAER Service Bulletin 120–76–0015, Change No. 06, dated October 3, 2000; Service Bulletin 120–76–0018, Change No. 04, dated March 30, 2001; and Service Bulletin 120–76–0022, Change No. 01, dated October 9, 2000; or Change No. 02, dated February 8, 2001. In addition, this AD specifies compliance-time requirements beyond those included in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999; or the service information. Where there are differences between this AD and previously referenced documents, this AD prevails.

Note 6: Accomplishment of the requirements of paragraph (d) of this AD does not remove or otherwise alter the requirement to perform the repetitive (400-flight-hour) CAT 8 task checks specified by the Maintenance Review Board.

Corrective Actions

(e) During any visual check or inspection required by this AD, if any countersunk-head bolt was NOT used to attach the power control cable to the bellcrank, or if any hex-head bolt WAS used to attach the cable to the bellcrank: Prior to further flight, repair per a method approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA; or the Departmento de Aviacao Civil (or its delegated agent).

Alternative Methods of Compliance

(f)(1) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta ACO. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Atlanta ACO.

(2) Alternative methods of compliance, approved previously for paragraphs (a), (b), and (c) of AD 92–16–51, are considered to be approved as alternative methods of compliance with the inspection requirements of paragraphs (a), (b), and (c) of this AD. No alternative methods of compliance have been approved per AD 92–16–51 as terminating action for this AD.

Note 7: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

Special Flight Permits

(g) Special flight permits may be issued per §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

Note 8: The subject of this AD is addressed in Brazilian airworthiness directive 90–07–04R4, dated October 4, 1999.

Issued in Renton, Washington, on May 8, 2002.

Vi L. Lipski,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 02–12067 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP San Diego 02–008]

RIN 2115–AA97

Safety Zone; Colorado River, Laughlin, NV

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes a temporary safety zone near Laughlin, NV on the navigable waters of the Colorado River for the Laughlin 4th of July fireworks show. The safety zone would encompass that portion of the Colorado River between Laughlin Bridge and the Golden Nugget Hotel and Casino. This temporary safety zone is necessary to provide for the safety of the crew, spectators, participants of the event, participating vessels and other vessels and users of the waterway. Persons and vessels are prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

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DATES: Comments and related material must reach the Coast Guard on or before June 4, 2002.

ADDRESSES: You may mail comments and related material to Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064. Marine Safety Office San Diego Port Operations maintains the public docket for this rulemaking. Comments and material received from the public, as well as documents indicated in this preamble as being available in the docket, will become part of this docket [COTP San Diego 02–008] and will be available for inspection or copying at Marine Safety Office San Diego, 2716 N. Harbor Drive, San Diego, CA 92101–1064 between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Petty Officer Austin Murai at (619) 683–6495.

SUPPLEMENTARY INFORMATION:

Request for Comments

We encourage you to participate in this rulemaking by submitting comments and related material. If you do so, please include your name and address, identify the docket number for this rulemaking [COTP San Diego 02–008], indicate the specific section of this document to which each comment applies, and give the reason for each comment. Please submit all comments and related material in an unbound format, no larger than 8½ by 11 inches, suitable for copying. If you would like to know they reached us, please enclose a stamped, self-addressed postcard or envelope. We will consider all comments and material received during the comment period. We may change this proposed rule in view of them.

Public Meeting

We do not now plan to hold a public meeting. But you may submit a request for a meeting by writing to Marine Safety Office San Diego Port Operations at the address under **ADDRESSES** explaining why one would be beneficial. If we determine that one would aid this rulemaking, we will hold one at a time and place announced by a later notice in the **Federal Register**.

Background and Purpose

This proposed temporary safety zone is necessary to provide for the safety of the crew, spectators, and participants of the 4th of July fireworks show. This proposed safety zone is also necessary to protect other vessels and users of the waterway. Persons and vessels would be prohibited from entering into, transiting through, or anchoring within this safety zone unless authorized by the Captain of the Port, or his designated representative.

Discussion of Proposed Rule

The proposed safety zone encompasses that portion of the Colorado River between Laughlin Bridge and the Golden Nugget Hotel and Casino. We are proposing to enforce this safety zone from 9 p.m. to 9:30 p.m. on July 4, 2002. The on scene Captain of the Port designated representative is expected to be a Coast Guard patrol commander. This temporary safety zone is necessary to provide for the safety of the participants, spectators, and sponsor vessels of the Laughlin 4th of July fireworks show.

Regulatory Evaluation

This proposed rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not significant under the regulatory policies and procedures of the Department of Transportation (DOT) (44 FR 11040, February 26, 1979).

Because of its limited duration, of one half (1/2) hour, we expect the economic impact of this proposed rule would be so minimal that a full Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we considered whether this proposed rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000.

The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities. The proposed safety zone would not have a significant economic impact on a substantial number of small entities because it will be in effect for only half (1/2) an hour on July 4, 2002.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see **ADDRESSES**) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we want to assist small entities in understanding this proposed rule so that they can better evaluate its effects on them and participate in the rulemaking. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact Petty Officer Austin Murai, Marine Safety Office San Diego at (619) 683–6495.

Collection of Information

This proposed rule would call for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520.).

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. We have analyzed this proposed rule under that Order and have determined that it does not have implications for federalism.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of $100,000,000 or more in any one year. Though this proposed rule would not result in such expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This proposed rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This proposed rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Indian Tribal Governments

This proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

To help the Coast Guard establish regular and meaningful consultation and collaboration with Indian and Alaskan Native tribes, we published a notice in the **Federal Register** (66 FR 36361, July 11, 2001) requesting comments on how to best carry out the Order. We invite your comments on how this proposed rule might impact tribal governments, even if that impact may not constitute a "tribal implication" under the Order.

Energy Effects

We have analyzed this proposed rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Protection of Children

We have analyzed this proposed rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not concern an environmental risk to health or risk to safety that may disproportionately affect children.

Environment

We have considered the environmental impact of this proposed rule and concluded that under figure 2–1, paragraph (34)(g) of Commandant Instruction M16475.lD, this proposed rule, a safety zone, is categorically excluded from further environmental documentation. A "Categorical Exclusion Determination" is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191, 33 CFR 1.05–1(g), 6.04–1, 6.04–6, 160.5; 49 CFR 1.46.

2. From 9 p.m. on July 4, 2002 to 9:30 p.m. on July 4, 2002, add a new § 165.T11–040 to read as follows:

§ 165.T11–040 Safety Zone; Colorado River, Laughlin, NV.

(a) *Location.* The following area is a safety zone: that portion of the Colorado River between Laughlin Bridge and the Golden Nugget Hotel and Casino.

(b) *Enforcement periods.* This section is effective from 9 p.m. on July 4th, 2002 to 9:30 p.m. on July 4, 2002.

(c) Regulations. In accordance with the general regulations in § 165.23 of this part, entry into, transit through or anchoring within the safety zone is prohibited unless authorized by the Coast Guard Captain of the Port, San Diego, or his designated representative.

Dated: April 22, 2002.

S.P. Metruck,

Commander, U.S. Coast Guard, Captain of the Port, San Diego.

[FR Doc. 02–12167 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–15–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IL214–1b; FRL–7164–5]

Approval and Promulgation of Implementation Plans; Illinois Emission Reporting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve revisions to Illinois rules for emission reporting. These revisions restructure previously approved emission reporting rules and add requirements for sources in the Chicago area trading program to report emissions of hazardous air pollutants. Illinois requested these revisions on November 6, 2001.

In separate action in today's **Federal Register**, EPA is approving the submittals as a direct final rule without prior proposal, because the EPA views this as a noncontroversial action and anticipates no adverse comments. A detailed rationale for this action is set forth in the direct final rule.

If EPA receives no adverse written comments in response to these actions, we contemplate no further activity in relation to this proposed rule. If we receive adverse written comments, we will withdraw the direct final rule and will address all public comments in a subsequent final rule based on this proposed rule. Any parties interested in commenting on this action should do so at this time.

DATES: Written comments must be received on or before June 14, 2002.

ADDRESSES: Mail written comments to: J. Elmer Bortzer, Chief, Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

A copy of the State submittal is available for inspection at: Regulation Development Section, Air Programs Branch (AR–18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: John Summerhays, Environmental Scientist, at (312) 886–6067.

SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the rules section of this **Federal Register**.

Authority: 42 U.S.C. 7401–7671q.

Dated: March 19, 2002.

Gary Gulezian,

Acting Regional Administrator, Region 5.

[FR Doc. 02–12007 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA185–4191; FRL–7211–5]

Approval and Promulgation of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Control of Volatile Organic Compounds From Solvent Cleaning Operations

AGENCY: Environmental Protection Agency (EPA).

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ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision includes the adoption of revised volatile organic compound (VOC) control regulations for solvent cleaning operations, and also adds new definitions and amends certain existing definitions for terms used in regulations pertaining to solvent cleaning operations.

DATES: Written comments must be received on or before June 14, 2002.

ADDRESSES: Written comments may be mailed to David L. Arnold, Chief, Air Quality Planning and Information Services Branch, Mailcode 3AP21, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air Protection Division, U.S. Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, Pennsylvania 19103; and the Pennsylvania Department of Environmental Protection, Bureau of Air Quality, P.O. Box 8468, 400 Market Street, Harrisburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Ellen Wentworth, (215) 814–2034, or by e-mail at *wentworth.ellen@epa.gov*. Please note that while questions may be posed via telephone and e-mail, formal comments must be submitted in writing, as indicated in the **ADDRESSES** section of this document.

SUPPLEMENTARY INFORMATION: On February 13, 2002, the Pennsylvania Department of Environmental Protection (PADEP) submitted a State Implementation Plan (SIP) revision. This revision consists of revised regulations for the control of VOC emissions from solvent cleaning operations. PADEP submitted this SIP revision in order to reduce VOCs emitted from solvent cleaning operations statewide. These regulations will help to achieve additional VOC emission reduction benefits needed in the Philadelphia-Wilmington-Trenton severe nonattainment area (the Philadelphia area) to close an EPA-identified shortfall in the attainment demonstration submitted by Pennsylvania for the Philadelphia area and approved by EPA on October 26, 2001 (66 FR 54143).

I. Background

Under the Federal Clean Air Act (CAA), states are required to ensure that the ambient air meets the National Ambient Air Quality Standards (NAAQS). In areas where those standards are not met, states are required to develop and implement emission control plans to meet the standards, and then to ensure that the standards are maintained.

The Ozone Transport Commission (OTC) was created by Congress, pursuant to the CAA amendments of 1990, to help coordinate control plans for reducing ground-level ozone in the Northeast and mid-Atlantic states. The OTC continues to work individually and collectively to ensure attainment and maintenance of the national ambient air quality standards (NAAQS). This includes identifying any remaining control measures that may be necessary to attain and maintain the NAAQS. Six states (Connecticut, Delaware, Maryland, New Jersey, New York, and Pennsylvania) in particular are focusing on additional control measures as part of their severe area ozone attainment demonstrations. Working regionally, the OTC states expedited development of control measures into model rules for a number of source categories and estimated emission reduction benefits from implementing these model rules. Implementing the model rules will result in SIP emission reductions in VOC and NO_X to support the attainment demonstrations, as well as reducing ground-level ozone in other areas of the states. The model rules that were developed may be used by states as a framework for state-specific regulations. Each state must act pursuant to its own administrative process in order to promulgate and implement the model rules.

On October 26, 2001 (66 FR 54143), EPA approved the one-hour attainment demonstration SIP submitted by Pennsylvania for the Philadelphia area, with the understanding that the Commonwealth would submit additional emission reduction measures to address EPA-identified emission shortfalls. One of the emission reduction measures identified by the OTC to help attain and maintain the one-hour ozone standard was a regulation reducing VOC emissions from solvent cleaning operations. Pennsylvania submitted a SIP revision to its solvent cleaning regulations to EPA on February 13, 2002, based upon the model rule developed by the OTC.

This revision will reduce VOCs emitted from solvent cleaning operations throughout the Commonwealth and will help achieve the additional VOC emission reduction benefits needed by the Philadelphia area to meet its attainment demonstration commitments.

II. Summary of SIP Submittal

On February 13, 2002, the Commonwealth of Pennsylvania submitted a SIP revision revising its VOC control requirements for solvent cleaning operations throughout the state. Specifically, a new section, section 129.63 of Chapter 129, Standards for Sources. Sources of VOCs, VOC Cleaning Operations, is replacing the current section 129.63 to update equipment requirements for solvent cleaning machines to make the requirements consistent with current technology. In addition, the operating requirements in section 129.63 are being revised to specify improved operating practices. This SIP revision also adds and revises definitions for terms in Chapter 121, section 121.1 Definitions, that are used in the substantive sections of Chapter 129 relating to standards for sources.

This revision also specifies volatility limits for solvents used in cold cleaning machines. This revision only applies to those operations that use solvents containing greater than 5 percent VOC content by weight for the cleaning of metal parts. This revision exempts solvent cleaning machines that are subject to the Federal Solvent Cleaning NESHAP (National Emission Standard for Hazardous Air Pollutants), and provides operators of solvent cleaning machines a choice of compliance options for meeting the requirements of this rulemaking. Owners and operators of affected solvent cleaning machines can either implement a program using low volatility solvents or they can assure that the affected units meet specific hardware requirements. Some of the VOC control requirements in this rulemaking are more stringent than the control requirements in the Federal Control Techniques Guidelines issued in 1977. PADEP revised the solvent cleaning operations control requirements to enable the Commonwealth to attain and maintain the ozone NAAQS. Specifically, this SIP revision includes requirements adopted in the Federal Solvent Cleaning NESHAP for cleaning operations utilizing nonhazardous air pollutant VOC solvents, as well as hazardous air pollutant (HAP) VOC solvents. This will discourage operators from converting to non-HAP VOC solvents to avoid the more stringent NESHAP requirements, which could adversely affect air quality.

A. Summary of Revised Solvent Cleaning Regulations

Chapter 129. Standards For Sources—Revisions to Section 129.63, VOC Cleaning Operations

Except for machines subject to the Federal Solvent Cleaning NESHAP promulgated under 40 CFR part 63, subpart T, the changes to section 129.63(a)–(c) and the addition of section 129.63(d) apply to cold cleaning machines, batch vapor cleaning machines, in-line vapor cleaning machines, airless cleaning machines, and airtight cleaning machines that use solvents containing greater than 5 percent VOC content by weight to clean metal parts. These revisions update equipment requirements for these solvent cleaning machines to make the equipment requirements consistent with current technology. These equipment specifications are consistent with the requirements of the Federal Solvent Cleaning NESHAP. Section 129.63(e) specifies volatility limits for solvents in certain cleaning machines.

Section 129.63(a) Cold Cleaning Machines

This section specifically applies to cold cleaning machines except for those subject to the Federal Solvent Cleaning NESHAP. This section applies to cold cleaning machines that use 2 gallons or more of solvents containing greater than 5 percent VOC content by weight for the cleaning of metal parts. The section outlines the operating practices and procedures that are to be followed when operating a cold cleaning machine.

Section 129.63(b) Batch Vapor Cleaning Machines

This section specifically applies to batch vapor cleaning machines, except for those subject to the Federal Solvent Cleaning NESHAP. This section applies to batch vapor cleaning machines that use solvent containing greater that 5 percent VOC by weight for the cleaning of metal parts. This section outlines equipment requirements and additional options required for batch vapor cleaning machines with a solvent/air interface area of 13 square feet or less, and for batch vapor cleaning machines with a solvent/air interface area of greater than 13 square feet. The operating procedures for batch vapor cleaning machines are also outlined in this section.

Section 129.63(c) In-line Vapor Cleaning Machines

This section specifically applies to in-line vapor cleaning machines except for those subject to the Federal Solvent Cleaning NESHAP. This section applies to in-line vapor cleaning machines that use solvent containing greater than 5 percent VOC by weight for the cleaning of metal parts. This section outlines the equipment requirements, the additional devices or strategies required in operation, and good operating procedures for in-line vapor cleaning machines.

Section 129.63(d) Airless Cleaning Machines and Airtight Cleaning Machines

This section specifically applies to airless cleaning machines and airtight cleaning machines except for those subject to the Federal Solvent Cleaning NESHAP. This section applies to airless cleaning machines and airtight cleaning machines that use solvent containing greater than 5 percent VOC by weight for the cleaning of metal parts. This section outlines the operating and equipment requirements for airless cleaning machines and airtight cleaning machines as well as the allowable emission limits from each machine. The operator of each machine shall demonstrate that the emissions from each machine, on a 3-month rolling average, are equal to or less than the allowable limit determined by the use of the following equation:

$EL = 330\ (vol)^{0.6}$

Where:

EL = the 3-month rolling average monthly emission limit (kilograms/month)

vol = the cleaning capacity of machine (cubic meters)

Section 129.63(e) Alternative Provisions for Solvent Cleaning Machines

This section describes the alternative provisions for solvent cleaning machines used to process metal parts that use solvents containing greater than 5 percent VOC by weight. As an alternative to complying with sections (b)–(d), the operator of a solvent cleaning machine may demonstrate compliance with paragraph (1) or (2) of section 129.63(e). The operator shall maintain records sufficient to demonstrate compliance. These records shall include, at a minium, the quantity of solvent added to and removed from the machine and the dates of the addition and removal. These records shall be maintained for at least 2 years.

Section 129.63(e)(1) outlines the requirements for solvent cleaning machines if the solvent cleaning machine has a solvent/air interface. In this instance, the owner or operator is required to maintain a log of solvent additions and deletions for each solvent cleaning machine, and to ensure that the emissions from each solvent cleaning machine are equal to or less than the applicable emission limit presented in Table 1.

TABLE 1.—EMISSION LIMITS FOR SOLVENT CLEANING MACHINES WITH A SOLVENT/AIR INTERFACE

Solvent cleaning machine	3-month rolling average monthly emission limit	
	kg/M^2/month	lb/ft^2/month
Batch vapor solvent cleaning machines	150	30.7
Existing in-line solvent cleaning machines	153	31.3
In-line solvent cleaning machines installed after the effective date of the regulation	99	20.2

Section 129.63(e)(2) specifies the volatility limits if the solvent cleaning machine is a batch vapor cleaning machine and it does not have a solvent/air interface. In that case, the owner or operator is required to maintain a log of solvent additions and deletions for each machine and to ensure that the emissions from each machine are equal to or less than the appropriate limits as described in paragraphs (3) and (4) of this section.

Section 129.63(e)(3) specifies the volatility limits for solvent cleaning machines without a solvent/air interface with a cleaning capacity that is less than or equal to 2.95 cubic meters. The emission limit for these machines is to be determined using Table 2 or the equation in paragraph (4) of section 129.63(e). If the table is used, and the cleaning capacity of a cleaning machine falls between two cleaning capacity sizes, the lower of the two emission limits applies.

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TABLE 2.—EMISSION LIMITS FOR SOLVENT CLEANING MACHINES WITHOUT A SOLVENT/AIR INTERFACE

Cleaning capacity (cubic meters)	3-month rolling average monthly emission limit (kilograms/month)	Cleaning capacity (cubic meters)	3-month rolling average monthly emission limit (kilograms/month)	Cleaning capacity (cubic meters)	3-month rolling average monthly emission limit (kilograms/month)
0.00	0	1.00	330	2.00	500
0.05	55	1.05	340	2.05	508
0.10	83	1.10	349	2.10	515
0.15	106	1.15	359	2.15	522
0.20	126	1.20	368	2.20	530
0.25	144	1.25	377	2.25	537
0.30	160	1.30	386	2.30	544
0.35	176	1.35	395	2.35	551
0.40	190	1.40	404	2.40	558
0.45	204	1.45	412	2.45	565
0.50	218	1.50	421	2.50	572
0.55	231	1.55	429	2.55	579
0.60	243	1.60	438	2.60	585
0.65	255	1.65	446	2.65	592
0.70	266	1.70	454	2.70	599
0.75	278	1.75	462	2.75	605
0.80	289	1.80	470	2.80	612
0.85	299	1.85	477	2.85	619
0.90	310	1.90	485	2.90	625
0.95	320	1.95	493	2.95	632

Section 129.63(e)(4) specifies volatility limits for solvent cleaning machines without a solvent/air interface with a cleaning capacity that is greater than 295 cubic meters. The emission limit for these machines is to be determined using the following quotation:

$EL = 330 (vol)^{0.6}$

Where:

EL = the 3-month rolling average monthly emission limit (kilograms/month)

vol = the cleaning capacity of machine (cubic meters)

This regulation also requires the owner or operator of a batch vapor or in-line solvent cleaning machine complying with this subsection to demonstrate compliance with the applicable 3-month rolling average monthly emission limit on a monthly basis. If the applicable 3-month rolling average emission limit is not met, an exceedance will have occurred. Exceedances shall be reported to the Department within 30 days of the determination of the exceedance.

B. Definitions

Chapter 121.1 General Provisions-Additions, Revisions to Section 121.1, Definitions

This SIP revision adds definitions and revises certain existing definitions to Chapter 121, General Provisions, section 121.1, Definitions for terms used in the substantive provisions of Chapter 129, Pennsylvania's regulations which contain VOC emission standards. Additional definitions are provided for the following: Airless cleaning system, Airtight cleaning system, Batch vapor cleaning machine, Carbon absorber, Cold cleaning machine, Dwell, Dwell time, Extreme cleaning service, Freeboard refrigeration device, Idling mode, Immersion cold cleaning machine, In-line vapor cleaning machine, Reduced room draft, Remote reservoir cold cleaning machine, Solvent/air interface, Solvent cleaning machine, Solvent cleaning machine automated parts handling system, Solvent cleaning machine down time, Solvent vapor zone, Superheated vapor system, Vapor cleaning machine, Vapor cleaning machine primary condenser, Vapor pressure, Vapor up control switch, and Working mode cover.

These amendments also include a revision to the definition of "freeboard ratio" to make it consistent with the definition in the Federal Solvent Cleaning NESHAP.

III. EPA's Evaluation of Pennsylvania's Submittal

The February 13, 2002 SIP revision submitted by the Commonwealth revises the existing solvent cleaning requirements as recommended by the OTC in their model rule for solvent cleaning operations to help attain and maintain the one-hour ozone standard. The new VOC regulations submitted by the Commonwealth of Pennsylvania as a SIP revision on February 13, 2002, related to solvent cleaning operations, and the addition of definitions used in the substantive sections of Chapter 129 strengthen Pennsylvania's SIP by providing enforceable emission control measures that will reduce VOC emissions from solvent cleaning operations throughout the Commonwealth.

These regulations implement one of the VOC control strategies recommended by the OTC to address the emission reduction shortfall in Pennsylvania's attainment demonstration. The emission reductions that will result from this rulemaking are a significant part of the Commonwealth's efforts to continue toward attainment and maintenance of the one-hour NAAQS for ozone throughout the Commonwealth.

IV. Proposed Action

EPA is proposing to approve the Commonwealth of Pennsylvania SIP revision for solvent cleaning operations, which was submitted on February 13, 2002. EPA is also proposing to approve the additions and revisions of definitions used in the solvent cleaning regulations. EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document. A more detailed description of the state submittal and EPA's evaluation are included in a Technical Support Document (TSD) prepared in support of this rulemaking action. A copy of the TSD is available, upon request, from the EPA Regional Office listed in the **ADDRESSES** section of this document

V. Administrative Requirements

Under Executive Order 12866 (58 FR 51735, October 4, 1993), this proposed action is not a "significant regulatory action" and therefore is not subject to review by the Office of Management and Budget. For this reason, this action is also not subject to Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use" (66 FR 28355, May 22, 2001). This action merely proposes to approve state law as meeting Federal requirements and imposes no additional requirements beyond those imposed by state law. Accordingly, the Administrator certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Because this rule proposes to approve pre-existing requirements under state law and does not impose any additional enforceable duty beyond that required by state law, it does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Pub. L. 104–4). This proposed rule also does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes, as specified by Executive Order 13175 (65 FR 67249, November 9, 2000), nor will it have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely proposes to approve a state rule implementing a Federal standard, and does not alter the relationship or the distribution of power and responsibilities established in the Clean Air Act. This proposed rule also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997), because it is not economically significant. In reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. In this context, in the absence of a prior existing requirement for the State to use voluntary consensus standards (VCS), EPA has no authority to disapprove a SIP submission for failure to use VCS. It would thus be inconsistent with applicable law for EPA, when it reviews a SIP submission, to use VCS in place of a SIP submission that otherwise satisfies the provisions of the Clean Air Act. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply.

As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this proposed rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1988) by examining the takings implications of the rule in accordance with the "Attorney General's Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This proposed rule to revise Pennsylvania's VOC control requirements for solvent cleaning operations does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: May 8, 2002.

Thomas C. Voltaggio,

Acting Regional Administrator, Region III.

[FR Doc. 02–12144 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[WT Docket No. 00–87; FCC 02–83]

Repetitious or Conflicting Applications

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: In this document the Commission proposes to amend its rules concerning repetitious or conflicting applications. This proposal will simplify and clarify the Commission's rules and promote the most efficient use of the Commission's resources.

DATES: Written comments on the proposed are due on or before June 14, 2002 and reply comments are due on or before July 1, 2002.

ADDRESSES: Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the US Postal Service, by an overnight courier or hand and messenger-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

FOR FURTHER INFORMATION CONTACT: Genevieve Augustin, Esq., *gaugusti@fcc.gov*, Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, (202) 418–0680, or TTY (202) 418–7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Federal Communications Commission's *Notice of Proposed Rule Making*, FCC 02–83, adopted on March 14, 2002, and released on March 20, 2002. The full text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, Room CY–A257, 445 12th Street, SW., Washington, DC 20554. The complete text may be purchased from the Commission's copy contractor, Qualex International, 445 12th Street, SW., Room CY–B402, Washington, DC 20554. The full text may also be downloaded at: *www.fcc.gov*. Alternative formats are available to persons with disabilities by contacting Brian Millin at (202) 418–7426 or TTY (202) 418–7365.

1. In this *Notice of Proposed Rule Making* ("*NPRM*"), the Commission proposes to amend § 1.937 of its Rules to prohibit the filing of any repetitious license application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application. The Commission's Rules have long prevented the filing of repetitious license applications. As written, however, § 1.937 can be interpreted as permitting the filing of other repetitious applications that are not specified in the rule. In at least one instance, a licensee has filed a repetitious application for the same service less than twelve months after the denial of his renewal

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application. Such cases can consume significant resources to re-litigate identical issues involving the same applicants very close in time. Therefore, we hereby propose to amend § 1.937 to prohibit any repetitious application in the Wireless Radio Services within twelve months of the denial or dismissal with prejudice of a substantially similar application.

2. Also the Commission proposes to streamline its Rules by combining §§ 1.937(a) and (b) into one simplified rule. Our goal is to simplify and clarify our rules against repetitious applications. This will promote the most efficient use of the Commission's resources by preventing the filing of such applications and barring applicants from immediately re-litigating decided matters.

I. Procedural Matters

A. Ex Parte Rules—Permit-But-Disclose Proceeding

3. This is a permit-but-disclose notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in our Rules.

B. Regulatory Flexibility Act

4. The Regulatory Flexibility Act (RFA) requires that an agency prepare a regulatory flexibility analysis for notice and comment rulemakings, unless the agency certifies that "the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." The purpose of this *Notice* is to prohibit the filing of applications for radio station licenses within twelve months of the denial of a substantially similar application. This change is proposed to promote the most efficient use of the Commission's resources by preventing the immediate filing of repetitious applications. The proposed rule change does not impose any additional compliance burden on small entities regulated by the Commission. Accordingly, we certify, pursuant to section 605(b) of the RFA, that the rule proposed in this *Notice* will not have a significant economic impact upon a substantial number of small entities, as that term is defined by the RFA. The Commission's Office of Public Affairs, Reference Operations Division, shall send a copy of this *Notice*, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with the RFA. We shall also publish a copy of this certification in the **Federal Register**. With respect to the proposed rules, we shall analyze the information submitted during the comment period and, if we determine at the time we issue a final rule that such final rule changes will have a significant economic impact on a significant number of small entities, we shall prepare a Final Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

5. This *Notice* does not contain either a proposed or modified information collection.

D. Comment Dates

6. Pursuant to §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before June 14, 2002 and reply comments on or before July 1, 2002. Comments may be filed using the Commission's Electronic Filing System (ECFS) or by filing paper copies.

7. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, then commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To obtain filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply.

8. Parties who choose to file by paper must file an original and four copies of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be sent to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW., Washington, DC 20554. Filings can be sent first class by the US Postal Service, by an overnight courier or hand and messenger-delivered. Hand and message-delivered paper filings must be delivered to 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. Overnight courier (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

9. Parties who choose to file by paper should also submit their comments on diskette. These diskettes should be submitted to: Genevieve Augustin, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, 445 12th St., SW., Room 3–A431, Washington, DC 20554. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Microsoft Word 97 or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the lead docket number in this case, WT Docket No. 02–87), type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters should send diskette copies to the Commission's copy contractor, Qualex International, Inc., 445 12th St., SW., Room CY–B402, Washington, DC 20554.

II. Ordering Clauses

10. Pursuant to Sections 4(i), 303(r), and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), 403, this *Notice of Proposed Rule Making is hereby adopted*, and *notice is hereby given* of the proposed regulatory changes described in the *Notice of Proposed Rule Making* and contained in the rule changes.

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Radio.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

Proposed Rule Changes

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 1 as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: 47 U.S.C. 151, 154(i), 154(j), 155, 225, 303(r), 309 and 325(e).

2. Section 1.937 is amended by revising paragraphs (a) and (c) and by removing and reserving paragraph (b) to read as follows:

§ 1.937 Repetitious or conflicting applications.

(a) Where the Commission has, for any reason, dismissed with prejudice or denied any license application in the Wireless Radio Services, or revoked any such license, the Commission will not consider a like or new application involving service of the same kind to substantially the same area by substantially the same applicant, its successor or assignee, or on behalf of or for the benefit of the original parties in interest, until after the lapse of 12 months from the effective date of final Commission action.

(b) [Reserved]

(c) If an appeal has been taken from the action of the Commission dismissing with prejudice or denying any application in the Wireless Radio Services, or if the application is subsequently designated for hearing, a like application for service of the same type to the same area, in whole or in part, filed by that applicant or by its successor or assignee, or on behalf or for the benefit of the parties in interest to the original application, will not be considered until the final disposition of such appeal.

* * * * *

[FR Doc. 02–12062 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 54

[WC Docket No. 02–60; FCC 02–122]

Rural Health Care Support Mechanism

AGENCY: Federal Communications Commission.

ACTION: Proposed rulemaking.

SUMMARY: In this document, the Commission seeks comment on proposed modifications to its rules and other changes governing the rural health care universal service support mechanism, which helps rural health care providers obtain access to modern telecommunications and information services for medical and health maintenance purposes. The NPRM asks for comment on ways to increase the number of health care providers that could benefit from the program's discounts, without modifying the existing funding cap, and to improve the overall operation of the program. Among other items, the NPRM seeks comment on how to treat entities that not only serve as rural health care providers, but also perform the functions outside the statutory definition of "health care providers," whether to provide discounts on Internet access charges, and whether the calculation of discounted services should be changed.

DATES: Comments are due on or before July 1, 2002. Reply comments are due on or before July 29, 2002. Written comments by the public on the proposed information collections are due on or before June 14, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 15, 2002.

ADDRESSES: Comments can be filed electronically or by paper. Electronic filers can access the Electronic Filing System via the Internet at *www.fcc.gov/e-file/ecfs.html*. Instructions for e-mail filing can be obtained by send an e-mail to *ecfs@fcc.gov* with the words get form<your email address> in the body of the e-mail. Parties choosing to file by paper must file an original and four copies with the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW., Washington, DC 20554 and file additional copies with parties as listed in the NPRM. See **SUPPLEMENTARY INFORMATION** Section for new filing procedures for all documents sent by hand-delivery and messenger to 445 12th Street, SW. A copy of any comments on the information collection(s) contained herein should also be submitted to Judith Boley Herman, Federal Communications Commission, Room 1-C804, 445 12th Street, SW., Washington, DC 20554, or to *jboley@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503. All filers must send a copy of the comments to the Commission's copy contractor, Qualex International, Portals II, 445 12th Street, SW., Room CYB402, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Eric K. Johnson, Attorney, Wireline Competition Bureau, Telecommunications Access Policy Division, (202) 418–2718. For further information concerning the information collection contained in this Notice of Proposed Rulemaking contact Judith Boley Herman, at 202–418–0214, or via the Internet to *jboley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking in WC Docket No. 02–60, FCC 02–122, released on April 19, 2002. The full text of this document is available for public inspection during regular business hours in the FCC Reference Center, Room CY-A257, 445 12th Street, SW., Washington, DC, 20554. The full document can also be viewed at <*http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC–02–122A1.pdf*>.

This Notice of Proposed Rulemaking (NPRM) contains proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

The NPRM contains discussion of information collections. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and OMB to comment on the information collection(s) discussed in this NPRM, as required by the PRA, Public Law 104–13. Public and agency comments on the information collections discussed in this NPRM are due on or before June 14, 2002. Written comments must be submitted by the OMB on the proposed information collections on or before July 15, 2002.

Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: 3060–0804.

Title: Universal Service—Health Care Providers Universal Service Program.

Form No.: FCC Forms 465, 466, 466-A, 467 and 468.

Type of Review: Proposed revised collection.

Respondents: Business or other for-profit, not-for-profit institutions, State, Local or Tribal Governments.

Title	No. of respondents	Est. time per response	Total annual burden
1. FCC Form 465—Description of Services Requested and Certification	8,300	2.5	20,750
2. FCC Form 466—Funding Request and Certification	8,300	2	16,600
3. FCC Form 466 A Internet Toll Charge Discount Request	8,300	1	8,300
4. FCC Form 467—Connection Certification	8,300	1.5	12,450
5. FCC Form 468—Telecommunications Carrier Support Form	8,300	1.5	12,450

Total Annual Burden: 70,550.

Cost to Respondents: $0.

Needs and Uses: In this NPRM the Commission has updated its data estimating the number of health care providers who could be respondents, to a total of approximately 8,300 rural health care providers. The Commission might further refine the burden estimates after receiving comment.

The purpose of the NPRM is to explore modifications that would increase the number of eligible health care providers that would participate in the program. It is not possible to estimate the number of eligible health care providers that would take advantage of this program as the NPRM asks for comment about possible changes in interpretation of the eligibility criteria for both entities and services. Therefore, we have included the largest possible number of applicants the total estimated number of rural health care providers—in the above burden estimates.

Synopsis of NPRM

I. Introduction

1. In this NPRM, we seek comment on proposed modifications to our rules and other changes governing the rural health care universal service support mechanism. The Commission implemented the rural health care mechanism at the direction of Congress as provided in the Telecommunications Act of 1996 (1996 Act). In the first five years of its operation, the rural health care mechanism has provided discounts that have facilitated the ability of health care providers to provide critical access to modern telecommunications and information services for medical and health maintenance purposes to rural America. Participation in the rural health care universal service support mechanism, however, has not met the Commission's initial projections. After five years of experience with the mechanism and considering recent developments, we find it appropriate to assess whether our rules and policies require modification.

2. In light of changes in technology and market conditions as well as recent national events, we find it appropriate to ask whether various aspects of the rural health care support mechanism can be streamlined and improved, in order to best effectuate the mandate of Congress. We seek comment on certain specific changes to the mechanism based on our past experience with the mechanism, and solicit input regarding other changes to improve efficiency, fairness, and overall operation of the mechanism. We believe certain changes to our rules affecting the rural health care support mechanism could significantly bolster the availability of telemedicine and telehealth, thereby enhancing critical diagnosis and communication support for isolated health centers throughout the rural United States in the event of a national public health emergency.

3. Our goals in undertaking this proceeding, consistent with the statute, are four-fold: (1) To ensure that the benefits of the universal service support mechanism for rural health care providers continue to be distributed in a fair and equitable manner; (2) to examine current rules and, if necessary, implement changes to improve and streamline operation of the rural health care universal service support mechanism; (3) to maintain our effective oversight over operation of the mechanism to ensure the statutory goals of section 254 of the Act are met without waste, fraud, or abuse; and (4) to strengthen the ability of rural health care providers to provide critical health care services, consistent with section 254, and thereby further our national homeland security.

4. In this NPRM, we seek comment on several general categories of issues, including whether to: clarify how we should treat eligible entities that also perform functions that are outside the statutory definition of "health care provider"; provide support for Internet access; and change the calculation of discounted services, including the calculation of urban and rural rates. In addition, we seek comment on other administrative changes to the rural health care mechanism, including whether and how to: streamline the application process; allocate funds if demand exceeds the annual cap; modify the current competitive bidding rules; and encourage partnerships with clinics at schools and libraries. We also seek comment on other measures to prevent waste, fraud, and abuse; and any other issues concerning the structure and operation of the rural health care universal service support mechanism.

5. We seek comment on these specific proposals, and how such changes could be implemented. We also seek comment on the effect that any such changes may have on demand for support under the universal service mechanism as well as data to support any comments made. We welcome any alternative proposals that are consistent with the statute and that satisfy the expressed goals of this proceeding. We seek comment from state members of the Federal-State Joint Board on Universal Service on the matters raised in this proceeding.

II. Discussion

A. Eligible Health Care Providers

6. Section 254(h)(1)(A) of the Act requires telecommunications carriers to provide discounted telecommunications service "to any public or nonprofit health care provider that serves persons who reside in rural areas in that State." Section 254(h)(2)(A) directs the Commission to enhance access to "advanced telecommunications and information services" for, *inter alia*, "public and non-profit . . . health care providers." The term "health care provider" as used in these sections is defined in section 254(h)(7)(B) as follows:

> For purposes of this subsection: * * * [t]he term "health care provider" means—
>
> (i) Post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools;
>
> (ii) Community health centers or health centers providing health care to migrants;
>
> (iii) Local health departments or agencies;
>
> (iv) Community mental health centers;
>
> (v) Not-for-profit hospitals;
>
> (vi) Rural health clinics; and
>
> (vii) Consortia of health care providers consisting of one or more entities described in clause (i) through (vi).

7. The Commission initially addressed the scope of this statutory definition in the *Universal Service Order*, 62 FR 32862, June 17, 1997, finding that the seven statutory categories adequately described the entities that Congress intended to qualify as health care providers. It declined to expand the definition of "health care provider" beyond the statutorily-enumerated categories, concluding that, had Congress intended any other entities to qualify, it would have included them in the list explicitly. On reconsideration of the *Universal Service Order*, the Commission rejected arguments that it had too narrowly defined the term "health care provider" and that it should expand the definition to include rural nursing homes, hospices, or other long-term care facilities, as well as emergency medical service facilities.

8. The Commission concluded that a nursing home, in particular, would be ineligible even if it was part of an eligible rural health clinic. The Commission reasoned that an ineligible entity's relationship with an eligible entity is an insufficient basis for allowing an entity omitted from the list in the statute to qualify for the benefits of the universal service support mechanism and that there was "no rational basis for distinguishing between a rural nursing home that is part of a not-for-profit * * * rural health clinic and a rural nursing home that is associated with any of the other categories of eligible entities listed in the statute." The Commission also rejected eligibility of nursing homes that were part of a rural health clinic because granting such eligibility "would very likely result in a flood of other types of ineligible entities requesting similar treatment, and thus would render meaningless the limitations imposed by Congress in section 254(h)(7)(B)."

9. In this NPRM, we again affirm that eligible health care providers are limited to the seven categories enumerated in the statutory definition of "health care provider." In light of the very low utilization of the discounts provided pursuant to section 254(h)(1)(A), however, we invite comment on whether we should revisit our prior interpretations of the terms "health care provider" and "rural health clinic" to enable rural health care providers to be eligible for discounts even if they or their affiliates also function in capacities that do not fall under the statutory definition in section 254(b)(7)(B). In particular, if an entity allocates some of its resources acting as a "rural health clinic" or in another capacity that would qualify it as a "health care provider" under section 254(b)(7)(B), should that entity be eligible for discounts irrespective of whether it (or an affiliate) also functions in a capacity—even on a primary basis—that would not qualify it as a "health care provider" under the Act? Such part-time or multipurpose providers may play a vital role in responding to public health crises affecting communities located in remote regions of our country. In some communities, for example, there are rural health clinics and emergency service facilities that are not currently eligible for support because they are operated by entities that also function as nursing homes, hospices, or other long-term care facilities. We seek comment on whether we can and should interpret the statute to enable such clinics and emergency service providers to receive discounted services supported under the rural health care mechanism. The number and importance of clinics with these or similar arrangements may be becoming—or may have already become—a critical part of the health care network in rural America.

10. We also seek comment on how the rural health care mechanism would benefit entities that function both as covered health care providers and as entities that do not fall under section 254(b)(7)(B). In particular, we seek comment on whether it would be both practicable and consistent with the statute to prorate discounts. Such proration could ensure that the rural health care universal service support mechanism benefits such entities only to the extent that they operate as covered health care providers. We seek comment on the best way to implement such a proposal and how it would affect administrative costs. We also seek comment on what safeguards, if any, we should consider or adopt to ensure that discounted services provided to such multipurpose facilities are used consistent with the statute and our rules.

B. Eligible Services

1. Internet Access

11. Under section 254(h)(1)(A) of the Act, a telecommunications carrier may receive reimbursement for providing telecommunications services to rural health care providers in a State at rates that are reasonably comparable to rates charged for similar services in urban areas of that State, with the amount of the reimbursement equal to the difference, if any, between the rural and urban rates. Under section 254(h)(2)(A), the Commission is authorized to establish competitively neutral rules "to enhance, to the extent technically feasible and economically reasonable, access to advanced telecommunications and information services for all public and non-profit elementary and secondary school classrooms, health care providers, and libraries * * *." Thus, the 1996 Act contemplates both support for telecommunications services provided to rural health care providers and enhancing access for health care providers to advanced telecommunications and information services.

12. In the *Universal Service Order*, the Commission, relying on these provisions, authorized limited support for access to the Internet for health care providers. The Commission declined at that time to adopt any proposals for support of the Internet access provided by an ISP, due to the limited information available and the complexity of the proposals. The Commission did find, however, that rural health care providers incur large telecommunications toll charges and those charges were a major deterrent to full use of the Internet for health-related services. Therefore, acting pursuant to its authority under section of 254(h)(2)(A), the Commission provided support for toll charges incurred by all health care providers that could not obtain toll-free access to an ISP. The support was limited to the lesser of $180.00 or 30 hours of usage per month, if a rural health care provider could not reach an ISP without incurring toll charges. The Commission determined that the dollar cap per provider was "a specific, sufficient, and predictable mechanism, as required by section 254(b)(5) * * * because it limits the amount of support that each health care provider may receive per month to a reasonable level." The Commission recognized, however, that the proliferation of ISPs and the competitive marketplace "soon should eliminate the need for such support."

13. We now seek comment on whether to alter our current framework for providing support for Internet access for rural health care providers. We note that the support for toll charges is presently unused by applicants because, as a result of the proliferation of ISPs, virtually all rural health care providers can now reach an ISP without incurring toll charges. We seek comment on whether we should eliminate support for toll charges to ISPs and instead provide support for any form of Internet access provided to rural health care providers.

14. The Commission has previously concluded that we have statutory authority to implement a mechanism of universal service support for non-telecommunications services to enhance

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access to advanced telecommunications and information services under section 254(h)(2)(A), as long as the mechanism is competitively neutral, technically feasible, and economically reasonable. Indeed, in the *Universal Service Order*, the Commission specifically rejected the notion "that support for non-telecommunications services is * * * barred under * * * section 254(h)(2). Moreover, in the schools and libraries universal service support context, the Fifth Circuit affirmed the Commission's determination that 254(h)(2)(A) authorized direct support for Internet access to non-telecommunications service providers.

15. We continue to believe that we have authority to support the services necessary to access the Internet under sections 254(h)(2)(A) and 154(i), and invite comment on this view. Given the rapid development of the Internet's capacities, the proliferation of applications available on the Internet, and the increase in the number of Internet users since the *Universal Service Order* was issued, it is time to reevaluate our previous policy decision not to support Internet access service provided by an ISP. Indeed, the Commission has previously recognized that the most efficient and cost-effective way to provide many telemedicine services may be via the Internet. In addition, health care information shared across the Internet may be an important benefit to enable rural health care providers to diagnose, treat, and contain possible outbreaks of disease or respond to health emergencies. We also wish to reduce isolation in rural communities by providing additional health care services to remote areas. We seek comment on the range of health care services and information that are available via the Internet, on the ability of the Internet to provide to rural communities the type of health care information that is available in urban areas, and, in general, on how health care providers can make use of the Internet to provide better health-related services. In light of these changes, the provision of support for Internet access could be beneficial in achieving the goal of section 254. We therefore seek comment on whether the rural health care support mechanism should now include discounts on Internet access, whether provided on a dial-up or high-speed broadband basis, and whether such support would be economically reasonable and technically feasible.

16. We seek comment on how support to rural health care providers for Internet access could be implemented. In determining an appropriate method of implementation, we seek comment on the appropriate balance among various competing factors. If we were to adopt this proposal, we would want to provide an adequate level of support to enable health care providers to afford such access. We also would want not to deter health care providers from seeking service offerings appropriate to their individual needs. At the same time, we seek to ensure that any implementation of support includes measures to avoid waste and fraud without imposing unnecessary costs on the Administrator, and to ensure that support is used for the purposes that Congress intended. One possible solution could be a percentage discount on Internet access charges, analogous to the operation of the schools and libraries support mechanism. Alternatively, we seek comment on whether support for Internet access provided under section 254(h)(2)(A) should include a rural-urban rate comparison of the sort required under section 254(h)(1)(A). We seek comment on the advantages and disadvantages of each proposal and how such proposals could be efficiently and effectively implemented. Further, we encourage commenters suggesting methods of implementation to address these competing concerns, to be specific as to the level of support that we should offer, and to provide us with the facts that they rely upon in advocating a level of support.

17. If commenters believe that Internet access support should take the form of a percentage discount, we invite them to discuss whether we should adopt a single discount rate broadly applicable to all rural health care providers or apply different rates depending on a factor or factors. If commenters argue that the latter approach is preferential, they should specify the factors that we should rely upon in determining rates and, where possible, how rates will vary depending on variations in the applicable factors. In all cases, commenters should specify the facts on which they rely in proposing a particular rate or schedule of rates.

18. Further, to accurately gauge the effect of such a proposal, we should understand how authorizing support for Internet access would increase the demand for support from rural health care providers. We therefore seek comment on the likely demand for Internet access, and from service providers on the cost of such services. We seek comment on whether demand for Internet access is likely to reach the $400 million cap on the amount of support to be provided by the rural health care mechanism, and how increased demand would affect the operation of the rural health care mechanism.

19. We recognize that, in certain circumstances, offering support for Internet access to health care providers in rural areas may not adequately ensure that such providers have access to critical medical and public health resources, particularly in the event of a national security emergency. In particular, we lack an adequate record upon which to evaluate whether the non-rural institutions with such resources have the financial wherewithal or alternate public funding to make those medical resources available on networks used by rural health providers. Thus, we encourage interested parties to identify what, if any, new policies we should establish to enhance access to advanced telecommunications and information services for health care providers consistent with the scope of our authority under section 254(h)(2)(A).

20. In general, we seek comment on the positive or negative effects that a decision to support Internet access will have on the rural health care support mechanism, from the perspective of the health care providers, the service providers, and the Administrator. In addition, we seek comment on how such implementation could be effectuated in keeping with the Commission's long standing universal service principles, specifically competitive neutrality and technological neutrality. We encourage parties to discuss any issues relevant to whether we should provide support for Internet access, which parties should be eligible for such support, what level of support to provide, the nature of the support, what restrictions we should place on such support, what administrative problems and concerns may arise if we provide such support, and the impact of such support on the mechanism's ability to support other services. We also seek comment on the effects on competition, if any, resulting from providing universal service support for Internet access under the rural health care mechanism. Specifically, we seek comment on whether such support would have positive or negative effects on facilities-based broadband deployment in rural areas.

2. Services Necessary for the Provision of Health Care

21. Under section 254(h)(1)(A), rural health care providers may receive support only for "telecommunications services which are necessary for the provision of health care services * * * including instruction relating to such services * * *" In the *Universal Service Order*, the Commission found that the phrase "necessary for the provision of health care services * * * including instruction relating to such services" meant reasonably related to the provision of health care services or instruction. The Commission further required that the health care provider certify that the requested service would be used exclusively for purposes reasonably related to the provision of health care services or instruction that the health care provider is legally authorized to provide under applicable state law, to help ensure that only eligible services are funded.

22. We seek comment on whether we should adopt any additional measures to effectuate the statutory restriction in cases where a health care provider engages in both the provision of health care services and other activities. We could rely solely on the certification that none of the telecommunications services being supported will be used in connection with the non-health care related activities. However, if we decide to support services to entities engaged in a substantial amount of a non-health care related activities, the current certification procedure may not be adequate to avoid waste and fraud. We therefore seek comment on how best to avoid waste and fraud, specifically in situations where entities perform a significant amount of non-health related activities.

C. Calculation of Discounted Services

23. Section 254(h)(1)(A) of the Act provides that "[a] telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State." Under our rules, the amount of support for an eligible service provided to a rural health care provider is the difference, if any, between the urban rate and the rural rate charged for the service.

24. For service charges that are not distance-based, qualifying entities receive discounts for the difference in urban and rural rates. Pursuant to our rules, the Administrator determines the "standard urban distance," (SUD) which is the average of the longest diameters of all cities in the state with a population of at least 50,000. The Administrator also calculates the Maximum Allowable Distance (MAD), which is the distance between the rural health care provider and the farthest point on the jurisdictional boundary of the nearest large city in the state with a population of at least 50,000. Under our rules, qualifying entities receive discounts on distance-based charges for services over any distance greater than the SUD but less than the MAD.

25. As discussed below, we seek comment on whether the "similarity" of urban and rural services should be determined on the basis of functionality from the perspective of the end-user, rather than on the basis of whether urban and rural services are technically similar. We also seek comment on whether, for purposes of determining the urban rate, the Administrator should allow comparison of rates in any urban area in the state, not just comparison with the rates in the nearest city with a population of over 50,000. In addition, we seek comment on whether to eliminate the MAD restriction, and seek comment on other alternatives. Furthermore, we seek comment on certain changes relating to the calculation of the urban rate in insular areas.

1. Interpretation of Similar Services

26. As noted, section 254(h)(1)(A) of the Act provides that "[a] telecommunications carrier shall, upon receiving a bona fide request, provide telecommunications services which are necessary for the provision of health care services in a State, including instruction relating to such services, to any public or nonprofit health care provider that serves persons who reside in rural areas in that State at rates that are reasonably comparable to rates charged for similar services in urban areas in that State."

27. However, our rules do not specify precisely how urban and rural services are to be compared for purposes of determining what are "similar." It has been our policy to base discounts on the difference in urban and rural rates between the same or similar services, such as comparing the rates for rural T–1 service with those of urban T–1 service. Our current policy of comparing technically similar services may, however, inadvertently create inequities between urban and rural health care providers. Doing so does not take into account the fact that some less expensive urban services are unavailable at any price in rural areas, and health care providers are thus required to seek out more expensive services.

28. We seek comment on changing our policy of comparing urban and rural rates for particular telecommunications services, such that the discounts would be calculated by comparing services based on functionality of the service from the perspective of the end user. In particular, we seek comment on whether comparisons should be made between or among different types of high-speed transport offered by telecommunications carriers that may be viewed as functionally equivalent by end-users. We also seek comment on whether this proposed policy change would better effectuate the statutory goals of section 254.

29. We seek comment on the fairest and most effective way to compare functionality between or among different types of telecommunications services. We seek comment on how a functionality-based approach would affect discounts for all telecommunications services, including fractional T–1 lines, ISDN, Frame Relay services, and ATM services, and any other such telecommunications services for which the rural health care universal service support mechanism may offer discounts.

30. We note that the discussion above presupposes that such functionality comparisons would be made between services provided as telecommunications services. If, however, the Commission rules that broadband Internet access services are information services, any such services would be eligible for support only under section 254(h)(2)(A), and not under section 254(h)(1)(A). As noted, we seek comment on whether any support for information services provided under section 254(h)(2)(A) should include a rural/urban rate comparison of the sort required under section 254(h)(1)(A).

31. We also seek comment on how this possible modification would affect health care providers seeking discounts for satellite services. Providers using satellite services have been particularly disadvantaged under the mechanism's current rules. In some areas throughout the United States and related territories, particularly remote and insular areas, satellite systems may provide the only viable means for a rural health care provider to receive telecommunications services. A rural provider using satellite services typically does not receive a discount under this mechanism because, under our current policies, the cost of rural satellite service would be compared to the cost of urban satellite service, and the price of satellite service does not vary by location. In some cases, satellite-based services can be more costly than traditional wireline services. Therefore, we recognize that widespread use of satellite-based services by rural health care providers that do have reasonably priced land-based

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alternatives, if fully funded by the rural health care mechanism, may prove costly for the universal service support mechanism and offer an unnecessarily expensive service option for some applicants. We therefore seek comment on how to address this concern, which is similar to our concerns with respect to traditional wireline services.

32. The Commission currently has before it a Petition for Reconsideration filed by Mobile Satellite Ventures Subsidiary (MSV), regarding the 1997 *Universal Service Order*, concerning, *inter alia*, the issue of discounts in the rural health care universal service support mechanism for satellite services. MSV, which offers satellite-based emergency medical communications, argues that because the cost of satellite systems is the same in rural and urban areas, providers of satellite-based services are at a disadvantage compared to terrestrial carriers, whose prices are distance sensitive. MSV proposes that the Commission establish "that the urban services that are 'similar' to MSV's rural [services] are the terrestrial mobile communications services typically used by ambulances and other emergency medical vehicles in a state's urban areas * * * [and that] support for rural health care providers that use MSV's services should be calculated on the basis of actual airtime usage rates that MSV charges for calls outside a customer's predefined talk-group." We seek comment on MSV's proposal as a way to make the functional comparison for mobile satellite services, and seek any other proposals for resolving this issue.

33. We further seek comment on whether, and how, a functionality approach could be implemented consistent with current requirements concerning the Maximum Allowable Distance. If the MAD requirement is altered or eliminated as discussed below, we seek comment on how that change may interrelate with any proposed treatment of satellite services.

2. Urban Area

34. Section 254(h)(1)(A) of the Act directs us to provide support for "rates that are reasonably comparable to rates charged for similar services in urban areas in that State." Under our rules, as described, the urban rate is based on the rate for similar services in the "nearest large city," defined as "the city located in the eligible health care provider's state, with a population of at least 50,000, that is nearest to the healthcare provider's location, measuring point to point, from the health care provider's location to the point on that city's jurisdictional boundary closest to the health care provider's location. In the *Universal Service Order*, the Commission chose to base the urban rate on the rate in the nearest city of at least 50,000 in the belief that such cities "are large enough that telecommunications rates based on costs would likely reflect the economies of scale and scope that can reduce such rates in densely populated urban areas." In addition, the Commission stated that because the telecommunications services a rural health care provider would use would likely involve transmission facilities linked to the nearest large city, using that location would provide more accurate and realistic comparable rates than using rates from more distant cities. The Commission also noted that while every state has a city of at least 50,000, not every state has larger cities.

35. Our experience with the rural health care universal service support mechanism leads us to consider reevaluating our previous conclusion. A number of applicants have suggested that the last several years of experience have demonstrated that rates and services available in small cities do not yet fully reflect the economies of scale and scope that are found in the most densely populated areas of the state. There is evidence that suggests the largest cities in a state have significantly lower rates and more service options than the city of at least 50,000 nearest the rural health care provider. In addition, our previous assumption that services used by rural health care providers would likely involve transmission links to the nearest city appears not always to be the case. There is increasing evidence that many rural health care providers choose to link their telemedicine networks to pockets of expertise located in larger cities in the state. We seek comment on whether to alter our rules to allow comparison with rates in any city in a state.

36. We recognize allowing a comparison of urban rates with any city in a state may result in certain rural health care providers receiving lower rates, by virtue of this support mechanism, than those obtained in the nearest city of 50,000 or more. The Commission previously expressed concerns about such an outcome in the context of relying on average urban rates in a state. We also note that this change would obviate the Commission's previous concern that some states may not have cities much larger than 50,000, because the comparison would be based on any city in the state. We seek comment on whether this proposal is the best way to effectuate the statutory mandate. We also seek comment on the potential effect this change may have on demand for support under the rural health care mechanism.

37. We further seek comment on any other changes involving the calculation of the urban and rural rate, in order to fulfill the goals and mandate of section 254.

3. Maximum Allowable Distance

38. We seek comment on eliminating or revising the MAD restriction in our rules, which limits support for rural health care providers to distances less than the "distance between the eligible health care provider's site and the farthest point from that site that is on the jurisdictional boundary of the nearest [city of at least 50,000]." In establishing the MAD, the Commission determined that providing discounts only for distance-based charges for the distance between a rural health care provider and the nearest city of 50,000 or more was sufficient to connect the health care provider to adequate services, and would protect against health care providers requesting telemedicine connections to "far flung areas in search of the real or imagined "expert" in the field." However, our experience to date suggests that limiting rural heath care providers to discounts for connection to the nearest city of 50,000 or more may not be adequate for purposes of creating a comprehensive telemedicine network. We therefore seek comment on changes that would better effectuate the intent of the statute.

39. Removing the MAD would offer rural health care providers greater flexibility in developing appropriate networks, which should improve the delivery of health care in rural areas. There are several legitimate reasons providers would seek connections to places farther away than the nearest city of 50,000. For example, in the case of large telemedicine networks, the circuit from a rural site may run to another rural site to link all sites in a consortium together. Similarly, a carrier may lay cable in a more complex route, but because the Administrator calculates the MAD on the basis of the shortest distance between points, a rural health care provider may lose discounts if the circuit exceeds the MAD. Rural health care providers may wish to connect with a health care facility with the appropriate expertise or other pockets of expertise located beyond the MAD.

40. Eliminating the MAD should reduce the administrative costs because calculating the MAD requires labor-intensive and time-consuming efforts on the part of the Administrator. The RHCD estimates that for each application seeking support for telecommunications service over a distance that exceeds the MAD, the Administrator must devote an average of three additional hours to the application in order to ascertain the proportion of the service for which the applicant is eligible. This process diverts important resources available for all applicants, which may not be cost-effective administratively. It also adds to the complexity of the rural health care universal health care mechanism for applicants. Eliminating the MAD restriction would therefore simplify the application process while reducing administrative overhead, thereby freeing up funds for discounts for other applicants. However, we recognize that eliminating the MAD may result in substantially increased demand if more entities seek support under the mechanism. We seek comment on whether to eliminate the MAD, including the benefits and impact on demand for support under the mechanism, and whether and how we may need to constrain increased costs resulting from changes to the MAD requirement.

41. We seek comment on alternative proposals to address this issue, including whether, in lieu of eliminating the restriction, we should modify it or adopt another limitation, such as the greatest distance between the location of the rural health care provider and the furthest point on the border of the same state or the distance between the health care provider and the nearest point of so-called tertiary care. If we elect to provide discounts to the nearest point of tertiary care, what standard would be used to define this point, and should we codify that in our regulations? In the alternative, would the creation of a state-by-state matrix listing the longest diameter in each state as the MAD for such state be feasible? We seek comment on whether all of these proposed approaches are consistent with the statutory scheme. Further, if we were to adopt any of the stated proposals, we seek comment on whether it makes sense to retain our rule that support not be provided on telecommunications service over a distance shorter than the Standard Urban Distance (SUD).

4. Insular Areas

42. Section 254(h)(1)(A) specifies that "telecommunications carriers shall . . . provide telecommunications services which are necessary for the provision of health care services in a State . . . to any public or nonprofit health care provider that serves persons who reside in rural areas in that State, at rates that are reasonably comparable to rates charged for similar services in urban areas *in that State*." Consistent with this statutory language, the Commission's rules determine the "urban rate" for purposes of determining the amount of support by looking to the rates charged customers for a similar service in the nearest large city in the State. In the *Universal Service Order*, the Commission noted that using urban rates within a State as the benchmark for reasonable rates may be ill-suited to certain insular areas that are relatively rural all over, including areas of the Pacific Islands and the U.S. Virgin Islands. Following up on this concern, the Commission sought comment in the *Unserved and Underserved Areas Further Notice*, 64 FR 52738, September 30, 1999, on whether the calculation of support should be modified for these areas, and invited commenters to propose specific revisions.

43. In response, certain commenters suggested that the Commission had authority under section 254(h)(2)(A) to designate an out-of-state urban locale as the relevant urban benchmark for insular areas such as Guam and the Northern Mariana Islands. We seek comment on whether section 254(h)(2)(A) gives us the authority to allow rural health care providers to receive discounts by comparing the rural rate to the nearest large city even outside of their "State." We also seek comment on any alternative means for addressing the special problems of insular areas, consistent with section 254.

D. Other Changes to the Rural Health Care Support Mechanism

1. Streamlining the Application Process

44. We seek comment on ways to streamline the application process to make it more accessible to rural health care providers. The Commission has recognized in the past that the application process, and the complicated nature of the forms involved, may sometimes be a barrier to applicants. We understand that this process may still provide unnecessary barriers to applicants. We believe the proposals in this NPRM could further simplify the operation of the rural health care universal service support mechanism. We seek comment in general on additional ways that the process of submitting, reviewing, and approving applications may be streamlined or otherwise improved to ensure timely, fair, and efficient decision-making.

45. While we welcome comments on all aspects of the application process, we specifically seek comment on the following areas. We seek comment on any additional ways that the calculation of the urban-rural differential on the forms may be made easier. We further seek comment on ways to eliminate delays and lack of response from eligible telecommunications carriers in supplying the information necessary for rural health care providers to complete the process.

46. We also seek comment on ways to ensure that rural health care providers are apprised of changes in deadlines for application filings and other material changes in the application and appeals process.

2. Pro-Rata Reductions If Annual Cap Exceeded

47. We seek comment on whether to modify our current rules governing the allocation of funds under the rural health care universal service support mechanism if demand exceeds the annual cap. The annual cap on universal service support for health care providers is currently $400 million per funding year. Under our rules, if the total demand for support in a year exceeds the cap, the Administrator shall divide the total annual support available by the total amount requested in that year, then multiply that result, which is the pro-rata factor, by the amount requested by each applicant, in order to determine the amount each applicant shall receive.

48. Discounts amounts requested under the rural health care universal service support mechanism, to date, have never exceeded the annual cap. However, it is possible that changes adopted in response to this NPRM could increase the level of discounts requested in a year such that discounts requested may, at some point in the future, exceed the cap. We therefore seek comment on whether this pro-rata distribution of funds for requested discounts is the most effective and equitable means of distributing limited funds in accordance with the goals and purposes of the statute, or whether an alternative approach should be adopted.

3. Preventing Waste, Fraud, and Abuse

a. Competitive Bidding

49. We seek comment on the effectiveness of the rural health care universal service support mechanism's competitive bidding rules. Under current rules, applicants are required to participate in a competitive bidding process pursuant to Commission regulations and any additional applicable state, local, or other procurement requirements. Applicants are required to submit to the Administrator an FCC Form 465, in

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which it solicits bids for services from telecommunications carriers, and makes various certifications relating to eligibility under the rural health care universal service support mechanism. The Administrator then posts the form on its website, notifying telecommunications carriers that may wish to bid for an applicant's services about the rural health care provider's request. An applicant's FCC Form 465 must be posted on the Administrator's website for at least 28 days before the applicant may enter into a contract for services with a telecommunications carrier, in order to allow sufficient time for different carriers to bid on the requested services.

50. After selecting a telecommunications carrier, the applicant must certify to the Administrator that it has selected the most cost-effective method of providing the requested services, defined as "the method that costs the least after consideration of the features, quality of transmission, reliability, and other factors that the health care provider deems relevant to choosing a method of providing the required health care services." Applicants must also submit to the Administrator paper copies of the responses or bids received.

51. The purpose of the posting requirement for the FCC Form 465 is to provide a rapid and easy mechanism for notifying all potential bidders for services of rural health care providers' requests, in order to encourage competition among bids and enable applicants to secure the most cost-effective services. However, to the extent that some rural areas may have only one service provider, the requirement may result in needless delays for applicants in securing support. We seek comment on whether the requirement can and should be waived in certain circumstances (*e.g.*, when applications are submitted by small entities), whether such a change is necessary or prudent, and how we may implement it with minimal administrative effort and expense, while fulfilling our obligations to reduce waste, fraud, and abuse and ensuring that universal service support is used "wisely and efficiently."

b. Ensuring the Selection of Cost-Effective Services

52. We seek comment on whether there currently are adequate measures to ensure that rural health care providers buy the most cost-effective services. As described, current rules require applicants to select the most cost-effective method of providing the requested services. However, there are no restrictions on the type of service offerings a rural health care provider may select. We seek comment on how best to ensure that applicants choose the most cost-effective services under the rural health care universal service support mechanism. We also seek comment on how such a change in our rules, if adopted, could be implemented most effectively and equitably, preventing waste and abuse without imposing undue burdens on rural health care providers. In addition, we seek comment on whether we should implement changes to encourage applicants to use lowest cost technology available, regardless of whether that technology involves wireline, coaxial cable, fiber, terrestrial wireless, satellite, or some other technology. If so, we seek comment on how those changes should be implemented.

c. Encouraging Partnerships With Clinics at Schools and Libraries

53. We seek comment on ways in which the rules or policies of the rural health care universal service support mechanism might be altered to better encourage rural health providers to pool resources with other entities in order to limit costs for themselves and thereby utilize support more efficiently. Some parties have questioned the rural health care universal service support mechanism for denying school-based clinics support on the grounds that such clinics are only eligible for discounts under the schools and libraries universal service support mechanism, while the schools and libraries mechanism denies the clinics support for the reason that the clinics are only eligible under the rural health care universal service support mechanism. We seek comment on the extent to which such clinics are or should be eligible under either mechanism, and on whether our rules and policies may encourage rural health care providers to partner with clinics at schools and libraries in rural locations. We further seek comment on other ways in which the Commission might promote similar cost-sharing in order to maximize the appropriate and beneficial use of universal service funds while minimizing waste and abuse.

d. Other Measures to Prevent Waste, Fraud, and Abuse

54. In keeping with our goal of preventing waste, fraud, and abuse, we seek comment on the effectiveness of our current rules regarding audits, and other procedures to ensure the appropriate use of funds available under the rural health care universal service support mechanism. Rural health care providers that receive support are currently subject to record-keeping and record production requirements, and random audits to ensure compliance. We seek comment on the effectiveness of these measures, and whether additional record-keeping or audit requirements are necessary. We further seek comment on any other rules that would help to combat potential waste, fraud, and abuse with respect to the rural health care universal service support mechanism.

4. Further Comments on Issues of Concern

55. In initiating this inquiry, we seek comments on various alternatives to enhance our existing rural health care universal service support mechanism. We are cognizant that these proposals contain measures that may significantly spur demand for advanced telecommunications and information services as well as implement critical cost savings measures designed to improve the efficiency and effectiveness of the mechanism. Given these numerous proposals, we ask that interested parties, to the extent possible, separately identify in their comments what, if any, potential effect individual proposal may have on demand for rural health care support. We note that any such increase in demand for rural health care support will be constrained by the operation of the $400 million rural health care support cap, and thus we seek input from commenters on any assistance they may provide in identifying which specific proposals will be most beneficial to ensuring access to advanced telecommunications and information services for all eligible rural health care providers.

E. Effect on Demand for Support

56. Lastly, we seek comment on the effect these proposals may have on demand for rural health care support. We note that any such increase in demand for rural health care support will be constrained by the operation of the $400 million rural health care support cap.

III. Procedural Matters

A. Initial Paperwork Reduction Analysis

57. This NPRM contains a proposed information collection. As part of a continuing effort to reduce paperwork burdens, we invite the general public and the Office of Management and Budget (OMB) to take this opportunity to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, Public Law 104–13. Public and agency comments are due at the same time as other comments on this NPRM; OMB comments are due July 15, 2002. Comments should address: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

B. Initial Regulatory Flexibility Analysis

58. As required by the Regulatory Flexibility Act of 1980, as amended (RFA), the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM provided. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

1. Need for, and Objectives of, the Proposed Rules

59. The Commission is required by section 254 of the Act to promulgate rules to implement the universal service provisions of section 254. On May 8, 1997, the Commission adopted rules that reformed its system of universal service support mechanisms so that universal service is preserved and advanced as markets move toward competition. Among other things, the Commission adopted a mechanism to provide discounted telecommunications services to public or non-profit health care providers that serve persons in rural areas. Over the last few years, important changes have occurred affecting the rural health universal service support mechanism. As discussed, several factors prompt us to review anew the rural health care universal service support mechanism, including the underutilization of the mechanism, changes in telecommunications technology and its use by the medical community, and the need to develop a broader and more fully integrated network of health care providers across the nation.

60. In this NPRM, we seek comment on whether to: clarify how we should treat eligible entities that also perform functions that are outside the statutory definition of "health care provider; provide support for Internet access; and modify the calculation of discounted services, including the calculation of urban and rural rates. We also seek comment on other administrative changes to the rural health care mechanism, including whether and how to streamline the application process; allocate funds if demand exceeds the annual cap; modify the current competitive bidding rules; encourage partnerships with clinics at schools and libraries. We also seek comment on other measures to prevent waste, fraud, and abuse; and any other issues concerning the structure and operation of the rural health care universal service support mechanism on which commenters wish to make recommendations. We seek further comment on these proposals and how such changes could be implemented. We also seek comment on the effect that any such changes may have on demand for support under the universal service mechanism as well as data to support any comments made.

2. Legal Basis

61. The legal basis for this NPRM is contained in sections 151 through 154, and 254 of the Communications Act of 1934, as amended.

3. Description and Estimate of the Number of Small Entities To Which Rules Will Apply

62. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted. The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." In addition, the term "small business" has the same meaning as the term "small business concern" under the Small Business Act. A "small business concern" is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).

63. A small organization is generally "any not-for-profit enterprise which is independently owned and operated and is not dominant in its field." Nationwide, as of 1992, there were approximately 275,801 small organizations. The term "small governmental jurisdiction" is defined as "governments of cities, counties, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand." As of 1997, there were approximately 87,453 government jurisdictions in the United States. This number includes 39,044 counties, municipal governments, and townships, of which 27,546 have populations of fewer than 50,000 and 11,498 counties, municipal governments, and townships have populations of 50,000 or more. Thus, we estimate that the number of small government jurisdictions must be 75,955 or fewer. Small entities potentially affected by the proposals herein include small rural health care providers, small local health departments and agencies, and small eligible service providers offering discounted services to rural health care providers, including telecommunications carriers and ISPs.

a. Rural Health Care Providers

64. Section 254(h)(5)(B) of the Act defines the term "health care provider" and sets forth seven categories of health care providers eligible to receive universal service support. Although SBA has not developed a specific size category for small, rural health care providers, recent data indicate that there are a total of 8,297 health care providers, consisting of: (1) 625 "post-secondary educational institutions offering health care instruction, teaching hospitals, and medical schools"; (2) 866 "community health centers or health centers providing health care to migrants"; (3) 1633 "local health departments or agencies"; (4) 950 "community mental health centers"; (5) 1951 "not-for-profit hospitals"; and (6) 2,272 "rural health clinics." We have no additional data specifying the numbers of these health care providers that are small entities. Consequently, using those numbers, we estimate that there are 8,297 or fewer small health care providers potentially affected by the actions proposed in this NPRM.

65. As noted, non-profit businesses and small governmental units are considered "small entities" within the RFA. In addition, we note that census categories and associated generic SBA small business size categories provide the following descriptions of small entities. The broad category of Ambulatory Health Care Services consists of further categories and the following SBA small business size standards. The categories of providers with annual receipts of $6 million or less consists of: Offices of Dentists;

Offices of Chiropractors; Offices of Optometrists; Offices of Mental Health Practitioners (except Physicians); Offices of Physical, Occupational and Speech Therapists and Audiologists; Offices of Podiatrists; Offices of All Other Miscellaneous Health Practitioners; and Ambulance Services. The category of Ambulatory Health Care Services providers with $8.5 million or less in annual receipts consists of: Offices of Physicians; Family Planning Centers; Outpatient Mental Health and Substance Abuse Centers; Health Maintenance Organization Medical Centers; Freestanding Ambulatory Surgical and Emergency Centers; All Other Outpatient Care Centers, Blood and Organ Banks; and All Other Miscellaneous Ambulatory Health Care Services. The category of Ambulatory Health Care Services providers with $11.5 million or less in annual receipts consists of: Medical Laboratories; Diagnostic Imaging Centers; and Home Health Care Services. The category of Ambulatory Health Care Services providers with $29 million or less in annual receipts consists of Kidney Dialysis Centers. For all of these Ambulatory Health Care Service Providers, census data indicate that there is a combined total of 345,476 firms that operated in 1997. Of these, 339,911 had receipts for that year of less than $5 million. In addition, an additional 3414 firms had annual receipts of $5 million to $9.99 million; and additional 1475 firms had receipts of $10 million to $24.99 million; and an additional 401 had receipts of $25 million to $49.99 million. We therefore estimate that virtually all Ambulatory Health Care Services providers are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

66. The broad category of Hospitals consists of the following categories and the following small business providers with annual receipts of $29 million or less: General Medical and Surgical Hospitals, Psychiatric and Substance Abuse Hospitals; and Specialty Hospitals. For all of these health care providers, census data indicate that there is a combined total of 330 firms that operated in 1997, of which 237 or fewer had revenues of less than $25 million. An additional 45 firms had annual receipts of $25 million to $49.99 million. We therefore estimate that most Hospitals are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

67. The broad category of Nursing and Residential Care Facilities consists of the following categories and the following small business size standards. The category of Nursing and Residential Care Facilities with annual receipts of $6 million or less consists of: Residential Mental Health and Substance Abuse Facilities; Homes for the Elderly; and Other Residential Care Facilities. The category of Nursing and Residential Care Facilities with annual receipts of $8.5 million or less consists of Residential Mental Retardation Facilities. The category of Nursing and Residential Care Facilities with annual receipts of less than $11.5 million consists of: Nursing Care Facilities; and Continuing Care Retirement Communities. For all of these health care providers, census data indicate that there is a combined total of 18,011 firms that operated in 1997. Of these, 16,165 or fewer firms had annual receipts of below $5 million. In addition, 1205 firms had annual receipts of $5 million to $9.99 million, and 450 firms had receipts of $10 million to $24.99 million. We therefore estimate that a great majority of Nursing and Residential Care Facilities are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

68. The broad category of Social Assistance consists of the category of Emergency and Other Relief Services and small business size standard of annual receipts of $6 million or less. For all of these health care providers, census data indicate that there is a combined total of 37,778 firms that operated in 1997. Of these, 37,649 or fewer firms had annual receipts of below $5 million. An additional 73 firms had annual receipts of $5 million to $9.99 million. We therefore estimate that virtually all Social Assistance providers are small, given SBA's size categories. In addition, we have no data specifying the numbers of these health care providers that are rural and meet other criteria of the Act.

b. Providers of Telecommunications and Other Services

69. We have included small incumbent local exchange carriers in this present RFA analysis. As noted, a "small business" under the RFA is one that, *inter alia*, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent local exchange carriers are not dominant in their field of operation because any such dominance is not "national" in scope. We have therefore included small incumbent local exchange carriers in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and determinations in other, non-RFA contexts.

70. *Total Number of Telephone Companies Affected.* The United States Bureau of the Census (the "Census Bureau") reports that, at the end of 1997, there were 6,239 firms engaged in providing telephone services, as defined therein. This number contains a variety of different categories of carriers, including local exchange carriers, interexchange carriers, competitive access providers, cellular carriers, mobile service carriers, operator service providers, pay telephone operators, PCS providers, covered SMR providers, and resellers. It seems certain that some of those 6,239 telephone service firms may not qualify as small entities because they are not "independently owned and operated." For example, a PCS provider that is affiliated with an interexchange carrier having more than 1,500 employees would not meet the definition of a small business. It seems reasonable to conclude, therefore, that 6,239 or fewer telephone service firms are small entity telephone service firms that may be affected by the decisions and rules adopted in this NPRM.

71. *Local Exchange Carriers, Interexchange Carriers, Competitive Access Providers, Operator Service Providers, Payphone Providers, and Resellers.* Neither the Commission nor SBA has developed a definition particular to small local exchange carriers (LECs), interexchange carriers (IXCs), competitive access providers (CAPs), operator service providers (OSPs), payphone providers or resellers. The closest applicable definition for these carrier-types under SBA rules is for telephone communications companies other than radiotelephone (wireless) companies. The most reliable source of information regarding the number of these carriers nationwide of which we are aware appears to be the data that we collect annually on the Form 499–A. According to our most recent data, there are 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers and 454 resellers. Although it seems certain that some of these carriers are not independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of these carriers that would qualify as small business concerns under SBA's definition. Consequently, we estimate that there are fewer than 1,335 incumbent LECs, 349 CAPs, 204 IXCs, 21 OSPs, 758 payphone providers, and 541 resellers that may be affected by the decisions and rules adopted in this NPRM.

72. *Internet Service Providers.* Under the new NAICS codes, SBA has developed a small business size standard for "On-line Information Services," NAICS Code 514191. According to SBA regulations, a small business under this category is one having annual receipts of $21 million or less. According to SBA's most recent data, there are a total of 2,829 firms with annual receipts of $9,999,999 or less, and an additional 111 firms with annual receipts of $10,000,000 or more. Thus, the number of On-line Information Services firms that are small under the SBA's $21 million size standard is between 2,829 and 2,940. Further, some of these Internet Service Providers (ISPs) might not be independently owned and operated. Consequently, we estimate that there are fewer than 2,940 small entity ISPs that may be affected by the decisions and rules of the present action.

73. *Satellite Service Carriers.* The SBA has developed a definition for small businesses within the category of Satellite Telecommunications. According to SBA regulations, a small business under the category of Satellite communications is one having annual receipts of $12.5 million or less. According to SBA's most recent data, there are a total of 371 firms with annual receipts of $9,999,999 or less, and an additional 69 firms with annual receipts of $10,000,000 or more. Thus, the number of Satellite Telecommunications firms that are small under the SBA's $12 million size standard is between 371 and 440. Further, some of these Satellite Service Carriers might not be independently owned and operated. Consequently, we estimate that there are fewer than 440 small entity ISPs that may be affected by the decisions and rules of the present action.

74. *Wireless Service Providers.* The SBA has developed a definition for small businesses within the two separate categories of Cellular and Other Wireless Telecommunications or Paging. Under that SBA definition, such a business is small if it has 1,500 or fewer employees. According to the Commission's most recent Telephone Trends Report data, 1,495 companies reported that they were engaged in the provision of wireless service. Of these 1,495 companies, 989 reported that they have 1,500 or fewer employees and 506 reported that, alone or in combination with affiliates, they have more than 1,500 employees. We do not have data specifying the number of these carriers that are not independently owned and operated, and thus are unable at this time to estimate with greater precision the number of wireless service providers that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 989 or fewer small wireless service providers that may be affected by the rules.

75. *Cable Systems.* The Commission has developed, with SBA's approval, its own definition of small cable system operators. Under the Commission's rules, a "small cable company" is one serving fewer than 400,000 subscribers nationwide. Based on our most recent information, we estimate that there were 1,439 cable operators that qualified as small cable companies at the end of 1995. Since then, some of those companies may have grown to serve over 400,000 subscribers, and others may have been involved in transactions that caused them to be combined with other cable operators. Consequently, we estimate that there are fewer than 1,439 small entity cable system operators that may be affected by the proposals.

76. The Act also contains a definition of a small cable system operator, which is "a cable operator that, directly or through an affiliate, serves in the aggregate fewer than 1% of all subscribers in the United States and is not affiliated with any entity or entities whose gross annual revenue in the aggregate exceeds $250,000,000." The Commission has determined that there are 67,700,000 subscribers in the United States. Therefore, we found that an operator serving fewer than 677,000 subscribers shall be deemed a small operator, if its annual revenues, when combined with the total annual revenues of all of its affiliates, do not exceed $250 million in the aggregate. Based on available data, we find that the number of cable operators serving 677,000 subscribers or less totals approximately 1,450. Although it seems certain that some of these cable system operators are affiliated with entities whose gross annual revenues exceed $250,000,000, we are unable at this time to estimate with greater precision the number of cable system operators that would qualify as small cable operators under the definition in the Act.

4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

77. The NPRM seeks comment on changes that could modify the reporting and recordkeeping requirements imposed on entities covered by the universal service support mechanism for rural health care providers. Specifically, the NPRM proposes that the application process for universal service support for rural health care providers be streamlined. The NPRM, however, does not contain any concrete proposals for streamlining, but rather seeks comment on ways that the process of reviewing, submitting and approving applications can be improved and streamlined. This NPRM also asks for general comment on measures that could be taken to reduce fraud, waste, and abuse with respect to the rural health care universal service support mechanism, particularly with regards to competitive bidding, measures for ensuring the selection of cost-effective services, and school-library partnerships, but again there are no specific proposals or compliance requirements.

78. In this NPRM, we also seek comment on whether it would be appropriate to prorate services for rural health care providers that provide other services. A change in this reporting requirement potentially could require the use of professional skills, including legal and accounting expertise. Without more data, however, we cannot accurately estimate the cost of compliance by small entities.

5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

79. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach impacting small business, which may include the following four alternatives (among others): (1) The establishment of differing compliance and reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or part thereof, for small entities.

80. In this NPRM, we make a number of proposals that could have an economic impact on small entities that participate in the universal service support mechanism for rural health care

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providers. Specifically, we seek comment on: (1) Allowing discounts for Internet access by eligible rural health care providers; (2) expanding the number of entities eligible for discounts by changing the definition of "urban area" and the definition of eligible entities; and (3) other proposals that could change how those discounts are calculated. If adopted, these proposals could change the size of the overall pool of eligible applicants for universal service support for rural health care providers, as well as affect the amount of discounts that eligible entities may receive. In seeking to minimize the burdens imposed on small entities where doing so does not compromise the goals of the universal service mechanism, we have invited comment on how these proposals might be made less burdensome for small entities. We again invite commenters to discuss the benefits of such changes on small entities and whether these benefits are outweighed by resulting costs to rural health care providers that might also be small entities.

81. We have also sought comment on how to address financial support of rural health care providers if demand exceeds the annual cap on universal support. Rural health care providers that received discounts in the past may be unable to obtain such support in the future should the demand increase significantly due to changes in eligibility and how discounts are calculated. As current demand has not exceeded the annual cap, however, we are unable to determine the net economic impact of changes to the current system to small entities as a whole. We therefore request that commenters, in proposing possible alterations to our proposed rules, discuss the economic impact that those changes will have on small entities.

6. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

82. None.

C. Comment Due Dates and Filing Procedures

83. We invite comment on the issues and questions set forth in the Notice of Proposed Rulemaking, Paperwork Reduction Analysis, and Initial Regulatory Flexibility Analysis contained herein. Pursuant to §§ 1.415 and 1.419 of the Commission's rules, interested parties may file comments on or before July 1, 2002, and reply comment on or before July 29, 2002. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS) or by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121, May 1, 1998.

84. Comments filed through the ECFS can be sent as an electronic file via the Internet to <*http://www.fcc.gov/e-file/ecfs.html*>. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the comments to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit electronic comments by Internet e-mail. To receive filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message, "get form <your e-mail address>." A sample form and directions will be sent in reply. Or you may obtain a copy of the ASCII Electronic Transmittal From (FORM-ET) at <*www.fcc.gov/e-file/email.html*>.

85. Parties who choose to file by paper must file an original and four copies of each filing. Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at a new location in downtown Washington, DC. The address is 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location will be 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

86. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

If you are sending this type of document or using this delivery method	It should be addressed for delivery to
Hand-delivered or messenger-delivered paper filings for the Commission's Secretary.	236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002 (8:00 to 7:00 p.m.)
Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail).	9300 East Hampton Drive, Capitol Heights, MD 20743 (8:00 a.m. to 5:30 p.m.)
United States Postal Service first-class mail, Express Mail, and Priority Mail.	445 12th Street, SW, Washington, DC 20554.

87. Parties who choose to file by paper should also submit their comments on diskette. These diskettes, plus one paper copy, should be submitted to: Sheryl Todd, Telecommunications Access Policy Division, Wireline Competition Bureau, at the filing window at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. Such a submission should be on a 3.5-inch diskette formatted in an IBM compatible format using Word or compatible software. The diskette should be accompanied by a cover letter and should be submitted in "read only" mode. The diskette should be clearly labeled with the commenter's name, proceeding (including the docket number, in this case WC Docket No. 02–60, type of pleading (comment or reply comment), date of submission, and the name of the electronic file on the diskette. The label should also include the following phrase "Disk Copy—Not an Original." Each diskette should contain only one party's pleadings, preferably in a single electronic file. In addition, commenters must send diskette copies to the Commission's copy contractor, Qualex International, Portals II, 445 12st Street, SW., Room CYB402, Washington, DC 20554 (see alternative addresses for delivery by hand or messenger).

88. Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW., CY–B402, Washington, DC 20554 (see alternative addresses for delivery by hand or messenger) (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*.

89. Written comments by the public on the proposed information collections pursuant to the Paperwork Reduction Act of 1995, Public Law No. 104–13, are due on or before July 1, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 15, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW., Washington, DC 20554 (see alternative addresses for delivery by hand or messenger), or via the Internet to *jboley@fcc.gov* and to Jeanette Thornton, OMB Desk Officer, 10236 NEOB, 725—17th Street, NW., Washington, DC 20503.

90. The full text of this document is available for public inspection and copying during regular business hours at the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*. Alternative formats (computer diskette, large print, audio cassette and Braille) are available to persons with disabilities by contacting Brian Millin at (202) 418–7426, TTY (202) 418–7365, or at *bmillin@fcc.gov*.

IV. Ordering Clauses

91. It is ordered that, pursuant to the authority contained in sections 151 through 154, and 254 of the Communications Act of 1934, as amended, this Notice of Proposed Rulemaking is adopted, as described herein.

92. It is further ordered that the Commission's Consumer Information Bureau, Reference Information Center, shall send a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 54

Reporting and recordkeeping requirements, Telecommunications, Telephone.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12096 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 61 and 69

[CC Docket No. 02–53, RM–10131; FCC 02–79]

Presubscribed Interexchange Carrier Charges

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document initiates a rulemaking proceeding to examine presubscribed interexchange carrier-change charges (PIC-change charges). PIC-change charges are federally-tariffed charges imposed by incumbent local exchange carriers on end-user subscribers when these subscribers change their presubscribed long distance carriers. PIC-change charges currently are subject to a $5 safe harbor within which a PIC-change charge is considered reasonable. The $5 safe harbor was implemented in 1984, and industry and market conditions have changed since that time. Therefore, this document seeks comment on revising the Commission's policies regarding the PIC-change charge.

DATES: Comments due June 14, 2002, and reply comments due July 1, 2002. Written comments by the public on the proposed information collections are due June 14, 2002. Written comments must be submitted by the Office of Management and Budget (OMB) on the proposed information collections on or before July 15, 2002.

FOR FURTHER INFORMATION CONTACT: Jennifer McKee, Wireline Competition Bureau, Pricing Policy Division, (202) 418–1530. For further information concerning the information collections contained in this document, contact Judith Boley Herman at (202) 418–0214, or via the Internet at *JBoley@fcc.gov*.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rulemaking (NPRM) in CC Docket No. 02–53 released on March 20, 2002. The full text of this document is available on the Commission's Web site Electronic Comment Filing System and for public inspection during regular business hours in the FCC Reference Center, Room CY–A257, 445 Twelfth Street, SW, Washington, DC, 20554.

This NPRM contains proposed information collections subject to the Paperwork Reduction Act of 1995 (PRA). It has been submitted to the Office of Management and Budget (OMB) for review under the PRA. OMB, the general public, and other Federal agencies are invited to comment on the proposed information collections contained in this proceeding.

Paperwork Reduction Act

This Notice of Proposed Rulemaking (NPRM) contains a proposed information collection. The Commission, as part of the continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collections contained in this NPRM, as required by the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.* Public and agency comments are due at the same time as other comments on this NPRM; OMB notification of action is due July 15, 2002. Comments should address: (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (2) the accuracy of the Commission's burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

OMB Control Number: None.

Title: Presubscribed Interexchange Carrier Charges.

Form No.: Not applicable.

Type of Review: Proposed new collection.

Respondents: Business or other for-profit.

Number of Respondents: 69.

Estimated Time Per Response: 85.5 hours.

Total Annual Burden: 5900 hours.

Total Annual Costs: $45,885.00.

Needs and Uses: The information would be used to determine local exchange carriers' costs of providing PIC-change charges for setting rates for these charges.

Background

This Notice of Proposed Rulemaking, adopted March 14, 2002 and released March 20, 2002 in CC Docket No. 02–53, FCC 02–79, initiates a proceeding to examine the charges imposed on consumers for changing long distance carriers, known as PIC-change charges. These charges currently are subject to a $5 safe harbor within which a PIC-change charge is considered reasonable. This $5 safe harbor was established by the Commission in 1984 and affirmed in 1987, but the Commission has not reviewed the reasonableness of this safe harbor since that time.

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On May 16, 2001, the Competitive Telecommunications Association (CompTel) petitioned the Commission to initiate a rulemaking proceeding to revise its policies governing the PIC-change charge. Based on CompTel's petition and the comments received in response to it, we conclude that circumstances have changed since the Commission's last comprehensive review of this issue, and the $5 safe harbor may no longer be reasonable. The current safe harbor was established based on the difficulty of assessing actual-costs by carrier for this service, what was known generally about the costs of providing this service, and a determination that it was good policy to discourage excessive switching of carriers. All three of these factors are now ripe for reexamination.

Discussion

We undertake this rulemaking with the goal of establishing a reasonable PIC-change charge under current conditions. We will examine whether to base the PIC-change charge on an examination of carrier costs or whether we can rely on market forces to ensure reasonable rates. We will consider what costs carriers reasonably can recover through the PIC-change charge and whether to take non-cost factors into account in determining a reasonable charge. We will also examine whether to establish a national safe harbor, whether carriers should submit individualized cost support with their tariffs, or whether we should review rates solely through our enforcement processes. We seek comment on these issues, as well as any alternative means of ensuring the reasonableness of PIC-change charges.

As a threshold matter, we think it is important to examine whether the PIC-change charge should be a regulated cost-based charge, or whether market forces will constrain PIC-change charges to reasonable levels. The current safe harbor was established in 1984, based largely on an analysis of carrier costs. When a market is not competitive we cannot rely on market forces to constrain rates. Thus, we must examine the market for PIC-change services to determine whether a cost-based or market-based approach is the appropriate means to regulate PIC-change charges. Under current network configurations, a PIC change must be completed by an end user's LEC. The change relates, however, to a customer-carrier relationship between the end user and an IXC, which may or may not be affiliated with the end user's LEC. We seek comment on the nature of the market for PIC-change services and the need for the Commission to continue to apply a cost-based standard to ensure reasonable rates for PIC-change charges. We also seek comment on whether reliance on market forces could be made more practicable by modifying network configurations or the relationships between LECs, IXCs, and end users.

If we conclude that market forces will not ensure reasonable PIC-change charges, we must determine whether PIC-change charges should be based on costs, and, if so, what costs those charges should recover. In the 1984 access charge order, the Commission simply said that a presubscription charge that covers the unbundled costs of a subscription PIC change would be reasonable. Parties submitting comments on CompTel's Petition have widely varying contentions with regard to the relevant costs. Some commenters contend that costs related to the actions necessary to process a request and implement the change are the only costs that should be recovered. Another contends that the PIC-change charge should recover a wider array of costs, including costs incurred in administering customer allegations of slamming. We seek comment on the types of costs that should or should not be recovered through the PIC-change charge and why. We ask that commenters be as specific as possible. Our goal is to establish a standard that does not require continuous revision as technology evolves. Accordingly, we ask that commenters identify the individual functions that make up the PIC-change process, describe the process in detail, and explain why each function is necessary. For example, if customer care personnel perform multiple functions manually, commenters shall separately identify each function and its purpose. Likewise, commenters should identify by function the services that are automated, not merely name the automated facilities that are used to perform these services.

Some commenters assert that it is more costly to perform PIC-change services for certain customers than others. For example, SBC notes that customers subscribing to SBC's "PIC freeze" service require more manual intervention than non-subscribers to process a PIC change. The carrier also suggests that "excessive" PIC changes would justify an above-cost PIC-change charge. Many parties contend that this is no longer a valid policy reason for maintaining a safe harbor that is not supported by current cost data. We seek comment on whether and how such issues should be taken into account in establishing a reasonable PIC-change charge. Should the same PIC-change charge apply to all customers, regardless of whether they subscribe to an incumbent LEC's PIC-freeze service, or should LECs impose a higher charge for PIC-freeze usage? Carriers may allow customers to freeze their PICs for multiple services, *i.e.*, interstate, intraLATA intrastate, and local service. If commenters argue that the additional costs of conducting a PIC change for a customer subscribing to a PIC-freeze service should be recovered through the PIC-change charge, we seek comment on how to allocate the additional costs among jurisdictions. Should end users incur the same charge each time they request a PIC change, or should a higher charge be imposed upon a customer that requests "excessive" PIC changes? If the latter, why, and what constitutes "excessive" PIC changes? Additionally, when the Commission first identified the potential for excessive carrier switching as a basis for the safe harbor, significant uncertainty about the ability of carriers to identify the costs of PIC changes existed. There is evidence that this circumstance has changed. How should a carrier's ability to identify accurately its actual PIC-change costs affect the weight to be given to non-cost-based rationales for a particular safe harbor?

In light of the existence of intrastate, intraLATA toll dialing parity, most end users currently have a choice of both interLATA and intraLATA interexchange service providers. Accordingly, end users may change both their interLATA and intraLATA carriers simultaneously to a single carrier. In that circumstance, incumbent LECs may impose both an interstate and intrastate PIC-change charge for the transaction. We seek comment on whether this amounts to a double recovery. Interested parties are asked to comment on whether it is reasonable for incumbent LECs to recover both charges, a percentage of each charge, only one of the charges, or some totally different charge under these circumstances.

If we determine that the PIC-change charge should be cost-based, we must then establish a means to ensure incumbent LEC PIC-change charges recover only the costs associated with that service. We seek comment on whether the Commission should (1) require the filing of cost support with each PIC-change charge tariff; (2) rely on the formal complaint process and other enforcement mechanisms to review rates; or (3) establish a safe harbor to ensure reasonable rates.

If we conclude that a safe harbor is the most efficient means of ensuring reasonable rates, we will need to establish that safe harbor. We seek comment on the best means for doing so. Should we establish a safe harbor on the basis of the incumbent LECs' average costs? Should we base the safe harbor on the incumbent LECs' lowest cost, giving carriers the option of providing cost support to justify a higher charge? If so, what would the lowest cost be? In this respect, we note that some carriers charge substantially less than the current safe harbor. For example, as noted above, BellSouth charges $1.49. Does BellSouth's $1.49 charge, or any other charge differing from the safe harbor, establish a lower or upper bound? Commenters should provide cost evidence supporting any safe harbor proposed. Should the Commission distinguish between incumbent LECs, and, if so, on what bases? Should the Commission use a proxy and, if so, what is a reasonable proxy for the PIC-change service? Should there be separate proxies for large and small incumbent LECs? Do market proxies exist? Are state-arbitrated rates for unbundled network element platform (UNE–P) and resale migrations or state-regulated rates for intraLATA PIC-change charges reasonable proxies for the interstate PIC-change service? Is there a weighted average of several rates that would constitute a reasonable proxy? Parties are asked to comment on these options, and submit alternative suggestions for our consideration.

Procedural Matters

Ex Parte Requirements

This proceeding will be governed by "permit-but-disclose" ex parte procedures that are applicable to non-restricted proceedings under 47 CFR 1.1206. Parties making oral ex parte presentations are reminded that memoranda summarizing the presentation must contain a summary of the substance of the presentation and not merely a listing of the subjects discussed. More than a one-or two-sentence description of the views and arguments presented generally is required. See 47 CFR 1.1206(b)(2). Other rules pertaining to oral and written presentations are set forth in § 1.1206(b) as well. Interested parties are to file any written ex parte presentations in this proceeding with the Commission's Secretary, Marlene H. Dortch, 445 12th Street, SW, TW–B204, Washington, DC 20554, and serve with three copies: Pricing Policy Division, Common Carrier Bureau, 445 12th Street, SW, Room 5–A452, Washington, DC 20554, Attn: Jennifer McKee. Parties shall also serve with one copy: Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC 20554, (202) 863–2893.

Initial Regulatory Flexibility Act Analysis

As required by the Regulatory Flexibility Act of 1980, as amended (RFA), 5 U.S.C. 603, the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this NPRM. The RFA, see 5 U.S.C. 601 *et seq.*, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104–121, Title II, 110 Stat. 857 (1996). Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the NPRM. The Commission will send a copy of the NPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA). See 5 U.S.C. 603(a). In addition, the NPRM and IRFA (or summaries thereof) will be published in the **Federal Register**.

Need for, and Objectives of, the Proposed Rules

In this NPRM, the Commission seeks comment on its policies for regulating presubscribed interexchange carrier-change charges (PIC-change charges). Specifically, we will examine whether to base the PIC-change charge on an examination of carrier costs or whether we can rely on market forces to ensure reasonable rates. We will consider what costs carriers reasonably can recover through the PIC-change charge and whether to take non-cost factors into account in determining a reasonable charge. We will also examine whether to establish a national safe harbor, whether carriers should submit individualized cost support with their tariffs, or whether we should review rates solely through our enforcement processes. We seek comment on these issues, as well as any alternative means of ensuring the reasonableness of PIC-change charges.

Legal Basis

The legal basis for any action that may be taken pursuant to the NPRM is contained in sections 4, 201–202, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154, 201–202, and 303, and §§ 1.1, 1.411, and 1.412 of the Commission's rules, 47 CFR 1.1, 1.411, and 1.412.

Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that will be affected by the proposed rules, if adopted. 5 U.S.C. 603(b)(3). The RFA generally defines the term "small entity" as having the same meaning as the terms "small business," "small organization," and "small governmental jurisdiction." 5 U.S.C. 601(6). For the purposes of this NPRM, the RFA defines a "small business" to be the same as a "small business concern" under the Small Business Act, 15 U.S.C. 632, unless the Commission has developed one or more definitions that are appropriate to its activities. 5 U.S.C. 601(3) (incorporating by reference the definition of "small business concern" in 5 U.S.C. 632). Under the Small Business Act, a "small business concern" is one that: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) meets any additional criteria established by the SBA. 15 U.S.C. 632.

We have included small incumbent local exchange carriers (LECs) in this present RFA analysis. As noted above, a "small business" under the RFA is one that, inter alia, meets the pertinent small business size standard (e.g., a telephone communications business having 1,500 or fewer employees), and "is not dominant in its field of operation." 15 U.S.C. 632. The SBA's Office of Advocacy contends that, for RFA purposes, small incumbent LECs are not dominant in their field of operation because any such dominance is not "national" in scope. See Letter from Jere W. Glover, Chief Counsel for Advocacy, SBA, to William E. Kennard, Chairman, FCC (May 27, 1999). The Small Business Act contains a definition of "small business concern," which the RFA incorporates into its own definition of "small business." *See* 15 U.S.C. 632(a) (Small Business Act); 5 U.S.C. 601(3) (RFA). SBA regulations interpret "small business concern" to include the concept of dominance on a national basis. 13 CFR 121.102(b). Since 1996, out of an abundance of caution, the Commission has included small incumbent LECs in its regulatory flexibility analyses. *See, e.g., Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, 61 FR 45476, August 29, 1996. We have therefore included small incumbent LECs in this RFA analysis, although we emphasize that this RFA action has no effect on Commission analyses and

determinations in other, non-RFA contexts.

The Census Bureau reports that, at the end of 1992, there were 3,497 firms engaged in providing telephone services, as defined therein, for at least one year. U.S. Department of Commerce, Bureau of the Census, 1992 Census of Transportation, Communications, and Utilities, UC 92–S–1, Subject Series, Establishment and Firm Size, at Firm Size 1–123 (1995). This number contains a variety of different categories of carriers, including LECs, interexchange carriers (IXCs), competitive access providers, operator service providers, pay telephone operators, and resellers. It seems certain that some of these 3,497 telephone service firms may not qualify as small entities or small incumbent LECs because they are not "independently owned and operated." *See generally* 15 U.S.C. 632(a)(1). It seems reasonable to conclude that fewer than 3,497 telephone service firms are small entity telephone service firms or small incumbent LECs that may be affected by this analysis.

Local Exchange Carriers

Neither the Commission nor the SBA has developed a special small business size standard for small LECs. The closest applicable category for these types of carriers under SBA rules is for telecommunications carriers, wired. 13 CFR 121.201, NAICS code 513310. *See also* 13 CFR 121.201, NAICS codes 513330 (telecommunications resellers), and 513340 (telephone communications carriers, satellite). The most reliable source of information regarding the number of LECs nationwide appears to be the data that we collect annually in connection with FCC Form 499–A, the Telecommunications Reporting Worksheet. Information from the Telecommunications Reporting Worksheets is compiled in the *Carrier Locotor* report. *See Carrier Locator: Interstate Service Providers*, FCC Common Carrier Bureau, Industry Analysis Division (rel. Nov. 2001) (Carrier Locator). According to our most recent data, there are 1,329 incumbent LECs. Carrier Locator at Table 1. Although some of these carriers may not be independently owned and operated, or have more than 1,500 employees, we are unable at this time to estimate with greater precision the number of LECs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are no more than 1,329 small entity incumbent LECs that may be affected by the proposals in the NPRM.

Interexchange Carriers

Although our actions as proposed would not directly affect IXCs, and therefore IXCs are not within the RFA for purposes of this IRFA, we voluntarily include them here to create a fuller record and encourage public comment. Neither the Commission nor the SBA has developed a definition of small entities specifically applicable to providers of interexchange services. The closest applicable definition under the SBA rules is for wired telecommunications carriers. 13 CFR 121.201, NAICS code 513310. *See also* 13 CFR 121.201, NAICS codes 513330 (telecommunications resellers), and 513340 (telephone communications carriers, satellite). According to the most recent *Carrier Locator* report, 229 carriers reported that their primary telecommunications service activity was the provision of interexchange services. *See Carrier Locator* at Table 1. We do not have data specifying the number of these carriers that are not independently owned and operated or have more than 1,500 employees, and thus are unable at this time to estimate with greater precision the number of IXCs that would qualify as small business concerns under the SBA's definition. Consequently, we estimate that there are 229 or fewer small entity IXCs that may be affected by the rules.

Description of Projected Reporting, Recordkeeping and Other Compliance Requirements

We are seeking comment on whether we can rely on market forces to set reasonable PIC-change charges, or whether these charges must be regulated. If we find that the market reasonably sets these charges, there will be no additional reporting or recordkeeping burden on incumbent LECs with respect to these charges. If we determine that the market will not successfully constrain PIC-change charges, we must determine whether to establish a safe harbor below which PIC-change charges are to be deemed reasonable, or whether these charges should be cost-based. If we adopt a safe harbor, incumbent LECs will be in the same situation as under the current rules, *i.e.*, PIC-change charges tariffed at rates below the safe harbor are deemed reasonable, and LECs have the option of demonstrating that their costs for PIC changes exceed that rate. If we decide not to adopt a safe harbor and require incumbent LECs to set PIC-change charges at cost, incumbent LECs will be required to file information demonstrating the costs of providing PIC changes.

Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

The RFA requires an agency to describe any significant, specifically small business, alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities. 5 U.S.C. 603(c)(1)–(c)(4).

We are seeking comment on alternative methods of setting a PIC-change charge, including whether market forces will successfully constrain these charges, and whether to adopt a safe harbor below which rates are presumed reasonable. These proposals would reduce the reporting and recordkeeping burden on all incumbent LECs, including small LECs.

Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules

None.

Filing of Comments and Reply Comments

Pursuant to §§ 1.415 and 1.419 of the Commission's rules, 47 CFR 1.415, 1.419, interested parties may file comments on or before June 14, 2002, and reply comments July 1, 2002. All comments and reply comments should reference the docket number of this proceeding, CC Docket No. 02–53. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS), or by filing paper copies.

Comments filed through the ECFS can be sent as an electronic file via the Internet to *http://www.fcc.gov/e-file/ecfs.html*. Generally, only one copy of an electronic submission must be filed. If multiple docket or rulemaking numbers appear in the caption of this proceeding, however, commenters must transmit one electronic copy of the filing to each docket or rulemaking number referenced in the caption. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic copy by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to *ecfs@fcc.gov*, and should include the following words in the body of the message: "get form <your email address>." A sample form and directions will be sent in reply. Commenters also may obtain a copy of the ASCII Electronic Transmittal Form (FORM-ET) at *http://www.fcc.gov/e-file/email.html*.

Parties filing paper copies must file an original and four copies of each filing. If multiple docket or rulemaking numbers appear in the caption of this proceeding, commenters must submit two additional copies for each additional docket or rulemaking number. All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th St., SW, Washington, DC 20554.

Interested parties who wish to file comments via hand-delivery are also notified that effective December 18, 2001, the Commission will only receive such deliveries weekdays from 8 a.m. to 7 p.m. at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The Commission no longer accepts these filings at 9300 East Hampton Drive, Capitol Heights, MD 20743. Please note that all hand deliveries must be held together with rubber bands or fasteners, and envelopes must be disposed of before entering the building. In addition, this is a reminder that as of October 18, 2001, the Commission no longer accepts hand-delivered or messenger-delivered filings at its headquarters at 445 12th Street, SW, Washington, DC 20554. Messenger-delivered documents (*e.g.*, FedEx), including documents sent by overnight mail (other than United States Postal Service (USPS) Express and Priority Mail), must be addressed to 9300 East Hampton Drive, Capitol Heights, MD 20743. This location is open weekdays from 8 a.m. to 5:30 p.m. USPS First-Class, Express, and Priority Mail should be addressed to the Commission's headquarters at 445 12th Street, SW, Washington, DC 20554.

Regardless of whether parties choose to file electronically or by paper, parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, Qualex International, Portals II, 445 12th Street SW, CY–B402, Washington, DC 20554 (telephone 202–863–2893; facsimile 202–863–2898) or via e-mail at *qualexint@aol.com*. In addition, one copy of each submission must be filed with the Chief, Pricing Policy Division, 445 12th Street, SW, Room 5–A225, Washington, DC 20554. Documents filed in this proceeding will be available for public inspection during regular business hours in the Commission's Reference Information Center, 445 12th Street, SW, Washington, DC 20554, and will be placed on the Commission's Internet site.

Written comments by the public on the proposed information collections are due June 14, 2002. Written comments must be submitted by OMB on the proposed and/or modified information collections on or before July 15, 2002. In addition to filing comments with the Secretary, a copy of any comments on the information collections contained herein should be submitted to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, Washington, DC 20554, or via the Internet to JBoley@fcc.gov, and to Jeanette Thornton, OMB Desk Officer, Room 10236 NEOB, 725 17th Street, NW, Washington, DC 20503 or via the Internet to *JThornto@omb.eop.gov*.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12097 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–980, MB Docket No. 02–93, RM–10414]

Digital Television Broadcast Service; Sacramento, CA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by La Dov Educational Outreach, Inc., an applicant for a new station operating on NTSC channel *52 at Sacramento, California, proposing the substitution of DTV channel *43 for channel *52. DTV Channel *43 can be allotted to Sacramento, California, at reference coordinates 38–37–49 N. and 120–51–20 W. with a power of 100, a height above average terrain HAAT of 304 meters.

DATES: Comments must be filed on or before June 24, 2002, and reply comments on or before July 10, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John Burgett, E. Joseph Knoll II, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006 (Counsel for La Dov Educational Outreach, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–93, adopted April 26, 2002, and released May 3, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

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Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.606 [Amended]

2. Section 73.606(b), the Table of Television Allotments under California, is amended by removing Channel *52 at Sacramento.

§ 73.622 [Amended]

3. Section 73.622(b), the Table of Digital Television Allotments under California is amended by adding DTV channel *43 at Sacramento.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Medio Bureau.

[FR Doc. 02–11980 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1043, MB Docket No. 02–102, RM–10430]

Digital Television Broadcast Service; Florence, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Young Broadcasting of Sioux Falls, Inc., licensee of station KDLO–TV, NTSC channel 3, Florence, South Dakota, proposing the substitution of DTV channel 2 for station KDLO–TV's assigned DTV channel 25. DTV Channel 2 can be allotted to at reference coordinates 44–57–56 N. and 97–35–22 W. with a power of 3.7, a height above average terrain HAAT of 243 meters.

DATES: Comments must be filed on or before July 1, 2002, and reply comments on or before July 16, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl R. Ramey, Wiley, Rein & Fielding LLP, 1776 K Street, NW., Washington, DC 20006 (Counsel for Young Broadcasting of Sioux Falls, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–102, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW., Room CY–A257, Washington, DC 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW., Room CY–B402, Washington, DC 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. *See* 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, *see* 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota is amended by removing DTV channel 25 and adding DTV channel 2 at Florence.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11974 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[DA 02–1042, MB Docket No. 02–101, RM–10429]

Digital Television Broadcast Service; Reliance, SD

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Young Broadcasting of Sioux Falls, Inc., licensee of station KPLO–TV, NTSC channel 6, Reliance, South Dakota, proposing the substitution of DTV channel 13 for station KPLO–TV's assigned DTV channel 14. DTV Channel 13 can be allotted to at reference coordinates 43–57–57 N. and 99–36–11 W. with a power of 40, a height above average terrain HAAT of 338 meters.

DATES: Comments must be filed on or before July 1, 2002, and reply comments on or before July 16, 2002.

ADDRESSES: The Commission permits the electronic filing of all pleadings and comments in proceeding involving petitions for rule making (*except in broadcast allotment proceedings*). *See Electronic Filing of Documents in Rule Making Proceedings*, GC Docket No. 97–113 (rel. April 6, 1998). Filings by paper can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). The Commission's contractor, Vistronix, Inc., will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743. U.S. Postal Service first-class mail, Express Mail, and Priority Mail should be addressed to 445 12th Street, SW, Washington, DC 20554. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Carl R. Ramey, Wiley, Rein & Fielding, LLP, 1776 K Street, NW, Washington, DC 20006 (Counsel for Young Broadcasting of Sioux Falls, Inc.).

FOR FURTHER INFORMATION CONTACT: Pam Blumenthal, Media Bureau, (202) 418–1600.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MB Docket No. 02–101, adopted May 3, 2002, and released May 9, 2002. The full text of this document is available for public inspection and copying during regular business hours in the FCC Reference Information Center, Portals II, 445 12th Street, SW, Room CY–A257, Washington, DC, 20554. This document may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, SW, Room CY–B402, Washington, DC, 20554, telephone 202–863–2893, facsimile 202–863–2898, or via-e-mail *qualexint@aol.com*.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Digital television broadcasting, Television.

For the reasons discussed in the preamble, the Federal Communications Commission proposes to amend 47 CFR part 73 as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334 and 336.

§ 73.622 [Amended]

2. Section 73.622(b), the Table of Digital Television Allotments under South Dakota is amended by removing DTV channel 14 and adding DTV channel 13 at Reliance.

Federal Communications Commission.

Barbara A. Kreisman,

Chief, Video Division, Media Bureau.

[FR Doc. 02–11975 Filed 5–14–02; 8:45 am]

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Notices

Federal Register
Vol. 67, No. 94
Wednesday, May 15, 2002

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 02–052–1]

Notice of Request for Approval of an Information Collection

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: New information collection; comment request.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, this notice announces the Animal and Plant Health Inspection Service's intention to initiate a new information collection activity to support the National Animal Health Monitoring System's national Catfish 2003 study.

DATES: We will consider all comments we receive that are postmarked, delivered, or e-mailed by July 15, 2002.

ADDRESSES: You may submit comments by postal mail/commercial delivery or by e-mail. If you use postal mail/commercial delivery, please send four copies of your comment (an original and three copies) to: Docket No. 02–052–1, Regulatory Analysis and Development, PPD, APHIS, Station 3C71, 4700 River Road Unit 118, Riverdale, MD 20737–1238. Please state that your comment refers to Docket No. 02–052–1. If you use e-mail, address your comment to *regulations@aphis.usda.gov*. Your comment must be contained in the body of your message; do not send attached files. Please include your name and address in your message and "Docket No. 02–052–1" on the subject line.

You may read any comments that we receive on this docket in our reading room. The reading room is located in room 1141 of the USDA South Building, 14th Street and Independence Avenue SW., Washington, DC. Normal reading room hours are 8 a.m. to 4:30 p.m., Monday through Friday, except holidays. To be sure someone is there to help you, please call (202) 690–2817 before coming.

APHIS documents published in the **Federal Register**, and related information, including the names of organizations and individuals who have commented on APHIS dockets, are available on the Internet at *http://www.aphis.usda.gov/ppd/rad/webrepor.html*.

FOR FURTHER INFORMATION CONTACT: For information regarding the national Catfish 2003 study, contact Mr. Chris Quatrano, Management Analyst, Centers for Epidemiology and Animal Health, VS, APHIS, 555 S. Howes, Fort Collins, CO 80521; (970) 490–7847. For copies of more detailed information on the information collection, contact Mrs. Celeste Sickles, APHIS' Information Collection Coordinator, at (301) 734–7477.

SUPPLEMENTARY INFORMATION:

Title: National Catfish Study 2003.

OMB Number: 0579–XXXX.

Type of Request: Approval of a new information collection.

Abstract: The United States Department of Agriculture is responsible for protecting the health of our Nation's livestock and poultry populations by preventing the introduction and interstate spread of contagious, infectious, or communicable diseases of livestock (including farm-raised fish) and poultry and for eradicating such diseases from the United States when feasible. In connection with this mission, the Animal and Plant Health Inspection Service (APHIS) operates the National Animal Health Monitoring System (NAHMS), which collects, on a national basis, statistically valid and scientifically sound data on the prevalence and economic importance of livestock and poultry diseases. Information from the studies conducted by NAHMS is disseminated to and used by livestock and poultry producers, consumers, animal health officials, private veterinary practitioners, animal industry groups, policymakers, public health officials, media, educational institutions, and others to improve the productivity and competitiveness of U.S. agriculture.

NAHMS' national studies have evolved into a collaborative industry and government initiative to help improve product quality and to determine the most effective means of producing animal and poultry products. APHIS is the only agency responsible for collecting national data on animal and poultry health. Participation in any NAHMS study is voluntary, and all data are confidential.

NAHMS will initiate a national study titled Catfish 2003. Catfish 2003 will take place on farms in Alabama, Arkansas, Louisiana, and Mississippi, where 95.2 percent of total U.S. catfish sales and 95.2 percent of the water surface acres for catfish production were located in 2001.[1] The purpose of Catfish 2003 is to support the catfish farming industry through the description of production and processing methods, the evaluation of the overall health status of farm-raised catfish, and the estimation of the prevalence of specific diseases affecting the industry. The potential benefits to the industry from Catfish 2003 include increased production through enhanced pond management and increased consumer confidence in quality through disease reduction.

The specific objectives of Catfish 2003 include the following: (1) Estimating the prevalence of specific diseases affecting the catfish industry, such as enteric septicemia, columnaris, winter kill, proliferative gill disease, visceral toxicosis, and diseases associated with trematodes; (2) assessing the frequency of water quality testing and pond maintenance to correlate specific water characteristics with possible health conditions in catfish; (3) describing management practices used by catfish farmers and their impact on productivity; (4) evaluating the use of nutritional supplements in the catfish farming industry; (5) describing the frequency of health-related management practices, including feeding practices, fingerling purchase and production, stocking procedures, harvesting methods, pest management practices, use of veterinary services, and vaccination and treatment practices.

We are asking the Office of Management and Budget (OMB) to approve the information collection activity for the national Catfish 2003 study.

The purpose of this notice is to solicit comments from the public (as well as affected agencies) concerning our information collection. These comments will help us:

(1) Evaluate whether the collection of information is necessary for the proper performance of the functions of the Agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, through use, as appropriate, of automated, electronic, mechanical, and other collection technologies; e.g., permitting electronic submission of responses.

Estimate of burden: The public reporting burden for this collection of information is estimated to average 0.458 hours per response.

Respondents: Industry personnel, private veterinary practitioners, company and independent producers, academicians, State veterinary medical officers, and State public health officials.

Estimated annual number of respondents: 1,080.

Estimated annual number of responses per respondent: 1.

Estimated annual number of responses: 1,080.

Estimated total annual burden on respondents: 495 hours. (Due to averaging, the total annual burden hours may not equal the product of the annual number of responses multiplied by the reporting burden per response.)

All responses to this notice will be summarized and included in the request for OMB approval. All comments will also become a matter of public record.

Done in Washington, DC, this 9th day of May 2002.

Peter Fernandez,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 02–12138 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–34–P

[1] NASS Catfish Production Report, February 2002.

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

Farm Service Agency

Type 31–V, Burley Biologically Engineered Tobacco

AGENCIES: Agricultural Marketing Service, Commodity Credit Corporation and Farm Service Agency, USDA.

ACTION: Notice; request for public comment.

SUMMARY: This notice invites comments about whether the biologically engineered Burley Tobacco Type 31–V and related tobaccos should be considered quota or non-quota tobacco for the 2003 and subsequent crop years.

DATES: Comments concerning the contents of this notice must be submitted by June 14, 2002 to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments concerning this notice to Director, Tobacco and Peanuts Division, FSA, USDA, 1400 Independence Avenue, SW, Room 5750–S, STOP 0514, Washington, DC 20250–0514. Comments may be sent by facsimile to (202) 720–0549. Comments may be sent by e-mail to: *tob_comments@wdc.fsa.usda.gov*.

FOR FURTHER INFORMATION CONTACT: Ann Wortham, Tobacco and Peanuts Division, (202) 720–2715 or at e-mail address *ann_wortham@wdc.fsa.usda.gov*.

SUPPLEMENTARY INFORMATION: The Agricultural Adjustment Act of 1938, as amended (The Act) established tobacco marketing quotas as part of the tobacco program, which is intended to balance supply with demand at levels assuring stable supplies for domestic and export use at prices that are considered sufficient for producers. The quotas set specific limits on the amount of particular types of tobacco that may be sold without penalty, and apply to the areas in which the type is produced if marketing quotas are approved through referendum by producers of that type. The Act also defined the types of tobacco that are subject to quotas, one of which is burley tobacco, which is defined by the statute to be Type 31 tobacco.

Recently, tobacco that was biologically engineered to have a low nicotine content became available to producers. The regulations of the Agricultural Marketing Service (AMS), which classifies tobacco for inspection purposes but does not determine types for FSA's Tobacco Program, provide that certain tobacco which in its cured state has a nicotine content of not more than eight-tenths of one percent (8/10 of 1%), oven dry weight, be classified as Type 31–V, if burley, or Type 73, if flue-cured. AMS thus classified, for inspection purposes, the biologically engineered tobacco, which fell at or below that nicotine level, as being either Type 31–V (burley) or, if cured in the same manner as class 1 flue-cured tobacco, as Type 73 (flue-cured).

FSA marketing quota regulations currently include Type 31 (burley), and Types 11–14 (flue-cured), as tobaccos subject to quotas. The purpose of this notice is to request comments on whether to include Type 31–V or Type 73 in the definitions of tobaccos subject to quotas.

Discussion

If the biologically engineered tobacco (Type 31 or Type 73) is determined to be quota tobacco, it could be grown in quota tobacco States and on quota tobacco farms without penalty. Some concern has been expressed that growing such tobacco in quota areas could create a risk of contamination of traditional types of tobacco through cross-pollination.

If the biologically engineered tobacco is determined to be non-quota tobacco, it could be grown in non-quota areas and not be subject to penalties, but it could not be grown in quota areas without incurring a penalty, thus alleviating the concern over cross-pollination.

FSA invites the views of interested persons before making its determination on considering biologically engineered tobacco, Type 31–V or Type 73, and related tobaccos, as quota or non-quota tobaccos, and will consider those views in formulating its policy. All responses to this notice will be summarized and included in any rule that may be forthcoming on this issue. All comments will become a matter of public record.

Signed at Washington, DC, on April 26, 2002.

James R. Little,

Administrator, Farm Service Agency and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 02–12076 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF AGRICULTURE

Forest Service

Fresno County Resource Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of Resource Advisory Meeting.

SUMMARY: Pursuant to the authorities in the Federal Advisory Committee Act of 1972 (Pub. L. 92–463) and under the secure Rural Schools and Community Self-Determination Act of 2000 (Pub. L. 106–393) the Sierra and Sequoia National Forests' Resource Advisory

Committee (RAC) for Fresno County will meet on June 18, 2002, 6:30–9:30 p.m. The Fresno County Resource Advisory Committee will meet at the Districts Ranger's officer Prather, CA. The purpose of the meeting is for the Resource Advisory Committee to receive project proposals for recommendations to the Forest Supervisor for expenditure of Fresno County Title II funds.

DATES: The Fresno RAC meeting will be held on June 18, 2002. The meeting will be held from 6:30 p.m. to 9:30 p.m.

ADDRESSES: The Fresno County RAC meeting will he held at the Sierra National Forest, Pineridge/Kings River Districts Ranger office, 29688 Auberry Road, Prather, CA.

FOR FURTHER INFORMATION CONTACT: Sue Exline, USDA, Sierra National Forest, 1600 Tollhouse Road, Clovis, CA 93611 (559) 297–0706 ext. 4804; E–MAIL *skexline@fs.fed.us.*

SUPPLEMENTARY INFORMATION: Agenda items to be covered include: (1) Review and approve the May 14, 2002 meeting notes; (2) Discuss new business of the RAC if applicable; (3) Consideration of Title II Project proposals from the public and/or the RAC members; (4) Determine the date and location of the next meeting; (5) Public comment. The meeting is open to the public. Public input opportunity will be provided and individuals will have the opportunity to address the Committee at that time.

Dated: May 6, 2002.

Ray Porter,

District Ranger.

[FR Doc. 02–12049 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF AGRICULTURE

Forest Service

Southwest Oregon Province Interagency Executive Committee (PIEC) Advisory Committee

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Southwest Oregon PIEC Advisory Committee will meet on June 4, 2002 in Prospect, Oregon at the Prospect Ranger District Office at 47201, Hwy. 62. The meeting will begin at 9 a.m. and continue until 5 p.m. Agenda items to be covered include: Provincial Advisory Committee Implementation Monitoring Schedule; Regional Interagency Executive Committee/ Interagency Advisory Committee Update; Provincial Advisory Committee Re-Charter Update; Rogue Basin Technical Team Update; Public Comment.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Debra Gray, Province Advisory Committee Staff Member, USDA, Forest Service, Umpqua National Forest, 2900 NW Stewart Parkway, Roseburg, Oregon 97470, phone (541) 957–3405.

Dated: May 9, 2002.

Lyle Burmeister,

Acting Designated Federal Official.

[FR Doc. 02–12083 Filed 5–14–02; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Notice of Availability of a Draft Restoration Plan and Environmental Assessment for the Oil Spill at Pepco's Chalk Point Generating Facility, Request for Comments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

SUMMARY: The Natural Resource Trustee agencies (Trustees) have written a draft Restoration Plan and Environmental Assessment (Draft RP/EA) that describes alternatives for restoring natural resource injuries and compensating for recreational losses resulting from the April 7, 2000 oil spill at the Potomac Electric Power Company (Pepco) generating facility. This plan was developed cooperatively among the Trustees and the responsible parties, Pepco and ST Services (respectively, the owner and operator of the pipeline) pursuant to the Natural Resource Damage Assessment Regulations, 15 CFR Part 990. See specifically 15 CFR 990.54 and 990.55. The purpose of this notice is to inform the public of the availability of the Draft RP/EA and the opportunity to submit written comments on the proposed restoration alternatives.

DATES: Comments on the Draft RP/EA must be submitted in writing on or before July 8, 2002.

ADDRESSES: Copies of the Draft RP/EA are available at: (1) Lighthouse Point Center, 30383 Three Notch Road, Charlotte Hall, MD (301) 290–0946, 1–800–685–1266, fax (301) 290–0943, Mon.–Fri. 9 am to 5 pm; (2) Information Resource Center, MD Department of Natural Resources, 580 Taylor Avenue, B–3, Annapolis, MD 21401, (410) 260–8830, fax (410) 260–8951, Mon.–Fri. 8 am to 4 pm, and (3) *www.darp.noaa.gov/neregion/chalkpt.htm.*

Written comments on the draft RP/EA should be submitted to: Jim Hoff, National Oceanic and Atmospheric Administration, Damage Assessment Center, 1305 East-West Highway, Bldg. 4 Rm. 10218, Silver Spring, Maryland 22044. Alternatively, comments may be submitted electronically to the following E-mail address: *James.Hoff@NOAA.GOV.* All comments received, including names and addresses, will become part of the public record.

FOR FURTHER INFORMATION CONTACT: Jim Hoff, National Oceanic and Atmospheric Administration, Damage Assessment Center, 1305 East-West Highway, Bldg. 4 Rm. 10218, Silver Spring, Maryland 22044.

SUPPLEMENTARY INFORMATION:

Background

On April 7, 2000, a pipeline ruptured at Pepco's Chalk Point generating facility near Benedict, Maryland, spilling roughly 126,000 gallons of oil into Swanson Creek and the Patuxent River. About 40 miles of environmentally sensitive downstream creeks and shorelines along the Patuxent River were oiled.

Four government agencies—the National Oceanic and Atmospheric Administration, U.S. Fish and Wildlife Service, Maryland Department of Natural Resources, and Maryland Department of Environment—are responsible for restoring natural resources injured by the spill. These agencies act as Trustees on the public's behalf to conduct a natural resource damage assessment, a process for determining the nature and extent of injuries to natural resources and the restoration actions needed to reverse these losses (Oil Pollution Act, 33 U.S.C. 2706(b)).

The Trustees have reviewed the results of numerous studies and consulted with a wide variety of experts in relevant scientific and technical disciplines to determine potential injuries resulting from the spill. Based on this work, the Trustees have estimated losses to: wetlands, fish and shellfish, benthic communities, birds, terrapins and recreational uses.

The Trustees considered numerous restoration alternatives to compensate the public for spill-related injuries and restore similar types of resources, and the services provided by the resources, that were injured by the oil spill (15 CFR 990.54 and 990.55). The Preferred Alternatives include:

(1) *Creating tidal marsh and enhancing shoreline beach to address injury to wetlands, beach shoreline, and diamondback terrapins.* Trustees propose to create five to six acres of intertidal marsh wetland adjacent to Washington Creek, a tributary of the Patuxent River, located south of Chalk Point. This wetland would be similar to those impacted by the spill and provide habitat for juvenile fish, shellfish, birds, and mammals; improve water quality by filtering sediments and other pollutants from the water column; and provide storm surge and flood protection. This project also includes creating roughly one acre of beach habitat to benefit diamondback terrapins and other organisms.

(2) *Acquiring and restoring ruddy duck nesting habitat to address injury to ruddy ducks.* Trustees propose to restore ruddy duck nesting habitat and acquire perpetual protective easements in areas of the Prairie Pothole Region of the Midwest. Ruddy ducks breed in wetlands located in the Midwest and southern Canada and migrate to the Chesapeake Bay to spend the winter. Restoration and protection of their nesting habitats would enhance ruddy duck populations in the vicinity of the spill.

(3) *Creating an oyster reef sanctuary to address injuries to fish, shellfish, benthic communities, and birds and waterfowl.* Trustees propose to create about five acres of oyster reef sanctuary in the Patuxent River to address injuries to fish, shellfish, non-ruddy duck birds, and benthic communities. The reef would enhance benthic communities, increase aquatic food for fish, birds, and waterfowl, and improve water quality by filtering out sediments and pollutants from the water column.

(4) *Addressing impacts to recreational opportunities.* Trustees propose the following alternatives to address the estimated 125,000 river trips that were affected by the spill: (a) Creating two canoe/kayak paddle-in campsites on the Patuxent River, one north of Golden Beach and one at Milltown Landing; (b) establishing a disabled-accessible kayak/canoe launch at Greenwell State Park; (c) improving recreational opportunities at Maxwell Hall Natural Resource Management Area; (d) rebuilding the King's Landing boardwalk and providing canoes for a river education program; and (e) building a fishing pier at Cedar Haven Park.

Administrative Record

Pursuant to the Natural Resource Damage Assessment regulations, the Trustees have developed an Administrative Record to support their restoration planning decisions and inform the public of the basis of their decisions (15 CFR 990.45). Additional information and documents, including public comments received on the Draft RP/EA, the Final RP/EA, and other related restoration planning documents, will also become a part of the Administrative Record, and will be submitted to a public repository upon their completion.

The documents comprising the public record (Administrative Record) can be viewed at the following locations: (1) Lighthouse Point Center, 30383 Three Notch Road, Charlotte Hall, MD (301) 290–0946, 1–800–685–1266, fax (301) 290–0943, Mon.–Fri. 9 am to 5 pm; (2) Information Resource Center, MD Dept. of Natural Resources, 580 Taylor Avenue, B–3, Annapolis, MD 21401, (410) 260–8830, fax (410) 260–8951, Mon.–Fri. 8 am to 4 pm; and (3) and *www.darp.noaa.gov/neregion/chalkpt.htm.*

Dated: April 12, 2002.

Jamison S. Hawkins,

Deputy Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 02–12075 Filed 5–14–02; 8:45 am]

BILLING CODE 3510–JE–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

[I.D. 050102F]

Magnuson-Stevens Act Provisions; Atlantic Highly Migratory Species; Exempted Fishing Permits

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Issuance of Exempted Fishing Permits; request for comments.

SUMMARY: NMFS announces the receipt of requests for Exempted Fishing Permits (EFPs) for the retention of undersize swordfish bycatch for distribution at a charitable food kitchen, and for tuna purse seine vessels to begin fishing prior to the traditional start date in order to assist with scientific research. In addition, NMFS announces its intent to issue an EFP for longline fishing to take place within a closed area of the North Atlantic in order to assist with research addressing sea turtle bycatch in the fishery. NMFS invites comments from interested parties on potential concerns should these EFPs be issued.

DATES: Comments must be received at the appropriate address or fax number (see **ADDRESSES**) no later than 5 p.m. eastern standard time on May 29, 2002.

ADDRESSES: Send comments to Christopher Rogers, Chief, Highly Migratory Species Management Division (F/SF1), NMFS, 1315 East-West Highway, Silver Spring, MD 20910. Comments also may be sent via facsimile (fax) to (301)713–1917. Comments will not be accepted if submitted via e-mail or Internet.

FOR FURTHER INFORMATION CONTACT: Sari Kiraly, 301–713–2347; fax: 301–713–1917.

SUPPLEMENTARY INFORMATION: EFPs are requested and issued under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.) and/or the Atlantic Tunas Convention Act (16 U.S.C. 971 *et seq.*). Regulations at 50 CFR 600.745 and 50 CFR 635.32 govern scientific research activity, exempted fishing, and exempted educational activity with respect to Atlantic HMS.

NMFS has received a request from Amazing Grace Church of Whaleyville, MD for an EFP to land swordfish below the allowable minimum size from two longline vessels operating out of Ocean City, MD for charitable donation at the church food kitchen. The requesters seek to land only those juvenile swordfish brought to the boat as dead bycatch. In addition, the requesters intend to assist NMFS with data collection on the distribution of juvenile swordfish.

The East Coast Tuna Association has requested an EFP for five tuna purse seine vessels to begin fishing their giant Atlantic bluefin tuna allocation on July 15, rather than the traditional start date of August 15. Beginning July 1 the vessels will facilitate research conducted by the New England Aquarium involving pop-up satellite tagging of bluefin tuna. The Aquarium's costs of chartering the purse seine vessels can be reduced if the vessels are in a position to conduct commercial fishing for their bluefin allocation upon the completion of the research on July 15 rather than return to other fishing activity requiring either vessel fishing gear changes or vessel relocation.

In addition, NMFS intends to issue an EFP for contracted longline vessels fishing in the Northeast Distant Water closed area of the North Atlantic. Approximately eight to fifteen longline vessels, depending upon availability, will be fishing under an Endangered Species Act Section 10 permit in order to conduct an experiment to determine alternative fishing methods to reduce sea turtle bycatch in the fishery.

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Authority: 16 U.S.C. 971 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: May 9, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–12166 Filed 5–14–02; 8:45 am]

BILLING CODE 3510–22–S

DEPARTMENT OF COMMERCE

Patent and Trademark Office

Submission for OMB Review; Comment Request

The United States Patent and Trademark Office (USPTO) has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

AGENCY: United States Patent and Trademark Office (USPTO).

Title: Trademark Processing (proposed rulemaking, Processing Fee for Use of Paper Forms for Submission of Applications for Registration and Other Documents).

Form Number(s): PTO Form 4.8/4.9/4.16/1478/1478(a)/1553/1581/1583/1963/2000, PTO/TM/4.16/1583.

Agency Approval Number: 0651–0009.

Type of Request: Revision of a currently approved collection.

Burden: 144,587 hours annually.

Number of Respondents: 677,151 responses per year.

Avg. Hours Per Response: The time needed to respond is estimated to range from 3 to 30 minutes. It is estimated that the time needed to complete the electronic forms ranges from 4 to 21 minutes, and the time needed to complete the paper forms with the declaration ranges from 6 to 24 minutes. The information collection also includes four items, namely, powers of attorney, designations of domestic representatives, trademark amendments/corrections/ surrenders, and petitions to revive abandoned applications, for which forms have not been created and which are not subject to the proposed mandatory electronic filing rule. The USPTO estimates that completing these items ranges from 3 to 30 minutes. The time estimates include time to gather the necessary information, create the documents, and submit the completed requests.

Needs and Uses: This collection is being submitted as a proposed addition in support of a proposed rulemaking, "Processing Fee for Use of Paper Forms for Submission of Applications for Registration and Other Documents." The USPTO proposes to amend 37 CFR § 2.6(a) of the Rules of Practice in Trademark Cases to require payment of a processing fee whenever a party elects to make a submission using paper in place of an electronically transmittable form available through the Trademark Electronic Application System (TEAS). If a party submits a paper document to the USPTO, and the TEAS system includes a form for preparing that document and transmitting it to the USPTO electronically, the fee for submitting the paper document will be fifty dollars ($50.00) more than the fee for submitting the equivalent electronic document.

Affected Public: Individuals or households; business or other for-profit; not-for-profit institutions; farms; the federal Government; and state, local or tribal Government.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain benefits.

OMB Desk Officer: David Rostker, (202) 395–3897.

Copies of the above information collection proposal can be obtained by calling or writing Susan K. Brown, Records Officer, Office of Data Management, Data Administration Division, (703) 308–7400, USPTO, Suite 310, 2231 Crystal Drive, Washington, DC 20231, or by e-mail at *susan.brown@uspto.gov*.

Written comments and recommendations for the proposed collection should be sent on or before June 14, 2002 to David Rostker, OMB Desk Officer, Room 10202, New Executive Office Building, Washington, DC 20503.

Dated: May 8, 2002.

Susan K. Brown,

Records Officer, USPTO, Office of Data Management, Data Administration Division.

[FR Doc. 02–12150 Filed 5–14–02; 8:45 am]

BILLING CODE 3510–16–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Pakistan

May 8, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port, call (202) 927–5850, or refer to the U.S. Customs website at http://www.customs.gov. For information on embargoes and quota re-openings, refer to the Office of Textiles and Apparel website at http://otexa.ita.doc.gov.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The current limits for certain categories are being adjusted for carryover, the recrediting of unused carryforward, swing, special swing, special shift and carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 66 FR 65178, published on December 18, 2001). Also see 66 FR 63683, published on December 10, 2001.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 8, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 4, 2001, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton and man-made fiber textile products produced or manufactured in Pakistan and exported during the twelve-month period which began on January 1, 2002 and extends through December 31, 2002.

Effective on May 15, 2002, you are directed to adjust the limits for the following categories, as provided for under the Uruguay Round Agreement on Textiles and Clothing:

Category	Twelve-month restraint limit [1]
Specific limits	
219	13,720,912 square meters.

Category	Twelve-month restraint limit [1]
226/313	129,031,506 square meters.
237	387,287 dozen.
239pt. [2]	2,882,040 kilograms.
314	9,619,245 square meters.
315	105,129,113 square meters.
317/617	57,006,364 square meters.
331pt./631pt. [3]	1,286,486 dozen pairs.
334/634	620,719 dozen.
335/635	910,083 dozen.
336/636	851,304 dozen.
338	8,614,748 dozen.
339	2,656,680 dozen.
340/640	1,375,553 dozen of which not more than 515,830 dozen shall be in Categories 340–D/640–D [4].
341/641	1,692,507 dozen.
342/642	594,534 dozen.
347/348	1,622,579 dozen.
351/651	737,723 dozen.
352/652	1,595,414 dozen.
359–C/659–C [5]	1,577,553 kilograms.
360	8,320,044 numbers.
361	9,674,468 numbers.
363	66,007,936 numbers.
369–S [6]	1,185,948 kilograms.
613/614	39,683,656 square meters
615	38,281,197 square meters.
625/626/627/628/629	98,345,774 square meters of which not more than 61,068,605 square meters shall be in Category 625; not more than 61,068,605 square meters shall be in Category 626; not more than 61,068,605 square meters shall be in Category 627; not more than 12,634,885 square meters shall be in Category 628; and not more than 61,068,065 square meters shall be in Category 629.
638/639	373,692 dozen.
647/648	1,535,806 dozen.
666–P [7]	1,157,969 kilograms.
666–S [8]	6,130,419 kilograms.

[1] The limits have not been adjusted to account for any imports exported after December 31, 2001.

[2] Category 239pt.: only HTS number 6209.20.5040 (diapers).

[3] Category 331pt.: all HTS numbers except 6116.10.1720, 6116.10.4810, 6116.10.5510, 6116.10.7510, 6116.92.6410, 6116.92.6420, 6116.92.6430, 6116.92.6440, 6116.92.7450, 6116.92.7460, 6116.92.7470, 6116.92.8800, 6116.92.9400 and 6116.99.9510; Category 631pt.: all HTS numbers except 6116.10.1730, 6116.10.4820, 6116.10.5520, 6116.10.7520, 6116.93.8800, 6116.93.9400, 6116.99.4800, 6116.99.5400 and 6116.99.9530.

[4] Category 340–D: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2025 and 6205.20.2030; Category 640–D: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2030, 6205.30.2040, 6205.90.3030 and 6205.90.4030.

[5] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[6] Category 369–S: only HTS number 6307.10.2005.

[7] Category 666–P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

[8] Category 666–S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02–12102 Filed 5–14–02; 8:45 am]

BILLING CODE 3510–DR–S

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Coverage of Import Limit and Visa and Certification Requirements for a Certain Part-Category Produced or Manufactured in Malaysia

May 9, 2002.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage for an import limit and visa and certification requirements.

EFFECTIVE DATE: May 15, 2002.

FOR FURTHER INFORMATION CONTACT: Keith Daly, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); Executive Order 11651 of March 3, 1972, as amended.

The Harmonized Tariff Schedule of the United States (HTS) has been amended, and goods formerly classified in HTS heading 6110.10.2070 are now classified in HTS heading 6110.12.2070. The Uruguay Round Agreement on Textiles and Clothing and the U.S.-Malaysia export visa arrangement both utilize the HTS and include such goods within their scope. To facilitate implementation of these agreements, CITA is directing the Commissioner of Customs to amend monitoring and import control directives and visa and certification requirement directives for Malaysia to account for this change, amending part-Category 438-O.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend monitoring, import control, and visa and certification requirements with respect to part–Category 438–O.

James C. Leonard III,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 9, 2002.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the monitoring and import control directives, and all visa and certification requirement directives for Malaysia, issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include wool textile products in part-Category 438–O produced or manufactured in Malaysia and imported into the United States on and after May 15, 2002, regardless of the date of export.

Effective on May 15, 2002, you are directed to make the change shown below in the aforementioned directives for products entered in the United States for consumption or withdrawn from warehouse for consumption on and after May 15, 2002 for part-Category 438–O, regardless of the date of export:

Category	HTS change
438–O	Delete 6110.10.2070
	Replace with 6110.12.2070

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

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James C. Leonard III
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.02-12103 Filed 5-14-02; 8:45 am]
BILLING CODE 3510-DR-S

DEPARTMENT OF DEFENSE

Office of the Secretary

[Transmitted No. 02-25]

36(b)(1) Arms Sales Notification

AGENCY: Department of Defense, Defense Security Cooperation Agency.

ACTION: Notice.

SUMMARY: The Department of Defense is publishing the unclassified text of a section 36(b)(1) arms sales notification. This is published to fulfill the requirements of section 155 of Public Law 104-164 dated 21 July 1996.

FOR FURTHER INFORMATION CONTACT: Ms. J. Hurd, DSCA/COMPT/RM, (703) 604-6575.

The following is a copy of a letter to the Speaker of the House of Representatives, Transmittal 02-25 with attached transmittal, policy justification, and Sensitivity of Technology.

Dated: May 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5001-08-M

DEFENSE SECURITY COOPERATION AGENCY

WASHINGTON, DC 20301-2800

29 APR 2002
In reply refer to:
I-02/004703

The Honorable J. Dennis Hastert
Speaker of the House of
Representatives
Washington, D.C. 20515-6501

Dear Mr. Speaker:

Pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act (AECA), as amended, we are forwarding herewith Transmittal No. 02-25, concerning the Department of the Navy's proposed Letter(s) of Offer and Acceptance (LOA) to Japan for defense articles and services estimated to cost $578 million. Soon after this letter is delivered to your office, we plan to notify the news media.

Sincerely,

TOME H. WALTERS, JR.
LIEUTENANT GENERAL, USAF
DIRECTOR

Attachments

Same ltr to: House Committee on International Relations
Senate Committee on Appropriations
Senate Committee on Foreign Relations
House Committee on Armed Services
Senate Committee on Armed Services
House Committee on Appropriations

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Transmittal No. 02-25

Notice of Proposed Issuance of Letter of Offer
Pursuant to Section 36(b)(1)
of the Arms Export Control Act, as amended

(i) Prospective Purchaser: Japan

(ii) Total Estimated Value:

Major Defense Equipment*	$218 million
Other	$360 million
TOTAL	$578 million

(iii) Description and Quantity or Quantities of Articles or Services under Consideration for Purchase: one MK 7 MOD 6(V) AEGIS Weapon System, one AN/SQQ-89(V)15R Surface Ship Undersea Combat System, one AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, one shipboard gridlock system, one Common Data Link Management System/Joint Tactical Information Distribution System, one MK 34 gun weapon system, one Navigation Sensor System Interface, one MK36 Decoy Launching System, one AN/WSN-7 Ring Laser Gyro Navigator, one AN/SQQ-121 Computer Aided Dead Reckoning Tracker, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support

(iv) Military Department: Navy (LSU)

(v) Prior Related Cases, if any:

FMS case LPE	- $462 million	- 27Aug93
FMS case LNW	- $450 million	- 11Sep91
FMS case LND	- $478 million	- 29Aug90
FMS case LKL	- $468 million	- 24Jun88

(vi) Sales Commission, Fee, etc., Paid, Offered, or Agreed to be Paid: none

(vii) Sensitivity of Technology Contained in the Defense Article or Defense Services Proposed to be Sold: See Annex attached

(viii) Date Report Delivered to Congress: 29 APR 2002

* as defined in Section 47(6) of the Arms Export Control Act.

POLICY JUSTIFICATION

Japan – AEGIS Combat System

The Government of Japan has requested a possible sale of one MK 7 MOD 6(V) AEGIS Weapon System, one AN/SQQ-89(V)15R Surface Ship Undersea Combat System, one AN/UPX-29(V) Aircraft Identification Monitoring System MK XII Identification Friend or Foe system, one shipboard gridlock system, one Common Data Link Management System/Joint Tactical Information Distribution System, one MK 34 gun weapon system, one Navigation Sensor System Interface, one MK36 Decoy Launching System, one AN/WSN-7 Ring Laser Gyro Navigator, one AN/SQQ-121 Computer Aided Dead Reckoning Tracker, testing and combat system engineering technical assistance, computer programs and support maintenance, U.S. Government and contractor engineering and technical assistance, testing, publications and documentation, training, spare and repair parts, and other related elements of logistics support. The estimated cost is $578 million.

Japan is one of the major political and economic powers in East Asia and the Western Pacific and a key ally of the United States in ensuring the peace and stability of that region. It is vital to the U.S. national interest to assist Japan to develop and maintain a strong and ready self-defense capability, which will contribute to an acceptable military balance in the area. This proposed sale is consistent with these U.S. objectives and with the 1960 Treaty of Mutual Cooperation and Security.

Installation of the AEGIS combat system on ships of the Japan Maritime Self Defense force will provide enhanced capabilities to Japan in providing for defense of its critical Sea Lines of Communication (SLOCs). AEGIS will be the keystone in Japan's effort to upgrade its anti-air warfare (AAW) capability. Japan is fully capable of integrating this system into its operational forces and will receive data sufficient for basic maintenance of the equipment. Japan, which already has AEGIS systems, will have no difficulty absorbing the additional system.

The principal contractors will be: Lockheed Martin Naval Electronics Systems and Support of Morristown, New Jersey; Lockheed Martin Naval Electronics Systems and Support of Syracuse, New York; Raytheon Company of Andover, Massachusetts; General Dynamics Armament Systems of Burlington, Vermont; and Lockheed Martin Naval Electronics Systems and Support of Eagan, Minnesota. There are no offset agreements proposed in connection with this potential sale.

Implementation of this sale will not require the assignment to Japan of any U.S. Government representatives. It will require the assignment of approximately 40 contractor representatives for approximately five years to support integration and testing of the AEGIS Combat Systems.

There will be no adverse impact on U.S. defense readiness as a result of this proposed sale.

Transmittal No. 02-25

Notice of Proposed Issuance of Letter of Offer Pursuant to Section 36(b)(1) of the Arms Export Control Act

Annex
Item No. vii

(vii) Sensitivity of Technology:

1. AEGIS Weapon System (AWS) hardware is unclassified, with the exception of the RF oscillator used in the Fire Control transmitter, which is classified Confidential. AEGIS documentation in general is unclassified. However, seven operation and maintenance manuals are classified Confidential, and there is also a classified Secret supplement to the AEGIS Combat System Maintenance Manual. Access to the manuals and technical documents is limited to those for whom the manuals and documents are necessary for operational use and organizational maintenance.

2. While the hardware associated with the SPY-1D(V) radar and AN/SQQ-89 sonar of the Undersea Warfare System (UWS) are unclassified, the computer programs are classified Secret. It is the combination of the SPY-1D(V) and AN/SQQ-89 sonar hardware and the computer programs that constitutes the technology sensitive aspects. The SPY-1D(V) radar and AN/SQQ-89 sonar hardware design and computer program documentation will not be released. Additionally, life cycle maintenance of the AWS computer programs will be performed by the U.S. Navy.

3. If a technologically advanced adversary were to obtain knowledge of the specific hardware and software elements, the information could be used to develop countermeasures which might reduce weapon system effectiveness or be used in the development of a system with similar or advanced capabilities.

4. A determination has been made that Japan can provide substantially the same degree of protection for the sensitive technology being released as the U.S. Government. This sale is necessary in furtherance of the U.S. foreign policy and national security objectives outlined in the Policy Justification.

[FR Doc. 02–12054 Filed 5–14–02; 8:45 am]
BILLING CODE 50001–08–C

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0010]

Federal Acquisition Regulation; Information Collection; Progress Payments

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for public comments regarding an extension to an existing OMB clearance (9000–0010).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35), the Federal Acquisition Regulation (FAR) Secretariat will be submitting to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning progress payments. This OMB clearance currently expires on September 30, 2002.

Public comments are particularly invited on: Whether this collection of information is necessary for the proper performance of functions of the FAR, and whether it will have practical utility; whether our estimate of the public burden of this collection of information is accurate, and based on valid assumptions and methodology; ways to enhance the quality, utility, and clarity of the information to be collected; and ways in which we can minimize the burden of the collection of information on those who are to respond, through the use of appropriate technological collection techniques or other forms of information technology.

DATES: Submit on or before July 15, 2002.

ADDRESSES: Submit comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW., Room 4035, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Jeremy F. Olson, Acquisition Policy Division, GSA (202) 501–3221.

SUPPLEMENTARY INFORMATION:

A. Purpose

Certain Federal contracts provide for progress payments to be made to the contractor during performance of the contract. The requirement for certification and supporting information are necessary for the administration of statutory and regulatory limitation on the amount of progress payments under a contract. The submission of supporting cost schedules is an optional procedure that, when the contractor elects to have a group of individual orders treated as a single contract for progress payments purposes, is necessary for the administration of statutory and regulatory requirements concerning progress payments.

The reduced estimate for this burden results from the lower number of respondents due to the increased threshold for use of progress payments published in FAC 97–16, FAR case 1998–400.

B. Annual Reporting Burden

Respondents: 18,000.
Responses Per Respondent: 32.
Annual Responses: 576,000.
Hours Per Response: .55.
Total Burden Hours: 316,800.

Obtaining Copies of Proposals

Requesters may obtain a copy of the information collection documents from the General Services Administration, FAR Secretariat (MVP), Room 4035, 1800 F Street, NW., Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0010, Progress Payments, in all correspondence.

Dated: May 8, 2002.

Al Matera,
Director, Acquisition Policy Division.

[FR Doc. 02–12128 Filed 5–14–02; 8:45 am]
BILLING CODE 6820–EP–P

DEPARTMENT OF DEFENSE

Department of the Air Force HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Predictive Battlespace Awareness (PBA) Study Information Integration and Prediction/ Confirmation Tools Panels. The purpose of the meeting is to allow the SAB and study leadership to gather information from Space and Naval Warfare Systems Command (SPAWAR) related to PBA information integration and prediction/ confirmation tools. Because of meeting classification level, this meeting will be closed to the public.

DATES: 16 May 2002, 0800–1600L.

ADDRESSES: SPAWAR, 4301 Pacific Highway, San Diego, CA 92110.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington, DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.

[FR Doc. 02–12084 Filed 5–14–02; 8:45 am]
BILLING CODE 5001–05–U

DEPARTMENT OF DEFENSE

Department of the Air Force

HQ USAF Scientific Advisory Board

AGENCY: Department of the Air Force, DoD.

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of the forthcoming meeting of the Predictive Battlespace Awareness (PBA) to improve military effectiveness, Operational Architecture Panel. The purpose of the meeting is to allow the SAB and study leadership to discuss operational architecture issues in a classified forum with the CINC's representatives. This meeting will be closed to the public.

DATES: 20–24 May 2002.

ADDRESSES: HQ SPACECOM (Building and Room: TBD), Colorado Springs, CO. HQ STRATCOM (Building and Room: TBD), Omaha, NE.

FOR FURTHER INFORMATION CONTACT: Colonel Marian Alexander, Air Force Scientific Advisory Board Secretariat, 1180 Air Force Pentagon, Rm 5D982, Washington DC 20330–1180, (703) 697–4811.

Pamela D. Fitzgerald,
Air Force Federal Register Liaison Officer.

[FR Doc. 02–12085 Filed 5–14–02; 8:45 am]
BILLING CODE 5001–05–U

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DEPARTMENT OF DEFENSE

Department of the Army

Notice of Availability of the Final Environmental Impact Statement (FEIS) for the Northern Training Complex with a Multi-Purpose Digital Training Range and Expanded Maneuver Areas, Drop Zones and Landing Zones at Fort Knox, Kentucky

AGENCY: U.S. Army Armor Center and Fort Knox, Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: In compliance with the National Environmental Policy Act (NEPA), the Army has prepared a FEIS for the construction and operation of a multi-purpose digital training range and a series of maneuver areas, drop zones and landing zones at Fort Knox. The FEIS analyzes the impacts of the proposed facilities. These facilities would provide a multi-functional war-fighting capability to meet the Army's training needs for soldiers in urban and restricted terrain combat scenarios and the new digital technology to support the M1A2 System Enhancement Package (SEP) Main Battle Tank. The FEIS identifies various alternatives and the associated environmental impacts of the proposed alternatives.

DATES: The post-filing waiting period for this EIS will end 30 days after publication of the notice of availability in the **Federal Register** by the U.S. Environmental Protection Agency.

ADDRESSES: Requests for copies of the FEIS may be made to Environmental Management Division, Directorate of Base Operations Support, U.S. Army Armor Center, ATTN: ATZK–OSE, Building 1110, Room 216, Ironsides & 6th Avenue, Fort Knox, KY 40121–5000; by phone at (502) 624–3629, or by fax at (502) 624–3000. Questions about the FEIS and written comments may be sent to the same mailing address. Submit electronic comments and data by sending email to: *Linda.Pollock@knox.army.mil.*

FOR FURTHER INFORMATION CONTACT: Mr. Al Freeland or Mrs. Gail Pollock at (502) 624–3629.

SUPPLEMENTARY INFORMATION: The proposed project includes upgrading an existing training range to a modern digitized multi-purpose training range; construction of a series of landing zones, drop zones and maneuver areas and a grassed mock C130 landing strip; upgrade of existing roads; installation of fiber optics and other infrastructure improvements. The facilities would prepare the mounted force warriors for full spectrum combat operations. The proposed facilities would fully support new equipment training such as the M1A2 Main Battle Tank (MBT) System Enhancement Package (SEP), the M2A3 Bradley Fighting Vehicle, and the Light Armored Vehicle (LAV III), as well as other enhanced vehicles requiring digital capability. These vehicles are equipped with a dynamic new computer system that uses digital technology to provide soldiers with on the move and instantaneous battlefield communications.

Individuals who wish to review the FEIS may examine a copy at any of the following locations: Barr Library; 400 Quartermaster Street, Fort Knox, Kentucky 40121–5000 and Ridgeway Memorial Library, 127 North Walnut Street, P.O. Box 146, Sheperdsville, Kentucky 40165.

Adoption: The U.S. Army Corps of Engineers hereby adopts (pursuant to 40 CFR 1506.3(a)) this FEIS for the U.S. Army Armor Center and Fort Knox Northern Training Complex, Fort Knox, Kentucky. This FEIS shall be used as the Corps' NEPA documentation for purposes of the Corps' Section 404 Clean Water Act permit review.

Dated: May 7, 2002.

Raymond J. Fatz,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I&E).

[FR Doc. 02–12086 Filed 5–14–02; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on (insert date thirty days from date published in the FR) unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 7, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records About Individuals," dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS) (February 22, 1993, 58 FR 10002).

CHANGES:

* * * * *

SYSTEM LOCATION:

Add a second paragraph 'U.S. Army Corps of Engineers: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314–1000, and all U.S. Army Corps of Engineers (USACE) Safety and Occupational Health Offices. Official mailing addresses are published as an Appendix to the Army's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals (includes contractors, volunteer personnel, and members of the public) involved in accidents incident to Army and U.S. Army Corps of Engineers operations and recreational facilities.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Records include name of injured individual, Social Security Number, job title, date of injury, location of accident, activity at time of injury, type of injury, board findings, recommendations, witness statements, wreckage distribution diagrams, maintenance and material data, and other personal and accident related and environmental information.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; Public Law 91–596, Occupational Safety and Health Act of 1970; Army Regulations 385–10, Army Safety Program; Army Regulation 385–40, Accident Reporting and Records; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Information will be used to monitor and facilitate the Army's and the USACE Safety and Occupational Health Offices' safety programs; to analyze accident experience and exposure information; and to support the Army's accident prevention efforts.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES: DELETE PARAGRAPHS TWO AND THREE.

STORAGE:

Delete entry and replace with 'Magnetic tapes, electronic storage media and printouts.'

RETRIEVABILITY:

Delete entry and replace with 'Information is retrieved by individual's name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Paper records are maintained in locked file cabinets. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. Remote terminal accessible only by authorized personnel. Specific to USACE: Computer stored records are secured behind security doors, accessible only by authorized personnel provided password access.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Accident and incident case records and aviation accident and incident case records maintain for 5 years then destroy, except for: U.S. Army Safety Center and U.S. Army Corps of Engineers maintain for 30 years in current file area then destroy; Office of Corps of Engineers records created prior to January 1, 1982 maintain for 30 years then destroy. Environmental restoration reports are maintained for 50 years then destroyed (5 years in current file area then transferred to records holding area). Reports of artillery mis-firings or accidents and harmful chemical, biological and radiological exposures accumulated in combat or combat support elements are permanent.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Army and USACE records and reports of accident, injury, fire, morbidity, law enforcement, traffic accident investigations, vehicle accident reports, and marine accident/casualty reports, individual sick clips, and military aviation records/reports.'

* * * * *

A0385–10/40 ASO

SYSTEM NAME:

Army Safety Management Information System (ASMIS).

SYSTEM LOCATION:

U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

U.S. Army Corps of Engineers: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street NW, Washington, DC 20314–1000, and all U.S. Army Corps of Engineers (USACE) Safety and Occupational Health Offices. Official mailing addresses are published as an Appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals (includes contractors, volunteer personnel, and members of the public) involved in accidents incident to Army and U.S. Army Corps of Engineers operations and recreational facilities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records include name of injured individual, Social Security Number, job title, date of injury, location of accident, activity at time of injury, type of injury, board findings, recommendations, witness statements, wreckage distribution diagrams, maintenance and material data, and other personal and accident related and environmental information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; 5 U.S.C. 7902, Safety Programs; Public Law 91–596, Occupational Safety and Health Act of 1970; Army Regulations 385–10, Army Safety Program; Army Regulation 385–40, Accident Reporting and Records; and E.O. 9397 (SSN).

PURPOSE(S):

Information will be used to monitor and facilitate the Army's and the USACE Safety and Occupational Health Offices' safety programs; to analyze accident experience and exposure information; and to support the Army's accident prevention efforts.

Routine uses of records maintained in the system, including categories of users and the purposes of such uses:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To the Department of Labor, the Federal Aviation Agency, the National Transportation Safety Board, and to Federal, State, and local agencies, and applicable civilian organizations, such as the National Safety Council, for use in a combined effort of accident prevention.

In some cases, data must also be disclosed to an employee's representative under the provisions of 29 CFR 1960.29.

The DoD 'Blanket Routine Uses' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Magnetic tapes, electronic storage media and printouts.

RETRIEVABILITY:

Information is retrieved by individual's name and Social Security Number.

SAFEGUARDS:

Paper records are maintained in locked file cabinets. Information is accessible only by authorized personnel with appropriate clearance/access in the performance of their duties. Remote terminal accessible only by authorized personnel. Specific to USACE: Computer stored records are secured behind security doors, accessible only by authorized personnel provided password access.

RETENTION AND DISPOSAL:

Accident and incident case records and aviation accident and incident case records maintain for 5 years then destroy, except for: U.S. Army Safety Center and U.S. Army Corps of Engineers maintain for 30 years in current file area then destroy; Office of Corps of Engineers records created prior

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to January 1, 1982 maintain for 30 years then destroy. Environmental restoration reports are maintained for 50 years then destroyed (5 years in current file area then transferred to records holding area). Reports of artillery mis-firings or accidents and harmful chemical, biological and radiological exposures accumulated in combat or combat support elements are permanent.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

For USACE: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW, Washington, DC 20314–1000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Commander, U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

For USACE: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW, Washington, DC 20314–1000.

Individual must furnish his/her full name, Social Security Number, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Commander, U.S. Army Safety Center, 4905 5th Avenue, Fort Rucker, AL 36362–5363.

For USACE: Chief, Safety and Occupational Health Office, Headquarters, U.S. Army Corps of Engineers, 441 G Street, NW, Washington, DC 20314–1000.

Individual must furnish his/her full name, Social Security Number, current address and telephone number, when and where the accident occurred, type of equipment involved in the accident, and signature.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Army and USACE records and reports of accident, injury, fire, morbidity, law enforcement, traffic accident investigations, vehicle accident reports, and marine accident/casualty reports, individual sick clips, and military aviation records/reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–12056 Filed 5–14–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Department of the Army is altering a system of records notice in its existing inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended. The alteration expands the category of individuals covered.

DATES: This proposed action would be effective without further notice on (insert date thirty days from date published in the FR) unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act of 1974, as amended, was submitted on May 7, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996 (February 20, 1996, 61 FR 6427).

Dated: May 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0640–3 CFSC

SYSTEM NAME:

Privilege Card Application Files (February 22, 1993, 58 FR 10002).

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'A0600–8–14 DAPE'.

SYSTEM NAME:

Delete entry and replace with 'Uniformed Services Identification Card.'

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters, Department of the Army, Major Army commands, staff and field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Active duty, Reserve, National Guard and retired members of the uniformed services and their family members; Department of the Army civilian employees assigned overseas or residing on a military installation within the United States and their authorized family members; eligible foreign military personnel and their family members; civilian employees under contract with the Department of Defense, Uniformed Services and other government agencies and their authorized family members; Red Cross personnel authorized by the Geneva Convention to accompany the Armed Forces; as well as other civilian and uniformed service members found eligible in accordance with eligibility requirements.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Application for a Uniformed Services Identification Card/DEERS Enrollment, service members name, Social Security Number, unit address and phone number, date of birth, age, blood type, marital status, family member's name, age, home address and phone number.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–14, Identification Cards for Members of The Uniformed Services, Their Family Members, and Other Eligible Personnel; and E.O. 9397 (SSN).'

PURPOSE(S):

Delete entry and replace with 'Provide a record of identification cards issued and DEERS enrollment to ensure positive identification of personnel authorized privileges and service on military installations and/or activities.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'By service members' name and Social Security Number; by applicant's name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in placed and periodically reviewed and updated to prevent unwarranted access.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Applications for military identification cards are destroyed after 1 year. Uniformed services identification cards are destroyed when no longer needed for current operations. Registers are destroyed after 5 years, unless they are bound which are maintained for 5 years after last entry then destroyed.

Uniformed Services identification cards for family members and other eligible personnel are destroyed when voided, replaced or is no longer valid (has expired).'

* * * * *

A0600–8–14 DAPE

SYSTEM NAME:

Uniformed Services Identification Card.

SYSTEM LOCATION:

Headquarters, Department of the Army, Major Army commands, staff and field operating agencies, installations and activities, Army-wide. Official mailing addresses are published as an appendix to the Army's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty, Reserve, National Guard and retired members of the uniformed services and their family members; Department of the Army civilian employees assigned overseas or residing on a military installation within the United States and their authorized family members; eligible foreign military personnel and their family members; civilian employees under contract with the Department of Defense, Uniformed Services and other government agencies and their authorized family members; Red Cross personnel authorized by the Geneva Convention to accompany the Armed Forces; as well as other civilian and uniformed service members found eligible in accordance with eligibility requirements.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for a Uniformed Services Identification Card/DEERS Enrollment, service members name, Social Security Number, unit address and phone number, date of birth, age, blood type, marital status, family member's name, age, home address and phone number.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; Army Regulation 600–8–14, Identification Cards for Members of The Uniformed Services, Their Family Members, and Other Eligible Personnel; and E.O. 9397 (SSN).

PURPOSE(S):

Provide a record of identification cards issued and DEERS enrollment to ensure positive identification of personnel authorized privileges and service on military installations and/or activities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Use' set forth at the beginning of the Army's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders; magnetic tapes; discs; cassettes; computer printouts, and microfiche.

RETRIEVABILITY:

By service members' name and Social Security Number; by applicant's name and Social Security Number.

SAFEGUARDS:

Records are maintained in secured buildings and are accessed only by authorized personnel who are trained and cleared for access, in the performance of their duties. Established procedures for the control of computer access are in place and periodically reviewed and updated to prevent unwarranted access.

RETENTION AND DISPOSAL:

Applications for military identification cards are destroyed after 1 year. Uniformed services identification cards are destroyed when no longer needed for current operations. Registers are destroyed after 5 years, unless they are bound which are maintained for 5 years after last entry then destroyed.

Uniformed Services identification cards for family members and other eligible personnel are destroyed when voided, replaced or is no longer valid (has expired).

SYSTEM MANAGER(S) AND ADDRESS:

Commander, U.S. Total Army Personnel Command, 200 Stovall Street, Alexandria, VA 22332–0400.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the issuing office where the individual obtained the identification card or to the system manager.

Individual should provide the full name, number of the identification card, current address, and signature.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the issuing officer at the appropriate installation.

Individual should provide the full name, number of the identification card, current address, and signature.

CONTESTING RECORD PROCEDURES:

The Army rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records and reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–12057 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF DEFENSE

Department of the Army

Privacy Act of 1974; System of Records

AGENCY: Department of the Army, DoD.

ACTION: Notice to amend a system of records.

SUMMARY: The Department of the Army is amending a system of records notice in its existing inventory of records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: This proposed action will be effective without further notice on June 14, 2002 unless comments are received which result in a contrary determination.

ADDRESSES: Records Management Division, U.S. Army Records Management and Declassification Agency, ATTN: TAPC–PDD–RP, Stop 5603, 6000 6th Street, Ft. Belvoir, VA 22060–5603.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Thornton at (703) 806–4390 or DSN 656–4390 or Ms. Christie King at (703) 806–3711 or DSN 656–3711.

SUPPLEMENTARY INFORMATION: The Department of the Army systems of records notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the records system being amended are set forth below followed by the notice, as amended, published in its entirety. The proposed amendments are not within the purview of subsection (r) of the Privacy Act of 1974, (5 U.S.C. 552a), as amended, which requires the submission of a new or altered system report.

Dated: May 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

A0715rrr USAEUR

SYSTEM NAME:

DoD Technical Experts/Troop Care/ Analytical Support Contractor Employees (October 9, 2001, 66 FR 51401).

CHANGE:

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Records are kept 6 years and 3 months after the completion of the contract.'

* * * * *

A0715rrr USAEUR

SYSTEM NAME:

DoD Technical Experts/Troop Care/ Analytical Support Contractor Employees.

SYSTEM LOCATION:

Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, ATTN: Department of Defense Contractor Personnel Office, APO AE 09100–9150.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for Troop Care Status Accreditation or Technical Expert Status Accreditation pursuant to an Exchange of Notes, Numbers 146 and 147, dated March 27, 1998, and Exchanges of Notes, Numbers 866 and 883, dated June 29, 2001, in accordance with Articles 72 and 73 of the German Supplementary Agreement to the NATO Status of Forces Agreement.

CATEGORIES OF RECORDS IN THE SYSTEM:

Individuals' name; Social Security Number; passport number; citizenship; local address; applications for status accreditation with substantiating documents, evaluations, correspondence and responses thereto; applications for status accreditation; questions pertaining to entitlement to status accreditation, allowances, privileges or other benefits granted as a result of accreditation; revocation of accreditation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 3013, Secretary of the Army; NATO SOFA Supplementary Agreement, Article 72 and 73 between the United States of America and the Federal Republic of Germany; and E.O. 9397 (SSN).

PURPOSE(S):

To ensure compliance with the established bilateral implementation of Articles 72 and 73 of the Supplementary Agreement to the NATO Status of Forces Agreement. These two Articles govern the use in Germany of DoD contractor employees as Technical Experts, Troop Care, and Analytical Support providers.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information from this system may be disclosed to officials of the Federal Republic of Germany (the host nation) and its various States (Laender) responsible for the enforcement of tax, labor and other host nation law.

Information from this system may be disclosed to officials of the Federal Republic of Germany and its various States (Laender) responsible for the implementation of the Exchange of Notes.

The DoD 'Blanket Routine Uses' published at the beginning of the Army's compilation of systems of records notices also apply to this system.

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system.

STORAGE:

Paper records in file folders and on electronic storage media.

RETRIEVABILITY:

By individual's surname or Social Security Number.

SAFEGUARDS:

Records are maintained in locked file cabinets and/or in locked offices in buildings employing security guards or on military installations protected by military police patrols.

RETENTION AND DISPOSAL:

Records are kept 6 years and 3 months after the completion of the contract.

SYSTEMS MANAGER AND ADDRESS:

Headquarters, U.S. Army Europe and Seventh Army, ATTN: Unit 29150, Director, Department of Defense Contractor Personnel Office, APO AE 09100–9150.

NOTIFICATION PROCEDURE:

Individuals seeking to determine if information about themselves is contained in the record system should address written inquiries to the Director, Department of Defense Contractor Personnel Office, Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, APO AE 09100–9150.

Individual should provide his/her full name, the address and telephone number, and any other personal data that would assist in identifying records pertaining to him/her.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Director, Department of Defense Contractor Personnel Office, Headquarters, U.S. Army Europe and Seventh Army, Unit 29150, APO AE 09100–9150.

Individual should provide his/her full name, the address and telephone number, and any other personal data that would assist in identifying records pertaining to him/her.

CONTESTING RECORD PROCEDURES:

The Army's rules for accessing records, and for contesting contents and appealing initial agency determinations are contained in Army Regulation 340–21; 32 CFR part 505; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

From the individual, Army records, and other public and private records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–12058 Filed 5–14–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF DEFENSE

National Security Agency

Privacy Act of 1974; System of Records

AGENCY: National Security Agency/ Central Security Service, DOD.

ACTION: Notice to add a system of records.

SUMMARY: The National Security Agency/Central Security Service proposes to add a system of records notice to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective on June 14, 2002 unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the National Security Agency, Office of Policy, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

FOR FURTHER INFORMATION CONTACT: Ms. Anne Hill at (301) 688–6527.

SUPPLEMENTARY INFORMATION: The National Security Agency's record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The proposed system report, as required by 5 U.S.C. 552a(r) of the Privacy Act, was submitted on May 7, 2002, to the House Committee on Government Reform, the Senate Committee on Governmental Affairs, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated February 8, 1996, (61 FR 6427, February 20, 1996).

Dated: May 8, 2002.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

GNSA 19

SYSTEM NAME:

Child Development Services.

SYSTEM LOCATION:

National Security Agency/Central Security Service, Ft. George G. Meade, MD 20755–6000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Children and their sponsors (NSA/ CSS civilian employees, military assignees, non-appropriated fund instrumentality (NAFI) personnel, employees of other Federal agencies, and contractor employees); and individual day care providers at the NSA/CSS day care facility.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records kept on the child include enrollment information and attendance records; medical care authorizations; names of family members; preferred activities and foods; photos; emergency forms and release authorizations; child care information as reported by the sponsor; physical health information, including allergies; custody paperwork (if applicable); special needs instructions; progress and report cards; and incident reports of injuries.

Records kept on the sponsor include: sponsor's name, grade or rank; Social Security Number; home and work addresses; home and work telephone numbers; contact information; employment affiliation (civilian, military, other, etc.); application identification number; photos; and comments/remarks related to the sponsor's status on the waiting list. Similar information is kept on other family members, as provided by the sponsor.

Records kept on day care providers and other contractors include: name; home and work addresses; home, cellular, and work telephone numbers; email addresses; citizenship; date and place of birth; social security number; physical characteristics; military service records; previous employment/duty/ volunteer experience; results of local and national security/police file checks; drug, alcohol use, and mental health information; and vendor employment application forms, which include references, automobile operator's and educational information.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Agency Act of 1959, 50 U.S.C. 402 note (Pub.L. 86–36) and 403 (Pub. L. 80–253); 5 U.S.C. 301, Departmental Regulations; DoD Instruction 6060.2, Child Development Programs; NSA/CSS Reg. No. 30–34, Child Development Programs; and E.O. 9397 (SSN).

PURPOSE(S):

To develop childcare programs that meets the needs of NSS/CSS employees and their families; provide child and family program eligibility and background information; record consent for access to emergency medical care and information. Information may also be used to verify health status of children, verify immunizations, note special program requirements, compliance with USDA food standards.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The DoD 'Blanket Routine Uses' set forth at the beginning of the NSA/CSS' compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are maintained in paper files and on electronic mediums.

RETRIEVABILITY:

By parent or child's name, and Social Security Number.

SAFEGUARDS:

The NSA/CSS Fort Meade facility is secured by a series of guarded pedestrian gates and checkpoints. Access to the facility is limited to security cleared personnel and escorted visitors only. Within the facility itself, access to paper and computer printouts is controlled by limited-access facilities and lockable containers. Access to electronic mediums is controlled by computer password protection.

Access to information is limited to those individuals specifically authorized and granted access by NSA/ CSS regulations. For records on the computer system, access is controlled by passwords and limited to authorized personnel only.

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RETENTION AND DISPOSAL:

Disposition pending (until NARA has approved a retention and disposal schedule for these records, the records will be treated as permanent).

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of Policy, National Security Agency/Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether records about themselves are contained in this record system should address written inquires to the Deputy Director of Policy, National Security Agency/Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should include the parent or child's name, along with his or her Social Security Number.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this record system should address written inquiries to the Deputy Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

Written inquiries should include the parent or child's name, along with his or her Social Security Number.

CONTESTING RECORD PROCEDURES:

The NSA/CSS rules for accessing records, and for contesting contents and appealing initial determinations are published at 32 CFR part 322 or may be obtained from the Deputy Director of Policy, National Security Agency/ Central Security Service, 9800 Savage Road, Suite 6248, Ft. George G. Meade, MD 20755–6248.

RECORD SOURCE CATEGORIES:

Individuals themselves; parents or guardians of individuals enrolled in day care programs; NSA personnel; medical providers who have provided information about family members needing or receiving care; and contractor personnel and/or teachers.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 02–12055 Filed 5–14–02; 8:45 am]

BILLING CODE 5001–08–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

SUMMARY: The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: Interested persons are invited to submit comments on or before July 15, 2002.

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Leader, Regulatory Information Management Group, Office of the Chief Information Officer, publishes that notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. OMB invites public comment.

The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on the respondents, including through the use of information technology.

Dated: May 8, 2002.

John Tressler,

Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Educational Research and Improvement

Type of Review: Revision.
Title: National Assessment for Education Statistics: 2003.
Frequency: Annually.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs; Not-for-profit institutions.
Reporting and Recordkeeping Hour Burden:
Responses: 658,800.
Burden Hours: 169,084.
Abstract: The 2003 National Assessment of Educational Progress (NAEP) Assessment will encompass the two curricular areas of Reading and Mathematics. Since 1984, NAEP has obtained descriptive information from three different sets of respondents: students, teachers, and school administrators. Questionnaires are administered to students at grades 4, 8, and 12, to teachers at grades 4 and 8, to school administrators at grades 4, 8, and 12. This process continues in 2003.

The student background questionnaires consist of two types of questions: (1) Core questions and (2) subject-specific background questions.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2032. When you access the information collection, click on "Download Attachments" to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW, Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivian_reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements should be directed to Kathy Axt at (540) 776–7742. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–12081 Filed 5–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507(j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 13, 2002. A regular clearance process is also beginning. Interested persons are invited to submit comments on or before July 15, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Karen Lee, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the internet address *Karen_F._Lee@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents, including through the use of information technology.

Dated: May 10, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of the Undersecretary

Type of Review: Revision.
Title: Evaluation of the Partnership Grants Program, Title II, Higher Education Act.
Abstract: The purpose of the Title II Partnership Grants Program evaluation is to assess the impact, strengths and weaknesses of the Partnership Grants Program, one of the three programs authorized in Title II of the Higher Education Act (HEA) Amendments of 1998. This request, to revise the Title II evaluation to include a school/ university partnership survey for elementary school principals, will assist the U.S. Department of Education in understanding the characteristics of collaborations between public elementary schools and institutions of higher education (IHEs) that are participating in Title II partnership activities, as well as the assocations between school/IHE collaborations and school-level student achievement outcomes.

Additional Information: This survey is an essential component of the evaluation of the Title II HEA Partnership Grants Program and has been designed to address the Administration's interest in understanding the associations between school/university partnership activities and student assessments at the school level. Without an emergency clearance, the data collection would have to be postponed until Fall, 2002, which would have two adverse consequences. First, it would require a change in the target year of inquiry to be the 2001–2002 school year, which would likely increase the sampling frame substantially. This would, therefore, have a serious effect on survey costs. Second, this survey is designed to be longitudinal. Delaying the first data collection until Fall, 2002 would mean that no data would be available about the earliest stages of partnership activities. This will make it difficult to describe the evolution of partnership activities from their earliest stages forward. Clearance is needed by May 13, 2002 to ensure that survey data can be collected before the end of the 2001–02 school year this Spring/Summer.

Frequency: Biennially.
Affected Public: State, Local, or Tribal Gov't, SEAs or LEAs.
Reporting and Recordkeeping Hour Burden:
Responses: 800.
Burden Hours: 178.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 2034. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the internet address *OCIO_RIMG@ed.gov* or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Kathy Axt at her internet address *Kathy.Axt@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–12090 Filed 5–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Acting Leader, Regulatory Information Management, Office of the Chief Information Officer, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1995.

DATES: An emergency review has been requested in accordance with the Act (44 U.S.C. Chapter 3507 (j)), since public harm is reasonably likely to result if normal clearance procedures are followed. Approval by the Office of Management and Budget (OMB) has been requested by May 29, 2002. A regular clearance process is also beginning. Interested persons are

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invited to submit comments on or before July 15, 2002.

ADDRESSES: Written comments regarding the emergency review should be addressed to the Office of Information and Regulatory Affairs, Attention: Lauren Wittenberg, Desk Officer: Department of Education, Office of Management and Budget; 725 17th Street, NW., Room 10235, New Executive Office Building, Washington, DC 20503 or should be electronically mailed to the Internet address *Lauren_Wittenberg@omb.eop.gov.*

SUPPLEMENTARY INFORMATION: Section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Chapter 35) requires that the Director of OMB provide interested Federal agencies and the public an early opportunity to comment on information collection requests. The Office of Management and Budget (OMB) may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Leader, Information Management Group, Office of the Chief Information Officer, publishes this notice containing proposed information collection requests at the beginning of the Departmental review of the information collection. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Summary of the collection; (4) Description of the need for, and proposed use of, the information; (5) Respondents and frequency of collection; and (6) Reporting and/or Recordkeeping burden. ED invites public comment. The Department of Education is especially interested in public comment addressing the following issues: (1) Is this collection necessary to the proper functions of the Department; (2) will this information be processed and used in a timely manner; (3) is the estimate of burden accurate; (4) how might the Department enhance the quality, utility, and clarity of the information to be collected; and (5) how might the Department minimize the burden of this collection on respondents', including through the use of information technology.

Dated: May 10, 2002.

Joseph Schubart,

Acting Leader, Regulatory Information Management, Office of the Chief Information Officer.

Office of Postsecondary Education

Type of Review: Extension.

Title: Strengthening Historically Black Colleges and Universities Program.

Abstract: The information is required of institutions of higher education designated as Historically Black Colleges and Universities and Qualified Graduate Programs. Title III, Part B of the Higher Education Act of 1965, as amended. This information will be used for the evaluation process to determine whether proposed activities are consistent with the legislation and to determine dollar share of congressional appropriation.

Additional Information: Administrative requirements have forced this collection to be processed under an emegency schedule. Public comments are due to OMB by May 29, 2002. The regular, three-year clearance public comments are due to the Department of Education by July 29, 2002.

Frequency: Annually.

Affected Public: Not-for-profit institutions; State, Local, or Tribal Gov't, SEAs or LEAs.

Reporting and Recordkeeping Hour Burden:

Responses: 117.

Burden Hours: 2,106.

Requests for copies of the proposed information collection request may be accessed from *http://edicsweb.ed.gov,* by selecting the "Browse Pending Collections" link and by clicking on link number 1576. When you access the information collection, click on "Download Attachments " to view. Written requests for information should be addressed to Vivian Reese, Department of Education, 400 Maryland Avenue, SW., Room 4050, Regional Office Building 3, Washington, DC 20202–4651 or to the e-mail address *vivan.reese@ed.gov.* Requests may also be electronically mailed to the Internet address OCIO_RIMG@ed.gov or faxed to 202–708–9346. Please specify the complete title of the information collection when making your request.

Comments regarding burden and/or the collection activity requirements, contact Joseph Schubart at (202) 708–9266 or via his Internet address *Joe.Schubart@ed.gov.* Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339.

[FR Doc. 02–12091 Filed 5–14–02; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–02GO92008]

Solicitation for Financial Assistance Applications; Inventions and Innovation Program

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Industrial Technologies (OIT) is funding a competitive grant program entitled the Inventions and Innovation (I&I) Program. The goals of the I&I Program are to improve energy efficiency through the promotion of innovative ideas and inventions that have a significant, potential energy impact and a potential, future commercial market. The following mission focus industries, comprised of the most energy intensive industries in the U.S. manufacturing sector, are of particular interest to the Program: Agriculture, Aluminum, Chemicals, Forest products, Glass, Metal-casting, Mining, Petroleum, and Steel. Category 1 and category 2 applications are open to all the mission focus industries and the building, transportation, and power sectors.

DATES: DOE issued the solicitation on April 29, 2002. The deadline for receipt of applications is 3 p.m. Mountain Time on June 28, 2002.

ADDRESSES: All Golden Field Office (GO) solicitations will be posted on the Industry Interactive Procurement System (IIPS) Web Site at *http://e-center.doe.gov;* however, you may access them, along with IIPS instructions, through links on the GO Web Site at: *http://www.golden.doe.gov/businessopportunities.html* by clicking on "Solicitations." IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system.

Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at *IIPS_HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Margo Gorin, Contract Specialist, at go_I&I@nrel.gov.

SUPPLEMENTARY INFORMATION:

Solicitation Specifications

Eligibility requirements include the following: (1) Individuals that are U.S. citizens, either native-born or naturalized; (2) small businesses (as defined by the Small Business Administration) that are U.S. owned, as defined in 10 CFR Part 600.501; or (3) institutions of higher learning located in the U.S. Individual inventors and very small businesses (15 or fewer employees) are especially encouraged to participate. More than one application may be submitted by an applicant for different innovations. However, funding will be limited to one award per applicant, per cycle. Also more than one organization may be involved in an application as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the I&J Program is 81.036. Cost sharing by applicants and/or cooperating participants is not required but highly encouraged. In addition to direct financial contributions, cost sharing can include beneficial services or items such as manpower, equipment, consultants, and computer time that are allowable in accordance with applicable cost principles.

The Golden Field Office has been assigned the responsibility of issuing the solicitation and administering the awards. Ideas that have a significant energy savings impact and future commercial market potential are chosen for financial support through the competitive solicitation process. The I&I Program will provide financial assistance of up to $40,000 for Category 1 and up to $200,000 for Category 2 to applications that fall within the "conceptual" and "developmental" stages of development, respectively. To be considered for a Category 2 award, a bench-scale model and/or other preliminary investigations must be complete. Each award may cover a project period of up to one year for Category 1 and up to two years for Category 2. In addition to financial assistance, the I&I Program offers technical guidance and commercialization support to successful applicants through the Resource Centers for Innovation (RCI).

A selection of former projects funded by the I&I Program that have reached commercial markets include the following:

- Meta-Lax Stress Relief Equipment offers distinct advantages over conventional heat treatment methods. It uses less energy, is portable, can handle any size metal part, and treats metal stress in hours versus days.
- Aero Cylinder Technology replaces conventional cylinders by combining air spring bellows into assemblies for use on machines (such as punch presses) to control motion and large masses. The air springs act as counter balancers and press cushioners to eliminate alignment problems. This proper alignment reduces downtime and compressed air losses, resulting in significant energy savings.
- Electro-Optic Inspection of Heat Exchangers is a laser-based, nondestructive evaluation system for inspecting heat exchanger tubing for internal corrosion, erosion, scale buildup, and deformation. Benefits to petrochemical, pulp and paper, and power-generation plants include reduced downtime and increased efficiency.
- Hydrodynamic Multi-Deflection Pad Bearings optimize bearing operation in high-speed, combined heat and power turbines, high-load electric motors or gear boxes, air or gas compressors, and air conditioning refrigeration equipment. Energy loss due to friction is reduced up to forty-percent by using fluids as a wedge between pads and moving parts.

Availability of Funds for FY 2003

DOE is announcing the availability of up to $2.7 million dollars in agreement funds for Fiscal Year 2003. The awards will be made through a competitive solicitation. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado on April 29, 2002.

Matthew A. Barron,

Acting Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 02–12098 Filed 5–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[Number DE–PS36–02GO92009]

Solicitation for Financial Assistance Applications; National Industrial Competitiveness Through Energy, Environment, and Economics (NICE^3) Program

AGENCY: Golden Field Office, Department of Energy (DOE).

ACTION: Notice of solicitation for financial assistance applications.

SUMMARY: The Department of Energy's Office of Industrial Technologies (OIT) is funding a competitive grant program entitled the National Industrial Competitiveness Through Energy, Environment, and Economics (NICE^3) Program. The goal of the NICE^3 Program is to advance U.S. competitiveness through commercial demonstration of energy efficient and clean production manufacturing and industrial technologies in industry. This is accomplished by providing cost-shared, financial assistance to state and industry partnerships. The following focus industries, which are the dominant energy users and waste generators in the U.S. manufacturing sector, are of particular interest to the DOE program: agriculture, aluminum, chemicals, forest products, glass, metal-casting, mining, petroleum, and steel.

DATES: DOE issued the solicitation on May 1, 2002. The deadline for receipt of applications is 3:00 pm Mountain Time on June 28, 2002.

ADDRESSES: The formal solicitation document will be disseminated electronically as Solicitation Number DE–PS36–02GO92009, National Industrial Competitiveness Through Energy, Environment, and Economics (NICE^3) Program. Access DOE Golden Field Office Home Page at *http://www.golden.doe.gov/businessopportunities.html,* click on "Solicitations", and then access the solicitation number. The Golden Home Page will also provide instructions on registering and submitting applications in the Industry Interactive Procurement System (IIPS) web site. The Solicitation can also be obtained directly through IIPS at *http://e-center.doe.gov* by browsing opportunities by Contracting Activity. DOE will not issue paper copies of the solicitation. IIPS provides the medium for disseminating solicitations, receiving financial assistance applications, and evaluating the applications in a paperless environment. Completed applications are required to be submitted via IIPS. Individuals who have the authority to

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enter their company into a legally binding contract/agreement and intend to submit proposals/applications via the IIPS system must register and receive confirmation that they are registered prior to being able to submit an application on the IIPS system. An IIPS "User Guide for Contractors" can be obtained by going to the Golden Field Office Homepage at *http://www.golden.doe.gov/businessopportunities.html*. Questions regarding the operation of IIPS may be e-mailed to the IIPS Help Desk at IIPS_*HelpDesk@e-center.doe.gov* or call the help desk at (800) 683–0751.

FOR FURTHER INFORMATION CONTACT: Margo Gorin, Contract Specialist, at *go_I&I@nrel.gov*.

SUPPLEMENTARY INFORMATION:

Solicitation Specifications: To be eligible to apply for this financial assistance program, applicants must be a state agency in partnership with an industry partner(s) or an industry partner(s) who has coordinated state agency endorsement. Endorsement, here, refers to the act of a state(s): (1) Recommending the proposed technology demonstration, (2) waiving its role as the primary applicant, and (3) assigning that role to industry via signature on the "State Endorsement Form." The "State Endorsement Form" must be reprinted on official state agency letterhead for signature by a state official, in cases where state agencies decline to be the primary applicant. State agencies include state energy, state environmental, state business development, or any state agency as defined by 10 CFR 600.202. In addition to the 50 states, the District of Columbia, the U.S. Virgin Islands, the Commonwealth of Puerto Rico, any territory or possession of the U.S., and all federally-recognized Indian tribes are eligible as described in 10 CFR 600.202. Applicants are not limited in the number of applications they can submit, provided that multiple applications are not submitted for the same project. Also more than one organization may be involved in an application, as long as the lead organization and lead financial assistance management responsibilities are defined. The Catalog of Federal Domestic Assistance number assigned to the NICE[3] Program is 81.105. Non-federal cost share from a combination of state and industrial partner sources for a single award must be at least 50% of the total cost of the project (if $500,000 in federal funding is requested, cost-share must equal at least $500,000. Cash, equipment, labor, and in-kind contributions are all allowable as cost share as defined in 10 CFR 600.123 and 600.224).

The Golden Field Office has been assigned the responsibility of issuing the solicitation, and the awards will be administered by DOE's Regional Offices. The Program's intent is to encourage highly leveraged funding to get an innovative project commercially demonstrated in industry by the end of the award period. The NICE[3] Program will provide financial assistance for the first production-scale, commercial demonstration of an industrial process. To be ready for commercial demonstration, all research and development activities must already be completed with successful test results. By the end of the financial assistance project period, an industrial scale, commercial demonstration must be completed in the U.S. At the end of the project, the technology/process must be ready for commercialization. Grants range up to $525,000. A 50% cost share is required. DOE anticipates awarding up to 4 awards, and each award may cover a project period of up to 3 years. No additional funding of applications for continuation of work beyond the award period is envisioned or planned by DOE.

A selection of former projects funded by the NICE[3] Program include the following:

- AAP St. Mary's in Ohio is improving cost of sales and reducing waste and pollution by recycling aluminum on-site.
- Beta Control Systems in Oregon has developed a closed loop hydrochloric acid recovery system for small to mid-size steel companies by integrating innovative materials with automatic controls.
- Brittany Dyeing & Printing in Massachusetts has developed a new process that increases productivity and energy efficiency in fabric finishing.
- Caterpillar in Illinois is recycling paint overspray in heavy construction equipment.
- ChemStone Inc. of South Carolina is demonstrating a newly developed patented chemistry for the pulp and paper industry that results in better fiber breakdown, higher pulp yields, and cleaner pulp when added to the pulping process.

Availability of Funds for FY 2003: DOE is announcing the availability of up to $2 million dollars in grant agreement funds for Fiscal Year 2003. The awards will be made through a competitive solicitation process. DOE reserves the right to fund in whole or in part any, all, or none of the proposals submitted in response to this notice.

Issued in Golden, Colorado on May 1, 2002.

Matthew A. Barron,

Acting Director, Office of Acquisition and Financial Assistance, Golden Field Office.

[FR Doc. 02–12099 Filed 5–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

[FE Docket Nos. 02–14–NG, 02–16–NG, 02–17–NG, 02–21–NG, 02–22–NG, 00–80–NG, 95–27–NG, 02–24–NG, 02–18–NG]

Office of Fossil Energy; New York State Electric & Gas Corporation, et. al.; Orders Granting and Vacating Authority To Import and Export Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of orders.

SUMMARY: The Office of Fossil Energy (FE) of the Department of Energy gives notice that during April 2002, it issued Orders granting and vacating authority to import and export natural gas. These Orders are summarized in the attached appendix and may be found on the FE Web site at *http://www.fe.doe.gov* (select gas regulation), or on the electronic bulletin board at (202) 586–7853. They are also available for inspection and copying in the Office of Natural Gas & Petroleum Import & Export Activities, Docket Room 3E–033, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The Docket Room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on May 9, 2002.

Yvonne Caudillo,

Acting Manager, Natural Gas Regulation, Office of Natural Gas & Petroleum, Import & Export Activities, Office of Fossil Energy.

Appendix—Orders Granting and Vacating Import/Export Authorizations

Order No.	Date issued	Importer/exporter Fe docket No.	Import volume	Export volume	Comments
1764	4–1–02	New York State Electric & Gas Corporation—02–14–NG.	50 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on July 1, 2002, and extending through June 30, 2004.

Order No.	Date issued	Importer/exporter Fe docket No.	Import volume	Export volume	Comments
1766	4–18–02	NJR Energy Services Company—02–16–NG.	200 Bcf		Import and export a combined total of natural gas from and to Canada, beginning on May 1, 2002, and extending through April 30, 2004.
1767	4–18–02	Entergy-Koch Trading, LP—02–17–NG.	800 Bcf		Import and export a combined total of natural gas from and to Canada and Mexico, beginning on May 1, 2002, and extending through April 30, 2004.
1768	4–18–02	Alcoa Inc.—02–21–NG	15 Bcf		Import natural gas from Canada, beginning on May 1, 2002, and extending through April 30, 2004.
1769	4–18–02	WGR Canada, Inc.—02–22–NG.	73 Bcf	73 Bcf	Import and export natural gas from and to Canada, beginning on July 14, 2002, and extending through July 13, 2004.
1639–A	4–22–02	Entergy-Koch Trading, LP (the successor to Koch Energy Trading, Inc.)—00–80–NG.			Order vacating blanket import authority.
1047–B	4–22–02	Entergy-Koch Trading, LP (The successor to Koch Energy Trading, Inc.)—95–27–NG.			Order vacating blanket import authority.
1770	4–22–02	Newport Northwest, L.L.C.—02–24–NG.	127.75 Bcf	127.75 Bcf	Import and export natural gas from and to Canada, beginning on November 1, 2002, and extending through October 30, 2004.
1771	4–29–02	UBS AG, London Branch—02–18–NG.	700 Bcf, 700 Bcf		Import and export a combined total of natural gas from and to Canada, and import and export a combined total of natural gas from and to Mexico, beginning on April 29, 2002, and extending through April 28, 2004.

[FR Doc. 02–12101 Filed 5–14–02; 8:45 am]

BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER99–967–001, et al.]

Wisvest-Connecticut, L.L.C., et al.; Electric Rate and Corporate Regulation Filings

May 9, 2002.

The following filings have been made with the Commission. The filings are listed in ascending order within each docket classification.

1. Wisvest-Connecticut, L.L.C.

[Docket No. ER99–967–001]

Take notice that on May 3, 2002, Wisvest-Connecticut, L.L.C. (Wisvest) filed a triennial update to its market rate tariff of general applicability under which it sells capacity, energy and ancillary services at market-based rates.

Comment Date: May 24, 2002.

2. Otter Tail Power Company

[Docket Nos. ER02–912–003]

Take notice that on May 3, 2002, Otter Tail Power Company tendered for filing with the Federal Energy Regulatory Commission (Commission) the compliance filing required by the Commission's April 5, 2002 order in Docket No. ER02–912–000. Copies of this filing were served on all parties included on the Commission's official service list established in this proceeding.

Comment Date: May 24, 2002.

3. MidAmerican Energy Company

[Docket No. ER02–1681–000]

Take notice that on May 3, 2002, MidAmerican Energy Company (MidAmerican) filed an amendment to its April 30, 2002 filing in the above-captioned proceeding.

Comment Date: May 24, 2002.

4. Pacific Gas and Electric Company

[Docket No. ER02–1704–000]

Take notice that on May 3, 2002, Pacific Gas and Electric Company (PG&E) tendered for filing Amendment No. 7 to PG&E Rate Schedule FERC No. 136, PG&E-Sacramento Municipal Utility District (SMUD) Interconnection Agreement. SMUD requests that the agreement be made effective before June 1, 2002.

Copies of this filing were served upon SMUD, the California Independent System Operator Corporation and the California Public Utilities Commission.

Comment Date: May 24, 2002.

5. Southwest Power Pool, Inc.

[Docket No. ER02–1705–000]

Take notice that on May 3, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an unexecuted interconnection agreement with Duke Energy Leavenworth (Duke) under the SPP Open Access Transmission Tariff. SPP requests an effective date of April 3, 2002 for this interconnection agreement.

A copy of the filing was served on representatives of Duke and other affected parties.

Comment Date: May 24, 2002.

6. PJM Interconnection, L.L.C.

[Docket No. ER02–1706–000]

Take notice that on May 3, 2002, PJM Interconnection, L.L.C. (PJM), filed amendments to the PJM Open Access Transmission Tariff and the Amended and Restated PJM Operating Agreement to amend the rules under which PJM accepts for monitoring and dispatch control local lower voltage transmission facilities not currently under PJM's monitoring responsibility and dispatch control and to provide a transition process for local lower voltage transmission facilities already under PJM monitoring and dispatch control that do not meet PJM reliability planning criteria set forth in the PJM manuals to become compliant with such criteria. Copies of this filing were served upon all PJM members and each state electric utility regulatory commission in the PJM region. PJM requests an effective date of June 1, 2002 for the amendments.

Comment Date: May 24, 2002.

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7. Southwest Power Pool, Inc.

[Docket No. ER02–1707–000]

Take notice that on May 3, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing a revised service agreement for Firm Point-to-Point Transmission Service with Southwest Public Service Company (Transmission Customer). SPP seeks an effective date of March 1, 2002 for this service agreement.

The Transmission Customer was served with a copy of this filing.

Comment Date: May 24, 2002.

8. Maine Public Service Company

[Docket No. ER02–1708–000]

Take notice that on May 3, 2002, Maine Public Service Company (Maine Public) submitted for filing an executed Service Agreement for Network Integration Transmission Service under Maine Public's open access transmission tariff with Houlton Water Company.

Comment Date: May 24, 2002.

9. Southwest Power Pool, Inc.

[Docket No. ER02–1709–000]

Take notice that on May 2, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing two executed service agreements for Firm Point-to-Point Transmission Service with Southwest Public Service Company d.b.a. Xcel Energy (Transmission Customer). SPP seeks an effective date of January 1, 2003 for these service agreements.

The Transmission Customer was served with a copy of this filing.

Comment Date: May 23, 2002.

10. Southwest Power Pool, Inc.

[Docket No. ER02–1710–000]

Take notice that on May 2, 2002, Southwest Power Pool, Inc. (SPP) submitted for filing an executed service agreement for Firm Point-to-Point Transmission Service with Texas New Mexico Power Company (Transmission Customer). SPP seeks an effective date of April 15, 2002 for this service agreement.

The Transmission Customer was served with a copy of this filing.

Comment Date: May 23, 2002.

11. Entergy Services, Inc.

[Docket No. ER02–1711–000]

Take notice that on May 2, 2002, Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States, Inc., Entergy Louisiana, Inc., Entergy Mississippi, Inc., and Entergy New Orleans, Inc., (collectively, the Entergy Operating Companies) tendered for filing a Non-Firm Point-To-Point Transmission Service Agreement and a Short-Term Firm Point-To-Point Transmission Service Agreement both between Entergy Services, Inc., as agent for the Entergy Operating Companies, and J. Aron & Company.

Comment Date: May 23, 2002.

12. Somerset Power LLC

[Docket No. ER02–1712–000]

Take notice that on May 3, 2002, Somerset Power LLC filed with the Federal Energy Regulatory Commission (Commission) pursuant to section 205 of the Federal Power Act, Part 35 of the Commission's regulations, and Commission Order No. 614, a request that the Commission (1) accept for filing a revised market-based rate tariff; (2) waive any obligation to submit a red-lined version of the currently effective tariff; and (3) grant any waivers necessary to make the revised tariff sheets effective as soon as possible, but no later than 60 days from the date of this filing. Somerset's proposed tariff revisions merely seek to properly designate, update and conform the tariff to a format like those that the Commission has approved for Somerset's affiliates.

Comment Date: May 24, 2002.

13. South Carolina Electric & Gas Company

[Docket No. ER02–1713–000]

Take notice that on May 3, 2002, South Carolina Electric & Gas Company (SCE&G) submitted a firm point-to-point transmission service agreement and a non-firm transmission service agreement (the Agreements) establishing Progress Ventures, Inc. (Progress Ventures) as a customer under the terms of SCE&G's Open Access Transmission Tariff.

SCE&G requests an effective date of April 4, 2002 for the Agreements. Copies of this filing were served upon Progress Ventures and the South Carolina Public Service Commission.

Comment Date: May 24, 2002.

14. LTV Steel Mining Company

[Docket No. ER02–1714–000]

Take notice that on May 3, 2002, LTV Steel Mining Company (LTVSMC) tendered for filing a notice of cancellation of its Rate Schedule FERC No. 1 and Rate Schedule FERC No. 2 under which it provided service to Minnesota Power (MP) and MP's wholly-owned indirect subsidiary, Rainy River Energy Corporation—Taconite Harbor (RRTH). The rate schedules being cancelled authorized LTVSMC to interconnect with, sell power at market-based rates to and provide temporary interconnection and transmission service to MP or its affiliate RRTH. LTVSMC requests that its notice of cancellation be accepted effective on or about May 1, 2002.

Comment Date: May 24, 2002.

15. American Electric Power

[Docket No. ER02–1715–000]

Take notice that American Electric Power Service Corporation, on May 2, 2002, tendered for filing with the Commission a Facilities, Operation and Maintenance Agreement (Facility Agreement) dated September 1, 2001, between Ohio Power Company (d/b/a AEP), South Central Power Company (hereinafter called SCP) and Buckeye Power, Inc. (hereinafter called Buckeye).

The Facility Agreement provides for the establishment of a new delivery point, pursuant to the provisions of the Power Delivery Agreement between Ohio Power, Buckeye, The Cincinnati Gas & Electric Company, The Dayton Power and Light Company, Monongahela Power Company, Columbus Southern Power Company and Toledo Edison Company, dated January 1, 1968. AEP requests an effective date of September 1, 2001 for the Facility Agreement.

EP states that copies of its filing were served upon SCP, Buckeye and the Public Utilities Commission of Ohio.

Comment Date: May 23, 2002.

16. Sierra Pacific Power Company, Nevada Power Company

[Docket No. ER02–1716–000]

Take notice that on May 2, 2002 Sierra Pacific Power Company and Nevada Power Company (jointly Operating Companies) tendered for filing a Service Agreements (Service Agreements) with Allegheny Energy Supply for Short-Term Firm Point-to-Point Transmission Service and UBS AG, London Branch for Non-Firm and Short-Term Firm Point-to-Point Transmission Service under Sierra Pacific Resources Operating Companies FERC Electric Tariff, First Revised Volume No. 1, Open Access Transmission Tariff (Tariff).

The Operating Companies are filing the executed Service Agreement with the Commission in compliance with Sections 13.4 and 14.4 of the Tariff and applicable Commission regulations. The Operating Companies (Attachment E) to the Tariff, which is an updated list of current subscribers. The Operating Companies request waiver of the Commission's notice requirements to permit an effective date of May 3, 2002 for Attachment E, and to allow the Service Agreement to become effective according to their terms.

Copies of this filing were served upon the Public Utilities Commission of Nevada, the Public Utilities Commission of California and all interested parties.

Comment Date: May 23, 2002.

17. Xcel Energy Services, Inc.

[Docket No. ER02–1717–000]

Take notice that on May 2, 2002, Xcel Energy Services, Inc. (XES), on behalf of Northern States Power Company and Northern States Power Company (Wisconsin) (collectively, NSP), submitted for filing a Form of Service Agreement with West Texas Municipal Power Agency (WTMPA), which is in accordance with NSP's Rate Schedule for Market-Based Power Sales (NSP Companies FERC Electric Tariff, Original Volume No. 6).

XES requests that this agreement become effective on April 23, 2002.

Comment Date: May 23, 2002.

18. Xcel Energy Services, Inc.

[Docket No. ER02–1718–000]

Take notice that on May 2, 2002, Xcel Energy Services, Inc. (XES), on behalf of Public Service Company of Colorado (Public Service), submitted for filing a Master Power Purchase and Sale Agreement between Public Service and Desert Power, L.P. (Desert Power), which is in accordance with Public Service's Rate Schedule for Market-Based Power Sales (Public Service FERC Electric Tariff, First Revised Volume No. 6).

XES requests that this agreement become effective on April 15, 2001.

Comment Date: May 23, 2002.

19. California Independent System Operator Corporation

[Docket No. ER02–1719–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing with the Federal Energy Regulatory Commission (Commission) a Scheduling Coordinator Agreement between the ISO and UBS AG, London Branch for acceptance by the Commission. The ISO is requesting that the Scheduling Coordinator Agreement be made effective as of April 24, 2002.

The ISO states that this filing has been served on UBS AG, London Branch and the California Public Utilities Commission.

Comment Date: May 24, 2002.

20. California Independent System Operator Corporation

[Docket No. ER02–1720–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for Scheduling Coordinators between the ISO and UBS AG, London Branch for acceptance by the Federal Energy Regulatory Commission. The ISO is requesting that the Meter Service Agreement be made effective as of April 24, 2002.

The ISO states that this filing has been served on UBS AG, London Branch and the California Public Utilities Commission.

Comment Date: May 24, 2002.

21. California Independent System Operator Corporation

[Docket No. ER02–1721–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between the ISO and CalPeak Power-Vaca Dixon LLC for acceptance by the Federal Energy Regulatory Commission.

The ISO states that this filing has been served on CalPeak Power-Vaca Dixon LLC and the California Public Utilities Commission.

The ISO is requesting that the Participating Generator Agreement be made effective April 24, 2002.

Comment Date: May 24, 2002.

22. California Independent System Operator Corporation

[Docket No. ER02–1722–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and CalPeak Power-Vaca Dixon LLC for acceptance by the Federal Energy Regulatory Commission. The ISO is requesting that the Meter Service Agreement for ISO Metered Entities be made effective April 24, 2002.

The ISO states that this filing has been served on CalPeak Power-Vaca Dixon LLC and the California Public Utilities Commission.

Comment Date: May 24, 2002.

23. California Independent System Operator Corporation

[Docket No. ER02–1723–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Meter Service Agreement for ISO Metered Entities between the ISO and CalPeak Power-El Cajon LLC for acceptance by the Federal Energy Regulatory Commission. The ISO is requesting that the Meter Service Agreement for ISO Metered Entities be made effective April 24, 2002.

The ISO states that this filing has been served on CalPeak Power-El Cajon LLC and the California Public Utilities Commission.

Comment Date: May 24, 2002.

24. California Independent System Operator Corporation

[Docket No. ER02–1724–000]

Take notice that on May 3, 2002, the California Independent System Operator Corporation (ISO) tendered for filing a Participating Generator Agreement between the ISO and CalPeak Power-El Cajon LLC for acceptance by the Commission. The ISO is requesting that the Participating Generator Agreement be made effective April 24, 2002.

The ISO states that this filing has been served on CalPeak Power-El Cajon LLC and the California Public Utilities Commission.

Comment Date: May 24, 2002.

25. David Sholk

[Docket No. ER02–1725–000]

Take notice that on April 26, 2002, David Sholk tendered for filing with the Federal Energy Regulatory Commission (Commission) a Petition for Blanket Authority to Purchase and Resell Electricity at Market-Based Rates.

Comment Date: May 24, 2002.

Standard Paragraph

E. Any person desiring to intervene or to protest this filing should file with the Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. All such motions or protests should be filed on or before the comment date, and, to the extent applicable, must be served on the applicant and on any other person designated on the official service list. This filing is available for review at the Commission or may be viewed on the Commission's Web site at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance). Protests and interventions may be filed electronically via the Internet in lieu of paper; see 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

Magalie R. Salas,

Secretary.

[FR Doc. 02–12104 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

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DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use Alternative Procedures in Preparing a License Application

May 9, 2002.

Take notice that the following request to use alternative procedures to prepare a license application has been filed with the Commission.

a. *Type of Application:* Request to use alternative procedures to prepare a new license application.

b. *Project No.:* 2204.

c. *Date filed:* April 24, 2002.

d. *Applicant:* City and County of Denver, Colorado, acting by and through its Board of Water Commissioners (Denver Water).

e. *Name of Project:* Williams Fork Reservoir Project.

f. *Location:* On the Williams Fork River, in Grand County, northern Colorado. The project occupies no federal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Kevin Urie, Licensing Project Manager, Denver Water, 1600 West 12th Avenue, Denver, CO 80254, (303)628–5987.

i. *FERC Contact:* Dianne Rodman at (202) 219–2830; e-mail *dianne.rodman@ferc.gov.*

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426.

Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The existing 3.0-megawatt project consists of a 706-foot-long, 217-foot-high dam; an impoundment with a storage capacity of 96,822 acre-feet; a power plant with one turbine and one generator; and appurtenant facilities.

l. A copy of the request to use alternative procedures is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link—select "Docket #" and follow the instructions (call 202–208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Denver Water has demonstrated that it has made an effort to contact all federal and state resources agencies, non-governmental organizations (NGOs), and others affected by the project. Denver Water has also demonstrated that a consensus exists that the use of alternative procedures is appropriate in this case. Denver Water has submitted a communications protocol that is supported by the majority of stakeholders. Denver Water intends to file 6-month progress reports during the alternative procedures process that leads to the filing of a license application by December 31, 2004.

The purpose of this notice is to invite any additional comments on Denver Water's request to use the alternative procedures, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. Denver Water will complete and file a preliminary Environmental Assessment, in lieu of Exhibit E of the license application. This differs from the traditional process, in which an applicant consults with agencies, Indian tribes, NGOs, and other parties during preparation of the license application and before filing the application, but the Commission staff performs the environmental review after the application is filed. The alternative procedures are intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12105 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Request To Use the Alternative Licensing Process in Preparing a License Application

May 9, 2002.

Take notice that the following request to use the Alternative Licensing Process (ALP) to prepare a license application has been filed with the Federal Energy Regulatory Commission (Commission).

a. *Type of Application:* Request to use the ALP to prepare a new license application.

b. *Project No.:* 2216–058.

c. *Date Filed:* March 6, 2002.

d. *Applicant:* New York Power Authority.

e. *Name of Project:* Robert Moses-Niagara Project.

f. *Location:* On the Niagara River, in Niagara County, New York. The project does not occupy any Federal lands.

g. *Filed Pursuant To:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Keith G. Silliman, *Esq.*, Director, Niagara Relicensing, New York Power Authority, 30 South Pearl Street, Albany, NY 12207–3425, (518) 433–6735.

i. *Commission Contact:* Patti Leppert at (202) 219–2767; e-mail *patricia.leppert@ferc.gov.*

j. *Deadline for Comments:* 30 days from the date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. All comment filings must bear the heading "Comments on the Alternative Licensing Process", and include the project name and number (Robert Moses-Niagara Project No. 2216–058). Comments may be filed electronically via the Internet in lieu of paper. *See* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site (*http://www.ferc.gov*) under the "e-Filing" link.

k. The existing project consists of a conventional development and a pumped storage development for a total licensed capacity of 2,755,500 kilowatts. Existing project facilities include two 700-foot-long intake structures located on the upper Niagara River about 2.6 miles upstream from the American Falls; two 4.3-mile-long concrete underground water supply conduits, each measuring 46 feet wide by 66.5 feet high; a forebay; the Lewiston Pump-Generating Plant, measuring 975 feet long by 240 feet wide by 160 feet high; the 1,900-acre Lewiston reservoir at a maximum water surface elevation of 658 feet United States Lake Survey Datum; the Robert Moses Niagara Power plant, including an intake structure, measuring 1,100 feet long by 190 feet wide by 100 feet high; a switch yard; and appurtenant facilities.

l. A copy of the request to use the ALP is on file with the Commission and is available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (for assistance call (202) 208–2222). A copy is also available for inspection and reproduction at the address in item h above.

m. NYPA has been engaged in an extensive outreach effort with Federal and state resource agencies, the Tuscarora Nation, non-governmental organizations (NGO), state and local governments, various companies, and the public regarding the Robert Moses-Niagara Project, and that a consensus exists that the use of the ALP is appropriate in this case. NYPA has submitted a Communications Protocol that is supported by most interested entities. NYPA intends to file 6-month progress reports during the ALP that leads to the filing of a license application by August 31, 2005.

The purpose of this notice is to invite any additional comments on NYPA's request to use the ALP, pursuant to Section 4.34(i) of the Commission's regulations. Additional notices seeking comments on the specific project proposal, interventions and protests, and recommended terms and conditions will be issued at a later date. NYPA proposes to complete and file an Applicant-Prepared Environmental Assessment in lieu of Exhibit E of the license application. This differs from the traditional process, in which the applicant consults with resource agencies, Indian tribes, and NGOs during preparation of the application for the license and before filing it, but the Commission staff conducts the environmental review after the application is filed. The ALP is intended to simplify and expedite the licensing process by combining the pre-filing consultation and environmental review processes into a single process, to facilitate greater participation, and to improve communication and cooperation among the participants.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12106 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Non-Project Use of Project Lands and Waters and Soliciting Comments, Motions To Intervene, and Protests

May 9, 2002.

Take notice that the following application has been filed with the Commission and is available for public inspection:

a. *Application Type:* Non-Project Use of Project Lands and Waters.

b. *Project No.:* 2232–442.

c. *Date Filed:* April 2, 2002.

d. *Applicant:* Duke Energy Corporation.

e. *Name of Project:* Catawba-Wateree Hydroelectric Project.

f. *Location:* On Lake Norman at the Long Island Marina, in Catawba County, North Carolina. The project does not utilize federal or tribal lands.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. E.M. Oakley, Duke Energy Corporation, P.O. Box 1006 (EC12Y), Charlotte, NC 28201–1006. Phone: (704) 382–5778.

i. *FERC Contact:* Any questions on this notice should be addressed to Brian Romanek at (202) 219–3076, or e-mail address: *brian.romanek@ferc.gov.*

j. *Deadline for filing comments and motions:* June 14, 2002.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, N.E., Washington, DC 20426. Please include the project number (2232–442) on any comments or motions filed.

k. *Description of Proposal:* Duke Energy Corporation proposes to lease to Eben L. Pyle, DBA Long Island Marina (Long Island Marina) one parcel of land underlying the project reservoir (a total of 2.815 acres) for a proposed expansion of an existing commercial/ non-residential marina (C/NR). The existing marina has three cluster docks accommodating 36 boats and one boat ramp. At the proposed C/NR lease area four new cluster docks accommodating 60 boats would be constructed and 12 boat slips would be added to an existing cluster dock. In total there would be 7 cluster docks accommodating 108 boats. The facility would provide access to the reservoir for patrons of the marina. Long Island Marina would also provide a pump out facility for boats with sanitation equipment. No dredging is proposed.

l. *Locations of the Application:* Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket #" and follow the instructions (call 202–208–2222 for assistance).

Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See*, 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link.

m. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

n. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

o. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

p. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12107 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application for Amendment of License and Solicitation of Comments, Motions To Intervene, and Protests

May 9, 2002.

a. *Application Type:* Application to Amend License for the Llyod Shoals Project.

b. *Project No.:* 2336–051.

c. *Date Filed:* April 10, 2002.

d. *Applicant:* Georgia Power Company.

e. *Name of Project:* Llyod Shoals Project.

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f. *Location:* The project is located on the Ocumulgee River in Butts, Henry, Jasper, and Newton counties in Georgia.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Larry J. Wall, Hydro License Coordinator, Georgia Power Company, 241 Ralph McGill Boulevard NE, Atlanta, GA 30308 Tel: (404) 506–2054.

i. *FERC Contact:* Any questions on this notice should be addressed to Mr. Vedula Sarma at (202) 219–3273 or by e-mail at *vedula.sarma@ferc.gov.*

j. *Deadline for filing comments and/or motions:* June 10, 2002.

k. *All documents (original and eight copies) should be filed with:* Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (2336–051) on any comments or motions filed.

l. *Description of Filing:* Georgia Power Company, proposes to revise the existing Llyod Shoals Project boundary by removing 26.4 acres of non-essential project land along the South River in Henry County, Georgia. The project's boundary at the property's location would change from the existing 545 foot elevation contour to 530 feet contour.

m. *Locations of the Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

n. Individuals desiring to be included on the Commission's mailing list should so indicate by writing to the Secretary of the Commission.

o. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

p. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

q. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

r. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site at *http://www.ferc.gov* under the "e-Filing" link.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12108 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 9, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12155–000.

c. *Date filed:* March 14, 2002.

d. *Applicant:* Arizona Independent Power, Inc.

e. *Name of Project:* Starhills Pumped Storage Project.

f. *Location:* The proposed project would be located on lands administered by the Bureau of Indian Affairs on the Gila River Indian Reservation, in Pinal County, Arizona.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Frank L. Mazzone, President, Arizona Independent Power, Inc., 746 Fifth Street East, Sonoma, CA 95476, Phone (707) 996–2573.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper; *see* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12155–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Description of Project:* The proposed pumped storage project would consist of: (1) A proposed 3025-foot-long, 135-foot-high earth and rocked filled upper dam with an impervious core structure located in the southeastern reach of the Sierra Estrella Mountain Range, (2) a proposed upper reservoir having a surface area of 220 acres with a storage capacity of 14,300 acre-feet and a normal water surface elevation of 3,025 feet msl, (3) a proposed 2,600-foot-long, 110-foot-long earth and rock filled lower dam with an impervious core structure, (4) a proposed lower reservoir having a surface area of 240 acres with a storage capacity of 15,000 acre-feet with a normal water surface elevation of 1,700 feet msl, (5) two proposed 7,100-foot-long, 23-foot-diameter underground penstocks, (6) a proposed powerhouse containing 5 generating units having a total installed capacity of 1,250 MW, (7) a two proposed 26-foot-diameter tailraces, (8) a proposed 40-mile-long 500 kV twin circuit transmission line, and (9) appurtenant facilities.

The project would have an annual generation of 1,682 GWh that would be sold to a local utility.

l. A copy of the application is available for inspection and reproduction at the Commission's Public Reference Room, located at 888 First Street, NE, Room 2A, Washington, DC 20426, or by calling (202) 208–1371. The application may be viewed on *http://www.ferc.fed.us/online/rims.htm* (call (202) 208–2222 for assistance). A copy is also available for inspection and reproduction at the address in item h above.

m. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (*see* 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) and 4.36.

n. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) and 4.36.

o. Notice of Intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

p. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

q. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

r. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Hydropower Administration and Compliance, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

s. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12109 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

Notice of Application Accepted for Filing and Soliciting Motions To Intervene, Protests, and Comments

May 9, 2002.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 12156–000.

c. *Date filed:* April 8, 2002.

d. *Applicant:* Minnesota Municipal Power Agency.

e. *Name of Project:* Coon Rapids Project.

f. *Location:* On the Mississippi River, in Hennepin and Anoka Counties, Minnesota. The project would not use any federal lands or facilities.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Derick Dahlen, Agent for, Minnesota Municipal Power Agency, 120 South Sixth Street, Suite 850, Minneapolis, MN 55402, phone (612) 349–6868.

i. *FERC Contact:* Robert Bell, (202) 219–2806.

j. *Deadline for filing motions to intervene, protests and comments:* 60 days from the issuance date of this notice.

All documents (original and eight copies) should be filed with: Magalie R. Salas, Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. Copies of this filing are on file with the Commission and are available for public inspection. Comments, protests and interventions may be filed electronically via the Internet in lieu of paper. *See,* 18 CFR 385.2001(a)(1)(iii) and the instructions on the Commission's Web site under the "e-Filing" link. Please include the project number (P–12156–000) on any comments or motions filed.

The Commission's Rules of Practice and Procedure require all interveners filing documents with the Commission to serve a copy of that document on each person in the official service list for the project. Further, if an intervener files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

k. *Competing Application:* Project No. 12142–000, Date Filed: January, 8, 2002, Date Notice Closed: April 22, 2002.

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l. *Description of Project:* The proposed project would consist of: (1) An existing 260-foot-long, 30-foot-high dam, (2) an existing impoundment having a surface area of 600 acres with negligible storage and a normal water surface elevation of 830.1 feet NGVD, (3) a proposed powerhouse containing 2 generating units having a total installed capacity of 7.2 MW, (4) a proposed 600-foot-long, 4.16 kV underground transmission line, and (5) appurtenant facilities.

The project would have an annual generation of 41.3 GWh that would be sold to a local utility.

m. Copies of this filing are on file with the Commission and are available for public inspection. Copies of this filing are on file with the Commission and are available for public inspection. This filing may also be viewed on the Web at *http://www.ferc.gov* using the "RIMS" link, select "Docket#" and follow the instructions (call 202–208–2222 for assistance).

n. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30 (b) and 4.36.

o. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

p. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

q. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

r. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Linwood A. Watson, Jr.,

Deputy Secretary.

[FR Doc. 02–12110 Filed 5–14–02; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF ENERGY

Western Area Power Administration

Parker-Davis Project—Notice of Proposed Extension of the Rate Methodology for Firm Power Service and Firm and Nonfirm Transmission Service—Rate Order No. WAPA–98

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed extension.

SUMMARY: This action is a proposal to extend the existing Parker-Davis Project (P-DP) rate methodology for determining the firm power service rate and the firm and nonfirm point-to-point transmission service rates, Rate Order No. WAPA–75, through September 30, 2004. The existing rate methodology will expire September 30, 2002. This notice of proposed extension of rate methodology is issued pursuant to 10 CFR part 903.23(a)(1). As permitted by 10 CFR part 903.23(a)(2), Western Area Power Administration (Western) will not have a consultation and comment period and will not hold public information and comment forums.

FOR FURTHER INFORMATION CONTACT: Mr. Todd Statler, Financial Analyst, Desert Southwest Customer Service Region, Western Area Power Administration, P.O. Box 6457, Phoenix, AZ 85005–6457, (602) 352–2781, or e-mail *statler@wapa.gov*.

SUPPLEMENTARY INFORMATION: By Delegation Order No. 00–037.00, effective December 6, 2001, the Secretary of Energy delegated (1) the authority to develop long-term power and transmission rates on a nonexclusive basis to Western's Administrator, (2) the authority to confirm, approve, and place such rates into effect on an interim basis to the Deputy Secretary and (3) the authority to confirm, approve, and place into effect on a final basis, to remand or to disapprove such rates to the Federal Energy Regulatory Commission (FERC).

Pursuant to applicable Delegation Orders and existing Department of Energy (DOE) procedures for public participation in power and transmission rate adjustments in 10 CFR part 903, Western's P–DP rate methodology for firm power service and firm and nonfirm point-to-point transmission service was submitted to FERC for confirmation and approval on November 19, 1997. On March 10, 1998, in Docket No. EF98–5041–000, at 82 FERC ¶ 62,164, FERC issued an order confirming, approving, and placing in effect on a final basis the P–DP rate methodology for firm power service and firm and nonfirm point-to-point transmission service. The rate methodology set forth in Rate Order No. WAPA–75 was approved for the period beginning November 1, 1997, and ending September 30, 2002.

On September 30, 2002, Western's P–DP rate methodology for firm power service and firm and nonfirm point-to-point transmission service will expire. Western proposes to extend the current rate methodology pursuant to 10 CFR part 903. Upon its approval, Rate Order No. WAPA–75 will be extended under Rate Order No. WAPA–98.

Western proposes to extend the existing P–DP rate methodology used each Fiscal Year (FY) to calculate the firm power service rates for capacity and energy (Rate Schedule PD–F6), the firm point-to-point transmission service rate (Rate Schedule PD–FT6), the firm point-to-point transmission service rate for Salt Lake City Area Integrated Projects Power (Rate Schedule PD–FCT6) and the nonfirm point-to-point transmission service rate (Rate Schedule PD–NFT6). This existing rate methodology ensures rates are set to collect annual revenues sufficient to recover annual expenses (including interest) and capital requirements, thus ensuring repayment of the project within the cost-recovery criteria set forth in DOE Order RA 6120.2. Under the existing rate methodology, the revenue requirements for generation and transmission are determined annually based on FY projections in the cost apportionment study. The cost apportionment study allocates all P–DP expenses and other revenues between generation and transmission. The revenue requirement for generation determines the amount of funds to collect through firm power service rates for capacity and energy. Similarly, the revenue requirement for transmission determines the amount of funds to collect through firm point-to-point transmission service rates.

During this extension period of the existing rate methodology, Western will initiate a rate adjustment process in accordance with procedures for public participation in power and transmission rate adjustments in 10 CFR part 903. Western anticipates this rate adjustment process to begin when audited financial data for FY 2001 and FY 2002 becomes available. In the meantime, Western will continue to conduct informal customer meetings to ensure involvement of interested parties in the rate process.

All documents made or kept by Western for developing the proposed extension of the P–DP rate methodology for firm power service and firm and nonfirm point-to-point transmission service will be made available for inspection and copying at the Desert Southwest Customer Service Region, located at 615 South 43rd Avenue, Phoenix, Arizona.

Within 90 days after publication of this notice, Rate Order No. WAPA–98 will be submitted to the Deputy Secretary for approval through September 30, 2004.

Dated: April 30, 2002.

Michael S. Hacskaylo,

Administrator.

[FR Doc. 02–12100 Filed 5–14–02; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0005; FRL–7179–5]

Data Submissions for the Voluntary Children's Chemical Evaluation Program; Request for Comment on Information Collection Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA announced in the **Federal Register** a proposed information collection activity and a request for public comment for an Information Collection Request (ICR) entitled: Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP) (EPA ICR No. 2055.01, OMB No. 2070–tbd) on April 16, 2002 (67 FR 18609) (FRL–6832–8). In that **Federal Register** document, the Agency inadvertently provided the public with only 30 days to comment on the proposed information collection. Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are required to provide the public with 60 days to comment when announcing a proposed information collection activity. This **Federal Register** document announces an 30–day extension of the previously announced public comment period.

DATES: Written comments, identified by docket ID number OPPT–2002–0005 and administrative record number AR–238, must be received on or before June 17, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION**. To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0005 and administrative record number AR–238 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Catherine Roman, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–8172; fax number: (202) 564–4755; e-mail address: roman.catherine@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a manufacturer or importer of certain chemicals and have volunteered to sponsor your chemical in the VCCEP. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Industrial organic chemicals	325
Adhesives and sealants	32552
Paints and allied products	32551
Textile goods	313
Petroleum products	42272

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select items 4089 and 4090 for a copy of the ICR.

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C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0005 and administrative record number AR–238. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. What Action is EPA taking?

EPA is extending the comment period for the following proposed ICR: Data Submissions for the Voluntary Children's Chemical Evaluation Program (VCCEP) (EPA ICR No. 2055.01, OMB No. 2070–tbd). EPA announced a 30–day comment period for this proposed ICR renewal in the **Federal Register** on April 16, 2002 (67 FR 18609). In that document, you will find a complete description of the ICR, as well as detailed instructions for submitting comments. This document announces a 30–day extension of the comment period in order to provide the public with 60 days to comment, pursuant to the PRA. Comments must be received on or before June 17, 2002.

As described in Unit III. of the document announcing the proposed ICR that published in the **Federal Register** of April 16, 2002 (67 FR 18609), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the document published on April 16, 2002. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPPT–2002–0005 and administrative record number AR–238 in the subject line on the first page of your response.

IV. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 10, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–12266 Filed 5–13–02; 1:43 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0004; FRL–7179–6]

TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals; Request for Comment on Renewal of Information Collection Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA announced in the **Federal Register** a proposed renewal of an information collection activity and a request for public comment for an Information Collection Request (ICR) entitled: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals (EPA ICR No. 1188.07, OMB No. 2070–0038) on April 16, 2002 (67 FR 18606) (FRL–6832–7). In that **Federal Register** document, the Agency inadvertently provided the public with only 30 days to comment on the proposed information collection. Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are required to provide the public with 60 days to comment when announcing a proposed information collection activity. This **Federal Register** document announces a 30–day extension of the previously announced public comment period.

DATES: Written comments, identified by the docket ID number OPPT–2002–0004 and administrative record number AR–240, must be received on or before June 17, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0004 and administrative record number AR–240 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Barbara Leczynski, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 564–4770; fax number: (202) 564–4775; e-mail address: leczynski.barbara@epa.gov.

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, processes, imports, or distributes in commerce chemical substances or mixtures. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Basic chemical manufacturing	3251
Resin, synthetic rubber and artificial synthetic fibers, and filaments manufacturing	3252
Paint, coating, and adhesive manufacturing	3255
Pesticide, fertilizer, and other agricultural chemical manufacturing	3253
Petroleum refineries	32411

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select items 4091, 4092, and 4093 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0004 and administrative record number AR–240. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. What Action is EPA taking?

EPA is extending the comment period for the proposed renewal of the following ICR: TSCA Section 5(a)(2) Significant New Use Rules for Existing Chemicals (EPA ICR No. 1188.07, OMB No. 2070–0038). EPA announced a 30–day comment period for this proposed ICR renewal in the **Federal Register** on April 16, 2002 (67 FR 18606). In that document, you will find a complete description of the ICR, as well as detailed instructions for submitting comments. This document announces a 30–day extension of the comment period in order to provide the public with 60 days to comment, pursuant to the PRA. Comments must be received on or before June 17, 2002.

In addition, EPA announces a change of the technical contact person listed under **FOR FURTHER INFORMATION CONTACT** in the April 16, 2002, document. The public should contact the technical expert listed in this document with any questions regarding the proposed ICR renewal. As described in Unit III. of the document announcing the proposed ICR renewal that published in the **Federal Register** on April 16, 2002 (67 FR 18606), you may submit your comments through the mail, in person, or electronically. Please follow the instructions for submitting comments that are provided in the document which published on April 16, 2002. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPPT–2002–0004 and administrative record number AR–240 in the subject line on the first page of your response.

IV. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 10, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–12267 Filed 5–13–02; 1:43 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPPT–2002–0002; FRL–7179–7]

TSCA Section 8(c) Health and Safety Data Reporting Rule; Request for Comment on Renewal of Information Collection Activities; Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice; extension of comment period.

SUMMARY: EPA announced in the **Federal Register** a proposed renewal of an information collection activity and a request for public comment for an Information Collection Request (ICR) entitled: TSCA Section 8(c) Health and Safety Data Reporting Rule (EPA ICR No. 1031.07, OMB No. 2070–0017) on April 16, 2002 (67 FR 18604) (FRL–6832–3). In that **Federal Register** document, the Agency inadvertently provided the public with only 30 days to comment on the proposed information collection. Under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), Federal agencies are required to provide the public with 60 days to comment when announcing a proposed information collection activity. Today, EPA is announcing a 30–day extension of the previously announced public comment period.

DATES: Written comments, identified by docket ID number OPPT–2002–0002 and administrative record number AR–239, must be received on or before June 17, 2002.

ADDRESSES: Comments may be submitted by mail, electronically, or in person. Please follow the detailed instructions for each method as provided in Unit III. of the **SUPPLEMENTARY INFORMATION.** To ensure proper receipt by EPA, it is imperative that you identify docket ID number OPPT–2002–0002 and administrative record number AR–239 in the subject line on the first page of your response.

FOR FURTHER INFORMATION CONTACT: *For general information contact*: Barbara Cunningham, Acting Director, Environmental Assistance Division (7408M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (202) 554–1404; e-mail address: TSCA-Hotline@epa.gov.

For technical information contact: Gerry Brown, Chemical Control Division (7405M), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 1200 Pennsylvania Ave., NW.,

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Washington, DC 20460; telephone number: (202) 564–8086; fax number: (202) 564–4765; e-mail address: brown.gerry@epa.gov

SUPPLEMENTARY INFORMATION:

I. Does this Action Apply to Me?

You may be potentially affected by this action if you are a company that manufactures, processes, imports, or distributes in commerce chemical substances or mixtures. Potentially affected categories and entities may include, but are not limited to:

Type of business	NAICS codes
Basic chemical manufacturing	3251
Resin, synthetic rubber and artificial synthetic fibers, and filaments manufacturing	3252
Paint, coating, and adhesive manufacturing	3255
Pesticide, fertilizer, and other agricultural chemical manufacturing	3253
Petroleum refineries	32411

This table is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this table could also be affected. The North American Industrial Classification System (NAICS) codes are provided to assist you and others in determining whether or not this action might apply to certain entities. If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

II. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

A. Electronically

You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

B. Fax-on-Demand

Using a faxphone call (202) 564–3119 and select item 4088 for a copy of the ICR.

C. In Person

The Agency has established an official record for this action under docket ID number OPPT–2002–0002 and administrative record number AR–239. The official record consists of the documents specifically referenced in this action, any public comments received during an applicable comment period, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period, is available for inspection in the TSCA Nonconfidential Information Center, North East Mall Rm. B–607, Waterside Mall, 401 M St., SW., Washington, DC. The Center is open from noon to 4 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Center is (202) 260–7099.

III. What Action is EPA taking?

EPA is extending the comment period for the proposed renewal of the following ICR: TSCA Section 8(c) Health and Safety Data Reporting Rule (EPA ICR No. 1031.07, OMB No. 2070–0017). EPA announced a 30–day comment period for this proposed ICR renewal in the **Federal Register** on April 16, 2002 (67 FR 18604). In that document, you will find a complete description of the ICR, as well as detailed instructions for submitting comments. This document announces a 30–day extension of the comment period in order to provide the public with 60 days to comment, pursuant to the PRA. Comments must be received on or before June 17, 2002.

As described in Unit III. of the document announcing the proposed ICR renewal that published in the **Federal Register** on April 16, 2002 (67 FR 18604), you may submit your comments through the mail, in person, or electronically. Please follow the instructions that are provided in the document which published on April 16, 2002. Do not submit any information electronically that you consider to be CBI. To ensure proper receipt by EPA, be sure to identify docket ID number OPPT–2002–0002 and administrative record number AR–239 in the subject line on the first page of your response.

IV. What is the Next Step in the Process for this ICR?

EPA will consider the comments received and amend the ICR as appropriate. The final ICR package will then be submitted to OMB for review and approval pursuant to 5 CFR 1320.12. EPA will issue another **Federal Register** notice pursuant to 5 CFR 1320.5(a)(1)(iv) to announce the submission of the ICR to OMB and the opportunity to submit additional comments to OMB. If you have any questions about this ICR or the approval process, please contact the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

List of Subjects

Environmental protection, Reporting and recordkeeping requirements.

Dated: May 10, 2002.

Stephen L. Johnson,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 02–12268 Filed 5–13–02; 1:43 pm]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[Regional Docket No. II–2001–05; FRL–7212–1]

Clean Air Act Operating Permit Program; Petitions for Objection to State Operating Permit for the Orange Recycling and Ethanol Production Facility of Pencor-Masada Oxynol, LLC

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final order on petitions to object to a State operating permit.

SUMMARY: This document announces that the EPA Administrator has responded to several citizen petitions asking EPA to object to an operating permit issued by the New York State Department of Environmental Conservation (NYSDEC). Specifically, the Administrator has denied 14 petitions asking EPA to object to the State operating permit issued to the Orange Recycling and Ethanol Production Facility, proposed by Pencor-Masada Oxynol, LLC (Masada), for construction and operation in Middletown, NY.

Pursuant to section 505(b)(2) of the Clean Air Act (Act), petitioners may seek judicial review of this petition response in the United States Court of Appeals for the second circuit. Any petition for review shall be filed within 60 days from the date this notice appears in the **Federal Register**, pursuant to section 307 of the Act.

ADDRESSES: You may review copies of the final order, the petitions, and other supporting information at the EPA, Region 2, 290 Broadway, New York, New York 10007–1866. If you wish to examine these documents, you should make an appointment at least 24 hours before visiting day. The final order is also available electronically at: *http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitiondb2001.htm.*

FOR FURTHER INFORMATION CONTACT: Steven Riva, Chief, Permitting Section, Air Programs Branch, Division of Environmental Planning and Protection, EPA, Region 2, 290 Broadway, 25th Floor, New York, New York 10007–1866, telephone (212) 637–4074.

SUPPLEMENTARY INFORMATION: The Act affords EPA a 45-day period to review, and object to as appropriate, operating permits proposed by State permitting authorities. Section 505(b)(2) of the Act authorizes any person to petition the EPA Administrator within 60 days after the expiration of this review period to object to State operating permits if EPA has not done so. Petitions must be based only on objections to the permit that were raised with reasonable specificity during the public comment period provided by the State, unless the petitioner demonstrates that it was impracticable to raise these issues during the comment period or the grounds for the issues arose after this period.

In October and November 2001, the EPA received four petitions from 14 different petitioners, requesting that EPA object to the issuance of the modified title V permit to Masada's facility. Specifically, we received separate petitions from Jeanette Nebus, Robert C. LaFleur, president of Spectra Environmental Group, Inc. (Spectra), and Deborah Glover. We also received a fourth petition with 11 signatories: Talkini Alves, Vidal Milland, Kristin Hannon, Bridgette Coppola, Nicole Young, Kathleen House, Campbell House, Susan Cohen, Debbie Carlisle, Roberta Constantino, and Elizabeth Collard.

These petitions challenged a revised permit issued on October 1, 2001, by NYSDEC for the Masada facility. NYSDEC revised the permit pursuant to a May 2, 2001 EPA order denying in part and granting in part prior title V petitions involving this facility. *See* 66 FR 30904, June 8, 2001. *See also http://www.epa.gov/region07/programs/artd/air/title5/petitiondb/petitions/masada_decision2000.pdf.* In the new petitions challenging the adequacy of the permit revisions, the petitioners allege that (1) the permit fails to include the physical or operational limits necessary to properly limit the source's PTE; (2) the permit limits actual emissions instead of potential emissions; (3) the annual emissions limits are set too close to major thresholds; (4) the hourly emissions limits have too long an averaging period; (5) the consequences of deviations from or exceedances of permit limits are not severe enough; and (6) the inspection & maintenance measures for data from continuous emissions monitors (CEM) should be clarified. Additionally, the petitioners raise issues with respect to the applicable requirements of the Standards of Performance for Industrial-Commercial-Institutional Steam Generating Units (NSPS) Subpart Db and Executive Order 12898 on Environmental Justice. Some of the petitioners also repeat issues previously addressed in the May 2001 Order.

On April 8, 2002, the Administrator issued an order denying the petitions. The order explains the reasons behind EPA's conclusion that petitioners have failed to demonstrate that Masada's permit does not assure compliance with the Act on the grounds raised.

Dated: May 8, 2002.

Jane M. Kenny,

Regional Administrator, Region 2.

[FR Doc. 02–12147 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7211–4]

Meeting of the Mobile Sources Technical Review Subcommittee

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Act, Public Law 92–463, notice is hereby given that the Mobile Sources Technical Review Subcommittee of the Clean Air Act Advisory Committee will meet three times annually. This is an open meeting. The theme will be "Voluntary Programs" and will include presentations from EPA and other outside organizations. The preliminary agenda for this meeting will be available on the Subcommittee's website in late May. Draft minutes from the previous meetings are available on the Subcommittee's Web Site now at: *http://epa.gov/air/caaac/mobile_sources.html.*

DATES: Wednesday, June 12 from 9 a.m. to 3:30 p.m. Registration begins at 8:30 a.m.

ADDRESSES: The meeting will be held at the Radisson Hotel Old Town Alexandria, 901 North Fairfax Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: For technical information: Ms. Cheryl L. Hogan, Alternate Designated Federal Officer, Certification and Compliance Division, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, MI 48105, Ph: 734/214–4402, FAX: 734/214–4053, email: *hogan.cheryl@epa.gov.*

For logistical and administrative information: Ms. Mary F. Green, FACA Management Officer, U.S. EPA, 2000 Traverwood Drive, Ann Arbor, Michigan, Ph: 734/214–4411, Fax: 734/214–4053, email: *green.mary@epa.gov.*

Background on the work of the Subcommittee is available at: *http://transaq.ce.gatech.edu/epatac.*

For more current information: *http://epa.gov/air/caaac/mobile_sources.html.*

Individuals or organizations wishing to provide comments to the Subcommittee should submit them to Ms. Hogan at the address above by May 31, 2002. The Mobile Sources Technical Review Subcommittee expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements.

SUPPLEMENTARY INFORMATION: During this meeting, the Subcommittee may also hear progress reports from some of its workgroups as well as updates and announcements on activities of general interest to attendees.

Dated: May 8, 2002.

Margo T. Oge,

Director, Office of Transportation and Air Quality.

[FR Doc. 02–12149 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0045; FRL–6836–3]

Technical Briefing on Revisions to the Organophosphate Pesticide Cumulative Risk Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Public Meeting.

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SUMMARY: EPA is announcing a public technical briefing on June 18, 2002, to discuss the revisions to the preliminary organophosphate (OP) cumulative risk assessment. This technical briefing will provide the Agency with an opportunity to present revisions to the preliminary risk assessment in a public forum and answer clarifying questions. This briefing follows the January 15, 2002, technical briefing on the preliminary OP cumulative risk assessment. In addition, on June 19, 2002, EPA and the United States Department of Agriculture (USDA) will hold a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process.

DATES: The technical briefing will be held on Tuesday, June 18, 2002, from 9 a.m. to 5 p.m. On Wednesday, June 19, 2002, from 9 a.m. to 4 p.m., EPA and the USDA will hold a public meeting of the CARAT Workgroup on Cumulative Risk Assessment/Public Participation Process.

ADDRESSES: The technical briefing will be held at the Holiday Inn Select, 480 King Street, Old Town Alexandria, VA. The telephone number for the hotel is (703) 549–6080. The hotel is located about 10 blocks from the King Street Metro Station. The CARAT Workgroup Meeting will be held at Crystal Mall #2, room 1110 (Fishbowl), 1921 Jefferson Davis Highway, Arlington, VA.

FOR FURTHER INFORMATION CONTACT: By mail: Karen Angulo, Special Review and Registration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 308–8004; e-mail address:angulo.karen@epa.gov.

SUPPLEMENTARY INFORMATION:

I. General Information

A. Does this Action Apply to Me?

This action applies to the public in general. As such, the Agency has not attempted to specifically describe all the entities potentially affected by this action. The Agency believes that a wide range of stakeholders will be interested in technical briefings on organophosphate pesticides, including environmental, human health, and agricultural advocates, the chemical industry, pesticide users, and members of the public interested in the use of pesticides on food. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. To access this document, on the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/.

To access information about organophosphate pesticides, you can also go directly to the Home Page for the Office of Pesticide Programs (OPP) at http://www.epa.gov/pesticides/op/. In addition, information about the cumulative process and the preliminary organophosphate cumulative risk assessment documents are found at http://www.epa.gov/pesticides/cumulative.

2. *In person.* The Agency has established an official record under docket control number OPP–2002–0045. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Rm. 119, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, from 8:30 a.m. to 4 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. How Can I Request to Participate in this Meeting?

This meeting is open to the public. Outside statements by observers are welcome. Oral statements will be limited to 3 to 5 minutes, and it is preferred that only one person per organization present the statement. Any person who wishes to file a written statement may do so immediately before or after the meeting. These statements will become part of the permanent record and will be available for public inspection at the address listed in Unit I.

List of Subjects

Environmental protection, organophosphate pesticides.

Dated: May 1, 2002.

Lois A. Rossi,

Director, Office of Pesticide Programs.

[FR Doc. 02–12008 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[OPP–2002–0064; FRL–7177–6]

Organophosphate Pesticides; Methidathion, Availability of Interim Reregistration Eligibility Decision Document

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the availability of the Interim Registration Eligibility Decision (interim RED) document for the organophosphate pesticide (OP), methidathion. This interim decision was developed as part of the OP pilot public participation process that the EPA and the United States Department of Agriculture (USDA) are now using for involving the public in the reassessment of pesticide tolerances under the Food Quality Protection Act (FQPA) and the reregistration of individual OPs under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA).

DATES: The interim RED document for methidathion is currently available in the OP Public Regulatory Docket under docket control number OPP–2002–0064.

FOR FURTHER INFORMATION CONTACT: Carmen Rodia, Chemical Review Manager, Special Review and Reregistration Division (7508C), Office of Pesticide Programs, Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Washington, DC 20460; telephone number: (703) 306–0327; e-mail address: rodia.carmen@epa.gov.

SUPPLEMENTARY INFORMATION

I. General Information

A. Does this Action Apply to Me?

This action is directed to the public in general, nevertheless, a wide range of stakeholders will be interested in obtaining the interim decision documents for methidathion, including environmental, human health and agricultural advocates; the chemical industry; pesticide users; and members of the public interested in the use of pesticides on food. Since other entities also may be interested, the Agency has not attempted to describe all the specific entities that may be affected by this action. If you have any questions regarding the applicability of this action to a particular entity, consult the person listed under **FOR FURTHER INFORMATION CONTACT**.

B. How Can I Get Additional Information, Including Copies of this Document and Other Related Documents?

1. *Electronically.* You may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at http://www.epa.gov/. On the Home Page select "Laws and Regulations," "Regulations and Proposed Rules," and then look up the entry for this document under the "**Federal Register**—Environmental Documents." You can also go directly to the **Federal Register** listings at http://www.epa.gov/fedrgstr/. In addition, copies of the methidathion interim risk management decision documents released to the public may also be accessed at http://www.epa.gov/pesticides/reregistration/status.htm.

2. *In person.* The Agency has established an official record for this action under docket control number OPP–2002–0064. The official record consists of the documents specifically referenced in this action, and other information related to this action, including any information claimed as Confidential Business Information (CBI). This official record includes the documents that are physically located in the docket, as well as the documents that are referenced in those documents. The public version of the official record does not include any information claimed as CBI. The public version of the official record, which includes printed, paper versions of any electronic comments submitted during an applicable comment period is available for inspection in the Public Information and Records Integrity Branch (PIRIB), Room 119, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA 22202–4501, from 8:30 a.m. to 4:00 p.m., Monday through Friday, excluding legal holidays. The PIRIB telephone number is (703) 305–5805.

II. What Action is the Agency Taking?

EPA has assessed the risks of methidathion and reached an Interim Reregistration Eligibility Decision (interim RED) for this OP. Provided that risk mitigation measures are adopted, methidathion fits into its own risk cup-its individual, aggregate risks are within acceptable levels. Methidathion is also eligible for reregistration, pending a full reassessment of the cumulative risk from all OP pesticides. Used on a variety of agricultural crops, predominantly alfalfa, citrus, and cotton, methidathion residues in food and drinking water do not pose risk concerns. Methidathion has no residential uses. EPA considered the mitigation proposal submitted by the technical registrant, as well as comments and mitigation ideas from other interested parties, and has decided on a number of label amendments (restrictions) to mitigate risks of concern posed by the uses of methidathion. With the implementation of these mitigation measures, methidathion's worker and ecological risks also will be below levels of concern for reregistration.

The methidathion interim RED was made through the OP pesticide pilot public participation process, which increases transparency and maximizes stakeholder involvement in EPA's development of risk assessments and risk management decisions. The pilot public participation process was developed as part of the EPA/USDA Tolerance Reassessment Advisory Committee, which was established in April 1998, as a subcommittee under the auspices of EPA's National Advisory Council for Environmental Policy and Technology. A goal of the pilot public participation process is to find a more effective way for the public to participate at critical junctures in the Agency's development of OP pesticide risk assessments and risk management decisions. EPA and USDA began implementing this pilot process in August 1998, to increase transparency and opportunities for stakeholder consultation.

EPA worked extensively with affected parties to reach the decisions presented in the interim RED, which concludes the pilot public participation process for methidathion. As part of the pilot public participation process, numerous opportunities for public comment were offered as the interim RED was being developed. The methidathion interim RED is issued in final, without a formal public comment period. The OP Public Regulatory Docket remains open; however, and any comments submitted in the future will be placed in the docket.

The revised risk assessments for methidathion were released to the public through a notice published in the **Federal Register** of December 8, 1999 (OPP–34213), (FRL–6399–2).

EPA's next step under the FQPA is to consider available information on the basis of cumulative risk encompassing all of the OP pesticides, sharing a common mechanism of toxicity. The tolerance reassessment decision for methidathion cannot be considered final until the cumulative risks for all of the OPs is considered. The Agency may need to pursue further risk management measures at that time.

List of Subjects

Environmental protection, chemicals, insecticides, acaricides, Pesticides and pests.

Dated: May 6, 2002.

Lois Rossi,

Director Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 02–12009 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–S

ENVIRONMENTAL PROTECTION AGENCY

[FRL–7212–3]

Water Quality Trading Policy; Proposed Policy

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for comment.

SUMMARY: Today's notice invites comment on the U.S. Environmental Protection Agency's (EPA's) proposed Policy on Water Quality Trading ("proposed policy"). The purpose of the proposed policy is to signal EPA support for soundly designed water quality trading programs developed by States and Tribes. Another purpose is to propose program components that EPA believes are appropriate for trading programs to be soundly designed and to operate successfully. In addition, the proposed policy is intended to address issues left open and limitations encountered implementing projects under EPA's January 1996 Effluent Trading Policy and May 1996 draft Framework for Watershed-Based Trading (EPA 800-R-96-001).

Water quality trading is a voluntary, incentive-based approach to more efficiently protect and restore the nation's waters. The proposed policy addresses trading to maintain water quality in unimpaired waters, trading in impaired waters before development of a Total Maximum Daily Load (TMDL) and trading to meet TMDLs. While the focus is on nutrients and sediment, the policy also discusses the potential for trading other pollutants under certain circumstances.

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The proposed policy is available for review at *www.epa.gov/owow/watershed/trading.htm.*

DATES: The Agency requests comments on the proposed policy posted at *www.epa.gov/owow/watershed/trading.htm.* Comments must be received or post-marked by midnight on July 1, 2002.

ADDRESSES: The proposed policy is available for review at *www.epa.gov/owow/watershed/trading.htm.* Please send an original and three copies of your written comments and enclosures to W–02–07 Comment Clerk, Water Docket (MC4101), EPA, 1200 Pennsylvania Avenue, NW., Washington, DC 20460. Comments may also be submitted electronically to *ow-docket@epamail.epa.gov.* Electronic comments must be submitted as an ASCII, WP5.1, WP6.1 or WP8 file avoiding the use of special characters and form of encryption. Electronic comments must be identified by the docket number W–02–07. Comments and data will also be accepted on disks in WP 5.1, 6.1, 8 or ASCII file format. Electronic comments on this notice may be filed online at many Federal Depository Libraries. Hand deliveries should be delivered to: EPA's Water Docket at 401 M Street, SW., Room EB57, Washington, DC 20460.

The record for this proposed policy has been established under docket number W–02–07, and includes supporting documentation as well as printed, paper versions of electronic comments. The record is available for inspection from 9 to 4 p.m., Monday through Friday, excluding legal holidays at the Water Docket, EB 57, USEPA Headquarters, 401 M St SW., Washington, DC 20460. For access to docket materials, please call 202/260–3027 to schedule an appointment.

FOR FURTHER INFORMATION CONTACT: David Batchelor, EPA, Office of Water, (202) 564–5764, *batchelor.david@epa.gov,* or Lynda Hall Wynn, EPA, Office of Water, (202) 564–0472, *wynn.lynda@epa.gov.*

Dated: May 9, 2002.

Diane C. Regas,

Acting Assistant Administrator for Water.

[FR Doc. 02–12148 Filed 5–14–02; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission

May 8, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before June 14, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, Room 1–C804, 445 12th Street, SW, DC 20554 or via the Internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0835.

Title: Ship Inspection Certificates.

Form No.: FCC Forms 806, 824, 827, and 829.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, not-for-profit institutions, state, local or tribal government.

Number of Respondents: 3,770 respondents; 1,210 responses annually.

Estimated Time Per Response: .084 hours (average).

Frequency of Response: On occasion, annual and five year reporting requirements, recordkeeping requirement and third party disclosure requirement.

Total Annual Burden: 102 hours.

Total Annual Cost: N/A.

Needs and Uses: The Communications Act requires the inspection of small passenger ships at least once every five years. The Safety Convention (which the United States is signatory) also requires an annual inspection, however, permits an Administrator to entrust the inspections to either surveyors nominated for the purpose or to organizations recognized by it. Therefore, the United States can have other entities conduct the radio inspection of vessels for compliance with the Safety Convention. The Commission adopted rules that require this inspection to be conducted by a FCC-licensed technician. This requirement reduces administrative burden on the public and the Commission. The purpose of the information is to ensure that the inspection was successful so that passengers and crew members of certain United States ships have access to distress communications in case of an emergency.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12059 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission, Comments Requested

May 6, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Written comments should be submitted on or before July 15, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman or Leslie Smith, Federal Communications Commission, Room 1–C804 or Room 1–A804, 445 12th Street, SW, Washington, DC 20554 or via the Internet to *jboley@fcc.gov* or *lesmith@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collection(s), contact Judith Boley Herman at 202–418–0214 or via the Internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION:

OMB Control No.: 3060–0704.

Title: Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96–61.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 519.

Estimated Time Per Response: 306.23 hours per response (avg). Range: .50 hours to 120 hours.

Frequency of Response: Recordkeeping requirement; annual and on occasion reporting requirements, third party disclosure requirement.

Total Annual Burden: 158,935 hours.

Total Annual Cost: $435,000.

Needs and Uses: In the Second Order on Reconsideration issued in CC Docket No. 96–61, the Commission reinstated the public disclosure requirement and also requires that nondominant interexchange carriers that have Internet websites pass this information on-line in a timely and easily accessible manner. See 47 CFR 42.10. These carriers also continue to be required to file annual certifications pursuant to section 254(g); maintain price and service information; and are forborne from filing certain tariffs. The information is collected under the information disclosure requirement and the Internet posting requirement must be disclosed to the public to ensure that consumers have access to the information they need to select a telecommunications carrier and to bring to the Commission's attention possible violations of the Communications Act without a specific public disclosure requirement. The other information will be used to ensure that affected interexchange carriers fulfill their obligations under the Communications Act of 1934, as amended.

OMB Control No.: 3060–0760.

Title: Access Charge Reform—CC Docket No. 96–262, First Report and Order, Second Order on Reconsideration and Memorandum Opinion and Order, Third Report and Order, and Fifth Report and Order.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 14.

Estimated Time Per Response: 4,165.64 hours per response (avg). Range: 3–2,117 hours.

Frequency of Response: On occasion reporting requirement, third party disclosure requirement.

Total Annual Burden: 58,319 hours.

Total Annual Cost: $23,000.

Needs and Uses: The Commission provides detailed rules for implementing the market-based approach, pursuant to which price cap local exchange carriers (LECs) would receive pricing flexibility in the provision of interstate access services as competition for those services develops. The Commission grants immediate pricing flexibility to price cap LECs in the form of streamlined introduction of new services, geographic de-averaging of rates for services in the trunking basket, and removal of certain interstate interexchange services from price cap regulation and provides for additional pricing flexibility upon showings. Some of the required information showings are as follows: showings under market-based approach (to obtain Phase I relief, price cap LECs must demonstrate that competitors have made irreversible, sunk investments in the facilities needed to provide the services at issue); cost study of interstate access service that remain subject to price cap regulation; tariff filings; third party disclosure (LECs were required to provide IXCs with customer-specific information about how many and what type of presubscribed interexchange carrier charges (PICCs) they are assessing for each of the IXCs presubscribed customers). The information is used in determining whether the incumbent LECs should receive the regulatory relief requested.

OMB Control No.: 3060–0770.

Title: Price Cap Performance Review for Local Exchange Carriers—CC Docket No. 94–1 (New Services).

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit.

Number of Respondents: 13 respondents; 26 responses.

Estimated Time Per Response: 10 hours per response (avg).

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 130 hours.

Total Annual Cost: N/A.

Needs and Uses: In the Fifth Report and Order issued in CC Docket Nos. 96–262, 94–1, 98–157, released August 27, 1999, the Commission permits price cap LECs to introduce new services on a streamlined basis, without prior approval. The Commission modified the rules to eliminate the public interest showing required by 47 CFR Section 69.4(g) and to eliminate the new services text (except in the case of loop-based new services) required under 47 CFR Sections 61.49(f) and (g). Each tariff filing submitted by a price cap LEC that introduces a new loop-based service must be accompanied by cost data sufficient to establish that the new loop-based services or unbundled BSE will not recover more than a just and reasonable portion of the carrier's overhead costs. Each tariff filing submitted by a LEC subject to price cap regulation that introduces a new loop-based service or a restructured unbundled basic service element must be accompanied by, among other things, a study containing a projection of costs for a representative 12 month period. See 47 CFR 61.49. The information is needed by the Commission to carry out its statutory mandate.

OMB Control No.: 3060–0793.

Title: Procedures for States Regarding Lifeline Consents, Adoption of Intrastate Discount Matrix for Schools and Libraries, and Designation of Eligible Telecommunications Carriers.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for-profit, state, local or tribal government.

Number of Respondents: 260.

Estimated Time Per Response: .60 hours per response (avg). Range: .50 hours to 1 hour.

Frequency of Response: Annual and on occasion reporting requirements, third party disclosure requirement.

Total Annual Burden: 155 hours.

Total Annual Cost: N/A.

Needs and Uses: In the Universal Service Order, the Commission determined that rural and non-rural carriers will receive federal universal service support determined separate mechanisms. The Commission determined that local exchange carriers (LECs) should self-certify their status as a rural company each year to the Commission and their state commission. Carriers who serve fewer than 100,000 access lines do not have to file the annual rural certification letter unless their status has changed since their last filing. For carriers with more than 100,000 access lines, that seek rural status, must file rural self-certifications and such carriers also are required to file only in the event of a change in their status. States must submit a list of carriers designed as eligible telecommunications carriers and the service areas such as non-rural carriers are required to serve to the Universal Service Administrator and the Commission. If a LECs status as a rural telephone company changes to that it becomes ineligible for certification as a rural carrier, that carrier must inform the Commission and the Universal Service Administrator within one month of the change in status. All of the requirements are necessary to implement the congressional mandate for universal service. The reporting requirements are necessary to verify that particular carriers and other respondents are eligible to receive universal service support.

OMB Control No.: 3060–XXXX.

Title: Ultra Wideband Transmission Systems Operating under Part 15 (ET Docket No. 98–153).

Form No.: N/A.

Type of Review: New collection.

Respondents: Business or other for-profit.

Number of Respondents: 500.

Estimated Time Per Response: 2 hours.

Frequency of Response: On occasion reporting requirement.

Total Annual Burden: 1,000 hours.

Total Annual Cost: $12,500.

Needs and Uses: The information will be used to coordinate the operation of the Ultra Wideband (UWB) transmission systems in order to avoid interference with sensitive U.S. government radio systems. Initial operation in a particular area may not commence until authorization has been received from the Commission. The UWB operators will be required to provide the name, address, and other pertinent contact information of the user, the desired geographical area of operation, the FCC ID number, time period during which operations will take place, and other nomenclature of the UWB device. This information will be collected by the Commission and forwarded to the National Telecommunications and Information Administration (NTIA under the U.S. Department of Commerce). This information collection is essential to control potential interference to Federal radio communications.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12060 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

Notice of Public Information Collection(s) Being Reviewed by the Federal Communications Commission for Extension Under Delegated Authority, Comments Requested

May 6, 2002.

SUMMARY: The Federal Communications Commission, as part of its continuing effort to reduce paperwork burden invites the general public and other Federal agencies to take this opportunity to comment on the following information collection(s), as required by the Paperwork Reduction Act of 1995, Public Law 104–13. An agency may not conduct or sponsor a collection of information unless it displays a currently valid control number. No person shall be subject to any penalty for failing to comply with a collection of information subject to the Paperwork Reduction Act (PRA) that does not display a valid control number. Comments are requested concerning (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology.

DATES: Persons wishing to comment on this information collection should submit comments July 15, 2002. If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the contact listed below as soon as possible.

ADDRESSES: Direct all comments to Judith Boley Herman, Federal Communications Commission, 445 12th Street, SW, Room 1–C804, Washington, DC 20554 or via the internet to *jboley@fcc.gov.*

FOR FURTHER INFORMATION CONTACT: For additional information or copies of the information collections contact Judith Boley Herman at 202–418–0214 or via the internet at *jboley@fcc.gov.*

SUPPLEMENTARY INFORMATION: OMB Control No.: 3060–0515.

Title: Miscellaneous Common Carrier Annual Letter Filing Requirement.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 32.

Estimated Time Per Response: 1 hour.

Total Annual Burden: 32 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Frequency of Response: Annual reporting requirement.

Needs and Uses: Pursuant to 47 CFR Section 43.21(c) each miscellaneous common carrier with operating revenues in excess of the indexed threshold as defined in 47 CFR Section 32.9000 for a calendar year shall file with the Wireline Competition Bureau Chief a letter showing its operating revenues for that year and the value of its total communications plant at the end of that year. The letters must be filed no later than April 1 of the following year. The information is used by Commission staff to regulate and monitor the telephone industry and by the public to analyze the industry. The information on revenue and total plant is compiled and published in the Commission's annual common carrier statistical publication and long distance market share report.

OMB Control No.: 3060–0526.

Title: Density Pricing Zone Plans, Expanded Interconnection with Local Telephone Company Facilities, CC Docket No. 91–141.

Form No.: N/A.

Type of Review: Extension of a currently approved collection.

Respondents: Business or other for profit.

Number of Respondents: 13.

Estimated Time Per Response: 48 hours.

Total Annual Burden: 624 hours.

Annual Reporting and Recordkeeping Cost Burden: N/A.

Frequency of Response: On occasion reporting requirement.

Needs and Uses: The Commission requirés Tier 1 local exchange carriers (LECs) to provide expanded opportunities for third-party interconnection with their interstate special access facilities. The LECs are permitted to establish a number of rate zones within study areas in which expanded interconnection are operational. In the Fifth Report and Order in CC Docket No. 96–262, the Commission allows price cap LECs to define the scope and number of zones within the study area. These LECs must file and obtain approval of their pricing plans which will be used by FCC staff to ensure that the rates are just, reasonable and nondiscriminatory.

Federal Communications Commission.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12061 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–P

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 2551]

Petition for Reconsideration of Action in Rulemaking Proceeding

May 6, 2002.

Petition for Reconsideration has been filed in the Commission's rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing any copying in Room CY–A257, 445 12th Street, SW., Washington, DC or may be purchased from the Commission's copy contractor, Qualex International (202) 863–2893. Oppositions to this petition must be filed by May 30, 2002. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Modification and Clarification of Policies and Procedures Governing Siting and Maintenance of Amateur Radio Antennas and Support Structures, and Amendment of Section 97.15 of the Commission's Rules Governing the Amateur Radio Service (RM–8763).

Number of Petitions Filed: 1.

Marlene H. Dortch,

Secretary.

[FR Doc. 02–12063 Filed 5–14–02; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Notice of Agreement(s) Filed

The Commission hereby gives notice of the filing of the following agreement(s) under the Shipping Act of 1984. Interested parties can review or obtain copies of agreements at the Washington, DC offices of the Commission, 800 North Capitol Street, NW, Room 940. Interested parties may submit comments on an agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days of the date this notice appears in the **Federal Register**.

Agreement No.: 011803.

Title: Maersk Sealand/Evergreen Slot Exchange Agreement.

Parties: A.P. Moller-Maersk Sealand, Evergreen Marine Corporation (Taiwan) Ltd.

Synopsis: The proposed agreement would authorize Maersk Sealand to charter slots on Evergreen's WAE service from East Asia to Tacoma and Evergreen to charter slots on Maersk Sealand's MECL service from India and Sri Lanka to the U.S. East Coast. The parties request expedited review.

Agreement No.: 011804.

Title: Eastern Car Liner/FOML Space Charter Agreement.

Parties: Eastern Car Liner, Ltd., Fesco Ocean Management Limited.

Synopsis: The proposed agreement would authorize Fesco Ocean Management to charter space from Eastern Car Liner from Japan to the U.S. Pacific Coast on an ad hoc basis, as needed and as available.

Agreement No.: 011805.

Title: Trans-Pacific Lines/Wan Hai Reciprocal Slot Charter Agreement.

Parties: Trans-Pacific Lines Ltd., Wan Hai Lines Ltd.

Synopsis: The agreement authorizes the two parties to exchange container slots on their respective vessels in the trade between the U.S. West Coast and Korea, China and Taiwan.

Agreement No.: 201072–004.

Title: New Orleans-Americana Ships Group Crane Lease.

Parties: Board of Commissioners of the Port of New Orleans, Americana Ships and its affiliates.

Synopsis: The amendment changes the payments for crane usage and updates the name of one of the parties. The agreement continues to run through December 31, 2002.

Agreement No.: 201134.

Title: New Orleans-Mediterranean Shipping Terminal Agreement.

Parties: Board of Commissioners of the Port of New Orleans, Mediterranean Shipping Co. (USA) Inc.

Synopsis: The agreement provides for volume discounts at the France Road and Nashville Avenue Container Terminals. The agreement runs through December 31, 2002.

Dated: May 10, 2002.

By Order of the Federal Maritime Commission

Bryant L. VanBrakle,

Secretary.

[FR Doc. 02–12163 Filed 5–14–02; 8:45 am]

BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Revocations

The Federal Maritime Commission hereby gives notice that the following Ocean Transportation Intermediary licenses have been revoked pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, effective on the corresponding date shown below:

License Number: 3189N.

Name: All Express Cargo Inc.

Address: 114–16 Rockaway Blvd., South Ozone Park, NY 11420.

Date Revoked: March 27, 2002.

Reason: Failed to maintain a valid bond.

License Number: 17229NF.

Name: Cubic Express Company, Ltd.

Address: 60 Helwig Street, Berea, OH 44017.

Date Revoked: March 28, 2002.

Reason: Failed to maintain valid bonds.

License Number: 15846N.

Name: David Shek dba Addition Freight Forwarders.

Address: 1317 N. Carolan Avenue, Suite A, Burlingame, CA 94010.

Date Revoked: March 25, 2002.

Reason: Surrendered license voluntarily.

License Number: 15223N.

Name: DSL Transportation Services, Inc.

Address: 5011 Firestone Place, South Gate, CA 90280.

Date Revoked: April 24, 2002.

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Reason: Failed to maintain a valid bond.

License Number: 15590N.
Name: Express Global Freight, Inc.
Address: 400 S. Atlantic Blvd., Suite 308, Monterey Park, CA 91754.
Date Revoked: April 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12918N.
Name: Freight Options Unlimited.
Address: 12621 Crenshaw Blvd., Hawthorne, CA 90250.
Date Revoked: April 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 12279F.
Name: Frontrunner Worldwide, Inc.
Address: 215 W. Diehl Road, Naperville, IL 60563.
Date Revoked: April 12, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4578NF.
Name: Global Logistics International Inc.
Address: 10858 NW 27th Street, Miami, FL 33172.
Date Revoked: March 21, 2002.
Reason: Failed to maintain valid bonds.

License Number: 17382NF.
Name: Latek USA, Inc.
Address: 662 Dell Road, Carlstadt, NJ 07072.
Date Revoked: March 27, 2002.
Reason: Failed to maintain valid bonds.

License Number: 16042N.
Name: MAI Global Transport, Inc.
Address: 1377 E. Irving Park Road, Itasca, IL 60143.
Date Revoked: March 26, 2002.
Reason: Surrendered license voluntarily.

License Number: 16650F.
Name: McCollister's Transportation Systems, Inc.
Address: 1800 Route 130 North, Burlington, NJ 08016.
Date Revoked: March 28, 2002.
Reason: Failed to maintain a valid bond.

License Number: 15778N.
Name: Overseasbridge Transport, Ltd.
Address: 5777 W. Century Blvd., Suite 1120, Los Angeles, CA 90045.
Date Revoked: April 24, 2002.
Reason: Failed to maintain a valid bond.

License Number: 4427F.
Name: Pegasus Transair, Inc.
Address: 612 East Dallas Road, Suite 100, Grapevine, TX 76099.
Date Revoked: March 30, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17602NF.
Name: Plus System, Inc. dba PSI Express.
Address: 2263 W. 255th Street, Lomita, CA 90717.
Date Revoked: April 17, 2002.
Reason: Failed to maintain valid bonds.

License Number: 4197N.
Name: S.A.C. International Forwarding, Inc. dba, S.A.C. International Consolidators.
Address: 8442 N.W. 70th Street, Miami, FL 33166.
Date Revoked: April 10, 2002.
Reason: Failed to maintain a valid bond.

License Number: 2971NF.
Name: Seino America, Inc. dba Seino Moving Center, Seino Container Line, Croft & Scully, Tri-Way International Movers.
Address: 8728 Aviation Blvd., Inglewood, CA 90301.
Date Revoked: April 4, 2002.
Reason: Surrendered license voluntarily.

License Number: 16616N.
Name: Shine Express Inc.
Address: 147–38 182nd Street, Jamaica, NY 11413.
Date Revoked: April 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 17115N.
Name: Sky Way Shipping Inc.
Address: 357 E. Mooney Drive, Monterey Park, CA 91755.
Date Revoked: April 21, 2002.
Reason: Failed to maintain a valid bond.

License Number: 10879N.
Name: Trans Marine International Corporation dba, TMI Systems dba Trans Tank.
Address: 18 North Bothwell Street, Palatine, IL 60067.
Date Revoked: April 7, 2002.
Reason: Failed to maintain a valid bond.

License Number: 14067N.
Name: Western Transit Express Inc.
Address: 2489 Technology Drive, Hayward, CA 94545.
Date Revoked: April 21, 2002.
Reason: Failed to maintain a valid bond.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 02–12161 Filed 5–14–02; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission an application for license as Non-Vessel Operating Common Carrier and Ocean Freight Forwarder—Ocean Transportation Intermediary pursuant to section 19 of the Shipping Act of 1984 as amended (46 U.S.C. app. 1718 and 46 CFR part 515).

Persons knowing of any reason why the following applicants should not receive a license are requested to contact the Office of Transportation Intermediaries, Federal Maritime Commission, Washington, DC 20573.

Non-Vessel Operating Common Carrier Ocean Transportation Intermediary Applicants

J C Freight, Inc. dba JCTrans Freight, 15240 E. Nelson Avenue, City of Industry, CA 91744. Officers: Ann Yan, Chief Operating Officer, (Qualifying Individual); Wei-Yu Lee, President.

Elite Express Co., Inc., 10105 Dory Avenue, Suite A, Inglewood, CA 90303. Officers: Edward Shih, President, (Qualifying Individual); Judy Keh, Secretary.

DSI Tiger Group, Inc., 17595 Almahurst Street, #206A, City of Industry, CA 91748. Officers: Patricia Wu, Secretary, (Qualifying Individual); Chi Hao Hung, CEO.

D.K. Logistics, Inc., 1533 W. 139th Street, Gardena, CA 90249. Officers: Danny Kim, President, (Qualifying Individual); Yon Jin Kim, Secretary.

Houston Syrius USA, Inc. dba Syrius USA, 3027 Marina Bay Drive, Suite 107, League City, TX 77573. Officer: Christopher Lavan, General Manager, (Qualifying Individual).

International Transportation Group Inc., 372 Doughty Blvd., 2nd Floor, Inwood, NY 11096. Officers: Sui Lung, Shum, Vice President, (Qualifying Individual); Wei Lung, Chen, President.

Leric, Inc., 1930 Japonica Street, New Orleans, LA 70117. Officer: Gerald P. Risberg, President, (Qualifying Individual).

O. T. I. Cargo Inc., 2401 NW 69th Street, Miami, FL 33147. Officer: John Abisch, Director, (Qualifying Individual).

jury Trans, Inc., 8244 N.W. 14th Street, Miami, FL 33126. Officer: Nabil Enrique Jury Bustamante, President, (Qualifying Individual).

Non-Vessel Operating Common Carrier and Ocean Freight Forwarder Transportation Intermediary Applicants

Energy Freight Systems Corp. of Florida, 6932 NW 51 Street, Miami, FL 33166. Officers: Rafael Fernandez, President, (Qualifying Individual); Jussepe Di Falco, President.

GQ Logistics, Inc., 11222 La Cienega Blvd., #510, Inglewood, CA 90304. Officers: Joon Sok Lee, CFO, (Qualifying Individual); Jun S. Park, CEO.

Interdel Logistics, Inc., 175–01 Rockaway Blvd., Suite 303A, Jamaica, NY 11434. Officer: Rodit R. Marco Vici, President, (Qualifying Individual).

Intermodal Bridge Services Inc., 100 Lighting Way, Suite 305, Secaucus, NJ 07094. Officers: John Knapp, Senior Vice President, (Qualifying Individual); Chen Xiaomin, President.

Ocean Freight Forwarder—Ocean Transportation Intermediary Applicants

Buenos Dias America, Inc., 12440 Firestone Blvd., Suite #1009, Norwalk, CA 90650. Officers: Bonghoon Shin, Vice President, (Qualifying Individual); Sung Soo Lee, President.

Emmeli Shipping, 3200 Sunset Avenue, Suite 209, Ocean, NJ 07712. Officer: Kristen Brandimarte, President, (Qualifying Individual).

Flegenheimer International, Inc., 227 W. Grand Ave., El Segundo, CA 90227. Officers: Blanca R. Lopez, Export Manager, (Qualifying Individual); William A. Flengenheimer, President.

Master Freight International Ltd., 6312 Militia Court, Bensalem, PA 19020. Officer: Nanik P. Lalwani, President, (Qualifying Individual).

Dated: May 10, 2002.
Bryant L. VanBrakle,
Secretary.
[FR Doc. 02–12160 Filed 5–14–02; 8:45 am]
BILLING CODE 6730–01–P

FEDERAL MARITIME COMMISSION

Ocean Transportation Intermediary License Reissuances

Notice is hereby given that the following Ocean Transportation Intermediary licenses have been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984, as amended by the Ocean Shipping Reform Act of 1998 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of Ocean Transportation Intermediaries, 46 CFR part 515.

License No.	Name/address	Date reissued
3504F	Indo-China Express, Inc. dba Shipper's Express. 211 Tenth Street, Suite 201, Oakland, CA 94607.	March 4, 2002.
16421N	Korea Express Atlanta, Inc. dba Korea Freight Line, Inc., 5559 New Peachtree Road, Chamblee, GA 30341.	February 16, 2002.

Sandra L. Kusumoto,
Director, Bureau of Consumer Complaints and Licensing.
[FR Doc. 02–12162 Filed 5–14–02; 8:45 am]
BILLING CODE 6730–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention; Public Health Service Act; Delegation of Authority

Notice is hereby given that I have delegated to the Director, Centers for Disease Control and Prevention (CDC) and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), with authority to redelegate, all of the authorities vested in the Secretary of Health and Human Services, under Title III of the Public Health Service Act, Part B—Loan Repayment Program, Section 317F (42 U.S.C. 247b–7), as amended hereafter, as they pertain to the functions of CDC and ATSDR.

This delegation shall be exercised under the Department's existing delegation of authority and policy on regulations.

This delegation became effective upon date of signature.

Dated: May 7, 2002.
Tommy G. Thompson,
Secretary.
[FR Doc. 02–12131 Filed 5–14–02; 8:45 am]
BILLING CODE 4160–18–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration on Aging

Agency Information Collection Activities; Submission for OMB Review; Comment Request; National Family Caregiver Support Program Survey: Grandparents and Other Relative Caregivers Raising Children

AGENCY: Administration on Aging, HHS.

ACTION: Notice.

SUMMARY: The Administration on Aging (AoA) is announcing that the proposed collection of information listed below has been submitted to the Office of Management and Budget (OMB) for review and clearance under the Paperwork Reduction Act of 1995.

DATES: Submit written comments on the collection of information by June 14, 2002.

ADDRESSES: Submit written comments on the collection of information to the Office of Information and Regulatory Affairs, OMB, New Executive Office Bldg., 725 17th St. NW., rm. 10235, Washington, DC 20503, Attn: Allison Herron Eydt, Desk Officer for AoA.

FOR FURTHER INFORMATION CONTACT: Rick Greene, (202) 205–2814, *rick.greene@aoa.gov.*

SUPPLEMENTARY INFORMATION: In compliance with 44 U.S.C. 3507, AoA has submitted the following proposed collection of information to OMB for review and clearance.

A one-time survey will collect information on organizations providing services to grandparents and other relatives caring for children, the nature of the services provided, the number of grandparents and other relatives served annually, the number of children assisted annually, and the training needs of these organizations. AoA estimates the burden of this collection of information as follows: 267 hours will be required to collect this information at an estimated cost of $5,340.

In the **Federal Register** of December 21, 2001 (Vol 66, Pages 65972–3), the agency requested comments on the proposed collection of information. No comments were received.

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Dated: May 3, 2002.
Josefina G. Carbonell,
Assistant Secretary for Aging.
[FR Doc. 02–12132 Filed 5–14–02; 8:45 am]
BILLING CODE 4154–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[Program Announcement 02091]

National Programs To Support Healthy Aging, Epilepsy, Prevention Activities, and Arthritis; Notice of Availability of Funds

A. Purpose

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 2002 funds for National Programs to Support Healthy Aging, Epilepsy, Prevention Activities, and Arthritis. These programs address the "Healthy People 2010" focus areas of Access to Quality Health Services, Educational and Community Based Programs, Physical Activity and Fitness, Disability and Secondary Conditions, Arthritis, Osteoporosis, and Chronic Back Conditions, and Health Communication.

The CDC, National Center for Chronic Disease Prevention and Health Promotion, is issuing this Program Announcement in an effort to simplify and streamline the grant and cooperative agreement pre-award and post-award administrative process, provide increased flexibility in the use of funds, and measure performance related to each grantee's stated objectives. Some advantages of the streamlined process are: elimination of separate documents (continuation application and semi-annual progress report) to issue a continuation award; consistency in reporting expectations; and increased flexibility within approved budget categories.

This program announcement covers the following program areas:

Program Area 1: Healthy Aging

The purpose of the Healthy Aging Program is to establish national partnerships to enhance health and quality of life for older adults through a broad national strategy to: (1) Promote oral, physical, and mental health healthy behaviors, (2) reduce the impact of injuries and chronic diseases, and (3) maintain function and independence for older Americans. Applicants may apply for one or more of the following priority areas:

Priority A—Collaboration and Health Promotion: To strengthen and enhance collaborations between health departments at the state and local level, and/or community organizations/networks that focus on older adults, e.g. senior centers and area agencies on aging, to promote behaviors and practices that lead to healthier, more fulfilling, and more satisfying lives for older adults.

Priority B—Implementation and Evaluation: To strengthen the capacity of national, state, and/or local agencies to conduct and evaluate programs that promote health, reduce the impact of injuries and chronic diseases, and maintain function and independence for older adults.

Priority C—Evaluate and Develop Tools: To assess and develop consumer education tools and strategies to improve health, reduce the impact of disease and injury, and delay disability and the need for long-term care among older adults.

Program Area 2: Epilepsy

The purpose of this program is to conduct epilepsy programs that enhance the health and quality of life of people with epilepsy through health promotion, education and enhancement of communication channels. Applicants may apply for one or more of the following priority areas:

Priority A—Partnership Building: To promote public awareness of epilepsy and facilitate collaborative partnerships at all levels of public health.

Priority B—Create Awareness/Improve Health Communications: To expand the outreach of media campaigns to promote understanding and awareness and improve communication strategies to develop, disseminate, and evaluate epilepsy educational materials and programs.

Priority C—Consumer and Provider Education: To expand the availability of carefully designed and well tested low-literacy epilepsy education materials for minority groups, self-management materials for those with epilepsy, and continuing medical education for health care providers.

Program Area 3: Prevention Activities

The purpose of this program is to develop national health promotion and disease prevention strategies for health care organizations, state and local health departments, businesses, and other non profit organizations whose mission is to promote prevention, improve health care quality and improve the public's health.

Program Area 4: Arthritis

The purpose of the Arthritis program is to implement the National Arthritis Action Plan: A Public Health Strategy (NAAP). Specific activities are intended to improve the availability and quality of information and services in order to improve the quality of life for persons with arthritis.

B. Eligible Applicants

Assistance will be provided only to existing grantees under the following program announcements:

a. National Programs to Support Healthy Aging—Program Announcement 01133.

b. Initiatives to Develop and Implement Programs to Enhance Epilepsy, Public Awareness and Partnerships, Education, and Communication—Program Announcement 01134.

c. Implementation of the National Arthritis Action Plan: A Public Health Strategy—Program Announcement 99128.

d. National Strategies to Promote Disease Prevention and Health Promotion—Program Announcement 99153.

Attachment I at the end of this document contains a sole source justification for the Arthritis Foundation. **Note:** Title 2 of the United States Code section 1611 states that an organization described in section 501(c)(4) of the Internal Revenue Code that engages in lobbying activities is not eligible to receive Federal funds constituting an award, grant or loan.

C. Availability of Funds

Program Area 1: Healthy Aging

Approximately $500,000 is available in FY 2002 to fund five awards. The average award will be $100,000, with a range from $75,000 to $200,000.

Priority Area A—Collaboration and Health Promotion: Approximately $100,000 is available to fund one award under Priority Area A in FY 2002.

Priority Area B—Implementation and Evaluation: Approximately $200,000 is available to fund two awards under Priority Area B in FY 2002. The average award is expected to be $100,000.

Priority Area C—Evaluating and Developing Tools: Approximately $200,000 is available to fund two awards under Priority Area C in FY 2002. The average award is expected to be $100,000.

Program Area 2: Epilepsy

Approximately $2,100,000 is available in FY 2002 to fund one award.

Program Area 3: Prevention Activities

Approximately $500,000 is available in FY 2002 to fund one award.

Program Area 4: Arthritis

Approximately $1,000,000 is available in FY 2002 to fund one award.

Note: It is expected that all awards under this Program Announcement will be awarded on or before August 30, 2002 and will be made for a 12-month budget period. It is expected that Program Areas 1 and 2 (Healthy Aging and Epilepsy) will have project periods of up to five years; Program Areas 3 and 4 (Prevention Activities and Arthritis) are expected to have project periods of up to two years. Funding estimates may change due to availability of funds.

Continuation awards within an approved project period will be made on the basis of satisfactory progress as evidenced by required reports and the availability of funds.

D. Program Requirements

In conducting activities to achieve the purpose of this program, the recipient will be responsible for conducting the activities under 1. (Recipient activities), and CDC will be responsible for the activities listed under 2. (CDC Activities).

1. Recipient Activities

Program Area 1: Healthy Aging

Priority Area A—Collaboration and Health Promotion: Develop mechanisms to:

a. Provide resources to health departments at the state and local level and/or community organizations/networks that focus on promoting healthy behaviors and practices among older adults.

b. Develop communications resources for use by communications organizations and older adults.

c. Develop tools to help communities inventory and publicize their resources.

d. Integrate health plans and other health care resources into community demonstration projects.

Priority Area B—Implementation and Evaluation:

a. Identify innovative health and supportive programs for older adults;

b. Conduct systematic review and synthesis of quality programs including organizational capacity, resource requirements and outcomes achieved;

c. Disseminate findings to organizations and individuals who work in the field of aging studies.

Priority Area C—Evaluate and Develop Tools: Evaluate existing consumer education tools and strategies and develop new tools by:

a. Conducting consumer research and marketing activities (e.g. focus groups and other appropriate assessment activities) among older adults, including those from minority and other under-served communities.

b. Developing recommendations and strategies for group-specific future interventions, educational messages, and programs according to the findings.

Program Area 2: Epilepsy

The applicant shall conduct activities in one or more of the following three priority areas:

Priority Area A—Partnership Building:

a. Provide financial and personnel support to epilepsy affiliates/chapters and other health-related organizations to facilitate building collaborative public health partnerships with state and local health departments.

b. Provide financial and personnel support to health related organizations (other than epilepsy affiliates/chapters) to facilitate building collaborative partnerships.

c. Expand ongoing communication vehicles (i.e., listservs, web sites, newsletters, conference calls, meetings) to facilitate problem solving and idea sharing among organizations involved in collaborative activities to strengthen programs to promote public awareness of epilepsy, provide education for those with epilepsy, the general public, and for health care providers, and enhance communication channels.

Priority Area B—Create Awareness/Improve Health Communications:

a. Expand a sustained multifaceted media relations outreach program.

b. Expand, implement and evaluate strategies to disseminate existing educational materials to those with epilepsy who are under served.

Priority Area C—Consumer and Provider Education

a. Expand the development or adaption, evaluation, and dissemination of low-literacy epilepsy education materials and/or educational materials for under served segments of the population, including large minority groups (e.g., Hispanic, Asian, American Natives, African American).

b. Develop, evaluate, and disseminate epilepsy self-management materials delivered through traditional and/or alternative delivery mechanisms (i.e., Internet-based, CD ROM, other).

c. Develop appropriate training on selected epilepsy interventions with demonstrated cost-effectiveness with appropriate experts including international organizations.

d. Develop, evaluate, and disseminate continuing medical education (CME) or CME and continuing education units (CEU) granting self study professional education through alternative delivery mechanisms (i.e., Internet based, CD–ROM).

Program Area 3: Prevention Activities

a. Develop and implement national health disease prevention programs and preventive health models for use by the recipient in providing assistance to a broad range of organizations, including private sector health care organizations, State and local health departments, universities, managed care organizations, and businesses.

b. Collaborate nation-wide with public, private, nonprofit, and academic institutions to promote the goals of prevention.

c. Conduct process and outcome evaluation on all activities.

d. Disseminate information concerning effective prevention activities for health care organizations.

Program Area 4: Arthritis

The applicant should propose at least one activity in each of the two following areas:

Priority Area A—Partnership Activities

a. Develop mechanisms to provide financial support to Arthritis Foundation Chapters to participate in collaborative activities with state health department and other partners.

b. Develop mechanisms to support training for Arthritis Foundation Chapter staff, state and local health department staff, and others to provide evidence-based self management education and physical activity programs (i.e., Arthritis Self Help Course—ASHC, People with Arthritis Can Exercise®—PACE, and Arthritis Foundation Aquatics).

Priority Area B—Consumer education

a. Based on the results of evaluation activities funded in FY 2000 and FY 2001, further develop, evaluate, and disseminate self-management materials delivered through web-based or CD ROM delivery mechanisms. Applicant is strongly encouraged to review the adequacy of previous or ongoing evaluation efforts and propose new or expanded efforts as necessary.

b. Support evaluation activities that may include market research approaches to better characterize the use and non-use of evidence-based self management education (i.e., ASHC) or physical activity (i.e., PACE or Aquatics) programs. Specifically, this activity should (1) characterize program participants and non-participants, specifically addressing access and availability issues, and demographic characteristics; (2) examine current strategies for program dissemination and access; (3) identify factors.

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facilitators and barriers, that limit or enhance the delivery and utilization of programs; and (4)recommend strategies to improve program delivery to significantly improve the utilization of the programs.

c. Support evaluation activities to determine the effectiveness of existing Arthritis Foundation self management education or physical activity interventions. The grantee is strongly encouraged to examine these interventions among large minority groups. The ASHC should not be considered under this activity.

d. Develop mechanisms to enhance the capacity of the Arthritis Foundation to respond to requests for information from the public.

e. Develop or support the development of innovative self management education or physical activity programs. These programs should have clearly defined purposes and objectives. Newly developed programs should be pilot tested in preparation for a more thorough evaluation. They should not be disseminated prior to evaluation. No more than $100,000 should be devoted to this activity. The grantee may conduct this activity through AF chapters.

f. Support or develop mechanisms to support training for leaders and trainers for the Spanish language version of the Arthritis Self Help Course.

g. Identify new opportunities to partner in the development of new health communications messages and materials. Hard to reach, underserved populations, especially African Americans and Hispanic Americans are of special interest.

2. CDC Activities for Program Areas 1, 2, 3, and 4 (Healthy Aging, Epilepsy, Arthritis and Prevention Activities)

a. Provide consultation on potential activities and mechanisms of fulfillment for partnership support, including chapters or affiliates and other partners. CDC will provide careful review of applicant grant announcements and where appropriate, participate in the review of applications.

b. Provide consultation on health communication and education efforts for the public in general, older adults, people with arthritis and people with epilepsy. CDC will provide review and input on the scope of work for proposed activities.

c. Provide consultation on the development and evaluation of self management education, physical activity, or other prevention programs. CDC will work with recipients to ensure proposed activities complement work already supported or conducted by CDC and are consistent with a public health approach to address arthritis, epilepsy, and older adults.

d. Provide consultation and support to analyze and interpret data from evaluation activities.

e. Provide assistance to plan and implement linkages among agencies funded under this program announcement. CDC will work to explore synergies among the activities of the different agencies funded under this announcement.

f. Provide assistance in the dissemination of interventions and training materials. CDC's support of and ongoing interaction with state health departments and other partners provide a mechanism for dissemination of evaluated health communication and self management materials developed under this announcement.

E. Content

Application

Use the information in the Program Requirements, Other Requirements, and Evaluation Criteria sections to develop the application content. Your application will be evaluated using the criteria listed, so it is important to follow them in laying out your program plan. All applications should have a type-written narrative of no more than 20 double-spaced pages, printed on one side, with one inch margins and 12 point Times New Roman font. The application should be organized into the following sections:

1. Executive Summary

Provide a clear, concise, and objectively written statement of the major objectives and components of the proposed activities, proposed time frame, and evaluation plan. Include proof of your non-profit status.

2. Needs Assessment

Describe the documented need for the proposed activities and current activities that provide relevant experience and expertise to perform the proposed activities.

3. Collaborative Relationships

Describe collaborative relationships with other agencies and organizations that will be involved in the proposed activities.

4. Operational and Evaluation Plan

Describe the specific process, impact, and outcome objectives for each proposed project, the major steps required to achieve the objectives, and a projected timetable for completion that displays dates for the accomplishment of specific proposed activities. Describe the evaluation process that will be used to determine effectiveness and initiate improvement as needed.

5. Management and Staffing Plan

Describe how the program will be effectively managed. Include the following:

a. Management structure including the lines of authority and plans for fiscal control.

b. The staff positions responsible for implementation of the program.

c. Qualifications and experience of the designated staff.

6. Budget and Justification

Provide a detailed budget request and line item justification of all proposed operating expenses.

F. Submission and Deadline

Applications

Submit the original and two copies of PHS 5161–1 (OMB Number 0937–0189). Forms are available at the internet address: *http://www.cdc.gov/od/pgo/forminfo.htm* or in the application kit. Submit the application on or before July 1, 2002 to: Technical Information Management—PA02091, Procurement and Grants Office, Centers for Disease Control and Prevention, 2920 Brandywine Rd., Room 3000, Atlanta, GA 30341–4146.

Deadline: Applications shall be considered as meeting the deadline if they are received on or before the deadline date.

Late Applications: Applications which do not meet the criteria above are considered late applications, and will be returned to the applicant.

G. Evaluation Criteria (100 Points)

Applications received from grantees funded under Program Announcements 01133, 01134, 99128, or 99153 will be reviewed by independent reviewers utilizing the Technical Acceptability Review (TAR) process.

1. Needs Assessment: (25 points)

The extent to which the applicant demonstrates that the experience and expertise for the proposed projects.

2. Collaboration: (15 points)

The extent to which the applicant provides evidence of collaborative relationships with other agencies and organizations relevant to successful completion of the proposed projects.

3. Operational and Evaluation Plan: (35 points)

The extent to which the applicant clearly identifies the specific outcome and process objectives for the proposed projects, and the major steps required to meet the objectives; provides a realistic plan for collaboration with partners including CDC in the project; and proposes an evaluation plan that is likely to provide meaningful information about the achievement of the project's objectives.

4. Implementation Plan: (10 points)

The extent to which the projected timetable for completion of tasks and for meeting objectives is reasonable and realistic.

5. Project Management and Staffing Plan: (15 points)

The extent to which the applicant demonstrates management structure and staff positions with clear lines of authority and plans for fiscal control, and that designated staff have appropriate qualifications and experience.

6. Budget (Not Scored)

The extent to which the applicant provides a detailed budget and justification consistent with the proposed program objectives and activities.

H. Other Requirements

Technical Reporting Requirements

Provide CDC with original plus two copies of:

1. *Semi-annual progress reports.* The first report is due February 28, 2003. Subsequent semi-annual reports will be due on the 28th of February each year through February 28, 2006.

Continuation Application Guidance: The February 28 semi-annual progress report and accompanying budget and budget justification will be used to process your continuation award. Semi-annual progress reports should include the following information outlined in the requirements under items (a) through (e):

a. A succinct description of the program accomplishments/narrative and progress made in meeting each program objective during the first six months of the budget period (August 30 through February 28) and should consist of no more than 20 pages.

b. The reason for not meeting established program goals and strategies to be implemented to achieve unmet objectives (see performance measures attached for each program area).

c. A description of any new objectives including the expected impact on the overall burden of cardiovascular diseases and related risk factors and method of evaluating effectiveness.

d. A one year line item budget and budget justification.

e. For all proposed contracts, provide the name of contractor, period of performance, method of selection, method of accountability, scope of work, and itemized budget and budget justification. If the information is not available when the application is submitted, please indicate *to be determined* until the information is available. When the information becomes available, it should be submitted to the CDC Procurement and Grants Management Office contact identified in this program announcement. Documenting and reporting the number of training programs offered and the number of people trained.

2. *Annual progress reports.* The annual report is due no more than 90 days after the end of the budget period (August 30, 2003) and should consist of the same information outlined for the semi-annual progress report in (a) through (c) above.

3. Financial status reports are due, no more than 90 days after the end of the budget period.

4. Final financial and performance reports are due, no more than 90 days after the end of the project period.

Send all reports to the Grants Management Specialist identified in the "Where to Obtain Additional Information" section of this announcement.

Measures of Effectiveness

Applicants are required to provide measures of effectiveness that will demonstrate the accomplishment of the various identified objectives of the cooperative agreement. Measures of effectiveness must relate to the Program and Priority areas as stated below. Measures must be objective and quantitative and must measure the intended outcome. These measures of effectiveness shall be submitted with the application and shall be an element of evaluation.

Program Area 1: Healthy Aging

Priority Area A—Collaboration and Health Promotion: Document the change in healthy behavior of aging adults by developing resources that focus on promoting healthy behaviors and practices among older adults: documentation should include a description of the process used, the scientific rationale for the content of the resources, intended target audience, and proposed evaluation plans.

Priority Area B—Implementation and Evaluation: Review of programs for older adults and dissemination of findings: documentation should include a description of the evaluation and dissemination processes.

Priority Area C—Evaluation and Development of Tools:

Evaluate current consumer educational tools and develop new tools: Documentation should include a description of the evaluation and development processes.

Program Area 2: Epilepsy

1. Develop diverse and active partnerships: documentation should include materials (i.e., minutes of meetings that delineate partners' roles, lists of work group members, outcomes or products of partnerships, communication vehicles developed or expanded to facilitate idea sharing among partners) that demonstrate collaboration on epilepsy program activities. Partners should include state and local health departments, organizations other than epilepsy affiliates/chapters that promote or address epilepsy issues; organizations that improve health and quality of life for those with chronic disease, and organizations that address the health care and support needs of minority populations.

2. Develop multifaceted outreach activities to expand epilepsy awareness at national and local levels. Extend educational outreach to under served groups: Documentation should include listings of network activities from at least 15 grantee affiliates, an outline of the elements of the current national media campaign, types of educational and promotional materials developed and disseminated, communication channels developed or expanded, and target populations reached. Provide measurable outputs that demonstrate that the target populations have been reached.

3. Develop, disseminate and/or evaluate at least five types of targeted consumer and/or provider education materials that focus on epilepsy and seizures: Documentation should include type of materials (i.e., fact sheets, articles, brochures, exhibits, presentations, training modules, audio/video materials) target populations reached, and evaluation methods used.

Program Area 3: Prevention Activities

1. Develop health promotion/disease prevention web-based modules: Documentation should include a detailed description of module development, including scientific rationale, steps taken to develop module

based on the rationale, intended target audience, intended outcomes for participants, and proposed evaluation plans.

2. Provide information by documenting the response to phone calls, email requests, and other referred questions generated by the dissemination of web-based materials.

3. Develop partnerships with at least 30 diverse and active national organizations representing health care practitioners that will disseminate the web-based modules to their membership: Documentation should include communications methods developed or expanded to facilitate information exchange, demonstration of feedback from the national organizations, dissemination of materials, and signed documents of collaboration.

Program Area 4: Arthritis

1. Document and report the number of training programs offered and the number of people trained in Arthritis Foundation evidence-based programs (i.e., ASHC, PACE, AF Aquatics).

2. Develop no more than five innovative self management education or physical activity programs by providing detailed descriptions of the process and outcome of program development, including scientific rationale for the program, steps taken to develop program based on the rationale, intended target audience, intended outcomes for program participants, theoretical model or framework, results of pilot testing, and proposed evaluation plans.

3. Increase capacity to provide information by documenting an increased ability to handle phone and web requests and the development and production of new materials.

The following additional requirements are applicable to these programs. For a complete description of each, see Attachment II of the announcement.

AR–7 Executive Order 12372 Review
AR–8 Public Health System Reporting requirements
AR–9 Paperwork Reduction Act Requirements
AR–10 Smoke-Free Workplace Requirements
AR–11 Healthy People 2010
AR–12 Lobbying Restrictions

I. Authority and Catalog of Federal Domestic Assistance Number

This program is authorized under the sections 301(a) and 317(k)(2) of the Public Health Service Act, (42 U.S.C. 241(a) and 247b(k)(2)), as amended. The Catalog of Federal Domestic Assistance number is 93.283.

J. Where To Obtain Additional Information

This and other CDC announcements can be found on the CDC home page Internet address *http://www.cdc.gov* Click on "Funding" then "Grants and Cooperative Agreements."

If you have questions after reviewing the contents of all the documents, business management assistance may be obtained from: Michelle Copeland, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Announcement 02091, Centers for Disease Control and Prevention, Room 3000, 2920 Brandywine Road, Atlanta, GA 30341–4146, Telephone: 770–488–2686, E-mail: *stc8@cdc.gov*.

See also the CDC home page on the Internet to obtain a copy of the announcement: *http://www.cdc.gov*.

For program technical assistance, contact: Mike Waller, Centers for Disease Control and Prevention, Division of Adult and Community Health, National Center for Chronic Disease Prevention and Health Promotion, 4770 Buford Highway NE, Atlanta, GA. 30341–3717, Telephone: (770) 488–5264, E-mail: *mnw1@cdc.gov*.

Dated: May 6, 2002.

Sandra R. Manning,

Director, Procurement and Grants Office, Centers for Disease Control and Prevention.

[FR Doc. 02–12087 Filed 5–14–02; 8:45 am]

BILLING CODE 4163–18–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 01N–0398]

Agency Information Collection Activities; Announcement of OMB Approval; Format and Content Requirements for Over–the–Counter (OTC) Drug Product Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Format and Content Requirements for Over–the–Counter (OTC) Drug Product Labeling" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (the PRA).

FOR FURTHER INFORMATION CONTACT: Karen L. Nelson, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1482.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 27, 2001 (66 FR 49388), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0340. The approval expires on April 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–12093 Filed 5–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00N–1034]

Agency Information Collection Activities; Announcement of OMB Approval; Medical Devices; Device Tracking

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that a collection of information entitled "Medical Devices; Device Tracking" has been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995.

FOR FURTHER INFORMATION CONTACT: Peggy Schlosburg, Office of Information Resources Management (HFA–250), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–1223.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of February 8, 2002 (67 FR 5943), the agency announced that the proposed information collection had been submitted to OMB for review and clearance under 44 U.S.C. 3507. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number. OMB has now approved the information collection and has assigned OMB control number 0910–0442. The approval expires on April 30, 2005. A copy of the supporting statement for this information collection is available on the Internet at http://www.fda.gov/ohrms/dockets.

Dated: May 8, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–12094 Filed 5–14–02; 8:45 am]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 00E–1345]

Determination of Regulatory Review Period for Purposes of Patent Extension; ACTOS

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for ACTOS and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Director of Patents and Trademarks, Department of Commerce, for the extension of a patent that claims that human drug product.

ADDRESSES: Submit written comments and petitions to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852. Submit electronic comments to http://www.fda.gov/dockets/ecomments.

FOR FURTHER INFORMATION CONTACT: Claudia V. Grillo, Office of Regulatory Policy (HFD–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3565.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Public Law 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Public Law 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: A testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Director of Patents and Trademarks may award (for example, half the testing phase must be subtracted, as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product ACTOS (proglitazone hydrochloride). ACTOS is indicated for the improvement of glycemic control in patients with Type 2 diabetes as monotherapy, or in combination with a sulfonylurea, metformin or insulin when diet and the single agent does not result in adequate glycemic control. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for ACTOS (U.S. Patent No. 4,687,777) from Takeda Chemical Industries, Ltd., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. In a letter dated January 17, 2001, FDA advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of ACTOS represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for ACTOS is 3,556 days. Of this time, 3,374 days occurred during the testing phase of the regulatory review period, while 182 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 355(i)) became effective*: October 21, 1989. FDA has verified the applicant's claim that the date the investigational new drug application became effective was on October 21, 1989.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the act*: January 15, 1999. FDA has verified the applicant's claim that the new drug application (NDA) for ACTOS (NDA 21-073) was initially submitted on January 15, 1999.

3. *The date the application was approved*: July 15, 1999. FDA has verified the applicant's claim that NDA 21-073 was approved on July 15, 1999.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,826 days of patent term extension.

Anyone with knowledge that any of the dates as published are incorrect may submit to the Dockets Management Branch (see **ADDRESSES**) written comments and ask for a redetermination by July 15, 2002. Furthermore, any interested person may petition FDA for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period by November 12, 2002. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (see **ADDRESSES**). Three copies of any information are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: April 22, 2002.

Jane A. Axelrad,

Associate Director for Policy, Center for Drug Evaluation and Research.

[FR Doc. 02–12092 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 02N–0169]

Combination Products Containing Live Cellular Components; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing; request for comments.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing to discuss the jurisdictional classification, assignment, and premarket review of certain products that consist of living human cells in combination with a device matrix. The hearing will focus on products that are intended for wound healing (e.g., wound repair or skin regeneration, replacement, or reconstruction), although the information obtained may also be pertinent to questions concerning other combination products containing live cells. Combination products that include human cell or tissue components have significant potential to enhance the public health. The purpose of the hearing is to solicit information and views from interested persons, including scientists, clinical investigators, professional groups, trade groups, commercial enterprises, and consumers, on the issues and concerns relating to the premarket review and regulation of these combination products. To assist in the development of a consistent policy on jurisdiction for these products, FDA is interested in responses to specific questions and any other pertinent information stakeholders would like to share.

DATES: The public hearing will be held on Monday, June 24, 2002, from 9 a.m. to 5 p.m. Submit written or electronic notices of participation by June 14, 2002. Written comments will be accepted until August 23, 2002.

ADDRESSES: The public hearing will be held at the Double Tree Hotel, Plaza II and III, 1750 Rockville Pike, Rockville, MD 20852. Directions to the hotel can be found at www.doubletreerockville.com. Submit written notices of participation and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, 5630 Fishers Lane, rm. 1061, Rockville, MD 20852, e-mail: FDADockets@oc.fda.gov. Submit electronic comments to http://www.accessdata.fda.gov/scripts/oc/dockets/meetings/meetingdocket.cfm. Transcripts of the hearing will be available for review at the Dockets Management Branch and on the Internet at http://www.fda.gov/ohrms/dockets.

FOR FURTHER INFORMATION CONTACT: Karen Wesley, Office of the Ombudsman, Office of Communications and Constituent Relations (HF–7), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–3390, FAX 301–480–8039, e-mail: ombuds@oc.fda.gov.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing a public hearing to discuss the jurisdictional classification, assignment, and premarket review of products that consist of living human cells in combination with a device matrix that are intended for wound healing. The meeting is another step in the agency's continuing effort to clarify and refine its regulatory approach to products that are comprised in whole or in part of living cells or tissues.

As the field of cell and tissue therapy has evolved, the agency has developed policies and practices to regulate these emerging products appropriately. For example, FDA is developing a risk-based regulatory approach for human cells, tissues, and cellular and tissue-based products (HCT/Ps). Under this approach, certain HCT/Ps would be subject to various requirements, including registration and listing, donor eligibility requirements, and good tissue practice requirements, but would not be subject to premarket review and approval. Other HCT/Ps, including combination products consisting of a cellular product combined with a device, would be subject to premarket review and approval.

Most cell therapies currently under development involve the use of cells alone, or in combination with biological products, such as cytokines or growth factors. However, in recent years sponsors have begun to combine human cells with other FDA-regulated articles, including devices or drug products. The combination of two distinct components that would normally be regulated under different regulatory authorities introduces additional factors to consider in the determination of primary jurisdiction and the application of appropriate regulatory authorities. In accordance with section 503(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(g)(1), the agency is required to assign primary jurisdiction for premarket review of combination products based on the product's "primary mode of action." In order to determine a combination product's primary mode of action the agency must be able to identify how the product acts on the body and to determine the relative contribution of each of its component parts.

In the absence of clear scientific data demonstrating which mode of action is primary, other factors have been considered to determine assignment of review responsibility within FDA. Historically, these other factors have included the guidance provided by the intercenter agreements, determination of the most novel element or component with the greatest safety risk and indication for use. Many of these products have been characterized as "cultured skin" products or interactive wound dressings and have been reviewed and regulated by the Center for Devices and Radiological Health (CDRH) under medical device authorities. Several such products have gone through CDRH administered review and are now marketed under approved premarket approval applications. FDA is soliciting information to determine whether this class of products should be transferred to the Center for Biologics Evaluation and Research (CBER) for premarket review and regulation.

II. Purpose and Scope of the Hearing

The promise of combination products that use living cells in combination with a device matrix for wound healing may be significant. Because such products combine cell and non-cell components successful development and marketing of these products may be slowed by uncertainty about jurisdiction, particularly as it relates to the nature and scope of regulatory requirements that must be met in order to bring these products to market. Moreover, such products have increasingly been the subject of questions regarding both jurisdiction and pre and postmarket requirements. The agency recognizes that it may need to modify existing paradigms to address the unique characteristics of these combinations.

In light of the regulatory and scientific issues posed by such combination products, the agency is holding a public hearing to solicit: (1) Information about these products, (2) recommendations on the formulation and implementation of a consistent policy for product assignment, and (3) appropriate requirements for approval.

The hearing will focus on a discussion of combination products that consist of autologous or allogeneic living human cells combined with a device matrix for wound healing. The agency notes that some of the products

that consist of living cells combined with a device matrix intended for wound healing are now assigned to CDRH. Depending upon the information presented at the hearing, the agency could conclude that the primary mode of action of some or all of these products is that of the cell component, and that the product(s) should therefore be reassigned to CBER.

Single entity products, combination products containing bone, ligament and vascular products used for structural purposes, and drug-device combination products are beyond the scope of this hearing. In addition, the hearing will not consider products intended for purposes other than wound healing, such as encapsulated pancreatic cells intended for implantation to produce insulin to treat diabetes.

Combination products that contain a gene therapy component are also beyond the scope of this hearing. The term gene therapy includes all products that contain genetic material administered to modify or manipulate the expression of genetic material or to alter the biological properties of living cells.

III. Issues for Discussion

The agency recognizes the importance of promoting the public health by promptly and efficiently reviewing clinical research and taking appropriate action on the marketing of regulated products in a timely manner, and of protecting the public health by assuring the safety and effectiveness of regulated medical products. New technologies and products that result from the combination of two distinct components provide not only unique scientific questions, but also challenges related to where and how the products should be regulated in order to ensure adequate, predictable, and consistent regulatory oversight. This public hearing is being held to discuss the classification, assignment, and premarket review of combination products comprised of live human cells used in combination with a device matrix for wound healing (e.g., wound repair, or skin regeneration, replacement or reconstruction). To assist in the development of a consistent policy on jurisdiction for these products, the agency invites information and comments on the following:

1. What are the public health concerns related to these combination products as a whole and with respect to their individual components? What information should the agency require in the premarket submission to demonstrate the safety and efficacy of combination products that contain live cells used in combination with a device matrix for wound healing (e.g., wound repair, or skin regeneration, replacement or reconstruction)? What regulatory requirements are necessary to ensure that adequate manufacturing controls are in place for both the device and live cell components? What other issues are important (e.g., clinical trial design, informed consent, infectious disease concerns)?

2. Given that primary mode of action determines jurisdiction for combination products, what information should the agency consider in identifying the level of contribution of each component to the therapeutic effect of the product? For example, skin replacement products are intended to act as wound coverings (historically considered a device action), and as mediators of tissue regeneration or repair by providing a living substrate to grow replacement tissue and through the production of soluble factors (historically considered to be biological product activities). What information should the agency consider in determining which action is primary?

3. In instances where both components of a combination product containing live cells appear to make a significant contribution to the therapeutic effect of the product and it is not possible to determine which mode of action is primary, what other factors should the agency consider in the assignment of primary jurisdiction? Is there a clear hierarchy among these additional factors that should be observed in order to ensure an adequate review? Should these same factors be used to determine the appropriate type of premarket application?

IV. Notice of Hearing Under 21 CFR Part 15

The Commissioner of Food and Drugs (the Commissioner) is announcing that the public hearing will be held in accordance with part 15 (21 CFR part 15). The presiding officer will be the Commissioner's designee, the Senior Associate Commissioner for Communications and Constituent Relations. The presiding officer will be accompanied by senior management from CBER, CDRH, and the Center for Drug Evaluation and Research (CDER).

Persons who wish to participate in the part 15 hearing must file a written or electronic notice of participation with the Dockets Management Branch (see **ADDRESSES**) before June 14, 2002. To ensure timely handling, any outer envelope should be clearly marked with the docket number listed at the head of this notice along with the statement "Combination Products Containing Live Cellular Components Hearing." Groups should submit two written copies. The notice of participation should contain the person's name; address; telephone number; affiliation, if any; the sponsor of the presentation (e.g., the organization paying travel expenses or fees), if any; a brief summary of the presentation; and approximate amount of time requested for the presentation. The agency requests that interested persons and groups having similar interests consolidate their comments and present them through a single representative. After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by telephone of the time allotted to the person and the approximate time the person's oral presentation is scheduled to begin. If time permits, FDA may allow interested persons attending the hearing who did not submit a written or electronic notice of participation in advance to make an oral presentation at the conclusion of the hearing. The hearing schedule will be available at the hearing. After the hearing, the hearing schedule will be placed on file in the Dockets Management Branch under the docket number listed at the head of this document.

Under § 15.30(f), the hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officer and panel members may question any person during or at the conclusion of each presentation.

Public hearings under part 15 are subject to FDA's policy and procedures for electronic media coverage of FDA's public administrative proceedings (part 10, subpart C (21 CFR part 10, subpart C)). Under § 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants. The hearing will be transcribed as stipulated in § 15.30(b). The transcript of the hearing will be available on the Internet at http://www.fda.gov/ohrms/dockets, and orders for copies of the transcript can be placed at the meeting or through the Dockets Management Branch (see **ADDRESSES**).

Any handicapped persons requiring special accommodations to attend the hearing should direct those needs to the contact person (see **FOR FURTHER INFORMATION CONTACT**).

To the extent that the conditions for the hearing, as described in this document, conflict with any provisions set out in part 15, this notice acts as a

waiver of those provisions as specified in § 15.30(h).

V. Request for Comments

Interested persons may submit to the Dockets Management Branch (see **ADDRESSES**) written or electronic notices of participation and comments for consideration at the hearing by June 14, 2002. To permit time for all interested persons to submit data, information, or views on this subject, the administrative record of the hearing will remain open following the hearing until August 23, 2002. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (see **ADDRESSES**) by August 23, 2002. Two copies of any written comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

VI. Electronic Access

Persons with access to the Internet may obtain more information about this hearing or combination products in general at http://www.fda.gov.

Dated: April 29, 2002.

Margaret M. Dotzel,

Associate Commissioner for Policy.

[FR Doc. 02–12171 Filed 5–10–02; 4:33 pm]

BILLING CODE 4160–01–S

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Substance Abuse and Mental Health Services Administration

Agency Information Collection Activities: Proposed Collection; Comment Request

In compliance with section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 concerning opportunity for public comment on proposed collections of information, the Substance Abuse and Mental Health Services Administration will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the information collection plans, call the SAMHSA Reports Clearance Officer on (301) 443–7978.

Comments are invited on: (a) Whether the proposed collections of information are necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology.

Proposed Project: National Survey of Characteristics and Funding of School Mental Health Services: 2002–2003—New—SAMHSA's Center for Mental Health Services will sponsor this national study of the mental health services provided in U.S. public schools. A substantial proportion of public schools provide some level of mental health screening, prevention, and treatment services to their students. However, no national-level data are available on these services. The study is designed to document the types of mental health problems encountered in schools, the mental health services provided, the types and of qualifications of staff providing the services, the arrangements for delivery of services, and the funding of those services. The study will examine the prevalence of these mental health resources and their distribution across schools in the nation as they vary by grade level, size, locale, and the student populations served.

The survey will be conducted as a self-administered mail survey (with telephone followup) of a nationally representative sample of 2,000 public elementary, middle and secondary schools. The districts associated with the sampled schools will be asked to answer questions about funding sources, budgets, and issues related to funding. The results of the study will be available in the summer of 2003. Response burden for the survey is summarized in the following table.

Questionnaire	Number of respondents	Responses/ respondent	Burden/ response (hrs.)	Total burden hours
School district	1,200	1	.5	600
School	2,000	1	1.0	2,000
Total	3,200			2,600

Send comments to Nancy Pearce, SAMHSA Reports Clearance Officer, Room 16–105, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Written comments should be received within 60 days of this notice.

Dated: May 8, 2002.

Richard Kopanda,

Executive Officer, SAMHSA.

[FR Doc. 02–12088 Filed 5–14–02; 8:45 am]

BILLING CODE 4162–20–P

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

Proposed Information Collection to Identify Tribal Non-Member Indian Artisan Certification Programs

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Arts and Crafts Board (IACB) is announcing its intention to request approval for the collection of information from those federally recognized Indian tribes that have established a non-member Indian artisan certification program as described in Pub. L. 101–644. This request for information from the tribes has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 14, 2002, in order to be assured of consideration.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to Meridith Z. Stanton, Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW., MS–4004 MIB, Washington, DC 20240 or electronically by e-mail to *iacb@os.doi.gov.*

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the proposed information collection instruments should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS 4004 MIB, Washington, DC 20240. You may also call (202) 208–3773 (not a toll free call), or send your request by e-mail to *iacb@os.doi.gov,* or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Indian Arts and Crafts Board (Board) is the agency responsible for the enforcement of the Indian Arts and Crafts Act of 1990, Pub. L. 101–644. The Act is a truth-in-advertising law that prohibits the offer or display for sale, or sale of any art or craft product in a manner that falsely suggests it is Indian produced, an Indian product, or the product of a particular Indian tribe. Under the law, an "Indian" is defined as "any individual who is a member of an Indian tribe, or for the purposes of this section is certified as an Indian artisan by an Indian tribe." It is voluntary for a tribe to establish a certification program in accordance with 25 CFR part 309.

As the agency responsible for the enforcement of the Indian Arts and Crafts Act, it is necessary for the Board to know which federally recognized tribes have established a non-member artist certification program in accordance with the Act. This information is important for the effective enforcement of the Act because it will enable the Board to quickly verify whether or not a particular Federally recognized tribe has a certification program under the Act, and to make a preliminary determination as to whether an individual is making a truthful claim regarding his or her certification by a particular Federally recognized tribe.

Finally, this information will enable the Board to answer general inquiries from the public regarding tribal non-member certification programs.

II. Method of Collection

In order to identify those federally recognized Indian tribes that have established a non-member Indian artisan certification program as set forth in Public Law 101–644, the Indian Arts and Crafts Board is mailing a response form and a self-addressed stamped envelope to federally recognized Indian tribes requesting that they (1) identify whether or not they have established a non-member artist certification program and, (2) if the tribe has established such a program, whether or not the tribe is willing to mail or fax to the Board a copy of the tribal statutory language establishing the certification program, and (3) whether the federally recognized tribe authorizes the Board to distribute its tribal language upon request by other tribes in search of a model for establishing their certification program. Submission of the information and authorization is strictly voluntary on behalf of the tribe.

Information collected	Reason for collection
Name of organization, address, telephone number, and name of contact.	To identify the federally recognized Indian tribe responding and to obtain a method and name of contact.
Whether or not the tribe has established a non-member artist certification program.	To identify those federally recognized Indian tribes that have established a non-member artist certification program.
Whether or not the tribe is willing to send to the Board by mail or fax its non-member artist certification program language.	To identify those federally recognized tribes that are willing to submit to the Board a copy of the tribal language establishing a non-member artist certification program.
Whether or not the tribe authorizes the Board to use its non-member artist certification program language as a model for other tribes.	To obtain the federally recognized tribe's authorization to use the tribal language establishing a non-member artist certification program as a model for other tribes.

III. Proposed Use of the Information

The information collected will be used by the Indian Arts and Crafts Board to determine which federally recognized Indian tribes have established a non-member Indian artisan certification program as contemplated by the Indian Arts and Crafts Act of 1990. This will enable the Indian Arts and Crafts Board to provide accurate responses to inquires from artisans and members of the public seeking this information.

IACB has submitted a request to OMB to approve the collection of information for the Non-member Artist Certification Response form. IACB is requesting a 3-year term of approval for the information collection activity.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number. As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on August 2, 2001 (66 FR 40292). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

(1) *Title:* Non-member Indian Artisan Certification Program Form.

OMB Control Number: 1085–xxxx.

Type of Review: New Collection.

Affected Entities: Federally recognized Tribal Governments.

Number of Respondents: 580.

Frequency of Collection: One time data gathering.

(2) Total annual reporting and record keeping burden.

Total Reporting Per Respondent: 10 minutes.

Total Annual Burden Hours: 97 hours.

(3) *Description of the need for the information and proposed use of the information:* The Board is requesting the foregoing information from Federally recognized Indian tribes in order to identify those federally recognized tribes that have established a program for certifying non-member Indian artisans as described in Public Law 101–644 and 25 CFR part 309.

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and validity of the methodology and assumptions used;

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(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology. Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: December 21, 2002.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. 02–12164 Filed 5–14–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Indian Arts and Crafts Board

Notice of Proposed Information Collection for Source Directory Publication

AGENCY: Indian Arts and Crafts Board, Interior.

ACTION: Notice and request for comments.

SUMMARY: In compliance with the Paperwork Reduction Act of 1995, the Indian Arts and Crafts Board (IACB) is announcing its intention to request approval for the collection of information for the Source Directory of American Indian and Alaska native owned and operated arts and crafts businesses. Two Business Listing Applications for (1) new businesses—group; (2) new businesses-individual; two Source Directory Business Listing Renewal Forms for (1) renewal for businesses already listed—group; and (2) renewal for businesses already listed—individual. There are four (4) types of forms total. Each respondent will only be asked to complete one (1) applicable form. This collection request has been forwarded to the Office of Management and Budget (OMB) for review and comment. The information collection request describes the nature of the information collection and the expected burden and cost.

DATES: OMB has up to 60 days to approve or disapprove the information collections but may respond after 30 days. Therefore, public comments should be submitted to OMB by June 14, 2002, in order to be assured of consideration.

ADDRESSES: Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Department of the Interior Desk Officer, 725 17th Street, NW., Washington, DC 20503. Also, please send a copy of your comments to Meridith Z. Stanton, Indian Arts and Crafts Board, U.S. Department of the Interior, 1849 C Street, NW., MS–4004 MIB, Washington, DC 20240 or electronically by e-mail to *iacb@os.doi.gov*.

FOR FURTHER INFORMATION CONTACT: Requests for additional information or copies of the Source Directory application or renewal forms, *i.e.*, the information collection instruments, should be directed to Meridith Z. Stanton, Director, Indian Arts and Crafts Board, 1849 C Street, NW., MS 4004 MIB, Washington, DC 20240. You may also call (202) 208–3773 (not a toll free call), or send your request by e-mail to *iacb@os.doi.gov* or by facsimile to (202) 208–5196.

SUPPLEMENTARY INFORMATION:

I. Abstract

The Source Directory of American Indian and Alaska Native owned and operated arts and crafts enterprises is a program of the Indian Arts and Crafts Board that promotes American Indian and Alaska Native arts and crafts. The Source Directory is a forty-one page full-color illustrated publication featuring fine examples of contemporary American Indian and Alaska Native art from the major cultural areas in the United States. The Source Directory also comes with a listing of American Indian and Alaska native owned and operated arts and crafts businesses. This listing is included as an insert in the back cover of the Source Directory.

The service of being listed in this publication is provided free-of-charge to members of Federally recognized tribes. Businesses listed in the Source Directory include American Indian and Alaska Native artists and craftspeople, cooperatives, tribal arts and crafts enterprises, businesses privately-owned-and-operated by American Indian and Alaska Native artists, designers, and craftspeople, and businesses privately owned-and-operated by American Indian and Alaska Native merchants who retail and/or wholesale authentic Indian and Alaska Native arts and crafts. Business listings in the Source Directory are arranged alphabetically by State. The Source Directory may be ordered from the Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250–7954, for a cost of $9.50 which includes shipping and handling. The business listings are also available on the Board's website located at *www.iacb.doi.gov*.

The Director of the Board uses this information to determine whether an individual or business applying to be listed in the Source Directory meets the requirements for listing. The approved application will be printed in the Source Directory. The Source Directory is updated annually to include new businesses and to update existing information.

II. Method of Collection

To be listed in the Source Directory, interested individuals and businesses must submit: (1) A letter requesting an entry in the Source Directory, (2) a draft of their business information in a format like the other Source Directory listings, (3) a copy of the individual's or business owner's tribal enrollment card; and for businesses, proof that the business is organized under tribal, State or Federal law; and (4) a certification that the business is an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization or that the owner of the enterprise is an enrolled member of a Federally recognized American Indian tribe or Alaska Native group.

The following information is collected in a single-page form that is distributed by the Indian Arts and Crafts Board. Although listing in the Source Directory is voluntary, submission of this information is required for inclusion in the Directory.

Information collected	Reason for collection
Name of business, mailing address, city, zip code (highway location, Indian reservation, etc.), telephone number and e-mail address.	To identify the business to be listed in the Source Directory, and method of contact.
Type of organization	To identify the nature of the business entity.

Information collected	Reason for collection
Hours/season of operation	To identify those days and times when customers may contact the business.
Internet website address	To identify whether the business advertises and/or sells inventory on-line.
Main categories of products	To identify the products that the business produces.
Retail or wholesale products	To identify whether the business is a retail or wholesale business.
Mail order and/or catalog	To identify whether the business has a mail order and/or catalog.
Price list information, if applicable	To identify the cost of the listed products.
For a cooperative or tribal enterprise, a copy of documents showing that the organization is formally organized under tribal, State or federal law.	To determine whether the business meets the eligibility requirement for listing in the Source Directory.
Signed certification that the business is an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization.	To obtain verification that the business is an American Indian or Alaska Native owned and operated business.
Copy of the business owner's tribal enrollment card	To determine whether the business owner is an enrolled member of a federally-recognized tribe.
Signed certification that the owner of the business is a member of a federally-recognized tribe.	To obtain verification that the business owner is an enrolled member of a federally-recognized tribe.

The proposed use of the information: The information collected will be used by the Indian Arts and Crafts Board:

(a) to determine whether an individual or business meets the eligibility requirements for inclusion in the Source Directory, *i.e.*, whether they are either an American Indian or Alaska Native owned and operated cooperative, tribal enterprise, or nonprofit organization, or an enrolled member of a Federally-recognized American Indian tribe or Alaska Native group;

(b) to identify the applicant's business information to be printed in the Source Directory. IACB has submitted a request to OMB to approve the collection of information for the Source Directory. Two Business Listing Applications for (1) new businesses—group; (2) new businesses—individual; two Source Directory Business Listing Renewal Forms for (1) renewal for businesses already listed—group; and (2) renewal for businesses already listed—individual. There are four (4) types of forms total. Each respondent will only be asked to complete one (1) applicable form. The IACB is requesting a 3-year term of approval for the information collection activity.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid Office of Management and Budget control number.

As required under 5 CFR 1320.8(d), a **Federal Register** notice soliciting comments on the collection of information was published on August 2, 2001 (66 FR 40293). No comments were received. This notice provides the public with an additional 30 days in which to comment on the following information collection activity:

(1) *Title:* Source Directory of American Indian and Alaska Native owned and operated arts and crafts businesses application and renewal forms.

OMB Control Number: 1085–xxxx.

Type of Review: New Collection.

Affected Entities: Business or other for-profit; Tribes.

Estimated Annual Number of Respondents: 100.

Frequency of Collection: Annual.

(2) Annual reporting and record keeping burden.

Total Annual Reporting Per Respondent: 15 minutes.

Total Annual Burden Hours: 25 hours.

(3) *Description of the need and use of the information:* Submission of this information is required to receive the benefit of being listed in the Indian Arts and Crafts Board Source Directory. The information is collected to determine the applicant's eligibility for the service and to obtain the applicant's name and business address to be printed in the publication.

The Department of the Interior invites comments on:

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(b) The accuracy of the agency's estimate of the burden of the collection and the validity of the methodology and assumptions used;

(c) Ways to enhance the quality, utility, and clarity of the information to be collected; and

(d) Ways to minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other collection techniques or other forms of information technology.

Burden means the total time, effort, or financial resources expended by persons to generate, maintain, retain, disclose or provide information to or for a Federal agency. This includes the time needed to review instructions; to develop, acquire, install and utilize technology and systems for the purpose of collecting, validating and verifying information, processing and maintaining information, and disclosing and providing information; to train personnel and to be able to respond to a collection of information, to search data sources, to complete and review the collection of information; and to transmit or otherwise disclose the information.

Dated: December 21, 2001.

Meridith Z. Stanton,

Director, Indian Arts and Crafts Board.

[FR Doc. 02–12165 Filed 5–14–02; 8:45 am]

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DEPARTMENT OF THE INTERIOR

Office of the Secretary

Central Utah Project Completion Act

AGENCY: Office of the Assistant Secretary for Water and Science, Department of the Interior.

ACTION: Notice of Availability of the Record of Decision documenting the Department of Interior's approval to proceed with the construction of the Diamond Fork System modifications, Utah County, Utah.

SUMMARY: On April 10, 2002, Tom Weimer, Deputy Assistant Secretary for Water and Science, Department of the Interior (Interior), signed the Record of Decision (ROD) which documents Interior's decision to modify a portion of the alignment of the Bonneville Unit Diamond Fork System of the Central Utah Project. The new alignment would eliminate the construction of a portion of the Upper Diamond Fork Tunnel and instead construct an alternative series of pipeline, tunnel, and shaft as presented in the Diamond Fork System 2002 Final Environmental Assessment for the Proposed Action Modifications and Finding of No Significant Impact (2002 Modifications EA/FONSI).

FOR FURTHER INFORMATION CONTACT: Additional information on matters related to this **Federal Register** notice can be obtained by contacting Mr. Reed Murray, Deputy Program Director, CUP Completion Act Office, Department of the Interior, 302 East 1860 South, Provo UT 84606–6154, (801) 379–1237, *rmurray@uc.usbr.gov*.

SUPPLEMENTARY INFORMATION: The ROD also approves the Central Utah Water Conservancy District (CUWCD) proceeding with the completion of the Diamond Fork System, in accordance with statutory and contractual obligations. The Proposed Action includes the following features: (1) Sixth Water Connection to Tanner Ridge Tunnel; (2) Tanner Ridge Tunnel; (3) Upper Diamond Fork Pipeline; (4) Upper Diamond Fork Flow Control Structure; (5) Upper Diamond Fork Shaft; (6) Aeration Chamber and Connection to Upper Diamond Fork Tunnel; and (7) Upper Diamond Fork Road Reconstruction.

The Proposed Action fulfills project needs to: (1) Maintain the statutorily mandated minimum flows in Sixth Water Creek and Diamond Fork Creek; (2) implement Interior's environmental commitments on the Diamond Fork System which includes but is not limited to removing high flows brought over from Strawberry Reservoir into the Sixth Water and Diamond Fork Creek drainages; (3) meet the CUWCD's M&I water contractual commitments to Salt Lake, Utah and Wasatch Counties, by conveying Bonneville Unit water to Utah Lake for exchange to Jordanelle Reservoir; and (4) provide the Utah Reclamation Mitigation and Conservation Commission (Mitigation Commission) the opportunity and flexibility for future restoration of aquatic and riparian habitat in Sixth Water and Diamond Fork creeks to protect water quality and threatened species in Diamond Fork Creek.

During preparation of the 2002 Modifications EA/FONSI, CUWCD consulted formally on listed species with the U.S. Fish and Wildlife Service (USFWS) under § 7 of the Endangered Species Act (16 U.S.C.A. sections 1531 to 1544, as amended). The Joint-Lead Agencies have included the USFWS recommendations as environmental commitments in the ROD.

Dated: May 1, 2002.

Ronald Johnston,

Program Director, Department of the Interior.

[FR Doc. 02–12089 Filed 5–14–02; 8:45 am]

BILLING CODE 4310–RK–P

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Tribal Consultation on Indian Education Topics; Correction

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of tribal consultation meetings; correction.

SUMMARY: This document corrects the notice that was published in the **Federal Register** on May 7, 2002 (67 FR 30722), by changing the comment deadline.

Correction

On page 30722, in the second column under the **DATES** section, the first sentence "Comments are due on or before June 28, 2002." is corrected to read: "Comments are due on or before July 26, 2002."

All other information published in the May 7, 2002 notice remains unchanged.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Whitehorn, (202) 208–4976.

Dated: May 7, 2002.

Neal A. McCaleb,

Assistant Secretary—Indian Affairs.

[FR Doc. 02–12053 Filed 5–14–02; 8:45 am]

BILLING CODE 4310–6W–M

INTERNATIONAL TRADE COMMISSION

[Inv. No. 337–TA–449]

Certain Abrasive Products Made Using a Process for Powder Preforms, and Products Containing Same; Notice of Issuance of Limited Exclusion Order and Cease and Desist Order

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has issued a limited exclusion order and a cease and desist order in the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Michael K. Haldenstein, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3041. Copies of the limited exclusion order, the cease and desist order, the public version of the Commission's opinion, and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW, Washington, DC 20436, telephone 202–205–2000.

General information concerning the Commission may also be obtained by accessing its Internet server (*http://www.usitc.gov*). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810. The public record for this investigation may be viewed on the Commission's electronic docket (EDIS–ON–LINE) at *http://dockets.usitc.gov/eol/public*.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation on February 5, 2001, based upon a complaint filed on January 5, 2001, by Minnesota Mining & Manufacturing Co. ("3M") of St. Paul, Minnesota and Ultimate Abrasive Systems, LLC ("UAS") of Atlanta, Georgia. 66 FR 9720 (Feb. 9, 2001). Their complaint named Kinik Company ("Kinik") of Taipei, Taiwan and Kinik Corporation ("Kinik Corp.") of Anaheim, California as respondents.

Complainants alleged that respondents had violated section 337 of the Tariff Act of 1930 by importing into the United States, selling for importation, and selling within the United States after importation certain abrasive products that are made using a process for making powder preforms that is covered by claims 1, 4, 5, and 8 of U.S. Letters Patent 5,620,489 ("the '489 patent"), owned by UAS and exclusively licensed to 3M. The complaint further alleged that an industry in the United States exists as required by subsection (a)(2) of section 337.

Complainants moved to terminate the investigation with respect to Kinik Corp. after they concluded that Kinik Corp was not manufacturing or importing products that infringed the '489 patent. The ALJ granted this motion on June 19, 2001, in an initial determination ("ID") (Order No. 15) and the Commission determined not to review that ID. On August 8, 2001, the ALJ issued an ID (Order No. 19) that the economic prong of the domestic industry requirement was satisfied with respect to the claims at issue of the '489 patent, and the Commission determined not to review that ID.

An evidentiary hearing was held on October 10–17, 27, and 30, 2001. On February 8, 2002, the ALJ issued his final ID, in which he determined that respondent Kinik's accused DiaGrid abrasive products infringed claims 1, 4, 5, and 8 of the '489 patent and that the '489 patent was valid and enforceable. Based upon these findings, he found a violation of section 337.

The ALJ recommended issuance of a limited exclusion order barring importation of all Kinik abrasive products that infringe the '489 patent, which includes products produced using Kinik's DiaGrid process. He also recommended issuance of a cease and desist order against Kinik, and a bond during the Presidential review period in the amount of five percent of the entered value of the infringing Kinik products.

On February 21, 2002, Kinik petitioned for review of the ALJ's final ID. Kinik also appealed Order No. 40, issued by the ALJ on October 12, 2001. That order precluded Kinik from asserting 35 U.S.C. 271(g) as a non-infringement defense. On February 28, 2002, 3M and the Commission investigative attorney ("IA") filed oppositions to Kinik's petition for review and its appeal of Order No. 40.

On March 29, 2002, the Commission determined to affirm Order No. 40 and not to review the ALJ's final ID, and issued a notice to that effect. 67 FR 16116 (Apr. 4, 2002). The Commission also issued an opinion explaining its reasons for affirming Order No. 40.

Having determined that a violation of section 337 has occurred in this investigation, the Commission sought comments on and considered the issues of the appropriate form of relief, whether the public interest precludes issuance of such relief, and the bond during the 60-day Presidential review period.

The Commission determined that the appropriate remedy consists of a limited exclusion order prohibiting the importation of the infringing abrasive products manufactured abroad by Kinik Company of Taipei, Taiwan, and a cease and desist order directed to Kinik prohibiting that company from selling or engaging in various other commercial activities relating to such products within the United States. The Commission further determined that the statutory public interest factors do not preclude the issuance of such relief. Finally, the Commission determined that during the Presidential review period importation and sales within the United States should be permitted pursuant to a bond requirement in the amount of five percent of the entered value of the infringing abrasive products.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and section 210.50 of the Commission's Rules of Practice and Procedure (19 CFR 210.50).

Issued: May 9, 2002.

By order of the Commission.

Marilyn R. Abbott,

Secretary.

[FR Doc. 02–12157 Filed 5–14–02; 8:45 am]

BILLING CODE 7020–02–P

DEPARTMENT OF JUSTICE

Office of Community Policing Services; Agency Information Collection Activities: Proposed Collection; Comments Requested

ACTION: 30-Day notice of information collection under review: new collection, Tribal Resources Grant Program Equipment and Training Progress Report.

The Department of Justice (DOJ), Office of Community Oriented Policing Services (COPS) has submitted the following information collection request to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995. The proposed information collection is published to obtain comments from the public and affected agencies. This proposed information collection was previously published in the **Federal Register** Volume 67, Number 25, page 5612 on February 6, 2002, allowing for a 60-day comment period.

The purpose of this notice is to allow for an additional 30 days for public comment until June 14, 2002. This process is conducted in accordance with 5 CFR 1320.10.

Written comments and/or suggestions regarding the items contained in this notice, especially the estimated public burden and associated response time, should be directed to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention Department of Justice Desk Officer, Washington, DC 20503. Additionally, comments may be submitted to OMB via facsimile to (202)–395–7285.

Request written comments and suggestions from the public and affected agencies concerning the proposed collection of information are encouraged. Your comments should address one or more of the following four points:

(1) Evaluate whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;

(2) Evaluate the accuracy of the agencies' estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Overview of This Information Collection

(1) *Type of Information Collection:* New Collection.

(2) *Title of the Form/Collection:* Tribal Resources Grant Program Equipment and Training Progress Report.

(3) *Agency form number, if any, and the applicable component of the Department of Justice sponsoring the collection:* Form Number: None. U.S. Department of Justice, Office of Community Oriented Policing Services (COPS).

(4) *Affected public who will be asked or required to respond, as well as a brief abstract:*

Primary: Federally Recognized Tribal Governments.

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Other: None.

Abstract: The information collected will be used by the COPS Office to determine grantee's progress toward grant implementation and for compliance monitoring efforts.

(5) *An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond:* There will be an estimated 200 responses, one for each respondent.

The estimated amount of time required for the average respondent to respond: The estimated time required for the average respondent to respond is 3 hours.

(6) *An estimate of the total public burden (in hours) associated with the collection:* There are approximately 600 annual burden hours associated with this collection.

FOR FURTHER INFORMATION CONTACT: Mrs. Brenda E. Dyer, Deputy Clearance Officer, United States Department of Justice, Information Management and Security Staff, Justice Management Division, Suite 1600, Patrick Henry Building, 601 D Street, NW., Washington, DC 20530.

Dated: May 9, 2002.

Brenda E. Dyer,

Department Deputy Clearance Officer, Department of Justice.

[FR Doc. 02–12082 Filed 5–14–02; 8:45 am]

BILLING CODE 4410–AT–M

DEPARTMENT OF LABOR

Office of the Secretary

Submission for OMB Review; Comment Request; Correction

May 8, 2002.

On Monday, May 6, 2002, the Department of Labor (DOL) published a notice in **Federal Register** (Vol. 67, No. 87, pages 30401 to 30402) announcing an opportunity to comment on an information collection request (ICR) that was submitted to the Office of Management and Budget (OMB) for review and approval in accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, 44 U.S.C. Chapter 35). The notice announced an opportunity to comment on the ICR for OSHA's Hazard Communication Standard (OMB control number 1218–0072).

The corrections are as follows:

On page 30402, third column, the "Title" line is revised by inserting "1910." Between "CFR" and "1200;" and inserting "Parts" between "1200" and "1915 * * *"

On page 30402, first column, the "Description" paragraph is revised by inserting "1910." Between "CFR" and "1200" and inserting "Parts" between "1200;" and "1915 * * *"

Ira L. Mills,

Departmental Clearance Officer.

[FR Doc. 02–12154 Filed 5–14–02; 8:45 am]

BILLING CODE 4510–23–M

DEPARTMENT OF LABOR

Employment and Training Administration

Workforce Security Programs: Training and Employment Guidance Letter Interpreting Federal Law

The Employment and Training Administration interprets federal law requirements pertaining to unemployment compensation (UC) and public employment services (ES). These interpretations are issued in Training and Employment Guidance Letters (TEGLs) to the State Workforce Agencies. The TEGL described below is published in the **Federal Register** in order to inform the public.

TEGL 18–01

TEGL 18–01 advises states of the federal law requirements applicable to the $8 billion Reed Act distribution made on March 13, 2002.

Like other Reed Act distributions, federal law governs how states may use this money. This $8 billion Reed Act distribution is available for the payment of UC and the administration of the state's UC law and its ES offices.

While the use of the $8 billion distribution is limited by many of the same requirements that apply to other Reed Act distributions, there are also differences. Using a question and answer format, Attachment I to TEGL 18–01 explains these differences and other amendments to federal law relating to the Reed Act, and answers questions that have been raised by the states concerning the distribution.

Dated: May 10, 2002.

Emily Stover DeRocco,

Assistant Secretary of Labor.

Employment and Training Administration, Advisory System, U.S. Department of Labor, Washington, DC 20210

CLASSIFICATION: Reed Act
CORRESPONDENCE SYMBOL: OWS/OIS/DL
DATE: April 22, 2002

Training and Employment Guidance Letter No. 18–01

To: All State Workforce Liaisons; All State Workforce Agencies; All State Worker Adjustment Liaisons; All One-Stop Center System Leads.

From: Emily Stover DeRocco, Assistant Secretary.

Subject: Reed Act Distribution.

1. *Purpose.* To advise states of the federal law requirements applicable to the $8 billion Reed Act distribution made on March 13, 2002.

2. *References.* Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 (TEUCA), which is Title II of the Job Creation and Worker Assistance Act of 2002, Public Law No. 107–147, signed by the President on March 9, 2002; Title IX of the Social Security Act (SSA); the Federal Unemployment Tax Act (FUTA); and Unemployment Insurance Program Letter (UIPL) 39–97 (62 FR 63960 (December 3, 1997)), UIPL 39–97, Change 1 (January 16, 2002) and UIPL 20–02 (April 4, 2002).

3. *Background.* On March 13, 2002, an $8 billion distribution was made to the states' accounts in the Unemployment Trust Fund. The TEUCA labeled this transfer a "Reed Act" distribution although it differs from traditional Reed Act distributions, most notably because it was a set dollar amount, made without regard to the statutory ceilings in the federal accounts. Each state was advised of its share of this distribution in UIPL 20–02.

Like other Reed Act distributions, federal law governs how states may use this money. This $8 billion Reed Act distribution is available for the payment of unemployment compensation (UC) and the administration of the state's UC law and its public employment service (ES) offices.

RESCISSIONS: None.

EXPIRATION DATE: Continuing

While the use of this $8 billion distribution is limited by many of the same requirements that apply to other Reed Act distributions, there are also differences. Using a question and answer format, Attachment I explains these differences and other amendments to federal law relating to the Reed Act, and answers questions that have arisen since the TEUCA became law. A separate advisory which discusses suggested uses for the $8 billion Reed Act distribution is under development.

4. *Action.* State administrators should distribute this advisory to appropriate staff. States must adhere to the requirements of federal law that are contained in this advisory.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

I. Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002—Questions and Answers

II. Text of Section 209 of the Temporary Extended Unemployment Compensation Act of 2002 [1]

Attachment I

Reed Act Distributions Under the Temporary Extended Unemployment Compensation Act of 2002 – Questions and Answers

In General

1. *Question:* How was my state's share of the total amount of the $8 billion Reed Act distribution determined?

Answer: In general, each state's share is based on its proportionate share of FUTA taxable wages for calendar year 2000. The specific formula is as follows:

- First, the amount of Reed Act moneys that would have been distributed in October 2001, had the distribution not been capped at $100 million, was determined. This amount was about $9.34 billion. (Section 903(d)(2)(A)(i), SSA, as added by the TEUCA.)
- Second, each state's share of the $9.34 billion was determined based on the state's proportionate share of FUTA taxable wages in calendar year 2000. (Section 903(d)(2)(A), SSA, as added by the TEUC, and Section 903(a)(2), SSA.)
- Third, each state's share of the $100 million actually distributed in October 2001 was deducted. This resulted in a figure of about $9.24 billion. (Section 903(d)(2)(A)(ii), SSA, as added by the TEUCA.)
- Fourth, the $8 billion cap was applied. (Section 903(d)(2)(B)(i), SSA, as added by the TEUCA.) According to Section 903(d)(2)(B)(ii), SSA, as added by the TEUCA, this reduction is applied "ratably." This means that each state's share of the $9.24 billion was reduced proportionately to result in the $8 billion distribution.

2. *Question:* My state has borrowed under Title XII, SSA, so that it can continue to pay benefits. Does this affect my Reed Act distribution?

Answer: Yes. The amendments state that the existing provisions applying to any outstanding advances shall apply. Specifically, Section 209(c), TEUCA, provides that Section 903(b), SSA, "shall apply to" the $8 billion Reed Act transfer. Section 903(b)(2), SSA, provides that the Reed Act distribution for a state will be reduced "by the balance of advances made to the State under section 1201, SSA" for purposes of reducing the outstanding loan. The upshot is that the state with an outstanding loan receives its full share of the distribution in terms of dollars; however, the amount distributed as Reed Act moneys is reduced or eliminated depending on whether the outstanding advance exceeds the state's share of Reed Act funds.

3. *Question:* For what may the $8 billion distribution be used?

Answer: As is the case with regular Reed Act distributions, the amounts are limited to the payment of UC and the administration of the state's UC law and its system of public employment offices. More specific information is provided in the Questions and Answers under "Use for Benefits" and "Use for UC and ES Administration." Details about requirements related to use of these funds are provided in a series of Questions and Answers below.

4. *Question:* If the $8 billion transfer is limited to the payment of certain administrative costs and the payment of UC, does this mean it may not be used to reduce employer taxes?

Answer: No. The use limitations apply only to expenditures. A state's share of the Reed Act distribution may increase the balance in the state's unemployment fund, and, as a result, lower employer taxes. Employer rates must, however, continue to be assigned on the basis of an employer's experience as provided under Section 3303(a)(1), FUTA.

Use for Benefits

5. *Question:* Is the use for benefits of the $8 billion distribution in any way restricted? For example, is it restricted to the payment of part-time workers or payments based on alternative base periods?

Answer: There are some restrictions. In general, the distribution may be used for the payment of regular compensation, including increased weekly benefit amounts, and certain payments of additional compensation, but not for the state's share of extended benefits (EB). More specifically, the distribution may be used for any of the following benefit purposes for weeks of unemployment beginning after March 9, 2002:

- The distribution may be used for the payment of "regular compensation." (Section 903(d)(3)(B)(i)(I), SSA, as added by the TEUCA.) Thus, any amount of regular UC payable under the state's UC law is permissible.
- "At the option of the State," the regular compensation "may include amounts which shall be payable to 1 or more categories of individuals not otherwise eligible for regular compensation," including part-time workers and those individuals who would qualify under an alternative base period. (Section 903(d)(3)(C), SSA, as added by the TEUCA.) Since this provision simply lists options, it is not exhaustive. However, if a state amends its law to pay any of these additional categories, the UC paid to such individuals "may not, for any period of unemployment, exceed the maximum amount of regular compensation authorized" under the state's UC law for the same period. Thus, if the state elects to pay these special categories out of this $8 billion Reed Act distribution, the benefit entitlement is limited to that applicable to other workers. For example, a worker using an alternative base period under this provision is limited to using it for purposes of qualifying for the same weekly and maximum benefit amounts as other workers.
- The distribution may be used for the payment of "additional compensation," but only upon the exhaustion of TEUC for individuals who would be "eligible for regular compensation," but for the fact that they had exhausted entitlement to that regular compensation. (Section 903(d)(3)(B)(i)(II), SSA, as amended by the TEUCA.) "Additional compensation" is defined as "compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors." (Section 205(d) of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.)
- The distribution may not be used for the state share of EB under the Federal-State Extended Unemployment Compensation Act of 1970. The distribution may only be used for payment of regular and additional compensation as described above.

Note that, if a payment is not allowed under the Reed Act requirements, the state may instead pay the amount from other moneys in its unemployment fund as long as the payment meets the definition of "compensation," that is, cash benefits payable to individuals with respect to their unemployment. (Section 3306(h), FUTA.)

6. *Question:* There are workers in my state who exhausted regular compensation, but who are not eligible for TEUC. May I pay additional compensation to these workers from this Reed Act distribution? Does this additional compensation fall under the "categories of individuals not otherwise eligible for regular compensation?'

Answer: The answer to both questions is "no." Since the use of the Reed Act moneys for additional compensation is explicitly restricted to TEUC

[1] ATTACHMENT II is available in the *www.workforcesecurity.doleta.gov* Web site under Directives/Advisories.

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exhaustees, additional compensation does not fall under the "categories of individuals not otherwise eligible for regular compensation." Since the examples of these categories pertain only to payments of regular compensation, they do not authorize the payment of additional compensation to individuals ineligible for TEUC. (Section 903(d)(3)(C)(iii), SSA, as amended by the TEUCA.)

7. *Question:* May my state use the $8 billion Reed Act distribution to pay for weeks of unemployment occurring prior to the date of enactment (March 9, 2002)?

Answer: No. The law explicitly limits payments to "weeks of unemployment beginning after the date of enactment." (Section 903(d)(3)(D), SSA, as amended by the TEUCA.)

8. *Question:* Do the amendments change the treatment of EB due to the receipt of additional benefits?

Answer: Yes. Under current EB law, any additional compensation received by an individual causes a reduction in the amount of EB payable. (Section 202(b)(1) of the Federal-State Extended Unemployment Compensation Act of 1970.) However, the amendments supersede this requirement. Additional compensation paid from the $8 billion Reed Act distribution, which is paid "upon the exhaustion" of TEUC, does not reduce EB entitlement by the amount of additional benefits paid. (Section 903(d)(3)(B)(ii), SSA, as added by the TEUCA.) The additional compensation to which this provision applies need not be created following the Reed Act distribution; it may be a longstanding state program. Instead, the key is whether the state uses the $8 billion distribution to finance these benefits. Once there are no longer TEUC exhaustees in the claimant population, this exception will have no effect.

Use for UC and ES Administration

9. *Question:* If my state wants to use the $8 billion Reed Act distribution for administrative purposes, must my state's legislature first appropriate the money?

Answer: Yes. The appropriation is explicitly required. (Specifically, Section 903(d)(4), SSA, as added by the TEUCA, says the distribution may be used for administrative purposes "subject to" the appropriation requirements of Section 903(c)(2), SSA.) However, the amendments also provide that one of the existing state appropriation requirements does not apply. State appropriations are not required to specify that moneys appropriated must be obligated within the two-year period beginning on the date of enactment of the state's appropriation law. States are free to obligate moneys beyond this two-year date. (State law may, however, restrict the obligation period to two years or less.)

10. *Question:* Prior to the enactment of the TEUCA, my state enacted an appropriation allowing Reed Act moneys distributed in fiscal year 2002 to be used for UC administrative purposes. Does this appropriation allow my state to use some/all of its share of the $8 billion Reed Act distribution for UC administration?

Answer: The Department has previously permitted Reed Act moneys to be appropriated in advance of their availability. Therefore, it is possible that an existing state appropriation of fiscal year 2002 Reed Act moneys permits the expenditure for UC administration of the state's share of the $8 billion Reed Act distribution. The state will need to examine its Reed Act appropriation law to determine if it is sufficiently broad to permit expenditure of amounts transferred to it under Section 903(d), SSA. Also, the state will need to determine if its general appropriation laws permit this.

11. *Question:* How long is the $8 billion Reed Act distribution available for administrative purposes?

Answer: There is no time limit on the use of this distribution (or any other Reed Act distribution) for administrative purposes.

12. *Question:* May the $8 billion Reed Act distribution be used for the administration of my state's One-Stop system?

Answer: Yes. Reed Act moneys may be used for the "administration of * * * public employment offices." (Section 903(c)(2), SSA.) The Department has in the past taken the position that "administration of * * * public employment offices" means any function fundable under the Wagner-Peyser Act. As a result, Reed Act funds may be used in the same manner that Wagner-Peyser Act funds are used to support One-Stop systems. Examples of activities that support administration and service delivery of employment and workforce information services in One-Stop offices include:

- Staff for delivery of appropriate core and intensive service employment services;
- Equipment and resources for resource rooms;
- Payment for rent, utilities, and maintenance of facilities, including common spaces such as resource rooms, reception areas, conference areas, etc. in accordance with cost sharing guidelines;
- Shared costs for operation of local one-stops including payment for one-stop operators in accordance with cost sharing guidelines;
- Development of products that support service delivery such as labor market information products and job bank technology;
- Computer equipment, network equipment, telecommunications equipment, application development, and other technology resources, including assisted technology, that support employment and workforce information service delivery;
- Outreach and educational materials targeted at users of one-stop employment and workforce information services;
- Training, technical assistance, and professional development of staff who deliver employment and workforce information services.

This list is not exhaustive, but only intended to provide examples of activities in the One-Stop system for which Reed Act funds may be used. Guidelines on permissible uses of Wagner-Peyser funds are found in 20 CFR parts 652 and 667. In addition, the Department plans to post guidance entitled *One-Stop Comprehensive Financial Management Technical Assistance Guide* on Employment and Training Administration Web sites in the near future.

13. *Question:* May the $8 billion Reed Act distribution be used to pay the costs of job training?

Answer: No. Except for training provided to UC and ES staff, Reed Act moneys may not be used to provide occupational skill training because this training is not a cost of administering either the state's UC law or its public employment offices. Just as with Wagner-Peyser funds, the Reed Act moneys may, however, be used for activities that are presented in a training format or a group setting but generally fall within the category of job search and placement services (*e.g.*, teaching individuals how to interview for a job or how to complete a resume).

14. *Question:* My state is using its share of the $8 billion Reed Act distribution to pay the benefits costs associated with the enactment of an alternative base period (or other expansion). How will my state's implementation costs be paid?

Answer: A state may use its UC grant to pay for these implementation costs. Alternatively, since Reed Act moneys may be used for administration of the state's UC law, the state may appropriate Reed Act moneys to pay for costs of implementation.

15. *Question:* Will my state be able to use UC and ES administrative grants to amortize Reed Act purchases made with my state's share of the $8 billion distribution?

Answer: Yes. Amortization relates to the permissible use of UC and ES administrative grants; this area is not addressed by the TEUCA. See UIPLs 39–97 and UIPL 39–97, Change 1, for guidance on when amortization is permissible.

16. *Question:* Is OMB Circular A–87, Cost Principles for State, Local and Indian Tribal Governments, applicable to the $8 billion distribution or any other Reed Act distribution?

Answer: No. OMB Circular A–87 applies only to federal grants and cooperative agreements and Reed Act funds are neither. Use of Reed Act funds for administrative activities is governed by Section 903(c)(2), SSA, which limits use to administration of the state's UC law and/or public employment offices under the conditions specified in that section. However, since Reed Act moneys may not pay costs for non-UI/non-ES programs, in cases where an activity (such as purchasing a multi-agency computer) benefits other activities, it will still be necessary to ensure that non-UI/non-ES costs are not paid from Reed Act funds. In these cases, states must allocate costs. Although states will not be required to submit cost allocation plans in such cases, in the event any plan is reviewed by the Department, cost allocation requirements applicable to grants will be applied to the plan.

17. *Question:* May I withdraw some or all of the $8 billion Reed Act distribution and use it to set up an administrative fund at the state level that would earn interest that could be used for administrative expenses?

Answer: No. Withdrawing amounts to create an investment fund at the state level is inconsistent with the limitations on the use of Reed Act moneys. That is, the Reed Act moneys would not be used for the payment of compensation or the administration of the state's UC law or system of public employment offices. Instead, the money would be withdrawn for purposes of investment. *See* page 12 of Attachment I to UIPL 39–97.

18. *Question:* If my state uses the $8 billion Reed Act distribution to pay for benefits, may the amounts so used be restored so that the state can use them for administrative payments?

Answer: No. The restoration provisions of the SSA are limited to "amounts transferred to the account of a State pursuant to subsections (a) and (b)" of Section 903, SSA. (Emphasis added; Section 903(c)(3)(A)(i), SSA.) The $8 billion Reed Act distribution was not transferred to states under these two subsections; instead it was transferred under subsection (d) of Section 903, as added by the TEUCA.

19. *Question:* May the interest earned on the Reed Act balances be used for UC and ES administration?

Answer: No. The amount of any Reed Act distribution is limited to the actual dollar amount transferred to the states. Therefore, interest earnings are not available for administrative purposes.

$100 Million Distributions Made in 1999–2001

20. *Question:* Do the amendments affect the use of the capped $100 million Reed Act distributions that were made in October of 1999, 2000, and 2001?

Answer: No. Although the TEUCA amendments repealed those provisions of Section 903, SSA, addressing these capped distributions, it also contained a savings clause providing that "[a]ny amounts transferred before the date of enactment of this Act * * * shall remain subject to section 903 of the Social Security Act, as last in effect before such date of enactment." (Section 209(a)(2), TEUCA.) Since all these capped distributions were transferred prior to the TEUCA's enactment, their use continues to be restricted to UC administration, and no appropriation by the state legislature is required. Although there is some indication in the legislative history that Congress intended to repeal this use limitation and reimpose the appropriation requirement, the plain language of the law produces the opposite result.

State Reed Act Laws

21. *Question:* Is the Department providing draft appropriation language?

Answer: Two alternative versions of draft language were provided in Attachment II of UIPL 39–97. Both of these may be used without change, except as noted in the following paragraph. Also, Alternative II may be modified to delete the provision required by Section 2 of that alternative, which pertains to the 2-year limitation on obligations since, as explained above, the 2-year limitation does not apply to the $8 billion distribution.

Care should be taken in crafting state appropriation bills to assure the source of the Reed Act moneys is clear. There should be no doubt about whether the moneys used derive from traditional Reed Act distributions (those made in the 1950's and in October of 1998); the $100 million distributions made in October of 1999, 2000, and 2001; and the $8 billion Reed Act distribution. The state may indicate that it is using its share of the $8 billion by specifically referencing Section 903(d), SSA, in the appropriation bill or referencing the specific date on which the transfer was made to the state (March 13, 2002). Without this information, the Department will be unable to determine if the appropriation is consistent with the applicable use requirements.

22. *Question:* Will the states need to change their permanent Reed Act provisions?

Answer: This will need to be determined by each state. Some states may restrict the use of Reed Act funds for administration purposes to amounts transferred under Section 903(c), SSA. Since the $8 billion transfer was made under Section 903(d), SSA, states may need to make this change. The Department is evaluating whether draft language should be provided in this area.

Reporting Requirements

23. *Question:* What are the reporting instructions for the Reed Act money?

Answer: States are required to report all Reed Act transactions on the ETA 8403. The report is required each month a transaction occurs (*e.g.*, deposits to the state account, withdrawals from the account, enactment of state appropriations). These reports are not required if there is no Reed Act activity. *See* ETA Handbook 401. The Department expects to have these transactions reported on-line through the Treasury's Automated Standard Application for Payments (ASAP) soon, and states will receive additional instructions at that time.

Reed Act reporting instructions for the ETA 2112 are unchanged. (*See* ETA Handbook 401, 3rd Edition, May 2000.)

[FR Doc. 02–12153 Filed 5–14–02; 8:45 am]
BILLING CODE 4510–30–P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council: Notice of Meetings and Agenda

The Spring meetings of committees of the Labor Research Advisory Council will be held on June 3, 4, and 5, 2002. All of the meetings will be held in the Conference Center, of the Postal Square Building (PSB), 2 Massachusetts Avenue, NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of

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union research directors and staff members. The schedule and agenda of the meetings are as follows:

Monday, June 3, 2002

9:30 a.m.—Committee on Employment and Unemployment Statistics—Meeting Room 9

1. Current Employment Statistics (CES) survey North American Industry Classification System (NAICS) conversion plans.
2. BLS research into establishment wage differentials (using Occupational Employment Statistics (OES) data).
3. Current Population Survey (CPS) topics:
   a. Issues in converting to new standards for race and ethnicity.
   b. Overview of May 2001 Supplement results related to work at home, shift work, overtime, and work preferences.
4. Topics for the next meeting.

1:30 p.m.—Committee on Productivity, Technology and Growth—Meeting Room 9

1. The impact of alternative measures of nonproduction and supervisory worker hours on productivity growth.
2. Status report on likely new measures for service sector industries.
3. Productivity growth in manufacturing industries characterized by "high tech" workers.
4. Highlights of the BLS 2000–2010 projections.
5. Topics for the next meeting.

Committee on Foreign Labor Statistics Meeting Room 9

1. Results from updated comparative labor force series.
2. Topics for the next meeting.

Tuesday, June 4, 2002

9:30 a.m.—Committee on Compensation and Working Conditions—Meeting Room 9

1. Recent issues concerning retirement plans.
2. Overview of the Employment Cost Index.
3. Calculation of hours in the Employment Cost Index.
4. Topics for next meeting.

1:30 p.m.—Committee on Prices and Living Conditions—Meeting Room 9

1. Update on program developments.
   a. Consumer Price Index.
   b. International Price Indexes.
   c. Producer Price Indexes.
2. Topics for the next meeting.

Wednesday, June 5, 2002

1:00 p.m.—Committee on Occupational Safety and Health Statistics—Meeting Room 9

1. 2000 Survey of Occupational Injuries and Illnesses-Industry Incidence Rates and Number of Cases.
2. 2000 Survey of Occupational Injuries and Illnesses-Worker Demographics and Case Circumstances.
3. Survey of Respirator Use and Practices.
4. Status Reports on:
   a. 2001 Survey of Occupational Injuries and Illnesses.
   b. 2002 Survey of Occupational Injuries and Illnesses.
5. Injury and Illness Follow-back Surveys.
6. Injuries and Illnesses involving restricted activity only.
7. Budget status.
8. Topics for the next meeting.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on 202–691–5970.

Signed at Washington, DC this 6th day of May, 2002.

Lois L. Orr,

Acting Commissioner.

[FR Doc. 02–12152 Filed 5–14–02; 8:45 am]

BILLING CODE 4510–24–P

LEGAL SERVICES CORPORATION

Notice of Availability of Calendar Year 2003 Competitive Grant Funds

AGENCY: Legal Services Corporation.

ACTION: Solicitation for Proposals for the Provision of Veterans Legal Services.

SUMMARY: The Legal Services Corporation (LSC) is the national organization charged with administering Federal funds provided for civil legal services to the poor.

LSC hereby announces the availability of competitive grant funds and is soliciting grant proposals from interested parties who are qualified to provide effective, efficient and high quality legal services to eligible veterans appearing before the United States Court of Veterans Appeals. The exact amount of congressionally appropriated funds and the date, terms and conditions of their availability for calendar year 2003 have not been determined.

DATES: See **SUPPLEMENTARY INFORMATION** section for grants competition dates.

ADDRESSES: Legal Services Corporation—Veterans Grant Competition, Attn: Jennifer Bateman, 750 First Street NE., 10th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Office of Program Performance, Veterans Grant Competition—by FAX at (202) 336–7272, by e-mail at *batemanj@lsc.gov*

SUPPLEMENTARY INFORMATION: Request for Proposals (RFP) will be available beginning May 28, 2002.

LSC is seeking proposals from: (1) Non-profit organizations that have as a purpose the furnishing of legal assistance to eligible clients; (2) private attorneys; (3) groups of private attorneys or law firms; (4) State or local governments; and (5) substate regional planning and coordination agencies which are composed of substate areas and whose governing boards are controlled by locally elected officials.

The RFP, containing the grant application, guidelines, proposal content requirements and specific selection criteria, can be requested by contacting Jennifer Bateman at 202.336.8835 or by email at *batemanj@lsc.gov*. LSC will not FAX the solicitation package to interested parties. The deadline for submission of the Grant Application is August 9, 2002 by 5:00 p.m. EDT.

Dated: May 9, 2002.

Michael A. Genz,

Director, Office of Program Performance.

[FR Doc. 02–12021 Filed 5–14–02; 8:45 am]

BILLING CODE 7050–01–P

NATIONAL COUNCIL ON DISABILITY

Cancellation of Advisory Committee Meeting/Teleconference

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: April 30, 2002, FR Doc. 02–1525, on page 21281.

TIME AND DATE: 4 p.m. EST, May 8, 2002.

PLACE: National Council on Disability, 1331 F Street, NW., Suite 850, Washington, DC.

AGENCY: National Council on Disability (NCD).

STATUS: Meeting canceled.

CONTACT PERSON FOR MORE INFORMATION: Gerrie Drake Hawkins, Ph.D., Program Specialist, National Council on Disability, 1331 F Street NW., Suite 850, Washington, DC 20004; 202–272–2004 (voice), 202–272–2074 (TTY), 202–272–2022 (fax), *ghawkins@ncd.gov* (e-mail).

YOUTH ADVISORY COMMITTEE MISSION: The purpose of NCD's Youth Advisory Committee is to provide input into NCD activities consistent with the values and goals of the Americans with Disabilities Act.

Dated: May 2, 2002.

Ethel D. Briggs,

Executive Director.

[FR Doc. 02–12151 Filed 5–14–02; 8:45 am]

BILLING CODE 6820–MA–M

NUCLEAR REGULATORY COMMISSION

Receipt of Request for Action Under 10 CFR 2.206

Notice is hereby given that by petition dated March 11, 2002, and supplements dated March 21, 22, and 27, 2002, Mr. David A. Lochbaum, Nuclear Safety Engineer in the Washington, DC, Office of the Union of Concerned Scientists (petitioner), and the co-petitioners identified in the petition supplements dated March 21 and March 22, 2002, have requested that the U.S. Nuclear Regulatory Commission (NRC or the Commission) take action with regard to the nuclear power facilities listed in Attachment 1 to the petition (multiple facilities). The petitioners request that the NRC immediately issue orders to the owners of all operating nuclear power plants to take measures that will reduce the risk from sabotage of irradiated fuel. Specifically, those measures are:

(1) The NRC should "impose a 72-hour limit for operation when the number of operable onsite alternating current power sources (*i.e.*, emergency diesel generators) is one less than the number in the Technical Specification limiting condition for operation. This 72-hour limit would be applicable when the nuclear plant is in any mode of operation other than hot shutdown, cold shutdown, refueling, or defueled." Oconee Nuclear Station does not rely on emergency diesel generators but "equivalent protection for its emergency power supply" should be provided. The NRC should also "cease and desist issuing NOEDs [Notices of Enforcement Discretion] that allow nuclear reactors to operate for longer periods of time with broken emergency diesel generators." This requested action would apply to the facilities listed in Attachment 1 to the petition.

(2) The NRC should "impose a minimum 24-hour time-to-boil for the spent fuel pool water. This limit would be applicable at all times." This requested action would apply to the facilities listed in Attachment 1 to the petition.

The petition also requested that the NRC hold a public meeting to precede "the Petition Review Board (PRB) non-public meeting regarding this petition" and assign "someone other than the Director of NRR [Office of Nuclear Reactor Regulation] to be responsible for our petition. The Deputy Executive Director for Reactor Programs or the Deputy Director of NRR would be acceptable to UCS [Union of Concerned Scientists]."

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director, NRR. As provided by Section 10 CFR 2.206, appropriate action will be taken on this petition within a reasonable time. On March 26, 2002, the petitioner participated in a teleconference with the PRB to discuss the petition, as supplemented. The PRB considered the petitioner's contributions to the teleconference in deciding on the requests for immediate action and in setting the schedule for review of the petition. A copy of the petition and its supplements is available for inspection at the Commission's Public Document Room (PDR), at One White Flint North, 11555 Rockville Pike (first floor), Rockville, Maryland. Publicly available records will be accessible from the Agencywide Documents Access and Management System (ADAMS) Public Electronic Reading Room on the Internet at the NRC Web site, *http://www.nrc.gov/reading-rm/adams.html*. Persons who do not have access to ADAMS or who have problems in accessing the documents in ADAMS, should contact the NRC PDR Reference staff by telephone at 1–800–397–4209 or 301–415–4737 or by e-mail to *pdr@nrc.gov*.

Dated at Rockville, Maryland, this 8th day of May 2002.

For the Nuclear Regulatory Commission.

Samuel J. Collins,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 02–12125 Filed 5–14–02; 8:45 am]

BILLING CODE 7590–01–P

NUCLEAR REGULATORY COMMISSION

Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued revisions to two guides in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

Revision 1 of Regulatory Guide 8.30, "Health Physics Surveys in Uranium Recovery Facilities," describes guidance acceptable to the NRC staff on health physics surveys at uranium recovery facilities. These health physics surveys are used in protecting workers at uranium recovery facilities from radiation and the chemical toxicity of uranium.

Revision 1 of Regulatory Guide 8.31, "Information Relevant to Ensuring that Occupational Radiation Exposures at Uranium Recovery Facilities Will Be As Low As Is Reasonably Achievable," provides guidance on design criteria and administrative practices that are acceptable to the NRC staff for maintaining occupational exposures as low as is reasonably achievable (ALARA) in uranium recovery facilities.

Comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time. Written comments may be submitted to the Rules and Directives Branch, Division of Administrative Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory guides are available for inspection or downloading at the NRC's Web Site at <*WWW.NRC.GOV*> under Regulatory Guides and in NRC's Electronic Reading Room (ADAMS System) at the same site. Single copies of regulatory guides may be obtained free of charge by writing the Reproduction and Distribution Services Section, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, or by fax to (301) 415–2289, or by e-mail to <*DISTRIBUTION@NRC.GOV*>. Issued guides may also be purchased from the National Technical Information Service on a standing order basis. Details on this service may be obtained by writing NTIS, 5285 Port Royal Road, Springfield, VA 22161.

Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 2nd day of May, 2002.

For the Nuclear Regulatory Commission.

Ashok C. Thadani,

Director, Office of Nuclear Regulatory Research.

[FR Doc. 02–12126 Filed 5–14–02; 8:45 am]

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PENSION BENEFIT GUARANTY CORPORATION

Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of interest rates and assumptions.

SUMMARY: This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates are also published on the PBGC's Web site (*http://www.pbgc.gov*).

DATES: The required interest rate for determining the variable-rate premium under part 4006 applies to premium payment years beginning in May 2002. The interest assumptions for performing multiemployer plan valuations following mass withdrawal under part 4281 apply to valuation dates occurring in June 2002.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024. (TTY/TDD users may call the Federal relay service toll-free at 1–800–877–8339 and ask to be connected to 202–326–4024.)

SUPPLEMENTARY INFORMATION:

Variable-Rate Premiums

Section 4006(a)(3)(E)(iii)(II) of the Employee Retirement Income Security Act of 1974 (ERISA) and § 4006.4(b)(1) of the PBGC's regulation on Premium Rates (29 CFR part 4006) prescribe use of an assumed interest rate (the "required interest rate") in determining a single-employer plan's variable-rate premium. The required interest rate is the "applicable percentage" (currently 100 percent) of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid (the "premium payment year"). (Although the Treasury Department has ceased issuing 30-year securities, the Internal Revenue Service announces a surrogate yield figure each month—based on the 30-year Treasury bond maturing in February 2031—which the PBGC uses to determine the required interest rate.)

The required interest rate to be used in determining variable-rate premiums for premium payment years beginning in May 2002 is 5.68 percent.

The following table lists the required interest rates to be used in determining variable-rate premiums for premium payment years beginning between June 2001 and May 2002.

For premium payment years beginning in	The required interest rate is
June 2001	4.91
July 2001	4.82
August 2001	4.77
September 2001	4.66
October 2001	4.66
November 2001	4.52
December 2001	4.35
January 2002	5.48
February 2002	5.45
March 2002	5.40
April 2002	5.71
May 2002	5.68

Multiemployer Plan Valuations Following Mass Withdrawal

The PBGC's regulation on Duties of Plan Sponsor Following Mass Withdrawal (29 CFR part 4281) prescribes the use of interest assumptions under the PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044). The interest assumptions applicable to valuation dates in June 2002 under part 4044 are contained in an amendment to part 4044 published elsewhere in today's **Federal Register**. Tables showing the assumptions applicable to prior periods are codified in appendix B to 29 CFR part 4044.

Issued in Washington, DC, on this 10th day of May 2002.

Steven A. Kandarian,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 02–12159 Filed 5–14–02; 8:45 am]

BILLING CODE 7708–01–P

OFFICE OF PERSONNEL MANAGEMENT

Submission for OMB Review; Comment Request for an Emergency Information Collection: Website Customer Satisfaction Survey

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995 (Pub. L. 104–13, May 22, 1995), this notice announces that the Office of Personnel Management (OPM) will submit to the Office of Management and Budget (OMB) an emergency request for review of a new information collection. The Website Customer Satisfaction Survey satisfies the requirements of Executive Order 12862 and the guidelines set forth in OMB's Resources Manual for Customer Surveys.

The completed survey will be web-based (electronic). We estimate approximately 300,000 surveys will be completed during the survey period. The time estimate is 7 minutes. The annual estimated burden is 35,000 hours.

Comments are particularly invited on:

- Whether this collection of information is necessary for the proper performance of functions of the Office of Personnel Management, and whether it will have practical utility;
- Whether our estimate of the public burden of this collection of information is accurate and based on valid assumptions and methodology; and
- Ways in which we can minimize the burden of the collection of information on those who respond through the use of appropriate technological collection techniques or other forms of information technology.

For copies of this proposal, contact Mary Beth Smith-Toomey on FAX (202) 418–3251 or e-mail *mbtoomey,@opm.gov*. Please include a mailing address with your request.

DATES: Comments on this proposal should be received within 3 calendar days from the date of this publication. We request OMB to take action within 15 calendar days of the close of this Notice.

ADDRESSES: Send or deliver comments to: Mary Beth Smith-Toomey, OPM PRA Officer, U.S. Office of Personnel Management, 1900 E St., NW, Room 5415, Washington, DC 20415, and Joseph Lackey, OPM Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building NW, Room 10235, Washington, DC 20503.

Office of Personnel Management.

Kay Coles James,

Director.

[FR Doc. 02–12078 Filed 5–14–02; 8:45 am]

BILLING CODE 6325–46–P

SECURITIES AND EXCHANGE COMMISSION

Existing Collection; Comment Request

[Extension: Rule 17f–5, SEC File No. 270–259, OMB Control No. 3235–0269; Rule 17f–7, SEC File No. 270–470, OMB Control No. 3235–0529; Form N–17D–1, SEC File No. 270–231, OMB Control No. 3235–0229; Rule 18f–1 and Form N–18F–1, SEC File No. 270–187, OMB Control No. 3235–0211; Rule 19b–1, SEC File No. 270–312, OMB Control No. 3235–0354]

Upon written request, copies available from: Securities and Exchange Commission, Office of Filings and Information Services, 450 Fifth Street, NW, Washington, DC 20549.

Notice is hereby given that, pursuant to the Paperwork Reduction Act of 1995 (44 USC 3501–3520), the Securities and Exchange Commission ("Commission") is soliciting comments on the collections of information summarized below. The Commission plans to submit these existing collections of information to the Office of Management and Budget ("OMB") for extension and approval.

Rule 17f–5 under the Investment Company Act of 1940 [15 USC 80a] ("Investment Company Act" or "Act") governs the custody of the assets of registered management investment companies ("funds") with custodians outside the United States. Under Rule 17f–5, the fund's board of directors must find that it is reasonable to rely on each delegate it selects to act as the fund's foreign custody manager. The delegate must agree to provide written reports that notify the board when the fund's assets are placed with a foreign custodian and when any material change occurs in the fund's custody arrangements. The delegate must agree to exercise reasonable care, prudence, and diligence, or to adhere to a higher standard of care. When the foreign custody manager selects an eligible foreign custodian, it must determine that the fund's assets will be subject to reasonable care if maintained with that custodian, and that the written contract that governs each custody arrangement will provide reasonable care for fund assets. The contract must contain certain specified provisions or others that provide at least equivalent care. The foreign custody manager must establish a system to monitor the contract and the appropriateness of continuing to maintain assets with the eligible foreign custodian.

The collection of information requirements in rule 17f–5 are intended to provide protection for fund assets maintained with a foreign bank custodian whose use is not authorized by statutory provisions that govern fund custody arrangements,[1] and is not subject to regulation and examination by U.S. regulators. The requirement that the fund board determine that it is reasonable to rely on each delegate is intended to ensure that the board carefully considers each delegate's qualifications to perform its responsibilities. The requirement that the delegate provide written reports to the board is intended to ensure that the delegate notifies the board of important developments concerning custody arrangements so that the board may exercise effective oversight. The requirement that the delegate agree to exercise reasonable care is intended to provide assurances to the fund that the delegate will properly perform its duties.

The requirements that the foreign custody manager determine that fund assets will be subject to reasonable care with the eligible foreign custodian and under the custody contract, and that each contract contain specified provisions or equivalent provisions, are intended to ensure that the delegate has evaluated the level of care provided by the custodian, that it weighs the adequacy of contractual provisions, and that fund assets are protected by minimal contractual safeguards. The requirement that the foreign custody manager establish a monitoring system is intended to ensure that the manager periodically reviews each custody arrangement and takes appropriate action if developing custody risks may threaten fund assets.

The Commission's staff estimates that each year, approximately 160 registrants[2] could be required to make an average of one response per registrant under rule 17f–5, requiring approximately 2 hours of director time per response, to make the necessary findings concerning foreign custody managers. The total annual burden associated with these requirements of the rule would be up to approximately 320 hours (160 registrants × 2 hours per registrant). The staff further estimates that during each year, approximately 15 global custodians[3] would be required to make an average of 4 responses per custodian concerning the use of foreign custodians other than depositories, requiring approximately 800 total hours annually per custodian.[4] The total annual burden associated with these requirements of the rule would be approximately 12,000 hours (15 global custodians × 800 hours per global custodian). Therefore, the total annual burden of all collection of information requirements of rule 17f–5 is estimated to be up to 12,320 hours (320 + 12,000). The total annual cost of burden hours is estimated to be $6,760,000 (12,320 hours × $500/hour for director time, plus 12,000 hours × $50/hour of professional time).

Rule 17f–7 permits funds to maintain their assets in foreign securities with depositories under certain conditions. The rule contains some "collection of information" requirements. An eligible securities depository has to meet minimum standards for a depository. The fund or its investment adviser generally determines whether the depository complies with those requirements based on information provided by the fund's primary custodian (a bank that acts as global custodian). The depository custody arrangement has to meet certain risk limiting requirements. The fund can obtain indemnification or insurance arrangements that adequately protect the fund against custody risks. The fund or its investment adviser generally determines whether indemnification or insurance provisions are adequate. If the fund does not rely on indemnification or insurance, the fund's contract with its primary custodian is required to state that the custodian will provide to the fund or its investment adviser a custody risk analysis of each depository, monitor risks on a continuous basis, and promptly notify the fund or its adviser of material changes in risks. The primary custodian and other custodians also are required to agree to exercise reasonable care.

The collection of information requirements in rule 17f–7 are intended to provide workable standards that protect funds from the risks of using securities depositories while assigning appropriate responsibilities to the fund's primary custodian and investment adviser based on their capabilities. The requirement that the depository meet specified minimum standards is intended to ensure that the depository is subject to basic safeguards deemed appropriate for all depositories. The requirement that the custody

[1] See section 17(f) of the Investment Company Act [15 USC 80a–17(f)].

[2] This figure is an estimate of the number of new funds each year, based on data reported by funds in 2001 on Form N–1A and Form N–2 [17 CFR 274.101]. In practice, not all funds will use foreign custody managers, and the actual figure may be smaller.

[3] This estimate is the same used in connection with the adoption of the amendments to rule 17f–5 and of rule 17f–7 in 1999, based on staff review of custody contracts and other research. The number of global custodians has not changed significantly since 1999.

[4] These estimates are based on a survey of global custodians.

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contract state that the fund's primary custodian will provide an analysis of the custody risks of depository arrangements, monitor the risks, and report on material changes is intended to provide essential information about custody risks to the fund's investment adviser as necessary for it to approve the continued use of the depository. The requirement that the primary custodian agree to exercise reasonable care is intended to provide assurances that its services and the information it provides will meet an appropriate standard of care. The alternative requirement that the fund obtain adequate indemnification or insurance against the custody risks of depository arrangements is intended to provide another, potentially less burdensome means to protect assets held in depository arrangements.

The staff estimates that approximately 900 investment advisers [5] would make an average of 4 responses annually per adviser under the proposed rule, requiring a total of approximately 20 hours for each adviser, to address depository compliance with minimum requirements, any indemnification or insurance arrangements, and reviews of risk analyses or notifications. The total annual burden associated with these requirements of the rule would be approximately 18,000 hours (900 advisers × 20 hours per adviser). The staff further estimates that during each year, approximately 15 global custodians would make an average of 4 responses per custodian under the rule, requiring approximately 800 hours annually per custodian.[6] The total annual burden associated with these requirements of the new rule would be approximately 12,000 hours (15 custodians × 800 hours). Therefore, the staff estimates that the total annual burden associated with all collection of information requirements of the rule would be 30,000 hours (18,000 + 12,000). The total annual cost of burden hours is estimated to be $1,500,000 (30,000 hours × $50/hour of professional time).

Section 17(d) [15 U.S.C. 80a–17(d)] of the Investment Company Act authorizes the Commission to adopt rules that protect investment companies and their security holders from overreaching by affiliated persons when the fund and the affiliated person participate in any joint enterprise or other joint arrangement or profit-sharing plan. Rule 17d–1 under the Act [17 CFR 270.17d–1] prohibits funds and their affiliated persons from participating in a joint enterprise, unless an application regarding the transaction has been filed with and approved by the Commission. Subparagraph (d)(3) of the rule provides an exemption from this requirement for any loan or advance of credit to, or acquisition of securities or other property of, a small business concern, or any agreement to do any of the foregoing ("investments") made by a small business investment company ("SBIC") and an affiliated bank, provided that reports about the investments are made on forms the Commission may prescribe. Rule 17d–2 [17 CFR 270.17d–2] designates Form N–17D–1 as the form for reports required by rule 17d–1(3).

SBICs and their affiliated banks use Form N–17D–1 to report any contemporaneous investments in a small business concern. The form provides shareholders and persons seeking to make an informed decision about investing in an SBIC an opportunity to learn about transactions of the SBIC that have the potential for self dealing and other forms of overreaching by affiliated persons of the SBIC at the shareholders' expense.

Form N–17D–1 requires SBIC's and their affiliated banks to report identifying information about the small business concern and the affiliated bank. The report includes, among other things, the SBIC's and affiliated bank's outstanding investments in the small business concern, the use of the proceeds of the investments made during the reporting period, any changes in the nature and amount of the affiliated bank's investment, the name of any affiliated person of the SBIC or the affiliated bank (or any affiliated person of an affiliated person of the SBIC or affiliated bank) who has any interest in the transactions, the basis of the affiliation, the nature of the interest, and the consideration the affiliated person has received or will receive.

Up to seven SBICs may file the form in any year. [7] The Commission estimates the burden of filling out the form is approximately one hour per response and would likely be completed by an accountant or other professional. Based on past filings, the Commission estimates that no more than one SBIC is likely to use the form each year. The total annual burden of filling out the form is one hour and the total annual cost is approximately $38.[8]

Rule 18f–1 [17 CFR 270.18f–1] enables a registered open-end management investment company that may redeem its securities in-kind, by making a one-time election, to commit to make cash redemptions pursuant to certain requirements without violating section 18(f) of the Investment Company Act [15 U.S.C. 80a–18(f)]. A fund relying on the rule must file Form N–18F–1 [17 CFR 274.51] to notify the Commission of this election. The Commission staff estimates that approximately 70 funds file Form N–18F–1 annually, and that each response takes approximately one hour. Based on these estimates, the total annual burden hours associated with the rule is estimated to be 70 hours.

Rule 19b–1 is entitled "Frequency of Distribution of Capital Gains." The rule prohibits registered investment companies from distributing long-term capital gains more than once every twelve months unless certain conditions are met. Rule 19b–1(c) permits unit investment trusts ("UITs") engaged exclusively in the business of investing in certain eligible fixed-income securities to distribute long-term capital gains more than once every twelve months, if (i) the capital gains distribution falls within one of several categories specified in the rule [rule 19b–1(c)(1)] and (ii) the distribution is accompanied by a report to the unit holder that clearly describes the distribution as a capital gains distribution [rule 19b–1(c)(2)] (the "notice requirement"). The purpose of this notice requirement is to ensure that unit holders understand that the source of the distribution is long-term capital gains.

Rule 19b–1(e) permits a fund to apply for permission to distribute long-term capital gains more than once a year if the fund did not foresee the circumstances that created the need for the distribution. The application must set forth the pertinent facts and explain the circumstances that justify the distribution. An application that meets those requirements is deemed to be granted unless the Commission denies the request within 15 days after the Commission receives the application. The Commission uses the information required by rule 19b–1(e) to facilitate the processing of requests from funds for authorization to make a distribution that would not otherwise be permitted by the rule.

[5] This figure is based on an estimate by the staff that there are approximately 3,650 registered funds within approximately 900 fund complexes. A fund complex is a group of funds with the same adviser.

[6] These estimates are based on a survey of global custodians.

[7] As of December 31, 2001, seven SBICs were registered with the Commission.

[8] Commission staff estimates that the annual burden would be incurred by accounting professionals with an average hourly wage rate of $37.50 per hour. *See* Securities Industry Association, *Report on Management and Professional Earnings in the Securities Industry—2000* (2000) (reporting median salary paid to senior accountants outside New York).

The Commission staff estimates that the time required to prepare an application under rule 19b–1(e) is approximately four hours. The staff estimates that on average one fund files one application per year under this rule. Based on these estimates, the total paperwork burden is 4 hours for paragraph (e) of rule 19b–1. The Commission staff estimates that there is no hour burden associated with rule 19b–1(c).

There is, however, a cost burden associated with rule 19b–1(c). The staff estimates that there are approximately 8,800 fixed-income UITs, which may rely on rule 19b–1(c) to make capital gains distributions. We estimate that on average each of these UITs relies on rule 19b–1(c) once a year to make a capital gains distribution.[9] We estimate that a UIT incurs a cost of $50, which is encompassed within the fee the UIT pays its trustee, to prepare a notice for a capital gains distribution under rule 19b–1(c)(2). Because the notices are mailed with the capital gains distribution, there is no separate mailing cost. Thus, the staff estimates that the notice requirement imposes an annual cost on UITs of approximately $440,000.

Based on these calculations, the total number of respondents for rule 19b–1 is estimated to be 8,801 (8,800 UIT portfolios + 1 fund filing an application under rule 19b–1(e)), the total hour burden is estimated to be 4 hours, and the total cost burden is estimated to be $440,000.

The collections of information required by 19b–1(c) and 19b–1(e) are necessary to obtain the benefits described above.

The estimate of average burden hours is made solely for the purposes of the Paperwork Reduction Act, and is not derived from a comprehensive or even a representative survey or study of the costs of Commission rules. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a currently valid OMB control number.

Written comments are invited on: (a) Whether the collection of information is necessary for the proper performance of the functions of the Commission, including whether the information has practical utility; (b) the accuracy of the Commission's estimate of the burden of the collection of information; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. The Commission will consider comments and suggestions submitted in writing within 60 days of this publication.

Please direct your written comments to Michael E. Bartell, Associate Executive Director, Office of Information Technology, Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549.

Dated: May 3, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12111 Filed 5–14–02; 8:45 am]

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[9] The number of times UITs rely on the rule to make capital gains distributions depends on a wide range of factors and, thus, can vary greatly across years.

SECURITIES AND EXCHANGE COMMISSION

[File No. 1–7256]

Issuer Delistings; Notice of Application to Withdraw From Listing and Registration on the Pacific Exchange, Inc. (International Aluminum Corporation, Common Stock, $1.00 Par Value)

May 9, 2002.

International Aluminum Corporation, a California corporation, ("Issuer"), has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") [1] and Rule 12d2–2(d) thereunder,[2] to withdraw its Common Stock, $1.00 par value ("Security"), from listing and registration on the Pacific Exchange, Inc. ("PCX" or "Exchange").

The Board of Directors ("Board") of the Issuer approved a resolution on March 15, 2002 to withdraw its Security from listing on the Exchange. The Board cited low trading volume and negligible benefit derived from the Issuer's listing as reasons for delisting its Security on the PCX. The Issuer will continue to list its Security on the New York Stock Exchange, Inc. ("NYSE").

The Issuer stated in its application that it has complied with the rules of the PCX that govern the removal of securities from listing and registration on the Exchange. The Issuer's application relates solely to the withdrawal of the Securities from listing on the PCX and shall have no affect upon the Security's continued listing on the NYSE and registration under Section 12(b) of the Act.[3]

Any interested person may, on or before May 30, 2002, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609, facts bearing upon whether the application has been made in accordance with the rules of the PCX and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Jonathan G. Katz,

Secretary.

[FR Doc. 02–12112 Filed 5–14–02; 8:45 am]

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[1] 15 U.S.C. 78*l*(d).

[2] 17 CFR 240.12d2–2(d).

[3] 15 U.S.C. 78*l*(b).

[4] 17 CFR 200.30–3(a)(1).

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25573; 812–12738]

The Wachovia Funds, et al.; Notice of Application

May 9, 2002.

AGENCY: Securities and Exchange Commission ("Commission").

ACTION: Notice of application under section 17(b) of the Investment Company Act of 1940 ("Act") for an exemption from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants request an order to permit certain series of registered open-end management investment companies to acquire all of the assets and certain identified liabilities of certain other series of the investment companies. Because of certain affiliations, applicants may not rely on rule 17a–8 under the Act.

APPLICANTS: The Wachovia Funds, The Wachovia Municipal Funds, The Wachovia Variable Insurance Funds (collectively, the "Wachovia Trusts"); Evergreen Equity Trust, Evergreen Select Equity Trust, Evergreen Fixed Income Trust, Evergreen Select Fixed Income Trust, Evergreen International Trust, Evergreen Select Money Market Trust, Evergreen Municipal Trust, and Evergreen Variable Annuity Trust (collectively, the "Evergreen Trusts"); and Wachovia Bank National Association ("Wachovia Bank").

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FILING DATES: The application was filed on December 27, 2001 and amended on May 9, 2002.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m. on June 3, 2002, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Wachovia Trusts, 1001 Liberty Avenue, Pittsburgh, PA 15222; Wachovia Bank, 201 S. College Street, Charlotte, NC 28288; and Evergreen Trusts, 200 Berkeley Street, Boston, MA 02116–9000.

FOR FURTHER INFORMATION CONTACT: Keith A. Gregory, Senior Counsel, at (202) 942–0611, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the Commission's Public Reference Branch, 450 Fifth Street, NW, Washington, DC 20549–0102 (tel. 202–942–8090).

Applicants' Representations

1. The Wachovia Trusts, each a Massachusetts business trust, are open-end management investment companies registered under the Act. The Wachovia Trusts together have a total of 27 series, of which 22 series are involved in the proposed transactions (the "Wachovia Acquired Funds"). The Wachovia Funds is presently comprised of 20 series, of which 15 series are involved in the proposed transactions. The Wachovia Municipal Funds is presently comprised of 4 series, all of which are involved in the proposed transactions. The Wachovia Variable Insurance Funds is presently comprised of 3 series, all of which are involved in the proposed transactions. Shares of the series of The Wachovia Variable Insurance Funds are sold only to separate accounts of insurance companies to serve as the investment medium for variable life insurance policies and variable annuity contracts issued by the insurance companies, and to qualified pension and retirement plans.

2. The Evergreen Trusts, each a Delaware business trust, are open-end management investment companies registered under the Act. The Evergreen Trusts together have a total of 92 series, of which 27 series are involved in the proposed transactions (the "Evergreen Funds"). Evergreen Equity Trust is presently comprised of 23 series, of which 5 series are involved in the proposed transactions. Evergreen Select Equity Trust is presently comprised of 8 series, of which 4 series are involved in the proposed transactions. Evergreen Fixed Income Trust is presently comprised of 7 series, of which 4 series are involved in the proposed transactions. Evergreen Select Fixed Income Trust is presently comprised of 9 series, of which 3 series are involved in the proposed transactions. Evergreen International Trust is presently comprised of 6 series, of which 3 series are involved in the proposed transactions. Evergreen Select Money Market Trust is presently comprised of 10 series, of which one series is involved in the proposed transactions. Evergreen Municipal Trust is presently comprised of 14 series, of which 4 series are involved in the proposed transactions. Evergreen Variable Annuity Trust is presently comprised of 15 series, of which 3 series are involved in the proposed transactions. Shares of the series of Evergreen Variable Annuity Trust are sold only to separate accounts funding variable annuity contracts and variable life insurance policies issued by life insurance companies, and to qualified pension and retirement plans. Certain Evergreen Funds are the "Acquiring Funds" and certain other Evergreen Funds are the "Evergreen Acquired Funds," and together with the Wachovia Acquired Funds, are the "Acquired Funds." The Acquired Funds and the Acquiring Funds are collectively referred to as the "Funds" and individually as a "Fund."[1]

3. Evergreen Investment Management Company, LLC ("EIMC"), an indirect wholly owned subsidiary of Wachovia Corporation, is registered as an investment adviser under the Investment Advisers Act of 1940 (the "Advisers Act"). EIMC serves as investment adviser to the Evergreen Funds. The Wachovia Trusts, on behalf of their series which are Wachovia Acquired Funds, have each entered into an interim advisory agreement with EIMC dated as of January 1, 2002, in reliance on rule 15a–4 under the Act.

4. Wachovia Bank, a national banking association, is a wholly owned subsidiary of Wachovia Corporation. Wachovia Bank, as fiduciary for its customers, owns of record or beneficially or both 5% or more (and in some cases, 25% or more) of the outstanding voting securities of certain of the Funds.[2] All of these shares are held by Wachovia Bank in a fiduciary capacity and Wachovia Bank does not have an economic interest in such shares.

5. On December 6, 2001 and January 15, 2002, and December 13–14, 2001, respectively, the board of trustees of each Wachovia Trust (the "Wachovia Board") and the board of trustees of each Evergreen Trust (the "Evergreen Board," and together with the Wachovia Board, the "Boards"), including a majority of the trustees of each Board who are not "interested persons" within the meaning of section 2(a)(19) of the Act (the "Independent Trustees"), considered and approved each applicable Fund Reorganization (as defined below), including each applicable agreement and plan of reorganization (each, a "Plan" and collectively, the "Plans"). Pursuant to the Plans, the Acquiring Funds will acquire all of the assets and assume the identified liabilities of the corresponding Acquired Funds, in exchange for shares of designated classes of the respective Acquiring Funds (the "Fund Reorganizations"). The shares of each Acquiring Fund exchanged will have an aggregate net asset value equal to the aggregate net asset value of the corresponding Acquired Fund's shares determined as of the close of business on the business day immediately prior to the date on which the Fund Reorganizations will occur (the "Valuation Date"). The net asset value of the assets of the Funds will be determined in the manner set forth in the Acquiring Funds' then-current prospectuses and statements of additional information.[3] The Fund Reorganizations are expected to occur on or about June 7, 2002 for the fixed income, money market, and variable annuity Funds and June 14, 2002 for the equity and international Funds (the "Closing Date"). On or as soon as is conveniently practicable after the Closing Date, each Acquired Fund will distribute its full and fractional shares of the applicable classes of the Acquiring Fund *pro rata* to its shareholders of record, determined as of the Valuation Date. After the distribution of the Acquiring Fund's shares and the winding up of the Acquired Fund's business, each Acquired Fund will be liquidated.

6. Applicants state that the investment objectives and strategies of each Acquired Fund are identical or substantially similar to its corresponding Acquiring Fund. Shareholders of Class A, Class B, Class C, Class Y, and the Institutional Class of the Wachovia Acquired Funds, and shareholders of Class A, Class B, Class C, Class I, and Class IS of the Evergreen Acquired Funds, as applicable, will exchange their shares for Class A, Class B, Class C, Class I, and Class IS shares, respectively, of the corresponding Acquiring Funds (except that shareholders of Class A, Class B, and Class C of three Wachovia Acquired Funds will exchange their shares for Class IS shares of the corresponding Acquiring Fund). Shareholders of the Wachovia Variable Insurance Funds will exchange their one class of shares for shares of the corresponding series of Evergreen Variable Annuity Trust. Applicants represent that the rights and obligations of each class of shares of the Acquired Funds are generally similar to those of the corresponding class of shares of the respective Acquiring Funds into which they will be reorganized. Applicants also state that each class of shares of the Acquiring Fund has the same or substantially similar distribution-related fees, if any, as the shares of the respective class of the Acquired Fund held prior to the Fund Reorganizations. For the purposes of calculating deferred sales charges, shareholders of Class B or Class C shares of an Acquired Fund will be deemed to have held the corresponding class of shares of the Acquiring Fund since the date such shareholder initially purchased the shares of the Acquired Fund. No sales charge will be imposed in connection with the Fund Reorganizations. EIMC or an affiliate will pay the expenses of the Fund Reorganizations.

7. The Boards, including a majority of the Independent Trustees, determined that participation in the Fund Reorganizations is in the best interests of each of the applicable Funds and its shareholders and determined that the interests of each Fund's existing shareholders will not be diluted as a result of the Fund Reorganizations. In approving the Fund Reorganizations, the Boards considered various factors, including, among others: (a) The investment objectives and policies of the Acquired Fund and the Acquiring Fund; (b) the terms and conditions of each Fund Reorganization; (c) the tax-free nature of the Fund Reorganizations; (d) the expense ratios, fees, and expenses of the Acquired Fund and the Acquiring Fund; and (e) the fact that the costs of the Fund Reorganizations will be borne by EIMC or an affiliate.

8. The Plans are subject to a number of conditions precedent, including that: (a) The Plans shall have been approved by the Boards of each of the Funds and approved by the shareholders of each Acquired Fund; (b) the Funds shall have received an opinion of counsel that the Fund Reorganizations will be tax-free for each Fund and its shareholders; (c) registration statements on Form N–14 containing combined prospectus/proxy statements relating to the Acquiring Funds will have become effective with the Commission; and (d) applicants receive from the Commission an exemption from section 17(a) of the Act for the Fund Reorganizations. Each Plan may be terminated by the mutual agreement of the Acquiring Fund and the Acquired Fund, or by either party in the case of a breach of the Plan. Applicants agree not to make any material changes to the Plans that would affect the application without prior approval of the Commission.

9. Registration statements on Form N–14 with respect to each Fund Reorganization containing a prospectus/proxy statement were filed with the Commission on February 4, 2002 through February 26, 2002, and became effective on March 6, 2002 through March 28, 2002. Definitive prospectus/proxy statement materials were mailed to shareholders of the Acquired Funds beginning on or about March 22, 2002. A special meeting of the shareholders of each Acquired Fund is scheduled to be held on or about May 13, 2002 (except for the special meeting of shareholders of The Wachovia Municipal Funds which was held on April 29, 2002).

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company, or an affiliated person of such a person, acting as principal, from selling any security to, or purchasing any security from, the company. Section 2(a)(3) of the Act defines an "affiliated person" of another person to include: (a) Any person directly or indirectly owning, controlling, or holding with power to vote 5% or more of the outstanding voting securities of the other person; (b) any person 5% or more of whose securities are directly or indirectly owned, controlled, or held with power to vote by the other person; (c) any person directly or indirectly controlling, controlled by, or under common control with the other person; and (d) if the other person is an investment company, any investment adviser of that company.

2. Section 2(a)(9) of the Act defines "control" in part to mean the power to exercise a controlling influence over the management or policies of a company, and provides that any person who owns beneficially, either directly or through one or more controlled companies, more than 25% of a company's voting securities shall be presumed to control such company.

3. Rule 17a–8 under the Act exempts from the prohibitions of section 17(a) mergers, consolidations, or purchases or sales of substantially all of the assets of registered investment companies that

[1] The Acquired Funds and the corresponding Acquiring Funds are: (i) Wachovia Balanced Fund and Evergreen Balanced Fund; (ii) Wachovia Quantitative Equity Fund and Evergreen Stock Selector Fund; (iii) Wachovia Special Values Fund and Evergreen Special Values Fund; (iv) Wachovia Blue Chip Value Fund and Evergreen Value Fund; (v) Wachovia New Horizons Fund and Evergreen Omega Fund; (vi) Wachovia Equity Fund, Wachovia Growth & Income Fund, Wachovia Personal Equity Fund and Evergreen Core Equity Fund; (vii) Wachovia Equity Index Fund and Evergreen Equity Index Fund; (viii) Wachovia Fixed Income Fund, Evergreen Intermediate Term Bond Fund, Evergreen Income Plus Fund and Evergreen Core Bond Fund; (ix) Wachovia Short-Term Fixed Income Fund, Wachovia Intermediate Fixed Income Fund, Evergreen Short duration Income Fund and Evergreen Fixed Income Fund; (x) Wachovia Emerging Markets Fund, Evergreen Latin America Fund and Evergreen Emerging Markets Growth Fund; (xi) Wachovia International Equity Fund and Evergreen International Growth Fund; (xii) Wachovia Prime Cash Management Fund and Evergreen Prime Cash Management Fund; (xiii) Wachovia Georgia Municipal Bond Fund and Evergreen Georgia Municipal Bond Fund; (xiv) Wachovia North Carolina Municipal Bond Fund and Evergreen North Carolina Municipal Bond Fund; (xv) Wachovia South Carolina Municipal Bond Fund and Evergreen South Carolina Municipal Bond Fund; (xvi) Wachovia Virginia Municipal Bond Fund and Evergreen Virginia Municipal Bond Fund; (xvii) Wachovia Equity Fund II and Evergreen VA Fund; (xviii) Wachovia Special Values Fund II and Evergreen VA Small Cap Value Fund; (xix) Wachovia Balanced Fund II and Evergreen VA Foundation Fund; (xx) Evergreen Quality Income Fund and Evergreen Diversified Bond Fund; and (xxi) Evergreen Secular Growth Fund and Evergreen Select Strategic Growth Fund.

[2] Although the proposed transactions between certain of the Funds do not currently require exemptive relief, applicants are requesting relief in the event that Wachovia Bank's ownership as fiduciary increases to 5% or more of the respective Funds' assets prior to the proposed transactions. If Wachovia Bank does not acquire as record owner such ownership, the respective Funds will not rely on the requested relief.

[3] In the Fund Reorganizations, each Acquired Fund and the corresponding Acquiring Fund will use all commercially reasonable efforts to resolve any material differences between the prices of portfolio securities determined in accordance with the pricing policies and procedures of its corresponding Acquiring Fund and those determined in accordance with the pricing policies and procedures of its corresponding Acquired Fund, and where e pricing difference results from a difference in pricing methodology, the parties will eliminate such difference by using the corresponding Acquiring Fund's methodology in valuing the Acquired Fund's assets.

are affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers, provided that certain conditions are satisfied.

4. Applicants state that they may not rely on rule 17a–8 in connection with the Fund Reorganizations because the Funds may be deemed to be affiliated for reasons other than those set forth in the rule. Applicants state that Wachovia Bank, as fiduciary for its customers, owns of record 5% or more (and in some cases, 25% or more) of the outstanding voting securities of certain Wachovia Acquired Funds. Applicants also state that Wachovia Bank, as fiduciary for its customers, owns of record 5% or more (and in some cases, 25% or more) of the outstanding voting securities of certain Evergreen Acquired Funds and certain Acquiring Funds.

As a result of these relationships, the Acquired Funds and the Acquiring Funds may be deemed to be affiliated persons of one another within the meaning of sections 2(a)(3)(A), (B) and (C) of the Act.

5. Section 17(b) of the Act provides that the Commission may exempt a transaction from the provisions of section 17(a) if evidence establishes that the terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, and that the proposed transaction is consistent with the policy of each registered investment company concerned and with the general purposes of the Act.

6. Applicants request an order under section 17(b) of the Act exempting them from section 17(a) to the extent necessary to complete the Fund Reorganizations. Applicants submit that the Fund Reorganizations satisfy the standards of section 17(b) of the Act. Applicants state that the Wachovia Board and the Evergreen Board, including a majority of each Board's Independent Trustees, determined that participation in the Fund Reorganizations is in the best interests of each of the applicable Funds and its shareholders, and that the interests of existing shareholders of the applicable Funds will not be diluted as a result of the Fund Reorganizations. Applicants also note that the exchange of the Acquired Funds' assets for shares of the Acquiring Funds will be based on relative net asset value.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12113 Filed 5–14–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 25572; 812–12438]

The Willamette Funds and Willamette Asset Managers, Inc.; Notice of Application

May 9, 2002.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of an application for an order under section 6(c) of the Investment Company Act of 1940 (the "Act") for an exemption from section 15(a) of the Act and rule 18f–2 under the Act.

Summary of the Application: The Willamette Funds (the "Fund") and Willamette Asset Managers, Inc. (the "Manager") (together, "Applicants") request an order that would permit them to enter into and materially amend subadvisory agreements without shareholder approval.

Filing Dates: The application was filed on February 2, 2001, and amended on December 19, 2001. Applicants have agreed to file an amendment during the notice period, the substance of which is reflected in this notice.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 3, 2002, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW, Washington, DC 20549–0609. Applicants, One Pacific Square, 220 NW 2nd, Suite 950, Portland, OR 97209.

FOR FURTHER INFORMATION CONTACT: Christine Y. Greenlees, Senior Counsel, at (202) 942–0581, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 5th Street, NW, Washington, DC 20549–0102 (telephone (202–942–8090).

Applicants' Representations

1. The Fund, a Delaware business trust, is registered under the Act as an open-end management investment company. The Fund currently is comprised of four series (each a "Portfolio," collectively, the "Portfolios"), each with its own investment objectives and policies.[1]

2. The Manager, registered under the Investment Advisers Act of 1940 (the "Advisers Act"), serves as the investment adviser to the Portfolios pursuant to an investment advisory agreement with the Fund ("Management Agreement") that was approved by the board of trustees of the Fund (the "Board"), including a majority of the trustees who are not "interested persons," as defined in section 2(a)(19) of the Act ("Independent Trustees"), and by each Portfolio's initial shareholder. Under the terms of the Management Agreement, the Manager provides investment management services for each Portfolio and may hire one or more subadvisers ("Sub-Advisers") to exercise day-to-day investment discretion over the assets of the Portfolio pursuant to separate investment sub-advisory agreements ("Sub-Advisory Agreements"). All current and future Sub-Advisers will be registered under the Advisers Act or exempt from registration. Sub-Advisers are recommended to the Board by the Manager and selected and approved by the Board, including a majority of the Independent Trustees. The Manager compensates each Sub-Adviser out of the fees paid to the Manager by the applicable Portfolio.

[1] Applicants also request relief with respect to future series of the Fund and any other registered open-end management investment companies and their series that in the future (a) are advised by the Manager or any entity controling, controlled by, or under common control with the Manager; (b) use the manager of managers structure described in the application; and (c) comply with the terms and conditions in the application ("Future Portfolios," included in the term "Portfolios"). The Fund is the only existing registered open-end management investment company that currently intends to rely on the requested order. If the name of any Portfolio contains the name of a Sub-Adviser (as defined below), the name of the Manager will precede the name of the Sub-Adviser.

3. Subject to Board review, the Manager selects Sub-Advisers for the Portfolios, monitors and evaluates Sub-Adviser performance, and oversees Sub-Adviser compliance with the Portfolios' investment objectives, policies, and restrictions. The Manager recommends Sub-Advisers based upon a number of factors used to evaluate their skills in managing assets pursuant to particular investment objectives. The Manager also recommends to the Board whether a Sub-Adviser's Sub-Advisory Agreement should be renewed, modified or terminated.

4. Applicants request relief to permit the Manager, subject to Board approval, to enter into and materially amend Sub-Advisory Agreements without shareholder approval. The requested relief will not extend to a Sub-Adviser that is an affiliated person, as defined in section 2(a)(3) of the Act, of the Fund or the Manager, other than by reason of serving as a Sub-Adviser to one or more of the Portfolios (an "Affiliated Sub-Adviser").

Applicants' Legal Analysis

1. Section 15(a) of the Act provides, in relevant part, that it is unlawful for any person to act as an investment adviser to a registered investment company except pursuant to a written contract that has been approved by the vote of a majority of the company's outstanding voting securities. Rule 18f–2 under the Act provides that each series or class of stock in a series company affected by a matter must approve the matter if the Act requires shareholder approval.

2. Section 6(c) of the Act provides that the Commission may exempt any person, security, or transaction or any class or classes of persons, securities, or transactions from any provision of the Act, or from any rule thereunder, if such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants believe that the requested relief meets this standard for the reasons discussed below.

3. The investment structure of the Portfolios is different from that of traditional investment companies. Applicants assert that investors are relying on the Manager's experience to select one or more Sub-Advisers best suited to achieve a Portfolio's desired investment objectives. Applicants assert that, from the perspective of the investor, the role of the Sub-Advisers is comparable to that of individual portfolio managers employed by other investment advisory firms. Applicants contend that requiring shareholder approval of the Sub-Advisory Agreements would impose unnecessary costs and delays on the Portfolios, and may preclude the Manager from acting promptly in a manner considered advisable by the Board. Applicants note that the Management Agreement will remain subject to the shareholder approval requirements of section 15(a) of the Act and rule 18f–2 under the Act.

Applicants' Conditions

Applicants agree that any order granting the requested relief will be subject to the following conditions:

1. Before a Portfolio may rely on the requested order, the operation of the Portfolio in the manner described in the application will be approved by a majority of the Portfolio's outstanding voting securities, as defined in the Act, or, in the case of a Portfolio whose public shareholders purchase shares on the basis of a prospectus containing the disclosure contemplated by condition 2 below, by the initial shareholder(s) before the shares of the Portfolio are offered to the public.

2. The prospectus of each Portfolio relying on the requested relief will disclose the existence, substance and effect of any order granted pursuant to the application. In addition, each Portfolio relying on the requested relief will hold itself out to the public as employing the manager of managers structure described in the application. A Portfolio's prospectus will prominently disclose that the Manager has ultimate responsibility to oversee the Sub-Advisers and recommend their hiring, termination and replacement.

3. The Manager will provide general management services to each of the Portfolios, including overall supervisory responsibility for the general management and investment of each Portfolio's assets, and, subject to the review and approval by the Board will: (i) Set each Portfolio's overall investment strategies; (ii) evaluate, select, and recommend Sub-Advisers to manage all or part of a Portfolio's assets; (iii) when appropriate, allocate and reallocate a Portfolio's assets among multiple Sub-Advisers; (iv) monitor and evaluate the investment performance of Sub-Advisers; and (v) implement procedures reasonably designed to ensure that the Sub-Advisers comply with the relevant Portfolio's investment objectives, policies, and restrictions.

4. At all times, a majority of the Board will be persons who are Independent Trustees, and the nomination of new or additional Independent Trustees will be placed within the discretion of the then-existing Independent Trustees.

5. The Manager will not enter into a Sub-Advisory Agreement on behalf of a Portfolio with any Affiliated Sub-Adviser, unless such agreement, including the compensation to be paid thereunder, has been approved by the shareholders of the applicable Portfolio.

6. When a Sub-Adviser change is proposed for a Portfolio with an Affiliated Sub-Adviser, the Board, including a majority of the Independent Trustees, will make a separate finding, reflected in the minutes of the meeting of the Board, that such change is in the best interests of the applicable Portfolio and its shareholders and does not involve a conflict of interest from which the Manager or the Affiliated Sub-Adviser derives an inappropriate advantage.

7. No trustee or officer of the Fund or director or officer of the Manager will own directly or indirectly (other than through a pooled investment vehicle that is not controlled by that director, trustee, or officer) any interest in a Sub-Adviser except for: (i) ownership of interests in the Manager or any entity that controls, is controlled by, or is under common control with the Manager; or (ii) ownership of less than 1% of the outstanding securities of any class of equity or debt of a publicly-traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

8. Within 90 days of the hiring of any new Sub-Adviser, the Manager will furnish the shareholders of the applicable Portfolio all the information about the new Sub-Adviser that would be included in a proxy statement. This information will include any changes in such disclosure caused by the addition of a new Sub-Adviser. To meet this obligation, the Manager will provide the shareholders of the applicable Portfolio with an information statement meeting the requirements of Regulation 14C and Schedule 14C under the Securities Exchange Act of 1934 ("the 1934 Act"), as well as the requirements of Item 22 of Schedule 14A under the 1934 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12114 Filed 5–14–02; 8:45 am]

BILLING CODE 8010–01–P

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SECURITIES AND EXCHANGE COMMISSION

Sunshine Act; Meeting

Federal Register Citation of Previous Announcement: [67 FR 31856, May 10, 2002]
Status: Closed Meeting.
Place: 450 Fifth Street, NW., Washington, DC.
Date and Time of Previously Announced Meeting: Monday, May 13, 2002, at 10 a.m.
Change in the Meeting: Additional item.
The following item has been added to the closed meeting scheduled for Monday, May 13, 2002:
Consideration of amicus participation.
Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.
At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 10, 2002.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–12188 Filed 5–10–02; 4:11 pm]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting Notice

Federal Register Citation of Previous Announcement: [67 FR 31856, May 10, 2002].
Status: Closed Meeting.
Place: 450 Fifth Street, NW., Washington, DC.
Date and Time of Previously Announced Meeting: Monday, May 13, 2002, at 10 a.m.
Change in the Meeting: Additional items.
The following items have been added to the closed meeting scheduled for Monday, May 13, 2002:
Opinion;
Adjudicatory matter; and
Cooperation with other regulatory organizations.
Commissioner Hunt, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.
The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (7), (9)(B), and (10) and 17 CFR 200.402(a)(3), (5), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the closed meeting.
At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: The Office of the Secretary at (202) 942–7070.

Dated: May 10, 2002.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–12189 Filed 5–10–02; 4:11 pm]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45895; File No. SR–Amex–2002–15]

Self-Regulatory Organizations; Order Granting Accelerated Approval of Proposed Rule Change by the American Stock Exchange LLC to Amend Commentary .02(c) of Amex Rule 901C to Include Volume Weighted Average Pricing as a Permissible Index Option Settlement Value Calculation Methodology

May 8, 2002.

I. Introduction

On March 5, 2002, the American Stock Exchange LLC ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Commentary .02(c) of Amex Rule 901C to add volume weighted average pricing ("VWAP") as a permissible index option settlement value calculation methodology for National Association of Securities Dealers Automated Quotation System ("NASDAQ") National Market System ("NMS") listed components. Notice of the proposed rule change was published for comment in the **Federal Register** on April 10, 2002.[3] This order approves the proposed rule change on an accelerated basis.

II. Description of the Proposal

The Exchange proposes to amend Commentary .02(c) to Amex Rule 901C to add VWAP as a permissible index option settlement value calculation methodology for NASDAQ/NMS listed components. Currently, Commentary .02(c) of Amex Rule 901C provides that index settlement values are determined by using the regular way opening sale price for each of an index's component stocks in its primary market on the last trading day prior to expiration.[4] Unlike exchange-listed securities where there is a market opening price at which all investors entering a market-on-open order can participate, investors in NASDAQ/NMS securities cannot be sure of transactions at a price equal to the first reported print. In some instances, this price may be significantly different than the first price at which most investors can conduct transactions. As a result, investors, market-makers and the specialist cannot be sure that any hedges into which they may have entered will converge to the settlement value for the index; and, in some cases, the value of the hedge may differ significantly from the index settlement value. This uncertainty adds to the cost of trading the options and makes them less desirable to trade.

While it may still be difficult to get complete convergence, the Exchange believes that using the VWAP would provide more opportunity for investors to transact at a price near the settlement price, making it much less likely that there will be any significant difference between the hedge and the settlement value. For this reason, the Exchange proposes to permit, in addition to "regular way" opening price settlement, the VWAP settlement calculation methodology for NASDAQ/NMS listed components.

III. Discussion

The Commission has reviewed carefully the proposed rule change and finds that it is consistent with the Act and the rules and regulations promulgated thereunder applicable to a national securities exchange and, in particular, with the requirements of Section 6(b).[5] Specifically, the Commission finds that approval of the proposed rule change is consistent with Section 6(b)(5)[6] in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system, and in general, to protect investors and the public interest. The Commission believes that permitting the VWAP settlement calculation methodology for NASDAQ/NMS component securities of an index option may provide more opportunity for investors to transact at a price near the settlement price, and should result in a settlement value more reflective of the markets in NASDAQ/NMS securities.[7]

The Commission finds good cause for approving the proposed rule change before the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. In the notice,[8] the Commission indicated that it would consider granting accelerated approval of the proposal after a 15-day comment period. The Commission received no comments on the proposal during the 15-day comment period. The Commission believes it is reasonable to implement the proposal on an accelerated basis, in view of the anticipated benefits of the proposal. For these reasons, the Commission finds good cause for accelerating approval of the proposed rule change.

IV. Conclusion

For the above reasons, the Commission finds that the proposed rule change is consistent with the provisions of the Act, in general, and with Section 6(b)(5)[9] in particular.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–AMEX–2002–15) be and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 02–12115 Filed 5–14–02; 8:45 am]
BILLING CODE 8010–01–U

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] Securities Exchange Act Release No. 45692 (April 4, 2002), 67 FR 17475. In the notice, the Commission stated it would consider granting accelerated approval of the proposed rule change after a 15-day comment period.
[4] *See, e.g.,* Securities Exchange Act Release No. 36283 (September 26, 1995), 60 FR 51825 (October 3, 1995) (SR–Amex–95–26) (order approving the listing and trading of options on the Morgan Stanley High Technology 35 Index).
[5] 15 U.S.C. 78f(b). In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).
[6] 15 U.S.C. 78f(b)(5).
[7] This approval order limits use of the VWAP as a permissible index option settlement value calculation methodology for NASDAQ/NMS listed components. Should the Amex wish to use the VWAP as the methodology for securities other than NASDAQ/NMS component securities, the Commission expects the Exchange to file a proposed rule change for Commission consideration.
[8] *See* footnote 3, *supra.*
[9] 15 U.S.C. 78f(b)(5).
[10] 15 U.S.C. 78s(b)(2).
[11] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45894; File No. SR–PCX–2002–23]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Exchange, Inc. Relating to Market Maker Auto-Ex Log On Requirements

May 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 25, 2002, the Pacific Exchange, Inc. ("Exchange" or "PCX") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the PCX. The proposed rule change has been filed by the PCX as a "non-controversial" rule change under rule 19b–4(f)(6) under the Act.[3] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

PCX proposes to amend its rules in order to eliminate the current requirements for Market Makers, set forth in PCX Rule 6.87(e)(4), to log on to PCX's automatic execution system ("Auto-Ex").[4]

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

Automatic Execution System

Rule 6.87

(a)–(d)—No change.

(e) Market Maker Requirements and Eligibility. Any Exchange Member who is registered as a Market Maker and who has obtained written authorization from a clearing member is eligible to participate on the Auto-Ex system, subject to the following conditions and requirements:

(1)–(3)—No change.

(4) *Reserved.* [Log on Requirement. A Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next Expiration Friday. A Market Maker who is limited to "closing only" transactions pursuant to PCX Rules or the requirements of that Market Maker's clearing firm will be exempt from this provision upon approval of two Floor Officials.]

(5)–(7)—No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PCX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PCX has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On July 10, 2000, the Exchange effected a new PCX rule establishing Auto-Ex log-on requirements for Market Makers.[5] The current Auto-Ex rules outline the requirements with which a Market Maker (other than a Lead Market Maker ("LMM")) must comply in order to be eligible to participate on Auto-Ex. Among the requirements, a Market Maker who has been logged on to Auto-Ex in an option issue at any time during an expiration month must continue to be logged on to Auto-Ex in that issue whenever present in that trading crowd, until the close of business on the next expiration Friday. The PCX represents that, by implication, a Market Maker who logs off of Auto-Ex may not log back on until the beginning of the next expiration cycle. The Exchange voluntarily implemented the rule in order to encourage Market Makers to remain on Auto-Ex throughout the trading month.

After assessing the impact of the Auto-Ex log on requirement, the

[1] 15 U.S.C. 78s(b)(1).
[2] 17 CFR 240.19b–4.
[3] 17 CFR 240.19b–4(f)(6).
[4] The PCX Auto-Ex system permits eligible market or marketable limit orders sent from member firms to be executed automatically at the displayed bid or offering price. Participating Market Makers are designated as the contra side to each Auto-Ex order on a rotating basis. Automatic executions through Auto-Ex are currently available for public customer orders at 250 contracts or less in all series of options traded on the PCX's options floor.
[5] *See* Securities Exchange Act Release No. 43150 (August 14, 2000), 65 FR 51390 (August 23, 2000).

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Exchange believes that, because the requirement provides so little flexibility, it no longer serves the purpose for which it was created, *i.e.*, encouraging greater Market Maker participation on Auto-Ex. Thus, despite the fact that LMMs would prefer Market Makers to participate on Auto-Ex as their risk profiles allow, the Exchange believes that the current requirement limits participation in an all-or-none fashion. As a consequence, the Exchange proposes to remove the log on requirement in its entirety in order to encourage Market Makers to log on to Auto-Ex to the extent that their business models permit.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act[6] in general, and furthers the objectives of section 6(b)(5) of the Act[7] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to Section 19(b)(3)(A)[8] of the Act and Rule 19b–4(f)(6) thereunder.[9]

A proposed rule change filed under Rule 19b–4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b–4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The PCX seeks to have the proposed rule change become operative immediately in order to maintain competition and efficiency among its market makers.

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change operative immediately upon filing as of April 25, 2002, to allow the PCX to maintain competition among its market makers and to encourage market makers to participate on Auto-Ex. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the PCX. All submissions should refer to File No. SR–PCX–2002–23 and should be submitted by June 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12116 Filed 5–14–02; 8:45 am]

BILLING CODE 8010–01–U

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[10] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–45893; File No. SR–Phlx–2002–25]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 Thereto by the Philadelphia Stock Exchange, Inc. Increasing the Maximum Guaranteed AUTO–X Size to 250 Contracts

May 8, 2002.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on April 19, 2002, the Philadelphia Stock Exchange, Inc. ("Exchange" or "Phlx") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. On April 25, 2002, the Exchange filed Amendment No. 1 to the proposed rule change.[3] The proposed rule change has been filed by the Phlx as a "non-controversial" rule change under Rule 19b–4(f)(6) under the Act.[4] The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend Phlx Rule 1080(c) to increase to 250 contracts the maximum order size of option contracts that are eligible to be executed on the Exchange's automatic execution system ("AUTO–X"), which is part of the Exchange's Automated Options Market ("AUTOM") System. AUTOM is the Exchange's electronic order delivery and reporting system, which provides for the automatic entry and routing of equity option and index option orders to the Exchange trading floor. Orders delivered through AUTOM may be executed manually or routed to AUTOM's automatic execution feature, AUTO–X, if they are eligible for execution on AUTO–X. Equity option and index option specialists are required by the Exchange to participate in AUTOM and its features and enhancements. Option orders entered by Exchange members into AUTOM are routed to the appropriate specialist unit on the Exchange trading floor. Currently, customer market and marketable limit orders of up to 100 contracts are eligible for AUTO–X.[5]

Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

Rule 1080. Philadelphia Stock Exchange Automated Options Market (AUTOM) and Automatic Execution System (AUTO–X)

(a)-(b) No change.

(c) AUTO–X—AUTO–X is a feature of AUTOM that automatically executes public customer market and marketable limit orders up to the number of contracts permitted by the Exchange for certain strike prices and expiration months in equity options and index options, unless the Options Committee determines otherwise. AUTO–X automatically executes eligible orders using the Exchange disseminated quotation and then automatically routes execution reports to the originating member organization. AUTOM orders not eligible for AUTO–X are executed manually in accordance with Exchange rules. Manual execution may also occur when AUTO–X is not engaged. An order may also be executed partially by AUTO–X and partially manually.

The Options Committee may for any period restrict the use of AUTO–X on the Exchange in any option or series. Currently, orders up to [100] *250* contracts, subject to the approval of the Options Committee, are eligible for AUTO–X. [With respect to options on the Nasdaq-100 Index Tracking Stock ("QQQ"), orders of up to 250 contracts are eligible for AUTO–X.]

The Options Committee may, in its discretion, increase the size of orders in one or more classes of multiply-traded equity options eligible for AUTO–X to the extent necessary to match the size of orders in the same options eligible for entry into the automated execution system of any other options exchange, provided that the effectiveness of any such increase shall be conditioned upon its having been filed with the Securities and Exchange Commission pursuant to section 19(b)(3)(A) of the Securities Exchange Act of 1934.

(c)(i)(A)-(E) No change.

(d)-(j) No change.

Commentary. No change.

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Phlx included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Phlx proposes to increase the maximum order size for eligibility for AUTO–X from 100 contracts to 250 contracts.[6] Under the rules of the Exchange, through AUTOM, orders are routed from member firms directly to the appropriate specialist on the trading floor. Of the public customer market and marketable limit orders routed through AUTOM, certain orders are eligible for AUTOM's automatic execution feature, AUTO–X. These orders are automatically executed at the disseminated quotation price on the Exchange and reported back to the originating firm.[7]

The Exchange represents that AUTO–X affords prompt and efficient automatic executions at the disseminated quotation price on the Exchange. Therefore, the Exchange believes that increasing automatic execution levels should provide the benefits of automatic execution to a larger number of customer orders. Further, the Exchange notes that this increase from 100 contracts to 250 contracts is consistent with similar Commission-approved increases to the automatic executions levels on other options exchanges.[8]

The Exchange notes that there are many safeguards incorporated into Exchange rules to ensure the appropriate handling of AUTO–X orders. For example, Phlx Rule 1080(f)(iii) states that the specialist is responsible for the remainder of an AUTOM order where a partial execution has occurred. Phlx Rule 1015 governs execution guarantees and requires the trading crowd to ensure that public orders are filled at the best market to a minimum of the disseminated size. Violations of any of these provisions could be referred to the Business Conduct Committee for disciplinary action.

The Wheel is a mechanism that allocates AUTO–X trades among specialists and Registered Options Traders ("ROTs").[9] An ROT has discretion to participate on the Wheel to trade any option class to which he is assigned. An increase in the maximum AUTO–X order size does not prevent an ROT from declining to participate on the Wheel.[10] Because the Wheel rotates in two-lot to ten-lot increments depending upon the size of the order, no single ROT will be allocated the entire 250 contracts.

The Exchange also has procedures that permit a specialist to disengage AUTO–X in extraordinary circumstances.[11] AUTOM users are notified of such circumstances.

With respect to financial responsibility issues, the Exchange notes that it has a minimum net capital

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] See letter from Richard S. Rudolph, Director and Counsel, Phlx, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated April 24, 2002 ("Amendment No. 1"). In Amendment No. 1, the Phlx amended its proposed rule text to eliminate a redundant sentence regarding the 250 contract maximum AUTO–X guarantee size for options on the Nasdaq–100 Index Tracking Stock ("QQQ").

[4] 17 CFR 240.19b–4(f)(6).

[5] See Securities Exchange Act Release No. 44404 (June 11, 2001), 66 FR 32857 (June 18, 2001) (File No. SR–Phlx–2001–51) (order approving maximum order size eligibility of 100 contracts for AUTO–X).

[6] *Id.*

[7] See Phlx Rule 1080(c).

[8] The Exchange notes that the Commission has approved increases in automatic execution levels from 100 contracts to 250 contracts on the American Stock Exchange LLC ("Amex"). See Securities Exchange Act Release No. 45628 (March 22, 2002), 67 FR 15262 (March 29, 2002) (SR–Amex–2001–94). The Exchange further notes that the Commission has approved increases in automatic execution levels from 100 contracts to 250 contracts on the Pacific Exchange, Inc. ("PCX"). See Securities Exchange Act Release No. 45641 (March 25, 2002), 67 FR 15445 (April 1, 2002) (SR–PCX–2001–48).

[9] Unlike ROTs, specialists are required to participate on the Wheel. See Phlx Rule 1080(g).

[10] See Exchange Options Floor Procedure Advice F–24(e)(i).

[11] See Phlx Rule 1080(e). The Exchange notes that it has filed amendments relating to the disengagement of AUTO–X in extraordinary circumstances pursuant to the Order Instituting Public Administrative Proceedings Pursuant to Section 19(h)(1) of the Securities Exchange Act of 1934, Making Findings and Imposing Remedial Sanctions, Securities Exchange Act Release No. 43268 (September 11, 2000) (File No. 3–10282), which are not effective as of the date of filing of the instant proposal. See File No. SR–Phlx–2001–27.

requirement respecting ROTs.[12] Furthermore, an ROT's clearing firm performs risk management functions to ensure that the ROT has sufficient financial resources to cover positions throughout the day. In this regard, the function includes real-time monitoring of positions. The Exchange believes that clearing firm procedures address the issue of whether an ROT has the financial capability to support trading of options orders as large as 250 contracts.

The Exchange believes that the increase in order size eligibility for AUTO–X orders should provide customers with quicker executions for a larger number of orders, by providing automatic rather than manual executions, thereby reducing the number of orders subject to manual processing. The Exchange also believes that increasing the AUTO–X maximum order size should not impose a significant burden on operation or capacity of the AUTOM System and will give the Exchange better means of competing with other options exchanges for order flow.

The Exchange represents that it will issue a circular to members and member organizations advising them of the increased maximum AUTO–X guarantee. The Exchange also represents that it posts AUTO–X guarantees on its web site on an issue-by-issue basis.

2. Statutory Basis

The Exchange believes the proposed rule change, as amended, is consistent with section 6(b) of the Act [13] in general, and furthers the objectives of section 6(b)(5) of the Act [14] in particular, because it is designed to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, as well as to protect investors and the public interest by enhancing efficiency by providing automatic executions to a larger number of options orders.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition that is not necessary in furtherance of the purposes of the Act.

[12] *See* Phlx Rule 703.

[13] 15 U.S.C. 78f(b).

[14] 15 U.S.C. 78f(b)(5).

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received.

IV. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing proposed rule change, as amended: (1) Does not significantly affect the protection of investors or the public interest; (2) does not impose any significant burden on competition; and (3) does not become operative for 30 days from the date of filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest, the proposed rule change has become effective pursuant to section 19(b)(3)(A) [15] of the Act and Rule 19b–4(f)(6) [16] thereunder.[17]

A proposed rule change filed under Rule 19b-4(f)(6) normally does not become operative prior to 30 days after the date of filing. However, Rule 19b-4(f)(6)(iii) permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. The Phlx seeks to have the proposed rule change, as amended, become operative immediately in order to remain competitive with other exchanges with similar rules in effect.[18]

The Commission, consistent with the protection of investors and the public interest, has determined to make the proposed rule change, as amended, operative immediately upon filing as of April 19, 2002, to allow the Phlx to compete with other options exchanges that currently have a maximum automatic execution eligibility limit of 250 contracts.[19] At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.[20]

[15] 15 U.S.C. 78s(b)(3)(A).

[16] 17 CFR 240.19b–4(f)(6).

[17] As required under Rule 19b–4(f)(6)(iii), the Exchange provided the Commission with written notice of its intent to file the proposed rule change at least five business days prior to the filing date or such shorter period as designated by the Commission.

[18] *See supra* note 8.

[19] For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[20] *See* section 19(b)(3)(C) of the Act, 15 U.S.C. 78(b)(3)(C). For purposes of calculating the 60 day abrogation period, the Commission considers the period to commence on April 25, 2002, the date that the Exchange filed Amendment No. 1.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposed rule change, as amended, is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–2002–25 and should be submitted by June 5, 2002.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–12117 Filed 5–14–02; 8:45 am]

BILLING CODE 8010–01–P

[21] 17 CFR 200.30–3(a)(12).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3415]

Commonwealth of Kentucky

As a result of the President's major disaster declaration on May 7, 2002, I find that Breckinridge, Crittenden, Grayson, Hancock, Hardin, Henderson, Hopkins, McLean, Meade, Ohio, Union and Webster Counties in the Commonwealth of Kentucky constitute a disaster area due to damages caused by severe storms, tornadoes and flooding occurring on April 27, 2002 and continuing. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on July 6, 2002 and for economic injury until the close of business on February 7, 2003 at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Bullitt, Butler, Caldwell, Christian, Daviess, Edmonson, Hart, Larue, Livingston, Lyon, Muhlenberg and Nelson in the Commonwealth of Kentucky; Gallatin and Hardin Counties in the State of Illinois; Crawford, Harrison, Perry, Posey, Spencer, Vanderburgh and Warrick Counties in the State of Indiana.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury: Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 341511. For economic injury the number is 9P5800 for Kentucky; 9P5900 for Illinois; and 9P6000 for Indiana.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 8, 2002.

Herbert L. Mitchell,

Associate Administrator, For Disaster Assistance.

[FR Doc. 02–12074 Filed 5–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3411]

State of Tennessee

Rutherford County and the contiguous Counties of Bedford, Cannon, Coffee, Davidson, Marshall, Williamson and Wilson in the State of Tennessee constitute a disaster area due to damages caused by a tornado, high wind and heavy rains that occurred on April 28, 2002. Applications for loans for physical damage may be filed until the close of business on July 8, 2002 and for economic injury until the close of business on February 10, 2003 at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	6.750
Homeowners without credit available elsewhere	3.375
Businesses with credit available elsewhere	7.000
Businesses and non-profit organizations without credit available elsewhere	3.500
Others (including non-profit organizations) with credit available elsewhere	6.375
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	3.500

The number assigned to this disaster for physical damage is 341112 and for economic injury the number is 9P5400.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–12130 Filed 5–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3412]

State of Texas; Disaster Loan Areas

Shackelford County and the contiguous counties of Callahan, Eastland, Haskell, Jones, Stephens, Taylor and Throckmorton in the State of Texas constitute a disaster area as a result of damages caused by excessive rain, flash flooding and hail that occurred on April 25, 2002. Applications for loans for physical damage may be filed until the close of business on July 8, 2002, and for economic injury until the close of business on February 10, 2003, at the address listed below or other locally announced locations:

U.S. Small Business Administration, Disaster Area 3 Office, 4400 Amon Carter Blvd., Suite 102, Ft. Worth, TX 76155.

The interest rates are:

For Physical Damage:

Homeowners with credit available elsewhere, *6.750%*.

Homeowners without credit available elsewhere, *3.375%*.

Businesses with credit available elsewhere, *7.000%*.

Businesses and non-profit organizations without credit available elsewhere, *3.500%*.

Others (including non-profit organizations) with credit available elsewhere, *6.375%*.

For Economic Injury

Businesses and small agricultural cooperatives without credit available elsewhere, *3.500%*.

The numbers assigned to this disaster are 341211 for physical damage and 9P5500 for economic injury.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: May 8, 2002.

Hector V. Barreto,

Administrator.

[FR Doc. 02–12129 Filed 5–14–02; 8:45 am]

BILLING CODE 8025–01–P

SMALL BUSINESS ADMINISTRATION

Region III Regulatory Fairness Board; Public Federal Regulatory Enforcement Fairness Hearing

The Small Business Administration Region III Regulatory Fairness Board and the SBA Office of the National Ombudsman will hold a Public Hearing on Monday, June 10, 2002 at 1:30 p.m. at the J. Sargeant Reynolds Community North Run Corporate Center, 1630 East Parham Road, North Run Business Park, Richmond, Virginia 23228, to receive comments and testimony from small business owners, small government entities, and small non-profit organizations concerning regulatory enforcement and compliance actions taken by federal agencies.

Anyone wishing to attend or to make a presentation must contact Lucy Gardner Davis in writing or by fax, in order to be put on the agenda. Lucy Gardner Davis, U.S. Small Business Administration, Richmond District Office, 400 North 8th Street, Federal Building, Suite 1150, P.O. Box 10126, Richmond, VA 23240, phone (804) 771–2400 ext. 145, fax (804) 771–2580, e-mail *lucy.davis@sba.gov*.

For more information, *see* our Web site at *www.sba.gov/ombudsman*.

Dated: May 8, 2002.

Michael L. Barrera,

National Ombudsman.

[FR Doc. 02–12073 Filed 5–14–02; 8:45 am]

BILLING CODE 8025–01–P

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DEPARTMENT OF STATE

[Public Notice 4019]

Amendment to Bureau of Educational and Cultural Affairs Request for Proposals: Islamic Life in the United States

SUMMARY: The Office of Citizen Exchanges, Bureau of Educational and Cultural Affairs of the U.S. Department of State announces the addition of Thailand to the Southeast Asian region for which proposals will be accepted.

The Islamic Life in the United States Grants Competition was announced on May 2, 2002 in the **Federal Register** (67 FR 22149). The deadline for proposals is June 20, 2002.

FOR FURTHER INFORMATION CONTACT: Interested organizations should contact Thomas Johnston, 202/619–5325; E-mail *tjohnsto@pd.state.gov.*

Dated: May 9, 2002.

Rick A. Ruth,

Principal Deputy Assistant Secretary, Bureau of Educational and Cultural Affairs, Department of State.

[FR Doc. 02–12141 Filed 5–14–02; 8:45 am]

BILLING CODE 4710–05–P

DEPARTMENT OF STATE

[Public Notice #3983]

U.S. Advisory Commission on Public Diplomacy; Notice of Meeting

The Department of State announces the meeting of the U.S. Advisory Commission on Public Diplomacy on Friday, May 24, 2002, in Room 1408 of the U.S. Department of State at 2201 C Street, NW., Washington, DC. The meeting will take place from 10:00 a.m. to 12:00 p.m.

The Commission, reauthorized pursuant to Public Law 106–113 (H.R. 3194, Consolidated Appropriations Act, 2000), will provide a general update on the effectiveness of public diplomacy initiatives as well as discuss potential areas of examination for the remainder of the Commissioners' terms of office.

Members of the general public may attend the meeting, though attendance of public members will be limited to the seating available. Access to the building is controlled, and individual building passes are required for all attendees.

The U.S. Advisory Commission on Public Diplomacy is a bipartisan Presidentially appointed panel created by Congress in 1948 to provide oversight of U.S. Government activities intended to understand, inform and influence foreign publics. The Commission reports its findings and recommendations to the President, the Congress and the Secretary of State and the American people. Current commission members include Harold Pachios of Maine, who is the chairman; Charles Dolan of Virginia, who is the vice chairman; Penne Percy Korth of Washington, DC; Lewis Manilow of Illinois; and Maria Elena Torano of Florida.

To attend the meeting, please contact Matt Lauer at (202) 619–4463. For more information visit *www.state.gov/r/adcompd.*

Dated: May 8, 2002.

Matthew Lauer,

Executive Director, U.S. Advisory Commission on Public Diplomacy, Department of State.

[FR Doc. 02–12047 Filed 5–14–02; 8:45 am]

BILLING CODE 4710–11–P

DEPARTMENT OF STATE

[Public Notice 3962]

Shipping Coordinating Committee; Notice of Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 9:30 AM on Wednesday June 12, 2002, in room 6319, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC. The purpose of the meeting is to prepare for the 48th session of the Subcommittee on Safety of Navigation (NAV) of the International Maritime Organization (IMO) which is scheduled for July 8–12, 2002, at the IMO Headquarters in London.

Items of principal interest on the agenda are:

—Routing of ships, ship reporting and related matters
—Integrated bridge systems (IBS) operational aspects
—Places of refuge
—Revision of fishing vessel Safety Code and Voluntary Guidelines
—Anchoring, mooring and towing equipment
—Feasability study on carriage of Voyage Data Recorders (VDR) on existing cargo ships
—Revision of performance standards for radar reflectors
—Review of performance standards for radar equipment
—International Telecommunication Union (ITU) matters, including Radiocommunication ITU–R Study Group 8
—Large passenger ship safety: Effective voyage planning
—Measures to prevent accidents with lifeboats
—Matters related to bulk carrier safety
—Casualty analysis

Members of the public may attend these meetings up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Edward J. LaRue, Jr., U.S. Coast Guard (G–MWV–2, Room 1407, 2100 Second Street SW, Washington, DC 20593–0001 or by calling: (202) 267–0416.

Dated: April 10, 2002.

Stephen M. Miller,

Executive Secretary, Shipping Coordinating Committee, Department of State.

[FR Doc. 02–12046 Filed 5–14–02; 8:45 am]

BILLING CODE 4710–11–P

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of Environmental Review of Doha Multilateral Trade Negotiations; Public Comments on Scope of Environmental Review

AGENCY: Office of the United States Trade Representative.

ACTION: Notice and request for comments.

SUMMARY: Pursuant to Executive Order 13141, 64 FR 63169 (Nov. 18, 1999), and implementing guidelines, 65 FR 79442 (Dec. 19, 2000), the Office of the United States Trade Representative (USTR), through the Trade Policy Staff Committee (TPSC), is initiating an environmental review of the multilateral negotiations launched in November 2001 at the World Trade Organization's Fourth Ministerial Meeting in Doha, Qatar. The negotiations are to be concluded within three years (not later than January 1, 2005).

The TPSC requests written public comments on the scope of the environmental review, including any reasonably foreseeable significant positive and negative environmental effects that might flow from economic changes attributable to the prospective agreements, and potential implications for environmental laws, regulations and other measures. The TPSC also welcomes public views on appropriate methodologies for conducting the review and the appropriate time to perform the environmental analysis, given the three-year time frame for the negotiations.

DATES: Public comments should be received no later than July 26, 2002.

FOR FURTHER INFORMATION CONTACT: For procedural questions concerning public comments, contact Gloria Blue, Executive Secretary, TPSC, Office of the USTR, 1724 F Street, NW., Washington, DC 20508, telephone (202) 395–3475. Questions concerning the environmental review should be addressed to the Environment and Natural Resources Section, USTR, telephone (202) 395–7320.

SUPPLEMENTARY INFORMATION: At the Fourth WTO Ministerial Meeting in Doha, Qatar, trade ministers representing more than 140 countries launched new multilateral trade negotiations. The agenda calls for a comprehensive 3-year negotiation, covering a variety of areas such as agriculture, services, industrial tariffs, WTO rules (including ways to clarify and improve disciplines on environmentally harmful fish subsidies), reduction in trade barriers to environmental goods and services, and limited aspects of the relationship between the WTO and multilateral environmental agreements. In a separate notice, the TPSC has requested public views on the general U.S. negotiating objectives and country and item-specific priorities for the Doha negotiations, including with respect to environmental objectives. 67 FR 12637 (March 19, 2002). That notice contains more detailed information concerning the scope of the negotiations. The Doha Ministerial Declaration and further information about the negotiations are available on USTR's website at *www.ustr.gov.* or on the WTO's website at *www.wto.org.*

Executive Order 13141—*Environmental Review of Trade Agreements* (November 1999) and implementing guidelines (December 2000) formalize the U.S. policy of conducting environmental reviews for certain major trade agreements. Reviews are used to identify potentially significant, reasonably foreseeable environmental impacts (both positive and negative), and information from the review can help facilitate consideration of appropriate responses where impacts are identified. The Order requires environmental reviews of certain types of agreements, including comprehensive multilateral trade rounds. *See* 64 FR 63169. Reviews address potential environmental impacts that may be associated with projected economic changes expected to occur as a result of the proposed agreement, and potential implications for environmental laws and regulations. The focus of the reviews is on impacts on the United States, although global and transboundary impacts may be considered, where appropriate and prudent.

In April 2001, USTR initiated an environmental review of the mandated WTO negotiations on agriculture and services, known as the "built-in agenda" negotiations. 66 FR 20846 (April 25, 2001). The "built-in agenda" review will be consolidated with this review of the Doha negotiations. It is not necessary to repeat comments submitted in response to the April 25, 2001 notice; those comments are being considered and are available for public inspection in the USTR Reading Room (see below). However, supplemental comments on the agriculture and services negotiations are welcome.

The TPSC recognizes that the Doha negotiations are at an early stage. As developments in the negotiations further clarify the scope of potential agreements, the TPSC anticipates that there will be other opportunities for the public to provide additional input as appropriate.

Written Comments

Persons submitting written comments should provide twenty (20) copies no later than July 26, 2002, to Gloria Blue at the above address. Where possible, respondents should also submit comments in electronic form by providing a disk together with the required twenty hard copies. The disk should be labeled and should clearly identify the software used and the respondent.

Written comments submitted in response to this request will be available for public inspection in the USTR Reading Room, in Room 3 of the USTR Annex, 1724 F Street, NW., Washington DC. An appointment to review the file may be made by calling (202) 395–6186. The Reading Room is open to the public from 10–12 a.m. and from 1–4 p.m., Monday through Friday.

Carmen Suro-Bredie,

Chair, Trade Policy Staff Committee.

[FR Doc. 02–12120 Filed 5–14–02; 8:45 am]

BILLING CODE 3190–01–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement: Fulton County and Cobb County, Georgia

AGENCY: Federal Transit Administration (FTA), Department of Transportation (DOT).

ACTION: Notice of intent to prepare an Environmental Impact Statement.

SUMMARY: The Federal Transit Administration (FTA) is issuing this notice to advise agencies and the public that, in accordance with the National Environmental Policy Act, an Alternatives Analysis/Environmental Impact Statement (EIS) is being prepared for a proposed transportation improvement in the Metropolitan Atlanta Region's Northwest Corridor. Located in Fulton and Cobb counties, the proposed Northwest Corridor would extend between an Atlanta connection with the existing MARTA rail line (at Arts Center, Midtown or Bankhead stations) and the Town Center/Kennesaw State University activity center area in Cobb County. The corridor is centered on US 41, I–75 and the W&A (CSX) Railroad. The corridor boundaries are roughly defined by Midtown Atlanta on the south, Powers Ferry Road on the northeast, Georgia 280 (Hamilton E. Holmes Drive/James Jackson Parkway/South Cobb Drive) on the southwest and Town Center on the north. The lead agency will also seek the cooperation of the Federal Highway Administration (FHWA), the U.S. Fish and Wildlife Service (USFWS), the U.S. Army Corps of Engineers (USCOE), the U.S. Environmental Protection Agency (USEPA), and the Federal Railroad Administration (FRA) in conducting this review.

DATES: *Comment Due Date:* Written comments on the scope of the alternatives and the impacts to be considered should be sent to Sylvia Greer, State & Community Affairs Specialist, at GRTA 404–463–2430; TDD phone number 711 by July 11, 2002. *Scoping Meetings:* GRTA will conduct three (3) identical public scoping meetings and an agency scoping meeting. The public scoping meetings will be held on Monday, June 10, 2002 in two locations, as follows: Kennesaw State University Center, Kennesaw, Georgia 11 a.m; and the Smyrna Community Center, Smyrna, Georgia 7 p.m. and on Tuesday, June 11, 2002 at the Carl E. Sanders YMCA in Buckhead at 6:30 p.m. The agency scoping meeting will be held on June 27, 2002 at 2 p.m. in the GRTA Board Room. The locations of the scoping meetings are accessible to persons with disabilities and open to all members of the community. Any individual with a disability who requires special assistance, such as a sign language interpreter, to participate in the scoping meetings should contact Sylvia Greer, State & Community Affairs Specialist, at GRTA 404–463–2430; TDD phone number 711 by June 9, 2002.

ADDRESSES: To be added to the mailing list or to provide written comments, please contact Sylvia Greer, State & Community Affairs Specialist, at GRTA,

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245 Peachtree Center Avenue, NE, Suite 900, Atlanta, Georgia 30329, phone 404–463–2430. The dates and addresses of the scoping meetings are given in the **DATES** section above.

FOR FURTHER INFORMATION CONTACT: Mr. Tony Dittmeier, Transportation Program Specialist, Federal Transit Administration 404–562–3512, or Mr. Crew Heimer, Manager of Passenger Rail, Georgia Regional Transportation Authority (GRTA) 404–463–3054.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA, in cooperation with GRTA, will prepare an Alternatives Analysis (AA)/ Environmental Impact Statement (EIS) to examine alternative improvement strategies to enhance transit access and mobility, respond to projected growth and increased traffic congestion, and address regional air quality issues. A *Project Advisory Committee*, representing local jurisdictions and key community leaders will provide guidance to GRTA on local decisions. Input received during the EIS scoping meetings will be summarized and provided to the Advisory Committee and the GRTA Board prior to the final selection of a Locally Preferred Alternative, which will include the selection of a preferred mode and alignment.

The following alternatives will be evaluated in the Environmental Impact Statement: a No-Build Alternative, Transportation Systems Management Alternative, and one or more mass transit Build Alternatives.

Scoping activities will include public meetings and an agency scoping meeting during the month of June 2002, and correspondence and discussions with interested persons, organizations, as well as federal, state and local agencies.

The Federal Transit Administration (FTA) and Georgia Regional Transportation Authority (GRTA) invite all interested individuals and organizations, and federal, state, and local agencies to provide comments on the scope of the study. During the scoping process, comments should focus on defining the alternatives to be studied in the EIS, identifying specific social, economic, or environmental issues to be evaluated, and suggesting alternatives that may be less costly or have less environmental impact, while achieving similar transportation objectives. A Scoping Information Booklet will be circulated to all federal, state, and local agencies having jurisdiction in the project and all interested parties currently on the Northwest Connectivity Study mailing list. The Scoping Information Booklet will be available at the meetings or in advance of the meetings by contacting Sylvia Greer, State & Community Affairs Specialist, at GRTA, as indicated above in **ADDRESSES**.

During Scoping, comments should focus on identifying the range of reasonable alternatives that should be considered and not stating a preference for a particular alternative. Individual preference for an alternative should be communicated during the comment period for the Draft EIS. Scoping comments may be made at the public scoping meetings listed above in the **DATES** section of this notice or in writing within 30-days of this notice to the individual in the **ADDRESSES** section of this notice.

The comments received during the public scoping meeting will be summarized and provided to the Project Advisory Committee, which will make a formal scoping decision on the alternatives to be carried forward in the EIS and the scope of the study in conjunction with selecting a Locally Preferred Alternative.

II. Description of Study Area and Project Needs

The purpose of the project is to identify a transportation solution that provides additional choices for travelers within and through the corridor. The identified transportation solution should decrease the vehicle miles traveled in the region, decrease emissions and, in turn, alleviate Atlanta's severe non-attainment status for air quality. To accomplish this, the proposed project will explore transportation alternatives that reduce the number of vehicle miles traveled; will enhance mobility within and through the corridor; will improve air quality; will increase connectivity between major activity centers; and will provide opportunities for integrating the existing and proposed land uses along the corridor with a transportation investment that maximizes transit and land use benefits within the northwest corridor of Metropolitan Atlanta. The additional travel choices and mode connectivity should provide travel along the study corridor, improved accessibility to jobs and essential activities within the region, and services throughout the corridor for all of the greater Atlanta region's citizens.

The project is to identify alternatives to address an increase in travel demand from projected increases in population and employment growth throughout the Northwest Corridor between the City of Atlanta and Town Center. Roadways in the corridor are currently congested and are projected to operate with moderate to severe congestion by 2015 (level of service C, D, and F), limited in both capacity and within existing rights-of-way. The number of vehicle miles traveled in the corridor has increased by 42 percent between 1990 and 2000 and contributes to poor air quality. Existing transit service in the corridor is limited and currently focused on serving work-based trips between Cobb County and the region's core.

III. Alternatives

A brief description of the initial alternatives is provided below:

No-Build Alternative. This Alternative consists of highway and transit system existing as of the year 2002, plus projects programmed for construction in the FY 2003–2005 Transportation Improvement Program adopted by the Atlanta Regional Commission, the region's metropolitan planning organization.

Transportation Systems Management Alternative. This Alternative consists of all reasonable cost-effective [low-cost, operationally oriented] transit improvements included in the region's current, constrained long-range transportation plan, the *2025 Regional Transportation Plan.*

Build Alternatives. One or more mass transit Build Alternatives providing service between the existing MARTA Arts Center station and the Town Center activity center will be evaluated. The mass transit Build Alternatives may include express bus, bus rapid transit, light rail transit, heavy rail transit, or commuter rail. Ancillary facilities, such as maintenance garages, rail yards, and parking facilities will be considered, as appropriate, for the mass transit Build Alternatives.

Scoping meetings, stakeholder interviews, and written comments will be sources of additional alternatives for consideration in this study.

IV. Probable Effects/Potential Impacts for Analysis

The purpose of the EIS process is to fully disclose the environmental consequences associated with each of the alternatives being evaluated. FTA and GRTA will assess all social, economic, and environmental impacts of the No-Build, TSM, and Build Alternatives selected for detailed evaluation at the end of the Alternative Analysis phase. Impacts may include the following: land use, zoning, and economic development; secondary development; cumulative impacts; land acquisition, displacements and relocation of existing uses; historic, archaeological and cultural resources; parklands and recreation areas; visual and aesthetic qualities; neighborhoods and environmental justice; air quality; noise and vibration; contaminated materials; ecosystems; water resources; energy; construction impacts; safety and security; finance; and transportation impacts. The impacts will be evaluated both for the construction period and for the long-term operation of each alternative. Measures to avoid, minimize or mitigate any significant adverse impacts will be identified.

V. FTA Procedures

FTA and GRTA invite comments on the content of the EIS related to the proposed project in order to ensure that the full range of issues and concerns of the public, interested parties, and federal, state, and local agencies are addressed. Comments are invited from all parties and should be directed to the name listed in the **ADDRESSES** section above within the time frame set forth in the **DATES** section above.

In accordance with the federal transportation planning regulations (23 CFR part 450) and the federal environmental impact regulations and related procedures (23 CFR part 771), the DEIS will be prepared to include an evaluation of the social, economic, and environmental impacts of the alternatives. Upon completion, the DEIS will be available for public and agency review and comment. Public hearing(s) will be held on the DEIS within the study area. The DEIS will also constitute the Alternatives Analysis required by the New Starts regulations.

The Final EIS will consider comments received during the DEIS public review process and will identify the preferred alternative.

Issued on: May 9, 2002.

Jerry Franklin,

Regional Administrator, Atlanta, Georgia.

[FR Doc. 02–12124 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Federal Transit Administration

Environmental Impact Statement for the Spokane Regional Light Rail (South Valley Corridor) Project in Spokane, Washington Metropolitan Area

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), Spokane Transit Authority (STA), and the Spokane Regional Transportation Council (SRTC) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act (NEPA) for transit improvements in Spokane County, between downtown Spokane and Liberty Lake. The EIS will be prepared to satisfy both NEPA and the Washington State Environmental Policy Act (SEPA). This project was originally scoped as an Environmental Assessment (EA), with one build Alternative. Recently, conditions have changed with an additional build alternative being considered. Therefore, it has been determined that an Environmental Impact Statement (EIS) is more suitable for the project.

The purpose of this Notice of Intent is to notify interested parties of the intent to prepare an EIS, the addition of a second build alternative for consideration and to invite participation in the study. The project proposes to implement a major high capacity rail transit improvement in the Spokane Metropolitan area that maintains livability, manages growth and provides a balanced transportation system. The Proposed Action is intended to contribute to implementation of a series of state, regional, and local planning policies that address air quality, sprawl, and growth. Three alternatives (described below) will be evaluated in the EIS.

DATES: The public is welcome to make comments on the scope of the proposed project. Written comments should be sent to the Spokane Transit Authority within 30 days from the date of publication of this notice in the local newspaper or June 18, 2002, whichever is later. A packet on the proposed project, project alternatives and the scoping process may be obtained from the Spokane Transit Authority. The information may also be obtained through a public website for the project, *www.spokanelightrail.com*. A *Public Open House/Scoping Meeting* will be held on Tuesday June 4, 2002 at 7:00 p.m. PDT, at the Spokane County Valley Library, 12004 East Main Avenue, Spokane, WA 99206. An *Agency Scoping Meeting* will be held at 2:30 p.m. PDT on Tuesday, June 4, 2002, at the Spokane Transit Authority (STA) Board Room, 1230 West Boone Avenue, Spokane, WA 99201. Both meeting locations are accessible to persons with disabilities. Any individual with a disability who requires special assistance, such as a sign language interpreter, should contact Geralyn Garberg at (509) 325–6000, ext. 196 or email *ggarberg@spokanetransit.com*, at least 48-hours in advance of the meeting in order for STA to make necessary arrangements.

FOR FURTHER INFORMATION CONTACT: The Spokane Transit Authority Agency Coordination contact is Greg Northcutt, Project Director at (509) 325–6056 or e-mail *gnorthcutt@spokanetransit.com*. The STA Public Information contact is Molly Myers, Public Involvement Manager at (509) 325–6090 or e-mail *mmyers@spokanetransit.com*. The STA TDD number is (509) 456–4327. Written comments should be sent to Greg Northcutt, Project Director, Spokane Transit Authority, 1230 West Boone Ave., Spokane, WA 99201.

The Federal agency contact is F. William Fort, Federal Transit Administration, 915 Second Avenue, Suite 3142 Jackson Federal Building, 915 Second Avenue, and Seattle, WA 98174. Phone (206) 220–4461.

SUPPLEMENTARY INFORMATION:

1. Notice of Intent

This Notice of Intent to prepare an EIS is being published to notify interested parties. The Spokane South Valley Corridor Project is examining two high capacity rail transit build alternatives and a no-build alternative in the south valley portion of the Spokane metropolitan area. Because the study is a transit alternatives study, FTA regulations and guidance will be used for the analysis and preparation of the South Valley Corridor Project EIS.

2. Study Area

The South Valley Corridor includes an area roughly parallel to I–90 running east through downtown Spokane, southeast Spokane, unincorporated urban Spokane County, and into the City of Liberty Lake. The proposed alternatives primarily utilize existing right-of-ways along operational and former railroad corridors and roadways.

3. Alternatives

Three alternatives will be evaluated in the EIS. The No-Build Alternative will provide the basis for comparison of the build alternatives. The No-Build Alternative includes the existing transportation system plus projects listed in the Spokane Metropolitan Area Transportation Improvement Program (TIP). The Separate Rail Alignment Alternative includes a light rail transit line running from downtown Spokane to Liberty Lake on an exclusive alignment. The new Shared Rail Alignment includes a light rail line from downtown Spokane to Liberty Lake

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sharing existing rail lines with the Union Pacific Railroad along portions of the alignment. This alternative would use operating time restrictions to separate light rail traffic from heavy rail traffic. Between the two termini there would be intermediate stations and associated local parking. Both the separate rail alignment and shared rail alignment Build Alternatives may use either electrified or diesel multiple unit (DMU) vehicle technology. These alternatives will also incorporate in-street operations along Riverside Avenue, between Post Street and Division Street. The rail options will utilize the former Milwaukee Road rail corridor, east of University Road.

4. Probable Effects

FTA and Spokane Transit Authority will evaluate the environmental, social and economic impacts of the alternatives and measures to mitigate any adverse impacts.

Dated: May 9, 2002.

Blas M. Uribe,

Acting Regional Administrator, FTA Region 10.

[FR Doc. 02–12122 Filed 5–14–02; 8:45 am]

BILLING CODE 4910–57–P

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Pipeline Safety: Development of Consensus Standards on Pipeline Public Awareness Programs

AGENCY: Office of Pipeline Safety, Research and Special Programs Administration, DOT.

ACTION: Notice of development of consensus standards.

SUMMARY: Trade associations for the natural gas and hazardous liquid pipeline industry are working together to develop consensus standards to expand the public awareness programs that pipeline operators conduct, and to further involve the local communities in ensuring pipeline safety. This notice provides information about how the public can participate in this consensus standard-setting process. The Research and Special Program Administration's (RSPA) Office of Pipeline Safety (OPS) is committed to improving the public education programs that are a part of the pipeline safety public awareness programs. Public participation is being sought as part of this standard-setting for industry public awareness programs, with the expected result of improved public education regarding pipeline safety.

Background

Current Federal regulations require that pipeline operators conduct public education campaigns so that members of the public, excavators, residents along pipeline rights-of-way, emergency responders and local officials understand what to do in a pipeline emergency. OPS has encouraged pipeline operators to review existing programs and to make needed improvements. The National Transportation Safety Board has also issued a recommendation urging that gas and hazardous liquid pipeline operators increase public education about pipeline safety operations.

In response to concerns raised by RSPA, the American Petroleum Institute (API) has initiated a revision of its Recommended Practice (RP) 1123, Development of Public Awareness Programs. This document was originally issued for use by API members which transport petroleum and other hazardous liquids. However, the need for public education standards extends beyond hazardous liquid operators. To promote a standardized approach to public education among pipeline operators, OPS encouraged natural gas pipeline operators to work with their colleagues in the liquid pipeline industry on the API revision of recommended practice. The recommended practice, upon completion of this consensus standard-setting process, will be assigned a new ANSI identification number, and will be referred to in that manner in all future correspondence.

The Interstate Natural Gas Association of America, the American Gas Association and the American Public Gas Association have joined API in this effort. This collaborative process will bring a measure of consistency to such programs throughout the industry, and will expand the effort to include public education not solely of pipeline operators, but of all relevant stakeholders. However, this revised recommended practice would apply to existing pipelines only.

RSPA in interested in the success of this effort because OPS had already begun work in the area of public education. In the fall of 2000, at the request of the OPS Technical Hazardous Liquid Pipeline Safety Standards Committee (THLPSSC), OPS formed a group with equal representation from government, industry and public sectors to explore this issue. OPS also held a well-attended public meeting in February 2001 to solicit input on the information needs of the public and other audiences.

The revision of the recommended practice will provide guidelines that operators can use to develop or improve existing public awareness and community outreach programs. In advance of this revision, API surveyed a number of its members to determine the effectiveness of existing public awareness programs and to identify areas which required improvement. The results of this survey are being used to help guide the revision of the recommended practice, which is expected to be complete by the end of 2002.

The API has created a Web site, *http://www.api.org/pipelinepublicawareness* to obtain informal, early feedback and to solicit public input. OPS hopes that the public will take this opportunity to provide its comments. It is important to note that the American National Standards Institute (ANSI) will also provide the opportunity for formal Notice and Comment on the revision of the recommended practice. OPS urges interested parties to submit their remarks on the completed revision to ANSI.

OPS, as the Federal government representative, and the National Association of Pipeline Safety Representatives (NAPSR), the body representing the State pipeline safety agencies, are participating in this process as observers. After industry has finalized the revision, OPS will decide whether or not to adopt it as a regulatory requirement. Alternatively, OPS may adopt only those portions of the document that meet its needs. While OPS has encouraged this process, the decision on whether to adopt this standard has not been pre-determined. If OPS decides to incorporate the revised recommended practice by reference, a Notice of Proposed Rulemaking will be published in the **Federal Register** for public comment.

FOR FURTHER INFORMATION CONTACT: Mary-Jo Cooney, OPS, (202) 366–4774, regarding the subject matter of this notice.

Issued in Washington, DC, on May 10, 2002.

Jeffrey D. Wiese,

Manager, Program Development, Office of Pipeline Safety.

[FR Doc. 02–12168 Filed 5–14–02; 8:45 am]

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NATIONAL ARCHIVES AND RECORDS ADMINISTRATION 1985

Federal Register

Wednesday,
May 15, 2002

Part II

Department of Transportation

Coast Guard

33 CFR Parts 175, 177, et al.

46 CFR Parts 2, 10, et al.

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA); Final Rule

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 175, 177, 179, 181, and 183

46 CFR Parts 2, 10, 15, 24, 25, 26, 30, 70, 90, 114, 169, 175, 188, and 199

[USCG–1999–5040]

RIN 2115–AF69

Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard establishes this final rule to implement safety measures for uninspected passenger vessels under the Passenger Vessel Safety Act of 1993 (PVSA). This Act authorizes the Coast Guard to amend operating and equipment guidelines for uninspected passenger vessels over 100 gross tons, carrying 12 or fewer passengers for hire. These regulations will implement this new class of uninspected passenger vessel, provide for the issuance of special permits to uninspected vessels participating in a Marine Event of National Significance (e.g., OPSAIL 2000 and Tall Ships 2000), and develop specific manning, structural fire protection, operating, and equipment requirements for a limited fleet of PVSA-exempted vessels.

DATES: This final rule is effective June 14, 2002.

ADDRESSES: Comments and material received from the public, as well as documents mentioned in this preamble as being available in the docket, are part of docket USCG–1999–5040 and are available for inspection or copying at the Docket Management Facility, U.S. Department of Transportation, room PL–401, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. You may also find this docket on the Internet at *http://dms.dot.gov*.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call Michael A. Jendrossek, Office of Operating and Environmental Standards (G–MSO–2), Coast Guard, telephone 202–267–0836. If you have questions on viewing the docket, call Dorothy Beard, Chief, Dockets, Department of Transportation, telephone 202–366–5149.

SUPPLEMENTARY INFORMATION:

Regulatory History

On March 2, 2000, we published a notice of proposed rulemaking (NPRM) entitled "Safety of Uninspected Passenger Vessels Under the Passenger Vessel Safety Act of 1993 (PVSA)" in the **Federal Register** (65 FR 11410). In order to prepare for the Year 2000's millennium sailing events, a 30-day comment period was provided for the changes proposed to 46 CFR 26.03–8, and an interim rule (IR) amending that section was published April 28, 2000 (65 FR 24878). Other changes proposed by the March 2, 2000 NPRM were subject to a 90-day comment period. We received six letters commenting on the proposed rule. No public hearing was requested and none was held.

Background and Purpose

We discussed the background and purpose of this rulemaking in fuller detail in the March 2, 2000 NPRM (65 FR 11410). Briefly, the Passenger Vessel Safety Act of 1993 (PVSA) (Pub. L. 103–206, title V, Dec. 20, 1993, 107 Stat. 2439) dealt with subjecting some formerly chartered vessels to Coast Guard inspection.

The PVSA also made several changes to the laws for vessels that carry passengers.

First, the PVSA required a vessel of less than 100 gross tons to be inspected as a small passenger vessel if it is—

- Carrying more than six passengers, including at least one passenger-for-hire;
- Chartered with crew provided or specified by the owner or owner's representative and carrying more than six passengers;
- Chartered with no crew provided or specified by the owner or the owner's representative and carrying more than 12 passengers; or
- A submersible vessel carrying at least one passenger-for-hire.

Second, the PVSA provided an exemption for certain vessels that were unable to meet inspection criteria. Sixteen vessels applied to the Coast Guard for exemptions, and four exemptions were granted. The PVSA authorized the Coast Guard to develop specific operating and equipment requirements for these vessels.

Third, the PVSA broadened the definition of uninspected passenger vessel to include vessels of at least 100 gross tons carrying not more than 12 passengers, including at least one passenger-for-hire; or vessels that are chartered with crew provided or specified by the owners or the owners' representatives and carrying not more than 12 passengers. These vessels are commonly referred to as 12-pack vessels. Vessels of at least 100 gross tons that carry more than 12 passengers, at least one of whom is for hire, must be inspected as passenger vessels under Code of Federal Regulations (CFR) Title 46, chapter I, subchapter H.

Fourth, the PVSA directed the Coast Guard to develop regulations necessary to implement equipment, construction, and operating requirements for uninspected passenger vessels operating as 12-pack vessels.

Fifth, the PVSA authorized the Coast Guard to develop regulations to issue special permits to uninspected vessels, thus, broadening authority from the now standard excursion permit for inspected vessels to include special permits for uninspected vessels. Special permits may be issued to an uninspected passenger vessel for charitable purposes up to a maximum of four times in a 12-month period. Special permits may also be issued to the owner or operator of a vessel that is a registered participant in an event that the Commandant, U.S. Coast Guard, declares to be a Marine Event of National Significance.

Discussion of Comments and Changes

The March 2, 2000 NPRM details the specific changes made by this rulemaking. We received six letters in response to the NPRM (excluding those relating to 46 CFR 26.03–8, which were discussed in the interim rule published April 28, 2000, at 65 FR 24878). The discussion below is limited to a review of those public comments, along with our response to each, and a discussion of the specific changes now being made in addition to or instead of changes proposed in the NPRM.

(1) One comment stated that we should establish a user fee for the issuance of excursion permits per 46 U.S.C. 2110. We already collect inspection-service user fees from inspected passenger vessels and do not have the authority to establish a new user fee category.

(2) One comment stated that we failed to account for the full costs of equipping the 406 MHz EPIRB, including battery replacement and additional "false alert" responses due to the additional units in service. EPIRB battery replacement costs were included in the Analysis Documentation, Appendix 6, supporting the March 2, 2000 NPRM (This documentation is available in the docket for this rulemaking at *http://dms.dot.gov.*). We do not agree that there is any tangible false alert cost associated with additional EPIRBs. Satellite EPIRBs are required to be registered. In addition, their digital message includes beacon identification.

With this information, the signaling EPIRB can quickly identify the distressed vessel and its owner. A radio or telephone call will normally confirm a false alarm. If an EPIRB on a docked, unattended vessel malfunctions, the COSPAS–SARSAT satellite system makes locating it relatively simple. False alerts from interference sources are not a problem on the 406 MHz satellite frequency, as they were with the old 121.5 MHz frequency. The false alert rate from 406 MHz satellite EPIRBs is low, and any added load created by this rulemaking can be handled without additional resources.

(3) Two comments state that we lack authority to modify the clear provisions of 46 U.S.C. 8102 and 46 U.S.C. 8104, regarding cabin watchmen and watch standing. Section 511 of the PVSA gives us the necessary authority to establish different operating and equipment requirements for uninspected passenger vessels over 100 gross tons carrying 12 or fewer passengers.

(4) One comment says we should clarify the provisions of proposed 46 CFR 26.03–6(b)(2) regarding the deduction of vessel operating expenses from "charitable donations" prior to their disbursement. We do not have the authority to allow any retention of these proceeds. The Internal Revenue Service (IRS) should be consulted regarding any tax relief that may be available. If such vessel operating expenses are allowed by the IRS as tax deductions, the Coast Guard will not view this as a consideration when determining whether a vessel is carrying passengers for hire.

(5) One comment asks why the requirement for signaling lights is limited to vessels on an international voyage when chapter V of SOLAS is not so limited. Our proposed requirement reflects the wording of SOLAS Chapter V, regulation 11, which does include such a limitation.

(6) One comment stresses the importance of getting disaster survivors out of the water as quickly as possible, and asks us to delete buoyant apparatuses and life floats from proposed 46 CFR 25.25–17. We agree and will make this change. We believe that because these vessels are uninspected and for the most part capable of extended ocean voyages, a higher level of safety equipment is required.

(7) One comment suggests we add a basic definition and clarifying language for bareboat charters. The comment states that this is necessary to help alleviate confusion over the types of arrangements made in contracting a vessel and its manner of use. We agree with this comment and will add the definition of demise charter to 46 CFR 169.107.

(8) One comment expresses concern that the change to 46 CFR 15.905 would inadvertently penalize a large segment of licensed mariners by restricting them to the tonnage limit of their license (e.g., a master of inspected vessels up to 50 gross tons would be limited to operating a 50 gross ton uninspected passenger vessel). We agree with this comment and will incorporate clarifying language into 46 CFR 15.905.

(9) One comment suggests we are perpetuating the carrying of passengers on uninspected barges that were designed solely for the carriage of bulk cargoes or for use as work platforms. We have investigated past allegations of uninspected barges carrying passengers and found that these operations were purely voluntary. No consideration flowed to the operators involved. Vessel operations of this type are not regulated by the Coast Guard as commercial operations and, therefore, are not subject to the requirements of the PVSA. We are committed to ensuring that all vessels that carry passengers comply with the laws and regulations that apply to their specific operations.

(10) One comment expresses concern that 12-pack vessels will be required to comply with load line requirements, where applicable. Noting the expense and burden of compliance, the comment asks us to establish alternative criteria to make load line assignment less difficult and more cost effective. We disagree with this comment. As stated in the NPRM, the load line is a safety device that verifies, through annual surveys, a vessel's seaworthiness. This is an important factor for 12 pack vessels that are capable of trans-oceanic intercontinental voyages.

(11) One comment questions the application of 46 CFR, part 175 to vessels operating under an exemption afforded in the PVSA. The comment states that an exempt vessel presently operates under the scrutiny of the Coast Guard and, therefore, has an existing Certificate of Inspection (COI) reflecting its seaworthiness. We are adding 46 CFR 175.118 so that the provisions of 46 CFR, chapter I, subchapter T apply to PVSA-exempt vessels. This is necessary because these vessels, all of which are over 100 gross tons, currently are not capable of meeting the more stringent requirements of 46 CFR, chapter I, subchapter H.

(12) One comment asks if the regulation for special permits for charitable fundraising activities applies to a non-profit organization that owns its own vessel. That regulation applies to any vessel owner/operator, including a non-profit organization.

(13) One comment asks how we can enforce the requirement for a voyage plan if a plan is transmitted verbally from the vessel to the berthing location or managing representative. Under 46 CFR 26.03–9, the required information must be provided on request, making it prudent for responsible persons to record the information to ensure its availability if needed.

(14) Although not prompted by public comment, we have revised several other proposed changes made in the NPRM. These nonsubstantive revisions are explained below:

- In § 10.466, Requirements for licenses as apprentice mate (steersman) of towing vessels, we revised this section in order to upgrade licensing requirements. In an action unrelated to this rulemaking, § 10.466 was redesignated § 10.467 after we published the NPRM. We have decided to change the section heading of new § 10.467 by adding the phrase "of less than 100 gross tons." However, we will make no other changes to that section. Instead, the upgrade in licensing requirements originally proposed for old § 10.466/new § 10.467 now is made in 46 CFR 15.605, using slightly different but substantively unchanged language.
- In § 15.301, Definitions of terms used in this part, we added the definition of "operate, operating, or operation" for clarity.
- In § 24.10–1, we rewrote the definition of "international voyage" (which was previously located at § 24.10–13) to match the definition of that term in 46 CFR 175.400.
- In § 70.10–1, we rewrote the definition of "vessel" (which was previously located at § 70.10–45) for clarity.
- In § 169.107, Definitions, we reformatted the section and rewrote the definition of "sailing instruction" to conform to the reformatting.

Regulatory Evaluation

This rule is not a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order. The Office of Management and Budget has not reviewed it under that Order. It is not "significant" under the regulatory policies and procedures of the Department of Transportation (DOT)(44 FR 11040, February 26, 1979).

A final Regulatory Evaluation under paragraph 10e of the regulatory policies and procedures of DOT is available in

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the docket as indicated under **ADDRESSES**.

A summary of the Regulatory Evaluation follows: Each vessel greater than 100 gross tons, which is currently operating as an uninspected passenger vessel and carries 12 or fewer passengers, has to obtain: (1) An Emergency Position Indicating Radio Beacon (EPIRB), (2) enough survival craft for all persons onboard, and (3) an operator with the appropriate master-level license. The Coast Guard estimates that all vessels operating in this type of trade are already in compliance with the proposed survival craft and licensing requirements; however, they are not in compliance with the EPIRB requirement. The use of EPIRBs will allow the Coast Guard to respond quicker to incidents by providing the location of the casualty and additional, relevant information prior to the arrival of the rescue team. The 10-year (2001 to 2010) present value cost of complying with the EPIRB requirement is estimated to be $100,121.

This rulemaking creates a class of vessel (i.e., 12 pack) not previously in existence. If no vessel owner decides to enter this new class of vessel, the cost of this component of the rulemaking would be $0, as it is not a requirement for any existing vessel to enter this class. However, the Coast Guard estimates that the owners of 570 vessels will choose to enter this class of vessel. The 10-year present value cost of this non-mandatory component is $12,882,008. The Coast Guard considers the cost to be non-mandatory because owners are not required to enter this new class of vessel.

Additionally, this rule affects uninspected passenger vessels participating in Marine Events of National Significance. The Coast Guard will inspect the vessels not possessing the appropriate certification and issue special permits that allow these vessels to carry passengers during the event. Vessel owners will have an information request burden as they must apply for permits. The 10-year, present value cost of this information collection request is $2,064. As participation in these events is not a requirement of the rulemaking, these costs are considered non-mandatory. The intent of this requirement is to provide a safer marine environment at Marine Events of National Significance. While there have been no notable problems at such past events, the Coast Guard is acting proactively to reduce the risk of marine casualties.

In summary, the total cost of this rulemaking is attributed to the requirement to install and maintain EPIRBs on vessels. The 10-year present value cost of this requirement is $100,121.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601–612), we have considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. No comments were received to our previous certification in the NPRM regarding the regulatory flexibility impact.

The only type of small entity that will be affected by this rulemaking is small business. The size standards for the relevant North American Industry Classification System (NAICS) codes (Deep Sea Passenger Transportation, 483112; Coastal and Great Lakes Passenger Transportation, 483114; Inland Water Passenger Transportation, 483212; and Scenic and Sightseeing Transportation, Water, 48721) consider enterprises with 500 or fewer employees to be small businesses, making practically all owners in the 12-pack industry small entities. However, the only mandatory cost in this rulemaking is the cost of an EPIRB. We do not expect that owners of vessels of this size and type, whose annual revenue ranges from about $100 thousand to about $5 million, will consider an additional cost of $1,000 per EPIRB to be significant. In addition, since the useful life of an EPIRB is indefinite, the annualized cost for this item over the 10-year period of analysis is $110, which is furthermore likely to be insignificant. The rule also has a 6-month phase-in period for owners to comply with the carriage of an EPIRB onboard.

Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this final rule will not have a significant economic impact on a substantial number of small entities.

Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Pub. L. 104–121), we offered to assist small entities in understanding this rule so that they can better evaluate its effects on them and participate in the rulemaking.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1–888–REG–FAIR (1–888–734–3247).

Collection of Information

This rule calls for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520). As required in 46 CFR 26.03–8, an owner, operator, or agent of a vessel that is registered as a participant in a Marine Event of National Significance may submit an application for special permit (form CG–950A) to carry passengers-for-hire for the duration of the event. The application will be used to initiate the inspection process to determine whether a vessel is properly equipped to be granted the special permit.

No comments were received regarding the collection of information burden.

This rule amends an existing Office of Management and Budget (OMB) approved collection, OMB Control Number 2115–0133, that expires on April 30, 2003. As required by 44 U.S.C. 3507(d), we submitted a copy of this rule to the Office of Management and Budget (OMB) for its review of the collection of information. OMB has not yet approved the changes to this collection. We will publish an additional notice when they do. Until we publish its approval, you are not required to respond to a collection of information unless it displays a currently valid OMB control number.

Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them.

We have analyzed this rule and have determined that it does not have federalism implications under that Order because it regulates with respect to categories, (construction, equipment and operation of certain uninspected passenger vessels) in such a comprehensive manner, that State laws or regulations on the same subjects are precluded. Any such state laws or regulations would necessarily either conflict with, or frustrate the purpose of this rule. See, *Ray* v. *Atlantic Richfield Co.* 435 U.S. 151 (1978); and *United States and Intertanko* v. *Locke*, 529 U.S. 89 (2000).

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure of $100 million or more in any one year by a State, local, or tribal government, in the aggregate, or by the private sector. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

Taking of Private Property

This rule will not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and does not create an environmental risk to health or safety that may disproportionately affect children.

Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. It has not been designated by the Administrator of the Office of Information and Regulatory Affairs as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211.

Environment

We have considered the environmental impact of this rule and concluded that, under figure 2–1, paragraph (34)(c), (d), and (e) of Commandant Instruction M16475.lD, this rule is categorically excluded from further environmental documentation. This rule will not result in any significant cumulative impact on the human environment; any substantial controversy or substantial change to existing environmental conditions; any impact, which is more than minimal, on properties protected under 4(f) of the DOT Act, as superseded by Public Law 97–449 and Section 106 of the National Historic Preservation Act; or any inconsistencies with any Federal, State, or local laws or administrative determinations relating to the environment. A "Categorical Exclusion Determination" is available in the docket where indicated under **ADDRESSES**.

List of Subjects

33 CFR Part 175

Marine safety.

33 CFR Part 177

Marine safety.

33 CFR Part 179

Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 181

Labeling, Marine safety, Reporting and recordkeeping requirements.

33 CFR Part 183

Marine safety.

46 CFR Part 2

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 10

Penalties, Reporting and recordkeeping requirements, Schools, Seamen.

46 CFR Part 15

Reporting and recordkeeping requirements, Seamen, Vessels.

46 CFR Part 24

Marine safety.

46 CFR Part 25

Fire prevention, Marine safety, Reporting and recordkeeping requirements.

46 CFR Part 26

Marine safety, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 30

Cargo vessels, Foreign relations, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements, Seamen.

46 CFR Part 70

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 90

Cargo vessels, Marine safety.

46 CFR Part 114

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 169

Fire prevention, Marine safety, Reporting and recordkeeping requirements, Schools, Vessels.

46 CFR Part 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 188

Marine safety, Oceanographic research vessels.

46 CFR Part 199

Cargo vessels, Marine safety, Oil and gas exploration, Passenger vessels, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR parts 175, 177, 179, 181, and 183 as well as 46 CFR parts 2, 10, 15, 24, 25, 26, 30, 70, 90, 114, 169, 175, 188, and 199 as follows:

33 CFR Chapter I

PART 175—EQUIPMENT REQUIREMENTS

1. The authority citation for part 175 is revised to read as follows:

Authority: 46 U.S.C. 4302; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.46.

2. In § 175.3, revise the definition of the following terms, in alphabetical order, to read as follows:

§ 175.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

Passenger means an individual carried on a vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel chartered without a crew, an individual charterer, or an individual representative of the charterer;

(2) The master or operator of a recreational vessel; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

* * * * *

Recreational vessel means any vessel being manufactured or operated primarily for pleasure, or leased, rented, or chartered to another for the latter's pleasure. It does not include a vessel engaged in the carriage of passengers-for-hire as defined in 46 CFR chapter I, subchapter C, or in other subchapters of this title.

* * * * *

3. Revise § 175.110(a) to read as follows:

§ 175.110 Visual distress signals required.

(a) No person may use a boat 16 feet or more in length, or any boat operating as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C, unless visual distress signals selected from the list in § 175.130 or the alternatives in § 175.135, in the number required, are onboard. Devices suitable for day use and devices suitable for night use, or devices suitable for both day and night use, must be carried.

* * * * *

PART 177—CORRECTION OF ESPECIALLY HAZARDOUS CONDITIONS

4. The authority citation for part 177 is revised to read as follows:

Authority: 46 U.S.C. 4302, 4311; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45 and 1.46.

5. Revise § 177.03(b) to read as follows:

§ 177.03 Definitions.

* * * * *

(b) *Boat* means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 179—DEFECT NOTIFICATION

6. The authority citation for part 179 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 4302, 4307, 4310, and 4311; Pub. L 103–206, 107 Stat. 2439; 49 CFR 1.46.

7. In § 179.03, revise the definition of the term "Boat" to read as follows:

§ 179.03 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 181—MANUFACTURER REQUIREMENTS

8. The authority citation for part 181 is revised to read as follows:

Authority: 46 U.S.C. 4302 and 4310; Pub.L 103–206, 107 Stat. 2439; 49 CFR 1.46.

9. In § 181.3, revise the definition of the term "Boat" to read as follows:

§ 181.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

PART 183—BOATS AND ASSOCIATED EQUIPMENT

10. The authority citation for part 183 is revised to read as follows:

Authority: 46 U.S.C. 4302; Pub. L 103–206, 107 Stat. 2439; 49 CFR 1.46.

11. In § 183.3, revise the definition of the term "Boat" to read as follows:

§ 183.3 Definitions.

* * * * *

Boat means any vessel—

(1) Manufactured or used primarily for noncommercial use;

(2) Leased, rented, or chartered to another for the latter's noncommercial use; or

(3) Operated as an uninspected passenger vessel subject to the requirements of 46 CFR chapter I, subchapter C.

* * * * *

46 CFR Chapter I

PART 2—VESSEL INSPECTIONS

12. The authority citation for part 2 is revised to read as follows:

Authority: 33 U.S.C. 1903; 43 U.S.C. 1333; 46 U.S.C. 3103, 3205, 3306, 3307, 3703; Pub. L 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46; subpart 2.45 also issued under the authority of Act Dec. 27, 1950, Ch. 1155, secs. 1, 2, 64 Stat. 1120 (see 46 U.S.C. App. note prec. 1).

13. In § 2.01–7(a), redesignate table 2.01–7(A) as table 2.01–7(a) and revise it to read as follows:

§ 2.01–7 Classes of vessels (including motorboats) examined or inspected and certificated.

(a) * * *

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Table 2.01-7(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels inspected and certificated under— Subchapter H—Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T—Small Passenger Vessels.[2, 3, and 4]	Vessels subject to the provisions of— Subchapter D—Tank Vessels.[2]	Subchapter I—Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C—Uninspected Vessels.[2, 3, 4, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 4, 7, and 9]	Subchapter O—Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 3	Column 2	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[6] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least [1] passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least [1] passenger-for-hire and are submersible vessels.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels carrying more than 12 passengers on an international voyage, except those covered by column 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, 6 And 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, 6 and 7.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 2.01-7(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter. Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel " " " being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, " " ". Under 46 U.S.C. 443, "an oceanographic vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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* * * * *

14. Revise § 2.01–45 to read as follows:

§ 2.01–45 Excursion permit.

(a) Under 46 U.S.C. 2113, the Coast Guard may issue a permit to the owner, operator, or agent of a passenger vessel, allowing the vessel to engage in excursions that carry additional numbers of passengers, extend an existing route, or both. Details concerning the application process for excursion permits for inspected passenger vessels are contained in §§ 71.10, 115.204, or §176.204 of this chapter. Details concerning the application process for special permits for uninspected passenger vessels are contained in § 26.03–6 of this chapter.

(b) For Marine Events of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in these events while carrying passengers-for-hire for the duration of the event. Event sponsors must request this determination in writing from the Commandant (G–M) at least 1 year prior to the event. Details concerning the application process for special permits for Marine Events of National Significance are contained in § 26.03–8 of this chapter.

(c) The application for an excursion permit is made by the master, owner, or agent of the vessel to the Officer in Charge, Marine Inspection, on Coast Guard Form CG–950, Application for Excursion Permit. If, after inspection, permission is granted, it is given on Coast Guard form CG–949, Permission to Carry Excursion Party. The permit describes the vessel, the route over which and the period during which the excursions may be made, and the safety equipment required for the additional persons indicated.

PART 10—LICENSING OF MARITIME PERSONNEL

15. The authority citation for part 10 is revised to read as follows:

Authority: 31 U.S.C. 9701, 46 U.S.C. 2101, 2103, 2110; 46 U.S.C. Chapter 71; 46 U.S.C. 7502, 7505, 7701; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45, 1.46; Sec. 10.107 also issued under the authority of 44 U.S.C. 3507.

16. Revise the heading of § 10.467 to read as follows:

§ 10.467 Licenses for operators of uninspected passenger vessels of less than 100 gross tons.

* * * * *

PART 15—MANNING REQUIREMENTS

17. The authority citation for part 15 is revised to read as follows:

Authority: 46 U.S.C. 2101, 2103, 3306, 3703, 8101, 8102, 8104, 8105, 8301, 8304, 8502, 8503, 8701, 8702, 8901, 8902, 8903, 8904, 8905(b), 9102; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.45 and 1.46.

18. In § 15.301(a), add, in alphabetical order, the definitions of "Operate, operating, or operation" and "Underway" to read as follows:

§ 15.301 Definitions of terms used in this part.

(a) * * *

Operate, operating, or *operation,* as applied to vessels, refers to a vessel anytime passengers are embarked whether the vessel is underway, at anchor, made fast to shore, or aground.

* * * * *

Underway means that a vessel is not at anchor, made fast to the shore, or aground.

* * * * *

19. Revise § 15.605 to read as follows:

§ 15.605 Licensed operators for uninspected passenger vessels.

Each uninspected passenger vessel must be under the direction and control of an individual licensed by the Coast Guard as follows:

(a) Every self-propelled, uninspected vessel as defined by 46 U.S.C. 2101(42)(B), carrying not more than six passengers, must be under the direction and control of an individual holding a license as operator.

(b) Every uninspected passenger vessel of 100 gross tons or more, as defined by 46 U.S.C. 2101(42)(A), must be under the direction and control of a licensed master, pilot, or mate as appropriate.

20. Add § 15.705(f) to read as follows:

§ 15.705 Watches.

* * * * *

(f) Properly manned uninspected passenger vessels of at least 100 gross tons—

(1) Which are underway for no more than 12 hours in any 24-hour period, and which are adequately moored, anchored, or otherwise secured in a harbor of safe refuge for the remainder of that 24-hour period may operate with one navigational watch;

(2) Which are underway more than 12 hours in any 24-hour period must provide a minimum of a two-watch system;

(3) In no case may the crew of any watch work more than 12 hours in any 24-hour period, except in an emergency.

21. Add § 15.805(a)(6) to read as follows:

§ 15.805 Master.

(a) * * *

(6) Every uninspected passenger vessel of at least 100 gross tons.

* * * * *

22. Add § 15.855(c) to read as follows:

§ 15.855 Cabin watchmen and fire patrolmen.

* * * * *

(c) For the watchmen described in paragraph (a) of this section, the owner or operator of an uninspected passenger vessel not more than 300 gross tons may substitute the use of fire detectors, heat detectors, smoke detectors, and high-water alarms with audible- and visual-warning indicators, in addition to other required safety alarms, only when each of the following conditions are met:

(1) Fire detectors are located in each space containing machinery or fuel tanks per § 181.400(c) of this chapter.

(2) All grills, broilers, and deep-fat fryers are fitted with a grease extraction hood per § 181.425 of this chapter.

(3) Heat and/or smoke detectors are located in each galley, public accommodation space, enclosed passageway, berthing space, and all crew spaces.

(4) High-water alarms are located in each space with a through hull fitting below the deepest load waterline, a machinery space bilge, bilge well, shaft alley bilge, or other space subject to flooding from sea water piping within the space, and a space below the waterline with non-watertight closure such as a space with a non-watertight hatch on the main deck.

(5) Each alarm has an audible- and visual-alarm indicator located at the normal operating station and, if the normal operating position is not continually manned and not navigating underway, in an alternate location that must provide the crew, and may at all times provide the passengers, immediate warning of a hazardous condition.

(6) The vessel is underway for no more than 12 hours in any 24-hour period, and the master of the vessel has chosen to operate with less than a three-watch system in accordance with § 15.705.

23. Revise § 15.905 to read as follows:

§ 15.905 Uninspected passenger vessels.

(a) An individual holding a license as master or pilot of an inspected, self-propelled vessel is authorized to serve as operator of an uninspected passenger vessel under 100 gross tons within any

restrictions, other than gross tonnage limitations, on the individual's license.

(b) An individual holding a license as a master or pilot of an inspected, self-propelled vessel is authorized to serve as master, as required by 46 CFR 15.805(a)(6), of an uninspected passenger vessel of at least 100 gross tons within any restrictions, including gross tonnage and route, on the individual's license.

(c) An individual holding a license as mate of inspected, self-propelled vessels (other than Great Lakes, inland, or river vessels of not more than 200 gross tons) is authorized to serve as operator of uninspected passenger vessels of less than 100 gross tons within any restrictions, other than gross tonnage limitations, on the individual's license.

PART 24—GENERAL PROVISIONS

24. The authority citation for part 24 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306, 4104, 4302; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

25. In § 24.05–1, revise paragraph (a), introductory text, and table 24.05–1(a) to read as follows:

§ 24.05–1 Vessels subject to the requirements of this subchapter.

(a) This subchapter is applicable to all vessels indicated in Column 5 of Table 24.05–1(a), and is applicable to all such U.S.-flag vessels, and to all such foreign-flag vessels, except as follows:

* * * * *

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Table 24.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels subject to the provisions of–				
	Subchapter D–Tank Vessels.[2]	Vessels inspected and certificated under– Subchapter H–Passenger Vessels[2,3,4, and 5] or Subchapter K or T–Small Passenger Vessels.[2,3, and 4]	Subchapter I–Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C–Uninspected Vessels.[2,3,6,7, and 8]	Subchapter U–Oceanographic Vessels.[2,3,6,7, and 8]	Subchapter O–Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[4]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade. ii) All vessels < 100 gross tons that– A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that– A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to– A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[9] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i.) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or, C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 24.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * * ." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12 See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13 Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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26. Revise subpart 24.10, consisting of § 24.10–1 to read as follows:

Subpart 24.10—Definition of Terms Used In This Subchapter

§ 24.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means a non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which includes the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit, including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage by monetary contribution or donation of fuel, food, beverage, or other supplies.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC.

International voyage means a voyage between a country to which SOLAS applies and a port outside that country. A country, as used in this definition, includes every territory for the international relations of which a contracting government to the convention is responsible or for which the United Nations is the administering authority. For the U.S., the term "territory" includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate. For the purposes of this subchapter, vessels are not considered as being on an "international voyage" when solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

Marine inspector or *inspector* means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Motorboat means any vessel indicated in column five of Table 24.05–1(a) in § 24.05–1, 65 feet in length or less, which is equipped with propulsion machinery (including steam). The length must be measured from end-to-end over the deck, excluding sheer. This term includes a boat equipped with a detachable motor. For the purpose of this subchapter, motorboats are included under the term *vessel*, unless specifically noted otherwise.

(1) The various length categories of motorboats are as follows:

(i) Any motorboat less than 16 feet in length.

(ii) Any motorboat 16 feet or over and less than 26 feet in length.

(iii) Any motorboat 26 feet or over and less than 40 feet in length.

(iv) Any motorboat 40 feet or over and not more than 65 feet in length.

(2) The expression "length must be measured from end-to-end over the deck excluding sheer" means a straight-line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline. Bowsprits, bumpkins, rudders, outboard motor brackets, and similar fittings or attachments, are not to be included in the measurement. Length must be stated in feet and inches.

Oceans means a route that goes beyond 20 nautical miles offshore on any of the following waters:

(1) Any ocean.

(2) The Gulf of Mexico.

(3) The Caribbean Sea.

(4) The Bering Sea.

(5) The Gulf of Alaska.

(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Officer in Charge, Marine Inspection or *OCMI* means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Passenger means an individual carried on a vessel, except—

(1) The owner or an individual representative of the owner, or in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master; or

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Survival craft, when used on an uninspected passenger vessel over 100 gross tons means a lifeboat, inflatable liferaft, inflatable buoyant apparatus, or small boat.

Vessel, as used in this subpart includes all vessels indicated in column five of Table 24.05–1(a) in § 24.05–1, unless otherwise noted in this subpart.

Uninspected passenger vessel means an uninspected vessel—

(1) Of at least 100 gross tons;

(i) Carrying not more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than 12 passengers; and

(2) Of less than 100 gross tons;

(i) Carrying not more than six passengers, including at least one passenger-for-hire; or

(ii) That is chartered with the crew provided or specified by the owner or the owner's representative and carrying not more than six passengers.

PART 25—REQUIREMENTS

27. The authority citation for part 25 is revised to read as follows:

Authority: 33 U.S.C. 1903(b); 46 U.S.C. 3306, 4302; Pub. L. 103–206, 107 Stat. 2439; 49 CFR 1.46.

28. Revise § 25.25–5(d) to read as follows:

§ 25.25–5 Life preservers and other lifesaving equipment required.

* * * * *

(d) In addition to the equipment required by paragraph (b) and (c) of this section, each vessel 26 feet in length or longer must have at least one approved ring life buoy, and each uninspected passenger vessel of at least 100 gross tons must have at least three ring life buoys. Ring life buoys must be constructed per subpart 160.050 of part 160 of this chapter. The exception is a ring life buoy that was approved prior

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to May 9, 1979, under former subpart 160.009 of part 160 of this chapter (see 46 CFR chapter I, revised as of October 1, 1979), which may be used as long as it is in good and serviceable condition.

* * * * *

29. Add § 25.25–17 to read as follows:

§ 25.25–17 Survival craft requirements for uninspected passenger vessels of at least 100 gross tons.

(a) Each uninspected passenger vessel of at least 100 gross tons must have adequate survival craft with enough capacity for all persons aboard and must meet one of the following requirements:

(1) An inflatable liferaft must be approved under 46 CFR part 160, subparts 160.051 or 160.151, and be equipped with an applicable equipment pack or be approved by another standard specified by the Commandant. Inflatable liferafts must be serviced at a servicing facility approved under 46 CFR part 160, subpart 160.151.

(2) An inflatable buoyant apparatus must be approved under 46 CFR part 160, subpart 160.010 or under another standard specified by the Commandant. An inflatable buoyant apparatus must be serviced at a servicing facility approved under 46 CFR part 160, subpart 160.151.

(b) If the vessel carries a small boat or boats, the capacity of the small boat or boat(s) may be counted toward the survival craft capacity required by this part. Such small boat or boat(s) must meet the requirements for safe loading and floatation in 33 CFR part 183.

30. Add § 25.25–19 to read as follows:

§ 25.25–19 Visual distress signals.

Each uninspected passenger vessel must meet the visual distress signal requirements of 33 CFR part 175 applicable to the vessel.

31. Revise § 25.26–10 to read as follows:

§ 25.26–10 EPIRB requirements for uninspected passenger vessels.

(a) Uninspected passenger vessels less than 100 gross tons are not required to carry an EPIRB.

(b) The owner, operator, or master of an uninspected passenger vessel of at least 100 gross tons must ensure that the vessel does not operate beyond three miles from shore as measured from the territorial sea baseline seaward or more than three miles from the coastline of the Great Lakes, unless it has onboard a float-free, automatically activated Category 1 406 MHz EPIRB stowed in a manner so that it will float free if the vessel sinks.

32. In § 25.30–20, redesignate paragraphs (b) and (c) as paragraphs (c) and (d), respectively, and add a new paragraph (b) to read as follows:

§ 25.30–20 Fire extinguishing equipment required.

* * * * *

(b) *Uninspected passenger vessels of at least 100 gross tons.* All uninspected passenger vessels of at least 100 gross tons must carry onboard hand-portable and semi-portable fire extinguishers per Table 76.50–10(a) in § 76.50–10 of this chapter.

* * * * *

PART 26—OPERATIONS

33. The authority citation for part 26 is revised to read as follows:

Authority: 46 U.S.C. 3306, 4104, 6101, 8105; Pub. L. 103–206, 107 Stat. 2439; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

34. Revise § 26.03–1(a), introductory text, to read as follows:

§ 26.03–1 Safety orientation.

(a) Before getting underway on any uninspected passenger vessel, the operator or master must ensure that suitable public announcements, instructive placards, or both, are provided in a manner that affords all passengers the opportunity to become acquainted with:

* * * * *

35. Revise § 26.03–2(a) to read as follows:

§ 26.03–2 Emergency instructions.

(a) The operator or master of each uninspected passenger vessel must ensure that an emergency check-off list is posted in a prominent and accessible place to notify the passengers and remind the crew of precautionary measures that may be necessary if an emergency situation occurs.

* * * * *

36. Add § 26.03–4 to read as follows:

§ 26.03–4 Charts and nautical publications.

(a) As appropriate for the intended voyage, all vessels must carry adequate and up-to-date—

(1) Charts of appropriate scale to make safe navigation possible;

(2) "U.S. Coast Pilot" or similar publication;

(3) Coast Guard light list;

(4) Tide tables; and

(5) Current tables, or a river current publication issued by the U.S. Army Corps of Engineers, or a river authority.

(b) As an alternative, you may substitute extracts or copies from the publications in paragraph (a) of this section. This information must be applicable to the area transited.

§ 26.03–5 [Removed]

37. Remove § 26.03–5.

38. Add § 26.03–6 to read as follows:

§ 26.03–6 Special permit.

(a) If the owner, operator, or agent donates the use of an uninspected passenger vessel to a charity for fundraising activities, and the vessel's activity would subject it to Coast Guard inspection, the OCMI may issue a special permit to the owner, operator, or agent for this purpose if, in the opinion of the OCMI, the vessel can be safely operated. Each special permit is valid for only one voyage of a donated vessel, which is used for a charitable purpose. Applications are considered and approved on a case-by-case basis.

(b) The criteria of § 176.204 of this chapter will apply to the issuance of a special permit. In addition, the owner, operator, or agent must meet each of these conditions—

(1) Any charity using a donated vessel must be a bona fide charity or a non-profit organization qualified under section 501(c)(3) of the Internal Revenue Code of 1986;

(2) All donations received from the fundraising must go to the named charity;

(3) The owner, operator, or agent may obtain a special permit for an individual vessel not more than four times in a 12-month period; and

(4) The owner, operator, or agent must apply to the local OCMI for a special permit prior to the intended voyage, allowing adequate time for processing and approval of the permit.

(c) Nothing in this part may be construed as limiting the OCMI from making such tests and inspections, both afloat and in dry-dock, that are reasonable and practicable to be assured of the vessel's seaworthiness and safety.

39. Revise § 26.03–8 to read as follows:

§ 26.03–8 Marine Event of National Significance special permits.

(a) For a Marine Event of National Significance, as determined by the Commandant, U.S. Coast Guard, a vessel may be permitted to engage in excursions while carrying passengers-for-hire for the duration of the event. Event sponsors seeking this determination must submit a written request to the Commandant (G-M) at least one year prior to the event.

(b) The owner, operator, or agent of a vessel that is registered as a participant in a Marine Event of National Significance may apply for a special permit to carry passengers-for-hire for the duration of the event. The master, owner, or agent of the vessel must apply to the Coast Guard OCMI who has jurisdiction over the vessel's first United States port of call. The OCMI may issue a Form CG–949 "Permit to Carry Excursion Party" if, in the opinion of the OCMI, the operation can be undertaken safely. The OCMI may require an inspection prior to issuance of a special permit to ensure that the vessel can safely operate under the conditions for which the permit is issued.

(c) The permit will state the conditions under which it is issued. These conditions must include the number of passengers-for-hire the vessel may carry, the crew required, the number and type of lifesaving and safety equipment required, the route and operating details for which the permit is issued, and the dates for which the permit will be valid.

(d) The permit must be displayed in a location visible to passengers.

(e) The carrying of passengers-for-hire during a Marine Event of National Significance must comply with the regulations governing coastwise transportation of passengers under 19 CFR 4.50(b) and 19 CFR 4.80(a).

40. Add § 26.03–9 to read as follows:

§ 26.03–9 Voyage plans for uninspected passenger vessels of at least 100 gross tons.

(a) The master must prepare a voyage plan that includes a crew and passenger list before taking an uninspected passenger vessel of at least 100 gross tons on a Great Lake, an ocean, or an international voyage.

(b) Before departure, the master must communicate the voyage plan ashore, either verbally or in writing. The voyage plan must go to either the vessel's normal berthing location or a representative of the owner or managing operator of the vessel. The master, owner, or operator of the vessel must make the voyage plan available to the Coast Guard upon request.

Subpart 26.20—Exhibition of Coast Guard License

41. Revise the heading of subpart 26.20 to read as set forth above.

42. Revise § 26.20–1 to read as follows:

§ 26.20–1 Must be available.

If a person operates a vessel that carries one or more passengers-for-hire, he or she is required to have a valid Coast Guard license suitable for the vessel's route and service. He or she must have the license in his or her possession and must produce it immediately upon the request of a Coast Guard boarding officer.

PART 30—GENERAL PROVISIONS

43. The authority citation for part 30 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; 49 CFR 1.45, 1.46; Section 30.01–2 also issued under the authority of 44 U.S.C. 3507; Section 30.01–05 also issued under the authority of Sec. 4109, Pub. L. 101–380, 104 Stat. 515.

44. In § 30.01–5, revise paragraph (d), introductory text, redesignate table 30.01–5(D) as table 30.01–5(d), and revise redesignated table 30.01–5(d) to read as follows:

§ 30.01–5 Application of regulations—TB/ALL.

* * * * *

(d) This subchapter is applicable to all U.S.-flag vessels indicated in Column 2 of Table 30.01–5(d), except as follows:

* * * * *

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Table 30.01-5(d)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1)	Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[3] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[3] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	(i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

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Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 30.01-5(d) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8)	Steam vessels >19.8 meters (65 feet) in length	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[5] in addition to the crew, as restricted by the definition of passenger.[7]				

Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel to the aftermost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civillan nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or linmology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tank barges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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PART 70—GENERAL PROVISIONS

45. The authority citation for part 70 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.45, 1.46; Section 70.01–15 also issued under the authority of 44 U.S.C. 3507.

46. In § 70.05–1, revise paragraph (a), introductory text, and table 70.05–1(a) to read as follows:

§ 70.05–1 United States flag vessels subject to the requirements of this subchapter.

(a) This subchapter is applicable to all U.S.-flag vessels indicated in Column 3 of table 70.05–1(a) that are 100 gross tons or more, except as follows:

* * * * *

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Table 70.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels subject to the provisions of--					
	Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 5, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[3]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[4] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade, B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew, C) Fishing vessels, not engaged in oceanwise service, may carry persons on the legitimate business of the vessel[4] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificaqted under--			Vessels subject to the provisions of --		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[6]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and are submersible vessels.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 70.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to: A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Key to symbols used in this table: ≤ is less than or equal to, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tank barges, see § 151.01-10(c) of this chapter.

12. See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13. Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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47. Add § 70.05–18 to read as follows:

§ 70.05–18 Applicability to vessels operating under an exemption afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or

(2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under the PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption. See 46 CFR 175.118 for information about applicable regulations for vessels that operate under the PVSA exemption.

48. Revise subpart § 70.10, consisting of § 70.10–1, to read as follows:

Subpart 70.10—Definition of Terms Used in This Subchapter

§ 70.10–1 Definitions.

Approved means approved by the Commandant, unless otherwise stated.

Barge means any non-self-propelled vessel.

Carrying freight for hire means the carriage of any goods, wares, or merchandise, or any other freight for a consideration, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person interested in the vessel.

Classed vessel means any vessel classed by the American Bureau of Shipping or other recognized classification society.

Coast Guard District Commander means an officer of the Coast Guard designated as such by the Commandant to command all Coast Guard activities within his or her district, which include the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Coastwise is a designation of service that includes all vessels normally navigating the waters of any ocean or the Gulf of Mexico 20 nautical miles or less offshore.

Commandant means the Commandant of the United States Coast Guard.

Consideration means an economic benefit, inducement, right, or profit including pecuniary payment accruing to an individual, person, or entity but not including a voluntary sharing of the actual expenses of the voyage by monetary contribution or donation of fuel, food, beverage, or other supplies.

Ferry is a designation that includes those vessels, in other than ocean or coastwise service, having provisions only for deck passengers and/or vehicles, operating on a short run, on a frequent schedule between two points over the most direct water route, and offering a public service of a type normally attributed to a bridge or tunnel.

Great Lakes is a designation of service that includes all vessels navigating the Great Lakes.

Headquarters means the Office of the Commandant, United States Coast Guard, Washington, DC 20593.

Lakes, bays, and sounds is a designation of service that includes all vessels navigating the waters of the lakes, bays, or sounds other than the waters of the Great Lakes.

Marine inspector or *inspector* means any person from the civilian or military branch of the Coast Guard assigned under the direction of an Officer in Charge, Marine Inspection, or any other person designated to perform duties related to the inspection, enforcement, and administration of Subttle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Motor vessel means any vessel more than 65 feet in length, which is propelled by machinery other than steam.

Ocean is a designation of service that includes all vessels navigating the waters of any ocean or the Gulf of Mexico more than 20-nautical miles offshore.

Officer in Charge, Marine Inspection means any person from the civilian or military branch of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of an inspection zone for the performance of duties related to the inspection, enforcement, and administration of Subtitle II, Title 46 U.S. Code; Title 33 U.S. Code; and regulations issued under these statutes.

Passenger means—

(1) On an international voyage, every person other than—

(i) The master and the members of the crew or other persons employed or engaged in any capacity onboard a vessel on the business of that vessel; and

(ii) A child under the age of one.

(2) On other than an international voyage, an individual carried on the vessel, except—

(i) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(ii) The master; or

(iii) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services.

Passenger-for-hire means a passenger for whom consideration is contributed as a condition of carriage on the vessel, whether directly or indirectly flowing to the owner, charterer, operator, agent, or any other person having an interest in the vessel.

Passenger vessel means—

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire;

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel and carrying at least one passenger-for-hire.

Pilot boarding equipment means a pilot ladder, accommodation ladder, pilot hoist, or combination of them, as required by this subchapter.

Point of access means the place on the deck of a vessel where a person steps onto or off pilot boarding equipment.

Recognized classification society means the American Bureau of Shipping or other classification society as recognized by the Commandant.

Rivers is a designation of service that includes all vessels whose navigation is restricted to rivers and/or canals, and to such other waters as may be designated by the Coast Guard District Commander.

Sailing vessel means a vessel with no mechanical means of propulsion, all propulsive power being provided by sails.

Short international voyage means an international voyage in the course of which a vessel is not more than 200 miles from a port or place in which the passengers and crew could be placed in safety. Neither the distance between the last port of call in the country in which

the voyage begins and the final port of destination, nor the return voyage, may exceed 600 miles. The final port of destination is the last port of call in the scheduled voyage at which the vessel commences its return voyage to the country in which the voyage began.

Specially suitable for vehicles is a designation used for a space that is designed for the carriage of automobiles or other self-propelled vehicles with batteries connected and fuel tanks containing gasoline on vessels on ocean or unlimited coastwise voyages. Requirements for the design and protection of spaces specially suitable for vehicles appear in subparts 72.15, 76.15, 77.05, 78.45, 78.47, and 78.83 of parts 72, 76, 77, and 78 of this subchapter. In addition, preparation of automobiles prior to carriage, with the exception of disconnecting battery cables, must be in accordance with the applicable provision of 49 CFR 176.905.

Submersible vessel means a vessel that is capable of operating below the surface of the water.

Vessel, unless otherwise noted in this subpart, includes all vessels indicated in column three of table 70.05–1(a) in § 70.05–1 that exceed 65 feet in length (measured from end-to-end over the deck, excluding sheer) and that carry more than six passengers-for-hire.

PART 90—GENERAL PROVISIONS

49. The authority citation for part 90 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub.L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

50. In § 90.05.1, revise paragraph (a), introductory text, and table 90.05–1(a) to read as follows:

§ 90.05–1 Vessels subject to the requirements of this subchapter.

(a) This subchapter is applicable to all U.S.-flag vessels indicated in Column 4 of Table 90.05–1(a) and to all such foreign-flag vessels which carry 12 or fewer passengers from any port in the United States to the extent prescribed by law, except as follows:

* * * * *

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Table 90.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels subject to the provisions of--				
	Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels Subchapter K or T--Small Passenger Vessels.[2,3,4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C--Uninspected Vessels.[2,3,4,7, and 8]	Subchapter U--Oceanographic Vessels.[2,3,4,7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[4] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 6] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[8] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or Part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

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Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the	All vessels not covered by columns 2, 3, 6, and 7	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would

Table 90.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]				otherwise be subject to these parts.[12]

Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *." Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tank barges, see § 151.01-10(c) of this chapter.

12 See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13 Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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PART 114—GENERAL PROVISIONS

51. The authority citation for part 114 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306, 3703; Pub. L. 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 114.900 also issued under 44 U.S.C. 3507.

52. In § 114.400(b), add, in alphabetical order, the definition of "Submersible vessel" to read as follows:

§ 114.400 Definitions of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 169—SAILING SCHOOL VESSELS

53. The authority citation for part 169 is revised to read as follows:

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 3306, 6101; Pub. L. 103–206, 107 Stat. 2439; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; 49 CFR 1.45, 1.46; § 169.117 also issued under the authority of 44 U.S.C. 3507.

54. Revise § 169.103(a) and (b) to read as follows:

§ 169.103 Applicability.

(a) This subchapter applies to each domestic vessel operating as a sailing school vessel.

(b) This subchapter does not apply to—

(1) Any vessel operating exclusively on inland waters, which are not navigable waters of the United States;

(2) Any vessel while laid up, dismantled, and out of service;

(3) Any vessel with title vested in the United States and which is used for public purposes except vessels of the U.S. Maritime Administration;

(4) Any vessel carrying one or more passengers;

(5) Any vessel operating under the authority of a current valid certificate of inspection issued per the requirements of 46 CFR chapter I, subchapter H or T, 46 CFR parts 70 through 78 and parts 175 through 187, respectively; or

(6) Any foreign vessel.

* * * * *

55. Amend § 169.107 as follows:

(1) Remove paragraph (g);

(2) Remove only the paragraph designations from remaining paragraphs (a) through (f) and (h) through (z);

(3) Add, in alphabetical order, the definition of "demise charter"; and

(4) Revise the definitions of "passenger" and "sailing instruction".

The additions and revisions read as follows:

§ 169.107 Definitions.

* * * * *

Demise charter means a legally binding document for a term of one year or more under which for the period of the charter, the party who leases or charters the vessel, known as the demise or bareboat charterer, assumes legal responsibility for all of the incidents of ownership, including insuring, manning, supplying, repairing, fueling, maintaining and operating the vessel. The term demise or bareboat charterer is synonymous with "owner pro hac vice".

* * * * *

Passenger on a sailing school vessel means an individual carried on the vessel except—

(1) The owner or an individual representative of the owner or, in the case of a vessel under charter, an individual charterer or individual representative of the charterer;

(2) The master;

(3) A member of the crew engaged in the business of the vessel, who has not contributed consideration for carriage, and who is paid for onboard services;

(4) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(5) An employee of the demise charterer of the vessel engaged in the business of the demise charterer; or

(6) A sailing school instructor or sailing school student.

* * * * *

Sailing instruction means teaching, research, and practical experience in operating vessels propelled primarily by sail, and may include any subject related to that operation and the sea, including seamanship, navigation, oceanography, other nautical and marine sciences, and maritime history and literature. In conjunction with any of those subjects, "sailing instruction" also includes instruction in mathematics and language arts skills to a sailing school student with a learning disability.

* * * * *

PART 175—GENERAL PROVISIONS

56. The authority citation for part 175 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3205, 3306, 3703; Pub.L 103–206, 107 Stat. 2439; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; 175.900 also issued under authority of 44 U.S.C. 3507.

57. Add § 175.118 to read as follows:

§ 175.118 Vessels operating under an exemption afforded in the Passenger Vessel Safety Act of 1993 (PVSA).

(a) The Passenger Vessel Safety Act of 1993 (PVSA) contained an allowance for the exemption of certain passenger vessels that are—

(1) At least 100 gross tons but less than 300 gross tons; or

(2) Former public vessels of at least 100 gross tons but less than 500 gross tons.

(b) The owner or operator of a vessel must have applied for an exemption under PVSA by June 21, 1994, and then brought the vessel into compliance with the interim guidance in Navigation and Inspection Circular (NVIC) 7–94 not later than December 21, 1996. The PVSA exemption is valid for the service life of the vessel, as long as the vessel remains certified for passenger service. If the Certificate of Inspection (COI) is surrendered or otherwise becomes invalid (not including a term while the vessel is out of service but undergoing an inspection for recertification), the owner or operator must meet the appropriate inspection regulations to obtain a new COI without the PVSA exemption.

(c) Except where the provisions of subchapter H of this chapter apply, the owner or operator must ensure that the vessel meets the requirements of this subchapter, meets any requirements the OCMI deems applicable, and meets any specific additions or exceptions as follows:

(1) If a vessel does not meet the intact stability requirements of subchapter S of this chapter, the vessel's route(s) will be limited to an area within 20 nautical miles from a harbor of safe refuge, provided the vessel has a history of safe operation on those waters. The OCMI may further restrict the vessel's routes if the vessel's service history, condition, or other factors affect its seaworthiness or safety.

(2) The vessel may not carry more than 150 passengers, and not more than 49 passengers in overnight accommodations.

(3) The owner or operator must crew the vessel under the requirements of this subchapter. All officers must be licensed for the appropriate vessel tonnage. The OCMI may require a licensed engineer for those vessels of at least 200 gross tons. Vessels carrying more than 50 passengers must have an additional deckhand, and all deckhands on vessels carrying more than 50 passengers must be adequately trained. The crew members on a vessel of at least 200 gross tons, except those operated exclusively on lakes and rivers, are required to hold merchant mariner

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documents and 50 percent of the unlicensed deck crew must be rated as at least an able seaman.

(4) The vessel owner or operator must comply with the lifesaving arrangements located in part 180 of this chapter, except that inflatable liferafts are required for primary lifesaving. A rescue boat or suitable rescue arrangement must be provided to the satisfaction of the OCMI.

(5) The vessel owner or operator must comply with the fire protection requirements located in part 181 of this chapter. When a vessel fails to meet the fire protection and structural fire protection requirements of this subchapter, the vessel owner or operator must meet equivalent requirements to the satisfaction of the cognizant OCMI or submit plans for approval from the Coast Guard Marine Safety Center.

(6) At a minimum, the owner or operator must outfit the vessel with portable fire extinguishers per 46 CFR 76.50. In addition, the vessel must meet any additional requirements of the OCMI, even if they exceed the requirements in 46 CFR 76.50.

(7) In addition to the means-of-escape requirements of 46 CFR 177.500, the vessel owner or operator must also meet the requirements for means of escape found in 46 CFR 78.47–40.

(d) The OCMI conducts an inspection and may issue a COI if the vessel meets these requirements. The COI's condition of operation must contain the following endorsement: "This vessel is operating under an exemption afforded in The Passenger Vessel Safety Act of 1993 and as such is limited to domestic voyages and a maximum _____ of passengers and may be subject to additional regulations and restrictions as provided for in Sections 511 and 512 of the Act."

58. In § 175.400, add a definition for "Submersible vessel", in alphabetical order, to read as follows:

§ 175.400 Definitions of terms used in this subchapter.

* * * * *

Submersible vessel means a vessel that is capable of operating below the surface of the water.

* * * * *

PART 188—GENERAL PROVISIONS

59. The authority citation for part 188 is revised to read as follows:

Authority: 46 U.S.C. 2113, 3306; Pub. L 103–206, 107 Stat. 2439; 49 U.S.C. 5103, 5106; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

60. In § 188.05–1, revise paragraph (a), introductory text, and table 188.05–1(a) to read as follows:

188.05–1 Vessels subject to requirements of this subchapter.

(a) This subchapter is applicable to all U.S.-flag vessels indicated in Column 6 of Table 188.05–1(a) to the extent prescribed by applicable laws and the regulations in this subchapter, except as follows:

* * * * *

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Table 188.05-1(a)

Method of propulsion, qualified by size or other limitation.[1]	Vessels subject to the provisions of--				
	Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1	Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(1) Motor, all vessels except seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[3]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[4] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels > 15 gross tons carrying freight-for-hire, except those covered by columns 2 and 3, and all vessels when carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 8] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(2)	Motor, seagoing motor vessels ≥ 300 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels, including recreational vessels not engaged in trade. This does not include vessels covered by columns 2 and 3, and vessels engaged in the fishing industry.	All vessels not covered by columns 2, 3, 4, 6, and 7.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(3)	Non-self-propelled, vessels < 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by column 3.	None.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]
(4)	Non-self-propelled, vessels ≥ 100 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	ii) All vessels that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel, or E) Carry more than 12 passengers on an international voyage.[7]	All seagoing barges except those covered by columns 2 and 3.	All barges carrying passengers or passengers-for-hire, except those covered by columns 3 and 6.	All seagoing barges engaged in oceanographic research.	All tank barges carrying cargoes listed in Table 151.05 of this chapter or unlisted cargoes that would otherwise be subject to part 151.[1, 11, and 12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 8] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U—Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(5)	Sail,[13] vessels ≤ 700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[6] in addition to the crew, as restricted by the definition of passenger.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]
(6)	Sail,[13] vessels >700 gross tons.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying passengers or passengers-for-hire, except recreational vessels.[7]	Those vessels carrying dangerous cargoes when required by 46 CFR part 98.	None.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 5]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 8]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(7)	Steam, vessels ≤ 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[9] in addition to the crew, as restricted by the definition of passenger.[7]	All tugboats and towboats. All vessels carrying dangerous cargoes when required by 46 CFR Part 98.	All vessels not covered by columns 2, 3, 4, and 6.	None.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Table 188.05-1(a) (continued)

Method of propulsion, qualified by size or other limitation.[1]		Vessels inspected and certificated under--			Vessels subject to the provisions of--		
		Subchapter D--Tank Vessels.[2]	Subchapter H--Passenger Vessels[2, 3, 4, and 5] or Subchapter K or T--Small Passenger Vessels.[2, 3, and 4]	Subchapter I--Cargo and Miscellaneous Vessels.[2 and 6]	Subchapter C--Uninspected Vessels.[2, 3, 6, 7, and 9]	Subchapter U--Oceanographic Vessels.[2, 3, 6, 7, and 9]	Subchapter O--Certain Bulk and Dangerous Cargoes.[10]
Column 1		Column 2	Column 3	Column 4	Column 5	Column 6	Column 7
(8)	Steam, vessels > 19.8 meters (65 feet) in length.	All vessels carrying combustible or flammable liquid cargo in bulk.[5]	i) All vessels carrying more than 12 passengers on an international voyage, except recreational vessels not engaged in trade.[7] ii) All vessels < 100 gross tons that-- A) Carry more than 6 passengers-for-hire whether chartered or not, or B) Carry more than 6 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iii) All vessels ≥ 100 gross tons that-- A) Carry more than 12 passengers-for-hire whether chartered or not, or B) Carry more than 12 passengers when chartered with the crew provided, or C) Carry more than 12 passengers when chartered with no crew provided, or D) Carry at least 1 passenger-for-hire and is a submersible vessel.[7] iv) These regulations do not apply to-- A) Recreational vessels not engaged in trade. B) Documented cargo or tank vessels issued a permit to carry 16 or fewer persons in addition to the crew. C) Fishing vessels, not engaged in ocean or coastwise service, may carry persons on the legitimate business of the vessel[9] in addition to the crew, as restricted by the definition of passenger.[7]	All vessels not covered by columns 2, 3, 6, and 7.	None.	All vessels engaged in oceanographic research.	All vessels carrying cargoes in bulk that are listed in part 153, table 1, or part 154, table 4, or unlisted cargoes that would otherwise be subject to these parts.[12]

Key to symbols used in this table: ≤ is less than or equal to, > is greater than, < is less than, and ≥ is greater than or equal to.

Footnotes:

1 Where length is used in this table, it means the length measured from end to end over the deck, excluding sheer. This expression means a straight line measurement of the overall length from the foremost part of the vessel, measured parallel to the centerline.

2 Subchapters E (Load Lines), F (Marine Engineering), J (Electrical Engineering), N (Dangerous Cargoes), S (Subdivision and Stability), and W (Lifesaving Appliances and Arrangements) of this chapter may also be applicable under certain conditions. The provisions of 49 CFR parts 171-179 apply whenever packaged hazardous materials are on board vessels (including motorboats), except when specifically exempted by law.

3 Public nautical schoolships, other than vessels of the Navy and Coast Guard, must meet the requirements of part 167 of subchapter R (Nautical Schools) of this chapter, Civilian nautical schoolships, as defined by 46 U.S.C. 1331, must meet the requirements of subchapter H (Passenger Vessels) and part 168 of subchapter R (Nautical Schools) of this chapter.

4 Subchapter H (Passenger Vessels) of this chapter covers only those vessels of 100 gross tons or more, subchapter T (Small Passenger Vessels) of this chapter covers only those vessels of less than 100 gross tons, and subchapter K (Small Passenger Vessels) of this chapter covers only those vessels less than 100 gross tons carrying more than 150 passengers or overnight accommodations for more than 49 passengers.

5 Vessels covered by subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter, where the principal purpose or use of the vessel is not for the carriage of liquid cargo, may be granted a permit to carry a limited amount of flammable or combustible liquid cargo in bulk. The portion of the vessel used for the carriage of the flammable or combustible liquid cargo must meet the requirements of subchapter D (Tank Vessels) in addition to the requirements of subchapter H (Passenger Vessels) or I (Cargo and Miscellaneous Vessels) of this chapter.

6 Any vessel on an international voyage is subject to the requirements of the International Convention for Safety of Life at Sea, 1974 (SOLAS).

7 The terms "passenger(s)" and "passenger(s)-for-hire" are as defined in 46 U.S.C. 2101(21)(21a). On oceanographic vessels, scientific personnel onboard shall not be deemed to be passengers nor seamen, but for calculations of lifesaving equipment, etc., must be counted as persons.

8 Boilers and machinery are subject to examination on vessels over 40 feet in length.

9 Under 46 U.S.C. 441 and oceanographic research vessel "* * * being employed exclusively in instruction in oceanography or limnology, or both, or exclusively in oceanographic research, * * *" Under 46 U.S.C. 443, "an oceanographic research vessel shall not be deemed to be engaged in trade or commerce." If or when an oceanographic vessel engages in trade or commerce, such vessel cannot operate under its certificate of inspection as an oceanographic vessel, but shall be inspected and certificated for the service in which engaged, and the scientific personnel aboard then become persons employed in the business of the vessel.

10 Bulk dangerous cargoes are cargoes specified in table 151.01-10(b); in table 1 of part 153, and in table 4 of part 154 of this chapter.

11 For manned tankbarges, see § 151.01-10(c) of this chapter.

12 See § 151.01-15, 153.900(d), or 154.30 of this chapter as appropriate.

13 Sail vessel means a vessel with no auxiliary machinery on board. If the vessel has auxiliary machinery, refer to motor vessels.

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PART 199—LIFESAVING SYSTEMS FOR CERTAIN INSPECTED VESSELS

61. The authority citation for part 199 is revised to read as follows:

Authority: 46 U.S.C. 3306, 3703; Pub. L 103–206, 107 Stat. 2439; 46 CFR 1.46.

62. In § 199.30, revise the definition of "passenger vessel" to read as follows:

§ 199.30 Definitions.

* * * * *

Passenger vessel means—

(1) On an international voyage, a vessel of at least 100 tons gross tonnage carrying more than 12 passengers; and

(2) On other than an international voyage, a vessel of at least 100 tons gross tonnage—

(i) Carrying more than 12 passengers, including at least one passenger-for-hire; or

(ii) That is chartered and carrying more than 12 passengers; or

(iii) That is a submersible vessel carrying at least one passenger-for-hire.

* * * * *

Dated: April 18, 2002.

Paul J. Pluta,

Rear Admiral, U.S. Coast Guard, Assistant Commandant for Marine Safety, Security and Environmental Protection.

[FR Doc. 02–11060 Filed 5–14–02; 8:45 am]

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Part III

Department of Defense

General Services Administration

National Aeronautics and Space Administration

48 CFR Part 31

Federal Acquisition Regulation; Training and Education Cost Principle; Proposed Rule

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DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 31

[FAR Case 2001–021]

RIN 9000–AJ38

Federal Acquisition Regulation; Training and Education Cost Principle

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) are proposing to amend the Federal Acquisition Regulation (FAR) "Training and Education Costs" cost principle.

DATES: Interested parties should submit comments in writing on or before July 15, 2002 to be considered in the formulation of a final rule.

ADDRESSES: Submit written comments to: General Services Administration, FAR Secretariat (MVP), 1800 F Street, NW, Room 4035, ATTN: Laurie Duarte, Washington, DC 20405.

Submit electronic comments via the Internet to: *farcase.2001–021@gsa.gov*. Please submit comments only and cite FAR case 2001–021 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: The FAR Secretariat, Room 4035, GS Building, Washington, DC, 20405, at (202) 501–4755 for information pertaining to status or publication schedules. For clarification of content, contact Mr. Jeremy Olson at (202) 501–3221. Please cite FAR case 2001–021.

SUPPLEMENTARY INFORMATION:

A. Background

Currently, FAR 31.205–44, Training and education costs, is somewhat restrictive in that the cost principle—

- Differentiates between vocational training, part-time college level education, full-time education, and specialized programs with numerous specific limitations on the allowability of costs associated with each of these categories. Historically, most of these specific allowability limitations were intended to reflect industry practices, *e.g.*, the 156 hours per year limit on compensation for part-time college level education, the 2-year limitation on full-time graduate education, and the 16 weeks per year limit for specialized programs; and
- Requires full-time education courses or degrees be "related to the field in which the employee is working or may reasonably be expected to work." The Councils propose to eliminate the current or future job relationship requirement since the associated costs represent minimal risk to the Government; and the standard is difficult to enforce, and counter to Government initiatives supporting upward mobility, job retraining, and educational advancement.

The proposed rule makes the costs associated with training and education generally allowable, subject to five public policy exceptions that are retained from the current cost principle. Except for these five expressly unallowable cost exceptions, the reasonableness of specific contractor training and education costs can best be assessed by reference to FAR 31.201–3, Determining reasonableness.

This is not a significant regulatory action and, therefore, was not subject to review under Section 6(b) of Executive Order 12866, Regulatory Planning and Review, dated September 30, 1993. This rule is not a major rule under 5 U.S.C. 804.

B. Regulatory Flexibility Act

The Councils do not expect this proposed rule to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because most contracts awarded to small entities use simplified acquisition procedures or are awarded on a competitive, fixed-price basis, and do not require application of the cost principle discussed in this rule. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. We invite comments from small businesses and other interested parties. The Councils will consider comments from small entities concerning the affected FAR Part 31 in accordance with 5 U.S.C. 610. Interested parties must submit such comments separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 2001–021), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose information collection requirements that require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 31

Government procurement.

Dated: May 9, 2002.

Al Matera,

Director, Acquisition Policy Division.

Therefore, DoD, GSA, and NASA propose amending 48 CFR part 31 as set forth below:

PART 31—CONTRACT COST PRINCIPLES AND PROCEDURES

1. The authority citation for 48 CFR part 31 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Revise section 31.205–44 to read as follows:

31.205–44 Training and education costs.

Training and education costs are allowable, except as follows:

(a) Overtime compensation for training and education is unallowable.

(b)(1) *Full-time college level education.* Costs of tuition, fees, training materials and textbooks, subsistence, salary, and any other emoluments in connection with full-time college level education, including that provided at the contractor's own facilities, are unallowable at—

(i) An undergraduate level; and

(ii) A postgraduate level, except where the course or degree pursued is related to the field in which the employee is working or may reasonably be expected to work and is limited to a total period not to exceed 2 school years or the length of the degree program, whichever is less, for each employee so trained.

(2) *Part-time college level education.* The cost of salaries for attending undergraduate or graduate level classes on a part-time basis is unallowable, except for attending such classes during working hours where circumstances do not permit attendance at these classes before or after regular working hours.

(c) Grants to educational or training institutions, including the donation of facilities or other properties, scholarships, and fellowships, are considered contributions and are unallowable.

(d) Training or education costs for other than bona fide employees are unallowable, except that the costs incurred for educating employee dependents (primary and secondary level studies) when the employee is working in a foreign country where suitable public education is not available may be included in overseas differential pay.

(e) Costs of college plans for employee dependents are unallowable.

[FR Doc. 02–12079 Filed 5–14–02; 8:45 am]

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Part IV

The President

Proclamation 7560—National Hurricane Awareness Week, 2002

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Presidential Documents

Title 3—

The President

Proclamation 7560 of May 13, 2002

National Hurricane Awareness Week, 2002

By the President of the United States of America

A Proclamation

Hurricanes can devastate our communities, endangering thousands of human lives and causing billions of dollars in property damage. Stemming from the ocean, the atmosphere, and heat from the sea, hurricanes bring with them the potential for high winds, tornadoes, torrential rains, flooding, and ocean water storm surges. Their fierce and destructive power requires that we all take steps to reduce our vulnerability to this natural hazard.

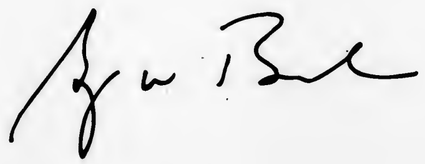
According to the Federal Emergency Management Agency (FEMA) and the National Oceanic and Atmospheric Administration, an average of ten tropical storms develop annually over the Atlantic Ocean, Caribbean Sea, and Gulf of Mexico. Every year, an average of six of these storms grow strong enough to become hurricanes. Approximately five hurricanes strike the United States coastline every 3 years. Out of these, two will have winds above 111 miles per hour, qualifying them as major hurricanes. The resulting high winds and high waves can seriously damage homes, businesses, public buildings, and critical infrastructure, and ultimately have the potential to injure people and claim lives.

To help avoid damage and help ensure the public's safety from hurricane hazards, FEMA recommends a variety of preventative steps for both individuals and communities. For example, construction measures can help minimize property destruction. These include installing storm shutters over exposed glass and adding hurricane straps to hold the roof of a structure to its walls and foundation. More complex measures, such as elevating coastal homes and businesses, can further reduce a property's susceptibility. In addition, communities can reduce their vulnerability by adopting wind- and flood-resistant building codes and by implementing sound land-use planning.

More than 50 million people live along hurricane-prone coastlines in the United States, with millions of tourists visiting these areas annually. During National Hurricane Awareness Week, I encourage those who live in coastal areas, as well as all concerned Americans, to be more vigilant in preparing for hurricanes and other natural disasters before they occur. By promoting awareness of hurricane hazards and helping with relief efforts when these powerful storms strike, we can reduce the risks of hurricane damage and help our neighbors recover more quickly from their devastating effects. With preparation, forecasting, and coordination, we can save lives and improve our Nation's ability to withstand the impact of hurricanes.

NOW, THEREFORE, I, GEORGE W. BUSH, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim May 19 through May 25, 2002, as National Hurricane Awareness Week. I call on government agencies, private organizations, schools, news media, and residents in hurricane-prone areas to share information about hurricane preparedness and response in order to help prevent storm damage and save lives.

IN WITNESS WHEREOF, I have hereunto set my hand this thirteenth day of May, in the year of our Lord two thousand two, and of the Independence of the United States of America the two hundred and twenty-sixth.



[FR Doc. 02–12371
Filed 5–14–02; 11:34 am]
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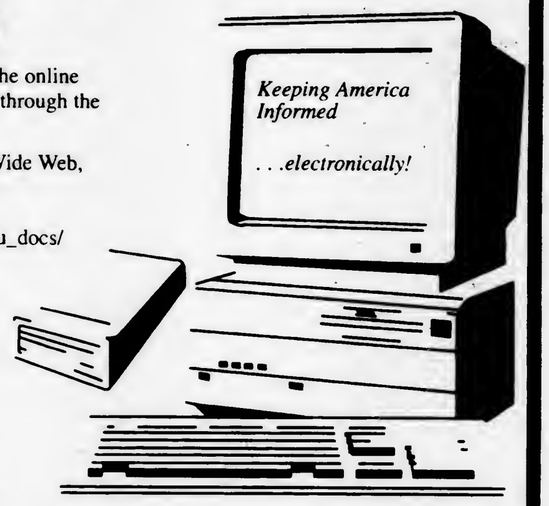
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